מסכת קידושין
על פי המאירי

Tractate Kiddushin According to the Meiri

By Yecheskel D. Folger

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APPROVAL LETTER FROM RAV PAM O"BM

BS'D 21 Iyar, 36 l'sfirat ha'omer, 5749

Increasing numbers of persons nowadays study Torah and thirst for G-d's word. Many books of halacha, agada and musar are being printed in English for the convenience of those who are more familiar with this langauge. Several holy seforim have also been translated into English, and more persons now have ready access to them.

But translation is an art rather than labor, and not all persons can prepare a proper translation. The translator must have a clear and careful understanding of the source sefer, and he must also master the language into which he translates. Only then will the resulting work be correct, well written and to the point.

The translation of the Meiri which was prepard by my friend and former student of our Yeshiva, Yecheskel Dovid Folger, is a work of this sort. After reviewing small parts of different sections, I saw that he had the wisdom properly to explain the approach of the Meiri in organized fashion, with good understanding, and in brief and clear language.

Avraham Yakov HaKohen Pam

FOREWORD

R. Menahem b. Solomon Meiri (1249-1316) spent the greater part of his life in Perpignan in the Provence section of southeast France. He was a renowned commentator and scholar of the Talmud. His most distinguished colleague was the Rashba with whom he corresponded frequently.

The name Meiri was derived from an ancestor whose name was Meir. His Provencal name was Don Vidal Solomon (the son of Solomon).

The decades which preceded the Meiri's birth were unsettled times in France, Provence and Spain. The schools of the French Tosefists were in large part discontinued in this period. The Talmud was burned in Paris in 1244, five years before the Meiri's birth. Earlier, in 1215, Pope Innocent III had decreed that Jews over 12 years old were to wear distinctive clothing and to pay an annual tax to local clergy. Conflict between the clergy and temporal forces in Provence was accompanied by persecution of Jews.

The Meiri's works may be viewed in part as an attempt to provide order for disordered times, and to organize materials for a generation too distracted to organize and synthesize without assistance. He provides a synthesis of the views of the commentators who flourished before the onset of the turbulence. He emphasizes orderly procedure. Each discussion is begun from elementary fundamentals and then moves gradually, by stages, to the most complex dialectic. There are brief introductions before each tractate, perek, and topic. Complicated matters are separated into individual parts which are dissected separately and are then recombined for easy understanding.

The Meiri seeks to establish halacha from the talmudic texts, and at the same time to use the process of establishing halacha as a tool to broaden understanding of the text. It was his strongly held view that a student has not achieved full understanding until he understands how the halacha is derived from the Gemara.

The Meiri emphasizes study of the Rambam's halachic conclusions for use in this endeavor. Prior codifiers, primarily Spanish, had selected from each tractate only what was relevant for the halacha under modern conditions, substantially omitting all else. The Rambam was an exception; in abbreviated fashion he treats all halachic matters, whether or not currently applicable. The Rambam's source material is immense and covered the Bavli, the Yerushalmi, the Tosefta and other sources, including the contributions of the Geonim, and his conclusions are organized by topic in clear Mishnaic Hebrew. This approach is emulated by the Meiri.

Another important aspect of the Meiri's commentary is his emphasis on the Mishnah. He develops each *sugyah* from its origin and for this reason he assigns a

separate section to the Mishnah and explains it fully before turning to the later development and discussions of the *amoraim*. In these later discussions he refers the reader back to the Mishnah for matters already explained there. Distinguish this from Rashi who in the Mishnah refers the reader to the Gemara for the clarification of ambiguities.

The Meiri's style contributes much to the lucidity of his presentation. His Hebrew is accurate, precise, direct and unencumbered.

His chief work is the Beit ha-Behirah on the Talmud, which he wrote from 1287 to 1300. In it he summarizes the subject matter of the Talmud, giving both the meaning and the halacha derived from it. The work covers the orders of Mo'ed, Nashim, and Nezikin, and the tractates Berakot, Hallah, Hullin, Niddah, Tamid, Middot, and Mikva'ot. Beit ha-Behirah has been republished in its entirety in recent years from a single complete manuscript in the Palatinate Library in Parma, Italy.

Each tractate and its individual chapters is preceded by a short preface outlining the subject in general terms. The discussion begins with a presentation of the fundamental principles involved and proceeds with an explanation of the opinions of each of the *amoraim*. The Meiri in conclusion sums up and collates these opinions, giving the relevant *halacha* as he sees it. Relevant analyses are drawn from the Yerushalmi. An abundance of comments handed down by German, Provencal, and Spanish scholars with their different interpretations are incorporated, but each one is given separately to prevent confusion on the part of the reader. In an unusual approach, these scholars are not mentioned by name but rather by epithet. For example, Rashi is referred to as the "greatest of rabbis," The Rambam is referred to as the "greatest of authors," and the Alfasi is referred to as the greatest of *posekim*."

The Meiri's activity also included other halachic rulings, talmudic exposition, biblical commentary, customs, ethics, and philosophy.

The vast majority of Meiri's works remained in manuscript until very recently, probably on account of their exceptional length, which made it practically impossible to copy them in full. It is also possible that his works were neglected because of an increasingly intense emphasis by Torah scholars on *pilpul*, or dialectic. A small number of his works were published in the second half of the 18th century and the majority of them from the beginning of the 20th century up to the present day. An exception is his commentary to the Book of Proverbs which was first published in Portugal in 1492, and then included in the Kehillot Moshe edition of Mikra'ot Gedolot (Amsterdam, 1724).

The preceding material was abstracted from Talpioth IV, 1 (1949) and a comprehensive article in Encyclopedia Judaica. These sources should be consulted for further biographical information.

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The present work is a complete and expanded English adaptation of the Beit ha-Behirah on Tractate Kiddushin of the Babylonian Talmud. It is not a literal translation. It reworks the Meiri into contemporary terminology and modern modes of argumentation. There is no abridgment, and it preserves all that the Meiri actually wrote.

My goal has been to enable modern English speaking students of the Talmud to penetrate beyond a basic comprehension of the Talmudic text, which they can arrive at using the Soncino translation. Using the Meiri, these students can now gain access to the underlying Talmudic dialectic.

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I acknowledge with gratitude the patience with which my wife Rachell and my children Chayi, Yomtov Shaul and Eliezer Menahem endured the many hours I devoted to this work. Dr. Stanley Sprecher, Professor A. Kirschenbaum and Rabbi M. C. Fuchs have offered encouragement and scholarly advice. Mr. Samuel Gross of Sefer Hermon Press bestowed abundant kindnesses. I thank them all. I am also grateful to those readers who will write to me to point out errors to be corrected in future editions.

I close with a blessing of *shehehianu* to *Hashem* for the peace of mind and many blessings which have allowed me to complete this work.

5 Sivan 5749.

INTRODUCTION

Tractate Kiddushin

With the Assistance of the Almighty, Amen

Tractate Kiddushin is the first Tractate in *Seder Nashim* which deals with marital bonds and related matters.

Before the Torah was given there were no formal marital bonds. Relationships between "husband" and "wife" were casually instituted and separated. The casualness of the relationship eliminated the wife's sense of obligation to work for her husband, to remain faithful to him, and to refrain from uttering oaths in anger. In contrast, the bonds of *yibbum* could not be dissolved by *halizah* or otherwise.

The Torah formalized marital bonds by providing for *kiddushin* and marriage in the presence of witnesses, requiring that the wife be given a *kethubah*, and permitting divorce only by formal *get*. *yibbum* was made dissolvable by way of *halizah.* The husband was given the authority to punish his wife if despite his warning she secluded herself with another man. Finally, the husband was given the authority to absolve his wife of her oaths.

All of these matters are discussed in Seder Nashim. Tractate Kiddushin is the first tractate in the grouping because it deals with betrothal, which begins the marital relationship.

The discussion is divided into four *perokim* on the following outline:

how women are betrothed (this discussion includes information on the precise words which must be used and the precise context which is required);

who may betroth and through whom (this discussion includes information on the cases in which the father's participation is or is not required, as well as the effect and the validity of conditions precedent to betrothal);

errors in betrothals;

categories of women for whom:

betrothal is permitted;

betrothal is effective but forbidden; and

betrothal is forbidden and ineffective.

Kiddushin is a kind of acquisition whereby the groom obtains rights in his bride. Accordingly, the discussion of *kiddushin* leads to a discussion of business and other acquisitions. Similarly, the listing of women who may not be betrothed evolves into a discussion of the status of the children of forbidden marriages. This further develops into a general discussion of familial purity, namely, which families are permitted to marry into the Jewish people or into the priesthood.

This is the basis of the Tractate in general, but other matters are included in digressions.

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The first *perek* focuses on the mechanics of betrothal, and uses this discussion as a base from which to discuss acquisitions in non-marital contexts. In the course of this discussion, note is made of the religious precept which commands men, but not women, to have children, and this evolves into a discussion of other precepts which bind men only. There follows an analysis of those precepts which apply worldwide and those which apply only in Eretz Israel. The *perek* also deals with certain extraneous matters.

PEREK I

[2:1]

[Modes of *Kiddushin*]

The first Mishnah begins with an explanation of how *kiddushin* is effected and states:

> A woman is acquired in marriage in three ways and acquires her freedom in two. She is acquired by money, by deed, or by cohabitation. "By money": Beth Shammai maintain, a *denar* or the worth of a *denar*; Beth Hillel rule, a *perutah* or the worth of a *perutah*. And how much is a *perutah*? An eighth of an Italian *issar*. And she acquires her freedom by divorce or by her husband's death. A *yebamah* is acquired by cohabitation, and acquires her freedom by *halizah* or by the *yabam*'s death.

[The significance of *kiddushin*]

> Once a woman is betrothed by a man in *kiddushin*:
>
> (i) no other man can attain any marital rights in the betrothed woman, and
>
> (ii) she is not permitted to cohabit with any other man during the lifetime of the man who betrothed her (unless she obtains a get).

Kiddushin does not result in a consummated marriage. It suffices only to institute the intermediate status of betrothal. This intermediate status is sufficient to bring about the results just discussed, but does not have the legal consequences of a consummated marriage.

Specifically, betrothal is not sufficient to obligate the woman to perform the seven types of work which married women must perform for their husbands[1], or to entitle the groom to the benefit of his bride's labor, or to inherit from her, or to have rights in lost items which are found by her. These entitlements begin only after the marriage is consummated by *huppah*.

Kiddushin can be effected in three ways: money, deed or cohabitation, both natural and unnatural.

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[1]See Keth. 59:2.

[A woman's acquisition of her freedom]

A woman acquires her freedom, to leave the control of the betrothing person (or the control of her husband if the marriage was completed by *huppah)*, in two ways. These are divorce and the death of the husband or the betrothing person.

[The Mishna's emphasis on the numbers *three* and *two*]

The Gemara explains that the Mishna's emphasis on the number **three** is to stress that there are only three modes of *kiddushin*. It also points out that although *huppah* can complete a betrothal which was instituted by *kiddushin*, *huppah* alone cannot bring about betrothal.

Similarly, the number **three** is intended to preclude the validity of *halifin* as *kiddushin*. *halifin* is valid in business transactions even if the object transferred by the buyer to the seller in the *halifin* ceremony is worth less than a *perutah*. Because *halifin* is essentially ceremonial and non-monetary, it is invalid as *kiddushin*, even where the item given in the *halifin* exchange is of great value.

The second numerical limitation, that a woman acquires her freedom in **two ways**, is designed to emphasize that she cannot acquire her freedom by *halizah*, notwithstanding that a *yebamah* does acquire her freedom by *halizah*. In relation to divorce, Scripture requires that "He shall write to her a **book** of separation,"[2] from which the Rabbis deduce that a **book** (*i.e.*, a *get*) can separate her, and nothing else.

[Scriptural or Rabbinic derivation]

Now, the three ways in which a woman can be acquired are all of Scriptural rather than Rabbinic derivation. The Meiri provides numerous proofs:

1. The Gemara derives the validity of money, deed and cohabitation from Scriptural verses:

   money, from the verse "When a man shall **take** a woman," (**takin**g connotes the passage of money from hand to hand);

   deeds, from the verse in relation to divorce "and she shall leave [her husband] and belong to another man,"[3] (the apposition of divorce to *kiddushin* implies that a deed is valid for *kiddushin* in the same manner as a *get* is valid for divorce);

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[2]Deut.24:1.

[3]Deut.24:2.

cohabitation, from the verse "and he shall possess her."[4]

2. The Gemara[5] initially suggests that *huppah* may be valid as *kiddushin*, and ascribes the Mishna's failure to mention *huppah* to the fact that *huppah*, as distinguished from money, deed and cohabitation, is not Scriptural.

3. There is considerable discussion in the Gemara on why Scripture refers to all three modes and on why any one of them could not be derived from another of them or from any other two[6].

4. In questioning Beth Shammai's view that the monetary minimum is a *denar*, the Gemara asks "But monetary kiddushin is written in the Torah (and a *perutah* is considered money for all purposes in the Torah)!"[7]

Despite all these proofs, Rav Hai Gaon holds that monetary *kiddushin* is Rabbinic. His source is a discussion in which the Gemara analyzes the power of the Rabbis to nullify *kiddushin*.[8] The Gemara readily accepts the rule where *kiddushin* is by way of money, since "betrothal by money is effected by sanction of the Rabbis, and is logically subject to revocation by them." The power to abrogate is considered more difficult where *kiddushin* is by cohabitation, and is explained only on the ground that the Rabbis are empowered to designate the cohabitation as having been illicit, rather than for the purpose of *kiddushin*.

Rav Hai explains that nullification is more readily applied to monetary *kiddushin* because such *kiddushin* is Rabbinic only, and is consequently subject to revocation by them. *kiddushin* by cohabitation is Scriptural, and can be abrogated only if the purpose of the cohabitation is not for *kiddushin*.

The Meiri does not consider this proof persuasive. To the contrary, monetary *kiddushin* is as much Scriptural as is *kiddushin* by cohabitation. It is nevertheless more readily abrogated by the Rabbis because of their power to cause an abandonment of the money or other property which was used to effect *kiddushin*. The result of the abandonment is that the betrother did not perform the *kiddushin* with his own money, and the *kiddushin*, although Scriptural, must fail automatically. It does not matter whether the property ceased to be his on Rabbinic grounds or

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[4]Deut. 24:1.

[5]5:2.

[6]5:1.

[7]11:2.

[8]Keth.3:1.

otherwise[9].

The Rambam concurs with Rav Hai Gaon. He argues that all matters which are derived by applying the principles of *hekesh*, *kal v'homer*, *gezerah shawah*, or any other of the 13 authorized rules of derivation and interpretation, are Rabbinic except where the Rabbis expressly state that the matter is Scriptural. In fact, unless there is an express statement to the contrary, even matters designated as having been transmitted to Moses on Sinai are Rabbinic only.

It follows that monetary *kiddushin* is Rabbinic, since its validity depends on the *gezerah shawah* in which the verb **take** appears both in the context of *kiddushin*[10] as well as in the context of the monetary purchase of real estate[11].

The Rambam concedes that consistent application of this proposition would result in our ascribing Rabbinic status to *kiddushin* by deed as well as to *kiddushin* by money, since the validity of a deed is derived by *hekesh*[12]. But the validity of a deed is Scriptural because the Gemara expressly so states[13].

This is the Rambam's view, but the Meiri prefers to emphasize the many citations which evidence that all three types of *kiddushin* are Scriptural. Besides, the Meiri questions the Rambam's premise that precepts derived from the accepted 13 rules of interpretation are Rabbinic. The requirement to honor the wife of one's father is taken by the Gemara to be Scriptural because it is derived by applying the rules of interpretation.[14]

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[9]The same result would obtain where the Rabbis do not decree an abandonment, but merely proscribe benefit from the item.

[10]"If a man **takes** a wife." Deut.22:13.

[11]"I have given the money for the field, **take** it from me." Gen.23:13.

[12]"And she shall **leave** his house [the house of the husband from whom she was divorced],and she shall **be** to another man." Deut.24:2. The **hekesh** teaches that a deed is valid in the context of **being**, *i.e.*, *kiddushin*, as well as in the context of **leaving**, i.e., divorce by *get*.

[13]At 9:2 the Gemara considers the possibility that *kiddushin* requires both money and cohabitation. An objection is raised from the Torah's recognition of the status of a betrothed **maiden**: obviously a woman can be betrothed and yet be a maiden! The Gemara responds that perhaps the status of a betrothed maiden can obtain only where *kiddushin* is by deed, since a deed is effective, standing alone, in the case of *get*, and the validity of a deed as *kiddushin* is derived by *hekesh* from *get*. Clearly, then, the Gemara ascribes the Scriptural status of the unbetrothed maiden to *kiddushin* by deed.

[14]Keth. 103:1.

[Monetary *Kiddushin*]

The Gemara's discussion of *kiddushin* begins with monetary *kiddushin* because money is of general use in business acquisitions as well as *kiddushin*. Besides, in the verse "When a man shall take a wife and cohabit with her," the verb **take** implies monetary *kiddushin*, so that in effect monetary *kiddushin* is mentioned first Scripturally. On this reasoning, the Gemara should have discussed cohabitation immediately after money. But the Gemara prefers to consider *kiddushin* by deed second, because of the general business applicability of written deeds.

[Monetary *equivalents*]

Monetary *kiddushin* consists of giving the woman to be betrothed either money or items having monetary value.

No evidence is required to support the rule that monetary **value** (as distinguished from actual money) is sufficient for *kiddushin*, although the Gemara does require evidence to support monetary value as legal tender for the compensation of tort victims[15], or the redemption of slaves[16].

There are two possible explanations:

1. Monetary value requires Scriptural support only where payment of the value is made against the will of the receiving person, such as the master from the slave or the injured person from the tortfeasor. On the other hand, a woman, who cannot be compelled to accept *kiddushin*, or the seller of land, who cannot be compelled to sell, are assumed to be as content with monetary value as with money.

2. Specific derivation is required only for slaves to counteract the mis-impression which might otherwise result from the direct mention of the word **money** in the verse which deals with the redemption of the slave[17]. Similarly, there is specific mention of the word **money** relative to the tortfeasor's obligation to compensate.

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[15]B.K.7:1. Monetary value is derived from the otherwise unnecessary words **he shall return** in a verse which provides for compensation by the owner of a pit into which an animal fell and was fatally injured: "The owner of the pit shall pay, **he shall return** money to the owner of the animal." Ex.21:34.

[16] In the verse "He shall **return** the price of his redemption," Lev. 25:51, the word **return** is taken to imply any mode in which the redemption price is proffered to the slave's master.

[17]"He shall return the price of his redemption out of the **money** for which he was bought." Lev.25:51.

But there is no need to correct any mis-impression for *kiddushin* because the word **money** never appears in the context of *kiddushin*; the validity of money is derived by *gezerah shawah* only.

The Meiri prefers the first explanation.

[Required declarations]

The groom must extend the money or its equivalent to the bride in the presence of witnesses and he must say to her in their presence "You are betrothed to me" in words she understands or in a context where she otherwise understands that *kiddushin* is intended. He need not declare "You are betrothed to me **with this thing**," but the expression is more complete if he does add these words.

The witnesses must see the groom extend the money or its equivalent, and they must also hear his declaration, as will be explained further below.

[*Kiddushin* by deed; role of declaration]

Kiddushin by deed requires that the declaration "You are betrothed to me" be written on paper or on a pottery shard, and witnesses must see the writing and the transfer of the deed by the groom to the bride's hand. They must also testify that the bride knew that the paper or shard was a deed of *kiddushin*.

Two issues arise in this context:

1. Need the groom orally declare that by the deed he proposes to betroth the bride? Or is the statement in the deed sufficient?

2. If no declaration is necessary, must it be shown that the bride knew that the deed was for *kiddushin*?

Those who require an oral declaration reason by analogy to *get* [18]. Those who disagree argue as follows:

1. Instead of analogizing *kiddushin* by deed to *get*, the proper analogy is to deeds of acquisition generally. A deed by a seller of land is valid if the deed recites "My land is sold to you."[19] There is no need to make any declaration.

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[18]At 5:2 the Gemara notes in the case of a deed of divorce, he must "write [the *get*] to her, give [the *get*] to her and state to her `thou art divorced'."

[19]26:1.

2. No oral declaration is necessary, since the statement is already inscribed in the deed. In fact, the Gemara refers to an oral declaration only in the case of monetary *kiddushin*.

The reason for the distinction is that money is frequently given, or loaned, or used as a medium of purchase. Unless the groom explains that he is giving it to the bride for betrothal purposes, the witnesses cannot assume that there was any intent to betroth at all.

Compare the case where A counts money over to B:

Testimony by witnesses who were present at the counting can give A no rights to return of the funds. Perhaps A owed the money to B, or perhaps A gave them to B as a gift.

This ambiguity is absent where the nature of the deed is clear on its face.

[Bride's awareness of deed's significance]

For monetary *kiddushin* all hold that no declaration is necessary where either:

1. The bride and groom had been discussing betrothal or marriage at the time of the *kiddushin* (rather than only previously); or

2. that the bride otherwise realize that the money is for *kiddushin*.

What of *kiddushin* by deed for those who do not require a declaration? Must one of these two conditions be satisfied? Yes.

The Meiri considers but rejects the view of some that a distinction be made between *kiddushin* by deed and *kiddushin* by money where the bride and groom had discussed marriage previously but not presently. The rejected view holds that a deed (but not monetary *kiddushin*) is supported by the combination of the prior discussion and the formality of the witnesses and the deed.

Note also that the deed cannot be a form but must be written expressly for the purpose of the particular *kiddushin*, and with the knowledge and approval of the woman to be betrothed.

[Declaration, testimony and presumptions for cohabitation]

Most commentators require a declaration in the general case of *kiddushin* by cohabitation. They dispense with a declaration where the couple had pre-existing familiarity, such as in the case of cohabitation with a divorced wife:

> The previous familiarity of the man with his divorced wife makes the presumption of cohabitation strong even where there is no declaration. Once cohabitation is assumed, we apply the further presumption that cohabitation is not intended to be illicit, and *kiddushin* must have been intended.
>
> Where the couple was not previously related, or even where the previous relation was limited to betrothal which was followed by divorce prior to consummation[20], cohabitation can be assumed only where there is an appropriate declaration.[21]

The Rambam goes further. Where there is no pre-existing familiarity cohabitation is assumed only if witnesses testify that the man and woman were actually conducting themselves in the manner of cohabitation. No declaration is required if there are such witnesses.

Precisely what declaration must be made where there is no pre-existing familiarity? The majority require that the declaration include a statement that the cohabitation is for *kiddushin*. A minority disagrees and requires only that he say "Cohabit with me," without mentioning that the purpose is *kiddushin*. We rely on a **presumption** that cohabitation is intended for *kiddushin* rather to be illicit.

> By extension, the minority would apply the same rule, and consider *kiddushin* to be effective, where there is no declaration at all but where the couple and the witnesses all know that the seclusion is for the purpose of *kiddushin*. The fact that all participants know the purpose of the seclusion suggests, even without a declaration, that there will be cohabitation.

Certain Geonim maintain that the various presumptions which have been described may be relied upon only to establish *kiddushin* of questionable status, which can be relied upon only for strict rulings. The presumptions cannot be used to establish certain and absolute *kiddushin* which can be relied upon for lenient rulings as well.

> Specifically, where *kiddushin* is certain and absolute, the *kiddushin* is given effect even for the lenient purpose of invalidating a purported later *kiddushin* of the bride by another man.
>
> Questionable *kiddushin* is recognized only for the strict purpose of

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[20] See Git.81:1.

[21] This accords with a Tosefta which states that there is *kiddushin* only where the cohabitation was for *kiddushin*. Presumably, the Tosefta's purpose is to require that there be an oral declaration.

requiring that the bride obtain a get before she marries another and to apply incest prohibitions to the couple's mutual relatives. Questionable *kiddushin* does not invalidate later betrothals by another.

The Meiri disagrees and rules that *kiddushin* resulting from presumptions is absolute and certain. The Gemara[22] **leniently** applies the presumption that cohabitation is for the purpose of *kiddushin* in the following case:

> Assume that a *ketannah* was betrothed by a relative other than her father. The *ketannah* may by *miun* annul her marriage at any time before her first cohabitation after adulthood. By "cohabitation," we mean only cohabitation which was not intended to be illicit.
>
> Should she cohabit with her husband after she attains adulthood, Rav holds that the cohabitation is **assumed** to be licit. *kiddushin* results and **subsequent betrothals by others are invalid**. Abbaye notes that this is a lenient holding, and questions why Rav took pains to announce the presumption in another case[23] where the result was strict!

Perhaps Rav's lenient case can be distinguished because there had been a pre-existing marital relationship[24]. Contrast this with the case of the divorced couple who had severed their relationship. Arguably, more is required here before the couple can be assumed to have made peace and to intend their cohabitation to be for *kiddushin*.

The proper rule in these cases is difficult to resolve with certainty. In each case *kiddushin* should be considered effective for strict rulings.

[Voluntary declaration on deed]

We have previously noted that no declaration is required where *kiddushin* is by deed. If, however, the groom chooses to make a declaration, he should say only "You are betrothed to me." He should not add "with this deed". *kiddushin* is by the intangible effect of the writing rather than with the tangible value of the deed. In fact, the deed need have no value. It may consist of a substance from which benefit

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[22]Keth. 73:1.

[23]A betrothed B on condition that she had uttered no oaths, the marriage is consummated, and it was discovered that she had in fact uttered oaths. Rav deemed the *kiddushin* valid and presumed that the condition was waived. This is a strict holding because it requires that the wife obtain a *get* before she marries another.

[24]The same applies to the case in the preceding footnote: the wife in that case had been married as a minor, albeit conditionally.

is prohibited[25], even where the prohibition is Scriptural rather than merely Rabbinic.

The rule is different if the deed is worth a *perutah* and the *kiddushin* is proposed to be by the deed's monetary value. Here the deed is invalid for *kiddushin* if benefit therefrom is prohibited, even if only Rabbinically.

> Compare the case of one who betroths with *hametz* after the prescribed hour on the fourteenth day of Nissan[26].

The Rabbinic prohibition divests the groom of his property ownership.

[Comparisons between *kiddushin* deeds and *get*]

A *get* may be written on forgeable material. Forgery is of no concern because we require that the *get* be delivered to the wife in the presence of witnesses. Deeds of *kiddushin* may also be written on forgeable material.

Also by analogy from *get*, the deed of *kiddushin* should be written with permanent markings such as ink or red paint. It should not be written on a plant leaf or other material which is connected to the ground[27].

Most commentators hold that *kiddushin* by deed is not valid unless there are two witnesses to its delivery. The commentators say the following about witnesses to the **signature**:

> 1. The Rashba compares the case to *get*: A *get* which has only one witness but which is written in the husband's handwriting is valid Scripturally but invalid Rabbinically. The same is true of *kiddushin*. In general, *get* differs from *kiddushin* only in that the *kiddushin* deed need not be dated.
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> Why does our Gemara say that one witness is not enough for *kiddushin*? The Rashba offers two explanations:
>
> 1. The Gemara refers only to *kiddushin* by money or cohabitation.
>
> 2. Alternatively, the husband's handwriting is the same as a second witness.

Where there are no witnesses but the deed is in the husband's

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[25]The same rule is applied by the Yerushalmi in the case of *get*. A *get* is valid even if written on material from which benefit is prohibited.

[26]Pes. 21:2.

[27]See Git. 19:1.

handwriting, the Rashba holds that there is questionable *kiddushin*.

2. Others maintain that only delivery must be witnessed. Witnesses need not attest to the **signature** on the deed.

3. The Raabad holds that witnesses to the **signature** are necessary if *kiddushin* is to be absolute rather than only questionable.

The Meiri agrees with the second view.

[Deed must be prepared for the particular bride]

The deed must be prepared for the woman to be betrothed. If the deed was prepared as a form, there is no *kiddushin* even if the deed is worth a *perutah*. The groom intends the *kiddushin* to be a deed rather than money.

Questionable *kiddushin* results if the groom tosses the deed to the ground between him and the bride, and it is uncertain whether the resting place is closer to him or closer to her.

[Minimum monetary amount]

How much value is required for monetary *kiddushin*? Beth Shammai require a *denar* or the value of a *denar*. Beth Hillel require only a *perutah* or the value of a *perutah*. The *halacha* is with Beth Hillel; a *perutah* is considered money.

A *perutah* is one-eighth of an Italian issar, which in turn is one twenty-fourth of a *denar*, so that a *perutah* is 1/192d of a *denar*.

The Rambam notes that an *issar* weighs four grains of silver, so that a *perutah* weighs one-half of a grain of silver. Why then do we refer to the *perutah* as a copper coin? Because the silver in it is negligible and is added only to whiten the coin.

[Beth Hillel as the stricter view]

Where A uses a *perutah* to betroth B, Beth Hillel hold that B is betrothed, and she must obtain a *get* before she marries another. Beth Shammai rule the *kiddushin* invalid and permit B to marry another. A Mishnah[28] takes this as an unusual case in which Beth Shammai take the lenient view and Beth Hillel take the strict view.

But are not lenience and strictness reversed if C then purports to betroth B with the value of a *denar*? Beth Hillel would consider C's betrothal invalid and B could marry without a *get* from C, whereas Beth Shammai would require that B obtain a

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[28] Ed. 4:7.

get from C!

> Yes, but the Mishnah judges strictness and lenience by its effect on the first betrother, not on later betrothers.

[Certain yibbum **rules]**

A *yebamah* is acquired only by cohabitation. There must be witnesses to the seclusion of the *yabam* and the *yebamah*. It is not necessary that the cohabitation be for *yibbum*.

It follows that no declaration is required, *i.e.,* the *yabam* need not say "Be betrothed to me with cohabitation." Similarly, as is the case with *kiddushin* by cohabitation generally, the witnesses need not be summoned to view the seclusion. It is enough if they chanced to be present.

Although cohabitation is the sole Scriptural means to acquire a *yebamah*, the Rabbis decreed that if a *yabam* purports to betroth her with money or a deed, a relationship of "*expressed kiddushin*" is established. The relationship prohibits *yibbum* by any other brother of the deceased husband. But, until consummated by cohabitation, *expressed kiddushin* does not give the *yabam* any entitlements with respect to the *yebamah* or her property.

A *yebamah* who was acquired by *expressed kiddushin* and who has not cohabited with the *yabam* may marry another only if she obtains both *get* and *halizah* from her *yabam*.

A *yebamah* can acquire her freedom prior to *yibbum* and *expressed kiddushin* either by *halizah* or the death of the *yabam*.

Once she has cohabited with the *yabam*, she is considered his wife completely for all purposes and can then acquire her freedom only by *get* or the death of her husband-*yabam*.

Commentators seek to explain why the Mishnah does not say "A *yebamah* acquires her freedom in **two ways**." The Meiri does not consider these efforts important.

[The Gemara]

This completes the exposition of the Mishnah. All of its rules are consistent with the *halacha*. The Gemara discusses the following matters:

[The Mishnah's terminology]

The Gemara considers why the Mishnah speaks in terms of acquisition (a woman

is **acquired**) rather than in terms of *kiddushin* (a woman is **betrothed**). This is contrasted with the Mishnah's style in the second chapter[29]: "The man **betroths**." Similarly, there is discussion regarding the reference in the second chapter to the "**man** betrothing" (with the emphasis on the man), whereas in the our Mishnah the reference is to "a **woman** is acquired" (with the emphasis on the woman).

There are yet other fine points which need not be mentioned here, especially given the confusion in the commentaries, the text and other difficulties. Generally, however, the matters are simple and easy to explain without delving into complexities.

[Derivation of money's validity]

When the Gemara asks "How do we know money," do not explain the question as "How do we know that a woman is betrothed with money?" This is a question which is asked and explained later[30].

Rather, the Gemara knew that business transactions effected by money are considered acquisitions because of the verse "Fields are acquired with money"[31]. What concerned the Gemara is the use of the term in the **marital** context. Hence, the question is "How do we know that the betrothal of a woman by money is an **acquisition**?" (In fact, in many manuscripts, the question is directly expressed in this fashion.)

The Gemara responds that betrothal is an acquisition because of a *gezerah shawah*. The verb **take** appears both in reference to *kiddushin* and in the business context of Abraham's purchase of Efron's field.

There is a follow up question: "And how do we know that the **taking** in the context of Efron's field is considered an acquisition?" This question was not posed by the Rabbi who asked the original question, for the Gemara knew all along that business transactions by money are acquisitions. Rather, the question is a rhetorical follow-up to the answer: once we have the *gezerah shawah* to Efron's field, we certainly know that the Efron's transaction was an acquisition, no less than acquisitions generally, because of the verse in the context of Efron's field: "the field which Abraham bought"[32].

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[29] 14:2 and 22:2.

[30] 3:2.

[31] Jer.32:34.

[32] Gen.49:30.

[Other complexities]

The Tosafot delve unnecessarily into the Mishnah's use of the article "**the**" in the phrase "the woman is acquired," whereas a similar Mishnah[33] begins with the phrase "**A** virgin is married," without the article "**the**".

[Forced betrothal]

A woman cannot be betrothed against her will if:

1. The woman says that she does not accept the

kiddushin.

2. She says at the time of *kiddushin* that she is accepting *kiddushin* under duress.

3. The man effects *kiddushin* without her knowledge.

4. The *kiddushin* were given in a conversation which did not deal with *kiddushin*, and only later does the man maintain that *kiddushin* were intended.

5. At the time of *kiddushin* the woman professes to accept *kiddushin* willingly, but it is later proved that she was under duress.

There is no direct evidence from Scripture; the verse "If a man takes a woman"[34] can be read to mean against the woman's will. The same applies to the phrase at the end of the verse: "And he cohabits with her." In fact, the contrary rule applies to *yibbum* and *get*: both are effective under duress[35]. The rule for *get* is persuasive for *kiddushin*: recall that *kiddushin* by deed is derived by *hekesh* from *get*.

Nevertheless, it must be that unwilling *kiddushin* is of no validity; otherwise, there is no daughter left to our Father Abraham! It cannot be that Jewish women can be forcibly betrothed! Besides, forced monetary purchase transactions are invalid. That *yibbum* and *get* are effective under duress is an exception based on Scriptural direction.

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[33]Keth.2:1.

[34]Deut.24:1.

[35]In the case of *yibbum* the verse "And he shall effect *yibbum* with her" denotes forcible *yibbum*. The verse "And he shall send her away" denotes forcible divorce.

This rule is supported by another Gemara[36] in which R. Huna holds that a forced sale of land is valid **where the seller acquiesces[37]**, and R. Ashi states that **corresponding** *kiddushin* (*i.e.,* where there is forced acceptance) is not valid. R. Ashi explains that the invalidity is a penalty assessed by the Rabbis for improper action.

[Duress applied to the man]

What if the woman compelled the man to betroth her?

1. The Ittur holds that the *kiddushin* is invalid. Even Amimar, who disagrees with R. Ashi and holds that a woman's forced acceptance of *kiddushin* is valid, would distinguish the case of the forced **man** because the forced man receives nothing of value.

Contrast this with the forced seller who at least receives his purchase price, and the forced woman who at least receives her *kiddushin*.

But why does the Gemara not refer to compulsion by the wife? Because this is rare.

2. The Rambam and the Raabad both hold that the *kiddushin* are valid. Note that a man can be forced to effect *kiddushin* if he seduces or forcibly violates an unbetrothed maiden. Also, a man can be compelled to acquiesce in the divorce of his wife.[38]

The man suffers no change in his monetary condition by the betrothal. Contrast this with the seller of land, who loses his land.

But does not the man lose the *perutah* he paid towards *kiddushin*, and does he not become subject to incestuous restrictions on marriage with relatives of the bride? Yes. But these costs are trivial.

The Meiri rules that where the compulsion was exerted by the **wife**, the Rabbis should penalize her and invalidate the *kiddushin*. Where others exert the compulsion, the compelled *kiddushin* should be treated as questionably valid.

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[36]B.B.47:2.

[37]The Gemara compares forced acquiescence to a sale to forced acquiescence in bringing a sacrifice. A sacrifice brought by forced acquiescence is valid in order to reconcile the verses "He shall bring it near," which suggests compulsion, and "in accordance with his will" which suggests willingness.

[38]B.B.48:1.

[Certain laws relating to bodily discharges]

Keri results in ritual impurity until nightfall, regardless of the number of emissions[39]. If a male has only one *zivah* discharge, his impurity is the same as *keri*. If a male has two or more *zivah* discharges, there is a higher degree of impurity[40]. and the impurity continues for seven days. The same ritual impurity results if there are three discharges, but there is the additional requirement that a sacrifice be brought before sacrificial food may be consumed.

Which *zivah* appearances are taken into account in computing whether there was more than one appearance? Only those which occur within a three-day period during which there was a *zivah* discharge at least once every 24 hours.

There are the following additional rules:

1. In calculating whether a sacrifice is required on account of there having been **three** appearances, neither of **the first two** may be ascribable to the non-*zivah* causes described below. The **third** discharge is recognized whether or not *zivah* related[41].

2. In calculating whether there is a high degree of ritual impurity on account of there having been **two** appearances, the **second** is counted only if it cannot be ascribable to non-*zivah* causes. It does not matter whether the first is ascribable to non-*zivah* causes.

3. If there is only **one** discharge, it is not relevant whether the discharge can be ascribed to non-*zivah* causes. Keep in mind that even if the discharge is clearly *zivah* related, the uncleanliness which results is no greater than that of *keri*.

A discharge is ascribable to non-zivah causes if it can be ascribed to the following seven causes:

food which is excessive or which is known to cause emissions;

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[39]*Keri* is emitted with erection and pleasure, and the emission is viscous and white, similar to the white of a non-fertilized egg. *Zivah* results from sickness, and emerges without erection or enjoyment. The emission is less viscous and is similar in composition to the water of barley dough, and in color to the white of a fertilized egg. See Nid.35:2.

[40]The impurity of *keri* does not defile the bed or seat of the *ba'al keri*. The impurity of *zivah* does defile the bed and the seat of the *zav*.

[41]The verse: "These are the rules of the Zav and he who has a zivah discharge, whether male or female," Lev.15:33, implies that there is one appearance, namely the third appearance, for which a male *zav* is similar to a female *zavah* in that no causative investigation is required.

drink which is excessive or which is known to cause emissions;

carrying an excessive burden;

jumping;

disease;

contemplation; and

visual stimulation.

Scripture refers to *zivah* as emerging "from his [the *zav's]* flesh,"[42] which suggests that the discharge must arise naturally from the flesh rather than from external causes.[43]

No investigation is made of any other possible factor, including whether the *zav* slept, laughed, rode an animal, etc.

In women, *zivah* is an appearance of blood other than on menstrual days, regardless of cause. It does not matter whether or not the discharge can be ascribed to any of the seven listed causes[44].

[The citron]

A citron is a **tree** for (i) *orlah*, (ii) *revai*, and (iii) *sheviith*. This means that the year in which a particular citron fruit **blossoms** (the test for trees) is the relevant year for determining whether it is referable:

to the tree's third year for the purposes of *orlah*,

to the tree's fourth year for the purposes of *revai*, or

to the seventh year of the *sheviith* cycle.

But the citron is a vegetable for other purposes: the year in which the citron fruit is **harvested** (the test for vegetables rather than trees) is the year to which the fruit is

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[42]Lev.15:2.

[43] Contemplation and visual stimulation are causative only if they occur not more than 24 hours prior to the discharge. There is an analogous rule which treats as *keri* all *zivah* discharges which occur within 24 hours after a *keri* discharge. The other five factors are causative regardless of the time which lapses before the discharge.

[44]Nid.36:2.

ascribed for the purposes of determining which tithe applies, and the crop for whose benefit the fruit may serve as tithe.

> The first tithe, which is given to the levite, applies in each of the first six of the *sheviith* years. The second tithe, the benefit of which is to be consumed by the owner in Jerusalem, applies only in the first, second, fourth and fifth years. In the third and sixth years a tithe for the benefit of the poor is substituted for the second tithe. Years for this purpose are determined by reference to the 15th day of *Shevat*.
>
> Produce must be tithed before it is consumed, whether before or after the harvest. (The only exception is for casual consumption.) The issue discussed in the Gemara is not the point at which fruit must be tithed before it is eaten, but **the particular crop** with which a particular fruit is to be tithed and the **particular tithe** which applies. Hence, citrons harvested on the 14th day of Shevat cannot be tithed with citrons harvested on the next day[45].

Rashi explains the Gemara differently. The Gemara's reference to a citron being treated as a tree is not meant for the purpose of determining the **particular year** to which to ascribe the citron in applying *orlah*, *revai* and *sheviith*. Rather, it is for the purpose of applying *orlah*, *revai* and *sheviith* in the first place, since these rules do not apply to vegetables.

The Meiri disagrees:

> If this were the Gemara's purpose, the Gemara should have listed other rules which apply to trees, namely *shikha* and *peah*, but which do not apply to vegetables[46].
>
> Also, if the purpose of the Gemara were merely to list specific rules which apply to trees and vegetables, the Gemara should have mentioned that it is forbidden to graft a citron with a vegetable outside of Eretz Israel, notwithstanding that it is there permissible to graft a vegetable of one species **with a vegetable** of a different species.[47]

In fact, Rashi himself elsewhere interprets the Gemara in the manner proposed by the Meiri here.

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[45] R.H.14:2.

[46]The laws of *shikha* and *peah* apply only to produce which is brought into the home for storage. This test excludes vegetables.

[47]Such grafts are prohibited in Eretz Israel.

[3:1]

A citron is treated as a vegetable because, like a vegetable, "it grows on all waters." This means that a citron requires both rain and irrigation, unlike trees which generally rely on rain only.

Why is it significant whether or not irrigation is required? Because Scripture directs that produce which is similar to grain and wine (grapes), which rely on rain, must be treated as grain and wine:

> In referring to *terumas maaser*, Scripture directs: "Your *terumah* shall be considered the equivalent of [*terumah* on] grain from the storage house, and on wine from its tanks."[48]

Now, we know that the test for categorizing grain is the year in which the grain is one-third grown. So also trees, which rely on rain, are categorized by the equivalent: the time at which the fruit blossoms[49].

[The *koy*]

A *koy* is possibly a beast of chase and possibly cattle, and is consequently subject to whichever rule applied to these groups is more stringent:

> Its blood must be covered after slaughter as is the rule for beasts of chase.
>
> The *koy* may not be slaughtered on holidays, since the *koy* may be cattle, and it is forbidden on holidays unnecessarily to carry earth to cover blood.
>
> Its *helev* is forbidden like that of cattle.
>
> It must not be made to breed with either cattle or beasts of chase[50].

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[48]Num.18:27.

[49]The derivation is an *asmakhta*, rather than truly Scriptural. Note that the requirement to tithe the produce of trees is Rabbinic.

[50]The Meiri is uncertain why the prohibition on crossbreeding results from the *koy's* uncertain status. Even if we were certain that a *koy* was a beast of chase, the *koy* could not be bred with a beast of chase of different species. Similarly, even if it were clear that it was cattle, the *koy* could not be bred with cattle of different species.

> One who bequeaths all of his cattle or all of his beasts of chase to his son does not give his son rights in a *koy*.

For rules which apply both to cattle and to beasts of chase, a *koy* is treated as both, such as for

> the requirements of slaughter as a precondition to consumption,
>
> the ritual impurity attaching to carrion, and
>
> the prohibition against eating limbs removed from an animal while alive.

[Declaration required of a messenger]

A messenger who brings a *get* sent by a husband from overseas to his wife here must declare that the *get* was written and signed in the messenger's presence. The same declaration must be made by a messenger who brings a writ of liberation for a slave.

[Certain exclusions implicit in Mishnah's terminology in other contexts]

The Mishnah uses the phraseology "X number of ways"[51] in order to exclude other possibilities. For example:

> The Mishnah's purpose in listing three **ways** in which a woman is acquired is to exclude two other ways, namely, *huppah* or *halifin*.
>
> In the case of a *zav*, an investigation is made only of the seven listed **ways** by which an emission can be caused, but not of sleep, hilarity or riding, even though they too can cause emissions.
>
> A citron is similar to a tree in three **ways**, but not for tithes.
>
> A *koy* is similar in certain **ways** to a beast of chase, in other **ways** to a domesticated animal and in yet other **ways** to neither of them.
>
> A *get* and a slave's writ of liberation are similar in three **ways** (namely, to require testimony of the messenger that he witnessed the writing and the signing, to validate testimony of a *Kuti* and to invalidate gentile signatories) but they are not similar on the rules of agency.

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[51] As opposed to the more common listing phraseology: **[X number] of things**.

[3:1]

> The agency power which the husband vests in a messenger entrusted to deliver a *get* to the husband's wife can be canceled at any time prior to delivery of the *get*. The *get* is harmful to the wife and she cannot be said to have vested **rights** in the *get*.
>
> An agency to deliver a writ of liberation to a slave cannot be revoked. The slave immediately obtains rights in the writ when the master transfers it to the agent.

The Mishnah which states that there are seven **things** which characterize a dunce and seven **things** which characterize a wise man does not use the term **ways** for two reasons:

> 1. Neither the wise man nor the dunce can have only some of the seven properties, so it cannot be said that person X is a wise man in four ways but not in three other ways. The listing illustrates aspects in which the wise man and the dunce are different, rather than aspects which define the wise man or the dunce.
>
> 2. The term **way** is inappropriate where the listed attributes themselves define the person described. The seven characteristics described in the Mishnah are those which serve to define who is the dunce and who is the wise man.

Another Mishnah[52] states that one who seduces a *na'arah* must pay three **things** (types of damages), whereas one who forcibly violates her must pay four **things:** he must also compensate the *na'arah* for the pain of her violation.

> 1. Here, too, the seducer always pays three things, and the violator always pays four things, and it cannot be said that person X is like a seducer in some ways and like a violator in other ways.
>
> 2. Besides, the term **ways** is not used because there is no intent to **exclude**; that the seducer does not pay for pain merely reflects the fact there **is no** pain in seduction cases.

[Our Mishnah's exclusion of *halifin* and *huppah*]

Given that the term **ways** is intended to limit and exclude, what mode of *kiddushin* is intended to be excluded by the word **ways** in our Mishnah? The Gemara

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[52]Keth.39:1.

explains that the term is intended to invalidate *halifin* and *huppah.*

> Absent the Mishnah's limitation, *halifin* would have been valid. The efficacy of money as *kiddushin* is derived by *gezerah* shawah from real estate transactions (i.e., Abraham's acquisition of Efron's field), **in which *halifin* is as effective as money**.
>
> Why in fact is *halifin* invalid? Because the symbolic object which is ritually transferred by the buyer to the seller in a *halifin* exchange can have a value of less than a *perutah*. A woman does not "sell herself" for less than a *perutah*.

But some commentators persist: why invalidate *halifin* for this reason? A deed of *kiddushin* can be worth less than a *perutah*! There are two answers:

> 1. *Get* can be effected **only** by deed. Consequently, the hekesh from get to *kiddushin* must teach that there can be *kiddushin* by deed. On the other hand, the fact is that Efron's field (although *halifin* could have been used) was actually acquired through the use of money. Therefore, it is proper, considering the dictum that a woman will not sell herself for less than a *perutah*, to limit the derivation to the precise facts of the case, namely to an acquisition by money rather than by *halifin*.
>
> 2. The concept of a deed implies that there is no monetary transfer, and there is accordingly no shame to the bride in that she is receiving no monetary value. The *halifin* exchange, on the other hand, involves the symbolic transfer to the bride of an object to which she technically acquires ownership. It is embarrassing to her to be acquired in a type of transaction which **involves transfer of property value**, and which in theory can involve property worth less than a *perutah*. The entire form of transaction is consequently invalidated, even in the case where the object used is in fact worth more than a *perutah*, and even if she agrees to accept it.
>
> Compare this to the woman who agrees to be betrothed by meaningless, self invented, artificial types of acquisition. Such forms of acquisition are of no effect, notwithstanding that they are acceptable to her.
>
> Also note the Gemara[53] in which a man tells a woman "take this large amount of money on condition that you will return it to me." Although far in excess of a *perutah* is involved and although the woman is agreeable,

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[53] 6:2.

the Gemara invalidates the *kiddushin* **because it is similar to a *halifin* transaction.**

Rashi's textual reading is "a woman will not permit acquisition **of herself** for less than a *perutah*." Rabbeinu Tam emends the text to delete the words **of herself** because to Rabbeinu Tam they suggest that the validity of *halifin* is to be determined on a case by case basis depending on acceptance or rejection by a particular woman.

The Meiri sees no need to emend the text. In referring to **of herself** Rashi is referring to women generally, so that, if a particular woman is an exception from the rule, her *kiddushin* by *halifin* is still invalid.

Compare Beth Shammai's explanation that *kiddushin* requires a *denar* because of the presumption that women consider a lesser amount embarrassing. A woman cannot **after** the *kiddushin* claim that she is an exception to the general rule.

But there is the following difference between monetary *kiddushin* and *halifin*:

In the case of monetary *kiddushin* Beth Shammai must accept the validity of *kiddushin* by a *perutah* (rather than a *denar*) if the woman then knew and then accepted that only a *perutah* was offered. After all, a *perutah* is a monetary unit. This is analogous to the rule that wealthy women (such as the daughters of R. Yannai) may **at the time of *kiddushin*** knowingly settle on less than a tarkavful of *denar*ii as the minimum *kiddushin* appropriate for their social standing.

In the case of *halifin* even knowing acceptance at the time of *kiddushin* would be of no avail. Unlike the *perutah* for Beth Shammai, *halifin* has no minimum monetary value which can salvage *kiddushin*.

[*halifin* in transactions with gentiles]

Is *halifin* valid in transactions with gentiles? The following Gemaras are relevant:

1. Our Gemara suggests that *halifin* would have been valid for *kiddushin* but for a woman's reluctance to sell herself for nominal amounts. The validity of *halifin* would have been derived from the same *gezerah shawah* from which monetary *kiddushin* is derived, that is, from Efron's field.

Does this suggest that *halifin* would have been valid for Efron, a gentile, and that this mode of transaction is generally valid for gentiles?

Perhaps not.

i. Although the implication is that Efron (who lived prior to the giving of the Torah) could have sold his field by *halifin*, there is no evidence that gentiles after the giving of the Torah retain this legal capacity.

Prior to the giving of the Torah, gentiles were subject to the same civil laws as Jews, and the primeval validity of *halifin* in the civil law is suggested by the verse, in Ruth, "And this was **long** the rule in Israel, that [a buyer] would remove his shoe [and ritually transfer it to the seller in a *halifin* transaction."[54]

ii. Efron, being a gentile, could not sell by *halifin*. The derivation of *halifin* for *kiddushin* would have been a two-stage process:

a. the *gezerah shawah* to the acquisition of Efron's field, which validates real property **type** acquisitions for *kiddushin*, and

b. application to *kiddushin* of **intra-Jewish** real property law, including acquisition by *halifin*.

2. A Jewish slave may redeem himself from a gentile master[55] by repaying "the **money** with which he was purchased." The Gemara takes this to mean that money is effective for redemption, but that "produce or utensils" are not. Does this mean:

i. Redemption from gentiles is valid only where the *kinyan* is monetary, but not where the *kinyan* is *halifin*, or that

ii. *halifin* is valid for gentiles, but the ritual object which must be transferred to the gentile-seller in the ***halifin*** ceremony cannot be money.

3. Another Gemara[56] states that a gentile has only one means of

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[54]Ruth 4:7.

[55]8:1.

[56]Bek.13:1.

acquisition, *i.e.,* money. Does this not mean that *halifin* is invalid?

Not necessarily. Perhaps the intent is to invalidate *meshikhah* as a *kinyan* for gentiles. This is not a strained reading. The same Gemara refers to the Jew as also having only one means of acquisition. At a minimum, the Jew has at least two forms of available *kinyan*: *halifin* and *meshikhah*. The Gemara must mean that a particular *kinyan*, the passage of money, is invalid in acquisitions by Jews. Just so the reference to gentiles is to invalidate the particular *kinyan* of *meshikhah*.

[Gentile as attorney-in-fact]

If A wishes to vest in B the power to deal with A's property as attorney in fact, the standard procedure is for A to transfer the power by *halifin* to witnesses who as B's agents acquire the power for B. If a gentile is to be appointed as an attorney in fact, the power can be transferred to him by *halifin* if *halifin* by gentiles is valid. However, a gentile cannot appoint agents, and, accordingly, the power should be transferred directly to him and not through witnesses.

But does not the gentile act as agent when he **exercises** his power?[57]

Yes, there is an element of agency, but an attorney in fact is also an **owner** of rights. This explains why an attorney appointed by A retains his power after the death of A, notwithstanding that A's minor heirs do not have the capacity to appoint agents.

Certain commentators disagree, and do not permit a gentile to act as attorney in fact at all. A distinction should be made between minors and gentiles:

A minor will in the future have the capacity to appoint agents. That is why we can rely on the ownership aspect of a power to bind the minor.

A gentile can never act as an agent, and we cannot rely on ownership

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[57]B.K.70:1.

[3:1]

doctrine to support his acting as an attorney in fact.

[3:2]

[Father's rights in property given to his daughter as *kiddushin*]

Property given as *kiddushin* to a *na'arah*, and most certainly to a *ketannah*, belongs to the father:

If the *kiddushin* is monetary, the money is his.

If by deed, he succeeds to ownership of the paper.

If by cohabitation, he may accept a gift from the groom for arranging the *kiddushin*. Alternatively, the father may (against his daughter's wishes) waive a gift which the groom has proposed to give.

The Gemara first attempts to derive the rule by the following syllogism.

1. A *na'arah* leaves her father's control upon kiddushin:

By *kiddushin* the father loses the power to absolve her of her oaths without the concurrence of the groom.

It matters not that until the marriage is completed by *huppah*, the father continues to be entitled to her labor and to her inheritance should she die.

The Gemara prefers to find instances in which the *na'arah* leaves her father's control which apply both to priests and non-priests. Otherwise, the Gemara could have noted that a *na'arah* who is the daughter of a priest may eat *terumah* until she is betrothed to a non-priest. In effect, by *kiddushin* her father loses the right to entitle her to eat *terumah*.

2. When a maidservant's term expires "she shall go out for nothing, without money."[58] The suggestion is that:

this master, *i.e.,* one who is not the father, receives no payment on expiration of the term of his control, but that

on expiration of another master's control, that of the father upon his

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[58]Ex.21:11.

daughter's *kiddushin*, there **is** a requirement to make payment.

But to whom?

3. When a groom is tried for slandering his *na'arah* bride, her father says "I have given my daughter to this man."[59] This teaches that a father may betroth his daughter to another.

If the father can betroth his daughter, it follows that he, not his daughter, is to receive this payment.

The Gemara rejects this reasoning because it is possible to limit the verses to *ketannah*:

1. True, the context of the verse dealing with slander refers to the slandered woman as a *na'arah*. But the circumstances may be that she **was betrothed** as a *ketannah* but **was slandered** after she became a *na'arah*!

2. The learning of the verse which deals with the maidservant, from which we derive the rule that the father is entitled to the *kiddushin,* can also logically be limited to the *ketannah*.

This reading might at first seem strained, for why would Scripture tell us that the father receives a *ketannah*'s *kiddushin*? We already know that a father may sell his *ketannah* into servitude and to retain the purchase price!

Yes. But a *ketannah*'s servitude ends after a maximum of six years. It is possible that the Scriptural teaching is that the father's rights apply even where he imposes a status (*kiddushin*) which continues **forever**.

The Gemara also holds that it is more logical for a father to own a *ketannah*'s *kiddushin* than to own a *na'arah*'s *kiddushin*.

1. A *ketannah* has less independent capability than a *na'arah*. A *na'arah* who has been betrothed can herself accept a *get* while her father is alive, notwithstanding that her marriage was not completed by *huppah*. A *ketannah*, even if sufficiently mature to preserve her *get*, can independently accept a *get* only if her marriage was completed by

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[59]Deut.22:16.

huppah.[60]

2. A *ketannah* is not subject to penalties or punishment, whereas a *na'arah* is an adult for such purposes.[61]

Ultimately, however, the Gemara notes that the verse dealing with the maidservant refers to *na'arah*: the verse's basic teaching is that a maidservant's term expires when she becomes a *na'arah*[62]. Consequently, the implication that payments are made to her father is best applied to her as *na'arah*.

And this is the *halacha*, with only one exception: a *na'arah* can accept or retain *kiddushin* during her father's lifetime if betrothal occurs after a marriage which was consummated and then terminated by divorce or death.

[The father's rights to his daughter's labor]

"And if a man shall sell his **daughter** to be a **maidservant,**"[63] suggests that a daughter and a maidservant have legal similarities. From this Rav derives the rule that a father is entitled to the benefit of his daughter's labor.

But a father can sell only his *ketannah* into slavery! How do we know that he owns his daughter's labor when she is as a *na'arah*?

Because were the verse limited to *ketannah*, no Scriptural direction would be required: from the fact that a father can sell his daughter into servitude it is evident that he is entitled to her labor.

Separate sources are required for Rav's rule on the father's right to his daughter's labor and our Gemara's rule on the father's rights to his daughter's *kiddushin*:

If only Rav's rule were known, the father's rights could have been explained as natural compensation for the sustenance he provides, and the

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[60] 43:2.

[61] Rashi emphasizes this distinction, rather than the distinction in paragraph 3 relating to *get*, because Rashi holds that even a *ketannah* may accept a *get* during her father's lifetime, notwithstanding that her marriage was not consummated. See 43:2.

[62] Unless terminated earlier.

[63] Ex.21:7.

rule would not have been applied to the externally derived funds of *kiddushin*.

Were only the *kiddushin* rule known, the father's rights would have been explainable on the grounds that the funds were not produced by the daughter's toil.

[Other potential sources]

A father's rights to his daughter's *kiddushin* and labor **cannot** be derived from any of the following three sources:

1. A father can annul oaths made by his daughter "in her youth, in her father's house."[64]

Civil law cannot be derived from the ritual law of oaths.

2. The penalty which a ravisher or seducer must give "to the father of the *na'arah*."[65]

Civil law cannot be derived from laws of fine or penalty.

3. The **monetary indemnity** payable to the father of a girl who was ravished or seduced.

These cases are distinguishable because the father himself also suffered monetary loss.

There appears to be circularity of reasoning in the Gemara's attempt to use as a source the rule that a ravisher must pay shame and depreciation indemnities to the father. This doctrine is itself derived from the rule that the father can forcibly **betroth** her to a foul person afflicted with boils.[66] How then can the Gemara attempt to derive the *kiddushin* rules from rules which are themselves based only on *kiddushin*?

Some commentators explain that the Gemara does not intend to derive

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[64]Num.30:17.

[65]Deut.22:29. See also, Keth.29:2.

[66]The fact that the Beth din may compel the foul groom or husband to divorce his wife is not relevant.

[3:2]

kiddushin rules from shame and depreciation but only from the rules regarding a daughter's labor. This is inconsistent with the flow of the Gemara's discussion.

Another commentator explains that even without learning derived from *kiddushin*, a father would logically have been entitled to half of the depreciation and shame indemnities, and that it is only his entitlement to the second half which is derived from *kiddushin*. If so, *kiddushin* doctrine can be derived from the father's entitlement to the first half of his indemnity payments.

The Meiri concludes that these analyses are unnecessary. For the purpose of full analysis, the Gemara at times takes pains to show that proposition A could not be derived from proposition B even were proposition B not derived from proposition A.[67]

[4:1]

[The right of a priest's daughter to eat *terumah*]

1. A priest's daughter may eat *terumah* until she is betrothed to a non-priest.

2. If her groom or husband dies, and there are no male or female issue, including grandchildren, she may again eat *terumah*.

3. There is an exception from Rule 2: if her marriage was to a man who disqualified her from the priesthood, then her bar from *terumah* is perpetual.

4. Grandchildren born to a mother who is a gentile or a heathen slave are not deemed **issue**. If these grandchildren are the grandmother's only remaining descendants, she may eat *terumah*.

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[67]See, *e.g.*, 17:2, and the Meiri's discussion relating to the rule that a Jewish slave serves his master's son, but not any other relative, on the master's death.

[4:1]

[A priest's wife's right to eat *terumah*]

1. A non-priest's daughter may eat *terumah* once she is married[68] to a priest.

2. On the death of her priest-husband, she may continue to eat *terumah* only if there are issue from her marriage to the priest. See preceding Rules 2 to 4 on what constitutes **issue**.

[A priest's slave's right to eat *terumah*]

A priest's gentile slave may eat *terumah*: "the property purchased with [the priest's money may eat of [*terumah*]"[69]. A Jewish slave, whether serving for the maximum six-year term or whether serving until the Jubilee (as a result of the ceremony in which the slave's ear was bored), may not eat *terumah*: "the sojourner and the hired hand may not eat of it."[70]

The term **sojourner** is a reference to the bored slave, and the term **hired hand** is a reference to the non-bored slave who leaves after a six-year term. Were Scripture to refer only to the hired hand, the term might have been ascribed to the non-bored slave only, on the theory that only he should not eat *terumah*. And we would have held that a slave who serves until the Jubilee should eat *terumah* because he is in effect his master's property. Hence the need for both references.

[Why Scripture directs that a maidservant is freed both at *na'arut* and *bagrut*]

In the verse dealing with a Jewish maidservant, "And she shall go out for nothing, without money,"[71] the phrase **go out for nothing** is held to apply to *bagrut* and the phrase **without money** is held to apply to *na'arut*[72]. Given that *na'arut* occurs before *bagrut*, why are both references necessary?[73]

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[68]The entitlement begins only after *huppah* and not at the point of *kiddushi*.

[69]Lev.22:11.

[70]Lev.22:10.

[71]Ex.21:11.

[72] *Bagrut* is generally achieved at age 12 and one half plus a day, and *na'aruth* is generally achieved at age 12 plus a day.

[73]Some commentators emend the text to state that the first phrase, for nothing, refers to *na'aruth*,

[4:1]

At first, the Gemara explains that if the Torah had only mentioned **without money**, the phrase would have been applied to the latest status possible, *i.e.,* to *bagrut*. Compare the result just discussed were the Torah to mention only the **hired hand** relative to *terumah*.

The Gemara then rejects this comparison. There is no inherent contradiction in referring both to the bored slave and to the non-bored slave:

> True, if a bored slave were directly prohibited from eating *terumah* we could have derived the same prohibition for the non-bored slave by *a fortiori* reasoning: as less of the priest's property he most certainly is not to eat *terumah*. But the bored slave and the non-bored slave are two physically separate persons, and both can coexist and be referred to by Scripture at the same time.
>
> Contrast this with the maidservant, who if freed when she is a *na'arah* will never be subject to servitude when she reaches *bagrut*: There is no woman to which the *bagrut* phrase will ever apply!

The Gemara then proposes that the second verse refers to a woman at age 20 who by then has shown signs of being barren, and is therefore established to be an *elonit*. The verse frees her at that age notwithstanding that she never achieves the status of *na'arut*[74]. But this explanation is rejected on the grounds that an *elonit*'s freedom at age 20 can be otherwise derived.

But why need Scripture free her at age 20?

> (i) Once she achieves that age and exhibits signs of *elonit.h* she should retroactively be considered to have been an *elonit* and a *bogeret* **from age 12**.
>
> In an analogous case[75], Rav holds that once a girl is proved to be an

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and the second phrase, **without money**, refers to *bagrut*. This is illogical, since a maidservant who is freed at *na'aruth* will not be subject to servitude at the time of *bagrut*. Besides, this reading requires that the Gemara's concern on the need for two phrases focuses on the need for the phrase **without money**. But this second phrase has been shown previously to be essential to teach that a father is entitled to his daughter's *kiddushin*.

[74]An *elonit's* sales price belongs to her father, and her sales price may be deemed *kiddushin* if her master wishes to designate her in betrothal.

[75]Yeb.80:1.

elonit at age 20, she is deemed retroactively to have attained *bagrut* at age 12. She is therefore subject to punishment for all transgressions committed after that age[76].

(ii) That being so, her freedom at age 20 follows **automatically** as a result of her having attained *bagrut* at age 12, so that her sale after that age was never valid in the first place! And it must be that her sale occurred after age 14, for we know that a maidservant's maximum term is six years!

The Meiri concludes that our Gemara limits Rav's rule to transgressions which occur after signs of *elonit* first appeared: *bagrut* cannot reach back past the first sign of *elonit* (or age 12 if later). The Torah must free an *elonit* at age 20 where her sale into slavery occurred after age 14 (so that she cannot rely for freedom on the expiration of her six-year term) and **prior** to the first signs of *elonit*. In that case her sale into slavery occurred **before** she attained *bagrut*.

Ultimately, the Gemara determines that the verse is necessary to establish the basic principle that an *elonit* can be sold into servitude notwithstanding that she will never be a *na'arah*.

[Adulthood in males and females]

The following table summarizes the rules on maturity of males and females:

I. Male:

1. Until age 13 plus one day--minor, regardless of pubic signs.

2. At a minimum age of 13 plus one day, with pubic signs--adult.

3. At a minimum age of 19 years and 11 months, if no pubic signs, is deemed adult on the occurrence of the first of the following:

i. eunuch signs

ii. pubic signs

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[76]Rav says that 12 is the age to which adulthood can be retroactively extended, and 18 (not 20) is the age at which signs of barrenness are recognized. This accords with Beth Shammai's rule on females. But Rav's principles are equally valid for the ages determined by Beth Hillel: 13 and 20 for males and 12 and 20 for females.

iii. age 35 years and one day (majority of lifetime)

II. Female:

1. Until age 12 plus one day-- *ketannah*, regardless of pubic signs.

2. At a minimum of age 12 plus one day, with pubic signs-- *na'arah* for six months.

3. Six months after *na'arut--bagrut* (adulthood)

4. At a minimum age of 19 years and 11 months, if no pubic signs, attains *bagrut* on the occurrence of the first of the following:

i. *elonit* signs

ii. pubic signs

iii. age 35 years and one day (majority of lifetime)

Pubic signs generally consist of two pubic hairs. In girls, eight top signs[77], if all are present, are the equivalent of pubic hairs; there is a presumption that pubic hairs were present but were somehow dislodged. If not all eight top signs are present, there is questionable adulthood. Pubic hair prior to age 13 in boys and age 12 in girls are considered moles and are ignored.

A bearded male is considered a eunuch only if he shows all signs of eunuchhood. A non-bearded male is a eunuch if he shows any one of these signs.

The signs of eunuchhood are discussed elsewhere[78].

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[77]See Nid.47:1.

[78]Yeb.80:1.

[4:2]

[Acquisition and freedom of maidservants]

A Jewish maidservant is acquired by money and not by cohabitation. She can redeem herself at any time by repaying the unamortized portion of her purchase price.

[Alternate derivation of monetary *kiddushin*]

Recall that one derivation of monetary *kiddushin* is from the verse relating to a maidservant "And she shall go out for nothing, without money." The Gemara refers to a sage who derives monetary *kiddushin* otherwise: from the verse "If a man **takes** a wife"[79]. The verb **take** connotes money which is passed from hand to hand.

Why do we need the sage's verse? To teach that the man **takes**, that is, betroths, the woman. Were the sole source of monetary *kiddushin* the verse "And she shall go out for nothing, without money," we would have held that the woman must betroth the man:

> The payment which is **not** made (*i.e.,* **by the maidservant** to her master), would have been contrasted to the payment which **is** made (*i.e.,* **by the girl** when she leaves her father, the other master).
>
> Some commentators question this: the payment which is **not** made by the maidservant to her master is one from the purchaser (of the rights to her own body) to the seller (of those rights). When transposed to *kiddushin*, the correct analogue should be a payment by the groom (who is the purchaser) to the bride's father (who is the seller)!
>
> Two explanations are possible:
>
> 1. If there were no second verse, the verse "And she shall go out" would have been interpreted as teaching that the girl's master receives no payment **because** he is a seller. Where she leaves her other master, her father, it is the groom who receives the payment because he is a

[79]Deut.24:1.

[4:2]

purchaser.

2. If there were no second verse, we would have thought that *kiddushin* may initially be given by the bride to the groom, so long as the groom thereafter pays the value over to the father-in-law. Ultimately, it is the seller who receives payment!

[5:1]

[Redemption of *hekdesh* and second tithe]

hekdesh and second tithe may be redeemed for money. The second tithe may also be redeemed with produce, but redemption other than for money is secondary in importance: Scripture speaks in terms of "tying the **money** [of redemption] in your hands."[80] In the case of *hekdesh* Scripture says "and he shall give the [redemption] **money** and [the property] shall stand as his."[81] Actual money is required, and even a promissory note is invalid.

[*Get* written on a living creature, etc.; the requirement that the *get* sunder all relations]

R. Jose the Galilean invalidates a *get* written on a living creature[82]. There would otherwise be a Scriptural inconsistency:

> Scripture on the one hand provides that a *get* need be written (which suggests that any written format is sufficient)[83], and in the same verse limits the permitted form of writing to a **book**.

The inconsistency is reconciled by holding that the word **book** narrows the broad universe of permissible *get* to inanimate objects such as books.

R. Jose's view does not prevail, and a *get* written on the horn of a cow or the hand of a slave is valid if the husband gives the cow or the slave to his wife.

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[80]Deut.14:25.

[81]Lev.27:19, with changes.

[82]See Git.19:1.

[83]And he shall write to her a **book** of separation.

[5:1]

A *get* must sever all connection between the husband and the wife, and any lingering bonds render the *get* invalid. For example, a *get* given on condition that the wife never drink wine or go to her father's house is invalid. On the other hand, a condition limited to a third person's **lifetime** is valid since there is the potential for complete separation of all bonds on the death of the third person.

Now, in the case of an oath not to enter **into A's house**, the oath is deemed not violated if A sells the house or dies, since the oath is **read to mean** "only so long as the house belongs to A." Why then is a *get* invalid if given on condition that the wife not enter her father's house; should not the **reading** be "so long as your father is alive"? If so, why is the *get* invalid, given that a condition which depends on a third party's lifetime is a total separation? Because oaths are interpreted in accordance with their everyday meaning, whereas a *get* is interpreted strictly.

[Why separate derivations are required for the three types of *kiddushin***]**

Money, deeds and cohabitation as *kiddushin* are separately derived from Scripture. None of the three can be derived from any of the other two:

> Money would have been distinguished on the ground of its effectiveness in redeeming *hekdesh* and second tithe.
>
> A deed would have been distinguished on the ground of its exclusive validity as *get*.
>
> Cohabitation would have been distinguished as the exclusive means of acquisition in *yibbum*.
>
> Money and cohabitation, taken together, would have been distinguished because they offer benefit or pleasure.
>
> Money and deeds, taken together, would have been distinguished on account of their general validity in business transactions.
>
> Deeds and cohabitation, taken together, would have been distinguished on the ground of their validity in forced situations, *i.e.,* a deed in the case of *get* and cohabitation in the case of *yibbum.*
>
> > But what of the fact that a father can forcibly betroth his minor daughter by monetary *kiddushin*? That rule is not known at this stage of the argument, for we are at this point weighing the results were there no verse validating monetary *kiddushin*.
> >
> > That a father can forcibly sell his daughter into slavery is irrelevant; only

> marital compulsions are determinative. And a master cannot forcibly designate his maidservant as his wife[84].

[*huppah* as *kiddushin*; consequences to *terumah*; *huppah* as consummating marriage; definition of *huppah*]

Rav Huna holds that *huppah* is effective as *kiddushin* because of the following *kal v'homer*:

> Money cannot consummate a marriage but can institute *kiddushin*; therefore *huppah* which can consummate a marriage should certainly be effective as *kiddushin*!
>
> An analogous *kal v'homer* would teach that money can consummate a marriage:
>
> > If *huppah* can consummate a marriage but cannot institute it, then money which can institute a marriage should certainly consummate it!
>
> However, it is illogical that without the seclusion of *huppah* there should be instituted all the marital rules which attend consummated marriage: *e.g.,* the strangulation of an adulterer rather than his or her stoning, and the right to inherit the wife's property on her death.

Abbaye agrees with R. Huna. Raba, although he confronts Rav Huna with certain difficulties, remains silent in the face of Abbaye's arguments. This suggests a possible concession to Abbaye's views. Even if Raba did not concede he would appear to be in the minority in opposing Rav Huna.

The Meiri nevertheless concludes that *huppah* is invalid as *kiddushin*. Note the certainty with which the Gemara holds that the Mishnah's limiting use of the word **three** is intended to invalidate *huppah*. The Gemara's concern on how **Rav Huna** would interpret the word **three** suggests that Rav Huna stands alone.

Similarly indicative is a Gemara[85] which deals with the forbidden marital connections which bar the daughter of a priest from eating *terumah*. R. Meir holds that *betrothal* by a high priest of a non-virgin renders her unfit to eat *terumah*. In

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[84] 19:1.

[85] Yeb.58:1.

[5:1]

considering whether R. Meir would hold that *huppah* would similarly bar a non-virgin from *terumah*, the Gemara sharply responds: *huppah* does not effect *kiddushin*, why then should it bar the woman from eating *terumah*?[86]

The "purchase of [a priest's] money" may eat *terumah*. A betrothed woman is deemed acquired by the groom, and consequently Scripture permits her to eat *terumah* if the groom is a priest. Rabbinically, however, *huppah* is a precondition to her eating *terumah*. There is concern that while still in her parent's house she may unwittingly offer *terumah* to her siblings.

Either *huppah* or cohabitation can complete a marriage. Where *kiddushin* is by cohabitation, either *huppah* or a second cohabitation can complete the marriage.

The essential element of both *huppah* and cohabitation is seclusion. The term *huppah* means a seclusion which follows *kiddushin*.

[5:2]

[Value or declaration by the bride; related rule in commercial transactions]

As previously explained, monetary *kiddushin* involves the transfer of value by the man to the woman, accompanied by the statement "You are betrothed to me," or "You are a wife to me." He need not add "with this thing," although the use of these words is preferable. If she gives the object and declares "I am betrothed to you," there is no *kiddushin*.

If he offers the object and she makes the statement, there is questionable *kiddushin*. The issue is whether Scripture, which requires that "a man take a wife," intends that the declaration as well as the action be effected by the man.

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[86]The Gemara in Yebamos ultimately concludes that huppah does bar the woman from eating terumah. But this results not from its effectiveness as kiddushin but from the fact that the seclusion of huppah and the woman's availability for intercourse with the high priest are themselves grounds for ineligibility.

> Although the ambiguity is based on Scripture, the questionable *kiddushin* has Rabbinic status only. The rule which requires strict interpretation of Scriptural ambiguity is itself Rabbinic.

Where, however, the couple were discussing betrothal, he offered the object and she made the declaration, there is absolutely valid *kiddushin*. The case is no worse than if there were no declaration at all and betrothal was being discussed.

The Meiri disagrees with several commentators who hold that silent *kiddushin* is better than *kiddushin* accompanied by the bride's statement. These commentators reason that where there is a statement the couple rely on the ineffective statement rather than on the accompanying discussion of betrothal. The Meiri prefers to analogize the case to the absolute *kiddushin* where both the man and the woman make declarations.

The Gemara does not deal with the case in which she offers the object, and he says "Be betrothed to me with the pleasure I give you in accepting the object." A later Gemara does hold this *kiddushin* valid if the man is an important person whose acceptance gives the woman pleasure worth a *perutah*. Some commentators would apply the same rule where the groom is not an important person but she is nonetheless fond of him.

The Rambam holds that the later Gemara is not the *halacha*. The Alfasi is inconsistent. He approves of the later Gemara, but he does not here mention the later Gemara's holding as an exception to the general rule that the man must give the *kiddushin*.

> Some commentators attempt to reconcile the apparently inconsistent holdings of the Alfasi. They explain that the *kiddushin* is invalid because **she** made no confirmatory statement of *kiddushin*.
>
> The Meiri disagrees. Where there is no confirmatory statement there can never be an issue of *kiddushin*! All other circumstances are irrelevant.

The Tosafot apply similar rules in the context of land purchases. They distinguish cases in which the seller and the purchaser respectively make declarations. The Meiri disagrees. It is essential that the purchaser give the purchase price, and it is meaningless who, if anyone, makes any declaration.

[Certain incomplete declarations; the law of explicit and inexplicit abbreviations]

Assume that A declares to B "You are betrothed," or "You are a wife," without saying "to me." The abbreviated expression is **inexplicit**, and the *kiddushin* is not valid. A did not make clear that the *kiddushin* was to him and not for another.

[5:2]

The Meiri discusses the following views and variations:

1. The expression is **explicit** where the couple had been discussing betrothal; here, *kiddushin* is effective even without any declaration at all.

2. Some say that:

a. If A is present at the Beth din where the status of the *kiddushin* is being judged, and maintains that he meant the *kiddushin* to be for his benefit, the *kiddushin* are definitely valid. It follows that if A is not available to testify, B's status as against the whole world is that of a woman who is definitely betrothed, given that a mere statement by A would result in definite *kiddushin*.

b. A does **not** have the credibility to maintain absolutely that the *kiddushin* was for the benefit of **C**, and not for A's own benefit. B is deemed **possibly** betrothed **both to A and to C**.

3. Others hold that even where A maintains that he meant himself, the status of B's *kiddushin* to A is no more than questionable.

4. Yet others maintain that *kiddushin* to A are questionable, whereas *kiddushin* to anyone else are absolutely invalid.

5. A final view holds that the expression is inexplicit even for A, and that there is not even questionable *kiddushin*.

The Meiri prefers the last view, and believes that it is supported by the flow of the Gemara's discussion. The Gemara would have mentioned any circumstance in which there is an issue of *kiddushin*.

The formulations "You are sent forth," You are divorced," and "You are permitted," are valid for *get* notwithstanding that the phrase "to me" is omitted in the first two cases, and the phrase "to any man" is omitted in the third. The formulation is **explicit** because no one can divorce another's wife. The Gemara in which Samuel appears to hold the abbreviated expression inexplicit **both for *get* and *kiddushin*** should not be so read: only *kiddushin* is intended.

Certain formulations in a deed are definitely invalid. An example is the statement in a *get*, "I am not your husband," and the statement by the husband in a deed of *kiddushin* "I am betrothed to you." The husband cannot "take" himself in *kiddushin* nor can he send himself away in *get*. Whether the *get* or *kiddushin* is invalid if **only the oral declaration** is defective depends on whether an oral declaration is required with a deed.

[5:2]

[Related holdings for nazirites]

If A says "I will be...," he is a *nazir* only if another *nazir* is then passing by. Only then is the expression explicit. Otherwise, even if A grasps a goblet of wine or his hair, where arguably the intent is to affect his appearance[87], the expression is inexplicit. Perhaps he meant only that "I will be in a fast."

Elsewhere[88] Samuel holds that if A makes an oath to separate from B, he must explain exactly what he means by **separation**. Otherwise the expression is inexplicit; it is not clear whether he means separation for food or for other matters. The Gemara asks, if so, why is a person a *nazir* when he **inexplicitly** says "I will be" when another *nazir* passes by?

> How does this square with our Gemara's treatment of the same case as valid because it is **explicit**?
>
> The Meiri first suggests that there are relative levels of explicitness, as follows:
>
> 1. I will be...
>
> 2. I am separated from you; this is equivalent in explicitness to: I will be *when a nazir passes by*.
>
> 3. I am separated from you in that you may not eat my food.

Thus, "I will be" when another *nazir* passes by is explicit relative to case 1, but inexplicit relative to case 3.

Another explanation is that the Gemara's question is from the case in which a *nazir* **previously** passed by; it is that case which is inexplicit. The Meiri disapproves of this explanation because there is no reference in the text to **previous** passage of another *nazir* [89].

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[87]In the manner of a *nazir* who may not shave his hair.

[88]Ned.4:2.

[89]The Gemara in Nedarim concludes that the Mishnah which requires that A state for what purpose he is separating from B indeed holds that inexplicit abbreviations are invalid. The Mishnah accords with the *halachic* view of R. Judah, with whose view Samuel agrees.

It is unclear whether the Meiri holds that Samuel ultimately withdraws from his view that A is a *nazir* if he says "I will be " when another *nazir* passes by.

[5:2]

It is sufficiently explicit for A to betroth B and then to say to C, in B's presence: "And you." This entire area will be explained in greater detail elsewhere.[90]

The phrase **inexplicit abbreviation**, literally translated, means a **non-probative hand or handle**. The words **hand** or **handle** refer to speech. The verse "and in his **hand** was a coal,"[91] means, "and with his **mouth** he **spoke**."

[6:1]

[Where no declaration is required; ambiguous cases]

Kiddushin is valid in the following circumstances:

1. A gives B monetary value, and tells her "you are betrothed to me," in clear language, whether or not A and B previously discussed *kiddushin*. It is necessary only that the bride and the groom understand that a ceremony of *kiddushin* is taking place. This understanding can be achieved either because the participants understand the words used, or because they are familiar with the customs which attend the ritual.

It is preferred but not required that the groom add the words "with this thing."

2. A gives B monetary value, says **nothing**, but the couple previously discussed *kiddushin*.

Kiddushin is invalid in the following case:

A gives B monetary value and uses ambiguous language, in a case where the couple did not previously discuss *kiddushin*.

The Raabad explains that the ambiguous situation results in a defect in the testimony of the witnesses; they cannot testify on exactly what it

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[90] Ned.4:2.

[91] Isa.6:6.

was they saw even if all present understood that *kiddushin* was intended.

But there is *kiddushin* if the groom previously explained to the witnesses exactly what he intends by the ambiguous phrase he is about to use.

Kiddushin is questionable in the following case:

Ambiguous language is used and the couple had previously discussed *kiddushin*. The case is worse than one in which there is no language at all, since the language that was used can be interpreted to suggest a joint effort at labor, etc., rather than *kiddushin*.

The following are examples of clear formulations, and are valid both orally and in writing:

1. You are my wife.
2. You are my betrothed.
3. You are acquired by me.
4. You are mine.
5. You are under my authority.
6. You are tied to me.
7. You are taken by me.

The following are ambiguous formulations:

1. You are singled out for me.
2. You are designated for me.
3. You are fit for me.
4. You are my help.
5. You are my rib.
6. You are my replacement.

7. You are gathered unto me.

8. You are seized unto me.

9. You are my *harufah*. The Gemara notes that this formulation is valid in Judea, where the term is synonymous with betrothal.

Nowadays the phrases "You are my *harufah* and "You are my rib" are commonly used everywhere, and are clear *kiddushin* formulations. Note also the verse "And she was a maidservant, *harufah* [meaning betrothed] to a man."[92]

No oral declaration is necessary if the *kiddushin* is given to the bride in the context of a discussion in which the issue of *kiddushin* was discussed. The discussion must be in a form which would have been effective as a declaration. For example, if A asked B "Do you want to be my wife?" and he then gives her an item of value in the presence of witnesses (who need not be summoned for this express purpose), the *kiddushin* is valid.

If, on the other hand the *kiddushin* was given after B asked A "Do you wish to be my husband?," the *kiddushin* is not valid, since this formulation would not be effective as a straight declaration. The rule would be no different even if A and B had previously negotiated all financial arrangements for their marriage[93].

The discussions mentioned in the prior paragraphs must take place at the time of *kiddushin*. If the discussion takes place prior to *kiddushin*, there must not be any intervening discussion of any kind, even if somewhat related to marriage. For example, there is no *kiddushin* if after A asks B "Do you wish to be my wife?," and before A actually gives B the item of *kiddushin*, A and B discuss the impending marriage of another couple.

Commentators disagree on whether discussion between A and B on matters related to their future household (*e.g.,* financial requirements, property settlements between A and B, B's housework) count as interruptions which would invalidate *kiddushin*.

A statement made by A to B **after** he passes *kiddushin* to B is valid if B confirms her acceptance. A later Gemara considers the result where B is silent.

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[92]Lev.19:20.

[93]See 50:1 for the rules relating to gifts that are directly or indirectly sent by one member of an engaged couple to the other.

[6:1]

[When declaration is required for a *get*]

The rules on prior discussions, and the absence of any requirement that witnesses be expressly summoned, apply to *get* as well as to *kiddushin*.

Note the following views:

1. Some commentators maintain that in fact no statement is needed, and the Gemara's reference to *get* is imprecise. After all, a *get* is valid even if given against the wife's will. The only cases in which a statement need be made at all are where:

> the husband proffered the *get* to his wife as a promissory note or a mezuzah, in which case a corrective statement to the wife or to the witnesses[94] is necessary, or
>
> where the *get* was delivered to the wife while she was asleep, in which case an alerting statement is necessary to satisfy the rule that a *get* can be given only to a wife who realizes that the document is important and should be preserved.

The corrective statements can be made after the *get* was delivered. There is no requirement that the *get* be returned by the wife to the husband and delivered anew.

2. Other commentators, including the Rambam, take the Gemara literally and require either a direct statement or *get*-related discussions, precisely in the manner applicable to *kiddushin*. Where the *get* is given as a promissory note, a statement is required absolutely, and no reliance can be place on *get*-related discussions.

These commentators hold that a wife who is deaf and dumb can be divorced only if the equivalent of a statement can be communicated to her by gestures. Contrast this with the commentators discussed in the preceding paragraph, who require no gestures where the wife is intelligent enough on her own to realize the importance of the preserving the *get*.

3. A third group of commentators take a middle ground, and hold that *get* is similar to *kiddushin* but not precisely the same. Whereas in *kiddushin* both the wife and the witnesses must realize that *kiddushin* is involved, in the case of *get* it is sufficient if either the wife or the witnesses realize that a *get* is involved.

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[94]It is sufficient that the corrective statement be made to the witnesses even if not made to the wife. It is assumed that the statement is not made to the wife because of the husband's embarrassment.

[6:1]

[Only learned persons may deal with *kiddushin* and *get*]

Only persons who are fully conversant with the laws of *kiddushin* and *get* should presume to rule in these areas. There is risk of serious error.

[7:2]

[6:2]

[Operative phrases in *get* and deeds of emancipation; rule in commercial transactions between partners]

The operative phrase in a *get* is "**You are permitted to every man**." The operative phrase in a deed which emancipates a female slave is "**You are free**." If these phrases are reversed the documents are invalid:

1. A female slave cannot be told **you are permitted to every man**, because she cannot marry until she has *tevilah* in a *mikveh*.

2. A wife cannot be told **you are free** because the language is simply inappropriate to divorce.

The phrase **you are to yourself** is valid both in a *get* and in a deed of emancipation.

"You have no concern with me" is inappropriate in a *get*. "**I have no concern with you,**" is even worse. It suggests that the husband is removing himself as a legal obstacle from his wife.

The phrase "**I have no concern with you,**" is also insufficient to extinguish the usufruct rights of a husband in his wife's property. Its weakness is its ambiguity. The phrase can be read to mean "I have no concern with X in that I am **confident in my rights** as regards X, and no person can relieve me of those rights[95]."

Why then is the phrase effective to free a slave and, with a *kinyan*, to extinguish rights in jointly owned property?

Here are several explanations:

1. The phrase is valid for partnership rights with a *kinyan* because the confidence-as- to- rights reading is inconsistent with the making of a formal *kinyan*. The emancipation of a slave requires no *kinyan*, and the phrase is given the same formality as if a *kinyan* had been performed.

2. The emancipation of a slave is more in the nature of a **waiver** than a transfer of rights. The phrase can accomplish a waiver, but it cannot accomplish the greater task of **transferring** ownership rights.

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[95]Ker.24:2.

[7:2]

> 3. Property can be **consecrated** by words alone and no *kinyan* is required. A slave once freed is in some measure consecrated: he becomes subject to the precepts which affect Jews generally.

How do the formulations **you are free**, **you are to yourself**, and **I have no affair with you** function to free a slave? The phrases must be written into a deed, and witnesses must attest either to the master's signature or to the master's transfer of the deed. This is the Rambam's view. The Raabad generally agrees, except that he maintains that an oral statement is valid if accompanied by an act of *kinyan*.

Apart from by deed, a slave can be freed only by monetary payment, or by the loss of a body member as a result of a blow by the master.

[Penalty applied to a master who sells his slave to a gentile]

A gentile cannot acquire true title to a slave from a Jewish seller, and the seller retains legal title. "You may buy slaves from them (gentiles),"[96] directs that they (gentiles) cannot acquire slaves from you, nor can one gentile acquire title to a slave from another gentile. That is why a slave who has been redeemed from a gentile cannot marry a Jewish woman until he receives a deed of emancipation from his former Jewish master.

Notwithstanding the gentile's failure to acquire title, the Jewish courts do not compel him to cede the slave without payment. Instead the Beth din compels the former Jewish master to redeem the slave for up to 10 times the price which the master received for the slave.

> This penalty is assessed because the master caused the slave to default in the observance of the religious precepts.

The Jewish master must then proffer an emancipatory deed.

[Assignment of future rights; deeds of emancipation given before a slave is acquired]

What if the Jewish master gives the deed before he has redeemed the slave and before the slave has escaped? Is the deed an invalid assignment of future rights? No. When R. Simeon b. R. Gamliel in our Gemara asserts that **prior** deeds are valid, he includes deeds given **prior to the slave's escape or redemption**.

What is the analysis? Although the escape was at the time only a future event,

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[96] Lev.25:24.

the master's rights in the slave were already in existence. Nor is the master transferring any right to the slave. The master is only removing the prohibition on marrying a Jewish woman which otherwise attaches [97].

> Other commentators explain that although an **assignment** of future rights is invalid, a **waiver** of future rights is effective. This explains how a married woman can waive the lien on her husband's land which secures her *kethubah* settlement. The *kethubah* rights are future rights because she is entitled to them only in the future event of her divorce or her husband's death.[98]
>
> This doctrine also explains another rule. A husband who divorces his wife need not pay her *kethubah* unless she swears that she had not previously received payment[99]. The husband can **waive** this future right before divorce. The renunciation binds not only himself but also later assignees.

[Betrothal with a debt; betrothal with agreed usury]

The Gemara sets forth the following dialogue:

> If a man betroths a woman with a debt, she is not betrothed; with the benefit of a debt, she is betrothed; yet this may not be done, as it constitutes an evasion of usury.
>
> This "benefit of a debt," how is it meant? Shall we say that he fixed the interest as a loan, he having said, I am lending you four *zuz* for five.--but that is real usury! Moreover, it is, in point of fact, a debt!
>
> This [benefit of a debt] holds good only if he extended the term for repayment.

To understand the Gemara we must first consider the basic rules on *kiddushin* by waiver of a debt, the right of a borrower to demand return of usury he has paid to his lender, and *kiddushin* with agreed usury.

1. *Betrothal by waiver of debt.*

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[97]Since an advance deed of emancipation is not an assignment of future rights, R. Simeon b. R. Gamliel is not listed at 62:2 as an authority who holds that an assignment of future rights is valid.

[98]See Git.55:2.

[99]Keth. 86:2.

[7:2]

A cannot betroth B by forgiving B's debt to A. This applies whether or not the debt is documented, and whether or not A returns the debt document to B for cancellation:

> The borrowed funds are assumed to be already spent and not to be within B's control. The forgiveness of the debt does not afford to B the tangible benefit which is the essence of monetary *kiddushin*. We do not make a special rule for the unusual case in which B still holds the borrowed funds.
>
> There are the following subsidiary rules:
>
> 1. The Tosafot propose that forgiveness of a debt is valid as *kiddushin* if A uses the formulation "Be betrothed to me with the benefit of the forgiveness of your debt to me." The Meiri disagrees, and sees no reason to treat this formulation differently.
>
> 2. Forgiveness of debt cannot serve as consideration in business transactions[100].
>
> 3. *kiddushin* is valid where A betroths B by forgiving a collateralized loan, but only if A returns the collateral to B[101].
>
> 4. *kiddushin* is effective where A betroths B with **both** a *perutah* and the forgiveness of a loan[102].

2. *Return of agreed usury*

If A **agrees** to pay usury to B, and A pays the usury, the Beth din can compel B to return the usurious funds to A, as if B had stolen the funds from A. Where interest is **not agreed**, A cannot demand that B return the non-agreed interest. But B is prohibited from accepting this interest from A.

3. *kiddushin with agreed usury*

What of *kiddushin* with **agreed usury** which is payable or paid by the proposed bride to the proposed groom? There are the following views:

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[100] 47:1

[101] 19:1.

[102] 45:2.

[7:2]

1. A **cannot** betroth B with interest which B **owes** A. The **obligation** to pay usury is merely a payment obligation, as is the debt itself, and suffers from the same infirmities as debt.

On the other hand, once usury was **paid**, the usurious *denar* can be used to effect *kiddushin*. This is consistent with the rule that A may betroth B with an item which A has stolen from B and is legally obligated to return to her anyway. In both cases, the bride is assumed to waive her right legally to compel return of the item used as *kiddushin*.

Furthermore, whereas a thief must return the item he has stolen, a lender who has accepted usury need not return the precise *denar* received. Our case should be no different than if A betroths B with usurious funds A obtained from **C**. The *kiddushin* are valid since C cannot demand that A repay to him the precise *denar* used to betroth B.

It follows that the Gemara excerpted above, which invalidates *kiddushin* with usurious funds, deals only with betrothal by way of the forgiveness of an **obligation** to pay such funds. Were the funds **already** paid by B to A, A could use the funds to betroth B.

"But that is real usury!" does not suggest that there is a special rule which invalidates usurious funds as *kiddushin* apart from the general rule which invalidates payment obligations. If that were the Gemara's purpose, it should have maintained simply: "but that is usury!" and is invalid as *kiddushin*.

The Gemara's surprise is the characterization of the case as one involving only an **evasion** of usury rather than **real** usury.

The Gemara's follow-up question: "Moreover, it is in point of fact a debt!" supports the view that the Gemara's discussion is limited to the case in which the usury remains a **debt** which has not yet been discharged.

2. An opposing view holds that funds which **were previously paid** by B to A as usury cannot be used by A to betroth B; B is entitled to return of the usurious funds anyway. There is no assumed waiver of this right.

Unlike the case of an item which was unwillingly stolen from the bride, it cannot be said with certainty that the bride is aware of the rule that she can compel her lender to return interest which she paid **willingly**.

The commentators who hold this view must explain why it is that the

> excerpted Gemara deals only with usury which is a **debt**, if the same rule would apply even were usury already paid and no longer a debt. They must explain that the case happened to be one in which the obligation had not yet been paid.
>
> "But that is real usury!" means that there is a special rule which invalidates usury already paid and which is no longer a debt.
>
> But how so? Have we not established that in the present case the debt had not yet been paid?
>
> Yes, but the Gemara refers to the fact that *kiddushin* would have been invalid even had usury already been paid.

Because of uncertainty on which view is correct, it is best to treat the *kiddushin* as possibly valid.

[Non-agreed usury]

One who pays non-agreed interest has no right to demand its return. It follows that once non-agreed usury was paid by B to A, A can use these funds to betroth B.

We also know A cannot betroth with interest before B has paid it. It is a debt, and waiver of a debt cannot serve as *kiddushin*.

But what of a case in which there is **no loan of funds**, the interest was not yet paid, and the interest is non-agreed?

> Assume, for example, that A loaned B a measure of grain, the loan was not yet paid, and B proposes to betroth A with the value (non-agreed interest) by which grain appreciated between the time of the loan and the repayment.

Analyze the case this way:

> 1. There is no debt, so the *kiddushin* cannot fall because of the doctrine that a debt cannot support *kiddushin*.
>
> 2. Still, acceptance of the usury is prohibited, but once paid the borrower cannot compel the lender to return it.
>
> > Does the advance proscription on acceptance mean that A gives B nothing since, if asked, the Beth din would not countenance A's acceptance of the usury?

[7:2]

> Or does A give value since B is not asking the Beth din's guidance, is prepared to pay the usury to A, and, once payment is made, the Beth din will not compel A to return the usurious payment?

The Meiri reaches no conclusion.

[Betrothal with "the benefit" of a debt]

In the excerpt cited above, the Gemara concludes that the words **benefit of a debt** mean an extension of the term for repayment. It is this extension which suffices as *kiddushin* but which constitutes an **evasion** of usury rather than **real** usury. Here are various explanations:

> 1. The Rambam explains that A proposed to lend money to be for a stated term requested by B. A counter-proposed, prior to the loan, to establish a longer term as value for B's *kiddushin*. It is the benefit of this **extension** (actually, the time offered beyond B's request), which suffices for *kiddushin*. There is an **evasion of usury** because of B's payment to A, in the form of her betrothal, for the benefit of the extension.
>
> Some commentators explain that there is no **real** usury because no tangible benefit passes from the borrower to the lender. This is incorrect, since it is usurious for the lender to receive value in the form of the borrower's labor or in the form of sharecropper rights to the borrower's field. The true distinction is that B receives as much pleasure from the betrothal as does A. In true usury, only the lender gains.
>
> 2. Whereas the Rambam explains that the extended maturity is established at the time of the loan, Rashi explains that the extension is given at the time payment would otherwise be due: A tells B "Be betrothed to me with the monetary value that you would have paid to another lender to obtain the extension I have given you". There is no **real** usury for the reason discussed for the Rambam: she benefits as much as he.
>
> The what-you-would-have-paid formulation would validate *kiddushin* even if applied to forgiveness of the loan rather than only to its extension:
>
> > *Kiddushin* would be valid if A were to say to B "Be betrothed to me with the monetary value you would have paid to another to persuade me to forgive your loan."
>
> The value to B is not the money comprising the loan, which is

deemed long spent, but the *perutah* which B would otherwise be required to spend to effect the extension or the forgiveness.

The Gemara wishes to express the two extremes of the proposition: if there is no reference to the *perutah* to be paid to another, even forgiveness of the entire loan is invalid as *kiddushin*. If there is reference to the *perutah*, even the mere extension of time is valid as *kiddushin*.

3. Others explain that the extension is given after the original loan but before the due date; there is no **real** usury because he could not at the time of extension press her for payment. The Meiri disagrees with this view for it would wrongly suggest that it is not usurious for a borrower prior to the due date to pay amounts to the lender to extend the payment date.

4. Yet others agree with Rashi that the extension is given at the time payment would otherwise be due. They maintain, however, that the reason there is only an evasion of usury is that A does not say "Be betrothed to me with the *perutah* you would otherwise pay to effect an extension." Rather he says only "Be betrothed to me with the benefit of the extension I give you." But this is strange, for what has he given her, if not the *perutah* she would otherwise have had to pay to obtain the extension?

Some explain that B is prepared at the time of maturity to make payment and then has funds available for this purpose. What B "gets" as a result of the extension is the equivalent of a new loan. In a similar vein, it is clear that *kiddushin* would be valid, if at the time B offers to pay a loan, A tells her that the loan is forgiven. There is direct passage of benefit to her.

5. A fifth group of commentators hold that there is no **real** usury in the sense that there is no **agreed** interest, but only a gift of funds she makes on her own motion in consideration of A's **prior** extension of the maturity date. Usury of this kind is elsewhere referred to as after-loan usury, and is less serious than usury agreed in advance.

6. Rabbeinu Tam interprets the case as involving the payment by A of a *perutah* to C to induce C to extend the term of his loan to B. Although this is generally permissible, in our case there is evasion of usury, because the borrower-woman B is being betrothed to the payor A, making it appear that the payor is in fact not acting independently but rather as the borrower's agent.

[7:2]

[Transfer of property conditional on return]

Assume that A gives property to B with the understanding that B must return the property to A. The gift to B is valid if B ultimately returns the gift to A. The issues subsumed under this heading follow.

I. Types of transfers conditional on return

A. Business transactions.

The transfer of a *denar* by a buyer to a seller of land is a *kinyan* which completes the sale. The formality is effective even should the parties agree that the *denar* is to be returned to the seller.

Now, a seller of land is liable to his purchaser should the seller's title be attacked; a donor of land is not responsible. Certain commentators maintain that the Gemara deals with a case in which the donor wishes to be responsible in the manner of a seller; hence the *pro forma* passage of a *denar*.

The Meiri disagrees. The procedure should not suffice to impose responsibility on the seller.

B. Redemption of a first-born son.

A first born son is validly redeemed from a priest notwithstanding that the priest agrees to return the funds used.

C. *terumah* given to a priest

If *terumah* is given to a priest by a non-priest on condition that the priest return the *terumah*, and if the *terumah* is in fact returned to the non-priest donor, the following rules apply:

the donor has fulfilled his religious obligation to give *terumah* to a priest despite the rule that a priest is prohibited from accepting *terumah* on these conditions[103]; a gift made subject to an obligation to return is valid at law;

the non-priest may not himself consume the *terumah*, but he has title to the *terumah* and may sell it to any priest[104]; and

the sales proceeds are not *terumah* and may be freely consumed and used by the non-priest[105].

D. Passage of a citron on Sukkot

A's obligation to acquire a citron on Sukkot is satisfied if he accepts a gift of B's

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[103] Why the prohibition? Because the priest's actions suggest that his purpose is to curry favor with the donor in order to be selected by the donor as a future recipient of *terumah* given without a return obligation.

Similarly, a non-priest may not give *terumah* to a priest who assists the donor in the harvest. The Torah demands that *terumah* be given "in exchange for his [the priest's] priestly labor [Num. 18:31]", not as salary for assistance to the donor.

[104] This sale will presumably be at a price lower than the price for grain which is not *terumah*. Potential purchasers are limited to priests.

[105] The special status of *terumah* does not transfer to the sales proceeds.

citron, even if the gift is made subject to A's obligation to return it to B.

E. *kiddushin*

There is no *kiddushin* if A betroths B with an item which B must return to A. If B does not return the item, the transfer is void since the condition to the transfer was not fulfilled. If she does satisfy the condition, she did not obtain the value which is requisite for valid *kiddushin*.

> The Gemara explains that the case is analogous to *halifin*, which is similarly invalid as *kiddushin*. The object of nominal value which a buyer gives to the seller to effect *halifin* is generally returned by the seller to the buyer; the purpose of *halifin* is merely symbolically to express the parties' goodwill and the finality of their actions.
>
> The equivalence is not complete:

As noted previously a buyer can acquire land by passing to the seller a *denar* subject to a return obligation. If the transaction had the status of *halifin*, the sale would not be valid since a coin cannot serve as the object transferred by the buyer to the seller in a *halifin* transaction.

Furthermore, if there were true equivalence, the seller could insist on retaining the *denar* as in *halifin*[106].

Because the equivalence is incomplete, some commentators emend the text to read that a conditional gift is invalid as *kiddushin* because the case is similar to *halifin*, and non-knowledgeable observers "might be misled to believe that *halifin* is valid as *kiddushin*".

Others emend the text to remove the reference to *halifin* entirely.

II. Consequence where the obligation to return was not stated but was implicit.

A gift given subject to an unspoken return obligation is not a valid gift. Examples are where the non-priest donor gives *terumah* and only implies that he expects a return, or if where the non-priest relies on a course of dealings in which there were consistent returns. We fear that:

1. The donee may have thought that no return was required; and

2. Perhaps the donor never intended to transfer true title.

Compare the case of R. Hananiah the priest. R. Hananiah declared invalid his redemption of the first born son of a non-priest where the father made no explicit return condition, but ostentatiously intimated that he expected the funds to be returned[107].

III. Consequence if an item's value is returned rather than the item itself.

Assume that a gift is given with a return obligation. If the item itself is lost, is the gift valid when its monetary value is returned?

Some commentators say no. They reason from *get*. A *get* given by a husband to

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[106]Ned. 48:2.

[107]See Bek.51:2.

his wife on condition that she return his coat is valid only when the actual coat is returned. It is not sufficient that the wife pay the value of the coat.[108]

But the case of *get* can be distinguished on two grounds:

1. An owner may have a special attachment to a familiar garment. Similarly in the case of a citron on Sukkot: the owner values the citron not for its monetary equivalence but for its utility in fulfilling religious precepts[109].

2. A divorcing husband may wish to inconvenience his wife. That is why his conditions are interpreted unfavorably to the wife.

IV. Consequence of a waiver of the requirement to return.

A husband who gives a *get* subject to a stated condition cannot later waive the condition and validate the *get*. But here again the case of *get* is distinguishable on the ground that a husband's words relating to *get* are always interpreted strictly.

A more convincing analogy can be drawn from the law of oaths. Assume that an oath is to expire on receipt of specified consideration from a third party. The oath will expire earlier if the person uttering the oath waives the consideration and **considers** himself **as if he had** received the consideration.[110]

V. *Kiddushin* with a stolen or borrowed item.

A thief cannot effect *kiddushin* with an item which he has stolen and to which he has not obtained title.[111]

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[108]Git.74:2.

[109]In fact, if the citron is lost prior to its return, the donee does not fulfill the precept which requires that he own a citron on Sukkot: The gift was never validated by a proper return.

Since the citron itself must be returned, it follows that B cannot consecrate the citron and still fulfill the precept that he own a citron on Sukkot. In B.B. 137:2 the Meiri reconciles our Gemara with another Gemara which holds that a gift is not valid if the donee does not have sufficient title to consecrate it.

[110]Ned.24:1.

[111]A thief obtains title to a stolen item when the owner resigns all hope of ever regaining control of the item.

[7:2]

A cannot betroth B with an item which B has borrowed[112]. B has no title to the borrowed item notwithstanding that B may satisfy his obligation to A by returning to A either the item or its monetary value.

But some commentators would permit A to betroth B with an item borrowed by A from C if **C was informed** that the item was borrowed for *kiddushin*. The statement of purpose gives A additional rights which are nearly equivalent to title. It is as if the parties understood that **only** a return of value (rather than of the item itself) was intended.

Consider the following analogous case[113]. If A tells B, "Lend me your shirt so that I may visit my sick father" B may ritually tear the garment in mourning if his father dies. He need only repay A the value of the garment. If A was not informed of B's purpose, B may not ritually tear the garment since he does not hold effective title; if he does tear the garment, he is a thief.

VI. *Kiddushin* with an item which the groom received only on condition that he return it.

Recall under Heading III the dispute among the commentators whether a donee of a conditional gift may return the gift's value rather than the gift itself. There is certainly no *kiddushin* if the item itself must be returned.

But what if we hold that monetary value is sufficient? Shall we, as in the case of the borrowed item under Heading V, give the borrower "title" only when the lender knows the purpose of the loan? Or shall we say that the donee of a conditional gift has more title than a borrower, and the donor need not know?

The Meiri concludes that the donor must know.

VII. When return is required if a specific time is not stated.

If one gives a gift which is conditional on return, but does not specify the time of

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Kiddushin with a stolen item is invalid even where the husband gives his wife a *kethubah* and later cohabits with her. Although intercourse by itself can effect *kiddushin*, in this case the pair intend the *kiddushin* to be effected by the stolen item, not by the later intercourse.

[112]One commentator maintains that if C lends an item to A for a specified time, then A may validly betroth B with the value B obtains from use of the item during the period before C can demand its return.

[113]M. Kat. 26:2.

return, some say that the donee may delay indefinitely, and the gift is validated upon its ultimate return. Others establish 30 days as the outside limit for return.

Others maintain that the gift must be returned on the donor's demand to satisfy the condition and to validate the gift. They reason from the following Gemara[114]:

> R. Huna holds that a *get* is valid immediately if given on condition that the wife pay a specified sum to the husband. The wife by acceptance of the *get* becomes indebted to her husband for the specified amount. R. Huna expresses the same rule for *kiddushin*[115].

Were the rule stated only for *get* we might have thought that the only in the case of *get* is there immediate validity because the husband will not be embarrassed to collect, **presumably on demand**, the amount owed to him by his former wife.

> Does this not suggest that where no time limits are stated amounts are due on demand?
>
> Not necessarily. Perhaps there is no legal time limit on when the payment must be made for the divorce to be valid. R. Huna relies on a pragmatic prediction that the divorced woman will succumb and pay a former husband who is not embarrassed to press for money.

The Meiri concludes that all should depend on the circumstances of the gift. A citron is needed on each day of Sukkot and can be presumed to be returnable by the next day. If not so returned, the gift of the citron should be invalid, even if the donor makes no demand. Similarly, if a *denar* is given by a buyer to a seller to effect the formal transfer of land, we may presume that the proper time for return is immediately after the sale is completed if the buyer makes a demand. All other cases should be similarly judged by their logical circumstances.

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[114] 60:1.

[115] R. Huna agrees that where the specified sum is not paid by the time of the obligor's death, the ~~*kiddushin*~~ or ~~*get*~~ are void from the beginning.

[7:2]

[7:1]

[Betrothal where benefit is given to or provided by a third party; related law on guaranties and the emancipation of gentile slaves]

B is betrothed if at her request A gives money or (in the view of certain commentators) makes a loan to C. The law of guaranty teaches that a guarantor need derive no **monetary** benefit from a transaction in order to be bound; emotional satisfaction is enough. Here, too, the value to the woman is her pleasure upon the fulfillment of her request.

This pleasure must be referred to in the statement which accompanies the *kiddushin*. A must tell B "You are betrothed to me with the pleasure you achieve when I fulfill your request to give funds or to make a loan to C."[116]

> Note that where A **gives** money to C at B's request, there is *kiddushin* although C assumes no **obligation** to anyone. This suggests to some commentators that A is bound if A tells B to **give** a *maneh* to C and that A will repay B for **giving** the *maneh* to C. It does not matter that A does not guaranty an obligation. All that is necessary is that funds be transferred to a third party at the request of the so-called "guarantor."
>
> The same thinking suggests that if A presses B to repay a loan and C says to A "Forgive B, and I, C, will repay the debt," C is a guarantor although B's obligations are extinguished, and C is not the guarantor of a **loan**.
>
> > But does not the last case also violate another rule of the law of guaranty: that guaranty obligations can arise only at the time of the initial loan? No.
> >
> > 1. Some commentators explain that the waiver of A's rights against B is the equivalent of the passage of funds from A to C.
> >
> > 2. The Meiri prefers to explain that C is not a **guarantor** at all. Instead, he is a direct obligor of A.
>
> There is no *kiddushin* where at B's request A **extends** the term of a loan made by A to C.

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[116]The formulation is not necessary if A initially offered to give B the money while stating "You are betrothed to me with this" and she then asked him to give it to a third party while expressly agreeing to be betrothed thereby.

[7:2]

> In the analogous case a guarantor is not legally bound to repay a loan which was not initially made at his request. That the loan was later extended at his request does not afford sufficient benefit to the guarantor to bind him[117].

The rule applies with greater force where there is no benefit to B at all, such as where she requests that A discard the proffered funds.

B is betrothed to A if she accepts a *maneh* given to her by C as A's agent. The groom need not bear the expense of the *kiddushin*. Similarly, a gentile slave may be redeemed with funds provided by third parties.

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[117] B.B.175:2.

If C is not A's agent, then A must be present while the *maneh* is passed, and he must then tell B "Be betrothed to me with the *maneh* that C is giving you on my behalf.[118]

The betrothal to A is valid even if C used his own property rather than A's property. Nor is it necessary that B know whose property was used.

The rule would be otherwise where A instructed C to use property supplied by A.[119] To avoid difficulties it is best for the principal to assert that an agent may use either his own property or the principal's property.

If B tells C, "Give a *maneh* to A, and I will be betrothed to C," she is betrothed to C. This rule is derived jointly from:

> the law of guaranty, which teaches that one person, *e.g.*, the woman, can be bound, although another (A) receives the direct benefit, and
>
> the law of redemption of gentile slaves, which teaches that the acquisition of rights by one person, *e.g.*, the betrother, is valid even if the necessary consideration flows from another.

It is necessary that C tell B at the time the *maneh* is passed "Be betrothed to me with the benefit of the *maneh* which A gave me at your direction".

There is also *kiddushin* where B tells A to give a *maneh* to C in order that she be betrothed to D.

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[118] Some commentators maintain that this statement by C may be made even after the ~~*maneh*~~ was paid by A. The betrothal is valid retroactively. Compare the case in which a son after the fact acquiesces in a betrothal made on his behalf by his father. See 45:2.

Other commentators hold that no statement is required where there is obvious acquiescence. This view is probably incorrect, as will be shown at 45:2.

[119] Some commentators suggest that we are less strict if the principal gave the agent money to be used for ~~*kiddushin*~~ and the agent commingled this money with his own funds. These commentators assume that the principal considers all money as fungible. However, the Meiri would rely on this view only in extreme circumstances.

[7:2]

[Where a bride can be betrothed when she gives value to her groom]

B is betrothed to A if A accepts her *maneh* and is an important person whose acceptance of the *maneh* confers pleasure on B. It is necessary that A tell her "You are betrothed to me with the pleasure I afforded you in accepting your gift," or "with the *denar* you would otherwise have had to pay to C to persuade me to accept a gift from you."

[Rule in commercial transactions]

All of these rules apply also to commercial transactions. For example, there is a sale if A tells B "Give a *maneh* to C and my field is sold to you."

However, Rashi and certain other commentators make an exception where A tells B "take this *maneh* and my field will be sold to you (an important person) because of my pleasure of your acceptance." The doctrine of a grantor's benefit from gifts to an important person applies only in the case of *kiddushin*, where the doctrine is enforced by the desire of the woman to be **wed** to the important person.

[No *kiddushin* *agav* another transfer]

Chattels can be acquired as adjuncts to [*agav*] transfers of real property. But a woman B cannot tell A "Acquire this *maneh* and acquire me *agav* the *maneh*." Why not?

1. The legal effect of betrothal is not **acquisition** in the sense that one acquires **ownership** in real property or chattels.

2. Real property cannot be acquired *agav* chattels, and a person counts as real property.

The Gemara's evidence is drawn from slaves; because of Scriptural direction slaves cannot be acquired *agav* real property. This presents two difficulties:

i. How can we derive learning from slaves to people generally?

ii. Even slaves to some extent count as chattels; other chattels cannot be acquired *agav* slaves!

The Meiri concludes that the true emphasis of the Gemara is on the proposition that *kiddushin* does not involve a sale.

[7:2]

[Purported betrothals of or by "half" persons]

If A tells B "Half of you is betrothed to me" there is no *kiddushin* because one woman cannot marry two men. If he tells her "Be betrothed to half of me," the betrothal is valid, because what he means is that he expects her to acquiesce should he determine to marry an additional woman.

> Were he really to mean that only half of his legal capacity is involved in the betrothal, such as where A is one-half slave and one-half free, B would not be betrothed, since the one-half of A which is slave cannot marry a Jewish woman.

The Rambam, however, holds that where A is half-free, B is possibly betrothed; yet other commentators hold that she is certainly betrothed. What of the statement in the Gemara that one who is half slave and half free man cannot marry a Jewish woman?

> The Rambam understands the Gemara to mean that he cannot effect absolute (as distinguished from questionable) *kiddushin*.
>
> Those who maintain that the *kiddushin* is absolute interpret the Gemara to mean that the *kiddushin* is prohibited but is valid if performed.

The Rambam also writes that a woman who is half slave and half free cannot be betrothed until totally free, but once freed she is betrothed in full, as is the case with the betrothal of a minor which becomes complete on her maturity. If yet another betroths the half free woman before she is freed, she is deemed questionably betrothed to both. These matters are discussed elsewhere.[120]

[Consecration of a portion of a sacrificial animal]

The Gemara distinguishes:

one who attempts to betroth half of a woman, from

one who attempts to consecrate only the head or only the heart of an animal.

An animal has no independent mind, hence the will of the owner to consecrate pervades the entire animal. A woman can be betrothed only to the extent she agrees; if her agreement is that only half of her person is to be betrothed, she cannot be betrothed in full against her will.

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[120] Git.43:1.

[7:2]

Indeed, the case of betrothal is similar to the case of a partner who sanctifies his half of the animal; the sanctification cannot pass to the half owned by the other partner because the will of the other partner is an impediment. Only when the first partner acquires the interest of the second can the first partner consecrate the other half.

> Some emend the text to provide that the animal is automatically fully sanctified upon acquisition by the first partner of the second partner's interest, and that there is no requirement that the first partner then expressly sanctify the other half. But carefully corrected texts do require the second sanctification. The Rambam concurs.

Can the animal be sacrificed? No. The animal was not fit for sacrifice, and was initially rejected, while the first partner owned only half. The rejection is permanent.

What is to be done with an animal which is sanctified but cannot be sacrificed? The animal grazes freely until blemished. It is then redeemed from sacred status by sale[121], and the proceeds, to which the animal's former sacred status attaches, are used to buy a substitute sacrificial animal.

Under the laws of *temurah*, if the owner prior to redemption announces that another animal is a substitute for the one initially rejected, the substitute animal assumes the same rejected status and is also permanently unfit for sacrifice.

[Rejection of sacrifices]

The preceding discussion reflects three aspects of the law of rejection:

1. Rejection can occur even if **initial**, *i.e.,* even though the animal was not properly and completely sanctified

prior to the rejection.

> This contradicts those who hold that only animals which were previously properly sanctified can be rejected.
>
> Those who hold this contradicted view argue that all animals are unfit for sacrifice during the first seven days after birth. Why is not the animal rejected permanently? Because the animal was not sanctified **prior** to **rejection**.

---

[121]Only blemished animals may be redeemed from sacred status.

[7:2]

2. Live animals can be rejected.

> This contradicts those who hold that there is rejection only where an animal was previously sanctified and properly slaughtered. An example is the rejection which results when blood is spilled or rendered ritually impure before it is applied to the altar.

3. Rejection can occur to objects whose sanctity attaches to their **monetary** value; rejection is not limited to objects which have a **bodily** sanctity in the sense that they themselves are offerable on the altar.

> In our case, for example, the sanctity introduced when the first partner sanctified his share of the jointly owned animal did not sanctify the body of the animal. The animal became sacred only to the extent of the **monetary** value of the first partner's interest, with the result that the Temple became entitled to the monetary proceeds to be received on sale of that share.
>
> At first sight one might suppose that in every case of initial rejection, the sanctification which results in rejection can be no more than monetary.
>
> But this is not so. A leper, by way of example, is required to bring specified sacrifices after a prescribed number of clean days. Animals sanctified for this purpose prior to the passage of the requisite number of days are deemed sanctified **bodily**, although at this stage they are not fit for actual sacrifice.

The Rambam rules, contrary to our Gemara, that animals **cannot** be initially rejected while alive **even though the sanctity is only monetary**. The highlighted **even though** language is puzzling since monetary sanctity is less likely to be rejected than bodily sanctity. Be that as it may, the Meiri agrees with the Rambam and extends the Rambam's rule even to cases in which the rejection was not **initial** but there had been prior valid sanctification: live animals can never be rejected [122].

[Consecration of non-vital portions of a sacrificial animal]

Recall that an animal is fully sanctified when the **full** owner of the animal sanctifies a portion. This applies only when he consecrates a limb which is essential to life. Sanctity does not pervade an animal where a less essential bodily member, such as an arm or a leg, is consecrated.

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[122] See Pes.73:2 and Yoma 64:1.

[7:2]

How do we treat the animal? The animal cannot be sacrificed in the Temple because of its unconsecrated portion, nor can it be sacrificed out of the Temple because of its consecrated limb.

The Gemara directs that:

> the animal be sold to a buyer who wishes to bring a sacrifice of the same kind, and the proceeds to the seller are not sacred except for the portion ascribable to the limb which was consecrated.[123]

There are two possible interpretations of the Gemara's prescription:

1. The buyer succeeds to full ownership of the animal, and he sacrifices it as its owner. The sanctity which previously attached to one limb passes to a portion of the sale proceeds, and the seller must buy a small sacrifice with these funds. Commentators who hold this view differ on whether the buyer must consecrate the animal anew or whether the initial consecration continues although the seller's interest is extinguished.

2. The buyer never succeeds to ownership of the consecrated limb. The Gemara's reference to the portion of the proceeds ascribable to the limb is imprecise. The Gemara means to say that the proceeds to the seller are not sacred, except for the portion ascribable to the limb, **which portion he does not have, because the limb was not sold.** When the buyer ultimately sacrifices the animal, he sacrifices it both for himself and for his seller, who is in effect his partner.

View No. 2 is supported by a Gemara[124] which questions how it is that the buyer's obligation to bring **an animal** as a sacrifice is satisfied if he does not sacrifice an animal he owns in full. The Gemara explains that the buyer carefully phrases his obligation as being to bring a **denar's worth of sacrifice**.

Return now to the second view. What if the buyer and seller mistakenly believe that the limb can be sold, and the buyer pays for the limb? The purported sale of the limb is invalid, and does not impart any sanctity to any portion of the sale proceeds. The "sale" is a mistake and the buyer is entitled to a refund of the amount he "paid" for it if he demands the refund prior to sacrifice of the animal, when arrangements can still be made for proper sacrifice of the animal on behalf of both the buyer and the seller as "partners".

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[123] Er.5:1.

[124] Tem.11:2.

[7:2]

If the buyer makes his demand only after the sacrifice, most commentators hold that he is not entitled to a refund, since he presumably made the sacrifice only for himself, and he did not benefit the seller.

Some commentators disagree and hold that the seller did benefit from the sacrifice. It does not matter that the buyer mistakenly thought that he was bringing the sacrifice entirely on his own behalf.

In an analogous case, an animal which is **erroneously** sacrificed as a type of sacrifice other than intended satisfies the owner's obligation to bring the requisite sacrifice. If that rule is extended to our case, then the seller did benefit from the sacrifice, and the buyer's entitlement to a refund continues even after the sacrifice.

[7:2]

[Where two halves are betrothed separately]

If A says to B:

1. "Half of you is betrothed to me for half a *perutah* and the other half of you for another half a *perutah*", or

2. "Half for a *perutah* and the other half for a *perutah*," or

3. "Half for a *perutah* today, and the other half for a *perutah* tomorrow, or

4. "You are betrothed for a *perutah*, half of you today, and half tomorrow" (even if the two statements are made substantially at the same time), or

5. "Your two halves are betrothed to me with a *perutah*" (as one statement),

there is only questionable *kiddushin*. In each case there is a reference to *kiddushin* of half a women.[125]

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[125] If A says to B "Half of you today and the other half tomorrow," there is no question that if another betroths her later on the first day, the second betrothal is valid. There is nothing to suggest that the first betrother intended his betrothal to be valid **as of the first day** once he betroths the second half of B.

[7:2]

The Rambam rules that there is absolute *kiddushin* in the first two cases, probably because the Gemara, after propounding these two cases, states "If you should decide to rule [that *kiddushin* is valid in cases 1 and 2], how would you rule [in the other cases]?" This suggests to the Rambam that the Gemara's preferred view on the first two cases is that the *kiddushin* are absolute.

But the Meiri maintains that the contrary implication can be drawn from the Gemara's later analysis of the case of "your two halves for a *perutah*": The Gemara suggests that because only one statement was used this case is more likely to result in *kiddushin* than all prior cases.

Cases 1 through 4 each involve two statements. The Tosafot hold that there is no *kiddushin* at all if these statements are not made substantially at the same time (*tokh k'dei dibur*). Rashi disagrees, on the authority of the Gemara's suggestion that Cases 1 through 4 are possibly valid because, if made on the same day, one statement may be a **continuation** of the other. To Rashi **continuation** suggests words which are not in proximity. The Meiri agrees with the Tosafot that **continuation** suggests proximity in time.

[Where two fathers are involved]

Assume that the father of sons A and B gives a *perutah* to the father of two daughters, C and D (who are minors and can therefore be betrothed by their father), and says "for one *perutah* C is betrothed to A and D is betrothed to B." The *kiddushin* are questionable. There is a full *perutah* if one focuses on the fathers, but not if one focuses on C and D.

Assume that one father says to the other, "Your daughter and your cow for a *perutah*," or "Your daughter and your plot of land for a *perutah*."

> Did the son's father mean to apply the *perutah* against both the daughter and the other object (even though legally, the cow, as a movable object cannot be acquired with money alone), in which case there is no *kiddushin*?
>
> Or was his intent to apply the *perutah* to the woman, and to acquire the cow with *meshikhah* and the land with *hazakah*, in which case there is *kiddushin*?

Because of the uncertainty we rule that there is questionable *kiddushin*.

What of the cow and the land? They are retained by their original owners. Title remains in the original owner wherever transfer is questionable.

[7:2]

[Betrothal with objects of unknown value]

The following rules are derivable from the Gemara's discussion of betrothal with silk or silk clothing:

> 1. If A betroths B with object X "for whatever it's worth," B is betrothed, so long as X is worth a *perutah*.
>
> 2. If A betroths B with object X, does not say "for whatever it's worth," and object X is what it appears to be (*i.e.,* object X is not low quality cloth plated with gold)[126], then B is betrothed notwithstanding that she assumed that objects of type X have greater value than they actually have.[127]
>
> 3. If A betroths B with object X which he tells her is worth 100 *perutahs*, and X actually does have that value, then B is betrothed notwithstanding that she did not **confirm** the valuation at the time of the betrothal. Once the value is confirmed, she is betrothed from the time she received the object. Should C purport to betroth B before the object's value is confirmed, C's betrothal is void.

The Tosafot maintain that most persons have some concept of the value of silk, rings which are not set with precious stones and similar items, and it is only for such items that the Gemara requires no prior valuation.

For objects whose value is less well known, such as precious stones, the assumption is that B does not permit herself to be betrothed unless and until the value of the object used as *kiddushin* is confirmed by experts.[128]

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[126]If A gives B a gold-covered silver ring, there is no *kiddushin* even if B says that she would have accepted the ring had she known. Such *kiddushin* are valid only if A at the time of *kiddushin* announced that *kiddushin* was to be by item X "whatever its material, and whatever its worth".

[127]The rule is the same even should B later claim that she acted based on a mental reservation that she would be betrothed only if object X had a designated minimum value. Mental reservations are invalid. Similarly, A cannot invalidate his unconditional *kiddushin* of B by later claiming that he assumed B was the daughter of a priest. See 50:1.

[128]The Gemara at 12:1 requires an appraisal of a black marble stone given in *kiddushin*. The Tosafot explain that in this case the concern is **not** that the woman as a non-expert must be assured that the stone is as valuable as it appears to be. To the contrary, the purpose of the appraisal is to assure that the stone is not worth less than a *perutah*.

[7:2]

The Tosafot extend their rule to forbid *kiddushin* with rings with stone inlays unless the stone is appraised at the time of *kiddushin*; the stone (which requires appraisal) is as important to B as is the ring (which has well known value)[129].

The Meiri prefers not to distinguish among types of objects. But because of the uncertainty introduced by the Tosafot's view, it is customary to permit *kiddushin* with an inlaid ring only if the bride is told to rely only on the ring and not on the stone.

[Where the declaration does not define the actual object used; implicit agreement]

Where A betroths B and improperly names the object used, such as where A says "Here is a ring," but he actually gives B a *denar*, B's betrothal is questionable. A and B both know that the object is a *denar*, and they in effect **implicitly agree** to refer to the *denar* as a ring[130]. Similarly, the Gemara holds [131] that it is not necessarily a false oath for one to swear that he saw a "camel fly": perhaps he saw a bird and called it "camel."

The doctrine of **implicit agreement** has no place where one party is not in a position correctly to assess the facts of the situation. For example, there is no *kiddushin* by A of B if B thought the oil obscured in a cup given her as *kiddushin* was wine, or vice versa. The same applies if she is deceived because a veil obstructs her vision.

In sales transactions, the doctrine of implicit agreement does not apply to statements made at the **time of sale.** The concept does apply to representations made **prior** to the sale. Specifically:

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[129] The Tosafot acknowledge that the rule is different where A betroths B with a combination of a *perutah* (valid as *kiddushin*) and a loan (invalid). Since the *perutah* is tangible, it is assumed that the tangible consideration is important to B. The *kiddushin* are valid.

[130]The Gemara at 8:1 deals with the case of *kiddushi* which is made with a *maneh* of which one of the 100 component *denar*s is copper rather than silver. The *kiddushin* is valid if both parties realized and accepted that one *denar* was copper.

Does this support the doctrine of implicit agreement? Not necessarily. The case is distinguishable on the ground that the **general silver** character of the *maneh* is not destroyed because **one** of 100 component *denars* is copper. Perhaps there would be no *kiddushin* if the whole *maneh* were copper even if the parties were aware of the situation.

[131]Shab.29:1.

[7:2]

A sale is invalid if at the time of sale the seller wrongly identified a plot of land as *kur*-size, notwithstanding that both he and the buyer realized that the plot's size was only one-half *kur*[132]. The only exception to this rule is where the plot was **commonly** referred to as *kur*-size.

But where **prior** to the sale the seller assures the buyer that land is capable of producing 20 measures of oil, when actually it could produce only 16 measures, the buyer is not entitled to relief if he was expert and himself realized the land's capability. The seller's representation should have been taken to mean that the 16 measures were equivalent to 20 in quality and value[133].

[Betrothal with coinage]

Some say that betrothal with a coin is invalid. Their argument is that the government's legal-tender fiat, which may be abrogated, "artificially" increases the value of the coin beyond its "real" value. But this view is mistaken, and such *kiddushin* are valid.

[*Kiddushin* **with real property]**

Certain commentators hold that *kiddushin* with land is ineffective because a woman betroths herself only for property which she can transport and store securely. The following observations are relevant:

1. A *get* written on real property is invalid, even if the husband transfers title to the land to his wife[134]. Scripture requires that he **give** her the *get*[135] which suggests that the *get* must be physically transferable. The corresponding verse for *kiddushin*, "If a man **take** a wife," should similarly imply that *kiddushin* objects must be **takeable**, *i.e.,* movable.

It is true that the **taking** refers to the woman, rather than to the object whereby *kiddushin* is effected. Still the Gemara applies the term **taking** to *kiddushin* objects, too. Recall the *gezerah shawah* in

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[132]B.M.104:1.

[133]B.B.106:1.

[134]Git.21:1.

[135]Deut.24:1.

which this **taking** is compared to the taking of Efron's field in order to derive the rule that money is valid as *kiddushin*.

2. Even if there were no corresponding verse for *kiddushin*, rules relating to *get* can be freely applied to *kiddushin* because of a *hekesh* between the two concepts.

3. The Gemara[136] lists aspects in which *get* and deeds of emancipation are similar but in which they differ from *kiddushin*. The Gemara explains that the effectiveness of a writing on real property is not one such aspect, because in this respect *get*, *kiddushin* and deeds of emancipation are treated alike. All are invalid! Does this not prove that real property cannot be given as *kiddushin*?

No. The reference is not to real property given as value, but to documentary *kiddushin* written on real property.

4. The Rashba argues that *kiddushin* with real property is valid. A Tosefta[137] states that *kiddushin* with real property is not valid **if** (the Rashba reads **only if**) it is **connected in some way with idolatry**, such as a tree worshipped as an idol or its fruit, a city marked for destruction as a result of idolatry, or an idol's statue and its pedestal. The Rashba deduces that *kiddushin* with real property is valid if the real property is not connected with idolatry.

Those who disagree with the Rashba maintain that the Tosefta stresses idol-related real property only to invalidate **sales proceeds**. It is only for idol-related property that the ineffectiveness of land carries over into proceeds of land.

Some attempt to distinguish the Tosefta as involving items which are not real property in the legal sense. That is why prohibition results only from the idol relationship. They explain that the Tosefta refers to a tree which was worshipped as an idol, but which was dedicated while still a sapling not connected to the ground.

The Meiri thinks that this distinction is nonsense. True, there is some dispute on whether fixtures constitute real property, but all agree that a tree planted in the ground is real property for all purposes!

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[136] Git.9:2.

[137] 4:7.

[7:2]

5. The Rashba draws support from a Yerushalmi[138] which states that a *get* is invalid if written on real property because of the Scriptural reference to "a **book** [a chattel] of divorce" which is **given** by hand from the husband to the wife. There is no similar reference for *kiddushin*.

Because of these arguments and the resulting confusion, it is best not to permit *kiddushin* with real property.

[8:1]

[Money is valid to acquire a Jewish slave]

[138]Git. 2:3;12:2.

[7:2]

A buyer acquires legal title to a Jewish slave by transferring money to the seller[139]. This is not *halifin*. *halifin* is based not on payment, but on an **exchange** principle in which a buyer transfers the *halifin* object to his seller **in exchange** for the item to be purchased.

[Monetary equivalents; *halifin* as a back-up transaction where less than a *perutah* is involved]

Money should be taken in its broad sense. It need not consist of coinage and its value need not be as readily ascertainable as coinage. Monetary equivalents are also sufficient. But only money or monetary value of at least a *perutah* is valid to transfer title by payment of money[140].

Remember that the nominal item given by the buyer to the seller in a *halifin* transaction need not have the value of a *perutah*. Whether title can be transferred with objects valued at less than a *perutah* depends on whether the parties can rely on *halifin* as a back-up form of transaction.

Whether *halifin* is available as a back-up in turn depends on the item sold and on the *halifin* item:

1. Grains, produce and other consumables **can be acquired** in a *halifin* transaction, but they cannot themselves constitute the *halifin* item. Scripture proffers a **shoe**[141] as an example of the nominal *halifin* item, and this is intended to exclude consumables.

2. Coins cannot serve as the *halifin* item, **nor** can coins themselves be transferred in a *halifin* transaction.

3. A vessel, receptacle, garment, tool, weapon, etc. can be acquired in a *halifin* transaction and can also serve as the *halifin* item. Recourse can be had to *halifin* where an item of this sort is valued at less than a *perutah* and is transferred by the buyer to the seller.[142]

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[139] 14:1.

[140] Even commodities which can be readily consumed or used (such as bread, utensils, grains and other produce) are not considered a monetary equivalent if they are worth less than a *perutah*.

[141] Ruth 4:7.

[142] See also B.M.47:1.

[7:2]

[Monetary equivalents and indeterminate values relating to redemption of a first-born son]

The father of a first-born son who is not a priest or a levite must redeem the son by paying a five *selah* redemption price to the priest. The following rules apply, many of which are analogous to those regarding *kiddushin*:

1. Money or monetary value may be used.

2. The redemption is valid if neither the father nor the priest make any representation regarding the value of the item given in redemption.

It is not necessary that an expert corroborate the item's value at the time of redemption.

3. If in fact the item is not worth five *selah*'s, the redemption is not valid until the balance is paid.

4. If the father and the priest both agree to accept five *selah*'s as the value of an item which is actually not worth that amount, then:

a. Where the item is of universal utility, such as a garment or a calf, the redemption is valid. One can conceive of situations in which such items can be of great value to any person. That is why we accept the priest's affirmation of value.[143]

b. Where the item is not of universal use, such as a scarf which serves as distinctive headgear only for scholars, then an affirmation of excess value is accepted only if made by a select person for whom the item is of use, *e.g.,* a scholar.

Rashi maintains that if a non-scholar **expressly** accepts the scarf at its purported five *selah* value, the redemption is valid; it is only if the recipient makes no **express** affirmation that the validity of the redemption depends on whether the recipient is a scholar. The Meiri disagrees: notwithstanding that R. Kahana expressly affirmed the excess value of the scarf, the Gemara validated his redemption only because R. Kahana was a scholar.

The R. Kahana the priest who is referred to in our Gemara is not the R. Kahana

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[143]The Meiri disagrees with commentators who hold that affirmations of value are invalid where the disparity in value is more than one *selah.*

who is referred to elsewhere[144]as being entitled to eat priestly gifts only on account of his wife who was the daughter of a priest. The Tosaefot explain that R. Kahana the priest was a contemporary of R. Johanan[145]. The second R. Kahana lived many years later and was a contemporary of R. Ashi. The Gemara records many dialogues between the later R. Kahana and R. Ashi.

[Where funds given are less than the amount declared]

If A announces that he is betrothing B with a *maneh*, but he then gives her only one *denar*, B is betrothed. A's statement is interpreted as if he had said:

1. "I am betrothing you with a *denar*."

2. "If I fail to pay you the balance of a *maneh*, my *kiddushin* shall be void from the beginning as if it never occurred."

3. "If I do pay you the balance, my *kiddushin* shall be valid from the moment I gave you the *denar*."

Payment of the balance of the *maneh* is therefore a **condition** to the immediate validity of the *kiddushin*. The rule in this case is called **Betroth-and-Pay.**

[Where the *maneh* displayed includes a copper *denar*]

What if A displays to B a *maneh* which contains one hundred *denar*, but one of the *denars* are copper rather than silver? The result depends on whether A said "Be betrothed with this *maneh*," or "Be betrothed with **a** *maneh*.

In a **this** *maneh* case, B is betrothed if she realized the copper *denar* at the time[146]. She need not say anything. This is not a case of waiver -- she never counted on receiving only silver *denar*s.

But if she did not know that the *denar* was copper, such as where the *kiddushin* occurred at night or where the *denar* was plated with silver,

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[144]Hul.132:1.

[145]See B. Kama 117:1 for a case in which R. Kahana was chastised by R. Johanan.

[146]A silver *denar* that cannot be passed is treated the same as a copper *denar*. If it passes, but only with difficulty, *kiddushin* are valid, but on B's demand A must give B a silver *denar* in exchange. If A dies prior to the exchange the *kiddushin* are void.

[7:2]

there is no *kiddushin*.

In an **a** *maneh* case, the *kiddushin* is valid only if B expressly says that she accepts the copper *denar*. The validity of the copper *denar* depends on her **waiver**.

[Issues in Betroth-and-Pay]

1. Can **B** revoke before A performs the condition?

2. Can **A** revoke the *kiddushin* before he performs the condition? If so, the result would be that there is no *kiddushin* even if he afterwards pays the *maneh*.

3. If A has no power to revoke, can B **compel** him to perform the condition?

4. If A does have the power to revoke, does he have the power only where the condition depends on him, or does he have the power even where the condition's performance depends on B? For example, take the case in which A gives B a gift on condition that B make a return gift to A. Can A revoke before B makes the return gift?

5. If A has the power to revoke, can he demand that B return the *denar*?

6. Can B validate the *kiddushin* by waiving A's obligation to pay?

Each of these issues will be discussed in turn.

1. Can B revoke before A performs the condition?

Consider this issue under several headings:

a. *Where A says "Here is a maneh."*

1. Consider the Gemara which analyzes the following two cases[147]:

i. A tells B "You are betrothed to me on condition that I give you 200 *zuz*," and he gives her nothing now.

Note that this case is equivalent to Betroth-and-Pay, with the

[147] 60:1.

following differences:

(1) Whereas in Betroth-and-Pay the formula is only **interpreted** as present *kiddushin* subject to ultimate payment of the *maneh*, in this case the condition is **express**.

(2) Whereas in Betroth-and-Pay the intent is clear that *kiddushin* is intended from the time of the initial statement, in this case the Rabbis dispute whether *kiddushin* is intended to reach back to the time of the statement once the 200 *zuz* are paid.

R. Huna holds that *kiddushin* are effective from the start once A pays B the funds. R. Yehuda validates the *kiddushin* only from when the funds are given because he holds that the **on condition** phrase connotes that effectiveness is to run only from the time the condition is performed[148].

The Gemara explains that holdings of R. Huna and R. Yehuda result in different rulings where **C** attempts to betroth B before A pays the funds. R. Huna holds that C's *kiddushin* is void, and R. Yehuda validates C's *kiddushin*.

ii. *A gives B a get on condition that **B** give **A** 200 zuz.* R. Huna validates the *get* from the start once **B** pays the funds. R. Yehuda validates the *get* only from when the funds are given.

The Gemara explains that the holdings of R. Huna and R. Yehuda result in different rulings **only** if the *get* is destroyed or lost before the funds are paid. R. Huna rules the *get* valid, whereas R. Yehuda rules that there is no *get*.

Now, should not R. Huna and R. Yehuda also differ where B accepts *kiddushin* from C after she accepted her *get* and before she made the requisite payment? Why does the Gemara not mention this difference?

It must be that even R. Yehuda would agree that the *get* is valid from the start once she accepts *Kiddushin* from C and she ultimately makes the requisite payment to A:

Once she accepts C's *kiddushin* she stands in the position of the man who promised a *maneh* and betrothed with a *denar*, and whose own

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[148]R. Huna's view prevails. The "on condition" formula is interpreted as an intent to effect immediate *kiddushin*.

> decision will determine whether or not the *kiddushin* will ultimately stand. In both cases, the action, whether *kiddushin* or *get,* stands, **and the opposing party can do nothing to thwart the performance of the condition**.
>
> Moreover, by accepting C's *kiddushin* she **obligated** herself to pay A to validate her *get*. Since she is in a position to fulfill her obligation, effectiveness runs from the moment of C's *kiddushin*.

The Meiri therefore concludes that B has no power to revoke where one *denar* was paid out of "a" *maneh*.

> b. Where A says "Here is this *maneh*"; where A is counting out money in an "a" *maneh* case.

The result is different were A to say "Be betrothed to me with **this** *maneh*." There is no *kiddushin* until she receives her final *denar*. B is presumed to have her mind set on the *maneh* which was displayed to her, and to accept betrothal only when that entire *maneh* is delivered. The *kiddushin* is void until she receives **the** *maneh* in full. A formal revocation is not necessary.

A *baraitha* rules that where A betroths B with a *maneh* and is counting out the *maneh* to B, B (and most certainly A) may revoke the *kiddushin* until the moment at which B finally has her entire *maneh* in hand[149].

Now, the Gemara claims that once the rule is known that B can revoke in an **a** *maneh* case where A is counting out the *maneh*, there is certainly no need to teach the rule that there is an infirmity in *kiddushin* in a **this** *maneh* case where A paid 99 *denar* out of 100. Does this not suggest that the rule in both cases is identical, and that revocation is necessary?

> No. The Gemara's point is only that there is an infirmity in *kiddushin* in both cases, not that the cases are precisely alike. In the first case B must expressly revoke and in the second case *kiddushin* are void even without express revocation.
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> c. Where a maneh is promised and 99 denars were given.

Where betrothal is with **a *maneh***, and A gave B 99 *denars* out of 100, B can

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[149]This rule applies whether A told B that A was betrothing with **a** *maneh* or whether A told B that he was betrothing her with **the** *maneh* which A displayed to B. The Alfasi appears to distinguish between these cases, but this is illogical and is probably a typographical error.

revoke *kiddushin* at any time until she receives her final *denar.* A formal revocation is necessary.

> The Raabad explains that where B received only one *denar*, it is presumed that B would have objected were she not willing to accept *kiddushin* with the condition that A pay later. However, where A already paid 99 *denar*s, there is concern that B might not be amenable to the deferral of A's obligation, but is embarrassed to demand that the last *denar* be paid now[150].

2. *Can A revoke the kiddushin before he performs the condition, with the result that there is no kiddushin even if he afterwards pays the maneh?* Commentators differ. The following considerations are relevant:

1. The Gemara at first suggests that Betroth-and-Pay is inconsistent with the *baraitha* which rules that where A betroths B with a *maneh* and is counting out the *maneh* to B, B (and most certainly A) may revoke the *kiddushin* until the moment at which B finally has her entire *maneh* in hand[151].

> How and why is the *baraitha* inconsistent with Betroth-and-Pay? Those commentators who maintain that neither A nor B can revoke in Betroth-and-Pay explain that the Gemara's concern is twofold, *i.e.,* that the *baraitha* evidently permits both A and B to revoke. Those commentators who permit A to revoke in Betroth-and-Pay explain that the Gemara's concern with the *baraitha* is only with the *baraitha's* apparent willingness to allow B to revoke as well as A.

2. If A says to C "Acquire this field for B on condition that you write the deed for him," A can revoke the transaction until the deed is written and transferred[152].

> On the one hand, this suggests that offers can be withdrawn prior to the satisfaction of a condition.
>
> On the other hand, the case can be distinguished on the ground that A

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[150]Of course, *kiddushin* would be valid were A to say "Be betrothed to me with 99 *denars* on condition that I pay you a final *denar*." This is no worse than any other conditional *kiddushin.*

[151]This rule applies whether A told B that A was betrothing with **a** *maneh* or whether A told B that he was betrothing her with **the** *maneh* which A displayed to B. The Alfasi appears to distinguish between these cases, but the Meiri disagrees.

[152]27:1.

by his statement expressly makes the transfer's effectiveness conditional on the deed. There is no express limitation in Betroth-and-Pay. In fact, the groom says that he is betrothing B **now**.

3. A married woman is entitled to sustenance, clothing and conjugal rights. If A betroths B on condition that B has no claim to these requirements, the betrothal is valid and the waiver of B's rights to sustenance and clothing is also valid. However, B continues to be entitled to conjugal rights, and these rights are not waived [153].

But why does not A simply revoke his *kiddushin*? After all his condition was not satisfied, since B continues to be entitled to conjugal rights! This suggests that an offeror cannot revoke his offer where he has set a condition to effectiveness. By analogy, in Betroth-and-Pay A cannot revoke his own offer if he chooses not to perform his own condition to pay B a *maneh*.

Can the case be distinguished on the ground that the attempted condition relating to conjugal rights is void because it contravenes Scriptural requirements? No. A is not saying "Be betrothed to me without the benefit to you of the designated rights." All he asks is that **there be no *kiddushin*** if these rights by law must withstand a purported waiver![154]

Can the case be distinguished because of the **inherent inconsistency** between the statement and the condition? Is there an argument that to be betrothed **means** to have marriage obligations? No.

i. If this were a true inconsistency, why is the condition valid as to food and clothing?

ii. There are many marriages in which the husband and wife seek only to

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[153] 19:1.

[154] Compare this to the case in which A tells B "You are divorced on condition that you (who are not the daughter of a priest) eat *terumah*." The condition is not void, although she is prohibited from eating Terumah. As far as he is concerned, "let her not eat and let her not be divorced!" Git.84:2.

Distinguish the case in which the husband wishes to absolve **himself** from the Torah requirement that he satisfy his wife's conjugal rights. Also distinguish the case of *terumah* from the case in which a man's condition is designed to afford him rights which the Torah specifically demands that he not have. An example is A's betrothal of a woman captured in battle on condition that he be entitled to sell her into slavery. The condition is void and the *kiddushin* are valid.

serve each other in permitted seclusion, without any thought of conjugal relationship.

It follows that logical inconsistency invalidates a condition only where the inconsistency is insurmountable, *e.g.,* "This is your *get* but the paper is mine." (And even in the latter case, if the husband says "on condition that the paper is mine," rather than "but the paper is mine," his condition is valid[155].)

4. In a later Gemara[156] R. Ashi rules **against** a seller of land who had announced prior to the sale that he was selling on account of his decision to emigrate to Eretz Israel, and who sought to rescind his sale when he failed to emigrate[157]. In effect, a failure of a condition set by A does not give A the power to revoke his action!

But this case can be distinguished. The seller failed to make his emigration a condition to the sale. Instead, his statements are taken only as explanatory.

5. Where A divorces B on condition that **B** pay a *maneh* to A[158], Raba holds that the divorce is valid even where A was compelled to accept the *maneh.* Obviously A has no revocative power[159].

Why does the Alfasi not include Raba's holding in his compendium of *halachot*?

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[155]See Git.75:1.

[156]50:1.

[157]See 50:1. for the result where the seller did not emigrate because of highway brigands or other impediments. Whether or not the seller would prevail in this case depends on the precise language which R. Ashi used to rule against the seller where there were no impediments:

If R. Ashi's words were: "**he could have gone had he desired**," the meaning is "if he really wanted to go, he could have found a way," notwithstanding impediments.

If R. Ashi said "**had he desired, could he not have [easily] gone?**" the suggestion is that the seller lost his case because there **happened** to be nothing to deter him from emigrating. Were there such factors, the seller would have prevailed.

[158]Git.74:2.

[159]Raba's holding stands notwithstanding that R. Papa questions it.

The Meiri explains that this omission is not because the Alfasi disagrees with the result, but because the Alfasi believes that this result is merely a subset of a broader rule[160] which the Alfasi considers *halachic*: the doctrine that a condition which is rendered physically impossible is void[161]. In Raba's case the husband's refusal to allow the wife to perform the condition renders performance **impossible**. The condition thereby becomes void and the *get* is automatically valid.

The Meiri further notes that his view under Heading No. 1 that B cannot revoke *kiddushin* in Betroth-and Pay is also a subset of the Alfasi's concept of **impossibility**. If B attempts to revoke the *kiddushin*, she in effect is attempting to make it **impossible** for A to satisfy the condition, and this renders the condition void and the *kiddushin* valid.

The Meiri concludes that A's attempted revocation is void. If he afterwards pay the *maneh kiddushin* are valid from the start.

3. *If A has no power to revoke, can B **compel** him to perform the condition?*

Some hold that B can compel A to perform. But this view is inconsistent with a Gemara[162] in which A tells B "You are divorced on condition that you (who are not the daughter of a priest) eat *terumah*." The condition is not void, although she is prohibited from eating terumah. As far as he is concerned, "let her not eat and let her not be divorced!"

Now, the woman accepted the *get* subject to a condition which is incumbent **on her** to perform. Does not the fact that the woman is not compelled to perform the condition suggest that there is no power to compel?

Not necessarily. A wife can be **compelled** to accept a *get*, and we do not interpret her ostensible acceptance of both the *get* and the attendant condition as a willing act. That is why she need not perform the condition where performance (the eating of *terumah*) would violate a religious principle.

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[160]In adhering to this view, the Alfasi rules with R. Simeon b. Gamliel rather than with the majority of the other sages. See Git.75:2.

[161]An example is a condition that the wife wet-nurse a son for two years, where the condition becomes impossible to perform on the son's death. Another example is a condition that the wife serve the husband's father for two years where the father refuses the service.

[162]Git.84:2.

The Meiri concludes that B cannot compel A to perform the condition, and A may delay as long as he sees fit.

If completion of the condition becomes impossible because of some outside cause, such as A's death or the lapse of a time limit, the *kiddushin* is void absolutely and immediately. Not even *halizah* is required where A dies without children.

4. If A does have the power to revoke, does he have the power only where the condition depends on him, or does he have the power even where performance depends on B?

For example, take the case in which A gives B a gift on condition that B make a return gift to A. Can A revoke before B makes the return gift?

Those commentators who rule "yes" hold that A's purpose in setting the condition was to reserve for himself the opportunity to revoke his own sale or gift until B reciprocates.

Would the same commentators also permit B to revoke, or can B cancel the gift only indirectly by not reciprocating?

> Some commentators say no. We know that once B does reciprocate, the gift is validated from when A made the gift, not from the time of B's reciprocating gift. Control of the gift is therefore in A's hands, not in B's.
>
> The Meiri is not impressed with this logic. Besides, A's right to revoke would be more coherent if B, too, were given the right to revoke prior to B's reciprocation.

Keep in mind that all this is academic, since the Meiri rules that even A cannot revoke. In fact, the Meiri therefore concludes that where A gives B a gift on condition that B reciprocate, neither of A or B may revoke, and B may delay as long as he sees fit before he reciprocates.

5. *If A is held to have the power to revoke, can he demand that B return the denar?* Yes. The contrary rule that *kiddushin* gifts are permanent and are not returnable applies only when the *kiddushin* is valid but is later upset by divorce, whether on account of the husband or on account of the wife. But where there is **a flaw in the *kiddushin* itself** the groom is entitled to demand return of the item given in *kiddushin*[163].

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[163] See B.B.145:1.

[7:2]

6. Can B validate the kiddushin by waiving A's condition?

The Meiri rules that B may waive performance of the condition and thereby solidify her *kiddushin*. A waiver which is properly witnessed is the equivalent of performance[164]. Compare the case of A who forbids B to benefit from A unless B benefits A's son: A can waive the condition and deem it as if B had given the desired benefit[165].

The rule is different in the case of a divorce which is conditionally given by the husband. Here, waiver is invalid because the enmity between husband and wife casts doubt on the husband's true willingness to make the waiver[166].

[Subsequent acquiescence to amount previously rejected]

Assume that A wishes to betroth B for 100 *denars*, while B demands 200. Assume further that one of them subsequently comes forward and says "I agree." The Tosefta holds that 200 *denar* are required for *kiddushin* if it is A who comes forward; if B comes forward, 100 are sufficient[167].

Why do we not simply look to the amount which B actually accepts? It must be that the Tosefta's case is Betroth-and -Pay: at the time of the disagreement A gave B only a *denar* -- and the issue is whether the **condition subsequent** is 99 or 199. An alternate explanation is that after the initial disagreement, A gave B a bundle of money which she did not count, so that nothing can be implied from the amount of funds delivered.

[Rule where collateral is given in the place of value]

The Gemara next discusses the following:

> If A says to B, "Be betrothed with a *maneh*, and he gives her a pledge on it, she is not betrothed: **there is neither a *maneh* or a pledge**.

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[164]Waiver must be express. For example, if one of the *maneh*'s component *denars* is copper rather than silver there is no *kiddushin* even if B recognized the substitution. To be valid, she must announce that she accepts the copper *denar* in place of the silver *denar*.

[165]Git.74:2.

[166]*Id.*

[167] The same rule applies in price disagreements in sales transactions.

[7:2]

> The sons of R. Huna b. Avin bought a female slave for copper coins. Not having the coins at hand, they gave a silver ingot in pledge. Subsequently, the slave's value increased, and the seller wished to withdraw. R. Ammi said **there are neither coins nor an ingot**.

The Tosafot explain that the Gemara's meaning is that B is not betrothed because she has only a security interest in the pledged object, whereas A retains title; the security interest does not give her the assurance of ownership that she would have from a present transfer of title. The same rule applies in the case of the slave's failed sale.

The Gemara's explanation "there is no silver ingot" means that title to the ingot had not passed. Under this interpretation, the phrase **there is no pledge** means **there is no title to the pledged item**.

Note that in this view, the pledge itself is good as a pledge, although deficient as title. The Gemara's holding is therefore limited to types of transactions, such as *kiddushin* or the purchase of a slave, whose validity depends on the transfer of title.

Others explain that the phrase **there is no pledge** means that a pledge which does not secure an actual loan is invalid **as a pledge**. By extension this view would hold that a pledge to secure a gift is also invalid[168].

In this view there would also be no pledge in the following instance:

> Assume that A gives B a gift of land, and A promises to allow B to recover against A's remaining lands should A's creditors seize the gifted land. The promise is not enforceable. The grant of rights in A's remaining lands is in effect a pledge which is not supported by an **obligation**.
>
> > The rule would be otherwise where A assumes the **personal responsibility** to indemnify A against A's creditors, and the pledge of A's remaining lands then secures A's **obligation**.
> >
> > Alternatively, B can obtain a valid interest in A's remaining lands if A by formal *kinyan* transfers to B present ownership rights in these lands, with the understanding that these rights are to be exercised only if title to the gifted land is attacked by A's creditors.

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[168]The Alfasi agrees with this position. In a responsum the Alfasi invalidates a pledge made to secure a gift of old coins. But why did not the donor consummate the gift by *halifin*? Because of the rule that coins cannot be transferred by *halifin*.

The Tosafot's view is somewhat supported by the rule that one may assert a claim against laborers' tools as a remedy for labor they failed to perform[169]. This suggests that the tools are validly pledged notwithstanding the absence of a loan.

Those who disagree with the Tosafot explain that the hiring person's recourse against his laborer's tools is not by way of a **pledge**, but is a penalty assessed against one who damages another: the damaged person may foreclose against property of the damaging person which the damaged person happens to hold.

> In fact, even in the case of the silver ingot which was given for the slave, if prices had risen and the **purchaser** wished to renege, his wrongful abrogation of the sale would have entitled the **seller** to foreclose against the ingot notwithstanding that there is no valid pledge.

But there is no wrongful action if A reneges on a promise to make a **gift** to B. Since there was no loan, and therefore no pledge, B has no rights against A at all.

The Ittur disagrees with much of what has been said:

> 1. Were A to say to B "Be betrothed to me with a *maneh* for which I give you this pledge", or "I am purchasing this maidservant for copper coins for which I pledge you this silver ingot," the *kiddushin* and the sale would be valid. The pledges are invalid in our Gemara only because they were offered subsequently. The Ittur also explains that this distinction is so elementary that the Gemara did not use it to explain an apparently inconsistent *baraitha* which holds that *kiddushin* with a pledge is valid.
>
> 2. In the case of a pledge to secure a gift, the moral obligation to make the gift, even if not enforceable, is a sufficient **obligation** to support the pledge.
>
> The same would apply if an attempt is made to transfer a gift presently, and the transfer fails because of legal invalidity. An example is where an

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[169]B.Mez.78:1. The claims asserted against the laborer's tools may exceed the promised wages by 40 or 50 *zuz*.

attempt is made to transfer coins by *halifin*[170]. A pledge made to secure the gift is valid.

Although the Ittur's views can be supported logically, they are inconsistent with the flow of the Gemara's discussion.

[170]Recall that *halifin* is invalid for coins.

[7:2]

[8:2]

[Betrothal with object pledged by a third party]

A lender may betroth a woman with an item pledged by a borrower. The lender has a kind of ownership right in the pledged item, and when these rights are transferred to the woman there is enough value to support *kiddushin*. It is as if the lender had given funds to the woman which she loaned to the borrower against a pledge.

> Contrast the case in which A promises a *maneh* to B and wishes to betroth B with a pledge which secures A's promise. In that case B does not receive title to a pledge which had been **previously established in favor of A**. She receives only security for an obligation to give her title to an item[171].

But are a pledgee's ownership rights meaningful? Yes. A pledge may be retained by the pledgee after the borrower's death. This is despite the rule that chattels inherited by heirs are not responsible for the deceased's debts.

True, this rule applies only to pledges given after the loan was made[172]. Still, ownership rights in **contemporaneous** pledges are sufficient to support *kiddushin*. This is proved[173] by the rule that a master may designate his bondmaid as his wife by freeing her of a *perutah*'s worth of labor:

> Analytically, she is betrothed by the transfer to her of an obligation she had to him (a "loan") which was secured by her body (a "pledge"). The "loan" (her obligation to work) was contracted **simultaneously** with her pledge (the transfer to the master of the labor inherent in her body).

Rashi holds that contemporaneous pledges are invalid as *kiddushin*. He distinguishes the case of the bondmaid because the transaction in which the bondmaid's body was pledged is a sale in addition to a pledge. The Meiri disagrees.

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[171]Recall that some commentators hold that the pledge to B is invalid in any event because it does not secure a **loan**.

[172]Since R. Issac's derivation of the rule is limited to pledges made subsequent to the loan.

[173]19:1.

[7:2]

[Betrothal with an object which the woman previously pledged to the groom]

Another rule can be derived from the analogy to the bondmaid: A man-lender may betroth a woman-borrower with collateral which the woman had given to the man[174].

Why then does our Gemara emphasize pledges given by **others**? To exclude the case in which A promises B a *maneh* and gives her a pledge to secure **that** promise.

[Betrothal by transfer of a debt owed by a third party]

Assume that a lender by way of *kiddushin*, assigns to a woman the lender's loan rights against a borrower. The Rambam holds that the *kiddushin* are valid if all three of the lender, the borrower and the woman were in each other's presence when the assignment is made. This reflects the rule that a debt is irrevocably transferred from the assignor to the assignee, and the assignor loses the right to renounce the debt, if the assignment is made in this way. An alternate procedure is for the lender to transfer the debt to the woman by a separate instrument of assignment.

[Ownership rights in Jewish-Gentile pledges]

Some maintain that the rule which permits betrothal with items pledged by others applies only where the item was pledged by a Jew, but not where the item was pledged by a gentile. The Scriptural source from which the Gemara derives ownership rights in a pledgee refers only to inter-Jewish transactions.

The same issue of ownership rights in objects pledged by a gentile applies elsewhere:

> A Jew must immerse in a *mikveh* utensils which were previously owned by a gentile and which a Jew uses once he obtains **ownership** rights. Is immersion required for utensils which were pledged by a gentile to a Jew? The Gemara reaches no definite conclusion[175].
>
> Some commentators require immersion because of this uncertainty. These commentators should also take the strict view in our context and should hold that there is possible *kiddushin*.

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[174]The *kiddushin* are valid whether A says to B "Be betrothed with the loan" or "Be betrothed with the pledge."

[175]A.Z.2:2.

[7:2]

Even those commentators who take a lenient view on immersion would possibly take a strict view on *kiddushin*. The issue on immersion is Rabbinic. The issue of *kiddushin* is Scriptural and deserves stricter interpretation.

[Betrothal with a promissory note to pay value]

Is B betrothed if A promises her a *maneh* and gives her a promissory note for the full amount?

Contrast the case in which A betroths B with a *maneh* and gives her only a *denar*. In that case, although there is present *kiddushin* the *kiddushin* can be upset if there is a later failure to make payment of the balance due. The issue here is whether the *kiddushin* are final now, so that if A fails to pay, B has only a monetary claim against A.

One commentator says "yes." It is as if A has given B a *maneh* which she loaned back to him.

Consider the following:

1. A sale of land by A to B is valid if B pays A 200 *zuz* of the 1,000 *zuz* purchase price and gives to A B's promissory note for the balance. If B later fails to pay, A cannot revoke the sale. He can only sue B for the balance[176].

Is this case evidence? Not necessarily.

The case involves partial payment; perhaps where the entire purchase price is in the form of a note, the sale is not final until the payment is made in full.

2. If a slave gives his master a "deed" which consists of a note to the master of the **entire** unamortized portion of the slave's purchase price, the emancipation is not documentary but is **valid as standard monetary emancipation**. Clearly, then, even a note for the full purchase price is valid.

Why then does the Gemara require that in land purchases there be a 200 *zuz* down payment? The reference to the 200 *zuz* is in fact superfluous. The Gemara mentions it only as a carryover from the prior discussion of the consequence should the buyer or seller renege where the sale is **not final** (*i.e.,* where no note was given). In that case, the partial payment is

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[176]B.M.77:2.

important:

> If the seller cancels, the buyer may demand return of his 200 *zuz* or 200 *zuz* worth of the seller's best lands.
>
> If the buyer cancels, the seller can return the 200 *zuz* or give the buyer 200 *zuz* worth of the seller's worst lands.

[Does the grant of a pledge extinguish debt for the oath on partial denials?]

Where A sues B for 100 *maneh* and B admits 60 but denies 40, he has made a **partial denial**. The Torah requires that B swear that he does not owe the 40.

Where B denies the **full** amount there is no Scriptural oath.

Where B admits the 60 and proffers it to A ("here it is"), A's claim is reduced to 40. There is no **partial** denial and there is no oath.

What if B offers a pledge to secure the portion conceded? Is that portion of the debt extinguished? Is the oath eliminated?

Recall that our Gemara holds that A cannot betroth B with a loan, and that even where A pledges an object to B to secure the loan, the value given by A to B is still a loan. From this the Alfasi and another commentator deduce that a pledge does not extinguish a debt and that it is the continuance of the relationship as a **loan** which is fatal to *kiddushin*. It follows that the Scriptural oath applies. There is a record of a case in which the Alfasi required an oath in accordance with this view.

Other commentators disagree:

> We mentioned previously that a pledgee can hold his pledge until payment. Recall also that where a pledge was not contemporaneous with the loan, the lender has a kind of ownership interest in it.
>
> Besides, the case should be no worse than if the defendant had given the claimant a promissory note. All agree that the tender of a note is the equivalent of a "here it is" type payment.
>
> The case can be distinguished from *kiddushin* because here, unlike *kiddushin*, an actual loan preceded the pledge.

[7:2]

[Delivery of a pledge by a gentile as payment for wine]

No monetary value or other benefit may be had from wine touched by a gentile. That is why one who sells wine to a gentile must obtain payment for the wine **before** the gentile takes possession[177].

Assume that the gentile gives the Jew a pledge for the purchase price. Has the Jew been paid? Can the Jew immediately afterward give the wine to the gentile?

> Some commentators reason by analogy from *kiddushin* that the pledge does not transfer title to the gentile and does not count as payment.
>
> What then shall the Jew do if the gentile cannot pay cash? The Jew must lend money to the gentile against the pledged item, and the gentile must use the borrowed funds to make a present payment to the Jew for the wine.
>
> The Meiri disagrees:
>
> Unlike the case of *kiddushin* or the case of the maidservant, the pledge in the case of the gentile secures a true loan: the loan of the wine.
>
> Besides, the pledge is valid to transfer ownership of the wine under gentile law, and the gentile can no longer renege. Since this obligation of the gentile can be enforced by the Jew, he has in effect received final payment for his wine.

[Money valid only for transfer of gentile slaves]

A gentile slave may be purchased for money. Chattels other than slaves cannot be acquired by payment.

The buyer and seller can each renege, and are penalized only by the *me shepora* curse.

There is not even a *me shepora* curse if no money was paid and only a pledge was given[178].

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[177] A.Z.71:1.

[178] B.M.41:1.

[7:2]

[*Kiddushin* if bride rejects value after angry acceptance; related rule in ambiguous cases]

There is no *kiddushin* if A tells B "I betroth you with this *maneh*" and B takes the *maneh* angrily and throws it to A's face, or if B puts the *maneh* in her purse and then angrily empties it.

Rejection need not be **immediate** or in A's presence. What is essential is that witnesses testify that it was clear from her behavior that she rejected the *maneh* from the moment that she received it. Should B accept the *maneh* without anger, she is betrothed even if she discards the *maneh* immediately.

What if she throws the *maneh* into the sea? If she is betrothed she is not responsible to return the *maneh*. But where betrothal is rejected, B is liable to A for loss of the *maneh* which she causes **directly**.

> B would not be liable if loss of the *maneh* is caused indirectly, such as where she throws the *maneh* to the ground and it rolls into the sea.
>
> Liability for indirect loss can be imposed only on persons who willingly accept deposits of another's property. This does not apply to B in light of the resistance she displayed towards accepting the *maneh*.

Shall we assume that she could not have rejected the *kiddushin*, because if she did she would be liable to A for the *maneh*? And shall we explain that she desired *kiddushin* but wished merely to test A's anger?

No. If she appeared angry the *kiddushin* are rejected.

It goes without saying that there is no *kiddushin* if B did not know that *kiddushin* were intended, or if A spoke as if he were giving B a gift.

If B responds to A by saying "Give them to my father" or "Give them to your father", there is no *kiddushin*. Her intent is merely to avoid A. The result would be different were B to say "Give them to my (or your father) so that he can accept them for me" or "so that I be betrothed to you."[179] What is essential is that the Beth din determine that B intended to accept *kiddushin* and that she referred to her father only to suggest that he safeguard the *maneh* or for some other plausible reason.

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[179] Rashi holds that the second formulation is effective only if the entire procedure was initially suggested by A.

[7:2]

[Where the *kiddushin* object is placed on property jointly owned by the bride and the groom]

If B says to A "Place the *kiddushin* on **this** rock" she is betrothed only if the rock is her property. If B owns the rock jointly with A there is questionable *kiddushin*.

Why is B betrothed if the rock is her own?

1. Rashi maintains that a woman must acquire her *kiddushin* object with a standard *kinyan*. It is a *kinyan* for a buyer to place the seller's chattel on the buyer's real property. The Meiri agrees.

A difficulty with Rashi's view is that where C and D own real property jointly, C cannot acquire a chattel from D merely by placing it on the jointly owned real property[180]. Why then is there questionable *kiddushin* where A and B jointly own the rock on which the *kiddushin* is placed?

That a ***get*** placed on jointly owned property is absolutely invalid does **not** present a difficulty to Rashi. A *get* must completely leave the husband's control. On the other hand, *kiddushin* are valid if the woman obtains even a modicum of possession or benefit. Recall that there is *kiddushin* if value is given to a third party at the woman's direction.

2. Other commentators disagree. They hold that a woman's acquisition of rights in the object given her as *kiddushin* is not judged by conventional acquisition standards.

Note the absence of formal *kinyan* type requirements when an item is directly given to the woman. In contrast to the rules in a typical purchase, the woman need not perform *meshikhah* or lifting to formalize her *kiddushin*.

The focus in *kiddushin* is not on the woman's acquisition of the *kiddushin* item, but rather on the change in the woman's status. There is *kiddushin* where the object is placed on her rock, not because there is a valid *kinyan*, but because of the implication that she means to accept the *kiddushin* rather than reject it.

The issue of the jointly owned rock revolves around whether the same implication can be drawn.

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[180]The sale is valid only if the chattel is placed in a receptacle owned by the buyer. See B.B.84:2.

[7:2]

[*Kiddushin* given to others; pre-existing obligation to others; costs incurred in saving another person's life]

If A offers food to B as *kiddushin* and B says "Give it to a dog," there is no *kiddushin*.

There is *kiddushin* where the dog belongs to B: B benefits, and A has no antecedent independent obligation to feed the dog. This distinguishes the case from where B directs that A give the food to the poor, where there is no *kiddushin*. A as well as B have a pre-existing responsibility to feed the poor.

What if A and B jointly own the dog? There is a three-way split among commentators. Some maintain that B is not betrothed if the food is worth less than two *perutahs* (because her share is only half of the food or less than a *perutah*) but she is betrothed if the food has a value of at least two *perutahs*. Others maintain that *kiddushin* are invalid in any case; B's intent might have been for A to feed the dog today, and for B to reciprocate by feeding the dog (out of her own resources) the next day. Yet other commentators rule that there is questionable *kiddushin*.

If B directs A to give the food to a dog which is attacking B, the *kiddushin* are questionable. A benefitted B by saving her life. But she may not give him credit for this benefit, since the Torah **obligates** him to save her and not "to stand by while the blood of your friend [may be shed]."[181]

Now, need A save B's life where B does not offer to reimburse A for his costs?

> If yes, the *kiddushin* are questionable only where B offers to make this reimbursement. If B does not offer reimbursement, there is absolute *kiddushin* since A was not **required** to assist.

Some commentators rule that B must offer to reimburse A. They reason from the doctrine that C cannot save his own life with the unauthorized use of D's property[182]. Others maintain that this doctrine applies only where D is not present at C's emergency. If D is present he must authorize the use of his property without the legal right to reimbursement by C.

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[181] Lev.19:16.

[182] B.K.60:2.

[7:2]

The second group of commentators argue from the doctrine that D need not assist C in unloading C's donkey if C does not join in the work. The doctrine requires special derivation from a verse which suggests that D must work **with** C, not **for** C[183]. Were there no such verse, D would have been required to contribute his labor to assist C even if C sat idly by.

By extension, this suggests that where C is not in a position to help himself, and certainly where C's life and not only his property is at stake, D must contribute his own efforts without a promise of compensation[184].

If B directs that A give food to a poor person, there is no *kiddushin*, even if the poor person was from her city and even if the poor person had previously relied on B and was in fact pressing her for assistance. True, the poor of A's city are more her responsibility than B's. But B is not **exempt** from responsibility altogether and A is therefore not deemed benefitted by the food.

Why then does the Yerushalmi rule that there **is** *kiddushin* where B directs A to give a large coin to the poor? Because the coin is **more** than a poor person needs for sustenance.

[9:1]

[Where object was previously requested by the woman other than for *kiddushin*]

If B requests that vendor A give her an apple, and A offers the apple as *kiddushin*, the following rules apply:

1. If B answers "Yes" when A gives her the apple, she is betrothed.

2. If B is silent, the better view is that there is *kiddushin*. A minority hold that there is no *kiddushin* because A acted only on B's initiative and B must therefore confirm her continuing interest.

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[183]See Ex.23:5.

[184]See B.K. 60:2 and 117:1.

3. If B merely repeats her original request for food, or if she says "Give it to me", she is not betrothed. Her intent is to indicate that betrothal is absurd.

4. If A repeats his intent to betroth B while he gives her the apple there is *kiddushin* even if B is silent or says "Give it to me."

Of course, B is betrothed if she initially suggested the *kiddushin*, and A responded by saying "Be betrothed with this apple." This applies even if she is silent while she accepts the apple or says merely "Give it to me."

[Witnesses to a deed of *kiddushin*; terminology]

The essence of *kiddushin* by deed is the **witnessed transfer** of the appropriate writing. It is not necessary that witnesses sign the deed. This explains why the Gemara permits the deed to be written on pottery shards notwithstanding that signatures can be readily forged on shards[185].

Can we say that signatures are important, and that pottery shards may be used only where the writings are carved and cannot be forged? No, this is unlikely. Besides, carved inscriptions are not **writings**.

The **man** A must write in the deed that he is betrothing the woman B.

There is no *kiddushin* if the deed recites the woman's statement "I am betrothed to you" or her father's statement "My daughter is betrothed to you." The Yerushalmi says of such statements "**What of it?**", which the Meiri interprets as meaning **of what concern is it** since A neither gives anything nor says anything[186].

Where, however, the deed is worth a *perutah*, there is questionable *kiddushin* since possibly the intent was to betroth with the deed's monetary value. Compare the rules for monetary *kiddushin* which is given by **A,** and in which **B** declares the *kiddushin*.

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[185]Sample signatures which are to be used for later verification may be written only on shards which are unenforceable as loan documents. If written on material which can serve as a deed, an unethical person might fraudulently insert loan language above the sample signatures. Keth. 21:1.

[186]The Meiri disagrees with those who would interpret the Yerushalmi as meaning **why treat this case differently from other acceptable formulations**.

[7:2]

[Deed need not have inherent value; result if deed is written on proscribed material]

The deed need not have any particular inherent value: it may be worth less than a *perutah*. That is why deeds may be written on materials from which enjoyment or benefit is proscribed. Another Gemara[187] states flatly that a deed is valid for *kiddushin* even if its use is Scripturally proscribed.

But consider the following dialogue in the Yerushalmi:

> Rabbi holds that *get* and *kiddushin* written on proscribed materials are valid. R. Eleazar holds that both are not valid.
>
> The Rabbis of Caesarea explain that Rabbi and R. Eleazar do not disagree. Rabbi validates **both** *get* and *kiddushin* on proscribed materials where the proscription is Rabbinic. R. Eleazar invalidates both where the proscription is Scriptural.
>
> Rav invalidates *kiddushin* made with *hametz* between 11:00 A.M. and Noon on the 14th day of *Nissan.* Why so? *Hametz* in that hour is proscribed only Rabbinically! Because:
>
> > The essence of *kiddushin* with *hametz* is its monetary value. That is why Rabbinically proscribed *hametz* is not valid.
> >
> > The essence of *kiddushin* by deed is the writing, not the monetary value of the document. That is why a deed is good where the proscription is Rabbinic.
> >
> > **If so, Scripturally proscribed deeds are valid.** At worst the deed has no value as a result of the proscription, and we know that a deed is valid even if the parchment or paper is not worth a *perutah*!
> >
> > No. A Scripturally proscribed document has no value at all, and is treated as if it does not exist. Documents which are worth less than a *perutah* have some value and therefor exist. The same is true of Rabbinically proscribed documents: The Rabbinic proscription does not destroy the document's existence.

The highlighted **if so** language at first appears to be a disbelieving rejoinder: if in fact the essence of *kiddushin* by deed is the writing, Scripturally proscribed deeds (which by law are void) would **wrongly** be held to be valid. The final paragraph then explains

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[187] Git.20:1.

why Scripturally proscribed deeds are void even though the essence of *kiddushin* is a writing: there must still be some **residual** value.

Read this way, the Yerushalmi would hold that Scripturally proscribed deeds are not valid.

But the Meiri suggests another reading. The **if so** language is expository, rather than inquiring:

Since the essence is the writing, Scripturally proscribed documents **are** valid.

The final paragraph deals with the issue: why tell us that Scripturally proscribed *kiddushin* is valid **when we already know** that low value documents are valid? The Yerushalmi then explains that Scripturally proscribed documents have no value at all, **and that is why we must be taught** that they are still valid as *kiddushin*.

[A deed should not be written on proscribed material, but is valid if written on this material]

One should not write a deed on proscribed material although the deed is valid if used. What is proscribed is **benefit**, and the effectiveness of the *kiddushin* is itself a benefit.

Some commentators disagree. They maintain that there is no proscribed benefit here because the value of the benefit is arguably less than a *perutah*.

> Why then is it that a benefit of less than a *perutah* may not be had from an object proscribed by oath? Because proscriptions resulting from oaths are unusually strict: even a customary premium-type gift offered by a seller to a buyer is forbidden where the buyer foreswore benefit from the seller.[188]

They note that the fulfillment of religious precepts (such as the precept which requires men to marry and have children) is not considered to have monetary value.

Even these commentators hold that one should avoid using proscribed deeds which have an inherent value of at least one *perutah*. True, the deed is not given as money, and the value of **the desired result** is less than a *perutah*. Still and all, the groom has **made use** of a deed worth a *perutah* to bring about a desired result.

The Meiri concludes that it is inappropriate as a matter of decency willfully to perform a precept, such as *kiddushin*, with a proscribed item. Similarly, one should

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[188] Ned.32:2.

not willfully perform *halizah* with a sandal dedicated to idols, or use as a *lulav* palm fronds which were dedicated to idols[189].

[The proper recipient of the deed of *kiddushin*]

A *na'arah*, and most certainly a *ketannah*, may be betrothed only through her father, whereas a *bogeret* has independent capacity to effect her own *kiddushin*. That is why there is *kiddushin* if B is a *na'arah* or a *ketannah* and A gives a deed to B's father in which A writes "Your daughter is betrothed to me."

If A gives the writing **to B,** she is betrothed if B is a *na'arah* and her father approves and in effect designates her as his agent. A *ketannah* cannot be an agent.

> Although there is *kiddushin* where B is a *ketannah* and her father directs her to accept monetary *kiddushin* from A, that result does not flow from B's agency. Instead, it depends on the doctrine that *kiddushin* is valid if given to a third party at the direction of the woman, or, in the case of a *ketannah*, at the direction of her father.

The rules are reversed where B is a *bogeret*. She may accept the *kiddushin* personally, or she may in effect appoint her father as her agent to accept the *kiddushin*.

[Deed written as a form is invalid]

Kiddushin by deed from A to B is valid only if A wrote the deed **for** B. There is no *kiddushin* if the deed is written as a form or for another woman or "for any woman I want," or "for either B or C" or "for both B and C." This rule is derived from a similar rule for *get*.

The rule applies even where the deed is worth more than a *perutah*. Where the intent is to betroth by **deed** rather than **money**, there can be no resort to the monetary value of the deed if it is invalid as a **deed**.

[Other factors which invalidate deeds of *kiddushin*]

Kiddushin deeds which are written by idiots, minors, slaves or gentiles are invalid. All other factors which **Scripturally** invalidate a *get* also invalidate a deed of *kiddushin*. For example, the following deeds written by A to B are invalid:

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[189] Yeb.103:2, and Suk.31:2.

a deed written on plants attached to the ground;

a deed written on the hand of a slave or the horn of a cow (unless A gives B the slave or the cow), even if A thereafter dislodges the horn and gives it to B and even if the horn is worth a *perutah*;

a deed in which the inscription is carved rather than written;

a deed written on the ground;

a deed written on two tablets rather than one.

Rabbinic (as opposed to Scriptural) invalidity of *get* does not carry over to *kiddushin*. For example, the following requirements apply to *get* but not to *kiddushin*:

the agent who delivers a *get* must declare that he witnessed the writing of the *get* and the signatures;

the witnesses must testify that they signed the *get* in the presence of each other;

the *get* must be deposited in the wife's hand securely, so that the husband would not be able to retrieve it were it connected to a string which he holds.

This lenience for *kiddushin* is supported by the rule that *kiddushin* deposited on a rock which is jointly owned by the man and the woman is possibly valid, whereas a *get* so deposited is definitely void.

If witnesses to a *get* are illiterate, the Beth din impresses their names unto the deed with a knife, and the witnesses then fill the impression with ink. The Gemara cautions that this rule applies to *get* only and not to other documents[190]. The Meiri concludes that the Gemara's intent is not to exclude *kiddushin*, but rather to treat *get* and *kiddushin* in the same way. In both instances there is no requirement that witnesses sign the deed; only witnesses to the transfer are essential. But whereas in a *get* the signing witnesses serve a purpose by facilitating subsequent validation of the *get*[191], even this purpose does not apply to *kiddushin*.

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[190] Git.19:2.

[191] Git.3:2.

[7:2]

[Conditional *kiddushin*]

A conditional *get* is invalid. *Kiddushin* in which A says to B "Your betrothal to me is effective to all persons except C," is also considered conditional and is invalid by analogy from *get*[192]. Does this suggest that **all** conditions are as invalid in *kiddushin* as they are in *get*? The Meiri believes not, and that only conditions which affect a woman's right to marry another invalidate *kiddushin*.

[9:2]

[Must the bride know and approve while the deed is being written?]

What if A wrote a deed of *kiddushin* for B, but B did not know this when the deed was being written, or B was opposed to *kiddushin* at the time?

> Raba and Rabina say the *kiddushin* is valid, by analogy from *get* in which the wife's knowledge is required only when she **actually receives** the *get*.
>
> R. Papa and R. Sherabia disagree. The knowledge of the **transferor-husband** is required at the time the *get*. The woman is the transferor (of her body) in *kiddushin*. Her knowledge is therefore required at the time of writing.

The Meiri prefers the logic of Raba's view. Besides, R. Papa is only Raba's disciple; and Raba is supported by Rabina, who was later in time and whose views are generally dispositive.

The Alfasi and the Rambam agree with R. Papa and require knowledge. They find persuasive the *baraitha* which R. Papa invokes to support his position, and they consider unconvincing Raba's response that the *baraitha*, which expressly requires knowledge in **documents of betrothal**, refers only to **financial agreements** which relate to the betrothal, but not to the *kiddushin* itself. Besides, they consider Raba's response inconsistent with the dispositive view of R. Ashi.

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[192] Git.82:2.

[7:2]

R. Ashi's position is derived by them from the propositions and dialogue in the following Gemara[193]:

(1) There is a general rule that financial arrangements entered into by prospective in-laws are deemed binding when their respective children are betrothed, even if there is no writing.

(2) Rabina asks R. Ashi whether a writing is permitted in these circumstances.

(3) R. Ashi rules that no writing is permitted.

(4) Rabina refers to the *baraitha* which requires the knowledge of both the husband and the wife on betrothal documents, and asks "Don't you agree that the *baraitha* refers to financial documents?"

(5) R. Ashi answers that the *baraitha* refers to an actual deed of *kiddushin* rather than to financial agreements.

The Alfasi and Rambam explain the Gemara as follows:

1. The issue of whether **a writing is permitted** in Rabina's question (2) is not whether the parties may reduce their financial understandings to writing. Rather, the issue is whether the party who is promised a dowry obtains rights in the promisor's property sufficient, should the promisor renege, to foreclose against purchasers of property from the promisor. The question **whether a writing is permitted** is a shorthand way of asking whether there apply the rules of foreclosure which generally attend written obligations.

That **a writing is permitted** means that foreclosure rights do apply. It follows that the document must be written with the knowledge of both parties, as is the rule for all documents which affect third parties.

On the other hand if the writing is **not permitted**, in the sense that it is ineffective against third parties, it follows that the writing can be written without the knowledge of the parties.

2. In step (3) R. Ashi responded that third parties cannot be affected. It follows that knowledge is not required.

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[193] Keth.102:2.

3. In (4) Rabina attacks R. Ashi's position and attempts to prove that the rights of third parties are affected, from the *baraitha* which requires the knowledge of both parties to financial agreements.

4. R. Ashi answers in (5) that he reads the *baraitha* as dealing only with the betrothal document itself. Consequently, R. Ashi is free to hold that knowledge is not required in financial documents, and that third parties are not affected.

In sum, R. Ashi's position that third parties are unaffected is tenable only if the *baraitha* which requires the knowledge of both the husband and the wife is limited to actual deeds of *kiddushin*. This **required** interpretation of the *baraitha* is consistent with the view of the Alfasi and the Rambam that the deed of *kiddushin* must be written with the knowledge of both the husband and the wife.

The Ba'al Ha'maor and the Ritva interpret the R. Ashi-Rabina dialogue differently, with the result that R. Ashi can interpret the *baraitha* as dealing **either** with financial arrangements **or** with actual *kiddushin*. The issue is not whether the *baraitha* makes R. Ashi's position untenable but whether the *baraitha* directly **supports** R. Ashi's position. They accomplish this result by reversing the meanings of the phrases which the Gemara uses.

The phrase a writing is permitted implies to:

the Ba'al Ha'maor that contracting parties generally intend their transactions to be recorded, and to

the Ritva that arrangements may be recorded **without** knowledge of the parties because third party rights are **not** affected.

Conversely, that a writing is **not permitted** means that the writing can be written with knowledge only:

the Ba'al Ha'maor holds that there is no assumption that contracting parties intend their transactions to be recorded;

the Ritva holds that third party rights **are** affected and the parties may not have intended the liens which arise from written documents.

In Step (3) R. Ashi held that no writing is permitted, in the sense that:

(i) for the Ba'al Ha'maor knowledge **is** required and

(ii) for the Ritva liens are created.

[7:2]

In Step (4) Rabina attempts to **support** R. Ashi.

In Step (5) R. Ashi says that the *baraitha* is not **definite proof**, since it **can** be read as dealing with betrothal itself.

Note that R. Ashi never **concludes** that the *baraitha* **must** deal with actual deeds of *kiddushin*. R. Ashi merely expresses uncertainty which undermines Rabina's **proof**.

The Raabad takes yet another approach:

That **a writing is permitted** means that the promisor assumes a direct personal obligation to pay the promised amounts or items to the promisee. That **a writing is not permitted** means that the promisor intends only a present **gift** of items which the promisor is now in a position to give. If he is not in a position to give these items now, he assumes no obligation or debt to pay the items to the other party. The **writing is not permitted** in the sense that it is of no avail to establish an obligation.

R. Ashi ruled in (3) that there is no personal obligation.

In (4) Rabina **attacks** R. Ashi's view with the *baraitha* which suggests that the only issue is the parties' knowledge of **the precise amount** promised. It is evident that once they have knowledge, in the sense that there is precise agreement, a document can be written which is legally binding.

In (5) R. Ashi, to maintain his position, is compelled to limit the *baraitha* to actual deeds of *kiddushin*.

It follows that the Raabad's view is supportive of the position of the Rambam and the Alfasi. The *baraitha* agrees with R. Papa and R. Sherabia.

The Meiri concludes that the views of Raba and Rabina should prevail, but that attention should be paid to the views of R. Papa and R. Sherabia wherever possible.

One final point on the Gemara just discussed:

The Gemara later refers to a Mishnah which deals with men who marry wives who have daughters from previous marriages. If wise, such a man would agree **in writing** to support the wife's daughters only so long as the husband and wife were alive and married. The Gemara maintains that the Mishnah is inconsistent with R. Ashi. Why?

The Ba'al Ha'maor and the Ritva explain that the Gemara's problem is with characterizing the men as **wise**.

Recall that the Ba'al Ha'maor and the Ritva hold that liens are created by writings.

The Gemara's problem is how these men are wise, if by recording their agreements they subjected their properties to a lien in favor of their stepdaughters?!

The Rambam, Alfasi and Raabad hold that no liens are created by writings. The Gemara's problem is not why the Mishnah called the men **wise**. Rather, the issue is why a writing is required.

[Binding nature of financial commitments relating to betrothal]

All commentators agree that financial arrangements are binding without formal *kinyan*. The only issues revolve around whether there are attendant liens and on whether the relationship is one of gift or personal obligation.

How is it that the legal relationship is established by mere words without the benefit of a *kinyan*? Further, why is it that the Yerushalmi holds these commitments binding only where they are made by the bride's or groom's father, but not by other relatives?

1. One group of commentators relies on the Gemara's stated explanation[194] that commitments are binding because of the pleasure the match gives to participants and their families. No relative derives the same joy at the match as does the father.

2. Other commentators hold that the commitments are binding to assure onlookers that the **accompanying** *kiddushin* is binding and is not conditioned on performance of the financial commitment. This rationale applies only where the undertakings are made substantially at the same time as the *kiddushin*.

If this is the explanation why does the Gemara explain that commitments are binding because of the pleasure which the in-laws derive from the impending match? The Gemara's rationale is supportive only.

This approach explains why commitments are binding only when undertaken by the father. Where the undertaking is by other relatives,

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[194] Kes.102:2.

there is not the close interest or control which can cause onlookers mistakenly to assume that the child's actions were contingent on undertakings made by the relative.

3. A third group of commentators begins analysis with the following question: why are the **groom's** financial commitments to his bride not binding if not in writing[195]?:

If the first group of commentators is correct, why are not the commitments binding because of the emotional benefit the **groom** will derive?

If the second group of commentators is correct, why is there no concern of potential error on the conditionality of *kiddushin*?

The explanation is that the binding nature of the father's obligations derives, not from the potential of error or from emotional benefit, but rather from the father's **obligation** to marry off his son and his daughter. Although a father is not obligated to provide a dowry to his son, the satisfaction the father feels on discharging his obligation to **betroth** his son carries over and affects the goodwill with which he makes financial **commitments** in favor of the son.

The groom himself, or the groom's or bride's mother or brother, do not have this duty, and that is why their commitments are not binding.

Should the rule be different if the bride's father bequeathed her with specific property to be used towards her dowry, and her mother or brother orally committed to transfer this property to the groom?

No. The mother and brother are not obligated to marry her off and they have no standing to establish commitments on which third parties can rely. The daughter does of course have a claim to the property.

Where the mother and brother commit with their **own** property, even the **daughter** has no claim.

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[195]The Meiri's source for this principle is the Yerushalmi. The Rambam's apparent inconsistency with the Yerushalmi is explained by the Meiri in Kes.102:2.

[7:2]

[Financial commitments made by others than the father]

Commitments which are not backed by a *kinyan* are binding when made **bilaterally by each spouse's father**. What if there is a father on one side and another relative (or no relative) on the other? Is the father's **unilateral** commitment binding without a reciprocating binding commitment?

The commentators differ. The following considerations are relevant:

A Mishnah teaches that a groom who cannot enforce his father-in law's commitment need not consummate the marriage. The bride "sits and waits until her hair turns gray."[196] Why is the commitment not enforced?

i. Because the commitment was unilateral? If so, this indicates that unilateral commitments are not binding.

ii. A unilateral commitment is binding, but the father-in-law has no assets or has died.

iii. A unilateral commitment is binding, but the groom chooses not to sue.

The Yerushalmi supports those who hold that a unilateral commitment is binding. The Yerushalmi deals with a husband's written commitment to his wife, which by definition is unilateral. The Yerushalmi explains that this commitment is binding because it is equivalent to a father-in-law's oral commitment to his son-in-law.

But why take the Yerushalmi as evidence that commitments by a **son's** father is binding? Does not the Yerushalmi speak in terms of the commitment improving the **daughter's** station relative to her sisters? Let us then limit the Yerushalmi to commitments to a daughter and a son-in-law!

No. In the course of its later discussion, it is obvious that commitments are binding on the son's father as well.

The Yerushalmi at first maintains that the rule which holds unilateral commitments binding would have been of greater interest in the context of the commitment of the groom's father than of the commitment of the bride's father:

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[196] Keth.10 8:2.

[7:2]

It is readily understandable that a bride's father's promise is "acquired" by the groom in-conjunction-with his acquisition of the bride. It is more noteworthy that the bride can seal the bargain of her groom's father!

The Yerushalmi ultimately concludes that there is no in-conjunction-with mechanism, so that even the binding nature of the bride's father's commitment is of interest.

Pervading the discussion is the assumption that the commitment of the groom's father is as binding as that of the bride's father[197].

[Recording an otherwise non-binding commitment]

A *kinyan* would make binding even the commitment of a mother or a brother. What if there is no *kinyan* but the commitment is recorded? The Yerushalmi holds that the commitment is not binding. This also applies where A tells B in writing "Buy C's land, and I will give you X." Commitments not backed by *kinyan* bind only fathers on their children's betrothal.

What if the commitments are made by a stranger? Here, too, the Yerushalmi rules that the commitments are not binding. Should there not be a presumption that a stranger, whose participation is voluntary, intends to be bound? No. To the contrary, a stranger has less interest in the bride than does a brother or mother! He certainly does not wish to be bound without the appropriate *kinyan*.

Our Gemara disagrees. Witness the case in which A states in a writing that he owes B a *maneh*[198]. R. Johanan holds that the statement, although not backed by a

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[197]There is a suggestion in the Yerushalmi that a father's commitment to his **son** is binding only for the son's **first** marriage.

A father has no obligation to give his son anything. Only the father's joy at his son's first wedding supports the commitment.

A father's commitment to his daughter is supported by obligation as well as joy. The father's obligations continue for subsequent marriages.

Our Gemara deals only with rules which apply uniformly to sons and daughters. This explains why it does not mention the first marriage rule.

[198]Keth.101:2.

kinyan, is sufficient to create an obligation even if there never was a loan.

Rather surprisingly, the Alfasi applies that rule even where A prepares the writing in error. Perhaps, the Alfasi's rule applies if the writing was intentional and conscious but was based on a misapprehension of facts. An example is where A "confirms" a loan to B and forgets that he had previously repaid this loan. Probably, the Alfasi would agree that there is no obligation if the very signing of the document is an error, such as where A thought he was signing some document other than an affirmation of a loan to B.

[The effect of the death of the groom or bride on the parent's commitment]

Where the bride or groom dies before the wedding, the deceased person's father has no obligation to the survivor[199]. Even the deceased groom's brother who acts as *yabam* has no claim. It does not matter that the *yabam* succeeded to certain rights and obligations from his deceased brother. The father-in-law can tell the *yabam* "I wanted to help your brother, but I do not want to help you."

The Yerushalmi explains that the father's oral commitment is annulled because "it was made with a view to marriage."

Does the Yerushalmi require that the father have **said** that marriage was a condition? Or do we rely on a **presumption?**

The Rambam and the Alfasi hold that a presumption is meant, and they also apply the presumption to invalidate any claims by the surviving spouse against his or her **own** father. Other commentators disagree and require an express statement by the father.

> But all hold that the deceased person's heirs can assert no claim even if the father made no statement. The issue of whether a statement is necessary affects only the rights of a surviving *yabam* or the rights of the father's son or daughter.

[Commitment by a third party where a *parent* dies]

Assume that A by *kinyan* or deed obligates himself to B to provide a dowry to B's daughter. Does this obligation survive B's death? Can the daughter maintain that A intended to assist her, and that B participated only as her agent? Or can A insist that he only wished to help B?

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[199] Keth.66:1.

[7:2]

The better rule is that A's obligations survive.

[Knowledge required regarding a *kethubah*]

Both the husband and wife must know in advance what is proposed to be written in a *kethubah*. Otherwise, the *kethubah* may undervalue the wife's property. Once the marriage is consummated the wife may be reluctant to sue her husband to be made whole.

The rule is different for promissory notes in business transactions: a scribe may write a note for the borrower without the lender's knowledge. A lender will not pass funds until he reviews the document carefully. Besides, if an error is discovered at a later time, the lender will sue to correct it.

[Certain rules relating to cohabitation]

Note the following rules:

1. If a man cohabits with an **unbetrothed virgin** who is not yet *bogeret* he must pay a 50 *shekel* fine, he must marry her, and he is subject to other penalties.

2. If a man commits adultery with a *na'arah* who is a virgin (a "maiden") and who is **betrothed,** both he and she are penalized by stoning.

3. If a man commits adultery with a **betrothed woman who is not a virgin**, or with a **married woman, he and she are** penalized by strangulation.

Our Gemara holds that *kiddushin* by cohabitation is valid, whether the cohabitation is natural or unnatural. The Torah refers to "cohabitation**s** of a woman"[200] in the plural, and this implies that unnatural cohabitation is equivalent to natural cohabitation for all purposes. Indeed, we know that incestuous unnatural cohabitation is proscribed[201]. The same is true of cohabitation with a betrothed maiden: both the man and the woman are stoned whether the cohabitation was natural or unnatural.

If a betrothed maiden cohabits with ten men unnaturally, all are stoned, since

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[200] Lev.20:13.

[201] San.54:1.

she remains a maiden after each cohabitation. However, if her **groom** cohabits with her unnaturally, later men are strangled and not stoned. Although she remains physically a maiden, she loses the legal status of virginity because of this cohabitation.

Rabbi is in the minority. He holds that if a **betrothed** maiden cohabits with the men unnaturally, even where the first man is not her groom, only the first man is stoned, and all later men are strangled.

> The same would apply if she had been previously betrothed to a groom who died after cohabiting with her unnaturally. She is no longer a **maiden**, and those who cohabit with her are not subject to fines.

However, if several men unnaturally cohabit with an **unbetrothed** maiden Rabbi concedes to the majority[202] that she remains a maiden for the purpose of applying the 50 *shekel* fine for the seduction or rape of such women.

> Which of the 10 must marry her? The Yerushalmi holds that she can designate which of the 10 is to marry her, and that she can change her designation at any time until betrothal. She requires a new betrothal to the person she ultimately selects, because the intercourse in which she was violated cannot serve as *kiddushin*: by definition there are no witnesses who attest that he told her "Be betrothed to me with this intercourse."

What is the *halacha*?

The Rambam rules that no fines are payable by a man who cohabits unnaturally with an unbetrothed maiden, even if she never previously cohabited with anyone, naturally or unnaturally. Consider the following in analyzing the Rambam's position:

> 1. It is difficult to reconcile the Rambam's holding with our Gemara, in which the concept of fines payable for unnatural cohabitation is pervasive.
>
> 2. The Rambam's view also contradicts a Gemara[203] which argues that a violated unbetrothed maiden must be compensated for her **shame** (in addition to her rights to a 50 *shekel* fine). The Gemara reasons that only if payment is made for shame will a man who cohabits unnaturally

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[202]The majority do not expressly state a view on this case. However, the phrase **Rabbi agrees** suggests that his agreement is with the majority.

[203]Keth.40:1.

suffer a deservedly greater penalty than one who cohabits naturally. The Gemara does not even **consider** the possibility that unnatural violation is exempt from penalty. It is irrelevant that the Gemara ultimately concludes that liability for shame is derived otherwise[204].

3. Another Gemara[205] deals with the interplay of the rule that one who seduces an unbetrothed maiden must marry her, and the obligations of a High Priest:

i. to marry only a maiden; and

ii. not to marry a widow or divorcee.

The Gemara first states the proposition that a High Priest who seduces a maiden **who was widowed** from a previously unconsummated marriage need not marry her, because the marriage is proscribed.

But given that a High Priest may marry only a maiden, is not the maiden automatically proscribed to him on account of **his own** cohabitation with her? The Gemara answers that the priest's cohabitation was unnatural and that the woman is a virgin. Only an outside proscription, such as her widowhood, can exempt the priest from the obligation to marry the woman.

Here is a clear statement contrary to the Rambam that unnatural cohabitation results in penalties to the seducer. Only the girl's widowhood protects the High Priest from penalties.

4. The Rambam's view is supported somewhat by a Gemara[206] which discusses the rule that a brother who seduces his unbetrothed sister must pay the standard fine of 50 *shekels*. Now:

Cohabitation of siblings is punishable by *kareth*.

Any onlooker may kill any person who is about to engage in

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[204] The alternative derivation begins with a verse which requires that the violator pay 50 *shekels* **for the pain** he caused the maiden. This suggests that the 50 *shekel* fine is **an addition**, on account of the special pain resulting from violation of chastity.

[205] Yeb.59:1.

[206] Sanh.73:1.

incestuous relations punishable by *kareth*.

There is no monetary penalty for actions which subject one to the threat of capital punishment.

So, asks the Gemara, why need the brother pay the penalty?

The Gemara answers that an onlooker may intervene only where the victim had not previously been violated. In our case the sister had been previously violated **unnaturally,** so that the brother who is now violating her **naturally** is not subject to capital punishment. It follows that he must pay the monetary fine.

Why does the Gemara emphasize that the current cohabitation, for which the penalty is paid, is **natural**?

The Rambam holds that no penalty would be payable for unnatural cohabitation.

Those who disagree hold that the Gemara's only interest was in explaining that the first violation is unnatural. Insofar as concerns the second violation, a natural violation is treated the same as an unnatural violation.

Certain commentators who disagree with the Rambam maintain that a penalty is paid for unnatural cohabitation only where the violation, although otherwise natural, did not physically remove virginity. This would explain the rule that a penalty is paid only for a *na'arah* and not for a *bogeret*: the virginity of a *bogeret* is physically not as complete as that of a *na'arah*. The Meiri disagrees.

[Uncertain betrothals]

Where A betroths one of two sisters and he does not know which, he cannot marry either sister, since he may have betrothed the other. But there is sufficient betrothal to require each sister to obtain a *get* before she marries anybody else.

The rules which limit the acquisition of a *yebamah* to cohabitation, and of a

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bondmaid to money, will be discussed below.[207]

[10:1]

[Minimum age for valid cohabitation]

A girl attains the capacity for cohabitation at age three years and one day, a boy at age nine years and one day.

R. Jonathan holds that if a child below these ages engages in incestuous or adulterous cohabitation with an adult of the opposite sex, the adult is subject to punishment (and if a woman she is forbidden to her husband), notwithstanding that the child is not subject to punishment.

R. Jonathan emphasizes the following verse:

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[207] 14:2.

[7:2]

1."The man **alone** that lay with her shall die"[208]

This implies that capacity for punishment is judged separately for each participant in the cohabitation.

R. Josiah disagrees[209]. No party is subject to punishment if the other is exempt. His source is the verse

2."**They** shall both of them die"[210]

The fact that Verse 2 deals with the adultery of a **married** woman is no objection, since learning for one marital capacity can be derived from learning which relates to cognate capacities. There is therefore no need[211] to emend the text to provide that R. Josiah's source is the following verse relating to a betrothed maiden:

3. "And **they** shall die"[212]

There is disagreement on R. Josiah's precise meaning. Rabbeinu Tam explains that even R. Josiah never intended to free one party to a proscribed intercourse if the other is underage[213]. Rather, his purpose is only:

> to exempt the adult from punishment if for any reason the adult's punishment is not the **same** that the other party's punishment would have been were the other party an adult.

Specifically, both R. Josiah and R. Jonathan subscribe to R. Meir's view[214] that one who cohabits with a betrothed *ketannah* is not stoned. The issue is whether the man

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[208]Deut.22:22.

[209]Holdings which directly contradict R. Josiah in Sanh.55:2 are ascribable to R. Jonathan.

[210]Deut.22:51. The phrase **both of them** is the source of the rule that a pregnant adulterous woman is executed with her fetus. Er.7:1.

[211]The Meiri holds that the Gemara in Er.7:1 discussed in the preceding Note presents Verse 2 as R. Josiah's source.

[212]Deut.22:4.

[213]Hence, the holdings in Sanh.55:2 need not be ascribed exclusively to R. Jonathan.

[214]Sanh.66:2.

is strangulated:

> R. Jonathan holds that the man is subject to the general penalty for adultery: strangulation.
>
> R. Josiah frees the man entirely, for were we to penalize him with strangulation, his penalty would not be the same (stoning) to which the girl (and, in fact, he) would have been subject were she of age.

The majority of the Rabbis disagree with R. Meir, and the dispute between R. Josiah and R. Jonathan is academic.

[Stages of cohabitation; licit and illicit cohabitation]

Betrothal by cohabitation is effective only at the end of cohabitation. The end of cohabitation occurs when there is complete penetration; there is no requirement that there be any further bodily movement or release. Although initial penetration results in culpability for incestuous or other proscribed relations, for the purposes of *kiddushin* the parties do not consider their action complete until the end of cohabitation.

Two rules follow:

> 1. If the woman accepts *kiddushin* from B after the beginning of cohabitation with A, she is betrothed to B.
>
> 2. Since a High Priest can marry a virgin only, he cannot betroth by cohabitation, since the betrothal becomes effective only at the end of cohabitation when his bride is no longer a virgin.

How is our Gemara to be reconciled with another Gemara[215] which rules that initial cohabitation is sufficient for marital relations[216]? The commentators offer the following explanations:

> 1. The beginning of cohabitation effects betrothal only where the intent to effect *kiddushin* in this way is expressly stated.

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[215]Yeb.54:2.

[216]The Gemara derives the rule by *gezerah shawah* ("If a man **takes** a woman" (Deut. 24:1)) from the verse on incest "If a man **takes** his sister" (Lev. 20:17)). Initial penetration is sufficient for incest because of a direct Scriptural reference (Lev. 20:18).

2. What is important is whether the cohabitation was ultimately completed. If not, there is no suggestion that complete cohabitation was intended, and initial cohabitation is valid. Where cohabitation is completed, no significance can be given to its early stages, since the couple obviously intended completion. The following rules result:

i. If cohabitation is completed, intervening *kiddushin* accepted from another is valid, because the first *kiddushin* was not intended to be complete until the end.

ii. A High Priest may not betroth by cohabitation which he completes, since in that case *kiddushin* is intended to be effective only upon completion, and his wife is then no longer a virgin. But he may betroth with cohabitation which is terminated at an early stage, because *kiddushin* is meant to be effective at the early stage, and she is then yet a virgin.

3. Yet another commentator reconciles the Gemaras thus: The beginning of cohabitation, in the sense of initial penetration, indeed does effect betrothal. Our Gemara deals with an even earlier stage: where the man touched the woman but made no penetration at all.

4. The Gemara which validates the beginning of cohabitation deals not with *kiddushin* but rather with cohabitation which follows *kiddushin* and which **consummates** marriage in a manner equivalent to *huppah.*

The consummation of marriage is significant. It entitles the husband to inheritance rights from his wife, it makes it permissible for him (if he is a priest) to become ritually impure for her if she dies, and it otherwise affects marital relations and rights.

The Meiri disagrees with the last explanation. He finds no reason to treat early cohabitation differently for *kiddushin* than for consummating marriage[217].

The Meiri concedes that the *halacha* rules that cohabitation in general can consummate marriage[218]:

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[217]He reinforces his argument by noting that the *gezerah shawah* referred to in the preceding Note does not at all suggest that its learning be limited to marital consummation rather than betrothal.

[218]If betrothal is by cohabitation, a second cohabitation (or *huppah*) is required to consummate the marriage.

[7:2]

A Tosefta holds that a woman betrothed to a priest eats *terumah* once she enters the *huppah* **or** cohabits with her husband.

Another Gemara[219] states that there is a presumption that an overnight stay by a betrothed man and woman in the man's premises is intended for the purpose of **consummating** the marriage.

But the proposition must be reconciled with another Gemara[220] which discusses the following two *sotah* rules:

1. A betrothed woman cannot be made a sotah. The Torah refers to the "straying of (the sotah) from her **husband**."[221]

2. A woman can become a *sotah* only if she previously cohabited with her husband. Why then is Proposition 1 necessary?

The Gemara explains that Proposition 1 is necessary where the groom cohabited with his bride while she was still in her father's house. In this case, she is only betrothed, yet her cohabitation with her groom precedes the adulterer's cohabitation.

Now, why is the groom's cohabitation, which we deem equivalent to *huppah*, not sufficient to consummate the marriage to make the woman subject to the rules of *sotah*? Because cohabitation completes marriage only if it is intended to be licit. There is no presumption of licit cohabitation where one without propriety cohabits with his bride in her father's house.

[Property rights of a *na'arah*]

While a girl is a *na'arah* her father is entitled to all value she receives towards her betrothal. Her father also owns any property she finds and the benefit of her labor. The father may discharge her vows in cooperation with her groom. Both she and her father may accept a *get* from her groom. However, her father has no usufruct rights in property which she inherits from her mother's family. Once her marriage is consummated, her husband succeeds to all her father's rights, and her husband also obtains usufruct rights in property which she inherits.

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[219]Keth.48:2.

[220]Sot.24:2.

[221]Num.5:29.

[7:2]

[Betrothed woman's rights to *terumah*]

The Rabbis forbid a woman who is betrothed to a priest from eating *terumah* until the marriage is consummated. The Gemara discusses two potential concerns behind this prohibition.

1. The groom may annul the betrothal should he discover a major bodily defect in the bride (the Nullification Concern).

2. The bride may offer *terumah* to her siblings while, as a bride, she still resides in her father's house (Ulla's Concern).

Note that Ulla's Concern does not apply once she is transferred to the authority of the groom's agents to bring her to the *huppah*. Her siblings are no longer with her. The same is true if her father accompanies the agents: the father is an adult and he will not mistakenly eat *terumah*.

The Gemara discusses the relative status of betrothal as against consummated marriage. Why does not the Gemara state that only consummated marriage entitles the woman to eat *terumah*? Because she may eat *terumah* where betrothal is by cohabitation. Why? Because both potential concerns are absent:

It is presumed that during cohabitation he would have discovered any bodily defects he finds objectionable.

The couple having cohabited, the bride is presumed to have left her father's house.

The Gemara ultimately concludes that the Rabbis' interdict was grounded on Ulla's Concern rather than on the Nullification Concern. The law does not react to the remote possibility of nullification of *kiddushin* on account of a bodily defect. Besides, the Rabbis' interdict applies even where the groom waives the right to claim nullification.

Rabina comments in the Gemara "But what can I do if:

despite the absence of a Nullification Concern, and

despite a *kal v'homer* which teaches that after monetary *kiddushin* the bride eats *terumah* as a Scriptural matter,

the Rabbis still prohibit her from eating *terumah* as a result of Ulla's Concern."

The kal v'homer is:

A gentile slave can eat *terumah* on account of her **purchase by a priest**

notwithstanding that intercourse with a priest does not entitle her to eat *terumah*.

That being so, a betrothed woman who may eat *terumah* upon *kiddushin* by intercourse, should certainly eat *terumah* when *kiddushin* is by way of her "purchase" by money or other value.

[Further rules on the minimum age for intercourse]

A girl aged three years and a day may be betrothed by intercourse at her father's direction. She is considered betrothed for all purposes:

An adult male is stoned if he cohabits with her while she is betrothed, and is strangulated if he cohabits with her while she is married.

If her groom dies she is a *yebamah*.

yibbum with an adult *yabam* renders her a married woman for all purposes, so that a third person who then cohabits with her is strangulated. If the *yabam* is a minor, the *yibbum* is effective to require that she obtain a *get* (as well as *halizah*) from the *yabam* before she marries another.

Although a girl aged less than three years and a day may be betrothed by money or documents, cohabitation is invalid as *kiddushin*. The act has no physical permanence. It is as if one presses a finger to an eye. Just as more tears will follow the initial tears, so too will her virginity be restored.

[Degrees of ritual impurity]

There are differing degrees of ritual impurity. Two of these degrees are:

1. **A father of impurity**. A person or object which is impure to this degree defiles persons or objects which he or it touches or carries.

2. **A first degree of impurity**. A person or object which is impure to this degree can defile only foodstuffs and liquids.

Our Gemara applies these rules as follows:

1. A *niddah* is a father of impurity. Her seat and bedding are also fathers of impurity, even if separated from her by many spreads and not touched by her.

[7:2]

2. One who cohabits with a *niddah* aged at least three years and a day is a father of impurity. However, his seat and bedding, if not touched by him, only have a first degree of impurity.

3. A garment carried by a *zav* but not touched by him is also only impure to the first degree. The Gemara refers to this garment as **having lain on** the *zav*.

4. One who touches but does not cohabit with a *niddah* is ritually impure only until nightfall, and his bedding and seat are not defiled at all.

5. One who cohabits with a *niddah* aged less than three years and a day has the status of one who **touches** a *niddah* who is older than three years and a day.

[7:2]

[10:2]

[Minimum age for intercourse regarding *terumah* and cohabitation with unfit persons]

It was previously noted that a girl who is betrothed to a priest may not eat *terumah* until the marriage is consummated by *huppah* or cohabitation after the girl is three years and one day old.

> If the girl is less than three years and one day old, her cohabitation is a nullity for *terumah*, and the same is true of her *huppah*.

If she cohabits with a gentile, a *mamzer* or another unfit person after she is three years and one day old, she becomes unfit for the priesthood. Those who cohabit with her incestuously are executed notwithstanding that she is exempt because she is not yet adult.

[Factors determining whether a gentile slave may eat *terumah*]

A priest's gentile servants and maidservants may eat *terumah* only if they are "the purchase of the priest's money." That is why a gentile maidservant cannot eat *terumah* if she cohabited with a priest but was not purchased by him.

[11:1]

[Potential rescission as affecting a slave's right to eat *terumah*]

The Gemara concludes that slaves may eat *terumah* immediately after purchase by a priest. We are not concerned that the purchase may ultimately be nullified:

> 1. Obvious defects are waived.
>
> 2. Hidden defects, such as a mole, a dog bite, or bad breath (whether from the mouth or nose), are of no account, since they do not detract from the slave's ability to perform labor.
>
> 3. Epilepsy which results in seizures at regular intervals is not obvious to the purchaser, since the slave can be hidden from public view when a seizure is expected. A purchaser can nullify a sale if a disease of this kind is discovered. But such seizures are uncommon. Slaves cannot be forbidden to eat *terumah* on account of an unlikely nullification.
>
> 4. If the slave is discovered to be a thief or kidnapper or a gourmand,

this is to be expected of slaves and is not grounds for nullification.

5. If the slave is discovered to be an armed robber or one who has been sentenced to die by the government, such facts are "well known" and are assumed to be waived.

The Rambam rules that the purchase of a slave can be nullified if the slave is afflicted with a grave skin disease, or any affliction which saps his strength, or epilepsy, idiocy or leprosy. These conditions either adversely affect the slave's capacity to perform labor or they engender disgust sufficient to make the slave unfit to perform personal services for the master. These conditions are considered not obvious to a purchaser.

Recall the holding that a slave's history as an armed robber is "well known." This must be reconciled with the Gemara[222] which says of a slave who is discovered to be an armed robber or subject to governmental order of execution:

he [presumably the purchaser] tells him [presumably the seller] **"there is your slave, take him!"**

If the purchaser can nullify the sale, why do we permit a slave to eat *terumah* immediately after purchase? There are several possible explanations:

1. The purchaser can nullify only if the slave was imported from another location so that the purchaser could not have known the slave's status. This possibility is too remote to prohibit *terumah*.

2. The purchaser can nullify only if he has not yet paid for the slave. Until then, the burden is on the seller, as plaintiff, to prove that the purchaser knowingly waived the slave's problematic status. Again, this is too remote to prohibit *terumah*.

3. In our Gemara the phrase "such matters are well known," means that the notoriety makes the purchase of such slaves unusual. We need make no exceptions to the general rule that a slave may eat *terumah*.

4. The Gemara which permits a party to the transaction to declare "Here is your slave, take him" does not refer to a statement by the **purchaser**. Rather, it is the seller who says "Here is your slave. You purchased him. You knowingly waived his status."

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[222] B.B.92:2.

[7:2]

[The minimum monetary value of *kiddushin*]

Beth Hillel hold that:

1. No woman is betrothed for less than a *perutah* even if she professes to be content with less than a *perutah*. Her judgment on value is ignored.

2. Every woman, no matter how exalted, is betrothed with a *perutah* unless she expressly demands additional value.

3. Betrothal with a *perutah* is valid, even if given at night or in other circumstances in which it cannot be presumed that she was aware that only a *perutah* was given.

4. It is essential only that there be no error in the basic nature of what was given. For example, there is no *kiddushin* if what appeared to be a precious stone was actually a pebble.

Now, in explaining why Beth Shammai require a *denar*, the Gemara first states that a woman's dignity will not permit her to be betrothed for less than a *denar*. To which Abbaye objects: Do you mean that R. Jannai's daughters, who are very particular and very wealthy, would not be betrothed even if they accept a *denar*? The Gemara responds that there is no issue if a woman affirmatively accepts a *denar* or even a *perutah*. The issue is the amount a woman can be presumed to accept where she is not aware of the amount given her, *e.g.,* at night or through agents.

At this stage of the discussion, Beth Shammai's view can be summarized as follows:

1. If a woman expressly accepts a *perutah*, she is betrothed.

2. If a woman expressly accepts less than a *perutah* she is not betrothed (her judgment is invalid).

3. If a woman accepts *kiddushin* at night or through agents, she is betrothed only if the value is a *denar*.

4. A woman can expressly set a minimum value she requires for *kiddushin*. This value may be greater than a *denar*.

The Gemara ultimately determines that Beth Shammai's insistence on a *denar* flows from the general rule that all Scriptural references to **money** (literally "silver") are to silver Tyrian coinage. The care Scripture takes to invalidate copper coinage teaches that substantial value is required. Beth Shammai therefore assume that a *denar* is required notwithstanding that there is a smaller silver Tyrian coin: the

[7:2]

ma'ah, which is one-sixth of a *denar* but which has no substantial value. Under this view, Beth Shammai hold that *kiddushin* with a *perutah* is invalid even if expressly accepted.

But keep in mind that all of this is academic, since Beth Hillel's view prevails and a *perutah* is adequate.

[11:2]

[Minimum monetary values in relation to the oath for partial denials]

Where A sues B for 100X and B denies all, there is no Scriptural oath. Where B denies 60X and admits 40X, A can demand that B swear that he does not owe the 40X denied. In order for the oath to be imposed the minimum amount conceded must be two *ma'ah's* and the minimum amount denied must be a *perutah*; it follows that the minimum amount of the claim must be two *ma'ah's* and a *perutah*.

The Gemara suggests that these requirements are inconsistent with Beth Shammai:

> As noted, Beth Shammai take strictly every reference to silver in Scripture as referring to one Tyrian silver coin. Once it is shown that substantial value is required, the Beth Shammai deduce that as to *kiddushin*, a valuable *denar*, rather than a less valuable *ma'ah* (the smallest silver coin) is requisite.
>
> Why then are **two** *ma'ah's* required rather than one? Obviously, Scripture leaves to the **Rabbis** room to interpret Scriptural monetary requirements!

Beth Shammai respond that Scripture is indeed strict in stating its monetary requirements. Two coins are the minimum to support an oath because Scripture refers to the oath as being in relation to "silver and utensil**s**."[223] Scripture's plurality for utensils also applies to silver[224].

[Why there is no minimum value for utensils]

Why is no particular value required for utensils? A utensil has inherent value

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[223]Ex.22:6.

[224]The amount denied need be no more than a *perutah,* because it is the implication of the verse's plurality that the entire claim involves value not in excess of two silver coins (plus a *perutah*).

because of its usefulness. The statement that "just as silver is valuable, so also are utensils valuable" does not create a rule which requires a certain value for utensils. Rather, it is a statement of fact: **all** utensils have sufficient value to support an oath.[225]

[Certain difficulties with the view Beth Shammai]

The Gemara proceeds to attack Beth Shammai's position with a Mishnah[226] which holds that:

> 1. Second tithe in the form of copper may be converted into silver, and may then be converted back to copper for ease in expenditure; and
>
> 2. Second tithe which was previously converted from commodities into copper may be reconverted into silver to make the tithe more easily transportable to Jerusalem.

Were Beth Shammai correct, how could there be conversion into copper? Scripture refers to silver[227] in relation to the second tithe!

A similar question is posed from *hekdesh*, where there is a similar reference to silver in redemption ("He shall add a fifth in silver and make a valid redemption"[228]) and the rule is nevertheless that *hekdesh* worth a *maneh* may be validly redeemed with a *perutah*[229].

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[225]The Meiri therefore finds it unnecessary to emend the text to read: "Just as all utensils have inherent value, so also must silver have some minimum value," *i.e.*, a *ma'ah*. See Shev.40:2.

[226]M.S.2:9.

[227]Deut.14:25.

[228]Lev.27:19.

[229]A *maneh*'s worth of *hekdesh* may be redeemed for a *perutah* because the rules which permit cancellation of a transaction on account of overcharging do not apply to *hekdesh*. The rules are derived from Lev.25:14 which refers only to overcharging of one's **comrade**; the term excludes *hekdesh*.

[7:2]

[How R. Assi's view is consistent with Beth **Hillel]**

R. Assi holds that all Scriptural references to **silver** are to Tyrian coinage. How can we reconcile R. Assi with Beth Hillel's prevailing view that a *perutah* is sufficient for *kiddushin*?

The Gemara explains that R. Assi's rule applies only where Scripture mentions a **specific sum** of money. For example, the five *selah's* which are payable to the priest in redemption of the first born, the fifty *shekels* payable by a ravisher and a seducer, the hundred *shekels* payable by a slanderer, and the thirty *shekels* payable to the master of a slave who was tortiously killed, all are payable in Tyrian currency, of which four *denars* equals one Scriptural *selah*.

R. Assi's rule does not apply where Scripture refers to silver or money generally, and not to a specific sum. Here, the reference is variably to Tyrian and to provincial coinage, depending on the context and on the tradition of the sages.

R. Assi's rule also does not apply in cases of Rabbinic monetary references, even if to specific fixed amounts. Here, the reference is to provincial currency, of which one *selah* (also referred to as an *istira*) is equal to 1/8 of a Tyrian *selah* or 1/2 of a Tyrian *denar*.

By way of example, the Rabbinic rules applying specific monetary penalties for embarrassments are read in terms of provincial coinage. The *selah* which is payable for shouting into a neighbor's ear is an *istira*.

[Betrothal of a maidservant by designation]

The master of a Jewish maidservant, or his son, may betroth the maidservant, if she approves. The master must say "You are betrothed to me with the money your father accepted as your purchase price." This betrothal, in which no additional value is provided, is known as **designation**.

[No purchase if designation is prohibited]

The sale of a maidservant is invalid if neither the purchaser nor his son is permitted to designate her. That is why a father may not sell his daughter as a maidservant to his son. Neither the son (her brother) nor his son's son (her nephew) will be permitted to designate her.

She may be sold to her father's father. Even though her grandfather cannot betroth her, his son (her uncle) may do so.

[7:2]

[No purchase if redemption by deduction is impossible]

A Jewish servant or maidservant may each purchase their freedom by deduction, *i.e.,* by paying their master the purchase price which remains after deducting the portion for the expired portion of their term.

Just as a maidservant cannot be sold in circumstances where designation is proscribed, so too a maidservant cannot be sold in circumstances where there can be no redemption by deduction. Since a *perutah* is the smallest monetary unit, a sales price of less than two *perutahs* is invalid because the sales price cannot be split into one monetary unit's worth of deducted time and one unit's worth of redemption price.

Shall we apply the same rule to male slaves where there is no designation? Commentators differ.

[12:1]

[Calculation of the value of a *perutah*]

The *perutah* for *kiddushin* must be worth 1/192 of a *denar*. When a *denar* is worth 24 issars this results in the Mishnah's value for the *perutah* of 1/8 *issar*.

Issars fluctuate in value relative to the *denar* and the *perutah*, and sometimes depreciate so that there are 32 *issars* to the *denar*. In that case, *kiddushin* still requires 1/192 of a *denar* or **1/6** of an *issar*, rather than 1/8.

A contrary incorrect view holds that the value of a *perutah* is determined solely by reference to the *issar* rather than to the *denar*, and that a *perutah* is 1/6 of an *issar* regardless of the value of the *issar* relative to the *denar*.

I. Correct View

(perutah can equal 1/8 issar)

selah = 4 denars = 24 ma'ah = 48 pundion = 96 issars = 768 perutah

1 denar = 6 ma'ah = 12 pundion = 24 issars = 192 perutah

1 ma'ah = 2 pundion = 4 issars = 32 perutah

1 pundion = 2 issars = 16 perutah

1 issar = 8 perutah

[7:2]

1/8 issar= 1 perutah

II. Incorrect

(results in perutah always equaling 1/6 issar)

24 issar=6 ma'ah = 18 hadris = 36 hanez = 72 shamnin = 144 perutah

= 1 ma'ah = 3 hadris = 6 hanez = 12 shamnin = 24 perutah

1 hadris = 2 hanez = 4 shamnin = 8 perutah

1 hanez = 2 shamnin = 4 perutah

1 shamnin = 2 perutah

Since 24 issar= 144 perutah, 1 perutah = 1/6 issar

[Penalty for transgressions and rewards for proper behavior]

The *me'ilah* penalty for a *perutah*'s worth of benefit from *hekdesh* is to pay 1-1/5 *perutah* to *hekdesh* and to sacrifice an *asham* which has a value of at least two *selah's* or 1,536 *perutahs*. If punishment is this great for an accidental and minor transgression, consider how great the punishment is for purposeful and major transgressions!

The reward for good deeds is a greater multiple of true merit than is punishment for misdeeds. Consider, then, how great the award is for those who fulfill commandments.

[*Kiddushin* which is or may be worth a *perutah* elsewhere]

The Gemara states the following proposition:

> Samuel said: If a man betrothed a woman with a date-fruit, even where [the date is not worth a *perutah*], she is nevertheless betrothed: we fear that it may be worth a *perutah* in Medea.
>
> But we learned: Beth Hillel rule, by a *perutah* or the worth of a *perutah*? [and in Samuel's view anything may be worth a *perutah* somewhere!]
>
> --There is no difficulty: the one refers to certain *kiddushin*; the latter to doubtful *kiddushin*.

[7:2]

Several issues must be clarified:

> 1. What if the object is **definitely** not worth a *perutah* here but may be worth a *perutah* in place B?
>
> 2. What if the object is possibly worth a *perutah* at **the site** of *kiddushin*?
>
> 3. What if the object is **definitely** not worth a *perutah* here but is definitely worth a *perutah* in place B?
>
> 4. Does it matter whether the object would be destroyed or disintegrate before place B could be reached?

Each of these issues are considered in turn.

> 1. The object is definitely not worth a *perutah* here but is possibly worth a *perutah* in Place B.

This is Samuel's direct holding. There is questionable *kiddushin*. She requires a divorce from the betrother, and if subsequently betrothed by a second person, also requires divorce from the second.

> 2. The object is possibly worth a *perutah* at the site of *kiddushin*.
>
> There is questionable *kiddushin*.
>
> 3. The object is definitely not worth a perutah here but is definitely worth a perutah in place B.

The majority rule that there is absolute *kiddushin.* A minority rules that the *kiddushin* are questionable because the bride may insist that she obtain value **here.** A third group of commentators arbitrate the dispute by declaring the *kiddushin* absolute where travel to B is convenient by frequent caravan, and questionable where travel to B is inconvenient.

The following arguments are presented:

> 1. Samuel's view is not clear. He holds there is questionable *kiddushin* where the object is **possibly** worth a *perutah* in Medea. Does this suggest that there would be absolute *kiddushin* where the object is **definitely** worth a *perutah* in Medea? Or is the point that even in that case the *kiddushin* would be questionable only?

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2. R. Judah holds[230] that where A offers second tithe to B by way of *kiddushin*, and B does not know that it is second tithe, the *kiddushin* is invalid. Second tithe may be consumed only in Jerusalem. Had she known the *kiddushin* was second tithe, she might have rejected the *kiddushin* because of the risk and trouble of the trip to Jerusalem.

But note that betrothal is absolute if B realized that second tithe was used. On this analysis, there is absolute *kiddushin* whenever a woman **knowingly** accepts as *kiddushin* an object from which a *perutah* of benefit can be derived only after travel and trouble[231].

3. A business debt from A to B may be satisfied in currency which is of value exclusively in a distant location, but only if B has occasion to travel to that location[232]. This suggests that there is absolute *kiddushin* if there are frequent caravans to the locale in which the object has the certain value of a *perutah*, and that there is otherwise questionable *kiddushin* only.

4. Does it matter that the object would be destroyed or disintegrate before Place B is reached?

The Rambam rules that *kiddushin* are absolutely invalid unless Place B can be reached in time for the bride to derive a *perutah* of benefit. It does not matter that objects **of the same** kind are worth a *perutah* in place B.

Others disagree: there is concern that a person who later travels to place B will mistakenly think that *kiddushin* there with the object in question is invalid, not realizing that *kiddushin* was invalid in place A only because in place A it was not worth a *perutah*, and place B could not be reached in time.

Even the Rambam would concede that it is not necessary that the bride have occasion to go to Place B.

In evaluating these issues, consider the following:

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[230] 52:2.

[231] R. Meir disagrees and holds *kiddushin* with second tithe invalid, even where B was aware that second tithe was being used. The *halacha* agrees with R. Meir. But this does not undermine the analysis in the text. R. Meir's holding is based on his view (which is of no significance in our context) that an individual can have no ownership interest in second tithe on account of its sacred character.

[232] B.K.97:2.

[7:2]

Some commentators hold that the Beth din can investigate rumors regarding transgressions by designated persons, and announce that they are baseless, only where the populace would accept that the Beth din had performed an investigation which supported the Beth din's conclusion. For example, the Beth din may announce that the rumor is baseless that A betrothed B with the portion of a fruit which adhered to the core; the populace will assume that an investigation revealed that the fruit was not worth a *perutah*.

This Gemara is readily understandable if the Rambam's view prevails. All that is necessary for the investigation is a determination that the object was not worth a *perutah* within the definable area within which the object could be transported prior to its disintegration. But if there is no such limitation, the investigation would have to cover the world and would never be complete; the populace's suspicions would never be squelched!

Those who disagree with the Rambam explain that the Gemara deals with a case where the basic facts of the betrothal, *i.e.,* whether any object at all was passed in *kiddushin*, are known only by rumor. Only in this case are we not concerned that the object may be worth a *perutah* elsewhere.

[The *halacha*]

What of the *halacha*? The great majority of commentators agree with Samuel. A minority do not, and there is yet another minority which disagrees with Samuel even to the point that they invalidate *kiddushin* where the object used is **known** to be worth a *perutah* elsewhere. A final fourth view arbitrates these differences:

Samuel's view is relied upon to prohibit the woman's marriage to another, but not (unless there are witnesses to the definite value of a perutah in a designated location at the time of *kiddushin*) to taint the legitimacy of her children by another.

Note the following arguments:

1. Our Gemara asserts that Samuel's position is inconsistent with Beth Hillel who fix the value of *kiddushin* at a minimum of a *perutah*. The Gemara's only issue is why fix a minimum value if **possible** value anywhere would invariably validate the *kiddushin* anyway. But the Gemara has no problem with Samuel's basic concept that an item is valid for *kiddushin* if it is definitely worth a *perutah*, even if only at

some distant location.

2. R. Joseph agrees with Samuel in the case cited in our Gemara of one who betrothed with a myrtle branch.

3. R. Hisda disagrees with Samuel in our Gemara. Abbaye and Raba in turn disagree with R. Hisda. But they note that their disapproval is grounded not on their agreement with Samuel, but rather because of concern with a rumor that witnesses were present abroad who could testify that the object used was worth a *perutah* **here** at the time of *kiddushin*.

The Gemara compares Samuel's case with similar rulings relating to captive women. A captive woman is assumed to have been violated by her captors despite her protestations to the contrary[233]. But she is believed where the fact of her captivity is known only through her testimony, **and the Beth din is not certain that there are witnesses to the captivity.** If she wished to state an untruth, she would more likely not have conceded her captivity in the first place. This credibility is not lost where there are only **rumors** that there are witnesses to her captivity. Why not?

A captive woman has greater credibility because she makes herself unattractive to her captors. Besides, only her suitability for priests is in question and the issue is less serious than the marital matters of concern in our Gemara.

Does this mean that Abbaye and Raba are concerned with value elsewhere only if there are rumors to that effect, and that they disagree with Samuel who has this concern even if there are no rumors? Not necessarily. Possibly their point is that **even where Samuel's rule does not apply** (*e.g.,* according to the Rambam if the object would perish before transport to a locale where it might be worth a *perutah*), there is nevertheless doubtful *kiddushin* if there is a rumor that the item was worth a *perutah* **here** on the day of *kiddushin*.

3. Our Gemara considers the case of one who betrothed with a mat of myrtle twigs in which four *zuz* were hidden. The only factor which

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[233]Her assumed violation serves to proscribe her to her husband if he is a priest, even if her violation was unwilling.

the Gemara considers supportive of *kiddushin* is the bride's silence **after the existence of the *zuz* was disclosed**.

Does this suggest that it is not relevant whether the **mat itself**, without any secreted *zuz*, might be worth a *perutah* elsewhere?

Again, not necessarily, and for the same reason: the Gemara's interest is in the possibility of *kiddushin* in cases where Samuel's rule does not apply. An example is where the mat, having value only when moist, cannot be transported elsewhere (where it might be worth a *perutah*) before it disintegrates. That is why *kiddushin* can be based only on the woman's silence after she discovers the *zuz* secreted in the mat.

> This is consistent with the Rambam's approach. The Rambam separates the issue of (i) a woman's silence after belated discovery that she has received value, and (ii) the significance of value elsewhere of items whose receipt the woman realizes immediately.
>
> Thus, the Rambam rules that a woman's silence after receiving her *kiddushin* is not supportive of *kiddushin*. Yet he holds that the woman is validly betrothed with a mat of myrtle twigs (even if she discards the money, keeping only the mat), where it may have value elsewhere if transported there in time.

4. One who pledges amounts to *hekdesh* beyond his means is obligated to pay to *hekdesh* no more than the assessed value of his property. The Mishnah[234] rules that the value of the pledgor's slave must be taken as the slave is. It does not matter that the purchase of new clothing would increase the slave's value beyond the actual cost of the clothing.

A diamond and a cow must similarly be valued at their present locations, and not as potentially increased by transport elsewhere.

This supports the commentators who hold *kiddushin* is invalid unless

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[234]Eruk.24:1.

[7:2]

it is worth a *perutah* at the place where betrothal was attempted.

[12:2]

[*Kiddushin* **which was possibly worth a** *perutah* **at an earlier time]**

Assume that A betroths B with an object which is definitely not worth a *perutah* anywhere when the *kiddushin* is being judged by the Beth din, but it is possible that the object was worth a *perutah* at the time of the *kiddushin*. The following rules apply:

1. There is *kiddushin* if both A and B testify that the object was worth a *perutah* at the time of betrothal.

2. There is *kiddushin* if witnesses testify that the object was worth a *perutah* at the time of betrothal.

3. But where B was subsequently betrothed to C, A's betrothal of B can only be validated by witnesses. Neither the testimony of A and B, nor the testimony of B's mother or other relatives, can be credited. Their motivation may be wrongfully to abrogate C's *kiddushin*.

Thus, R. Hiya's wife was not believed when during the travail of childbirth she claimed that her mother told her that she (R. Hiya's wife) had been previously engaged to another. The Gemara would have denied credibility even were R. Hiya's wife to claim that she **herself** had accepted *kiddushin* from another. This lack of credibility is far-reaching. Not only can she not forbid her husband to live with her, she cannot forbid herself to live with her husband, and she may continue to eat *terumah* if her husband is a priest[235].

4. If the Beth din is assured that there are witnesses who can testify that the *kiddushin* is valid, this knowledge is sufficient to prohibit B's continued cohabitation with C. Most commentators hold that what is required is actual knowledge that witnesses exist, not merely rumors that witnesses exist. The reference in the Gemara to there being witnesses in Idith is not to the *possibility* of such witnesses, but to the certainty of such witnesses.

Recall also that a captive woman's credibility is not lost because of

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[235] Ned.94:2.

rumors that there are witnesses to her captivity[236].

5. Where B is only betrothed to C, and not yet married to him, it **is** appropriate to take account of a rumor that there are witnesses, and to postpone marriage until the rumor is confirmed or disproved. If the couple nevertheless marry, the Beth din compel their divorce, and the status of their children is questionable.

The rumor must be confirmed or denied only where the act of betrothal is certain, and the only rumored issue is whether or not there are witnesses on the value of the *kiddushin* object.

[*kiddushin* by cohabitation is discouraged; other reprehensible conduct]

Kiddushin by cohabitation is valid but unseemly. Consider the witnesses which are necessary and the great importance which attaches to their precise testimony. The situation is worse where there was no prior engagement: the groom is given *malkot* because of the appearance that the cohabitation was not for the purpose of *kiddushin*.

We also find fault, but do not give *malkot*, to one who betroths by money or deed without a prior engagement, such as one who betroths in the street.

The Gemara lists the following additional cases of reprehensibility and *malkot*.

1. It is reprehensible for a husband to annul a *get* sent by messenger unless the messenger is informed prior to delivery. The wife may contract another marriage before she learns of the annulment. But the husband is not given *malkot*.

2. One who lodges with witnesses a secret protest to a *get* he later delivers is not given *malkot*, despite the risk that his wife may wrongfully contract a marriage with another.

His action is reprehensible if not prompted by force. If the *get* is exacted by force, his action is not even reprehensible.

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[236]The cases are analogous. It does not matter that a captive woman might arguably have greater credibility because of her ability to make herself unattractive to her captors. Also no distinction is made on the grounds that only her suitability for priests is in question and that the issue is therefore less serious than the marital matters of concern in our Gemara.

[7:2]

> 3. We ban, but do not give *malkot*, to one who harasses and embarrasses a messenger sent by the Beth din to deliver a summons or to seize collateral.
>
> > One who has been banned for 30 days on account of non-submission to court summons is banned again. In neither case do we give *malkot*.
>
> 4. The Beth din gives *malkot* to a son-in-law who dwells in his mother-in-law's house, if the two were previously under suspicion. If there is no prior suspicion, then the matter is reprehensible but there is no *malkot*.
>
> Some commentators maintain that because of increased morality nowadays, it is permissible for one to dwell with his mother-in-law except in cases of rumor and suspicion.

The ban in these cases is fixed by the Beth din according its powers and the needs of the time[237].

[Must witnesses be present when *kiddushin* is confirmed?]

When a woman is given a worthless object towards *kiddushin* and is later told that a valuable item was secreted in the object, there is valid *kiddushin* if she confirms the betrothal.

But must witnesses be present when she makes the confirmation? The Meiri holds that witnesses are required. He presents the following reasoning:

> A woman is not betrothed with items unknown to her, or with items which are known to her but to which she pays no **attention**. If A betroths B "with this cup" she is not betrothed if the cup is not worth a *perutah*, even if there is water in the cup, and the cup and the water, taken together, are worth a *perutah*.
>
> > The rule obviously applies where the groom drew her attention to the cup and away from its contents, by saying "Be betrothed with the cup." But the rule goes further: there is no betrothal even where

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[237]The text follows the second version of rules set by Rav. Certain commentators conclude that the *halacha* is in accord with Rav's first version under which we give *malqoth* to each person whose action is reprehensible.

> the groom was more general and said "Be betrothed with this object."[238]
>
> It follows that the woman in our case is betrothed only when she becomes aware and pays attention to the item secreted in the worthless object, and it makes no difference whether the man betrothed her "with this [worthless item]," or whether he even says more generally "Be betrothed with this."
>
> The act of *kiddushin*, **at the time when *kiddushin* is effective[239],** requires witnesses in order to be valid.

The rule is different where A says to B, "Be betrothed to me if I am righteous." B is betrothed even if A is absolutely wicked for he may have meditated repentance in his thoughts[240]. No witnesses are required. It is assumed that the groom will repent in order to validate the *kiddushin*.

But some commentators disagree, and from the case just mentioned reason generally that witnesses need not be present at the satisfaction of a condition subsequent to *kiddushin*.

[Silence as acquiescence to *kiddushin*; liability of a bailee; *kiddushin* by objects previously entrusted to the bride as bailee]

The Meiri then discusses the following series of rules:

> 1. A bailee may at any time return to his bailor items which the bailor entrusted to the bailee's custody. The only exception is where the bailment was taken for a specified term.
>
> 2. Assume that A entrusts B with a gold coin and tells B that it is a silver coin. The coin is lost. B is in theory a bailee insofar as concerns the hypothetical silver coin, but not for the gold coin. Consequently, if B is merely negligent, B is responsible only for the value of a silver coin. If B

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[238]See 48:2. The woman is betrothed if the content of the cup is something to which the woman does pay attention. Thus, if the content of the cup is something to which the woman does take heed, such as wine, she is betrothed if the wine and the cup together are worth a *perutah*.

[239]In other words, witnesses must be present when a condition subsequent to *kiddushin* is satisfied.

[240]49:2.

is actively destructive, he is responsible for the full value of the gold coin. A tells B, "You didn't accept responsibility for a gold coin, but you had no right actively to destroy my property."

However, if B did not know that there was **any** money hidden within a worthless item, then B is responsible only for the worthless item, even if B was actively destructive[241].

3. If A gives B an item as *kiddushin* and does not request that B act as bailee, B's silence connotes acceptance of *kiddushin*. But this applies only if the funds are given to her in hand, not if the funds are merely hurled towards her[242]. This is to be contrasted from *get* which is valid if hurled to a resting place which is closer to the wife than to the husband[243].

4. There is no *kiddushin* where A gives an item to B and B is silent when A later betroths her with it[244]. We reason that she failed to discard the item, not because she wished *kiddushin*, but rather because of her proper concern for her liability as bailee.

But why did she not simply return the object to the man? As noted, the law permits a bailee at any time to return the bailment to the bailor?! There are two reasons:

It is assumed that the woman was unaware of this rule.

Alternatively, she accepted the bailment for a designated time, and has no right to terminate the bailment.

5. If A gives an item to B as bailee and **immediately** says "Take it in betrothal," and B promptly objects, there is of course no *kiddushin*. But if B is silent and yet does not discard the item, there is doubtful *kiddushin*. She never accepted the bailment, and the case is similar to that in Proposition 2, in which a person who has not accepted a

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[241]B.K.62:1.

[242]Unless, of course, she expressly directs him to do so. See 8:2 for valid *kiddushin* where A places the *kiddushin* object on B's property at B's direction.

[243]See Git.78:1 for the rationale behind the differing treatment of *kiddushin* and *get*.

[244]Contrast this with the case where B **accepts** *kiddushin* with an apparently worthless object, but is silent later when value is discovered to be secreted in the object.

bailment is liable only for **active** destruction. If she did not wish to be betrothed she should have discarded the item without liability.

Can she invalidate *kiddushin* by arguing that she did not know that the item could be legally discarded?

No. Here, she never accepted the bailment and she should have known instinctively that her liability is unlikely.

We therefore rule with Rabina that her possible ignorance of the civil law is sufficient only to render the *kiddushin* doubtful, not to void it.

There are two additional details:

If the rule which **frees her of liability for discard** was explained to her at the time of the betrothal, her failure to discard should result in definite *kiddushin*. The only possible exception is where we can explain that she failed to discard the object because she was reluctant to involve herself in an embarrassing court case.

If she was advised to **object**, but did not, there is definite *kiddushin*.

[7:2]

[13:1]

[Stolen or borrowed items as *kiddushin*]

There are cases where there is no *kiddushin* even if the woman was silent **while she received funds** from her proposed groom. Where A borrows, steals or seizes a *selah* from B and he then gives it to her, purportedly as *kiddushin*, she is not betrothed even if she is silent and even if she never previously demanded repayment or return. She is merely retrieving her own property[245]. The only exceptions are:

1. Where A and B had become engaged **prior** to her receipt of the funds, meaning that negotiations and discussions relating to the impending betrothal were absolutely complete.

   What if the engagement follows receipt of funds? There is no *kiddushin* even if she later confirms the betrothal. The funds which were already given by A to B served to repay his debt to her. They cannot now be resurrected as kiddushin.

   Contrast this with the rule where A deposits a *selah* with B and later asks that she be betrothed with it. Here, there is *kiddushin* if she verbally accepts.[246]

2. Where there was no engagement but B said "Yes" when she

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[245]The assumption that the payment was merely repayment of a pre-existing debt applies only where the loan is mentioned while A gives B the funds. If the loan is not mentioned, we do not apply the payment to the loan, even where the loan was recent, and could not be said to be forgotten.

But in cases involving seized or stolen property the payment is applied to the seized or stolen property whether or not the seizure or the robbery is mentioned, so long as the seizure or robbery did not occur long ago.

Can B avoid betrothal by showing that she accepted A's property as collateral for a pre-existing loan? The Rashba rules that she cannot. If she wished to avoid *kiddushin* she should have said so expressly.

Certain commentators prefer to limit the Rashba's holding to cases in which the collateral has value in excess of the loan. In that case it can be said that the woman intended *kiddushin* to be effective on the basis of the excess value.

[246]But where there is no verbal acquiescence there is no *kiddushin* based on the former deposit, even if engagement negotiations were complete.

[7:2]

received the funds[247].

The majority view is that A continues to be obligated to repay his debt. However, it is assumed that B waived her right to restitution for robbed or stolen items.

The Yerushalmi disagrees. Even in the case of robbed or stolen items, the assumption is that B stands on her rights; she is content to let the matter ride, accept funds as *kiddushin* now, and obtain her property at another time. The Yerushalmi therefore holds that there is no *kiddushin* where A seized one of B's **chattels**, rather than B's money. Chattels are not fungible, and we do not assume that B accepts chattel X as *kiddushin* and expects A to give her chattel Y by way of return for the seized item.

A *baraitha* quoted in our Gemara holds that A can betroth B with item X which he forcibly purchased from B. The Yerushalmi must explain either that:

1. Item X is money rather than a chattel, and A forced an exchange of one form of money for another, or

2. The case of a forced sale is different from a seized or stolen item. There is an assumption that where negotiations are complete B **acquiesces** in the **sale** which A previously forced, and there is no requirement that A return the chattel to her. Although the transaction was forced, she at least received a fair purchase price for item X.

The Meiri suggests that account be taken of the Yerushalmi's view.

[*Kiddushin* **with items stolen from a third party]**

The stolen objects to which we have been referring are objects which the man A previously stole from the woman B. If the objects were stolen from a third party C, the validity of *kiddushin* depends on the ability of B to obtain absolute title free of

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[247]Some commentators hold that the *kiddushin* are valid only when A later repays the debt. Compare the rule where A promises B a *maneh* and gives her only a *denar*.

claims of the original owner[248]. Two elements are necessary for the claim-free transfer of title to a stolen object:

1. The original owner must **despair** of its return; and

2. There must be a transfer of possession from the thief to a third party.

Despair is assumed in the case of theft. It must be proved in the case of robbery, since the victim knows the robber's identity and may expect somehow to compel the robber to return the victim's property[249].

But what of the transfer of possession requirement: is the transfer by A to B for *kiddushin* itself a transfer of possession for this purpose? Or does *kiddushin* require that title already have vested in the man **before** it is given to the woman?

The following sources are helpful:

1. *hekdesh* loses its sacred character when accidentally transferred to a third party. Where A transfers *hekdesh* to B by way of *kiddushin*, R. Judah holds that *kiddushin* are valid, **notwithstanding that the transferor never had title prior to the transfer**[250]. The Meiri considers this strong evidence that B is betrothed where the only transfer is from the thief to her.

2. A later Gemara[251] holds that where A seizes property from C and A

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[248]A *baraitha* at 52:1 validates *kiddushin* where there was a prior engagement and A, in the face of B's silence, betrothed B with an item which A **robbed, or stole or seized from B**.

Now, if the words **from B** modify only **seized**, the *baraitha* would be inconsistent with the rule in the text, since it would appear that *kiddushin* are valid even where the item was robbed or stolen from others.

But the words **from B** modifies **each** of the words **robbed, stole or seized**, not only the last word **seized**.

[249]This is the *halacha*. R. Simeon disagrees and assumes despair whether or not the malefactor was identified. See 52:2.

[250]55:2.

[251]55:2.

then gives the property to B as *kiddushin*, there is no valid betrothal. Raba explains that this results from our holding that **despair** is not **assumed** since C knows A's identity and expects somehow to re-obtain his property:

Some hold that this suggests that were there despair, B would have been betrothed.

Others distinguish the Gemara on account of Raba's view that despair alone, without transfer of possession, is sufficient to convey title to a stolen item.

[*Kiddushin* with an object stolen from the bride where the bride despaired of its return]

Does B's despair validate *kiddushin* where the object had been seized **from her** by A and there had been no prior engagement? No. All that matters is whether there had been a prior engagement. Hence, this is a case in which *kiddushin* is more easily effected with items stolen from others than with items stolen from B[252]:

This rule is easily explainable for those who disagree with Raba and maintain that a victim can compel return of the item after despair until there was a change in possession. B's acceptance **of her own item** is not a change in possession for this purpose.

But what of Raba who holds that despair without change of possession conveys claim-free title? Why is there no *kiddushin* where the woman had despaired? Because Raba agrees that where the thief ultimately returns the stolen item the victim is deemed to have owned it all along.

What then is the legal consequence of the rule that despair conveys title? Only that after despair the thief has the right to satisfy his obligation to make restitution with either the stolen

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[252]But where there had been a prior engagement, B is more easily betrothed with items which had been stolen from her, since no despair or transfer of possession is required.

[7:2]

item or its value; before despair the victim has a legal right to compel return of the item itself.

[*perutah* in real property and *halifin* transactions]

Real property cannot be purchased or rented for less than a *perutah*. On the other hand, in a *halifin* transaction, the ritual object transferred by the buyer to the seller need not be worth a *perutah*.

[13:2]

[Sacrifices to be brought by a woman who gives birth]

A woman who gives birth must sacrifice first a *hattat* and then an *oleh*[253]. The purpose of the *hattat* is forgiveness. The *oleh* is more in the nature of a gift[254]. These rules follow[255]:

1. If a woman dies prior to bringing her *hattat*, her heirs need not bring the *hattat*. There is no forgiveness for the dead. Neither need they bring an *oleh*, since *hattat* must precede *oleh*.

2. If the woman brought her *hattat* but failed to bring her *oleh*, her real property is subject to a lien which requires that the heirs bring that sacrifice. The real property is bound whether or not the woman prior to her death identified the animal or fowl she intended to bring as her *oleh*.

If she has no real property, the only property which can be subject to a lien is a fowl which she identified for the purpose of sacrifice prior

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[253]That Scripture (Lev.12:6) mentions the *oleh* first is irrelevant. In all cases, whether the *hatos* is animal or fowl, a *hattat* precedes the accompanying *oleh*.

[254]An *oleh* does serve in a general way to obtain forgiveness for the failure to perform positive precepts. But contrary to a *hattat* sacrifice, which must be brought for a specified transgression, the effect of an *oleh* is more diffuse and need not be identified with the failure to perform a definite positive precept.

[255]All these rules apply to men as well, such as to a leper or a *zav* who are also required to sacrifice both a *hattat* and an *oleh*. The few commentators who hold otherwise are incorrect.

to her death[256].

3. If contrary to law, the woman brought her *oleh* but failed to bring her *hattat*, the heirs do not bring the *hattat.*

If prior to her death she had already identified the fowl[257] to be her *hattat*, her heirs must see to it that the fowl is put to death, consistent with the general rule for a *hattat* whose owner dies prior to sacrifice.

[Categories of *hattat* sacrifices which must be put to death]

The following are the categories of *hattat* which must be put to death:

1. the offspring of a female *hattat*;

2. an animal or fowl which was to be sacrificed in place of another *hattat*;

3. a *hattat* whose owner died;

4. a *hattat* which becomes over-age prior to sacrifice[258]; and

5. a *hattat* whose owner obtained forgiveness through the use of another *hattat* (e.g. while the first *hattat* was misplaced).

Certain of these categories cannot physically or legally apply to a *hattat* which is brought by the public rather than an individual. A *hattat* brought by the public must be male and can have no offspring. The public cannot legally sanctify a *hattat* which is to be sacrificed in exchange for another *hattat*. Nor can the public as a whole die.

R. Simeon (but not the majority) reasons by extension that **none** of these categories applies to the public. Similarly, as to *hattat* brought of fowl: such *hattat* cannot be the live offspring of another *hattat*, and by extension R. Simeon (but not

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[256]See R.H.6:2.

[257]The *hattat* of a woman who gives birth is of fowl only.

[258]Only a minority of the Rabbis hold that an over-age *hattat* is put to death. The *halacha* is otherwise: the animal is permitted to graze until it receives a blemish which makes it unfit for sacrifice. It is then sold, and the monetary proceeds are deposited in the fund from which voluntary *oleh* sacrifices are brought for the public.

the majority) would not put to death any *hattat* of fowl, whatever the category. The Tosefta agrees with R. Simeon. Our Gemara agrees with the majority[259].

[A lender's lien]

Some hold that a lender's lien is Scriptural. What does this mean?

That the property of the borrower guarantees the borrower's debt[260], whether:

the debt is contracted orally or in writing,

in or out of the presence of witnesses: or

the borrower does or does not expressly grant a lien to the lender[261].

It follows that third party purchasers take title to the seller's land subject to the lien of the seller's creditors. But to protect unwitting purchasers, the Rabbis order that the lien be disregarded where the debt was not documented and hence not publicized. But the lien securing oral debt stands as against the borrower's heirs.

In our Gemara R. Papa explains that the lien binds heirs because of the lien's Scriptural basis. But this is not R. Papa's personal view. R. Papa himself holds that the lien is not Scriptural but nevertheless binds heirs because of a Rabbinical interest to encourage loans[262].

> R. Papa's personal view may be grounded on his minority position that a borrower's obligation to repay debt is not a civil absolute which a creditor can enforce. Rather, it is a religious obligation which the Beth din compels him to satisfy. If the debt itself is not a civil obligation, it follows that liens to secure the debt are not Scriptural.

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[259]Based on another derivation, the majority agrees with R. Simeon that the public is excluded from the rule that a *hattat* is put to death once the owner is forgiven by use of another *hattat*. The animal is treated in the manner described in the preceding Note.

[260]The binding nature of a guaranty is derived from the verse "I will guarantee him." Gen. 43:9.

[261]That a contractually granted lien is valid requires no special authority. The case is covered by the general rule that a person must perform his contractually assumed duties. A person's "yes" must be "just." See B.M.49:1.

[262]B.B.176:1. The Raabad also holds that heirs are subject to their testator's lien only to encourage lending and not as a result of the Scriptural basis of the lien.

Other commentators explain that even those who hold that liens are Scriptural must rely on the same Rabbinic interest in encouraging loans to explain why they **did not abrogate** the lien to protect heirs.

> In any event, a lien securing oral debt can be foreclosed against heirs only in limited circumstances:
>
> on a debt not yet past maturity (otherwise there is concern that the deceased may have paid the debt); or
>
> a debt which was acknowledged by the deceased; or
>
> a debt for which the deceased was placed under a ban for non-payment which continued to his death.

Details of these rules are explained elsewhere[263].

[Marital prohibitions which do or do not survive death]

Where A is married to B and may not marry C because of C's incestuous relationship with B (such as where C is B's mother), in most cases the prohibition survives B's death. But where A cannot marry C solely because C is married to B, and not because of any family relationship, A may marry C on B's death. The only exception is where C becomes a *yebamah* on B's death. These rules are explained in greater detail elsewhere[264].

[Factors relating to a widow's right to remarry]

The Torah decrees for a **divorced woman** "**she** shall leave and be to another."[265] The Gemara considers whether the implication is that only **she** (a divorcee) can remarry but not a widow.

> A prohibition so derived would have had the status of a **positive** precept since it would be based on the positive affirmation that a divorced woman **may** remarry.

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[263]B.B.174:2.

[264]Sanh.54:1.

[265]Deut.24:2.

[7:2]

This is all academic, since the Gemara concludes that a widow may remarry.

[Redemption and related procedures for consecrated animals which become unfit for sacrifice]

Consecrated animals which are unfit for sacrifice may not be slaughtered or consumed until redeemed. There is *me'ilah* if the animal is improperly slaughtered. Once redeemed, the animal may be slaughtered and eaten, but it may not be shorn or used for work. "Thou shalt not work with the first-born of your ox, and thou shalt not shear the first-born of your sheep,"[266] refers to unfit animals after redemption.

Another Gemara[267] derives the rule from the verse "You shall slaughter [implying you shall not shear] and you shall eat meat [implying you shall not milk]"[268].

The animal's meat may be consumed only by humans and may not be given to dogs or livestock. The previous verse ends "and **you** shall eat," which implies that only humans may partake.

[14:1]

[Certain rules for *yebamah*]

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[266]Deut.16:19.

[267]Bek.15:1.

[268]Deut.12:16.

[7:2]

A *yebamah* is acquired by cohabitation even against her will, and she acquires her freedom by *halizah*. *halizah* must be conducted by a Beth din of natural born Israelites, none of whom is a proselyte and each of whom has a Jewish father and a Jewish mother. Once the *yebamah* has loosened the *yabam's* shoe and has made the statements required by Scripture, all those present must declaim "loosed shoe," three times[269].

A married woman is forbidden to others on pain of strangulation. A *yebamah* is forbidden only by negative precept: "The wife of the dead man shall not be unto a stranger."[270]

It is preferable that the *yabam's* own shoe be used for *halizah*[271] but any person's shoe is effective. The verse's emphasis on **his shoe**[272] mandates only that the shoe be appropriate to the *yabam*.

Even if he owns the shoe it cannot be so large that he cannot walk in it, or so small that it does not cover most of his foot, or lack a heel or a sole.

The sole must be of the same piece of leather as the rest of the shoe, lest a half shoe be wrongly used.

[Designation of sacrifices by the high priest and by a woman who gives birth]

On Yom Kippur the high priest sacrificed one goat as a *hattat*[273] and consigned the other to die at the precipice of Azazel. Lots were used to determine which goat was to be used for each purpose, and a purported designation by the priest was of no effect.

The reverse is true of other sacrifices: designation is effective, lots are of no consequence. For example, a woman after childbirth and a Nazirite must each bring an *oleh* and a *hattat*. Once the two animals or fowl are obtained, the determination of which is to be used for each sacrifice depends in the first instance on the person bringing the sacrifice. If the owner fails to make the designation, the priest's

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[269]Yeb.106:2.

[270]Deut.25:5. See also, Yeb.92:1.

[271]In Yeb.103:2 the Gemara suggests that the *yabam* be given a shoe for the purpose of *halizah*.

[272]Deut.25:9.

[273]Sin offering.

designation is effective. Hence, the two verses "And she shall take two fowl, one for *oleh* and one for *hattat*,"[274] (which suggests that the owner makes the selection), and "The priest shall make them, one an *oleh* and the other a *hattat*,"[275] (suggesting that the priest makes the designation).

[One *get* must be written expressly for each woman to be divorced]

A *get* must be written for the particular woman who is to be divorced and not as a form. One *get* cannot be used to divorce two wives, even if both have the same name. "And he shall write **to her**."[276]

[*Kinyanim* for a Jewish slave]

The second Mishnah begins the discussion of acquisitions other than *kiddushin*. It considers first acquisition of a Jewish slave:

> A Jewish slave is acquired by money and by deed; and acquires himself by years, by Jubilee and by deduction from the purchase price. A Jewish maidservant is more [privileged] in that she acquires herself by "signs". He whose ear is bored is acquired by boring, and acquires himself by Jubilee or his master's death.

A Jewish person may sell himself into slavery when he is so poor that he has nothing to **eat**. He may not sell himself to raise funds to pay debts or to purchase anything other than food, or when he can still raise funds for sustenance by selling any remaining property. Alternatively, a Jewish person may be sold into slavery by the Beth din in order to repay the principal amount[277] of property he has stolen. Also, a father may sell his daughter into slavery.

A slave may be sold for money or by deed:

1. The money is paid to:

   the slave when he sells himself,

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[274]Lev.12:18.

[275]Num.6:11.

[276]Deut.24:1,3.

[277]But not to pay the *qefal* penalty.

[7:2]

to the victim of the theft when the Beth din sells the slave, and

to the father when he sells his daughter.

The purchaser must declare that the slave is to become his property by way of a monetary *kinyan* consisting either of the money paid as purchase price or by additional money paid to consummate the formal *kinyan*.

2. The slave, the Beth din or the father can sell by deed in which is inscribed "I am sold to you," or "such and such person is sold to you," or "my daughter is sold to you."

[Derivation of *kinyanim* for Jewish slaves]

The following verses relate to sales by the slave himself:

"When your brother shall be impoverished and shall be sold to you."[278] (sale to a Jewish master)

"When the hand of a sojourner or resident with you shall achieve, and your brother shall be impoverished and be sold to him."[279] (sale to a gentile master)

The following verses deal with sales by the Beth din:

"And if has no [assets with which to repay], he shall be sold for his theft."[280]

"When you shall buy a Jewish slave."[281]

"When your brother the Jew shall be sold to you."[282]

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[278]Lev.25:39.

[279]Lev.25:47.

[280]Ex.25:2.

[281]Ex.21:2.

[282]Deut.16:12.

[7:2]

The verse "from the money whereby he was purchased"[283] deals with a slave who sells himself to a gentile.

The rule that money is a *kinyan* for the purchase of a slave begins with:

> 1. The verse "from the money whereby he was purchased," in the context of a slave who sells himself to a gentile.
>
> 2. The rule for a slave who sells himself to a Jew is in turn derived by *gezerah shawah* from the slave sold to a gentile[284].
>
> 3. The rule for a Jewish maidservant is derived from the phrase and "she shall **redeem** herself,"[285] which suggests that she was initially acquired with money.
>
> 4. Finally, the rule for a slave sold by the Beth din is then derived either by *hekesh* from the Jewish maidservant[286], or directly by the same *gezerah shawah* from the Jew who sells himself to a gentile[287].

A deed is valid because of negative implication from the verse for a Jewish maidservant "She shall not **leave** in the manner of gentile slaves."[288] The implication is that she can be **purchased** in the manner of gentile slaves, *i.e.,* by deed. The rule is then applied to one sold by the Beth din by the *hekesh*. From there, the *gezerah shawah* is used to apply the rule to one who sold himself.

> Gentile slaves can also be acquired with *hazakah*. Why not imply that a maidservant can also be acquired with *hazakah*? Because of the verse "And you shall pass **them** [gentile slaves] as a heritage." Lev.25:46. The word

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[283]Lev.25:51.

[284]The word *sakhir* appears in both contexts. Lev.25:40 and 50.

[285]Ex.21:8.

[286]The words the **Jewish slave** and the **Jewish maidservant** appear next to each other in the context of the slave sold by the Beth din. Deut.15:12.

[287]The word *sakhir* also appears in the context of one sold by the Beth din. Deut.15:18.

[288]Deut.21:7. Gentile slaves are freed if their master should remove one of their limbs. Jewish slaves do not leave if this occurs, and instead have only a monetary claim against the master for the damage caused.

them suggests that gentile slaves are more easily transferred than Jewish slaves: the additional mode of transfer is *hazakah*. Similarly, a Jewish slave cannot be transferred by *halifin*.

Once acquired by his master, a Jewish slave is subject to the servitude of slavery, and his labor is his master's property. If he was sold by the Beth din, his master may in certain cases compel him to wed the master's gentile maidservant.

[How a Jewish slave obtains his freedom]

A Jewish slave who has been sold by the Beth din is freed upon the expiration of a six-year term.

One who sells himself can specify a greater term. Commentators differ on the proper term where none was specified: some suggests that the term should then be six years, while others hold that the term continues until the Jubilee.

The *shemittah* does not cut short the term of the slave or the maidservant. The Jubilee does.

All Jewish slaves and maidservants leave by deduction, meaning payment to the master of the portion of the purchase price which is allocable to the unexpired portion of the term.

Where the master dies, a slave of a Jewish master must serve only the slave's son and not any other relative[289]. If the master is a gentile, the slave need not serve even the son. A maidservant also need not serve the master's son.

[Privilege of a maidservant to obtain freedom in certain circumstances]

The Mishnah lists the privileges of the maidservant which give her additional means to freedom. They are the appearance of signs of *na'aruth* and, where she is an *elonit*, the appearance of signs of *bagrut*. Why does not the Mishnah list as an extra privilege the rule that the maidservant need not serve the master's **son** after the master's death? There are two explanations:

1. The privilege applies only where the master has a son; where there is no son, the male slave is also freed upon the master's death. The

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[289]The limitation is derived from the verse "And he shall serve **you**" (Deut.15:12) which suggests that the slave need serve only you but not **your heirs**. The limitation is not applied so strictly as to exclude **your son.**

[7:2]

Mishnah prefers to list privileges which **always** distinguish the maidservant from the male slave.

2. The Mishnah's listing is not complete in any event. Note that the Mishnah fails to mention that all slaves can be freed by deed of emancipation.

A slave's ear is bored if prior to sunset on the last day of his six-year term he refuses to leave and declares: "I love my master..." The act of boring gives the master ownership rights in the slave. His term continues until the earlier to occur of the Jubilee or the master's death. He need not serve the master's son. His term does not expire after six years[290]. He cannot obtain freedom by deduction, since the master did not acquire rights in him by money purchase.

This completes the exposition of the Mishnah, all of which is consistent with the *halacha*. The following are the matters which the Gemara considers.

[Acquisitions by gentiles]

"All of a gentile's acquisitions are with money." Rashi explains that this means that a gentile can acquire **only** with money, and not by *meshikhah*[291]. But what of another Gemara[292] which says that *meshikhah* is valid in acquisitions among gentiles and between gentiles and Jews?

1. Some commentators explain that our Gemara's intent is not to limit the gentile's mode of acquisition to money, but rather to say that money is valid **as well as** *meshikhah*.

This is consistent with another Gemara[293] which deals with the rule that a gift given to a prostitute may not be used as a sacrifice. A gentile prostitute need not perform *meshikhah* to acquire rights in an animal given a gift of this kind. Those who amend the text to read that *meshikhah* **is invalid** are mistaken.

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[290]The Torah requires that he serve his master **forever**, Ex.21:6, meaning until the Jubilee.

[291]Rashi derives this rule from the verse which permits acquisitions "from the hand of your **friend**." This suggests that an object can be acquired by *meshikhah* only if by a friend, *i.e.*, a Jew.

[292]A.Z.43:2.

[293]Tem.29:2.

[7:2]

2. Rashi holds that our Gemara is not consistent with the *halacha*.

3. Rabbeinu Tam maintains that our Gemara means that a gentile can acquire **slaves** only with money. This results from the following reasoning:

In general, a gentile's only *kinyanim* are money[294], *meshikhah*[295] or *hazakah*[296]. A gentile can never acquire by deed, and this rule extends also to his acquisition of slaves.

Unless there is express evidence to the contrary, such as in the case of *hazakah*, a gentile cannot have more means than a Jew with which to acquire a slave.

Although a gentile can use *meshikhah* generally, a Jewish master cannot acquire a slave with *meshikhah*. It follows that a gentile cannot use *meshikhah* **to acquire slaves**.

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[294]Based on the verse for a gentile master described earlier.

[295] R. Johanan holds in B.M.47:2 and Bek.13:2 that Scripture permits **money** purchases only for Jews. By negative implication, gentile acquisition must be by *meshikhah*.

[296]Jews were not permitted to acquire the lands of Amon and Moab. But these lands became permissible to Jews once the lands were **seized and legally acquired**, in a *hazakah* type acquisition, by King Sikhon, a gentile. Git.38:1. See A.Z.73:2 for the extension of this doctrine to permit analogous modes of acquisition, such as lifting.

[7:2]

[Distinctions between slaves who sell themselves and slaves who are sold by the Beth **din]**

In addition to the distinctions mentioned in the Mishnah between a slave who sells himself and one who is sold by the Beth din, there are the following additional differences:

1. On the expiration of his term, a slave sold by the Beth din is entitled to be furnished with gifts by his master[297]. One who sells himself has no right to be furnished with gifts.

2. A slave may sell himself to a gentile, but the Beth din cannot do so.

[297]The nature of these gifts is explained in greater detail below.

[7:2]

[15:1]

[When the ear of a Jewish slave is bored]

A Jewish slave is bored in his right ear, but only if his declaration "I love my master"[298], and his insistence on continuing servitude, occur when there is sufficient time remaining in the term to do at least one *perutah* of labor[299].

[Gifts to be given to a Jewish slave]

It is a positive precept that the master furnish gifts to his Jewish slave on expiration of his term. One who fails to furnish gifts violates the negative precept "You shall not send him empty-handed, you shall give him gifts"[300]. If the slave dies before receiving his gifts, his heirs succeed to his rights.

> The phraseology used by the Gemara to express this concept, "his [the slave's] **labor** belongs to his heirs," refers to the basis for the requirement to furnish gifts: the assumption that the slave's work for his master was worth more than the amount which the master paid for the slave.

A slave's gifts are his own property even if received by him during his term while he is still subject to his master's domination.

The slave's **right to receive** gifts is not subject to the claims of his creditors, notwithstanding R. Natan's doctrine that a creditor may foreclose on the borrower's rights to receive property from a third person[301]. The Torah means to exclude

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[298]Ex.21:5.

[299] 22:1.

[300]Deut. 15:13.

[301]Assume that A owes money to B, and that B owes money to C. R. Natan holds that A must pay C directly. He derives his rule from the verse in Num. 5:7:

"And he [interpreted as borrower A]

shall give it [the amount he owes to borrower B]

to him [interpreted as ultimate creditor C]

creditors by its emphasis on **him** in the verse "You shall give gifts to **him**."[302]

> Some commentators extend this exemption to wage claims of a laborer. They limit R. Natan's principle to loans in which actual monetary amounts were initially received by borrower B. Wage claims owed by B were never embodied in identifiable money and therefore cannot be the subject of the ultimate creditor's claim.[303]

[A Jewish slave can be compelled to marry a gentile bondwoman]

The master can compel a Jewish slave who was sold to him by the Beth din to

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to whom he [interpreted as borrower B]

is indebted."

The literal reading is "he shall give it to whom he is indebted." However, the use of the noun *asham* (with its suggestion of principal ownership rather than debt) suggests ultimate ownership of the claim, which belongs to the final creditor C. If the intervening creditor B were meant, the word hilvahu (he who loaned him) would have been preferable.

[302]Deut. 15:14.

[303]The Meiri's disagreement with this view is explained in B.K.40:2.

[7:2]

marry a gentile bondwoman. The rule is derived from an apparent inconsistency between two verses:

> 1. "For he (the Jewish slave) has labored for you twice the labor of a day laborer,"[304] which suggests that the Jewish slave must labor at night as well as by day, and,
>
> 2. in explaining why a Jewish slave might wish to remain with his master at the expiration of his term, "For it is good for him with you,"[305] which suggests that the slave is **with you** when you eat, **with you** when you drink and **with you** when you sleep.

The verses are reconciled by holding that the slave need not labor at night but that he must cohabit with a gentile bondwoman furnished by his master.

[15:2]

[Jewish slaves sold to gentiles]

No matter how destitute he is, a person may not sell himself as a slave to a gentile or a *ger toshav*. But a sale in violation of this rule is valid, and the slave's term in this case is not limited to six years but extends to the Jubilee, at which time we compel the gentile to free the slave if we have the legal power to do so.

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[304]Deut. 15:18.

[305]Deut.15:15.

[7:2]

Prior to the Jubilee, the slave may redeem himself by payment of the pro rata portion of his purchase price allocable to the unexpired portion of his term, and he may borrow to raise these funds. If he cannot raise his full redemption price, he may pay a portion and thereby reduce his term accordingly, as will be explained[306].

If he cannot obtain the requisite funds, even by borrowing, then his nearest relatives can be compelled by the Beth din to provide these funds. If no relatives are in a position to assist, then the community at large is responsible to raise the redemption moneys. The slave freed thereby need not perform any services for the redeeming party.

The rule is different for a Jewish master. Relatives may not redeem the slave against the master's will or against the slave's will, nor may he redeem himself with borrowed funds, nor may he offer less than the entire redemption price.

> This disagrees with the Rambam. The Rambam holds that relatives cannot be compelled to furnish the requisite funds, but, once funds are raised, the master can be compelled to accept redemption funds and to free the slave. Even the Meiri agrees that if the slave himself (as distinguished from relatives) raises the funds he can force his freedom.

The rule that there is no six-year term for a Jewish slave who sold himself to a gentile master is derived by Rabbi [Yehudah HaNasi] from the verse "and if he (the Jewish slave sold to the gentile) is not redeemed with *these* (referring to redemption funds), then he shall leave at [remain enslaved until] the Jubilee."[307]

Were it not for the verse, the contrary rule would have been derived by the following reasoning:

> There is a six-year term applicable to Jewish masters, for whom there is no redemption by relatives. Given that gentile masters are subject to redemption by relatives, most certainly they should be subject to the six year term.

[Redemption by relatives]

Both R. Jose and R. Akiva otherwise interpret the verse "And if he is not redeemed with these." Here is their analysis:

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[306] 20:2.

[307] Lev.25:54.

[7:2]

1. The Torah first discusses the mechanics of redemption by relatives. The verse then decrees: "And if he is not redeemed with **these**, then he [must continue in servitude and] shall leave [only] at the Jubilee." The words suggest that he works until Jubilee if there **was redemption other than by *these***.

What is meant by **these**?

2. R. Jose asserts that the reference is to the prior verses which deal with **redemption by relatives**:

> If he is not redeemed by relatives, but is instead redeemed by others, then he must work **for the non-relative redeemers** until the Jubilee.

But if he in fact is redeemed by **these** (relatives), he need not work for them.

3. R. Akiva takes the opposite view. The meaning is:

> If he is not redeemed by **others** (non-relatives) than **these** (the relatives), *i.e.,* he is redeemed **by relatives, then** only need he work to the Jubilee.

This is of course the reverse of R. Jose's holding.

4. The Gemara protests that R. Akiva's rationale is inconsistent with the plain meaning of the verse! The verse does not read **by other than these**!

5. The difference between R. Akiva and R. Jose is then explained on another ground altogether. The dispute is based on the three clauses in the following verse dealing with redemption of a slave sold to a gentile[308]:

> Or his uncle or his uncle's son may redeem him (redemption by relatives)
>
> Or if he attain wealth (self redemption)
>
> And he shall be redeemed (interpreted to mean redemption by

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[308] Lev.25:49.

others)

There is no question that the middle clause, dealing with self redemption, results in absolute freedom. R. Jose maintains that the teaching of the middle clause is appropriately drawn to the prior verse, dealing with relatives. While R. Akiva maintains that the middle verse's teaching more appropriately flows to the following verse, dealing with redemption by non-relatives.

6. If this is the basis of the argument, why do R. Akiva dispute the meaning of the words **of these**?

7. Initially, the Gemara explains that without reliance on the word *these*, as variously interpreted by R. Jose and R. Akiva, both would have held that the middle verse appropriately modifies **both** the prior clause (dealing with relatives) and the later clause (dealing with strangers).

But the Gemara quickly protests that this does not resolve R. Akiva's difficulties with the clear import of the verse (the verse does not read by **other than these**).

8. The Gemara ultimately concludes that the two argue on what the appropriate result **should** be on **logical** grounds. The reference to Scripture, *i.e.,* the word **these**, is used only to support logical arguments, and not as a source of doctrine[309].

Rabbi uses the verse which includes the word **these** for the purpose mentioned earlier, and he has no support for the views of either R. Jose or R. Akiva. He therefore concludes that the middle clause modifies both the prior and the later clauses, so that the slave is freed in all circumstances.

What then, is to be done with the negative implication of the words **with these**? Simply that if not redeemed the Jewish slave is to be left in the hands of his gentile master, and we are not to attempt by subterfuge to free him prior to his term.

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[309] The logical arguments deal with which rule best encourages redemptions and discourages sales into slavery.

[7:2]

[16:1]

[The deed for the sale of a daughter]

The father must write the indenture document for his daughter on paper or pottery shards. He must write "My daughter is sold to you, my daughter is acquired by you." The document is void if the master is the one who writes, for example, "Your daughter is sold to me").

[Rights to the property of a deceased convert]

Anyone who legally seizes the property of a convert who dies without Jewish heirs obtains legal title, as will be explained.[310]

["Money" for redemption]

A promissory note, or any other monetary equivalent counts as money for the purpose of a slave's redemption. The Torah requires that "He...return his redemption"[311] and specifically fails to mention money.

[The slave's deed of emancipation]

A slave's deed of emancipation must be in writing. It is not sufficient for the master merely to announce to the slave in the presence of witnesses, "Go!" unformalized by a *kinyan*[312].

Action of this sort without a document is in the nature of a waiver. A waiver, although valid to release a **debt** claim, cannot release the **ownership** claim which a master has in a Jewish slave **insofar as concerns his labor.** This ownership right is similar to the ownership one has in a tree the fruits of which he has purchased for a limited period.

For the same reason a master cannot without a document or *kinyan* waive any portion of his right to the slave's labor.

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[310] B.K.110:1 and *infra* 23:1.

[311] Lev.25:51.

[312]Were the command formalized by *kinyan*, the case would be treated as if there were a deed. It is presumed that transactions which are formalized by *kinyan* will be recorded.

[7:2]

[Ownership rights in a Jewish slave; consequences of waiver of rights]

Why is it that the **Mishnah** does not refer to documents as a mode of freeing slaves? Why are documents mentioned only in a *baraitha*[313]? Shall this be taken as evidence that our Mishnah holds that even an **oral** waiver is effective to free slaves? And that we hold with another Gemara[314] that states outright that a master has no ownership rights in a Jewish slave?

No. A later Gemara[315] quotes Raba as holding that a master does have ownership rights in a slave. The Gemara which holds that a master has no ownership rights in a Jewish slave means that the master does not have **full rights** in the manner of a gentile slave.

Why then does our Mishnah omit mention of documents? Because it focuses on means for a woman to obtain freedom against the master's will.

[Waiver of an unsecured debt]

A majority of Geonim conclude that the waiver of a **debt**, where there are no ownership rights, is valid without the formality of a *kinyan* or of a document. If the master had no ownership rights in the slave, the command "Go!" would have been sufficient to free the slave. Even the Rambam, who expresses concern on whether a waiver was made in jest, would agree with the Geonim where the waiver is sincere, such as where the creditor appoints witnesses to attest to the waiver.

The Alfasi agrees. In a responsum he distinguishes between

> a case of pure waiver, in which no *kinyan* is required (even witnesses are not absolutely necessary), and
>
> submission to arbitration, where the agreement to arbitrate is valid only if formalized by a *kinyan*.

By agreeing to arbitrate, the **defendant** is binding himself to **pay** should he not prevail. This is more than a waiver, and a *kinyan* is required to make the defendant's undertaking binding. Once a *kinyan* is required of the defendant, we do not discriminate against him, and we require a *kinyan* also of the plaintiff.

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[313] 16:1.

[314] B.M.99:1.

[315] 28:1. The same implication can be drawn from B.K.113:2.

[7:2]

[Waiver of a secured debt]

What of a debt secured by a pledge? Can it be waived without a *kinyan*?

The Ittur maintains that a *kinyan* is required.

> He argues that a pledgee's rights are as much ownership rights as the incomplete rights which a master has in a Jewish slave. It must be that the master's rights are not complete: for otherwise how does the Jewish slave differ from a gentile slave?
>
> The same learning can be drawn from a later Gemara316 which deals with the right of a master to designate a Jewish maidservant to himself as his wife.
>
> > R. Jose ben Judah states that the *kiddushin* in this case is not the purchase price originally paid by the master to the girl's father, but rather the relinquishment of the rights the master has to the continuance of her labor during the balance of her term, **which rights are secured by the maid's body in the way of a pledge**.

The Meiri disagrees with the Ittur.

A master's rights in a slave are indeed ownership rights insofar as the slave's labor is concerned.

> > Note the analogy above of one who buys the rights to a tree's fruits for a specified term; the ownership rights in the tree as to the fruits are complete.
> >
> > A pledgee's rights in chattels[317] are of lesser status and can be waived.
> >
> > There is sufficient contrast with the gentile slave: the master has ownership rights to the slave's body. These rights are not limited to the slave' labor.

The Meiri further supports his position elsewhere[318].

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[316] 19:1.

[317] Land pledges do transfer ownership rights and cannot be waived.

[318] B.K.49:2.

[7:2]

[Waiver of documentary debt]

The Yerushalmi records a disagreement on whether a documentary debt can be waived without the lender's return of the promissory note. The Meiri notes that a document cannot confer greater status than a pledge; given his view that a debt secured by a pledge can be waived, it should follow that the waiver is effective without return of the note. However, in what appears to be a postscript, the Meiri writes that he was ultimately persuaded otherwise.

[Inheritance of certain of a father's rights in his daughter's property]

A father's rights to his daughter's earnings continue throughout her youth until she is *bogeret*. The father's heirs cannot succeed to these rights. "And you shall bequeath **them** [your gentile slaves, but not your daughters] to your sons."[319]

A master's rights in a bondmaid survive the death of the girl's father.

[Slave's freedom on master's death]

Both a Jewish bondmaid and a male slave whose ear has been bored are freed on death of their master. This mode of freedom is not listed in the Mishnah, since the Mishnah does not list means of freedom which are shared by male slaves with female slaves.

[Certain rules relating to time of puberty]

Signs of puberty are not fixed "above." This means that a girl is not *elonit* until age 19 years and 30 days even if she previously shows signs of *elonit*.

Signs of puberty in a girl result in her being a *na'arah* for six months[320] so long as these signs appear before age 20. A girl who shows no signs of puberty or *elonit* continues to be a minor until she has lived the major portion of her life, that is, until

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[319] Lev.25:46.

[320] After which she is a *bogeret*.

[7:2]

she is age 35 plus one day.

[16:2]

The same applies to a male. Even with signs of eunuchhood a male without signs of puberty continues as a minor past age 13 plus one day until he is age 19 years and 30 days. Without such signs he continues as a minor until signs of puberty or eunuchhood appear or until he is age 35 years plus one day.

Signs of puberty are fixed "below." This means that signs such as pubic hair which appear before age 12 plus a day in females, and 13 plus a day in males, are ignored. They are assumed to be moles in the skin. In fact, hair which sprouts before these ages cannot be taken as signs of puberty even if they remain in place after these ages are attained.

Hair which is not **known** to have grown prematurely is presumed to have grown after the age of puberty. Two pores which are discovered after puberty are assumed to have been occupied by pubic hairs which were dislodged.

[The obligation to provide gifts on a slave's departure]

A master must provide gifts to slaves who leave the master's control:

1. A female slave is given gifts in four events (expiration of the six year term, Jubilee, death of her master and signs of puberty);

2. A male, non-bored slave obtains gifts in two cases (expiration of the six year term and Jubilee); and

3. A male bored slave obtains gifts in two cases (death of the master and Jubilee).

The *halacha* agrees with the *baraitha* which begins with the words "and these slaves obtain gifts." The *halacha* disagrees with the *baraitha* which holds that there are **three** instances in which male slaves receive gifts and **three** instances in which female slaves receive gifts.

A slave who redeems himself obtains no gifts. Gifts apply only "When you [the master] shall **send** him away,"[321] not when the slave buys himself out of bondage. Needless to say, a slave who flees his master's control obtains no gifts, for he is

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[321] Deut.15:13.

obligated to complete his term. If the slave returns and completes his term, he is entitled to gifts.

Note the following rules:

1. A slave's creditors have no claims against the slave's gifts.

2. A bondmaid's gifts belong to her father. If her father previously died, the gifts are her own, although there are commentators who dispute this in certain circumstances[322].

3. A bondmaid's findings belong to her father. Her master can claim only the value of labor he lost while his bondmaid obtained the found items.

[Effect of Jubilee on an escaped slave]

Assume that:

a slave is sold into servitude four years before the Jubilee,

he escapes three years into his term (one year before the Jubilee), and

he is recaptured at the Jubilee.

The Jubilee cuts off the obligation to work the final two years of his term. But what of the year prior to the Jubilee in which he had escaped and did not work. Need he make up that year?

The Meiri rules that there is no need to make up the year, and that this explains why a *baraitha* cited in the Gemara holds that an escaped slave need not be given gifts where the Jubilee intervenes:

> Were the slave required to make up, why should he not receive gifts after he satisfies all of his obligations to his master? Did not the slave work the full number of years he would have completed had he not escaped?
>
> Certain commentators who disagree, and who require that the slave make up the lost time, exempt the master from giving gifts only where the master waives his rights to the lost labor, such as where the escape occurred just prior to the Jubilee and where the cost of gifts exceed the

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[322] B.M.12:1.

[7:2]

value of the lost labor.

The same commentators also require a bored slave who escapes prior to the Jubilee to make up the time lost as a result of his escape.

[7:2]

[17:1]

[Jubilee and ailing slaves]

> If the slave's labor was interrupted because of illness, what time must he make up?
>
> He need not make up for any lost time if the interruption affected one day less than a majority of his term, *i.e.,* a day more than three years.
>
> If he was ill one day more, so that a majority of his term is affected, the slave must make up for the **whole** period of his illness, not just the extra day[323].

This is analogous to the law of overcharges. Overcharges of up to one-sixth are waived; if the overcharge exceeds one-sixth, the full amount of the overcharge (even the first one-sixth) is recoverable[324].

If a slave was sold only four years before the Jubilee, how many years must he be ill before he must make up for the lost time? The illness test for a typical six-year term is three years.

> Is that test rooted in the requirement that a majority of the term be spent in illness (in which case two years is sufficient in a four-year term).
>
> Or is there something substantive in the three-year period?

The Rambam holds that the three-year period is substantive because of Scripture's reference to the slave as being as a "hired" man[325]. Unless otherwise expressed, the term of hire of a hired man is three years. The Meiri disagrees and holds that the proper test should be two years.

An escaped slave who falls ill for less than a majority of his term is treated as an escaped slave and not as an ill slave. He must complete his term. The master can

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[323]This applies only if the slave was totally incapacitated. If the slave could perform needlework (even though he previously performed heavier work), he receives full credit for all time served. Where the Jubilee intervenes, we apply the rules for escaped slaves.

[324]Some commentators disagree and require that the slave make up only the extra day.

[325] Lev. 25:40.

claim that the slave would not have fallen ill had he not escaped. Where illness preceded the escape, the master can claim that recovery would have been prompt had there been no escape[326].

[Bondmaid's right to gifts]

A bondmaid also receives gifts on expiration of her term. The Torah demands "And to your bondmaid do the same"[327] as you do to a slave who is bored and who refuses to leave upon expiration of his term. This does not mean that a bondmaid's ear is to be bored; the reference must be to a requirement that a bondmaid be given the same gifts as a male slave.

Why would we even think that a bondmaid might not be entitled to gifts? Because her sale is always voluntary on her father's part. The Beth din does not sell a bondmaid into slavery on account of theft.[328]

[The property to be given as gifts]

A slave is outfitted with property which is subject to natural internal increase, as is the property mentioned in Scripture "from your sheep, your threshing-floor and your wine-press,"[329]. The master need not give gifts of money (which increase only from investment or business) or gifts of clothing.

How much property must be given?

R. Judah's view is that 30 *selah's* are required, by derivation from the amount payable to the master of a slave who has been gored.

R. Meir holds that the gifts need aggregate only 15 *selah's* in value. His view is derived from Scripture's threefold mention of sheep, threshing floor and wine-press; the purpose is by *gezerah shawah*[330] to apply to **each** an

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[326]Yerushalmi.

[327] Deut. 15:17.

[328] Sotah 23:2.

[329] Deut.15:14.

[330]The word **empty** appears both in this context and in the context of the redemption of a first born son for five *selah's*.

[7:2]

implied value of five *selah*'s.

R. Simeon's view is that 50 *selah*'s are required, by derivation from the maximum valuation of a human whose value has been vowed to the Temple.

From this follows the Gemara's question: how do R. Judah and R. Simeon explain the threefold explanation of Scripture?[331]

If the master's house was blessed on account of the slave[332], the master should take this into account in considering whether to make gifts above the minimum requirement.

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[331]Note that everyone agrees that there is no requirement that gifts be given only of the specific types outlined in the verse.

[332] Deut.16:14.

[7:2]

[17:2]

[The son's succession rights in his father's slave]

A master's son succeeds to his father's rights in a Jewish slave. Other heirs of the master (even his daughter and his brother, and most certainly his other relatives) do not succeed to these rights. Not even a son succeeds to his father's rights in a slave whose ear has been bored, in a slave who has been sold to a gentile or to a convert, or in a bondmaid.

[Designation of a bondmaid]

Should the father wish to designate the bondmaid to be his own wife, there is no requirement of *kiddushin*. All that is necessary is that he tell her "You are betrothed to me with the money which I paid to your father when he sold you to me."

The son succeeds to the father's right to designate the bondmaid as his wife in that he, too, need not provide new *kiddushin*. It is sufficient that the father say to her "You are betrothed to my son with the money I paid to your father when he sold you to me." All other relatives must provide new *kiddushin* and cannot rely on the master's initial outlay, unless these relatives initially agreed with the father that the money to be paid to him by the master would constitute *kiddushin* for them.

[Comparison between the rights of a son and the rights of a brother]

In situations where Scripture suggests that certain rules apply only to one of the brother or the son, without specifying which--such as in the succession to rights in an ancestral field or a Jewish slave--we award these rights to the son, because the son's rights are greater. A bondmaid cannot be designated to the master's brother.

But is it not true that only a brother can be a *yabam*? Yes. But a son's rights are greater: whereas the son's designation rights apply even where the master has a brother, a brother's *yibbum* by definition applies only where there are no surviving sons.

[The comparative succession rights of a son and a brother in ancestral fields]

The rule is applied to ancestral fields as follows:

> 1. If A sanctifies an ancestral field, he may redeem it from the Temple treasury at a price of 50 silver *shekels* for each plot of land capable of being sown with a *homer* of barley. If less than 49 years remain until

the Jubilee, the purchase price is adjusted proportionately.

2. If the Temple treasurer sells the field to third parties prior to the Jubilee, then A may redeem the field from the buyer at the same fixed rate[333].

3. If A does not redeem his land from the Temple treasurer or from a third party purchaser prior to the Jubilee, the priests succeed to the land upon the Jubilee[334].

For this purpose, a third party purchaser **includes any relative other than A's son.**

If the purchaser is A's son, the land returns to A upon the Jubilee[335].

[The comparative succession rights of a son and a brother in inheritance]

A son is also superior to a brother in inheritance. Here are the major relevant verses[336]:

1. If a man dies and he has no son, you shall transfer his estate to his daughter.

2. If he has no daughter, you shall give his estate to his brothers.

3. And if he has no brothers, you shall give his estate to the brothers of his father.

4. And if his father has no brothers, you shall give his estate to the

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[333]The Meiri disagrees with Rashi's statement to the contrary.

[334]Where the land was not previously sold to a third party, the priests must pay the redemptive price to the treasurer in order to avoid a loss to the treasurer. The later commentators dispute whether the priests pay the fixed rate discussed in the text, or whether they must pay the land's true value.

[335]This rule is derived in Er.25:2 by analogy to the law of inheritance as well as from the special relationship a son has concerning the designation of his father's bondmaid. Actually, a son's priority in inheritance is itself derived from the doctrine relating to the appointment of bondmaids. See the text below.

[336] Num.27:8-11.

nearest relative in his family [interpreted as the father][337].

Obviously, verse 4 is out of order, since surely the father should inherit before the father's brothers. The verse, to the extent it provides for inheritance by the father, is properly placed immediately **prior** to the verse which provides for the brother's inheritance.

Why place the father ahead of the brother but not ahead of the son?

The fact that the son is stated to be ahead of the brother is not a sufficient answer. The brother is stated next when there is no son. Where there is no son why should the father be interposed ahead of the brother?

Because we learn from designation that wherever there is doubt on which relative has rights we prefer the son, even against the father.

[A gentile's inheritance rights]

A gentile has inheritance rights. Anyone who seizes property in which a gentile has inheritance rights must return the property to the gentile and is otherwise guilty of theft [338]. If gentiles had no inheritance rights why would Scripture take pains to direct that a gentile cannot bequeath rights in a Jewish slave[339]? Also indicative is the verse "For I have given [the land of] Ur to the sons of Lot as an **inheritance**."[340]

A Jewish apostate also has inheritance rights.

[A convert's inheritance rights]

A convert has no Scriptural right to inherit from his gentile father. He is as a new-born child, and he has no family relationship with his gentile natural relatives. It is only a Rabbinical injunction[341] which prohibits a convert from marrying his sister or

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[337]Num.27:11.

[338] B. K.113:2.

[339]"And he [the Jewish slave] shall calculate [the unamortized portion of his labor] **with him [the gentile master] who purchased him**," Lev.25:3, but not with **his son**.

[340] Num. 5:9.

[341]Lest incest laws be misconstrued as being less severe for Jews than for gentiles.

his half-sister.

The Rabbis, however, afford him inheritance rights, because otherwise he might be tempted to return to gentile status to obtain his inheritance under gentile law in the gentile courts.

> The Rabbinic rule that affords a convert inheritance rights prevails over the rights of a third party who has seized the inheritance. This is an example of the authority of the Rabbis to expropriate property rights.

But if the convert backslides we return to the strict law and we do not expropriate a third party's rights. Also, like an apostate Jew, he continues to be a Jew, and should he betroth a woman, the betrothal is valid.

[Subsequent determinations--*berera]*

Under the doctrine of *berera*, subsequent determinations are considered to be made retroactively. Examples of *berera* follow, and will be helpful in considering whether *berera* accords with the *halacha*.

> 1. As a general rule one may not benefit from idols or wine of libation. Nevertheless, if a convert and his gentile brother stand to inherit property from their father, the convert may say to his brother: "You take the idols and the wine of libation and I will take money and fruits." Two explanations are possible:
>
> i. The proposal is not deemed an exchange by the convert of his rights in these properties, because as a matter of law, the convert never obtained a true property right in the inheritance at all. His inheritance rights are rabbinic only. The rule would be different if the exchange is proposed after the prohibited items had come under the control of the convert.
>
> ii. Once the exchange is made the ultimate disposition of inherited property is deemed to have been determined retroactively under the doctrine of *berera*, so that the convert never had an interest in the forbidden item.
>
> 2. Where A and B were **partners** prior to A's conversion, A may **not** tell B "You take the idols and I will take the fruit." Again, two explanations are possible:
>
> i. There is no doctrine of *berera*.

ii. The doctrine of *berera* applies only where there is a division of property of the same physical kind but which differs in legal ownership or ritual status[342]. *Berera* cannot retroactively establish that partners owned physically different property when in fact they previously shared ownership and enjoyment of both.

3. A Mishnah[343] deals with a *haber* brother and a non-*haber* brother who inherit grain only a portion of which was definitely tithed. The *haber* may tell the non-*haber* "You take the grain there and I will take the grain here," with the intention that the *haber* take the grain which was definitely tithed.

The Mishnah emphasizes, however, that this sort of selection is not permitted where one species, *e.g.,* wheat, was definitely tithed, and another species *e.g.,* barley, was not definitely tithed.

The possible explanations follow:

i. There is *berera* where one species is involved but not where two species are involved.

ii. There is no *berera* where Scriptural matters are concerned, whether or not two species are involved. The doctrine is applied here, in the case of one species, because the issue is only Rabbinic:

Even if one takes possibly untithed grain and exchanges it for tithed grain, all that has occurred is a violation of the **Rabbinic** prohibition against the sale of untithed grain.

But what of the Scriptural precept against encouraging transgressions by others[344]? That precept is not violated because there is no certainty that the grain was not tithed. In fact, there is a presumption that even the deceased non-*haber* tithed his grain.

4. Where two brothers inherit two fields and divide the fields between them, the division can be nullified if a creditor of the father

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[342]Such as where one property is subject to the strictures of *orlah* or *k'lay hakerem.*

[343] D'mai 6:9.

[344]"You shall not place an obstacle in the path of a blind man."

later forecloses on one of the fields[345].

The Gemara explains that where two brothers divide an estate, each does not **acquire** his own field while **releasing** his rights against the other. Rather, the division is by *berera*, and retroactively **confirms** the ownership rights each brother is considered to have had immediately upon the father's death.

Since there are no releases, it follows that the retroactive selection can be undone by the creditor's attack.

5. There is further proof of *berera*. Without *berera* the division of an inherited estate would constitute the acquisition and release of rights. Consonant with the rules applying to acquirors of land in general, the division would have to be undone at the Jubilee. That being so, no person at all can have the legal status of the full owner of the property (as opposed to owning temporary rights to produce) unless he is the last in line of ancestors each of whom had only one son since the original conquest of the land by Joshua.[346]

6. R. Eliezer b. Jacob holds that if two partners vow not to benefit from each other, each may enter into jointly owned real estate. *Berera* established that each step that a partner takes on the undivided property is on property which belongs to him.

The Meiri concludes for reasons stated elsewhere that all of these proofs are not persuasive. *Berera* is not applied to matters of Scriptural (as opposed to Rabbinic) import.

[Additional rules on a convert's inheritance rights]

A gentile cannot inherit from a convert, such as where the father became a convert while his son remained a gentile. There is no family relationship between father and son. Nor is there concern of backsliding by the survivor, who is gentile.

One convert cannot inherit from another, such as where a father and a son became converts together:

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[345] B.B.107:1.

[346] Git.48:1.

[7:2]

> There is no familial relationship, and there is no concern on backsliding, since apostasy will not avail the son any additional rights: the disposition of the deceased convert's estate (who dies Jewish) will be conducted by the Beth din and not by the gentile courts.
>
> Mere sympathy to the plight of the surviving convert is not sufficient for us to remove property from a third person who seized it legally on the death of the deceased convert.
>
> Nor are we swayed by concern that the surviving convert may backslide **as a matter of spite** notwithstanding that his inheritance rights will not be thereby improved: we cannot concern ourselves with matters of spite. Let the convert follow his tendencies!

[Moral obligations relating to convert inheritance]

That being so, one who borrows from a convert need not repay the borrowed amounts to the convert's son (who is also a convert) on the death of the lender. The sages are not particularly pleased if the borrower nevertheless determines to repay. Some go even further and maintain that repayment is not approved because the repaying borrower is reducing the value of his own estate to the detriment of his heirs. This is analogous to one who disenfranchises his sons: the act is valid but is not approved of by the Rabbis[347].

The Gemara is concerned with making this rule consistent with a Mishnah[348] which states the contrary rule: the Rabbis do approve of one who repays the convert's son. According to the Meiri's textual reading, the Gemara explains that:

> repayment is not approved where the surviving convert was born a gentile;
>
> repayment is approved where the surviving son was born Jewish but was conceived a gentile, such as where his mother became a convert after he was conceived.

In short, the dispositive question is whether **birth** was Jewish.

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[347] B.B.133:2.

[348] Sheviith 10:9.

[7:2]

This must in turn be reconciled with a Gemara[349] which discusses the case of the convert Isur who was the father of R. Meri and for whom Raba held 12,000 *zuz*. Now, R. Meri was conceived a gentile but **was born Jewish**. When Isur turned ill, he sought to transfer the funds to R. Meri. Raba assumed that the funds could not be validly transferred:

1. Money cannot be transferred by *halifin*.

2. The funds were in Raba's possession so that R. Meri could not acquire ownership by drawing the funds into his own possession by *meshikhah*.

3. Inheritance rights do not apply from one convert to another.

4. The same legal deficiency which invalidates inheritance without a will invalidates purported bequests by will.

5. Generally, A can transfer to B A's rights against C, if A, B and C are each in each others' presence. Raba could avoid this result merely by refusing to appear in Isur's presence.

6. The funds could not be transferred to R. Meri as appurtenant to a transfer of real property because Isur owned no real property.

Having in theory exhausted the possibilities, Raba felt confident that Isur could not transfer the deposit to R. Meri. However, Raba was frustrated, and claimed to have been damaged, when it was suggested that the deposit be transferred by way of a deed of "confession" by Isur that the deposit was the property of R. Meri. Isur acted on this suggestion, and R. Meri succeeded to the deposit.

Why was Raba irritated? Do not the Sages approve of the return of such property? The following explanations have been offered:

1. Rabbeinu Tam holds that our approbation is limited to the case of a loan which benefits the borrower. The borrower's moral obligations are greater than the moral obligations of a bailee on a deposit.

2. Others explain that Raba was frustrated because he wished to return the funds voluntarily rather than by the legal compulsion which arose from the confession. Raba's reference to having been

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[349]B.B.149:1.

"damaged" means his damage at not having been in a position to take voluntary action approved by the Rabbis.

3. Were Raba to return the funds voluntarily, R. Meri might have felt morally compelled to reward Raba for taking an action not legally required.

Other commentators rely on the case of Raba and Isur to propose an entirely different textual reading in our Gemara. What is essential is not whether the **birth** was Jewish, but whether **conception** was Jewish. The Rabbis approve of return only when conception was Jewish. R. Meri's conception was not. This explains Raba's irritation, but leaves open the question of why there is no **legal** inheritance when conception was Jewish. One who is conceived and born after his mother ceased to be a gentile is a Jew for all purposes [350]. Besides, the statement that the Rabbis do not approve appears in our Gemara in the context of one who became a convert in conjunction with his sons, *i.e.,* with sons who were conceived and born gentiles.

A third group of commentators holds that the test is in fact Jewish **birth**. But the results of the test are the reverse of the Meiri's reading. We **approve** of return where the birth is **gentile** and there is fear of backsliding. We **disapprove** where the birth was **Jewish** and there is no concern of backsliding.

The Meiri disagrees. For one, backsliding will not afford the convert any inheritance, since under Jewish law he remains Jewish in any case. The gentile courts will not interfere since the deceased was Jewish. Given no practical results, we are not concerned with backsliding out of spite, as discussed previously.

And, as already noted, the Gemara expresses the rule that there is no Rabbinical approval in a case in which the gentile and his sons become converts together, i.e., where both conception and birth were gentile.

A fourth group of commentators agrees with the proposition in the first reading that where conception is gentile and the birth is Jewish, the Rabbis approve of voluntarily passing the deceased father's property to the son. They explain, however, that this applies where only one parent (not **two** parents) were gentile at conception. R. Meri's disability arose from the fact that not even his mother was Jewish at conception. The Meiri considers this view far-fetched, and concludes that the first textual reading is correct.

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[350] Yeb.97:2.

[7:2]

The Meiri elsewhere[351] explains related doctrines which are derivable from the case of Raba and Isur, and also the rules relating to death-bed bequests from converts to Jews, from Jews to converts and from converts to converts.

[351] B.B.149:1.

[7:2]

[18:1]

[Marital status of a designated bondmaid]

A bondmaid who has been designated is considered a betrothed woman until the marriage (with the master or his son) is consummated. Until the designation is consummated, the master cannot inherit from the bondmaid, or defile himself on her account if he is a priest and she dies, or annul her vows without the cooperation of her father.

She can marry others only upon the death of her husband or if he gives her a *get*. By saying that she is not **freed** by the death of her master-son husband, the Gemara means that she is not "freed" of her **rights** but instead has the full **rights** of a widow.

She is subject to the requirements of *yibbum* should her husband die.

[When a father may sell his daughter into slavery; redemption requirements of relatives; no redemption for notes]

A father may not sell his daughter unless he is so impoverished that he has nothing to eat and he has nothing else to sell. If relatives determine that the father has the wherewithal to redeem his daughter, they can compel him to do so to safeguard the family's honor.

Where the father does not have sufficient funds, we cannot compel the master to accept a promissory note as a redemptive payment. The master paid good funds, how can we compel him to release his rights for words written on a shard?

[Relative's redemption requirements for male slaves]

The rule is different for a male slave who is sold to a Jewish master: his relatives cannot be compelled to redeem him. Scripture refers to redemption by relatives only in the context of a slave sold to a **gentile** master[352] and not to a Jewish master[353]. Were the Rabbis to impose a redemption requirement to safeguard the family's honor, the slave would merely sell himself again.

The same reasoning explains why the majority hold that relatives cannot be

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[352] Lev.25:49.

[353] 15:2.

compelled to redeem a bondmaid: the father would promptly sell her again. Only the father can be compelled.

This suggests that where a person is compelled to raise funds for redemption himself the Rabbis do not fear that he will again effect a sale, perhaps because they will simply compel another redemption.

Some emend the text to explain that the slave is not compelled to redeem himself (to protect the family's honor) because he will promptly sell himself anew. But, if so, why do we compel the father to redeem his daughter if she is a bondmaid? Will he not sell his daughter again?

[Sale of a thief into slavery; general rule]

The rule that a thief may be sold into slavery is applied as follows:

To recover for the theft and the attendant fine[354] the victim proceeds first against the thief's chattels, and then against the thief's real property. The thief's prime real property is attached first, consistent with the rule that a tortfeasor's best property is subject to claims of his plaintiff.

The thief is sold only if he is a male and only if there is a shortfall in recovery for the actual theft.

Once the victim recovers the value of the stolen item, the thief can no longer be sold into slavery to recover the fine. Instead, the victim is his creditor and is entitled to recover the fine should the thief ever obtain funds. A man may be sold "**for his theft**"[355], not for a fine.

[Witnesses who falsely testify with a view to causing one to be sold into slavery]

If C and D testify that A loaned money to B, and it is proved by witnesses that C and D were elsewhere at the time, C and D must under the law of *hazamah* pay to B the amount they wrongfully desired him to lose. This rule does not apply to testimony which would have resulted in the sale of B into slavery: C and D are not

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[354]The fine is equivalent to the theft where the stolen item was not sold or slaughtered. Where the stolen item was sold or slaughtered, the penalty may be as great as four or five times the theft.

[355] Ex. 22:2.

sold into slavery because of such testimony.

[Minimum value of theft]

A thief can be sold only where his own value is not a *perutah* or more greater than the value of the item which was stolen. Scripture requires that "he be sold"[356], this implies that all of the thief must be sold, not merely a portion. Where the value of the stolen item exceeds the thief's value, the thief remains indebted to the victim for the excess, in the same manner as applies to the fine owed by the thief.

[Additional rules regarding slavery on account of thefts]

1. One who steals twice from the same person is sold only once. He remains indebted to the victim for the second theft, with payment to be made when the thief obtains sufficient funds. The rule is different where thefts from more than one victim are involved: the thief is sold once for each victim. The terms of servitude are consecutive.

2. If thefts from one or many are discovered before the thief is summoned to the Beth din, the value of the thefts is aggregated, the thief is sold only once, and the proceeds of the sale are applied against all of the thefts.

3. If partners steal, each is sold against the value of his portion of the theft, so long as his own value does not exceed the value of this portion.

This is the traditional understanding, and it accords in large part with the Rambam. Other commentators disagree[357]. The dispute is based on differing interpretations of the following dialogue in the Gemara.

The Gemara attempts to explain an inconsistency between our Mishnah, which suggests that a slave can be sold twice, and a *baraitha* which (based on the Scriptural requirement that he be sold for "his theft," not "his thefts") holds that a slave cannot be sold twice. The Gemara's initial attempt is explained as follows:

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[356] Ex.22:2.

[357]The Meiri ascribes these other views to Rashi. This is inconsistent with the version of Rashi we have.

Recourse to the Ritva is necessary to supplement the following discussion in the Meiri.

[7:2]

1. The Meiri's view.

   i. Where one theft is involved, and the thief's value is less than the stolen item, he is sold only once. He cannot be sold for the balance of the theft when the term of his first servitude expires. There can be only one sale for each individual theft. This is the *baraitha*'s case. In short: one theft--one sale.

   ii. Where two thefts are involved, even from the same victim, two terms of servitude are permissible, and this is the case ascribed to the Mishnah. Each sale is an independent sale for an individual single theft. In short: two thefts--two sales.

2. Other view.

   i. For one theft, the thief is sold again and again until the entire value of the theft is recovered. This is the point of the Scriptural phrase that he must be sold as many times as is necessary "for his theft." In short: one theft--two sales.

   ii. The thief cannot be sold twice for two thefts, whether from one victim or from two victims. In short: two thefts--one sale.

The Gemara takes issue with its initial explanation as follows:

1. The Meiri's view.

   The Gemara questions why is more than one sale permitted where two thefts are involved? The phrase "for his theft" can be taken generically, in the sense of his having committed the crime of theft!

   Other examples of generic reference is the phrase "and a plentitude of beast"[358] and "the fish in the canal."[359]

2. The other view.

   Why should not one victim sell the thief many times? The phrase **For his theft** is generic, and can mean many thefts!

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[358] Jonah 4:11.

[359] Ex.7:18.

[7:2]

The Gemara's final explanation is as follows:

1. The Meiri's view.

   The baraitha takes the limiting phrase "for his theft", to mean one crime per person[360]. Where there are two thefts from two persons, there are two sales, because insofar as concerns each victim there was only one theft. In short: one victim--one sale; two victims--two sales.

2. The other view.

   One victim can sell the thief many times, so long as he summons the thief to the Beth din only once. But where there are several victims, only the first victim can sell the thief. In short: one victim--two sales; two victims--one sale.

By way of summary, the Meiri's reading of the Gemara's initial and final views is as follows:

Original view	**Ultimate view**
-one theft, one sale	-one victim, one sale
-two thefts, two sales	-two victims, two sales

The other reading of these views follows:

Original view	**Ultimate view**

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[360]Unless the thefts were committed before the thief was summoned to the Beth din, in which case the one sale is made to cover all the loss from all of these thefts.

What if a thief's term of servitude expires and he steals again from the same victim? Of course, he sold anew.

[7:2]

-one theft, two sales -one victim, two sales

-two thefts, one sale -two victims, one sale

[18:2]

[Daughter may be sold only where designation is feasible]

A father may sell his daughter only to a master who may marry her. She cannot be sold to her father's son (the girl's brother, whose *kiddushin* is ineffective), or to the father's grandson (the girl's nephew). She may be sold to her father's father, for although the purchaser cannot designate the girl himself (she is his grand-daughter), he can designate her to his son (the father's brother), since a woman may marry her uncle.

There are relationships in which *kiddushin* is proscribed, but the *kiddushin* is effective if contracted despite the prohibition:

> A high priest may not marry a widow, and no priest may marry a divorcee or a *haluzah*. If they do betroth such women, the *kiddushin* are effective.

May a daughter be sold to a person who has this relationship? For example, may a *haluzah*[361] or a divorcee be sold to a priest? Yes. Scripture recognizes that a sale may be valid notwithstanding that there are impediments to *kiddushin*. It is permissible for a bondmaid to be "evil in the eyes of her master"[362], in the sense that he cannot betroth her because of a prohibited relationship.

[When can a father sell a daughter who was a *haluzah*?]

We must take the following rules into account in constructing the case in which a father sold a daughter who was previously a *haluzah* or a divorcee:

1. A father who has once **betrothed** his daughter to another can never:

   (i) betroth her to another again **if the marriage was consummated**, or

   (ii) sell her into servitude even if the marriage was not consummated.

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[361]The *halacha* is that a minor's *halizah* is invalid. The Rambam holds that the *halizah* is nevertheless sufficient to proscribe the minor to a priest.

[362] Ex.21:5.

[7:2]

2. A father who has once **sold** his daughter may sell her again and he may also betroth her. This applies even where the initial sale ultimately resulted in designation and marriage which was later terminated. In short, a daughter may be sold twice.

The Gemara states that the father's rights are lost once his daughter's groom spreads his garment over the daughter. This applies only where the father betroths her to the groom, not to the case where the daughter is designated as the indirect end result of a sale into servitude.

The father's sale is not the equivalent of his having contracted *kiddushin* by designation for her. The potential of designation is too remote.

3. By definition, a girl who is to be sold as a bondmaid must be a *ketannah*.

4. A *ketannah* cannot alone contract a valid marital relationship, which when terminated results in her being a divorcee or a *haluzah*.

5. If her prior marriage was contracted for her by her father, under Proposition 1 he loses the right to sell her into servitude.

6. Recall, however, Proposition 1 that a father does not lose his right to sell his daughter after a prior sale, **even if the prior sale ultimately resulted in betrothal by way of designation.**

In what circumstances can a father proposes to sell his daughter, who is a divorcee or a *haluzah*, to a priest? Where the girl was divorced from a prior *master*, or became a *yebamah* on his death.

[Marital status of a designated woman]

The Gemara's discussion should be understood as follows:

1. Does designation result in **betrothal** only, or does it result in consummated marriage similar to the effect of *huppah*[363]?

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[363]Why does not the Gemara mention another distinction: only if the marriage is deemed consummated may the bride eat *terumah* if her husband is a priest? The commentators differ:

1. One group holds that the bride may not eat *terumah* even if designation is equivalent to *huppah*.

2. Others deduce the opposite rule: a designated bondmaid may eat *terumah* even if her status is

Only if the marriage is deemed consummated may the master inherit from his designated wife, or defile himself for her on her death, or annul her vows without her father's cooperation.

2. Consider the verse "To **sell** her [the bondmaid] unto a strange people he [the father] shall have no power, seeing that he [the master] has dealt deceitfully with her [by designating her and then divorcing her]."[364]

If we interpret the verse as suggested by the brackets, it appears that the father cannot **sell** the girl but there is no verse which eliminates his power to **betroth** her to another. It must be that designation effects betrothal only, since we know from Proposition 1 that a father's rights in a daughter are lost once her marriage is consummated.

But the verse has nothing to do with bondmaids! It deals with a girl who was previously **betrothed** by her father to another.

3.(i) Recall the case of the widowed girl who is sold to a priest, and our conclusion that there must have been the following sequence of events:

sale by the father to a master

designation by the master

death of the master, and

father's sale to the priest.

It must be that the designation had the status of *kiddushin* only. For if the designation counts as consummated marriage, how could the father later sell her anew, given the rule in Proposition 1(i) that a father cannot betroth or sell his daughter once her marriage is consummated!

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betrothal only. Recall that a betrothed woman may not eat *terumah* because of concern that, given her continued residence in her parent's home, she may offer *terumah* to her siblings. This does not apply to a bondmaid who serves her master and lives apart from her siblings.

[364] Ex.21:8.

> Note that we treat the father's as a sale, not as a betrothal on account of the right he gives the master to designate. The Gemara at this point assumes that this applies only if we agree with R. Jose that a master designates his bondmaid, not with the funds he paid to her father for her purchase, but rather by waiver of his rights to her servitude during the balance of her term.
>
> > For if designation is by way of her father's purchase price, then her father in effect indirectly betroths her to the master. This should bring into play the rule that a father cannot sell his daughter once he has betrothed her.

The Gemara ultimately determines that even if we disagree with R. Jose, the father's involvement in designation to still too remote to count as his betrothal.

(ii) But this suggestion proves too much. Keep in mind that the father here proposes to **sell** his daughter to a priest, not to **betroth** her to a priest. Even if we hold that designation results only in *kiddushin* we must explain how the father can sell her again to a second master, given the rule in Proposition 1.ii that a father cannot **sell** his daughter after he has contracted any marital relationship for her, even if only *kiddushin*.

(iii) You must therefore say that the *kiddushin* which results from designation is not equivalent to general *kiddushin* for the purpose of applying the rule against **sale** following betrothal. If so, it would not be surprising if designation has the status of *huppah* and nevertheless does not relieve the father of all rights.

(iv) No. The fact that a widowed girl can be sold to a priest after a prior designation proves that designation is *kiddushin*, not *huppah*:

> The father retains selected rights when he himself effects standard *kiddushin*. It is easy to understand that he loses no rights at all when his daughter effects *kiddushin* on her own through designation.
>
> But a father's authority is totally lost on standard marital consummation. If designation counts as consummated marriage, why should his control not be lost where she consummates the marriage by designation?

[7:2]

> The Tosafot further explain that the rule which forbids a father to sell his daughter after *kiddushin* is an unexpected exception from the general rule that a father's rights continue until the marriage is consummated. That being so, we apply the exception as narrowly as possible, and limit it to the case in which the father effected the kiddushin, and do not apply it to kiddushin which the daughter effected by designation.
>
> On the other hand, it is the general rule that the father loses his authority on consummation of a marriage, and there are no exceptions which must be applied narrowly. Consequently, why not apply the rule to consummation by designation?

[19:1]

[Designation to a master's son]

A master may designate a bondmaid to his son only if the son is an adult and only if the son is willing. The procedure is for the father to say to the bondmaid, "You are designated to my son with the money that your father accepted [from me] for your value."

[Bondmaid must approve designation]

The bondmaid must also approve notwithstanding that her father had the power to betroth her to another against her will. The father's involvement in the designation is indirect, and his authority is therefore circumscribed. Other commentators disagree.

In any event, it is clear that the father's approval is not required: the Gemara notes that the father cannot forestall designation by betrothing the girl to another[365].

[Termination of right to designate]

The right to designate a bondmaid ends on the master's death, since she then obtains her freedom. The right also ends at sundown on the last day of her term. She can, however, be designated a moment before sundown on that day, notwithstanding that the remaining value of her labor is then less than a *perutah*.

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[365] 19:2.

This follows from our holding that designation is not with the value of her remaining servitude, but with the money her father accepted on her sale.

The rule is otherwise if she wishes to obtain her freedom by redemption of the unamortized portion of her purchase price: there must be at least a *perutah*'s worth of remaining labor.

[Cohabitation with minor; minor has no marital status]

A minor is not penalized for adultery if he cohabits with a married woman. She, however, is penalized if he is at least nine years and one day old.

A minor has no legal marital relationship with his wife. That is why an adult who cohabits with a minor's wife does not commit adultery. This rule applies even if the minor was age nine years and a day and his cohabitation was sufficient for *yibbum*.

[Father's direction to daughter to accept *kiddushin*]

The Gemara states that a man can direct his daughter to accept *kiddushin* from another, and proves this by the fact that a father who sells his daughter in effect directs her to submit to potential designation by her master.

> Can we distinguish designation on the ground that it is by way of the purchase price which the **father** receives directly from the master?
>
> No. R. Jose holds that the father does not participate in the master's designation, and designation is by way of forgiveness of a portion of the girl's servitude, rather than by way of the purchase price paid to the father. And this proposition stands notwithstanding that the *halacha* disagrees with R. Jose and holds that designation is by way of the purchase price funds initially paid by the master to the father.

The Meiri's teachers extend this rule and permit the father to give his daughter blanket authority to accept *kiddushin* from whomever she chooses, and that it is not necessary that the *kiddushin* be to a groom designated by the father. After all, the father gives the master authority to designate his daughter!

The Meiri objects that this extension in effect makes the daughter the agent of the father in contravention of the doctrine that a minor cannot be an agent. The Gemara's reference is not to **authority** given to the daughter, but rather to the father's suggestion to a prospective groom that he give ***kiddushin*** to the daughter and thereby betroth her to him. This is effective, since it is the equivalent of the

[7:2]

direction by an adult woman to a prospective groom to place *kiddushin* on a designated boulder or dog in order to effect *kiddushin*[366].

Why then does the Gemara analogize this to the designation of a bondmaid? By selling his daughter to her master, **whose identity is known**, her father in effect gives the master ultimate authority to betroth in the same manner as a father who suggests to a prospective **identified** groom that he betroth his daughter.

[Transfer of a secured loan in *kiddushin*]

Can there be *kiddushin* by transfer to the woman of a secured loan? The Meiri answers "yes," and he supports this by reference to R. Jose. Designation in R. Jose's view is by way of the labor which she **owes** to the master in the sense of a loan for which her body is collateral. But the rule survives notwithstanding that the *halacha* disagrees with R. Jose.

[19:2]

[Mechanics and time of effectiveness of designation]

Designation occurs when in the presence of witnesses the master tells his bondmaid "you are betrothed to me or to my son with the money that your father accepted [from me] for your value." It is not necessary that there be time remaining in her term for her to perform even one *perutah* of labor, since we ultimately rule, contrary to R. Jose, that designation is with the initial purchase price, and not with the value of the remaining labor. It is only requisite that the ceremony be performed while there is at least a moment (not necessarily a *perutah*'s worth) remaining of the term of servitude. Once she is designated, she is the master's wife and he can no longer demand servitude of her.

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[366] 8:2.

[7:2]

Since designation is by the purchase price paid by the master initially, it follows that designation is effective from the time of initial purchase. Therefore, intervening *kiddushin* which is accepted by the father from third parties is invalid. The case is similar to that in which a man says "Be betrothed to me now and after 30 days." Once the 30 days pass, the *kiddushin* is effective from the start and intervening *kiddushin* by others is invalid[367].

Note that in our case no 30-day or other specific period which is set for designation at the time of the initial sale. But this failure to set a time is of no consequence, for the rule is that one who says "You are betrothed to me now and when I so desire," betroths effective as of the initial statement once he expresses a desire to betroth. Intervening *kiddushin* are invalid notwithstanding that no time limit was set.

> One commentator applies the same rule to a gift given "now and when I desire." The Meiri is concerned that this extension goes too far. At least in the case of the bondmaid there is an outside limit on when the designation must occur, *i.e.,* before the expiration of the six year term of servitude. There is no limit at all in the case of a gift.

If the father betroths her to another while she is a bondmaid, and the master fails to designate her, then the father's betrothal is effective once her term is over or she is otherwise set free.

[R. Jose and intervening betrothal]

Recall again R. Jose's view that designation occurs by way of waiver of remaining servitude, rather than by way of the purchase price initially received by the bondmaid's father. At first sight it appears that it is inherent in R. Jose's view that intervening *kiddushin* are effective. The master provides no value which precedes the value given by the intervening betrother.

> But the matter is not self-evident:
>
> The master does not expressly delay the time of effectiveness. Contrast this with the case of one who says "Be betrothed to me after 30 days." In that case effectiveness is expressly delayed, and there is no question that intervening *kiddushin* by others is effective.

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[367]Contrast one who says simply "Be betrothed to me after 30 days," without adding the word **now**, where intervening *kiddushin* are valid.

> Besides, not all legal consequences are delayed from the time of sale. Effective from that time, the father's approval to her designation is no longer required.

Therefore, without a *baraitha* to the contrary, we might have thought there is an understanding that designation, once it occurs by way of the forgiveness of her labor, is effective from the start, at least for the purpose of questionable *kiddushin.*

[Master's agreement not to designate; certain other stipulations]

The father cannot enforce an agreement by the master not to designate the bondmaid, even if the agreement was made at the time of sale. The agreement contravenes non-monetary Scriptural requirements and is void. Similarly, one who betroths on condition that he not be responsible for food, clothing and conjugal rights, is relieved of the monetary requirements relating to food and clothing, but not of the non-monetary requirements relating to conjugal rights.

One commentator maintains that even a stipulation on food or clothing is invalid if expressed as above, since the stipulation is violative of the **religious** rule which demands that he fulfill these monetary obligations. What is valid is a stipulation that she *waive* her rights to these monetary obligations. This is similar to the Gemara[368] which distinguishes between the following two stipulations to avoid the rule that debts are extinguished by the *shemittah*:

> 1. I make this loan to you on condition that *Shemittah* not extinguish it--ineffective since the operation of *shemittah* cannot be avoided by agreement.
>
> 2. I make this loan to you on condition that you do not rely on *shemittah* to extinguish your loan--effective since the operation of *shemittah* continues, and the borrower has merely agreed to waive his monetary recourse to *shemittah*.

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[368] Mak.3:2.

[7:2]

[Simultaneous dual designations; when a daughter may be sold or betrothed]

The simultaneous designation by one person of two bondmaids is ineffective, based on the Scriptural reference to designation in the singular: "designate *her*"[369].

A father can sell his daughter only while she is a minor, but he may betroth her so long as she is a *na'arah*.

[20:1]

[Master's bodily damage to a Jewish slave]

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[369] Ex.21:8.

[7:2]

A Jewish slave is not freed if his master causes him to lose a limb. If, for example, the master blinds the slave's eye, the slave's servitude continues and the slave is entitled to compensation. "If he comes in by himself, he shall go out by himself"[370] means that he is entitled to indemnity for any bodily loss.

[Single Jewish slave cannot be compelled to marry; related rules]

From the same verse we derive the rule that if the slave was single when his term began, he is entitled to leave single. His master (or the master's son on the master's death) cannot obligate the slave to marry a gentile bondmaid in order to engender children who will remain the property of the master as gentile slaves.

> In fact, the slave is not permitted to marry a gentile bondmaid even if the slave so desires. There is concern that the single slave, once married to the gentile bondmaid, will continue to live with her after he is freed.

The right to obligate the slave to marry a gentile woman applies only where the slave was previously married and is less inclined to continue to live with the gentile bondmaid.

In no event may the master separate the slave from his prior wife and children. Scripture speaks in terms of his wife being "with him"[371].

The master cannot require that a slave marry two gentile bondmaids, or require that two slaves marry one gentile bondmaid. Scripture speaks in terms of the singular, both of the slave and of the bondmaid: "If his master shall give him a wife."[372]

[Redemption of Jewish slaves]

A Jewish slave may obtain his freedom by paying to the master a redemption price equal to the unamortized portion of the slave's initial purchase price. Calculation of the redemption price is made in favor of the slave in those cases in which the slave either appreciated or depreciated in value after his initial sale to his master. For example, if the slave was sold for a *maneh* (100 *zuz*) and his value increases to 200, his redemption price is calculated based on his initial value. If the

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[370] Ex.21:3.

[371] Ex.21:3.

[372] Ex.21:4.

reverse occurred, his redemption price is based on his present, lower value.

A Jewish slave who is sold to a gentile may redeem himself in part. This rule sometimes assists the slave and is sometimes to his detriment, as will be explained below[373]. A Jewish slave cannot be redeemed in part[374].

[Master's conduct towards Jewish slaves]

A master may treat himself no better than he treats his Jewish slave in matters of food and drink. "For he is well with you"[375] teaches that he must be equal with you in matters of food and drink. You may not eat white bread and ask him to eat black bread, you may not drink old wine and ask him to drink new wine, and you may not sleep on a feather bed while he sleeps on straw. This is the source of the proverb that one who buys a Jewish slave buys himself a master.

The Geonim hold that these rules are not obligatory, but merely express standards of approved conduct. The Geonim also say that although the institution of Jewish slavery was abolished with the abolition of the Jubilee[376], the rules of approved conduct still apply to **permanent servants**.

Where local custom permits a master to feed his servants at a designated level of expense, the master nevertheless may not feed himself more expensively. This is so despite the rule that custom regarding conduct with slaves prevails over legal requirements[377].

All of these rules apply to lodging as well as to food.

What if the master stipulates in advance with his permanent servants that the suggested rules of conduct are not to apply? The stipulation is valid, since it effects a waiver only of **suggested** modes of conduct. Even express stipulation is invalid to permit the master to feed his servants unfit food.

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[373] 20:2.

[374] 15:2.

[375] Deut. 15:16.

[376] 69:1.

[377] See Meiri B.M.87:1.

[7:2]

Many of these rules are reflected in a Mishnah[378] regarding workers who were hired by the sons of R. Johanan b. Masya and whom the sons agreed to feed. R. Johanan complained that the sons didn't agree on advance on how much food would be offered. The workers could therefore claim a repast fit for King Solomon, since the workers were Jews and were elite persons descended from the Patriarchs.

R. Johanan therefore directed that his children stipulate in advance that the workers are entitled to bread and beans only. Because R. Johanan proposed to eat superior food, the stipulation was required even though under local custom black bread was sufficient for servants.

In determining whether R. Johanan meant bread **of** beans or bread **and** beans, the Gemara[379] notes that the stricter reading is required because, even were there an express stipulation otherwise, bread **and** beans are as essential to the servant as is a pole which protects a ship from colliding against a reef.

In dealing with his Jewish slave, a master should conduct himself with compassion and brotherhood: "Amongst your brothers the children of Israel, one shall not impose hard labor on his brother."[380] Even for gentile slaves the Yerushalmi recounts the practice of R. Johanan, who when eating meat gave his slave meat, and when drinking wine gave his slave wine, referring to the verse "For in the womb you made me and you made him."[381]

One commentator states that a master may treat himself better than his slave, so long as he does not treat his children better than he treats his slave.

The slave has a personal obligation to carry out the terms of his servitude.

[Relative severity of precepts]

It is forbidden to trade in the produce of the *shemittah* year. Scripture makes such produce available only "to eat"[382], from which we deduce "but not to trade." This negative deduction from a positive commandment has the force of a positive

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[378]B. M.83:1.

[379]B.M.87:1.

[380] Lev.25:46.

[381] Job 31:15.

[382]Lev. 25:6.

commandment only, but it should nevertheless not be treated lightly. The Rabbis said "Be as concerned with a less important commandment as with a severe one, for you do not know the reward allocable to a particular commandment"[383]. The same applies to penalties; one does not know the precise penalty ascribable to a particular commandment.

The Gemara elaborates on the unexpected severity of apparently less important commandments:

> 1. If one does not take heed of even the minor proscriptions relating to *shemittah*, that is, not to trade in its fruits, dealt with in Lev.25:6, then in the end he will be forced to sell his chattels.
>
> This is derived from verses 13 and 14 of the same chapter:
>
> Verse 13 concludes the section on *shemittah* and Jubilee with "In this year of Jubilee you shall return every man unto his possession."
>
> Verse 14 begins "If you sell anything to your neighbor, or buy of your neighbor's **hand**", which refers to chattels which are acquired from hand to hand.
>
> 2. If he disregards the punishment or does not perceive it as such, he will be compelled to sell his fields, as set forth in verse 25: "If your brother becomes impoverished and sells of his possessions."
>
> 3. If he still disregards the punishment, he will be compelled to sell his house, as provided in verse 29: "And if a man sells his house."
>
> 4. If he still disregards the punishment, he will be compelled to sell his daughter into servitude, as provided in the verse "And if a man sells his daughter as a bondmaid."
>
> Note that the verse on selling a daughter as a bondmaid does not appear in the progression of verses with which the Gemara deals here. Still, the Gemara assumes that this punishment should precede that next stated, that is, the borrowing of money on interest. There is a maxim that better one sell his daughter into slavery (with a term that can be cut short by redemption) than borrow money on interest (which is an obligation which constantly increases).

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[383] Abot 2:41.

[7:2]

5. If he still disregards the punishment he will be compelled to borrow on interest, as in verse 36 "If your brother is impoverished, do not take of him usury or increase."

6. If he still disregards the punishment, verse 39 states that he will "sell himself to you" as a slave.

7. If he still disregards the punishment, he will sell himself to a convert, and not to a righteous convert, but to a *ger toshav*, as provided in verse 47.

8. Ultimately, he will sell himself to a gentile, which isintended by verse 47's reference to the family of a convert, and even to the service of the idol itself (by hewing wood and drawing water) as is meant by the reference in the same verse to a sale to the "stock."

Despite the fact that all these misfortunes were brought about by the transgressor's own free will, we throw no stones after the fallen person. Instead we have compassion for him, as provided in verse 48: "after he is sold, he shall be redeemed."

[20:2]

[Redemption and changes in slave's value; redemption in part]

In calculating a slave's redemption price, his appreciation or depreciation is taken into account favorably to the slave. Some also hold that a Jewish slave who has been sold to a gentile master may redeem himself in part, *i.e.,* he may reduce the balance of his term by partial payment[384]. These two rules operate in tandem as follows:

Assume that the slave was purchased for 200, and his value had declined to 100 when he redeemed half of his term by paying 50. If his value again increases to 200, the slave need pay only another 100 (half of his value at the time of redemption) to obtain his freedom.

Were the slave not permitted to redeem himself in part, his prior payment of 50 would be deemed to have been paid towards a redemption price determinable only on full redemption--in this case 200. This would have required him to pay an additional 150 to obtain his freedom. In this instance, partial redemption helped the slave.

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[384]Redemption in part cuts short the term of servitude. It does not result in alternating days of servitude and freedom.

[7:2]

> Assume that he was purchased for 200 and the slave redeemed half of his servitude by paying 100 to the master, and that he thereafter depreciates in value to 100. To obtain his freedom the slave must pay an additional 50 towards the one-half of the servitude which the master still owns at present value.
>
> > Were the prior redemption not effective in part, the 100 which the master held **on account** would have been sufficient for the redemption of the slave without the payment of any additional funds at all. Here the effectiveness of a partial redemption hurt the slave.

Additionally, some hold that a Jewish slave sold to a gentile may be redeemed by his relatives and may borrow his redemption price.

But what is the *halacha* in these cases?

> 1. The Meiri holds that the proper rule would permit partial redemption where helpful to the slave and not where disadvantageous to him:
>
> There are direct statements in the Gemara and by Rabina (whose views are generally authoritative on account of his having lived later than R. Ashi) that there is no partial redemption.
>
> It is appropriate, out of a sense of justice to assist the slave, to limit Rabina's holding to partial redemptions which are disadvantageous to the slave.
>
> Where helpful to the slave we should rely on R. Ashi who states as a premise to another proposition "If partial redemption is permitted, then what if..." Where the Gemara uses this syntax, the proposition in the assumed premise is often taken as *halacha*.
>
> 2. Other commentators prefer not to antagonize the gentile master. They therefore validate partial redemptions even where contrary to the interests of the slave, especially since in most instances the slave would be helped by the rule.
>
> 3. Yet other commentators follow Rabina's holding literally and invalidate all partial redemptions.
>
> 4. The Meiri also rules that the slave may borrow his redemptive

funds. The verse reads "**or** his hand shall achieve, and he shall be redeemed."[385] The word **or** emphasizes that self-obtainment of funds is not the only means to freedom, and that borrowing is permitted. But this holding is uncertain. The verse's intent may be to exclude borrowings.

[Redemption where master is Jewish]

Where the slave, whether male or female, is sold to a **Jewish** master, whether by the slave himself or by the Beth din, there can be no redemption by relatives. The verse relating to relatives appears in the context of gentile masters only and states, in limiting fashion, "he shall redeem **him**"[386]. This suggests that relatives can redeem only slaves owned by a gentile master.

We also know that relatives can compel the father to redeem his daughter, but no other relatives can be so compelled.

The Torah's failure to permit redemption by relatives suggests a policy not to ease the path to the slave's freedom. It follows that the slave of a Jewish master cannot borrow his redemptive funds and he cannot redeem himself partially.

[Redemption of varying categories of sold or consecrated property]

[Note: the following rules are summarized on page 21:1]

One who **sells** a house in a walled city may redeem on the date of sale or during the first 12 months after the sale, but not afterwards. Redemption is for the full purchase price, without any deduction for the period in which the purchaser lived in the house. Redemption cannot be by relatives, or with borrowed funds or in parts. Jubilee does not affect ownership even if Jubilee occurs during the one-year period in which redemption is permitted.

If a house in a walled city is **sanctified** and is then sold by the Temple treasurer to a third party, the original owner may redeem it from the third party for one year after the third party's purchase. If not redeemed by the end of the one year period, redemption rights are forever lost. Redemption rights continue indefinitely so long as the Temple treasurer has not sold the house.

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[385] Lev.25:49.

[386] Lev.25:48.

[7:2]

A house which is sanctified in a city dedicated to Levites may be redeemed by the original owner indefinitely. Further, should the Temple treasurer sell the house to a third party, the house returns to the original owner at the Jubilee.

One who sells an inherited field may redeem it prior to the Jubilee after the purchaser has harvested two yearly crops. The redemption price is the unamortized portion of the purchase price based on the number of years remaining to the Jubilee. The seller may not borrow to pay the redemption price; Scripture limits redemption to cases in which "his hand achieves"[387]. Nor may he partially redeem his field; Scripture requires that "he find [sufficient funds] to redeem it"[388]. Relatives have redemption rights: "And his redeemer who is related to him shall redeem the sale made by his brother"[389]. If not redeemed, the field returns to the seller at the Jubilee.

The redemption price for an inherited field which was sanctified is one *selah* and one *pundyon* for each year remaining until Jubilee for each plot of land on which a *kor*[390] of grain can be planted. Redemption can be immediate, and there is no two year waiting period. Partial and borrowed redemptions are permitted.

If neither the sanctifier nor his son redeems the field prior to the Jubilee the field then passes to the priests who pay the value of the field to the Temple treasurer, so as not to give the impression that sacred property can pass from the treasurer without redemption. If the treasurer sold the field to others prior to the Jubilee, then the field passes to the priests at the Jubilee without any payment, since the treasurer previously received a payment for the sanctified field.

[Redemption in part]

What is meant by the proposition that a sanctified field may be redeemed in part? Is the intent that **half of the field** is redeemed **immediately** (redemption in terms of **space**), or is the meaning that the **time period** during which the purchaser may retain the **entire field** is cut in half (redemption in terms of **time**)?

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[387]Lev.25:26.

[388]*Id.*

[389]Lev.25:25.

[390]Same as a *homer.*

[7:2]

1. A Mishnah[391] in M. Erukhin expressly invalidates partial redemption of sanctified fields. The Meiri suggests that the Mishnah may refer to partial redemptions in terms of **time**, whereas our Gemara deals with the partial **immediate** redemption in **space** of a **portion** of the sanctified field[392]. Rashi also holds that partial redemption is in terms of space rather than time.

2. Some commentators take the opposite view, and validate partial redemption in time but not in space.

i. This is consistent with the rule that one who mortgages a field as security for a loan cannot repay half of the loan and demand release of half of the mortgage, even where the mortgage covers two distinct fields[393].

ii. One who buys a *kor* of grain can revoke the purchase if he is proffered anything less than a whole *kor*, even if he is offered a pro rata reduction in the purchase price[394].

iii. Recall the rule that the sanctifier of an inherited field may redeem the field at an arbitrary price based on the size of the field and the number of years remaining to the Jubilee (a *selah* and a *pundyon* per year per plot of land fit to plant a *kor* of grain).

The Gemara[395] holds that if the field contains depressions or elevations which are at least 10 *tefachim* high or low, the fixed redemption price does not cover these elevations and depressions, and these areas must be separately redeemed **at actual value**. The Gemara then asks why these excluded areas are not **separately** redeemable at the *selah* and *pundyon* price, and explains that these areas are not fit for planting. Were they fit for planting, they could have been separately redeemable, **but only because of their**

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[391]Er.25:1.

[392]The Meiri speaks in terms of a house sold in a walled city, but the sources he cites speak in terms of the sanctified field.

[393]B.B.107:1.

[394]B.B.105:1.

[395]B.B.103:1.

distinctiveness in terms of elevation and depression.

This initially suggests that the doctrine of partial redemption refers to time only, and spatial partial redemption is permitted only where the part is distinctive in some way.

Those who support partial redemption in space, including Rashi, would explain either that:

a. The Gemara readily accepts the premise that the elevated and depressed areas should be treated as separate fields, consistent with the general rule that redemption of half of a field is permitted. The Gemara's sole concern is why, even as separate fields, they are redeemed at actual value rather than at the fixed *selah* and *pundyon* rules. This is Rashi's explanation; or

b. Although partial redemption in terms of space is generally permitted, such redemption is not proper where the part redeemed is of better quality than the part not redeemed.

[7:2]

[21:1]

[Redemption of a house in a walled city]

A house which is sold in a non-walled city can be redeemed immediately, without any waiting period. Redemption is based on the unamortized porion of the purchase price calculated on the number of years remaining to the Jubilee. The house returns to the original owner at the Jubilee, without the payment of any funds, since Scripture provides that the house shall be "treated as the fields of the Earth"[396]. Redemption may be by relatives, but not with borrowed money and not in parts.

[Meaning of redemption by relatives]

In each case where redemption may be by relatives, the meaning is that relatives may, if they so desire, redeem the property against the will of the current owner. The verse "And he shall redeem the sale made by his brother"[397] means if the relative so desires. The closest relative has priority. Scripture provides that his "uncle or his uncle's son"[398] shall redeem the property, listing the closer kinship first.

[Summary of redemption rules]

Here is a summary:

I. *The seller of an inherited field* is subject to six rules, three of which are favorable to him and three of which are not favorable:

A. Unfavorable to seller:

1. no redemption prior to two year waiting period.

2. no redemption with borrowed funds.

3. no redemption in parts.

B. Favorable to seller:

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[396]Lev.25:31.

[397]Lev.25:25.

[398]Lev.48:49.

1. after two years redemption permitted based on amortization until Jubilee.

2. redemption by relatives permitted.

3. unredeemed fields return at the Jubilee.

II. *The seller of a house in a walled city* is subject to seven rules, six of which are unfavorable to him, and one of which is favorable:

A. Unfavorable to seller:

1. redemption is always at full purchase price.

2. no redemption by relatives.

3. no redemption with borrowed funds.

4. no redemption in parts.

5. no redemption after first year.

6. Jubilee ineffective even during first year.

B. Favorable to seller:

1. No waiting period prior to redemption.

III. *The seller of a house in a non-walled city* is subject to the rules applicable to the seller of an inherited field except that redemption can be immediate, without any waiting period.

IV. *The sanctifier of an inherited field* is subject to five rules favorable to him and one unfavorable to him:

A. Favorable to sanctifier:

1. Redemption is at a set arbitrary price of a *selah* and a *pundyon* per year per plot of land on which a *kor* of grain can be planted.

2. No waiting period.

3. Borrowing permitted.

[7:2]

4. redemption may be in parts.

5. if redeemed by the sanctifier's son, it returns to

the father at the Jubilee.

B. Unfavorable to sanctifier:

1. if not redeemed by the sanctifier or his son, the field is distributed to the priests at the Jubilee (for payment if not previously redeemed by another, without payment if previously redeemed).

V. The sanctifier of a house in a walled city:

1. may redeem immediately and forever, so long as a third party has not purchased the house from the Temple treasurer.

2. redemption in this case continues after the Jubilee.

3. redemption is at initial purchase price, without deduction.

4. all redemption rights expire one year after the house is sold by the Temple treasurer.

VI. The sanctifier of a house in a non-walled city:

1. has immediate and continuous redemption rights.

2. is entitled to return of the house at the Jubilee *if* sold by the Temple treasurer to another.

[The phrase "and in all" relating to inherited fields]

The Gemara discusses the purpose of the additional words **and in all** in the verse "And in all inherited fields you shall give redemption to the land."[399] The words are obviously intended to extend the reach of the rules for inherited fields to other contexts. But to which context?

If the reference is to houses in non-walled cities, the only purpose of the phrase can be to give priority to the relative who has the highest degree of kinship; the basic rules permitting redemption by relatives are independently derived from the

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[399]Lev. 25:24.

fact that such houses are to be "treated as fields of the land."[400] That being so, Scripture should have stated simply that priority is by degree of kinship, without relying on a phrase which is more logically used to import a whole body of law. But if the new context is houses **in walled cities,** the phrase *and in all*, which suggests the importation of a whole body of law, is understandable.

[400]Lev. 25:31.

[7:2]

[21:2]

[Various rules relating to the boring of a slave's ear]

A Jewish slave's ear is bored with an awl, a needle, a borer, a stylus or with any other metal puncturing instrument. Wooden instruments, such as a prick or a thorn, may not be used.

Notwithstanding the Scriptural phrase "**the** awl,"[401] there is no implication that the great awl be used; a small awl is in fact sufficient. Similarly, the *halacha* does not agree with R. Judah's rule that the phrase "**the** thigh"[402] implies that only the sinew in the right thigh is prohibited.

The cartilaginous body of the ear is bored, not the soft part.

Scripture requires that at the Jubilee the slave "return to his family"[403], which means to the established rights of his family, including the right to officiate in the Temple[404]. We do not bore the ear of a Jewish slave who is a priest and who would

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[401]Deut. 15:17.

[402]Gen.32:33.

[403]Lev. 25:41.

[404]But the priest-former slave may not reassume any official position he may previously have had, such as the Presidency of the Beth din. Mak.13:1.

[7:2]

thereby be blemished[405].

A slave's ear is bored only if he married a gentile slave presented to him by his master. Recall that the Gemara would have permitted a priest's ear to be bored were it not for the blemish it would cause. This suggests that the master can present a gentile slave for marriage even to a slave who is a priest.

[22:1]

[Women captured in battle]

A Jewish soldier may cohabit with a woman whom he captures during battle. He may do so only once and only if he intends to bring her to his home to convert and marry her. The Torah assumes that the soldier's passions will prevail; it therefore permits cohabitation, and directs only that cohabitation be with a view towards conversion and marriage.

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[405]Bek.37:1. Boring of the soft part of the ear is considered merely a puncture of the skin which does not render a priest unfit for service.

[7:2]

She is the soldier's property as soon as she is captured, and no other person may seize her. "You shall **take** her,"[406] means that the soldier **takes her as his property**. The verse would be unnecessary if it referred only to **taking in betrothal** after she willingly converts: why would we even think that betrothal is not effective?

The captive should not be pressured to convert. This is what the Gemara means by forbidding the soldier to "molest" her. The Meiri disagrees with Rashi's interpretation that the soldier "molests" her by cohabiting with her before her conversion.[407] A minority explain that the soldier "molests" her if he cohabits against the woman's will.

The soldier may marry the woman immediately if she decides to convert. If she resists conversion, he must let her spend 30 days in his house. During this period she deliberately makes herself unattractive by shaving her head and letting her nails grow, and she grieves over the loss of her family, religion and customs. If she ultimately determines to convert, he may marry her once three months pass from the day on which she first entered his house.

If he decides not to marry her, he must free her. He cannot sell her, or treat her as a bondmaid.

If she has not converted after 12 months, the soldier must compel her to accept the seven precepts which were given to the sons of Noah and which apply to all gentiles. She remains a gentile and he may not marry her.

Note the following additional rules:

1. If the soldier is a priest he may not marry a captive woman. A priest may not marry a convert.

2. Scripture permits the soldier to cohabit with a "beautiful" captive[408]. By this, Scripture means only that the captive must be beautiful **in the soldier's eyes**.

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[406]Deut.21:11.

[407]Note that at 21:2 the Gemara states outright that one cohabitation is permitted.

The Yerushalmi records that Rav disagrees with R. Johanan, and holds that one cohabitation is permitted before conversion.

[408]Deut.21:11.

[7:2]

3. The soldier can take only one captive: "and you desire **her**." Nor may he take a captive for his father or other relative. The Torah's dispensation is directed only against the soldier's passions, not those of others.

4. What of the child if a captive becomes pregnant from cohabitation before conversion? The child is gentile, the same as its mother, and does not have any family relationship with the father. In fact, the father's son may marry the child.

It is this rule which Amnon applied in marrying Tamar. Amnon and Tamar were children of King David by different mothers. Tamar's mother cohabited with King David upon her capture in battle before conversion, so that Tamar was not related to Amnon. That is why Tamar was convinced that King David would "not forbid you from me."[409] Absalom was Tamar's full brother, except that he was conceived after their mother converted.

[When a slave's ear is bored]

A slave's ear is bored if he refuses to leave when his term expires, and if he then twice declares "I love my master, etc."

What then of the requirement that the first statement be made at the "beginning of the six-year term?" Raba explains that this means only that it must be made while there is still time for the slave to do one *perutah*'s worth of labor. The second statement must be made at the last possible moment prior to the end of the term. The purpose of all this is to ensure that both statements are made when freedom is in sight, and it is certain that they are made with full understanding and willingness.

The following additional circumstances must be present before a slave's ear is bored:

1. The master must have a wife and children. "For he loves you [the master] and your household[410]."

2. The slave must have a wife and children. "I [the slave] love my wife and children."

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[409] Sam.II, 13:13.

[410] Deut.15:16.

> 3. The master must love the slave. "For it is good to him [the slave] with you.[411]"
>
> 4. The slave must love the master. "For he loves you..."
>
> 5. Neither the slave nor the master may be ill. "For it is good to him with you."

[Master's obligation to sustain his slave's wife]

Scripture directs that at the end of the term "his [the slave's] wife shall leave with him,"[412] and "his children shall leave with him."[413] The reference cannot be to a gentile bondmaid:

> A gentile bondmaid which the master gives to the slave in marriage, as well as their children, are the master's property and do not leave: "the wife and her children shall be unto the master."[414]

The reference must be to a Jewish wife which the slave took prior to servitude, or which he took during his term with his master's approval. Now, such persons are not slaves. In what sense do they **leave**? In the sense that the master no longer feeds them! This proves that the master **must** feed them until the slave is freed.

Note also:

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[411]Deut.15:16.

[412]Ex.21:3.

[413]Lev.25:41.

[414]Ex.21:4.

[7:2]

1. The master need feed only a woman whose marriage to the slave was consummated, not one who is only betrothed to the slave or who is obligated to perform *yibbum* with the slave.

2. The master does not feed a woman who is forbidden to the slave, even if the proscription is only by positive precept or Rabbinic interdict. This woman does not "leave with him."

3. The slave's wife owns her own labor. This is not required by law, but is morally correct. A prior agreement that the wife's work will belong to the master is valid, since no precept is violated.

[22:2]

[How the ear is bored]

The master himself (not his son, his messenger or a court official) must bore the awl through the slave's ear directly into an upright door. Boring is invalid if the ear is bored first and the ear is then placed against a door to continue the boring into the door.

There need be no door-post. Scripture refers to the door-post[415] only to require that the door be upright in the manner of a door-post.

The ceremony is invalid if performed on two slaves simultaneously[416].

[Why the ear is bored]

Why is it the ear that is bored? As punishment: the ear heard G-d say that "The children of Israel are slaves **unto me,**"[417] and this slave nevertheless committed theft and **caused his sale by the Beth din** into slavery. Note that the ceremony of boring applies only to slaves sold into slavery by the Beth din, and not to slaves who sell themselves into slavery voluntarily[418].

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[415]Ex.21:6.

[416]Sot.8:1.

[417]Lev.25:54.

[418]The Mekhilta, Ex.21:6, explains that the slave is punished because he committed theft notwithstanding that at Sinai his ear heard the commandment "Thou shalt not steal."

[7:2]

Why is boring into the door, and why the reference to the door-post? Because doors and door-posts belonging to Jews were witnesses to G-d's avoidance of Jewish homes when G-d decimated the Egyptians and delivered the Jews from slavery. A witness to a crime takes precedence in punishing the malefactor[419].

The Midrash explains that the Jewish word for awl is numerically equivalent to 430, which is the number of years of Jewish oppression beginning with the birth of Issac. This slave ignored the lesson of those 430 years and took action which resulted in his sale into slavery!

[Dignity of the slave]

The slave must be sold quietly and with respect, not on the auction block where gentile slaves are sold.

The slave cannot be asked to perform more work than is commonly assigned to laborers, or work that the master does not need. The master should not direct the slave to labor "until I return," if the master intends to delay. It is for such transgressions that Scripture cautions "You shall fear your G-d."[420]

Where the Beth din has power, it compels a gentile master to adhere to the same rules. "He [the gentile] shall not cause him [the Jewish slave] to labor unconscionably."[421]

The slave cannot be asked to perform demeaning and embarrassing work. For example, the master cannot demand that the slave put on or take off the master's shoes, or carry the master's clothing to the bath house, or act as a barber or baker for the general public. "You shall not make him work the labor of a slave,"[422] but only the work of a non-slave laborer. Also, "He [the Jewish slave] shall be as the hired hand and as the alien resident with you" [423].

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[419]Deut.17:7.

[420]Lev.25:43. The Rambam holds that unconscionable labor means work which has no apparent end.

[421]Lev.25:53.

[422]Lev.25:39.

[423]Lev.25:40.

[7:2]

[Acquisition of slaves]

The third Mishnah deals with the acquisition of gentile slaves, and provides as follows:

> A Canaanite slave is acquired by money, deed or *hazakah*, and he acquires himself by money through the agency of others, and by deed, through his own agency: this is R. Meir's view. The Sages maintain: by money, through his own agency, and by deed, through the agency of others; providing that the money is furnished by others.

[Relationship with seven nations]

The Canaanites are one of the seven nations of whom the Torah directs that the conquering Jews "not leave any soul alive"[424]. Why then does the Mishnah refer to a **Canaanite** slave? There are two possible explanations:

> 1. The reference is non-specific, and means gentiles generally, rather than Canaanites. After all, the original Canaanites have long since been exiled and can no longer be traced.
>
> 2. There is no absolute requirement to kill the members of the seven nations. Rather, here are the rules of conquest:
>
> > i. No Jewish enemies are killed, **even if from the seven nations,** if they sue for peace and agree to pay tribute to Jewish conquerors and to abide by the seven precepts to which gentiles are subject.
> >
> > ii. The Jews **take the initiative** and offer peace to all nations other than Amon and Moab, for whom Scripture directs, "You shall not seek their peace or goodwill."[425] The Meiri disagrees with the Raabad who holds that the obligation to offer peace ceased after the Jews crossed the Jordan River into Israel proper.
> >
> > iii. If an enemy nation refuses to submit to tribute and to accept the seven precepts, then:

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[424]Deut.20:16.

[425]Deut.23:7. If Amon or Moab sue for peace on their own initiative, they too, are exempt from the requirement that no soul remain alive.

[7:2]

a. if the enemy is one of the seven nations, no soul may be left alive.

b. if the enemy is of any other nation, only the adult males are killed, and all others are spared.

Why then did the Gibeonites feel compelled falsely to claim that they were not of the seven nations when they sued for peace with Joshua? Because Joshua had not yet offered peace, and they did not know that Jewish law would absolve them were they to submit.

But why were they punished to be hewers of wood and drawers of water, and why does it appear that they were spared only because the Jews had already sworn to save them? Because they sought to deceive the Jews on their true identity as one of the seven nations.

It results that there are cases in which the seven nations are preserved, and it is to such a case that the Mishnah refers when it discusses the acquisition of a Canaanite slave.

[Persons from whom slaves are acquired and to whom slaves are sold]

Return now to the Mishnah. The Mishnah recites the *kinyanim* by which a gentile slave can be acquired:

1. by a Jew from a Jew;

2. by a Jew from a gentile or a resident alien;

3. by a Jew from a gentile who sells himself; and

4. by a Jew from a gentile who sells his sons or his daughters.

A gentile can **acquire only the labor of** a fellow gentile; he can acquire no actual **ownership** interest in the slave. That explains why the slave may marry a Jewish woman if he escapes from his gentile master and converts to Judaism. Still, when a Jew acquires the gentile's labor rights, these rights are transmuted in the Jew's hands into absolute ownership.

The Mishnah does **not** refer to a slave who is sold by a Jew to a gentile. Such a slave is free under Jewish law, and the seller is penalized and compelled to redeem him from the purchaser at a price up to ten times the slave's worth.

A slave is validly acquired by *kinyan*. After the slave is purchased the master must arrange for the slave's *tevilah* and circumcision, and he must see to it that the slave

perform those commandments which women are required to perform. If over a 12-month period the slave refuses to be circumcised and to accept these commandments, the Jew may sell the slave to a gentile[426]. In this case, and in this case only, the gentile purchaser can acquire the slave by any of the *kinyanim* referred to in the Mishnah.

[Other *kinyanim* for slaves]

Return again to the Mishnah. A gentile slave can be acquired by the *kinyanim* of money, deed and *hazakah* because slaves can be acquired and sold in the same manner as real property. But note the following:

1. *halifin* is valid for land as well as for slaves[427]. But *halifin* is not listed because it is not a type of acquisition which is **peculiar** to land and slaves. Even chattels can be acquired by *halifin*.

2. *meshikhah* is valid for slaves, but is not listed because it physically cannot apply to land.

3. Sales of slaves are final and are not undone at the Jubilee, since Scripture directs "You shall cause them [gentile slaves] to labor forever"[428]. A sale of real property is valid only until the Jubilee.

A buyer cannot acquire a slave by **lifting the slave**. If the buyer directs the slave **to lift the buyer**, there is a *kinyan*, but the *kinyan* is grounded on ***hazakah***, since the act of lifting displays the buyer's dominance over the slave.

[Is redemption a benefit? Slave's rights when given property to the exclusion of his master]

The balance of the Mishnah revolves around the following three issues:

1. Is it a **benefit** for a slave to be freed, or is it a **detriment**? If a benefit, others can accept a deed for the slave **without the slave's knowledge**. If a detriment, others cannot accept a deed without the

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[426]Yeb.48:2.

[427]The Meiri's teachers hold that *halifin* cannot be used to acquire a gentile slave from a gentile master.

[428]Lev.25:46

[7:2]

slave's knowledge.

Whereas it is the essence of a deed that the **slave** accept it, it is the essence of redemptive money that the **master** accept it. It follows that money paid to the master without the slave's knowledge is effective even if a slave's freedom is a detriment to the slave.

2. Assume that a slave **wishes** to be redeemed. Certainly others can accept a deed for him. But can he himself accept the deed and acquire the deed and his freedom simultaneously? Or is his own acceptance of the deed a nullity because he belongs to his master?

3. Can a slave ever personally own property? Or must a slave's property belong to his master even where the property is given to the slave on condition that the master obtains no ownership?

If the slave can never own property then the slave cannot buy his own freedom by giving money to the master directly. The money was never his to give, since the money became his master's property as soon as the slave received it.

R. Meir holds:

1. It is a detriment for a slave to be freed.

That is why a **deed** cannot be given to others without the slave's knowledge. But the master can accept **money** from others acting without the slave's knowledge.

2. A slave can obtain his freedom and property simultaneously.

Hence, a slave can himself accept his master's deed.

3. A master acquires his slave's property even where a donor stipulates with the slave that the master is to obtain no ownership.

Hence a slave cannot buy his freedom by paying money himself to his master.

The Sages hold:

1. It is a benefit for a slave to be freed.

Hence, others can accept a deed on his behalf.

[7:2]

2. A donor can stipulate that a slave have private ownership of property.

Hence the slave himself can pay redemptive money to the master, where it is stipulated that the master is to have no ownership interest until he receives the money as redemption funds.

3. A slave can acquire property and his freedom simultaneously.

Hence, he can accept a deed directly from his master.

R. Simeon b. Eleazar holds:

1. It is a benefit for a slave to be freed.

Hence, others can accept a deed on his behalf without his knowledge.

2. A slave cannot alone own property, and a slave cannot acquire property and his freedom simultaneously.

Hence, a slave cannot alone accept a deed or pay money to his master.

All of the Sages, R. Meir and R. Simeon b. Eleazar hold that others can pay money for the slave. Even R. Meir who holds that freedom is a detriment would rely on the argument that the money is being paid not on the **slave's behalf** but rather for the benefit of the master who receives the payment.

The *halacha* accords with the Sages.

[The conditions whereby a donor to a slave can exclude a master's rights; the dispute between R. Shesheth and R. Eleazar]

Recall that the Sages permit a slave to pay redemptive money to his master, if the slave received the money from others **on condition** that the master have no ownership interest. What sort of condition is meant?

Is it sufficient for the donor to give the money to the slave, on the simple condition that the **master** obtain no rights in the money? A condition of this kind is called a **general limitation**.

Or must the **slave's** rights in the money also be limited? Must the slave be told that the money is his only for the particular purpose of obtaining his freedom? A condition of this kind is called a **particular**

limitation.

R. Meir is one grade more stringent than the Sages. If the Sages hold that only a **particular** limitation is sufficient, then it must be that R. Meir disapproves of even this condition. But if the Sages hold that a **general limitation** is sufficient, R. Meir disapproves of the condition only where it is **general,** and he credits the condition where it is **particular**.

R. Shesheth and R. Eleazar dispute the positions of the Sages and R. Meir on this as follows:

		General	*Particular*
R' Shesheth	Sages	good	good
	R. Meir	bad	good
R. Eleazar	Sages	bad	good
	R. Meir	bad	bad

R. Eleazar extends his rule to apply also to married women: where a married woman receives property her husband owns it, unless the wife was given ownership with a particular limitation, such as where the property is given her only for the purpose of purchasing her own food or clothing.

The Meiri explains that the discussion under the next several headings is not critical to an understanding of the Gemara.

[Arguments in support of R. Shesheth and R. Eleazar]

The Alfasi rules with the Sages as interpreted by R. Eleazar. Here are the arguments for and against the Alfasi's holding:

[7:2]

1. How can we disregard the wishes of the donor and ignore his general limitation?

The Alfasi would answer that there are other cases in which we disregard a donor's intention. Here is an example: a testator cannot direct the disposition of property upon the ultimate death of a person, such as a son, who will inherit from the testator. It does not matter that the son receives a greater share than he would have received had the testator not made his bequest[429].

2. What of the rule that a person can revoke the legal effect of a statement if he withdraws it promptly ("*tokh k'dei dibbur*")? Did not the person who gave property to the slave immediately insist by his general limitation that the master was to have no rights? Why then does the Alfasi ignore the limitation?

Because the donor does not intend to **revoke** his prior statement. He thinks, wrongly, that both the prior statement and the limitation are valid and consistent.

3. A child is considered rebellious only when he has stolen from both his father and his mother. The Gemara[430] explains that property can be stolen from the mother where the mother received the property with the proviso that her husband was to have no ownership rights. This is a general limitation!

The Alfasi would respond that the Gemara is not precise on the nature of the limitation, and that a particular limitation is in fact required.

4. If R. Shesheth prevails then even R. Meir holds that a slave can free himself with property he received with a particular limitation. If so, why does the Mishnah hold that for R. Meir there can be monetary redemption only if performed by others?

5. A Yerushalmi validates property transferred to a slave with a general limitation. Obviously, the Yerushalmi accords with the Sages as interpreted by R. Shesheth.

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[429]B.B.129:2.

[430]San.71:1.

[7:2]

6. Consider the following Gemara in Nedarim[431]:

> Assume that a person forbids his son-in-law by oath from deriving any benefit from him. How can the father in law benefit his **daughter** without violating the oath? The Mishnah suggests that he give property to his daughter and tell her that the property is given only for the benefit of "what you put in your mouth."
>
> What if he tells her simply "only on condition that **you** do what you want and that your husband not interfere?" Rav holds that the condition is invalid. Samuel holds the condition would be valid.
>
> The Gemara explains that Rav's position is consistent with R. Meir who invalidates limitations.
>
> Now, a Mishnah holds that a husband may transfer to his wife for the benefit of third parties property which is to serve as an *erub*.
>
> Given Rav's view that the Mishnah in Nedarim follows R. Meir, how is the Mishnah in Nedarim consistent with the Mishnah on *erub*? Would not R. Meir hold that the transfer of the *erub* property to the wife is a nullity because her husband owns everything that she owns?
>
> Raba explains that even R. Meir would agree with the Mishnah on *erub*: the wife is merely a medium for the transfer of ownership to third parties, who, unlike the wife, can draw ownership rights away from the husband.
>
> A *baraitha* directly conflicts with the Mishnah on *erub*. The Gemara explains that in the case of the Mishnah the wife herself has a parcel of land which requires the benefit of *erub*. Since she requires the *erub* for herself she can also obtain rights for others. In the *baraitha* the woman has no land of her own which requires coverage by the *erub*.
>
> The Gemara can be explained in one of three ways:
>
> The first approach would hold that the Gemara runs counter to the Alfasi:

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[431] 85:1.

[7:2]

a. **What you put in your mouth** is a particular limitation, and **on condition that you do what you want** is a general limitation. The Gemara accords with R. Shesheth:

i. Samuel validates a general limitation because he rules with the Sages according to R. Shesheth. Rav credits only a particular limitation because he holds with R. Meir according to R. Shesheth.

ii. But how does Samuel explain the Mishnah? Why does it suggest only a particular limitation? Either:

(1) it reflects R. Meir's position, or

(2) it prefers to state a position with which even R. Meir can agree.

iii. The Gemara's follow-up question attacks Rav for agreeing with R. Meir. Why does the Mishnah countenance a wife's ownership in the *erub* case?

b. The second possible approach is:

The Gemara agrees with the Alfasi: the Sages validate only a particular limitation and R. Meir voids even a particular limitation. R. Eleazar's view is correct.

The language **do what you want** is midway between a general and a particular limitation, in the sense that the property is given to the daughter only for consumption, and not for business or saving purposes.

Both Rav and Samuel agree with the Sages that a **true** particular limitation is valid. But where the limitation is midway, Rav holds the limitation insufficient for the Sages, **in the same way** that a full particular limitation is insufficient for R. Meir. But in no way does Rav agree with R. Meir.

Samuel disagrees because he considers a midway limitation the same as a full particular limitation which the Sages validate according to R. Shesheth.

The Gemara then takes issue not with Rav, who in essence agrees with the Sages, but with R. Meir himself. Can R. Meir's holding be reconciled with the Mishnah on *erub*?

c. A third approach would support the Alfasi on the dominance of R. Eleazar, allow Samuel to hold with the Sages according to R. Eleazar, and still reconcile R. Meir with the Mishnah which validates "only to your mouth":

Rav holds that **what you put in your mouth** is even stronger than a particular limitation, since it limits to one designated use the potential uses to which the wife can put the property given her. This super-limitation is valid even for R. Meir in R. Eleazar's interpretation.

Since Rav determines that the Mishnah is consistent with R. Meir the Gemara follows up by attacking Rav with the Mishnah on *erub*. How is R. Meir consistent with that Mishnah?

But why does not the Gemara explain that in the case of *erub* the woman obtains independent rights because it was given to her with the super-limitation that she is acquiring it only for the benefit of others?!

Because a super-limitation is valid against the husband only where the wife acquires property from a person other than the husband. In that case the wife's meager rights provide less of a handle on which the husband's claims can fall. But where the property is acquired **from the husband,** the super-limitation **reserves** rights in the husband, and should make it **more** difficult for the wife to obtain rights. It results that in the case of *erub* R. Meir should not allow the woman to obtain rights. How then to reconcile R. Meir with the Mishnah which gives the wife *erub* ownership?

In summary, the *halacha* according to the Alfasi certainly supports a super-limitation; that sort of limitation is valid even in R. Meir's view. The *halacha* goes further and holds with the Sages according to R. Eleazar that any particular limitation is valid.

The Meiri discusses two final matters relating to the Gemara in Nedarim:

1. The dispute between the Mishnah and the *baraitha* on whether *erub* can be transferred through the wife could have been resolved differently. The rule which requires an *erub* for an alley way is Rabbinic only. Perhaps, the Mishnah and the *baraitha* differ on whether the Rabbis intended their rule to be as strict as rules which are Scriptural in

derivation[432].

2. There is another inconsistency between the Mishnah and the *baraitha*. The Mishnah validates transfer for *erub* through **maidservants**. The Mishnah's reference must be to **minor** maidservants, for we know the rule that maidservants are free on their majority. Yet the *baraitha* invalidates minors for the purpose of the transfer!

The Meiri suggests that a minor is invalid only when he or she is the son or daughter of the transferring person and is dependent for support on the transferring person. In this case only, the property transferred to the minor cannot be said to have emerged from the transferor's control.

[Distinctions between a master's rights in his slave's property, and a husband's rights in his wife's property]

Return again to the Gemara in Nedarim. Assume that the Gemara supports R. Shesheth's view. Still, can we derive doctrine on the rights of slaves from learning which relates to the rights of married women? Can we maintain that a master legally owns the slave's body, so that there is greater difficulty in evading the master's rights in property given to the slave?

Consider the following:

1. A lender directs a borrower to use the borrower's slave to return a borrowed item to the lender. The risk of loss passes to the lender as soon as the item is given to the slave[433].

Samuel limits the rule to Jewish slaves. For gentile slaves the risk of loss passes only when the lender receives the item in return; until then the item is still considered to be in the borrower's possession.

Why? In Nedarim under the first approach Samuel held that a **wife** can alone own property given her with a general limitation. Is not property which a master gives to his gentile slave the equivalent of property given with a general limitation?! Why then did not the Gemara in Nedarim confront Samuel with the rule on borrowed items in the same way it confronted Rav with the rule on *erub*? Does this not suggest that a wife more readily can exclude her husband's ownership than a slave can exclude

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[432]Compare the Gemara at Git.64:2.

[433]B.M.98:2.

his master's ownership?!

Not necessarily:

a. A general limitation is not **assumed** when the master gives the borrowed item to his gentile slave.

b. Samuel assumed that the anonymous Mishnah on borrowed items was taught by R. Meir[434], who holds a general limitation is invalid in transfers by a husband to his wife. The Yerushalmi supports this view.

c. The Gemara in Nedarim in fact could have questioned how Samuel's holding is consistent with the *baraitha* dealing with the return of borrowed items. But the Gemara prefers to question Rav's position, since there is a direct married woman-to-married woman contradiction, than to question Samuel, where the issue is why there is a distinction between borrowed-items-slaves and married-women-oaths.

2. A husband can divorce his wife by placing her *get* on his real property, and then transferring the real property to her[435]. But does not the property again become the husband's the moment he transfers it to her? Raba explains that at the moment she receives her *get*, the woman simultaneously obtains ownership and her freedom. He proves this by showing that a gentile **slave** who grasps his deed of emancipation obtains his freedom and "his hand" simultaneously.

Why cannot the same point be proved by the validity of a *get* passed to a **wife's** hand?

The Gemara explains that a husband's ownership rights in a wife's hand is not equivalent to a husband's ownership rights in her real property or in the hand or body of his gentile slave.

This suggests that the ownership rights of a wife and a slave are distinguishable.

3. Our Gemara treats slaves and women alike, and states as an undisputed proposition that "a slave has no *kinyan* without his master, and a wife has no

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[434]Consistent with the rule that a Mishna whose author is not stated is presumed to be taught by R. Meir.

[435]Git.77:2.

kinyan without her husband."

The Meiri concludes that the better view is not to make a general distinction between the rights of slaves and the rights of married women. But what of a narrower distinction? Perhaps slaves and married women are treated alike when they receive property from third parties, but are treated differently when they receive property from the master or husband on the following theory:

> in the case of the slave, nothing has transpired, since the case is no different than if a master passes property from his right hand to his left hand or if one says "Let my real property obtain ownership rights to my exclusion";
>
> in the case of the married woman, she can obtain property from her husband since she is not legally owned by her husband.

If this distinction is correct it would explain why the Gemaras dealing with the return of borrowed items and divorces distinguish between married women and slaves, since both cases do not deal with property proffered by third parties. Our Gemara, on the other hand, does deal with third parties, and that is why the cases are treated alike.

The Meiri concludes that, although our Gemara deals with property acquired from third parties, the finality with which the Gemara asserts that slaves and married women are treated alike suggests that there is no distinction even where property is acquired from the master or the husband.

[The Yerushalmi's view]

The Yerushalmi concludes that R. Meir does distinguish between slaves and married women. A slave's hand belongs to his master but a married woman's hand is her own.

> The Yerushalmi notes R. Meir's holding that a woman who wishes to redeem second tithe on her inherited property must pay to the sanctuary the additional one-fifth of value which is payable only when an owner redeems, and which is not payable when a stranger redeems.
>
> The Yerushalmi also uses the distinction to explain a *baraitha* which invalidates *erub* through slaves but validates *erub* effected through wives.
>
> But there are several indications that our Gemara is not impressed with these proofs:

[7:2]

a. Our Gemara[436] refers to the same holding of R. Meir regarding second tithe and initially considers this holding in conflict with R. Meir's rule on slaves. The conflict is resolved only by explaining that the wife inherited the second tithe from her father, and that the sacred nature of the second tithe removes it from the category of the wife's inherited property in which the husband obtains rights.

b. The Gemara in Nedarim explains the *erub* conflict otherwise: R. Meir permits a husband to give property to his wife on behalf of third parties only where the woman herself will benefit from the *erub*, such as where she owns real property in the area to be covered by the *erub*[437].

This completes the non-critical material which began under the heading "Arguments in support of R. Shesheth and R. Eleazar."

[Does husband have absolute or usufruct rights in gifts by others to his wife?]

In those instances where the husband succeeds to gifts made to his wife, is his ownership absolute, or does he have usufruct rights only? Rashi and other commentators give the husband absolute ownership rights, by analogy to the master's ownership in property given to his slave and the rules relating to property found by the wife. Others compare the case to property inherited by the wife, and give the husband usufruct rights only[438].

The following observations are relevant:

1. The Yerushalmi seeks to explain why a husband owns property found by his wife, notwithstanding that he has only limited rights to her labor. One reason is concern that she will take her husband's property and falsely claim that she found it.

The Yerushalmi disapproves of this explanation. If that is the concern, the woman can still abuse her husband by falsely claiming

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[436] 24:1.

[437] Ned.88:2.

[438] Surprisingly, certain Rashi texts suggest that a husband has absolute ownership in property inherited by his wife after marriage, and that the limitation to usufruct applies only to property inherited after marriage. This limitation is in direct conflict with Kes.78:1.

that the property was not found, but was **given to her!**[439]

Some commentators hold that this suggests that the wife retains basic ownership notwithstanding that her husband has usufruct rights: if the husband's ownership is absolute, of what use would the false claim be to the wife?

Others hold that the concern is that the wife will fabricate a claim that the gift was given her with general or particular limitations sufficient to avoid her husband's property rights altogether.

2. The Alfasi maintains that a gift to a wife is in essence an acquisition of property. This acquisition is consensual and is presumably grounded on some benefit which the wife gave to the donor. Why should it give to the husband greater rights than inheritance which is automatic, which in theory more easily transfers rights to the husband and in which the transferor cannot be presumed to have derived benefit form the wife? Should we not limit the extent to which the donor's desires are thwarted by restricting the husband's rights to usufruct?

3. If A deposits with B money to be used for the dowry of A's daughter C, C can direct B to give the money to C's husband only once she is an adult and her marriage has been consummated[440].

Since C's statement avails her husband, it is obvious that without the statement his rights are not complete: presumably he has only usufruct rights.

But it is possible to distinguish this case. By depositing funds with B, A in effect established a limitation which (in the absence of C's statement) deprives C's husband of rights generally. Perhaps if there

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[439]The Yerushalmi ultimately explains that gifts by third parties receive public notice, whereas findings of property do not. Hence, a woman will falsely claim a finding but will fear a false claim of a gift. But why do findings belong to the woman where there are witness that she found the property and did not steal it from her husband? Because the Rabbis wish to avoid excessive distinctions in *halacha*.

The Yerushalmi also mentions R. Johanan's rationale for the rule on findings: a husband owns his wife's findings because we wish to avoid arguments between the husband and the wife.

[440]Kes.69:2.

were no limitation, the husband's rights would be complete even without C's statement.

The Meiri concludes that logic dictates that the husband has usufruct rights only.

[Acquisition of freedom by loss of limb or *halifin*]

Return to our Mishnah. A gentile slave can acquire his freedom by loss of limb as well as by money or deed. Why is loss of limb not mentioned in the Mishnah? Because this mode of freedom is in essence a penalty, and the Mishnah deals only with monetary rules, and not with penalties. Besides, freedom for loss of limb follows only after the master gives the slave a deed.

halifin is not listed as a means for a slave to acquire his own freedom. This must be reconciled with another Gemara[441] which discusses a master who threw a hat to a maidservant and said "Acquire the hat and acquire your freedom." The Gemara rules that the maidservant was not freed because the hat belonged to the master rather than to the maidservant.

The suggestion is that *halifin* was ineffective only because the *halifin* item must belong to the buyer. Were the hat to belong to the maidservant, such as where it was given to her by others with appropriate limitations, *halifin* would have been effective! Why so?

The Rambam explains that the master attempted to free her, not by way of *halifin*, but by way of money. But did not the master know that it is the slave who must give the master redemption funds, and not the other way around? The master was confused by the rule that validates *kiddushin* which is given by the bride to the groom. He did not realize that such *kiddushin* is validated only where the groom is an important person, and the bride derives psychic benefit from the groom's acceptance of the funds.

This completes the exposition of the Mishnah. All of its tenets, in the manner explained, are consistent with the *halacha*. The following are the matters added in the Gemara.

[Scope of *halifin*]

halifin is a good *kinyan* for chattels other than coins.

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[441] Git.39:2.

[7:2]

Promissory notes and deeds have no intrinsic value and cannot be acquired by *halifin*. They can be acquired only as adjuncts to (*agav*) transfers of real property.

[Mechanics of *meshikhah* for animals and slaves]

An animal is purchased by *meshikhah* if the animal approaches the buyer in response to his call, or if the animal moves after the buyer strikes the animal with a stick.

The rule is different for an adult gentile slave: the buyer must seize and pull the slave. An adult slave has a mind of his own, and, unless seized, the slave's movement cannot be attributed to the buyer's action[442]. Minor slaves are treated as animals for the purposes of *meshikhah*, yet are also treated as adults in that they may also be purchased by money, deed or *hazakah*.

[Mechanics of *mesirah* for animals and slaves]

The essence of *mesirah* is delivery, a concept which applies to chattels but not to animals. There is no *kinyan* if a buyer seizes an animal by its hoof, hair, saddle, saddle-bag, the halter in its mouth, or the bell around its neck. The concept of delivery is even less appropriate to slaves than to animals, and gentile slaves cannot be acquired by *mesirah*.

[Lifting as a *kinyan* for slaves]

The Gemara states that slaves cannot be acquired by lifting. Why? Some commentators base this on the rule that if an object is commonly lifted, it can be acquired **only** by lifting. They reason **by extension** that the *kinyan* does not apply to items which are not commonly lifted, such as adult slaves. If this were the correct rationale lifting would be valid for **minor** slaves who are commonly lifted.

But the rule which invalidates lifting for slaves is stated absolutely, with no hint that it is to apply to adults only. The true reason why slaves cannot be acquired by lifting is that it is not **appropriate** for a **master** to lift his **slave**. It follows that even minors cannot be acquired by lifting.

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[442]What if the slave moves when struck by the buyer? Do we attribute the movement to the buyer or to the slave's own mind? The better view is that there is no *kinyan*.

[7:2]

[*hazakah* as a *kinyan* for slaves]

There is *hazakah* when a buyer asserts dominance over a gentile slave, even if for a minor service. There is *hazakah* where the slave unties the buyer's shoe or carries his baggage after him, or if the slave bathes, undresses, washes, anoints, scrapes, dresses or lifts the buyer.

What of conventional labor which is not personal to the buyer's body, such as sewing or weaving? Some commentators hold that these services do not reflect dominance and possession, but are more in the nature of usufruct from ownership of the slave's body.

> Others disagree. Why then does the Gemara lists exclusively personal services (even carrying the buyer's baggage to the bath is a personal service)? Because these services can be performed anywhere and not only at the buyer's work place.

A gentile bondmaid is freed if she has relations with her master: there is a presumption that the master does not wish to have illicit relations with a bondmaid. How then can our Gemara consider whether a bondmaid can be **acquired** by the master (as a lifting by the bondmaid) by having relations with her?[443] Because it is obvious that the presumption does not apply to the master, and that he wishes his relations to be illicit.

[Rights to a convert's slaves on the convert's death]

A convert's heirs are only those children which he has after conversion. If he has no heirs, anyone can freely acquire the convert's property by *kinyan* on his death. A slave then owned by the convert acquires his freedom by *hazakah*, since the slave dominates himself at the moment of his master's death. But if another person then asserts dominance over the slave, that person acquires the slave by *hazakah*.

The Sages hold that a minor slave also acquires his freedom on his master's death; Abba Saul holds that a minor cannot acquire his freedom in this way.

[Must the slave be aware of his master's death to acquire his own freedom?]

Must the slave, whether adult or minor, be aware of his master's death at the

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[443]The Gemara ultimately rules that cohabitation with a gentile maidservant does not count as lifting for these purposes. Lifting is a *kinyan* only where there is work by one person for the benefit of another, and where the laboring person suffers some discomfort.

time the slave asserts dominance over his own body?

> Shall we compare the case to the rule that one cannot acquire ownership of a convert's field by *hazakah* unless the person performing *hazakah* is aware of the convert's death?
>
> Or is it more appropriate to reason from the rule that a person can acquire ownership of property which is placed on his real estate, whether or not the owner of the real estate is aware of the situation?

The Meiri prefers the second analogy.

> The Gemara recounts that:
>
> Mar Zutra directed that the slave of R. Judah the Indian (a convert who was dying without children) remove Mar Zutra's shoes by way of *hazakah*.

The Gemara's immediately succeeding statement can be read in differing ways. The precise reading selected affects whether the *halacha* accords with the Sages or Abba Saul. But there are further results: the first two readings assume that awareness is not required. The third disagrees.

> 1. According to the Meiri, the Gemara says:
>
> **Some say the slave was an adult, in accordance with Abba Saul** [who holds that a minor does not acquire his freedom on the death of his convert-master]. **Others say the slave was a minor in accordance with the Sages** [who hold that a minor does acquire his freedom on the death of his convert-master].

Those who say the slave was an adult, in accordance with Abba Saul [who holds that a minor does not acquire his freedom on the death of his convert-master] hold that Mar Zutra intervened because the slave was an adult and would otherwise have acquired his own freedom forthwith whether or not he was aware of his master's death; were he a minor the slave would not have acquired his own freedom in any event and *hazakah* by Mar Zutra could have been accomplished later. This reading is consistent with Abba Saul.

The "others" who say the slave was a minor in accordance with the Sages [who hold that a minor does acquire his freedom on the death of his convert-master] hold that Mar Zutra had to intervene at the time of the convert's death, rather than later, because even a minor slave would otherwise have acquired his own freedom on the master's death. This supports the Sages.

Since the *halacha* generally supports the second version where there is an

"others say" dispute, the *halacha* accords with the Sages.

2. The Alfasi's reading is a flat undisputed statement that:

> the slave was a minor in accordance with Abba Saul [who holds that a minor does not acquire his freedom on the death of his convert-master].

Note that this is the direct reverse of the Meiri's reading. The Gemara's point is to explain why Mar Zutra demanded a service (carrying shoes) which continued for some time, rather than perform a quick *hazakah* at the scene.

> It must be that Mar Zutra agrees with Abba Saul that there was no need to perform a *kinyan* at the scene.
>
> The Sages, on the other hand, would require quick action, because in their view the minor would acquire his own freedom immediately on the convert's death.

The Alfasi concludes that the *halacha* is consistent with Abba Saul.

The Meiri protests that the Alfasi's reading does not necessarily support Abba Saul. Perhaps Mar Zutra acted as he did, not because he **held** with Abba Saul, but because he feared that a third party might appear later and maintain **wrongly** that Abba Saul is correct and that the third party made *hazakah* before Mar Zutra.

3. There is a third possibility. Both the Sages and Abba Saul hold that adult slaves can acquire their own freedom only if they are aware of their master's death.

> But whereas Abba Saul holds that minors are worse than adults and can never acquire their own freedom, the Sages hold that minors are better than adults in that they acquire their own freedom whether or not they are aware of their master's death. Minors are in effect wards of the Almighty, and awareness by the Almighty is sufficient to liberate them on their master's death.

This analysis supports the following textual reading:

> **Some say the slave was an adult** [without limiting the case to either Abba Saul or the Sages]. **Others say the slave was a minor in accordance with Abba Saul.**

Mar Zutra went beyond *hazakah*, and took action which might be interpreted as designed to distract the slave. Those who say the slave was an adult hold that Mar Zutra's purpose was to distract the slave from knowledge of the master's impending death. This is vital whether one agrees with the Sages or with Abba Saul.

[7:2]

Those who hold that the slave was a minor must agree with Abba Saul, for the Sages hold that a minor automatically acquires his own freedom whether or not he is distracted. Mar Zutra's action is consistent with Abba Saul. Its essence was not to distract the slave, but rather to acquire him before a third person makes *hazakah*.

The Meiri disagrees with the third view since a person should be entitled to acquire an interest **in his own body** without awareness of the death of the master.

[23:2]

[Agent appointed by a slave; priest not an agent]

Just as a slave can acquire his deed of emancipation directly from his master, so can he appoint an agent to accept the deed. If A has two slaves, one cannot accept a deed for the other. But A's slave can accept a deed from B as the agent of B's slave.

If A makes an oath not to derive benefit from priest B, B may nevertheless offer A's sacrifices on A's behalf. In conducting sacrifices, a priest is not an agent of the person who brings the sacrifice. Priests are agents of the Almighty.

[24:1]

[Redemption of the second tithe]

The redemption price for second tithe derived from one's own land is the value of the tithe plus one-fifth. Four *zuz* worth of second tithe must be redeemed for five *zuz*; the premium is one-fifth of the five *zuz*. The rule applies:

whether the land was acquired by inheritance or gift;

whether the second tithe is derived from a husband's own lands or from his wife's lands in which the husband has usufruct rights. The second tithe counts as usufruct, and the husband has absolute ownership in it;

whether the owner redeems the tithe himself or through an agent; and

whether the owner redeems his own tithe or the owner's wife redeems the second tithe with her husband's funds.

A single woman can redeem her own second tithe without adding a fifth, on the strength of the verse "If a **man** [but not a woman] redeems second tithe [he must

add a fifth]."[444]

Where a third party gives a woman money on condition that her husband obtain no ownership rights, the woman can use the funds to redeem her husband's tithe without adding a fifth, since in this case she is not her husband's agent.

A husband has no usufruct rights in second tithe which his wife inherits. Usufruct rights attach only to property which is entirely personal and no part of which is sacred. That is why if the husband redeems the tithe, or if the wife redeems the tithe with her husband's money, she need not add a fifth. The **husband's** money is being used to redeem the **wife's** second tithe.

[Slave's freedom on account of loss of limb]

A gentile slave is freed if his master deliberately strikes him and causes the permanent loss of his eye, his tooth or one of 24 surface projecting limbs, *i.e.,* the 20 fingers, the protruding portion of the two ears, the nose, the breast in a woman and the male member in a man. Scripture lists the eye and the tooth[445] only to indicate that the affected limbs must be on the body's surface, and that the loss must be permanent, in the manner of a lost eye or tooth.

Why are both eyes and teeth listed? If only teeth were listed, we would have included a child's teeth which are not permanent in the manner of an eye. If only eyes were listed we would have excluded adult teeth which are not present at birth in the manner of an eye.

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[444]Lev.27:31. What then shall we make of the double verb in the cited verse "And if the **redeeming** man shall effect a **redemption**...", which the Sifri takes as a directive that a woman must also add a fifth? That verse applies only where a woman redeems her husband's tithe as his agent.

[445]Ex.21:26,27.

[7:2]

[24:2]

The Rambam rules that a slave is freed if the master wrenches the slave's beard and dislocates his jaw. True, the jaw itself is not one of the limbs whose loss of function frees a gentile slave. But the slave is freed because the master caused the **teeth** embedded in the jaw to lose their function.

What if the master removes a limb, such as a blind eye, which had not functioned previously? The slave is freed. Compare the rule that fowl may be sacrificed if a limb is non-functional[446].

Conversely, a slave is freed if the master does not remove the limb but by direct contact makes non-serviceable a limb which was previously serviceable. For example, if the slave's eye was dim but usable, or if his tooth was loose but usable, the slave is freed if the eye or tooth is made non-usable, notwithstanding that the eye or tooth is not actually removed.

A slave is not freed for damage which will eventually heal, such as a wound to the hand.

A slave who has been freed by loss of a limb may not marry a Jewish woman until he obtains a deed of emancipation. The *halacha* accords with R. Akiva, under the general rule that R. Akiva prevails in disputes with single Rabbis, such as R. Tarfon in this instance.

But what of the rule that the *halacha* agrees with the views of arbitrators? Do not sages in the Gemara purport to arbitrate R. Akiva's dispute with R. Tarfon? No! The *halacha* follows the arbitrators' view only in disputes related in the Mishnah, not in disputes related in a *baraitha*.

The arbitrators hold with R. Tarfon that no deed is required where an eye or tooth is involved, and with R. Akiva where one of the 24 limbs is involved. They explain that freedom on account of loss of an eye or a tooth is Scriptural. Freedom on account of the loss of other limbs is derived indirectly by the Rabbis, and must therefore be supported by a deed.

But is not a doctrine Scriptural when it is derived by *klal u prat* [447]? There are

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[446]But not if the limb is totally removed or if a wing is totally withered. A limb that is withered is the same as a limb which has been removed. Some commentators limit this rule to the **wing**, because a fowl's strength and capability center in its wing.

[447]The *klal* (general proposition) is "If a man smite," suggesting that any limb can be smitten. The

two views.

1. Some commentators explain that doctrines derived from *klal u prat* are Rabbinic in essence, and *klal u prat* is used only to support the Rabbinic rule. Similarly, the Gemara[448] refers to the following three propositions as Rabbinic although they are derived from *klal u prat*:

i. Any material which can support plant growth may be used to cover the blood of a slaughtered fowl or animal, notwithstanding that Scripture refers only to earth[449].

ii. A *get* may be written on any material, notwithstanding that Scripture refers only to a book[450].

iii. A *nazirite* may not shave with any implement, notwithstanding that Scripture proscribes only a razor[451].

2. Rabbeinu Tam explains the matter differently. Certainly, all 24 limbs are equal Scripturally with the eye and tooth. Still, a deed is required for all other limbs because they are not stated directly. There is concern that those who are not learned might not be aware of the *klal u prat* and may believe that the slave was not freed. If the slave marries a Jewish woman without a deed, such persons might be misled into holding that a slave who was not freed may marry a Jewish woman.

This error is made more likely because the hurt to the slave is frequently accidental or unintended, and the master is motivated at some later time, when the memory of witnesses has faded, to announce that the slave was not freed at all.

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prat (specific proposition) is "the tooth...the eye." The interpretive rule of *klal u prat* infers that Scripture did not limit the general to the specific.

[448]Sot.16:1.

[449]Lev.17:13.

[450]Deut.24:1.

[451]Num.6:5,

[7:2]

[Abrogation of *kiddushin* and *get* because of Rabbinic doctrine]

R. Ahai Gaon holds that where *kiddushin* was witnessed by persons who are Rabbinically incompetent as witnesses[452] the woman must obtain a *get* before she marries another[453]. Rabbeinu Tam's reasoning applies. Not all persons are aware that the witnesses are incompetent, and they may be misled into believing that a betrothed woman can marry another without a *get*.

Why then is no *get* required where a woman is betrothed with *hametz* after 12 o'clock on the 14th day of Nissan? Is not *hametz* then proscribed only Rabbinically!

Firstly, the Rabbinic proscription of *hametz* is widely known, and errors are not likely.

Secondly, the *kiddushin* are no invalid by **direct** Rabbinical proscription. They are **indirectly** voided because the Rabbinic proscription removes the owner's property right. *kiddushin* then fails automatically.

One cannot reason from cases in which the Rabbis explicitly invalidate *kiddushin* to cases in which there is no explicit holding.

Some commentators extend the rule of R. Ahai Gaon to require a *get* for *kiddushin* which is witnessed by persons whose incompetence is derived from indirect Scriptural references. (The only relationship which Scripture invalidates directly is testimony of fathers for sons, or sons for fathers.) They reason from our Gemara which downgrades derivations which rely on Rabbinic interpretations. The Meiri disagrees strongly with this view.

Some, including the Alfasi, take the opposite extreme and disagree with R. Ahai Gaon. They do not require a *get* where the witnesses are incompetent Rabbinically. They apply the rule that the Rabbis intend their rules to be the equivalent of Scriptural doctrine, and they therefore annul the *kiddushin*. The Meiri opposes this.

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[452]This applies only after there has been a public announcement of the witnesses' incompetence. Until then, their testimony is valid for all purposes. San.26:2.

[453]Similarly, where a woman cannot engage in *yibbum* because marriage to the *yabam* is forbidden Rabbinically, the *yebamah* must still perform *halizah* before she may marry another.

[7:2]

What would the Alfasi hold if a ***get*** is delivered in the presence of Rabbinically incompetent witnesses? The Meiri presumes that here the Alfasi would not invalidate the *get*.

The Rabbis are empowered to annul *kiddushin* because *kiddushin* is contracted subject to the reserved right of the Rabbis to annul. This is based on their power to force an abandonment of value used in monetary *kiddushin*, and to declare that intercourse which was intended for *kiddushin* is illicit.

There is no corresponding power or rationale for *get*.

Besides, even for *kiddushin* the right to abrogate is exercisable only where expressly referred to in our Gemara, and not wherever the Rabbis might consider *kiddushin* improper for some reason.

The following are examples of cases in which there is no express reference to abrogation:

where an agent betroths a woman for himself rather than for his principal[454];

where *kiddushin* is effected with the proceeds of *orlah* or *k'lay hakerem*[455];

where the man was previously married[456]; or

where betrothal is prohibited on pain of flagellation[457].

[Responsibility for damage caused by one's animal]

The owner of an animal is responsible for all damages which his animal causes by direct physical contact while it is walking naturally. The owner is responsible for only one-half of the damage which is caused indirectly, such as by pebbles thrown by the animal, or if the damage is caused by unnatural behavior.

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[454] 58:2.

[455] 56:2.

[456] Presumably the Meiri here refers to the *herem* of Rabbeinu Gershom.

[457] 12:2.

[7:2]

It follows that if a cock stretches its head into the cavity of a glass vessel, and then crows and breaks it:

1. If there was food in the vessel, the behavior is natural. Still, the owner's responsibility is limited to one-half of the loss because the cock's body did not directly touch the vessel. Compare the rule for damage by pebbles.

2. If there was no food in the vessel, the behavior is unnatural, and the owner's responsibility is limited to one-half of the loss for that reason.

The same applies to damage caused by a neighing horse or a braying donkey.

[Personal injury caused without physical contact]

If A blows into B's ear without touching him, and deafens B, A is responsible only for B's embarrassment and not for any other damage suffered by B. If A seized B to blow into his ear, A is responsible in full. These rules are explained in detail elsewhere[458].

[Loss of limb by the master acting as doctor, etc.]

If the master is a doctor, and the slave asks him to apply salve to his eye or to drill his tooth, the slave is freed if the master blinds his eye or dislodges his tooth. What is essential is not the intent to blind the eye or to loosen the tooth, but rather to touch the eye or the tooth. Needless to say, the slave is freed if the master intended to **remove** the tooth for health reasons.

But if the master blinds a fetus's eye the fetus is not freed, since the master did not intend to touch the eye. Similarly, the slave is not freed if the master throws an animal at the slave and the slave's eye is blinded or his tooth is dislodged as a result.

If the slave had a sixth finger on his hand and the master removes it, the slave is freed only if the finger was in line with the other five.

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[458]B.K.18:2.

[7:2]

[25:1]

The slave is not freed if the master castrates him by loosening his testicles without removing the scrotum, or if the master removes the slave's tongue. Only patent and obvious losses result in freedom.

[Freedom on loss of limb subject to jurisdiction of present-day Beth dins]

The Alfasi does not list *halachot* which are in essence penalties, because such *halachot* are rarely invoked and because the Beth din does not presently have the power to assess penalties[459]. Why then does the Alfasi refer to the rule which frees a slave on the loss of a limb? Because the Beth din does have the power to ratify property seized towards a penalty; a slave is considered to have seized his own body.

[What is an "exposed" area?]

A leper is considered unclean if any of the following signs are present:

1. If at any time there is a white hair within the affected area.

2. If at any time there is healthy skin within the affected area.

3. If the affected area expands during any of the seven-day periods in which the potential leper is sequestered for examination.

Where the affected area is on the tip of a limb[460], and healthy skin obstructs the priest's vision so that he cannot see the entire affected area at one time, the affected person is clean. Scripture requires that "The priest shall see it,"[461] which means that the whole affected area must in the same view be seen as **one** affected area.

If the leper's whole body is affected, he is clean unless there is some portion of his body on which there is healthy skin which can be examined in one view. Here, there is no verse "The priest shall see it." Still, Scripture considers healthy skin to be a sign of uncleanliness only where "The healthy skin is in the affected area,"[462]. This

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[459]See B.K.54:2.

[460]This applies to all of the 24 limbs by which a slave is freed. But the nipples of a man do not count as the tip of a limb.

[461]Lev.13:3.

[462]Lev.13:10.

means that the healthy skin must be located where unhealthy skin would have resulted in uncleanliness if it did not cover the whole body.

A person who is unclean because of association with a dead person can be purified only by ritual sprinkling on an exposed part of his body. For this purpose, the tongue is considered unexposed, whereas the lips, although sometimes joined, are considered exposed.

On the other hand, the tongue is not considered hidden for the rule that a person is clean if **hidden** parts of his body touch a dead reptile or a *zav*.

A priest is not considered blemished for truly internal defects, such as the lack of a kidney or the puncture of his intestines. But a priest is considered blemished if the greater portion of the unattached part of the tongue is removed. The tongue is considered exposed for this purpose.

Both the tongue and the tooth are considered hidden in applying the rule that all exposed parts of the body must be made wet in *tevilah*. Although the tongue and tooth need not be made wet, they must be wettable **were** the mouth opened. The *tevilah* is invalid if there is an irritating foreign object which separates the teeth, and which, if the mouth were opened, would not have allowed water to enter between the teeth.

> That is why a woman who was a *niddah* must remove all bones from her teeth prior to *tevilah*. It is assumed that such bones are irritating. If a bone is found after *tevilah*, another *tevilah* is required.
>
> Why must a *niddah's* mouth be susceptible to being made wet?
>
> 1. The Gemara recites a case in which Rabbi required that his bondmaid undergo *tevilah* because she had a bone between her teeth during her first *tevilah*.
>
> True, the purpose of the *tevilah* was to allow the bondmaid to eat ritually pure food. But the same rule applies where the purpose of the *tevilah* is to make a former *niddah* fit for relations with her husband.
>
> 2. Another Gemara[463] holds that "whatever separations invalidate *tevilah* also invalidate *tevilah* for .... *niddah*." The only possible meaning is that whatever separations invalidate *tevilah* for ritually pure food also invalidate *tevilah* for the purpose of a *niddah's* relations with her husband.

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[463] Yeb.47:2.

[7:2]

Do not think the rule is Rabbinic. Note the Gemara's reference to the requirement that there be **an entry of water**, which tracks the Scriptural language. Our Gemara also applies R. Zera's rule for *menahot*:

> for objects which are fit for mixing [in our case for making wet], the mixing [in our case the making wet] is not indispensable; for objects which are not fit for mixing, the mixing is indispensable[464].

The rule for *menahot* is definitely Scriptural.

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[464]R. Zera's rule is discussed in greater detail at B.B.81:2.

[7:2]

[25:2]

[Certain sacrificial blemishes]

An animal is blemished for sacrificial purposes if:

its testicles or male membrum is bruised or crushed; or

if the membrum (but not the testicles) is **broken or cut**.

bruising refers to the mild crushing of the testicles by hand;

crushing refers to more severe crushing by hand;

cutting refers to case in which there still remains some connection between the testicles between the body; and

breaking refers to the complete separation of the testicles from the body, but retention of the testicles within the scrotum[465].

Bruising and **crushing** are as obvious in the testicles as they are in the membrum, **breaking** and **cutting** are not; this explains their differing treatment.

The same applies to the prohibition against castrating animals under the verse "And in your land you shall not do so"[466]: only the male membrum may not be broken or cut.

[*Kinyanim* for animals]

The fourth Mishnah deals with the acquisition of animals:

Large cattle are acquired by *mesirah*; small cattle by lifting: this is the opinion of R. Meir and R. Eliezer. But the Sages rule: small cattle are acquired by *meshikhah*.

Real property can be acquired with money, deed or *hazakah*. Chattels cannot.

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[465]This explains how there can be **breaking after cutting**. Shab.111:1.

[466]Lev.22:24.

[7:2]

[*Kinyanim* for chattels generally]

There are nine *kinyanim* for chattels. Six do not require physical contact between the purchaser and the chattel, and three do require contact. The six which do not require contact are:

1. the lease by the seller to the purchaser of the real property on which the chattel rests;

2. *halifin* in which there is a ritual transfer of nominal value by the buyer to the seller;

3. *halifin* in which there is a true exchange, such as a cow for a donkey.

4. acquisition of the chattel as an adjunct (*agav*) to the acquisition of real property;

5. the placement of the chattel on other chattels which belong to the purchaser, but only where the purchaser's chattels rest on a public thoroughfare and not on the seller's real property;

6. the placement of the chattel on real property owned by the purchaser.

These *kinyanim* have the following limitations:

i. *Kinyan* No.6 is effective only where the buyer's real property is secure against thieves;

ii. *halifin* is not effective where the item transferred by the buyer to the seller is a coin or belongs to the seller.

These forms of *kinyan* transfer ownership of every conceivable type of chattel, except that coins cannot be transferred by *halifin*.

The three forms of *kinyan* which require physical contact between the buyer and the chattel are:

1. lifting:

2. *meshikhah*; and

3. *mesirah*.

A person can use any of the nine *kinyanim* to acquire a chattel for another person.

[7:2]

Why do we not list as a *kinyan* the **confession** by A that B owns a chattel? Because this form of transaction is not structured as a **transfer** by A to B, but rather as a statement (concededly fictional) that B owned the chattel all along.

[Mechanics of *mesirah***]**

Precisely what is *mesirah*? The Gemara explains that there is *mesirah* if the buyer seizes the animal by its hoof, hair, saddle, saddle-bag, halter or bell.

Must the seller pass these items into the hands of the buyer? The Tosafot hold "yes." They refer to a Gemara[467] which holds that *mesirah* is ineffective to acquire property lost by others or property which was owned by a convert who died without heirs.

The Gemara explains: "Who delivers the object to the buyer for the purposes of *kinyan*?"

But the Gemara can be interpreted as inferring only that in a proper *mesirah* the seller must **orally instruct** the buyer to seize the saddle, etc.

In fact, another Gemara suggests that a seller in a *mesirah* transaction tells the buyer "**Go** [rather than **come to me]** and seize the object to make a *kinyan*."

[The *halacha* **on how animals are acquired]**

Return again to the Mishnah.

R. Meir and R. Eliezer hold that large animals such as horses, mules, asses and oxen may be acquired by *mesirah* because of the inconvenience of *meshikhah* or lifting. Smaller animals, on the other hand, can be acquired only by lifting.

The Sages of the Mishnah disagree and hold that *meshikhah* is also effective for smaller animals, because the legs of these animals can become entangled in earth and grass, so that lifting may be more difficult than *meshikhah*.

However, the *halacha* accords with none of these viewpoints. Instead, it follows the Sages of the *baraitha* who hold that all animals are acquired by *meshikhah*, that lifting is not necessary for any animal[468], and that *mesirah* is not sufficient for any

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[467]B.M.8:2.

[468]Except perhaps for such truly light animals as kids or calves, or fowl such as geese or chickens. This is supportable by B.B.86:1, which maintains that objects which are by nature lifted can be

animal.

[Ranking of lifting, *meshikhah* and *mesirah*]

Return now to the three *kinyanim* which require physical contact. These *kinyanim* apply differently to different chattels. This is best understood by ranking the three in order from greatest effectiveness to least effectiveness:

1. lifting for chattels which are readily lifted;

2. *meshikhah* only where lifting is impractical; and

3. *mesirah* only where lifting and meshikhah are impractical, such as a ship.

Anything which is susceptible to a higher form of *kinyan* cannot be acquired by a lesser form. A higher form of *kinyan* is always valid for an object even where that form of *kinyan* is not necessary: a ship can be acquired by *meshikhah*. Also, the seller can insist that the buyer must use a higher level of *kinyan* than is necessary. The parties cannot by agreement validate a lower degree of *kinyan*[469].

This is the Meiri's view. Rabbeinu Tam disagrees and ranks *mesirah* superior to *meshikhah*, since, as will be shown below, *mesirah* is valid in a public thoroughfare whereas *meshikhah* is not. The consequence is that large cattle, for which *meshikhah* is known to effective, should certainly be acquired by *mesirah*, which is a higher form of *kinyan* and which is also practical for cattle.

Consider the following in evaluating Rabbeinu Tam's position:

1. Another Gemara[470] rules that the *kinyan* of riding an animal (the equivalent of *mesirah*) is inferior to the *kinyan* of leading the animal (the equivalent of *meshikhah*).

   Rabbeinu Tam would explain that the Gemara just mentioned deals with lost property or the property of a convert who dies without heirs. It is because there is no **seller** to deliver the animal that *mesirah* is defective and is no better than *meshikhah*.

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acquired only by lifting.

[469]This principle is disputed by the commentators. See B.B.76:2.

[470]B.M.8:2.

[7:2]

2. In another Gemara[471] the Sages hold that *mesirah* is not effective so long as the buyer does not make *meshikhah*. This is a strong suggestion that *meshikhah* is the superior *kinyan*.

3. The Sages in our Mishnah state their view that both large and small animals are acquired with *meshikhah* in the following syntax: just as small animals are by *meshikhah* [meaning *meshikhah* only], so also are large animals acquired by *meshikhah* . The parallelism suggests that **only** *meshikhah* is effective for large animals, and does not support Rabbeinu Tam.

[*Kinyanim* differ in the domains in which they are effective]

1. Lifting is valid everywhere, even on the seller's real property.

2. *meshikhah* is effective only in the no-man's alley which adjoins a thoroughfare, or in real property which is jointly owned by the seller and the buyer, or where the chattel is drawn from a public thoroughfare into one of these domains.

3. *mesirah* is valid in a public thoroughfare, and in private real property in which neither the buyer nor the seller have an ownership interest. The Meiri holds that *mesirah* is also effective in an alley and on real property jointly owned by the buyer and the seller[472]. *mesirah* is not effective on the seller's real property.

Assume that an object is susceptible to *meshikhah* but is situated in a public thoroughfare in which *meshikhah* is invalid. Can *mesirah* be used? The Alfasi holds yes[473]. The Meiri disagrees. Here are considerations to be kept in mind:

1. The Gemara[474] states that *meshikhah* is valid in an alley and jointly owned property, whereas *mesirah* is valid (presumably for the same object) in a public thoroughfare and in real property in which neither party has an

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[471]B.B.76:1.

[472]Those who disagree maintain that these domains are valid for *meshikhah* only.

[473]Some go even further than the Alfasi and hold that any object which is appropriate for *meshikhah* can nevertheless be acquired by *mesirah* where the seller so directs.

[474]B.B.76:2.

interest. Does this not support the Alfasi?

Not necessarily. Perhaps the Gemara does not refer to the same object. Rather, the Gemara separately refers to an item which is susceptible to *meshikhah* and to an item which is susceptible only to *mesirah*.

2. Consider a Gemara[475] which discusses a dispute between R. Meir and the Sages on the proper *kinyan* for a ship. R. Meir holds that *mesirah* is appropriate, whereas the Sages require *meshikhah*.

R. Ashi explains that where the seller simply directs the buyer to make a *kinyan* all agree that *mesirah* is sufficient. The issue is where the seller directs the buyer to make *meshikhah*. The Sages hold that the seller was specific, whereas R. Meir holds the seller simply meant "do the appropriate *kinyan* and then you may pull the ship to wherever you want."

The Alfasi understands the Gemara to mean that the Sages hold that *meshikhah* is the generally acceptable mode of *kinyan* for a ship. How then can be *mesirah* be effective?! It must be that this refers to domains which cannot support *meshikhah!*

But the Meiri disagrees. There is no question but that *mesirah* is the appropriate *kinyan* for a ship, and **that is why *mesirah* is effective**. The only issue in the Gemara is whether the seller is understood to demand *meshikhah* as a higher form of *kinyan*.

This completes the exposition of the Mishnah. The following is the substantive portion of the Gemara's discussion:

[Use of rented or loaned real property to transfer chattels]

Where A, the owner of real property, rents his land to B, B acquires a kind of temporary ownership in the land. It is this ownership which suffices to transfer to B chattels which he purchases from A and which are located on the rented real property[476].

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[475]B.B.76:1.

[476]However, A is still responsible for religious violations which are done through the use of his property. This is the meaning of the Gemara (A.Z. 15:1) which holds that renting does **not** change property ownership.

[7:2]

Even a loan of real property is sufficient to convey temporary ownership to the borrower. The only distinction is that a rental transaction can be completed by the payment of money. For this purpose the money paid by the renter to the owner for the chattel is sufficient. To complete a real property loan, the borrower must either obtain a deed or perform *hazakah*.

[Use of buyer's receptacle as a *kinyan*]

A chattel can be acquired if placed on or in a receptacle owned by the buyer which is not located on seller's real property. The seller need not direct the buyer to make a *kinyan* if it is clear that a sale was contemplated.

If the receptacle is located on the seller's real property, there is a *kinyan* only if the seller directs the buyer to make a *kinyan*. Here the *kinyan* is not by way of the buyer's receptacle. Rather it is by way of the loan of the real property on which the buyer's receptacle is located.

Distinguish this from the case in which the chattel to be purchased lies directly on the real property (not on buyer's receptacle). For the seller to loan his real property to the buyer in this case requires a deed or *hazakah*.

[Mechanics of lifting as a *kinyan* for animals]

A buyer can purchase an animal by placing an object under each of the animal's legs.

[26:1]

Several commentators hold that there is no ownership change in rented real property. Instead, the right given by A to B to maintain the chattel on the rented property is sufficient to transfer ownership of the chattel to B.

[7:2]

If the seller directs the buyer to acquire an elephant or other large animal by lifting, the animal may be lifted by causing it to step unto a bundle of branches three *tefachim* high[477]. The buyer can also hold branches over the animal's head to cause it to raise itself three *tefachim*. This is the equivalent of the rule that there is *meshikhah* where the buyer merely **causes** the animal to move; it is not necessary that the buyer physically move the animal.

[*Kinyanim* for real property]

The next Mishnah continues the discussion of *kinyanim*:

> Property which offers security [real estate] is acquired by money, deed or *hazakah*. Property which does not offer security [chattels] can be acquired only by *meshikhah*.
>
> Property which does not offer security may be acquired in conjunction with property which offers security by money, deed or *hazakah*; and it obligates the property which provides security to take an oath concerning them.
>
> Money is valid even if:
>
> not given as the purchase price;
>
> it represents only a portion of the purchase price, or only a *perutah*;
>
> many fields are to be acquired with one *perutah*[478].

What is essential is that there be an intent that the money effect a *kinyan*. Where the intent is **not** to acquire with money, but with *hazakah*, the buyer can acquire only those fields for which he has paid in full[479].

The essence of *hazakah* dominance by the buyer. Dominance can be expressed by such minor activity as locking a gate to the field, or setting up a fence around the field, or breaking a hole through a fence around the field. The *kinyan* is performed

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[477] An interest in an *erub* can be acquired where the object is lifted only one *tefach* (Erub.79:2). Why? Some explain that direct lifting by hand requires only one *tefach*, and it is only where the lifting is by chattels that three are required. A more plausible explanation is our general lenience in issues of *erub*. See also B.K.29:2.

[478] But only if all fields are mentioned.

[479] 27:1. See also B.M.49:2.

either in the presence of the seller or at his direction.

Money serves as a *kinyan* only where it is not the custom to write a deed, or where the parties agreed that a *kinyan* by money will suffice. Where it is customary to write a deed, there is no *kinyan* until the deed is written.

Precisely what does this mean? Some commentators explain that the Gemara is not to be taken literally. The *kinyan* is valid, and the Gemara infers only that the scribe and the witnesses are compelled to write the deed. The Meiri disagrees:

> If either party can withdraw (which the Meiri believes to be the rule), what *kinyan* has occurred?
>
> If the *kinyan* is effective only upon signing of the deed, again, nothing has occurred!
>
> And, if the *kinyan* is in fact complete, nothing more need be done, because a deed which follows *halifin* (by way of example) is evidentiary only and has no operative force.

[Can real property be transferred nowadays by deed?]

> What is the rule today? Are deed's customary where we live? Consider the following:
>
> 1. Our deeds appear to be directed more at evidence of the transaction[480] rather than as an operative *kinyan*. Our deeds recite the transaction as having already occurred, and are witnessed. If the deeds were operative documents, they would recite "My land is **hereby** sold to you," and there would be no requirement of witnesses. In fact, deeds are written even for chattels, and this must be for evidence only, since deeds are invalid as a *kinyan* for chattels.
>
> 2. Another Gemara[481] clearly holds that deeds, at least in the Gemara's time, were customarily meant as *kinyan*, rather than as evidence only. The Gemara holds that a purported transfer of land by a husband to his wife is not valid, because the transaction is only a scheme for the husband to determine whether his wife has secreted funds. The Gemara adds that if

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[480] And also to establish responsibility of the seller if there is a later attack on seller's title.

[481] B.B.51:1.

> the transfer is by deed rather than money, so that no scheme could be intended, the transfer **brought about by the deed** is final.

The Meiri concludes that at the present time deeds are presumed to be for evidence only, so that a deed is not a necessary precondition for the validity of money as *kinyan*. Still, *halifin* is so universally used that money cannot serve as *kinyan* until there has been *halifin*.

[Where deeds are sufficient without money]

Our Gemara holds that a deed without money is valid as *kinyan*:

for gift transactions;

in sales in which both parties agree that a deed is sufficient[482]; and

in sales in which the seller is conveying title to a field because of its poor quality[483].

[*hazakah* or *halifin* for real property without money]

Some commentators reason by extension that *hazakah* or *halifin* without money are valid as *kinyan* only for gifts and not for sales, on the theory that such formalities should have no greater status than a deed[484]. The Meiri disagrees, primarily because it is unlikely that the doctrine would not have been mentioned in the Gemara. He also considers and deals with the following arguments:

1. The Scriptural bases for *hazakah* and *halifin* are cases in which gifts

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[482]Assume that one party, for example the buyer, has stipulated that he alone can decide whether the *kinyan* will require both money and a deed, or whether a deed alone shall suffice.

The buyer is in a favored position once money has been paid. He can withdraw by declaring that he desires both formalities. Should the seller wish to withdraw, the buyer can thwart him by declaring that he wishes money to be effective standing alone.

[483]Where **money** standing alone is invalid, the party who withdraws is subject to the curse of *mi shepora*. Most commentators hold that there is no curse if a party withdraws where there was a **deed** which was not valid standing alone.

[484]One commentator also notes that where *hazakah* is customary, neither money nor deed is valid without *hazakah*.

rather than sales were involved!

The Meiri's response is that the Scriptural references are not sources. They only support traditional learning.

2. Another Gemara[485] deals with a buyer who has made partial cash payment for real property. It suggests that if the buyer wishes to finalize the transaction, he agree with the seller that the balance of the purchase price be considered paid by a loan made by the seller to the buyer. If *halifin* were valid without payment of the purchase price in full, why does not the Gemara suggest *halifin*?

Perhaps because the Gemara wishes to point out how the transaction can be made irrevocable using only a monetary *kinyan*.

3. Yet another Gemara[486] asserts that the three-year *hazakah* of adverse possession is an issue only where there is a dispute on ownership, and that simple *hazakah* **transfers title to gifts, distributes property among heirs, and conveys title to property left by an intestate convert**. None of these examples involves a sale.

But perhaps the Gemara's purpose is to list cases in which a minor action such as *hazakah* conveys title without passage of money. This is always true in gift transactions. But in sales transactions the seller **most likely** (but not necessarily) transfers only the property for which the buyer has paid.

Besides, the Mishnah[487] to which the Gemara refers deals with sales as well as gifts.

4. In considering the superiority of one form of *kinyan* to another[488], the Gemara does not say that *hazakah* is valid standing alone whereas money and deeds are not.

But perhaps the Gemara does not wish to use validity standing alone as a

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[485]B.M.47:2.

[486]B.B.52:2.

[487]B.B.42:1.

[488]27:1.

distinction, because money and deeds are each valid standing alone where the parties so stipulate expressly.

[Requirements for deeds given as *kinyan*]

A deed intended as a *kinyan*, rather than as evidence:

is valid only when transferred by the seller to the buyer's hand,

requires no signing witnesses[489] or that it be written in the seller's handwriting,

and can be on non-permanent, forgeable material.

If the deed was forgeable, was not witnessed and was not in the seller's handwriting, the seller can later deny that the deed was his act since a deed of this kind is invalid as **evidence**[490]. However, if the seller acknowledges the deed as his act, the deed is absolutely valid as a ***kinyan***[491].

[Transfer of chattels in conjunction with real property]

Chattels can be acquired in conjunction with (*agav*) real property, whether or not the chattels are on the real property[492], and regardless of the amount of real property transferred. Even a speck of real property, when transferred by money, deed or *hazakah*, is sufficient to convey 1,000 sheep and 1,000 camels. The only essential

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[489]Some commentators require that there be witnesses to the **transfer**.

[490]The Gemara (Keth.21:1) which requires that the deed be inscribed on non-forgeable material refers to a deed to be used for evidence.

[491]Some commentators hold that a deed on forgeable material is valid as *kinyan* only if the writing is engraved. The Meiri disagrees. The Gemara is specific in referring to **writing**; the term excludes engraving. See Git.20:1.

[492]This is the Gemara's conclusion. Initially, the Gemara considered the possibility that the chattels must physically be located on the real property sold by the seller to the buyer.

But how could the Gemara even consider this possibility? Would not *agav* then be merely a subset of the rule that chattels can be acquired if **located on the buyer's property**?! Not so, for the buyer's property can effect a *kinyan* only if it is guarded against outsiders. But where *agav* applies, chattels can be transferred even where the property is not guarded.

formality is that the seller say "Acquire the chattels **with** the real property."

Now, our Gemara uses the Aramaic formulation "agav," which literally means "**in conjunction with**". But "agav" can also be translated less formally as "with"; the phrase **in conjunction with** is not absolutely necessary. Note that the **in-conjunction-with** *kinyan* is derived from the verse "And their father gave them silver and gold presents and delicacies **with** fortified cities in Judea."[493]

Rashi holds otherwise. The Gemara considers whether a statement by the seller is required in *agav* transactions. The Gemara wishes to prove that no statement is required by listing cases which do not involve a seller's statement. But in one of those cases the seller did indeed use the **with** formulation! Obviously, **with** has no validity!

The Meiri disagrees. The Gemara does not claim that **none** of the listed cases involve a statement; only that some do not[494].

[Oaths in combined real property and chattel disputes]

Oaths are not imposed in real property disputes. But if disputes involve chattels **and** real property an oath may be imposed for both types of property. This is the converse of the rule that chattels follow real property for the purposes of *kinyan*.

This completes the exposition of the Mishnah. There follow the matters discussed in the Gemara.

[Liability of seller and donor for claims by his creditors]

A seller is responsible to his buyer should the sold property be seized by the seller's creditors. The donor of property does not have this responsibility towards his donee.

Where a gift is given, but the transaction is referred to as a "sale," the donor does assume responsibility towards the donee and purchasers from the donee, even where the donee acknowledges that the transaction was actually a gift. The majority holds that it is not necessary for a formal "sales" price to be recited. Even without a "price"

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[493]Chron.II, 21:3.

[494]*I.e.*, the case involving R. Gamliel's statement when arriving on a ship in company with the Sages, and the case involving the seller who directed that a deed be written in favor of a third person.

the donor is responsible to the extent of the property's value[495].

[Why money is not a valid *kinyan* for chattels]

Scripturally, money is a *kinyan* even for chattels. Money is invalid nowadays only because the Rabbis wish to encourage the seller to safeguard a chattel he retains in his possession after having received the purchase price. Otherwise the seller might show no concern and tell the buyer "**Your** wheat was burned in my attic." Ramifications of this doctrine are discussed elsewhere[496].

[Minimal land sufficient for *peah*, *bikurim*, *prosbul* and *agav*]

All land, no matter how small, is liable to *peah* and *bikurim*, and to the confession which is made on *bikurim*. The Gemara does not refer to the confession which must be made periodically relating to the tithe, because that confession has no necessary relation to the land. It must be made even by one who buys untithed produce on the market.

The deed of *prosbul* can be written only if the borrower owns real property. Any land owned by the borrower is sufficient, regardless of size.

Finally, as already noted, all land no matter how small, is sufficient when transferred by the seller to the buyer simultaneously to convey chattels from the seller to the buyer[497].

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[495]Depending on the circumstances, the value of the property is determinable either at the time of the gift or at the time of attack by creditors.

[496]B.M.46:2.

[497]See also B.B.27:1.

[7:2]

[26:2]

[*halifin* out of buyer's presence; formal confession]

The Gemara refers to a person who wished to convey a multitude of chattels and for whom only the *kinyan* of transferring chattels *agav* real estate was practical. The Gemara asks why the chattels were not transferred by *halifin*, and answers that the buyer was not present.

This suggests to some commentators that *halifin* is valid only in the presence of the buyer. They say that this is so even nowadays, when it is traditional for the witnesses, not the buyer, to transfer the nominal *halifin* item to the seller on behalf of the buyer. The witnesses act as the buyer's agents, and the buyer must therefore be present.

The Meiri disagrees:

> The difficulty in our Gemara was that no third person was willing to assist the buyer by conveying a *halifin* item to the seller.
>
> Indeed, it **must** be that the buyer could not locate assisting third parties. Otherwise, why did not the seller convey the chattels directly to the third party on behalf of the buyer?!

But why did not the seller formally "confess" that the property belonged to the buyer? A formal confession can transfer property even where the confession is "I owe 100 *zuz* to A," rather than "I owe **these** 100 *zuz* to A"!

> 1. Perhaps the seller did not wish to make a knowingly false "confession" even for a legitimate purpose.
>
> 2. The seller wanted the public to know of his largess. Had he used the "confession" route, the public might not have realized that the "confession" was only a formality.

[Land necessary to support an *agav* transaction]

Chattels can be acquired in conjunction with (*agav*) real property even though the specific land being transferred is not identified. It is sufficient to say that a "*tefach* by *tefach*" plot of land is being sold. Some commentators require that the seller identify the land in which the sold plot is included, and some (probably incorrectly) go even further and require that the seller indicate the direction (north, east, etc.) of the larger field in which the sold plot lies.

[7:2]

As a matter of law the seller must actually own the land in which the *tefach* by *tefach* plot is included. However, the Geonim ruled that even landless sellers can use the **in- conjunction-with** *kinyan* because every Jew owns four cubits of land in Eretz Israel. The Geonim legislated this rule for the purpose of finality in sales transactions, and to avoid the unfair voiding of business transactions.

[Formalities in transfers by the very ill]

The Gemara analyzes a case in which a transferor sought to make a proper *kinyan*. The Sages assume that the transferor must not have been ill, whereas R. Eleazar holds that the transferor may have been ill.

The Sages hold that were the transferor ill, he could have transferred his chattels by oral declaration without a *kinyan*. R. Eliezer, on the other hand, holds that even an ill person is not exempt from *kinyan*.

[*terumah* **and tithe arranged by Rabban Gamliel from afar]**

While travelling in a ship with other Sages, Rabban Gamliel said "Let the first tithe which I am to measure out be given to R. Joshua b. Hananiah, the Levite[498], and the place where it is lying is rented to him[499]." R. Gamliel was compelled to donate the tithe to a Levite who was present on the ship so that the Levite be able immediately to donate a portion of the tithe as *terumah* to a priest. Once compelled to give the tithe to a Levite who was present, Rabban Gamliel preferred to give it to R. Joshua because he was learned and venerable.

[Levites' rights to tithes]

Another Gemara recites that Ezra penalized the Levites for not emigrating with him in mass at the beginning of the Second Commonwealth:

> R. Akiva holds that prior to the penalty the tithe could be given to Levites only. The penalty consisted of permission to give the tithe to priests **as well as** Levites.

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[498]See Er.11:2 in which R. Joshua b. Hananiah directed R. Johanan b. Gudgada not to assist R. Joshua in the closing of the gates "for I [R. Joshua] am of the family of Levites in charge of the gates at the Temple, but you [R. Johanan] are among the Levites who sing in the Temple."

[499] The Meiri notes that the Gemara's insistence on **rentals** suggests that **loans** of real property are insufficient to support *agav*. This is probably because the loan was not formalized by *kinyan*.

[7:2]

> R. Eliezer holds that prior to Ezra the tithe could be given to both priests and Levites, and Ezra penalized the Levites by disqualifying the Levites entirely.
>
> Both hold that Ezra's penalty was permanent.

That R. Gamliel gave the tithe to a Levite, notwithstanding that the penalty was permanent, shows that he holds with R. Akiva.

The Tosefta notes that R. Joshua donated *terumah* out his tithe, and that the *terumah* was given to R. Eleazar B. Azariah who was also present on the ship, and who was a tenth generation descendant of Ezra the priest.

[*Agav* with sub-leased property]

The Tosefta mentions that this *terumah* was given to R. Eleazar b. Azariah by way of the *agav kinyan* which permits chattels to be transferred **in conjunction with** rentals of real property. The real property which R. Joshua rented to R. Eliezer was the same real property which had been rented to R. Joshua by Rabban Gamliel to accomplish transfer of the tithe. But what of the rule that a lessee cannot sublease leased land[500]? Perhaps the rule does not apply where the lessor permits otherwise. Alternatively, perhaps the rule does not prohibit formalistic rentals which are for the purposes of *kinyan* only.

Rabban Gamliel next gave another tithe to R. Akiva b. Joseph as the treasurer on behalf of the poor. The year happened to be either the third or sixth of the seven-year *shemittah* cycle, and a tithe to the poor was obligatory. The tithe was transferred to R. Akiva by renting to R. Akiva (for an actual rental payment) the real property on which the tithe was located. The Gemara assumes that the *kinyan* was *agav*.

[Must chattels be located on real property supporting an *agav* transfer?]

From Rabban Gamliel's emphasis on renting the particular real property on which the tithes were located, the Gemara attempts first to show that *agav* is effective only for chattels located on the real property transferred or rented. But the Gemara concludes that the inference is not necessary. Perhaps Rabban Gamliel did not wish to inconvenience R. Joshua and R. Akiva by giving them tithes on land which was not rented to them and from which the owner could demand that the tithe be removed at any time.

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[500] B.M.29:2.

[7:2]

[Limitations on transfers by placement on buyer's land]

Why did not the Gemara explain that the *kinyan* Rabban Gamliel used was not *agav*, but rather the transfer of chattels to a buyer **on whose land** (whether owned or rented) the chattel stands? There are two possible explanations:

1. If the *kinyan* were of the **on-whose-land** variety, Rabban Gamliel should first have mentioned the rental of real property (making the land the possession of R. Joshua and R. Akiva), and only then should R. Gamliel have mentioned the tithes given to them. The failure of Rabban Gamliel to insist on this order of transfer suggests that both were transferred simultaneously in an *agav kinyan*.

2. The tithes were located in Rabban Gamliel's house, so that they were not guarded against Rabban Gamliel. The **on whose land** *kinyan* is ineffective where the land is not guarded for the benefit of the buyer.

Another Gemara[501] expresses the concept somewhat differently. "Were R. Joshua and R. Akiva standing **at the side of the field** in which the tithes were located?!" The Gemara cannot mean that the produce was in the fields: the obligation to tithe does not arise until produce appears in front of the owner's house. Rather, the produce was in Rabban Gamliel's house, and by asking whether R. Joshua and R. Akiva were standing there, the Gemara's only point is that the produce was not **guarded** in favor of the two.

[Was Rabban Gamliel's produce *tebel**?]***

There are three possible interpretations of Rabban Gamliel's urgency, and the precise nature of Rabban Gamliel's actions:

1. Although *terumah* had been separated from the produce, tithes were not. The produce was therefore *tebel*.

2. The tithe had been separated but not delivered. The remaining produce was not *tebel*.

3. The Meiri's preferred view, which is in essence a combination of the other two approaches.

Each approach will now be considered in detail.

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[501] B.M.11:2.

[7:2]

I. The produce was *tebel*

It is certain that Rabban Gamliel had separated *terumah*:

1. Even one grain of wheat is sufficient to satisfy *terumah* obligations for an entire pile of produce.

2. *terumah* is validly separated by the owner's unspoken thought. It need not be physically measured out.

3. Even if Rabban Gamliel's urgency prevented him from himself separating *terumah*, he could easily authorize others to separate *terumah* on his behalf.

But separation of the **tithes** was a different matter. Each tithe is of considerable dimension; by definition each constitutes one-tenth of the entire produce. Further, the tithes ar not validly separated unless the proper amounts are carefully measured out.

It was this process which Rabban Gamliel did not succeed in accomplishing before his departure (perhaps because he left at the beginning of the harvest and did not expect to be delayed as long as he was), and which he did not wish to entrust to others[502]. That is why the produce was *tebel* for tithes, and that explains Rabban Gamliel's urgency to separate the tithes. He wished to assure that his household not eat *tebel*.

If the tithe was not separated, why Rabban Gamliel's reference to the tithe which he was to **measure**? Because the term also means to **separate**.

Note that the term **measure** is used even in relation to *terumah* which the Levite separates from his tithe. We know that *terumah* need never be measured, only separated.

A scrupulous person is not suspected of separating tithes from *tebel* when the produce is not close by. How could Rabban Gamliel accomplish the separation while away on a ship? Because it is only necessary that the **tithe** be in the same location as the **produce from which it is taken[503];** it is not necessary that the **owner** be close by.

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[502]The Yerushalmi also notes that *terumah* was commonly separated immediately after the produce was wind-winnowed, but that tithes were not separated until the owner desired to do so after he gathered the produce into his house.

[503]To avoid a situation in which the contemplated tithes have been unknowingly burnt or otherwise

[7:2]

Now, Rabban Gamliel's household did not know which portion of the produce had been tithed by Rabban Gamliel. How could they eat any produce at all? Is it because they relied on the doctrine of *berera* to establish retroactively that they did not consume the tithe portion? But we know from other sources that *berera* does not apply in this case![504]

> Yes. We cannot rely on *berera* to permit persons to proceed to eat the produce. *Berera* is sufficient *post facto* to absolve from punishment those who go ahead anyway and eat the produce.

Supportive of the *tebel* interpretation is the Mishnah's lead-in to the case of Rabban Gamliel: One whose produce is located at a distant place, must **call them a name** [presumably dedicate and separate tithes] in the manner of Rabban Gamliel.

> II. The produce was not *tebel*; the tithes had been separated but not delivered.
>
> When must the tithe be distributed?:
>
> "At the end of three years, you shall take out all the tithes of your produce."[505] This means that tithes must be distributed not later than the third and sixth years of each seven-year *shemittah* cycle.
>
> > What about tithes and other separations which need not be distributed, but instead must be consumed by the owner in Jerusalem (such as second tithe, *bikurim* and *neta revai*)? These tithes must be burned when tithes of the first type must be distributed.
>
> When he distributes or burns his tithe, the owner must confess that "I removed the sacred [produce] from my house...and I also distributed it...."[506]. The confession must be made on a festival because of a *gezerah shawah*: the word **end** appears both in the verse just mentioned, and also in the verse "At the **end** of seven years during the **festival** of Sukkot."[507]

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destroyed.

[504]See D'mai 7:4.

[505]Deut.14:28.

[506]Deut.26:13.

[507]Deut.31:10.

[7:2]

> The verse "When you shall cease to tithe..."[508] suggests that the festival for confession purposes should not be Sukkot, since there are kinds of produce for which the obligation to tithe does not mature until after Sukkot. The festival must be Passover.

Rabban Gamliel's concern was that his tithes might not be distributed prior to the relevant deadline. Why did Rabban Gamliel use the phrase **produce which I am to measure**, which suggests that he was referring to a **separation** of the tithe from *tebel*, rather than to **distribution** of the tithe? It is improbable to explain that after an initial separation the tithes were commingled with other produce and that therefore a new separation was necessary!

Perhaps, the tithe was very near other produce, and perhaps it is customary to measure out produce (including tithes) in the course of distribution.

Why did not Rabban Gamliel distribute *terumah*? We know that the confession applies to *terumah* as well as to tithes; *terumah* is implied by the word **also** in the verse "and I **also** distributed it"!

> The Meiri disagrees with those who hold that the confession for *terumah* is Rabbinic only, and that the verse is used only as an *asmakhta*.

But what of a Gemara (Yeb.43:1) which appears to suggest that there is no deadline for distribution of *terumah*? That Gemara means only that *terumah* cannot be burned in the manner of second tithe or *bikurim*; instead *terumah* must be distributed to a priest.

Perhaps, Rabban Gamliel had succeeded in distributing *terumah* prior to his departure.

Why does the Gemara refer to the case of Rabban Gamliel as one in which the owner did not succeed in "calling his produce a name?" Does this not suggest that the issue is one of **dedication** rather than distribution? Perhaps not. The meaning may be that the owner failed to designate the **names of the persons to whom the tithes were to be distributed**. The Mishnah's point may be that the owner must designate specific recipients, and he cannot satisfy his obligations merely by saying "Let the tithes belong to those entitled to them."

Note that the Mishnah which relates the actions of Rabban Gamliel appears among other Mishnahs which deal with the **distribution** of tithes.

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[508] Deut.26:12.

[7:2]

But this approach suffers from the fact that the produce to which Rabban Gamliel referred was in his field rather than in his house. One would have expected that tithes which had been separated would have been placed in Rabban Gamliel's house.

> Can we explain that the produce was in Rabban Gamliel's house which was not guarded for the benefit of R. Joshua and R. Akiva, so that the house was akin to an open field for R. Joshua and R. Akiva? This is unlikely.

The Meiri concludes that the preferred explanation is a combination and amplification of the two preceding readings:

III. Separation **and** Distribution

Rabban Gamliel wished to separate out the tithes, **and** to distribute them.

His concern was **not** that his household might eat untithed produce. They would realize that in Rabban Gamliel's absence they could not rely on the presumption that a scrupulous person does not delay in separating tithes from his produce.

Rabban Gamliel's urgency was simply to distribute the tithes at the earliest time possible, which is when the produce is introduced into the owner's house, namely Sukkot. Rabban Gamliel did not wish to wait until the Passover deadline.

There was no need for Rabban Gamliel to separate *terumah* because he had already done so at the time of his departure when the harvest began. His failure to separate the tithe at that time is explainable on account of the harvest not having been completed. Rabban Gamliel assumed that he would return prior to Sukkot to separate and distribute the tithe in person, but his delay made this impossible. Hence, his action on the ship.

[27:1]

[Slaves transferred by *agav* must be located on real property]

Chattels which are acquired **in-conjunction-with** [*agav*] real property need not be located on the real property. The only exception to the rule is that slaves must be located on real property for a valid transfer[509].

Livestock are treated as chattels and need not be located on the real property.

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[509] B.K.12:1.

[7:2]

Note the reference in our Gemara to 100 sheep being transferred on a square *tefach* of property, and another Gemara's reference to a cow and a garment both having been transferred (presumably subject to the same requirements) in conjunction with real property.

Whether or not the chattels are located on the real property, the *kinyan* is not valid unless the seller expressly directs the buyer to acquire the chattels *agav* real property. The Meiri disagrees with the Rambam who says that no declaration is necessary where the chattels are located on the real property.

[Revocation of authority to write deed]

If A tells C and D to acquire a field for B by hazakah and to write a deed for B as evidence, A can revoke the authority to deliver the deed at any time before delivery. This applies even after C and D complete the *hazakah* and write the deed. But once the *hazakah* is complete A cannot revoke the sale of the field so long as he did not make the sale conditional on delivery of the deed[510]. The Meiri explains the purpose of the deed elsewhere[511].

Assume that A needs funds and prepares a deed for his real property so that it is immediately available should he succeed in selling his field. A scribe may write a deed of this kind, since the seller is the only person who may be damaged should the deed be lost and should a finder claim that he acquired the field. If upon sale of the land to B, A authorizes B to acquire the deed *agav* the land, B does succeed to ownership of the deed. The distinguishing factor is that the deed already exists.

The rule is otherwise where A directs C and D to acquire a field for B by *halifin*. The immediacy of *halifin* and the ease with which it can be accomplished suggests that A wished B to acquire easily and without difficulty; hence, B acquired the rights to the deed in conjunction with his acquisition of the real property. It is in such a case that we apply the rule that a seller is presumed to intend that the buyer's *kinyan* be recorded. The Meiri disagrees with commentators who would apply the presumption only where the seller does not object to the writing of the deed.

[*Agav* suffices to transfer promissory notes]

The **in-conjunction-with** *agav kinyan* also transfers to the buyer promissory notes which third parties gave to the seller, but only if the seller authorizes the buyer to

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[510]For variations on this rule, see the Meiri to B.B.77:1.

[511]B.B.77:1.

acquire the notes **and the obligations which they represent**.

Can an oral unrecorded claim be transferred by this *kinyan*? The Rambam holds no, and he disagrees with Geonim who hold that the *kinyan* suffices to transfer any and all claims.

[Requirement that payment have been made for certain chattels transferred by *agav*]

Chattels can be transferred *agav* real property whether the real property is donated and the chattels are sold, or *vice versa*. But if the chattels are sold rather than donated, and the chattels are not located on the real property, the *kinyan* is effective only for chattels for which full payment has been made. In our Gemara, Raba notes that "the matter [the *agav kinyan* referred to in a *baraitha*] was learned only when payment was made."

It follows that the rule for *agav* is the same as the rule stated by Samuel regarding *hazakah* on different parcels of real property: a *hazakah* in one parcel of real property can serve to acquire other fields only if payment has been made.

The Rambam disagrees with this proposition, and holds that chattels can be acquired *agav* real property even where payment has not been made in full. Raba's statement to the effect that "the matter was learned only where payment was made" refers not to the *baraitha* but rather to Samuel's statement that ten fields can be acquired with one *hazakah*.

> But is it not true that **the matter was learned** formulation generally applies only to a Mishnah or a *baraitha*? Yes, but Raba's point is that Samuel's statement was also mentioned in a *baraitha*, and the *baraitha*'s holding was limited to cases of full payment.

[*Agav* where real property and chattels are transferred to different purchasers]

Is there a *kinyan* where the real property is transferred to A and the chattels are to be transferred to B? Probably not.

> But what of the fact that Rabban Gamliel's tithe was effectively transferred **to the poor** although the *kinyan* used was a rental of real property **to R. Akiva**:
>
> > Firstly, the real property was rented to R. Akiva only for the purpose of transferring the chattel (the tithe) to the poor.
> >
> > Secondly, R. Akiva acquired the real property as trustee for the poor.

[7:2]

[Seller's rights if buyer makes *hazakah* but fails to pay the purchase price]

Where A sells real property to B and B makes a *hazakah* before he has paid for the property, the property in which the *hazakah* was made belongs to B, and A's rights are limited to his claim as creditor of B. This applies even where A insists on receiving the balance of his funds, and even if it is clear that the prospect of prompt payment motivated the seller to sell.

But what of the Gemara[512] which holds that a seller who has been insistent on payment can revoke a sale before he has received payment in full? That applies only where there has been no *hazakah* or other *kinyan*, and the sole potential *kinyan* is the partial payment of money which was not declared to have been made as a *kinyan*.

> Those who disagree with the Meiri hold that a seller can withdraw if he has been insistent on payment, even if the buyer succeeded in making a *hazakah* or other *kinyan*. They claim that the Gemara described in the preceding paragraph appears to deal with chattels, since it refers to A who has sold **something** to B. That being so, there must have been a *kinyan* other than money, for money is invalid as a *kinyan* for chattels. It follows that even for chattels an insistent seller can withdraw after a proper *kinyan* so long as he has not received full payment.
>
> The Meiri counters that the Gemara can be explained as dealing with chattels in a case in which there was no true *kinyan*. There was only the payment of money, which, while not a *kinyan* for chattels, in a proper case is sufficient for a *me shepora* curse on the withdrawing party. The issue in the Gemara is whether the buyer's partial payment (in the face of the seller's insistence to receive full payment promptly) is sufficient to entitle the buyer to utter this curse.

[Acquisition of numerous fields with money or *hazakah*]

All agree that a *hazakah* on one field is effective for other fields only to the extent payment has been made for them; it matters not whether or not the seller is insistent on receiving payment. In this case, the money does not serve as *kinyan*, for if so there would be no need for *hazakah* at all; instead, payment serves a condition precedent to the validity of *hazakah*.

Where payment has been made in full, the Earth is considered one block so that

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[512] B.M. 77:2.

[7:2]

a *hazakah* for one field suffices for all, no matter how distant.

Money as a *kinyan* suffices for all fields only where all fields are mentioned. The same is true of deeds; a deed for one field cannot transfer other fields, even if paid for in full, unless all fields are mentioned. But all fields which have been paid for, whether or not mentioned, are transferred by *hazakah*.

By definition, there is no requirement of payment where the lands are donated. *hazakah* in one of the donated fields transfers all.

The same is true where the fields are rented: there is no requirement that the rental have been paid in full for all fields. This results from the doctrine that rental obligations are deemed to accrue only on completion of the term, so that there is no payment obligation at the time of the *kinyan*.

Where some fields are sold and the rest are donated or rented, all are transferred when payment has been made for the sold fields.

The rule is different for chattels. A separate *kinyan* is required for each of ten animals or for all ten together (such as by pulling all ten with one halter if they are all tied together), unless all 10 are transferred *agav* real property.

[7:2]

[27:2]

[Superimposition of oaths for *sotah***]**

If a wife secludes with another man despite her husband's warning, her husband compels her to drink the bitter waters and to take an oath that she did not commit adultery with the man with whom she was secluded[513].

On this oath, the husband can superimpose the additional oath that she did not commit adultery with **any** man while she was betrothed or married to the husband. Scripture expresses the oath as a statement by the woman "Amen, Amen."[514] The duplication connotes:

> Amen to the curse (*i.e.,* that her abdomen shall swell and her thigh shall fall if she swears falsely) and amen to the oath;
>
> amen that she was not unfaithful by this man, and amen that she was not unfaithful by any other man;
>
> amen that she did not commit adultery while married, and amen that she did not commit adultery while betrothed.

In short, the husband can superimpose an oath for any relations which would prohibit his wife to him. Adultery committed during betrothal also suffices to prohibit a woman to her husband.

Conversely, a woman is not prohibited to her husband on account of relations with another man which occurred before her betrothal, or while she was divorced from her husband and before he married her anew; and no oath can be superimposed regarding relations of this kind.

A woman who is a *yebamah* and who has relations with a man who is not her *yabam* is not subject to capital punishment, whether by the Beth din or divine. The relations are prohibited only by negative precept. Whether an oath can be superimposed regarding such relations is disputed by R. Akiva and the Sages:

> R. Akiva holds that *kiddushin* is invalid if purportedly effected between persons whose relationship is prohibited by negative

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[513]Sot.18:1,2.

[514]Num.5:22.

> precept. Given his view of the seriousness of the relationship, he also holds that a woman who violates a negative precept, such as the precept which forbids a *yebamah* from cohabiting with a man other than her *yabam*, would also prohibit the woman to her husband.
>
> That being so, her husband can superimpose an oath relating to her relations while a *yebamah*.
>
> The Sages, on the other hand, hold that *kiddushin* are effective if performed by persons whose relation is prohibited only by negative precept. Accordingly, a woman's relations with another while a *yebamah* do not prohibit her to her *yabam*, and it follows that an oath of this kind cannot be superimposed.

The Sages would agree that the *yabam* **can** superimpose an oath that she did not commit adultery during the lifetime of the brother whose death caused her to be a *yebamah.* This adultery would make her unfit to the *yabam*.

[When must warnings, seclusions and oaths occur to support superimposition]

We have just explained that **where there has been a proper warning and seclusion after a marriage is consummated**, the husband can superimpose an oath that his wife did not commit adultery at the betrothal stage. But the bitter waters are not administered, and there is no oath, where the husband's warning and the wife's seclusion occur during the betrothal stage or (even in R. Akiva's view) while the wife is a *yebamah*; the warnings and seclusion must occur "while you are under [married to] your husband."[515] It does not matter that a betrothed woman who secludes with another despite proper warning loses her right to a marriage settlement, because her own action results in her prohibition to her groom.

That is why the Gemara is concerned with a *baraitha* which holds that a husband can impose an oath that his wife did not commit adultery when betrothed, as well as when married:

> 1. If the warning, seclusion and oath occur while she is still betrothed, that is impossible! The bitter waters and the oath **are administered only** "while you are under [married to] your husband."
>
> 2. If the warning and seclusion occurred while she was betrothed, but the waters and the oath are being administered after the marriage was

[515] Num.5:19.

consummated, that too is impossible!

The bitter waters detect adultery only for the purpose of "cleansing the husband from transgression."[516] The waters are not administered where the husband transgressed and cohabited with his wife after he suspected her of adultery.

Note in passing that the Rambam holds that the waters do not avail where the husband committed any adulterous transgression with any woman at any time during his life. The Meiri considers this far-fetched[517].

3. If the warning and seclusion occurred while she was betrothed, but the waters and the oath are being administered after the marriage was completed by *huppah* and before the husband transgressed by cohabiting with his wife, that too is impossible!

The waters detect only whether "you cohabited with a man **in addition to** your husband,"[518] suggesting that the husband must have cohabited with the woman before she cohabited with the suspected adulterer.

The Gemara ultimately concludes that the *baraitha* deals with a case in which **both the warning and seclusion occurred after the woman's marriage was consummated, and the oath is superimposed for acts done** during betrothal. This is the Meiri's textual reading, and it reflects his view that oaths can be superimposed for betrothal where no warning occurred at that stage.

Other commentators emend the text to provide that the doctrine applies only where at least the warning occurred during betrothal. Still others hold that although a warning at the betrothal stage is requisite as an anchor on which to support a superimposed oath, that warning itself is not sufficient to compel even the underlying oath. They consequently emend the text to deal with a case in which the wife was **warned** while betrothed (supporting the superimposed oath), and she was warned **again** (supporting the underlying oath) and secluded with another after her marriage was consummated.

The Ra'avid asks why the Gemara does not explain the *baraitha* as dealing with a case in which:

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[516] Num.5:31.

[517] Shev.5:1.

[518] Num.5:20.

> the husband cohabited with his bride while she was betrothed (so that his cohabitation preceded that of the suspected adulterer);
>
> the warning and seclusion with another occurred afterwards while she was still a bride;
>
> he subsequently completed the marriage by huppah (so that she is "under her husband"); and
>
> he did not cohabit with her after the suspected seclusion (so that he did not transgress).
>
> > True, this would not present an issue for the Rambam, who holds that any unlawful intercourse renders the husband a transgressor for this purpose; the Rabbis forbid a groom from cohabiting with his bride in her father's house. But this is a minority position with which the Raabad does not agree!

If the case can be explained so and as involving an oath for the betrothal stage **on its own strength**, how can the Gemara derive from the *baraitha* the doctrine of superimposition of oaths?

There are two possible explanations:

1. The *baraitha* treats the oath on the betrothal stage the same as the oath on the *yebamah* stage:

> In the case of *yebamah* there can be no relations with the husband which leave the woman a *yebamah*. Any cohabitation with the *yabam* automatically terminates the *yebamah* status and renders the former *yebamah* the former *yabam's* wife for all purposes. It must therefore be that the *yebamah* referred to by the *baraitha* had not cohabited with the *yabam*. For the sake of consistency, we cannot interpret the *baraitha* as involving a betrothed woman's relations with her groom.

2. Some commentators maintain that the requirement that relations with the husband precede that of the suspected adulterer is satisfied only with permitted relations, not with illicit relations. The Meiri disagrees with these commentators.

[Other potential sources for the rule of superimposition]

Recall that an oath can be imposed that there was no adultery with any man, not

[7:2]

only the man with whom the warning was given. Why does not the Gemara derive the doctrine of superimposition from this oath?

The Meiri explains that the doctrine of superimposition is important only in marital relationships which are alone insufficient to support an oath, such as the betrothal stage.

But warnings and seclusions for any man are sufficient to support an oath, and there never was any question that this minor sort of superimposition was permitted.

This is what the Yerushalmi means when it says that superimposition cannot be derived from oaths applied to other potential adulterers **because such are matters on which oaths are normally imposed**.

[28:1]

[Underlying and superimposed oaths on uncertain claims]

A single witness is of no significance in the law of *sotah*. No oaths are imposed, nor are bitter waters administered, unless two witnesses confirm both the husband's warning and the woman's seclusion.

In monetary disputes one witness suffices to impose an oath on the defendant.

Certain oaths can be imposed by a plaintiff only if he has a positive claim. Illustrative are the oaths imposed on a defendant where a plaintiff's claim is supported by one witness or where a defendant denies a portion of the plaintiff's claim.

Other oaths can be imposed by the plaintiff even if he is uncertain whether the defendant is liable. Illustrative are:

> the oath which a bailee must make on the circumstances in which the bailment was lost or destroyed; and
>
> the oaths which the Rabbis impose:
>
> > on a guardian on the proper discharge of his duties, and
> >
> > on partners and sharecroppers before they divide and distribute jointly owned property.

Both positive and doubtful oaths can support superimposed oaths, **but the superimposed oaths must be for positive claims only**.

[7:2]

The Gemara notes that the doctrine of superimposition is derived from *sotah*. But for *sotah* where the combination of the husband's warning and the wife's seclusion is equivalent to a positive claim of adultery! How then do we derive from *sotah* the rule that even doubtful claims support superimposed oaths?[519]

The Gemara explains that the word **oath** appears both in the context of the oath made by a *sotah* **in** the Temple, and the oath made by a defendant in monetary matters in the Beth din **outside** of the temple. The *gezerah shawah* teaches that just as Scripture treats a relatively questionable *sotah* claim (where the suspected adulterer had not previously been seen in association with the wife) the same as a more certain claim (such as where the suspected adulterer had previously been known to speak with the wife), so also outside the Temple, Scripture directs that an oath based on an uncertain claim support superimposed oaths the same as oaths based on positive claims.[520]

As noted previously, the **superimposed** oath must be on a certain claim. Why so, given that the husband of a *sotah* can superimpose oaths on possible adulteries of which the husband asserts no claim? Because the underlying claim of *sotah*, although treated by us as a certain claim on account of the husband's warning and the witnessed seclusion, is still in essence an uncertain claim; it is this **special** treatment for **sotah** which for *sotah* permits superimposition for uncertain claims. Alternatively, the case of *sotah* can be distinguished on the ground that Scripture treats all claims on *sotah* as certain, whether or not based on warnings or witnessed seclusions.

[When doubtful oaths may be superimposed]

But what of another apparent exception to the rule that the superimposed oath

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[519]Certain commentators hold that the Gemara's reference to certain and doubtful oaths refers to the superimposed oath rather than to the underlying oath. The Gemara treats as a certain superimposed oath the issue of whether the woman committed adultery with the identifiable man against whom she was warned and with whom she secluded. The Gemara therefore inquires on the source of the doctrine that even doubtful oaths can be superimposed. The Gemara responds that the husband can also superimpose an oath on the **uncertain** issue of whether his wife committed adultery with another, unknown, man.

[520]There is as an alternative explanation of the Gemara's statement that for *sotah* a questionable claim is equivalent to a certain claim: that a wife whose adultery was witnessed is treated the same as a wife whose seclusion, but not whose adultery, was witnessed. The Meiri disapproves because where actual adultery was witnessed, the wife is prohibited absolutely to her husband and her guilt is not tested by the bitter waters or any oath. The Meiri suggests, however, that where the husband was present with the witnesses the waters and the oath are administered.

must be certain? Although no oath is imposed directly on partners who have already divided their joint estate, such an oath may be superimposed on an underlying oath which is administered on any other issue! There are two possible explanations:

1. The rule is different for partners because oaths among partners, such as when applied prior to division of the estate, are inherently designed to resolve doubts even where there are no claims.

2. The Meiri himself prefers to introduce a new definition of the doubtful oath which cannot be superimposed: only claims which the plaintiff **should have known** with certainty, but does not know, are not superimposed. Where one partner divides an estate unbeknownst to the other the absent partner cannot be faulted for being unaware of whether the division was proper. That is why he may superimpose an oath on the partner who divided the estate.

Another Gemara[521] supports this proposition. But first note the following rules:

i. One who rents an animal is not liable for accidental death, but one who borrows an animal is liable.

ii. Where A rents one animal and borrows another, and one animal dies accidentally, he is liable if the dead animal was borrowed but not if it was rented.

iii. Where the lender questions which animal died and A is certain that the animal was rented, A is absolved without any oath.

iv. Where the lender maintains with certainty that the dead animal was loaned and A maintains the opposite, then A must absolve himself with an oath that the animal was rented.

Now, generally, oaths in civil cases without any witness are imposed only where the defendant concedes the plaintiff's claim in part. In the last case, there is no partial concession; what is the basis of the oath imposed on the defendant?

The Gemara explains that even if the defendant is to be believed that the dead animal was rented he must still swear that the animal did not die as a result of his negligence; this is the standard oath applied on bailees. That

[521] B.M.97:2.

being so, we superimpose the oath the dead animal was rented and not borrowed.

Now, the standard bailee's oath is applied even where the lender is uncertain whether there was negligence. Why, then, when the lender is uncertain which animal died do we not superimpose an oath on the borrower to swear on which animal had died?!

This proves that claims about which the plaintiff is expected to be knowledgeable (such as which animal was rented and which was borrowed) cannot be superimposed on oaths imposed for doubtful claims.

Any oath on a positive claim can also support a superimposed oath which relates to the defendant's personal status. The plaintiff can demand that the defendant swear that he is not the plaintiff's Jewish slave.

But why state the rule? We already know that a slave's status is equivalent to real estate, and we also know that oaths may be superimposed regarding real estate!

Yes, but we might have said that oaths are more easily superimposed for land, because sales of land are often kept secret by embarrassed buyers, and oaths are therefore more necessary to determine the facts[522].

[Where superimposed oaths are not allowed]

No superimposed oaths are allowed on the following claims:

1. That the defendant is the plaintiff's gentile slave. In fact, the plaintiff is banned if he demands such an oath of the defendant. Gentile slaves are accursed, from the verse "Canaan is accursed... and he shall be a slave unto him."[523] That is why we ban him who indirectly refers to his comrade as accursed; one who is banned is accursed.

2. That the defendant is a *mamzer*. In fact, the Rabbis prescribe that the

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[522]Another Gemara notes that the **buyer** of land, as distinguished from the seller, prefers to publicize his purchase. B.B.42:1. Our Gemara holds that it is possible that the buyer acceded to the **seller's** reluctance to publicize.

[523]Gen.9:25,26.

plaintiff receives 40 lashes for demanding the oath. That is because the plaintiff would have required one who marries the defendant to receive 40 lashes for transgressing the prohibition of "A *mamzer* shall not enter the congregation of G-d."[524]

3. That the defendant is wicked.

If the plaintiff makes this demand, the defendant may justify plaintiff's opinion of him by competing with the plaintiff and diminishing the plaintiff's **livelihood**. (The Gemara's reference to **life** rather than **livelihood** is imprecise.) One who wrongfully competes with his friend is considered wicked[525]. By competing, the defendant justifies the plaintiff's aspersion.

Other commentators maintain that the Gemara's reference to the plaintiff's **life** is precise: the defendant may attack the plaintiff physically. In this way, the defendant justifies the plaintiff's view of him as wicked, in light of the verse "Wicked one, why do you strike your friend?!"[526]

[Exchange transactions]

The sixth Mishnah deals with exchange transactions:

Whatever can be used as payment for one object, as soon as one party takes possession thereof, the other assumes liability for what is given in exchange. How so? If one barters an ox for a cow, or an ass for an ox, as soon as one party takes possession, the other becomes liable for what is given in exchange.

The buyer assumes the risk of loss as soon as he acquires title. At the same time, the buyer assumes the absolute obligation to pay the balance of the purchase price.

The dialogue which follows in the Gemara can be explained in several different ways:

1. Rashi explains the dialogue as follows:

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[524]Deut.23:3.

[525]San.81:1.

[526]Ex.2:13.

[7:2]

The Gemara first assumes that the phrase **whatever can be used as payment** refers to coinage. The *kinyan* is not the passage of money **as purchase price (which is invalid for chattels),** but rather the ritual transfer of money by the buyer to the seller as *halifin*.

But if **whatever is used as payment** means money why does the Mishnah illustrate the transaction with "if one barters an ox for a cow, or an ass for an ox"?

Because the point of the Mishnah is that money, animals and produce are alike in that they are valid as *halifin*. It does not matter that they are not conventional chattels in the sense of the shoe-*halifin* referred to in Ruth.

Note that in Rashi's view if animals or produce are invalid as ***halifin*** coinage is similarly not valid.

The Gemara then maintains that coinage should not be treated the same as produce. A coin has no inherent value; its value depends on the government's continued support. Consequently, even if animals or produce can serve as *halifin* coins should not.

The Gemara responds that coins are in fact invalid as *halifin*. The phrase **whatever can be used as payment** means whatever must be **evaluated** as payment, *i.e.,* any object which is **not** currency and whose value as against other objects must be determined.

Only such objects, **in fact excluding coins**, can serve as *halifin*. Further, the *halifin* is effective even when an item of little value is transferred for an ox: the *kinyan* is complete and the seller of the ox reserves only a monetary claim for the balance of the purchase price.

The Gemara then concerns itself with another issue. How does R. Nahman reconcile the Mishnah with his view that produce cannot serve as *halifin*, and the corollary holding that animals, too, cannot serve as *halifin*. Why does the Mishnah hold that the barter of an ox for a cow is a valid *halifin* transaction?

Although the difficulty with R. Nahman is raised after the Gemara reinterprets the phrase **whatever can be used as payment**, the same questions could have been brought up at the stage at which the Gemara held that the phrase meant money. Recall that at that stage the Gemara held that money, produce and animals are all

equivalent in that they can effect *halifin* notwithstanding that they are not conventional chattels.

2. The Alfasi explains the Gemara otherwise. In his view coins (were it not for their transient value) and animals have a *halifin* status superior to produce, since coins, animals and chattels are used repeatedly for convenience, as opposed to produce which is consumed and which ultimately spoils.

Why then does the Gemara take issue with R. Nahman, who holds that produce cannot serve as *halifin*? Because when the Gemara thought that money was valid as *halifin*, the Mishnah's reference to an "ox for a cow" could only be read as meaning "the meat of an ox for the meat of a cow," *i.e.,* produce, disproving R. Nahman. The Mishnah's text could not be **an ox for a cow**, for if money (whose value depends on fiat) is valid as *halifin* it follows that animals are certainly valid and the Mishnah would not take pains to mention their validity.

But once the Gemara concludes that the Mishnah holds that money is invalid, R. Nahman can easily explain the Mishnah as dealing with live animals rather than meat. The Mishnah wishes to teach that animals are valid as *halifin* notwithstanding that coins are not.

Another Gemara supports the Alfasi's view that produce can be invalid as *halifin* even if coins are valid. The formula *halifin* recitation in a deed recites that the *halifin* was made **with implements which are themselves proper for acquisitions.** The Gemara explains that:

the word **implement** excludes produce,

proper excludes objects from which no benefit is permitted,

implements which are proper for acquisitions excludes objects which belong to the seller, and

implements which are themselves proper for acquisitions excludes coins.

Obviously, the exclusion of produce does not by itself exclude coins.

Also supportive is another Gemara[527] which deals with the case in which a cow owned by A is being exchanged for a donkey owned by B, by way of A's transfer of the cow to B in *halifin*. It turns out that the donkey died and A and B dispute whether:

the death occurred after the *halifin*, in which case the exchange is valid, the donkey was transferred to A **while alive**, and A bears the loss, or

the purported exchange occurred after the death of the donkey so that the donkey's death is B's loss.

Clearly, a live animal can be used as *halifin*. And the Gemara does not consider that this might conflict with R. Nahman.

The Meiri does have one difficulty with the Alfasi. Why would anyone exchange the kosher meat of an ox for the forbidden meat of an ass? Perhaps the Mishnah's real emphasis is on the exchange of the meat of a **cow** for the meat of an ox, and the reference to the meat of an ass is imprecise.

3. A third group of commentators agrees with Rashi that animals are treated as produce, based on the verse "and the fruit of your animals,"[528] and the equivalence of animals to produce for the purposes of tithe-related exchanges[529].

But they differ from Rashi in limiting this holding to animals which are not suited for labor because of their small size, their age or their excessive fat. Animals which are suited for labor are not produce.

The Meiri would agree with the third group except for the uncertainty on whether any particular animal is or is not produce. The Meiri ultimately supports the Alfasi.

[Exceptional cases in which chattels are transferred by money-type payments]

Return now to our Gemara. How can R. Nahman reconcile his view that produce cannot be *halifin* with our Mishnah? The Gemara explains:

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[527]Keth.77:1.

[528]Deut.28:11.

[529]Eruv.27:2.

[7:2]

> Money sometimes ranks as an object of barter. How so? If one barters the money of an ox for a cow, or the money of an ass for a cow.

The Gemara's basic point is that the ox-for-a-cow language does not deal with *halifin*, but with monetary *kinyan*. There are three possible interpretations of the Gemara's precise meaning:

> 1. There is a circumstance in which the payment of money, **not as *halifin*, but as purchase price,** is valid as a *kinyan* for chattels, notwithstanding the general rule that such payment is a *kinyan* only for real estate. The case in which money is valid for chattels follows:
>
> > A has a cow. B asks him how much purchase price A would demand to sell the cow. A responds that he needs a donkey. B says that he has no donkey, but B has money equal to the monetary value of a donkey.
>
> In this case there is a *kinyan* as soon as A accepts the money, because **the money was passed as the monetary equivalent of a chattel**. The case is treated as if B had passed the donkey to A.
>
> This follows from the rule that the payment of money is valid as a *kinyan* for chattels as a Scriptural matter. It is the Rabbis who invalidate money out of concern that a seller who received money and retains possession of the chattel would not bestir himself to protect the chattel against loss.
>
> The Rabbis do not apply their injunction in the unusual case in which the money is passed as the equivalent of a chattel.
>
> 2. Others explain the case precisely in the reverse:
>
> > A has a cow. B asks him how much purchase price A would demand to sell the cow. A says he requires a *maneh*. B says he has no *maneh*, but he does have an ox worth a *maneh*.
>
> Once A accepts the ox the transaction is complete, **notwithstanding that the ox was given as money in substitution for a demand for actual money.** The transaction is unusual, and the Rabbis would not invalidate the transaction for the reasons for which they invalidate money.
>
> 3. The Raabad explains:

> A has a cow. B asks him how much purchase price A would demand to sell the cow. A says he requires a *maneh*. B reaches into his pocket for money, does not count them, and A accepts the money without counting.

In this **unusual** circumstance the payment of money is valid as a *kinyan*.

4. Rashi and the Rambam explain:

> A agrees to sell his cow to B for a *maneh*, and B completed the *kinyan* by *meshikhah* of the cow. Before B pays for the cow, A suggests that B keep the *maneh* in exchange for B's ox which A wants.

As soon as the parties agree to the exchange, the deal is complete and no further *kinyan* is required. In effect, A has paid money to B for B's ox, and in this **unusual** case the Rabbis are content to leave undisturbed the Scriptural holding that the payment of money for a chattel is valid as *kinyan*.

Now, in fact A did not pay any money; he only forgave B's monetary debt. How does this square with the Gemara[53o] that the **forgiveness** of a monetary obligation is not a *kinyan* even as a Scriptural matter?

> Rashi and the Rambam must explain that there is a distinction between
>
> obligations which arise from loans and which are intended to be spent, and are deemed spent, and
>
> obligations which are generated in sales transactions, which are intended to be paid immediately and which are therefore considered to be as present as physical money.

[53o] 47:2.

[7:2]

The Meiri considers this explanation far-fetched[531].

This completes the exposition of the Mishnah. The Gemara does not set forth matters which need be discussed here.

[28:2]

[*Kinyanim* in transactions with the Sanctuary]

The next Mishnah reads:

> The Sanctuary's title to property is acquired by money; the title of a common man to property is acquired by *hazakah*. Dedication to the Sanctuary is equal to delivery to a common person.

The Sanctuary's treasurer, as well as common persons, acquire real estate by payment of the purchase price. But whereas the payment of the purchase price suffices for the treasurer even for chattels, common persons require a *kinyan* such as *meshikhah*, lifting or the like.

The Mishnah refers to *hazakah* as a *kinyan* for chattels, but this is imprecise. *hazakah* is valid for real estate only. Nor can the Mishnah refer to real estate: even a common person can acquire real estate by payment of money.

Why is money a valid *kinyan* for the Sanctuary?

> For R. Johanan the explanation is simple. He holds that money is valid as a *kinyan* even for common persons as a Scriptural matter. The **Rabbis** invalidated money for common persons but did not disturb its validity insofar as concerns the Sanctuary, in view of the specific reference to money in the verse "you shall give the money for your value [to the Sanctuary]."

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[531]See also Meiri to B.M.47:1.

[7:2]

> But what of Resh Lakish who holds that money is not valid as a *kinyan* from a Scriptural standpoint? The Yerushalmi explains that all chattels are located on G-d's guarded real estate and are acquired by the *kinyan* of location-on-real-estate. "The world and all included in it is the property of G-d"[532].

If an individual dedicates an animal for sacrifice, the transaction is complete even if the treasurer of the Sanctuary is absent. The rule is explainable with the Yerushalmi's rationale.

If so, and given that even an offer to buy or sell is considered a dedication[533], for what purpose does the Mishnah rule that the Treasurer acquires by payment of money? There are two possible explanations:

> 1. Once the **treasurer** has made a money payment he can no longer renege. In civil transactions, a common person **may** renege before a *kinyan* and after the payment of money; he is subject only to the curse of *me shepora*.
>
> 2. Rav Hai Gaon explains that an individual is in fact bound when he tells the treasurer "I will sell the object to you for so much money": this is the equivalent of dedication to the Sanctuary.
>
> But there is no dedication if an individual only quotes a price to the treasurer without saying that "I will sell for such and such price." But the individual is bound if he accepts the treasurer's money.

mesirah is only one of the *kinyanim* which are valid for an individual. The Mishnah mentions *mesirah* as an example of these *kinyanim*.

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[532]Ps.24:1.

[533]See B.B.133:2 and Er.27:1. The Mishna in Erukhin deals with a case in which A offered to buy a field from the treasurer for 20 *zuz*, B offered to buy for 10, and A then reneges. The Mishna rules that A is responsible for the 10 *zuz* loss which the treasurer will incur by selling to B.

[7:2]

The Gemara discusses the following matters relative to the Mishnah.

[29:1]

[Price variations in the course of dealings with the Sanctuary]

Assume that the Sanctuary as seller receives the purchase price for an item which later **increases** in value. The following rules apply:

1. The Sanctuary can rescind the transaction and insist that it is bound only by *kinyanim* which bind individuals.

2. If the Sanctuary rescinds, it cannot take an inconsistent position and demand that the buyer take the item at the higher purchase price. The buyer can freely withdraw without a *me shepora* curse.

Assume that the Sanctuary receives the purchase price for an item which later **decreases** in value. The following rules apply:

1. If the buyer performed *meshikhah* or another *kinyan* valid for individuals, or if he performs a binding dedication[534], the Sanctuary can insist that the transaction be completed. It has a status no worse than a common person.

2. The same is true if the buyer paid the purchase price. The buyer is bound, since transactions with the Sanctuary as seller are (at the Sanctuary's option) complete upon passage of funds.

The same rule would apply where the buyer did not pay the purchase price **in full** before the item's value decreased. When does it matter whether the purchase price was paid in full? Where the price rises and the buyer insists that the Sanctuary either accept his prior payment as payment in full or release him.

[Obligations of parents towards children]

The next Mishnah provides as follows:

For all obligations of the son upon the father, men are bound, but women

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[534]Can there be a *meshikhah* without a dedication? Yes. This occurs where a person silently performs *meshikhah* after the treasurer quotes a sales price.

[7:2]

> are exempt. But for all obligations of the father upon the son, both men and women are bound. For all affirmative precepts limited to time, men are liable and women are exempt.
>
> All affirmative precepts not limited to time are binding upon both men and women.
>
> All negative precepts, whether limited to time or not limited to time, are binding upon both men and women; excepting "You shall not round the corners of your head, neither shall you mar the corners of your beard,[535]" and "He shall not defile himself for the dead.[536]"

Obligations of the son upon the father means obligations which the father must perform for the son. Examples are the obligation to circumcise the son, to redeem him from the priest if the son is his mother's first-born, to teach him Torah and a trade, and to arrange for his marriage[537].

Mothers are exempt from these obligations because women do not have these obligations for themselves:

> 1. Circumcision and redemption are required only of men.
>
> 2. Women need not study Torah since Scripture requires only that the Torah "be taught to your **sons**."[538]
>
> 3. Women need not marry because only men are commanded to be fruitful and multiply.

A woman needs a trade as much as a man. But it stands to reason that a woman who need not teach her son Torah should not have the obligation to teach him a trade.

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[535]Lev.19:27.

[536]Lev.21:1.

[537]Note that a father's obligation to arrange his son's marriage is not derived Scripturally. Its source is the verse in Jeremiah "Take wives and beget sons and daughters, and take wives for your sons." (Jer.29:6)

[538]Deut.6:7.

[7:2]

Besides, the greatest honor of a woman is modesty[539], and in arranging for her son to study a trade, a mother would have frequent occasion to visit her son's teachers.

Obligations of the father upon the son means obligations which the son is required to perform for the father. Examples are the son's obligations to fear and honor the father. Daughters who have sufficient funds are also responsible for these matters.

Women are exempt from affirmative precepts which are limited to time, such as the precepts of *sukkah* and *lulav*. But, as will be explained below, there are exceptions to this rule; women are subject to the precepts relating to *matzo*, the eating of the Passover sacrifice, the sanctification of holidays, periodic assembly at the Temple and rejoicing during the festivals.

Women are responsible for affirmative precepts which are not limited by time, such as the obligations to be charitable and to perform good deeds. We have already noted three exceptions to this rule:

teaching Torah;

redeeming the first-born: and

marriage.

Women are subject to all negative precepts. It does not matter whether the precepts are limited by time, such as the eating of *hametz* on the Passover or the performance of work on Sabbath or the festivals, or are not limited by time, such as the prohibition against eating certain animal fat or carrion.

There are three exceptions to this rule:

1. Since a woman is not subject to the prohibition that she not mar her own beard, she is also exempt from the prohibition against marring the beard of another.

2. A woman is exempt from the prohibition against "circling" the head by shaving, because the prohibition is in the same verse as that which prohibits marring the beard.

3. Scripture refers to the **sons** of Aaron, and excludes daughters, in relation to the rule that priests may not defile themselves for the dead.

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[539]Ps.45:14.

[7:2]

The Gemara discusses the following matters:

If a father does not circumcise his son, the responsibility devolves on the local Beth din; if there is no Beth din the responsibility devolves on the congregation.

The Geonim require that a representative of the Beth din or of the congregation recite the blessing which praises G-d for having accepted the child into Abraham's covenant. The Raabad generally agrees but suggests that the *sandek* recite the blessing. Yet others prefer that the *mohel* recite the blessing. The Meiri disagrees with the Rambam who disputes the Geonim and permits only the father to recite the blessing.

[Personal obligation to arrange for one's circumcision and redemption]

A child who was not circumcised must arrange for his own circumcision when he becomes an adult. For each day of delay, he (not his father) commits a sin for which the penalty is *kareth*: "And the uncircumcised male who will not perform circumcision, that soul shall be cut off."[540] The Rambam explains that the child can avoid *kareth* by arranging for circumcision at any time before his death.

An adult first-born son must redeem himself from the priest if his father did not do so. If a father has enough money to redeem either himself or his first-born son, the father should redeem himself. Commandments which relate to one's own person have priority.

[29:2]

[Priority between father and son on redemption]

Assume that:

1. A is B's father.

2. Both A and B are first-born sons who were never redeemed from a priest.

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[540] Gen.17:14.

[7:2]

3. Either A or B pledged to the priest property which A or B subsequently sold subject to the pledge, and that neither A nor B have any unsold property.

In this case, the priest cannot seize the property from the purchaser: a creditor can attack a purchaser's title only if the debt is secured by a writing.

Assume that:

1. A is B's father.

2. B is a first-born son who was never redeemed from a priest.

3. B's first-born son C was also not redeemed.

4. A pledged property to the priest for B's redemption, and A or B subsequently sold the property subject to the pledge.

5. B has five *selah*'s of non-pledged property.

The pledge is invalid for the reasons stated earlier. The case is analyzed as one in which a father has only sufficient funds to redeem either himself or his son. As noted earlier, the father B should redeem himself before he redeems his son C.

Were the priest's pledge valid, B would have redeemed himself with the pledged property, because A made the pledge for B and not for C. A grandfather need not redeem his grandson. The property which is free from pledge would have been used for C.

How would we rule if **B** pledged the property for C and the pledge were valid?

1. If at the time of pledge B was already obligated to redeem C, then the pledged property can be used for either B or C.

2. If C was not 30 days old at the time of pledge, and B was not then obligated to redeem C, then the pledged property can be used only for B's redemption.

[Priority among creditors]

Assume that in an unrelated case:

1. A lends 100 *zuz* to B on a written note in month 1.

[7:2]

2. B sells property valued at 100 *zuz* to a third party in month 2.

3. B dies in month 3.

4. A lends 100 *zuz* to B's son, C, in month 4.

5. When A presents his claim in month 5, C has only 100 *zuz* in his possession.

By analogy to the preceding holding, the proper rule is that C uses his 100 *zuz* to repay his own loan from A. A then attacks the purchaser's title based on the claim A had against B. The purchaser cannot resist A's attack by directing A to collect from C. The fact is that A's claim against C did not mature before the sale to the purchaser; this is analogous to the failure of a claim for redemption to mature before a first-born is 30 days old.

But if A accepts a payment by C which is designated by C to be on account of B's debt, A's position is damaged, since A cannot proceed against the purchaser for a debt from C which was not matured at the time of the sale. Commentators differ on whether A can resist a payment which C insists on designating as on account of B's debt.

It goes without saying that if C's debt matured before B's sale that A can proceed for either debt against the 100 *zuz* as well as against the property of the purchaser.

[Priority among precepts]

Precepts which will expire if not performed timely have priority over payment obligations which do not expire.

Where one can readily perform the festival pilgrimage or the redemption of his son, but **hardship** will be incurred to perform both, the redemption has priority. Scripture requires that "All the firstborn of your sons you shall redeem," and only then does it state "and no one shall appear before me empty."[541]

The pilgrimage has priority if performing the redemption would make it **impossible** to perform the pilgrimage.

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[541] Ex.34:20.

[7:2]

[Additional obligations of the father]

A father must redeem the first-born of each of his wives. The test is whether the son "opened his mother's womb." But for inheritance purposes only the **father's** firstborn receives a double share. The son must be "the beginning of his father's strength."[542]

As explained earlier, a father has primary responsibility to teach his son Torah. If the father neglects this duty, the son must school himself as he grows older. Where a father can either school himself or his son, but not both, the father has priority unless the son is exceptionally capable.

[Preferred age of marriage]

One should study Torah first and then marry. Marriage is a millstone around one's neck which does not permit scholarly concentration. This rule does not apply where one desires to marry for the sake of the purity of his thoughts, and it is customary that men study while women conduct the household's business affairs.

To avoid sinful thoughts it is advisable to marry at about age 14. Otherwise, and especially if marriage is postponed past age 20, the sinful thoughts of youth will be ingrained and will never leave. One of the sages said that he married at 16; had he married at 14 he would have told the Satan, "An arrow in your eye."

[30:1]

[Obligation to correct a son's behavior and to educate him]

A father must supervise and correct his son's behavior, primarily between ages 16 (when true understanding is achieved) and 24 (when the father's influence wanes).

A father's obligation is to teach his son the precepts in the written Torah. The son himself must then broaden his knowledge to the best of his abilities. He should dedicate one-third of his study time to Scripture, one-third to Mishnah and one-third to Talmud and related studies and investigations.

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[542]Deut.21:17.

[7:2]

Scripture requires that "you shall make [the Torah] known to your sons and to your son's sons."[543] The Gemara explains that, as in the story of Zevulun b. Dan, a person's obligations extend to his grandchildren (should the son not fulfill the obligation), but not to later generations.

The obligation to teach Torah applies even to persons other than one's children and grandchildren. The verse "And you shall teach them diligently to your **sons**"[544] includes students who are spiritual sons, as in the verse "the **children** of the prophets emerged"[545], where the reference is to students. But the obligation to educate one's sons and grandchildren is more extensive, since it requires that the father or the grandfather **hire** teachers. For non-relatives, the obligation is personal and there is no monetary obligation.

The obligation should be cherished and should not be a burden. The father himself should conduct his son to his studies, he should review the day's studies with his son and he should add a verse from the studies expected for the next day.

R. Joshua b. Levi would don a non-appropriate covering on his head while hastening to escort his son to his studies. R. Joshua explained that the commandments requiring a father to educate his son is equivalent to "the day you stood before the Lord your G-d at Horeb."[546]

[How well-versed must a person be?]

One should continue his studies until he becomes thoroughly familiar with even minor details of the Torah. The early scholars were called *soferim*, or counters, because they counted all the letters of the Torah, and concluded that:

> the letter *waw* in the word *gahon*[547] marked the exact midpoint of the Torah in terms of letters,
>
> the words *darosh dorash*[548] marked the exact midpoint of the Torah in

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[543]Deut.4:9.

[544]Deut.6:7.

[545]II Kings 2:3.

[546]Deut.4:10.

[547]Lev.11:42.

[548]Lev.10:16.

terms of words,

the word *we-hithgalah*[549] marked the exact midpoint in terms of verses,

the letter *ayin* in the word *mi-yaar*[550] marks the midpoint of Psalms in terms of letters,

the verse "But he being full of compassion"[551] marks the midpoint of Psalms in terms of verses, and

the Torah has 8,888 verses, Psalms has eight more, and Chronicles has eight less.

Certain of these matters became doubtful with the passage of time. Today we do not know whether the *waw* in *gahon* belongs to the first half of the Torah or the second half. We cannot resolve this issue by counting the letters of Torah, because, although we rely on generally accepted Torah scrolls, we are no longer certain in which words silent letters are written and in which words silent letters are dropped. Note, for example, the inconsistencies between the traditional *mesorah* and the Midrash. The Midrash states that the words *pilagshim*[552], *wa'asimem*[553] and *kalot*[554] all have dropped silent vowels, whereas the *mesorah* preserves the vowel in each word.

The Geonim hold that readings which the Talmud uses as a source of doctrine are definitive, and that Torah scrolls are invalidated if written otherwise. This applies to the word *karnot*[555] in which the *mesorah* drops the vowel and the Midrash preserves it, as well as to the words *le'totofot*, *b'sukkot*, and *ayn lo*. But where no doctrine is derived from any particular reading, the Meiri would be lenient and he would not void Torah scrolls which do not accord with accepted norms on silent

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[549]Lev.13:33.

[550]Ps.80:14.

[551]Ps.78:38.

[552]Gen.25:6.

[553]Deut.1:13.

[554]Num.7:1.

[555]Lev.4:7.

[7:2]

letters or on chapters which are open or closed[556].

One should be prepared to answer Torah questions promptly and crisply. Of persons who have this ability Scripture says "They shall not be ashamed when they speak with enemies in the gate."[557]

The term "enemies" refers even to fathers and sons and teachers and students, who naturally love and are tolerant of each other, but who are as enemies when they dispute matters of Torah. But their purpose is to arrive at the truth, and Scripture assures that "they shall not be ashamed," and they shall restore their friendship once their dispute is resolved.

[30:2]

[Power of learning]

The Torah protects and rehabilitates even persons who transgress because of powerful urges and who develop evil personalities. Compare a plaster which is placed on a son's wound by a father who has punished the son; so long as the plaster is on the wound, the wound will heal regardless of what the son eats or drinks, but if removed the wound will break out into sores. So too G-d created evil desire (the wound) but prepared the Torah as a remedial plaster.

Anyone who is beset by evil desire should figuratively take the desire into the study-house. If the desire is strong as iron, it will shatter into fragments; if strong as stone, it will dissolve.

[Obligation to arrange a daughter's marriage]

A father must seek to marry off his daughter as well as his son. He must dress her

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[556]In closed chapters, the succeeding chapter begins on the same line. In open chapters, the succeeding chapter begins on the next line.

[557]Ps.127:5.

properly and give her a dowry to make her attractive to the most fit among potential suitors.

[Obligation to teach a son a trade]

A father who does not teach his son a trade teaches him to be a brigand. For when the son matures he will seek to live in the style to which he was accustomed.

What if the son is taught Torah? Some commentators hold that it is not necessary to teach the son a trade, for where there is Torah, there is food. Other commentators hold that the son must still be taught a trade. All agree that a son who is taught to trade in merchandise need not be taught a craft.

[The requirement to honor one's parents]

It was previously explained that both men and women must honor and fear their parents. However, a woman need not **honor** her father while she is married and does not control her own affairs.

One honors and fears G-d when one honors and fears his parents; where a person respects his parents, it is as if G-d dwelled among them and he too was honored[558]. Note the following verses:

> "Honor and fear your father and your mother,"[559] and "Honor the Lord with your substance."[560]
>
> Also, "Every man shall fear his mother and his father," [561] and "You shall fear the Lord, your G-d."[562]
>
> As to cursing, "And he cursed his father or his mother,"[563] and "Whoever

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[558]B.K.25:1.

[559]Ex.20:12.

[560]Prov.3:9.

[561]Lev.19:3.

[562]Deut.6:13.

[563]Lev.20:9.

[7:2]

curses his G-d."[564]

This is appropriate because G-d is a partner in every person equally with the person's father and mother. The Gemara[565] explains that the father is responsible for white matter from which is created bone, sinew, nail, brain matter and the white of the eye. The mother is responsible for red matter from which is created skin, flesh, blood, hair and the pupil of the eye. G-d is responsible for spirit, soul, facial form, vision, hearing, speech, movement, knowledge, understanding and wisdom. The father and mother contribute five attributes each, whereas G-d's contribution of ten items is equal to the parents' joint participation[566].

Scripture mentions the father first in regard to honor; the mother is mentioned first in regard to fear. This is to equalize the natural tendency to honor the mother and to fear the father.

[31:1]

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[564]Lev.24:15.

[565]Nid.31:1.

[566]Compare B.K.25:1. G-d stated that it was appropriate for Miriam to be ostracized for 14 days for disrespect to G-d, since a seven-day ostracization would have been appropriate had she insulted her parents.

[7:2]

G-d is all-knowing, and the fear of Him must always be in a person's heart. "The eyes of the Lord pass through the Earth,"[567] and "The heaven is [G-d's] throne and the Earth is [His] foot-stool."[568] One who secretly transgresses, because he imagines that G-d is not aware, is as if he pushes off the legs of the Holy Presence, in the sense that he denies G-d's omnipresence.

For the same reason, one should not walk with haughty mien. Several of the great Sages would not walk four cubits with haughty mien or bareheaded.

The Gemara next recounts the case of a son who was told that the father must be honored ahead of the mother because the mother must herself honor her husband. The son asked R. Joshua whether the same rule applies once the mother is divorced. R. Joshua answered:

> From your eyelids it is obvious that you are a [texts differ on whether R. Joshua said "widow's" or "divorcee's"] son; pour some water for them in a basin, and screech for them like fowls!

There are four possible interpretations:

> 1. The Meiri's reading is that R. Joshua concluded that the mother was a **divorcee**. R. Joshua's answer was a ruling that when there is an issue of priority between a father and a divorced mother, the two must be treated equally, and where this is impossible both should be served at the same time, with the issue of priority to be resolved by the parents themselves.
>
> 2. R. Joshua concluded from the son's swollen eyes that the child's mother was a widow. Compare the statement elsewhere that R. Gamliel cried until the lashes on his eyelids were dislodged.
>
> R. Joshua's response was a sarcastic retort that the son had posed a theoretical question, since the child's father had died. It follows that R. Joshua's statement cannot be taken as a ruling.
>
> The Meiri disagrees with the concept that R. Joshua assumed that the mother was a widow because of the son's eyelids. The phrase on the child's eyelids should not be taken literally. And, even if taken literally, perhaps the child cried over some other person who died?!

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[567] Zakh.4:10.

[568] Isa.66:1.

3. R. Joshua's conclusion was that the son's mother was a widow, but not from the son's swollen eyes. Rather, R. Joshua enjoyed the son's retort and concluded that the son had the cunning which the sons of widows commonly develop as a result of hardship.

4. R. Joshua's conclusion was that the son's mother was a widow. But R. Joshua did not respond sarcastically, since the son's query still had meaning: the widow had remarried and the issue was priority between the widow and the son's **stepfather**. R. Joshua ruled that a stepfather is of equal priority with a mother.

One must go to great extremes to honor one's parents. Indeed, even gentiles have been known to honor parents on moral grounds although gentiles are not subject to the Torah's commandment on the subject.

A certain gentile in Ashkelon had the opportunities to sell merchandise at a profit of 600,000 gold *denarii*, and to provide a precious jewel for the high priest's *ephod* at a profit of 80,000 gold *denarii*, but in each case he forewent the opportunity because he would not wake his father to obtain the key to the warehouse in which the merchandise was stored.

The gentile also did not embarrass his mother when she spat at him and tore his gold-embroidered clothing while he sat among the elders of Rome.

In the following year, G-d rewarded him by causing a red heifer to be born in his herd. In setting a price for the heifer he asked that the Sages compensate him only for the profit he lost because of the honor he paid his father. The Sages agreed.

The events just described must have occurred during the Second Temple, for during the First Temple, only the one red heifer prepared by Moses was sacrificed[569]. That being so, why is it that jewels were still sought for the *ephod*:

The function of the jewels set into the *ephod* was to serve as an anchor for the *hoshen* in which the *urim v'tumim* were contained. The *urim v'thumim* were abolished during the Second Temple!

During the First Temple, the *shamir*[570] was used to inscribe the names of the 12 tribes on the stones set in the *ephod*. The *shamir* was not available during the second Temple!

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[569]Parah 3:5.

[570]A living creature.

[7:2]

Yes. But the priests continued to seek to place jewels in the *ephod* in order to continue as much tradition as was possible.

[Blessings for voluntary actions]

> May a person recite a blessing when he or she voluntarily performs a precept?
>
> Consider our Gemara which deals with the dispute between R. Judah and the Sages on whether the blind are exempt from precepts. R. Judah holds that the blind are exempt. R. Joseph, who was blind, initially preferred R. Judah's view that the blind are exempt from precepts; by performing the precepts R. Joseph held he would obtain a greater reward than one who performed on an obligatory basis. He reversed his position when he learned that one who performs precepts which he is obligated to perform receives a greater reward.
>
> If no blessing can be recited by one who performs precepts voluntarily, how could R. Joseph initially prefer a position which would not permit him to recite blessings?!
>
> The argument goes further. It must be that R. Joseph followed the majority view and considered himself **bound** to perform precepts. Initially, he only wished that the precepts could be voluntary (which he knew they were not) for if so he would have received greater reward.
>
> Could R. Joseph desire a situation in which he could not recite blessings when he knew in actual fact that blessings were required?!
>
> Does not this prove that blessings may be performed for voluntary actions?
>
> Not necessarily. In fact, the Rambam holds that persons, such as women, who are fully exempt from precepts cannot recite blessings on account the prohibition against taking G-d's name in vain.
>
> But what of R. Joseph?
>
> R. Judah asserted only that the blind are exempt as a Scriptural matter, but the Rabbis **require** that the blind nevertheless perform the precepts. The Rabbinical requirement was sufficient to support blessings.

The French Rabbis, including Rabbeinu Tam, disagree with the Rambam as is

explained elsewhere.[571]

[Specific requirements relating to a parent's honor]

To honor one's parents means to feed them, to give them drink, to dress them, to take them in and out and otherwise to do without limit whatever is appropriate. In certain situations, it may be appropriate to do less, and, in fact, even to permit one's parents to serve him.

The Yerushalmi recounts that R. Tarfon asked that his mother step on his hands when her stockings were torn[572]. R. Tarfon was subsequently ill, and his mother asked that the Sages pray for him because of the great honor he displayed toward her. The Sages responded that were R. Tarfon to perform such services many thousands of times he would not have satisfied even one-half of the commandment.

Conversely, R. Ishmael's mother complained to the Sages that he refused to allow her to wash his legs[573]. The Rabbis held that R. Ishmael should have permitted her to conduct herself so, for such was her will[574].

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[571]*E.g.*, R.H.33:1.

[572]Our Gemara also records that R. Tarfon would bend down to permit his mother to climb on him into her bed.

[573]The Meiri disagrees with a reading that he refused to permit her to wash his legs and drink the water.

[574]Our Gemara holds that where the father is learned the son must not accept services from him. The father is distressed thereby no matter what he says.

[7:2]

R. Mani commented that this demonstrates how persons' fates differ: R.Tarfon was criticized for doing too little, whereas R. Ishmael was criticized for refusing to allow his mother to serve him. R. Zeira initially regretted that he had no living parents to honor. When he learned of the cases of R. Ishmael and R. Tarfon he thanked G-d for not having parents: "I could not serve as did R. Tarfon, nor could I accept services as did R. Ishmael."

The son's words and manner when proffering services are more important than the services themselves. The Yerushalmi recounts that a hunter would feed his father meat of pheasant. When his father would ask on how the son obtained the pheasant, the son would insult the father "Old man, eat and chew, just as dogs eat and chew." Although the son fed his father well, he acted improperly and drove himself from this world. Conversely, the Gemara recounts that a son who owned a mill suggested that his father work the millstones while the son substituted for his father in the army. The son received a reward in the world to come.

[31:2]

A son must honor his father even if the son is of mature years and is a Sage in his own right. Abimi had five ordained sons and still ran to open the door, crying "yes, yes," when his father R. Abbahu arrived. On one occasion R. Abbahu asked that Abimi bring him some water. R. Abbahu drowsed while Abimi went to bring the water, and Abimi bent and stood over him until R. Abbahu awoke. While waiting, Abimi was rewarded by a realization which had previously eluded him: Why does not the dirge "a **song** of Asaph[575]" begin with the words "a **dirge** of Asaph"? Abimi now realized that the song praises G-d for destroying the wood and the stones of the Temple rather than destroying his people. "G-d expended his furor by kindling a fire in Zion."[576]

The requirement to honor one's parents cannot override other precepts. However, one may leave Eretz Israel to greet one's parents or otherwise to honor them.

In an area where the father is well respected, the son should not request that his demands be heeded out of honor to himself, but rather because of the honor owed to his father.

The requirement to honor continues after the father's death. During the 12

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[575]Ps.79:1.

[576]Eikha 4:11.

months following his father's death, a son should accompany quotations from his father with the phrase "Thus said my father, my teacher, for whose resting place I am an atonement." After the 12 month period he should use a phrase such as "His memory be for a blessing, for the life of the world to come."

A sage speaking to an audience refers to his father as "my father," but the interpreter refers to him by name.

One fears his father by not standing in his presence without his permission, by not sitting in the father's accustomed place, by not contradicting him in his presence and by not suggesting compromises in disputes between the father and others.

[Son's financial responsibility towards his parents]

It was noted earlier that one honors his father by feeding him, giving him to drink, dressing and covering him and taking him in and out. Out of pocket costs are at the father's expense, although the son is not compensated for the value of his labor.

Since the principal rule is that the father must pay his own expenses, the son may support the father with the tithe which is dedicated for the poor; the son is not considered to be discharging his own obligation with the poors' tithe. Nevertheless, the Rabbis disapprove and curse the son unless the son sustains the father's basic needs from the son's own resources, and has recourse to the poors' tithe only for amounts beyond the father's minimum requirements.

Where the father has no assets, the son must bear all costs, and the Beth din compels him to do so. The Midrash notes that would that all questions of *halacha* were as clear-cut as the proposition that a son is compelled to support his father at the son's expense.

If the son has no assets he must solicit contributions on behalf of his father. On the other hand, the obligation to honor G-d is only "with your substance,"[577] so that there is no obligation to separate *terumah*, tithes or other offerings from one's field where one has no assets. The Midrash also notes that in this respect the obligation to

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[577]Prov.3:9.

[7:2]

honor one's parents is greater than the obligation to honor G-d.

This holding and the doctrine that a father can be compelled to support his infant children are exceptions to the rule that the Beth din does not compel actions for which Scripture promises a reward. Some extend the exception to hold the Beth din can compel a person to make charitable contributions generally[578].

[32:1]

One who redeems his own second tithe must add one-fifth to the redemption price, whereas one who redeems another's second tithe need not add this fifth. In order to avoid the fifth, a father may give his adult children money with which to redeem the father's tithe, and two partners and a master and his student may redeem each other's second tithe.

The son must not embarrass his father or lose his temper at him, even if the father takes a packet of the son's money and throws it into the sea. A father may train his sons in this respect, by appearing to destroy property. The father should, however, be prepared to waive the son's possible insult to him. Also, the father should not actually violate the precept against wanton destruction of property. Although R. Huna appeared to destroy his silk clothing for this purpose, he actually tore the clothing only along the seams.

Assume that criminals were sentenced to various forms of death, some of which are more severe than others. By way of example, stoning is considered more severe than burning. Assume also that it is not known who was condemned to which death. All are executed with the most lenient form of death, even if the great majority had been condemned to a more severe form of death.

Where one's father incorrectly interprets the *halacha* or commits a similar error, or transgresses a precept, the son should not accuse the father of an error or transgression. Instead, he should ask him politely whether the relevant authority in fact supports the father's position.

Where the requirement to honor one's father conflicts with the performance of another precept, one should honor the father if the other precept can be done by

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[578]See Keth.49:2.

[7:2]

another person or at a later time. If the conflict is irreconcilable, then the other precept should be performed, because the father, too, is subject to the precept.

Never may a father order a son to violate any precept, whether Scriptural or Rabbinic. The same applies to the precept to study the Torah; this obligation has precedence over the obligation to honor one's parents. Note that Jacob was not punished for the many years he spent in study at the house of Ever.

[May a person renounce an honor due him?]

A father, a master and even a Nasi may renounce his honor, but the renunciation should be accepted by others only with dignity and with such reluctance that it is clear that the others had no right to demand the renunciation.

A king may not renounce any honor. No person may treat the king lightly or accept any service from the king, even with the king's permission. The purpose of the rule is to maintain the populace's awe of the king. In decreeing that "You shall appoint a king over you,"[579] Scripture requires that all be done to maintain the king's dignity.

[32:2, 33:1]

[Obligation to honor a teacher or a sage]

A student's obligation to honor his master is greater even than his obligation to honor his father. His father brought him to this world, whereas his master is responsible for bringing him to the world to come. If the master is the student's principal teacher, the student must rise in his honor so long as he can see him.

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[579]Deut.17:15.

[7:2]

One must also honor a sage who is not one's teacher, even if the sage is young. The verse "You shall honor the face of a *zaken*,"[580] is not limited to a *zaken* in the sense of an aged person but also refers to one who has acquired wisdom[581]. One must rise even 100 times a day each time the sage passes within four cubits until the sage leaves his presence.

Where the sage is President of the Beth din the obligation to rise begins as soon as the sage is seen and continues until the Sage passes at least four cubits out of his presence[582]. In the case of a Nasi, the obligation begins as soon as the Nasi is seen, and continues until the Nasi either sits down or is no longer seen. Some apply the same rule to one's principal teacher.

There is no obligation to rise where this would cause monetary loss, such as to workers. To the contrary, day laborers should not rise, because they thereby cause money losses to those who hired them. This is not inconsistent with the fact that tradesmen in Jerusalem would stand up and inquire on the welfare of those who would arrive in the City with *bikurim*. The laborers did not wish to honor the arrivals, but only to encourage them to return in the future.

One should not rise before a teacher in such places as a privy or the inner rooms of a bathhouse. Rising of this sort is not an honor. In such a place it is forbidden even to think of Torah matters.

One may not close one's eyes purposefully to avoid seeing the passage of a teacher or sage. Scripture cautions, "You shall fear your G-d."[583] On the other hand, the sage or teacher should take pains to avoid undue interruption; wherever possible he should pass in such a way as not to require persons to rise.

If a sage is seated, it is inappropriate for those who do not know him well to pass by bareheaded or with lack of respect.

There is no requirement to stand up for an aged person who is not learned. Nevertheless, even a young sage should, by motioning as if he is about to rise, honor an aged person who conducts himself decently. "You should rise for and honor the

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[580]Lev.19:32.

[581]The word can be read as an acronym: *zeh kanah*: **he acquired** wisdom.

[582]When the President of the Beth din enters the study hall, all present honor him by forming one row in front of him and one row behind him. See Horiot 13:2.

[583]Lev.19:32.

[7:2]

hoary head."[584]

There is no need to honor an aged sinner or wicked person[585].

There is no need to rise for aged gentiles, but such persons should be honored by offering them a hand in walking and the like. Where it is inappropriate for a sage to offer assistance, the sage should send others for this purpose. Thus, R. Nahman would offer his court assistants for this purpose. R. Nahman considered it inappropriate to offer assistance himself, not because of his honor, but because of the honor of the Torah he represented: "Were it not for the Torah there are many Nahman's in the street."

[33:2]

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[584]Lev.19:32.

[585]In describing an aged sinner, the Gemara uses the term *ashmai*. The term is derived from the verse "and the earth shall not be *sashem*" (Gen.47:19), meaning the Earth shall not be barren.

[7:2]

A student need rise for his teacher only twice a day; not more often than the morning and evening prayers one offers to G-d. He need rise even 100 times daily only for a sage other than one with whom the student is studying. This accords with the Gemara[586] which recounts that R. Assi when exhausted from his studies would stand at the door of the study hall to rise for scholars who would enter and leave.

Some commentators hold that a student must indeed rise every time his teacher rises, even if many times daily. The point of our Gemara is that one should not **seek to arrange for opportunities** to rise more than twice daily, given that one addresses G-d in prayers only twice daily. Others modify this holding slightly. One is not required to arrange such opportunities, but one **may** if he so desires, in the same way as one may address G-d more frequently if one so desires.

> But what of the rule that day laborers are not permitted to rise? That rule is not a prohibition; it is an exemption from the obligation to rise.
>
> A son must rise for his father even if he teaches the father. The father need not rise for his son.
>
> A teacher or father who is riding is treated as if he is walking, and onlookers must rise.
>
> A leper who sits in a tent defiles others who sit in or pass through the tent. A leper who walks through a tent does not defile others in the tent, whether they sit or walk. The same is true of a leprous stone that is carried in a tent. What is relevant is whether the stone rested within the tent, not whether the person who is defiled rested or passed through.
>
> There is a different rule for defilement by a corpse. Here it does not matter whether the corpse was at rest within the tent or whether the corpse was being carried through. In both cases, all those in the tent are defiled.

One must rise when a Torah scroll is raised or passes by. The Gemara explains that those who learn Torah cannot be given more respect than the Torah itself.

> But does not another Gemara[587] suggest that those who learn Torah **do** deserve greater respect? The Gemara notes that the Sages by interpretation limit the number of lashes given as punishment to 39,

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[586] Ber.28:1.

[587] Mak.22:2.

[7:2]

despite the Torah's reference to 40 lashes[588]! From this the Gemara deduces that it is foolish to rise before a Torah scroll but not before the sages!

No. The Gemara does not mean that sages are worthy of more respect than Torah. The Gemara only underscores the folly of those who fail to rise for the Sages.

R. Simeon reprimanded R. Eleazar and R. Jacob for rising in R. Simeon's honor while they were engaged in a Torah discussion. R. Simeon explained that two had been ordained whereas R. Simeon had not yet been ordained. R. Simeon further maintained that even if he had been ordained they should not have risen because they were engaged in Torah, and the Torah [meaning a person engaged in Torah discussions] does not rise before those who learn it.

Abbaye condemned this teaching because a Sage must rise for his teacher, even from a Torah discussion. This is the *halacha*.

[34:1]

[Certain affirmative precepts for which women are responsible]

We previously explained that women are responsible for affirmative precepts which are not limited to time. Among these precepts are the commandments:

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[588]Deut.25:3.

to build battlements for safety on flat roofs ("You shall build a battlement"[589]),

to return lost property ("You shall return [the lost property]"[590]) and

to dismiss the mother fowl from her nest before removing her offspring ("You shall send away [the mother]"[591]).

True, each of these affirmative precepts is commonly associated with a negative precept which is binding on women as well as men. But there are cases in which the positive precept does apply (for which women are not responsible), while the negative precept does not apply. Specifically:

The negative precept against causing the "loss of blood"[592] by failing to build a battlement applies only to houses which are **built** without a battlement. Where there was once a battlement, the obligation to **repair** it springs exclusively from the affirmative precept.

But what of the Gemara[593] which holds that one who raises a defective ladder violates the **negative** precept? That Gemara refers to a ladder which was defective **from the start**. Alternatively, the Gemara refers to a Rabbinic proscription only, and the reference to Scriptural verse is an *asmakhta*.

It is possible that the woman originally intended to send the mother fowl from her nest, but failed to do so. This intent is sufficient to remove the negative precept "You shall not take the mother with the children", and only the affirmative precept remains.

A woman may have already retrieved lost property and removed it to her home, so that she no longer is liable for the negative precept "You shall not ignore the [property]." Only the affirmative precept to return the property remains.

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[589]Deut.22:8.

[590]Deut.22:1.

[591]Deut.22:7.

[592]Deut.22:8.

[593]B.K.15:2.

[7:2]

An *erub* of courtyards may be made only with bread. Rashi's contrary statement in our Gemara is intended for explanatory purposes only, and not as *halacha*. An *erub* of boundaries and a partnership of courtyards on a street can be made with a food and a garnish. Water and salt are not considered garnishes unless combined as salt water into which food may be dipped. For reasons discussed elsewhere[594], mushrooms and truffles may not be used.

[34:2]

[594]Erub.27:1.

[7:2]

There is an obligation to rejoice in the festival season[595]. The Gemara at one point considers that a woman might be required to rejoice only through her husband, and that Scripture's reference to rejoicing by widows[596] refers only to a requirement that a benefactor of a widow see to it that the widow rejoices. However, the Meiri concludes that the *halacha* requires that each woman must rejoice in her own right.

The affirmative precept to wear *tefillin* is limited to time because the precept does not apply on Sabbath and the festivals[597].

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[595]Deut.16:14.

[596]Deut.16:11.

[597]See Sanh.68:1.

[7:2]

[35:1]

[Women generally subject to negative precepts]

With the exception of the precepts relating to rounding the corner of the head, marring the corner of the beard and defilement, a woman is subject to all negative precepts. This doctrine is derived:

> from the verse "When a man or woman shall commit any sin...,"[598] which directs that women be treated equally with men for penalties, and
>
> the verse "And these are the judgments which you shall place before them,"[599] which equalizes men and women for civil laws.

[May women serve as judges?]

Now, the Tosafot derive from the last verse the doctrine that women may serve as judges, and they adduce further evidence from the prophetess Deborah, of whom Scripture says "And she judged the Jews."[600] Now, women are incompetent as witnesses, for Scripture says "And the two **men** shall stand [as witnesses]."[601] What shall we make of the dictum that all persons who are fit as judges must be fit as witnesses[602]?

The Tosafot explain that the rule means only that **men** who wish to act as judges can do so only if they have competence as witnesses.

The Meiri disagrees. The verse "And these are the judgments which you shall place before them" has nothing to do with giving women the power to act as judges. Rather, the verse means only that the Beth din will deal equally with claims made by women as well as men, and against women as well as against men.

Deborah assumed her authority only because of her extraordinary qualities;

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[598]Num.5:6.

[599]Ex.21:1.

[600]Judges 4:4.

[601]Deut.19:17.

[602]Sanh.34:2.

[7:2]

> even so, she acted only through male judges who stood in her presence. "And she sat...and the children of Israel [including male judges through whom she acted] came before her for judgment."[603]

[35:2]

[Exemption of women from precepts on marring the beard, etc.]

In the Mishnah we noted that a woman is not bound by the prohibition against marring the beard or "rounding" the head. She may round her own hair or beard should she grow one, and she may round or mar the head or beard of men or other women.

For all other purposes, the beard of a woman, should she have one, is treated the same as a man's. For example, should there be a plague in her beard, the plague is judged by the rules for plagues in the beard, not the rules for plagues on the skin.

A beard is marred only if the hair is shaved with a razor. If hair is removed with a pincer or a remover, there is no proscription, since these implements pluck the hair rather than shave it. If hair is removed with scissors, there is no proscription because the hair is not removed completely.

[36:1]

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[603]Judges 4:5.

[7:2]

Women as well as men may not cause baldness out of grief for the dead. The same is true for the interdict against making incisions and cutting the skin for the dead. The Yerushalmi mentions that R. Hamnuna directed the scholars to order their wives not to cause themselves baldness on account of the dead. In explaining the proscription, Scripture cautions "For you are a holy nation,"[604] which applies to women as well as to men.

The interdict applies anywhere on the head. Now, the interdict insofar as concerns Israelites is phrased in terms of "You shall not ... make any baldness **between your eyes** for the dead."[605] But note the more general verse directed to priests "They shall not cause baldness in their head." [606] The word baldness appears in both verses, and the resulting *gezerah shawah* permits doctrine for priests to be applied to Jews generally.

The reverse is also true. The verse for priests is not limited to action taken **on account of the dead,** the verse for Israelites is so limited. The *gezerah shawah* teaches that the limitation for Israelites is to be applied also to priests. There is no injunction against causing baldness out of anguish for a ship which sinks or a house which collapses.

The injunction against incising and cutting is also limited to grief for the dead, with one exception: incising and cutting as part of idol worship is prohibited.

Each action which causes baldness, and for which a separate warning was given, is a separate infraction. For example, five infractions are committed if in the face of separate warnings, baldness is caused by each of five fingers, whether by plucking out hair, or by coating the fingers with a hair-removing drug.

Whereas baldness by definition applies only to hairy portions of the body, incising and cutting are not so limited. Note also that the injunction against cutting and incising applies whether done by hand or with any implement.

The Yerushalmi records a dispute on the minimum amount of baldness which is proscribed. Some sages emphasize the word **baldness**[607] as connoting any baldness, no matter how small. Others hold that the area made bald must be at least the size of

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[604]Deut.14:2.

[605]Deut.14:1.

[606]Lev.21:5.

[607]Deut.14:1.

a bean, on account of doctrine derived from the minimum size of a plague in the body[608].

[Sacrificial requirements which do not apply to women]

> The next Mishnah lists sacrificial requirements which do not apply to women:
>
> The rites of laying hands, waving, bringing near the meal offering, taking the handful, burning the fat, pinching the neck of bird sacrifices and receiving and sprinkling the blood, are performed by men but not by women, excepting the meal offering of a *sotah* or a *nazirah*, where they themselves do perform waving.

A man must lay his hands, with all his strength, on the head of his animal sacrifice before it is slaughtered. This applies to all voluntary and obligatory sacrifices other than to:

> first-born sacrifices,
>
> *maser behemah*, and
>
> the Passover sacrifice.

The requirement is derived from the verse "and he [the owner] shall lay his hands..."[609]

The person who brings the sacrifice confesses his sins during the rite of laying his hands, but only if the animal is brought as a *hattat*, an *asham*, or an *oleh*. If the animal is a *shlamim*, the owner praises G-d and does not confess.

Only the owner of the animal may lay hands. The rite is improper if performed on the owner's behalf by his agent, his slave or his wife: the verse just mentioned directs that the owner shall lay **his** hands.

Women need not lay hands because the verse is addressed only to **sons** of Israel. There is disagreement on whether women are merely exempt from laying of hands, or whether they are forbidden to lay hands even if they choose to do so.

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[608]By *gezerah shawah,* since the word **baldness** also appears in relation to plagues. Lev.13:42.

[609]Lev.1:4.

[7:2]

The rite of **waving** applies to peace-offerings. The owner takes the chest and the thigh of the animal in his hands, the priest places his hands under the owner's hands, and together the chest and the thigh are waved forward and backward, and upwards and downward. The ceremony is performed to the east of the altar.

Although a woman's peace offering also requires the rite of waving, the rite in this case is performed by the priest alone, without the woman's participation. A woman performs the rite of waving only with the meal offering of a *sotah* or of a *nazirah*.

The rite of bringing near applies both to animal sacrifices and to meal offerings. For animal sacrifices the ceremony follows the waving rite, and consists of bringing to the altar the portion of the sacrifice which is to be consumed on the altar. For meal offerings the ceremony is performed by the priest after the meal was placed in a sacred container and mixed with oil and frankincense; the container is then brought to the priest who in turn **brings it near** to the southwest corner of the altar.

Our Mishnah wishes to emphasize that the ceremony can be performed only by a male priest. In discussing the rite relating to a meal offering, Scripture directs that the "**sons** [not the daughters] of Aaron shall bring it near."[610]

The rite of taking the handful refers to meal-offerings, where Scripture directs "and [the owner] shall bring the meal offering to the **sons** of Aaron,"[611] who then perform the rite, again excluding women.

The rite of burning the fat of the animal on the altar is exclusive to male priests both for meal offerings ("And the **priest** [not the priestess] shall burn its remembrance"[612]) and animal sacrifices ("And the **sons** of Aaron shall burn ") [613] the portion of the animal to be consumed on the altar.

That women are not competent to perform the rites of arranging logs, fire and portions of sacrifices on the altar is derived from their exclusion from the rite of burning the fat.

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[610]Lev.6:7.

[611]Lev.2:2.

[612]Lev.2:2.

[613]Lev.3:4.

[7:2]

Scripture says that a **priest**[614] (but not a priestess), may pinch the neck of fowl brought as a sin-offering.

Scripture requires for animal sacrifices that "The **sons** of Aaron shall bring near."[615] It is traditional to apply the verse to the rite of bringing near to the altar **the blood of the sacrificed animal**.

The Mishnah directs that the rite of sprinkling blood on the altar can be performed by male priests only. Sprinkling of the *hattat* of Yom Kippur and of the *parah adumah* can be performed only by the High Priest. The Mishnah which excludes women refers to fowl sin-offerings. That women are excluded is derived from the fact that they are excluded from sprinkling the blood of **animals**, notwithstanding that even a non-priest may slaughter an animal. The rule for fowl is stricter: only a priest may pinch the fowl's neck. It follows that a woman should certainly be excluded!

A sacrifice can be brought during the day only. The laws of sacrifice are therefore affirmative precepts which are limited in time, from which women are excluded in any event. Why does the Gemara require separate derivations?

The Meiri explains that although women are exempt from such precepts, there is nothing in the law which invalidates what women voluntarily choose to do. The Scriptural references invalidate any voluntary actions.

But how could we even think that women can serve as priestesses when they presumably cannot wear the ritual garb required of priests? Because if there were no Scriptural direction we would have ruled that only men must wear the ritual garb.

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[614] Lev.1:15.

[615] Lev.1:5.

[7:2]

[36:2]

[Which precepts apply only in Eretz Israel]

The next Mishnah states:

> Every precept which is dependent on the land [of Israel] is practiced only in the land; and that which is not dependent on the land is practiced both within and without the land [of Israel], except *orlah* and *kilayim*.
>
> R. Eliezer said: *hadash* too.

Precepts which are directed at a person's body apply everywhere, even for precepts (such as *tefillin* and a donkey's first born) in which Scripture speaks in terms of "When you shall come into the land."

Conversely, precepts which focus on the land or its produce (such as *terumah*, tithes, *leket*, *shikha*, and *peah*), apply Scripturally and even Rabbinically, only in Eretz Israel.

The only exceptions to the rule are *orlah* and *kilayim*. Although related to the land, these precepts apply **Rabbinically**, but not Scripturally, even outside of Eretz Israel.

R. Eliezer holds that *hadash* is also an exception; notwithstanding its relation to the land, it applies everywhere, even nowadays, as a **Scriptural** matter.

[Where *Hallah* applies]

The Yerushalmi asks why no mention is made of *Hallah* which relates to the land and nevertheless applies everywhere Rabbinically? (The same question could have been asked of *terumah* which applies Rabbinically in areas which are adjacent to Eretz Israel.)

The Yerushalmi answers that the Mishnah lists only precepts which apply even to a gentile's property. Neither *Hallah* (which applies only to "**your** dough"[616]), nor *terumah* (which applies only to "**your** grain"[617]) affects the produce of fields owned by a gentile.

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[616]Num. 15:20.

[617]Deut.18:4.

[7:2]

[*orlah*, etc. relating to a gentile's produce]

It must follow from the Yerushalmi that the Mishnah lists *orlah* because it affects gentiles as well as Jews, and this is consistent with the Rambam's ruling. Why then is it common practice to buy grapes from gentiles even though gentiles commonly graft new vines unto old ones, and newly grafted vines are considered newly planted for the purposes of *orlah*? There are two possible explanations:

1. The Rabbis apply the rules of *orlah* to grafts only out of concern that *orlah* might apply, not out of certainty. That being so, the Rabbis except gentiles from the rule on grafts but not form *orlah* generally.

2. The type of graft prevalent today is not a new plant. It is inserted into the root of the old plant and continues always to draw sustenance from the old root.

But what of the flat statement in another Mishnah[618] that *orlah* does not apply to the plantings of a gentile? And what of the Sifri which holds that the verse for *orlah* "And **you** shall plant"[619] exempts gentiles from *orlah*, without suggesting that there is a Rabbinical proscription? Some commentators explain that perhaps the Mishnah and the Sifri are limited to a gentile's plantings in his own field; the Yerushalmi refers only to the gentile's plantings on a Jew's behalf, such as by a gentile day laborer or a gentile sharecropper.[620]

If so, what of the Gemara[621] which prohibits a gentile's cheese on account of a presumption that the gentile preserved the cheese (or the milk from which it was produced) in resin of *orlah*? That Gemara's concern is that the gentile may have used resin derived from the Jew's field, or from the Jew's field in which the gentile is a sharecropper. Similarly, the Gemara[622] which holds that a gentile seller is not given credence when he identifies his produce as *orlah*[623] refers only to produce identified

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[618] *Orlah* 1:2.

[619] Lev.19:23.

[620] Those commentators who apply *orlah* even to a gentile's own field explain that the verse cited by the *Sifri* is limited to its facts: produce which was seized by Jews during the initial conquest under Joshua.

[621] A.Z.35:2.

[622] Yeb.122:1.

[623] It is assumed that the gentile wished only to increase the value of his produce, since the produce of

as having been produced on Israeli lands; that is why the produce would have been proscribed were the gentile believed.

> Compare the related proposition that a gentile is not believed when he claims his produce is *sheviith*. All agree that *sheviith* does not apply to a gentile. It must be that the concern, were the gentile believed, is that the produce was grown on the land of a Jew.

Return now to the Yerushalmi. That the Mishnah lists *orlah* but not *terumah* or *Hallah* suggests that *terumah* does not apply to Jewish produce which is winnowed by a gentile, and that *Hallah* does not apply to Jewish dough which is kneaded by a gentile. However, the Alfasi and others disagree and proscribe grain winnowed by a gentile, or dough kneaded by a gentile. The following considerations are relevant:

> 1. A Gemara[624] holds expressly that there is no *terumah* or *Hallah* on grain winnowed by a gentile or *Hallah* kneaded by him. The Alfasi must limit the Gemara's holding to cases in which the gentile performed these processes on his own produce, and then sold the completed produce to a Jew.
>
> 2. The same Gemara states that certain Sages disagree and hold that there is a Rabbinic prohibition on grain winnowed by a gentile because of **those with pockets**. There are two possible explanations:
>
> > i. There was concern that the rich, with big pockets, would avoid *terumah* by arranging for gentiles to winnow the produce belonging to the rich. This is consistent with the Yerushalmi which apparently holds that such grain is exempt from *terumah*. It conflicts with the Alfasi who holds that the rich would avail themselves nothing by arranging for gentiles to winnow grain: the resulting produce is still liable to *terumah*.
> >
> > ii. The Alfasi must explain that the concern was that the rich would **sell** their grain to gentiles, so that the grain is the property of the gentile and is exempt. These sales can be accomplished secretly and without embarrassment: a gentile's acquisitions can be sealed with the passage of money and no physical *meshikhah* is required.
>
> 3. There is no **tithe** for produce owned and winnowed by a gentile[625]. But if

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newer plants sometimes exceeds in value that of older plants.

[624]Men.67:1.

[625]Only **your** grain (Deut. 18:4) must be tithed.

the produce is purchased by a Jew or is winnowed by a Jew, the Jew must separate a tithe[626]. Most commentators explain that the Jew winnowed the produce because he is the gentile's sharecropper, and that without the near-ownership status of a sharecropper a Jew who winnows would not be required to tithe. It follows that, conversely, a **gentile's** non-ownership activities, such as kneading, should not exempt a **Jew's** produce from obligations such as *Hallah*. This supports the Alfasi.

4. Similar implications can be drawn from two holdings of another Mishnah[627]:

i. There is no *Hallah* where a Jew kneads a gentile's dough.

ii. Where a gentile and a Jew together knead dough in which they are partners, there is *Hallah* only where the Jew alone owns enough of the dough to satisfy the *Hallah* requirement. Clearly, where only the gentile owns the minimum amount, the Jew's kneading of the gentile's dough would not result in a *Hallah* requirement. It follows that, conversely, a **gentile's** non-ownership kneading should not exempt a **Jew's** produce from *Hallah*. This supports the Alfasi.

But if the Alfasi is correct, what of the Yerushalmi's difficulty? In what way is *Hallah* a less strict requirement than *orlah*? Why then does our Mishnah list *orlah* but not *Hallah*? Perhaps, the Alfasi would apply *orlah* even to a gentile's own plants, whereas *Hallah* does not apply to a gentile's own dough. Alternatively, it may be that whereas *Hallah* requirements are purely Rabbinic, the requirements of *orlah* and *kilayim* have higher status: they may be considered to be *halacha* transmitted from Sinai[628]. But what of the reference to Rabbinic derivation? It is imprecise.

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[626]Bekh.11:2.

[627]Hallah 3:5.

[628]For orlah there is a clear statement in the Gemara that the rule is based on *halacha*. The Meiri

[7:2]

halacha for *orlah* and *kilayim* which is transmitted from Sinai is nearly equivalent to the Scriptural status of *hadash*.

This completes the explanation of the Mishnah. The Gemara discusses the following:

[37:1]

[The words "dwelling" and "coming" and their implications]

Until the *mishkan* was constructed in the desert, it was permissible to bring sacrifices on private altars, which were also known as minor or individual altars. The use of private altars was not permitted in the desert once the copper altar (referred to as the great altar or the public altar) was available in the *mishkan*.

During the fourteen years after the River Jordan was crossed and Eretz Israel was conquered and settled, private altars were permitted for individual sacrifices but not for public sacrifices.

During the ensuing period in which the *mishkan* was in Shiloh, private altars were again not allowed.

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suggests that the same may be true of *kil'ayim* notwithstanding the absence of a statement of this sort.

[7:2]

Private altars were again allowed for individual sacrifices for one final period after the destruction of Shiloh and before the construction of the Temple in Jerusalem, that is, during the period in which the *mishkan* resided in Nov and Gibeon[629].

Scripture requires that public sacrifices, which were always performed on the great altar, be accompanied by libations on the same altar[630]. When individuals were limited to the great altar in the desert, were they, too, required to pour libations? R. Ishmael and R. Akiva disagree:

> 1. R. Ishmael notes that the Scriptural verse which deals with private libations refers to the period after "You shall **come** to the land of your **dwelling**[631] in Eretz Israel." He sees this as meaning the permanent dwelling after the conquest and settlement and the establishment of the *mishkan* in Shiloh. This proves that previously individuals did **not** pour libations on the great altar!
>
> 2. R. Akiva, on the other hand, does not interpret the word **dwelling** to mean ultimate settlement after conquest. Rather, the phrase means **wherever the Jews shall dwell**.

If the verse is so inclusive why do we need a verse at all? It must be that the verse teaches the converse: that libations are required wherever and whenever sacrifices are brought, including private altars whenever permitted, even in the desert.

> The purpose of the verse cannot be to prohibit libations outside of Eretz Israel. Sacrifices were not permitted outside of Eretz Israel.
>
> R. Akiva would apply a different rule in those cases where Scripture speaks in terms of "you shall **dwell in her,"** such as in relation to the appointment of a king[632], or first fruits[633]. Such language clearly denotes final settlement after conquest.

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[629]The rationale behind these changes is discussed at Meg.9:2.

[630] "And so [the pouring of libations] shall you do to the altar", referring to public sacrifices. Ex.29:38.

[631]Num.15:2.

[632]Deut.17:14.

[633]Deut.26:1.

[7:2]

To understand the following Gemara, realize the following:

1. The verse dealing with libations refers to periods in which the Jews shall **come** to the land of their **dwelling.**

2. The verse dealing with *hadash* also refers to **coming** and **dwelling**.[634] Hence, R. Ishmael concludes, by analogy to his view of the law of libations, that *hadash* applies only in Eretz Israel and after the conquest and settlement.

3. The verses which deal with *orlah*[635], *sheviith*[636] and Jubilee[637] refer to **coming** but not to dwelling. R. Ishmael's doctrine does not apply in these cases. On the other hand, R. Ishmael holds that **dwelling** without **coming** is equivalent to **dwelling** and **coming**.

One sage disputes R. Ishmael, and maintains that the word **coming** is alone sufficient to limit a doctrine to Eretz Israel after conquest and settlement.

But even this sage would not limit *tefillin* to Eretz Israel although the word **coming** appears[638]. The limitation to Eretz Israel is implied only

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[634]Lev.23:10,14.

[635]Lev.19:23.

[636]Lev.25:2.

[637]Id.

[638]Ex.13:5.

[7:2]

> for precepts which deal with the land, not to those which are directed to the person.
>
> What of *Hallah* where there is a reference to **coming** but not to dwelling[639]? Even this Sage agrees that the precept applies in Eretz Israel even before conquest and settlement. This results from the peculiar formulation of the **coming** term for *Hallah*: the phrase can be read to mean **upon your collective arrival**.

Realize, however, that all of these distinctions are not consistent with the *halacha*. The *halachic* test is whether the precept attaches to the land or to the person.

[37:2]

[Comparisons among *hadash*, *kilayim* and *orlah*]

As discussed in relation to the Mishnah, the *halacha* disagrees with R. Ishmael and forbids *hadash* even outside of Eretz Israel and even before the dwelling which followed the conquest; the reference to **dwelling** means **wherever you dwell**.

The law of *hadash* proscribes the new year's grain harvest until the *omer* is brought on the 16th day of Nissan, which is the second day of Passover.

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[639] Num.15:18.

[7:2]

Immediately after the Jews crossed the Jordan River with Joshua and before the conquest, "they ate of the produce of the land on the morning after the Passover."[640] The Mishnah

would explain that the verse either:

> (i) refers to the day (the 15th day of Nissan) after the day (the 14th day of Nissan) on which the Passover sacrifice is brought. If so, the verse refers to old produce and not to *hadash*, or
>
> (ii) refers to the day (the 16th day of Nissan on which the *omer* was brought) after the first day of Passover (the 15th day of Nissan). If so, the verse can refer to *hadash*.

[38:1]

The Gemara maintains that *hadash* has the following properties:

1. It is not permanently forbidden;

2. Not all benefits are forbidden; and

3. there are circumstances in which the proscription can be removed and the *hadash* can be consumed.

For *kilayim*:

1. The prohibition is permanent;

2. All benefits are forbidden; and

3. The proscription cannot be removed.

orlah has two of the three strict features of *kilayim*. The Gemara does not identify these two features.

Rashi explains that:

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[640] Josh.5:11.

[7:2]

hadash is not permanently forbidden in the sense that new produce may be consumed **after** the 16th day of Nissan whether or not the *omer* was brought. And after the destruction of the Temple, when the *omer* can no longer be brought, the dawning of the 16th day of Nissan is Scripturally sufficient to permit the consumption of *hadash*.

Note that R. Johanan b. Zakai modified this rule somewhat by delaying consumption of *hadash* until the **close** of the 16th day.

That the proscription on *hadash* can be removed means that the bringing of the *omer* can lift the proscription even in the midst of the 16th day.

That *kilayim* is permanently forbidden, and that *kilayim*'s proscription cannot be removed, means that the produce of wheat and grape which were sown together, and the produce derived from such produce, is forbidden forever.

We know that *orlah* shares two stringent features attributed to *kilayim*: all benefit is forbidden from *orlah*, and its proscription cannot be lifted during the three years after planting. That there is one stringent feature of *kilayim* which is not shared by *orlah* must mean that the proscription of *orlah* is not permanent, since fruits of a tree are permitted once three years pass from the time of planting.

Here is a summary of Rashi's holding:

	permanent	*benefit forbidden*	*benefit can be removed*
hadash	no.	yes.	yes.
	New produce may be consumed on 16th day of Nissan whether or not *omer* was brought		*omer* is valid even on the 16th
kilayim	yes.	yes.	no.
			even the produce of produce is forbidden.
orlah	no.	yes.	yes.

[7:2]

	Fruits of a tree may be eaten once three years pass		*omer* is valid even on the 16th

But, asks the Meiri, what of the fact that the proscription of *orlah* is permanent **for the fruits which grew during the three years after planting**!?

There are alternative explanations of the stringent features for *kilayim*. That *kilayim*'s proscription may not be lifted means that the very existence of kilayim springs from transgression. *hadash*, on the other hand, is legally sown. Accordingly, the feature which does not apply to *orlah* is the lifting of the proscription, since all trees are legitimately planted, and the proscription does not apply at the time of planting.

Under another explanation, a proscription is forever if it is **universal**, in the sense that it applies to gentiles as well as to Jews. This is true of *kilayim* in the limited circumstances discussed elsewhere relating to tree grafts[641], but not to *hadash* or *orlah*.

That the benefits of *kilayim* are forbidden is derived from the verse as to *kilayim* "lest you shall consecrate [the produce wrongly sown as *kilayim]*"[642]. In the Hebrew, the word **consecrate** (*tukdash)* can be read to mean **consume in fire**. Accordingly, the verse is read to forbid the use of *kilayim* even as kindling.

[38:2]

[When laws of Jubilee and *sheviith* apply]

The laws of Jubilee applied Scripturally only during the period of the First

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[641]See San.56:2.

[642]Deut.22:9.

Temple when all the Jews were on all the land. The Jubilee laws which released the land applied only in Eretz Israel, whereas the laws which released slaves applied everywhere.

What of *sheviith*?

1. The rules forbidding working of the land applied only when Jubilee released the land.

2. So long as Jubilee released the land[643] in Eretz Israel, *sheviith* released debts everywhere.

Now, during the Second Temple, the **Rabbis** applied the proscriptions against working the land on *sheviith*, and the Rabbis required the release of debts on *sheviith*. Although some dispute this, and hold that the proscription against working the land applied Scripturally during the Second Temple, the Yerushalmi supports the view that this was Rabbinic only.

There is considerable confusion on whether the rules relating to release of debts, etc. apply in modern times. The Meiri discusses this at length elsewhere[644].

[Where it is uncertain whether produce is *orlah* or *kilayim*]

Assume that produce is found near a field of *orlah* or *kilayim* and it is possible that the produce is derived from the field:

1. In Eretz Israel the produce is forbidden. The proscription of *orlah* and *kilayim* is Scriptural in Eretz Israel, and we are therefore concerned with the nearby *orlah* and *kilayim*.

But what of the rule that the presumptions derived from the majority (in this case, the majority of produce which is not *orlah* or *kilayim*) prevails over presumptions drawn from nearness? The rule does not apply in cases of **close** proximity.

Others explain that majority prevails even over near-proximity. Our Gemara involves a case in which produce was known to have been taken from a field which had both *orlah* and non-*orlah*. That is why

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[643]Alternatively: "so long as *scheviith* proscribed working the land...." This reading is possible if one holds that working the land was not Scripturally proscribed during the Second Temple.

[644] M.K.36:1; Git.36:1.

[7:2]

the majority is not relevant.

2. In Syria the proscription has less force. The produce is permitted.

3. Elsewhere, the produce is permitted even where it is obvious that the produce is derived from the field **and even to the person who collects the produce**. All that is necessary is that there be the remotest possibility **to the person eating the produce** that the produce was transported from some other place.

That the collecting person may himself eat the produce goes against the Gemara's initial thought that doubtful produce is permitted only when collected by another.

The produce is forbidden if witnesses testify or it is otherwise certain that the produce was derived from the forbidden field.

Note that *orlah* and *kilayim* are treated alike. It does not matter that outside of Eretz Israel, *orlah*'s proscription is based on *halacha* transmitted from Sinai, and *kilayim*'s proscription is only Rabbinic.

[39:1]

What did Levi mean when he said "Supply me with *orlah*, and I will eat it"? Most hold that this relates to the Gemara's initial view that even doubtful *orlah* is permitted only if collected by another. Levi's purpose was to show that the **other** need not be a gentile.

The *halacha* would explain that Levi asked that the produce be collected without his knowledge so that as far as Levi was concerned there would be a remote possibility that the produce is not *orlah*. The Meiri considers this procedure undesirable, since the Jew collecting the produce does know absolutely that the produce is *orlah*.

[Three aspects of *kilayim*]

There are three aspects to *kilayim*, all of which are defined in detail below:

1. The grafting of trees of differing species;

2. *kilayim* of the vineyard; and

3. *kilayim* of seeds of different species.

[7:2]

Trees may not be grafted in or out of Eretz Israel on pain of *malkot*. Nor may a Jew direct a gentile to graft trees. But once grafted, the fruit is permitted, even to the person who grafted the tree.

kilayim of the vineyard is proscribed Scripturally in Eretz Israel and Rabbinically elsewhere. No benefit may be derived from the produce.

kilayim of seeds is proscribed in Israel on pain of *malkot*. A Jew may direct a gentile to sow such *kilayim*. Once sown, even by a Jew, the produce may be consumed. Why then does the Gemara say that **benefit** is permitted, which suggests that **consumption** is proscribed? The Gemara wishes merely to contrast the case with *kilayim* of the vineyard, where even benefit is proscribed.

Outside of Eretz Israel a Jew himself may commingle seeds and sow *kilayim* of seeds. Must he attempt to separate the species so that they not draw the same sustenance from the soil? No.

[Definitions relating to *kilayim*]

kilayim of trees refers to the grafting of, say, a branch of a nut tree into a fig tree, or even into a tree which does not bear fruit. Similarly, vegetables cannot be grafted onto trees and *vice versa*, so that a tree branch may not be grafted onto a melon bush to benefit from the moisture of the melon bush.

There is no prohibition where there is no grafting. That is why one may **sow** tree seeds with any other tree seeds or any other seeds whatsoever.

Different variations of one species may be grafted unto one another. This is the import of the Mishnah[645] which holds that *kilayim* does not apply to grafts of pear-trees, crustumenian pear-trees, and sorb-apples. We are today uncertain of the precise identity of these species, but they certainly differ from each other more than, say, different species of figs.

kilayim of seeds applies to one who sows two species of plants, whether of beans, vegetables or grains. For example, the proscription applies to wheat and barley, beans and lentils, and moss and leeks.

kilayim of the vineyard according to R. Josiah means the sowing of two species of plants in one "hand throw" among grape vines, or in one hand-throw with grape seeds. The species which are proscribed Scripturally are only those (such as grains,

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[645]Kil.1:4.

hemp or *lof*[646]) which ripen at the same time as grapes. The Rabbis also proscribe certain beans and vegetables, but not *iris, casus*, king's lily and related plants. Note that in each case the person who sows also violates the precept against *kilayim* of plants.

[How many species are requisite for *kilayim*; must they be sown simultaneously]

What if the two species are not sown in a hand-throw but only consecutively? Or if there is only one species besides grape? There is no *kilayim* of the vineyard[647]. But commentators differ as follows:

1. Some hold that there is no proscription at all against either sowing in this way or eating or otherwise benefitting from the resulting produce.

2. Other commentators explain that it is only the proscription against **sowing** which is limited to two species which are sowed simultaneously. But no **benefit can be derived** from the produce of even non-simultaneous sowing of one plant species with grape seed or in a vineyard.

3. Other commentators propose a compromise:

(i) it is forbidden to sow even **one** species with grapes,

(ii) if only **one** species is sown the produce may be consumed, and

(iii) the produce may not be consumed where there are **two** species, even though they are not sown in a hand-throw.

The following considerations apply:

i. It must be that R. Josiah holds that the produce of grape and one species may be consumed, for otherwise for what purpose does the Gemara note that the populace follows R. Josiah's view?

ii. What of a Mishnah[648] which holds that a plant (even **one** plant!) which grows in a perforated pot is proscribed if it is passed over a vineyard long enough for the grapes to increase in size by

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[646] An onion-like plant.

[647] Of course, there is *kil'ayim* of plants if two species are involved.

[648] Kil.7:8.

1/200? That Mishnah is not consistent with the *halacha*!

iii. Another Gemara determines that wine and oil must be tithed separately and then considers whether oil and grain must be tithed separately. The Gemara reasons that since tithes cannot be given from grapes for oil where no *kilayim* applies[649], then tithes certainly cannot be given from grapes on grain where *kilayim* does apply. The Gemara then asks "But what of R. Josiah" who holds that there is no *kilayim* unless **two** species are sown in a hand-throw into grape vines?

Clearly, the Gemara assumes that R. Josiah holds that there is not *kilayim* for one species even for the purpose of proscribing consumption of the produce which results.

iv. Our Gemara relies on R. Josiah in finding that there was no *kilayim* where one sowed grain among grapes. Presumably, the person doing so intended to eat the produce, and still there was no ban. It must be that the produce is permitted where only one species of grain is involved.

v. Another Gemara[650] distinguishes between:

plants which have been sown together with grapes (*i.e.,* by a hand-throw) where the produce is absolutely prohibited, and

plants which were sown separately from the grapes, where the produce is proscribed only if the grape increased in size by at least 1/200 during the period in which the plants grew in the grape's proximity[651].

In the second case there was no seeding by hand-throw and yet the produce is proscribed where there was the 1/200 addition.

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[649]Scripture refers to tithes of the best of the oil, and of the best of the grain and wine, Num. 18:12, suggesting that the tithes for these two categories are separate.

[650]Hul.116:1.

[651]In this way the Gemara resolves the apparent inconsistency between one verse which suggests only the **filling** of the *kil'ayim* is proscribed, and another which suggests that even the **seed** is proscribed. See Deut.22:9.

[7:2]

> For what purpose then, do we apply the rule that the produce of *kilayim* is not proscribed until the grape go beyond the half-ripe stage of *boser* and becomes similar to a white bean? For the purpose of the Rabbinical ban whereby even the plant other than the grape becomes forbidden.

vi. Note the Gemara's reference[652] to *kilayim* which may result when a barrier between a vineyard and other plants is destroyed; to one who covers his comrade's grain field with grape vines[653]; to one who permits thorns to grow in his vineyard[654]; and to *cascuta* as *kilayim* in a vineyard[655].

[*kilayim* through a gentile]

Another Gemara[656] suggests that it is permissible to pay a gentile a minor amount to plant one (but not two) species of plant in a vineyard. But several commentators hold that the Gemara applies only to *cuscutha* which may perhaps have the status of a tree and is therefore exempt from *kilayim* of the vine altogether. In all other cases, one cannot do through a gentile what one cannot do one's self.

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[652]B.B.2:1.

[653]Kil.7:5.

[654]Kil.5:8

[655]Sab.139:1.

[656]Sab.139:1.

[7:2]

[39:2]

[Reward and punishment for precepts]

The next Mishnah states:

> He who performs one precept is well rewarded, his days are prolonged, and he inherits the land. But he who does not perform one precept, good is not done to him, his days are not prolonged and he does not inherit the land.
>
> He who is versed in Bible, Mishnah and secular pursuits will not easily sin, for it is said "And a three-fold cord is not easily broken."[657] But he who lacks Bible, Mishnah and secular pursuits does not belong to civilization.

The performance of one precept can make an enormous difference. One positive precept may be the equivalent of many other precepts, and one transgression may be the equivalent of many other transgressions.

A person is punished in this world to cleanse him of transgressions. One precept may be all that determines whether or not a person will suffer punishment where the number of precepts previously performed is equal in importance to the number of transgressions. A person must therefore concede the justice of his fate, and understand that the ways of G-d cannot be understood.

The Mishnah also teaches that a righteous man is rewarded both in this world and in the next (*i.e.,* he inherits the land). The same thought is expressed elsewhere in a listing of the precepts for which a person receives "income" in this life, while the "principal" stands him in good stead in the world to come. These precepts include those which require that one honor his parents, do good deeds, seek to maintain the peace among persons, and (equal in importance to all the others taken together) study Torah.

It is a principle of faith that there is reward and punishment both in this world and in the next world. One should not be confused by the apparent success of the wicked or the tribulations of the righteous. All is just. A righteous person may have committed certain transgressions. It is better to atone now for these sins, to prepare him for a "good day" in the world to come.

The reverse is true of the wicked person. He receives his reward now to prepare

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[657] Ecc.4:12.

[7:2]

him for a "bad day," that is, not to receive a share of the world to come.

The righteous in this world can be compared to a tree whose trunk is on pure ground, and a few of whose branches extend into impure ground. By cutting off the few branches (by punishing the righteous) the entire tree is made to stand on pure ground only. "And your beginning shall be small (initially you shall be punished), and your end shall grow exceedingly."[658] The reverse is true of the wicked: "A man may have a direct road, but its end leads to death."[659]

This is not to say that there cannot be a reward for good deeds in this world as well as in the next. It is the force of circumstances which may delay rewards until the next world. For example, assume that a person heeds his parent's order to fetch young birds, and to send the mother bird away before taking the chicks. How is it that such a person can die while performing two precepts, for each of which Scripture promises long life? The force of circumstances delays reward until the next world!

A desire to transgress is not the equivalent of a transgression, but nevertheless there is punishment for the desire and for the fact that only outside circumstances prevented performance of the transgression. The reverse is also true. One is considered to have performed a precept if he withstands and does not succumb to an evil thought.

A thought can be the equivalent of an action. "So that the Jews grasp this in their hearts."[660]

[40:1]

The worst possible transgression is for one who is respected as a scholar to

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[658]Job 8:7.

[659]Prov.14:12.

[660]Ezek.14:5.

[7:2]

profane G-d's name. The punishment for profaning G-d's name is immediate, and if a person's good deeds are otherwise equivalent to his bad deeds, the bad deeds will prevail if one of them is profaning G-d's name. It is far better that a person transgress in private rather than in public.

One who transgresses in private, thinking that G-d is unaware of his actions, is deemed to press against the legs of the holy Presence, *i.e.,* to be denying that G-d is omnipresent.

The Gemara advises one who cannot withstand his evil desires to dress in black and to remove himself to a place where he is not recognized. The fact he is there unknown and is there unconcerned with his dignity, may deflect his desire. If not, better that he transgress there without profaning G-d's name. There are many wicked persons in the street.

[40:2]

Encourage yourself to perform precepts and to avoid transgressions. Imagine that the performance of one precept is all that is necessary to outweigh an otherwise equal balance of your own (and even the whole world's!) precepts and transgressions.

You cannot rely on credit obtained for past performance of precepts. A life full of precepts will not protect one who rebels in the end. "The righteousness of the saint will not save him on the day of his iniquity."[661] Still, the person's past actions, unless he regrets them, serve him in the world to come to reduce the punishment he would otherwise receive then; figuratively, they serve to cool the gehenna. The same applies in reverse to one who was wicked throughout his life, and at the end performs proper deeds.

[Disgraceful behavior which disqualifies a witness]

One who is not versed in Bible, Mishnah and secular pursuits does not belong to civilization, and is also incompetent as a witness[662].

Study which is necessary for one's own knowledge is more important than the performance of a precept which can be performed later. By study, the person makes it possible for himself to perform additional precepts. However, performing precepts

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[661] Ezek.33:12.

[662] Hag.21:1.

[7:2]

is more important than teaching knowledge to others[663].

One who eats publicly in the street is disgraced and is incompetent as a witness. The Yerushalmi explains that the disgrace attaches to one who **grabs** food in the street and eats.

Of course, if the food is worth a *perutah* or more the person is incompetent as a witness anyway as a thief. The Yerushalmi records that R. Judah HaNasi complained to his son R. Simeon that it is inappropriate for a scholar to eat in the street. The Yerushalmi asks why R. Judah emphasized the word **scholar**, and answers that as to a scholar the shame attaches even where the scholar grabs less than a *perutah*'s worth of food.

Also disgraced are those who walk naked in the street when they perform disgusting labor.

[41:1]

[663]See B.K. 17:1.

[7:2]

A person's character is important because it determines whether he will succumb to transgression or perform good deeds. By way of comment, the Rabbis said that a person is given a taste in this world of the results of his labor. If he angers easily, his anger will bring him to error and embarrassment in this world. If he is humble, his humility will result in leadership. "Humility precedes honor."[664]

This completes the first *perek*

G-d be praised

[664]Prov.15:33.

[7:2]

[7:2]

PEREK II

With the Help of G-d

This *perek* deals in the main with the following topics:

1. *kiddushin* by agency and by a girl's father;

2. when a woman can accept *kiddushin* without her father's intervention;

3. general aspects of the law of agency;

4. when items worth less than a *perutah* can combine to effect valid *kiddushin*;

5. erroneous *kiddushin*;

6. one who betroths two women simultaneously; and

7. the law relating to one who betroths with sacred property or with property from which benefit is proscribed.

The *perek* also digresses into various unrelated matters.

[*Kiddushin* **by agency]**

The first Mishnah states:

A man can betroth a woman through himself or through his agent. A woman may be betrothed through herself or through her agent. A man may give his daughter in betrothal when a *na'arah* either himself or through his agent.

[Preference that *kiddushin* **be performed personally]**

The Mishnah mentions **through himself** first, to teach that it is better to betroth personally than through an agent. There is an element of transgression if one betroths without first seeing the bride. Where betrothal must be through an agent, and the man does not have the opportunity to see the bride in advance, he should investigate the woman and her family as much as possible. Far better that he forego

betrothal with a woman whom he dislikes than to betroth and dislike later.

What of the woman? Must she see the man first to be sure that she will like him? No. There is a presumption that a woman will find any man acceptable. Still, the general rule applies that wherever possible one should perform precepts personally. For the same reason, R. Safra would himself singe an animal's head for the Sabbath, and Raba would himself salt fish for the Sabbath.

But what precept applies? A woman is not personally subject to the precept to be fruitful and multiply! Yes, but she does serve as the agent through which her husband performs the precept. Alternatively, although the Gemara holds that she is free from the full force of the precept, she is not entirely exempt.

[Father may betroth his daughter while she is a *ketannah* or *na'arah*]

The Mishnah states that a father can give his daughter in betrothal while she is a *na'arah* even though at that age he can no longer sell her as a maidservant. Here, too, it is preferable that the father perform the betrothal personally, but there is no transgression if he arranges for betrothal through an agent. As noted previously, there is the presumption that a mature woman will find any husband acceptable.

A father can most certainly give his daughter in betrothal while she is yet a *ketannah*. At that time he can still sell her into slavery. But here the father is forbidden from accepting betrothal through an agent. A *ketannah* can be unfairly influenced through her friends to dislike the groom. The father must wait until the girl becomes a *na'arah*.

[Formal requirements of agency]

One who betroths personally must declare "You are betrothed to me with this object." One who betroths through an agent must formally appoint the agent, and the agent should declare to the woman "Be betrothed to such and such a man with this object, for I am his agent." It is not absolutely necessary that the agent identify himself to the woman as an agent. It is necessary only to establish that there was in fact an agency.

The agent can use either the principal's property or the agent's own property, unless the principal directs otherwise.

What is necessary to establish the agency? For an agency to **deliver** *kiddushin* and *get* and to separate *terumah*, no witnesses are necessary. It is sufficient that both the principal and the agent testify to the appointment. This is the Meiri's view and is supported by the Rambam and a Tosefta.

[7:2]

But witnesses must observe the appointment of an agent by a woman to **accept** *kiddushin*. The appointment is the only action taken by the woman, and is therefore the counterpart of the act of personal *kiddushin* which must be witnessed.

The Raabad disagrees. Even the appointment of a **delivering** agent is valid only where witnessed[665]. Besides, if we were to credit the testimony of the agent and his principal we would disadvantage a second man who might claim to have betrothed the woman later.

Why is the rule different for *get* and *terumah*? Because the *get* document supports the agent's contention, and there is no general requirement that witnesses attest to the separation of *terumah*.

The Meiri cautions that the Raabad's rule should be applied where this would lead to more stringent results.

[Ratification of the acts of one who was not an agent]

What if one who is **not** an agent betroths a woman on behalf of another, and the other person approves of the "betrothal" when informed of the action? The Meiri holds there is no *kiddushin* even if property of the "principal" was used. Others disagree on account of the doctrine that one can obtain rights for another out of the other's presence. Here are considerations which should be kept in mind:

1. The Gemara[666] holds that where A tells B "Here is a maneh and be betrothed to C," the betrothal is valid. Yes, but perhaps the case assumes that C had appointed B as C's agent, and that the Gemara's purpose is only to show that B can use his own property.

2. Where a *ketannah* accepts *kiddushin* without her father's knowledge she may not remarry without a *get*, because the father may have acquiesced when he discovered the act.[667] Now, the daughter cannot betroth herself and she cannot be more than an "agent" who was not appointed by the principal-father. Is this not evidence that the *kiddushin* of an unappointed

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[665]The Raabad and those who agree with him hold that when the Gemara is concerned at 45:2 that the husband might have appointed an agent, the Gemara means that the husband might have appointed an agent in the presence of witnesses.

[666]7:1.

[667]44:2.

agent can be ratified?

Not necessarily. The case is different because after all it is the girl who is being betrothed! That is why ratification is valid here but not elsewhere. Besides, the Gemara concludes that we do not fear the father's later acquiescence. It results that the Gemara in fact supports the Meiri's position.

3. The Gemara[668] discusses the case of the father of a son who abruptly gave a *kiddushin* object to the father of a girl, and announced that the girl was thereby betrothed to the boy. The holding is that there is no *kiddushin*, because a son cannot be assumed to ratify his father's unauthorized act on his behalf. It would appear, then, that the *kiddushin* would be valid where there is ratification.

Nor can the case be distinguished on the ground that the father was in fact previously appointed as the son's agent, for the issue of possible agency is discussed separately in the Gemara.

4. The Mishnah[669] holds that a woman who accepted a basket of figs on behalf of five women can effect *kiddushin* for all of them. Shall we presume that the woman had not been appointed as the others' agent, and that the operative doctrine is ratification of unauthorized acts? No. Perhaps there had in fact been a previous authorization.

The Meiri concludes that one need take the strict view only where this does not cause undue hardship.

[Recital of blessings in *kiddushin* by agency]

The Rambam holds that the groom must recite a blessing before he betroths personally, and the agent must recite a blessing before he betroths for his principal. This is similar to the rule that an agent who separates *terumah* for his principal must recite a blessing. The Rambam also adds that if the blessing is not timely made, the blessing cannot be made at all, because blessings are valid only if made **prior** to performance of a precept.

Some commentators do not permit a blessing where the principal transgressed

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[668] 45:1.

[669] 50:2.

and did not see his bride before the agent betrothed her. Compare the rule that no blessing is recited:

> by one who dispatches a mother bird only after removing her from the nest with her chicks,
>
> by a husband who divorces his wife (because we dislike divorce),
>
> by one who performs the precept of removing the head of a first-born donkey where the owner failed to redeem the donkey.

Other commentators hold that the agent should never recite a blessing at all, even where there is no transgression. The blessing can be recited by the husband himself, before the *huppah*. The same blessing will cover both the initiation of the marriage by *kiddushin* and its consummation by *huppah*.

But what of the rule that a blessing must be performed **before** the precept to which it relates? The rule is satisfied because the blessing is performed before the *huppah* which completes the precept.

[Who may act as an agent]

All persons who have the capacity to act as agents for *get* can do so for *kiddushin*, except that a blind person cannot be an agent for *get* but can serve as an agent for *kiddushin*.

This completes the explanation of the Mishnah. The Gemara adds the following:

[May one agent appoint a substitute?]

An agent for *kiddushin* or *get* can himself appoint another agent. In the case of sickness or other emergency this applies even to an agent who is appointed by a woman to accept. It does not matter that an accepting agent is given no physical object to pass but has only verbal authority to act on behalf of the woman.

Some commentators hold that without express authority the agent cannot substitute another agent where the principal appoints the agent with the words "**you** give the *kiddushin*." The matter is discussed at greater length elsewhere[670].

The doctrine of substitution of agents for *get* is derived from the repetition of the

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[670] Git.29:1.

word **send**[671], and for *kiddushin* by derivation from *get*[672]. Is the doctrine therefore limited to these two cases? The Meiri is uncertain. He concludes that where an agent transfers the principal's property to another the principal should be able to claim that he did not wish his property to be given to another.

[Derivation of agency rules]

The doctrine of agency is derived generally from the verse "And the whole assembly of the congregation shall kill [the Passover sacrifice]."[673] Unless we hold that:

all Jews may satisfy their obligations with one Passover sacrifice, and

there is no requirement that all Jews eat at least one olive-sized portion of the sacrifice and

all Jews are in effect partners in that one sacrifice[674],

it must be that a person who kills a Passover sacrifice is deemed to do so as the agent for all persons he has in mind.

Can it be that the verse validates agency only where the agent is a partner in the Passover sacrifice? No. The verse applies even where the agent is not a partner, such as where he is not a member of the group which has determined to partake of the particular sacrifice. An example is the case[675] of an agent who is uncertain whether he was asked to sacrifice a kid or a calf: he sacrifices both and specifies that if the principal designated a calf, then the kid is brought for the agent, and vice versa.

[Agency for *terumah*]

There is no set requirement for the amount of *terumah* which must be separated

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[671]Deut.24.

[672]The verses "she shall depart...and she shall be another man's wife" (Deut.24:2) assimilate marriage to *get*.

[673]Ex.12:6.

[674]See 42:1.

[675]Pes.88:2.

[7:2]

from produce. Scripture speaks only in terms of "the first of your corn,"[676] from which the Rabbis derive the rule that even one grain can satisfy the *terumah* requirements for a pile of produce. Still, the prophet Ezekiel[677] refers to 1/60th as the proper measure, and the Rabbis hold that this measure applies to one who is mean-hearted. An average person is expected to give 1/50th, whereas a kind-hearted person gives 1/40th.

An agent should separate what he expects of the principal. If he does not know the principal's mind, he should separate 1/50th. This separation is valid even if it thereafter appears that there was a divergence of 10, meaning that the principal preferred to separate 1/40th or 1/60th; in appointing the agent, the principal implicitly accepted any valid separation of *terumah*.

[41:2]

[Mental separation of *terumah***]**

[676]Deut.18:4.

[677]Ezek.45:13.

[7:2]

terumah may be separated mentally. Once the owner mentally designates produce in one location as *terumah* he may immediately eat produce at other locations. Scripture directs "And *terumah* shall be **considered** for you..."[678] The same applies to *hekdesh*: one who mentally determines that "this ox shall be a burnt offering" must sacrifice the animal as a burnt offering. "All those who so willed in their hearts brought burnt offerings."[679]

[Agency for Passover sacrifice]

Each Passover sacrifice is brought for a specific company. "You shall be numbered on the lamb." The sacrifice may be eaten only by the members of the company. [680] No member can withdraw from a company after the animal has been killed. There must be an olive-sized morsel available for each member of the company, and each member must consume at least that amount. Those who cannot consume the minimum amount (such as infants and those who are exceedingly sick or aged) may not be included in the company.

Our Gemara does not agree with those who hold that one Passover sacrifice is sufficient for all Jews, that it is not necessary that each Jew consume any portion of the sacrifice, and that the only essential act is that the blood of the sacrifice be sprinkled on the altar on behalf of everybody.

Assume that a company loses its sacrifice while the animal is yet alive, and that the company appoints one of its members to locate the animal and to sacrifice it on behalf of the company. Assume further that the member so designated locates and kills an animal, and that the remaining members kill another animal.

If the member-agent killed his animal first, then:

1. All the members may partake of his animal for he was the company's agent.

2. The remaining members could not withdraw from the original company once the first animal was killed; hence, they invalidly established a company for the second animal and that animal must be destroyed by burning.

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[678] Num.18:27.

[679] Chron.II 29:31.

[680] Ex.12:4.

[7:2]

If the animal brought by the remaining members is killed first, then:

1. The agent-member may partake of his animal for he did not appoint the others as his agent to sacrifice for him, and he never withdrew from the original company (which now consists of himself alone).

> What of the rule that a company must have more than one member[681]? That rule states the desired practice, but sacrifices brought in violation of the rule are valid, if the individual can himself consume the entire animal or if the animal was initially brought on behalf of a larger company. The fact that the balance of the company withdrew, and that much of the animal will therefore remain unconsumed, is the result of unexpected circumstances for which the individual is not penalized.

2. The remaining members of the original company partake of their animal, for they validly withdrew from the original company while the first animal was yet alive.

Where it is uncertain which animal was killed first:

1. The agent member can eat his own animal.

2. The other members cannot eat either animal.

3. Animals brought by the other members must be destroyed by burning.

They need not bring a second sacrifice on the 14th day of Iyar for reasons discussed elsewhere[682].

[Capacity of a gentile, *kuti*, minor and others to act as agent]

A gentile or a *kuti* cannot be an agent. One source of the rule of agency is the verse "You **also** shall separate *terumah.*"[683] The word **also** is superfluous and from it the Rabbis derive the rule that an agent can separate *terumah*. But the agent must be like **you**, in that like you the agent cannot be a gentile. Produce purported to be separated by a gentile is not *terumah*, and may be consumed by non-priests.

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[681]Pes.91:1.

[682]Pes.98:2.

[683]Num.18:28.

[7:2]

Still, *terumah* which was separated by a gentile from his own field in Eretz Israel has the status of *terumah* as a Rabbinical matter, and the *terumah* can be eaten by priests only. Some explain that this rule arises from the doctrine that a gentile's ownership of land in Israel (and most certainly his winnowing of produce in Eretz Israel) is not sufficient to relieve the land of its *terumah* and tithe liabilities.

Other commentators hold that a gentile's ownership or his winnowing does exempt produce from *terumah* and tithe. Our Gemara deals with a case in which:

> the produce was grown on a Jew's land until it was more than one-third of its full size, so that the gentile's ownership did not result in exemption, and
>
> the produce was sold to a gentile who separated *terumah* **before** winnowing while the grain was still in its stalks (so that the gentile's winnowing did not result in exemption).
>
> All agree that a gentile's purported *terumah* is invalid outside of Eretz Israel.

A deaf-mute, an idiot or a minor can never be an agent. A gentile slave can be an agent for the purposes of *terumah* since he has the same status as a woman. Still, he cannot be an agent for the purposes of delivering or accepting[684] a *get* or *kiddushin*. Since a gentile slave is not subject to the laws of *kiddushin* and *get* (for this purpose the slave has the status of an animal[685]), he cannot serve as an agent in relation to these laws.

The rule would be otherwise where the slave is bound or asleep and the *get* or the *kiddushin* is deposited on his person. In this case, the *get* or *kiddushin* are effective not because of the slave's agency but because the slave is the equivalent of his or her owner's real property, and chattels may be transferred by deposit on the transferee's real property.

[Where *terumah* can be separated without the owner's authority]

It is implicit in the preceding discussion that *terumah* separated by one for another without the other's authority is invalid. But one partner may separate

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[684]The Meiri disagrees with some commentators who wold permit the slave to act as an agent for **delivering** a *get*. In Git.23:1 the Gemara treats both delivery and acceptance alike.

[685]This is implicit in the verse in which Abraham directed his gentile slave Eliezer to "Remain **with the donkey**," which can also be read as meaning a **nation similar to the donkey**.

[7:2]

terumah for himself and his partner, a guardian may separate *terumah* for orphans[686] and a sharecropper may separate *terumah* for the land-owner[687].

[42:1]

[Role of minor regarding Passover sacrifice]

The Gemara states that an adult, but not a minor, can **acquire** for the purpose of the Passover sacrifice. What does this mean?

Some explain that the Gemara means that a minor cannot join a Passover company if he cannot eat the olive-sized portion referred to above. But the generally accepted explanation is that a minor who can eat an olive-sized portion, and who can therefore join a company, nevertheless **cannot invite others** into the company.

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[686]Some commentators permit a guardian to separate *terumah* only to the extent necessary for the orphans' present needs before their adulthood. Compare Git.52:1.

[687]See Kesef Mishna in Rambam H. Terumot 4:10 for a reconciliation of these holdings with our Gemara.

[7:2]

Why then does another Gemara[688] hold that a minor can acquire objects on behalf of another if the minor is mature enough to discard a stone and to retain a nut? That Gemara applies only Rabbinically, and only when the minor acquires the objects from adults **for the purpose** of transferring ownership to others.

> In fact, the Meiri considers the proposition that a minor cannot acquire objects for another so self evident that he asks why the need for specific support to exclude it for the purposes of the Passover doctrine. The fact that a minor can acquire an *erub* on behalf of others is not instructive, for the doctrine of *erub* is Rabbinic only.
>
> The Meiri also cautions that even for *erub* a minor can acquire on behalf of others only if he is mature enough not to discard valuable items.

How can the minor himself be counted in the company when we know that a deaf-mute, an idiot **and a minor** may retain their findings only for the sake of preserving the peace and not as a legal matter[689]? That applies only when the minor acquires the object, such as the finding, by his own action. In our case, the minor is included in the company by adult action, and this gives him legal ownership rights.

[Appointment of guardian for division of estate with minor heirs]

The Gemara states the proposition that when orphans come to divide their father's estate, the Beth din appoints a guardian on their behalf to their advantage and to their subsequent disadvantage.

> Although a minor cannot appoint an agent, others can still acquire objects on his behalf[690]; since the guardian was appointed by the Beth din, his division stands even if it later turns out that the division was disadvantageous.

The division can be over-turned only if it appears that the guardian erred in evaluating the worth of the orphans' respective shares.

Now what does the Gemara mean by the phrase **when orphans come to divide their father's estate**? Minors have no power to summon a person to the Beth din!

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[688] Git.64:2.

[689] Git.59:2.

[690] This results from the general doctrine that A may acquire rights for B without B's knowledge.

[7:2]

Here are two possible explanations:

1. The Beth din or an adult relative initiated the proceeding for a purpose deemed beneficial to the orphans. A non-guardian can initiate Beth din proceedings to appoint a guardian for division. It follows that a guardian most certainly can initiate a division.

2. The orphans share an interest in the estate with an adult, and it is the adult who initiates the division. In this reading, a guardian would not have the power to initiate a division.

The Meiri prefers the second explanation.

How are we to reconcile our Gemara with a Gemara in Gittin[691] which holds that orphans can protect an action by the guardian which ultimately results in the orphans' disadvantage? There are several possibilities:

1. The Gemara in Gittin deals with a guardian who was appointed by the father[692], and who is empowered to act only for the orphans' advantage. Our Gemara deals with a guardian who was appointed by the Beth din[693] and who has the additional power of acting to the orphans' later disadvantage.

In this view, the orphans should not be able to object when a guardian appointed by the father **takes specific action authorized by the Beth din** to their disadvantage. The result should be no worse than actions taken by a guardian appointed by the Beth din[694].

2. In our case the disadvantages are relatively slight, and probably relate only to the particular location of the real estate plots which are distributed. The Gittin Gemara deals with monetary claims by or against the orphans, where the disadvantage can be great.

3. Where the orphans are plaintiffs and initiate action, the guardian is protected even where the suit results in their disadvantage. The Gittin

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[691] 52:1.

[692] "An [existing] guardian is not permitted to act to the orphans' disadvantage."

[693] "They appoint a guardian."

[694] This is consistent with a Tosefta in Terumot 1:12.

[7:2]

Gemara refers to a case in which the orphans are defendants; here the orphans can object if the result is disadvantageous.

The Meiri prefers the third view.

[Minor orphans cannot insist that an estate be divided]

Adult orphans, but not minor orphans, may insist on a division of an estate in which minor orphans also have an interest[695]. The Beth din appoints a guardian for the minor orphans, the adult orphans divide the field into equivalent parcels, and the guardian selects the parcels to be distributed to the minors. Division is not by lot.

The same rule applies: the orphans can later object to the division only if there has been a valuation error.

[Rule of over-charges on sale transactions]

The following rules apply to a seller who **profits** on a sale:

1. The seller may retain all profits in real estate sales.

2. Chattel sales are invalid where the overcharge exceeds one-sixth.

3. Chattel sales are valid where the overcharge is precisely one-sixth, so long as the seller refunds the **entire** profit.

4. Chattel sales are valid where the profit is less than one-sixth, and the seller may retain this profit.

An agent can act only in accordance with his precise instructions, and any divergence invalidates his authority, even where the divergence is less than one-sixth. The principal can demand of the agent "I appointed you for my benefit, not for my detriment."

[Overcharges in the context of the division of an estate and in sales for orphans]

Where the Beth din values an estate of orphans[696], the valuation can be upset

[695]The Meiri disagrees with Rabbeinu Tam who holds that even the adult orphans cannot force a division.

[696]These evaluations can relate to the sustenance rights of the widow or daughters of the deceased person, or for the *kethubah* of the widow, or for the claims of a creditor.

only for divergences of one-sixth or more of the sales price (such as where a plot worth 120 was sold for 100 or less). The one-sixth measure is derived by analogy from the law of overcharges.

> But what of the doctrine that this law does not technically apply to real property sales? Yes, but when the Beth din act, they act as agents.
>
> If so, why must the overcharge be at least one-sixth before their actions can be upset? Because in this aspect the agency of the Beth din is more potent than other agents.

That any divergence invalidates the action of an agent other than the Beth din, even if the agent is a guardian, is obvious from our Gemara:

> R. Nahman holds that orphans cannot object to a guardian's division of property. How reconcile this with the holding that an undervaluation or overvaluation (of one-sixth or more) by the Beth din is invalid? The Gemara explains that R. Nahman refers only to errors which have no monetary consequence. An example is where an orphan complains that he would have preferred land in a different location in which he owned other land.

Why did not the Gemara explain that R. Nahman's rule applies only when the valuation is in error by less than one-sixth? Obviously, the one-sixth limitation applies to the Beth din only.

What if **orphans** profit precisely one-sixth on a sale by a guardian? Some commentators would apply the general rule and would permit the orphans to validate the sale by refunding the excess profit. But what of the Gemara which invalidates a sale where the Beth din **increased** by a sixth? Does this not suggest a profit? No.These commentators maintain that this refers to where the **orphans** were overcharged on a **purchase** of property.

The Meiri disagrees. The Gemara voids sales where the guardian overcharged **as seller**. The agent's action is unauthorized even where he refunds the excess **profit**.

The Rambam's view is more favorable towards the orphans. In chattel sales where the overcharge was precisely one-sixth:

> 1. where the orphans were overcharged, the orphans can either rescind the sale or demand a refund of the overcharge;
>
> 2. where the opposing party was overcharged, the orphans can either rescind the sale or refund the overcharge; where real property is involved they either rescind the sale or affirm it without paying any refund.

[7:2]

The rules discussed above apply where the overcharge was less than one-sixth:

1. if under the Beth din's sponsorship, the sale is valid and there is no refund;

2. if done by an agent or guardian, the sale is void.

[42:2]

Adult brothers who divide an estate are **purchasers,** so that the law of overcharges applies to mis-valuations of chattels[697]; *i.e,* overcharges of less than one-sixth are ignored, overcharges of precisely one-sixth must be refunded but the transaction cannot be rescinded, and transactions in which the overcharge exceed one-sixth can be rescinded. The adult brothers for this purpose are not **heirs** who are entitled to precisely equal divisions as discussed earlier for orphans.

What if the error among adult brothers was made by a guardian who was appointed to protect younger minor brothers? Here even a minor overcharge suffices to void the sale. The guardian is an agent, and his action exceeded his authority. Rescission follows from agency law rather than from the law of overcharges.

[Rescission in sales transactions]

In the law of overcharges, one must distinguish between errors in valuation (where the rules discussed in the preceding paragraphs apply), and errors on the quantity or measure of the land or chattels sold, in which case minor divergences permit **rescission** even in land sales[698].

Why rescission? Why not allow the seller to make up the difference? How is this different from a case in which the purchaser erred and gave the seller 90 *zuz* instead of 100, where all hold that the seller cannot rescind, and that his remedy is to demand the excess? The Meiri explains that there is an analytical difference between the following cases:

1. A agrees to sell B five objects and sells only four, or B asks to buy five acres, and the surveyor mistakenly marks out only four. In this case, the emphasis is on the quantity or measure. If the quantity is in error, the

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[697]Recall that the law of overcharges does not apply to real property.

[698]See B.B.90:1.

aggrieved party's sole right is to demand the excess.

2. A asks to buy object X which is assumed to have a certain measure. Here the emphasis is on the object. If the object does not have the presumed measure, the transaction is void.

There is a minority which disagrees and holds that there is never a right to rescission, and that the inconsistent Gemaras can be otherwise resolved. This is discussed fully elsewhere[699].

[Transgressions and damages by an agent]

An agent has no power to commit transgressions for his principal, and the agent's transgressions are his own. The agent's higher loyalty is to the master (G-d) rather than to the pupil (the agent's principal).

One who causes a conflagration through a deaf-mute, an idiot or a minor is liable morally but not legally. These persons cannot act as agents, and in any case there is no agency for transgressions.

What if one causes a conflagration through a normal person? There is not even a moral liability. Variations of this ruling are discussed elsewhere[700].

[*Me'ilah* by an agent]

One who accidentally derives a *perutah*'s worth of benefit from *hekdesh*, whether personally or by way of an agent **who adheres precisely to instructions**, commits *me'ilah*. This applies even where the "agent" is a deaf-mute, idiot or minor; what is important is only that the "principal's" will was done. If the agent does not adhere to instructions, such as where the agent purchases a prayer shawl instead of a shirt, it is the agent who trespasses rather than the principal.

What of the rule that there is no agency for transgressions? The law of *me'ilah* is a special case because of agency doctrine derived from *terumah* by *gezerah shawah*[701].

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[699] B.B.103:2.

[700] B.K.59:2.

[701] The word **sin** appears in both contexts. Lev.22:9 and Lev.5:15.

[7:2]

But what is the transgression, given that the law of *me'ilah* applies only where both the principal and the agent benefitted without knowing that they were dealing with *hekdesh*? There are two possible explanations:

1. The transgression consists of the failure of the principal and the agent to consider that **perhaps** the money or other valuables in which they dealt were *hekdesh*.

2. Alternatively, the Meiri suggests that where an agent follows his principal's instructions exactly, the principal is absolved (other than in the special case of *me'ilah*) even where the agent's transgression was unwitting. The action is still considered a transgression. To rule otherwise, and to strictly apply the rule that the agent is liable only where he **knows** that he is transgressing, would result in too many ambiguous situations.

[Misappropriation by an agent]

The law of misappropriation, in which a person who takes another's item assumes the risk of loss, is another special case in which the principal can be held liable for transgressions by his agent.

Misappropriation requires that the item be physically taken. Mere intent to take is not effective[702].

[43:1]

[Thief's penalties and agency]

[702]See B.M.44:1.

[7:2]

A third special case is the law requiring that a thief pay a quadruple or quintuple penalty for stolen animals which he either sells or slaughters. The thief is responsible for his agent's actions because of the otherwise superfluous word **or** in the verse "If a man steals an ox or a sheep...and he shall kill it **or** sell it"[703].

[Sacrifices outside of the Temple by agent]

One who willingly kills sacrifices outside of the Temple is penalized by *kareth*; if unknowing, he must bring a sin offering. Here the general rule applies which exempts a principal from transgressions by his agent.

Where two persons kill a sacrifice together outside of the Temple there is no liability. Scripture speaks in terms of "he that shall kill,"[704] to teach that only one person can be liable.

If an unknowing violation requires a *hattat*, for what purpose does our Gemara say that the word *ha-hu* excludes liability for persons who are compelled, ignorant or led into error? To teach that there is no *kareth* for these violations! Note that the word *ha-hu* appears in the verse "blood shall be imputed to that man"[705] which deals with *kareth*.

A person is **ignorant** if he knows that to sacrifice outside of the Temple is forbidden but he does not realize that there is a sin offering for violations. A person is **compelled** if he is under the mis-impression that he is in the Temple. He is **led into error** if he mistakenly believes that sacrifices are permitted outside of the Temple. Alternatively, a person is **compelled** if by his own deduction he thinks that sacrifices are permitted outside of the Temple, and he is **led into error** if others delude him into this view.

Why would one think that an unwitting violation would result in *kareth*? Even if we could rationalize that the exemption is necessary for ignorant violations how could we imagine *kareth* for **compelled** violations? There are three possible answers:

1. Perhaps the Gemara means only to exempt ignorant violations, and the Gemara mentions compelled violations only by-the-way.

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[703]Ex.21:37. See B.K.71:1.

[704]Lev.17:3. The Meiri follows the Rambam's derivation rather than our Gemara's derivation from the word *ha-hu*.

[705]Lev.17:4.

[7:2]

2. The Raabad explains that by **compelled** the Gemara means one who chooses to transgress in order to save his life. The Gemara wishes to teach that this transgression is not one for which a person must sacrifice his own life in order to avoid transgression, and there is therefore no *kareth*.

The Meiri disagrees. There are certain precepts (such as the proscription against murder) which a person should not violate even to escape his own death. But if a person succumbs and does violate a precept of this kind he is not punished. Why would we even think that there is a penalty of *kareth* where a person need not sacrifice his life to avoid a transgression?

3. The Meiri prefers to explain that the exemption is from the obligation to bring a sin offering. This is an exception from the general rule that a sin offering is brought for unknowing transgressions of those precepts which are punishable by *kareth* if violated knowingly. Note, however, that the *halacha* is otherwise, and unknowing violations are in fact subject to sin offerings.

But what of the fact that the word *ha-hu* appears in the context of *kareth* for knowing violations? The meaning is only that there is no sin offering for unknowing violations notwithstanding that there is *kareth* for knowing violations.

[Moral responsibility for an agent's actions]

Although a principal is not liable for his agent's transgressions, he should take care not to cause another to transgress. This applies even where the agent is motivated to transgress and obtains pleasure from the transgression, such as where the agent is directed to engage in incestuous intercourse or to eat *helev*.

Thus although Uriah the Hittite was killed by action of the agents of King David, his death is still ascribed to King David: "And him you killed with the sword of the Ammonites."[706]

But what of the view that Uriah the Hittite was justly treated because he rebelled against David by comparing Joav to the King in the verse "And the servants of Joavand the servants of my Lord [David]"[707]?

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[706]Samuel II, 12:9.

[707]Samuel II, 11:11.

This view is countermanded by the verse "Only because of Uriah..."[708] which suggests that David was culpable for Uriah's death.

[Agent may be a witness]

An agent can serve as a witness both for *kiddushin* and for *get*. For example, where a man sends an agent to deliver *kiddushin* to a woman, the agent can serve as one of the two witnesses requisite for the *kiddushin*. If two agents are sent, the agents can serve as both witnesses. We do not say that the agents are treated as the principal, and that they are therefore incompetent as witnesses.

The same rule applies to *get*, even though there might be concern that a witness would perjure his testimony in order to marry the woman once her divorce is complete. If we were to countenance such concerns, how could we credit witnesses to a sales transaction without first determining that they are not motivated by a desire to benefit from the witnessed transaction?

[Formalities of agency]

Witnesses to *kiddushin* need not be appointed as such; they must merely witness physical facts. Witnesses need be appointed only where there are no "facts," such as witnesses to a confession of liability.

Now, although witnesses need not be appointed, the woman must know of their existence in order for *kiddushin* to be valid. In the absence of witnesses she does not take the ceremony seriously. The same applies to any formal transfer of title.

The rule is otherwise where no formal ceremony is involved. For example, persons in hiding who witness a loan may testify on what they saw.

Witnesses may **execute a deed** only when **both** parties instruct them to do so. Otherwise, when a transaction is witnessed by 100 persons, one of the parties would ask each of them to execute a deed. That is why it is customary for the parties to summon witnesses to witness sale transactions, and why deeds recite that the parties summoned the witnesses.

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[708] Kings I,15:5.

[7:2]

[43:2]

[Agent as witness in monetary transactions; potential interest of witnesses]

In a monetary transaction, a plaintiff who is supported by one witness can demand an oath of the defendant. A plaintiff who is supported by two witnesses has proved his case. An agent can be a witness for these purposes. For example, where a borrower directs his agent to repay an amount to lender, the agent's testimony is sufficient to require an oath of the lender should the lender deny receipt of the funds. If the agent's testimony is supported by another, the testimony absolutely defeats the lender's claim.

But is not the agent interested, since if the lender is believed, the borrower will hold him personally responsible for the funds? No, because the agent could dispose of the borrower's claim by maintaining that he had returned the funds to the borrower[709]. One who entrusts funds to another in the presence of witnesses cannot demand that the funds be returned only in the presence of witnesses. And the agent is no more uncomfortable in lying to the borrower than he is in lying to the lender.

Now, if the borrower wished merely to claim that the lender had been repaid, he would have been believed without the corroborating testimony of witnesses, based on the doctrine that one who lends funds to another in the presence of witnesses cannot demand that the funds be repaid only in the presence of witnesses. Why must the borrower here produce witnesses that the loan was repaid?

1. Witnesses are required because the borrower chose to defend himself with the claim that he had repaid the lender with funds forwarded

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[709]But in that case could not the lender sue the agent for returning the funds to the borrower? Compare Git. 14:1 where the Gemara holds that upon the borrower's delivery of funds to the agent with the direction to repay the lender, the lender obtains an interest in the funds sufficient to support a claim against the agent for wrongful return!

There are two possible explanations:

1. The lender can proceed against the agent only where the borrower has no remaining funds. Otherwise, the lender must proceed first against the borrower. In our Gemara, the borrower has sufficient funds.

2. The lender can proceed against the agent only where the borrower announced to the agent "Take these funds to the lender." In our case, the lender did not obtain rights in the funds because the borrower said only "Be my agent to repay money to my lender."

through the agent. In this case the testimony of the agent is required even though the initial loan had not been witnessed.

2. Alternatively, witnesses are required where the borrower and lender initially agreed that only witnessed repayments would be credited, or where the loan was evidenced by a promissory note.

All this applies only before the Rabbis instituted the oath of equity (*heses*) for one who claims to have repaid a loan. Now that the Rabbis have instituted this oath, the agent no longer is credible as a witness because of his personal interest. When faced with a choice between testifying falsely that he repaid the lender, or that he returned the payment to the borrower, the agent prefers to testify that he repaid the debt to the lender; a claim that he returned the funds to the borrower would be believed only after swearing an oath of equity[710]. And the issue of self interest cannot be overcome by the usual presumption that an agent has completed his duties.

What then would the result be today in the case just mentioned, *i.e.,* where the borrower claims that he sent money to his lender through the agent, the agent claims that he delivered the funds to the lender, and the lender denies receiving the funds?

The agent swears an oath of equity that he paid the funds to the lender. This absolves the agent of the borrower's claim. The borrower dealt directly with the agent and he must accept the agent's oath.

The lender swears that he did not receive the funds. He thereby becomes entitled to receive payment from the borrower. The lender need not accept the agent's oath since he never credited the agent.

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[710]Since the borrower wishes to obtain the testimony of the agent, why does he not simply release the agent of any liability for return of the funds, thereby eliminating the agent's interest? Compare B.B.43:1 where one who donates funds to a city disqualifies all judges and witnesses from that city **except for persons who renounce any interest in the gift**.

The cases can be distinguished. In our case, a release by the borrower has the appearance of a gift given to the agent in order to encourage the agent to testify. The agent gives up nothing of value. In the case of the funds donated to the city, the person who renounces rights to a gift cedes a valuable interest.

The Meiri nevertheless concludes that in our case had the borrower from the start relieved the agent of all liability, there would be no interest and the agent could testify.

[7:2]

Some characterize the agent's oath as the "Mishnahic oath" which is sworn by A and B in the following case. C owes B money, and directs him to obtain it from storekeeper A. A swears that he paid the money to B, and B swears that he received no money from A. C must then pay both, since neither A nor B dealt with each other, and they need not accept each other's oath.

Other commentators maintain that the Mishnahic oath applies only to persons such as B who swear in order to **obtain** funds. This description does not fit the agent's oath, because its purpose is to avoid liability and it is more in the nature of an oath of equity. The lender's oath, on the other hand, is in fact akin to the Mishnahic oath.

But there are circumstances nowadays in which monetary agents can be witnesses, such as where the borrower accompanied the agent and observed the agent's delivery of funds to the lender. The agent is therefore not concerned about liability to the borrower. This explains why the Yerushalmi permitted the testimony of a person through whom a bailee returned a deposited item to the bailor; presumably, the bailee accompanied the agent so that there was no pending claim by the bailee against the agent.

An alternative explanation of the Yerushalmi is that in fact there was a potential claim by the bailee against the agent. The testimony of the agent was therefore not sufficient to require the bailor to make the standard oath which a credible single witness can impose. But the testimony was sufficient to require an oath of equity by the bailor.

> Why was testimony necessary for this purpose, given that an oath of equity applies to every case of denial?
>
> Perhaps the bailee was not certain of the circumstances of the claimed return, and the bailee's uncertain position would not support an oath by the bailor were the bailee not supported by his agent's testimony.

Assume that two agents are appointed to deliver a *denar* to a woman as *kiddushin*, and the woman denies receiving the *denar*. Can they testify to the *kiddushin* now that the Rabbis have established the oath of equity? Are they interested and not credible because their testimony would absolve them of liability to the husband for the *denar*? Here are the two views of commentators on the issue:

> 1. The witnesses cannot be believed. They can be credited only when they have no concern on liability, such as where the woman agrees that they delivered the *denar* but she maintains that she received it as a gift or as repayment of a loan or the like.
>
> 2. Others would credit the witnesses on the woman's marital status, and

they separate this issue from monetary issues. Assume, for example, that the witnesses testify that they delivered the *denar* as *kiddushin* but in order to indicate their disinterest they offer to repay a *denar* to the husband nevertheless. In this case we would certainly deem the woman betrothed. How then can the marital status of the woman depend on whether the witnesses choose to offer to repay a *denar* to the husband?!

This is supported by the Yerushalmi which concludes that such witnesses are credited despite their potential monetary interest[711].

Assume that a borrower B owes a lender L 100 *zuz*. A approaches borrower B, claims to be the agent of lender L, and convinces borrower B to give him the 100 *zuz* for delivery to lender L. When lender L demands the funds from A, A retains the funds based on an independent claim which A has against lender L.

Does A prevail on the independent claim, on the theory that if A were a liar he could have claimed that he had returned the funds to borrower B? Were he to make this claim he would have succeeded on the principle that one who accepts a bailment that is witnessed need not return the bailment under witnesses. And, in current times, must A be believed if he swears an oath of equity?

Or is our Gemara distinguishable because the borrower appointed the agent, and that is why the agent would have been believed had he claimed that he had transmitted the funds. But in the A, B and L case, the agent in effect appointed himself, and we do not apply the dictum that return need not be made in the presence of witnesses.

The Meiri takes the second position.

[Acceptance of get by *na'arah* or *ketannah*]

When Scripture decrees that the father of a betrothed *na'arah* can accept a *get* on her behalf, Scripture does not intend to remove the *na'arah*'s power to accept a *get* herself. Both she and her father have the capacity to accept a *get*. R. Judah disagrees and holds that the *na'arah* has no capacity to accept a *get* on her own **so long as the *na'arah*'s father is alive**.

The father loses his capacity once the *na'arah*'s marriage is consummated or once his daughter becomes *bogeret*. The same rule follows once a *ketannah*'s marriage is

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[711] The Yerushalmi presumably refers to a time after the oath of equity was instituted.

consummated.

Can a betrothed *ketannah* accept her own *get*? The Alfasi holds no.

The Alfasi must reconcile his holding with a Mishnah in Gittin[712] which holds that a *ketannah* cannot appoint an agent, and that therefore she is divorced only when the agent passes the *get* to her. But once the *get* is given to the *ketannah* she is divorced!

True, our Gemara[713] holds that the Mishnah in Gittin deals with a case in which the *ketannah* has no father. But that is required only for a different purpose[714]; the Gemara has no apparent difficulty with the holding that the *ketannah* can accept her own *get*.

Nor can the Mishnah be explained as dealing with a *ketannah* whose marriage was consummated, for in a later section of the Mishnah, it is held that the father can validly appoint an agent, and a father does not have this capacity once his daughter's marriage is consummated.

The Alfasi must explain that the Mishnah deals with a father who has given his daughter the authority to accept her own *get*. This is analogous to the rule that a father may authorize his daughter to accept *kiddushin* personally[715].

The Alfasi would concede that a *ketannah* may accept her own *get* where she has no father or where her marriage was consummated. It is necessary only that the *ketannah* be mature enough to distinguish her *get* from other documents.

Rashi disagrees and holds that any betrothed *ketannah* can accept her own *get*.

Why then does our Gemara state the rule only for *na'arah*? To emphasize that R. Judah disagrees even for *na'arah*.

But why not emphasize that the majority give even a *ketannah* the power

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[712] 65:1.

[713] 44:2.

[714] To explain the implication from the Mishna that a *na'arah,* unlike a *ketannah,* **can** appoint an agent. Our Gemara explains that this applies only when the *na'arah* has no father.

[715] 19:1.

to accept her own *get*? Because it is of greater interest to inform us that R. Judah gives the father sole authority over a *na'arah* (despite the *na'arah*'s maturity and her possession of certain legal rights), than it is to tell us that the majority hold that a *ketannah* has authority to accept her own *get* (which is a result one would logically expect).

[Declaration of a *yabam*]

Although Scripturally a *yebamah* is acquired only by cohabitation, the Rabbis decreed that she is betrothable with money before cohabitation. The Rabbis call this monetary betrothal **declaration**, and its legal consequence is that no other brother may thereafter perform *yibbum*. Declaration is effective only if consensual. Certain other *kiddushin* rules also apply. Specifically:

if the yebamah is a *bogeret*, she herself must consent;

if the yebamah is a *na'arah*, either she or her father must consent (according to the majority, but not according to R. Judah);

if the yebamah is a betrothed *ketannah*, only her father's consent is effective;

Recall that Rashi holds that a betrothed *ketannah* can accept her own *get*. But Rashi would agree with the proposition on *yebamah*. *yibbum* is more akin to *kiddushin* than to *get*. *kiddushin* of a *ketannah* is invalid even where she has no father at all, whereas the *get* of a *ketannah* is valid where she has no father.

if the *yebamah* is a married *ketannah*, or if her father died, she herself must consent[716].

[*ketannah* can be divorced only if she has understanding]

A *ketannah* cannot be divorced if she does not understand the significance of her *get*, or if she does not have sufficient understanding to preserve the document. Can such a *ketannah* be divorced through her father if the *ketannah* was betrothed but not yet married? The Alfasi rules yes, and disagrees with Rashi. These matters are

[716]But once she consents the declaration is valid. It does not matter that a *ketannah's kiddushin* is never valid, even once the father dies.

[7:2]

discussed further elsewhere[717].

All agree that an immature *ketannah* cannot be divorced at all once her marriage is consummated.

[44:1]

[Annulment of the oaths of a *yebamah]*

The oaths of a betrothed maiden can be countermanded only by joint action of her groom and her father. If the betrothed maiden is widowed and her *yabam* performs a declaration, her father's action remains sufficient, and nothing is required of the *yabam*.

It follows that the declaration does not change the father's control. Why does the Gemara suggest otherwise? Some commentators explain that the declaration makes the father lose his right to give her in betrothal to brothers of the *yabam*.

[Multiple oaths of a bailee; multiple sacrifices for failure to testify; multiple *kiddushin*]

[717]Git.64:2.

[7:2]

One who falsely swears that he is not holding a bailment must bring a sacrifice for each false oath. For example, A must bring five sacrifices if five persons claim that they deposited an item with A, and A falsely swears "not you, not you, etc."[718] The separate listing of each claimant in effect results in an oath for each one, and it is not necessary that the word **oath** or **swearing** be repeated. But where there is no detail, such as where he swears that he has no deposit from "any of you," only one sacrifice is required. R. Simon disagrees and considers oaths separate only where A says "I swear to you, I swear to you, etc."

The rule is different relating to the sacrifice which is brought for wrongfully failing to give testimony. Only one sacrifice is brought no matter how many items A falsely swears that he has no testimony to give.

What is the rule for *kiddushin*? Even when the betrother says "Be betrothed with this item, and this item, and this item," (the equivalent of "not you, not you, etc."), the meaning is not separate *kiddushin* with each listed item, but rather a general *kiddushin* with all. That is why the woman is betrothed if all the items together have the aggregate value of a *perutah*[719].

Only where the groom says "Be betrothed with this, be betrothed with this, etc." is each betrothal deemed separate, so that the woman is betrothed only if at least one of the items is alone worth a *perutah*[720]. The *kiddushin* rule is therefore

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[718]The Yerushalmi appears to require that A mention the word "oath" or "swearing" again after listing the five persons to whom the oath is given. The Meiri holds that this merely reflects imprecision in the Yerushalmi's language.

[719]One commentator would require values to be aggregated only where the groom says "Be betrothed with these." The Meiri disagrees.

[720]But see 12:1 for doubtful *kiddushin* where an item not worth a *perutah* here may be worth a *perutah* elsewhere.

[7:2]

equivalent to R. Simon's minority rule on oaths.

[44:2]

[May *na'arah* appoint an agent to accept a *get*?]

Although a betrothed *na'arah* can alone accept her *get*, she does not have the power to appoint an agent for this purpose if she has a father. A *ketannah* may not appoint an agent even where she has no father.

Some commentators explain that a *na'arah* does have the capacity to appoint an agent for the purpose of **delivering** the *get* to her. She lacks the capacity only to appoint an agent **with the power to accept a *get* on her behalf**. She is divorced once the *get* is delivered to her.

Others disagree and hold that the *na'arah* is not divorced even when she receives the *get* from her agent. They reason from another Gemara[721] which deals with a *ketannah* who purports to appoint an agent to accept her *get*:

> The Gemara holds that she is divorced when she receives the *get* from her agent. The assumption is that the husband knows that a *ketannah* cannot appoint an agent; accordingly, when the husband gave it to the agent he did not intend the agent to be the *ketannah*'s agent **for acceptance**, but rather to be the husband's own agent **for delivery to her**, so that the divorce follows when the *get* is delivered to her.

The commentators hold that for *na'arah* (as distinguished from *ketannah*) it cannot be assumed that the husband knows she cannot appoint an agent. That being so, the husband gave the *get* to the agent intending the agent to act, **invalidly**, as the *na'arah*'s agent for accepting the *get*.

The holding of these commentators results in the paradox that it is more difficult to divorce a *na'arah* than it is to divorce a *ketannah*.

[Alternatives to passage of *get* to wife's hands]

Scripture directs that the husband give the *get* into his wife's **hand**[722], but this is interpreted as meaning the wife's **control**. A wife can be divorced by placing the *get*

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[721] Git.63:1.

[722] Deut.24:1.

in her court-yard, in her father's court-yard if she is a betrothed *na'arah*, or (as the equivalent of her court-yard) on her gentile slave if he is asleep and bound.

The court-yard must be guarded by the woman alone, and the court-yard must not be mobile. Hence, the slave must be asleep, for otherwise the *get* is guarded by the slave as well as by herself. If the slave is not bound the *get* is invalid because the slave is potentially mobile upon awakening.

[Father's acquiescence in *kiddushin*]

Assume that a girl accepts *kiddushin* without her father's knowledge[723]. Rav and Samuel require that, both for *ketannah* and for *na'arah*, the father must be asked whether he acquiesced in the *kiddushin*. If the father confirms his acquiescence, the girl's *kiddushin* is valid absolutely, so that if her groom purports to betroth her sister the second *kiddushin* is invalid.

If he denies acquiescence, or if the father is not available, we fear that he may have acquiesced. Accordingly, there is questionable *kiddushin*, and should the girl's groom betroth her sister, the second betrothal is possibly valid.

> Another result is that the girl, if a *ketannah*, can marry another only after she obtains a *get* (in case there was acquiescence), and only after she performs *mi'un*. *Mi'un*, which is a *ketannah's* rejection of *kiddushin* effected by a person other than her father, is necessary so that onlookers realize that her *kiddushin* is questionable and that a betrothal of her sister may be valid.

If the girl is a *na'arah*, Rav and Samuel require only a *get*, since *mi'un* applies to a *ketannah* only. There is nothing more we can do to avoid error by the onlookers. Similarly, what can we do to avoid error to onlookers who view only the *get* of a *ketannah* but not her *mi'un*?

Ulla is not concerned with possible acquiescence. He requires neither *get* nor *mi'un*.

In construing Ulla, the Meiri and the Alfasi hold that the *kiddushin* are not valid even if **we know** that the father later acquiesced. Others disagree and compare the case to a person who betroths a woman effective in 30 days. The *kiddushin* are valid

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[723]This goes beyond the father's absolute ignorance suggested by Rashi. The father's silent acquiescence (even if supported by prior *kiddushin* negotiations), does not count as knowledge where there was no **present** discussion of *kiddushin*.

even if the value given as *kiddushin* is destroyed before the 30th day. Here, too, the value given to the *ketannah* serves as *kiddushin* when the father approves even if the value was destroyed by then.

The Meiri agrees with the Geonim, Alfasi and the Rambam that the *halacha* accords with Ulla. Rabina, who is the latest Amora to speak on the subject, accords with Ulla even where the father has shown a desire for *kiddushin*, *i.e,* there had been prior negotiations[724].

Others disagree and rule with Rav and Samuel. (Several of these commentators apply R. Nahman's gloss, and require *get* only where there had been prior negotiations.) They reason from the Gemara below[725] in which Abbaye and Raba argue whether the view of Rav and Samuel applies to the case there discussed in the Gemara.

[How *mi'un* can apply while father still alive]

There is no *yibbum* where any wife of the deceased brother is forbidden to the *yabam* because:

1. she is the *yabam's* daughter or is related to the *yabam* in one of 14 other incestuous relations; and

2. she was married to the deceased brother at the time of his death.

The *yabam* must perform *yibbum* with his brother's other wives where the *yabam*'s daughter (or other relative) died, or was divorced, or was determined to be barren, or properly performed *mi'un* prior to the brother's death.

Now, how could the *yabam*'s daughter have performed mi'un while her father the *yabam* was alive? A father's *kiddushin* of his *ketannah* is absolute, and can be dissolved only by get! A *ketannah*'s relative may give her in betrothal subject to mi'un only if her father is not alive! How does this square with Ulla's view that without the father's knowledge while he is alive there is not *kiddushin* even for the purposes of mi'un[726]!

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[724] 45:2.

[725] 45:2.

[726] Rav and Samuel can explain that the Gemara deals with a case in which there is concern that the father might have acquiesced to *kiddushin* which the *ketannah* effected without his knowledge.

[7:2]

The Gemara explains for Ulla that the daughter had previously consummated another marriage, and she thereby left her father's control. Later betrothals are valid only because of the Rabbis' concern that she not become promiscuous, and these betrothals can be dissolved by mi'un.

The matters in the Gemara which relate to the sale of a bondmaid to relatives were discussed previously.

[45:1]

[*yabam*'*s* declaration does not sever *yibbum* bonds]

A *yebamah*'s bonds of *yibbum* are finally severed when she cohabits with the *yabam*. A divorce thereafter requires no *halizah*; a *get* is sufficient.

The declaration does institute aspects of the betrothal and marital relationships, but it does not completely sever *yibbum* requirements. That is why, if after declaration and before cohabitation, the *yabam* and *yebamah* wish to sever their relationship, the *yabam* must:

perform *halizah* to sunder the residual *yibbum* ties, and

give a get to cut off the marital relationship.

Where the *yebamah* is a *ketannah* and the declaration is approved by her father, the rule is the same. But no *mi'un* is required, since a declaration approved by the father is the equivalent of absolute *kiddushin* which is not subject to *mi'un*.

[Father's acquiescence in declaration]

Assume that a *ketannah*'s initial betrothal by the *yabam*'s brother, as well as the declaration by the *yabam*, are performed without the knowledge of the *ketannah*'s father. What would Rav and Samuel require before she marries another? All three of *get*, *halizah* and *mi'un*:

1. She requires a *get* because the father might have acquiesced in the declaration but not in the first betrothal. If so, the declaration resulted in absolute *kiddushin* which can be dissolved only by *get*.

2. She requires *halizah* because the father might have acquiesced in the first betrothal, so that there is a *yibbum* requirement. It does not matter whether or not the father also acquiesced in the declaration; even a valid declaration cannot completely remove *yibbum* requirements.

3. She requires *mi'un* because the father might have acquiesced in neither the betrothal nor the declaration. If so, there is absolutely no marital relationship with the *yabam*, and should the *yabam* betroth the girl's sister the *kiddushin* would be valid. In order for onlookers not wrongly to assume that there is a definite marital relationship and that the girl's sister is not betrothed, we require *mi'un* as a signal that the *get* is not an absolute *get*.

Where the girl is a *na'arah* we do not require *mi'un* for the reason discussed previously: there is nothing more we can do in this case to avoid error.

What if there was no declaration? Here only *halizah* is required. The father might have acquiesced in the original betrothal and there is a true *yibbum* requirement. But why not be concerned that without *mi'un* onlookers would wrongly think that there is a certain *yibbum* requirement and that the *yabam's* betrothal of the girl's sister is invalid? Because onlookers will realize that the sister is betrothed even if they wrongly think that the *halizah* was absolute. They know that as a Scriptural matter one may betroth the sister of a woman (the "*haluzah*") with whom one performed *halizah*. It is only the Rabbis who prohibit marriage with a *haluzah's* sister.

But what if the *yabam's* father later attempts to betroth the *yebamah?* Should we not be concerned that onlookers might assume that the initial betrothal was valid, and that therefore the father's betrothal is invalid Scripturally because the *yebamah* is his daughter-in-law? Because the public is aware of the strict incestuous prohibitions against daughter-in-law and similar relationships, and the public will strictly investigate all circumstances before ruling in such cases. It is only matters relating to a wife's sister which the public treats lightly, and where the public might err.

[7:2]

[45:2]

[Son's acquiescence in father's *kiddushin*]

A father has no power to accept *kiddushin* for his son. But in this case we apply to the son everything we have said regarding the father's possible acquiescence in his daughter's betrothal. This includes the differing holdings of the Meiri and other commentators on whether the *halacha* accords with Ulla or with Rav and Samuel, and on whether the *halacha* takes account of R. Nahman's concern with prior negotiations.

There is only one difference. Rav and Samuel agree that we do not fear acquiescence, even if the father and son maintain that there is acquiescence, where the *kiddushin* was effected contemptuously, such as in the market-place (even if with a huge quantity of gold), or if quietly and in discreet fashion but with items of little value such as vegetables.

Assume that the son is an adult and can appoint an agent. We cannot assume that the son appointed his father as his agent because this would be an insulting use of the father. Should the father and son both agree that the father had been appointed as agent, the *kiddushin* is valid, since the appointment of an agent need not be witnessed to be valid.

Where a stranger effected *kiddushin* and there is no issue of insult, there is concern that perhaps the stranger acted as agent.

> What if both agree that there was no agency?
>
> Perhaps even the commentators who rule with Rav and Samuel would agree that the concern applies only to a father but not to strangers.
>
> We can go even further. It may be that we give no credence to a stranger who affirmatively claims that there was an agency. Compare the prior discussion of the Meiri's view that Ulla would not take account of definite later acquiescence **by the father**.

[Presumptions against acquiescence]

Assume that a husband demanded that his daughter betroth his relative A, and his wife demanded that the daughter betroth her relative B. Assume further that the husband acquiesced to betrothal with B, that he went to the great expense of preparing a feast for B preparatory to betrothal, and that A betrothed her in the interim. Even Rav and Samuel would agree that in light of the husband's expense

there is no concern that he acquiesced in A's betrothal.

The Meiri cautions that in his own view, agreeing with Ulla, we would not have feared acquiescence even if there were no feast. After all, the father's concession and the expense of the feast can be no more indicative than prior negotiations, and in the Meiri's view acquiescence not significant where there were prior negotiations.

> There are commentators, however, who distinguish the case of the feast from prior negotiations, since in this case the husband previously desired his own relative, and the fact that he nevertheless undertook expense for his wife's relative is exceptionally indicative of his desires. Besides, the negotiations which are of no significance consist only of preliminary discussions which were not completed; the father's concession and the feast are greater indicators of approval. The Meiri suggests that a stringent ruling is appropriate because of the uncertainty.

[Father must indicate acceptability of daughter's *huppah*]

The marriage of a *ketannah* or a *na'arah* can be consummated with *huppah* only with the father's approval. The Tosefta recounts a case in which a *ketannah* was removed from her *huppah* because her father had approved her *kiddushin* but not her *huppah*. In this case, all agree that what is necessary is some indication of the father's attitude. A mere indication is sufficient because of the presumption that a father who consented to *kiddushin* will consent to *huppah*.

On the other hand, where the father is unavailable to approve or disapprove the marriage cannot be properly consummated. The husband therefore cannot inherit from his wife, and (in Rav Assi's view, with which Rav disagrees) the wife may not eat *terumah* should the husband be a priest.

But what of the rule that the Rabbis can arrange for consummated marriage for a *ketannah*? That applies only where her father died, not where her father is in distant lands and his approval has not been ascertained.

Some hold that the marriage is properly consummated once the time fixed for *huppah* has passed.

What if the father is here but is silent? The *huppah* is not valid. The Gemara invalidates *huppah* when betrothal was approved by the father, but marriage was not approved by him **while he was here**. The Meiri suggests that this means that the father was present but silent. We take his silence as anger.

[7:2]

[Why daughter cannot eat *terumah* if her *huppah* was not approved]

Now, in essence a woman betrothed to a priest may eat *terumah*; the prohibition against her eating *terumah* arises out of Rabbinic concern:

> that she may inadvertently feed *terumah* to her siblings; or
>
> that upon consummating the marriage her husband will discover a bodily flaw which will cause him to annul the marriage.

In the case just mentioned, the girl lives with her husband, not with her siblings. Why does not Rav Assi allow her to eat *terumah*?

> Because she visits her siblings frequently because of the uncertainty of her marital status; and
>
> her husband may intend to annul the marriage but may await the father's return in order to confront him.

What of the *halacha* in these cases? The Gemara notes that even Rav who holds that the wife can eat *terumah* ultimately observed R. Assi's strict view that it is inappropriate to eat *terumah*. This is the Rambam's holding. However, there are commentators who hold that Rav maintained his prior view, and that his **concern** with Rav Assi's view was a stringent holding he applied only to himself.

[Geonic rule on *huppah* while father is not available]

The preceding is the strict law. But the Geonim rule, as a matter of ordinance, that a girl's marriage can be properly consummated if betrothal is arranged by her mother and her brothers while her father is in distant lands. This is in conflict with some of the Tosafot who are concerned that the father may betroth her to another while he is away.

How do the Tosafot reconcile their holding with the rule that the daughter of a priest may continue to eat *terumah* while her father is in distant parts, and there is no concern that her father may have betrothed her to a non-priest? Similarly, how can a slave continue to eat *terumah* when his master may have sold him to a non-priest?

> The daughter of a priest and his slave can rely on the presumption that their prior status **continues** indefinitely, whereas in our case the *ketannah* wishes to institute a **new** relationship.
>
> Alternatively, it is more likely for a father to betroth his daughter to any Jew and not to realize that his daughter might have been betrothed to another by her mother and brothers, than it is for a priest to betroth his

[7:2]

daughter to a non-priest without informing her somehow so that she can cease to eat *terumah*.

The Meiri ultimately disagrees with the Tosafot. If there is concern that her father betrothed her to another, why does this concern cease when the girl becomes *bogeret*? Why may she then accept *kiddushin* when her father might have betrothed her to another while she was a *na'arah*?

[46:1]

[Revocation by daughter of *kiddushin* made without father's knowledge]

The Gemara deals with the girl's right to object to *kiddushin* made without her father's knowledge. The Gemara is *halachically* significant only to those commentators who rule that the father's later acquiescence validates *kiddushin*; the point of the Gemara is that if the girl objects before then the *kiddushin* is void and cannot be resurrected by her father's later approval. The Gemara has no *halachic* significance to the Meiri, the Rambam and the Alfasi who hold a father's later acquiescence is of no consequence. That is why neither the Rambam nor the Alfasi mention this Gemara.

[*Kiddushin* by a man who marries a *na'arah* he seduced]

One who seduces a *na'arah* must marry her. But the girl or her father may repudiate the marriage, in which case the man must pay a penalty.

The man must pay a penalty even where the *na'arah* joined in the seduction and even where the father approves and has the power to betroth her to whomever he chooses.

What if the seduction was for *kiddushin* and she wishes to marry the seducer? Is additional *kiddushin* required? The Meiri would hold yes. Recall the Meiri's holding that *kiddushin* which is not known to the father cannot be made valid if the father later approves.

But what of those commentators who hold that the father's acquiescence can validate later *kiddushin*? Do they, too, require additional *kiddushin*? Perhaps the untoward circumstances of the seduction result in an irrebuttable presumption that the father does not acquiesce. Compare the case discussed earlier of one who betroths in the market-place.

[7:2]

[46:1]

[Aggregation of items each worth less than a *perutah*]

The next Mishnah reads as follows:

> He who says to a woman, "Be betrothed to me with this date, be betrothed to me with this one," if any of them is worth a *perutah*, she is betrothed; if not, she is not betrothed.
>
> If he says "with this one and with this one and with this one," and they are altogether worth a *perutah*, she is betrothed; if not, she is not betrothed.
>
> If she eats them one by one she is not betrothed unless one of them is worth a *perutah*.

When he mentions the words **betrothed to me** between each date, he distinguishes among the dates. That is why she is betrothed only if at least one date alone was worth a *perutah*; she is questionably betrothed if it is possible that any one date was worth a *perutah* elsewhere. The dates which are not worth a *perutah* are deemed given her as either a gift to be retained or as a deposit to be returned. It makes no difference whether she eats the dates one by one as he gives them to her, or whether the date which is worth a *perutah* is given to her first or last.

The same result would follow where the interruptions are by way of the word **or**: "with this, or with this, or with this."

The result is different where he uses the word **and**: "with this, and with this, and with this," or the words **and also**, or the words "with this pomegranate and with this other fruit," or where he uses neither the word **and** nor the word **or:** "with this, with this, with this." In each case, the intent is to aggregate all the items.

But where there is aggregation it does matter whether the woman retains the items or eats them. If she retains the items, she is betrothed if altogether they are worth a *perutah*. If she eats them one by one, she in effect borrows them from him until the *kiddushin* is complete when the last item is given. A woman cannot be betrothed by the groom's forgiveness of his loan to her. That is why she is betrothed if the **last** item is alone worth a *perutah.* She is not betrothed if the last item is not worth a *perutah* even if each of the prior items is worth a *perutah*.

> Why are the dates given to the woman treated as a loan? Because value given to a woman towards *kiddushin*, but which cannot effect *kiddushin*, is returnable to the groom and remains his property. For example, if a man gives money as "*kiddushin*" to a woman who is known to be married, the

woman takes the money as the man's bailee. If the woman consumes the value, she has borrowed the man's bailment.

Were the property treated as a gift rather than as a loan, then she would have been betrothed with the first of the dates which have the value of a *perutah*.

But some hold that *kiddushin* given to a married woman is a gift. How do they reconcile that holding with our Mishnah? By distinguishing the case where no *kiddushin* is possible so that the property must have been a gift, to our case where there would have been valid *kiddushin* were the transaction not treated as a loan. The matter is discussed fully elsewhere[727].

Where A betroths B effective in 30 days, B consumes the value in the interim, and no one else betroths B in the interim, the *kiddushin* is valid on the 30th day. When B consumes the value, is she not appropriating B's property by way of a loan, and if so why is B betrothed? Because in that case all requisite actions were taken at the start, and the only missing ingredient is the automatic passage of time. That is why the woman has greater ownership rights in the property than in our case.

The rule is otherwise where the groom says "Be betrothed **with these**." She has constructive possession of all the dates even before they are given to her, so that she is betrothed even if she eats them one by one as she obtains physical possession. Once the man says "with these" there is a presumption that he will promptly deliver all the items to the woman.

Still, should another betroth her before the first man has given her all of "these," the Meiri rules that the second betrothal is valid. This is most certainly true where he did not say "with these," but merely "and this, and this," and another betrothed her while he was delivering the items to her. The Meiri disagrees with commentators who compare these cases to one who says "Be betrothed to me **now** and after 30 days," in which case only the first betrothal is valid.

All that has been explained in the Mishnah is the *halacha*. Here is what the Gemara discusses relative to the Mishnah:

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[727]Git.45:1.

[7:2]

[46:2]

Certain rules relating to *Hallah* and *terumah*]

Dough becomes subject to the *Hallah* requirement from the time of kneading. But *Hallah* is valid if separated earlier at any time after the flour and water are mixed, since the mixture is considered **dough** within the meaning of Scripture[728]. The Rambam holds that the **obligation** begins when the water and flour are mixed, but his view is difficult to reconcile with the Mishnah[729] which holds that the obligation for wheat begins with kneading and for barley when the holes in the dough are plugged.

Hallah given at an earlier stage is invalid because it is not dough within the meaning of Scripture. But *terumah* given on grain still in stalks is valid because the kernels are even then considered **grain**.[730]

A priest who takes *Hallah* at a premature stage takes property in which he has no rights, and he must return it to its owner. The dough from which it is taken is subject to the *Hallah* requirement once it is kneaded. The premature "*Hallah*" is itself also subject to the *Hallah* requirement if it is combined with enough other dough to meet the minimum quantity which gives rise to the *Hallah* requirement.

Priests and levites must themselves separate *terumah*, tithes and *Hallah*, because in relating the requirements Scripture directs that they apply to "you also."[731] The additional word **you** is taken to include levites, and the additional word **also** is taken to include priests.

Priests must separate these items in order to remove the prohibition of *tebel*; they need not give the separated property to another priest. The items are retained, and the *terumah* is eaten with requisite purity. The tithes and the *Hallah* are eaten as *Hullin*.

Why need a priest separate first tithes at all? First tithes have no sacred status; the rule that tithes may be eaten only after *tevilah* for defilement applies only to the

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[728] Num.15:20.

[729] *Hallah* 3:1.

[730] Deut.18:4.

[731] Num.18:28.

second tithe; the first tithe may be eaten even while one is ritually impure! The Meiri explains that the first tithe must be separated as a precondition for separating the *terumah* which must be taken from the first tithe.

Assume that one has grain which is subject to *terumah* requirements Scripturally, and other grain which is subject to *terumah* only Rabbinically. *terumah* may not be separated from one of these grains for the other.

For example, grain in an unperforated pot is subject to Rabbinical *terumah*, and grain in a perforated pot is subject to Scriptural *terumah*. If grain is separated from an unperforated pot as *terumah* for grain in a perforated pot, the owner must separate additional *terumah* out of the perforated pot. Still, the priest may retain the "*terumah*." In fact, the priest must also separate *terumah* for the produce he received as "terumah"; this rule is not mentioned only because the requirement is Rabbinic rather than Scriptural.

The same rules apply where grain is separated from the perforated pot as *terumah* for produce in the unperforated pot. Here the priest's obligation to separate *terumah* on his "*terumah*" (whether from the produce in the perforated pot or from other produce) is Scriptural.

> The Gemara does not mention a requirement that the owner separate additional *terumah* from the unperforated pot. This is either because this obligation is Rabbinic or because the Rabbis did not impose any requirement in this case.

Bad produce (a cucumber found to be bitter or a melon found to be putrid) which is separated as *terumah* for good produce is valid Scripturally, but the Rabbis require that *terumah* be separated again[732]. Scripture directs "You shall bear no sin by reason of it, when you shall have separated from it the best thereof."[733] This suggests that where the best is not separated there is a sin **because the action avails**.

> Now, it is a sin to sell an ancestral field past the Jubilee. The sale is invalid and is therefore not a sin itself. The sin consists of receiving *malkot* for violating a negative precept. Why not maintain by analogy that the *terumah* is invalid?

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[732]Bitter almonds are considered a separate species which is exempt from *terumah* altogether. The sour cucumber in our Gemara is of a species which tends to be sweet, just as a putrid melon is just a happenstance.

[733]Num.18:32.

[7:2]

> Because there is a specific precept which is violated by the sale and which results in *malkot*. There is no specific precept for inferior *terumah*, and that is why the sin can be understood only if the action avails.

How shall we reconcile our Gemara with a Mishnah[734] which suggests that additional *terumah* is not required? In our Gemara the owner intended to separate good produce as *terumah* (note the reference to cucumbers which were **found** to be sour). His desire to give good produce results in the requirement that he give *terumah* again. Where he intends to give inferior *terumah*, the *terumah* is valid and no additional *terumah* need be given.

Where one intends to separate *terumah* from wine, and the *terumah* is later discovered to be vinegar, the vinegar is not *terumah* at all[735]. That is because before the separation, the owner tested the *terumah*-to-be and confirmed that it was then still wine. He showed by his actions that he did not wish the *terumah* to be vinegar. Contrast the case of the cucumber which he assumed was sweet, but did not indicate by his actions that he did not want *terumah* to attach if sour.

[47:1]

[Consequence if items given in *kiddushin* are consumed before *kiddushin* is complete]

Recall the section of the Mishnah which requires that where the woman eats the dates there be at least one date with the value of a *perutah*. We have explained that this refers to the second case cited in the Mishnah, *i.e.,* when the language used is

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[734]Terumot 2:6.

[735]Can we distinguish the case on the ground that wine and vinegar constitute two species for the purposes of wine of libation (A.Z.76:1)? No. The Rambam holds that **for the purposes of *terumah*** wine and vinegar are one species, and one can be separated as *terumah* for the other when this is intended.

such as would permit aggregation. In this case, where the woman eats the dates one by one, she is betrothed only if the **last** one is worth a *perutah* for all others are in effect borrowed by her when she eats them. This is R. Ammi's explanation.

Rav and Samuel disagree. They hold that this section of the Mishnah refers to the Mishnah's first case, *i.e,* when the language used is such as would not permit aggregation. The Mishnah tells us only that even when the dates are promptly eaten, and are of immediate benefit, there is no *kiddushin* unless at least one date, **not necessarily the last one,** is worth a *perutah*.

But what do Rav and Samuel make of a *baraitha* which deals with aggregate type language (**this-and-also-this**), and nevertheless discusses the issue of the dates which are eaten one by one! The Gemara answers that although the majority would hold the *baraitha's* language to be aggregating, the *baraitha* itself follows the view of Rabbi who considers **this-and-also-this** not to be aggregating. That is why the *baraitha* can be explained in the same way as the Mishnah, that is, as teaching that at least one date, **any date,** must be worth a *perutah* even when enjoyment is immediate and the dates are immediately eaten.

The Meiri now explains the dialogue[736] from which the Gemara deduces that Rabbi considers all formulations (including **this-and-also this** and **this-this** without the **and**) separative except when the reference is to **these**.

There is a penalty of *kareth* for one who brings a sacrifice and intends to eat at least an olive sized portion beyond the **time** limit set for eating the sacrifice. The intent also renders the animal *piggul*. The animal is not *piggul* (only *posul*) and there is no *kareth* where the intent is to eat an olive sized portion outside of the **space** in which the animal may be eaten.

Where there is an intent to eat both out of time and out of place, the animal is *piggul* but there is no *kareth*. It does not matter which intent is stated first and whether the intents are separated by the word **and**. Scripture compares properly brought sacrifices to improperly brought sacrifices. In properly brought sacrifices there can be no element of improper intent. So too for improper sacrifices there is *kareth* only where all intents lead to *kareth*, namely, where there is no spatial intent.

Rabbi holds that if an intent to consume a sacrifice outside of time limits **precedes and can be separated from** an intent to consume outside of space limits, there is *piggul* and *kareth*, but *vice versa* there is no *piggul* (although the animal is *posul*) or *kareth*.

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[736] Zeb.28:2.

[7:2]

Levi wished to ask Rabbi one question and thereby to determine whether the following two statements are sufficiently separative for this purpose:

1. an intent to eat outside of time **and** outside of space; or

2. an intent to eat a portion outside of time, a portion outside of space.

It is more likely that the statements are separated in the second statement where the word **and** is not used.

Levi determined to question Rabbi on the rule in the first case and thereby to determine the rules in both:

1. Were Rabbi to respond that there is separation in the first case, there is certainly separation in the second case.

2. Were Rabbi to hold that there is no separation in the first case, Rabbi could indicate that:

   there is no separation in the second case by responding **in an angry tone**, thereby evidencing his annoyance at Levi's implicit assumption that there is separation in the second case[737]; or

   there is separation in the second case by responding in an even tone, which impliedly approves Levi's evident assumption (by questioning only the first case) that there is separation in the second case.

What is important for our Gemara is that Rabbi responded that there is separation in the first case. This implies that both formulations are separative.

[Forgiveness of loan or bailment]

See the Meiri's earlier discussion[738] of the rule that a man cannot betroth a woman by forgiving her indebtedness to him. This applies even where the debt is evidenced by a writing, and even if the woman had not yet spent the borrowed money. What is dispositive is that loaned funds are outside of the lender's control until the due date, and that the borrower is responsible for risk of loss.

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[737] Levi's wrong assumption would result in a replacement *hullin* animal being wrongfully brought for sacrifice.

[738] 6:2 and 46:1.

[7:2]

There is also no monetary *kinyan* where a buyer forgives the seller's debt to the buyer.

[*Kiddushin* with a bailment]

A deposit or bailment is not meant to be spent. That is why a woman can be betrothed by a man who says "Be betrothed to me with the bailment I have on deposit with you." If the major portion of the bailment had already been lost or stolen, the woman can be betrothed if she retains at least one *perutah* worth; the man's statement can be interpreted as meaning "Be betrothed with whatever bailment I have on deposit with you."

The Yerushalmi holds that the result would be different were the man to say "Be betrothed with the **entire** bailment you hold for me." Here she is not betrothed if a portion of the bailment was already lost or stolen. The Meiri suggests that the same result would follow if he says "Be betrothed with **that particular** bailment you hold for me."

[*Kiddushin* with partial payment]

Assume that a woman is told that she will be given a *maneh* (100 *zuz*) in *kiddushin* but is given only one *zuz*. She is not embarrassed to demand the 99 *zuz* balance, is betrothed, and has a claim against the groom for the balance. But she is not betrothed where she is given 99 *zuz* out of 100. She will be embarrassed to demand the one *zuz* balance, and will never receive what she was promised.

[47:2]

[When a non-monetary loan cannot be revoked]

A borrowing is made final by *meshikhah* and cannot afterwards be cancelled by the lender until the agreed upon repayment date, or until the completion of the job for which the item was borrowed. *meshikhah* also transfers the risk of loss to the borrower. It does not matter when the borrowed item is first used.

[*Kiddushin* by transfer of third-party notes]

What if a man transfers to a woman for *kiddushin* a promissory note which the man holds against a third party? Assume that the claim is properly transferred, *i.e.,* he delivers to her a written assignment in which he states that the transfer is of the promissory note and of the indebtedness it represents. Is she betrothed? The Rambam rules that she is betrothed, but the Ramban disagrees.

[7:2]

The Ramban holds that she is not betrothed because the groom reserves the power to waive the debt. The Ramban would agree that the *kiddushin* are valid where the assignment is conducted in the "presence-of-the-three," *i.e.,* in the presence of the assignor (the man), the assignee (the woman), and the borrower, in which case the assignor can no longer waive the loan[739].

Most commentators believe that the Ramban would rule the same way, and validate *kiddushin*, where an **oral** loan is assigned as *kiddushin* in the presence-of-three. Note that:

> Our Gemara assumes that the only relevant issue on whether a loan assignment in the presence-of-three can effect *kiddushin* is whether the rule of the presence-of-three applies to loans as well as bailments. The Gemara does not distinguish between oral and written loans.
>
> A Gemara elsewhere[740] concludes that the rule does apply to loans as well as to bailments.

But one commentator disagrees. He maintains that the rule of the presence-of-three is in essence arbitrary and legislative. **Particularly when applied to intangible debt relationships which are not evidenced by documents**, it is inappropriate to apply the rule to such loans **to validate *kiddushin***.

A man may betroth a woman with a collateralized loan owed by a third party. An assigning lender cannot waive an assigned loan for which the assignee has collateral.

[48:1]

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[739]See B.K.89:1.

[740]Git.13:1.

[7:2]

A deed may serve as *kiddushin* only if it was written for the particular woman to be betrothed. Some say that the woman must also be aware that the deed is being written for her[741].

A deed is valid if it is signed by witnesses or if its delivery is witnessed. If there are no witnesses at all, the deed is void even if written in the groom's hand[742].

[Generally, no account may be taken of deed's monetary value]

A deed which is invalid **as a deed,** for example if it was not written for the woman to be betrothed, cannot bring about **monetary** *kiddushin* should the deed have inherent value in excess of one *perutah*. There is *kiddushin* where the deed was delivered as a monetary equivalent rather than as a deed[743]. There is questionable *kiddushin* where it is uncertain in which capacity the deed was delivered.

[No *kiddushin* by waiver of right to wages]

There is no *kiddushin* if a woman requests that an artisan make her a necklace, ear-rings or finger-rings, with the understanding (even if expressed by both the artisan and the woman) that she will betrothed to the artisan in lieu of wages. The liability for wages accrues as a debt throughout the period of the artisan's labor. The attempted *kiddushin* is therefore invalid since it is based on the artisan's **forgiveness** of the woman's **debt**.

The artisan does not obtain any ownership rights in the jewelry entrusted to him; otherwise the cession of these rights could have supported *kiddushin*. True, the artisan does obtain **collateral rights,** and such rights count as **payment** to pass to him the risk of loss which is borne by a **paid** bailee. But the woman does not **realize** that the artisan has these collateral rights. The rule would be otherwise were the couple to stipulate that the artisan would have collateral rights in the jewelry.

Those who hold that the liability for wages does not accrue until "the end" hold that the artisan can indeed betroth with the benefit of his forfeited wages:

The wages accrue only upon completion of the labor, and at that moment

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[741]See 9:2.

[742]The Meiri disagrees with one commentator who holds that a deed written in the groom's hand results in questionable *kiddushin*.

[743]This is supported by the Yerushalmi.

[7:2]

the *kiddushin* is effective, so that there is no indebtedness which is waived.

Rashi goes further and explains that the liability for wages does not accrue until the item is **returned** by the artisan, so that *kiddushin* is effective **before** (rather than simultaneously with) the accrual of liability.

[48:2]

[Misunderstandings in *kiddushin*]

The next Mishnah provides:

> If a man says to a woman "Be betrothed to me with this cup of wine," and it is found to be honey, or "of honey" and it is found to be wine; "with this silver *denar*," and it is found to be of gold, or "of gold" and it is found to be of silver; "on condition that I am wealthy," and he is found to be poor, or "poor" and he is found to be wealthy; she is not betrothed. R. Simeon said: if he deceived her to her advantage, she is betrothed.
>
> "On condition that I am a priest," and he is found to be a levite, or "a levite" and he is found to be a priest; "a *natin*" and he is found to be a *mamzer*, or "a *mamzer*" and he is found to be a *natin*; "a townsman" and he is found to be a city dweller, or "a city dweller" and he is found to be a townsman; "on condition that my house is near the baths" and it is found to be far, or "far" and it is found to be near; on condition that he has a daughter or maidservant that is grown up, and he has not, or on condition that he has not, and he has; on condition that he has no sons and he has, or on condition that he has and he has none -- in all these cases, even if she declares "it was my intention to become betrothed to him notwithstanding," she is not betrothed. It is likewise so if she deceives him.

A woman cannot be betrothed if the man gives her an object other than that declared, unless the woman was betrothed in circumstances, such as daylight[744], where she must have been aware of the substitution. The rule applies even where the substituted item, *e.g.,* honey, is worth more than the promised item, *e.g,* wine. It applies, too, where the substituted item and the promised item are of one species, *e.g.,* a sweet cucumber and a bitter one. In fact, even where he was rich and promised to be poor, there is no *kiddushin* because she may have preferred a poor man whom she could dominate.

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[744]Some commentators hold that in this case there is only doubtful *kiddushin.*

[7:2]

R. Simeon agrees that a woman is not betrothed even where the item given **to her** is worth more than the item promised. He disagrees with the majority only where a woman directs **her agent** to accept *kiddushin* from so-and-so "who promised me silver." Here R. Simeon rules that the woman is betrothed where so-and-so gives the agent gold instead. The woman herself was not deceived in this case, and never discussed the *kiddushin* item with the man who wishes to betroth her. We interpret her direction to the agent as meaning "take whatever he gives you, even if it is silver."

The majority view is the *halacha*, and a direction to an agent is construed strictly. Similarly, the woman is not betrothed where the agent deceived the **man**, such as where the man told the agent "Please lend me silver to betroth the woman," and the agent instead loaned him gold.

The Mishnah applies the same rule where the conditions relate to pedigree, even where the groom's actual pedigree is greater than promised: a woman can feel more comfortable "with a shoe that is not larger than her foot." Where the conditions relate to his being a *natin* or a *mamzer* it may be that she is aware of her own status and is concerned that if her husband's status is greater there would be no peace between the two.

A woman may prefer a townsman to a city man because of monetary inflation and population density in the city. The reverse preference may also exist[745].

Women may prefer houses which are near or far from the bathhouse. Similarly, a woman may prefer that a man have a daughter or maid which is grown (others read which can bring up others, or which can braid hair or is otherwise skilled) to assist her with her household tasks, whereas other women may prefer the privacy of not having an adult in the house who can refute her will or reveal her confidences.

The Gemara explains that R. Simeon agrees with the majority on conditions which relate to pedigree. For this reason R. Simeon agrees with the majority where the husband does not deliver a **grown** maid, in the sense of high pedigree (*i.e.,* the maid was born of a Jewish slave). A higher pedigree maid has more access to gossip.

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[745]The Meiri here quotes a Tosefta which notes that the *kiddushin* are valid if the condition was met at the time of *kiddushin*; later changes in circumstances do not matter. If the betrothal was on condition that he is a perfumer, and he was, there is *kiddushin* notwithstanding that he later becomes a tanner.

The Tosefta also considers the condition satisfied if he was a perfumer as well as a tanner. The rule would be different where the condition is that he be a perfumer **but not** a tanner.

The majority, however, hold that there is no betrothal even where the condition is monetary rather than pedigree, such as where the word "grown" is interpreted to have the meaning discussed in the preceding paragraph.

What if the woman later claims that she had mentally determined to waive the man's condition? Mental reservations cannot detract from spoken words. The same applies to the man's mental reservation when he is deceived by the woman.

What if at the time of *kiddushin* she told the man I will be betrothed regardless of whether your condition (*e.g.,* that you are a priest or levite) is satisfied? She is betrothed, for by listening and acquiescing, the man in effect waived his condition. This is especially so since the condition related not to her status but to his own, and he was certainly aware of his own true status.

This completes the exposition of the Mishnah. Here is what follows in the Gemara:

[Which items may aggregate to achieve the minimum *perutah* **value]**

If a man gives a woman a cup in *kiddushin*, then:

1. if the contents are water, she is betrothed only if the cup itself, without the water, is worth a *perutah*. The water itself has no value to the woman, and the woman assumes that she is to be betrothed with the cup.

2. if the contents are wine, she is betrothed only if the **wine** is worth a *perutah*; otherwise she is not betrothed even if the cup is worth a *perutah* standing alone. She assumes that she is expected to return the cup after drinking the wine.

3. if the contents are oil, she is betrothed so long as the oil and the cup are together worth a *perutah*. There is no necessary expectation that she immediately pour out the oil and return the cup.

This is Rashi's view. It is logical and preferred notwithstanding that these holdings do not follow in the order of the *baraitha's* to which the Gemara refers. There are other instances in which the Gemara explains inconsistent *baraitha's* out of the order in which they are listed.

The Rambam, however, prefers to match the Gemara's holdings to the *baraitha's* in the order in which they are listed. The following rules result:

1. if the contents are water, she is betrothed so long as the water and the cup are together worth a *perutah*. Given that the water has nominal value,

[7:2]

it is assumed that he intended to betroth with the cup. Why then did he fill the cup with water? To complement the value of the cup to provide a total of one *perutah* in value.

2. if the contents are wine, she is betrothed only if the cup itself, without the wine, is worth a *perutah*. It cannot be assumed that expensive wine is intended to "complement" value.

3. if the contents are oil, she is betrothed only if the **oil** is worth a *perutah*; otherwise she is not betrothed even if the cup is worth a *perutah* standing alone. Oil is of greater value than wine, and she assumes that the intent is to betroth with the oil alone and to return the cup.

There is yet a third view which holds with Rashi where the contents are water, and that if the contents are wine, she is betrothed if the cup with the wine are together worth a *perutah* (on the ground that the man obviously wishes to complement the cup's value).

Because of confusion in explaining the Gemara it is best to take the strict view in all cases.

Notwithstanding that for the purposes of *terumah* wine and vinegar are treated as one species[746], they are separate commercially. Wine cannot be delivered when vinegar was sold, brown grain cannot be delivered where white grain was sold, etc.

[49:1]

[Result where plain deeds are given rather than folded deeds, and *vice versa*]

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[746] 46:2.

[7:2]

Witnesses sign a plain deed (whether a *get*, a loan document or otherwise) on the inside, and the plain deed is dated currently. Witnesses sign a folded deed on the outside, and the folded deed is dated one year past the actual date[747]. If the reverse was done, the deed is invalid:

> Where witnesses signed on the outside of a plain deed, it will be assumed that the deed was initially folded and then opened. The deed will be mistakenly treated as having been delivered one year before the actual delivery date.
>
> Where witnesses signed on the inside of a folded deed, the lender (where the deed is a promissory note rather than a divorce deed) may not have realized that the deed was folded and was being **post**-dated to his detriment.
>
> > The lender can attack the title of one who purchases land from the borrower after the date of the deed. Presumably, a folded deed would be understood for this purpose to have been signed one year earlier than the date in the deed. Still, a lender prefers a plain deed which states the earlier date on its face.

Some hold that a lender can validate a folded deed which was signed on the inside: all the lender need do is open the folds and waive the post-dating. The *halacha* is otherwise.

A scribe who is asked to write a deed may write either a pain deed or a folded deed whether or not local custom supports the scribe's choice. Where the scribe is **directed** to write a plain deed or to write a folded deed, his failure to conform invalidates the deed even where local custom supports the scribe. The instruction was meant to be taken seriously[748].

[Interpretation of various conditions to *kiddushin*]

A *get* or *kiddushin* is invalid if **accepted** on a woman's behalf by her agent at a place other than where the woman directed for **acceptance**. But where the woman directed that the agent **bring** the *get* from a designated place, it does not matter if

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[747]See B.B.164:2.

[748]For further details, see B.B.165:1.

[7:2]

the *get* is brought from another place[749].

If the man betroths a woman on condition that he is a reader or that he can read, she is betrothed only if he can read at least three verse in the synagogue and only if he can translate them in accordance with the Targum of Onkelos (rather than in his own, possibly faulty, translation).

If he betroths on condition "that I have read," the *kiddushin* is valid only if he can carefully and precisely read all 24 holy books.

One who reads a verse letter by letter, without vowelization, such as one who proofreads, is a liar. The same is true of one who translates literally, such as one who translates literally the verse "And you shall sacrifice the *pesach* ...sheep or goats and cattle,"[750] where the correct translation (in accordance with the Targum) limits the *pesach* to sheep or goats, and applies cattle to peace offerings brought on the festival.

Where one adds to the translation ("And the angels of G-d said" in the place of "And G-d said"), he is a blasphemer. There are also cases where one can blaspheme by literal translations, such as by literally translating the verse "And they saw the G-d of Israel"[751], instead of translating in accordance with the Targum.

Where the condition is "that I am learned" it is satisfied only if he can read the Mishnah. If the condition is "that I am a *tanna*," it is satisfied only if can read the Mishnah, the *sifra*, the *sifri* and the Tosefta.

[49:2]

Where the condition is "that I am a disciple" he need not be as learned as b.

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[749]See Git.65:1.

[750]Deut.16:2.

[751]Ex.24:10.

Azzai and b. Zoma. It is enough that he has the general information which most persons know somewhat, such as the rules of *shavuot* during *shavuot*, and of Passover during Passover. This is what our Gemara means by the *halachot* of *kallah*, which is a reference to the topical *halachos* which were taught at the *kallah* assemblages.

Some commentators take the reference as being to Tractate Kallah, which is rarely studied and which is not part of our Talmud; the Gemara requires that the man be learned even in this Tractate. The Meiri disagrees.

Where the condition is "that I am a sage" he need not be equivalent to R. Akiva and his companions, whose profundities were beyond the range of understanding of most persons. Rather, it is sufficient that he can answer a matter of wisdom asked on any topic.

Where the condition is "that I am mighty" he need not be as strong as Abner b. Ner and Joav b. Zeruiah. It is enough that his companions fear him for his strength. Similarly, where the condition is "that I am wealthy" he need not be as wealthy as R. Eleazar b. Azariah or R. Eleazar b. Harsom. It is enough that he is honored by comrades for his wealth.

Where the condition is "that I am righteous" she is betrothed even if he is absolutely wicked, for he may have meditated repentance in his thoughts. Even **meditated** repentance is significant: "in order to seize the **hearts** of the children of Israel."[752]

[Mental reservations not valid in sales transactions]

If one sells his house unconditionally, and it is known to the buyer and others that the seller sold only to leave to Eretz Israel, the sale is absolute and stands even if the seller does not or cannot leave. Mental reservations have no force. If the sale is made conditional on his leaving, the sale is void if he does not leave, even if it is his own uncompelled decision not to leave. But once he does leave, the sale is absolute notwithstanding that his emigration is not permanent for whatever reason. He conditioned the sale on his **leaving**; he may have **meant** his permanent settlement, but he did not say so, and mental reservations have no force.

> What if no condition was set, but the seller mentioned during the course of the sale that he intended to leave to Eretz Israel? The reservation is expressed, not mental.It does not matter that the reservation was not

[752]Ezek.14:5.

stated as a **condition**. But the sale is valid if the seller's failure to leave is by his choice. The buyer says, "You should have left!"

What if the seller mentioned during the course of the sale that he intended to leave to Eretz Israel, and outside circumstances made it impossible for the seller to emigrate? Shall we let the sale stand because of the invalidity of mental reservations? No. In the preceding paragraph we held that a reservation of this kind is not "mental."

Assume that a father makes a gift to his son **on condition** that the father can sustain himself financially, and the father then abandons his remaining property and is impoverished. Can the son maintain that the father's penury is his own fault? No, just as the buyer cannot maintain where a condition is stated that the seller's failure to leave is his own fault. Similarly, until Hillel legislated a remedial ordinance[753], a buyer could avoid a seller's redemption payment by absconding at the deadline for redemption notwithstanding that the buyer's action caused the seller's failure to redeem.

[Where mental reservations are valid]

There are cases where we take judicial notice of mental reservations and enforce them. For example:

1. A woman prior to her marriage transfers all her property to her son. When she is divorced, she may rescind the transfers, on the ground they were intended only to exempt the property from her husband's claims.[754]

2. A man transfers all of his property to another upon hearing a rumor that his son has died. The transfer may be rescinded when the rumors prove false.[755]

3. A woman who was distressed by her son and who announced that she will accept *kiddushin* from anybody, is assumed to mean that she will accept *kiddushin* only from fit persons.[756]

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[753]That the redemption payment could be deposited in the Temple treasury. Git.74:2.

[754]Keth.78:2.

[755]B.B.132:1.

[756]B.K.80:1.

[7:2]

4. Transfers made by a deathly ill person may be rescinded should he recover.[757]

5. A gift made under duress may be rescinded, even where the donor acquiesced in the gift.

In these cases, we infer a condition even without statements by the woman or the man. There is no such independent inference in the case of the seller who intended to leave to Eretz Israel.

Besides, in the case of the seller who intended to leave to Eretz Israel, it is possible that the money he received made him acquiesce in the sale. In the examples just cited, the transferors received no funds. It is instructive that although a compelled gift can be rescinded, a compelled **sale**, where funds are received, cannot be rescinded[758].

Consider also the following cases:

1. R. Akiva wished to prove a *halachic* point by eliciting an admission from a woman regarding the legitimacy of her son. She agreed to confess the truth on condition that R. Akiva swear that she would have a portion of the world to come. R. Akiva made the oath and at the same time mentally rescinded it.

> The recision was valid even without compulsion because of the overriding importance of determining the *halacha*. Furthermore, there was an inherent weakness in the oath, because it would have imposed on him an obligation which was not in his power to perform.

2. One can abandon *hametz* mentally where there is some compelling reason, such as where the *hametz* is owned by a disciple for whom it is improper to leave his master physically to dispose of the *hametz*, or if the *hametz* is located in a recess shared by a Jew and a gentile (where there is danger in physically removing the *hametz*), or where the owner of the *hametz* is engaged in saving others from brigands or in performing some other precept.[759]

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[757]B.B.150:2.

[758]B.B.49:1.

[759]Pes.7:1; 8:2; 49:1.

[7:2]

> The mental act is validated by: the compelling reason, the fact that there is no second party whose rights are affected, and the fact that there is no conflicting oral statement.

A person's words are not given effect where he intends to dedicate *terumah* but says tithe, or tithe and says *terumah*, or an *oleh* and he says a *shlamim*, or a *shlamim* and he says an *oleh*[760]. Why do we not simply ignore the mental reservations, and honor only the actual statements?

> 1. We in fact do not **honor** the reservations. We take them only as indications that the oral statements were in error. To **honor** a mental reservation means to give it effect where it contradicts an oral statement.
>
> 2. Mental attitudes are more potent regarding sacrifices. Even a mental consecration of sacred property is valid. "All those whose **hearts** shall move him."[761]

Keep these examples in mind when considering other instances in which the force of mental reservations must be evaluated. Also keep in mind that at times the mental reservation consists of pure thought, whereas in other cases the mental reservation consists of recitation of words at a volume so low that they are not heard.

[Formalities of conditions]

What statements qualify as a condition? The Rambam and others hold that a condition is valid only if the phrase **on condition** is used or if the condition is stated in duplicate: my sale is not valid if I do not leave, and my sale is valid if I leave. Other commentators disagree and hold that the **on condition** phrase or duplication is not required in commercial transactions such as our case. The language used in our Gemara "with the view of leaving for Eretz Israel," without duplication, tends to support those who hold that no duplication is required.

Also supportive of the second view is the Gemara's conclusion[762] that one who sells land to raise money can rescind when it turns out that there was no need for him to raise funds. Here it must be that there was no duplication, for if there was,

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[760] Pes.63:1.

[761] Ex.35:5. See Shev.26:2.

[762] Keth.97:1.

[7:2]

how could the Gemara even consider the possibility that the sale might not be rescindable?

There is an alternate explanation of the Gemara summarized in the preceding paragraph. Perhaps the Rambam is correct: where the person making the condition **prefers** that the action and condition both be satisfied, then he must duplicate the condition if it is to effective to void the action, even in monetary transactions. What strengthens the condition in the case of one who sold to raise money is that the action (the sale) was never truly desired and was performed reluctantly.

How then do we explain the duplication requirement for a *get* written by a deathly ill person to save his wife from the trouble of *yibbum* and *halizah*[763]? The condition that the *get* is to be valid only if the husband dies must be duplicated notwithstanding that the husband does not really wish to effect a divorce! Perhaps the Rabbis apply a stricter rule for the serious matter of *get*.

[50:1]

[Compulsion to bring a sacrifice]

[763] Git.74:5.

[7:2]

One who commits to bring a sacrifice and does not dedicate and sacrifice an animal in the ensuing three festivals, is compelled by the Beth din to bring a sacrifice at the next festival. "He **shall** sacrifice it."[764] But what of the verse "to his will"?[765] We compel him[766] until he says "I agree." Similarly, in all cases in which a man is compelled to give a *get*, compulsion is applied until the man acquiesces.

[Unstated conditions cannot upset *kiddushin*]

A man cannot rescind *kiddushin* by claiming he wrongly assumed that the woman was the daughter of a priest, nor can she rescind *kiddushin* because she wrongly assumed that he had a desirable pedigree. In each case, there was no deception by anybody.

[Mental reservations ignored for *me'ilah*]

Recall the discussion regarding a principal's obligation to bring a *me'ilah* offering where his agent **accurately** followed his instructions and accidentally obtained benefit from *hekdesh*. Since mental declarations are ignored, where the principal tells the agent to bring property from a window sill, and the agent complies, the principal must bring a *me'ilah* offering notwithstanding that he **intended** that the object be brought from a chest. Of course, if the agent realized that the property was *hekdesh* before there was *me'ilah*, neither the principal nor the agent brings a sacrifice. A sacrifice is brought only for unwitting *me'ilah*.

[Where direction on where to effect *kiddushin* is to be construed strictly]

The fourth Mishnah provides:

> If he says to his agent, "Betroth to me so-and-so in such and such a place," and he goes and betroths her elsewhere, she is not betrothed. "She is in such and such a place," and he betroths her elsewhere, she is betrothed.

In the first instance, the man insists on the place of betrothal, perhaps because in the designated place he has friends who will not malign him, or for some other

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[764]Lev.1:3.

[765]Id.

[766]No compulsion is applied (whether by way of seizure of property or otherwise) for sin and guilt offerings. There is a presumption that the person will voluntarily bring these sacrifices to obtain the forgiveness which the sacrifices afford.

reason. In the second instance, it is assumed that he merely wished to suggest where the agent might find her. The same applies to an agent whom she appoints to accept *kiddushin* or to deliver or accept a *get*.

[Consequence if agent dies, and it is unknown whether and whom he betrothed]

The Gemara elsewhere[767] discusses the case of an agent who dies after he is sent to betroth a woman. The principal cannot marry any woman who would be forbidden to him had the agent betrothed her relative on behalf of the principal. However, the principal may marry women who **at the time the agent was appointed** were related only to married women, even if the married women were later divorced before the agent's death. The agent is empowered to betroth only women who were available for betrothal **at the time the agent was appointed**.

[Vows and blemishes which are violative of stated or understood conditions]

The fifth Mishnah provides:

> If he betroths a woman on condition that she has no vows upon her, and it is found that she has, she is not betrothed. If he marries her unconditionally, and it was found she had vows upon her, she is divorced without her *kethubah*.
>
> If he betroths her on condition that she has no blemishes, and blemishes are found on her, she is not betrothed. If he marries her unconditionally and blemishes are found on her, she is divorced without her *kethubah*.
>
> All blemishes which incapacitate priests to serve at the altar render women unfit.

A husband cannot annul vows which his wife made prior to betrothal; hence, these vows are flaws. But why so, given that a sage may annul any vow for which extenuating circumstances are found, or which are regretted? Because the husband does not wish his wife to be embarrassed by presence at the Beth din.

> The Rambam maintains that the *kiddushin* are valid if she does have her vow annulled by a sage.

Only three vows are considered significant enough to invalidate *kiddushin*. They are a vow not to eat meat, a vow not to drink wine, and a vow not to wear colored

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[767] Naz.12:1.

clothing. Any other vows are ignored, despite his protestations, unless his condition was in the form "that you have absolutely no vows in the world."

What if he betrothed her and married her without any condition at all and it turns out that she had uttered a significant vow? Her betrothal and marriage are of questionable validity[768], but if he chooses to divorce her she receives no *kethubah* unless she seizes it from him.

> What if he betrothed her on condition that she had no vows, but he married her unconditionally?
>
> If he has not cohabited with her, she requires no *get* to marry another, because his failure to repeat the condition before the marriage is not deemed a waiver.
>
> If he cohabits with her and there are witnesses to his seclusion, we apply the presumption that no person wishes his cohabitation to be illicit[769]. He is therefore deemed to waive his condition, so that she requires a *get* to marry another. It does not matter whether the marriage was previously consummated by *huppah* or whether the marriage is consummated by the cohabitation itself.

The blemishes which are violative of the man's condition are those which incapacitate priests, plus the following eight: foul odor, excess sweat, foul breath, a low-pitched voice, where one breast is a *tefach* larger than the other, there is more than a *tefach* between one breast and the other, skin which is scarred by a dog-bite, and a mole on the forehead no matter how small and no matter how close to the hair on her head. It does not matter whether there is hair in the mole.

No other blemishes count, probably even if he formulated the condition as "your not having any blemishes whatsoever."

If he betrothed and married her unconditionally and the designated blemishes appeared, her *kiddushin* and marriage are of questionable validity and she is not given her *kethubah* on divorce. The same is true where he betrothed her on condition but married her unconditionally.

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[768]Keth.73:2.

[769]Compare the presumption which is applied where one betroths with less than a *perutah* and then engages in witnessed seclusion.

[7:2]

[*Elonit* as a fault which can invalidate *kiddushin*]

Does *elonit* count as a fault which can serve to invalidate *kiddushin*? There are the following considerations:

1. Our Gemara refers only to eight faults and *elonit* is not listed.

2. *yibbum* does not apply to the *elonit* wife of a deceased brother, and not even *halizah* is required[770].

3. A Mishnah[771] lists the following women as not being entitled to a *kethubah*:

i. an *elonit*;

ii. a woman whose marriage violated Rabbinic (as opposed to Scriptural) prohibitions against incest; and

iii. a girl whose betrothal had Rabbinic force only and who annuls the betrothal or marriage by *mi'un*.

In dealing with second category, the Gemara asserts that the Mishnah dispenses only with *kethubah*, but does require a *get*. In dealing with *mi'un*, the Gemara does not make this deduction; no *get* is required.

Whether *elonit* requires a *get* depends on whether she is to be analogized to second degree kinship or to *mi'un*.

4. Widow A requires no *yibbum* if her co-wife Widow B is prohibited to the *yabam* on account of any one of 15 family relationships. Where Widow B is discovered to be an *elonit* after her husband's death, so that she had no true marital relationship with the deceased brother, her relationship to the

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[770]Yeb.79:2. But why not require *halizah* on the possibility that the *yabam* may accept her in her *elonit* condition? Note that even a woman with the eight significant blemishes or who has uttered oaths requires a *get* if she was betrothed without conditions, because not all persons find these conditions unacceptable!

The Meiri distinguishes the cases on the ground that we take judicial notice that a *yabam* will find an *elonit* unacceptable. The purpose of *yibbum* is to produce a child who will perpetuate the memory of the deceased brother. See Deut. 25:9.

[771]Keth.100:2.

yabam does **not** exempt Widow A[772]. This suggests that Widow B would not have required a *get* to leave the deceased brother were he to have objected to her condition after discovering it.

5. R. Meir rules that there is no *yibbum* for a *ketannah*. He explains that at puberty it may appear that she is an *elonit*. Because of that possibility, the rules of *yibbum* cannot serve to counteract the prohibition against incest with a brother's wife[773]. If in fact a husband can reject an *elonit* without a *get*, why not permit *yibbum*? At worst if she is discovered to be an *elonit*, her betrothal to the deceased brother was of no force, so that there is no incest prohibition against her marrying the *yabam*?![774] Does this not prove that *elonit* requires a *get*?

Not necessarily. We can give R. Meir meaning even if we hold that an *elonit* can be rejected without a *get*. True, *yibbum* of the *ketannah* is of no harm in itself since at worst she was never the deceased brother's wife. Still, R. Meir's concern is that onlookers may wrongly assume that there was absolute *yibbum*, rather than possible *yibbum*, and they might think that the *yibbum* suffices to free her co-wives to marry strangers [775].

This completes the explanation of the Mishnah. The Gemara adds nothing.

[Later gifts cannot validate *kiddushin* made with less than a *perutah*]

The sixth Mishnah states:

If one betroths two women with the value of a *perutah*, or one woman

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[772]Yeb.2:2.

[773]Yeb.61:2.

[774]The majority of the Sages disagree with R. Meir only because they do not concern themselves with the remote possibility that the *ketannah* may turn out to be an *elonit*. It is clear that were *elonit* a true concern they would concur with R. Meir. That being so, the evidence in the text can be adduced from the Sages' position as well as from R. Meir's position.

Note that although the majority permit *yibbum*, they do not permit *halizah*, because the verses dealing with *halizah* (Deut.25:5) refer to the ceremony as being conducted by a **man**, which suggests that **both** participants must be adults.

[775]See Yeb.12:1.

> with less than a *perutah*'s worth, even if he subsequently sends gifts, she is not betrothed, because they were sent on account of the first *kiddushin*. It is likewise so if a minor betroths [and sends gifts after his adulthood].

Neither of the two women is betrothed. But where A tells B "Your two daughter are betrothed to my two sons for a *perutah*, there is questionable *kiddushin* [776] because a full *perutah* is passed from the giving father to the receiving father.

The situation in the Mishnah cannot be improved by the traditional gifts which are sent by a groom to his bride after betrothal. It does not matter whether the agents who deliver the gifts specifically refer to them as "gifts," whether the couple had been discussing matters relating to betrothal, or whether the gifts are given in the presence of witnesses. The assumption in all cases is that they were intended as gifts which follow the invalid *kiddushin*, rather than as *kiddushin*.

Similarly, a minor can establish no *kiddushin* or any other marital relation. His invalid act cannot be rectified by gifts he sends after adulthood, where the gifts can be interpreted as gifts rather than as *kiddushin*.[777]

There is no *kiddushin* where a minor announces that he is betrothing a woman effective upon his adulthood. It does not matter whether the value given in *kiddushin* still exists when adulthood is achieved.

Why then can a father validly redeem his first son before the son is 30 days old so long as the father makes the redemption effective after 30 days and the redemption value is maintained until then?

> Firstly, the law of betrothal bears no relation to the law of redemption!
>
> Secondly, all that is necessary to validate redemption is the passage of time. To validate *kiddushin* both the passage of time and signs of puberty are required.
>
> The following matters appear in the Gemara:

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[776] 7:2.

[777] There is betrothal if the groom cohabits with his wife after adulthood and there are witnesses to his seclusion.

[7:2]

[*Kiddushin* by idiots, deaf-mutes, androgynous persons and others]

An idiot[778] as well as a minor cannot establish legal and binding marital relations, even Rabbinically. The rule applies if either the man or the woman is an idiot.

A deaf-mute can establish marital relations Rabbinically. What if a normal person purports to betroth a normal woman who is married to a deaf-mute? There are the following views:

1. The Rambam holds that the second betrothal is valid Scripturally and cannot be avoided by the prior Rabbinical betrothal. He adds that the deaf-mute may remarry the woman if she is later divorced by the normal man.

2. The Raabad holds that she may not remarry the deaf-mute, lest onlookers wrongly assume that the deaf-mute had divorced her prior to her second betrothal, and that one may remarry a wife he has divorced and who was subsequently married to another man.

A *tumtum* or androgenous person can establish questionable *kiddushin* by betrothing a woman. The Rambam holds there is also doubtful *kiddushin* where a *tumtum* or androgenous person is betrothed by a man. The Raabad holds that in this case there is not even questionable *kiddushin*[779].

The Rambam also holds that a drunk person's betrothal is valid unless he is as drunk as Lot.

[*Kiddushin* of gentiles]

No marital relation can be established by or with a male or female gentile free person or slave. Why are we not concerned that the gentile's ancestors were members of the ten lost tribes?

The Gemara first explains that the men and women of the ten tribes were exiled separately to hasten their assimilation. The children of the Jewish men who married gentile women are gentiles because of Samuel's dictum that a Jew's grandson derived from a gentile daughter-in-law is not considered "your son," *i.e.,* is not Jewish. The Jewish women, had they married gentiles, would have given birth to children considered Jewish. However, the women all drank potions which sterilized

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[778]The attributes of an idiot are set forth in the Meiri to Hag.3:2.

[779]The Ra'avid draws support from a Gemara (Yeb.81:1) which states flatly that an androgynous person cannot be taken in marriage.

them.

Ultimately, the Gemara explains that the ten tribes assimilated and are considered gentile.

A Jewish apostate, even an idolater, is still Jewish, and his betrothal and *get* are valid. Another Gemara[780] states flatly that a convert can never revert to a gentile status, and that should he return to idolatry his *kiddushin* remain valid. The Meiri disagrees with those who hold that apostates today are considered non-Jewish on the ground that they do not keep the Sabbath or that they worship idols.

[780] Yeb.47:2.

[7:2]

[50:2]

[When gifts given prior to *kiddushin* suggest *kiddushin* or constitute *kiddushin*]

The Gemara considers whether there is *kiddushin* if an agent delivers gifts in the presence of witnesses **before** *kiddushin*, or before **it is established that there was *kiddushin*** (such as where the man and woman contest whether there was *kiddushin*).

But what is the issue? We know that *kiddushin* is valid only if there is a declaration of *kiddushin* or if at least the couple had been discussing *kiddushin*[781]. That being so:

> There should certainly be *kiddushin* if the agent discussed betrothal when he delivered his gifts!
>
> There should certainly be no *kiddushin* if he failed to discuss *kiddushin*!

The Raabad explains that where there was no discussion of *kiddushin* there is no absolute *kiddushin*, but there is nevertheless questionable *kiddushin*. Our Gemara deals only with the issue of questionable *kiddushin*.

The Meiri suggests two alternate explanations:

> 1. Generally, where betrothal was not discussed there is no betrothal at all. The Gemara's concern here arises because the gifts were sent to the woman on completion of negotiations. That is why there may be at least questionable *kiddushin* sufficient to require a *get* before she marries another.
>
> 2. Our Gemara does involve contemporaneous discussion of *kiddushin* which would generally suffice for absolute *kiddushin*. But the issue here is clouded because in transmitting the gifts, the agents used words which indirectly suggest that the gifts are being given **as gifts**. By way of example, the agents tell her "These things are being sent to you by so-and-so to beautify yourself among the girls."
>
> Compare the rule that where there was discussion of betrothal there is only questionable *kiddushin* where the man uses ambiguous language such as "You are my rib," or "You are my help"; had he remained silent there

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[781] See Meiri at 6:1.

would have been absolute *kiddushin*[782].

[Status of gifts depends on location]

There are varying textual readings of the Gemara's precise conclusion. Here is the Alfasi's reading:

> Where it is customary to betroth and then give gifts, we are concerned. Where the reverse is customary we are not concerned.
>
> Where it is customary to betroth and then give gifts, of course we are concerned! Why need the case be stated at all?!
>
> The case must be stated where only a minority of persons betroth before they give gifts. The teaching is that we pay attention to the minority.

The Meiri explains that there were witnesses to the transfer of the gift. Where at least a minority betroth before they give gifts, it is the gift itself which we consider to be *kiddushin*. Recall that witnesses need not be **summoned** for the express purpose of attesting to *kiddushin*. Were there no witnesses, or were the gift clearly designated as a gift, there would be no *kiddushin* in this view.

Why the concern with the minority? Because of the seriousness of marital relations, and because of concern that if we rule leniently, the minority may one day become the majority.

Others explain that for the Alfasi the "concern" is not that the gifts **constitute** *kiddushin* but that they create a presumption that there was **prior** *kiddushin*. Compare the Gemara's question on whether the fact that a woman's *kethubah* became known in the market-place can be taken as evidence that she had been betrothed. This concern applies even where the gifts were transmitted expressly as gifts, and even if there were no proper witnesses to the transfer. This reading fits better with the Gemara's language "we are concerned with gifts," which implies somewhat that the word "gift" was used.

Rashi has the reverse textual reading:

> The case must be stated where a majority **betroth and then give gifts** and a minority do the reverse.

The teaching is that we may not **rely** on the minority ("be **concerned** with the

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[782] 6:1.

minority") to void *kiddushin*. Why might we have relied on the minority? Because the minority is supported by the presumption that a person's personal status (in this case the woman's unbetrothed status) continues until there is evidence of change. But where the majority provide gifts before betrothal there is no issue of *kiddushin* at all.

Is it appropriate to speak of **concern** with factors which result in lenient rulings? Yes. The Meiri cites two examples in which the term is used in this sense.[783] The word connotes attention to remote and unlikely cases.

The Meiri prefers the Alfasi's more stringent reading. However, nowadays all persons give gifts, complete negotiations and then betroth. Those who do the reverse are an infinitesimal minority to whom no attention need be paid unless the giver of the gift ostentatiously seeks witnesses to the transfer.

[*kethubah* as evidence of *kiddushin*]

Assume that a woman does not hold a *kethubah* and is not known to be betrothed or married. Assume further that the market-place is aware of a *kethubah* which so-and-so has written for her. In areas where betrothal always precedes the *kethubah* we consider her possibly betrothed, so that she cannot marry another without a *get*.

This applies even where the *kethubah* does not contain language such as "Be you a wife for me" which could be read as making the *kethubah* itself a deed of *kiddushin*, and even where there are no permanent scribes so that it might be argued that the *kethubah* was written in advance when a scribe happened to be present.

Where it is customary to write a *kethubah* before *kiddushin* there is no *kiddushin* at all, since the woman is not known to be betrothed or married.

Some hold that where betrothal customarily precedes the *kethubah* there is certain *kiddushin*, and that where the reverse is true there is questionable *kiddushin*. The Meiri disagrees.

[Simultaneous betrothal of related women]

The next Mishnah reads:

If one betroths a woman and her daughter or a woman and her sister

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[783]Sab.151:1, and Git.19:2.

> simultaneously, they are not betrothed. And it once happened to five women, among whom here were two sisters, that a man gathered a basket of figs, which was theirs, and which was of *sheviith* and declared "All of you are betrothed to me with this basket," and one accepted on behalf of all: the sages ruled, the sisters are not betrothed.

Had he betrothed the mother and daughter or the two sisters **one after the other**, the second could not be betrothed because of her incestuous relation to him; accordingly, when they are betrothed **simultaneously** neither can be betrothed even though two *perutahs* were used.

The Gemara notes that had he said "One of you is betrothed to me," there would be questionable *kiddushin*. It does not matter that the betrothal cannot be consummated because we do not know which is his wife and which is prohibited on account of incest. But were he to say "The one of you with whom I can consummate a marriage is betrothed," neither is betrothed, since marriage cannot be consummated with either.

Consider now the case of the betrothal with the basket of figs. Because the figs were *sheviith* produce they were considered abandoned. Otherwise, there could be no betrothal at all; a woman cannot be betrothed with property illegally seized from her unless there were prior negotiations[784].

As noted, the two sisters were not betrothed even though there was a *perutah* of value for each of the five women. But the other three women were betrothed notwithstanding that their betrothal is effected through action which is invalid for the two sisters. We hold that where A tells B "My property is given to you and the donkey," the donee acquires one-half of the property notwithstanding that the gift to the donkey is invalid.

Why then does the Gemara explain that non-related women are betrothed only because the man said "Those of you fit to me are betrothed?" Because the Gemara wishes to make the Mishnah consistent even with those who hold, contrary to the *halacha*, that there is no gift where property is given to "you and the donkey."

The Rambam holds otherwise. The non-related women are betrothed only if the man said "Those of you fit to me are betrothed to me," and yet the Rambam holds that a gift to "You and the donkey" is valid. How so? Because the Rambam does not wish to apply monetary doctrine to cases involving ritual betrothal. The Meiri disagrees.

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[784]See Meiri to 13:1.

[7:2]

Nine rules can be derived from the Mishnah:

1. Many non-related women can be betrothed simultaneously.

2. Two related women cannot be betrothed simultaneously.

3. Where related and non-related women are betrothed simultaneously, the related women are not betrothed and the non-related women are betrothed.

4. Where one of two related women is betrothed, there is questionable betrothal although no marriage can be consummated.

5. Where a man simultaneously betroths non-related women and one of two related women, the non-related women are betrothed absolutely, and the related women are questionably betrothed.

6. Where one of two related women is betrothed with the declaration "the one of you with whom I may consummate a marriage," neither is betrothed at all.

7. One may betroth with *sheviith* produce, although Scripture refers to such produce as "holy"[785].

8. One may not betroth a woman with property seized from her unless there had been prior negotiations.

9. One woman can act as another's agent even if the agent becomes her co-wife. Some apply the rule even where the agent was not appointed in advance, but her actions were merely ratified afterwards.

This completes the exposition of the Mishnah. Here is what is added in the Gemara:

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[785]Lev.25:12.

[7:2]

[51:1]

[Separation of excess first tithes]

After *terumah* is separated, one tenth of the remaining produce must be separated as a tithe by exact measurement rather than by estimate. Where too little is separated, the portion separated does not have the status of tithe at all. What must be done? A tithe must be separated both from the invalid tithe and from the remaining produce.

If one separates a proper measure of tithe and then separates an additional unnecessary portion, the unnecessary portion is not a tithe. In fact, the initial tithe served to convert the unnecessary portion from *tebel* to *Hullin*, and it may be freely consumed.

If one initially separates an excess portion, the remaining produce is considered properly tithed and may be consumed. But there is no tithe for the excess portion, which is a mixture of *tebel* and tithe.

The Meiri holds that there is no remedy for the mixture of *tebel* and tithe. But Rashi holds that the mixture can be remedied by separating tithe from **other** *tebel* in a measure calculated to tithe the portion of the mixture which is itself *tebel*. It follows that the mixture becomes one of tithe and produce for which a tithe has been separated. The mixture may be consumed, for even certain tithe may be consumed by all Jews.

But what does Rashi make of the rule that tithe can be separated only from nearby produce? The rule only sets forth what is preferable, and is not an absolute requirement. Alternatively, the *tebel* from which the tithe is separated is physically placed alongside the mixture.

And what of the *terumah* which must be given to the priest **exclusively** from tithes? The *terumah* cannot be taken from the mixture itself, since the mixture also contains produce other than tithe?! There is no problem. The *terumah* can be separated from other certain tithe, since most commentators hold that *terumah* can be separated from produce which is not located near the tithe for which it is to be separated.

Commentators propose two other remedies for the mixture. Assume that there were five measures of *tebel* for which the proper tithe is one-half measure. If one full measure was separated, then one-half of the measure is proper tithe and the other half is *tebel*.

1. No attempt is made to separate out the half which is proper tithe.

[7:2]

Instead, one-tenth of one-half (assumed to be the non-tithe half) is separated from the measure as a tithe to cover the other nine-tenths of the non-tithe half. There remains a mixture of tithe and properly tithed produce.

2. The measure **is** physically separated into halves, and one half is assumed to be the proper tithe. Then, one-tenth of the remaining one-half is separated from the measure as a tithe to cover the other nine-tenths of the remaining half. There remains purely tithed produce which is not mixed with tithe.

Note that these remedies differ from Rashi's remedies in that Rashi assumes that the untithed produce in the measure can only be tithed from outside produce which is certainly *tebel*.

We have previously explained that successive separations cannot result in excess *tithes*. What does the Gemara mean by the statement that tithes can be given in halves? That one can separate one full measure (instead of a half measure) out of five, so long as one states that only half of the measure (or half of each grain) constitutes tithe. The result is that tithe and tithed produce are mixed, and can be consumed. The *halacha* is in accord despite possible inconsistencies with Gemara's elsewhere.

[Erroneous or excessive separation of animal tithes]

Cattle tithes are not effective in successive stages or in halves. The tithes are effective simultaneously or if in error. Namely:

1. *Successive stages.*

Assume that nine animals were properly counted, the tenth was properly counted as the tenth, and the eleventh is then called "tenth." Once there is a proper tithe, a later animal cannot be tithed; the eleventh animal has no tithe status at all. It does not matter whether the counter announced "ten" aloud as the tenth passed before him.

2. *Halves.*

If the tenth and eleventh emerge together, and the counter announces that one-half of each is tithe, neither is tithe.

3. *Simultaneous.*

If the tenth and eleventh, or the ninth and the tenth, emerge together,

and the counter calls them both "tenth" or "eleventh" or nothing, then both are considered doubtful tithe, and the tithe and the non-tithe animals are "mixed," in the sense that we do not know which one is the tithe animal.

What is the remedy for the "mixture?" The two animals are set out to graze until they are sufficiently blemished to permit redemption. The animals (more accurately, the indeterminate one of the two which is the tithe animal) are then redeemed onto another animal which is sacrificed as tithe.

4. *Error.*

What if the counter in error called either the ninth or the eleventh the "tenth" and he called the actual tenth "tenth" or he did not call the actual tenth anything at all? In each case the animal called tenth, and the actual tenth, are considered mixed-tithe-non-tithe.

But there is no doubtful tithe where the eighth or a lower number, or the twelfth or a larger number, was called "tenth." In these cases, the actual number is too far removed from ten.

5. *Special rule where ninth and eleventh are both called "tenth".*

What if the counter called both the ninth and the eleventh animals "ten" and the tenth animal "nine" or nothing at all? All three have elements of sacredness. The tenth is considered tithe, the eleventh is brought as a peace offering, and the ninth is eaten after it is blemished[786].

[Excess or erroneous *todah* loaves]

There are three sorts of individual peace-offerings:

1. Joyful (*shalmei simha*) and festive (*shalmei hagigah*) peace offerings which are brought either on account of a vow or by free will. Such offerings are not accompanied by loaves.

2. Nazirite peace-offerings, also known as nazirite rams, are accompanied by 10 loaves and 10 wafers. The 10 wafers are anointed with oil. The flour for the loaves is moistened in oil before grinding. Both the loaves and the

[786]See Bekh.60:1.

[7:2]

wafers are baked as matzo in an oven.

3. Thanksgiving offerings (*todah*) are brought to mark miracles which occurred to the person bringing the offering. They are accompanied by 10 *hametz* loaves and 30 matzos. Of the 30 matzos, 10 are oven-baked loaves, 10 are oven-baked wafers and 10 are prepared from a pulp of flour which is mixed with hot water and is then fried in oil.

The nazirite's loaves are baked out of six and two-third tenths measures, and his wafers are also baked out of six and two-third tenths measures. The 30 matzos of the *todah* offering are baked out of one measure and the 10 loaves of the *todah* offering are also baked out of one measure.

The priest is entitled to one each of the nazirite's loaves and wafers, and to one each of the three types of matzo and the one type of loaf which accompanies a *todah* offering. The loaves, wafers and matzos are consecrated when the related animal offering is sacrificed.

The following additional rules apply to the baked items which accompany the *todah* offering:

1. **They cannot be brought in halves**. None of the items are consecrated where half of 80 loaves (meaning half of each loaf) is brought. Scripture speaks in terms of the priest's taking **one** of each kind, suggesting that he must take a whole loaf which is sacred in its entirety.

2. **They cannot be brought in error**. Where he expected the baked items to be white, they are not sacred if they are actually black. Nor are loaves sacred if they were accidentally substituted for those originally intended. Mistaken consecration is ineffective.

3. **They cannot be consecrated in succession**. Where first 40 baked items were brought, the owner cannot later consecrate an additional 40 items.

If 80 items are brought, and the owner consecrates 40 of the 80, the consecration is valid for 40 which are selected at random. The other 40 must be redeemed. If 80 items are brought and he consecrates 40 on condition that 80 are consecrated, none are consecrated.

If 80 items are brought and nothing is said, Hezekiah holds that the intent was to consecrate only 40; 80 were brought only to ensure alternate loaves in case any of the initial 40 are lost. R. Johanan disagrees. The Rambam rules with R. Johanan, whereas others rule in favor of Hezekiah, based on the dictum that the *halacha* favors the master as against his disciple. Hezekiah was R. Johanan's teacher.

[7:2]

[Raba's view that *kiddushin* is not valid if uncertainty prevents consummation]

In the Mishnah, we expressed the rule that *kiddushin* are valid even where uncertainty renders consummation impossible. This accords with Abbaye's holding, and is one of the six disputes between Abbaye and Raba in which the *halacha* accords with Abbaye.

How can Raba invalidate such *kiddushin* when we know that *kiddushin* are effective in women with whom marriage cannot be consummated on account of negative precept[787]?! The Tosafot explain that Raba expresses his rule only where the inability to consummate results from actions relating to the *kiddushin* (such as where a man betroths one of two sisters), rather than from pre-existing incestuous relationships which are forbidden by precept.

[51:2]

[Uncertainty on which daughter was betrothed]

These rules apply to one who gives one of his daughters in betrothal without specifying which:

1. If there are two daughters one of whom is either a *ketannah* or a *na'arah* and the other of whom is a *bogeret*, the *ketannah* or *na'arah* is betrothed. This applies even where the *bogeret* appointed her father as her agent to accept *kiddushin* and even where the *bogeret* waived her right to retain the value given in *kiddushin*. There is a presumption that a father prefers to betroth the *ketannah* or *na'arah* to fulfill obligations he has towards her but not towards the *bogeret*.

2. If there are two daughters, both of whom are either a *ketannah* or a *na'arah*, or one of whom is a *ketannah* and the other is a *na'arah*, the case is treated as if one of two equals were betrothed without specifying which. The betrothal cannot be consummated, and each daughter must obtain a get before she remarries.

3. If the "senior" daughter is given in betrothal, the presumption is that

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[787]Rather than by capital punishment.

> the oldest **non-bogeret** daughter was meant, regardless of whether they are of different mothers. The same is true with the word "junior"; the youngest is meant. In each case, the person uttering the word is assumed to desire specificity, not uncertainty.

We disregard testimony by the father that he had another daughter in mind. Mental reservations cannot overcome words we consider clear.

But what if negotiations had been completed for one daughter? Some commentators hold that if an unspecified daughter is then betrothed **to the man with whom there were negotiations**, it is assumed that the betrothal is with the daughter who was the subject of the negotiations; if the betrothal is **to another**, it is assumed that the betrothal is with the daughter who was not the subject of the negotiations.

The Meiri agrees with this view despite the disapproval of other commentators. This also appears to be the import of a Tosefta which states:

> Where they were dealing with the senior for the senior and the junior for the junior, I say the senior is betrothed to the senior and the junior is betrothed to the junior.

Can the Tosefta be distinguished as dealing with two men who knew at the time of betrothal whom they were betrothing but were confused later? Is this not different from the case in which it was **never** absolute who was betrothed to whom? Does not our Gemara distinguish between circumstances in which facts were originally known and circumstances in which facts were never known?

Not necessarily. The distinction is made only to reconcile Raba's non-halachic position that holds invalid betrothal which cannot be consummated with a *baraitha* which suggests that such betrothal is valid. The Gemara limits the *baraitha* to cases in which the facts were known at the time of betrothal, and the betrothal could have been consummated then.

But why then does the *baraitha* use the individualistic formulation "I do not know," which could be taken to suggest that the facts were forgotten, rather than "it is not known," which could imply that the facts were never known? Because the *baraitha*'s purpose in using the formulation is quite different. It is to **personally** chastise and censure the light-headed persons who do not know whom they betroth.

The Meiri ultimately concludes that negotiations are relevant in cases of uncertainty. He explains further that this is most definitely the rule today when there is a *herem* on one who repudiates a negotiated match, but was also true prior to the *herem*, on account of the presumption implicit in the dictum that "the remnant of

Israel will not do an injustice."

Some would apply this presumption even in favor of a *bogeret* where she was the daughter with whom negotiations were completed. But why is the completion of negotiations a greater indicator than the daughter's appointment of her father as her agent? We noted earlier that the Gemara does not give weight to the *bogeret*'s appointment of her father as her agent! There are several explanations:

1. The groom is a participant in negotiations, whereas the daughter's appointment of her father is unilateral.

2. An appointment as agent is ineffective only if it gives the father authority to select any groom. Where the agency is specific to one groom, the appointment is in fact given the same effect as negotiations. This is Rashi's view.

[Uncertainty where there is also an issue of *yibbum*]

Return now to the case of one who betroths one of two sisters (sister A and sister B) without knowing which was betrothed. Recall that both sisters require a *get* before they may remarry. What if the betrothing man dies and his brother, the *yabam*, survives?

The *yabam* must perform *halizah* to both A and B before they can remarry. He cannot perform *yibbum* with either, even after he has performed *halizah* with the other. Here is the rationale (for the sake of convenience A is assumed to be the sister whom the *yabam* confronts first):

1. The *yabam* must perform *halizah* with A before she marries another; she might have been the one who had been betrothed to the deceased brother, and the *halizah* is required to break the tie of *yibbum*.

2. The *yabam* cannot perform *yibbum* with A because there may be an incestuous interdict: possibly, B was the one who was betrothed to the deceased brother, so that A is the **sister of a woman tied to the *yabam* by ties of *yibbum***.

3. After the *yabam* performs *halizah* with A he cannot perform *yibbum* with B. Possibly A was the one who was betrothed to the deceased brother, and she truly required *halizah*. B is therefore **the sister of the *yabam*'s *haluzah***, and is incestuously forbidden to the *yabam*.

What if the deceased brother is survived by **two** brothers, brother A and brother B? Brother A performs *halizah* with sister A, and brother B may then perform

yibbum with sister B. Here is the rationale:

> 1. Although a person cannot marry the sister of the woman with whom **he** performed *halizah*, a person may marry his brother's *haluzah*. Accordingly, if sister A was actually the deceased brother's wife, then once brother A performs *halizah* with her, sister B may marry brother B, since sister B is only the sister of brother A's *haluzah*.
>
> 2. If sister A was not the deceased brother's wife, then sister B is appropriately subject to *yibbum* and may therefore marry B.

But brother A cannot perform *yibbum* with sister A. Sister B may have been the deceased brother's wife, so that sister A is incestuously prohibited as **the sister of a woman tied to brother A by ties of *yibbum.***

What if brother A did not wait and proceeded to marry sister A, and brother B thereafter married sister B? The brothers need not divorce their wives. It does not marry whether they married simultaneously or successively.

> 1. Insofar as concerns brother B, there is certainly no problem, since at worst sister B is the wife of a woman with whom brother A appropriately performed *yibbum*. There is no prohibition against two brothers marrying two sisters.
>
> 2. Insofar as concerns brother A, the *yibbum* was initially inappropriate because sister A may have been the sister of a woman tied to brother A by ties of *yibbum.* Still, once brother B married sister B, this possible tie was dissolved and concerns us no longer.

Consider another complication. Assume that A and B, who are not brothers, betroth X and Y who are sisters. There is confusion on who betrothed whom. Neither of X or Y may marry any person until they receive a *get* from each of A and B. Assume that each of A and B die, and that there survive a brother of each, A_1 and B_1. Neither of A_1 and B_1 knows who was his brother's wife. The women therefore require *halizah* from each. Here is the reasoning:

> A_1 may not perform *yibbum* with either woman. Assume, for instance that A_1 wishes to marry X.
>
> 1. If B_1 has not yet performed *halizah* with X, then A_1 may not marry X. Y may have been married to A, and X may have been married to B so that:
>
> > X is prohibited to A_1 as a woman who is tied to another (B_1) by ties of *yibbum*; and

[7:2]

X is also prohibited to A1 as a woman who is the sister of Y who is tied to A1 by ties of *yibbum*.

2. If B1 has already performed *halizah* with X and Y, A1 may still not marry X, because perhaps A had been married to Y, so that X is prohibited to A1 as a woman who is the sister of a woman (Y) tied to A1 by ties of *yibbum*. Nor can A perform *halizah* with Y first to dissolve these ties, because once A1 performs *halizah* with Y, X becomes the sister of his *haluzah*.

One final complication. Assume that A had only brother A1, but that B had brothers B1 and B2. Here are the rulings:

1. A1 cannot marry either of X or Y. At best, even after B1 or B2 perform *halizah*, X may be the sister of a woman who is tied to A1 by ties of *yibbum*.

2. A1 performs *halizah* with both. B1 must perform *halizah* with one woman, *e.g.,* X, and B2 may then marry Y:

i. neither woman any longer has potential ties of *yibbum* to A1, since A1 has already performed *halizah* with both.

ii. Y's sister X cannot be tied to B2 with ties of *yibbum*, for if X were married to B, her ties were already sundered by B1's *halizah*.

Again, if despite the *halacha* each of B1 and B2 marries one of the sisters, we do not insist on a divorce. This follows from the reasoning discussed previously.

[52:1]

Assume that A (whose five sons have appointed him as their agent for betrothal) tells B "Your five daughters are betrothed to my five sons," or "One of your five daughters is betrothed to one of my five sons." We do not assume that the sons and daughters were meant to be paired in the order of seniority. Instead, there is doubtful *kiddushin* which cannot be consummated, and each daughter requires a divorce from all five sons. If one of the five sons dies, then each daughter requires a *get* from all four survivors and *halizah* from one of the survivors.

See the Meiri's earlier discussion[788] on the rules relating to betrothal with stolen items.

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[788] 13:1.

[7:2]

The Meiri discusses elsewhere[789] the rule that where an item was stolen from a person who had not abandoned hope of its return, neither the owner nor the thief may consecrate it.

[52:2]

[789]B.K.68:2.

[7:2]

Also discussed elsewhere is the presumption that an owner abandons hope for return of items robbed by an armed Jewish robber[790].

[Property deemed taken wrongfully cannot support *kiddushin*]

A sharecropper or partner cannot betroth with his part of jointly owned property. The property may be partitioned only after evaluation. Unilateral partition is therefore theft.

[What constitutes approval of another's taking]

Where A took an owner's produce and betrothed with it after the owner told him "Why did you not take the better produce?!" this too is theft and the betrothal is void. Some explain that the owner is ironic; others that the owner seriously complains that better produce should have been used.

There are two parenthetical rules for *kiddushin*:

> The woman is betrothed if **prior** to the betrothal the owner tells A clearly "I don't mind, you may use my produce."
>
> If the owner makes the statement afterwards there is no *kiddushin*. We consider the object to have been stolen at the time of betrothal even if we are convinced that the owner would have made the statement then had he known that A wished to use the produce.
>
> Compare the rule that an object found before the owner despaired of its return does not belong to the finder. It does not matter that had the owner discovered the loss earlier he would certainly have despaired then.[791]

The rule for *terumah* is different. There is *terumah* where A unilaterally separates *terumah* for the owner, the owner says "Why did you not take the better produce," and there in fact exists better produce, or the owner personally adds additional produce to the *terumah*. Here, the owner must separate *terumah* in any event, and it is assumed that he meant to approve and acquiesce.

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[790]See *supra* at 13:1, and B.K.114:1.

[791]B.M.22:2.

[7:2]

[Betrothal with *hekdesh* and second tithe]

The next Mishnah reads:

> If one betroths a woman with his portion, whether it is of the higher or the lower sanctity, she is not betrothed. If with the second tithe, whether unwittingly or deliberately, he does not betroth her: this is R. Meir's view. R. Judah said: if unwittingly, he has not betrothed her; if deliberately, he has.
>
> If with *hekdesh*, if deliberately, he has betrothed her; if unwittingly, he has not: this is R. Meir's view. R. Judah said: if unwittingly, he has betrothed her; if deliberately, he has not.
>
> "One's portion" means:
>
> > the priest's share of the flesh of sacrifices after their blood has been sprinkled, whether the sacrifices are of the higher sanctity (such as sin or guilt offerings, of which the entire meat is distributed among the priests) or of the lower sanctity (such as peace offerings, of which the priests were given only the chest and the thigh, with the balance being retained by the owners); and also
> >
> > the owner's share (all but the chest and the thigh) of sacrifices of lower sanctity.

In each case, the woman is not betrothed if these shares are proffered to her. Although the shares may be consumed by the persons to whom they are lawfully given, they are not the property of these persons. Rather, G-d affords them these shares only for the limited purpose of consuming the flesh. The flesh may not be used to repay debts or for any other purpose.

> The Tosefta rules that the meat of animals sacrificed as tithe may not be used for *kiddushin* but the bone, sinew, horn and hoof portions of such animals may used for this purpose. The bones and other portions are not subject to the penalties of *me'ilah* after the sacrifice's blood has been sprinkled on the altar, suggesting that they are then private property. The same applies to the animal's milk, and to the animal's blood taken while the animal is still alive or before it has flowed after death to the Brook Kidron. Once the blood arrives at the Brook Kidron, *me'ilah* applies, and the blood can no longer be used for *kiddushin*[792].

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[792] See Me'ilah 12:2.

[7:2]

R. Meir holds that second tithe is similarly the property of G-d ("it is for G-d"[793]), and cannot be used for *kiddushin*. This applies whether or not one or both of the man and woman knew that the property was second tithe. Even in Jerusalem, where the second tithe may be eaten, the "owner" of the second tithe cannot do anything with the tithe, other than eat it, until it is properly redeemed.

But where she did not know that the produce was second tithe, she is betrothed only if given to her in Jerusalem. If given elsewhere, there is a presumption that she does not wish to undertake the perils of the journey in order to consume the produce. It does not matter that the man must assume the risk of loss on account of his failure to disclose the true nature of the property he used.

The *halacha* accords with R. Meir because we rule that second tithe is not personal property. Still, R. Judah's holding has legal significance, for it teaches that a woman cannot be betrothed with a coin which unbeknownst to her is legal tender only in a location which can be reached only with some peril. Here again it does not matter that some hold that the husband is responsible for risk of loss from perils of the journey.

[Relationship of me'ilah with betrothal through *hekdesh*]

The following summarizes the respective views of R. Meir and R. Judah on the circumstances in which *me'ilah* of *hekdesh* donated for Temple repair results in secularization, and the circumstances in which a *me'ilah* offering must be brought:

	Unwitting	*Deliberate*
R. Meir	Secularized and *me'ilah* offering brought **only** if property is consumed, burned or otherwise destroyed.	Secularized whether or not property is destroyed. *Me'ilah* offerings never apply.
R. Judah	Secularized in all cases, and *me'ilah* offerings are brought. The value of the *hekdesh* plus one-fifth, must be returned to the Temple	Never secularized. No *me'ilah* offerings apply.

[793]Lev.27:30.

[7:2]

	treasurer.	

It follows that R. Meir holds that *kiddushin* result where *hekdesh* of this kind is used **and accepted** deliberately. The woman receives secularized property although there is no *me'ilah* offering. Nor, given her knowledge, can the woman complain that she does not wish to be party to a transaction in which *hekdesh* is secularized.

Where **he** was unwitting, R. Meir holds that there is no *kiddushin*. The property could not have been **destroyed**; if it were there would certainly be no *kiddushin*. The property therefore retains its *hekdesh* character, is not secularized and is not private property usable for *kiddushin*. Where he is deliberate and **she** is not, there is no *kiddushin* although the property is secularized. She is conclusively presumed not to be willing to be a party to a transaction in which *hekdesh* is secularized. Her protestations to the contrary do not avail.

R. Judah holds that there is *kiddushin* where **he** was unwitting, since R. Judah holds that in this case the *hekdesh* is secularized. It does not matter whether **she** was unwitting or deliberate. Where **he** was deliberate (regardless of **her** status), there is no *kiddushin* because the property is not secularized.

The *halacha* accords with R. Judah.

[Betrothal with *orlah*, *kilayim*, etc.]

The next Mishnah, at 56:1, provides:

> If he betroths a woman with *orlah* or *kilayim* of the vineyard, or an ox condemned to be stoned, or the heifer which is to be beheaded, or a leper's bird-offerings, or a nazirite's hair, or the firstlings of a donkey, or meat seethed in milk, or *Hullin* slaughtered in the temple court, she is not betrothed. If he sold them and betrothed her with the proceeds, she is betrothed.

Further, at 58:1:

> If one betroths a woman with *terumot*, tithes, priestly gifts, the water of purification and the ashes of purification, she is betrothed, even if an Israelite.

No benefit may be derived from any of the items listed in the first sentence of the first paragraph of the Mishnah, as well as from *hametz* during Passover. The same applies when the prohibition is Rabbinic only, such as for *hametz* from 11 A.M. to 12

noon on the 14th day of Nissan; property is not private if subject to a Rabbinic prohibition.

If despite the prohibition, the listed properties are sold, the proceeds may **freely** be used for *kiddushin*[794]. A prohibition attaches to proceeds only for objects which are prohibited on account of idolatry[795] or *sheviith*[796].

> But is it not true that if a Jew purchases the forbidden items, the buyer may rescind the sale since he unwittingly purchased an object from which he is permitted no use? If so, the seller in effect **stole** the proceeds, and no *kiddushin* can result!
>
> > Yes, but there is *kiddushin* in the Mishnah because the sale was to a gentile.
> >
> > The Yerushalmi in the name of R. Haggai b. Zeira offers an alternate explanation: The Mishnah validates betrothal not with the **proceeds** themselves but with an object purchased with the proceeds.

[Is the right to give an item a property right?]

Kiddushin by an Israelite with *terumah* and tithe is valid, even though the *terumah* and tithe must be donated, rather than sold, to a priest and levite, respectively. The Gemara first bases this holding on the so-called benefit-of-disposal: it is a valuable right to decide **which** priest or levite is to receive property, because in some way the donor will receive some benefit from the selection. It is this right which the man transfers to the woman as *kiddushin*.

However, the Gemara concludes that benefit-of-disposal is not value, and that the Mishnah deals with the case in which the Israelite has the right to **sell** the *terumah* or tithe and is not obligated to give them to anyone. This is because the Israelite inherited the produce from a maternal grandfather who was a priest or a

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[794]The Mishna's syntax "If he **sold** them and **betrothed** her," in the past tense, does not indicate that it is improper to betroth her. The syntax merely follows the past tense of the word **sold**, which is appropriate since the sale violated the prohibition against deriving benefit from the listed items.

[795]Even the excrement of animals used in idolatry is considered prohibited proceeds. Scripture decrees that "**Nothing** [idolatrous] shall attach in your hands." Deut.13:18.

[796]Notwithstanding that the *sheviith* prohibition attaches even to proceeds of *sheviith* produce, the produce itself, and most certainly its proceeds, may be used for *kiddushin*.

levite:

> If the produce was actually *terumah* or tithe when inherited, the produce was his grandfather's personal property without further obligation. The Israelite inherits the grandfather's absolute title to the produce and can sell them as he wishes.
>
> Where the produce was inherited while yet *tebel*, the grandfather's title was not yet perfected, since the grandfather was obligated formally to separate *terumah* and tithe before consuming the produce. Nevertheless, the obligation to separate does not detract from legal title: produce not yet separated is treated the same as separated produce. That being so, the heir has sufficient title to separate and sell the *terumah* to a priest and to retain the proceeds.

The *halacha* is that benefit-of-disposal does not rank as value, although a minority of commentators are uncertain. This will be explained later[797].

[Betrothal with priestly gifts, etc.]

Just as a priest may betroth with *terumah* he may also betroth with priestly gifts, that is, the arm, the cheeks and the maw of *Hullin* animals.

"Water of purification" is water drawn from a spring into a receptacle in order **later** to receive the ashes of purification. The water must be placed in the receptacle before the ashes.

No benefit may be derived from ashes or water of purification, and it is impermissible to demand payment for mixing the ashes of purification with the water or for sprinkling the mixture. The Gemara explains[798] that the Mishnah permits *kiddushin* by way of these ashes where the man waives the right to receive payment from the woman for **bringing** the ashes from the place where they were secreted or for **drawing** and **bringing** the waters of purification.

But is the waiver of a right to receive compensation for services ever valid as *kiddushin*, when we know that an artisan cannot betroth a woman by waiving amounts she owes him in payment for work he did for her?[799] The ashes and water

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[797] 58:2.

[798] In Rashi's interpretation. See Rashba.

[799] 48:1.

are not her property and the case is similar to an artisan who has an express pledge of the item taken for repair. The artisan's waiver of these rights is sufficient to validate *kiddushin*.

This completes the Mishnah, which is the *halacha* to the extent described. The Gemara explains the following:

[Lower grade sacrifices are owner's property]

One who swears falsely in repudiating another person's property right must bring an *asham* for "trespass[ing] in G-d"[800]. The reference to G-d teaches that an *asham* must be brought even where the property right that is repudiated is another person's lower grade sacrifice. It follows that a lower grade sacrifice is the owner's property until its blood is sprinkled on the altar, and that an Israelite may betroth a woman with a lower grade sacrifice at this stage. The woman succeeds to the man's right to eat the sacrifice.

[May women enter the Temple court?]

Recall the Mishnah's holding that one cannot betroth with higher grade sacrifices. Now, higher grade sacrifices may be consumed only in the Temple Court. The Gemara therefore inquires on how the woman happens to be in the Temple Court rather than in the Woman's Court. The Gemara explains that:

1. She was a *ketannah* or a *na'arah* and her father accepted *kiddushin* for her while **he** was in the Temple Court; or

2. She was an adult and appointed a male agent to accept *kiddushin* for her while **he** was in the Temple Court; or

3. She forced her way into the temple court.

Is it forbidden for a woman to enter the Temple Court, or is it only unusual that she appear there? The following considerations are relevant:

1. Our Gemara says "she **forced** her way in," rather than "she **transgressed** and entered."

2. A Mishnah elsewhere[801] lists the following 10 grades of increasing levels

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[800] Lev.5:21.

[801] Kelim 1:6 *et seq.*

[7:2]

of sanctity:

i. The land of Israel is more sacred than other lands because only its produce may be used for *omer*, *bikurim*, and the two breads of *shevuot*.

ii. Walled cities in Eretz Israel have greater sanctity in that a leper is expelled from such cities, and the Rabbis prohibit a corpse to be returned to such cities once removed. Until removed, the corpse may be transported from one place to another in walled cities for eulogy.

iii. The area within Jerusalem's walls has greater sanctity because lower grade sacrifices and second tithes may be consumed there.

iv. The Temple mount has greater sanctity since it is forbidden to a *zav*, a *zavah*, a *niddah* and a woman who has given birth and who has not yet brought the requisite offerings.

v. The *hel* on the Temple mount has greater sanctity in that entry is not permitted to gentiles or to persons who were defiled with corpses.

vi. The Women's Court has greater sanctity since entry is forbidden to one who has performed *tevilah* but must still wait until sunset to be ritually clean.

vii. The Temple Court has greater sanctity in that entry is forbidden to one who is ritually clean but has not yet brought requisite sacrifices. Besides, even a ritually pure person cannot enter without *tevilah*[802].

viii. The Priest's Court is of greater sanctity in that Israelites may enter only for the purpose of putting their hands on the heads of their sacrifices (which must be done by the owner), slaughtering sacrifices (which may be done by non-priests), and waving of the sacrifice (which must be done by the owner).

ix. The area between the hall leading into the interior of the Temple and the altar is of greater sanctity because entry is forbidden to blemished and bareheaded priests.

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[802] Yoma 30:1.

[7:2]

x. The Temple itself is of higher sanctity since it may be entered only after the priest has appropriately washed his hands and feet. The Holy of Holies is of the highest sanctity since it may be entered only by the high priest on Yom Kippur.

Note that the Mishnah does **not** say that the Temple Court has a higher level of sanctity than the Woman's Court in that women are not permitted.

3. We know that women may slaughter sacrifices. And sacrifices were generally slaughtered in the Temple Court[803].

4. Rashi holds that a woman can have no greater status than a man who is perfectly clean but has not yet brought requisite sacrifices. Entry is therefore forbidden.

The Meiri disagrees with Rashi and concludes that women may enter the Temple Court, but that this was not common.

[53:1]

[Distributions among priests]

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[803]The Mishna's reference to slaughter in the Priest's Court merely teaches that sacrifices are **also** valid if performed in the Priest's Court. Presumably, only men may perform sacrifices in the Priest's Court.

[7:2]

The priesthood was divided into families. Each family participated in all property to which any member of the family was entitled. With reference to meal-offerings of sifted fine flour Scripture states "It shall be to all of Aaron's sons, each as his brother."[804]

Why then does Scripture provide for *asham* "It shall be to the priest who effects the forgiveness," and for *shlamim* "It shall be to the priest who sprinkles the blood"?[805] To teach that the distribution is made only among priests who are **fit** to conduct sacrifices, so as to exclude minors, ritually impure priests, women and androgynous priests.

Blemished priests are entitled to a distributive share. Although they are not fit to conduct sacrifices, they are permitted to remove worms from the kindling wood placed on the altar, to remove the sacrifice's skin and to cut the sacrifice into separate sections. Scripture states of the blemished priest "[he eats] of the bread of G-d, from the higher grade sacrifices."[806]

The distribution is made in kind from **each** sacrifice. We do not distribute to priest A a portion of sacrifice A and to priest B a portion of sacrifice B. The more different the sacrifices, the more logical the rule that priests must share in kind. The rule applies in all cases, from the most different to the most alike:

1. Not only:

> where sacrifice A is an animal offering and sacrifice B is a meal offering, in which case:
>
> > the species are different, and
> >
> > a meal offering cannot be substituted, in the case of poverty, for the animal offering which must be brought by one who defiles the Temple or falsely swears that he knows no testimony (a meal offering can be brought only if the person cannot afford a **fowl** offering);

But also:

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[804]Lev.7:10.

[805]Lev.7:14.

[806]Lev.21:22.

[7:2]

where sacrifice A is a fowl offering and sacrifice B is a meal offering, notwithstanding that meal offerings follow next in line to fowl offerings where the owner cannot afford a fowl offering in the case just described.

2. Not only:

where sacrifice A is a fowl offering and sacrifice B is a meal offering, where one offering is not live;

But also:

where sacrifice A is an animal offering and sacrifice B is a fowl offering.

3. Not only:

where sacrifice A is an animal offering and sacrifice B is a fowl offering, where the animal's sacrifice is performed with a knife, whereas the fowl's sacrifice is performed by pinching the fowl's neck by hand;

But also:

one meal offering as against another meal offering, and one fowl offering as against another fowl offering.

4. Not only:

where sacrifice A is a meal offering dressed in the frying pan, and sacrifice B is a meal offering dressed in the baking pan, where one is dressed firmly and the other is soft;

But also:

where each offering is dressed in a frying pan or in a baking pan.

5. Not only:

where the sacrifices are high grade where it is well known that the sacrifices are not property of the priests, so that it is inappropriate to distribute different sacrifices and to even out values by monetary payment;

But also:

[7:2]

> lower grade sacrifices, for these, too, are not the priest's property, and equalizing payments are also improper.

A *baraitha* relates that initially even a small portion of the *lehem ha'ponim* was enough to satisfy a priest, but that subsequently a curse entered the *lehem ha'ponim*, and the small pieces did not satisfy. At that point "the modest withdrew their hands, but the greedy **shared**." One can assume that it was impossible to distribute equal portions to each priest. Does not then the word **sharing** suggest that the greedy priests indemnified each other if their portions were not equivalent?! No, the word **sharing** is used more in the sense of **snatching** and **grabbing**.

Do not deduce that priests have rights only in distributions which are divided equally among family members. Certain types of property are distributed only to the priests on a particular watch and the property is nevertheless the distributee's for sale and other purposes. Recall for example that one who falsely denies under oath that he stole property from a convert must deliver the property to the priests if the convert has since died. The priests of the watch receive this property and have title to it although they need not distribute it among family members.

The *lehem ha'ponim* was made of matzo weekly, and was presented on Sabbath. The two breads of *shevuot* were made of *hametz*. When *shevuoth* fell on Sabbath, both breads were brought, with the *hametz* distributed separately and the matzo distributed separately.

[53:2]

[*Me'ilah* with deposited funds]

Assume that one deposits funds of *hekdesh* with a money-changer without telling him that they belong to *hekdesh*. If the funds were obviously not intended for the money-changer's use, such as where they were conspicuously bundled or sealed, and the money-changer uses the funds nonetheless, it is the money-changer who has committed *me'ilah*.

If there was no distinguishing sign, the Meiri holds that the owner has committed *me'ilah*, since he in effect authorized the money-changer to use the funds. The Rambam disagrees based on a different textual reading; he holds that the owner has not committed *me'ilah*, because he did not **direct** the money changer to expend the funds.

The same rules apply to a store-keeper.

[7:2]

[54:1]

***[Me'ilah* with priestly garments]**

There is no *me'ilah* in a *hekdesh* object from which **any** person (it does not matter that the person is not the one who commits *me'ilah*) is permitted to derive **any** personal use.

For example, there is no *me'ilah* if a non-priest unwittingly eats high grade sacrifices after the blood has been sprinkled; the sacrifices may then be consumed by priests. Similarly, priestly tunics may be worn during the service (when their use is not personal), and also afterwards (when their use is personal)[807]. The Torah was not given to angels who can remove their tunics instantaneously upon completing the service. That being so, even a non-priest commits no *me'ilah* by using these tunics. Since there is no *me'ilah*, it follows that the tunics are not secularized by use.

Once the tunics are worn out, no use may be made of them by anyone, and *me'ilah* applies both to priests and non-priests.

There is no *me'ilah* for high grade sacrifices which have been rendered unfit for consumption, because there had **once** been a time (before the animal was rendered unfit) when consumption was permitted. Why, then, does *me'ilah* apply to worn out tunics from which personal use was **once** allowed? Because the permission to derive personal use from tunics was grudging and narrow; it resulted only from the physical impossibility of removing the tunic instantaneously after the service was completed.

But what of the rule that an object which has served its ritual purpose is not subject to *me'ilah*? Worn out tunics and ashes removed from the altar are exceptions to this rule[808].

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[807]Commentators differ on whether the *avnet*, which was made of *kilayim*, could be worn on the day of the service in the Temple after the service had been completed.

[808]Me'ilah 11:2. The Gemara there also discusses the rule that there is *me'ilah* for the linen clothing worn by the high priest on Yom Kippur. Some hold (consistent with the *halacha*) that the verse for such clothing "And he shall lay them there" (Lev.16:23) refers to permanent laying aside. It follows that the ritual purpose of the clothing has been permanently served. The holding that *me'ilah* applies must be an exception from the rule that there is no *me'ilah* for objects whose ritual purpose has been served.

An opposing view holds that the verse directs only that the clothing not be used by **the high priest in the following year. The clothing can otherwise be used by the high priest and the other priests**

[7:2]

Cloth from worn-out tunics which belonged to non-high priests was made into wicks for the menorah. Worn out breaches and girdles were used to form wicks for oil lights used in the *simhat bet ha'shoeva* on the second night of Sukkot. Why was there no *me'ilah*? Because, in the view of most commentators, these uses were ritually based, and were for public benefit. Compare the rule that surplus Temple funds could be used to maintain city walls even in the view (inconsistent with the *halacha)* of those who hold that *me'ilah* applied to these funds. Other commentators explain that *me'ilah* applies to vestments of the high priest but not to other vestments.

[*Me'ilah* with funds contributed to the Temple]

There were 13 money receptacles in the Temple. They were shaped as a *shofar*, and were narrow on top and wide on bottom. The funds in each receptacle were segregated for specific purposes as explained elsewhere[809]. One receptacle was marked "new" and was used for deposit of shekels contributed for the year commencing with the first day of the most recent Nissan; when this was receptacle was full, its funds were transferred to the Temple treasury for use as described in the next paragraph. Another receptacle was marked "old"; in it were deposited funds which were contributed for the prior year. The funds in the "old" receptacle could not be used for sacrifices in the current year[810]. In referring to Nissan, Scripture says "This *chodesh* is to you."[811] The word *chodesh* means both month and new.

Once the "new" funds were transferred to the Temple treasury, they were placed in a large chamber and were then deposited in three large boxes, each of which held nine *se'ah*. Before each of Passover, Shevuot and Sukkot, three *se'ah*'s worth of shekels were placed in a small three *se'ah* box in a procedure called the "separation of the treasury," and were used to purchase the *tamid*, *musaf* and other

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throughout the year, so that it cannot be said that the purpose of the clothing has been served. In this view, the applicability of *me'ilah* is not an exception from the general rule.

[809]Shek.6:4.

[810]Funds deposited in the old receptacle after Nissan are deemed atoned for by sacrifices brought prior to Nissan, so long as the delay in bringing the old funds was not deliberate. When, prior to Nissan, the past year's funds were removed to the Temple treasury, the priests intended that the removal also cover all funds which were yet to be collected for the year, which had been collected but lost, or which had otherwise not timely reached, or would otherwise not timely reach, the Temple receptacles.

[811]Ex.12:2.

public sacrifices, and for certain other purposes explained elsewhere[812]. The funds remaining in the small boxes at the end of the year were called "remainders of the separation," and were used to make thin golden sheets for placement in the Holy of Holies and for certain other purposes explained elsewhere[813].

The funds which remained in the large chamber or in the large box after the smaller boxes were separated were called "remainders of the chamber," and were used for repair of the city walls and towers, and for certain other purposes explained elsewhere[814]. Funds deposited in the "old" receptacle were also considered "remainders of the chamber."

What was done with funds which were not necessary for repair of the city, etc.? R. Ishmael holds that they were used by the Temple treasurer to conduct business activities for the account of the Temple. R. Akiva holds that it is improper for the treasurer to engage in profit making activities. The Mishnah does not explain for what purpose R. Akiva would use the excess funds; it is likely that they were deposited in a reserve for potential future use in city repairs.

Me'ilah applies to "new" funds but not to "old" funds.

Me'ilah applies to general Temple property. In fact, Temple construction projects are not consecrated until completion, to avoid *me'ilah* by workers who accidentally benefit from Temple property by sitting on stones during construction or by standing in the shade of a beam.[815]

[The formulation which is requisite for a vow]

An oath can attach to a non-*hekdesh* object only if the person uttering the oath declares that the object is to be to him as an object consecrated to *hekdesh* by an oath.

By way of example, a vow can be validated by declaring that an object "is to be to me as a *hattat* or an *asham*," or a "lamb" (assumed to mean the lamb brought as a sacrifice), as a "shed" (assumed to mean a shed of sacrificial animals or a shed of

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[812]Shekolim 4:1.

[813]Shekolim 4:2.

[814]Shekolim 4:2.

[815]See B.M.57:2.

[7:2]

kindling-wood to be placed on the altar), as "clubs of wood" (assumed to mean the two clubs of kindling-wood placed on the altar), as "fires" (assumed to mean the flame on the wood of the altar), as the "altar" or the "temple" or as "Jerusalem" (assumed to mean the sacrifices brought in these places rather than to the wood or stone of the altar or the Temple).

It is not necessary to express the vow as "the object shall be **as** a shed, **as** Jerusalem, or **as** the temple." The word **as** is assumed if the statement takes the form "an altar if I shall eat of yours," or "Jerusalem if I eat of yours."

There is no vow if a person says "this object shall be to me as meat of swine." A vow is valid only for an interdict which arises from **consecration**.

[54:2]

[Fourth-year vintage compared to second tithe]

Fourth-year vintage is similar to second tithe in the following respects:

1. It can be eaten only by its owners and only in Jerusalem, unless the produce is redeemed for money, in which case the money must be expended for produce consumed in Jerusalem.

2. If the fourth-year vintage is redeemed by its owner (rather than a third person) the redemption price must be one-fifth in excess of true value.

3. Fourth-year vintage may not be maintained in the home after the third and the sixth year of each *sheviith* cycle.

4. Fourth-year vintage is exempt from the laws which dedicate to the poor fallings (individual grapes) and gleanings (small single bunches) which are dislodged during the harvest. The law of fallings and gleanings applies only to "**your** vineyard," whereas fourth-year vintage is considered the property of G-d.

> It follows that fourth-year vintage need not be marked conspicuously to alert the poor of fourth-year status: the poor have no business taking even the fallings and gleanings of such produce, let alone other portions of such produce. A Mishnah which requires that fourth-year vintage be conspicuously marked refers only to fourth-year vintage which grows in the *sheviith* year. All persons may eat *sheviith* fruit, and the markings are necessary to alert the rich as well as the poor.

[7:2]

Fourth year vintage may be processed into wine before it is redeemed. The same is true of fourth-year plantings of olives: they may be converted to oil before redemption. Other fourth-year produce must be redeemed in its natural original form.

[*Me'ilah* and the laws of agency]

We previously explained that a principal commits *me'ilah* if he unwittingly directs his agent to expend *hekdesh*[816] funds for non-*hekdesh* uses. This applies even to an agent who is a deaf-mute, an idiot or a minor. Where the agent did not carry out the principal's orders precisely, and the agent is adult, sane and not a deaf-mute, then the principal is exempt from *me'ilah* and the agent is liable.

What if after giving the funds to the agent the principal realizes that the funds were *hekdesh*? Since it is only the agent who is unwitting, it is only he who commits *me'ilah*. If indeed the agent before he expends the funds also realizes that the funds are *hekdesh*, then neither the principal nor the agent commits *me'ilah* and the funds are not secularized by their expenditure.

Assume that a principal gives a storekeeper money which the principal knows to be *hekdesh*. The storekeeper commits *me'ilah* when he later transfers the money unwittingly.

[How one can give a gift of second tithe or fourth-year vintage]

One who redeems his own second tithe pays a redemption price equal to the value of the tithe plus one-fifth. This applies even where he succeeded to its ownership by inheritance or **gift**.

> How could the donor give a gift of property which is divinely owned? By giving produce before the tithe is separated. But what of the rule that tithes are considered legally separated even before they are physically separated? The rule does not apply here: sanctity cannot attach until actual separation.

The same applies to fourth year vintage. One who redeems his own fourth year vintage pays a redemption price equal to the value of the vintage plus one-fifth. This applies even where the owner succeeded to the vintage by inheritance or gift.

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[816]The *hekdesh* involved here means funds consecrated for temple repair work; not funds consecrated for the purchase of sacrificial animals.

[7:2]

But how could the donor give a gift of property which is divinely owned? It is no answer here that sanctity cannot attach until separation; there is no separation for fourth-year vintage!

When then could the property have been given in gift? Before the grapes are considered fruit, *i.e.,* immediately after the opening of the bloom when the grapes first become recognizable as grapes[817]. At this stage the rules of fourth-year vintage and *orlah* do not yet apply.

Some commentators explain that gifts can be made **only after** this stage is reached; if given at an earlier stage the grape is not yet an object in being and can therefore not be the subject of a gift.

[Sale of second tithe]

Second tithe is sacred property and should not be sold. But a sale which transgresses this prohibition is valid and effective. What form of *kinyan* applies? The same as for *hekdesh*; the basic *kinyan* is by transfer of money[818]. However, where beneficial to *hekdesh* (in this case the seller of second tithe is treated as *hekdesh*) *meshikhah* is also valid; this is a Rabbinical rule to avoid a result which would otherwise favor civil property over sacred property.

It follows that:

1. If the buyer performed *meshikhah* when the tithe was worth one *zuz* but money did not pass until the price rose to two *zuz*, the seller prevails. He can insist that only the passage of money can finalize a sale of *hekdesh*--tithe.

2. If the buyer performed *meshikhah* when the tithe was worth two *zuz* but money did not pass until the price fell to one *zuz*, the seller can insist

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[817]The Rambam would apply the same rule even at the later stage of *boser*. The Meiri disagrees; at that stage the doctrine of fourth-year vintage applies in full force.

[818]"He shall give the purchase price ... and it shall stand in his possession."

[7:2]

that the sale is final and that the buyer pay him two *zuz*.

The Rambam and certain other commentators disagree with this interpretation of the Gemara and explain that the Gemara deals with a case in which **monetary** tithes are being exchanged for civil **produce**. The Meiri disagrees.

[55:1]

[Dealing with animals which are possibly *hekdesh*]

Migdal Eder was a town near Jerusalem. An animal found outside of Jerusalem within a distance no greater than that from Jerusalem to Migdal Eder was assumed to have strayed from Jerusalem. Most animals in Jerusalem were *hekdesh*, and for stringent purposes the animal was given the sanctity of all types of sacrifices for which it could possibly have been brought.

The following lists the types of sacrifices which can be brought in the Temple, and certain delimiting characteristics:

Sacrifice	*public/ private*	*species*	*male/ female*	*age*
Oleh	public and private	cattle, sheep (including rams), goats, turtle doves, young doves	animals must be male; fowl can be male or female	varies
Hattat	public and private	same as oleh	public may bring male only; private brings female only (with minor exceptions)	private-one year of age with minor exceptions
asham	private	sheep only	male only	if for theft, me'ilah or a betrothed maidservant, two years; if for a nazir or a leper one

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				year
shlamim	private (except for two sheep of Atzeret)	same animals as *oleh*; no fowl	male or female	varies
two sheep of *Atzeret*	public			
bekhor, *maser* or *pesach*	private	same as shlamim	same as shlamim	same as shlamim

The exceptional male *hattat* sacrifices to which the table refers are those brought by a *Nasi*, the anointed priest, and by the high priest on Yom Kippur.

It follows that:

1. If a female one-year old animal is found, it is potentially a *hattat*. It cannot be sacrificed, for possibly it is one of the five types of *hattat* which must be put to death by confining it to graze until it dies.

> The reference to imprisoning it in an enclosure is not literal, although it is possible that an enclosure dedicated for this purpose did exist.

2. If a female two-year old animal is found, it can only be a *shlamim*. However, on account of uncertainty on whether the animal is a *todah*-type *shlamim,* the animal must be sacrificed with the loaves which accompany the *todah*.

3. If the animal is male and two-years of age, it can only be an *asham* which must be brought on account of theft, *me'ilah* or a betrothed maidservant. Such sacrifices cannot be brought voluntarily. As a result, the found animal cannot be sacrificed, but is permitted to graze until its ultimate death. There is no concern that the animal was a *hattat* brought by the public, the anointed priest or by the *Nasi*, since this is unlikely.

4. A male animal one-year old is assumed not to be an *asham* brought by a leper or a nazirite because these are unlikely events.

There is concern that the animal may be either an *oleh* or a *shlamim*. It follows from this uncertainty that the animal cannot be sacrificed. The

remedy is to do as follows:

i. Wait until the animal is permanently blemished. Only a sanctified animal which has been blemished may be redeemed.

ii. Purchase two animals and designate one as destined to be an *oleh* (animal O) and the other as destined to be a *shlamim* (animal S).

iii. Announce that if the found animal was an *oleh*, then the sanctity of the animal is to be transferred to animal O. If the opposite was true, then the sanctity is to be transferred to animal S.

iv. Animals O and S are then sacrificed as *oleh* and *shlamim*, respectively. Out of concern that the found animal was a *todah*-type *shlamim*, the appropriate loaves are brought with animal S.

v. The found animal, now blemished, may then be eaten. This is because all sacrifices other than *pesach* (which is a variety of *shlamim*) may be eaten once redeemed.

But what if the found animal was in fact a *pesach*? This is of no concern on the day when the *pesach* sacrifice is to be brought, since it is assumed that the owner of the sacrifice then carefully guards his animal. If the time for sacrifice is past, the *pesach's* status reverts to typical *shlamim* and the redeemed animal may be eaten.

[Consecutive *me'ilah* in the same object]

A Mishnah states the proposition that "There can be no consecutive *me'ilah* in respect of sacred objects except in the case of **animals** and vessels of ministry." The proposition relative to **animals** and **vessels of ministry** can be explained in one of two ways:

1. The majority hold that the reference is to objects which obtain bodily sanctity. In the case of animals this means pure unblemished animals which are fit for sacrifice, and in the case of vessels, this means the actual vessels used in the Temple service. Such an animal or vessel is subject to repeated *me'ilah* by those who unwittingly use or derive unlawful benefit from it.

For example, if A rides on a sanctified animal and B then does the same, each commits *me'ilah*. The same applies if A sells or gives the animal

to B, and B then sells or gives the animal to C, or if A drinks form a sacred utensil, and B drinks from it afterwards.

The rule is otherwise for objects whose sanctity attaches to their monetary value only, such as property donated to the Temple for the sake of the Temple's physical upkeep, including impure animals which are not fit for sacrifice. Here, the first person to commit *me'ilah* transmutes the object into civil, non-sacred status, and no other person can thereafter commit *me'ilah*.

2. The Rambam disagrees. Our Gemara holds that there can be successive *me'ilah* where the sanctity is monetary rather than bodily. The reference to animals is to those which are impure and are therefore sanctified, not as a sacrifice, but for their monetary value only. The reference to vessels is to objects not used in the Temple service itself. Thus, the Tosefta refers to an axe which was consecrated as *hekdesh*.

But what of the rule that *me'ilah* secularizes monetary sanctity? That applies only when the *me'ilah* consists of a transfer of title; it does not apply to *me'ilah* which consists of injury to *hekdesh* caused by obtaining a proscribed benefit, such as a *perutah's* worth of benefit from riding on a donkey or from using a consecrated axe. That is in fact why the Gemara uses these examples (in which there is proscribed use rather than a transfer) to explain situations in which there is successive *me'ilah*.

In analyzing these views, the Meiri observes that:

1. Although the Rambam is supported by the Tosefta, he is contradicted by our Gemara, and our Gemara must prevail over the Tosefta. For our Gemara holds that the Mishnah reflects the rule that items of **bodily** sanctity cannot be redeemed, and that it is this doctrine which results in successive *me'ilah*.

2. The Mishnah uses the words **vessels of ministry**, and this term is never used otherwise than for the vessels actually employed in the Temple service.

3. Animals fit for sacrifice, primarily sheep or goats, are generally not fit for riding. Does this not support the Rambam that impure animals such as donkeys are meant? Not necessarily. Perhaps the reference is to occasional use, or to riding on an ox or a cow, which are also fit for certain sacrifices.

The Meiri concludes against the Rambam that all monetary sanctity is secularized by proscribed benefit as well as by transfer of title, and that the Mishnah's reference

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to successive *me'ilah* is limited to objects of bodily sanctity.

> But is it possible that successive *me'ilah* **for items of bodily sanctity** applies only where there was no transfer of title? In other words, shall we apply to such items the distinction which the Rambam proposed for items of monetary value?
>
> The Meiri disagrees with a minority of commentators who make this distinction. Although he disagrees with the Tosefta's basic view (which is the same as the Rambam's), the Meiri does consider the Tosefta sufficiently authoritative on this point: the Tosefta specifically refers to successive *me'ilah* in cases of transfer of title.

The Meiri also disagrees with a minority of commentators who would distinguish between different sorts of bodily sanctity, such as between sacrifices and kindling-wood.

[55:2]

[Where second tithe is inappropriately redeemed or expended]

Second tithe funds may be **redeemed** outside of Jerusalem by transferring their sanctity to other coins. Alternatively, second tithe may be used in Jerusalem to **purchase** food for consumption.

Funds which are second tithe may not be used to purchase an animal outside of Jerusalem for consumption in Jerusalem. We are concerned that the animal will be weakened by transport to Jerusalem. For these reasons, the prohibition applies:

not only

> in the owner's residence outside of Jerusalem, where there is concern that the animal might inadvertently be consumed outside of Jerusalem,

but also

> on the road to Jerusalem, where it is obvious that the overriding purpose is to consume the animal in Jerusalem,

and not only

> when many animals are bought, out of concern that a herd of second tithe animals will be engendered and not be properly

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consumed,

but also

where only one animal is bought.

There are the following corollary rules:

1. If the buyer of the animal and transferor of the funds (B) did not know that his funds were second tithe, the transaction was a mistake and is rescinded if the seller of the animal and recipient of the funds (S) is available. "The money is returned to its place."

2. If B was unwitting but S is not available for rescission, B may take the animal to Jerusalem for consumption. "It must be brought up and consumed in the Place." B is not penalized, since he was unwitting.

3. If B and S realized that the funds were second tithe, and that B intended that the animal be purchased as *shlamim* for consumption in Jerusalem, there is no mistake in the transaction and there is no rescission. The animal must be brought to Jerusalem and consumed as a *shlamim*.

4. If B and S deliberately intended that the animal be consumed as *Hullin*, whether inside or outside of Jerusalem, and S is not available, then B is penalized and is required "to eat the value thereof." This means that B must produce additional funds, and he must announce that the funds which B previously gave to S are redeemed on additional funds which B must produce. The additional funds must then be taken to Jerusalem to purchase food and drink for consumption.

5. If B and S deliberately intended that the animal be consumed as *Hullin*, whether inside or outside of Jerusalem, and S is present, then S too is penalized and we demand rescission[819].

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[819]The Rambam holds that in case 5, where the violation is deliberate, the funds "are brought to their place," whereas in case 1 where the violation is unwitting, B must "eat the value thereof." The Meiri assumes that the Rambam's rationale is that the rule as outlined in Items 1 through 5 represents R. Judah's view, presumably in opposition to the view of the Sages. The Meiri disagrees. R. Judah's purpose is to elaborate on the Sages' view rather than to disagree with them.

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The rescission rule where S is available makes eminent sense where the transaction occurs in Jerusalem, and is in the nature of **purchase and sale**. Because an improper item was purchased, the sale is invalid as a mistake. It follows that the property in B's hands is not *hekdesh*, whereas the funds paid to S are *hekdesh* in his hands. S should certainly be penalized as well as B.

But transactions **outside** of Jerusalem are **redemptive** (rather than purchase and sale) in nature and there is no concept of mistake. The sanctity of the second tithe did pass to the *Hullin* animal, and the funds which passed to S are freed of sanctity. Why do we penalize S by insisting on rescission? Why not demand that B "eat the value thereof?"

Rashi explains that S's guilt is that he engages in the transaction although he knows that **B intends** to consume the purchased animal outside of Jerusalem. This transgresses the rule that one may not abet another's transgressions ("You shall not set an obstacle in the path of a blind man").

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6. Produce may be purchased with second tithe only for food or drink or for oil to be used for anointing.

It follows from case 5 that where second tithe funds are used to purchase items (such as impure animals, slaves and real property) which cannot be used for these purposes, the transaction must be rescinded where S is available, and B must eat the value thereof where S is not available.

[Must *hekdesh* and fourth-year vintage be in hand in order to be redeemed?]

Recall the cases in which B is required to make redemptions designed "so that he eat the value" of funds which are owned by S, who is absent. This suggests that redemption is valid even where the sacred funds to be redeemed are not in hand. The same rule may be implied from the following two Gemaras.

1. Funds derived from *sheviith* must be expended for *sheviith* produce for one's own personal consumption before the end of the *sheviith* year. The funds cannot be used in business transactions. Accordingly, it is forbidden to transfer such funds to an ignorant *am ha'aretz*, out of concern that the *am ha'aretz* will violate this prohibition. If the

> funds were nevertheless given to an *am ha'aretz*, the transferor must redeem the funds (which are not in the transferor's possession) onto the transferor's non-*sheviith* produce, which thereupon attain *sheviith* status.[820]
>
> 2. One can redeem another's *hekdesh*, even without the owner's knowledge.[821]

But another Gemara[822] holds that pious persons would each day in advance redeem the fourth-year vintage which the poor would consume later that day. Does not that Gemara prove that fourth-year vintage cannot be redeemed while in another's possession!?

The Meiri concludes that neither our Gemara, nor the two others cited, hold that redemption is valid on property which is not physically possessed:

> 1. Our Gemara does not mean to imply that the property in B's hands is validly redeemed by S's unilateral action. Rather, the purpose is only to penalize S by requiring that he "eat the value thereof." Note that the Gemara only requires "that he eat the value thereof," and does not state that "he redeems B's property and eats the value thereof."
>
> 2. The Gemara relating to ***sheviith*** reflects a Rabbinical remedy to be applied where nothing else can be done.
>
> 3. *hekdesh* is distinguishable because of its dedication to G-d, so that it is no more in one person's possession than in another's. Distinguish second tithe, fourth year vintage and *sheviith*, where (unless as a

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[820] Sukkah 39:1.

[821] Yeb.88:1.

[822] B.K.69:1.

[7:2]

Rabbinical remedy where there is no alternative) there is a definite ownership interest, and it is inappropriate for anyone to redeem property which is not in his possession.

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[*Kiddushin* **with** *orlah***]**

The rule that no benefit can be derived from *orlah* applies, not only where there is a tangible benefit, such as where the *orlah* or its sales proceeds are consumed, but also where:

1. the benefit is only to the eye, such as where the *orlah* is used as a dye; and

2. the *orlah* is destroyed (such as oil that is used in a lamp) in the course of the benefit. This is the purpose of the additional[823] verse "You shall count the fruit thereof as uncircumcised."[824]

It is permissible to derive benefit from *orlah*, as well as from other prohibited items, where the benefit is derived in:

a non-standard way by a person who suffers from some ailment, even if minor, or

in accordance with its usual use where the ailment carries with it serious risk.

Is there *kiddushin* where *orlah* is given to an ailing woman?

The Rashba is uncertain, and rules that the woman should be considered betrothed where this results in a stringent holding. The Rashba notes that a woman can be validly betrothed with an item which is worth a *perutah* only to her, such as a leaf of lettuce or a myrtle branch which she requires to perform a commandment, or with an apple which she requires for her health while ailing. Other commentators disagree.

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[823] A previous verse states "They shall be as uncircumcised unto you; they shall not be eaten."

[824] Lev.19:23.

[7:2]

[*Kiddushin* where a woman has a craving for an item not worth a *perutah*]

All agree that a woman is betrothed where she has a strong craving for an item which is not worth a *perutah*, and the craving does not arise from illness or the need to fulfill a commandment. But recall the Gemara[825] which holds that only persons of the standing of R. Kahana could value a head-dress at five shekels, because such coverings are **appropriate** to them. This suggests to some commentators that the craving must be appropriate to the woman.

Some commentators disagree. They would distinguish between a head-dress, a calf or a *tallit*, which are not of general utility, and objects which are of general utility. They hold that objects of the second sort can be accorded value even by persons to whom they are not appropriate.

This view is not supported by the Gemara[826] which states that there is concern that objects not worth a *perutah* here may be worth a *perutah* in Medea. Why do we not express concern that the object may be worth a *perutah* to the particular woman, no matter how inappropriate we think it?

The Meiri concludes that the matter is unclear, and stringent holdings are appropriate.

[*Kiddushin* with various items from which benefit is proscribed]

No benefit may be derived from *k'lay hakerem*. Scripture explains that one should not take actions relating to *k'lay hakerem* in language which can be read to mean "lest it [be wrongfully] burn[t] in fire," suggesting that the produce cannot be used to fire an oven.

No benefit may be derived from an ox, whether *tam* or *muad*[827], which is condemned to be stoned, even from its hide. The prohibition applies even if the condemned ox is ritually killed (rather than stoned). Note that benefit may be derived from non-condemned animals which are not ritually killed. Scripture permits them "to be sold to a gentile."[828]

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[825] 8:1.

[826] 12:1.

[827] See B.K.41:1 and 43:2.

[828] Deut.14:21.

[7:2]

> Where a *muad* injures, its owner is personally responsible for the injury in full. Where a *muad* kills, its owner must pay a full ransom. Where a *tam* injures rather than kills, the injured person may levy on the animal to recover one-half of his damages. Where the *tam* kills, its owner is not responsible for any portion of a ransom, even for one-half of a ransom.
>
> Even where a *tam* causes injury, the injured person can recover half of his injury only by levying against the animal. He cannot attach the owner's other assets.

Since a *tam* which kills must be stoned and benefit from the animal is prohibited, why is it necessary to teach that a *tam* pays no ransom at all? In cases where the animal is not stoned, such as where the animal was condemned on the testimony of its owner or of a single witness.

No ransom is paid where either a *tam* or a *muad* causes a woman to abort her fetus.

The matters relating to slaughter with a stone, glass or reed are explained elsewhere.[829]

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[829]Hullin 15:2.

[7:2]

No benefit may be derived from an *eglah arufah*, and the rules of *me'ilah* apply: Scripture refers to the *eglah arufah* as providing forgiveness in the manner of sacrifices[830]. The prohibition begins at the time it is first **known** as beheaded, *i.e,* from the moment it is brought into the rugged valley to be beheaded. Before that time, no sanctity at all attaches; the proceeds of its sale at that time are not dedicated to *hekdesh* even for the monetary purpose of Temple repair.

But if sanctity attaches once the animal descends into the rugged valley, how can we explain the rule that even at that stage if the murderer is found before the animal is beheaded, the animal resumes civil status and feeds with all other animals?

> Another Gemara concludes that the considers the rules inconsistent and are the holdings of different *tannaim*.
>
> The Rambam and Meiri suggest that it is acceptable to hold that sanctity attaches when the animal descends into the rugged valley, but that the sanctity **dissipates** if the murderer is found before the animal is beheaded.

[Procedure on purification of a leper; *kiddushin* with items used in the purification procedure]

A leper who wishes to be purified must bring two bird offerings. He slaughters the better bird, pours its blood into an earthen receptacle which contains one *reviith* of water, and then follows the procedure detailed in Scripture[831]. The slaughtered bird is then buried.

The leper takes cedar wood, hyssop and scarlet thread, and with them surrounds and ties the wings and tail of the remaining live bird. He then dips the bound bird into the blood and water in the earthen receptacle. The leper is sprinkled seven times as directed in Scripture[832]. The live bird is freed outside the city walls. The bird is directed towards the fields rather than towards the sea or the desert. Scripture directs that the bird be set free "outside the city towards the fields."[833]

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[830]"Forgive your people Israel..." Deut.21:8.

[831]Lev.14:4 *et seq.*

[832]Lev.14:7.

[833]Lev.14:53.

[7:2]

From the verse "But these [birds] you shall not eat,"[834] in which the word **but** is otherwise superfluous, we derive the rule that the slaughtered bird may not be eaten; if a person eats more than a *k'zayit* he is given *malkot*. Nor may any benefit be derived from the slaughtered bird. The rule is derived as follows:

1. A leper's bird offering are brought **outside of the Temple** to **qualify** him to resume residence among the general population.

2. A leper's *asham* is brought **inside of the Temple** for the same purpose, *i.e.,* to **qualify** him to resume residence. No benefit may be derived from the leper's **qualifying** *asham*; Scripture treats the *asham* as an atoning *hattat:* "just as the *hattat* so the *asham*"[835].

3. The *eglah arufah* is brought **outside** of the Temple for **atonement**. As noted previously, no benefit may be derived from the *eglah arufah*.

It follows that **within** the Temple, a **qualifying** offering (*i.e.,* the leper's *asham* is treated as an **atoning** sacrifice. So, too, **outside** of the Temple, the leper's **qualifying** bird-offerings must share the same rule as the **atoning** *eglah arufah*.

The prohibition applies only once the bird is slaughtered. It follows that no prohibition attaches to the remaining bird once it is set free. Scripture would not attach a prohibition to a bird which roams freely, and from which might result unwitting transgressions by persons who later capture and slaughter the bird.

Benefit may be derived from the slaughtered bird if it is determined that it is *trefa*; no sanctity attaches to a *trefa* bird. Where it is determined that the slaughtered bird was not of the proper species, the error is sufficient even to permit the bird to be eaten. In each case, the remaining live bird is not invalidated, and the leper need bring only one additional bird in the place of the *trefa* bird.

If one bird was in fact slaughtered but any one or more of the cedar wood, hyssop or scarlet thread was not used, the slaughter is improper. But because the slaughter was for the **purpose** (albeit not achieved) of purifying the leper, the slaughter is sufficient to apply the rule which forbids benefit.

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[834]Deut.14:12.

[835]Lev.7:7.

[7:2]

[When an animal is stoned for participating in human transgression]

An animal is stoned only if it was a party to a person's transgression, and only if its continued existence causes shame to a Jewish person[836]. Once an animal must be stoned no benefit may be derived from it. It follows that:

1. An animal which was worshipped by a gentile or which was designated for worship by a gentile may be used for all purposes except as a sacrifice. The animal is not stoned because it did not shame a Jewish person.

2. An animal with which a Jewish person committed bestiality in the presence of at least two witnesses is stoned, and no benefit may be derived from the animal once it is condemned. Both elements are present: the animal was a party to transgression and shames a Jewish person.

But where there is only one witness or the owner's testimony, the animal is not stoned. Here again, the animal is unfit for sacrifice, but individuals may derive benefit from the animal.

[Additional items from which no benefit may be derived]

No benefit may be derived from a nazirite's hair. "He shall be holy, he shall let the hair of his head grow long"[837] suggests that an element of sanctity attaches to the hair. As explained in the Mishnah, the sanctity is not sufficient to attach to the proceeds of the hair.

The first-born of an ass must be redeemed for a lamb. If this is not done, the first born animal must be beheaded. No benefit may be derived from the first born animal until redemption. If the animal dies prior to redemption it must be buried.

Our Mishnah holds that the sales proceeds of the first born ass can be used in *kiddushin*. Why then does the Rambam hold that no benefit may be derived from the sales proceeds? Perhaps the Rambam holds that the sales proceeds are permitted only to a third party, such as a woman receiving the proceeds in *kiddushin*, but not to the seller.

No benefit may be derived from meat-in-milk. Scripture three times states the prohibition against seething meat in milk, in order to prohibit eating, benefit and seething.

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[836]See Sanh.55:2.

[837]Num.6:5.

[7:2]

[Benefit from *Hullin* slaughtered in the Temple court]

No benefit may be derived from *Hullin* slaughtered in the Temple court.

Initially, the Gemara attempts to derive the rule thus:

1. Sacrifices, which are brought for sacred purposes, may be brought only in the sacred Temple court. "He shall slaughter the calf before G-d."[838]

2. *Hullin*, which is brought for ordinary purposes, is properly brought in ordinary precincts; "You shall slaughter from your cattle and from your sheep...in your gates."[839]

3. No benefit may be derived from **sacrifices** brought in **ordinary** precincts because there is lacking any action to remove the sanctity which attached to the animal while alive.

4. Just so, no benefit may be derived from the converse case, *i.e.,* when **ordinary** animals are brought in **sacred** precincts.

The Gemara then rejects this derivation because if it were valid, *kareth* would apply to *Hullin* slaughtered in the Temple court, just as *kareth* applies to sacrifices slaughtered outside of the Temple court.

The Gemara determines that the following is the proper derivation:

1. Initially, while the Jewish nation was in the desert near the *mishkan*, animals fit for sacrifice could be consumed **only** if brought as a sacrifice.

2. Scripture permitted *Hullin* sacrifices once the Jews entered Eretz Israel and were dispersed far from the *mishkan* or the Temple. "When the place shall be **distant** from you, you shall slaughter [*Hullin*]...and you shall eat."[840]

3. For this purpose "distant" is interpreted broadly. The term means outside of the Temple.

4. This implies a prohibition: *Hullin* may be brought only distant, *i.e.,*

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[838] Lev.1:5.

[839] Deut.12:21.

[840] Deut.12:21.

[7:2]

outside of the temple, but not near, *i.e.,* inside of the Temple.

The prohibition applies even to beasts, birds and blemished animals which could not have been brought as sacrifices in the desert.

What if the proscription is transgressed, and *Hullin* is slaughtered in the Temple court? The animal may not be eaten. Only "When the place is distant...you shall eat."

But may benefit be derived? Scripture states of *trefa* "You shall not eat any flesh that is torn of beasts in the field, you shall cast **it** to the dogs," *i.e.,* you **may** derive benefit therefrom.[841] Scripture speaks in terms of **in the field** to teach that benefit may be derived from parts of animals which at the time of slaughter extend out into the **open**, out of their normal enclosure, such as the limb of a fetus which is extended out of the birth canal. But in emphasizing that only **it** may be cast to the dogs, Scripture implies that no benefit may be derived from other animals which are slaughtered out of their proper enclosures, such as *Hullin* slaughtered in the Temple court.

The Meiri agrees with some commentators who hold that the proscription of benefit is Rabbinic only, and that the derivation in the last paragraph is used only to buttress the Rabbinic rule.

Those who hold that the proscription is Rabbinic have no difficulty with the rule that a woman cannot be betrothed with *Hullin* slaughtered in the Temple court. Compare this with the rule that a woman cannot be betrothed with *hametz* on the 14th day of Nissan during the hours when the *hametz* is proscribed only Rabbinically.

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[Disposition of items from which benefit is proscribed]

What is to be done with objects from which benefit is proscribed? Of those discussed in our Gemara the following are buried, whether animal, beast or fowl:

the ox condemned to be stoned

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[841] Ex.25:30.

[7:2]

the eglah arufah

the leper's bird offerings

the hair of a defiled nazirite

the first born ass

meat seethed in milk

Hullin sacrificed in the Temple court.

The hair of a non-defiled nazirite is burned. *orlah* and *k'lay hakerem* are burned where burning is customary (such as food), and are otherwise buried. A fuller discussion of these rules appears elsewhere[842]

[Status of improper slaughter]

Improper slaughter, meaning slaughter which does not make an animal's flesh fit to eat (such as where the animal is *trefa* or is discovered to be *trefa*), counts as slaughter for the rule that an animal may not be slaughtered in the same day as its son. It does not count as slaughter for the rule that the blood of a slaughtered beast or fowl must be covered with earth.

But does improper slaughter count as slaughter in applying the proscription against deriving benefit from *Hullin* slaughtered in the Temple court? The Meiri rules no, based on his holding that the proscription is Rabbinic even for properly slaughtered animals.

[Benefit from idolatry, *hekdesh* and *sheviith*]

No benefit may be derived from idolatry, or from the proceeds of idolatry, or from the proceeds of the proceeds *ad infinitum*. "You shall not bring an abomination into your house, lest you **be** a cursed thing like it," means that anything you bring into **being** relative to idolatry is as accursed as the idolatry itself.

The rule is more lenient for *hekdesh*. Where *hekdesh* is redeemed, the proceeds become sacred and the redeemed item is secularized.

Sheviith stands midway between *hekdesh* and idolatry. The original *sheviith*

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[842]Tem.33:2.

object can never be secularized. The ultimate proceeds partake of *sheviith* sanctity. However, intermediate proceeds are secularized. For example, If *sheviith* fruit is sold for meat, both are *sheviith*. If the meat is later sold for fish, then the fruit and the fish are *sheviith* and the meat is secularized.

Now, the sanctity of the **original** *sheviith* fruit cannot attach to **monetary** proceeds of a sale. If one says "these fruit are redeemed for this money," the money is not treated as *sheviith*. But the sanctity of secondary *sheviith* fruit does attach to monetary sales proceeds.

[Right to dispose as a property value]

We noted in the Mishnah that the mere right to **give** some object to a third person, the so-called "benefit-of-disposal," is not considered value. The rule is otherwise where the benefit may be *sold* for value to a third person, such as a woman who sells her contingent right to receive her *kethubah* should she be divorced or widowed.

But what are we to make of the following Gemara[843] which suggests that benefit-of-disposal is a property right:

> If an owner of produce vows that no priest or levite may derive any benefit from the produce, the vow is invalid. Priests and levites continue to be entitled to *terumah* and to the first tithe.
>
> The vow is effective when applied to particular priests or levites, and the *terumah* and tithe must be given to other priests. This suggests that the vow validly attaches **to the owner's benefit of disposal**.
>
> > Why then when the vow is global does not the owner's vow result in a prohibition to all priests and levites?
> >
> > Raba explains that by purporting to impose a ban on all priests and levites the owner would in effect abrogate the rights of all priests and levites. This the owner cannot do.

The Meiri suggests that benefit-of-disposal counts as property only for the purposes of the doctrine of vows, which is strictly interpreted. Note the strict interpretation where one forswears any benefit from his neighbor: if the neighbor is a retailer, the person making the vow may not even accept the retailer's customary addition to the

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[843] Ned.84:2.

[7:2]

exact measure.

Other commentators disagree. They rule from the case of vows that benefit-of-disposal does count as value, and, indeed, if one betroths a woman with *terumah* or tithes she is questionably betrothed with the value of her benefit of disposal, *i.e.,* her right to give the *terumah* or tithe to a priest or levite of her own choosing.

[58:2]

Return again to our basic holding that benefit-of-disposal does not count as value. There are the following additional rules:

> 1. One who steals from an owner *terumah* or tithe which the owner has set aside does not steal value. Hence, the doctrine of *kefel* does not apply. *Kefel* applies only for theft from one's "friend," *i.e.,* for property in which one's friend has ownership rights.
>
> 2. The rule is otherwise where the *terumah* was stolen from an Israelite who has inherited a monetary right in the *terumah* from a grandfather who was a priest. In this case, the Israelite had the right to **sell** the *terumah* to whichever priest he chose.
>
> 3. Where one steals an owner's *tebel*, the thief must pay *kefel* for the whole theft, and he cannot deduct the amount separatable as *terumah*. The owner can maintain that he would have separated only the one grain of wheat which legally suffices for *terumah*.
>
> But what of the tithe portion, where a full one-tenth must be given? Either we do not wish to make excessive distinctions between *terumah* or tithe, or we choose to penalize the thief by not giving him the benefit of the tithe portion.

[No compensation permitted for judges and witnesses]

A judge may be compensated only for the use of his time, not for his services as a judge. If he does accept payment in any lawsuit, that ruling and all subsequent rulings are void. Hence, the plural form of the doctrine: "his ruling**s** are void."

The same is true of a witness who accepts payment for his testimony. That testimony and all subsequent testimony is void unless it is determined that the later testimony was not given for pay.

If the witness returns the payment, his testimony is reinstated. There is no inherent defect in the testimony for which payment was received. Instead, our

refusal to accept it is in the way of a penalty based on the verse "See, I have taught you laws and decisions as G-d has commanded me,"[844] which teaches that just as G-d teaches for no pay, so must we also act without pay.

The Beth din publicly announces the names of persons who are incompetent to testify, even where the incompetence is rabbinic only. But no announcement is made of a witness whose testimony was invalidated on account of payment; it is not the witness who is incompetent, it is his testimony which we disregard by way of penalty until we are certain that no payment was received.

[No compensation permitted for sprinkling and mixing ashes of the red heifer]

If one accepts payment for sprinkling and mixing with water the ashes of the red heifer, his water is cavern water and his ashes the ashes of a hearth. The water and ashes are not valid.

This completes the Perek, with praise to G-d.

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[844]Deut.4:5.

[7:2]

[7:2]

PEREK III

With the Help of God

[Where an agent betroths a woman intended for the agent's principal]

This Perek deals in the main with the following topics:

1. disputed, mistaken, future and uncertain *kiddushin*; and

2. the status of children born of proscribed marriages.

As is usual, the Perek also digresses into various unrelated matters.

The first Mishnah reads as follows:

> If he (the first man) says to his neighbor (the second man) "Go forth and betroth me such a woman," and the second goes and betroths her to himself, she is betrothed to the second.

The second was unethical and cheated the first and the woman. Further, one might argue that she was misled and would have rejected *kiddushin* from the second were she aware of the first's interest. Still, the second's action is valid.

Where the second intended to betroth her on behalf of the first, but the woman demurred, the second acted honorably in betrothing her to himself. We do not impose on the second the obligation to inform the first of the woman's refusal and of the second's intentions. The second can legitimately be concerned that she may betroth herself to another while these consultations take place.

But if this is the second's first marriage, why the concern that she may marry another? Why does not the second rely on the dictum that a person's first wife is selected for him 40 days before his birth? A person cannot rely on this dictum to neglect personal efforts. Besides, the effect of the dictum can be overcome by a rival's prayer and the love of G-d.

The Mishnah is consistent with the *halacha*.

The Gemara discusses the following matters.

[7:2]

[Where an agent appropriates a commercial advantage]

Similar rules apply in commercial transactions. Where A sends B to purchase land for A, and B buys it for himself, B owns the land although he acted dishonestly. But where the seller refused to sell to A and is willing to sell to B (such as where the seller honors B more or prefers to be B's neighbor), B may purchase for himself without informing A.

The Yerushalmi holds that where A sends B to buy produce with the understanding that A and B will share any profit, then:

1. If B fails to buy the produce, A has no legal recourse other than to voice his complaint.

2. If B does buy the produce, A has a legal right to seize the produce.

How is the second ruling consistent with our Gemara? The Meiri explains that in the Yerushalmi's case, B did not inform the seller that B was purchasing the property for himself. By being silent, B permitted the interpretation that he in fact was acting as A's principal.

B is considered dishonest even where A did not give him funds to make a purchase, but where B knows that A has made efforts to purchase a property, or that A is making efforts to acquire an abandoned item, or to obtain an item as a gift from its owner. It is a trait of pious and learned persons to return all such items to the person who first sought to obtain them.

Where the person who first sought to obtain the item is a poor person, one who preempts him is more than a cheat; he is "wicked." Here, it is appropriate to return the item even if at the time the second person obtained the item he was not aware of the first's interest.

The Gemara recounts that R. Giddal sought to purchase a parcel of land, and R. Abba preempted him. R. Giddal complained to R. Zera, who in turn complained to R. Issac Nappaha. R. Issac Nappaha told R. Zera to wait until R. Abba came up to him for the Festival. When R. Abba came, R. Issac Nappaha asked him "If a poor man is examining a cake and another comes and takes it away from him, what then?" "He is called a wicked man." "Then why did you do so?" "I did not know of R. Giddal's interest." "Then let him have it now!" "I will not sell it to him, because it is my first field, and it is a bad omen to sell one's first field. If he wants it as a gift, he may have it." R. Giddal refused to take possession on account of the verse "He who hates gifts shall live."[845] Neither took possession. The land was made available to students to

[845] Prov.15:27.

stroll in it, and was called "The Rabbis' field."

One should beware of bidding up the price of property which another wishes to buy. The Yerushalmi mentions that R. Zera cursed those who by bidding increase the price paid by another. R. Bon b. Zera also cursed those sellers who conspire jointly to raise the price to one known to be anxious to buy. The Rabbis apply to such persons the verse "He melts [robs] kindness from his comrade."[846]

[*Kiddushin* stated to be effective at a later time]

The Mishnah continues:

> If he says to a woman, "Be betrothed to me after 30 days," and another comes and betroths her within the 30 days, she is betrothed to the second. If she was an
>
> Israelite's daughter betrothed to a priest [*i.e.,* the second person is a priest] she may eat *terumah*.

The first person's *kiddushin* is of no effect whatsoever until the 30 days pass. Consequently, the second person's *kiddushin* is absolute, so that if he is a priest the woman may eat *terumah* as far as Scripture is concerned. When the 30th day arrives she is already betrothed to the second, so that there is no *kiddushin* at all to the first.

The first *kiddushin* also never takes effect if prior to the 30th day either the man or the woman revokes his or her willingness to betroth or be betrothed. As concerns the man, the Gemara at first assumed that the power to revoke was implicit in his statement that the *kiddushin* were to take effect only in 30 days, presumably to give him time to reconsider. But ultimately the Gemara applies the same rule to the woman.

Where neither revokes, and there is no intervening *kiddushin*, the *kiddushin* takes absolute effect on the 30th day even if the value given to the woman is then non-existent (such as where *kiddushin* money was spent by the 30th day).

But why is *meshikhah* of a cow ineffective when it is stipulated that it is to take effect in 30 days (unless the cow is in the purchaser's possession on the 30th day?)[847] Because *meshikhah* is a formality which has significance only if intended to effect a

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[846]Job 6:3.

[847]B.M.34:1.

present *kinyan*. Contrast funds given to a woman which give her actual present benefit.

But where the value is spent, why is the case different from a deposit given by a man to a woman, and which is later transferred to her as *kiddushin*, where *kiddushin* is valid only if the funds exist at the time of transfer?! Because a deposit is held for the benefit of the bailor, whereas here the woman had the full use of the funds for her own benefit, with the funds being returnable only if there was ultimately no *kiddushin*.

Recall also the rule that forgiveness of a loan cannot effect *kiddushin*. That rule is based on the doctrine that a loan is given to be spent, so that the presumption is that the funds are no longer available once they are purportedly designated as value for *kiddushin*. In our case, when the funds were passed to her they were **at that time** designated to be for *kiddushin* rather than for expenditure.

Certain commentators distinguish between

1. monetary *kiddushin* which has been expended, and

2. *Kiddushin* by deed where the deed is lost or is in a public thoroughfare out of her possession, or by way of cohabitation.

These commentators hold that there is *kiddushin* where monetary *kiddushin* was expended, because the woman must return the money if there is no *kiddushin*, and *kiddushin* benefits her by freeing her of this obligation. This continuing benefit does not apply in the case of deeds or intercourse which are to be effective at a later time, and where *kiddushin* does not free her of any obligation. The Meiri does not favor this distinction.

[Where *kiddushin* to be effective "now and after 30 days"]

The Mishnah continues:

> But if he declares "Be betrothed to me from now and after 30 days," and another comes and betroths her within the 30 days, she is betrothed and not betrothed to both. An Israelite's daughter thus betrothed to a priest, or a priest's daughter to an Israelite, may not eat *terumah*.

Rav and Samuel disagree on the Mishnah's meaning:

Samuel says that **from now and after 30 days** means **Be betrothed effective now unless I revoke by 30 days**. In other words, the statement is a condition. It follows that once the 30 days pass, and there is no revocation, the first *kiddushin* is **absolute**.

[7:2]

The Mishnah which holds that both the first and the second *kiddushin* are possibly valid applies only before the end of the 30th day, when it is still unknown whether the condition (*i.e,* that there be no revocation) will be satisfied. It is only until the 30th day that she cannot eat *terumah*.

Rav says that the Mishnah is uncertain whether the statement is:

> a condition, in which case Samuel's result would follow, or
>
> whether it is to be interpreted as if the man after saying **now** changed his mind and said **after 30 days**, in which case the same rules apply as if the man had said **only** after 30 days: she is betrothed only if another failed to betroth her by the 30th day.

If another betroths before the 30th day, and the first does not revoke, the uncertainty is never resolved. She can never eat *terumah*, even after the 30th day.

But why does Rav hold that the statement is less definite a condition than other statements such as "You are betrothed to me if you do so and so?" Because in the Mishnah's case the only subsequent event which affects *kiddushin* is the passage of time rather than the occurrence of any designated action or omission. Given the man's lack of any interest in events occurring during the time lapse, there is concern that what really happened was that he changed his mind in the course of the statement.

The *halacha* agrees with Rav.

The same uncertainty applies in the case of *get* where the husband says "This is your *get* now and when I die."

The Gemara discusses the following matters.

[59:1]

[Revocation of agency]

Where one appoints an agent to separate *terumah*, the agency can be revoked prior to separation, even if the revocation occurs outside of the agent's presence.

The Yerushalmi holds that the revocation is effective only if the agent does not follow the principal's instructions, such as where the agent separates in the south, whereas the principal directed that he separate *terumah* in the north. The Rambam follows the Yerushalmi. However, the Meiri explains that the Yerushalmi's position is valid only according to the views of those who hold that an oral agency cannot be

revoked orally. Since the *halacha* is that oral revocation is valid, the Yerushalmi's distinction does not hold.

If a husband sends an agent to deliver a *get*, the agency can be revoked before delivery. To revoke the agency the husband must tell the agent, either personally or through a second agent, "The *get* I gave you is revoked." The *get* can later be used again; it was only the agency that was destroyed, not the validity of the deed.

What if the husband revokes the *get* while he still holds it? Most commentators hold that here the only possible interpretation is that the deed's power as a *get* was abrogated, so that the *get* can never be used again. Others disagree. They claim that a valid *get* cannot be invalidated by a statement. Compare a woman who says "I will never be betrothed with this money." Certainly, she is betrothed if she later accepts the money in *kiddushin*!

[Intent as affecting ritual purity]

Utensils cannot be rendered ritually unclean until they are completely fabricated for their intended purpose. Where a utensil is sufficiently fabricated for a lesser purpose, it may be made unclean by the mere *intent* to use it for the lesser purpose.

Rashi holds that the intent to use the utensil as-is for the lesser purpose is sufficient even where it is conventional to apply additional work even for the lesser purpose. The Meiri finds this dubious; why should we respect the intent of one who, for example, wishes to use an unpolished and unsanded utensil where most persons would not?

The rule that we ignore mental reservations does not apply for the reasons stated previously[848].

Assume that:

> a utensil was fabricated for a lesser purpose, or
>
> there was an intent to use for a lesser purpose a utensil partially fabricated for a higher purpose.

Can liability for uncleanliness be removed by the intent to limit use of the utensil to a higher purpose? No. What is necessary is a further change **in substance**, *i.e.,* actual additional fabrication towards the higher purpose.

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[848] 49:2.

[7:2]

By way of example, a hide generally intended for shoes can be rendered susceptible to uncleanliness by the mere intent to use the hide, as-is, as a tablecloth. The hide remains susceptible to uncleanliness notwithstanding a new intent to fashion it into shoes. But if work commences to fashion the hide into shoes, it is no longer susceptible to uncleanliness (even if work had previously been done to fashion it as a tablecloth). In fact, most commentators hold that if the hide was actually made unclean, the uncleanliness is **removed** by actual fabrication towards shoes[849].

[59:2]

Produce can be rendered unclean only if moistened while no longer connected to the ground, and only if the moistening is acceptable to its owner. In discussing the moistening, the literal words used by Scripture "And if one put [moisture]" are read "And if it be put." How reconcile the literal words and the reading? The putting [moisture] must be acceptable to the owner when it is put by others, in the same way that it is acceptable when he puts it himself.

> The Meiri had a variant reading of our Gemara in which the Gemara states the proposition that "Just as there is an action when the owner puts, so too must there be an action when it is otherwise put." How does this fit with the tenor of our Gemara in which the purpose is to show that intent counts as action for rendering implements susceptible to uncleanliness?
>
> The Meiri explains that the action refers to produce (as distinguished from implements) where there must be a specific act of wetting. The point is that the action of wetting is sufficient when acceptable to the owner even if he does not do it alone. This shows that for implements, **where there must be no particular action**, the intent of the owner is alone sufficient.

[Woman's revocation of agency]

The following rules apply to a woman who appoints an agent to accept her *kiddushin*:

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[849]See B.K.66:1 for rules which vary depending on whether the hide is fashioned by a professional tanner.

[7:2]

1. If she accepts *kiddushin* from another before the agent accepts his *kiddushin*, her *kiddushin* is valid. The reverse is true if the agent's *kiddushin* is prior in time.

2. The woman can revoke the agent's authority by express statement in the presence of witnesses.

[R. Johanan's holding where *kiddushin* to be effective "now and after 30 days"]

Refer back to the case in the Mishnah of the man, A, who betrothed "now and after 30 days," where another, B, betrothed her on the 20th day. Recall Rav's view that she is permanently possibly betrothed to both A and B. Rav explains that we are uncertain whether A intended a **condition** (*i.e.*, whether A chooses to revoke in the interim), in which case only A's *kiddushin* is valid, or if A meant to cancel the "now" statement and to render *kiddushin* effective only on the 30th day, in which case only B's *kiddushin* is effective.

What if:

A betrothed "now and after 30 days,"

B betrothed her "now and after 20 days," and

C betrothed her "now"[850] or "now and after 10 days"?

Only A's and C's *kiddushin* are possibly valid; to marry she requires no *get* from B. If the meaning of the phrase is a **condition**, then only A's *kiddushin* is valid. If the meaning is to **cancel** the **now** portion of the phrase, then only C's *kiddushin* are valid, because his preceded the others'.

But why not interpret A as having meant cancellation, and B as having meant a condition, in which case B's *kiddushin* would be valid? Because the interpretive issue is one which concerns **us**, as the Beth din. **We** must decide whether the words mean

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[850]The Gemara only discusses the case in which C says "now and after 10 days." The same result would follow hold if C says only "now." The longer formulation is used as a carryover from the statements made by A and B, which must be compound.

[7:2]

one thing or another. Whatever our decision, the words mean the same by whomever they are used.

[60:1]

R. Johanan disagrees with Rav, and holds that there is also possible *kiddushin* to B. But R. Johanan does not base his view on B's statement's possibly having a different meaning from A's statement. For if that were R. Johanan's intent he would not have used the phrase "Even a hundred persons can have a **hold** on her," which suggests that each of 100 has some absolute *kiddushin* relationship with her. Rather, R. Johanan should have said "She is **possibly** betrothed to each of the 100."

What then is R. Johanan's explanation? He interprets the statement of each as meaning "my *kiddushin* begins today, but is not completed until 10, 20 or 30 days, in the sense that anyone else who betroths you during this period can also obtain **absolute** (albeit **partial**) *kiddushin* rights in you."

Given that this is R. Johanan's reasoning, the same result would obtain where 100 persons **simultaneously** betroth a woman "now and after 30 days," or where, after one or more persons have betrothed her "now and after 30 days," others **within the 30 day period** betroth her "now."

But what of the rule that the is no *kiddushin* if some rights remain, such as where A betroths a woman "insofar as concerns the whole world other than B, who may still obtain *kiddushin* rights in you?"!

> That rule does not apply where *kiddushin* is to all except B, the opening to B is a remaining right which is permanent, whereas the remaining right in our case is limited in time to 30 days.

There is additional evidence that R. Johanan means absolute and certain *kiddushin* to each. The Gemara suggests that R. Johanan's holding is inconsistent with the rule that there is only a **questionable** *get* if the *get* is given "now and after I die." The Gemara's point is that were R. Johanan correct in that room remains for later *get*, the first *get* should be absolutely invalid. This is because a *get* (as distinguished from *kiddushin*) is totally invalid whenever there is some **absolute** remaining tie with the husband.

Why is the remaining tie a more serious defect in the case of *get* than in the case of *kiddushin*, where we have just explained that a remaining right limited in time is not a defect? Because no *get* can be given after death. Contrast *kiddushin* where absolute *kiddushin* can be given after 30 days.

The Alfasi and the Rambam hold that the *halacha* is consistent with R. Johanan,

probably because of the rule that R. Johanan's view prevails in disputes with Rav. But the Alfasi and the Rambam are incorrect in stating that she is **possibly** betrothed to all; for we have proved that R. Johanan holds that she is **certainly** partially betrothed to all. Perhaps in referring to each of the *kiddushin* as being **doubtful** the Rambam and the Alfasi mean only that the *kiddushin* are insufficient to permit any one of the betrothers to marry her unless she first obtains a *get* from each of the other betrothers.

The Meiri concludes by preferring to rule with Rav against R. Johanan:

> 1. The Meiri does not accept R. Johanan's explanation that time-limited remaining rights are not fatal to *kiddushin*.
>
> 2. The Gemara concludes by distinguishing between a *get* given "now and after my death," where the *get* is possibly valid[851], and a *get* given "now, if I die" where the *get* is absolutely valid upon death. The Gemara explains that in the first case we are uncertain whether the statement is a **condition** or a withdrawal, whereas in the second case it is certainly a condition. This reasoning is consistent with Rav and not with R. Johanan.

[Where betrother dies in the interim in an "after 30 days" case]

Refer back to the Mishnah's case of one who betroths "after 30 days." Recall that the woman is not betrothed if either she or the man rescinds before the 30th day, and that she is betrothed to another who betroths her before the 30th day. Finally recall that where there is no rescission and no intervening *kiddushin* she is betrothed to the first betrother even if the *kiddushin* money has been spent in the interim.

What if the betrother dies in the interim? Must she perform *halizah* with the betrother's brother out of concern that the *kiddushin* were valid? The Meiri holds no. The *kiddushin* can be effective only on the 30th day, and on the 30th day the betrother had died.

Consider the rule where the **intervening betrother** dies or divorces within the 30 days:

> 1. Where the intervening betrother dies childless and the rules of *yibbum* apply, all hold that the intervening *kiddushin* serves to

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[851]So that if the marriage was childless, the *get* does not absolve her from *halizah*. On the other hand, the possible validity of the *get* proscribes *yibbum*.

nullify the first *kiddushin*.

2. Where there is no *yibbum* requirement, the Yerushalmi holds that the first *kiddushin* springs into place on the 30th day. The Meiri finds this surprising: why not treat the intervening *kiddushin* as at least the equivalent of rescission or withdrawal? Perhaps because we interpret the woman as intending to be betrothed to the second only until the 30th day.

All hold that the first *kiddushin* is void where the intervening betrother died or divorced **after** the 30th day.

[Cancellation by betrother in the interim]

Return once more to the case of the man who betroths "now and after 30 days." Recall once more Rav's view that we are uncertain whether the man meant his betrothal to be valid unless **he** rescinds within 30 days, or whether the man meant to cancel the "now" statement and to render *kiddushin* effective only on the 30th day.

Most commentators hold that the man can rescind the *kiddushin* if he so desires[852].

But why is the case different from:

1. "Be betrothed now on condition that I give you a *maneh*," where the man has no right to rescind (in the sense that she is betrothed if he purports to rescind and later gives the *maneh*)?![853]

Because in the case of the *maneh* it is not obvious that he wishes the opportunity to rescind, only that he does not now have access to the *maneh*. In our case, the only logical reason for the condition, which is only a time delay, is to give the man the opportunity to reconsider.

2. "Make *meshikhah* of this cow to purchase it now and after 30 days," where the rule is that the seller cannot withdraw?!

Because the seller's statement can be interpreted as reflecting a

[852]One dissenting commentator holds that the man cannot withdraw by analogy with the case of one who gives a *get* "now, on condition that you not be divorced until 30 days." (Git.74:2.) The rule in that case is that the man cannot rescind.

[853]See 8:1.

desire to use the cow during the 30 day period, and it is not necessary (as in our case) to explain the statement as insisting on the right to reconsider.

All hold that only the man may reconsider. The woman consented to have her *kiddushin* depend on the man's ultimate decision, and she is bound by it.

[Death of betrother in the interim in an "now-after 30-days"case]

What if the man dies before the 30th day? Is the *kiddushin* so absolutely void that the woman need not perform *halizah* with the dead man's brother? There are the following views[854]:

1. Rashi holds that *halizah* is not required. Given the man's absolute right to reconsider it follows that where the man **dies** before the 30th day the *kiddushin* should be absolutely void and no *yibbum* or *halizah* should be required. Death should be the equivalent of rescission.

2. The Meiri does require *halizah*. But how reconcile this with the man's right to abrogate the *kiddushin* by his unilateral rescission?

Because the case is no different from one who betroths "On condition that my father does not protest within 30 days," where there is *kiddushin* should the father die before the 30th day without having protested. The point is that the condition is subject only to the man's **rescission** or his father's **protest**. The condition is not that the man or his father **survive.**

If the condition so clearly focuses on rescission rather than on death, why then not permit *yibbum* to the dead man's brother (by analogy with the absolute *kiddushin* in the case of the father who dies without making protest)? Because of Rav's uncertainty whether the statement is a condition at all, or whether the man intended to withdraw from the "now" portion of his statement, leaving only the "after 30 days" portion. If the latter is true, the woman was not the dead man's wife so that *yibbum* is inappropriate.

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[854]Needless to say, the one commentator who holds that the man has no right to rescind would require that the woman obtain *halizah* should the man die before the 30th day. The discussion in the text focuses on those (the majority) who hold that the man can freely rescind.

[7:2]

Others disagree. *yibbum* is permissible. If the man meant to withdraw from the "now" portion of his statement, then certainly his *kiddushin* were not valid if he dies before the 30th day, so that his brother can marry her in any event: either as *yibbum* if the betrother meant his statement as a condition, or as a woman never married to the purported betrother, if the betrother meant to withdraw from his "now" statement.

The only possible objection to *yibbum* is that the dead man may have had other wives who require absolute *yibbum* or *halizah* on account of his death. Need we not fear that by his brother's marrying the woman who was betrothed "now and after 30 days" observers might mistakenly think that full-fledged *yibbum* occurred, so that the other wives no longer require even *halizah*? Is it not this reasoning which proscribes *yibbum* of an *elonit*, *i.e.,* concern that her co-wives would be wrongly absolved of *halizah* on account of the assumed validity of the *elonit's* marriage-*yibbum*?

Not so. The *elonit* was generally known to be the brother's wife. Hence the potential error. On the other hand, all observers know that the "now and after 30 days" woman was not the dead brother's certain wife, and error will be avoided.

[Where there are surviving brothers]

Another case. Where A betrothed "now and after 30 days," B betrothed within the 30 days, and one of A or B died within the 30 days in circumstances (*i.e.,* there being a surviving brother to both A and B) where *yibbum* would otherwise apply. She requires *halizah* from the surviving brother:

1. The statement may have been a condition, so that the first *kiddushin* were valid, and as noted in the prior discussion the first's brother must perform *halizah* in such cases.

2. The first brother may have intended to withdraw from the "now" portion of his statement, so that the second *kiddushin* was absolutely valid, and the second's brother must perform *halizah*.

Another case. Assume that A betrothed "now and after 30 days," B betrothed within the 30 days, both died within the 30 days and one had a surviving brother and the other either divorced the woman or had no surviving brother. Here the surviving brother may perform *yibbum*. Here is the analysis:

[7:2]

1. Assume that the first betrother has a surviving brother.

    i. If the statement was a condition, the first *kiddushin* was valid. Hence *yibbum* is appropriate.

    ii. If the statement was meant as a withdrawal from the "now" portion, then the second's *kiddushin* was valid, and the first had no marital relationship with the woman. But the second betrother has no surviving brother, so that there are no *yibbum* requirements. Accordingly, the first's surviving brother may marry the woman, since she was not his brother's wife, and has no *yibbum* bonds.

2. Assume that the second betrother has a surviving brother.

    i. If the statement was a condition, the first *kiddushin* was valid, and the second had no marital relationship with the woman. But the first betrother has no surviving brother, so that there are no *yibbum* requirements. The second's surviving brother may marry the woman, since she was not his brother's wife, and has no *yibbum* bounds.

    ii. If the statement was meant as a withdrawal from the "now" portion, then the second's *kiddushin* was valid, Hence *yibbum* is appropriate.

A final case. Assume that A betroths a woman "now and after 30 days," and the woman dies within the 30 day period. Assume also the woman's sister had been married to A's brother A2, and A2 had previously died under circumstances which would otherwise have required that A perform either *yibbum* or *halizah* with the sister.

In general, there is no requirement of *halizah*, and *yibbum* is proscribed, with a woman who is related to the wife of the prospective *yabam.* In this case, does A have a sufficient marital relationship with the "now and after 30 days" woman to dissolve the requirements of *halizah* and to proscribe *yibbum* with the woman's sister? Can A perform *yibbum* if he so chooses?

Recall Rashi's holding that where the **man** dies, his wife needs no *halizah* from his surviving brother. Rashi would hold that A had no marital relationship with the deceased woman, and that he can perform *yibbum* with her sister.

On the other hand, those who require *halizah* where the man died would hold that there is a marital relationship with the deceased woman sufficient to proscribe *yibbum* with her sister. But the

relationship is not sufficient to permit the surviving sister to marry another without *halizah*.

[When a condition can impose an obligation on the person who states the condition]

The next Mishnah reads:

If one says to a woman "You are betrothed to me on condition that I give you 200 *zuz*, she is betrothed and he gives it. "On condition that I give you within 30 days from now": she is betrothed if he gives her within 30 days, if not she is not betrothed.

R. Huna and R. Judah dispute the meaning of the Mishnah:

R. Huna maintains that the Mishnah means "Once he gives it." The woman cannot compel him to pay the 200 *zuz*[855]. But once the man does give the 200 *zuz* the *kiddushin* are effective retroactively to the time of the man's statement. This follows a general principle that conditional statements are assumed to be effective retroactively once the condition is satisfied.

R. Judah maintains that the Mishnah means "When he gives it." Since the man did not say "effective as of now," retroactive application is not assumed. R. Judah does not agree with R. Huna's general principle.

The Gemara explains that R. Judah believes his view to be consistent with those Sages who hold that where a *get* is given "today and after my death" the *get* is of doubtful validity. This suggests to some commentators that R. Judah is not certain that retroactivity is inappropriate; his point is merely that he disagrees with R. Huna's certainty that there is retroactivity.

Now, even R. Huna, who holds that *kiddushin* is effective retroactively once the 200 *zuz* are paid, would hold that it is improper to cohabit with the woman before the 200 *zuz* are paid. Possibly he will not pay the 200 *zuz* and the children resulting from the cohabitation will be blemished in social standing. What practical difference, then, is there between his view and R. Judah's view?

The Gemara explains that the two differ where the woman accepts *kiddushin* from another before the *zuz* are paid. R. Huna holds that the subsequent payment of the *zuz* validated the first *kiddushin* retroactively and voids the second. R. Judah would hold that the second *kiddushin* is first in time, and that the first is void.

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[855]See 8:1.

[7:2]

The *halacha* accords with R. Huna.

The Meiri earlier[856] explained the following views:

> 1. Although the man cannot be compelled to pay the *zuz* he cannot rescind the *kiddushin*. Accordingly, if he chooses to pay the *zuz* after purporting to rescind the *kiddushin*, the payment results in *kiddushin*.
>
> 2. The woman certainly cannot rescind, for she was not the one who set the condition.
>
> 3. The woman may waive the 200 *zuz* in the presence of witnesses. The waiver has the same legal effect as the payment of the 200 *zuz*.
>
> 4. Where a time limit was set to the payment of the *zuz*, *kiddushin* are valid only if the payment is in fact made within the time limit.

This completes the exposition of the Mishnah. Here is what follows in the Gemara.

There is a corresponding dispute between R. Huna and R. Judah where a husband gives a wife a *get* on condition that she give him 200 *zuz*. Here again R. Huna on satisfaction of the condition validates the *get* retroactively, and R. Judah disagrees.

> Again, the *halacha* accords with R. Huna.

In discussing the different practical result of these views, the Gemara explains that where the *get* was destroyed or lost before the condition is satisfied, R. Huna would hold the *get* valid, since it was extant when the divorce was retroactively effective. Of course, the woman may not marry until the *zuz* are paid, and it is known that the condition has been satisfied. R. Judah requires that she obtain a new *get*.

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[856] 8:1.

[7:2]

[60:2]

But why not explain that R. Huna and R. Judah would differ on *get* in the same circumstances in which we explained their difference on *kiddushin*? Specifically, where a ***get*** is given and the woman accepts *kiddushin* from another before the condition is satisfied, R. Huna would hold that the first person's *get* is retroactively valid, so that the second person's *kiddushin* is valid. R. Judah would hold that the *get* is valid only after the second person attempted *kiddushin*; it follows that the *kiddushin* is void!

Some explain that even R. Judah would not void the *kiddushin*. As noted previously, he is not certain that there is no retroactivity, and he would therefore apply retroactivity to avoid a lenient ruling. Another solution was discussed previously[857]. The Meiri suggests that the most practical explanation is that when dealing with *get* the Gemara prefers a difference between R. Huna and R. Judah which deals only with *get*. On the other hand, our Gemara deals with *kiddushin* and prefers to deal in purely *kiddushin* cases.

[Death before monetary condition is satisfied]

Where a husband tells his wife "Here is your divorce on condition that you give me 200 *zuz*," and the husband dies before she pays him the *zuz*, the *get* is void and she is subject to *yibbum* requirements. She cannot validate the *get* by paying the money to her husband's heirs. The condition was that she give the money to **him.**

Compare this with the case of a man who betroths "On condition that **I give you** 200 *zuz*." What happens in this case if the man or the woman dies before the 200 *zuz* are paid? May his heirs pay 200 *zuz* to the woman's heirs in order to establish *yibbum* requirements to the dead man's brothers? Where she dies before the money is paid, and he chooses to pay the money to her heirs, is there a marital relationship which would prohibit him from marrying her relatives?

The Meiri and Rashi hold that the same principles apply. In each case, the money was to be paid by **him** and not by his estate, and to **her** and not to her estate.

Others disagree. In the case of *get* the condition was stated by the intended **recipient** of the funds, whereas in the case of *kiddushin* the condition was stated by the **provider** of the funds. A provider is less insistent than a recipient on whether the funds are given by a person or by his estate or to a person or to his estate.

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[857] 8:1.

In rebuttal, the Meiri argues that once a recipient dies should he not consider funds given to his heirs to be the same as funds given to him during his lifetime?! Obviously, then, the issue is not one of personal preference, but rather of straight interpretation. That being so, there is no reason to treat the cases differently.

The Mishnah continues:

> "On condition that I possess 200 *zuz*," she is betrothed if he possesses them. "On condition that I show you 200 *zuz*," she is betrothed and he must show her. But she is not betrothed if he shows her money lying on the counter.

Until the man establishes that he has 200 *zuz* she is considered possibly betrothed, on the possibility that he has the funds. She is absolutely betrothed once he establishes that he has the funds. He need not show her the funds if he establishes possession through witnesses.

Assume that A says "On condition that I have 200 *zuz* on deposit with B," and B claims not to have any money on deposit. The Tosefta rules that there is questionable *kiddushin*. Presumably, A would not have stated the condition had he not had funds on deposit. Possibly, then, A reconsidered, and he conspired with B wrongly to invalidate the *kiddushin*.

Where the condition is stated in terms of **showing her** she is not betrothed unless he proves he has the money and he shows it to her. Witnesses are insufficient. If a time limit was established, and he did not show her the money until after the time had expired, she is not betrothed, even doubtfully.

Where he showed her the money on the counter, such as where he is a money-changer and the profits are his, she is not betrothed. She wishes to be betrothed only if the principal is his, not only the profits.

[Requisites to satisfaction of certain conditions]

The next Mishnah reads:

> "On condition that I own a *Beth kor* of land," she is betrothed if he owns it. "On condition that I own it in a designated place," she is betrothed if he owns the land in the designated place. Otherwise, she is not betrothed. "On condition that I show you a *Beth kor* of land," she is betrothed if he shows it to her. But if he shows it to her in a plain, she is not betrothed.

Again, until he proves that he owns the *Beth kor* she is considered possibly betrothed.

[7:2]

Where he claims that he owns property in a designated place, she is betrothed only if he owns it there. It is of no avail that he owns property elsewhere. The location of property is significant, whether as a result of the relative value of a particular location, its proximity to or abutment on the owner's other lands, or the behavior of the persons on neighboring lands.

Note that the requirement that property be in a designated place is stated only for land and not for money in the prior Mishnah. This might be taken to suggest that the location of money is not as significant, so long as the funds are relatively portable. The Rambam takes a stricter view and requires that even money be in a designated location for *kiddushin* to be valid. The Tosefta supports the Rambam.

Where the condition is that he **show** her the land, he must actually show the land, as well as establish that he owns it.

Where he shows her land in a plain she is not betrothed even if he has usufruct rights to the land and even if he has sharecropping rights. She intends to be betrothed only if he owns the land in fee.

This completes the Mishnah. The Gemara discusses the following:

[7:2]

[61:1]

[When non-arable portions of land can be taken into account as satisfying conditions based on land holdings]

Assume that he betrothed her on condition that he owned a *Beth kor* of land, but he owned a *Beth kor* only if one takes into account rocks which are 10 or more *tefachim* tall and on which plants cannot take root. Or assume that there is a *Beth kor* only if one includes ravines which are 10 or more *tefachim* deep and which cannot be planted or sown because they are water-logged. In each case, she is not betrothed because he does not have a *Beth kor* of land. But rocks which are not 10 *tefachim* high, and ravines which are not water-logged, do count as part of the field.

The same rules apply to *hekdesh*. The basic principle here is that an inherited field is redeemed from *hekdesh* at the arbitrary rate, independent of true value, of 50 shekels for 49 Jubilee years (one and 1/49th shekel per year) for each parcel of land on which there can be sown a *homer* of barley (the same as a *Beth kor*). The redemption price is proportionately adjusted for smaller or larger fields. Although one may redeem a portion of an inherited field, it is improper to redeem only the superior portion.

Where an inherited field contains large rocks or waterlogged ravines, these areas count as separate fields, so that the land other than these rocks and ravines can be separately redeemed. If the former owner does choose to redeem the ravines and the rocks, they are redeemed at true value and cannot be redeemed at the arbitrary rates which apply to inherited **fields**. Where the rocks are less than 10 *tefachim* high or where the ravines are not water-logged they are treated as one with the rest of the field.

The rule is otherwise with respect to sales. Here a seller who has offered a *Beth kor* of land cannot sell a *Beth kor* consisting in part of ravines which are 10 or more *tefachim* deep, even if they are not water-logged and can be planted. A buyer does not wish to purchase a field which is in effect separated into two or three fields by ravines. The Meiri disagrees with the Rashbam who holds that this rule applies only where the seller promised a *Beth kor* **of land**, but not where he promised only a *Beth kor*. The Rashbam holds that the rule is applied against the seller only where the ravines are at least four *tefachim* wide; in this the Meiri agrees.

What is the rule for *get*? Where the husband says "here is your *get* on condition that you give me a *Beth kor*," can she give him a *Beth* kor which includes non-water logged ravines? *Get* (unlike *kiddushin* and *hekdesh*) is treated as a sale, and non-waterlogged ravines cannot be proffered as part of a *Beth kor*.

[7:2]

Most commentators agree that, whether for *get* or for *kiddushin*, two non-adjacent fields cannot be offered where a *Beth kor* was promised or demanded.

[Formal requisites to validity of conditions]

The next Mishnah reads:

> R. Meir said "Every stipulation which is not like that of the children of Gad and the children of Reuben is not a valid stipulation, because it is written "And Moses said unto them, 'If the children of Gad and the children of Reuben will pass with you [then they will have the land of Gilead],' and it is also written 'But if they will not pass over with you armed [then they shall not have possession].'
>
> R. Hanina b. Gamliel said "The matter had to be stated for otherwise it implies that they should have no inheritance even in Canaan."

By way of introduction to the following discussion, consider the statement "If you do X, then Y shall be effective." The "If you do X" phrase is referred to as the **condition**, and "Y shall be effective" is referred to as the **action**.

The verse to which the Mishnah refers reads in full as follows:

> And Moses said to Eleazar and Yehoshua bin Nun "If the children of Gad and the children of Reuben will pass with you over the Jordan [River], then you shall give them the land of Gilead, but if they shall not pass they shall have possession among you in the land of Canaan."

Note that the conditions were stated in duplicate: If you shall pass...; if you shall not pass.... R. Meir deduces that a condition which is not double is not a valid condition, and the action is effective even if the condition is not satisfied. Because of the failure to duplicate, it is assumed that the condition was not meant as a condition but rather as a stern **request** that the condition be satisfied.

> Specifically, R. Meir holds that in the case of the tribes of Gad and Reuben:
>
> Since the condition was duplicated, the tribes would not have obtained sole possession of Gilead had they failed to satisfy the double condition. Instead, they would have shared generally with all other Jews in both Canaan and Gilead.
>
> If no double condition had been stated, the tribes would have obtained sole possession of Gilead even if they did not cross the Jordan.

[7:2]

By way of further example, if a man says "You are betrothed to me if you give me 200 *zuz* by such-and-such day," without saying "You are not betrothed to me if you don't give me 200 *zuz* by such-and-such day," the woman is betrothed [the action is effective], even if the condition is not performed.

> But how reconcile this with another of R. Meir's holdings?
>
> R. Meir holds that where one demands of potential witnesses in his favor "G-d not strike you if you testify for me," this is a good subpoena, since the essential oath "G-d strike you if you fail to testify" can be implied[858].
>
> The Gemara explains that R. Meir generally permits the converse of a statement to be implied in issues of religious proscriptions, such as the ritual necessary to penalize potential witnesses who refuse to testify.

Now, in the religious context of *kiddushin*, from the condition "If you pay, then..." why do we not simply imply the converse "But if you don't pay, then...." Why must the converse be stated?

> Perhaps because matters of *get* and *kiddushin* are taken more strictly than other religiously based matters. This is consistent with the Yerushalmi which notes that R. Meir generally ("in every place") implies the converse of statements, but his holdings on *get* and *kiddushin* reflect the stringency of marital and incest laws.

Now, the failure to imply a converse in the case of *kiddushin* is obviously a stringency since it results in a woman's greater susceptibility to be betrothed and to require a *get* before she marries another. But what of *get*? There are two explanations:

> Once we apply the rule strictly for *kiddushin* we make no distinction and apply it also to *get*.
>
> Alternatively, we are stringent not in the results of our holdings, but in the strictness with which we insist on clarity and precision.

To what general cases of religious matters does the Yerushalmi refer? The Meiri offers two illustrations:

1. To the case of the subpoena to witnesses already discussed.

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[858] See Shevuot 36:2.

[7:2]

2. To the verse which promises that priests who enter the Sanctuary without having drunk wine will live[859], from which we imply the converse that they will not live if they enter after having drunk wine.

But what of one who states "I am not under oath not to obtain benefit from you." Even though oaths are religious matters, R. Meir does not imply the converse, *i.e.,* a positive oath against obtaining positive benefit?![860] Perhaps this reflects the general principle that in matters of oaths words are interpreted in accordance with their every-day meaning, and oaths are therefore judged in the same manner as monetary matters.

Return to the Mishnah. R. Hanina b. Gamliel disagrees with R. Meir. The duplication for Gad and Reuben was necessary to ensure the result should they not cross. The two tribes would share in all of Canaan and Gilead with the other Jews. Otherwise, we might have thought that, notwithstanding that the tribes assisted in the conquest of Gilead, the failure to cross would result in the penalty that the tribes would not obtain land anywhere, let alone in Gilead!

The *halacha* accords with R. Meir, although some commentators rule that reliance can be placed on R. Meir only where this results in a stringent ruling.

[Additional requisites to validity of conditions]

Although the Mishnah refers only to the requirement that a condition must be stated in the duplicate, there are 10 aspects of conditions which are derived from the verse relating to the tribes of Gad and Reuben. They are:

1. Conditions must be double, as already stated.

2. The condition must be stated before the action. Note that Moses did not say "Give them the land if they cross." Where the action is mentioned first, this downgrades the condition. The condition is treated as a mere request that the condition be preformed.[861]

3. The affirmative **action** must be stated first. One who is intent on

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[859]Lev.10:9.

[860]Ned.11:2.

[861]See B.M.94:1 for a disagreement between the Meiri and the Rambam relating to this aspect of conditions.

the performance of his condition takes care to mention first the narrow circumstance in which the action will be valid.

It does not matter whether the first statement of the **condition** is put in negative fashion. The condition of Moses would have been equally valid were it phrased "If you do not stay here in Gilead, you will inherit Gilead...." The fact is that the action, *i.e.,* the inheritance of Gilead, precedes the reverse action, *i.e.,* the failure exclusively to inherit Gilead.

As a further illustration see the Gemara below[862] where R. Meir interprets a verse on *sotah*[863] as containing the double condition "If you did not stray, be clean," and "If you did stray, be strangled." The condition is valid. It does not matter that the first condition is stated in the negative. What does matter is that the positive action (the declaration of the woman's innocence) appears in the first statement.

As a final illustration, it is a valid condition for one to say "If you don't steal my money you are betrothed, but if you do steal, you are not betrothed. The positive betrothal is contained in the first statement.

4. The condition and the action must not deal with the same proposition. It is all right to say "If you cross the Jordan, you will inherit land." It is not proper to say "If you return the paper on which the *get* is written, this is your *get*," or "If you return this *etrog*, it is yours." In each case, the condition is considered contradictory to the action, and is treated as a null jest. The action is valid although the condition is not performed.

5. A condition is valid only where the action is not personal and can be performed by an agent. For example, the settlement in Gilead could be performed by agents. Where the action is personal, such as the case of the mistaken *halizah* discussed below, the action is considered of exceptional power, and cannot be voided by the mere failure of a condition.

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[862] 62:1.

[863] Num.5:19.

Why then can a condition abrogate the effectiveness of *kiddushin* by cohabitation, which cannot be performed by an agent? Because all forms of *kiddushin* are treated alike and share the same rules[864].

6. It must be physically possible to perform the condition. A condition that "You rise to the sky" is invalid, and the action is effective as if no condition had been stated.

What if the condition would require the other person to perform an act which is physically possible but is proscribed religiously? The condition is valid. "Let her not eat [swine], and let her not be divorced!"[865]

7. The condition must not violate the Torah in religious matters. How is this consistent with the rule just stated regarding "Let her not eat [swine], and let her not be divorced!" where the condition is valid? The condition is void only where:

> the condition would apply to the person **who states the condition**, such as to give himself rights he does not otherwise have, or to absolve himself of obligations he otherwise has. An example is "If I have no marital obligation to you, you are betrothed to me."

or

> where the condition affects another by **imposing obligations which the other person does not otherwise have**. An example is a statement to a woman captured in battle "If I may sell you to another, I am taking you as my wife."

8. The condition must deal with an existing matter.

9. The condition must deal with a tangible matter.

10. The condition must be serious on its face, and must not be mere verbiage. For example, a condition is considered verbiage where the condition is stated after the action was already performed, or where the condition is addressed to one who is unaffected and has no interest in the action.

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[864]See Ned.74:1.

[865]Git.84:2.

[7:2]

[R. Hanina's view on formal requisites]

R. Hanina b. Gamliel explains why R. Meir's holding on **duplication** cannot be derived from the case of the tribes of Gad and Reuben. From this Rashi deduces that he argues only with the R. Meir's duplication requirement, but not with the other nine aspects just discussed. Note also the argument by R. Simeon b. Gamliel elsewhere[866] that there are two verses which require duplicate conditions, and that is why the rule **for duplicate conditions** should not be applied universally[867]. The suggestion is that the **other nine aspects** do apply universally.

The Meiri agrees with Rashi, although he expresses some concern with a Gemara elsewhere[868] which holds that R. Hanina disagrees also with R. Meir's rule that the condition must be stated before the action. If R. Hanina disputes this rule too, should he not dispute all of R. Meir's other eight propositions?

All of this is theoretical since the *halacha* accords with R. Meir on all ten aspects.

[Precisely when do formal requisites apply?]

There are numerous views on the scope of R. Meir's holdings. They may be summarized as follows:

I. ***Aspects generally apply only in "if"-type conditions***

What if the condition is stated in terms of "If you do so and so, this is your *get* **effective now**," or the equivalent (also implying retroactivity to now) "**On condition** that you do so and so, this is your *get*." Do the aspects apply? A majority of the geonim hold "no." The 10 aspects apply only where the condition is stated in terms of **if**, without **effective now** language, such as "If you do such and such, this is your *get*."

In the case of "if" the effect of the condition is great. It serves to delay the effectiveness of a present action even if the condition is ultimately performed. Note that should the *get* be destroyed before the condition is performed, the *get* is void. To accomplish this drastic result, the **if** condition must satisfy the 10 rules of R. Meir.

A "from now" condition is less drastic. The effectiveness of the action is not

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[866]Git.76:1.

[867]For if Scripture intended general application, why did not one Scriptural reference suffice?

[868]B.M.94:1.

delayed once the condition is performed; if the *get* is destroyed before the condition is performed the action is still valid. That being so, the majority of R. Meir's rules do not apply.

But what of the condition relating to the tribes of Gad and Reuben? Were they not permitted immediately permitted to settle in Gilead? Yes, but the 10 rules still applied because the words "from now" or the equivalent words "on condition" were not used.

Now, the Gemara holds that where a person performs *halizah* **on condition** that the woman pay him 200 *zuz*, the condition is void and the *halizah* is valid even if the 200 *zuz* are not paid. The Gemara explains that this reflects the rule that a condition is not valid for actions, such as *halizah*, which cannot be performed by an agent. But why does the Gemara apply R. Meir's rules at all? The condition was stated with the **on condition** formulation?! And what of numerous other instances in which the Gemara refers to R. Meir's rules in the context of conditions made with the "from now" or "on condition" formulations?[869] There are several explanations:

> 1. The Gemara is not precise in its use of the terms "from now" or "on condition.
>
> 2. R. Meir (**but not the *halacha***) applies the 10 aspects even to "from now" or "on condition" formulations.

Yes. But the ***halacha*** (not only R. Meir's view) is that a *get* given by a dangerously ill person must state that it is effective "from **now** and after I die," for otherwise the *get* would be void as having been made effective after death. Yet we (not only R. Meir) nevertheless require that the condition be double!

> Perhaps this is a special case in which even the majority follow R. Meir's general rule. We insist on a double condition so that there be no error should the *get* be presented to a *Beth din* which wrongly agrees with R. Meir.

II. ***Some, but not all, aspects are limited to "if"-type conditions.***

Some hold that "now" and "on condition" statements are exempt only from the rule that conditions must be double, and possibly also from the rule that affirmative action must precede the negative. But certain of the other aspects continue to apply. They are logical and are not dependent on derivation from the Gad and Reuben condition. These are the aspects which require that:

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[869] See, *e.g.*, Git.75:2.

[7:2]

It must be physically possible to perform the condition.

The condition may not be violative of the Torah in religious matters.

The condition must deal with an existing matter.

The condition must deal with a tangible matter.

What about the following aspects:

the action and condition cannot deal with the same thing

the action must be susceptible to performance by an agent

The Meiri thinks that these should not apply in "on condition" formulations. R. Ashi holds that a *get* given **on condition** that the paper be returned is a valid condition, notwithstanding that the action and condition deal with the same thing[870]. Besides, if the source of all the aspects is the condition relating to the tribes of Gad and Reuben, if any aspects do not apply to "now" and "on condition," why should the others apply?

III. ***The aspects apply only when another person is directed to satisfy the condition***

Where a person accepts a sharecropping tenancy and states "If I do not farm the field, I will pay you well," the condition is valid without reference to R. Meir's aspects[871]. Some commentators explain that this proves that R. Meir's aspects do not apply to self-directed conditions. Were R. Meir's rules to apply, the condition would have been ignored, and the action (to pay well) would apply even if the farmer did his duty. The statement would therefor be inherently nonsensical and would not enforced.

Others maintain that the case can be distinguished on the ground that the requirement to pay the landlord where the land is left fallow is the appropriate rule even if the condition were not stated. The Meiri concurs.

> The initial commentators disagree, and note that the farmer promises to pay **well**. To them this indicates that there is a promise to pay more than is appropriate on the application of straight law. Nor is the amount so excessive as to constitute an unenforceable *asmakhta* penalty. An example

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[870] Git.75:2.

[871] B.M.104:1.

of an *asmakhta* penalty would be a promise to pay 1,000 *zuz* (a huge sum) if a field is not farmed.

IV. ***Conditions to retention of funds as distinguished from conditions for extracting funds.***

Some commentators hold that we insist on R. Meir's aspects only where this would result in the retention of funds.

V. ***Conditions directed to a person's agent.***

Where a person directs that his agent take certain actions on stated conditions, the conditions must be fulfilled even if they do not satisfy R. Meir's aspects. An agent has power to act for his principal only as expressly instructed.

VI. ***R. Meir's aspects do not apply to monetary matters generally.***[872]

The Alfasi and the Raabad hold that R. Meir's rules do not apply to monetary matters. The Rambam disagrees. The essence of this dispute was mentioned previously in the interpretation of the Yerushalmi which discusses R. Meir's views.

Here are the arguments which are presented in this context:

1. The Raabad explains that monetary matters are generally fixed by *kinyan*. Where there is a *kinyan*, this is the equivalent of a "from now" statement[873]. The Raabad then applies the holdings of the commentators who do not apply R. Meir's rules to "from now" conditions.

2. In monetary matters we give legal effect even to presumptions and appearances which we consider obvious. A non-double condition should have a status at least equal to an obvious presumption!

The opposing view holds that a presumption which is obvious to all observers should indeed have greater weight than a "condition" which may have been intended only as a request, rather than as a matter which can countermand an action.

3. The Rambam points out that the Gad and Reuben condition, from

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[872]For a related discussion relating to mental reservation, see 49:2.

[873]See B.B. 137:1.

which R. Meir derives his aspects, in fact deals with monetary issues of land division!

The Meiri does not think this is valid evidence:

i. A monetary division which is Divinely dictated is treated as religious rather than monetary.

ii. Perhaps R. Meir would in fact apply his rules even monetarily, given his derivation from the Gad and Reuben condition. We, on the other hand, rule with R. Meir only as concerns *get* and *kiddushin*.

4. Recall the Yerushalmi which notes that R. Meir implies converses **generally**, so as not to require duplication, except for *get* and *kiddushin*. The word **generally** can be taken as referring to all else other than *get* and *kiddushin*, *i.e.,* all other religious matters **and all monetary matters**.

Alternatively, the word **generally** can be taken to mean in religious matters generally, without there being any reference to monetary matters.

5. Recall Samuel's rule, discussed previously, that a bequest made by a dangerously ill person must state that it is effective "from **now** and after I die," in double form. Does this not contradict the Alfasi and the Raabad?

Again, perhaps **R. Meir** applies his rule even monetarily. We then insist that the condition be double to validate the condition according to all views, so that there be no error should the deed of bequest be presented to a *Beth din* which wrongly agrees with R. Meir.

6. How do the Alfasi and the Raabad explain another Gemara's holding[874] that a condition must precede the action even in a monetary case? Again, that particular Gemara may follow R. Meir's holding, with which we do not agree.

Other commentators suggest yet another explanation on how the Alfasi and the Raabad can be reconciled with the Gemara which deals with obvious presumptions

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[874]B.M.94:1.

and the fact that the case of Gad and Reuben was monetary:

> A double condition is required monetarily only where it appears that a transaction is entered into willingly, such as the whole-hearted gift of Gilead to the tribes of Gad and Reuben. In such cases, we need particularly strong conditions to void the transaction.
>
> The rule is otherwise where the transactions are not willing, such as where there is a strong obvious presumption which supports a mental reservation[875]. Here a non-double condition is as effective as an obvious presumption, and actions which reflect the participant's state of mind are as effective as a single condition.
>
> The effect of these rules is evident in the following cases:
>
> > 1. Assume that one sells with the view, known to all, to apply the sales proceeds to the purchase of X. If it turns out that X is not available for purchase, the seller can rescind his transaction if there is a single condition.
> >
> > 2. The penalties of *asmakhta* are void even where there is no double condition, as mentioned in the earlier discussion. Here, too, there is a presumption that the person to be subject to the penalty does not wish the penalty promise to stand.
> >
> > 3. Where it is evident that sale is forced by exigencies, such as to purchase food or to emigrate to Eretz Israel, even a single condition is sufficient.

VII. ***R. Meir's rules apply only where the action is taken immediately.***

Moses gave possession of Gilead to Gad and Reuben immediately upon stating the condition. The duplication of the condition is required in order to allow the drastic result of conditioning an action which was already taken.

In this view, even those who apply R. Meir's rules monetarily would exempt the double condition where the monetary action is deferred. An example is a case in which A promises to give B an object when B performs a condition. The condition is valid. This is supported by a Gemara[876] which holds that where A says "If B marries

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[875]See 49:2.

[876]Betzah 20:1.

my daughter give him 200 *zuz*": the condition is valid, and the *zuz* are given only if the condition is satisfied.

What then is meant by the rule that the condition must precede the action? Not that the condition must precede the performance of the action, for as we have explained, even in the case of Gad and Reuben the action was performed immediately, long before the condition was satisfied. Rather, the rule requires only that the condition **be expressed** before the action **is expressed.** The Meiri elsewhere[877] discusses the Rambam's differing view on this.

[Explanation of Gemara's dialogue between R. Meir and R. Hanina]

This completes the Mishnah. The following summarizes the Gemara's analysis of the dispute between R. Meir and R. Hanina and indicates what *halachot* may be derived from the Gemara.

R. Meir: Without the second condition, Gad and Reuben would have succeeded to all of Gilead **even if they did not pass!** This proves that the first condition, standing alone, would not have countermanded the first action: the grant of all of Gilead.

R. Hanina: One condition is enough to countermand an action. Even without the second condition, the tribes would not have succeeded to Gilead if they failed to pass.

The second condition is necessary to correct a possible misapprehension. We might have thought that the tribes would be **penalized** if they did not pass. That is why the verse must teach that should they fail to pass, they would not be penalized, but would retain equal rights with other Jews.

What penalty might have been asserted? Most certainly that they receive no land in Gilead, where a penalty is more appropriate because they coveted it and (unlike Canaan) the Jews did not have primeval rights in it. But the penalty would be greater. We would not give them land even in Canaan!

R. Meir: To teach that there is no penalty, the second condition should have stated only "but if they shall not pass they shall have possession among you."

Why the additional words **in the land of Canaan**? To duplicate the first condition and countermand the action: The tribes would not receive all of Gilead if they did not pass, they would share only in the land of Canaan.

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[877] B.M.94:1.

[7:2]

R. Hanina: The first half of the statement teaches that there is no penalty. As explained below, once there is no penalty, we automatically know that if the tribes fail to pass, they will share in Gilead which they helped conquer. The second half of the verse (in the land of Canaan) teaches that they will share not only in Gilead but also in Canaan.

R. Meir: **Among you** is sufficient to teach that the tribes share everywhere. The only possible meaning of the words **in the land of Canaan** is to duplicate the first condition and countermand the action: The tribes would not receive all of Gilead if they did not pass, they would share only in Canaan.

R. Hanina is not persuaded by R. Meir's rejoinder and their dispute at this point stands.

Note that in this discussion it is implicit that **penalties** would more likely have been assessed in Gilead than in Canaan, on the ground that Gad and Reuben coveted Gilead and on the further ground that (unlike Canaan) the Jews did not have primeval rights in Gilead. That is why the Mishnah speaks in terms of "for otherwise it implies that they should have no inheritance even in Canaan," implying **and most certainly not in Gilead**. But once we determine that penalties are not appropriate, as in R. Hanina's last rejoinder, it becomes more appropriate for Gad and Reuben to share in Gilead, in whose conquest they assisted, than in Canaan, in whose conquest they would not have assisted.

[Analogous rules where bequest is made on condition]

R. Hanina then seeks to bolster his view by comparing the Gad and Reuben case to a father who bequeaths Field A to son A and Field B to son B. The father directs that son C is to have the right to pay 200 *zuz* to sons A and B and is on account of the payment to obtain superior field C. The father adds that should C not pay the 200 *zuz* he shall maintain **the right to inherit the shares of Fields A and B (as well as Field C) which C would have inherited had the father not offered him the opportunity alone to succeed to Field C by making payment.** The additional language is significant, for it emphasizes that C is to have inheritance rights apart from his 200 *zuz*, so that if he fails to pay the 200 *zuz* he will share in all three fields with A and B and not only obtain his share in Field C.

The same applies to Gad and Reuben. Were Moses not to make his express second statement, we would have thought that if Gad and Reuben did not pass they would not share at all in Canaan which was set aside for the other Jews.

One of the Sages listened to this discussion and recalled our earlier analysis that **penalties** are more readily assessed in Gilead than in Canaan, and that were it not for the "take possession" language, Gad and Reuben would been penalized and

[7:2]

would have received nothing. The Sage therefore asked that the analogy bears no similarity to the Mishnah, because in the analogy were it not for the father's statement C would at least have received his share of C, for there is no reason to penalize C.

The Gemara responds that R. Hanina's analogy is proffered only at the stage where it had been determined from the **take possession** language that penalties were not appropriate, and R. Meir had explained that the source of his double-condition rule was the reference to the **land of Canaan.** Recall that R. Hanina had responded that the purpose of these words was to give Gad and Reuben a share in Canaan as well as in Gilead. It is at this point that the analogy comes into play and is appropriate.

[61:2]

There remain certain issues with respect to the case of Fields A, B and C:

Another Gemara[878] holds that where one says "Give 400 *zuz* to X and let him marry my daughter," the money must be given although X need not marry the donor's daughter. But where the donor says "If he marries my daughter, give him 200 *zuz*," the money is given only if X marries the donor's daughter.

Should not the same rule apply in the analogy? Where the father says "let him inherit, and let him give," should not C inherit field C, even if he does not give? The Meiri holds no, for reasons discussed elsewhere[879].

What if the father says "If C does not pay, let him not inherit at all"? The statement is invalid because one cannot totally disinherit a son. But any bequest which the father makes to A and B is valid and is indirectly sufficient to remove C's rights[880].

As stated, if the father says "If he does not give the 200 *zuz*, he shall inherit with the others," without specifying in which fields C is to share, the *halacha* is that son C obtains only his share of Field C. But why do we not apply R. Meir's holding that **take possession among you** means wherever you are? Why do we rule with R. Hanina?

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[878] Betzah 20:1.

[879] Id.

[880] B.B.129:1.

[7:2]

The Meiri offers two explanations:

1. We prefer R. Hanina's view where there are no conditions and the matter is a purely monetary interpretive dispute.

2. Perhaps the distinctions between the father's statement and the Scriptural verses are so numerous that comparisons are not appropriate at all.

[62:1]

[*sotah* as bearing on the dispute between R. Meir and R. Hanina]

The Gemara discusses the verses:

And the priest shall make [the *sotah*] swear "If you did not stray... be clean....

And if you did stray....the priest shall make the [*sotah*] swear [an oath]

Note that there is no express statement that the *sotah* is not to be clean if she did stray. The Gemara suggests that this supports R. Hanina's view that conditions need not be double.

What of R. Meir? He holds that because of the absence of the letter *yod,* the word "be clean" can also be read as "be strangled," and this satisfies the requirement that conditions be double.

How does R. Hanina explain the missing *yod*? To teach that if the woman did stray the transgression must be punished.

But, the Meiri asks, do we not know in any event that the whole purpose of the *sotah* ritual is to punish a straying woman? Do we not know that an adulterer is strangled? The Meiri explains that the verse is necessary in those circumstances where

the waters proffered to the *sotah* do not determine her guilt (such as where she cohabited with the adulterer before cohabiting with her husband or where her husband himself was not free of sin), or

she is not subject to the Beth din's punishment (such as where there are no witnesses and proper warnings).

In these cases, the missing *yod*, with the "be strangled" reading, constitutes a

warning that G-d has many avenues of recourse. Compare the dictum that although capital punishment has been abolished, G-d still metes out equivalent punishments[881].

[Certain rules on sprinklings with ashes of the *parah adumah*]

One who is unclean on account of a dead person must be sprinkled with the ashes of the *parah adumah* on the third and seventh days of his uncleanliness in order to eat *terumah* or *kodshim*. The interval between the sprinklings is three full days.

What if he is sprinkled on the second day, and waits three full days before he is sprinkled on the sixth day? The sprinkling is invalid, because the first sprinkling did not have the requisite separation from the time he became unclean.

What if he is sprinkled on the third and on the eighth day? Here the separation between the sprinklings is excessive.

But if there are additional days which separate uncleanliness from the first sprinkling, and if the second follows the first by no more than three full days, the sprinkling is effective. An example is a sprinkling on the fourth and on the eighth days[882].

Why then does the Gemara state that sprinklings on the fourth and eighth days are ineffective? The textual reading is improper and should refer to sprinklings on the **third** and eighth days. Alternatively, the teaching is that it is **preferable** to accomplish the sprinklings timely on the third and on the seventh days.

[Mental conditions are not valid]

The next Mishnah reads:

> If he betroths a woman and then declares "I thought she was a priest's daughter, whereas she is a levite," or "a levite whereas she is of a priest"; "poor, whereas she is wealthy," or "wealthy, whereas she is poor," she is betrothed, since she did not deceive him.

This Mishnah was explained previously[883] in the second *perek*. It would more

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[881] Sanh.37:2.

[882] The Meiri supports this rule by reference to the Sifri.

[883] 49:2.

appropriately have been placed in that *perek*, but is placed here only to teach that although R. Hanina does not require a double condition, he does require that the condition (albeit single) be expressed aloud. Conditions maintained in the mind or the heart are ineffective.

The Gemara adds nothing.

[Conditions whose fulfillment depends on acts of others]

The Mishnah continues:

> If he says to a woman "You are betrothed to me after I become a convert," or "after you become a convert," or "after you are liberated," "after your husband dies, "after your sister [who is married to me] dies," or "after your *yabam* performs *halizah* for you," she is not betrothed.

There is no betrothal "after you become a convert" or "after I become a convert" even if the funds of the *kiddushin* still exist at the time of the conversion. At the time of the *kiddushin* the man cannot alone obtain a status which permits *kiddushin*.

But where the man is to be converted, is not his conversion within his power, and if so why do we not apply the dictum that actions which are within one's power are considered as already accomplished? Because conversion, and the capacity to marry a Jewish woman, require that the convert immerse himself in a *mikveh* in the presence of a three-person Beth din. Who can say that a Beth din will accommodate the convert?

Similarly where he or she is a slave he is not in a position alone to obtain a status in which valid *kiddushin* can be had. But what if she is his slave? In this case he can liberate her on his own, and her immersion does not require a Beth din, because a Beth din was already present when she converted. Nor does her immersion even require witnesses, because her master's testimony is sufficient!

> She cannot be betrothed because once liberated she is considered a person different from the slave who received the *kiddushin*. This rule applies only to Canaanite slaves or maidservants and members of the seven nations who inhabited Canaan (all of whom are deemed nations equivalent to asses). The rule does not apply to other gentiles.

She is not betrothed "after your husband dies," or "after your sister [who is married to me] dies," because it is not within his power to betroth her now.

She is not betrothed "after your *yabam* performs *halizah*." The Mishnah holds

that *kiddushin* do not attach in a woman who requires *halizah* notwithstanding that her prohibition is based solely on the negative precept (without the penalty of *kareth*) under the verse "The wife of the dead man shall not be [married] to the outside."[884]

What of the general rule that *kiddushin* attaches to women whose marriage is not forbidden on pain of *kareth* or capital punishment? The Mishnah holds that *halizah* is an exception on account of the word **be** in the verse just mentioned, which suggests that there is be no state of **being** in which the woman can have a marital relationship prior to *yibbum* or *halizah*.

Certain commentators hold that the *halacha* accords with the Mishnah. They note, for instance, that both R. Johanan and R. Simeon b. Lakish agree with our Mishnah[885]. They also note the subsequent reference to the Mishnah's rule in our Gemara[886].

However, most commentators are uncertain whether the verse is intended only to convey a negative precept, or whether it extends also to invalidate any state of marital being. Accordingly, *kiddushin* to a woman who requires *halizah* results in questionable betrothal. Why then does another Gemara[887] say that all agree that a child is not a *mamzer* if born to a man who cohabited with a woman who required *halizah*? The Gemara means only that the child is questionably a *mamzer* rather than a certain *mamzer*.

R. Akiva holds that *kiddushin* cannot attach to any woman who is forbidden by negative precept, and that therefore a child born of any such union is a *mamzer*. But, paradoxically, even R. Akiva agrees that a child born of a woman who requires *halizah* is not a *mamzer*[888]:

> The fact that the negative precept is expressed in terms of **being** (which should not be necessary for R. Akiva in light of his general view) suggests that this is an isolated case in which there is in fact **being** if the negative precept is

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[884]Deut.25:2.

[885]Yeb.92:2.

[886]68:1.

[887]Yeb.49:2.

[888]See Rashi at Yeb.49:2.

transgressed.

[Future transfers]

The Mishnah continues:

> If he says to his neighbor "If your wife gives birth to a girl, she is betrothed to me," she is not betrothed.

The Mishnah reflects the majority view that one cannot now transfer to any person the future form of an object (*e.g.,* a fetus given in *kiddushin*) which is yet incomplete. Similarly, a transfer of a complete object cannot be made **to** a person (*e.g.,* a fetus) who will be perfected only in the future.

R. Eliezer b. Jacob disagrees. He holds that *kiddushin* attaches to a fetus which has become noticeable. Note that Rabbah and R. Joseph disagree on precisely how incomplete R. Eliezer b. Jacob would permit a transferable object to be. When the Gemara states that "all agree" that *kiddushin* attaches at this stage, the reference is not to the majority, but rather to Rabbah and R. Joseph in their dispute on the meaning of R. Eliezer. The Meiri therefore disagrees with the Rambam who states that even the majority would validate *kiddushin* of a noticeable fetus[889].

Some explain that the Rambam validates *kiddushin* only where the man postpones the *kiddushin* until birth; at **that time** the fetus is fully competent to accept transfers. The Meiri objects: the Rambam holds that a transfer **to a fetus** is invalid, and the Rambam[890] does not distinguish on whether the transferor attempts to delay effectiveness until birth!

> Some commentators are not as certain as the Rambam that a delayed transfer to a fetus is invalid. These commentators rule that there is questionable *kiddushin* where one betroths a noticeable fetus effective upon its birth.

This completes the Mishnah. The Gemara discusses the following:

Produce is not liable to *terumah* while it is attached to the ground. It is only

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[889]The Rambam does require that the girl be betrothed anew upon birth in order that there be *kiddushin* without question.

[890]A view in which the Meiri concurs.

when harvested that *terumah* can be the "first of your grain."[891] If one offers attached produce as *terumah* for harvested produce, and harvested produce for attached produce, there is no *terumah*. All remains *tebel*, and *terumah* must be separated: for the harvested produce now, and for the attached produce when it is finally harvested.

But harvested produce **is** *terumah* if it is separated for attached produce for delayed effectiveness **when the attached produce is harvested**. Similarly where attached produce is offered as *terumah* for harvested produce effective when the *terumah* is harvested.

> What of the rule that one cannot affect the status of an object which exists only in the future?
>
> The rule presents no problem. Matters within one's power, such as harvest, are deemed to have already occurred. Compare the case of a person who now owns a field which he proposes to resell and repurchase. He may consecrate the field now effective as of his repurchase; it is within his power to consecrate it **now** before he sells it.

There is one additional requirement. *terumah* applies to produce only once the produce has grown to at least one-third of its full maturity. It follows that in our case, we must insist that the minimum size have been attained, so that in fact the owner could cause traditional *terumah* by the mere act of harvest.

The owner's act is invalid where the minimum size is not reached, even where the produce is sufficient for animal fodder, and even more so where the produce has only attained leek-like size. (Produce which is leek-like is large enough to bend its head over, but is not yet sufficiently mature to serve as fodder.) Nor does it matter for this purpose whether the produce grows in an irrigated field or in one which relies on rainwater.

The one-third in size requirement applies for *terumah* only. As far as concerns sales transactions, produce is considered to exist from the point of blossoming.

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[891] Deut.18:4.

[7:2]

[62:2]

Recall the rule that it is not within a gentile's power to convert because the cooperation of a Beth din is necessary. The rule is otherwise for divorce, where a Beth din is not necessary, and all that is required is a scribe and witnesses. A scribe and witnesses are assumed to be available to all who require them.

[Present betrothal and re-betrothal after future divorce]

If one says to his wife "Here is a *perutah* with which I am now betrothing you effective after I divorce you" there is no *kiddushin*. It is within his power to divorce her, but it is not within his power alone to betroth her.

What if the woman is not yet married to him, and he gives her two *perutahs*, saying "I am betrothing you with one *perutah*, I will then divorce you, and I am now betrothing you again with the other *perutah*"? The Gemara at first suggests that here, too, she should not be betrothed. But the Gemara then appears to be uncertain, suggesting that **perhaps** this case may be different because at least one of the man's actions is given effect, *i.e.,* the current *kiddushin*.

> Most commentators seize on the **perhaps** formulation to rule that there is questionable betrothal.
>
> Other commentators rule that there is no betrothal at all, based on a Gemara in Nedarim[892]:
>
> Assume that a person consecrates plants as *hekdesh* until "the plants are harvested." If he redeems the *hekdesh* prior to the harvest, the redemption is valid momentarily, sufficiently so that the redemption funds themselves become *hekdesh*. But the person's initial action in insisting that *hekdesh* apply until the harvest results in the immediate reassertion of *hekdesh*.
>
> R. Johanan holds that this result obtains only where the **owner** redeems. Where another redeems, the plants are within the other's power until the harvest, and *hekdesh* cannot reestablish itself where the owner himself is powerless to reestablish *hekdesh*.
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> The Gemara then considers it certain[893] that the same rule should apply

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[892] 30:1.

[893] In fact, R. Yermiohu was angry that his students failed to recognize the similarity in the two cases.

[7:2]

> where a person gives two *perutahs* to a woman not married to him, saying "I am betrothing you with one *perutah*, I will then divorce you, and I am now betrothing you again with the other *perutah*." Here, too, once she is divorced her husband is powerless to betroth her then. That being so, his initial statements and his initial *kiddushin* should be insufficient to reestablish *kiddushin*.

Nevertheless, other commentators hold that the Gemara's comparison of our case with *hekdesh* redeemed by another is not a flat holding, but rather only a possible reading which the Gemara suggests. For, in fact, our case is logically distinguishable on the ground that the woman wishes to be betrothed after the divorce. In the case of *hekdesh* there is no corresponding will. The Meiri rules that the uncertainty is sufficient to institute questionable *kiddushin* where the woman understands and is willing to be betrothed.

The Meiri considers surprising the Rambam's holding that the woman is absolutely betrothed. The Rambam's source is the Gemara which holds that the owner of a field can consecrate it as *hekdesh* effective after he sells it and repurchases it. Likewise, the Rambam assumes that where one consecrates plants until the harvest, he may re-consecrate them effective **after he repurchases them** from another person who will redeem them.

The proof is weak. In our case the woman has her own mind, and it is more difficult to reestablish rights over her, than it is over an inanimate field or an inanimate plant[894].

[63:1]

[**Purchase of slave for purposes of redemption**]

Where one purchases a slave with the intent to emancipate him, the slave cannot complain if the master reneges. The slave is his master's property and as such has no standing to assert or obtain any rights.

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[894]Note that the logic of this distinction is somewhat at odds with the discussion in the prior paragraphs.

[7:2]

But what if the master tells him prior to the purchase "You are now redeemed effective as of my purchase." This, too, is invalid, for the master's rights in the slave are in the future, and future rights cannot be assigned. The slave therefore remains the purchaser's property, and he must be returned to the purchaser should he escape and be captured.

There is one exception to this rule: where the slave escapes from outside of Eretz Israel to Eretz Israel. It is to this case that we apply the verse "You shall not deliver a slave unto his master."[895] The master is compelled to deliver a deed of emancipation to his slave, and the slave delivers to the master a note by way of redemption. The master collects on the note when the slave can pay.

[Wife's vow on her labor]

The Sages decreed that a husband owns his wife's labor, in consideration of his obligation to provide her with food. Another Gemara[896] prescribes the amount of labor which the wife must perform. But if she exceeds the minimum, all of her labor still belongs to her husband.

A married woman cannot use a vow to avoid her husband's right to her labor. The husband has a lien on this labor, even labor in excess of the minimum, and the wife cannot unilaterally destroy this right. But where the woman renounces her rights to her husband's support, she can utter such a vow, and the vow is effective. The only condition is that the vow take the form "My hands be prohibited to my husband insofar as concerns their future labor." If she fails to use this formulation, the vow is invalid because it purports to attach to labor which does not yet exist.

Of course, even where the vow is valid, the husband retains the right to annul the vow.

It is wise for the husband to annul a vow which is properly formulated but is invalid because the wife has not renounced his support. Otherwise, the vow will be effective should he divorce her and free himself of his support obligations. Nor will he have the power to annul her oaths once she is no longer his wife. If this occurs the husband will not be permitted to remarry her: there can be no marital relationship where the husband cannot obtain any benefit from his wife's labor[897].

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[895]Deut.23:16.

[896]Keth.64:2.

[897]See Keth.59:1.

[7:2]

[*Kiddushin* by the benefit of a man's future labor]

The next Mishnah reads:

> If one says to a woman "You are betrothed to me on condition that I speak for you to the governor," or "that I work for you as a laborer," if he speaks for her to the governor or works for her as a laborer, she is betrothed. Otherwise, she is not betrothed.

The value given in *kiddushin* is not the benefit of the discussion with the governor or the benefit of the husband's labor. The discussion and labor are **conditions** to a *kiddushin* which is brought about by other value, such as a *perutah*.

Were the *kiddushin* proposed on the basis of the benefit of the discussion or labor, there would be no *kiddushin* even if he performs these actions. The same applies to the other actions listed in the Gemara, such as to mount the woman on a donkey, or to sit in the woman's company, or to dance for her, or to do as was done in a public game.

> In each case, the woman's liability to pay wages for the man's labor accrues as a debt as the labor is performed. In effect the man is attempting to betroth, not by granting his labor to her, but by way of his **forgiveness** of the woman's **debt** to him.[898] Betrothal with a debt is invalid.

[Where the man and women disagree on whether a condition was performed]

The Geonim disagree on the proper rule where the man and the woman dispute whether a condition was performed. The Meiri suggests that the following principles should apply:

> 1. Where the condition is that she not perform an action she is believed when she claims that she satisfied the condition and did not perform the action.
>
> This proposition is evident from another rule. Where a husband gives his wife a *get* on condition that **she not perform an action** until a designated time we permit the wife to remarry immediately without insisting that she wait until the designated time to be certain that the action is not performed.
>
> Were the husband to be believed if he claims that his wife did

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[898]The Meiri further explains these concepts at 48:1.

> perform the action, how could we allow the woman to marry without witnesses who monitor her constantly to be able to testify that the action was not performed?
>
> 2. Where the condition is that **she does perform an action**, the person who wishes to establish the action must prove it, whether the person is the man or the woman.

The Ramban disagrees and holds as follows:

> 1. We always credit the person who was to perform the action. For example, the Ramban would credit the man if he claims that he has spoken to the governor or that he has walked to such and such a place. Similarly, where the condition is that she perform an action, she is believed if she claims to have performed it.
>
> 2. Consider a case in which both the man and woman must participate in the designated action, such as where the condition is that one give the other 200 *zuz.*? What if the woman claims that the condition was not satisfied? Here the Ramban suggests two approaches:
>
> > The person who announced the condition, namely, the husband, must prove that the action was performed; or
> >
> > She is believed in the case of *kiddushin* where the result would be to preserve her unmarried status, and he is believed in the case of divorce where the result would be to preserve her status as his wife. In other words, we change her status only where the claimed action is proved.

The text of the Yerushalmi on this topic is confused and cannot be relied upon. Still, the Yerushalmi is somewhat supportive of the view that we respect a presumption in favor of continuation of the woman's prior status.

Assume that a man betroths a woman on condition that he give her 200 *zuz* before 80 days pass. In the general case, as noted, the man must prove that he gave her the money, since the man desires to change her marital status. What if the man marries her before the 80th day?

The Yerushalmi recounts that in such a case R. Abbahu held for the wife and required that the husband pay her the money. In entering into the marriage the woman intended her marriage to be absolute and waived the right to annul it should he not give her the money; the woman did not want a non-firm marriage in

which her children could be rendered illegitimate were the husband not to pay. But conversely, there is an implicit agreement that the payment, although no longer a condition, become an absolute obligation of the husband which the woman can enforce until he proves that the money was paid.

This completes the explanation of the Mishnah. The Gemara contains nothing which we have not explained.

[*Kiddushin* subject to father's consent; meaning of "consent"]

The next Mishnah reads:

If he says "On condition that my father consent":

If his father consents, she is betrothed; if not, she is not betrothed.

If his father dies, she is betrothed.

If the son dies, the father is instructed to say that he does not consent.

The Mishnah's reference to **consent** can be interpreted in three ways:

1. That the father **affirmatively consent**. If so, there should be no betrothal where the father dies before consenting.

2. That the father **fail to object** when he first hears. It does not matter whether he objects later. Further, the emphasis is on **objection**, so that where the father dies without having been informed there is *kiddushin*.

3. That the father **permanently refrain from objecting** even after he has affirmatively approved or remained silent. If so, there can never be *kiddushin* so long as the father is alive.

The first part of the Mishnah holds that she is betrothed if the father consents. The condition for the purposes of this part can be explained as either referring to the father's **affirmative consent**, or the father's **initial failure to object**.

The second part of the Mishnah holds that she is betrothed if the father dies, whether or not he heard before he died. For this part consent cannot mean **affirmative consent**, for there was none. But the latter two explanations are possible: the **initial failure to object**, and the **permanent failure to object**.

The third part of the Mishnah teaches that where the son dies we **instruct** the father to object in order that the woman not be tied to her *yabam*. Obviously, at the

time of the son's death the father had been informed and had initially failed to object. For otherwise, the *Mishnah* should have said we **inform** him rather than we **instruct** him. Nevertheless, the father can still revoke his consent. It must be that there is *kiddushin* only if the **father permanently fails to object**.

It follows that the condition cannot be uniformly interpreted across all three parts of the Mishnah[899]!

The Gemara explains that there is one interpretation which is generally suitable. The condition is that the **father fail to object within a designated time**, such as in 30 days. She is engaged in the first part where the 30 days have passed and the father fails to object. In the second part, she is betrothed when the father dies, for he will not have objected within the 30 days. In the third part, we instruct the father to object within the 30 day period in order for the woman to be free of the bonds of *yibbum*.

The Meiri then summarizes the *halacha*.

1. Where the condition is that the father not object for a designated time:

    i. Where the father does not object within the allotted time, there is betrothal even if the father was never informed before the time lapsed, and even if he died without having been informed.

    ii. There is no betrothal if the father objects within the allotted time.

    iii. There is no betrothal if the father objects within the allotted time, even if he previously consented affirmatively, and even if the son has

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[899] The Raabad disagrees on the interpretation of "initial failure to object":

He requires that the father hear and fail to object before either he or the son dies. If the father dies before hearing there is no *kiddushin*. In the Mishna's second case, the father in fact heard and failed to object. But would it not be more relevant for the Mishna to say that the father heard rather than that he died? No. The point is that there is *kiddushin* although death cut off the possibility of **affirmative consent**.

How then does the Raabad deduce from the third part of the Mishna that the father can revoke even after he heard and failed to object? Perhaps there the father never heard before the son's death and **that** is why he can still revoke?! Because the Raabad maintains that from the second part we know that the father heard and failed to object before he died, so presumably the father heard and failed to object before the son died in the third part.

died.

2. Where the condition is that the father **never** object:

> i. There is no betrothal so long as the father is alive, even if the father affirmatively consents. This applies even where the son marries the woman; the father can later object and blemish the status of children of the marriage.
>
> ii. Where the father dies there is betrothal whether or not the father had been informed.
>
> iii. Where the son dies, we instruct the father to object so that there be no *yibbum* bonds.

3. Where the condition is that the father be silent initially the rules are as stated previously.

4. Where the condition is that "my father say yes," most commentators hold that there is no *kiddushin* if the father is silent on being informed.

The Meiri holds that there is questionable *kiddushin* because the father may say yes at a later time, just as we are concerned that a father who does not object immediately may later object.

All agree that there is no *kiddushin* if the father dies before having said yes.

5. What is the ***halacha*** where a man uses the Mishnah's formulation (as originally understood by the Gemara) "on condition that my father consent"? The matter is unclear. The commentators interpret this variously as "that my father be silent," or "that my father say yes." It is appropriate to apply the stringent rulings of each interpretation.

Can the phrase also be interpreted as "on condition that my father not object"? This is questionable:

> Another Gemara[900], deals with the case in which a man tells a woman "I will marry you on condition that my father consents." The Sages hold that there is betrothal even if the father does not consent, whereas R. Simeon b. Gamliel holds that there is betrothal only if the father consents.

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[900] Keth.73:2.

[7:2]

> At one point, the Gemara suggests that the dispute is whether the phrase means the father's affirmative consent or whether it means the father's silence. True, this interpretation does not survive the Gemara's final analysis, but still note that the Gemara never even **considered** that the **failure** to object is a possible interpretation.
>
> The Meiri emphasizes the tentative nature of the Gemara's discussion. He therefore thinks it appropriate also to apply the failure-to-object interpretation when this results in stringent rulings.

The rules of *berera* also have application in this context[901].

[63:2]

[Credibility of third person where it is uncertain to whom a father betrothed his daughter]

The next Mishnah reads:

> If a man declares "I have given my daughter in betrothal, but do not know to whom," and then another comes and says "I betrothed her," he is believed. If one says "I have betrothed her," and another says "I have betrothed her," both must give a *get*. But if they wish, one can give a *get* and the other can then marry her.

A father is believed when he declares that he betrothed his *ketannah* or *na'arah* to a particular person. Where the father does not remember to whom he betrothed her, she can marry no one.

Where a second person comes and claims that the betrothal was to him we believe him, not only

> to permit her to marry a third person after obtaining a *get* from the second, on the theory that a person does not sin for the sake of another,

but also

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[901]See Git.25:2; 26:1.

> to permit the second person himself to marry her, without additional *kiddushin*[902], on the theory that, even if he were disposed to lie on account of his desire for the woman, he would be intimidated by fear that the father would contradict him.

Since the second may marry her only because we rely on his fear of contradiction, it follows that he cannot marry her where the father is not alive. He can, however, give her a *get* sufficient so that she may marry others: for this purpose we rely on the presumption that one does not sin for the benefit of others. It also follows that where the father contradicts him, even his *get* is meaningless.

Assume that a person claims that the betrothal was to him, and the father is at first silent but later contradicts the person and maintains that he had betrothed his daughter to another. The Meiri would believe the father in this case, too. He disagrees with the Raabad who would require a *get* from the first person in this case. The Raabad explains that this is the case to which the Gemara refers when it says that the person is believed [the Raabad assumes against the father] "to give a *get*."

Where each of two persons claim that the betrothal was to him, we know that one is lying, but we do not assume that both are lying. That is why she can marry freely once she obtains a *get* from both. This is also why where one gives a *get* the other may marry her. However, he must provide new *kiddushin:* she may actually have been betrothed to the one who gives the *get*.

What if one person marries her before a second comes to object that the betrothal was to him? The second person has no credibility. The only exception is that the father can undermine the first's marriage, as explained previously.

This completes the Mishnah. The Gemara discusses the following.

Where a woman declares that she was betrothed, but does not remember to whom, she may marry no one. If a man then announces that he was the one, he may not marry her. It is possible that he desires her, and that she seeks to protect him so that she may marry him.

[Limits on father's credibility on to whom he betrothed his daughter]

The father's credibility is not sufficient to cause one who cohabits with his daughter to receive punishment. This applies not only

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[902]If we were to require additional *kiddushin* then the father's *kiddushin* must have been to another! How then could we permit the second to marry her?

> where the father does not recall to whom he betrothed his daughter, and the cohabiting person may have been the person to whom she was betrothed so that no penalty is appropriate,

but also

> where the father asserts that the cohabiting person was not one of those to whom the father may have betrothed his daughter,

and also

> where the father asserts that the cohabiting person was a minor or a gentile at the time and who therefore could not have been the person who betrothed his daughter,

and also

> where the father or the woman or both affirmatively state flatly that the father betrothed her to so and so (who is not the cohabiting person), but there are no witnesses.

Insofar as concerns punishment of the woman or the cohabiting person, there are no facts, even admission, which establish that a woman is betrothed. Witnesses are essential.

The same lack of credibility for punishment applies to one who testifies that his cohabiting son or daughter had reached the age of intercourse, *i.e.,* age nine years for a boy, and age three years for a girl.

Now, a father is believed when he testifies that his sons and daughters have reached the age at which their oaths, *erukhin*, *heramim* or *hekdesh* are valid regardless of whether they had signs of puberty or understood the meaning of their action. This age is 13 years and one day for a boy, and 12 years and one day for a girl.[903] But the father's testimony cannot be credited where this would result in punishment to the son or daughter for transgressions.

May we rely on presumptions based on commonly held opinions? Such

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[903]Note that during the one-year period prior to these respective ages (*i.e.*, from age 12 and one day in boys and age 11 and one day in girls), vows and *hekdesh* are valid only if the boy or girl understands the meaning of his or her action. It does not matter that there are signs of puberty; at this age the pubic hairs are assumed to be mere moles. At younger ages, all actions are invalid even if there is understanding.

[7:2]

presumptions cannot be used to determine whether there was an act of *kiddushin*, but they can be relied upon **to support the father's testimony** on collateral issues such as age. Accordingly, a person who cohabits with a girl who is known to have engaged in an act of betrothal is punished if the girl is generally assumed to have reached age three years, and the father so testifies.

[64:1]

[Limits on father's credibility on whether he betrothed his daughter to another]

The next Mishnah reads:

> If a man says "I have given my daughter in betrothal," or "I gave my daughter in betrothal and then accepted her *get* while she was a *ketannah*," and she is still a *ketannah*, he is believed. He is not believed if she is not now a *ketannah*, and he says "I gave my daughter in betrothal and then accepted her *get* while she was a *ketannah*." Whether or not she is now a *ketannah* he is not believed if he says "She was taken captive and I redeemed her.

If a man says "I have given my daughter in betrothal," whether as a *ketannah* or as a *na'arah*, he is believed so long as his daughter is still a *na'arah*. Similarly, we believe him when he says he accepted a *get* for her and thereby rendered her unfit to marry a priest.

A woman who was captured and redeemed is not permitted to marry a priest; it is possible that she was violated by her captors and thereby became a *zonah*. A father is not believed if he says "she was captured and I redeemed her." Why not?

The Gemara first assumes that the father's credibility depends on whether he has the present power to bring about the result which flows from his testimony. He has no power to give her to captors! But would not the result be the same were he to say "I betrothed her and then accepted a *get*"? No. The latter statement would not result in an interdict against eating *terumah*, whereas a claim that she was captured would make her ineligible for *terumah*. Only improper cohabitation can proscribe *terumah* to the daughter of a priest who returns to her father's house.

But he does have power to make her ineligible to eat *terumah* by betrothing her to a *halal*! For just as the children of a marriage to a *halal* are forbidden to the priesthood, so also must the wife be forbidden if she is widowed from the *halal*. Similarly, he can render her ineligible to eat *terumah* by betrothing her to one to whom she is prohibited!

The Gemara ultimately concludes that the father's credibility has nothing to do

with his power to bring about a result. In fact, the father cannot even bring about betrothal and divorce, for how do we know that he can find someone to whom to betroth her? Or that the person will later divorce her?

Why then do we believe the father in that case? Because of the direct Scriptural authority stemming from the verse "I gave my daughter to this man."[904] This authority applies only in matters of marriage and divorce. There is no authority elsewhere, and it follows that the father has no credibility in matters of capture. Also the verse refers only to *ketannah* and *na'arah*, so that the father's authority applies only while she is yet a *ketannah* or a *na'arah*.

The Gemara explains no additional matters.

[Father's credibility on whether he has sons which exempt his wife from *yibbum*]

The next Mishnah reads:

> If a man says at the time of his death "I have sons," he is believed. He is not believed if he says "I have brothers."

If he says "I have sons," the result is that his wife requires no *halizah*, and he is believed. If he says "I have brothers," the result would be that she requires *halizah*, and he is not believed.

The Gemara explains that prior to the declaration the woman was presumed not to have bonds of *yibbum*. The husband's statement that he has sons is believed because it does not contradict the presumption. Instead, it strengthens it to withstand any later rumor that there are bonds of *yibbum*. On the other hand, the husband's statement that he has brothers is not believed because it contradicts the presumption.

Rabbi and R. Natan disagree in the following case. A man is presumed to have brothers and proposes to betroth a woman who, absent further action, would thereby be presumed to have bonds of *yibbum*. At the time of *kiddushin* the man declares that he has sons or that he has no brothers. Although the statement contradicts the presumption, it is credited because if the man were lying he could have promised the woman a divorce effective prior to his death.

> Note that in the Mishnah the man is dying and is presumably not in a position to give a divorce. That is why his testimony cannot be buttressed

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[904] Deut.25:16.

with the were-he-lying argument. See the Meiri's discussion later on the rule where at the time of death there is still the opportunity to deliver a *get*.

The were-he-lying rationale results in the opposite presumption, that the woman has no bonds of *yibbum*.

Assume further that at the time of his death the same man declares that he has brothers and no sons. Rabbi does not believe the man, because Rabbi holds that the lenient presumption introduced by the were-he-lying argument is absolute, and totally destroys the prior stringent presumption. R. Natan holds that the stringent presumption is not destroyed. Rather, it is in rough balance with the lenient presumption. Where the man dies without denying his prior statement, this strengthens the lenient presumption, for there is yet another presumption that a man does not sin for the benefit of others. But where he does deny his prior statement, we have no authority to rely on the lenient presumption rather than the stringent presumption.

There is a general principle that the *halacha* accords with Rabbi in disputes with one person, such as R. Natan in this case. The Meiri appears to hold that the principle applies here, although he mentions that some commentators would make an exception in light of our Gemara's efforts to reconcile our Mishnah with R. Natan.

If we rule with Rabbi, we must reconcile our holding that were-he-lying can absolutely destroy a contrary presumption, with the holding elsewhere that the issue is a matter of doubt[905]. The Meiri explains that the were-he-lying argument here is supported by the fact that the wife, not the husband, is the direct beneficiary of the husband's statements. We therefore apply the dictum that a person does not sin for others. It is where the statements are self-serving that we are uncertain on the relative strengths of were-he-lying and a contrary presumption. In these other cases we apply stringent rulings in religious matters, and lenient rulings (on behalf of the possessor) in monetary matters.

Both Rabbi and R. Natan agree as follows:

1. The husband's statement at the time of *kiddushin* can establish a lenient presumption if the husband does not later deny this statement. Read carefully R. Natan's holding: "The husband [by his statement at the time of his death] is believed to bind, **too**," implying that the husband's lenient statement at the time of

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[905] B.B.6:1.

[7:2]

> *kiddushin* is also credited.
>
> 2. Where a woman is under a presumption that there are bonds of *yibbum*, the husband should be believed if:
>
> > at the time of death he says that he has sons or that he has no brothers, and
> >
> > there is still time to write and deliver a *get*, so that even now we can apply the were-he-lying argument.

The Meiri is surprised that both the Rambam and the Raabad appear to disagree with the second principle.

But what of the rule that a husband who declares that he divorced his wife cannot thereby free his wife from the bonds of *yibbum*, even where it is in the husband's power to deliver a *get*[906]? Because a *get* generally becomes a matter of public knowledge and we are concerned with the absence of notoriety. On the other hand, the public is not expected to take wide notice of whether the husband has brothers or sons.

No additional matters are explained in the Gemara.

[64:2]

[Who is meant when a father gives his "eldest" or "youngest" daughter in betrothal]

The next Mishnah reads as follows:

> If one gives his daughter in betrothal without specifying which, the *bogeret* are not included.
>
> If one has two groups of daughters from two wives, and declares "I have given in betrothal my eldest daughter, but do not know whether the eldest of the seniors or the eldest of the juniors, or the youngest of the seniors who is older than the senior of the juniors," all are forbidden

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[906] B.B.135:1.

except the youngest of the juniors. This is R. Meir's view. R. Jose said "They are all permitted except the eldest of the seniors."

"I have betrothed my youngest daughter, but do not know whether the youngest of the juniors or the youngest of the seniors, or the eldest of the juniors who is younger than the youngest of the seniors," they are all forbidden except the eldest of the seniors, this is R. Meir's view. R. Jose said: "They are all permitted, except the youngest of the juniors."

"If one gives his daughter in betrothal without specifying which, the *bogeret* are not included." This is the *halacha* in the circumstances discussed earlier[907], and the same rule applies in the case of *get*.

In considering the rest of the Mishnah, know that each daughter is considered an elder daughter relative to those younger than she. Also recall that in the second *perek*[908], we established that the father at the time of *kiddushin* knew which daughter he was betrothing, but was subsequently confused. For if the matter were uncertain initially, R. Meir would hold that the *kiddushin* are invalid because the *kiddushin* could never be consummated.

R. Jose assumes that the eldest of the seniors was betrothed, and (in the second case the youngest of the juniors), based on the principle that a person does not place himself in a position of doubt.

Now, R. Meir's holding applies only when the there are two groups of daughters from different wives. Where they have the same mother, the father refers only to the actual oldest as "my oldest" and to the actual youngest as "my youngest." All other daughters are referred to by their proper names. Only where there are two groups of girls can he refer to all members of one group as the "oldest" or the "youngest" relative to the other group.

Why then when there are two groups does the term **eldest** apply to all but the youngest daughter of the second group? Why does it apply to the middle daughters of the **second** group? In fact, it does not, and the Mishnah states its rule flatly because it assumes that the second group has no middle daughters. Were R. Meir to hold that the middle daughters in the second group are included, the Mishnah should have said that the man does not know whether he betrothed "the eldest of the seniors or the eldest **or the middle daughter** of the juniors...."

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[907] 51:2.

[908] 51:2.

[7:2]

Is this proper proof, given that the middle daughter of the **eldest** group **is** betrothed, although the Mishnah does not mention her? The proof is valid. Insofar as concerns the eldest group, the middle girls are deemed covered by the term "eldest" since they are older relative to the members of the second group.

The *halacha* is consistent with R. Jose even where there are two groups. A person does not place himself in a position of doubt.

The same principle applies elsewhere. Where one vows not to derive benefit from another **until the Passover**, what is meant is until the beginning of Passover. Where he says **until Passover shall be,** he means until the end of Passover. Where he says **until the face of Passover**, the phrase can be read to mean until the front of Passover, or until the last day of Passover, because each day in effect shows its face to the other. In order to resolve the ambiguity we apply the principle that a person does not place himself in a position of doubt, and we rule that he meant until the arrival of Passover.

Refer again to the rule just stated that the phrase **until such and such shall be** means until the end of such and such. The Gemara explains elsewhere[909] that this rule applies only where the mentioned thing has a specific time limit. But where there is no established time, such as where he says **until the harvest shall be**, the intent is only until the beginning of the harvest.

This completes the Mishnah. The Gemara adds nothing that we have not explained elsewhere[910].

[65:1]

[Where the husband and wife dispute whether there was betrothal]

The next Mishnah reads:

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[909]Ned.61:2.

[910]See 51:2.

[7:2]

> If he says to a woman "I have betrothed you," and she says "You have not betrothed me," her relations are forbidden to him but his relations are not forbidden to her.
>
> If she says "You have betrothed me," and he says "I have not betrothed you," her relations are permitted to him, but his relations are forbidden to her.
>
> "I have betrothed you," and she replies "You have betrothed none but my daughter," the relations of the mother are forbidden to him, while his relations are permitted to the mother; the daughter's relations are permitted to him, and his relations are permitted to the daughter.
>
> "I have betrothed your daughter," and she says "You have betrothed none but myself," the daughter's relations are forbidden to him, while his relations are permitted to the daughter; the mother's relations are permitted to him, while his relations are forbidden to the mother.

The person who maintains that there was *kiddushin* claims that the *kiddushin* were witnessed, but that the witnesses departed to a distant land, or died, or that he or she cannot recall who the witnesses were.

Were both the man and the woman to agree that there had been *kiddushin* in the presence of witnesses, there would be absolute *kiddushin* notwithstanding that the *kiddushin* is not established by witnesses. The issue in the first part of the Mishnah is that she **contradicts** him.

Her relations (such as her sister and the like) are forbidden to him based on his own admission. His relations are not forbidden to her, for she denies his claim and there are no witnesses.

Where she claims that he betrothed her, and he denies it, she cannot marry his relations **after she receives a *get* from him**. Until she receives his *get* she cannot marry anyone. He can marry her relations because, unless he gives her a *get* (as will be explained below), he has confessed to nothing. The fact that she renders herself forbidden to the whole world does not add credibility to her claim; perhaps she did not realize this result when she made her claim.

The Meiri cites a recent case in which the woman claimed that she had been betrothed at a specified time. The man denied it **and was supported by witnesses**. Nevertheless, the Rabbis applied the rule that a person's testimony adverse to himself is stronger than 100 witnesses. The woman was therefore forbidden to the whole world.

[7:2]

A mother has no credibility as regards her daughter. Where the mother claims that a man betrothed her daughter, and he claims that he betrothed the mother, the mother's relations are forbidden to him, and his relations are forbidden to the mother but not to the daughter.

> The daughter's relations are not necessarily the same as the mother's. For example, the daughter's half sister from her father's side is not a relation of the mother at all.

The following additional matters are discussed in the Gemara.

Where she says that he betrothed and he denies it, we **request** that he give her a *get* to permit her to marry another. We do not **compel** the *get* because by giving it her relations become forbidden to him.

He need not give her a *kethubah* if he divorces her at our request. He must give her a *kethubah* if he divorces her on his own volition, since this suggests a concession that he betrothed her.

[*kethubah* rights of a woman who is divorced after betrothal]

Now, it must be that there is no written *kethubah* in our case, for if there were the *kethubah* would prove the betrothal. Our Gemara is therefore evidence that a **betrothed** woman who is divorced is entitled to a *kethubah* payment even if there is no written document, probably in order to discourage the groom from divorcing her without mature consideration.

Consider another Gemara[911] which holds that a widowed betrothed woman is given a *kethubah* payment without a *kethubah* deed, but is uncertain whether to apply the same rule to women who are divorced after betrothal. How are we to reconcile the Gemara's?

Several explanations are possible:

> 1. Our Gemara follows Rav's view[912] that both widows and divorced women are entitled to payment of their unwritten *kethubahs*. The difficulty with this explanation is that, if so, our Gemara would not be consistent with the *halacha*. Why then is it cited by the Alfasi?

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[911] Keth.89:2.

[912] Id.

[7:2]

2. In our Gemara there in fact does exist a written *kethubah*. Why then is it not evidence of *kiddushin*? Because of a local custom that the *kethubah* is written prior to *kiddushin*.

3. Where a woman insists that her betrothal was conditional on her husband's oral acceptance of a *kethubah* obligation, this acceptance is equivalent to a written deed. In our Gemara she claims, but cannot prove with a deed, that he betrothed her and, further, that she had insisted that betrothal was conditional on payment of the *kethubah*. That is why she receives a *kethubah* if he ultimately accedes to her position and divorces her on his own volition

The Meiri closes this discussion by remarking that the Rashba holds that both widowed and divorced betrothed women are entitled to *kethubah* payments even where there is no deed. Evidence supporting and contradicting the Rashba's position is discussed elsewhere[913].

There can be no *kiddushin* without witnesses even if both agree that he performed a *kiddushin* ceremony. As noted in the Mishnah there is *kiddushin* if both assert that witnesses were present. Where he claims that there was *kiddushin* in the presence of witnesses, she denies it, and his position is supported by one witness, she prevails. As will be explained later[914], a single witness has no credibility.

If the witnesses were not competent Scripturally, the *kiddushin* is null. If the

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[913]B.M.17:2. Among other things, the Rashba notes that in Keth.89:2, the Gemara does not ask whether a *kethubah* is payable, but rather inquires on the source of the rule that a *kethubah* is payable.

[914]65:2.

[7:2]

incompetence was Rabbinical she is questionably betrothed[915]. In these cases we compel him to give a *get* and we compel her to accept it.

One who divorces his married wife and secludes with her overnight in an inn must give her another *get* if there are witnesses to the seclusion. Because the man and woman are familiar with each other, the witnesses of seclusion are considered the same as if they had witnessed cohabitation. There is less familiarity where the divorce was at the **betrothal** stage, and here no new *get* is required[916].

[65:2]

[Where two men and one woman dispute each other's marital status and property rights]

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[915]See 24:2.

[916] Git.81:1.

[7:2]

Assume that two men and one woman arrive from a distant location, and that they bring with them a certain chattel. Each man claims that the woman is his wife and that the other man is his slave. The woman claims she is married to neither and that the men are her slaves. All three claim to own the chattel outright.[917]

The woman requires no *get*, for witnesses do not support either man. The same result would obtain were one of the men supported by one witness. A single witness cannot contradict any person in religious matters.

> The rule is different insofar as concerns civil matters, such as whether one of the men is the slave of the other: A single witness is sufficient to require an oath of the person whom he contradicts.

How do we deal with the case?

All three swear that they own not less than a third of the chattel, and they each succeed to a one-third portion[918]. She receives a *get* from both men. Once this division is complete and she has received a *get* she can compel the two to pay to her one *kethubah*, **but only out of the men's remaining interest in the chattel**.

Why so? Does she not deny that she was married to either, and does she not thereby disclaim her *kethubah*? And is it not the rule that a man need not pay a *kethubah* where he maintains that he betrothed a woman and she denies it? And is it not the rule that where the donee of a gift denies receiving the gift of a field, that the donor eats the fruit, on the principle that in disputed cases we leave money rights where we find them?

Yes, but in our case she argues "If I tell the truth, then the chattel is all my property apart from any *kethubah*. If either of the two of you tell the truth, then you owe me a *kethubah*!"

Most commentators hold that she cannot collect a total sum out of the men's combined interest in the chattel which exceeds **one** *kethubah* [presumably the smaller of the two *kethubahs* if they differ in amount]; both men cannot owe her a *kethubah*. Others disagree and permit her to recover both *kethubahs*. It is conceivable that one of the men married her after the other first divorced her, so that both are liable for a *kethubah* payment.

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[917]The Yerushalmi cites a case in which the woman arrives riding on an animal in which all three claim full ownership.

[918]B.M.2:1.

[7:2]

Similarly, where only one of the men has divorced her, then she can recover one *kethubah* only out of that man's one-third interest in the chattel. If that one-third interest is sufficient to cover her *kethubah*, then her situation is no worse with one *get* than with two.

In discussing this case, the Yerushalmi also resolves the claims of servitude in this case: the woman and one of the men issue an emancipatory deed to the other man, and the other man then joins with the woman to issue an emancipatory deed to the first man. The Yerushalmi also concludes that the three share equally in the chattel, without discussing the woman's rights to receive a *kethubah*[919].

Others disagree with the basic thrust of the prior discussion. The woman must decide whether she wishes to recover one-third of the chattel based on her oath that she owns at least that third, or (where the value of her *kethubah* exceeds one-third of the chattel) she can choose to recover her entire *kethubah* from the chattel. Here, again, the commentators differ whether she can recover one or two *kethubahs*. Also, for the woman's *kethubah* to affect more than two-thirds of the value of the chattel (one-third in excess of the one-third available to her upon her oath) it is necessary that she have received a *get* from both men.

Where each man brings two witnesses, and it is possible that both groups are truthful, such as where one man may have married the woman after the other divorced her, the witnesses stand, and the woman is not believed unless she, too, brings a pair of witnesses which supports her.

Where it is not possible that both groups are telling the truth, most commentators hold that neither group is believed. A minority would credit the witnesses to the extent of finding that the woman must be treated as married, for both groups agree that she is married to one of the two men. In a similar case, where one group of witnesses testifies that A owes B 100 *zuz* and another group testifies that A owes B 200 *zuz*, we rule that there is adequate proof that at least 100 is owed[920].

But would the minority apply the same rule where each man brought one witness? Shall we say that both witnesses agree that she is a married woman? Is not a plaintiff believed when one witness testifies that the plaintiff loaned the

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[919]One commentator on the Yerushalmi suggests that the Yerushalmi's rule is grounded on the pre-geonic *halacha* that chattels are not responsible for *kethubah* payments. See the discussion of R. Meir's view on this below.

[920]Sanh.31:1.

defendant money on Sunday, and the other testifies that the loan occurred on Monday?[921] Yes, but the cases are distinguishable. There each witness supports the plaintiff. Here one witness supports one of the men, and the other witness supports the other. The fact that they agree on the woman's general status is not sufficient to combine them. As separate witnesses they must fail when arrayed against a party (the woman) who contests their credibility. The same result would obtain were one witness to be directly contradicted by another witness.

Where the men are not supported by witnesses she may not marry either one. By her own declaration she has declared them slaves. She must first free the man she wishes to marry and she must accept a *get* from the man she does not wish to marry. But where the men are supported by witnesses who both testify that the men are free, some commentators hold that she cannot by her declaration cause the men to be treated as slaves even as relates to her own status.

[Woman's rights to seize chattels against her *kethubah*]

The woman's right to seize a chattel in payment of her *kethubah* is consistent with the rule introduced by the Geonim following the completion of the Talmud. In earlier Talmudic times the rule was followed only by R. Meir. The majority held that a woman could enforce her *kethubah* rights only against real property, whereas all other creditors could seize even a debtor's chattels, "even the coat on his shoulders."[922] An inconsistent Gemara[923] which holds that a woman can seize even the proceeds of her husband's hair, should he sell it, is also R. Meir's minority view.

[Are witnesses essential for commercial transactions?]

Witnesses are essential to the validity of *kiddushin*, but not to the validity of monetary transactions. In monetary deals, witnesses serve only as proof that a transaction has been finalized by a *kinyan*. Where the *kinyan* is determined by admission of the parties, the transaction is final and irrevocable whether or not witnessed[924]. This is the view of the Alfasi and the Rambam.

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[921]Sanh.30:1.

[922]B.K.11:2.

[923]Ned.68:2.

[924]This is the significance of R. Ashi's holding on the issue propounded to him by Mar Zutra and R. Adda Saba.

[7:2]

Rabbeinu Tam concurs, and he maintains that this is also the import of a Gemara[925] which deals with the rule that the redemption price for **another's** second tithe is equal to the tithe's value, whereas the price for one's own tithe is 125% of its value. It therefore behooves the owner of the tithe wherever possible to transfer funds to his comrade so that his comrade can redeem the tithe.

> A *baraitha* suggests that this effect can be brought about in a roundabout way: the owner gives the **tithe produce** to his comrade, and the owner then uses his own funds to redeem the tithe now owned by his comrade. The Gemara at first suggests that this scheme is used because the funds are not physically present, and *halifin* is invalid to transfer money. The Gemara ultimately explains that the case involves the unusual situation where the transferor owns no property which could be used to effect *halifin*.
>
> Now, if witnesses are essential to monetary transfers, why does not the Gemara more logically explain that *halifin* is indeed valid, but there are no witnesses![926]

The Raabad disagrees based on another Gemara[927] which compares a *kinyan* with an admission, in that just as an admission of a debt is invalid without witnesses, so also does a *kinyan* require witnesses. The Meiri disagrees. Witnesses are required for admissions only to ensure that the admissions were made seriously rather than in jest. They are not essential *per se*. The Meiri discusses this at greater length elsewhere[928].

["Confessions" in monetary matters]

Note the Gemara's explanation that confessions are valid in monetary matters because others are not harmed. This does not apply to A who owes money to B, and who "confesses" to C that C owes him no money. B is harmed by A's confession, so that A is not believed without witnesses. But B is not considered harmed if he lends money to A **after** A has made his confession.

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[925]B.M.46:1.

[926]Query how the produce could be transferred if there were no witnesses?

[927]B.B.40:1.

[928]B.M.55:2; B.B.40:1.

[7:2]

[When a *hattat* is brought on account of the testimony of a single witness]

One who unwittingly eats *helev* must bring a *hattat* sacrifice. Abbaye propounds the following rules:

> 1. If a witness claims that a person has unwittingly eaten *helev*, and the person insists that he did not eat it, or that it was not *helev*, or that "I do not believe you that it was *helev*," no *hattat* need be brought so long as the witness's testimony is not upheld.
>
> 2. If the person does trust the witness, but denies this trust in order not to bring a *hattat*, he indeed brings no *hattat*, but is considered wicked. "You shall fear your G-d" who knows your internal thoughts.
>
> 3. If he affirms his trust, or remains silent, he must bring a *hattat*. But there are the following differences:
>
> > If he affirmatively states his trust, he can never withdraw it.
> >
> > If he was merely silent, he can revoke his position, and be freed of a *hattat*, if his revocation is based on subsequent investigation.

What is the basis of the rule that a *hattat* is brought where the person remains silent? Some commentators analogize from the rule that a single witness has credibility in religious matters for lenient rulings. They claim that the witness should more certainly be credited for stringent rulings, such as where his testimony results in the requirement that a *hattat* be brought.

The Meiri disagrees. A person must bring a *hattat* only "if his sin **became known** to him;"[929] this implies **self** realization. Besides, if a *hattat* can result from testimony, why is there no *hattat* where the person says "I don't know"?

Instead, the Meiri explains that the person's silence is interpreted as trust. This is the equivalent of self realization. Where this trust is absent, such as where he says "I don't know," he need not bring a *hattat*.

Why, then, do some commentators hold that where the witness is a gentile, silence does not result in a *hattat*? Is there no self-realization? Quite so, we assume that the person does not credit the witness, and that he does not take the trouble to contradict the witness because the witness is a gentile.

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[929] Lev.4:23.

[7:2]

Similar rules apply where one witness tells a person "Your clean food was defiled." Where he contradicts the witness, the food is presumed clean. Where he is silent, we read this as agreement, and the food is considered defiled.

[Analogous dispute between Abbaye and Raba relating to defiled food]

A Gemara in Gittin[930] rules that where a person claims "The clean food we are working on today is defiled," he is believed. But he is not believed when he says "The clean food on which we worked the other day was defiled." Abbaye explains that in the first case the witness is still in a position to defile the food. The witness is no longer in a position to defile the food in the second case.

Presumably, the owner was silent in both cases. Still, the witness is believed only where the witness is in a position to take action! How then can we reconcile this with Abbaye in our Gemara where a witness is believed notwithstanding that it is not within his power to feed anyone *helev*?

The Tosafot explain that the witness is believed where either:

a matter is within a witness's power, or

the owner is silent when the witness claims "You yourself know that you ate *helev*."

The Meiri takes another approach. In the Gemara in Gittin, the owner does not trust the witness and says so. Abbaye holds that where something is within a witness's power, the witness has credibility even where not trusted by the owner[931]. Where something is not within a witness's power he is believed where he is credited by the person on whom he testifies, and this crediting can be evidenced by silence.

Rabbeinu Tam explains that the witness is given credibility in our Gemara by silence, whereas in the Gemara in Gittin the owner of the clean food affirmatively says "I don't know," and that is why the witness is believed only when it is within his power. The Meiri disagrees, for in our Gemara[932] a blind man's silence is treated as silence, when at most it has the status of a seeing person's "I don't know."

Now Raba explains the two parts of the Gemara in Gittin differently. His basic

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[930] Git.54:2.

[931] But probably not for *hatos* purposes, where self realization is required.

[932] 66:1.

premise is that where it is in the witness's power to defile, he is believed whether defilement is claimed to have occurred today or long ago. The cases assume that the witness is not in a position to defile the food. They are distinguished thus:

Where a person claims "The clean food we are working on today is defiled," silence connotes belief because the witness acted properly in promptly informing the owner. But silence does not connote belief if the witness says "The clean food we worked on such and such a day was defiled." The owner expects the witness to inform him promptly where the witness **worked with** him. In our Gemara, where the witness is a stranger, there is no such expectation, and mere silence does denote agreement.

Recall the Meiri's interpretation of Abbaye's view:

> Where something is within a witness's power, the witness has credibility independent of the person's trust. Where something is not within a witness's power he is believed where he is credited by the person on whom he testifies, and this crediting can be evidenced by silence.

Analytically, Raba agrees with Abbaye that the witness is always credited on all matters within his power. In fact, Raba agrees with Abbaye in all cases except one: Abbaye holds that silence denotes agreement even where the witness did not come forward immediately. In that one case Raba does not credit the witness.

The Meiri disagrees with commentators who explain that Raba does not credit a witness who was not immediately forthcoming even where the witness has the present power to bring about a result. The Meiri complains that this is illogical. Besides, the witness's present power must mean that his testimony is immediate!

[Another analogous case]

It remains to reconcile a Gemara in Sanhedrin[933] with our Gemara. Where a witness testifies that "Your father hid money in a chest, and declared it to be second tithe":

> the witness is not believed where the chest was hidden in the father's house;
>
> he is believed where he claims that the chest was hidden in the field.

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[933]Sanh.30:1.

[7:2]

In the first case, it is not within the witness's power to take the funds and expend them as he wishes: in the second case it is. Does it not appear that where a matter is not within a witness's power, silence connotes nothing?!

There are several possible explanations:

1. In Sanhedrin there was no silence. The witness was contradicted.

2. There was silence, which in this case does not denote agreement because the witness does not claim to know that the money was second tithe, only that he heard the father say so. Perhaps the money was not second tithe but the father nevertheless did not wish the sons to take the oath imposed on heirs[934] who are presented with a claim against their estate.

   Why then is he believed where the chest is in the open field? Because the father obviously trusted the witness by placing the funds where the witness could take them for himself.

3. The Gemara in Sanhedrin is a monetary case; if believed, the witness would transfer ownership of produce from civilian hands to the status of second tithe. The testimony of a single witness is not credited in monetary matters. But where the funds are secreted in an open field, the witness is in effect a third party escrow and is therefore credited.

Where one witness tells a person "You were defiled," meaning "You entered the Temple in a defiled state" and must bring a sacrifice, the following rules apply:

1. If the person contradicts the witness, he need not bring a sacrifice. The same would be true if there are two witnesses, and the person's denial can be interpreted as meaning "I was no longer defiled, for I had cleansed myself in a *mikveh*."

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[934]The text of the Meiri refers to the father's desire to avoid **his** having to take an oath. The Meiri's source here is the Rashba, and the Rashba refers to the father's desire not to have the sons take the oath.

[7:2]

2. Where he is silent, he is understood to agree with the witness.

[66:1]

[Where a witness testifies on bestiality]

Where a witness says "Bestiality was committed with your ox," the following rules apply:

1. If the owner contradicts the witness, the animal need not be killed. The animal is fit for sacrifice.

2. If the owner agreed or was silent, the animal is not fit for sacrifice.

3. If the owner says "I don't know," the animal is also unfit for sacrifice. This rule differs from *hattat*, where it is necessary that there be self-realization.

[Where a witness testifies on adultery]

Where a witness tells a husband that his wife committed adultery, the following rules apply:

1. The husband may continue to cohabit with his wife where the husband considers the witness only generally credible. This applies even where the husband was silent and even if the husband believed that the witness was telling the truth. The rule is based on the dictum "No marital matter may be established by less than two."

It goes without saying that the husband may cohabit with his wife where he contradicts the witness or where he says that he does not know. In all these matters we entrust a person's heart to Him to whom all mysteries are open.

2. Where the husband so trusts the witness that he considers him the equivalent of two witnesses, and the wife does not contradict the witness, all hold that as a **moral matter**, the husband may determine not to cohabit with his wife. As a **legal matter,** the dictum continues to apply that "No marital matter may be established by less than two."

Note that where a husband warns his wife outside of the presence of witnesses not to seclude with another, and there is a witness that she nevertheless secluded, the husband surely believes the witness. Still,

the husband may continue to cohabit with his wife.

The Meiri took this lenient view (*i.e.,* that there is not even a moral problem where the husband believes that his wife sinned but he does not credit the witness generally as he would two witnesses) in an actual case, and he was supported in his ruling by the Rashba. The Rashba adduced evidence from our Gemara's reference to "Don't cohabit with her if you believe the single witness as two," rather than to "Don't cohabit with her if you believe that she transgressed."

The Rambam takes a stricter view. He requires the woman to be divorced where the husband only feels in his heart that the witness is telling the truth. The Rambam even applies his rule where the witness is a woman or a slave!

But how does the Rambam explain the Gemara which the Rashba cites as support? Even Abbaye, who does rely on one witness, requires a divorce only where the witness is eligible to testify: "Divorce her if you believe the witness was not a robber"! A slave or a woman is not eligible!

Some explain that the Rambam would limit the Gemara to cases in which the husband did not previously suspect his wife of infidelity. But this explanation is unsatisfactory. For even in suspect circumstances (such as where a husband finds his wife arranging her clothing while a peddler leaves her house[935]) a woman can be forbidden to her husband only by two witnesses.

Others suggest that a slave's testimony suffices for the Rambam because the Rambam understands "Divorce her if you believe the witness was not a robber" to mean "Divorce her if you believe the witness," rather than "Divorce her if the witness is legally competent to testify."

[Credibility of a woman to assert that she committed adultery]

What if a wife asserts to her husband that she committed adultery? She is not believed, even where she explains why she sinned. We fear that her purpose is to marry another man.

This is the import of a Gemara in Nedarim[936]. A woman married to a priest (who may not cohabit with his wife if she cohabited with another even accidentally or against her will) habitually would bring water to wash her husband's hands after

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[935]See Yeb.24:2.

[936]Ned.91:1.

relations. In an instance when she brought water when they had no relations, she explained that by error she had relations with a perfume salesman whom she confused with her husband. The woman was not believed; her purpose may have been to marry another.

The same rule would apply to the wife of a non-priest who offers a pretext why she sinned with another **willingly** (since wives are forbidden to non-priests only if they sin willingly).

At one point the Rabbis determined to veer away from the *halacha* because of concern that women might have sinned and were wrongfully cohabiting with their husbands. The Rabbis returned to the pure *halacha* when they realized women could be motivated by the desire to marry another.

We have to this point discussed circumstances in which the husband has a moral obligation to divorce. We have noted that he has a legal obligation to divorce his wife only where two witnesses testified that she committed adultery willingly (insofar as concerns non-priests). The same rule applies (except that the *kethubah* must be paid) where the husband claims that he himself witnessed the adultery: we compel the husband to divorce his wife.

Now this last rule applies only where the *halacha* and local law is that a husband may freely divorce his wife. But where the *herem* applies which prohibits a man from divorcing his wife against her will, or where local gentile laws prohibit such divorce, we do not compel or permit the husband to divorce based on adultery he claims to have witnessed. We fear that his purpose is only to divorce her to marry another.

> Compare this with the prior discussion in which it was noted that the Rabbis became concerned that women were "admitting" to adultery merely to marry another. The presumption is so strong that we ignore her assertion and allow her to continue to eat *terumah* (where her husband is a priest) and to live with him, notwithstanding that a person generally has the power to apply interdicts to himself.

The Rashba applies this reasoning even in areas where a person may still marry two wives, since practically speaking a woman will more readily marry a man who is not already married.

The Meiri recounts his ruling in the following actual case. A husband constantly abused his wife to encourage her to consent to a divorce. This consent was required under local law. The husband also caused malicious rumors to circulate regarding his wife, and it was determined that certain of these were false. A corrupt person who had argued with the wife's father agreed to assist the husband in destroying the wife's reputation. The corrupt person approached the husband and asserted that he

had committed adultery with the wife. The husband joyfully approached the Beth din with this claim and demanded that the Beth din affirm that a *get* was in order. The husband proposed to use this affirmation to obtain the consent of the civil authorities to a divorce.

The Meiri applied the following analysis:

> 1. A person cannot testify against himself. The corrupt person therefore cannot indict himself for having committed adultery. But shall we immunize the corrupt person against his testimony but credit the testimony insofar as concerns the woman?
>
> No. The very purpose of the testimony is to further a wicked scheme. Even someone who is generally suspected of ill-deeds is incompetent to testify in marital matters; much more so a person who is corrupt in the very testimony under consideration!
>
> Besides, the rule that one cannot indict himself applies only where one intends his statement as **testimony**, whether in the presence of the Beth din or out of the Beth din's presence. Where statements are not meant as such, a person can freely indict himself, and we must judicially take note of what he says, even against himself[937].
>
> We therefore cannot immunize the corrupt person against his own testimony and believe it against others. His statements must fall in their entirety.
>
> 2. But does not the husband have a moral obligation to divorce when he believes the witness? Yes elsewhere, but not here. We give no credence to the husband when he says that he believes the witness. We assume that the husband's purpose is to marry another. Our position is based on the many arguments between the pair and the instances in which the husband's statements were proved false.
>
> > Compare the rule that a woman who frequently argued with her husband is not credited when she asserts that her husband has died[938].

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[937]The Gemara in Yebamoth (24:2) holds that an adulterer's testimony is sufficient to require that he divorce the woman if he marries her. See the discussion in the Gemara on whether the rule applies only where there were witnesses to the adultery, etc.

[938]Yeb.114:2 and 116:1.

> Besides, how can we believe him when he says that he trusts and credits the testimony of a person who claimed to have cohabited with his wife.

The husband then maintained that he had witnessed his wife behave repulsively.

The Meiri rules that this is insignificant even if believed. A woman cannot marry a person with whom she engaged in repulsive behavior **while she was married to another**. But repulsive behavior with another can never result in a requirement that her husband divorce her. A woman receives no *malkot*, nor is she proscribed to her husband, on account of seclusion with another. The only circumstances in which a woman is forbidden to her husband (other than by the direct testimony of two witnesses) is where the husband warned her in the presence of witnesses, and she secluded in the presence of one witness.

The husband realized that he was losing his case, and suddenly maintained that he had witnessed his wife's adultery. The Meiri ignored this claim for several reasons:

> 1. The husband never until now claimed personal knowledge of adultery. A witness is not believed when he alters his testimony.
>
> 2. Compare the effect on credibility of witnesses who did not come forward immediately when they first obtained information regarding the defiling of food.
>
> 3. The husband has no credibility in any event where there is concern that his intent is to marry another.

Here again the Rashba supported the Meiri, and expressed his view (which was stated earlier) that the *halachic* basis of our refusal to credit the woman or the man is doctrine that neither the husband nor the wife can unilaterally affect the other's rights and claims.

> But where the assertion is by the woman what claims does the woman have against her husband? Certainly she has no right to compel him to have relations when he claims that she had committed adultery?! The Meiri explains that the reference is to her claims to food and clothing.

[Uncertainty on whether a woman was held captive]

A woman who was once held captive may not marry a priest. There is concern that she cohabited with a captor and is a *zonah*. Where two pairs of witnesses contradict each other on whether she was captured, there is a presumption that the woman's prior non-captive status continued. Needless to say, the witnesses who

[7:2]

assert that she was not captured must be able to state their case affirmatively: it is not enough for them to say "we didn't see any capture."

Why then was Yannai not presumed to be legitimate on account of the presumption that his mother's non-captive status continued? Because Yannai's mother was not present to be judged. The question focused on **Yannai's** legitimacy at **birth**, so that Yannai never had a valid status to which a presumption could be applied[939].

The prior discussion assumes that the witness pairs **contradict** each other but there is no ***hazamah***[940]. Were a third set of witnesses to refute by *hazamah* the pair which testified that Yannai's mother was captured then no force would have been given to the captive testimony, and Yannai would have been ruled legitimate. The same would be true were one pair to testify that yes, she was captured, but she immediately managed to secrete herself and replace herself with a bondmaid.

A single witness that a woman was captured has no force. A marital matter can be decided only by two witnesses.

We mentioned previously that the wife of a non-priest is forbidden to her husband only if she **willingly** committed adultery. Where a minor commits adultery, she is deemed to have acted unwillingly, and she is not prohibited to her husband.

[66:2]

[When a present finding is assumed to have occurred]

Whenever there is doubt whether an unclean person or object was purified in a *mikveh*, we apply the presumption that the object continued in its unclean status.

> The uncertainty takes one of two forms. There may be uncertainty whether the *mikveh* was full or not, and there may uncertainty whether there was

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[939]The Meiri refers to his commentary to Kethuboth (26:2) for an alternate approach.

[940]"How could you testify so? You were with us that day!"

tevilah of the person or thing.

Here is how we apply the presumption in the first case: If a *mikveh* is found to be not full, even if only by the testimony of a single witness, we presume that the *mikveh* was not full as far back as one moment after it was measured and found full; all items which thereafter used the *mikveh* for *tevilah* are unclean.

> This is R. Akiva's view. R. Tarfon disagrees and holds that a *mikveh* which is discovered unfull is assumed to have been full until it is first determined that it is not full.

Where the uncertainty is whether an object became unclean, then, if the uncertainty is based on events occurring in a public thoroughfare, we rule that the object is clean. There is no definite uncleanliness to which a presumption can attach.

A priest may not serve in the Temple if two witnesses establish that he is a *halal*.If a person who is possibly a *halal* serves anyway, his service is valid. What if a person who is a definite *halal* serves despite the proscription? Is his service valid?

> The Gemara notes that in his dispute with R. Akiva on *mikveh* R. Tarfon argues by analogy from the rule that the services of one who served while a *halal* is valid, and that just so the *mikveh* should be presumed to be full until we know it to be unfull.
>
> Now, we know that R. Tarfon holds that a *mikveh* has no force for any *tevilah* which occurs **after** it is determined that the *mikveh* is not full. For there to be an analogy it must be that where the priest is definitely a *halal* his service is void, the same as *tevilah* which occurs in a *mikveh* after it is known not to have been full.

[Priest cannot perform service while blemished]

If a priest has a blemish, whether permanent or transient, his service is void. This applies only if the blemish is of the sort which renders an animal unfit for sacrifice.

A priest is given *malkot* if he willingly performs the service while blemished, whatever the form of blemish and whether or not it would render an animal unfit for sacrifice. The only exceptions are those blemishes which are only apparent blemishes.

Why do we not permit a priest to perform the service where one witness testifies that the priest is blemished? Because it is a simple matter to disprove the witness, and we place this burden on the priest.

[7:2]

[Status of child born to parents of differing genealogical status]

The next Mishnah reads:

> Whenever there is *kiddushin* and no transgression, the child follows the status of the male. This is the case with the daughter of a priest, a levite or an Israelite.
>
> But where there is *kiddushin* and transgression, the child follows the status of the inferior. This is the case where a widow is married to a high priest, or a divorced woman or a *haluzah* to an ordinary priest, or a mamzeret or a netinah to an Israelite, and the daughter of an Israelite to a mamzer or natin.
>
> Whatever woman cannot contract *kiddushin* with that particular person but can contract *kiddushin* with another person, the child is a mamzer. This is the case with one who cohabits with any relation prohibited in the Torah.
>
> Whatever woman cannot contract *kiddushin* with that particular person or with others, the child follows her status. This is the case with the child of a bondmaid or a gentile woman.
>
> R. Tarfon said "Mamzerim can be purified. How? If a mamzer marries a bondmaid, her son is a slave. If the son is freed, the son is a free man." R. Eliezer said "The son is a slave, a mamzer."
>
> The Meiri proceeds to explain each section of the Mishnah.
>
> Whenever there is *kiddushin* and no transgression, the child follows the status of the male.

For example, where the mother is an Israelite and the father is a priest, the child is a priest. Where the mother is the daughter of a priest and the father is an Israelite, the son is an Israelite. The same applies to all other unions among priests, levites and Israelites.

> But where there is *kiddushin* and transgression, the child follows the status of the inferior.

[Examples of *kiddushin* interdicted by negative precept]

Where *kiddushin* is interdicted by negative precept only, the *kiddushin* is valid and the child has the status of the inferior person. For example:

[7:2]

1. If an Israelite woman marries a natin or a mamzer, the child follows the father. The child follows the mother where the mother is a netinah or a mamzeret.

The natinim were the Gibeonites who converted in the time of Joshua in the course of deception. They were assigned to be hewers of wood, and their conversion, although sufficient to require that they follow the precepts, was not adequate to permit them to intermarry freely with Israelites. Hence, the Yerushalmi's reference to Joshua as having distanced the natinim.

But why does the Bavli maintain that it was David who decreed that there be no intermarriage with the natinim? Either because Joshua's action was reintroduced by David when Joshua's restriction was forgotten, or because David's prohibition was for all time, whereas Joshua's prohibition was to endure only so long as the Temple.

2. Where a high priest marries a widow or a divorced woman, and where an ordinary priest marries a divorced woman, the child is a *halal*, and in this respect follows the mother who becomes a *halala* as a result of her first cohabitation with the child's father. It makes no difference whether the cohabitation is willing or forced, or natural or unnatural.

What of the father? The father must divorce the *halala* but he himself does not become a *halal*.

[Examples of where a child is a *mamzer*]

Whatever woman cannot contract *kiddushin* with that particular person but can contract *kiddushin* with another person, the child is a mamzer.

For example, one cannot contract *kiddushin* with one's sister or **his** other relations who are forbidden on pain of *kareth* or execution by the Beth din. Any such woman can contract *kiddushin* with others. The issue of such forbidden relations is a mamzer.

[Where a child is a gentile or a slave]

Whatever woman cannot contract *kiddushin* with that particular person or with others, the child follows her status. This is the case with the child of a bondmaid or a gentile woman.

Where a gentile or a slave purports to betroth a Jewish woman, or where a Jewish

male purports to betroth a gentile woman or a bondmaid, there is no *kiddushin*. The child follows the mother's status.

[Child of a master-father and a bondmaid-mother]

Some hold that there is an exception to this rule: Where one cohabits with his own bondmaid, the child is Jewish on the presumption that the father freed his slave so as not to render his cohabitation illicit. For the same reason, where a married person dies without children other than the child of his bondmaid his wife is free to marry another without *yibbum*.

The Rambam disagrees. The presumption against illicit cohabitation is applied only in limited circumstances:

1. Where one cohabits with a woman he previously divorced.

2. Where one betroths with a stated condition, but then consummates the marriage without repeating the condition.

The Meiri agrees with the Rambam, because of a *baraitha* which holds that only cohabitation which is for the purpose of *kiddushin* results in *kiddushin*.

[Must all *mamzer* descendants be *mamzerim*?]

> R. Tarfon said "Mamzerim can be purified. How? If a mamzer marries a bondmaid, her son is a slave. If the son is freed, the son is a free man." R. Eliezer said "The son is a slave, a mamzer."

A non-mamzer may not marry a slave because of the verse "A [slave] shall not be taken among the daughters of Israel"[941]. But a mamzer may marry a bondmaid (and vice versa), and *kiddushin* between the two are effective. It is not requisite that the mamzer first achieve the status of a Jewish slave.

> It follows that R. Tarfon's method applies even during periods in which the Jubilee rules are suspended and there is no Jewish slavery. The Jubilee rules are suspended when not all of the land's inhabitants live on the land.

The son of this union is a slave, based on the rule that we follow the inferior. The child can be freed by his owner and then be legitimate.

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[941] Deut.23:18.

[7:2]

The marriage of a mamzer with a gentile woman is subject to interdict. Still, if such a marriage does occur, the child can be legitimized by conversion.

Cannot the same result be achieved where a slave marries a mamzeret? No. In this case the child is a mamzer. Why do we not follow the inferior and declare the child a slave? Because a male slave is not deemed to have any lineage.

R. Eliezer disagrees with R. Tarfon because R. Eliezer holds that the taint of mamzerut can never be removed. Scripture forbids a mamzer to intermarry "forever."[942] Accordingly, the child of a mamzer father and a slave mother is both a slave and a mamzer.

The *halacha* accords with R. Tarfon.

This completes the explanation of the Mishnah. The Gemara discusses the following matters:

[67:1]

[Passage of *mamzer* or *halal* status to descendants]

[942]Deut.23:4.

[7:2]

A convert may marry a mamzeret, and a mamzer may marry a female convert. "A mamzer may not come into the assembly of G-d,"[943] but he may enter into the assembly of converts. In each case the children are mamzerim, since we follow the inferior status.

What of later generations? Male and female descendants of converts may marry mamzerim so long as they are still commonly recognized as converts and so long as the convert does not have **any** Jewish non-convert ancestors.

A *halal* can freely marry non-priests. There is no interdict, and *kiddushin* are effective. That being so, in determining whether the child is a *halal* we follow the father. It follows that Jewish daughters do not purify their husband's lineage of *halalim*, whereas Jewish sons do purify their wives's lineage of *halalim*.

[Three categories of converts]

For marital purposes there are three sorts of converts:

1. Converts from all nations other than Amon, Moab, Egypt and Edom may intermarry with Jews immediately.

2. Male Amon and Moab converts, and their male descendants, are full-fledged Jews, but can marry only other Amon and Moab converts. Female converts are permitted to intermarry immediately. Scripture speaks of "Amonites," not of "Amonitesses."

3. Whether male or female, only third generation Egyptian or Edomite converts may intermarry with Jews. Where a second generation Egyptian convert marries a first generation Egyptian convert, the child follows the inferior, and is considered a second generation convert.

[67:2]

Where gentile Egyptian and Edomite persons intermarry with gentile Amonites or Moabites, we follow the father in determining the status of the child. Where the

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[943]Deut.23:3.

father is Amonite, the male descendants may never intermarry with Jews after conversion. Where the father is Egyptian, the third converted generation may intermarry.

Similarly, where the father is of any nation other than the seven nations native to Israel who cannot be left to live, and the mother is of one of the seven nations, the child is deemed to be of the permitted nations. Accordingly, the child may be purchased as a slave. It is to such a person that Scripture refers in the verse "And also of the children of the residents [may you purchase slaves]"[944], meaning children of **men** who arrived from elsewhere to reside here and to marry women of the seven nations who are native here.

What if intermarriage occurs after conversion? We follow the inferior. Here are several examples:

> 1. Where the father is an Amonite convert and the mother is an Egyptian convert, a son is treated as an Amonite (so as to forbid intermarriage with him and his direct male descendants) and a daughter is treated as an Egyptian (so as to forbid intermarriage until the third generation).
>
> 2. Where the father is an Egyptian convert and the mother is an Amonite convert, both a son and a daughter are treated as Egyptian.
>
> 3. Where a convert of other nations marries an Egyptian woman convert, the child is treated as an Egyptian.

[Penalties for incest with familial relations]

A father's wife, a son's wife, and a brother's wife (except where *yibbum* is appropriate) and the wife of a father's brother are forbidden forever, even where they were only betrothed but not married by the father, son or brother, and even after they are divorced or widowed from the father, son or brother. A transgression is punished with *kareth*. Purported *kiddushin* with these forbidden relations is null, because Scripture says in regard to a divorced woman "She shall go out and **be** [meaning be as a wife, in the sense that *kiddushin* are effective] to **another** man,"[945] meaning to a person not her relative.

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[944]Lev.25:45.

[945]Deut.24:2.

[7:2]

Corresponding to the women who may not marry a man because of their marital relationship to the man's relatives, there are six relatives of a woman who are forbidden to her husband. They are

the wife's mother,

her mother's mother,

her father's mother,

her daughter,

her daughter's daughter, and

her son's daughter.

In each case, cohabitation is punished by *kareth* even after the wife is divorced.

A wife's sister (whether from her father's side or her mother's side) is also forbidden on pain of *kareth*, but only while the wife is alive.

Now there are other forbidden relations which are punishable by execution by the Beth din where there was forewarning, by way of strangulation (such as adultery with a woman who was married and not thereafter divorced or widowed) or by stoning or burning[946]. But the punishment in each case is *kareth* where there was no forewarning.

In all these cases, unwitting violators must bring a *hattat*, under the dictum that a *hattat* is brought for every unwitting violation of a precept whose deliberate violation is punishable by *kareth.*

Those relations for which there is no execution by the Beth din, such as those listed above and cohabitation with one's sister, are punishable by *malkot* in addition to *kareth* where the transgressors were forewarned.

[68:1]

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[946]Sanh. perek 7 and 8.

[7:2]

Relations with a *niddah* are punishable by *kareth*. Nevertheless, *kiddushin* of a *niddah* is effective. We interpret the verse "And her *nidatha* shall be upon him,"[947] to mean that she can **be** to him in betrothal.

[Penalty for cohabiting with a wife known to have committed adultery; status of child]

One who cohabits with his wife after she is known to have committed adultery is punished by *malkot*, for he has violated the precept forbidding relations with a wife "after she has been defiled."[948] Where the wife was warned in the presence of witnesses and thereafter secluded herself with another in the presence of witnesses, and there is no proof of adultery, she is forbidden to her husband Rabbinically. Should he transgress he is punished with *malkot* which is Rabbinically derived for rebelling against rabbinic proscriptions. Since the prohibition is only Rabbinic it follows that a child which results from such forbidden relations is not a mamzer.

R. Akiva disagrees with the prior discussion. He holds that relations with the secluded woman is forbidden by a Scriptural negative precept, and he further holds that the issue of relations forbidden by negative precept is a mamzer. The *halacha* disagrees with him on both counts.

Although we hold that there is *kiddushin* in women whose relation is forbidden by negative precept, one uncertainty remains. Scripture says of a woman who requires *yibbum* or *halizah* "The wife of the dead man shall not be to the outside"[949] until she has received *halizah*. Is this only a negative precept, with the result that *kiddushin* of a third party is effective, consistent with *kiddushin* of all others interdicted by negative precept? Or is the phrase **shall not be** directed at voiding states of marital **being**, so that *kiddushin* is not effective?

Because of the uncertainty, the woman is considered questionably betrothed. But the issue of such a union is not a mamzer.

[Children born of cohabitation proscribed by positive precept]

Even R. Akiva agrees that the issue of marriages forbidden by positive precept are not mamzerim. Such marriages are:

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[947]Lev.15:24.

[948]Deut.24:4. See Yeb.11:2.

[949]Deut.25:5.

[7:2]

> between a Jew and an Egyptian or Edomite convert of the first or second generations (because the prohibition is derived by implication from the positive precept that the **third generation** may intermarry, implying that the first and second may not); and
>
> a non-virgin to a high priest (because the prohibition is derived by implication from the positive precept that he must marry a virgin, implying that he cannot marry a non-virgin).

[68:2]

[Derivation of rule that gentile status depends on mother]

Here is an explanation of the Gemara's discussion regarding the verses:

> "Your daughter do not give to his [the gentile's] son, and his daughter do not take for your son. For he will turn your son away from me."[950]

Logically, "For he will turn" refers to the immediately preceding clause, namely that in which the Jew takes the gentile's daughter for the Jew's son. If so, and the reference is to the daughter-in-law's action, should not the verse have read "For **she** will turn...."?

It must be that the reference in "**he** will turn" is to the gentile girl's father influencing his Jewish son-in-law. That being so, it appears that Scripture evinces no concern that the gentile daughter-in-law will influence her son (your grand-son), because the grand-son is the son of a gentile mother and is not Jewish!

Rabina then derives the converse rule. He points out that once we learn from the last clause that "he will turn your son" refers to actions of the gentile father-in-law, it is applied in the same way to the second preceding clause, namely that in which the Jew gives his daughter to the gentile's son.

> Now, who is the gentile father-in-law turning away? It cannot mean his son (your son in law), for his son is gentile. It must mean his grandson. It follows that the son of a gentile father and a Jewish mother is Jewish.

The preceding explanation is consistent with the Tosafot, but does not agree with Rashi, who provides another explanation.

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[950] Deut.7:3-4.

[7:2]

The majority hold that where a slave or a gentile marries a Jewish woman, the child is completely legitimate and may even marry into the priesthood. The Meiri disagrees with several Geonim who question whether the child may marry into the priesthood.

[69:1]

[Monetary status of bondmaid's child]

Recall that where the mother is a bondmaid, her child takes her status. But this is for marital purposes only. It is possible for a master to free his bondmaid, and for her son to remain a slave. In fact, a master can free his pregnant bondmaid and insist that her fetus remain a slave. For this purpose we do not apply the doctrine that a fetus is considered as one with its mother ("as the mother's limb").

The reverse is not true. If a master purports to free a fetus and to retain his rights to the mother he has done nothing and his action is a nullity. The Rambam explains that this is because one cannot free half a slave. But this rationale is inconsistent with the rule that for these purposes the fetus is **not** considered one with its mother.

The Meiri prefers the Raabad's alternate explanations that:

1. The fetus cannot obtain rights because it has not yet come into this world, and so is not in a state fit to obtain any rights, or

2. One slave of a master cannot accept a deed of emancipation for the master's other slave.

This completes the Perek

with praise to G-d.

[7:2]

[7:2]

Perek IV

With the Help of G-d

This Perek deals in the main with genealogy in the following sections:

1. The different genealogical classes, and the classes which may intermarry.

2. The determination of a persons's genealogy, and the presumptions which may be applied.

3. Genealogical classes which are forbidden to marry into the priesthood.

4. The circumstances in which a person may establish his son's genealogy.

The Perek also deals with uncertainties in *kiddushin* and related issues. The Perek concludes with the rules which forbid seclusion with forbidden relations and other women.

As is usual, the Perek also digresses into unrelated matters.

[The genealogical classes]

The first Mishnah states:

> Ten genealogical classes went up from Babel. Priests, levites, Israelites, *halalim*, converts, freedmen, mamzerim, natinim, shetuki, and foundlings.
>
> Priests, levites and Israelites may intermarry with each other. Levites, Israelites, *halalim*, converts and freedmen may intermarry.
>
> A shetuki knows his mother but not his father. A foundling was gathered in from the streets and knows neither his father nor his mother. Abba Saul used to call the shetuki "Beduki."

The Mishnah continues:

> All who are forbidden to enter into the assembly may intermarry with each other. R. Judah forbids it.

[7:2]

> R. Eleazar said, "A person who is certainly unfit may marry a person who is certainly unfit. Intermarriage is forbidden between persons who are certainly unfit and persons who are doubtfully unfit, and is also forbidden between persons who are doubtfully unfit. The doubtful persons are shetuki, foundlings and kutim."

When Ezra left to Israel from Babel, he was accompanied by the major scholars of the age. No person remained in Babel who was equipped to establish genealogy. Ezra feared that in the absence of persons of stature, or as a result of poverty, the remaining populace would intermarry to the point that genealogy would be hopelessly confused. He therefore brought with him to Eretz Israel all persons who were genealogically unfit. Babel was left as sifted flour.

Why was not Ezra concerned that there would be intermarriage in Eretz Israel? Because the Sanhedrin were there, as well as other leaders, who guarded against marriage with the unfit. The Gemara notes elsewhere[951] that the Sanhedrin in the Chamber of Gazith engaged in genealogical determination of priestly and levitical ancestry.

The Mishnah counts ten genealogical classes:

> 1-2. **Priests and levites**. But what of the statement in Ezra[952] that "I did not find any levites there"? One explanation is that he found no unblemished levites. The levites had all bitten off their thumbs by the rivers of Babylon to prove to Nebuhadnezzar that they could not use their harps to sing the songs of Zion. Another explanation is that levites arrived at a later time. In fact, Ezra says "And the priests and the singing [presumably unblemished] levites sat...."[953]
>
> 3. Israelites.
>
> 4. ***Halalim***. These are persons descended from the relations between a priest and a woman who was unfit for the priesthood.
>
> 5-6. **Converts and freedmen**. Both classes have the same legal status. Still, a convert who was never a slave is preferred. Another Gemara[954] explains

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[951] 76:2.

[952] 8:15.

[953] 2:70.

[954] Horiot 13:1.

that persons more readily marry converts than freedmen, because slaves were included in the curse of Noah "And Canaan shall be a slave unto him."

7. **Mamzerim**. Persons descended from a cohabitation of two persons between whom there could be no effective *kiddushin*.

8. **Natinim**. This class was explained previously.

9. **Shetuki**. One who recognizes his mother but not his father. The reference is to an unmarried woman who cohabited and gave birth, and who died or otherwise became incapable of communication before the Beth din had the opportunity to question her on the father's identity. The shetuki is unfit because he may be a mamzer.

What if the mother was questioned?

If the mother claims that she cohabited with a man who was fit to give her *kiddushin*, she is believed, even if the majority of the men in the city were unfit, and even if she was betrothed and claimed that she cohabited with her groom.

Now, the mother's credibility is sufficient to establish her own legitimacy so that if she is a priest's daughter she may still eat *terumah* and marry a priest. Certainly her credibility extends to her daughter to establish that the daughter is not a mamzeret. But does her credibility suffice to establish that her daughter is not a *halala* and may marry a priest?

The Meiri agrees with the Rashba that the daughter may marry a priest only when the mother's assertion is supported by two majorities: namely, only if the majority of the city in which she cohabited are fit, and the majority of the persons passing through the area in which she cohabited are also fit. But even without these majorities, if the daughter went ahead against our ruling and married a priest, we do not insist that she leave him.

If the mother claims that she cohabited with an unfit person or with a mamzer she cannot establish that the child is a definite mamzer, even where the putative father agrees with the mother. Instead, the child is a shetuki, meaning a doubtful mamzer. It is such a shetuki whom Abba Saul called a "beduki," meaning a child who was investigated.

[7:2]

10. **Foundlings**. Persons who are brought in off the street by compassionate persons and who know neither their mothers nor their fathers. The child is considered a possible mamzer. His mother may have been a married woman who committed adultery and who could not attribute the child to her husband; she may have abandoned the child out of shame. Alternatively, the mother may have been unmarried, or she may not have had the means to feed the child, and the child is legitimate. The child is therefore a possible mamzer.

[Intermarriage among classes]

There follow the rules on intermarriage among the classes:

1. A priest may not intermarry with classes below the Israelite. A *halala* is forbidden to him, and a convert and a freed woman are each considered a *zonah*. The term *zonah* includes both Jewish women who cohabited with persons who could not betroth them, and non-Jewish women who converted or were freed.

2. Levites and Israelites have equal status, and may intermarry with all classes down through the freedmen.

3. Converts and all lower classes may freely intermarry:

i. A mamzer may marry a convert because a mamzer is forbidden only to enter the assembly of G-d[955]. The assembly of converts is considered a separate assembly.

ii. A freedman may also marry a mamzer because he has the same status as a convert.

iii. A natin is a convert for all purposes, with the sole exception that he may not intermarry with the status of Israelite and above.

iv. A shetuki and a foundling could intermarry with all classes based on the strict law. It is only a definite mamzer who may not enter the assembly of G-d; a doubtful mamzer may enter. However, the Rabbis set a higher standard for genealogy and forbade the highest three classes to intermarry with a doubtful mamzer, namely, the shetuki and the foundling.

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[955]Deut. 23:3.

[7:2]

Recall the Mishnah:

All who are forbidden to enter into the assembly may intermarry with each other.

The Gemara considers two difficulties with this portion of the Mishnah:

> 1. Presumably those who are forbidden to enter into the assembly are the mamzer, natin, shetuki and foundling. Do we not know this already from the statement that converts, freedmen, mamzerim, natinim, shetukim and foundlings may intermarry? For certainly the meaning is that each of the six classes may marry into any one of the other six classes. It would go against the sense of the Mishnah to read it as allowing converts and freedmen to intermarry with the other four classes, but not to allow the other four classes to intermarry among themselves.
>
> 2. The converse of the Mishnah would imply that all those who are **permitted** to enter into the assembly **may not** intermarry with any of the six classes. But that is not so! For we know that a convert and a freedman may marry a mamzeret.

The Gemara then suggests that perhaps the Mishnah which deals with "those who are forbidden to enter into the assembly" wishes to teach the following additional doctrine:

> A woman is a zonah if she was once a gentile or a slave, even where she did not cohabit prior to conversion or freedom, such as where conversion or emancipation occurred before the age (three years) at which cohabitation is first legally recognized.

But this explanation is rejected. There are numerous other women who cannot marry a priest and who are not listed. For example the Mishnah makes no hint of the proscriptions against marriage of a priest with a divorced woman, a *halala*, a woman who is a zonah because she cohabited with one who could not betroth her, and (insofar as concerns a high priest) a widow.

The Gemara ultimately concludes that the Mishnah reflects the minority, non-*halacha* view of R. Judah that a convert may not marry a mamzeret because the assembly of G-d includes the assembly of converts. The Mishnah points out that R. Judah agrees that male Amonite and male Moabite converts (who may not marry Israelites and higher classes) are exceptions and may marry mamzerim. Such converts are not in the assembly of G-d. Interpret the Mishnah thusly:

> All [converts] who are forbidden to enter into the assembly [namely, male

> Amonite and Moabite converts] may intermarry with each other [including mamzerim]. [Although] R. Judah forbids it [as to other converts, he permits it for these converts].

What does R. Eliezer add? He refers back to the strict law which forbids only a definite mamzer from entering into the assembly of G-d; a doubtful mamzer (such as a shetuki or a foundling) may enter. Recall also that the Rabbis set a higher standard for genealogy and forbade the highest three classes to intermarry with a doubtful mamzer.

R. Eliezer holds that the higher standard extends to a prohibition against a doubtful mamzer marrying a definite mamzer, and even against one doubtful mamzer marrying another doubtful mamzer, on the possibility that one may be a mamzer while the other is not.

R. Eliezer's prohibition attaches only when the issue is mamzerut. It does not apply to converts, freedmen and natinim who may freely marry a shetuki, foundling or other doubtful mamzer. The child of a marriage of this sort takes the inferior status and is deemed a shetuki or a foundling or a doubtful mamzer.

The *halacha* agrees with R. Eliezer.

Would R. Eliezer permit one shetuki or foundling to marry another?

> 1. R. Eliezer's strict reasoning would prohibit marriage of this kind, because a mamzer may be marrying a non-mamzer. Still, the Meiri's rabbis conclude that R. Eliezer's Rabbinical prohibition would not go to this extreme.
>
> 2. What of the Gemara[956] which forbids a kuti from marrying a kuti because of possible intermarriage with mamzerim? Perhaps that Gemara is limited to those who hold that the kutim intermarried with definite mamzerim.

The Meiri concludes that a Tosefta supports those who take the strict view.

Recall the final portion of the Mishnah: "The doubtful persons are shetuki,

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[956] 75:1.

[7:2]

foundlings and kutim." The Gemara explains that kutim are doubtful in the sense that they may have intermarried with mamzerim or slaves. Ultimately, the rabbis considered kutim as gentiles. Our Mishnah also does not consider them a genealogical class, and prohibits any of the 10 classes from intermarrying with them.

This completes the Mishnah which is consistent with the *halacha* to the extent discussed. The Gemara adds the following.

[69:2]

[Priestly lineage]

A priest could serve in the Temple, and eat the priestly portion of sacrifices and **Scriptural** *terumah*, only if he could trace his lineage to a priest who served in the Temple. For such a priest we apply the presumption that there was no intervening event which rendered the priest ineligible.

Where a person's lineage could not be traced in this matter, but the person was commonly considered a priest in the sense that he ate **Rabbinical** *terumah*, he was permitted to continue to eat Rabbinical *terumah*. The rule applies even if it is known that he never ate Scriptural *terumah* when available. Further, we allow him to continue to eat Rabbinical *terumah* where Scriptural *terumah* exists; we are not concerned that he will inadvertently eat Scriptural *terumah*. He is not permitted to eat Scriptural *terumah* or the priestly portion of sacrifices, nor do we allow him to perform Temple services.

What if witnesses testify that a person has eaten Scriptural *terumah*? Such a person is considered the equivalent of a priest whose lineage has been traced. This explains why the Gemara holds that where lineage is not traced, priests were permitted only Rabbinical *terumah*: were they given Scriptural *terumah* a Beth din would have elevated them to the full priesthood.

The preceding represents the view of the Meiri and the Rambam. The Raabad disagrees and holds that anyone who is commonly considered a priest need not trace his lineage for any purpose. But what of the verses in Ezra referred to in our Gemara which recount that the persons who could not establish their lineage were forbidden to eat of the priestly sacrifices until "there stood up a priest with *urim* v'*tumim*?"[957] The issue in Ezra was that there was a specific rumor that the persons were *halalim*.

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[957]Ezra 5:62. The reference to *urim* v'*tumim* is literary, since there were no *urim* v'*tumim* during the Second Temple. The meaning is that the priests were excluded indefinitely as if the verse read "until they died" or "until the coming of the Messiah".

[7:2]

But if there were such rumors how could the persons referred to in Ezra eat *terumah*? Does not another Gemara[958] hold that where there is a rumor, we "demote" the priest? No. We demote him from what was his **father's** custom if his father customarily partook of more priestly rights than the son. A rumor is not sufficient to demote a priest from matters in which he himself customarily partook.

In fact, the Gemara supports the Raabad that there was an issue of *halalim*. Note the mention in Ezra that the family was descended in part from the convert Barzilai. Recall also the rule that a priest may not marry a convert who is descended only from converts and in whose lineage there is no Jewish non-convert blood. It would appear that the issue with the priests in question was whether the convert who had married into the family had any Jewish non-convert ancestors, in which case the family was not *halal*, or whether the reverse was true. It was only for this reason that presumptions could not be relied upon, and that the family was permitted to eat only Rabbinical *terumah*.

Recall the Raabad's basic premise that anyone who is commonly considered a priest need not trace his lineage for any purpose. The Meiri explains that the Raabad applies his rule only during brief exiles, such as the one in Babel. Where the exile is long, such as the present, the lineage of priests will have to be determined by prophecy.

[70:1]

[Various rules of behavior]

A person should seek a wife of fit family. Children naturally follow the character of relatives, particularly on the wife's side. A person should reject not only families which are definitely unfit, but also families in which the parents personally or in the use of their money act contrary to law. This behavior is evidence that the family is not fit from a genealogical standpoint.

Where one ignores this rule and marries for money his children will not be proper, "Eliohu will bind him and G-d will flagellate him." The reference to Eliohu is based on the convention that Eliohu the Prophet will one day resolve all uncertain matters. But a person's uncertainty of his wife's familial status will not be resolved.

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[958] Keth.26:1.

[7:2]

The effect to him will be the same as if she were definitely unfit. G-d flagellates him in the sense that he is punished for his wrong.

Do not denigrate other people out of spite or envy or to increase your own honor. To do so reflects concern on your own standing, and fear that others will discover your own problems. Samuel adds that where one claims that another's family is blemished, we suspect that the family of the denigrator has that very same blemish. The Meiri cautions that we do not announce that the denigrator's family is unfit until it is determined that this is actually so.

We pronounce a ban against one who insults a scholar, whether or not the insult was uttered in the scholar's presence. The scholar himself may pronounce the ban.

One who obtains a community leadership position because of his wisdom or other attributes should conduct himself with appropriate dignity. For he will lose authority if he conducts himself as a commoner. That is why such a person should not perform labor in the presence of three or more people, except for minor labor in his house where a precept is involved, such as the construction of a balustrade.

One should not accept any personal service from a woman, even if she is a *ketannah* and unmarried. What is prohibited is personal service which may result in familiarity, such as preparation and mixing of wine, the washing of hands and feet, the preparation of a bed, and the like. Other services are permitted.

[70:2]

Where the woman is married, it is forbidden even to inquire of her welfare, even through another person and even through her husband. Excepted are persons who are confident that they will not thereby become unduly familiar. "You shall fear your G-d"[959] in determining whether you are the kind of person to whom the exception applies.

A scholar who has a personal interest in an issue should not propound on it even by citing the ruling of his rabbis or others. But we do heed teachings which the scholar propounded before his personal interest arose. We also heed the teachings of an accompanying scholar who has no personal interest.

[Hasmonean family intermarried with slaves]

The Gemara asserts that all who claim descent from the Hasmonean family are

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[959]Lev.19:14.

[7:2]

slaves. Why so? Did we not learn that if a slave marries a Jewish woman, the children are legitimate? Could this not have occurred with at least some members of the Hasmonean family after they first intermarried with slaves? Rashi answers that the general populace was aware of the intermarriage with slaves and took care that no Jewish girl marry into the family.

[71:1]

[mamzer taint is removed with passage of time]

Recall the rule that the taint of mamzerut continues forever unless there is a marriage with a bondmaid whose child is then freed. The rule is different if in the course of time a family of mamzerim slowly intermarries on account of their wealth, until the matter of mamzeret becomes a matter of remembered tradition rather than certainty. Here we allow the family to intermarry freely. "A family once mixed up remains so." Such families also will remain fit in the time to come, even should prophecy ascertain their initial mamzer status.

The same applies to natinim.

[Requirement of ritual slaughter]

The Scriptural requirement that animals be slaughtered is stated only for domestic animals "And you shall slaughter from your cattle"[960]. The rule nevertheless applies also to beasts of chase and to fowl. Beasts of chase are compared to domestic animals in reference to the first-born of a domestic animal, which is to be eaten "as the deer and the hart."[961] Further, fowl are compared to beasts of chase in that the blood of both must be covered[962].

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[960]Deut.12:21.

[961]Deut.15:22.

[962]Lev.17:13.

[7:2]

[72:1]

[Statement required of an agent who brings a *get*]

A messenger who brings a *get* to a woman from one place to another within Eretz Israel need not view the writing of the *get* and its signature. He need merely give the *get* to the woman in the presence of witnesses, and she may thereupon marry. Should the husband later attack the *get*'s witnesses, it is incumbent on the woman to prove the validity of the signatures. If she fails she must leave her second husband.

A messenger who bears a *get* to a woman from one place to another outside of Eretz Israel, or from Eretz Israel to a place outside of Eretz Israel, must declare that he witnessed the writing and signing if he indeed did do so. If the husband thereafter attacks the *get* we ignore him.

If in the last case the messenger did not witness the writing and the signing, then he may not deliver the *get* until we establish the validity of the signatures. If he delivers the *get* before we establish its authenticity, the *get* is invalidated and she may not marry with it. However, we do not insist that she leave her second husband if she marries in violation of this prohibition.

For all these purposes, Babel is considered the same as Eretz Israel. There is much confusion on Babel's boundaries. But this is of no real concern since the locations referred to in the Gemara have long been lost and forgotten.

[72:2]

[Abandoned slaves]

A slave is freed if he is abandoned by his master. He still needs a writ of emancipation before he can marry a Jewish woman[963].

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[963]Git.38:2.

[7:2]

[Women may marry unfit men]

Recall that a priest may not marry a convert woman. But fit women are not forbidden from marrying unfit men, and a convert man may marry the daughter of a priest[964]. Similarly, the daughter of a priest may marry a freedman or a *halal*.

[73:1]

[Status of foundlings]

A child found in circumstances where it is obvious that those who abandoned him took care to ensure his survival is assumed to have been abandoned on account of poverty rather than because of mamzerut. Such a child is fit for intermarriage generally. Here are several examples:

1. The child is circumcised.

2. His limbs are set and properly arranged.

3. His face is massaged with oil or he was powdered around his eyes cosmetically.

4. On his neck he carries an amulet of inscriptions, herbs or other objects which women commonly hang on their children's necks.

5. He is found suspended on a tree at a level at which beasts of chase cannot reach.

On the other hand, a child is a foundling, and a possible mamzer, where he was abandoned in a place where people generally fear to go.

These rules (other than the first) apply only in totally Jewish cities where the only issue is whether the Jewish child is fit or a mamzer. If the city is not completely Jewish, then, even if the child was found in circumstances where care was taken for its survival:

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[964]It results that a convert may marry a mamzeret (although their children are mamzerim) as well as the daughter of a priest. The same is true of a freedman.

[7:2]

1. If a majority is gentile, the child is treated as a gentile, and may be fed carrion. If his ox gores one of ours we treat him as a gentile and immediately recover our entire loss. But what of the rule that in monetary matters we do not follow the majority? That rule applies only to persons known to be Jewish.

There is one exception to the child's status as a gentile. If he is covered by stones on Sabbath, we violate the Sabbath to save him. This follows the general principle that lenient rulings are applied in matters of life and death.

One commentator disagrees. He maintains that the fact that a majority is gentile does not make it likely that child is gentile. Recall the rule that a child is Jewish if born to a Jewish mother of a gentile father. The Meiri complains, however, that the same commentator agrees with the specific rules listed below for cities which are half Jewish. How would this commentator distinguish between half Jewish cities and majority gentile cities?

2. If a majority of the city is Jewish, we treat him as a Jew in that we sustain him and return objects he loses and which have not been possessed by other Jews. Where he seeks to remove objects from Jewish possession, we do not treat him as Jewish: in monetary matters we do not follow the majority.

But unlike the case where a child is found in caring circumstances in a city wholly Jewish, a child found in a majority Jewish city is not fit for the priesthood unless there are two majorities favoring the child's status, such as that a majority of the city and a majority of the persons in the surrounding area are both Jewish. Without the two majorities, if the child is a girl, she may not marry a priest; if a boy, his daughter and his widow may not marry a priest.

One commentator holds that without two majorities the child is fit for intermarriage, even with Israelites, only if he conducts himself in line with what we expect of Jews. If he conducts himself properly his status is no worse than that of a convert. If he does not conduct himself properly and he betroths a woman we consider the *kiddushin* only possibly valid.

[7:2]

The Meiri disagrees. The Gemara[965] holds where a majority of the city is Jewish, the child is treated as Jewish for all purposes other than his fitness for intermarriage with the priesthood. This suggests that for all other purposes, including his *kiddushin*, there is no issue but that the child is treated as fully and certainly Jewish. Besides, the Tosefta states that *kiddushin* is possibly valid where the city is only half Jewish. This supports our view that where a majority of the city is Jewish the *kiddushin* are fully valid.

3. If precisely half of the city is Jewish, the following rules apply:

i. we must sustain him;

ii. we do not give him carrion;

iii. we do not return items which he loses;

iv. if our ox gores his, we do not pay him. We ask that he prove that he is Jewish and is entitled to compensation;

v. if his ox gores ours, he pays only half of our loss. He tells us that he will pay our entire loss only if we prove that he is gentile.

What if the child was found circumcised and it is obvious that he was not born circumcised? The Meiri rules that in this case a child found in a city with gentiles is treated under the same rules which apply to wholly Jewish cities.

What if a child is found in a city in which gentiles live, and he is converted by the Beth din or converts himself after he reaches adulthood? The Rambam holds that the conversion merely removes the issue of whether he is a gentile. We then apply the rules governing children found in Jewish cities to determine whether the child should be treated as a possible mamzer.

The Raabad disagrees where the majority is gentile. Here the conversion removes the gentile issue. In light of the gentile majority there is no need for concern that the child was a Jewish mamzer.

Return now to the case of the child found in a wholly Jewish city. What if a person comes forward and claims that he or she is the child's father or mother?

1. While the child is still in the street, the person is believed.

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[965]Keth.15:1.

[7:2]

2. Once the child has been taken off the street, the person is believed only in times of famine when we can explain that the person delayed because of his or her desire to have the child fed by others.

As more fully explained below, our Gemara holds that a midwife and others have credibility only if they act promptly. But in the case of a foundling most commentators hold that the identifying person need not act promptly.

[Credibility of a midwife]

A midwife is believed when she identifies the first born of a set of twins. She loses her credibility if she leaves the room before making the identification. On the other hand, she does not lose credibility if she merely turns her head away while still in the same room.

If three women sleep on the same bed close to one another, and blood is found under one of them, we consider unclean those women who could then possibly be a *niddah* (*i.e.,* those women who are not pregnant or nursing a child). But if one of the women discovered blood when she tested herself with a cloth immediately after the blood was found only she is unclean.

Assume that many women give birth in the same room, and that they have different classes of genealogy. A midwife is believed when she identifies one child as the daughter of a priest, and another child as the daughter of a mamzeret, and so on.

But the midwife is not believed when there was a protest **on him**, meaning the child. A protest is sufficient even if only by one witness; two witnesses are required for protest only when their testimony would result in a **change** of a person's status. In this case the issue is the child's initial status, rather than a change in status.

The Rambam emends the text to read that the midwife is not believed when there is a protest **on her**, meaning the midwife's credibility. The result is the same.

What results when the midwife is not believed?

1. The Meiri holds that each child in the room is a doubtful mamzer.

2. The Rambam holds that each child is legitimate but has no lineage. The Meiri finds this difficult. For what purpose is he legitimate if we do not know his lineage and he may be a mamzer?!

Should one witness's protest also destroy the mid-wife's credibility that one of

[7:2]

twins is the first born? The Meiri's rabbis rule "yes." But the testimony of the child's father or mother has greater weight: it can be contradicted only by the direct testimony of **two** witnesses.

Mere rumors, even when conveyed by two or more persons, are insufficient to gainsay the testimony of the father or the mother. This explains the Gemara which holds that a father is believed when he identifies one son as his first born notwithstanding that another son was commonly assumed to be the first born.

[74:1]

[Credibility of the father and mother]

Recall the rule that a midwife is believed when she testifies **promptly** on which of two children is the first born. Compare the following rules:

> 1. A mother's credibility continues for the children's **first seven days**. She pays great attention to the children's respective identities while they are prepared for circumcision. The Meiri believes that the mother's credibility is permanent where the two sons are not twins.
>
> 2. A father's credibility persists **forever**. In certain circumstances a father is also believed when he testifies that a son is born of a *haluzah* or a divorced woman[966].

[Credibility of a judge]

Assume that a judge decides a law suit, that there is no written decision, and that the disputants disagree on who was awarded judgment:

> 1. If the case was determined on the basis of strict law, the judge must reconsider the entire case and rule anew. He cannot by his testimony establish who won his prior decision.
>
> 2. If the case was one determined by the judge's sense of equity, the judge may by his testimony establish who won his prior decision, but only so long as the disputants still stand before him.

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[966] B.B.127:2.

[7:2]

[Credibility of a seller in a dispute among purchasers]

Here is an excerpt of the following Gemara:

> A seller is believed when he says "To this one I sold it and to this one I did not sell." When is that? Only if his ware is in hand[967]; but if his ware is no longer in his hand, he is not believed.
>
> [Where he no longer holds the ware] let us see whose money he holds? He holds money from both, and states "One paid me with my consent and the other paid me against my will," and **he does not know** which was with his consent and which was against his will.

From this textual reading it follows that had the seller known when he no longer held the ware, he would have been believed. But why need the Gemara tell us that he is not believed when he does not know? What is there to believe?

The Gemara intends to teach various levels of credibility:

> 1. If he doesn't know, the seller does not have the standing of even a single witness.
>
> 2. Where he does know, and he does not hold the ware, he has the force of a single witness, and the single purchaser who contradicts him must take the oath required of one who contradicts a single witness.
>
> 3. Where he does know and holds the ware he has the deciding force of two witnesses.

The Meiri prefers Rashi's textual reading:

> **and it is not known** which was with his consent and which was against his will.

The point is that even if the seller claims to know, we the Beth din do not know. We assume that the seller can easily err because he holds money from both and he no longer holds the ware. The seller cannot count even as a single witness.

Here is an analysis of Rashi's holding:

1. The seller counts as an escrow agent for the ware so long as he

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[967]Such as where the sale was consummated by *halifin* or with another form of *kinyan* which does not require that the ware be physically delivered by the seller to the buyer.

[7:2]

holds it. That is why he is believed when he holds the ware regardless of who paid what purchase price.

2. Where the seller no longer holds the ware, but he accepted only one person's money, he counts as an escrow agent for the money who was appointed by both purchasers, with the absolute right to decide which purchaser paid the money.

3. Where the seller no longer holds the ware and he accepted money from both, he no longer counts as an escrow agent, **or even as a single witness**, because he has a personal interest which may sway him on the subtle issue of to which purchaser he **intended** to sell. The seller may fear that one potential purchaser will be more hostile should the seller return money to him and declare the ware was sold to the other.

In both previous readings, the question "Let us see whose money he holds" was assumed to refer to the case when the seller no longer holds the ware. Rabbeinu Tam disagrees. The question is presented when the seller still holds his wares: why believe him when we can see whose money he holds? To which the Gemara answers that he accepted money from both and **we don't know** whose money the seller accepted willingly. That is why we must rely on the seller's testimony. The seller has absolute credibility.

What if the seller no longer holds the ware? Rabbeinu Tam would give him the status of a single witness.

There are additional interpretations. One would agree with Rashi in all respects, except that (as in Rabbeinu Tam's interpretation) the seller is treated as a single witness where he no longer holds the ware and he has accepted money from both. The Meiri discusses this view and others in detail elsewhere.

[74:2]

[When a woman becomes a *zonah*]

We have previously explained that a woman convert may not marry a priest. The essence of the prohibition is based on presumed cohabitations which result in her being a *zonah*. But the Rabbis extend the rule to apply to a woman who converted when she was less than three years old and whose prior cohabitations are not recognized in law.

A woman, whether single or married, becomes a *zonah* if she has relations with a man whom she may not marry (whether as a result of a positive or a negative

[7:2]

precept), or with a man with whom she can have no *kiddushin* or *get*, or with one who is a *halal*. Therefore, a woman is a *zonah* if she has relations with any of the following males who is more than nine years and one day old. It does not matter whether the woman is the daughter of a priest, a levite or an Israelite:

1. An Amonite or Moabite convert, notwithstanding that the convert's daughter may freely intermarry;

2. An Egyptian or Edomite convert of the first two generations, notwithstanding that the next generation may freely intermarry;

3. A natin or a mamzer;

4. A gentile or a slave (since no *kiddushin* or *get* can apply);

5. A *petsuah daka* or a *khrut shofkha*;

6. Any man other than one to whom she is bound to perform *yibbum* or *halizah*;

7. A *halal*, even though a woman is permitted to marry a *halal.*

A *zonah* may not marry a priest. Also, if she is the daughter of a priest she may no longer eat *terumah*.

[75:1]

The child of a second generation Egyptian convert may intermarry freely, even into the priesthood. It does not matter that the child's mother or father is a person (such as an Israelite woman) who was not permitted to marry the second generation Egyptian convert and who became a *zonah* because of relations with the convert. The same applies to the child of an Amonite or Moabite convert and an Israelite woman.

The following relations, standing alone, do not give a woman the status of a *zonah*:

1. Relations with an animal, notwithstanding that she is punishable with stoning;

2. Relations while a *niddah*, because she could have married the person who cohabited with her while she was a *niddah*;

3. Permitted relations while she is single.

[7:2]

[The rules relating to women of "suspected family"]

A woman of suspected family means a woman whose status is subject to "double doubt." She may not marry a priest.

What is the double doubt?

Assume that priest A divorced his wife in circumstances where the *get* may not be valid. For example, assume that he threw the *get* to her and we do not know whether the *get* rested more closely to him or to her.

Assume that priest A immediately remarried his wife, who may by then have been a divorced woman, and that she gave birth to priest B within seven months. Even if A's wife is a divorcee, it is possible that priest B was conceived prior to the divorce.

It follows that priest B is a *halal* only if both doubts are determined against him, *i.e.,* it is assumed that:

the divorce was valid; and

that he was conceived after the divorce and that he was born after seven months' gestation.

When priest B marries, his widow's status is also subject to this double doubt.

B's widow may not marry a priest, notwithstanding that there is only a double doubt that she is a *halala* or *zonah*, [and a person generally is presumed to maintain his or her status in the face of a double doubt. But] because the woman's daughter is prohibited to the priesthood [because she begins life without any previous legitimate status,] so too is the mother prohibited[968]. If she goes ahead and marries a priest anyway we do not insist that he divorce her.

We do insist that he divorce her where there is only a single doubt.

The same rule applies to the widow of a priest who was a member of a family which was known to include a person who was possibly a *halal*. There is double doubt: The family **possibly** includes a *halal* and she **possibly** married that *halal*.

Rashi holds that the double doubt begins not with the priest but with the widow. The case involves a priest who is a possible *halal*. His wife is subject to a

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[968]The bracketed material is not mentioned in the Meiri but is derived from Tosafot Keth.14:1.

double doubt in the sense that her status becomes questionable only derivatively through her husband. The Meiri does not approve of Rashi's view, because the Meiri holds that where the husband is subject to a single doubt, so too is his widow, for her status reflects and depends on his.

[Where a woman is not a *halala*]

Do not be confused on the rule in the following case. If a *halala* marries an Israelite her daughter may marry a priest. If a divorced woman marries an Israelite no one would question that her daughter may marry a priest. A *halala* is forbidden to a priest only where she herself engaged in relations with a priest which were forbidden to him, or if she was conceived in such relations **with a priest**, or if she is the daughter of a *halal*[969].

[Status of a child born to a betrothed woman]

The following rules apply to a child born to a betrothed woman:

1. If the husband asserts that the child is not his, the child is a definite mamzer.

2. If the husband asserts that the child is his, then the child is legitimate and inherits with his brothers.

3. If the husband is silent or is unavailable and the mother asserts that the child was her husband's, we believe her to the extent that if the child seizes a share in his father's inheritance he may retain it.

4. In all other cases, the child is a doubtful mamzer who may marry neither an Israelite or a mamzer. He may not inherit with his "brothers" even if his mother later consummates her marriage with the bridegroom. If the child seizes an inheritance share we compel him to return it.

[Intermarriage of converts into the priesthood]

In the Mishnah we discussed the rule that converts may marry into the priesthood if at least one ancestor is not a convert. Converts without Jewish ancestors may marry mamzerim so long as the populace still identifies them as converts.

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[969] 76:1.

[7:2]

The same rule applies to freedmen.

The Gemara discusses kutim. But we can safely ignore this topic because kutim were subsequently deemed equivalent to gentiles.

[75:2]

[Certain *yibbum* rules]

A woman is free of *yibbum* bonds where she has a forbidden relation to the prospective *yabam*, such as where she is the *yabam*'s daughter. Not only is she free, but her co-wives who have no relation with the *yabam* are also free. That being so, if the co-wife nevertheless marries the "*yabam*", both she and the "*yabam*" transgress the interdict which forbids one to marry his brother's wife. Their child is a mamzer and they themselves are subject to *kareth*.

The widow of a childless husband is subject to *yibbum* bonds even if she was only betrothed and the marriage was not consummated.

Assume that a woman is subject to *yibbum* bonds and nevertheless marries another. The child has no taint of mamzerut[97°].

[76:1]

[Familial investigation before marriage]

The next Mishnah reads:

> He who marries a priest's daughter must investigate her descent up to four mothers, which are eight, namely,
>
> her mother and her mother's mother,
>
> her mother's paternal grandmother and her mother,
>
> her father's mother and her mother,

[97°] 68:1.

[7:2]

her father's paternal grandmother and her mother.

In the case of a levite or an Israelite, one more is added.

We make no investigation from the altar and upwards, from the *dukhan* and upwards, nor from the Sanhedrin and upwards.

All whose parents were established to have been among the public officers or charity overseers are permitted to marry into the priesthood, and their descent is not investigated.

R. Jose said "Also those who signed as a witness in the old court of Sephoris. R. Hanina b. Antigonus said "Also one who was recorded in the king's list of officers."

The Mishnah deals with a priest who wishes to marry. The priest must determine whether there are family blemishes peculiar to priests, such as divorced women, *zonah* and *halala*. The priest therefore extends his search to cover all blemishes, including mamzerut and the like. Since an Israelite need not investigate blemishes peculiar to priests, we do not require that he investigate even for blemishes which affect Israelites, such as mamzerut.

The Gemara asks why the woman need not investigate the man's family, and explains that women may marry men with family blemishes. More precisely, the Gemara refers to men with **priestly** defects. Certainly, women may not marry men with family defects, such as mamzerut, which affect Israelites generally.

The Mishnah requires this investigation even for families for which there has been no claim of family blemishes. Where there has been such a claim even an Israelite would be required to perform an investigation prior to marriage. For this purpose, a "claim" means testimony by two witnesses that a mamzer or the like has intermarried into the family. Mere rumors are not sufficient, unless the family is known to be quarrelsome and to be hasty in ascribing family blemishes to others.

However, the Gemara ultimately determines that the *halacha* is that even a priest need make an investigation only where there has been a claim of blemish. The *halacha* is also that where there is a claim of priestly or other defects for priests or other defects for Israelites, both priests and Israelites must perform the described investigations.

If the woman is of a priestly family, the investigation must cover four mothers, each with their respective mother, so that eight are investigated, four on each side. In short, we investigate each of the following and her mother:

1. the woman's mother

[7:2]

2. the mother of the woman's father

3. the mother of the woman's grandfather on her father's side

4. the mother of the woman's grandfather on her mother's side

Why need we not investigate whether any of the male ancestors were mamzerim, etc.? Because men tend to insult one another with family blemishes when they argue, so that any blemishes would be publicly known. Woman tend to insult one another with licentiousness rather than with family blemishes.

If the woman is not of a priestly family additional investigation is necessary because non-priestly families are more likely to intermarry with blemished persons:

> The Mishnah specifies that we investigate also the mother of each of the last group of four mothers whom we investigate for priestly families. This would result in 12 mothers being investigated.
>
> But the Gemara explains that we must also investigate the mother of each of the four mothers added by the Mishnah (as if the Mishnah required investigation of an additional **pair** of mothers), so that **16** mothers are investigated.

The Yerushalmi interprets the Mishnah to mean that additional investigation is necessary where the **man** is not a priest. The Yerushalmi recognizes the incongruity of requiring that a non-priest pay greater attention to lineage than a priest. It explains that we make difficulties in order to encourage a person to marry into his own family, which he knows and of which no investigation is necessary. Priests are more concerned with lineage and are therefore disposed even without difficulties to marry into their own families. The Yerushalmi is inconsistent with the Bavli, and the Meiri's rabbis preferred the Bavli's interpretation.

An investigation need go no further into the past once the investigation arrives at a priest who served in the Temple, or a levite who sang on the *dukhan*, or a person who was a member of the Sanhedrin. It is assumed that a person would not have served in any of these posts without a complete familial investigation. However, some commentators hold that where an investigation is occasioned by a claim of family blemish, it cannot be cut short by determining that an ancestor served in one of these posts.

The Mishnah's reference to public officers means local judges who were appointed to rule on minor matters so that disputants could avoid the difficult journey to the 23-man Jerusalem court which would otherwise have jurisdiction. The Gemara explains that public officers are assumed to be of good family only in

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Jerusalem, because outside of Jerusalem no account was taken of family in appointing the officers. As a matter of strict law even a mamzer may judge monetary matters.

Charity overseers are presumed to be of good family because of their power to seize collateral even on the eve of Sabbath. Were they of bad family their blemishes would have been exposed in the quarrels in which they would be embroiled while they seize the collateral.

> The old court in Sephoris admitted as members only persons of good family.
>
> The king's list of officers means the list of King David's army officers.
>
> This completes the Mishnah. The Gemara discusses the following:

[76:2]

[Fitness to act as a witness or judge]

One who is unfit to testify as a witness is unfit to sit as a judge.

There are instances, some relating to capital cases and some relating to civil cases, in which one who is fit to be a witness may not sit as a judge. The following may not sit as a judge even in civil matters:

1. an enemy of a principal;

2. a close friend of a principal;

3. a convert whose mother is not an Israelite;

4. a freedman.

The following may not judge capital cases, but may judge civil cases:

1. an aged person;

2. a *saris*;

3. a mamzer;

4. a person who is blind in one or both eyes.

Any person with a Jewish mother may be appointed to all leadership positions.

[7:2]

Where his mother was not an Israelite he may not be appointed to any leadership position.

> Minor leadership positions are an exception. This is how the words in the Gemara "deals with them" are appropriately read. Rashi has a different reading.

[Certain idolatry rules]

If a gentile blemishes or otherwise degrades an idol it ceases to have the status of an idol. A Jew's idol continues to have the status of an idol regardless of any action which is taken.[971]

[77:1]

[Descendants of a *halal* and of a *halala*; certain *zonah* rules]

> The next Mishnah reads:
>
> The daughter of a male *halal* is unfit for the priesthood for all time. If an Israelite marries a *halala*, his daughter is fit for the priesthood. If a *halal* marries the daughter of an Israelite, his daughter is unfit for the priesthood.
>
> R. Judah said "The daughter of a male convert is as the daughter of a male *halal*."
>
> R. Eliezer b. Jacob said "If an Israelite marries a female convert, his daughter is fit for the priesthood, and if a male convert marries the daughter of an Israelite, his daughter is fit for the priesthood. But if a male convert marries a female convert, his daughter is unfit for the priesthood. The same law applies to a convert as to freed slaves, even unto ten generations his daughter is unfit unless his mother is of Israelite stock."
>
> R. Jose said "If a male convert marries a female convert, his daughter is fit for the priesthood."

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[971] A.Z.53:1.

[7:2]

A *halal*'s direct male descendants are *halalim* notwithstanding that their mother had no blemish prior to marrying their father. The daughter of any one *halal* in the line of *halalim* is a *halala*. Should a *halala* marry a non-*halal* her children are not *halalim*; Jewish non-*halal* men (but not Jewish non-*halala* women) are like a *mikveh* which purifies their spouse's *halal* status.

R. Judah holds that anyone with convert ancestors is unfit for the priesthood. R. Eliezer b. Jacob disagrees, and holds that a convert who has any Jewish ancestors is fit for the priesthood. The same applies to freedmen. R. Jose disagrees further, and holds converts with no Jewish ancestors are also fit for the priesthood.

The *halacha* accords with R. Eliezer b. Jacob. Still, if a female convert with no Jewish ancestors goes ahead and marries a priest we rely on R. Jose not to insist on a *get*. But if she herself converted, rather than being the daughter of persons who converted before she was conceived, she may not marry a priest and must be divorced if she does marry. Even where she is not a *zonah* in the traditional sense, because she converted before the three year age of intercourse, we still apply the dictum a priest's wife must be from the "seed of Israel."[972]

It goes without saying that the daughter of a *halal* must be divorced if she goes ahead and marries a priest.

> This completes the Mishnah. The following matters are discussed in the Gemara.
>
> There are two sorts of *halala*:
>
> 1. A woman who was born a *halala* because she, her priestly father or one of her father's direct male ancestors is the issue of a union between a priest and a woman forbidden to a priest; or
>
> 2. She was born a non-*halala* but had relations with a priest notwithstanding that she was forbidden to a priest. For example if she was a widow and had relations with a high priest she becomes a *halala*. The high priest must divorce her but does not become a *halal* himself. She can no longer marry any priest on pain of *malkot*. The daughter of such a union is a *halala* and the son is a *halal*. The son's *halal* taint continues down through his direct male descendants.

A woman who cohabits with an Israelite to whom she is forbidden does not become a *halala* but a *zonah*. Should a priest then cohabit with her she also becomes

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[972] Ezek.44:22.

[7:2]

a *halala*, because she was forbidden to the priest as a *zonah*.

A *halala* who has relations with a priest is also a *zonah*, since the relations were forbidden to the priest; it does not matter that she was permitted to enter into the relations.

There is a negative interdict against remarrying one's divorced wife who in the interim has married another. Nevertheless, if he does remarry her, their children are legitimate.

A woman does not become a zonah if she cohabits with a man while a *niddah*, assuming that the relations are not otherwise forbidden. That she is a *niddah* does not take away from the fact that she may marry the man.

[77:2]

[Accumulation of prohibitions]

If a high priest is warned not to cohabit with each of three different widows, he is given *malkot* for each cohabitation. In fact, the same would apply to three cohabitations with one widow if he is warned separately on each. If he was warned only once he receives *malkot* only for the first. Compare the rule that a nazir is given only one *malkot* if he drinks wine all day after one warning. If he is warned intermittently he receives *malkot* for each warning.

If the high priest cohabits with a woman who was widowed three times, the high priest receives only one *malkot* even if he was warned not to cohabit with her on account of her being a widow thrice.

> Assume that a high priest cohabits with a woman who:
>
> was first a **widow**;
>
> then married and was **divorced**;
>
> then cohabited with a priest to whom she was forbidden on account of her being a divorced woman, and who thereupon became a ***halala***; and
>
> then became a ***zonah*** when she cohabited with either a *halal* or a relative forbidden to her.

Assume also that the high priest was warned that his cohabitation was forbidden on account of each of these four statuses. Now, there is a general rule that we do not cumulate prohibitions for the same transgression. Still, the high priest is punishable

with four sets of *malkot*. The rule against cumulation does not apply in the following three circumstances:

1. where the prohibitions attach simultaneously;

2. where the later prohibitions are of wider scope in the sense that they affect more people or are subject to more severe penalties ("*mosif*"); and

3. where the later prohibitions are more inclusive on the matters prohibited, such as where the later prohibition forbids all foods whereas a prior prohibition attached to only certain foods ("*kollel*").

In our case the prohibitions are *mosif*:

1. A widow is forbidden only to a high priest.

2. A divorced woman is forbidden to all priests; because the prohibition attaches to non-high priests, it also attaches as an additional prohibition to the high priest.

Note that at this point if the woman is the daughter of a priest she may return to her father's house to eat *terumah* if she has no children.

3. As a *halala* she may no longer eat *terumah*.

4. Once she becomes a *zonah* we take note of the fact that there exists a case, albeit not in this one, where *znut*, meaning adulterous transgression, results in a woman being forbidden even to an Israelite: that is, the case of a married woman who willingly commits adultery.

But what of the rule that prohibitions included in the same interdict can be punished only once? Is not the prohibition for the high priest included in the one interdict "a widow, divorcee, *halala* and *zonah*, of these he shall not take"[973]? Yes, but note that in the verse dealing with non-high priests there is a separate prohibition for divorced women: "A woman who is a *zonah* or a *halala* they shall not take, and a woman divorced from her husband they shall not take."[974] Obviously a separation is also implied for the high priest, although not stated. That being so, we imply the separation for all four prohibitions, and we also imply the separation for non-high priests insofar as concerns *halala* and *zonah*.

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[973]Lev.21:14.

[974]Lev.21:7.

[7:2]

If the four statuses were attained in an order in which additional persons were **not** covered at each stage, there is no *mosif*, and only the first prohibition attaches. If there was no warning for the first prohibition, there is no punishment for later prohibitions even if they were warned against. This rule applies, for example, where the woman first became a *zonah*, then a *halala*, then a divorcee, and finally a widow.

The preceding paragraph assumes that *zonah* is more encompassing than *halala*, for the reasons stated previously. Realize, however, that the penalties for *zonah* may in a special case be less severe than the penalties for *halala*. Assume that a woman becomes a *zonah* on account of a cohabitation which was prohibited only by positive precept. For this cohabitation she receives no *malkot*. When she later cohabits with a priest, she becomes a *halala* and thereby becomes subject to *malkot*.

[Additional rules on cumulation]

If a high priest cohabits with a woman who is his sister and a widow, he is punished only for incest with a sister. Her becoming a widow did not prohibit her to additional persons, for she was prohibited to the high priest anyway. The exception of *mosif* does not apply, and prohibitions cannot accumulate.

One who eats on Yom Kippur is liable for *kareth* if deliberate, and to bring a *hattat* if unwitting; if he was warned not to eat he also receives *malkot*. One who eats *nevela* deliberately and after warning is given only *malkot*. If one eats *nevela* on Yom Kippur the interdict of Yom Kippur is added to the interdict of *nevela* for two reasons:

the doctrine of *mosif* applies because of the addition of the *kareth* penalty;

the doctrine of *kollel* applies because of the additional foods other than *nevela* which are interdicted by Yom Kippur.

But if the animal became *nevela* on Yom Kippur, did not the interdict of Yom Kippur apply first?

1. Some explain that the interdict of *nevela* applies to an olive-sized portion, whereas the interdict of Yom Kippur applies only to larger date-sized portions. In this sense the interdict of *nevela* is first.

2. Rashi explains that at the onset of Yom Kippur there was an interdict equivalent to *nevela*: that which forbids the eating of live animals.

Now, we know that the interdict of Yom Kippur falls on animals

which were **properly** slaughtered on Yom Kippur. Why so? These animals, too, were prohibited at the onset of Yom Kippur!

Yes, but at the instant of the slaughter the animal is permitted, and the interdict of Yom Kippur falls without hindrance. Where the animal became *nevela* the interdict of *nevela* attached immediately when the interdict against eating live animals was lifted, so that Yom Kippur must fall on an existing interdict.

[Interplay of rules of *halala* and *zonah*]

You already know the following rules:

1. A woman becomes a *zonah* if she has relations with a man who is forbidden to priests and Israelites alike, such as a mamzer, a natin or a person forbidden by the interdicts against incestuous relations, including those forbidden by negative precept.

2. A woman also becomes a *zonah* if she has relations with a *halal*, notwithstanding that she is permitted to marry him.

3. A woman can become a *halala* by cohabitation only if she has relations with a priest which would have been permitted to non-priests. Examples are the prohibitions against a priest's marrying a divorced woman or a *zonah*, or against a high priest marrying a widow.

It follows that if an Israelite has relations with his sister, she becomes a *zonah*. Should she later have relations with a priest she is also a *halala*. Since the status of *zonah* preceded the status of *halala* there is no *mosif*, and accordingly there is no *malkot* for *halala*.

It also follows that if a priest has relations with his sister, she becomes a *zonah* only and not a *halala*. Therefore, a child of that union is a mamzer and not a *halal*; those who permit a mamzer to eat *terumah* would allow the child to eat *terumah*.

But the *halacha* is that a mamzer cannot eat *terumah*[975]. Of what significance, then, is it that the child is a mamzer rather than a *halal*? That if the child has relations with the daughter of a priest, she becomes a *zonah* rather than a *halala*. She therefore can eat *terumah*.

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[975] Yeb.66:1.

[7:2]

Return now to the case of the woman who becomes a *zonah* because she had relations with her brother who was a priest. Should her brother or another priest have any other relations with her, she becomes a *halala*, and the issue of any such union is a *halal*.

Why does not the same rule apply to the first cohabitation? We know that the onset of intercourse is sufficient to cause a woman to become a *zonah*. Should we not say that she becomes a *zonah* with the onset of intercourse, and a *halala* at its completion? No. The rule that a woman can become a *zonah* with the onset of intercourse applies only where intercourse was interrupted at that stage. Where intercourse is completed, we consider the entire intercourse as resulting only in the status of *zonah*.

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[Multiple prohibitions on cohabiting with a *halala*]

In referring to the high priest, Scripture directs that "He shall not profane his seed."[976] We separate this verse into two sections. The first part of the verse (He shall not profane) refers primarily to the profanation of an interdicted woman, whereas the second part of the verse (his seed) deals with the profanation of the seed. There is another verse, parallel to a similar verse for non-high priests, which directs that "A widow, a divorced woman, a *halala* and a *zonah* **he [the high priest] shall not take [in the sense of taking in betrothal]**."[977]

Now then, if a high priest betroths a widow and then commences intercourse with her, he violates two precepts: that against **taking** a widow, and that against **profaning** a widow by making her a *halala*.

Should he interrupt intercourse and later complete it, he violates a third interdict: that against profaning **his seed** by intercourse with a *halala*.

> If intercourse is not interrupted, we apply the prior rule that the entire intercourse serves to make her a *halala*, so that he does not violate the precept against profaning his seed by intercourse with a *halala*.

But if intercourse was interrupted, should we not hold that she became a *halala* at the onset? If so, when he completes intercourse, why does he not also violate the

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[976] Lev.21:15.

[977] Lev.21:14.

interdict against taking a *halala*?

> In fact he does violate that interdict. But the interdict against profaning a woman by making her a *halala* disappears. The fact is that at the end of the intercourse she was already a *halala*. It does not matter that he caused the status. The same intercourse cannot be held to be both the making of a *halala* and intercourse with a *halala*.

Although there is no equivalent verse which prohibits profanation for non-high priests, the doctrine of *hekesh* is used to apply the same rules where a non-high priest has relations with a divorced woman, a *halala* or a *zonah*.

[*haluzah* forbidden to a priest]

Scripture does not prohibit a *haluzah* to a priest, but the Rabbis do prohibit her to a priest because of a *haluzah*'*s* resemblance to a divorced woman. Similarly, the child of such a union is Rabbinically a *halal*.

[Status of a *halal*]

One who is a *halal* Scripturally is treated in all respects as an Israelite: he may marry a divorced woman and he may defile himself for the dead. One who is a *halal* Rabbinically is treated as a priest for stringent rules, and he may not may marry a divorced woman or defile himself for the dead. He is also treated as an Israelite where that results in stringent rulings: he may not eat *terumah* or serve in the Temple.

[Where a priest betroths but does not cohabit, or cohabits without betrothal]

Refer back to the rule that a high priest who betroths and cohabits with a widow (or a non-high priest who betroths and cohabits with a divorced woman) violates two precepts: taking and profaning. What if he betroths and does not cohabit? He violates nothing! **Taking** is prohibited only when it **results in profanation**.

The reverse is not true: the priest violates the precept against profanation where he cohabits without betrothing. There is only one exception: One who cohabits with his divorced wife after she has married another violates an interdict only if he betroths her again. Scripture forbids only to "take her [again] for a wife."[978] But

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[978]Deut.24:4.

does the verse which forbids one "to **take** her again"[979] mean that one violates the precept by betrothal without cohabitation? No. Scripture refers only to betrothal which leads to relations.

> The bracketed material shows how the Gemara is consistent with this discussion:
>
> Abbaye said "When he [a high priest with a widow, or a non-high priest with a divorced woman] betroths he receives *malkot* [for **taking**]; and when he cohabits [after betrothing] he receives *malkot* [for **profaning**].
>
> Raba said "When he cohabits [after betrothal], he receives *malkot* [meaning two *malkots*], as you said. But when he betroths without cohabiting, he does not receive *malkot* even for **taking**. The interdict against **taking** applies only when it results in cohabiting.
>
> And Abbaye admits that in the case of one who marries his divorced wife, although here too there is a negative precept against **taking**, still there is no *malkot* [because of the verse "to take her for a wife"].
>
> And Raba admits that if he [meaning a high priest with a widow, or a non-high priest with a divorced woman] cohabits but does not betroth, he receives *malkot*, for he has **profaned**. [In fact, the same is true of all prohibited relations, where the interdict is stated in terms "He shall not have relations."]
>
> And both admit that in the case of one who cohabits with his divorced wife[980], there is no *malkot*, for the Torah prohibits cohabitation only which results in the building of a new household[981].
>
> In sum:
>
> > 1. Both agree that relations which are interdicted with language which forbids **cohabitation** are punishable where there has no betrothal;

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[979]Id.

[980]The Meiri rejects a variant reading in which both Raba and Abbaye admit that there is no *malkot* with one who cohabits with his *haluzah*. To the contrary, cohabitation with one's *haluzah*, who is his brother's wife, is subject to *kareth*, so that attempted betrothal would not even be valid!

[981]This discussion does not appear in our texts.

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> 2. Both agree that there is *malkot* for one's divorced wife only where there is both betrothal and cohabitation;
>
> 3. Both agree that there is *malkot* for cohabitation without betrothal for women prohibited to the priesthood; and
>
> 4. They argue only on women who are prohibited only to the priesthood, and who were betrothed without cohabitation. Raba holds there is no *malkot*; Abbaye disagrees. The *halacha* is as Raba.

This is the understanding of the Meiri and of the Geonim, and is supported by the text.

The Rambam disagrees and holds as follows:

> 1. There is no *malkot* where any priest has relations with a **divorced woman, a *halala* or a *zonah*** without betrothal.
>
> 2. There is *malkot* where a high priest has relations with a **widow** without betrothal.

Recall Raba's admission, which the Meiri interpreted as follows:

> And Raba admits that if he [meaning a high priest with a widow, or a non-high priest with a divorced woman] cohabits but does not betroth, he receives *malkot*, for he has **profaned**. [In fact, the same is true on all prohibited relations, where the interdict is stated in terms "He shall not have relations."]

The Rambam reads Raba's admission as follows:

> And Raba admits that if he [meaning only a high priest with a widow], cohabits but does not betroth, he receives *malkot*, for he has **profaned**. [The same is not true of other prohibited relations.]

The Rambam reasons that a high priest does profane a widow by cohabiting with her. He does not profane a divorced woman, a *halala* or a *zonah*, because such women are already profaned.

The Meiri does not understand. A priest does profane a divorced woman, a *halala* (and a *halala*'s children) or a *zonah* by cohabiting with them. Because of the cohabitation, a divorced woman and a *zonah* become a *halala* and unfit for *terumah*.

The Rambam goes on to say that all relations which are interdicted by negative

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precept, such as that prohibiting relations between a mamzer and an Israelite, are subject to *malkot* only where cohabitation follows betrothal[982]. The Raabad attacks this proposition with another Gemara which analyzes the view of R. Isaac that one who violates a virgin whom he may not marry cannot both receive *malkot* for the transgression and a monetary penalty for the violation. The Gemara considers R. Isaac's view to be inconsistent with a Mishnah which requires a penalty for one who violates a mamzeret. Obviously the case involves no betrothal, and yet the Gemara assumes that there is *malkot* for cohabiting with a mamzeret!

The Meiri concludes that the Rambam's interpretation is strange.

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[Credibility of a father to declare that a son is a mamzer]

The next Mishnah reads:

> If a man declares "This son of mine is a mamzer," he is not believed. And even if both the husband and the wife admit that the child within her is a mamzer, they are not believed. R. Judah said "They are believed."

The father admits that the child is his son, but the father claims that the child was a mamzer because he was born of a woman prohibited to the father on pain of execution by the Beth din or *kareth*. The father is not believed for two reasons:

> 1. A witness has no credibility in testimony regarding his kin; just as a person is considered **kin** to himself, so also is he kin to his son.
>
> 2. A person cannot incriminate himself by his own testimony. By claiming that the child is a mamzer the father is in effect testifying that he cohabited with a woman prohibited to him. For if he means that the child is a mamzer of another father, then the father would not have acknowledged the child as his son.

Where the wife's husband does not acknowledge the child as his son, he is not believed even if his wife concurs that the child is a mamzer and even if the child is

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[982] Again, the only exception is cohabitation between a widow and a high priest.

not yet born, and therefore has less of a status of fitness.

R. Judah holds that the husband is believed in both cases, even without the mother's concurrence. What of the rule against self-incrimination and the rule that one cannot testify regarding his kin? Credibility is based on the express Scriptural direction that the father is credited when he acknowledges[983] "to others" a child as his first-born son who has the right to receive a double portion in the father's inheritance. He may so acknowledge the child even where an older child was presumed to be the first born, **and even where the necessary result of the acknowledgement is that the older child is not his son.** For were the older child his son, he would have the rights of a first-born even if he is a mamzer.

From this R. Judah concludes that just so may a father acknowledge a child as his son, but that the child is a mamzer or the son of a divorced woman or a *haluzah*. R. Judah would certainly credit a person who claims that a child is not his son and a mamzer, since here there is no self-incrimination.

> Now, precisely how does Scripture teach that the father has special credibility?
>
> Does not the father have the power to **give** his property to the younger boy in any event?
>
> Yes, but the father has that power only for property he now owns; he cannot now convey property to which he will succeed in the future. The fact that the father's testimony will give the younger boy a double portion of even such property is evidence of special credibility.
>
> But is there evidence according to R. Meir who holds that **any** person has the power to convey property which does not yet exist?
>
> Yes, because R. Meir agrees that one cannot now transfer property to which one will succeed during and after one's final death throes at a time when one could not physically make a present transfer. Still Scripture credits the father by allowing the child to take a double portion in property to which the father succeeds while is his death throes and a single portion in property which the fathers's estate inherits after the father's death.
>
> > As a side matter, note that in the latter case, the son can have only a single portion, because of the rule that a first born inherits a double

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[983]Deut.21:17.

> portion only in property which the father owned at the time of his death.

The majority disagree with R. Judah and hold that the Scriptural direction which gives credibility on one's first-born is limited to just that: identification of the first-born. There is no further credibility.

The *halacha* is as R. Judah, but only where the father's testimony would not adversely affect persons, including grandchildren, in addition to the child identified as a mamzer. That is why the Gemara elsewhere[984] concludes that one is believed on his **minor** son but not on his **adult** son. The Gemara explains that a minor son means a son without children of his own, and an adult son means a son with children of his own.

This completes the Mishnah. The Gemara contains nothing which we have not already explained.

[Agent's betrothal acts may be pre-empted]

The next Mishnah reads:

> If a man authorizes his agent to give his daughter in betrothal, and then he himself goes and gives her in betrothal to another, if the betrothal by him is first, his betrothal is valid; if the agent's was first, the latter's betrothal is valid. But if it is unknown, both must give her a *get*. If they wish, one gives her a *get* and the other marries her.

The case involves a *na'arah* or a *ketannah*. When the father preempts the agent and accepts *kiddushin* himself, he effectively cancels the agent's authority. Since the agent loses his authority, it follows that his *kiddushin* is not valid even should the one from whom the father accepted *kiddushin* die before the agent accepts *kiddushin* from another.

Likewise, if a woman authorizes an agent to give her in betrothal, and she goes and betroths herself to another: if her own preceded, her betrothal is valid; if her agent's preceded, his betrothal is valid. If they do not know, both must give her a

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[984] B.B.127:2.

[7:2]

get. If they wish, one gives a *get* and the other marries her.

The Mishnah accords with the *halacha*.

The Gemara explains the following.

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[79:1]

[Signs of *bogeret*, and interplay with father's betrothal; relation back of present status]

A girl is a *na'arah* for six months from when she is 12 years and one day old and she has two pubic hairs. It does not matter whether during this period she shows signs of *bogeret*; she remains a *na'arah*. Once the six months expire, she is a *bogeret* whether or not she shows signs of *bogeret*.

Her status **on the day on which the six months end** depends on whether she shows signs of *bogeret*. These signs are explained elsewhere[985]. R. Jose HaGlili says the sign is the appearance of a fold under the breast. R. Akiva holds the sign is the bending downward of the breast. Ben Azzai holds the sign is the darkening of the nipple. R. Jose holds that the sign is when the nipple remains depressed for a period after being pushed downward. The Gemara also discusses other signs. The *halacha* in each case takes account of the view which would result in the most stringent ruling.

Now if her father betroths her during the six month period on the assumption that she is a *na'arah* and she betroths herself to another, her own betrothal is void even if she shows signs of *bogeret*.

Rav says that if she is a *bogeret* now she is assumed to have been a *bogeret* previously. The Gemara questions Rav's position: why so, "only now has she become a *bogeret*!"

> Does this not suggest that were we to **know** that she had signs of *bogeret* earlier we would deem her a *bogeret* then, even during the six-month period? No. The Gemara means only that where the issue comes before the Beth din after the six months have elapsed, we say that she is *bogeret* now; but where there were known signs of *bogeret* earlier she would be a *bogeret* commencing after the six-month period.

If the father betroths her after the six months, his action is void even if she showed no signs of *bogeret*.

If the father betrothed her and she betrothed herself on the day on which the six months ended, the issue becomes whether she had shown signs of *bogeret* on that day. If she is known to have signs of *bogeret* at the end of the day she is assumed to have had the signs at the beginning of the day, whether or not she herself knows

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[985] Niddah 47:1.

[7:2]

whether she had the signs.

Other commentators disagree and hold that signs of *bogeret* are significant even during the six month period. They take literally the Gemara's question mentioned previously and hold that the issue is that we did not **know** that she was a *bogeret* previously.

The Meiri concludes that the Gemara's plain reading supports the other commentators. Still he holds that the *halacha* is as stated previously.

We have already considered[986] the rules relating to a *mikveh* which was measured and found not to have sufficient water.

Elsewhere[987] we consider the result where one discovers that a barrel presumed to contain wine, and for which one has separated wine as *terumah*, is discovered to contain vinegar instead. The basic rule is that the barrel is assumed to have turned to vinegar three days prior to the discovery of the vinegar. In considering the status of the barrel before that day, we rule in whichever manner would result in a stringent holding.

[79:2]

If a person is dangerously ill and conveys all of his property, without leaving any to himself, it is implied that the gift was meant to be valid only if he dies. If a healthy person makes such a gift it is irrevocable.

If the donor insists that he was dangerously ill, and the donees insist that the donor was healthy, the donor prevails because he has possession of his real property and the others wish to take it away. This applies even where the donees have purported to make a *hazakah* in the property; land remains in its owner's possession until we know that title has changed.

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[986] 66:2.

[987] B.B. 96:1, Pes. 107:1.

[7:2]

For chattels the rule is different. The donees swear the Rabbinical oath of protest (*heses*) and retain the chattels, for if they were lying they could have successfully argued that they purchased the chattels. The matter is explained at greater length elsewhere[988].

[Credibility of a man who identifies women and children as his]

The next Mishnah reads:

> A man emigrated overseas together with his wife, and then he, his wife and his children returned. The man declared "This is the woman who emigrated with me overseas, and these are her children." The man is believed and he need not bring proof of the woman or of the children.
>
> If he declares "She died abroad and these are her children," he must bring proof of the children but not of the woman.
>
> If he declares "I married a woman overseas, and this is she, and these are her children," he must bring proof of the woman, but not of the children. If he said "She died, and these are her children," he must bring proof of the woman and of the children.

The case refers to a priest, and the issue is whether the woman and her children are fit for the priesthood. If she is the same woman who left here, we assume that she was properly investigated when he married her initially. The children are presumed to be fit only if they cling to her so that they are obviously the woman's children. In this case the children may eat *terumah*, and (in R. Johanan's view) their own children are fit for the priesthood.

The Yerushalmi gives an additional rationale. The man and woman are given the credibility of witnesses because a woman will not stand by silently while another's children are passed off as her own.

Where only the man is present, so that there is no clinging, or where the children are adult and do not cling, the father must prove[989] that the children are fit before they may eat *terumah*, let alone to have their daughters marry into the priesthood. The *halacha* does not agree with Rabbi who holds[990] that a father can without proof

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[988]B.B.153:2.

[989]Unless the father's statement was made innocently, and not as testimony.

[990]Keth.25:2.

identify his son as a fit priest for the purposes of *terumah*.

Now the Rambam agrees with Rabbi's holding. But that view is contradicted by our Gemara. Both R. Johanan and Resh Lakish hold that the children are fit only if they cling to the mother.

> Resh Lakish holds that clinging is sufficient proof to permit the children to eat *terumah*, but not to permit **their** children to marry into the priesthood. R. Johanan takes the lenient view and permits their children to marry into the priesthood.

Why does another Gemara[991] hold that a person is believed when he says that A is my slave, and he later reverses himself and says A is my son? Does this not support the Rambam? No. The Gemara credits the father only as concerns the son's inheritance and to free the man's wife from *yibbum* bonds. The Gemara does not refer at all to issues of fitness for the priesthood.

Return now to the Mishnah. Where the man left without a wife and returned with a wife and children, he must prove the wife's fitness. The children thereafter need no proof, so long as they cling to the mother. Where the man returns with the children only and without the wife, he must prove the fitness of both the wife and the children, since there is no clinging from which to derive evidence.

This completes the Mishnah, all of which is *halacha*.

The Gemara explains the following matters.

Assume that one returns from overseas and declares that he married two women, that one of the women died, that the woman with whom he returned is the other, and that the children with whom he returned belong to the surviving woman. Here he must prove the fitness of both the woman and of the children. It does not matter that the children cling to the woman: she may be their foster mother. Some commentators would apply the rule even where both women return, since even here one wife may have been more affectionate to the other's children than the mother. The Meiri does not agree with these commentators.

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[991] B.B.127:2.

[7:2]

[80:1]

The presumption that a child who clings to his mother is her son is powerful. In an actual case in Jerusalem a woman was stoned when she had relations with such a child who was at least nine years old and whose intercourse was therefore recognized at law. The child would also be stoned in a case of this kind if he has reached the age at which he is liable for punishment. Similarly, a father who cohabits with a girl presumed to be his daughter is burned.

[Reliance on presumptions for *malkot* and ritual impurity]

These presumptions are also sufficient for *malkot*. A husband receives *malkot* if he has relations with his wife in the face of warnings grounded on niddah-type clothing recognized by her neighbors.

Numerous commentators hold that the presumption applies only where the wife does not dispute the presumption, such as where she was asleep while her husband cohabited with her. Were she awake and were she not to dispute the presumption she too would be punished.

Other commentators disagree and hold that the woman can dispute the presumption only when she offers a plausible explanation of why she wore the niddah type clothing. The Meiri believes that the Gemara supports this view.

Once we give the husband *malkot* he is freed of the penalty of *kareth*. This follows the general rule that one who has received *malkot* for a transgression is no longer liable for *kareth*[992].

Presumptions are sufficient to support capital punishment and *malkot*. Still there are circumstances where presumptions cannot be relied upon for *terumah*.

By way of explanation note the following background rules:

1. When a question arises on whether an item was made unclean by an intelligent person in private property we rule that the item is unclean.

2. If the issue is whether the item was made unclean by an unintelligent person, such as a deaf-mute, idiot or minor, the item is clean.

But the item is clean only if there is no presumption which supports

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[992] Mak.23:1.

uncleanness.

If there is a presumption that the item is unclean, the presumption is equivalent to a ruling that the issue of uncleanliness arose with regard to an intelligent person.

Still, if the item is *terumah* we do not rely on the presumption to burn the *terumah*. Instead, the *terumah* is held in suspense and may not be eaten or burned until the question is determined.

For example, assume that a child who is ritually unclean is found at the side of a piece of *terumah* dough and there is dough in his hand:

The Sages hold that the entire dough is unclean because of the presumption that a child dabbles and that he himself took some dough from the dough at his side.

R. Meir disagrees, since it is possible that a clean person took from the dough at the child's side and gave it to the child. Only the dough in the child's hands is unclean.

But, for the reasons stated previously, even the Sages do not permit the dough to be burned.

Now Rashi explains that in our case the child was not **known** to be unclean. Rather, he is **presumed** to be unclean because he may have dabbled with dead reptiles. But, if so:

Why does R. Meir hold that the dough in the child's hand is unclean? Does not R. Meir refuse to rely on presumptions?

And further, why do the Sages hold that the dough at the side of the child is unclean, given the double doubt: whether the child is unclean, and even if the child is unclean whether the child touched the dough at his side.

The Raabad also attacks Rashi's position based on a Tosefta which holds that a child which was left alone by its mother is presumed to have remained clean. Obviously, then, in the Gemara just referred to the child must be known to have been unclean.

The Raabad also notes a Tosefta in which R. Jose takes issue with both R. Meir and the Sages in our case. R. Jose holds that if the child can reach out and touch the dough at his side, it is unclean; if not, it is clean. Obviously then the issue is whether the child touched the dough at his side, not whether he was clean or unclean himself.

[7:2]

If there is a clean piece of dough in a house which contains fowl and unclean fluid, and holes made by the fowls' beaks are found in the dough, there is a presumption that the fowl drank from the fluid and that they made holes in the dough while their beaks were still wet. The dough is therefore unclean. Here again, the presumption that fowl drink and make holes is sufficiently strong to treat the fowl as an intelligent object and to require that the dough be held in suspense and not burned or eaten.

Here are additional rules regarding the presumption that fowl drink and then make holes in food:

> 1. The presumption does not apply where there is sufficient ground between the fluid and the dough in which the fowl could dry their beaks. There is the contrary presumption that fowl dry their beaks where they can do so.
>
> 2. Where the fluid is turbid there is the contrary presumption that had the fowl not dried their beaks the turbidity would have been recognized in the holes.
>
> This contra presumption does not apply to non-turbid fluid even if colored red; the dough could have absorbed the non-turbid colored fluid.
>
> Fluid is considered turbid if it reflects no images.

But what of the rule that a *reviith* of fluid is the minimum amount which can render other objects unclean? How can the lesser amount on a fowl's beak suffice? The fact that the fluid is not loose but attached to the beaks renders even less than a *reviith* significant. Compare the rule that unclean fluid on the outside of a goblet can render objects unclean because of the materiality of the goblet[993].

The Rambam has an alternate explanation. A *reviith* is necessary only to render a person unclean. Less than a *reviith* is sufficient to render food unclean. But what of the rule that a gentile's wine can render food unclean only if there is at least a *reviith?* That is because the uncleanliness of a gentile's wine is Rabbinical only. Hence, the lenient ruling.

Other animals have rules similar to fowl where their bites can be recognized in the dough. In each case the presumption applies only where there is not sufficient ground between the fluid and the dough in which the animal can dry its mouth, or

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[993]Berak.52:1.

in the case of a cow, to dry its tongue. There is an exception for dogs: dogs are considered sufficiently intelligent not to drink where food is available.

The next Mishnahs read as follows:

[When seclusion with a woman or women is prohibited]

> A man may not be alone with two women, but one woman may be alone with two men. R. Simeon said "Even one man may be alone with two women, if his wife is with him, and he may sleep with them in an inn, because his wife watches him."
>
> A man may be alone with his mother and his daughter, and he may sleep with them in immediate bodily contact; but when they grow up, she must sleep in her garment and he in his.
>
> A bachelor [*ravek*] must not be an elementary teacher [teach *sofrim*], nor may a woman be an elementary teacher. R. Eliezer said "One may also not be an elementary teacher if he has no wife."
>
> R. Judah said "A bachelor must not tend cattle, nor may two bachelors sleep together under the same cover." But the Sages permit it.
>
> One whose business is with women must not be alone with women, and one should not teach his son a trade among women.

One may not be alone with a woman forbidden to him lest this lead to forbidden relations. The proscription is not Scriptural and is not counted among the precepts. But the Gemara[994] supports the proposition by the Scriptural verse "the son of your mother"[995] which suggests that a son may be found close to his mother, but that other relations may not seclude with each other.

Since the issue is Rabbinical, the Rabbis extend it to prohibit a man to be alone not only with one woman but even with two women. The man may be motivated by lust, the women may not take the matter seriously and they may protect one another should they transgress. Besides, the woman who transgresses seeks to have the other transgress too, so that the other is also motivated to keep the matter

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[994]See *e.g.*, A.Z.36:2 where the Gemara states that the proscription is "Scriptural," meaning based on Scriptural support.

[995]Deut.23:7.

confidential.

The rules go further. King David's Beth din reacted to the events of Tamar and Amnon by forbidding a man to be alone even with a single permitted woman, and Hillel and Shammai forbade a man to be alone with a gentile woman[996]. For all purposes discussed in the Gemara, being alone with either a single woman or a gentile woman is treated the same as being alone with a married Jewish woman.

Rashi holds that one man may be alone with three or more women. That is why the Mishnah emphasizes **two**. But one who deals with women by profession may not be alone even with many women. That is why the Mishnah discusses no number when dealing with such persons.

One woman may be alone with two men, even where she is forbidden to one or both of them. The men prevent each other from transgressing. This applies only when the men are respectable, not if they are profligate. In one instance ten profligate persons carried a married woman out on a bier, and then committed adultery with her.

There is also a converse rule. A man may be alone with a woman if her husband is in the city. Fear of the husband will deter the woman from sinning. But she may be alone with a man who is bold with her, such as a man who raised her or who is her relative, only if her husband is in the house.

Finally, a woman may be alone with a man in a house whose door is open to a public thoroughfare.

R. Simeon permits even one man to be alone with two women. The *halacha* disagrees.

All hold that a man may be alone with another woman if the man's wife is in the same house or inn. Even at night a wife is alert to her husband's possible adultery with another. But a Jewish woman may not be alone with a gentile even if the gentile's wife is in the house or inn. The gentile's wife has no shame and does not deter her husband. In fact, while the husband eats old pumpkins she eats young pumpkins[997], *i.e.,* she sins on her own.

A father may be alone with his daughter and a mother may be alone with her son because they have no temptation to sin. They may actually live together. But

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[996] A.Z.36:2.

[997] Sot.10:1.

once the daughter either shows signs of *na'arah* or is embarrassed to stand nude in his presence, she may sleep in immediate bodily contact with her father only if both lie in their garments.

A husband may be alone with his wife when she is a niddah.

[Trades prohibited because of possible seclusion]

The Mishnah directs that a *ravek* may not teach *sofrim*. A *ravek* is a bachelor who has never married. Schoolchildren are *sofrim*; the Mishnah's meaning is that a bachelor may not **teach learning to** schoolchildren. Others explain that *sofrim* refers to elementary teachers, so that the Mishnah's meaning is that a bachelor **shall not accustom himself to be** an elementary school teacher. The concern is not pederasty, but that they may have relations with the mothers who bring their children to school. A widower is under no such restriction. His inclinations are assumed to be under greater control.

Similarly, a woman should not be an elementary school teacher because relations may ensue with fathers who bring children to school.

R. Eliezer applies the same prohibition to one who is **presently** unmarried. It does not matter that he was previously married. Most commentators other than the Rambam conclude that the *halacha* is with the Sages.

R. Judah says that two bachelors may not sleep together under the same cover lest pederasty ensue. But the *halacha* is with the Sages who hold that Jews are not suspected of pederasty.

The Mishnah directs that one whose business is with women must not be alone with women. It does not matter that he is busily at work while in their presence, as a tailor for their clothing or as a jeweler for their ornaments, or otherwise. He may not be alone with them no matter how many women are present, unless his own wife is also present.

Some commentators apply a stricter rule. He may not be alone with women even if his wife is present. His wife cannot guard him constantly, and because of his close association with many women, and their need for his services, they feel familiar with him and will protect him if he transgresses.

The Mishnah continues that one should not teach his son a trade which involves working with women. Others explain that the interdiction is against teaching any trade to a young boy and a young girl together.

[7:2]

[Trades one should teach his son; certain evil trades]

> R. Meir said "One should always teach his son a clean and easy craft, and pray to him to whom all wealth and property belongs. For every craft contains both poverty and wealth; neither poverty nor wealth is due to the craft but all depends on one's merit."

R. Meir recommends a clean and easy craft, without great travail and shame, such as being a tailor or a weaver. True, these trades do not generally enrich those who practice them. But G-d controls wealth and property and it is up to each person to pray to Him for success in his trade. Every trade has within it both riches and poverty, and all depends on one's personal merit and the mercy of G-d.

> R. Simeon b. Eleazar said "Have you ever seen a wild beast or bird with a craft? Yet they are sustained without anxiety. Now, they were created only to serve me, while I was created to serve my master. Surely, then, I should make a living without anxiety! But what shall I do if I have acted evilly and destroyed my livelihood.
>
> Abba Gurion of Zaidon said on the authority of Abba Guria "One should not teach his son to be an ass-driver, camel driver, wagoner, sailor, shepherd or shop-keeper because their profession is the profession of robbers."
>
> R. Judah said in his name "Most ass-drivers are wicked, while most camel drivers are worthy men, and most sailors are pious. The best of doctors are destined for Gehenna, and the worthiest of butchers is Amalek's partner."

Certain persons in these trades travel on the roads and seize produce belonging to others. A shepherd grazes his animals on others' fields. A shop-keeper is typically adept at fraud; he mixes wine with water and other substances, and tampers with his weights.

Ass-drivers travel short distances in relative safety. Camel drivers are more subservient to G-d; they travel to greater distances and to places in which wild animals and brigands roam.

Why then does the Gemara say elsewhere[998] that camel drivers are all wicked? When they ride on their camels they tend to arousal and emissions. This does not occur when they lead their camels without riding.

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[998] Niddah 14:1.

[7:2]

Sailors travel to the greatest distances, and are so frequently in danger that they cannot help but be constantly repentant.

The best of doctors is destined for Gehenna. Doctors despair too early of their patients' recoveries, do not make sufficient efforts on behalf of their patients, and act as experts in matters in which they are not expert.

Rashi explains that the best of butchers is Amalek's partner because they sell possibly non-kosher meat for their economic benefit. But why the comparison to Amalek? Because Amalek's ancestor Elifaz was mercenary and seized all of Jacob's money.

The Meiri prefers to explain that butchers tend to transgress by castrating animals. This is related to Amalek's actions in castrating Jews and casting their foreskins to the sky in order to insult the precept of circumcision. Hence, Scripture says of Amalek *vayazanev*, meaning he excised the extremities, and *hanechashalim*, meaning he severed the testicles[999].

> R. Nehorai said "I abandon every trade in the world and teach my son Torah only, for man enjoys the reward thereof in this world while the principal remains to him for the world to come. But all other professions are not so; for when a man comes to sickness or old age or suffering and cannot engage in his craft, he must die of starvation. The Torah is not so, for it guards him of all evil in his youth and gives him a future and hope in his old age.
>
> Of his youth what is said? 'But they that wait upon the Lord shall renew their strength[1000].' Of his old age what is said? 'They shall bring forth fruit in old age.'[1001] And thus it is said of our father Abraham 'And Abraham was old...And the Lord blessed Abraham with everything.'[1002]
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> We find that our father Abraham observed the whole Torah before it was given, for it is said 'Because that Abraham obeyed my voice, and kept my

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[999]Deut.25:18.

[1000]Isa.40:31.

[1001]Ps.92:15.

[1002]Gen.24:1.

[7:2]

charge, my commandments, my statutes and my laws.'"[1003]

This completes the Mishnah, its explanation, and the *halachot* which may be derived from it. The Gemara discusses the following matters.

Evil inclinations are present even during a person's grief. He may not then be alone with a woman on the very day on which a relative died. The Gemara notes that when an infant dies before it is 30 days old it must be accompanied to burial by three persons[1004], at least two of whom must be men. One man and two women may not conduct the burial because of the rules which prohibit men to be alone with women.

[Rule where a man's wife secludes with another]

If a man's wife secludes with another despite the husband's warning, the husband must report this to the Beth din of his city and explain to them that he wishes to bring his wife to Jerusalem to drink the bitter waters of *sotah*. The Beth din appoints two scholars to accompany the couple on the way to Jerusalem to assure that the husband does not cohabit with his wife before she is cleared of suspicion. For if the husband does cohabit, he is not free of sin, and the waters will not serve to indict the wife if she sinned.

[81:1]

[Which men may accompany a *sotah*, etc.]

Recall that one woman may seclude with two **respectable** men. By way of comment, the Gemara mentions that Rav and R. Judah were walking on the road, and a woman was walking in front of them. Rav directed R. Judah to "lift your feet before Gehenna," that is, to pass ahead of the woman. Rav explained to R. Judah

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[1003]Gen.26:5.

[1004]Where the infant is more than 30 days old, burial requires a full complement of 10 persons.

that neither he nor R. Judah were considered respectable, and that R. Hanina b. Papa and his companions were examples of respectable persons.

Now, Rav's purpose was only to advise R. Judah to pass ahead of the woman to avoid evil thoughts. Insofar as concerns the **prohibition** against being alone with a woman, the average person is considered respectable if he is known to have withstood temptation. Consider the following:

> 1. Persons of the ilk of R. Hanina b. Papa and his companions are rare. And where will we find persons with more integrity than Rav and R. Judah to accompany a couple to Jerusalem to drink the bitter waters of *sotah*?
>
> 2. The Gemara says that respectable persons guard against adultery, but **profligates** do not. The Gemara does not say that **average** persons do not. Obviously only known profligates are ineligible, and are suspected of intimacies. It results that if two profligates seclude with one unmarried woman, we give both *malkot mardut* (as discussed below) and forbid them to marry the woman.

Why then do we need two **scholars** to accompany a couple to Jerusalem? Because only scholars can with proper urgency warn the couple not to cohabit. It follows that any two respectable men may accompany one or more women on the road in cases where there is no issue of *sotah*.

[*Malkot* given for improper seclusion]

We give *malkot* to a couple who improperly seclude where the woman is unmarried or a gentile.

What sort of *malkot* is this? Some say that Scriptural *malkot* is meant, and that the case involves a forbidden staying alone, in the face of a warning, with a woman with whom relations are forbidden by negative precept. The theory is that the witnesses of seclusion are equivalent to witnesses of cohabitation. But the Meiri disagrees: cohabitation can be inferred from seclusion only where there is pre-existing familiarity, such as where the pair were formerly married.

The Meiri prefers to interpret the *malkot* as Rabbinical *malkot mardut*[1005].

There is no *malkot* where the woman was married. No matter how carefully we

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[1005]Compare Shab.40:2 where the Gemara explains that *malkot* means *malkot mardus.*

announce the *malkot* others will hear of the *malkot* and not of the explanation. They will believe that she was punished for actual cohabitation and that her children are mamzerim.

The Gemara considers whether to make announcements for married women as a possible way to give the couple *malkot* and yet avoid tainting her children. The Gemara ultimately decides that these announcements are inappropriate.

No announcements are made for **unmarried woman**. The Rambam's contrary view is puzzling.

[Presumption that no transgression occurred despite seclusion]

A married woman is not forbidden to her husband because of seclusion unless there was a proper witnessed warning. Even if she asserts that she committed adultery, we do not believe her; perhaps she lies because she wishes to marry another.

In an actual case certain of the Meiri's Rabbis wished to make an exception where one secluded with his former wife who had remarried, on the theory that the couple's familiarity means that witnesses of seclusion are the same as witnesses of cohabitation.

The Rabbis ultimately decided that the exception was not appropriate:

> A person is bold with his former wife where she is single and he is permitted to cohabit with her, not where she has remarried. The same is true even if the second husband dies, for she remains forbidden to the first husband despite the second husband's death.

Elsewhere[1006] the Gemara recounts the case of a man who secluded with a married woman in a locked house. When her husband arrived, the other man broke through the fence around the house and escaped. Raba did not forbid the woman to her husband. There is a presumption that had the other man sinned he would have hidden rather than escaped. The same ruling was applied in another case, where the other man cautioned the husband not to eat figs which may have been poisoned by a snake. But why do we need the presumption, given the *halacha* that a woman does not become forbidden solely on account of seclusion?

1. The Tosafot explain that the woman had asserted that she had sinned, or

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[1006] Ned.91:2.

she was otherwise suspected of having relations with the other man. Were it not for the deduction derived from the man's escape, we would have ruled against the woman because of these prior circumstances, and we could not have relied on the theory that she lied to obtain a divorce to marry another.

2. The Ran explains that in that case the husband wishes to satisfy moral (rather than legal) scruples against continuing to live with his wife.

3. Yet others explain that the husband had actually warned the wife previously not to seclude.

Although a single woman is given *malkot* for being alone with a man, we do not consider her a *zonah*. She may marry a priest.

[*Malkot* for licentious persons]

We give *malkot* to one whom the public believes to have sinned. "No, my sons, for it is a no good report that I hear being passed ("ma'avirim[1007]") by the nation of G-d."[1008] Although it does not appear in the Torah itself, the "No" by tradition has the legal force of a proscription.

[Where men may not meet with women even if many men are present]

Recall that seclusion is permitted in a room which contains many men and many women. But where the men and women are separated there is concern that a man may somehow meet with a woman. Even this concern disappears where reeds or other objects are placed between the groups and would make noise if traversed.

[1007]Compare the same verb in the verse "And they passed ("vayaviru") a rumor in the camp." E.26:6.

[1008]Samuel I 2;24.

[7:2]

[81:2]

[Avoidance of evil thoughts]

A person should avoid evil thoughts because evil thoughts can lead to evil deeds. A person requires forgiveness if he satisfies an evil desire in thought. In one case a scholar repented for having relations with a woman he mistakenly thought not to be his wife.

In the same vein, Scripture states that where a husband has annulled his wife's oath, "G-d will forgive her."[1009] Why the forgiveness if her oath was annulled? It must be that she was not aware of the annulment and took actions which she thought contrary to her oath.

On this R. Akiva cried. If a person needs forgiveness for desiring to eat swine when in fact he ate calf, how much more so is forgiveness required where he desires swine and eats swine!

Or go the other way. One must bring a *hattat* sacrifice where he thought he was eating calf but unwittingly ate swine. How much more so is forgiveness required when one desires to eat swine and eats swine!

[Where another woman's presence is sufficient to permit seclusion]

A person may seclude with:

two *yebamot*, meaning in this case two women who are married to two brothers,

with two wives of one man,

with a woman and her *yebamah*, meaning a woman and the wife or the sister of her husband, and

with a woman and her husband's daughter.

We assume that these women dislike each other and will not protect each other if they sin.

Also, one may seclude with a woman and with a girl old enough to understand

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[1009] Num.30:13.

[7:2]

the meaning of cohabitation but who has not reached the age at which she herself would engage in cohabitation. Her knowledge means that she will notice and be able to recall transgressions, and her innocence means that she will not protect the other woman.

[Seclusion with one's daughter]

Recall that one may not sleep with his daughter in the same garment if she either has shown signs of *na'arah* or if she is embarrassed to stand before him naked. The prohibition applies at an earlier age if the girl has been betrothed, for the betrothal arouses her desire[1010].

A father may not hug or kiss his daughter once she shows signs of *na'arah* or if she is embarrassed to stand before him naked. But he may do so if he intends merely to display affection to his daughter ("for the sake of Heaven") without any prurient intent.

[82:1]

[All crafts serve a purpose; sons and daughters]

Goldsmiths, carders and handmill cleaners, wool-dressers, barbers, launderers, blood-letters, bath attendants and tanners are of mean professions. They may not be appointed as kings or high priests.

[82:2]

No craft departs from the world, and all are necessary. Still, each person should seek to choose a clean craft. The world needs both perfumers and tanners. Fortunate is he who is a perfumer! Woe is he who is a tanner!

[1010]Recall the rule that a man should not betroth his daughter to another until she is mature enough to make a conscious decision whether she wishes to be betrothed to the particular person.

[7:2]

Best of all is to forsake all worldly crafts and to engage only in Torah. All crafts stand by a person only in his youth, whereas Torah stands by him in his youth and in his old age. Of his youth what is said? "But they that wait upon the Lord shall renew their strength and raise wings as eagles[1011]." Of his old age what is said? "They shall bring forth fruit in old age."

Similarly, the world must have both males and females. Fortunate is he whose children are males, and woe to him whose children are females ("*nekevot*")!

> Besides the simple meaning of *nekevot* as girls, the word can also be explained from the root "incomplete": fortunate is he whose children are complete--whether or not male.

"The father of the righteous shall rejoice, and he who gives birth to a scholar shall be happy in him." Amen, Amen.

Here is completed what we saw appropriate to write on M. *kiddushin*, praise to G-d. There will follow what is appropriate to include in M. Kethubot, with the help of G-d and with his assistance. Amen selah, amen selah.

[1011] Isa.40:31.

[7:2]

GLOSSARY

BARAITHA

a teaching or a tradition of the Tannaim that has been excluded from the Mishna and incorporated in a later collection compiled by R. Hiyya and R. Oshaiah.

BETH DIN

a gathering of three or more learned men acting as a Jewish court of law.

BOGERET

a girl from the age of twelve years and a half plus one day and onwards.

DENAR

Denarius, a silver or gold coin, the former being worth one twenty fourth (according to others one twenty-fifth) of the later.

ERUB

a quantity of food, enough for two meals, placed (a) 2000 cubits from the town boundary, so as to extend the Sabbath limit by that distance; (b) in a room or in a court-yard to enable all the residents to carry to and fro in the court-yard on Sabbath.

GET

a deed or legal document; when used without further specification denotes generally a writ of divorce.

GEZERAH SHAWAH

the application to one subject of a rule already known to apply to another, on the strength of a common expression used in connection with both in the Scriptures.

HABER

one scrupulous in the observance of the law, particularly in relation to ritual cleanness and the separation of the priestly and Levitical dues.

HADASH

the new cereal crops, which may not be eaten before the 16th day of Nissan.

HALACHA

the final decision of the Rabbis, whether based on tradition or argument, on disputed rules of conduct.

HALIFIN

exchange; a legal form of acquisition effected by handing to the seller an object in nominal exchange for the object bought.

HALIZAH

the ceremony of taking off the shoe of the brother of a husband who has died childless.

HALLAH

the portion of the dough which belongs to the priest.

HALAL

the issue of an interdicted priestly union.

HALUZAH

a woman who has performed halizah.

HAZAKAH

a legal term denoting (a) presumptive title based on the occupier"s undisturbed possession during a fixed legal period, in cases where a claim to ownership cannot be established by other legal evidence; usucaption; (b) taking possession (of landed property) by means of a formal act of acquisition, e.g., digging, fencing.

HEKDESH

any object consecrated to the Sanctuary.

HELEV

the portion of the fat of a permitted domestic animal which may not be eaten; in sacrifices that fat was burnt upon the altar.

HULLIN

ordinary unhallowed food, as opposed to terumah; unconsecrated objects, as opposed to hekdesh.

HUPPAH

the bridal chamber; the entrance of a bride into the bridal chamber, whereby the marriage was completed.

ISSAR

a small Roman coin.

KAV

measure of capacity equal to four logs or one sixth of a se'ah.

KETANNAH

a girl under the age of twelve years and a day.

KETHUBAH

(a) A wife's marriage settlement which she is entitled to recover on her being divorced or on the death of her husband. The minimum settlement for a virgin is two hundred zuz, and for a widow remarrying a hundred zuz; (b) the marriage contract specifying the mutual obligations between husband and wife and containing the amount of the endowment and any other special financial obligations assumed by the husband.

KIDDUSHIN

(a) The act of affiancing or betrothal; (b) the money or article given to effect the betrothal.

KILAYIM

(a) Diverse seeds sown together, which is forbidden; (b) the prohibited mixture of wool and linen in garments.

MA'AH

the smallest current silver coin, weighing sixteen barley-corns, equal in value to two dupondia, a sixth of a silver denar or zuz.

MAMZER

a child born from a union prohibited under penalty of death or kareth.

MANEH

one hundred zuz. The maneh was a weight in gold or silver equal to fifty hold, or a hundred common, shekels.

MESHIKHAH

one of the legal modes of acquiring a movable object, which the buyer performs by drawing the object into his-not necessarily exclusive-possession.

MESIRAH

a formal act of taking possession of an animal through delivery by the vendor or donor to the recipient.

MIKVEH

a ritual bath containing not less than forty se'ahs of water.

MISHNA

the collection of oral laws edited by R. Judah ha-Nasi.

NA'ARAH

a girl between the age of twelve years and a day and twelve years and a half plus one day, when she becomes a bogereth.

NA'ARUTH

the state of being a na'arah.

NASI

chief, patriarch; the chief of the Great Sanhedrin in Jerusalem; after its abolition, the head of Palestinian Jewry.

NAZIR

one who has taken a nazirite vow to abstain from wine and let the hair grow long.

NEZIRAH

a female NAZIR.

NEZIRUT

naziriteship, the state of being a nazirite.

NIDDAH

a woman in the period of her menstruation.

OMER

the sheaf of barley offered on the sixteenth of Nissan, before which the new cereals of that year were forbidden for use.

ORLAH

("uncircumcised"); applied to newly-planted trees for a period of three years during which their fruits must not be eaten.

PEAH

("corner"); the corner of a field that is being reaped,which must be left for the poor.

PERUTAH

the smallest copper coin, equal to one-eighth of an issar or one-sixteenth of a dupondium.

SE'AH

measure of capacity, equal to six kavs.

SELAH

coin, equal to four zuz or denarii (one sacred, or two common, shekels).

SHEKEL

coin or weight, equal to two denarii or ten ma'ah The sacred shekel was worth twenty ma'ah or gerah, twice the value of the common shekel.

SOTAH

a married woman suspected of infidelity who has been formally warned by her husband.

SUKKAH

booth, esp. the festive booth for Tabernacles, the roof of which must be made of something that grows from the ground, e.g., reeds or branches.

TEBEL

produce, already at the stage of liability to the levitical and priestly dues, before these have been separated.

TEVILAH

the act of taking a ritual bath in a mikveh.

TERUMAH

"That which is lifted or separated"; the heave-offering given from the yields of the yearly harvests.

YABAM

the brother of a married man who dies childless; the widow is called YEBAMAH.

YIBBUM

Levirate marriage with a brother's childless widow.

ZAV

(f.ZAVAH) a person suffering certain bodily discharges.

ZONAH

a harlot, i.e., a woman who has had intercourse with a man forbidden to her on all grounds save those specifically applying to priests.

ZUZ

a coin the value of a denarius.