

rights are not money, but here, however, the reference is to tebalim which he inherited from the house of his maternal grandfather, a priest, and they differ as to whether unseparated [priestly] dues are regarded as separated: one Master holds that they are regarded as separated,<sup>6</sup> and the other that they are not. Alternatively, all agree that they are regarded as separated, and disposal rights have no monetary value. Here, however, they differ in respect to Samuel's dictum, for Samuel said: One grain of wheat frees the whole stack:<sup>7</sup> One Master accepts Samuel's ruling; the other does not accept it.<sup>8</sup> Another alternative: All reject Samuel's dictum, but here this is Rabbi's reason, viz., the Rabbis penalized the thief. Another alternative: all agree with Samuel; but here this is R. Jose son of R. Judah's reason: The Rabbis penalized the owner, for he should not have tarried with his tebel.<sup>9</sup>

We learnt: IF ONE BETROTHS [A WOMAN] WITH TERUMOTH, TITHES, [PRIESTLY] GIFTS, THE WATER OF PURIFICATION AND THE ASHES OF PURIFICATION, SHE IS BETROTHED, EVEN AN ISRAELITE. But the following is opposed thereto: If one accepts payment for judging, his judgments are null; for testifying, his testimony is worthless; for sprinkling and mixing [with water] the ashes [of the Red Heifer],<sup>10</sup> his water is cavern water<sup>11</sup> and his ashes are ashes of a hearth!<sup>12</sup> — Said Abaye. There is no difficulty: here it [the Mishnah] refers to payment for bringing [the ashes] and drawing [the water];<sup>13</sup> there, payment for sprinkling and mixing [are meant].<sup>14</sup> This may be proved too, for here it is stated: WITH THE WATER OF PURIFICATION AND THE ASHES OF PURIFICATION,<sup>15</sup> while there it is taught, for sprinkling and mixing. This proves it.

### CHAPTER III

MISHNAH. IF HE SAYS TO HIS NEIGHBOUR, 'GO FORTH AND BETROTH ME SUCH A WOMAN,' AND HE GOES AND BETROTHS HER TO HIMSELF, SHE IS BETROTHED TO THE SECOND. LIKEWISE, IF HE SAYS TO A WOMAN, 'BE THOU BETROTHED UNTO ME AFTER THIRTY DAYS,' AND ANOTHER COMES AND BETROTHS HER WITHIN THE THIRTY DAYS, SHE IS BETROTHED TO THE SECOND: THUS AN ISRAELITE'S DAUGHTER [BETROTHED] TO A PRIEST MAY EAT TERUMAH.<sup>16</sup> [BUT IF HE DECLARES, BE THOU BETROTHED UNTO ME [FROM NOW AND AFTER THIRTY DAYS,]<sup>17</sup> AND ANOTHER COMES AND BETROTHS HER WITHIN THE THIRTY DAYS, SHE IS BETROTHED AND NOT BETROTHED [TO BOTH]:<sup>18</sup> AN ISRAELITE'S DAUGHTER [THUS BETROTHED] TO A PRIEST, OR A PRIEST'S DAUGHTER TO AN ISRAELITE, MAY NOT EAT TERUMAH.<sup>19</sup>

GEMARA. IF HE SAYS TO HIS NEIGHBOUR . . . A Tanna taught: What he did is done, but that he has behaved toward him as a cheat. And our Tanna?<sup>20</sup> — When he states: AND HE GOES,<sup>21</sup> he indeed means, He goes in cheating fashion. Why is it taught here, IF HE SAYS TO HIS NEIGHBOUR,

(1) This is explained in the text.

(2) Deriving the word from huza, 'shrub', he understood him to say 'You are a shrubcutter'; i.e., your suggestion shows that your knowledge is only fit for this work.

(3) An ancient town below Nehardea, but nearer to Sura, within whose province it lay in matters of jurisdiction. Obermeyer, p. 299f.

(4) The question whether disposal rights rank as money.

(5) Including the terumoth and tithes which were yet to be separated. Ran in Ned. 84b explains: including the value of the disposal rights of the terumoth and tithes.

(6) Hence they have a monetary value to the Israelite, and so the thief must pay for them.

(7) [The removal of one single grain is sufficient to raise the prohibition that rests on the stack, as far as a non-priest is concerned, though the precept of 'giving' terumah is not fulfilled except on setting aside for the priest an amount varying between one fortieth to one sixtieth.]

(8) It is now understood that the reference is to one's ordinary produce, not to a legacy. Now, Rabbi agrees with Samuel: hence the robbed person can say: 'It was all mine, for I would have separated only one grain.' According to this, the controversy refers only to the value of terumah, which, notwithstanding Samuel's dictum, varied from one fortieth to one sixtieth. But the thief is certainly not liable for the tithe it contains, on all views, since that must be one tenth.

(9) But should have separated the dues when the obligation arose.

(10) An unclean person. v. Num. XIX, 17ff.

(11) I.e., useless, for running ('living') water is specified; *ibid.* 17.

(12) I.e., like ashes of any substance, not those of the red heifer, hence unfit. — This shews that they have no monetary value, since payment is forbidden.

(13) That is permitted.

(14) Which is forbidden.

(15) [They were, that is to say, still unmixed, and he betrothed her with them. *Tosaf. Ri.*]

(16) Because she is certainly betrothed to him.

(17) As though it were a long ceremony, commencing immediately but requiring thirty days for its completion.

(18) I.e., she is not free from either, nor may she live with either; v. p. 47. n. 10.

(19) Her status being undetermined.

(20) Does he too not condemn him?

(21) *Lit.*, 'AND HE WENT'.

## Talmud - Mas. Kiddushin 59a

whilst elsewhere<sup>1</sup> it is taught. 'If he says to his agent'<sup>2</sup> — We are informed of something noteworthy here, and likewise there. We are informed of something noteworthy here: for if 'his agent' were stated: I might think, Only his agent is stigmatised a cheat, because he relies upon him, thinking, 'He will perform my bidding';<sup>3</sup> but as for his neighbour, seeing that he does not rely upon him,<sup>4</sup> I might say that he is not a cheat. There too we are taught what is noteworthy. For if it were stated: 'If he says to his neighbour.' I might think, Only if his neighbour betroths her elsewhere is she not betrothed, because he thinks that he will not trouble;<sup>5</sup> but as for his agent, who will trouble. I might think, He merely indicates the place to him.<sup>6</sup> Hence we are taught [otherwise].

Rabin<sup>7</sup> the pious went to betroth a certain woman for his son, but betrothed her for himself. But was it not taught. What he did is done, but that he has behaved toward him as a cheat? — They would not give her to him [his son]. Then he should have informed him!<sup>8</sup> — He feared that in the meantime another man might come and betroth her.

Rabbah b. Bar Hanah gave money to Rab [and] instructed him, 'Buy this land for me,' but he went and bought it for himself. But did we not learn, What he did is done, yet he has behaved toward him as a cheat? — It was a stretch of land belonging to lawless<sup>9</sup> men;<sup>10</sup> for Rab they shewed respect. but would not for Rabbah b. Bar Hanah. Then he should have informed him? He feared that in the meantime another person might come and buy it.

R. Giddal was negotiating for a certain field, when R. Abba went and bought it. Thereupon R. Giddal went and complained about him to R. Zera, who went [in turn] and complained to R. Isaac Nappaha.<sup>11</sup> 'Wait until he comes up to us for the Festival,' said he to him. When he came up he met and asked him, 'If a poor man is examining<sup>12</sup> a cake<sup>13</sup> and another comes and takes it away from him, what then?' 'He is called a wicked man,' was his answer: 'Then why did you, Sir, act so?' he questioned him. 'I did not know [that he was negotiating for it],' he rejoined. 'Then let him have it now,' he suggested. 'I will not sell it to him,' he returned, 'because it is the first field [which I have ever bought]. and it is not a [good] omen;<sup>14</sup> but if he wants it as a gift, let him take it.' Now, R. Giddal would not take possession,<sup>15</sup> because it is written: But he that hateth gifts shall live,<sup>16</sup> nor would R. Abba, because R. Giddal had negotiated for it; and so neither took possession, and it was called 'The Rabbis' field'.<sup>17</sup>

LIKEWISE, IF ONE SAYS TO A WOMAN, BE THOU BETROTHED UNTO ME etc. What if another does not come and betroth her within these thirty days? — Rab and Samuel both rule: She is betrothed, even if the money [of betrothal] is consumed. What is the reason? This money is neither like a loan nor like a deposit. It is not like a deposit. [because] a deposit is consumed in its owner's possession,<sup>18</sup> whereas this is consumed in her possession. Again, it is not like a loan, [because] a loan is given to be expended,<sup>19</sup> whereas this was given to her for betrothal.

What if another does not come and betroth her, but she herself retracts? — R. Johanan said: She can retract, [because] words can come and nullify words.<sup>20</sup> Resh Lakish maintained: She cannot retract, [because] words cannot come and nullify words — R. Johanan refuted Resh Lakish: If he annuls,<sup>21</sup> if before he [his agent] has made a separation, his separation is invalid. Now here it is speech against speech,<sup>22</sup> yet one comes and nullifies the other? — Giving money into a woman's hand is different, because it is like action, and words cannot come and annul action.

He refuted him: If one sends a divorce to his wife, and then overtakes the messenger or sends [another] messenger after him and says to him, 'The divorce which I gave you is null,' it is indeed null. Now, giving the divorce into the messenger's hand is like giving money into a woman's hand, and yet it is taught: 'it is indeed null'? — There too, as long as the divorce has not reached her hand, it is speech against speech, and so one comes and annuls the other.

Resh Lakish objected to R. Johanan: All utensils become liable to<sup>23</sup> their uncleanness by intention, but ascend thence only by a change in substance.<sup>24</sup>

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(1) Mishnah supra 50a.

(2) 'Agent' or 'messenger' implies that he sends him to a particular place to betroth her; 'neighbour', that he gives him a general commission, but does not send him: 'should you meet her, betroth her to me.'

(3) Lit., 'sending'.

(4) Because he did not actually send him.

(5) To go elsewhere, therefore he specifies that particular place.

(6) But does not insist upon it.

(7) Var. lec., R. 'Amram.

(8) To clear himself of unjust suspicions.

(9) Lit., 'strong'.

(10) Who would not allow any person to own a field near theirs.

(11) Or, the smith.

(12) Lit., 'turning over'.

(13) To buy it.

(14) To sell.

(15) Lit., 'descend to it'.

(16) Prov. XV. 27.

(17) [For the use of the students of the law, v. supra p. 192, n. 6.]

(18) In that he bears the loss.

(19) I.e., if one lends money to a woman and subsequently proposes it for kiddushin, the money was to have been spent before it was to effect betrothal, and therefore is theoretically non-existent.

(20) Her refusal can nullify his betrothal.

(21) If one appoints an agent to separate his terumah, and then cancels his authority.

(22) Both the appointment and the annulment are by words.

(23) Lit., 'go down to'.

(24) Lit., 'change (brought about) by action'. Utensils may become unclean only when they are finished for use; if they require smoothing, scraping, etc., they are not liable to uncleanness, unless their owner declares his intention to use them as they are. On the other hand, having done so, it is not enough that he subsequently declares he will not use them thus,

in order to free them from their liability to uncleanness, unless he actually begins smoothing them. Or, if utensils are unclean, it is insufficient for him to declare that he will not use them any more, so that they should cease to be regarded as utensils, but must render them unfit for use by an act, e.g., break or make a hole in them.

## **Talmud - Mas. Kiddushin 59b**

An act can nullify both act and intention,<sup>1</sup> but intention can nullify neither act nor intention.<sup>2</sup> Now, it is well that it [intention] cannot nullify an act, because speech cannot nullify action; yet let it nullify intention?<sup>3</sup> — Intention, in respect to uncleanness, is different, because it ranks as action, and in accordance with R. Papa. For R. Papa pointed out a contradiction. It is written, and if one put [yitten], whereas we read, and if it be put [yuttan]:<sup>4</sup> how is this [to be reconciled]? ‘If it be put’ [must be] similar to ‘if one put’: just as when one puts, he desires it, so when it is put, he must desire it.<sup>5</sup> R. Zebid recited this discussion in reference to the following: Likewise, if she authorized her agent to betroth her, and went and betrothed herself: if hers came first, her kiddushin is valid; if her agent's came first, her own kiddushin is not valid.<sup>6</sup> Now, what if she did not betroth herself, but retracted?<sup>7</sup> R. Johanan said: She can retract; Resh Lakish maintained: She cannot retract. R. Johanan said: She can retract: Speech comes and nullifies speech — Resh Lakish said: She cannot retract: speech cannot come and nullify speech R. Johanan refuted Resh Lakish: If he annuls, if he does so before he [his agent] has made a separation, his separation is invalid? — Said Raba: Here the circumstances are, e.g., that the owner anticipated [his agent] by separating terumah for his stacks, so that it is action. Resh Lakish refuted R. Johanan: All utensils become liable to their uncleanness by intention, but ascend thence only by a changeful act. An act can nullify both act and intention, but intention can nullify neither act nor intention. Now, it is well that it cannot nullify an act, because speech cannot nullify action; yet let it nullify intention? — He replied: Intention, in respect to uncleanness, is different, because it ranks as action, and in accordance with R. Papa. For R. Papa pointed out a contradiction. It is written: ‘and if one put [yitten],’ whereas we read: ‘and if it be put [yuttan]’: how is this [to be reconciled]? ‘If it be put’ [must be] similar to ‘if one put’: just as when one puts, he desires it, so when it is put, he must desire it.

R. Johanan objected to Resh Lakish: If one sends a divorce to his wife, and then overtakes the messenger or sends a messenger after him and says, ‘The divorce which I gave you is null,’ it is null. This is a refutation of Resh Lakish. It is indeed a refutation. Now, the law is as R. Johanan., even in the first [dispute]; for though we might argue [there]. ‘Giving money into a woman's hand is different, for it is like an action,’ yet even so, speech comes and nullifies speech. But one law contradicts another! For you say; The law is as R. Johanan, while we have an established principle that the law is as R. Nahman, For the scholars propounded: Can he change his mind and divorce therewith?<sup>8</sup> R. Nahman said: He can change his mind and divorce therewith; R. Shesheth ruled: He cannot change his mind and divorce therewith — And it is an established [principle] that the law is as R. Nahman!<sup>9</sup> — Granted that he nullified it as far as the messenger is concerned, he did not nullify its efficacy as a divorce.<sup>10</sup>

**SHE IS BETROTHED TO THE SECOND.** Rab said: She is permanently betrothed to the second; Samuel ruled: She is betrothed to the second until [the end of the] thirty days, after which the betrothal of the second is lifted and that of the first is completed. R. Hisda sat, and found it difficult: Wherewith is the betrothal of the second lifted? — Said R. Joseph to him, You, Sir, learn this in connection with the first clause, and so find it difficult; but Rab Judah learns it in connection with the second clause, and finds no difficulty: **FROM NOW AND AFTER THIRTY DAYS.** etc. Rab said: She is permanently betrothed yet not betrothed; whereas Samuel ruled: She is betrothed and not betrothed only until [the end of the] thirty days, after which the betrothal of the second loses force and that of the first is completed. Now, Rab is in doubt whether it is a stipulation or a withdrawal;<sup>11</sup> whereas Samuel is certain that it is a stipulation. Now, this enters into the controversy of the following Tannaim: [If one declares, ‘Be thou divorced] from to-day and after my death,’ it is a

divorce and not a divorce: this is the view of the Sages.<sup>12</sup> Rabbi ruled: It is indeed a divorce.<sup>13</sup> Then let Rab say: The halachah agrees with the Rabbis, and let Samuel say: The halachah is as Rabbi? — It is necessary. For if Rab said: The halachah is as the Rabbis, I might argue. [That is only] there, seeing that he comes to alienate her;<sup>14</sup> but here, that he comes to attach her [to himself]. I would say that he agrees with Samuel that it is a stipulation.<sup>15</sup> And if Samuel said: The halachah is as Rabbi, I would argue, That is only there, because there is no divorce after death;<sup>16</sup> but here, seeing that the kiddushin can take effect thirty days later, I might say that he agrees with Rab. Thus it is necessary.

Abaye said: On Rab's view, If one came and said to her, 'Behold, thou art betrothed to me from now and after thirty days'; then another came and said to her, 'Behold, thou are betrothed unto me from now and after thirty days':<sup>17</sup>

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(1) E.g. if he first slightly smoothed a utensil, shewing that he considered this enough, or declared his intention to use it without smoothing, and then began to smooth it properly, the latter act nullifies the former, and until he finished it is not liable to uncleanness.

(2) If he first declares his intention not to smooth it, or begins using it without smoothing, and then declares that he will smooth it, and so it is unfinished, his second intention cannot nullify his first, or his action.

(3) On R. Johanan's view that speech nullifies speech.

(4) Lev. XI, 38. Foodstuffs, e.g., grain, cannot become unclean unless they receive moisture after being harvested. Now, the text as it stands may be read **וְרָתַן** 'one puts', which implies that a person must actually wet it; but the traditional reading **וְרָתַן** 'it be put', implying even if water accidentally falls thereon.

(5) I.e., if it falls there in circumstances that the owner may be assumed to be pleased therewith, it becomes liable to uncleanness. Thus Scripture intimates that mere thought has the force of action.

(6) V. infra 79a.

(7) cancelling her agent's authority. Rashi states: Whether she retracts in the agent's presence or not, Tosaf., more plausibly, explains: she retracted without informing the agent; for if she informed him it is obvious that she can withdraw.

(8) With a Get which he had annulled after giving it to the agent.

(9) Which proves that his second declaration does not nullify the validity of the document.

(10) I.e., he never intended to nullify the document itself, but merely the messenger's authority.

(11) When one declares, 'Be thou betrothed unto me from now and after thirty days', we do not know whether he means, 'Be thou betrothed unto me from now, providing that I am still willing in thirty days' time'; or, 'Be thou betrothed unto me from now — not after thirty days.' If the first is correct, when after thirty days he signifies his willingness, his betrothal was valid from the very beginning, and so the subsequent betrothal of another is null. But if the second is correct, this is the same as the first clause, and the second betrothal is valid. Hence her status remains permanently doubtful.

(12) Because we are doubtful: he might have meant, 'Be thou divorced from to-day, providing that I die,' in which case it is valid, or, 'Be thou divorced from to-day — no! only after my death': then it is invalid. If he dies childless, she may not marry her brother-in-law, lest it was a divorce; nor is she free to marry a stranger, lest it was not, and so must be freed by halizah, q.v. Glos.

(13) For it was certainly a stipulation.

(14) And as it is hard for him, he postpones it as much as possible, and therefore he may have retracted.

(15) Because he certainly desires the betrothal to take effect as early as possible.

(16) That is generally known, and therefore it must have been a stipulation.

(17) Which ended within the thirty.

## Talmud - Mas. Kiddushin 60a

then another came and said to her, 'Behold, thou art betrothed to me from now and after thirty days':<sup>1</sup> she requires a divorce from the first and the second, but not from the last. For on either alternative:<sup>2</sup> if it is a stipulation, that of the first is [valid] kiddushin, but not those of the second and third; if it is withdrawal, that of the last is kiddushin, but not of the first and the second.<sup>3</sup> But is this

not obvious? — I might say. This expression implies both stipulation and withdrawal, and she requires a divorce from each:<sup>4</sup> hence we are informed [otherwise]. ‘Ulla said in R. Johanan's name: Even a hundred have a hold on her.’<sup>5</sup> R. Assi said likewise in R. Johanan's name: Even a hundred have a hold on her. R. Mesharasheya son of R. Ammi said to R. Assi: I will explain R. Johanan's reason to you: they made themselves like a row of bricks, each leaving room for the next. R. Hanina raised an objection: [If one declares, ‘Be thou divorced] from to-day and after my death,’ it is a divorce and not a divorce, and if he dies, she must perform halizah, but not yibum.<sup>6</sup> Now, on Rab's view it is well, for this supports him; according to Samuel too, [there is no difficulty,] for [he may say], This agrees with the Rabbis, whereas I hold with Rabbi.<sup>7</sup> But according to R. Johanan who maintains that something is left over: every divorce which leaves something in her [tied to her husband] is entirely invalid:<sup>8</sup> then let him perform yibum? — Said Raba: The divorce is to free [her], and death is likewise; [hence] what the divorce leaves [undone] is completed by death — Abaye demurred: How compare! Divorce frees her from the yabam's authority, whereas death places her in the yabam's authority? But, said Abaye, there, what is the reason? As a preventive measure, on account of ‘From to-day, if I die,’ which is certainly a valid divorce.<sup>9</sup> Then let us enact that [if he says,] ‘from to-day, if I die,’ she shall perform halizah<sup>10</sup> on account of ‘from to-day and after death!’<sup>11</sup> — Should you say that she must perform halizah, she may submit to yibum.<sup>12</sup> Then here too, if you say that she must perform halizah, she may submit to yibum? — Then let her, and it does not matter, seeing that it<sup>13</sup> is only a Rabbinical precaution.<sup>14</sup>

**MISHNAH.** IF ONE SAYS TO A WOMAN. ‘BEHOLD, THOU ART BETROTHED UNTO ME<sup>15</sup> ON CONDITION THAT I GIVE THEE TWO HUNDRED ZUZ,’ SHE IS BETROTHED, AND HE MUST GIVE IT. ON CONDITION THAT I GIVE THEE WITHIN THIRTY DAYS FROM NOW: IF HE GIVES HER WITHIN THIRTY DAYS, SHE IS BETROTHED; IF NOT, SHE IS NOT BETROTHED. ON CONDITION THAT I POSSESS TWO HUNDRED ZUZ, SHE IS BETROTHED, PROVIDING HE POSSESSES [THEM]. ‘ON CONDITION THAT I SHEW THEE TWO HUNDRED ZUZ,’ SHE IS BETROTHED, AND HE MUST SHEW HER. BUT IF HE SHEWS HER [MONEY LYING] ON THE COUNTER,<sup>16</sup> SHE IS NOT BETROTHED.<sup>17</sup>

**GEMARA.** It was stated: R. Huna said: [The Mishnah means] and he must give it;<sup>18</sup> Rab Judah said: When he gives it:<sup>19</sup> ‘R. Huna said, and he must give it’: it is a condition, [and so] he fulfils the condition and goes on.<sup>20</sup> ‘Rab Judah said: When he gives it’: when he gives it, the kiddushin is valid; nevertheless now it is not kiddushin. Wherein do they differ? — They differ where she stretches out her hand and accepts kiddushin from another: on R. Huna's view it is not kiddushin; on Rab Judah's it is kiddushin. Now, we learnt similarly with reference to divorce. If one says to his wife, ‘Behold here is thy divorce on condition that thou givest me two hundred zuz,’ she is divorced, and must give [it]. It was stated: R. Huna said: And she must give it; Rab Judah said: When she gives it. ‘R. Huna said: And she must give it’: it is a condition, [and so] she proceeds to fulfil the condition. ‘Rab Judah said: When she gives it’: when she gives it to him, then it is a divorce; now, however it is not a divorce.

(1) Or simply, ‘Behold, thou art betrothed unto me. ð ‘From now,’ etc., is only mentioned as a parallel to the first two (Rashi).

(2) Lit., ‘what will you?’

(3) Hence only the first and last are in doubt.

(4) The first may have meant to retract, so that the second's kiddushin is valid, whilst the second himself may have stipulated, in which case his is valid. Again, both the first and second may have retracted, so the third's is valid; thus all three are in doubt.

(5) The kiddushin of each has partial force, because the declaration means, Let the kiddushin commence now, but be completed only in thirty days' time. On this view there is no question of stipulation or withdrawal.

(6) V. p. 301. n. 1.

(7) V. supra 59b.

(8) Cf. supra p. 13, n. 10.

(9) And yibum is then forbidden. But when he says: 'From to-day and after my death,' people may confuse it with the other. Hence the Rabbis forbade yibum in both cases.

(10) Though actually it is unnecessary.

(11) Which, being invalid, leaves her tied to the yabam, and necessitates halizah; and, as stated, these two may be confused.

(12) Thinking that there is a real tie.

(13) Sc. the law that she must not submit to yibum.

(14) Lit., 'fear'.

(15) E.g., with this perutah.

(16) Of a money-changer.

(17) Because it is understood that his own is meant.

(18) I.e., she is betrothed immediately, and then this obligation lies on him.

(19) Only then is she betrothed.

(20) I.e., when he can.

### **Talmud - Mas. Kiddushin 60b**

Wherein do they differ? — They differ where the divorce document is torn or lost [before the money is given]: according to R. Huna, it is a divorce; according to Rab Judah, it is not a divorce. Now, it is necessary [to state both cases]. For if we were told this of kiddushin [only, I would say] in that case R. Huna says thus, because he comes to attach her [to himself];<sup>1</sup> but as for divorce, where he comes to alienate her, I might say that he agrees with Rab Judah. And if the latter were taught: only there does R. Huna rule thus, for he [the husband] is not ashamed to demand it of her; but here [in the case of marriage], seeing that she is ashamed to demand it of him, I would argue that he agrees with Rab Judah. Thus both are necessary.

An objection was raised: 'Here is thy divorce, on condition that thou givest me two hundred zuz,' she is divorced even though the document is torn or lost;<sup>2</sup> yet she may not marry another until she has given it. Again, it was taught: 'Here is thy divorce on condition that thou givest me two hundred zuz,' and then he dies, if she gave it [before his death], she is not bound to the yabam; if not, she is bound to the yabam.<sup>3</sup> R. Simeon b. Gamaliel said: She can give it to his brother, father, or one of his relations.<sup>4</sup> Now, they differ only in so far as one Master holds, 'To me' [implies] 'but not to my heirs', whilst the other rules: 'Even to my heirs'; but all agree that it is a condition, which refutes Rab Judah! — Rab Judah answers you: Who is the authority for this? Rabbi. For R. Huna said in Rabbi's name:<sup>5</sup> He who says, 'On condition,' is as though he says: 'From now';<sup>6</sup> but the Rabbis disagree with him, and I hold with the Rabbis.

The text [says]: R. Huna said in Rabbi's name: He who says, 'on condition,' is as though he says: 'From now.' R. Zera observed: When we were in Babylon<sup>7</sup> we used to say: With reference to R. Huna's dictum in Rabbi's name, 'One who says: "on condition," is as though he says: "from now": the Rabbis dispute it. When I went up thither [Palestine], I found R. Assi sitting and expounding in R. Johanan's name: All agree that if he says: 'on condition,' it is as though he says: 'From now'. They differ only in respect of 'from to-day and after death'. And it was taught even so: 'From to-day and after [my death]': it is a divorce, yet not a divorce: this is the view of the Sages. Rabbi said: This indeed is a divorce.<sup>8</sup> Now, according to Rab Judah who maintains that they differ in respect of 'on condition' too' instead of disputing in [the case of] 'from to-day and after [my] death,' let them dispute in respect of 'on condition?' — That is to teach you the extent of Rabbi's view,<sup>9</sup> that even in the case of 'from to-day and after death,' it is a valid divorce. Then let them dispute with reference to 'on condition,' to shew you the extent of the Rabbis' view? — The extent of what is permitted is more important.<sup>10</sup>

ON CONDITION THAT I GIVE THEE WITHIN THIRTY DAYS FROM NOW' etc. But it is obvious? — I might have thought that it is not a condition,<sup>11</sup> and he said it to urge her on; hence we are told [that it is not so.]

ON CONDITION THAT I POSSESS TWO HUNDRED ZUZ' etc. But let us fear that he may possess it [secretly]? Moreover, it was taught: We fear that he may possess it? — There is no difficulty: The one refers to certain kiddushin; the other, to doubtful kiddushin.<sup>12</sup> 'ON CONDITION THAT I SHEW THEE TWO HUNDRED ZUZ' etc. A Tanna taught: Her purpose was to see none but his.

BUT IF HE SHEWS HER [MONEY LYING] ON THE COUNTER, SHE IS NOT BETROTHED. But it is obvious? — It is necessary [to teach it] only even when he holds the money in an investment.<sup>13</sup> MISHNAH. [IF HE SAYS TO HER 'BE THOU BETROTHED UNTO ME]<sup>14</sup> ON CONDITION THAT I OWN A BETH KOR<sup>15</sup> OF LAND',<sup>16</sup> SHE IS BETROTHED, PROVIDING THAT HE DOES OWN IT. ON CONDITION THAT I OWN IT IN SUCH AND SUCH A PLACE', IF HE OWNS IT THERE SHE IS BETROTHED, BUT IF NOT SHE IS NOT BETROTHED. 'ON CONDITION THAT I SHEW THEE A BETH KOR OF LAND,' SHE IS BETROTHED, PROVIDING THAT HE DOES SHEW IT TO HER. BUT IF HE SHEWS IT TO HER IN A PLAIN,<sup>17</sup> SHE IS NOT BETROTHED.

GEMARA. But let us fear that he may possess it? Moreover, it was taught. We fear that he may possess it? — There is no difficulty: the one refers to certain kiddushin; the other, to doubtful kiddushin.<sup>18</sup>

Why must it be taught with respect to both land and money? — It is necessary: for if we were told this of money, [I would say] that is because people are accustomed to hide money;<sup>19</sup> but as for land I would say: If he possesses land, it is known:<sup>20</sup> hence we are informed [otherwise].

ON CONDITION THAT I POSSESS IT IN SUCH AND SUCH A PLACE,' IF HE POSSESSES IT. etc. But it is obvious? — I might argue that he can say to her, 'What does it matter to you? I will take the trouble of bringing [its produce where you want it].' Hence we are informed [that it is not so].

ON CONDITION THAT I SHEW THEE A BETH KOR OF LAND. A Tanna taught: Her meaning was to see none but his.

BUT IF HE SHEWS IT TO HER IN A PLAIN, SHE IS NOT BETROTHED. But that is obvious? — It is necessary [to teach it] only if he holds it on a farming tenancy.<sup>21</sup>

With respect to hekdesch we learnt:

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(1) Therefore we assume that both are anxious for the kiddushin to be valid as early as possible, and determine that the first perutah shall effect it.

(2) By the time the condition is fulfilled. This contradicts Rab Judah.

(3) If her husband dies childless.

(4) Whereupon the divorce is retrospectively valid.

(5) The reading supra 8a is Rab, which is more correct per se, since Rab was his teacher. But as a Tanna is necessary here, it is referred to Rabbi.

(6) V. p. 29, n. 8.

(7) R. Zera hailed from Babylon. and went to study in Palestine.

(8) V. supra 59b.

(9) Lit., 'Rabbi's strength.'



- (10) I.e., it is more important to shew how far one maintains that a particular act is valid, rather than the opposing view how far it is invalid, for one must be more positive to permit than to forbid.
- (11) That it be given within the thirty days.
- (12) If he is not openly in possession of the stipulated sum she is not betrothed with certainty; v. p. 47. n. 10.
- (13) He was trading with another man's capital at a fixed percentage of profit and loss, so that he had a proprietary interest therein. Nevertheless she is not betrothed.
- (14) E.g., with this perutah.
- (15) An area which requires thirty se'ahs of seed, which is estimated at 1500 cubits X 50 cubits.
- (16) Lit., 'earth'.
- (17) Which does not belong to him.
- (18) v. p. 305. n. 5.
- (19) Hence even if he is not openly in possession of it, she is doubtfully betrothed.
- (20) Lit., 'it has a voice'.
- (21) Paying an agreed percentage of the crops in rent; v. p. 305, n. 6.

### **Talmud - Mas. Kiddushin 61a**

He who sanctifies his field when Jubilee is in force, must pay [for its redemption] fifty silver shekels for [an area requiring] a homer of barley seed.<sup>1</sup> If it contains ravines ten handbreadths deep, or rocks ten handbreadths high, they are not measured with it;<sup>2</sup> if less than this, they are measured therewith. Now, we pondered thereon: Granted that they are not sanctified together with the [rest of the] field, yet let them be sanctified separately? And should you answer, whatever is less than a beth kor is not counted.<sup>3</sup> But the following contradicts it: [And if a man shall sanctify unto the Lord part of a] field [of his possession, etc.]:<sup>4</sup> why is this stated? Because it is said, the sowing of a homer of barley shall be valued at fifty [shekels of silver]; [hence] I know it only if he sanctifies in such a manner;<sup>5</sup> how do I know to include a lethek.<sup>6</sup> half a lethek, a se'ah, tarkab<sup>7</sup> half a tarkab, and even a quarter [se'ah]? Because it is stated: 'a field,' whatever its size! — Said Mar 'Ukba b. Hama: The reference here is to ravines filled with water, because they are unfit for sowing. This may be proved too, because it is taught analogous to high rocks.<sup>8</sup> This proves it. If so, [it is the same] even if less than this?<sup>9</sup> — Those are called basins of the field<sup>10</sup> and ridges<sup>11</sup> of the field.<sup>12</sup>

With respect to purchase we learnt: If one says to his neighbour, 'I sell you a beth kor of land,' and it contains ravines ten handbreadths deep or rocks ten handbreadths high, they are not measured with it. And Mar 'Ukba b. Hama said: Even if they are not filled with water. What is the reason? — Said R. Papa: Because a man does not wish to pay his money for one field and it should appear as two or three plots.<sup>13</sup> How is it here:<sup>14</sup> do we compare it with hekdesch or purchase? — It is rational that we compare it to hekdesch. because he can say to her, 'I will exert myself<sup>15</sup> sow it, and bring [you the crop].' MISHNAH. R. MEIR SAID: EVERY STIPULATION WHICH IS NOT LIKE THAT OF THE CHILDREN OF GAD AND THE CHILDREN OF REUBEN IS NOT A [VALID] STIPULATION, BECAUSE IT IS WRITTEN. AND MOSES SAID UNTO THEM, IF THE CHILDREN OF GAD AND THE CHILDREN OF REUBEN WILL PASS WITH YOU OVER THE JORDAN, [. . . THEN YE SHALL GIVE THEM THE LAND OF GILEAD FOR A POSSESSION]. AND IT IS ALSO WRITTEN. BUT IF THEY WILL NOT PASS OVER WITH YOU ARMED, THEN THEY SHALL HAVE POSSESSIONS AMONG YOU IN THE LAND OF CANAAN.<sup>16</sup> R. HANINA B. GAMALIEL MAINTAINED: THE MATTER HAD TO BE STATED. FOR OTHERWISE IT IMPLIES THAT THEY SHOULD HAVE NO INHERITANCE EVEN IN CANAAN.<sup>17</sup>

GEMARA. R. Hanina b. Gamaliel says well to R. Meir? — R. Meir answers you: Should you think that it does not come for [teaching] a double stipulation, it [Scripture] should write, 'but if they will not pass over . . . they shall have possession among you': why state, 'in the land of Canaan'?

- (1) Whatever its actual value, in accordance with Lev. XXVII, 16.
- (2) As part of the total area.
- (3) Because that is the smallest area mentioned in Scripture.
- (4) Ibid.
- (5) I.e., this area.
- (6) Half a kor.
- (7) =Three kabs =half a se'ah.
- (8) Where sowing is impossible.
- (9) Ten handbreadths high or deep.
- (10) Into which the water runs off.
- (11) Lit., 'spine'.
- (12) But are not considered as distinct. For fuller notes v. B.B. (Sonc. ed.) pp. 429ff.
- (13) Such deep ravines etc. break up the field.
- (14) In our Mishnah, if the field contains such deep ravines which are not waterlogged.
- (15) Lit., 'trouble'.
- (16) Num. XXXII, 29f; but not Gilead. Though the second follows from the first, Moses stated both contingencies explicitly. Again, the positive ('will pass') precedes the negative ('will not pass'). and the condition ('if they pass over') precedes the apodosis ('then ye shall give' etc.). Hence every stipulation, to be valid, requires these three factors: (i) it must be double, stating both contingencies; (ii) the positive must precede the negative; and (iii) the condition must be stated before the act (Rashi. Raabad, Adreth and Tur). Maim. interprets: the condition must be stated before the act is agreed upon, but not after.
- (17) But if the negative clearly follows from the positive, the condition need not be doubled. Rashi holds that he differs on this point only, agreeing on the other two, while Tosaf. maintains that he differs on all three.

## **Talmud - Mas. Kiddushin 61b**

This proves that it comes to necessitate a double stipulation. And R. Hanina b. Gamaliel? — If the Divine Law did not write, 'in the land of Canaan,' I would think that 'they shall have possession among you' in the land of Gilead, but nothing at all of the land of Canaan. And R. Meir? — 'Among you' implies, 'wherever you have possessions'.<sup>1</sup> It was taught: R. Hanina b. Gamaliel said: For example, to what may this matter be compared? To a man who divided his estate among his sons, and directed, 'That son shall inherit that field, that son shall inherit that field, while that son shall pay two hundred zuz and inherit that field.'<sup>2</sup> But if he does not give it, he shall inherit the rest of my estate together with his brothers.' Now, what causes him to receive an inheritance together with his other brethren in the rest of the estate? His doubling [of the stipulation] effects it for him.<sup>3</sup> But the illustration is not similar to our Mishnah. There he states. [FOR OTHERWISE] IT IMPLIES THAT THEY SHOULD HAVE NO INHERITANCE EVEN IN CANAAN, which proves that the doubling served a purpose in respect of Gilead too;<sup>4</sup> whereas here he states: 'What causes him to receive an inheritance together with his other brethren in the rest of the estate? His doubling [of the stipulation] effects it for him,' which proves that the doubling is efficacious [only] in respect to the rest of the estate? — There is no difficulty: the former was before R. Meir told him [the implication of], 'then they shall have possession therein';<sup>5</sup> the latter [the illustration], after R. Meir told him [the implication of], 'then they shall have possession therein'.<sup>6</sup>

As for R. Meir, it is well: hence it is written: If thou doest well, shalt thou not be rewarded? and if thou doest not well, sin coucheth at the door.<sup>7</sup> But according to R. Hanina, what is its purpose?<sup>8</sup> — I might have thought, If thou doest well, there is reward, but if thou doest not well, there is neither reward nor punishment. Hence we are informed [otherwise].

Now, as for R. Meir, it is well: hence it is written, then thou shalt be clear from this my oath;<sup>9</sup> but according to R. Hanina b. Gamaliel, what is its purpose?<sup>10</sup> — It is necessary: I might think, If she were willing but not they [sc. her family], he was to bring her against their will. Hence we are

informed [otherwise]. What is the purpose of, 'and if the woman be not willing?'<sup>9</sup> — It is necessary: I might think, If they [her family] were willing but not she, he should bring her against her will. Hence we are informed [otherwise].

Now, as for R. Meir, it is well: hence it is written. If ye walk in my statutes . . . and if ye shall reject my statutes.<sup>11</sup> But according to R. Hanina b. Gamaliel, what is its purpose? — It is necessary. I might think, 'if ye walk in my statutes', [ye shall have] a blessing; 'but if ye shall reject my statutes,' neither a blessing nor a curse. Hence we are informed [otherwise].

Now, as for R. Meir, it is well: hence it is written: If ye be willing and obedient etc. . . . but if ye refuse and rebel.<sup>12</sup> But according to R. Hanina b. Gamaliel, what is its purpose? — It is necessary. I might think, 'If ye be willing,' [it will be] well; 'but if ye refuse,' [it will be] neither well nor good. So we are informed [that it is not so].

What is the meaning of,

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(1) I.e., Canaan; hence R. Hanina's hypothetical assumption is impossible. — From the whole discussion it appears that even if they did not pass over they would still have a portion of Palestine. This is most unreasonable, and so Tosaf. explains the verses as follows: If they pass over armed at the head of the forces, bearing the brunt of the battle, they will be favoured with the special grant of Gilead. But if they merely take an equal share with their brethren in the conquest, they will receive the same as the rest, viz., a portion of Palestine proper.

(2) Which is worth more than his due share.

(3) [For but for the second claim, it might be maintained that if he does not give the two hundred zuz he can claim a share only in the third field, but receives nothing from the other two fields assigned to his two brothers. Similarly, in the verses under discussion, but for the second claim, it would be assumed that the Gaddites and Reubenites in the case of their non-fulfilment of the condition would share with the rest of the tribes the district of Gilead, while forfeiting all claim to the land of Canaan.]

(4) ['EVEN' implies that, but for this doubling, they would, on nonfulfilment of the condition, have no share in Gilead.]

(5) [R. Hanina in the Mishnah was but countering R. Meir's argument which he understood to be that the whole of the verses in question are required for the purpose of the doubling of the condition, and he thus said that the doubling was necessary, for without it, it would be assumed that they would have no share at all, even in the land of Canaan.]

(6) [When he learnt that R. Meir based his deduction from 'in the land of Canaan', he rejoined that these words are necessary to indicate that they would, on fulfilment of the condition, receive a share in the land of Canaan, as supra.]

(7) Gen. IV, 7.

(8) For one follows from the other.

(9) Ibid. XXIV. 8.

(10) Since it follows from the general context of the oath, q.v. (Tosaf.).

(11) Lev. XXVI, 3, 15.

(12) Isa. I, 19f.

## Talmud - Mas. Kiddushin 62a

‘ye shall be fed with the sword’?<sup>1</sup> — Said Raba: Coarse salt, hard baked barley bread, and onions; for a Master said: Stale bread baked in a large oven with salt and onions is as harmful to the body as swords.

Now, as for R. Hanina b. Gamaliel, it is well: hence it is written: If no man have lain with thee, and if thou hast not gone aside to uncleanness, be thou free.<sup>2</sup> But according to R. Meir, it should [also] state, ‘be thou strangled’?<sup>3</sup> — Said R. Tanhum: hinnaki is written.<sup>4</sup> [Then] as for R. Meir, it is well: hence it is written hinnaki. But according to R. Hanina b. Gamaliel, what is its purpose?<sup>5</sup> — It is necessary: I might think, If no man have lain [with thee] . . . be thou free; but if a man have lain [with thee], be thou neither free nor strangled, but merely [guilty of violating] a prohibition. Hence we are informed [otherwise].

As for R. Meir, it is well: hence it is written: He shall purify himself therewith on the third day, and on the seventh day, [then] he shall be clean: but if he purify not himself etc.<sup>6</sup> But according to R. Hanina b. Gamaliel, what is its purpose? — It is necessary: I might think, The precept of sprinkling is [that it be performed] on the third and the seventh [days]; yet if it is done only on one of these days, it is done [and effective]. Therefore we are told [that both days are essential]. What is the purpose of, and the clean person shall sprinkle upon the unclean on the third day, and on the seventh day?<sup>7</sup> — It is necessary: I might think, the third excludes the second, and the seventh excludes the sixth, because thereby one diminishes the days of purification; but if it is performed on the third and the eighth days, thereby increasing the period of purification. I might say that it is well. Hence we are informed [otherwise].<sup>8</sup> What is the purpose of, ‘and on the seventh day he shall purify him’? — It is necessary: I might think, that [sc. sprinkling on these days] is only for sacred food,<sup>9</sup> but for terumah even one is sufficient: hence we are told [that it is not so]. MISHNAH. IF HE BETROTHS A WOMAN AND THEN DECLARES, ‘I THOUGHT THAT SHE WAS A PRIEST'S DAUGHTER, WHEREAS SHE IS OF A LEVITE.’ OR OF A LEVITE WHEREAS SHE IS OF A PRIEST; ‘POOR’, WHEREAS SHE IS WEALTHY, OR ‘WEALTHY’, WHEREAS SHE IS POOR, SHE IS BETROTHED, SINCE SHE DID NOT DECEIVE HIM. IF HE SAYS TO A WOMAN, BEHOLD, BE THOU BETROTHED UNTO ME AFTER I BECOME A PROSELYTE,’ OR ‘AFTER THOU BECOMEST A PROSELYTE, AFTER I AM LIBERATED,’ OR ‘AFTER THOU ART LIBERATED, AFTER THY HUSBAND DIES’. OR, ‘AFTER THY SISTER DIES.’<sup>10</sup> OR ‘AFTER THY YABAM PERFORMS HALIZAH FOR THEE’; SHE IS NOT BETROTHED. LIKEWISE, IF HE SAYS TO HIS NEIGHBOUR, IF THY WIFE BEARS A FEMALE, LET HER BE BETROTHED UNTO ME,’ SHE IS NOT BETROTHED. (IF HIS WIFE, HOWEVER, IS PREGNANT, THE CHILD BEING DISCERNIBLE, HIS WORDS ARE VALID, AND IF SHE BEARS A FEMALE, SHE IS BETROTHED.)<sup>11</sup>

GEMARA. We learnt elsewhere: Terumah must not be separated from detached [corn] for that which is attached,<sup>12</sup> and if he does separate, his separation is not terumah. R. Assi asked R. Johanan: What if one declares, ‘The detached produce of this furrow be terumah for the detached produce of this one, when it is plucked’,<sup>13</sup> and then it is plucked? — He answered him: Whatever [act] lies in his power, is not as though that act were lacking.<sup>14</sup> He raised an objection: IF ONE SAYS TO A WOMAN, BEHOLD, THOU ART BETROTHED UNTO ME AFTER I BECOME A PROSELYTE, OR, ‘AFTER THOU BECOMEST A PROSELYTE,’ ‘AFTER I AM LIBERATED, OR, ‘AFTER THOU ART LIBERATED,’ ‘AFTER THY HUSBAND DIES,’ OR, ‘AFTER THY SISTER DIES,’ OR, AFTER THY YABAM PERFORMS HALIZAH FOR THEE.’ SHE IS NOT BETROTHED. As for all, it is well, for they are not in his power; but [to be] a proselyte surely lies in his power! — [To become] a proselyte is not in his power either. For R. Hiyya b. Abba said in R. Johanan's name:

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(1) Ibid., so translated here.

- (2) Num. V. 19; but the reverse contingency is left to be understood.
- (3) If thou hast gone aside, etc.; i.e., the reverse.
- (4) Which also suggests, hinnaki, be thou strangled. v. Shebu (Sonc. ed.) p. 213, n. 6 and Sot. (Sonc. ed.) P- 89, n. 2.
- (5) Why write a word capable of two readings?
- (6) Num. XIX, 12.
- (7) Ibid. 19. This difficulty arises on all views: why repeat third and seventh?
- (8) By this repetition.
- (9) I.e., sacrifices, which require a very high degree of purity.
- (10) I.e., his own wife, whether living with him or divorced.
- (11) From R. Hanina's statement infra but is evident that the bracketed passage must be deleted.
- (12) Produce is not liable to terumah until it is harvested, but not while it is yet attached to the soil, and one may not separate from what is liable for what is not liable.
- (13) That refers to both clauses.
- (14) Since it rests with him to harvest the produce, it is accounted as already harvested, and his declaration is valid.

## Talmud - Mas. Kiddushin 62b

A proselyte requires three [Israelites].<sup>1</sup> What is the reason? Judgment [mishpat] is written in connection therewith, as for a lawsuit:<sup>2</sup> who can say that these three will assemble for him?<sup>3</sup>

R. Abba b. Memel demurred thereto:<sup>4</sup> If so, if a man gives a perutah to his [heathen] bondmaid and says to her, 'Behold, thou art betrothed unto me after I liberate thee,' is it indeed [valid] kiddushin?<sup>5</sup> — How compare! There, she is originally like an animal,<sup>6</sup> whereas now [after liberation] she is an independent mind. Then when R. Oshaia said: If he gives his wife a perutah and says to her, 'Behold, thou art betrothed unto me after I divorce thee,' she is not betrothed: according to R. Johanan. is she indeed betrothed? — Granted that it rests with him to divorce, is it in his power to betroth her?<sup>7</sup> [From this answer, then,] solve R. Oshaia's problem. [Viz.] [What] if one gives two perutoth to a woman: With one he says to her, 'Be thou betrothed unto me to-day.' and with the other, 'Be thou betrothed unto me after I divorce thee': from this [then] deduce that it is not [valid] kiddushin! — [No.] Perhaps. just as kiddushin can be effective now, it can be effective afterwards.<sup>8</sup>

It was taught as R. Johanan: One must not separate from detached [produce] for attached; and if one does separate, his separation is not terumah. How so? If he declares, 'The detached produce of this furrow be terumah for the attached produce of that one,' or 'the attached produce of this furrow be terumah for the detached produce of that one', his statement is null. But if he declares, 'when it is cut off,' and then it is cut off, his declaration is valid. R. Eliezer b. Jacob went further.<sup>9</sup> Even if he declares, 'The detached produce of this furrow be terumah for the attached produce of this one,' or, 'the attached produce of this furrow be terumah for the detached produce of this one when it [the attached] is a third grown and cut off,' and it then grows to a third [of its full maturity] and is cut off, his declaration is valid.<sup>10</sup> Rabbah said: R. Eliezer b. Jacob ruled thus only of fodder,<sup>11</sup> but not of leek-like plants.<sup>12</sup> R. Joseph said: [He ruled thus] even of soft plants.<sup>13</sup> Where is it implied that this word 'agam' connotes leek-like plants? — R. Eleazar answered, because Scripture saith, is it to bow down his head as a rush [ke-agmon]?<sup>14</sup>

With whom does the following agree? For we learnt: IF ONE SAYS TO HIS NEIGHBOUR. 'IF THY WIFE BEARS A FEMALE, LET HER BE BETROTHED UNTO ME.' SHE IS NOT BETROTHED — whereon R. Hanina said: This was taught only if his wife is not pregnant; but if she is, his declaration is valid, — with whom [does it agree]? — If it is according to Rabbah, it means that her child was discernible; if as R. Joseph, even if her child is not discernible.<sup>15</sup> Others state, Rabbah said: R. Eliezer b. Jacob ruled thus only of the fodder of a naturally watered field, but not of the fodder of an artificially irrigated field.<sup>16</sup> R. Joseph said: Even of the fodder of an artificially irrigated field. With whom does the following agree? For we learnt: IF ONE SAYS TO

HIS NEIGHBOUR. 'IF THY WIFE BEARS A FEMALE, LET HER BE BETROTHED UNTO ME,' SHE IS NOT BETROTHED, whereon R. Hanina said: This was taught only if his wife was not pregnant; but if she was, his declaration is valid with whom [does it agree]? — It means that her child was discernible, and agrees with all.<sup>17</sup>

Abaye said: R. Eliezer b. Jacob, Rabbi, and R. Meir, all hold that one may transmit the title to an object which has not come into the world.<sup>18</sup> R. Eliezer b. Jacob, as stated. Rabbi, for it was taught:

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(1) For the ceremony of conversion, v. Yeb. 47a.

(2) Lev. XXIV, 22: Ye shall have one manner of judgment (mishpat), as well as for the proselyte (so understood here; E.V. 'stranger') as for the homeborn. 'Mishpat' really means a judgment in a civil suit, for which three are required.

(3) Hence it is not in his power. Views on proselytes varied in ancient Israel, v. J.E. X. pp. 221ff. But as it may, the answer given here shews that one encountered real difficulties before he could be converted, and often was denied it altogether.

(4) Sc. R. Johanan's ruling.

(5) Surely not, though it does rest with him.

(6) In that she has no independent will.

(7) Surely not.

(8) That is R. Oshaia's problem: seeing that he can betroth her now he can do so for the kiddushin to become effective after divorce. But if he gives his wife kiddushin, to take effect after he divorces her, no part of his declaration is valid there and then.

(9) Lit., 'said more than this'.

(10) Though before it is a third grown it is not regarded as produce at all, and even if he harvested it then he could not tithe it (R.H. 13a), and so it is something as yet non-existent; moreover, it does not rest with him to make it grow. Yet R. Eliezer b. Jacob maintains that his declaration is valid, for one can transmit title of what is yet non-existent. (Here by his declaration he transmits a title to priests.)

(11) I.e., corn which can be cut before it is a third grown and used for fodder.

(12) Jast.: soft, bending plants, which cannot be used as fodder.

(13) Rabbah holds that soft plants have no real worth at all before they are a third grown; R. Joseph holds that even so it is sufficient for R. Eliezer b. Jacob's view to operate.

(14) Isa. LVIII, 5.

(15) 'Discernible' and 'not discernible' are compared respectively to fodder, which can be put to use, and to soft plants, which cannot (before they are a third grown). On both views, however, R. Hanina's interpretation implies that one can transmit the title of an object which is as yet non-existent, and hence agrees with R. Eliezer b. Jacob.

(16) The former is more certain than the latter, which permits human error and neglect.

(17) Since the development of the embryo does not depend on artificial means, it is similar to the fodder of a naturally watered field.

(18) I.e., as yet non-existent.

## **Talmud - Mas. Kiddushin 63a**

Thou shalt not deliver unto his master a servant [which is escaped from his master]:<sup>1</sup> Rabbi said: The Writ refers to one who buys a slave on condition that he emancipates him.<sup>2</sup> How so? Said R. Nahman b. Isaac: E.g., if he wrote for him, 'When I buy you, you belong to yourself from now.'<sup>3</sup>

R. Meir, for it was taught: If one says to a woman, 'Behold, thou art betrothed unto me after I become a proselyte', or, 'after thou becomest a proselyte', 'after I am freed,' or 'after thou art freed,' 'after thy husband dies,' or, 'after thy sister dies,' 'after thy yabam performs halizah for thee,' she is not betrothed. R. Meir said: She is betrothed.<sup>4</sup> R. Johanan the sandal maker said: She is not betrothed. R. Judah the Nasi<sup>5</sup> said: [By rights] she is betrothed, yet why did they [the Sages] say, she is not betrothed? Because of bad feeling.<sup>6</sup> Then let R. Judah the Nasi be counted too? — Rabbi and R. Judah the Nasi are identical. And let R. Akiba be counted too? For we learnt: [If a woman says to

her husband,] ‘Konam be my work for thy mouth,’<sup>7</sup> he need not annul it.<sup>8</sup> R. Akiba said: He should annul it, lest she do for him more than she is obliged to do for him!<sup>9</sup> — But was it not stated thereon, R. Huna son of R. Joshua said: It means that she vowed, ‘Let my hands be sanctified to their Maker,’<sup>10</sup> and her hands are in existence?<sup>11</sup>

**MISHNAH.** IF ONE SAYS TO A WOMAN, BEHOLD. THOU ART BETROTHED UNTO ME ON CONDITION THAT I SPEAK TO THE GOVERNOR ON THY BEHALF’, OR ‘THAT I WORK FOR THEE AS A LABOURER’, IF HE SPEAKS TO THE GOVERNOR ON HER BEHALF OR WORKS FOR HER AS A LABOURER, SHE IS BETROTHED; IF NOT, SHE IS NOT BETROTHED.

**GEMARA.** Resh Lakish said: Providing that he gives [her] the value of a perutah.<sup>12</sup> But not in payment [of speaking etc.]? Surely it was taught: ‘[Be thou betrothed unto me] in payment for that I drove thee on an ass,’ or ‘seated thee in the carriage or ship,’ she is not betrothed.<sup>13</sup> ‘In payment for that I will drive thee on an ass, or ‘seat thee in a carriage or ship,’ she is betrothed? And should you answer: Here too it means that he gives her the value of a perutah: but it states: ‘in payment?’ Again, it was taught: [If a woman says,] ‘Sit with me as a companion, and I will become betrothed unto thee,’ ‘jest before me,’ ‘dance before me,’ ‘do as was done in this public game’,<sup>14</sup> we assess it: if it is worth a perutah, she is betrothed; if not, she is not betrothed. And should you answer, here too it means that he gives her the value of a perutah [in addition]; surely it states, we assess it, thus refuting Resh Lakish? — Resh Lakish can answer you: The Tanna of this Baraitha<sup>15</sup> holds, Wages are a liability only at the end; whereas our Tanna holds, Wages are a liability from beginning to end.<sup>16</sup> Now, what compels Resh Lakish to explain our Mishnah on the basis that wages are a liability from beginning to end and that he gives her [a perutah in addition]? — Said Raba: [For otherwise,] our Mishnah presents a difficulty to him: why state particularly, ON CONDITION: state, ‘in payment for’? Hence this proves that wherever ‘on condition’ [is taught], it means that he gives her [something in addition].

**MISHNAH.** [IF HE SAYS,] ‘ON CONDITION THAT [MY] FATHER CONSENTS,’ IF HIS FATHER CONSENTS, SHE IS BETROTHED; IF NOT, SHE IS NOT BETROTHED. IF HIS FATHER DIES, SHE IS BETROTHED; IF THE SON DIES, THE FATHER IS INSTRUCTED TO SAY THAT HE DOES NOT CONSENT.<sup>17</sup>

**GEMARA.** What is meant by ‘ON CONDITION THAT [MY] FATHER CONSENTS?’ Shall we say, providing that my father [explicitly] says ‘yes’? Then consider the middle clause: IF HIS FATHER DIES, SHE IS BETROTHED. Surely he did not say ‘yes!’ Hence [it must mean]

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(1) Deut. XXIII, 16.

(2) Or, for the purpose of emancipating him. If his master goes back on his word and the slave escapes, the Court must not deliver him up again.

(3) Thus he transmits to the slave something which, as far as he is concerned, is as yet non-existent, viz., his rights over him. (Such fall within the category of things which have not yet come into the world.) Since Rabbi applies the verse to such a case, he evidently holds such transmission valid.

(4) Though all these are non-existent at the time.

(5) The Prince.

(6) [Which such betrothal engenders in the mind of the sister and the husband whose death seems to be keenly awaited. R. Judah the Nasi refers to these two cases. In the other cases he agrees with R. Meir.]

(7) Forbidden be it by a vow, v. Ned. 85a.

(8) Since she must work for him, her vow is null in any case.

(9) For the extent of her obligation v. Ket. 64b. The vow in respect of the excess is binding, hence R. Akiba rules that her husband should annul it. This shews that he holds that one may make a binding declaration in respect of what is not yet in existence.

- (10) In the sense that they may do nothing for her husband.  
 (11) Lit., 'in the world'.  
 (12) And stipulates, 'on condition that I speak' etc.  
 (13) Because this payment is a debt, which cannot effect kiddushin; v. supra 6b.  
 (14) Jast. Which games are alluded to is not stated. Rashi: Make for me such a masonry.  
 (15) Lit., 'this outside Tanna'.  
 (16) V. supra 48a.  
 (17) So that the kiddushin is null ab initio and she is not bound to the yabam.

## Talmud - Mas. Kiddushin 63b

'on condition that my father is silent.'<sup>1</sup> Then consider the last clause: IF THE SON DIES. THE FATHER IS INSTRUCTED TO SAY THAT HE DOES NOT CONSENT: yet why, seeing that he was silent?<sup>2</sup> Hence [it must mean that] he said to her, on condition that my father does not [explicitly] object': thus the first clause has one meaning, while the middle and the last clauses have a different meaning? — Said R. Jannai. Even so, Resh Lakish observed: This proves that in R. Jannai's opinion we strain the Mishnah by giving two different connotations [to the same phrase], so that it agrees with one Tanna, rather than give it one connotation by making it reflect [the views of] two Tannaim.<sup>3</sup> R. Joseph b. Ammi said: After all, it has one connotation, and what is meant by 'ON CONDITION THAT [MY] FATHER CONSENTS'? On condition that he does not protest within thirty days from now.<sup>4</sup>

MISHNAH. [IF A MAN DECLARES,] 'I HAVE GIVEN MY DAUGHTER IN BETROTHAL, BUT DO NOT KNOW TO WHOM I HAVE BETROTHED HER,' AND THEN ONE COMES AND STATES, I BETROTHED HER, HE IS BELIEVED. IF ONE SAYS, I HAVE BETROTHED HER,' AND ANOTHER [ALSO] SAYS, 'I BETROTHED HER,' BOTH MUST GIVE A DIVORCE;<sup>5</sup> BUT IF THEY WISH, ONE GIVES A DIVORCE AND THE OTHER MARRIES HER.

GEMARA. Rab said: HE IS BELIEVED to give her a divorce, but he is not believed to take her. He is believed to give her a divorce: no man sins without profit.<sup>6</sup> But he is not believed to take her: passion may have mastered him. R. Assi said: He is even believed to take her. Yet R. Assi admits that if she declares, 'I have been betrothed, but do not know to whom,' and one comes and says: 'I betrothed her,' he is not believed to take her.<sup>7</sup> We learnt: BUT IF THEY WISH, ONE GIVES A DIVORCE AND THE OTHER TAKES HER: this refutes Rab! — Rab can answer you. There it is different: since another is with him, he is indeed afraid.<sup>8</sup> It was taught as R. Assi: 'I have given my daughter in betrothal, but do not know to whom I betrothed her,' and one comes and says: 'I betrothed her,' he is believed, even to take her. If he takes her and [then] another comes and says: 'I betrothed her,' it does not rest with the latter to forbid her to him [the first]. [But] if a woman says: 'I have been betrothed, but do not know to whom,' and one comes and declares, 'I betrothed her,' he is not trusted to take her, because she will shield him.<sup>9</sup>

The Scholars propounded: Can we stone [her] on his statement?<sup>10</sup> — Rab said: We do not stone [her]; R. Assi said: We stone [her]. Rab said: We do not stone [her]: the Divine Law gave credence to the father in respect of an interdict<sup>11</sup> but not of execution. R. Assi maintained, We stone [her]: The Divine Law gave credence to the father in the whole matter. R. Assi said: Yet I admit that if she herself says: 'I was betrothed,' we do not stone [her].<sup>12</sup> R. Assi said further: These rulings of mine break roofs!<sup>13</sup> [For one may argue:] If you say that we stone her where one who comes to take her may take her,<sup>14</sup> how much the more should she be stoned where one who comes to take her may not take her!<sup>15</sup> Yet it is not so. The Divine Law gave credence to the father, but it gave no credence to her.<sup>16</sup> But R. Hisda ruled: In both cases we do not stone. Now, R. Hisda follows his opinion [elsewhere]. For R. Hisda said: [If a man declares,] 'This my son is nine years and a day.' [or] 'this



my daughter is three years and a day,' he is believed in respect of sacrifice, but not in respect of flagellation or [other] punishment.<sup>17</sup> It was taught as R. Hisda: [If a man declares,] 'This my son is thirteen years and a day,' [or] this my daughter is twelve years and a day,'<sup>18</sup>

(1) I.e., does not explicitly object.

(2) And the Kiddushin became effective.

(3) For it could be explained that he simply said: 'on condition that my father consents' and that the first and the middle and last clauses represent two differing views as to its meaning: the Tanna of the first explains it to mean that his father is silent; whereas the one of the middle and last, that his father does not explicitly object.

(4) I.e., within any agreed period, and CONSENTS and DOES NOT CONSENT mean within that period.

(5) To free her for others.

(6) Why should he want to divorce her if she is not his wife?

(7) The reason is stated below.

(8) [He is afraid to lie for fear that the father who gave her in betrothal will remember that he was not the man, but the other, and thus expose him].

(9) If her father betrothed her one is afraid to lie, because he will certainly expose him if he remembers that this was not the man; hence he is believed. But a woman, in her eagerness for marriage, may conceal his falsehood, and he may count upon this: hence he is disbelieved.

(10) Lit., 'at his hand'. If her father declares that he gave her in betrothal, but does not produce witnesses, and then she is unchaste, is he believed to the extent of stoning the daughter for adultery? V. Deut. XXII, 21.

(11) By his declaration he interdicts her to all men.

(12) For subsequent unchastity.

(13) They are paradoxical.

(14) Viz., when her father states that he does not know to whom he betrothed her. The fact that another is permitted to take her shews that the father is not so absolutely believed as to render her forbidden to all, including the claimant; yet she is stoned for unchastity.

(15) Viz., when she herself declares that she does not know to whom she was betrothed. Since the claimant may not take her, we evidently regard her as a married woman absolutely. Surely then we should stone her for unchastity?

(16) Hence she is not stoned; nevertheless, the claimant may not take her, because she rendered herself, by her declaration, forbidden to all.

(17) The intercourse of a male or female of these ages (and upwards) is regarded as such in respect of adultery, incest, etc. Now, if these were committed unintentionally, so that a sacrifice is incurred, the father's statement is accepted. But if intentionally and attested by witnesses, thus involving flagellation or death, according to the nature of the offence, the father's uncorroborated statement is not believed. They themselves, being minors, are in any case exempt, but the reference is to their adult partners.

(18) At these ages they are adults.

## **Talmud - Mas. Kiddushin 64a**

he is believed in respect of vows, haramim,<sup>1</sup> sanctifications, and 'arakin;<sup>2</sup> but not in respect of flagellation and [other] punishments.

MISHNAH. [IF A MAN DECLARES.] 'I HAVE GIVEN MY DAUGHTER IN BETROTHAL,'<sup>3</sup> 'I GAVE HER IN BETROTHAL AND DIVORCED HER WHILST A MINOR,' AND SHE IS [NOW] A MINOR,<sup>4</sup> HE IS BELIEVED.<sup>5</sup> 'I GAVE HER IN BETROTHAL AND DIVORCED HER WHILST A MINOR,' AND SHE IS NOW AN ADULT, HE IS DISBELIEVED.<sup>6</sup> 'SHE WAS TAKEN CAPTIVE AND I REDEEMED HER,<sup>7</sup> WHETHER SHE IS A MINOR OR AN ADULT<sup>8</sup> HE IS DISBELIEVED.

GEMARA. Wherein do the first and the second clauses differ? — In the first clause, it is in his hand;<sup>9</sup> in the second, it is not in his hand. Is it not? Surely it is in his power to marry her to a halal,<sup>10</sup> whereby he unfits her for the priesthood!<sup>11</sup> — That is no difficulty: it [our Mishnah] agrees with R.

Dosethai b. Judah, who maintained: The daughters of Israel are a purifying mikweh for halallim.<sup>12</sup>

But it is in his power<sup>13</sup> to marry her to a mamzer?<sup>14</sup> — This agrees with R. Akiba, who maintained, Kiddushin has no validity<sup>15</sup> with those [marriages forbidden by] negative injunctions.<sup>16</sup> But it is in his power to marry her, if a widow, to a High Priest, and in accordance with R. Simai; for it was taught: R. Simai said: [The issue] of all [marriages forbidden by a negative injunction] R. Akiba declared [to be] mamzer, excepting that of a widow [married] to a High Priest, since the Torah said, [a widow . . .] he shall not take, and he shall not profane [his seed]:<sup>17</sup> he renders [his seed] profane,<sup>18</sup> but not mamzer!<sup>19</sup> — This is according to R. Yeshebab, who said: Come, let us cry out against Akiba son of Joseph<sup>20</sup> who declared: He who has no entry in Israel,<sup>21</sup> the issue is mamzer.<sup>22</sup> Now, on R. Yeshebab's view, it is well if he states an independent opinion [of R. Akiba's ruling].<sup>23</sup> But if he [merely] comes to combat R. Simai,<sup>24</sup> then it is [still] in his [the father's] power to marry her to a person forbidden by a positive injunction?<sup>25</sup> R. Ashi answered: Is it logical that the first clause [states that he is believed] because it is in his power? Granted that it is in his power to betroth her, is it in his power to divorce her? Moreover, if this person [to whom he desires to betroth her] says that he has no pleasure in her, can he then betroth her against his will? But, said R. Ashi, in the first clause the Divine Law declared him trustworthy, as R. Huna [said]. For R. Huna said in Rab's name: How do we know that a father is believed to interdict his daughter<sup>26</sup> by Biblical law? Because it is said: I gave my daughter unto this man [to wife]:<sup>27</sup> [with the words] 'unto a man,' he renders her forbidden [to all];<sup>28</sup> with 'this [one]', he frees her. [Now,] the Divine Law believed the father in regard to marriage<sup>29</sup> but in regard to captivity it did not believe him.

MISHNAH. IF A MAN SAYS AT THE TIME OF HIS DEATH I HAVE SONS, HE IS BELIEVED;<sup>30</sup> 'I HAVE BROTHERS,' HE IS DISBELIEVED.<sup>31</sup>

GEMARA. This shews that he is believed to free, but not to bind. Shall we say [then] that our Mishnah does not agree with R. Nathan? For it was taught: if at the time of betrothal one declares that he has sons, but at the time of his death he asserts that he has no sons; If at the time of betrothal he declares that he has brothers, while at the time of his death he declares that he has no brothers: he is believed to free, but not to bind: this is Rabbi's view. R. Nathan said: He is believed to bind too! — Said Raba, there it is different: since he retracts at the time of his death, I assume that he may be speaking truth. Abaye asked him: Does it [the reverse] not follow a minori: If there, though he contradicts his [former] words, you say that he may be speaking truth; surely it is all the more so in our Mishnah, where he does not contradict his [former] words! But, said Abaye, our Mishnah treats of one who is not presumed<sup>32</sup> to possess brothers or sons: hence we rule, since he is not presumed to possess either brothers or sons, if he says. 'I have sons,' he is believed;<sup>33</sup> but if he declares, 'I have brothers,' he is disbelieved, [because] it does not rest solely with him to forbid her to the whole world. [Whereas] the Baraitha refers

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(1) V. Glos.

(2) V. Glos. As they are of age, their vows, etc., are valid, and the father is believed on the question of age.

(3) Rashal adds: a minor (ketannah). and it is likewise so in Asheri and Alfasi.

(4) When he makes this declaration.

(5) She may therefore not marry a priest; v. Lev. XXI, 7.

(6) The reason is explained in the Gemara.

(7) A woman taken captive above the age of three years and a day may not marry a priest, lest she was ravished in captivity.

(8) When he makes this declaration.

(9) Since she is now a minor, he can betroth her even now and accept a divorce on her behalf, thus disqualifying her from the priesthood. Hence he is believed.

(10) 'Profaned'; the issue of a widow married to a High Priest in violation of Lev. XXI. 14.

(11) She may not marry a priest after that; infra 74b.

(12) Pl. of halal. If a halal marries a Jewess born in legitimate wedlock, his daughter may marry a priest. Now, since his daughter is fit, his widow too (i.e., the Jewess herself) is fit, according to the principle: you may marry the widow of any man whose daughter you may marry. — Of course, a father can in any case render his daughter, a minor, unfit by marrying and divorcing her; but that is only for a priestly marriage, yet if he is a priest she may still eat terumah, whereas when he declares that she was taken into captivity he desires to disqualify her from terumah too. (Rashi)

(13) Lit., 'his hand'.

(14) V. Glos. This likewise renders her unfit, even to eat terumah.

(15) Lit., 'cannot take hold on'.

(16) Which includes a mamzer, Deut. XXIII, 3. Since the kiddushin is invalid, it does not disqualify her from the priesthood.

(17) Lev. XXI, 14f.

(18) I.e., hallel.

(19) Since the child is not mamzer, the kiddushin, though forbidden, is valid, because it is a principle that the issue of marriage that cannot be valid is mamzer. Further, being valid, it disqualifies her from the priesthood.

(20) I.e., R. Akiba.

(21) I.e., with whom marriage is forbidden.

(22) Thus in his view, R. Akiba holds that even the issue of a High Priest and a widow is mamzer, whence it follows that the marriage is entirely invalid, which in turn implies that she is not disqualified from terumah, as above. Thus the Mishnah agrees with R. Akiba as R. Yeshebab explains his view,

(23) I.e., the issue of all interdicted marriages, no matter how forbidden, is mamzer.

(24) Who excepted the issue of a widow and a High Priest; yet he too refers only to unions forbidden by a negative injunction.

(25) V. Deut. XXIII, 8f: Thou shalt not abhor an Edomite . . . thou shalt not abhor an Egyptian. The children of the third generation that are born unto them shall enter into the assembly of the Lord. The 'third generation' after conversion is meant; hence the first and second are forbidden, and since that is implied by a positive statement, the interdict too ranks as a positive injunction. — Such a marriage, on the present hypothesis, is valid, and disqualifies her from terumah, v. infra 74b.

(26) To all men, by maintaining that he betrothed her to a particular one.

(27) Lit., 'unto a man, this one'. Deut. XXII, 16.

(28) Even to this particular man.

(29) Provided she is not a bogereth. The whole section speaks of a na'arah.

(30) And his wife is exempt from yibum.

(31) And even if he is childless his wife is free to marry a stranger.

(32) Lit., 'it is not established to us'.

(33) Since he does not change her present status; and he is believed even if a man subsequently claims to be his brother.

## **Talmud - Mas. Kiddushin 64b**

to one who is presumed to have brothers but not sons. So we argue. Why should he lie? Why does he say it?<sup>1</sup> to free her from the yabam! Then he could Say, 'I will free her by a divorce [just before my death].' Now, Rabbi holds that [the argument,] 'why should I lie' is as [strong as] witnesses, so that the witnesses come and cancel<sup>2</sup> the presumption. But R. Nathan holds, [The argument,] 'why should I lie' is [only] as [strong as] a presumption, and one presumption cannot come and completely cancel another.<sup>3</sup> MISHNAH. IF ONE GIVES HIS DAUGHTER IN BETROTHAL WITH OUT SPECIFYING WHICH, THE BOGEROTH<sup>4</sup> ARE NOT INCLUDED. IF ONE HAS TWO GROUPS OF DAUGHTERS BY TWO WIVES, AND HE DECLARES, I HAVE GIVEN IN BETROTHAL MY ELDEST DAUGHTER, BUT DO NOT KNOW WHETHER THE ELDEST OF THE SENIORS OR THE ELDEST OF THE JUNIORS, OR THE YOUNGEST OF THE SENIORS WHO IS OLDER THAN THE SENIOR OF THE JUNIORS, ALL ARE FORBIDDEN, EXCEPT THE YOUNGEST OF THE JUNIORS: THIS IS R. MEIR'S OPINION. R. JOSE SAID: THEY ARE ALL PERMITTED, EXCEPT THE ELDEST OF THE SENIORS. I HAVE BETROTHED MY YOUNGEST DAUGHTER, BUT DO NOT KNOW WHETHER THE YOUNGEST OF THE

JUNIORS OR THE YOUNGEST OF THE SENIORS, OR THE ELDEST OF THE JUNIORS WHO IS YOUNGER THAN THE YOUNGEST OF THE SENIORS,' THEY ARE ALL FORBIDDEN, EXCEPT THE ELDEST OF THE SENIORS; THIS IS R. MEIR'S VIEW. R. JOSE SAID: THEY ARE ALL PERMITTED, EXCEPT THE YOUNGEST OF THE JUNIORS.

GEMARA. But minors are [apparently] included; this proves that kiddushin that cannot be followed by intercourse is kiddushin?<sup>5</sup> — The circumstances are that there is only a bogereth and a minor. But 'BOGEROTH' is taught! — By 'bogereth', bogereth in general are meant. Then it is obvious: what business have bogereth [here]?<sup>6</sup> — We refer here to where she [the bogereth] appointed him [her father] an agent. I might have thought that when he accepted kiddushin he did so on her behalf; hence we are informed that a man does not put aside something by which he benefits to do something by which he does not benefit. But do we not refer [even] to where she said to him, 'Let my kiddushin be yours!' — Even so, a man does not put aside a good deed which [primarily] rests on him and perform one which is not incumbent upon him.<sup>7</sup>

IF ONE HAS TWO GROUPS OF DAUGHTERS. Now, it is necessary.<sup>8</sup> For if we were told the first one, [I would say only] here does R. Meir rule [so], for since there is yet a younger one than this, he calls this one 'elder', but in the latter [clause], I might say that he agrees with R. Jose that only the youngest of all he calls 'young'. Again, if the latter [clause only] were stated: I would say that only there does R. Jose rule thus, but in the former he agrees with R. Judah.<sup>9</sup> Thus both are necessary.

Shall we say that R. Meir holds that a man places himself in a position of doubt, while R. Jose maintains that he does not?<sup>10</sup> But we know them [to hold] the reverse. For we learnt: If one vows, '[This be forbidden me] until Passover,' it is forbidden until it arrives; 'until Passover shall be', it is forbidden until it is gone.<sup>11</sup> 'Until pene [before]<sup>12</sup> Passover': R. Meir ruled: It is forbidden until it comes; R. Jose said: Until it is gone!<sup>13</sup> — Said R. Hanina b. Abdimi in Rab's name: The passage [on vows] must be reversed. And it was taught even so: This is a general principle: That which has a fixed time. and one vows, until' — R. Meir said: It means, Until it goes; R. Jose said: Until it comes.

Abaye said: The controversy refers [only] to two groups of daughters; but in the case of one group, all agree that 'elder' and 'younger' are literal,<sup>14</sup> [for] the middle one is called by name. R. Adda b. Mattana said to Abaye: If so,

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(1) That he has sons.

(2) Lit., 'eradicate'.

(3) Thus: before marriage it was generally held that he had brothers but not sons, though there were no witnesses. Now, when he declared at betrothal that it was the reverse, we believe him; because he had no need to lie, since he could always free his wife from the yabam by a divorce. But the controversy arises where he retracts his words at death. Rabbi holds that the argument whereby we believed him at betrothal is as strong as witnesses, and completely eradicates the general pre-marriage presumption and establishes her as a woman not bound to a yabam. Hence it does not rest with him at death to interdict her. But R. Nathan holds that this argument does not completely eradicate the former presumption. Nevertheless, if he persists in his former statement we believe him; since, however, he reverses it at death, the original presumption holds good, and she is forbidden.

(4) Plur. of bogereth, v. Glos.

(5) V. supra 51a.

(6) For in any case the father has no authority over them, Now, it is well if the actual plural is meant, so that the Mishnah is necessary for its corollary that minors are included, thus shewing that kiddushin that cannot be followed etc. But if there is only one, neither the teaching itself nor its corollary is necessary.

(7) For notes on the whole passage and the Mishnah V. supra. 51b.

(8) For both clauses to be stated.

(9) By inverting the former reasoning.

(10) The meanings of 'my elder daughter' and 'my younger daughter' are doubtful. Thus R. Meir, by extending their scope, holds that he intends his words to bear a meaning which can be attributed to them only with doubt; whereas R. Jose maintains that he intends them to bear only that meaning which they certainly possess.

(11) I.e., the tense is regarded as future perfect — until it shall have been.

(12) [Of doubtful meaning, as each day of Passover is the one before the next day succeeding it (Rashi). For other interpretations. v. Ned. (Sonc. ed.) p. 191. n. 3.]

(13) Thus R. Meir includes even a doubtful meaning, while R. Jose excludes it.

(14) I.e., the oldest and the youngest respectively.

## **Talmud - Mas. Kiddushin 65a**

let the middle one of the second [junior] group be permitted?<sup>1</sup> — The meaning here is that there are only an elder and a younger [daughter].<sup>2</sup> And reason supports this too: for if it is so, that there is [a middle one], let her be mentioned!<sup>3</sup> But even on your view; the middle one of the first [senior] group, who is certainly doubtful and forbidden<sup>4</sup> — is she mentioned? — How compare! There [even] the one younger than her is taught as being forbidden, and the same applies to this [middle] one, who is older than her; but here,<sup>5</sup> if it is so that there is [a middle one], let her be mentioned! R. Huna, son of R. Joshua, said to Raba:<sup>6</sup> But Passover is as one group, and yet they differ? — There, he replied, they differ merely on language: one Master holds, 'until pene Passover' means until [just] before Passover, and the other maintains, until it has passed.<sup>7</sup>

MISHNAH. IF HE SAYS TO A WOMAN, 'I HAVE BETROTHED THEE,' AND SHE SAYS, THOU HAST NOT BETROTHED ME: HER RELATIONS<sup>8</sup> ARE FORBIDDEN TO HIM,<sup>9</sup> BUT HIS RELATIONS ARE PERMITTED TO HER. IF SHE SAYS, 'THOU HAST BETROTHED ME,' AND HE MAINTAINS, 'I HAVE NOT BETROTHED THEE,' HER RELATIONS ARE PERMITTED TO HIM. BUT HIS RELATIONS ARE FORBIDDEN TO HER. 'I HAVE BETROTHED THEE,' AND SHE REPLIES, THOU HAST BETROTHED NONE BUT MY DAUGHTER,' THE RELATIONS OF THE SENIOR [THE MOTHER] ARE FORBIDDEN TO HIM, WHILST HIS ARE PERMITTED TO THE SENIOR; THE JUNIOR'S RELATIONS ARE PERMITTED TO HIM, AND HIS RELATIONS ARE PERMITTED TO THE JUNIOR.<sup>10</sup> I HAVE BETROTHED THY DAUGHTER,' AND SHE REPLIES, 'THOU HAST BETROTHED NONE BUT MYSELF'; THE JUNIOR'S RELATIONS ARE FORBIDDEN TO HIM, WHILST HIS RELATIONS ARE PERMITTED TO THE JUNIOR; THE SENIOR'S RELATIONS ARE PERMITTED TO HIM, WHILST HIS RELATIONS ARE FORBIDDEN TO THE SENIOR.

GEMARA. IF HE SAYS TO A WOMAN, I HAVE BETROTHED THEE etc. Now, it is necessary.<sup>11</sup> For if we were informed this of him,<sup>12</sup> [that is] because a man does not care,<sup>13</sup> and so it happens that he speaks [thus].<sup>14</sup> But as for her, I might argue, were she not certain of her statement, she would not have made it,<sup>15</sup> and so her relations are forbidden to him. Hence we are informed [that it is not so].

I HAVE BETROTHED THEE,' AND SHE REPLIES ['MY DAUGHTER'] etc. Why do I need this too? — It is necessary. I might think, By Scriptural law the Merciful One gave credence to the father;<sup>16</sup> hence by Rabbinical law credence was given to her [sc. the mother], and so her daughter is interdicted on her statement. Hence we are informed [otherwise].

I HAVE BETROTHED THY DAUGHTER etc. What is the purpose of this too? Since the one is taught, the other is taught too.<sup>17</sup>

It was stated: Rab said: We force [him to divorce her]; Samuel said: We request. To what [does this refer]? Shall we say: To the first clause: there is neither compulsion nor request?<sup>18</sup> But if to the second clause:<sup>19</sup> as for requesting him, that is well; but we compel why? He can protest. 'I do not

wish to be forbidden to her relations!<sup>20</sup> — But these rulings were stated in reference to each other.<sup>21</sup> Samuel said: He is asked to give her a divorce; Rab said: If he gives a divorce of his own accord,<sup>22</sup> he is compelled to pay the kethubah.<sup>23</sup> It was stated likewise: R. Aha b. Adda said in Rab's name — others state. R. Aha b. Adda said in R. Hamnuna's name in Rab's name: We compel and request. Both?<sup>24</sup> — This is the meaning: He is requested to grant a divorce; but if he gives a divorce of his own accord, he is compelled to pay the kethubah.

Rab Judah said: If a man betroths in the presence of one witness, we disregard<sup>25</sup> his kiddushin.<sup>26</sup> Rab Judah was asked: What if both admit it?<sup>27</sup> He answered 'Yes' and 'no', being uncertain.<sup>28</sup> It was stated: R. Nahman said in Samuel's name: If a man betroths in the presence of one witness, we disregard his kiddushin even if both admit it. Raba objected before R. Nahman: IF ONE SAYS TO A WOMAN, 'I HAVE BETROTHED THEE,' AND SHE SAYS, THOU HAST NOT BETROTHED ME: HER RELATIONS ARE FORBIDDEN TO HIM, WHILST HIS RELATIONS ARE PERMITTED TO HER. Now, if there are witnesses, why are his relations permitted to her? And if there are no witnesses, why are her relations forbidden to him?<sup>29</sup> Hence it surely means that there is one witness!<sup>30</sup> — [No.] The meaning is that he says to her, 'I betrothed thee in the presence of So-and-so,<sup>31</sup> who have [since] gone overseas.'

He raised an objection: If one divorces his wife and then stays overnight with her in an inn: Beth Shammai rule: She does not require a second divorce from him; while Beth Hillel maintain: She does require a second divorce from him.<sup>32</sup> What are the circumstances? If there are witnesses,<sup>33</sup> what is Beth Shammai's reason? And if there are no witnesses, what is Beth Hillel's reason?<sup>34</sup> Hence it must surely mean that there is one witness!<sup>35</sup> — Yet according to your view, consider the second clause: But they agree that if she was divorced after erusin,<sup>36</sup> she does not require a second divorce from him, because he is not intimate with her.<sup>37</sup> Now if you think that one witness is believed, what does it matter whether [the divorce was] from erusin or nissu'in? Hence the meaning here is that we have witnesses of privacy, but not of intercourse. Beth Shammai maintain: we do not

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(1) This refers to the first clause of the Mishnah. There the middle one can be called 'elder' only by comparison with the youngest of all, which is the same as in the case of one group only.

(2) In the junior group.

(3) Sc. 'I do not know whether the middle one of the juniors'.

(4) Since she is a senior in comparison to those of the second group.

(5) With reference to the second group.

(6) Var. lec.: R. Adda b. Mattena said to Abaye.

(7) Taking pene to mean 'the turn', v. p. 325. n. 6.

(8) E.g., sister, mother, daughter.

(9) Because he himself has thrown an interdict upon them in respect of himself; v. p. 319. n. 8.

(10) Notwithstanding her mother's statement, because she has no power to cast an interdict upon her daughter.

(11) That all be taught.

(12) Viz., that when he says: 'I have betrothed thee,' his relations are not forbidden to her.

(13) If the relations of a particular woman are interdicted to him, he can marry someone else.

(14) Untruthfully.

(15) Since, unless he divorces her, she cannot marry at all.

(16) V. Mishnah 64a top.

(17) For the sake of parallelism.

(18) She is permitted to marry in any case—even his relations.

(19) Where she says: 'Thou hast betrothed me'.

(20) For if he divorces her, he establishes the presumption that she was his wife, and those relations who are interdicted even after divorce, e.g., a sister, are now forbidden to him.

(21) The reference is to the second clause, but Rab and Samuel do not dispute but supplement one another.

(22) And thus tacitly admits having betrothed her,

- (23) v. Glos,  
 (24) Surely that is self-contradictory!  
 (25) Lit., 'have no fear of,  
 (26) She is not betrothed.  
 (27) Do we normally disregard because we disbelieve a single witness, but here, since both parties admit it, they are betrothed? Or perhaps kiddushin in the presence of one witness only is invalid?  
 (28) Lit., 'it was weak in his hand'. His answer vacillated.  
 (29) For unattested kiddushin is invalid,  
 (30) That proves that kiddushin in the presence of one witness is valid, since he is forbidden to her relations.  
 (31) In the presence of two witnesses.  
 (32) V. Git. 81a.  
 (33) That he betrothed her anew by intercourse.  
 (34) V. p. 328, n. 10.  
 (35) And they both admit, Beth Hillel holding that betrothal in the presence of one witness is valid.  
 (36) V. Glos.  
 (37) Lit., 'his heart is not bold towards her' — the marriage never having been consummated.

### **Talmud - Mas. Kiddushin 65b**

say. The witnesses of privacy are likewise witnesses of intercourse;<sup>1</sup> Beth Hillel hold: The witnesses of privacy are likewise witnesses of intercourse.<sup>2</sup> But they certainly agree that if she was divorced from erusin, we do not say that the witnesses of privacy are likewise witnesses of intercourse, because he is not intimate with her.

R. Isaac b. Samuel b. Martha said on Rab's authority: If a man betroths in the presence of one witness, we disregard his kiddushin even if both admit it. Rabbah son of R. Huna said: If a man betroths in the presence of one witness, the Great Court rules: We disregard his kiddushin. Who is the Great Court? — Rab.<sup>3</sup> Others state, Rabbah b. R. Huna said in Rab's name: If a man betroths in the presence of one witness, the Great Court rules: We disregard his kiddushin. Who is the Great Court? — Rabbi.<sup>4</sup>

R. Ahadaboi b. Ammi raised an objection: If two come from overseas with a woman and chattels;<sup>5</sup> and one maintains. 'This is my wife, this is my slave, and these are my chattels', whilst the other says: 'this is my wife, this my slave, and these are my chattels'. while the woman claims, 'These two are my slaves and the chattels are mine', she requires two divorces, and collects her kethubah out of the chattels. How is this meant? If this one has witnesses and the other has witnesses,<sup>6</sup> can she claim, 'These two are my slaves and the chattels are mine!' Hence it surely means that there is one witness?<sup>7</sup> — Now, is that logical? Is one witness believed when he is rebutted?<sup>8</sup> But as for permitting her to the world,<sup>9</sup> all agree that she is permitted; here, however, the meaning is this: she needs two divorces in order to collect her kethubah from the chattels,<sup>10</sup> and it is according to R. Meir, who ruled: Movables are mortgaged for the kethubah.<sup>11</sup>

What is the result of the matter? — R. Kahana maintained, We disregard his kiddushin; R. Papa said: We pay heed to his kiddushin.<sup>12</sup> R. Ashi said to R. Kahana: What is your opinion? that we learn the meaning of 'dabar' [matter] here from civil matters?<sup>13</sup> If so, just as there the admission of the litigant is as a hundred witnesses,<sup>14</sup> then here too the admission of the litigant is as a hundred witnesses!<sup>15</sup> — There, he replied, he does no injury to others; here, however, injury is done to others.<sup>16</sup>

Mar Zutra and R. Adda the elder, sons of R. Mari b. Issur, divided their property between them. Then they went before R. Ashi and asked him: When the Divine Law said: 'at the mouth of two witnesses . . . shall a matter be established,' is it so that they [the litigants] cannot retract if they

wish, whereas we do not desire to retract; or perhaps, a transaction can be established [i.e., given legal force] only by witnesses? — Witnesses were created only against liars, he answered them.<sup>17</sup>

Abaye said: If one witness says to a person<sup>18</sup> ‘You ate heleb’.<sup>19</sup> while he is silent, he [the witness] is believed.<sup>20</sup> Now, a Tanna supports this: If one witness says to a person. ‘You ate heleb,’ and he replies, ‘I did not eat,’ he is not liable. Thus, it is only because he answered: ‘I did not,’ but if he is silent, he is believed.

Abaye also said: If one witness says to a person. Your clean [food] has been defiled,’ and he is silent, he [the witness] is believed.<sup>21</sup> Now, a Tanna supports this: If one witness declares, ‘They have been defiled’,<sup>22</sup> and he [their owner] replies, ‘They have not been defiled,’<sup>23</sup> he is not liable.<sup>24</sup> Thus, it is only because he says: ‘No’; but if he is silent, he is believed.

Abaye also said: If one witness says to a person,

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- (1) I.e., we do not assume that since he is intimate with her he certainly cohabited in their privacy.
  - (2) And, moreover, we assume that this intercourse was not unchaste but for the purpose of betrothal; v. Git. 81b.
  - (3) Rab, on his return to Babylon after studying in Palestine, was recognised as the greatest scholar of his time.
  - (4) Par excellence, i.e., R. Judah the Nasi, compiler of the Mishnah.
  - (5) Lit., ‘a bundle’.
  - (6) Of betrothal.
  - (7) And she requires a divorce.
  - (8) Surely not! Even if she only denies it he is disbelieved, and no divorce is necessary.
  - (9) I.e., to marry another.
  - (10) She can collect her kethubah only if both voluntarily divorce her, in which case she is in any circumstance entitled to the chattels, v. supra a.
  - (11) Hence she can collect it from the parcel of goods. and this is what the Baraita informs us, v. Keth. 80b.
  - (12) She is in the position of a doubtfully married woman; v. p. 47, n. 10.
  - (13) Lit., ‘money’. Here — Deut. XXIV, 1: When a man taketh a wife and . . . she find no favour in his eyes, because he hath found some unseemly matter (dabar) in her; civil suits — ibid. XIX, 15: at the mouth of two witnesses . . . shall a matter (dabar) be established. Hence, just as there two are needed, so for marriage.
  - (14) No stronger proof is required.
  - (15) Since both parties admit, the marriage should be valid.
  - (16) In that their marriage interdicts their consanguineous relations
  - (17) They are not essential for the validity of a transaction.
  - (18) Lit., ‘him’.
  - (19) V. Glos.
  - (20) This offence involves a sin-offering; since the accused is silent, he is liable.
  - (21) And the owner must treat it as defiled, eating it only when he himself is unclean.
  - (22) Var. lec.: ‘you have been defiled’.
  - (23) Var. lec.: ‘I etc.’
  - (24) To a sacrifice; the reference is to flesh of sacrifices, which may not be eaten when defiled, or when the eater is unclean.

## **Talmud - Mas. Kiddushin 66a**

‘Bestiality was committed with your ox,’ and he is silent, he is believed.<sup>1</sup> And a Tanna supports it: Or [an ox] with which a transgression was committed, or which had killed [a person] on the testimony of one witness, or by admission of its owner, he [the one witness] is believed.<sup>2</sup> How is this ‘on the testimony of one witness’ meant? If the owner admits, then it is ‘by admission of the owner’? Hence it surely means that he is silent.



Now, it is necessary.<sup>3</sup> For if he told us this first one, [I would argue:] if he were not certain thereof himself, since he [otherwise] sacrifices<sup>4</sup> hullin in the Temple Court, he would not bring [an offering].<sup>5</sup> But as for ‘Your clean food has been defiled,’ we might say, the reason of his silence was that it is fit for him when he himself is unclean.<sup>6</sup> And if we were told of this: that is because he causes him a loss whilst he is clean;<sup>7</sup> but as for bestiality having been committed with his ox, he may say [to himself]. ‘Not all oxen are for the altar.’<sup>8</sup> Thus all are necessary.

The scholars propounded: What if his wife [is charged with having] committed adultery on the testimony of one witness, and he [the husband] is silent?<sup>9</sup> — Abaye said: He is believed;<sup>10</sup> Raba said: He is disbelieved, because it is a sexual matter, and no sexual matter can be established by less than two.<sup>11</sup> Abaye said: Whence do I know<sup>12</sup> it? For there was a certain blind man who used to recite Baraitas in systematic order before Mar Samuel. One day it was late, but he did not come; so he sent a messenger for him. While the messenger was going by one road, he came by another. When the messenger returned, he stated that his [the blind man's] wife had committed adultery. When he came before Mar Samuel he said to him, ‘If you believe him, go and divorce<sup>13</sup> her; if not, do not divorce her.’ Now surely, ‘if you believe him’ means that he is not a robber?<sup>14</sup> And Raba?<sup>15</sup> — If you believe him as two [witnesses],<sup>16</sup> go and divorce her; if not, do not divorce her.

Abaye also said: Whence do I know it? Because it was taught. It once happened that King Jannai<sup>17</sup> went to Kohalith in the wilderness<sup>18</sup> and conquered sixty towns there. On his return he rejoiced exceedingly and invited all the Sages of Israel. Said he to them, ‘Our forefathers ate mallows<sup>19</sup> when they were engaged on the building of the [second] Temple; let us too eat mallows in memory of our forefathers.’ So mallows were served on golden tables, and they ate. Now, there was a man there, frivolous, evilhearted and worthless, named Eleazar son of Po'irah, who said to King Jannai. ‘O King Jannai, the hearts of the Pharisees<sup>20</sup> are against thee.’ ‘Then what shall I do?’ ‘Test them<sup>21</sup> by the plate between thine eyes.’<sup>22</sup> So he tested them by the plate between his eyes. Now, an elder, named Judah son of Gedidiah, was present there. Said he to King Jannai. ‘O King Jannai! let the royal crown suffice thee, and leave the priestly crown to the seed of Aaron.’ (For it was rumoured that his mother had been taken captive in Modi'im.)<sup>23</sup> Accordingly, the charge was investigated, but not sustained,<sup>24</sup> and the Sages of Israel<sup>25</sup> departed in anger.<sup>26</sup> Then said Eleazar b. Po'irah to King Jannai: ‘O King Jannai! That is the law even for the most humble man in Israel, and thou, a King and a High Priest, shall that be thy law [too]!’<sup>27</sup> ‘Then what shall I do?’ ‘If thou wilt take my advice, trample then, down.’<sup>28</sup> ‘But what shall happen with the Torah?’ ‘Behold, it is rolled up and lying in the corner: whoever wishes to study. Let him go and study!’ Said R. Nahman b. Isaac: Immediately a spirit of heresy was instilled into him,<sup>29</sup> for he should have replied. ‘That is well for the Written Law;<sup>30</sup> but what of the Oral Law?’<sup>31</sup> Straightway, the evil burst forth<sup>32</sup> through Eleazar son of Po'irah,<sup>33</sup> all the Sages of Israel were massacred, and the world was desolate until Simeon b. Shetah came and restored the Torah to its pristine [glory].<sup>34</sup> Now, how was it?<sup>35</sup> Shall we say that two testified that she was captured and two that she was not? what [reason] do you see to rely upon the latter rely upon the former?<sup>36</sup> Hence it must surely mean [that her captivity was attested] by one witness, and the reason [that his evidence was rejected] was that two rebutted him; but otherwise, he would have been believed.<sup>37</sup> And Raba? [He will reply:] After all, there were two against two, but it is as R. Aba b. R. Manyomi said [elsewhere]: that it refers to witnesses of refutation [hazamah]; so here too, there were witnesses of refutation.<sup>38</sup> Alternatively, this agrees with R. Isaac, who said: They substituted a bondmaid for her.<sup>39</sup> Raba said:

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(1) The ox is rendered unfit as a sacrifice.

(2) ‘Is believed’ is absent in Zeb. 70b and Bek. 41a, whence this is quoted, but it is presupposed there, ‘With which a transgression was committed’ refers to bestiality in Bek. 41a; in Zeb. 70b it is a general term including bestiality.

(3) To state all three cases.

(4) Lit., prepares’. Var. lec.: eats.

(5) A sin-offering can be brought only when it is incurred, but if a person dedicates a sin-offering without being liable, it

remains hullin. Hence this man would not be silent, thus admitting it, if the witnesses were false.

(6) Therefore he does not trouble to deny it. Yet actually the witness may not be believed, and the food remains fit even for a ritually clean person.

(7) Therefore he would deny it, if it were untrue.

(8) So that it is not worth while denying it; yet his silence may not imply agreement.

(9) When the witness testifies.

(10) In that the husband may not retain her as his wife, but must divorce her.

(11) E.g., marriage or divorce are invalid unless attested by two. This case too is a sexual matter.

(12) Lit., 'say'.

(13) Lit., 'send her forth'.

(14) I.e., that he is not ineligible to testify in general. Thus, since he did not rebut the witness, but was silent, he was to divorce his wife.

(15) How does he explain this?

(16) Then you are certain that he is right.

(17) I.e., John Hyrcanus, not Alexander Jannai, though Abaye held these to be identical, Ber. 29a; Halevi, Doroth, I, 3, p. 397, n. 13. [Friedlaender, I, JQR (N.S.) IV. pp. 443ff assigns the whole incident to Alexander Jannai].

(18) [In the course of his trans-Jordanic campaign.]

(19) The food of the very poor.

(20) The traditional, orthodox party, as opposed to the Sadducees.

(21) Lit., 'raise them up'. [ **וְהָיָה לְפָנֶיךָ** the phrase is difficult, and is so rendered by Graetz III, 678. Rashi takes it literally and explains: make them stand on their feet by wearing the plate on which the Divine Name is inscribed.]

(22) Worn by the High Priest; i.e., by their reactions toward your office as High Priest.

(23) In the days of Antiochus Epiphanes; Modi'm (Modim) was the birthplace of the Hasmoneans. As a son of a captive woman he would not be eligible for the priesthood.

(24) Lit., 'found'.

(25) [Identical with the Pharisees; v. Lauterbach, JQR (N.S.) VI, pp. 88ff.]

(26) Rashi: under the King's anger. Weiss, Dor, I, p. 133: in anger at the false accusation.

(27) There is probably a lacuna in the narrative, which may be supplied from Josephus. Ant. XIII, 10, – 6: The Rabbis sentenced him to flagellation, in accordance with the law of slander; but Eleazar urged that this was altogether inadequate in view of Jannai's exalted position, and proved that they secretly held with the slanderer (Goldschmidt). — In fact, the status of a person is taken into account when bodily injury is sustained (B.K. 83b), but not for slander.

(28) Destroy them.

(29) Jannai.

(30) I.e., the Pentateuch.

(31) The whole of the Rabbinical elaboration and development of the Written Law, so called because it was originally not committed to writing but preserved by oral tradition.

(32) Lit., 'blossomed'.

(33) [MS.M. adds 'and through Judah v. Gedidiah'.]

(34) In the reign of Queen Alexandra. The reference is probably to the educational reforms of setting up schools for children from the age of five or six. In B.B. 21a this is ascribed to Joshua son of Gamala, whereas in J. Keth. chapter VIII. end, it is attributed to Simeon b. Shetah. The latter was probably afraid to move himself in the matter, knowing that his actions were suspected by the Sadducees, and so he put himself in the background and worked through Joshua, who was persona grata with the ruling party. The whole Baraita is carefully analysed and discussed in Halevi, Doroth, I, 3, pp. 397ff

(35) How was the charge found to be untrue?

(36) The Rabbis were extremely strict on the question of family purity, and therefore in such a case the former two witnesses could not be ignored (Tosaf.).

(37) This proves Abaye's point.

(38) Hazamah means refutation which takes the form of 'You who testify to having witnessed this at a certain place on a particular date were with us then elsewhere.' In that case the second witnesses were always believed; v. B.K. 72b.

(39) Sc. his mother, the captors being ignorant of it. Thus there was no real contradiction: two witnesses attested the capture of one whom they thought to be Hyrcanus's mother, and another two attested that it was a bondmaid.

## Talmud - Mas. Kiddushin 66b

Whence do I know it?<sup>1</sup> Because we learnt: R. Simeon said: It once happened that the water reservoir of Discus in Jabneh, which stood in the presumption of being full, was measured and found wanting.<sup>2</sup> Everything which had been rendered clean thereby. R. Tarfon declared clean and R. Akiba unclean.<sup>3</sup> Said R. Tarfon: This mikweh<sup>4</sup> stands in the presumption of being full,<sup>5</sup> and you come to declare it wanting because of a doubt: you must not declare it wanting on the strength of doubt. Said R. Akiba, This man<sup>6</sup> stands in the presumption of unclean, and you wish to declare him clean on the strength of doubt:<sup>7</sup> do not purify him on the strength of doubt.<sup>8</sup> R. Tarfon said: This may be compared to one [a priest] who stood and sacrificed on the altar, when he was discovered to be the son of a divorced woman or a haluzah, in which case his service [hitherto] is fit.<sup>9</sup> Said R. Akiba: This may be compared to one who stood and sacrificed on the altar, when it was learned that he was [physically] blemished, in which case his service is [retrospectively] unfit. Said R. Tarfon: You have compared it to a man with a blemish, while I have compared it to the son of a divorced woman or a haluzah. Let us then consider, to whom is it similar: if it is similar to the son of a divorced woman or a haluzah, we shall judge it like [the law] of a son of a divorced woman or a haluzah; if it is similar to a man with a blemish, we shall judge it like [the law] of one who has a blemish. [Thereupon] R. Akiba began to argue:<sup>10</sup> the unfitness of a mikweh is by one, and the unfitness of a man with a blemish is by one;<sup>11</sup> hence let not the son of a divorced woman or a haluzah prove it, since his unfitness [must be attested] by two. Again, the unfitness of a mikweh is in itself, and that of a man with a blemish is in himself: let not the son of a divorced woman or a haluzah prove it, seeing that his unfitness is through others.<sup>12</sup> Said R. Tarfon to him, 'Akiba! whoever separates himself from you is as though he separated himself from life!' Now, this case of a man with a blemish — whose unfitness is by one, how is it meant? If he contradicts him, is he [the witness] believed!<sup>13</sup> Hence it must mean that he is silent, and by analogy, in the case of a son of a divorced woman or of a haluzah, he is also silent; and it is taught: 'The unfitness of a mikweh is by one, and the unfitness of a man with a blemish is by one; but let not the son of a divorced woman or of a haluzah prove it, since his unfitness [must be attested] by two!'<sup>14</sup> But Abaye maintains, After all, it means that he contradicts him; yet as to your argument. Why is he believed? [the answer is] because he can say to him, 'Strip, and I will shew you [the blemish].' And that is meant when it is taught: 'The unfitness of a mikweh is in itself and the unfitness of a man with a blemish is in himself,<sup>15</sup> but let not the son of a divorced woman or a haluzah prove it — whose unfitness is through others.'

And how do we know that the service of the son of a divorced woman or a haluzah is [retrospectively] fit? — Said Rab Judah in Samuel's name, Because Scripture saith, and it shall be unto him, and to his seed after him, [the covenant of an everlasting priesthood]:<sup>16</sup> this applies to both fit and unfit seed.<sup>17</sup> Samuel's father said, [It is deduced] from the following: Bless, Lord, his substance [helo], and accept the work of his hands:<sup>18</sup> accept even the profaned [hullin] in his midst.<sup>19</sup> R. Jannai said, [It is deduced] from this: And thou shalt come unto the priest that shall be in those days:<sup>20</sup> now, could you then imagine that a man should go to a priest who was not of his days? But this [must refer to one who] was [originally assumed to be] fit, and then became profane.<sup>21</sup>

How do we know that the service of a man with a blemish is [retrospectively] invalid? — Said Rab Judah in Samuel's name: Because Scripture saith, Wherefore say. Behold, I give unto him my covenant of perfection:<sup>22</sup> when he is perfect,<sup>23</sup> but not when he is wanting.<sup>24</sup> But shalom [peace] is written! — Said R. Nahman: The waw of shalom is broken off [in the middle].<sup>25</sup>

MISHNAH. WHEREVER THERE IS KIDDUSHIN AND THERE IS NO TRANSGRESSION,<sup>26</sup> THE ISSUE FOLLOWS THE STATUS OF THE MALE: SUCH IS THE CASE WHEN THE DAUGHTER OF A PRIEST, A LEVITE OR AN ISRAELITE IS MARRIED TO A PRIEST, A LEVITE OR AN ISRAELITE.<sup>27</sup> BUT WHEREVER THERE IS KIDDUSHIN AND THERE IS

TRANSGRESSION, THE ISSUE FOLLOWS THE STATUS OF THE INFERIOR;<sup>28</sup> THIS IS THE CASE WHEN A WIDOW IS MARRIED TO A HIGH PRIEST, OR A DIVORCED WOMAN OR A HALUZAH TO AN ORDINARY PRIEST, OR A MAMZERETH OR A NETHINAH<sup>29</sup> TO AN ISRAELITE, AND THE DAUGHTER OF AN ISRAELITE TO A MAMZER OR A NATHIN.<sup>30</sup> AND WHATEVER [WOMAN] WHO CANNOT CONTRACT KIDDUSHIN WITH THAT PARTICULAR PERSON<sup>31</sup> BUT CAN CONTRACT KIDDUSHIN WITH ANOTHER PERSON, THE ISSUE IS MAMZER. THIS IS THE CASE WHEN ONE HAS INTERCOURSE WITH ANY RELATION PROHIBITED IN THE TORAH.<sup>32</sup> AND WHATEVER [WOMAN] WHO CAN NOT CONTRACT KIDDUSHIN WITH THAT PARTICULAR PERSON OR WITH OTHERS, THE ISSUE FOLLOWS HER STATUS.; THIS IS THE CASE WITH THE ISSUE OF A BONDMAID OR A GENTILE WOMAN.

GEMARA. WHEREVER THERE IS KIDDUSHIN. R. Simeon<sup>33</sup> said to R. Johanan: Is it then a general principle that wherever there is kiddushin and there is no transgression the issue follows the status of the male? But what of

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- (1) That one witness is invalid in sexual matters, even if he is not rebutted.
  - (2) It was used as a ritual bath, which requires a minimum of forty se'ahs.
  - (3) R. Tarfon maintains that the reservoir is regarded as containing the standard quantity until it is actually found to be short, while R. Akiba holds that its shortage is retrospectively assumed.
  - (4) Ritual bath.
  - (5) Until it is found otherwise.
  - (6) Who performed his ablutions therein.
  - (7) For we do not know whether the bath contained the requisite quantity when he bathed therein or not.
  - (8) It is a general principle that in a case of doubt we retain the status quo. Here, however, by applying this principle to the bath and the man respectively, we obtain contradictory results, and hence the controversy of R. Tarfon and R. Akiba.
  - (9) Though it will be unfit in the future, nevertheless that unfitness does not operate retrospectively.
  - (10) Lit., 'judge'.
  - (11) A single person testifying that the mikweh is deficient, or that a priest has a blemish, disqualifies them, v. infra.
  - (12) His mother.
  - (13) Surely not!
  - (14) This supports Raba.
  - (15) I.e., it can be directly ascertained.
  - (16) Num. XXV, 13.
  - (17) But nevertheless, only if the service has already been performed.
  - (18) Deut. XXXIII, 11.
  - (19) Deriving חילול from חולל 'profane'; cf. however, Mak, (Sonc. ed.) p. 79 n. 10. This refers to the tribe of Levi, hence the priesthood. The son of a divorced woman or a haluzah by a priest is a halal, which is connected here with helo and hullin.
  - (20) Deut. XXVI, 3.
  - (21) I.e., was proved to be such, The verse intimates that until he is proved profane, the 'going to him' for service, etc. is valid.
  - (22) Num. XXV, 12 (sic).
  - (23) I.e., unblemished,
  - (24) I.e., blemished,
  - (25) Being written with a broken waw ( ן ) instead of שׁלום (with a complete waw); this intimates that it must be read without it too, שׁלם shalem, = whole, perfect, sound.
  - (26) I.e., the betrothal is valid and permitted.
  - (27) The child has the father's status.
  - (28) Lit., 'the defective'.
  - (29) Fem. of mamzer and Nathin respectively.
  - (30) In all these cases the betrothal is valid, though forbidden,

- (31) I.e., the kiddushin, even if contracted, is invalid.  
 (32) E.g., a sister, mother, etc. A married woman too is included.  
 (33) Probably, R. Simeon b. Lakish.

## Talmud - Mas. Kiddushin 67a

a proselyte who marries a mamzereth, where the kiddushin is valid and there is no sin, and yet the issue follows the status of the inferior?<sup>1</sup> For it was taught: If a proselyte marries a mamzereth, the issue is mamzer: this is the view of R. Jose! He replied: Do you think that our Mishnah agrees with R. Jose?<sup>2</sup> Our Mishnah is according to R. Judah, who maintained: A proselyte may not marry a mamzereth; hence there is kiddushin, but there is transgression, [and so] the issue follows the status of the inferior. Then let it be taught [in the Mishnah]?<sup>3</sup> — ‘WHEREVER’ of the second clause is taught as an extension.<sup>4</sup> Alternatively, it is after all, according to R. Jose, but ‘THIS IS THE CASE’<sup>5</sup> is taught as a limitation.<sup>6</sup> Does then the ‘THIS IS THE CASE’ imply that there are no others? But what of a halal<sup>7</sup> who marries the daughter of an Israelite, where there is kiddushin and there is transgression, yet the issue follows the male?<sup>8</sup> — That is no difficulty: he [the Tanna of our Mishnah] holds with R. Doseithai son of R. Judah.<sup>9</sup> But what of an Israelite who marries a halalah,<sup>10</sup> where there is kiddushin and there is no transgression, and yet the issue follows the male? — ‘WHEREVER’ is stated in the first clause as an extension.<sup>11</sup> Then let it be explicitly taught? — Because it cannot be [conveniently] taught. [For] how shall it be stated: ‘The daughter of a priest, a Levite, or an Israelite or a halalah who marries a priest, a Levite, or an Israelite?’ Is then a halalah eligible to [marry] a priest?<sup>12</sup>

But there is the case of Rabbah b. Bar Hanah. For Rabbah b. Bar Hanah said in R. Johanan's name: If an Egyptian of the second degree<sup>13</sup> marries an Egyptian woman of the first degree, her son ranks as third degree!<sup>14</sup> — ‘WHEREVER’ of the first clause is stated as an extension; whereas according to R. Dimi, who maintained that he belongs to the second degree,<sup>15</sup> ‘THIS IS THE CASE’ is taught as a limitation.

But there is [the following]: For when Rabin came,<sup>16</sup> he said in the name of R. Johanan: In the case of [other] nations, follow the male;<sup>17</sup> if they become proselytes, follow the more inferior status<sup>18</sup> of the two! — ‘THIS IS THE CASE’ is taught as a limitation.

[Reverting to the authorship of the Mishnah:] How now! If you say that our Mishnah agrees with R. Judah, it is well: then ‘WHEREVER’ of the first clause includes an Israelite who marries a halalah<sup>19</sup> and the case of Rabbah b. Bar Hanah; while ‘THIS IS THE CASE’ excludes the cases of R. Dimi and Rabin.<sup>20</sup>

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(1) Viz., it is mamzer.

(2) Who permits this union in the first place.

(3) Among the cases enumerated in this category

(4) I.e., to include cases not explicitly enumerated.

(5) Lit., ‘and which is it? It is . . .

(6) Notwithstanding that a general principle is stated, the ‘THIS IS THE CASE’, teaches that it applies only to the cases enumerated.

(7) V. Glos.

(8) Hence this should be included in the first clause.

(9) That the daughter of this union may marry a priest, v. infra 74b, thus she does not follow the male.

(10) Fem. of halal.

(11) V. p. 338. n. 6.

(12) Surely not. Hence halalah could not be added simply, and so the Tanna implicitly includes it by stating ‘WHEREVER’.

(13) I.e., the second generation after conversion, his father having been a proselyte.

(14) Hence, eligible to an ordinary Jewess, v. Deut. XXIII, 8. Thus, here we have kiddushin and no transgression, and the issue follows the male.

(15) Thus following the mother.

(16) V. p. 46, n. 6.

(17) If a man and a woman among them of two different peoples marry, the issue takes the father's status, v. infra.

(18) Thus, though their kiddushin is valid and involves no transgression, the status of the male is not invariably followed.

(19) His daughter may marry a priest, thus following her father's status. This union is permitted.

(20) As above.

## Talmud - Mas. Kiddushin 67b

[Again] 'WHEREVER' of the second clause includes a proselyte who marries a mamzereth. But if you say that it agrees with R. Jose: 'WHEREVER' of the first clause is [to be explained] as we have said: 'THIS IS THE CASE' [likewise] as we have said: but what is 'WHEREVER' of the second clause to include?<sup>1</sup> — Now on your view, according to R. Judah, what is the purpose of the 'THIS IS THE CASE' of the second clause? Hence [you must say] because the first clause states 'THIS IS THE CASE', the second likewise states: THIS IS THE CASE. So here too, because the first clause states 'WHEREVER,' the second does likewise state WHEREVER.

The [above] text [states]: 'When Rabin came, he said in the name of R. Johanan: In the case of [other] nations, follow the male; if they become proselytes, follow the more inferior status of the two'. What is meant by 'In the case of [other] nations, follow the male'? — As it was taught: How do we know that if a member of one of the nations<sup>2</sup> has intercourse with a Canaanitish woman<sup>3</sup> and begets a son, you may buy him as a slave?<sup>4</sup> Because it is said: Moreover of the children of the residents that do sojourn among you, of them shall ye buy.<sup>5</sup> I might think that even if a Canaanite has intercourse with a woman of other nations and begets a son, you may buy him for a slave; therefore it is said, which they have begotten in your land:<sup>6</sup> only of those who are begotten in your land, but not of those who dwell in your land.<sup>7</sup>

'If they become proselytes, follow the more inferior status of the two.' In which case? Shall we say, in the case of an Egyptian who marries an Ammonitess? What inferior status is there? [The Torah decreed,] An Ammonite [shall not enter unto the assembly of the Lord . . . even to the tenth generation],<sup>8</sup> but not an Ammonitess!<sup>9</sup> — But [it means] an Ammonite who marries an Egyptian woman: now, if [the issue] is male, he follows<sup>10</sup> him [the father];<sup>11</sup> and if [the issue] is female, she follows her [the mother].<sup>12</sup>

WHATEVER [WOMAN] WHO CANNOT CONTRACT KIDDUSHIN WITH THAT PARTICULAR PERSON. How do we know it? — For R. Hiyya b. Abin said in R. Johanan's name, the matter eventually being ascribed to the authority of R. Jannai, while R. Aha son of Raba said that it was eventually ascribed to the authority of R. Jose the Galilean: Scripture saith, And when she is departed out of his house, she may go and be married to a strange man:<sup>13</sup> 'to a stranger', but not to relations.<sup>14</sup> R. Abba demurred to this: Yet say: 'a strange [man]', but not [her husband's] son?<sup>15</sup> — Of a son it is explicitly written: A man shall not take his father's wife;<sup>16</sup> what then is the purpose of 'a strange [man]' This proves, [it is to teach], to strangers, but not to relations. Yet perhaps both refer to the [husband's] son, one [treating of it] at the outset, the other, if performed!<sup>17</sup> — [That it is interdicted] at the outset is deduced from a wife's sister: if one may not betroth a wife's sister, who is [forbidden on pain of] kareth;<sup>18</sup> how much the more so is this of those on account of whom death by Beth din is incurred!<sup>19</sup> — Then perhaps both refer to a wife's sister, one [forbidding it] at the outset, the other, if performed!<sup>20</sup> — That indeed is so. [Then] we have found [this] of a wife's sister; how we do know it of other consanguineous relations? — We learn then from a wife's sister: just as a wife's

sister is distinguished in that she is a consanguineous relation with whom a deliberate offence<sup>21</sup> involves kareth, and an unwitting offence involves a sin-offering, and kiddushin with her is invalid;<sup>22</sup> so with every consanguineous relation, with whom a deliberate offence involves kareth and an unwitting offence a sin-offering, kiddushin is invalid. Now, as for all [others], it is well: they may be [so] derived; but as for a married woman and a brother's wife, it [the analogy] can be refuted [thus:] As for a wife's sister, that [the invalidity of kiddushin] is because she is not permitted [even] where there is a precept;<sup>23</sup> will you say [the same] of a brother's wife, who is permitted where there is a precept? [The analogy with] a married woman too may be refuted: as for these, that [the invalidity of kiddushin] is because she cannot be permitted whilst they who cast the interdict upon her are alive;<sup>24</sup> will you say [the same] of a married woman, who can be permitted during the lifetime of him who renders her forbidden?<sup>25</sup> — But, said R. Jonah others state, R. Huna son of R. Joshua — Scripture saith, For whosoever shall do any of these abominations, even the souls that do them shall be cut off:<sup>26</sup> thus all consanguineous relations are assimilated to a wife's sister: just as kiddushin with a wife's sister is invalid, so is kiddushin with all other consanguineous relations invalid. If so,

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- (1) No other case of kiddushin being legally recognised but forbidden, where the issue follows the status of the inferior, is known, barring those enumerated in the Mishnah.
- (2) Other than the seven which inhabited Palestine at the time of the Conquest. Deut. XX, 16f.
- (3) I.e., a member of the seven nations.
- (4) The law of Deut. XX, 16f does not apply to him.
- (5) Lev. XXV, 45. This is preceded by (v. 44) of the nations that are round about you (i.e., not the seven nations), of them shall ye buy bondmen and bondmaids. Hence, 'Moreover,' etc., implies not only of them, but even of the residents etc. Since the members of the seven races are excluded (Deut. XX. 16f), it must mean, not only the pure members of the other nations, but even those borne by Canaanitish women.
- (6) Lev. XXV, 45.
- (7) The Canaanites. Thus in both cases the issue takes the status of the father.
- (8) Deut. XXIII, 4.
- (9) The 'of more inferior status of the two' implies that they are both inferior, but one more so than another. But an Ammonitess has no inferior status at all, for she may marry a Jew immediately after her conversion.
- (10) Lit., 'cast him after.'
- (11) And ranks as an Ammonite; neither he nor any of his male descendants will be permitted to marry a Jewess.
- (12) And counts as an Egyptian woman of the second generation; the following generation will be permitted to marry a Jew or a Jewess. But she does not take her father's status to count as an Ammonitess, in which case she herself could marry a Jew.
- (13) Deut. XXIV, 2.
- (14) Who are interdicted by the laws of incest; i.e., marriage with these is invalid.
- (15) Only then is kiddushin invalid. But kiddushin with any other consanguineous relation, though forbidden, may be valid.
- (16) Ibid. XXIII, 1 (E.V. XXII, 30); 'shall not take' intimates that such 'taking.' viz., betrothal, is invalid.
- (17) One shews that this marriage may not be contracted in the first place. Yet I might think that if contracted it is valid and necessitates a divorce for its dissolution; therefore the other shews that even if performed it is not recognised.
- (18) V. Glos.
- (19) The latter includes a husband's son.
- (20) Lev. XVIII, 28, thou shalt not take a woman to a sister, teaches that kiddushin is forbidden; and Deut. XXIV, 2 'to a strange man' implying but not to relations, may intimate that such kiddushin is invalid if contracted. But with respect to other relations enumerated in Lev. XVIII, 7-17 in connection with which Scripture does not say: 'thou shalt not take' — a term implying 'betrothal' — kiddushin with them, though forbidden, may be valid.
- (21) I.e., coition,
- (22) Even when performed.
- (23) If A and B, two brothers, are married to C and D, two sisters, respectively, and A dies childless, B may not take C, though if she were not his wife's sister it would be incumbent upon him (Deut. XXV, 5ff.).

(24) Even if one divorces his wife, her sister is still prohibited as long as the former lives.

(25) I.e., — by her husband's divorce. And thus the question remains, whence do we know that kiddushin is invalid with consanguineous relations?

(26) Lev. XVIII, 29; the chapter enumerates the forbidden consanguineous relations.

## Talmud - Mas. Kiddushin 68a

even a niddah too?<sup>1</sup> Why then did Abaye say: All agree that if one has inter — course with a niddah or a sotah,<sup>2</sup> the issue is not mamzer? — Said Hezekiah, Scripture saith, [and if any man lie with her,] and her menstruation<sup>3</sup> be upon him:<sup>4</sup> even during her 'menstruation' betrothal with her is valid.<sup>5</sup>

Consider: one can assimilate [all other consanguineous relations] to niddah, and one can assimilate her to a wife's sister:<sup>6</sup> what [reason] do you see to assimilate them to a wife's sister:<sup>7</sup> assimilate them to niddah? — [In a choice between] leniency and stringency, we assimilate to the case of stringency.<sup>8</sup>

R. Aha b. Jacob said: It is inferred a minori from yebamah: if kiddushin with a yebamah is invalid,<sup>9</sup> though she is [interdicted only] by a negative precept, how much the more so with those who are forbidden on pain of death or kareth! If so, should not others, interdicted [only] by negative precepts. be the same?<sup>10</sup> — Said R. Papa, of those interdicted by negative precepts it is explicitly stated: If there be to a man two wives, the one beloved, and the other hated.<sup>11</sup> Now is there before the Omnipresent a hated [woman] or a beloved one!<sup>12</sup> But 'beloved' means beloved in her marriage, and 'hated' means hated in her marriage;<sup>13</sup> yet the Divine Law states: 'and if there be.'<sup>14</sup>

Now R. Akiba, who maintained, kiddushin with those who are interdicted by a negative precept is invalid, — to what does he apply, 'if there be'? — To [the betrothal of] a widow to a High Priest, and in accordance with R. Simai. For it was taught: R. Simai said: [The issue] of all [marriages forbidden by a negative injunction] R. Akiba declared mamzer, excepting that of a widow [married] to a High Priest, since the Torah said, [a widow . . . he shall not take,] and he shall not profane [his seed]:<sup>15</sup> he renders [his seed] profane, but not mamzer. But on the view of R. Yeshebab, who said: Come, and let us cry out against Akiba son of Joseph, who declared: He who has no entry in Israel, the issue is mamzer — it is well if R. Yeshebab comes to combat R. Simai; then it is right. But if he states an independent opinion, this including even those who are interdicted by a positive precept, to what can he apply it?<sup>16</sup> — To a non-virgin<sup>17</sup> [married] to a High Priest.<sup>18</sup> And wherein does it differ?<sup>19</sup> — Because it is a positive precept unapplicable<sup>20</sup> to all.<sup>21</sup> And the Rabbis: instead of explaining [the verse]<sup>22</sup> as referring to those forbidden by negative precepts, let them refer it to those forbidden by positive precepts?<sup>23</sup> — Those who are forbidden by positive precepts, — how are they conceivable? If both are Egyptian women, both are 'hated'? If one is an Egyptian woman and the other a Jewess — we require that the 'two wives' shall be of one people: if [one is] a non-virgin [married] to a High Priest, — is it then written, [If] there be [two wives] to a priest?<sup>24</sup> And R. Akiba?<sup>25</sup> — You are forced to leave it to the verse to explain itself.<sup>26</sup>

AND WHATEVER [WOMAN] WHO CANNOT CONTRACT KIDDUSHIN etc. How do we know [it of] a Canaanitish bondmaid?<sup>27</sup> — Said R. Huna, Scripture saith, Abide ye here with ['im] the ass<sup>28</sup> — it is a people ['am] like unto an ass.<sup>29</sup> We have thus found that kiddushin with her is invalid:

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(1) If one betroths a woman during her menstruation the kiddushin should be invalid, and as a corollary, the issue conceived during menstruation should be mamzer, these two being interdependent. The prohibition of intercourse with a niddah is also stated in that passage.

(2) V. Glos. The sotah is forbidden to her own husband too, and to this Abaye refers.

(3) E.V. 'impurity'



- (4) Lev. XV, 24.
- (5) Lit., 'there is (being) — sc. betrothal — with her.' The verb 'to be' is understood to mean betrothal.
- (6) Both being mentioned in Lev. XVIII.
- (7) So that the kiddushin is not legally recognised.
- (8) Owing to the doubt.
- (9) V. Yeb. 23b.
- (10) Granted that they cannot be deduced a minori, yet they follow by analogy.
- (11) Deut. XXI. 15.
- (12) Surely it is unthinkable that God will change the law of inheritance because a man loves one woman or hates another! Hence one general law that the firstborn receives a double portion of the patrimony would have sufficed.
- (13) I.e., the marriages being permitted and forbidden respectively.
- (14) Intimating that the kiddushin is recognised.
- (15) Lev. XXI, 14f.
- (16) Sc. 'hated' and 'beloved'. For notes on this passage v. supra 64a.
- (17) A woman who is not a virgin.
- (18) Forbidden in Lev. XXI, 23f.
- (19) Why is she different from an Egyptian or an Edomite woman, since all three are interdicted by a positive command?
- (20) Lit., 'not alike'.
- (21) And not as stringent.
- (22) 'And if there be'.
- (23) Since by analogy with yebamah kiddushin with the former should be invalid.
- (24) Hence the verse cannot refer to a woman who is forbidden by a positive precept.
- (25) How does he overcome these difficulties?
- (26) It cannot refer to those who are interdicted by negative precepts, since the analogy with yebamah teaches otherwise. Hence it must refer exclusively to one of those just mentioned, in spite of their improbability
- (27) That kiddushin with her is invalid.
- (28) Gen. XXII, 5; said by Abraham to his slaves.
- (29) By reading אַמ ('am) for אִמ ('im); a mere chattel of the master.

## Talmud - Mas. Kiddushin 68b

how do we know that the issue takes her status? — Because Scripture saith, the wife and her children shall be her master's.<sup>1</sup> How do we know [it of a freeborn] Gentile woman? — Scripture saith, neither shalt thou make marriages with them.<sup>2</sup> How do we know that her issue bears her status? — R. Johanan said on the authority of R. Simeon b. Yohai, Because Scripture saith, For he will turn away thy son from following me:<sup>3</sup> thy son by<sup>4</sup> an Israelite woman is called thy son, but thy son by a heathen is not called thy son.<sup>5</sup> Rabina said: This proves that thy daughter's son by a heathen is called thy son.<sup>6</sup> Shall we say that Rabina holds that if a heathen or a [non-Jewish] slave cohabits with a Jewess the issue is mamzer?<sup>7</sup> — [No.] Granted that he is not [regarded as] fit,<sup>8</sup> he is not mamzer either, but merely stigmatised as unfit.<sup>9</sup>

Now, that [verse] refers to the seven nations!<sup>10</sup> whence do we know it of other nations? — Scripture saith, 'For he will turn away [thy son],' which includes all who may turn [him] away. That is well according to R. Simeon, who interprets the reason of Scripture.<sup>11</sup> But on the view of the Rabbis,<sup>12</sup> what is the reason?<sup>13</sup> — Scripture saith, and after that thou shalt go in unto her, and be her husband, [etc.],<sup>14</sup> whence it follows that before that kiddushin with her is invalid.

We have thus found that kiddushin with her is not recognised. How do we know that her child is as herself? — Scripture saith, If there be to a man [two wives] . . . and they bare to him [children]:<sup>15</sup> where we read 'if there be',<sup>16</sup> we also read: 'and they bare to him';<sup>17</sup> but where we do not read: 'If there be', we do not read: 'and they bare to him'. If so, is not a [heathen] bondmaid likewise? — Yes, it is even thus. Then what is the purpose of 'the wife and her children shall be her master's'? —

## For what was taught:

- (1) Ex. XXI, 4. This refers to a Gentile bondmaid given as wife to a Hebrew slave. The children remain slaves when their father is freed, shewing that they bear their mother's status.
- (2) Deut. VII, 3. The verse implies that such marriage is not recognised.
- (3) Ibid. 4.
- (4) Lit., 'who comes'.
- (5) [Although the text speaks both of the case of a Jewess becoming the wife of a heathen, and of a heathen becoming the wife of a Jew, yet it gives only one reason for the prohibition of intermarriage: viz., lest 'he turn aside thy son from following after me', a reason which, as it stands appears applicable only to one prohibition. Hence the verse must be taken not as expressing the fear lest the Jewish partner in a heathen marriage may turn aside from God, since this is evident and is equally applicable to both cases, but states an additional reason for the prohibition with reference to the offspring — the fear that the heathen father 'will turn aside thy son' i.e., the son of thy daughter who is legally a Jew 'from following after me'; whereas in the case where a Jew marries a heathen woman the fear does not arise, since the child follows her status, and is not considered 'thy son' Rashi.] Tosaf.: Since Scripture states 'son' and not 'seed' which would include the son's son, it is evident that the fear is only for thy 'son' born of a Jewess, but not his son, born of a Gentile. That must be because his son is a heathen too, like the mother.
- (6) [According to Rashi's interpretation (n. 5), whereas R. Johanan's main emphasis is on the heathen status of the offspring of a heathen woman by a Jew, Rabina stresses the other inference — the status of the offspring of a Jewish woman by a heathen. v. Strashun.] Tosaf. I.e., a Jew. This follows because Scripture does not say: for he will turn away thy son and thy daughter. Now, 'and thy daughter' would likewise imply, but not thy daughter's son, as in n. 5, whence we would learn that her son by a heathen is also a heathen. Since he is not excluded, it follows that Scripture objects to his being 'turned away' too, because he is a Jew (Tosaf.)
- (7) For, since he is called 'thy son', he is a Jew, not a heathen. Yet he is the issue of a Jewess by one with whom kiddushin is not recognised, and therefore mamzer, in accordance with the Mishnah. — In that case his status is worse, for as a mamzer he can never marry a legitimately born Jewess (Deut. XXIII, 3), whereas as a Gentile he can become a proselyte and marry a Jewess.
- (8) V. next note.
- (9) Pasul. As such only a priestly marriage is barred to him.
- (10) V. Deut. VII, 1, 2.
- (11) In the sense that when we know the reason of a precept, we may extend it to all other cases where the same applies, and conversely, exclude those where it does not.
- (12) Who oppose this.
- (13) Seeing that for he will turn away too refers to the seven nations.
- (14) Deut. XXI, 13. The verse refers to a woman captured in war; since the members of the seven nations were to be utterly exterminated, this must allude to a member of other nations, 'After that' means after her period of mourning. etc.
- (15) Deut. XXI, 25.
- (16) I.e., kiddushin is valid; v. p. 343, n. 4.
- (17) The child takes his status.

## Talmud - Mas. Kiddushin 69a

If he says to his bondmaid, 'Behold, thou art free, but thy child [yet to be born] shall be a slave,' the 'child is as herself: this is the view of R. Jose the Galilean; the Sages maintain: His words are valid,<sup>1</sup> for it is said: 'the wife and her children shall be her master's'. How does this teach it?<sup>2</sup> — Said Raba: This refers to R. Jose the Galilean's [ruling].<sup>3</sup>

MISHNAH. R. TARFON SAID: MAMZERIM<sup>4</sup> CAN BE PURIFIED.<sup>5</sup> HOW? IF A MAMZER MARRIES<sup>6</sup> A BONDMAID, HER SON IS A SLAVE;<sup>7</sup> IF HE IS FREED, IT IS FOUND THAT THE SON IS A FREE MAN.<sup>8</sup> R. ELIEZER SAID: BEHOLD, HE IS A SLAVE, A MAMZER.<sup>9</sup>

GEMARA. The Scholars propounded: Does R. Tarfon say [thus] at the very outset,<sup>10</sup> or only if it