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CHAPTER X.

HOW DEEDS SHOULD BE WRITTEN AND WHERE THE WITNESSES SHOULD SIGN. CONCERNING ERASURES OF SOME WORDS IN DEEDS. IN WHICH CASES BOTH PARTIES MUST BE PRESENT AT THE WRITING OF THE DEEDS, AND IN WHICH ONE OF THEM SUFFICES. CONCERNING A DEPOSITED DEED WHICH WAS PAID IN PART. HOW SHALL THE COURT APPROVE AN ERASED DOCUMENT? PROPERTY FOR PRIVATE USE WHICH WAS LEFT TO POOR AND RICH BROTHERS.

MISHNA *I.*: A simple "get" [1] (document) the witnesses must sign at the end of the contents. A folded one, however, the witnesses must sign outside. [2] But if the witnesses signed their names outside in a simple one, or inside in a folded one, both are invalid. R. Hanina b. Gamaliel, however, said: If in a folded one the signatures of the witnesses were inside, it is valid, as it can be taken apart and will constitute a simple one. Rabbon Simeon b. Gamaliel maintains: All must be done as is the custom of the country. A simple document must be signed by two, and a folding one by three witnesses. If there was only one witness to a simple and two to a folding, both are invalid.

GEMARA: Whence is this deduced? Said R. Hanina: From [Jer. xxxii. 44] "Men shall buy fields for money, and write it in deeds, and seal them, and certify it by witnesses," etc. "Write it in deeds" means a simple document; "seal" means a folding one; "certify" means by two witnesses; "by witnesses" means three. How so? We must say, then, two

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witnesses for a simple, and three for a folding one. But perhaps the reverse? Common sense dictates that a folding one, which is added to in folding, should be added to also in witnesses. (The discussion proceeds to deduce this from the Scriptures, which were objected to as usual, and the Gemara came to the following conclusion): The folding one is only an enactment by the rabbis; and the verse above cited was only a light support. And why this enactment? Because of the many priests who used to live in their city. (The law prescribes that a priest, having divorced his wife, it is prohibited to him to remarry her; which is not the case with a commoner.) And as the priests are usually ill-tempered, they used to divorce their wives as soon as they became angry. Therefore the rabbis enacted that the "get" should be folded and sewn several times, that it might prolong the time, in order that they should become quiet, and recede from their previous intention. This is correct concerning divorces. But why for other documents? Because all kinds of documents were then called "gets," they enacted that all should be done in one manner.

In what place should the witnesses sign a folding document? According to R. Huna: Between one folding and another (*i.e.*, in the folding space above the lines, and thereafter it was folded and sewn so that the signatures were inside). According to R. Jeremiah b. Abba: On the reverse side, and exactly opposite the writing. Said Rami b. Hama to R. Hisda: According to R. Huna,

who maintains in the folding space above the lines which is thereafter also folded, it is to be assumed that it remains inside; but this is not so, as it happened that a folding document was brought before Rabbi, and he exclaimed: There is no date to it. To which R. Simeon his son answered: Perhaps the date is inserted, etc. (*post*, p. 363), Now, if it were as R. Huna said, Rabbi ought to say: There is neither date nor witnesses (as the witnesses signed inside, one could not sew it when it was folded). And R. Hisda answered: Do you think that R. Huna means between the folding inside? He meant outside. But if so, why should not forgery be feared, as one can write inside what he likes, while the witnesses have already signed outside? In the document must be written at the end, "All its contents are true," and they remain

forever. Hence to that which is written thereafter no attention is given. But it is still to be feared that after it is written he can forge what he pleases, and then write again, "All this is true," and have it signed by other witnesses? A document must contain only one approval that "all is true," but not more. But still it is to be feared that he can erase the approval, adding what he pleases, and then write, "All is true," etc. To this it was said by R. Johanan: If there was inserted a word between the lines, and thereafter the witnesses testify it was inserted at their instance and they approve it, the document is valid; but if some words were erased, then, although approved at the end, the document is nevertheless invalid. And this was said concerning an erasure in the place of the words "all that is written is true," and the size of these words. But even according to R. Jeremiah b. Abba, who said: On the reverse, and opposite the writing (*i.e.*, where the writing finishes inside, he shall begin opposite to write his name; so that if there should be some lines more over the signature of the witness it would be considered forgery), it is also to be feared that one might forge some lines, and add one more witness, opposite the forgery, and might say: My intention was to add one witness more? And the answer was: Do you think that the witnesses have signed lengthwise, in order? No! They signed one under the other, so that no more lines after the witnesses' signatures could be added. [1]

R. Itz'hak b. Joseph in the name of R. Johanan said: To all the erasures which are in the document must be written at the end, "With this signature we approve them," etc.; and in the mean time they must mention the abstract of the contents in the last line. And why so? Said R. Amram: Because the last line is not taken into consideration, as it can easily be forged; as usually the witnesses do not sign so near to the writing that one line could not be inserted, and therefore if the abstract of its contents is written attention is given, but not to something new. And to the question of R. Na'hman: What is the basis of your statement? he answered: The following Boraitha: If the signatures of the witnesses were separated

by a space of two lines from the writing, the document is invalid; but if by one line, it is valid. Let us, then, see what is the reason that two lines' space make the document invalid. Is it not because one can forge the two lines? But the same can be done with one line also? We must then say that if a new sentence is written on the last line it is not taken into consideration. And so it is.

The schoolmen propounded a question: How is it if there is space for one line and a half? Come and hear the following: If there is space for two lines, it is invalid; for less than two, it is valid. If there were four or five witnesses to a document and one of them was found to be a relative, or incompetent for sonic other reason to be a witness, the document may remain in force by the

remaining witnesses. And this is a support to Hezkiyah, who said: If there was a space left, and this was filled up with the signatures of relatives as witnesses, the document is valid. And do not be surprised at such a law (why should not the signatures of the relatives who are not competent to witness in that case harm this document?), as such a law is to be found concerning a Sukka: If on the roof of the Sukka was space to the size of *three* spans uncovered, it makes the Sukka invalid; but if it was covered with illegal things, the size of *four* is needed to make it invalid.

The schoolmen questioned: In the two lines in question, is it meant with their usual space or without? Said R. Na'hman b. Itz'hak: Common sense dictates that their space is included; as if it were supposed that it meant without, of what use could be the size of one line without any space to it? (If one should come to forget this line, he would then be compelled to write it in such characters that it would be entirely different from the original and immediately recognized. Infer from this, therefore, that "with their space" is meant.)

R. Sabbathi said in the name of Hezkiyah: The space of the two lines in question means of the handwriting of the witnesses, not of the scribes; as if one wants to forge, he does not go to the scribes (and usually the handwriting of a commoner is larger than that of a scribe). And what size is meant?

Said R. Itz'hak b. Elazar: As in writing, *e.g.*,

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, which makes two lines in four spaces. According to R. Hyya b. R.

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[paragraph continues] Ami in the name of Ula: Two lines and three spaces. According to R. Abuhu: One line and two spaces. [1] Said Rabh: This was all said about the space between the contents of the document and the signature of the witness. But from the signature of the witness to the approval of the court, it does not matter how much space is left. R. Johanan, however, said: All this was said concerning the space from the contents to the signatures of the witnesses; but concerning the space from the signatures of the witnesses to the approval of the court, even if there was one line, it is invalid. [2]

"*R. Hanina b. Gamaliel*," etc. Rabbi objected to the statement of R. Hanina, thus: How could one make from a folding one a simple, if their dates were entirely different? As in a simple document which is dated according to the years of the king, if the king was in his first year, it is written: On fourth day of such and such a month, in the first year of king so and so; and in a folding one they used to add one year to the kingship of the ruler (*e.g.*, when it was in the first year, they used to write in the second; and if in the second, they used to write in the third). (Rashbam says: It was the custom of the nations to add one year to the kingship of the ruler in

their documents. And the rabbis enacted: In a folding one it shall be dated according to the custom of the land, for the above-mentioned reason; but not in simple documents.) Now, if you say that it can be taken apart and made a simple one, it may happen that one can borrow money with a folding one, and during this time may come into some money and pay his debt before due; and to the request for a return of the document, one may say that he lost it, and give a receipt. Then, when the document falls due, he can make it into a simple, and require his money again (as in the folding one there was added one year, hence the time due in a simple comes one year later, and he can claim that he borrowed money again for the current year)? Rabbi holds: Concerning a folding one, no payment is made upon a receipt unless the document is returned or destroyed.

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But was, then, Rabbi acquainted with a folding document? Did not one come before Rabbi, who was about to annul it because it bore a later date? And Zunin said to Rabbi: So is the custom of this nation, that if the king has ruled one year they count him two; and if two, three. After he had heard it from Zunin, he enacted the law that no money should be paid upon a receipt. There was a document in which was written: In such a date of the year of Orkhon, A had borrowed money from B (but the number of the year was not written), and R. Hanina, before whom the case came, said: It must be examined when this Orkhon ascended the throne; and perhaps it was several years after, as the meaning of Orkhon is "lengthy," and he was named Orkhon because he was a good many years on the throne. Said R. Hoshea to him: So is the custom of this nation: the first year they named him Orkhon, and the second year Digon. Hence this document must be counted from the first year of the present ruler. But perhaps it was when he ascended the throne the second time, as once he abdicated and then ascended again? Said R. Jeremiah: At the second time he was named Orkhon-Digon, and not Orkhon only.

There was a folding document which came before Rabbi, and he said: There is no date to it. R. Simeon his son then said to him: Perhaps it is inserted between its folds! He took it apart, and found the date. Thereupon Rabbi scrutinized him, To which Simeon said: Not I was the writer of it, but Jehudah the Tailor. And Rabbi answered: Leave out slander. It happened at another time that R. Simeon was sitting before Rabbi, and reading for him a chapter of Psalms, and Rabbi said: How correctly and nicely it is written. To which Simeon answered: Not I, but Jehudah the Tailor, wrote it. And also to this Rabbi remarked: Leave out slander. (Questioned the Gemara:) It is correct that the first time he told him he should leave out slander, as Rabbi disliked folding documents, and was angry with the writer of it. But what slander was it if he said that the correct and nice writing was by Jehudah? This is in accordance with R. Dimi the brother of Safras, who taught: One must be careful in praising his neighbor, as very often blaming comes from praising.

R. Amram in the name of Rabh said: From the following three transgressions one is not saved day by day, namely: (a)

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[paragraph continues] Thought about sin (*e.g.*, if he sees a handsome woman); (b) calculation of the effects of prayer--expectation of the granting of one's prayer as a due claim; (c) and slander. Slander! Do you mean that people slander one another every day? It means indirect slander (*e. g.*, while praising or talking of one, one indirectly comes to blame). R. Jehudah said in the name of Rabh: The majority of men are suspected of robbing (*i.e.*, in business every one looks out for

himself, without taking care lest he do wrong to him who deals with him), the minority are suspected of adultery, and all of them of indirect slander.

"*All must be done as is customary in the country*." But does not the first Tana also hold that the customs of the country are to be observed? Said R. Ashi: At those places where a simple is customary, and one told the scribe to make it, and he made him a folding one, it is certainly invalid; and *vice versa*. The point of this difference, however, is the places where both are customary, and he ordered the scribe to make for him a simple, but he prepared a folding one. According to the first Tana: It is invalid. According to R. Simeon: It is valid, as it may be supposed that he ordered him to make for him a simple only for the scribe's sake, that he should have less trouble; but if he did not heed, and made a folding one, it must not be ignored. Said Abayi: R. Simeon b. Gamaliel, R. Simeon, and R. Elazar all are of the opinion that in such a case it must be supposed that the giver of the order did so only to show him what was better for him; but he did not intend to be particular. B. Gamaliel as just mentioned; R. Simeon with his statement that if one has deceived a woman, not to her evil, but to her good (*e.g.*, if he said to her: You are betrothed to me with this silver dinar, and it was a golden one), his act is valid; and R. Elazar of the following Mishna: If a woman said: Go and receive my divorce at such and such a place, and he received it at another place, it is invalid. But according to R. Elazar it is valid, as it is to be supposed that she only showed him the place where she supposed it was better for him to go, but was not particular in her words.

"*If there was only one witness to a simple*," etc. It is correct what the Mishna teaches us: A folding document which was signed by two witnesses only is invalid, as in all other cases two witnesses suffice. But to what purpose does it state

that one witness to a simple is invalid? Is this not self-evident, as there is no case in which one witness should be sufficient? Said Abayi: It teaches: Even if, in addition to that witness who has signed, there were another who testified the same verbally, it is nevertheless invalid. Amimar, however, had in a similar case which came before him decided that the document is in force. And to R. Ashi's objection that Abayi holds it invalid, he answered: I do not hold with him. But how would Amimar explain the above question--to what purpose is it stated in the Mishna? He would answer thus: It came to teach that as a simple document with one witness is invalid biblically, so it is with two witnesses to a folding. And as a support to Amimar there may be taken the following: The colleagues of R. Jeremiah in Palestine sent a message to him: How is it if there is one witness in writing and the other verbally--should they be conjoined for decision upon their testimony, or not? We do not question, how is it according to the first Tana, the opponent of R. Jehoshua, b. Kar'ha, who maintains, in Tract Sanhedrin: Even two with two must not be conjoined under certain circumstances, and so much the less one with one. But our question is, how is it according to R. Jehoshua, who decided: If there were two witnesses in writing and two verbally, they are to be conjoined? Does he hold the same when there was one and one, or not? And R. Jeremiah answered: I am not worthy that you should send to me such a message. But as you have already done so, I may say that the opinion of your disciple is that they may be conjoined. (Said R. Ashi:) We have heard that the message was thus, The colleagues sent to R. Jeremiah: How is the law if, of two witnesses, one of them has testified before one court and the other before another--may both courts be conjoined to decide upon their testimony? We are aware that according to the first Tana, the opponent of R. Nathan: Even if they had testified at different times before one court, their testimony is not to be taken into

consideration, two courts are out of the question. But according to R. Nathan, who says: "In one court their testimony may be conjoined," does he hold the same with two courts, or not? And R. Jeremiah answered them as said above. Rabhina, however, said: The message was thus: If three were sitting as a Beth Din to approve a document,

and thereafter one of them died, must they write in their approval, "We were sitting three, but one is gone"; or is it not necessary? And he answered them: I am not worthy that you should send questions to me, but as you have done so, I may say that the opinion of your disciple is that it is necessary they should write, "We all three were sitting as a Beth Din, according to the law, to approve this document, but one of us is gone, and therefore only we two sign." And for this answer R. Jeremiah was returned to the college (above, p. 71, it was written that he was driven from the college).

MISHNA *II.*: If in the document was written, "hundred zuz which make twenty selas," he collects only twenty selas. If, however, it was written, "hundred zuz which make thirty selas," he collects only one mana (which only makes twenty-five selas). If there was written, "silver zuz which *are*," and the preceding words were erased, then the document is good for no less than two; "silver selas which *are*," and the preceding was erased, no less than two selas; "dracontiums which *are*," it means also no less than two.

If on the top of the document was written "a mana" and on the bottom "two hundred zuz," or *vice versa*, the last one must always be taken into consideration. But if so, why is it at all necessary that the amount should be written at the top? To the end that should it happen that in the words of the bottom one letter should be erased, then we may learn it from the top one.

GEMARA: The rabbis taught: If it was written "silver," without mentioning any particular coin, the document is good for no less than one silver dinar; and if "silver dinars," or "dinars of silver," then it is no less than two silver dinars. If, however, "silver to be paid with dinars," then it is no less than two golden dinars (it being understood that he borrowed from him silver to be paid with gold dinars, and as there is a plural it is no less than two).

The master said: "Silver no less than a dinar." But perhaps it means a piece of metal? Said R. Elazar: It means it was written a silver coin, but it was not mentioned which. But if so, why should it not mean perutas? Said R. Papa: It treats of those places where the perutas were not made of silver.

The rabbis taught: If the documents read "gold," it is not less than a golden dinar; "golden dinars," or "dinars of gold," it is not less than two golden ones. If, however, it was written, "gold to be paid with dinars," he must pay in gold the value of two *silver* dinars. But why should this not be explained: He shall pay him in good gold to the value of two golden dinars? Said Abayi: The defendant has always the preference (*i.e.*, by the general name dinar is meant a silver one; of a golden dinar it must be said plainly *golden*, and as here it is mentioned to be paid with dinars, and the word *gold* is omitted, the holder of the document has to suffer). But why in the first case, where it reads "silver to be paid with dinars," you say he shall pay two golden dinars P

Said R. Ashi: That Boraitha treats of when the document reads "denri," and the latter Boraitha when it was written "*denrin*"; and "denri" means gold, and "denrin" silver. And my support is from a Mishna in Tract Kinin: " . . . It happened that the price of kinin in Jerusalem increased to the extent of denri in gold. Said R. Simeon b. Gamaliel: I swear by the Temple that I go, not to bed this night before their price shall decrease to denrin." Hence denrin means silver, and denri gold.

"*On the top of the document*," etc. The rabbis taught: The bottom may be learned from the top when there is only one letter erased; but not when two (*e.g.*, if it was written, "Hanan of Hanani," or "Anan of Anani"--*i.e.*, the *i* was erased). Let us see! Why not two letters? Because if there were a name of four letters, two would constitute one half of a name. The same can be said with one of two letters, as there are names which consist of two letters only; [1] then the one would be one half of a name. Therefore we must say that the exception of two letters is because it might happen in a name of three letters, and when two are erased the greater part of the name is missing.

There was a document in which was written "six hundred and a zuz," and R. Chrabia sent it to Abayi, questioning him: Does it mean six hundred staters and one zuz, or six hundred perutas and a zuz. And he answered: Eliminate perutas, which it is not usual to write in a document, as generally they are counted together to make from them dinars or zuz. This

must therefore mean six hundred staters. But as there are staters of two zuz, and also others of the same name of half a zuz, and it was said above that the defendant has the preference, the holder of the document must suffer, and he takes only six hundred half-zuz and a zuz. Abayi said: If one desires that his signature shall be known in the court, he shall not write it at the bottom of a paper, as one can find it, but write at the top that he owes him money. And there is a Mishna: If one shows a document with his handwriting that he owes him money, he may collect from unencumbered estates.

There was a toll-master of a bridge who was a Jew, who said to Abayi: Let the master show me his signature, as it is my custom to allow the rabbis to pass without pay (I would leave it with my assistants so that if it should happen you would like to pass, they will not demand payment). Abayi showed him on the top of a piece of paper. He, however, tried to draw the paper so that the signature should come a little lower, and Abayi said to him: Do not try, as the rabbis have preceded you with their advice to sew a signature at the very top of the paper. Abayi said again: From the word "thlath," which means three, to the word "eser," which means ten, one shall not write in a promissory note at the end of the line, to prevent forgery. [1] But if it happened that he did so, he should repeat the word two or three times, so that one of them should occur in the middle of the line.

There was one document in which was written: "A third of a vineyard"--in Aramaic "Thiltha Beperidisa"--and the owner of this document erased the top and the bottom of the first letter of the second Hebrew word, so that from the Beth he made a Vav, which means "and," so that the document, as brought before Abayi, read: "A third and the vineyard," and claimed a third of the seller's garden and the whole vineyard. When Abayi examined the document, he asked him: Why does the Vav stand so extended in the world? He then urged him to confess, which he did.

There was another document, in which was written: The shares of Reuben and Simeon my brothers ("Achai" in Hebrew)

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were sold to me. The buyer, however, added a Vav for the word Achai, and as the brothers had another brother by the name of Achai, he claimed that he bought the shares of all three brothers--Reuben, Simeon, and Achai. With this document he came to the court of Abayi. And there also Abayi asked him: Why is the world so narrow to the Vav? And also he was urged to confess, which he did. There was another document, which was signed by Rabha and R. Aha b. Ada. When it was brought before Rabha, he said: I recognize my handwriting, but I never signed my name in the presence of R. Aha b. Ada. He urged the holder of the document to confess, which he did. Then said Rabha to him: I understand how you might easily forge *my* name; but how could you do so with R. Aha's, whose hands are trembling? And he answered: I would put my hand on the rope-bridge, to imitate, trembling writing.

MISHNA *III*.: A divorce may be written by the court for a husband in the absence of his wife (because, according to the ancient law, the consent of the woman was not necessary); and an approved receipt for a marriage contract to be handed to the woman in the absence of her husband, provided the court knows them--the husband must pay the fees. A promissory note may be written for the borrower in the absence of the lender, but not for the tender unless the borrower is present; and the fee is to be paid by the borrower. A bill of sale may be written for the seller in the absence of the buyer, but not for the buyer unless the seller is present; the buyer pays the fees. Documents of betrothal and marriage must not be written unless both are present--at the expense of the groom. The same is the case with documents for hiring, and contracting fields and gardens; and the expenses are to the contractors. Documents of arbitrating, and all other acts of mediating by the court, must not be written unless both parties are present--at the expense of both.

R. Simeon b. Gamaliel, however, maintains: The latter documents must be written in two copies, one for each party.

GEMARA: What does it mean--provided the court knows them? Said R. Jehudah in the name of Rabh: They shall know exactly the name of the husband concerning a divorce, and the exact name of the woman concerning a receipt.

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[paragraph continues] R. Safra, R. Aba b. Huna, and R. Huna b. Hinna were sitting together in the presence of Abayi and were deliberating over the statement of Rabh just mentioned--concerning a divorce, the name of the husband, but not the name of his wife? and concerning a receipt, the name of the woman, though they do not know the name of the husband? Why should it not be feared that this man would furnish the divorce to another woman, whose husband bore the same name as himself? And the same is the case with the woman: she may furnish her receipt to a man whose wife bears the same name. Said Abayi to them: So said Rabh: The name of the husband and of his wife, concerning a divorce; and the same is the case with a receipt--the name of the woman and her husband. But why should it be prepared and given to the husband? Is it not to be feared that two men who bear one and the same name should reside in the same city (*e.*

g., Joseph b. Simeon), whose wives also bear the name of Rachel, and one can take a divorce and give it to the wife of the other? Said R. A'ha b. Hinna to them: So said Rabh: If two men of the same name reside in one city, they cannot divorce their wives unless both the men named and their wives are present. Still, it is to be feared that one may go to another city, name himself according to one of the inhabitants of his city, and take a divorce, and thereafter return to his city and furnish the divorce to the wife in whose husband's name the divorce was made out. Said R. Huna b. Hinna: So said Rabh: If one was known under one name thirty days in succession, there is no fear that he bears a false name, as he would be afraid to bear it for such a long time. But how is it if one requires a divorce should be prepared for him before he was known thirty days--shall he not be listened to? Said Abayi: This can be proved by somebody calling him suddenly by this name, and he answered. R. Zebid, however, maintains: A swindler knows what he is about, and is careful. And therefore it is no evidence if he answers to a sudden call.

There was a receipt approved by Jeremiah b. Abba. However, the same woman came into his court to claim her marriage contract several years later; and when her receipt was shown to her, she claimed to be not the same woman (*i.e.*, it was another woman who bore my name and signed the receipt). Said R. Jeremiah: I also was of that opinion, and I said so to

the witnesses who signed this document; but they told me you are the same but older, and therefore your voice has changed. And the case came before Abayi, who said: Although it was decided by the rabbis: If one said something in behalf of the plaintiff or the defendant, he has no right to retract from the first statement, and decide otherwise; however, with a scholar, who is not used to look in the face of a woman and to be particular as to her voice, it is different, as it must be supposed that after he was told she was the same, he himself had recognized her.

There was another similar case before the same R. Jeremiah, who said to that woman: I am sure you are the same. And also here Abayi decided: Although a rabbi is not used to look in the face of a woman, etc.; but when he says he did so, and is sure, he may be trusted.

Abayi said: It is advisable for a young scholar, who goes to betroth a woman, that he shall take with him a commoner; as otherwise they may substitute another woman, and he will not notice it.

"*The husband must pay the fees*," etc. Why so? Because it is written [Deut. xxiv. 1]: " . . . he may write and give," which means at his expense. In our time, however, it is not so customary, because the rabbis put the expenses to the account of the woman, in case the husband should decline to bear the expenses and postpone the divorce in a case where the woman is compelled to demand it.

"*Paid by the borrower*," etc. Is this not self-evident? It treats even where he takes money for business at a half profit.

"*The buyer pays the fees*," etc. Is this not self-evident? It treats even in case the seller sold his field because of its infertility.

"*The expense of the groom*," etc. Is this not self-evident? It means even if he were a scholar and the court were certain that they would be pleased to have him as a son-in-law even at their

expense.

"*The expenses are to the contractors*," etc. Is this not self-evident? It speaks even in case it must remain for a year or two unfertilized for the sake of the estate.

"*Arbitrating*," etc. What kind of documents is meant? In this college it was explained: The documents of the claims

which the scribes of the court have to copy so that the parties should not change afterwards. R. Jeremiah b. Abba said: It means, in case each one chooses his arbitrator.

"*One for each party*," etc. Shall we assume that the point of their difference is, if one may be compelled not to act like a Sodomite? According to the first Tana: If one declines to pay the half of the expenses, it is an act of a Sodomite, and he must be compelled to do so. And according to R. Simeon: It is not, and he must not be compelled? Nay! All agree that such cases are to be compelled. Here, however, it is different, as the reason of R. Simeon's decision is: One may say, I would not like that my claim and my decided right should always be before your eyes, while I do not possess them; and this would be a burden to me, as if a lion would lie at my house, fearing every time that you might come to quarrel with me.

MISHNA *IV.*: If one has paid a part of his debt and deposited his document with some one, with the stipulation: If I should not pay you from date until a certain day, you may return this document to the lender, and finally he failed to pay; according to R. Jose: The depositary may return, and according to R. Jehudah: He must not.

GEMARA: What is the point of their difference? R. Jose holds: An asmachtha [1] gives title. And R. Jehudah maintains: It does not. Said R. Na'hman in the name of Rabba b. Abuhu, quoting Rabh: The Halakha prevails with R. Jose. When they came to say the same before R. Ami, he said to them: After such an authority as Johanan teaches us, once and twice, that the Halakha prevails with R. Jose, what can I do? However, the Halakha does not prevail with R. Jose (remarks the Gemara).

MISHNA *V.*: If it happened to one that a promissory note became erased, he must find witnesses who are aware of the date when it was written, and bring them before the court, and they have to make the following approval: A, the son of B, came here with his note, which was erased on such and such a day, and C and D were his witnesses.

GEMARA: The rabbis taught: The approval must be written as follows: "We three, E, F, G, the undersigned, were sitting together, and before us was brought by A, the son of B,

an erased note, which was signed on such and such a day, and C and D are his witnesses." And then if there be added: "We have examined the testimony of the witnesses, and have found it correct," the holder of the document may collect with it, without further evidence. If, however,

this were not remarked, he must bring evidence.

If a document was torn, it is invalid; but if it was torn of itself, it is valid. If it was erased or faint, if still recognizable it is valid.

What does it mean--"was torn," and "was torn of itself"? Said R. Jehudah: If it was torn by the court; and of itself means not by the court. How is it to be known that it was torn by the court? Said R. Jehudah: If the places where the signatures of the witnesses, the date, and the amount were written are torn. Abayi, however, said: The court used to tear it in its length and width.

There were Arabs who came to Pumbeditha, who used to compel the inhabitants to submit to them the deeds of their estates. The inhabitants of the city came to Abayi with their deeds, requesting him to take a copy of them, so that, in case they should be compelled to deliver to the Arabs the originals, the copies should remain, so that in the future they could be sued. Said he: What can I do for you, since R. Safra long ago decided that two deeds must not be written for one field, because it might happen that one would seize it once, and again thereafter. They, however, troubled him, and he said to his scribe: Write for them on an erased paper, and the witnesses shall sign on the paper which is not erased, as such a deed is invalid. Said R. Aha b. Minumi to him: But perhaps the writing will be recognizable, and then it will be valid, as stated in the Boraitha above? And he answered: I did not say he should write a correct deed: I meant he should write some letters of the alphabet.

The rabbis taught: If one comes before the court claiming that he has lost a promissory note from so and so, although he brought with him witnesses who testify, "We wrote and signed the note in question for the borrower, and in our presence he gave it to him," the court must not write another one. However, this is said only concerning promissory notes. But concerning deeds, if such a case happened, they may write him

another one, without mentioning that the seller is responsible in case it should be taken away by creditors. Rabban Simeon b. Gamaliel, however, maintains: This must not be done even concerning deeds. And he used to say also: If one has presented a gift to his neighbor by a deed, if the deed was returned by the beneficiary, the gift is considered returned. The sages, however, say: Nevertheless, the gift remains for the beneficiary. The master said: Without mentioning the responsibility of the seller. Why so? Said R. Safra: Because two deeds must not be written for one and the same field, for the reason it may happen that a creditor of the previous owner will take it away. Then, the buyer who has two deeds may use both deeds to take away the estates which were sold by A to D and E. (*I.e.*, A had sold a field to B, which was encumbered to C, the creditor of A; and C proclaimed his right to it. Then B proclaimed his right, based upon the deed, to the estate encumbered to C, and took away the estate from D, who bought it from A at a later date. After he did so, and the deed was torn by the court, he (B) would make a bargain with C that for a certain amount he should not hasten to take possession of the field to which he was entitled, but should wait a few years and then do it; for the purpose that C's first claim should be forgotten, and later on, when C should take possession of the field which was until now in the hands of B, it should seem to be as a new claim; and then, on the basis of the second deed retained by him (B), he should also take away from E the estates bought by him from A at a later date.

(Says the Gemara:) But as the promissory note of the creditor was torn by the court when he took away from him the first time, how came he to proclaim his right again? And should one say, in case it was not torn? Did not R. Na'hman say: The following is the order of claims before the court? The lender comes to the court to complain that the borrower does not pay his debt; then the court summons him, and if he does not appear it puts him under the ban, and a replevin is given to the lender, that he may levy on the estates of the borrower or of those who bought same from him at a later date than that of the promissory note. And when the creditor finds such estates in some other city, the court of that city tears the replevin and substitutes a document that he may collect such

and such an amount from such and such estate, after the appraisement shall be made for the court. And after this is done, the court furnishes him with a memorandum of the appraisement and tears the previous document. Hence a replevin in which it is not mentioned that the promissory note of the borrower was "torn by us" must not be taken into consideration by any court; and a document which was given for appraisement in which it is not mentioned that the replevin of such and such a court was "torn by us" is also not to be taken into consideration. The same is the case with the memorandum of appraisement with which the court furnishes him, if it is not mentioned that the document giving the right to make an appraisement of the estate for the debt of so and so was "torn by us." Hence the alleged bargain between B and C could not occur? The statement of R. Safras that two deeds must not be written is because it might happen that one should claim the field not for debt, but because he inherited it from his parents, and it was stolen by the possessors of it. In such a case the above-mentioned bargain may be made. [1]

Said R. Aha of Diphthi to Rabhina: According to the supposed bargain mentioned above, that B asked C that he should not hasten to take possession, to what purpose such a bargain? If he possesses two deeds, he may take away from D and E at one time? And he answered: By such an act he would invite investigation by his opponents, and they would find out the bargain.

One Mishna states: Concerning deeds, they may write another one, without mentioning the responsibility of the seller for the estate, in case it should be taken away. Why? Let the court write a correct deed and deliver it to the buyer, at the same time furnishing the seller with a document that the first deed was lost, and if such should be found, that it was of no value, as another deed was supplied to the buyer. The rabbis said before R. Papa, according to others before R. Ashi: Because this is not stated, we may infer that the court must not furnish the seller with such a receipt. And he answered: In other cases, receipts may be written. In this case, however, it is not because of the bargain mentioned above, but as the receipt

which makes the first deed valueless is in the possession of A, and not in the hands of the buyers; and it might be that D and E, who had bought from A, would not be aware of such a document, and would not be in a position to protest against the estates being taken away from them by the creditors of A. But, finally, D and E would transfer their claims to A; and then he would show them the document, and the estates would certainly be returned to them? Yea! But meanwhile the creditors would consume the products, and it would be a difficulty for D or E to collect the value from them, as there is a rule: On consumed stolen property it is very bard to collect. It may also happen that D and E bought their estate without any responsibility on A's

part; hence one may take it away without any claim from these parties. But if such a case is to be feared, why should they furnish such receipts in cases of loans, as the same may happen with promissory notes--that the goods should be taken away while the receipt is in the hand of the borrower? There it is different. If the claim comes with a promissory note which had nothing to do with this estate, the possessors of the estate would investigate the matter, whether the borrower had paid him the money due, and would not return the estate without consulting the seller, who is the debtor on that promissory note: which is not the case if the document was for real estate, as in such cases usually estates are claimed, and not money.

The master said: "It may be written without mentioning the responsibility," etc. How, then, should it be written? Thus said R. Na'hman: This deed is not for collection, neither from encumbered nor from unencumbered estates, but only to testify that the estate belongs to so and so, who is the buyer of it. Said Raphram: From this, where it must be written that such a document is not in force for collection, it may be inferred that in such a one where nothing is written there is authority to collect with it even from encumbered estates; as it is to be supposed that it is an error of the scribe, who had forgotten to insert the responsibility of the seller. R. Ashi, however, maintains: A document in which nothing is mentioned does not collect from encumbered estates. And the above Boraitha, which states, "not to mention the responsibility," etc., is not as R. Na'hman explained it, but is to be taken

literally--that nothing is to be mentioned--and then he is not responsible.

There was a woman who gave money to one that he might buy estates for her. He bought them for her, without responsibility in case there should be claims. And she came to complain before R. Na'hman, who said: The woman is right, as she sent to you to the end that she should have benefit, but not that she should suffer damage. You, therefore, have to buy from the woman without responsibility, and thereafter to sell to her with your responsibility.

It is said above by R. Simeon b. Gamaliel: If one has presented a gift . . . the gift is considered returned. What is his reason? Said R. Assi: Because it is to be considered as if one were to say: I give you this for a present so long as you keep this document. Rabba opposed: If so, how is it if this document was torn or lost--must one also return the gift? Therefore, said he, the point of the difference between R. Simeon and the rabbis is thus: According to R. Simeon, title is given to documents and to all their contents by transferring; and therefore when the donee returned it to the donor, the latter acquired title to it and to its contents. But according to the rabbis, title is not given by transferring; hence when the donee takes possession of the gift, the returning of the document counts nothing.

The rabbis taught: If one came to claim a field, saying that he possesses a deed, and also that it was in his possession the years of hazakah--according to Rabbi, the main evidence should be the deed (if he cannot show it, his second claim of hazakah must not be considered); and R. Simeon b. Gamaliel maintains: The main evidence is the hazakah. What is the point of their difference? When R. Dimi came from Palestine, he said: They differ whether title is given to documents. by transferring. According to R. Simeon b. Gamaliel, the transferring does not give title; and according to Rabbi, it does. Said Abayi to him: If so, you differ with my master, Rabba, who said above: R. Simeon b. Gamaliel holds: That transferring does give title. And he answered: And what if I do differ? Why not? Rejoined Abayi: I mean to say that the above Boraitha could

be explained only as done by my master, but not otherwise. And then, if it is as you say, R. Simeon

contradicts himself. Therefore, said Abayi, the point of the difference between Rabbi and R. Simeon b. Gamaliel in the Boraitha just cited is: In case it happened that one witness who signed the deed was found to be a relative, or for some other reason incompetent to be a witness. And it is the same point in which R. Meir and R. Elazar differ. Rabbi holds with R. Elazar, who says that the final act of a divorce, or anything else, is to be considered done by the witnesses who are present at the transfer, and not by the witnesses who sign the document. And R. Simeon b. Gamaliel holds with R. Meir, who said: The final act is considered done by the witnesses who sign the document.

But did not R. Abba say: Even R. Elazar admitted that if there was any forgery in the document, or there were incompetent witnesses, the transferring is not considered, even when it was done by lawful witnesses? Therefore said Rabhina: All agree that if the court said, "We have investigated the testimony of the witnesses, and found it false," or that one of them was incompetent, the document is invalid, as R. Abba declared. And the above Tanaim differ concerning a document without witnesses at all. According to Rabbi, who holds with R. Elazar, if it was transferred in the presence of witnesses, the act is considered final; and according to R. Simeon, who holds with R. Meir, it is not. And if you wish, it may be said that the point of their difference is: Whether a document which the signer admits must or must not be approved by the court. According to Rabbi, it must not; and according to R. Simeon, it must. But have we not heard just the reverse in Middle Gate, p. 11? (The rabbis taught:) Therefore we must say that the point of their difference is: If one is obliged to convince the court of all the evidence one mentioned at the beginning of the trial, or it is sufficient if he convinces it of one part of it (*i.e.*, if he said, first, "My evidence is a deed, and also hazakah," and thereafter he was able to convince the court of the hazakah only). According to Rabbi: It is not sufficient unless he should show the deed. And according to R. Simeon: The latter evidence suffices. But if he should be able to show the deed, then all agree that the evidence of the hazakah would not be necessary at all. And this is similar to the following case: R. Itz'hak b. Joseph claimed to have money with R. Abba,

and came to complain before R. Itz'hak of Naf'ha. And R. Abba claimed: I paid you in the presence of A and B. Said R. Itz'hak (of Naf'ha) to him: Bring, then, A and B--they shall testify. Said he to him: Am I not to be trusted, even if they do not appear? Is it not a Halakha: If one borrowed money in the presence of witnesses, it is not necessary for the borrower that he shall pay him in the presence of witnesses? Rejoined the former: I hold with the Halakha which was said by you, master, in the name of R. Ada b. Ahaba, quoting Rabh: If one says, "I paid you in the presence of A and B," it is necessary for him that A and B shall come and testify. Said R. Abba again: But did not R. Giddle say in the name of Rabh: The Halakha prevails with Rabban Simeon b. Gamaliel? And even Rabh, his opponent, meant with his statement only to make his evidence clear before the court (but not because the law dictates so)? And R. Itz'hak answered: I also mean you shall make your evidence clear before the court, as I hold with Rabha; and if you are not able to do so, you must pay.

MISHNA *VI.*: If one has paid a part of his debt, according to R. Jehudah, the promissory note must be changed (*i.e.*, the old note must be torn, and a new one made for the balance). According to R. Jose: The lender has to give a receipt for the amount paid. Said R. Jehudah: Then, according to you, the borrower must watch his receipt so that it shall not be consumed by mice. Answered R. Jose: Yea! This is better for the lender, as if it should be a difficulty for the borrower to watch the receipt he will pay the whole debt sooner; and we must not impair the right of the lender.

GEMARA: Said R. Huna in the name of Rabh: The Halakha prevails neither with R. Jehudah nor with R. Jose, but the court must tear the first note and write him another one with the same date as the first. Said R. Na'hman, according to others R. Jeremiah b. Abba, to R. Huna: If Rabh were aware of the following Boraitha: "The witnesses tear the note, and write for him another one with the same date as the first," he would retract from his statement that this must be done by the court. And he answered: He was aware of this Boraitha, and nevertheless he did not retract, for the reason that only the court has the power to collect money, which therefore may tear and write another one with the former date, but not witnesses

who have done the message they were ordered to, as they have no right to do the same again without a new order. Is that so? Did not R. Jehudah say in the name of Rabh: If a deed was lost, witnesses may write another one, even if this occurred ten times, to one field. Said R. Joseph: Rabh meant a deed of gift. And Rabha said: Rabh meant a document without any, responsibility of the estate for other claims.

Where is to be found the Boraitha cited above, of which Rabh was aware? It is thus: If one's debt was a thousand zuz on a document, and he paid five hundred, the witnesses may tear the document and write another one for five hundred, of the date of the old one. So is the decree of R. Jehudah. R. Jose, however, says: The document of the thousand remains, and a receipt for five hundred must he given to the borrower. And for two reasons it was said that a receipt should be written and handed to the borrower: first, because he should be compelled to pay as soon as possible; and, secondly, the debt should be counted from the first date. But does not R. Jehudah also say that a new document should be written with the same date as that which was torn? So said R. Jose to R. Jehudah: If you say that the document should be written from the first date, then I differ with you only in one thing--concerning the receipt; and if you think that the document should be written from the date on which a part was paid, then I differ with you in both.

The rabbis taught: If the document was written at the date used by the government, and such a date fell on a Sabbath or on the Day of Atonement, on which it is prohibited for an Israelite to write, this note is to be considered written with a later date, which is valid. So is the decree of R. Jehudah. But according to R. Jose, it is invalid. Said R. Jehudah to him: Did not such a case come before you in Cepphoris, and you made it valid? And he answered: I did so only with a case similar to that about which we are discussing, because, as the date fell on a Sabbath, it is highly probable that the document was of a later date; but in other cases, where such a supposition has no basis, I do not agree with you. But what answer is this? R. Jehudah also claimed that the case happened to be before R. Jose in Cepphoris. Said R. Pdath: All agree that if the date of the document was examined and found

to fall on a Sabbath, or on the Day of Atonement, it must be considered as with a later date, and it is valid. In what they do differ is: A document which is doubtful, if written with an earlier or a later date. According to R. Jehudah, who holds that in case of payment no receipt is given, but the document itself must be returned, it is valid, because it cannot do any harm to any one by being collectible twice. And according to R. Jose, who holds that for a payment in part the document must not be returned, and only a receipt is furnished, it is invalid, because he can collect with it the whole amount, as the receipt is in the hands of the borrower. Said R. Huna b. Jehoshua: Even according to them who say that a receipt may be written, it is only if a part or a half was paid; but for the whole amount no receipt is written, but he must return him the note; and if lost, he loses his money.

(Says the Gemara:) In reality it is not so, as a receipt may be written even on the whole amount; as it happened with R. Itz'hak b. Joseph, who had money with R. Abba, and when he demanded his money, R. Abba demanded his promissory note. And R. Itz'hak answered: The note is lost, and I will give you a receipt. And he answered: There are both Rabh and Samuel who taught that we do not write a receipt. And when this case came before R. Hanina b. Papi, he said: Rabh and Samuel were so beloved by us that if some would bring the earth of their graves we would keep it always before our eyes; but notwithstanding this, there are both R. Johanan and Resh Lakish who decided that a receipt should be given; and the same was said by Rabbin when he came from Palestine in the name of R. Ilah. Common sense also dictates so; as how can it be supposed that if the creditor lost the promissory note the debtor may consume the whole amount and enjoy himself? Abayi opposed: But after your theory that a receipt is to be written, how is it if the receipt is lost--should the lender collect the money again and enjoy himself? Said Rabha to him: Yea! So is the law, as we read in the Scriptures: "The borrower is a servant to the lender" [Prov. xxii. 7]. Said R. Yema, according to others R. Jeremiah of Diphthi, to R. Kahna: What is the basis of our custom that we write documents with later dates, and we also write receipts? And he answered: That which R. Abba said to his scribe: When it shall happen

that you have to write a document with a later date, you must write as follows: This document was postdated by us for a certain reason, and is dated not with the date it was ordered, but of to-day. Said R. Ashi to R. Kahna: However, in our day and in our country we do not act likewise. It is since R. Safras said to his scribe: Should you have to write a receipt for a lost promissory note, then, if you are aware of the date the promissory note was given, you must write: "The money which was due according to the note written on such and such a date was returned to the lender." And if you do not know the exact date, you must write: "The money due on a note of so and so, to so and so, was paid," not mentioning the date at all; and then, if the note should appear again, it will be of no value. Said Rabhina to R. Ashi, and according to others R. Ashi to R. Kahna: But why is it not customary in our time to do so, as we write documents with later dates without mentioning that they are postdated, and receipts with the date of payment, and we do mention the date of the document? And he answered: The rabbis enacted: One shall do so for his own sake; but if one does not care to do so, it will be his own fault if he should suffer damage. Said Rabba b. Ashila to the scribes: If you should have to write a deed of gift, or deeds in which the seller does not take the responsibility of the estate for the future, you shall do as follows: If you remember the date when the donor or the seller told you in the presence of witnesses to do so, you shall write that date; and if you do not recollect the exact date, you may

write the current date, and it will not be considered false. Rabh told his scribes, and the same did R. Huna: When you are writing a document in the city of Shili, although you were ordered to do so in the city of Hini, you must write in the document the city in which you are doing it, and not the city where you were ordered.

Rabha said: If one holds a promissory note for a hundred zuz, and requests that it shall be rewritten in two notes, each of fifty zuz, his request is to be refused--for the sake of both the lender and the borrower: for the lender it is better to have one document, as, should it happen that he pay the half, he will give him a receipt, which the borrower will have to watch, and therefore he will hasten to pay his debt; and for the borrower

it is also better, as the law of a document paid in part is, that the lender must take an oath (and in case he is lacking cash the lender will give him time rather than take an oath). And he said again: If one has two notes of fifty each, and he requests that one of a hundred should be made instead of the two, also to this request no attention should be paid--and also for the sake of both. For the lender it is better, if fifty is paid, that the other document should remain in force, so that he will not be obliged to take an oath; and also for the borrower it is better, having paid one note, that he shall not be bound to watch the receipt for the other half. R. Ashi said: If the lender holds a promissory note for a hundred zuz, and orders the scribe to write for him another note for fifty zuz, claiming that the half was paid by the borrower, he must not be listened to; nor if he asks that the note should be written from that date, or from the current date. Why so? It is to be feared that the borrower has paid the whole amount, and to the demand that his note should be returned, he was answered, "It was lost," and furnished him with a receipt instead; and this note for fifty zuz be will collect from him, claiming that this note has nothing to do with the former one.

MISHNA *VII.*: If there were two brothers, one rich and one poor, and they inherited from their father a bath-house or an olive-press house, if for business, they must share equally; but if for private use, the rich one may say to the poor, "You may hire slaves, that they shall heat the bath for your use"; or, "You may buy olives and press them for your private use, but I shall not allow you to do this for a stranger, and you take the benefit." If it happen that in one city two persons bear one and the same name, they cannot give promissory notes to each other nor can any of the inhabitants collect on a promissory note of one of them. If there were found a promissory note of one of the two persons by some one which is marked "paid," the other may also claim: My note is paid. How, then, shall they do, if they wish that their documents shall be of value? Write their names threefold--*e.g.*, Joseph b. Simeon b. Jacob; and if they are alike in this also, they must make a sign to their names (*e.g.*, if one is shorter than the other, he must say, "the Little"; and if they are both of equal size, if one is a priest, he shall write "Cohen").

GEMARA: There was a promissory note which came to the court of R. Huna, in which was written: "I, A, the son of B, have borrowed from *you* a mana." Said R. Huna: "From you" can be any one--even the Exilarch, or even King Sabur. Hence it may be that some one lost it, and you found it. Said R. Hisda to Rabba: You must study the case, as in the evening R. Huna will ask you how to decide it. He had deliberated, and found the following Boraitha: A divorce which was signed by witnesses, but there was no date. Said Aba Saul: Ii the divorce reads: "I divorced

her this day," it is valid. Hence we see that "this day" means that on which it was given out. The same is the case with this document; "from you" means from this man who holds it. Said Abayi to him: But perhaps Aba Saul holds with R. Elazar, who holds that the final act of the witnesses of transfer is considered (therefore he makes valid such a divorce as must be delivered in the presence of lawful witnesses). But in our case, why should it not be feared that the plaintiff found a lost note? And he answered: That such a supposition is not to be taken into consideration may be inferred from our Mishna, which states: If there are two persons who bear one and the same name, they cannot give promissory notes to each other, nor to any of the inhabitants, etc. But if one of them has a promissory note from one of the inhabitants, it is valid, and he may collect. Now, why is it not to be feared that it was lost by the other person who bears the same name, and this plaintiff found it? Hence we see that this is not taken into consideration. Abayi, however, may say that this is not taken into consideration because there is only one person who could lose it, and if so, he would certainly announce his loss; but in other cases, where it might be lost by any one, it should be feared. But is there not a Boraitha which states: As the two persons who bear the same name cannot collect promissory notes from each other, so also cannot one of them collect from any other one? Hence this Boraitha differs with our Mishna. And what is the point of their difference? Whether in such a case the plaintiff has to bring evidence. The Tana of the Mishna holds that he has not; and the Tana of the Boraitha maintains that he has. As it was taught: To promissory notes title is given by transferring. However, according to Abayi the holder

of them must bring evidence that they were transferred to him. And Rabha said: He must not.

Said Rabha: I infer my statement from the following Boraitha: If one of the brothers holds a promissory note from some one, claiming that his father or his brother had transferred it to him, it is for him to bring evidence. Hence we see that this law holds good only concerning brothers, who usually hinder one another, and claim that their brother took it without their or their father's consent; but in all other cases no evidence is needed. Abayi, however, maintains: On the contrary, this Boraitha comes to teach: Lest one say that concerning brothers, who hinder one another and are very careful with the inheritance, no evidence is needed for the one who holds the document, although in all other cases it is, the Boraitha came to state that it is not so. But there is another Boraitha: As the persons who bear the same name are allowed to take promissory notes from others, so they may take from each other. And what is the point of their difference? Whether a promissory note may be written for the borrower in the absence of the lender. The Tana of our Mishna holds that this may be done. Hence one of the two persons may go to the scribe, telling him that he wants to borrow from his fellow-citizen, who bears the same name, some money. And after he receives such a promissory note, he may claim that this was given by the other to him; therefore our Mishna says that they cannot collect from each other. And the Tana of the Boraitha holds: The promissory note must not be furnished to the borrower in the absence of the lender. Hence there is no fear.

"*If a promissory note was paid*," etc. We see, because a receipt was found. But how would it be if not? The promissory note would hold good. But our Mishna states: Nor can any of the inhabitants collect. Said R. Jeremiah: It speaks of when in the note his name was written threefold; but if so, let them see the receipt, to whom it was made out. Said R. Hoseah: It speaks of when it was written threefold in the note, but not in the receipt. Abayi, however, said: The Mishna is to be explained thus: If there was found among the borrower's documents a writing,

"The promissory note which I gave to Joseph b. Simeon is paid," if he possess such from the other, both are considered paid.

"*To write their names threefold*," etc. There is a Boraitha: If both were priests, they must write their names four fold--*e.g.*, Joseph b. Jacob b. Itz'hak b. Abraham; and that all the four names should be alike is very rare.

MISHNA *VIII.*: If one (while struggling with death) says to his son: "A promissory note among the notes I possess is paid, but I do not remember which," all of them are to be considered paid. If, however, one person has given two promissory notes, the larger amount is considered paid, and the smaller amount not.

GEMARA: Rabha said: If one says: "A promissory note from you, which I possess, is paid," and there were two from him, the larger amount is considered paid, and the smaller amount not; if, however, "The debt you owe me is paid," all the promissory notes from him which are in his hands are considered paid. Said Rabhina to him: According to your theory, if one says: "My field is sold to you," does it mean that the largest he has is sold? And if he said, "The field I possess is sold to you," does it mean all the fields? There it is different, as it is for the plaintiff to bring evidence; and if the buyer so claims, he has to bring evidence to what he claims. But here the creditor is the plaintiff; and if he says, "Your debt is paid," it is the best evidence that all the notes are paid.

MISHNA *IX.*: If one made a loan to his neighbor through a surety, he must not collect first from the surety, unless the borrower does not possess any estate; however, if the stipulation was made that he may collect from whom he pleases, then he may start with the surety.

R. Simeon b. Gamaliel (however) is of the opinion that even in such a case the lender may not start with the surety, unless the borrower does not possess anything. And he used to say thus: If one made himself a surety to a woman for her marriage contract, and thereafter the husband was about to divorce her, the court should compel him to vow that from the time divorced he should not derive any benefit from his former wife, which means not to remarry her, for fear that the husband and his wife may have made a bargain to collect the money for the marriage contract from the surety, and thereafter he will remarry her.

GEMARA: And why should not the creditor collect from the surety? Both Rabba and R. Joseph said: The surety may

claim: I have given bail for the money in case the borrower should die or run away, but not if I deliver him to you. R. Na'hman opposed, saying: Such is the Persian law. But this is not so, as the Persians collect from the surety only, even when the borrower possesses estates? R. Na'hman meant to say: Such a law is similar to a Persian law, for which they give no reason, and therefore he says the Mishna meant: He shall not summon the surety unless he has already summoned the borrower. So also we have learned in the following Boraitha: If one made a loan to his neighbor through a surety, he must not summon the surety first, unless the stipulation was that he might

collect from whom he pleased. R. Huna said: Whence do we deduce that a surety is obliged to pay? From [Gen. xliii. 9]: "I will be a surety for him." R. Hisda opposed, saying: He was not a surety only, but also a receiver, as it reads farther on, "from my hand shalt thou require him," and also [ibid. xlii. 37], "deliver him into my hand," etc. Therefore said R. Itz'hak: From [Prov. xx. 16]: "Take away his garment, because he hath become surety for a stranger." (Here is repeated from Middle Gate, p. 305. See there.)

Amimar said: Whether a surety has to pay or not, R. Jehudah and R. Jose differ. According to the latter, who holds that an asmachtha gives title, he is responsible; and according to the former, who holds that an asmachtha, does not give title, the surety is not obliged to pay. Said R. Ashi to him: But is it not a fact that a surety is responsible, although it is now taken as a rule that an asmachtha. does not give title? Therefore said R. Ashi: Because of the pleasure that the lender trusted him on his word, the surety made up his mind that the lender should be paid under all circumstances; and such a case it is not considered as an asmachtha, but as a debt which ties upon himself.

"*That he may collect from whom he pleases*," etc. Rabba b. b. Hana in the name of R. Johanan said: Even then, if the borrower possess estates, he must not collect from the surety. But does not the latter part of the Mishna state that Simeon b. Gamaliel said so; from which it is to be inferred that the first Tana holds that he may collect from the surety in any event? The Mishna is not complete, and should read thus: If one made a loan to his neighbor through a surety, he must not collect

through the surety unless he had made the stipulation that he might collect from whom he pleased. But even then he collects from the surety in case the borrower does not possess any estate; but if he does, he must collect from the borrower first, and if it should not be sufficient, then from the surety. If, however, the surety was also the receiver of the loan for the borrower, then he may collect from the surety, although the borrower possesses estate. R. Simeon b. Gamaliel, however, maintains that even then he collects from the borrower if he possesses any estate. (In the name of R. Johanan was said (First Gate, p. 156): In that case the Halakha does not prevail with R. Simeon b. Gamaliel.)

R. Huna said: If the surety said: "Lend to this man, and I am the surety"; or, "I will pay"; or, "Count the debt to me"; or, "Lend him, and I will give to you"--all these versions are considered surety. If, however, he said to him: "Give to him, and consider me as receiving the money"; or, "Give to him, and I will pay"; or, "Count the debt to me"; or, "Give to him, and I will return to you"--all these versions are considered receipt. (*I.e.*, if he said: "Borrow from him," it means that he should be the debtor: "In case he shall not pay, I will." But if he says, "Give to him," then the borrower is not considered here at all, as the lender gave by his order.)

The schoolmen propounded a question: How is it if he said, "Lend him, and count me as the receiver"; or, "Give to him, and I will be surety"? According to R. Itz'hak: In the first case, in which he remarked, "I will be the receiver," he must be so considered, although he said, "Lend *him*"; and in the second case, in which he said, "I will be surety," he is to be so considered, although he said, "*Give* to him." R. Hisda, however, maintains: In either case he is considered a receiver, unless he said, "Lend him, and I will be the surety." And according to Rabha: All the versions mentioned above are considered surety, unless he said, "Give to him, and I will return

to you."

Said Mar b. Amimar to R. Ashi: So said my father: If the expression was, "give to him, and I will return you," then has the lender nothing to do with the borrower. (Says the Gemara:) In reality it is not so. The lender may collect the

money from the borrower, unless the surety took the money from the hand of the lender and delivered it to the borrower.

There was a judge who transferred the estate of the borrower to the lender, before the lender had demanded his money from the borrower, and R. Hanin b. R. Yeba removed the judge. Said Rabha: Who so wise to do such a thing, if not R. Hanin b. R. Yeba, as he holds that the estates of the debtor are his surety; and our Mishna states: He must not collect from the surety, nor must he demand his debt first from the surety?

There was a surety for orphans who had paid the lender before he notified the orphans (*i.e.*, he was surety for the father of the orphans, who borrowed some money, and after his death he paid the lender from his own pocket, and then summoned the orphans to pay him from their estates). And R. Papa decided: To pay a debt for which there is no document is a meritorious act, to which orphans who are not of age cannot be compelled; and therefore the surety must wait with his claim until they shall become of age. R. Huna b. Jehoshua, however, maintains: The reason why the orphans have not to pay until they shall become of age is, because they are not aware that the deceased had not paid such a debt. And the difference of the two statements is, in case the deceased had confessed before his death that he had not yet repaid the debt. Then, according to R. Huna, the orphans may be compelled to pay; but not, according to R. Papa.

A message was sent from Palestine: If one was put under the ban because he declined to pay his debt, and he died while still under the ban, he is to be considered as if he had confessed before his death that he had not yet paid, and the orphans have to pay, as the Halakha prevails in accordance with R. Huna b. Jehoshua.

An objection was raised from the following: If the promissory note of the deceased was in the hands of the surety, who claims to have paid the lender, and he demands the debt from the orphans' estates, he cannot collect (for perhaps the lender lost it, and he found it). If, however, there was marked in the note by the lender that he has received the debt from the surety, he may. Hence this is correct only with R. Huna's statement; but it contradicts R. Papa, who said: The orphans must not

be compelled to pay in such a case. R. Papa may say: When, the lender wrote that he received the money from the surety and transferred the promissory note to him, it is no longer considered a debt without a document, the payment of which is only a meritorious act, to which the orphans cannot be compelled; as for that purpose the tender marked, "I have received from you that from this date the promissory note should be considered as if given by the deceased to the surety."

There was a surety for a deceased debtor to a heathen, who paid the heathen before he had demanded his debt from the orphans. Said R. Mordecai to R. Ashi: So said Abimi of Hagrunia in the name of Rabha: Even according to him who holds that it may be doubted whether the deceased had paid his debt before dying, it is only when the creditor was a Jew, but not when he was a heathen, who usually demands the debt from the surety and not from the debtor. Answered R. Ashi: "It is just the contrary. Even according to him who said that it must not be doubted whether the debt was paid, it is only concerning a Jew; but concerning a heathen, whose law dictates that they have to collect the debt from the surety, it is to be feared that if the surety should not have in his hand an amount which would cover the debt in case it should not be paid, he would not consent to be a surety; and therefore he cannot collect from the orphans except by suing them when they shall be of age.

"*If one made himself surety to a woman for a marriage contract*," etc. Moses b. Azoi was a surety for the marriage contract of his daughter-in-law, whose husband was R. Huna, who was a scholar, and became thereafter very poor and was unable to support his family. Said Abayi: Is there not one who shall advise R. Huna to divorce his wife, and she shall go to his father, who is rich, and collect the marriage contract, and thereafter R. Huna shall remarry her? Said Rabha to him: But does not out Mishna state: "He shall vow not to derive any benefit," etc.? Rejoined Abayi: Must, then, every one who wishes to divorce his wife go to the court? Finally it was developed that R. Huna was a priest, who could not remarry his wife in case of being divorced. Said Abayi: This is what people say: Poverty follows in the path of the poor. But did he not say above (p. 304), that he who gives such advice

is called a shrewd knave? In this case, where the surety was his father and the son was a scholar, it is different. But was not the father a surety only, who has not to pay (as will be explained farther on)? He was also a receiver. But even then, it is correct according to him who holds that a receiver must pay, even in case the groom possessed nothing at the time of marriage. But what can be said to him who said that in such a case even a receiver is not to be compelled to pay? It may be said that when his father became surety the son was still in the possession of some estates; and if you wish, it may be said that with a father it is different. As it was taught: A surety in a marriage contract, all agree that he has not to pay. A receiver from a creditor, all agree he must pay; but concerning a receiver in a marriage contract and a surety from a creditor the rabbis differ. According to one: If the borrower possessed estates at the time the loan was made, the receiver must pay, as it may be supposed that he obliged himself with all his mind, as he had nothing to fear; and the other holds: He must pay in any event. The Halakha, however, prevails: A surety must pay in any event, unless he was a surety to a marriage contract, even in case the husband was in possession of estates at the time he became surety. And the reason is, because it may be supposed that he did so as a meritorious act, in order that the couple should not be parted; and he did no harm to the bride, as, if the husband had money, he would pay.

R. Huna said: A sick person who has consecrated all his estates, and at the same time said, "So and so has a mana with me," he may be trusted, as it is to be assumed that one would not use deceit against the sanctuary. R. Na'hman opposed: Is it, then, usual that one should use deceit against his children? And, nevertheless, both Rabh and Samuel say: If a sick person said, "So and so has a mana with me," if he added, "Give to him," he is to be listened to; but if he did not, he is not to be listened to. Hence we see that, if he did not say "Give," his statement that so and so has a mana with him is considered as if he did so for the purpose that, should he be cured, his

children should not think him very rich. Why should not the same be applied in the case of the sanctuary. R. Huna speaks in case there was a promissory note, and only the sick person admitted that the note was a right one. if so, then we must

say that the statements of Rabh and Samuel applied even when there was no promissory note. But if so, it was a loan without a document, and both Rabh and Samuel said: On such a loan one cannot collect, neither from the heirs nor from the buyers? Therefore said R. Na'hman: In both cases it speaks of when there was a document: one case treats of when the note was approved, and the other when it was not. And then if he said "Give," he approves the note, and is to be listened to; and if he does not say "Give," the note remains unapproved.

Rabba said: A sick person who said, "A has a mana with me," and thereafter the orphans claimed that they have paid, they are to be trusted. If, however, he said, "Give a mana to A," and the orphans say they have paid, they are not to be trusted. But is not common sense against such a theory? It seems just the contrary. If the father said, "Give," and the orphans said "We did so," they may be trusted; but if the father said, "A had a mana with me," it may be supposed they did not hasten to pay him, and why should they be trusted? Therefore if such a statement was made by Rabba, it must be thus: If a sick person said, "A has a mana with me," and the orphans thereafter said that after deliberating the deceased said, "I have paid it already," they may be trusted, as it is probable the deceased remembered that he had returned it. But if the sick person says, "Give a mana," and thereafter the orphans claim the same as is said above, they are not to be trusted; as if it were for deliberation, he would not say it give."

Rabha questioned: If a sick person had confessed (*i.e.*, his creditor came to him, saying, "You owe me a mana," and he said, "yea"), must the sick person also add "yea," that those who are present shall be witnesses, as is required in such a case of one in good health, or not? And it is also a question whether he must say to the witnesses: "Mark this in writing "; and also whether a sick person has the right to say, "It was only a joke," or, "This is out of the question." Concerning one who is dying, after deliberating, he came to the conclusion that all these are not necessary, as there is a rule: The words of a dying person are to be considered as written and delivered to whom it concerns.

MISHNA *X*.: If one borrows money on a promissory note, the lender has a right to collect from encumbered estates; and

if without a note, but in presence of witnesses, the lender may collect from unencumbered only. If A holds a writing that B owes him money (not a promissory note, which usually must be drawn by witnesses), he collects from unencumbered estates only. A surety who has signed his name after the signatures of the document ("I, so and so, am a surety"), the lender may collect from the surety from unencumbered estates only (as it is considered a verbal surety, as there were no witnesses who testified to this).

Such a case happened to come before R. Ishmael, and he decided that he should collect from free estate. Ben Nanas, however, maintains: He must not collect from any estate. And to the

question of R. Ishmael: Why so? he answered: If it happen that a creditor sees his debtor in the market, grapples him by the throat, and one passes by and says, "Leave him alone, I will pay," he is nevertheless free, because the loan was made not upon his surety. The same is the case here. If, after the document was made and the witnesses signed it, he adds, "I am a surety," he is not considered such, as he was a surety when the loan was already made. Said R. Ishmael: If one wishes to become wise, he shall occupy himself with the civil law; for there is no store (of wisdom) in the entire Law richer than it (the civil law). And those who wish to study civil law may take lessons of Ben Nanas.

GEMARA: Ula said: Biblically there is no difference between a loan on a document and by word of mouth; and it should be collected from encumbered estates. Why is it said that on a verbal one, one collects from free estate only? Because the buyers of the borrower should not suffer damage (*i.e.*, as they could not be aware of a thing done verbally). But when there is a document, it is their own fault if they do not investigate before they buy. Rabba, however, maintains the contrary: Both loans ought to be collected from free estates only; as, according to the biblical law, the estates are not mortgaged even if there is a document (unless it is so written). But why did the rabbis enact that a document collects from encumbered estate? In order not to close the door for borrowers. For a verbal loan, however, they did not enact, as it is not known to the people; and the buyers from the borrower could not know there was a loan.

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Did, indeed, Rabba say so? Was not his decision [in Chapter VIII., p. 274] "that a first-born takes a double share in the estate collected after the death of the father"? Now if not mortgaged biblically, in a document why should he take a double share--to which he is not entitled in movable property or money collected after death? And lest one say that the names of Ula and Rabba should be reversed in the above statements, this would not hold good, as we have heard Ula saying elsewhere that a creditor collects biblically from the worse estate of the debtor. Hence we see that Ula holds that estates are mortgaged biblically. (This presents no difficulty, as the cited statement of Rabba [in Chapter VIII.] was only to give the reason of the Palestinians; but he himself does not hold with them.)

Both Rabh and Samuel hold: A verbal loan is not collectible--neither from heirs nor from buyers; as, biblically, estates are not mortgaged on any loan. But R. Johanan and Resh Lakish both hold: They are mortgaged, and therefore a loan is collectible--whether from heirs or from buyers. Said R. Papa: The Halakha prevails that a verbal loan is collectible from heirs, for the purpose of not closing the door to borrowers; but is not collectible from buyers, who could not know of the existence of such a debt.

"*If A holds a writing from unencumbered estates*," etc. Rabba b. Nathan questioned R. Johanan: How is it if this writing was approved by the court? And he answered: Even then, the same is the case. Rami b. Hama objected from a Mishna in Tract Gittin, in which it is stated that, according to R. Elazar, if such a document, without witnesses, was given to the lender in the presence of witnesses, he may collect from encumbered estates? The case is different, as the writing was with the intention of transferring it in the presence of witnesses; it is the same as if the witnesses had signed the document.

"*A surety . . . after the signatures*," etc. Said Rabh: If the surety signed before the signatures, it may be collected from encumbered estates; and if after, from unencumbered estates only. But at

some other time the same Rabh said: Even if he had signed his name before the signatures, it is to be collected from free estates only. Hence Rabh contradicts himself.

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[paragraph continues] This presents no difficulty, as his statement, from free estates only, speaks of when the surety wrote, *e.g.*, "B is a surety," which does not make it clear for whom he is a surety; and the witnesses who signed their names after him, perhaps they have nothing to do with the surety. And his statement that it is collectible from encumbered estates speaks of when there was written after the text, explaining the loan, "And so and so is the surety," to which the approval was by the witnesses signed after him. And the same was said by R. Johanan.

"*Such a case came before R. Ishmael*," etc. Said Rabba b. b. Hana in the name of R. Johanan: Although R. Ishmael praised Ben Nanas, the Halakha prevails with R. Ishmael.

The schoolmen propounded a question: How is it if such a case as illustrated by Ben Nanas occurs? Come and hear what R. Jacob said in the name of R. Johanan: Even then, R. Ishmael differs with him. But with whom, then, does the Halakha prevail? Come and hear what Rabbin, when he came from Palestine, said in the name of Johanan: R. Ishmael differs with Ben Nanas even in the case illustrated by him, and the Halakha prevails also in this case with R. Ishmael. Said R. Jehudah in the name of Samuel: However, if the man who said, "Leave him alone, I will pay," fulfils his promise with the ceremony of a sudarium, he is mortgaged. Infer from this that in case of all other sureties no sudarium is necessary; and this differs with R. Na'hman, who said: Only a surety, in the presence of the court, is free from a sudarium; but all others are not. The Halakha, however, prevails that with a surety who was present when the money was delivered, a sudarium is not needed, but after the delivery it is needed. With a surety appointed by the court it is not needed, as, because of his pleasure at the court choosing him to be the surety, he makes up his mind to pay, and is mortgaged.

END OF TRACT BABA BATHRA AND OF VOL. VI. (XIV.)

Footnotes

358:1 All documents were called by the Mishna "get." This term was afterwards applied to a bill of divorce. The Gemara, however, uses the term "shtar" for documents.

358:2 In ancient times they used to write documents as follows: The scribe wrote one line, then left a blank the size of the line written, and folded it over and sewed it; then he wrote on top of the folding, and again left a blank of the same size, and folded it over the writing and sewed again, and so on; so that after the document was complete the signatures of the witnesses remained on the outside.

360:1 The text continues to discuss the different kinds of forgery possible, and gives illustrations so complicated that it would be difficult for the reader to get any idea of them. They are unimportant, and therefore omitted.

362:1 Here also are illustrations of Hebrew words, which it would be difficult for the English reader to understand, and are therefore omitted.

362:2 We have omitted the discussion in the Gemara as to the reasons of Rabh and Johanan about the risk of forgery, with many illustrations of great complication, which would hardly be understood if translated, and are also of no importance.

367:1 In the Bible there are many examples of names which consist of only two letters.

368:1 "Thlath" means three, "thlathin" thirty; and so also is it with all the words from three to ten: "arba" means four, and with the suffix "in" it means forty; "eser" means ten, "eserin" means twenty.

372:1 This term is explained in previous volumes in several places.

375:1 The commentators give illustrations of how such a bargain might be made, so involved and far-fetched that we spare the reader their infliction.