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TRACT BABA METZIA (MIDDLE GATE).

CHAPTER I.

RULES AND REGULATIONS REGARDING FOUND ARTICLES, DOCUMENTS, ANIMALS, AND IF ONE APPOINTS A MESSENGER TO PICK UP A FOUND ARTICLE.

MISHNA *I.*: Two persons, who hold a garment, and each of them claims that he has found it, or that the whole belongs to him, (in such a case) each of them shall take an oath that no less than a half belongs to him, and then its value shall be divided. If, however, one claims the whole and the other half of it, then the oath for the first must be for no less than three quarters, and for the second no less than a quarter, and it is to be divided accordingly. The same is the case with an animal, if both are riding; or, if one is riding and one leading, each of them must take an oath that no less than a half belongs to him, if both claim for the whole, and so they divide. If, however, there are wit. nesses, or they admit the fact, then it is to be divided without any oath.

GEMARA: Why is it stated: "Each of them claims he has found it, or the whole garment belongs to him"--is not one of them sufficient? R. Papa, according to others R. Shimi bar Ashi or Kadi, says: The first part speaks about a found article, and the last one about a transaction, and both cases are necessary. For when the case of a found only, only a found article should be stated, one may say that the rabbis ordered an oath, because it is only a found article, of which each of them may say: My neighbor would lose nothing even if I claim the whole and get half of it, which is not the case in a transaction (as the buyer paid for it, and if it would not be necessary for him he would not do so). On the other hand, if the last part only should be stated, one may say: "The rabbis have given an oath to both of them,

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because each of them may say: As the same money my neighbor claims that he has given, I also have given, therefore I have a right to keep it for myself, and my neighbor shall go to the trouble to buy another, which is not the case with a found article, and therefore in the former case an oath would not be ordered." Hence both cases are necessary.

"Transaction!" Let us see from whom the money was taken. The case was, that both paid the money, one with the consent of the seller and the other against the seller's will, but the seller does not recollect to which of them he had given the consent (hence the order of the oaths).

Shall we assume that our Mishna is not in accord with Ben Nanas, who says: "An oath cannot be ordered to both, as one I of them would surely swear falsely"? The Mishna can be explained even in accord with Ben Nanas, as he speaks of a case where one of them would surely swear falsely. Here, in case of a found article, it may happen that both of them has picked it lip at the

same time?

Shall we then assume that our Mishna is not in accord with Symmachus, who says: "That money which is doubtful is to be divided without an oath"? (See First Gate, page 3.) With whom, then, is the Mishna in accord? With the rabbis who are the opponents of Symmachus; do they not say that it is always incumbent on the plaintiff to bring evidence? What comparison is there? In the case where one of them is a plaintiff, and the other a defendant, the rabbis say that it is incumbent on the plaintiff to bring evidence. Here, however, when they both held a thing, they ordered an oath. But according to the theory of Symmachus, even in the case where there is a plaintiff and defendant, it is to be divided without an oath. Moreover, here, as both are holding it, it can be said that even Symmachus would agree with our Mishna, as the oath mentioned is rabbinical only, for R. Johanan says that the oath is an enactment of the sages to prevent one from going out and taking hold of his neighbor's property, claiming it as his.

At any rate, our Mishna is not in accord with R. Jose, who says (Chapter III., Mishna 106): "If so is the case, what can the defrauder lose? therefore, the whole amount must be deposited until there will be evidence." Let us then see if our Mishna can be explained in accord with the rabbis, the opponents of R. Jose, who say that the part in doubt should be deposited until Elijah will come." Is not the case in our Mishna similar

to the case there, as both claims are doubtful? What comparison is it?

It does not belong to both parties, but to one of them; the rabbis ordered it should be deposited "until Elijah will come." Here, however, there is a possibility that the article belongs to both parties, so they ordered an oath; but R. Jose maintained that even where it is certain that both parties have a share in the money in question, he nevertheless decided that the money should be deposited "until Elijah will come." Moreover, here, it is probable that the article belongs to one party. (Therefore our Mishna is in accord with the rabbis and not with R. Jose.)

According to both the rabbis and R. Jose, how should the following Mishna be understood: "A storekeeper upon his credit-book (if it is found that he has given something by the order of the employer to his working-men, and they deny having received anything), both take an oath, and collect the money from the employer"? Now, one of them has surely sworn falsely; why should it not be here the same also, that the money should be collected from the employer and deposited "until Elijah will come," as one of them is surely a defrauder? It can be said there is another reason. The storekeeper may say to the employer: I have followed your order, and I have nothing to do with your working-men, whom I would not believe even with an oath, and it was your fault that you did not order me to give the goods only in the presence of witnesses or to take a receipt from him. The working-man can say to the employer: You must pay me for my work, and I have nothing to do with your storekeeper, whom I would not believe even with an oath; and therefore both collect the money from the employer after they have sworn.

R. Hyya taught: If the plaintiff says that the defendant owes him a hundred zuz and the defendant denies owing him anything, and witnesses, however, testify that they only know that he owes him fifty, he must give him fifty, and take an oath for the remainder. The reason is that the admission of the defendant himself shall not be stronger than the testimony of witnesses, [1]

and this I have concluded by drawing an *a fortiori* conclusion, and also our Mishna supports me by its statement:

"*When two are holding a garment*," etc. We are the witnesses

that each of them holds what he claims to be his, without any admission by his opponent, and, nevertheless, it is stated that each of them must take an oath.

Why was it necessary to draw an *a fortiori* conclusion for the above statement? Lest one say that a biblical oath is given only when there is an admission in part from the defendant, and the reason is, as Rabba declared elsewhere: "Why do the Scriptures decide that one who admits to a part of the claim must take an oath? Because usually one is not so bold as to deny the whole in the face of his creditor, and therefore he admits partly, even had he intended to do so before his creditor appeared, and therefore he only denies a part of it; and it may be that even their denial is only to gain time for the investigation, thinking that in the meantime he will get cash, and will pay the whole claim; and, therefore, the Scripture prescribes an oath in such a case, which is to be believed, that a man with such intention will refuse to swear falsely, and would rather admit the debt of the whole amount. But in case he denies, and witnesses testify against him, in which case the intention above cannot be supposed? No oath is prescribed, he must pay according to the testimony of the witnesses, and shall be acquitted. Therefore it was necessary for him (R. Hyya) to deduce it, by drawing an *a fortiori* conclusion, as follows:

The admission from his own mouth, which does not cause fine, nevertheless causes an oath; witnesses who cause fine, so much the more they should cause an oath. [1]

Let us see, then, what R. Hyya means in saying that he has support from our Mishna? How can the case in the Mishna be compared to his case? In the case of R. Hyya the creditor had witnesses, and the borrower had none at all; then if he would have witnesses who would testify that he owes him nothing, R. Hyya certainly would not order an oath. But in our Mishna, as we are witnesses for one party, we are also witnesses for the other party, and nevertheless an oath is ordered. (Consequently the Mishna orders an oath, not because of admission in part, in which case a biblical oath would be necessary, but only a rabbinical oath as stated above.) Therefore, if it was taught that R. Hyya had said he had a support from our Mishna, it was said in regard to

another statement of his as follows: "If the plaintiff claims a hundred and the defendant says only fifty, and here they are, he is, however, obliged to take an oath upon the remainder. Why so? Because "here they are" is considered an admission in part; that is, although "here they are" *means that "your claim is now settled*, and I owe you nothing," it is nevertheless considered an admission in part. And the support of the Mishna is this: As they both hold the garment, we are witnesses that each of them says, "Take what you hold, and the remainder is mine," and this is equal to the claim "here they are," and nevertheless an oath is ordered.

R. Shesheth, however, says: "When he says, 'here they are,' there is no oath. Why? Because 'here they are' is considered as if the money is already in the hands of the plaintiff. Consequently the

claim for the other fifty is denied entirely without any admission. But according to R. Shesheth the decision of our Mishna would be embarrassing to him. He may say that the oath in our Mishna is only an enactment of the sages.

But does not R. Hyya also agree that so it is? Yea, but if "here they are" is equal as an admission in part, and the oath is ordered biblically, the rabbis have the right to order an oath similar to the biblical one. According to R. Shesheth's theory, however, that in such a case no biblical oath should be ordered at all, how could the rabbis arrange an oath which has no analogy in the Scripture?

An objection was raised from the following Boraitha: If there was a note for Sellahs or Dinars without number, the lender claims five and the borrower says three, there must be an oath, because the third one by the borrower is an admission in part. As he could say that the plurality in the note means only two, so is the decree of R. Simeon Elazar. R. Aqiba, however, says: "The admission of the third one is to be considered as if he had returned a lost thing, and he is acquitted. Now, how the case would be if he would say only two (which would not be denied after the note is recognized), an oath would be ordered, even ac. cording to R. Aqiba's theory. Is not the note (which can be collected from his real estate) considered as "here they are," and, nevertheless, an oath would be necessary? Infer then from this that such is the law with all claims which are defended with here they are."

Nay, it can be said that even when he admits only two, there is no oath, and the expression "three" is mentioned only to

deny the theory of R. Simeon, who takes three for an admission in part, for which the law prescribes an oath. And so also seems to be common sense that, according to R. Aqiba, even if he would say only two, he is free from an oath. Then if not so, how can he make him free, when he admits three? It could be a trick on his part to admit three and to be free from any obligation, as he would know that when, if he should claim only two, an oath would be given to him. Infer from this, that so it is. But if it is so, then it contradicts R. Hyya, who says that "here they are" does not prevent an oath. Nay, here in our case of the note, "here they are" is not the reason, but because the note is a support to his assertion, or it can be explained the note implies a mortgage on real estate, and there is no oath in a case where real estate is claimed.

Come and hear (another objection): We learned that the father of R. Aputriki had taught in the first case of R. Hyya just "the reverse of R. Hyya, viz.: "If one claims a hundred, and the other denies all, and there are witnesses for fifty, lest one say there should be given an oath, because the testimony of the witnesses should be considered as an admission in part; therefore it is written [Ex. xxii. 8]: 'For any manner of lost things, of which he can say, *this it is*,' which means the liability is only when he admits with his own mouth, but not by the testimony of witnesses." (Hence it contradicts R. Hyya.) How can you contradict R. Hyya with a Boraitha? R. Hyya is a Tana, who is authorized to differ with it. But is not the Boraitha supported by a verse of Scripture? R. Hyya may say that the question is needed for the law of an admission in part. And the Tana of the above Boraitha may say that "*this it is*" has one word which is superfluous. We therefore deduce from both of them, viz.: that to an admission in part an oath is necessary, and that no oath is given when witnesses testify.

There was a shepherd to whom cattle was given always in the presence of witnesses. It happened, however, one day, that it was given to him without witnesses, and he denied, and witnesses testified that he had eaten two of them. Said R. Zera: "If it I is to agree with the first case of R. Hyya, he must take an oath", for the others." Said Abayi to him: "Even should we agree, could then an oath be given to him? Is he not a robber (to whom an oath is not given)?" Rejoined R. Zera: "I mean to say, that an oath should be given to the plaintiff that he had delivered to him such, and he may collect the money."

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But even if we do not agree with R. Hyya's decision, we should nevertheless give him a rabbinical oath, according to R. Na'hman's enactment concerning the following Mishna: "When one claims hundred and the other denies, he is free." Said R. Na'hman: "He is free from a biblical oath, but he must take a rabbinical oath?" Nay, that an oath which cannot be given to the defendant the plaintiff shall swear, etc., is also only an enactment of the sages, and an enactment to an enactment cannot be made.

"Why," said Abaye, "he is a robber? Even if a shepherd only, an oath could not be given to him according to R. Jehudah, who says: 'A shepherd who is not known to be trustworthy, is unfit as a witness?'" This presents no difficulty. If the shepherd keeps his own cattle, he is not fit for an oath; but if he keeps the cattle of others, he is fit; because if it would not be so, how could we confide the cattle to a shepherd? Is it not written [Lev. xix. 14]: "Nor put a stumblingblock before the blind." But we go with the rule: A man will not sin for others' benefit.

"*Each of them swears*," etc. What shall the oath contain? The part that he claims to have in it, and he swears that he has half of it, or he swears that he has not *less* than a half in it? (The difference between the two expressions is this. In case he swears to an affirmative statement, if he has not, he has sworn falsely. When, however, he swears to the negative statement, the oath is not false, even if he has nothing, as he only swears that he has *not* in it *less* than so and so, and in case he has nothing in it, he has not sworn falsely. The expression in the Mishna, however, is in the negative, and therefore the question.) Said R. Huna: "He swears both. 'I have some claim in it, and not less than a half.'" But why not in an affirmative manner: "I swear that I a half belongs to me"? Then he would contradict his claim that the whole garment belongs to him. And even in the negative manner, does he not contradict his claim? If he says: "According to my knowledge, the whole is mine, but at all events I swear that at least no less than a half belongs to me. But, after all, as they both hold the garment and the oath is ordered to both equally, why the oath at all? Let them divide without an oath?" Said R. Johanan: "This oath is not biblically at all, it is only an enactment of the sages, for the purpose that one shall not take possession of his neighbor's property, claiming that it is his, or he has a share in it; therefore the oath. But if he is suspected in the case of money, why should he be trusted in an oath?"

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[paragraph continues] Nay, the "theory of because" (because he is suspected in the, case of money, should he be also suspected in an oath?) we do not act upon. And a support to it we can find in the Scripture, which ordered an oath in an admission in part; and if it would be customary that whoever is suspected in a case of money, should be also suspected of swearing falsely, why then the oath? This above support, however, can be dismissed thus: In the case of an admission in part, there is no suspicion at all. The defendant merely had not the whole amount in cash, but

only a part of it, and he taught: I will admit now only the part I have in cash, and the remainder I will give afterwards. And it is as Rabba stated before, p. 238. This can also be proved from the statement of R. Idi bar Abin in the name of Hisda: "One who denies falsely a money loan is nevertheless qualified to be a witness, but whoever denies a deposit (which was given to him only to,, take care of, and he falsely denies it) is disqualified to be a witness." But why shall we not say if he denies a deposit, that merely he could not find it then, and therefore he denies it, intending, however, to return it when it will be found? He is disqualified only in the case where there are witnesses that the deposit was in his house when he denied it, and he had knowledge of it, or the witnesses testified that he was holding it in his hand. But did not R. Shesheth say: "For the following three things: (a) That I have not neglected it, (b) I have not made use of it, and (c) I am positive it is not under my control, the oath was given"? (This is the case of a gratuitous bailee, who is not liable when it is stolen.) Now, why then should he be trusted with the oath? Let "the theory of because" he is suspected in a case of money, he should also be suspected in an oath, also be applied here. Say, then, that such a theory we do not practise. Abayi, however, says that the reason for the statement in our Mishna, to make them both swear, is not as R. Johanan explains, because in such a case an oath would not be trusted to him, but we suppose that his claim is because he has an old loan of money, which is forgotten by the other, and therefore he takes possession of the garment claiming it is his, because in reality all personal property is a security for the loan. If it is so, let them take the garment without an oath? We are not supposing a certain loan, but that he is in doubt about it. But when he is doubtful, and he nevertheless takes possession of his neighbor's property, let him be suspected, that he will also swear in such a case? Said R. Shesheth, the son of R. Idi: Usually men restrain themselves

from taking an oath on a doubtful thing, although they are not averse to taking possession of property doubtfully, because money can be returned, which is not the case with an oath.

R. Sera propounded a question: "When one of the two holders overcame the other and took it away, what is the law?" Let us see how was the case? If the other party keeps silence, then he admits; and if he objects, what more could he do, when his opponent is stronger than he? The case was, that previously he was silent, and afterwards he objected, and the question is: Shall we assume that because he was silent he has admitted, or perhaps the reason he kept silent previously was because it was done in the presence of the rabbis, who could testify in the case? Said R. Na'hman: Come and hear (in addition to our Mishna, there is a Boraitha, as follows): "All this is said only when both are holding the garment; but if only one holds it, and the other claims the ownership of it, the rule that the plaintiff is to bring evidence applies here also." Now, let us see; if one would claim ownership of personal property which is in the possession of another, the statement of the Boraitha would be entirely superfluous, as it is self-evident. We must say, then, that the case was as R. Zera stated it. Nay; this can be explained as follows: They appear before the court when one took possession of the whole garment, and the other put only his hand upon a small piece of it. In such a case an oath is necessary, even according to the theory of Symmachus, who says that doubtful money is to be divided without an oath; he would agree, however, in this case, because the laying of one's hand upon a piece of it counts for nothing.

If the law were that of one overcome, and took possession in the presence of the court, and the court decided that it should be taken away from him, and in the meantime he had consecrated it, there is no question but that such an act at that time cannot be considered. But if the court would

decide to leave it in his possession, should he have overcome the other, and he as yet not taking possession of it, consecrated it, what is the law? Shall we say, because the master says elsewhere: "The consecration by word of mouth only is equivalent to delivering to a common person," in our case shall his mere word of mouth be considered as equivalent to his overcoming and taking it away (and then the thing is certainly consecrated), or perhaps it is not so, because it is not yet in his possession, and it is written [Lev. xxiv. 14]: "And if a man sanctify *his* house," of which it is to be inferred that, as his house is under his control, so he can consecrate it, so

everything which is under his control, but not otherwise, can be consecrated, and in our case it is not yet under his control? Come and hear: There was a bath-house about which two parties quarrelled, each of them claiming it was his property. Then one of them arose and consecrated it. And R. Hanania and R. Aushia and other rabbis did not use this bath any more. And R. Aushia said to Rabba: "When you go to see R. Hisda in Kopri, question him about this case." When Rabba went to Kopri, he passed by Sura, and he questioned R. Hamnuna, and the latter answered him thus: It is decided in a Mishna [Thaharoth, Chap. IV., 12], which states: "If there is a doubt about a first-born, be it of a human being or of an animal, clean ones (which are allowed to be eaten) or unclean ones, the rule that the plaintiff must bring evidence is applied to it." And a Boraitha, in an addition to this Mishna, states: "They are nevertheless prohibited from shearing their wool and to use them for labor." Now, it is certain that if the priest took it away, the court would not compel him to return it, because then he would be the defendant, and the other party must bring evidence. And still, even when the priest did not yet take it away, it is said that it must not be used for labor, as stated above. (Hence we see that even when it is doubtful, it is nevertheless consecrated.) Rejoined Rabba: "You compare this with the consecration of a first-born! There is a difference, as its consecration comes by itself without being consecrated by a human being, and therefore it must be used for labor, no matter under whose control it is."

But what is the law in the above case of the bath-house, after all? Come and hear: R. Hyya bar Abin said: "A similar case happened to R. Hisda, and he questioned R. Huna, and his decision was based upon R. Na'hman's following decision: That such property which must be replevined by the court, even if it is f'; consecrated by one of the parties, it is not holy." But how is it if it could be replevined? The consecration would be valid, although he did not as yet take possession thereof. Did not R. Johanan say: "If one has robbed a thing, and the owner has not yet resigned the hope to regaining it, it cannot be consecrated by one of them? (See First Gate, page 155.) Do you think the bath-house in question was a movable property, to which the rule that the plaintiff must bring evidence applies? This was a real estate, that, if he can replevin it by the decision of the court, it is considered as if it were already under his control."

R. Thalifa of Palestine taught in the presence of R. Abbahu:

[paragraph continues] "If two appear before the court, both holding one garment, each of them gets the part he holds in his hand, and the remainder they divide equally." Remonstrated R. Abbahu: But not without an oath. (Asked the Gemara): If it is so, how is our Mishna to be explained, which states: It shall be divided, and it does not state that, 'only the part that he holds in his hand.' How is the case to be explained? Said R. Papa: When both hold only the χερχοξ (the

fringes). Said R. Mesharshias: "Infer from this that a *sudarium*, which usually the buyer must take in his hand when he wishes to consummate his agreement, [1] is enough when he takes in his hand the size of three fingers square, as this piece which he holds is considered as if cut off, and the expression [Ruth, iv. 7], "and gave it to the other," is applied.

Rabha said: "The case in our Mishna, even when the garment was covered with gold (on some places), it is nevertheless to be divided. Is this not self-evident? Rabha means to say that the gold cover was placed in the centre of the garment. But even this is self-evident? The case was that the gold covering was nearer to the hand of one of the parties. Lest one say, that the garment shall be divided so that the gold shall remain his share, he comes to teach us that the other party has the right to demand that the gold shall also be divided.

The rabbis taught: When two hold a note (the lender and the borrower), the lender claims: "The note is not yet paid, but I dropped it, and it was found by the borrower"; and the borrower says: "The note is paid, and it is mine now"; the note is still in force, if the signature is certified to by the court. So is the decree of Rabbi. R. Simeon ben Gamaliel, however, says: "The value of it must be divided." If, however, the note falls into the hands of the judge, nobody can compel him to give it away. R. Jose, however, says: "Even then the note is in full force."

The master says: "It is in force if the signature," etc. And what is then-does the lender collect the whole amount? which contradicts the statement of our Mishna. Said Rabba in the name of R. Na'hman: "If the note is approved by the court, all of them (the Tanaim who are named in the above Boraitha) agree

that the value of it must be divided (because it is considered as money or a garment, the law of which is stated in our Mishna). They differ, however, when the note is not approved by the court. "Rabbi holds that even when the borrower admits that it is his note, it must be nevertheless approved by the court." If they do so, the value is divided; but if they do not, it is not to be divided. Why so? Because the note would not have any value whatever. Who then makes it a valid note? The borrower, by the admission of his signature, but in the same time he claims that the note is paid. R. Simeon ben Gamaliel, however, is of the opinion that when the signature is admitted, it need not be approved by the court, and therefore it has a positive value, which must be divided. The text above says: "If it falls in the hands of the judge," etc. Why? Is the judge not a human being as any other? Said Rabha It means thus: If a stranger has found a note, on which the certification of the court is to be seen much less when there is no certification by the court, neither of the parties mentioned in the note can make use of it. (Therefore it must not be returned to any of them), for fear that either was written by the borrower, and he has not received any money as yet, or (if it was certified to by the court) perhaps it was paid. But R. Jose holds that, so long as it is not marked that the note is paid, it is in force, and there is no fear that it is a paid note."

R. Elazar said: "R. Simeon ben Gamaliel and Rabbi differ when both parties hold the text of the note, or both hold the signatures of the witnesses or court; but when one holds the text and the other the signatures, each of them may keep what he holds." R. Johanan, however, said: "It makes no difference what they hold, it must always be divided." But is it not stated: "Each takes what he holds"? The case was, when the certification of the court or signatures to the note were in the centre of it. If it is so, what is there new in that he comes to tell us? The case was, that the

signatures were nearer to one than to the other. (This is to be explained, as in the above case, when covered with gold.) Said R. Aha of Diftha to Rabbina: "According to R. Elazar, who says that one takes the text and one the signatures, for what purpose do the parties need it, to use it as a cover for a utensil?" Rejoined Rabbina: "It means its value, namely: The difference in value is to be appraised between the text and the signatures; and the explanation is thus: A note which is certified to by the court, and the date is stated, has more value, as such can be collected even from property that was mortgaged

after the date of certification, which is not the case with a note in which the date of certification is not stated. In this case the one who holds the certification gets the amount, which is as mortgaged after the date of certification. And also the case in which it must be divided, also means its value; because if not so, how would you explain the case in our Mishna, where the garment is to be divided? Should it be cut in pieces and damaged? Surely not, but it means the value of it should be divided, and the same is the case here." [1]

Rami bar Hama said: "From the decision of our Mishna (that when both claim to have found a garment, which means that both picked it up, both are entitled to it, and it is to be divided), it is to be inferred that if one sees an article upon the ground, and tells his companion to pick it up for him, the latter acquires the title. For if it could be borne in mind that it is not so, the case of our Mishna when both picked it up, for the purpose that they should get title to it, each half that belongs to one of them was also picked up by the other, and consequently both should not get title to it, and it should still be considered as it is still upon the ground, so that any other may take it out of their hands, and acquire title for himself. Infer from this, that so it is." Rabha, however, says: "This is no support at all. It may be said that one cannot get title to a found thing through another, even when the other does not intend to keep it for himself. The case in the Mishna, however, is different, because each of them intends to get title to it, and in the same time, when he gets title for himself, he acquires title to the other half for his companion. And a support to it is to be found in the following: If one commands his messenger he shall steal something, and he did so, the sender is free; but if they were partners and had stolen something together, both are liable. And why? Is it not because at the same time that he bears the guilt for himself, he bears it also for his neighbor?" Infer from this, that so it is.

The same said again: Now that we are coming to the conclusion that we can use "the theory of because," if a deaf and

healthy man picked up a found article together, neither of them gets title to it, because, as the deaf man cannot get title for himself, the healthy one cannot get title to it. And lest one say, why should the healthy one be considered worse off than if he too were deaf, for in such a case when both are deaf, both get title to it? The reason is, that in such a case it is only an enactment of the sages, that they shall not come to blows; but here, when the healthy one does not acquire title, the deaf one will say: "If the healthy one does not get title of it, how should I get title to it?"

"*If two are riding*." R. Joseph said: R. Jehudah told me as follows: "I have heard from Mar Samuel two things, in the case when one is riding and the other is leading. In one case he

decided that he acquires title to it and in the other that he does not, and I cannot recollect in which case it is and in which not." Let us see what was the case! Shall we assume that if one was riding on a found animal and somebody came and took it away from him, and in the same way was the case with the leader, that one was leading a found animal and somebody took it away from him, is it possible that Samuel could declare in the latter case r that the leader did not get title to it? (The law is that leading gives title.) Consequently if Samuel declared in one case that he had not, it is riding only.) And R. Jehudah would not doubt it.) When, however, he was in doubt, it must be the following case, when one was a-riding, and the other was the leader of the same animal, and in this case Samuel declared that one had acquired title to it and the other not; and his doubt was if the rider had the preference because he held the animal, or the leader because the animal was going by his leading? Said R. Joseph again: "R. Jehudah told me, let us find out the meaning of Samuel from the following Mishna: If one was sitting in a wagon of Kelaim and another was leading it, each of them gets the forty stripes. R. Meir, however, sets free the sitting one" [Kelaim, VIII., 4]. Samuel, however, changed the names and declared that the sages made him free, and this was because so the Halakha prevails.

Infer from this that, riding, one does not acquire title even when there is no leader, and much less when *there* is another one who leads it. Said Abayi to R. Joseph: "How can the master decide the case of riding from the case of sitting? The riding one holds the bridle, which is not the case with the sitting one." And he answered: "So taught Idi: A bridle does not give any title."

It was taught, also, by R. Helbou in the name of R. Huna, that a bridle gives title only when it is given hand to hand; a found animal, however, or if it was from the inheritance of a proselyte who dies without heirs, it does not. For what purpose is the bridle termed *Mussira*? 1 Said Rabha: "Idi explained to me that this expression was used because it contains in it delivery." And, therefore, if his neighbor delivers to him the bridle of the animal, he has bought it, and he acquires title. Of a found animal or of the inheritance stated above, in which there is no one who can deliver it to him, title cannot be acquired.

An objection was raised from our Mishna. "When two were riding upon an animal," etc., according to whom would be this statement? Certainly not according to R. Meir, who declared that even sitting gives title, so much the more riding. It must be, therefore, that it is according to the rabbis, from which it is to be inferred that riding gives title. Nay, the Mishna may treat of a case when the riding one leads the animal by striking her with his feet. But if it is so, he is the leader? Yea, there are two kinds of leaders. Lest one say, that the riding one has the preference, because he does both, holds and leads it, the Mishna therefore comes to teach us that both are equal.

(Another objection was raised.) Come and hear: "Two who were pulling a camel or leading an ass, or one of them was pulling and the other leading, by such an act the title is recognized." R. Jehudah, however, says: "Title is not recognized unless one is pulling a camel or leading an ass." We see, then, that the Boraitha states "pulling and leading" only, but not riding. The same is the case in riding, and when it states pulling and leading, it is only to deny the theory of R. Jehudah, who says that the title to a camel is acquired by pulling and an ass by leading, and it teaches that title is acquired even in the reverse. But if it is so, let the Boraitha teach both when two were pulling or leading either a camel or an ass? There is one who does not acquire title. Some say that pulling an ass and others say leading a camel. According to others, the objection was raised

from the latter part: "By such an act," etc. Does not this expression mean to exclude riding? Nay, it means to exclude when the reverse was done. If so, it is only a repetition of R. Jehudah: "There is a difference between them, that with both mentioned animals

one of the two things in question does not give title; some say pulling an ass and others say leading a camel."

Come and hear: "If one was riding upon a found ass and another was holding the bridle, the former has acquired title of the ass, and the other one of the bridle. Hence we see that riding does give title? Here is also the case, when he leads it with the feet. If it is so, why does he not acquire title to the bridle also? Read: The riding one acquired title to the ass and half of the bridle, and the other to the other half of the bridle. This would be correct if the riding one does acquire title to the bridle by picking it up through an agent intentionally; but the one who was only holding it, why should he have any right? Read, then: The one has acquired title to the ass and the whole bridle, and the other only to the piece which he holds in his hand. What answer is this? Even if you would say that when an agent picks up a found article for his principal, the principal acquires title, this is only in the case when the agent was willing to do so; but here the holder of the bridle picked it up with the intention to keep it for himself, and when you say that he has not any right for himself, how should he acquire title for the other? Said R. Ashi: "The riding one has a right to the ass and the part of the bridle which is upon the head of the ass, and the holder of it the piece which he holds in his hand, and the remainder does not belong to either of them." Come and hear (again): R. Eliezer says that riding gives title in the field and leading in the city. (Hence we see that riding gives title?) Here is also meant when he leads it with the feet; then it is leading? There are two kinds of leading, as explained above. But if it is so, why does not riding give title even in the city? Said R. Kahna: "Because it is not customary for men to ride in the city." Said R. Ashi to him: "According to your theory, if one picked up a Persian coin on Sabbath, which is not the custom with Israelites on Sabbath, should he also not acquire title to it? You also admit that such an act is good enough to give title. The same should be the case with riding in the city?" Therefore we must say that R. Eliezer speaks not of a found article, but of a regular sale, at which the buyer was told: "Go and acquire title in it, as it is customary." If it was a public ground where men are usually riding, title is acquired; and if he was a respectable man who used to ride even in the city, the title is acquired. The same is the case when it was a woman. And (on the contrary, if he was a commoner, who is not ashamed to ride anywhere,) title is acquired. (And the title is not acquired

only by such people who are accustomed to riding in the city.)

R. Elazar questioned: "If one says to a person: Pull this animal and acquire title on the utensils which have been placed upon it, what is the law? Does the pulling of the cattle suffice to give title on the utensils or not?" Said Rabha: "Even if he should say to him, acquire title on both things in question, would it be sufficient for the utensils also? Is not the animal considered as a movable court, which does not give title in the utensils placed on it? And lest one say it means when the animal stops, is there not a rule that when the title is not acquired by moving, it does not even when it was standing or sitting?" The Halakha, however, prevails, that when the animal was tied. Said R. Papa and R. Huna the son of R. Joshuah to Rabha: "According to your theory,

if one was going in a boat and fish fell into the boat, would we also consider the boat as a moving court, that title in the fish would not be acquired?" And he answered: The boat is resting, but the water is moving and bears it along."

MISHNA *II.*: If one rides on an animal and sees an article on the road, and says to his neighbor, Bring it to me, and the latter picks it up and says, I myself have acquired title to it, he has done right. If, however, after delivering it he says: I have acquired title to it first, his claim is not to be considered.

GEMARA: We have learned a Mishna [Peah, IV., 9]: If one has gathered the corner tithe, saying, I take it for a poor so and so, R. Eliezer says that the poor ones get title to it. The sages, however, say that he may give it to the first poor man he may meet. Said Ula in the name of R. Joshua b. Levy: "They differ only when the one who took it was not poor. R. Eliezer holds, that because he can renounce his ownership of all he possesses so that he himself would be poor, would be then entitled to it, the same is the case even if he had not done so. And "because" he himself is entitled to it, he may do so for any one else. The rabbis, however, hold, that the "theory of because" can be applied only *once*. In this case, however, "Because" is used twice, therefore their decision. If, however, the man in question was poor himself, all agree that he can take it for another poor man, as here only one "because" is to be used; namely, because be has a right to acquire it for himself, he may do the same for another. Said R. Na'hman to Ula: "Let the master say, that even if they were both poor, they still differ. As regarding a found article, all are considered as poor, and nevertheless our

[paragraph continues] Mishna stated that if the one who picked it up said: I myself have acquired title to it, his act is correct. Now if in the quoted Mishna they differ, in that one poor for another, our Mishna would be in accord with the rabbis." (That is, in the first part, "because" the one who picked it up was entitled to it for himself, he has also a right to transfer it to another although he was directed by the rider; and the latter part teaches us that, when he has not acquired title to it before he has given it to the rider, we do not apply the above "theory of because," if he want it for himself.) But if you will say that the recited Mishna speaks only of a rich for a poor, but when both were poor all agree that the title is acquired for the other, then our Mishna is neither in accord with the rabbis nor with R. Eliezer? And he answered: "The Mishna treats of a case when the man who picked it up says to the rider: Although you have seen it first, nevertheless by picking it up I intended to acquire it for myself." And it seems that this explanation is correct from the latter part, which states: "If he says I have acquired title on it first," etc., which is superfluous, as it is self-evident that he means at the time when he picked it up, which certainly he was the first, even if he would not assert it so plainly. Therefore, we must say that it comes to teach us that even in the first part his claim was that he acquired title *first*. R. Na'hman, however, may say that the expression "first," mentioned in the latter part, was with design to show that in the first part this word was not used.

R. Na'hman and R. Hisda both said: "If one picks up an article for another, the latter does not acquire title. Why so? Because this would be similar to one who takes possession, without any order, of goods or money of his neighbor for the purpose of settling his account with so and so, although the same is a debtor to other persons, which is certainly unlawful, and his act cannot be taken into consideration." Rabha objected to R. Na'hman's statement from the following: A thing found by an employee who was hired by the day, belongs to himself. When is this the case?

When the employer has hired him to clean or plough the field; but if he was hired for any kind of work for the day, the found article belongs to the employer. (Hence we see that one can acquire title for another.) Said R. Na'hman: In the case of an employee is different, for his hand is considered as the hand of his employer for the whole day. But did not Rabh say that an employee can retire from his agreement in the middle of the day though he was hired for the whole day? And R.

[paragraph continues] Na'hman rejoined: "Yea, but so long as he has not retired, his hand is considered as the employer's hand." And the reason why an employee may retire from his agreement, even in the middle of the day, is because it is written: "For unto me are the children of Israel servants" [Lev. xxv. 55], which means my servants but not servants to other servants. (So one cannot make another one a slave even for one day.)

R. Hyya b. Aba, however, says in the name of R. Johanan, that "if one picked up an article for another, the latter acquires title; and if you should object to it from our Mishna, I would say that the Mishna speaks of a case when he said: 'Bring it to me and not acquire title for me.'"

MISHNA *III*.: If one has seen an article and he fell upon it, and at the same time another came and took hold of it, the latter has acquired title.

GEMARA: Said Resh Lakish in the name of Aba Kahna Bardala: "The four ells of a man gives title to him at every place. Why so? The rabbis made this enactment to prevent quarrels." (This sentence will be explained in the following discussion.) Said Abaye: R. Hyya bar Joseph objected to this from the following Mishna [Peah, IV., 3]: "If one took a part of the Peah and threw it on the remainder, he lost his share in it entirely." If one of the poor fall upon the Peah, or he spreads his garment upon it (with the intention of acquiring title to it), his act is ignored, and the garment must be removed. The same is the case with the forgotten sheaf [Peah, IV., 3]. Now if the statement of Resh Lakish is correct, why does he not acquire title to it with his "four ells" (when he has fallen upon it)?

The case was that he did not say: "I intend to acquire title to it." But if the above enactment of the sages exists, even if he did not say anything, what is it? With his falling he convinces us that only with this act he wishes to acquire title to it, but not with the four ells in question. R. Papa, however, said: The enactment of the sages regarding the four ells had reference only to a public place, but not on a private field; and although the Merciful One has privileged him to go in and to gather the Peah, he is entitled only to do that, but he is not privileged to consider it as his own property.

Said Rabha: "R. Jacob bar Idi objected the above saying of Resh Lakish from the Law of Damages stated in our Mishna: 'If one falls upon a found article and another took hold of it at the same time, the latter acquires title to it.' Now if Resh Lakish's

statement is correct, did not the former acquire title with his four ells?" This objection is answered in the very same manner as Abaye's objection. R. Shesheth, however, says: "The

enactment of the sages is only in a *semita* (a kind of sidewalk where it is not so crowded), but not in the public street, where there is always a crowd and many have the same four ells." But did not Resh Lakish say: "In every place?" With this expression he means to include the sidewalks of the public streets.

Resh Lakish said again in the name of the same authority: "A minor female has not the right to acquire title in her property, and also the law of the four ells does not apply to her." R. Johanan, however, in the name of R. Janai said: That both of the above laws apply also to her. The two sages, however, do not differ--the former speaks of a divorce, the law of which will be explained in Tractate Gittin (Divorces); and the latter treats about a found article, which was in her four ells or on her property, she does acquire title.

MISHNA *IV.*: If one has seen people running after a found article which was on his field, or after a lame stag, or after unfledged pigeons, and he says: "My property shall give me title to it," his saying is correct. If, however, the stag was not lame, or the pigeons were fledged, his saying counts for nothing.

GEMARA: Said R. Jehudah in the name of Samuel: "The Mishna treats only of a case when he was standing upon his field." But let his property give him title, even if he was not standing upon it, did not R. Jose bar Hanina declare that the property of one gives title to him, even without his knowledge? Yea, but this is said only of a closed yard in which things are preserved; but in an open field, in which things are not, the title is acquired only when he is standing upon it, but not otherwise, as we learned in the following Boraitha: "If one was in the city and said: It is known to me that my employees have forgotten a sheaf in my field (I myself, however, did not forget it), it shall not be considered a forgetfulness as mentioned in the Scripture, lest one say it is not called forgotten; therefore it is written: 'And thou forgettest a sheaf in the field.' There it is considered a forgetfulness, but not if he has recollected it when he was already in the city." How shall the Boraitha be understood?

It is said, first: "Lest one say it is not called forgetfulness, by which we see that the Boraitha would state that it is considered as forgotten, and afterwards is proved the contrary, that it is not considered as forgotten."

We must, therefore, say that when he was still in the field it first escaped his mind, and then the minds of his employees; but if he kept it in his mind, and the employees forgot it, it is not considered as forgetfulness. And why so? Because when he was standing upon it, his property gives him title to it, even if afterwards it escaped his mind. But when he was in the city, even if he was aware of it, and afterwards it escaped his mind, it is called forgetfulness; because he was not on his field, his property does not give him title. And so it is, as Ula and also Rabba bar bar Hana explained our Mishna, that the case was only when he was standing upon his field.

R. A'ha, however, objected to Ula's statement: "There is a Mishna (Maaser Sheni, V., 9): It happened that Raban Gamaliel, with the Elders, were sailing on a boat, and R. Gamaliel said: The tithe, which I am going to measure, should be delivered to Joshu, and the place where it is now is leased to him. Another tithe for the poor should be delivered to Aqiba ben Joseph; he should take possession of it for the poor, and the place where it is now found is also leased to

him." Now, were then R. Joshua and R. Aqiba standing upon R. Gamaliel's field, and, nevertheless, we see that they acquired title to it? And Ula answered him: This question fit coming from a man who never studied. When R. Abba came to Sura, he told the students of the college that so said Ula, and so I objected (and I did not get a satisfactory answer from Ula), said one of the students to him: "R. Gamaliel assigned to them movable property through real estate." R. Zera accepted this explanation. R. Abba did not. Said Rabha: "R. Abba is right in opposing it." Then was there not a *Sudarium* through which usually title is acquired in consummating a sale? But as the grain, which was already tithe, would not be considered as R. Gamaliel's property, and he had only the benefit of choosing the men whom he likes to give it, and such a benefit is not considered as money, that it shall be sold by *Sudarium*, the same is not considered as money to acquire it through real estate. (But R. Gamaliel renounced his ownership) and to ownerless property every one can acquire title. And for this purpose, R. Gamaliel leased his property to them, that it should belong to them for a certain time. So it is considered their property, and they acquire title to it. (Said the Gemara:) In the reality it is not as Rabha said, because the gifts that belong to the priest, it is written, you shall give to him, and therefore title cannot be acquired through a *Sudarium*, which is only an act of buying and selling.

[paragraph continues] But to assign movable things as real estate, it can be called a valid gift.

R. Papa, however, said: "In the above case of R. Gamaliel the title was acquired through his property, and nevertheless there is no contradiction to Ula's theory, because in this case the things of tithe which were assigned to the two persons named were not ownerless, but belonged to R. Gamaliel, and he transferred them through his property, and this suffices even if they were not standing on the property assigned to them." Said R. Shimi to R. Papa: "Let us see the case of a divorce, [1] where also a third person transfers it to her, and nevertheless, said Ula, the divorce is valid only when the woman is standing upon her property." In a case of divorce it is different, as the laws permit that it be delivered to her against her will. R. Shesheth, the son of R. Idi, opposed: "Is this not an *a fortiori* conclusion? namely, a divorce which is permitted to be delivered to her against her will, nevertheless it is necessary that she should be standing upon her property; so much the more, a gift the title of which is acquired only by the acceptor's will, it should be necessary that he should stand upon property." Therefore said R. Assi: "The theory of the *a fortiori* conclusion would not be applied here, as the reason why the property gives title is because her property is considered as her hand, and cannot be less in value than her messenger, who acquires title of a gift for her, even when she did not appoint him to do so, for the reason that it is self-evident she would not refuse to accept a gift." In the case of a divorce, however, which is not for her benefit, a messenger without her consent cannot accept for her in a matter which is supposed to be against her will; and there is a rule that a messenger cannot accept anything which is not beneficial to his principal. And the same is the case with her yard.

"If we have seen them running," etc. Said R. Jeremiah in the name of R. Johanan: "The case is, when the owner was running after them, and overtook them." He, however, propounded a question, what would the law be in the case of a gift, and R. Aba bar Kohana received the decision afterwards, that even if he had not overtaken them, he acquired title, because a third person transferred it to him.

Rabha propounded a question: When one throws a purse of money through an open door, and (after passing through the

house) it came out through another opening, what is the law--has the owner of the house acquired title to it or not? Shall we say that, although the purse did not rest in the house, it is considered as if it had rested? Rejoined R. Papa, according to others R. Ada bar Mathna or Rabbina, to Rabha: "Is it not a similar case as in our Mishna, where it is said: 'When he sees them running,' etc., where R. Jeremiah said in the name of R. Johanan that he only acquires title when he ran after them and overtook them; and then he propounded the question, what is the law in the case of a gift, from whom afterwards R. Aba bar Kahana heard that by a gift he acquired title through his property even when without overtaking them?" In the case of our Mishna the animals were also only running through the field without resting there, and nevertheless it is said that the property gave title to him. The same is therefore even in our case. So Rabha rejoined: "Both these cases are different, as there, although the animals did not rest upon the field, still they ran upon it, and touching the ground may be considered as if they had rested upon it, which is not the case with the purse, which did not touch the ground at all."

MISHNA *IV.*: When a thing was found by the minor son or daughter of a man or by his man or maid servant, or by his wife, the found article belongs to him. When, however, it was found by his son or daughter of age, or by his Jewish man or maid servant, or by his divorced wife, although he had not yet paid the amount due according to her marriage contract, the found article belongs to the finder.

GEMARA: Said Samuel: "Why did the rabbis say that the found article of a minor son belongs to his father? The reason is that, as soon as he finds it, he runs with it to his father without any delay. (He picked it up, therefore, specially for his father, and so it belongs to the parent.) (Kethuboth gives another reason why the found article of his minor daughter or his wife belongs to him, and therefore here the question is only of the minor son.) Shall we say that Samuel is of the opinion that a minor cannot acquire title for himself, according to biblical law? (for if the minor could acquire title for himself, the rabbis would not say that the found article should always belong to his father, even in the case where the son is independent of his father and supports himself). Did we not learn: "When a man hires a workman to labor in his field, it is allowed for the son of the workman to gather the forgotten sheaves in the same field (in

case the son is poor)? When, however, the workman was working (as a partner) for a half or a third or a quarter of the products of the field, then his son is not allowed to gather." (As then the workman is considered as the owner of the field. The son is, therefore, not allowed to gather in the same field.) R. Jose, however, said: "Even in the latter case his son and his wife are allowed to gather in the same field (as R. Jose is of the opinion that the son even can keep that which he gathers for himself, and so he can do it even when his father is the owner of the field, when the son himself is poor)." And Samuel said that the law is according to R. Jose's theory. This would be right when we say that Samuel is of the opinion that a minor can acquire title in himself, for the reason that we say the minor gathers it for himself, and the father afterwards acquires title to it from his son (and therefore he said that the law is according to R. Jose). But when Samuel was of the opinion that a minor cannot acquire title for himself at all (how could Samuel say that the law is according to R. Jose, that the son may gather in the same field?), as the son can only acquire title to it for his father, and his father is a rich man; how is it allowed that the son as well

as his wife may gather in the same field? Nay, this presents no difficulty, as Samuel only gives the reason of the Tana of our Mishna, but Samuel himself did not accept the theory. But does R. Jose really hold that a minor had a right to acquire title according to biblical law--is there not a Mishna in Tract Gittin, in which his opinion there contradicts his opinion here? Therefore Abaye said: "It is, however, allowed that the son may gather in the same field for the following reason (the rabbis consider this field as a field in which the gatherers after the youth were already in the field, in which case the sheaves are allowed to be gathered even by rich people, because the poor had already renounced their ownership in the field, and the same is the case with this field), that the poor (at the start) renounce their right to gather in this field, as they know that the son of the workman will gather in there where the father is working." R. Ada b. Mathna, however, objected to Abaye's statement: "Is it allowed for a man to put a lion in his field, that the poor men shall be frightened to run away when seeing it? (It means if the son has no right to gather in this field it should not be allowed for him to be there at all, and then the poor will not renounce their right to gather in this same field?)" Therefore says Rabha: "In this case they gave him the right to acquire title, although he cannot do so in other cases, because the other

poor men would be satisfied with this; for when they themselves will be hired as workmen, their sons also would be allowed to gather in the same field."

And he differs (*i.e.*, Samuel, with his above-stated reason of the Mishna) with the opinion of R. Hyya bar Aba in the name of R. Johanan, who said (about the expression "of age" and "minor" in our Mishna) that it is no matter if the son is of age or a minor; but even if of age, if he lives with his father and depends upon him, he is considered as a minor. On the other hand, even a minor, if he is independent of his father, is considered as of age.

"*The found article of his Jewish man or maid servant*," etc. Why? Suppose he would be only hired as a workman, we have learned: "When a thing is found by a workman, it belongs to him. This is only the case when the employer has said to him, Clean my field or dig it to-day; but when he has hired him for any work for the day, the found belongs to the employer." (And why, then, should not the case in our Mishna be the same?) Said R. Hyya bar Aba in the name of Johanan: "The Mishna treats of a case where the servant was working at a labor similar to piercing pearls, and his employer did not want him to interrupt his ordinary work with any other work, not even to pick up a found article, and therefore (even when it happened that he had found a very precious thing) it belonged to himself." Rabha said: "The case here is that he picked up the found article without interrupting his work (and therefore it belongs to himself)." R. Papa, however, said: "The case in the Boraitha, where it is said that the found article belongs to the employer, means only when the working-man was hired to gather found articles for him; *e. g.*, when his field was flooded, and he hired him to gather the cast-up fish."

(In such a case only any other found article belongs to the employer, but not in any other case.)

"*The found article of his wife*," etc. If she was divorced, is it not self-evident? The case was where it was doubtful if the divorce reached her legally, and in such a case the husband is still bound to support her; lest one say that for that reason her found article belongs to him, it comes to teach us that the reason why her found article belongs to the husband is only to prevent animosity, which cannot apply here, as here there is already animosity.

MISHNA *V.*: When one has found a note which secures real estate, he shall not return it, because it can be collected by the court; but if not, he shall return it, as it cannot be collected.

[paragraph continues] So is the decree of R. Meir. The sages, however, say: "He must not return (to the parties), as at any rate the case will come before the court and the money will be collected."

GEMARA: How is the case? Shall we assume that the debtor admits, even in the first case, why he shall not return to the lender, and if he does not admit, why shall he return it, even when there is no security, the note cannot be collected only from encumbered property, but from free property? The case is when the debtor admits, and the reason why it must not be returned is this: It is to be feared, perhaps, the note was written in Nisan, but he did not receive the money in question before Tishri. And if it will be returned to the lender, he will take possession of goods sold in the mean time against the law. If so, then why is it not to be feared in the case of all the notes which come before the court? In all the notes there is no weak point; but this note, because lost, has a weak point. R. Elazar said: "They differ when the debtor does not admit. R. Meir holds that a note without security cannot be collected even from unencumbered property, and the rabbis hold that it can be collected; but when there is an admission, all agree it must be returned without any fear that perhaps it is paid, and his admission is a χοινωνια (a sort of conspiracy.)" R. Johanan, however, said: "They differ only when there is an admission, and the point of their difference is this: R. Meir holds that a note without security is collected from unencumbered property only; the rabbis, however, hold, that from encumbered property also. But in case there is no admission, according to all it must not be returned, because it is to be feared that the note is paid."

There is a Boraitha in support of R. Johanan objecting to R. Elazar's statement in one point and to Samuel's in two: "When one has found a note, if there is security, although both admit it shall not be returned to one of the parties; if, how. ever, there is no security, when the borrower admits, it shall be returned to the lender; but if there is no admission, it must not be returned to either of them. So is the decree of R. Meir, as he used to say that notes to which there are security can be collected even from encumbered property; but if there is no security, it can be collected only from free property. The sages, however, say any note can be collected even from encumbered property." Hence there is a contradiction to R. Elazar's statement in one point, for he says: R. Meir holds that a note with. out security is not to be collected from any property, and he says,

also, that according to both R. Meir and the rabbis there is no fear for a *Kainunia*, and the Boraitha states that a note without security can be collected from unencumbered property, and it is also too plain to see that according to all, the Boraitha fears a *Kainunia*, in that it states that even when they both admit, it must not be returned. [But is this not two points in which R. Elazar is contradicted by the Boraitha? Nay, it is counted only one, because there is only one reason for both the theories, namely: As he interpreted it, the difference between the Tanaim of the Mishna in case there is no admission, he was compelled to say that such a note is not to be collected even from free property; and when, according to his interpretation when there is an admission, all agree that it must be returned, he was compelled to say that there is no fear for a Kainunia.] And there is a contradiction to Samuel in two points; the first one is the same as to R.

Elazar's statement, as he also interpreted the Mishna when there is no admission; and the second is to Samuel's statement elsewhere, that if one has found a bill of sale he must return it to the owner without fear that it is a paid one, and the above Boraitha, which states that even if they both agree, it must not be returned to either of them, contradicts directly Samuel's statement, as we see that the Boraitha fears that it is paid even when they both agree; and so much the more in the case of Samuel, when the debtor does not admit. Samuel said: "The reason why the sages hold that a note without security is to be collected from all kinds of properties is, because that according to their supposition the mistake, in not mentioning the security, is made by the scribe, but there is no doubt that the lender who took the note had intended that the amount should be secured by all the property of the borrower." Said Rabha bar Ithi to R. Idi bar Abin: Did Samuel indeed say so-did he not declare elsewhere that the scribe must be advised by the owner regarding the increment to the field in case it is mortgaged, and will be taken away from him, and also that in such a case he shall have the right to collect his money from the best estate, and that all his estates are mortgaged to this sale, but he must not write such things without advice in the matter? Shall we assume that the one who said, in the name of Samuel, the above statement does not hold, that Samuel stated the last one, or both contradictory statements can be reconciled? There is no difficulty in explaining. The first statement of Samuel is in case of a money loan, in which usually one who gives money is very careful in securing all

the borrower's property, and if it was not so mentioned in the note it must be a mistake of the scribe's; and the other one is by a regular sale, in which it can happen that one needs an estate only for a short time and he does not care if it will be taken away from him afterwards, as it happened that Abuha bar Ihi bought the best estate of his sister. Afterwards it was taken away by one of her creditors, and he complained before Mar Samuel. The latter questioned him: Is it mentioned in the bill of sale that her property is security? And he answered "No." Then Samuel said: "You can go in peace." He questioned: "Did not the master say that the omission of security was only a mistake of the scribe?" And the answer was: "This is only in the case of notes on money loans; but in a case of a bill of sale, it can happen that the buyer needs the real estate only for a short time."

Rabha said: "If Reuben sold a field to Simeon with security, and the creditor of Reuben came and took it away, this is the law, that Reuben has a right to summon him before the court, and the creditor cannot say, I have nothing to do with you, because Reuben may claim that finally the debt will return to him for payment. According to others, the same is the case even if the field was sold without security, because Reuben may say: I dislike to have Simeon incensed against me."

Rabha said again: "If Reuben sold a field to Simeon without security, and before he took possession of it there were claims against it, he can retract; but not when the claims arose after he had taken possession, because the seller can say, You have bought a cat in a bag (without looking to see what there was in it), and therefore you must keep it." What act of the buyer is considered sufficient as a Hazaka (occupation)? When he has improved the borders of the field. According to others, the same is the case even when the field was sold with security, because the seller can say to him, Show me the warrant by which the field will be taken away from you, and I will repay the money to you, but not before. It was taught: "If one sold a field and it was found that it was not his, Rabh said: The money as well as the increase must be returned." Samuel, however, said: "The money only." The schoolmen asked R. Huna: "When the increase in

question was stated plainly in the bill of sale, what is the law? Shall we assume that Samuel's reason rested on the theory that the increase was not stated, then in our case the seller is obliged to return; or that Samuel's reason rested on the theory that in reality he did not

possess any estate, and if the money paid would be returned with any increase, it would appear usurious?" R. Huna answered: "Yea and nay," as he himself was in doubt. It was taught, however, by R. Na'hman in the name of Samuel, that "the increase does not belong to him, even if it were in the bill of sale, for the reason just mentioned." Rabha objected to R. Na'hman from the following Mishna [Gittin, V., 1]: "Encumbered property is not liable either for the used fruits, for the increase of the estate, or for the support of the wife and daughters; for the benefit of humanity." (For if this would be practised, nobody would buy a field, for fear it might be taken away from him.) Now, from the expression "encumbered," it is to be inferred that free estate is liable even for the increase; and is this not the same case as when it was bought from one who did not possess any estate? Nay, a creditor may be meant. If it is so, how is the first part of the same Mishna to be understood, that "of the used fruit"? If there is a creditor, has he the right to use the fruit at all? Did not Samuel say: "The creditor has the right to collect from the field of its increase, but not of the fruits." We must, therefore, say that in this part the case of a robbery arises and, consequently, the latter part also treats of a robbery--why, then? Is it not customary in a Mishna that the first part should treat of one case and the other part of another? But is it not otherwise explained in the following Boraitha: "What is meant by the expression 'for the increase of the estate'? If one has robbed a field and it is to be taken away from him; the amount of the field is to be collected even from encumbered property; the increment, however, from unencumbered only." Now, how was the case? If we assume that it is from a robber, why should the robber get any benefit? It must, therefore, treat of a case where the robber had sold the field to another, and the other has increased its value, and nevertheless it is said that it must be paid for the increment also? Answered R. Na'hman: "And without your objection, could, then, the Boraitha be taken as it reads? It must be corrected; correct it, also, that it treats of a creditor." The Gemara raised another objection from the further explanation of the above Boraitha: Come and hear: "What is meant by the expression 'of the used fruits,' etc.?" '

Here, also, it cannot be interpreted to mean that it was taken away from a robber, for the reason explained above; and it must treat of a case as explained above, and nevertheless it is said that for the used fruits is to be collected. (Are, then, not the fruits to be

considered as an increment?) Said Rabha: "The case was that one had robbed a field full with fruits, and he had consumed the fruits and digged excavations in it. When, then, the robbed one came to complain, he collected for the field even from the encumbered property of the robber, but for the fruits of his free estate only." Rabha bar R. Huna said: "It means that it was taken away from Gentiles for debt. The robbed one, then, when he complains, collects as above." Rabha did not explain as Rabha bar R. Huna, because the expression, "and it is to be taken away from him," is to be interpreted by the court. Rabha bar R. Huna did not explain as Rabha, because the same expression means that the field is to be taken away in good condition, and not when it was spoiled by digging. R. Assi, however, said: "The Boraitha is to be corrected, and it speaks of two different parties in the case as follows: If one robbed a field full with fruit, and he consumed the fruit and sold the field, then the buyer collects his money from the encumbered

property of the robber, and the robbed one for the fruit from the free estate only."

Let us see: according to both Rabha and Rabha bar R. Huna, is this not a debt without any written document, the law of which is, that it cannot be collected from encumbered property? The case arose after it was decided by the court, which is equal in strength to a note. If it is so, why not the fruit also? The case was that the decision was for the principal estate, but not for the fruit. What compels you to interpret the Boraitha with such an explanation? Because usually men claim of the court first for the estate and after for the fruits.

Did Samuel indeed say that the buyer does not collect for the increase--did not Samuel say to R. Huna bar Shilath: "Be careful, in writing a bill of sale or a mortgage, to mention that it should be collected from the best estate, and the increase and the fruit?" Now, what case is referred to? If a creditor, has he then a right to the fruit? Did not Samuel say: "The creditor collects the increase, but not the fruit?" It must, therefore be said that Samuel means to say that there is a suspicion that the seller is a robber? Said R. Joseph: "Samuel speaks of a case where such was the condition, that he should be responsible also for the increase, with the same legal formality." Said Abaye to him: "Is it then allowed to lend a saah of grain to get back the same measure (although the price of it may be then higher, seeming usurious), when it was in accord with the legal formality?" and

he answered: "There is a difference between a loan and a sale. Here it is a loan, and therefore it is allowed."

The text reads: "Samuel said: 'The creditor,'" etc. Said Rabha: "From this it is to be inferred that the seller shall write the bill of sale as follows: I, the first party, assign the goods to you, and I will discharge all claims which may arise against the sold property, and am responsible for the trouble and increase you may have made, and it shall also be testified to in this bill of sale that the transaction was consummated with good will, etc." Said R. Hyya bar Abin to Rabha: "If it is so, how would it be with a gift, in which case such a bill of sale is not made, as the donor would not care to take such a responsibility on himself? Does this affect the case so that the donor is not bound to pay for the increment?" And he said, "Yea, it is." "But if so, does then a gift give more right than a sale?" And he rejoined: "Certainly it has, because the buyer gets it returned from the seller, which is not the case with a gift."

R. Na'hman said: "The following Boraitha supports the statement of Mar Samuel, but my colleague, Huna, interprets it for other purposes, namely: 'When one sold a field to another, and finally it is to be taken away from him, he collects for the estate from encumbered property, but for the increment from free estate only. (Hence there is a support to Samuel's theory.) Huna, however, interprets that the Boraitha speaks of when it was bought from a robber.'"

We have learned in another Boraitha: When one sells a field and the buyer has improved it, and a creditor takes it away, then, when the buyer collects his money, if the value of the increase was more than the expenses, he collects the expenses from the creditor, and the difference between the expenses and the value of the increase from the owner of the field; when, in reverse, he collects from the creditor the value of the increase only, how would Samuel himself explain the above Boraitha? If the case is when it was bought from a robber, in the first part there will be a

difficulty, as, according to his theory, no increment must be paid to a robber; and if it speaks of a creditor, then the whole Boraitha would not agree with him, as, according to his theory, a creditor collects the increment of the field (without being obliged to return the expenses?). The Gemara explains this: "If you choose, it speaks either of a case of where it was bought from a robber who possessed real estate, or when the increment was mentioned in the bill of sale with the legal formality.

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[paragraph continues] And if you choose to explain that the Boraitha speaks of a creditor, here also it presents no difficulty, if you take into consideration that there is a difference between an increment that is not yet ripe, where in such a case a creditor can collect it, and an increment of grain, which is already ripe for harvest, which a creditor cannot collect. But is it not a fact that Samuel's court collects every day even from grain that is ripe for harvest? This presents no difficulty. When the claim is equal to the amount of the field with its increment (then the creditor collects the increase also). When, however, the claim is only for the estate, then he pays for the increment and takes the estate."

If one buys an estate knowing that the seller is not the real owner of it, and, nevertheless, he has paid money for it, then the money must be returned to him, but not the increment. So is the opinion of Rabh. Samuel, however, said: "Even the money is lost." In what point is their difference? According to Rabh the money was given by the buyer as a deposit, and the reason why he did not plainly say so was because he was afraid he would not accept it. Samuel, however, means that knowing that the property did not belong to the seller, he gave his money as a gift; and the reason why he did not say so is because he was afraid he would be ashamed to accept it. But let us see: According to both he has not bought the estate; how then did he take possession of it and consume its fruit? The buyer thought so: I, meanwhile, will work the estate and use its fruit as the robber did till now, and when the real owner of it will come, then the money shall be, according to Samuel, lost; or, according to Rabh, returned. Rabha said: "In case an estate is bought from a robber, the Halakha prevails that he collects both the amount and the increment, although the latter was not spoken of. In case the buyer had knowledge that the estate did not belong to the seller, and nevertheless he paid money and has improved the estate, the Halakha prevails that he loses the increase but not the money, and also that not mentioning the security in a bill of sale or a note given for a loan is to be considered as a mistake of the scribe, and not, as Samuel said, that the scribe must not do it without advice."

Samuel questioned Rabh: "If the robber, after he has sold it, bought it from the real owner, can he be substituted for the real owner, to take it away from his buyer?" And Rabh. answered: Nay, because before the sale the intention of the (so-called) robber was to buy it from the owner; consequently, he

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sold to the buyer the right which he would acquire afterwards. What is the reason for ascribing to him such an intention? Mar Sutra says: "Because it would be disagreeable for him to be called a robber." R. Ashi, however, says: "It is agreeable to one that he shall remain an honest man." What is the difference between these two opinions? There is a difference in case the robber has given the robbed field as a gift, according to him who says that it is agreeable to remain an honest man; the same is the case also in a gift; but according to him who says that he would not

like to be called a robber, with a gift it is different, as he could not be called a robber even if the gift would be taken away from the donor.

It is self-evident that when (before the robber bought it from the owner) he sold it again to another man or bequested it, or gave it as a gift, then certainly his intention was to remove the goods from his possession, he sold it first; the same is the case when he inherited this estate; after he sold it, he may rescind the sale by returning the money, as here cannot apply the supposition that he intended to remain an honest man, as the estate came to him not through his effort; but in case he took possession of the field afterward as a creditor of the robbed one, then it is to be seen whether the latter possesses other estates; and the creditor insisted on having this field, then it is to be inferred that it is to remain in the possession of the buyer; but if not, then his intention is not certain and the buyer cannot insist upon this estate; but when he received it after it was sold as a gift, then R. A'ha and Rabbina differ: one maintains a gift is the same as an inheritance; the other, however, says that a gift is equal to a sale; for if he would not trouble himself to please the robbed one, he would not get this gift, and the intention to remain an honest man in the eyes of the buyer is applied here. At what time did he buy it from the robbed one, so that the above intention can be applied that the buyer can insist upon this sale? R. Huna said, when the robber bought it before he was summoned by the buyer to the court (but when he was summoned and he appealed to the court, then we see that the above intention was not in his mind, and he bought the field only for himself). Hyya bar Rabh said: "Before the judgment was in his hands." R. Papa said: 'The time did not expire until the days of the proclamation began." [1]

Rami bar Hama opposed, saying: "Let us see what was the act by which the buyer acquired title to the estate; with the bill of sale? Is that not to be considered as a piece of broken clay vessel, as the estate was not his?" Said Rabha to him: "The theory of Rabh's statement can be explained, that when the buyer said to him, 'I trust upon your word that you will see that the estate shall remain in my possession without any trouble,' and for this satisfaction that his word was trusted, the intention mentioned above is to be applied here." R. Shesheth, however, objected from the following Boraitha: "If one says, 'I sell to you my inheritance from my father, or what I will catch with my net,' he says nothing. If, however, he said, 'I sell you what I will inherit from my father, who is dying, or what my net will catch this day,' the transaction is valid. Hence we see that the sale of property which is not yet in possession is of no value?" Answered Rami bar Hama: "Here I see a great man with a wonderful objection." Rabha, however, answered: "I see the great man, but I do not see the wonderful objection, as the two cases have no comparison at all. In the case of Rabh, the buyer said to him, I rely upon you, therefore he troubles himself to make his sale good so that he shall not be called a robber afterwards; but here the buyer cannot rely upon him (because it was not known to him if he will inherit anything or not)." The above objection of R. Shesheth was sent to R. Abba bar Zabda, and he answered: "It would be of no use to bring this objection before the students, as it seems to me that they will not be able to answer it." Rabha, however, said: "It ought to be brought before the students of the higher class, for it seems to me they will understand the difference between the two cases as stated above. A similar case happened in Pumbeditha (and the court decided on Rabh's theory, and objection was made from the above Boraitha, and R. Joseph said then, as Abba bar Zabda and Abaye, the same as Rabha."

But what is the reason that in the latter part of the Boraitha the sale is of value? Said R. Johanan: In the latter part, when his father is dying, the sale is of value for the honor of his father (as it

may be that he needs money for the expense of burial, and he sells it beforehand not to disgrace his father in delaying the burial). And what about the net? that is also an enactment of the sages to make the sale valid, as perhaps he needs food for the day.

R. Huna said in the name of Rabh: "If one says that the

estate which I am about to buy now shall be transferred to you at the same time that I acquire title to it, the title is acquired and it cannot be rescinded any more." Said Rabha: "It seems to me that Rabh's statement applies only when he said any field which I am about to buy, as the donee relies upon him; but if he mentioned a certain field, then the donee does not rely upon it, as he may think perhaps this field is not for sale at all (the Gemara said) by God, Rabh said even when he specified a field, as Rabh's theory is in accord with R. Meir [Kedushin II., 43*b*] that a man can grant a thing which is not yet in existence in a case of marriage, and our case is equal to that."

Samuel said: "If one finds in the market a note, made for a loan, which contains the legal formality that it should be collected even if the loan did not take place, it is to be returned to the creditor; for if it was written for the purpose of making a loan which did not as yet take place, yet the note is valid, as his promise was to pay at any rate, and there need be no fear that it was paid, because if so it would be torn." Said R. Na'hman: "When I was about six or seven years old, my father was among the scribes of Mar Samuel's court, and they used to proclaim that a note of the above-mentioned kind, if found, should be returned to the creditor." Said R. Amram: "This is also supported from the last Mishna. 'All documents signed by the court are to be returned.' Hence we see that there is no fear that perhaps it is paid." Said R. Sera to him: "The Mishna may speak of documents in which it is testified that, according to the order of the court, the creditor had already taken possession of the estate, or judgments against debtors who at that time had no property, and both kinds are not to be paid with money." Said Rabha: "Are these kinds of notes not payable? Did not the court of Nahardayi say that even an estate the value of which was ascertained and assigned to the creditor is to be returned till twelve months elapsed, and Amemar of the same place testified that he, as one of the judges of the, above city, had declared there is always time it should be returned if paid." Said Rabha: "In those cases there is another reason, for, according to the law, the creditor would not be obliged to return the estate, and it is only an enactment of the sages to return it on account of the verse [Deut. vi. 6]: 'And thou shalt do that which is right and good in the sight of the Lord.' Therefore, when he took possession of the estate, it was considered as a regular sale, and also the debtor had either to tear the note made for a loan when

paid, or take from him a bill of sale; and by not doing so, he harmed himself, which, however, in the case of a common credit note, the above reason cannot be applied, for the following reason: It may happen that the creditor, when he got the money, promised him to return the note afterwards, as at this time it was not at hand, or he kept it back for the expenses of the scribe."

R. Abuha said in the name of R. Johanan: "If one finds a note on the street, although approved by the court, it shall, however, not be returned to the creditor, because it may be feared that the note is paid, and much less when such was not approved." R. Jeremiah, however, objected from

the above mentioned Mishna: "All documents, etc." Said R. Abuha to him: "Jeremiah, my son, all cases are not equal! The Mishna may be explained so that it speaks of a debtor who was already known as a liar." Said Rabha: "And even in such a case, must it be taken as a rule that such a man never pays his debts?" "Therefore," says Rabha, "the Mishna in question explains as R. Sera said above." And as the case of a liar is mentioned, we may say thus: R. Joseph bar Minumi said in the name of R. Na'hman: "When one was ordered by the court to pay, and he claimed afterwards he had done so, he may be trusted (with a rabbinical oath). If, however, the court had only decided and the order was not yet issued, and the debtor claimed he had paid it, he is not to be trusted, and the creditor can get a judgment (when he takes a rabbinical oath)." R. Zebid, however, in the name of R. Na'hman said: "In both cases he is to be trusted; and when the creditor claims a judgment, it is not to comply with his request; therefore, if there is some difference in the above cases, it may be as follows: When he was ordered by court to pay his debt and afterwards he said he had done so, and there were witnesses that he had not, then he is considered a liar in regard to this money that he is not to be trusted when he says again he has paid it; if, however, it was only decided, but the order was not yet issued, and the witnesses contradicted him, he may be, nevertheless, trusted, if he says again he had paid, because his first statement was only to gain time, and he thought that until the judges would consider the matter that an order be issued the money would be paid."

Rabba bar bar Hana said in the name of R. Johanan: "If one claims hundred zuz and the other denies, but witnesses, however, testify for the whole amount; afterwards he says, I have paid it, he is considered a liar in this case." A similar case arose

with Shabbathai, the son of Mrinus, who assigned a silk garment to his daughter-in-law in her marriage contract, and she accepted it. Afterwards the marriage contract was lost, and he denied that such a thing was written in the contract; witnesses, however, testified that he had written; then he declared he had given her the garment, and when the case came before R. Hyya, he decided that the above Shabbathai is to be considered a liar in this case. R. Abin in the name of R. Ilaa, quoting R. Johanan: "If it was decided that the defendant take an oath, and afterwards he said he did so against the testimony of witnesses that he had not, he is considered a liar in regard to this oath." When this statement was reported to R. Abuhu, he said: "It seems that such a statement holds only when he was ordered by the court, but not when he declared himself willing to take an oath, as then it may happen that he had after reconsidered, and therefore he cannot be considered a liar." When this statement was reported again to R. Abin, he said: "So, too, was my declaration. And so it was taught elsewhere plainly." R. Asi said in the name of R. Johanan: "If one finds a note made for a loan which was approved by the court, dated the same day on which it was found, it must be returned to the creditor, because there is no fear that the loan did not take place, as it was approved by the court, and also there need be no fear that it was paid, as the loan was made only that day." Said R. Zera to R. Asi: "Did R. Johanan say so--did you not state in his name that if the loan was paid, one cannot use the same note for another loan, as its strength to collect from encumbered property ceased (from the moment it was paid)? Now, then, on what date does it mean that it cannot be taken for another loan? If for a later date, then this note cannot be used at any rate, as the note is of an earlier date. We must then say that it means it cannot be used for another loan on the same day." [1] And he rejoined: "Did I say that it can never happen? I said only it is not usual." R. Cahana said. "The statement of R. Johanan treats only when the borrower admits that the note was not yet paid. If so, what comes he to tell us? Lest one say the note is paid, and the reason the debtor admits that it was not paid is only

because he wants to take another loan, and save the expense of writing another note, he comes therefore to teach us that it is not so, as in such a case the creditor himself would oppose, for the reason that if this would be heard in the court it would cancel the note."

R. Hyya bar Abba said in the name of R. Johanan: "If one claims to have done what was enacted by the court to do, he says nothing; for the enactment of the court is good as if one held a note in his hand." And the same, when he heard this, asked R. Johanan: "Is this not said in the [Kethuboth] Mishna: When a woman shows her divorce without the marriage contract, she nevertheless collects what is written in the marriage contract?" Answered R. Johanan: "If I would not take away the broken vessel which had covered the pearl, thou hadst not found it." Said Abaye: "Why, then, this Mishna may treat of such places where it is not customary to write a marriage contract at all, and so the document of divorce is considered as if she had the contract in her hand; but where the above contract is customary, she cannot collect without it. After consideration he retracts the former statement, and said what I said above cannot be the reason; for if such is the case, that where the contract is written she cannot collect it without the contract, how should she collect when she becomes a widow after betrothal (with a ring, as the custom was then, and from that time she was already considered a married woman; the marriage contract, however, was written after the official marriage)? You can say that she collects it when she brings witnesses that her husband is dead; then this would count nothing, as the heir could nevertheless say that he had paid already; and lest one say that it is so, then to what use would be the enactment of the sages that the woman shall get support."

MISHNA *VI.*: When one finds documents of divorce, of enfranchisement of a slave, of presents, or of receipts, he should not return them (to the person for whom they were made), because it may be that the person who had written the documents had changed his mind not to give them for whomever they were written.

GEMARA: Rabba bar bar Hana lost a document of divorce (which he had to deliver to the women as a messenger) in college, and when it was found he said: "If you require signs to identify the document, I have them; and if I am trusted by you to recognize it, then I recognize it" (and he had done both, he had told what were the signs and also recognized it by sight). When it was returned to him he said: "I cannot tell if they did it on account of the signs, as they hold that the biblical law requires only signs; or signs only would not be sufficient, and it was returned only by sight, in which only a scholar is trusted, but not a common

man." (There is an objection to our Mishna from the following Mishna:) "If one has found in market a document of divorce, and if her husband admits that he wrote such a divorce he shall return it to her; and if not, he must not return it to either of them." Now then, it states that when the husband admits, it may be returned. Why then: let it be feared that perhaps the husband wrote the divorce to deliver it in the month Nissan, and he had not given it to her until Tishri, and in the meantime he had sold (legally) the fruit of her property, which was produced from Nissan to Tishri, and afterwards when the woman would collect with the same divorce, she would take away from the buyers the products from the time it was written illegally. This, however, would be correct according to him who holds that as soon as the husband has decided to divorce her, he has no more right to use her products; but according to him who holds that he

has a right until the divorce is delivered, what can be said? When she comes to collect, it can be said to her, Bring evidence at what time the document was delivered to you. But why should this be different from the note made for a loan stated above, where he must not return it, even when the debtor admits, for the same reason stated above by the divorce, let him there also return it to the creditor, and when he will come to collect, evidence shall be required at what date the note made for the loan was delivered to him? It may be said, in the case of a divorce the buyer can say that the rabbis had decided to return the divorce to her only for the purpose that she should be able to remarry; but regarding the collecting, she must bring evidence when the divorce was delivered to her, but by a creditor the buyer cannot say anything. Now is it obvious that the purpose the robbers had in returning to him the note was for collecting.

The rabbis taught: "If one finds a document of enfranchisement on the market, if the owner admits, it may be returned to the slave; and if not, it must not be returned to either of them." It states, however, that when the owner admits, it may be returned to the slave. Why should it not be feared here the same as above, that the document was written in Nissan and was not delivered to him until Tishri, and meanwhile the slave had bought property for himself, and the owner (who had not yet delivered the document) sold out, and when the slave came with his document of enfranchisement, which was written in Nissan, he will certainly collect it illegally? The above answer can also

apply here, that evidence will be required from the slave at what time the document was given to him.

"*Wills or presents*," etc. The rabbis taught: "What is to be considered a will? if it is written, the property so and so shall belong to so and so after my death; and what is considered a note for a gift, a present? if it is written, the property so and so belongs to so and so from this date, but he cannot sell it or use its fruit until I die. Is it to be assumed that if it was written it shall belong to so and so from to-day without the above explanation, the donee did not acquire title of it! (he certainly acquires title to sell it and to use it from that day)." Said Abaye: "The Boraitha means to say thus: When is the note for a gift to be considered equal to a will? If it is explained that he shall not take possession of it before his death."

Now let us see, after all the discussion above, the reason for our Mishna that it shall not be returned because the testator did not consent to return it; but if he does, it may be returned; is that not contradictory to the following *Boraitha*: "If one has found documents of wills, of hypothecation, or presents, although both admit, it is not to be returned to either of them?" Said R. Zebid: (It is not as Abba bar Mamal tried to explain the above contradiction that one speaks of a healthy man and one of a sick man, but) "both speak of the latter case, and nevertheless there is no contradiction, as our Mishna treats of a case where the testator himself, who can change his mind to assign it to anybody, said, Give to another; so that if it would be returned to whom it was first assigned, he would not acquire title to it, but the last one would: and the Boraitha which states that it shall not be returned speaks of the son of the testator, and the reason is, it is to be feared that perhaps the testator has not given it to him because he has decided to assign it to another; and, therefore, he did not deliver it to him, and the son, after the death of the father, to whom the intention of his father was known, assigned the estate to another and already delivered the document to him, and afterwards he decided to give it to the one to whom it was previously assigned by his father, but as the document was already given to the second, and he

could not retract it, he declared that the father's will was, to deliver it to whom it was first assigned with the intention that the latter should summon the party to whom the son had delivered his document, so that finally the estate should be divided among them. The court, therefore, may say it will not be returned for the reason explained

above; but if you wish that the man in question should get the estate, go and draw up another document and deliver it to him and then the will of your father will be complied with.

The rabbis taught: "If one finds a receipt (of a marriage contract), it is to be returned to the husband when the woman recognizes it, but not otherwise." Now then, why should it not be feared the same as above? Perhaps she wrote it to deliver it in Nissan and she had not delivered it before Tishri, and in the meantime she had assigned to somebody else her marriage contract for the benefit of the products in the interim from Nissan to Tishri, and afterwards if the goods would be collected by her receipt, it would be illegal." Said Rabha: "Infer from this, that the Boraitha is in accord with Samuel, who says: 'When one sells a note made for a loan and afterwards he relinquishes the debt mentioned in the note, it is relinquished, and even his heir can do so (so that the debtor must pay nothing and the money taken for the note is to be returned).'" Abaye, however, said: "Even if we should say that Samuel's decision is not to be considered, the case in question is to explain when the marriage contract is in her possession and she brought it before the court. According to Rabha's theory, however, the marriage contract is not to be considered, for she may have had two." Abaye, however, rejoined: "First, it is not to be feared that there may be two; and secondly, the collection on account of the receipt takes place from the date it was signed, no matter when it was delivered." The last statement of Abaye is in accord with his theory elsewhere, that witnesses with their *signature* give title to whomever the document was written.

MISHNA *VII.*: One who found documents in which was assigned by the court the property of the defendant in benefit for the plaintiff, or obligations of supporting (his step-daughter, or) documents of Haliza or such where the annulment of a marriage of a female minor is expressed, documents of a claim and of arbitration, and other documents made by the court, are to be returned to whomever they belong. When one finds a note in a καψα or bag or a roll or a bunch of notes, it must be returned. What is to be considered a bunch? Three bound together. R. Simeon ben Gamaliel says: "When three notes of the same debtor and different creditors are found, they should be returned to the debtor; but if three different debtors from one creditor, then to the creditor. If one finds a note among his own notes and he does not know to whom it belongs, it shall be placed in court

until Elijah will come. If there is a συ μ φωνια, he shall act according to it."

GEMARA: What is meant, claiming documents? In the college of Babylon they used to explain it as documents of plaintiff and of the defendant. R. Jeremiah, however, said: Documents of the arbiters taken by the parties."

"And all documents made by the court." There was found a divorce which was written in the

city of Shevéré, which was situated on the river Rackth, and it was brought in the court of R. Huna. Said R. Huna: "It is to be feared that there are two cities of such a name (therefore it is doubtful if it may be returned)." Said R. Hisda to Rabba: "Look up this matter, for in the evening R. Huna will inquire about it of you." Rabba did so, and found the quotation stated above in our Mishna. Said R. Amram to Rabba: "How can you, master, decide the matter of a legal marriage from a money case?" And he answered: "Tardus! Did not the Mishna state documents of Haliza, etc. (are these not documents of legal marriage)?" In the meantime the pillar of the college broke, and each of the above sages claimed that this happened as a punishment for the disgrace of his honor (Rabba because he was insulted by the expression of R. Amram, and the latter because he was ashamed of being called Tardus).

"A roll or a bunch of notes." The rabbis taught: "What is called a roll?" If there were no less than three; and a bunch must contain the same number, but in this case they must be tied together. Shall we infer from this that such a knot is to be considered as a sign of identification? Said R. Hyya: "It treats of a case where the notes of the bunch were also rolled, one in the other." If it is so, then it is a roll (already mentioned above). A roll means that each of the notes was rolled separately in it; and a bunch means they were rolled together. What shall be proclaimed: the number? Why, then, no less than three: must he not proclaim it even when there were two? As Rabbina said elsewhere, that if one finds a number of coins he must proclaim that he found money without mentioning the number and without explaining what kind of money, the same is the case here, he shall proclaim: "I have found documents," without any explanation (and the loser must explain their condition and how many).

"*R. Simeon ben Gamaliel*," etc. If they belong to the creditors, how could they be together? But perhaps they were

lost by the creditors while going to register them. The case was when they were already registered. But perhaps they were lost from the hand of the register. It is not usual for one to leave his registered note with the register.

"When three borrowed from," etc. For if they were lost by debtors, how could they be found together? But perhaps they were lost on the way from the scribe's. The case was when three different handwritings were found. Perhaps they were lost on the way to the register's? Usually the creditor registers the note, but not the borrower.

"If there is," etc. R. Jeremiah bar Abba said in the name of Rabh: "A συμφωνια that is in the hand of the creditor is invalid even when it was written by himself, as it may be that he prepared it in case the debtor would give him the money at a time when it would not be easy for him to make a receipt, and much less when it was written by a scribe, as it may be that he expected money from the debtor, and while waiting for it, it happened that the scribe called upon him. Does not our Mishna, which states he shall do accordingly, contradict Rabh? As R. Saphra said elsewhere, if it were found between torn notes, so also can be explained our Mishna. An objection was raised. Come and hear: "A συμφωνια in which was proved by witnesses (and the creditor denies that he received the money), it is sufficient if the witnesses admit their signatures." Read: The witnesses must be questioned if they saw the payment. There is another objection: "A συμφωνιαwhich is proved by witnesses is valid." It means that the payment was

approved by the court, and this explanation seems to be right, as the latter part states that if there are no witnesses it is invalid, and it cannot mean that no witnesses at all, as this would be self-evident. Hence it must be explained that when it was not approved by the court, it is considered as if there were no witnesses. In addition to the text mentioned above, we learn: "If there were no witnesses, but it was in the hands of the depository, or it was placed below the signatures, it is valid: and the reasons are that a depository was trusted by the creditor; and below the signatures, because if it would not be paid, he would not permit them to spoil the note."

Footnotes

3:1 The law is that if one denies all, there must be no oath, biblically; but if there is an admission in part, a biblical oath must be taken for the remainder. If, however, there are witnesses, although he denies, he must pay the full amount.

4:1 The text here is very complicated, and Rashi and Tosphat with great difficulty interpret it differently. It seems to us, however, that our explanation is the exact sense of the text.

11:1 In ancient times, and even now in our day in those places where the Jews use their own law, all transactions and even marriage contracts are conclusive only when the buyer or the husband takes in his hand a garment which belongs to the other party to the agreement. This is called *Kabboloth Kinyan*, which means the taking possession of what he has bought. And this is based upon the Scripture [Ruth, iv. 7].

13:1 The text of this page is so complicated that it is difficult to explain its exact meaning, for we cannot understand the meaning of Rabbina's explanation, and also the difference between holding the text of a note, or the certification of the same, as the court certifies only that the text is legal. We could not find any one of the commentators who was able to interpret this clearly. Still, according to our method, we could not omit it, and, therefore, we have translated it almost literally.

15:1 "Mossar" in Hebrew means "deliver."

22:1 The law of it is explained in Tractate Gittin.

33:1 The custom was that, after a judgment was issued that the estate should be transferred from one to another, this act was to be proclaimed in public places.

37:1 Hence we see it may happen that a loan may be paid on the same day?

Next: Chapter II