CHAPTER IX.

RULES AND REGULATIONS CONCERNING THE SUPPORT OF UNMARRIED DAUGHTERS AFTER THE DEATH OF THEIR FATHER, IF AMONG THE CHILDREN WERE AN HERMAPHRODITE OR AN ANDROGYN. MAY OR MAY NOT ONE BEQUEATH HIS ESTATE TO STRANGERS IF HE HAS CHILDREN? DOES THE SECOND WILL ABOLISH THE FIRST? IF A SICK PERSON RECOVERS AFTER MAKING A GIFT WHILE SICK, MAY HE RETRACT OR NOT? IF SUDDEN DEATH OCCUR TO MANY PERSONS, AND IT IS NOT KNOWN WHO DIED FIRST, AND EACH OF THE HEIRS CLAIMS FOR HIS BENEFIT.

MISHNA *I.*: If one dies, and leave sons and daughters, if the inheritance is of great worth, then the sons inherit, and the daughters must be supported from it; and if a moderate one, the daughters must be supported, and the sons may go a-begging. Admon, however, said: Because I am a male shall I suffer? Said Rabban Gamaliel: It seems to me that Admon is right.

GEMARA: What is to be considered great worth? Said R. Jehudah in the name of Rabh: It shall be sufficient for all of them to be supported for twelve months. And he (Jehudah) added: When I told the Halakha before Samuel, he said: Such is the decree of R. Gamaliel b. Rabbi. The sages, however, maintain: It shall suffice to support all of them until the daughters become of age. So also it was taught by Rabbin, according to others by Rabba b. b. Hana, when he came from Palestine, in the name of R. Johanan: If the inheritance suffices to support all of them until the daughters become of age, it is considered of great worth; and if less, it is considered moderate. How is this to be understood? If it does not suffice to support all of them, shall the daughters take the entire inheritance, leaving nothing for the sons? Therefore said Rabha: There must be deducted from the inheritance the amount which will suffice for the daughters until they become of age; and the remainder shall be given to the sons.

It is certain that if for some reason the estates become less

in value after the father's death, and do not suffice for the support of the daughters until they become of age, and also for the sons' support, both have already acquired title, and must be satisfied with that which falls to their lot (*i.e.*, the daughters have no right to claim that they shall be supported until of age from the share of their brothers). But how is it if the estate increased in value after death? Shall we assume that the increase belongs to the heirs, and therefore the sons may have the benefit of it? Or, as they had nothing in it when their father died, they are considered entirely cut off from this inheritance, and have nothing to do with the increase? Come and hear what R. Assi said in the name of R. Johanan: If orphans hastened and sold out from this inheritance before the daughters summoned them, the sale is valid, and the daughters have no right to take it away from the buyers, according to the rule that it cannot be collected from encumbered estate for the support of the daughters. (Hence we see the sons are considered heirs, notwithstanding that the estate was not of great worth.) Consequently they have a share in

the increase.

R. Jeremiah was sitting before R. Abuhu, and questioned him as follows: If the estates were of great worth, but there was a promissory note in the hands of a creditor, which ought to be collected from the estates, should the estates, because of the note, be considered moderate, so that the support should be for the daughters and the sons should go a-begging? Or, until collected, should all of them be supported, without taking into consideration that after collecting nothing might remain for the support of the daughters? And should you decide that the promissory note, although not yet collected, diminishes the value of the estates, for the reason that the amount due will be collected in any event, even should the creditor die, how is it if the deceased left a step-daughter whom he has to support, according to the marriage contract of his wife, until she shall become of age, and the amount of her support diminishes the estate from being of great worth, and stamps it moderate? How, then, should the inheritance be considered, should the step-daughter die, and then, the obligation being gone, the estates remain of great worth. There is still another question. If the deceased left a widow and a daughter, and the estates left could support only one of them, who

has the preference? And R. Abuhu answered: Go to-day, and come to-morrow. And when he came he said to him: Of all the questions, I can decide the last one. As R. Aba said in the name of R. Assi: The sages have enacted that when there is a widow with a daughter she shall have similar treatment to that of a sister who remains with her brother. As in the latter case, if the estate is moderate she must be supported, although her brothers remain beggars, so also the widow as against a -daughter-the widow must be supported and the daughter may go a-begging.

"*Admon, however, said: Because I am a male*," etc. How is this to be understood? Said Rabha: He means to say: Because I am a male, and ought to inherit all the estates where the inheritance is of great worth, leaving for my sister only the support for her livelihood until of age, shall I remain a beggar when there is a moderate estate?

MISHNA *II.*: If one leave sons, daughters, and an hermaphrodite (if it is doubtful whether male or female), and the inheritance is of great worth, the males may count same among the females; but when the inheritance is moderate, the females may count same among the males.

If one say: "If my pregnant wife should bear a male, he shall take a mana," and she bears a male, the mana is to be given to him; "If a female, she shall take two hundred zuz," she takes two hundred. If a male a mana, and a female two hundred zuz, and she had born a male and a female? The male takes one hundred and the female two hundred zuz. But if she bears an hermaphrodite, he takes nothing. If, however, he said: "What she shall bear shall take," then he takes accordingly. And the same is the case if there were no heirs but he--he inherits all.

GEMARA: The Mishna states: They count same among the daughters, which means he shall be treated like them. But does not the later part state: If she bears an hermaphrodite, he takes nothing? Said Abayi: It means that the males counted him among the females; but the latter have the right not to accept him, and he remains without any support. Rabha, however, maintains: They pass him and he must be similarly supported. And the latter part of our Mishna is in accordance with Rabban Simeon b. Gamaliel of the following Mishna: If

she bears an hermaphrodite or an androgyn, which is at times a male and at times a female, R. Simeon b. Gamaliel said: No sanctity rests upon them. (The cited Mishna treats: If one made a vow for the offspring of a gravid cow--if a male, it shall be a burnt-offering; and if a female, a peace-offering.)

An objection was raised from the following: "An hermaphrodite inherits like a son, and is supported like a daughter." And this can be correct only according to Rabha: That he is considered an heir, like a son, in a moderate inheritance; and is supported, like a daughter, in one of great worth. But according to Abayi, who said above that he takes nothing, how do you find that he shall be supported like a daughter? Even according to your theory, how do you explain Rabha's statement, that as an heir, like a son, he takes something of a moderate inheritance? In such a case the sons take nothing; hence he means to say that he is *considered* an heir like a son--to be a beggar. So also you can explain the Mishna: He is in condition to have support like a daughter, but, nevertheless. he does not get any.

"*If one says: If my pregnant wife shall bear a male*," etc. Shall we assume that a daughter is better to him than a soil (as the Mishna says, "If a male one hundred, and a daughter two hundred")? Concerning inheritance, a male is better to him, as he bears his name; and concerning a gift, a daughter is better to him, as it is more difficult for her to make a living than for a male. Samuel, however, maintains that the Mishna treats of when his wife was pregnant with her first child; and it is in accordance with R. Hisda, who said elsewhere: If the first child is a female, it is a good sign for future sons, according to some because she will educate the sons; and according to some, that she should not be afflicted by a covetous eye. Said R. Hisda: As for me, I always give preference to females over males. And if you wish, it may be said that our Mishna is in accordance with R. Jehudah in the following Boraitha: It is a meritorious act for one to support his daughters, and so much the more his sons who occupy themselves with the Torah. So is the decree of R. Meir. R. Jehudah, however, said: It is a meritorious act to support the sons, and so much the more to support the daughters, because of their humiliation (if they should have to beg).

There was one who said to his wife: I bequeath my estate to the child with which you are pregnant. Said R. Huna: This means that he designed to give title to an embryo, and an embryo cannot acquire title. R. Na'hman objected to R. Huna from our Mishna, which states: If my wife shall bear a male, he shall take a mana, etc. And he answered him: I do not know who has taught our Mishna (*i.e.*, I do not find our Mishna to be in accordance with the majority, nor a single one of the sages). But let R. Na'hman say that the Mishna treats of when the bequeather said: I bequeath the estate to the child after my wife has borne it? R. Huna is in accordance with his principle that the child does not acquire title even after birth. (As it was taught:) R. Na'hman said: If one bequeaths to an embryo, title is not given; but if he said, "after he is born," title is given. R. Huna, however, maintains that even then title is not given. But R. Shesheth is of the opinion that in either case title is given. And he added: I deduce my statement from the following Boraitha: "If a proselyte supposed to be childless dies, and Israelites have robbed his estate, and thereafter they hear that he has a son, or that his wife is pregnant, they are obliged to return it. If, however, they have returned it, and thereafter they hear that the son is dead, or that his wife has had a miscarriage, and they again take the estate, he who made a hazakah in the

second instance has acquired title, but he who made the same in the first instance has not." Now, if it be remembered that an embryo does not acquire title, why should title not be given to them who made a hazakah in the first instance? Said Abayi: There is a difference with an inheritance which came of itself: In such a case the embryo acquires title. Rabha, however, said: Even in case an inheritance came by itself, the embryo does not acquire title; and the reason why title is not given to them who made a hazakah in the first instance is because they were still uncertain whether the property taken would remain with them, as there was still a doubt whether children were left. But in the second instance they were sure of their ground.

Come and hear another objection: "A child of one day inherits and bequeaths (*e.g.*, if his father dies when he was even one day old, he inherits from his father; and if at birth the estate of his deceased father came to him, and he dies when he was

one day old, his relatives inherit from him). We see, then--only when he was one day old, but not when in embryo. This was explained by Rabh Shesheth: He inherits the estate of his mother, to bequeath to his brothers on his father's side. And this can be only when he was alive one day after his mother; but not when he was in embryo, as he died before his mother. And a son does not inherit from his mother, when once in his grave, so that his brothers on his father's side could inherit from him.

Shall we assume that in case the mother dies while pregnant the embryo dies first? Perhaps she dies first? There happened such a case, and the embryo moved convulsively thrice. Said Mar b. R. Ashi: Such a movement was without any life, such as the movement of the tail of a lizard. Mar b. R. Joseph in the name of Rabha said: The cited Boraitha means to say that a child of one day diminishes the share of a first-born . E.g., a first-born takes a double share--*i.e.*, twice as much as each of his other brothers. But if there were added a male child of one day, the estate must be divided into five parts, if there are four brothers, of which the first-born takes a double share. And if this child dies afterwards, his share is to be divided equally among the four brothers. This is only when he was old one day, but not when an embryo; because [it is written, Deut. xxi. 15], "and they *bear* him children." As the same said also on the same authority: A son who was born after the death of his father does not diminish the share of the first-born, as it reads in the verse just cited "bear *him*"; but when born after his death, it was not born to him.

All that was said here was taught in the city of Sura. In Pumbeditha, however, it was taught as follows: Mar b. R. Joseph said in the name of Rabha: A first-born who was born after the death of his father does not take a double share. As it is written [ibid., 17]: "Shall he acknowledge," and when he is dead he cannot acknowledge. The Halakha prevails in accordance with all the versions said by Mar b. R. Joseph in the name of Rabha.

R. Itz'hak in the name of R. Johanan said: He who bequeaths to an embryo, title is not acquired. And should you object to this statement from our Mishna, which states: "If one bequeaths a mana to the embryo, he takes it after he is born,"

[paragraph continues] I may tell you that this is said only of a father, whose mind is near to his son;

but it cannot be done by a stranger. Said Samuel to R. Hana of Bagdad: You may bring to me ten persons, and I will teach in their presence that title is given if one bequeaths to an embryo. The Halakha, however, prevails that title is not given.

There was one who said to his wife: I bequeath my estate to the children who shall be born of you by me. And his elder son came and said: What becomes of me? And the father answered: You will take a share as one of the brothers. Now, the children which are to be born can certainly not acquire any title; but the question is, does the elder son, when he came to share with his brothers born thereafter, take a double share, as his father bequeathed to him a part of his estate when his brothers were not yet in existence? Or does he share with them equally? According to R. Abbin, R. Miicha, and R. Jeremiah, he *is* entitled to a double share; and according to R. Abuhu, Hanina b. Papi, and R. Itz'hak of Naf'ha, he is not. Said R. Abuhu to R. Jeremiah: With whom should the Halakha prevail--with us or with you? And he answered: Certainly with us, as we are older than you; and not with you, who are still young scholars. And R. Abuhu rejoined: Does this depend upon age? It depends upon reason, and our reason is better than yours. And what is it? questioned R. Jeremiah again. And he answered: Go to R. Abbin, and ask him, as I have already explained to him the reason at the college; and he shook his head in sign of assent. He went to him, and he told him: Because this case is similar to that of one who says: "You and this ass shall acquire title to this article," would title be given to him? Is this not to explain: You shall acquire title as the ass? The same is the case if one says: You shall share with the children, which are not yet in existence even in pregnancy. Hence title is not acquired in either case. It was taught: If one says: "Acquire title to this as the ass," certainly title is not given; but if he says: "Acquire title, you and the ass," according to R. Na'hman title is given to a half. And R. Huna said: This man said nothing. R. Shesheth, however, said: He has acquired title to the whole of it. Said R. Mordecai to R. Ashi: R. Ivia raised an objection from a Mishna in Tract Kiduchin: It happened with

five women, among them two sisters, that one presented to them a basket with dry figs, saying: You are all betrothed to me with this basket. And one of the women accepted the basket for them all. And when the case came before the sages, they said: The sisters are not betrothed. Hence--only the sisters? But the strangers were. Why? Is this not similar to the case: You and the ass shall acquire (*i.e.*, as the sisters could not under any circumstances be betrothed to one person, the other women must also be treated similarly)? And he answered: That is what R. Huna dreamt--that R. Ivia was going to raise a question (and now I see that R. Huna's dream was true). However, the objection does not hold good, as that Boraitha was explained: In case the man has added: All of you who are fit to be my wives.

There was one who said to his wife: My estate shall be for you and your children. And R. Joseph decided: One half of the estate belongs to her, and the other half to her children. And he added: I deduce my decision from the following Boraitha: Rabbi said: It is written [Lev. xxiv. 9]: "And it shall belong to Aaron and to his sons," meaning a half shall be for Aaron and a half for his sons. Said Abayi to him: What comparison is this? Aaron was fit to receive a share; and therefore the Merciful One mentioned him, that he should take a half. But in this case a woman is not fit to be an heir at all, when there are male children. Would it not be sufficient that she should take an equal share with her children? Is that so? Did not such a case happen in Nahardea, and Samuel collected for the woman a half; and also in Tiberias, and Johanan collected for her a half? Furthermore, when R. Itz'hak b. Joseph came from Palestine, he told: It happened that the

government had taxed the citizens of the city and those who had real estate for the manufacture of a crown for the ruler, and Rabbi decided a half should be collected from the citizens, and the other from the owners of real estate. But what comparison is that with what was told by R. Itz'hak? As to that one, it is known that in previous orders from the government they applied only to the rich citizens, and those who possessed real estate only assisted them, with the consent of the government. But the order in question was written: Both the rich, and real-estate owners are taxed. Therefore Rabbi's decision.

R. Zera objected from the following: If one said: I intend to bring a meal-offering, of one hundred tenths of an ephah--to bring it in two vessels--he may bring sixty in one vessel and forty in the other. However, if he brought fifty and fifty, in two vessels, he has fulfilled his duty. We see, then, that only when he does so it is valid; but the law prescribes that he must bring sixty in one and forty in the other. Hence we see that equal halves is not to be understood when he says in two parts? Nay, this cannot be compared. We are witnesses that he intended to bring a great offering; and the expression "in two vessels" was because he was aware that it could not be put into one. Therefore there must be put in one vessel as much as it can contain, and the remainder in the other one.

(Says the Gemara:) The Halakha prevails in accordance with R. Joseph in the three cases: the case of a field, mentioned in the eighth chapter (p. 254), in the case of a sudarium mentioned in the preceding chapter (p. 253), and in this case of the half. There was one who had sent home pieces of silk, without any order to which member of his household they belonged, and R. Ami decided: Those which are fit for the sons, they shall use; and those which are fit for the daughters, shall be used by them. This law, however, holds good only in case he had no daughters-in-law; but if such a case should happen when there are daughters-in-law, and his own daughters are married, it is to be supposed that he sent them to the daughters-in-law. If, however, his own daughters were unmarried, he would not neglect his daughters, and it is to be supposed that he sent them for them.

There was one who said in his will: My *sons* shall inherit my estate. However, he had only one son, and some daughters. And the question arose: By the expression "sons" in the plural, does he mean the one son only, excluding the daughters, or does he mean to include them? Said Rabha: There is a verse in Num. xxvi. 8, "And the *sons* of Pallu: Eliab." And R. Joseph said: There is another verse in I Chron. ii. 8, "And the *sons* of Ethan: Azaryah." There was another, who said: "My estate shall belong to my sons," and he had only one son and a grandson. And the question arose: Whether people are used to call grandsons also sons? R. Hbiba said:

[paragraph continues] They are. And Mar b. Ashi maintains: They are not. And there is a Boraitha in accordance with the latter, namely: If one vowed not to derive any benefit from his sons, he may derive it from the grandsons.

MISHNA *III*.: If one left grown-up and minor sons, and the former improved the estate, the improvement shall be divided equally. If, however, they said: "Observe in what condition the estate was left by our father, and it shall be known that we are going to improve it for our own

sake," they have a right to take the benefit for themselves. The same is the case with a widow. If she had improved it without any remark, the improvement belongs to all the heirs. But if she remarked, "Seeing in what condition my husband left," etc., the benefit belongs to her.

GEMARA: Said R. Hbiba, son of R. Joseph b. Rabha in the name of his grandfather: The Mishna means to say that they have improved the estate, not at their own expense, but .at that of the estate (*i.e.*, they went only to the trouble of hiring laborers for improving, but at the expense of the estate). But if they had expended from their own, then the benefit belongs to them without any remarks. Is that so? Did not R. Hanina say: If their father left them only covered wells (which are usually higher for watering fields), the improvement is for all? We see, then, that although the wells required much trouble to preserve them from pollution, and they should be always covered, the improvement is nevertheless for all? This case is different. It requires only that they shall be watched; and this can be done by minors also.

"*Observe in what condition*," etc. R. Saphra's father left money, and R. Saphra took it for business purposes. His brothers summoned him before Rabha (demanding a share from the profits). Said Rabha to them: R. Saphra is a great man, and would not leave his study to trouble himself for the sake of others.

"*If she had improved it*," etc. But what has a woman to do with the estate of orphans? (The law dictates as to whether she shall take what belongs to her according to her marriage contract, and depart; or shall take upon herself the trouble of the orphans, and be supported from the estate. But she .has no right to any profit.) Said R. Jeremiah: It treats in case

the woman were an heir (*i.e.*, if the will reads: She shall share equally with the orphans). [1] But if so, it is self-evident. Lest one say: As it is not usual for a woman to occupy herself with business, therefore it should be considered as she remarked--she is doing it for herself, it comes to teach us that it is not so.

"*In what condition my husband left it*," etc. Is this not self-evident? Lest one say: Because of the pleasure she takes in thinking that people praise her for troubling herself for the orphans' sake, she relinquishes the benefit in spite of her previous remark, it comes to teach us that it is not so.

R. Hanina said: If one has made the wedding of his son in one of his houses, the son acquires title to the house: provided the son was of age, married a virgin, and she was his first wife, and this wedding was the first of his house. It is certain that when the father has separated for this wedding a house with an attic, the son acquires title to the house, but not to the attic. But how is it if on the house was a balcony? or there were two houses, one inside of the other? Is title given to both, or only to that in which the wedding took place? These questions remain undecided. An objection was raised: If the father had separated for his son a house and furniture, the son acquires title to the furniture, but not to the house? This Boraitha treats of when the treasurer of his father was still in the house. So said R. Jeremiah. And the Nahardean said: Even when there was left his pigeon-coop. And both R. Jehudah and R. Papi said: It suffices if his father left there a vessel with roasted fish (*i.e.*, this shows that he has not relinquished his right to the house). Mar Zutra left his sandals in the wedding house which he separated for his son, and R. Ashi a bottle of oil (for the purpose said above). Said Mar Zutra: The following three things the rabbis

enacted as laws, [2] without giving any reason: The case just mentioned; and that which was said above in the name of Samuel: If one has bequeathed

all his estates to his wife, she is considered a guardian only; and also that which was said by Rabh. If A said to B: You owe me a mana, give it to C, and all the three were present, title is given to C.

MISHNA *IV.*: Brothers partners in business. If one of them was taken by the government to work for it, the damage caused by his absence, and also the profit for the business during that time, must be counted to the partnership. If, however, he becomes sick, and has to be cured, it is at his own expense.

GEMARA: The rabbis taught: If the government had appointed one of the brothers as a collector, or a military purveyor, if this was because of the duty of the house, it must be counted for all of them, but if it was because of his personal fitness, then it is for himself. Is this not self-evident, because the duty of the house must be counted for all? It treats of when he was a genius. Lest one say: In such a case it must rot be counted for the house, because he was taken on account of his genius, it comes to teach us that it is not so.

The rabbis taught: If one of the brothers took two hundred zuz, to begin the study of the Torah, or to learn a trade, they may say to him: If you are with us, you have to be supported; but not otherwise. But why not support him, by deducting what his labor was worth to the house? This may be a support to R. Huna's statement, who said elsewhere: The blessing of the house increases when there are more people (*i.e.*, because the expenses of the house do not decrease when there is one person less). But, after all, let them support him even in his absence for the profits, owing to his share after deducting his labor and the expenses. Yea, this in reality they have to do.

"*If, however, he becomes sick*," etc. Rabbin sent a message in the name of R. Ilah: The Mishna means to say: In case he himself causes his sickness; but if he was occasionally sick, the cure must be at the expense of the house. What does it mean: "Caused by himself"? As R. Hanina says: All sickness comes from Providence, except cold. As it is written [Prov. xxii. 5]: "Thorns [1] and snares are in the way of the perverse man; he that doth guard his soul will keep far from them."

MISHNA *V.*: If, while the father of the house was still alive, he sent through some of the brothers presents to weddings of his friends, and after his death some of the brothers married and the presents were returned to them by the same friends, it is to be counted to the income of the house; as the wedding presents may be replevined by the court. If, however, one presents to his friends pitchers of wine or oil, it is not to be replevined by the court, as this is reckoned a bestowing of favors only.

GEMARA: There is a contradiction from the following: "If the father sent, through one of his sons, a present to the wedding of his friend, and told him to remain there during the wedding,

then, when this present returns to the son's wedding, it belongs to him only. If, however, a wedding present was sent to the father, the returning must be at the expense of the house." Hence we see that the son may preserve the returning present for himself; and this contradicts our Mishna. Said R. Assi in the name of R. Johanan: Our Mishna also treats: When the wedding present was first sent to the father. But does not the Mishna state: Through some of the brothers? Read to some of the brothers. But the Mishna states farther on: If it was returned? It means: If this came to be returned by the brothers, it must be returned at the expense of the house. R. Assi himself, however, said: It presents no difficulty (there is no necessity for such a complicated explanation of the Mishna, as it can be explained thus). Our Mishna treats: When the father sent the present through one of his sons, without designating that the returns should belong to him, then the returns belong to the house. And the Boraitha treats: When the father has nominated one of his sons to deliver the present, so that the returning should belong to him. Samuel, however, said: The law is to be practised in accordance with the Boraitha. And our Mishna treats: In case the son through whom the present was sent dies childless, and his brother came to marry his wife, who according to the law is also his heir. However, this present he does not inherit from him; because there is a rule that this brother does not inherit property which was not yet in the deceased's possession, but has to come to him in the future. (Says the Gemara:) From Samuel's statement is to be inferred that the one who has received

the present is obliged to return, even if the donator were dead. Why, then, let him say: Give me my friend who presented it to me, and I shall enjoy myself and give him a present, as he did to me. But as this cannot be, I am not obliged to anything. As we have learned in the following Boraitha: At those places where it is customary to return the presents which the bride has given to her groom at the time of betrothal, and she dies before marriage) they must be returned. At the place where it is not customary, they must not. And R. Joseph b. Abba in the name of Mar Uqba, quoting Samuel, said: Even at those places where it is customary to return, it is only in case the bride dies; but when the groom, it must not be returned, for the reason that she may say: Give me my husband, and I will enjoy myself with him, as for that purpose he gave them to me. Hence he may say also: Give me my friend, and I will enjoy with him. Said R. Joseph: It speaks of when his friend was at the wedding and had enjoyed himself with him all the seven days of the wedding, and the groom suddenly dies before the present was returned to him.

Shall we assume that in the above-mentioned claim of the bride, "Give me my husband," etc., the Tanaim of the following Boraitha differ: If one has betrothed a woman, and dies before marriage (and the marriage contract was already written), a virgin collects two hundred and a widow one hundred zuz. Concerning the presents given at the betrothal, however, it is to be practised as is customary at that place. So is the decree of R. Nathan. R. Jehudah the Prince, however, said: In reality, it was decided that in the place where it is customary to return, it must be returned; and where it is not customary it must not. Now does not R. Jehudah repeat what was said by the first Tana? It must then be assumed that the point of the difference is: If the bride may claim: "Give me my husband," etc., and the Boraitha is not complete and should read thus: If one betroths a woman, a virgin collects two hundred and a widow one hundred zuz, provided he has withdrawn from the contract. But if she dies, if it was in a place where it was. customary to return, it must be done so; and if where it was not, it must not. But all this is in case she dies. But if he dies, there is to be no return, as she may claim: Give me my husband, etc. And to this R. Jehudah the Prince came to say:

[paragraph continues] Even in the latter case it must be done according to the custom of that place, as such a claim is not to be considered? Nay! All agree that the claim in question is to be considered; and there is no difference between them in case he dies. But in case she dies, they differ. And the point of their difference is: Whether the presents with which she was betrothed should be considered lost forever. According to R. Nathan, they are not so considered; and according to R. Jehudah, they are. But does not the Boraitha state that where it is customary to return, it must be so done? This means presents which were given by him aside from the betrothal. And the Tanaim of this Boraitha are in accordance with the Tanaim of the following: If one has betrothed his bride with a talent (a coin--according to some one hundred and twenty manas, and to others sixty, and according to Rashbam twenty-five), a virgin collects two hundred zuz besides the talent, and a widow one hundred. So is the decree of R. Meir. R. Jehudah, however, maintains: A virgin two hundred, and a widow one hundred of the talent; and the remainder must be returned. But R. Jose said: If he has betrothed her with twenty, he may give her thirty halves; and if with thirty, he may give her twenty halves. Let us see of what kind of case this Boraitha speaks. In case *she* dies, there is no longer any marriage contract; and if he dies, why should she return the remainder? Is it not said above that all agree that the betrothal money must not be returned, as the claim: "Give me my husband," etc., is to be considered? And if you should say: It speaks in case she had sinned; then if intentionally, has she still a right to her marriage contract? And if unintentionally, he may marry her if he be a commoner. It must be then said that it speaks of when the groom was a priest, and she was *forced* to sin (and in such a case a commoner may, and a priest may not marry her). And the point of their difference is, that R. Meir holds the money of betrothal to be lost forever, and R. Jehudah holds that it is not; and to R. Jose it was doubtful whether yes or no. And therefore he maintains that, according to the rule, doubtful money is to be divided. If he has betrothed her with twenty selas (eighty zuz), she has to return to him forty zuz. However, he has to complete the amount belonging to a widow as a marriage contract, which is one hundred zuz; therefore he gives her thirty half-selas, which

are sixty zuz, and this completes the mana to which she is entitled. And if he betrothed her with thirty selas, she has to return to him fifteen, and he must give her twenty half-selas more. Said R. Joseph b. Minumi in the name of R. Na'hman: Babylon is the place where it is customary to return. And by Babylon he meant the city of Nahardea. But how is it with the other cities in Babylon? Both Rabba and R. Joseph say: The betrothal money is not to be returned; but the presents are. Said R. Papa: The Halakha prevails, whether he or she dies, or he has retracted, the presents only are to be returned, but not the betrothal money. And in case *she* has retracted, the betrothal money also. Amimar, however, maintains that even in the latter case the money must not be returned, for the reason that one may say that he is then allowed to be betrothed to her sister (*i.e.*, if one should see the betrothal money returned, he might think the betrothal cancelled, and he might marry her sister, which is biblically prohibited so long as she is alive). But according to R. Ashi: This is not to be feared, as the divorce in her hands testifies that the betrothal was not cancelled. (Said the Gemara:) R. Ashi's statement is not to be taken into consideration at all; as one may be aware that she has returned the betrothal money, and not be aware that she took a divorce.

"*May be replevined*," etc. The rabbis taught: The following five things were said about wedding presents: (a) They may be collected by the court; (b) they are returned at the time when the donator marries; (c) they are not considered usurious (*i.e.*, if the return was of a greater value

than presented); (d) the Sabbatic year does not release them; (e) a firstborn has no double share in them. They are collected by the court, because they are considered a loan. They are not usurious, because they were not presented with this intention. The Sabbatic year does not release them, because the verse Deut. xv. 2 does not apply to them. And the first-born does not take a double share in them, because they are not as yet in existence, and he is not entitled to that which will be an inheritance in the future.

R. Kahana said: The following is the rule: If one came into the city, and heard that his comrade, who was at his wedding, marries, he must come and make a present. The same is the

case if he heard the voice of the drum which announced the marriage of his comrade; but if it was not drummed, the groom ought to let him know. However, if he failed to do so, although he may be away, he nevertheless must pay. In such a case, however, he may deduct for the meal of which he has not partaken. And how much may he deduct? Said Abayi: The inhabitants of the city of Ganna used to deduct one zuz. However, this depends upon the value at which one would appraise the respect and honor of attendance at the wedding banquet. The rabbis taught: If one has married publicly, and thereafter, by returning the presents, he wishes to be married privately, he has a right to say: As you did with me publicly, I will do with you; but not when privately. The same is the case if one has married a virgin, and the other marries a widow; or, if one has married a second wife, and his comrade marries his first wife, the former may say: As you have done with me, I will do with you. The same is the case if to him it was done once, and his comrade demands from him he shall do twice.

The rabbis taught: Who is like unto a wealthy man who is known to be rich by his many cattle and estates? The one who is a master in Haggadah (as he lectures everywhere, and becomes known to all). Who is like unto a broker who does business at his home only and is not well known to the community? The one who occupies himself with pilpulistic (dialectology, one who is a master in dialectics). Who is like unto one who makes his living by selling things which are to be measured--who gathers his money little by little, which finally becomes a considerable amount? The one who gathers the decisions of the rabbis, little by little, and finally possesses a great deal of wisdom. However, all are dependent to the owner of wheat, which is the Gemara, as only by the studying of it are we able to understand the Mishnayoth and the Boraithas.

R. Zera in the name of Rabh said: It is written [Prov. xv. 15]: "All the days of the afflicted are evil." It means: The masters of Gemara (because they must find out how to decide the laws from the Mishnayoth, which always need an explanation). "But he that is of a cheerful heart," etc., means: the one who is a master in Mishnayoth. Rabba, however, maintains the reverse. He who is a master in Mishnayoth cannot come to any conclusion about Halakha; but he who is a master in

Gemara knows how to decide Halakhas. And this is what R. Mesharshia said in his name: It is written [Eccl. x. 9]: "He that moves stones will be hurt through them," meaning the masters of the Mishna. "He that cleaveth wood will be endangered thereby," means the masters of Gemara (because they do not always succeed in finding out the correct decisions). R. Hanina said: "All the days of the afflicted," etc., means him who has a bad wife. "But he who is of a cheerful

heart," etc., means him who has a good wife. R. Janai said: "All the days of the afflicted," etc., means one who is effeminate. "And he that is of a cheerful heart," etc., means him who is hardened to the ways of the world. R. Johanan said: By the first is meant him whose nature is merciful, and who takes to heart everything which happens to his fellow-men; and by the second is meant him who is callous. R. Jehoshua b. Levi said: The first means him who is a pedant; and the second, him whose mind is worldly. 1

MISHNA *VI.*: If one sends presents to the house of his betrothed's father, to the value of one hundred manas, and has partaken of the betrothal meal, even for one dinar, they are not to be returned. If, however, he did not partake, they may be returned in case of retraction. If the presents were given for the purpose that the bride should bring them, after her marriage, to her husband's house, they are to be returned. But if such is to be used while she is yet in her father's house, they are not.

GEMARA: Said Rabha: It means if he has partaken of no less than the value of a dinar; but if less, he has a right to demand a return. Is this not self-evident? The Mishna states a dinar? Lest one say this statement is only general, but not particular, he came to say that this is to be taken literally. Here in the Mishna it is eating. But how is it if he drank, or his substitute had partaken? Also, how is it if they had sent *to him*? Come and hear. R. Jehudah in the name of Samuel said: It happened with one who had sent to his betrothed's father one hundred *carrums* containing pitchers of wine and oil, and vessels of silver and gold, and silk garments; and while he was joyful over the act, he rode on his horse to the gate of

his betrothed's father, where they gave him a goblet of a warm beverage which he drank while sitting on the horse. Thereafter he died before marriage. And R. Aha, the mayor of that city, brought this case up before the sages in the college of Usha, and they decided: Such presents as may become spoiled before marriage are not to be returned, but such as are in good condition may. Hence we see even if one has not eaten, but drunk, it is the same. Infer from this also that the value of what he had drunk was less than a dinar (as a goblet of warm beverage cannot amount to a dinar). Said R. Ashi: Who can assure us that the goblet to which they treated him was not worth a thousand zuz, as perhaps they had ground a pearl 1 of that value in the goblet? But infer from this that if they had sent to his house, it is the same as if he had partaken of it at the house of his betrothed's father? Nay! Perhaps at the gate of his betrothed's father is the same as if he had partaken of it *inside* the house. The schoolmen questioned: How is it when the presents have improved--*e.g.*, if he had made presents in cattle and they brought offspring? Shall we say, because they have to be returned to him, they are to be considered under his control, and belong to him; or, because if they should be lost, payment for them would be demanded, they are considered under the control of his betrothed's father? This question remains undecided.

Rabha questioned: The presents which are usually spoiled during the time from the betrothal to marriage--how is it if they were in good condition; must they be returned, or not? Come and hear the Boraitha cited above: "R. Aha, the mayor of that city, brought the matter up before the sages of Usha, who decided: If they are liable to be spoiled, they are not to be returned." Does it not mean although they are in good condition? Nay, it may mean if they *were* spoiled. Come, then, and hear the last part of our Mishna: "But if they be used while she is yet in her father's house they are not? "This was explained by Rabha to be nets and veils. R. Jehudah in the name of Rabh said: It happened with one who sent to the house of his betrothed's father, wine, oil, and

garments of flax; all of them new of that year at the time of Pentecost.

[paragraph continues] But what news came he to tell us? If you wish, he tells us the great value of the land of Israel; and if you wish, it may be said that he came to teach us: If one claims that he had done so at such a time, his claim is to be considered. The same said again in the name of the same authority: It happened with one, that he was told that his betrothed wife could not smell. He went after her into a ruined building to test her, and said: I perceive a smell of radishes (*i.e.*, he kept in his pockets some for the purpose of testing her, whether she would smell them), and she answered him sarcastically: If one should furnish me with the dates of Jericho, I would eat them with the radishes I smell. Thereupon the ruined building fell and she died. And the sages decided: Because her husband entered the ruin only for the purpose of testing, he has no right to inherit from her.

"*But if they be used while in her father's house*," etc. Rabbin the elder was sitting before R. Papa and said: This is only in case death occurred to one of them; but if he had retracted, the presents are to be returned, but not what he had expended for the banquets. If, however, she had retracted, even the value of a bundle of herbs is to be returned. Said R. Huna b. R. Jehoshua: The value of the meat used at the banquets must be appraised at the cheapest price. How cheap should it be? A third of the existing price.

MISHNA *VII.*: If a sick person had bequeathed all his estates to strangers, leaving some ground for himself, his gift is considered valid. If, however, he left nothing, it is invalid.

GEMARA: Who is the Tana who holds that we may act in accordance with the supposed intention of the bequeather (as the Mishna states, "If he left nothing for himself it is invalid," which means, if the sick person becomes cured, he may retract: because if he could know that he would remain alive, he would not do so)? Said R. Na'hman: It is according to Simeon b. Menasia of the previous chapter (p. 291). R. Shesheth, however, maintains: This is in accordance with R. Simeon of Shizuri of Tract Gittin (Chapter VI., Mishna 6), who said: Also who is dangerously sick. Who is the Tana of what the rabbis taught in the following Tosephtha: If one was sick in bed, and he was questioned to whom he bequeathed his estates, and he said: "I thought that I had a son, but now that I am

convinced I have not, I bequeath my estates to so and so"; or, "I thought that my wife was pregnant, but now that I know she is not, I bequeath them to so and so"; and thereafter it became known that he left a son, or that his wife was pregnant, this bequeathing counts nothing--shall we assume that it is in accordance with R. Simeon b. Menasia and not with the rabbis? Nay! It may be even in accordance with the rabbis, as when he said: "I thought," etc., it is different. Why was it supposed previously that this should not be in accordance with the rabbis? Lest one say that the sick person said it only to mention his sorrow, but he did not think that it should not be bequeathed if he did have a son, it comes to teach us that it is not so. R. Zera in the name of Rabh said: Whence do we deduce that a gift of a sick person must be *biblically* considered? Because it is written [Num. xxvii. 8]: "Then shall he cause to pass unto his daughter" (*i.e.*, it should be written as elsewhere: You shall give the estates), it comes to teach that there is

another case which we have to pass, and this is the gift of a sick person. R. Na'hman in the name of Rabba b. Abuhu, however, maintains from [ibid., verse 9]: "Shall ye give his inheritance unto his brothers" (which is also superfluous, as it should read: If no daughter, then to the brothers), which teaches that there is another gift which is to be considered valid, and that is, of a sick person. R. Menasia b. Jeremiah said: It is deduced from [II Kings, xx. 1]: "Give thy charge to thy house," etc., from which we see that concerning a sick person it is sufficient when he charges without any writing. And Rami b. Ezekiel said: From the following [II Samuel, xvii. 23]: "And Achithophel . . . and gave his charge to his household," etc., we see that charging is sufficient without any writing.

The rabbis taught: The following three things has Achithophel charged his sons: You shall not quarrel with each other; you shall not rebel against the kingdom of David; and if the Day of Pentecost be a clear one, you may begin to sow wheat. Mar Zutra, however, said: It was taught that he said: If it should be cloudy. Nahardeans said in the name of R. Jacob: Not exactly clear, and not exactly cloudy; as, if it should be a little cloudy, with a north. wind blowing, it is also considered clear. Said R. Abba to R. Ashi: We, however, do not rely

upon the cited Boraitha, but on what is said by R. Itz'hak b. Abdimi in Tract Yoma (p. 29, lines 14, 15, etc.).

[There is a Boraitha by Abba Shaul: If the Day of Pentecost be clear, it is a good sign for the whole year. R. Zebid said: If the first day of the new year is a warm one, the whole year will be warm; and if cold, the whole year will be so. And to what purpose was it said? Concerning the prayer of the high priest on the Day of Atonement (that he should pray accordingly).] Rabha, however, in the name of R. Na'hman said: The gift of a sick person is rabbinical. And it was so enacted that a sick person should not become exhausted, being aware that, because he is sick and cannot write down or sign his will, he can do nothing with his property. But did, indeed, R. Na'hman say so? Did he not say: Although Samuel decided: If one sold a promissory note to his neighbor, and thereafter relinquished his right in it, his act is valid; and even his heir may do so? He (Samuel) nevertheless admits that if he gave this note to some one as a gift, he has no longer right to relinquish his debt, even if he becomes cured. Now, this would be correct if the gift of a sick person were biblical; but if it is rabbinical, why should he not be able to relinquish it when cured? It is true it is not biblical, but the rabbis have enacted that this law should be equal to a biblical one.

Rabha in the name of R. Na'hman said: If a sick person said: "A shall reside in such a house," or, "B shall consume the products of such and such a tree," he said nothing, unless he said: "Give such and such a house to A, that he may reside there"; "Give such and such a tree to B, and he shall consume its products." Is it meant to say that R. Na'hman holds that a sick person who verbally wills has no more right than one who is in good health--*i.e.*, if one who is in good health should say: "He shall reside there," it would not be considered a gift even if it were done with the ceremony of a sudarium; then it would contradict another saying of Rabha's in the name of R. Na'hman: If a sick person said: "The loan made by me to A shall be given to B," he is to be listened to, which is not the case with one in good health, as title cannot be given to a loan which is made with the intention that the borrower shall expend it. (Hence we see that a sick person has more right than one in good health.) Said R. Papa: The reason of this law is,

because an heir inherits it, it is considered as if it were under the control of the borrower. And farther on it is said that the gift of a sick person is considered as an inheritance. R. Aha b. R. Aiqua, however, said: To transfer a loan is lawful, even for him who is in good health in case it were made in the presence of all three, as is said above by R. Huna.

The schoolmen propounded a question: If the sick person bequeaths a tree to A and the products of it to B, should it be considered as if he reserved it for himself, in such a case it being said above that he cannot retract when cured, or is it not so considered? And should you decide that it is not so considered when he bequeaths the products to another, how is it if he said: I bequeath the tree to A, except the products. Is this considered as if he reserved some of the ground for himself, or not? Said Rabha in the name of R. Na'hman: Even if it should be decided, the products to another, it cannot be counted that he reserved some of the ground for himself, it is to be counted as if he left the products to himself, for the reason that if one left to himself, he does it with a good eye. Said R. Abba to R. Ashi: We taught R. Na'hman's statement as to what was said above (p. 153) by Resh Lakish concerning a house and an attic; and in accordance with R. Zebid's explanation there.

R. Joseph b. Minumi in the name of R. Na'hman said: A sick person who has bequeathed all of his estates to strangers, it must be investigated how was the case (*i.e.*, if he had divided them at one time). *E.g.*, of my property such and such shall belong to A, and such and such to B, etc.--as he could not do otherwise if he had made up his mind to divide his estates in such a manner as if 'he were to die of his sickness, so the last ones are not considered as if he would reserve some of his estates for himself--all of them acquire title after his death. But in case of cure he may retract from all of them, even from the first, but if he so does after deliberating (*i.e.*, "Such and such shall be to A," then stops, and some time thereafter adds: "Such and such to B," etc.), in case he was cured of this sickness he may retract only from the last one, as he left nothing for himself--for it is to be supposed that if he knew he would be cured he would not give away the last of his estate so that he should remain a beggar--but not from the previous one.

[paragraph continues] But why should not we suppose, even in the latter case, that his intention was concerning all of them, in case he should die, and the deliberation was as to who was more worthy to be his inheritor? Usually a sick person who expects to die makes up his mind for all his estates before he mentions any name.

R. Aha b. Minumi in the name of R. Na'hman said: If a sick person has bequeathed all his estates to strangers, and thereafter is cured, he cannot retract, as it may be feared, perhaps, he has estates in another country. But does not our Mishna state: In case he left nothing for himself, he may? And according to this theory, how can such a case occur? Said R. Hama: It may occur, if he said: *All* my estates, wherever they may be found. Mar b. R. Ashi said: Our Mishna means to say: In case it was clear to the people that he had no estates elsewhere.

The schoolmen propounded a question: Should a retraction in part be considered a retraction of all, or not (*e.g.*, if he first bequeaths all his estates to A, and thereafter he bequeaths a part of same to B, which, according to the law, he may do, the question arises whether A has still the

right to what was bequeathed to him at first, or the retraction of a part annuls the first entirely)? Come and hear: "If one bequeaths all his estates to A, and thereafter a part of them to B, B acquires title, but A does not." Is it not to be assumed that it means in case he dies? Nay! It means in case he was cured. And so it seems to be from the latter part stated in the same Boraitha: "If he wrote, 'A part of my estate shall belong to A and all the remainder to B,' the latter acquires title, but not the first." And this statement is correct in case he was cured; as then, bequeathing all the remainder to B, he reserved nothing for himself; but if it speaks in case he dies, why should both of them not acquire title? Said R. Yemar to R. Ashi: The same might be said even when he was cured. If you decide that a retraction in part is considered a retraction to all, it is correct that title is given to B, as the first bequeathing to A is entirely annulled with that which he has separated from it to B. But if you should decide that a retraction in part does not annul the first, let this case be considered as the case of "dividing" mentioned above, and title should not be given to any of them.

The Halakha, however, prevails: "That a retraction in part

is considered entirely." And the first case mentioned in the just cited Boraitha holds good for both, whether he dies or is cured; and the latter case holds good only when he was cured.

R. Shesheth said: The expressions, "He shall take," "shall be rewarded," "shall make a hazakah," and "shall acquire title" are to be considered a *gift*, from which he has no right to retract. A Boraitha adds: "Also the expression 'shall inherit,' to him who is fit to be his direct heir." And it is in accordance with Johanan b. Beroka.

The schoolmen questioned: How shall it be done, if he expresses himself: A is the one who shall derive benefit from my estates? Does he mean all of them shall belong to him, or that he shall derive *some* benefit from them, but not all? This remains undecided. The same propounded another question: How is it if he had sold all his estates while he was sick--may he retract when cured, or not? And in answering this question, at one time it was said by R. Jehudah in the name of Rabh: He may retract; and at another time it was said by the same in the name of the same authority: He may not. However, they do not contradict each other, as the first decision holds good in case the money obtained was still in his hands, and the second applies in case the seller had expended it by paying his debts.

The schoolmen propounded another question: If a sick person has confessed, "I owe so much to so and so," shall it be taken for granted, and his creditors acquire title to the cash or estates left; or, probably, that he said this for the purpose that, should he be cured, his children should not think that he was rich, and therefore the man whom he mentioned in his confession takes nothing? Come and hear: Aisur, the proselyte, had thirteen thousand zuz with Rabha. R. Mari was his son (whose mother Rachel, daughter of Samuel, who was in captivity, was pregnant with him from the same Aisur when he was still a heathen before marriage, and although he was born after the father had embraced Judaism, according to the law he was not considered his son concerning inheritance, and also must not be named after him, therefore Mari was named Mari b. Rachel, after his mother). Said Rabha: I do not see any lawful case which could make R. Mari inherit the money deposited with me. By inheritance he cannot, as, according to the law, he is not considered an heir. Should his father while sick make

it a gift to him, there is a rule that he who can be an heir is fit to receive the gift, but not he who is not fit to be an heir. There is also a rule that to coins title cannot be given by exchange; and if his father would present him with real estate, which is lawful, his father does not possess it; and if by transferring them from me to him in the presence of all three of us, then certainly, if he would send after me, I would not listen. Which R. Aiqua b. R. Ami opposed, saying: Why, then, let Aisur confess that the money in question belongs to Mari, and with his confession title would be given to him. While so discussing, Aisur got wind of it, and confessed. Rabha became angry, saying: They are instructing people how to make their claims good and do harm to me.

"*Reserving some ground for himself*," etc. But what is meant by this? Said R. Jehudah in the name of Rabh: It means real estate, or ground by which his livelihood is assured. And R. Jeremiah b. Abba maintains: The same is the case when he left movable property. Said R. Zera: See how the decisions of our elders correspond. Why is it said real estate? Because it is supposed that a sick person would think, "If I should be cured, I shall get my livelihood from this estate." The same is the case if he left movable property; he relies upon it. R. Joseph, however, opposed: I do not see such a correspondence at all. He who says "movable property" does not correspond with our Mishna, which states plainly, "ground" (real estate); and he who said "to be sufficient for his livelihood" also does not correspond with it, which states "some real estate," which cannot be explained that it should suffice for a livelihood. Said Abayi to him: Does the Mishna mean in each case when it mentions ground, that it is not changeable for movable property? Did not R. Dimi b. Joseph say in the name of R. Elazar, referring to a Mishna in Tract Gittin, in which also some ground is mentioned: Movable property is also considered a remainder in that case? There it is different. It should not state "ground" at all; but because it begins with the law of Peah, which applies to ground no matter how small it is, etc., it uses the same expression at the end. But in reality there is a difference between real estate and movable property. It was also questioned: Is this a rule--that wherever the expression, a trifle, is mentioned

in the Mishna, it does not mean a certain quantity? Is there not a Mishna in Chulin: "If five sheep give some wool, the law of the first shearing applies to it"? and to the question: What does "some wool" mean? said Rabha: No less than a litra and a half, etc. Hence we see the expression "some" means a certain quantity? There also it should not state "some wool"; but because in the beginning it states: If each sheep gives a litra and a half, it expresses in the latter case "some wool," as the quantity from every five sheep is only one litra and a half.

It is certain that if one says, "I bequeath my movable property to so and so," he acquires title to all vessels or garments which are useful, except wheat and barley. And if he says, "*All* my movable property," wheat and barley are also included; and even the grinder of a handmill, but not the grindstone. And if he say, "All that is movable," even the latter is included. But the question arises: If among his properties were also bondsmen, is title given to them also, as they are also considered movable property; or are slaves under the category of real estate and title is not given?

Said R. Aha b. R. Ashi to R. Ivia: Come and hear Mishna 7 in Chapter IV. of this tract, which states: If he said, "I sell the town, with all its contents," slaves are included. From which it is to

be inferred that slaves are considered movable property; as if they were considered real estate they ought to be included, even if he did not mention "with all its contents." But can you infer from it that they are considered movable property? Does not the Mishna express itself "even bondsmen"; and if they should be considered movable property, why "even"? We must then say that there is a difference between movable property which must be carried and that which is self-moving. The same answer can also apply to the theory that slaves are considered real estate. (See previous vol., p. 59.)

Rabha in the name of R. Na'hman said: In five cases the act of a gift is not considered unless the bequeather writes "all my estates," and they are: A sick person, his bondsmen, his wife, his children, and the estates of a woman who has bequeathed them to some one for the purpose that her future husband should not demand them at the marriage. "A sick

person"--as our Mishna states: If he reserved nothing for himself, the bequeathing is not considered. "A slave"--as there is a Mishna which states: If one has bequeathed all of his estates to a slave, the latter becomes free. If, however, he reserved some for himself, he does not. "His wife"--as is said above: If one bequeaths all his estate to his wife, it is considered that he has appointed her as a guardian only. "To his children"--as stated above: If one bequeaths all his estate to his children, but reserves for his wife some ground, she loses the right of her marriage contract. "And the estate of a woman who desires to hide it from her future husband"--as the Master said elsewhere: In such a case she must write all her estates, as only then she may retract after her marriage. But if she reserved something for herself, she loses the right. And in all those cases where they reserved for themselves movable property, their acts were invalid, except in the case of a marriage contract, to which the enactment of the rabbis was made for real estate only. Amimar, however, maintains: If the movable property in question was mentioned in the marriage contract, and while bequeathing all his estate to his children he reserved it for himself, it is considered, and his wife does not lose her right in the marriage contract.

If A bequeaths his estates to B, and among them were slaves, they are included, as they are also called estate, as said above. Earth is considered estate, as there is a Mishna: Estates which one can rely upon can be acquired with money, with a bill of sale, and with hazakah. Garments are also considered estate, as the same Mishna adds: And to that which cannot be relied upon, title is given only by drawing. Coins are also considered estate, from the same Mishna, which adds: Such estates which cannot be relied upon may be obtained with that which may be relied upon. [1] [Here is repeated from Baba Kama (p. 236) what happened to R. Papa when he had to collect twelve thousand zuz, as evidence that coins are considered estate.] Deeds are also considered estate. As Rabba b. Itz'hak said: There are two kinds of deeds. If one said to witnesses: "Give title of this field to so and so by a ceremony of a sudarium, and

write him a deed, he may retract as to the deed," but he cannot retract as to the field itself, as title was already given. But if he said: "Give title," etc., with the stipulation, "You shall write him a deed also," he may retract from both. And R. Hyya b. Abbin in the name of R. Huna said: There are three, kinds of deeds: the two just mentioned; and the third, if the seller hastened and wrote the deed. As is said above: If the. seller desire to write a bill of sale, he may do so even in the absence of the buyer; as after the buyer makes a hazakah on the estate, title is given to the

deed wherever it may be found. As we have learned: Estates which cannot be relied upon are obtained with that which is to be relied upon, etc. (We see, then, that deeds are considered estate.) Cattle are also so considered, as we have learned (Tract Shekalim, Chapter IV., Mishna g): "If one devote his possessions, and there are among them cattle. fit for the altar, male or female," etc. Fowl are also so considered, as we have learned [ibid., h]: "If one devote his possessions, and among them . . . oils and birds," etc. Tephilin are also so considered, as we have learned: "If one devote his estates, among which tephilin were found, they must be left for him."

The schoolmen propounded a question: How is the case with the Holy Scrolls--as they must not be sold, are they considered estate or not? This remains undecided. The mother of R. Zutra b. Tubhia had transferred to Zutra her estates because she was about to marry R. Zebid. However, after marriage, Zebid divorced her. Then she came before R. Bibi b. Abayi, claiming that she retracted from her transfer, as she told R. Zutra plainly that only for the purpose of marriage had she transferred her estates to him. But he said: You transferred them on account of marriage, and you did marry. Said R. Huna b. R. Jehoshua: Because you are weak you speak weak words (see above, p. 306). Even according to him who said: "If she wishes to hide her estates from her future husband, title is given," it is only in case she does it without any remark; but in this case she said plainly to her son that she did it because of marriage. But now she is divorced.

The mother of Rami b. Hama bequeathed to him her estates on one evening, and in the morning she bequeathed them to her son R. Uqba. Rami then went to R. Shesheth,

who turned over the estates to him. And R. Uqba went to R. Na'hman's court, and he decided that the estates belonged to him (Uqba). R. Shesheth then went to R. Na'hman and questioned him: Why such a decision? If it is because she retracted from the first, this would hold good only should she be cured; but she was dead from this sickness, and her first will ought to be listened to? And he answered: So said Samuel: In such a case where a retraction holds good in case of a cure, it is the same if the retraction was made while still sick. Rejoined R. Shesheth: Samuel said so in case he has retracted and reserved the estates for himself? But did he say also that he might bequeath to another? And R. Na'hman answered. Yea! Samuel said plainly: One may do so, whether for himself or for another.

The mother of R. Amram the Pious possessed a bundle of deeds, and while dying she said: They shall be given to my son Amram. His brothers, however, came to complain before R. Na'hman, claiming that Amram had not made any drawing on the deeds; consequently he had not yet acquired title to them. To which R. Na'hman answered: The words of a dying person are considered as if written and delivered.

The sister of R. Tubi b. Matna bequeathed her estates to him on one morning, and in the evening came R. Ahadbui, who cried before her, claiming that people would say: The one brother is a scholar and the other not, and she has bequeathed to him. When the case came before R. Na'hman, he decided as he said above in Samuel's name, that the retraction held good. The sister of R. Dimi b. Joseph owned a part of a vineyard; and every time she became sick, she used to present it to him, and when cured to retract. At one time she became sick and sent to him: Come and acquire title to my estates.

And he answered: I do not want them. She, however, sent again to him: Come and acquire title to them, so that, according to the law, I shall not be able to retract. He then went, reserved a part thereof for her, and then the ceremony of a sudarium was made. She again became cured, and again retracted, and came to R. Na'hman requesting that he should return to her her estates. And R. Na'hman summoned R. Dimi before the court. But he was not willing to listen, saying: To what purpose shall I go? All that was done was in

accordance with the law. She reserved of the estates for herself in case she should be cured, etc. He then sent to him: If you will not appear before the court, I shall prick you so that blood will not run (*i.e.*, put him under the ban). Then R. Na'hman examined the witnesses how was the case. And they said: The woman said thus: "Woe is me! I am dying," and then she said her will. To which R. Na'hman gave his decision: In such a case it is considered that she made the will because she was afraid she would die; and a will made in the fear of death may be retracted.

It was taught: Concerning a gift in part of a sick person, it was said before Rabha, in the name of Mar Zutra the son of R. Na'hman, who said in the name of his father: In one respect it is equal to a gift by one in good health; it means he cannot retract if cured; and in the other to a will of a sick person, as it needs not the ceremony of a sudarium. Said Rabha to them: I told you several times, "Do not put a clay-pot (see Chapter I., p. 14) on the neck of R. Na'hman." R. Na'hman said thus: It is considered a gift of one in good health and must be done with the ceremony of a sudarium. Rabha, however, objected to R. Na'hman from our Mishna, which states: If he reserved some ground for himself the gift is valid. Is it not to be assumed that no sudarium is needed? And he answered: Nay! It must be done with the ceremony of a sudarium. But does not the latter part state: If he reserved nothing, title is not given? And if it is as you say, why should it not be the same when made by a sudarium? And he answered: So said Samuel: If a sick person has bequeathed all his estates to strangers, although made with a sudarium, he may retract, because it is certain he made it in the fear of death. R. Mesharshia objected to Rabha from the following: It happened with the mother of Rukhl's sons that while sick she said: My jewelry shall be given to my daughter, and is worth twelve manas. And she died; and the sages listened to her will. (Hence we see that, although it was a part of her estate, and it was not made with the ceremony of a sudarium, it was nevertheless considered.) The case was, because she had mentioned: I am certain I shall die, therefore I bequeath this to my daughter. R. Huna b. R. Jehoshua, however, said: If the sick person has commanded while dying, a sudarium is needed; and all Boraithas

cited treat when the sick person has divided all his estates among different persons. And in such a case it is said above that the rabbis consider them as a gift of a sick person. The Halakha, however, prevails that for a gift of a sick person in part a sudarium is needed, even when he dies of that sickness; but if he commanded while dying, no sudarium is needed in case he dies. But if he was cured he may retract, even if it was done with a sudarium.

It was taught: A gift of a sick person, in which it was written that it was made with a sudarium--it is considered based upon two sources, and must be listened to. So declared the school of Rabh in the name of their master. Samuel, however, said: I do not know what should be done in such a

case. The reason of the school of Rabh is: Because the will was made on two bases, it is equal to both--a gift of one in good health, from which he cannot retract, and to a gift of a sick person who said, "The loan I have with A, shall be given to B." And the reason of Samuel, who was doubtful in such a case, is: Perhaps the sick person made up his mind not to give title without a deed, and such cannot be written after death.

However, there is a contradiction from the following statement of Rabh's, to his one decision just mentioned, and the same is it with Samuel--namely: The message which Rabbin sent in the name of R. Abuhu (above, pp. 300-1), in which both Rabh and Samuel contradict themselves? Nay! There is no contradiction at all. Rabh it does not contradict, because in one case he speaks where it was made with a ceremony of a sudarium, and in the other where it was not. And to Samuel also there is no contradiction, as his decision in the case cited speaks when the sudarium was made to strengthen the act. (This will be explained farther on.)

R. Na'hman b. Itz'hak was sitting behind Rabha, and Rabha before R. Na'hman, who questioned him: Did Samuel indeed say that it is to be feared the sick person had perhaps made up his mind to give title by a deed only? Did not R. Jehudah say in his name: A sick person who has bequeathed all his estates to strangers, although made with a sudarium, if he was cured he may retract. Because it is known that this bequest was only because he thought he would die. R. Na'hman gestured, and Rabha remained silent. After R. Na'hman went out,

questioned R. Na'hman b. Itz'hak: Rabha, what does R. Na'hman mean by his gesture? And he answered: He means that title is given when the act was strengthened. And to the question: How is it known that the act was strengthened? Said R. Hisda: If it was written: "In addition to his gift the ceremony of a sudarium was made."

It is certain that if one bequeathed first to one, and thereafter to another, it is as R. Dimi said above: The later will abolishes the first. But how is it if he wrote and gave title with a sudarium to one, and thereafter he did the same to another? According to Rabh: Title is given to the first, as in his opinion it is similar to a gift by one who is in good health. But according to Samuel title is given to the second, as in his opinion it is similar to a gift of a sick person, and it is to be feared that he had perhaps made up his mind to give title only by a deed. So it was taught in the city of Sura. In Pumbeditha, however, it was taught as follows: R. Jeremiah b. Abba said: A message was sent from the college to Samuel: Let the master teach us--how is the law if one has bequeathed his estate to strangers with a sudarium? And his answer was: After a sudarium, nothing can be done. The schoolmen, however, understood that Samuel's decision was only if it was bequeathed to another; but if he became cured and wished to retract for the sake of himself, he might do so. Said R. Hisda to them: When R. Huna came from Khuphry, he explained that Samuel meant to say it holds good in any event (*i.e.*, he cannot retract even for himself). There was one who bequeathed his estates with a sudarium while he was sick, and thereafter became cured and wanted to retract, and brought up his case in the court of R. Huna. And R. Huna said to him: "I can do nothing for you, as you acted not in accordance with those who wish to retract after cure. They usually give title with one of the two--a document or a sudarium. You, however, have done both; and such an act can by no means be abolished." There was a deed of gift in which it was written: While I live and after my death. Rabh considered this as a will upon death, because death was mentioned. And Samuel considered it as a gift by one in good health, because while "I live" was mentioned--explaining that the word death is to be interpreted from

time everlasting. Said Uhla: The

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sages of Nahardea decided: The Halakha prevails with Rabh. Said Rabha: If, however, it was written: "While I *still* live," title is given. And Amimar said: The Halakha does not prevail with Rabha. Said R. Ashi to him: Is this not self-evident? Have not the Nahardeans decided: The Halakha prevails with Rabh? (And he rejoined:) One might say: When "*still* alive." Rabh also admits: I came to say that it is not so. There was such a case, which came before R. Na'hman in the city of Nahardea, and he sent the plaintiff to R. Jeremiah b. Abba in the city of Shum-Tamia, saying: Nahardea is the city of Samuel, and we cannot act against him, though the Halakha prevails with Rabh. There was also such a case which came before Rabha, and he decided in accordance with his own theory. And the plaintiff was a woman, who troubled him very much, saying: His decision was not in accordance with the law. He said then to R. Papa b. R. Hanon, who was his scribe: Write her a document that she won the case; but at the bottom write a few words from a Mishna in Middle Gate: "He may hire other laborers or deceive them" (that the court to which she shall bring my judgment will understand that I do not agree with it). And she exclaimed: I see you desire to fool me--may your ship sink! Rabha's followers dipped his clothes in water, to overcome the curse of the woman. However, they did not succeed, as Rabha was punished for this.

MISHNA *VIII.*: If in the deed it was not mentioned that he was sick, and he claims that he was sick at the time of writing and had a right to retract, while the plaintiff claims that he was in good health, it is for him to bring evidence that be was sick. So is the decree of R. Meir. The sages, however, say: There is a rule that it is always for the plaintiff to bring evidence.

GEMARA: There was a deed of gift in which it was written that it was done while he was sick in bed; but it was not mentioned that he died from that sickness. And Rabha said: It does not matter, as in reality he did die, and his grave is evidence. Said Abayi to him: But what evidence is this that he died from that sickness? Perhaps he was then cured, retracted, and thereafter died of another sickness? And that this is to be feared we may infer from a ship which sinks, when it is seldom that the men on board are saved. And, nevertheless, we apply

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to such a case both the rigorous law concerning life and the rigorous law concerning death (*i.e.*, the wives of those who were on board are not allowed to marry, as perhaps their husbands are not dead, but have drifted to the shore at another place and remain alive, and also must not partake of Terumah in case their husbands were priests, as perhaps they are dead). So much the more in our case, in which the majority of sick persons become cured. Should we not fear that, because it was not mentioned in the deed that he died from that sickness, he was cured?

Said R. Huna b. R. Jehoshua: The decision of Rabha in this case is in accordance with R. Nathan of the following Boraitha (in such a case as stated in our Mishna, it depends on circumstances): Who has to collect from whom? If he, the bequeather, has to take out of their hands, he can do so without any evidence; but if they have to collect from him, evidence must be brought. So is the decree of R. Jacob. R. Nathan, however, maintains: If the case comes on while he is in good health, it is for him to bring evidence that he was sick when the deed was written. On the other hand, they have to bring evidence that he was in good health, if the case comes on while he is

sick. (Hence we see that R. Nathan's decision is according to the circumstances at the time the case is before the court; and the same is Rabha's theory.)

"*The sages, however, say,*" etc. What kind of evidence is required? According to R. Huna: Witnesses shall testify that he was in good health when the deed was written. And according to R. Hisda and Rabba b. R. Huna: The evidence should be by approval of this deed (*i.e.*, the defendant claims that he was then sick, and consequently the deed is valueless; but if they bring evidence from the court that it was approved by it, he must not be trusted, as it is to be supposed that the court would not approve it if it was not aware that he was in good health). R. Huna, who required witnesses, maintains: R. Meir and the sages differ as R. Jacob and R. Nathan do. And R. Hisda and Rabba b. R. Huna maintain: They (Meir and the rabbis) differ as to whether a deed which is admitted by the signer must be approved by the court or not. According to R. Meir, it is not necessary; and according to the rabbis, it is.

Rab ha is also of the opinion that the evidence in question

must be witnesses. Said Abayi to him: What is your reason? Shall we assume that because all other documents state it was done when he was on his feet and in good health, and here it is not so mentioned, it is to be assumed that he was then sick? Why not say to the contrary, as in all documents of a sick person it is written: "It was done while he was sick in bed," and here it is not mentioned, it is to be assumed that he was then in good health? (And he answered:) Since it can be so said, and also the contrary, therefore we leave the money or the article in the hands of its possessor; and it is for the plaintiff to bring evidence.

The decision of this question is still in discussion, as R. Johanan and Resh Lakish also differ. According to the former, witnesses are required; and according to the latter, the approval of the deed.

R. Johanan objected to Resh Lakish from the following: It happened in the city of Bene Brack that one sold the estate of his father, and died; and his relatives complained that he was not of age when he died. And they came and questioned R. Aqiba whether they had a right to examine the corpse. And his answer was: First, you are not allowed to disgrace the dead; and secondly, the signs of maturity are subject to change after death. Now, according to my theory that witnesses are required, it is correct: as the buyers required evidence from the relatives, which they could not give, they asked for permission to examine the corpse. But according to your theory that the evidence should be by approval of the deed, let them, then, approve the documents, and hold the goods without any, examination? And Resh Lakish answered: Do you think that his estates were still in the possession of his relatives, and the buyers were the plaintiffs? On the contrary, the estates were in the hands of the buyers; and the relatives were the plaintiffs. (Says the Gemara:) It seems to be so, as his relatives kept silence when Aqiba told them they were not allowed to examine; and if the buyers were the plaintiffs, they would certainly claim: We gave him money--let him be disgraced and disgraced. However, this cannot be taken as a support, as it can be said that therefore R. Aqiba said to them: "And secondly, signs of maturity are subject to change," because of their claim: Let him be disgraced.

(It was taught) Resh Lakish questioned R. Johanan: There is a Mishna among the Mishnayoth of Bar Kapara: If one worked up a field and consumed the products as if he were the owner of it, and then one came and claimed, "It is mine," but the occupant showed him a document, whether bill of sale or deed of gift, and the plaintiff said, "I do not recognize such a document at all," the signatures which are on the document must be approved by the court (*i.e.*, it is sufficient that the witnesses should testify before the court that they recognize their signatures, but it is not necessary that they should testify that the sale or gift was made in their presence). If, however, the plaintiff claims: "I recognize this deed, but it was written only upon your request for a special purpose; but I never sold"; or, "I sold to you and never took any money," if the plaintiff brings evidence, then it must be done accordingly; but if there is no evidence, the deed is in force. Shall we assume that it is according to R. Meir, who said: "If one recognizes his document, the approval of it is not necessary," and not in accordance with the rabbis? And R. Johanan answered: Nay! I say that all agree such a document does not need any approval. Said Resh Lakish again: But there is a Mishna that they do differ. And he answered: That Mishna treats that the witnesses themselves impair the deed (*i.e.*, they testified that they signed it illegally). But can he, the giver of the document, be supposed to impair it? Rejoined Resh Lakish: But in your name it was said that you would approve the claim of the relatives who asked permission for the examination (cited above), as it seemed to you they were right. To which R. Johanan rejoined: This was said by Elazar, but *I* never said such a thing. Said R. Zera: If R. Johanan denies what was said by Elazar his disciple, will he also deny what was said by R. Janai his master? The same said in the name of Rabbi: If one admits that he wrote this document, it must nevertheless be approved. To which R. Johanan said, answering him: Rabbi, is this not the same as our Mishna states? The sages, however, say: It is for the plaintiff to bring evidence. And there is no other evidence but the approval of the document. And therefore (adds R. Zera), it seems that our master Joseph Js right when he states in the name of R. Jehudah, quoting Samuel, that the rabbis said approval is not needed to a document

which is admitted by the signer. And he who holds that he still needs an approval is R. Meir. Also, by the expression of R. Johanan, "All agree," is meant the rabbis, as R. Meir was only a single individual who so holds. But does not the Mishna state the reverse? And also the Boraitha, does it not state in the name of the sages that it must be approved? Reverse the names in the Mishna, as well as in the Boraitha. But was it not stated above that R. Johanan is the one who requires that the evidence mentioned in the Mishna should be witnesses? This statement is also to be reversed (*i.e.*, R. Johanan said: The evidence should be with the approval of the deed). Then the objection must be reversed also--not that R. Johanan objected to Resh Lakish, but the reverse? Nay! So said R. Johanan to Resh Lakish: According to my theory that I require the evidence should be by the approval of the deed, it is correct that the buyers took possession of the estate which was sold to them by the alleged minor. But according to your theory, how can there be such a case--that the buyers should possess the estate? Where could they find witnesses who should testify that he was of age? And Resh Lakish answered him: I admit to you that the claim of the relatives ought not to be taken into consideration; for what was their claim as against the deed in which witnesses signed that "he was of age"? And there is a rule that witnesses have the preference; as it is assumed that witnesses would not testify unless they were aware of the case. Hence concerning this deed they would not sign it if they were not aware that he was of age.

It was taught: What must be the age of one who has the right to sell the estates left him by his

father? Rabha in the name of R. Na'hman said: Eighteen. And R. Huna b. Hinna in the name of the same authority said: Twenty. R. Zera objected from the above case which happened in the city of Bene Brack, to whom R. Aqiba said: The signs of maturity are subject to change after death. And this can be correct in him who said eighteen, as then his relatives questioned the law if the corpse might be examined. But according to him who said twenty, of what use could the examination be? At that time the signs of maturity are already unrecognizable, as we have learned in a Mishna: If one gets to the age of twenty,

and the signs of maturity are not visible, they have to bring evidence that he has reached the age of twenty; and he, the castrate, is a legal "saris," who does not perform the ceremony of Halitzah and also cannot marry his brother's wife. Hence we see that after twenty the symptoms of maturity are already unrecognizable. The answer was: Was it not taught in addition to the Mishna by R. Samuel b. R. Itz'hak in the name of Rabh: Provided the symptoms of a "saris" were visible. Said Rabha: It seems that this explanation is right, as the Mishna states: "He, the castrate, . . . 'saris,'" from which it is to be understood that such signs were visible on the body; as if not, why should he be named "castrate"? But how is it if neither the signs of maturity nor of a "saris" were visible? How many years are needed, that he should be considered of age? Taught R. Hyya: After he reaches the majority of life (*i.e.*, thirty-six years, as life is considered seventy). It happened that such cases were brought before R. Hyya by the mothers, questioning him: What must be done, that the signs of age should appear? And he used to answer: If the lad was thin, see he should become fat; and if he was fat, he would advise that they should make him thin, as sometimes the signs came earlier because of thinness, and sometimes because of fatness.

The schoolmen propounded a question: How is he to be considered during the nineteenth year--nineteen, which is still not of age, or twenty? Rabha in the name of R. Na'hman said: The whole twentieth year, is he considered nineteen? And Rabba b. R. Shila in the name of the same authority said: As twenty. The statement of Rabha, however, was not heard from him plainly; but it was so judged from the following act: There was a lad who was between nineteen and twenty, who used to sell his father's estate, and Rabha had annulled all his acts. People who saw this thought that it was because he considered him not of age. In reality, however, Rabha did so because signs of foolishness were seen in him, as he used to free all his slaves. [1]

Giddle b. Menarshia sent a message to Rabha: Let the master

teach us! How should a girl of fourteen years and one day who has a knowledge of business be considered? And he answered: If she has a knowledge of business, then her sale is valid, but not otherwise. Why was the question for a female and not for a male child? Because so was the case.

There was one lad, less than twenty, who had sold the estate of his father, and his relatives instructed him that when he should be at the court of Rabha he should eat dates and throw the pits at Rabha's person (for the purpose that Rabha should see he was a fool, and so annul his sales). He did so, and Rabha did indeed annul the sales. When the judgment was written, the buyers instructed him to go into court and say: The Book of Esther can be bought for one zuz,

and the same is the price for Rabha's judgment. And he did so. Rabha then decided: His sales are valid. And when his relatives told him he was so instructed by the buyers, Rabha answered: He understands business if it is explained to him, and in such a case his acts are valid; and his previous act, that he threw the pits at me, was because he is too much of a scamp.

Said R. Huna b. R. Jehoshua: Concerning witnesses--his testimony may be considered at such an age (between nineteen and twenty). Said Mar Zutra: But only concerning movable property, and not real estate. Said R. Ashi to him: What is the reason that he is fit to be a witness for movable property--because his sales are valid? If so, let children of six and seven years be fit for this, as there is a Mishna: The purchase or sale of movable property by minors is valid. And he answered: Witnesses must be men, as it is written [Deut. xix. 17]: "Then shall both the men who have the controversy stand before the Lord," etc., which cannot be applied to children.

Said Amimar: If a lad of thirteen years and one day presented a gift to some one, his act is valid. Said R. Ashi to him: Why? Even concerning a sale where he should receive money, the rabbis enacted that it should be annulled, because he might sell too low. Shall we say, if he presents a thing without any money his act is valid? (Said Amimar to him:) And according to your theory, if such a lad bought a thing which is worth six zuz for five, should this be considered? This is certainly not so, because there is no difference whether it was worth more or less, as the rabbis annulled all sales made by such a lad who

does not understand business. And the reason is that the rabbis were aware that lads at such an age have an inclination for money; and if you should allow one to sell, he would sell all the estates of his father for a small amount. But concerning a gift it is different, as if he would not have any benefit from it, he would not do so; and therefore the rabbis enacted that his gift should be considered, so that others should also please him. R. Na'hman in the name of Samuel said: A young man before twenty may be examined for the signs of maturity concerning betrothals, divorces, the ceremony of Halitzah, and protesting against marriage, and as to selling the estates left him by his father. The Halakha, however, prevails, that between nineteen and twenty he is considered as before nineteen; and it prevails also in accordance with Giddle b. Menarshia, with Mar Zutra, and also with Amimar, and with all the laws which are stated by R. Na'hman in the name of Samuel.

MISHNA *IX*.: If one divides his estates verbally, no matter if he was in good health or dangerously sick, according to R. Elazar to real estate title is given by money, by a deed, and by a hazakah; and to movable property, title is given by drawing only. He was then told that it happened with the mother of the sons of Rukhl, who was sick and said: Give my jewelry, which is worth twelve manas, to my daughter, that the sages had listened thereto. And he answered: The sons of Rukhl ought to have been buried by their mother while they were still young (*i.e.*, they had bad habits, and therefore the sages fined them, that they should not inherit from their mother).

GEMARA: There is a Boraitha: R. Eliezer said to the sages: It happened with an inhabitant of the city of Mruni, who was in Jerusalem, that he possessed much movable property which he desired to present to different persons; and he was told that he could not give them title, unless he did so together with some real estate. He went then and bought a rock near Jerusalem, and said: The north side of the rock shall belong to A, and with it one hundred sheep and one

hundred barrels; and the south to B, and with it one hundred sheep and one hundred barrels. And when he was dead, the sages approved his will. Hence we see that, though the rock could not be considered real estate, as it could not be used for anything, nevertheless title was given. And he was answered:

[paragraph continues] This is no support, as the Mrunian was in good health when he did so; but this cannot be done by a sick person.

R. Levi said: It is allowed to make the ceremony of a sudarium with a sick person even on Sabbath, lest he become exhausted; but not because the Halakha is in accordance with R. Eliezer of the following Mishna.

MISHNA *X*.: R. Eliezer said: If it happens that a sick person divides his estates verbally on Sabbath, it may be listened to, because it is prohibited to write; but not on week days. R. Jehoshua, however, maintains: It was said on Sabbath, *a fortiori* when it happened on week days. Similar to this is: One may acquire title for a minor, but not for adults. So is the decree of R. Eliezer. R. Jehoshua said: For a minor, and *a fortiori* for an adult.

GEMARA: Our Mishna is in accordance with R. Jehudah, as we have learned in the following Boraitha: R. Meir said: The reverse is the case. If this happened on week days, his words must be listened to, because he is allowed to write; but not on Sabbath, because he is not allowed to write. So is the decree of R. Eliezer. R. Jehoshua said, on the contrary: It was said on week days, and so much the more on Sabbath. R. Jehudah, however, said: R. Eliezer's decree was, if on Sabbath, his words must be listened to, because he is not allowed to write; but not on week days, when he is allowed to write. And R. Jehoshua's decree was to the contrary. And the same is the case as to the latter part of the Mishna.

MISHNA *XI*.: Suppose a house falls upon A and his father, or on any persons, that one of them has to be bequeather and the other inheritor, and it is not known who dies first, and to the estate there is a claim from the widow for her marriage contract, and from other creditors. The heirs of the father say that the son died first; and the creditors say that the father died first, and the son afterward. (*I.e.*, the creditors of the son who had a right to the estate only if he died after his father, so that with the death of his father the inheritance came to him. But if he was dead before his father, he has nothing in the estate. And this is what his brothers claim, that the creditors have no right in the estate left by their father. Concerning a marriage contract, that will be explained in the Gemara.) According to the school of Shamai, they have to divide; and according to

the school of Hillel, the estate must be left in the hands of the present occupants. [1]

If it happened that the house fell on him and his wife, the heirs of the husband claim that the woman dies first, consequently her husband has inherited from her; and the heirs of his wife claim that he died first, consequently they have a right to her marriage contract and also to her own estate. They have to divide, according to the school of Shamai. But the school of Hillel say:

They must leave the estate in the hands of its present occupant. And the occupants are to be considered as follows: The estates belonging to the marriage contract are to be considered as in the hands of the husband's heirs. But her own estates, which she brought with her to her husband, and which ought to go out with her by death or divorce, are to be considered in the hands of the heirs of *her* father.

If, however, the house falls on one and his mother, both schools agree that it must be divided. R. Aqiba, however, said: I hold that they (the schools) differ in the latter case also; and the school of Hillel are still of the opinion that estates must be left in the hands of the occupants. Said Ben Azai to him: We deplore that the schools differ in the former cases, and you come to add the third one, in which the rabbis testify that they have agreed.

GEMARA: The estates which were brought by the deceased woman, mentioned in the Mishna--to her husband for usage of fruit only, according to the school of Beth Hillel. Who is to be considered the occupant? According to R. Johanan: The heirs of the husband. According to R. Elazar: The heirs of the woman. R. Simeon b. Lakish, however, said in the name of Bar Kapara: Such must be divided. And the reason of this statement was taught by Bar Kapara himself, that as the claims of both parties are equal (*i.e.*, the heirs of the husband claim that all the products of this estate belonged to the deceased, as he had a right to sell them, and therefore they belong to his heirs; and the opponents claim that they were only to be used while he was alive, and therefore what was not

consumed by him, if his wife were alive she would certainly take with her estate; hence it belonged to her, and after her death to us), it is to be considered doubtful money, the law of which is division.

"*R. Aqiba said . . . in the hands of the occupants*." But who are considered their occupants? R. Aila said: The heirs of the mother; and R. Zera: The heirs of the son. When R. Zera ascended to Palestine, he retracted from his statement in Babylon and accepted the system of R. Aila. Rabba, however, retained the system of R. Zera as a Halakha. Said R. Zera: From my retraction, I see that the air of the land of Israel makes one wise; as after I came here I saw that my statement while I was still in Babylon was erroneous. [1]

"*Said Ben Azai to him*," etc. Said R. Simlai: Infer from this that Ben Azai was an associate disciple of R. Aqiba; as if he were a disciple only, he would have said to him, "The *master* said," and not, "And you (thou)."

A message was sent from Palestine as follows: If a son has sold his share of the inheritance of his father to some one, and dies while the father was still alive, and thereafter his father died, the son of the seller has a right to take away the goods from the buyer. (Because, at the time sold, the seller has nothing as yet in his hands, and the sale was for that which would be his in the future; and as the son died before his father the goods were never his, and his son is now the heir of his grandfather, to whom the goods in question belong; hence he has a right to take them away.) And this is a complicated case in the law of money matters. But let the buyers say: Your father has sold, and you are taking away? What a claim is this! Cannot the plaintiff say: My basis is my grandfather, from whom I inherit (and my father had not any right to sell this--as

explained above); and that such a claim is to be considered may be supported by [Ps. xlv. 17]: "Instead of thy fathers shall be thy children: thou shalt appoint them as princes in all the land." Hence it is not at all a complicated case in money

matters. And if such there be, it would be the following: A first-born who sold the share prescribed to him while his father was still alive, and died before his father, the first-born's son has a right to take away from the buyers after the death of his grandfather. Hence his father sold that to which he was entitled; and his son, whose basis is his deceased father, takes the goods away. And this is complicated, as he cannot say, "My basis is my grandfather," for the grandfather had nothing to do with the double share of the first-born son. But even this cannot be called a complicated case, as he may claim, "My basis is my grandfather, and not my father, who has never possessed the goods he sold; for now only do I take the place of my father, who was a first-born, and take his share." Hence it is in accordance with the usual law. Therefore, if in the message of Palestine was said "a complicated case," it might be the following: If one sign a document before he robbed some one, and thereafter he became a robber, who is no longer competent to be a witness, he has no right to testify to his handwriting; but others, who know his handwriting, may. Hence he is not trusted, and the others who came upon his basis are trusted. Is this not complicated? But perhaps it treats of when his handwriting was already approved by the court, while he was still righteous? Therefore it is to be assumed that they meant the following case: If one signed a document as a witness to a stranger, and thereafter he became his son-in-law, he has no right to testify to his signature; but others may testify that they recognize the writing of the son-in-law, and then it may be relied upon. Hence he is not trusted, and others are. And you cannot say that it means only when his handwriting was already approved by the court at that time, as R. Joseph b. Minumi in the name of R. Na'hman said plainly: Even in case it was not. However, even this cannot be called complicated, as it may be said that it is thus decreed by the law. A son-in-law must not witness in a case of his father-in-law, not because it is feared he may lie, but because it is prohibited, even if the son-in-law were Moses our master. Therefore we must come to the conclusion that the complication lies in the first case mentioned in the message, and the objection based on the cited verse is not to be taken into consideration, as the verse speaks of a "blessing." But bow can you say that it

speaks of a blessing, and nothing is to be inferred from it? Does not our Mishna state: "If the house falls upon him and his son, or any persons," etc.? Does it not mean, by the "heirs of the father," grandsons, and "any persons," brothers of the deceased? Now, if you bear in mind that one cannot say, "I come on the basis of my grandfather," as the cited verse cannot serve as a support, then, even when the son dies first, how is it? Let the creditors say: We claim the inheritance of the father? Nay! By "the heirs of the father" is meant the deceased's brothers; and by "any persons," his uncles, brothers of his father.

"*One and his mother*," etc. R. Shesheth was questioned: Nay! A son inherits from his mother when he is already in the grave, so that his brothers from his father's side should inherit from him? (The illustration may be found above, p. 317.) Answered R. Shesheth: This we have learned in the following Boraitha: If the father was taken into captivity and died there, and at the same time his son dies in his country, or *vice versa*, and it was not known who died first, the heirs of the father and the heirs of the son (on his mother's side) may divide among themselves

the inheritance. Now, if the son while in the grave could inherit from his mother, even if he dies first, let him inherit from his grandfather on his mother's side, and then his brothers on the father's side would inherit from him. Infer from this that while in the grave nothing is to be inherited. Said R. Aha b. Minumi to Abayi: This may be inferred also from our Mishna, which states that concerning one and his mother all agree that they must divide. And if the law of inheriting in the grave were in force, let him inherit from his mother while in the grave, the same to revert to his brothers on the father's side. Hence such a law does not hold good. And why not? Said Abayi: There is the same expression in the Scripture concerning the inheritance of a husband from his wife, and a son from his mother. As the first does not inherit while in the grave, so it is with the second, etc. (This has already been explained in Chapter VIII., p. 254) (Here is repeated the whole story of Bar Sisin's estate, preceding volume, pp. 86-87.)

Footnotes

322:1 The commentators Rashbam, Tosphath, and Bach discuss at length how the widow is an heir also, illustrating, *e.g.*, if one has married the daughter of his brother, who has no other children besides her, and the brother has inherited the estate of their father, and thereafter both brothers die, then the widow of the one brother is also an heir to the estate of her grandfather, which belonged to her father, who had no heirs except her. There are also some other illustrations, but all are complicated. We give the last, which is simple.

322:2 Gershom explains *Sinaic* laws, with which Rashbam does not agree.

323:1 The term in Hebrew is "zinim," and "zinha" means cold; and so it is taken by the Talmud. The basis of Leeser's translation is unknown.

329:1 The second explanation to this verse by the same authority will be in Chapter XI. of Tract Sanhedrin as the proper place.

330:1 In ancient times they used to grind pearls and diamonds in medicine.

339:1 In the Talmud, wherever it means real estate, the expression is estates which one can rely upon--which means that if they are mortgaged for a loan the lender may rely upon them, as they cannot be lost by fire, etc.

350:1 At that time it was prohibited to free a bondsman without a good reason, according to Roman and Persian, as well as to Jewish laws.

354:1 The Gemara to this Mishna we transfer to Mishna 8 of the succeeding chapter, as the proper place. We also deemed it necessary to put all three Mishnas which treat of falling houses together, though in the original text they are in three separate places.

355:1 The commentators differ concerning the explanation of this, as well as concerning the

completion of the text. Rashbam affirms that Rabba was not in the text at all. Gershom changes the question concerning the cases in the Mishna and explains them differently. We have done what we could to make the passage intelligible to the reader.

Next: Chapter X