THE JERUSALEM TALMUD
THIRD ORDER: NAŠIM
TRACTATE KETUBOT
SIXTH ORDER: TAHOROT
TRACTATE NIDDAH
THE JERUSALEM TALMUD

תלמוד ירושלים

THIRD ORDER: NASIM

סדר נשם

TRACTATE KETUBOT

מסכת חתובה

SIXTH ORDER: TAHOROT

סדר טהרות

TRACTATE NIDDAH

מסכת נדה

EDITION, TRANSLATION, AND COMMENTARY

BY

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Preface

The present volume is the eighth in this series of the Jerusalem Talmud, the third in a four volume edition, translation, and Commentary of the Third Order of this Talmud. It also contains an edition of the surviving fragment of Tractate *Niddah*, of the Sixth Order. The principles of the edition regarding text, vocalization, and Commentary have been spelled out in detail in the Introduction to the first volume. The text in this volume is based on the manuscript text of the Yerushalmi edited by the Academy of the Hebrew Language, Jerusalem 2001.

The text contains many passages which are paralleled in other Tractates of this Talmud. It is general knowledge that parallel passages in the Jerusalem Talmud are copies of one another. Since there are no parallel sources for Tractate *Ketubot* and only two Geniza fragments for Tractate *Niddah*, parallel passages are considered as parallel sources and a full list of variant readings is given in every case. These readings show that in fact parallel passages are to be considered witnesses to the same original text but it appears that a number of deviations cannot be explained as copyists’ errors and that the scribe of the Leiden ms. copied different tractates from different mss. representing different histories of transmission and different stages of adaptation of Palestinian spelling (as represented by most Geniza fragments) to the Babylonian spelling with which the scribes were familiar.
The extensive Commentary is not based on emendations; where there is no evidence from manuscripts or early prints to correct evident scribal errors, the proposed correction is given in the Notes. As in the preceding volume, for each paragraph the folio and line numbers of the text in the Krotoschin edition are added. It should be remembered that these numbers may differ from the editio princeps by up to three lines. It seems to be important that a translation of the Yerushalmi be accompanied by the text, to permit the reader to compare the interpretation with other translations.

Again I wish to thank my wife, Dr. Eva Guggenheimer, who acted as critic, style editor, proof reader, and expert on the Latin and Greek vocabulary. Her own notes on some possible Latin and Greek etymologies are identified by (E. G.).
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Introduction to Tractate Ketubot

The Tractate mostly deals with the monetary aspect of talmudic marital law. Its Babylonian equivalent is known as "miniature Talmud" since a mastery of this Tractate requires concurrent mastery not only of all aspects of marriage law (as given in Tractates Yebamot, Gittin, and Qiddusin) but also of torts and all aspects of civil law (contained in the three Gates of Tractate Neziqin) and of judicial oaths (from Tractate Sebuot). The same characterization can be applied to the Yerushalmi Tractate.

The word ketubah denotes the document which spells out the husband's obligations towards his wife. (There is a question whether to write ketubah or ketubbah for the Hebrew הַכְּבֻּעַה. It is clear that the word is spelled, and is pronounced, by all Jewish groups with ב to distinguish it from the feminine passive participle הַכְּבֻּעַת, but it seems that universally the /b/ is treated as having dagesh lene. A duplication of b seems to be unwarranted.) The ketubah document contains several sections. The obligatory ones are: (1) a declaration that the bride, mentioned by name, has agreed to be married by the groom, also mentioned by name. (2) A promise by the groom of a donatio propter nuptias, to be paid upon termination of the marriage either by divorce or by the husband's death. The required minimum is two minas for a virgin, one mina for a widow.
The actual value of such a sum can be determined by Mishnah *Peah* 8:8 which states that a person who owns two minas in passive investments is precluded from applying for public charity. The minimum sum is always stated explicitly; the groom is free to obligate himself for additional sums.  

(3) A summary statement of the mutual duties of the spouses. (4) A description and evaluation of the dowry brought by the bride, which becomes the husband’s property for the duration of the marriage. Originally, in the times of the establishment of Jewish customs after the Babylonian exile, the husband pledged specific guarantees for dowry and donation. In Hasmonean times, this was changed to a general lien on all real property held by the husband. (5) A declaration that the bride’s rights in this document were irrevocably affirmed in the presence of two witnesses who signed the document.  

The first Chapter states first the principle that the basic amount of the ketubah of a virgin is 200 zuz, two minas, and that of a non-virgin one mina. Since the second mina is *pretium pudicitiae*, there follow rules under which circumstances the husband can claim that his bride was not a virgin and he has the right of either to declare the marriage null and void.  

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1 In modern Israeli ketubot, a sufficient amount in modern currency is pledged.  
2 The specific pledge is found in Hellenic law in Egypt; the general lien on all property was Egyptian native practice. Cf. R. Taubenschlag, *The Law of Greco-Roman Egypt in the Light of the Papyri*, New York 1944, p. 94. In general, local laws are more relevant for Talmudic law than Roman law which in matters of personal relations superseded local customs in the East only in Christian times.  

This section is missing in most modern ketubot, since the transfer of jurisdiction in money matters from rabbinic to State courts has reduced most ketubot in the Western world to meaningless pieces of paper.
or to reduce the ketubah. (Since Deut. 22:13-21, about the husband claiming his bride was not a virgin, deals with criminal law, it is clear that in rabbinic interpretation the entire paragraph has to be re-interpreted. Since the husband is married to his wife, he is barred from testifying for or against her as a relative. Criminal matters can be decided only by the testimony of two independent witnesses. Therefore, the paragraph presumes that the husband produces two witnesses to the adultery of his bride between preliminary and definitive marriage ceremonies.) It is clear that the husband has no claim if before the definitive marriage he had unchaperoned access to his fiancée. The second part of the Chapter is devoted to the weight given to testimony of the parties in absence of witnesses or documents in all kinds of civil suits.

The second Chapter starts with a case in which there is no ketubah document; what kind of proof is admitted for a claim of a divorcee or widow for full payment of a virgin's dower. The remainder of the Chapter is devoted to two principles of procedure in matters other than criminal law. The first is that the mouth which forbade is the mouth which permits; i.e., if a person testified to anything which is to his detriment and which was not known from another source, he must be believed if he testifies to another fact which neutralizes the detriment. The second is that while people cannot testify in their own behalf since everybody is related to himself and relatives cannot testify, two people can mutually testify to each other's benefit. The main application of that principle is to the rules of priesthood. A priest may not be married to a woman who had sexual relations with a man whom she could not legally marry. A woman raped by a Gentile cannot be married to a Cohen. But women who were kidnap victims together can testify for one another that
they had not been raped. This then leads to a discussion of further rules for victims of kidnappings or wars.

The third Chapter deals with the fines and other payments imposed on rapists and seducers, whose payments are in biblical law tied to the "bride money of virgins", which is identified with the two minas of the basic ketubah. A close relative who rapes or seduces cannot be made to pay since for an act which is a capital crime the perpetrator cannot be made to pay even if he cannot be executed for lack of eye-witnesses. Whether a person who is punished by whipping can be made to pay is a matter of dispute. There are differences in law depending on the age of the victim, whether underage, adolescent, or adult. This leads to a discussion of patria potestas over the different categories of girls (there is no materna potestas in rabbinic law.) The rapist or seducer who confesses to his crime can be made to pay for the damage he caused but cannot be made to pay a fine since nobody (e.g., a thief) can be punished by a fine on his own confession.

The main topic of the fourth Chapter is the father's power over his underage or adolescent daughter, based on the biblical rules regarding a rapist and a seducer on one side and of the man falsely accusing his wife (whom he married when she was underage) of infidelity. Marriage emancipates a girl from her father's power. This leads to a discussion of the husband's power over and obligations towards his wife and children. The second part of the Chapter contains a list of obligations of the husband or his estate towards his wife and children which are independent of a written ketubah; they are implied by the fact that a marriage exists. If a wife is kidnapped, the husband has to ransom her. If she falls sick, he
has to pay for her medical expenses. (For the widow, there is a difference in treatment of an acute or chronic illness.) In a polygamous marriage, if a wife dies before her husband, her sons will inherit their mother’s ketubah claim. Daughters, who do not inherit if there are sons, have the right to be supported until they marry and to receive an appropriate dowry. The widow is given the choice either of remaining in her husband’s house and being supported by his estate or to claim payment of her ketubah and leaving.

The fifth Chapter starts with a discussion of the value of a ketubah. Everybody agrees that there is no upper limit to the amount for which the groom can obligate himself in the ketubah, and that the basic amount must be two minas for the virgin and one mina for the previously married woman. There is an opinion that the bride may write a fake receipt, in fact reducing the basic amount. The opposing opinion holds that any marriage without full financial responsibility of the husband is immoral. A second topic is the way in which a non-priestly woman enters the priestly clan by marriage; the complications are uniquely the result of the rabbinic system of double marriage ceremonies, preliminary and definitive. The wife is obligated to keep house; there is a list of necessary duties which depend on the amount of dowry the bride brings with her; most authorities hold that even the richest heiress has to do some housekeeping, if only for her own mental health. Then follows a discussion of the marital duties; a husband’s duty to satisfy his wife’s sexual needs depend on his working life; it ranges from once every day for financiers to once in six months for sailors. If a wife refuses to sleep with her husband, he can go to court to reduce her ketubah; if the husband refuses to sleep with his wife, she can go to court to increase her
discussion turns to details of other obligations the spouses have to one another.

The sixth Chapter starts with a discussion of the wife's earnings but most of the Chapter is devoted to the treatment of dowries and the obligations of the husband in exchange for receiving the dowry as working capital.

The seventh Chapter is devoted to cases in which one of the parties misbehaves and either the wife can force a divorce with full payment of the ketubah, or the husband can divorce without paying.

The eighth Chapter deals with property the wife inherits during the marriage. This is paraphernalia property, property outside the ketubah, of which the husband has power of administration but no property rights. The relevant rules are then extended to levirate marriages.

The ninth Chapter starts with the power of the contracting parties to live in a regime of separation of property. It then turns to the order of precedence between creditors, the widow, and heirs of an estate, and to rules covering the accountability to the heirs of a wife active in her husband's business, or one whose ketubah claim is not clear-cut.

The tenth Chapter essentially discusses bankruptcy cases, disguised as rules governing the liquidation of ketubah claims of wives of a polygamous husband whose estate is insufficient to pay all claims. The case of three wives with different ketubah amounts, all married at the same moment, presents an interesting mathematical problem; the rule
implied by the Mishnah is one of the rare cases in which a Mishnah is rejected by both Talmudim without much discussion.

The eleventh Chapter treats the rights of a widow in dealing with her late husband's estate, and the rules of judicial liquidation sales. The twelfth Chapter first treats the case that a husband undertook certain obligations regarding his wife's daughters from a previous marriage and then returns to the widow's rights. The Halakhah for this part repeats a Halakhah in Kilaim.

The thirteenth and last Chapter contains different rules about money matters, some of them connected with marital law. The thread which connects the different subjects is that all these rules are attributed to two judges active sometime during the Second Commonwealth. The last part of the Chapter returns to marital matters: the limited power of the husband to determine the marital domicile and the currency in which the ketubah has to be liquidated in case of change of domicile.
Mishnah 1: A virgin is married on Wednesday and a widow on Thursday, for in smaller towns court convenes two times per week, on Monday and Thursday, so if he has a complaint about virginity he can quickly go to court\(^\text{1}\).

\(^{1}\) This reason, explored at length (and rejected) in the Halakhah, refers only to the marriage of the presumed virgin. For the widow, both Talmudim explain that the groom will have three days, the day of the wedding, Friday, and the Sabbath, to spend with his new wife. If he marries any other day, the groom might be expected to go to work the next day. In a metropolis one might expect to have the court available every working day.

Halakhah 1: "A virgin is married on Wednesday," etc. Bar Qappara said, because a blessing is written there. But a blessing in only written on the Fifth and the Sixth days! On the Fifth for birds and fish\(^\text{2}\), on the Sixth...
for Adam and Eve\textsuperscript{3}. Rebbi Yose said, the reason of Bar Qappara is the Fourth, evening of the Fifth\textsuperscript{4}, and the Fifth, evening of the Sixth\textsuperscript{5}. Is there not a blessing written also on Sabbath\textsuperscript{6}? No blessing is written for creatures, only for the day.

2 The days of the week, which in Hebrew are simply numbered from 1 to 6, are identified with the Days of Creation. Fish and birds, created on the Fifth Day (Thursday) are blessed in Gen. 1:22.

3 Gen. 1:28.

4 A couple which marries on Wednesday will first sleep together in the following night. Since the Jewish day starts at nightfall, this already is Thursday; they immediately benefit of the blessing to be fruitful and multiply. In the Babli, 5a, this is a baraita in Bar Qappara’s name.

5 In the Babli, 5a, the explanation of R. Yose is part of the baraita attributed to Bar Qappara.

6 Gen. 2:3.

Because no blessing is written for creatures? Could she have been married on the Sabbath if a blessing were written for creatures? But was it not stated\textsuperscript{7}: "A man should not first have sexual relations\textsuperscript{8} on the Sabbath, for he makes a wound." It must follow "others", for "others permit it.\textsuperscript{9}" But "others" permit only when he is already married\textsuperscript{10}, for
before he was married he had no right to what she finds, what she earns\textsuperscript{11}, and to dissolve her vows\textsuperscript{12}. After he married her, he has the right to receive what she finds or earns, and to dissolve her vows. If you say so, he is like someone who acquires on the Sabbath\textsuperscript{13}. Rebbi Mana said, this means that those who marry a widow\textsuperscript{14} must take her in\textsuperscript{15} when it is still daytime on Friday, that he should not be like someone who acquires on the Sabbath.

7 This \textit{baraita} is stated in full in \textit{Berakhot} 2:6 (5b l. 7), Note 261.

8 With his virgin bride.

9 This is part of the \textit{baraita} text in \textit{Berakhot}. In the Babli, \textit{Ketubot} 6b, the opinion of "others" is ascribed to "the Sages" and practice is decided following them.

10 Meaning the final marriage ceremony in which the bride enters her husband's house, which consists of the recitation of the "Seven Benedictions" in the presence of at least ten witnesses (cf. Note 76) after which the couple is considered married in all respects by being alone together. This ceremony activates all monetary aspects of the marriage contract.

11 In addition, the woman acquires the right to all services the husband is obligated to deliver in return for his acquisition of her property rights.

12 Without needing her father's consent; cf. \textit{Nedarim} Chapter 11.

13 Which is certainly forbidden by rabbinic standards, and, in the opinion of Isaiah, by biblical standards (\textit{Is.} 58:13).

14 Who make the big wedding meal Friday night, to save the expenses of a separate Sabbath meal.

15 He must take her into his house before sunset to acquire his marital rights.

This sentence, which has no parallel in the Babli, is the source of an extensive rabbinic literature; cf. \textit{Sulhan Arukh} Even Ha'ezer 64:5. (In Tosafot, \textit{Yoma} 13b, s. v. קנה, the statement is quoted in the name of R. Hanina.) The question is whether the clause "to take her in", is different from "entering the \textit{huppah}" used to describe the final marriage ceremony of a virgin. From Medieval times, \textit{huppah} denotes the canopy, open on all sides, under which
the pair stands for the recitation of the "Seven Benedictions". But there is no reason to assume that originally meant anything but the totally covered bridal bedroom (Ps. 19:6), from the "to cover". There is no indication here that the rules of transfer of property rights are different for marriages of virgins and widows.

Rebbi Eleazar explains the reason given in the Mishnah, that if he has a complaint about virginity he can quickly go to court. A baraita supports Rebbi Eleazar: Since the time of danger they used to marry on Tuesdays and the Sages did not object; about Monday one does not listen to him, but if it was because of a danger it is permitted, because of sorcery. What is the difference between Monday and Tuesday? One who waits one day cannot be compared to one who waits two days. Why not let him wait two days? That his acquisition should not be sweet for him. Why should his acquisition not be sweet for him? One cannot tolerate it, since Rebbi Hila said in the name of Rebbi Eleazar, if he found the door open, he is forbidden to keep her because she might have been bought.
unfaithful\textsuperscript{19}. Could we not suspect that she was raped\textsuperscript{20}? A rape is public knowledge. And even if you suspect that she was raped, there is no other doubt\textsuperscript{21}. There is a doubt whether she was raped or whether she was [willingly] opened\textsuperscript{22}. From the words of the Torah one has to be stringent. Rebbi Yose said, if you suspect that she was raped, there are two doubts. There is a doubt whether she was raped or whether she was [willingly] opened; there is a doubt whether it happened after she was preliminarily married or before. From the words of the Torah, with two doubts one has to be lenient\textsuperscript{23}.

16 His explanation is given later, by R. Hila. He insists that the Mishnah does not refer only to the fact that if he married a girl supposed to be a virgin and he found her lacking virginity that he can divorce her without paying but he can claim "erroneous acquisition" and ask the court to void the marriage without bill of divorce.

17 Tosephta 1:1, Babli 3b. As S. Lieberman points out (Tosefta ki-Fshurah vol. 6, p. 187), "danger" always refers to the persecutions after the war of Bar Kokhba, when Jewish observances were forbidden and, therefore, marrying on Wednesday would have been a capital crime. (The Babli explains otherwise.)

18 If somebody is afraid that sorceresses will put a spell on him to make him impotent if he marries on a day known to be a day for marrying, one lets him marry on any other day.

19 Here πηγα means "unfaithful, deviant" in a general sense, not in the technical sense discussed in Tractate Sotah. R. Eleazar holds that the Mishnah does not only give the husband the right to complain about lack of virginity but obligates him to go to court to annul his marriage since nobody can stay married to an adulterous wife (Mishnah Sotah 5:1) and he presumes his bride was deflowered after she was preliminarily married to him, up to a year earlier. In the Babli, 8b/9a, the same argument is quoted in his name.

20 If a married woman is raped, the husband does not have to divorce her unless he is a Cohen.
21 In editio princeps: in* p?0 Nb
"is there not only one doubt?" It is a generally recognized principle in both Talmudim that a single doubt referring to biblical precepts has to be judged restrictively, a double doubt leniently. Cf Yebamot 7:2, Note 73; Babli Besah 3a.

22 If she was a willing partner to adultery. This only applies to a girl which has the status of adolescent since "the seduction of a minor is rape" (Babli Yebamot 33b).

23 The husband who claims that his bride was not a virgin is not obligated to divorce his wife against his will; R. Eleazar's interpretation of the Mishnah is rejected by R. Yose.

24 If the preliminary marriage (see Peah 6:2, Note 46) precedes the final marriage ceremony only by a few moments, the bride could not possibly have committed adultery and R. Eleazar's argument becomes pointless.

R. Mattaniah's procedure was adopted by all Jewish groups (except that the bridal chamber was transformed into a canopy, Note 15.) To separate the preliminary from the final marriage, one spends some time by publicly reading the marriage contract. However, it seems that the current procedure is not derived from any talmudic statement but is a consequence of the poverty of the remnants of the Jewish communities in Western Europe after the devastation of the First Crusade which did not allow most people to organize two festivities, one for the preliminary and a separate one for the definitive wedding; cf. I. Schepansky, תמצותב תכתב יבשות, vol. 3, Jerusalem-NewYork 1992, pp. 14 KETUBOT CHAPTER ONE

If he performed the preliminary marriage in the bridal chamber, these strictures do not apply. They said that Rebbi Mattaniah acted thus for his daughter.
In the opinion of Rebbi Eleazar, could she be married any day at a place where courts are in session every day? And at a place where there are no courts (every day) could she never be married? One does not want to abolish the time of Wednesday. Why does one not want to abolish the time of Wednesday? Because he also accepts what Bar Qappara stated. Bar Qappara said, because a blessing is written there. Could she not be married on Sunday, that he might quickly go to court on Monday? Some want to say, not to abolish the time of Wednesday; some want to say, because of what Bar Qappara stated, for Bar Qappara said, because a blessing is written there.

25 In the Babli, 3a, (and at the end also in the Yerushalmi, cf. Note 66) this is accepted as a declarative sentence (subject to the condition that the groom spend three days to prepare the wedding feast.)

26 An erroneous corrector's addition (reproduced in editio princeps).

27 Nobody challenges the first statement in the Mishnah, even if they disagree with the meaning of the later part of that Mishnah.

28 R. Eleazar accepts that the Wednesday/Thursday combination is preferable over Sunday/Monday, even though local courts always also sit on Monday.

29 In the Babli, 3b, the reason of the rejection is that the groom has to spend three days to prepare the wedding feast.
One agrees that she should not be married either Friday or Saturday night. Not on Friday, for the honor of the Sabbath\(^\text{30}\). Not Saturday night: The colleagues say, because of the exertion; Rebbi Yose says, for the honor of the Sabbath\(^\text{31}\). A *baraita*\(^\text{32}\) supports the colleagues: Why did they say, a virgin is married on Wednesday? That a man should prepare for his needs\(^\text{33}\) three consecutive days.

30 That the wedding feast should not impinge on the observance of the Sabbath and the Sabbath meal. As noted above, the wedding of a widow, which proceeds without great fanfare, may be scheduled for Friday.

31 That he should not prepare on the Sabbath for the feast scheduled directly after nightfall; Babli 5a.

32 Babli 2a,3a,5a,7a. In the Tosephta, 1:1, this is given as an alternative to the reason explained in the Mishnah.

33 The wedding feast.

34Rebbi Abba bar Cohen said before Rebbi Yose: Rebbi Aha in the name of Rebbi Jacob bar Idi: A man may not [preliminarily] marry on a
Friday. That means, to make an engagement feast. This implies that the preliminary marriage itself is permitted. Samuel says, even on the Ninth of Ab a preliminary marriage is permitted, lest another forestall him. The argument of Samuel seems inverted. There, he says, "God puts singles in a house, etc." "To rise on scales; they all are of vapor!" And there, he says so?

That means, that he should not forestall him in prayer. Even so, it would not be permanent.

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34 The parallels are in Besah 5:2 (63, l. 64) and Ta'aniot 4:9 (69b, l. 50).
35 Since this would impinge on the Sabbath meal. It is in order to make the preliminary marriage on Friday and arrange the engagement feast as the Sabbath meal.
36 The anniversary of both destructions of the Temple, the most severe day of mourning in the Jewish calendar, where any exhibition of joy is frowned upon.
37 A similar argument in the Babli, Mo'ed Qatan 18b.
38 Ps. 68:7. The verse means that marriages are pre-ordained in Heaven. The verse is quoted in the name of R. Johanan in the Babli, Sota 2a and Sanhedrin 22a, to show that selecting the right mate is as difficult as the liberation of Israel from Egypt, the topic of the second half of the verse.
39 Ps. 62:1. In Lev. rabba 29(5), this verse is the topic of a sermon of R. Hyya bar Abba in the name of R. Levi, that when the fetuses still are like vapor in their mothers' wombs, they already are joined together on Heaven's scales.
40 If marriages are pre-ordained, why should anybody be afraid that another man could snatch the bride preselected for him?
41 Another man may by his prayer cause the Heavenly decree to be changed.
42 In the Babli, Samuel tells a man that praying to change Heaven's decree leads to an early death of either groom or bride.
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43 Rebbi Hizqiah, Rebbi Aha, said in the name of Rebbi Abbahu: It is forbidden to judge money matters on Friday. Does not a Mishnah object 44: "Therefore, one does not judge criminal matters on Friday or any day before a holiday"? Therefore, one judges money matters 45. Also, Rebbi Hiyya stated thus: One judges money matters on Friday but not criminal matters. One is for practice, the other for Torah study 46.

43 The same text in Besah 5:2 (64 l. 59), Sanhedrin 4:6 (22b l. 17).

44 Sanhedrin, Mishnah 4:6: "In money matters, judgment can be rendered immediately. In criminal matters, the accused can be found innocent immediately, but he can be found guilty only the next day; therefore ..." Since judgment may not be rendered on the Sabbath, the panel discussion cannot be held on Friday.

45 The prohibition is explicitly restricted to criminal matters.

46 In Sanhedrin:1ND np'T}?' pMe{Sh4 "here for practice, there for action." It is declared practice not to judge money matters on Friday but if a court held a session on Friday its decisions are valid. In the Babli (Baba Qama 113a): One does not schedule court sessions on the eve of a Sabbath or holiday.
Rebbi Jonah in the name of Rebbi Crispus: An adult woman is like an open amphora. That means, not to let her lose her ketubah. But he is not permitted to keep her because she might have been unfaithful.

This also applies to what Rebbi Hanina said, since Rebbi Hanina said: It happened that a woman was found without virginity and the case came before Rebbi. He said to her, where is it? She said, the stairs in my father's house were high and it was rubbed off. Rebbi believed her. That means, not to let her lose her ketubah. But he is not permitted to keep her because she might have been unfaithful. This also applies to what we stated there: "The ketubah sum of a virgin who is a widow, or a divorcée, or one who had received halisah, after a preliminary marriage is 200 [zuz], and they are subject to complaints about virginity." That means, referring to a ketubah sum of a mina or 200 [zuz]. But he is not permitted to keep her because she might have been unfaithful. This also
applies to what we stated there: "One who eats unchaperoned at his father-in-law's in Judea cannot go to court about virginity since he was alone with her." That means, referring to a ketubah sum of a mina or 200 [zuz]. But he is not permitted to keep her because she might have been unfaithful. This also applies to what we stated: "If somebody married a woman and found her not to be a virgin. She says, I was raped after the preliminary marriage and your field was flooded, but he says, no, it was before the preliminary marriage and my acquisition was in error," that refers to a ketubah sum of a mina or 200 [zuz]. But he is not permitted to keep her because she might have been unfaithful. This also applies to what we stated: "She says, I was injured by a piece of wood, but he says no, you were trampled on by a man," that refers to a ketubah sum of a mina or 200 [zuz]. But he is not permitted to keep her because she might have been unfaithful. All these cases are based on what Rebbi Hila said in the name of Rebbi Eleazar, if he found the door open, he is forbidden to keep her because she might have been unfaithful.

47 Once she is older than 12\(\frac{1}{2}\) years, her body is so soft that the rupture of the hymen may not be noticed. The court will not hear such a case.

48 In the quote in Tosaphot (9a, s. v. יוב: "an open wine amphora."

49 In the parallel case in the Babli, 9a, the argument acribed here to R. Yose (Notes 21-23) is used to restrict R. Eleazar's statement to the case of either a Cohen (who has to divorce his wife in case of rape) or a person who preliminarily married a girl aged less than 3 full years (who could not have had premarital sex). Note also the change of language: R. Hila in the name of R. Eleazar states that he is forbidden to keep her; here he is not authorized to keep her. As Rashi explains in the Babli, there one treats the case that the husband comes to court to report the case and is ready to be convinced if the proceedings clear
his wife. In the Yerushalmi one treats the case that the husband comes to complain convinced that his bride was unfaithful after the preliminary marriage. Then one follows the principle that if somebody is convinced that something is forbidden, one cannot permit it.

Since the husband is only subjectively forbidden to keep his wife who objectively may have been a virgin, he has to pay the full amount of her ketubah since obligations based on written contracts can be abolished only by a full proof of the guilt of the beneficiary.

50 In the Babli, 10b, a woman did not bleed when deflowered and Rabban Gamliel the elder accepted the fact that not to bleed was hereditary in her family and told the husband to enjoy his wife. In another case quoted there, Rebbi convinced the husband that he had not penetrated on his wedding night.

51 That the woman wins her case in money matters does not imply that the court tells the husband to keep her.

53 Mishnah 1:2. In all three cases the husband died before the huppah ceremony and the women are presumed to be virgins.

54 The ketubah sum of a non-virgin is 100 zuz, called πη, a mina (1Mvâ = 100 Δράχμη, in contrast to the Babylonian πη manē = 60 šeqel).

55 Mishnah 1:5.

56 Even though the court will not hear a claim to annul the marriage because of missing virginity since the groom was alone, unchaperoned, with his preliminarily married wife, if he asserts that he did not sleep with her before the huppah one tells him that he cannot keep his wife.

57 Mishnah 1:6.

58 If a farmer buys a field and after the property rights were transferred to him the field is flooded and unusable for that year, he has no regress on the seller. While it is true that her ketubah is only a mina since the ketubah is executed at the time of the final marriage, his acquisition of marital rights was at the preliminary marriage and, therefore, he cannot claim to have been lured by false pretenses and cannot annul the marriage without paying anything.

59 It is a question who has the burden of proof. For Rabban Gamliel and R. Eliezer, the husband has the burden of proof and if he cannot prove his assertion he has to pay. For R. Joshua, the wife has the burden of proof and if she cannot prove her case
the marriage is annulled and she gets nothing.

60 Mishnah 1:7. This case is completely parallel to the preceding one.

When is an adult married following Rebbi Eleazar\(^\text{61}\)? When is a virgin after marriage married\(^\text{62}\)? When is a woman injured by a piece of wood married following Rebbi Meir\(^\text{63}\)? Let us hear from the following:\(^\text{64}\) "If there are witnesses that she went out in hinuma.\(^\text{65}\)" Wednesday was not mentioned. This means that Wednesday does not mean anything\(^\text{66}\).

61 Since it was stated that no claim of missing virginity is possible for adult girls, there is no need to have the wedding on Wednesdays.

62 If the husband died immediately after the final marriage ceremony, the widow is still a virgin but in her next marriage she can claim only the widow’s mina for her ketubah, the same as a widow who is not a virgin. Therefore, for R. Eleazar there is no reason why she should marry on a Wednesday.

63 Mishnah 1:3. She can claim a virgin’s ketubah but is not subject to a claim of missing virginity.

64 Mishnah 2:1.

65 A woman whose ketubah was lost who claims that she married as a virgin. If she can produce witnesses that υμέναια "wedding songs" were sung at her wedding, it is a proof that she married as a virgin (M. Sachs). Since wedding songs were prohibited after the wars of Bar Kokhba (Sotah 9:13, Note 189), the word hinuma changed its meaning. In Babylonia it became "a veil" (2:1, 26a l. 71; Babli 17b), in Galilee φόρημα "a litter".

66 A marriage on Wednesday is no proof of virginity and a marriage on another day is no proof of non-virginity.
"A widow [is married] on Thursday." For if you would let him [marry] any other day of the year, he would go to work the next morning. Since you tell him, on a Thursday, he enjoys himself with her on Thursday, Friday, and Sabbath.

The same argument, somewhat enlarged, in the Babli, 5a, and Tosephta, 1:1. From the Tosephta text it seems likely that one would read "any other weekday". Since the husband has to spend time on Friday and buy provisions for the Sabbath, it is not worthwhile for him to go to work.

Moses instituted seven days of a marriage feast and seven days of mourning, but he instituted nothing for the widow. Even though you say that he instituted nothing for the widow, she needs a benediction.
From Boaz, as it is written\textsuperscript{71}: "And (Boaz)\textsuperscript{72} took ten men of the city Elders and said, sit here, and they sat down." Rebbi Alexander said, \textsuperscript{73}from here [one learns that] the lesser person is not permitted to sit down until the more important person\textsuperscript{74} tells him to sit down. Rebbi Phineas said, from here [one learns that] this family\textsuperscript{75} appoints Elders for their marriage feasts. Rebbi Eleazar ben Rebbi Yose said, from here [one learns that] the wedding blessing needs ten people [present]\textsuperscript{76}. Rebbi Jehudah bar Pazy said, not only a bachelor marrying a virgin, but also a widower marrying a widow, since Boaz was a widower and Ruth a widow, as it is written\textsuperscript{77} "The entire city was in an uproar because of them." Is that possible that the entire town was in alarm because of the sorry state of Naomi? But Boaz's wife had died that very day and when all the people went to the burial, Ruth and Naomi entered. It turned out that when one left, the other entered.

68 The week-long wedding feast of Jacob and Leah, Gen. 29:27. But in the interpretation of Naḥmanides, the Yerushalmi refers to an oral tradition going back to Moses, without reference to biblical verses. Sforno sees in Gen. 29:21 a biblical justification for R. Mattaniah's procedure (Note 24). In Yalqut Sim'oni II, 70, in a note attributed to Pirqe R. Eliezer (not in the surviving text): "The seven days of a wedding feast we learned from Jacob and Simson (Jud. 14:12)."

69 The week-long mourning for Jacob, Gen. 50:10. Since this mourning was held before the burial, it cannot be the real paradigm for the rabbinic mourning period which starts after burial.

70 The "Seven Benedictions" without which the final marriage ceremony cannot be held. The same argument in the Babli, 7a, as an Amoraic statement.

71 \textit{Ruth} 4:2.

72 Not in the biblical text, implied by v. 4:1; is also in \textit{Ruth rabba} 4(7).

73 This and the following statements are also in \textit{Ruth rabba} 4(7).

74 Since Boaz was of the family of

75 The descendants of King David.

76 In contrast to the preliminary marriage ceremony which requires only the presence of two witnesses.

77 *Ruth* 1:19. The same argument in the Babli, *Baba ha'tra* 91a; *Ruth rabba* 3(6).

It was stated: The marriage benedictions are said all seven days.\(^79\) [Rebbi Jeremiah wanted to say that one re-enacts the marriage all seven days.\(^80\)] Rebbi Yose said to him, but did not Rebbi Hyya state: The benedictions of mourners\(^81\) are said all seven days. Can you say that one buries the dead all seven days? How is that? Since here he consoles with him, so there he enjoys with him; as here one remembers, so there one remembers.\(^82\)

78 Addition from the parallel text in *Megillah* 4:4 (75a l. 74), missing here in ms. and *editio princeps*.

79 In the Babli, 7b: One recites the marriage benedictions in the presence of 10 persons all seven days. In *Megillah*: "Neither the marriage benedictions nor the mourning benedictions are said all seven days." The following discussion shows that this cannot be the correct version.

80 How else could one recite the wedding benedictions?

81 The special version of Grace for the mourner.

82 Anytime visitors to a house of mourners bring food and eat with the mourners, they recite the special version of Grace; anytime visitors of a newlywed couple who participate in a festive meal append the seven wedding benedictions to Grace recited after the meal.

In *Megillah*, the positions of
"consoles" and "enjoys" are switched. The topic of conversation in a house of mourning is the deceased; the topic of conversation in a house of mourning is the deceased; the topic of conversation in a house of mourning is the deceased; the topic of conversation in a house of mourning is the deceased.

83 It was stated: Rebbi Jehudah said, in Judea in earlier times they appointed two best men, one for the bride and one for the groom, but they appointed them only for the wedding day. In contrast, this was not done in Galilee.

In Judea in earlier times one let the fiancé be alone with the fiancée for an hour so that he became familiar with her; in contrast, this was not done in Galilee.

In Judea in earlier times the best men were investigating the places of groom and bride; in contrast, this was not done in Galilee.

In Judea in earlier times the best men were sleeping in the room with groom and bride; in contrast, this was not done in Galilee. Anybody who did not follow these rules could not present a claim of missing virginity.
Slightly different version of this *baraita* are in the Babli, 12a, and the Tosephta, 1:4.

This is a hidden polemic against the formulation of the Tosephta, that the best men were appointed three days before the wedding day and conducted a common investigation of the bridal chamber, so that there was no place where the groom possibly could make a blood-stained cloth disappear in order to accuse the bride falsely of not being a virgin and also that the bride could not hide beforehand a blood-stained cloth in order to fake a non-existing virginity.

This practice is confirmed by Mishnah 1:5. As noted there, it is obvious that at a place where one lets the pair be alone together there can be no claim of virginity and no best men were appointed.

In the Babli, and it seems also in the Yerushalmi's discussion of R. Eleazar's position (Note 54), one assumes that at certain places in Judea one was very stringent and at others very lax. But it seems from Halakhah 1:5 that the radical change from appointing best men to letting the fiancé to be alone with the fiancée is not a matter of different localities but of different times (and the Yerushalmi's practice certainly does not follow R. Eliezer).

This paragraph belongs together with the first; it explains the roles of the best men.

After bride and groom had finished their first sexual relations, the best men were invited for the remainder of the night to make sure no evidence was removed or introduced.

In Jehudah, at a place where one did not let the pair be together unchaperoned.

(25a line 49)
There, we have stated\textsuperscript{90}: "Every vine gives wine; if there is no wine it is dried up\textsuperscript{91}." Rebbi Jeremiah asked: Does that mean that Rebbi Jehudah does not admit claims of missing virginity\textsuperscript{92}? Rebbi Yose said, in itself it means that Rebbi Jehudah admits claims of missing virginity, as it was stated: Rebbi Jehudah said, in Judea in earlier times they appointed two best men, one for the groom and one for the bride, but they appointed them only for the wedding day. In contrast, this was not done in Galilee. . . they were sleeping in the room with groom and bride; in contrast, this was not done in Galilee. How is this? She has to bring proof that she comes from a family of dryness\textsuperscript{93}.

\textsuperscript{90} Mishnah \textit{Niddah} 9:11, a statement of R. Jehudah.

\textsuperscript{91} Greek τρυγητής, from τρύγη, ἡ, "crop, vintage; dryness". It means that there are women who are congenitally unable to bleed. (In this and similar discussions it is always assumed that the causes of menstrual bleeding and bleeding when the hymen is torn are the same.)

\textsuperscript{92} Since he states that there are women who do not bleed when they are deflowered.

\textsuperscript{93} The proven absence of bleeding is prima facie evidence of non-virginity, open to medical explanation which preserves the fact and denies the inference.
Rebbi Jeremiah was of the opinion to follow the standard of Judea in Galilee\(^4\). Rebbi Yose said to him, is the standard of Judea in Galilee a testimony by biblical standards\(^5\)? No, [one follows] the standard of Judea in Judea and the standard of Galilee in Galilee. If you say, it is not testimony by biblical standards, why appoint them\(^6\)? That the daughters of Israel should not become wanton in immorality. If it is that the daughters of Israel should not become wanton in immorality, even if one appoints, they should not be trustworthy! Rebbi Yose in the name of Rebbi Hila: A man would not go to all this expense in order to give his wife a bad reputation\(^7\). If it is that a man would not go to all this expense in order to give his wife a bad reputation, even if one does not appoint, he should be believed. Rebbi Hila said, because of one suspicion, because of one immoral person\(^8\). Where do we hold? If he investigated and found, he found\(^9\)! If he did not find but investigated, did he not investigate\(^10\)? But we deal with the case that he did not investigate and found\(^11\). She says, it is blood of virginity. He says no, it is a bird’s blood. His case is damaged since he did not follow the procedures. \(^{49}\)That means, not to let her lose her ketubah. But he is not permitted to keep her because she might have been unfaithful. It follows what we stated.
there\textsuperscript{102}: "A virgin and a widow, etc." All these cases are based on what Rebbi Hila said in the name of Rebbi Eleazar, if he found the door open, he is forbidden to keep her because she might have been unfaithful\textsuperscript{19}.

94 Since at the end of the Tosephta R. Jehudah states that anybody not following the procedure of Judea cannot claim absence of virginity, it seems that he denies to the people of Galilee the right to bring any such claim.

95 The assertion of R. Jeremiah is unreasonable since the procedure of certain places in Judea has no biblical basis.

96 If the testimony of the best men is not needed, why are they there?

97 Since the groom bears all expenses of the wedding feast, he would not do that if his intention was from the start to claim non-virginity and go for an annulment of the marriage. There are much cheaper ways to get a woman for one night. (In a different context, the same argument is made in the Babli, \textit{Ketubot} 10a, \textit{Yebamot} 107a, \textit{Qiddusin} 45b.)

98 The entire set-up in certain regions in Judea is only because in a very few cases bad things do happen.

99 He is bound by the testimony of the best men that his wife was a virgin.

100 He can go to court and ask for annulment of the marriage. ([R. Nissim Gerondi (רבי נסים גרון, ed. A. L. Feldman, Jerusalem 1997, col. 28), copied from R. Crescas, reads: "If he did not check and found, or his side checked but not her side."]

101 He claims that he could enter his (underage) wife without resistance and that, therefore, she could not have been a virgin. The Babli, 10b, dismisses such claims out of hand since (a) it might be possible to enter without rupturing the hymen and (b) any man making such a claim must have ample experience with women, virgins and non-virgins, so that he must be treated as an amoral person.

102 Mishnah 1:2, cf. Note 53.
It was stated: The claim of virginity is based on any amount (of blood). It happened that for a certain woman nothing was found except for [a stain the size of] a mustard seed. She came before Rebbi Ismael ben Rebbi Yose, who said to her, there should be many like you in Israel. Rebbi Zachariah the son-in-law of Rebbi Levi: He cursed her\textsuperscript{103}, like people who, when they see a blind man, call him "much light". The colleagues said, he needled her, any woman with little blood has few children\textsuperscript{104}. Rebbi Yose said, he praised her, any woman with little blood will not cause impurity to food prepared in purity\textsuperscript{105}.

\textsuperscript{103} As explained later, because she much blood has many children.
\textsuperscript{105} In the Babli, 10b: She will not cause her husband any problems with the impurity of her period.
\textsuperscript{104} In the Babli, 10b, R. Meir states the contrapositive: Any woman with the impurity of her period, might not have children.

Mishnah 2: The ketubah\textsuperscript{106} of a virgin is 200 and that of a widow one mina\textsuperscript{107}. The ketubah of virgins who after a preliminary marriage\textsuperscript{53} become widows, divorcees, or who received halisah, is 200 and they are...
subject to a claim of non-virginity\textsuperscript{108}. The *ketubah* of a proselyte, a prisoner, and a slave who were redeemed\textsuperscript{109}, freed\textsuperscript{110}, or converted\textsuperscript{111} at less than three years and one day of age, is 200 and they are subject to a claim of non-virginity\textsuperscript{108}.

106 The minimum payable to the bride at the dissolution of the marriage either by divorce or by the husband’s death. This does not exclude that the *ketubah* document may stipulate higher amounts.

107 100 zuz. The Mishnah remains noncommittal about the nature of the coin involved.

108 To invalidate the document if they are found not to be virgins.

109 It is assumed that a female kidnap victim will be raped as a matter of course. But a girl raped at age less than 3 years still is a virgin.

110 Since slaves can have guiltless sexual relations with Gentiles, it is assumed that they do have such relations.

111 There is no presumed minimal age for sexual activity of Gentiles. Therefore, a proselyte aged more than 3 years at conversion is presumed not to be virginal.
the 30 of the slave\textsuperscript{116}, the 50 of the rapist and the seducer\textsuperscript{117}, the 100 of the slanderer\textsuperscript{118}, are all computed in Temple $\text{\textdegree}$\textit{eqel}s in Tyrian coinage." A woman's \textit{ketubah} is not stated with them. Rebbi Abin said, did they not learn the \textit{ketubah} of a woman from the rapist and the seducer\textsuperscript{119}? Since the rapist and the seducer are mentioned, it is as if women's \textit{ketubah} was stated with them\textsuperscript{120}.

\textsuperscript{112} The Temple $\text{\textdegree}$\textit{eqel} coins struck in Jerusalem during the first war with the Romans are silver coins weighing between 13.5 and 14.3 g. The corresponding Tyrian coinage is about 13.5 g. A Temple $\text{\textdegree}$\textit{eqel} in Babylonian theory is twice the weight of a common $\text{\textdegree}$\textit{eqel}, which is the name of the two-denar coin. This means that the Temple $\text{\textdegree}$\textit{eqel} is equal, both in the Yerushalmi and in the Babli, to the Roman tetradrachma ($\text{\textdegree}$\textit{drachma}) based on an unadulterated silver denar (drachma, $\text{\textdegree}$\textit{drachma}) of 3.4 g. Tyre ceased to mint coins between the reigns of Augustus and Septimius Severus, meaning that Tyrian coins in the Mishnaic period were unadulterated silver. Samuel requires that the \textit{ketubah} be adjusted for the inflation caused by the debasement of the currency in circulation. It may be that he holds that the basic \textit{ketubah} amount is a biblical requirement (cf. Halakhah 13:11).

\textsuperscript{113} The value of the \textit{ketubah} has to be computed on the basis of the currency in circulation.

\textsuperscript{114} Mishnah \textit{Bekhorot} 8:7; cf. Tosephta \textit{Ketubot} 12:6.

\textsuperscript{115} The redemption of the firstborn, \textit{Num.} 3:47, identifying the biblical $\text{\textdegree}$\textit{eqel} as tetradrachma.

\textsuperscript{116} 30 $\text{\textdegree}$\textit{eqel} weregilt for the killing of another person's slave by one's ox, \textit{Ex.} 21:32.

\textsuperscript{117} 50 $\text{\textdegree}$\textit{eqel} bride money paid by the rapist (\textit{Deut.} 22:29) and, by inference, the seducer (\textit{Ex.} 22:15-16) of a girl.

\textsuperscript{118} The fine imposed on a man wrongly accusing his wife of committing adultery during her preliminary marriage period, \textit{Deut.} 22:19.

\textsuperscript{119} Since the 50 tetradrachmas due from the rapist and the seducer are exactly 200 denarii; either these 200 denarii are the "bride money" described in the verse \textit{Ex.} 22:16 or at least they
are the inspiration for the rabbis to fixate the minimum *ketubah* at 200 zuz. does not prove anything.

(25b line 7)

So far about a virgin. What about a widow? Rab Hinena said, it is enough for a widow that she take half of a virgin’s portion. Everybody agrees that the ketubah of a widow is a rabbinic institution.

(25b line 9)

Rebbi Hiyya bar Ada said, even if "a woman’s ketubah" was stated with them, do not all these rabbis disagree? Rebbi Hananiah and Rebbi Jonathan both say, circulating coin. Rebbi Joshua ben Levi said, circulating coin. Rebbi Jacob bar Aha, Rebbi Immi, Rebbi Simeon ben Laqish in the name of Rebbi Jehudah Nesia: Current coin. Rebbi Johanan said, good Severan tetradrachmas, Jerusalem ones. These are saying so, those are saying otherwise! But he also changed his mind and thought like them. Are not always these saying so, those are saying otherwise? Here, even he changed his mind and thought like them.
Even if the Mishnah did state that the ketubah of the virgin is a biblical institution, practice could not follow that Mishnah since all amoraic authorities hold that the ketubah is a purely rabbinic institution. The Babli (Qiddusin 10b) quotes Mishnah Bekhorot 8:7 with the addition that "all money due by rabbinic institutions is local coin", following R. Abba bar Bun. A similar statement underlies the text here.

This can be debased coin. However, if merchants refuse to accept debased silver coin but require to be paid in gold, it would not be possible to liquidate a ketubah debt in legal but not circulating coin.

The history of interpretation of this sentence is documented by D. Sperber, Roman Palestine 200-400, Money & Prices, Ramat Gan 1974, p. 223. I follow Sperber in identifying the coins referred to as those of Severus Alexander, whose Antiochene coins, following those of Elagabalus, earned the attribute of "good", returning to earlier standards after the debasement of the gold minting by Caracalla.

This must refer to the full weight Jerusalem Temple šegels of the war against the Romans, not the copper coins of Aelia Capitolina. R. Johanan here holds with Samuel that the ketubah goes by biblical standards.

In general, R. Jonathan, R. Joshua ben Levi, and R. Johanan are the leading authorities; it is difficult to decide if they disagree.

R. Johanan changed his mind and agreed that the ketubah has to be satisfied by rabbinical standards.

The standing of the ketubah is no different from most other rabbinic institutions.
There came a case before Rebbi Hanina of a woman whose ketubah was less than 200 zuz, and he said, she should take what he had written for her. He said to Rebbi Mana, sit down and sign. He answered, follow your argument and sign yourself, did not Rebbi Hiyya say in the name of Samuel, by the Temple seqel? Rebbi Eudaimon of Sepphoris in the name of Rebbi Ḥuna: Because of a renunciation. Now, should a woman whose ketubah was for less than 200 [zuz] not hide her ketubah in order to collect by the Temple seqel? They said in the name of Rebbi Ḥuna, at a place where one does not write a ketubah, what she presents she collects. Rebbi Johanan said, it was stated thus: If a deaf-mute man married a hearing wife, she has no claim for support nor ketubah, but if she died, he inherits from her, for she wanted to connect him with her property, but he could not want to connect her with his property. If a hearing male married a
deaf-mute woman, she has a claim to support and *ketubah*, but if she died, he does not inherit, for he wanted to connect her with his property, but she could not want to connect him with her property. But can a deaf-mute woman acquire and have *ketubah*? Rebbi Jeremiah in the name of Rebbi Eleazar, explain it that at the moment he married her, she was hearing. Rebbi Jacob bar Aha in the name of Rebbi Eleazar, he married her when she was hearing but she turned deaf-mute. In any case, did he not marry her when she was hearing? Rebbi Jacob bar Aha in the name of Rebbi Eleazar, explain it that she was deaf-mute and turned hearing; he married her when she was hearing and she turned deaf. That you should not say, because at the start she was deaf-mute she has [no] *ketubah*, therefore it is necessary to say that she (does not have) [has]. Rebbi Yose does not say so, but since if one has sexual relations with a deaf-mute, is he not liable for a fine? Only if there were no fine would there be no *ketubah*. Rebbi Yudan said, does that depend on a fine? Look, the adult woman collects no fine but her *ketubah* is 200, the virgin after marriage collects a fine but her *ketubah* is a mina!

The rabbinic commentaries all explain that the *ketubah* was written for 200 (debased) silver denars, as R. Hanina lived in the first half of the third Century C.E., at the end of the Severan dynasty and the early military anarchy. It could also be that the document was written in terms of a foreign currency, Persian or other, which when translated into local currency turned out to be less than the statutory 200 *zuz*. In any case, it is clear that the *ketubah* did not amount to the value of 50 Temple *seqel* when it became due.

R. Mana I.

This probably is a scribal error since R. Hiyya the Elder preceded Samuel and R. Hiyya bar Abba lived two generations later. One should read (Rav) Ḥuna, student of Samuel's contemporary Rav (Note 112).
132 Since the woman had agreed at the moment of marriage to be satisfied with the smaller amount. [In Mishnah 5:2, R. Meïr states that living with a woman without guaranteeing her the minimum support of the ketubah is immoral and cannot be tolerated. The Babli, 57a, decides that practice follows R. Meïr, against the opinion of R. Yose (usually the higher authority) that money matters between consenting adults are their private business. The Yerushalmi discusses R. Meïr's opinion in Halakhah 4:9 in a non-committal way; the discussion here shows that it accepts R. Yose's opinion as determining practice.]

133 It seems that there were places in Galilee where nobody could read or write. At such a place, the ketubah by default is 200 full weight silver denar. (A standard ketubah, as explained later, contains additions which exceed the legal minimum. Such additions are impossible if the ketubah is not written.)

134 One must assume that the deaf-mute is also illiterate since, if he could communicate in writing, he would be able to conduct business. If he cannot write, he cannot transact business, cf. Yebamot, Chapter 14. The woman who marries him can accept all financial consequences of marriage, but her husband is incompetent to do so. (Naturally, the question could be asked, how can an incompetent person inherit? The question is asked for the next statement; it could have been asked here. The Babli, Yebamot 113a, notes that if the husband is healed and becomes able to conduct business, the marriage ceremony has to be repeated.)

135 It is clear that the deaf-mute woman has a claim to support since she lives with her husband. The question is only, how can the deaf-mute woman acquire a claim to the ketubah that could be enforced against her husband's legal heirs, whose claim to the inheritance is biblical?

In contrast, the Babli, Yebamot 113a, holds that in this case of a deaf-mute bride her legal status is irrelevant; since the groom dedicated the ketubah money to her, the court will transfer it to her guardians. This must also be the theory of the Tosephta, 1:3, which prescribes 200 zuz for the virgin deaf-mute or insane bride.

136 The two statements in the name of R. Eleazar are identical in meaning.

137 The explanation cannot work: if the woman was competent when she married, she acquired all the rights of a married woman and her later loss of
hearing and speech cannot change that.

138 She was deaf-mute before the marriage, she is deaf-mute now. But in between there was a period in which she could communicate with the outside world; she acquired all the rights of a married wife if the husband lived with her during her lucid period.

139 The words in parentheses are those of the ms.; the words in brackets are those of the editio princeps. Only the latter make sense.

140 The fines of the rapist and the seducer (Note 117) of an underage girl. The Tosephta (3:5) states that the deaf-mute has no claim to a fine. The existing mss. and the editio princeps of the Babli (36a) quote the Tosephta to the effect that she has a claim, but Tosafot RID quotes "she has no claim".

S. Lieberman concludes that the original version of the Babli (if there existed a uniform original version) cannot be reconstructed. He also accepts the emendation of M. Margalit: "If one has sexual relations with a deaf-mute, would he be not liable for a fine? Since there is no fine there is no ketubah." Even though this changes only one letter in the text, one should hesitate to accept emendations of M. Margalit without very convincing reasons.

141 Who marries as a virgin.

142 If she still has not reached 12 years and 6 months of age. The argument of R. Yose is shown to be wrong.

143"A deaf-mute or an insane male who were taken in by a hearing woman. Even if the deaf-mute became hearing, or the insane sane, she has no ketubah. If he wants to keep her, her ketubah is one mina." Rebbi Eleazar in the name of Rebbi Hanina: Only if he slept with her after he became hearing or sane. If he did not sleep with her after he became hearing or sane, she does not even have a ketubah of a mina.
married. Since there never was a legal marriage.

Even if at the start she was a virgin, now, at the moment her husband is legally able to contract a marriage, she is no virgin.

married.

Since there never was a legal marriage.

married.

At less than three years and one day of age, Rebbi Yose in the name of [Rav] Hiyya bar Ashi, Rebbi Jonah, Rav Hiyya bar Ashi in the name of Rav: What is this like? One makes a dimple in the flesh which straightens out by itself. Rebbi Hiyya stated: Like one who muddies a source which becomes clear again. Rebbi Yose said, a Mishnah says so: Younger than that, it is as if one puts a finger on an eye. Rebbi Abun said: "I am calling to Almighty God, to the God who decides with me." If a girl is three years and one day old, if the Court decided to lengthen, her hymen repairs itself, otherwise her hymen does not repair itself.

This explains the statement of the Mishnah that girls violated less than three years of age are still virgins.
Mishnah 3: If an adult male had sexual relations with an underage girl\textsuperscript{150}, or an underage boy\textsuperscript{150} with an adult female, or one injured by wood\textsuperscript{151}, their ketubot are 200 [zuz], the words of Rebbi Meir. But the Sages say, the ketubah of one injured by wood is a mina.

\textsuperscript{150} Too young to marry. \textsuperscript{151} Accident.

If an adult male had sexual relations with an underage girl," etc. What is an underage boy and what is an underage girl? They said in the name of Rebbi Jehudah ben Hagra, an underage boy is younger than nine years and one day\textsuperscript{152}, an underage girl is younger than three years and one day\textsuperscript{147}. One understands that if an adult male had sexual relations with an underage girl, her hymen repairs itself. If an underage boy has sexual relations with an underage female, her hymen repairs itself. But if an underage boy has sexual relations with an adult female, her hymen does not repair itself\textsuperscript{153}. Rebbi Abin, explain it that he had relations with her without penetration\textsuperscript{154}. Rebbi Yose ben Rebbi Abin said, you can even
say that he had normal relations with her. The relations of an underage boy are relations but he does not have the force to damage her hymen. It was stated thus: It happened that [an adult] became pregnant while her hymen was intact.

152 The sex act of a boy of 9 years and one day has legal consequences; cf. Yebamot, Mishnaiot 10:15-18; Chapter 3, Note 143. The sex act of a younger boy has no legal consequences.

153 How can she marry as a virgin?

154 There was no penetration.

155 This is a matter of dispute in the Babli, 11b.

156 The Babli, Hagigah 14b/15a, holds that an intact virgin might become pregnant in a bathtub from semen floating there.

They objected to Rebbi Meir: There is no hymen and you say, her ketubah is 200 [zuz]? He answered them, is that dependent on the hymen? But the adult has no hymen and the ketubah is 100; the virgin widow has a hymen and her ketubah is a mina! What is the reason? The adult still has all her grace; the virgin widow has lost her grace. Where do they disagree? If she was injured by wood. Rebbi Meir says, she did not lose her grace, but the rabbis say, she lost her grace.

157 Referring to the virgin whose hymen was ruptured in a mechanical accident.

158 Mishnah 4, about a girl whose husband dies in the huppah after the recitation of the wedding benedictions.
159 The groom is willing to pay for male, a woman who never was with another.

Did they disagree that a virgin who had sexual relations with an underage boy\textsuperscript{160} or with someone who is not a man\textsuperscript{161} is enabled for the priesthood? Rebbi Halaphta ben Shaul said, she is enabled even for the High Priest\textsuperscript{162}.

\textsuperscript{160} This is a problem only for R. Eleazar who holds (Yebamot 6:5, Note 108; 7:5, Note 105; 13:1, Note 14) that sexual relations between unmarried partners are always harlotry which bars the female from marrying a priest. For all other authorities, there would only be a problem regarding the High Priest who may marry only a virgin.

\textsuperscript{161} Sexual relations of a woman with an animal is a capital crime if initiated by the woman. But it has no influence on her marital status.

\textsuperscript{162} In the Babli, Yebamot 59b, this is an Amoraic statement by Samuel.
Rebbi Jeremiah and Rebbi Ammi asked: What is the difference between her and one who had sex with a finger? Rebbi Haggai said, explain it that there was no penetration. Rebbi Haggai wanted to change his mind; Rebbi Abba said to him, do not change your mind. Why did Rebbi Haggai want to change his mind? Because of the verse: "But he shall marry a wife in her virginities," only if she is a virgin in both respects. Similarly, "a virgin and no man had known her." A virgin, with respect to penetration. No man had known her, without penetration. Rebbi Isaac ben Eleazar said, [no man] ever had wanted to touch her hand, for it was said: "The staff of evil shall not rest on the just’s lot." Why did Rebbi Haggai want to change his mind? He could explain it by "touching". Why does (Rav Yosef) Rebbi Yasa not explain it by "touching"? Rebbi Mana said, because it presented a problem for him: Rebbi Yasa asked: What is the legal status of "touching" with a male? "Touching" with an animal? When Rebbi Jeremiah heard that of Rebbi Haggai, he said, that was not Rebbi Ammi’s problem.

The text is impossible as it stands. It must have been either "R. Jeremiah (fourth generation) said that R. Immi (second generation) asked" or "R. Yasa and R. Immi asked". The sequel would support both versions.

The woman whose hymen was impaired by a mechanical accident, who is declared eligible to marry a High Priest.

Either she or another person perforated her hymen with his finger in sexual activity without penetration by a penis.

The high priesthood. Only the High Priest is required to marry a virgin.

If the girl had sexual experience without any penetration, she will qualify for a virgin’s ketubah.

Lev. 21:13, speaking of the high priest. The complicated expression πψκ
"a woman in her virginities" instead of simply "a virgin" calls for an explanation.

She must be a virgin without any sexual experience; cf. Babli Yebamot 59a.

Gen. 24:16; here again the double expression calls for an explanation. In Gen. rabba 60(5), the explanation is ascribed to R. Simeon ben Laqish.

Ps. 125:3. In Gen. rabba 60(5), this explanation is ascribed to R. Johanan.

Since the author here cannot be the fourth generation Babylonian Rav Joseph (bar Hyya), most likely he is Rebbi Yasa (cf. Note 163).

The touching of the genitals of two persons, whether there was penetration or emission or not. "Touching" is the legal definition of the sex act both for marriage (cf. Yebamot 4:2, Note 59; Mishnah 6:1) and for criminal law (Mishnah Keritut 2:4; cf. Sotah 1:2, Notes 97,98). The same question is asked in Qiddušin 1:1 (59c 1.14).

That solution is too obvious not to have occurred to R. Ammi, and it does not address his question which asks for the difference between a hymen split by mechanical means or by the girl's own finger. In both cases, no male was involved.

For virgins who after a final marriage become widows, divorcees, or who received halisah, their ketubah is a mina and they are not subject to a claim of non-virginity. For a proselyte, a prisoner, and a slave who were redeemed, converted, or freed at more than three years and one day of age, their ketubah is a mina and they are not subject to a claim of non-virginity.
Halakhah 4: "A virgin, a widow, a divorcée after final marriage," etc.

Who is a virgin after marriage? Rebbi Johanan said, any who entered the bridal chamber but her witnesses testify that she had no sexual relations. Rebbi Yose said, this implies that if a man married a woman under the presumption that she was a virgin and she turned out not to be a virgin, that is not an erroneous acquisition to deprive her of the ketubah of a mina. If a man married a woman under the presumption that she never had illegitimate sex and she turned out that she had illegitimate sex, that is not an erroneous acquisition to deprive her of the ketubah of a mina.

175 Cf. Mishnah 2, Notes 108-111.

176 A different formulation of the same fact is in the Tosephta, 1:4, and the Babli, 11b.

177 Hazaqah "holding fast" is the presumption that a known status quo ante remains unchanged until a change in status has been observed. In the case here, the groom had the right to assume that his bride was still the virgin she had been at birth. If before the marriage he required special assurances that the bride was a virgin, that is not a case of presumption, and if she was not virginal he can claim acquisition in error and annulment of marriage and forfeit of ketubah.

178 In the case of the Mishnah there was a presumption of virginity but only a ketubah of one mina; this shows that the presumption does not exclude that the bride was not a virgin. In the Babli, 11b (13a), a statement of Rav
Sheshet; this might imply that "R. Yose" here is R. Yasa.

179 This is essentially the previous case since, if there are witnesses that the husband had not slept with her, any defect could have come only from illegitimate sexual activity.

Rebbi Eleazar asked, what about a male who sleeps with a manumitted slave girl? Let us hear from the following: I could think that a male who sleeps with a Gentile slave has to pay; the verse says: "He shall take her as wife by the bride price." If he can marry her. This excludes the [gentile] slave (or any) whom he cannot marry. Only because he cannot marry her! Therefore, if he can marry her, she collects the fine, and any who collects the fine has a ketubah.

180 Rebbi Yudan said, does that depend on a fine? Look, the adult collects no fine but her ketubah is 200, the virgin after marriage collects a fine but her ketubah is a mina! Rebbi Ze'ira said before Rebbi Mana, explain it if she was converted or freed before she reached three years and one day. He said to him, any woman who was converted or manumitted before she reached three years and one day is like an Israel.
180 It seems that this is a rhetorical question since the *ketubah* of the freedwoman is determined in Mishnaiot 1:2,4 and her right to the fine imposed on the rapist or the seducer in 3:1,2. R. David Fraenkel emends ΊΠΒ to T' and reads the question as asking for the biblical source of the Mishnaiot mentioned.

181 A parallel text in Halakhah 3:1.

182 The fine imposed on a person raping or seducing an underage girl, cf. Note 117.

183 *Ex. 22:15.*

184 Reading for of the text.

185 If she is freed and can contract a marriage.

186 From Halakhah 1:2.

187 Mishnaiot 1:2, 3:1 state clearly that in matters of marriage, girls becoming Jewish at a very young age are equal to those born Jewish (except for marriages with priests where practice follows *Ez. 44:22*; cf. *Bikkurim* 1:5 (Notes 89-99), Babli *Yebamot* 60b.)

188 A woman without secondary female sex characteristics, presumed to be infertile; cf. *Yebamot* 1:1, Note 65.

189 Since the blind woman cannot see what her husband does, she cannot see to it that the traces of her hymen-

189 The blind woman and the she-ram are subject to claims of missing virginity. Symmachos said in the name of Rebbi Meir that the blind woman is not subject to claims of missing virginity. What is Rebbi Meir's reason? I say, he found [her to be a virgin] and destroyed [the evidence]89. What is the rabbi's reason? She can catch him. What does Rebbi Meir with this argument? He can cleanse it with spittle.

190 eal blood are not destroyed, leaving her without defenses in court. R. Meir assumes that she prefers to have an untouchable mina as *ketubah* over having 200 *zuz* with a chance of being deprived of it by a cheating husband.
The Babli, 36a, connects the disagreement between R. Meir and the rabbis to that of Rabban Gamliel and R. Joshua (Mishnaot 1:8,9) whether her unsupported statement is credible or not. The rabbis follow Rabban Gamliel, R. Meir follows R. Joshua. The Tosephta, 3:5, knows only of the rabbis' position.

190 It was stated: A claim of non-virginity may be brought within thirty days, the words of Rebbi Meir. But the Sages say, immediately. Where do we hold? If he copulated, immediately. If he did not copulate, even after a longer delay. But we must deal with the case that it was not spelled out. Rebbi Meir said, it is credible that a man may hold himself back for thirty days. But the Sages say, a man does not hold himself back even for one day. Rebbi Jeremiah asked: According to Rebbi Meir, would a man be believed to assert that he held himself back for thirty days in order to make the child of unknown paternity? Let us hear from...
the following: "If the sister-in-law claims within thirty days that she was not copulated with, one forces him to perform halisah with her. After thirty days, one asks him to perform halisah with her." And Rebbi Eleazar said, this is Rebbi Meir's. And Rebbi Eleazar said, that refers only to her, but not to her co-wife. As you say there, she is not believed to damage her co-wife, so here, he is not believed to damage his son.

191 The queer spelling in the ms. was read in editio princeps as bin x^ naaV ainV naon "she is not believed to damage her son!"

192 This is from Yebamot 13:15, Notes 123-130; cf. Babli Yebamot 111b. The variant readings from Yebamot are indicated by ".

Mishnah 5: If somebody eats at his father-in-law's in Judea without chaperones cannot claim missing virginity since he is alone with her\textsuperscript{193}. Both for an Israel widow as a Cohanim widow\textsuperscript{194} the ketubah is a mina. The court of priests collected 400 zuz for a virgin\textsuperscript{195}, to which the Sages did not object.

\textsuperscript{193} As the Halakhah makes clear, he is supposed to sleep with his fiancée.

\textsuperscript{194} The daughter of a Cohen, even if married to an Israel.

\textsuperscript{195} It is not clear whether this applies to marriages of daughters of Cohanim, or marriages of Cohanim, or both. Since this is generally accepted practice known to the groom at the
time he contracted the marriage, it is original ketubah was lost.

Halakhah 5: "If somebody eats at his father-in-law’s," etc. In earlier times they decided on a persecution in Judea because they had a tradition from their forefathers that Jehudah had killed Esaw, as it is written: "Your hand is on your enemies’ neck." They went and enslaved them and raped their daughters; they decided that a soldier would have sex with her first. They decreed that her husband should come to her when still in her father’s house; for when she knows that her husband’s fear is on her she is drawn after him. But is she not in the end being used for sex by a soldier? She is raped, and a rape victim is permitted to her husband. What did Cohanot do? They were hiding them. Why did they not also hide the daughters of Israel? That becomes talk and the government hears it; then these and those will be taken together. What kind of a sign did they have? The talk of a cook in town: There is a wedding meal, there is a wedding meal; there is light
in Beror-Hayil\textsuperscript{207}: a week for a son, a week for a son. When the persecution ended, the custom did not end. Rebbi Hoshiaia's\textsuperscript{208} daughter-in-law was pregnant when she married definitively.

196 The only time when the Roman government could be supposed to act officially in the manner described was during Hadrian's persecution in the aftermath of the war of Bar Kokhba.

197 "Esaw" is a code name for Rome; e.g., Eccl. rabba to 5:7. The story that Jehudah killed Esaw when the latter wanted to kill Jacob at Isaac's funeral is in Midraš Soḥer Tob 18:32, mentioned in Sifry Deut. 348, quoted in Yalqut Sim'ony 162. In the tradition of the Babli, Sota 13a, Esaw was killed by Ḥushim ben Dan at Jacob's funeral.

198 Gen. 49:8.

199 After the war of Bar Kokhba, most of the Jewish population of Judea were sold as slaves.

200 Greek στρατιώτης. In the considerably toned down version of the Babli, 3b, it was only the general, ἱγμών, who would exercise a ius primae noctis over girls married on Wednesdays.

201 After the preliminary marriage.

202 The commentaries and S. Lieberman emend \(\tau\rho\iota\nu\nu\kappa\iota\nu\) to \(\tau\rho\iota\nu\nu\kappa\iota\nu\nu\) "she is fenced in." This emendation has to be rejected since it is understandable that one should want the girl to be drawn to her husband and not to the soldier with whom she otherwise would have her first sexual experience.

203 Sifry Num. 7, based on Num. 5:13.

204 If everybody does it, it cannot be kept secret.

205 Greek μάγειρος, 'o, "cook, butcher".

206 While in biblical Hebrew \(\pi\nu\pi\nu\) is any festive meal, in rabbinic Hebrew the term is used exclusively for wedding festivities. Since one could not speak of weddings during the persecution, one spoke of the cook.

207 Beror-Hayil was the residence of Rabban Yohanan ben Zakkai after the first war with the Romans; it must have been in the imperial domain of Jabneh, in the plain. Lights were lit to indicate an invitation to attend a forbidden circumcision, just as the presence of a professional cook indicated a wedding.

208 He taught in Galilee 100 years after the Hadrianic persecution. His
family was from Judea, where his father still lived (Niddah 3:3, 50 c 1).

It was stated: "And for a widow 200,209" This order applies both to a widow of an Israel\(^{210}\) and a widow of a Cohen\(^{211}\). Rebbi Yose said, it is reasonable that the daughter of a Cohen should collect, for her tribe collects. The daughter of an Israel married to a Cohen should not collect; is it not sufficient that she rose to the priesthood that you say, she should collect? Rebbi Mana said, it is reasonable the other way. The daughter of an Israel married to a Cohen should collect for she rose to the priesthood; the daughter of a Cohen should not collect for she stepped down from the priesthood. Rebbi Yose bar Abun said, in both cases they demanded a fine so that everybody should cling to his tribe and family.

209 The court of Cohanim collected 200 zuz for a widow, against the explicit testimony of the Mishnah. In the opinion of the Babli, 12a/b, the priestly families tried to enforce this for their daughters but were forced to retract since nobody would take a widow for 200 zuz when he could get a virgin for the same price. The Babli also gives to non-priestly noble families the right to establish the higher tariff as default option for their daughters; the Yerushalmi considers this part of the Mishnah obsolete.

210 The daughter of a Cohen, widow of an Israel.

211 The daughter of an Israel, widow of a Cohen.
Mishnah 6: Somebody married a woman and found that she was no virgin\textsuperscript{212}. She says, I was raped after you had married me preliminarily, so your field was flooded\textsuperscript{213}. He says not so, but it happened before I married you preliminarily; therefore, my acquisition was made in error. Rabban Gamliel and Rebbi Eliezer say, she is believed\textsuperscript{214}. Rebbi Joshua said, we do not live off her mouth but there is a presumption that she had sexual relations before she was preliminarily married unless she provides proof of her statement\textsuperscript{215}.

\textsuperscript{212} The fact is not in dispute.

\textsuperscript{213} Cf. Note 58.

\textsuperscript{214} If neither of them has any corroborating evidence, her claim that she \textit{certainly} was raped later is stronger than his assertion that \textit{maybe} she was raped or had consensual sex earlier. If the husband wants to deny her claim, he has to provide evidence.

\textsuperscript{215} Since she claims a \textit{ketubah} and he does not want to pay at all, she claims money and a claimant in a civil suit carries the burden of proof.
"Somebody married a woman and found that she was no virgin", etc. Rebbi Jeremiah asked: Does this mean that a claim of missing virginity is impossible following Rabban Gamliel and Rebbi Eliezer, only following Rebbi Joshua? He turned around and said, a claim of missing virginity is possible following Rabban Gamliel and Rebbi Eliezer, if she remains silent. And even if you say that she talks, if she said that he found her a virgin and destroyed the evidence. Why should she not be believed? One cannot tolerate it, since Rebbi Hila said in the name of Rebbi Eleazar, if he found the door open, he is forbidden to keep her because she might have been unfaithful. Here you say, she is believed. There, you say that she is not believed. In this case, both agree that the door was open.

216 If the court automatically has to side with the woman, how could the husband hope to be heard?
217 If she claims to have been a virgin at the time of the final marriage ceremony.
218 In the case of the Mishnah here, the facts are not in dispute, only their explanation is. It is possible to prefer an explanation presented as certain over a presumed argument. But if she denies not being a virgin, he has to assume that she is forbidden to him and, because he thinks her to be guilty, has to divorce her irrespective of the real facts behind the case.
There, we have stated\textsuperscript{219}: "If she had bodily defects while still in her father’s house, the father has to bring proof." Rebbi Eleazar asked Rebbi Johanan: Is this Mishnah from Rabban Gamliel and Rebbi Eliezer? Not from Rebbi Joshua\textsuperscript{220}? He said to him, those are everybody’s words. There is a difference because bodily defects have a way to appear\textsuperscript{221}. Rebbi Yose said, formerly we saw rabbis who compared bodily defects to [defects of] virginity. These can be inferred from those and those can be inferred from these\textsuperscript{222}. Bodily defects from claims of missing virginity: For if he slept with her in her father’s house, the father has to provide proof\textsuperscript{223}. Claims of missing virginity from bodily defects\textsuperscript{224}: For if she developed bodily defects and there is a doubt whether it happened after she entered his domain or before she entered his domain, the husband has to provide proof, from claims of missing virginity. But if she lost her virginity, was it not in her father’s house? Nevertheless, you say, the husband has to provide proof\textsuperscript{225}; so here also, the husband has to provide proof.

\textsuperscript{219} Mishnah 7:8. The groom says that he never would have agreed to the marriage had he known that the bride had a bodily defect; his preliminary marriage was arranged under false pretenses; he wants to withdraw without paying. The father asserts that at the time of the preliminary marriage the bride was without defects, and that "the groom’s field was flooded". If the disagreement surfaces before the final marriage, the burden of proof is on the father; after that, the burden of proof is on the husband.
Since R. Joshua puts the burden of proof on the wife in the Mishnah here; why is there no disagreement recorded there? For problems that have to be expected, the person in control of the place where they happened is responsible. In Halakhah 7:8, it is stated that in the matter of very frequent defects, the husband can complain if at the start he had stipulated that the bride be free from even the most minute impairment.

Claims for annulment of the marriage because of bodily defects of the bride and because of missing virginity follow identical rules.

It really is the other way around; in this case the rule about a complaint about virginity is derived from that about defects. If the final marriage ceremony is held at the father’s house, then in case of a blemish the burden of proof would have to be on the father; therefore, for the claim of missing virginity the father has to bring proof that his daughter either was a virgin at the moment of final marriage or lost her virginity in a manner which did not impair the validity of the marriage.

Again, this should be inverted: Rules for claims about blemishes derived from rules of complaints about virginity.

This follows only Rabban Gamliel and R. Eliezer; it is the only indication that practice should follow Rabban Gamliel (and not R. Joshua against R. Eliezer); this is stated explicitly in the Babli (12b). In the Mishnah here it is agreed that the loss of virginity occurred in her father’s house. But since the argument developed after the final marriage in the husband’s house, the burden of proof is on the husband.
Mishnah 7: She says, I was injured by wood, but he says not so, you were trampled on by a man; Rabban Gamliel and Rebbi Eliezer say, she is believed. Rebbi Joshua said, we do not live off her mouth but there is a presumption that she was trampled on by a man unless she provides proof of her statement.

This Mishnah is a continuation but that the bride was not an intact of the previous one; there is no doubt virgin.

Halakhah 7: "She says, I was injured by wood," etc. Rebbi Eleazar said, that follows Rebbi Meir, since Rebbi Meir said the ketubah of one injured by wood is 200 [zuz]. Rebbi Yose said, we would think to say, when did Rebbi Meir disagree with those rabbis? If he took her in assuming she was injured by wood. But if he took her in assuming she
was a virgin and it turned out she was injured by wood, then even Rebbi Meir agrees, since we have stated: "She says, I was injured by wood, but he says not so, you were trampled on by a man." That means, there is a disagreement even if he took her in assuming she was injured by wood and she turned out to have been injured by wood.

Rebbi Jeremiah in the name of Rebbi Ze'ira did not say so, but: She says, I was injured by wood and my ketubah is 200 [zuz]. He says, it is not so, but you were trampled on by a man and you have no claim on me. What are we talking about? If he married her as a virgin and she turns out to have been injured by wood, Rebbi Meir will agree. If he married her as one injured by wood and she turns out to have been injured by wood, is there a recognizable difference in the opening of the door between wood or man?

Rebbi Huna in the name of Rebbi Ze'ira did not say so, but: She says, I was injured by wood and so I stipulated with you, but he says, it is not so, but you were trampled on by a man and there was no stipulation between you and me.

227 In the Babli, 13a, R. Eleazar is reported that she claims 100 zuz as ketubah but he does not want to give anything. This is the position articulated by R. Huna here. R. Johanan holds that she claims 200 but he wants to give only 100.

228 If the husband was not informed of the facts when he signed the ketubah, R. Meir agrees that he can sue to annul the contract.

229 There is agreement among all commentators that this should read: "if he took her in assuming she was a virgin." But if that were true, R. Jeremiah would say the same as R. Yose. In addition, we know that there is a difference of opinion between R. Meir and the rabbis about the ketubah of one who claims to have been injured by wood.

230 In that case, the position of
Rabban Gamliel and R. Eliezer is preferable since she holds the contract in her hands and the burden of proof is on the party contesting a written contract (Baba batra 9:8, 17a l. 56).

Mishnah 8: If she was seen speaking to a man and one asked her, what kind of man is this? He is Mr. X, a Cohen; Rabban Gamliel and Rebbi Eliezer say, she is believed. Rebbi Joshua said, we do not live off her mouth but there is a presumption that she was lying with a Gibeonite and a bastard unless she provides proof of her statement.

231 An unmarried woman was seen having an affair with an unknown person.
232 A single person engaging in sexual activity with a man whom she could marry is still permitted to marry a Cohen.
233 Bastards (children of adultery or incest punishable by death by the court or Heaven) are forbidden to marry into the congregation by biblical decree (cf. Yebamot 1:1, Note 29) and Gibeonites by tradition (cf. Yebamot 2:4, Note 72). Therefore, a woman sleeping with such a man is a נערו and forbidden to marry a Cohen (Yebamot 6:5, Note 100).

"If she was seen speaking to a man," etc. What is "speaking"? She had sexual relations. Why did we state "speaking"? An expression for the knowing; Rebbi says, of purity.
In the Babli, 13a, this is the opinion of Rav Assi. His (Babylonian) contemporary Ze’iri explains that R. Joshua already disqualifies her from marrying into the priesthood if she had a rendez-vous with an unidentified person.

Rebbi Jacob bar Aha in the name of Rebbi Joshia: Practice follows Rabban Gamliel and Rebbi Eliezer since two form a majority against one. Rebbi Yose asked: If it is practice, why two? And if two, why practice? Would that mean if Rebbi Johanan would hold with Rebbi Joshua that practice would not follow Rabban Gamliel and Rebbi Eliezer but Rebbi Joshua? What about it? It is a testimony for which a woman in empowered. They wanted to say, when does Rebbi Joshua disagree with these rabbis? At a place where most are disabling, but at a place where most are qualified, even Rebbi Joshua will agree. There came Rebbi Jacob bar Aha in the name of Rebbi Johanan, Rebbi Hila in the name of Rebbi Eleazar: There is disagreement even at a place where most are qualified. Does Rebbi Joshua think that immorality runs after...
the disabling? Rebbi Ze'ira said, a *baraita* stated that even qualified people whore, as it was stated: Even the most pious man cannot be appointed guardian for illicit sex.

235 Since R. Joshua is a higher authority than either Rabban Gamliel or R. Eliezer, the formulation of the Mishnah as a vote of 2 against 1 is to be read as endorsing the majority opinion.

236 "Practice" usually means "prior practice", going back for generations. In that case, the formulation of the Mishnah invites scrutiny whether it really supports a decision. In the Babli, 14a, the situation is resolved by the ruling that "practice follows Rabban Gamliel but one should act only if most people around that woman are qualified", see Note 239.

237 If the decision in the Mishnah is problematic a leading Amora, whose opinion would count for nothing against an anonymous Mishnah, could lend his weight to the opposite opinion.

238 In general, women can testify in court for matters of fact but not in law. But for the personal status of women, the testimony of women is accepted as it is from qualified men (*Yebamot* Chapter 15). The Babli concurs, 13b.

239 We have a principle that "it may be assumed *prima facie* that anybody who comes from a group belongs to the majority in that group" (Babli, 15a). In a town where most inhabitants are Gentile, or otherwise disqualified from marrying Jewish women, one would assume that the unidentified man sleeping with that woman was disqualified (siding with R. Joshua), but in a town where she could legally marry most of the men, he would be qualified (siding with Rabban Gamliel and R. Eliezer).

240 If only the disqualified engage in extramarital sex, the unidentified man does not come from the large group of city dwellers, most of whom are qualified, but from the small group of whorers, most of whom are disqualified. Then R. Joshua would be consistent and should be followed.

241 The formulation in the Babli (13b) and the Tosephta (1:6) is: "There does not exist a guardian against illicit sex." In Babli and Tosephta this belongs to R. Joshua's argument. For Greek ἐπίτροπος "guardian, administrator", cf. *Bikkurim* 1:5, N. 82.
Mishnah 9: If she was pregnant and one asked her, what kind of fetus is this? He is from Mr. X, a Cohen; Rabban Gamliel and Rebbi Eliezer say, she is believed. Rebbi Joshua said, we do not live off her mouth but there is a presumption that she is pregnant from a Gibeonite or a bastard unless she provides proof of her statement.

"If she was pregnant," etc. Rebbi Eleazar said, everybody agrees that the child is of unknown paternity. It was stated thus: "Where was this said, for the testimony of the woman in her own behalf. But everybody agrees that the child is of unknown paternity." Rebbi Johanan said to him, simply of unknown paternity! We find that a child of unknown paternity can be High Priest. How is this possible? A group of Cohanim was passing by, one of them came and had sexual relations; it turns out that the child of unknown paternity can be High Priest.

242 In Mishnah Qiddusin 4:1, the child of unknown paternity is barred from intermarrying with qualified Jews and is permitted only marriage with proselytes, freedmen, bastards, Gibeonites, those of unknown paternity, and foundlings.

243 Tosephta 1:6; Babli 13b.
244 That the woman's testimony is accepted without corroboration.

245 Since the father is unknown, the child cannot inherit from him. The expression "silenced one" can be explained as "one silences him if he claims inheritance".

246 He was not identified by name but certainly was a Cohen.

247 The Babli, 13b, agrees that the child is qualified to marry in the congregation but denies that he is a Cohen, based on Num. 25:13: "A covenant of priesthood it shall be for him and his seed after him", from which it is inferred that only a Cohen's child which is recognized as his is a Cohen. In the case under discussion, the child "is silenced from claiming priesthood".

Rebbi Eleazar said to him: Is not the dough widow qualified but her daughter is disqualified? He said to him, whoever declares her to be qualified, declares her daughter to be qualified. Rebbi Jacob bar Aha said, did he not say "whoever declares her to be qualified"? This implies that there is another who disqualifies! Who declares qualified? Rebbi Meir. Who disqualifies? The rabbis. As we have stated: What is qualified dough, anyone about whom there is [no suspicion of descent from] a desecrated, a bastard, or a Gibeonite. Rebbi Meir says, the daughter of any woman not tainted with one of these is qualified for the...
priesthood. But about a family in which a disability had disappeared, Rebbi Meir says he checks up to four mothers and marries, but the Sages say, he checks forever.

248 As a dough is a mixture of several ingredients, so the dough widow is a mixture; she is a woman qualified for priesthood who was married to a husband with a questionable family background (one whose females are permitted to marry Israelites but not Cohanim). The problem is that there is the knowledge that something was wrong in the marriages of that family but the exact nature of the defect is not known.

249 She carries the possible disabilities of the father's family.

250 If the daughter might be disqualified then the mother might be desecrated, i.e., her husband might have been the offspring many generations back of a union forbidden to Cohanim.

251 In the Tosephta (Qiddusin 5:2) and the Babli (14a; Qiddusin 4:4, 66a 1.29), there is no mention of the desecrated, but there is the added category of "king's slaves", who were used by the king to run the state and, by their influence and riches, were able to marry Jewish women even if not manumitted. In Jewish tradition (Rashi 14a), Herod was a slave of the Hasmoneans.

In the Babli tradition (cf. Otzar ha-Geonim 8, Ketubot, p. 12), the dough widow was a woman who had married a man possibly descending from a desecrated woman. This definition is reproduced by Rashi, 14a.

The difference between the Galilean and Babylonian traditions was already highlighted by Rabbenu Hananel (Otzar ha-Geonim I. c., p. 12).

252 The nature of the disability was no longer known.

253 These are really 8 mothers, spanning 3 to 4 generations, enumerated in Mishnah Qiddusin 4:4.

254 Until he finds the source of the trouble.
Rebbi Jeremiah in the name of Rebbi Ze’ira had a different version: Rebbi Eleazar asked Rebbi Johanan, what is the rule about a dough widow? He said to him, she is qualified. What about her daughter? He said to him, the one who declares her to be qualified, declares her daughter to be qualified. They wanted to say, according to Rebbi Eleazar, a child of unknown paternity is disqualified; according to Rebbi Johanan, a child of unknown paternity is qualified. Rebbi Johanan also holds that in some cases a child of unknown paternity is disqualified; he answered [Rebbi Eleazar] following the latter’s reasoning: Since you reason that the child is simply of unknown paternity, we find that a child of unknown paternity can be High Priest! How is this possible? A group of Cohanim was passing by, one of them came and had sexual relations; it turns out that the child of unknown paternity can be High Priest.
The word of Rebbi Zera\textsuperscript{255} implies that a child of unknown paternity is qualified, for Rebbi Ze'ira asked before Rebbi Yasa\textsuperscript{256}: Is it the same for families\textsuperscript{257}? He said to him, so says Rebbi Simeon ben Laqish: There, for families\textsuperscript{258}, but here for sanctified food in the country\textsuperscript{259}. The word of Rebbi Samuel ben [Rav] Isaac implies that a child of unknown paternity is disqualified, for Rebbi Samuel ben Rav Isaac asked: Does this mean that a child of unknown paternity is does not exist following Rabban Gamliel and Rebbi Eliezer, only following Rebbi Joshua? He turned around and said, a child of unknown paternity is possible following Rabban Gamliel and Rebbi Eliezer, if she remains silent. And even if you say that she talks, if she said that she does not know\textsuperscript{260}.

\textsuperscript{255} This is the Babylonian spelling of Ze'ira.

\textsuperscript{256} It is clear that R. Ze'ira asked before his teacher R. Yasa, not before his student's student R. Yose.

\textsuperscript{257} In the Mishnah, Rabban Gamliel and R. Eliezer declare than one believes the woman if she says that her child is a Cohen's. Mishnah \textit{Qiddušin} 4:1 excludes a child of unknown paternity from marrying most Jews. What is the relation of the two Mishnaiot?

\textsuperscript{258} If somebody looks after the purity of his blood line, he should follow the Mishnah in \textit{Qiddušin}.

\textsuperscript{259} "Sanctified food in the country" is heave. The child is empowered to eat heave; this implies that he is qualified for certain aspects of the priesthood (on the model of the local priests in Josiah's reform, 2K. 23:9).

\textsuperscript{260} If the mother states that she does not know the identity of the child's father, the child doubtless is of unknown paternity.
Mishnah 10: Rebbi Yose said: It happened that, when a girl was raped while she went to draw water from the spring, Rebbi Yohanan ben Nuri said: If most people of the town can marry into the priesthood then she can marry into the priesthood\textsuperscript{261}.

Therefore, the girl was raped by a man whom she could have married without detriment to her status; the rape does not diminish her status.

Halakhah 10: "Rebbi Yose said: It happened," etc. Rav Jehudah in the name of Rav: That happened at the source\textsuperscript{262} of Sephphoris.

In the Babli, 14b/15a, the statement is used in an argument that R. Joshua will agree with R. Yose only in this case when the rape happened at a place where not only the inhabitants of the city but all travelers congregate and it was known that at that point in time only qualified people travelled there. One cannot read the Babli's interpretation into the Yerushalmi text.
Both Rebbi Jeremiah, Rebbi Hama bar Uqba, say in the name of Rebbi Hanina in the name of Rebbi Yannai: Rebbi Joshua agrees in the case of the rape victim. Rebbi Hizqiah, Rebbi Abbahu in the name of Rebbi Johanan: Rebbi Joshua agrees in the case of the rape victim. Rav Hiyya bar Ashi said in the name of Rav: Practice follows Rebbi Yose who said in the name of Rebbi Yohanan ben Nuri. Rebbi Ze’ira asked before Rebbi Yasa: How does one act in a practical case? He said to him, following Rebbi Yose who spoke in the name of Rebbi Yohanan ben Nuri.

263 The Babli, 15a, disagrees and holds that R. Yose speaks of a very special case, that the rape occurred on a market day when many carriages came to Sepphoris and it was ascertained that both the majority of inhabitants of Sepphoris and the majority of foreign traders there were acceptable to marry into the priesthood, implying that R. Joshua agrees that no special proof is needed only in case (a) there are two groups and the majority of both is acceptable and (2) the woman was a victim, not a willing partner.
Rebbi Hila said in the name of Rebbi Yannai: He cohabited with her inside of Sepphoris. Rebbi Abba in the name of Rebbi Yannai: If he was seen coming out of Sepphoris and he cohabited, the presumption is that he disqualifies since he cohabited there. What about a thoroughfare? Rebbi Jeremiah bar Abba, Rebbi Yose says: By a majority. The force of Rebbi Jeremiah comes from the following which Rebbi Hyya had said in the name of Rebbi Johanan: If a wall fell in a dead-end street populated by Gentiles, but where one Jew lived, one digs there because of the Jew; but in a thoroughfare one follows the majority. And what is the interpretation of what Rebbi Abba said in the name of Rebbi Yannai, if he was seen coming out of Sepphoris and he cohabited, the presumption is that he is disqualified since he cohabited there? In the opinion of Rebbi Jeremiah, if one saw him coming out of a house. In the opinion of Rebbi Yose, even in a thoroughfare. If Sepphoris was locked. Rebbi Yose says, until there is proof. But
here, Rebbi Yose says, by a majority! The force of Rebbi Yose comes from the following, which Rebbi Ze'ira had said: Rebbi [Hiyya] (Yose) in the name of Rebbi Johanan: If his [box] (bread) was exchanged at the miller's, if it was established that an am ha'arez gave [grain] to be milled there that day, he has to worry; otherwise, he does not have to worry. Should he not worry? What is the difference between this and the Saracens? Was it not stated: "If a group of Saracens one day provisioned themselves from forbidden supplies, then that day becomes a proof for all days." It is impossible for Saracens not to supply themselves. But here it was not established that the am ha'arez was milling there that day. And here, I am saying that the disqualified person went to draw water only that day, and one has to worry. And here, Rebbi Hila said in the name of Rebbi Yannai: He cohabited with her inside of Sepphoris. And here, Rebbi Abba said in the name of Rebbi Yannai: If he was seen coming out of Sepphoris and he cohabited, the presumption is that he is disqualified since he cohabited there.

The scene described by the Babli (Note 263) is rejected; it is purely the question of the people of the place. This is based on a statement attributed in the Babli (15a) to R. Ze'ira: Everything fixed in its place is judged as 50/50. Since the population of the town has fixed residences, if a person was seen coming from one of the houses, he cannot be considered to be from the qualified majority but one considers it only a 50% chance that he be qualified. In this case, R. Johanan ben Nuri will agree that the rape victim cannot marry a Cohen. Greek πλατεία, cf. Berakhot 5:1, Note 56. The thoroughfare is government property even in the town. This must be "Rav". He is the early Amora Rav Jeremiah bar Abba, presenting a tradition of R. Yose the Tanna. He might be one of the editors of R. Yose's Seder 'Olam; cf. the author's Introduction (pp. x-xi) to his
268 On the Sabbath, because for saving a life one violates all prohibitions of the Torah (except murder, incest and adultery, and idolatry).

269 One searches for victims only if the majority of the users are Jewish or at least known not to be idolators.

270 Since the thoroughfare is a Roman military road, it may be assumed that the majority of users are not qualified to marry Cohanim.

271 If the rape happened in the night, when the gates of Sepphoris are locked, by the argument of Note 265 there is no majority of qualified people and the rapist would have to be identified in order to permit his victim to marry into the priesthood.

272 In the Mishnah.

273 The following sentences are from Demay 3:4, Notes 93-96; the variant readings are noted 7. The problem is that a person who is careful about the laws of tithing brings his grain to a mill that also serves the 'am ha'ares, the person who can be presumed to have given heave but not tithes from his grain. If the miller switches batches, the observant is in trouble.

274 The words in brackets are from Demay, those in parentheses from Ketubot. The text from Demay seems preferable.

275 He has to tithe a second time under the rules of demay.

276 If the travelling Arabs buy once from unobservant Jews, one has to assume that they always do, and that the grain they sell is not exempt Gentile produce.

277 Since they are itinerant sellers they have to buy provisions all the time. But the farmer mills once for his entire season.

278 End of the quote from Demay. The quote establishes that there is a presumption that things go wrong, in our case that the rapist was from a family disqualified for the priesthood.

279 This conclusion differs from the position of the Babli (Note 263) but not by much: One can qualify the rape victim only if the gates of the city were not locked and the perpetrator was not seen coming from a fixed place; that the group from which he came was not composed of locals only (Note 265).
"And everything found is judged by a majority." 280 In difficult cases the rabbis compare this 281 to crawling things 282, as it was stated 283: "Nine frogs and one crawling thing 284 in a private domain 285, if somebody touched one of them and it is not known which one he touched, in doubt he is impure. If he transferred to the public domain and touched, in doubt he is pure. If he returned to the private domain and touched, in doubt he is impure. And for what is found one follows the majority." Rav Hisda said, no valiant person can find his hands 286. Rebbi Immi said, praise to Him Who chose them 287 and their words; do not compare this 288 to a private domain but to the public domain! As it was stated: "Nine crawling things and one frog between them in the public domain, if somebody touched one of them and it is not known which one he touched, in doubt he is pure 289. If he transferred to a private domain and touched, in doubt he is impure. If he returned to the public domain and touched, in doubt he is impure.
he is pure. And for what is found one follows the majority." Rav Hisda said, no valiant person can find his hands. Rebbi Immi said, praise to Him Who chose them and their words; is the spring of Sepphoris not public domain? Rebbi Yose said, since the two could be alone together it is treated as private domain\textsuperscript{290}.

280 This sentence does not really belong here but is an intrusion from the Tosephta quoted in the sequel. It is also quoted in the Babli, 15a, in the same context. What is meant here is that a find is pure if most things in town are pure, otherwise it is impure. In principle, this can also be applied to permitted or prohibited things: If 9 stores in town sell kosher meat and 1 non-kosher, then any meat found on the street can be considered as kosher (Rabban Simeon ben Gamliel disagrees, Tosephta \textit{Tahorot} 6:1).

281 The status of the rape victim.

282 \textit{Lev.} 11:29-30 contains a list of "crawling things", mostly reptiles, whose cadaver is a source of impurity. The only cadavers that produce impurity are those of crawling things and mammals.

283 A shorter version of this \textit{baraita} is in the Babli 15a, \textit{Niddah} 18a and Tosephta \textit{Tahorot} 6:2.

284 They are all dead; the dead frogs do not carry impurity.

285 Questions of doubt in matters of ritual impurity must be resolved by a presumption of impurity in private domains and a presumption of purity in public domains; cf. \textit{Sotah} 1:2, Note 88.

286 This is not rational, since the place where the object was found should be of importance.

287 The Sages. A similar expression in the heading of the \textit{baraita} of \textit{Abot}.

288 The case of the raped girl whose disqualification would be a case of impurity.

289 Even against all probabilities.

290 The difference between public and private domains is not in the ownership but in accessibility. A cave in the public domain has the status of private domain. Rav Hisda is justified; this kind of argument is not relevant to explain the relation of Mishnah 10 to Mishnaiot 8,9.
It happened that a baby girl was noticed who had been thrown on a garbage heap. The case came before Rebbi Ismael ben Rebbi Yose, who said, she should be adjoined to dough. Rebbi Jeremiah thought to say, to qualified dough, would Rebbi Ismael ben Rebbi Yose disagree with his father? Rebbi Yose said, even if you say to disqualified dough, Rebbi Ismael ben Rebbi Yose would not disagree with his father. Why? While the qualified whore, only the disqualified throw away.

291 She should be adopted by a family of questionable status.
292 He said that in a town of mostly qualified families, the children are automatically qualified.
293 Therefore, that baby is from a group of mostly unqualified children.
Mishnah 1: If a woman became widowed or divorced and she claims to have been married as a virgin, but he says not so, I married you as a widow, if there are witnesses that she went out in hinuma or with uncovered hair, her ketubah is 200 zuz. Rebbi Johanan ben Beroqa says, the distribution of roasted kernels also is proof.

1. Either her ketubah is lost or, if she married at a place of illiterates, it never was written.
2. Cf. Chapter 1, Note 65; Chapter 2, Note 22.
3. A virgin will start covering her hair only at the wedding.
4. At his place, this was a sign of the wedding of a virgin.

Halakhah 1: "If a woman became widowed," etc. We understand if she was divorced. If she became widowed, who opposes? The heirs.

5. Only the husband's descendants, and in their absence the husband's family, do inherit; Num. 27:6-11. The widow can claim only her ketubah (in the absence of a will).
Should one follow the majority, and most women are married as virgins. Say then that she was married as a virgin. This implies that in criminal cases and in money matters one does not apply a majority argument. There, we have stated: "If an ox gored a cow and one finds her fetus beside her." Do most cows have miscarriages? Say therefore that the goring induced the miscarriage. Rebbi Abbahu said, this implies that in criminal cases and in money matters one does not apply a majority argument. Rebbi Abun said, in one case they applied a majority argument, as Rebbi Aha stated: If a camel was in heat among camels and one finds one of them dead, I am saying that the one in heat bit it.

6 Why does the Mishnah put the burden of proof on the woman when there should be a presumption in her favor to require the husband or the heirs to prove their case.

7 Since the woman claims money, the burden of proof is on her; cf. Chapter 1, Note 215. The Babli agrees, Baba Batra 93a.

8 Mishnah Baba Qama 5:1.

9 If it cannot be ascertained whether the miscarriage was induced by the goring or preceded the goring, the ox's owner pays (by biblical decree, Ex. 21:35) half of the damage done to the cow but only a quarter of the value of the fetus. It is clear that the proven fact of the goring creates a presumption that the miscarriage was induced by it. This presumption is not
sufficient to force the owner of the ox to pay; the value of the fetus, had it grown to be a calf, is "money in dispute". Money in dispute for which there are no proofs either way is split evenly between the parties (Babli Baba Mes'ía 2b). A similar text is in Baba Qama 5:1. The Babli, Baba Qama 46a, denies the designation as "money in dispute" and puts the burden of proof on the claimant, the injured party.

10 In Baba Qama, R. Yose.
11 In the Babli, Baba Batra 93a: It is known that the one in heat killed it. The Babli holds that this is not a case of majority but one of prima facie evidence: Proof that the camel was in heat implies proof that it did attack other males. Therefore, the owner of the camel in heat would have to prove that the attack by the male in heat on the male not in heat was not lethal.
If somebody claimed a mina, the [defendant] denied it, and the [claimant] produced witnesses that the [defendant] owes him 50 [zuz]. The older Rebbi Hyya said, [the defendant] has to swear about the remainder. Rebbi Johanan says, he does not have to swear. The older Rebbi Hyya learned it from two who are grabbing a toga, as we have stated there: "Two are grabbing a toga, one says, I found it, and the other says, I found it." The one who grabs half of it is as if he brought witnesses that that half belongs to him. The other says, "it belongs to me entirely", and the fact that he grabs half of it is as if he brought witnesses that this half belongs to him. The one who says, "it belongs to me entirely", swears that not the entire [toga] is the other's. But he did not hear that Rebbi Hila said in the name of Rebbi Johanan that this oath is a rabbinic institution, that a man should not see another in the market and tell him, the toga which you are wearing is mine, come and split your toga with me! Rebbi Abin in the name of Rav: My uncle agrees in the case of a document. How is that? He claimed a mina, the [defendant] denied it, and the [claimant] produced a document that the [defendant] owed him 50 [zuz]. He has only fifty. And Rebbi Yose ben Rebbi Abun said, we can understand it from the following: "The amount of . . . tetradrachmas and it was illegible, he owes no less than two." If it is more, if the lender says five but the borrower says three, Ben Azzay says since he partially agreed to the claim, he has to swear, but the Sages say, what he agreed to is not of the kind which was claimed. Because it was not of the kind which was claimed! Therefore, if it were of the kind which was claimed, he would be obligated. And is it not here that the agreed sum was part of the claim? Everybody agrees that he owes her a mina. But she claims
another mina from him, to which he does not agree. The burden of proof is on the claimant.\(^{21}\)

12 Following the principle that the defendant in a suit for money can by biblical law only be forced to swear if he admits that part of the claim is justified; based on Ex. 22:8, where the expression אֱלֹהֵי יִשְׂרָאֵל פִּי הָאָזֶן הוא, "if he agrees that this is so." In Baba Meisi'a (1:1, 7d l. 24; Babli 3a) the reason of the older R. Hiyya is "that what he admits himself should not have greater force than the testimony of witnesses."

13 Mishnah Baba Meisi'a 1:1. If two people come to court, each grabs half of a toga and asserts ownership of the entire piece because he found it, each of them has to swear that he owns no less than half of it (so the court should not force obvious perjury) and takes half of the piece since "it is money in dispute."

14 The student of the older R. Hiyya's son Hizqiah.

15 Baba Meisi'a 1:1, 7d l. 33; Babli 3a; both in the name of R. Johanan. Rabbinic institutions do not imply anything for biblical law.

16 The older R. Hiyya, half-brother to both of Rav's parents.

17 Mishnah Baba Batra 10:2. If the amount of indebtedness is illegible, the use of the plural proves that the amount was at least two.

18 In Baba Batra 10:2 (by the editorial team of Neziqin, different from the editors of the rest of the Yerushalmi) and the Babli, Baba Meisi'a 4b, the "Sages" are identified as R. Aqiba. In the Babli, Ben Azzai is replaced by R. Simeon ben Eleazar, 2 generations younger than Ben Azzai and R. Aqiba. In both sources, the reason of R. Aqiba is given that the borrower, in agreeing to pay more than he could be forced to by the existing document, is like a person returning what the other had lost, not directly answering the lender's claim.

19 In our Mishnah, why should the divorcing husband not be forced to swear that he does not have to pay 200 zuz even if there are no witnesses, since he agrees that he owes 100? (The heirs, not being able to swear, would have to pay.)

20 Since this amount is not in dispute, the husband cannot be considered as agreeing to part of the claim; no oath is due.

21 This is the standard formulation, Babli Baba Qama 46b.
"In hinuma". There, a veil. The rabbis here say, a phorema\textsuperscript{22}.

22 As explained in Chapter 1, Note 65, originally a virgin was led to her husband's house with υμεναιοι "wedding songs". After the war of Bar Kokhba, when these songs were forbidden (Sotah 9:13, Note 189), the word hinuma changed its meaning. In Babylonia it became "a veil" (Babli 17b), literally "a slumber cloth" from מַס "to sleep", in Galilee φόρημα "that which is carried", i.e., "a litter".

"She went out with uncovered head." Rebbi Hiyya in the name of Rebbi Johanan, like those who went out on the Day of Atonement\textsuperscript{23}. If she went out with uncovered head, the witnesses testify\textsuperscript{24} that she had not been cohabitated with. Should one not worry that she was a virgin after final marriage? That means, a virgin after final marriage does not go out with uncovered head\textsuperscript{25}. Should one not worry that she had been injured by wood? That must follow Rebbi Meir, since Rebbi Meir says\textsuperscript{26} the ketubah of one injured by wood is 200 [zuz]. Rebbi Johanan said, they did not worry about infrequent occurrences\textsuperscript{27}. 

\textsuperscript{22} As explained in Chapter 1, Note 65, originally a virgin was led to her husband's house with υμεναιοι "wedding songs". After the war of Bar Kokhba, when these songs were forbidden (Sotah 9:13, Note 189), the

\textsuperscript{23} The virgins of Jerusalem who went out to dance in the vineyards on the 15th of Ab and the Day of Atonement to find husbands (Mishnah Ta'anit 4:8).

\textsuperscript{24} To the fact that she had her head uncovered before the wedding.

\textsuperscript{25} As in German one says "under
die Haube kommen" ("to get under the bonnet") for "to be married", the widow who is a virgin is a lady, always wearing a hat, no longer a girl.

26 Mishnah 1:3.

Mishnah 2:1 does not contradict the position of the Sages in Mishnah 1:3. The Babli agrees in a different context, 16a.

"Rebbi Johanan ben Beroqa says, the distribution of roasted kernels also is proof." Should one not worry that she was a virgin after final marriage? That means, for a virgin after final marriage one does not distribute roasted kernels. It was stated28: Abba Shaul says, also if one brought before her an amphora of good news29. Should one not worry that she was a virgin after final marriage? That means, in front of a virgin after final marriage one does not bring an amphora of good news.

28 In the Babli, 16b, in an anonymous baraita it is stated that it was a sign of a virgin's wedding if one brought before her a cup of good news or danced at her wedding.

29 In the Babli, the "cup of good news" is explained as a cup of heave wine, since heave is called "beginning" (Num. 18:12), the bride also represents a beginning. It probably is difficult to have a full amphora of heave wine; so one might think of the "good news amphora" as one of new wine which is opened for the first time at the wedding, just as the bride will be "opened" after the wedding.
Mishnah 2: Rebbi Joshua agrees\textsuperscript{30} that if somebody says to another: "This field did belong to your father but I bought it from him," that he is trustworthy since the mouth which forbade is the mouth which permits. But if there are witnesses that it did belong to [the second man's] father and [the first] said, I bought it, he is not trustworthy\textsuperscript{31}.

\textsuperscript{30} Even though he held in Chapter 1 that uncorroborated statements are not admissible in court, he agrees that if the question would not arise had a person not pointed it out, the same person is empowered to remove the difficulty he himself created. This is the principle behind the following Mishnaiot of this Chapter.

\textsuperscript{31} If there are witnesses, even if they come to court after the first person explained the problem, the first person has to establish his claim following all rules of testimony.

Halakhah 2: "Rebbi Joshua agrees," etc. Rebbi Joshua agrees, but he does not disagree\textsuperscript{32}? In the former.

\textsuperscript{32} No disagreement is mentioned in Mishnah 1. Why should it be noted that R. Joshua agrees in another case? The reference is to all Mishnaiot of Chapter 1 where he disagrees. The same explanation is in the Babli, 16a.
"He is not trustworthy" if he did not eat the years of legal claim\textsuperscript{35} from it. But if he ate the years of legal claim from it, he is trustworthy if [the second person's] father did not die in possession. But if [the second person's] father died in possession, he is [not] trustworthy\textsuperscript{36}. \textsuperscript{37} As the following: Reuben ate from a field\textsuperscript{38} claiming that it was his. Simeon brought witnesses that his father died in possession. One removes [the field] from Reuben and hands the title to Simeon. Reuben came back and brought witnesses that [Simeon's] father did not die in possession. Rebbi Nahman ben Jacob\textsuperscript{39} said, I took it from Reuben, I am returning it to Reuben\textsuperscript{40}. That is what the rabbis here think. The rabbis there say, from the time it was removed, by clear testimony it was removed\textsuperscript{41}. So the rabbis here say, from the time she married, by clear testimony she married\textsuperscript{42}. Rebbi Yose said, the rabbis there agree that if during the first proceedings two [witnesses] say that his father died in possession and two say, he did not die in possession, Reuben's claim is upheld\textsuperscript{43}.

\textsuperscript{33} This word appears both in the ms. and editio princeps; it seems a copyist's error.

\textsuperscript{34} This word is missing in the ms. but appears in editio princeps.

\textsuperscript{35} If a person can prove three years of undisturbed possession of real estate and claims legal acquisition (by sale, inheritance, or gift), the court has to confirm him in possession since documents have to be kept only for three years.
36 The three years of undisturbed possession count only if the person from whom he acquired it was alive during these years since the heirs might not be knowledgeable enough of the details of the deceased’s property to exercise their duty to object to the squatter’s occupation.

37 Except for the last sentence, the following is Halakhah Baba Batra 3:4 in a different editing.

38 Undisturbed for 3 years.

39 He should be called Rav Nahman ben Jacob, in the Babli simply called Rav Nahman, chief judge and highest authority in money matters in Babylonia.

40 If there are two against two witnesses and all four testimonies hold up under cross examination, there is no testimony and Simeon has no claim. The identical statement appears in the Babli, Baba Batra 31b.

41 Since (Deut. 19:15) “by the testimony of two or three witnesses the case shall be confirmed”, Reuben’s witnesses cannot be accepted unless they prove that Simeon’s witnesses were lying.

It is difficult to see who "the rabbis from there" are since Rab Nahman was the authority in Babylonia and the Babli (loc. cit.) decides explicitly that later claims are admissible in money matters.

42 This really belongs to the next paragraph, about a woman whose husband has disappeared and she remarried on the testimony of two witnesses that her husband had died; when two witnesses come and say he is alive, they are not listened to.

43 If during court proceedings there are contradictory statements, none of which can be shown to be false, there is no proof and the claim of legal possession cannot be denied.
Rebbi Johanan said, it was stated thus: "Two [witnesses] say he died, [later] two witnesses say, he did not die. She shall not remarry, but if she has remarried she should not leave. Two [witnesses] say she was divorced, [later] two witnesses say, she was not divorced. She shall not remarry; if she has remarried she must leave. There, they say, it makes no difference; whether about death or divorce she should not leave. In the opinion of the rabbis there it is understandable, there is no difference between death and divorce. In the opinion of the rabbis here, what is the difference between death and divorce? Rebbi Ze'ira said it without attribution, Rebbi Hiyya in the name of Rebbi Johanan: It is reasonable to decide in the case of witnesses of death that if he returns he contradicts them. Rebbi Hizqiah said, the rabbis there stick to their opinion since the rabbis there say, when the [first] testimony was accepted, it was accepted as certain. So the rabbis here say, at the moment of her remarriage, she remarried based on certified testimony. Rebbi Yose said, it is reasonable that the rabbis there did not change their argument. Do the rabbis there not agree if two [witnesses] say, his father died while in possession, [and two say his father died while not in possession,] that the field is in Reuben's possession? Therefore, if two say, she was divorced and remarried, and two say she was not divorced, rightly she should not leave.

A baraita disagrees with Rebbi Johanan: "If two are saying, she was preliminarily married, and two are saying, she was not preliminarily married, she should not get married, but if she married she should not leave." Rebbi Hoshiaia said, Rebbi Johanan may explain it as follows: "If
two are saying, she was divorced, and two are saying, she was not
divorced, she should not get married, but if she married she should not
leave." What is the difference between this and the first case? There, she
was considered a married woman in everybody's opinion. Here, she is
considered a married woman only for two people. If two others came and
identified the man who was betrothed to her.

A *baraita* disagrees with Rebbi Johanan: "If two are saying, she was
kidnapped but is pure, and two are saying, she was kidnapped and is
impure, she should not get married, but if she married she should not
leave." Rebbi Yose said, since these say, she is pure, and those say, she is
impure, it is as if two said, she was kidnapped, and two said, she was not
kidnapped, and we depend on what she says.

If two are saying, she had been betrothed and two are saying she had
not been betrothed. Rebbi Jonah compares that to fat. If two said, X ate
fat, and two said, X did not eat fat, did he not have to bring a "hung"
reparation sacrifice because of the doubt? Here, he should give a bill of
divorce because of the doubt. Rebbi Yose said to him, do not compare
this to fat, because even if he says my conscience bothers me, he brings a
"hung" reparation sacrifice. A *baraita* disagrees with Rebbi Yose: If two
are saying she had been betrothed and two are saying she had not been
betrothed, she should not get married. The end disagrees with Rebbi
Jonah: If she married she must leave. Rebbi Mana said, Rebbi Yose did
not say that she may marry, nor did Rebbi Jonah say if she married she
must leave, he said only, do not compare this to fat, because even if he
says my conscience bothers me, he brings a "hung" reparation sacrifice.
44 Reading of the parallel in *Yebamot*. Reading here "on behalf of".

45 This word is not in *Yebamot*; it should be read since NVT manoa KV is a standard formula.

46 From *Yebamot* 10:4, explained in Notes 99-114. The variant readings are noted by *.

47 Tosephta *Yebamot* 14:1

48 A similar text in Tosephta *Ketubot* 2:2. The kidnap victim who was raped cannot marry a Cohen.

Mishnah 3: If witnesses said, this is our signature, but we were under duress, or underage, or disqualified, these are trustworthy. But if there are witnesses to identify their signatures, or their signatures are confirmed from another document, they are not trustworthy.

49 If at the time they witnessed the document they lived off illegal or immoral earnings (e.g., as gamblers having no other employment, who cannot make money if the game is honest).

50 They have witnessed a document of indebtedness or transfer of property which ended up in court. The court must first establish that the document is genuine by certifying the signatures of the witnesses. If the witnesses were unknown to the court, their testimony qualifies the document as genuine. But since theirs is the mouth which permits the introduction of the document, their mouth can prohibit its introduction by claiming that their signatures were obtained illegally.

51 If the witnesses were unknown to the court but another document was presented carrying their signatures and certified by another court as genuine,
then the court judging the present document is empowered to certify their signatures by comparing them to the certified ones. Their mouth is not the one which permits; therefore, their mouth cannot prohibit.

Halakhah 3: "If witnesses said, this is our signature," etc. It was stated:

And similarly, the witnesses who testified whether to declare impure or pure, or to remove or include, or to forbid or permit, or to obligate or absolve, if they say we did invent this before their testimony was investigated by the court, they can be believed; after their testimony was investigated by the court, they are not trustworthy.

Rebbi Simeon ben Laqish said, they considered witnesses who signed a document as if their testimony had been investigated by the court. If they say, these are our signatures, and others say, these are their signatures, Rebbi Hiyya stated: Their [testimony] does not add and does not detract. Rebbi Yose said, our Mishnah says so, "if there are witnesses to identify their signatures, or if their signatures are confirmed from another document, they are not trustworthy."
In slightly different wording in Tosephta Ketubot 2:1, Sanhedrin 6:5.

These testimonies are all about personal status. To declare impure or pure is the same as to exclude (bastards from marrying Jewish partners or desecrated females from marrying Cohanim) or to include them in the pool of eligible marriage partners. Similarly, to forbid marriages (because the woman is still married) or to permit, to impose a purification sacrifice for sinful marriage or to absolve. The parallel Tosephta in Sanhedrin must be interpreted to deal with money matters, to impose payment or to absolve from payment.

The text here is in doubt. The Erfurt ms. of the Tosephta reads נֵאמְרָה בְּכָל בֵּית בֵּית in both places, "we were made to lie"; this is the reading of many German and Italian medieval authorities in the Yerushalmi. The text of the ms. and editio princeps is also the text of the Vienna ms. of the Tosephta and most African, Spanish, and French authorities; cf. Tosefta ki-Fshutah, part 6, p. 199-200.

This does not necessarily mean investigation by cross-examination but indicates that identification of their signatures was accepted by the court; cf. Tosefta ki-Fshutah, part 6, p. 200-202.

Once the signatures have been accepted, the witnesses cannot change their stories since "no witness can testify twice in the same matter" (Babli 18b; Bikurim 3:4, Note 72). The Babli agrees, 18b. Cf. also Sevi'it 10:5, Note 96.

Since their testimony is not needed, they do not have the power to modify the terms of the contract which they signed as witnesses.

Rebbi Mana said, that becomes a document which has been put under a
cloud\textsuperscript{59}. Issi said, only if it had been put under a cloud but was confirmed by the court\textsuperscript{60}. Rebbi Eleazar said, if it was not confirmed by a court\textsuperscript{61}. Rebbi Ila said, the reason of Rebbi Eleazar is, that after the witnesses were confirmed as the signatories of the document, it is as if their testimony had been investigated by the court.

58 Witnesses before the court.
59 A document signed by unidentified witnesses is worthless.
60 This refers to the statement of the Mishnah, that witnesses are not needed if "their signatures are confirmed from another document." He holds that signatures can be confirmed from other documents without asking the witnesses if there was a problem with the other document and it was confirmed by a court after due investigation. Since the signatures on a document whose validity is acknowledged by all parties do not have to be investigated, those signatures should not be used to validate documents in dispute. This opinion is quoted in the Babi, 19b, as tannaitic. Later, 20a, in the name of R. Assi (Issi), it is interpreted to mean that one may use a document in dispute to validate other documents only if the first document was confirmed by a court, implying that an undisputed document can be used even if no court ever had given its opinion on it. This cannot be the meaning in the Yerushalmi.
61 Any document accepted by a court, after investigation or without, is valid to compare signatures.

Rav Hana said, one learns from a corrected scroll, like those who say, Issi's scribe\textsuperscript{62}. From letters it is problematic\textsuperscript{63}. Rebbi Yose ben Rebbi Abun said, only from three documents in the hands of three people\textsuperscript{64}.
A document in the characteristic handwriting of a known scribe can be accepted, since that scribe would not be a party to a dishonest document.

Letters cannot directly be used to identify handwriting since it is known, from Geniza documents and Sephardic documents through the 18th Century, that people develop very intricate signatures that cannot be compared directly to their fluent writing in letters.

The Babli, 20a, accepts two documents in the hands of two people to verify signatures. It is explained that two documents in the hand of the same person are no help since just as he forged one document so he may have forged the other.

Rav Huna in the name of Rav: The witnesses can be trusted if they say, that is a document given in good faith, or a document in trust. But Rav said, it is forbidden to sign a document given in good faith, or a document in trust. Does this contradict what they say in the name of Rav, the witnesses can be trusted if they say, that is a document given in good faith, or a document in trust? One word of Rav contradicts a word of Rav! Rebbi Haggai said, Rav did not say it is forbidden to sign but it is forbidden to keep. As the following, "if evil is in your hand, remove it," that is a document given in good faith, or a document in trust, "do not let injustice dwell in your house," that is a document of indebtedness which was paid.
A document of indebtedness while no debt exists, to be activated later if the debtor needs money, given in good faith that the lender will not use it unless there really will be a loan (naturally interest-free).

In a more general sense, a good faith document is a document covering eventualities which the parties expect never to happen. Such a document is not enforceable. Some rabbinic authorities hold that pre-nuptial agreements about eventual modalities of divorce are good faith documents since nobody marries with the idea of a divorce in mind.

Greek πίστις "trust, credit, credence" (in the editio princeps the spelling is U'D'O'D; Musaphia reads ΖΙΣΙΣΙΣ). A document which does not correspond to reality and is not intended ever to correspond to reality, but to make the holder appear richer than he really is.

The Babli, in the name of Amora'im of the last generation, disagrees and holds that it is forbidden to sign inactive documents and that witnesses who claim the documents were not meant to be used declare themselves to be sinners and, therefore, unacceptable as witnesses. But if they say that the debtor stated before them that he agreed to the document only under duress, they are to be believed.

Job 11:14. In the Babli, 19b, this is attributed to R. Joshua ben Levi.

It should be torn up rather than invalidated by a separate receipt.
my signature, each of them needs another with him, the words of Rebbi, but the Sages say, everybody is trustworthy to confirm his own signature.

70 There is a document before the court which should be certified and for that the court has to check whether the signatures of the two witnesses on the document are genuine. If each of the two witnesses testifies to the genuineness of both signatures, there are two witnesses for each signature and the document is validated. (While nobody can testify in his own behalf, here the witness testifies in behalf of the owner of the document.)

71 As the Halakhah explains, Rebbi requires that each signature on the document be certified by two witnesses but the Sages hold that only the contents of the document have to be certified by two witnesses.

Halakhah 4: "If one says, this is my signature," etc. Why was this necessary? For Rebbi. Even though Rebbi says, each of them needs another with him, here he agrees that they are trustworthy.

72 He accepts cross validations since there are two witnesses for every

Rebbi Ze'ira said: It was stated in Rav's Ketubot: The words of Rebbi (Eleazar) that he testifies about the document, the words of the Sages that he testifies about the loan.
73 This is in the ms. and editio princeps, but does not fit the context. The correct text is in Sefer Ha’a’ittur (vol. 1, 14b, Note 74):

This is the basis of the translation. However, since it leaves out the irrelevant information about Rav’s Ketubot, it probably is not an exact copy of the Yerushalmi text.

74 The Babli agrees (after some discussion), 20b/21a.

It was stated: A person may write down his testimony and testify about it even some years later. Rav Huna said, only if he remembers his testimony. Rebbi Johanan said, even if he does not remember his testimony. It turns out that Rav Huna follows Rebbi and Rebbi Johanan the Sages.

75 Babli 20a; Tosephta 2:1 (there, the wording is: even after 100 years.) The problem is that the verse (Deut. 19:15) requires that “anything be confirmed by the mouth of two or three witnesses.” The disagreement of Rav Huna and R. Johanan is confirmed by the Babli, but not its explanation.

76 It is obvious that nobody has to refresh his memory in order to identify his signature, so the difference must be about testifying to the substance of the document. R. Johanan follows the Sages since his testimony about his signature certifies the document and any additional information is ancillary but for Rav Huna the testimony about the signature says nothing about the contents of the document; any additional testimony must be by the mouth of the witnesses and not by his writing. (The explanation of Tosaphot 20a, s. v. רבר יוחנן is difficult to accept.)

בבר יָעָרִי רב חֵנוֹל כֶּסֶם רְבּ. אֵין הוּא אֶזְרָה מַשְׁפָּרָא וּלְחִימָה (26c line 4)

less את המִּカー כֶּהַב וּלְכָּבֶּר וּלְכָּהֲבָּר כָּהֲבָּר.
Rebbi Ze’ira, Rav Huna, in the name of Rav: One witness and someone from the market place cannot together certify the signature of the second witness. How is that? If one identified his own signature and that of his colleague, but that second witness’s signature was not known to anybody except his colleague, may that colleague together with somebody from the market place testify on that signature? That is what Rebbi Ze’ira, Rav Huna, said in the name of Rav: One witness and someone from the market cannot together certify the signature of the second witness. Another case where there are no two persons: The signature of one is known by everybody, but that second witness’s signature is not known to anybody except his colleague. Can that colleague testify on his signature as if he were someone from the market place? If you say so, the entire testimony is confirmed by one witness. Rebbi Yudan said, that is correct. If two people come from a town that is mostly Gentile, like Hippos. One is known by everybody as a Jew, but the other is not known by anybody except his companion. Can the latter
be considered one from the market place to testify about him? If you say so, the entire testimony would be confirmed by one witness! And in the prior case, the entire testimony would be confirmed by one witness.

77 In the formulation of the Babli, 21a, one witness comes before the court but the other has died in the meantime. If the surviving witness were enabled to testify to his own signature and, with the help of an unrelated person, to that of the other witness, then 75% of the testimony would be from one witness (100% of his own half and 50% of the other half). But testimony of witnesses is acceptable only if both of them have equal validity.

The paragraph appears also in Roš Haššanah 2:1, 57d.

78 Which he is enabled to do by the Mishnah following the Sages.

79 In court.

80 I. e., unconnected with the court and the parties before the court.

81 On the mountain ridge overlooking the Eastern Shore of Lake Genezareth.

82 To establish a Jewish identity, one witness is enough since it is a testimony about Torah prohibitions.

83 If the two testify about a document executed in the city of Hippos, the second witness testifies only because he was enabled by the first. Therefore, the second witness cannot be considered to be independent of the first.
Rebbi Haggai said that Rebbi Ze'ira asked: Can one witness testifying orally and one by a document be taken together? Is a single witness on a written document worth anything? Therefore, his question was, if there are two. They managed to confirm the first signature but not the second. Rebbi Mana asked, is one witness on a written document enough to force anybody to swear? Is a single witness on a written document worth anything? Therefore, his question was, if there are two. They managed to confirm the first signature but not the second.

Parallel to it: One does not accept testimony from witnesses unless they had seen together. Rebbi Joshua ben Qorha says, even if they saw one after the other. Rebbi Jeremiah, Rebbi Samuel bar Rav Isaac, in the name of Rav: The Sages agree with Rebbi Joshua ben Qorha for witnesses about primogeniture and rights of possession.

84 Mishnah *Baba batra* 10:2: A document signed by a single witness is invalid.

85 In the Babli, *Baba batra* 165a, this is a question, if one signature was confirmed from another document and one by oral testimony. It is resolved that the document is valid.

86 *Ex. 22:9* decrees that in all money matters in dispute, "if there is one who says, he is the one" who owes money, there should be an oath. This is interpreted to mean that the claimant can force the defendant to swear if he can support his claim by a single witness but does not have the two witnesses necessary to force the defendant to pay.

87 From here to the end of the Halakhah, the text is from *Sotah* Chapter 1, Notes 46-71. The text here is from the hand of the corrector; the scribe of the ms. only notes הַרְשָׁנָה יְהוּדָאִים דָּרְשֵׁתָה כָּלָה דָּוָה נַרְשָׁנָה קְדָמָא דָּרְשֶׁתָה כָּלָה דָּוָה. "One reads all this in the first Halakhah of *Sotah* up to ‘and here, every single hair needs two witnesses’." There are several differences in the sequence of sentences in addition to systematic differences in spelling; it is clear that the corrector copied from a different
ms. which now is lost.

88 R. Joshua ben Qorha will accept the written testimony of one witness (of two on a document) combined with the oral one of another; the Sages will reject it except in the three cases stated here. The same disagreement in the Babli 26b, Sanhedrin 30b.

87 Rebbi Abba in the name of Rebbi Jeremiah. The same holds for testimony regarding signs. In that case, it is obvious if one says, I saw two hairs on his back and the other says, I saw two hairs on his back. If one says, I saw one hair on his back and the other says, I saw one hair on his belly, that is nothing; similarly on his back and on his back. If two say, we
saw one hair on his back and two others say, we saw one hair on his belly? Rebbi Yose ben Rebbi Abun and Rebbi Hoshaia ben Rebbi Shammai, one said, it is invalid, but the other said, it is valid. He who says id it is invalid considers him as one who testifies to half a sign. He who said it is valid? Maybe they were rubbed off. One says, I saw two hairs on his back and one says, I saw two hairs on his belly. Rebbi Abba said, everybody agrees that this is valid [testimony]. Rebbi Haggai said, everybody agrees that this is invalid. Rebbi Yose said, this is in disagreement. Rebbi Yose said to Rebbi Haggai, does not Rebbi Yudan follow my opinion? He answered, I am disagreeing with his teacher, so much more with him. Rebbi Mana said, Rebbi Haggai was correct. If a document was signed by four witnesses and it was disputed, if one person verified the signature of two [witnesses] and another that of the other two, is that worth anything? Does not every single signature need two witnesses? And here, every single hair needs two witnesses. Rebbi Hanania learns it from the years of possession. If one [witness] testified that he ate from the property the first, second, and third years and another [witness] testified that he ate from it the fourth, fifth, and sixth, is that worth anything? Does not every single year need two witnesses? And here, ever single hair needs two witnesses.

89 The statement of R. Yudan is in the text in Sotah, missing here.
Mishnah 5: If a woman said, I was married but I am divorced, she is to be trusted, since the mouth which forbade is the mouth which permits. But if there are witnesses that she is married and she says, I am divorced, she is not trustworthy.

She is new in the community and produces no divorce document. If the witnesses know of her marriage but do not know of her divorce, she has to prove her assertion; in the meantime she is treated as legally married and cannot remarry.

Halakhah 5: "If a woman said, I was married," etc. It was stated: If the witnesses came after she remarried, she should not leave. Rav Huna and Rebbi Hanina both say, not only after she remarried but even after the court authorized her to remarry. As the following: A woman came to Rebbi Johanan and said to him, I was married but I am divorced, and he permitted her. After she left, they said to him, are not her witnesses at Lod? He said, so I am saying: Should she wait even if her witnesses are at Lod? Rebbi Yose bar Rebbi Abun said, there were two cases. In one case, they said to him, are not her witnesses at Lod? In the other case, they said to him, are not her witnesses at Caesarea? And so it was!
He said to them, so I am saying: Should she wait even if her witnesses are at קוסמטן?

92 Her second marriage should not be dissolved.

93 In the Babli, 23a, this is a statement of Samuel's father, of the generation of transition between Tannaim and Amoraim.

94 She said that she had been married at Lod. Therefore, it would be possible to check her out by sending for witnesses from Lod.

95 In the editio princeps, the spelling is קוסמטן. (Perhaps cf. Greek κασαυρεΐον, τό, also κασώριον, "brothel", with assimilation of σ from Greek ρ. The implication is that witnesses in any case would not be considered [E. G.].)

96 Caesarea Philippi, much closer to Tiberias than Lod in the South.

Rebbi Yudan asked: "I had been married but I was divorced at place X"; if two [witnesses] come and say, no woman was divorced at place X, do they contradict her? Rebbi Yose asked, if she said, I had been married but I was divorced at place X at a certain date," and two came and said, a woman was divorced at that place, but two [others] came and said, no woman was divorced at that place? That is a contradiction of the essence of the testimony; we live off her mouth.

97 No answer is given. The Babli (23a) notes, "we did not see' is no proof." There are divorces done in privacy, and this kind of negative testimony is inadmissible. The reluctance of the Yerushalmi to decide
here is understandable; it may be that the correct spelling of the place in question had not been established and a divorce document is invalid if the names of the persons or of the place are incorrect. (For example, the Jewish community in Basel, Switzerland, was founded by Jews from Alsatia and until after 1918 all divorces were executed in old established Alsatian communities. When it was found necessary to perform divorces in Basel, the problem arose whether to write the name of the city as טאוז or טאוז, following the rules of Western Yiddish in which /a/ = ą, /e/ = ę, or since the /e/ is almost inaudible in local speech. The problem had to be settled by an outside expert in the writing of divorce documents.)

But they have no direct knowledge of the specific case in question.

One day, she said, I am married. The next day, she said, I am divorced. We asked her, yesterday you said this, today you say otherwise? She said to them, because of a group of amoral people who wanted to start up with me. Rebbi Abun in the name of Rebbi Ila: Since she provided an explanation for her words, she can be believed. A similar case: Samuel wanted to sleep with his wife, but she said to him, I am impure. The next day, she said, I am pure. He said to her, yesterday, you said impure, today pure? She said to him, I did not feel well enough at that moment. He came and asked Rav, who told him, since she provided an explanation for her words, she can be believed.
She needed the protection given in society to married women. In the Babli, 22a, the case and its resolution is tannaitic, attributed to the Sages of the court at Usha (probably under Antoninus Pius). And therefore forbidden for an additional 10 days.

In the Babli, 22a/b, Samuel accepted the ruling for everybody except himself; cf. Tosaphot 22b, s. v. אסיפהל

Mishnah 6: If a woman said, I was kidnapped but I am pure, she is to be trusted, since the mouth which forbade is the mouth which permits. But if there are witnesses that she was kidnapped and she says, I am pure, she is not trustworthy. If the witnesses came after she was married, she should not leave.

Even if a woman is held for ransom, it is assumed that her Gentile kidnapper raped her and that, therefore, she is forbidden to marry a Cohen. If she is married to a Cohen, he does not have to divorce her.

Halakhah 6: "If a woman said, I was kidnapped," etc. Rav Huna said, not only after she remarried but even after the court authorized her to remarry.
Women were kidnapped and brought there. The case came before Abba bar Abba, and Samuel. They ordered and gave them over to chaperones who were to return them to the Land of Israel. He said to him: What did we do for the earlier times when they were alone with them? Abba bar Abba said to him, would you say so if they were your daughters? Samuel’s daughters were kidnapped, “like an error which comes from the ruler.” When they were brought here, their kidnappers came with them. They came before Rebbi Hanina and left their kidnappers outside. They said to him, we were kidnapped but we are pure. He permitted them. After they left, their kidnappers sent after them. He said, it is obvious that these are the daughters of a Sage. When they came to know who they were, they said to Simeon bar Abba, take care of your relatives. He married the first one, but she died. The second one and she died. Why? Because they lied? God forbid, they did not lie. But because of the sin of Hanania, Rebbi Joshua’s nephew, who intercalated the year outside the Land.
The entire Halakhah is reproduced in the Babli, 23a.

To Nahardea in Babylonia.

Samuel's father.

Samuel.

Eccl. 10:5. From the story of another daughter of Samuel, Rachel, who was kidnapped and raped during the destruction of Nahardea by a soldier of Odenathus who later converted and married her, it seems that one has to date this at 259 C.E., after Samuel's death.

Speaking Hebrew, they made it clear that they were educated.

To collect the redemption money from the Jewish community of Sepphoris.

A relative of Samuel and a Cohen.

He was the founder of the Academy of Nahardea and the ancestor of its leaders, Abba bar Abba and Samuel. He validly intercalated years during the war of Bar Kokhba but tried to hold on to his prerogative after the patriarchate was re-established; cf. Nedarim 6:13, Notes 118-129, Babli Berakhot 63a.

The last sentences of this paragraph have no parallel in the Babli.

מישנה 7: Two women who were kidnapped and each one of them says I am pure, are not trustworthy. But if they testify one for the other they can be trusted.

This was known before the testimony.

In order to help kidnap victims, one admitted the testimony of a single witness. The Mishnah notes that this is true even if one would suspect that they do this in order to help one another.
Mishnah 8: Similarly, if of two men each one says that he is a Cohen, the cannot be trusted. But if they testify for one another, they can be trusted\textsuperscript{116}.

\textsuperscript{116} This follows the opinion stated in the next Mishnah that the testimony of a single witness suffices to enable a person to receive heave and other gifts to the priesthood.

Halakhah 8: "Similarly, if of two men," etc. Rebbi Hiyya in the name of Rebbi Johanan: The Mishnah is valid for countryside sanctified food\textsuperscript{117}. But for family matters and the sanctified food of the altar\textsuperscript{118} one needs two witnesses. But was it not stated\textsuperscript{119}: One raises to priesthood, levitic status, or Israel, by the testimony of one witness. One understands priesthood and levitic status. But the status of an Israel? Is that not regarding family status? To give him the tithe of the poor\textsuperscript{122}.

\textsuperscript{117} Heave and Hallah. In the Babli, 24a, that is a tannaitic statement.
\textsuperscript{118} In fact, Mishnah Qiddusin 4:4 requires a check on the families of bride and groom for several generations to ascertain that no ancestor is a bastard or desecrated.
\textsuperscript{119} Tosephta 2:3. The Tosephta continues: But one demotes only on the testimony of two witnesses.
\textsuperscript{120} What privileges accrue only to an Israel?
\textsuperscript{121} This would imply that the family status of a Cohen as entitled to
serve in the Temple also could be proven by a single witness.

122 But family status depends on two witnesses. This means that, even if the Temple is rebuilt, it cannot be staffed until either seamless documentary proof is found for some priestly families that their direct ancestors served in the Temple and none of them in the intervening time married an unsuitable woman, or that the immortal Prophet Elijah comes to indicate which Cohanim pass muster.

123 In the Land of Israel there are two legal claims to priestly status, the priestly blessings and the distribution from the threshing floor. In Syria, priestly blessings but not distribution from the threshing floor. Up to the place where the messengers for the New Moon arrive, up to Nimerin. Babylonia is like Syria. Rebbi Simeon ben Eleazar says, also in Alexandria in the time when regular courts are sitting there. Rabban Simeon ben Gamliel stated: Just as heave establishes a legal claim to priesthood, so First Tithe establishes a legal claim to priesthood. If somebody gives his heave to the court to distribute he has no legal claim to priesthood;” I am saying that the heave came to him from his mother’s father, a Cohen.

123 Tosephta 3:1; most of it also in Peah 4:6; Babli Ketubot 25a, 26a.
124 If somebody is admitted to recite the priestly blessings in the synagogue, it must be that the rabbinic authority at that place found him
qualified.
125 Since a point can be made that heave and hallah in the Land of Israel are biblical obligations, the rabbinic authorities would not empower a man to receive heave unless they checked his credentials.
126 The land ruled over by David outside the biblical borders of the Land; cf. Peah 7:6, Note 119.
127 Since heave cannot be a biblical obligation in Syria, nobody checks eligibility there.
128 A distance of 14 days' walk from Jerusalem, cf. Mishnah Roš Haššanah 1:3-4. (The place of Nimerin has not been determined, cf. Ṣevi'it 6:1, Note 50; it could be biblical Bet Nimra (Jos. 13:27) in the territory of the tribe of Gad in Gilead.)
129 As long as the Jews of Alexandria enjoyed a certain autonomy, before the revolt against Trajan.
130 In the Tosephta: "for Levitic status." The text of the Yerushalmi is also that of the Babli, 26a. It is appropriate for the Babli, which reserves the First Tithe to priests, against the biblical rules. It is not appropriate for the Yerushalmi which assigns tithes to the Levites, but to priests only in their quality of Levites (cf. Ma'aser Šeni 5:5, Notes 88-89.) One has to assume a copyist’s error; in the absence of parallel sources this cannot be confirmed.
Rebbi Ismael ben Rebbi Yose said, I never testified except once, when I raised a slave to priestly status\(^{131}\). Rebbi Isaac Haquila and Rebbi Simeon ben Rebbi, one raised a brother on the testimony of his brother, the other a son on the testimony of his father; one to the priesthood, the other to levitic status\(^{132}\). A person came before Rebbi Hila\(^{133}\); he said to him, this is my son\(^{134}\) and he is a Cohen. He answered him, he is your son but he is no Cohen\(^{135}\). Rebbi Hiyya the elder said to him, if you believe him that he is his son, believe him that he is a Cohen. If you do not believe him that he is his son, do not believe him that he is a Cohen. He answered, he is his son but I say that he is the son of a divorcee or one who had performed halisah\(^{136}\). Rebbi Abin said, so he said to him: If you believe him that he is his son, believe him that he is a Cohen. If you do not believe him that he is a Cohen, do not believe him that he is his son. In that case, he would be unrelated and trustworthy in his testimony!!\(^{137}\) He answered, he is his son but I say that he is the son of a divorcee or one who had performed halisah. Did they not say, Rebbi Isaac Haquila and Rebbi Simeon ben Rebbi, one raised a brother on the testimony of his brother, the other a son on the testimony of his father\(^{138}\)? Let us say that Rebbi\(^{139}\) elevated a brother on the testimony of his brother. You may even say, a son on the testimony of his father, to levitic status\(^{140}\).
dispute between R. Jehudah and R. Yose on whether a slave is entitled to receive heave from any person other than his master.

In the Babli, 28b, the story is transferred to his brother, R. Eleazar ben R. Yose, and is explained away.

132 The problems raised here are explained at the end of the paragraph. In the Babli, 25b, the actors are Rebbi and the elder R. Hiyya.

133 In the Babli, 25b, the discussion is theoretical and put into the mouths of Rebbi and the elder R. Hiyya. Here, it is reported as an actual case. There is something wrong with the tradition of names here. If the case was before R. Hila, the opponent must be R. Hiyya bar Abba, his fellow-student before R. Johanan. If the opponent is the elder R. Hiyya, the case must be before Rebbi.

134 From an extramarital relationship, otherwise he would not need confirmation as an heir by the court.

135 He is accorded all rights of inheritance (and cannot marry his close relatives from his father's side) but he cannot act as a priest.

136 Following R. Joshua in Chapter 1, the court is obligated to think the worst of an extramarital relationship unless proven wrong.

137 Since we said that one witness is enough to establish a title to priesthood, if the man is not his father, he could testify that the child is a Cohen (which by R. Hiyya's argument would make the man his father and disqualified from testifying.)

138 If the brother was a full brother, there is no problem. In the Babli, it was R. Hiyya who elevated a man to levitic status by the testimony of a (paternal half-)brother, since for Levites the status of the mother is irrelevant (as long as she is Jewish and not a bastard.)

139 It seems that a name is missing here under the influence of the Babli.

140 Cf. Note 128. In the Babli, the cases are switched.
Mishnah 9: Rebbi Jehudah says, one does not elevate to the priesthood by the testimony of one witness. Rebbi Eleazar said, when is this? If there are protesters; but if there are no protesters, one elevates to the priesthood by the testimony of one witness. Rabban Simeon ben Gamliel says in the name of Rebbi Simeon, the son of the second in command, that one elevates to the priesthood by the testimony of one witness.

141 They claim that the person’s mother was disqualified to marry into the priesthood.

142 The executive officer of the Temple, who must have known the practice of the Temple Court which had to certify priests to be admitted to the service.

Halakhah 9: "Rebbi Jehudah says, one does not elevate," etc. Rebbi Hiyya in the name of Rebbi Johanan: A complaint needs at least two [plaintiffs]. Rebbi Abun bar Hiyya asked, how do we hold? If they elevated him on the testimony of one person, they should demote him on the testimony of one person. If they elevated him on the testimony of two persons, even if there are many [opposed] they should not demote him! Rebbi Huna said, it follows the rabbis there. But following the rabbis here and Rav Nahman bar Jacob, just as one elevates him on the
testimony of two persons, one demotes him on the testimony of two persons.

143 Babli, 26a. The court will not listen to a claim that the person is the son of a disqualified mother unless confirmed by at least two independent witnesses.

144 Since two witnesses confirm a fact by biblical standards, they are as weighty as any number of witnesses.

145 Cf. Note 41; to cancel an action of the court, they require full testimony.

146 Note 39.

Mishnah 10: A woman who was jailed by Gentiles, if because of money matters, she is permitted to her husband; if because of criminal matters, she is prohibited to her husband. If a city was conquered after a siege, all wives of priests in it are disqualified; but if they have witnesses, even a slave, even a slave girl, those are trustworthy; nobody is trustworthy about himself. Rebbi Zachariah, the son of the butcher, said, by the Temple! Her hand did not leave my hand from the moment the Gentiles entered Jerusalem until they left! They said to him, nobody testifies on his own behalf.
She is permitted to her Cohen husband since certainly she was not raped; the Gentiles who hold her for the payment of a debt would be afraid to have to pay the diminution of her value following a rape.

It is not clear whether this means that she is forbidden to her Cohen husband since she certainly would be raped, or even to her Israel husband since she would agree to sleep with one of her jailers who promised to save her.

Greek χαράκωμα "palisade".

Disqualified from eating heave and from living with their husbands.

The singular shows that a single witness is acceptable, even though first "witnesses" are mentioned.

This is one of the examples that ψ may mean (cf. Mishnah Besah 1:2).

He was a Cohen.

Halakhah 10: "A woman who was jailed by Gentiles," etc. There, we have stated: "Rebbi Yose the Cohen and Rebbi Zachariah the son of the butcher testified about a girl who was given as a pledge in Ascalon and her family excluded her, but her witnesses testified that she never was in a secret place and was not impure." Because the witnesses testified that she never was in a secret place and was not impure; therefore, not if no witnesses testified that she never was in a secret place and was not impure! Rebbi Eleazar said, there is a difference about a pledge, because many treat her as permitted.
Mishnah *Idiut* 8:2; quoted in extenso in the Babli, 26b/27a. The argument is about the part of the Mishnah not quoted here, that the Sages forced the family to accept her as marriageable by a Cohen.

155 That she could be sold as a slave if her parents did not pay their debt.

156 Declared her unfit to be married by a Cohen.

"If because of criminal matters she is prohibited." Rebbi Yudan the son of Rav Ḥama\(^\text{159}\) from Kefar Teḥumim in the name of Hizqiah: Only if she was sentenced to death. Rebbi Joḥanan said, even if she was not sentenced to death\(^\text{160}\). They said in the name of Rebbi Joḥanan: A robber’s wife is like a robber\(^\text{161,162}\).

\(^{159}\) The title "Rav" is certainly suspect. He might be identical with Rebbi Ḥiyya from Kefar Teḥumim.

\(^{160}\) Their disagreement is confirmed in the Babli, 27a.

\(^{161}\) Greek ληστης.

\(^{162}\) In the Babli, this is Rav’s opinion.
What are palisades? Rebbi Abba in the name of Rav Hyya bar Ashi: For examples if bells, chains, and ropes, and geese, and chickens and machinery surround the town. And Rebbi Abba in the name of Rav Hama bar Ashi said, it happened that a blind woman was able to flee from there. If there was one breach, it saves all. If there were hiding places, it is questionable. Rebbi Ze'ira, Rebbi Abba bar Zavda, Rebbi Isaac bar Haqula, in the name of Rebbi Yudan the prince: Only if there were palisades of that government. But palisades from another government are like robbers.

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163 From a parallel text in Gittin 3:4 (45a 1.4). The text here has the unexplained word פָּרָד.  
164 Interpretation of Musaphia. The parallel text in Gittin reads מְשֶׁרֶשׁ לַיְיוֹם "soldiers." The same in the Babli, 27a.  
165 In Gittin בְּלֵבָן "dogs." The same in the Babli, 27a.  
166 The bells, geese, etc. shall make sure that nobody escapes.  
167 Here certainly בר is a mistake for רב, cf. Note 159.  
168 He questions the Mishnah. If a blind woman can escape a siege conducted so that nobody should escape, then everybody could escape and the fact that at the beginning of the siege the wife of a Cohen was in the town does not mean anything.  
169 In the palisades surrounding the town.  
170 It is undecided whether a woman can claim that she was in hiding and not a victim of the entering army.  
171 The Mishnah speaks only of a revolt or a civil war, when the army is ordered to attack (and enslave) the civilian population. A conquering foreign army might plunder, but its soldiers are not under orders to rape all women. In the interpretation of Tosaphot (s. v. קֵר), the same statement appears in the Babli, 27a, in the name of Hizqiah.
And even a minor. Rebbi Immi in the name of Rebbi Joshua ben Levi:

Even a minor, even a relative. Even an underage relative? Let us hear from the following: Hananiah from Cartes\textsuperscript{172} was kidnapped, he, his son, and his wife. They came before Rebbi Hanina who did not receive them. They came before Rebbi Joshua ben Levi who received them\textsuperscript{173}. This implies, even an underage relative.

\textsuperscript{172} In the parallel in the Babli, 27b, the story is told by a R. Hanina from Carthage (or Carthagena).

\textsuperscript{173} He let the husband, a Cohen, stay married to his wife on the testimony of his own underage son.

The Babli disagrees, 27b, and admits the testimony of children and family slaves only if given spontaneously, without being asked; certainly not in the court of a rabbi.

\textsuperscript{173} Rebbi Hiyya bar Yosef sent after his wife. He said, three students should accompany her, so that if one has to absent himself for his needs, she should still be with two of them. But did we not state: "And they
give him two scholars to prevent him from sleeping with her on the trip"?
Rebbi Abin said, with her husband that makes three.

Also he rented a house for her and looked after her upkeep but was never alone with her except in the presence of her children. He applied to himself the verse\(^\text{175}\): "I exercised myself in my worry but found no rest".

This text is from Sotah 1:3, Notes 162-164. It is copied here by mistake because of the next paragraph which refers to the Mishnah.

"He" is R. Zachariah, the son of the butcher, and "she" is his wife whom he refused to divorce but with whom he could not live.

\(^{175}\) Jer. 45:3.

**Mishnah 11:** In the following cases, one is trustworthy to testify as an adult about what one saw in one’s minority. A man is trustworthy to say, this is my father’s handwriting, my teacher’s handwriting, my brother’s handwriting\(^{176}\); I remember that this person went out in hinuma\(^{22}\) and uncovered hair\(^{177}\), or that this man left school to immerse himself to eat heave\(^{178}\), or that he took his part with us on the threshing floor\(^{179}\), or that this place is bet happeras\(^{180}\), or this far we went on the Sabbath\(^{181}\). But a
person is not trustworthy to say that X had a right of way at this place\textsuperscript{182}, or that X had a space for eulogies at this place.\textsuperscript{183}

176 Even though a minor is not admitted as a witness in money matters, since he testifies only to the genuineness of the document, not about its monetary implications, he can be admitted. A similar text is in Tosephta 3:3.

177 The implication of the testimony is that the woman can collect a virgin’s ketubah; but this is not the direct text of the testimony.

178 He is a Cohen and was taken by his father to learn how to eat heave in purity.

179 One Cohen testifies for another that he is a Cohen.

180 A “field of pieces” is a lot of which it is known that there had been a grave but which was ploughed over and, therefore, there might be pieces of human bones anywhere and the passage through this lot is forbidden to Cohanim.

181 To indicate the Sabbath boundary, 2000 cubits from the town. There may be implications for money matters, as noted in the Halakah, if the town expanded or shrank in the meantime.

182 In that case, his testimony would directly transfer money’s worth from one person to another.

183 Eulogies cannot be delivered in the graveyard; since the dead cannot deliver sermons, sermonizing there would be blasphemy since (Pr. 17:5) “he who mocks the poor insults his Maker”. There were public places on the road from the town to the graveyard where eulogies were held; some families had their own spots for eulogies of their deceased. The right to hold these eulogies has monetary value.

\begin{quote}
It was stated: Only these which they are used to\textsuperscript{185}. It was stated: Only if they are supported by others\textsuperscript{186}.
\end{quote}
Here starts Halakhah 11, even though in the ms. and editio princeps this title appears only towards the end.

The adult is restricted to testifying about the handwriting of his father, teacher, and brother which he saw in his youth. He is not able to testify about other people's handwriting even if he saw it frequently.

The need for two witnesses is not waved.

Should one not worry that he might be a slave? This supports what Rebbi Hama bar Uqba said in the name of Rebbi Yose ben Rebbi Hanina: It is forbidden for a man to teach Torah to his slave. But did not Rebbi Ze'ira say in the name of Rav Jeremiah: A slave is counted as one of the seven readers; wayedabber is counted as one of three verses! Explain it, if he learned it by himself or his master taught him like Tebi.

Should one not worry that he might be a slave? This supports what Rebbi Hiyya stated: Women and slaves cannot share in the distribution on the threshing floor, but one gives them the gifts of priesthood and levitic status from the house.

May the child taken after school to be immersed to be purified for heave not be the slave of a Cohen who is entitled to eat it (Lev. 22:11)?

In the Babli, 28a, in the name of R. Joshua ben Levi.

In contrast to the Greek and Roman world, the literate person was
supposed to be free, not a slave.

190 On the Sabbath, he can be one of the seven people called to read in the Torah. If he is illiterate, how could he possibly read? The same argument in the Babli, 28b.

191 In any public Torah reading, three verses are the minimum. The short verse: "The Eternal spoke to Moses, saying" is a full verse and counted as one of the three; the rule also is stated in Megillah 21b.

This was the version written by the scribe. The corrector crossed out "3" and replaced it by "7"; followed in the editio princeps.

192 Rabban Gamliel’s slave; cf. Mishnah Berakhot 2:8.

193 This refers to the testimony that the person was receiving heave on the threshing floor.

194 Since a Cohen’s daughter loses her claim to heave upon marriage to a non-Cohen and the wife of a Cohen might lose it by divorce, they should not establish customary rights to receive heave directly from the farmer (Babli Yoma 10a).

195 Since they are entitled to eat. In all these cases, the Babli restricts the testimony to cases of rabbinic heave (other than heave of grain, wine, and olive oil in the Holy Land).

May one act in money matters on their testimony? How is that? If everybody knew that the Sabbath boundary was at Reuben’s field; they came and said, this far we came on the Sabbath, and it turns out that this field is in Simeon’s hand. May one take it from Simeon and return it to Reuben?

196 For example, on the testimony about the Sabbath boundary in earlier times.

197 If Reuben claims ownership of the field but has no documents; Simeon also has no documents and does not claim to have bought it from Reuben. Neither this nor the following questions are answered.
Would they be trustworthy to say, we went out to collect unripe figs in the sabbatical year and heard X talking about his wife Y, or woman Z talking about her children?  

198 The Mishnah gives the adult permission to tell from his youth to confirm another man in the priesthood. Is he also permitted to tell things that would bar a man from the priesthood or even from marrying in the congregation, such as Mr. X telling about the unfaithfulness of his wife, or a woman about the fact that some or all of her children are not her husband's?

Rebbi Aha, Rebbi Samuel asked: If they were proven to be false witnesses, do they have to pay? Or it might be, following what Rebbi Abba, Rav Jehudah, said in the name of Samuel: One does not infer one thing from another in the matter of false witnesses. And here it is so.

199 By biblical decree (Deut. 19:16-21), the punishment of a false witness is that he suffers the punishment that would have been imposed on the defendant had the testimony stood up in court. Since the entire Mishnah is interpreted to speak about money matters, the punishment in this case would be monetary. (In rabbinic theory, a witness can be proven false only if it is shown that his testimony is impossible, i. e., that he was not at the place he testifies about at the time in question.)

200 Sotah 1:1, Note 44.
It was stated:\(^{201}\): "That we ate in X or Y's clipping." What is clipping?

If a man sold his inherited field, his relatives filled amphoras with roasted kernels and nuts and broke them before children. The children were collecting them and saying, X was clipped from his inheritance. When he bought it back, they were doing the same and saying, X returned to his inheritance. Rebbi Yose ben Rebbi Abun said, \(^{202}\) also if a man married an unsuitable woman, his relatives filled amphoras with roasted kernels and nuts and broke them before children. The children were collecting them and saying, X was clipped from his family. When he divorced her, they were doing the same and saying, X returned to his family.

\(^{201}\) Tosephta 3:3.

\(^{202}\) Babli 38b. If a Cohen married a woman forbidden to him, his children would not be Cohanim and forbidden as marriage partners to the rest of the family. (Rabbinically, he himself would be barred from all priestly functions until he divorced the unsuitable wife.)
Halakhah 11: "In the following cases, one is trustworthy to testify as an adult about what he saw in his minority," etc. They are only trustworthy as adults about what they saw as minors; therefore, not as minors! There, we have stated: "A woman or a minor are trustworthy when they said, from there a swarm of bees left. He then can enter another's field and take his swarm." And here, you say so? Rebbi Aha, Rebbi Hananiah in the name of Rebbi Johanan: Rebbi Johanan ben Beroqa said this only about a swarm of bees because taking it is not robbery by biblical standards. Rav Oshaiah stated, only if it is swarming. But not if it clings to a branch. Rebbi Ze'ira asked before Rebbi Mana: Is that not reasonable only when it happens, but not after some time? He said to him, I agree. And we have stated: When is this said? When they testified to what they said. Otherwise, the Mishnah simply could have stated: "In the following cases, one is trustworthy to testify about what he saw in his minority."
the Land. The moment the bees swarm, they really become ownerless. If the right of the beekeeper to the swarm which leaves his hive is by stipulation, then the testimony of a minor also can be accepted by stipulation; cf. 13:7, Note 110. The Babli (Baba Qama 114b) agrees.

207 Some commentators want to refer "swarming" to the minor; that he can testify only as a "swarming minor" (Babli Berakhot 47b), one for whom it is not clear whether he is a minor or an adult. That does not make sense, in particular because in the Yerushalmi (Berakhot 7:2, Note 66) he is simply called "doubtful".

208 Sefer Ha'ittur (part 2, p. 115a, Note 135) reads: מַכְּלָל קַשֶּׁף יְלַּדוֹת "but not when it is resting." The text of the ms. is preferable since (a) it is confirmed by the different editorship of Baba Qama and (b) the Mishnah continues with a dispute whether the beekeeper is entitled to cut off the tree branch on which the bees have settled (and then pay the tree's owner.)

209 Sefer Ha'ittur (loc. cit.) reads: כְּלָל קַשֶּׁף יְלַּדוֹת "as long as the witnesses stand (before the court)."

The text of the ms. is preferable since (a) by the general rules of procedure no witnesses can testify twice in the same matter (Note 56) and (b) the reference is to the Mishnah here which is interpreted to mean that they are only trustworthy in matters that have pecuniary implications if their testimony is taken as soon as they indicate that they have knowledge of the matter, but not if in the meantime they were subject to outside influences. The Babli (Baba Qama 114b) admits the testimony of the minor about the swarm of bees "if he speaks without being prompted."
Mishnah 1: The following adolescent girls\(^1\) can claim a fine: From someone who has intercourse with a bastard girl\(^2\), or a Gibeonite or a Samaritan girl, and one who comes to a female proselyte, a kidnap victim, or a slave girl who was redeemed, converted, or freed, at less than three years and one day of age\(^3\). Also from one who has intercourse with his sister, or his father’s sister, or his mother’s sister, or his wife’s sister, or his brother’s wife\(^4\), or his paternal uncle’s wife\(^5\), or a menstruating girl; he has to pay the fine since it is not a capital crime\(^6\) even though he is subject to extirpation.

Mishnah 1

The biblical law prescribes (Deut. 22:28-29) that the man raping עול נטיוותהimestone על המConfigurerה ועל המConfigurerה (על חפיפה שהפרה (كشف תיבה) wirシュשתמרירפערוט מŊכון שŊכמ יنوי אקדו. חפיפה על אהות אביכי עול אהות אמיו עול אהות אשתו עול אהות אשת אשה עול אהות אברי עול.

tוכזת יג לוכ חנס אג על פי ישן הביניכר את בקע מיתת בית דרי.

\(^1\) The biblical law prescribes (Deut. 22:28-29) that the man raping נטיה a virgin adolescent girl has to pay her father 50 seqel and must marry her. In the corresponding law about the seducer of a virgin (Ex. 22:15) he has to pay if he does not marry the girl. In that paragraph, the adolescent is not mentioned; but since it is stated that the father has the right to withhold her from the seducer, it follows that the girl cannot be an adult; she must be underage or adolescent. An adolescent is a girl in the first 6 months after she grows two pubic hairs, cf. Nedarim Chapter 10, Note 1.
The age at which the fine can be claimed is the topic of Halakhah 3:9.

2 Obviously, one who rapes or seduces an eligible Jewish girl has to pay. The Mishnah enumerates only those categories where there might be an argument that he should not be required to pay. Each category is discussed in the Halakhah. A bastard is excluded from contracting a valid marriage in the native congregation in Deut. 23:3.

3 Cf. Mishnah 1:2.

4 If she was divorced or became a widow before the final marriage. The preliminary marriage activates all incest prohibitions implied by marriage.

5 But for a capital crime he does not pay since there cannot be two punishments for one crime. Extermination is a divine punishment, outside the purview of a human court.

Halakhah 1: "The following adolescent girls," etc. It is written7: "She should be his wife," one who can be his wife8. Can the bastard girl be his wife? Rebbi Simeon ben Laqish said, "he should weigh silver appropriate
for the bride-price of virgins\textsuperscript{9}, that added many virgins. Rebbi Ze'ira said, if it had said "virgin's brides-prices"; but it says only "appropriate for the bride-price of virgins"; the verse added them only for the bride-price\textsuperscript{10}. But where was this said\textsuperscript{11}? As Hizqiah stated: "If refusing her father should refuse\textsuperscript{9}," not only if her father refuses; from where even if from Heaven they refuse\textsuperscript{12}? The verse says "refusing should refuse", in any case. But then a man who has intercourse with a slave girl should pay the fine! This is impossible, as it was stated: I could think that one who has intercourse with a Gentile slave-girl should be obligated, the verse says, "by bride-money he should take her as a wife to himself." Only one whom he can marry; this excludes the Gentile slave whom he cannot marry\textsuperscript{13}. But he cannot marry his sister and he pays the fine! There is a difference since she can be married to others. But his daughter can be married to others and he does not pay the fine\textsuperscript{14}! There is a difference since it is a capital crime and nobody who commits a capital crime pays money\textsuperscript{15}.

6 This word is in the ms. and editio princeps but should be deleted.
7 Deut. 22:29, speaking of the rapist.
8 This argument will be used at the end of the paragraph to exclude the slave-girl from consideration since she cannot legally marry anybody. The bastard can legally marry a proselyte or another bastard (Mishnah Qiddusin 4:1). The inverse question could be asked if a bastard rapes a regular Jewish girl. The question is asked in the Babli, 29b.
9 Ex. 22:16, speaking of the seducer. In the Babli, 29b, R. Simeon ben Laqish argues differently.
10 It implies only that even a virgin disqualified in general still has a claim to a full ketubah; e. g., if a bastard girl marries a proselyte.
11 That the fine must be paid.
12 By a biblical prohibition.
13 While the Gentile slave-girl of a
Jewish owner becomes pseudo-Jewish by baptism in a miqweh, she would be able to contract a marriage only by manumission by which she would become a full-fledged proselyte. Cf. Halakhah 1:4, Notes 181-184.

14 Mishnah 3:2.

15 Even if he cannot be convicted because there were no two eye-witnesses to the act.

16 Gibeonites are descendants of genuine proselytes; they are only excluded from intermarrying with Jews because they are considered undesirable. The extended discussion of the problem of Gibeonites is in Qiddusin 4:1.

17 Would the fact that the Gibeonites were "wood cutters and water drawers for the congregation" (Jos. 9:21) imply that they had servile status? Since nowhere in the Bible we hear that they were freed, their descendants then would still be slaves and unable to contract marriages.

18 Mishnah 3:2.

19 Therefore, even in the time of Joshua the Gibeonites were subordinate but not servile.
"A Samaritan." That follows him who said, a Samaritan is a like full Jew. But for him who says that a Samaritan is like a Gentile, it is not so. As they disagreed⁰: A Samaritan is like a Gentile, the words of Rabbi. Rabban Simeon ben Gamliel said, a Samaritan is like a Jew in every respect. Even if you say, a Samaritan is like a Gentile, why are Samaritans disqualified? Not because of a Gentile and a slave²¹? If a Gentile or a slave has intercourse with a Jewish woman, the child is a bastard²². But a bastard girl can claim a fine! For restrictions or family relations you consider him a Gentile or a slave who had intercourse with a Jewish woman; the child is a bastard. But for a fine you consider this as a Jew having intercourse with a Gentile woman, in which case the child is a Gentile²³.

⁰ Cf. Demay 3:4, Note 98; Berakhot 7:1, Note 59.

²¹ Since 2K. 17, 24ff. clearly states that the settlers from Babylon, Kuta, etc. at the start were idolators; if they intermarried with the remainders of the Israelite populations there, their descendants all acquired the status of descendants of Gentiles (or slaves) from Israelite mothers.

²² This is the argument of R. Johanan and R. Simeon ben Laqish in Yebamot 7:6, Note 129; it is rejected there since the child of a Jewish woman from a Gentile, together with her mother, is disqualified from priesthood but not a bastard (Notes 130,131).

²³ The separation from Samaritans is purely one of practice, with no theoretical basis, and disapproved of by the Mishnah. In the Babli, 29b/30a, the argument (attributed to R. Mei'r) is rejected, in order not to reward a sinner (the rapist or seducer.)
Rebbi Yose ben Rebbi Hanina said, a man who rapes or seduces an orphan girl does not have to pay. Rebbi Abba bar Mamal said, that is a disagreement, it follows Rebbi Yose the Galilean. But following Rebbi Aqiba she can claim the fine and the fine becomes her property. Rebbi Yose said, the Mishnah said "at less than three years and one day of age," and is she not like an orphan? And did we not state: "Because he raped her," that includes an orphan for a fine, the words of Rebbi Yose the Galilean? Rebbi Ahai said, explain it that he had intercourse with her when her father was alive; when her father died, he already had the obligation to give to her father.

24 Since Deut. 22:29 states that "the man who had intercourse with her has to give her father 50 silver [seqel]." This seems to negate the obligation if there is no father to collect the fine.

25 He holds in Mishnah 3:7: that an underage girl which was preliminarily married and then divorced as a virgin has no claim to the fine (since by the preliminary marriage she was emancipated from her father's power.) R. Aqiba holds that she can claim the fine for herself.

26 Neither the proselyte nor the freedwoman are under the authority of a father; nevertheless, the Mishnah gives them the right to claim the fine.


28 For R. Yose the Galilean the fine belongs to the father's heirs.
29 There, we have stated: "If somebody eats heave intentionally, he pays the principal but not the fifth." And we have stated: "The following are flogged." Here you say, he is flogged, and there you say, he pays. Rebbi Johanan said, the Mishnah is two-sided: If he was cautioned, he is flogged; if he was not cautioned, he pays. Rebbi Johanan is of the opinion that in a case where there is flogging or restitution, when he pays he is not flogged. Why should he not be flogged and have to pay? (Deut. 25:2) "Corresponding to his guilt." You sentence him for one offence but you may not sentence him for two offences. The verse speaks of one who may incur two punishments (Deut. 25:2): "The judge shall have him laid down and flogged in his presence a number [of times] because of his guilt."

29 The parallel (with very minor deviations) to the remainder of the Halakhah is in Terumot 7:1, fully explained there in Notes 3-73, shortened also Baba Qama 7:2 (fol. 5d), Makkot 1:1 (fol. 31a); Babli Ketubot 32b, Baba Qama 36a, Makkot 7b, 13b. The variant readings from Terumot are noted n.
Rebbi Simeon ben Laqish said, even if he was not cautioned should he not pay since when cautioned he would be flogged? A Mishnah disagrees with Rebbi Simeon ben Laqish: "If somebody eats heave in error, he pays principal and fifth," but if he was cautioned, will he not be flogged? He explains it following Rebbi Meir since Rebbi Meir said, he is flogged and pays. A Mishnah disagrees with Rebbi Simeon ben Laqish, as we have stated: "The following adolescent girls can claim a fine," but if he was cautioned, will he not be flogged? He explains it following Rebbi Meir since Rebbi Meir said, he is flogged and pays. Rebbi Abbahu in the name of Rebbi Simeon ben Laqish: Rebbi Meir learned from the calumniator. (Deut. 22:18) "They shall punish him," flogging; (Deut. 22:19) "and they shall fine him", money. But the rabbis say, [the law of] the calumniator is...
separate because of its novelty; one cannot learn from a novelty! Because nowhere else will a person become guilty by speech, but here he becomes guilty by speech; therefore, nothing can be inferred. Another explanation: one cannot transfer the rules of either payment or flogging. Did not Rebbi Abbahu say in the name of Rebbi Johanan: If he [eats] fat in error but is intentional about the sacrifice, if he was cautioned he will be flogged and has to bring a sacrifice? So here, he is flogged and he pays. Rebbi Abun bar Hiyya in the name of Rebbi Samuel bar Rav Isaac said, (Deut. 25:2) "Because of his guilt." If two possibilities are given to the court, one chooses one of them. This excludes matters in the power of Heaven.

30 The text in Terumot is close enough that the explanations given there are valid here, but the details of the texts differ too much to be presented as variant readings of one and the same text.

31 Mishnah Terumot 6:1.

Everybody agrees that there is no money payment in capital cases, as it is written (Lev. 24:21): "The slayer of an animal must pay for it but the slayer of a human shall be put to death." Just as you did not make a
difference between unintentional and intentional action of a slayer of an animal to force him to pay money, so you should not make a difference between unintentional and intentional action of a slayer of a human to free him from paying money. Where do they differ? About money in a flogging case. Rebbi Johanan said, there is no money in a capital case but there is money in a flogging case, but Rebbi Simeon ben Laqish said, just as there is no money in a capital case so there is no money in a flogging case.

Rebbi Immi the Babylonian in the name of the rabbis from there: The reason of Rebbi Simeon ben Laqish is "criminal, criminal." "Criminal" is mentioned in capital cases, "criminal" is mentioned in cases of flogging. Just as for the criminal in capital cases there is no monetary fine, so for the criminal mentioned in flogging cases there is no monetary fine.
Nathan bar Hoshiaiah said, one speaks about an adolescent girl, the other about an adult woman. The adolescent has a fine but nobody is flogged for her; for the adult he is flogged but pays no fine, she cannot be sold; she has no claim for shame and blemish. The rabbis of Caesarea said, explain it that she seduced him or remitted [the fine] for him. Nathan bar Hoshiaiah thinks that in a case of flogging and payment he pays but is not flogged. Why should he not be flogged and have to pay? (Deut. 25:2) "Because of his guilt." You sentence him for one offence but you may not sentence him for two offences. From perjured witnesses. Just as you say there, perjured witnesses pay but are not flogged, here also he pays and is not flogged. Rebbi Jonah said, the reason of Rebbi Nathan bar Hoshiaiah: (Deut. 25:2): "For his evil deed." It refers to one whose flogging frees him from his guilt, excluding one who is told: get up and pay.
Our Mishnah disagrees with Rebbi Simeon ben Laqish! "If somebody eats heave intentionally he pays the principal but not the fifth." In the opinion of Nathan bar Hoshiaiah who said he pays, it is understandable. In the opinion of Rebbi Johanan who said, if he was cautioned he is flogged, but if he was not cautioned he pays, he explains it as intentional without cautioning. In the opinion of Rebbi Simeon ben Laqish there is no difference between intentional and unintentional, between cautioned or not cautioned. He explains following Rebbi Meir who says, he is flogged and he pays.

32 From the text in Terumot; missing here.
Rebbi Hinena said before Rebbi Mana: Even if Rebbi Simeon ben Laqish thought the entire Mishnaiot were Rebbi Meir's, does the verse agree with Rebbi Meir? Is it not written (Lev. 22:14): "If a person ate consecrated food in error"? But Rebbi Simeon ben Laqish must hold that the fifth is a sacrifice. But even if he holds that the fifth is a sacrifice, can the principal be a sacrifice? Rebbi Yudan bar Shalom said, the Mishnah declares that the principal is a fine, as we have stated: "He does not pay in heave but in totally profane food which is turned into heave." If he had to pay from what he ate, it would be fine. And it was stated: "If he ate impure heave, he has to pay in pure profane food, but if he paid in impure profane, he discharged his obligation." Does he not owe him the price of wood? That shows that the principal is a fine and since the principal is a fine, the fifth also is a fine. But Rebbi Simeon ben Laqish follows his own opinion. Just as Rebbi Simeon ben Laqish said, there, everybody was under the obligation of (Ex. 20:16) "Do not become a false witness against your neighbor", but this one was treated separately, (Deut. 19:19) "do to him what he intended to do to his brother", to pay money; also here, everybody was under the obligation of (Lev. 22:10) "no outsider shall eat holy [food]," but this one was treated separately, (Lev. 22:14) "if somebody should eat holy [food] in error," to pay money.
Did we not state: The Sages admit to Rebbi Me’ir that one who stole his neighbor’s heave is flogged and has to pay since whoever eats heave is flogged. Did we not state: The Sages admit to Rebbi Me’ir that one who stole his neighbor’s fat is flogged and has to pay since whoever eats fat is flogged. Did we not state: The Sages admit to Rebbi Me’ir that one who muzzled his neighbor’s cow is flogged and has to pay six qab per cow and four qab for a donkey since whoever muzzles his cow is flogged. Rebbi Yose said, the same holds if death is the penalty. If he stole Temple heave and ate it, he is whipped and has to pay since in any case he caused monetary loss.
Rebbe Mana said before Rebbe Yose: If it is so, he who sleeps with his minor sister should be flogged and have to pay since if he sleeps with his adult sister he is flogged. He reversed himself and said, there death and payment fall on him simultaneously. But here, when he muzzled he is subject to flogging but only later for payment. Rebbi Ze’ira objected before Rebbi Mana: He who sets fire to his neighbor’s grain stack on the Sabbath is subject to capital punishment from the first ear but only later for payment! One cannot say that because for every single ear there is cautioning for the death penalty. Here also, for every moment of muzzling there is cautioning for flogging. Rebbi Yose bar Abun said, two Amoraîm. One said, if he muzzled for heave which is Temple property. The other one said, if he muzzled through an agent. Then the agent is flogged and he is free (Lev. 17:4): “As a blood guilt it will be charged on this man,” not on his employers.

33 Reading of the text in Terumot; here: פסוק “flogging”.

In error for heave and intentional for leavened, in error for heave and intentional for nazir, in error for heave and intentional for the Day of Atonement. If one explains it with two things, it is fine. If one explains it for one, this is the disagreement of Rebbi Johanan and Rebbi Simeon ben Laqish.
There, we have stated: "The only difference between the Sabbath and the Day of Atonement is that intentional infraction of the former is punished by the hands of man, but intentional infraction of the latter is punished by extirpation." Therefore, for payment both follow the same rules. This is by Rebbi Nehoniah ben Haqanah since "Rebbi Nehoniah ben Haqanah says, the Day of Atonement follows the rules of Sabbath for payment. But Rebbi Simeon ben Menassiah says those subject to extirpation equal those subject to capital punishment." What is between them? Rebbi Aha in the name of Rebbi Avina said, a menstruating adolescent girl is between them. Rebbi Mana said, also his wife’s sister is between them. In the opinion of Rebbi Nehoniah ben Haqanah, just as the Sabbath does not become permitted after its prohibition started; so the
Day of Atonement does not become permitted after its prohibition started. However, these may become permitted after their prohibition started, he has to pay. But Rebbi Simeon ben Menassiah said, extirpation applies to the Sabbath and the day of Atonement; extirpation does not apply to these, he has to pay.

Rebbi Judah bar Pazi asked: What say these Tannaim about whipping and extirpation? Rebbi Yose said, that is a problem for the rabbis. Rebbi Jonah said, why can we not understand it from what Rebbi Simeon ben
Iohai stated? As Rebbi Simeon ben Iohai stated: "Rebbi Tarphon says, extirpation was mentioned for the Sabbath and the Day of Atonement. Since for extirpation mentioned for the Sabbath there is no payment in a case involving the death penalty, so for extirpation mentioned for the Day of Atonement there is no payment in a case involving extirpation." Rebbi Mana said before Rebbi Yose: When do we need this? Not for Rebbi Simeon ben Laqish? But for Rebbi Johanan, if he admits flogging in death penalty cases, certainly flogging in extirpation cases, since they disagreed: If somebody slaughters [an animal] and its young for idolatrous purposes. Rebbi Johanan says, if he was cautioned about an animal and its young, he is flogged, about idolatry, he is stoned to death. Rebbi Simeon ben Laqish said, even if he was cautioned about an animal and its young, he is not flogged since he would be stoned to death had he been cautioned about idolatry. He said to him, we need it even for Rebbi Johanan! Here are two cases, there it is one case.
According to Rebbi Simeon ben Laqish, what is between these Tannaim and those rabbis? Prohibitions without extirpation. Rebbi Judan said, he who sleeps with a bastard girl is between them. Rebbi Hananiah said, he who puts fire to the grain stack of his neighbor on a holiday is between them. These Tannaim think, since there is no extirpation, he pays. Those rabbis think, since there is flogging he does not pay. But then "these are the adolescent girls who can claim a fine" cannot follow the rabbis! Rebbi Mattaniah said, explain it according to everybody if it refers to a bastard male who sleeps with a bastard girl.

34 Reading of the text in Terumot; Atonement", whose desecration is here: "the Day of punished by extirpation.

But is his brother's wife not his sister-in-law? Explain it that the man's brother had children and had performed the preliminary wedding with a woman when he died and [the surviving] brother came and raped her.

Mishnah 2: The following cannot claim a fine: One who comes to a proselyte woman, a kidnap victim, or a slave girl who was redeemed,
converted, or freed, at more than three years and one day of age. Rebbi Jehudah says, the redeemed kidnap victim is in her holiness even if she is an adult.

35 She is trustworthy if she asserts that she is a virgin.

Halakhah 2: "The following cannot claim a fine," etc. Rebbi Johanan said, Rebbi Jehudah excepted the kidnap victim only for the fine. Rebbi Hiyya stated: Also for the ketubah of a mina or 200 [zuz]. Rebbi Simeon ben Laqish said, even to let her eat heave. In the opinion of Rebbi Simeon ben Laqish, Rebbi Jehudah and Rebbi Dosa both said the same, as we have stated there: The kidnap victim eats heave, the words of Rebbi Dosa. Rebbi Hanina came in the name of Rebbi Simeon ben Laqish: Practice follows Rebbi Dosa.

36 But he accords her only the ketubah of one mina and forbids her to marry a Cohen.

37 Tosephta 3:4: "R. Jehudah says, a kidnapped underage Israel girl, even one 10 years old, remains in her holiness and her ketubah stays intact."

38 In the Babli, 36b, this is the opinion of R. Johanan.


40 He should be R. Hinena, not R. Hanina the teacher of R. Simeon ben Laqish.

41 The Babli, 36b, which has to follow this ruling since it attributes it to R. Johanan, explains it away as...
applying only to the fine, that a sinner should not get away with his crime, and for rabbinic heave; in all other respects one follows the anonymous majority.

Mishnah 3: The one who comes to his daughter, his granddaughter from his daughter or his son, his wife's daughter, his wife's granddaughter from her daughter or her son does not pay the fine since he committed a capital crime and should be executed by the court; for anybody committing a capital crime does not pay cash as it is said: "If there is no case of murder, a fine shall be imposed."

42 These are the only cases among the incest prohibitions of Lev. 18, 20 which are both capital crimes and may involve a virgin girl.

43 Even if he cannot be executed because of missing eyewitnesses to a
due warning and the deed.

44 Ex. 21:22. The next verse reads: "But if it is a case of murder, you shall take life for life." This excludes the imposition of a fine in a murder trial.

Halakha 3: "The one who comes to his daughter," etc. If another man had come to her, would the fine not be her father's? Explain it that another man came to her before her father died and then her father...
45 Why does the Mishnah state in this case that he does not have to pay the fine because he committed a capital crime; in that particular case it is because he would have to pay the fine to himself.

46 If the girl was raped by a third person during her father’s lifetime but the father died before he could collect the fine, the girl collects the fine for herself. But if she was raped by her father, she cannot claim the fine from the estate because the rape was a capital crime.

47 Their disagreement is in Mishnah 4; cf. also Note 25.

Rebbi Jeremiah in the name of Rebbi Eleazar: We understand that, since it said 44 "if there is no case of murder, a fine shall be imposed", that if it is a case of murder, you shall take life for life? Why does the verse say, it is a case of murder? To add the case of premeditation and warning 48. Rebbi Yose said, is that not a Mishnah, "for anybody committing a capital crime does not pay cash", that it deals not only with cases of error. 49Hizqiah said, one states a baraita 50: "The slayer of an animal must pay for it but the slayer of a human shall be put to death." Just as you did not make a difference between unintentional and
intentional action of a slayer of an animal to force him to pay money, so you should not make a difference between unintentional and intentional action of a slayer of a human to free him from paying money.

48 Which is a case where a person actually could face execution. 

49 Cf. fol. 27b, line 30; Terumot 7:1, Lev. 24:21.

Mishnah 4: If an adolescent girl had been preliminarily married but was divorced, Rebbi Yose the Galilean says she cannot collect the fine; Rebbi Aqiba says, she can collect the fine and it belongs to her.

51 If she was raped while still preliminarily married, it was a capital crime and she cannot collect the fine.

Halakhah 4: "An adolescent girl who had been preliminarily married," etc. What is the reason of Rebbi Yose the Galilean? "Who was not preliminarily married." 

52 In both the rules about the seducer (Ex. 22:15) and the rapist (Deut. 22:28) it is emphasized that the fine is due only for "a virgin who was not preliminarily married." Now the verse cannot mean "a virgin not currently preliminarily married" since it is obvious that seduction or rape of a
Before she was preliminarily married, he gives to her father; after she had been preliminarily married, he gives to herself. In the opinion of Rebbi Yose the Galilean, if she is an adolescent, he gives to her father; if she is an adult, does he give it to herself? If she is a virgin, he gives to her father; if she is injured by wood, does he give it to herself? It is different, because it is written "an adolescent", adolescent but not adult. "A virgin," a virgin not one injured by wood. Is it not written "who was not preliminarily married," "who was not preliminarily married," to infer from there by an equal cut? Since in one case it is 50, so in the other case it is 50. Does Rebbi Yose not have "50"? He has "silver, silver." Since "silver" written at one place is 50, so "silver" [written at the other place] also is 50.
53 This is R. Aqiba’s opinion; a mention of R. Aqiba might have been omitted by the scribe; the statement is ascribed to R. Aqiba in the Mekhilta.

54 As shown at the end of the paragraph, this should read "R. Aqiba".

55 The rule for the rapist is formulated for "a virgin adolescent", when the payment of 50 pieces of silver is due to her father; in the rule for the seducer, only "a virgin" is mentioned, and payment of "bride money", due to the woman at the dissolution of the marriage. On the face of it, the rule for the seducer does not exclude an adult victim.

56 The second hermeneutical rule, that equal expressions in two different paragraphs lets one transfer rules from one paragraph to the other. A condition for the applicability of that rule is that the expressions should be "free", not needed to establish a rule.

57 The amount of bride money is not stated in Ex. 22; it is taken from Deut. 22 to be 50 holy seqel which in talmudic theory are 200 zuz.

58 Rebbi Yose the Galilean who cannot accept R. Aqiba’s "equal cut" as valid.

59 In Ex. 22:16, "he shall weigh silver"; in Deut. 22:29 "50 silver pieces". The same argument is quoted in the Babli, 38b.

If he came to her before she was preliminarily married, then she was preliminarily married and divorced. Does the statement of Rebbi Ahai...
not imply that he pays? Did we not state: "For he had mistreated her," to include the orphan for the fine, the words of Rebbi Yose the Galilean.

Rebbi Ahai said, explain it that he came to her before her father died; when subsequently her father died he already was obligated to give to her father. One came to her before her father died and subsequently her father died; one came to her before she was preliminarily married, subsequently she was divorced. Rebbi Ze'ira said that Rav Hisda asked: If one came to her before she was married and then she was married?

Since you say there, she is under her husband but he has to pay to her father, so in this case she is under her husband but he has to pay to her father.

60 Does R. Yose the Galilean require the rapist to pay even after his victim was preliminarily married?

61 Deut. 22:29. A reason is given for the punishment of the rapist; therefore, the punishment applies any time the reason applies.

62 In Sifry Deut. 245, R. Eliezer holds that this refers only to the rapist, for whom the reason is given, but not to the seducer, for whom the rules do not extend to the orphan. In the Babli, 44b, R. Yose the Galilean applies the same rule to the orphaned victim of the seducer by an argument reproduced in Mekhilta dR. Ismael, Mišpatim, Neziqin 17.

63 R. Yose the Galilean is not contradicting himself; he only exempts the rapist or seducer of the preliminarily married girl if the sexual act happened while the girl was no longer in the father's power. But if it happened earlier, even though the court proceedings had not started at the father's death or the girl's preliminary marriage, the obligation of rapist or seducer is not erased.

64 The two cases are parallel.

65 Who collects the fine if an adolescent was raped and then (both preliminarily and definitively) married before the rape was adjudicated in court?
Mishnah 5: The seducer pays for three things and the rapist for four.

The seducer pays for shame, diminution of value, and fine. The rapist in addition pays for suffering; the seducer does not pay for suffering. The rapist pays immediately, the seducer only if he divorces her. The rapist drinks from his pot; the seducer may divorce if he wishes.

66 The computation of payments for shame and diminution of value are explained in Mishnah 8. Usually, the diminution of value refers to the loss of virginity but, in the case of forcible rape, it may also include the consequences of bodily injury such as a scar or a broken bone.

67 The rapist’s fine is formulated as a fine in Deut. 22:29. That verse, stipulating that the fine goes to the father, then decrees that the rapist has to marry his victim and is barred from ever divorcing her. In contrast, the payment of the seducer is formulated in Ex. 22:16 as payment of a virgin’s ketubah in case of a divorce.

68 He has to marry her even if she is ugly and deformed.

Halakhah 5: “The seducer pays three,” etc. This does not follow Rebbi Simeon, since Rebbi Simeon freed the rapist from paying for suffering.
To what can you compare this? To one who cuts somebody’s wart when that one would have cut it himself in the future. To what can you compare this? To one who cuts somebody’s trees when that one would have cut them himself in the future. They said to him, you cannot compare one who is deflowered by rape to one who is deflowered by consent; you cannot compare one who is deflowered on a dungheap to one who is deflowered in the bridal chamber! How does Rebbe Simeon interpret "because he mistreated her"? They said in the name of Rav Hisda, explain it that he raped her on thorns.

69 In the Babli, 39a, there is a short discussion on what the suffering is for which the rapist has to pay. In the opinion of Samuel, represented in the Yerushalmi by his student’s student Rav Hisda, it is the suffering inflicted by the attack. This is rejected in the Babli, since R. Simeon could not have opposed that payment. The payment for suffering therefore is restricted in the Babli to payment for the pain caused by the rupture of the hymen. In contrast, the Yerushalmi starts out with assuming that the pain is that of the deflowering and ends up with embracing the point of view of Samuel.

“The seducer only if he divorces her,” etc. Rav Hisda said, if he does not want to keep her. But if he decides to keep her, he does not give anything. Rebbe Ismael stated: "He should weigh silver appropriate for the bride-price of virgins", which indicates that his obligation is for him that of bride-price, and bride-price is the ketubah; as it also says "add for me much bride-price and gifts."
This implies that all his obligations are transformed into ketubah obligations due at the dissolution of the marriage; not only the 200 zuz basic fee but also the sums fixed for shame and diminution of value.

Gen. 34:12.

Rebbi Eleazar asked: Do the daughters of the rape victim have the rights given by the ketubah stipulations? It is clear to me that the rape victim has no [ketubah] of the male children, and that the seduced victim has no [ketubah] of the male children. If you say that he questions in both cases, we could ask, do the daughters of the rape victim and the daughters of the seduced girl have the rights given by the ketubah stipulations? That is a problem following the rabbis, but it is obvious following Rebbi Yose ben Rebbi Jehudah; as it was stated: Rebbi Yose ben Rebbi Jehudah says, the rapist gives a mina as ketubah.

Mishnaiot 4:8-12 contain a number of stipulations which the courts will enforce whether or not they were written in the ketubah document. The one in question here (Mishnah 11) states that the daughters, who do not inherit in the presence of sons, will have to be fed and lodged from the inheritance until they marry (they have a lien on the inheritance which has to be satisfied before the sons, the heirs, can take any money from the inheritance.) Since R. Ismael stated in the preceding paragraph that the seducer has to write a virgin’s ketubah, it is clear to him that all stipulations of Mishnaiot 4:8-12 apply to the future children of the seduced girl. The only problem is with the rape victim who, never facing divorce, does not have a
ketubah in the opinion of the rabbis who disagree with R. Yose ben R. Jehudah later in this paragraph. In the Babli, 54a, this question is also asked and similarly left unanswered. In practice, this is a negative answer since "the burden of proof is on the claimant" and in the absence of a rule the daughters cannot prove their claim.

73 The ketubah of male children (Mishnah 4:10) stipulates that if a man has sons from different wives, the amounts of the different ketubot are first taken from the inheritance and distributed among the sons of the wives; the remainder is then split evenly among the sons (except that an eventual male firstborn takes a double portion). The reason given for this stipulation is that fathers should be encouraged to give their daughters ample dowries which become part of the ketubah obligations of their husbands, to make them attractive to prospective suitors. Therefore, the stipulation is necessary to insure that the property remains in the possession of the direct descendants of the givers. But since the rape victim and the seduced girl are married by biblical decree, they cannot expect dowries.

74 And is unanswered.

75 In contrast to the seducer who writes the ketubah of a virgin for a minimal sum of 200 zuz, the rapist already paid the fine of 200 zuz to the girl’s father. He therefore writes for his wife an additional ketubah of the non-virgin.

Mishnah 6: How does he drink from his pot? Even if she is lame, even if she is blind, or even if she is afflicted with boils. If a matter of immorality was found with her or she could not marry in Israel, he may not keep here since it is written: "She shall be his wife," a wife appropriate for him.
The rapist mentioned in Mishnah 5.

He has to marry her and is prohibited from divorcing her.

If she was found guilty of adultery or incest. In that case, the husband is not permitted to keep her.

If she was a bastard or a Gibeonite.

Deut. 22:29.

Halakhah 6: "How does he drink from his pot," etc. Rebbi Jeremiah, Rebbi Hiyya, in the name of Rebbi Simeon ben Laqish: It should not have said "she shall be his wife" for the calumniator; it is superfluous since she already is his! Why does the verse say, "she shall be his wife"? You should infer from this by an equal cut. One has to infer from "she shall be his wife", "she shall be his". Since "she shall be his" which is said there means a wife appropriate for him, so "she shall be his" which is said here means a wife appropriate for him. Then since "she shall be his" which is said here means a wife appropriate for him and he pays the fine, so "she
shall be his" which is said here means a wife appropriate for him and he pays the fine. 

Rebbi Ze'ira, Ulla [ben] Ismael, in the name of Rebbi Eleazar: It should not have said "she shall be his wife" for the calumniator; it is superfluous since she already is his! Why does the verse say, "she shall be his wife"? You should infer from this by an equal cut. One has to infer from "she shall be his wife", "she shall be his". Since "she shall be" which is said there means that if he divorced her one tells him to take her back, so "she shall be his" which is said here means that if he divorced her one tells him to take her back.

Rebbi Hyya stated: "In the cases of both the rapist and the calumniator who divorced, one forces them to take back. If they were Cohanim they absorb the forty."

81 The man who claims that his bride was not a virgin; Deut. 22:13-19. Since the verse treats this as accusing his wife of a capital crime, it must be that he accuses her of adultery while living in her parents' house but preliminarily married to him. If he cannot prove the accusation, he is fined 100 pieces of silver (400 zuz) and "she shall be his wife; he cannot send her away all his days." Since he can only accuse her if she is his wife, the first clause of this sentence is superfluous.

It should be noted that since the husband is related to his wife, he is barred from testifying in court against her. Deut. 22:14 states only that he calumniates her and asserts that he did not find her a virgin. That would be a civil case, discussed in the first Chapter. To make this a criminal case, one must assume that the husband brought witnesses to the adultery. This is the standard rabbinic interpretation of the case.

Without invocation of the rule of gezerah šawah, Sifry Deut. 238 reads the verse as applying the rules of Mishnah 6 to the case of the calumniator.

82 Cf. Note 56. The preceding argument makes it clear that the
expression "she shall be his wife" is not needed for any inference; the application of the rule of gezerah sawah is legitimate.

83 Identical expressions in Deut. 22:19 (the calumniator) and 22:29 (the rapist).

84 Only the calumniator pays 100 pieces of silver, the rapist 50.

85 The Amora who is called Ulla in the Babli is always called Ulla ben Ismael in the Yerushalmi. That must be the reading here also. The text as written, Ulla in the name of R. Ismael (Tanna of the 2nd generation) in the name of R. Eleazar (Amora) does not make sense. Ulla's argument, in a very complicated formulation, is also in the Babli, Makkot 15a.

86 Tosephta 3:7.

87 Since a Cohen may not take back his divorcee, by divorcing her he committed a sin which cannot be repaired and "absorbs" 39 lashes (which are called 40 in Deut. 25:3).

As it was stated88: "Living married to a husband89," that includes one who had received her husband in her father's house while preliminarily married; the one who comes after him is strangled. Not only a regular
intercourse but even perverse\textsuperscript{90}. Rebbi Abbahu in the name of Rebbi Johanan; it is necessary to mention perverse intercourse for if it were regular, why mention her husband\textsuperscript{91}? As we have stated: If she was raped by two men, the first is stoned, the second strangled\textsuperscript{92}.

The preliminarily married adolescent girl. If ten men came upon her perversely and then one regularly, they are all stoned\textsuperscript{93}. If they all come upon her regularly, the first is stoned and the remainder strangled. If ten men "touched" her\textsuperscript{94} and then one penetrated, they are all stoned. If they all penetrated, the first is stoned and the remainder strangled.

A single girl. If ten men came upon her perversely and then one regularly, they all pay the fine. If they all come upon her regularly, the first is stoned and the remainder is free\textsuperscript{95}. If she chose one of them, the others were freed from the prohibition\textsuperscript{96}. If she said, he\textsuperscript{97} is impossible, she repeatedly chooses. If he was married to her sister, he already is freed\textsuperscript{98}. If she died, he is freed. If he died, one does not force the levir\textsuperscript{99}.

\textsuperscript{88} Sifry Deut. 241; Tosephta Sanhedrin 10:10.
\textsuperscript{89} Deut. 22:22. While the man sleeping with a preliminarily married girl is stoned, the adulterer with a woman who had lived with her husband while preliminarily married is strangled; Sifry Deut. 241.
\textsuperscript{90} Perverse intercourse is one which leaves the woman a virgin but leads to sexual satisfaction.
\textsuperscript{91} As is implicit in the text here and made explicit in the Babli, Qiddušin 9b, the preliminarily married girl who had perverse relations with her husband is no longer a virgin in criminal law but any other man can remove her status of virgin only by penetration.
\textsuperscript{92} Speaking of the virgin preliminarily married girl Deut. 22:23-27. The second man sleeps with a married woman who is not a virgin, Deut. 22:22.
\textsuperscript{93} The same statement in slightly different formulations in the Babli,
Their penises touched her genitals without injuring the hymen; cf. *Yebamot* 4:2, Note 59.

They are freed from the biblically imposed fine of the rapist; they still can be sued for claims of diminution of value and suffering.

This sentence clearly refers to the prior case that all the men raping her are liable for the fine. In that case, all of them are required to marry her and forbidden to divorce her. But since a woman cannot have more than one husband, she may choose one of them. The others then do not infringe on the prohibition to divorce her since they cannot marry her.

Her first choice among the rapists.

A man raping his wife's sister cannot marry her (*Lev.* 18:18). He pays but does not marry her.

If the childless rapist dies before he marries his victim, there is no obligation on the levir to marry her since the rape is no marriage; it only creates an obligation of marriage.

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**About an orphan girl who had been preliminarily married and was divorced**

R. Eleazar says that the rapist has to pay but the seducer does not.

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This Mishnah follows R. Aqiba (Mishnah 3) who holds that the under age girl who is emancipated from her father's power either by her marriage arranged by the father or the father's death has the status of an orphan and collects the fine for herself.
Halakhah 7: "About an orphan girl who had been preliminarily married and was divorced," etc. Rebbi Johanan said, it turns out that Rebbi Eleazar follows the opinion of his teacher Rebbi Aqiba. Just as Rebbi Aqiba said that she can collect the fine and it belongs to her, so Rebbi Eleazar said that she can collect the fine and it belongs to her. Then also for a seduced one? Rebbi Jeremiah said in the name of Rebbi Eleazar, explain it that she remitted it to him. Can anybody remit anything that does not belong to him? Explain it for an orphan; as it was stated in the House of Rebbi thus: The orphan, Rebbi Eleazar said that the rapist has to pay her but the seducer does not. Can anybody remit something which is not in his possession? Let us hear from the following,
as Rebbi Abun bar Hiyya said in the name of Rebbi Ze'ura: The fine is not due from the first moment on\textsuperscript{107}. As we have stated there\textsuperscript{108}: "If she came to court before her father died, [the payments due] belong to her father and if the father died they belong to the brothers." If you say that the fine is due from the first moment, it would belong to the brothers from the first moment\textsuperscript{109}. Rebbi Abba in the name of Rav Hisda: The Mishnah deals with shame and diminution of value\textsuperscript{110}. As Rebbi Mana said, how is it? The rapist is obligated for everything and the seducer is free from everything\textsuperscript{111}. Rebbi Abin said, [Rebbi] Shammai asked: What does it mean that the rapist has to pay but the seducer does not? The rapist has to pay everything but the seducer is free [from paying] for shame and diminution of value but is obligated for the fine\textsuperscript{112}. That is Rebbi Aqiba's. Or, the rapist is free [from paying] for shame and diminution of value but is obligated for the fine but the seducer is free from everything? That is Rebbi Yose the Galilean's\textsuperscript{113}.

\textsuperscript{102} Ben Shamua, the Tanna.  
\textsuperscript{103} Bar Pada, the Amora.  
\textsuperscript{104} Rashi and all of his followers explain that, since she legally is an adult, she slept with him of her own free will and the law will assume that in doing so she forgave him all payments due. The Babli, 40a, simply states that practice follows R. Eleazar without discussing the reason.  
\textsuperscript{105} It seems that this Amora did not have "an orphan" in his Mishnah. He asks whether the consent of the minor has any legal consequences since the money is her father's and she has no possibility of depriving him of his claim.  
\textsuperscript{106} This is our Mishnah. The text seems to indicate that this is a later edition of the Mishnah and that in the first Mishnah the orphan was not mentioned.  
\textsuperscript{107} The question is whether the fine is due because of the seducer's illegal act, then it is due from the moment of the act and the seduced girl has the
possibility to forgive all monetary claims to her lover, or whether it is due only upon sentence by the court. In the latter case, forgiveness would need a conscious act by the seduced and, by the time the case comes to court, she could well have changed her mind and go after the money. Then there is no reason that the law should assume that she remitted all money claims to her seducer.

108 Mishnah 4:1.

109 The Mishnah states that the heirs have claim to the money only if the father had a claim, i.e., if the case came before the court during the father's lifetime. The Mishnah also asserts that the money belongs to the girl if the case came before the court after the father's death. If a claim had existed from the moment of the seduction, it should have been part of the inheritance. Therefore, there is no claim before the case came to court.

110 Since the monetary value of these claims depends on the determination of the court, they certainly do not exist from the time of the seduction.

111 This is the ruling accepted by the Babli, 40a.

112 Since she has no power to forgive the fine at the moment of the act, this claim still exists. But since she was a willing partner, she certainly will have forgiven him any payment for shame and diminution of value.

113 While it is difficult to understand why the rapist should not pay for the shame (since he will have to pay for the shame of an adult victim who has no fine), otherwise the ruling follows R. Yose the Galilean in Mishnah 4.

Mishnah 8: How much is shame worth? Everything depends on the offender and the offended. For diminution of value one considers her
as if she were a slave girl to be sold; how much would she have been worth before\textsuperscript{115} and how much would she be worth now. The fine is equal for everybody since everything determined by the Torah is equal for everybody.

114 The amount is in the discretion expressed here.

of the court subject to the guidelines 115 As a virgin.

Halakhah 8: "How much is shame worth? Everything depends on the offender and the offended," etc. One cannot compare one who is offended by a person of high standing to one offended by a person of low standing. The shame for a person of high standing is great but the injury he incurs is small. The shame for a person of low standing is small but the injury he incurs is great\textsuperscript{116}.

116 While the amount of damages is fixed in cases involving virgins, in the case an adult insults another adult, the injured party can sue for damages which have to be fixed following the principle stated here.
Mishnah 9: Anytime there is a sale there is no fine and anytime there is a fine there is no sale. The underage girl is subject to sale but not to fine; the adolescent can claim a fine but has no sale; the adult has neither fine nor sale.  

It is generally agreed that a father can sell his daughter as a domestic slave only as long as she is a minor since the verse calls her "daughter" (Ex. 21:7) and in legal texts "son" and "daughter" are always interpreted to mean minors. This Tanna is of the opinion that the fine applies only to the adolescent since the victim is called "an adolescent virgin" in Deut. 22:28 (but in the case of the seducer she simply is called "a virgin"). It is agreed that the adult cannot claim a fine (she will be able to claim damages.)

Halakhah 9: "Anytime there is a sale," etc. Rebbi Hyya in the name of Rebbi Johanan: This is Rebbi Meir's. But for the rabbis there can be sale and fine together. Following Rebbi Meir: From one day old until the age of 3 years and one day there is sale but no fine. From the age of 3 years and one day until she becomes an adult there is a fine but no sale. The adult, neither sale nor fine. Following the rabbis: From one day old until the age of 3 years and one day there is sale and fine together.
From the age of 3 years and one day until she grows two pubic hairs there is sale but no fine. After she grows two pubic hairs until she becomes an adult\textsuperscript{120} there is a fine but no sale. The adult, neither sale nor fine.

118 In the Babylonian sources (Babli 40b, 29a; Tosephta 3:8), R. Meir is reported to decree sale but no fine for a girl from the age of one day until adolescence, fine but no sale for the adolescent, and nothing for the adult. Since for a rape at age below three years the hymen is supposed to repair itself, there is no place for the fine at that age. The statement that a father cannot sell his daughter once she reaches the age of marriage, 3 years and one day, is found only here. In any case, the statement is purely theoretical since the institution of Hebrew slaves was not re-established on the return from Babylonia even though the girl was supposed to be sold in marriage.

119 In the Babylonian sources, the rabbis hold that a daughter can be sold until she becomes an adolescent and she can claim the fine starting at the age of 3 years and one day. As explained in the preceding Note, it does not seem reasonable to have a fine for the rape of a girl below the age of 3 years and one day. Therefore, it seems that the statements regarding girls below and above the age of 3 years and one day should be switched.

120 A period of 6 months.
There\textsuperscript{122}, we have stated: "He who comes to a preliminarily married adolescent is guilty\textsuperscript{123} only if she was an adolescent, virgin, preliminarily married, in her father's house\textsuperscript{124}. If two came upon her, the first is stoned and the second strangled\textsuperscript{125}." Rebbi Yasa in the name of Rebbi Johanan, Rebbi Hiyya in the name of Rebbi Eleazar: That is Rebbi Mei'î's. But following the rabbis even if she is a minor. What is Rebbi Mei'î's reason? "A lad" is written in the paragraph\textsuperscript{126}. How do the rabbis explain "a lad"? Rebbi Abbahu said in the name of Rebbi Simeon ben Laqish: Once in the paragraph it is written "a young woman"; this teaches that in the entire paragraph she is an adult\textsuperscript{127}. Rebbi Meir objected to the rabbis: In the matter of the calumniator, "a lad" is written and she is an adult since a minor is not stoned\textsuperscript{128}. What do the rabbis with this? Rebbi Abin said, explain it if he came to her as to a male\textsuperscript{129}.

\textsuperscript{121} From the text in \textit{Sanhedrin}. Text here: \כילה "an adult", which certainly is an error.
\textsuperscript{122} Mishnah \textit{Sanhedrin} 7:15; Tosephta 10:8. From "Rebbi Yasa" to the end of the Halakhah, the text is also in \textit{Sanhedrin} 7:14; the readings from there are noted.
\textsuperscript{123} To be stoned, \textit{Deut.} 22:24. The penalty for adultery (if the act is observed by two independent witnesses) is death by strangling.
\textsuperscript{124} As the Babli explains (\textit{Sanhedrin} 66b), the law does not apply if the girl had been delivered to the husband's emissaries to be brought to his place for the final wedding.
\textsuperscript{125} Since she was no longer a virgin.
\textsuperscript{126} In the entire Pentateuch with the exception of \textit{Deut.} 22:19, "girl" is written in the masculine form \כילה "a lad". R. Meir takes this as a restriction that the rules apply only to the adolescent in the strict sense. The
rabbis take the spelling to mean that one deals with a girl that is not yet feminine, not yet sexually awakened. (Instead of postulating a unique Hebrew-Phoenician root רע"ש "youth", the rabbis probably derive יט from the root רע "to awake").

127 Deut. 22:19; the case of the calumniator must deal also with the possibility that the wife is criminally responsible, as pointed out by R. Mei'ir. Therefore, נער in the context of sexual offenses must mean "underage and adolescent".

128 Deut. 22:21. An underage person is not criminally responsible; the seduction of a minor is statutory rape. If the criminal sanctions do not apply, why should the rest of the rules apply to an underage girl?

129 The rapist is punished even if he uses the יט as if she were a נער without penetration.

Jacob bar Abba asked before Rav: What is the law for him who comes to a minor? He said to him, by stoning. What is the law for him who comes to an adult? He said to him, I am reading "an adolescent", not an adult. Read "an adolescent", not a minor! "Because he mistreated her", that includes a minor for a fine", read 'because he mistreaded her', 131 that...
includes an adult for a fine! Rav said, even though Jacob won the logical argument, practice is that he who comes to a minor is [punished] by stoning but she is free. Rebbi Abin in the name of Samuel: Why? He understood it from the following\textsuperscript{133}: "The man who had lain with her alone should die." Did we not know that "the girl has not committed a capital crime"? Then why does the verse say: "Do not do anything to the girl, the girl has not committed a capital crime"? That includes him who comes to a preliminarily married underage girl that he is stoned and she is free\textsuperscript{134}.

\textsuperscript{130} A preliminarily married underage girl, whether by seduction or rape.

\textsuperscript{131} In Deut. 22:29.

\textsuperscript{132} The man who commits adultery with an adult preliminarily married woman is punished for adultery, as if it were with a definitively married woman.

\textsuperscript{133} Deut. 22:26, speaking of the preliminarily married rape victim. It should be obvious that the rape victim is innocent; why does the verse have to emphasize this?

\textsuperscript{134} The verse is not written for the adolescent rape victim, whose innocence is obvious, but for the consenting underage girl who would have committed a capital crime had she been adolescent. But because of her age, her seduction was statutory rape and she is immune from any form of punishment.
Mishnah 10: One who says, I seduced X’s daughter, pays for shame and diminution of value on his own testimony but he does not pay the fine. One who says, I stole and I slaughtered or sold, pays the value on his own testimony but neither double restitution nor four or five times.

My ox killed X or X’s ox, he pays on his own testimony. My ox killed X’s slave, he does not pay on his own testimony. This is the principle: Anybody who has to pay more than the damage he caused does not pay on his own testimony.

135 Payments for shame and diminution of value are civil claims and for civil claims "the admission of the debtor is worth 100 witnesses" (Tosephta Baba Meši’a 1:10; Babli Baba Meši’a 3b). But the fine is assessed in a criminal trial and confessions are inadmissible in criminal trials.

136 The criminal fine for stealing livestock is double the value if the animal is found alive, but four or five times its value if it was slaughtered or stolen (Ex. 22:2,3).

137 Restitution in civil law.

138 The payment is a fixed sum of 30 šeqel (Ex. 21:32) whose status is discussed in the Halakhah.

139 Since any excess payment has the character of a penalty.
Halakhah 10: "One who says, I seduced X's daughter," etc. 143 Rebbi Isaac asked: Would he have to pay the slave's value on his own testimony? What is his problem? Are the entire 30 [Seqel] a fine or is only the excess over his value a fine? If you say, the entire 30 [Seqel] are a fine, he does not pay. If you say, the excess over his value is a fine, he pays 144. There, we have stated 145: "Your ox killed my slave! The other said, 'he did not kill'. 'I want you to swear' and he said 'Amen', he is free. 146" Rebbi Haggai said before Rebbi Yose, explain it if he killed a slave afflicted with boils 147. He said to him, what does it say afterwards 148? "Your ox killed my son! The other said, 'he did not kill'. 'I want you to swear' and he said 'Amen', he is obligated. 149" Why do you not explain it that he was afflicted with boils, then he would be free 150. Rebbi Haggai said before Rebbi Yose, explain it following him who says "he shall pay the redemption of his person", the one's who caused the damage 151. He said to him, if following him who says "he shall pay the redemption of his person", the one's who caused the damage, everything is a fine 152. Can one say to him, be also in the clear with Heaven 153? Let us
hear from the following: It happened that Rabban Gamliel knocked out his slave Tebi's tooth\textsuperscript{154}. He came to Rebbi Joshua\textsuperscript{155} and said to him, I found a reason to free my slave Tebi. He said to him, what do you have in your hand? Fines can be imposed only by a court! Could they not say to him, do your duty before Heaven? That means one does not tell him, do your duty before Heaven! Rebbi Gamliel ben Avina\textsuperscript{156} asked before Rebbi Mana: Does Rabban Gamliel follow him who said, it is permitted to manumit? He said to him, the story in itself implies that it is forbidden to manumit since, otherwise, he could have freed him immediately!

140 From the text in $\text{Sebuot}$, missing here.
141 Written in the text here, missing in $\text{Sebuot}$.
142 From the text in $\text{Sebuot}$, here ה"נ" he is obligated".
143 The entire Halakhab is part of a larger text in $\text{Sebuot}$ 5:7.
144 The slave's market value.
145 Mishnah $\text{Sebuot}$ 5:5. The topic of the Mishnah is the obligation to bring a purification sacrifice for a false oath ($\text{Lev.}$ 5:4). The sacrifice is due for "an expression of the lips for worse or good", i. e., if the oath changes the situation as far as monetary obligations are concerned. If A was accused by B to have seduced B's daughter (when B has no witnesses to prove his claim) and A swore falsely, A is obligated for a sacrifice since by admitting guilt he would have had to pay for shame and diminution of value.
146 This Tanna assumes that the entire 30 $\text{seqel}$ to be paid for the slave are a fine which cannot be collected upon the confession of the guilty party. Therefore, the oath did not change the situation as far as monetary obligations are concerned and no purification sacrifice is possible.
147 If the slave could not be sold on the slave market, he has no value and certainly all of the 30 $\text{seqel}$ are a criminal fine and not due upon confession.
148 This is a $\text{baraita}$, not the continuation of the Mishnah.
149 Since he would have to pay damages upon agreeing that his ox did the damage, his false oath requires a
sacrifice.

150 If no damages were due.

151 Ex. 21:30: "If weregilt is imposed on him, he shall pay the redemption of his person, all that is imposed on him." The question is, to which person does "his person" refer? Is the weregilt assessed by the person killed or the owner of the ox? The question is discussed in Baba Qama Tosephta 4:7, Yerushalmi 4:7 (4c), Babli 27a, 40a; Babli Makkot 2b; Mekhilta dR. Ismael Mišpaṭiṭ p. 285, dR. Simeon bar Iohai p. 182.

152 In that case there is no direct connection between the amount to be paid and the damage caused.

153 Is there a moral obligation to pay when there is no legal way to force payment?

154 A slave has to be freed if his owner injures one of his limbs (Ex. 21:26,27). On the other hand, there is an interpretation of Lev. 25:46 which reads the statement about Gentile slaves, "for ever you shall have them work for you" that manumission of Gentile slaves without a good reason is forbidden. In the Yerushalmi (Yebamot 11:6, Note 134) this interpretation is ascribed to R. Yose the Galilean, in the Babli to Rav Jehudah (Berakhot 47b) or R. Aqiba (Soṭah 3b). Another interpretation of the verse [Babli Niddah 47a; Sifra Bekar Paraḥah 6(6)] insists that slaves can be used only for work, not sexual purposes.

155 The Babli, Baba Qama 74b/75a, reads the story as a ruling by R. Joshua that anybody who freed himself by confession from a fine cannot be fined even if later the fact is proven by two witnesses. It holds that Rabban Gamliel should have produced witnesses before talking informally to R. Joshua who even in a private setting could not forget about his position of president of the court.

156 Elsewhere, the name is Ininia (cf. Peah 1:1, Note 61).
Mishnah 1: Payments for shame, diminution of value, and fine of a seduced adolescent girl belong to her father, as are payments for suffering for the victim of an attack. If she appeared in court during her father’s lifetime, they are the father’s; after the father’s death they are the brothers’1. If she did not appear in court until after the father’s death, they belong to herself2.

1 The claim to the payments is established with the first appearance of the claimants before the court (today one would say with the filing of court papers.) This might be different from the Babli, whose Mishnah requires that there were actual court proceedings during the father’s lifetime. Cf. also Chapter 3, Note 109. Once the claim is noted as the father’s, upon the father’s death it becomes part of the estate which is inherited by the male children. The inheritance of the brothers is subject to the claims of the daughters for sustenance and dowry. If there are only daughters, the daughters inherit.

2 Following R. Aqiba (Mishnah 3:4).
Halakhah 1: "A seduced adolescent girl," etc. Who stated "adolescent"? Rebbi Meir. But following the rabbis, even an underage girl.

Cf. Halakhah 3:9; Babli 40b.

Halakhah 1: "Payments for suffering for the victim of an attack." The rape victim. This does not follow Rebbi Simeon since Rebbi Simeon frees the rapist from paying for suffering.

Cf. Halakhah 3:5.

So far payments that are consequences of sexual relations. If somebody injured her, blinded one of her eyes, cut off one of her hands, broke one of her legs? To whom does he pay, to her or to her father? Rebbi Johanan said, he pays to her father; Rebbi Simeon ben Laqish said,
he pays to her. Rebbi Simeon ben Laqish is of the opinion that her earnings belong to her even before she becomes an adult. Rebbi Johanan says, only after she comes of age. Rebbi Abin in the name of Rebbi Hila: They disagree before she comes of age, but after she is an adult everybody agrees that all belongs to her. A *baraita* supports either one of them. A *baraita* supports Rebbi Johanan: If somebody injures somebody else’s daughter or son, the payments for the son must be given immediately; those for the daughter shall be held as property value.

Rebbi Yudan, the father of Rebbi Judah the father of Rebbi Mattaniah, said that some state it so that beginning and end support Rebbi Simeon ben Laqish: If somebody injures his own underage daughter, diminution of value belong to her and he is free from paying for shame and diminution of value. If others injure her, diminution of values belong to her, the rest shall be transformed into property value, but payments for shame and diminution of value belong to her father.

5 Since biblical law allows a father to marry off his daughter and to pocket the money given for her preliminary marriage, and explicitly states that the father receives the fine imposed on the rapist, it is natural that the father should receive all benefits accruing to him from the fact that she is his underage female child. But since the text nowhere gives monetary rights deriving from male children to the father, the question is who receives payments which do not depend on the sex of the child. The Babli, *Baba Qama* 87a/b, states flatly that the father has no claims to sums due under laws which are independent of the sex of the injured party.

6 Mishnah *Baba Qama* 8:1 states that the person causing an injury is liable to pay for diminution of values (permanent reduction of earning power), suffering, medical costs, lost earnings (earnings lost while disabled in treatment), and shame.

7 As always, "son" or "daughter"
means underage child. In the Babli, *Baba Qama* 87b, and the Tosephta, *Baba Qama* 9:8, the payment due the son is given in the form of a capital value which is transferred to the son on his reaching majority. Everybody agrees that the father has no claim to any sum due to his son.

8 In the *baraitot* of Babli and Tosephta: They belong to the father. This is then explained away as referring only to lost earnings since in the Babli everybody holds that all earnings of an underage daughter belong to the father.

9 In the opinion of R. David Fraenckel, the father collects the yield of the capital reserved for the daughter until she reaches adulthood and in this the *baraita* supports R. Johanan.

10 Since he collects payments for shame and diminution of value from the rapist, he collects all payments of this kind due to his underage daughter. If he is the guilty party, he is free since he would have to pay to himself. In Babli and Tosephta, he is never required to pay anything to his own underage children of either sex.

It is clear that in the case of the father attacking his own daughter, "diminution of value" must refer to damage done to her physical appearance, not defloration. Since sexual relations with one's daughter are a capital crime, no payment can be demanded (cf. Note 111, Chapter 3:1 Note 30, *Terumot* 7:1 Note 5 ff.)

11 In Tosephta *Baba Qama* 9:9 and the *baraita* in Babli *Baba Qama* 87b nothing is awarded to the father. This is then explained away as referring to children who no longer live at home. In the Yerushalmi, payments for shame and diminution of value belong to the father; of the others he collects the yield of the capital until the daughter reaches adulthood. The treatments in the two Talmudim have very few points in common even though they are based on almost identical tannaitic texts.
What did you see to say so? Rebbi Simeon ben Iohai stated: "He shall give to the girl; he shall give to the girl's father." How is this? If there were court proceedings before her father died, you can say "he shall give to the girl's father"; after the father died you can say "he shall give to her". If there were court proceedings before she became an adult, you can say "he shall give to the girl's father"; after she became an adult you can say "he shall give to her."

12 This refers to the Mishnah, that if the case came to court after the father's death the fine is not part of the inheritance but belongs to the girl even if she still is supported by the brothers and her earnings go to them.

13 The following is the interpretation of R. David Fraenkel. In the case of the calumniator it is written (Deut. 22:19): "[The court] shall fine him 100 pieces of silver and give them to the girl's father because he calumniated a virgin of Israel", stating first the fine and then the reason. But for the rapist it says (v. 29): "The man who had lain with her shall give 50 pieces of silver to the girl's father." Since the reason is stated immediately after the obligation to pay, it is inferred that the obligation to pay is independent of the availability of the father. Therefore, in the absence of a father, or if the girl is no longer in his potestas, one may disregard the mention of the father and read the verse as an obligation to pay the girl.

14 This quotes the language of the Babli Mishnah, cf. Note 1.

15 This refers to Mishnah 2.
From where comes this? Rebbi Abbahu in the name of Rebbi Johanan: "You shall give them as inheritance to your sons to inherit property," those to your sons and not your daughters to your sons; the verse speaks about the fine. Rebbi Hiyya stated: They have no right to the fines of the daughter nor to payments for seduction or injuries. When does the fine become due? Rebbi Jonah said, from the first moment; Rebbi Yose said, at the end. Rebbi Yose objected to Rebbi Jonah: Since you say, from the first moment, did we not state: "If there were court proceedings during her father's lifetime, [the payments] are the father's; after the father's death they are the brothers." He said to him, that refers to what Rebbi Simeon ben Iohai stated, "He shall give to the girl; he shall give to the girl's father." Rebbi Jonah objected to Rebbi Yose. In your opinion, since you say, at the end, did we not state: "If there were court proceedings before she became an adult, they are the father's; after she became an adult they belong to herself." Does an adult
have a claim to a fine? He said to him, that refers to what Rebbi Hiyya stated, as Rebbi Hiyya stated: "Because he mistreated her," that includes if she was an adolescent and became an adult\(^23\). Does it turn out that this disagreement parallels another disagreement, as we have stated there\(^24\): "If he stole from his father, slaughtered or sold, and afterwards [his father] died, . . . , he pays fourfold or fivefold?\(^25\)"? Rebbi Yose objected to Rebbi Haggai\(^26\): In your opinion, since you say that it depends on the court proceedings, should one not state: If he stole from his father, slaughtered or sold during his father’s lifetime but did not appear in court until after his father’s death, he pays twofold?\(^27\)? But it says fourfold or fivefold! But here\(^28\), everybody agrees that they belong to herself. The only problem is whether he has to pay to her or to her father.

16 In Babylonian sources, this is a tannaitic statement: Ketubot 43a, Qiddusin 16b; Sifra Behar Paraşah 6(5). The verse, Lev. 25:46, speaks of Gentile slaves. The main import of the verse is that slaves can be bought or inherited following the rules of real estate. As a side remark, it is stated that income due because of daughters does not become part of the estate.

17 The father’s heirs.

18 The act of rape creates the obligation to pay the fine.

19 The judgment of the court creates the obligation to pay the fine.

20 If this is an argument of R. Yose against R. Jonah, the reference must be to the Mishnah in general and in particular to the last part, not quoted here, which gives the fine to the girl if court proceedings start after the father’s death. If the fine was due from the moment of rape, it should be part of the estate.

21 Cf. Note 13. The exclusion of the fine from the estate is a biblical decree, independent of when the obligation starts.

22 An enlarged version of Mishnah 2.

23 It is not that an adult rape victim can claim a fine but the verse gives the adult the right to sue for what was done to her as an adolescent.
24 Mishnah *Baba Qama* 7:2.

25 The fine for stealing is double restitution; the fine for selling or slaughtering stolen livestock is fourfold or fivefold restitution. The Mishnah requires the thief to pay fourfold or fivefold to the estate (unless he is the sole heir); but if the obligation does not start with the act of larceny then the fine should depend on the relative times of selling/slaughtering and the father's death, as explained in the next sentence.

26 This should read: R. Haggai objected to R. Yose (who holds that any obligation starts only with the court's action.)

27 There is no doubt that he stole from the estate and has to make good. But since the injured party is no longer alive, according to R. Yose he should not have to pay the extra penalty for selling or slaughtering. The Babli, *Baba Qama* 71b, agrees with this reasoning.

28 The verses, in R. Simeon's interpretation, determine the obligation to pay a fine irrespective of the recipient of the fine. Therefore, the question of the start of the obligation is secondary.

**Mishnah 2:** If she did appear in court before she became an adult, [the payments] belong to her father, after the father's death, they belong to the brothers. If she did not appear in court before she became an adult, they belong to herself. Rebbi Simeon says, if she did not collect before the father died, they belong to herself. Her earnings and what she finds, even if she had not collected [by the time] the father died, belong to the brothers.
29  R. Simeon holds that the father's rights start only with the delivery of the money as explained in the Halakhah (and the Babli, 42b). The anonymous majority hold that the payment ordered by the court can be enforced by foreclosure and therefore is ready money and part of the estate.

30  The earnings of an underage daughter belong to the father since even the money given for a preliminary marriage of an underage daughter is pocketed by her father (Mishnah 4:6). After the death of the father only uncollected earlier earnings go to the estate, not her later earnings. The situation is slightly paradoxical since the brothers are obligated to support their unmarried sister but the father has only a religious, not a legal duty to support his daughters (Halakhah 4:8).

Halakhah 2: "If she did appear in court before she became an adult," etc. Rebbi Simeon ben Iohai stated: "The man who had lain with her shall give 50 silver pieces to the girl's father;" this teaches that the father acquires only by handing over. Rebbi Simeon says, the matter depends on the collection, but the rabbis say, the matter depends on the court procedure. Rebbi Simeon treats it as court decrees but the rabbis treat it as a loan. In the opinion of Rebbi Simeon, he forecloses from the best land; in the opinion of the rabbis he forecloses from average land. In the opinion of Rebbi Simeon, the Sabbatical year does not cancel the debt;
in the opinion of the rabbis the Sabbatical year cancels the debt\textsuperscript{35}. In the opinion of Rabbi Simeon the firstborn takes a double portion; in the opinion of the rabbis the firstborn does not take a double portion\textsuperscript{36}.

31 In the Babli, 42b, this is an Amoraic interpretation of R. Simeon’s position.

32 Money receivable because of a judicial decision is not counted as property to be part of the estate since in many cases the collection of such a judgment depends on the claimant swearing that his claim was not otherwise satisfied and the heirs cannot swear for their deceased father.

33 Outstanding documented loans are property and part of the estate since the debtor would have to prove his case if he claims that the loan had been repaid.

34 If the debtor is unable to pay cash and the creditor comes to foreclose real estate, Mishnah Gittin 5:1 states that debts for torts are foreclosed from the most valuable real estate, loans from average, and a \textit{ketubah} from the least valuable (R. Meir says, from average.) The value is determined by the going rate for a unit of surface area.

35 Only private debts are cancelled by the Sabbatical year, not those created by court order nor those handed over to a court for collection; Mishnah \textit{Sevi’it} 10:2. The details of the laws of the Sabbatical relating to this case are explained in \textit{Sevi’it} 10:2, Note 69.

36 The law of inheritance of the firstborn \textit{(Deut. 21:17)} states that the father has to give him a double portion (or $2/3$, assuming there are only two sons) “of everything that is found with him”, meaning everything in actual possession at the time of death. Money due for an executable court order is money in possession; money due for an outstanding loan is not money in possession since it is subject to the uncertainties of a court proceeding if foreclosure is needed and the position of the firstborn is not privileged in regard to future income.
Rebbi Ze’ira sent to Rav Nahman bar Jacob and Rebbi Immi bar Pappai: Who owns the earnings of the daughter? They said to him, the diligent said, herself. Who is the diligent? Samuel! Rebbi Mattanah said, it was said in the name of Rebbi as explanation of a verse: “You shall give them as inheritance to your sons to inherit property,” those to your sons and not your daughters to your sons; the verse speaks about the earnings of the daughter.

Rebbi Yudan said, the Mishnah says so: "Her earnings and what she finds, even if she had not collected when the father died, belong to the brothers." Anything she earned during her father’s lifetime. But what she earned after her father’s death according to everybody is hers.

37 A slightly different version of the entire paragraph is in the Babli, 43b, where R. Ze’ira points out that the brothers have to support their sisters but do not receive their incomes.

38 In the Babli Rav Abime bar Pappai; cf. Note 262.

39 In the Babli: Rav.

40 If the heirs retained the right to the earnings of the underage daughters, the Mishnah would not have to emphasize that they retain the right to income earned but not collected. The same argument in the Babli, 43a.
Mishnah 3: If somebody gives his daughter in preliminary marriage and she was divorced, in preliminary marriage and she was widowed, the ketubah belongs to him. If he gave her in definitive marriage and she was divorced, in definitive marriage and she was widowed, the ketubah belongs to her. Rebbi Jehudah says, the first ketubah is his. They said to him, from the moment he gave her in definitive marriage, he no longer has any power over her.

41 As long as his daughter lives in his house, she is his property. The question whether a preliminarily married woman has a ketubah is treated in Halakhah 5:1.

42 Even an underage girl is emancipated in civil law by marriage.

Halakhah 3: "If somebody gives his daughter in preliminary marriage," etc. Rebbi Abun bar Ḥiyya said, the reason of Rebbi Jehudah is to
encourage a man to give an ample dowry to his daughter. Rebbi Jacob bar Aha in the name of Rebbi Isaac: Rebbi (Meir) learned from the calumniator. Did not Rebbi Hiyya state: If she whored while in her father's house and he calumniated her after she became an adult, he is not flogged nor does he pay 100 tetradrachmas but either she or the false witnesses are executed by stoning? Rebbi Mana asked before Rebbi Yose: Think of it, if he calumniated her when she was an adolescent and now she is an adult? He said to him, we heard that he pays to her father. Rebbi Jeremiah said before Rebbi Ze'ira: I am wondering how could the rabbis compare a ketubah to a fine when they are not comparable! For the ketubah is an obligation from the first hour but the fine is only at the end; and you say so? He said to him, who says that to you? Even the [obligation of the] fine is from the first moment. It turns out that Rebbi Mana is like Rebbi Jeremiah and (like Rebbi Yose ben Ze'ira).

43 This presupposes the earlier practice that the ketubah was written and the dowry given at the time of the preliminary marriage, in contrast to the later practice which postponed these transactions to the time of the definitive marriage. In that case, the dowry has to be returned at the dissolution of the preliminary marriage and it is clear that the father wants to have the dowry returned to him. [Many Jewish communities in the Middle Ages enacted rules which guaranteed the return of the dowry to the wife's family if the marriage was of short duration and/or there were no children; the best known being the rules of the community of Tulaitula (Toledo), Sulhan 'Arukh Even Ha'Ezer §118.]

44 Since R. Meir is not mentioned otherwise in this connection, it seems that this is a scribal mistake for R. Jehudah.

45 The calumniator accuses his definitively married wife, who is an
adolescent, of infidelity while preliminarily married. If his accusation is false, he pays the fine to the father, not to his wife. This shows that the father retains an interest in the money coming to his adolescent daughter even if she is definitively married. In the opinion of Maimonides (More Nebukhim, part 3, Chapter 49) and Nachmanides (Commentary to Deut. 22:19), the fine of the calumniator is 400 zuz since he wanted to steal from her the ketubah sum of 200 zuz by his accusation; as a thief he has to pay double restitution to the injured party. This supports R. Jehudah’s contention that the father is the injured party. (Interpretation following R. Baruch Fränkel-Teomim.)

46 He is called a calumniator by the biblical text because he has to accuse his wife of adultery in front of the court, and for that he is punished if his accusation is not sustained. For the court to act on his accusation he has to produce two witnesses to the adultery since as husband he is his wife’s relative and barred from acting as a witness for or against her.

47 The expression "they shall punish him" in Deut. 22:17 is interpreted to mean "they have him flogged."

48 In Deut. 22:18 it is written: They shall fine him 100 silver pieces and give them to the adolescent’s father. If the girl is no longer an adolescent, the punishment does not apply.

49 The standard punishment for adultery by a preliminarily married adolescent, Deut. 22:24. If the witnesses for the husband are shown to be false (cf. Note 86), they are stoned since any false witness is punished by the sentence that would have been passed upon the accused if the testimony had been true.

50 As long as the accusation is made when the girl is an adolescent, the verse gives the money to the father.

51 The groom has to accept all obligations of the ketubah before a definitive marriage is possible.

52 The fine is due only upon sentencing.

53 He holds that the act of rape creates the obligation to pay the fine rather than the court’s sentence.

54 This probably should read: "and Rebbi Yose like Rebbi Ze’ira," that the obligation of the fine starts with the rape and, therefore, fine and ketubah are parallel institutions; the rules of the fine may inspire rules of ketubah.
Mishnah 4: If a proselyte woman converted together with her daughter and the latter committed adultery, she is executed by strangling; she has neither a door of her father's house nor 100 tetradrachmas. If she was conceived not in holiness but born in holiness, she is executed by stoning; she has neither a door to her father's house nor 100 tetradrachmas. If she was conceived and born in holiness, she is a Jewish woman in all respects. If she has a father but no door to her father's house, or a door to her father's house but no father, she is stoned since the door to her father's house was mentioned only as a commandment.

55 As a preliminarily married adolescent.
56 As any adulteress. The special rules of the preliminarily married adolescent are addressed to "a virgin of Israel". She may be a virgin, if she was converted before she reached the age of three years and a day, but she is not of Israel.
57 The adulterous preliminarily married adolescent is stoned there (Deut. 22:21).
58 If her husband had falsely accused her.
59 Her mother converted while pregnant.
60 Since her mother's relationship with her father was a relationship of Gentiles at the moment of conception, it is non-existent for Jewish law.
61 Her mother became pregnant after her conversion. Holiness is Judaism.
62 This now refers to Jewish
adolescents, rather than to proselytes.  
The sentence probably is the missing 
Mishnah 5.  
63 Her father owns no house.

Halakhah 4: "If a proselyte woman converted," etc. It is written
"For he calumniated a virgin of Israel". That excludes this one
who is not from Israel. "For he calumniated a virgin," to include the proselyte
whose conception was not in holiness but her birth was in holiness, that
she should be stoned. Why does one not add her for the fine? You
cannot do that; as Hizqiah stated: We understand that it was said "they
shall stone her," does that not imply that she dies? Why does the verse
say, "and she shall die"? But there must be another one who is stoned but
[she] is free; who is that? That is the proselyte whose conception
was not in holiness but who was born in holiness.

67 The girl not born Jewish.
68 The verse refers to the fine when she was falsely accused, not to
her death when she was proven to be an adulteress.
69 In the Babli, 44b, that is a statement of R. Simeon ben Laqish.
70 Deut. 22:21, speaking of the girl proven to be an adulteress: "her town's
people should stone her with stones that she dies."
This is the text of ms. and *editio princeps* but one has to read there must be one case which is added only for this kind of death penalty.

As the Babli argues, (28b line 68)

It is written: "If a man takes a wife, comes to her, and hates her." He is not guilty unless he marries her definitively, has intercourse, and accuses her not to be a virgin. "He puts a libel on her"; I could think even if she spoiled a dish? It says here "a libel" and it says later "a libel". Since "a libel" later implies whoring, so also here it means whoring. Since "a libel" later implies from the place of virginity, so also here? From where if he came upon her otherwise? The verse says, "and he calumniates her", in any way. "He said, I took this wife and came to her," that excludes assignations; "I took", to exclude the one waiting for her levir; "I took", to exclude the preliminarily married one.

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72 In the Babli, 46a, this interpretation is attributed to R. Eliezer ben Jacob, in *Sifry Deut.* 235, to R. Jehudah, as dissenting opinions.
73 Which according to the House of Hillel could be a cause for divorce, Mishnah *Giṭṭin* 9:10.
74 V. 14 reads: "He attacks her by libel and calumniates her, and he says, I took this woman, came to her and did not find her to be a virgin." One could
read this as meaning that the libel and the claim of missing virginity are two different actions by the husband. But v. 17 makes it clear that there is only one action: "He attacks her by libel, saying, I did not find your daughter to be a virgin." The same argument is in Sifry Deut.

76 He sets himself up for punishment even if during the first intercourse he did not penetrate. The Babli disagrees, 46a/b; Sifry Deut. agrees.

77 can be translated as: "I bought".

If a man buys somebody's underage daughter as an indentured servant (Ex. 21:7-11) he can later assign the price he paid for her as bride money either for himself or for his son and declare her preliminarily married without investing an additional penny in her. But since the money originally was given for her work as a servant, not for marriage, the husband cannot say "I bought her as a wife".

79 The levir did not give any money, his deceased brother did.

80 In this case, money was given but the marriage not consummated.

81 In Qiddusin 1:2 (59b l. 40), Babli 19a, the only other places where the question is raised, only R. Yose ben R. Jehudah holds that the original money
was not given with the idea that eventually it would be used as brides-money. But everybody agrees that the verses Ex. 21:8-9 require a separate action of assignment which is distinct from the original acquisition; therefore, the marriage of the indentured servant is not a "buy".

82 Cf. Yebamot 12:7, Note 140; Bekhorot Mishnah 1:7.

"I came to her and did not find her a virgin." Should we not worry that he found and made disappear? The husband brought witnesses that she committed adultery while in her father's house. "This is proof of my daughters' virginity." Should we not worry that this is bird's blood? The father brought witnesses to prove perjury by the husband's witnesses. Rebbi Yose ben Rebbi Abun said, in this paragraph there are witnesses, witnesses of perjury, and witnesses of perjury of the witnesses of perjury: The husband says, these are witnesses that she whored in her father's house. The father brought witnesses to prove perjury of the husband's witnesses. Rebbi Yose ben Rebbi Abun said: The father brought witnesses to prove perjury of the husband's witnesses. And the husband brought witnesses to prove perjury of the father's witnesses. Some Tannaim state: "If this was true," that the father found witnesses to prove perjury of the husband's witnesses.
It is difficult to accept that the court should take the case simply on the husband's statement, in particular because the husband cannot be cross-examined as a witness since he is related to his wife and relatives are barred from being witnesses.

Deut. 22:17. The father also is barred from being a witness in a case involving his daughter.

The case is a regular criminal case to be adjudicated following all rules of criminal procedure; the only new feature is the punishment inflicted on the husband if his case is not sustained in court.

In talmudic law, there are unreliable witnesses and there are perjurers. If the story of the witnesses does not hold up under cross-examination, or if the witnesses' story is contradicted by equally trustworthy witnesses, the witnesses are unreliable and their testimony is not accepted as basis of a judgment. Perjury with its attendant penalties (Deut. 19:18-20) only is impossible testimony, i.e., that the opposing party produces witnesses to testify that the other witnesses could not possibly have seen what they testify to since they were at another place at the time they pretend to have seen certain things.

The penalties mentioned in this paragraph can only be imposed if the case is one of proven formal perjury.

"And they spread out the cloth." That is all simile. Rebbi Ismael stated: That is one of three verses in the Torah which have been written as simile. "If he gets up and walks outside on his support, the one who hit him is not prosecuted." Could anybody think that one walks in the
market and the other is executed because of him? But what is "on his support", in his health? If the sun shone on him, he has blood. Does the sun shine only on him? But just as the sun is particular that it brings peace to the entire world, so also this one, if one knows that [the other] is at peace with him and he kills him, he is guilty.

88 Deut. 22:17. It was proven that this sentence cannot mean what it says.
89 Sifry Deut. 237; in Finkelstein's opinion not of the original Sifry text. A slightly enlarged version is in Sanhedrin 8:8, 26c l. 6.
90 Ex. 21:19, speaking of a person who deliberately injures another.
91 If the injured person regains his health but then has a relapse and dies, the person who injured him cannot be prosecuted for murder.
92 Ex. 22:2, speaking of a thief digging a tunnel under a house, who can be killed with impunity if found out since in the tunnel "he has no blood".
93 In the opinion of the Babli, Sanhedrin 72a/b, this can only be asserted of a father coming to steal from his son. In the opinion of the Yerushalmi (Note 89) it cannot be asserted of anybody. Cf. Mekhilta dR. Ismael Mišpatim 13; differently in Mekhilta dR. Simeon ben Iohai p. 192.
It was stated\textsuperscript{94}: Rebbi Eliezer ben Jacob says, the words should be said as they are written. What means "the words should be said as they are written"? Rebbi Yose ben Rebbi Abun said, he is not guilty unless he marries her definitively, has intercourse\textsuperscript{73}, and accuses her not to be a virgin. "They spread the cloth\textsuperscript{88}. Not that "they spread the cloth" but until the things become clear like a cloth\textsuperscript{95}. Assi said, "they spread the cloth", the witnesses are not stoned, nor is the husband flogged and pays 100 tetradrachmas, until they say: you were with us at a certain place\textsuperscript{96}, and the husband hired them to testify falsely\textsuperscript{97}. If they said, you were with us at a certain place, but they did not say, the husband hired them to testify falsely? Rebbi Yose ben Rebbi Abun, Rebbi Johanan in the name of Rebbi Simeon ben Laqish\textsuperscript{98}: It is said here "putting", it is said there "putting". Since "putting" there means money, also "putting" here must mean money\textsuperscript{99}. But did we not state: He did not say to the witnesses, come and testify in my case, but they came on their own, he is not flogged nor does he pay 100 tetradrachmas but either she or the false witnesses would be stoned\textsuperscript{49,100}? Because he did not say. But if he said, even if he did not hire them it is as if he hired them\textsuperscript{101}. If the father
brought two groups of witnesses. One side say, you were with us at a certain place. The other side say, the husband hired them to testify falsely. It is obvious that those who said, you were with us at a certain place, are stoned, and those who said, the husband hired them to testify falsely, are flogged and pay 100 tetradrachmas. Rebbi Yose ben Rebbi Abun said, neither by these not by those are they flogged and pay 100 tetradrachmas, but they are flogged because of "you shall not testify as a false witness against your fellow man."

94 Babli 46a, Sifry Deut. §237. In the interpretation of the Babli, R. Eliezer ben Jacob requires that the court hear testimony about virginal blood.
95 Usually, new cloth was simply bleached, not dyed. יָד really means "pale"; only in a derivative sense it means "logically consistent".
96 This is necessary to prove the witnesses guilty of perjury, cf. Note 86.
97 This is necessary to impose penalties on the husband.
98 This attribution seems most unlikely. Since the argument is quoted in the Babli, 46a, as a tannaitic statement attributed to R. Jehudah, it is more likely that the original text was: In the name of R. Simeon ben lohāi.
99 The argument is a little more explicit in the Babli. It is written here, "he puts a libel on her". It is written in Ex. 22:24: "you shall not charge interest to [the recipient of a loan]." From the principle that a word has only one meaning, one infers that the husband "puts" a libel on his wife by paying for it; then according to this opinion he cannot be punished unless he actually pays for the false testimony.
100 The Babli agrees, 46a.
101 This disagrees with the opinion given before. The husband must actively be involved in bringing the witnesses before the court but he does not have to pay them in order to become criminally liable. In general, a person who hires another to commit a crime (or simply induces him to commit a crime) cannot in general be prosecuted since "there is no agent for sin" (Babli Qiddusin 42b); exceptions to that rule must have a biblical basis.
102 Who then are proven to have
perjured themselves. (The Babli, Sanhedrin 9b, discusses only the simple case that the same witnesses testify both about the other witnesses and the husband's involvement.)

103 Since, if their testimony had been true, the husband's witnesses would have been stoned.

104 Since they testify to the involvement of the husband in the prosecution of his wife.

105 The husband is not flogged and does not have to pay if his witnesses tell the truth. Therefore, the witnesses who testify to his involvement in the recruiting of his witnesses are not the only cause of him being flogged and having to pay; without the other set of witnesses their testimony would have been irrelevant.

106 Ex. 20:17. The Babli disagrees, Makkot 2b, since "a prohibition violated without an action is not prosecutable" (cf. Nedarim 1:1, Note 2).
Rebbi Abun bar Hiyya asked before Rebbi Ze'ira: If the father brought witnesses to prove the perjury of the husband’s witnesses; but the father’s witnesses were proven perjurers, is he flogged and pays 100 tetradrachmas by the judgment of three and the witnesses are stoned by the judgment of 23? He said to him, if the father’s witnesses are not proven perjurers, is not the husband flogged and pays 100 tetradrachmas by the judgment of three and the witnesses are stoned by the judgment of 23? Rebbi Ze'ira is of the opinion that there are two different proceedings. Rebbi Jeremiah in the name of Rebbi Abbahu: There is only one proceeding. A baraita disagrees with Rebbi Abbahu: "To the town’s Elders", that is a court of three members; "to the gate", that is a court of 23. He explains it following Rebbi Meir, since Rebbi Meir says that he is flogged and pays. There, we have stated: "The seducer, the rapist, and the calumniator [are judged] by three [judges], the words of Rebbi Meir; but the Sages say, the calumniator by 23 since it is a potential capital case." Rebbi Mana said, they disagree about the preliminarily married adolescent. Rebbi Meir says, she loses her ketubah in a court of three and is stoned by a court of 23; but the Sages say, at the same place which sentences her to be stoned she loses her ketubah. But in the case of the calumniator, everybody agrees that by the court in which the witnesses are stoned, the husband is flogged and pays 100 tetradrachmas. Rebbi Yose ben Rebbi Abun said to him, would they differ where it was not stated? But they differ about the calumniator! Rebbi Meir says, he is flogged and pays 100 tetradrachmas by the judgment of three and the witnesses are stoned by
the judgment of 23; but the rabbis say, by the court in which the witnesses are stoned, the husband is flogged and pays 100 tetradrachmas. But by the case of the preliminarily married adolescent, everybody agrees that at the same place which sentences her to be stoned she loses her ketubah. [It turns out that Rebbi Yose ben Rebbi Abun follows Rebbi Ze'ira and Rebbi Mana [follows] Rebbi Abbahu]116.

107 Money matters are adjudicated in a court of 3 judges (Mishnah Sanhedrin 1:1), capital cases by a court of 23 (Mishnah 1:4). The anonymous majority hold that potential cases of flogging are adjudicated by a court of 3 (Mishnah 1:2). Therefore, flogging and payment of a fine can be imposed by the same court.

108 It is not necessary to discuss the case that the witnesses to perjury are found to be themselves perjurers; the same result can be obtained assuming the husband's witnesses are perjurers. Then also the husband's case is one of flogging and fine, in the competence of a small court, but that of the witnesses is a capital case which requires the large court.

In the Babli, Sanhedrin 8b, this is reported as the opinion of R. Hiyya bar Abin and the Babylonian Rava.

109 Since the husband can only be flogged and fined if the witnesses are stoned, the husband's case is an appendix to that of the witnesses.

110 This baraita is not found in other sources. The reference is to Deut. 22:15, where the girl's father is instructed to go "to the town's Elders, to the gate." The double determination is read as instruction to appear before two different courts.

111 Cf. Chapter 3:1, Note 30. He will agree that the two punishments of the husband are in the competence of one court. The Sages, who hold that in general the culprit who is flogged does not pay, must agree that the husband can only be flogged by the court which sentences the witnesses for perjury.

112 Mishnah Sanhedrin 1:1.

113 Since the wife has to be stoned if found to have committed adultery as a preliminarily married adolescent.

114 Since the husband can be freed from his obligations under the ketubah only if the wife is found guilty, a set-up
in which two courts could come to contradictory conclusions is impossible.

115 Mishnah Sanhedrin 1:1 states clearly that there is a disagreement in the case of the calumniator. If there were a disagreement in the case of the preliminarily married adolescent, it would have to be stated in the Mishnah.

116 Text of the Constantinople edition. Text of the ms. and editio princeps:

The husband is never flogged, nor does he pay 100 tetradrachmas, unless the witnesses are stoned. When is he obligated for the fine? Rebbi Jonah said, at the end. Rebbi Yose said, from the first hour.

Rebbi Yose objected to Rebbi Jonah: In your opinion, since you say at the end, can he be flogged and made to pay 100 tetradrachmas by a court of three and the witnesses stoned by a court of 23? Rebbi Mana said, even according to Rebbi Yose one could ask the question following him who holds that perjured witnesses need to be warned. If they did not warn them, is he flogged and made to pay 100 tetradrachmas by a court.
of three; are the witnesses stoned by a court of 23\textsuperscript{120}? Rebbi Abbamari said, who is that who says so\textsuperscript{121}?

117 Since only in this case is the husband's guilt established.

118 They switch their positions from Halakhah 1, in the case of the fine imposed on the rapist. "At the end" means after sentence is imposed, "the first hour" is the moment he falsely accuses his wife of adultery.

119 If the obligation of the fine is a consequence of the conviction of the witnesses, flogging and the fine should be mentioned after the sentence imposed on the witnesses and not before.

120 If the witnesses are shown to be perjurers but they cannot be punished because they were not warned of the consequences of perjury, the fact that they cannot be convicted frees the husband and, therefore, his obligation could not be from the first moment.

121 Nobody holds that witnesses need special warnings since they must be informed by the court about the importance of their testimony. The Babi agrees, 33a.

Rebbi Yose ben Rebbi Hanina: One who rapes or seduces an orphan is free\textsuperscript{122}. Rebbi Abba bar Mamal said, this is in dispute; following Rebbi Yose the Galilean. But following Rebbi Aqiba a fine is due, and the fine belongs to herself\textsuperscript{123}. Rebbi Yose said, the Mishnah\textsuperscript{124} says so: "She has neither a door to her father's house nor 100 tetradrachmas," is she not like...
an orphan? Rebbi Immi and Rebbi Joshua ben Levi both say, one who calumniates an underage girl is free. Rebbi Hoshiaiah said, that is correct. If she were an adult who was not warned, would there be any case? And an underage girl who was warned is like an adult who was not warned.

He does not have to pay the criminal fine, but the payments enumerated in Mishnah 3:5 in civil law are still due.

This now refers to Mishnah 5.

The Mishnah refers to the girl whose mother converted while pregnant with her, who legally has no father since by conversion her mother became a new person, unrelated to her prior existence.

Even the adolescent, who is an adult in criminal law, cannot be executed for adultery if at the moment of her adultery she was not duly warned in front of two witnesses that she would risk the death penalty if she went ahead with her adultery. It was stated before that the husband pays only if his witnesses are stoned. But his witnesses can be stoned only if the woman would be stoned had their testimony been true. If there are no witnesses to the warning, the witnesses to the adultery cannot cause her to be executed. Therefore, if these witnesses are found perjured, they cannot be stoned. Therefore, the husband cannot be flogged and fined.

A minor cannot be criminally liable. Since the underage wife could under no circumstances be stoned, the husband cannot possibly be flogged and fined. The same argument in the Babli, 44b.

(28c line 70)
Rebbi Ze’ira, Rav Hammuna in the name of Rav Ada bar Ahawa: She cannot be executed unless she is an adolescent at the time of the execution. What is the reason? “They shall execute the adolescent at her father’s door.” But did not Rebbi Hiyya state: If she whored in her father’s house and [the husband] calumniated her after she became an adult, he is not flogged nor does he pay 100 tetradrachmas but either she or the witnesses are executed by stoning. A Mishnah disagrees with Rav Ada bar Ahawa: “If he escaped after being sentenced and then his pubic hair grew fully.” There, you can say “they shall execute the adolescent” who whored; can you say here “they shall execute him”, the son? 

128 Deut. 22:18-21. hair is fully grown. If he was sentenced as an adolescent, he can be executed as an adult.

129 Mishnah Sanhedrin 8:6, speaking of the unruly son, Deut. 21:18-21, who can be judged only if he is an adolescent, in the 6 months after he grew two pubic hairs before the pubic

130 Deut. 22:21 says only “they shall stone him”, without indicating age.
It was stated\(^{131}\): One stones a preliminarily married adolescent girl who whored at her father's door. If she does not have a father's house's door one stones her where she whored. If it was a Gentile town one stones her at the court's door. Also, a person who practiced idolatry one stones at the place where he worshipped. If it was a Gentile town one stones him at the court's door. But did not Rebbi Hyya state: "Take the blasphemer out from the encampment,\(^{132}\)" this teaches that the court sits inside and the place of stoning is outside. Rebbi Yose said, there is a difference: The place where he went astray is the place where he was found, is the place where he was judged, is the place where he was stoned\(^{133}\). "For she did a foul deed in Israel." This one befouled all of Israel, for she came to whored in her father's house. The bad growth they grew shall come and foul up them and their growth.

131 Babli 45b; Tosephta Sanhedrin 10:10.  
133 In the Babli, 45b, this is a tannaitic statement about Deut. 17:5, that the idolator has to be stoned "at your gates." In Sifry Deut. 148: "The gate where he was found, not the gate where he was judged."
Mishnah 6: The father has the benefit to give his daughter in preliminary marriage by money, contract, or intercourse; he has the right to what she finds and to her earnings, to dissolve her vows, and to receive her bill of divorce, but cannot eat usufruct in her lifetime. If she is definitively married, the husband in addition eats usufruct in her lifetime but is required to pay for her upkeep, her ransom, and her burial. Rebbi Jehudah says, even the poorest in Israel should not provide for her less than two flutes and one wailing woman.

134 As long as she is not an adult.
135 He can pocket the money.
136 He can make himself be paid for signing the marriage contract.
137 Mishnah Qiddusin 1:1 states that a woman can be preliminarily married either by money (given by the groom to his bride or her father) or by a contract (by which the groom signs his intention to marry his bride) or by intercourse (which has to be performed in front of two witnesses to be legally valid); the latter way is frowned upon in practice.
139 As long as she is not definitively married.
140 If her mother is dead and she inherits from her maternal grandfather, all yield from that property is hers and has to be kept in trust for her. But if she dies unmarried, the father inherits from her.
141 In addition to what she finds and earns, and to dissolve her vows.
142 Of all property she brings into the marriage; cf. Chapter 8.
143 If she is kidnapped.

Halakhah 6: "The father has the benefit to give his daughter," etc. One understands that the father has a benefit from money or contract. By
intercourse? Explain it that [the groom] said to [the father]: When your daughter becomes mine by intercourse, this money shall be your property.

"He has the right to what she finds." Rebbi Zakkai from Alexandria asked: How do you treat what she found on [her] field, as a find or as her usufruct? If you treat it as usufruct it is hers.

A field which she inherited from her mother's side and to whose yield the father has no claim.

While R. Zakkai's question is not answered, the fact that only one interpretation is analyzed further seems to indicate that anything she finds on her field belongs to her.

"If she is definitively married, the husband in addition eats usufruct in her lifetime," as a regulation they instituted that he should oversee his wife's property and eat from it. Is it also thus for the father? Without incentives the father oversees the daughter's property; should he eat? "He is required to pay for her upkeep and her ransom." It was stated: If the husband said, it is impossible for me to eat and to oversee, one does not listen to him; but if the father said, I shall oversee if I can eat, one listens to him.
146 This is an unnecessary quote from the Mishnah; the text continues to refer to the wife's property.

147 Since this is a generally valid regulation, the court cannot relieve the husband from caring for his wife's property. (But the husband can cede the administration of the property to his wife by a private contract as long as no court is involved.)

148 The court may allow the father a reasonable fee for administering his underage daughter's property if this is to her advantage.

"And her burial." It was stated: If the husband refused to bury her, the father buries her and recovers his expenses in court. Rebbi Haggai said, they said only, the father. Therefore, a third party cannot recover. Rebbi Yose says, both the father and also a third party can recover. There is a parallel disagreement, as we have stated there: "He is required to pay for her upkeep, her ransom, and her burial.149" Rebbi Haggai said, they said only, a third party. Therefore, the father can recover. Rebbi Yose says, neither the father nor a third party can recover. In the opinion of Rebbi Haggai, both for burial and for upkeep the father can recover, a third party cannot recover. In the opinion of Rebbi Yose, for burial both the father and also a third party can recover because it is unthinkable that his wife should be thrown to the dogs150. It was stated151: At a place where it is customary to eulogize, one eulogizes.
149 The reference here really should be to Mishnah 13:2; the parallel to this paragraph, formulated in a slightly different way, is at the end of Halakhah 13:2. The essence of that Mishnah is that if the husband is absent without providing for his wife and a third party supports the wife without either having the wife sign a document that she recognizes the money for support as a loan, or being appointed her guardian by the court, he has no regress on the husband upon his return.

150 If the community buries her, they can recover the costs from the husband. The Babli, 47a, refers this to the husband: If somebody tells his heirs not to bury him, the community buries him and recovers the cost from the estate since one will not allow a man to have himself buried with taxpayers’ money in order to increase his estate.

151 Tosephta 4:2, Semahot 14:7. The fee of the preacher who eulogizes the deceased can be recovered from the husband.

**Mishnah 7:** She always remains in the father’s power until she enters the husband’s power for definitive marriage. If the father entrusted her to the husband’s emissaries she is in the husband’s power. If the father went with the husband’s emissaries, or the father’s emissaries went with the husband’s emissaries, she is in the father’s power. If the father’s emissaries entrusted her to the husband’s emissaries, she is in the husband’s power.
For all the rights and duties enumerated in the preceding Mishnah, accompany the bride to the place of the nuptials and participate in them.

Even though they will

"She always remains in the father’s power," etc. Not only to the bridal chamber but to a house where the bridal chamber is. In which way? A banquet hall and a bedroom, the bridal chamber being the bedroom, and she entered the banquet hall. In which respect? Rebbi Eleazar said, to inherit from her. Rebbi Simeon ben Laqish said, to dissolve her vows. Rebbi Ze’ira said, even though Rebbi Simeon ben Laqish said, to dissolve her vows, he agrees that he does not actually dissolve them until she enters the bridal chamber. Rebbi Huna said, a baraita supports Rebbi Simeon ben Laqish: "To whore in her father’s house," that excludes the case that the father’s emissaries entrusted her to the husband’s emissaries, after which she should not be stoned but strangled.

It seems that the original Yerushalmi Mishnah did not read "until she enters the husband’s power for definitive marriage" but "until she enters the bridal chamber" with most Mishnah mss. and the Munich ms. of the Babli. S. Lieberman emphasizes on several occasions that it seems that the scribe of the Leiden ms. obtained the Mishnah text not from the Yerushalmi text he was copying but from a separate Mishnah ms.
becomes a divorcée or widow after definitive marriage. This parallels R. Ze’ira’s interpretation here, that the husband acquires all rights even if he cannot exercise them yet.

159 A similar baraita is quoted in the Babli, 49a.

160 If now she should commit adultery before two witnesses after being duly warned that it would be a capital crime, she is treated as a definitively married woman, not as a preliminarily married adolescent.

In the Babli, 48b, this is Samuel’s opinion, that after the signing of the ketubah document, the husband’s rights and obligations are activated not by the formal "seven benedictions" of the definitive marriage but by the bride entering the husband’s power.

In the Babli, 48b, he is reported to hold that after this moment, if she is divorced or widowed before entering the bridal chamber, she legally becomes a divorcée or widow after definitive marriage. This parallels R. Ze’ira’s interpretation here, that the husband acquires all rights even if he cannot exercise them yet.

159 A similar baraita is quoted in the Babli, 49a.

160 If now she should commit adultery before two witnesses after being duly warned that it would be a capital crime, she is treated as a definitively married woman, not as a preliminarily married adolescent.

Mishnah 8: The father is not obligated to support his daughter. This inference did Rebbi Eleazar ben Azariah explain in the vineyard of Jabneh: “The sons shall inherit and the daughters be supported.” Since the sons do not inherit before their father’s death, neither are the daughters supported before their father’s death.

161 The ketubah contract with his wife does not force a father to feed his underage or adolescent daughter even though he has the right to receive her earnings.

162 The seat of the central rabbinic authority in the time between the two wars with the Romans.
The original Hebrew text of the ketubah stipulation quoted in Aramaic

**Halakhah 8:** "The father is not obligated to support his daughter," etc.

It is meritorious to feed one’s daughters, unnecessary to say this of sons. Rebbi Johanan ben Beroqa said, it is meritorious to feed one’s daughters. Some Tannaim state, the sons are most important. Some Tannaim state, the daughters are most important. He who says the sons are most important, for the study of Torah. He who says the daughters are most important, that they should not go outside for bad behavior.

184 Tosephta 4:8, Babli 49a. In these sources, and in the editio princeps corrected following the Babli, "R. Johanan ben Beroqa said, it is obligatory to feed one’s daughters.

185 The Babli, 49a, identifies this Tanna as R. Mei'r, the one who gives preference to the daughters as R. Jehudah, with the same reasoning as given here. In the Tosephta only the first opinion is given, anonymously.

186 That they should not be forced into prostitution.
Rebbi Simeon ben Laqish in the name of Rebbi Jehudah ben Hananiah: They voted at Usha that a man has to feed his underage children. Rebbi Johanan said, we know who participated in that vote. Uqba came before Rebbi Johanan who said to him: Uqba, feed your children. He answered, Master, why? He said to him: Evil Uqba, feed your children. Rebbi Ulla said, a Mishnah confirms that a man has to feed his underage children, since we have stated there: "If she is nursing, she has to work less and one adds to her food."

187 In the Babli, 49b, in Peah 1:1, Note 59, and eventually in the next paragraph, he is called R. Jehudah bar Hanina.
188 The temporary meeting place of the supreme religious authority in the aftermath of the war of Bar Kohkba; cf. Peah 1:1, Note 60.
189 They were important enough to accept their vote as judicial practice. (In today's practice of the Israeli Rabbinate, support is required to the end of the child's schooling.)
190 He was sued for child support by either his wife or the local overseer of charity who did not want to spend public funds on Uqba's children.
191 There is no biblical authority to force me to feed them.
192 Probably R. Hila (Ilai), the tradent of R. Simeon ben Laqish's statements in the Babli, 49b.
193 Mishnah 5:13. The Mishnah shows that the husband has less revenue and more expenses because of the feeding of his baby.
Rebbi Simeon ben Laqish in the name of Rebbi Jehudah ben Hananiah:
They voted in Usha that if one writes all his property over to his sons, he and his wife are supported by them. What is the situation of underage children? Rebbi Abbahu in the name of Rebbi Yose ben Rebbi Jehudah, but some say it in the name of Rebbi Judah ben Hanina: He, his wife and his underage children are supported by them. What about his widow? Rebbi Ze'ira said, this was asked but not resolved. Rebbi Abba bar Mamal said, it was asked and resolved, Rebbi Abba said, it seems reasonable that if she ate during her husband's lifetime then she eats; otherwise, she does not eat. It says only "if one writes"; that excludes the seller. If he wrote to his sons and sold to others, what is here reasonable? Rebbi Hanina said, I would not give him anything. Rebbi Mana: Is it not reasonable that they hire him a servant and marry a wife to him so she should serve him?

194 Even if the property be given unconditionally and immediately, it is a law promulgated at Usha that the sons have to care for their parents (Rashi, on Babli 49b).
195 The adult sons who inherited from their living parents.
196 She cannot collect her ketubah since her husband died without leaving an estate. Therefore, if the sons supported her during their father's lifetime, they must support his widow indefinitely.
197 The sons received only part of the estate; the remainder was sold to outsiders and the proceeds used up.
198 As a matter of honoring father and mother, not as a monetary obligation deriving from their partial inheritance.
200 What is the situation of grandchildren? Rebbi Mana said, [grandchildren are like children. Rebbi Yose said, grandchildren are not like children.] Rebbi Yose ben Rebbi Hanina and Rebbi Mattaniah were sitting together. They wanted to say, the same situation applies to grandchildren here as there. Rebbi Yose ben Rebbi Hanina said to him, inheritance by biblical law jumped on grandchildren.

199 Text from the parallel Gittin 5:3, line 64. The text here is unintelligible.

200 This paragraph, transmitted here in rudimentary form, is from Gittin 5:4. The variant readings are indicated by א. In this text, "here" means the text in Gittin, "there" is a different setting in Yebamot 6:6 (Notes 115,116). The topic of the Mishnah in Gittin is the enforcement of the ketubah contract for the support of a wife and her daughters; the question is whether the ketubah also covers granddaughters. Similarly, here the question is whether the rules of Usha require a man to feed his underage grandchildren (if they have no father or the father is incapacitated.) In Yebamot, the question is whether grandchildren count as much as children in the obligation "to be fruitful and multiply." The answer there is a qualified yes, while here and in Gittin it is no.

201 In biblical obligations, grandchildren can be counted as children. But in rabbinic institutions involving monetary obligations, only what is specified counts.
Rebbi Simeon ben Laqish said in the name of Rebbi Jehudah ben Hanina:

They voted in Usha that one who insults an Elder or hits him has to indemnify him fully for his shame. It happened, that somebody who insulted an Elder and hit him had to indemnify him fully for his shame. They said, it happened to Rebbi Jehudah ben Hanina\(^\text{202}\).

\(^{202}\) It is explained in *Baba Qama* 8:6 is one Roman *libra* of gold.

Rebbi Simeon bar Laqish said in the name of Rebbi Jehudah ben Hanina: They voted at Usha that a person may donate a fifth of his property for good deeds. How far down? Rebbi Jeremiah and Rebbi Abba bar Cahana; one said corresponding to *terumah* and the *terumah* of the tithe, the other said (Prov. 3:9): "Honor the Eternal with your property" . . . "corresponding to the first of all your yield"\(^\text{204}\). Rebbi Gamliel bar Ininia asked before Rebbi Mana: Does it mean one fifth every year? [One studies this in the first Halakhah of Peah.]\(^\text{203}\) Will he not die\(^\text{205}\)? But lest he die in the future.
This paragraph is essentially from *Peah* 1:1, Notes 58-64, as noted by the scribe when he stopped copying the entire paragraph. In the Babli, 50a.

In *Peah* it is clear that the inference is from the part of the verse which is not quoted here.

If every year he gives away one fifth of his property, soon he will have nothing. This part is formulated differently in *Peah*: A person is permitted to give to charity one fifth of his property once; from thereon in he is restricted to one fifth of his income lest he die of hunger in the future.

Rebbi Eleazar ben Azariah insisted on interpreting the *ketubah*:

Rebbi Eleazar ben Azariah explained: 'The sons shall inherit and the daughters shall be supported.' Since the sons can only inherit after their father's death, so the daughters can claim support only after their father's death.

From here to the end of the Halakhah the text essentially is from *Yebamot* 15:3, Notes 34-79 (whose readings are denoted by *); its Tannaitic parts are paralleled in *Tosephta Ketubot* 4:9-13.
The House of Hillel insist on interpretation of the ketubah. Hillel the Elder explained it, using the vernacular. In Alexandria they were writing that a man there became betrothed to a woman. Another man abducted her from a public place. When this came before the Sages, they intended to declare [the children] as bastards. Hillel the Elder told them, bring your mothers' ketubah. They brought their mothers' ketubah. They found written there: "When you enter my house you shall be my wife according to the laws of Moses and the Jews."

The House of Shammai insist on interpretation of the ketubah. As the House of Shammai explain, the text of her ketubah document teaches, for he writes: "If you would be married to another man you shall take the amount I wrote for you." The House of Hillel reversed themselves and taught following the House of Shammai.

Rebbi Meir insists on interpreting the contract text. Rebbi Meir explained, if somebody accepts a field as a contractor, at the moment [he] accepts, one estimates how much it is expected to yield and he gives to
[the owner]. Because the standard contract reads: "If I let it lie fallow and
do not work on it, I shall pay as if from the best."

Rebbi Jehudah insists on interpreting the contract text. Rebbi Jehudah explained: A man brings for his wife any sacrifice she is obligated for, even if she ate suet or desecrated the Sabbath. Also, Rebbi Jehudah says, once he divorces her, he is no longer obligated for her, for she writes to him "any other obligations that may come to you from me from earlier times."
Rebbi Yose insists on interpreting the contract text. Rebbi Yose explained: In a place where one treats the ketubah as a loan, she collects the entire amount. Where one doubles, she collects only half the amount.

Rebbi Eleazar the caper grower insists on interpreting the contract text. Rebbi Eleazar the caper grower explained: nobody is permitted to buy domesticated or wild animals or birds unless he has food prepared for them.

Rebbi Joshua ben Qorha insists on interpreting the contract text. Rebbi Joshua ben Qorha explained: a person lending money to another person should not take pledges except in court; he should not enter [the debtor’s] house to take the pledge, for he writes to him: "It will be paid by the property that came to my hand that I shall acquire corresponding to this [sum]."

208 In the text of Yebamot: "a person lending money to another person should not take pledges from him for more than the value of the loan since he writes for him: It will be paid . . ." That text should be considered the correct one since (a) it refers to the text of the contract and (b) the statement here is a biblical commandment (Deut. 24:10-11).
Rav Huna insists on interpreting the contract text. Rav Huna explained: "The sons shall inherit but the daughters must be fed." Since the sons inherit movables, the daughters also are fed from movables. Samuel said, the daughters are not fed from movables. A Mishnah supports Samuel: "The female children you shall have from me shall dwell in my house and be supported from my property." It was stated on this: From real estate but not from movables. Rebbi Abba bar Zavda said: Rav Huna follows Rebbi and Samuel follows Rebbi Simeon ben Eleazar, as it was stated: "One uses both guaranteed property and non-guaranteed property for the support of the wife and the daughters, the words of Rebbi. Rebbi Simeon ben Eleazar says, guaranteed property may be taken by sons from sons, by daughters from daughters, by sons from daughters, and by daughters from sons. But non-guaranteed property may be taken by sons from daughters but not by daughters from sons." They said, Rav Huna reversed himself. They said, that was well done, ketubah is a biblical commandment but support of the daughters is from their words. May their words uproot a biblical commandment? It must be that they differ about the money contained in their mother’s ketubah.
say, they differ about the money contained in their mother’s *ketubah.*[209]

But is the money stipulated in their mother’s *ketubah* not also real estate? 66?

209 Inserted here by the corrector missing in *Yebamot.*
"If somebody who works his wife's property has the intention of divorcing her and goes and takes from the ground, he is quick and is rewarded. If somebody who works the property of prisoners heard that they prepare to return, goes and takes from the ground, he is quick and is rewarded. These are properties of prisoners: In any case where his father, brother, or any person from whom he might inherit, went overseas; it was heard that they died, and he went to work the inheritance. But property of abandoning persons one takes out of their hands. These are properties of abandoning persons: In any case where his father or any person from whom he might inherit went overseas, he did not hear that they died, but he went to work the inheritance. Rabban Simeon ben Gamliel said, I heard that there is no difference between prisoners and abandoning persons. But property of broken persons one takes out of their hands. These are properties of broken persons: In any case where his father, brother, or any person from whom he might inherit, went overseas, and his whereabouts are not known. Samuel says, the prisoner is one who left involuntarily. If he had left voluntarily he would have given him instructions. The abandoning person is one who left voluntarily. You should know that he had the intention of keeping [the relative] off his property since he left voluntarily and did not give him instructions. Rebbi Abba, Rav Jehudah in the name of Samuel: Movables do not fall under the rules of broken people. Rebbi Jacob bar Aha in the name of Rav:

211Those date palms of Babylonia which do not need grafting, is it not reasonable that we should treat them like standing grain ready to be harvested and grapes ready to be harvested?
210 In Yebamot, "Rav Jehudah". It is impossible to determine the original reading since R. Jacob bar Aha, a student of R. Johanan, was a great collector of the sayings of earlier authorities.

211 There are two sentences from Yebamot missing which are needed to make sense of the statement. "Standing grain ready to be harvested and grapes ready to be harvested are movables [for the rules of broken people]. Rav Sheshet asked".

Mishnah 9: If he did not write her a ketubah, a virgin collects 200 [zuz] and a widow 100, for this is a stipulation enforced by the court. If he substituted something valued at a mina for the 200 zuz and did not write "that all my property is guaranty for your ketubah," he still is obligated by it, for this is a stipulation enforced by the court.

212 The fact that there is a marriage creates the financial obligations of the husband even in the absence of a contract. This stipulation bars any mut'a marriage (temporary marriage for sexual pleasure only). A similar institution, αγραφος γάμος, "marriage without written contract," which nevertheless implied all monetary obligations of the husband towards his wife, was known in contemporary Egyptian native law; cf. R. Taubenschlag, The Law of Greco-Roman Egypt in the Light of the Papyri, New York 1944, Chapter IIB3.

213 In the Mishnah of the Babli: "A field." Since the lien of the ketubah is a mortgage (primarily or exclusively) on all the husband's property, it is reasonable to assume that in the Yerushalmi version likewise it is understood that a piece of real estate
was offered to satisfy the ketubah claims.

214 Therefore, all the stipulations mentioned in this and the following Mishnaiot are not written in ketubah contracts following the Babylonian style; the fact that a document is designated as ketubah makes these stipulations enforceable.

Halakhah 9: "If he did not write her a ketubah," etc. The Mishnah is Rebbi Meir's, since Rebbi Meir said: "Anybody who writes for a virgin less that 200 [zuz] or a mina for a widow engages in immoral intercourse." Who needs it? Rebbi Meir! Even though Rebbi Meir says that any contract which does not contain an alienation clause cannot be foreclosed, here he agrees that it can be foreclosed.

214 Mishnah 5:2: he is opposed by R. Jehudah who lets the woman agree to a reduction of the ketubah amount.

215 For R. Meir, the existence of a marriage is proof of a responsibility of the husband or his estate for at least 200 or 100 zuz; that amount can therefore be foreclosed. A similar argument is in the Babli, 51a, where, however, the position is taken that R. Jehudah agrees that in the absence of evidence to the contrary the obligation of the husband's estate is 200 or 100 zuz but that by written agreement of the wife this obligation can be reduced.

216 The position of R. Meir in Mishnah 5:2 does not yet explain why a document of indebtedness does not have to be produced in court.

217 R. Meir holds that a loan document which is not a mortgage, i.e., does not contain a clause which states that in the case of nonpayment some of the debtor's property will be alienated to the creditor, cannot be enforced in court. In that he is opposed by R. Jehudah who holds that the absence of such a clause is a scribal error (Babli
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51a/b; Mishnah Baba Mezi'a 1:6).

218 The Babli, 51b, qualifies this statement that R. Meir permits foreclosure only from real estate not otherwise pledged while the Yerushalmi will permit foreclosure from real estate pledged after the marriage was contracted (because the wife's lien cannot be removed.)

Mishnah 10: If he did not write her "if you are kidnapped I shall ransom you and bring you back as my wife," or for Cohens' wives "I shall return you to your country," he is obligated, for this is a stipulation enforced by the court.

Mishnah 11: If she was kidnapped he is obligated to ransom her. If he said, here is her divorce document and her ketubah, let her redeem herself; he is not allowed to do that. If she was smitten, he is obligated to heal her. If he said, here is her divorce document and her ketubah, let her redeem herself; he is allowed to do that.

219 Since she is forbidden to him as a probably rape victim, he has to divorce her and pay her ketubah in addition to the ransom he paid for her.
220 Even if the ransom will exceed the value of her ketubah.
221 He is not allowed (a) to cap possible ransom by the value of the ketubah and (b) to deduct the amount of the ransom from her ketubah.
222 If she became sick.
223 This probably is a scribal error.
In all other mss. (Babli and independent Mishnah mss.): πβίγι "let her heal herself."

224 The explanation given for the rule is in Tosephta 4:5, that ongoing medical expenses are part of the upkeep promised in the ketubah. This means, as explained in the Halakhah, that medical costs which can be determined beforehand are not part of the husband's obligation but ongoing costs for chronic conditions are to be paid by the husband just like ongoing costs for food are his responsibility.

225 Tosephta 4:5.

226 The widow of a childless man who waits to be married in levirate. The Babli, 52a, reports the same rule for any widow.

227 This should be "Rav".

228 This name does not appear otherwise in the Talmudim. In the Babli, Rav reports his argument in the name of his uncle, the elder Rabbi Hiyya (bar Abba bar Aha Karsala).

"If he did not write her "if you are kidnapped I shall ransom you," etc. "If she was kidnapped he is obligated to ransom her," etc. It was stated:

If a sister-in-law was kidnapped, the heirs do not have to ransom her. Rebbi Hiyya bar Ashi in the name of Rav: Not only if she was kidnapped when her husband was still alive but even if she was kidnapped after the husband's death, the heirs do not have to ransom her. Rebbi Hiyya bar Aha: The Mishnah supports Rav: "And bring you back as wife;" there is no "wife".
"For Cohens’ wives ‘I shall return you to your country.’” Does this mean, exactly to her country? To a civilized place.

To a Jewish community where he pays her the ketubah and where she can find a new husband.

Rabban Simeon ben Gamliel stated: For any hurt which has a fixed medical fee, she is healed from her ketubah. If it does not have a fixed medical fee, she is healed from the estate. As the following: A woman came to Rebbi Johanan. He asked her: Did your doctor give a fixed price? She said, no. Did not Rebbi Achai say in the name of Rebbi Joshua ben Levi: “Do not turn yourself into an pleader,” that one shall not disclose the judgment to a party? He knew her to be honest.

Reading of the quote in Arukh, s. v. כֶּשֶׁת, and in (the differently formulated) parallel in Baba Batra 9:6, 17a l. 20. The ms. text reads: מֶקֶשׁ הָא אָמַר לָהּ: "Did he fix a price?" which was emended by the corrector who prepared the editio princeps into: מֶקֶשׁ הָא אָמַר לָהּ: "if he [the doctor] fixed the price, it is lost [you have to pay yourself]." The emendation appears as a distortion of the text.
Simeon ben Abba. In the Babli, 52b, R. Johanan is reported to have sided with the heirs, telling them to get an all-inclusive price from the doctor.

It is unethical for a judge to dispense legal advice.

She would not change her behavior based on the information received from him.

**Mishnah Abot 1:8**

The most ethical (fol. 28a)

חספ חטבמה יתיר על חלוקתם ועומ אימים מים שאינה חכמה בתי עיד

**Mishnah 12:** If he did not write her "the male children you will have from me shall inherit the amount of your ketubah in addition to their part with their brothers"; he is obligated, for this is a stipulation enforced by the court.

If the wife should die before the husband and the husband inherits from her then, if the husband dies, the sons of his several wives can first claim their mother's ketubah (the 200 zuz noted in the document) from the estate; only the remainder is divided between the sons (with an eventual first-born son taking two parts.)

**Halakhah 12:** If he did not write her "the male children," etc. That is what Rebbi Immi said, that a man should be disposed to give generously to his daughter.

If he knows that the dowry will remain the possession of his grandchildren, he will be more inclined to provide his daughter with a dowry.

In the Babli, 52b, the explanation is ascribed to R. Johanan and the
recommended amount is 10% of the

father's property. Halakhah 10:2.

There, we have stated: "Rebbi Johanan ben Beroqa says, if he speaks about somebody who is a legal heir, his statements are valid, but about somebody who is not a legal heir, his statements are invalid." Rebbi Johanan said, Ben Beroqa spoke only about a son among sons or a (daughter) son among daughters, not about a daughter and brother or a brother among daughters. Rebbi Yasa in the name of Rebbi Johanan:

There was a case and Rebbi decided following Rebbi Johanan ben Beroqa.
Rebbi Ze'ira, Rebbi Yasa in the name of Rebbi Johanan: Rebbi asked Nathan the Babylonian, why did they say that practice follows Rebbi Johanan ben Beroqa? Rebbi Abba, Rebbi Hiyya in the name of Rebbi Johanan: What is the reason? He asked Nathan the Babylonian, why did the Sages say that practice follows Rebbi Johanan ben Beroqa? Are you not the one who stated "shall inherit"? (He said to him, you stated "shall take"; he came to him). He said to him, there is no "shall inherit" but "shall take". When he came to his father, he said to him: you disadvantaged Nathan the Babylonian; there is no "shall take" but "shall inherit". Rebbi Yose ben Rebbi Abun said, this is what he told him: I made an error in what I taught you; there is no "shall take" but "shall inherit". Rebbi Ze'ira said, this is one of the leniencies of the ketubah stipulations. In general, a person can transfer rights only by a document; here even verbally. In general, a person cannot transfer rights to somebody not yet existing; here to the non-existing. Rebbi Jeremiah said before Rebbi Ze'ira: I am wondering how the rabbis can compare ketubah to inheritance, for inheritance is a biblical law but ketubah is from their words; how can one argue this? Even if you say that ketubah is a biblical law, do they not agree that the stipulations of the ketubah are from their words?

239 A similar, but more tersely and clearly formulated text is in Baba Batra 8:6.

240 Mishnah Baba Batra 8:6. The biblical law of inheritance (Num. 27:8-11) states that inheritances should be distributed to the next of kin; it is implied that all persons of the same degree of relationship shall be treated equally (except for the rule of the firstborn, Deut. 21:15-17). In Mishnah 8:5, the anonymous majority states that a person may make a will in which he distributes his property unevenly. The
will will be valid if formulated in the language of gifts, invalid in the language of inheritance. In Mishnah 8:6, R. Joḥanan ben Beroqa states that even the language of gifts is acceptable if and only if the recipient is a legal heir directly in line; e. g., one son among many, but not a daughter in the presence of sons since daughters inherit only if there are no sons. If there are no sons, R. Johanan ben Beroqa will accept unequal distribution of the estate among the daughters. The Mishnah here is formulated following Ben Beroqa since it accepts unequal distribution of the estate even without writing (Babli Baba Batra 131a).

241 This was the first (correct) word written by the scribe who then (incorrectly) crossed it out and replaced it by "son" to produce a meaningless sentence.

242 Since the Mishnah in Ketubot is anonymous, it represents practice and it follows R. Joḥanan ben Beroqa. The Babli, Baba Batra 131a, presents the question in slightly different form and ends up by denying its validity. The Babli holds (seemingly against the Yerushalmi) that property rights based on a ketubah stipulation are strictly weaker than those mentioned in the ketubah contract in that they cannot be asserted against third parties.

243 The fragments of sentences in this parenthesis make no sense; they belong to nearby texts and the scribe seems to have been unsure about the order of the sentences. It is best to leave the parenthesis unexplained.

244 It is not quite clear whether this is Rebbi's or R. Nathan the Babylonian's statement. It changes the language of the Mishnah, that the woman's sons "shall take her ketubah", making the transaction one of a gift valid from the time of the marriage. Therefore, the rules of inheritance are irrelevant and there is no relation between the Mishnah here and Ben Beroqa's statement about wills. (Everybody agrees that by a gift "valid now but executed only after my death", a person can freely dispose of his assets without regard to biblical laws of inheritance.)

245 When Rebbi came to Rabban Simeon ben Gamliel, the latter affirmed the text of the Mishnah as the correct one.

246 At the date of the marriage, no sons are yet born. For everybody except R. Meir, the unborn cannot be the recipient of a gift (other than through a guardian); the same argument is in the Babli, loc. cit.
Ketubah is purely a rabbinic institution (or better, a generally followed practice in post-exilic Judaism, inspired by but not derived from the biblical "bridal gift"). This is the opinion of Rabban Simeon ben Gamliel, cf. the last paragraph of this tractate.

Since the Mishnah text is Rabban Simeon ben Gamliel's, the question is relevant.

Therefore, there is no connection between the ketubah stipulations and the laws of inheritance.

Mishnah 13: "The female children you will have by me shall live in my house and be supported by my estate until they are married to men"; he is obligated, for this is a stipulation enforced by the court.
Halakhah 13: "The female children you will have by me," etc. Rav Hisda said, if they became adults, they lost the support. If they married, they lost their dowries. Rebbi Hyya stated: "If they became adults without being married or were married without being adults, they lost their support but not their dowries." Rebbi Abin in the name of Hila: They all agree on the following: If a widow sues the heirs, she says I did not receive my ketubah, but the heirs say you received your ketubah. Before she remarried, the burden of proof is on the heirs that she received her ketubah. After she remarried, the burden of proof is on her that she had not received her ketubah. But did we not state: "If an orphan was married off by her mother or her brother and they wrote her [a dowry of] 150 zuz, after she grows up she can extract from them." The reason, because she was underage. Therefore, a grown up gave up her claim. Explain it that she had received partial payment. Did not Rebbi Avina say in the name of Rebbi Assi: If a firstborn took as a simple [brother], this is prima facie evidence that he gave up his claim. Still, if she had received part payment. Rebbi Yose ben Rebbi Abun said, this one did not take anything from his primogeniture. There came a case before Rebbi Mana, who wanted to act following Rav Hisda. Rebbi Hananiah said to him, did not Rebbi Hyya state, "if they became adults without being married or were married without being adults, they lost their support but not their dowries"? He said to him: I quoted a tradition, you quoted a baraita. Let the tradition be disregarded before the baraita.
249 Since support for daughters is stipulated only until marriage, the support ends once the usual age for marriage, adolescence, has passed.

250 If after the father's death she did not claim her dowry at the moment of marriage, she is presumed to have renounced her right to a dowry which on average is 10% of the estate (cf. Halakhah 6:6). In the Tosephta, 4:17, this is the opinion of R. Simeon ben Eleazar.

251 Tosephta 4:17, opinion of the anonymous majority.

252 There is a parallel text in the Babli, 96a/b, but it deals with the case that the widow comes at the end of a year and claims not to have received support for the past year. There is no mention of ketubah in the Babli since it requires either that the widow present the ketubah, which will be torn up upon payment, or bring witnesses that she married at a place where routinely no ketubah is written; then she has to deliver a receipt.

253 Since all support by the estate stops upon remarriage of the widow, it would be a most unusual circumstance if the ketubah was not liquidated at that time.


255 She is supposed to have renounced her claim if she did not request her dowry at the time of the marriage; the underage girl may wait until she becomes an adult able to act in legal matters.

256 If the quarrel is not about the entire amount of the ketubah, there can be no argument that the widow renounced her claim.

257 This must be Rav Assi, quoted in the Babli, Baba Batra 136a.

258 The ms. form וּבְשָׁא in his quality of "simple" brother (i.e., taking only one portion in contrast to the firstborn's double share), is good rabbinic Hebrew style and does not have to be changed into וּבָשָׁא.

259 Therefore, the case of the firstborn is different from that of widow or orphan girl. In the Babli, Baba Batra 136a, this is very much in dispute since a dissenting opinion holds that the firstborn only lost his right to re-open past distributions but that he is not restrained from asserting his double claim in the future.
Mishnah 14: "And you shall dwell in my house and be supported by my property during all of your widowhood"; he is obligated, for this is a stipulation enforced by the court.

Halakhah 14: "'And you shall dwell in my house". Rebbi Abun bar Hiyya asked before Rebbi Ze'ira: If he slept with her when she still was in her father's house, did he then activate all ketubah stipulations or is that only by definitive marriage? Rebbi Abun bar Hiyya asked before Rebbi Ze'ira: If she renounced her ketubah, what is the situation? She renounced her rights but not those of her children.

260 The question is not answered. In the Babli, 53a, it is stated that ketubah stipulations do not apply to the preliminarily married woman. This is obviously implied by the question raised here.

261 One could read this sentence as a question: She renounced her own rights (which she can do following R. Jehudah, Mishnah 5:2), but was she able to renounce those of her children? In the Babli, 53a, the question is answered in the positive: she renounced all rights. Under the influence of the Babli, the commentators chose the interpretation as a question.
Rabbi Ze’ira asked Rav Nahman bar Jacob and (Rabbi) Abime bar Pappai: What if there was no house? They said to him, the heirs rent a house for her. One concludes that if she says real estate and they say money, the law sides with the heirs. As the following: A woman’s ketubah was twenty denars, and there was a house worth at most ten denars. The case came before Rebbi Hanina who said, either they give her a house or they give her twenty denars. Rebbi Mana said, since the house is not worth more than 20 it is as if her ketubah was only twenty. One concludes that if she says real estate and they say money, the law sides with the heirs.

262 This text is difficult in several places. There exists a version quoted and explained by Rosh (R. Asher ben Jehiel) which in itself is not without problems, see Note 267. As the reader will easily verify, the Aramaic portions of the text have been adapted to Babylonian spelling. Therefore, the text cannot serve as witness to the details of the text:
Rebbi Ze'ira sent to ask Rav Nahman bar Jacob and (Rebbi) Abime bar Pappai: What if there was no house? They said to him, the heirs rent a house for her. One concludes that if she says real estate and they say money, the law sides with the heirs. As the following: A woman's ketubah was twenty denars, and there was a house worth at most ten denars. The case came before Rebbi Hanina who said, either they give her the house or they give her twenty denars. Rebbi Mana said, since the house is not worth more than 10 it is as if her ketubah was only 10. One concludes that if she says real estate and they say money, the law sides with the heirs.

The following is Rosh's explanation (Chapter 4, #29): "This is the explanation: What are the rules if there was no house there appropriate as a dwelling for the widow and the orphans together? They said to him, the orphans rent a house for her and if she says, real estate, i.e., "I want to dwell in my husband's house", but they say money, "we rent you an apartment but we want to dwell [in the house]", the law sides with the heirs since she has no property rights in the real estate, only an easement. Therefore, they can rent an apartment for her and they can dwell in that house. (And what we say that she has the right to continue living in her husband's dwelling (Mishnah 12:3), that is if the house is large enough for all but they want to move her to a lesser apartment.) In the case of that woman, whose ketubah was 20 denars and the only apartment in the estate was a house worth 10 denars (Note of Qorban Nathanael: insufficient to pay the ketubah), R. Hanina ruled that either they give her the house or they pay her 20 denars. On that, R. Mana(I) said that she should not take the real estate but that they could give her 10 denars since she has no property rights in the real estate, only an easement. Therefore also in general, since she has no property rights to the apartment, only a claim to be given one, they can move her out of the apartment and rent a different one for her.

263 This title is in error; it might be "Rav". In the Babli, he has no title.

264 This interpretation of assimila as a technical term follows Qorban Nathanael (the standard commentary to Rosh), ad loc.
Greek φερνή "nuptual gift" used as synonym with ketubah, representing both the sum the husband gave from his side and the dowry which has to be returned at the dissolution of the marriage.

Gold denars, at the usual rate of 25 silver zuzim for one gold denar a total of 500 zuz.

In the version of the ms., supported by the quote in RAN (R. Nissim Gerondi, in his commentary on Alfasi, 20b in the Wilna ed.), R. Hanina tells the heirs either to give the widow (who probably is not their mother) the house to dwell in or to pay the ketubah in full, where R. Mana disagrees and holds, in accordance with the practice of the Babli, that the ketubah cannot be worth more than the real estate which guarantees it. In Rosh's version, the entire discussion is only about the right of the widow to an apartment.

This sentence certainly is correct in Rosh and incorrect in the ms.
Halakhah 15: "This is what the people of Jerusalem wrote," etc. The people of Galilee cared for their honor more than for their money; the people of Judea cared for their money more than for their honor. Rebbi Hananiah the son of Rebbi Abbahu, and some say it in the name of Rebbi Abbahu: Caesarea follows Judea and all other countries Jerusalem.

271 Since the widow can claim her ketubah unless she was supported by the estate for 25 years (Mishnah 12:4), it is clear that the heirs save money by immediately paying the ketubah in full. But certainly it is not honorable to evict the widow from her husband's home.


273 The stipulation of Mishnah 14 is enforced everywhere except in R. Abbahu's town.

A man said when he was dying: "This man's wife should be paid her ketubah." The case came before Rebbi Mana, who said, let the words of the deceased be confirmed. Rebbi Hanina said to him: Can a person do away verbally with a ketubah stipulation? He answered, since you are saying that, what is your reason? He said to him, are we not living in Galilee? And we are taught to say that the people of Galilee prefer their honor over their money.
He told his heirs to immediately pay the ketubah and not provide dwelling and sustenance for his widow.

It is a general principle that legal death-bed dispositions must be followed.

Since the ketubah stipulations are part of the marriage contract, they cannot be abrogated except by mutual consent, by a rider attached to the ketubah contract. There can be no unilateral abrogation of contractual obligations.

Since the wife at the time of marriage could expect that all ketubah stipulations were part of the contract; the dying husband's wish was illegal and could not be enforced.
Ať Ul P"ir Mishesh

Mishnah 1: Even though they said that a virgin collects 200 [zuz] and a widow a mina, if he wants to add even 100 minas, he may add 1. If she became widowed or divorced, whether preliminarily or definitively married, she collects everything. Rebbi Eleazar ben Azariah says, definitively married, she collects everything; preliminarily married a virgin collects 200 [zuz] and a widow a mina since he added only with the idea to bring her in 2.

1 The ketubah document is formulated to indicate that the husband obligates himself for 200/100 zuz by law; the additional sum he takes on himself must be spelled out separately.

2 Since the document was signed and witnessed beforehand and it is stated that the addition is invalid before the definitive wedding, the question arises when and how the addition becomes enforceable by law.
243

HALAKHAH1

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ΗΪΗ HWIO Ι Ρ Ν ΥΡΝΠ
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H a l a k h a h 1: "Even though they said that a virgin collects 200," etc.
How does he become indebted to her? Do not Rebbi Johanan and Rebbi
Simeon ben Laqish both say, if somebody writes a debenture f o r another
person under the assumption that he owes him and it turns out that he
does not owe, [he does not have] 4 to give to him! He wants to give much
to be called X's son-in-law 5 . That is, if he decided this 6 at the time of the
preliminary m a r r i a g e .

W h a t if he decided this 6 at t h e t i m e of t h e

definitive marriage? He wants to give much for sexual relations with her,
which are sweet 7 . That is if he slept with her. If he did not sleep with
her?

H e wants to give much for the acquisition 8 he made.

If he had

decided at the preliminary marriage, at the definitive marriage, he already
is called X's son-in-law, sexual relations are nothing new, there is no new
acquisition; f r o m t h e r e o n 9 he wants to give much that she should not
change her mind 1 0 . But can she? Was it not stated 1 1 that "a man divorces
only by his own will"? Rebbi Abin said, she makes his life miserable and
he frees her 1 2 .
3

In Halakhah 12:1 naa.

4

From

the

parallel

If the a d d i t i o n is not v a l i d f o r the
in

woman w h o b e c o m e s a w i d o w b e f o r e

Halakhah 12:1, required by the context.

text

her d e f i n i t i v e w e d d i n g , w hy is t h e


additional gift ever enforceable in court? Can the heirs not argue that the deceased never was obligated to pay the addition and, therefore, his estate is not required to pay?

5 The addition is payment for value received; this makes it an enforceable obligation.

6 To add to the obligatory amount of the ketubah.

7 Old German law knew of a similar gift, called Morgengabe, "gift on the morning (after the nuptials)"; Latin dotalicium. This is the only reason accepted by the Babli, 56a.

8 The marriage which is called "acquisition".

9 I. e., if the husband should add to the ketubah sum while married, what makes that addition enforceable?

10 But stay married to him.

11 Mishnah Yebamot 14:2. In strict talmudic law, divorce is a unilateral act by the husband though in cases of spousal abuse the court can force a divorce by punishing the husband "until he says, I want [to divorce]". Otherwise, the wife cannot force a divorce.

12 Nobody says that she needs a court to get a divorce.

It was stated: Just as the husband decides, so the father decides; only that the husband transfers rights in writing but the father only by speech, restricted to those things that can be acquired by speech. What
is that? Gidul in the name of Rav: How much are you giving to your son? Such and such. And how much are you giving to your daughter? Such and such. When he preliminarily married her, the daughter acquired among the daughters. Rebbi Hiyya bar Joseph said, Gidul found something large and said something small! But it is as follows: How much are you giving to your son? Such and such. How much are you giving to your daughter? Such and such. When he preliminarily married her, the daughter acquired among the daughters and the son among the sons. Rebbi Ze'ira said, is that something small? Does he not acquire a wife on top of movables with one peruta’s worth? But nobody can acquire two wives with one peruta’s worth! But cannot a person acquire real estate and several movables with one peruta’s worth? For a person can acquire two pieces of real estate with one peruta’s worth, but nobody can acquire two wives with one peruta’s worth.

13 He may decide to give to his wife more than the legal minimum.
14 He decides to give his daughter a dowry. The daughters have a legal right to a dowry from the estate but not from the living father.
15 Dowries of daughters and endowments of sons are the only things that can be finalized by speech only; Babli 102a.
16 In the Babli, 102a: If the groom preliminarily married the bride immediately after the young couple was promised the money by their respective parents. The Yerushalmi has to be understood in this sense also.
17 By restricting the right of informal acquisition to the daughter.
18 This is the Babli’s formulation of Rav Gidul’s statement. "Among the daughters" means that if the father should die before the dowry was paid, its amount does not form part of the estate; the same holds for the son and the capital promised him.
19 The minimum amount a man has to give a woman for the preliminary marriage is one perutah (in the tradition of the House of Hillel; Mishnah Qiddusin 1:1). The perutah is
the smallest coin, about 2 g bronze, valued at $\frac{1}{144}$ or $\frac{1}{192}$ of a silver \textit{denar} ($\frac{1}{16}$ or $\frac{1}{8}$ of the smallest Roman coin, the \textit{as}). That coin disappeared with the Hasmonean kingdom; it remained as the smallest unit of value in legal theory. In rabbinic practice, \textit{Sulhan ‘Arukh Even Ha’ezer} 27:10, the value of a \textit{perutah} is half a grain of sterling silver (0.0324 g).

If the marriage of the couple is contracted by the respective parents, the groom acquires not only a wife but all that is promised him from both sides by giving one \textit{perutah}. Since the \textit{perutah} is the smallest unit of computation, the fact that one may acquire more than one thing with one \textit{perutah} is not trivial and needs to be spelled out.

20 Mishnah \textit{Qiddusin} 2:6. It is possible for a man to simultaneously preliminarily marry any number of women by giving something of value to one of them if she is empowered by the other women to receive the value on their behalf and if there is at least one \textit{perutah} for each of them.

21 Real estate can be acquired by money and everything can be acquired with real estate (Mishnah \textit{Qiddusin} 1:5); therefore, any number of things can be acquired by giving one \textit{perutah} for real estate (cf. also \textit{Peah}, Chapter 3, Notes 135 ff.).

Rebbi Abba bar Hiyya in the name of Rebbi Johanan: "How much are you giving to your son? Such and such. How much are you giving to
your daughter? Such and such. When he preliminarily married her, the
daughter acquired among the daughters and the son among the sons," but
only if it is a first marriage\textsuperscript{22}. This follows what Rebbi Hanania said: If
somebody definitively married off his son in a house, the latter acquired
the house, but only if it is a first marriage\textsuperscript{23}. Rebbi Hoshia said, she\textsuperscript{24}
acquired movables but did not acquire the house. Do they disagree?
Rebbi Jeremiah in the name of Rebbi Abbahu: Explain it that his father
used it for storage\textsuperscript{25}. Rebbi Hizqiah in the name of Rebbi Joshua ben
Levi: It is needed in case what was stored was borrowed from the
market. Rebbi Abbahu said, if he said it is loaned\textsuperscript{26}, he did not acquire it.
There came a case before Rebbi Jacob ben Rebbi Abun and he instructed
following Rebbi Abbahu. Rebbi Ze'ira said, essentialy this has no basis\textsuperscript{27}
but the rabbis build and add to it!

\textsuperscript{22} The waiver of the rules of
acquisition explained in the previous
paragraph applies only if it is the first
marriage for both parties.

\textsuperscript{23} In the Babli, \textit{Baba Batra} 144a,
only if (1) the son was an adult, (2)
marrying a virgin, (3) as his first wife,
and (4) is the first of his children to be
married. Since "house" usually means
"one-room house", the father gives the
house to be used by the pair as bridal
chamber, with them staying there alone
after all wedding guests have left.

\textsuperscript{24} Probably this sentence has to be
formulated in the masculine.

\textsuperscript{25} While the newlyweds were
living there alone, if the place was
used as storage for produce, that is
indication enough that it was intended
only as a temporary dwelling place and
R. Hanania will agree that the son did
not acquire the house with the wife.

\textsuperscript{26} If the father tells his son that
the house is a loan, not a gift, it is not a
gift.

\textsuperscript{27} Greek \textit{θεμελίωσις} "basis". The
acquisition of valuables by speech has
no basis in the rabbinic legal system;
evertheless, it is subject to detailed
rules. In the Babli, \textit{loc. cit.}, this is
called "practice lacking a reason".
You say that the father decides for his daughter; even if she is an adult. Let us hear from the following: The father decides for his daughter, but the mother does not decide for her daughter, nor the brother for his sister. Is there a difference about his sister whether she is an adolescent or an adult? So here, there is no difference whether she is an adolescent or an adult. Rebbi Abba from Carthage asked, even a third party? They said, even if she be an adult? A third party, let us hear from the following: The father decides for his daughter, but the mother does not decide for her daughter, nor the brother for his sister. So much more for the adult. Also in money matters it is so: Give your daughter to X and I shall give you so-and-so much. Buy this field and I shall give you so-and-so much.

28 Is the promised dowry for an adult daughter due on a verbal promise if the daughter is already an adult, no longer in the father’s power. Since the Babli (Note 23) requires the bride to be a virgin, it must deny the power of verbal acquisition to the adult daughter.

29 Reading of Alfassi (12:1,#384): “Neither the brother for his sister nor the mother for her daughter, even if she is underage.” Mother and brother can give only in the legal forms, by money, document, or handing over.

30 Since the baraita formulates no age criterion, there is none.
31 If mother and brother are disqualified from informal giving, so are third parties.

32 If close relatives other than the father are excluded, then third parties in general are excluded.

So is the Mishnah: "Because he did only add for the love of the first night, when he had intercourse with her." If he slept with her, divorced her, and took her back, the love of the first night is still there. If he slept with her, died, and she became available to the levir, the love of the first night is still there. Rebbi Jacob bar Aha, Rebbi Alexis in the name of Hizqiah: Practice follows Rebbi Eleazar ben Azariah who said, if they were divorced or widowed after a preliminary marriage she collects 200,
after the definitive marriage she collects everything. Rebbi Hanania said, practice follows Rebbi Eleazar ben Azariah. Rebbi Abbai\textsuperscript{36} said, they said to Rebbi Hanania, get outside to recite\textsuperscript{37}. Rebbi Jonah, Rebbi Ze'ira in the name of Rebbi Jonathan said, practice follows Rebbi Eleazar ben Azariah. Rebbi Yosa, Rebbi Ze'ira\textsuperscript{38} in the name of Rebbi Jonathan said, practice does not follow Rebbi Eleazar ben Azariah. Rebbi Yose said, we had a rule that Hizqiah and Rebbi Jonathan said the same thing. As it was stated\textsuperscript{39}: If somebody’s son went overseas and one heard that he died, [the father] went and wrote his property to somebody else, and after that, the son returned. The gift remains valid; Rebbi Simeon ben Menasia says that the gift is invalid since he would not have written the deed if he had known that his son was alive\textsuperscript{40}. And Rebbi Jacob bar Aha said, practice follows Rebbi Eleazar ben Azariah, and the reason of Rebbi Eleazar ben Azariah is the reason of Rebbi Simeon ben Menasia\textsuperscript{41}; and Rebbi Yannai said, they said to Rebbi Hanania, get outside to recite. And Rebbi Yose bar Ze'ira in the name of Rebbi Jonathan said, practice does not follow Rebbi Eleazar ben Azariah\textsuperscript{42}. An actual case was judged according to Rebbi Eleazar ben Azariah\textsuperscript{43}.

33 This is a paraphrase of the Mishnah, given also in the Babli, 56a. The problem of the Babli, whether the contract becomes valid by intercourse or by the possibility of intercourse, attributed there to the Galilean R. Abin, seems to have been decided in Galilee without great discussion. Cf. J. N. Epstein, תרכז לב inconsistently 2, p. 494, and Halakhah 2.

34 He took her back on the terms of the prior ketubah before he paid her for the divorce; he remains obligated for the entire sum.

35 Her claim to the entire sum is intact.

36 This name is unknown otherwise. The quote below and the parallel in the Babli (56a) show that one must read: R. Yannai.
In the Babli: Get out and recite your verse outside; a standard expression of disapproval.

The Amora quoted here cannot be R. Yose, the colleague of R. Jonah, who proves below that practice follows R. Eleazar ben Azariah. Therefore, the name quoted later, R. Yose bar Ze'ira (no relative of R. Ze'ira) seems to be the correct one, characterizing his statement as that of a very minor figure.

Tosephta 4:14, Babli Baba Batra 132a.

The deed is a will, executed now to become effective after the testator's death, and duly signed by two witnesses.

In the Babli, loc. cit., Rav Nahman, the great authority in matters of money and contracts, agrees.

His opinion is not counted against that of R. Jonah, head of the Academy.

The Babli agrees to the practice after an inconclusive debate, Ketubot 56a.

Mishnah 2: Rebbi Jehudah says, if he wants he writes for a virgin a contract of 200 [zuz] and she writes "I received 100 from you", or for a widow a mina and she writes "I received 50 from you." Rebbi Meir says, anyone who diminishes [the ketubah] of a virgin below 200 or that of a widow below 100 is engaging in whoring copulation.

Obviously the woman must agree to the smaller sum.

For him, the sums of 100/200 zuz are the absolute minimum. He admits that there are places where one does not write a ketubah document; this fact does not diminish the amount of ketubah due.
Halakhah 2: "Rebbi Jehudah says, if he wants he writes," etc. Does Rebbi Jehudah think that the minimum for a virgin is a mina and for a widow 50 zuz\(^{46}\)? Should he not write so from the start? But it must be a diminution afterwards\(^{47}\). Why can he not write that "I received from you such and such"? It was found that bar Kappara stated: "I received from you such and such\(^{48}\)." Rebbi Johanan said: Rebbi Jehudah formulated this only for the end; but at the start, even Rebbi Jehudah agrees\(^{47}\). What is the beginning and what is the end? The colleagues in the name of R. Johanan: Before he had intercourse\(^{49}\), and after he had intercourse. Rebbi Ze'ira in the name of R. Johanan: Before he took her in, and after he took her in\(^{50}\). If he did not have intercourse with her, divorced her, and took her in again; that is before and after\(^{51}\).

\(^{46}\) Since those are the amounts he settles for.

\(^{47}\) R. Jehudah cannot alter the established practice that at the time of the wedding the amounts must be 200/100 zuz. The Babli disagrees (57a) in the name of Bar Qappara.

\(^{48}\) Any amount is possible if the wife agrees.

\(^{49}\) This is the definition of beginning.

\(^{50}\) "Taking in" is the ceremony of the definitive marriage; in this second version the wife can write a partial
receipt even before they sleep together.

In a different setting, the Babli (57a) quotes these two possibilities and in addition "beginning" as before the definitive marriage and "end" as after sexual relations. This is theoretical since the Babli decides that practice follows R. Meir.

Since a woman divorced after the definitive marriage but before sexual relations can claim only a ketubah of a mina, it is at the end. But since she still is a virgin, it is the beginning. The definition of R. Ze'ira leads to the construction of a self-contradictory case; it should be rejected.

What is a wife and what is a concubine? Rebbi Meir says, a wife has a ketubah, a concubine has no ketubah. Rebbi Jehudah says, both have a ketubah. A wife has a ketubah and the ketubah stipulations; a concubine has a ketubah but no ketubah stipulations. Rav Jehudah in the name of Rav: These are the opinions of Rebbi Meir and Rebbi Jehudah. But the words of the Sages: "A man may marry a woman and stipulate with her not to feed her and not to provide for her. Not only that, but that she should feed and provide for him and teach him Torah." It happened that...
Rebbi Joshua, son of Rebbi Aqiba, married a woman and stipulated with her not to feed her and not to provide for her. Not only that, but that she should feed and provide for him and teach him Torah. But when years of famine came and they distributed the properties among themselves, she started complaining about him to the Sages of Israel. He said to them, for me she is trustworthy more than anybody. She told them, it is true that thus I stipulated with him. [They said to her], nothing comes after acquisition.

Since the institution of pilegeš does not exist in rabbinic practice, the question is of purely theoretical character, an inquiry into the essence of the biblical institution of legal concubine.

Since R. Meir in the Mishnah forbids any marriage without a full ketubah, he must hold that a concubine is not married. This is the position of the Babli, Sanhedrin 21a, articulated by Rav. (For rabbinic practice in Medieval Spain, cf. Menahem ben Aaron ben Zerah, Part 3, Chapter 2.)

Since he permits any modification of the financial aspects of marriage by written mutual consent, he also admits a situation in which a female of lower social rank signs away her rights.

The context requires this translation.

This Tosephta has two aspects. It implies that the institution of concubines has no place in rabbinic law but that the parties are free to decide on the material aspects of their marriage (while retaining the formal requirement of a ketubah of 200/100 zuz). It also recognizes that a woman of higher social standing can buy herself a husband on her terms. Cf. Tosefta ki-Fshutah, part 6, p. 244.

This may mean that she pays for him so he can go and study full time. However, R. Petahya of Regensburg reports that a daughter of the Gaon of Baghdad was a lecturer in his Academy, and the Yerushalmi looks approvingly on women’s Torah study; cf. Berakhot 3:3, Note 137.

It is not clear what this means; it
could be that her family’s property was distributed among the heirs and her part was no longer sufficient.

60 R. Aqiba’s son said to the Sages.

61 Inserted from the Tosephta, not in the Yerushalmi text.

62 Since there are contracts written for the future, such as the ketubah, the execution of the contract alone does not make it valid or irrevocable. For this it needs an act of acquisition, exemplified by Ruth 4:7, where the acquirer (Boaz) takes his sandal and lets the seller (the redeemer) move it in front of witnesses. (In the Tosephta, the expression is תְּכֻנָּה "contract"). After acquisition, a contract can only be modified by a written rider agreed to by the parties.

משנה ג: כעשרת שנהólica נושה וודאי מתכנתה בכל הפריסה Anat אםכה. וכסים שעונים כלשהי מכנתחי לאריש הפריס אחר עשה. ולאכלנה שслаשה הם. הגינא זמא לוא ניירא כאוכלות משלא (ואוכלות בתרומה). רבי טרפה אויר נוהגין ליה כל תרומת. רבי עקיבאanoi ממאה תרומת בהיל נפשיה תרומת.

Mishnah 3: One gives a virgin twelve months from when the husband requested to marry her to provide for herself\(^\text{63}\). Just as one gives to the woman so one gives to the man to provide for himself\(^\text{64}\). And to a widow thirty days\(^\text{65}\). If the time has come and they are not definitively married, they eat from his [property] and may eat heave\(^\text{66}\). Rebbi Tarphon says, one gives her everything in heave. Rebbi Aqiba said, half profane and half heave\(^\text{67}\).

63 To make her trousseau.

64 To look for a house and otherwise prepare for a family. The girl’s family cannot force the husband into a definitive marriage before 12 months after the date of the preliminary
marriage.

65 Since she already has a trousseau.

66 If the prospective husband is a Cohen, the preliminary marriage is the act of acquisition. Lev. 22:11, speaking about heave, reads: "If a Cohen buy a person with his money, that person may eat it." Since the preliminary marriage is formally an acquisition by money, the bride can eat heave as soon as the groom is required to feed her. Therefore, if the delay of the wedding is his fault, the girl's family can require that he feed her after the statutory 12 months delay, and he can fulfill his obligation by providing her with heave (for which he did not pay) and which she must eat in levitic purity in her father's house.

67 As the Halakhah explains, a woman regularly has periods of impurity. R. Aqiba requires the groom to provide her with profane food for her periods of impurity; R. Tarphon, in the interpretation of the Babli, thinks that she can sell the heave and buy profane food for the money. This is a very problematic proposition since heave, for which the only possible buyers are other Cohanim, cannot fetch a price commensurate with that of profane food.

Halakhah 3: "One gives a virgin twelve months." It was stated:

Adulthood in its time is twelve months. Rebbi Hila said, state: One gives an adult twelve months and one gives her a preliminary wedding, and
thirty days to a widow. We have stated: "One gives a virgin twelve months," and you say so? Rebbi Abin in the name of Rebbi Hila: After she was an adult for twelve months one gives her the preliminary marriage and afterwards thirty days. If she spent twelve months for the first and then the second one came. If he says to her, did you not wait already? She can say to him, I love you better than the young one. He is a widower, she is a virgin, and he wants to definitively marry. She can say, I love you better than a bachelor. If he is a bachelor and she a widow, and she wants to be definitively married. He can say, I love you better than a virgin. If she is underage and wants to grow up one listens to her.

68 Similar texts are Tosephta 5:1, Babli 57b. It is difficult to know what "in its time" means. The Tosephta reads: "Adulthood is equivalent to a request [for marriage], twelve months." This means the same as the explanation in the Babli: "If a girl became preliminarily married after she was an adult for 12 months, one gives her 30 days as for a widow," since she had ample time to sew her trousseau. One can read the Yerushalmi in the same sense, that the time of reaching adulthood is as good as an engagement.

69 How can the time given between definitive and preliminary marriages be 30 days when it is 12 months?

70 This is the explanation in the Babli (cf. Note 68) where also the tannaitic text is close to unintelligible.

71 And for some reason, she was not married but divorced or widowed.

72 She has everything prepared but never used her trousseau. Her new fiancé wants to marry immediately and notes that she already has everything. She can say that her trousseau was good enough for the first, to whom she never was definitively married, but for him it will not be good enough and she needs more time to prepare more things. She cannot be forced be marry immediately.

73 The same kind of argument as in the preceding case. In each case,
neither party can be sued for breach of contract before the time allotted in the Mishnah has expired.

74 While the underage girl can be preliminarily married to a man by her father without her being asked, she cannot be definitively married against her will while underage. The formulation of the Babli (57b) is: One does not contract for an underage girl to be definitively married while underage but one may contract for an underage girl to be definitively married when reaching adulthood. That formulation does not require the underage girl to ask for the delay.

When the time came and they were not definitively married, they eat from his property and [do not] eat heave. If the husbands died, they eat from his property and eat heave. 75 Samuel, the brother of Rebbi Berekhiah, said: Only if the time was up on a Wednesday 76. What if the time was up on Tuesday or Thursday? Rebbi Hama bar Uqba in the name of Rebbi Yose ben Rebbi Hanina and Levi: Both say that he is as if the Sages had jailed him. Rebbi Joshua ben Levi said, if the delay is his fault, she is fed from his property. 77

75 The word in parenthesis is a correction by the scribe himself, in the wrong gender and probably at the wrong place. The sentence is quoted by Tosafot, 58a, s. v. אייסאיל there it reads:הginas תמק לא נשאה אנ שמחה "When the time came and they were not definitively married or their husbands died, they eat from his property and eat heave." The next Mishnah will state that all this and the
connected difficulties are removed by later practice, that no woman married to a Cohen can eat from her husband's heave unless she is definitively married to him. The practice of the returnees from Babylonia probably should read: "When the time has come and they were not definitively married, they eat from his property and eat heave. If the husband died, they eat from his property and [do not] eat heave." The levir who is a Cohen cannot cause his prospective wife to eat heave since in contrast to his brother he has no preliminary marriage that could count as acquisition. A Cohen's widow can eat heave only if she remains a member of the priestly clan, i.e., if any descendants of her husband by her survive her husband's death. Vice versa, a Cohen's daughter married to an Israel can eat heave after her husband's death only if no descendants of her husband by her survive her husband's death.

76 "12 months after she was asked to marry" means that the virgin can request to be definitively married on the first Wednesday following the end of the twelfth month (Mishnah 1:1). Therefore, she cannot ask to be sustained by her husband before that Wednesday.

77 The court will uphold her claim to be paid back the money she spent on her own food only if the delay is the groom's fault.

It was stated78: "Rebbi Tarphon says, one gives all heave to her, for heave is found everywhere. Rebbi Aqiba says, half profane [food] and half heave, for women frequently are impure for holy things.79" It was stated: "Rabban Simeon ben Gamliel says, any place, where heave is mentioned, one gives her twice the corresponding amount of profane [food]80.
Tosephta 5:1, Babli 58a, speaking of a Cohen's wife. It is to be noted that the complete rules of purity were fully observed for almost 200 years after the destruction of the Temple; cf. Berakhot 1:1, Note 3. If heave cannot be eaten, it has to be given in minute amounts ("1 kernel of grain frees an entire silo") and be destroyed; no wife can be fed with it.

Since she is not yet definitively married she can be presumed not to be pregnant; then she is impure every month during her menstrual period. He agrees with R. Tarphon that she can be given all her food as heave but he holds that for her period of impurity she has to be given enough of the heave that she could sell a certain amount to Cohanim and buy profane food. Since there are few buyers, heave can be sold only at a large discount. Babylonian sources (Babli 58a and Tosephta) record a fourth opinion, by R. Jehudah ben Bathya of Nisibis, that she is given \( \frac{2}{3} \) of heave and \( \frac{1}{3} \) in profane food, which should be enough for her total sustenance.

Mishnah 4: The levir does not cause her to eat heave. If she spent six months for her husband and six months for the levir, or even all the time for the husband except for one day for the levir, or all the time for the levir except for one day for the husband, she cannot eat heave. That is the earlier Mishnah. The court in later times said that no woman eats heave unless she had been entering the bridal chamber.
81 Since he cannot acquire his sister-in-law otherwise than by sexual relations, after which she will be his wife in all respects, a woman engaged to be married by the levir is not part of his clan.

82 The moment a levir enters the picture, the earlier acquisition by the husband is suspended.

83 Both Mishnaiot 3 and 4.

84 The definitive marriage. For the original husband, no sexual act is required.

85 The widow of a childless man cannot remarry or be freed by her levir to remarry until three months have passed since her husband's death and it has been ascertained that she is not pregnant, Mishnah Yebamot 4:11. Therefore she can claim her sustenance from her husband's estate like any...
other widow. The same statement is in the Babli 107b, Yebamot 41b.

86 And he had agreed to marry his brother's widow in levirate, or to free her by halisah after the end of the three months' waiting period.

87 Since he had taken responsibility for his sister-in-law, he cannot avoid his financial responsibility by his absence.

88 In the interpretation of Tosaphot, 107b, s. v. 메reu, this rule does not apply if the levir is sick at the end of the three months and is unable to marry his sister-in-law at the first possible moment.

89 If she says that she has no desire to remarry, neither in levirate to her levir nor to any other man by halisah, the heirs have to pay indefinitely for her upkeep in her husband's house.

90 He says that he wants to marry his sister-in-law; therefore, he becomes responsible for her upkeep immediately at the end of the three months' waiting period.
"If she spent six months for her husband and six months for the levir, she cannot eat heave. Not only six months for the levir but even all the time for the levir except for one day, she cannot eat heave." The Mishna follows neither the earliest not the last Mishnah, but the intermediate development. As it was stated: First, they were saying that a preliminarily married woman, daughter of an Israel, could eat heave, for they were explaining: "If a Cohen acquires a person, acquisition by money," for what would be the difference between one who acquires a wife and one who acquires a slave girl? They changed, to say: after twelve months, when he becomes responsible for her upkeep. The court of the later ones said: A woman never eats heave before she enters the bridal chamber. "Already Rebbi Johanan ben Bagbag sent to Rebbi Jehudah ben Bathya at Nisibis: They say in your name that the preliminarily married daughter of an Israel eats heave. He sent back the following: I had been convinced that you are knowledgeable in the secrets of the Torah, but you do not even know the rules de minore ad majus! Since money can acquire a Gentile slave girl to permit her to eat heave, but she cannot be acquired by sexual relations to permit her to eat heave, whereas a wife can be acquired by sexual relations to permit her to eat heave, it is only logical that money can acquire a wife to permit her to eat heave! But what can I do? They said that no woman eats heave before she enters the bridal chamber," and they supported it by the verse: "Every pure person in your household shall eat it." Rebbi
Yudan said, that is an argument de minore ad majus that can be reversed! Because he could say to him, since a Gentile slave girl can be acquired by active possession\(^{100}\) to permit her to eat heave, what can you say about a wife who cannot be acquired by active possession? If an argument de minore ad majus can be reversed, the argument is invalid.

91 A similar statement is in Tosephta 5:1, where, however, the intermediate Mishnah is not mentioned. Cf. also Terumot 8:1, Note 9.


93 The slave girl, by becoming the property of a Jew, is presumed to become Jewish by immersion in a miqweh. Then she has to follow all Jewish laws valid for women (only that, being unable to marry, she is permitted guiltless unmarried sex with everybody except Jewish men). By manumission she would become a full Jewish woman. While a Gentile cannot become impure by biblical standards, the immersion in the ritual bath makes her subject to all rules of purity. If her owner is a Cohen, she may eat his sacred food if in the appropriate state of ritual purity.

A wife is usually acquired in preliminary marriage, as far as criminal law is concerned, by a gift of money or its equivalent. The argument is shaky since one should mention that if the wife is acquired by a matrimonial contract or by sexual relations without a gift of money (Mishnah Qiddushin 1:1), there would be no reason to permit heave to the Israel woman preliminarily married to a Cohen. Nowhere do we find that the way the preliminary marriage is effected makes any difference.

94 Tosephta 5:1. However, the same Tosephta (and the Yerushalmi. Yebamot 4:12, Note197) mentions that in a famine, R. Tarphon (a Cohen) preliminarily married 300 women to give them access to sanctified food. This means that the "later Mishnah" has to be dated some time after the destruction of the Temple when, probably, the importance of heave for the income of Cohanim was rapidly diminishing.

95 Tosephta 5:1.

96 The leader of Babylonian Jewry in the first half of the 2nd Century C.E.
Being Gentile, she could be married to a Gentile by sexual relations. But sexual relations with her are forbidden to a Jew and, therefore, she cannot be acquired by a Jew through sexual relations either as a slave or a wife.

If preliminary and definitive marriage are enacted together in the bridal chamber without any gift of money, the woman is a wife and entitled to eat her husband's food by biblical standards.

Num. 18:11. The wife is part of the household only after the definitive marriage. The argument is rejected in Sifry Num. 117, since in v. 13 a similar restriction is noted, "every pure person in your household shall eat it," and it is a generally accepted hermeneutical principle that "two consecutive restrictions mean a relaxation", in this case, that the wife may eat heave from the moment of the preliminary marriage. Therefore, the restriction to definitively married wives is purely rabbinical.

The word נפש "grasping" can have two very different meanings. In legal arguments, it denotes a general assumption which generates *prima facie* evidence. In the law of real estate and slaves, it denotes the exercise of possession. For example, if an intestate person dies without heirs (e.g., a proselyte who failed to start a Jewish family), his property becomes ownerless and is up for grabs. Therefore, if somebody goes to the ownerless real estate and acts as proprietor, fencing in or harvesting a field or painting a house, he has acquired the piece of real estate by his action. Similarly, if somebody takes an ownerless slave from the estate and tells him to work on his orders, the work of the slave makes him the property of the person giving the orders. The work can be quite symbolical, such as carrying a stone for a short stretch, to qualify as נפש and if the acquirer is a Cohen, the slave is qualified to eat heave. Therefore, the means of acquisition of slave girls and wives are only partially comparable; the ways of acquisition of a slave are not subordinated to those for a wife.
Halakhah 5: "If somebody dedicates his wife's earnings," etc. Rebbi Meir says, it is sanctified as his property. Rebbi Johanan the Alexandrian says, it is profane as his property. Rebbi Simeon ben Lakish said, they disagree about the excess over five tetradrachmas. He
explains it in the case of one who supports his wife with food but does not give her an obolus for her needs, as we stated: “If he does not give her an obolus for her needs, what she earns is hers”. Rebbi Johanan said, they disagree about the excess left after [the husband’s] death; for he explains it if he does not support her with food. But if he supports her with food, everybody agrees that it became dedicated. Rebbi Ze’ira said, what one states there supports Rebbi Johanan: ”When was this said? If he does not feed her. But if he feeds her, everybody agrees that it was sanctified.” But is not everything a wife has subject to the husband’s claim to its yield?

104 From the text in Nedarim and the Mishnah, missing here.
105 Rebbi Meir holds that a man means what he says (Nazir 2:1, 51d l. 16; Babli Arakhin 5a). Since he must agree with R. Johanan the Alexandrian and everybody else that nobody can dedicate anything that is not under his control, he will interpret the husband’s vow not that he dedicates the future earnings of his wife but he dedicates her hands for what they will produce in the future. Since the hands do exist and the wife is required to work for him, the vow is valid.
106 Nobody can dedicate anything that is not under his control; the husband can appropriate his wife’s work for himself as profane property.
107 The following text is from Nedarim 11:4, Notes 50-53. In the Babli, 57b, different but similarly sounding explanations are given in the names of the Babylonians Rav and Samuel.
108 End of the parallel in Nedarim.
109 In Babylonia. The baraita is not in the Babli.
110 In the absence of a written contract to the contrary, the husband is the administrator of the wife’s property; he is paid for his efforts by the cash yield of the property (Mishnah 6:1). Therefore, while he has no property rights to his wife’s excess earnings, by the ketubah he has a contractual interest in the increase of property generated by these earnings since such an increase could increase the cash yield which will be his.
Therefore, he should be an interested party and his vow should be recognized by both R. Meir and R. Johanan the Alexandrian without restrictions. This argument is too far-fetched to merit an answer.

Rebbi Samuel ben Rav Isaac said, [the status] of her earnings is between them. Rebbi Meir says, the earnings are susceptible to be dedicated from the first moment; Rebbi Johanan the Alexandrian says, the earnings are not susceptible to be dedicated from the first moment. "What I shall inherit from my father (today) is sold to you, what I shall catch today in my trap is sold to you; his words are valid." Rebbi Abbahu in the name of Rebbi Johanan: If he takes out a loan for his father's burial shrouds, if his father was sick or in mortal danger. Rebbi Abbahu in the name of Rebbi Johanan: Only if the trap was set. And Rebbi Abbahu said in the name of Rebbi Johanan: But as a dedication it would not be sanctified. Why? Because of the disagreement of Rebbi Meir and Rebbi Johanan the Alexandrian. One could say, there is a difference about the dedication,
because the trap is not usually successful\(^\text{117}\). Rebbi Yose said to Rebbi Jacob bar Aha: Do you remember that both you and Rebbi Jeremiah were saying in the name of Rebbi Simeon ben Laqish: Who stated about the dedication, because the trap is not usually successful? The disagreement of Rebbi Meir and Rebbi Johanan the Alexandrian! Rebbi Simeon ben Laqish has many a thought\(^\text{118}\).

\(^{111}\) A corrector's addition; it is found in all parallel texts, where it is necessary, but it is not clear whether the word is necessary here.

\(^{112}\) They cannot be dedicated before they exist.

\(^{113}\) Tosephta *Nedarim* 6:7, Babli *Baba Meši'a* 16a, *Mekhilta d'R. Simeon bar Iohai* p. 212. In the last source, the text is a commentary on *Ex. 22:24*, which is read as: "If you extend a loan of what you have with you to a poor person," meaning that transactions cannot validly be made about nonexisting things (explanation by J. N. Epstein).

\(^{114}\) The transaction should be invalid as long as his father is still alive. The Babli, *loc. cit.*, concurs that this is a rabbinic exemption from the rules if necessary for his father's honor.

\(^{115}\) The selling of the expected catch is accepted as regular trading practice once the trap is set because the probability that there will be a catch is high. In the Babli, *Baba Meši'a* 16a/b, the transaction is validated only on an emergency basis, if otherwise the catcher would have nothing to eat. It seems that the Tosephta follows the Yerushalmi.

\(^{116}\) This fixes practice following R. Johanan the Alexandrian, that futures contracts in general cannot be enforced. In the Babli, 59a, this is an explicit statement.

\(^{117}\) Even R. Meir will agree that a contract of which both parties assume that it will not be realized is invalid. The technical term for such a contract is נַעְלוֹת (Since few people used to marry with the idea that the marriage would end in divorce, some rabbinic authorities hold that pre-nuptial agreements about the consequences of a divorce are asmakhta: but cf. Note 226.)

\(^{118}\) The explanation that a
dedication of future earnings is invalid as *asmakhta* contradicts R. Simeon ben Laqish’s explanation of the Mishnah, which describes a setting in which the husband has lost his rights to his wife’s earnings. Why did he not explain the Mishnah simply because one cannot dedicate future earnings, the explanation accepted in the Babli? The answer is that he would agree to the Babli’s explanation, except that he has another one in addition. Since the Mishnah can be explained in several ways consistent with his legal doctrines, he may choose different (parallel, not contradictory) doctrines in different situations.

Rebbi Jeremiah asked: If somebody dedicated his slave’s earnings and the latter was a hunter, what are the rules? Let us hear from the following: If somebody dedicates his slave, that one is dedicated but his earnings are profane. His [slave’s] earnings, he is profane and his earnings are dedicated. Rebbi Johanan said, if somebody cuts off the hands of another person’s slave, that one’s owner collects the payments for his injuries, his pain, his shame, and impairment but he shall go out and subsist on alms. Did we not state: If somebody dedicates his slave, that
one takes out his provisions but the remainder is dedicated. Rebbi Abba bar Mamal said, nobody thinks that he should die more than for slaves. Did not Rebbi Johanan say, if somebody cuts off the hands of another person's slave, that one's owner collects the payments for his damages, his pain, his shame, and impairment but he shall go out and subsist on alms. The rabbis of Caesarea in the name of Rebbi Aha: Jews are obligated to care for amputees, even slaves. Rebbi Johanan gave to his slave from everything he himself ate and quoted for this: "Did not his Maker make me in the belly and formed me likewise in a womb?"

If the owner expects the slave to feed himself from his catch.

The slave becomes Temple property, but he can use anything he catches or earns for himself without stealing dedicated property.

In this version, the slave cannot eat anything he catches because that immediately becomes Temple property, any profane use of which is larceny. The Tanna of this baraita seems to hold that an owner is not obligated to feed his slave.

This sentence is out of place and belongs to the discussion below.

Even though the slave is not dedicated, since the owner is obligated to feed his slave one automatically interprets his dedication to mean that only the excess earnings over the slave's minimal needs are dedicated.

It remains open whether there is an obligation on the part of the owner to feed his slave but in any case, nobody thinks that the slave should suffer king Midas's fate that he could not eat anything that he made or earned.

The text is defective. The original text must have been similar to the parallel in Baba Qama 8:4 from a different editorial team: "Rebbi Aha said, Jews are more obligated to provide for free persons than for slaves."

In Baba Qama 8:4 one adds: His medical costs. This means that the owner presents the bill for medical costs to the person causing the injury.

In Baba Qama: "R. Aha said,
Jews are more obligated to provide for amputated slaves than for whole ones."

On that statement then comes the objection that R. Johanan shares his meat and wine with his slave.

129 His deeds do not follow his words that the owner has the right to let his slave be fed from charity. In Baba Qama, the answer is given that his rule is legal, his behavior moral.

130 Job 31:15, speaking of Job's slaves.

Mishnah 6: These are the kinds of work a woman does for her husband: She grinds flour, bakes, launders, nurses her baby, makes his bed, and spins wool. If she brought a slave girl with her, she does not have to grind flour, bake, and launder. Two, she does not have to nurse her baby. Three, she does not have to make his bed or spin wool. Four, she sits in a chair. Rebbi Eliezer says, even if she brought him a hundred slave girls, he forces her to spin wool because indolence causes immorality.

131 The amount is determined in Mishnah 13.

132 As her dowry.
Halakhah 6: "These are the kinds of work a woman does for her husband," etc. It was stated\(^{134}\): Seven main labors did they enumerate; the rest the Sages did not need to specify\(^{135}\).

134 Tosephta 5:4. wine, a wife does even if otherwise she
135 The Babli (61a) notes that the is "sitting in a chair".

Additional services, such as mixing the

"She nurses her baby." Rebbi Haggai said, is says only "her baby," therefore not twins\(^ {136}\). Why does it say "her baby"? As it was stated\(^ {137}\): "A man cannot force his wife to nurse another man’s child, nor can a woman force her husband to let her nurse another woman’s child\(^ {138}\). If she made a vow not to nurse her baby, the House of Shammai say that one removes the breast nipple from his mouth\(^ {139}\), but the House of Hillel

\(^{134}\) Tosephta 5:4.

\(^{135}\) The Babli (61a) notes that the is "sitting in a chair".

\(^{136}\) "She nurses her baby." Rebbi Haggai said, is says only "her baby," therefore not twins.

\(^{137}\) Why does it say "her baby"? As it was stated:

"A man cannot force his wife to nurse another man’s child, nor can a woman force her husband to let her nurse another woman’s child.

\(^{138}\) If she made a vow not to nurse her baby, the House of Shammai say that one removes the breast nipple from his mouth, but the House of Hillel
say, one forces her\(^{140}\). If she was divorced\(^{141}\), one cannot force her if [the baby] is not used to her, but if he is used to her one forces her\(^{142}\) and pays her wages to nurse her baby." How old is the baby if he can be presumed to know her? Rebbi Jeremiah\(^{143}\) in the name of Rav: Three months. But Rebbi Ze'ira was staring at him\(^{144}\). He asked him, why are you staring at me? Should I say to you following Samuel, since Samuel said, three days\(^{145}\)? Samuel follows his opinion, since Samuel said, I recognized\(^{146}\) the midwives who delivered me. Rebbi Joshua ben Levi said, I recognized the circumciser who circumcised me. Rebbi Johanan said, I recognized the women who kept my mother company.

136 The singular implies that the husband has to hire a wet-nurse for the second child. Alfassi (§274) quotes this rule in the name of R. Hanina.
137 Tosephta 5:5, in a different order; a partial quote in the Babli, 59b.
138 To earn money.
139 The reason of the House of Shammai is not stated. The Babli, 59b, conjectures that the vow is one "between her and him" and, therefore, it would be in the husband's power to annul the vow (cf. Nedarim Chapter 10). If he does not annul his wife's vow, he has to pay the wet-nurse.
140 They always hold that nobody can get rid of his obligations by a vow. The vow does not have to be annulled.
141 The obligation to nurse her baby ends with the divorce.
142 In Tosephta Niddah 2:5, the formulation is: If the baby recognizes his mother one may not give him to a wet-nurse since that would be a danger to his life.
143 In the Babli, this is attributed to Rav Jeremiah bar Abba, of Rav's Academy. Probably something is missing from the text since R. Jeremiah cannot really have addressed his teacher R. Ze'ira as "you".
144 "Staring at somebody" is always a sign of disapproval.
143 In the Babli, 60a, Samuel is quoted as refusing to set a time limit but to put the mother in a line-up with other women and see whether the baby recognizes her.
144 As a newborn.
It was stated\(^{147}\): A baby sucks continuously until 24 months; after that he is as if an unclean creature would suckle, the words of Rebbi Eliezer. But Rebbi Joshua says, he suckles continuously even four or five years. If he stopped, one does not return him. How long? Rebbi Jacob bar Aha, Rebbi Jeremiah\(^{148}\) in the name of Rav: From hour to hour\(^{149}\). Rebbi Hizqiah, Rebbi Abbahu in the name of Rebbi Joshua ben Levi: Three days from hour to hour\(^{150}\). It was stated: From hour to hour. Rebbi Hizqiyah, Rav: When has this been said? If he stopped while being healthy. But if he stopped because of sickness, one does return him. When there was no danger. But if it was because of danger, one returns him even after a number of days\(^{151}\).

\(^{147}\) Tosephta *Niddah* 2:3, Babli 60a. In both these texts, one reads: If he stopped *after 24 months*, one does not return him. A parallel text in *Yerushalmi Niddah* 1:5, with a different tradition of names.

\(^{148}\) This reading is impossible since R. Jacob bar Aha is one generation before R. Jeremiah. One must read "Rav Jeremiah", the colleague and student of Rav.

\(^{149}\) From a certain hour one day to the same hour the next day, i.e., 24 hours.

\(^{150}\) In the Babli, 60a, this is attributed to the school of Samuel.
151 This argument is not mentioned assumed to agree, in the Babli which, therefore, can be

"If she brought". Rebbi Samuel bar Rav Isaac said, not only if she brought but even if she could have brought\textsuperscript{152}. As it was stated: His wife ascends with him but does not descend with him\textsuperscript{153}; a widow and her children descend but do not ascend\textsuperscript{154}; workers ascend but do not descend\textsuperscript{155}. The daughter neither ascends nor descends. Rebbi Hiyya bar Jehudah said, because one cares for the slave girl\textsuperscript{156}. Rebbi Abun said, Because these labors are degrading, they are referred to as the slave girl's. Rebbi Judah ben Rebbi Abun said, because usually a woman does not sit aimlessly in her house\textsuperscript{157}. Rav Huna said, even if she brought him 100 slave girls, he can force her to serve him with particular attention\textsuperscript{158}. 
What are services with particular attention? She rubs his body, washes his feet, and mixes him the cup\textsuperscript{159}. Why? Because she is obligated to do that, or because it is not appropriate to use a slave girl for these\textsuperscript{160}? If you say because it is not appropriate to use a slave girl for these, here she brought him slaves\textsuperscript{161}! It must be because she is obligated to do that. Rebbi Eudaimon in Sepphoris asked before Rebbi Mana: Is it not reasonable because she is obligated to do that? He said to him, that is what I am always thinking.

152 If her dowry is large enough to pay for a slave girl. In the Babli, 61a, this is a statement of R. Samuel ben Nahmani.

153 This clause is also in the Babli (48a, 61a). It means that if the material circumstances of the husband improve, he has to provide for his wife according to his social standing; but if he loses money, he cannot reduce her standard of living below the level he provided for her at the time of the wedding.

154 They are supported from the estate and only have a claim to the lesser amount of the yield of the estate at the time of the husband's death or now. If the heirs improve the yield of the estate, the improvement is theirs (assuming zero inflation). Similarly, the claim of the daughters to a dowry is limited to 10\% of the estate at the time of the father's death.

155 The standard contract for journeymen stipulates that the employer must feed the workers (Mishnah \textit{Baba Meši'a} 7:1); he cannot reduce his contribution below the standard accepted at the beginning of the contract.

156 That she should not be overworked. It is difficult to see why the slave girl should be overworked with three types of work but the wife not with seven. In the Babli, 61a, this question is asked and the answer is that the slave girl also has to care for guests.

157 The other things, except grinding flour, baking, and washing, the wife does anyhow.

158 A similar statement is in the Babli, 61a.

159 In the Babli, "she mixes his cup,
makes his bed, and washes his face and feet."

160 These are intimate services; if a slave girl would perform those, the husband would start to sleep with her.

161 The Mishnah does not mention that she could have brought a male slave as dowry who could serve as the husband's valet, to free the wife from personal services.

It was stated so: He forces her to work with wool, but not with flax since that causes bad breath and broadens the lips.

162 Following R. Eliezer.

163 In Baba Meṣi’a 1:5, it is stated in more general terms: He can force her to work with wool but not anything else (unless stipulated otherwise in the marriage contract) since the terms of a contractual relationship cannot be changed unilaterally. For the damage that spinning flax does to the lips, cf. the Brothers Grimm’s fairy tale, die drei Spinnerinnen.

Mishnah 7: Rabban Simeon ben Gamliel says, also a man who by a vow forbids his wife to work must divorce her and pay her ketubah since idleness induces mental illness.
Mishnah 8: If somebody by a vow bars his wife from sexual intercourse, the House of Shammai say two weeks, the House of Hillel say one week\textsuperscript{165}. Students can go to study Torah for thirty days without permission\textsuperscript{166}; journeymen one week\textsuperscript{167}. The period mentioned in the Torah\textsuperscript{168}: People who do not have to work every day\textsuperscript{169}, journeymen twice a week, donkey drivers once a week, camel drivers once in thirty days, sailors once in three months, the words of Rebbi Eliezer.

164 Since the divorce is his fault.
165 If he does not have his vow dissolved by that time, the wife can go to court and force a divorce with full payment of the ketubah.
166 Without asking his wife's permission if she married him knowing he was a student.
167 They can hire themselves out to work at another place where they cannot return to their homes every night.
168 Ex. 21:10, where it is spelled out that a man can take a second wife only if he does not reduce the amount of sexual activity with his first wife.
169 If a man marries a woman telling her that he is rich enough not to have to work, he is obligated to sleep with her every night and cannot later reduce this amount without the wife's consent. Similarly, a donkey driver engaged in local traffic, who is home every week, cannot change his profession to camel driver engaged in long distance caravan traffic without his wife's consent.

Halakhah 8: "If somebody by a vow bars his wife from sexual intercourse," etc. \textsuperscript{170}The House of Shammai say, two weeks as after the birth of a girl\textsuperscript{171}. But the House of Hillel say one\textsuperscript{172} week, as after the birth of a boy\textsuperscript{173} or the days of her menstruation\textsuperscript{174}.
170 Tosephta 5:6.
171 After the birth of a girl, the mother is forbidden intercourse for two weeks, Lev. 12:5. Since this is a normal occurrence in a marriage, the wife can be assumed to be able to live for two weeks without intercourse.
172 The masculine рнх refers to "week", the intended meaning of ηπάτα (30a line 73).
173 Lev. 12:2.
174 Lev. 12:2, 15:19. Since a forced abstinence of seven days is routine in the marriage, it is reasonable to ask the wife to wait for 7 days before giving her the right to sue in court (the Babli's interpretation of the House of Hillel, 61b).

"Students can go to study Torah for thirty days without their wives' permission." Therefore, with permission even longer176. Rebbi Samuel bar Nahman in the name of Rebbi Johanan: "He sent them to the Libanon, ten thousand per month.177 Rebbi Abin said, the Holy One, praise to Him, preferred being fruitful and multiplying over the Temple. What is the reason? "One month they would be in Libanon, two months each in his house."178 Rav said, "the one entering and the one leaving, month for month for all months of the year.179"

175 Addition to the Mishnah text.
176 The Babli agrees, 61b/62a.
177 JK. 5:28.
178 The Babli, 62a, is explicit that R. Johanan requires a student who leaves his house for study to make up for it and spend double the time with his wife.
179 1Chr. 27:1, speaking of all watches in the service of the king. The interpretation is that each watch served for six months each year, one
month at a time. Rav will require a student to spend only one month with his wife for every month away. In the Babli, R. Johanan rejects this argument since the king’s servants were well paid and absences for money-making purposes follow different rules.

Here you say, one week. But there, you say, twice a week. Bar Qappara stated: "Journeymen can hire themselves out without their wives’ permission for one week."  

180 The Mishnah permits journeymen to absent themselves for one week but requires them to sleep with their wives twice a week. How can the two statements be reconciled? 181 The agreement of the wife is taken for granted since she also lives off her husband’s earnings. But if he is at home, she has the right to expect that he sleep with her twice a week.
"The period mentioned in the Torah." Some Tannaim state: רָאוּפַּשִּׁים that is intercourse; קְנֵי that is food. Some Tannaim state: קְנֵי that is intercourse; רָאוּפַּשִּׁים that is food. He who said רָאוּפַּשִּׁים is intercourse: "No person to the רָאוּפַּשִּׁים of his flesh;" קְנֵי is food: "He fed you and made you hunger. He who said קְנֵי is food: "He let rain on them רָאוּפַּשִּׁים like dust;" קְנֵי that is intercourse, "that you should not deprive my daughters," that refers to intercourse. Rebbi Eliezer ben Jacob explains the verse, "her flesh her garment", that her garment should fit her flesh, that he should not give a young woman clothes of an old woman nor an old woman clothes of a young one. "Her garment her season", that he should not give summer clothing for the rainy season nor that for the rainy season in summer. From where does he get food? Since he is not permitted to withhold from her things that are not necessities of life, not so much more things that are necessities of life! From where does he get the obligation of periodic intercourse? Since he may not withhold from her things which do not constitute the main reason for marriage, so certainly he may not withhold the things which constitute the main reason for marriage!

182 In Mekhilta dR. Ismael (ed. Horovitz-Rabin p. 259), the first opinion is attributed to Rebbi, the second to R. Joshua; the explanation attributed here to R. Eliezer ben Jacob is there in the name of R. Jonathan. In the Babli, 47b, the first opinion is attributed to R. Eleazar or R. Eliezer, the second is anonymous; the midrash of R. Eliezer ben Jacob is given in his name, 48a. Mekhilta dR. Simeon ben Iohai follows the attributions of the Yerushalmi (pp. 167-168).

183 The problem is Ex. 21:9 which states that a man who takes an additional wife may not diminish קְנֵי, מָשֵׁר, and קְנֵי of his first wife. The meaning of קְנֵי "garment, covering" is clear but the meaning of the other two words is a matter of controversy.
means "flesh" but, as the verses quoted in support of different meanings show, it means both "meat" and "relative, one’s flesh and blood." Note also in Accadic Šērum "flesh", Š'r (of a different etymology) "to go towards; to have sexual relations". The root שאר II has no connection with the usual שאר "to remain, be a remainder" (Arabic لممار).

The problem with שאר is that the verb שאר "to humiliate, inflict pain" in sexual context always means "to rape, to have forced intercourse" but in the verse here it has a positive meaning, the intercourse to which the wife is entitled. [Note that in Arabic, ضع means both "produce plants" (said of the earth) and "to be humiliated, captive" (from this étymologie "Moslem women").]

From the positive meaning of שאר in the verse comes the rabbinic-modern Hebrew שאר "season", used in the midrash of R. Eliezer ben Jacob.

184 Lev. 18:6: "No person to the שאר of his flesh should come close, to uncover nakedness."

185 Deut. 8:3, usually translated as: "He chastised you and made you hunger before He fed you with the manna that neither you nor your fathers knew."

186 Ps. 78:27.

187 Gen. 31:50. "That you should not deprive my daughters nor take wives in addition to my daughters." In Gen. rabba 74(12), this verse is explained that (a) Bilha and Silpa also were Laban’s daughters from slave women and (b) that Laban made Jacob swear that he would not deprive his daughters of intercourse during their lifetime nor take additional wives after their deaths.

188 He denies that there is a biblical command which fixes minimal amounts of sexual attention due wives. He explains Ex. 21:9 as exhortation rather than prescription, reading "her flesh, her garment, and her season he should not diminish".

189 How can he establish an obligation of the husband to feed his wife?

190 A new garment at least twice a year.
Rebbi Eliezer inferred from the gift which Jacob had sent to his brother Esaw, for he sent him according to copulations. "200 she-goats and 20 he-goats," one for ten; "200 ewes and 20 rams," one for ten. "Nursing camels and their sons 30." Rebbi Berekhiah said, because it is decent in his sexual behavior did the verse not publicize. "40 cows and ten bulls," one for four since they are tired; "20 she-donkeys and ten he-donkeys," one for two since they are tired.

Rebbi Jeremiah asked: Is it reasonable to consider scholars like those who do not work? Rebbi Mana said, would it not be more reasonable to compare them to sailors since they exert themselves harder? Rav said, "she eats with him every Friday night," in clean language.

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191 His list of prescribed minimal frequencies of intercourse is based on the occupation of the male. The same argument is given in Gen. rabba 76(6); it is reproduced in Rashi's Commentary to Gen. 32:15-16.

192 One male can satisfy 10 females since it has nothing to do except grazing and copulating.

193 In Gen. rabba 76(6), R. Berekhiah in the name of Rabban Simeon ben Gamliel implies that 30 males (ד'נ"ס "builders") accompanied the 30 females.

194 Cattle was used extensively for ploughing and drawing agricultural implements.
196 Who have to sleep with their wives only once every six months.

197 Mishnah 5:13. A man who does not live with his wife but supports her financially through an intermediary nevertheless has to sleep with her every Friday night (unless he actually is away as in the cases enumerated in the Mishnah). Therefore, the scholar has to sleep with his wife at least every Friday night.

198 "Eating" is a common metaphor for sexual relations; cf. Gen. 39:6, Prov. 30:20.

Mishnah 9: If a woman revolts against her husband, one reduces her ketubah by seven denars a week; Rebbi Jehudah says, by seven tropaikes.

Mishnah 10: For how long does one reduce? Up to the amount of her ketubah. Rebbi Yose says, he continues to reduce, for maybe an inheritance will come to her from outside and he would be able to collect from it. Similarly, if the husband revolts against his wife, one adds to her ketubah three denars a week; Rebbi Jehudah says three tropaikes.

199 While one could read the Mishnah as speaking of a woman refusing sexual relations with her husband. (This remains a matter of dispute in the Babli, 63a/b.)

200 The court, following the husband's complaint.
Late classical Greek τροπαίκον, τό, "a half denarius" defined in the Babli (64a) as στατήρ (name introduced by Alexander the Great for a gold coin but used in later antiquity for silver didrachmas of varying standards, i.e., half a sela.) The name τροπαίκον was given to coins depicting a trophy (τροπαίον); in the Roman Empire it was identified with the victoriatus (nummus), a small silver coin stamped with the image of Victoria, goddess of victory; declared by Varro to be equal to the quinarius argenteus, one-half of a denarius argenteus. This is the meaning used here.

Then the court will force the husband to divorce his wife without payment of a ketubah.

The husband cannot be forced to divorce his wife.

Halakhah 10: "For how long does one reduce? Up to the amount of her ketubah", etc. 204 Here you say seven, and there you say three? Rebbi Yose ben Rebbi Hanina said, since she is obligated for seven205, he deducts seven; he, since he is obligated for three206, has to add three. Think of it,
if she brought him slaves, she is not obligated for anything! Think of it, if he stipulated [that he is not obligated for] either še‘ēr, or dress, or ‘onāh, he is not obligated for anything! What is it? Following Rebbi Johanan, that the suffering of the male is greater than that of the female. That is what is written: "It was when she had nagged him day after day and pressured him." What means "and pressured him"? Rebbi Isaac ben Eleazar said, that she slipped away from under him. "He felt badly, to die". He felt badly, ready to die, but she did not feel badly, to die. But some say that she fulfilled her needs with others. So much more she should have wanted, since Rebbi Nahman said in the name of Rebbi Nahman: This human limb, if you starved it you satisfied it, if you satisfied it you starved it.

204 A shortened version of the paragraph is in Gen. rabba 52(13), with most of the attribution of names omitted.
205 The 7 types of work enumerated in Mishnah 6.
206 The obligations enumerated in Ex. 21:9, whatever they mean.
207 While in general we hold (following R. Jehudah) that in money matters biblical rules are only default options which can be changed or eliminated by contract, in non-monetary matters one usually holds that biblical rules are prescriptive and cannot be abolished. The Yerushalmi here considers sexual intercourse a money matter since the Mishnah gives monetary value to the refusal of intercourse. This argument, which is against all principles of the Babli in the usual rabbinic interpretation, will be important for the last statement of the Halakha.

In any case, the arguments given here show that the explanation cannot be the correct one (even though it is quoted by Tosaphot, 63a s. v. הַיָּאוּר, as the opinion of the Yerushalmi. Tosaphot do not attribute the statement to R. Yose ben R. Hanina, even though the latter is also quoted in the Babli, 63a, representing the opinion that "revolting" refers to any of the mutual
obligations in marriage). One must agree that the Mishnah speaks only of the case that one partner refuses sexual activity with the other. The Babli leaves the question open as to which interpretation is the correct one.

208 If deprived of sexual fulfillment.

209 Jud. 16:16, speaking of Delilah and Simson.

210 In the Babli, Sotah 9b, in a slightly more graphic description, "R. Isaac in the name of Rebbi Ammi" or something similar.

211 This is a rather weak argument, that Delilah could not have slept with other men since then she would also have wanted to sleep more with Simson, in view of the enormous sum of money promised her by the Philistine princes. The argument of R. Nahman in the name of a different R. Nahman is in the Babli (Sanhedrin 107a) in the name of R. Jehudah.

Following Rebbi Eliezer\textsuperscript{212}, how far can he deduct? Let us hear from the following\textsuperscript{213}: Rebbi Hiyya stated: One writes a bill of rebellion for the husband\textsuperscript{214} of a preliminarily married woman\textsuperscript{215}, or a sick one, a
menstruating woman or one who is waiting for her levir. Where do we hold? If she rebelled against him when she was having her period, the Torah made her rebel against him\textsuperscript{216}\textsuperscript{216} But we must hold that she rebelled against him before she had her period and now she has it. At that moment she would not be able to rebel but you say one writes, therefore one also deducts\textsuperscript{217} From where does one deduct? From the additions to her ketubah\textsuperscript{218}. Let us hear from the following: “Rebbi Yose says, he continues to reduce, for maybe an inheritance will come to her from outside and he would be able to collect from it.” He mentioned only inheritance, which is infrequent. That means he deducts from the additions to he ketubah. \textsuperscript{219}Rebbi Ze’ira in the name of Samuel: One writes a bill of rebellion for a preliminarily married woman, but one does not write a bill of rebellion for one who is waiting for her levir\textsuperscript{220}. But did not Rebbi Hiyya state that one writes a bill of rebellion on the ketubah of a menstruating woman or a sick one, a preliminarily married woman or one who is waiting for her levir? There, according to the first Mishnah, here according to the later Mishnah\textsuperscript{221}. Rebbi Yose bar Abun said, even if you say according to the later Mishnah, \textsuperscript{222}“the later Court [instituted that] one warns her for four weeks, then she writes a receipt for her ketubah and leaves\textsuperscript{223}.”

\textsuperscript{212} Who in the Mishnah held the wife of a sailor to one sex act every six months. If she refuses sex with her husband, does she lose 7 denars every week or every six months?
\textsuperscript{213} In a somewhat different formulation, Tosephta 5:7, Babli 63a
\textsuperscript{214} The expression \textit{על בעל} is uncommon. Although it can be explained as “for her husband’s benefit”, probably it is a copyist’s error for \textit{על חותמה} mentioned in the quote of the Tosephta later in this paragraph.
215 Who now is forbidden to sleep with her husband but who made it clear that she will refuse sex with him when definitely married. The Babli, 63a, explains that she is inflicting pain on the husband since "one cannot compare one who has bread in his basket to one who has no bread in his basket", i.e., one who is assured of a sexual partner after time. The same argument is to be assumed for the woman being temporarily disabled by her period.

216 Since sexual relations with her are forbidden, Lev. 18:19.

217 Therefore, the sailor's wife loses money every week, not every three months.

218 Greek τα παράφερνα, "additions to the dowry which the bride brings". This corresponds to בְּשֵׂם, the amounts the husband promises his wife for her dowry over and above the legal minimum of 200/100 zuz (cf. Mishnah 6:3). In this opinion, one forces the husband to divorce his wife after the additions to the dowry were written down.

219 From here on, a parallel but different text is in the Babli, 64a.

220 Since she always can receive halisah and leave the family.

221 Mishnah Bekhorot 1:7, that in earlier times levirate marriage was preferred over halisah, so that the woman refusing her levir was inflicting pain on him, but today halisah is preferred and in refusing her levir the woman is acting correctly. Cf. Yebamot 12:7, Note 140.

222 Different formulations in Tosephta 5:6, Babli 63b.

223 I.e., she confirms in writing that her former husband does not owe her any money; then she can claim a bill of divorce from him.

Rebbi Ḥanina in the name of Rebbi Ismael ben Rebbi Yose: A wife who leaves because of a bad reputation has no rags; the rebellious one has rags. Rebbi Simon in the name of Rebbi Joshua ben Levi: The rebellious one and the one who leaves because of a bad reputation can claim neither sustenance nor rags.
224 A woman whom her husband divorces without paying the ketubah since he can produce evidence of unfaithfulness of his wife even though it does not add up to formal legal proof (which could be produced only by the testimony of two eye witnesses to the illicit copulation.)

225 If the value of the garments she brought into the marriage was determined and written into the ketubah document as monetary obligation of the husband. If the divorce is for cause, the husband does not have to pay. It is stated here that in this case, even if the garments still exist at the time of the divorce, the divorcée cannot take them; they remain the husband's property. The Babli, 101b, emphatically disagrees.

Rebbi Yose said: Those who write: "If he hates, if she hates", that is a monetary condition and these conditions are valid.

226 This sentence has been discussed in great detail by M. A. Friedman, Jewish Marriage in Palestine, A Cairo Geniza Study, Tel-Aviv and New York 1980, vol. 1, Chapter V,A: The Wife's Right to Demand Termination of the Marriage, pp. 312-346.

The stipulation referred to is quoted in part in Halakhah 7:7, Note 96. The full text has been recovered by Friedman (loc. cit., pp. 328-329) from Geniza ketubot: "If X, the groom, hates this Y, does not desire her, and wants to separate from her, he shall pay all that is written and specified in this marriage contract, completely. And if this Y hates this X, her husband, and desires to leave his home, she shall lose her ketubah money, and she shall not take anything but only that which she brought from her father's house and she shall go out by the mouth of the court (לע שן בית הדין) and with the consent of our masters, the Sages."

The sentence about the husband hating his wife does not bring anything new. The sentence about the wife hating the husband states first that the husband does not have to pay the promised ketubah sum, then that she takes the rags with her (following R.
Ismael ben R. Yose in the preceding paragraph), and, finally, that she is to be divorced "by the mouth of the court," i. e., that the court will direct the husband to divorce his wife. Even though biblical law, as interpreted by all Jewish sects, does grant the husband the exclusive power to divorce, to the exclusion of any right of the wife to force a divorce, R. Yose (the Amora) holds that if the divorce is forced as consequence of a monetary settlement, the stipulation regards monetary, not religious, obligations and is enforceable in court.

The essence of this prenuptial agreement, which allows a woman to buy her freedom from an intolerable marriage, was adopted in Babylonia by the Saboraim Rav Rabba and Mar Rav Huna as a taqanah, a rabbinic ordinance, which instructed the husband to divorce his rebellious wife while granting him the monetary advantages of the Yerushalmi agreement. This ordinance was in fact disestablished by R. Asher ben Iehiel, Rosh, in the 14th Century, when he interpreted the rule as a recommendation, not obligatory on the husband. Cf. I. Szczepansky, The Takkanot of Israel, Jerusalem-New York; Vol. 3, Chapter 13 (1992) (Hebrew). The dependency of the Saboraim on the Yerushalmi is studied by Dr. Eliahu Rahamim Ziani, Haifa 1992.

In the Babli, this is asserted as R. Jehudah's opinion: Qiddusin 19b. In the Yerushalmi it is a generally accepted principle transmitted anonymously: Below 9:1 (32d l. 51); Baba mesi'a 7:10 (11c l. 11), Baba batra 8:6 (16b l. 28), 8:8 (16c l. 37).

Mishnah 11: If somebody provides for his wife through a third party, he cannot give her less that two qab of wheat or four qab of barley.
Rebbi Yose said, only Rebbi Ismael assigned her barley, because he lived in proximity of Idumea.

228 One sixth of a seah, about 2.17 liters. One speaks here of grain, delivered per week.

229 The Babli, 64b, reads this sentence as meaning that only R. Ismael requires that the quantity of barley be double that of wheat. There is no reason to assume this interpretation for the Yerushalmi; it seems that R. Yose forbids a husband to give his wife barley except in regions in which wheat is not cultivated.

Halakhah 11: "If somebody provides for his wife through a third party," etc. What is "in proximity of Idumea"? In the South.

230 It is known that R. Ismael, the student of R. Joshua, lived in the South but it is not known what the definition of "South" is, whether in the mountains South of Hebron or in the Southern plain near Ascalon. He probably did not live in Kefar Aziz, cf. Kilaim, Chapter 6, Note 42. Idumea in Second Temple times was the Negev.
Mishnah 12: One gives her half a qab of legumes\textsuperscript{231} and half a qab of oil\textsuperscript{232}, a qab of dried figs or a mina\textsuperscript{233} of fig cake; if there are none available one finds her fruit from other places. Also one gives her a bed and a mat; if he has no bed, a mat and a rug\textsuperscript{234}. Also, one gives her a cap for her head\textsuperscript{235} and a belt for her loins, and shoes every holiday, and garments worth 50 tetradrachmas every year. One does not give her new ones in the summer or worn ones in the winter, but one gives her garments worth 50 tetradrachmas in the winter and she covers herself with the worn garments\textsuperscript{236} in the summer; and the rags are hers\textsuperscript{237}.

\begin{itemize}
  \item Peas or beans.
  \item Olive oil.
  \item The mina as a weight is 60 seqel.
  \item To sleep on it.
  \item Since a married woman may not be seen in public without a bonnet on her head. Bed, mat, cap, and belt are once-a-lifetime gifts.
  \item Which in the meantime became summer weights by constant use.
  \item The husband has no right to require her to hand over last year's used garments before giving her the new ones.
\end{itemize}

Halakhah 12: "One gives her half a qab of legumes and half a qab of oil," etc. Rebbi Mana said, a mina, i.e. four ritl\textsuperscript{238}. He gives her a pillow, a light\textsuperscript{239} and wick, and an amphora, and a pot. Rebbi Yose said, she has
no right to a pillow since the wives of poor men do not sleep on a pillow. Rebbi Hiyya in the name of Rebbi Johanan: If she left over from her food, it is hers, if she left over rags they are his - if she left over rags they are hers. That is, of a married woman. But for a widow, both her leftover food and her leftover rags are hers.

238 It is not known what these *ritl* are. It is the consensus of the linguists that Syriac *ral*, Arabic *rotl*, with the derived verb *ritl* "to weigh by hand" is simply Greek λίτρα, a Roman pound of 12 oz. This also is Musaphia's explanation of *ritl*; but a mina of 60 *seqalim* is about 2 *librae*. (In modern times, the weight of a *rotl* varied from .45 kg in Egypt to 3.2 kg in Syria.) R. Mana states that the mina used here is 4 Roman lbs., 1.38 kg, or 100 "holy" *segel*. The translation follows S. Lieberman [Tarbiz 4 (1933), p. 377-378] who identifies מ as shorthand for "this is".

239 A small clay vessel to be filled with oil.

240 Since the rules given here have to be generally valid, only the minimum amounts can be prescribed; the remainder is a matter of private contract between husband and wife. The rule is a matter of dispute in the Babli, 65a.

241 The text is unclear here between the scribe and the first corrector. The next sentence shows that both possibilities are valid; it was a matter of dispute between schools which alternative was chosen. The Babli disagrees with all the rules spelled out here, 65b.

242 Anything given by the heirs to the widow becomes the latter's unconditional property.
Mishnah 13: One gives her a silver obolus for her needs and she eats with him Friday nights\(^{198}\). If he does not give her a silver obolus for her needs, she works for herself. And what does she work for him? In Judea, a weight of five tetradrachmas warp\(^{243}\), which is ten tetradrachmas in Galilee, or in Judea the weight of ten tetradrachmas woof which are twenty tetradrachmas in Galilee. If she was nursing, one reduces the amount of her work and increases her food. When has this been said\(^{244}\)? For the poorest man in Israel. But for the most honored one, everything commensurable with his honor\(^{245}\).

243 She spins. The warp, being fixed under tension in the weaving frame, has to be spun much tighter than the woof.

244 For whom are the amounts mentioned in Mishnaiot 11-13 binding?

245 The wife would have standing in court if she complains about being treated shabbily.

Halakhah 13: "One gives her a silver obolus for her needs and she eats with him every Friday night," etc. The matters are formulated in clean language\(^{246}\). Simeon bar Abba in the name of Rebbi Johanan: Really eating\(^{247}\). In the opinion of Rav, she eats at his expense\(^{248}\); in the opinion of Rebbi Johanan she eats at her own expense.
This is the opinion of Rav at the end of Halakhah 8, Note 198. In the Babli, 65b, it is attributed to Rav Assi, the colleague of Rav (in many mss. and the editio princeps erroneously: Rav Ashi).

In the Babli, this opinion is attributed to Rav Nahman, Samuel's student.

Since "eating" is meant as an euphemism for sexual intercourse, it implies in the context that she does not eat Friday nights from the food allotted her during the week.

She has no claim to wine since poor Jewish women do not drink wine. Do rich women drink? Did we not state: It happened that the Sages assigned to Martha bat Boethos two se'ah of wine every day. How can the court assign wine? Rebbi Hiyya bar Ada said, because of "Whoring, wine, and cider will destroy the mind." But did we not state:
"If she was nursing, one reduces the amount of her work and increases her food"? Rebbi Joshua ben Levi said wine, for it increases the milk. Rebbi Hizqiah, Rebbi Abbahu in the name of Rebbi Johanan: Also they assigned it for cooking. Nevertheless, she cursed them and said to them, so you should give to your daughters. Rebbi Aha said, and we answered her, Amen. Rebbi Eleazar ben Rebbi Zadoq said, I should not see consolation if I did not see her collecting barley grains between horses' hooves at Acco. I quoted about her the verse: "The dainty one among you and the pampered, . . ." "If you have no experience, most beautiful of women, go following the flock . . .". But did we not state: It happened that the Sages assigned to Miryam, the daughter of Simeon ben Gorion, a daily supply of perfume for 500 denar, when she was only waiting for her levir. Nevertheless, she cursed them and said to them, so you should give to your daughters. Rebbi Aha said, and we answered her, Amen. Rebbi Eleazar ben Rebbi Zadoq said, I should not see consolation if I did not see her bound with her hair to a horse's tail at Acco. I quoted about her the verse: "The dainty one among you and the pampered, . . .".

249 And the rules are written only for the poor; Tosephta 5:8; Babli 64b.
250 The paradigm of a rich widow; cf. Yebamot 6:4, Note 75.
251 Let a woman drink wine in the absence of a husband. The Babli, 65a, approves of not more than one cup of wine per meal.
252 Hosea 4:11. It is inferred that drinking wine induces sexual desires.
253 The same statement is in the Babli, 65b.
254 The original scribe wrote  ינק which by the first corrector was changed into  ינק. One has to assume that the scribe intended  יהא Babylonian Aramaic "yes"; in a Yerushalmi text this is a corruption.
255 If her food was cooked with wine there was no problem since
cooking eliminates the alcohol.

256 As confirmation.

257 Being part of an oath formula, the positive has a negative implication and vice versa. The implication is that the speaker would give up his share of paradise if what he says is not true.

258 Deut. 28:56, the chapter of curses.

259 Cant. 1:8. This verse has a positive interpretation in all Midrash sources.

260 The reliability of the tradition about Martha bat Boethos is questioned since a parallel tradition is reported about another woman. But it seems that both traditions are one and that Martha ("the lady") bat ("of the family of") Boethos is Miryam bat Simeon ben Boethos, cf. Yebamot 6:4, Note 75; Josephus Antiquities xv. 320 ff. In the Babli, 65a and 66b/67a (for the second story, Tosephta 5:9-10). both stories refer to one person, the widowed daughter-in-law of one Nikodaimon ben Gorion waiting for her levir; in the second story (in an intended contrast to the Yerushalmi) it is emphasized that nobody said "amen", (because the unhappiness of a childless widow cannot be compensated with money.)
Mishnah 1: What a woman finds or makes with her hands belongs to her husband. Of what she inherits he eats the yield during her lifetime. [Payments she receives for] settlements for shame and diminution of value belong to her; Rebbi Jehudah ben Bathyra says, in case it is covered, she receives two thirds and he one third; in case it is visible, he receives two thirds and she one third. His part shall be given immediately; her part shall be invested in real estate and he eats its yield.

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1 As stated in Mishnah 4:6.
2 He is obligated to administer her property so it retains its value. For this, he is paid with the yield of the property. All these rules can be modified by prenuptial agreements.
3 If she is injured by a third party, Mishnah Baba Qama 8:1 states that the attacker has to pay for injury, pain, medical costs, lost earnings, and mental anguish. The expression "diminution of value" used here covers both injury (permanent impairment) and pain; "shame" is mental anguish. Since the husband has a claim to her handiwork, he also has a claim for payment for the time his wife is unable to work.
4 The wife's injury is covered by her clothing; then the husband's shame that he was unable to defend his wife is not so great. If the wife's injury is visible, the husband's loss of face is serious.
Halakah 1: "What a woman finds or makes with her hands belongs to her husband," etc. Rebbi Hizqiah in the name of Rebbi Immi: Rebbi Johanan and Rebbi Simeon ben Laqish disagree: One said, this is everybody's opinion, the other said it is in dispute. We do not know who said what. It is reasonable that Rebbi Simeon ben Laqish should be the one who said it is in dispute since he explained that [the husband] provides her with food but does not give her a silver obolus as pocket money, and we did state: "If he does not give her a silver obolus as pocket money, what she makes with her hands is hers." The work of her hands is parallel to what she finds. Rebbi Jacob bar Immi came in the name of Rebbi Simeon ben Laqish: It is everybody's opinion. That means that Rebbi Simeon ben Laqish varies in his opinions.

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5 Between R. Mei'r and R. Johanan the Alexandrian who disagree in Mishnah 5:5 whether a man can dedicate his wife's work to Heaven.

6 Cf. Halakah 5:5; Nedarim 11:4, Notes 51-55. R. Mei'r holds that the obligatory work the wife does for her husband is for her silver obolus and what she does in addition is for her food. Therefore, if he does not provide her with pocket money, he has no right to her work and, similarly, to what she finds. For R. Johanan the Alexandrian, the work is for her food and the excess
for the pocket money. (This is where R. Johanan disagrees.) Therefore, the husband has the right to what she makes and finds.

7 What she finds belongs to her husband according to everybody, as explained in the next paragraph.

8 It seems that he taught different approaches to different students.
there is another reason for his wife. What is the other reason for his wife? Rebbi Haggai says, because of quarrel. Rebbi Yose does not say so, but that she should not smuggle away any of her husband’s property and say, I found it. Think of it, if another person gave it to her as a gift! A gift is public knowledge, a find is not public knowledge. Think of it, if she found it in the presence of witnesses! This because of that. Rebbi Yohanan said, if they are not dependent on their father. But if they are dependent on their father, their finds belong to him.

9 The clause in the Mishnah that the husband has only the usufruct of any inheritance coming to his wife during the marriage.

10 Similarly, R. Meir holds that a wife cannot act legally except as her husband’s representative. It would seem reasonable that a wife can retain separate property by prenuptial agreement (cf. Yeabamot 7:1, Note 1), but for R. Meir one would expect that a wife can only acquire an inheritance as representative for her husband. Therefore, it is essential that the Mishnah state that an inheritance becomes the wife’s sole property for which the husband has to act as administrator. Cf. Nedarim 11:8, Note 70; Ma’aser Šeni 4:4, Note 95; Babli Nedarim 88b, Qiddusin 23b.

11 The inheritance.

12 Mishnah Baba Meši’a 1:5.

13 It is not required that the slave be Phoenician. Any non-Jewish slave who became semi-Jewish by circumcision (for a male) and immersion in a mikveh is called "Canaanite slave". In the theory of the Babli, the Canaanite slave’s body is the property of his master; therefore, if the slave lifts a find to acquire it, it is legally his master whose hand took it.

14 While the rules for the treatment of Hebrew slaves (Ex. 21:1-11) are a frequent topic in the Talmudim, the subject is purely theoretical since the institution of Hebrew slavery disappeared with the end of the First Commonwealth. It is asserted that only the working capability of the slave is the master’s, not his body. Therefore, if he lifts a find to acquire it, it is not the master’s hand which lifts the find.
Obviously, the master can direct the Hebrew slave to perform any task he asks of him; but he cannot direct him not to use his hands for anything else.

In Chapter 5, an exhaustive list was given of work the husband can demand from his wife. The wife’s body certainly is not her husband’s property. Therefore, one does not understand why her find should be her husband’s.

One has such a poor opinion of Jewish husbands that one is afraid he would be offended if the wife would not share her find with him [mentioned also in Baba Meși’a 1:5 (8a l. 15)]. This is the only explanation offered in the Babli, 96a; it is called "because of jealousy".

Meaning: stealing.

The gift can be given on condition that the husband have no right to it. Should the wife not be believed if she says she received a gift?

R. Yose will agree that in the case of a find in the presence of other people his reason is invalid. He holds that, nevertheless, the rabbinic decree giving the find to the husband stands because it would be impractical to admit exceptions.

This refers to the adult children to whom the Mishnah in Baba Meși’a assigns their finds. This is qualified; the Mishnah applies only if the children are financially independent. In the Babli, this is formulated that "they are not dependent on their father's table." Cf. Peah 4:6, Note 107; Baba Meși’a 1:5 (8a l. 3); Babli Baba Meși’a 12b.

Rebbi Isaac instructed about one who had sent away his wife but not liquidated her ketubah, that he has to feed her until the time he liquidated it.

Greek φερνή "dowry". In Halakhah 7:7, the word is used in the meaning of ketubah, the document in which the value of the dowry was recorded. Therefore, it seems reasonable to read the text that R. Isaac
obligated the former husband to support his former wife until he had paid the last penny of everything he was obligated to by the ketubah document, not only until he had returned all her dowry.

רבינדרדיפהרביאחדאבסמבריגבוךכהנה.долאמהファーולחה
בسرعةלקהליהואנוטיל.מפניעאערישיםמשמשעהامة.

Rebbi Redipha, Rebbi Aha, in the name of Rebbi Abun bar Cahana:

Because he does not make her lose anything. In secret, why does he take? Because of the pain he suffers with her.

23 This refers to the rules of R. Yehudah ben Bathyra who gives the husband part of the payment for shame and diminution of value. Why should the husband get part of the payment for shame? Since the payment is pure revenue for the recipient, not restitution, she still ends up having more than she did before her injury.
24 If the scars of her injury are not visible in public. The Babli, 66a, formulates: His wife is his body.

משנהב:הפוסקמעתולחתנהומתחתנתאמורייחכימיוכלוהוא
שאטרלקאותהכコミュニרוזהלמהולכליא النفسיאלנין.

Mishnah 2: If somebody decided on money for his son-in-law and the son-in-law died, the Sages said that he can say, I was ready to give to your brother, but it is impossible for me to give to you.

25 He promised a fixed amount of dowry payable at the moment of the final marriage ceremony.
26 Between the preliminary and the final marriage ceremony.
27 To the levir who is scheduled to marry his daughter. This is intended to induce the levir to prefer halisah to the levirate marriage.
Halakhah 2: "If somebody decided on money for his son-in-law and the son-in-law died," etc. Are these not the things that are acquired by speech? Bar Qappara stated: He promised the dowry on condition there be a marriage. And it is so: If somebody decided on money for his underage daughter, one forces him to give. But not for the adult one? Rebbi Abun said, one forces [the groom] to give a bill of divorce.

28 This word, "for sons", does not make any sense in the context. With all commentators it seems necessary to read "to marry definitively" with the easily explained changes.

29 As explained in Halakhah 5:1, Notes 16 ff., that promises made at the moment of the preliminary marriage are enforceable in court. Why can the levir not sue for his brother's property?

30 A promise of dowry becomes enforceable only after the definitive marriage ceremony.

31 This refers to Halakhah 13:5: If somebody promised a sum to his son-in-law at the moment of the preliminary wedding but went bankrupt before the final wedding, and the groom is not willing to proceed with the definitive marriage without the dowry being paid, the question is whether the girl can insist on either to be married or to be freed to marry somebody else. In Tosephta 13:4, it is stated: If somebody decided on money for his underage daughter but then went bankrupt, one forces him to give because one can give a minor benefit but not obligation. A similar text is in the Babli, 109 a. In all these texts, it is stated "one forces him", without an explanation whom one forces.

32 Is a promise of dowry for an adult daughter not enforceable?

33 If the daughter was a minor at the time of the preliminary marriage and then the father went bankrupt, the court will force the groom either to marry the girl without money or to free her by a bill of divorce since acts
of third parties to the detriment of minors are invalid and not enforceable in court. The same explanation is given in the Babli, 109a, by Rava, a frequent discussion partner of Ravin (= R. Abun.)

Mishnah 3: If she decided to bring him 1'000 denars, he decides as equivalent fifteen minas. Corresponding to estimates he decides one-fifth less. If it was appraised for a mina and it is worth a mina, he has only a mina. For the estimate of a mina she gives him 31 tetradrachmas and one denar. For 400 she gives 500, for what the groom decides, he decides one-fifth less.

34 If the dowry is in cash which the groom will use in his business, he has to obligate himself in the ketubah to return 150% of the capital at the dissolution of the marriage to account for his earnings from that capital.

35 As a matter of principle, any part of the dowry given in goods has to be capitalized at 80% of its estimated value at the time of marriage. Some commentators of the Babli explain that the 20% represent the depreciation of things in use; others explain that estimators have a tendency to inflate the values to make the bride appear richer than she is. Cf. Note 42.

36 If the rule of the preceding paragraph is not followed and the groom agrees to accept in the ketubah the full written value as value received, he cannot later complain and have the ketubah sum reduced.

37 In ms. and editio princeps, and in a few other mss., two words are missing. The corrected text reads:
This text was translated. Cf. The Babylonian Talmud with Variant Readings, Tractate Kethubot vol. 2, ed. M. Herschler, Jerusalem 1977, p. 31a, 38-31-4 + 1 = 125; 0.8-125 = 100.

For a value of 100 denars written in the ketubah, she has to deliver goods estimated at 125 denars.

Halakhah: If she decided to bring him 1'000 denars," etc. Why did they say for money, one and one half times, and for estimations less one fifth? Rebbi Yose ben Hanina said, one estimates the will of the woman that she wants to use her vessels and depreciates them by a fifth. One estimates the will of the man to use it in trade and to make them one and one half. Rebbi Yose said, this implies that nobody has the right to sell his wife’s vessels. Example: Rebbi Hyya, Rebbi Yasa, and Rebbi Immi went to appraise for Rebbi Yose ben Hanina’s daughter. They said to [the groom]: Deduct a fifth and double. He said to them, he deducts a fifth and does not double.

39 "includes both garments and household vessels. Tosaphot (66a, s. v. רמה) quotes the statement in the name of Samuel but in Alfasi the text is quoted as in the ms. 40 The cash received. 41 He expects to earn more than 50% from the dowry. 42 That garments and vessels are depreciated in the ketubah implies that
they are intended for permanent use. The husband's responsibility for them does not give him the right to dispose of them.

First he is told to deduct 20% to arrive at the real value of the dowry and then to double, to inflate the apparent value. This was a widespread practice in Babylonia and was proposed by the three Babylonian-born rabbis acting as appraisers. The device was rejected by the Palestinian groom. The subject is dealt with by M. A. Friedman (cf. Chapter 5, Note 226), vol. 1, pp. 296-298, where references to the large literature about the subject are given. Friedman notes that none of the Palestinian ketubot edited by him exhibit artificial inflation of the value of the dowry.

Meaning himself.

Simeon bar Abba in the name of Rebbi Johanan: If she brought him gold, at full value. jewellery to be turned into denars, at the rate of one and one half. Denars to be turned into jewellery, at their full value. Rebbi Aha bar Pappos asked before Rebbi Immi: If she brought him an animal? He said to him, at full value. If she brought him real estate: He said to him, at full value. But does he not gain from it? But she collects the real estate, he has only the usufruct.

Gold jewellery does not depreciate when worn. The Babli, 67a, points out that under a government which depreciates its currency, gold coins have the status of jewellery, not of coin.
working capital.

48 Either cattle for agricultural work or goats for milk.

49 Why is real estate not evaluated at 150%?

50 Real estate, whether mortmain or paraphernalia, remains the wife's property of which the husband has the usufruct. Since at the dissolution of marriage the real estate returns to the wife, there is no need to increase its value in the ketubah. (Cf. Yebamot 7:1, Note 1.)

Mishnah 4: If she decided to bring him money, each tetradrachma is turned into six denars and the groom engages himself for ten denars for the perfume box for each mina; Rabban Simeon ben Gamliel says, all follows local custom.

51 This is 150%, as stated in the preceding Mishnah.

52 He will provide her with perfumes and accessories worth one tenth of the cash dowry.
Halakhah 4: "If she decided to bring him money," etc. "If she decided to bring him 500 denars by appraisal, he makes it 400. If he did not do that but made it 1'000; if she made an agreement, she collects everything; if not, he deducts five denars for each tetradrachma, but he cannot touch the addition. If she decided to bring him 500 denars in coin, he makes it 750. If he did not do that but made them 1'000; if she made an agreement, she collects everything; if not, he deducts six denars for each tetradrachma, but he cannot touch the addition. If she decided to bring him 1'000 zuz, he must turn them into fifteen minas. If he did not do that but wrote over to her a field worth 12 minas in place of the 1'000 zuz. If she made an agreement, she collects everything; if not, one does not decrease for a virgin to less than 200 and for a widow to less than a mina." Here, you say, he deducts. But there, you say, he does not deduct. Here, if she invalidated part of it, there if she did not invalidate part of it. Here, you say, he touches the addition but there, you say, he does not touch the addition. It was stated: Both for appraisal and for coin. Why for appraisal? Corresponding to what he subtracts, corresponding to what what he adds, corresponding to what she brings.
53 This meaning is conjectural, based on the meaning of מִ揿 in Syriac (cf. Tosefta ki-Fshutah Ketubot p. 245). In the commentary on the Tosephta which is parallel to the text here (6:6-7), S. Lieberman reads in the text יָנָא "what she had decided", based on the Tosephta text (6:6), and explains that the woman takes all if she actually delivered what she had promised. But in the ms. it is clear that in the Yerushalmi the word ends in the definite article מ, and Lieberman’s identification of Tosephta and Yerushalmi texts (pp. 278-279) cannot be accepted (or the ending מ in the Tosephta should be interpreted as מ). In the Babli, מִ揿 is "a fixed date", מִ揿 כ "a fixed price." The explanation given here is close to that proffered by R. Moses Margalit.

Since the groom doubled the original appraisal and deviated from the norm, acceptance of this deviation is valid only if explicitly endorsed either in the ketubah or in an accompanying document. In the ketubot published by A. M. Friedman, the sums are regularly acknowledged by the bride’s representatives. It is to be assumed that in every case where one speaks of an agreement made "by the bride," it means an agreement signed by her father or in his absence another duly authorized member of her family.

54 This follows the Mishnah, for each 5 denars of appraised value, the husband (or his estate) is obligated only for 4 denars, one selas. But what he added over and above the appraised value is his irrevocable gift since in Galilee one did not routinely double the appraisals (cf. Note 41.) The widow collects from the estate 400 denars for the appraisal and 500 additional, for a total of 900.

55 As prescribed by the Mishnah.

56 If the amount actually given as dowry cannot be ascertained, the husband’s estate is entitled to deduct 6 denars for every 4 in dispute. But the additional 250 denars have to be paid in full.

57 He offers only 1200 in place of the 1500 for which he was obligated by the rules. If the wife accepts this in writing, because she prefers 1200 in real estate to 1500 in silver coin whose silver content depends on the policies of the government, she takes everything that is written in the ketubah.

58 And the amount of her claim is in dispute.

59 In all cases except the last,
definitive rules are given as to how to compute the claim on the estate. Only in the last case can the entire dowry be lost.

60 Following the reading conjectured by S. Lieberman (loc. cit. p. 279) instead of בִּכְסָלָה "she invalidated" instead of בִּכְסָלָה "she took".

61 In all cases except the last one, the estate has to pay the full amount of the addition over and above the value of the dowry. Only in the last case, there is no clause that protects the addition. By taking real estate for 1'200 zuz she renounced 300 zuz that would have come to her, putting the entire ketubah in question.

62 They follow the same rules.

63 All this needs confirmation by the parties in writing.

So is the Mishnah: "And a perfume box for every mina". Rebbi Johanan said, they made usufruct of perfumes like usufruct of money. Rebbi Avin said, they made usufruct of procreation like usufruct of money. As the following: The students of Rebbi Yose went to Qaddisin; they found them childless. They said to them: Did you stipulate between you? If you stipulated, it is fine; otherwise everything follows the local custom.

64 The corrected text is not that of the Mishnah (and the Tosephta, 6:6), "ten denars for the perfume box for each mina" but "ten denars and a perfume box for each mina." Cf. J. N. Epstein, הַלּוֹדֶר p. 494; Note 25; יבכ, כבלי משלי נשתחה חורשת p. 277.

One has to interpret כלל קנה as כלל יינון. It is not necessary to change the text; cf. the author’s The Scholar’s Haggadah, Northvale 1995, p. 322.
65 It is not clear what is referred to. From the next sentence, it seems that the paragraph refers to the statement of Rabban Simeon ben Gamliel that in the absence of explicit written agreement, all monetary aspects are judged based on local customs. Spices and perfumes given as articles of trade have the status of money (are better than money in an inflationary environment, and still are equal to money after Diocletian's stabilization of the Roman currency.) In the Babli, 67a, this is restricted to Antiochene spices and perfumes (which, probably, were of guaranteed quality.)

66 The groom can be generous in the conditions of the ketubah since he or his children will inherit the money. It is left to local custom (in the Middle Ages mostly: local regulations) to deal with the disposition of the dowry if the couple remain childless; a clause which denies the husband the inheritance of his childless deceased wife is authorized by R. Yose and the end of Halakhah 9:1; cf. M. A. Friedman, Jewish Marriage in Palestine, vol. 1, VE, pp. 391-418.

67 The rule that the husband inherits from his wife, being a money matter, can be set aside by stipulation. The biblical root of the rule is not explicit; cf. Sifry Deut. 134.

משנה ה: חמישים א加快建设 לא יפוחה ליה מחמתם ויה. פסק
לכלכימ עורמות לא יאמר שלוש עורות לא בוצרה באופותיה ולא באופותיה
שום דבר אחר אביך. כל חמישה א加快建设 לא יפוחה ליה מחמתם ויה.
אם יא בכסים מפור佺ים אותיה לכל עורה.

Mishnah 5: If somebody marries off his daughter without mentioning particulars he should not give her less than 50 zuz. If he had decided to take her in naked the husband should not say, if she comes to my house I shall clothe her in my garment, but he covers her when she still is in her father's house. Similarly, those who marry off an orphan girl should not
give her less that 50 zuz, and if money is available one provides for her according to her social standing.  

68 As dowry. A person having a capital of 50 zuz (silver denars) as working capital is barred from taking welfare payments (Mishnah Peah 9:9).

69 As stated in Halakhah 6, some people have to come up with a large dowry to marry off their daughter but some can take money for giving away their daughter.

70 The overseers of charity can use public money and even impose a tax on the public to provide a minimal dowry for a fatherless girl. (It is really the mother and/or the brothers who marry off the girl but the overseers of charity provide the money.)

71 The overseers of charity cannot collect money to provide the girl with a dowry that would approximate what her father would have given had he lived, but if there already is money in the charity account they have the right to vote her more than 50 zuz.

Halakhah 5: "If somebody marries off his daughter," etc. Rebbi Abba Mari, Rebbi Yose’s brother, asked: Did we not state: From where that even if he said, I shall go naked but clothe her, one does not tell him to be naked and to clothe her but he clothes her according to her social standing? There, it is the way of people to say, it is better for me to stand naked if only I cover my wife; but here it was a prior condition.

72 The intended text is probably close to Tosephta 6:7: If somebody marries off his daughter and contracted with his son-in-law that the latter should stand naked if only he provided her with clothes, one does not tell him...
to stand naked in public but that he has to clothe her according to her standing. In the Tosephta, "standing naked" is a figure of speech; why should it be taken literally in the Mishnah?

So is the Mishnah: And so those who provide for the orphan girl.

Rebbi Hinena said, this means that one says to the overseers to take out a loan. For he explains it, if nothing is in the wallet one takes out a loan up to fifty. But if there is money in the wallet, one may add. Rebbi Yose said, this means that one does not say to the overseers to take out a loan. For he explains if there is money in the wallet. But if there is no money one diminishes. As the following, about a girl in the days of Rebbi Immi. He said, let it be held over for the holiday. Rebbi Ze’ira said to him, you are causing a loss, but give everything, for the Lord of the holiday exists. It turns out that Rebbi Hanina holds with Rebbi Ze’ira and Rebbi Yose with Rebbi Immi.

73 Cf. Note 68, parenthesis.
74 It seems that he does not accept the last sentence in his Mishnah text.
75 R. Immi did not want to give public funds for the dowry of an orphan girl because he needed the money to distribute to the poor for their holiday needs.
76 The orphan girl will not be able to marry.
77 Give her a dowry of what is available in the charity account and
God will see to it that money will be donated to charity for the holiday. overseers of charity can take out loans, he would not have to worry about the holiday.

Mishnah 6: If an orphan girl was married off by her mother or her brothers and they wrote her 100 or 50 zuz, after she becomes an adult she can claim from them what is appropriate to be given to her. Rebbi Jehudah says, if he married off his first daughter, the second should be given in the way the first had been given. But the Sages say, sometimes it happens that a person was poor and became rich, or was rich and became poor. But one appraises the property and gives to her property.

79 Less than what she could have expected, given her father's wealth. 80 If the father died before the second daughter was married, the second should get the percentage of the estate that the first got from the

רבי יהודה אמר אס hashing את חתמי הרשושה יננה_LISTEN LESS, MORE THAN SHE COULD HAVE EXPECTED, GIVEN HER FATHER'S WEALTH.

81 The standard 10%. They will interpret "rich" and "poor" as feeling rich or poor, and giving his daughter more or less than the standard 10%.
Halakhah 6: "If an orphan girl was married off by her mother or her brothers," etc. So is the Mishnah: If they married off the first one there should be given. The words of the Sages: Sometimes a man marries off his daughter and spends money on her, and sometimes a man marries off his daughter and collects money for her."

82 This is the reading of a number of Mishnah mss., among them both the Cambridge and the Kaufmann mss. A number of mss., among them the Parma mss., read "she (the mother) married off" (Babli with variant readings, p. 78). In this version, what the father did is not a precedent for his heirs but the heirs have to be consistent in the treatment of the daughters. (The text of the Mishnah here, in the Babli, and Tosephta 6:3 which refers to the father, is found in the Munich ms. of the Babli and the Mishnah mss. of the Maimonides tradition.) The arguments of J. N. Epstein (loc. cit. Note 62) who wants to disregard the change in number, cannot be sustained in view of the many Mishnah mss. confirming the Yerushalmi reading.

83 Tosephta 6:3.
asked before Rebbi: If there were ten daughters. Then if the first one took a tenth of the estate, the second took a tenth of the estate, the third, the fourth, the fifth, and so on up to the tenth, there is nothing left for the son! He said to them: The first one takes a tenth of the estate and leaves; the second takes a tenth of the remainder, the third from what then is left, the fourth of what then is left, up to the tenth from what then is left. It turns out that the daughters take two thirds less a little, and the son takes one third plus a little.

84 He probably is the Amora called Ze'iri in the Babli.
85 This is an explicit Tosephta, 6:3: Rebbi says, each [daughter] takes a tenth of the estate. (Babli 68a, 52b, Nedamim 39b.)
86 The first one takes her part, the younger sisters get less than she did. This is also accepted in the Babli, 68a/b.
87 Let us assume that each daughter takes a part \( p \) from the estate. Let \( E_0 \) be the original estate, \( E_n \) the amount left after the \( n \)-th daughter took her part. Then

\[
E_n = (1 - p)E_{n-1} = (1-p)^n E_0.
\]

In our case, \( p = .1 \), \( n = 10 \), we have \( .9^{10} = .3487 = .3333 + .0154 \). The last term is the "little bit" which the son takes above \( \frac{1}{3} \) and the daughters combined take less than \( \frac{2}{3} \). On the word "less than" and its possible derivations cf. E. and H. Guggenheimer, Notes on the Talmudic Vocabulary, "Lesönenü 39(1975) pp. 59-62."
If there were two daughters and one son; the first one took a tenth of the estate, but the son died before the second could take her tenth. Rebbi Hanina was of the opinion that the second takes a tenth of the estate and the rest they divide equally among themselves. Rebbi Johanan told him that in this case there was nothing else to provide for her, but here she may sell from the remainder and provide for herself! Rebbi Tebi in the name of Rebbi Joshia: The reason of Rebbi Hanina: If she can collect from encumbered real estate, from what lies before her not so much more? Rebbi Johanan sticks to his opinion, since Rebbi Ze'ira said that Rebbi Johanan does not collect. Who collects? Rebbi Hanina [and Rebbi Hila] collect. Rebbi Yasa was appointed custodian of orphans' property. There were orphan [girls] who asked to be provided for. He brought the case before Rebbi Eleazar and Rebbi Simeon bar Yaqim. Rebbi Simeon bar Yaqim said, is it not better to provide for them from their father's estate rather than from charity? Rebbi Eleazar said to him: If such a case came before our teachers, our teachers would not touch it; would we act? Rebbi Yose said, I shall give to them, and if some orphans...
get up and complain, I would give it to them. Even so, they saw and did not complain. Rebbi Ze'ira asked before Rebbi Yose: How do you decide in practical cases? He said to him, following Rebbi Hanina. And so an actual case was decided following Rebbi Hanina. Rebbi Abun in the name of Rebbi Hila: One considers the estate as if it were dry.

88 From a similar text in Gittin 5:3.
Text here: όλ ν "He does not collect."
89 Parallel arguments are in the Babli 69a, Gittin 51a.
90 The son died childless; then the two daughters inherit the estate.
91 In the Babli, R. Johanan holds that the second daughter gave up her claim for the extra 10% and takes 50% of the estate. According to R. Hanina, 45% go to the first daughter and 55% to the second.
92 He holds that providing a dowry for the daughters is a ketubah obligation and as such has the status of a mortgage. Therefore, in talmudic law (abolished by the Geonim in Babylonia after the Arab conquest and apparently never followed in the European provinces of the Roman empire) the claim for a dowry must be satisfied by real estate. If the father sold a piece of real estate and there is none left to satisfy the demand for dowry, the daughter can go to court to repossess the land and let the buyer be indemnified by the estate.
93 He refuses to grant repossession for claims to dowry.
94 Valuables, not real estate.
95 The underlying hypothesis here is that dowries from estates are given only from real estate. R. Simeon ben Yaqim holds that an estate rich in money but without real estate should provide for the daughters in money and not force them to apply to public charity for their dowry.
96 The Patriarch's court in his days could not decide whether dowries should be paid from real estate or movables; why should a lower court deal with the matter?
97 In a similar situation, he provided for the daughters from movables. But since he had no precedent, if the male orphans were to appeal the judgment, he would rescind it. Since there was no appeal, a precedent was created that dowries be given from movables. The Babli strongly disagrees, 69b.
98 To split the inheritance 55% / 45%, cf. Note 89.
99 The daughters cannot claim part of the yield of the estate for their dowry.

**Mischnah 7:** If somebody gives money in trust⁴⁰⁰ for his daughter and she says, I am trusting my husband⁴⁰¹, the trustee should execute what he was entrusted with⁴⁰², the words of Rebbi Meir. Rebbi Yose says, is it not only about a field? If she wants to sell it, can she not sell it now⁴⁰³? When has this been said? If she is an adult. But about a minor, no legal act of a minor is valid⁴⁰⁴.

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100 To buy some real estate for his daughter, after the giver's death.
101 She wants the money to be given to her husband that he could buy the piece of real estate for her.
102 And not hand over the money to the husband.
103 Could she not legally sell today the field that in the future will be bought for her by the trustee, to be the buyer's after the trustee will have delivered the field to her. Therefore, the trustee should follow the daughter's instructions.
104 R. Yose agrees that the instructions of an underage daughter should not be followed.
Halakhah 7: "If somebody gives money in trust for his daughter and she says, I am trusting my husband," etc. The Mishnah speaks of the case that he gave at the time of the preliminary marriage. But if he gave at the definitive marriage even Rebbi Meir agrees\(^\text{105}\) If he established the trust after the definitive marriage, that is the disagreement\(^\text{106}\).

105 Since the husband gets the income from the real estate after the definitive marriage, there is no reason why he should not be entrusted with buying the real estate. A similar argument is in the Babli, 69b, and an explicit text in Tosephta 6:9.

106 If the father by his action shows that he does not trust his son-in-law, the trustee should not hand over the money. R. Yose holds that even in this case the daughter can sell her rights to that land any day of that year.

If somebody says\(^\text{108}\), give my sons one *seqel* per week and they need a tetradrachma, one gives them a tetradrachma\(^\text{109}\). Do not give them more than one *seqel* per week, one gives them a *seqel*. But for the support of the wife and the daughters, whether he says give or do not give, one gives them a *seqel*\(^\text{110}\). It was stated: Rabban Simeon ben
Gamliel says, Mei'r used to say, if somebody says, give my sons one šeqel per week and they need a tetradrachma, one gives them a šeqel, and for the remainder they should be provided for by charity. But the Sages say, one takes continuously until the property is used up and after that they should be provided by charity.” Rebbi Yose said, that gives a simple example for Hilfai’s question. He said, I shall sit on the river bank and if I cannot extract the teachings of the elder Rebbi Hyya from the Mishnah, throw me into the river. What could he say? “The trustee should execute what he was entrusted with.”

107 Tosephta 6:10; the first part also in the Babli, 69b.
106 In his will to the executors of his estate after his death.
109 If prices rise, since 2 šeqalim, 1 tetradrachma, comprise at least one šeqel.
110 All sources of the Tosephta read: “A tetradrachma.” This reading is required since the widow and her daughters are fed by the ketubah contract and a will cannot modify a contractual obligation.
111 The executors are not empowered to deviate from the testator’s instructions even if it means that the children have to apply to public welfare.
112 Nobody should be forced to apply for welfare if there is a possibility to avoid it.
113 The Tosephta. In the Babli, 69b, he is called Ilfa and it is explained that he objected to the use of baraitot and tosephiot in the study of Jewish law and was ready to jump into the sea if somebody could produce a baraita whose teachings he could not derive from the Mishnah. In the Babli, R. Yose’s observation is Hilfai’s own.
114 Where does he find justification for the position of R. Mei'r that the executors of the will cannot deviate from their instructions even in case of necessity.
115 Even if it seems reasonable to follow the daughter’s wishes.
If they died, others should inherit." Did not Rebbi Abbahu say in the name of Rebbi Johanan: A person can transfer property rights in any language except with an expression of inheritance? One does not have here "they shall inherit" but "they shall take". Rebbi Ze'ira asked before Rebbi Mana: Do they not differ here in matters of a gift? If somebody signed over all his property to two persons at the same time; to one he wrote in the language of gift but to the other in the language of inheritance. Rebbi Eleazar said, since the one acquired in the language of...
gift, the other one acquired in the language of inheritance. Rebbi Johanan said, it seems that one did acquire in the language of gift but the other did not acquire in the language of inheritance. Rebbi Phineas said, there came a case before Rebbi Jeremiah: Practice follows Rebbi Eleazar since Rebbi Eleazar stated a doctrine but Rebbi Johanan said only "it seems". Rebbi Samuel said, but did not Rebbi Meir say that and it does not seem reasonable; is that nothing? Did not Rebbi Johanan say in the name of Rebbi Assi: Carded firstling wool becomes insignificant in a plurality. Rebbi Hyya the Sephoraean brought before Rebbi Ammi a pound in eight but the latter refused to rule since had not Rebbi Assi said, is that not a Mishnah? "If somebody weaves the length of a sit of firstling's wool in a cloth, the cloth must be burned, of hair of a nazir or firstling donkey in sackcloth, the sackcloth must be burned"? The following Mishnah disagrees with Rebbi Johanan: "If he wrote any expression of gift either at the start, or in the middle, or at the end, his instructions are valid." There, to one person in an expression of gift and to one an expression of inheritance. But here to each one both in the language of gift and the language of inheritance. Rebbi Haggai asked before Rebbi Yose: But does he not prejudice the rights of others? He said to him, if there are no brothers. But does he not prejudice the rights of his paternal uncles? Rebbi Hanania the son of Rebbi Hillel: A person prefers the good of his house over his relatives.

116 This refers to a sentence in the Tosephta quoted in the preceding paragraph: "If he said, if they should die, others should inherit, then one gives them only a seqel, whether he said to give, or not to give more." The fact that others have to be mentioned in the will proves that these are not the legal heirs to whom the inheritance would have been given had the testator
died intestate.

117 Since inheritance is defined in 
\textit{Num.} 27:6-11 and transfer of property 
by inheritance is restricted to the 
paternal family. The last sentence in 
this paragraph will make clear that one 
supposes that the beneficiaries of the 
wills are one or more sons-in-law whose 
wives are excluded by biblical law 
from the inheritance if there is a son at 
the time of the father's death, even if 
that only son should then die childless.

In Mishnah \textit{Baba Batra} 8:5, R. 
Johanan ben Beroqa holds that a 
testamentary gift may be formulated in 
the language of inheritance if the 
recipient is a relative on the father's 
side who might be an heir if the other 
prospective heirs would die before him.

118 It is suggested that the (Hebrew) 
text of the Tosephta be explained (in 
Aramaic) to remove the objection.

119 In one document.

120 He holds that a document is 
either valid or invalid. Since the 
bequest by gift is valid, the entire 
document is valid. The same argument 
exists in the Babli in greater detail, \textit{Baba 
Batra} 129a.

121 The document is valid but the 
bequest of inheritance to a non-heir is 
not enforceable in court.

122 R. Eleazar gives a straight 
decision, implying that he learned this 
principle from his teachers. R. 
Johanan's statement seems to be 
tentative.

123 R. Johanan gives a definitive 
statement: R. Meir's opinions in the 
Tosephta are rejected. Therefore, R. 
Jeremiah's argument is without base.

124 The next three sentences are 
from 'Orlah 3:2, Notes 88-94.

125 This must be read with the text 
in 'Orlah: Rebbi Assi (Yasa) in the 
name of R. Johanan; the latter is the 
teacher and the former the student.

126 A firstling sheep may not be 
shorn (\textit{Deut.} 15:19). The wool is 
forbidden for usufruct but, in contrast 
to fruits from a tree less than three 
years old, the wool according to R. 
Johanan does not make everything 
forbidden if it is mixed with permitted 
fibers.

127 One pound of firstling wool 
mixed with eight pounds of wool from 
other sheep, and thoroughly mixed so 
that one cannot recognize the fibers 
coming from the firstling.

128 It is Mishnah 'Orlah 3:3 but 
Mishnah 3:2 shows that it represents R. 
Meir's minority opinion; therefore, it is 
not practice.

129 Mishnah \textit{Baba Batra} 8:5. If 
somebody wrote a will in which either
he gave some property to a non-heir or he distributes his estate in unequal portions between the heirs, if he wrote either "as a gift this property is given to X" or "this property as a gift is given to X" or "this property is given to X as a gift", the gift is valid and can be collected by court order. This is the Babli’s interpretation in Baba Batra. The Yerushalmi in Baba Batra does not discuss the meaning of the sentence. R. Eleazar could read the Mishnah as stating that a will is valid if it gives property to three people if to one of them at least it is given as gift (position of Rav Sheshet in the Babli, loc. cit. Note 118).

The Mishnah clearly implies that any of these instructions makes the entire will valid.

130 R. Johanan would agree that a document, in which some property is given as a gift and other property as inheritance to one and the same person, is valid. But if the recipients are two different people, the validity for one does not imply the validity for the other.

131 By naming his daughters and their husbands as heirs after his sons, does he not deprive his brothers of their biblical right of inheritance?

132 In order to execute the will of the deceased, the court has to enforce a will giving property to daughters and their husbands even against the testator’s brothers.
Mishnah 1: If somebody makes a vow that his wife should not have any usufruct from him\(^1\), up to thirty days\(^2\) he shall appoint a provider\(^3\), more than that he has to divorce her and pay the *ketubah*. Rebbi Jehudah says, if he is an Israel\(^4\), for one month he should keep her, for two he has to divorce her and pay the *ketubah*; in the case of the wife of a Cohen\(^5\) for two months he should keep her, for three he has to divorce her and pay the *ketubah*.

1 Then he cannot fulfill his obligation to feed, clothe, and house his wife.
2 This can be read to mean that the wife cannot sue for divorce if the husband limits his vow to thirty days. But if his vow is unlimited, the wife can demand an immediate divorce. It might also mean that in no case can the wife sue unless the husband did not provide for her for at least 30 days.
3 Who provides for her from his own money and only later is repaid by the husband.
4 Who can remarry his divorcee if he found an Elder who dissolves his vow.
5 He is given more time to find a way to dissolve his vow since he never could remarry his divorcee, *Lev.* 21:7.
Halakhah 1: "If somebody makes a vow that his wife should not have any usufruct from him," etc. There, we have stated: "If somebody by a vow bars his wife from sexual intercourse," and here you say so? There, he makes a vow to separate her from his body, but here he makes a vow to separate her from his property. But can anybody make a vow not to pay his debt? Rebbi Yose ben Hanina said, since in the future he will divorce her, pay her the ketubah, and stop her food supply, it is as if there was no debt. Why could she not sit there and wait; if he divorced her everything would be in order, otherwise let him provide her with food? It follows him who said that the wife's food is not from words of the Torah, as it was stated: The court will not determine food for the wife from Sabbatical money, but she may be given Sabbatical produce to eat at her husband's. Then should she not be considered as a worker not worth a perutah? This proves that she is not considered as a worker not worth a perutah.

6 Mishnah 5:8. There, the House of Hillel already force the husband to divorce his wife after one week.

7 A vow not to sleep with his
wife is essentially a vow to terminate the marriage; a vow concerning money matters is not.

8 Why should the vow be valid if it infringes contractual rights of third parties? (Cf. Introduction to Tractate Nedarim.)

9 The Babil, 70a, notes that the partners in a marriage have the right to separate their incomes: The husband can renounce any benefit from his wife's work and not pay any of her expenses or the wife can renounce any support from her husband and keep all her earnings. But any of these possibilities presuppose mutual consent.

10 Since in Halakhah 5:8 the obligation of the husband to feed his wife was given a biblical basis, why should the husband's vow not simply be declared invalid and he be forced to feed his wife by a court order?

11 This and the next argument are explained in Ma'serot 3:1, Notes 11-13. Cf. also the argument of R. Eliezer ben Jacob in Halakhah 5:8 and the last sentence of Chapter 13.

12 Tosephta Ṣevi'it 5:22.

13 If the husband is away on a trip and the wife needs money to survive, she can sell some of the husband's property under the supervision of the court. She cannot sell Sabbatical produce since nobody may use such produce to pay his debts (and the wife's claim is a debt based on the ketubah document.) But if the husband is present, she may eat from his Sabbatical fruit since this fulfills the rabbinic ordinance to support the wife and is not counted as paying a debt.

14 This sentence may not belong here; it is copied from Ma'serot. An agricultural worker can eat untithed produce by biblical decree (Deut. 23:25-26). If his work is not worth any wages (not even the smallest Hasmonaean coin), anything he eats is a gift and a gift may not be eaten untithed. But the wife is considered identical with her husband and anything he may eat she also may eat. Therefore, she may eat his Sabbatical produce in his house. But then the question arises why the wife cannot use Sabbatical money to buy Sabbatical produce for herself if her food supply is not her husband's contractual obligation.
He could appoint a provider\textsuperscript{15}, as the following: "X is forbidden any profit from me by a vow and I do not know what to do." Let him appoint a provider\textsuperscript{16}. A woman has the right to say, it is impossible for me to be provided for by anybody other than my husband. But did we not state\textsuperscript{17}: "If somebody provides for his wife through a third party." There, if she accepted it; here, if she did not accept it. If she did not accept it\textsuperscript{18} then he should not appoint even for one day! She continues with him for one month, perhaps he will find an opening for his vow\textsuperscript{19}. Samuel says, if he vowed for thirty days. But if he vowed forever, he shall divorce immediately and pay the ketubah. Rebbi Ze’ira, Rebbi Avina in the name of Rav: Even if he vowed forever, she continues with him for one month, perhaps he will find an opening for his vow\textsuperscript{20}.

\textsuperscript{15} The Mishnah requires the husband to look for a provider but in fact he cannot appoint one since his vow prohibits him to provide for his wife through an agent. The only way the husband can fulfill his obligation is indicated by Mishnah Nedarim 4:8 (Notes 101,102) quoted here, in that he indicates to a third person that he is ready to repay that person after he has provided for his wife, in a way that the provider could not have recourse to the courts if the husband would not pay.

\textsuperscript{16} Why can the wife force a
divorce if she is provided for?

17 Mishnah 5:11. That Mishnah and the following give detailed instructions on how a wife is provided for by an agent, giving the impression that this refers to a permanent arrangement. Why is this only accepted as very temporary in the Mishnah here?

18 This clause is an insert by the first corrector. The text is suspect since י is Babylonian, for Galilean י in.

19 One requires a cooling-down period of one month to give the husband time to regret his vow and seek dissolution of the vow by an Elder.

20 In the Babli, 71a, the positions attributed to Samuel and Rav are switched.

Some Tannaim state: thirty days. Some Tannaim state: up to thirty days. He who says thirty days supports Rav; he who says up to thirty days supports Samuel.

21 All ms. sources (Mishnah, Tosephta 7:1, quotes in Yerushalmi and Babli) support the second version. thhus the husband certainly has to provide for 30 days.

22 This is the minimum delay before the wife can go to court; the divorce proceedings should be finished by then and the full ketubah paid.

23 כֵּסָף שְׁלָשׁוֹת. כֵּסָף שְׁלָשׁוֹת. כֵּסָף שְׁלָשׁוֹת. כֵּסָף שְׁלָשׁוֹת. כֵּסָף שְׁלָשׁוֹת. כֵּסָף שְׁלָשׁוֹת. כֵּסָף שְׁלָשׁוֹת. כֵּסָף שְׁלָשׁוֹת. כֵּסָף שְׁלָשׁוֹת. כֵּסָף שְׁלָשׁוֹת.
Rebbi Yose said, they differ about wives of Cohanim. "Beyond that he has to divorce her and pay the ketubah," at the end of the second [month]. "Rebbi Jehudah says, if he is an Israel, for one month he should keep her, for two he has to divorce her and pay the ketubah," at the end of the second [month]. "In the case of the wife of a Cohen for two months he should keep her, for three he has to divorce her and pay the ketubah," at the beginning of the third. And a disagreement was stated, at the end of three [months], the words of Rebbi Meir. Rebbi Mana said to him, where no disagreement was stated, you introduce a disagreement. But they disagree if he is an Israel. "Beyond that he has to divorce her and pay the ketubah," at the beginning of the second [month]. "Rebbi Jehudah says, if he is an Israel, for one month he should keep her, for two he has to divorce her and pay the ketubah," at the beginning of the second. "In the case of the wife of a Cohen for two months he should keep her, for three he has to divorce her and pay the ketubah," at the end of three [months]. It was stated thus: At the end of three by everybody's opinion.

24 R. Jehudah and R. Meir, the author of the anonymous Mishnah. In Tosephta 7:1 it is stated: "He should appoint a provider for up to 30 days, and for a Cohen's wife three months, the words of R. Meir." At first glance, this seems to indicate that R. Jehudah permits the court to force the husband to divorce his wife immediately after the end of the second month but R. Meir only after the end of the third.

25 Scheduling one month for the court proceedings.

26 In the Tosephta.

27 In a short month only 29 days, in opposition to R. Meir who requires 30 days in every case (Babli 71a).
Mishnah 2: If somebody causes a vow of his wife that she should not taste any kind of fruits has to divorce her and pay the ketubah. Rabbi Jehudah says, if he is an Israel, for one month he should keep her, for two he has to divorce her and pay the ketubah; in the case of the wife of a Cohen for two [months] he should keep her, for three he has to divorce her and pay the ketubah.

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28 The Halakhah will explain how a husband can cause a wife's vow.

29 Most mss. of the Babli and the Mishnah read "day" instead of "month". The reading "month" is found in a number of early medieval authors discussing the Babli.
him who says that he put his finger between her teeth, he has to divorce her and pay the *ketubah*. Rebbi Huna said, even he who said that she put his finger between her teeth, and should be divorced without *ketubah*, will agree in case he provoked her to make the vow.

30 Since she is the cause.  
31 He forbade his property to her.  
Why does the anonymous Tanna require a stay of 30 days in the first Mishnah but none in the second?  
32 The question whether the husband is responsible for the consequences if he does not dissolve his wife's vows is in the last paragraph of *Nedarim*, 11:13, Notes 98-103. The image is that if he puts his finger between her teeth, he has only himself to blame if she bites. R. Meir and R. Jehudah hold that he put his finger between her teeth; cf. also Babli 71a.  
33 That he has to pay.

Mishnah 3: If somebody causes a vow of his wife that she should not adorn herself with one of the kinds has to divorce her and pay the *ketubah*. Rebbi Yose says, among the poor if he did not give a time limit, among the rich for thirty days.

34 Kinds of perfume. In modern Hebrew, only jewellery would be *זיויר*.
Halakhah 3: "If somebody causes a vow of his wife that she should not adorn herself," etc. Rav Huna said, so is the Mishnah: "Among the poor if he did not give a time limit." Ulla bar Ismael said, among the poor if he did not give a time limit; but if he gave a time limit even if it were for ten years it is permitted, for no fox dies if he gets dusty from his lair. Nathan bar Hosaiah said in the name of Rebbi Johanan: Except holidays.

35 J. N. Epstein, nairi που νόο, p. 474-475 conjectures that originally the Mishnah read: "if he set a time limit, he may keep her," and only Rav Huna changed the text to adapt it to the other Mishnaiot of this series. In any case, all mss. of Mishnah and Babli follow Rav Huna's reading.

36 In the Babli, 71b, this is R. Johanan's opinion.

37 This popular saying also occurs in a slightly different version in the Babli, 71b. If the husband himself smells badly, he will not be bothered by his wife's smells.

38 In the Babli, 71b, this is ascribed to Rav Hisda.

Mishnah 4: If somebody causes a vow of his wife that she should not go to her father's house, if they live in the same city she does, for one month he should keep her, for two he has to divorce her and pay the ketubah. If they live in another city, for one holiday he should keep her, for two he has to divorce her and pay the ketubah.
Halakhah 4: "If somebody causes a vow of his wife that she should not go to her father’s house," etc. Rebbi Ze’ira said, they stated there\textsuperscript{39}: If he made her make a vow that she should not wash in the bathhouse\textsuperscript{40}, in walled cities one week, in villages two weeks. That she should not wear shoes\textsuperscript{41}, in villages three months\textsuperscript{42}, in walled cities 24 hours.

\textsuperscript{39} In Babylonia.  
\textsuperscript{40} The public thermal bath.  
\textsuperscript{41} Only sandals.  
\textsuperscript{42} Maimonides (\textit{Hilkhot Issut} 13:9) reads: Three days.

Rebbi Johanan\textsuperscript{43} said, they taught that about the pursueds’ holiday.

What is the pursueds’ holiday? Rebbi Yose ben Rebbi Bun said, that is the first holiday\textsuperscript{44} when her father drives her to her husband’s house\textsuperscript{45}.

\textsuperscript{43} In the Babli, 71b, this is said in the name of Rabba bar Ulla with the concurrence of R. Johanan.  
\textsuperscript{44} After her final marriage.  
\textsuperscript{45} When it is customary for the newlywed to visit her family and the father sends her back to her husband’s house.
Mishnah 5: If somebody causes a vow of his wife that she should not pay condolence visits or go to weddings has to divorce her and pay the *ketubah*. But if he argues because of another reason, he is in his rights. If he said to her you should tell X what I said to you or that she should fill [vessels] and pour them out on garbage heaps, he has to divorce her and pay the *ketubah*.

46 The entire Mishnah is explained in the Halakhah.

47 This is the text in the Yerushalmi and one Babli mss. In all other Talmud or Mishnah mss.: "What you said to me or what I said to you" (text in the Halakhah) or "what I said to you or you said to me".

Halakhah 5: "If somebody causes a vow of his wife that she should not pay condolence visits," etc. If he made her vow not to lend out fine and coarse sieves, he shall divorce her and pay the *ketubah*, since he gives her a bad reputation among her [female] neighbors. And so if she made a vow not to lend out fine and coarse sieves, she should leave without *ketubah* since she gives him a bad reputation among his [male] neighbors."
"If he made her vow not to pay condolence visits or go to weddings, he shall divorce her and pay the ketubah, since tomorrow a relative of hers will die and nobody will take notice of her. And so if she made a vow not to pay condolence visits or go to weddings, she should leave without ketubah since tomorrow a relative of his will die and nobody will take notice of him."  

Rebbi Meir is saying in the name of his teacher Rebbi Aqiba: 'It is better to pay condolence visits than to go to a wedding since the former is the end of every human, and the living should take notice.' Why does the verse say, 'and the living should take notice'? But do so they shall: eulogize so they should eulogize, bury so they should bury, accompany so they should accompany.

In the Babli, 72a, and Tosephta 7:5: She will die and nobody will care.  

In the Babli, 72a, and Tosephta 7:6: "fine and coarse sieves and portable ovens."  

Babli, 72a. In Tosephta 7:5: She will die and nobody will care.  

Accompany the coffin to the cemetery.

"If he argues because of another reason, he is in his rights." because of bad reputation.

If he objects only to certain persons of bad reputation who might visits where his wife is likely to meet seduce her.
"If he said to her I require that you tell Mr. X what you said to me," alone, "or I said to you", alone, "or that she should fill [vessels] and pour them out on garbage heaps, he has to divorce her and pay the ketubah." There, they say, like Er's action, but the rabbis here say, senseless things.

53 Private matters at the time of sex play; Tosephta 7:6. The formulation in the Babli 72a, "shameful matters" is ambiguous.

54 In the Tosephta: Because he does not treat her following the laws of Moses and Israel. The formula for the preliminary marriage is that the woman shall be married to the man "following the laws of Moses and Israel."

55 Babli 72a in the name of Samuel.

56 Which in Jewish tradition was identical to Onan's sin. He requires her to take contraceptive action; Gen. 38:7,9. Cf. Gen. rabba 85(5) where the expression is: He ploughed in the gardens and poured out on the garbage heaps.

57 In the words of the Babli, 72a, if she pours water out on the garbage heap "her neighbors would consider her insane."

Mishnah 6: The following leave without ketubah: Any one violating the laws of Moses or Jews. What is the law of Moses? She feeds him what is not tithed, or makes him sleep with her when she is menstruating,
or does not cut *hallah*, or makes vows which she does not keep. And what is the law of Jews: She leaves home with her hair in disorder, or spins in public, or speaks with everybody. Abba Saul says, also one who curses his parents in his presence. Rebbi Tarphon says, also the big-voiced.

**Mishnah 7:** What is the big-voiced? Any who speaks inside her house and her neighbors hear her voice.

58 In all these cases, she causes him to commit a sin punishable by extirpation. One recommends to the husband to divorce her since "nobody should live with a snake in the same basket" [Babli 72a; Yerushalmi *Demai* 2:2 (Note 129; 22d 1. 59)].

60 It seems that it was a common sign of a free woman engaged in prostitution to appear as if spinning in public (in the Babli, 72b, if she is spinning with a rose on her ear), in contrast to slave girls used as prostitutes who were exhibited naked in front of brothels.

59 In both Talmudim, this is interpreted that she leaves home with her hair uncovered.

61 This also could be interpreted as a way of soliciting.

**Halakhah 7:** "The following leave without ketubah," etc. "What is the big-voiced," etc. And all with witnesses. "X tithed, X saw the stains, X cut her *hallah*, X permitted her vow." They checked and found it was not so.
62 The same argument in the Babli, 72a.

63 She said to her husband that she showed her stained underwear to a rabbi who decided that it was not menstrual blood. In the first Century C.E. it was a common usage of Jewish sects to accuse the adherents of other sects of sleeping with menstruating women. Pharisees accused Sadducees and Samaritans because they considered all genital discharges as menstrual (Mishnah Niddah 4:1) and Sadducees accused Pharisees because they do not consider all genital discharges as menstrual (Damascus Document A 5:7). Later practice eliminated the problem by observing both Pharisaic and Sadducee prohibitions. Pharisaic distinctions between pure and impure blood required women to consult rabbis about their discharges. It is not likely that this ever was widespread practice except for wives of Cohanim in whose household impurity had to be reduced to an absolute minimum. The disappearance of priestly purity in the second century C.E. probably put an end to that practice even though the fourth Century Babylonian Rava still claimed full knowledge of all relevant rules.

64 The heave to be taken from bread dough. It was common practice to have a professional baker prepare bread dough for private households and to take hallah from it; cf. Mishnah Hallah 1:7.

"She feeds him what is not tithed, or makes him sleep with her when she is menstruating, or does not cut hallah, or makes vows which she does not keep." We understand all these because he is involved. "She makes vows which she does not keep," what is his interest in this? He can say, I
cannot live with a vowing wife because she buries her children. It was stated in the name of Rebbi Yudan: Children die for the sin of vows, as it is written: "For vain [vows] I smote your children.

65 In the first three cases, she leads him into sin.

66 Geniza ms. of Ketubot; in Yalqut Shim'on Jer. #266 a different verse in the name of R. Nathan (anonymous in the Babli, 72a).

67 Jer. 2:30.

In the first three cases, she leads him into sin.

Gittin 4:3 (45c l. 63), Sabbath 5b l. 8; Babli 72a in the name of Rav Nahman. Sabbath 32b in the name of Rav Nahman bar Isaac (also thus in one Geniza ms. of Ketubot).

With her hair in disorder." They said that for the courtyard; so much more for the passageway. Rebbi Hiyya in the name of Rebbi Johanan: If one goes out in her wig, she does not go out with her hair in disorder. That is, to the courtyard; if she does it in the passageway, she goes out with her hair in disorder. There exists a courtyard which is like a passageway and a passageway which is like a courtyard. A courtyard through which outsiders have broken is like a passageway and a passageway through which no outsiders are breaking is like a courtyard.

68 It is supposed that no house has a direct exit to the street but that a number of houses share a common courtyard from which one leaves to a passageway or a street.

69 A side street which is not a thoroughfare. It may be a dead-end street or not; it is public domain but
mainly used by the dwellers of courtyards opening to that side street.

70 The word was identified by Musaphia as Latin capillitium. But the meaning of that word as given in the dictionaries is not "wig" as asserted by Musaphia but "the hair" (collective). The meaning "false hair, wig" is found in Latin capillamentum. Cf. also the Latin adjective capillatus, -a, -um "having hair, with fine head of hair".

The parallel in the Babli, 72b, has וּרְקֵלָה הַןָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּהַנָּh

Abba Saul says, also one who curses their child in his parents’ presence. Rebbi Tarphon says, also the big-voiced. What is the big-voiced? Samuel says, any who speaks and her women neighbors hear her voice. Rav says, any one whose voice is heard by other people from bed to bed during intercourse.

73 In the Babli, 72b, as Amoraic statement: One who curses his parents before his children.
74 Therefore, all his marital disagreements are immediately public knowledge.
75 The same statement is also in the Babli, 72b.
Rebbi Ḥanin stated in the name of Rebbi Samuel: Both for women about whom they said that they have ketubah as also those about whom they said they leave without ketubah, as the minor, the secondarily prohibited, and the she-ram, did they speak about a mina or 200 [zuz]? But even if the ketubah was a thousand denars, she loses, but she takes her existing rags. But the one who leaves because of a bad reputation loses everything. Can she take her paraphernalia? Rebbi Ze'ira said, she takes. Rebbi Hila said, she does not take. Rebbi Hila, Rebbi Yasa, Rebbi Abba bar Cohen mention it in the name of Rebbi Ḥanina ben Gamliel: Both women about whom they said that they leave without ketubah, did they speak about the ketubah of a mina or 200 [zuz]? But even if the ketubah was a thousand denars, she loses. Rebbi Simon said, Rebbi Johanan: All the Mishnaiot are connected to this baraita. Rebbi Mana said before Rebbi Yasa: About which baraita? Of Rebbi Ḥanin from Samuel? He said to him, it is everybody's opinion. And Rebbi Hiyya formulated so: "Women who infringe upon the law lose everything."
76 This text seems to be in rather bad shape and the secondary sources are contradictory, Note 79.
77 Obviously one has to read in the first clause: have no ketubah. Somehow the text should accommodate several kinds of divorces.

The minor who is mentioned in this connection is an underage girl married off by her mother or brothers after her father’s death whose marriage has no biblical validity and who can walk out of it without formality (cf. Yebamot 12, Note 118). Her repudiation of her husband annuls her marriage and with it her ketubah but it does not touch her property rights; both mortmain (dos aestimata) as also paraphernalia (dos non aestimata) must be returned to her (cf. Yebamot 7:1, Note 1).

Secondary prohibitions are rabbinically prohibited unions extending biblical prohibitions, usually for one additional generation (cf. Yebamot 2:4, Note 67). The rabbinate will force the husband to divorce his wife and, in order to scare away women from such marriages, will not enforce any payment of ketubah. But her property rights for mortmain and paraphernalia are not touched (and her children are legitimate.)

The she-ram (Yebamot 1:1, Note 65) is a woman exhibiting secondary male sex characteristics. She is presumed to be congenitally infertile; her marriage is considered invalid by biblical standards, and she will have difficulty collecting the ketubah but not recovering her property.

The statement as it stands now does not cover women who are divorced following Mishnah 6, who may not be able to recover their property.

78 Promised by the husband; this does not touch repayment of the dowry.
79 R. Nissim Gerondi (Commentary to Alfasi, 59b in the Wilna edition) reads: נשים שאמורות儀ום אין להו כנותנה. גוונא ומכותיה הפשיתות לא שאו אלא ממה מתאימים. אול כנותנה ביאלה לינר גוסלק “Women about whom they said that they leave without ketubah, as the underage orphan, the secondarily prohibited, and the she-ram, they spoke only about a mina or 200 [zuz]. But if the ketubah was a thousand denars, she takes it.” As the commentators of the Babli explain, the obligatory ketubah must be lost since she leaves without ketubah; but any additional sums are voluntary gifts from the husband. The claim to such a voluntary gift can be lost only by criminal behavior of the wife, not by an inherent defect of the marriage.
which was known to the husband at the time he made the promise.

Nahmanides (Sefer Hazekhukh, in Alfasi, loc. cit.) reads: "Rebbi Hanin ben Rebbi Samuel stated: Women about whom they said they have no ketubah, receive the additions; but those about whom they said that they leave without ketubah do not even get the additions." Women who have no ketubah are those whose marriage was invalid from the start, e.g., the under age orphan, the secondarily prohibited, and the she-ram. They receive the voluntary additions as explained above. Women who leave without ketubah are those who are divorced because of their crimes; they lose also the husband’s voluntary gift since they force the husband to divorce them.

Probably one should read in the text: "Rav Hanin (known as Rav’s student) in the name of Samuel." This is consistent with the quote later in the paragraph.

80 Her used clothing; cf. Chapter 5, Notes 224-225.

81 Including mortmain, the dowry given to the husband as the latter’s property subject to his obligation to return their value in the fixed amount stated in the ketubah document. Nothing is said about paraphernalia, the wife’s separate property which is administered by her husband. The parallel statement of Samuel in the Babli, 101a, agrees that she loses the husband’s additions above the minimal ketubah but is silent about mortmain.

82 This means her dowry as addition to the ketubah, including mortmain and paraphernalia in the literal sense.

83 This text does not make too much sense. Probably one should read something similar to the text of Tosephta 7:7: "[Women] about whom they said that they leave without ketubah, they spoke not only about a mina or 200 [zuz], but even if the ketubah was a thousand denars, she loses everything, but she takes her used clothing." The Tosephta can be quoted in support of R. Hila that she takes anything that clearly is her property at that moment (her personal effects and the paraphernalia proper) but the husband is not required to return her mortmain which has become
his property; her claim to it is voided. as Amoraic opinion of a single person,
84 All Mishnaiot on the topic why it cannot be the central topic of a
a women should be divorced. whole series of Mishnaiot.
85 Since this is clearly formulated 86 Tosephta 7:7.

Rebbi Eleazar in the name of Rebbi Hanina\textsuperscript{87}: If they saw her putting
on her underpants\textsuperscript{88} and the pedlar leaves her house, the thing is ugly, she
should leave\textsuperscript{89}. There is slime on her bed, the thing is ugly, she should leave. There is slime on
his\textsuperscript{90} bed, the thing is ugly, she should leave. His sandal is in front of her bed, the thing is ugly, she should leave. Her sandal is in front of his\textsuperscript{90} bed, the thing is ugly, she should leave. Both
leave the same dark place, the thing is ugly, she should leave. They lift one another from the cistern, the thing is ugly, she should leave. Both of them clap on her thighs in the bathhouse, the thing is ugly, she should leave. Hanina bar Iqa in the name of Rebbi Jehudah, in all these cases, if she brings an explanation for her behavior she is believed. Rav Ada bar Ahava in the name of Rav: A case came before Rebbi and he said, what of it? They asked before him: Even if they saw him putting his mouth on her mouth? He said, this did happen, that they saw a man putting his mouth on her mouth. The case came before Rebbi Yose, who said that she should leave without ketubah. Her relatives appealed the case and said, if she is deviant, she should leave without ketubah. If she is not deviant, she should take the entire ketubah. Rebbi Mana said to them, bring the ketubah that we may read it. They brought the ketubah and found written in it: If this X marries this Y as her husband and should no longer desire his company, she shall take half the ketubah sum. Rebbi Abun said, since she agreed that he should put his mouth on her mouth it is as if she hated him; she has only half the ketubah. She lies in his bosom or he lies in her bosom, she is deviant. If they embrace, she is deviant. If they kiss, she is deviant. If the door is locked, she is deviant. If it is blocked, that is a problem.

87 In the opinion of S. Abramson, the name should be Ze'ira ben Hanina, an Amora contemporary with rabbis Yose and Mana mentioned later in the text. Cf. Sinai 89 (1981) pp. 118-121.
88 Cf. Sotah 1:2, Note 115.
89 In the Babli, Yebamot 24b-25a, this and the following statements are by R. Hiyya (the elder) quoting the authority of Rebbi. In all these cases, where adultery is not proven by two witnesses to the act, one implies that the woman can be divorced without
payment of the ketubah since the acts describe a high probability of adultery, which is admissible proof in money matters and does not need prior warning.

90 The other man's.

91 Where everybody is naked. Mishnah 9 implies that the use of public thermal baths was separate by sex; then the reference would be to lesbian relationships which, while not forbidden (cf. Yebamot 8:6, Note 240) are generally classified as undesirable.

92 It seems to mean that Rebbi did not want to see the courts involved as long as the testimony did not amount to a legal proof. Some commentators of the Babli read the sentence as referring to the woman's explanation, that Rebbi would not accept any explanation except a legal disproof (cf. R. Yosef Habiba, Nimmuqe Yosef, on Alfassi Yebamot, 6a in the Wilna edition.)

93 This seems to refer to the person mentioned at the head of this paragraph Note 87.

94 A man other than the husband.

95 A proven adulteress. Since there is no legal proof, she should take the entire ketubah amount if the husband divorces her.

A document in which מְלִיתָם and נַשָּׁבָה are used interchangeably was published by S. Asaph, Tarbiz 9(1938), #1, p. 25.

96 About this ketubah text which gives the wife the right to force a divorce in exchange for a predetermined financial reward for the husband, see the details in Note 226, Chapter 5.

97 For Aramaic כַּפֶּרֶת = Hebrew כַּפֶּרֶת, cf. Targum Yerushalmi Ex. 4:6,7. A less likely explanation would be "hideout", derived from the Hebrew root עָסָה "to hide". In the cases mentioned here, there are witnesses but the parties are fully clothed.

98 And may be divorced without claim to the ketubah.

99 Not locked, but some obstacle would have to be removed before a third party could enter the room.

100 The wife has not lost her right to sue for the ketubah amount but the outcome of the suit cannot be guaranteed.
Mishnah 8: If somebody performed the preliminary marriage with a woman on condition that she had no obligation of vows on her and it turned out that she had vows to fulfill, she is not preliminarily married\textsuperscript{101}. If he married her definitively without inquiry\textsuperscript{102} and she had vows to fulfill\textsuperscript{103}, she should leave without ketubah. If somebody performed the preliminary marriage with a woman on condition that she had no bodily defects and it turned out that she had bodily defects, she is not preliminarily married. If he married her definitively without inquiry and she had bodily defects, she should leave without ketubah; and\textsuperscript{104} all defects which disqualify a priest\textsuperscript{105} disqualify a woman.

Mishnah 9: If she had bodily defects\textsuperscript{106}, as long as she is in her father's house, the father has to prove that the defects developed after she was preliminarily married and his field was swamped\textsuperscript{107}; once she entered her husband's domain, the husband has to prove that she had the defects before the preliminary wedding so that his acquisition was in error\textsuperscript{108}, the words of Rebbi Meir. But the Sages say, when was this said? For hidden
defects, but he has no claim about visible defects, and if there is a public bathhouse in his town he has no claim for hidden defects since he checks her out through his female relatives.

101 No conditional contract is valid if the condition is not fulfilled at the moment the contract is activated.

102 Vows were not mentioned at all in the preparations for the preliminary marriage.

103 Of the kind she could expect that the husband would object to.

104 This is one of the cases where \( \psi \) and \( \gamma \) have the same meaning.

105 From Temple service; cf. Lev. 21:16-24; Mishnah Bekhorot 7.

106 The preliminarily married groom divorces her because of the defects and refuses to pay the ketubah. Is the burden of proof on the claimant (in this case the bride and her father) or on the person who wants to break the contract (the groom)? Since in money matters the burden of proof is both on the claimant and on the person who disputes the validity of a document, a way has to be found to reconcile the two conflicting rules. This Mishnah presupposes that the ketubah was written at the time of the preliminary marriage.

107 This agricultural simile is used generally to describe that an accident happened in the buyer’s domain. If somebody buys a field and then finds out that it was recently flooded and became unusable for the current season, it is of the essence that the date of the flood be determined exactly to find out whether it was his bad luck or that he had been sold the field fraudulently. In the latter case he can recover the price paid in court.

108 The underlying principle is: There is a \textit{prima facie} assumption that a defect happened where it was discovered.

109 Since he is not supposed to marry a woman he had not seen before the marriage.
Halakhah 9: "If somebody performed the preliminary marriage with a woman on condition that she had no obligation of vows on her," etc. "If she had bodily defects, as long as she is in her father's house," etc. We have stated defects. Which vows? Rebbi Johanan said in the name of Rebbi Simeon ben Yoṣadaq: If she vowed not to eat, or not to drink wine, or not to wear dyed garments. Rebbi Ze'ira said, the fine linen garments which come from Bet She'an have the status of dyed garments. Rebbi Yose said, the Mishnah deals with the case that he said to her, "on condition that you have no obligation of vows on you." But if he said, "on condition that you have no obligation of any vow on you," then even if she made a vow not to eat carob fruit it is a vow.

110 The Mishnah stated a criterion for defects which are serious enough for annulment of the marriage. Does there exist a similar criterion for vows? "Vows" without a qualifier are always "vows or oaths of prohibition for the purposes of mortification"; cf. Introduction to Tractate Nedarim.
The entire Halakhah from here on is also Halakhah Qiddušin 2:5. The variant readings are noted p.
111 Babli 72b, Tosephta 7:8. These vows either interfere with her ability to cook for her husband or they detract from his standing in the community if his wife appears in undyed woolen or linen garments used only by the poor.
112 These are bleached white; he asserts that bleaching is the equivalent of dying.
113 In which case nobody should care. A similar argument is ascribed to Rav Pappa in the Babli, 72b.
114"If she went to an Elder and her dissolved her vow, she is preliminarily married. To a doctor and he healed her, she is not preliminarily married." 115What is the difference between the Elder and the doctor? The elder uproots the vow from its start; the doctor heals only for the future. 116Some Tannaim state: Even if she went to an Elder and her dissolved her vow, she is not preliminarily married. The baraita follows Rebbi Eleazar, as we have stated there: "Rebbi Eleazar said, they forbade this only because of the other." What is the reason of Rebbi Eleazar? It would have been logical about a vow which has to be investigated by a Sage... because a vow which does not have to be
investigated by a Sage\textsuperscript{118}. Some Tannaîm state: She is allowed to marry\textsuperscript{119} without a bill of divorce. Some Tannaîm state: She is forbidden to marry without a bill of divorce\textsuperscript{120}. They wanted to say that he who says, she is allowed to marry without a bill of divorce, is Rebbi Eleazar\textsuperscript{121}, and he who says, she is forbidden to marry without a bill of divorce, are the rabbis\textsuperscript{122}. Everything follows the rabbis. He who says, she is allowed to marry without a bill of divorce: Since she knows that if she went to an Elder, he would dissolve her vow, since she does not go therefore she can be married without a bill of divorce\textsuperscript{123}. But he who says, she is forbidden to marry without a bill of divorce, that she should not go to an Elder who would dissolve her vow, then the preliminary marriage would become retroactively valid for her and it would turn out that her children become bastards. Therefore she is forbidden to marry without a bill of divorce\textsuperscript{125}.

\textsuperscript{114} Tosephta 7:8; quoted in Babli 74b; also in Yerushalmi Qiddusin 2:5 (62c l. 66).
\textsuperscript{115} In the Babli (previous Note) this is quoted as a tannaitic text.
\textsuperscript{116} The following text has a parallel with different emphasis in the Babli, loc. cit.
\textsuperscript{117} The reference is to Mishnah Gittin 4:7 where it is stated that a man who divorces his wife because of her vows is never permitted to take her back. This is a rabbinic rule. R. Meir holds that no remarriage is permitted in case of any vow that needs to be annulled by an Elder (cf. Nedarim Chapter 9). The reason is that one has to avoid a situation in which the divorcee marries another man and for him goes to an Elder to have him annul the vow. If the ex-husband says, "if I had known that her vow will be annulled, I would not have divorced her," he retroactively would annul the bill of divorce, make his ex-wife a bigamist and bastards of her children from the second husband. Therefore, one has to make clear to him that the divorce is final and irreversible, to prevent him from having second
thoughts. But if the cause of the divorce is an invalid vow, the divorce is not caused by the vow and the husband may remarry his divorcee (as long as she did not marry another man). R. Eleazar says that remarriage was forbidden in the second case because of the first one since it is obvious that the husband must be an ignoramus if he divorces his wife because of a vow which every competent scholar will immediately declare as invalid if asked about it ("a vow which does not have to be investigated by a Sage" because the Sage will declare it invalid at first sight.)

118 This text is clearly elliptic. There does not seem to be a lacuna, but rather the text is a reference to an extensive argument in Gitin 4:7 (and a related text in Qiddusin 2:5): Rebbi Eleazar said, they forbade this only because of the other. It would have been logical that even in the case of a vow which has to be investigated by a Sage he could take her back. For the Elder uproots the vow from the start. Why did they forbid a vow which does not have to be investigated by a Sage? Because of a vow which has to be investigated by a Sage."

119 The woman whose preliminary marriage has been declared invalid because of her vows may marry any other man without a divorce from the first.

120 This is also quoted in the Babli, loc. cit.

121 Who holds that all these prohibitions are only extreme precautions.

122 This position, rejected here, is the one adopted in the Babli. It seems that the Babli would reject the argument given for the permission to remarry as unreasonable (cf. R. Nissim Gerondi, ad Alfassi 35a.)

123 If she does not go to stay married to the first husband, one does not expect her to try to dissolve her vow for any other man.

124 Having used the vows to escape a marriage chosen for her when adolescent by her father, she might be expected to have the vow annulled as an adult for a man of her choice.

125 From her first husband, who in executing the divorce has to forswear any hope ever again to be married to her.
Rebbi Simeon ben Laqish said, the Mishnah deals with the case that he married her preliminarily conditionally but definitively silently. But if he married her preliminarily silently and definitively silently, she can claim her ketubah. Rebbi Johanan said, even if he married her preliminarily silently and definitively silently, she has no ketubah. Rebbi Hiyya in the name of Rebbi Johanan: But she needs a bill of divorce from him even if he married her preliminarily conditionally but
Rebbi Ze'ira asked before Rebbi Mana: In case he married her preliminarily silently and divorced her after the preliminary marriage, what does Rebbi Simeon ben Laqish say? Let us hear from the following: "If she had bodily defects, as long as she is in her father's house, the father has to prove." This implies that if the father proved his case, she can claim her ketubah. What do you see to say, if he married her preliminarily silently and divorced her after the preliminary marriage! Where do we hold? Since afterwards [it is stated]: "When was this said? For hidden defects, but he has no claim about visible defects." If he [made it conditional], could he not also claim for visible ones? But did not the colleagues say before Rebbi Yose: Should we say that the following statement disagrees with Rebbi Simeon ben Laqish? "Once she entered her husband's domain, the husband has to prove." This implies that if the husband proved his case, she has no claim to ketubah. But by the statement of Rebbi Simeon ben Laqish, she has a claim to ketubah. Rebbi Cohen in the name of the rabbis of Caesarea: The Mishnah deals with the case that he definitively married her but did not sleep with her; Rebbi Simeon ben Laqish speaks about the case that he definitively married her and slept with her; I am saying that she was acceptable to him since he took her to bed.

126 From the parallel in Qiddušin, missing here in ms. and editio princeps.
127 The Mishnah does not spell out what the connections are between preliminary and definitive marriage ceremonies. R. Simeon ben Laqish reads the Mishnah as one statement: If he stipulated for the preliminary marriage that the woman should be without vows or blemishes, if his condition is not met he can walk out of his commitment without further obligation. If he goes ahead with the definitive marriage, the marriage is
valid and can be dissolved only by a bill of divorce, but his original condition has not been withdrawn and, therefore, he does not have to pay.

128 This case has not been dealt with in the Mishnah; therefore the groom has no legal basis for refusing to pay the ketubah even if one agrees that he can divorce his wife for cause since he cannot be expected to live with a vowing or invalid wife. The Tosephta, 7:9, supports R. Simeon ben Laqish.

129 He holds that the two cases in the Mishnah, referring to preliminary and definitive marriages, are independent of one another. Therefore, anybody who finds his wife encumbered by vows or having bodily defects can divorce her without ketubah, even if the subject was never mentioned at the preliminary marriage.

130 Since the stipulation was not repeated at the definitive marriage, the fact of the definitive marriage retroactively validates the preliminary marriage that would have been invalid if the condition of the bride had been investigated by the groom. Therefore, the stipulation can refer only to money matters, not to the validity of the marriage and the marriage cannot simply be declared nonexistent.

In the Babli, 72b/73a, this is the position of Rav, disputed by Samuel. The Babli explains that Rav holds that if a man sleeps with a woman he shows that in his mind he is legally married (and the preliminary marriage is validated retroactively); Samuel does not attribute such pious thoughts to men.

131 If the ketubah was written for the preliminary marriage, does R. Simeon ben Laqish equate the signing of the ketubah document to a definitive marriage as far as money matters go?

132 This proves that the Mishnah must assume the preliminary marriage to have been unconditional.

133 Referring to an unconditional preliminary marriage.

134 He must have been aware of her bodily defect. The Mishnah treats the cases of vows and defects as completely parallel; one must therefore restrict the statement of R. Simeon ben Laqish to the case that the husband was aware of his wife’s vows when he slept with her for the first time.
And all defects which disqualify a priest disqualify a woman. They added to them for women mouth odor, sweat odor, and a hairless mole. Rebbi Ammi bar Uqba in the name of Rebbi Yose ben Hanina: They taught this about the skin of the face. But did we not state: "When was this said? For hidden defects, but he has no claim about
visible defects," and this is of the visible defects! Explain it if she hid it under her headgear. It was stated: "A mole with hairs is a defect, whether it be large or small, whether it be on the body or on the face. Without a hair it is a defect on the face but not on the body. When has this been said? If it is small. But if it is large, it is a defect whether it be on the body or on the face. How big is large? Rabban Simeon ben Gamliel says, up to an Italic as 139. Rabbi Eleazar bar Hanina said, for example such a Gordianic denar 140 his measure is half an ubiquitous gold piece 141. Rebbi Radifa, Rebbi Jonah: Rebbi Jeremiah asked: A bald woman with a row of hair going from one ear to the other 142? They wanted to understand it from the following: "They added to them for women mouth odor, sweat odor, and a hairless mole." They did not mention baldness. They wanted to conclude that it is not a defect. There came Rebbi Samuel the son of Rebbi Yose ben Rebbi Abun: Rebbi Nasa said, it is a defect. It is listed only if it is ugly for both sexes. But something which is beautiful in one sex but ugly in the other, like a bald pate, even though it is a defect it was not listed. You should know that this is so because a beard is beautiful for a man and a defect for a woman, and we did not state: In addition, for a woman a beard. There are breasts which are beautyiful for a woman and a defect for men, and we did not state: In addtion, for a man women's breasts 143.

135 The correct spelling is in Qiddusin: ṣתרב ל"her head gear". 136 This is the reading in Qiddusin. Here: תמרפ which is incomprehensible. 137 Tosephta 7:9, quoted in Babli 75a. Mishnah Bekhorot Chapter 6 enumerates the defects which make an animal unfit for the altar. Chapter 7 states that any defect making an animal
unfit will disqualify a Cohen from Temple service. In addition, a misshapen head will disqualify a priest, also a bald pate not bordered in the front by a line of hair from ear to ear.

138 The mole.
139 A rather large copper coin, about an inch in diameter.

The *baraita* is quoted in the Babli, 75a; the following amoraic comment (and reduction in size) has no parallel there.

140 Minted by Gordianus III. Really a double denar, an *Antoninianus*, but whose weight was only \( \frac{1}{3} \) larger than the simple denars minted by Gordianus I and II. Cf. D. Sperber, *Roman Palestine, 200-400, Money and Prices*, Ramat Gan 1974, pp. 39,226. Since the text here is confirmed by its parallel in *Qiddusin*, the different readings in *Qiddusin*, the quote is "R. Eleazar in the name of R. Hanina"; the latter lived under the last Severan emperors and the early military anarchy. The gold coin is an *aureus* of Septimius Severus or his successors.

141 This R. Eleazar bar Hanina is not mentioned again in the Talmudim. In *Qiddusin*, this is the end of the Halakhah.

142 Which is not a defect for a male, cf. Note 137.

143 No list is complete. In the Babli, oversized woman's breasts are listed as defect.

144 Defects that do not appear during the natural aging process.

The Mishnah deals with defects which do not spontaneously appear. But about defects which spontaneously appear, the husband has to bring proof and say that he stipulated about them.

144 Defects that do not appear during the natural aging process. Without prior stipulation the husband cannot complain if his wife is not permanently youthful looking.

There is a possibility that this
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paragraph refers to a statement similar to Tosephta 7:10: The Sages agree with R. Meir (in Mishnah 8) that for defects which usually develop (in Nachmanides’s opinion, birth defects or defects that develop in early childhood) the father has to bring proof even if she is in her husband’s house (even if these are visible defects). In the opinion of the Babli, 77a, epilepsy is a hidden defect if the onset of an attack is preceded by signs which give the girl time to hide herself; it is a public defect if attacks come without warning.

Mishnah 10: If a man developed defects, one does not force him to divorce. Rabban Simeon ben Gamliel said, when has this been said? For minor defects. But for major defects one forces him to divorce.

145 If the wife claims that she cannot live with such a man.
Halakhah 10: "If a man developed defects," etc. Rav Jehudah in the name of Rav: So is the Mishnah, "if he had." But if they developed newly, one forces him to divorce. Rebbi Abba bar Cahana in the name of Rebbi Johanan: Practice follows Rabban Simeon ben Gamliel. There came a case before Rebbi Jeremiah about a kopeah, and he forced him. It turns out that following Rav if he did not become so, following Rabban Simeon ben Gamliel if he became so. Rebbi Ze'ira said, Rabban Simeon ben Gamliel follows Rebbi Meir. Which [statement of] Rebbi Meir? The former or the later? If the former, until she made a condition. If the later, even if he made a condition it is nothing. But this Mishnah turns out following Rabban Simeon ben Gamliel; does "the following one forces to divorce" [follows] the rabbis? Let us hear from the following: "Rabban Simeon ben Gamliel says, if it was a major defect, e.g., blind in one eye, amputated of one of his hands, lame in one of his legs, immediately he shall divorce and pay the ketubah." This Mishnah turns out following Rabban Simeon ben Gamliel; "the following one forces to divorce" [follows] the rabbis.

146 One has to read: שבע
147 In the Babli, 77a, Rav Jehudah reads that the defect "developed (after the marriage)" and Rav’s son Hiyya reads "was (in existence at the time of marriage)".
148 This is Rav Jehudah’s conclusion.
149 In the Babli, this is a statement of R. Abba bar Jacob in the name of R. Johanan, it is rejected by the Babylonian Amoraim.
150 This is mentioned in Mishnah Bekhorot 7:6 as כשם (in the Maimonides tradition of the Mishnah and oriental mss. of the Babli collected by R.
Besalel Ashkenazi) or Ἰωή. According to Rashi (Bekhorot 45b), he is overly tall but has soft bones so that he cannot walk straight. R. Besalel Ashkenazi (Bekhorot 45b, Note 2) quotes one opinion that he is an epileptic.

151 To divorce his wife upon her demand.

152 I. e., in Rav’s interpretation of the anonymous Tanna in the Mishnah.

153 The former statement is in Mishnah 9, that one assumes that the defect occurred at the place it was detected. The later statement is that of Mishnah 11: a woman may claim that she married because she thought she could stand to live with a man having such a defect but she recognizes now that this is impossible for her.

154 If the reference were to Mishnah 9, one would require the woman to stipulate before the marriage that the man be free of defects. In that case, everybody agrees that she can force a divorce.

155 If he divulged his defect to his fiancée before the marriage, R. Meir still will not force the woman to stay married if she finds the experience intolerable.

156 The entire Mishnah 10 is Rabban Simeon ben Gamliel’s. (One usually reads Mishnaiot containing a statement “when has this been said” to be the text of the person who explains). Since he makes a distinction between small and large defects, he must speak of newly developed defects.

157 Does Mishnah 11 follow the rabbis in Rav’s interpretation, dealing with pre-existing conditions?

158 Tosephta 7:9, Babli 77a; the language of the Tosephta is closer to the Yerushalmi.

159 Since the defects mentioned in the Mishnah are not on Rabban Simeon ben Gamliel’s list.
Mishnah 11: The following one forces to divorce: Those smitten with boils, the one afflicted with a polyp\(^{160}\), the dung collector\(^{161}\), the brass refiner, and the tanner\(^{162}\), whether they were in this before they married or they came to it after they married. For all of these says Rebbi Meir that, even if he contracted with her\(^{163}\), she can say "I thought that I could stand it, now I cannot stand it." But the Sages say, she is forced to stand it except for the one smitten with boils because she causes him consumption\(^{164}\). It happened in Sidon that a tanner died\(^{165}\) who had a brother tanner; there the Sages said, she can say: "I could stand that in your brother, I cannot stand it in you."

160 Greek πολύπιους "many-footed", a cancerous growth in the nose (according to the Babli, 77a, an evil smelling growth.)
161 He collects animal dung to sell to tanners; he smells badly.
162 All these have professions that impregnate them with bad smells which even with a bath cannot be removed.
163 He informed her of his impediment before the marriage.
164 In talmudic medical theory there are kinds of boils for which sexual activity is very detrimental.
165 He died childless; his widow can force her levir not to take her in levirate marriage and free her by halisah.
Halakhah 11: "The following one forces to divorce: Those smitten with boils," etc. "The meqammes." This is the dung collector; but some say it is the tanner. Rebbi Ze'ira said, the Mishnah implies that this is the dung collector since we have stated: "The meqammes and the tanner."\(^{166}\)

"The brass refiner." Samuel said, that is the one who smelts brass from its ore\(^{167}\).

166 The Babli, 77a, explains the problem away that in the opinion of the dissenting Tosephta (7:11) there are different kinds of tanners, smelling differently.

167 In the Babli, 77a, this is only one opinion; Rav disagrees and holds that he repairs metal pots.

It was stated\(^{168}\): "Rabban Simeon ben Gamliel said, I met an old man, smitten with boils, from Sepphoris. He told me, there are 24 kinds of boils; the worst one, and the one for which a woman is bad, is flowing boils\(^{169}\). Rebbi Samuel bar Nahman in the name of Rebbi Jonathan: With the latter kind, the evil Pharaoh was smitten\(^{170}\); that is what is written\(^{171}\): "The Eternal smote Pharaoh and his house with great plagues," etc. Rebbi Berekhia said: Because he dared to touch the matron's body.
There are 24 kinds of cedar\textsuperscript{173}, and from all of them the verse mentioned only seven. That is what is written\textsuperscript{174}: "I shall give in the desert cedar, acacia, myrtle, and oil wood\textsuperscript{175}; I put in the prairie beroš, tidhar, and teaššur together. Beroš is cypress; tidhar is idra\textsuperscript{176}; teaššur is the box-tree\textsuperscript{177}. They added to them\textsuperscript{178} 'allonim, 'armonim, and 'almogim. 'Allonim are oaks, 'armonim plane trees, 'almuggim aloës.

168 Tosephta 7:11 [Gen. rabba 41(2)] in this version only the person afflicted with ritan is required to divorce his wife for medical reasons. Another version in the Babli, 77b [Lev. rabba 16(1)], requires all sufferers from boils to refrain from sexual activity.

169 Usually derived somehow from Greek ρέω "to flow".

170 This is anonymous in Gen. rabba 41(2).

171 Gen. 12:17.

172 This is slightly distorted in Gen. rabba 41(2), correct in 52(14). It was read by H. Graetz as mixed Aramaic/Greek/Latin sentence: δέ-τόλμησαν ἡμα' βα-σῶμα δέ-ματρονα; where δέ-τόλμησαν is aorist of τολμάω "to dare, to presume".

173 This is added here because of the number 24. In the Babli (Roš Haššanah 23a, Sukkah 37a, Ta'anit 25b, Baba batra 80b) there are only 10 kinds mentioned, the 10 explained here, with sometimes different and multiple identifications. The original text seems to be in Gen. rabba 15(2): "R. Samuel ben Nahman in the name of Rebbi Jonathan: There are 24 kinds of cedar but only 7 are of the best kind."

174 Is. 41:19.

175 In the Babli identified as the balsamum shrub.

176 This Aramaic word for a tree has not been identified. In the Babli identified as ξή "teak".

177 Greek πυξίνον "box-tree".

178 This expression is out of place here; it belongs to the tannaitic tradition reported in the Babli that there are 10 kinds of cedar, with three added to the seven mentioned by Isaiah.
Mishnah 1: If a woman inherited property before she became preliminarily married, the Houses of Shammai and Hillel agree that if she sells or gives it away it is valid. If she inherited after she became preliminarily married, the House of Shammai say she may sell, the House of Hillel say she should not sell, but both of them agree that if she sold or gave it away it is valid. Rebbi Jehudah said: They said before Rabban Gamliel: If he obtained the right to the woman, should he not also acquire the right to the property? He said to them, are we not ashamed about the new [properties] and you want to burden us with the old ones?

1 If she is an unmarried adult, she is fully capable of acting and does not need any male guardian or representative. "Properties" without further qualifications are real estate.

2 Up to the time of the definitive marriage. At the definitive marriage the husband becomes the administrator of the properties and receives their yield; he has no say in the matter before that date. Everybody agrees that after the definitive marriage the wife can sell only through her husband (unless a separation of property was...
stipulated before the definitive marriage. Since these are money matters, they are all subject to modification by the contracting parties.)

3 Since the preliminary marriage makes the bride a married woman in all aspects of criminal law, should the husband not also have acquired a say in her properties.

4 Properties she inherits after the final wedding ceremony, of which Mishnah 2 decrees that the husband can veto her sale. It seems not reasonable that the secondary interest of the husband in the yield of the properties should override the primary property rights of the wife in her inheritance.

5 The properties inherited before the final wedding date

Halakhah 1: "If a woman inherited property," etc. So is the Mishnah:

Before she was preliminarily married. What is the difference between before she was preliminarily married and after she was preliminarily married? Before she was preliminarily married, it fell to her; after she was preliminarily married it fell to her and him.

6 There seems to be no difference in meaning between t-reflexive hitpael and n-reflexive niphal. J. N. Epstein (loc. cit. Chapter 5, Note 33, p. 474) sees in this sentence only the introduction to the following question since in all quotes of the Mishnah in other parts of the Yerushalmi the formulation of the Mishnah is used.

7 The Babli, 78a, has a slightly more careful formulation, that after the preliminary marriage the husband might have an interest.

(32a line 16)
Rebbi Phineas asked before Rebbi Yose, why did we not state it with the leniencies of the House of Shammai and the stringencies of the House of Hillel? He said to him, the Mishnaiot apply only to circumstances that are either stringent on both sides or lenient on both sides. But here it is a stringency on one side and a leniency on the other side. But did we not state: "The House of Shammai say, property abandoned to the poor [is abandoned]?" Is this not lenient for the poor and stringent for the householder, and it was stated! He said to him, it is lenient for the poor and not stringent for the householder, since he intentionally abandoned it. He said to him, did we not state: "If the sheaf that was near a closure, a stack, cattle, or vessels was forgotten," is this not lenient for the householder and stringent for the poor, and it was stated! He said to him, it is lenient for the householder but not stringent for the poor, because they did not acquire it yet. You may also say here, it is lenient for the woman and not stringent for the husband since he did not yet acquire property rights to it. He said to him, since he became betrothed to her, the inheritance fell to both of them.
Rebbi Jehudah said, they argued before Rabban Gamliel: Because preliminarily married she is his wife and definitively married she is his wife; just as the sale by the latter is void, the sale by the former also should be void. He said to them, we are ashamed of the new ones, now you want to roll the new on over the old ones! The new ones, after the definitive marriage; the old ones before the definitive marriage, when she was married in the second ceremony.

8 From here to the end of the explained there in Notes 45-55 Halakhah, the text is from Peah 6:2, (variants b).

Mishnah 2: If she inherited property after she was definitively married, both agree that if she sold or gave away the husband retrieves from the hand of the buyers. [If she interited] before she was definitively married and [sold] after she was definitively married,
Rabban Gamliel said if she sold or gave away it is valid. Rebbi Hanina ben Aqiba said, they said before Rabban Gamliel: If he obtained the right to the woman, did he not also acquire the right to the property? He said to them, are we not ashamed about the new properties, and you want to burden us with the old ones?

9 This word is in the text of the Mishnah, not in the quote in the Halakhah nor in any other known Mishnah or Talmud ms. This supports S. Lieberman's opinion that the copyist of the Leiden ms. took the Mishnah text from a ms. different from the Talmud ms. before him.

10 The Houses of Shammai and Hillel.

11 In the absence of a contract to the contrary, the husband has the administration of the wife's paraphernalia and receives their yield. This means that at the moment the wife acquires title to the property, the husband acquires title to its yield. Therefore, he can go to court and invalidate the real estate transaction which was done without his concurrence.

12 Even after she was preliminarily married; therefore this property does not become part of her dowry proper (mortmain) but remains the wife's separate property as paraphernalia (Yebamot 7, Note 1).

13 Since she could have sold before the final marriage, as stated in Mishnah 1, the husband has no acquired rights in the property.

14 This name appears also in the Munich ms. and the Soncino print of the Babli. In most other sources: Aqabia.

15 Since with the act of definitive marriage he acquires his wife's mortmain properties, why are his rights over her paraphernalia properties not likewise absolute?
Halakhah 2: “If she inherited after she was definitively married,” etc.

We did state: She may sell or give away and it is valid. Rebbi Hiyya stated: She should not sell or give away, but if she sold or gave away it is valid. 17”Rebbi Hanina ben Aqiba said, that is not what Rabban Gamliel gave as answer, but the following was his argument: No, if you have an argument about a preliminarily married one, where he has rights neither to what she finds, nor to her handiwork, nor to dissolve her vows, what can you say about a definitively married one where he has rights to what she finds, to her handiwork, and to dissolve her vows? Let the proof be the case of one who [inherited] before the definitive marriage and then was definitively married, in which case he has rights to what she finds, to her handiwork, and to dissolve her vows, and you admit to us that she should not sell or give away. He said to them, I agree that she should not sell or give away, but if she sold or gave away it is valid.” There came a case before Rebbi Immi. He said, is not Rabban Gamliel’s an isolated opinion? One cannot rely on it. A baraita supports him and disagrees with him: 20“Our teachers took up the case again, voted, and instructed...
about property which she inherited before the definitive marriage and 
then was definitively married, that she should not sell or give away, and if 
she sold or gave away it is invalid." It disagrees\(^{21}\) that the sale is invalid. 
It agrees that our teachers took up the case again, instructed, and voted. 
Before they voted, they did not disagree with him\(^{22}\).

16 She inherited real estate before 
her definitive wedding. 
17 Tosephta 8:1, Babli 78b. In both 
of these sources the text seems to be 
more correct: The argument is 
inverted. If the husband has property 
rights after the definitive marriage, 
what does this prove for the preliminary? 
18 He has joint rights to dissolve 
the vows of the adolescent 
preliminarily married girl; Mishnah 

Nedarim 10:1. He has no rights to 
dissolve the vows of his adult 
preliminarily married wife. 
19 Rabban Gamliel. The argument 
of R. Immi is faulty but his conclusion 
correct. 
20 Tosephta 7:1, Babli 78b. 
21 With Rabban Gamliel. 
22 In his time, Rabban Gamliel 
represented the majority opinion; his 
rule was invalidated by a later 
generation.

Mishnah 3: Rebbi Simeon differentiates between properties: 
Properties known to the husband she shall not sell and if she sold or gave 
away it is invalid\(^{23}\). Those unknown to the husband she shall not sell but 
if she sold or gave away it is valid.
23 Since this is not practice, neither Talmud gives a reason. According to the Tosephta (8:1), the husband can claim that he married her only because of the property he knew was coming to her and that, therefore, the validity of the marriage depends on his getting his hands on that property.

HALAKHAH 3: "Rebbi Simeon differentiates between properties," etc.

Rebbi Johanan said, properties known to the husband are real estate, those not known to the husband are movables. Rebbi Yose ben Hanina said, properties known to the husband are those she inherited in the presence of the husband, those not known to the husband are those she inherited while her husband was overseas. A baraita supports Rebbi Yose ben Hanina: The following are properties not known to the husband, what she inherited while her husband was overseas.

24 In the Babli, 78b, this is attributed to R. Yose ben R. Hanina.

25 In the Babli, 78a, R. Johanan holds that all properties discussed here are real estate; but properties unknown to the husband are what she inherits overseas. Since the husband cannot administer these properties, he cannot object to his wife's selling the properties, turning them into money.
Mishnah 4: If she inherited money; real estate should be bought with it and he eats its yield. For produce cut from the ground, real estate should be bought and he eats its yield; with produce connected to the ground, Rebbi Meir says one has to estimate how much the property is worth with produce and how much without, for the difference real estate should be bought and he eats its yield. But the Sages say, standing produce is his, cut it is hers; real estate should be bought from it and he eats its yield.

26 Since it is the husband’s duty to preserve his wife’s property. In the economic environment of the later Roman Empire, real estate was the only investment guaranteed to keep its value (investments appropriate for the guardian of widows and orphans). Since the husband is required to pay for all her needs, she has no direct use for the cash she inherited.

27 The field in which the crop is standing.

28 Since R. Meir holds that a crop is yield only if it grew under his care.

29 Since it is yield.
Halakhah 4: "If she inherited money; real estate should be bought," etc.

Rebbi Jeremiah said, this is Rebbi Meir’s opinion since Rebbi Meir considers standing [produce] as if it were cut. Rebbi Yose said, he did not hear that Rebbi Yose ben Hanina said, Rebbi Meir said this only for standing grain ready to be harvested and grapes ready to be harvested; therefore not unripe produce. But here, even unripe produce. Rebbi Jeremiah asked, are not the arguments of Rebbi Meir contradictory? There, he did not consider standing [produce] as if it were cut, but here he considers standing [produce] as if it were cut. Rebbi Johanan said, Rebbi Meir does not consider standing [produce] as if it were cut. But if you see cut grain, you empower the woman; if you see an unseeded field, you empower the man. In case of doubt you estimate how much it is worth unseeded and how much seeded. If before it was seeded it was worth (two denars) and when it was seeded (one denar), with that denar real estate should be bought and he reaps its yield.

This refers to Mishnah Sevuot 6:6. In rabbinic interpretation, Ex. 22:8 defines when an oath is required by the court: "About any criminal matter, about an ox, a donkey, a sheep, a garment, or anything lost, if he agrees that this is it, the suit shall be heard by the judges." This is read to mean that an oath is needed if the defendant agrees that the plaintiff has a case but that he owes less than what is being claimed (cf. Mekhilta dR. Ismael, Mishpatim 15). The part of the claim in dispute is what the claimant considers criminal withholding of his property by the defendant. If the defendant rejects
the entire claim, the claimant has to prove his case by witnesses or documents; if the defendant admits part of the claim the claimant can request that he swear not to owe more. But since the examples given in the verse are all about movables, it is concluded that claims of real estate cannot be resolved by an oath (Mishnah Sevuot 6:5). On that, R. Meir states that "some things are on the ground but are not real estate". The example given is that the claim is "I handed over to you (to harvest and make wine from) ten vines full of fruit" but the defendant claims "there were only five." In that case, R. Meir requires the defendant to swear but the Sages hold that anything connected to the ground is like real estate.

Since the produce on the field is considered as the wife's capital, not the husband's produce, R. Jeremiah infers that the Mishnah does not represent practice since it follows R. Meir in a case in which the majority disagrees.

31 Cf. Yebamot 15:3, Note 79; Babli Sevuot 43a.

32 The case of the wife's inheritance is not restricted to ripe produce.

33 This attribution is impossible. Rebbi Jeremiah cannot ask a question answered by his teacher's teacher's teacher R. Johanan. It might be Rav Jeremiah, one generation before R. Johanan.

34 In Mishnah Sevuot 6:6.

35 Cut grain is as good as coin for an inheritance.

36 This has to be tended; the husband will reap the fruits.

37 Obviously, the numbers have to be switched since 1 < 2.
Mishnah 5: Rebbi Simeon says, in the circumstances where he was empowered at her entrance he was disabled at her exit, and in the circumstances where he was disabled at her entrance he was empowered at her exit. What was connected to the ground at her entrance is his and at her exit is hers, what was cut from the ground at her entrance is hers and at her exit is his.

He follows the Sages in the previous Mishnah that produce she brings into the marriage as capital and real estate is given over to his administration. He adds that at a divorce (if she exits the marriage) he has to deliver the field as is at the moment the bill of divorce is delivered, with all the grain standing if it was not cut before the divorce but that all produce harvested before the moment of divorce is his; cf. Yebamot 15:5, Notes 67-68.

"Rebbi Simeon says, in the circumstances where he was empowered," etc. You say, at her entrance they are his: If she sold them they are not sold, if she gave them to a sharecropper he has the reward from it, if she...
dedicated them as First Fruits they are not dedicated. You say, at her exit they are hers, if he sold them they are not sold, if he gave them to a sharecropper she has the reward from it, if he dedicated them as First Fruits, this is the disagreement of Rebbi Johanan and Rebbi Simeon ben Laqish, since they disagreed: (Deut. 26:11): 'You shall enjoy all the good things that the Eternal, your God, gave to you and your house.' This teaches that a person brings First Fruits from his wife's property." Rebbi Simeon ben Laqish said, after her death but not during her lifetime. Rebbi Johanan said, there is no difference, during her lifetime and after her death. Rebbi Simeon ben Laqish follows his own opinion since he said, a person does not inherit from his wife as a biblical rule. In the opinion of Rebbi Simeon ben Laqish it never was dedicated. In the opinion of Rebbi Johanan it is dedicated and the holiness is removed.

39 One has to read: 'at her exit' instead of 'at her finding.'
40 This is the text of the parallel in Bikkurim. Text here: 'for no person'.
41 The text may mean: He takes it away from him. In the first interpretation, the standing crop given to the sharecropper is counted as part of the latter's compensation.
42 Since nobody can dedicate anything which is not his property and not in his possession.
43 The next few sentences are from Bikkurim 1:6, Notes 119-121. Cf. Sifry Deut. #301.
44 This is the common Sadducee-Karaite opinion that the wife is never mentioned in Num. 27:7-11 (only that the children inherit from their mother, Num. 36:3). In the Babli, Gittin 47b. it is supposed that R. Simeon ben Laqish accepts that the wife is mentioned obliquely in Num. 27:11 and his disagreement with R. Johanan is about a technicality; the opinion attributed here to R. Simeon ben Laqish is attributed in the Babli, 84a, to Rav. In Bekhorot 52b, it is asserted without dissent that the husband's right of inheritance is biblical. (Maimonides,
Hilkhot Nahalot 6:8, asserts that the husband's right of inheritance from his wife is only rabbinic practice. If the First Fruits were dedicated during the marriage then the act of divorce removes the husband's ownership and with it the dedication.

Mishnah 6: If she inherited old male and female slaves, they should be sold and real estate bought with the proceeds, of which he eats the yield. Rabban Simeon ben Gamliel says, she does not have to sell because they are the glory of her father's house.

He cannot sell her family's slaves against her will.

Halakhah 6: "If she inherited male and female slaves," etc. The Mishnah speaks of those who do not work enough for their upkeep. But if they work enough for their upkeep, she does not have to sell because the glory of her father's house still exists.

As Tosaphot notes (79b, s. v. אבה תנה), if they cannot work at all they cannot be sold.
Mishnah 7: If she inherited old vines or olive trees, they should be sold for their wood and real estate bought with the proceeds, of which he eats the yield. Rebbi Jehudah says, she does not have to sell because they are the glory of her father’s house.

Halakhah 7: "If she inherited old vines or olive trees," etc. Rav Abun in the name of the rabbis there: The Mishnah deals with the case that she inherited olive trees but not their ground, vines but not their ground. But if she inherited olive trees with their ground, vines with their ground, she does not have to sell since her father’s house’s glory still exists. But the rabbis here say, even if she inherited olive trees with their ground, vines with their ground, did she not inherit the value of the olive grove, did she not inherit the value of the vineyard? A baraita supports the rabbis there: "I am selling you the vineyard", this is a valid sale even if there are no vines since he sells him [the real estate] by description. ‘I am selling you the grove’, this is a valid sale even if there are no trees since he sells him [the real estate] by description."
49 It seems that Alfassi reads "Rabban Simeon ben Gamliel", with the Munich ms. of the Babli (38b in the Wilna edition.)

50 According to the Babli, 79b, these Babylonian rabbis are Rav Cahana in the name of Rav.

51 Therefore, if one waits until the trees have died, all value from the inheritance is lost.

52 On condition that the orchard or the vineyard be generally known as "her father's orchard or vineyard."

53 The remainder of this paragraph is from Ma'aserot 2:5, Notes 107,108. The quote is from Tosephta Baba Batra 6:18, Babli Baba Batra 7a, Baba Meisi'a 104a.

54 If the lot was popularly known as "vineyard" or "olive grove".

Mishnah 8: If somebody invests in his wife's properties, if he invested much but it yielded little, or he invested little but it yielded much, what he invested he invested and what it yielded it yielded. If he invested and had no yield, he shall swear how much he invested and get repaid.

55 The paraphernalia properties which in case of a divorce have to be returned to the wife.

56 He has no claim to be repaid for the excess of his investment over his gain.

57 If he divorced his wife before he had any income from his investment, he can ask to be repaid.
Halakhah 8: "If somebody invests in his wife’s properties," etc. Rebbi Abba⁵⁹ in the name of Rav Hiyya bar Ashi: Even if he ate only one basket of dates. Assi⁶⁰ said, that is, if the investment is greater than the increase in value. But if the increase in value is greater than the investment, one gives him the increase in value⁶¹. A baraita disagrees⁶² with Assi: "In all cases⁶³ one evaluates it as for a sharecropper." The baraita disagrees about planting; what Assi said was about a building. The baraita disagrees about planting, is that what Rebbi Abba said in the name of Rav Hiyya bar Ashi: Even if he ate only one basket of dates⁶⁴. He said to him, in one case if he ate, in the other if he did not eat.

⁵⁸ It seems that one has to read סרה (this is the word translated).
⁵⁹ In the Babli, 80a, he says "one date cake".
⁶⁰ It seems that he is the Babylonian, colleague of Rav; identified correctly in the Munich ms. of the Babli, 80a.
⁶¹ In the Babli, 80a, two interpretations are given for Assi’s statement but in both of them, the husband is restricted to restitution of the amount he spent.
⁶² Tosephta 8:3; Babli Baba Meși’a 39a.
⁶³ Any person who has to return property to its rightful owner, including the husband who divorces his wife and has to return her paraphernalia properties in kind. If he returns a field before it is ripe, he can claim to be paid for his work only as sharecropper.
⁶⁴ Which is much less than the sharecropper’s part.
Mishnah 9: If a woman waiting for her levir inherited property, the House of Shammai and the House of Hillel agree that if she sells or gives away it is valid. If she died, what shall be done with her ketubah and the properties which enter and leave with her? The House of Shammai say, the husband’s and the father’s heirs shall split it. But the House of Hillel say, the properties are in the hands of the holders; the ketubah in the hands of the husband’s heirs and the properties which enter and leave with her in the hands of the father’s heirs.

Mishnah and Halakhah are also 84-95 (variants noted *). Yebamot 4:3, explained there in Notes.
Halakhah 9: "If property came to a woman waiting for her levir," etc. Here, you say "she may sell or give away and it is valid." And you also say "the husband's heirs should split with her father's heirs!" Rebbi Yose ben Hanina said, when do you say "she may sell or give away and it is valid"? If they came to her before she became a woman waiting for her levir. When do you say "the husband's heirs should split with her father's heirs"? If they came to her after she became a woman waiting for her levir. If they came to her before she became a woman waiting for her levir and produced revenue after she became a woman waiting for her levir, [that revenue is as if] they came to her after she became a woman waiting for her levir. Rebbi Ze'ira said, the levir in this situation is a problem for the House of Shammai. If he is a husband, he inherits everything. If he is not a husband, he inherits nothing. Because of the doubt, "the husband's heirs should split with her father's heirs." For the House of Hillel it is obvious that he is a husband and inherits everything. For even his brother had only the usufruct.
Rebbi Hoshiaia stated: Her heirs, those who inherit her ketubah are obliged to bury her. Rebbi Yose said, if Rebbi Hoshiaia had not stated this, we would have had a problem. If she had no ketubah, do they not have to bury her? This is difficult. If a woman has no ketubah, does she not have to be buried? A wife, even if she has no ketubah, must be buried. This one, if she has a ketubah, is entitled to burial costs. But here, if she does not have a ketubah, she is not entitled to burial costs.

Mishnah 10: If his brother left money, real estate should be bought with it and he eats its yield. For produce cut from the ground, real estate should be bought and he eats its yield; connected to the ground, Rebbi Meir says one has to estimate how much it is worth with produce and how much without, for the difference real estate should be bought and he eats its yield. But the Sages say, standing produce is his, cut it is up for grabs. If he took possession first, it is his; if she took possession first, real estate should be bought for the proceeds and he eats its yield. If he married her, she is his wife in every respect except that her ketubah is a lien on the property of her first husband.
66 Since the first husband's inheritance is mortgaged to his widow as security for her ketubah, it is not available to the brother who marries the widow without due safeguards.

67 These rules follow Mishnah 4.

68 The Halakhah and the Babli (82a) change the text of the Mishnah and require: "are hers" for the same reason given for money left by her husband.

69 This applies only if one follows the Mishnah that a ketubah is guaranteed only by real estate. The author of this part of the Mishnah must hold that the statement about money left was R. Meir's who holds that a ketubah can be guaranteed and paid for by movables.

70 The levir as heir of his brother.

It is clear that a person without claim (i.e., other than the widow, a brother, or a creditor) has no right to the produce.

71 It becomes property coming to the wife after the wedding, i.e., paraphernalia property.

72 This is Mishnah Yebamot 4:4, Note 96.

73 He can divorce and remarry her; Halakhah Yebamot 4:4, Notes 97-100.

Halakhah 10: "If his brother left money," etc. Rebbi Abbahu in the name of Rebbi Johanan: It is necessary, if the money was deposited with him, that you would not let him say, since I am the heir it is mine.

74 Since the Mishnah states at the end that the ketubah in a levirate marriage is guaranteed by the estate and Mishnah 11 states that all the property is under this lien, it seems superfluous to note that cash left by the first husband cannot be spent by the levir. Then it is noted that it is necessary to state that money deposited with the levir has to be accounted for and separated for the wife's ketubah. In the Babli, 81b, this is an explicit baraita.
Rebbi Abbahu in the name of Rebbi Johanan: One does not say "his"76 but [ ].77 In which respect? In case the heir took it78, one removes it from his hand. Does one have the same rule for the creditor? Was it not stated: If either the heir or the creditor took it, one takes it from their hands79? Rebbi Aha bar Ulla said, let us hear from the following: "If he dedicated 90 minas but his debt was 100 minas, [the creditor] adds another denar and redeems these properties.80" Not necessarily a denar, but anything, that a dedication should not be seen to be profaned without redemption81. Rebbi Abbahu in the name of Rebbi Johanan: One would
be guilty of complete larceny. That is difficult. If one would be guilty of complete larceny, should if not be redeemed for its full value? If it can be redeemed for less than its full value, one should not be guilty of complete larceny! What are we talking about? If it is connected to the ground, can there be larceny about real estate? But we talk about standing grain. Since if the administrator misbehaved and took it, one does not take it from his hand; the administrator and the heir follow the same rule. Also if the heir misbehaved and took it, one does not take it from his hand. Rebbi Samuel, Rebbi Abbahu in the name of Rebbi Johanan: The same rule holds for an ox. Can you say that an ox is real estate? Rebbi Tanhum bar Mari in the name of Rebbi Yose: They made the rules for an ox parallel those of dedications that lost their value.

Here, you say one takes it from his hand, but there you say, one does not take it from his hand. Since you diminished the woman's power in that her ketubah is a lien only on the properties of her first husband, you strengthened her power in this matter that if the heir came and took it, one removes it from his hand. It was stated thus: Trees and cutting, old or young, one removes from their hands.

75 This sentence has several corrections in the ms. It seems that the scribe first wrote "if the administrator acted and took it, one does not take it from him." This is a correct sentence but unvocalized it is misleading because of the simultaneous use of Aramaic "if" and Hebrew "not". Therefore, the scribe crossed out the first א and replaced it by ו, read וי, which the corrector then completed (somewhat redundantly) to וי אליך. The scribe also changed עכו "acted" to עכו "acted wrongly" and crossed out (mistakenly) the second א. The best version is the original text.

76 Since the widow's ketubah is guaranteed by her first husband's estate, there is no reason why the
standing grain should go to the levir. If the husband had lived, it would have been his, but it could not be the levir's before the latter actually married the widow. One has to correct the Mishnah to hers from his. This argument is R. Simeon ben Laqish's in the Babli, 82a.

77 The word "hers" is missing in ms. and editio princeps; it is understood in the text.

78 If the levir harvested the grain without crediting it to the widow's ketubah fund, she can go to court and have him acquire real estate for the corresponding amount.

79 The same statement is quoted in Halakhah 9:3; there the scribe wrote: "one does not remove from their hands", but the first corrector crossed out "not". In both cases, the context implies that the scribe’s original text is the correct one. Since the heir does not have a claim on the standing grain, the heir's creditor does not have one either.

80 It is stated repeatedly in the Babli (Yebamot 46a, 66b; Gittin 40b; Ketubot 59b, Nedarim 86b; Baba Qama 90a) that dedications to the Temple break contracts. This rule is not mentioned in the Yerushalmi and the latter's position in this matter is not known. In Rashi's interpretation, only dedications to the altar break contracts, not dedications which are purely monetary gifts to Temple or charity. Therefore, that principle does not apply here in any case.

The text is Mishnah 'Arakhin 6:2. There it is stated that if somebody dedicates his encumbered property, neither can the wife collect her ketubah nor a creditor his claim from Temple property which must first be redeemed. Then it is stated that if the creditor's claim is at least equal to the appraised value of the property, he may lend another denar to the debtor and force him to redeem it to be able to foreclose the now secular property.

81 This is a generally accepted principle; Babli Arakhin 32b, Pesahim 31a. The redemption is purely symbolical since the debtor did not have the right to injure the creditor's claim by dedication; therefore, the dedication is invalid.

82 Me'ilah is larceny with Temple property which requires restitution in the amount of 125% and a sacrifice; Lev. 5:14-16. R. Johanan implies that a person using the dedicated property for his personal advantage before it was redeemed is obligated for a sacrifice. On the other hand, it is sinful to offer unnecessary sacrifices which would be
"profane animals in the Temple courtyard." If the sacrifice is valid then the dedication must be valid and could not be undone by a token amount but would require appraisal by a Cohen (Lev. 27:11-14).

83 Lev. 5:14 restricts me'ila'h to "the Eternal's holy things", which excludes real estate.

84 This is not subject to me'ilah when standing but will be subject once it is cut.

85 The Temple’s chief financial officer. Since the dedication was invalid when made for the field, he should not have cut the grain. But once it was cut, it becomes legitimate Temple property and can be sold for the Temple’s upkeep.

86 This does not mean that the levir can take the standing grain, cut it, and keep it, but that the heir’s standing vis-à-vis the creditor is like the administrator’s vis-à-vis the creditor. Since the creditor’s lien is on the real estate, it cannot cover the grain once it is cut and made movable. (Cf. the commentary RYDBZ ad loc. in the Wilna ed., and the novellae of Rashba, Gitten 40b, end.)

87 Since the ox is movable, the dedication should be absolute.

88 This is a rabbinical rule to protect the holders of chattel mortgages.

89 This is the main question of this paragraph: Since the heir can cut the grain to the detriment of the lienholder, why can he not cut the grain to the detriment of the widow who also is a lienholder?

Mishnah 11: He90 should not say to her "here your ketubah is lying on the table" but "all my properties are pledged for your ketubah." If he divorced her, she has no ketubah-lien91. If he took her back, she is like all women who have a ketubah92.
The levir who marries his sister-in-law and whose brother’s inheritance is much larger than his wife’s ketubah cannot split the inheritance, reserve the amount necessary for the ketubah in a separate account, and use the remainder for his business. If he wants to commingle the inheritance with his own properties for his working capital, he has to pledge all his properties for her ketubah.

After he paid her, he has unlimited use of the remainder of his brother’s inheritance.

This is explained in the Halakhah.

Halakhah 11: 93“He should not say to her ‘here is your ketubah’, etc. What does he do? "He marries her, he may divorce her and take her back, and she writes him a receipt for her ketubah." Rebbi Yose said, the baraita has two possibilities. "Or she writes him a receipt for her ketubah." Rebbi Ze’ira in the name of Rav Hamnuna: If he married her, divorced her, and took her back, if he wrote her a new ketubah, the lien is on his property; otherwise, it is on the property of her first husband. Rebbi Yose ben Rebbi Abun said in the name of Rav Hisda, a Mishnah
said so: "For he who takes back his wife, takes her back under the terms of her first *ketubah*." In the end, if he married her, divorced her, and took her back? He tells you something new. Even if he married her, divorced her, and took her back, if he wrote her a new *ketubah*, the lien is on his property; otherwise, it is on the property of her first husband.

Rebbi Ze'ira in the name of Rav Hamnuna said: A betrothed woman who died does not have a *ketubah* since she was not permitted to marry outside. That you should not say [the case] should be considered as if he divorced her and she should have a *ketubah*, therefore it was necessary to say that she does not have a *ketubah*.

93 These two paragraphs constitute there in Notes 97-101. Halakhah 4:4 in *Yebamot*, explained

94 In earlier times, her *ketubah* was deposited with her family; then it was easy for him to divorce her. They then instituted that her *ketubah*...
had to be deposited with her husband\(^95\); even so it was easy for him to divorce her. Then they instituted that a man should buy with his wife's *ketubah* cups, plates, and bowls; that is what we did state: "He should not say to her 'here your *ketubah* is lying on the table' but all his properties are pledged for her *ketubah.*" Finally they instituted that a person should use his wife's *ketubah* in business, then because he uses his wife's *ketubah* in his business dealings he loses track of it and it becomes difficult for him to divorce her.

94 A different version is in the Babli, 82b. It starts with a statement that women did not want to marry because their *ketubah* was unsecured and not privileged against the heirs.
Simeon ben Sheṭaḥ decreed three things\(^{96}\): That a person should use his wife’s ketubah in his business dealings. And that children have to go to school\(^{97}\). Also, he decreed impurity for glass ware\(^{98}\). But did not Rebbi Ze’ira, Rebbi Abuna say in the name of Rav Jeremiah: Yose ben Yo’ezer from Sereda and Yose ben Johanan\(^{99}\) from Jerusalem decreed impurity for Gentile lands\(^{100}\) and glass ware; Rebbi Yose said, Rebbi Jehudah bar Tabbai\(^{101}\)? Rebbi Jonah said, Jehudah bar Tabbai and Simeon ben Sheṭaḥ decreed on metal vessels\(^{102}\); Hillel and Shammai decreed on the purity of hands\(^{103}\). \(^{104}\)Rebbi Yose ben Rebbi Abun in the name of Levi: That was the current practice; they forgot it\(^{105}\), but the later ones got up and agreed to the opinion of the earlier ones to teach you that everything the Court insists on will come to be in the end just as Moses was told on Sinai; as Rebbi Mana said (Deut. 32:47): “For it is not an empty word, from you,” if it is empty it is from you because you do not exert yourself about it. “Because it is your life,” when is it your life? At the time that you exert yourself!

96 In the Babli, Šabbat 14b, he is credited only with the institution of the ketubah and a decree about impurity of metal vessels (Note 102). “The institution of the ketubah” probably means the formulation of the ketubah as a contract, which was unnecessary as long as the sum due was paid, or at least earmarked, as bride money. His decrees can be dated to the reign of his sister Shlomzion (Salome), widow of Alexander Yannai, 79-69 B.C.E.

97 In the Babli, Baba batra 21a, universal mandatory schooling is attributed to the post-Herodian High Priest Joshua ben Gamla. The Babli also notes that before Joshua ben Gamla’s time there was organized higher instruction only for youths 16 years and older. This cannot refer to Simeon ben Sheṭaḥ’s institution reported in the Yerushalini since by no stretch of the imagination can a 16 year old teenager be called pia’n.
Biblical impurity applies only to kinds of vessels and implements mentioned in the rules of impurity: earthenware and metal (Lev. 6:21), leather and textiles (Lev. 13:49), bone and wood (Num. 31:20). Other vessels cannot become impure; to this fact one attributes the great number of stone vessels found on archeological sites of the Second Temple period. (Similarly intrinsically pure vessels made of cow dung have not survived for the archeological record.) The impurity of glass vessels, unknown to Moses, is purely rabbinical. One has to take the information that the impurity of glass ware "was decreed" by the head of the Synhedrion with a grain of salt. Most probably, he simply codified the rules which were popularly observed before, when the Pharisees obtained the leadership in the state. The reasons given in the Babli Šabbat 16a/b for the rules are inconsistent since the rules, derived from popular observance without any scriptural basis, are inconsistent as a mixture of two different sets of rules. Glass vessels are compared to earthenware vessels since the former are made from sand, the latter from clay. They are also compared to metal vessels since if broken they can be melted down and made into new vessels.

The heads of the pre-Maccabean Hassidim sect; cf. Gen. rabba 65(18).

Here also, a long-standing popular observance (cf. Amos 7:17) was codified which attributed to the earth of Gentile lands (within or without the Holy Land) the impurity of rotting human bodies.

The co-head with Simeon ben Sheṭāḥ in the leadership of the Pharisees under Shlomzion.

The possible impurity of metal vessels is biblical (Note 98). Following the Babli Šabbat 16b, what they decreed was that metal impure by the impurity of the dead should not become pure by being melted down, but only by sprinkling with water containing ashes of the red cow. The political background of this decision (which seems to contradict biblical rules, Num. 31:22-23) and the reliability of the Babli in this respect is difficult to establish.

They codified the rules that hands which were not all the time consciously guarded from impurity after being washed are impure in the second degree and, therefore, impart impurity to fluids, heave, and sacrifices but not to solid profane food (cf.
Demay 2:3, Notes 136-137; Babli Sabbath 14b).

104 From here to the end of the Chapter, the text is from Sevi'it 1:7, following Note 55 (variants noted V).

105 There was no rule-making authority in the time between the two Yoses and Simeon ben Sheṭaḥ and Jehudah ben Ṭabbai.
Mishnah 1: If somebody writes to his wife¹: "I shall have nothing to do with your properties," he receives their revenues and if she should die, he inherits from her. In this case, why did he write "I shall have nothing to do with your properties"? If she sold or gave away, it is valid. If he wrote to her: "I shall have nothing to do with your properties, nor with their revenues," he does not receive their revenues during her lifetime but if she should die, he inherits from her. Rebbi Jehudah says, he continues to receive the investment results of her revenues² unless he writes: "I shall have nothing to do with your properties, nor with their revenues, nor with revenues derived from revenues, without limits³." If he wrote "I shall have nothing to do with your properties, nor with their revenues, nor with revenues derived from revenues during your lifetime and after your
dealt," he does not receive the revenues during her lifetime and does not inherit from her after her death. Rabban Simeon ben Gamliel says, if she dies, he should inherit from her since he made a condition contradicting what is written in the Torah\(^4\), and anybody's condition contradicting what is written in the Torah is invalid\(^5\).

1 After the preliminary but before the definitive marriage, when he does not yet have the administration of her properties.

2 If the wife invests some or all of the revenue from her holdings, these new holdings are not referred to in the renunciation. They represent new paraphernalia and as such their administration is the husband's, who receives their yield.

3 I. e., even the yield of the k-th re-investment of prior yields, k = 1, 2, . . . , is excluded by this contract.

4 Since in rabbinic interpretation (disputed by Sadducees/Karaïtes) the husband inherits from his wife but the wife not from her husband; cf. Babli Baba batra 111b, Sifry Num. 134. In the opinion of R. Ismael, this cannot be established from the pentateuchal law of inheritance (Num. 27:7-11) but from the books of Josua, 34:33, and 1Chr. 2:22. According to R. Aqiba, the husband's right of inheritance follows by twisting the text of Num. 27:11.

5 As a general principle, this is Mishnaïot Baba mesi'a 7:14, Baba batra 8:5. Quoted in Peah 6:10 (Note 159), Gittin 9:1 (50a 1.48), Qiddusin 1:2 (59c 1.40), Baba mesi'a 7:10 (11c 1.11); Babli 56a/b, 83b, 84a, and 7 other quotes.

As far as money matters go, his opinion is that of a minority of one; cf. Chapter 5, Note 207. He will agree that in matters of revenues, whose assignment to the husband is purely rabbinic usage, there are no restrictions in the freedom to contract.
Halakhah 1: "If somebody writes to his wife: "I shall have nothing to do with your properties," etc. Rebbi Johanan in the name of Rebbi Yannai: If he did not take her in. But if he took her in, nobody can lose his rights by these expressions. Rebbi Yose ben Rebbi Abun said, this is the word of Rebbi Hiyya: He who says that "my hands are removed from this field, my feet are removed from this field," did not say anything. Rebbi Abun bar Hiyya asked before Rebbi Ze'ira: Does a Mishnah imply that nobody can lose his rights by these expressions? Did we not state there: "If somebody was married to two wives when he sold a field and the first one wrote for the buyer: I have no claims on you, the second one can take it away from the buyer's hands," this implies, not the first one. He said to him, that text itself implies that nobody can lose his rights by these expressions, but here the second wife cannot take anything away from the first, and why can the first one not take it away from the buyer's hands? For she writes to him: For any complaint I shall have regarding this field, I shall have nothing against you.

6 The language quoted in the administration of his wife's property. This must be done before the definitive renounces his right to acquire the marriage. The Babli agrees, also in the
name of R. Yannai (83a).

7 Since he did acquire the right of administration by the definitive marriage, a contract executed after this moment would have to contain language of transfer of rights (by gift or sale) to be legally actionable.

In *Gittin* 8:1 (49b l. 30 ff.) it is stated that the husband can deliver a bill of divorce to his wife by depositing it on her paraphernalia property only if previously he had validly renounced his rights to the income produced by that property because the right to income is an ownership right.

8 If he tells his wife that he does not want to take care of her properties, this has no legal consequences since he is obligated to work for her. The only way he can remove his obligation is by a formal transfer of his right to her as a gift.

The Babli (83a, 95a; *Gittin* 77a; *Baba batra* 43a, 49a; *Keritut* 24b) notes that even between strangers such a formula would not transfer property rights.


10 The field is mortgaged to both *ketubot*; if he dies and there is not enough money in his estate to satisfy the claims of both wives, the wives can reclaim the field from the buyer since their lien precedes his title.

11 She agrees with the sale and promises not to sue the buyer.

12 She was no party to the transaction. If her claim to *ketubah* is not satisfied, she can repossess the field.

13 The second wife by her action does not diminish the claim of the first to the property.

14 All the first wife agreed to was not to sue the buyer. This prevents her from going to court but has no influence on her rights vis-à-vis others. It is stated in Mishnah 10:1 that the *ketubah* of a first wife has precedence over that of a second wife. Therefore, if the second wife recovers the field from the buyer, the first one may sue for the unsatisfied part of her own *ketubah*. Therefore, the first wife did not transfer any property rights by her statement to the buyer.
If he wrote for her and she wrote for him\(^\text{15}\). Just as he did not lose his rights so she did not lose her rights\(^\text{16}\). If he wrote to her "from preliminary and definitive marriage"\(^\text{17}\), that is the disagreement between the Houses of Shammai and Hillel\(^\text{18}\). In the opinion of the House of Shammai she shall sell\(^\text{19}\); in the opinion of the House of Hillel she should not sell\(^\text{20}\).

15 She wrote him the same text he wrote her, that "she has nothing to do with his properties."

16 If she becomes a widow or divorcee, she is not prevented from claiming his real estate as payment for her ketubah.

17 "I shall have nothing to do with your properties, from preliminary and definitive marriage." The question is, why did he mention preliminary marriage which gives him no rights of administration?

18 In Mishnah 8:1.

19 Since the House of Shammai give the wife the right to sell any inheritance she received while preliminarily married, the mention of the preliminary with the definitive marriage can only mean that the husband invites his wife to dispose of her property after definitive marriage as if it were only after preliminary marriage.

20 Mishnaiot 8:1, 9:1 give only legal standing to the wife's sales after the fact; they do not invite the wife to sell without her husband's consent. For the House of Hillel, the husband mentions his disinterest in her properties after the preliminary marriage in order to give her the right to dispose of her properties without asking him, against the opinion of the House of Hillel. But this does not imply that after the definitive marriage he does not want to be asked, following Mishnah 9:1.
Rebbi Jeremiah asked before Rebbi Ze'ira: If he wrote to her: "I shall have nothing to do with your properties," and she inherited properties afterwards, what is the rule? Can a person put a condition on something not in existence? Rebbi Abun bar Hiyya said before Rebbi Ze'ira: From his rights you can infer his obligations. If he had not written to her, would it make any difference, would he not receive its yield? That means, from his rights you can infer his obligations. Rebbi Levi bar Haita asked: If he wrote to her: "I shall have nothing to do with your properties which you shall inherit in the future," what is the rule? Can a person put a condition on something not in existence?

21 There are many different interpretations of this paragraph, detailed by R. Jehudah Rosanes in his Commentary to Maimonides, *Hilkhot Issut* 23:1. The following explanation is simply one which seems reasonable to the author.

22 This question is very elliptic. It is not obvious whether the document was written before or after the definitive marriage and whether the inheritance was foreseeable or not. If the document was written before the definitive marriage and the wife was in line for the inheritance, there is no reason why the husband's renunciation of his rights would not be valid since that essentially is the case of the Mishnah. In addition, it is the right of any person not to accept an inheritance. Therefore, in view of the answer given, it seems that one speaks of an inheritance which was unexpected, that at the moment of preliminary marriage the wife was not a probable recipient of the inheritance but that later some prospective heirs died which made the wife the next surviving kin. Since such an occurrence is not foreseeable, no contracts can be concluded about them. If the document was executed after the definitive marriage, it would require an additional statement in which the
husband cedes his rights to future yield to his wife.

23 For example, in talmudic law a farmer cannot write a futures contract on his grain harvest before his seed has sprouted. Similarly, no contract can be written covering unexpected inheritances.

24 Since the ketubah contract gives the husband the right to the yield of any future properties coming to his wife during their marriage, whether foreseen or not, it follows that he can deprive himself of his right to yield, whether foreseen or not.

25 If the succinct language proposed by R. Jeremiah is invalid, the more explicit language of R. Levi is also invalid. The objection of R. Abun bar Hiyya is irrelevant as far as a separate contract is concerned. But certainly it would be possible for the husband to renounce his right to yield in the ketubah document itself, since what he acquires by the ketubah he can renounce in the ketubah. In that case, his wife’s hand in acquiring estates never was his hand and she does not need his renunciation.

26 In Nazir 2:5 (52b l. 41), the question is asked about a vow to pay for somebody’s nazir sacrifices if a person will make a nazir vow in the future, an act over which the maker of the original vow has no control. The original vow is declared void since the text proposed by R. Levi ben Halita is also void.

If she sold produce connected to the ground27: Rav Aha said, as if she sold harvested [produce]28; Rebbi Yose said, as if she sold a tenth of the ground29. Rebbi Ze’ira, Rav Jehudah in the name of Rav: If somebody
writes a field over to his wife, she cannot sell the produce. Rebbi Ze’ira said, a baraita says so "What are revenues derived from revenues? He sells the produce, buys real estate, and eats its revenue." Rebbi Immi asked: If another person had written [real estate] over to her, would he not receive the revenue? If he himself wrote, not so much more! He said only "wrote over", but not "sold". What is the difference between one who writes and one who sells? He tried to find a reason to hide food from the wife.

27 This refers to the statement in the Mishnah that the wife’s sale is valid if the husband had written that he had nothing to do with her properties. Since he retains the right to the revenue, she certainly cannot sell harvested produce which is her husband’s property. May she sell produce still standing?

28 The sale is invalid.

29 The sale is valid.

30 Since the field becomes paraphernalia property, he retains the right to its yield.

Rebbi Ze’ira, Rav Jehudah in the name of Rav: If somebody writes a field over to his wife, he has no claim to its yield. Rebbi Mattanah said, a baraita does not say so: "What are revenues derived from revenues? He sells the produce, real estate should be bought from the proceeds, and he eats its revenue." Is that not as if he...
wrote a field over to his wife, and you say, he has neither revenue nor revenue from revenue! Rebbi Immi asked: If another person had written [real estate] over to her, would he not receive the revenue? If he himself wrote, not so much more?

The baraita refers to the Mishnah, regarding property which the wife inherits during her marriage. Then the question is raised why does the husband eat the yield of property coming from others but not from his own gift. But in this version, the questions of R. Mattanah and R. Immi duplicate one another. The text of Rosh seems to be a contamination of the current and the following paragraphs.

The passive voice, real estate should be bought, is that of our Tosephta text, in contrast to the quotes from both Talmudim in which he buys the real estate. In that version, the investment decision is not the husband's.

36 If the husband sold a field to his wife, he cannot claim the yield. The Babli, Baba batra, 51b, also decides that the husband eats the yield of the field sold but not the one given as a gift.

37 He gives the field to his wife that she should sustain herself from its yield and he would no longer have to care for her; for this purpose it is obvious that he does not want to take the yield.

(32d, line 34)
It is reasonable according to Rebbi Jehudah, if he wrote: "I shall have nothing to do with your properties and the revenues," that he cannot take the revenues. Even if he wrote: "I shall have nothing to do with this field and its yield," he cannot eat its yield. It is reasonable according to the rabbis; if he wrote: "I shall have nothing to do with this field and its yield," can he eat its yield? Even if he wrote, "I shall have nothing to do with your properties and its yields," can he eat its yield? Let us hear from the following, as Rebbi Ze'ira, Rav Jehudah said in the name of Rav: If somebody writes a field over to his wife, he has no right to its yield. Rebbi Ze'ira said, a baraita says so. "What are revenues derived from revenues? He sells the produce, buys real estate, and eats its revenue." Since he wrote, "I shall have nothing to do with your properties and their yields," is that not as if he wrote a field over to his wife, and you say, he has neither revenue nor revenue from revenue! That means, there is no difference in the opinion of Rebbi Jehudah whether he wrote "I shall have nothing to do with this field and its yield," or he wrote "I shall have nothing to do with your properties and their revenues," he cannot take any revenue. Similarly, for the rabbis it makes no difference whether he wrote "I shall have nothing to do with your properties and their revenues," or he wrote "I shall have nothing to do with this field and its yield," he can take its yield.

38 The statements are trivial since Jehudah agree that the husband has no right to the yields; their disagreement is
whether the yield of any money saved from the revenues reverts to the husband or not.

39 The answer should be a trivial "no" since the rabbis assign to the wife even the compound yield which R. Jehudah gives to the husband.

40 It is obvious that he has no right to the yield which he disclaimed. It is claimed here also that he has no investment power over the part of the yield which his wife does not spend on herself; this explains why he has no right to revenues derived from revenues saved.

Rav Jeremiah in the name of Rav: Practice follows Rabban Simeon ben Gamliel, but not in the matter of words. Practice follows Rabban Simeon ben Gamliel for he said, if she dies he inherits from her, but in matters of words, "since he made a condition contradicting what is written in the Torah, and anybody's condition contradicting what is written in the Torah is invalid," in personal matters. But in money matters, one's
stipulations are valid and that is a money matter! Why did we say that the condition is invalid? Because in the end he acquired it. Rebbi Immi in the name of Rebbi Johanan: The law should have been that if she sold or gave it away it should be valid, for [the buyer] acquired it. Why did they say it is invalid? That a wife should not sell her husband’s property and say, it is mine.

This is the correct text from the parallel in Baba batra 8:6 (from a different editorial team). Rav Jeremiah in the name of Rav: Practice follows Rabban Simeon ben Gamliel, that if she dies he inherits from her, but not because of his words, "since he made a condition contradicting what is written in the Torah, and anybody’s condition contradicting what is written in the Torah is invalid," in personal matters. But here we deal with money matters! Why did they say that the condition is invalid? Because in the end he acquired it.

A generally agreed principle in the Yerushalmi, cf. Qiddushin 1:2 (59c 1.43), Baba mesi’a 7:10 (11c 1.11); in the Babli accepted with reservations in the name of R. Jehudah, 57a.

In Baba batra 8:6, the reason is given that practice follows R. Johanan ben Baroqa who holds that wills can be written only in favor of people who could be heirs (if a number of closer relatives had died.) Then the law of inheritance is compulsory and falls under the category of personal matters. The definitively married wife
should retain the right of disposal of her paraphernalia property since she retains sole ownership.

She could claim that mortmain property was really hers to dispose of.

Rabbi Justinus had a case and he asked the rabbis who told him, leave you properties. He asked Rabbi Simeon ben Laqish, who told him, enter your properties. Rabbi Jeremiah asked before Rabbi Ze’ira: Who are those rabbis? What about Rav, Rabbi Johanan, and Rabbi Simeon ben Laqish? He said to him, Rabbi Justinus’s rabbis.

From the parallel in Baba batra 8:6. The reading here is which is inconsistent with the second mention of the name. (Both Juste and Justine probably are provincial forms of Justus, Justinus (E.G.).)

He had an agreement with his wife that she was the sole administrator of her properties, also after [his] death. Unexpectedly, the wife died before he did.

He had no right to inherit from his wife.

He confirmed him as his wife’s heir, acting as an appeals judge.

Declaring that practice follows Rabban Simeon ben Gamliel.

Holding in Baba batra (Note 48) that the basic provisions of the biblical law of inheritance are a matter of persons, not money.

The local court whose rulings were overturned.
They asked before Rebbi Johanan: Following the Sages, if she died who inherits from her? Those, her brothers, inherit from her.

58 The Mishnah only states that if the husband had renounced his rights, he could not inherit from his wife living and dead. It does not state who inherits.

59 Here family certainly inherit from her but there seems to be no reason why they should not inherit as if she had been unmarried. The version in Baba batra 8:6 is more intelligible: Rebbi Johanan said, her father inherits from her [and after his death] her brothers inherit from her.

Rebbi Jeremiah asked before Rebbi Ze'ira: If the brothers divided [the inheritance], the widow is supported by them. For you should not say, they should be considered as if they had sold the properties and the widow would not be supported by these, since it is obvious that if they sold, they sold their own property.

60 As stated in Mishnah 4:12, the widow has the option not to take the ketubah money but to live in her deceased husband’s house and be supported by his estate. While the ketubah proper is a lien on the real estate, the widow’s (and her daughters’) support is not. This means that the brothers may divide the inheritance while their father’s widow is still living.

61 And the widow has no regress on the buyer if the husband’s heirs do not fulfill their duty towards her. The Babli (e. g., Baba batra 107a) strongly disagrees and holds that brothers who divided an inheritance are like buyers from one another but that they are liable in common for the debts of the estate.
Rebbi Ze'ira asked before Rebbi Abbahu: It is written\(^{62}\): "If the Jubilee will happen for the Children of Israel." If the institution of the Jubilee exists\(^{63}\), inheritances return; if the institution of the Jubilee does not exist, inheritances do not return\(^{64}\). It is the opposite way, it comes to tell you that even if the institution of the Jubilee exists and inheritances return, inheritance by biblical law does not return\(^{65}\)!

62 Num. 36:4. The argument of the tribe of Manasseh is that if Salpaad’s five daughters (representing most of the Cisjordanian tribe) would marry outside the tribe, their territory would be inherited by their husband’s tribes and be lost to Manasseh.

63 I. e., as long as the 12 tribes were living on their ancestral lands.

64 From the moment that the tribes of Gad and Reuben were deported by the Assyrians, in all other parts of Canaan the land no longer had to be returned to its original owners by the buyers in the Jubilee year. Cf. \(1\) Sevi'it 1:1, Note 7.

65 While the verse does not directly prove that the wife’s property is inherited by her husband, it certainly implies that it is given to her sons as ancestral lands.
Rebbi Hillel bar Pazi asked before Rebbi Yose: If he sold and then she died? He said to him, his sale is invalid; it is as if a son sold during his father’s lifetime and then the father died. If she sold and then he died? He said to him, her sale is valid; it is as if a father sold during his son’s lifetime and then the son died. Rebbi Hiyya bar Marius asked before Rebbi Jonah: What is the situation if she sold to her husband? He said, since Hizqiah said, practice follows Rebbi Judah, this implies that her sale is a sale. It was stated: "If somebody says, my property should be given to X, if X died to Y, [if Y died to Z]. If the first one died the properties should be given to the second, if the second died they should be given to the third. If the second one died during the first’s lifetime; since the second never acquired them, the third cannot acquire them." He said to him, so did Rebbi Hoshia, the father of the
Mishnah, explain: After him to X, after him to Y; it is as if stated: if the third died during the second’s lifetime, since the second one did not acquire his heirs cannot acquire, one really could say: After him to X, after him to Y. It was stated: "Rebbi says, the first one may sell the real estate and buy movables. Rabban Simeon ben Gamliel says, he has only the usufruct." Hizqiah said, practice follows Rebbi. Rebbi Mana said, since Hizqiah said, practice follows Rebbi, that implies that he cannot dispose of it by a death-bed will. So said Rebbi Mana before Rebbi Yose: Since this woman’s upkeep is her husband’s responsibility, is it not like a gift of sick persons? He said to him, her upkeep is what is necessary for her: food, oil, and salt. But she wants to sell and buy chickens. This means that if the first one wanted to sell and buy chickens, he may sell. Rebbi Jacob bar Aha said, her burial is equal to her upkeep. Since you said there, he may sell real estate and buy food, so he may sell real estate and buy a burial.

66 Added from Baba batra 8:9 (16c:120) (Tosephta Baba batra 8:4), missing here in ms. and editio princeps; cf. Note 76.
67 The first sentences are quoted by Nahmanides in ‘סולה וַיַּהֲמוּן (in the Wilna edition of Alfassi, Yebamot 22a).
68 The husband sold of his wife’s paraphernalia property during her lifetime. Since he was not the owner, he could not sell; the sale is void even when he becomes the heir.
69 Nahmanides writes וַיִּבְרֵא that may have been a correct ms. or it may be his (obvious) correction of the text. In these details, a medieval quote is not a witness to the text.
70 While a son can legally sell his right of inheritance to a speculator (who would take the risk that the son might die before the father and his investment become worthless), the son cannot sell his father’s property before his father’s death; such a sale is void even after the son becomes the heir.
71 She sold of her paraphernalia
properties, of which she is the owner, and her husband died during her lifetime. She sold irregularly since her husband had the administration of her properties during his lifetime but after her husband's death the sale is valid.

72 The father is not required to inconvenience himself to leave his properties for his heirs.

73 The reference is not to R. Jehudah (bar Illai) mentioned in the Mishnah but to Rebbi, R. Jehudah ben Rabban Simeon, quoted in the baraita later in this paragraph.

74 As explained at length later, the temporary owner is a total owner and may sell at will. The question why she would want to sell is addressed below.

75 A similar text in Tosephta Baba batra 8:4 (fragmentary), Yerushalmi Baba batra 8:9 (16c 1.19); Babli Baba batra 136b/137a (cf. R. Rabbinowicz, וקדישך מוסריך בוו חכמה p. 374, Note n).

76 This clause appears in all texts mentioned in the preceding Note; it is necessary to introduce the third beneficiary of the will.

77 In the language of the Babli: If the second died while the first is alive, the properties should return to the first's legal heirs (in Yerushalmi Baba batra: to the testator's legal heirs).

78 In the Babli (Baba batra 136b), he is called "Rav Hoshia in Babylonia".

79 As the Babli explains in the name of Rav Hoshia, for him there is a difference between "it should be given to X, then to Y, then to Z" and "you should inherit, after you Y, after him Z." In the first case, the properties are given in usufruct but have to be preserved. In the second case, the properties are given in possession; the owner receives title. The only claim the successor has is to the real estate which still is in the preceding heir's hand at his death; Y cannot complain if X sells the properties. This is made clear in the following baraita.

80 In the Babli, the position of Rabban Simeon ben Gamliel is modified to mean that a sale is a breach of trust but not that it is void. Since a baraita which forces the Babli to its conclusion is not mentioned in the Yerushalmi, one has to assume that in its opinion for Rabban Simeon ben Gamliel there is no difference in the language of the will; in any case in which a succession of heirs is noted only usufruct is transferred and any sale of real estate is void.

81 In Baba batra, the text reads: "R. Yannai said, Rebbi agrees that he cannot dispose of it by a death-bed will. R. Johanan said, not even as a gift
between the living." The statement of R. Mana (I)/R. Yannai simply means that X, the first heir, cannot give the properties away in a will since the will becomes active only after X's death and at that moment the real estate is already Y's property (as explained in the Babli, loc. cit.). R. Johanan's statement is explained by R. Eliahu Fulda, that X may sell for his own needs because he is the owner, but he cannot give away since the original will prescribes that after X it must be given to Y.

82 R. Mana II.
83 Why should the wife have the power to sell the real estate whose proceeds go to her husband? Is it not that she received the properties on condition that after her, they should be given to her husband or children?
84 She may sell for expenses which the husband is not required to cover.
85 X may sell real estate only for his personal needs but the definition of personal need has to be very generous.
86 In the Tosephta from Baba batra. The wife may also sell some of her property and buy herself a burial plot (which, if used, becomes forbidden for all usufruct.)

Rebbi Yose said: Those who write "if she should die childless, her property should return to her father's family" write a monetary condition which is a valid condition\textsuperscript{87}.

\textsuperscript{87} If the wife should die childless, both her mortmain and her paraphernalia properties return to her father's family. This text (and its ramifications in medieval rabbinic literature) has been studied by M. A. Friedman, \textit{Jewish Marriage in Palestine} (cf. Chapter 5, Note 226), vol. 1, Chapter VE, pp. 391-418.
Mishnah 2: If somebody died and left his wife, a creditor, and heirs, and he was owed a deposit or a debt by a third party, Rebbi Tarphon says, these should be given to the weakest among them. Rebbi Aqiba says, one does not show mercy in law! But these should be given to the heirs for all others have to swear, only the heirs do not have to swear.

Who is secured by a mortgage lien on the deceased person's real estate.

Since a deposit is unsecured movable property, also the debt due to the deceased is presumed to be unsecured movable property.

The widow who wants to receive her ketubah in cash (instead of being supported by the heirs for the rest of her life) has to swear that she did not receive anything during her husband's lifetime. The creditor has to swear that his claim was not satisfied.

Since as movable property the deposit or debt was not mortgaged, it becomes the heirs' free property at the moment of death of the bequeather.
Halakhah 2: "If somebody died and left a wife," etc. Rebbi Yose ben Hanina said, the weakest in his claim. For example, one lent before witnesses, the other lent on a mortgage document; it should be given to the one who lent before witnesses. Rebbi Johanan said, the weakest in his body. Think about it, if he is rich, like those of the family Andreas. Rebbi Aha said, the weakest in his body and poor. As the following: They gave to a relative of Rebbi Samuel bar Abba as the weakest. Rebbi Simeon ben Laqish brought slaves of Rebbi Jehuda the Prince and took it away from her. Rebbi Johanan was leaning on Rebbi Simeon bar Abba and said, what was done with that poor woman? He said to him, Rebbi Simeon ben Laqish brought slaves of Rebbi Jehuda the Prince and took it away from her. Was he justified in doing this? Rebbi Jeremiah asked before Rebbi Ze'ira: Should we say that Rebbi Johanan follows his doctrine and Rebbi Simeon ben Laqish his own? Since they disagree: Everybody agrees that if they err in arguments, one does not reverse. In the words of the Torah, one reverses. Where do they disagree? If one errs in a Mishnah, for Rebbi Johanan says, an error in Mishnah is like an error in arguments, but Rebbi Simeon ben Laqish says, an error in Mishnah is like an error in words of the Torah. What is said of the Mishnah is also said of words of the Elders.

92 In the Babli according to Rashi, the creditor of a lower ranked mortgage; according to Alfasi any creditor because he can collect only if he proves his claim. The claim of a person giving money before witnesses...
is very weak since he loses his money if both the borrower and his witnesses die.

93 The same statements are in the Babli, 84a. There, R. Johanan says explicitly that it should be given to the widow; his argument is buttressed by a *baraita*.

94 If the creditor is rich, even if he lent without a mortgage he does not need special protection.

95 The woman has precedence only if she is poor.

96 It is to be assumed that by the middle of the Third Century the common practice was to prefer R. Aqiba's opinion over that of any of his colleagues. Nevertheless, there was a court which followed R. Tarphon in the interpretation of R. Johanan. [In the opinion of *Rosh* (cf. Note 102), the Gaonic decree that all *ketubot* have to be satisfied by movables changed practice in the Mishnah from R. Aqiba to R. Tarphon.]

97 As head of the Patriarch's court, he ordered the *familiares* of the Patriarch to seize what he considered assigned by an erring court.

98 R. Johanan holds that the Patriarch's appeals court erred in reversing the lower court's decision. It is also mentioned in the Babli, 84b, that R. Simeon ben Lakish considers following R. Tarphon a reversible error.

99 A lower court whose judgment was appealed to the Patriarch's court. If it is a matter of weighing the evidence, the ruling of the lower court has to stand.

100 An error that even school-children can detect.

101 R. Johanan's position in this matter is not mentioned in the Babli; the opposing view is quoted as universally accepted in the name of Rav Sheshet and Rav Assi, *Sanhedrin* 6b.

101 In the Babli, *loc. cit.*, Rav Pappa accepts as non-reversible error only a judicial argument rejected by the appeals court but which does not contradict existing precedents.

—מִטְנַעַ שְׂעֵמוּת שֵׁפָטְוּרִי מִנְּ שְׁבָטָה (33a, line 28)

Think of it, if they were exempt from swearing? One is biblical, the other is not biblical.
102 In Sefer Ha-ittur I, 23b (Note 16), followed by Rosh 9:2, the reading is "Think of it, if he exempted them from swearing", i.e., the debtor agreed to a clause in the mortgage contract which exempted the creditor from swearing to his heirs. In the version of the ms., there are additional cases when the creditor is by law exempted from swearing; for example, if the due date is later than the debtor’s death (then the debt certainly was not paid) or if the debtor before his death acknowledged the debt.

103 Possession by the heirs is automatic by biblical law; all others have to prove their claims in court.

Mishnah 3: If he left produce taken from the ground, the one who takes them first acquires them. If the widow acquired more than her ketubah sum, or the creditor more than his claim, the remainder, Rebbi Tarphon says, should be given to the weakest among them. Rebbi Aqiba says, one does not show mercy in law! But it should be given to the heirs since all others have to swear, only the heirs do not have to swear.

104 Or any other movables not in the actual possession of the deceased.
105 On condition that he have a legal claim on the estate, as widow or creditors do.
106 The excess over the claim has to be assigned by the court. A detailed study of the divergent interpretations of this Mishnah in Yerushalmi and Babli was made by I. Francus, Sinai 86 (1979/1980), 136-148.
Halakhah 3: "If he left produce taken\textsuperscript{107}," etc. Both Rav and Rebbi Simeon ben Laqish say, if they were collected at a trading place\textsuperscript{108}. But if somebody collected it in his house, his house acquired for him. Rebbi Johanan said, even if he collected it in his house, his house did not acquire for him. For he thinks that they are his but they are not his. Does from this follow how the owner acquires his produce\textsuperscript{109} in a Sabbatical year? Rebbi Jeremiah wanted to say, from the moment he put them into his vessel. Rebbi Yose said, even if he put them into his vessel he did not acquire, for he thinks that they are his but they are not his\textsuperscript{110}.

\textsuperscript{107} In this and the preceding Mishnah, the Mishnah text differs in a few details from the common reading of most Mishnaiot but the text quoted in the Halakhah is the standard Mishnah text.

\textsuperscript{108} "A place of Saracens." The problem discussed here is quite different from that discussed in the Babli, 84b, by the same authors. In the Yerushalmi, it is supposed that the acquirer removes the produce from the public place since it is obvious that it would not be his when left in the public place. But if the produce was already in a place belonging to the claimant, according to Rav and R. Simeon ben Laqish "a person's courtyard acquires for him automatically" (Babli Baba \textit{mesi'a} 10b). For R. Johanan, "a person's courtyard acquires for him only by a conscious act." Therefore, in a situation where an unlearned person could think that anything in a private domain to which the owner has a claim is automatically
his, we may assume that the conscious act of acquisition is missing. This argument assumes that the first part of the Mishnah is everybody's opinion and the difference between R. Tarphon and R. Aqiba refers only to the excess.

In the Babli, the entire first part of the Mishnah is considered R. Tarphon's and everybody agrees that "a person's courtyard acquires for him automatically"; cf. Note 106.

109 The ripe produce is ownerless by biblical decree. Naturally, the owner of the property has the same right to take it as does everybody else. Anybody but the owner acquires simply by taking. How does the owner acquire, that taking from him would be theft?

110 He can acquire only by a) putting the produce into his vessel and b) declaring that it is his.

That widow took a slave girl. The case came before Rebbi Isaac who said, what she took, she took. Rebbi Immi took her away, for she thought that she was hers but she was not hers. A similar case: The father of the sons of Shammai died and bequeathed a goat to them. The creditor came and took it. The case came before Rebbi Abbahu who said, he took his own property. Did we not state that if either an heir or a creditor came and took, one does [not] remove from his hand; for they thought they were theirs but they were not theirs. Rebbi Jacob bar Zabdi said, Rebbi Abbahu agrees that if they sold it, or gave it as a pledge, or
moved it to another place, if then the creditor came and took it one removes it from his possession.

111 She took her as a servant from her husband's estate as part payment of her ketubah. The case is also quoted in Qiddusin 1:3 in the discussion whether slaves are acquired under the rules of movables or of real estate.

112 If the widow could not point to an act of acquisition, the fact that the girl served her when she was a wife and continued to serve her when she was a widow does not make her the widow's property.

113 This word was written by the scribe; it was deleted by the first corrector and, therefore, is missing in editio princeps. But the partial quote in Halakhah 8:10 proves that the original text was correct.

114 The creditor can take an unsecured part of the debtor's estate only if the heirs did not act as owners. The moment they acted as owners, and the father had not told them to liquidate his debts, the debtor can make himself paid only through regular foreclosure procedures in court.

Think of it, if they were exempt from swearing102? One is biblical103, the other is not biblical.

Mishnah 4: If somebody engages his wife as grocer or appoints her as steward115, he can make her swear any time he wants116. Rebbi Eliezer says, even about her distaff and her dough117.
115 To administer his properties. The word is the feminine form to masc. Greek επίτροπος; cf. Mishnah Bikkurim 1:5.

116 That her accounts are honest.

117 R. Eliezer disagrees with the anonymous Tanna and holds that the husband can make his wife swear that she did not take anything for herself from any domestic work she performed for him. (The Babli, 86b, is unsure whether R. Eliezer disagrees with the anonymous Tanna or holds that if the wife handles large sums of money, the husband can also make her swear on minutiae. In the latter version, the rabbis hold that a wife would rather want a divorce than be married to such a nitpicker.)

118 Why do the rabbis permit the husband to make his wife swear only if she is entrusted with large sums of money? What is the difference between a business account and household money? In the Babli, 86b, the rabbis hold that a man who cannot trust his wife with household money should divorce her since "nobody lives with a snake in the same basket."

119 In the course of regular household duties.

120 The legal categories are defined in terms of shepherds, to agree with
the biblical verses. Mishnah *Baba mesi'a* 7:8, *Sebuot* 8:1: "There are four kinds of responsible people: Unpaid and paid watchmen, the borrower and the lessee. The unpaid watchman swears about everything (which is missing or broken, that it is not by his fault); the borrower pays for everything; the paid trustee and the lessee swear about broken, robbed, or dead (animals) and pay for what was lost or stolen (for if an animal is lost or stolen it is their fault since it was not guarded correctly.)"

If the wife were an unpaid trustee, she would have to pay for the damage unless she can swear that it was not her fault. The same holds for the paid trustee except that she would have to pay for inattention.

121 The wife never pays for broken dishes.

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**Mishnah 5:** If he wrote to her: "I have no vow or oath against you," he cannot make her swear, but he can ask an oath from the heirs or her business associates. "I have no oath against you, or your heirs, or your business associates," he cannot ask an oath from her, or her heirs, or her business associates, but the heirs can ask an oath from her, or her heirs, or her business associates.

122 This continues Mishnah 4. If the wife refuses to conduct a business or a stewardship for him if he does not believe her accounts and will require her to swear, all depends on the language of the contract between
husband and wife. This Mishnah is really one together with Mishnah 6.

123 If she died, he can make her sons swear who will inherit her ketubah (Mishnah 4:10) or eventually her family if she was childless (Note 87). This "oath of heirs" is "that our mother did not tell us that the ketubah was paid, or that money of hers was due to others, etc."

124 They can swear that none of the husband's money is in their hands.

125 The husband's heirs, after the husband's death.

Halakhah 5: "If he wrote to her: "I have no vow or oath against you," etc. Rebbi Jonah and Rebbi Yose both say, not only about properties over which she exercised control during her husband's lifetime but even about properties over which she exercised control after her husband's death are the heirs prevented from making her swear.

126 This paragraph is in the wrong place; it refers to Mishnah 6 where the husband exempts the wife and her heirs from any oath imposed by him and his heirs. In that case the wife is exempted as long as she acts within the powers entrusted to her by her husband.
השוואל לא אפילו לא שינה חתב. אלא בנים זכרים. פית蛔ו שומר חותם לחות.
פטור וקושבpleasant (מושבpleasant) קלחות פטור מושבpleasant. ואמרת ימר כל שָׁאָה על פי
שתחתה עצו שלוה פטור שלוה חתב. בקוש שלושש прият atl Shelley. נישמארונה
ס米兰ש прият atl Shelley. אוכל
משבש прият atl ורשקית רק עם מקש מקשה. נקדה אמירה שמה מקשה.
לשה刖 atl השואל atl משת았다. נקדה כלפה atl חיה atl סמק atl המית atl בטלה.
נקדה כלפה atl חיה atl סמק atl המית atl בטלה interesse. אפור רבי חינה.
לא פורץ מלא נקדה atl חיה atl. אמר פורק י النهائي atl חיה atl בטלה. רבי הליה בלש прият atl יניאי atl חיהatl בלשה. atl חיהatl בטלה atl שכר.
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128There, we have stated: "If somebody leases a cow from another person and lends it to a third party; if it died naturally, the lessee has to swear that it died naturally and the borrower has to pay to the lessee." Rebbi Hila in the name of Rebbi Yannai: Only if he gave permission to lend to others. Also Rebbi Hyya stated thus: "The borrower cannot lend, nor the lessee lease, nor the borrower lease, nor the lessee lend, nor the trustee give to another unless they received permission from the owners. And all who changed the titles without the owners' knowledge are liable. But the borrower is liable even if he did not change." But it is because we stated: "An unpaid watchman can stipulate to be exempt from an oath and the borrower may stipulate that he not have to pay." This means that even if he stipulated to be exempt that he is obligated. What if he wanted to let the borrower swear? Let us hear from the following: "If he wrote to her: 'I have no vow or oath against you,' he cannot make her swear, but he can ask an oath from the heirs or her business associates." This implies that if he wanted to make the borrower swear, he can force him to swear. The first case teaches about the second and the second about the first. The first case teaches about the second, that if he wanted to make the borrower swear, he can force him to swear. The second case teaches about the first, that if he wants to force the wife to swear, that he can make her swear. Rebbi Hanina said, it is not necessary to derive the first case from the second, and what does one learn for the second case from the first? Following what Rebbi Hila said in the name of Rebbi Yannai: Only if he gave permission to lend to others. And here, only if he gave permission to let her sons be stewards. Rebbi Yose said, he has to pay the lease all
the time it is leased to him. Rebbi Ze’ira asked Rebbi Abuna: If the owners borrowed it and it died? He said to him, in that case we say, they ate it. Rebbi Yose bar Abun said, if they ate it, they ate their own property. Rebbi Ze’ira asked before Rebbi Yasa: How does one act? He said to him, there are two against four; one does not act following the argument. He said to him, they are two against two! Rebbi Eleazar is the elder Rebbi Hiyya’s student; Rebbi Johanan is Rebbi Yannai’s student.

127 This word is not in the primary Qiddusin text.
128 This entire paragraph is from Qiddusin 1:4, fol. 60b. Since at the end it treats a question from there which was not introduced here, it is clear that the text here is secondary.
129 Mishnah Baba mesi’a 3:3.
130 Since the lessee does not have to pay for acts of God; Note 120.
131 The borrower has to pay for every defect that develops; Note 120. Agreed to in the Babli, Baba mesi’a 29b. In 96b, this is a matter of dispute; the Tanna R. Yose holds there that the borrower pays the original owners.
132 Otherwise the lessee violates the terms of his lease and becomes liable for every defect which develops. In the Babli, Baba mesi’a 36a, this is a matter of dispute which is decided (36b) in conformity with the Yerushalmi.
133 Tosephta Baba mesi’a 3:1 (the first sentence only), also quoted in Baba mesi’a 3:3 (9a 1.51).
134 Mishnah Baba mesi’a 7:13.
135 If he deviated from the original terms; even if he later subleased with permission (unless he explicitly requested immunity also for the later change.)
136 Can the original owner of the cow go to court against the borrower from the lessee to have him swear that the cow died a natural death and, if the borrower refuses to swear, collect the value of the cow from the lessee, or can the borrower claim that he is involved only with the lessee and is immune to suits from third parties?
137 The original owner, since the borrower is a business associate of his lessee.
138 The first Mishnah Ketubot 9:5 and the second Baba Mesi'a 3:3 with its Tosephta can be combined.

139 Cf. Note 127; editio princeps reads here "that he cannot make her swear." But the text is very clear, the fact that the husband freed his wife from having to swear about her fiduciary duties does not absolve her from responsibility and having to swear if she deviated from the framework of these duties.

140 The wife can appoint others to fulfill part of her duties (in the example given, her adult sons from a prior marriage) only with her husband's explicit agreement; they have to swear unless especially exempted (interpretation of Tosaphot 86b, s. v. Sefer Ha'ittur 23a, Note 2).

141 This refers back to Mishnah Baba meši'a 3:1. Even if the original owner gave permission to the lessee to lend out his cow, the lessee is responsible for paying his lease the whole time the cow is in the hands of the non-paying borrower.

142 Is this true even if the original owners borrowed it back?

143 In that case, the lessee does not have to pay.

144 This refers to the problem dealt with in Qiddusin 60b 1. 48: Rav Jehudah sent to R. Eleazar: A person having responsibility who handed it over to another (and something happened, who is responsible)? He said to him, the first one has to pay. Rebbi Johanan said, the second one has to pay; Rebbi Simeon ben Laqish said, the second one has to pay. (The following argument shows that one has to read that R. Johanan holds the first one has to pay.) In Qiddusin there follows the discussion of this paragraph, which shows that R. Yannai and R. Hyya (the Elder) both agree with R. Eleazar and R. Johanan.

The Babli, Baba qama 11b, attributes to R. Eleazar the opinion that the first one is free from paying if he did not have to pay under the original arrangement; in practice it is decided that the first one always has to pay unless the original owner agreed to the new arrangements.

145 R. Simeon ben Laqish and Rav Jehudah. The latter would not have asked if he agreed with the Tosephta of which he certainly was cognizant.

146 The quote should have been: R. Eleazar says in the name of the Elder R. Hyya, R. Johanan says in the name of R. Yannai (which is the quote of the latter in Baba qama 115a.)
Mishnah 6: "I have no vow or oath against you, neither I, nor my heirs, nor my business associates, against you, or your heirs, or your business associates," he cannot ask an oath from her, neither he, nor the heirs, nor the business associates, from her, or her heirs, or her business associates.

Halakhah 6: ""I have no vow or oath against you," etc.  
Rebbi Jonah said, only if she was made a steward during her husband's lifetime. But if she was appointed as a steward after her husband's death, the heirs

ןכוסי ינשנלקיז בקמ לך נמיית גבע לח ייורישיא נמיית
"I have no vow or oath against you," etc.  
Rebbi Jonah said, only if she was made a steward during her husband's lifetime. But if she was appointed as a steward after her husband's death, the heirs
can(not)\textsuperscript{148} make her swear. That is the Mishnah: if she was not appointed a steward, the heirs cannot make her swear\textsuperscript{149}. If she was appointed a steward, the heirs can make her swear for the future\textsuperscript{150}, but they cannot make her swear about the past. What is "about the past"? From the time of death to the time of burial\textsuperscript{151}. And Rebbi Yose said, even if he appointed her as steward after her husband's death, the heirs can make her swear\textsuperscript{152}. But did we not state\textsuperscript{153}: "If he did not appoint her as steward, the heirs cannot make her swear. If he appointed her as steward, the heirs can make her swear for the future but cannot make her swear for the past." He explains it about the first case\textsuperscript{154}. But if it is about the first case, Rebbi Jonah and Rebbi Yose both say, not only about property over which she had control during her husband's lifetime but even about property over which she acquired control after her husband's death the heirs cannot make her swear. Explain it, from the time of death to the time of burial. For Rebbi Abbahu said in the name of Rebbi Johanan: The heirs cannot make her swear from the time of death to the time of burial\textsuperscript{155}. Bar Qappara stated: That she should not abandon him and leave for her family\textsuperscript{156}.

\textsuperscript{147} A lengthy discussion of this text is in R. Bezalel Ashkenazi, שיטה מקובצת נhawks (reprint Tel Aviv, n/d) p. 221 a/b. However, probably the text is not based on an original ms. since it is Babylonized, remarkable for such a careful author.

\textsuperscript{148} Probably this should be deleted since the husband cannot give her immunity if he appoints her as testamentary executor unless he makes the appointment valid "one hour before my death".

\textsuperscript{149} If she is not the executor of her husband's will and the husband had freed her from swearing about what she had overseen for him, the heirs cannot ask for an accounting of the past.

\textsuperscript{150} Since they now are the owners...
and cannot be bound by their father's dispositions.

151 As explained at the end, it is not desirable that the widow should hand over the estate to the heirs before her husband's burial. Therefore, before the burial she is the husband's agent and not the heirs'. The Babli agrees, 87a.

152 Probably some addition is missing such as "only for the future". The entire sentence is a corrector's addition.

153 Mishnah 7, speaking of a woman who was freed by her husband from the obligation to swear, who resigned her stewardship at the time of her husband's burial.

154 Even in the case of Mishnah 5, the widow cannot be made to swear about the expenses of the funeral. The Babli agrees, 87a.

155 It is possible to explain this statement as a new paragraph, referring to Mishnah 7: Even a woman who was not appointed as steward, or whose stewardship ceased with her husband's death, and who was not granted exemption from swearing, cannot be made to account under oath for the expenses of her husband's burial.

156 The heirs, the beneficiaries of the estate, have the duty to bury the husband. It would be very bad for the reputation of the family if the widow would return to her own family before the burial because she fears to be accused by the heirs that she spent too much money on her husband's burial. Therefore, she is prevented from resigning her stewardship before the burial and, in exchange, is freed from having to provide an accounting of the burial costs under oath.
the heirs cannot make her swear. But if she was appointed as steward, the heirs can make her swear for the future\textsuperscript{150}, but they cannot make her swear about the past\textsuperscript{155}.

157 Then she requires that the full ketubah be paid to her immediately on the basis of the ketubah document which is as good as a mortgage coming due.

158 She prefers not to collect her ketubah but to be supported by her husband’s family for the foreseeable future; cf. Mishnaiot 12:3-4.

Mishnah 8: If she had compromised her ketubah\textsuperscript{159}, she shall not be able to collect without an oath\textsuperscript{160}. If one witness\textsuperscript{161} testifies that [the ketubah] was paid, she shall not be able to collect without an oath. From orphans’ property\textsuperscript{162}, or from encumbered property\textsuperscript{163}, in his\textsuperscript{164} absence she shall not be able to collect without an oath.

159 She had signed a receipt for part of the ketubah, as explained in the next Mishnah.

160 She can collect the remainder of the ketubah only in a court proceeding in which she will have to swear to the amount of the ketubah which still is unpaid.

161 A single witness cannot legally prove anything (Deut. 19:15). That rule is stated for criminal proceedings. In money matters, it is a rabbinic institution that the testimony of a single witness creates a presumption that he testified truthfully. The opposing party therefore either has to produce a witness who contradicts the first, or she can swear that her claim is not satisfied.

162 Since the heirs are not usually cognizant of all business dealings between their deceased father and his
wife (who might not be their mother), she has to swear that she did not receive any valuables on account of the ketubah.

163 If the husband sold real estate after the date of his wedding, the sale did not remove the ketubah lien on the property. If the ketubah cannot be paid by the estate, the widow has regress on the buyer. Clearly, the buyer can require the widow to swear for the same reason the heirs of the estate can.

164 If the husband sends his wife a bill of divorce from abroad, the court handling the delivery of the bill of divorce to the wife will require her to swear that no part of the ketubah had been paid before overseeing the payment of the ketubah.

The Mishnah is repeated in Sebuot 7:7.

Halakhah 7" "If she went from her husband's grave to her family," etc.165 Rebbi Ze'ura said, this came down in the manner of a biblical oath. The ketubah is acknowledged in her hand for collection; it is as if collected. But since with the document of 200 there is an acknowledgment of payment and she says, one mina [is due to her], she cannot be paid without an oath166.

165 This quote has nothing to do with the Halakhah which discusses only Mishnah 8.
166 He discusses the first case of the Mishnah, if she had compromised the ketubah by signing a receipt for partial payment without specifying the amount. The basic biblical text is Ex. 22:8: "About any guilty behavior, about an ox, or a sheep, or a garment, or anything lost, if he agrees that this is it, the case of the two parties shall come before Elohim." This is explained as follows (Mekhila dR. Ismael, ed. Horovitz-Rabin p. 301; Mekhila dR. Simeon bar Iohai ed. Epstein-Melamed
p. 203; Babli Baba Qama 107a, Baba Mesi’a 5a, 98a): The paragraph speaks in vv. 6-7 about a person who holds another’s property without being paid for his services, who will not have to pay if the property is stolen and the holder never used it for his own purposes. Then v. 8 continues about any behavior implying monetary obligation, i.e., any monetary claim of one person against another, and requires first that the object of the claim be well defined (an ox, a sheep, etc.) and that the defendant of the suit agree that “this is it”, i.e., that there is a case, then there shall be a trial before a judge acting as Elohim, as a representative of God as judge. In praxi this means that if the claimant cannot prove his case by witnesses or documents, the defendant can free himself from paying by swearing while holding a copy of the Torah and being subject to all the rules of judicial oaths. But if the claim is for one thing (e.g., an ox) and the defendant agrees only that something else is owed to the claimant (e.g., a sheep), or if the defendant disputes the entire claim, he cannot be forced to swear and the claimant loses his case.

R. Ze’ura notes that the case of the damaged ketubah has most of the features of a case requiring an oath by biblical standards, even though it seems otherwise since the divorced wife claims the remainder of the ketubah but the husband claims that all was paid. For that he argues that everybody knows that a ketubah becomes payable at the moment of divorce. Therefore, the husband is considered to have paid the ketubah sum and now he requests to get his money back, and the ex-wife disputes part of his claim. (In the opinion of the Babli, Šebuot 48b, 81a, this is held only by the House of Shammai; cf. Note 178.) There are two points why the case does not fit the framework of Ex. 22:8: The person who swears a biblical oath does not have to pay, but in the case under discussion the wife swears in order to collect money. This is by rabbinic tradition. Second, since the ketubah is a mortgage lien (or: in talmudic times was a mortgage lien), the suit is about real estate and real estate claims cannot be settled by oaths (Mishnah Šebuot 6:5). This argument is explicit in the Babli, 87b, where the place of R. Ze’ura is taken by (the slightly younger) Rami bar Hama.
It was stated "compromised". Not that she reduced her *ketubah*. If her *ketubah* was 200 but she claims a mina, she is paid without an oath. What is the difference between one who compromises and one who claims less? Rebbi Hanina said, if she compromises there was a transaction between them; if she claims less there was no transaction between them.

167 This statement is quoted in *Shabbat* 7:7 (38a 1. 25), *Sanhedrin* 8:6 (26b I. 49); Babli 87b.

168 In the Babli, this is made more explicit: If her *ketubah* was 1000 *zuz*, the husband claims that it was paid but he has no receipt, the divorced wife states that she received nothing but that her claim was only a mina, this is not conceding part of the husband’s claim (cf. Note 166) and she collects without an oath. It seems that the Yerushalmi would agree to that interpretation.

On documents which show that 200 *zuz* written in the *ketubah* might mean 100 *zuz* in actual money (and the standards by which the value of a *zuz* is determined), cf. M. A. Friedman, *loc. cit.* Note 87.

169 Therefore, the oath is required if only to protect creditors with claims against the estate.

170 At least, there is no presumption of any transactions between her and her husband regarding her *ketubah* during her marriage. Therefore, anybody claiming that there was such a transaction in order to impose an oath on the widow would have to prove his case in court.
Rebbi Jeremiah asked: Since we stated there: "If one witness testifies that [the ketubah] was paid, she shall not be able to collect without an oath," should it be similar that if one witness testifies that [the ketubah] was reduced, she shall not be able to collect the reduced sum without an oath? Rebbi Yose said, at the moment that one witness testifies that the amount should be reduced, he is like a single witness who contradicts the testimony of two [witnesses] but no single witness can contradict the testimony of two.

171 This should be read as already corrected in editio princeps. The text in Sanhedrin 8:6 is formulated differently.

172 The two witnesses who signed the ketubah document.

173 There can never be an oath imposed for a lesser claim in the settlement of a ketubah since the preceding paragraph dealt with the case of no witnesses and there can be no oath if there are two witnesses.

It was stated: If an heir's father held a compromised promissory note, the son collects without swearing. In that the son's power is greater...
than the father's, since the son collects without swearing while the father can collect only by swearing. Rebbi Eleazar said, nevertheless he has to execute an heir's oath, "that our father did not charge us, that our father did not tell us, that we did not find a document among our father's documents that this note was paid." Rebbi Hoshiaia asked, does the baraita follow the House of Shammai? For the House of Shammai say, "she collects her ketubah and does not drink." Rebbi Yose said, there the reason of the House of Shammai is: Bring my husband and I shall drink! But here, it would be in order that even his father would not have to swear. They instituted a rule that he has to swear. They instituted that for him, but not for his son. When he died, you put his son on the biblical rule.

174 If the father had indicated that a certain part of the note was paid, and both the lender and the borrower had died, the lender's son collects the remainder from the borrower's son without swearing that no more than the sum indicated had been paid (assuming that the borrower's son cannot produce a document or witnesses that more had been paid than was claimed), since he could not collect if he had to swear that he was 100% sure that his claim was in the correct amount.

175 If the borrower had died.

176 The same statement in the Babli, Sebuot 48a. It is in the heirs' power to swear that according to their best knowledge the claim is justified.

177 Mishnah Sebuot 7:7.

178 The one mentioned at the start of this paragraph, and also the Mishnah (cf. Note 166).

179 Mishnah Sotah 4:3, about a woman whose husband, having no witnesses, formally accused her of adultery but died before he could bring her to the Temple for the cleansing ceremony. Since the verse requires the presence of the husband at the Temple ceremony (Yerushalmi Sotah, p. 180, Note 14), the woman is prevented from clearing her name. The House of Hillel hold that she cannot collect her ketubah since she cannot prove her
innocence to the heirs (loc. cit. p. 185, Note 38) based on the general principle that "the burden of proof is on the claimant." Since the House of Shammai also agree to that principle, it must follow that for them the ketubah is as good as paid and the heirs are the claimants who want to have the money back but who cannot prove their case. This shows that for the House of Shammai the ketubah is the widow's property from the moment of the husband's death.

180 The preceding argument is invalid. The House of Shammai may not hold that the ketubah is the widow's property from the moment of the husband's death, but they hold that if the woman was ready to clear her name, any impediment which is not her fault cannot be held against her. The House of Hillel hold that the heirs do not have to pay her ketubah; since she brought the problem on herself by being seen with another man after having been duly warned by her husband in front of two witnesses; she cannot collect except by successfully clearing her name. The problem is discussed in similar terms in Sotah 4:1, Notes 13-16.

181 His oath is a purely rabbinic institution for the prevention of fraud. Since it is rabbinic, it cannot be enforced if it would prevent anybody from collecting what is rightfully his.

182 Meaning, it could not be instituted as a burden on his son.

If a father became obligated to swear in court and died, his son cannot collect. If it were otherwise, what could we say? Can a man let his son inherit an obligation to swear? Rebbi Avin said, you mean, if a man compromised his document in court, his son cannot collect. Rav Hisda asked: Because he walked those two steps, he loses? If he
compromised it outside the court, he collects. Because he compromised it in court, he cannot collect\textsuperscript{185}?

183 The context shows that the oath is a rabbinic one imposed on the person who wants to collect money.

184 Since he lacks the knowledge about the details of his father's business transactions, he can only swear a disclaimer of knowledge (Note 177) but not the required positive statement.

In the Babil, \textit{Sebuot} 48a, this is a common formal statement by Rav and Samuel, not an obvious fact.

185 In the Babil, \textit{Sebuot} 48a, R. Eleazar holds (with Rav Hisda here) that the heirs swear the heir's oath (Note 177) in any case. R. Abin's statement is rejected.
Halakhah 8: "If she had compromised her ketubah, she shall not be able to collect without an oath," etc. 187Rebbi Johanan said in the name of Rebbi Yannai: One pays from an orphan's property only a document on which interest is due188, and some say189, also a woman's ketubah. Rebbi Yannai said, because of her sustenance. Rebbi Mattaniah said, who is worried about sustenance? Rebbi Simeon! Since Rebbi Simeon said, it depends on the collection190. What about it? For attraction, that everybody should jump to marry her191. Some say, also for robbery and torts192. Rebbi Yose said, we stated both of these. Robbery from the following: "If it was mortgageable, he has to pay."193 For torts from the following194: "One pays from an orphan's property only from the least valuable.195" So is the Mishnah: One pays for torts from an orphan's property only from the least valuable196. But was it not stated: If the son took his father's place, one estimates torts from the most valuable land, creditors from average quality, and a woman's ketubah from the least valuable197. Rebbi Yose ben Rebbi Abun said, here197 about an adult orphan, there about an underage orphan.

185 This awkward expression seems to be a scribal error induced by the preceding word. In the parallels Sebuot 7:9, Gittin 5:3 (and Arukh s. v. וְיִנָּה) the idiomatic יִנְנָה is used.

186 The vocalization is from the ms., characteristic for Italian/Ashkenazic texts which almost never write qamas.

187 The Halakhah is repeated in Gittin 5:3, Sebuot 7:9.

188 To preserve the orphan's property. In the Babli, 'Arakhin 22a, this opinion is ascribed to Rav Assi.

189 In the almost parallel text in
Sebuot 7:9, this is attributed to R. Nathan [who is called "some say" in the Babli (Horaiot 13b)]; in the Babli (loc. cit.) it, together with R. Yannai’s explanation, appears in R. Johanan’s name.

190 Mishnah 11:2 states that a married woman, for whose upkeep the husband is responsible, and whose husband does not fulfill his support duty, may sell from the estate without court supervision. The same holds for the estate after the husband’s death as long as the ketubah was not paid. R. Simeon grants this right only to the definitively married woman and the wife who becomes a widow after definitive marriage, but not to the preliminarily married who cannot claim support but only ketubah if widowed or divorced. Mishnah 11:1 gives the estate the right to the widow’s earnings in exchange for the support; it is held that R. Simeon thinks that, in general, the amount needed for her support is greater than her prospective earnings (Babli loc. cit.).

191 Since in those times a single woman had few possibilities of earning a living, if the heirs were not her children she needed the ketubah as dowry to attract a new husband.

192 If the father had been found guilty of robbery or causing damage but died before he paid the sums assessed by the court.

193 Mishnah Baba Qama 10:1: "If somebody robbed and used the proceeds to feed his children, [if the father died] they do not have to pay. But if it was mortgageable [real estate], they have to pay."

194 Mishnah Gittin 5:2.

195 An estate’s real estate holdings are classified by their values per unit of area. It is assumed that the higher the unit value, the easier it is to sell the property. The debtor in general will try to satisfy his obligations with real estate of the lowest quality. The property which per unit area is valued highest is called עיריה "elite", the average ירגימי "medium", and the lowest ירגירית "stony field". These categories are not absolute; they refer to the holdings of an individual.

196 This statement was not discussed by J. N. Epstein in his treatment of קנים (cf. Note 199). The statement should not be considered as emendation. A simple reading of the text will require that the statement apply to all cases in which an orphan’s real estate is to be alienated. In the opinion of both Talmudim (Gittin 5:1, Babli 48b-50a; Baba mes’i’a 9:14, 12b 1.
11) rabbinic practice demands that tort judgments have to be satisfied by best quality, financial debts by medium quality, and *ketubah* by lowest quality. In the opinion of most authorities, biblical law requires only minimal quality for the settlement of financial obligations. The rabbinic upgrading was a necessity to make it easier for people to get a loan. Since this argument is irrelevant for orphans, one does not need the Mishnah to know that mortgage debts paid by an estate are settled by low quality real estate. Where the Mishnah is really needed is payment for torts for which (Ex. 22:4) "the best of his fields or the best of his vineyards" are required. The statement therefore should be read: One pays *even for torts* from an orphan's property only from the least valuable; cf. *Tosaphot* 84a, s. v. πιβν

197 The rules for the adult heir are the same as they would have been for the bequeather.

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**Mishnah 9:** If she had compromised her *ketubah*, how is that? If her *ketubah* was 1'000 zuz and he said to her, you received your *ketubah*, but she says, I received only one mina, she shall not be able to collect without an oath.

**Mishnah 10:** If one witness testifies that [the *ketubah*] was paid, how is that? If her *ketubah* was 1'000 zuz and he said to her, you received your
ketubah, but she says, I received nothing, and one witness testifies that 
the ketubah was paid, she shall not be able to collect without an oath.

Mishnah 11: From encumbered property, how is that? If he sold his 
real estate to others and she collects from the buyers, she shall not be able 
to collect without an oath. From orphans' property, how is that? If he 
died and left his estate to the orphans, if she is paid out by the orphans she 
shall not be able to collect without an oath. Not in his presence, how is 
that? If he went overseas and she collects in his absence, she shall not 
be able to collect without an oath. Rebbi Simeon says, any time she asks 
for her ketubah, the heirs can require an oath from her. If she does not 
ask for her ketubah, the heirs cannot require an oath from her.

198 If the widow prefers to be supported by the estate for an 
unlimited period, the heirs can never ask for an oath that she did not receive 
part payment of the ketubah (which would disqualify her from being 
supported) during her husband's lifetime. But if she asks for her 
ketubah, they do not have to pay unless she swears, even if her husband had 
freed her from any obligation to swear. R. Simeon disagrees with Mishnaiot 5.6.
**Halakhah 9-10:** "If she had compromised her ketubah, how is that? If her ketubah was 1'000 zuz," etc. "If one witness testifies that [the ketubah] was paid," etc. So is the Mishnah\(^\text{199}\): "If she collects in his absence, she shall not be able to collect without an oath."

J. N. Epstein, p. 475 notes that this is not an emendation but simply a quote from the third Mishnah which belongs to this Halakhah.  

\(\text{199}\) The quote from the Mishnah is not in Sebuot, and hence it seems to be closer to the original form. That text for the main section is given here in smaller type; it is taken as basis of the translation, with the deviations from the text in Ketubot noted in the Commentary.

The quote from the Mishnah is not in Sebuot since the Mishnah there deals with creditors in general, not only the divorcee or widow. Since the text from Sebuot has all the characteristics of being the original, the discussion of the Halakhah refers to contracts in general, not only to ketubot.

It is a general principle in Jewish law that "one may benefit a person without his knowledge but one
may not obligate him without his knowledge," Mishnah Gittin 1:6. Since a ketubah, and also a loan document in general, is executed as a lien on all of the debtor's properties, not on a specified piece of real estate, it cannot be foreclosed without court proceedings in the presence of the debtor or his representative.

202 In that case the court will act for the benefit of the debtor if this satisfies the creditor.

203 Since taking interest among Jews is forbidden, the court will not enforce any interest clause in a contract.

204 If the Jewish defendant is sued as guarantor for a Gentile from whom the Jewish creditor may take interest legally, the court will recognize the contract as valid.

Alexis said before Rebbi Mana: We act much better than you do. We send edicts. If he comes, it is good. If he does not come, we irrevocably give away his properties. He answered him, we also act in
this way, we have the herald announce for thirty days. If he comes, it is good. If he does not come, we irrevocably give away his properties. He said to him, think of it, if he was in distant corners. He said to him, we send three letters, one after thirty days, one after the next thirty days, and one after the next thirty days. If he comes, it is good. If he does not come, we irrevocably give away his properties. Rebbi Hanina said, that is, if he was present at the trial and then fled. But if he was not present at the trial, we cannot irrevocably give away, but only announce.

205 In the Ketubot text, R. Mana speaks to the Gentile Alexis. In that text it is not always clear who is the speaker.

206 Greek διατάγματα; in Roman praxis referring to edicts of the emperor or the provincial prefect. The corresponding Aramaic word in the Ketubot text, if it is not simply a corruption, means "judgment that cannot be appealed." Since the prefect also was the chief judge of the province, there is really no difference between the Roman administrative edict and the Jewish court's letter of summons.

207 The debtor who refuses to appear in court for foreclosure proceedings.

208 The verb ḥודו "to announce" is formed from Greek κήρυξ "herald". Public announcements were usually made Mondays and Thursdays, the market days.

209 This was Roman practice in Egypt, cf. R. Taubenschlag, The Law of Graeco-Roman Egypt in the Light of the Papyri, New York 1944, p. 383. In Jewish Babylonia, the person who did not obey the first summons was put in the ban (Babli, 88a; against Tosafot s. v. הרעמה).

210 In Ketubot: R. Mattaniah.

211 Once the validity of a claim has been established in court, the execution of the court order may proceed in the absence of the debtor.

212 In Ketubot: "they" (third person).
You find that one may say that Hanan and Rebbi Simeon said the same thing. Just as Hanan said, she shall swear only at the end, so Rebbi Simeon says, she shall swear only at the end. Just as you say, practice follows Hanan, so here practice follows Rebbi Simeon.

213 Mishnah 13:1. If a man travelled overseas and his wife asks permission from the court to sell of his property for her upkeep, Hanan says that she can sell and only swears at the end, if either the husband returns or notice of his death is received, that she did not retain any of the husband’s property over and above the amount she was entitled to. Hanan’s opponents also require her to swear before permission is granted by the court.

214 He admits the widow’s oath only if she demands her ketubah. The Babli, 88b, rejects this statement and finds other cases to which R. Simeon may refer. It therefore also rejects the conclusion (Note 216) reached here.

215 Mishnah 13:1, on the highest authority of R. Joshua.

216 By inference from the decision of Hanan.

Mishnah 12: If she produced her bill of divorce without a ketubah, she collects her ketubah. If a bill of divorce and a ketubah are produced, she obtains the ketubah. If a ketubah is produced without a bill of divorce, she loses her ketubah. If she says, I lost my bill of divorce but he says, I lost my receipt; similarly, the
holder of an instrument of debt not accompanied by a *prozbol*; these shall not be paid. Rabban Simeon ben Gamliel says, since the times of the persecution, a woman collects without the bill of divorce and the creditor collects without *prozbol*.

**217** The obligatory minimum amount of the *ketubah* due the divorcee. She has to sign a receipt or the bill of divorce has to be torn up to prevent her from collecting again in another court.

**218** If the debt documented in the instrument runs beyond a Sabbatical year, the debt is cancelled unless secured by a *prozbol*; cf. Ševi‘it 10:3 ff., pp. 650 ff.

**219** The Hadrianic decrees in Palestine in the aftermath of the war of Bar Kokhba when all Jewish ritual was prohibited. In those times, the *prozbol* and the distinctively Jewish bill of divorce had to be torn up as soon as they had been delivered. After the decrees were lifted in the reign of Antoninus Pius, the *status quo ante* was not restored. The fact of a divorce could be established by witnesses; the existence of a *prozbol* was assumed.
Halakhah 11: "From encumbered property, how is that?" Rebbi Hyya in the name of Rebbi Johanan: If somebody disputes a court document, he is not trustworthy. Rebbi Hyya bar Abba said to him: Is that not the Mishnah? "If she produced her bill of divorce without a ketubah, she collects her ketubah!" Rebbi Johanan said to him: Babylonian, after I removed the clay from the pearl, you say to me: Is that not the Mishnah? Rav said, at a place where one does not write a ketubah. But at a place where one writes a ketubah, what she produces she collects. He changed his mind and said, she collects even at a place where one writes a ketubah; let anyone powerful object to this! Rebbi Yose objected: Was it not stated: She might collect on her divorce document, hide her ketubah, and collect a second time? If those died. Are there not witnesses? Bring them! They went overseas. Is there not an agreement? Is there no registrar of agreements? There is a registrar of agreements; as you say, if a document is lost, one writes a replacement. This is what one says, if the ketubah was lost, one writes a new one. Rebbi Abba objected: Was it not stated, she might collect on her divorce document, hide her ketubah, wait until he dies, and collect a second time? Rebbi Yose bar Abun said to him: Would she not have to prove that she lived with him until he died?

220 The consensus of all commentators is to read אדכ קרטסן. 221 The consensus of all commentators is to read דנומ. 222 A document made in one court will be accepted by another court as
valid.

223 He is the same R. Hiyya who stated the thesis; it is recounted how he was convinced to attribute the statement to R. Johanan.

224 Since the bill of divorce is a court document but the ketubah a private one, the court document which proves her status as a divorcée is enough to have another court direct that she be paid the divorce settlement. If divorce and payment were handled by the same court, she would not have to present anything.

225 This is all part of R. Johanan’s argument, that the Mishnah does not prove anything since Rav gave it an interpretation which has nothing to do with the divorce bill being a court document. Rav declares that there are places where one would not write a ketubah if the amount stipulated in it did not exceed the legal minimum. Since legally required terms do not have to be written in the ketubah (Mishnaiot 4:7-12), the amount itself does not have to be written (4:7) for the marriage to be legal.

226 R. Johanan asserts that Rav in the end did agree with him. The Babli disagrees, 89a, and asserts that Rav restricts the Mishnah to cases in which no ketubah was written; R. Johanan’s opinion there is attributed to Samuel.

227 A similar text is in the Babli, 16b. This must be part of a baraita which explains the precautions necessary to prevent that the same claim could be presented in different jurisdictions.

228 In case no receipt was written or the document presented for payment was shredded.

230 Greek ὁμολογία “consensus”, a joint statement of payor and payee.

231 The fact that it is a replacement has to be stated in the new document. Therefore, the new document cannot be used fraudulently as an original.

232 From the heirs, as a widow.
Rebbi Ze'ira, Rebbi Abuna in the name of Rav: At a place where one writes *ketubah* documents, if he says I wrote, but she says you did not write, the burden of proof is on her to prove that he did not write. But at a place where one does not write *ketubah* documents, if he says I wrote, but she says you did not write, the burden of proof is on him to prove that he wrote.\(^{233}\)

\(^{233}\) In the Babli, 89a, this is an always *prima facie* evidence in inference of Rav Anan from a statement of Samuel. Local usage is

\[\text{Rebbi Hiyya bar Abba found Rebbi Jonathan’s prozbol and ran to give it to him.}^{234}\] He said to him, I do not need it, as it was stated: The creditor can be believed if he says, I discarded this document and tore it up. Rebbi Jeremiah in the name of Rebbi Hiyya: The Mishnah says so: “Since the times of the persecution, a woman collects without the bill of divorce and the creditor collects without prozbol.” Is that not impossible? I tore it without discarding? Here, I discarded and tore it.\(^{238}\)

\(^{234}\) Since R. Hiyya is two generations younger than R. Jonathan, this must have been a very young R. Hiyya bar Abba.

\(^{235}\) In the Babli, *Gittin* 37b, this is a statement of Rav Nahman, that Rabban Simeon ben Gamliel’s elimination of the requirement to produce a bill of divorce or prozbol is permanent.

\(^{236}\) The prozbol.
237 He cannot possibly ask for payment if he does not claim to have had a *prozbol* to discard.

238 This includes the claim that a *prozbol* was in existence when needed.

Mishnah 13: Two bills of divorce and two *ketubot*, she collects two *ketubot*. Two *ketubot* and one bill of divorce, or one *ketubah* and two bills of divorce, or one *ketubah* and a bill of divorce, and death; she collects only one *ketubah* since a person who divorces his wife and takes her back, takes her back on the basis of her prior *ketubah*. If a minor was married off by his father, [his wife's] *ketubah* is valid since he kept her by that understanding. If a proselyte converted together with his wife, her *ketubah* is valid since he kept her by that understanding.

239 She was twice married and twice divorced from the same man. After the first divorce, she did not collect her *ketubah*. When he married her the second time, he wrote her a new *ketubah* (which he did not have to do, as explained in the Mishnah.) Then the new *ketubah* is a new obligation, additional to the old one, not superseding it.

240 Without documentary proof to the contrary, a man married twice to the same woman is presumed to owe only one *ketubah*.

241 A minor cannot legally take on obligations. The *ketubah* becomes only valid at the moment the minor becomes an adult and stays married to his wife.
The rabbinic court will enforce all obligations the groom had undertaken for his bride in Gentile law.

Halakhah 12-13: "If she produced her bill of divorce without a ketubah, she collects her ketubah," etc. "Two bills of divorce and two ketubot," etc. But only if the bill of divorce is dated between the two ketubot. So far if they are equal. If one was for a mina, the other for 200 [zuz]? Rav Huna and Rav Jeremiah and Rav Hisda. One said, she collects the first one. The other said, she collects the second one and the excess she collects from the date of the second.

Otherwise the second ketubah was only intended to replace the first which was thought to be lost; a similar argument is in the Babli, 90a.

This refers to the second case, that the divorcee presents two ketubot and one bill of divorce. If the amounts are equal, the second bill replaces the first. If they are unequal, they cannot replace one another.

Probably it should read: Rav Huna in the name of Rav Jeremiah; otherwise, the name of a first generation Amora should not appear between the names of two second generation Amoraim.

Even if the first ketubah should be larger, it now is a lien on the husband's real estate only from the date of the second. Any real estate sold between the dates of the two ketubot cannot be taken by the divorcee. In the Babli, 43b, Rav Huna states that if she only claims the smaller amount she collects from the date of the first ketubah, otherwise from the time of the second.
Rebbi Hanaiah said before Rebbi Mana: Does this not mean that if a person borrows from another, and then he borrows again, he has to declare "in addition to the first paper you have on me"? It is frequent that a woman says, my ketubah is lost, write me another. Is it frequent that a man say, my paper is lost, write me another? But it is possible that he should declare for him.

247 Would two commercial contracts be considered under the same rules as ketubot?
248 The husband would have to oblige, leaving the wife with two documents.
249 The debtor does not have to oblige; if he agrees in order to retain the possibility of future loans, the new contract will certainly be written so that the prior contract would be invalidated.
250 Instead of writing in the contract, the debtor could declare his multiple indebtedness in front of witnesses.

Rebbi Yudan from Sicily brought this case before Rebbi Yose: Did not Rebbi Abbahu say in the name of Rebbi Johanan: Nobody should use a paper on which he borrowed and paid the loan back to take...
out another loan on the same day? He said to him, here if he had paid back, there if he did not pay back.  

Rebbi Hanin stated before Rebbi Hila: Two Amora'im, one said for *ketubah* but not for individual stipulations, the other said, both for *ketubah* and for individual stipulations.

251 Or, "son of Sicinius" (E. G.).

252 The statement that a man remarrying his divorcee can do that on the basis of the prior *ketubah*.

253 In the Babli, *Baba Meši'a* 17a, R. Assi (Yasa) in the name of R. Johanan.

254 If the loan was paid back the day it was taken out (otherwise the paper would be predated and invalid). The reason given in the Babli is that the rights given by the borrower to the lender by handing over the contract to the lender were annulled by the repayment and cannot be resurrected.

255 Obviously, if the *ketubah* was paid after the divorce, at the remarriage the husband has to execute a new *ketubah*. The Mishnah refers only to the case that the husband prefers to remarry instead of paying up.

256 This text is quoted in *Demay* 6:3, Notes 88-89. It refers to the validity of the *ketubah* for the remarried divorcee. From the Babli, 90a, one might be led to read this statement as belonging to the next paragraph, about the *ketubah* of a minor’s wife, but this does not fit the interpretation given the statement in *Demay*.

-One understands a proselyte. A minor? Can a minor divorce? Rebbi Ḥaggai said, I explained it following what Rebbi Eleazar said in the name of Rebbi Hanina: Only if he slept with her when he regained sight...
or became sane mentally. And here, if he slept with her after he reached adulthood.

257 He contracted the marriage as an adult. His conversion cannot invalidate his contractual obligations. He cannot enter into valid contracts. If he dies, how can his wife enforce her claims against the minor's heirs whose rights are biblical?

259 Since a minor cannot act in law, he cannot divorce his wife and her ketubah cannot become due.

260 In Chapter 1, Note 146. The wife of a deaf-mute or insane man can collect a ketubah only if for some period she lived with him while he was legally competent. At that time, their marital relations validate the contract.
Mishnah 1: If somebody was married to two women when he died, the first one \(^1\) precedes the second \(^2\), and the heirs of the first precede the heirs of the second \(^3\). If the first one he had married died \(^4\), then he married the second one and he himself died, the second and her heirs \(^5\) precede the heirs of the first.

1. The wife whose ketubah is dated earlier.
2. Since a ketubah is a mortgage lien, the holder of the earlier mortgage has the right to foreclose any real estate before the holder of the later mortgage may foreclose. The rules of this Chapter are in essence rules of privileged creditors in bankruptcy proceedings since they become irrelevant if the estate is large enough to satisfy everybody.
3. If the wives die before they have collected their respective ketubot, the heirs collect these from the estate (Mishnah 4:10).
4. The husband then inherits his deceased wife's property; only after his death can the first wife's children claim her ketubah as inheritance.
5. The widow is a mortgage holder, a creditor of the estate; the first wife's children are heirs. The heirs can lay their hands on the estate only after all outstanding obligations are paid. If the widow dies before she is paid, her claim passes to her heirs.
Halakhah 1: "If somebody was married to two women," etc. The Mishnah refers to ketubah, but for sustenance both are equal. Between ketubah and burial, what has precedence? Between ketubah and a loan attested to by witnesses, what has precedence? Between ketubah and daughters' dowry, what has precedence? For him who says, one collects for dowry from mortgaged property, daughters' dowry has precedence. But for him who says, one does not collect for dowry from mortgaged property, daughters' dowry does not have precedence.

6 If both widows prefer not to receive their ketubah but to be sustained by the estate, they have to be treated equally. The statement is also in Tosephta 10:1.

7 The estate is only sufficient either for the expenses of the man's burial or his widow's ketubah. The question is not answered, maybe because it never arose in practice. Since the deceased has to be buried before questions about payment are asked, it seems that the burial is charged to public welfare.

8 For R. Tarphon in Mishnaiot 9:2-3, the creditor has precedence since he depends on the testimony of witnesses who might die but the widow depends on the written ketubah.

9 R. Hanina in Halakhah 6:6, against R. Johanan (Notes 93, 96-97). The disagreement is also quoted in 13:3 (36a l. 15).
It says only, "she died". Therefore, if she was divorced, her status is that of a creditor\(^\text{10}\). As it was stated\(^\text{11}\): "He married a woman and wrote her a ketubah. He divorced her but did not pay the ketubah. He married another woman and wrote her a ketubah. He took back the first one and wrote her a ketubah in addition to the first ketubah\(^\text{12}\). The [second ketubah] of the first [wife] has precedence over that of the second [wife] and her heirs, and the second [wife] and her heirs have precedence over the heirs of the first.\(^\text{13}\)"

\(^{10}\) If the first one was divorced, her claim has preference over the claims of the second and her heirs.

\(^{11}\) Tosephta 10:1.

\(^{12}\) Then the husband died and his estate is not sufficient to satisfy all three ketubot.

\(^{13}\) That text is elliptic but its meaning is clear; it is not necessary to assume that the original text was that of the Tosephta and was shortened in transmission. The Tosephta reads: "The first ketubah of the first [wife] has precedence over the second and her heirs; the second and her heirs have precedence over the second ketubah of the first."

Any prior document has precedence over any later one.
Ben Azay\textsuperscript{14} says\textsuperscript{15}, the heirs of the first say to the heirs of the second: If you are creditors, take what is yours and leave\textsuperscript{16}; otherwise let us split evenly between yourselves and us\textsuperscript{17}. Rebbi Aqiba said to him: Biblical inheritance "jumped" on the sons of the second; they take their mother’s ketubah and come back to split\textsuperscript{18}. Rebbi Mana\textsuperscript{19} said, they disagree if there is an excess denar\textsuperscript{20}. But if there is no excess denar, even Rebbi Aqiba will agree with Ben Nanas\textsuperscript{14} that both parties split evenly\textsuperscript{21}. Rebbi Yose ben Rebbi Abun said to him, a situation which was stated without disagreement you turn into a disagreement. They must disagree if there is no excess denar. But if there is an excess denar even Ben Nanas\textsuperscript{14} agrees with Rebbi Aqiba that biblical inheritance "jumped" on the sons of the second; they take their mother’s ketubah and come back to split\textsuperscript{18}.

\textsuperscript{14} Later in the discussion, the author is called Ben Nanas in ms., editio princeps, and all ms. sources of the Babli, 90b. However, in the Constantinople edition with the commentary of Joshua Benvenist, the name is Ben Azay in both occurrences. Ben Nanas is mentioned in Mishnah 5.

\textsuperscript{15} This refers to the second case in the Mishnah, where the first wife died and the second becomes a widow. In that case, the husband inherited the first wife’s property; the first wife’s children have claim to inherit their mother’s ketubah only by rabbinic institution, cf. Mishnah 4:10, whereas the widow (or her children in her stead) has a contractual claim on the estate. If the estate is larger than the sum of the two ketubot by at least "one excess denar", there is no problem. All children can inherit their mother’s ketubah and part of the remainder. But if the estate is not sufficient and payment of the "ketubah of male children" instituted in 4:10 would eliminate biblical inheritance rules, the question is whether rabbinic inheritance can or cannot supersede biblical inheritance (which would treat
all children equally except that a male firstborn counts for two.)

16 The rabbinic institution of "ketubah of male children" eliminates the biblical laws of inheritance. The sons of the second wife take their mother's ketubah as inheritance from their mother, not their father; what remains of the estate is taken by the sons of the first wife as "ketubah of male children". In Tosephta 10:1, this is presented as anonymous rule: "If there is an excess denar, both parties take their mothers' ketubot and the remainder is split evenly; if there is no excess denar, the second wife or her heirs take her ketubah and the remainder is divided evenly.

17 If the sons of the second wife want to deprive the sons of the first of their "ketubah of male children", they lose their own ketubah and everybody becomes an heir in biblical law. Since this would be to the detriment of the sons of the second wife, the first alternative is operative.

18 The sons of the second wife take their mother's ketubah under the rules of creditors and the remainder is biblical inheritance split among all sons since rabbinic inheritance decrees cannot eliminate biblical rules if the estate is too small.

19 R. Mana II, contemporary of R. Yose ben R. Abun.

20 It is very difficult to accept that the second marriage invalidates the "ketubah of male children" of the first marriage.

21 It is equally difficult to accept that the ketubah of the second has the status of a creditor's claim only for the widow but not for their heirs. Since the argument of R. Yose ben R. Abun is reasonable, there seems to be no possibility to claim a copyist's corruption.

Debts diminish and, equally, debts add. How is this? If there was a field which in the future would return in the jubilee year, you consider it virtual property.
22 In determining whether an estate is larger than the sum of the ketubot due, one deducts debts payable by the estate and adds debts due to it. The Babli agrees, 90b.

23 The example is purely theoretical since the institution of the jubilee disappeared under the Israelite monarchy; cf. Introduction to Tractate Sevi'it. The practical implication is that the "ketubah of male children" is due even if the estate reaches the required size only by counting contracts far into the future.

How is that? If he preliminarily married Rachel, definitively married Leah, and only then definitively married Rachel. In the opinion of the rabbis, Rachel has precedence; in the opinion of Rebbi Eleazar ben Azariah she does not have precedence. They say, even Rebbi Eleazar will agree that since in the end he definitively married Rachel, Rachel has precedence. To what can this be compared? To one who took out a loan from another person and said to him, if I have not paid it back by twelve months, all my properties shall be mortgaged to you. If the twelfth month arrived and he has not paid back, his properties become mortgaged from that moment on. But if he said, all my properties shall be mortgaged to you only after twelve months, they become mortgaged
only after twelve months. The status of the days in between\(^{29}\) is in dispute between Rebbi Meir and the rabbis\(^{30}\). In Rebbi Meir’s opinion, the properties became pledged by the document\(^{31}\). In the rabbis’ opinion, the properties became pledged by the money\(^{32}\).

24 This sentence does not refer to anything; it seems to be a copyist’s error.

25 By combining preliminary and definitive marriage (cf. Chapter 1, Note 24).

26 In Mishnah 5:1, R. Eleazar ben Azariah holds that a *ketubah* becomes executable only after definitive marriage; therefore, Leah’s *ketubah* in effect should predate Rachel’s even though Rachel’s was executed earlier, at the time of her preliminary wedding. For the rabbis, the date of the contract is the determining factor.

27 R. Eleazar ben Azariah agrees that if both contracts are executable, the dates of the contracts determine precedence. He only holds that before definitive marriage the contract is not executable.

28 The moment of the loan. If the debtor had sold any real estate in the meantime, the creditor can have regress on it since the contract predates the sale even if it becomes executable only later.

29 The days between the signing of the contract and the end of 12 months when the contract becomes executable.

30 There are many disputes between R. Meir and the other rabbis and it is a matter of conjecture to which dispute this refers. R. Moses Margalit points to a *baraita* quoted in the Babli *Baba mesi’a* 13b, in which R. Meir states that a loan contract allows regress on alienated property only if this was stated in the contract; but the rabbis hold that such regress is a matter of law and does not have to be stated explicitly.

31 The alienation clause becomes activated only after 12 months; it cannot apply to properties sold during these months.

32 The moment the loan money changed hands, the alienation clause became executable whether written or not.
Mishnah 2: If somebody was married to two women who both died, and then he died, and the orphans demand their mothers’ ketubot, if [the estate] is sufficient only for both ketubot they split evenly. If there was an excess denar, these take their mother’s ketubah and those take their mother’s ketubah. If the orphans say, we accept the properties of our father for the value of an extra denar in order to take their mother’s ketubah; one does not listen to them but one appraises the properties in court.

33 If there are $n$ sons, the estate is divided into $n$ equal parts. If one of the children is a male firstborn, the estate is divided into $n+1$ parts and the firstborn takes two. If there are no sons, only $n$ daughters, the estate is divided into $n$ equal parts.

34 The remainder is split evenly between the heirs.

35 If the ketubot were unequal, the sons of the mother with the larger ketubah would be interested to receive the ketubah rather than the inheritance. Similarly, if the ketubot were equal but one wife had few sons, the other many, the few sons would gain if they could split their mother’s ketubah between them and not have to share with their many halfbrothers. These are willing to take some property at an inflated value in order to receive more than the other woman’s sons.
Halakhah 2: "If somebody was married to two women," etc. That refers to what Rebbi Immi said, that a man should be induced to give generously to his daughter\(^\text{36}\). If that is so, then even if there is no excess denar\(^\text{37}\) Rebbi Abun said, in case you can uphold their words with the words of the Torah, you uphold their words with the words of the Torah\(^\text{38}\). But in case you cannot uphold their words with the words of the Torah, you disregard their words and uphold the words of the Torah.

\(^{36}\) Halakhah 4:12, Note 238.

\(^{37}\) If the "ketubah of male children" was instituted so that people would increase their daughters' dowries in the knowledge that the money will be transferred to their grandchildren, it does not seem reasonable to restrict the rules to sufficiently large estates.

\(^{38}\) If the estate is large enough, one can distribute the "ketubah of male children" and still have an estate which is distributed according to biblical law (Num. 27:6-11). Cf. M. A. Friedman, *Jewish Marriage in Palestine*, Tel Aviv 1980, vol. I, pp. 381 ff.

Rebbi Judah bar Pazi in the name of Rebbi Yose ben Hanina: If one of the brothers died, they all split evenly\(^\text{39}\). Rebbi Mana said, that is
necessary if they did not yet divide the estate. You should not say that he should be considered nonexistent and his house should inherit from him. If there was a (male) firstborn, you say the firstborn takes a double portion. What does he take? A double portion among his house or among all brothers? Rebbi Hoshia stated: If there were two groups of daughters, they all split evenly. If there was a firstborn, you say the firstborn takes a double portion. What does he take? A double portion among his house or among all ketubot?

39 If he dies without issue, all his paternal brothers inherit from him.
40 If the estate had been distributed by the time of his death, this would be a simple case of inheritance; in the absence of children his maternal brothers would inherit. But if the estate was not yet distributed, the question is whether the heirs are considered to have acquired their part at the moment of their father's death or whether they acquire only at the time of the actual distribution. Clearly, for the part of the estate which is distributed under biblical law, all surviving full and halfbrothers inherit equally. But for the "ketubah of male children", in the second case, only the maternal brothers share his part, while in the first they all share. R. Mana states here that an inheritance is acquired at the time of death of the bequeather. In the Babli, Baba batra 107a, this latter opinion is attributed to Rav; Samuel holds that "brothers at the distribution of the estate have the status of buyers from one another", i.e., their status is determined only at the time of distribution. Since the Babli follows Samuel in money matters, it will deny R. Mana's assertion.
41 Deut. 21:16-17. In that example, the firstborn takes $\frac{2}{3}$ since there are only two sons.
42 Is the "ketubah of male children" of the other wife exempt from the biblical rule of the firstborn?
43 Mishnah 4:10 refers only to male children. If all children are female, they each receive an equal share of the estate.
44 It is not clear why this question is repeated since R. Hoshia does not deal with sons at all and a female firstborn has no special rights.
At which point in time does one appraise? The students of Rebbi Mana say, at the end. Rebbi Yose ben Rebbi Abun said to them, are you not those who speak in the name of your teacher, "that is necessary if they did not yet divide the estate"? But one assesses from the first moment!

Probably one should read רבענ א"ע, i.e., רבענ "your teacher" (R. Mana) instead of רבענ "the rabbis".

Almost certainly this should be שמס "one assesses".

At the time of distribution.

If the share of each son in the "ketubah of male sons" is determined at the moment of their father’s death, the value of the estate must be determined at that moment since the "ketubah of male sons" depends on that value.

The moment of the father’s death. This is asserted in the Babli, 91a/b, by Rav Nahman, the highest authority in money matters. In his opinion, the status of the estate is not connected with the point in time at which the heirs take possession of their inheritance.

Mishnah 3: If the estate contained expected property, it does not have the status of property in actual possession. Rebbi Simeon says, even if there was no mortgageable property, it does not count unless there is mortgageable property in the value of at least a denar more than the two ketubot.
If the expected inheritance from a grandfather would bring the father's estate over the limit for distribution of the "ketubah of male sons", it cannot be counted until it becomes due. Similarly, the double portion of a male firstborn is restricted to "all that is present with him" at his father's death (Deut. 21:17); the firstborn has no special rights to any inheritance from other members of their family coming to the sons after the father's death.

Movables.

Real estate. R. Simeon holds that a ketubah is a mortgage lien and, therefore, cannot be satisfied by movable property.

Halakhah 3: "If the estate contained expected property," etc. Rebbi Mana said, they disagree about the basic claim of the two ketubot. Rebbi Simeon says, real estate, but the rabbis say, movables. But for the excess denar everybody agrees that it is movable. Rebbi Yose ben Rebbi Abun said, everybody agrees about the basic claim of the two ketubot that it must be real estate. Where do they disagree? About the excess denar, where Rebbi Simeon says, real estate, but the rabbis say, movables. Rebbi Abba bar Zavda in the name of Rav: But in Syria they routinely collect...
from bronze and bedspreads. Rebbi Abbahu in the name of Rebbi Johanan: Only from bedspreads of that night. Rav Samuel bar Nahman in the name of Rebbi Johanan: The people in Arabia routinely collect from camels and spices. Similarly, only from spices of that night?

Rebbi Huna’s widow collected from movables following her place’s custom.

It is not totally clear what "the basic claim of the ketubah" means. Is it only the required 100/200 zuz or is it that amount plus any dowry which became the husband’s property, to exclude any sum the husband wrote into the ketubah in excess of minimum and dowry? The second version is preferred by the classical commentators.

Articles of trade, at places were Jews were not traditionally land owners.

He wants to restrict the recovery of the ketubah to the articles of the dowry brought by the bride.

Since they are bedouin traders, they do not possess any real estate; their equivalent of real estate are camels (affirmed in the Babli, 67a, by the same authors); their object of trade is spices.

Since it would be nonsensical to require the spices brought by the bride to be available to the widow; the condition about bedspreads is also nonsensical.

The famous Gaonic decree that ketubot be paid from movables is nothing but an application of the Yerushalmi rule that local conditions overrule general statements.
Mishnah 4: If somebody was married to three women when he died, the ketubah of one was a mina, of the other one 200, and of the other one 300. If the estate is only 100, they divide equally. If it was 200, the one who claims a mina takes 50, and those who claim 200 and 300 each take three gold denars. If it was 300, the one who claims a mina takes 50, the one who claims 200 takes a mina, and the one who claims 300 takes six gold denars. Similarly, if three who invested together lost or gained they would split in this manner.

59 100 zuz.
60 1 gold denar was worth 25 silver denars. 3 gold denars equal 75 zuz, 6 gold denars 150 zuz.
61 This refers to the proportional distribution of the last case. Loss and gain of a stock company are distributed per share.
62 This Mishnah poses difficult problems. First, it deals with a scenario that cannot arise since Mishnah 1 stated that a ketubah which precedes in time has to be satisfied from the estate before the later ketubah can be claimed. Therefore, the case of the Mishnah presupposes that the husband married three woman simultaneously. While this is possible in theory, it is excluded in practice. The problem is a practical one if applied to the case that the amount available in bankruptcy proceedings is not sufficient to cover all claims of equal rank.

At first glance, it seems that the Mishnah is inconsistent, applying three different rules to three different cases. Since the Mishnah must guide the judge to correctly apportion payment of claims if the available amount a < c₁ + c₂ + c₃, for all a between 0 and c₁ + c₂ + c₃, it is obvious that the Mishnah has to be explained by one single consistent formula or algorithm. In addition, the algorithm must be applicable to any number of claims.

In the tenth Century, Saadya Gaon succeeded in reducing the number of different rules employed in the Mishnah to two (Osar Hageonim...
A complete discussion of the Geonic treatment of the Mishnah was given by I. Francus, *Ojuwn no’l») I3B-139 'JO  NΠ"Π31 WVITM 3"i-?7¥f> (KDwn (Μ. H. Katzenellenbogen Memorial Volume).

The first complete solution of the problem of finding a uniform rule for all three cases was given by R. J. Aumann and M. Maschler, *Game Theoretic Analysis of a Bankruptcy Problem from the Talmud*, J. Econom. Theory 36(1985) 195-213. In the framework of the theory of cooperative games, the authors show that the distribution of the Mishnah corresponds to the nucleolus strategy in game theory. Using only elementary mathematics, a single distribution formula covering all cases was given by M. Balinski in: Quelle équité, *Pour la science* 311 (September 2003) 82-87; What is Just? *Am. Math. MONTHLY* 112(2005), 502-511. While these authors succeed in explaining the Mishnah in itself, they do not explain the interpretation given to the Mishnah by the Talmudim. Nor do they explain why in both Talmudim the Mishnah is rejected out of hand. The explanation of the Babli is in language close to the Yerushalmi but translated into mathematical formulas the results are quite different; in both Talmudim the proposed explanation results in a procedure which is not monotone; i.e., it is possible that if the available amount $a$ is increased, the payouts for some claimants are decreased. The solutions both of Aumann/Maschler and Balinski are monotone, increasing with $a$.

Balinski shows that the Mishnah can be understood in terms of a different distribution problem in Mishnah *Baba meşi’a* 1:1, as indicated by Alfasi (*Ketubot* 10, 51b in the Wilna ed.). Since this problem is also the basis of the arguments in both Talmudim, Balinski’s method is explained first. In *Baba meşi’a* there are two claimants for an amount of 1. The first claims it all, the second claims $1/2$. Both claims are of the same status. Then the first is awarded $3/4$, the second $1/4$. While the claims are in ratio 2:1, the awards are in ratio 3:1. The reason given is the rule ascribed to Symmachos, a student of R. Meir, that "money in doubt is split evenly" [*Babli Baba meşi’a* 2b, *Baba qama* 35b; Yerushalmi *Baba meşi’a* 8:5 (11d l. 18); cf. Chapter 2, Notes 9 ff.]. Since the second claimant asks only for $1/2$, the other half is awarded to the first claimant. The first half is in doubt; therefore it is split evenly.
between the two parties, resulting in the awards mentioned.

In order to arrive at a mathematical formulation, assume that \( n \) claims \( c_i \) are advanced,

\[ c_1 < c_2 < \ldots < c_n. \]

If several claims were identical they would be consolidated into a single claim and the award split evenly between the participants. For any amount \( a \) available for distribution, the payout for claimant \( i \) is \( p_i(a) \),

\[ p_1(a) + p_2(a) + \ldots + p_n(a) = a. \]

We also introduce the sum of the claims, \( S = c_1 + c_2 + \ldots + c_n \) and \( M = S/2 \). For \( n = 2 \), Symmachos's argument determines the payouts uniquely:

If \( a \leq c_1 \), the entire sum is in dispute,

\[ p_1(a) = p_2(a) = a/2. \]

Therefore, \( p_1(c_1) = p_2(c_1) = c_1/2 \).

If \( c_1 < a \leq c_2 \), the amount \( a - c_1 \) belongs to claimant 2 and

\[ p_1(a) = c_1/2, \]

\[ p_2(a) = a - c_1 + c_1/2 = a - c_1/2, \]

and \( p_1(c_2) = c_2/2, p_2(c_2) = c_2 - c_1/2 \).

If \( c_2 < a \), both claimants have equal rights to the excess over \( c_2 \),

\[ p_1(a) = c_1/2 + (a - c_2)/2 \]

\[ p_2(a) = c_2 - c_1/2 + (a - c_2)/2 = (a + c_2 - c_1)/2. \]

If \( a = c_2 + c_1 = S \), all claims are satisfied in full. Using the function \( \min(x, y) \) = smaller of \( x \) or \( y \), Balinski did express the formulas given above by

(1) \[ p_i(a) = \min(c_i/2, \lambda) \] where \( \lambda \) is chosen so that \( p_1(a) + p_2(a) = a; i = 1,2. \)

An inspection of the formulas shows that the distribution is symmetric about the middle value of the claims:

(2) \[ p_i(M-x) + p_i(M+x) = c_i. \]

This means that the distribution for \( M \leq a \leq S \) is determined if it is determined for \( 0 \leq a \leq M \). In the Mishnah here, it should be sufficient to indicate the distribution up to an estate of 300 if the sum of claims is 600. But the generalization of the procedure for \( n = 2 \) to \( n > 2 \) is not trivial. As Balinski points out, an arbitrary distribution function which yields the given values for \( a = c_i \) and satisfies (2) is compatible with the Mishnah. His own solution is to postulate (1) for \( i = 1, \ldots n \).

(2) is satisfied and the distribution is monotone. For example,

\[
\{ p_1(400), p_2(400), p_3(400) \} =
\{ 100-p_1(200), 200-p_2(200), 300-p_3(200) \} =
\{ 50, 125, 225 \}.
\]

The problem with this solution, as with most other solutions proposed in the last 1000 years, is that the Talmudim take another view. The solution of the Babli is easily described as a recursive computational procedure. We assume that \( p_1(a), \ldots, p_n(a) \) have been determined; leaving an amount \( a, \)
to be distributed. We determine $p_i(a_i)$. If $c_i \geq a_i$, $p_i(a_i) = a_i/(n-i)$ for $j = i, \ldots, n$. Otherwise, all claims larger than $c_i$ are consolidated into one claim $C_i = c_{i+1} + \ldots + c_n$ and $p_i(a_i)$ is the payout assigned to claimant #i in the two-person distribution problem for claims $c_n, C_i$ and amount $a_i$. The fictitious second claimant then receives $P_j(a_j) = a_j/(n-i)$ for $j = i, \ldots, n$. In praxi, this means that one has only to split between $c_i$ and $c_n$. If $c_i < a_i < c_n$ then $p_i(a_i) = c_i/2$. If $c_n < a_i$ then write $a_i = c_n + \delta$. Claims $n$ and $i$ overlap to the amount $c_i - \delta$. This yields $p_i(200) = 50$, $P_1(200) = 150$. Since $200 > 150$, the latter amount is split evenly, resulting in $p_2(200) = p_3(200) = 75$. For $a = 300$, one sees that $p_i(300) = 50$, $P_1(300) = 250$; $p_2(300) = 100 = 200/2$, $p_3(300) = 50 + 200/2 = 150$. This explains the numbers stated in the Mishnah, but what about $a = 101$? In that case, $p_1(101) = 50$, $P_1(101) = 51$; $p_2(101) = p_3(101) = 51/2 = 25.5$. This clearly is unacceptable; the procedure of the Mishnah has to be rejected.

The explanation of the Yerushalmi (cf. Note 69) is not so clearly stated but it seems to be the following: The procedure also is recursive. If $c_i \geq a_i$, $p_j(a_j) = a_j/(n-i)$ for $j = i, \ldots, n$. Otherwise, one considers all two-person problems between claimants $i$ and $i+1, \ldots, n$. In praxi, this means that one has only to split between $c_i$ and $c_n$. If $c_i < a_i < c_n$ then $p_i(a_i) = c_i/2$. If $c_n < a_i$ then write $a_i = c_n + \delta$. Claims $n$ and $i$ overlap to the amount $c_i - \delta$. This means that

$$p_i(a_i) = \delta + (c_i - \delta)/2 = (c_i + \delta)/2.$$

For $a \leq M$, the numbers obtained for Babli and Yerushalmi coincide; the Yerushalmi's method also is not monotone. The results for $a > M$ disagree. For example, for the data of Mishnah 4, the Yerushalmi gives $p_1(400) = 100$, $p_2(400) = 100$, $p_3(400) = 200$ while the Babli gives $p_1(400) = 50$, $P_1(400) = 350$; $p_2(400) = 100$, $p_3(400) = 250$.
Halakhah 4: "If somebody was married to three women," etc. Samuel said, sharpness of the judges. As in the case of two mortgages written on one field, to whom the court wants to hand it over in possession they hand it over. The Mishnah disagrees with Samuel: "If the estate is only 100, they divide equally." Was this said for the sharpness of the judges? And did we not state: If the heirs inherited an instrument of indebtedness, the male firstborn takes a double portion; and if an instrument of indebtedness was presented to them, the male firstborn pays a double portion. Was this said for the sharpness of the judges? Rebbi Abin in the name of Samuel: There is no difference, whether two mortgages were written on one field or one mortgage was written on two fields, on whom the court decide they hand it over in possession.

63 Samuel seems to indicate that the court has to investigate and choose the method of distribution which seems most appropriate for the case before them, to whom to give real estate and to whom money or securities.

The translation of אשתות is tentative. In the Babli, the word appears as אשתות which either is derived from the Aramaic root ריח "to throw" (interpreted to mean that the court may "throw" the properties to the party it feels has the best claim) or it is identical with Galilean אשתות because of the disappearance of כ in Babylonian speech. I am proposing to derive אשתות from Arabic "to sharpen (a knife)", Mishnaic Hebrew תשתות.

64 If the field is too small to be useful as property if divided up. The holder of the second mortgage (assuming both were written on the same day) has to be indemnified with
money; this is Samuel's position in Babli 94a.

65 Does this not indicate that all three women have to be treated exactly equally?

66 The Mishnah speaks only about the value, not about the mode of distribution.

67 Since a documented claim is as good as collected, such a document is counted as ready money, not as future claim (cf. Note 50). In Babli Baba batra 124a and in Tosephta Bekhorot 6:17 the firstborn is given the right to refuse a double portion of secured future claims and then not pay double part of future secured claims against the estate.

68 This is not a case that allows of judicial discretion.

Samuel said, if they empower one another. If the third empowered the second to deal with the first. She said to her, is not a mina due to you? Take 50 and leave!

69 To deal separately with the co-wife claiming the smallest amount. In the Babli, 93a, Samuel explains that the second wife empowered the third to represent her also; cf. Note 62. Unless all parties agree to the procedure, the estate has to be distributed proportional to the claims. It is difficult to see why all parties should agree; the procedure of the Mishnah is eliminated from practical use.

70 If the amount available is larger than a mina, the first has to split the mina only with one co-wife.
Similarly, if three who invested together lost or gained they would split in this manner." 73Rebbi Eleazar said: You say that in case the tetradrachma lost or added value. But for earnings or losses they split evenly74. That is difficult! One gave 100 denars and the other gave ten, and you say so? The colleagues say, he may say to him, by my contribution the merchandise rose. So far, if they ran after little merchandise75. If there was much merchandise? Rebbi Abun bar Hiyya said, he may say to him, by the time you sold one piece, I am selling ten. That is, at a nearby place. If it was far away? Rebbi Hila said, he may say to him, by the time you go and return once, I am going and returning ten times. There76, we have stated: "If [the ox] gored an ox worth 200, the last one takes 100, the one before him 50, and the two first ones a gold denar." Rebbi Samuel in the name of Rebbi [Ze'ira]: The same holds for earnings77. Rebbi Yose said, the statement of Rebbi Ze'ira disagrees with Rebbi Eleazar. Rebbi Mana said before Rebbi Yudan: Does Rebbi Eleazar
not agree if they contracted between themselves that each can take according to his contribution? Oxen are as if contracted. He turned around and said, they disagree explicitly: Rebbi Eleazar said, if nothing was said, they split evenly; Rebbi Ze'ira said, if nothing was said, each takes according to his contribution.

71 Instead of this word "was running", Sefer Ha’ittur 42a reads "it was". The reading of the ms. may be confirmed as lectio difficilior.

72 The name is missing in the ms., it was added from the parallel in Baba qama, supported by Sefer Ha'ittur 42a,

"Similarly, if three who invested together lost or gained they would split in this manner." Rebbi Abun said, the statement looks reasonable if they bought a precious stone because he can say to him, without my ten denars you could not have bought anything. But anything that usually is split (smaller units that can be bought with less capital) one adds together and splits (proportionally to the capital invested). Rebbi Eleazar says, even things that usually are split (are divided evenly), because
he can say to him, you have a lot of merchandise and you have difficulty selling it. I have little merchandise and turn it over rapidly and make as much as you do. So far if his merchandise was here. What if his merchandise was in Rome? He can say to him, by the time you went to Rome, I turn mine over rapidly and make as much as you do.

There, we have stated: "If [the ox] gored an ox worth 200, the last one takes 100, the one before him 50, and the two first ones a gold denar." Rebbi Samuel in the name of Rebbi Ze'ira: The same holds for earnings. Rebbi Yose said, the statement of Rebbi Ze'ira disagrees with Rebbi Eleazar. Rebbi Mani said, I asked this before Rebbi Yudan. He said to me: does Rebbi Eleazar not agree if they contracted between themselves that each can take according to his contribution? Oxen are as if contracted. He turned around and said this before Rebbi Yose, who answered him, they disagree explicitly: Rebbi Eleazar said, if nothing was said, they split evenly; Rebbi Ze'ira said, if nothing was said, each takes according to his contribution. (This paragraph is a direct quote from Ketubot since the quote from "there" refers to here, Baba qama 4:1).

74 Only results of financial operations are split per share. Results of personal effort by the shareholders are split evenly; they are socii pro aequa parte of Justinian's legislation.
75 Expensive items, as explained in the parallel text.
76 Mishnah Baba qama 4:1. Ex. 21:35 decrees that if an ox kills another ox, the owner of the attacking animal and the owner of the victim become co-owners of both the living and the dead animal. If the attacking ox attacks another one before it can be slaughtered, its co-owners now become co-owners with the owner of the second victim. The case quoted in the Mishnah is about an ox worth 200 zuz which attacks three oxen, each of which was worth 200 zuz but whose carcasses are not worth anything after the attack. Then the owner of the ox which was killed last takes half the combined value of the attacker and its victim as prescribed in the verse, 100 zuz. The owner of the second ox has a claim of 50% of the value of the combined value of the attacker and its victim. But since only 100 zuz remain of the value of the attacker and the victim is not worth anything, the second owner gets only 50 zuz. By the
same argument, the owner of the first ox gets 25 zuz, the same amount as the owner of the attacker retains.

77 R. Ze'i'ra interprets the Mishnah in Baba qama that in the company created by the attacking ox, the owner of the third victim contributed 200, the owner of the second 100, the owners of the first and of the attacker 50 each, and 50% of the value was lost as prescribed in the verse. Therefore, the Mishnah prescribes proportional appropriations for a case which is not a financial operation; the Mishnah in Ketubot can be interpreted that in a company, all gains and losses have to be distributed in proportion to the capital invested.

78 Since in money matters, biblical law is not prescriptive.

79 Since R. Ze'i'ra is the later and higher authority, the Yerushalmi decides that all distributions must be proportional. The Babli, 93b, quotes the opinion attributed here to R. Eleazar in the name of Samuel as interpreted by Rav Hamnuna, it clearly decides that all distributions must be split equally.

Mishnah 5: If somebody was married to four women when he died, the first one\(^1\) precedes the second\(^2\), the second the third, and the third the fourth. The first one swears to the second\(^80\), the second to the third, and the third to the fourth; the fourth is paid out without an oath\(^81\). Ben
Nanas said, should she be preferred because she is the last one? She also should be paid only after an oath. If all [ketubot] were executed on the same day, one who precedes another one even if only by an hour has acquired [precedence]; therefore in Jerusalem one used to note hours. If [the documents] were all executed at the same hour and there is only one mina, they split evenly.

80 She has to swear that during their husband's lifetime she did not receive any downpayment on the ketubah, so that she is fully entitled to the sum she is receiving from the executors of the estate. The second wife can demand this oath because every penny the first one receives diminishes her chances of being fully paid by the remaining estate.

81 No oath is due to any co-wife since all had been paid in full; she might have to swear to the heirs.

82 There is a possibility that the prior wives might be disadvantaged if the fourth is paid too much: If any ketubah was satisfied by transfer of title of a field that turned out to be mortgaged and was repossessed by the lender, that wife then has regress on the remainder of the estate and, therefore, has a vital interest that the fourth wife not be paid too much. The Babli, 94a, has some additional reasons for Ben Nanas's opinion.

83 Not only the date but also the hour of the signing of a contract were written into the document.

84 As already noted in Mishnah 4.
Halakhah 5: "If somebody was married to four women when he died," etc. Rebbi Abuna in the name of Rebbi Samuel: Following Ben Nanas, if one document was produced against (the wife) buyers, they all divide evenly\(^85\). Rebbi Aqiba\(^86\) said before Rebbi Mana: Does this not disagree with Rebbi Samuel, since Samuel said, sharpness of the judges? As in the case of two mortgages written on one field, to whom they want to hand it over in possession they hand it over\(^64\). And here, he says so\(^87\)? Not with two mortgages, what about one\(^88\)? He did not hear what Rebbi Abin said in the name of Samuel: There is no difference, whether two mortgages were written on two fields or two mortgages were written on one field\(^89\), to whom the court decide they hand it over in possession. Rebbi instituted that one follows Ben Nanas in matters of *annona*\(^90\), head taxes, and real estate taxes\(^91\).

\(^85\) This sentence makes no sense; the word ס_Top clearly is wrong. In the absence of parallel sources, the exact wording cannot be reconstrued. The consensus of the commentators is that one must read approximately: "if one document was produced against [several] buyers, they all divide evenly". The deceased husband had taken a loan which cannot be satisfied by a single property; if the mortgage document is presented after the wives' *ketubot* were satisfied, they all have to contribute equally to the satisfaction of the mortgage.

\(^86\) This seems to be a scribal error.

\(^87\) Should the court not direct the claimant to one field, with the other buyers contributing money?

\(^88\) In his opinion, the case of one claimant against multiple owners is not covered by Samuel's original statement.
89 It seems that the deviation of this quote from the original in Halakhah 4 is a scribal error, but this cannot be proved. Samuel’s statement can easily be applied to our case of a single document covering a multiplicity of real estate.

90 Latin annona, the prestations in kind required by the Roman army in the provinces; cf. Peak 1, Note 85. It is not clear what the relationship is between the statement of Ben Nanas and the collection of taxes. Since the tax was imposed on the community to be repartitioned by the local person responsible, the latter could impose an oath on the tax payer that he declared his situation honestly.

91 Greek ἀναφορά “report, listing”. In the opinion of A. Gulak, this is the yearly tax which people paid who had the right to farm imperial domains in perpetuity; cf. S. Lieberman, חמסתא, p. 710.

As the following92. Relatives of Rebbi Yose bought fields from the family of Bar Tapqan. Those from the family of Bar Tapqan went and married women, and gave them seqi'in93. They came and wanted to attack the relatives of Rebbi Yose94. Rebbi Mana said to them: I know that at the moment at which you bought these fields, these seqi'in were not before you95.

92 This paragraph refers to the Mishnah which states that the date of a document determines its status in foreclosure proceedings. The word קָדָם as designation of a document appears only in this paragraph. Since קָדָם means "to sink, to go down", it is reasonable to assume that קָדָם are mortgages on real estate the usufruct of which is given to the creditor to reduce the amount due and finally to retire the mortgage. This is called
"Suran mortgage" in the Babli (Baba mesi’a 67b, 110a; Baba batra 35b, 38a), and corresponds, in the interest-charging Gentile environment, to the ἀντίχρησις of the Digests (20,1,11,1) and the Egyptian papyri (P. Gron. 11), "substitution of usufruct for interest".

It seems that the men gave their brides documents on the fields they had sold which were predated before the date of the sale.

To take the usufruct of the fields for a fixed number of years.

A predated document is invalid.

Mishnah 6: If somebody was married to two wives when he sold his field and the first wife wrote to the buyers "I have no claims against you", the second takes from the buyer, the first from the second, and the buyer from the first; they go on in circles until they compromise between them. The same holds for a creditor and a woman who is a creditor.

If the husband died and his estate did not suffice to satisfy the second wife’s ketubah, she can have regress on the field since she did not sign away her rights. Since the first wife’s ketubah has to be satisfied before the second wife has any claim, the first can take the field which by the action of the second was no longer the buyer’s property but becomes part of the estate. But since the first had given up any claim to that field, the buyer can claim it back from the first. Therefore, all three claimants are forced to agree to a compromise to have any use of the property.

If a loan was given in the value of two fields which the borrower then
sold, and the creditor wrote to the second buyer that he would not exercise his rights against him; if the loan is foreclosed, the creditor can take the first field; the first buyer can indemnify himself by taking the second field; the creditor can take it from the first buyer but the second buyer can reclaim it from the creditor, etc.

An only wife whose ketubah was secured by two fields which were sold by her husband, and who wrote to the second buyer that she would not exercise her claim against him. In the last two cases it is necessary that the renunciation be for the second buyer since if it were for the first, the second would have no regress on the first.

Halakhah 6: "If somebody was married to two wives," etc. Rebbi Yose said, this means that if somebody borrowed from two persons and the second comes and says to him, get up and let us settle, and [the borrower] says, will not in the end the first hear of it and come to foreclose, he [the second lender] may say let us settle, and if he forecloses, he forecloses. If he settled, one may assume that the first will come and foreclose. If he settled with the first, Rebbi Phineas said, such a case came before Rebbi Jeremiah who said, he settled. Rebbi Yose said,
did he not write "what I shall acquire"\textsuperscript{103}? It happens only with an heir\textsuperscript{104}. Rebbi Hanina said, even with a creditor it can happen if he did not write "anything I shall acquire", or if he said, "you shall not be paid except from this.\textsuperscript{105}" Rav Mattaniah said, this follows him who said, for ketubah but not for stipulations\textsuperscript{106}. But for him who said, for ketubah and for stipulations, does it not return?

99 He realizes that the borrower is not in a position to repay the entire loan. Since his loan is an essentially unsecured second mortgage, he can settle with the borrower to receive part of the mortgaged property. Even if the secured first mortgage giver will in the end foreclose, the second has the usufruct in the meantime and will have saved something.

100 In the text, either כ or מ is superfluous or a word is missing and it should read דועה

101 The first, secured, mortgage holder settled with the borrower and in the foreclosing took only part of the field while he could have taken all of it. The question now is whether the piece of land is remaining in the borrower's hand or if it was assumed to be foreclosed and then returned to the borrower. In the second case, the borrower took possession after the date of the second mortgage and the second lender has no regress. In the first case, the second lender may foreclose.

102 The second lender may not foreclose.

103 If the loan contract stipulated that all the borrower's present and future real estate holdings are mortgaged, there should be no difference in the status of the property left after a compromise with the first mortgage holder.

104 If the future clause really was in the contract, the second mortgage holder can foreclose from the original borrower. But if the borrower died and the heir settled with the holder of the first mortgage, the remaining land was acquired by the heir, not the borrower, and is not subject to the second mortgage.

105 If the mortgage was written on a specific piece of land, the lender cannot foreclose anything else.

106 The court stipulations required
for any ketubah as enumerated in Chapter 4, in particular the "ketubah of male sons". Whether this stipulation can be satisfied by foreclosure is discussed in the Babli, 55a, and the Yerushalmi, Baba batra 8:6 (16b 1.23). The answer is positive in the Yerushalmi, negative in the Babli. For the Yerushalmi, the renunciation by the mother of her claim against the buyer is not valid for her heirs; they are free to foreclose in any case.
Mishnah I: If a widow is supported by the orphans’ property\(^1\), she has to work for them but they are not obligated to bury her\(^2\). Her heirs, the heirs of her ketubah, are obligated to bury her.

1 The widow who chose to be supported by the estate (as explained in Mishnah 4:12) rather than taking her ketubah.

2 If they are not her heirs, she has to keep house for them anyway. The husband whose wife dies before him must bury her since he is the heir of her property. If she died childless after her husband, the heirs of her side of the family have to bury her. Similarly, if she sold her future rights to a ketubah and died after her husband, the speculator who bought her ketubah has to bury her (cf. Note 57 and S. Lieberman, תמציתו שלuciones p. 329).
**Halakhah 1:** "If a widow is supported by the orphans' property," etc.

Rav Jehudah in the name of Samuel, Rebbi Abbahu in the name of Rebbi Johanan: What she finds belongs to herself. If she had sustenance left over? Since her finds belong to her husband, the married woman's leftover sustenance belongs to her husband. Since a widow's finds belong to herself, her leftover sustenance belongs to herself. Her worn-out clothing belongs to her. Since even a married woman, whose leftover sustenance belongs to her husband, keeps her worn-out clothing to herself, the widow, whose leftover food belongs to herself, her worn-out clothing so much more! There, she needs them for the time of her period. Here also, she needs them for the time of her period.

3 He is the author of the same statement in the Babli, 96a.

4 A baraita in the Babli, 65b. (In *Nazir* 24b it is explained that the husband's property is the household money which she did not spend on food, rather than actual food she saved when being on a diet. The editing of *Nazir* seemingly is different from that of most Babli Tractates.)

5 A baraita in the Babli, 65b, rejected there.

6 A woman never has worn-out clothes since she always has occasion to wear rags. The Babli rejects this argument since in the absence of her husband she does not need a wardrobe of second rate dresses; she can wear real rags.

Rebbi Immi in the name of Rebbi Yose ben Hanina: Also she does not perform for them services of intimacy. What are services of intimacy? She rubs their bodies, washes their faces, or mixes their cup.
A slightly different list is in the Babli, 96a, also in the name of R. Yose ben Hanina. It is understood that the heirs have the right to expect from her all services a wife does for her husband, except those that are preliminaries to sexual relations.

One adds to her sustenance: A married woman has no wine, a widow has wine. If a married woman said, my earnings should be counted against my sustenance, one does not listen to her; if a widow said, my earnings should be counted against my sustenance, one listens to her.

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8 Cf. Chapter 5, Note 251.

9 She keeps all of her earnings and the husband does not have to pay for her (he still has to provide for her lodging.) The Babli emphatically permits such an arrangement by the wife's initiative (58b, 70a, 82b, 107b; Baba qama 40b; Baba mesi'a 49b), i.e., against the husband's will. Since this is a money matter, the Yerushalmi will accept it in case of mutual agreement.

10 Even against the heirs' opposition.
Rav said, if a dying person said, do not bury me, he is buried as a charge on public charity. Rebbi Immi asked, how could one think that others are provided for by his property and he is buried as a charge on public charity? The Mishnah disagrees with Rav: "Her heirs, the heirs of her ketubah, are obligated to bury her." Explain it, if they inherited real estate. As it was stated: "If he left male and female slaves, mortgages, and movables, anybody who takes them first acquires them and he shall be buried by public charity." Because he took it first. Therefore, if he did not take it first one removes from his hand. Explain it, if he said, bury me. As Rebbi Yose said in the name of the rabbis: If a dead person was buried who had not said "bury me", even though others came and took [of his property] one removes from their hands. If they
took real estate. In fact, what you say, one removes from their hands, if they took real estate. But if they took movables, one does not remove from their hands, if it was a loan by witnesses. But for a documented loan, whether they took real estate or movables one does not remove from their hands. For Rebbi Abba, the son of Rav Huna, said: They made the words of a bedridden person equal to those of a healthy person who wrote and delivered. But only if he died from that illness, not if he recovered. And if he was explicit and said, give field X to Y. If he said, give field X to Y? Is it as if he was explicit or only if he said, the Northern half, the Southern half? Rebbi Yudan asked: If he said, burn me by pagan rites and give half of field X to Y. Since they do not burn, do they give? Rebbi Haggai asked: A sick person who said, my daughters shall be supported. Would the daughters not be supported anyway? No, it is necessary, for otherwise would they be supported from pledged real estate or would they be supported from movables? Rebbi Yudan [there came a case before Rebbi Yose about a bedridden person who had said, my documents shall be given to X. He said to him, the bedridden can only transfer property which is acquired either by a document or by taking hold. But these are acquired by a document and by taking hold. As it was stated: "A ship is acquired by taking hold in the opinion of everybody. Rebbi Nathan says a ship and documents are acquired by a document and by taking hold. If he wrote and did not take hold, or took hold without writing [a transfer document] he did not do anything unless he both writes and takes hold."

11 This is the unanimous opinion of the Babli. 12 This is an obligation independent of the wishes of the
deceased.
13 Since usually a ketubah is payable in real estate.
14 A similar text in Tosephta 9:3.
15 Anybody with a claim sustainable in court, the widow for her ketubah or a creditor.
16 If nothing is left of his estate.
17 If the estate already had disappeared before the burial.
18 If the deceased had requested a burial before he died, the burial expenses are privileged.
19 In this case, time is of the essence since any one of the witnesses could die anytime. But real estate can be foreclosed only by a regular court procedure.
20 It seems that this is a scribal error and one should read: מָשָׁל "one does remove". Since the claim is documented, there is no need for the creditor to resort to self-help.
21 This is an unnecessary word; R. Abba explains general principles about the legal standing of death-bed requests.
22 In the Babli (Baba batra 152a, 175a; Gitin 13a, 15a) this is an undisputed statement of Rav Nahman.
23 The legal forms of a valid gift.
24 It seems that one has to read: Give field X to Y and Z. It is understood that each one gets half a field but the method of subdivision of the field was not indicated.
25 No answer is given since it is clear that the bequest cannot be enforced against the legal heirs; the burden of proof being on the claimants, who would have to prove in court that the method of division is that intended by the donor; this is impossible after the latter's death.
26 Since the first half of the request is clearly illegal, can the second half be legal?
27 Since daughters' right to sustenance is a standard condition of the ketubah (Mishnah 4:11), what did the mention of the daughters add to their rights?
28 At places where the ketubah could be taken only in real estate, the daughters could be supported only by real estate.
29 The words "he fled to beauty" do not make sense here.
30 By bodily possession.
31 Tosephta Qiddusin 1:7.
32 This last sentence is not in the Tosephta or in the Babli (Baba batra 76a); R. Yose's ruling is rejected by Rav Nahman (Note 22) who validates the transfer of documents by death-bed declaration.
Mishnah 2: A widow, whether after preliminary or definitive marriage, may sell without court supervision. Rebbi Simeon says, after definitive marriage she may sell without court supervision; after preliminary marriage, she may sell only under court supervision since she has no sustenance and any person who has no claim to sustenance may sell only under court supervision.

The woman who becomes a widow before her definitive wedding may have a claim to ketubah; the widow after definitive marriage has a choice of either taking her ketubah or being sustained by the estate. Both Talmudim explain that nobody will want his family’s honor compromised by forcing his widow into court; therefore, it is understood that he wrote the ketubah with the idea that it should be liquidated, if possible, in private.

Halakhah 2: "A widow, whether after preliminary or definitive marriage," etc. Rebbi Simeon is of the opinion that everything depends on sustenance. If he had agreed to sustain her after preliminary marriage, she may sell without court supervision. If he had agreed to sustain her after
definitive marriage, she may sell only under court supervision\textsuperscript{34}. The words of the Sages? Rebbi Aḥa, Rebbi Ḥinena in the name of Rebbi Johanan: A person is concerned for his widow’s dignity\textsuperscript{35} whether after preliminary or after definitive marriage.

\begin{enumerate}[34]  
\item If she is widowed before definitive marriage is also R. Johanan’s opinion in the Babli, 97b, where it is not the only explanation.
\item That she should not have to appear before an all-male court. This
\end{enumerate}

Rav Jehudah in the name of Samuel: The one who renounced her \textit{ketubah} in favor of the orphans is sustained by them. This is difficult. If there were a woman without \textit{ketubah}\textsuperscript{36}, does she not have claim to sustenance? A woman without \textit{ketubah} has claim to sustenance\textsuperscript{37}. But here is it not enough that she renounced her \textit{ketubah} in favor of the orphans, that you want to cheat her of her sustenance?

\begin{enumerate}[36]  
\item Cf. Mishnah 5:2; it is a matter of dispute whether a woman may donate her \textit{ketubah} to her husband.
\item Since she is entitled to sustenance for the work she does in keeping house. The problem could not arise before the husband’s death (hinted at in Babli 53a).
\end{enumerate}

Many commentators want to emend the text; these emendations have to be rejected since the text as it stands is quoted in \textit{Sefer Ha’ittur} vol. 2, 32d, at Note 23.
Rav Jehudah in the name of Rav: If she requested her *ketubah* in court, she lost her claim to sustenance. Rebbi Yose said, but only from a clear mind; not if forced. As in the case of the widow of Rebbi Eudaimon from Mozva to whom they said, Rebbi Abba bar Cohen wants you. She requested her *ketubah* and lost her sustenance. After the matter became known, it was brought before Rebbi Yose and she returned to her sustenance.

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39 Not if the request is made in private.
40 Since the widow is entitled either to be paid her *ketubah* or to be sustained by the estate.
41 The heirs informed her falsely that a rabbi of reputation wanted to marry her.
42 Fraudulent information by an interested party is counted as forced deal for the victim.
Rebbi Eleazar in the name of Rebbi Yose ben Zimra: A widow who lived two or three months without asking for sustenance, loses the sustenance of these three months. That is, if she did not take a loan. But if she took out a loan, she collects. If there is no pledge in her hand. But if she has a pledge in her hand, she collects even if she did not take a loan. Rebbi Yasa in the name of Rebbi Johanan: That is what they said, at the start one sells for sustenance of twelve months but one gives her sustenance for 30 days. If at the end of thirty days they say, we gave, but she says, I did not receive, it would be similar to what Rebbi Abbahu said in the name of Rebbi Johanan: If one took a loan of 12,000 for a year in order to repay one gold denar per month. It is obvious that he gave for the first month and did not give for the last. About the days in between they said, not at the start.

43 In the Babli, 97a, "two or three years".
44 Any action she takes earlier to show that she is aware of her claim validates the claim later.
45 If the widow goes to court to sell from the estate's real estate, it cannot be sold in small portions. One therefore sells to cover her sustenance for twelve months but the moneys are delivered to her in monthly installments since, as explained in the next paragraph, money delivered to the widow for her sustenance cannot be taken back (even if she remarries).
46 Who carries the burden of proof? Is it the widow because she is the claimant, or is the ketubah considered as if collected in the widow's hand and the heirs want to deprive her of it and have to bring proof?
47 Under the Augustan monetary system, a gold denar was worth 25
silver denars. The present statement must have been formulated during the inflation of the Military Anarchy when the debased "silver" denars had even lost their name. In Ma'aser Šeni 4:1 (Notes 23,24) there is mention of an aureus worth 2'000. Cf. D. Sperber, Roman Palestine 200-400, Money & Prices, 1974, Chapter II.

48 Since this was due at the beginning of the contract, it may be presumed that payment was made. In this case, the burden of proof is on the recipient.

49 Since nobody can be presumed to pay before due date, if the payor claims to have paid before that day, the burden of proof is on him.

50 While in general in disputes about the fulfillment of contracts the burden of proof is on the claimant, in matters of payments to the widow the burden of proof is on the payor except for the first installment.

Rebbi Abbahu quoted in the name of Rebbi Johanan 51: At the start one sells for sustenance of twelve months but one gives her sustenance for 30 days. Why should they sell for the sustenance of 12 months? Not to disadvantage the woman 52. Why do they give her sustenance for 30 days? If you said otherwise, you would act in detriment of the orphans, as it was stated 53: If a widow took possession even of 1'000 zuz for her sustenance, one does not take it away from her. What could one say to her? "Show 54 what is in your hands!" 55 The students of Rebbi Mana said to her, "show what is in your hands." Rebbi Yose ben Rebbi Abun said to
them, since in the end she will have to swear about anything in her hands, one says to her, let it be so.

51 Quoted in the preceding paragraph in the name of R. Yasa, Note 45. 'אכאמ here corresponds to 'אכאמ in the Babli as back reference.

52 She does not have to run after her sustenance every month.

53 A similar baraita is quoted in the Babli, 96a.

54 Reading רח instead of Babylonian רוח.

55 One might think that she can collect for next month's sustenance only after having accounted for the expenses of the past, reducing next month's payment by the amount not spent in the preceding.

56 If in the end she decides to take her ketubah, she has to deliver an accounting about any estate property in her hands.

Mishnah 3: If she sold her ketubah entirely or partially, or donated her ketubah to another, entirely or partially, she cannot sell the remainder except under court supervision. But the Sages say, she may sell even four or five times, and may sell for sustenance without court supervision but writes in the document that "I sold for sustenance." A divorcee may sell only under court supervision.

57 She sells her future right to the sum promised her in the ketubah to a speculator who assumes the risk that she might die before her husband and
the ketubah become void.

58 This belongs to R. Simeon's statement from the preceding Mishnah.

59 She may sell small portions of the ketubah without damaging her powers.

60 The divorcee can sell her former husband's property only if he sent her the bill of divorce from far away. In that case, the court supervision is justified to preserve the estate.

The Babli explains that the husband does not care if his divorcée has to apply to the court to collect her dues. The Yerushalmi rejects this argument in the second paragraph.

Halakhah 3: "If she sold her ketubah entirely or partially," etc. It was stated: "She sells and writes 'this I sold for ketubah' and 'this I sold for sustenance,' the words of Rebbi Jehudah. Rebbi Yose said, she sells and writes non-specifically; in this she is empowered." If a loan before witnesses [comes due], she says, I sold for sustenance. If a loan by contract [comes due], she says, I sold for my ketubah. And even if a loan before witnesses [comes due], she sells for sustenance and turns around and forecloses it for her ketubah; could one not say to her, show your sale? Explain it, if the object increased in value.

61 Tosephta 11:1; Babli 96b.
62 If the loan was executed after the date of her marriage, she can claim that the real estate is mortgaged to her ketubah. If there is no unincumbered real estate, the creditor is prevented
from foreclosing. A verbal loan executed before witnesses cannot be used to foreclose property sold after the loan was made.

63 If no real estate is left in the estate, the creditor cannot foreclose from the buyers if his contract was dated later than her ketubah.

64 In the first case (Note 62), could not the amount of the sale and its circumstances inform a competent appraiser whether it was for sustenance or ketubah? Since a sale for sustenance is a sale on credit, to be paid over a 12 months’ period, should it not bring a premium price?

65 And today it is impossible to determine the fair value at the time of sale.

Rebbi Jacob bar Aha in the name of Rebbi Johanan, Rebbi Hila in the name of Rebbi Eleazar: Just as a man is concerned about his widow’s honor so he has to be concerned about his divorcee’s honor, as 67Rebbi
Jacob bar Aha said in the name of Rebbi Eleazar, "do not hide yourself from your flesh"\(^6\), that refers to one's divorcee. Rebbi Yose the Galilean's wife\(^6\) did mistreat him badly. Rebbi Eleazar ben Azariah went to him and told him, rabbi, send her away, for she does not treat you with the honor due to you. He said to him, her ketubah is too large for me. He said to him, I shall give you the ketubah and send her away. He gave him the ketubah and he divorced her. She went and married the city treasurer\(^7\). That one lost his property and became blind. She took him around the town and led him. Once they went around the entire town and nobody gave him anything. He said to her, is there not another neighborhood? She said to him, there is the neighborhood of my divorcer; it is beyond my powers to bring you there. He started hitting her. Rebbi Yose the Galilean passed by and heard them demeaning one another in public. He took them, brought them to one of his houses, and provided them with food all the days of their lives, because "do not hide yourself from your flesh", that refers to one's divorcee\(^7\). Nevertheless they quarrelled loudly in the night and her voice was heard saying, the pain she suffered outside her body was easier to bear than that inside her body\(^7\).

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66 This disagrees with the Mishnah.
67 From here on, more wordy parallels are in *Gen. rabba* 17(3), *Lev. rabba* 34(14); *Yalqut Šim'oni Torah* #23, 665, *Is. #492*; it is hinted at in *Tanna dBe Eliahu rabba* 27.
68 *Is. 58:7*.
69 In *Gen. rabba* she is referred to as his niece, his sister's daughter, whom to marry is considered meritorious by Pharisees based on *Is. 58:7* (but sinful by Sadducees, *CD* V 7-10).
70 Musaphia identifies the word אגרה with Greek ἀγρόφωτής "collector". The parallel words in the Midrashim seem to be corrupted.
71 Here end the parallels.
Mishnah 4: If a widow’s *ketubah* was 200 and she sold either the worth of a mina for 200 or the worth of 200 for a mina, her *ketubah* was paid. If her *ketubah* was for a mina and she sold the worth of a mina and a denar for a mina, her sale is void. Even if she says, I shall return the denar to the heirs, her sale is void.

73 She sold her husband’s property not under the supervision of the court.
74 She received what was due her.
75 It is her fault if she had sold too cheaply; from the estate she received real estate in the value of her *ketubah*. While she was within her rights to sell the property, she could have chosen the process of judicial appraisal which would have shielded her against any claims by the heirs or their guardians.
76 Since she had the right only to sell for the payment of her *ketubah*, any excess is an unauthorized sale and invalidates the entire transaction.
77 An unauthorized transaction cannot be validated after the fact.
Halakhah 4: "If a widow’s ketubah was 200," etc. We understand worth a mina for 200 or worth 200 for a mina. In any case, she made the orphans lose a mina. If it was worth a mina and she sold it for 200, would the sale not be invalidated as erroneous buy? Explain it that the property increased in value. Rebbi Abin said, this supports Rebbi Simeon ben Laqish, since Rebbi Simeon ben Laqish said, real estate buys are never under the laws of overcharging. Rebbi Johanan said, if the transaction was excessive, it comes under the law of overcharging. The Mishnah disagrees with Rebbi Johanan: "The following do not fall under the laws of overcharging: Slaves, securities, real estate, and redemptions." He explains it, unless it was excessive. If he redeemed what was worth a mina by 200, Rebbi Johanan said, it is not redeemed, but Rebbi Simeon ben Laqish said, it is redeemed. A baraita disagrees with Rebbi Johanan: If he said, this toga instead of this donkey, the latter becomes profane. And its end disagrees with Rebbi Simeon ben Laqish: It is necessary to compute the value. Rebbi Yose said, the baraita itself implies that it is necessary to compute the value. Where do they disagree?
To bring [a sacrifice to atone for] larceny. Rebbi Johanan said, he has to bring a sacrifice for larceny; Rebbi Simeon ben Laqish said, he does not have to bring a sacrifice for larceny.

78 The Babli, 98 ab, does not hold that it is trivial that the widow is not rewarded for getting such a good deal; it concludes that an agent by his office is always required to look for the best possible deal and the widow sells as an agent for the estate.

79 That she receives only 100 zuz for her ketubah if she sells real estate too cheaply is not a matter of the laws of ketubah but of torts in general; the person who causes damage has to pay for it.

80 Lev. 25:14: "If you sell a sale to you neighbor or buy from your neighbor's hand, do not overcharge one another." Rabbinic interpretation holds that an overcharge of a sixth, $\frac{16}{3}$%, entitles the injured party to rescind the transaction.

81 And the fair value on the date of transaction can no longer be determined.

82 Baba mešia 4:9.

83 Real estate is excluded in Lev. 25:14 since it is not bought "from his hand"; slaves are excluded since they are traded under the rules of real estate; securities are excluded since what one buys "from the neighbor's hand" is the paper, but what is intended are the rights given by the paper and these are immaterial. The Temple is excluded in its transactions since it is not "a neighbor" (Babli Baba mešia 56b).

84 He holds that any transaction is void in which the profit margin is 100% of the fair value. Tosaphot (s. v. תוספתא, 98a) find the same opinion expressed by Rav Nahman in the Babli, Baba mešia 57a.

85 He had donated something (other than a sacrificial animal) to the Temple. The redemption rules are based on Lev. 27:11-25.

86 The standard commentators agree to switch the places of "mina" and "200 zuz". Since the Yerushalmi never quotes Samuel's statement in the Babli (Baba mešia 57a and 7 other instances) that a redemption of dedicated items worth a mina by a peruta is valid (i.e., in ratio 19200 : 1), there is no reason to assume that there should be any difference in the rules.
for overpaying or underpaying.

87 He substitutes a toga for the dedicated donkey (which is redeemable since it is not a sacrificial animal) and presumably the donkey is worth at least two togas.

88 It is a biblical requirement that dedications can be redeemed only after their value has been determined (Lev. 27:12). The presumption is that the statement means not only that the value has to be determined but also that it has to be paid in full.

89 Unauthorized use of Temple property is sinful and has to be atoned for by a special sacrifice (Lev. 5:14-16). If the redemption of the donkey was valid, no sacrifice is due for using the donkey even if there remains the additional obligation to make up the difference in price between toga and donkey. If the redemption is invalid because the difference in price between the dedicated and the substitute values is too large, a sacrifice is due. The Babli, Baba mesi'a 57a/b, is not quite sure to whom to attribute which opinion in this dispute.

Mishnah 5: Rabban Simeon ben Gamliel says, her sale is valid unless there would have been left a field [for sowing] nine qab, and in a garden half a qab, or following the words of Rebbi Aqiba, a fourth. If her ketubah was 400 zuz and she sold to one person worth 100, to a second 100, to a third 100, and to the last the value of a mina and a denar for a mina, the last transaction is invalid but all others are valid.
90 This Mishnah is the direct continuation of the preceding one; in most Mishnah mss. it is part of Mishnah 4. Rabban Simeon ben Gamliel holds that the sale, about which the heirs claim that the widow sold too cheaply, is valid if the field which would have remained in the heirs' hands would not have qualified as an independent piece of agricultural real estate. Mishnah Baba batra 1:10 gives minimal measures for different kinds of real estate; if these measures are not reached, the real estate cannot be subdivided. Therefore, if the parcel, which the heirs claim should not have been sold, would be one that could not be sold under the rules of Baba batra, the widow cannot be faulted if she gave it away essentially for free; it is not a case of over- or undercharging.

91 The standard unit for agricultural land is bet se'ah, a plot of land on which in normal practice of extensive agriculture one would sow one se'ah of seed grain, which by tradition is fixed at 2500 square cubits (cf. Peah 2:1, Note 31). One se'ah equals 6 qab; the field of 9 qab then is 3750 square cubits. In the opinion of R. Jehudah, half of this area is a tradeable field.

92 A garden is intensively worked, irrigated property. The area for half a qab would then be 2500:12 = 208 1/3 square cubits, and a quarter qab 104 1/6.

93 This sentence refers back to Mishnah 4, and is not only Rabban Simeon ben Gamliel's. If one of several connected transactions is declared invalid, the others are not affected.
Halakhah 5: "Rabban Simeon ben Gamliel says, her sale is valid," etc. That is, if she sold them in four contracts\(^{94}\). If she sold them in one contract, there is disagreement between Rebbi Johanan and Rebbi Simeon ben Laqish, as they disagreed\(^ {95}\). If somebody wrote all his property over to two persons in one document\(^ {96}\) and the testimony of the witnesses was valid for one but invalid for the other\(^ {97}\). Rebbi Hila in the name of Rebbi Yasa: Rebbi Johanan and Rebbi Simeon ben Laqish disagreed; one said, since it is invalid for one it is invalid for the other, but the other said, it is valid for one and invalid for the other. Rebbi Mana did not specify; Rebbi Abin specified: Rebbi Johanan said, since it is invalid for one it is invalid for the other\(^ {98}\); but Rebbi Simeon ben Laqish said, it is valid for one and invalid for the other\(^ {99}\). Rebbi Elazar said, a Mishnah\(^ {100}\) supports Rebbi Johanan: "Since testimony of two [witnesses] is invalid if one of them turns out to be related or disqualified, so also of three [witnesses] it is invalid if one of them turns out to be related or disqualified. From where
even 100? The verse\textsuperscript{101} says, 'witnesses'. Rebbi Jacob bar Aha said, Rebbi Hananiah the colleague of the rabbis and the rabbis disagree. One says, the argument of Rebbi Eleazar is correct, but the other says, the argument of Rebbi Eleazar is not correct. For him who says, the argument of Rebbi Eleazar is correct, it is as if there was one testimony about one person. For him who says, the argument of Rebbi Eleazar is not correct, it is as if two groups of witnesses came, valid for one and disqualified for the other\textsuperscript{102}.

94 The Halakhah deals only with the last case mentioned in the Mishnah, that the widow overstepped her authority only in part of the sale of property. If the legal and illegal contracts were executed separately, there is no reason to invalidate the earlier contracts because of the (necessarily last) invalid contract.

95 The same text is in \textit{Gittin} 1:1 (43a l. 54) \textsuperscript{11} and \textit{Makkot} 1:16 (31b l. 26) \textsuperscript{12}, it is quoted in Alfasi \textit{Makkot} 1, \#1063 and discussed by his commentators R. Nissim Gerondi and Nahmanides.

96 His will.

97 Relatives are not admitted as witnesses even in civil proceedings.

98 He holds that testimony, even if in writing, is one whole; either it is valid or invalid. If it is invalid in one case, it must be invalid in general.

99 The testimony has to be separated from its application. If the witnesses are known not to be felons, their testimony is valid. In the case of a relative, it is not applicable.

100 \textit{Makkot} 1:12. \textit{Deut.} 17:6 reads: "By the testimony of two witnesses or three witnesses the guilty person shall be condemned to death; he cannot be condemned by the testimony of a single witness." The question is raised, if two witnesses are sufficient, why are three mentioned? The answer given in the Mishnah is that the since two witnesses are both disqualified if one of them is disqualified (in which case the remaining witness becomes a single witness), a group of three (or 100) witnesses who all testify to exactly the same effect is disqualified if one of them is disqualified. The witnesses signing a document necessarily all
testify to exactly the same facts. (Alfassi #1062 notes that the Geonim restrict the Mishnah to criminal cases.)


102 Since practice is not decided either way, the legal heirs can successfully attack the validity of the will, and the guardians of the orphans the validity of the entire sale by the widow.

Mishnah 6: If the judges estimated one sixth too little or too much, their sale is invalid\textsuperscript{103}. Rabban Simeon ben Gamliel says, their sale is valid\textsuperscript{104}; otherwise, what is the court's power worth? But if they offered public tender\textsuperscript{105}, even if they sold either the worth of a mina for 200 or the worth of 200 for a mina, their sale is valid.

103 Since any overcharging of at least one sixth empowers the injured party to annul the transaction.

104 If they followed the rules of public sales detailed in Tractate Arakhin.

105 They made a written public announcement of a public sale and invited tenders and then sold to the highest bidder. The actual bids received are the best estimate of the value of real estate and override expert testimony as to the intrinsic value of the land.

Following Rashi, אינוכי בורוכו is a circular inviting people to visit (ביאור) the property and make their offers.
Halakhah 6: "If the judges estimated one sixth too little or too much," etc. As you say for a private person, in real estate up to one third\(^ {106}\), in movables up to one sixth\(^ {80}\). And similarly, for Temple property, in real estate up to one sixth, in movables up to [one in] twelve\(^ {107}\). There\(^ {108}\), we have stated: "The estimation for orphans is thirty days, the estimation for Temple property sixty days, and one publicly announces mornings and evenings\(^ {109}\)." And why thirty? In order to empower the orphans. Why should they not announce longer? Up to thirty days you empower the orphans, more than that you diminish their power\(^ {110}\). Why do you not say that for Temple property? Temple property is different because each offer made is firm\(^ {111}\). Then they should announce forever! If suffices for the Temple that it should be twice that of a private person. Rebbi Yudan said, since you say that Temple property is different because each offer made is firm, this implies that if they find their estimation they do not continue but close the deal\(^ {112}\).

\(^{106}\) R. Johanan was reported to say deviation must be 100%. This is in Halakhah 4 that in real estate the

\(^{107}\) This is interpreted here to mean than the
overcharge cannot be more than 100% of the undercharge, 150% vs. 50%, giving a ratio of 3 to 1 (Pnei Mosheh).

107 For redemption of property dedicated to the Temple, all terms are halved or doubled to the advantage of the Temple as exemplified in the Mishnah, next Note.

108 Arakhin 6:1; cf. Tosephta Ketubot 11:3.

109 The court’s herald announces the sale twice daily in public.

110 In less than 30 days one is not sure that all potential buyers hear of the sale; a shorter period would diminish the number of bidders. If the process is drawn out too long, people lose interest and one diminishes the number of buyers.

111 Each offer made to the Temple administration obliges the bidder to act on his bid until he is notified that he was released from his obligation because a higher bid was accepted. The Temple does not have to worry that it would lose bidders in a drawn out process.

112 If the administration had decided on an adequate price, the first bidder meeting this price can immediately be given possession and the public announcements stopped, since the Temple will get its full price. The sixty day period is a possibility, not a necessity.

113 Rebbi Yose said, if they do not get their estimated price, they can conclude the sale. Is that the Mishnah, "if the judges estimated one sixth too little or too much, their sale is invalid"? Because...
they sold too low or too high, but if they found their estimate they close the deal\textsuperscript{115}. Rebbi Hananiah said before Rebbi Mana: What can you say, we deal with the case that they did not announce in public\textsuperscript{116}! From what is said afterwards: "Except if they offered public tender." What is public tender? Rebbi Jehudah bar Pazi said, announcement\textsuperscript{117}.

\textsuperscript{113} Babli \textit{Arakhin} 21b. As explained there, the landlord can then tell his workers to look up the property offered and to report back in the evening.

\textsuperscript{114} After the 30 days of public announcement. (The Babli in the end substitutes 8 weeks of announcement on market days for the 30 days of daily announcement.)

\textsuperscript{115} Even before the 30 days are up.

\textsuperscript{116} The disagreement between the rabbis and Rabban Simeon ben Gamliel is only in the absence of a public tender.

\textsuperscript{117} Quoted by Rashi in his commentary to the Mishnah.

\textsuperscript{118} Ulla bar Ismael said, slaves lest they flee, securities and moveables lest they be stolen\textsuperscript{119}. Rebbi Abba bar Cohen asked before Rebbi Yose: Does this not imply that a slave is redeemed in front of three people\textsuperscript{120}? He answered him, yes. He said to him, but did we not state\textsuperscript{121}: "Real estate\textsuperscript{122} nine persons and a Cohen, and a human\textsuperscript{123} by the same rule"? He answered him, the human here is a free person.
118  This paragraph is also in Megillah 4:4 (75b 1.22), noted ו, and Sanhedrin 1:3 (19b 1.6), noted ו. The origin is in Sanhedrin since only there one finds the baraita which is explained by Ulla: "The following are not subject to public tender: Slaves, securities, and movables."

119  Since the owner has to be mentioned, thieves would be informed that it is worth while to break into that house.

120  If a slave was dedicated to the Temple and then redeemed by his owner, this should be a private procedure.

121  Mishnah Sanhedrin 1:3, determining the number of jurors in judicial cases.

122  Real estate dedicated to the Temple and redeemed following the rules of Lev. 27:22-23.

123  A person who dedicates his own worth and finds it impossible to give the prescribed value; Lev. 27:8. In both cases, the Cohen's determination has to be made in public; the definition of "public knowledge" is "known by at least 10 people."

124  Hananiah bar Šeleemiah in the name of Rav: A case came before Rebbi, who wanted to act following the rabbis125. Rebbi Eleazar ben Proteus, the grandson of Rebbi Eleazar ben Proteus126, said to him: Did you not teach us in your old man’s127 name, "except if they offered public tender"128? He accepted it; Rebbi changed his mind and acted following Rabban Simeon ben Gamliel.

124  With slight changes in names this is quoted in the Babli, 100a.
125  A case was appealed to him, in which the local court had sold property, deviating more than a sixth from the appraised value. He wanted to annul the sale.
126  Who can be dated to the first
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half of the Second Century.

127 For תקנין as "your father" cf. S. Lieberman, תרבי גורשלייר, Tarbiz 4(1933), p. 378.

128 In this interpretation, the last sentence of the Mishnah is Rabban Simeon's and is disputed by the rabbis. This disagrees with the findings above, Note 116. In the Babli, the entire case dealt with a sale without public announcement which Rebbi refrained from annulling.

Mishnah 7: Neither the orphan129, nor the secondarily prohibited130, nor the she-ram131 may claim ketubah, or usufruct132, or sustenance, or depreciation133. But if he married her from the start as a she-ram, she has claim to her ketubah134. A widow [married] to the High Priest135, a divorcee or one who had received halisah to a common priest136, a bastard or Gibeonite girl to an Israel, an Israel girl married to a bastard or Gibeonite137, have claim to ketubah.

129 The orphaned underage girl who was married off by her mother or brothers, who repudiated her husband before reaching adulthood (cf. Ye'abamot 1:2, Note 118). By walking out, she showed the marriage to be non-existent (Ye'abamot Mishnah 13:4).

In all Babli mss. and in all Mishnah mss. of the Babylonian tradition, instead of "the orphan" one reads outright תקנין "the repudiating". Cf. The Babylonian Talmud with Variant Readings, Kethuboth II, p. 100b, Note 59. The Yerushalmi version must have been the original one since the Babli, 100b, discusses whether the Mishnah
implies that no minor can claim a ketubah.

130 She is her husband’s relative but not a close one; her marriage is valid by biblical standards but considered incestuous by rabbinical rules; Yebamot 2:4, Note 67. But since the marriage is valid by biblical standards, her children are not bastards. She is denied a ketubah in order to induce her to refuse the marriage from the start.

131 The infertile female who lacks secondary female sex characteristics; cf. Yebamot 1:1, Note 65. If she was married underage and failed to become an adult physically, the husband may claim that he entered the marriage thinking that she was fully female and that, therefore, the marriage transaction was in error and invalid.

132 The husband does not have to return the usufruct he had from her dowry during the existence of the marriage.

133 He is not responsible to replace depreciated goods brought as her dowry.

134 Not only ketubah, but all other payments due to the divorcee or widow, since the marriage certainly was valid.

135 The High Priest is forbidden to marry her (Lev. 21:14); she is not forbidden to marry him but she is barred from eating sanctified food and her children are desecrated from the priesthood. By biblical decree, she and her children are desecrated. This is prosecution. Her marriage is biblically valid; there is no rabbinic reason to deny her the ketubah and the benefits accruing automatically to a wife.

136 He is forbidden to marry her (Lev. 21:7); she is not forbidden to marry him but she is barred from eating sanctified food and her children are desecrated from the priesthood.

137 The bastard is forbidden by biblical law to marry an Israelite girl (Deut. 23:3, cf. Yebamot 1:5 Note 176; 4:15 Note 211), the Gibeonite by an old popular tradition ascribed to King David (Yebamot 2:4, Note 72). By Mishnah Qiddusin 3:14, in both cases the children inherit the status of the partner with the lower status.
"Neither the orphan girl, nor the secondarily prohibited, nor the she-ram," etc. One understands the secondarily prohibited and the she-ram. The orphan? Does an orphan not have ketubah? Rebbi Hizqiah, Rebbi Abbahu in the name of Rebbi Johanan: Explain it for an orphan who repudiated. Rebbi Ayvo bar Naggari, Rebbi Immi: Just as they fined her, so they fined him. In which respect? That if he preliminarily married her by [giving her] a pound of gold, he loses it all.

'No usufruct.' Rebbi Jeremiah said, that he has from her only the usufruct. Rebbi Yose the Sidonian stated before Rebbi Jeremiah, in disagreement with Rebbi Jeremiah: "He has the right to what she finds and earns, and to dissolve her vows." What means "no usufruct"? That she cannot reclaim from him the usufruct he had [from her property].

From here to the end of the 9:4, variant readings noted, explained Halakhah, this is Halakhah Yeabomot there in Notes 31-53.
Rebbi Yose said: All the time my teacher Rebbi Hila told me, state in your baraita that he inherits from her and defiles himself for her. We have also stated so: A man defiles himself for his qualified wife but does not become defiled for his disqualified wife.

Rebbi Reuben asked before Rebbi Mana: May the slaves of a secondarily forbidden [wife] eat heave? He said to him, be quiet, it is better for you. She eats but her slaves do not eat.

139 It is impossible to decide could have asked R. Mana I and R. between the two versions; R. Reuben Abun II R. Mana II.
There, we have stated: "A forced bill of divorce is valid in Israel; it is invalid from Gentiles." Samuel said, it is invalid and disqualifies for the priesthood. Samuel said, one does not force, only disqualify. Samuel said, one does not force except for example a widow married to a High Priest, a divorcée or one freed by halisah for a simple priest. But did we not state: "Secondarily forbidden"? Did he not say "for example"? But did we not state: "A person who by a vow forbids his wife to have any usufruct from him, up to 30 days he shall appoint a caretaker; after 30 days he shall divorce her and pay ketubah"! We heard that he shall divorce; did we hear that one forces him?

What is the difference between these and those? Since these are words of the Torah and the words of the Torah [do not] need support, therefore they have ketubah. Those, because they are words of the Sopherim and the words of the Sopherim need support, therefore they do
not have *ketubah*. Some want to say since these are punished together with the child, they did not fine them, therefore they have *ketubah*. Those, since they are not punished together with the child, they fined them, therefore they do not have *ketubah*. What is the difference between them? He who remarried his divorced wife after she had remarried. For him who says since these are words of the Torah, and this case is a word of the Torah, therefore she has *ketubah*. For him who says since these are punished together with the child, this one, since neither she nor the child is punished, therefore, she has no *ketubah*.

140 Missing in *Ketubot*; considered a later quote.

scribal error since it is implied by the

Rebbi Jacob bar Aha said that Rebbi Ze'ira and Rebbi Hila say that they differ about sustenance. Rebbi Johanan said, she may demand sustenance. Rebbi Eleazar said to him, divorce her! And you say so? They wanted to say, for him who says they differ about the conditions attached to a *ketubah*, Rebbi Johanan said, she has the *ketubah*
stipulations. Rebbi Eleazar said to him, everybody agrees that she cannot claim support since they even punished her heirs, so much more herself. But for him who says that they differ about sustenance, it follows that they do not differ about the stipulations of a *ketubah*. They fined her, but did not fine her heirs.
Mishnah 1: If somebody marries a woman and contracts with her to sustain her daughter\(^1\) for five years, he is obligated to sustain her for five years\(^2\). If [the mother] was married\(^3\) to another man who contracted with her to sustain her daughter for five years, he is obligated to sustain her for five years. The first one cannot say, if she will come to live with me I shall sustain her, but he has to bring her support to her place\(^4\). Similarly, the two cannot say we shall support her in common, but one of them sustains her and the other gives the money equivalent to her sustenance.

1 From a prior marriage.
2 Even if he divorces her mother before the end of the five years, since his obligation is towards the daughter, and obligations towards minors cannot be renegotiated.
3 During the five years from her marriage to the first.
4 Who is with her mother, in the second husband's house.

(34d line 32)
Halakhah 1: "If somebody marries a woman and had contracted with her," etc. How does he become indebted to her? Do not Rebbi Johanan and Rebbi Simeon ben Laqish both say, if somebody writes a debenture for another person under the assumption that he owes him and it turns out that he does not owe, he does not have to give to him?! Rebbi Simeon ben Laqish said, they gave it the status of an addition to the ketubah. Then he should have to pay in the end! They gave it the status of the gift for a woman's preliminary marriage. Then he should pay up front! They treated it as when one marries a woman preliminarily by promising to give her twelve silver denars within one year by delivering one silver denar's worth every month.

5 Since obviously the intention of the groom was to feed the daughter with her mother in his house; if he had known that he would divorce the mother before the daughter reached marriageable age he would not have agreed to these terms. Can he not claim now that he entered the obligation in error?

6 In the Babli, 101b, he is reported to hold that an obligation entered into voluntarily cannot be repealed, as pointed out by Tosaphot, 102a s. v. לבר

7 Cf. Chapter 5, Halakhah 1.

8 A voluntary addition by the groom to the minimal amounts of the ketubah, which is protected by all privileges given to the ketubah.

9 Not at the end of five years but at the end of the marriage, when the entire ketubah becomes due immediately. But the Mishnah lets him pay off his obligation for the remainder of the five years.

10 This is an awkward formulation of the answer given to the question in the Babli (102a): The mother acquires the rights for her daughter under the special rules for acquisition by the
children of sums promised by the respective parents when they decide on the marriage pact, cf. 5:1 (Notes 15, 16), 6:2 (Note 29). The acquisition of rights by mother and daughter as a consequence of the oral promise of the groom.

11 Anything promised for preliminary marriage has to be delivered at the preliminary marriage.

12 The husband delivers by taking the daughter to live in his house together with her mother.

It was stated: He supports her the first five years, whether in inflation or in deflation. If [living expenses] were high and became low, if he was the cause\textsuperscript{13}, he pays the high rate, if she was the cause, he pays the low rate. If they were low and became high, whether he was the cause or she was the cause, he pays the low rate\textsuperscript{14}. That is, "the daughter neither ascends nor descends.\textsuperscript{15}\"

13 If he divorced the girl's mother by his own initiative before the end of the contracted years.

14 He obligated himself only for living expenses which were the going rate at the time the contract was signed.

There\textsuperscript{16}, we have stated: "The female children you will have by me shall live in my house and be supported by my estate," and it was stated about this: They will be clothed with garments supplied by me\textsuperscript{17}. For whom does the daughter work? Let us hear from the following\textsuperscript{18}: "The husband has to sustain her and they pay the cost of her sustenance." This means, he feeds her but she works for her husband\textsuperscript{19}. Rebbi Yose\textsuperscript{20} said, this means that if somebody had agreed to sustain his daughter-in-law, he has to sustain her, but she works for his son. If he wants her to be with him\textsuperscript{21} but she does not want to, the law is with her, as we have stated: "They pay the cost of her sustenance." If she fell ill, it is as if she had married. If she died, is it as if she had married\textsuperscript{22}? If she died, she already is dead\textsuperscript{23}.

\textbf{17} One should not interpret מנה as "food" but more generally as "sustenance" (but excluding rent.)
\textbf{18} Mishnah 12:2, about the wife's daughter who marries while her mother's (ex-)husbands continue to support her.
\textbf{19} And if the daughter is still unmarried, she works for herself.
\textbf{20} Rosh (Chapter 12, #1) reads: Rebbi Assi; this means that he read an unlikely reading.
\textbf{21} The daughter of his divorcee, in the case that her mother did not remarry.
\textbf{22} Is the husband's obligation one that the wife's daughter's heirs can collect?
\textbf{23} The obligation ends with the daughter's death. In the Babli, \textit{Baba batra} 140a, this is considered to be obvious.
Mishnah 2: If the daughter married, the husband has to sustain her and they pay the cost of her sustenance. If they died, their daughters are supported from unincumbered property but she is supported from mortgaged property since her status is that of a creditor. The intelligent ones did write: On condition that I support your daughter for five years the entire time you are with me.

24 In the ms: אין "they do not." ex-husband.
This is an obvious scribal error which has been corrected from the quote in Halakhah 1.
25 The one mentioned in Mishnah 1.
26 The mother's husband and/or ex-husband.
Her claim is that of her mother's ketubah.
27 The mother's husband and/or ex-husband.
Then the daughter's claim is terminated if either the mother is divorced or the mother or the husband died.
28 Her claim is that of her mother's ketubah.
**Halakhah 2:** "If the daughter married, the husband has to sustain her," etc. What is the status of the *ketubah* stipulations if he wrote them in the document? Rebbi Jacob bar Aha said, Rebbi Johanan and Rebbi Simeon ben Laqish disagree. Rebbi Johanan said, he wrote them for emphasis; Rebbi Simeon ben Laqish said, he wrote them to collect from encumbered property. Rebbi Jeremiah switched the traditions. Rebbi Yudan said, a Mishnah supports him who said, he wrote them for emphasis, since we stated there: "One does not foreclose from mortgaged property to indemnify for produce or investment, or sustenance of widow and daughters, in order not to impede the economy." Are [the first categories] not based on a document? Here also based on the document.

Rebbi Hanania said, "since her status is that of a creditor!" Is that not based on a document? Here also based on the document.

29 All the stipulations enumerated in Mishnaiot 4:7 ff. are enforceable even if they are not written in the *ketubah*. What is the legal difference between a *ketubah* in which the stipulations are explicit and one in which they are implicit?

30 Without legal consequences. (In Rashi's interpretation of the Babli, 102b, Rav Ashi agrees.)

31 He switched the attributions to R. Johanan and R. Simeon ben Laqish. Therefore, the discussion proceeds without referring to names.

32 Mishnah *Gittin* 5:3.

33 If somebody sold a field, the title to which was later disputed and the court awarded the title to another person who then takes the field away from the buyer. The innocent buyer then has regress on the fraudulent seller. Real estate is always sold with a title guarantee; therefore the value of the field can be taken from the seller's mortgaged property (depending on the time of sale). But both the value of the standing crop which the buyer lost, and the value of the investments the buyer made in the property cannot be recovered from mortgaged property. The main difference is that the privileged amount, the value of the
field, is a well-defined sum written in the sales contract, whereas the rest are open-ended obligations which cannot be foreseen and whose inclusion in the causes for foreclosure would bring all real estate transactions to a halt.

34 These also are open-ended obligations which cannot be estimated beforehand; they cannot be enforced against mortgage holders, in contrast to the ketubah sum which is well-defined.

35 Since the regress of the buyer on the fraudulent seller is based on the sales contract, and it turns out that only part of the claim can be satisfied by foreclosure, it shows that the ketubah document also has parts which have the status of certificates of indebtedness and other parts which cannot be enforced by foreclosure.

36 The wife's daughter's claim is also based on her mother's ketubah document and is enforceable as a creditor's claim but her mother's own claim to sustenance as a widow is based on the same document and not thus enforceable.

If she dies she is not with him\(^\text{37}\). If she was divorced she is not with him. If he took her back\(^\text{38}\)? One says, this was stated for the ketubah but not for the stipulations; one says, both for the ketubah and the stipulations, which opinion is valid?\(^\text{39}\) "The intelligent ones did write: On condition that I support your daughter for five years the entire time you are with me;" on that it was stated: Only for the first marriage\(^\text{40}\). This parallels what Rebbi Hanina said, if somebody marries off his son in a house, the latter acquires the house, but only for a first marriage\(^\text{41}\).
This refers to the stipulation of the "intelligent" who limit their liability.

Without writing a new ketubah document, as authorized in Mishnah 9:13 (Note 240).

R. Nissim Gerondi (commentary on the Mishnah) has a smoother text:

"Following the one who says, this was stated for the ketubah but not for the stipulations, it is clear; following the one who says, both for the ketubah and the stipulations, it is clear." But since is purely Babylonian style, his text is a paraphrase, not a variant reading.

Even if in general stipulations are re-instated with remarriage, this particular condition has been permanently terminated by the divorce. It could only be re-instated by a separate document.

He gives them a house to live in alone during their wedding week; cf. 5:1 Note 23 (Babli 144a). For the Babli, there would be no parallel since there, R. Hanina assigns the house only to the oldest son who marries a virgin, and a woman with a daughter by another man is not a virgin.

Mishnah 3: If the widow said, I cannot move from my husband’s house, the heirs cannot say to her, go to your father’s house and we shall support you there, but they support her and give her a dwelling commensurate with her honor.

The following Halakhah in its entirety is Halakhah Kilaim 9:4 (Notes 70-136). The ms. readings from Kilaim are printed in Frank-Rühl typeface in the variant readings.
Halakhah 3: "If the widow said, I cannot move from my husband’s house," etc. It is written (Ps. 88:6): "Among the dead is freedom." When a person dies he becomes free from the Commandments.
Rebbi commanded three things on his death-bed: My widow should not move from my house; do not eulogize me in small towns; and he who served me during my lifetime should also serve me in death. "My widow should not move from my house," is that not a Mishnah? "The widow who said, I cannot possibly move from my husband’s house . . ." Rebbi Dositheos said, that they should not say, this is the house of the patriarchate and must serve the patriarchate. Rebbi Eleazar bar Yose said, as we have stated: "She lives in the houses just as she lived while her husband was overseas, she uses silver and gold vessels just as she used to while her husband was overseas, she is fed just as she was fed while her husband was overseas." "Do not eulogize me in small towns" because of the quarrels. "He who served me during my lifetime should also serve me in death;" Rebbi Hananiah from Sepphoris said, for example Yose Ephrati and Joseph from Haifa. Rebbi Hizqiah added, do not use many shrouds on me and let my coffin have holes at the bottom. These words say that Rebbi was buried in a single shroud since Rebbi said, not as a man left, he will come. But the rabbis say, just as a man left, he will come. It was stated in the name of Rebbi Nathan: The garment that went with a person to the grave will come back with him. What is the reason? (Job 38:14) "The seal turns itself around like clay, they appear in dress." Antoninus asked Rebbi, what is the meaning of what is written: "The seal turns itself around like clay?" He said to him, He Who brings the generation clothes it.
Rebbi Johanan commanded: Dress me in beige, neither white nor black. If I rise among the just I shall not be ashamed, if I rise among the wicked I shall not be ashamed. Rebbi Joshia commanded: Dress me in clean white. They said to him, in what are you better than your teacher? He said to them, why should I be ashamed of my deeds? Rebbi Jeremiah commanded: Dress me in clean white, dress me in my socks, put my shoes on my feet and a walking stick in my hand, lay me on my side; when the Messiah comes I shall be ready.

The people from Sepphoris said: We shall kill anybody who tells us that Rebbi died. Bar Qappara associated with them, his head covered and his garments torn. He said to them: Earthlings and angels held the Tablets of the Covenant; the angels were stronger and they took away the
Tablets. They said to him: Rebbi died. He said to them: You said it. They tore their clothes and the sound of the tearing was heard from the gate to a distance of three mil.

Rebbi Nahman in the name of Rebbi Mana: Miracles happened that day. It was Sabbath eve and all the surrounding towns came together to eulogize him. They made him [Rebbi] rest in eighteen synagogues until they brought him to his resting place but the day extended for them until each one had time to get to his house, fill an amphora of water, and light the candles. When the sun set, the rooster crowed. They were anxious and said, maybe we did desecrate the Sabbath? There came a voice and said to them, every one who was not lazy for the eulogies of Rebbi shall be announced for the life of the Future World, except the fuller.
Rebbi dwelt in Sepphoris seventeen years and applied to himself (Gen. 47:28): "Jacob lived in Egypt seventeen years," Jehudah lived in Sepphoris seventeen years. Of these he suffered from toothache for thirteen years. [Rebbi Yose ben Rebbi Abun said, all these thirteen years no woman lying-in died in the Land of Israel and no pregnant woman had a miscarriage in the Land of Israel.] Why did he have a toothache? Once he saw a calf to be slaughtered when it bellowed and said to him, Rebbi, save me! He said to it, for that you were created. At the end, how was he healed? He saw them killing a burrow of rats. He said to them, let them live, it is written (Ps. 145:9) 'His mercy extends to all His creatures.'
The text in brackets is missing in Ketubot.
Rebbi was very meek and said, all a man might ask from me I am ready to do, except what the Elders of Bathyra did for my ancestor: they divested themselves and appointed him. If Rav Huna, the Head of the Diaspora, came here I would let him sit higher than myself since he is from the tribe of Judah and I am from Benjamin, he is from the male line and I am from the female. Once, the elder Rebbi Hyya visited him and said, Rav Huna is outside. The face of Rebbi became saffron-colored. He [R. Hyya] said to him, it is his coffin. He [Rebbi] said to him, go outside and look who wants you there. He stepped outside and did not find anybody; he understood that he [Rebbi] was angry with him. He did not visit him again for thirty days. Rebbi Yose bar Abun said, in those thirty days did Rav learn from him [R. Hyya] the principles of Torah. At the end of thirteen years and thirty days, Elijah visited him [Rebbi] in the likeness of the older Rebbi Hyya. He said to him, how does my lord feel? He said to him, one tooth hurts me. He said to him, show it to me. He showed it to him, he put his finger on it and it was healed. The next day, the older Rebbi Hyya came to him and asked him, how does Rebbi feel, what is with that tooth? He said to him, from the moment that you put your finger on it, it was healed. At that moment, he said, woe on you, lying-in women of the Land of Israel, woe on you, pregnant women of the Land of Israel! He [R. Hyya] said to him, that was not me. From that moment on, he [Rebbi] treated him with honor.

When he [Rebbi] went to the assembly hall, he said, may the older Rebbi Hyya come inside. Rebbi Ismael ben Rebbi Yose asked, closer than me? He said, beware! The older Rebbi Hyya inside, and Rebbi Ismael ben Rebbi Yose innermost. Rebbi used to state the praises of the older
Rebbi Hiyya before Rebbi Ismael ben Rebbi Yose. Once, he [R. Ismael ben R. Yose] saw him [R. Hiyya] in the bathhouse and he did not show him reverence. He [R. Ismael ben R. Yose] said to him [Rebbi], is that the one of whom you state praises? He said, what did he do to you? He said, I saw him in the bathhouse and he did not show me reverence.) He [Rebbi] said to him [R. Hiyya], why did you do that? He said to him, so much should come over me if I realized that I was washing myself, at that time my eyes were occupied with the allegorical interpretation of the entire book of Psalms. From that moment on, he [Rebbi] appointed two students to accompany him [R. Hiyya] because of the danger.

Rebbi Yasa fasted eighty days to see the old Rebbi Hiyya. In the end, he saw his bier and him sleeping on it. If you say that Rebbi Assi was an insignificant person, one tanner came to Rebbi Johanan and said, I saw the
sky falling but one of your students supported it. He asked him, could you recognize him? He said, if I would see him, I would recognize him. He made all his students pass before him [the tanner], and he recognized Rebbi Assi. Rebbi Simeon ben Laqish fasted three hundred fasts to see the old Rebbi Hiyya but did not see him. In the end, he started to feel badly and said, did he study Torah more than I did? They said to him, he spread Torah more than you did and in addition he went into exile. He said to them, did I not also go into exile? They said to him, you went into exile to study, he went into exile to teach.

When Rav Huna, the Head of the Diaspora, died they brought him here. They said, where shall we put him? They said, let us put him next
to Rebbi Hyya the elder for he is one of them. They said, who might want to bring him there? Rebbi Haggai said, I shall go up to put him there. They said to him, you are looking for a pretext, for you are an old man and you want to go to rest there yourself. He said to them, put some string on my feet and when I shall be weak you pull. He went in and found the three arguing. "Jehudah my son, after you, and no more. Hizqiah my son, after you, and no more. Joseph ben Israel, after you, and no more." He [R. Haggai] lifted his eyes to look, it was said to him lower [your eyes], turn around. Rebbi Hyya the elder [who said to] his son Jehudah, make space for Rav Huna that he may rest there. But [Rav Huna] did not accept this. They said, since he did not accept that one made space for him, so his descendants will never end. He [R. Haggai] exited from there eighty years old and his years were doubled.

(35b line 6) קק"ב בשבתין מפוארין שבברית בקברותיו. עקש כל-ך חוהו פי חוה מבר. רבי עזרא אמר זבריו בת. רבי יהושע בן נח אמבר זבריו בך. רבי עזרא בת. רבי שלום בן קרש אמר. אחמהל كلمי ובראות התמיה. והלא ארץ מארת変えים אלא תור זכירים וברSizePolicyים. להם כלאו כלש דב. רבי שלום בן קרש сообщил בך. סקרא. ארץ שפוקיתיה חים חיהל למאח שתפני. מיהו נעמה. נ﹢ הנשק בך. עֶלֶם אינון. משחת רבונינו שבבל הפיסדו. אמר רבי סמאי. תודש בורב מיהו מחלק לפוןינו אלא יאכר והם מתוכללים יכדוות. יכין שפוקינה לארץ ישראלי נפשותינו עמקה. מיהו נעמה. יהבאת אחים אל אדמתנו יתמי. רוחו בכים וחיהו.
It is written (Gen. 47:30): “You shall carry me from Egypt and bury me in their burial place.” What would Jacob lose at any place he would prophesy? Rebbi Eleazar gave an inner reason, Rebbi Joshua ben Levi gave an inner reason, Rebbi Hanina gave an inner reason. What is the inner reason? Rebbi Simeon ben Laqish said, (Ps. 116:9) “I will walk before the Eternal in the Land of Life.” But the lands of life are only Tyre and its surroundings and Caesarea (maritima) and its surroundings; there is cheap (food), there is plenty. Rebbi Simeon ben Laqish in the name of Bar Qappara, the Land whose dead will live again in the days of the Messiah. What is the reason? (Is. 42:9) “He gives soul to the people on it.” That would mean that our teachers in Babylonia would lose out! Rebbi Simai said, the Holy One, praised be He, walks before them and they roll like wine barrels. When they arrive in the Land of Israel their souls are with them. What is the reason? (Ez. 36:24) “I shall bring you to your soil,” (37:14) "give My spirit into you, and you will live."
Rebbi Berekhiah asked Rebbi Helbo. Rebbi Helbo asked Rebbi Immi. Rebbi Immi asked Rebbi Eleazar. Rebbi Eleazar asked Rebbi Hanina, some say Rebbi Hanina asked Rebbi Joshua: Even those like Jeroboam and his kind? He said to him, (Deut. 29:22) "Sulphur and salt, conflagration throughout the country." Rebbi Berekhiah said, one asked the other and we understand nothing from it. What does it mean? Since the Land of Israel was burned, judgment was executed on it. We have stated in the name of Rebbi Jehudah: Seven years was the Land of Israel burned; that is what is written (Dan. 9:27) "The Covenant overtook the public for one week." What did the secondaries in it do? Pieces, pieces and it was burned.

It is written (Jer. 20:6-7): "But you, Pashhur, and all inhabitants of your house will go into captivity. You will come to Babylon, die there, and be buried there." Rebbi Abba [bar Zemina] said, Rebbi Helbo and Rebbi Hama bar Hanina. One of them said, if somebody dies there and is buried there, he has two [detriments] in hand. If he dies there and is buried here, he has one [detriment] in hand. The other one said, burial atones for their death.
Rebbi Jonah in the name of Rebbi Ḥama bar Ḥanina: A human’s feet bring him to where he is wanted. It is written (IK. 22:20) “The Eternal said, who will seduce Ahab that he should go and fall in Ramot Gilead?” Might he not die in his house rather than there? Eliḥoref and Aḥiah were two of Solomon’s secretaries. He [Solomon] saw the Angel of Death looking at them and grinding his teeth. He said a word and put them into space. He [the Angel of Death] went and took them from there, then he came laughing before him [Solomon]. He said to him, just before you were grinding your teeth and now you are laughing at us? He said to him,
the Merciful told me to take Elihoref and Ahiah from space and I was wondering who would put them there where I was sent to take them; He put it into your mind to do so that I could complete my mission. I went and dealt with them there. The two sons of Rebbi Reuben ben Strobilos were students of Rebbi. He [Rebbi] saw the Angel of Death looking at them and grinding his teeth and said, let us exile them to the South, maybe the exile atones. He [the angel of death] went and took them from there.

Ulla was an emigrant. He was dying there and started to cry. They said to him, why are you crying? We shall bring you [to the Land of Israel]. He said to them, how does this help me? I am losing my pearl in an impure land. One cannot compare one who expires in the bosom of his mother to one who expires in the bosom of a strange woman. Rebbi Meir was dying in Assos. He said, tell the people of the Land of Israel, there is your Messiah. With all that, he said to put his bier on the cape since it is written (Ps. 24:2): "For He founded it on seas, based it on rivers."
Seven seas surround the Land of Israel: The ocean, lake Tiberias, lake Samkho, the salt sea, lake Holata, lake Sheliat, lake Apamea." But does there not also exist the lake of Horns? Diocletian dammed up rivers and created it. It is written (Num. 21:20): "Looking down on the desert." Rebbi Hiyya bar Abba said, if one ascends the desert mountain one finds the likeness of a sieve in lake Tiberias, that is the well of Miryam. Rebbi Johanan bar Mara said, the rabbis estimated it and it is assessed opposite the middle gate of the old synagogue of Imdwrgyn.
Rebbi Bar Qiria and Rebbi Eleazar were taking a walk on the road when they saw coffins being brought into the Land from abroad. Rebbi Bar Qiria said to Rebbi Eleazar: What good is that going to do them? I am reading for them (Jer. 2:7) "My inheritance your considered an abomination" during your lifetime, "you came and made My Land impure" in your death. He said to him, when they arrive in the Land, one takes a lump of earth and puts it on the coffin, as it is written (Deut. 32:43) "His earth atones for His people."

Mishnah 4: If she said, I cannot possibly move from my father’s house, the heirs can tell her: If you are with us, you are provided with sustenance, but if you are not with us, you are not provided with sustenance. If she argues because she is young and they are young, one provides her with sustenance while she is in her father’s house.

42 The widow.
43 If she does not want to keep house for them, she has to claim her ketubah.
44 As the Halakhah explains, if they lived together, people would start to talk that she was sleeping with her stepsons.

מלכחה 3: אםра לא אפקיש ליאו מנייה אבא שלה כל יהב מנייה. אם קיתה
סורה גוסית שירתיה כליה והילידים ונחשמיה ליאו מנייה ויהא בבית אביך.
Halakhah 4: "If she said, I cannot possibly move from my father’s house," etc. "If she argues because she is young and they are young," to avoid a bad reputation.

Mishnah 5: All the time she lives in her father’s house, she always can collect her ketubah; if she lives in her husband’s house, she can collect her ketubah for 25 years, for in 25 years she will have received benefits in the value of her ketubah, the words of Rebbi Meir who spoke in the name of Rabban Simeon ben Gamliel. But the Sages say, all the time she lives in her husband’s house, she always can collect her ketubah; if she lives in her father’s house, she can collect her ketubah for 25 years. If she died, her heirs can sell her ketubah for up to 25 years.

45 Since she was not sustained by the estate.
46 Since she has to keep house for the heirs, her sustenance is payment for her services and cannot be counted against her ketubah.
47 Since she is not supported by the estate and has no connection with the heirs, one may assume that she has decided not to claim the ketubah; this is a statute of limitation for claims.
48 This reading is found in the
Yerushalmi and two other Mishnah mss., as well as the editio princeps of the Tosephta (12:3). In the Halakhah it is quoted in the form of the Mishnah of the Babli and the great majority of Mishnah mss. and both Tosephta mss: "they mention". This refers to the rule explained in the second paragraph of the Halakhah, that any mention of the ketubah to the heirs stops the statute of limitations and begins a new period of 25 years. Therefore, it is even possible to sustain the reading of the Mishnah, that her heirs can sell her claim within 25 years since the notification of the stake of the claim to the heirs automatically starts a new period of 25 years.

Halakhah 6: "All the time she lives in her father's house," etc. For the good she received; her properties became delivered during her husband’s lifetime and after 25 years she gave up the claim to her ketubah. Rav Hiyya bar Ashi in the name of Rav Hiyya asked before Rebbi La: One understands for a woman who has no ketubah. But should a woman who has a ketubah not be able to collect forever? He answered him, it tells you more: Even a woman who has a ketubah collects only up to 25 years. The statement of Rebbi Eleazar says, the creditor collects forever. He said only, "the creditor"; but a woman can collect only up to
25 years. Rebbi Abin said, this is reasonable only for a woman who is not being supported. But for a woman who is being supported, I say that she did not claim it because of her support.

49 In rabbinic Hebrew, **ונ** means not only "to parboil" but also "making a final decision". Neither meaning fits the context here. It seems that the word is Arabic **ףנ** "to mix something with something else", meaning that her dowry was mixed with her husband's property all the time.

50 In the Babli, 104b, Rav Nahman decides with Rav Ḥiyya bar Ashi that the limitation imposed by the Mishnah refers only to a widow who has no ketubah document to present to the court.

51 Tosephta 12:3 notes that the creditor (who is secured by a mortgage document) can foreclose forever, after the description of the difference between R. Meir and the Sages, and a remark that R. Ismael sets the time limit at 30 years. (The first law enacted in the Roman Empire to set a time limit on the collection of debts seems to have been Theodosius II's praescriptio triginta annorum of 424 C.E.). The (anonymous) Tosephta is ascribed here to one of the Tannaim named R. Eleazar.

Therefore, her claim is not subject to a time limit. The Babli agrees, 104b.

Rebbi Yose ben Rebbi Abun said, not only that she claims, but even if she mentions [her claims], as we have stated there: "If she died, her heirs can mention her ketubah for up to 25 years." He tells you more: Even if she let 25 years minus one day go by before claiming, and then claimed, one gives her another 25 years.
52 Since this refers to the Mishnah of this Halakhah, "there" is out of place. Probably the Mishnah is correct as given and the quote here refers to a text similar to Tosephta 12:3.

53 The claim does not necessarily have to be a claim for payment but may be a reminder that the claim exists. This is sufficient to start a new period of limitation. The Babli agrees, 104 a/b, but in connection with the rule that a documented ketubah is not subject to a statute of limitations; cf. Note 50.

Rebbi Simon in the name of Rebbi Joshua ben Levi: One stated this only for the ketubah of a mina or 200 [zuz]54. But a ketubah of 1’000 denar55 she collects forever56. Rebbi Abbahu quoted in the name of Rebbi Johanan: Even a ketubah of 1’000 denar she can collect only up to 25 years. This disagreement parallels the following disagreement, as was stated there: "Torts are estimated from choice land, creditor’s claims from average, and a woman’s ketubah from the least valuable."57 Rebbi Jeremiah said to him, this was stated only for the ketubah of a mina or
200 [zuz], but a ketubah of 1'000 denar is evaluated in terms of average quality land\textsuperscript{56}. But Rebbi Yose said, even a ketubah of 1'000 denar she collects only from the least valuable land. It turns out that Rebbi Yose follows Rebbi Johanan and Rebbi Jeremiah Rebbi Joshua ben Levi. As we have stated there\textsuperscript{58}: "If somebody signs over his property to his sons and signs over some real estate to his wife, she lost her claim to ketubah."

Rav said, if he lets them acquire through her. Samuel says, if he distributes in her presence. Rebbi Yose ben Hanina said, they stated here a relaxation of the laws of ketubah. Rebbi Abba said, the reason of Rebbi Yose ben Hanina is that it applies not only to a ketubah of a mina or two hundred, but even regarding a ketubah of one thousand denar they proclaimed a relaxation of the laws of ketubah.

\textsuperscript{54} The amount the husband has to promise from his own money.
\textsuperscript{55} The greatest part of which is represented by the dowry, her own family's contribution.
\textsuperscript{56} Mortmain dowry is secured by a general mortgage on the husband's properties; there seems to be no reason to treat this mortgage differently from the mortgage executed for a third party lender.
\textsuperscript{57} Mishnah Gittin 5:1. Since mortgages were usually not written on specific parcels, there are general rules governing foreclosures if the debtor cannot pay cash. The categories mentioned here are explained in Chapter 9, Note 195.
\textsuperscript{58} Mishnah Peah 3:9, Note 151.
\textsuperscript{59} This text is a slightly shortened version of a text in Peah 3:9, explained there in Notes 182-189.
Mishnah 1: Two robbery judges were in Jerusalem, Admon and Hanan ben Absalom. Hanan said two things and Admon seven. If somebody went overseas and his wife now is demanding sustenance, Hanan says that she is made to swear in the end. The High Priests’ sons disagreed with him and said, she is made to swear in the beginning and in the end; Rebbi Dosa ben Hyrkanos endorsed their statement. Rabban Johanan ben Zakkai said, Hanan said correctly that she is made to swear only in the end.

1 In most sources of the Babli. Probably this is simply a case of change of liquids. It is stated in Seqalim 4:3 that the judges in criminal law were paid from the Temple taxes.

2 All recorded statements of Admon and Hanan refer to civil law; the count refers only to those statements which were disputed by the High Priest’s sons. It is possible that the latter represented Sadducee practice.

3 She goes to court to obtain permission to sell from her husband’s real estate. She claims either that the husband did not provide her with household money before he left or that he stayed overseas longer than
intended and that her household money is now exhausted.

4 Either news is received that her husband died and she requests her ketubah or her husband returns and claims that she sold too much of his property. In both cases she has to provide an accounting and swear that nothing of her husband’s money remains in her hand.

5 The court should not grant her permission to sell her husband’s property unless she swears that all her claims are true.

Halakhah 1: "Two robbery judges were in Jerusalem," etc. Did not Rebbi Phineas say in the name of Rebbi Hoshaia: 469 synagogues were in Jerusalem and each one of them had a Book house and a study house; the Book house for Scripture and the study house for Mishnah? But these two were appointed for robberies; to teach you that if anybody has the power to intervene, if he does not exercise his power the misconduct is attributed to him. It was stated in the name of Rebbi Nathan: Nahum the Mede also was with them. In Rebbi Nathan’s opinion, three robbery judges were in Jerusalem.

6 Since every “study house” was a law school, it is obvious that Jerusalem had more than two judges.

The statement of R. Phineas is also in Megillah 3:1 (73d 28), Thr. rabbati 2:2, Introduction #12; in Ta’anit 4, (69a 13) the number of schools is put at 500 in the name of Rabban Simeon ben Gamliel. In the Babli, 105a, the number is 394.
7 The other judges were for civil cases. Those appointed to watch over public order are personally held responsible; therefore these judges are remembered by name. In the Babli, 105a, it is asserted that judges in a criminal court can be paid, in contrast to civil judges.

8 In the Babli, 105a, this tradition is denied.

9Rebbi Hizqiya in the name of Rebbi Aha: Rebbi used to explain three verses for praise. "She sat at the entrance to the double spring." Is this possible? Even the most brazen whore would not do that. But she lifted her eyes to the door to which all hope is directed; she said before Him: Master of the universe, do not let me leave this house empty. Another explanation: "She sat at the entrance to the double spring;" she opened his eyes and told him, I am single and pure.
"And Eli was very old; . . . that they slept with." It is written "they bedded them." Rebbi said, the women were bringing their nests to become purified for their husbands and they were deferring the sacrifices; the verse counts it as if they had slept with them. Rebbi Tanhuma said, that is what he scolds them for: "Why do you disregard my slaughter sacrifice and my flour sacrifice?" Could he remove them from the serious sin and scold them for the simple one?

"His sons did not walk in his ways," that they were taking tithe and judging. Rebbi Berekhiah said, a camel caravan was passing by, they neglected public needs and dealt in merchandise.

9 This text is also in Sotah 1:4, 1. To the sources indicated there one may add Gen. rabba 85(8) (in the name of R. Immi.)
her? Who told me that he did not leave for her?  Do the passers-by know?  Rebbi Hila said, this is what Rebbi asked:  Rebbi is of the opinion that the Mishnah does not speak of a married woman but of a widow. He said, Samuel and Rebbi Simeon ben Laqish both say, the Mishnah deals with a widow. It was stated in the House of Rebbi thus: "If somebody left for overseas and his wife demands sustenance." They wanted to say, for him who says, the Mishnah speaks of a married woman, "in the beginning" that he did not send her, "in the end" that she did not put aside and did not act dishonestly. For him who says, the Mishnah speaks of a widow, "in the beginning" that he did not leave for her, "in the end" that she did not put aside and did not act dishonestly. Samuel, Rebbi Berekhiah's brother, said, that she did not renounce her ketubah in the orphans' favor.

10 In the Babli, 107b, this is R. Abin's version of what happened. Both in the Babli and here, "R. Ismael" cannot refer to the Tanna R. Ismael who lived in the South two generations earlier; the reference must be to R. Ismael ben R. Yose, the contemporary of Rebbi.

11 Could the woman get permission to sell her husband's property through an informal talk in the market? This would contradict all rules of judicial procedure.

12 The absent husband.

13 That the husband provided his wife with enough money to cover her expenses until his return.

14 The courts will not intervene in the monetary affairs of married couples. After the husband's death, the liquidation of the husband's estate is a legitimate object of the court's attention.

15 This is confirmed in the Babli, 107a, but rejected as practice, 107b.

16 Our Mishnah reads "if somebody went overseas", i.e., with the intent to return. In this version, the court will intervene in behalf of the married woman. But "if somebody left for overseas", i.e., emigrated permanently, then the Mishnah only deals either
with an abandoned wife or a widow, but not with a wife who expects her husband to return.

17 The oath required in the opinion of the High Priests' sons.

18 Before the husband left on his trip.

19 The initial oath required by the High Priests' sons does not refer to the amount of money she needs, since this can all be settled by the accounting she has to deliver under oath in the end. She has to swear at the beginning that in principle she is entitled to sustenance, since a widow who renounces her claim to ketubah at the same time also renounces her claim to sustenance.

20 If somebody together with his wife left for overseas, then she returns and says, my husband died, she shall be supported and collect her ketubah. My husband divorced me, she shall be supported from her ketubah since, as you take it, if she be a married woman, she must be supported from her husband's; if she is no longer a married woman, she can be supported from her ketubah.

25 "If somebody returns from overseas and his wife requests support but he says, let her earnings cover her sustenance, one listens to him. But if the court had allotted, what they allotted, they have allotted." Rebbi Jeremiah said, if her
earnings are not enough for her support\textsuperscript{29}. In this case, does one listen to him\textsuperscript{30}? Following him who says, there is no support for the wife in biblical law, as we have stated: "The court will not determine food for a wife from Sabbatical money, but she may be given Sabbatical produce to eat at her husband's."\textsuperscript{31} Rebbi Yose says, if her earnings are sufficient for her support\textsuperscript{32}. In that case, why what they allotted, they have allotted? Explain it, if they allotted excess.

20 This \textit{baraita} is also discussed in the Babli, 107b.
21 Since Mishnah \textit{Yebamot} 15:1 states that in this case the widow may remarry without proof of the husband's death, she certainly must be believed regarding the monetary implications of her husband's death.
22 In this case she is not permitted to remarry unless she proves the fact of her divorce either by a court document or by witnesses. Since her word alone is not accepted in criminal law, it cannot be accepted in civil law.
23 But she really is divorced.
24 If her husband's death later becomes known, she can collect only the amount of her \textit{ketubah} minus the amounts already taken for her sustenance (Interpretation of the Babli).
25 Tosephta 12:4; Babli 107a.
26 His wife took out a loan under the supervision of the court and now the wife requests him to repay the loan.
27 He can request her to repay the loan from her own earnings. In the interpretation of R. Nissim Gerondi (Alfasi # 389), the husband has to pay the wife's debt beforehand and then can recover from her earnings.
28 If the court had empowered her to sell of the husband's property, he cannot require her to buy it back.
29 He explains the Tosephta in case that the earnings of the wife were not sufficient to cover her expenses; therefore the court was justified in giving her permission to sell and their order has to stand.
30 In this case, why should the husband be able to refuse to pay for his wife's borrowing.
31 \textit{Ma'aserot} 3:1, Notes 11-12. The marriage contract explicitly notes that the husband will "work for, honor,
feed, and provide for" his bride "in the manner of Jewish husbands." The language seems to imply that this is a contract following rabbinic guidelines; this is the position of Nachmanides and R. Asher ben Icchiel (Rosh Ketubot Chap. 13, Sec. 6.) Maimonides holds that nevertheless the obligation is biblical, Hilkhot Issut 12:2.

The wife may not sell Sabbatical produce for her needs since Sabbatical produce may not be used to pay debts of any kind. But if the husband is present, she may eat of his Sabbatical fruits; since his obligation to feed his wife is only rabbinical, this is not considered paying his debts with Sabbatical produce.

32 He explains that the Tosephta is applicable even if the wife earns enough and does not have to go hungry in her husband's absence. Since by the ketubah contract the wife is entitled to live as well in her husband's absence as in his presence, the court is entitled to grant her money to make up the difference.

If somebody was overseas and said, certain things should be given to his sons, his daughters are included\(^{34}\). If he said that when he was dying, certain things should be given to his sons, his daughters are not included\(^{35}\).

33 The text in parentheses, "in the Sabbatical year", is the ms. text. The text in brackets, "when he was dying" is that of the quote by Alfasi Baba batra #887. However, there the text is different: מַעַשֶּׁהּ מִמדִידָהּ הַיָּם אָמַר יִטְנוּ נֶלְּנָהּ בּוֹנִיתָ בַּכֶּלֶל אָמַר בַּכֶּלֶל. בַּכֶּלֶל. בַּכֶּלֶל. בַּכֶּלֶל. בַּכֶּלֶל. בַּכֶּלֶל. בַּכֶּלֶל. בַּכֶּלֶל. הבכל. הבכל. הבכל. הבכל. הבכל. "If somebody sent from overseas and said, certain things should be given to my sons, his daughters are included. If he said that when he was dying, certain things should be given to my sons, his daughters are not included." While the ms. text is corrupt and the translation follows Alfasi, the hybrid ms.-Alfasi text cannot really be considered as representing the original.
34 For gifts between the living, people make no distinction between sons and daughters. Following the general linguistic rule that for mixed genders the masculine is used (in educated speech), D'aa can mean both "sons" and "children".

35 Death-bed instructions are to be interpreted as referring to inheritance. Since in biblical law daughters do not inherit in the presence of sons, daughters are not included in the absence of specific instructions (cf. Mishnah 4:8).

Rebbi Ze'ira, Rav Hananel in the name of Rav; Rebbi Ze'ira in the name of Abba bar Jeremiah: Practice follows Hanan in his two statements; practice does not follow Admon in his seven statements. Rebbi Abba bar Zavda in the name of Rebbi Isaac bar Haquila: In every case in which Rabban Simeon ben Gamliel said, I am convinced by Admon's statement, practice follows him\textsuperscript{36},\textsuperscript{37}.

36 Similar statements are in the Babli, 109a.

37 Only three of Admon's sayings are accepted in practice.
Mishnah 2: If somebody went overseas and another person provided for his wife, Hanan says, he lost his money. The High Priests’ sons disagreed with him and said, let him swear on what he expended, that she shall collect; Rebbi Dosa ben Hyrkanos endorsed their statement. Rabban Johanan ben Zakkai said, Hanan said correctly that he put his money on a deer’s antler.

38 The other person neither was appointed by the husband to provide for his wife, nor did the wife sign that she received his support as a loan, to be repaid at her husband’s return.

39 The deer runs away and sheds his antlers every year; a person who puts his money on a deer’s antlers is declaring it ownerless.
Halakhah 2: "If somebody went overseas," etc. Rebbi Abba bar Mamal asked: If somebody pays off somebody else’s debt without the latter’s knowledge, is that the disagreement of Hanan and the High Priests’ sons? Rebbi Yose said, there the reason of the High Priest’s sons is that he would not expect his wife to starve. But here, [the debtor could say:] "I could negotiate with him and he would forgive some." Think of it, if [the loan] was on a pledge! "I could negotiate with him and he would return my pledge." So far about a creditor who does not push [for repayment]. Even for a creditor who pushes, we can hear from the following: "He may give his seqel." If somebody does not pay his seqel, does one not take a pledge from him? This says, even for a creditor who pushes. You should know that this is so, as we have stated: "He can bring for him nests for males or females suffering from genital discharges, nests for childbirth, purification and reparation offerings" since nothing of these comes to [the other person’s] hand. And here also, that nothing should come into his hand.

40 This and the following paragraphs are from Nedarim 4:2, explained there in Notes 20-44. Variant readings from there are denoted by 1.

The present paragraph refers there to Notes 20-26. The Mishnah in Nedarim explains what a person can do for someone else about whom he has vowed that he should not have any usufruct from him. According to Hanan, a person in that situation could support the other’s wife in his absence since he has no legal right to recoup his money.

41 Sentence missing in the Ketubot text.
Rebbi Joshua ben Levi says, nobody is held responsible for his neighbor except for *annona* and head-tax. Rav said, anything for which one is held responsible for one’s neighbor has to be repaid. The strength of Rav is from the following: "He who appropriated a field and oppressors took it." He did not hear that Rebbi Johanan said, they exacted a fine from a robber. Rebbi Abin asked, what is greater? Rebbi Yose ben Rebbi Abun, and Rebbi Hyya ben Julianus both said in the name of Samuel; one said, it is like *annona* and head-tax; the other said, it is not like *annona* and head-tax.

There, we have stated: "He heals him in the sense of personal healing but not in the sense of financial healing." Rebbi Judan and Rebbi Yose. One of them said, here if the vow refers to his body, there if the vow refers to his property. But the other said, here if he has somebody else
who can heal him, there if there is nobody else who can heal him. If he has somebody else who can heal him, he should not be able to heal him personally! Not by everybody is a person successfully healed.

Is not the property of the finder forbidden to the owner of the cow? Ulla bar Ismael in the name of Rebbi Isaac: If each man's property was forbidden to the other.

Who is the Tanna of "the gain should be given to the sacred fund"? Rebbi Meir! For Rebbi Meir said, one commits sacrilege with prohibitions. Rebbi Abun bar Hiyya asked: If somebody made a vow [to forbid] a loaf to himself, can he use it to warm his hands? Let us hear from the
following: "If he said, this loaf shall be dedicated, if he or another person ate it, they committed sacrilege; therefore, it can be redeemed. But if he said, it is for me [as if dedicated], if he ate it he committed sacrilege on goodwill but others would not commit sacrilege." He said only, if he ate it. Therefore, to warm his hands is permitted. The students of Rebbi Jonah in the name of Rebbi Abun bar Hiyya: That is if he said I shall not eat it nor taste it; if he forbade only eating to himself. But the question was, if somebody made a vow [to forbid] a loaf to himself, can he use it to warm his hands?

42As it was stated: "If somebody went overseas and another person provided for his wife." Rebbi Haggai said, they said only, another. Therefore, the father can recover. Rebbi Yose says, neither the father nor a third party can recover. There is a parallel disagreement, as we have stated there: "He has the right to what she finds and to her earnings, to dissolve her vows, and to receive her bill of divorce, but cannot eat usufruct in her lifetime... He is required to pay for her
upkeep, her ransom, and her burial." Rebbi Haggai said, they said only, the father. Therefore, a third party cannot recover. Rebbi Yose says, both the father or a third party can recover. In the opinion of Rebbi Haggai, both for burial as for upkeep the father can recover, a third party cannot recover. In the opinion of Rebbi Yose, for burial both the father and also a third party can recover because it is unthinkable that his wife should be thrown to the dogs. For sustenance, neither the father nor a third party can recover.

A slightly different parallel to this paragraph is in Halakhah 4:6, Notes 149-150.

Who was responsible for her sustenance before her marriage; Mishnah 4:6.

Mishnah 4:6, Notes 138-140.

The father of an underage girl.

The husband after marriage.

This refers to the baraita stated at the start of the parallel paragraph in 4:6: "If the husband refused to bury her, the father buries her and recovers his expenses in court."

Burial expenses for an unrelated woman.

Unless given as a loan or by a court-appointed guardian.

Mishnah 3: Admon promulgated seven [rules]. If somebody dies and is survived by sons and daughters. If the estate is large, the sons inherit and the daughters will be sustained. If the estate is small, the daughters...
shall be sustained and the sons shall go begging. Admon said, because I am a male, shall I lose? Rabban Simeon ben Gamliel said, I am convinced by Admon’s statement.52.

50 From the estate. 52 All underage children are sustained together. 51 If the entire estate is needed to sustain the daughters until they marry.

Halakhah 3: "Admon promulgated seven [rules]," etc. 53 How large is a large estate? Rebbi Ze'ura, Rav Jehudah in the name of Rav: That there should be twelve months of sustenance for all of them. Samuel heard this and said, this is the opinion of Rabban Gamliel ben Rebbi,55 but the Sages say, until they reach adulthood or are married. They asked before Rebbi Yose,57 what did you hear from Rebbi Johanan? He said to them, let us explain the words of the Sages by their words! Nathan bar Hosaia asked before Rebbi Johanan, if there was sustenance for twelve months but the estate diminished in value? He answered him, since the heirs started to eat with permission, they continue to eat until the last coin is gone.
Most of this Halakhah is found in *Baba batra* 9:1, in a somewhat different formulation.

The majority opinion in the Mishnah that only the daughters are supported by a small estate, but he follows Rabban Gamliel III in the definition of a large estate. Practice almost always follows R. Johanan.

When does one appraise for them? Rebbi Mana said, one appraises at the end. Rebbi Hanina said to him, the words of the rabbis imply that one does not listen to you, for Nathan bar Hosaia asked before Rebbi Johanan, if there was sustenance for twelve months but the estate diminished in value? He answered him, since the heirs started to eat with permission, they continue to eat until the last coin is gone! Therefore, one
appraises at the start\textsuperscript{60}. Rav Hisda asked: If there was sustenance for twelve months and then the property increased in value\textsuperscript{61}? Let us hear from the following, for Rebbi Hanina, Rebbi Yasa\textsuperscript{62} said in the name of Rebbi Johanan: If the heirs sold, they sold from their own property\textsuperscript{63}. So here, if it increased in value, their property value increased\textsuperscript{64}. If the estate was not sufficient for twelve months' sustenance, may the sons say to the daughters, take what is yours and leave\textsuperscript{65}? Rebbi Abba said, is that a question? The Mishnah says that they cannot say so to them, as we have stated there\textsuperscript{66}: "If the orphans say, we accept the properties of our father for the value of an extra denar in order to take their mother's ketubah; one does not listen to them but one appraises the properties in court."

59 At the end of 12 months.
60 The only valid appraisal is one made immediately after the father's death.
61 Can the daughters claim part of the value by which the estate has increased over the appraisal?
62 In Baba batra, the statement is in the name of "the Babylonian R. Ammi", i.e., R. Immi, the constant companion of R. Yasa.
63 If the male heirs sold real estate from a small estate, their sale is valid since they are the heirs in biblical law; the rights of the daughters are purely contractual. While the widow can take the real estate away from the buyer for her ketubah as prior mortgage holder, the daughters cannot since their claim was created only at their father's death, when the sons already were legal owners of the property.

The same statement by R. Assi (= Yasa) in the name of R. Johanan is in the Babli, 103a.
64 The daughters cannot acquire any rights to the inheritance which they did not have immediately upon their father's death.
65 If there was more than enough to sustain the daughters but not enough for daughters and sons together, can the sons pay the daughters and take the remainder as inheritance?'
66 Mishnah 10:2.
As you say, after deduction for her *ketubah*, after deduction of burial costs, after deduction of loans by witnesses or by contract\(^{67}\). After deduction for daughters’ dowries? For him\(^{68}\) who says, one forecloses from mortgaged property for daughters’ dowries, the dowries are privileged. For him who says, one does not foreclose from mortgaged property for daughters’ dowries, the dowries are not privileged. Let us hear from the following\(^{69}\): The widow and the sons are of equal rank\(^{70}\). The widow and the daughters are of equal rank. The widow does not push the sons aside and the widow does not push the daughters aside. How is that? If there was enough for 12 months sustenance and a widow to sustain\(^{71}\). That explains that sometimes the widow pushes out the sons by means of the daughters. Just as she pushes out the sons by means of the daughters, should she not push them out by means of the sons\(^{72}\)? She might claim her *ketubah* and lose her right to sustenance\(^{73}\).

\(^{67}\) The value of the estate is computed only after all liens and debts have been deducted.

\(^{68}\) In Halakhah 6:6, R. Hanina holds that daughters’ dowries are privileged.

\(^{69}\) R. Johanan that they are not privileged.
One would assume that practice would follow R. Johanan, but in Baba batra daughters' dowries are listed together with the ketubah and outstanding loans as diminishing the free portion of the estate used to determine whether it is "small" or "large".

69 This does not refer to any discussion; it introduces a new topic.

70 If the widow decides not to claim her ketubah, her claim of support by the estate is of equal weight with that of sons and daughters.

71 If there was just enough to sustain sons and daughters for 12 months but the widow also claims sustenance, then widow and daughters are sustained and the sons do not get anything.

72 This text does not make much sense. The text in Baba batra is in worse shape, but the original meaning can be gleaned from it even if the original text is lost irretrievably:

> sometimes the widow pushes out the daughters by means of the sons. Just as the widow pushes out the daughters by means of the sons, should she not push the sons out? Since clearly here the roles of "sons" and "daughters" are exchanged, the question is whether the widow's sustenance should not preempt the daughters' if the estate is not sufficient for all of them.

73 Her claim to sustenance is conditional; it cannot override the claim of the daughters which is absolute. The Babli disagrees, 43a, and declares that the claim of the widow precedes that of the daughter.

"The sons shall go begging." Some Tannaim state, "shall support themselves." He who says "shall support themselves", "make yourselves comfortable under the tree." He who says, "go begging", "may his children wander about begging, asking out of their ruins."
In *Baba batra*, the Escurial ms. has a third reading "shall go around."

75 The text reads χλώρης. "shall go around."

76 *Ps. 109:10.*

Rav Ze'ira, Rav Hananel in the name of Rav; Ze'ira in the name of Abba bar Jeremiah: Hanan made two statements, practice follows him; Admon made seven statements, practice does not follow him. Rebbi Abba bar Zavda in the name of Rebbi Isaac bar Haqula: In every case in which Rabban Simeon ben Gamliel said, I am convinced by Admon’s statement, practice follows him.

77 Except for small syntactical changes, this paragraph is identical with the one at the end of Halakhah 1, Notes 36, 37.

Mishnah 4: If somebody sues another for amphorae of oil, and the defendant admits [that he owes him] vessels, Admon says, since he admitted part of the claim he is made to swear, but the Sages say, what he admitted was not of the kind that was claimed. Rabban Simeon ben Gamliel said, I am convinced by Admon’s statement,
If neither party has proof but the defendant admits to part of the claim, it is rabbinic interpretation (Mishnah Sebuot 6:1) of Ex. 22:8 that the defendant has to swear that he does not owe more than he admitted. In Admon's interpretation, a claim for amphoras of oil is a claim for oil and the vessels in which it is contained, but for the Sages it is simply a claim for a certain standard measure of oil; if ownership of the vessels is also claimed, it would have to be stated explicitly. This Mishnah is repeated as part of Mishnah Sebuot 6:3, in a series of explanations of what means "agreeing to part of the claim."
Halakhah 4: "If somebody sues another for amphoras of oil," etc. The Mishnah, if he sued him for wheat and he admitted barley; but if he sued him for two kinds and he admitted one of them, according to everybody he is free.

Text in Ketubot.

Rebbi Immi in the name of Rebbi Johanan: The Mishnah, if he sued him for wheat and he admitted barley; but if he sued him for two kinds and he admitted one of them, according to everybody he is free. And why did we state: "Rabban Gamliel obligates him"? This comes to tell you the power of Rabban Gamliel, how far he obligates people. Rebbi Abbahu [supported] that of Rebbi Immi. Rebbi Simeon ben Laqish says, the Mishnah, if he sued him for wheat and he admitted barley; but if he sued him for two kinds and he admitted one of them, according to everybody he is obligated. Rav Shetuv: Halakhah 4: "If somebody sues another for amphoras of oil," etc. The Mishnah, if he sued him for wheat and he admitted barley; but if he sued him for two kinds and he admitted one of them, according to everybody he is free. And why did we state: "Rabban Gamliel obligates him"? This comes to tell you the power of Rabban Gamliel, how far he obligates people. Rebbi Abbahu [following] that of Rebbi Immi. Rebbi Simeon ben Laqish says, the Mishnah, if he sued him for wheat and he admitted barley; but if he sued him for two kinds and he admitted one of them, according to everybody he is obligated. Rav Shetuv: Halakhah 4: "If somebody sues another for amphoras of oil," etc. The Mishnah, if he sued him for wheat and he admitted barley; but if he sued him for two kinds and he admitted one of them, according to everybody he is free.
followed Rebbi Simeon ben Laqish: A person went with another to court before Rav. He started claiming from him barley, wheat and spelt. Rav told him, charge him with anything you have to charge, and in the end he will swear one oath about everything. Rebbi Abbahu said, so argued Rebbi Simeon ben Laqish against Rebbi Johanan: In your opinion, since you say that if he sued him for two kinds and he admitted one of them, according to everybody he is free, did we not state "if he sued him for vessels and real estate; if he admitted the vessels and denied the real estate, the real estate and denied the vessels"? If he is obligated for vessels about vessels, not so much more vessels for real estate? What does he do with it? He explains it, to transfer an oath to him. But did we not state: If somebody sues another for amphorae of oil, and the defendant said, it is only if he sued him for two kinds and he admitted one of them, but if he sued him for wheat and he admitted barley according to everybody he is obligated. Following Rebbi Simeon ben Laqish: A person went to court before Rav. When he claimed from another wheat, barley, and spelt. Rav told him, wait until he charged you with anything he has to charge, and in the end you will swear one oath about everything. Rebbi Abbahu said, so argued Rebbi Simeon ben Laqish against Rebbi Johanan. In your opinion, since you say that if he sued him for two kinds and he admitted one of them, according to the Sages he is free, did we not state "if he sued him for vessels and real estate; if he admitted the vessels and denied the real estate, the real estate and denied the vessels"? For vessels about vessels he is obligated, not so much more vessels for real estate? He answered him, to transfer an oath to him by the following Mishnah:
admits [that he owes him] vessels"? How do we hold? If he sued him for vessels and oil, and he admitted one of them, everybody agrees that this refers to the claim. But if he sued him for oil and he admitted vessels, everybody agrees that what he admitted does not refer to the claim. Rebbi Ze’ira, Rebbi Abuna said in the name of Rav: The Mishnah deals with the case that he sued for vessels full of oil; the ones are full, the others empty. One understands vessels but not oil. Oil but not vessels? Rebbi Eleazar in the name of Rebbi Abun formulates it as oil bucket. Can one not ask him in the end? If he lost his speech.

79 Except for this sentence, which is redundant since it is repeated in the Mishnah with attribution of authorship, the Halakhah is a not quite complete copy of Halakhah Sebuot 6:3. Since the deviations between the two texts are
not easily described as variant readings, both texts are given here side by side. It is seen that the basis of discussion is Mishnah Ṣebuot 6:6, not Ketubot 13:4. The major additions and changes in the Ṣebuot text are indicated by italics in the translation.

80 The Mishnah referred to is Ṣebuot 6:3 which states that if the claim was for wheat but the defendant admits an obligation for barley, the admission is not relevant for the claim and the defendant does not have to swear, except that Rabban Gamliel holds that any admission by the defendant obligates the latter to swear. This sentence is followed by a copy of the Mishnah here, detailing the difference between Admon and the majority about claims for oil with or without the containers. It is now claimed in the name of R. Johanan that if a claim is put forward for two unrelated items, the admission in full of liability for one item does not induce an obligation on the defendant to swear if he denies all liability for the second claim since the two claims, while stated together before the court and treated at the same time, really constitute two separate suits. This opinion is quoted in the name of R. Hiyya bar Abba in the name of R. Johanan in the Ṣebuot text and in the Babli, 108b; it is explicitly rejected in the name of R. Johanan in the Babli Ṣebuot 40a where R. Johanan, Rav Nahman and Samuel are quoted as stating that any claims which form one suit have to be treated as one common claim. The inconsistency of the Babli was recognized by the early commentators.

81 The opinion of R. Simeon ben Lakish and Rav quoted here is that of R. Johanan and Samuel in Babli Ṣebuot 40a; cf. the preceding Note. The Babli, loc. cit., implies that R. Simeon ben Lakish’s opinion in the matter is unknown.

82 This is the next sentence in Mishnah Ṣebuot 6:3. The Mishnah states that if one suit contains claims that have to be adjudicated following different rules of procedure, they cannot be consolidated and have to be treated separately. Since claims for real estate cannot be resolved by taking oaths (Mishnah Ṣebuot 6:5), if the claim was for movables and real estate, an admission by the defendant either of the claim for movables in full or for the claim for real estate either partially or in full cannot trigger an obligation to swear.

83 The last statement of Mishnah
Sebuot 6:3: A partial admission about movables triggers an obligation to swear about movables and real estate; a partial admission about real estate does not trigger an obligation to swear. As explained in this Mishnah, also Mishnah Qiddusin 1:5, and quoted in the Sebuot text, an obligation to swear about movables induces an obligation to swear about real estate.

84 See the Sebuot text for an intelligible version of this statement.

85 If the claim is not for storage vessels but for those used to draw oil from a large container.

86 The disagreement between Admon and the rabbis is not one that is frequently going to happen in practice.

Since the problem is one of semantics, does a claim for amphoras of oil imply separate claims for amphoras and the oil that fills them or is "amphora of oil" simply a technical term denoting a standard volume for which contracts of delivery are made? Any judge asked in such a matter will ask the parties to clarify the meaning of their statements and then it will be obvious whether the defendant accepted part of the claim or not. The difference in the interpretation could only arise if one of the parties cannot be asked, either if a party dies or if he loses his speech.

87 Cf. Note 80.

88 Cf. Note 83.

89 Cf. Note 84.

Mishnah 5: If somebody obligates himself about money for his son-in-law but then goes bankrupt, she must wait until her hair grows white. Admon says: "If I had obligated myself, I would have to wait until my hair grows white. My father obligated himself, what can I do?"
Marry definitively or divorce!” Rabban Simeon ben Gamliel said, I am convinced by Admon’s statement.

90 At the time of the preliminary marriage, the father signed a promise to deliver a dowry in a fixed amount before the definitive wedding date.

91 This is the meaning of the term in medieval rabbinic and modern Hebrew. "He stretched his foot" might also mean that he ran away; he cannot be found to be asked to fulfill his promise.

92 The bride, being preliminarily married, cannot marry any other man. Since the father did not fulfill his obligation, she cannot sue the groom either for a definitive wedding or for support after 12 months from the preliminary wedding.

Halakhah 5: "If somebody obligates himself about money for his son-in-law," etc. The Mishnah [deals with the case] that he obligated himself in her presence. But if he obligated himself not in her presence, even the rabbis will agree.

93 While one may give a person a benefit without his knowledge, one cannot impose an obligation on him without his knowledge (Mishnah Gittin 1:6). This implies in particular that a preliminarily married underage girl, whose father has promised money but has not paid, can always force a divorce once she reaches adulthood and is able to act in her own behalf. (The Babli, 109a, and Tosephta 12:4 hold that the court will intervene on behalf of a minor whose father does not pay and whose groom does not want to marry without money.)
It was stated\(^94\): Rebbi Yose ben Rebbi Jehudah said, Admon and the rabbis did not disagree about one for whom the father had promised money but went bankrupt that she may sit until her hair grows white. Where did they disagree? If she promised herself, Admon says, she might say, "I was of the opinion that my father wants to give, but now my father does not want to give\(^95\), what can I do? Marry definitively or divorce!"

Rabban Simeon ben Gamliel said, I am convinced by Admon’s statement.

\(^94\) Tosephta 12:4, Babli 108b.

\(^95\) The legal basis for the annulment of the preliminary marriage is the fact that the usual (but not unique) way of executing the marriage is a commercial transaction in which the groom buys the bride’s agreement to the marriage by giving her an object of value (such as a gold ring.) The bride now claims that, if the groom does not want to marry her definitively as is, the transaction is invalid as ממתא "a commercial transaction entered into in error." Since the marriage is no real commercial transaction, it can be dissolved only by a divorce.
Mishnah 6: If somebody protests about a field when he himself had signed as a witness, Admon says: "The second one fits me, the first one was harder"; but the Sages say, he lost his right of appeal. If he made [the field] a marker for another, he lost his right.

96 A goes to court to claim ownership of a parcel to which B holds title, and the contract by which B holds the land was signed by A as a witness to the sale.

97 Admon says that a person can argue in court that he put his signature on a fraudulent contract without declaring himself a criminal by explaining what he did. In the case in question he argues that the seller was a violent person who would have injured him had he claimed his property from him but that the buyer was a civilized person whom he could sue in court; therefore, it was in A's interest to sign the fraudulent document.

98 By testifying in writing that the transaction was legitimate, he is prevented from changing his testimony. This is a general principle, "after he spoke (as a witness, cross-examined in court), he cannot come back and speak again (in the same case)", cf. Halakhah 2:3, Notes 52-53. One has to assume here that the witness's signature had been confirmed in court.

99 If A himself executed a contract in which he described a parcel as being "bounded by B's field", he cannot later claim that the field was not B's. In this case, Admon will agree with the Sages.

Halakhah 6: "If somebody protests about a field," etc. Not only if he himself made it a marker for another [field], but even if a third person made it for a fourth, when he signed as a witness, he lost his right.

100 C wrote a sales contract in which he sold a parcel to D and describing the adjacent properties mentioned the field in dispute as B's
field. If A signs as a witness on that contract, he cannot claim title to B's field since, as noted by the Babli, 109a,

witnesses never sign a document without reading it first.

Mishnah 7: If somebody went overseas and lost the way to his field\footnote{He left for a long time and left his field untended. In the meantime, the neighbors ploughed their field and in time incorporated the boundary strip by which the farmer reached his field into their fields. Upon his return, he did not find any witnesses who could testify to where his access path had been located.} but the Sages say, he has to buy a right of access for a hundred minas\footnote{Since it is obvious that there had been an access path.} or fly through the air.\footnote{Since "the burden of proof is on the claimant", if he wants to take away a strip of land from any of the current owners, he must prove his case.}
Halakhah 7: "If somebody went overseas," etc. Rebbi Yose ben Hanina said, if he sues with reasons. This means, only if four [owners] surround him. Samuel says, even if one surrounds him on all sides. Joshua's stipulation: "If he was lost in vineyards or fields, he crosses and leaves until he reaches a road to his house, even a plot full of vineyards, for this is one of the conditions under which Joshua distributed the Land to Israel." Joshua stated this to leave, maybe to enter? Joshua stipulated for a person, perhaps for his cow? Rebbi Yose said, his cow usually returns; since a swarm of bees does not usually return, they treated it as if it were his body.

104 Admon gives the returnee a right of ingress if he can proof that he had a way and only its location is in doubt. The Sages require him to buy his right of way even if he can prove that he had one, as long as he cannot locate it.

105 In his interpretation, the returnee cannot reclaim his lost right of way if he cannot be sure from whom to claim. R. Yose ben Hanina would give him a right-of-way if all four adjacent fields belonged to the same person; in that case, the proof that a right-of-way existed should be sufficient.

106 As the Babli explains, Samuel agrees that the single owner of the four surrounding fields must give the returnee access to his field if he already had been the owner when the returnee left, since then certainly the owner of the surrounding fields took the lost path illegally. But if there were several owners when the returnee left, the current owner can claim that the returnee's suit must be directed against that prior owner who had taken over his earlier path, not against the buyer. If it is not known who in that case was the owner who incorporated the returnee's right-of-way into his property, the returnee cannot identify that owner, and loses his claim. The Babli, 109b, presents similar arguments in the name of other authors.

106 Ten categories of public use of private land are attributed to Biblical Joshua, attached as liens to the original distribution of land; cf. Kilaim 2:5,
One of the meanings of Arabic Λ. If somebody is lost in vegetation, he may cross growing fields and orchards until he regains his orientation.

If the person who lost his way can cross other peoples' fields, why can the returnee whose path was lost not cross into his field?

A path to the field is worthless if the field cannot be ploughed because the cattle to draw the plough cannot enter.

The beekeeper can enter another person's private domain to catch the swarm which left his hive; cf. 2:11, Notes 204-205.

Rebbi Jeremiah said, both Admon and Rebbi Aqiba said the same thing, as we have stated there: "If he sold them to another person, Rebbi Aqiba said, he does not have to buy access, but the Sages say, he has to buy access." He had not heard that Rebbi Hila said, Rebbi Yasa in the name of Rebbi Johanan: They disagree when nothing was mentioned. Where do we hold? If it is obvious that access was included, everybody agrees that he does not have to pay for access. If it is obvious that access was not included, everybody agrees that he has to pay for access. But we must hold that nothing was mentioned.
Rebbi Aqiba said, he does not have to buy access, but the rabbis say, he has to buy access. But in the case here, even while it is clear that he had access, everybody\textsuperscript{116} agrees that he has to pay for access.

\textsuperscript{111} In a slightly different formulation, this paragraph is also in Baba batra 4:2.

\textsuperscript{112} Mishnah Baba batra 4:2. The Mishnah belongs to a series of statements about commercial contracts. If somebody sold cisterns in his backyard to a third party, R. Aqiba holds that nobody buys anything which he cannot use; therefore, it is understood that the seller, by offering the cisterns for sale, did also offer access to them. But the Sages hold that people also buy real estate for speculation and, therefore, the sale covers only what is explicitly stated in the sales contract and nothing more.

\textsuperscript{113} The sales contract does not mention access.

\textsuperscript{114} If the right of access to the property was mentioned in the contract.

\textsuperscript{115} It is not necessary that access was excluded, it suffices if the contract states that only cisterns are sold.

\textsuperscript{116} This is not everybody; everybody except Admon. The question in Ketubot is not one of interpretation of commercial contracts but of enforcing a claim if it is not known against whom the claim could be enforced.
what is yours when you sold me the field\textsuperscript{118};" but the Sages say, that one was smart when he sold him real estate because he can take it as a pledge\textsuperscript{119}.

\textsuperscript{117} The field was sold after the note had become due.

\textsuperscript{118} The debtor can claim the debt documented in the I.O.U was forgiven since the creditor sold him something for the money which was due to him.

\textsuperscript{119} If the original mortgage stated that all present and future holdings of the debtor are pledged and the creditor was afraid the debtor would not pay, he seduced the latter into parting with his money by offering him real estate. If the debtor then does not pay, the creditor can take the real estate back and end up both with his money and his original property.

\textsuperscript{118} The debtor can claim the debt documented in the I.O.U was forgiven since the creditor sold him something for the money which was due to him.

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\textsuperscript{118} The debtor can claim the debt documented in the I.O.U was forgiven since the creditor sold him something for the money which was due to him.

\textsuperscript{119} If the original mortgage stated that all present and future holdings of the debtor are pledged and the creditor was afraid the debtor would not pay, he seduced the latter into parting with his money by offering him real estate. If the debtor then does not pay, the creditor can take the real estate back and end up both with his money and his original property.

\textbf{Halakhah 8:} "If somebody produces a promissory note on another person," etc. Rebbi Jonah says, if it is worth it\textsuperscript{120}; Rebbi Yose says, even if it is not worth it\textsuperscript{121}. Think of it, if he had real estate\textsuperscript{122}! He can say to him, I want good real estate\textsuperscript{123}. Think of it, if he had good real estate\textsuperscript{124}! He can say to him, I want mine. In addition, he can say to him, to care for two parcels overtaxes my powers\textsuperscript{125}.

\textsuperscript{120} The Sages' argument in the Mishnah is good only if the sale of real estate covers the entire amount due.

\textsuperscript{121} Even if the creditor cannot recover the entire amount of the bad debt, even partial recovery is better than nothing at all.

\textsuperscript{122} If the debtor had real estate and the I.O.U. was already secured as a mortgage.
123 The argument is not detailed since a creditor can claim only to be paid by real estate of average quality (Chapter 9, Note 195; Chapter 12, Note 57). The argument given here makes sense only if one assumes with the following statement that the creditor can take back his own property.

124 If the debtor already had real estate which would satisfy all demands of a creditor. [R. Nissim Gerondi (commentary to Alfasi) reads: "If he had no good real estate", i.e. if the creditor did not have real estate worth while for such a transaction.]

125 If he had to foreclose another parcel, he would have to work two fields. If he manages to foreclose his own, he has cash and only one field to work.

Mishnah 9: If two people mutually produced promissory notes of one on the other, Admon says: "If I owed you, how come you borrowed from me?" But the Sages say, each collects the amount of his note.

126 The one whose note is dated later claims that his own indebtedness was paid off even though he has no receipt in his possession, since the other party could have taken its money back instead of taking out a loan.
Halakhah 9: "If two people mutually produced promissory notes of one on the other," etc. If one borrowed a mina from the other, but the other borrowed from him 200 [zuz]. Rav Huna said, Rav Nahman bar Jacob and Rab Sheshet disagree. One says, one counts one mina against the other mina, but the other says, each one collects the amount of his note. He who says, one counts one mina against the other mina, learns it from tame oxen who injured one another, where half of the excess damage is paid. He who says, each one collects the amount of his note, learns it from the Sages and Admon. Can the Sages and Admon not agree that one counts one mina against the other mina? Because we have stated: Admon says: "If I owed you, how come you borrowed from me?" Therefore it was necessary to say, each one collects the amount of his note. If the holder of the note of 200 forgave a mina, but the holder of the note of a mina did not forgive. For him who says, one counts one mina against the other mina, already one mina against the other mina was counted. But for him who says, each one collects the amount of his note, then what he forgave he cannot collect but what was not forgiven.
he can collect. If the note for 200 was written in a document but the loan for a mina was not written. For him who says, one counts one mina against the other mina, already one mina against the other mina was counted. But for him who says, each one collects the amount of his note, the holder of the written note can collect but the recipient of the oral promise cannot collect\textsuperscript{132}.

127 In the Babli, 110a, Rav Nahman is identified as holding that each one collects the amount of his note, Rav Sheshet that one counts mina against mina. Rav Nahman's opinion is then restricted to the case that neither of the parties has money to satisfy his obligation and that the average quality of their respective real estate holdings is unequal. This means that in the Babli, Rav Nahman agrees with Rav Sheshet except in the case where such a mutual accounting would be to the detriment of one party. This interpretation is excluded by the Yerushalmi's examples at the end of this paragraph.

128 If a steer which has no history of injuring other animals gores another steer, Ex. 21:35 requires the owner of the animal to pay half of the damages caused by his steer. If two such steers fight with one another and injure one another, Mishnah Baba qama 3:9 prescribes that money changes hands only for the amount for which one injury was estimated to be larger than the other. Since the fighting steers create obligations for their owners, it is seen that mutual obligations can be counted one against the other.

129 Most commentators want to correct the text from \text{n}רנכניי \text{]אאכ} to \text{n}רנכניי \text{]אאכ} "the rabbis opposing Admon." But since \text{n}רנכניי \text{]אאכ} can be interpreted as "the rabbis in their discussion with Admon", the readings of ms. and editio princeps can be upheld as lectio difficilior.

130 It is not necessary to read the Mishnah as prescribing that the notes have to be paid in cash and cannot be liquidated by accounting. Since Admon would allow one of the note holders to contest the other note without producing a receipt, all the rabbis say is that nobody can claim that a valid note was paid unless he produces a
No money changes hands since the two notes cancel one another out.

If one loan was given as a mortgage but the other as a loan before witnesses, the mortgage can be foreclosed from any property the debtor had but the loan before witnesses could be foreclosed only from property not otherwise encumbered. If there are any other mortgages outstanding on the debtor’s property, the holder of the loan before witnesses cannot foreclose.

Mishnah 10: There are three districts for marriage, Judea, Transjordan, and Galilee. One does not move from one village to another village and from one walled city to another walled city, except that in one district one moves from one village to another village and from one walled city to another walled city, but not from a village to a walled city or from a walled city to a village. One moves from a bad neighborhood to a better one but not from a better one to a worse one. Rabban Simeon ben Gamliel says, not even from a bad neighborhood to a better one, because the better neighborhood tests.

Cf. Sevi’it 9:2, Note 39. These districts are considered separate entities.

The husband who married without stipulating that he has the right to determine the place of residence at will cannot force his wife to move, except within her own district to
another place of approximately the same size.  

135 Cf. Berakhot 9:5, Note 216.

136 A radical change of circumstances can cause medical problems.

...
Galilee but must live with him in Judea.

140 Tosephta 12:5. They used to write in the ketubah the place of origin of the groom and the place of the wedding, in order not to leave any doubt in which district the husband could dwell without his wife being able to object.

141 In the Tosephta: "One moves from a mostly Gentile village to a mostly Jewish village but not from a mostly Jewish village to a mostly Gentile village." In Babylonia there were no totally Jewish villages.

And from where that a better neighborhood tests? Rebbi Levi in the name of Rebbi Hama in the name of Hanina: "That disaster should not cling to me and I die." He was in the plain and was directed to the mountains, and you say so? But from here that a better neighborhood tests!

142 That more healthy surroundings can cause problems.

143 Gen. 19:19, Lot speaking to the angels who had told him to move to the mountains to escape the destruction of Sodom. The climate in the Moabite mountains is much healthier that in the plain of the Dead Sea.

A slightly expanded version is in Gen. rabba 50(20) by R. Berekhia in the name of R. Levi. The Babli, 110b, quotes a verse of Sirach to the same effect.
Mishnah 11: Everybody moves to the Land of Israel but not everybody leaves. Everybody moves to Jerusalem but not everybody leaves. How is this? If he married a woman in the Land of Israel and divorced her in the Land of Israel, he pays her in coin of the Land of Israel. If he married a woman in the Land of Israel and divorced her in Kappadokia, he pays her in coin of the Land of Israel. If he married a woman in Kappadokia and divorced her in the Land of Israel, he pays her in coin of the Land of Israel; Rabban Simeon ben Gamliel says, in coin of Kappadokia. If he married a woman in Kappadokia and divorced her in Kappadokia, he pays her in coin of Kappadokia.

144 As explained in the Halakhah, if one part of the family wants to emigrate to the Land of Israel, the other has to follow.

145 This word is not in the Babli; it is found in all Yerushalmi Mishnah mss. and Maimonides’s autograph Mishnah. It implies that the preference given to the coin of the Land of Israel is a consequence of the first part of the Mishnah.

146 This is unproblematic; since ketubah and bill of divorce were executed in the same country, it is clear that the sum stipulated in the ketubah, whose payment was triggered by the bill of divorce, has to be settled in the coin of the country.

147 It is pointed out in the Babli that in terms of contract law, the two statements contradict one another. If he married in Israel and had to pay in coins of Israel, it implies that the ketubah determines the currency. But if he married in Kappadokia and had to pay in coins of Israel, it implies that
the bill of divorce, the trigger of the payment, determines the currency. (In the Babli, 101b, and the Tosephta, 12:6, Rabban Simeon ben Gamliel states that the place of executing the *ketubah* determines its currency.) The Babli, 110b, concludes that, since the Persian coins current in Kappadokia are better than the debased Roman coins in Israel, the obligation of the *ketubah* is a rabbinic institution and the possibility of paying with debased coin was part of the institution. The Yerushalmi (also Tosephta, 12:6) will argue that the Jewish coins of Israel, not the Roman coins, are meant and, therefore, the Mishnah proclaims a stringency which can only be explained by giving the *ketubah* biblical status.

**Halakhah 11**: "Everybody moves," etc. If he wants to move to the Land of Israel but she does not, one forces her to move.¹⁴⁸ If she wants but he does not, one does not force him to move.¹⁴⁹ If he wants to move to Jerusalem but she does not, one forces her to move. If she wants but he does not, one does not force him to move.¹⁵⁰ If he wants to leave the Land of Israel but she does not, one does not force her to leave. If she wants to leave but he does not, one forces her not to leave.

¹⁴⁸ In the Babylonian texts, Babli 110b and Tosephta 10:5, it is explained that "forcing" means that the refusing party is the guilty party in the ensuing divorce.

¹⁴⁹ In Babli and Tosephta: "One forces him".

¹⁵⁰ The sentences about Jerusalem are missing in Babli and Tosephta.
"He pays her in coin of the Land of Israel." This implies that the coins of the land of Israel are the best of all countries. This supports him who says that a woman's ketubah is from the words of the Torah, against Rabban Simeon ben Gamliel, as it was stated: Rabban Simeon ben Gamliel says, a woman's ketubah is only an institution of the Soferim.

151 Since Palestine had no imperial mint in Talmudic times, this cannot refer to Roman coins in circulation, which were coins in the Land but not of the Land. It must refer to the minting standards of the two revolts whose Jewish coins were intended to be used for the Temple tax and as such were of full weight, i.e. the "holy sheqel". This also must be the meaning of the statement in the Tosephta 12:6, cf. S. Lieberman, "משatron" p. 389.

152 Because it has to be paid in terms of biblical coin standards.

153 Babli 10a, in a first version. In the second version and in 110b, he is reported to consider ketubah a biblical obligation. In Mekhilta dR. Simeon bar Iohai p. 209, a Babylonian compilation in the opinion of J. N. Epstein, Rabban Simeon ben Gamliel is quoted as saying that ketubah has no fixed sum from the Torah; i.e., the institution is biblical, "the mohar of virgins", but the amount and all details are rabbinical.

The Babli follows the saboraic rule that practice always follows Rabban Simeon ben Gamliel in the Mishnah; a principle not known to the Yerushalmi and certainly rejected here. Cf. also 1:2, Notes 112-120, 4:8 (29a l. 30), 4:12 Note 248; Yebamot 7:2 Note 63, 15:3 Note 63. For biblical status of ketubah, Mekhilta dR. Ismael, Mišpatim 17 (p. 308, ed. Horovitz-Rabin).

154 I.e., dating from Ezra and/or his successors.
Introduction to Tractate Niddah

Tractate *Niddah* is the only one from the Seventh Order of the Mishnah, *Tahorot*, "purities", detailing the rules of impurity, which is treated in the Babylonian Talmud. In the Yerushalmi, only a fragment has survived, consisting of the first three Chapters and a few lines of the fourth. The theme of the Tractate is the impurity of a menstruating woman (*Lev. 15:19-24*) and of the woman after childbirth (*Lev. 12:1-8*). Connected with this impurity is the prohibition of sexual relations with menstruating women and those having given birth (*Lev. 18:19*).

The first two Chapters deal mostly with the effect of menstruation on the preparation of food in ritual purity. These rules seem vastly to exceed the biblical rules on which they are based. On the other hand, it is a pharisaic-rabbinic peculiarity that not all genital discharges imply impurity; the second Chapter contains a discussion of the impure discharges. It is known from the Damascus document that Sadducees regarded all genital discharges as impure.

The third Chapter is a collection of precepts on how to deal with stillbirths and fetal malformations.
Mishnah 1: Shammi says, every woman's timing is exact; Hillel says, from checking to checking, even if that is a long time. But the Sages say following neither of them but for checking to checking to be reduced by 24 hours, and from 24 hours to be reduced by checking.

Mishnah 2: Every woman with a regular period follows her exact timing; and if one has intercourse with cloths, this counts as checking and is reduced by 24 hours and by checking.

1 A menstruating woman is impure and imparts original impurity to anything she sits on (Lev. 15:19-23). While impurity of food is not mentioned in these verses, it is taken for granted that if she imparts impurity to implements that do not easily become impure, certainly she imparts impurity to food which easily becomes impure. The impurity is defined (v. 19) by "blood is flowing from her flesh". Shammi holds that a woman notices exactly when her period starts; therefore any food she touches after the onset of her period is impure but anything she had touched before is pure.

2 Hillel holds that blood drops
can separate from the uterine wall without necessarily flowing out of the vagina. For him, all food a woman touched between the last time she checked herself thoroughly and the noticed onset of her period are retroactively declared possibly impure.

3 For them, a woman with a regular period does not have to worry about retroactive impurity (Mishnah 2). If she has no regular period, she is expected to check herself from time to time but the retroactive impurity cannot extend to more than 24 hours; the interval of impurity is the smaller of 24 hours and the time from the last thorough check.

4 Latin svetum, corresponding to Hebrew "regularity"; cf. E. and H. Guggenheimer, Notes on the Talmudic Vocabulary 8-11, Lešonenu 37 (1973), 105-112.

5 After intercourse (according to Rashi: before and after intercourse) she wipes herself with a clean cloth which can be inspected the next morning. The connection of the word דתית to the biblical hapax in Is. 64:5 is due to Qimhi; according to Rashi (Is. 64:5), the biblical word is an Aramaism and means "to be discarded". In Niddah, Rashi seems to to read דתית as "a witness".

"Shammai says, every woman’s timing is exact," etc. What means, "their timing is exact"? They do not retroactively impart impurity to food prepared in purity. "But the Sages say following neither of them," not following Shammai who imposed no restriction, and not like Hillel who went overboard. "But for checking to checking it is reduced by 24 hours,
and from 24 hours is reduced by checking." How is checking to checking reduced by 24 hours? If she checked herself on Tuesday and saw blood on Thursday, [her food] is impure only from the same time on Wednesday. How is 24 hours reduced by checking? If she checked herself out in the morning and saw in the afternoon, it is impure only starting from the morning.

A slightly longer version is in Babli, 4b, and Tosefta 1:1-2.

There, we have stated: "A [dead] crawling animal found in a dead-end alley causes impurity retroactively. Rebbi Immi asked, does this Mishnah not disagree with Shammai? Rebbi Yose said, this is true, it does not follow Shammai, but even Hillel it does not follow. Does Hillel not agree that a dead-end alley which was swept or inundated by a rainstorm is pure? Shammai says, since this woman regularly urinates, she is like a dead-end alley which was swept or inundated by a rainstorm and is pure.
of public domains since it is used only by its inhabitants and their visitors. It can be turned into a private domain as far as the rules of the Sabbath are concerned (this is the topic of Tractate *Erubin*). It is a private domain for the rules of impurity, meaning that a doubt of impurity has to treated as presumptive impurity; cf. *Sotah* 1:2, Note 88.

10 The Mishnah continues: "up to the time it was swept (with a broom)."

If any food was transported through the alley, one assumes that the bearer touched the dead crawling thing, became impure, and transferred that impurity to the food he was carrying. One assumes that sweeping the alley with a broom cleans it, but one fears that the animal died very soon after the alley was swept. Therefore, it seems that impurity in a dead-end alley follows Hillel's rules.

11 It would seem that one has to read: R. Yasa, R. Immi's companion.

12 In this case, nobody checked but one assumes that the rain swept everything away. This case appears neither in the Mishnah nor in the Tosephta (6:12).

13 She would notice any blood at that time.

14 Shammai's position is the most rational one. It presumes that the Mishnah speaks of an alley which is swept regularly (Babli 56a/b). In the Babli, 3a, Hillel denies that a woman will check herself for blood when urinating.
So far if she checked and found herself dry\textsuperscript{15}. If she checked and found herself pure\textsuperscript{16}? Rebbi Immi in the name of Rav, Rebbi Abba in the name of Rav Jehudah: If she checked and found herself pure she is forbidden to her husband until her [blood's] source dries up\textsuperscript{17}. One Rebbi Tobi said in the name of Rebbi Abbahu, she is forbidden to her house for 24 hours. Rebbi Jacob bar Aha said, when I\textsuperscript{18} immigrated here, I heard from all rabbis that she is immediately permitted to her husband\textsuperscript{19}. They wanted to say that for him who says, she is permitted to her husband, this is a check which diminishes from 24 hours\textsuperscript{20}, but for him who says, she is forbidden to her husband, it is not counted as a check which diminishes from 24 hours\textsuperscript{21}. But even for him who says, she is forbidden to her husband, it is counted as a check which diminishes from 24 hours\textsuperscript{22}. Why is she forbidden to her husband? Because she is used to pure blood, she might get used to impure blood\textsuperscript{23}.

\textsuperscript{15} No discharge whatsoever.
\textsuperscript{16} She found a discharge from her body but it was of a kind declared pure in Mishnah 2:6. The existence of pure genital discharges is Pharisaic doctrine, absolutely denied by all Sadducee sources known to us; cf. the Damascus Document CD 5:7, Mishnah 4:2.
\textsuperscript{17} This is the standard Babylonian doctrine, culminating in the Babli (66a) in R. Ze'ira's doctrine, which accepts the Sadducee doctrine that all discharges are impure and, in order to avoid the consequences of this doctrine which are unacceptable in Pharisaic practice, treats every menstrual discharge as a continuing non-menstrual discharge (Lev. 15:25-30), which requires an additional seven days before purity may be achieved. Babylonian practice accepts the distinction between pure and impure discharges only for the rules of impurity, which were irrelevant in Babylonia, but not for those of marital relations.
\textsuperscript{18} A Babylonian immigrating into Palestine.
\textsuperscript{19} Since the determination of the character of blood as pure or impure is
in the domain of competence of a rabbi, it follows that the woman who claims her blood to be pure has to show her blood to a rabbi. It is not to be assumed that any woman did that unless her household was run on the rules of ritual purity, i.e., a family of Cohanim or of "fellows" (cf. Introduction to Tractate Demay).

20 All the food she prepares remains pure.

21 If she later has an impure discharge, the food becomes retroactively impure.

22 There is no reason to make the status of the check depend on its outcome.

23 Once she is used to the looks of the pure discharge, she might decide herself about the quality of her discharge and wrongly qualify impure for pure. The prohibition of marital relations in this case is purely rabbinical; it has no biblical source.

If she checked herself and found it a doubtful case, it is not counted as a check to diminish from 24 hours. Itself, would it be impure because of doubt? Let us hear from the following: "A sexless or a hermaphrodite who had a discharge follow their exact timing." What do you infer from this? Rebbi Yose said, a sexless or a hermaphrodite represent a doubt, 24 hours represent a doubt, and a doubt is not superimposed on a doubt.

24 If it cannot be decided whether the discharge is pure or impure. (This is the explanation of R. Moses Margalit. It is somewhat difficult to accept since
(a) in matters of biblical prohibitions a doubt has to be resolved in a restrictive way and (b) this is a matter of impurity in a private domain and has to be declared impure; cf. Note 9, Sotah 1:2 Note 88. Therefore, it seems more likely that it cannot be determined whether there was any discharge.)

25 If later this was followed by a genuine discharge, the previous doubt was resolved and food retroactively became impure for 24 hours.

26 The blood according to R. Moses Margalit, or alternatively the cloth used for the check.

27 Tosephta 1:3. The sexless has neither penis nor vagina, cf. Yebamot 8:6, Note 226. He could be a male with an ingrown penis. It is difficult to see how he could have a female genital discharge.

28 He has penis, testicles, breasts and vagina; if he has a discharge, its status is in doubt since if he is a male, the vaginal discharge is irrelevant. Cf. Yebamot 8:6, Notes 224,225,236,237,242.

29 In the Babli, this is called יִּצְרָאֵל "a doubt superimposed on a doubt" (Qiddusiin 75a); a prohibition in such a case would be disregarded. Cf. Ketubot 1:1 Note 23, Yebamot 16:1, last line.

30 R. Moses Margalit would translate: "The nature of her discharge is in doubt".

31 Huna bar Hiyya said, the 24 hours which were quoted refer to sacrifices but not to pure food. Rav Hisda objected, was it not stated:

"It happened with a girl in Aitlo that she missed for three periods and then had a period. When the case came before the Sages, they said that..."
her timing is exact." Are there sacrifices in Aitlo? But it must be food prepared in the purity of sacrifices\textsuperscript{36}! Is that not really profane food\textsuperscript{37}? Explain it if it was prepared in the purity of purifying water\textsuperscript{38}, since purifying water has more restrictive rules than sacrifices.

31 From here on, a Geniza fragment is available; its readings are denoted by \( a \). For the quotations from a Tosephta, the Babli is denoted by \( b \), the Tosephta edited by Zuckermandel by \( \nu \).

32 In the Babli, 4a, he is identified as Rav Huna. This is the only place in which his patronymic is given.

33 He denies the applicability of the Mishnah after the destruction of the Temple. Since the only sanctified food available after the destruction of the Temple was heave, the entire discussion becomes academic.

34 Tosephta 1:9, Babli 9b.

35 The vocalization is not known; the Babylonian tradition is different; the place has not been identified. But in any case it is impossible to prepare sacrifices outside of Jerusalem since living animals cannot become impure and the material for flour, wine, and oil sacrifices was controlled by the Temple.

In Babli and Tosephta it is stated that the impurity in effect should have been retroactive, that the ruling as given fits only extraordinary circumstances. One may assume that the Yerushalmi refers to a similar text and that Rav Hisda the Babylonian’s question really refers to this, that under normal circumstances the impurity of a menstruating woman without regular period should act retroactively on food prepared in purity outside of Jerusalem.

36 Profane food, eaten by people who insist that they adhere to strict standards of purity. While most of these, called "fellows", observed the standards of heave (which recognizes three degrees of derivative impurity, cf. Introduction to Tractate Demay, p. 349; Demay 2:2, Note 137), some people adhered to standards of sacrifices which recognized four degrees (Mishnah Tahorot 2:5).

37 Mishnah Tahorot 2:8 decrees that profane food prepared according to the standards of sacrifices is still profane, admitting only two degrees of derivative impurity. A minority
opinion admits three degrees, but certainly not four. This may be a polemic against followers of sects similar to that of Qumran, whose MMT text seems to prescribe the purity of sacrifices for all members of the group of the select few.

38 The water to which ashes from the red cow were added and which purified from the impurity of the dead. This water had to be guarded even from touching sacrificial food, Mishnah Parah 10:6. The ashes were available in Palestine a long time after the destruction of the Temple, cf. Berakhot 1:1, Note 3; it was not impossible for a priestly family to preserve the rules of this purifying process.

It was stated: For the 24 hours which were stated, one suspends but one does not burn. Rebbi Ze'ira enjoyed this [because] he found stated: "A woman who detects a stain makes impure retroactively."
What does she make impure? Food, and drinks, and seats, and beds; her count is in disorder, and she makes her sex partner impure retroactively. A woman who detects blood makes impure retroactively. What does she make impure? Food, and drinks, and seats, and beds; her count is not in disorder, and she does not make her sex partner impure retroactively. Rebbi Aqiba says, she makes her sex partner impure retroactively. In both cases, one suspends but one does not burn. There, they say: For the 24 hours which were stated, her bed is like her touch. How? Like one who sleeps with a menstruating woman who does not make impure by moving and does not make clay vessels impure. It was found stated: He makes clay vessels impure by moving. For the 24 hours which were stated, what is the status of what she touches in the public domain? Let us hear from the following: Pregnant and nursing women are pure for their husbands, as is a woman with a regular period. And all other women are pure for sexual relations but impure in their touch. That means, what she certainly touched in the public domain is impure.

39 All variant readings are from the Geniza fragment. Mostly they just represent Galilean spelling.

40 If heave was declared "impure" because a woman had handled it within 24 hours of her menstrual impurity, it cannot be burned as impure heave since the declaration was purely precautionary; the woman might have been impure when touching the heave. Since it is forbidden to destroy pure sanctified food, that heave neither can be destroyed, for perhaps it is pure, nor be used, for perhaps it is impure. It has to be left unused until it spoils, is no longer food, and automatically loses its sanctified status.

41 Tosephta 96,5; Babli 6a, both in slightly different formulation.

42 She detects a blood stain on her garment. This is proof that she bled sometime but she does not know when.
The retroactivity extends all the time back until either the time when the woman had checked herself or the garment had been washed.

By Lev. 15:20-23, any seat or couch used by a menstruating woman becomes a source of original impurity. The impurity of food is not mentioned in the verses; it is only secondary (cf. Note 36). The original impurity of beds and seats induced retroactively is also asserted in the Babli, 5b.

By tradition, denied by Sadducees, there are 11 days after the end of seven days of a menstrual period in which no new menses are possible, in which any bloody discharge cannot be menstrual but must follow the rules of zava. But if the start of the period is unknown, the count is impossible and any discharge triggers a seven day menstrual period.

Since her impurity was unknown to her.

In Tosephta and Babli: For 24 hours. The Yerushalmi probably assumes the validity of the Sages' statement in Mishnah 1.

She counts from the moment she notices the discharge.

Stain or blood.

In Babylonia. This statement is missing in the Geniza text.

Since her touch creates only derivative impurity, her seat and bed also do not become sources of original impurity.

Lev. 15:24 declares the man and his seat or bedding as impure but refrains from declaring seat and bedding as sources of original impurity.

Lev. 15:6 is interpreted that the male sufferer of gonorrhea imparts impurity to anything he moves, even if he never touches it. By biblical standards, a clay vessel cannot become impure by being touched from the outside; it becomes impure only by an original impurity inside its cavity. If a clay vessel has a cover fastened to it, it also cannot become impure by the impurity of the dead. But if either a (male or female) sufferer from gonorrhea or a menstruating woman indirectly moves a clay vessel, for example moving a wooden plank (in itself impervious to impurity) on which there is a closed clay vessel, that vessel and its contents become impure.

In the Tosephta (Note 41) this is asserted for both cases of menstrual impurity. The baraita quoted here disproves the earlier statement which denied the possibility of impurity by moving.

A general rule states that a
doubt about matters of impurity in a public domain can be disregarded (cf. Note 9). The question is, if a woman had certainly touched something in the public domain within 24 hours of her menstruation, is this counted as a doubt or not?

56 A related text in Tosephta 3:8.
57 They are not supposed to menstruate.
58 Except close to her time.
59 Excluding pre-puberty girls and post-menopausal women. There are not many women left in this category of "others".
60 Since at any time they could induce retroactive impurity.

Rebbi Yudan asked: She checked her garment in the morning and found it pure, in the afternoon and found a stain on it. It is obvious that her garment is retroactively impure only after the time of her checking. Is her body impure for retroactive 24 hours? Does one not declare her body to be impure only because of her garment? Her garment is retroactively impure only after the time of her checking; her body should retroactively be impure for 24 hours61?

61 The 24 hour rule is never mentioned in connection with stains.
"And if one has intercourse with cloths, this counts as checking." How is that? If she checked herself in the morning, had intercourse with a cloth at noontime, and saw [blood] in the afternoon, she is impure only from after the time of intercourse. Levi said, the Mishnah speaks of a cloth used after intercourse, but for a cloth used before intercourse she would be impatient for her mate and not check thoroughly. Rebbi Abun in the name of Rebbi Ze'ira, the Mishnah speaks of a cloth used before intercourse, but a cloth used after intercourse is faded because of semen.\(^{62}\)

62 The Babli, 5a, requires both checks.

Mishnah 3: How is her timing exact? If she was sitting on a bed occupied with pure food, if she left [the bed] and saw blood, she is impure but all the food is pure. Even though they said, she is retroactively impure for 24 hours, she counts only from the moment she saw. Rebbi Eliezer says, the timings of four kinds of women are exact: a virgin, and a pregnant woman, and a nursing one, and a post-menopausal. Rebbi
Joshua said, I heard only about the virgin, but practice follows Rebbi Eliezer.

63 The woman with a regular period, who may prepare pure food until close to the time of her period.

64 The woman without an established period.

65 As explained in the next Mishnah, this is a young girl who never had a period, independent of any sexual activities she might have had.
"Rebbi Joshua said, I heard only about the virgin, but practice follows Rebbi Eliezer." One does not say, somebody who did not see the new moon should come and testify, but one says, if somebody saw the new moon, he should come and testify. You did not hear, I heard. All during Rebbi Eliezer’s lifetime, practice followed Rebbi Joshua. After Rebbi Eliezer’s death, Rebbi Joshua introduced practice following Rebbi Eliezer. Where do we hold? If Rebbi Eliezer heard from one [authority] but Rebbi Joshua from two, practice should follow Rebbi Joshua whether [Rebbi Eliezer] was alive or dead. But if Rebbi Joshua heard from one [authority] but Rebbi Eliezer from two, practice should follow Rebbi Eliezer whether he was alive or dead. As it was stated: One says, I heard from two [authorities] and two say, we heard from one, the power of the one who heard from two is greater than that of two who heard from one. But we must hold either that either one heard from one or that either one heard from two. During his lifetime he was not convinced of his opinion, after he died he became convinced of his opinion. What did he see to say that he became convinced of his opinion? As it was stated: The stains of all four categories of women, about whom the Sages said that their timings are exact, cause retroactive impurity except for a girl who is too young to menstruate, for that one has no stains, the
words of Rebbi Meir. But the Sages say, for all four categories of women about whom the Sages said that their timings are exact, their stains cause retroactive impurity except for a girl about to start to menstruate, for her stains start with her menstruation. Since if she sees blood her timing is exact, so also for her stain her timing. Rebbi Yannai said, because her sap is frequent. If the timing of one whose sap is frequent is exact, the others whose sap is not so frequent so much more! By this reason he became convinced of his opinion.

66 To testify that he saw the new moon, to proclaim a new month.
67 In the language of the Mishnah (Idiut 2:2): "'We did not see' is no proof;" neither is 'we did not hear'.
68 Since R. Eliezer did not accept majority votes in religious practice, he was put in the ban and R. Joshua was the undisputed authority. After R. Eliezer's death, practice could follow his opinion without creating the danger of a schism.
69 The translation follows the Geniza text which reads הנ unheard "the power is greater" rather than the Leiden ms. הנ unheard "(an unknown subject) empowered". The principle is mentioned in Mishnah Idiut 5:7.
70 R. Eliezer.
71 R. Joshua.
72 The rules of stains do not apply to her. The Babli has a different version, 5a, and defines the onset of menstruation as the earlier of either the growth of two pubic hairs or 12 years of age.
73 The reading of the Leiden ms. seems superior to Geniza ms., "too young to menstruate".
74 נְחַל is tree sap. It is an appropriate image for body fluids before the discovery of the circulation of blood. There would have been reason to make the impurity of the girl in puberty retroactive. Since R. Joshua agrees that in her case there is no retroactivity, there is no reason to extend retroactivity to the other three cases.
**Mishnah 4:** What is a virgin? Any female who never saw blood, even if she was married. Pregnant, once the fetus is recognizable. Nursing, until she weans her child\(^ {75}\). If she gave her child to a wet-nurse or weaned him, Rebbi Meir says she causes retroactive impurity for 24 hours but the Sages say, her timing is exact\(^ {76}\).

75 24 months after birth, cf. *Sotah* 76 The entire 24 months.

4:4, Note 57.

**Halakhah 4:** "What is a virgin? Any one," etc. So is the Mishnah: Any one who never did menstruate; they spoke of one virginal for blood, not one virginal for sexual relations. Sometimes she is virginal for blood and not virginal for sexual relations, sometimes she is virginal for sexual relations and not virginal for blood. She is virginal for blood if she started to menstruate before marrying; she is virginal for sexual relations if she married before menstruating.
It was stated\textsuperscript{77}: "There are three virgins: a human virgin, a virgin sycamore, and virgin soil. A human virgin, who never had intercourse. A virgin sycamore, which never was cut\textsuperscript{78}. Virgin soil, which never was ploughed\textsuperscript{79}; Rabban Simeon ben Gamliel says, which has no groove\textsuperscript{80,81}.

\textsuperscript{77} Midrash \textit{Samuel} 26:2; Tosephta \textit{Sevi'it} 3:10, in a different order which is followed also in Babli \textit{Niddah} 8b. This \textit{baraita} somehow negates the Mishnah which transfers to name of "virgin" to the pre-menstrual girl.

\textsuperscript{78} Sycamores were planted not for their fruits but to produce logs for buildings. The sycamore can be cut and from the stump a new (and larger) tree will grow; cf. \textit{Sevi'it} 4:5, Note 71.

\textsuperscript{79} Really: on which never any grooves had been made, referring to the furrows.

\textsuperscript{80} If no signs of agricultural activity are visible on the soil. In Babylonia the לֵך (which in Babylonian and modern Hebrew would be לֵך) was heard as לֵך, resulting in לֵך. "potsherd". Therefore, the Babylonian texts (and Midrash \textit{Samuel}) declare as virgin any soil on which no potsherds are found (which would prove human activity at the place).

\textsuperscript{81} Here ends the first Geniza fragment of this Tractate.
Even if she was married, if pregnant, even if nursing, and even if she was bleeding all seven [days] for a boy or all fourteen for a girl. Does she have a charm in her hand? After [the birth of] a boy seven [days], after a girl fourteen, but only if she stopped during her period of purity. As it was stated: If she stopped during her period of purity and had no discharge, but later she had a discharge; this case came before the Sages who said that her timing was exact. In Rav’s opinion, who says that all is one source but the Torah purified it, it is understandable. In Rebbi Yannai’s opinion, who says that all is one source but it changes, it is in order. In Levi’s opinion, who says that there are two sources, should her timing be exact even if she does not stop during her period of purity? Rebbi Mana said, the reason of Levi is that since she became used to pure blood, she might become used to impure blood. Rebbi Yose ben Rebbi Abun said, Levi can explain what we have stated: “Rebbi Yose said, the timing of a pregnant or a nursing woman who had stopped for three periods is exact.” On that it was stated: The days of her pregnancy and her nursing add up to three periods. Can he think that there is only one source?

82 This refers to the Mishnah which enumerates the women whose impurity is not retroactive, in particular the girl having a baby
without ever having menstruated.

83 Lev. 15:25 creates a special category, zavah, for a woman whose discharge of blood is prolonged "many days after her menstrual period", who is subject to more complicated rules of cleansing. Since "days" must mean a minimum of two days, "many days" must mean at least three days (by the hermeneutic principle of definiteness, cf. H. Guggenheimer, Logical Problems in Jewish Tradition, in: Confrontations with Judaism, Ph. Longworth, ed., Blond, London 1966, pp. 174-175). Now it is stated here that bleeding after childbirth cannot induce a status of zavah since (1) the time span of 7 days after the birth of a boy and 14 after that of a girl are defined as "menstrual impurity" and (2) this is followed by a period of purity of 33 days (for a boy) or 66 (for a girl) in which no discharge has any implication for impurity (Lev. 12:4-5). Therefore, the only way a birth is followed by a status of zavah would be if the bloody discharges persist all through the period of purity.

84 This is a little pedantic about the formulation of the text, from which one might infer that the pregnancy already determines the length of the period of impurity. The text is then elaborated to indicate that this period is determined only at the time of delivery.

85 The status of the "blood virgin" is not changed by pregnancy and all the bleeding necessarily connected with giving birth.

86 Here starts the discussion of the condition that the discharges stop sometime during the period of purity. Rav holds that the blood lost during childbirth and the menstrual blood are of equal character; the period of purity is a biblical decree whose reason is unknown but a continuation of the discharge beyond this period shows that menstrual blood is flowing for "many days". (Everybody agrees that prolonged flow before the actual delivery creates a status of zavah.) Therefore, a retention of the status of "blood virgin" necessitates the cessation of discharge during the period of purity (or even earlier). Rav's opinion is detailed in the Babli, 11a, 35b.

87 This opinion is not reported in the Babli. The only difference to Rav's opinion is theoretical, that the biblical decree of the period of purity has a biological explanation.

88 His opinion is also discussed in the Babli, 11a and 35b. He holds that the blood lost in childbirth is different in nature from menstrual blood. Then
it is difficult to see why menstrual virginity should depend on a cessation of childbirth discharges during the period of purity.

89 Levi also subscribes to the cessation rule, but only as one of purely rabbinic character. Since she is used to discharges, she does not react to a menstrual discharge with the speed necessary to avoid retroactive contamination.

90 Mishnah 1:5.

91 Tosephta 1:10: "R. Yose and R. Simeon say that the timing of a pregnant or a nursing woman is not exact unless there passed three periods (without menstruation); the days of her pregnancy and those of her nursing are added together." It is clear that pregnancy and nursing cannot be counted together if the blood lost in childbirth is of menstrual character. Therefore, the Tosephta and the similar baraita quoted in the text are intelligible for Levi, not for Rav.
How long is it until a pregnancy is recognized? Symmachos said in the name of Rebbi Meir: After three months. Even though it is no proof, there is a hint: "It was after about three months, etc." Rebbi Yudan said, even for a phantom pregnancy, "we were pregnant, we were sick, as if we gave birth to wind," "get pregnant with dry grass, give birth to straw", etc. Rebbi Ze'ira, Rebbi Abba bar Zuṭra said, Rebbi Ḥanina in the name of the Great Rebbi Ḥiyya: Even most of the first, most of the last, and the middle one complete. Assi said, a full 90 days. Samuel said, they in their fulness. A case came before the rabbis there; we do not know if thirteen of the first and seventeen of the last or seventeen of the first and thirteen of the last, and five complete ones in the middle; they wanted to touch the child because of a doubt of bastardy. Rav Nahman bar Jacob told them, such a case came before Abba bar Abba and he declared it acceptable. Does Abba bar Abba disagree with his son Samuel? Rebbi Abba said, there is a difference between recognizing a pregnancy and giving birth. A pregnancy is recognized after full months, a birth can happen after fractional months. There, we have stated: "How long can labor be? Rebbi Meir said, even 40 to 50 days. Rebbi Jehudah said, her month is sufficient. Rebbi Yose and Rebbi Simeon say, no labor lasts longer than two weeks." Rebbi Yose in the name of Rebbi Abba: This implies that a
woman gives birth after fractional months. Since otherwise one should have stated "thirty days". Rebbi Yose ben Rebbi Abun in the name of Samuel: This implies that a woman gives birth after full months. Since we have stated: "Her month is sufficient."

92 From here to the end of the 4:11, Notes 130-155.

Halakhah, the text parallels Yebamot.

Rebbi Yudan asked: Does this hold until she gives birth? No, even if she had a miscarriage.
Rebbi Mana said, I heard in the name of Samuel that there is no difference between recognizing a pregnancy and giving birth, but I do not remember from whom I heard this. Rebbi Abba bar Cohen said before Rebbi Yose, Rebbi Jeremiah said this. Rebbi Hizqyah said to him, Rebbi Jeremiah did not say this; Rebbi Yose was offended by him. He said to him: Even Joshua who was bound to Moses would not have said so, but you said so! He checked himself and said, it is true that he said that but as a person who quotes something and questions it; does Abba bar Abba disagree with his son Samuel? Rebbi Berekhiah in the name of Samuel: A woman gives birth only either after 271, 272, 273, or 274 days. Rebbi Mana said to him, from whom did the rabbi hear this? He said to him, from Rebbi Abba. The position of Rebbi Abba seems inverted. There, he says, there is a difference between recognizing a pregnancy and giving birth, and here, he says so? Rebbi Abba bar Zutra in the name of Samuel: Everything which is "many" is 273.
Rav Hiyya bar Ashi was sitting before Rav who saw him disturbed. He said to him, what is the matter? He said to him, my female donkey is pregnant and will give birth; then I have to get her to copulate before she is out of heat. He said to him, when did the male mount her? He said, on day X. He calculated and said, she still has some time until then. It was stated so: A quick one does not need less than the days of the moon and one who is late is not later than the days of the sun. The words of Rebbi Joshua disagree, since Rebbi Joshua ben Levi said, the cattle herd of Antoninus passed by and those of the house of Rebbi took bulls from them to copulate. Some cows gave birth soon and some of them later. Here it is about an impure animal, there about a pure animal. But is it not written, “do you know the time the mountain goats will give birth, watch the birthing of gazelles,” ”count months, make them complete, you will know the time of their giving birth.” He told him: A pure wild animal is like a domestic impure animal.
**Mishnah 5:** What is an old woman? Any who missed three periods when she became old. Rebbi Eliezer says, the timing of any woman who misses three periods is exact. Rebbi Yose said, the timing of a pregnant or a nursing woman who had stopped for three periods is exact.

**Halakhah 5:** "What is an old woman," etc. Rebbi Meir says, the blood disappears because of the milk. Rebbi Yose says, the blood disappears...
because of the pain. You find a leniency and a stringency following Rebbi Me’ir, and a leniency and a stringency following Rebbi Yose. A leniency following Rebbi Me’ir, for if the baby was continuing to suckle for four or five years, her timing continues exact. And a stringency, if she handed her child to a wet-nurse or it died, she [makes impure] for 24 hours. A leniency for Rebbi Yose, for if she handed her child to a wet-nurse or it died, her timing is exact. And a stringency, for if the baby was continuing to suckle for four or five years, it is forbidden after 24 months. But did not Rebbi Me’ir say, she makes impure for 24 hours? When? Immediately or if the baby stops and cannot start again? Let us hear from the following: “A baby can nurse until 24 complete months, after that it is as if an abomination suckled, the words of Rebbi Eliezer. Rebbi Joshua said, a baby can nurse even four or five years; this is permitted. If he stopped, one cannot return him.” How long? Rebbi Jacob bar Aha, Rebbi Hiyya in the name of Rebbi Johanan: up to 24 hours. Rebbi Hizqiah, Rebbi Abbahu in the name of Rebbi Simeon ben Laqish, up to three times 24 hours. When was this said? If he stopped when healthy. But if he stopped because of sickness, one can return him immediately. And for a baby which was not in danger. But a baby who was in danger one can return him immediately even after a longer time.

93 In the Babli, 9a, "the blood is turned into milk". 94 In the Babli, 9a, R. Yose, R. Simeon, and R. Jehudah hold that "her limbs are in disorder and do not return to their natural shape before 24 months." 95 Babli 9a, Tosephta 2:1. 96 Up to 24 months after giving birth. 97 The text is influenced by the following discussion over the length of
the nursing period. R. Yose holds that the timing of a nursing woman is exact only up to 24 months; Babli 9a, Tosephta 2:1.

After stopping to nurse, when do the rules for the mother change from exact timing to retroactive impurity?

One may assume that the rich landlord R. Eliezer presents the rule usual in his moneyed circle and the poor charcoal burner R. Joshua those of the poor, who had no money for baby food and could use the implied contraception provided by nursing.

"An old woman." Who is an old woman? Rebbi Simeon ben Laqish said, any person whom one calls "mother" and she is not offended. Does that depend on her opinion? Rebbi Abun said, any who should be called "mother".

A similar opinion in the Babli, 9a/b. "Mother" is the obvious translation but the meaning is that of German Mütterlein "little mother", for which I did not find a concise English translation. Similar, אבב in the next paragraph is Väterlein "little father".

It was stated: One does not call male or female slaves "little father X" or "little mother Y". In the house of Rabban Gamliel they used to call their male and female slaves "little father Tabi" and "little mother Tabitha".
translations of Hebrew עַזָּיִית (m.), עַזָּיִית (f., woman's name 2Ch 24:1). Fleischer insists that נְזִיבָּה, נְזִיבָּה ("girl") never means "servant girl" in classical Arabic. The occurrence of a name with its translation for the same person is a general phenomenon; cf. E. und H. Guggenheimer, Etymologisches Lexikon der jüdischen Familiennamen. München 1996, pp. xxvii-xxviii.
Rebbi Hoshia stated: If a woman gave birth and then converted, she has no period of purity. Rebbi Yose said, this is correct. If Rebbi Hoshia had not stated this, would it have been a problem for us? Since she has no period of impurity\(^{104}\), she cannot have a period of purity. \(^{105}\)

It was stated: The proselyte, the captive, and the slave woman who were redeemed, or converted, or freed, have to wait three months, the words of Rebbi Judah. Rebbi Yose says, they do not have to wait. Their blood, Rebbi Jehudah says, is timed exactly; Rebbi Yose says, it makes impure 24 hours retroactively. Rebbi said, the words of Rebbi Yose are reasonable for the blood, and the words of Rebbi Judah for the child. But Rebbi Hiyya in the name of Rebbi Yoḥanan, practice follows Rebbi Yose. Rebbi Abba bar Cohen asked before Rebbi Yose: For if it were not so, what could we say? Between Rebbi Jehudah and Rebbi Yose, practice does not follow Rebbi Yose? But because Rebbi said, "they are reasonable". Did not Rebbi Abba say in the name of Rebbi Ze'ira, every time Rebbi taught "they are reasonable", the disagreement is unresolved except in the case of the fig cake where each party to the controversy accepts the opposition's argument. Rebbi Yose said, I stated a difficulty before Rebbi Hanina ben Abbahu: Even if it is certain that they had sex? He said to him, is a normal Gentile not like one who had sex?

\(^{104}\) Living Gentiles cannot be impure by biblical standards; all their impurity is rabbinical. The biblical status of the impurity of Gentile corpses is a matter of dispute. Since the period of purity follows the period of impurity caused by birthing, the fact that the woman was still a Gentile when giving birth eliminates the period of impurity and with it the period of
purity.

105 From here to the end of the paragraph, the text (with some significant changes) is from Yebamot 4:11, Notes 167-171. In the variant readings, the Leiden ms. of Yebamot is noted by ʿ, the Ashkenazic ms. fragments [Qobez al yad XII (XXII)] by ن.

Rebbi Eliezer says, the timing of any woman who misses three periods is exact.” But we stated on this: They said to him, the Sages said this only for the old woman. But did we not state34: "Rebbi Eliezer said, it happened with a girl in Aitlo35 that she missed for three periods and then had a period. When the case came before the Sages, they said that her timing was exact." They said to him, you were underage, and an underage boy cannot testify106. Once did Rebbi decide to follow Rebbi Eliezer and he regretted it107. Rebbi Mana said before Rebbi Yose: Come and see, when he instructed following the leniencies of Rebbi Meir and Rebbi Yose108, he did not regret it, but in this case he regretted? He said to him, there we deal with isolated opinions109. You can say, we add his110 opinion to that of Rebbi Meir to form a plurality against Rebbi Yose, and
we add his opinion to that of Rebbi Yose to form a plurality against Rebbi Meir; can you say here that we add his opinion to that of Rebbi Eliezer to form a plurality against the Sages? And in addition, it was stated on this\(^{111}\): "It was an emergency decision."

106 In general, an adult cannot testify to what he saw when he was underage. A small number of exceptions is listed in Mishnah *Ketubot* 2:10.

107 Also mentioned in the Babli, 6a, 9b, *Erubin* 46a. In the Babli, Rebbi is quoted as saying that one may follow R. Eliezer in emergencies.

108 As explained in the next Halakhah, he followed R. Meir against R. Yose in matters of impurity of a pregnant woman and R. Yose against R. Meir in matters of impurity of a nursing woman.

109 No opinion of the anonymous majority was recorded.

110 Rebbi's own; while he lived one generation later, his standing is high enough that he may be counted with the students of R. Aqiba to decide matters.

111 In Tosephta 1:9, this is the answer which the majority gives to R. Eliezer about the ruling for the girl from Aitlo.

Rebbi Yose said, the timing of a pregnant or a nursing woman who had stopped for three periods is exact." On that it was stated\(^{91}\): The days of her pregnancy and her nursing add up to three periods. Can he think that there is only one source?
Mishnah 6: Under which circumstances did they say that her timing is exact\(^{112}\)? If she sees [blood] for the first time. But the second time she retroactively makes impure for 24 hours\(^ {113}\). But if the first time she saw because of outside force\(^ {114}\), also the second time her timing is exact.

\(^{112}\) For the adolescent girl or the menopausal woman.

\(^{113}\) Her timing will be exact again if for three consecutive periods she counted exactly the same number of days between two periods. "Impure for 24 hours" naturally means "impure for the lesser of either 24 hours or the time of her last check", as stated in Mishnah 1.

\(^{114}\) If either she suffered great mental shock or was forced to extraordinary physical exertion.
Halakhah 6: "Under which circumstances did they say that her timing is exact," etc. Samuel said, they taught only about a virgin and an old woman. But to a pregnant or nursing woman they give all during pregnancy and nursing time. Both Rav and Rebbi Johanan say, the rules are identical for virgin, post-menopausal, pregnant, or nursing woman. Rebbi Ze’ira said, Rav and Rebbi Johanan parallel Rebbi Hanina’s and they all disagree with Samuel’s opinion, since Rebbi Eleazar said in the name of Rebbi Hanina: Once Rebbi instructed following the leniencies both of Rebbi Meir and of Rebbi Yose. How was this? If the fetus was noticed and after that she bled, Rebbi Meir says, her timing is exact; Rebbi Yose says, she retroactively makes impure for 24 hours. If she then bled frequently, interrupted for three periods, and then bled, Rebbi Meir says, she retroactively makes impure for 24 hours; Rebbi Yose says, her timing is exact. If you say, one gives her all the time during pregnancy, why would we need Rebbi Yose’s leniency? Is not that of Rebbi Meir less weighty than that of Rebbi Yose? Rebbi Mana said before Rebbi Yose: Might we say, following Rebbi Meir and Rebbi Yose of milk? He said to him, it was said so explicitly.

115 Samuel’s and Rav’s opinions are reported similarly in the Babli, 10b. There, R. Johanan is reported to join Samuel’s opinion, that pregnant and nursing women never induce retroactive impurity.

116 While pregnant.

117 R. Yose’s leniency is a stringency for Samuel who would not require an interruption of three periods or almost three months.

118 The leniency of R. Meir which Rebbi followed is simply that of Mishnah 4; it alone would never have to be mentioned.

119 The late Amora.

120 In Halakhah 5, Note 93 ff.

121 That it referred to the status of a pregnant woman.
So far for a girl who reached the age of puberty. "If a girl did not reach the age of puberty but started menstruating? For the first bleeding, her timing is exact. For the second bleeding, her timing is exact. For the third bleeding, her timing is exact; after that it will retroactively impart impurity for 24 hours." Rav in the name of Rav: At the third time itself it will retroactively impart impurity for 24 hours. The timing of an old woman who had stopped for three periods is exact. If she then interrupted for three periods and then bled, her timing is exact. If she again interrupted for three periods and then bled, her timing is exact. If the interruption was not exact the same period; if it was less or more. But if it was exactly the same time, she established a [new] period."
Rebbi Yudan asked: If she\textsuperscript{126} bled a first and a second time and then interrupted for three periods before she bled again. Is that like one long regular period and she would retroactively impart impurity for 24 hours\textsuperscript{127} or like an interruption\textsuperscript{128} so that her timing would be exact? Rebbi Yose said to him, if at a time you considered her as ready to bleed you\textsuperscript{129} said that her timing was exact, in this case when you do not consider her as ready to bleed\textsuperscript{130}, not so much more? He answered him: If that is so, even if she saw only once she should not retroactively impart impurity for 24 hours until she bled three times after that interruption! He agreed\textsuperscript{131} that it is like one long regular period.

\textsuperscript{126} The girl who is too young to be menstruating.
\textsuperscript{127} As required by Tosephta 1:8.
\textsuperscript{128} Since for a menopausal woman any interruption of three periods without bleeding creates a new situation, Mishnah 5.
\textsuperscript{129} For her second period.
\textsuperscript{130} Since she did not reach puberty, the interruption of three periods will show that the earlier bleeding was not menstrual.
\textsuperscript{131} R. Yose retracted his earlier statement and agreed that at the third menstrual period she retroactively imparts impurity.
What is the period that is counted for her\textsuperscript{132}? An average period\textsuperscript{133}, Rebbi Simeon ben Laqish in the name of Rebbi Yudan Nesia\textsuperscript{134}: One gives her 30 days as average period. Can she not have a personal period? Since it cannot be verified by blood, she has no period. Should she \textsuperscript{[become impure]} by stains\textsuperscript{135}? Hizqiah said, since you made her a full water pitcher\textsuperscript{136}, she has stains. Samuel\textsuperscript{136} said, even if the entire bedsheets is full of drops of blood she has no stains. Rebbi Johanan in the name of Rebbi Yannai: Even if she bled a hundred times, she has no stains\textsuperscript{137}. How long? Until she reaches the age of puberty. What is the age of puberty? When she grows two pubic hairs\textsuperscript{138}. Rebbi Abba, Rebbi Hiyya, Rebbi Johanan in the name of Rebbi Simeon ben Yosadaq: Her spittle is pure, what she sits on is pure, what she touches in the public domain is pure\textsuperscript{139}. They interpreted this: no 24 hours\textsuperscript{140}.

\textsuperscript{132} While the paragraph speaks of the pre-pubescent girl, the same question could be asked for the post-menopausal woman since for both Mishnah and Tosephta speak of "periods" while by the nature of things they have no period.

\textsuperscript{133} Of an adult woman of child-bearing age.

\textsuperscript{134} The same statement in the Babli, 9b.

\textsuperscript{135} Since an adult woman is impure if she detects a stain on her underwear even if she is unaware of any discharge, Note 42.

\textsuperscript{136} Her bleeding is like water overflowing from a full pitcher; therefore, minimal discharges indicated by a stain should not be excluded.

\textsuperscript{137} In the Babli, 10a, Hizqiah's opinion is reported as it is here, but R. Johanan's opposing view is restricted to a girl who had no more than one
episode of bleeding.

138 Cf. Sotah 1:1, Note 61; Yebamot 1:2, Note 142.

139 None of the impurities associated with the menstruating woman or the zavah (cf. Notes 42, 44, 55) are applicable to the pre-pubescent girl.

140 None of the rules of retroactive impurity can apply to a young girl.

Mishnah 7: Even though they said that their timing was exact\textsuperscript{141}, she has to check herself\textsuperscript{142}, except for the menstruating\textsuperscript{143} and one in her period of purity\textsuperscript{83}; even one who has intercourse with cloths\textsuperscript{5,144} except one in her period of purity and a virgin\textsuperscript{145} whose blood is pure. Twice she has to check herself, morning\textsuperscript{146} and evening\textsuperscript{147}, and when she goes to have intercourse\textsuperscript{148}. In addition, wives of Cohanim when they go to eat heave\textsuperscript{149}. Rebbi Jehudah says, also when they stop eating heave\textsuperscript{150}.

\textsuperscript{141} The women enumerated in Mishnaiot 2 and 3.

\textsuperscript{142} If she prepares food in ritual purity.

\textsuperscript{143} The menstruating woman for seven days cannot prepare pure food. In the period of purity, a woman cannot become impure by any genital discharge.

\textsuperscript{144} She is pure for her husband and if she checks herself in the evening and finds herself pure she can be certain that the food she prepared during the preceding day is pure; but
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for the next morning she still needs to check herself.

145 A "blood virgin" who can be married and even have children.

146 If she prepared pure food during the preceding night.

147 To justify the food she prepared during the preceding day.

148 This is necessary only if she regularly prepares pure food.

149 They have to be sure that they are pure when they eat sanctified food.

150 If there is any leftover food, they have to check themselves to be sure that it remained pure and usable.

Halakhah 7: "Even though they said that their timing was exact," etc.

So is the Mishnah: Except for the menstruating woman whose period was not interrupted by purity. "Even one who has intercourse with cloths," so is the Mishnah: She is required to have intercourse with cloths.

"And a virgin whose blood is pure," so is the Mishnah: A girl who has not reached puberty but was married.

151 During the prescribed seven days of impurity.

152 נמקש is corrected into נמקש This correction is found in those modern printed Mishnah editions which are not based on mss.

153 An extensive discussion of this paragraph with variant readings from Mishnah and Babli mss. is in J. N. Epstein, ימי נצור המשת, Jerusalem-Tel Aviv 1964, pp. 483-485.
Samuel said, a night and a day form a period, and part of a period is as if it were the entire period. If she ceased and then bled again, she is impure. If the look of the blood changed, she is impure. Rebbi Ze'ira said, if it did not change because of intercourse. But if it changed because of intercourse, she is pure. Rebbi Yose said, the Mishnah says so, "a virgin whose blood is pure." That implies, if it changed because of intercourse, she is pure. Since if you said, if it changed because of intercourse she is impure, let her have intercourse with a cloth, maybe it would change because of intercourse and she would be impure!

154 This refers to the case of a girl who was married after she reached puberty. In Mishnah 10:1, it is stated that the House of Shammai permit only the first intercourse which deflowers her, because the blood she loses as a consequence is considered as if it were menstrual blood. In the Mishnah and in Tosephta 9:8, the House of Hillel is reported to permit intercourse the entire first night. In the Tosephta (quoted in the Babli, 65a), Rabban Simeon ben Gamliel says "one gives her a full period," and he explains that a full period is night and day but that part of the day (until midday) is already counted as the entire day and after that, for the remainder of the wedding week, the bride is forbidden to the husband as if she were menstruating.

155 In Tosephta 9:7 it is explained that if a girl had not reached puberty when she was married, the wound from deflowering had healed, and she was able to have intercourse without bleeding, if then she bleeds for any reason she is impure as menstruating. That is the meaning of the small excerpt quoted here.
The first part of Tosephta 9:8 states: "If the look of the blood was changed she is impure as menstruating." R. Ze'ira disputes this reading and holds that if the blood is mingled with semen, it is obvious that she is injured by the intercourse; she remains pure until for the first time she bleeds not in connection with intercourse.

The argument goes as follows: The Mishnah here states that a pre-puberty girl does not have to check herself when she works on pure food, and she does not have to check herself when she sleeps with her husband. If she could be impure by bleeding during intercourse, she should be prevented from working with pure food unless she checked herself after each intercourse. Since she is not prevented, it follows that she cannot be held to be menstruating unless either she reached puberty or she once bled in a way not connected with intercourse.

From darkness to light and from light to darkness. The rule is purely one of convention, not intrinsic to the situation.
Rebbi Eleazar in the name of Rebbi Hoshiaia: In every situation in which the Sages said that her husband would be obligated for a sacrifice, pure food became impure; her husband would be exempt from a sacrifice, pure food remains pure; her husband would have to bring a sacrifice for a doubt, pure food is in limbo. Rebbi Samuel bar Rav Isaac asked: If an old man and a child walk in a dining room, does the old man not enter first? But the child can come and make a fool of him. Rebbi Abun in the name of Rebbi Yudan: I say, it was here but the intercourse stopped it from leaving; but there, what hindered it to leave? The Mishnah disagrees with Rebbi Hoshiaia: "If she left [the bed] and saw blood, she is impure but all the food is pure." The Mishnah disagrees with Bar Pedaiah: "Rebbi Jehudah says, also when they stop eating heave." Why? Not that if she would bleed, the food should not retroactively become impure? Rebbi Ezra said before Rebbi Mana: Explain it for a woman who has no regular period. He said to him, so says my teacher Rebbi Yose: All that is described here is about a woman who has a regular period. Rebbi Yose ben Rebbi Abun said, the Mishnah rises: Up to this point [it speaks] about a woman who has a regular period; from there on about a woman who has no regular period. But even if you say that the Mishnah does not rise, and we deal only with a woman who
has a regular period, where does Bar Pedaiah hold? One differs with Rebbi Jehudah.

159 In the Babli 60b (and later in this paragraph in the Yerushalmi) this is attributed to Bar Pada or Pedaiah. Rashi explains the text:

A woman was occupied with pure food and noticed she was bleeding; since if that were to happen during intercourse her husband would have to bring a purification sacrifice (for a sin committed inadvertently), we assume that the blood was already there when she was touching the pure food, the food is certainly impure and has to be burned. But if only a short time after she was finished with the food she noticed it, since if she did notice blood a short time after intercourse her husband would have to bring an expiation sacrifice (not knowing whether a sin has been committed, cf. Bikkurim 2:9 Note 162), the food can neither be used nor burned. If the woman detected the blood after a longer interval, the husband is in the clear and the food is pure.

160 This simile is slightly pornographic. The dining hall is the woman's womb, the old man the penis, and the child menstrual blood. Even though the penis closes the entrance, the blood can sneak out before the penis leaves. The implication is that even in the case in which the husband only would be obligated for the expiation sacrifice, the food should be declared impure and be burned.

161 The argument in the preceding simile does not apply; a woman working in the kitchen is not to be compared to a woman during intercourse. In the first case, blood will flow out immediately under the action of gravity; in the second case she is lying down and her vagina is closed by the man's penis.

162 Mishnah 1:3. This refers to a case which, when occurring immediately after intercourse, would obligate the husband for an expiation sacrifice. Nevertheless, the food remains pure if the woman has a regular, predictable, period. (In the Babli, R. Hoshia is reported to oppose the opinion ascribed to him in the present paragraph and to hold that in all cases other that direct touch by an impure person, pure food is held in limbo. This also is denied by the
Mishnah quoted.)

163 R. Jehudah's opinion can only be explained in the case that he requires a verification to avoid retroactive impurity even where the husband would be free from any obligation of sacrifice if there remains the possibility of retroactive impurity. But Bar Pedaiah asserts that in the latter case there is no retroactive impurity!

164 Following Mishnah 1.

165 The Mishnah has two parts; R. Jehudah does not address the same situation as does the anonymous majority; one cannot infer that he represents a minority opinion.

166 The Mishnah assumes a uniform background; R. Jehudah's opinion is that of a minority.
Mishnah I: Every hand which checks frequently is praiseworthy for women but should be cut off for men. If an insane woman, or a blind, or a mentally disturbed have sane women friends, they can put them in order so they can eat heave. It is the way of Jewish women to have intercourse with cloths, one for him and one for her, and the religious ones prepare a third to put their house in order.

1 To check for genital emissions.
2 Since she minimizes impurity of foods.
3 Since it will arouse the man sexually.
4 The insane is permanently mentally disabled; the mentally disturbed is ill temporarily.
5 Depending on the context, נשמ can mean either “sane” or “seeing”; here it means both.
6 They can check them out and certify that they are not menstruating.
7 If they are members of a Cohen’s household.
8 If they are preparing their food in purity and are required to check themselves at least twice a day, so they can wipe themselves after intercourse and inspect the cloths the next morning to be sure no blood appears on any cloth.
9 Since the requirement was already stated in Halakhah 1:7 that a woman engaged in preparing pure food has to check herself before intercourse, the question arises in the Halakhah what this Mishnah adds to Mishnah 1:7.
Halakhah 1: "Every hand which checks frequently is praiseworthy for women," etc. So is the baraita\textsuperscript{10}: "Any one who frequently puts his hand on his eye will frequently have tears. Rebbi Ţarphon says, it should be cut off on his navel. One said to him, does that not split open his belly? He said to them, that is what I said, for such a person's death is better than his life." The colleagues say, Rebbi Ţarphon curses him in his body. Rebbi Yose said, he only explains that it is forbidden to manipulate lower than the navel. "That is, in the matter of semen. But in a case of gonorrhea, every hand which checks more frequently than another is more praiseworthy than the other.\textsuperscript{11}"

\textsuperscript{10} A similar text is quoted piecewise in the Babli, 13a/b. A continuous text is in Tosephta 2:8: "Every hand which checks frequently is praiseworthy for women but should be cut off for men; Rebbi Ţarphon says, it should be cut off on his navel. One said to him, does that not split open his belly? He said to them, that is what I said, to what can this be compared? To one who forcefully puts his hand on his eye who will have tears. When has this been said? In the matter of semen. But in a case of gonorrhea, every hand which checks more frequently than another is more praiseworthy than the other."

\textsuperscript{11} An exact check is necessary to determine the duration of his impurity and the correct way of purification once the patient is healed.
The religious women were checking themselves out for every amphora and every loaf.  

12 It happened that Tabitha, the slave girl of Rabban Gamliel, was carrying wine for libations and checked herself for every amphora. She said to him, my master, I detected a stain. Rabban Gamliel started. She said to him, I was checking myself for every amphora and was impure only for that amphora.

12 A similar story appears in the Babli, 6b, where Rabban Gamliel had to rule that only the last amphora was impure. Rabban Gamliel here is clearly Gamliel I, Hillel’s grandson, since libations are possible only in the Temple. The Babli has great trouble with the story because it identifies the master as Gamliel II of Jabne.

They said in Rabbi Yannai’s name: There is no blind woman. Does this hold up? They said in Rabbi Yose ben Rebbi Hanina’s name: There is no blind woman. Does this hold up? Rebbi Ilai, Rabbi Yose ben Hanina, in the name of the House of Rebbi Yannai: There is no blind woman.

13 One has to omit the reference to a blind woman in the Mishnah. It seems that there was opposition to this statement and it was accepted only on the authority of R. Ilai. The Babli, 13b, quotes the statement in R. Yose ben R.
Hanina's name and explains that a blind woman can check herself and show the cloth to a seeing friend. While she needs help, she acts on her own and does not have to be certified.

Rebbi Yannai said, the first one\(^\text{14}\) also is called religious. We have stated "they have to check themselves", and you say so\(^\text{15}\)? Rebbi Ila said, to tell you that everybody who keeps the directives of the rabbis is called religious\(^\text{16}\).

\(^{14}\) The woman working on pure food mentioned in Mishnah 1:7 who is required to check herself before intercourse.

\(^{15}\) In Mishnah 1:7, the checking is stated as a requirement. In Mishnah 2:1, a similar statement appears as an act of special piety. It is impossible to explain Mishnah 2:1 as dealing with a woman not occupied with pure food since Mishnah 2:3 very clearly states that all women are permitted to their husbands without any checking.

\(^{16}\) The Babli, 12a. quotes the explanation attributed here to R. Ila in the name of R. Immi and rejects it since a person who does not follow the rabbis' directives is called evil. Rava explains there that the religious women take a new piece of textile for every check whereas others use the same piece repeatedly.
Rebbi Jeremiah in the name of Rav: If she checked herself with an unchecked hand or if she hit hard with her body on her genitals, the presumption is that her body was checked. Rebbi Ze’ira said, the Mishnah says so: "If it was found on his [cloth], they are impure and obligated for a sacrifice." Does that not mean that there is a presumption that the body was checked? Rebbi Hanina said, explain it if he had checked himself. Rebbi Ze’ira was offended. Do people do that? Rebbi Ze’ira in the name of Rav Jeremiah: Up to a broken bean she hangs it, more than that its needs an explanation. They said, Rav Jeremiah retracted this. They said, he retracted it when he was informed of the words of the rabbis. Rebbi praised Rebbi Ḥama, the father of Rebbi Hoshiaia, before Rebbi Ismael ben Rebbi Yose. Rebbi Ḥama, the father of Rebbi Hoshiaia, asked before Rebbi Ismael ben Rebbi Yose: If she checked herself with an unchecked hand or if she hit hard with her body on her genitals? He said to him, according to him are you asking me? Following the teacher or following the student? My father said, a stain. But Rebbi said, an episode of bleeding. He said to him: That is the one of whom you are proud? Rebbi Ze’ira said, it profits a man to learn his own teacher’s reasons.
17 Later in the Halakhah he correctly is called Rav Jeremiah (bar Abba).

18 An unwashed hand which might have blood on it from other sources.

19 The expression is elliptic and uses the masculine for the feminine. If the woman sat down hard, or hit herself with a hard object on the outer genitals, and now there are blood drops found there. Rav declares her impure as menstruating since one has to assume that any blood found came from the body at the time it was found, and that her body, including her hand, was free of blood drops beforehand.

20 Mishnah 2:2.

21 If the next morning there was nothing on her cloth but a bloodstain was found on his, it is assumed that both their bodies were clean at the start of intercourse and that, therefore, the bloodstain had to come from her.

22 Nobody checks himself out like that.

23 This statement seems to be elliptic and should read: If the stain is smaller than a broken bean, one may presume it is the blood of a louse or flea. If the stain is larger, it comes from menstrual blood unless there is an explicit explanation, i.e., a known source of the blood. Yerushalmi אַמְלָה יָדוֹלָה is the same as Babylonian אַמְלָה יָדוֹלָה "an explanation" (etymologically: a peg to hang on.)

24 In the following story.

25 R. Yose, Rebbi's teacher. In the Babli, 14a, R. Yose's opinion is credited to R. Hiyya (the Elder).

26 Which creates a doubt that it be menstrual blood.

27 A case of certain menstrual bleeding.

28 The reaction is unintelligible here. It is explained in the Babli, 14b, where R. Hama's question was about the situation discussed in the next paragraph and where R. Hama insisted to hear Rabbi's opinion, not that of R. Yose (R. Ismael's father and Rebbi's teacher), about which R. Ismael was offended.

29 R. Hama's question was justified (but he could have asked in a more diplomatic way.)
If she checked and deposited it in a glass box, Rebbi Hiyya said, a stain; Rebbi said, an episode of bleeding. Rebbi Hiyya objected to Rebbi: Do you not give her the possibility of an explanation? Rebbi Abun bar Hiyya said, Rebbi’s reason is that a box is safe from crawling things, it is not safe from lice. Up to the size of a broken bean she explains it; if it is larger, by what can it be explained?

30 She wiped herself with a cloth and put it away for inspection later when it was found stained.

31 Which might have been on the cloth. The size of a squeezed louse is the upper limit of a stain which may be explained away.

Mishnah 2: If [a stain] is found on his [cloth], they are impure and obligated for a sacrifice. If it is found on hers immediately, they are impure and obligated for a sacrifice. If it is found on hers later, they are possibly impure but free from the duty of a sacrifice.

32 Irrespective of when it was inspected, blood on his cloth is evidence of her menstrual blood.

33 If the Temple is rebuilt in their lifetime, they have to bring a purification sacrifice to atone for a sin committed inadvertently.

34 Greek εὐθέως “immediately”.

35 She cleansed herself later when there was no possibility to determine whether she bled during or after intercourse.
Halakhah 2: "If [a stain] is found on his [cloth]," etc. It was stated in this regard: If it is found on his, whether immediately or not immediately. Unless he has an open wound on from her; he is unlikely to have a bloody discharge.

Immediately, they are impure." They said immediately for wiping, not for examination. Rav Huna said, that she should wipe the face of the house from the outside, but not what is in the rooms nor in the crevices. They asked before Rav Nahman bar Jacob: Should she not examine it immediately? Rebbi Abba said, if you say that she should examine it immediately, you abolish immediacy. Rebbi Yose ben Rebbi Abun said, if you say that she should examine it immediately, is that not checking, to be reduced from 24 hours, as we have stated: Checking reduces from 24 hours. Rebbi Yose ben Rebbi Abun said, as an example, if the beadle and a witness were standing at the lintel. When the beadle comes out and the witness enters, that is "immediately."
37 That should be done later in a leisurely fashion.
38 The woman is the house, the face of the house is the opening of the vagina; the rooms are the inner genitals, the crevices the folds of her skin.
39 You would have to extend the duration of "immediately".
40 Since the only purpose of the cloths is to let the woman check herself before she goes to work on pure food the next time, nothing could be gained by requiring an immediate inspection of her cloth.
41 A witness waits outside the courtroom to be called. The definition of "immediate" is the time required for the beadle to appear, to motion the witness to enter, and the witness to enter the courtroom. The same criterion is quoted in the Babli, 12a, 14b.

"They are free from the duty of a sacrifice." They are free from a purification sacrifice but are obligated for an expiation sacrifice.

42 Required when it is unknown whether a sin has been committed; cf. Keritut 17b.
Chapter 1, Note 139. The same statement is in the Babli, 14 b and
Mishnah 3: What is "later"? That she should leave her bed and wipe her face. After that time she would retroactively make impure for 24 hours but does not make her sex partner impure; Rebbi Aqiba says, she makes her sex partner impure. The Sages agree with Rebbi Aqiba that one who finds a stain makes her sex partner impure. All women are presumed pure for their husbands. The wives of men coming from a trip are presumed pure. The House of Shamai say, she needs two cloths for each intercourse or she should have sex by candle light. The House of Hillel say, two cloths for the entire night suffice.

43 Mentioned in Mishnah 2; Note 35.
44 Her outer genitals.
45 If she waits longer and then finds blood on her cloth.
46 A red stain found on her garment, even if it is not proven that it is a blood-stain.
47 Unless they tell them explicitly that they are impure.
48 This refers back to Mishnah 1.

If a woman has to use cloths to check herself because of her occupation with pure food, the House of Shamai require that she use a separate cloth for each sex act, even if she examines them only the next morning, or, if she has only one cloth, that she examine it between any two sex acts. The House of Hillel admit repeated use of a single cloth for the entire night.

Halakhah 3: "What is 'later'," etc. Rebbi Yose ben Rebbi Abun said, that is not later but after later. What is later? That she can stretch out her arm and take the cloth from under the bedsheet. But after later, her husband is pure.
The Sages disagree with R. Aqiba in the situation described in the Mishnah, that a stain is found after the woman left her bed to check herself. But in the situation described by R. Yose ben R. Abun the Sages will agree with R. Aqiba that both are impure. In the Babli, 14b, and the Tosephta, 3:6, the statement of R. Yose ben R. Abun is attributed to the Tanna R. Eleazar ben R. Sadoq (II), of R. Aqiba's generation.

Rebbi Eleazar in the name of Rav: The words of those Sages who follow the method of Rebbi Meir. Rebbi Johanan said, really the Sages. How is that? The colleagues in the name of Rebbi Johanan: We shall infer the point of view of the Sages from that of Rebbi Aqiba. Just as Rebbi Aqiba says, she makes her sex partner impure retroactively but her count is not in disorder, so the Sages say, she makes her sex partner impure retroactively but her count is not in disorder.

The source which attributes the power to impart retroactive impurity to stains found on a garment (Chapter 1, Note 42) is attributed to R. Meir. Rav thinks that if the Sages follow R. Aqiba in extending impurity to the sex partner in case a stain was found, they also must hold that the impurity is retroactive for 24 hours.

They deny retroactive impurity caused by stains.

If the count is not in disorder, i.e., the 8th day after the onset of menstruation is well defined, then the onset is well defined and there is no place for retroactive impurity.
Abba bar Jeremiah, Cahana in the name of Samuel: Any woman without a definite period is forbidden to her house unless she checked herself. But did we not state: "All women are presumed pure for their husbands." He explains it, for those who come from a trip. But did we not state: "The wives of men coming from a trip are presumed pure"? Rebbi Abun bar Hiyya said, explain it if he came and found her awake. But was it not stated: Whether he found her awake or found her sleeping. Rebbi Abba said, explain it if he left her in a state of purity. (What is the period that is counted for her? Rebbi Simeon ben Laqish said: One gives her 30 days as average period.) Rebbi Johanan said, I am stating that it is permitted even after three years, but only for a woman who has a regular period. Rebbi Abbahu said, only if it was seven days after the onset of her period. Are you not worried that maybe she did not immerse herself? Rebbi Hanina said, that means that it is forbidden for
a woman to stay in her impurity. Samuel bar Abba asked: Even if it was certain that she had given birth\(^{61}\)? Rebbi Yose said, so we are saying, even if she became impure. But since her prior state was invalidated when she gave birth, so her prior state was invalidated when she became impure\(^{62}\).

54 In the Babli, 54b, this is restricted to women preparing pure food. But the present paragraph seems to speak of women in general. Her house is her husband.

55 It is understood that she would inform him if she were forbidden to him.

56 One may assume that a prior state continues until one is appraised of a change. In the Babli 11b (Tosephta 3:8), this is a Tannaitic statement; it is accepted as operative (16b) while in the Yerushalmi it is rejected at the end (Note 62).

57 It does not seem that this belongs here; it is an echo from Chapter 1, Note 132. It seems clear that if the wife has a regular period, the husband has to use that period to compute whether his wife is pure or impure at the time of his return, not any theoretical average.

58 Whose husband can compute in advance her days of purity. Then there is no question anymore of assuming the wife to be pure by her prior status of purity but of prior length of the period which may be assumed to remain unchanged. This is also the interpretation given R. Johanan's statement in the Babli, 15b.

59 Since the biblical days of impurity are 7, irrespective of the length of the menstruation.

60 And remain impure since her husband is away. This argument proves that in this paragraph one does not speak about a woman engaged in preparing pure food; if she prepared impure food her only reason for immersing herself in a miqweh would be to be able to sleep with her husband.

61 In that case, the prior regular period has ceased to exist and the woman has to establish a new period after she finishes nursing her baby. Even if she reestablishes a regular period of the same length, in most cases its position in the month will change. A prior knowledge cannot be
used when it is known to be obsolete. In the Babli, 15b, he addresses his question to R. Abba.
62 It is obvious that the computation based on the prior period cannot be used after it is known that the woman has given birth. Then it is also clear that if for any reason whatsoever the continuation of the regular period is in doubt, there can be no computation. The explanation given by R. Abba earlier in this paragraph is shown to be invalid since the woman is certain to have become impure by the time of her regular period and, therefore, has no presumption of purity. The only way to admit R. Johanan's statement is one based on the computation of pure days when there is no known change in the wife's regular period.

63 Also quoted in the Babli, 16b.
64 In the dark. The Babli takes the Mishnah as it is written.
65 She is working with pure food and, therefore, is cleansing herself after intercourse. If in the morning
66 A woman who does not work with pure food can have sex without checking herself with a cloth and is always presumed pure unless known to be impure. Why should a woman using a cloth be in a worse position than one who does not use it?

67 If she already has to use a cloth, that cloth must be of use. The use is to confirm her status of purity. If the status cannot be confirmed because the cloth was lost, why should her status of purity be confirmed?

Mishnah 4: The Sages gave a simile about a woman’s anatomy: The room, the anteroom, and the upper floor. The blood from the room is impure. If it is found in the anteroom it is impure even in the case of a doubt since it is presumed to come from the source.

68 The uterus.

69 The vagina. The Babli version is יַחְבּוּד. Cf. Greek πρόθυρον “front door; porch”, also πρόσοδος “approach, onset; sexual intercourse”.

70 The ovary. The Fallopian tubes leading from the ovary to the uterus in the Babli are called יַחְבּוּד "staircase, chicken coop".

71 The walls of the room. The implication is that blood originating in the ovary or the tubes is pure.
Halakhah 4: "The Sages gave a simile about a woman's anatomy," etc.

So is the Mishnah: The blood from the room is impure but the blood from the upper floor is pure\(^72\). Rav Jehudah in the name of Samuel: The room is inwards from the anteroom; the upper floor is over the room up to the middle of the anteroom, the door of the upper floor opens to the anteroom\(^73\). Rav Nahman bar Rav Isaac asked Rav Huna: Does the Mishnah [deal with the case that blood was found] inwards of the door of the upper floor\(^74\)? He said to him, if it was found inwards of the door of the upper floor it is certainly [impure]. But we deal with the case that it was found outwards from the door of the upper floor\(^75\). The words of the rabbis disagree, since Rebbi Johanan said, three are like a doubt but they treated them as certain, viz., the following: A woman who has a miscarriage in the form of a cut-off hand or cut-off foot\(^76\), or a placenta\(^77\), and blood found in the anteroom\(^78\). What are we speaking of? If it was found inwards of the door of the upper floor it is certainly [impure]. But we must deal with the case that it was found outwards from the door of the upper floor. Rebbi Abba the son of Rebbi Pappaios asked before Rebbi Yose: We have stated many doubts\(^79\) and you say so? He said to him, Rebbi Johanan spoke only of a woman\(^80\).
The second part of the Mishnah would be superfluous if all blood in the genital apparatus were impure.

It is not known what is the source of anatomical knowledge in Babylonian medical schools. The anatomy of Palestinian authors seems to be derived from lost Roman sources; it is reported (Babli 30b, Tosephta 4:17) that the slave girls who had helped with Cleopatra's suicide were delivered to Roman doctors who made them pregnant and then killed them in various stages of pregnancy to study the development of the fetus.

In the Babli, 17b, the statement is credited to the school of Rav Huna.

Does the presumption of impurity of the blood presuppose proof that it is unlikely to come from the tubes?

Therefore, the blood is treated as probably, but not certainly, impure. If the woman touched heave, the heave would be in limbo, could not be used nor be burned before it spoils.

Mishnah 3:1. If the miscarriage produces something that does not look at all like a human fetus, one might think that it was questionable whether there really had been a pregnancy and there should be no pure period but this is treated like a birth and the woman becomes impure (as for a female) and subsequently pure (as for a male).

An empty placenta is treated as sign of a birth even if it was not preceded by any child, Mishnah 3:4.

The case of the Mishnah here. According to R. Johanan, heave becomes certainly impure and has to be burned immediately. In the Babli, 17b, the disagreement between the Babylonian Rav Huna and the Galilean R. Johanan is quoted as one between the Babylonian Rav Qatina (a colleague of Rav Huna) and the Galilean R. Hiyya (the Elder).

There are many more Mishnaiot (partially enumerated in the Babli, 18a) in which cases of impurity are resolved by rabbinic rules without all the facts being known which would allow a factual determination. Why does R. Johanan count only three?

The same answer in the Babli, 18a.
Mishnah 5: Five kinds of blood are impure from a woman: Red, black, like saffron stigma\(^{81}\), and like earth water\(^{82}\), and like mixed wine\(^{83}\). The Hause of Shammai say, also like fenugreek water\(^{84}\) and like roast beef juice, but the House of Hillel declare these pure. The green\(^{85}\) Aqabia ben Mahalalel declares impure but the Sages declare it pure. Rebbi Meir said, if it does not cause impurity as a stain, it causes impurity as a body fluid\(^{86}\). Rebbi Yose says, neither one nor the other.

81 Which has the shape of a horn,  85 Yellowish green, the color of an etrog (citrus medica).
82 Reddish ochre.  86 The body fluids (blood, urine)
83 Red wine mixed with water.  of a menstruating woman are sources
84 Water in which fenugreek seeds were steeped.  of original impurity.
Halakhah 5: "Five kinds of blood are impure from a woman," etc. Rav and Rebbi Johanan both say that there are four kinds of blood. The red one oxydizes and becomes black\(^\text{87}\). Samuel said, black comes from all of them. From where that there are five kinds of blood impure by the Torah? Rebbi Joshua ben Levi said, "she uncovered the source of her bloods\(^\text{88}\)," "she shall be purified from the source of her bloods\(^\text{89}\)" "blood will be the excretion of her genitals\(^\text{90}\)" But "a woman whose excretion of blood flows"\(^\text{91}\) is also there! That only comes to her in the days of her excessive flow to turn her into a zavah\(^\text{92}\). From where that there is impure and pure blood? Rebbi Ḥama ben Joseph in the name of Rebbi Hoshiaiaḥ\(^\text{93}\): It is written: "If something in the law is too difficult for you;" then it is not written "whether blood and blood" but "between blood and blood"\(^\text{94}\), that shows that there is impure and pure blood\(^\text{95}\).

\(^{87}\) In the Babli, 19a, 20a, this is a statement of R. Ḥanina supported by a Tannaitic statement. Samuel's statement is ascribed there to Rami bar Abba, a student of Rav Huna.

\(^{88}\) Lev. 20:18.

\(^{89}\) Lev. 12:7.

\(^{90}\) Lev. 15:19. This verse is not quoted in the Babli, 19a, since only four kinds of blood have to be established. Also, that verse is needed to establish the fact that a menstruating woman is impure; in the hermeneutics of the Babli it cannot be used to establish details of the rule. The other two verses mention the blood as a kind of side remark; they can be used to establish the details. The argument is that in both verses the plural is used; an indefinite plural always means 2 (cf. H. Guggenheimer, Logical Problems in Jewish Tradition; cf. Chapter 1, Note 83), and 2+2 = 4.

\(^{91}\) Lev. 15:25.

\(^{92}\) The verse deals with a different subject, with blood that is not menstrual.

\(^{93}\) Quoted in the Babli, 19a, in the names of the same authors.

\(^{94}\) Deut. 17:8.

\(^{95}\) That there are cases of impurity of blood which need a judicial determination.
The House of Shammai say, also like fenugreek water and like roast beef juice." That makes seven\(^96\). They are similar to earth water\(^97\). Rebbi Yose in the name of Rav, the colleagues in the name of Rebbi Johanan: Rebbi Meir did not declare impure, only Aqobia mentioned it\(^98\). Then it also should bring impurity like fenugreek water and like roast beef juice which were mentioned by the House of Shammai! These are similar to earth water\(^99\). Pure blood prepares for impurity, impure blood does not prepare\(^100\).

\(^96\) The preceding paragraph established that there can be only five kinds.

\(^97\) Not counted separately.

\(^98\) As explained in Tractate Demay, Chapter 2, Notes 136, 137, 141, dry harvested produce remains impervious to impurity as long as it remains dry. But if it is wetted by human body fluids, it becomes susceptible to impurity. R. Meir agrees that green discharge is not menstrual blood and therefore not impure in itself, but as a body fluid it will have the power to prepare dry food for impurity. R. Yose objects since a green discharge is not blood and only blood, breast milk, sweat, spittle, semen, and urine are the body fluids which prepare for impurity.

\(^99\) Therefore, the House of Hillel will agree that they can prepare for impurity.

\(^100\) This is a minority opinion of R. Eleazar ben Azariah, Mishnah Makhširin 6:5. According to the majority opinion, in general what prepares does not make impure but menstrual blood prepares and transfers impurity at the same moment. For this opinion, one would translate: "Impure blood does not need preparation."
Mishnah 6: How is red? Like blood from a wound. Black, like ink-stone; lighter than that is pure. Like saffron stigma, like the uniformly colored part of it. Like earth water, from the valley of Bet Kerem on which water was poured. And like mixed wine, two parts water for one part Sharon wine.

101 Ink is made by scraping of flakes and dissolving them in water.
102 Which is reddish, not yellow.
103 Near Jerusalem, from where the stones for the Temple were quarried (Mishnah Middot 3:4).

Halakhah 6: "How is red," etc. Rebbi Jacob bar Aha, Rebbi Ulla from Caesarea in the name of Rebbi Hanina; Rebbi Abba in the name of Rebbi Simeon ben Menasia: Like blood of a wound which was hit a second time. Rebbi Jacob bar Sosai said before Rebbi Yose: The Mishnah implies this, "red like blood from a wound." Rebbi Isaac bar Nahman and Rebbi Eudaimon from Haifa were sitting together when a man passed by them. Rebbi Isaac bar Nahman said to Rebbi Eudaimon from Haifa: That one is close to produce blood of a menstruating woman. Does he
disagree? If he would be hit a second time, it would be like menstrual blood.

104 Blood coming from a pre-existing wound. In the Babli, 19b, many different characterizations are given and one of them is "blood from a wound on the small finger of an unmarried teenager which had healed and opened a second time." Such a string of conditions is characteristic for the Babli which wants to make sure that these criteria are never used in praxi.

105 It seems that he had an open wound.
"And black, like ink-stone." How do you check that? Rebbi Abba in
the name of Rav Jehudah: One takes the ink-stone and puts in on white
leather. Rebbi Yose ben Rebbi Abun said, on colored leather. Rebbi
Ze'ira in the name of the rabbis: Black like a raven, black like a grape
berry, black like asphalt are pure. The colleagues in the name of Rebbi
Johanan: Black like liquid ink is pure. Rebbi Immi in the name of
Rebbi Johanan: Like a felt hat imported from overseas is impure. Rebbi
Ze'ira asked before Rebbi Immi: Are all these facts to be acted upon? He
answered him, yes. Rebbi Simeon ben Laqish said, all of them, if they are
lighter than the standard they are pure, darker than the standard
impure. Rebbi Johanan said, all of them, if they are lighter than the
standard they are pure, darker than the standard pure except for black.
The Mishnah supports Rebbi Johanan, as we have stated: "And black like
ink-stone is impure, lighter than that is pure." Therefore, darker than that
is impure, but only black was mentioned in that connection. Therefore, all
others, even if they are darker than the standards, are pure. The town of
Rav Jehudah followed Rebbi Simeon ben Laqish but Rav Jehudah himself
followed Rebbi Johanan. Bar Qappara stated a support for Rebbi Simeon
ben Laqish but one does not follow him in practice, since Rebbi Hanina
mixed wine for Bar Qappara and asked him, if it is like that, what is its
status? He answered, impure. He lightened it, then he answered, pure.
He said to him, peace shall be on him who erred with his mouth but not
with his eyes. They wanted to say that he who says pure, refers to
when it was polished. But he who says impure, if it is not polished.
Let us hear from the following: It happened that a woman from the
Patriarchate had a discharge of black blood. The case came before Rebbi
Jacob bar Zabdi and Rebbi Isaac bar Tabelai; they wanted to declare her impure. Rebbi Helbo told them: So says Rav Huna in the name of Rav: Black which penetrates is pure, that which polishes is impure. He said that only about black. Therefore, all others are pure even if they polish.

106 On a white background to make the black appear deeper. In the Babli, 20a, Samuel requires a white cloth.
107 To make the black appear more muted.
108 In the Babli, 20a, liquid ink and grape are classified as impure by Samuel, asphalt and raven as pure by R. Eleazar.
109 Tosephta 3:11. In the Babli, 20a, this is the position of Ulla and Bar Qappara (who is mentioned in the same sense later in this paragraph); the latter explicitly excludes the looks of mixed wine from this rule. The question is whether the list of shades given in the Mishnah is to be taken as limit of what is impure or is an exact description.
110 In the Babli, 20a, this is a definite minority opinion ascribed tentatively to Rebbi Immi (bar Abba). It is not mentioned in the Tosephta.
111 In the Babli, 20a, the same story is told with R. Hanina praising Bar Qappara who sticks to his teachings since he had exempted mixed wine from his general rule. In the Yerushalmi he is praised for following in practice what two generations later would be the teachings of R. Johanan while formulating support for what would be the position of R. Simeon ben Laqish.
112 If it forms a shiny crust.
113 The blood colors any textile but the stain never reflects light.
114 And do not exactly represent any of the colors described in the Mishnah.
"Like saffron stigma, like the uniformly colored part of it." Moist, not dried\textsuperscript{115}. From the upper part, not the lower\textsuperscript{116}. From the part in the shadow, not exposed to the sun. Rebbi Abbahu brought before Rebbi Eleazar\textsuperscript{117} in cupper's vessels. He said to him, its looks already are dimmed. Rebbi Jacob bar Zavdi brought before Rebbi Abbahu goat's blood as [example of] red, fish blood as [example of] black. He said to him, its looks already are dimmed\textsuperscript{118}

\textsuperscript{115} Agreed to in the Babli, 20a, and in Tosephta 3:11.

\textsuperscript{117} He brought him blood to examine, probably in a glass vessel.

\textsuperscript{116} Put in doubt in the Babli, 20a; confirmed in Tosephta 3:11.

\textsuperscript{118} The color of blood can be judged only when it is fresh.

"Like earth water, from the valley of Bet Kerem on which water was poured." Rebbi Hanina and Rebbi Jonathan both say one pours the water on a piece of cloth\textsuperscript{119}.

\textsuperscript{119} One checks the color remaining on the cloth. In the Babli, 20a, R. ochre; cf. Note 130.
"And like mixed wine." Abba bar Hana in the name of Rebbi Johanan: As one sees a cup of mixed wine from the outside. They wanted to say, in a Tiberian cup. Rebbi Eudaimon from Sepphoris said before Rebbi Mana: As in a small phial whose walls do not cast a shadow. Samuel said, anybody who has no experience in seeing kinds of pure blood should not judge kinds of impure blood. Rav said, only if he is competent about them and their names. The words of Rebbi Johanan say so: I know all kinds of pure blood and of impure blood. The pure is the most red; the impure is like earth water. "If he has no experience," therefore, if he has experience he can judge it. In addition, from what we have stated: clear but not turbid. Rebbi Hanina used it
turbid. They said before Rebbi Johanan: Rebbi Hanina uses it turbid, but you said, not turbid. He said to them, Rebbi Hanina drinks old [wine], Rebbi Johanan does not drink old [wine], Rebbi Hanina drinks oldest [wine]. Rebbi Hoshaiyah said: Since Rebbi Hoshaiyah’s eye is full of happenings, even turbid is not disqualified for him. Rebbi Shammay in the name of Rebbi Aha: Rebbi Hanina estimated with a lump of earth. Rebbi Abun, Rebbi Shammay in the name of Rebbi Aha: Since we know that Rebbi Hanina is competent, do we follow his precedents? Rebbi Hanina was living in Sepphoris, they brought cases before him and he decided on the basis of three precedents. Rebbi Johanan and Rebbi Simeon ben Laqish were there but he did not invite them to sit with him. They said, the old man is a Sage since his irons are sharp! Once he invited them to sit with him. They said, for what reason do you take notice of us this time? He said, so should come over me if I had not heard every single case from Rebbi in theory as many times as there are hairs on my head, and in a practical way three times; but the present case did come before Rebbi only twice. Therefore, I adjoined you with me.

120 It seems rather that this should be R. Abba bar bar Ḥana, known as student of R. Johanan, and not his father Rav Abba bar Ḥana, nephew of R. Hiyya the Elder.
121 Diminutive of ἄρη, Greek φιάλη, Latin phiala, "phial, saucer".
122 In a colorless glass phial (Rashi 21a), cf. Babli 21a.
123 He wants to restrict the authority to deliver an opinion on purity or impurity of blood to surgeons like himself.
124 An academically trained medical expert.
125 A quote from Samuel’s statement.
126 Referring to the "earth water", paint made from ochre earth. In the Tosephta (3:11) the opposite is stated: One checks the color only if the water is turbid (i.e., if the entire fluid has a
uniform color), not if it is clear (if the ochre has separated and settled on the bottom.)

127 Confirmed in the Babli, 20a.

128 R. Hanina, of the generation of R. Johanan's teachers, had old traditions. In the Babli, 20b, R. Johanan complains that he never had training in judging kinds of blood because R. Hanina (a medical man) was so competent that he handled all cases by himself. This agrees with the story told here.

129 He has seen so many cases that he can use shortcuts to quickly come to a decision.

130 He did not have to dissolve it in water; confirmed by the Babli, 20a.

131 People with less competence have to follow the rules painstakingly.

132 There were young rabbis there but the Chief Rabbi kept them out of the decision process. R. Johanan himself said that he moved to Tiberias since he would never have amounted to much in Sepphoris because of R. Hanina's dominance.

133 His iron knife is sharp; i.e., he has no difficulty to decide. The Hebrew word for "judicial decision" is יִבָּב "what is cut off", a translation of Latin decisio, from caedo "to cut".

134 An oath inviting disaster if he was lying.

Rebbi Isaac bar Nahman learned from Rebbi Eleazar the kinds of pure blood. Does this mean, not the impure kinds? But did not Rebbi Isaac bar Nahman say to Rebbi Eudaimon from Haifa: That one is close to produce blood of a menstruating woman? But one who learns one kind, learns at the same time the other kind. Isaac bar Jonathan and Rav
Huna were sitting together when a woman came and asked them. Isaac bar Jonathan said to her, did you see it more smoky than that? Rav Huna said to him, so says Rav: Instruct according to what comes before you! Rebbi Jacob bar Aha said in the name of Rebbi Simeon bar Abba: A number of chests full of problems came before Rebbi Hanina and about what came before him, he did pronounce.

135 Earlier, Note 105.
136 This shows that he was an expert in the matter of impure blood.
137 Showed them a blood stain.
138 Whether the stain originally was darker.
139 One has to decide according to the evidence produced. In the Babli, 20b, the formulation is: The judge has only what his eyes are seeing.
140 The "problems" were stained garments. He never investigated whether the stains had changed color in the meantime.

May one review stains at night? Rebbi reviewed at night and declared impure. He said, let it stay until morning. He reviewed at daylight and declared pure. He said, great are the words of the Sages who said, one does not review stains at night. He said, let it stay until the evening. He reviewed at night and found pure. He said, I did not make a mistake; that one faded!
141 The same story in a different version is in the Babli, 20b.
142 Quoted also in the Babli, Megillah 14a.
143 One reviews stains at the first possible moment, even at night.

If she saw on the bedsheets, is she trustworthy if she says it looked like such and such? Rebbi Abba in the name of Rav Jehudah; Rebbi Helbo, Rebbi Hiyya in the name of Rebbi Johanan: if she saw on the bedsheets, she is trustworthy if she says, it looked like such and such. It was stated so: She is trustworthy. I could think that in the same way she shows the looks of her stain so she shows the looks of skin disease, the verse says: "He shall be brought to Aaron the priest or to one of his descendants, the priests."

144 Such a baraita is also quoted in the Babli, 20b.
145 Lev. 13:2. Skin disease can be judged only by examining the patient personally, not by description.
Mishnah 1: If a woman has a miscarriage in the form of a lump\(^1\); if this was accompanied by blood she is impure\(^2\), otherwise she is pure. Rebbi Jehudah says, in any case she is impure.

1 Not anything recognizable as a human fetus.  
2 Impure as menstruating, not as giving birth.

Halakhah 1: "If a woman has a miscarriage in the form of a lump," etc. The Sages say, the uterus grows the lump\(^3\). Rebbi Jehudah says, blood congealed and was formed into a lump\(^4\).

3 The miscarriage is neither a birth nor menstruation; it cannot be classified with anything implying impurity.  
4 Since any blood seeping from the walls of the uterus is a source of impurity, the fact of the discharge is proof of impurity.
Rebbi Johanan said, Rebbi Jehudah declared impure only in the color of the four kinds of blood. Rebbi Jacob bar Aha, Rebbi Simeon bar Abba, in the name of Rebbi Yose bar Nehorai: Practice follows Rebbi Jehudah. Rebbi Eleazar heard that and said, I do not accept this. Samuel said, practice follows Rebbi Jehudah. Rebbi Ze'ira said, he did not say that practice follows Rebbi Jehudah but he saw that the rabbis are used to follow Rebbi Jehudah. Rebbi Johanan in the name of Rebbi Simeon bar Iohai: One tears it open. If one finds blood collected there, she is impure, otherwise she is pure.

Rebbi Eliezer ben Jacob stated, disagreeing with Rebbi Simeon ben Iohai: "Blood would be her flow from her genitals," not what is in the amnion nor in a lump.

5 In the Babli, 21a, R. Johanan is reported to hold that even the Sages agree that a lump in the color of the four types recognized as impure blood (taking red and black together) makes the woman impure; for him the disagreement between the Sages and R. Jehudah refers only to lumps that do not look like blood. R. Johanan's opinion as quoted here is ascribed in the Babli to Rav Jehudah in the name of Samuel.

6 There is no principle involved that practice should follow R. Jehudah; he only stated what he recognized as usual among Babylonian rabbis.

7 In the Babli, 21b, this is a tannaitic statement of Symmachos attributed to R. Meïr.

8 Leïv. 15:19.

9 In the Babli, 21b, this is an amoraic statement attributed to R. Ze'ira. The explanation of the verse in Sifra Meïsora' Parashah 4(4) is rejected by R. Ze'ira in the Babli, 21b, and by R. Simeon (ben Iohai) in Sifra.
Mishnah 2: If a woman miscarried the form of a membrane, a hair, dust, or red mosquitoes, it should be soaked in water; if it dissolves she is impure. If a woman miscarried the form of fishes, grasshoppers, abominable or crawling things; if this was accompanied by bleeding she is impure, otherwise pure. If a woman miscarried the form of a domestic or wild animal, or bird, whether pure or impure, if it is a male she should observe the days of a male birth, if a female of female births, if it cannot be determined then of both males and females, the words of Rebbi Meir. But the Sages say, anything which has no human form is no child.

10 Everybody agrees that these are congealed masses of blood if they dissolve in water; there is menstrual blood but no birth.
11 Following the rules of menstruation.
12 Seven days of impurity followed by 33 days of purity.
13 14 days of impurity followed by 66 days of purity.
14 14 days of impurity as of a female followed by 26 days of purity (the 33 of a male minus 7 days assigned to the impurity of a female birth).
15 If there was bleeding, she is impure as menstruating, otherwise she remains pure.

מלכלה ב:ippleathy כמייה החגיגה כל: רבי חנונית ברו רבא שמיעון
ב כל חיים. טסיל לפוסרין. הלтинן. היפלחת כמייה ברקנס הגריס החקיאים

Mishnah 2: If a woman miscarried the form of a membrane, a hair, dust, or red mosquitoes, it should be soaked in water; if it dissolves she is impure. If a woman miscarried the form of fishes, grasshoppers, abominable or crawling things; if this was accompanied by bleeding she is impure, otherwise pure. If a woman miscarried the form of a domestic or wild animal, or bird, whether pure or impure, if it is a male she should observe the days of a male birth, if a female of female births, if it cannot be determined then of both males and females, the words of Rebbi Meir. But the Sages say, anything which has no human form is no child.

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14 14 days of impurity as of a female followed by 26 days of purity (the 33 of a male minus 7 days assigned to the impurity of a female birth).
15 If there was bleeding, she is impure as menstruating, otherwise she remains pure.
Halakhah 2: If a woman miscarried in the form of a lump, etc. 
Rebbi Hanina in the name of Rebbi Simeon ben Laqish: She has to soak it in lukewarm water. But did we not state: "If a woman miscarried in the form of fishes, grasshoppers, abominable or crawling things; if this was accompanied by bleeding she is impure, otherwise pure." Can she not put it in lukewarm water? The second learns from the first and the first learns from the second. The second learns from the first, that if they dissolved she is impure, if not, she is pure. The first learns from the second, if this was accompanied by bleeding she is impure, otherwise pure, and she has to soak it in lukewarm water.

16 Obviously a misquote, from Mishnah 1.
17 This must be R. Hinena, the student, not R. Hanina, the teacher of R. Simeon ben Laqish.
18 Quoted also in the Babli, 22b.
19 Since the Sages at the end state that the event cannot be considered a birth.
20 There is an alternative way of checking: if the discharge was without blood, the woman would nevertheless be impure if the discharged material dissolved in water.
21 In case of a discharge that looked like peel or hair, if it was accompanied by bleeding, the woman is impure even without dissolving the object in water.
There, we have stated\textsuperscript{22}: How long does it have to be soaked? In lukewarm water, 24 hours.\textsuperscript{23} Jehudah ben Neqosa says, if has to be lukewarm for 24 hours\textsuperscript{24}. How does one proceed? One puts it into hot ashes or adds any amount of hot water.

\textsuperscript{22} Mishnah 7:1, speaking of body fluids other than blood, which transmit impurity only if moist, not when dry. There it is stated that dry matter becomes a carrier of prior impurity if it becomes moist after 24 hours of soaking in lukewarm water.

\textsuperscript{23} By analogy, that is the time of soaking in lukewarm water accepted here and in the Babli, 22b.

\textsuperscript{24} Before being used; Tosephta 6:11.

If a woman miscarried dry blood, Rebbi Eleazar says, she is impure; Rebbi Yose ben Hanina said, she is pure\textsuperscript{25}. A Mishnah disagrees with Rebbi Yose ben Hanina: "Menstrual blood and flesh from a corpse make
impure moist and dry.  

He explains it that it was moist and then became dry. A Mishnah disagrees with Rebbi Eleazar: "If a woman had a miscarriage in the form of a lump, a hair, dust, or red mosquitoes, it should be soaked in water; if it dissolves she is impure." He explains it, because of a creature. Rebbi Ze'ira said, even there you can object about dust. Is dust a creature? Rebbi Abba said, You even may mention dust. The dust from a pregnant woman exists as a creature. A baraita disagrees with Rebbi Yose ben Ḥanina: "It happened that a woman miscarried with a kind of red membranes. The case came before the Sages who sent and called the doctors who told them, she has an internal wound. Also it happened that a woman miscarried with a kind of red hairs. The case came before the Sages who sent and called the doctors who told them, she has an internal wart." Only because of a wart and a wound. Therefore, if there is no wart or no wound, it does not apply. This disagrees with him and [his opinion] cannot be upheld.

25 In the Babli, 22a/b, this is formulated as a discussion between R. Yose ben Ḥanina and R. Eleazar, with only R. Eleazar's position fully articulated.

26 Mishnah 7:1. Blood contrasts with all other body fluids which are carriers of impurity only when moist.

27 Blood keeps its impurity once it has acquired it. This implies nothing for blood which never was moist when it left the body. The same answer is given in the Babli, 22a.

28 Since one speaks of a lump of dry blood, this probably is an intentional misquote of the Mishnah, instead of "membrane".

29 The reference is to the part of the Mishnah which was not quoted: "If it does not dissolve, she is pure." Then something had grown in her body, but since it is not human, it cannot make her impure, following the Sages at the end of the Mishnah. (Rashi on 22b).

30 The Mishnah does not say "dust" but "in the form of dust"; this can
represent microscopic creatures.

31 In a different formulation this is Tosephta 4:3-4, quoted in the Babli, 22b.

32 Rashi explains as scar tissue.

33 There cannot be any question of menstrual blood; the woman is pure.

34 In the absence of a sufficient medical reason, the woman has to be declared impure.

35 Rebbi Johanan said, this birth is like all other births mentioned in the Torah. Just as all other births mentioned in the Torah [are counted] from the appearance of either head or most of the body, this also [is counted] from the appearance of either head or most of the body. Rebbi Simeon ben Laqish said, this birth is different from all other births mentioned in the Torah. All other births mentioned in the Torah [are counted] from the appearance of either head or most of the body, this one once the face is recognized. What is the difference between them? If he came cut or stunted. In the opinion of Rebbi Johanan, until the appearance of either head or most of the body. In the opinion of Rebbi Simeon ben Laqish, until the face is recognized.

35 Here starts the discussion of the positions of R. Meir, who declares that a still-birth of an animal-shaped body is counted as a human birth, and the Sages who deny this. In a later paragraph, R. Johanan defines the human or animal character of a chimera or hybrid by its human or animal face.
has difficulty giving birth, one dissects the fetus in her womb and removes it in pieces because her life has precedence over his life. If the greater part of his body came out one may not touch him since one does not choose between lives." Commentary of Maimonides: This is obvious and true and does not need a commentary. Similarly, the impurity of birth starts with the appearance of the forehead (head first) or most of the body (feet first).

37 Since the face of a chimera defines its human character, there can be no recognition of human birth before that character is recognizable.

38 There is no human birth if there is no face even if there is a forehead and a body.

If it cannot be determined then she shall observe for both male and female, the words of Rebbi Meir. But the Sages say, anything which has no human form is no child." Everywhere we stated "she shall observe for male and female, fourteen [days] impure and 26 pure\textsuperscript{14}; one puts upon her the restrictions of the male and of the female. That means, for her house\textsuperscript{39}. But for pure food, she shall observe for a female [birth].

39 The 26 days of purity are applicable only to her relations with her husband. For preparations of pure food, she can consider the full 66 days of a female birth as pure.
Rebbi Hanina the son of Rebbi Abbahu said, Rebbi Meir’s reason is that "shaping" is written for them as for humans. The Eternal God shaped man as dust from the earth. Rebbi Immi asked, because "shaping" is written for them as for animals, "the Eternal God shaped from the earth all animals of the field and the birds of the sky? But is it not written "for behold the Shaper of mountains and Creator of wind? Then, if she has a miscarriage in the shape of a mountain, she should be impure because of birth! There is a difference, for shaping is not written for them in the Creation story. Rebbi Yasa in the name of Rebbi Johanan: Because they look forward as humans do. Abba bar bar Ḥana said in the name of Rebbi Johanan: Because they walk forward as humans do. Rebbi Abun bar Hiyya objected: Did we not state, "if his eyeball is round like that of a human," is that not a defect? Rebbi Yose said, did we not state, look forward; did we not state, walk? What about it? Human eyeballs are round, animal eyeballs are elongated. Rebbi Yose ben Rebbi Abun said, human eyes have more white than black, animal eyes have more black than white.

40 In the Babli, 22b, this is of Samuel. attributed to Rav Jehudah in the name 41 Gen. 2:7.
42 Gen. 2:19. The masoretic text is slightly different from the text quoted.

43 Am. 4:13. The same question is asked in the Babli, 23a.

44 In the Babli, 23a, Rabba bar bar Hanan in the name of R. Johanan gives the explanation attributed here to R. Yasa.

45 Mishnah Bekhorot 6:8. A firstling whose eyes look human is not acceptable as sacrifice.

46 R. Johanan only spoke about functions, not about looks. (But human eyes are forward looking as eyes of predators; the eyes of kosher animals are sideways looking eyes of prey. In the Babli, 23a, Abbai restricts the rule of R. Meir about birds to owls who have forward-looking quasi-human eyes.)

47 Which features make animal eyes a bodily defect by being like human eyes?

Rebbi Haggai said in the name of Rebbi Hanina: A colleague of the rabbis objected to the position of Rebbi Meir: If she miscarried the likeness of a raven and he stands on the top of a tree, can one say to him, come and give halisah or marry in levirate? Rebbi Mana told him, instead of objecting to Rebbi Meir, object to the rabbis! Since Rebbi Yasa said in the name of Rebbi Johanan, if his entire body is human and only his face is animal, he is not counted as a child. If his entire body is animal and only his face is human, he is counted as a child. If his entire body is human and only his face is animal, when he is standing reading the
Torah one may tell him, come to be slaughtered\textsuperscript{51}. If his entire body is animal and only his face is human, when he is ploughing the field\textsuperscript{52} one may tell him, come and give \textit{halisah} or marry in levirate!

48 The \textit{hiphil} of the root \textit{בָּשָׁה} means "to miscarry, to abort (actively or passively)". \textit{בָּשָׁה} is the stillborn. The questioner here presumes that if a woman can give birth to a stillborn chimera, she can also give birth to a live chimera. Then R. Meir must hold that there are animals which are counted as human, with paradoxical consequences.

49 Since the Sages disagree with R. Meir only in the definition of what makes a woman impure as consequence of a birth, if R. Meir accepts living chimeras so do the Sages. The implied conclusion is that the language of the Mishnah, the term "miscarried", was chosen judiciously to teach that chimeras by their nature are stillborn. The cases constructed here cannot happen; a conclusion stated explicitly in the Babli, 23a.

50 In the Babli, 23b, a statement of Rav Jeremiah bar Abba in the name of Rav.

51 If his face is that of a kosher animal.

52 An ox harnessed to the plough.
And Rebbi Yasa said in the name of Rebbi Johanan: Not all the criteria together but only one criterion. The following are the criteria: The forehead, the eyebrows, the eye, the ear, the mandible, the nose, the beard, and the dimple. And Rebbi Yasa said in the name of Rebbi Johanan: Not all the criteria together but only one criterion. Rebbi Abba, Rav Jeremiah in the name of Rav: The words of Rebbi: Only if the entire face has human traits; but the words of the rabbis: Even one of the criteria; and the words of Rebbi Simeon ben Iohai: Even its fingernails. Rebbi Phineas asked: Are not the statements of Rebbi Simeon bar Iohai inverted? There, he says, 'only if its head and most of its body are like its mother,' and here, he says so? Here about humans, there about animals. Rebbi Abba said, the Elder Rebbi Hiyya went South. Rebbi Hama the father of Rebbi Hoshiaia and bar Qappara asked him: What is the rule if its entire body is human and only its face is animal? He returned and asked Rebbi, who told him, go and write to them, it is no birth. Rebbi Jeremiah said, Zeugos went out, Rebbi Hama the father of Rebbi Hoshiaia and bar
Qappara asked him: What is the rule if its eyes are shapeless? He returned and asked Rebbi, who told him, go and write to them, there is no child. Rebbi Yose ben Rebbi Abun said, Rebbi follows his own opinion since Rebbi says, only if the entire face has human traits. What if its face was crushed? Rebbi Yasa said, Rebbi Johanan and Rebbi Simeon ben Laqish differ. Rebbi Johanan says, it is no child; Rebbi Simeon ben Laqish says, it is a child. Rebbi Ze'ira said, not that Rebbi Johanan said it is no child in every respect but it is no child to provide the mother with days of purity; it is a child to require the mother to observe the days of birth. Rebbi Johanan in the name of Rebbi Yannai: If its hip is unformed, it is not a child. Rebbi Johanan in the name of Rebbi Yose ben Rebbi Joshua: If the navel is unformed, it is no child. Rebbi Johanan in the name of Rebbi Zakkai: If its holes are unformed, it is no child. Rebbi Ze'ira in the name of Gidul: If its skull is unformed there is no child.

53 In the Babil, 23b, one baraita states that one criterion is sufficient except for the ear but all Amoraim hold that all criteria together have to be fulfilled for a human birth.

54 Tosephta Bekhorot 1:9: "R. Simeon says, why does the verse say 'camel, camel' two times (Lev. 11:4, Deut. 14:7) to add a camel born from a cow as if it were born from a she-camel but if its head and most of its body are similar to its mother it is permitted as food. But the Sages say that what comes from an impure animal is impure, since no pure animal can be impregnated from an impure animal and vice versa, nor cattle from sheep and goats and vice versa, nor a human from an animal and vice versa." Here R. Simeon requires that most of the animal be similar to its mother to accept it as animal birth.

55 In Sifra Semini Pereq 4(6), the fact that a camel is not kosher is brought as proof that one criterion for a kosher animal is not sufficient; all criteria must be satisfied. Since that statement is obvious from the verses, one may see in it a veiled attack on the
position that one criterion is sufficient to determine a human birth.

56 According to Rashi in the Babli, 24a, the skull has no sign of indenture where the eyes should be. In the Babli, R. Hiyya’s sons were asked and gave the wrong answer.

57 The face is barely recognizable (Rashi in Babli 24a).

58 14 days of impurity for a female birth (Rashi in Babli 24a).

59 A stillbirth whose legs are not movable. This is a birth defect which is not mentioned in the Babli.

60 Since the navel is the point where the fetus is connected to the placenta, an absence of an indication of the place of the navel is proof that there is no human fetus. The Babli agrees, 24a.

61 Neither bladder nor intestines have an outlet. The Babli agrees, 24a.

62 In the Babli, 24a: R. Johanan.

Mishnah 3: If a woman miscarried an amnion full of water, or blood, or flakes, she does not have to consider this as a child. But if it showed tissue she has to observe for male and female birth.

63 It looks like flakes of flesh but no body is formed.

64 If inside the amnion a form is seen but it is not recognizable what it is.
Halakhah 3: "If a woman miscarried an amnion full of water," etc. It was stated\(^6\): Full of water\(^6\), she is impure for a birth; full of blood, she is impure as menstruating; full of flesh\(^6\), she is impure as menstruating. But did we not state: "If a woman miscarried an amnion full of water, or blood, or flakes, she does not have to consider this as a child"? Rebbi Bevai in the name of Rebbi Simeon ben Laqish: The Mishnah if [the contents are] clear; the baraita if [the contents are] turbid. Rebbi Simon in the name of R. Joshua ben Levi: Even if all was clear, since only humans have an amnion\(^6\). That is what is written\(^6\): "When I gave clouds as his garment and fog as his diapers." "His garment" is the amnion, "and fog his diapers" that is the placenta.

\(^{65}\) A similar but different baraita is quoted in the Babli, 25a.

\(^{66}\) This baraita holds that there is no amniotic fluid without a fetus.

\(^{67}\) Since there is no shape, there can be no birth; pieces of flesh contain blood and make the woman impure.

\(^{68}\) In the Babli, 25a, these statements refer to another baraita, (close to Tosephta 4:12): "If a woman gives birth to an amnion which does not contain tissue, R. Joshua says it is a birth but the Sages say it is no birth". R. Simeon ben Laqish said in the name of R. Oshaia (= Hoshia): They quarrel if it is turbid, but if the contents are clear everybody says that it is no birth, but R. Joshua ben Levi said, their quarrel is if the contents are clear.

In the end, Samuel declares in the Babli that an amnion is not a sign of birth only if it is transparent. This might agree with the Yerushalmi.

\(^{69}\) Job 38:9. The verse, which describes the creation of the world, is interpreted as describing human birth.
If an amnion’s shape was spoiled, what is the rule? Rebbi Johanan said, it is a child; Rebbi Simeon ben Laqish said, it is not a child. Rebbi Simeon ben Laqish objected before Rebbi Johanan: What is the difference between this and a rotting corpse without a spine? He said to him, in the latter case it would have been correct that he should be pure even with his spine intact; why did they say, he is impure? That he should be treated with honor. But in our case it is a birth.

Tosaphot Niddah 27b, s. v. נכיד "If an amnion’s shape was mixed up, what is the rule? Rebbi Johanan said, it is impure; Rebbi Simeon ben Laqish said, it is pure. Rebbi Simeon ben Laqish objected before Rebbi Johanan from the statement of R. Isaac from Magdala. He said to him, biblical law even requires that he be pure even with his spine intact; why did they say, he is impure? That he should be treated with honor.

a A Babylonian expression.
b A statement in the Babli, 27b: "The corpse of a person who was burned is impure if the spine exists."

The quote of Tosaphot from "Yerushalmi" is probably from the Ashkenazic "Book Yerushalmi", containing Yerushalmi rules adapted to the Babli.

If the skeletal remains of a corpse are found and the spine is not complete, one does not have to worry that the earth below and around it is really decomposed flesh and should be impure. If the remains of the amnion are not recognizable as such, there
seems to be no reason to treat it as impure. The impurity of the dead is a sign that the corpse needs burial.

What is the amnion containing tissue which they referred to? Any which initially looks like a *rašon*? One does not check it in water, for water is a solvent and destroys it, but only in oil which is neutral and clears up; also one checks only in sunlight.

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**notes**

73 In the Babli, *Hulin* 65a, *rašon* is identified as biblical שֵׁפֶר, a locust (Lev. 11:22). In the Tosephta (4:10) *Niddah* 25a (*princeps, reading of 'Arukh*)

74 Tosephta 4:11 (there are for *aura*); Babli 25a/b (משנתא). In the Babli *Niddah* 25a *editio princeps*, *et al.* reading of 'Arukh

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**Abba Shaul said,** a human is created from his navel; from there spreads its roots in all directions. It was stated: One sees his two eyes like two fly-blows, his two nose holes like two fly-blows, his mouth opened like a barley grain. One sees his two hands like two fly-blows, his navel

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like a fly-blow, his genital like a fly blow and if she is female, her genital spanned like a barley grain." It was stated: Rebbi Jonathan says, one sees his two arms like two threads of crimson wool and his other limbs like compressed unformed material; he has not yet developed hands and feet. On that it is explained in the Bible\textsuperscript{76}: \textquotedblleft My unformed body was seen by Your eyes, in Your ledger they are all written down, the days bundled before one of them was."\textsuperscript{77}

75 Tosephta 4:10; Babli 25a; also Sotah 45b, Yoma 85a.

76 that which was received denotes all parts of the Hebrew Bible other than the Torah.

77 Ps. 139:16. That Psalm, while ascribed to David, is generally interpreted to describe the experiences of Adam. Cf. H. Guggenheimer, The Scholar's Haggadah (Northvale 1995), p. 220.

Rav Jehudah asked Samuel: Since I am learned, can I judge the signs of an amnion? He said to him, your head's head can be scalded by boiling water, you should not be scalded even by lukewarm water\textsuperscript{78}. Rebbi Hiyya in the name of Rebbi Johanan, we do not rely on women who say, its completion\textsuperscript{79} would have been male, its completion would have been female. Rebbi Jacon bar Zavdi, Rebbi Abbahu in the name of Rebbi Johanan: A woman is trustworthy if she said, I gave birth or I did not
give birth. But she is not trustworthy if she says, it was male or it was female.

78 I, the medical authority and your teacher, can investigate the most difficult situations; you, a rabbi, should not give an opinion even in obvious cases. In the Babli, 25b, Samuel is reported to have told Rav Jehudah not to decide in cases in which there was a fetus with no hair on his skull.

79 *Editio princeps* reads "its snail" for "its completion".

80 This is quoted in *Or Zarua* #340 (vol. 1, col. 90b), where the author, R. Isaac ben Moses of Vienna, notes that he does not understand why women should not be trusted in the matter of impurities and purity. But it seems that the students of R. Johanan only confirm the interpretation given to R. Johanan's position earlier, Note 58.

Mishnah 4: If a woman miscarried a sole or a placenta, she should observe for male and female birth. A placenta in the house makes the house impure; not that the placenta is a child but there is no placenta without a child. Rebbi Simeon says, the child was dissolved before it came out.

81 Greek οὕδαλος "sandal; a flat fish (solea)". The object of the miscarriage was a flat piece, without recognizable face or limbs.

82 Without a body attached to it.

83 If there was a placenta, one may assume that it was accompanied by a small dead human embryo. Therefore, the house transmits the impurity of the dead as long as any tissue from this
birth is in the house.

84 While no placenta can be formed without a pregnancy, if no child was found at the moment of birth there is none and the house is pure. A stillbirth is not a source of impurity as long as it remains in the womb of a woman.

Halakhah 4: "If a woman miscarried a sole or a placenta," etc. Rebbi Abba in the name of Rav Jehudah: There only is a sole because it was weighed down by a living [fetus]; it comes out not with a living but with a dead [child]. Rebbi Abun bar Hiyya objected: did we not state, "if a woman miscarried a sole or a placenta, she should observe for male and female birth"? That means, it is a child. Rebbi Huna said, I explained it before Rebbi Jeremiah. Explain it if the child was born through the wall of the womb and the sole from the womb. The child within fulfilling, the sole after fulfilling. The child before she converted, the sole after she converted. But even you may say, both were born from the womb, both were born after she converted. Explain that the child was born first and she designated a sacrifice for it. Before she could bring the sacrifice, the sole came out and the first sacrifice was pushed away. It turns out that she brings the sacrifice for the sole.
85 If one of a pair of twins kills its sibling in the womb, he himself will die in the womb.

86 It is stated in Mishnah Keritut 1:3 that a woman having a miscarriage of a sole or a placenta is obligated to bring a sacrifice (Lev. 12:6-8) which is eaten by the Temple priests. This implies that this miscarriage is a complete birth in the sense of the biblical text. But Rav Jehudah seems to imply that these miscarriages are always accompanied by a regular stillbirth, which requires a sacrifice by the simple wording of the text. It seems that the Mishnah in Keritut is superfluous. The Mishnah here can be justified as informing on the periods of impurity and purity which are changed from those induced by the stillbirth.

87 A delivery by caesarean section is not a birth; the mother is not impure for the birth and not required to bring a sacrifice (Mishnah Niddah 5:1). If one child is delivered by caesarean section and the other through the vagina, only the second is counted as birth for impurity and sacrifice.

88 "Fulfilling" refers to Lev. 12:6: "After fulfilling the days of her purity for son or daughter, she has to bring .."

Immediately after the end of her period of purity, the obligation of a sacrifice starts. Any additional birth occurring between the first and the end of the period of purity does not create a new obligation of sacrifice, but any birth occurring when the mother already is obligated for a sacrifice creates a separate obligation after the observation of its periods of impurity and purity (Mishnah Keritut 2:4).

89 This is a different case. As a Gentile, the woman is not obligated for anything. If she converts before the miscarriage of the sole, she has to observe the rules of birth for the sole alone, even if it was accompanied by the birth of a recognizable child.

90 The constructions of R. Huna are unnecessary.

91 Within the days of "fulfilling", but after she had designated the sacrifice. She now has to bring one sacrifice dedicated to two births.

92 A purification sacrifice which cannot be used for its original purpose cannot be used for any other purpose. Therefore, a sacrifice dedicated to one birth cannot be used for two; the second miscarriage obligates the mother to dedicate a new sacrifice.
“What is the sole which they mentioned? Anything which looks like the sole, a sea fish. Rabban Simeon ben Gamliel says, anything which looks like an ox tongue. Our teachers voted about this to say, only if it exhibits human traits.”

Who are “our teachers”? Rebbi Jehudah the Prince and his court. At three places is Rebbi Jehudah the Prince called "our teachers", about bills of divorce, oil, and a sole. About a sole, as we just said. About oil, as we have stated: "Rebbi and his court permitted oil." About bills of divorce, as we have stated there: “This is your bill of divorce if I die, this is your bill of divorce if [I die from this] sickness,
this is your bill of divorce after my death; he did not say anything. But our teachers said, this is a bill of divorce? Who are "our teachers"? Rebbi Jehudah the Prince and his court. They should have called him "permissive court" since any court which permits three [previously forbidden] things is called "permissive court." Rebbi Yudan said, his court disagreed with him about the bills of divorce. Rebbi Yannai shouted, you purified the women giving birth! Rebbi Simon in the name of Rebbi Joshua ben Levi: This is part of the testimony of Rebbi Onias from Hauran; as from Rebbi Ze'ira: If this is part of the testimony of Rebbi Onias from Hauran then it was Rebbi Hanina who shouted, you purified the women giving birth!

93 Tosephta 4:6, Babli 25b. The last sentence reads in the Babli: Our teachers testified that a sole [to be the source of birth impurity] needs the shape of a face.

94 Sabbath 1:1 (3d 1.20), Gittin 7:3 (48d 1.17), Avodah zarah 2:8 (41d 1.48); obliquely mentioned in the Babli Gittin 72b, 76b; Ketubot 2b, Avodah zarah 37a.

94a Mishnah Avodah zarah 2:9. The Mishnah has a list of foods that cannot be taken from Gentiles without kosher supervision since one cannot be sure that no forbidden ingredients were used but which are not forbidden for usufruct. A first group contains milk, bread, and olive oil, with a note that "our teachers permitted olive oil" [to be used without supervision.] In the Babli, this permission is attributed to Rebbi, not his grandson R. Jehudah the Prince. (The chronology of the House of Hillel in the third cent. and the attribution of decrees between Rabbis Jehudah I, II, and III is in dispute.)

95 Mishnah Gittin 7:3. From here on there exists a Geniza text; its readings are given by א.

96 After his death, no person can perform any legal action. Therefore, a bill of divorce which shall be valid only after the husband's death is invalid. If the husband is sick or goes on a trip overseas, and he wants to spare his wife (or prevent her from
contracting) a levirate marriage to his brother, he can give her a bill of divorce stating "if I die then this shall be your bill of divorce valid from today." But then he cannot live with her any longer without invalidating the divorce.

97 The Babli, *Gittin* 72b, reports the same but in 76b refers the decision to Mishnah 7:9: "If he says, this is your bill of divorce if I do not return within 12 months; if he dies in the meantime, the bill of divorce is void." In this case also, he did not specify from today. The Babli explains that in both cases they follow R. Yose who holds that "the date of a document is proof of its validity;" a bill of divorce executed before the husband's death is valid. The same explanation is tentatively accepted in the *Yerushalmi, Gittin* 7:3 (48d l. 25).

98 Mishnah *Idiut* 8:4, the oldest Mishnah on record.

99 By freeing all miscarriages without a recognizable fetus from the rules of birth impurity.

100 One should read מָכָּה מֵאָדַר, cf. *Sevi'it* 1:7, Note 53.

101 Rebbi Onias's teacher.

102 "What is the placenta they mentioned? Anything looking like a thread of woof and its head is blown up like a lupine. Rabban Gamliel says, anything looking like chicken intestines and its head is blown up like a crop and it is hollow like a trumpet. No placenta is shorter than a hand-breadth."

102 The Babylonian version has slightly different attributions: Babli

26a, Tosephta 4:9.
Rav Jehudah sent and asked Rebbi Eleazar: If a placenta came out partially today and partially tomorrow? He told him, for pure blood she counts from the first day, for impure blood she counts from the second day. Rebbi Mattaniah said, this refers to the case that there was no child born with it. But if a child was born with it, then both for pure and for impure blood she counts only from the moment the child was born.

The same text is in Qiddusin 1:4 (60b 1.43), p. A different version is in the Babli, Baba qama 11a.

She has only 25 days of purity since the 14th day of her impurity is the 15th day of her count for purity. In the version of the Babli, during the first day she would make pure food impure but the count, including 26 days of purity, starts only on the second day.
Rebbi Yose ben Shaul asked before Rebbi: Can one refer a placenta to something which is not a child? He said to him, one does not refer a placenta to anything which is not a child. If it came out attached to it, what then? He said to him, one does not discuss anything impossible.

Rebbi Hanin stated from Samuel: One does not refer a placenta to something which is not a child, if nevertheless it came out attached to something else, one refers to it. Samuel asked the students of Rav: Can one refer a placenta to stillbirths? They said to him, one refers a placenta...
to a child and one [does not] refer(s) a placenta to stillbirths. Samuel praised them because they follow the argument [of their teacher]. Rebbi Hanin stated from Samuel: One refers a placenta to a child but one does not refer a placenta to stillbirths since it does not separate until it [was completed]. Rebbi Ze’ira in the name of the rabbis: What you say, that one refers a placenta to a child, is because a pregnant woman does not become pregnant. Why does one not refer it to stillbirth, can a woman not have a stillbirth followed by a stillbirth? I say that she was pregnant with twins when the placenta of one amnion was crushed by the amnion of the other placenta. Rebbi Ze’ira, Rav Jehudah in the name of Rav: One refers a placenta to a child for up to three days, and no child remains after another child for three days. Rebbi Ze’ira said, he who said this also said the other, but they disagree with one another! Rebbi Abba said, Rav Jehudah explained it following Rav: You say that one refers a placenta to a child for up to three days if the child was born first, and you say that no child remains after another child for three days if the sole appeared first. Rebbi Mana said, is that correct? The active ones come out first. Rebbi Yose ben Rebbi Abun said, if [the womb] opened for the large, it opened for the small; if it opened for the small it did not open for the large.

105 If a woman is delivered of a placenta without a baby, does one have to assume that this represents a stillbirth or could she have developed a tumor in the form of a placenta which then was expelled from her body?

106 The reading of the Geniza: R. Hanina, R. Samuel, is preferable since R. Hanin was the student of R. Samuel bar Isaac.

107 After the birth of a live child, the placenta will be expelled separately; a placenta not followed by birth cannot be considered placenta
praevia of a stillbirth.

108 Translation of the Genizah text. Leiden ms: "The argument of Rebbi Abun" (who lived several generations after Rav and Samuel and is never mentioned in this connection.)

109 He holds that the stillbirth of an incomplete gestation is always expelled together with its placenta.

110 While pregnant (with one or several simultaneous children), a woman will not start a later pregnancy. This is asserted as certain truth in the Babli, 27a.

111 Can a woman not be pregnant with twins and lose them at different times?

112 After the birth of a child it can take up to three days before the placenta is expelled; the count of impurity starts with the birth of the child. If the placenta is expelled later that three days one considers this as a later stillbirth and starts the count of impurity for an indeterminate stillbirth from the later date. The same opinion in the Babli, 26b.

113 If twins can be born three days apart, then the placenta could be expelled after 6 days, not three as asserted in the first part of the statement.

114 He denies that in the case of twins a live birth can happen three days after a stillbirth.

115 A fetus whose development was arrested cannot stay in the womb after the birth of its live twin; the live child can stay in the womb after the dead was expelled. This sentence is missing in the Genizah text.
Rebbi Joḥanan said, this\textsuperscript{116} follows Rebbi Simeon, since Rebbi Simeon said, the child was dissolved before it came out. Rebbi Joḥanan said, Rebbi Simeon agrees that he causes his mother the days of birth\textsuperscript{117}. Then the house should be impure\textsuperscript{118}? Rebbi Abun bar Ḫiyya said, explain it if it came out partially dissolved\textsuperscript{119}. Rebbi Simeon said to the Sages: Do you not agree with me that if the basin is carried from the inner to an outer room it is pure\textsuperscript{120}? They said to him, because it becomes scrambled\textsuperscript{121}. He said to them, this one is already scrambled. What is the rule about vessels which were there at the time of delivery? Let us hear from the following which we stated there\textsuperscript{122}: "Rebbi Eliezer ben Jacob says, if a cow brought forth a cake of blood, that should be buried and she is freed from the rule of firstlings." It was stated on this: It does not bring impurity by being carried\textsuperscript{123}. Rebbi Johanan said, Rebbi Simeon and Rebbi Eliezer ben Jacob said the same thing\textsuperscript{124}. This implies that vessels which were there at the time of delivery are pure\textsuperscript{125}.

\textsuperscript{116} The entire Mishnah follows R. Simeon's reasoning that there must have been a fetus which failed to develop; the only difference between R. Simeon and the majority relates to the impurity of the dead. The same statement in the Babli, 27b.

\textsuperscript{117} R. Simeon agrees with the first statement in the Mishnah. The same statement in the Babli, 27b.

\textsuperscript{118} A complete human fetus (older than 40 days after conception) is a human corpse and causes the impurity of the dead, in particular the impurity of a "tent" which applies to all the vessels in the "tent" (Num. 19).
R. Simeon holds that a fetus whose existence can only be inferred from the existence of a placenta will never be born intact.

Tosephta 4:13. The Sages, who hold that the room in which the woman is delivered from the empty placenta becomes a "tent" containing human remains, will agree that, if the placenta and all that remains is carried out from there in a basin, the next room is no longer a "tent" and remains pure. The same argument in made the Babli, 27a.

By the delivery and the motion, the undeveloped fetus will no longer be complete in one piece.

Mishnah Bekhorot 3:1. If a cow is pregnant the first time and has a miscarriage, what she is delivered of is "opening of the womb" (Ex. 34:19) and must be treated as holy. While a calf born afterwards may be her firstling, it is no longer "opening of the womb" and, therefore, not a sacrifice.

If somebody carries the cadaver of a kosher animal (even without touching it), he and his clothing become impure (Lev. 11:40). If the stillbirth does not have any features which make it recognizable as an animal, it does not induce the impurity of cadavers.

The same statement is in the Babli, Bekhorot 22a.

For R. Simeon, the room in which the woman was delivered is not a "tent" transmitting the impurity of the dead. This argument also establishes that practice follows R. Simeon. In the Babli, 27a quoting Tosephta 4:13, this is clear since it identifies the anonymous Mishnah as R. Meir's and states that R. Jehudah and R. Yose support R. Simeon. In the Babli, Bekhorot 21b, this is a baraita ascribed to R. Hiyya (the Elder.)
Mishnah 5: If a woman miscarries a sexless, or a hermaphrodite, and a male, she shall observe for a male and a female. If it was a sexless and a male, or a hermaphrodite and a male, she shall observe for a male and a female. A sexless and a female, or a hermaphrodite and a female, she shall observe for a female exclusively. If it came out in pieces or defective, it is born as soon as most of its body came out. If it was a regular birth, when most of its head came out. When is it most of its head? If the forehead came out.

Mishnah 6: If a woman miscarries and it is not known what it was, she shall observe for a male and a female. If it is not known whether there was a fetus, she shall observe for a male, a female, and menstruation. If she miscarries on the 40th day, she gives no thought to a child. On the 41st day, she shall observe for a male, a female, and menstruation. Rabbi Ismael says, on the 41st day, she shall observe for a male and menstruation, on the 81st day, she shall observe for a male, a female, and menstruation for the male is fully formed by the 41st day and the female by the 81st. But the Sages say, the creation of males and females is identical, both on the 41st.

126 The rules of this Mishnah are formulated for a miscarriage since it is valid also for live births. It is part of a series speaking mostly of
miscarriages.

127 A child without either male or female sex characteristics. The child could be either a male with an ingrown penis or an undeveloped female.
127 This word is missing in the Halakhah, the Babli, and the independent Mishnah mss.; it is a scribal error.
130 Since the second child could be a female. While the mother of live twins, one a male and one a female, observes only the rules for a female, in this case the male is certain but the female uncertain. Therefore, the mother has to observe the rules for a male and only those rules of a female which are restrictive, not those which are permissive.
131 This is not different from the rules for twins of different sexes since the days of impurity and purity for a male are contained, respectively, in those for a female.
132 This is the point in time from which the impurity of birth is counted.
133 From this moment on, the child is a person in law and cannot be killed even if the birth endangers the life of the mother.
134 If there was no child, there are no days of purity. She is impure like a menstruating woman for 14 days. It is traditional that 11 days after the menstrual period, i.e., days 8 to 19 in the menstrual cycle, no menstruation can occur. Therefore, if the woman has a bloody discharge after day 8, she is impure in the impurity of flow (Lev. 15:25-30). For this, one follows the rules of the male, not the female.
135 The human character of a fetus starts at the end of the 40th day after conception. A termination of pregnancy before this time is no abortion.
136 Since so early in the pregnancy it falls under the rules of a miscarriage whose nature cannot be determined.
Halakhah 5: "If a woman miscarries a sexless, or a hermaphrodite," etc. In all cases in which we have stated "she shall observe for a male and a female," it means 14 [days] impure and 26 pure; one puts on her the restrictions of both male and female\(^\text{14}\). That means, for her house\(^\text{137}\). But for pure food she observes the rules of a female [birth]. "If it was a sexless and a male, or a hermaphrodite and a male, she shall observe for a male and a female," one takes into account the possibility of a male\(^\text{138}\). "A sexless and a female, or a hermaphrodite and a female, she shall observe for a female exclusively," does one not take into account the possibility of a male? This implies that if she gave birth to a male and a female, or a female and a male\(^\text{139}\), she observes the rules for a female\(^\text{130}\).

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137 For sexual relations with her husband; cf. Note 39.

138 The rules are restrictive since the sexless or the hermaphrodite might in reality be males. Therefore, the female influences only for impurity, not for purity.

139 The order in which the twins are born may be important for rules of inheritance; it is irrelevant for rules of purity and impurity.
If it was in pieces and the head came out, what is the rule? Rebbe Yasa said, Rebbi Johanan and Rebbi Eleazar disagree. Rebbi Johanan said, its head counts for most of it. Rebbi Eleazar said, its head is like any other of its limbs. A Mishnah disagrees with Rebbi Johanan: "If it came out in pieces or defective, it is born as soon as most of its body came out." Explain it if its head came out. A Mishnah disagrees with Rebbi Eleazar: "If it was a regular birth, when most of its head came out." Did not the first part say, the head is nothing? Explain it about the incomplete body. Rebbi Jonathan and Rebbi Simeon ben Laqish; Rebbi Jonathan agrees with Rebbi Johanan, Rebbi Simeon ben Laqish with Rebbi Eleazar. Rebbi Ze’ira showed the colleagues his forehead with the skull. One of the house of Gamliel ben Rebbi Leani asked before Rebbi Mana: Since you say, it is a child, does this not imply that one who comes after him is firstborn neither for inheritance nor for the Cohen.

He said to him, explain it if both were stillborn.

140 Their disagreement is confirmed in the Babli, 29a.
141 The head is called "most of the body".
142 If the head appeared first, even if it was a stillbirth with an incomplete body.
A "regular birth" must refer to a fully formed body since otherwise the first statement, that one needs most of the body, contradicts the second, that the skull with the forehead is enough. From the last statement of the Mishnah there is no objection to R. Eleazar since it does not speak of a defective fetus.

The first, but not the second statement of the second half of the Mishnah.

Here ends the Genizah fragment.

That a birth is counted only from the moment that the forehead with the greater part of the skull had appeared.

Mishnah Bekhorot 8:1 states that any child born after an initial miscarriage such as described in this Chapter is a firstborn for inheritance but not for redemption by a Cohen (Ex. 13:15).

Obviously any miscarriage produces a stillborn baby. The rules of the firstborn for inheritance have nothing to do with those of the firstborn for redemption. While the firstborn for inheritance must be born (Deut 21:15), he cannot have been delivered by caesarean section and he must be the father's first (Deut 21:17), but not necessarily the mother's. Since a miscarriage is not counted for the father, only for the mother, the next child still can claim the double part of the inheritance (Sifry Deut. 217).

Rebbi Isaac bar Nahman in the name of Rebbi Eleazar: The head of a bird by most of it. Rebbi Ze'ira in the name of Samuel: The throat of a bird by most of it. There came a case before Rebbi Yose about [a bird whose throat] was punctured by a needle's width. Do we not know what "most" means?

This has nothing to do with the topics discussed before; it refers to the rules of kosher food. Since "you shall not eat meat from a torn animal" (Ex.
22:30), a four-legged animal whose membrane encasing the brain or esophagus is punctured by the most minute hole is unfit for consumption. It is asserted here that these strict rules do not apply for birds.

150 Certainly, a hole the width of a needle is not "most". In the Babli, Hulin 44a/b, the definition of "most of the throat" is in dispute.
Mishnah 1: The daughters of Samaritans are menstruating from their cribs, and Samaritan men make impure bottoms like uppers because they sleep with menstruating woman since they sit for every blood. But one is not guilty about them for entering the Temple and one does not burn heave because of them since their impurity is one of doubt.

1 It can happen that a newborn baby girl, under the influence of the activated sex hormones of the mother, shows a slight vaginal discharge. According to pharisaic tradition, such a baby girl has to be purified by immersion in a miqweh. The Samaritans, a Sadducee sect, apply the rules of menstruation only to girls from their puberty on. Therefore, a pre-puberty Samaritan girl might be impure by Pharisaic standards.

2 This is a technical term not easily translated. The sufferer from gonorrhea makes any textile on his couch severely impure; that textile has the ability to make humans and vessels impure. A garment worn by the sufferer from gonorrhea is also impure, but it makes only food and drink impure. The textile on the couch of a man who slept with a menstruating woman (the bottom) is impure in the impurity of a garment of the sufferer from gonorrhea (the upper).

3 Samaritans, like all Sadducees, are extremely careful not to sleep with menstruating women. They are treated
here as "sleepers with menstruating women" because they consider any vaginal discharge as menstrual; they do not recognize the different shades of blood at the core of pharisaic doctrine (Mishnah 2:5). If a woman has a discharge, she starts counting 7 days and then cleanses herself in a miqweh. But in pharisaic theory, she could have a pure discharge on the first day and an impure on the second or third; then the seventh day of her count would be only the sixth of fifth for a pharisaic woman. Therefore, a Samaritan woman might tell her husband that she was pure when in pharisaic theory she was still impure. (A pharisaic woman only has the choice either of showing her blood to a rabbi or to start counting from the last day of her period.)

The compliment was returned by the Sadducees who accused the Pharisees to "make the Temple impure because they do not separate themselves [from their wives] following the Torah and sleep with one who sees the blood of her discharge" (CD V:6).

Since it is very unlikely that a Samaritan girl or man really be impure when he or she say that they are pure, one cannot act on their impurity except of not using heave touched by a Samaritan.

Halakhah 1: "The daughters of Samaritans are menstruating from their cribs," etc. 5Menstrual blood is dirty, virginal blood is not dirty. Menstrual blood is red, virginal blood is not red. Menstrual blood is from the womb, virginal blood is not from the womb but from the side.

5 Also quoted in the Babli, 65b.
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