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CHAPTER VIII.

RULES AND REGULATIONS CONCERNING BEQUESTS TO AND INHERITANCE BY NEAR AND DISTANT RELATIVES, MALE AND FEMALE SLAVES AND THEIR DESCENDANTS, FIRST-BORN AND HUSBANDS. ONE MAY OR MAY NOT WISH TO BEQUEATH HIS ESTATE TO STRANGERS WHEN HE HAS CHILDREN. WHICH WILLS MUST BE CONSIDERED AND WHICH WILLS MUST NOT. THE DIVIDING OF AN INHERITANCE BETWEEN GROWN-UP AND MINOR CHILDREN, MALE AND FEMALE.

MISHNA *I.*: (Concerning inheritance, there is a difference between relatives.) There are those that bequeath at their death, and also inherit at the death of their relatives. There are those who inherit but do not bequeath, and also those who neither bequeath nor inherit. The father, his children, and also the brothers of the father may both bequeath and inherit to and from each other. The son from his mother, and the husband from his wife, and also the children of sisters inherit, but the former do not bequeath to the latter. The woman to her children, her husband, and her brothers bequeaths, but does not inherit from them. The brothers of the mother, however, neither bequeath to nor inherit from her.

GEMARA: Why does the Mishna mention the father his sons first? It does so, first, because the reverse order would imply a curse, and usually the beginning must not be with a curse (for when the son dies before his father it is certainly a curse), and, secondly, the Scripture [Numbers, xxvii. 8] reads, "If a man die and have no son," etc.; hence the death of the father is mentioned first. The Tana of the Mishna does thus because the law that a father shall inherit from his son is not written in the Scripture but is deduced (as will be explained farther on) and he desires to mention it first. Whence do they deduce it? From the following Boraitha: "(It is written) 'his kinsman means the father, from which it is deduced that if one dies and leaves brothers and a father, the father is the heir and not the brothers'; but lest one say that the father of the

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deceased is preferred to his son, it is written 'that is next to him,' which means, whoever is nearest, and the son to his father is considered nearer than a father to his son. And what is the reason that you exclude the brother and include the son? Because the Scripture has substituted the son for the father in the case of a man servant [Ex. xxi. 9] and also in that concerning the possession of a field [Levit. xxv. 13], of which it is said elsewhere that only when the son has redeemed the field sanctified by his father, it may be returned in the jubilee year, but not if the father's brother or any other relative has done so. But why not say that the brother shall have the preference, as he inherits from his brother in case the latter dies childless [Deut. xxv. 5]? This cannot hold good, as the brother thus inherits only if there is no son; but if there is a son the brother does not inherit." Is it only for this reason, and if it were otherwise would the brother be the heir? May the son be substituted for his father in the two cases above stated, and the brother in the one case only? Nay, the same reason is given in the case of the above-mentioned possession of a field, wherein the son is preferred to the brother, also because the brother

inherits only when there is no son. But why not say a kinsman means the father, from which we infer that he is preferred to his daughter? Lest one say that he is preferred to his son also, therefore it is written, "who is next to him," and a son is nearer to his father than the father to his son. As said above, this could be opposed thus: Let us see! If one dies and leaves a daughter, it is the same concerning Yeboom as if lie should leave a son. Hence we see that a son and daughter are here equal before the law, and the same equality would obtain concerning inheritance. But why not infer from this that the father has the preference over his brother? And lest one say that he should have the preference over the brothers of the deceased also, it is written "the next," and brothers are considered nearer than the father to his son. It is not necessary that the fathers brother be considered as excluded in the Scripture, as that would be contrary to common sense. What is the basis for the inheritance of the uncle of the deceased from his nephew, if not that his brother is the father of the deceased; and when the father is still alive, why should the brother be the heir?

But let us see. The passage in the Scripture does not correspond

with all that is taught above [Num. xxvii. 8], "If a man die and have no son, then shall ye cause the inheritance to pass unto his daughter, and if he have no daughter . . . unto his brothers . . . and if no brothers, unto his father's brothers, and if . . . no brothers, . . . to the kinsman." (Hence when the kinsman is mentioned at the end, how can you say that it means the father, who is the first in case the deceased left no son?) The passages are not written in order, as the kinsman, meaning the father, should be mentioned first, but the Scripture relies upon the words "who is next to him," and it is for the court to decide who is nearest to him. The following Tana, however, deduces it from the same passage in another manner, as we have learned in the following Boraitha: R. Ishmael said: "It is written, 'If a man die and have no son, then ye shall cause his inheritance to pass,' etc. Infer from this that you transfer the inheritance from the father only when the deceased left a daughter, but not when he left brothers." But why not say that the daughter transfers the inheritance from his brothers but not from his father? Because if it were so, the passage would read "and ye shall *give* the inheritance," and not "ye shall *cause to pass*," which means that if there is a daughter, her father may pass the inheritance to her, even when his own father is still alive. Now, what does kinsman mean in the opinion of R. Ishmael, who has deduced this from the words "ye shall cause to pass"? That which the following Boraitha states: "His kinsman means his wife. Deduce from this that the husband inherits from his wife." But to him who infers this from the word kinsman, what do the words "ye shall cause to pass" mean? That which we have learned in the following Boraitha: Rabbi said: In all the passages it is written "shall ye give," and only concerning the daughter "ye shall pass," to show that there is no one who shall pass an inheritance to another tribe except a daughter; so if she marries one of another tribe, her son or her husband may inherit from her.

But, after all, where is it you are assured that kinsman means the father? In Levit. xix. 12, "Thy father's kinswoman." Then why not say it means the mother, as the next verse reads "thy mother's kinswoman"? Said Rabha: It is written [xxvi. 11] "next to him of this family," and the family is named

only from the father's side as [ibid., 2] "after their families, by the descent from their fathers."

But is not the name of the mother's side also employed? Is it not written [Judges, xvii. 7], "And there was a young man out of Bethlehem-Judah of the family of Judah, but he was a Levite, and sojourned there"? Now does not this passage contradict itself? It is written "of the family of Judah," from which it is to be inferred that they came from the tribe of Judah, and then it says he is a Levite, which means that he was of the tribe of Levi. We must conclude that his father was from Levi and his mother from Judah, and nevertheless this is called a family name. Said Rabha b. R. Hanan: The verse reads "and he is Levi," which does not mean that he was a Levite, but that his name was Levi. If so, how is to be understood (ibid., 17), "I have obtained a Levite for a priest"? There it is also written Levi, and means a man by the name of Levi. But how can you say that his name was Levi? Was not his name Jonathan, as it is written (ibid., xviii. 30), "And Jonathan the son of Gershom . . . were priests," etc.? And he answered: Even according to your theory, was he then the son of Menashe? He was the son of Moses, as it is written [I Chron. xxiii. 15]: "The sons of Moses were Gershom and Eliezer." It is written Menashe, because he acted like Menashe, who was an idolator; and therefore the phrase "of Judah" is employed because Menashe came from Judah. R. Johanan in the name of R. Simeon b. Jo'hai said: From this is to be inferred that we confer a corrupt name on a corrupt man. R. Jose b. Hanina, however, said that this may be inferred from the following [I Kings, i. 6]: "And his mother had after Abshalom." But was not Adoniyah the son of Chaggith, and Abshalom the son of Maacha? We must say that. because he acted like Abshalom, who also rebelled against the kingdom, the verse conjoined him with Abshalom.

R. Elazar said: We see that when Moses married the daughter of Jethro, Jonathan was the outcome, and when Aaron married the daughter of Aminadab the outcome was Pinchos.

But was not Pinchos also a descendant of Jethro, as it is written [Ex. vi. 251, "Elazar took of the daughters of Putiel for wife and she bore unto him Phinchas," and it is said elsewhere that Jethro and Putiel are identical? Nay, this Putiel is Joseph, as it is also said elsewhere that Joseph and Putiel are

identical. [1] But is it not said elsewhere that the tribes chided Phinchas, saying: "See the descendant of Puti, whose grandfather had fattened calves for idols; shall he dare to kill a prince of the tribe of Israel?" Both names are applicable; for if his mother's father was a descendant of Joseph, his mother's mother was a descendant of Jethro or *vice versa,* and the word Putiel instead of Puti may mean both.

Rabha said: If one is about to marry, it is advisable for him to investigate the character of the bride's brothers; as it is written (ibid., 23), the "sister of Nachshon." To what purpose is it written the "sister of Nachshon"? Is it not evident that she was the sister of Aminadab? Hence this is an intimation to one about to marry to investigate the brothers of his prospective bride. There is also a Boraitha to the effect that the majority of children resemble the brothers of their mother. It is written [Judges, xviii. 3], "Who brought thee hither?" (*halom*) which means "Are you not a descendant of Moses?" of whom it is written [Ex. iii. 5] "hither" (*halom*), and "thou shalt be a priest to the idol"? And he answered: "I have a tradition from the house of my grandfather that it is better for one to hire himself to *Abhada Zarah* (idolatry) than to rely upon people that shall support him." [(Says the Gemara:) He has misunderstood it. *Abhada Zarah* means "idolatry." Literally, however, it is "a strange service" and it is as Rabh said to Kahana: (If you are in need), fleece a carcass in the middle of the market and do not say you are a great

man, and it is not fit for you.]

David saw that he was fond of money and appointed him treasurer for the government, as it is written [I Chron. xxvi. 24], "Shebuël the son of Gershom, the son of Moses, superintendent of the treasuries." Was then his name Shebuël? Was it not Jonathan? Said R. Johanan: Shebuël is composed of two words, *Shebu*, which means "repented," and *El* means "God"; and "Shebuël" means that he repented to God with all his heart.

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"*His children . . . inherit*." Whence is this deduced? It is written [Numbers, xxvii. 8], "If a man die, and have no son," etc. We see the case is one wherein he has no son, but if he has one, that one has the preference. Said R. Papa to Abayi: But perhaps it means that if there is a son only, he shall inherit, and if there is a daughter only, she shall inherit; but if there were a son and a daughter neither of them should inherit. Said he: Who then shall inherit--the mayor of the city? I mean to say that neither of them shall inherit all, but each take an equal share. Said Abayi to him: Was it then necessary for,, the Scripture to state that if there were only one son he may inherit all the estates of his father? Answered he (R. Papa): I mean to say that the verse perhaps came to teach that a daughter may also be an inheritor. And he (Abayi) answered: This is already written [ibid., xxxvi. 8], "And every daughter that inheriteth," etc. R. A'ha b. Jacob said: This is to be deduced from the following [ibid., xxvii. 4], "Why should the name of our father be done away from the midst of his family because he hath no son?" But if he should have a son, the son would have the preference; but perhaps this was only the saying of the daughters of Zelophchod (*i.e.*, they thought that such was the law, as it was customary at that time). But after the Torah was given the law was changed, that a son and daughter should inherit together; therefore Abayi's explanation is better.

Rabhina said: This is to be deduced from the words "next to him," and a son is nearer than a daughter; and why? As it is said above, he may be substituted for his father in the cases concerning a maid-servant and a field, etc. But could then a daughter be substituted for her father in the case of a maid-servant? Hence the best interpretation is Abayi's; and' if you wish, it may be deduced from Levit. xxv. 46, "For your sons after you," etc., which means to your sons [1] and not to your daughters. But according to this the verse [Deut. xi. 21], "The days of your children," which is also written with "*Bniechein*," should also be explained the sons and not the daughters? With a blessing it is different.

"*The brothers of the father*." Whence is this deduced? Said Rabba: By analogy of expression "brothers" here [Numbers, xxvii. 9]

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and in Genesis, xlii. 32. "We are twelve brothers, the sons of our father"; as there they were brothers of the father, so are they here also on the father's side. But was it not said above that from the father's side the family is named, but not from the mother's? (See above, p. 244.) Yea, this is deduced from verse 11, as above, and Rabba's statement was taught concerning Yeboom (the marriage of a brother to the widow of his childless brother).

"*The son from his mother*." Whence is this all deduced? From that which the rabbis taught. It is

written [Num. xxxvi. 8], "Any daughter who inherits the estate of the tribes." 1 How can a daughter inherit from two tribes? It must be concluded that her father was from one tribe and her mother from another, and both died leaving estates, and she has inherited both. This is concerning a daughter, but whence have we knowledge concerning a son? From the *a fortiori* argument that as a daughter who has no share in the inheritance of her father when there is a son is nevertheless an heir to the estate of her mother, a son who inherits from his father so much the more inherits from his mother. And from this it is to be deduced that, as there the son has the preference over the daughter as an heir of the father, so is it also with the inheritance from the mother. Both R. Jose b. Jehudah and R. Elazar b. Jose, however, say in the name of Zecharia the son of the butcher that a son and a daughter are equally heirs of their mother. Why so? Because there is a rule: It is sufficient that the result derived from the inference be equivalent to the law from which it is drawn (and as the law that a son may inherit from his mother is drawn *a fortiori* from the case of the daughter, it is sufficient to say that he inherits also, but not that he shall have the preference). But does the first Tana ignore the theory of "it is sufficient"? Is this not biblical, as we have learned (First Gate, p. 51, in the beginning of the Gemara)? In all other cases he uses the theory; here, however, it is different, because of the reading "from the tribes." We see then that the tribe of the mother is equal to the tribe of the father, and as concerning the father's the son has the preference, so also is it concerning the mother's.

Nithai was about to act in accordance with Zecharia, and

[paragraph continues] Samuel said to him: Ignore Zecharia, as the Halakha does not prevail with him. R. Tabla had acted in accordance with R. Zecharia, and R. Na'hman asked him What he had done. And the answer was that he had done so because R. Hinna b. Shlamiah said in the name of Rabh that the Halakha prevails with R. Zecharia the son of the butcher, and R. Na'hman told him, "Go and retract from your statement, and undo what you have done, and if you will not listen, I will put out R. Hinna from your ears" (I will place you under the ban). R. Huna b. Hyya was also about to act in accordance with R. Zecharia, and R. Na'hman said, "What are you doing?" And he answered: "I do so because R. Huna said in the name of Rabh that the Halakha prevails with R. Zecharia. Said R. Na'hman: "I will send immediately a message to R. Huna asking him if he said so." And Huna b. Hyya became ashamed. Said R. Na'hman to him: "If R. Huna were dead, you would rebel against me and act accordingly." But in accordance with whose was R. Na'hman's opinion? With both Rabh's and Samuel's decision that the Halakha does not prevail with R. Zecharia.

R. Janai leaned upon the shoulders of R. Simlai his servant, when he walked on the street, and it happened that R. Jehudah the second was coming in an opposite direction, and R. Simlai said to him: "The man who is coming in an opposite direction is a respectable one, and he is also nicely dressed." When they came together, R. Janai fumbled about R. Jehudah's dress 1 and said: "Is this what you call nicely dressed? It seems to me like a sack." Jehudah the second questioned him: "Whence 1 is it deduced that a son has the preference over a daughter in the estate of their mother?" And he answered: "Because it is written 'tribes,' and the verse compares the tribe of the mother with the tribe of the father. As in the former case the son has the preference, so is it in the latter." Said Jehudah: "If so, why not say that as in the father's case the first-born takes a double share, so should it be in the mother's?" Said R. Janai to his servant: "Take me away from him, this man does not want to learn." And what was the reason? Said Abayi: It is written [Deut. xxi. 17], "of all that is found in his possession," not in her possession. But why not say that

this is so when a single man has married a widow who has children from the first husband, but if a single man has married a virgin, the first-born shall take a double share? Said R. Na'hman b. Itz'hak: The same verse cited reads, "for he is the beginning of *his* strength," *his* but not *her*. Is this verse not necessary to include a first-born who came after a miscarriage, that he is entitled to a double share, although he is not considered as such to be redeemed? Because it should be read, "he is the first of strength," and from the addition his both inferences are drawn. But still it may be said in case a widower married a virgin, but if a bachelor married a virgin then the first-born is entitled to a double share also from his mother. Therefore said Rabha: The verse ends "to him belongeth the right of first birth"; which means to him a *male*, but not to a *female*.

"*And the husband from his wife*." Whence is this deduced? From that which the rabbis taught. It is written [Numbers, xxvii.], "his kinsman," and his wife is meant. Infer from this that the husband inherits from his wife; but lest one say that she inherits from him also, it is written [ibid.] "and he shall inherit from her." "*Outhoh*" means he inherits from her, but not she from him. But the verses are not written in that order, you say? Said Abayi: Read thus: "Then shall ye give his inheritance to his next kinsman and he shall inherit from her." Said Rabha to him: It seems to me that you have a keen knife to cut the verses. Therefore, said he, the verse means he shall give the inheritance from *his* kinsman to him; as he holds that the sages have a right to subtract, to add, and to interpret. (*I.e.*, it is written *nachlossou*, literally "his inheritance," with a Vav at the end; *lishourou*, literally "to his kinsman," with a Lahmed at the beginning. Subtract the Lahmed from *lishourou* and the Vav from *nachlossou*. Put these two letters together and they will read *lou*, literally "to him," and then the verse will read thus: "Ye shall give the inheritance of his kinsman to him.) The following Tana, however, infers this from the same verse in another way, as we have learned in the following Boraitha: It is written, "And he shall inherit from her." Infer from this that the husband inherits from his wife. So said R. Aqiba. R. Ishmael, however, said: It is not necessary to cut the verses (he does not hold the theory of subtracting, adding,

etc.), as there are other verses [ibid., xxxvi. 8], "every daughter that inheriteth," which refers to the transferring of an estate from one tribe to another through the husband, who is of one tribe and has married a woman of another tribe. It is written [ibid. 7], "And the inheritance of the children of Israel shall not pass from tribe to tribe," and it is also written next, "and no inheritance shall pass from one tribe to another," and then it is written [Joshua, xxiv. 33], "And Elazar the son of Aaron died and they buried him in the hill of Pinchas his son." Where then had Pinchas a hill which Elazar did not possess? We must then conclude that Pinchas married a woman who owned a hill, she died and he inherited it. And it is also written [I Chronicles, ii. 22], "And Segub begat Jair, who had three and twenty cities in the land of Gilad." And wherefrom did Jair obtain that which his father, Segub, did not possess, if not by inheritance from his wife. But to what purpose did R. Ishmael cite all the above verses? Lest one might say that the first cited verse does not speak of transferring an estate through the husband, but through her son, and the husband does not inherit. Therefore is the other verse cited, "And the inheritance of the children of Israel shall not pass," etc. But lest one say that this verse is written to make the one who transgresses answerable under a positive and a negative commandment, but still through the son and not the husband, therefore is the third verse cited. But lest one say that this verse is also written for the purpose of making the transgressor answerable under two

negative and one positive commandments, therefore is the fourth verse cited; and lest one say that Elazar's wife owned a hill and Pinchas inherited it from her, therefore is the fifth verse cited. And lest one say that the same was the case with Segub and Jair, then why two verses which contain the same case?

Said R. Papa to Abayi: But what does this support? It may be said that the husband does not inherit, and all the above cited verses state that it was through the son, and did both Jair and Pinchas buy the estate in question? And Abayi answered: You cannot say that Pinchas bought the estate, as if this had been so the property would have been returned to the seller in the jubilee year, and then the upright Elazar would have been buried in ground not his own. But perhaps the hill

in question was transferred to Pinchas from estates set apart for the priests [Numb. xviii. 14]. Said Abayi to him: If we were to agree with your theory, the estate would be still transferred from one tribe to another. Is it not explained above that verse 8 refers to a woman who has inherited from both father and mother, who were of two different tribes? Why, then, if she should marry one belonging to the tribe of her father, would the estate of her mother be transferred to another tribe? And R. Papa said: This is no objection, as the case may be different, and perhaps the estate of her mother was already transferred. Rejoined Abayi: Such a supposition cannot be taken into consideration; as one would not say that because a part had already been transferred, the other part should now be transferred. Furthermore, the transfer was according to the law, as when a woman has married one of another tribe, her brother being still alive, she then possessed no heritage, but received it after she was already married. Afterward her daughter, who has inherited her mother's estate, if she should marry even one belonging to her father's tribe, her son would inherit from her the estate which had belonged to another tribe.

Said R. Jiiman to R. Ashi: Even in accordance with Abayi, who holds that the husband does inherit, it is correct. If the verse is to be explained that the daughter has already inherited from her mother, who was of another tribe, the Scripture commands that she shall marry one of another tribe, to the end that the estate of one tribe shall not be transferred to another one, no matter whether through son or husband; but if the estate of her mother was not as yet transferred, why should she marry one of her father's tribe? The estate of her mother, which belongs to her, if her husband inherits from her, would be transferred to him; hence the estate of one tribe would be transferred to another. The answer was that she might marry a man whose father was of the tribe of her father, and his mother of the tribe of her mother, and in such a case the estate of her father remains within the tribe of her father, and the estate of her mother remains also with the man whose mother is of the same tribe. But if so, should not the verse read "to one who is of the family of her father's and mother's tribe"? If the verse should so read, one might say that even if her husband's father were of her mother's tribe, and his mother was of

her father's tribe, this would not be in accordance with the law, as the estate of her father would be transferred to her husband, who is of another tribe. There is a Boraitha that through the son the estate is transferred, namely: "The seventh verse reads 'the inheritance of the children of Israel shall not pass,' etc., which refers to the son. But perhaps it refers to the husband? This could not be, as verse 9 reads 'as no inheritance shall pass from one tribe to another,' which

refers to the husband; hence verse 7 refers to the son." There is another Boraitha: "Verse 9 refers to the husband, but perhaps it refers to the son? This cannot be, as verse 7 has already referred to the son." We see, then, that both Boraithas hold that verse 9 refers to the husband. Where is this taken from? Simon in the name of Rabba b. R. Shila said: From the expression "*ish*" in verse 8, which means husband. But is not the same expression in verses 7 and 9? Said R. N'ahman b. Itz'hak: From the expression "*Idbako*" (adhere). But also this expression is in 7 and 9? Therefore said Rabha: From the end of verse 9, which reads "the tribes of Israel shall adhere"; and R. Ashi maintains, from the expression "from one tribe to another tribe," a son cannot be called of another tribe.

R. Abuhu in the name of R. Johanan, who spoke in the name of R. Janai, who heard it from Rabbi, quoting R. Joshua b. Kar'ha, said: Whence is it deduced that the husband does not inherit the estate to which his wife during her life is only heir apparent (*e.g.*, his wife is an only daughter and she dies before her father, leaving a child, and thereafter her father dies, and her child but not her husband inherits)? From [I Chronicles, ii. 22]: "Segub begat Jair, who had three and twenty cities." Whence did Jair obtain these, which his father did not possess. Infer from this that Segub, had married a wife who had twenty-three cities, and she died while her nearest heirs yet lived. Thereafter her nearest heirs also died, and Jair, her son, not Segub, her husband, was her heir. And the same is the case with Elazar, who married a woman who possessed a hill, and she died while her nearest heirs were still alive, and thereafter the nearest heirs also died and Pinchas inherits from her. How are we assured that Elazar's wife brought him the hill; perhaps Pinchas' wife possessed it? By the words "his son," in Joshua, xxiv. 33 (which are superfluous, as every one

knows that Pinchas was his son), meaning his son who was the proper heir."

"*And also the children of sisters*." There is a Boraitha, "Sons but not daughters of sisters." How is this to be understood? Said R. Shesheth: It means that if there were sons and daughters, the sons would have the preference. As R. Samuel 1). R. Itz'hak taught in the presence of R. Huna: It is written [Numb. xxvii. 11] "and he shall inherit it," which means that the second inheritance shall be equal to the first; as in the first the son has the preference, so it shall be with the second. Rabba b. Hanina taught in the presence of R. Na'hman: It is written [Deut. xxi. 16], "Then shall it be (in the day 1) when he divideth an inheritance," which means in the daytime he may divide an inheritance but not in the night-time. Said Abayi to him: "Do you mean to say that only from him who dies in the daytime his children may inherit, but otherwise they cannot? Perhaps you mean to say that judges must not discuss a case of a will, at night, as we have learned in the following Boraitha: It is written [Numb. xxvii. 11] "a statute of justice," which means that the whole section which treats of inheritance is a statute of justice (which must be discussed in the daytime *only* and by no less than three judges). It is as R. Jehudah said elsewhere: If three persons visited a sick man and he made verbally his last will before them, they might, if they wished, write it down, and, further, they might execute it. If, however, there were only two, they might write down his will (as witnesses), but could not execute it. And to this R Hisda added that so it is as to the daytime only, but if it were at night, even if there are three, they may write down the will, but not execute it; because they are considered witnesses only, and a witness cannot qualify as an executor. And Rabba answered him: Yea, this is what I meant to say.

It is taught: In the case of a gift with the ceremony of a sudarium by any person, whether healthy

or sick, what time may be given him to. retract? Rabba said: As long as they are sitting at that place where the ceremony was performed And R. Joseph said: As long as they are discussing this matter Said R. Joseph also: It seems to me that I am right in my decision, as R. Jehudah said that three who are visiting a sick person

may, if they like, write down his will and execute it; now, if you say he may retract as long as they are sitting there, though they do not discuss the matter, how can they execute the will but in the doubt that while they are doing so he may retract? Said R. Ashi: I have maintained before R. Kahana, even in accordance with R. Joseph's theory, that it is to be feared that even while they are discussing this matter he will retract; how then can they execute the will? Say, then, that they have ceased to discuss this matter and are discussing another one. The same can be said here, that they arose after hearing his will, and again took their seats. The Halakha, however, prevails in accordance with R. Joseph concerning the field mentioned above (p. 38), concerning this case, and concerning the case of "a half" (when the sick man says, "I bequeath my estate to you and your son," upon which, according to R. Joseph, the estate may be divided equally), which matter will be explained in Chapter IX.

"*The woman to her children*." To what purpose is this repeated? Does not the first part read "the son from his mother," etc.? It comes to teach us that the case of "the woman to her children" is equivalent to that of the woman to her husband. As the husband does not inherit in the place of his wife that which she would have inherited had she lived (as illustrated in the case of the woman who predeceases her father), so also the son inherits his mother's share, but his brothers (of the one father) do not inherit from him if he dies. [1] R. Johanan in the name of R. Jehudah b. R. Simeon said: Biblically a father inherits from his son, and a mother also inherits from her son, as it is written "tribes," from which is deduced the tribe of the mother as well as the tribe of the father; as concerning the tribe of the father, the father inherits from his son, the same is the case with the mother. R. Johanan, however, opposed R. Jehudah, from our Mishna, which states that a woman to her son, her husband, and the brothers of the mother may bequeath but not inherit. R. Jehudah answered: I am not aware who taught our Mishna; but let him say that our Mishna is in accordance with R. Zechariah, who does not care to explain the

word "tribes" as a comparison. Our Mishna cannot be explained in accordance with R. Zechariah, as it states "and the children of sisters," and a Boraitha adds that the sons but not the daughters are meant, which was explained by R. Shesheth as meaning that the sons have the preference, and according to R. Zechariah, sons and daughters are equal heirs of their mother. But how is to be explained the teaching of the Tana of our Mishna? If he holds that the word "tribes" is to be taken as a comparison of one tribe to another, why should not a woman inherit from her son; and if he does not, whence does he derive his theory that a son has the preference in the estate of his mother? The comparison holds good, but this case is different; because it is written "every daughter that inheriteth," which means she may inherit but does not bequeath.

MISHNA *II*.: The order of inheritance is thus: If a man dies, leaving no son, the inheritance shall pass to his daughter (reads the passage), by which we see that the son has preference before the daughter, and the same is the case with all the descendants of the son, who also have preference before the daughter. The daughter has preference over the brothers of her father, and

the same is the case with her descendants. The brothers of the deceased have preference over the father's brothers, and the same is the case with their descendants. This is the rule: After every one who has the preference concerning an inheritance, his descendants have, in order, a like preference. The father has the preference before all his descendants.

GEMARA: The rabbis taught: It is written "a son from which we know the son himself only, but whence do we deduce the son's son or his daughter, or even the grandson of his daughter? It is written *ien lou*; and we read the word *ien* as if it were written *ayin*, which means investigate, for perhaps his son left a son or a daughter, etc. It is also written "a daughter," by which we know indeed the daughter, but whence do we deduce her daughter, son, and daughter of her son? It is written *ien*, "*ayin*," as said above. And the same is the case with investigation in the opposite direction (*i.e.*, perhaps the father's father is yet alive), so that an investigation concerning inheritance may stretch back to Reuben, the son of Jacob. Why only back to Reuben, and not as far as Jacob? Said Abayi: We have a tradition that the whole tribe cannot be

extinguished. [1] R. Huna in the name of Rabh said: 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, as so acts the Sadducean, which we have learned in the following Boraitha: On the 24th day of the month Tebheth we returned to our old law, namely: the Sadducean used to say that a daughter should inherit an equal share with the daughter of the son, and Rabban Johanan b. Zakai said to them: "Ye fools, wherefrom have ye taken this?" And none was there to answer him, except an old man who talked (childishly) against him thus: Is this not an *a fortiori* conclusion? The daughter of his son who comes upon the strength of her deceased father, the son of the bequeather inherits. So much the more the daughter who comes upon the strength of the bequeather himself should take a share in the inheritance. R. Johanan then read before him [Gen. xxxvi. 20], "These are the sons of Seir the Chorite, who inhabited the land, Lotan and Shobal and Zibon and Anah," and there is also written [ibid. 24]. "And these are the children of Zibon, both Ajah and Anah." How is it to be understood? Infer from this that Zibon had lain with his sister Ajah, and she bore Anah. [But perhaps there were two Anahs?] Said Rabba: I shall say a thing which would be fit for King Sabur to say [Samuel is meant, although, according to others, R. Papa said so when he meant Rabba]. It is written in the same verse cited "that Anah," which means one that is the same as the Anah of verse 20. Said the Sadducean to R. Johanan: Rabbi, with such an explanation do you think to override me? R. Johanan answered: And why not? Should not our Torah with its regulations ignore your gossip? Your *a fortiori* conclusion could be easily overthrown by the following theory: How can you compare one's daughter to the daughter of his son, when the latter has a right of inheritance even when the brothers of her father are still alive, while the former has no such right (for a daughter does not inherit when she has brothers)? And with this he conquered the Sadducean, and this day was established for a festival.

It is written [Judges, xxi. 17]: "And they said their inheritance must be secured for Benjamin, that not a tribe may

be blotted out from Israel." Said R. Itz'hak of the school of R. Ami: Infer from this that at that time a stipulation was made that as long as the tribe of Benjamin should continue, the daughter

of a son should not inherit her share with existing brothers, in order that, through her marriage to a man of an other tribe, she might not divert the estate from the tribe of her father. R. Johanan in the name of R. Simeon b. Johai said: He who leaves no son to succeed him is unloved of heaven, as it is written [Psalms, lv. 20]: "Those who leave [1] no changes fear no God." R. Johanan and R. Joshuah b. Levi ,differ. According to one a son is meant, and according to the other a disciple. From the fact that R. Joshuah b. Levi did not go to a funeral unless the deceased was childless, because it is written [Jeremiah, xxii. 10], "Weep sorely for him that goeth away," which R. Jehudah in the name of Rabh interpreted as meaning "he who passeth away without a son," it must be concluded that R. Joshuah b. Levi was the one who said "a disciple." R. Pinchas b. Hama lectured: It is written [I Kings, xi. 21]: "And when Hadad heard in Egypt that David slept with his father and that Joab the captain of the army was dead." Why concerning David is it written "slept," and concerning Joab "dead"? Because David left a son, and Joab did not. But is it not written [Ezra, viii. 9]: "From the children of Joab, Obhadia b. Jechiel"? Therefore, as "slept" is the word employed for David, we must conclude that he left a son like himself, which was not the case with Joab. Wherefore in his case the term "dead" is used. And he also said: Poverty in the house of one is harder than fifty plagues, as it is written [Job, xix. 21]: "Spare me, spare me, O ye my friends! for the hand of God hath touched me." And he was answered [ibid. xxxvi. 21]: "Thou hast chosen this instead of poverty." [2] The same said again: If one has a sick person in his house, he shall go to a wise man and request him to pray for the sick one, as it is writ ten [Prov. xvi. 14]: "The fury of a king is like the messengers (of death; but a wise man will appease it."

"*This is the rule*." Rami b. Hama questioned: If the deceased left a grandfather and a brother, as did Abraham and Jacob to the estate of Esau, who had the preference? Said

[paragraph continues] Rabha: Come and hear the decision of our Mishna, which states that the father has the preference before all his descendants. Rami, however, maintains that the father has the preference over his descendants, but not over the descendants of his son. (Says the Gemara:) It seems that Rami is right. As the Mishna states, this is the rule: He who has preference concerning inheritance, his descendants have the same. Now, if when Esau died Isaac and Abraham were both alive, Isaac would have had the preference to the estate; the same would have been the case if Isaac had been dead. Then Jacob would have had the preference over Abraham, because he was a descendant of Isaac. Infer from this that so it is.

MISHNA *III*.: The daughters of Z'lophchod have inherited three shares from the inheritance of their father, his share as one of the ascendants from Egypt, his share in the division of Chipher his father (who was also among the ascendants from Egypt), and because he was a first-born he inherited a double share.

GEMARA: Our Mishna is in accordance with him who said that the land was divided among the ascendants from Egypt, and not to their children (*i.e.*, the person who entered the land of Israel, if he was among the ascendants of Egypt, took his share, and divided it among his children; and if an ascendant had died and his children entered the land, the share of their deceased father was given to them and they divided it among themselves), as we have learned in the following Boraitha: R. Iashiah said: The land was divided to the ascendants of Egypt, as it is written [Numb. xxvi. 55], "According to the names of the tribes of their fathers." But how does this correspond with [ibid. 53], "unto these shall the land be divided," which means to those who

entered the land? Those are meant who are of sufficient age (twenty years), excluding the minors. R. Jonathan, however, said that to those who *entered* the land it was apportioned, not to their fathers, as it is written in the verse just cited. But how would this correspond with verse 55? This inheritance is different from all other inheritances, as in all others the living inherit from the dead, and here the dead inherit from the living, and to illustrate this, said Rabbi, I shall give you a parable. It is similar to the case of two priests in one city, one of whom has one son, while the other has two;

and when they go to the barn to take the Taruma, he who has only one son takes one share (*e.g.*, a saah), and he who has two takes two shares, and they turn them over to their fathers, who divide the shares equally among themselves, according to the number of souls. Such, also, was the apportionment of the land of Israel. Each received land according to the number of his souls, and after that they divided it among themselves according to the number of the heads of the family who were of the ascendants from Egypt; hence the dead ascendants inherit from the living. R. Simeon b. Elazar, however, said that the land was apportioned to both, in the manner stated in both of the above-cited verses. How so? He who was of the ascendants from Egypt took his share among them, and he who was of those who entered the land of Israel took his share among them, and he who was of both the ascendants and the entering took his shares with both of them. The shares of the spies Joshuah and Caleb took and divided equally. Those who murmured and the congregation of Kora'h had no share in the land at all, and their children took their shares, as the direct heirs of their grandfathers on both the paternal and maternal sides. But whence do you know that in Num. xxvi. the ascendants from Egypt are meant? Perhaps it means the tribes themselves who entered the land? It is written [Ex. vi. 8]: "I will give it you for an heritage." Inheritance implies from parents to children, and this was said to the ascendants from Egypt.

Said R. Papa to Abayi: It is understood by him who says. that the land was divided among the ascendants from Egypt [Num. xxvi. 54], "To the large tribe shalt thou give the more inheritance, and to the small shalt thou give the less inheritance," etc.; but to him who says "to those who entered the land," what does this verse mean? This objection remains.

R. Papa said again to the same: To him who said that the land was divided to the ascendants it is to be understood why the daughters of Z'lophchod sued for their father's share; but according to him who says "to those who entered the land," for what did they sue? There was no share for them, as Z'lophchod was dead and he had no share. They sued that the share of their deceased father might be given to their grandfather Chipher, and that they might take their shares in succession. (He said again:) It is comprehended by him who says "the

ascendants," etc., why the children of Joseph cried [Joshua, xvii. 14], "Why hast thou given me but one lot and one portion of inheritance?" But to him who says "to those who entered," why did they cry--each of them took his share? They cried concerning the minor children, which were numerous. Said Abayi: From all this is to be inferred that all who entered the land of Israel had a share; and if not, they protested. And lest one say that he whose protest had effect is written, and he whose protest had no effect is not written, then the protest of the children of Joseph was of no effect and nevertheless written down. This is beside the purpose of the verse,

which is aimed to convey good advice to mankind; in effect, that one shall take care not to be afflicted by a covetous eye. And this is what Joshuah said to the children of Joseph [ibid. 15], "If thou art a numerous people, then get thee up to the wood country," which means, "Go and hide thyself in the forest, that no covetous eye may afflict thee"; and they answered: We are the descendants of Joseph, whom a covetous eye cannot afflict. As it is written, etc. [see Middle Gate, p. 213].

The text says that the shares of the spies Joshua and Caleb inherited. Whence is this deduced? Said Ula: It is written [Numbers, xiv. 38]: "But Joshua the son of Nun and Caleb . . . remained alive." What is meant by "remained alive"? Shall we assume it is meant literally? To this there is another verse [ibid. xxvi. 65], "save Caleb and Joshua." We must then conclude that the first-cited verse means that they lived with their shares. Farther on they murmured, and the congregation of Kora'h had no share? But did not a Boraitha state that the shares of the spies, the murmurers, and the congregation of Kora'h, Joshua and Caleb inherited? This presents no difficulty. The Tana of our Boraitha compares the murmuring to the spies, while the other master does not, as we have learned in the following Boraitha: It is written [ibid. xxvii. 3], "Our father died in the wilderness." Z'lophchod is meant. "But he was not of the company" means "the spies"; "of those who gathered themselves" means "the murmurers in the company of Kora'h," literally. Hence one compares the murmurers to the spies, and one does not.

Said R. Papa to Abayi: And to him who does not so compare them, did then Joshua and Caleb inherit almost the whole

land of Israel (as the murmuring ones were very numerous)? And he answered: He means to say the murmurers who were among the company of Kora'h. [1]

"*As a first-born he inherited a double share*." But why? At the time when Z'lophchod died the land was not as yet prepared for apportionment (as it was still in the possession of the nations), and it is said above that a first-born does not inherit a double share in that which is not yet in existence. Said R. Jehudah in the name of Samuel: The Mishna was meant to say "in their personal property."

Rabba opposes R. Jehudah's statement that the daughters of Z'lophchod, took four shares, as it is written [Joshua, xvii. 5], "Ten portions of Menasseh." Therefore said Rabba: The land of Israel was considered prepared for division, since the Lord himself promised to give it as an inheritance to Israel. An objection was raised from the following: R. Hidqua said: "I had a colleague, Simeon the Shqmuni, who was one of the disciples of R. Aqiba. He used to say thus: Moses our master was aware that the daughters of Z'lophchod were heiresses; but he did not know whether they were entitled to the share of the first-born, and the passage about the inheritance would be written through Moses, even if the case of the daughters of Z'lophchod had not happened, but they were favored by heaven that this passage should be written through them. The same was the case with the wood-gatherer. Moses our master was aware that for the crime he committed there is a capital punishment, but he did not know by which of them he should be executed; and the passage would have been written through Moses, even if the case of the wood-gatherer had not happened. But as he was guilty, it was written through him; and this is what is meant by the reward of virtue, while the chastisement for sin is dealt out through a sinner. (See Sabbath, 1st ed., p. 55.) Now, if it be borne in mind that the land of Israel was

prepared for division, why was Moses doubtful? He was doubtful in the following: It is written [Ex. vi. 8] "And I will give it you for an heritage." Does this mean "an heritage from the parents"? Hence a first-born has to take a double share; or does it mean, "I give it to you--you shall bequeath it to your children" (as the decree was, that the persons ascending from

Egypt were to die in the desert), and the decision was both that the land was a heritage from the parents and yet not for themselves, but to bequeath to their children? And this is what is written [ibid. xv. 17]: "Bring them, and plant them." It was not said "us," and this was a prophecy, wherein they themselves did not know they were prophesying.

It is written [Num. xxviii. 2]: "And they stood before Moses and before Elazar the priest, and before the princes and all the congregation." Is it possible that when Moses did not answer them they were going to complain before the princes? Therefore this verse must be reversed. So said R. Jashia. Abba Hanan in the name of R. Elazar said: All of them were in the college when they came to make their complaint. And the point of their differing is: Whether in presence of the master the disciple must be honored or not. According to one, he may; and therefore he maintains that before they came before Moses they asked the princes, and he who said that this verse must be reversed, maintains that all were of the opinion that in presence of the master the disciple must not be honored with any question. There is a Boraitha that the Halakha prevails that he may be honored. But another Boraitha states: He may not. And it presents no difficulty. In case the master himself honors the disciple, it may be done; and in case he does not, it may not.

There is a Boraitha that the daughters of Z'lophchod were wise, understood lecturing, and were also upright. They were wise, as their protest was to the point. As R. Samuel b. R. Itz'hak said: At the time when Moses our master was sitting and lecturing about the law of Yeboom [Deut. xxv. 57], "If brothers dwell together," they said to him: If we are considered as a son, then let us inherit; and if we are not considered at all, then let our uncle marry our mother. And therefore [Num. xxvii. 5]: "And Moses brought the cause before the Lord." They understood lecturing, as they said: If he should have a son, we would not say a word. But there is a Boraitha that they said: If there should be a daughter. How is this to be understood? Said R. Jeremiah: Ignore the Boraitha. Abayi, however, said: "It is not necessary to ignore it. As they said: If there should be a daughter from a son, we would not say a word. They were upright, in that they each only married him

who was respectable and fit for them. R. Eliezer b. Jacob taught: Even the youngest of them was not less than forty years of age when she married. Is that so? Did not R. Hisda say: If a woman marries at less than twenty years of age she bears children until sixty. After twenty she bears until forty; but when she marries after forty, she does not then bear children? Because they were upright, a miracle happened to them, as to Jochebed, the mother of Moses. As it is written [Ex. ii. 1]: "And there went a man of the house of Levi, and took a daughter of Levi." Is it possible that a woman of one hundred and thirty years of age should be named daughter? As R. Hama b. Hanina said: This meant Jochebed, whose mother was pregnant while on the road to Egypt, and she was born before the walls (when they arrived in Egypt). As it is written [Num. xxvi. 59]: "Jochebed the daughter of Levi, whom (her mother) bore to, Levi in Egypt." And why is she

named daughter? Said R. Jehudah b. Zebidah: Infer from this that signs of youth returned to her. The wrinkles disappeared, the complexion became improved, and her beauty returned to her. But why is it written "he took"? It ought to read, "he remarried." Said R. Jehudah b. Zebidah: Learn from this that he did with her as if he were marrying for the first time: he placed her under a canopy. Aaron and Miriam sang before her and the angels said: "The mother of the children shall rejoice."

Farther on the Scripture mentions the daughters of Z'lophchod according to their age, and here according to their wisdom. [1] And this is a support to R. Ami, who said: In the college the most scholarly has preference to age; at a banquet, however, age is considered. Said R. Ashi: Even in college, only he who excels in wisdom; and also concerning a banquet, only he who is of advanced age is considered (but if one has little wisdom and little more age than the others it does not matter).

In the school of R. Ishmael it was taught: All the daughters of Z'lophchod were equal in wisdom (and that they are mentioned in the Scripture differently means nothing).

R. Jehudah in the name of Samuel said: It was permitted to them to marry any one of any tribe, as it is written [Num. xxxvi. 6]: "To those who are pleasing in their eyes may they

become wives." But what is to be said of that which is written farther on: "Only to the family of their tribe," etc. This is to be considered as a good advice--that they should marry respectable men only who were fit for them, and not as a positive commandment.

Rabba objected: It is written [Lev. xxii. 3]: "Say unto them . . . in your generations." (How is this to be understood?) Say unto them, who were at the mountain of Sinai; and to "your generations" means that the same law shall apply to "all their generations." But why should it be mentioned, "the parents and their children"? Because there were some commandments for the parents only, and some applying to children only. And what are the commandments to parents only? The law [Num. xxxvi. 8]: "And every daughter that inheriteth any possession," etc. And what are the commandments to the children? Many, as *e.g.*, heave-offering, tithe, and all others imposed upon the land of Israel.

We see, then, that the cited verse 8 prohibited marriage to other tribes at that time only? Rabba himself answered his objection: The daughters of Z'lophchod were not included in the commandments to the parents.

The master says: "The commandments belong to the fathers, but not to the sons. But whence is this deduced? From [ibid., verse 6]: 'This is the thing,' which means, 'This thing shall be customary only in their generation.' So said Rabha." Said Rabha the minor (Zuti) to R. Ashi: According to this, should Lev. xvii. 3, in which the same expression is used, also be "for their generation" only? And he answered: There it is different, as verse 7 reads plainly: "A statute forever shall this be unto them throughout their generations."

There is a Mishna in Tract Taanith, p. 80: "Never were any more joyous festivals in Israel than the 15th of Ahb and the Day of Atonement," etc. Why is the 15th of Ahb a festival? Said R.

Jehudah in the name of Samuel: In their days the tribes were allowed to intermarry.

(Here is repeated from Taanith, pp. 91, 92, q. V.)

The rabbis-taught: There were seven men who encompassed the whole world since its creation until now: namely, Mesushelach has seen Adam the first, Shem has seen Mesushelach, Jacob has seen Shem, Amram has seen Jacob, Achiah the Shiloni has

seen Amram; Elijah the prophet has seen Achiah, and the latter (Elijah) is still alive. But how can you say Achiah had seen Amram? Is it not written [Num. xxvi. 65]: "There was not left of them one man save Caleb and Joshua"? Said R. Hamnuna: The tribe of Levi was excluded from the decree that all should die in the desert. As it is written [ibid., xiv. 29]: "In this wilderness shall your carcasses fall, and all that were numbered of you, according to your whole number from twenty years," etc., excluding the tribe of Levi, of which the number was from thirty years. But did not the same happen to other tribes? Is there not a Boraitha that Jair and Machir, the sons of Manasseh were born in the time of Jacob, and did not die until after the entering into the land of Israel? Said R. A'hab. Jacob: In that decree, they who were less than twenty, and more than sixty years old, were not included. [1]

The schoolmen propounded a question: How was the land of Israel divided? Was it divided into twelve parts for twelve tribes (and for each tribe as a whole), or was it divided severally? Come and hear! [Num. xxvi. 56]: "According as they are, many or few" (hence it was divided among the tribes and not severally). And there is also a Boraitha: "In the future the, land of Israel will be divided among thirteen tribes," while in the past it was divided only among twelve; and it was also divided by money (the explanation will be given farther on); and it was also divided only "by lot" and by the Urim v'tumim, as it is written [ibid., 56]: "by the decision of the lot." How so? Elazar was attired in the Urim v'tumim. Joshua and all Israel were standing by, and an urn containing the names of the tribes, and another, and the names of the boundaries of the land, were placed there; and Elazar, influenced by the Divine Spirit, would say thus: "Zebulon will now come out from the urn, and with him, the boundary of Akhu." And then one of the tribe of Zebulon would put his hand into the urn and draw the name of his tribe, and then put his hand into another urn and draw Akhu. And then again Elazar, influenced by the Divine Spirit, would say: Now Naphtali will come, and with him the boundary Ginousar. And so it was with each tribe. However, the division in the world to come will not be equal to the division of

land in this world, as in this world, usually, the lot of one is a field of grain, and of another, one of fruits; but in the world to come, every one will have a share in the mountains, valleys, and plains. As it is written [Ezek. xlviii. 31]: "The gates of Reuben, one," etc., which means that every one will have equal land and shares, and the Holy One, blessed be He, Himself will assign the shares. As it is written [ibid., 29]: "And these are their allotted division, said the Lord Eternal." We see, then, that the Boraitha states that in the past the division was twelve parts to the twelve tribes. Hence it was divided among the tribes and not severally. Infer from this that so it is.

The master said: The land of Israel will be divided among thirteen tribes. Who will be the thirteenth? Said R. Hisda "The prince of Israel will be the thirteenth. As it is written [ibid., 19]: "And the laborer of the city (*i.e.*, the prince who bears the yoke of the whole city), whom men of all the tribes will serve." [1] Said R. Papa to Abayi: But why not say that to the prince would be given a city or the like, but not a thirteenth share of all the land? [2] And he answered: This could not be borne in mind. As it is written [ibid., 21]: "And the residue shall belong to the prince, on the one side and on the other of the holy oblation, and of the possession of the city," etc. (Hence we see that a share was given to him by all tribes.)

The text says farther on: "It was divided by money." What does it mean? Shall we assume that he who had good land would pay to him who had inferior? Does the Boraitha treat of fools, who take money instead of good land? Therefore it must be said that money was paid by those who had shares near to Jerusalem to those who took their shares far from Jerusalem (nearness to Jerusalem being preferable, as it was nearer to the Temple and farther from the land of the natives, therefore in less danger than if near to them). And on this point the following Tanaim differ. R. Eliezer said that they were rewarded with money, and R. Joshua maintains that this reward was in land, as, *e.g.*, compared with where a saah can be sown nearer to Jerusalem they took five saahs.

It says farther on: "It was divided only by lots." There is a Boraitha, "except Joshua and Caleb." What does it mean? That they did not take any land at all? Is it possible? It is said above that they took the shares of the spies, etc. Hence they took what did not belong to them. So much the more what did belong to them. It means they did not take by lots, but by the decree of heaven. As it is written [Joshua, xix. 50): "By the order of the Lord did they give him the city which he had asked--Timnath Serah on the mountain of Ephraim." And Caleb--as it is written [Judges, i. 20]: "And they gave Hebron unto Caleb as Moses had spoken." But was not Hebron one of the cities of refuge? It means the suburbs and villages around the city.

MISHNA *IV.*: A son and daughter are equal concerning inheritance. However, a son takes two shares of the estate of his father, but not of the estate of his mother; and the daughters are fed from the estate of their father, but not from that of their mother.

GEMARA: What does the Mishna mean by its statement that they are equal concerning inheritance? Shall we say that they inherit together? Is it not said above that the son and all his descendants have preference over the daughter? Said R. Na'hman b. Itz'hak: It means to say that they are equal concerning an estate which is not yet fit for division. But have we not learned also this: That the daughters of Z'lophchod took three shares from the estate of their father, and when Z'lophchod died the land was not yet fit for division? And, secondly, what does the expression "however" mean? Said R. Papa: It means to say that they are equal in taking the share of a firstborn. It means that when a first-born died childless they took his share. But this also was already stated concerning Z'lophchod; because he was a first-born, a double share belonged to him, which his daughters inherited, and in reference to him also we do not know what the expression "however" means. Therefore said R. Ashi: It means to say that the son and daughter are equal; in case one has bequeathed to him or to her all his estate, his will must be executed. Is this in accordance with R. Johanan b. Beroka? This is said farther on by him: If one has bequeathed to them who are legal heirs, his words must be listened to? And even if one should say that our Mishna is in

accordance with R. Johanan, and the succeeding Mishna is in accordance with them who differ with R. Johanan, is it not a rule that in such a case the Halakha does not prevail with the anonymous Mishna? And still, what means the word "however"? Therefore said Mar b. R. Ashi: It means that the son and daughter are equal in all cases concerning inheritance, be it the estate of father or mother. However, there is a difference between them, that the son takes two shares from the estate of the father, but does not from the estate of his mother."

The rabbis taught: It is written [Deut. xxi. 17]: "To give him a double portion," which means a double portion as against one brother., But perhaps it means a double portion from all the estate, and should be discussed thus: His share, when he has five brothers, should be equal to that when he has only one. As in the latter case he takes two shares from the whole estate, so it should be with the former. On the other hand, it can be discussed thus: His portion, when he has five brothers, should be equal to that when he has only one brother, in this respect, that as in the latter case he takes twice as much as his brother, so it should be in the former case, that he takes twice as much as all of them. Therefore it is written [ibid., 16] "Among his sons, what he hath." We see, then, that the Torah treats of the inheritance as among all one's sons; hence we have to take the second supposition, and not the first. It is also written [I Chron. v. 1]: "And the sons of Reuben, the first-born of Israel, for he was the first-born; but when he defiled his father's bed, his birthright was given unto the son of Joseph the son of Israel, so that the genealogy is not to be reckoned after the first birth." And it is also written [ibid., 11]: "For Judah became the mightiest of his brothers, and the prince descended from him; while the first birthright belonged to Joseph."

Now the case of the first-born is mentioned concerning Joseph, and also concerning generations; as in the case of Joseph, it was only twice as much as each of the brothers. As it is written [Gen. xlviii. 22]: "Moreover, I have given unto thee one portion above thy brothers." So also is it with the case mentioned as to generations, that the first-born should have only one portion more than his brothers. It is written farther on: "Which I took out of the hand of the Emorite with my sword and with my bow." Did he indeed take it with sword

and bow? Is it not written [Ps. xliv. 7]: "For not in my bow will I trust, and my sword shall not help me."? Therefore we must explain that "with his sword" he means prayer, and "with my bow" supplication.

To what purpose was it necessary to cite all the verses? Lest one say that the cited verse in the above Boraitha is needed for R. Johanan's above theory; therefore the other cited verse, etc.

Said R. Papa to Abayi: How is it inferred from the last cited verse that Jacob gave Joseph twice as much as to all his brothers? Perhaps he presented to him only a like estate? And he answered: To thy question. the Scripture says [Gen. xlviii. 5]: "Ephraim and Manasseh shall be unto me as Reuben and Simeon." (Hence we see that he had twice as much as his brothers, who each were counted as one tribe, and he for two.)

R. Helbo questioned R. Samuel b. Na'hmeni: What is the reason that Jacob took away the privilege of the first-born from Reuben and gave it to Joseph? You ask for the reason. Does not the Scripture state the reason: "When he defiled his father's bed"? I mean to say: Why did he give it to Joseph? And he rejoined: I will tell you a parable to which this case is similar: There was one who had raised an orphan in his house. At a later period the orphan became rich, and thought, I will recompense my benefactor (because Joseph supported his father in the years of famine, therefore he recompensed him). Said R. Helbo to him: And how would, it be if Reuben had not sinned: then Jacob would have given nothing to Joseph? Thereto I shall tell you what R. Jonathan your master said concerning this: The first-born had to come from Rachel. As it is written [ibid., 37]: "These are the generations of Jacob. Joseph." But Leah was preferred by virtue of her prayers. Because of the very chastity of Rachel, the Holy One, blessed be He, returned it to her. And what were Rachel's virtues? As it is written [ibid., 12]: "And Jacob told Rachel that he was her father's brother, and that he was Rebekah's son." The brother of her father? Was he not the son of her father's sister? It was thus: He asked her whether she would marry him, and she said, Yea, but my father is very shrewd, and you cannot persuade him. And to the question: What does it mean? she answered: I have a sister who is older than myself, and my father will not give me

to you while she is not married. Then he said: I am his brother in shrewdness. She then asked him: Is it, then, allowed to the upright to be shrewd? And he answered: Yea; as it is written [II Sam. xxii. 27]: "With the pure thou wilt show thyself pure, and with the perverse thou wilt wage a contest." And then he furnished her with some signs, that when she should be brought to him he would ask her for these signs, that he might be sure that she was not exchanged for Leah. Thereafter, when Leah was brought to him instead of Rachel, the latter thought, Now Leah will be ashamed, and confided to her the signs. And this is what is written [Gen. xxix. 25]: "And it came to pass that in the morning, behold, it was Leah," from which it is to be inferred that until the morning he did not know that she was Leah, because of the signs which Leah received from Rachel.

Abba Halipha Qruyah questioned R. Hyya b. Abba: Of Jacob's children who came to Egypt in sum you find seventy; however, if you will number them in detail, you will find only sixty-nine. And he answered: There was a twin with Dinah. As it is written [ibid., xlvi. 15]: "With Dinah his daughter." According to your theory there was a twin with Benjamin also, as the same expression was used? He said then: A valuable pearl was in my hand, and you were about to abstract it. So said R. Hama b. Haninah: This was Jochebed, whose mother was pregnant, and bore her before the walls (above, p. 263).

R. Helbo questioned again R. Samuel b. Na'hmeni: It is written [Gen. xxx. 25]: "And it came to pass, when Rachel had borne Joseph," etc. Why when Joseph was born? And he answered: Because Jacob our father saw that the descendants of Esau would become submissive to the descendants of Joseph only. As it is written [Obadiah, i. 18]: "And the house of Jacob shall be a fire, and the house of Joseph a flame, and the house of Esau a stubble." Helbo objected to him from [I Sam. xxx. 17]: "And David smote them from the twilight even unto the evening of next day," etc. Hence we see that they were submissive also to David, who was a descendant of Judah, and not of Joseph. Answered Samuel: The one who made you read the prophets did not do so with the Hagiographa, in which it is written [I Chron. xii. 21] [1] "And as he was going over to

[paragraph continues] Ziklag . . . captains of the thousands that belonged to Manasseh." Hence they were submissive to the descendants of Joseph. R. Joseph objected from [ibid., iv. 42 and 43]: "And some of them, even of the sons of Simeon, five hundred men, went to mount Seir, having at their head Pelatyah and Nearyah and Rephayah, and Uzziel, the sons of Yishi. And they smote the rest of the Amalekites that were escaped, and dwelt there unto this day." Said Rabba b. Shila: Yishi was a descendant of Manasseh. As it is written [ibid., v. 24]: And these were the heads of their family divisions: namely, Epher and Yishi."

The rabbis taught: "The first-born takes a double share in the shoulders, in two cheeks and the maw, in the consecrated things, and also in the improvement of the estate which was improved after the father's death. How so? If the father left them a cow which was hired to others, or she was pasturing on the meadow and she brought forth offspring, the first-born takes a double share. If, however, the heirs build houses or plant orchards, the first-born does not take a double share."

Let us see how was the case with the shoulders, etc. If already in the father's hand, it is self-evident; and if not when still alive, then it was not yet in existence; and there is a rule that a first-born does not take a double share in that which is fit, but not yet in existence? The Boraitha treats of a case where the priest has acquaintance among people who usually give such a gift to him only, and the cattle were slaughtered while the father was still alive. And the Tana of the Boraitha holds that the above gifts are considered separated immediately after slaughtering, although they were not as yet taken off. It states farther on: If the father left them a cow, etc. Let us see: It teaches that the first-born takes a double share, even when it was under the control of others. Is it not self-evident that so much the more does the rule apply when it was pasturing on the meadow under proper control? It comes to teach us that the case "hired out to others" should be equal to pasturing in the meadow in this respect, that the heirs not needing to feed it, the improvement came of itself; but not when the heirs fed it, as then the improvement would be considered as made by the heirs, of which no double share is given. And this Boraitha is in accordance with Rabbi of the following Boraitha: A first-born

does not take a double share in the improvement of an estate which was improved after the father's death. Rabbi, however, said: I say that he takes, provided the improvements came by themselves, but not if improved by the heirs.

When they inherited a promissory note, the first-born took a double share; and if there was left a promissory note from the father, the first-born had to pay a double share. If, however, he says, "I will not pay double and also not take a double share," he may do so. What is the reason of the rabbis? It is written [Deut. xxi. 17]: "To give him a double portion." We see that the Scripture considers this a gift; and a gift is not considered unless it comes to one's hand. The reason of Rabbi is, because it is written "a double portion." We see, then, that the Scripture equals this to an ordinary share; and as concerning an ordinary share it is considered belonging to the heir even before it reaches his hand, the same is the case with the double share.

Said R. Papa: In case the father left a small tree, and pending the time of inheritance it became

large; or unmanured earth, which has improved by itself, all agree that a double share is given. In what they differ is, in a case where the father dies when the seeds are as yet growing, and at the time of dividing the inheritance had been made into sheaves; or date-trees were as yet blooming, and at the time, of dividing bore dates. According to one, it is to be considered an improvement by itself; and according to the other, it is considered changed to another article, of which a double share is not to be given.

Rabba b. Hana in the name of R. Hyya said: If one has acted in accordance with the decision of Rabbi, the act is valid; and the same is when he has acted in accordance with the decision of the sages. And the reason is because R. Hyya was doubtful whether the Halakha prevails with Rabbi when he differs with an individual, or it is so even when he differs with a majority (as in this case a majority differs with him). Hence it cannot be considered a wrong act if one has acted according to one of the decisions. Said R. Na'hman in the name of Rabh: It is prohibited to act in accordance with Rabbi [as he holds that the Halakha prevails with Rabbi against an individual only]. R. Na'hman, however, himself maintains that it is permitted to act in accordance with Rabbi [as he holds that the Halakha prevails

with Rabbi even against a majority]. Said Rabba: It is prohibited to act in accordance with Rabbi to start with; however, if one did so, his act is valid [and his reason is, that in such a case where Rabbi differs with the majority, the college has to teach in accordance with the majority to start with, but it cannot compel the one who acted in accordance with Rabbi to ignore his act].

It was taught: R. Na'hman taught in the Mechilta and Siphre, it is written [Deut. xxi. 17]: "Of all that is found in his possession," means to exclude the improvement which was made by the heirs after the father's death, but not that which improved by itself. And this is in accordance with Rabbi. Rami b. Hama, however, taught in the above-mentioned books that it excludes that which improved by itself, and so much the more that which was improved by the heirs. And this is in accordance with the sages.

R. Jehudah said in the name of Samuel: A first-born does not take a double share in a loan. According to whom is it? It cannot be in accordance with the rabbis, as they exclude him even from an improvement which is under the heirs' control; so much less of a thing which is not under their control. It must then be said that this is in accordance with Rabbi. But then the Boraitha which states. "If they inherit a promissory note, the first-born takes a double share in the loan, as well as in the interest," will not be in accordance with both the rabbis and Rabbi. It may be that Samuel's statement is in accordance with the sages; and nevertheless he has to teach this, lest one say, because he holds the promissory note in his hand, it is to be considered as already collected, he comes to teach us that it is not so.

"A message was sent from Palestine, that he takes a double share in the loan, but not in the interest." According to whom is this? It cannot be in accordance with the rabbis, for the reason stated above; and also not. in accordance with Rabbi, who states in a Boraitha that he takes a double share in the loan, as well as in the interest? It is in accordance with the sages; but the Palestinians hold that a note is considered as already collected.

Said R. A'ha b. Rabh to Rabhina: Amimar happened to be in our city, and lectured: "A first-born

takes a double share

in a loan, but not in the interest thereof. And Rabhina answered: The Nahardeans are in accordance with their theory elsewhere (both Amimar and R. Na'hman were from Nahardea), as in such a case Rabba said that if the heirs recovered real estate on a loan of their father a double share is given, but not if they collected money. R. Na'hman, however, holds the reverse: A double share is given if money is collected, but not on real estate. Said Abayi to Rabba: There is a difficulty concerning your decision, and also concerning the decision of R. Na'hman. Concerning your decision, the reason of which is to be supposed that their father left to them not *this* money now collected, as he left a promissory note only; but why should it not be the same with the estate? Did, then, their father leave real estate to them? Moreover, you, master, said that the reason given by the Palestinians concerning the case of a certain old woman (stated farther on) seems to you a right one, and this certainly contradicts your present decision. And concerning R. Na'hman's there is also the same difficulty, as his reason must be that there is no double share from the collected estate, because they did not inherit it from their father. Why should it not be the same with money, as the collected money was not of the inheritance of their father. Moreover, did not R. Na'hman say in the name of Rabba b. Abuhu, that if orphans have recovered real estate for a debt to their father, and there was a creditor to whom their father was indebted, the creditor might take away the estate which they recovered? (Hence he (R. Na'hman) considers the recovered estate as if left by the deceased--why, then, should there not be given a double share?) Answered Rabba: There is no difficulty concerning my statement, nor concerning R. Na'hman's, as we both have pointed out only the reason of the Palestinians by which, according to my theory, a double share is given from real estate, but not for money; and to R. Na'hman's it is the reverse. But our own opinion is, that neither from real estate nor from money is a double share given.

What was the case of the old woman, mentioned above? There was one who wrote in his will: "My estate shall be given to my old grandmother, but after her death it shall belong to *my* heirs." The deceased had a married daughter, who died while her husband and the deceased grandmother were still

alive; and her husband, after the death of the old woman, demanded the estate of his father-in-law, which was in the hand of his grandmother. And R. Huna's decision was: His claim is right, as the will states, "After her, my heirs shall inherit it," which is to be explained, "My heirs, and the heirs of my heirs." R. Anan's decision, however, was: His claim is not to be considered, as the will states, "to *my* heirs," and he was not his heir, but the heir of his daughter. And the Palestinians sent a message: The Halakha prevails with R. Anan, but not for his reason, as, according to his reason, even should his daughter leave a son, he would also not inherit; and this is not so, as the reason why the husband could not inherit is, that the law that the husband inherits from his wife holds good only when she left real estate, but not such an estate as was not as yet in her hands, but to come, which is not the case with a son, who inherits this also.

But shall we assume that R. Huna holds that one may inherit even an estate which was not as yet in the hands of his wife? Said R. Elazar: This case was discussed by great men, and the final decision, with its reason, will be rendered by a small man like my humble self. Every one who

says "after thee" is to be considered as if he were to say "from to-day" (*i.e.*, the above will states "after her," which means the estate shall belong to "my heirs from to-day, but they are not to use the products so long as the old woman is alive"). Rabba, however, said: It seems to me that the reason given by the Palestinians is good as, according to that will, if the old woman should sell the estate, the sale would be valid.

R. Papa said: The Halakha prevails that a husband does not inherit a property which was to come in the future to his wife, and the same is the case with a first-born. He--the first-born--also does not take a double share in a recovered loan, in real estate or money; and, furthermore, if the first-born owes money to his father, the share which belongs to a first-born is to be divided, half to himself and the other half to his brothers. (The reason is, according to Rashbam, because this share is considered doubtful money, as it is not certain that the first-born is to be considered an occupant with respect to it, the supposition being that he has mortgaged all his estate for this debt to his father for the purpose that, in case of his father's death, he should take a double share. And there is a rule that doubtful

money is to be divided. And according to Gershom, the reason is because this loan is not to be compared with the loan of a stranger, as he who is an heir is also an occupant with respect to this debt, and this gives him title to a half of the share in question.)

Said R. Huna in the name of R. Assi: If the first-born protests when his brothers come to improve the estate left by their father, saying: "They shall delay improvement until after division," this protest must be considered in case they have not listened to him, and he takes a double share in the improvement also. Said Rabba: The decision given by R. Assi seems to me right in case, *e.g.*, they inherited vines, and the improvement was by gathering the grapes from the vines; or they inherited olives, and took them off from the trees: but if they made wine or oil thereof, the protest is not to be considered. R. Joseph, however, maintains: Also in the latter case, it is to be considered. Why? They inherited grapes, and now it is wine! As R. Uqba b. Hama said elsewhere: It means he shall receive a double share of the value of the grapes. The same is the case here. *I.e.*, if it happened that the vine was of less value than the grapes, he might claim his double share in the grapes, as he has protested that wine be not made of them. And where did Uqba say this? In reference to the statement of R. Jehudah in the name of Samuel, that if a first-born and his brother have inherited vines or olives, and gathered them, the first-born takes a double share of them, even when they were pressed. Pressed! Were they not first grapes, and now wine? Mar Uqba b. Hama explained that it means that the first-born receives his full double share of the value of the grapes, as explained above.

R. Assi said: If, at the dividing, the first-born took an equal share with his other brother, it is to be considered that he has relinquished his right. R. Papa in the name of Rabha said: He has relinquished his right in the divided estate only. R. Papi in the name of Rabha, however, said: It is to be considered that he has relinquished his right on all the estates. The reason of the former is because he holds that the first-born has nothing until the estate is divided. Therefore he can relinquish his right only in the divided ones. And the latter holds that as soon as the father dies the double share belongs to the first-born, even before division. And therefore, as he has relinquished his right

in the divided estate, so has he done with all others. Both statements, however, were not said by Rabha plainly, but were inferred from the following act: There was a first-born who sold all the estate belonging to him and his brother. The orphans of his brother were going to eat dates of the estate belonging to their father, which was in the possession of the buyers, who struck them. Their relatives said to the buyers: It is not enough for you that you have bought their estate without the consent of the father and the orphans, you dare to strike them. And the case came before Rabha, who decided that the act of the first-born was null and void. R. Papi explained that it means he did nothing with the share belonging to the ordinary brother, but concerning his own share, the sale was valid; and R. Papa explained the decision of Rabha, that the whole sale was null and void, because the first-born had nothing in the estate before it was divided.

A message was sent from Palestine: If a first-born sold out before division, he did nothing. Hence they hold that the firstborn had nothing before the division. The Halakha, however, prevails that he has. Mar Zutra of Drishba had divided a basket of pepper with his brothers, and took an equal share, though he was a first-born; and when the case came before R. Ashi, he decided that as he relinquished his right concerning the pepper, it was also relinquished on all other property.

MISHNA *V.*: If one said in his will, "My son so and so, who is a first-born, shall not take a double share," or, "My son so and so shall not inherit at all with his brothers," he said nothing, as this provision is against the law in the Scripture. If, however, he has divided all his goods in his verbal will, and to some of his heirs he has bequeathed more and to some less, also equalizing the first-born, his will is valid, provided he has not mentioned in his will the word "inheritance." But if he said "because of inheritance," it is not to be considered. If there was a written will in which, in the beginning, middle, or end, was mentioned "a gift," all that it contains is to be listened to.

GEMARA: Shall we assume that our Mishna is not in accordance with R. Jehudah, who said in Tract Kedushin that a condition against the law in the Scripture, if in money matters, may be listened to? This Mishna can be even in accordance with him, as in that case the woman was aware of the law, but

relinquished her right. In our case, however, no one has relinquished.

R. Joseph said: "If one said in his will, 'My son so and so is my first-born,' he takes a double share. If, however, he said, 'My son so and so is a first-born,' he does not, as perhaps it was meant he was a first-born to his mother." There was one who came before Rabba b. b. Hana as a witness that he was certain so and so was a first-born. And to the question: Whence do you know it? he answered: Because his father called him "the first-born fool." And he said: This is no evidence, as people used to name a first-born to his mother first-born fool (*i.e.*, a first-born without right).

It happened that another came before R. Hanina as a witness for a first-born, and to the question: Whence do you know it? he answered: His father used to say, "Go to Sh'kh'at my son, who is a first-born, whose spittle cures eyes." But perhaps he meant a first-born to his mother? There is a

tradition that a first-born of the father cures, and a first-born to his mother does not.

R. Ami said: If born ατμητος, and after perforation found to be a male, he does not take a double share, as it is written [Deut. xxi. 15], "first-born son," which means a son when born. R. Na'hman b. Itz'hak said that also the law of ibid., ibid. 18 does not apply to him. Amimar said: Such is not considered an heir at all, so that his share is not to be reckoned, and does not diminish the double share for the first-born. R. Shezby said: He must also not be circumcised on the eighth day. And R. Shrabyah said: The law [Lev. xii. 2] does also not apply to such (as in all the cited verses it reads a son or a male child). Said Rabha: There is a Boraitha in accordance with R. Ami: It is written a son, but not ατμητος a first-born, but not a doubtful one. What does the latter part mean to exclude? That which Rabha lectured: 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 (*i.e.*, if I am the first-born, I authorize you to take the double share for me; and if you are, then take it for yourself. And then one of them collects the double share and divides it with the other. Said R. Papa to Rabha: But did not Rabbin send a message: I have questioned all my masters about the law

in this case, and could get no answer from any of them; but it was said in the name of R. Janai that if they were recognized, and afterward they were mixed up again, then the stated power of attorney is to be written, but not otherwise. Then Rabha took an interpreter and announced in college: That which I said in my first lecture was an error, as in the name of R. Janai was said thus: That if they were already recognized and afterward mixed, then the above-mentioned power of attorney should be given to each by the other, etc.

The inhabitants of a village situated in a meadow sent the following question to Samuel: Master, teach us where it was certain to the people that so and so, from the children of so and so, was a first-born. Their father, however, said that another was the first-born. How is the law? And his answer was: They should write the above-mentioned power, one to the other.

According to whom was Samuel's decision? If he holds in accordance with R. Jehudah, let him say so; and if in accordance with the rabbis, let him say so? He was in doubt according to whom the Halakha prevails. And wherein is their differing? The following Boraitha: It is written [ibid., ibid. 17]: "Shall he acknowledge," which means, he shall introduce him to others (which is superfluous, this being already written in the previous verse). From this said R. Jehudah: One is to be trusted if he testifies, "This is my first-born son." And as he is trusted concerning a first-born, so is he also to be trusted to testify, "This is a son of a divorced woman," and of lost priesthood. The sages, however, say that he is not trusted. Said R. Na'hman b. Itz'hak to Rabha: According to R. Jehudah's theory, the above-cited verse is right; but according to the rabbis, to what purpose is it written? That in case of a doubt the father's acknowledgment is needed (but in a case of certainty to the people that one was a first-born, the father is not trusted in denying it). But to what does such a law apply? If concerning a double share, even if he was not a first-born, has the father not a right to bequeath him a double share in the manner of a gift? It means, in case the father acquired estates after acknowledgment (*i.e.*, if he is to be trusted, the acknowledged first-born takes a double share; and if not, he does not). But according to R. Meier, who said that one may grant a thing

not yet in existence, to what purpose is the above verse written? If property came to him while he was struggling with death.

The rabbis taught: If one was known to the people as a firstborn, and his father said of another, that he was the first-born, he is to be trusted; and if one was known to the people as not a first-born, his father, however, testifying that he is, he is not to be trusted. The first part is in accordance with R. Jehudah, and the latter with the rabbis. R. Johanan said: If he has testified, "He is my son," and thereafter said, "He is my bondsman," he is not to be trusted. If, however, he testified, "He is my bondsman," and thereafter, "He is my son," he is to be trusted; as the first testimony is to be considered as if he should say, "He serves me like a bondsman." The reverse is the case when at the house of taxes. If he said before the officers, "He is my son," and afterwards, "my bondsman," he is to be trusted, as the first statement was to avoid the payment of taxes for his slave; but if he said before the officers, "He is my bondsman," and thereafter, "my son," he is not to be trusted. An objection was raised from the following: If he has served him like a son, and he acknowledged him as such, and thereafter he said, "he is my bondsman," he is not to be trusted; and the same is the case if he has served him like a bondsman, and was acknowledged by him as such, and thereafter he said, "He is my son": he is not to be trusted. (Hence this contradicts R. Johanan.) Said R. Na'hman b. Itz'hak: The Boraitha treats of when he was called "the slave who costs me a hundred zuz," and such a thing a father would not say of his son.

R. Abba sent a message to R. Joseph b. Hama: If one says, "You have stolen my slave," and the defendant says, "I have not," and to the question, "What, then, is he doing with you?" the defendant answers, "They sold him to me," or "gave him to me as a present; and if you wish, take an oath that it was not so, and then you can take him." And if the plaintiff did so,(although, according to the law, the plaintiff had no right to take him with an oath, and for the defendant no other evidence or oath is necessary, if he would not say so), the defendant has no right to retract from his previous words.

What news came he to teach us? This we have already learned in a Mishna (Sanh. III., 2)? He comes to teach that

the differing of R. Meier and the sages is in a case equal to our case, and the Halakha prevails in accordance with the sages.

The same R. Abba sent a message to the same R. Joseph: The Halakha prevails that a creditor may collect from bondsmen belonging to orphans for their father's debt. R. Na'hman, however, said: He must not.

The former sent another message to the same: The Halakha prevails that to a second-cousin a third-cousin may be a witness (according to the law, relatives must not be witnesses, and Abba comes to teach that a third to a second-cousin, which means a great-grandson to a grandson, is not considered a relative in this respect). Rabha, however, said: The third-cousin is competent as a witness even to the first-cousin. Mar. b. R. Ashi had accepted a grandfather as a witness: the Halakha, however, does not prevail with him. The same sent another message to the same: If

one can witness about an estate, and he became blind, he is no longer competent as a witness in the case. Samuel, however, maintains that he is, as it is still possible for him to mark the boundaries; but concerning a garment, he is not. R. Shesheth, however, maintains that even in case of a garment he is still competent, as he may mark the width and the length of the garment; but not in a piece of metal. R. Papa, however, maintains that even in such a case he is still competent, as he may be aware of the weight.

An objection was raised: If one were cognizant of a case before he became a son-in-law to one of the parties, and the case came before the court after he became a son-in-law; or he was cognizant of the case when he was still in good health, and afterward became dumb, blind, or insane, he is not competent as a witness. But if he was cognizant of the case before becoming a son-in-law, and thereafter married a daughter, but she died before the case came before the court; or he was in good health when he became cognizant of the case, and also when it came before the court, but in the time between he became dumb, blind, etc., and cured, he is fit to be a witness. This is the rule: If in the beginning or the end of the case he was not competent, his testimony is not to be considered; but if he was competent both at the beginning and the end, but not in the time between, his testimony holds good. This opposes

the statements of all the Amoraim as above, and the objection remains.

R. Abba sent another message to R. Joseph b. Hama: If one say, "Of one child among the others," he is to be trusted. R. Johanan, however, says: He is not. What does this mean? Said Abayi: If one says, "This child shall inherit all my estates," he is to be listened to in accordance with R. Johanan b. Beroka. R. Johanan, however, says: He is not to be listened to, in accordance with the rabbis. Rabha, however, opposed: Does the message say he shall or shall not "inherit"? It says "trusted." Therefore he explained it thus: "If one testifies to one child among his children that *he* is the first-born, he is to be trusted, in accordance with R. Jehudah. R. Johanan, however, says: He is not to be trusted, in accordance with the rabbis. The same sent another message to the same. If one said in his will, "My wife shall take an equal share in my estates with one of my sons," he is to be listened to. Said Rabha: It holds good only concerning the estate in possession when the will was made, but not concerning the estate bought thereafter, and also that she takes an equal share with one of his children at the time of dividing (*i.e.*, if his children increased in number after the will was made, she takes her share accordingly, but not according to the number of children at the time the will was made). The same sent another message to the same: If one holds in his hands a promissory note, saying, "Nothing was paid," but the borrower say, "The half is paid," and witnesses testify that the whole amount is paid, the borrower has to take an oath that he paid the half, and then the lender may collect the other half from unencumbered, but not from encumbered estate, as the people by whom the estate is encumbered may claim, "We rely upon the witnesses that the whole amount is paid." And even according to R. Aqiba (Middle Gate, p. 5), the borrower may be considered as one who returns a lost thing-that is, if there are no witnesses; but if there are, R. Aqiba also admits that a half must be paid, as it is to be supposed that the borrower has admitted the half when he has seen that there are witnesses, and he did not know whether they were for or against him, and therefore lie admitted a half. Mar. b. R. Ashi opposed: Even in accordance with R. Simeon b. Elazar, who said that the admission is to be considered, as an admission in part, to which an oath is

given biblically, it is only when there are no witnesses who support him; but not in this case, where witnesses support him: he is certainly considered as if he returned a lost thing. Mar Zutra in the name of R. Simeon b. Ashi lectured: The Halakha prevails in accordance with all messages that were sent by R. Abba to R. Joseph b. Hama. Said Rabhina to R. Ashi: But does not R. Na'hman oppose one of the above messages (and there is a rule that the Halakha prevails with R. Na'hman concerning money matters)? And he answered: We read the above message: It must not be collected; and so also said R. Na'hman. If so, what does Mar Zutra mean to exclude by his statement that the Halakha prevails with all the messages? It cannot mean Rabha's above statement, as he does not oppose, but explain; and also not Mar b. R. Ashi's, who said that a grandfather is competent as a witness. It is already said there that the Halakha does not prevail with him. And should we say that it means to exclude Samuel's, R. Shesheth's, and R. Papa's concerning witnesses who were not competent at the time the cases came before the court, they also were already objected? Therefore, we must say he came to exclude R. Johanan's statement, and the opposition of Mar b. R. Ashi as above.

"*If it was mentioned in. the beginning*," etc. How is this to be illustrated? When R. Dimi came from Palestine, he said in the name of R. Johanan: "There shall be given such and such a field to so and so, who shall inherit it"--this is considered as if "gift" were written in the beginning. "So and so shall inherit such and such a field, and it shall be given to him"--this is a gift in the end. "He shall inherit, and it shall be given to him to inherit"--this is considered "gift" in the middle. This, however, is if there were one man and one field--*i.e.*, "Such and such a field shall be given to A, and he shall inherit"; but if it was written, "The field on the east side shall be given to A, and he shall also inherit such on the west side," that concerning which inheritance is mentioned is not to be considered, as it is against the biblical law. The same is the case where there was one field and two persons, as, *e.g.*, "A shall inherit a half of such and such, and the other half be given to B." R. Elazar, however, maintains: The law holds good even in the latter cases, but not when there are two fields and two persons. When Rabbin came from Palestine,

he said: "If one wrote, "The field on the east side shall be given to A, and B shall inherit that on the west side"--according to R. Johanan, title is acquired, and according to R. Elazar it is not. Said Abayi to him: Your saying is right concerning R. Elazar, as he said above that when there are two fields and two persons the will is not to be considered; but it contradicts R. Johanan's above statement. And he answered: R. Dimi and I differ in the statement which was made in the name of R. Johanan. Resh Lakish, however, maintains that title is not acquired unless it is stated plainly, "A and B shall inherit such and such fields which I have presented to them as a gift." Then they should inherit (*i.e.*, as this will speaks about two persons, "gift" must be mentioned twice, so that it should constitute a gift for each of them). However, in this case the Amoraim still differ. R. Hamnuna maintains that the will in question holds good only as to one person and one field, but not as to one person and two fields, or *vice versa*. R. Na'hman, however, said that it holds good even as to one person and two fields, or *vice versa*; but not as to two persons and two fields; and R. Shesheth maintains that it holds good even in the latter case.

Come and hear an objection from the following: "My estates shall belong to you, and after you so and so shall inherit, and after him so and so shall inherit. If the first heir dies, title is given to the second; if the second dies, title is given to the third; but if the second dies while the first is still alive, the estate must be turned over to the heirs of the first one." Now, is not the case in that Boraitha equal to two fields and two men, and nevertheless it states that title is given? And lest

one say that the Boraitha also treats of a case in which the persons mentioned are all direct heirs of the testator, and it is in accordance with R. Johanan b. Beroka's statement said above, then how is to be understood the latter part: "If the second dies, title is given to the third"? Did not R. A'ha b. R. Ivia send a message that in accordance with R. Johanan b. Beroka, if one says, "My estates shall belong to you, and after you to so and so," if the first was a direct heir, the second has nothing in the estate, as the expression is not to be considered as a "gift," but as an "inheritance"? And there is no interruption concerning an inheritance (*i.e.*, an inheritance cannot be halved so that a half of the inheritance shall belong to the direct heir and the other

half to the second, and also cannot be interrupted by the death of the regular heir, but is to be inherited by his heirs). Hence, the Boraitha is an objection to the statements of all the Amoraim mentioned above, and so it remains.

Shall we then assume that it also objects to Resh Lakish's statement (*i.e.*, that the Halakha does not prevail with him)? How can this be imagined? Did not Rabha say that the Halakha prevails with Resh Lakish in certain three things, one of which being his statement made above? This presents no difficulty. The Boraitha cited speaks of when it was said in one speech (*i.e.*, there was no interruption between the words, "My estate shall belong to you, and after you," etc. It is therefore to be supposed that at the time he gave title to the first he also gave it to the second; and therefore all of them acquire title). But Resh Lakish treats of when it was said *with interruption* (*i.e.*, the statement of Resh Lakish that if there were two men and two fields title is not given, means that he said first, "This field shall be given to them," and after deliberating he said again, "shall inherit such a field," etc. Then the word "given" cannot be considered, in case of this other, and therefor title is not given). The Halakha prevails that all that is said in one speech is valid, except as to idolatry (*i.e.*, if one said this shall be for the idol, and without any interruption he said for something else, the thing in question is prohibited: because of the rigor as to idolatry, the first word which was spoken is considered). And the same is the case concerning betrothing--the first word is considered and the following is not, although it was in one speech.

MISHNA *VI.*: If one says: "A (who is a stranger to him) shall inherit my estate," and he has a daughter, or, "my daughter shall inherit," though he has a son, he said nothing, as the provision is against the biblical law. R. Johanan b. Beroka, however, maintains that if he has bequeathed to such persons as are fit to be his heirs, his will must be listened to; but if the persons are not fit to be his heirs, it is not to be considered.

GEMARA: From the expression of the Mishna, to a stranger instead of his daughter, or to the daughter instead of a son, it is understood if it was one daughter among others, or one son among others, he may be listened to. How, then, as to the latter part? R. Johanan b. Beroka said: If the persons

were fit to be his heirs, etc. Is this not the same as what the first Tana said? And lest one say that R. Johanan holds that even in the former case his will is valid, this cannot be, as the following Boraitha states: R. Ishmael the son of R. Johanan said: My father and the sages do not differ as

to when one has bequeathed to a stranger instead of his daughter, or to his daughter instead of his son--he is not to be listened to; and wherein they do differ is, if he had bequeathed to one son or to one daughter among others, where according to my father his will is valid, and according to the sages it is not. (Hence there is a difficulty in understanding the expression of the Mishna?) If you wish, it may be said that because R. Ishmael found it necessary to say that they do not differ, there must be one who said that they do; and this was the first Tana. And if you wish, it may be said that the whole Mishna is in accordance with R. Johanan b. Beroka. But it is not complete, and should read thus: If one said: "A shall inherit my estate instead of my daughter," or "My daughter instead of my son," he said nothing. If, however, "My daughter so and so shall inherit my estate instead of my other daughters," or "my son instead of my other sons," he may be listened to; as R. Johanan b. Beroka declares that if he has bequeathed all his estate to him who is one of his direct heirs, his will is valid.

Said R. Jehudah in the name of Samuel: The Halakha prevails with R. Johanan. And so also said Rabha. And he added: What is the reason of R. Johanan b. Beroka? [Deut. xxi. 16]: "Then shall it be, when he divideth as inheritance among his sons what he hath," means that the Torah gave permission to the father to bequeath his estate to whichever of his sons he pleased. Said Abayi to him: This may be inferred from "that he shall not institute the son of the beloved as the firstborn before," etc. We see that this is said only about the firstborn, but not about the other sons. Nay, the latter is needed in addition to what we have learned in the following Boraitha: Aba Hanan in the name of R. Eliezer said: To what purpose is it written, "that he shall not institute," etc.? Because from the beginning of the verse it is deduced that permission is given to a father to bequeath his estate to whom he pleases. And one may discuss thus: An ordinary son has the privilege to take his share in the estate which is not yet fit for division as if it

were already fit, and nevertheless his father has the permission to ignore him; a first-born, who has no such privilege, so much the more he could be ignored. Therefore it is written, "He shall not institute," etc. But let the Scripture read, "he shall not institute," *only*. Why the first half of the verse? Because one may discuss thus: a first-born, who has not the privilege to take his double share from that which is not yet fit, has nevertheless the privilege that he cannot be ignored by his father. An ordinary son, who has the privilege, so much the more he should not be ignored. Therefore the beginning of the verse, from which we infer that the father is permitted to bequeath his estates to whom he pleases, was necessary.

Said R. Zrika in the name of R. Ami, quoting R. Hanina, who said so in the name of Rabbi: The Halakha prevails in accordance with R. Johanan b. Beroka: Said R. Abba to him: He did not say so, but he decided so in a case (which came before him.) And what is the difference? One holds preference is to be given to a statement (*i.e.*, if he states that so the Halakha prevails, it is a teaching forever; but if he was only acting so, it may be said that it was only according to the circumstances and we cannot take it for a rule forever). And the other holds that the preference may be given to an act.

The rabbis taught: A Halakha must not be taken for granted from a discussion or from an act, as one has no right to act unless he is told to do so. If he questioned his master and he told him such and such a Halakha is to be practised, then he may go and act so, provided he does not compare one case to another. But do we not compare one thing to the other in the laws of the Torah? Said R. Ashi: It means to say that he must not compare one thing to the other in the law

of dietary (*i.e.*, an animal which is fit for eating biblically, if it has such a sickness that it cannot live twelve months, it must not be used). In Tract Chulin the diseases are enumerated, but such diseases as are not enumerated there are discussed whether in connection with lawful use or otherwise. And it is said that in such cases no comparison is to be taken in consideration unless known by tradition. As we have learned in a Boraitha, one must not say, concerning *Trepheth* (sickness which makes the animal illegal): This is similar to this. And one should not be surprised, as, if one cuts a piece of the animal from one side, it

may remain alive; and from another side, and it dies immediately.

R. Assi questioned R. Johanan: "If you, master, declare a Halakha to us, saying that such is the law, may we practise accordingly? And he answered: You shall not practise unless I tell You that such is for practice. Said Rabha to R. Papa and to R. Huna b. R. Joshua: If it should happen that my written resolution in a judgment should come to your hands, and you should see some objection concerning it, you shall not tear it before seeing me; for if I should have some reason to approve it I will tell you, and if not I will retract from it. But if the same should happen after my death, you shall not tear it, and at the same time you shall not take it for an example for other cases. You shall not tear it, because, if I were alive, probably I would approve it by a good reason; and shall not take it for an example, as a judge has to act only according to his conviction and to that which he sees with his own eyes.

Rabha questioned: How is it when one bequeaths his estates to one son among others, while he is still in good health? Shall we assume that R. Johanan b. Beroka's statement is concerning a sick person only, to whom the above-cited passage may apply, but not concerning one who is in good health (when it is not usual for one to divide his estate), or it does not matter, and one may bequeath his estate when he pleases? Said R. Mesharshia to him: Come and hear the following: R. Nathan said to Rabbi: You have taught the following Mishna: If one has not written in the marriage contract, "Male children borne of you by me shall inherit the amount mentioned in your marriage contract in addition to their share among their other brothers," he is nevertheless responsible in this respect, as this stipulation is made by the Beth Din (court). And Rabbi answered him: It is to be read in that Mishna, instead of "inherits," they shall "take" (which means a gift, and to this all agree that the father has a right). Thereafter, however, Rabbi said: My youth made me presume to contradict Nathan the Babylonian, as I see now--from the law that male children cannot collect their mother's marriage contract from encumbered estate--that Nathan, who declared the expression of the Mishna to be "inherited" was right, as if the expression were as I declared, why, then, should they not collect from encumbered estates also?

[paragraph continues] (Hence we see that one even in good health has the right to bequeath, etc., as the Mishna treats of one entering into marriage.) And who is the one who holds that one may give the preference to one of his sons among others, if not R. Johanan b. Beroka? Hence there is no difference if he does it while sick or in good health. Infer from this that so it is.

Said R. Papa to Abayi: Let us see. According to both, no matter if the expression in the Mishna is "inherit" or "take," why should this hold good? Is there not a rule that one cannot grant to some one a thing which is not as yet in his hands? And even according to R. Meir, maintains

that one may do so, it is when the thing is in existence, but not as yet in his hands. Here, however, concerning the marriage contract the male children are not at all in existence, and in such a case even R. Meir admits that one cannot. And if the answer to this question should be: When the court made a stipulation, it is different. Say then that only in a case where the stipulation of Beth Din holds, one can write so, even when he is in good health, but not otherwise? And Abayi answered: After all, it may be inferred that the Halakha prevails in accordance with R. Johanan b. Beroka, from the expression "inherit," as it could state "take" to which there is no opposition; and the choosing of the expression "inherit" shows that it agrees with R. Johanan. Thereafter, however, said Abayi: "What I said above is incorrect, as there is another Mishna: If one has not written in the marriage contract, 'The female children whom you will bear by me shall remain in my house after my death, and shall be fed from my estates until they shall marry,' he is nevertheless responsible, as this is a stipulation of the Beth Din." Now we see that the two statements which ought to be written in the marriage contract are in one case because of inheritance and in the other because of a gift; and in such a case even the opponents of R. Johanan admit that it is lawful. Said R. Nihumi, according to others R. Hananiah b. Minumi, to Abayi: But how do you know that one Beth Din has enacted both the stipulations mentioned above? Perhaps they were enacted by two different Beth Dins?

R. Jehudah in the name of Samuel said: If one bequeath all his estates to his wife, it is to be considered that he makes her a guardian only. It is also certain that if he did so to his elder

son, he is considered a guardian only. But how is it if he has bequeathed all his estates to his younger son? It was taught: R. H'nilai b. Aidi in the name of Samuel said that the same is the case even when his younger son was in his cradle.

It is certain that if one allot in his will an estate to a son and a stranger, the son is considered a guardian and the stranger acquires title to that which is bequeathed to him as a gift. The same is the case if to his wife and a stranger. It is also certain that when he had bequeathed his estates to his bride who was betrothed (and yet not married), or to his divorced wife, that it is a gift and they acquire title. The schoolmen, however, were doubtful when he did so to his daughter if there were sons, or to his wife if he left brothers; and also to his wife, Who had no children, but stepsons. Shall we assume that he appointed any one of them as guardian only, for the purpose that she should be respected by the heirs as long as she lived, or he made them a gift and they acquire title to the estate. Said Rabhina in the name of Rabha: The women mentioned above do not acquire title, as they are considered guardians; except the bride and also his childless wife if she is together with her stepsons. and therefore acquire title). R. Avira, however, said in the name of the same authority that all the above-mentioned women acquire title except his childless wife, if he left brothers; and also his childless wife if she is together with her stepsons.

(All that is said above treats of a will by a sick man?) Rabha questioned: How is it if this was done by one while in good health? Shall we assume that the above verse applies only to a sick man, whose last will must be respected, or the same is the case with one in good health, as for this purpose he so acted that his words should be respected from that day? Come and hear: If one writes the products of his estates to his wife, and thereafter he dies, she may collect her marriage contract from the estate itself. If he writes her a part of the estate--a half, a third, or a quarter--she may collect her marriage contract from the remainder. If, however, he had presented to her all his estates, and thereafter a creditor came holding a promissory note from

the deceased, according to R. Eliezer the deed of gift shall be annulled and she shall remain by her marriage contract. The sages, however, maintain, on the contrary: The marriage contract shall be annulled and she shall remain by the

deed of gift (as it may be supposed that she has relinquished her right in the marriage contract because of the gift she has received). Should, however, evidence be brought that the gift was not lawful, she remains shorn on both sides of the head. R. Jehudah the baker told that such a case happened with his sister's daughter, who was a bride; and the case came before the sages, and they decided that her marriage contract should he annulled and she should remain by her deed of gift. And thereafter the latter, for some reason, was also annulled, and she remained shorn on both sides of the head. We see, then, that if it were not for the creditor with his note, title would be given to her. Now, how was the case? Shall we assume that it was by a will from a sick man? Is it not said above that she is considered a guardian only? We must then say that it was by one in good health. Hence Rabha's question can be decided affirmatively. Nay, it may treat of a will by a sick man; and, according to R. Avira, it can apply to all the women mentioned above, and according to Rabhina's explanation it may apply to a bride and a divorced wife. Said R. Joseph b. Minumi in the name of R. Na'hman: The Halakha prevails that the marriage contract shall be annulled as the sages declare. Shall we assume that R. Na'hman does not hold the theory of supposition? Have we not learned in the following: If one's son went to the sea countries, and was thereafter reported dead, and he in consequence bequeathed all his estates to some one else, the gift is valid, even if his son were alive and returned. R. Simeon b. Menasia, however, maintains that the gift is null and void, as if he were aware that his son was still alive he would not do so; and R. Na'hman said that the Halakha prevails with the latter. (Hence we see that R. Na'hman holds the theory of supposition.) Yea, his decision that the marriage contract should be annulled is also because of a supposition--that for the pleasure she has in announcing that her husband presented to her all his estates she has relinquished the right to her marriage contract.

There is a Mishna (Peah, III., 10): "If one has bequeathed all his estates to his sons, but has left to his wife a small portion of ground, she loses her marriage contract." How is this to be understood--because he gave her a parcel of ground, she lost her marriage contract? Said Rabh: It means when he made the ceremony of a *sudarium*, to give title to his sons with

her garment (*i.e.*, as she has given her garment for the purpose of dividing all his estate among his sons, it is to be supposed that she agreed to this act without any objection concerning her marriage contract). Samuel, however, maintains that it is sufficient if he did so in her presence and she kept silent (as if this were against her will she would protest). R. Jose b. Hanina, however, maintains: It speaks of when he said to her, "Take this ground instead of your marriage contract." And the Boraitha teaches that concerning a marriage contract it is more loosely constructed than for other creditors, as the latter do not lose their right unless they say plainly, "We relinquish our right," while concerning a marriage contract it is sufficient that she does not protest. There is an objection from a Mishna in Khethuboth: R. Jose said: "If she has accepted, although he wrote nothing, she has lost the right of her marriage contract." From which it is to be inferred that according to the first Tana the accepting is not sufficient unless he writes. Hence he requires both writing and accepting. And lest one say that all of the Mishna in question is in accordance with R. Jose (*i.e.*, if he wrote her a small parcel of ground, she loses her right). And

R. Jose adds that the same is the case if she accepted, although it was not written. This cannot hold good, as there is a Boraitha in addition to that Mishna: Said R. Jehudah: All this holds good when she was present and had accepted; but if she accepted and was not present, she lost nothing of her right in the marriage contract. Hence this Mishna is an objection to all the Amoraim mentioned above, and the objection remains.

Said Rabha to R. Na'hman: In the case in question we have heard the opinions of Rabh, Samuel, and R. Jose. Now I would like to know what is the opinion of you, master. And he answered: I am of the opinion that as soon as he made his wife a sharer with his sons (*i.e.*, at the time when he bequeathed his estates to his sons and set aside a piece of ground for her), she lost her marriage contract. (Provided she had not protested, as R. Na'hman holds with Samuel that if she kept silent it was sufficient.--Rashbam.) And so also it was taught by R. Joseph b. Minumi, in the name of R. Na'hman. Rabha questioned: How is it in a similar case when one is in good health? Shall we say only when he was sick, and she was aware that he had no other estates, therefore she relinquished? But when he was

still in good health she might think, "Why should I relinquish my right--he may in the future buy some other estates?" Or, on the other hand, having seen that he divided all his estates, she renounced her hope and relinquished? This question remains undecided.

There was one who wrote in his will, a half of my estate to one daughter, and the other half to another, and a third of the products to my wife. At that time R. Na'hman happened to be in Sura (where this will was made), and R. Hisda questioned him: How should such a case be decided? And he answered: Thus said Samuel: Even if he left to her the products of one tree only, she lost her right in the marriage contract. Said R. Hisda to him: Samuel's decision was when he gave her title to that which is attached to the ground; but in our case he left for her only fruit which was already gathered. And he rejoined: Then you speak of movable property. In such a case she certainly lost nothing. There was another man who said in his will: A third to one daughter, a third to another, and a third to my wife. It happened that one of the daughters died while her father was still alive (*i.e.*, as a father inherits from his daughter the deceased's share reverted to him, and this is similar, as he might buy some other estate after the division of his previous one), and R. Papa was about to decide that his wife had only the third bequeathed to her, but nothing in the third left from her daughter, for the reason that as soon as he has made her a sharer with his daughters the marriage contract was considered null. Said R. Kahana to him: Why should this case be different from the case that after making his will he bought other estate? Would she not have a right to it because of her marriage contract, as she has relinquished her right only for the sake of her daughters, when there was no other estate, but not in the estate he bought afterwards? The same is the case here: the inheritance of his daughter is to be considered as other estate bought.

There was another who divided all his estate but one tree among his wife and children, and Rabhina was about to say that the widow had a right to this tree only, if the amount of her marriage contract exceeded the value of the estate she received. Said R. Yimar to him: If she relinquished her right at the time the division took place, then she has no right even to this tree; and, on the other hand, if she has a right to this

tree, which means that she did not relinquish her right, then, by the same right by which she collects the excess from this tree, she may do so from the others which are in possession of the heirs.

R. Huna said: From all said above, it is to be inferred that in the case of 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. Then he takes it as an inheritance; and if not, he takes it as a gift. Said R. Na'hman to him: Why quibble? Say plainly the Halakha prevails in accordance with R. Johanan b. Beroka, as your decision is in accordance with him. However, perhaps you refer to a case which happened while one was dying and was questioned: To whom do you bequeath your estate--probably to so and so? and he answered: To whom else? And hence your statement that if the legatee is in some way fit to be an heir he takes it as an inheritance; and if not, he takes it as a gift? And he (Huna) answered: Yea, that is what I meant. But what is the difference whether he takes it as an inheritance or a gift? R. Ada b. Ahbha in the presence of Rabha said: If because of inheritance, then the widow of the deceased must be fed from the estate until she gets the amount belonging to her according to her marriage contract, which is not the case when he takes it as a gift. Said Rabha to him: Shall such a case make the position of the widow worse? In the case of an inheritance biblically, it is said that the widow must be fed from the estate; in the case of a gift, which is only a rabbinical enactment (as in reality one cannot present anything after death, but the sages enacted that the will of a sick person shall be considered as written and presented), shall she not have her right of support? Therefore Rabha explained: R. Huna's above statement agrees with the message which was sent by R. Aha b. Ivia: In accordance with the decision of R. Johanan b. Beroka (above, p. 285), an inheritance has no interruption, and goes direct to the heirs of the inheritor. Said Rabha to R. Na'hman: But the testator himself has controverted this with his saying, "after you, so and so shall inherit." He said so because he meant that he might do so. But the law dictates that there shall be no interruption; hence this stipulation is against the biblical law, and must therefore not be considered.

There was a man who said in his will: My estates shall belong to A and after A to B. A, however, was a legitimate heir, and when he died, B came and demanded the estate. And R. Elish in the presence of Rabha was about to decide that B's claim was a right one. Said Rabha to him: judges who are arbitrators (*i.e.*, who do not decide according to the strict law, but mediate between the parties) judge so. This case, however, was the same as that concerning which R. Aha b. Ivia sent his message (that inheritance has no interruption), and he became ashamed. Rabha then applied to him [Is. lx. 22]: "I the Lord will hasten it in its time" (*i.e.*, Elish was ashamed that were it not for Rabha he would have acted against the law). And Rabha comforted him, in that Providence would not leave such an upright man to act wrongly, and therefore it so happened that he (Rabha) was present. Hence he had no need to fear the justice of his decisions in other cases.

MISHNA *VII.*: If one bequeathed his estates to strangers, leaving his children without anything, his act is valid; but he is condemned in the eyes of the sages. R. Simeon b. Gamaliel, however, maintains that if his children were not going in the right way he might be mentioned among the good men.

GEMARA: The schoolmen propounded a question: Do the rabbis differ with R. Simeon or not?

Come and hear: Joseph b. Joezer had a son with bad habits; and he had also a measure of dinars. And because of his son, he consecrated the dinars to the Temple. The son went and married the daughter of Gadil, the master of the crowns for King Janai; and when his wife had borne a child, he bought a fish for her, and found in it a pearl. Said his wife to him: Do not carry it to the court of the king, as they will appraise it cheaply and will take it from you. Take it, rather, to the treasurer of the sanctuary; but do not mention any price for it, as if you should do so, you will have no right to change it thereafter, as there is a rule that concerning a sanctuary the upset price is considered final, and one has no longer right to retract, as after delivery to a commoner. He did so, and it was appraised by the treasurer at thirteen measures of dinars. The treasurer then said to him: We have now in the treasury only seven measures of dinars, as the taxes are not yet collected. And he answered: Let the remaining six measures be consecrated to heaven. And the treasurer recorded

in his book: Joseph b. Ioezer brought to the sanctuary one measure, while his son has brought six. According to others, they wrote: Joseph brought to the sanctuary one measure, and his son took from it six measures. Now, as they wrote Joseph brought in, it is to be inferred that he acted rightly. But perhaps, on the contrary, as according to others they recorded "his son took out seven," it may be said that they considered the act of the father unlawful. Therefore from this Boraitha nothing is to be inferred. However, how should this question be decided? Come and hear: Samuel said to R. Jehudah: Do not transfer an inheritance from any one, even from a bad son to a good one; further, nor from a son to a daughter.

The rabbis taught: It happened in the case of one whose children had evil habits, that he bequeathed all his estates to Jonathan b. Uziel; and the latter sold a third of them, consecrated a third, and the remaining third he returned to the deceased's sons. And Shamai the Elder came to rebuke him for having so done with estates bequeathed to him, contrary to the will. And he answered him: Shamai, if you have the right to make null that which I have sold and that which I have consecrated, then you have also a right to take away the property which I have returned to the children. But as you have no right to do the former, you have no right to exclaim against my latter act (*i.e.*, if you consider me the owner of the estates bequeathed to me, then I may do with them what I please; and if I am not the owner, then also what I have consecrated should be annulled; and as you cannot annul the consecration, because the estate was bequeathed to me without any condition, consequently the estates are mine, and you cannot take away the property from the children.) And Shamai exclaimed: The son of Uziel has vanquished me! the son of Uziel has vanquished me! But what was his opinion before he came to rebuke him? He did so because of what happened in the city of Beth Horon. There was one of whom his father vowed that he should not derive any benefit from him; and when he made a banquet for the marriage festival of his son, he said to his neighbor: I make you a present of this courtyard and all that is prepared for the banquet, but only to the end that my father should be able to come and eat with us at that banquet. And his neighbor answered: If all this is mine, I consecrate it to heaven. And the

donor rejoined: I have not given you my property to be consecrated to heaven. Rejoined the neighbor: Then you have given all this to the end that your father and you shall eat and drink and be reconciled, and the sin shall rest on my head. And the sages decided that a gift which

cannot be consecrated by the benefactor is not to be considered a gift at all. 1

MISHNA *VIII.*: If one says: "This is my son," he is to be trusted; but, "my brother," he is not to be trusted. He may, nevertheless, share with him the inheritance of his father (when there are only two; but if there are three, the third, who does not recognize him as his brother, is not bound to share with him, and so he receives a half of the share of the brother who does recognize him). If the doubtful man dies, the estate must be turned over to him from whom it was taken. If, however, the deceased left other estates besides those he inherited with his brother, all the brothers share equally (because in the case of that one who testified that he is a brother to all, he has no right to the inheritance without the other brother).

GEMARA: The Mishna states: "'This is my son,' he is to be trusted." To what purpose is it stated? Said R. Jehudah in the name of Samuel: For the purpose that he may inherit from him, and to acquit his wife of Yeboom. But was it necessary for the Mishna to state that he might inherit from him? Is it not self-evident (*i.e.*, if its testimony was because of inheritance only, he could give it as a present)? It was necessary to state that he is to be trusted to acquit his wife of Yeboom. But this also we have learned elsewhere: If one says while dying: "I have children," he is to be trusted (and his wife is acquitted of Yeboom). If, however, he says: "I have brothers somewhere," and he was childless, he is not to be trusted (the intent being that his wife should be prohibited from remarrying). That Boraitha speaks of when the people were not aware of any brothers, and our Mishna came to teach that even when people were aware that one had brothers he is to be trusted if be testifies that such a person was his son.

R. Joseph in the name of R. Jehudah, quoting Samuel, said: Why was it said: One is trusted in testifying that he has a son; because if one testify that be has divorced his wife, he is to be trusted? And Joseph himself exclaimed: Lord of Abraham!

[paragraph continues] He sustains a thing which we have learned in a Mishna by a thing which was not teamed at all. Therefore, if this was taught, it must be thus: R. Jehudah in the name of Samuel said: Why is one trusted to testify, "This is my son" (and with this to acquit his wife of Yeboom)? because, if he likes, he can divorce her. Said R. Joseph again: Now, when we come to the conclusion that the theory of "because" may be used, we may infer that if one testify he has divorced his wife, he is to be trusted; because, if he wishes to make her free, he may give her a divorce then. When R. Itz'hak b. Joseph came from Palestine, he said in the name of Johanan: A husband is not trusted to testify that he has divorced his wife. R. Shesheth, when he heard this, made a gesture implying: Now the "because" of R. Joseph is gone. Is that so? Did not Hyya b. Abin say in the name of R. Johanan: The husband is trusted? This presents no difficulty. If his testimony is of a time long past, he is not to be trusted; and if of a short period of time (*e.g.*, a day or two before, so that this testimony should be used for the future), he is to be trusted. The difference is in case she was suspected of adultery a month before his testimony: If he is trusted, then she committed no adultery; and if not, the suspicion must be investigated. 1

The schoolmen propounded a question: Should one's testimony for the time past, in which he is not to be trusted, be considered for the future (*e.g.*, if he testified in January that he had divorced in December, which does not hold good in case of the suspicion stated above, does it hold good for the time after the testimony took place? And the question is: Can one's testimony be divided--

that for the past he should not be trusted, and for the future he should)? R. Mary and R. Zebid: According to one we may divide, and according to the other we may not. But why should this case be different from the following case stated by Rabha: If one testifies that his wife has committed adultery with so and so, if he has another witness, the man can be put to death in accordance with the law that two witnesses have to testify to a crime-we conjoin his testimony to the stranger's and they are considered two witnesses; but his wife cannot be executed, as it is unlawful that

a husband should be a witness against his wife (hence we see that the testimony is divided: for one it is considered, and for the other it is not)? It may be said: Concerning two we do divide, but not concerning one person.

There was one who, while dying, was questioned concerning his wife (*i.e.*, he was childless, and they questioned him if his wife was divorced from him, so that she might remarry after his death or she remained liable to Yeboom)? And he answered: She is fit to marry even the high priest [1] (*i.e.*, I have divorced her). Said Rabha: We may trust him, as it is said above by Hyya b. Aba in the name of R. Johanan: A husband is to be trusted in testifying that he has divorced his wife. Said Abayi to him: But did not R. Itz'hak b. Joseph in the name of R. Johanan say: He is not to be trusted? And Rabha rejoined: But have we not explained above, that one speaks of the past, and the other of the future? Rejoined Abayi: Shall we rely upon an explanation in such a rigorous law as marriage is? Then said Rabha to R. Nathan b. Ami (before whom the case came: Investigate this matter (as probably Abayi is right). There was another, of whom it was known to the people that he had no brothers, and so, also, he testified while dying. However, it was murmured by some that he had brothers in some other country. And R. Joseph decided: There is no risk in allowing his widow to remarry, as he not only said so while dying, but it was known to the majority. Said Abayi to him: But is it not murmured that there are witnesses in the sea-country that he has brothers? (Answered R. Joseph:) But at present there are no witnesses, and in a similar case, R. Hanina said elsewhere: Should we prohibit a woman from marrying because some say that there are witnesses in the north? Rejoined Abayi: If Hanina had decided leniently concerning a woman in captivity, whose prohibition to marry a priest is rabbinical only, should we compare our case, which is biblical, if the childless deceased left brothers? And Rabha said to Nathan b. Ami, who had charge of this case: Investigate this matter.

"*'This is my brother,' he is not*." But let us see what the

other brothers say. If they admit that the one in question is their brother, why should he share with one only? We must then say that they deny it. Then how is the latter part, "If he had estates from other sources, the brothers have to share," to be understood? They do not deny that he was their brother. It means When the others say, "We do not know whether he is a brother or not."

"*It must be turned over to him*," etc. Rabha questioned: How is it if the same estate were improved of itself--*e.g.*, if it were a young tree, and it grows up, etc., there is no question of the improvement being through the labor of the deceased, as this is similar to the case in which one got estates from other sources; but the question is: If the improvement was of itself? This

question remains undecided.

MISHNA *IX*.: If one dies, and a δαιθηχη was tied to his body, it is not to be considered at all. If, however, while sick he had submitted it to some one, be he his direct heir or not, it must be listened to.

GEMARA: The rabbis taught: What is to be considered a δαιθηχη? (Repeated here from Middle Gate, p. 40, from the quotation "Wills" to the end of the paragraph. See there.)

Rabba b. R. Huna was sitting in the balcony of Rabh, and declared the following in the name of Johanan: If a sick person said to witnesses: "Write, and give a mana to so and so," and before they did so he dies, it must not be listened to, for the reason that probably the deceased had in mind to give title in the case by a deed only; and as such a deed cannot be written after death, nothing can be done. Said R. Elazar to the disciples who were also sitting there: Bear in mind this Halakha, as it is for practice. R. Shezbi, however, said: The reverse was the case: R. Elazar declared the Halakha, and R. Johanan told them to bear it in mind, etc. Said R. Na'hman b. Itz'hak: It seems to me that R. Shezbi is right, as, if R. Elazar declared the Halakha, it was necessary for R. Johanan to approve it; but if Johanan declared it, was it then necessary for Elazar to give 'his approval to what his master said? And secondly, from the following, it is to be inferred that Elazar had declared the above, namely: Rabin sent a message in the name of R. Abuhu: It shall be known to you that R. Elazar sent a message to the sages in exile, in the name of our master (Rabh): If a sick person said,

[paragraph continues] Write, giving a mana to so and so, and it was not done until he had died, nothing is to be done (for the reason said above). (R. Jehudah in the name of Samuel, however, said: They may write and give. 1) But R. Johanan said (though the Halakha so prevails): It must, nevertheless, be investigated. What shall be investigated? When R. Dimi came from Palestine, he said the following two things: (a) A will which is written at a later period abolishes a will written previously (if title was not given by a ceremony of a sudarium). (b) If a sick person said, "Write, giving a mana to so and so," and died, it must be investigated, whether with the expression "write" the testator meant to strengthen the act. In that case it may be done; and if not, it must not. R. Aba b. Mamel opposed from the following: If one in good health said to witnesses, "Write, giving a mana to so and so," and suddenly died, nothing is to be done. From which it is to be inferred that if this were said by a sick person it would be listened to? He himself answered thereafter: If the expression "write" was only to confirm the act, then it may be listened to. But how can we know what he meant? As R. Hisda said elsewhere: If written, and confirmed by the ceremony of a sudarium, no retraction can take place. So also in our case. If it was said by the sick person, "Give to him, and also write," then the last expression may be considered as a confirmation of this act; and it may be so done.

It was taught: R. Jehudah in the name of Samuel said: The Halakha prevails, they may write and give; and so also said Rabha in the name of R. Na'hman.

MISHNA *X*.: If one wishes to bequeath his estate to his children (*i.e.*, it speaks of one who remarries and does not wish that the children by his first wife should lose their share in his estate after his death), he must write: I bequeath my estate to them from to-day and after my death (*i.*

e., the estate belongs to them thenceforward, but not the products until after his death). So is the decree of R. Jehudah. R. Jose, however, maintains: It is not necessary to write "from to-day."

If one wrote: "I bequeath my estate to my son from today, and after my death," he has no longer any right to sell his estate, because it is bequeathed to his son; and his son, also, has

no right to sell it because it is still under the control of his father. If, notwithstanding this, the father has sold, the products thereof are sold until he dies. If the son, however, sold, the buyer has nothing therein until the father dies.

GEMARA: But how if he has written "from to-day and after my death"? Have we not learned in a Mishna: If one wrote in a divorce, "from to-day and after my death," it is considered a doubtful divorce, so that after his death his widow cannot marry his brother, but must perform the obligation of Halitzah. (This is no objection) as there we are doubtful as to the explanation of his words. Does he mean by the words, "after my death," to be a condition (*i.e.*, if I die she shall be divorced from to-day), or as a retraction (*i.e.*, the last words retract the former), and therefore she cannot marry. Perhaps the divorce was valid, and it is prohibited to her to marry a brother-in-law. But she is under the obligation of Halitzah. Perhaps the divorce was invalid. In our case, however, it is to be explained, the body of the estate is bequeathed "from today," but the products, "after my death."

"R. Jose . . . It is not necessary," etc. Rabba b. Abuhu became sick. R. Huna and R. Na'hman came to make him a sick call. Said R. Huna to R. Na'hman: Question him whether the Halakha prevails with R. Jose. And he answered: I am not aware of the reason of his statement. To what purpose, then, should I ask if the Halakha so prevails? Rejoined R. Huna: I will tell you the reason later, and meanwhile you may question him with whom the Halakha prevails. And he did so. And Rabba answered: So said Rabh: The Halakha prevails with R. Jose. When they went out from him, said R. Huna: The reason of R. Jose's statement is because the date of the deed testifies to whom from that day the estate belongs. And so also we have learned plainly in a Boraitha.

Rabha questioned R. Na'hman: According to R. Jehudah, who requires that there shall be written "from to-day," etc., how is it, if this was made with the ceremony of a sudarium? (Shall we assume that as the above ceremony was already performed title is acquired, and nothing further is to be added; or, even then, it must be written in the deed "from to-day," etc.?) And he answered: In such a case it is not necessary. R. Papa, however, maintains that there is a difference in the

tenor of the deed. If it was written: We have secured the ceremony of a sudarium, which he agreed to and made, then nothing is needed to be added. If, however, it was written: He agreed, and we performed the ceremony, then it is necessary to write, "from to-day," etc. (and the reason is, that the latter expression may be explained as intimating that he agreed that possession should come after death, and thereto we have joined the ceremony of a sudarium). R. Hanina of Sura opposed: Are there such things as we do not know, and we must rely upon the scribes? The

scribes of Rabha and of Abayi were questioned, and it was found that they were aware of the difference mentioned above. R. Huna b. R. Joshua, however, said: There is no difference between the two versions mentioned above; as to either of them, nothing is to be added. But if "sudarium" was not mentioned in the deed at all, and there was a memorandum: *e.g.*, "The undersigned testify that a memorandum was made by so and so," etc., then, according to R. Jehudah, "from to-day," etc., is needed. Said R. Kahana: I repeated this discussion before R. Zebid of Nahardea, and he told me: You have learned this so. We, however, have learned it as follows: Said Rabha in the name of R. Na'hman: If a sudarium is mentioned, no matter what version was used, nothing is needed to be added; but in respect to a memorandum (illustrated above) R. Jehudah and R. Jose differ.

"*I bequeath my estates to my son*," etc. It was taught: If the son sold out and then died while the father was still alive, according to R. Johanan the buyer has nothing in it; and according to Resh Lakish, title is given to the buyer after the father's death. The reason of their difference is, because the former holds that the sale of the products ought to be held similar to the sale of the body; and as the products could not be sold by the son, as he had nothing in them so long as the father was alive, so he could not sell the body. And the latter holds that the body is not subordinate to the products; as the body belonged to the son, the sale is valid.

R. Johanan objected to Resh Lakish from the Boraitha stated above, p. 289, which says: The estate must be turned over to the heirs of the first; and according to you, it ought to be to the heirs of the testator. And he answered: It was already explained

by R. Hoshua in Babylon that there was a difference when the testator said plainly "and after you." And so also it was answered by Rabh, to a contradiction made before him by Rabha b. R. Huna. But have we not learned in a Boraitha that the estate must be turned over to the heirs of the testator? In the resolution of this case, Tanaim differ: "My estates are bequeathed to you, and after you to B; A sells out, and consumes the amount. B has a right to recover it from the buyers after the death of A. So is the decree of Rabbi. R. Simeon b. Gamaliel maintains B has a right only to what remained from A." A contradiction was made from the following: My estate is bequeathed to you, and after you to B; A may sell and consume it. So is the decree of Rabbi. R. Simeon b. Gamaliel, however, maintains that A has a right to the products only. Hence Rabbi and R. Simeon contradict themselves in the two Boraithas. This presents no difficulty. The statement of Rabbi in the later Boraitha is concerning the products only; and the statement in the first Boraitha is concerning the body. There is also no contradiction in R. Simeon's statements, as his statement in the last Boraitha means that so is the law to start with; and his statement in the former means, if it were already done.

Said Abayi: Who is called a crafty villain? He who advises A to sell the estate (bequeathed to him for his life only), relying upon R. Simeon b. Gamaliel's decision. Said R. Johanan: The Halakha prevails with R. Simeon b. Gamaliel. He, however, admits that if A gives the same as a present to C, when he is dying, he has done nothing. And what is the reason? Said Abayi: Because C ought to acquire title to it only after the death of A. But at that time B had already acquired title, as it was bequeathed to him after A's death. But did Abayi say so? Was it not taught: To a gift presented by one who is dying, at what time is title given? According to Abayi, with the death: and according to Rabha, after death. Hence C ought to have the preference, according to Abayi's last statement, as to B it is bequeathed after death? Abayi has retracted

from his last statement. But do you know where he has retracted from the last statement? Perhaps he has retracted from the first. Yet it cannot be borne in mind that there is a Mishna which states as follows: If one should say:

[paragraph continues] "This shall be your divorce if I should die"; or, "It shall be yours if I should not recover from this sickness"; or, "After my death," he said nothing. (Hence this Mishna is a direct contradiction to Abayi's statement that title is given *with* the death. If it were so, the divorce would be valid when he said: This shall be your divorce when I die. And therefore it must be supposed that he retracted from the later statement.)

Said R. Zera in the name of R. Johanan: The Halakha prevails with R. Simeon, even in case in the estate in question there were included bondsmen, and they were freed. Is this not self-evident? Lest one say that the testator may claim: "I did not bequeath to you my estate, you shall transgress [1] with them," it came to teach us that it does not matter. And R. Joseph said in the name of the same authority: Even if he had made of them shrouds for a corpse. Is this not self-evident? Lest one say that the testator may claim: "I did not give it to you for the purpose that you should make from it things from which it is prohibited to derive any benefit," he came to say it does not matter.

R. Na'hman b. R. Hisda lectured: If one said: "This citron is given to you as a gift, and after you to B," and A became seized of it, and performed his duty as owner on the first day of Tabernacles, it depends upon the difference between R. Simeon and Rabbi whether it was done lawfully. R. Na'hman b. Itz'hak opposed: The above Tanaim differ in the case whether the sale of the products be considered the same as the sale of the body (explained above), or not? But in our case, if it was not presented to him to the end that as owner he should perform the duty of that day, for what, then, was it given to him? Therefore it must be said that all agree that A, who did as owner his duty of that day, acted lawfully. But if he has consumed or sold it, it depends upon the difference between the Tanaim mentioned above whether the sale is valid, or A has to pay for it.

There was a woman who had a tree on the estate of R. Bibbi b. Abayi; and each time she went to gather the products of the tree, it made him angry. She then sold it to R. Bibbi for his life, with the condition that after his death it should be

turned over to her or her heirs. He, however, transferred it to his minor son (to the end that the tree should remain his for a long time, as according to the law a minor acquires but cannot give title, and this act was according to R. Simeon b. Gamaliel). Said R. Huna b. R. Jehoshua: Because you are weak you speak weak words. [1] Even Simeon b. Gamaliel admits that his statement holds good only when he transferred it to some one else; but not if to himself.

Rabha said in the name of R. Na'hman: If A said to B, "I give you this ox as a present, with the stipulation that you shall return it to me," and B consecrated it and afterward returned it, the ox is consecrated, and B has fulfilled his duty. Said Rabha to R. Na'hman: But, after all, what has he returned to him? The ox being consecrated, he cannot derive any benefit from it. Rejoined R.

Na'hman: But did B depreciate the value, of the ox? Has he not returned it as he got it? R. Ashi, however, said: It must be investigated how the stipulation reads. If "You shall return it," then he acted correctly, as he did return it. But if "You shall return it *to me*," which means it shall be fit for me, but if he has consecrated it, it is no more fit for him. Consequently it cannot be considered returned.

R. Jehudah said in the name of Samuel: If A has bequeathed his estate to B, and B says "I do not want it," he nevertheless acquires title, even if he still protests he does not want it. R. Johanan, however, says: He does not. Said R. Abba b. Mamel: And they do not differ. If B protests at the very time the deed of gift was given to him, he does not acquire title; but if he first kept silent, and afterward protested, title is acquired.

The rabbis taught: If a sick person said, "Give two hundred zuz to A, three hundred to B, and four hundred to Q" it must not be understood that he who is mentioned first in this deed acquires title to that amount; and, therefore, if a creditor comes with a promissory note of the deceased, it may be collected from all of them. If, however, it reads, "Two hundred zuz to A, and after him three hundred to B, and after him four hundred to C," then the one who is mentioned first in

the document acquires title to that amount; and the promissory note must be collected from the last. And if the money he receives does not suffice, it must be collected from the one mentioned before him; and if his does not suffice, it must be collected from the first.

The rabbis taught: If a sick person said, "Give two hundred zuz to my first-born son so and so, who is worthy to have them," he may take them, and also the double share belonging to a first-born. If, however, the sick person said, "Give him such an amount for his first-born privilege, the son has the preference to choose which is better for him--the amount bequeathed or the double share prescribed for him. The same is the case if the sick person said, "Give two hundred zuz to my wife, who is worthy of them." She takes them and also what belongs to her according to her marriage contract. If, however, he said, "Give them to her for her marriage contract," she has the choice of taking them or that which belonged to her according to her marriage contract. If a sick person said, "Give two hundred zuz to my creditor B, who is worthy of them," he may take them, and also collect what the deceased owes him. But if he said, "Give them to him for my debt," then he takes it for the debt.

How is the last sentence to be understood--because he said he is worthy of them, he shall take both the two hundred zuz and his debt? Why not explain, as he had a right to them because of my debt? Said R. Na'hman: Huna told me that this Boraitha is in accordance with R. Aqiba, who is particular concerning the version as it is said (Chap. IV., Mishna 2): R. Aqiba admits, etc. From which we see that he gives his attention to a superfluous word. The same is it with the case in our Boraitha-that the words, "as he is worthy of them," are superfluous; and according to R. Aqiba they are said because he wants to add them to his debt.

The rabbis taught: If a sick man said, "I have a mana with so and so," the witnesses may write this, although they are not aware that such is the case. And therefore, when his heirs come to collect from the debtor, it is for them to bring evidence. So is the decree of R. Meir. The sages, however, maintain that the witnesses must not write unless they are aware that so it is. And

therefore, the heirs may collect this debt without any

other evidence. Said R. Na'hman: Huna told me: The Boraitha must be so understood. R. Meir said: They must not write; and the sages: They may. And even R. Meir said so because he feared that the court, before which the case of "collection" should come, would err, and approve the deed without any investigation, if the witnesses who signed the deed testified only to what the deceased said, or they were aware that the contents were true. And the sages maintain: Usually a court does not err, and can be relied upon to give proper attention to this matter. Said R. Dimi of Nahardea: The Halakha prevails that it must not be feared the court will err. But why should this differ from the following case stated by Rabha: The ceremony of Halitza must not be made by the court, unless they know the persons? And the same is the case with a denial (of a woman, betrothed in childhood, who on arriving at majority denies the marriage before the court; and according to the law she may remarry without any other act). And therefore the witnesses who were present may write a testimony of this act, although they themselves did not know the persons. And the reason why the court must not perform the ceremony of Halitza, unless they know the persons, is because it is to be feared that the court before which she may come to remarry will not investigate whether she is the same person who had to take Halitza. (Hence we see that error by the court is to be feared?) This is no objection. A court usually does not investigate the act of a former court; but the acts of witnesses, it does.

MISHNA *XI.*: The father has a right to pluck the products of trees which are found on the estate bequeathed to his son, after his own death, and may present them to whom be pleases. If, however, the plucked fruit remains after his death, they belong to his heirs.

GEMARA: The plucked fruit only, but not that which is attached to the trees, although ready to be plucked (*i.e.*, such belongs to the son, to whom the estate is bequeathed after his father's death)? Have we not learned in a Boraitha that in case the fruit was ripe, under the control of the bequeather, it belongs to the buyer if he sold it before his death? Said Ula: This presents no difficulty. Our Mishna treats of when he bequeathed to his son, and it may be supposed that his last will

was that from that remaining on the tree his son should derive benefit; and the Boraitha speaks of when he has bequeathed his estate to a stranger.

MISHNA *XII.*: If he left grown-up and minor sons, the grown ones have no right to derive any benefit on account of the minors, nor have the minors a right to same on account of the older brothers (*e.g.*, the older ones have no right to dress themselves at the expense of the inheritance before the division, nor should the minors be supported from the inheritance); but they must divide the inheritance equally. If the older ones have married at the expense of the inheritance, the same amount must be added to the shares of the minors. However, the latter have no right to claim for any addition if their older brothers have married while their father was still alive, as the amount expended for their marriages is considered a gift from their father. [1]

The very same is the case with grown-up and minor daughters. All of them must receive an

equal share. However, in one respect preference is given to daughters who were left together with grown-up sons. The daughters must be fed from the inheritance at the charge of the sons, which is not the case with minor daughters who were left together with grown-up ones.

GEMARA: Rabha said: In the case of the oldest brother who has dressed himself at the expense of the house before division, his act is lawful (and nothing is to be deducted from his share). But does not our Mishna state: "Grown-up ones have no right to derive any benefit," etc. Our Mishna speaks of when they are idle, and do nothing for the benefit of the house. If idlers! Is it not self-evident? Lest one say that, nevertheless, they would be pleased that their brother should be nicely dressed, it comes to teach that it is not so.

"*Grown-up and minor daughters*," etc. R. Abuhu b. Genibh sent a message to Rabha: Let the master teach us:. How is it if a woman has borrowed money, consumed it, and thereafter she married without paving her debt, and brought estates with her at marriage? Must her husband pay her debt, or not?

Shall we assume that the husband is considered a buyer of the estates brought, consequently he has not to pay, as the law

dictates that a loan made without a deed cannot he collected from a buyer; or is he considered an heir, and must pay his wife's debts, even when contracted without any deed? And Rabha answered: This we have learned in our Mishna: If the grown-up daughters have married, the minors may do the same. Is this not to be interpreted that if the grown-up daughters have borrowed money from the estate also belonging to the minors, the minors shall do the same by collecting the debts from their sisters' husbands? Nay! The Mishna means to say that they take the same amount from the inheritance as their sisters did. But this is not so. As R. Hyya taught plainly: If the older ones have married at the charge of the inheritance, the minors may collect the amount from their husbands? (Hence we see that the husband is considered an heir, and must pay?) This cannot be taken for support, as a law made in connection with an inheritance for the purpose of marriage is considered as public and known to the people, and also in the light of a deed which is to be collected from encumbered estates.

Said R. Papa to Rabha: Why did you try to decide the question from R. Hyya's Boraitha? Was the same not decided by Rabbin's letter: If one dies leaving a widow and a daughter, the widow must be supported from the deceased's estate. If the daughter has married or dies, the widow is still to be supported from the estate. Said R. Jehudah the son of R. Jose's sister: Such a case came before me, and it was decided that a widow must still be supported from the estate. Now, if the husband is considered an heir, it is correct that his widow should be supported from his estate; but if he is considered a buyer, why should she be supported from his estate? Does not a Mishna state that for the support of a widow and daughters, encumbered estate must not be taken away? Said Abayi: What news has Rabbin sent in his message? Have we not learned this in a Mishna: "The following is not to be returned in the jubilee year: The double share taken by a first-born and the inheritance of a woman taken by her husband"? Hence we see that the husband is considered an heir? Said Rabha to him: And even after he has sent the message. do we then know that it is in accordance with the law? Did not R. Jose b. Hanina say (Middle Gate, p. 255) that the husband takes away

from the buyer? Therefore said R. Ashi: The rabbis have enacted that in some respects the husband should be considered as an heir, and in some respects as a buyer; and have so done on his account. Concerning the jubilee year, it is better for him that he should be considered an heir, for the purpose that he should not be compelled to return the inheritance of his wife, and concerning the case of R. Jose b. Hanina (stated above) he is to be considered as a buyer, that he should not suffer any, damage; and in the case of Rabbin they have considered him as an heir, to the end that the widow should not suffer any damage. But why did the sages consider him as a buyer in the case of R. Jose b. Hanina? Do not the buyers (from whom he takes away the property) suffer? Therein they themselves cause that they should suffer, as they ought not to have bought goods from a married woman, who lives with her husband, without his consent.

Footnotes

245:1 The Gemara infers it from terms in Hebrew or Chaldaic which it is impossible to translate into English; namely, Putiel, which is a name, *Pitem* meaning in Aramaic "fat," and *Pitpet*, which means in Aramaic "subduing." Hence by Putiel can be meant Jethro, who fattened calves for idols, and also Joseph, who subdued the evil spirits.

246:1 It is written *bniechein*; literally, "sons." Leeser translates "children," according to the sense.

247:1 Leeser's translation does not correspond.

248:1 R. Janai was very infirm and could not see well.

253:1 The Scripture reads *byoum*, "at the day," which Leeser has not translated.

254:1 This is the explanation of Gershom. Rashbam, however, interprets it to mean that if the son dies while his mother is still alive, the legal heirs are not his brothers, but the relations of her father.

256:1 *I.e.*, it cannot happen that all the descendants of one of the twelve tribes of the sons of Jacob should die. The basis of this is Malachi, iii. 6.

257:1 Leeser translates "dread," which does not correspond.

257:2 Leeser does not correspond at all.

261:1 The text continues a discussion about the same matter, explaining the supposed contradiction of the passages, which is of no importance, and is therefore omitted.

163:1 [Num. xxvii. I:] Mahlah, Noah, Chaglah, Milcah, and Thirsah, white on the occasion of their marriage, Mahlah, Thirsah, Chaglah, Milcah, and Noah are written.

265:1 In the text it is deduced by analogies of expression, and omitted as of no importance.

266:1 Leeser's translation does not correspond.

266:2 The text has "Rungur." The Aruch explains this as two words of the Persian language: "Run" means "day," and "gur" means "hirer"; and accordingly Rashbam construes "day-hirer," which does not fit very well. We have therefore translated in accordance with R. Gershom.

270:1 In the Hebrew Bible it is verse 21; in Leeser's, Verse 20, because he put together verses 5 and 6.

297:1 In the text is repeated here from Tract Sukka, p. 36, which see.

298:1 The commentators try to explain at length with illustrations, which we omit as of no importance.

299:1 The commentators find difficulty in explaining the meaning of this expression. It seems to us, however, very simple. He meant: I divorced her before having intercourse with her, and she is still a virgin, whom a high priest may marry.

301:1 Transferred from 152*a*.

305:1 The ancient Hebrew as well as the Roman law prohibits the freeing of a slave without good reason; and also the deriving of benefit from shrouds, or anything else belonging to a corpse.

306:1 The commentators' explanation of this is that Abayi was of the family of Eli, who according to tradition were short-lived. Therefore the word "weak."

309:1 So is it explained in the Gemara by R. Jehudah.

Next: Chapter IX