

SYNOPSIS OF SUBJECTS

OF

TRACT BABA BATHRA (LAST GATE).

(PART II)

CHAPTER VI.

MISHNAS I. TO VIII. If one sold fruit and it did not sprout, or an ox and thereafter it was found a goring one. May the trouble of slaughtering and selling the meat be taken into consideration? If an ox was found killed at the side of another pasturing one. Between majority and hazakah, which should be preferred (see footnote [p. 217](#))? All hold the theory of majority. If one delivered wheat for grinding to fine meal, but the miller did not properly grind it; or if meal were delivered to a baker and he did not bake it properly. If one buys fruit, he has to accept a quarter of a kabh of dust on a saah. If he sold a cellar of wine, he must accept ten harsh barrels on each hundred. If wheat, a quarter of a kabh of peas; if barley, a quarter of chaff; if lentils, of dust. If the buyer has found more than the above prescribed quantity. The difference between a cellar and this cellar, and also if for keeping was added. May or may not wine which is sold in retail stores be considered products of the vine? If one sells wine, and it turns sour. Which wine is considered an old one. If one is proud, he is not tolerated even by his family. A commoner who disguises himself in the garment of a scholar cannot enter into the habitation of the Holy One, etc. If one sells, or a contractor undertakes to build, a wedding or a widow house. A groom who resides in the house of his father-in-law is lighter than bran, and still lighter is an invited guest who brings with him an uninvited one, and still lighter is he who answers before hearing the question. If one wishes to build a stable. If one possesses a well, situated on the other side of his neighbor's house, or a garden inside of his neighbor's. If there was a public thoroughfare through one's field, etc. If one sells a place for digging a grave, or an undertaker makes a place for one, the inside of the cave must be four by six, etc., [215-230](#)

CHAPTER VII.

MISHNAS I. TO VI. I sell you earth of the size whereon one kur can be sown, etc., or measured with a line. In case the buyer has to make return, it shall be in money. If the seller said "the size of a kur," without

any addition, how is the law? "I sell you the estate," with a measurement a trifle more or less; or, "this estate . . . with its marks and boundaries." If two versions of the seller contradict each

other, which is to be considered? The difference in opinion of the Amoraim in the explanation of Mishna IV. R. Papa bought an estate said to be twenty saahs--after it was measured it was found only fifteen. To two brothers who had divided their inheritance came a third brother (of whose existence they were not previously aware). If brothers divided their inheritance, and a creditor of their father came and took away the share of one of them. If the members of the court differ in the amount, upon appraisement brought before them. "I sell you the half of the field"; "The southern half of this field," etc.--the seller has to give space for a partition, etc., [231-240](#)

CHAPTER VIII.

MISHNA I. There are those who bequeath, and also inherit, others who inherit but do not bequeath; and also those who neither bequeath nor inherit. The passage [Num. xxvii. 8] in the Scripture does not correspond with all that is taught above. Who were the grandfathers of Pinchos ben Elazar on his mother's side. If one is about to marry, it is advisable for him to investigate the character of the bride's brothers, It is better for one to hire himself to Abhada Zarah (idolatry) than to rely upon people that shall support him. Abhada Zarah means "idolatry." Literally, however, it is "a strange service." Is the tribe of the mother's side equal to the tribe of the father's side? What happened to Janai and Jehudah the second when they came together? The husband from his wife. Whence is this deduced? Whence came Pinchos ben Elazar to have a mountain which his father did not possess? Whence is it deduced that the husband does not inherit the estate to which his wife during her life is only heir apparent? In the case of a gift with the ceremony of a sudarium, whether healthy or sick, what time may be given him to retract, [241-255](#)

MISHNAS II. TO IV. The order of inheritance is thus, etc. If one decides that a daughter shall inherit, when there is a daughter of a son, even if he were a prince in Israel, he must not be listened to. What happened to Rabban Johanan with the Sadducean? "The daughters of Z'lophchod have inherited," etc. The land, of Israel was divided among the ascendants from Egypt, and not among their children. Joshua and Caleb inherited the shares of the spies. Whence is this deduced? May or may not a disciple be honored in the presence of his master? Why is the order in mentioning the daughters of Z'lophchod different in the Scripture? If a woman marries at less than twenty years of age, she bears children until sixty; but when she marries after forty, she does not then bear children. There were seven men who encompassed the whole world since its creation until now, etc. How was the land of Israel divided--into twelve parts, or among the people severally? The land of Israel will be divided among thirteen tribes. A son and a daughter are equal concerning inheritance, etc. How shall the double share of the first-born be counted--double as to each brother or as to the whole estate. What is the reason that Jacob took away the privilege of the first-born from Reuben and gave it to Joseph? Jacob's children, who came to Egypt, in sum you find seventy; however, if you will number

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them in detail, you will find only sixty-nine. In the case of inheritance of a promissory note, the first-born took a double share, etc. A first-born does not take a double share in a loan. The Palestinians, however, say he does. What is to be done with an estate bequeathed for life only, which the inheritor has sold? A first-born does not inherit property to come in the future, and the same is the case with a husband. If the first-born protests when his brothers come to improve the estate left by their father, [255-271](#)

MISHNAS V. TO VII. A will which is against the law of the Scripture must not be listened to; however, if it is as a gift, it may. "My son is my first-born," he takes a double share; "My son is a first-born," he does not. "Go to Sh'kh'at my son, who is a first-born, whose spittle cures eyes." If two wives of one have born two sons in a secret place which was dark, and it is not known who was born first, they may write a power of attorney each to the other, etc. If one was known to the people as a first-born, and his father said of another, etc. A creditor may collect from bondsmen belonging to orphans for their father's debt. A second-cousin, a third-cousin, may be a witness (according to the law). If one says, "This child shall inherit all," or "My wife shall take an equal share with one of my sons," he is to be listened to. If the word "gift" was mentioned in the beginning, etc. How is this to be illustrated? If one wrote, "The field on the east side shall be given to A, and B shall inherit that on the west side," is title given or not? All that is said in one speech is valid, except as to idolatry. If one says: "A shall inherit my estate," and he has a daughter, he said nothing; or, "A shall inherit my estate instead of my daughter," or, "My daughter instead of my son"--how is the law? A Halakha must not be taken for granted from a discussion or from an act, unless one is told to do so. Rabbi said: My youth made me presume to contradict Nathan the Babylonian. If one bequeath all his estates to his wife, he makes her a guardian only. (All that is said above treats of a will by a sick man.) How is it if this was done while in good health? If one has bequeathed all his estates to his sons, but has left to his wife a small portion of ground.

How is it in a similar case when one is in good health? A sick person who has bequeathed all his estate to a stranger, it is to be investigated if the latter is in some way fit to be called a direct heir. An inheritance has no interruption, and goes direct to the heirs of the inheritor. The rabbis condemned one who bequeathed his estate to strangers, leaving out his children. What happened to Shamaï the elder with Jonathan b. Uziel, [271-297](#)

MISHNAS VIII. TO XII. "This is my son," he is to be trusted; "My brother," he is not. If one testify he has divorced his wife, he is to be trusted. If a short period of time, can one's testimony be divided--that for the past he should not be trusted, and for the future he should? If a sick person said to witnesses: "Write, and give a mana to so and so," and before they did so he dies. How is it if the same was said by one in good health? If one wishes to bequeath his estate to his children, etc. How if he has written "from to-day and after my death"? If a sudarium is mentioned, no matter what version was used, nothing is needed to be added. "My estates are bequeathed to you, and after you to B," etc. Who is called a crafty villain? To a gift presented by one who is dying, at what time is title given? There was a woman who had a tree on the estate of

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[paragraph continues] R. Bibbi b. Abayi, etc. If A said to B, "I give you this ox as a present, with the stipulation that you shall return it to me." If a sick man said, "I have a mana with so and so," the witnesses may write this, etc. The Halakha prevails that it must not be feared the court will err. The father has the right to gather the products bequeathed to his son, etc. If he left grown-up and minor sons, the grown ones have no right to derive any benefit on account of the minors, etc. How is it if a woman has borrowed money, consumed it, and thereafter she married without paying her debt, and brought estates with her at marriage? "The following is not to be returned in the jubilee year," etc. (p. 310). In some respects the husband should be considered as an heir, and in some respects as a buyer, [297-311](#)

CHAPTER IX.

MISHNAS *I. AND II.* If one leave sons and daughters, if the inheritance is of great worth, the daughters must be supported from it; if a moderate one, the daughters must be supported, and the sons may go a-begging. If the estates were of great worth, but there was a promissory note in the hands of a creditor. If the deceased left a widow and a daughter, and the estates left could support only one of them. If one leave sons, daughters, and an hermaphrodite. "If my pregnant wife shall bear a male," etc. A child of one day inherits and bequeaths, etc. All that was said here was taught in the city of Sura. In Pumbeditha, however, it was taught otherwise, etc. One said, "I bequeath my estate to the children who shall be born of you by me," etc. One said, "My estate shall be for you and your children." And R. Joseph decided: One half of the estate belongs to her, and the other half to her children. There was one who had sent home pieces of silk, without any order to which member of his household they belonged, [312-321](#)

MISHNAS *III. TO VII.* If one left grown-up and minor sons, and the former improved the estate, etc. If one has made the wedding of his son in one of his houses, the son acquires title to the house, etc. Three things the rabbis enacted as laws without giving any reason. Brothers partners in business; if one of them was taken by the government to work, etc. If one of the brothers took two hundred zuz to begin the study of the Torah or to learn a trade, etc. Wedding presents may be replevined by the court. If one has betrothed a woman and dies before marriage, a virgin collects two hundred and a widow one hundred zuz. Five things were said about wedding presents: (a) They may be collected by the court; (b) they are returned at the time when the donator marries, etc. Who is like unto a wealthy man who is known to be rich by his many cattle and estates, etc.? The different explanations of Prov. xv. 15. If one sends presents to the home of his betrothed's father, to the value of one hundred manas, and has partaken of the betrothal meal, even for one dinar, they are not to be returned. How is it when the presents have improved, etc.? If a sick person had bequeathed all his estates to strangers, etc. Three things Achithophel charged his sons, etc. If a sick person said: "A shall reside in such a house," or, "B shall consume the products of such and such a tree," etc. A sick person who has bequeathed all of his estates to strangers, it must be investigated how was the case. If a sick person has bequeathed all his estates to strangers and thereafter is cured. The expressions, "He shall take," "shall be rewarded."

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[paragraph continues] How shall it be done if he expresses himself A is the one who shall derive benefit from my estates? If a sick person has confessed, "I owe so much to so and so," shall it be taken for granted, etc.? In five cases the act of a gift is not considered unless the bequeather writes "all my estates." What is considered estates? How is the case with the Holy Scrolls--as they must not be sold, are they considered estate or not, etc.? The mother of Rami b. Hama bequeathed to him her estates on one evening. The mother of R. Amram the Pious possessed a bundle of deeds, etc. Concerning a gift in part of a sick person--in one respect it is equal to a gift by one in good health, etc. A sick person who has bequeathed all his estates to strangers, although made with a sudarium, if he was cured he may retract. If one bequeathed first to one and thereafter to another, etc., [321-345](#)

MISHNA *VIII.* If in the deed it was not mentioned that he was sick, and he claims that he was sick at the time of writing and had a right to retract. What kind of evidence is required, etc. It happened in the city of Bene Brack, that one sold the estate of his father and died; and his

relatives complained that he was not of age when he died. What must be the age of one who has the right to sell the estates left him by his father? How is he to be considered during the nineteenth year--nineteen, which is still not of age, or twenty? There was one lad less than twenty, who had sold the estate of his father. If a lad of thirteen years and one day presented a gift to some one, his act is valid. If one divides his estates verbally, no matter if he was in good health or dangerously sick, according to R. Elazar to real estate title is given by money, etc. It happened with an inhabitant of the city of Mruni, who was in Jerusalem, that he possessed much valuable property which he desired to present to different persons, etc. If it happens that a sick person divides his estates verbally on the Sabbath, etc. Suppose a house falls upon A and his father or on any persons, that one of them has to be bequeather and the other inheritor, and it is not known who dies first. If a son has sold his share of the inheritance of his father to some one, and dies while the father was still alive, and thereafter his father died, the son of the seller has a right to take away the goods from the buyer. And this is a complicated case in the law of money matters. A son inherits from his mother when he is already in the grave, so that his brothers from his father's side should inherit from him, [345-357](#)

CHAPTER X.

MISHNAS I. TO V. A simple get (document) the witnesses must sign at the end of the contents. A folded one, however, the witnesses must sign outside, etc. In what place should the witnesses sign a folding document? If the signatures of the witnesses were separated by a space of two lines from the writing, the document is invalid; is it meant with their usual space or without? There was a folding document which came before Rabbi, and he said: "There is no date to it," etc. All must be done as is customary in the country. If there was only one witness to a simple, etc. If in the document was written "hundred zuz," which make twenty selas, etc. If on the top of the document was written "a mana," and on the bottom "two hundred zuz," or *vice versa*, etc. There was a document in which was written, "six hundred and a zuz," etc. There was a toll-master of a bridge who was a

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Jew who said to Abayi: "Let the master show me his signature," etc. A divorce may be written by the court for a husband in the absence of his wife-the husband must pay the fees. Documents of arbitrating and all other acts of mediating by the court must not be written unless both parties are present-at the expense of both. There was a receipt approved by Jeremiah b. Abba. However, the same woman came into his court to claim her marriage contract several years later, etc. If one has paid a part. of his debt, and deposited his document with some one. If it happened to one that a promissory note became erased, he must find witnesses. The approval must be written: "We three, E, F, G, the undersigned, were sitting together, and before us was brought by A, the son of B, an erased note," etc. If one comes before the court claiming that he has lost a promissory note from so and so, etc. If one has presented a gift to his neighbor by a deed, if the deed was returned by the beneficiary the gift is considered returned. The following is the order of claims before the court. The lender comes to the court to complain that the borrower does not pay his debt, etc. Concerning deeds, they may write another one without mentioning the responsibility of the seller for the estate, etc. There was a woman who gave money to one that he might buy estates for her, etc. If one came to claim a field saying that he possesses a deed, and also that it was in his possession the years of hazakah, etc. If there was any forgery in the document, or there were incompetent witnesses, the transferring is not considered, [357-379](#)

MISHNAS VI. TO IX. If one has paid a part of his debt, according to R. Jehudah the promissory note must be changed. According to R. Jose. the lender has to give a receipt for the amount paid. The Halakha prevails neither with R. Jehudah nor with R. Jose, etc. If the document was written at the date used by the government, and such a date fell on a Sabbath or on the Day of Atonement, etc. It happened with R. Itz'hak b. Joseph, who had money with R. Abba, etc. Abba said to his scribe. "When it shall happen that you have to write a document with a later date, you must write as follows: this document was postdated by us for a certain reason," etc. If one holds a promissory note for a hundred zuz, and requests that it shall be rewritten in two notes each of fifty zuz, etc. If there were two brothers, one rich and one poor, and they inherited from their father a bath-house, or an olive-press house, if for business they must share equally; but if for private use, etc. If there are two persons who bear one and the same name, they cannot give promissory notes to each other, nor to any of the inhabitants. If a promissory note was paid, etc. If one (while struggling with death) says to his son: "A promissory note among the notes I possess is paid, but I do not remember which," etc. If one made a loan to his neighbor through a surety, he must not collect first from the surety, etc. Whether a surety has to pay or not, R. Jehudah and R. Jose differ, etc. If the surety said: "Lend to this man, and I am the surety," etc. If the expression was, "Give to him, and I will return you," then has the lender nothing to do with the borrower. There was a judge who transferred the estate of the borrower to the lender. before the lender had demanded his money from the borrower, etc. There was a surety for orphans who had paid the lender before he notified the orphans. If one was put under the ban because he declined to pay his debts. If the promissory

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note of the deceased was in the hands of the surety, who claims to have paid the lender, etc. There was a surety for a deceased debtor to a heathen, who paid the heathen before he had demanded his debt from the Orphans. If one made himself surety to a woman for a marriage contract, etc. A sick person who has consecrated all his estates, and at the same time said "So and so has a mana with me," he may be trusted. A sick person who said: "A has a mana with me," and thereafter the orphans claimed that they have paid, they are to be trusted. If one borrows money on a promissory note, the lender has a right to collect from encumbered estates. If it happen that a creditor sees his debtor in the market, grapples him by the throat and one passes by and says, "Leave him alone, I will pay," he is nevertheless free, because the loan was made not upon his surety. Biblically there is no difference between a loan on a document and by word of mouth, and it should be collected from encumbered estates. A verbal loan is not collectible--neither from heirs nor from buyers. If the surety signed before the signatures, it may be collected from encumbered estates. Only a surety in the presence of the court is free from a sudarium, but all others are not. [379-395](#)

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