Preface

The present volume is the tenth in this series of the Jerusalem Talmud, the fifth in a five volume edition, translation, and Commentary of the Third Order of this Talmud. 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 J. Sussman for the Academy of the Hebrew Language, Jerusalem 2001. The author has exercised his own independent judgment on what may or may not be corrupt in the text. The text essentially represents an outline, to be fleshed out by a teacher's explanation. The translation should mirror this slant; it should not endow the text with literary qualities which the original does not posses. In particular, the translation is not intended to stand separate from the Commentary.

The text contains many passages which are repeated in other Tractates of this Talmud. Occasionally in the Leiden manuscript, and quite frequently in the Genizah texts, the parallel text is not copied but after the first few words is replaced by a notice: "One continues this in Tractate A, Chapter X."1 This proves that parallel passages in the Jerusalem Talmud are copies of one another. In the present edition, parallel passages in most

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1 Cf. Chapter 3, Notes 147,162,166,192,259,280; Chapter 4, Note 171.
cases 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 enable 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 Qiddusin

In most civilized societies, an actual marriage is preceded by a betrothal, a public statement by the parties that they are ready to contract marriage at a later date. Such betrothal is also found in medieval and later Jewish sources and is known either as מיני "stipulations" or נין "fine", since usually it was a contract for the marriage of two young persons detailing the promised monetary contributions by the parents of both parties to the new family and containing a clause stipulating the fine imposed on a party which would be backing out of the contract at a later time. Such a contract of betrothal is treated in the present Tractate under the Greek name of σύμφωνον "agreed upon, contract"; it has no parallel in the Babylonian Talmud, according to which in Babylonia property settlements on the young couple were settled orally.

It is a peculiarity of Jewish marriage law, accepted by all groups, that marriage must be executed in two steps. This is apparent from the Pentateuch, which in criminal law treats the betrothed girl as "one's neighbor's wife"\(^1\) while she still is a virgin, and describes marriage as a two-step process\(^2\): "If a man (1) take a wife and (2) take possession of her." The verb נן "to take" used in the description of the first step is the term

\(^1\) Deut. 22:24.
\(^2\) Deut. 24:1.
generally used to describe marriage in Genesis and other biblical books. The meaning "to buy, to acquire" in Hebrew only occurs in late texts, e.g., *Neh.* 5:2,3. Since the change of status of the prospective bride from single girl to married wife is relevant for criminal law, the point in time when this change occurs must be well defined by a legal action. Based on the interpretation of "to take" as "to acquire", the preliminary marriage must be an intentional act of acquisition by the groom. This act generally is called קדש "dedication"; the biblical root שוד "to betrothe" is used only in quotes of or references to biblical texts. The real, definitive marriage, by which the bride enters the groom's house and lives with him, which activates all financial rights and obligations incidental to marriage, is called ניקש "carrying off". The modalities of the definitive marriage are discussed in Tractate *Ketubot*. In modern practice, preliminary and definitive marriage are performed consecutively in the same ceremony, following the Yerushalmi (*Ketubot* 1:1, Note 24).

Since preliminary marriage is structured as an act of acquisition, the first Chapter of the Tractate treats acquisitions in its diverse forms. This Chapter is by far the longest in all of the Jerusalem Talmud. The first Halakhah treats preliminary marriage. The Mishnah details the ways in which a man may acquire the exclusive right to marry a woman, both in original and levirate marriages, and the ways in which the wife may regain her status as single woman. Since the distinction between

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3 It probably is an intended double-entendre that נישא is used in *Jud.* 21:23 to indicate that the Benjaminites both "carried off" and "married" the flute players in the vineyards of Shiloh. The only other biblical occurrence of נישא as "to marry" is *Ru.* 1:4, where the expression is used to emphasize the irregularity of marriages to unconverted Gentile women.
preliminary and definitive marriages is biblical, all the possibilities have to be shown to be valid by biblical standards. A side remark discusses the status of Gentile marriages in biblical law. The text quotes two opinions; the one which the New Testament follows that marriage can be contracted only by marital relations and is absolutely indissoluble, and the Roman one that marriage is a compact between two consenting parties which can be repudiated at will by either party. If the groom chooses to contract the preliminary marriage by a gift of money or valuables, the Houses of Hillel and Shammai disagree about the minimum amount involved. Talmudic theory does not take cognizance of inflation. According to the House of Hillel, the minimal amount is equal to the value of the smallest Hasmonean coin, the *perutah*, whose Roman equivalent had disappeared even under the Julio-Claudian emperors. The lengthy discussion about the subdivisions of the denar is an attempt, in post-Diocletian times, to reconstruct the Augustean monetary system. The Halakhah ends with a short discussion of divorce and levirate marriage, followed by an attempt to define the terms used in *Lev. 19:20*.

Halakhah Two is purely theoretical, dealing with the laws of the Hebrew slave. Since *Lev. 25* connects Hebrew slavery with the institution of the Jubilee, the end of the latter at the latest with the fall of Samaria precluded any re-emergence of Hebrew slavery during or after the Second Commonwealth. This does not prevent the Talmudim from discussing at length the biblical laws of this by then hypothetical institution.

Halakhah Three deals with the acquisition and manumission of Gentile slaves. The manumission of Gentile slaves is a topic treated in Tractate *Gittin*. Here, only parallels to the Roman *manumissio inter amicos* and the Babylonian, Egyptian, and Byzantine *manumissio per epistulam* are treated, with an indication of the problems raised by partial manumission.
Halakhah Four treats the acquisition of livestock, Halakhah Five that of real estate and movables; it discusses deals involving both real estate and movables and the judicial status of suits involving composite transactions. Halakhah 6 covers barter.

The second part of the Chapter is introduced in Halakhah Seven, detailing the obligations of parents towards their children and of children towards their parents. The texts describing the obligations of children to honor and support their parents are copies of the relevant texts from Peah. The obligations of parents towards their children are really only obligations of the father's; this leads to a discussion of any biblical obligations not incumbent on women. Halakhah Nine similarly contains a discussion of those biblical obligations which are not relevant outside the Holy Land. The Chapter ends with a homily on the rewards awaiting the person who keeps his obligations.

Preliminary marriage, as a purely legal proceeding, is eminently suited to be performed by proxy. Chapters Two and Three deal with complications that might arise in preliminary marriage contracted by agent, or which is dependent on explicit or implicit stipulations, or executed by a gift of services. Chapter Two concludes with preliminary marriage executed by a gift of questionable value. The second part of Chapter Three treats preliminary marriages where either the identity of the woman is not clear or where the existence of such a marriage is itself a point of dispute between the parties.

The last part of the Chapter states the principle on which the qualifications for permitted marriages are based. There are two main problems. Deut. 23:3 prohibits the marriage of a bastard (the child from an adulterous or incestuous union) and any of his descendants with a
regular member of the congregation. *Lev.* 21:7 restricts the marriage pool available to priests. In addition, priests of the Second Commonwealth disregarded the rule that prophetic utterances are invalid as bases of legal rules and, based on *Ez.* 44:22 forbade the marriage of priests with women proselytes. The children of priests from women forbidden to them are desecrated priests; their disability also is hereditary. The main rule stated in Mishnah 14 is that the children of a legal union belong to the marriage class of their father. This means that female bastards and female descendants of desecrated priests can remove their disabilities; bastards by marrying proselytes permitted to them, and female desecrated ones by marrying an Israel. In the last Halakhah it is indicated that male bastards can father non-bastard children by marrying an unconverted Gentile woman under Gentile rules and converting her children at birth. This makes the children proselytes, rather than bastards.

The last Chapter starts with detailing the different marriage classes, not all of which follow distinct rules. This is followed by a discussion of the rules applying to children with unknown paternity and foundlings, and the special rules applying to marriages of male and female members of the priestly clan. In the Halakhah, these latter rules are declared obsolete. The rules for marriages of desecrated priests and proselytes are discussed in passing.

The second part of Chapter Four deals with the power of the father to legitimize or delegitimize his children and the limits of this power, as well as the value of personal declarations in establishing family relationships. An appendix notes that a man may not be alone with a woman who neither is his wife nor a close relative forbidden to him by biblical incest rules; related rules forbid unmarried males to act as teachers and females to teach male children. In both cases the Halakhah notes that one does
not suspect Jews to be either pedophiles or homosexuals but one is wary lest the teacher be attracted to one of the parents of the opposite sex.

The Chapter, Tractate, and Order closes with a lengthy homily on the merit of study of the Law and the rewards of such study.

The Tractate contains an above average number of passages borrowed from other Tractates, sometimes the same passage from different Chapters of the same Tractate. A complete list of the sigla used to characterise these parallels is given at the beginning of the Index. The critical notes also include the Geniza texts edited by Louis Ginzberg in his ידיעות החכואים. They leave out three inedited Geniza fragments, for whose location I am indebted to Professor Jacob Sussman⁴. The first of these (Halakhot 3:1-3) contains only fragments of lines; short of a full publication of the text a list of the Galilean spellings (which otherwise confirm the Leiden text) would be very misleading. The interesting additions in the remaining short fragments in Halakhot 2:9, 3:1 have been given by Professor Sussman in his edition of the Leiden Text; these are duly noted in the text⁵.

⁴ They are T.-S. NS 171.1 (at the Manuscript Department of the National and University Library in Jerusalem, reel 31347) and Cambridge University Library OR 1080.85a, 1080.452 (reel 19790).
⁵ Chapter 2, Notes 235, 236a; Chapter 3, Note 57.
Mishnah 1: A wife may be acquired in three ways; she regains her autonomy in two ways. She is acquired by money, or by a document, or by intercourse. By money, the House of Shammai say, by a denar or a denar’s value; but the House of Hillel say, by a peruta or a peruta’s value. How much is a peruta? One eighth of an Italic assarius. She regains her autonomy by a bill of divorce or by the husband’s death. A sister-in-law is acquired by intercourse; she regains her autonomy by halisah or by the brother-in-law’s death.

1 In matters of criminal law, any relations the woman might have with another man would be adultery. The husband cannot live with his wife (and does not acquire any dowry she might bring with her) unless he accepts the financial responsibilities incumbent upon a husband in a public ceremony, attended by at least 10 witnesses (cf. Peak 6:2, Note 46). The acquisition, or betrothal, mentioned here only needs the presence of two witnesses.

2 The woman agrees to be preliminarily married for a monetary consideration given in the presence of two witnesses.

3 A written promise of marriage.

4 Attested to by two witnesses. It
is enough for the witnesses to confirm that the parties were together in a locked bedroom for a period of time sufficient for intercourse. Since one speaks of preliminary marriage, the couple is in principle forbidden to live together after such intercourse and before the definitive marriage. There is a midrashic doctrine that no woman can become pregnant from her first intercourse unless she had lesbian or autoerotic experiences [Gen. rabba 45(5), 51(11); Pesiqta rabbati 42, p. 177].

5 A Roman silver denar; under Augustus and his first successors about 3.5 g of silver.

6 The perula was a small Hasmonean copper coin which disappeared with the end of the Jewish commonwealth, more than 100 years before the compilation of the Mishnah. Therefore, its value has to be defined in terms of Roman coins.

7 Corresponding to \( \frac{1}{192} \) of a denar. Assarius is the old name of the Roman as. In rabbinic practice, a peruta is defined as half a grain \( \frac{1}{960} \) of a troy oz. or 0.0324 g) of sterling silver.

8 The widow of a brother who died childless; cf. Introduction to Tractate Yebamot.

9 In definitive marriage. By biblical standards there is no preliminary levirate marriage.

10 Before she entered the levirate marriage. Once she is married, she is a wife in all respects and regains her autonomy by divorce or widowhood.

Halakhah 1: "A wife may be acquired in three ways," etc. So is the Mishnah: Either by money, or by document, or by intercourse. Rebbi Hiyya stated as follows: Not only by all three together, but even by any one of them.
By money, from where? "After he acquires," this tells you that she is acquired by money.\(^{11}\) By marital relations, from where? "And has marital relations with her," this tells you that she is acquired by intercourse\(^{12}\). I would say, by both together. Money without intercourse and intercourse without money, from where? \(^{13}\)Rebbi Abbahu in the name of Rebbi Johanan, it is written: "If a man is found lying with a woman having had intercourse with her husband." Think of it, even if he did only acquire her by intercourse, the one coming after him is [executed] by strangulation. Not only regular intercourse but even perverse\(^{14}\). Rebbi Abbahu in the name of Rebbi Johanan, it is necessary to mention perverse intercourse for if it were regular, why mention her husband?\(^{15}\) As we have stated there\(^{16}\): "If she was raped by two men, the first is stoned, the second strangled."

\(^{11}\) Babli 2a. In rabbinic Hebrew, \(יִשָּׁם\) means "to buy". The Babli shows from Gen. 23:13 that \(יִשָּׁם\) in biblical Hebrew may mean "to accept a deal involving money". By the talmudic doctrine of invariability of lexemes in biblical language, the same meaning must apply in all cases.

\(^{12}\) Babli 9b. Deut. 24:1: "After a man takes a wife and has marital relations with her" is the preamble to the rules of divorce. The verse is read
to mean: "After a man buys and/or has marital relations with a woman, if he desires to terminate the relationship he is required to follow the rules of divorce." Since there is no divorce without a preceding marriage, it follows that acquiring a wife by money and/or intercourse establishes marriage by biblical standards.

13 This elliptic statement is shortened from *Ketubot* 3:6 (Notes 88-92). The man who sleeps with a virgin preliminarily married to another man is stoned; one who sleeps with a married woman who is not a virgin is strangled. Since the verse mentions only intercourse, it is deduced that even if no money was given, the girl is legally bound to her husband and the seducer or rapist is executed for adultery.

14 Sex play which leads to satisfaction without penetration and ejaculation.

15 If the verse was simply intended to state that the punishment of the adulterer with a non-virgin is different from that with a virgin, it would not have mentioned "her husband". The husband makes his wife a non-virgin even by perverse intercourse, any other man only by penetration.

16 Mishnah *Sanhedrin* 7:15.

17 If the first one penetrated her.

So we learned intercourse without money. Money without intercourse, from where? "She shall go free, without money." "If he did acquire another one." Since one was by money, so the other is by money19.

18 *Ex. 21:11,10*, speaking of the "Hebrew slave girl", the underage girl sold by her father with the understanding that the buyer may use the amount he paid for the girl as bride-money in case he wants to marry her or give her to his son. This certainly is marriage by money. V. 11 notes that if she is not married either within 6 years or by the time she reaches adulthood, she goes free; the money given for her was to buy her working power. V. 10 states that once she is married, she cannot be treated differently from any other wife. It is inferred that as a matter of principle
her acquisition cannot be different from that of any other wife.
19 In *Mekhilta dR. Simeon bar Iohai* (p. 167) the argument is inverted:

By a document? "He shall write her a bill of divorce, hand it to her, and send her out of his house. If she left his house and went to be another man’s." It brackets her being with her leaving. Since her leaving was by a document, so her being is by a document.

20 Deut. 24:1. 25a, Ketubot 47a, Gittin 21b, Sifry 21 Babli 5a, Erubin 15b, Sukkah Deut. 269, end.

Rebbi Abin said that Hisqiah stated: "After he acquires," which means that she is acquired by money. Would it not be an argument *de minore ad majus*? Since the Hebrew slave girl, who cannot be acquired by intercourse, can be acquired by money, would it not be logical that this one, who may be acquired by intercourse, should be acquired by money? This is proved by the sister-in-law, who cannot be acquired by money but is acquired by intercourse. Therefore you would not be astonished if
this one, who may be acquired by intercourse, might not be acquired by money. The verse says, "after he acquires," this tells you that she is acquired by money²⁵.

²² *Sifry Deut.* 268; Babli 4b. Then the verse would be redundant.

²³ In these kinds of arguments, "proves" means "disproves the possibility of an argument de minore ad majus" because the rules are not comparable.

²⁴ The verse is necessary to understand the rules.

²⁵ And has marital relations with her," this tells you that she is acquired by intercourse. Would it not be an argument de minore ad majus? Since the sister-in-law, who cannot be acquired by money, can be acquired by intercourse, would it not be logical that this one, who may be acquired by money, should be acquired by intercourse? The Hebrew slave girl proves²⁴, who cannot be acquired by intercourse but is acquired by money. You likewise do not wonder that this one, who may be acquired by money, might not be acquired by intercourse. The verse says, "after he acquires," this tells you that she is acquired by money; "and has marital relations with her," this tells you that she is acquired by intercourse.

²⁶ *Sifry Deut.* 268; Babli 5a. The argument is completely parallel to that
By a document. Since money which does not send out permits to enter, would it not be logical that a document which sends out should permit to enter? No. If you speak about money which eliminates dedication through redemption, what can you say about a document which does not eliminate dedication through redemption? The argument *de minore ad majus* is broken and you have to return to Scripture. Therefore, it was necessary to say: "He shall write her a bill of divorce, hand it to her, and send her out of his house. If she left his house and went to be another man's." It brackets her being with her leaving. Since her leaving was by a document, so her being is by a document.

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27 Money is used in preliminary marriage, to permit the woman to enter her husband's family. Money cannot be used for divorce; the wife cannot pay the husband as a formal means of divorce.

28 All valuables dedicated to the Temple regain their profane status by redemption when that money is given to the Temple treasury, and in no other way.

29 Dedications cannot be redeemed by an I.O.U.
Rebbi Yudan said, an argument *de minore ad majus* that a free woman should be acquired by actual possession. Is it not logical that since a Gentile slave woman, who cannot be acquired by intercourse, can be acquired by actual possession, by an argument *de minore ad majus* a free woman, who can be acquired by intercourse, could be acquired by actual possession? The verse says, "and has marital relations with her." She can be acquired by intercourse but cannot be acquired by actual possession. An argument *de minore ad majus* that a Gentile slave woman should be acquired by intercourse: Is it not logical that since a free woman, who cannot be acquired by actual possession, can be acquired by intercourse, by an argument *de minore ad majus* a Gentile slave woman, who can be acquired by actual possession, could be acquired by intercourse? The verse says, "you may leave them as inheritance to your sons after you, to inherit them as property." She is acquired by actual possession; she is not acquired by intercourse. So we inferred that a woman can be acquired in three ways: by money, or by document, or by intercourse.

30 His proof that arguments *de minore ad majus* are inappropriate here is explained at length in *Ketubot* 5:5, Note 100.

As a legal term, נמות may have two very different meanings. What seems to be intended here is that ownerless property can be acquired by active actual possession (i.e., possession combined with use.) The idea seems to be that a woman, performing a wife's duty in a man's house, by this act should become his wife. The comparison is to a slave woman who

belonged to a proselyte who failed to start a Jewish family and dies without heirs. Any Jew who gets hold of her and lets her perform a servile job for himself has acquired her in law.

A second meaning of הָהָיָת is "permanence of the status quo ante," cf. Gittin 3:3, Notes 81,89; Nazir 9:2, Note 90. This meaning is referred to, somewhat incongruously, in the verse quoted at the end; property is inherited by the permanence of the state of "belonging to".

A subcategory of "permanence of the status quo ante" is the validation of squatter's rights after three years of undisturbed possession, if accompanied by a claim of rightful acquisition.

So far for Israel. For the Gentiles? Rebbi Abbahu in the name of Rebbi Eleazar32: It is written33 "you shall die because of the woman whom you took, since she is having marital relations with a husband."

They are guilty for those having marital relations; they are not guilty for the betrothed34. The words of Rebbi Eleazar imply, only if he had intention of acquiring her; the words of Samuel imply, even if he had no intention of acquiring her; since Rebbi Jonah said in the name of Samuel35: "A prostitute stands in a window36. Two men sleep with her. The first one37 is not killed, the second one is killed because of him38." But did the first one intend to acquire her39?
32 In *Gen. rabba* 18(8), a parallel source for this and the following paragraphs: R. Abbahu in the name of R. Johanan.

33 *Gen.* 20:3, speaking to the Gentile Abimelech.

34 Babli, *Sanhedrin* 57b.

35 In *Gen. rabba*: "Rebbi Samuel." For chronological reasons, and also because he is quoted after R. Eleazar, the reading of *Gen. rabba* is the only acceptable one.

36 To attract customers.

37 Who deflowers her. In R. Samuel's opinion, a Gentile marriage can be contracted only by intercourse and there is no divorce. Therefore, a free woman is automatically married to the man who deflowers her and any subsequent intercourse with any other man (during the first man's lifetime) is adultery.

38 As an adulterer. In his theory, a Gentile can sleep without guilt only with a wife whom he married as a virgin, or a chaste widow, or a servile prostitute who as a slave cannot marry.

39 According to R. Eleazar, Gentiles can be married only by mutual consent. Then they also can repudiate the marriage.

40 In *Gen. rabba* 18(8) only R. Samuel's opinion is quoted, with the addition that "for Gentiles, intercourse acquires automatically."
woman, one judges them by Jewish law. Rebbi Eleazar said, of all of them there is only the Jewish betrothed, for if he had intercourse with a Jewish preliminarily married woman he is guilty, with a betrothed Gentile woman he cannot be prosecuted. If he had intercourse with a Jewish preliminarily married woman he is guilty. How is he found to be guilty? By their rules or by Jewish rules? If you say by Jewish rules, by two witnesses, 23 judges, after warning, and by stoning. If you say by their rules, by one witness, one judge, without warning, and by the sword.

 Lev. 18:5: "Any man to any blood relation shall not come to uncover nakedness." Parallel interpretations are in the Babli, Sanhedrin 57b; Sifra Ahare Pereq 13(1).

 The Gentile cannot commit incest with a Jewish partner since he has no family relationship with her. If he commits adultery with a married woman, he is guilty under Gentile law. The only case is intercourse with a preliminarily married woman, which is adultery in Jewish law but a relationship with an unmarried woman by Gentile standards.

 In the Babli, Sanhedrin 57b, this also is a statement of R. Johanan.

 Deut. 19:15.

 Mishnah Sanhedrin 1:4.

 Cf. Sotah 3:4, Note 121.

 Rebbi Jehudah bar Pazi added one who strangles, as a separate offense. What is the reason? For "blood in a human."

 Reading of the editio princeps. is known.

 The corrector wrote No root תַּנְנָה. This does not belong here:
except for the name, it is the corrector's text taken from Gen. rabba 34(19) where from Gen. 9:6 it is inferred that Gentiles are executed by the sword. The verse reads: "He who spills a human's blood, by humans his blood shall be spilled." Then the question arises whether a murderer who kills by strangling can be prosecuted under Noahide law. To this, R. Jehudah bar Simon gives a positive answer by reading the verse as: "He who spills a human's blood within a human, his blood shall be spilled." [In the Babli, Sanhedrin 57b, R. Ismael is quoted as deducing that for a Gentile, the killing of a foetus, a "human within a human", is a capital crime. In rabbinic law, abortion is not prosecutable and is even required if the mother's life is at risk (Mishnah Ahilut 7:6).]

If you say, by Jewish rules, he is guilty if he converted. If you say, by their rules, he cannot be prosecuted if he converted, as Rebbi Hanina said, a descendant of Noah who blasphemed and then converted cannot be prosecuted since the law changed for him. Rebbi Eleazar in the name of Rebbi Hanina: The descendants of Noah are warned about nakedness as Jews are; the verse says, "he shall cling to his wife", not to somebody else's wife. "He shall cling to his wife", not to a male, nor to an animal. Rebbi Samuel, Rebbi Abbahu, Rebbi Eleazar in the name of Rebbi Hanina: A descendant of Noah who had perverse intercourse with his wife is killed. What is the reason? "He shall cling to his wife so they become one flesh," at the place where they together create one flesh.
The Gentile who had raped a preliminarily married virgin, mentioned in the paragraph before the last.

Nobody can be convicted under a law which did not apply to him at the moment the criminal act was committed. Since after conversion, Jewish law applies to him, he cannot be prosecuted for prior crimes. The Babli agrees, Sanhedrin 71b.


In addition, it is deduced there that the wording "father and mother" prohibits incest of father with daughter or stepdaughter, and son with mother or father's wife. From Gen. 20:12 it is inferred that the uterine half-sister also is forbidden.

Any sex play which does not include penetration and ejaculation.

Any intercourse which excludes the possibility of creating a pregnancy is sinful, except regular intercourse with one's pregnant wife.

Rebbi Yose asked: What is the legal status of "touching" a male? What is the legal status of "touching" an animal? Were not all incest prohibitions inferred from the menstruating woman? The male is included; the animal is included. So far, for Israel. For Gentiles? Rebbi Mana said, not from this: "He shall cling to his wife"? Not in any way to somebody else's wife, not in any way to a male or an animal.

If the two persons' genitals are touching. This is the definition of a sex act for criminal and marriage laws (Yebamot, 4:2 Note 59; 6:1, Note 11 ff.)

Not the prohibition, but the technicalities which make the act prosecutable. It is spelled out in Lev. 20:18 that in the case of the menstruating woman, "touching" establishes the criminality of the act.
Therefore, for Jews "touching" is the equivalent of completed intercourse in criminal law. The Babli, Yebamot 54b, seems to reject the equation of bestiality with homosexual activity.

So we have established that Gentiles have no preliminary marriage. Do they have divorce? Rebbi Jehudah ben Pazi and Rebbi Hanin in the name of the great Rebbi Huna of Sepphoris: Either they have no divorce, or either of them may divorce the other. Rebbi Johanan from Sepphoris, Rebbi Aha, Rebbi Hinena, in the name of Rebbi Samuel bar Nahman: "For the divorcer is hateful, says the Eternal, Israel's God." In Israel I gave divorce, I did not give divorce among the nations of the world. Rebbi Hananiah in the name of Rebbi Phineas: In the entire paragraph it is written "the Eternal, Sabaot"; only here it is written "Israel's God." To teach you that the Holy One, praise to Him, did lend his name only to Jewish divorce.

57 Mal. 2:16, speaking of the necessity.

מיכלן דרכם חיה רבח אָמֶרָה. גוֹם אֱלֹהֵי בַּלָקָה וּנְשָאָהּ תֵּאָמֶר וּנְרָשָׁה (58c line 25)
The word of the elder Rebbi Hiyya implies that Gentiles have no divorce, as Rebbi Hiyya stated in this matter: A Gentile who divorced his wife, who herself then went and married another, when the latter divorced her and then both of them converted, I do not read for them: "Her first husband who had divorced her cannot return to marry her." It was stated in this matter: A case came before Rebbi and he approved.

58 Not that divorce were impossible for Gentiles but that Gentile divorce does not have the legal implications of Jewish divorce.
61 Reading with Gen. rabba for אַיָּא נַשְׂכָר תִּשְׁכְּרָה. בִּשְׂכָר שְׁאָלָהּ תַּחַת שָׂם פִּרְוָחָה. אַבְּל בִּשְׂכָר נַשְׂכָר שָׁוָה תִּפָּה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָחָה. בִּשְׂכָר שָׁוָה שָׁוָה פִּרְוָ�

By a document. This means, by a document which is not worth a perutah, but a document which is worth a perutah is money's worth. Rebbi Hiyya stated in this respect: "Not only a document which is worth a perutah since a woman can have herself preliminarily married by anything which is worth a perutah. But even if he wrote it on an ostrakon or on papyrus and gave it to her, she is preliminarily married."
If he wrote it on material forbidden for usufruct? Rebbi Ḥanin stated: A case came before Rebbi who said, she is divorced. Rebbi Eleazar said, she is not divorced. Rebbi Ze'ira said, the rabbis disagree: For him who said, she is not preliminary married, she is not divorced. For him who said, she is preliminary married, she is divorced. The colleagues say, for restrictions. Rebbi Yose asked, what means "for restrictions"? She is not preliminarily married but divorced, is this "for restrictions"? Or she is not divorced but preliminarily married, is this "for restrictions"?
restrictions"? What about it? The rabbis of Caesarea in the name of Rebbi Jacob bar Aha: He who says that she is divorced, involving material forbidden for usufruct by their words. But he who says that she is not divorced, involving material forbidden for usufruct by words of the Torah. Therefore, by material forbidden for usufruct by their words she is preliminarily married. If you say so, does this not disagree with Rav? For Rav said, the words of Rebbi Meir: A person who uses leavened material for preliminary marriage after noontime did not do anything. Is leavened material of any use after noontime? There, he used the material for preliminary marriage, but here he effected the preliminary marriage by the [written] conditions. But then she should be preliminarily married even with material forbidden for usufruct by the Torah! What is the difference between this and a document not worth a perutah? There, it cannot be used as filler. But here, it can be used as filler.

66 The declaration of marriage.
67 Rashba, Responsa vol. 1, #603, reads: Zenon.
68 Quoted as anonymous statement in the Babli, Gitin 20a, which also states as undisputed Galilean rule that a divorce document may be written on material forbidden for usufruct. By implication, a declaration of marriage also may be written on such material.
69 Rashba, loc. cit., reads "R. Eliezer."
70 This opinion is not mentioned in the Babli. Rashba holds that the Babli, which simply quotes the rule without discussion, by reference incorporates the Yerushalmi discussion and decision.
71 Material permitted by biblical law, only forbidden by rabbinic rules.
72 Most material prohibited for usufruct by biblical law must be burned or otherwise disposed of. It seems that the authorities quoted follow the opinion, not mentioned in the Yerushalmi and attributed in the Babli to R. Simeon as minority opinion.
(Pesahim 12b, Menahot 79b, 102b, Keritut 24b, Temurah 23a) that anything which must be burned by biblical command is legally considered ashes even if not burned.

73 According to everybody, leavened matter in possession of a Jew is forbidden for usufruct after noon-time on Passover eve, the 14th of Nisan. For the majority, this is a biblical decree, derived from Ex. 23:18, 34:25. For R. Meïr it is a rabbinic decree; biblical prohibition of leavened matter only starts shortly before nightfall on the fourteenth (Pesahim 1:4, 27c 1. 48 ff.). Why does R. Meïr invalidate a preliminary marriage document for which material was used which is only rabbincally prohibited for usufruct?

74 Since material rabbincally prohibited for usufruct has no monetary value, it cannot be used as a gift for preliminary marriage. It is possible that R. Meïr would validate a marriage by text written on paper sized with a solution of flour in water executed on Passover eve.

75 If used as writing material, rather than for its intrinsic worth.

76 Material not worth a perutah (in the Babli, Gittin 20b, the example is a single leaf of an olive tree) can be used together with other materials as stuffing. Material forbidden for usufruct cannot be used for anything.
There, we have stated: "A judicial oath, for a claim of two silver pieces and a judicial acknowledgment of a perutah. The claim, the House of Shammai say, an obolus, but the House of Hillel say, two obols." The argument of the House of Shammai seems inverted. There, they say, "silver" is a denar, but here, they say that "silver" is an obolus. The argument of the House of Hillel seems inverted. There, they say, "money" is a perutah, but here, they say that "money" is two obols. Rebbi Jacob bar Aha in the name of Rebbi Hanina: The house of Shammai learn from the initial sale of a Hebrew girl. Since her initial sale was by [at least] a denar, so her preliminary marriage is by [at least] a denar. The House of Hillel learn from the end of her diminution. Since the end of her diminution is a perutah, so her preliminary marriage is by a perutah. What is the reason of the House of Shammai? As it is said: "She leaves gratis, without silver." Would we not know that it is without...
money? Why does the verse say, "without silver"? From there, that she is sold for more than silver. And what is more than silver? A denar. But maybe "silver" is a perutah, more than silver two perutot? The smallest silver coin is an obolus. So why is it not an obolus? Rebbi Abun in the name of Rebbi Judah bar Pazi: For if she wants to diminish, she diminishes every year by an obolus and leaves. Could she not diminish by a perutah? Rebbi Abun said, think of it. If she wanted to compute the diminution at the start of the sixth year, there would be a perutah left, and at the end of the sixth year, there would be a perutah left. But the start of the diminution must be an obolus, the end of the diminution a perutah. If there is only one perutah left, can she not pay the diminished amount and leave? Just as the last diminished amount is a perutah, so her preliminary marriage should be a perutah! What is the reason of the House of Hillel? Since her last diminished amount is a perutah, you know that her preliminary marriage is by a perutah.

77 The original of this and the following paragraphs is in Sebuot 6:1 (36d, II. 21-50, 9).
78 The oath required by Ex. 22:8 for a person denying a claim when neither he nor the claimant have proof. The defendant can be made to swear only if he admits that at least one perutah's worth of the claim is true; cf. Ketubot 2:1, Note 12 (Mekhila dR. Ismael, Neziqin 2).
79 One sixth of a drachma identified with the imperial silver denar.
80 Miishnah Qiddusin 1:1. The formulation shows that the origin of the text is in Sevuot.
81 It is clear from the biblical text, Ex. 21:7-11, that the person buying an underage Hebrew girl is supposed to marry her when she grows up, or to marry her to his son. The money given for her services is at the same time the money for preliminary marriage. The House of Shammai hold that the original buying price, which later is
shown to be at least a silver denar, is the bridal money used for the legal acquisition of the girl as preliminarily wedded wife. The House of Hillel hold that only the amount not amortized by the girl's work in the meantime is bridal money. Since the master can marry the girl even on the last day of her servitude, he can marry her for a perutah's worth and, as shown before, he can marry any other woman also for a perutah's worth.

82 Since Ex. 21:8 states that "if she is bad in her master's eyes, who does not intend her for himself, let her be redeemed", it is concluded that the Hebrew girl-servant can be redeemed during her servitude, in contrast to the Hebrew indentured servant who has to serve his full six years. Since it is prescribed for the Hebrew servant of a Gentile master that he can be redeemed by paying off the proportion of his original price not amortized by the time spent in servitude (Lev. 25:50), the same must hold for the servant girl. As long as she still is a servant, the redemption price is at least a perutah.

83 Ex. 21:11. At the end of six years, the master cannot ask for money to let her go.

84 Since "gratis" means "without payment".

85 Even though in Achaemenid Persia, the silver half-obolus was currency (also minted in the province of Yehud), in later times, prior to the Roman conquest, the obolus was the smallest silver coin. In Roman currency, the denarius was the smallest silver coin.

86 Since she serves for six years, her price must be a six-fold multiple of a silver coin. This determines the drachma as the minimum price.

87 And be bought at the start for 6 perutot.

88 This argument is correctly missing in Šebuot since the House of Shammai consider the original sum as bride-money, cf. Note 81. The Yerushalmi's interpretation of the House of Shammai is explicitly rejected in the Babli, 12a.

89 The Šebuot text has here an additional text similar to the text used in Qiddušin in the discussion of the House of Shammai: "יְהַלוּלָה בִּשְׁמַשׁ שָׁמָּא אַוָּי נַבְרַעְתָּו וַיָּזֶא כֶּשֶׁשׁ שָׁסְף וַיְוַיָּהָא "Think of it, if there is one perutah's worth left, can she not pay the diminished amount and leave? Just as the last diminished amount is a perutah, so her preliminary marriage is a perutah."
The argument of the House of Hillel seems inverted. It is written:\(^{90}\) "If a person give to his neighbor money or vessels to watch over." If to teach that the court will not act on less that a perutah's worth, is it not already written: "To incur liability for it"\(^ {91}\)? To exclude anything not worth a perutah. (Why does the verse say, "without silver"?)\(^ {92}\) From there, that it should be more than silver\(^ {93}\). And what is more than silver? Two obols. But maybe "silver" is a perutah, more than silver two perutot? The smallest silver coin is an obolus\(^ {85}\). So why is it not an obolus? "Or vessels"; since "vessels" are two\(^ {94}\), also "money" is two\(^ {95}\). How do the House of Shammai interpret "or vessels"? As we have stated: Rebbi
Nathan says, "or vessels", to include all kinds of vessels. Samuel said, if he claimed from him two needles and he admitted to one, he is guilty. Rebbi Hinena said, only if they are worth two perutot, that the claim should be about a perutah's worth and the confession about a perutah's worth. This follows the House of Shammi who do not learn money's worth from "vessels". But following the House of Hillel who learn money's worth from "vessels", since "vessels" are two, also "money" is two. Similarly, since "money" means two obols, also "vessels" means two oboli's worth.

90 Ex. 22:6. The verse is the introduction to the judicial oath prescribed in v. 8 (cf. Note 78) and establishes the parameters of judicial intervention. The arguments in this paragraph are to some extent paralleled in Mekhilta dR. Simeon ben Iohai, ed. Epstein-Melamed, p. 199.

91 Lev. 5:26. One of the topics treated in Lev. 5:20-26 is the guilt of the person swearing falsely the oath required in Ex. 22:8. For the translation of the verbal root כָּלַח as "to incur liability", cf. J. Milgram, Leviticus 1-16, Anchor Bible 1991, pp. 339-345 (the author does not refer to the rabbinic texts.) Since restitution is possible only by payment, anything worth less than the smallest coin cannot be restituted: There can be no oath for a residual claim not worth a perutah (Sifra Wayyiqa Pereq 23, end.)

92 This text is an intrusion from the parallel discussion in the preceding paragraph; it is correctly missing in Šebuot.

93 The argument seems to be that nobody will give a worthless thing to be watched over. If the verse emphasizes "silver" or "money", it must mean more than the minimum.


95 Babli 11b, Šebuot 39b.

96 This argument can only be understood by reference to Mekhilta dR. Simeon ben Iohai (Note 90). There it is argued that since silver is mined from the earth, also "vessels" should be restricted to those made from terrestri-
al material, to exclude anything coming from the sea (either from seaweed or fish skin). R. Jehudah reads דני as דני יד "objects from the sea" (explanation of J. N. Epstein). E. Z. Melamed also reports there that J. N. Epstein, in his personal copy of the Yerushalmi, emended the parallel reading in Ṣebuot, דלי דלי יד as דלי דלי יד "clay vessels", into דלי דלי יד "fisherman's netting", which might have been made from material grown in the sea. (The reading דלי יד makes no sense, since clay vessels are always understood if "vessel" is used without qualifier in biblical texts and do not need to be defined through additions. In the Babli, Zebahim 22a, anything grown in water is considered water.) "All kinds of vessels" includes vessels made from marine material.

The Babli, Ṣebuot 40b, points out that Samuel must hold that the "vessels" quoted in the verse refer to any vessels, irrespective of their value.

Since otherwise the court could not take cognizance of the case, Note 91 (quoted in Tosephot Ṣebuot 39b, s. v. לול).
Even though the House of Shammai and the House of Hillel disagreed about co-wives, and sisters, and an old bill of divorce, and a woman doubtfully married, and someone who gives qiddushin in the value of a peruta, and someone who divorses his wife and spends the night with her in a hostelry, and a woman who receives qiddushin for at least a denar or the value of a denar, the House of Shammai did not refrain from marrying women from the House of Hillel or the House of Hillel from the House of Shammai but they behave truthfully and in peace, as it is said: ‘Love truth and peace.’” Bastardy is between them and you say so? How is that? If a first man gives her qiddushin for a peruta and a second [gives her afterwards]) for a denar, in the opinion of the House of Shammai she is betrothed to the second and her child by the first is a bastard. In the opinion of the House of Hillel she is betrothed to the first and her child by the second is a bastard. Rebbi Jacob bar Aha in the name of Rebbi Johanan: The House of Shammai concede to the House of Hillel as a restriction. In that case, the House of Shammai should marry women from the House of Hillel since they concede to them. But the House of Hillel should not marry women from the House
of Shammai since they do not concede to them. Rebbi Johanan in the
name of Rebbi Yannai: They all followed the same practice. If they
followed the same practice, in this case we stated: "The House of
Shammai sent and diminished it, since the House of Shammai say unless
most of it is missing?" Rebbi Yose ben Rebbi Abun said, the House of
Shammai acted before the question came before the House of Hillel.
After a question came before the House of Hillel, the House of Shammai
were not touching it. Rebbi Abba Mari said, that is correct. Did we not
state: "They declared impure all purities from before", but not in the
future. Rebbi Yose ben Rebbi Abun said, Rav and Samuel disagreed.
One said both acted according to valid practice; the other said, each party
followed their own practice. Bastardy is between them and you say so?
The Omnipresent watched and no case ever happened.

99 The text of this paragraph and Notes 243-261(א). It seems that the
the one following is from Yeheamot 1:6, Yeheamot text is the original.
In this matter, it was stated: "About anybody who wanted to take upon himself the stringencies both of the House of Shammai and the House of Hillel it was said: 'The silly one walks in darkness'. The leniencies of both of them, he is called wicked. Either following the words of the House of Shammai in their leniencies and stringencies, or following the words of the House of Hillel in their leniencies and stringencies." That is, before there came the disembodied voice. But after the disembodied voice was heard, "practice follows the House of Hillel forever." And any who transgress the words of the House of Hillel are deserving of death. It was stated: There came the disembodied voice and said: Both of them are the words of God, but practice follows the House of Hillel. Where was the disembodied voice heard? Rebbi Bebai in the name of Rebbi Johanan: The disembodied voice was heard at Yabneh.

"How much is a perutah? One eighth of an Italic as." It was stated: The as is $\frac{1}{24}$ of a silver denar; the silver denar is $\frac{1}{24}$ of a gold denar. Rebbi Hiyya stated: "A tetradrachma is four denarii. Six silver oboli are in a denar. Two dupondii are an obolus. An obolus is two as. A pondius is two semisses. An as is two quadrantes. A semis is two perutot. It turns out that a quadrans is $\frac{1}{32}$ of the above."
100 Babli *Baba mesia* 44b, Tosephta *Baba batra* 5:11.

101 In Imperial coinage, the gold denar was usually counted for 25 silver denarii.

102 This has to read: "a dupondius".

103 This has to read: "an as."

104 This has to read: "a semis".

105 Greek κοδράντης, equivalent of Roman *quadrans*, 1/4 of an *as*.

106 This has to read: "a quadrans".

The final list reads: 1 denar = 6 oboli = 12 dupondii = 24 as = 48 semisses = 96 quadrantes = 192 *perutot* (confirming the tannaitic standard of the *perutah* as 1/8 of an *as*, Mishnah *Idiut* 4:7). In the Roman system, the obolus appears as a weight, rather than a coin: one-sixth of a denar of 3.6 g.

107 This has to read: "A *perutah* is 1/32 of an obolus." In the entire list, the first entry in each sentence has to be replaced by the next smaller unit and מעשה by מעשה.

Rebbi Ze'ira said, in the days of Rebbi Simai and our teachers they made it 108 1/24 of an obolus, as it was stated: 109 "Rabban Simeon ben Gamliel says, three *dodrantes* are an obolus, two *besses* are a *dodrans*, two *semisses* are a *bes*, two *perutot* a *semis*. It results in 1/24 of an obolus."

108 Of the generation of transition between Tannaim and Amora'im. "Our teachers" therefore refers to Rebbi.

109 The *perutah*.

110 Latin for 3/4 of any measure.

111 Latin for 2/3 of any measure.

112 D. Sperber, *Roman Palestine 200-400, Money and Prices*, Ramat Gan 1974, pp. 78-80, conjectures that the change in computation of a *perutah* from 1/32 to 1/24 of an obolus was a rabbinic response to Caracalla's monetary reform which increased the ratio of silver to gold from 12:1 to 9:1.
The argument is purely theoretical with the Jewish Commonwealth, since the *perutah* as a coin disappeared.

Rebbi Hanina and Rebbi Mana. Rebbi Hanina says, bronze remained in its place, silver increased or decreased in value. Rebbi Mana said, silver remained in its place, bronze increased or decreased in value. In Rebbi Hanina's opinion, with one as six women always can contract a preliminary marriage. In Rebbi Mana's opinion, sometimes six, sometimes eight.

113 They probably are R. Hanania of Sepphoris and R. Mana II, of the last Amoraim. After Diocletian's reform, with the gold standard universally accepted, they discuss the legal standard in the inflationary period of the last Severans and the following military anarchy when the government paid its debt in adulterated silver coin but required taxes to be paid in genuine silver coin.

114 I.e., is the monetary standard.

115 It is assumed that a man can deliver a coin to a group of women as payment for his preliminary marriage to all of them (Mishnah *Qiddusi* 2:6-7).

In R. Mana's opinion, the groom has to deliver merchandise (including copper coin considered as merchandise) in the actual value of a *perutah*. In terms of the silver as, not in circulation after Nero's time, he can use one silver coin for as many women as the as can buy *perutot*. In R. Hanina's opinion, since women cannot be expected to be cognizant of the current value of silver on the metals exchange, the women can be sure that the as represents the value promised them only at the historical minimum value of silver. (The explanations of the classical commentaries have to be rejected since
they require a switching of the names in addition to emending the text. The relation of coins to the mint standard, whether they are treated as money or merchandise, is the topic of *Baba mese’a*, Chapter 4.)

Hilfai said\textsuperscript{116}: Bring me to the river’s edge. If I cannot derive Rebbi Hiyya the Elder’s *baraita*\textsuperscript{117} from the Mishnah, throw me into the river. They said to him, did not Rebbi Hiyya state: "A tetradrachma are four denar." He said to them, we also have stated\textsuperscript{118}: "By how much can a tetradrachma be deficient without being fraudulent? Rebbi Meir said four *as*, one *as* per denar\textsuperscript{119}.” They said to him, did not Rebbi Hiyya state: "Six silver obols are a denar." He said to him, I also have stated it\textsuperscript{120}: "Fraud\textsuperscript{121} is four silver coins for twenty-four silver coins, a tetradrachma, one sixth of the selling price.” They said to him, did not Rebbi Hiyya state: "Two *dupondii* are an obolus." He said to them, we also have stated thus\textsuperscript{122}: "He gives a tetradrachma and a *dupondius* per year." They said
to him, did not Rebbi Hiyya state: "Two as are a dupondius". He said to them, we also have stated thus123: "He who put aside an as and ate for half of its worth, then went to another place where it is worth a dupondius, has to eat another as for it." They said to him, did not Rebbi Hiyya state: "Two semisses are an as, two quadrantes are a semis, two perutot are a quadrans." He said to them, we also have stated thus124: "How much is a perutah? One eighth of an Italic as."

116 At many places, he is quoted as opposing the use of baraitot in talmudic discussions; cf. Ketubot 6:7, Note 113.

117 A paradigm for the later Tosephta, in the present case the two preceding baraitot.

118 Mishnah Baba Meṣi'a 4:4.

119 He accepts a coin as of full weight if it deviates from the standard by no more than $\frac{1}{24}$, i.e., 4.167%, in contrast to commercial contracts which are fraudulent only if the customer was overcharged by more than $\frac{1}{6}$, 16.667%.

In any case, the Mishnah states clearly that the deficiency admissible for a tetradrachma is four times that of a denar. [Cf. Trimalchio's remark that the profession of banker is one of the most difficult since he must be able to recognize the inferior metal of a coin beneath its silver coating (E. G.)]

120 Mishnah Baba Meṣi'a 4:3. Since "silver coin" means "smallest silver coin", i.e., an obolus, and it was established that a denar was a quarter tetradrachma, it follows that a silver denar was 6 obols. These and smaller denominations had long disappeared from circulation in Hilfai's time, towards the middle of the Third Century. (Cf. Note 85.)

121 Overcharging or underpaying in commercial contracts.

122 Mishnah 'Arakhin 7:1. If somebody dedicates his field to the Temple, Scripture prescribes that he redeem it proportional to the numbers of years to the next Jubilee. The full rate, for the entire 49 yrs of a Jubilee cycle, is 50 šeqel for a field on which a homer (or kur, 30 se'ah) of barley can be sown (75'000 square cubits).

Talmudic theory identifies the biblical šeqel with the Roman tetradrachma, which is slightly more than the
standard *seqel* documented from First Kingdom times, 11.4 g. Since in the vernacular the *zāz*, the Babylonian half-*seqel*, was identified with the Roman *denarius*, the "sheqel" was identified as two denar. This gave rise to the theory that the biblical "holy *seqel*", which simply was "the king's weight" and still the Tyrian *seqel* in Roman times, was twice the profane *seqel*. The rate to be paid for the standard field per year therefore was \( \frac{50}{49} = 1 \frac{1}{49} \) tetradrachma. The rate stated in the Mishnah is \( 1 \frac{1}{48} \) tetradrachma. The small difference, \( 1 \frac{1}{48} - 1 \frac{1}{49} \), is *qolbon* (κόλλυβος, Latin *collybus*, *collubus*, "exchange of coins; rate of exchange"), the small coin paid as agio to the money-changer to convert the sum into actual coin. The Mishnah shows that a *dupondius* was \( 1 \frac{1}{48} \) of a tetradrachma or half an obolus.

123 Mishnah *Ma'aser Šeni* 4:8, Note 130.
124 Mishnah 1:1. While the Mishnah does not state anything about the intermediate denominations, it clearly defines the relation between *perutah* and *as*.

125"She regains her autonomy by a bill of divorce," as it is written¹²⁶: "He shall write her a bill of divorce." "Or the husband's death," as it is written: "Or if the latter husband dies,"¹²⁷ So far, if the latter one dies, [what about] the death of the former¹²⁸? Since the latter’s death releases
her, even though his death does not cause a complete release\textsuperscript{129}, it is only logical that the former's death should release her since his death will cause a complete release\textsuperscript{130}. Rebbi Ḥuna said, the verse implies that death releases, as it is written: "If brothers live together and one of them dies childless, etc.\textsuperscript{131}" Therefore, if he had a child, death releases. Rebbi Yose bar Abun said, if you would say that death does not release, how could we find a widow for a High priest, a divorcée or one who has received halîsah for a common priest\textsuperscript{132}? Rebbi Johanan bar Marius said, explain it for a sister-in-law\textsuperscript{133}.

\begin{itemize}
  \item A parallel but different discussion is in the Babli, 13b.
  \item Deut. 24:1. The part not quoted and v. 2 make it clear that the divorcée is free to contract another marriage.
  \item Deut. 24:3. Since the widow cannot remarry her first husband, it is clear that she can marry any other man.
  \item Which is not mentioned in the verse.
  \item The former husband becomes forbidden. He was permitted after his divorce and before her second marriage.
  \item The divorcée is free to marry any man not forbidden to her by incest or holiness prohibitions.
  \item Deut. 25:5. Since the verse prohibits remarriage of the widow outside the family, it implies that the widow of a man who had children is free to marry according to her wishes.
  \item The statement about the common priest implies that a widow is permitted to a common priest even if he is not of her first husband's family.
  \item If a brother of a High Priest dies childless, his widow is forbidden to the High Priest. The prohibition has to be stated even if in general a widow were not permitted to remarry.
\end{itemize}
"Her levir shall come upon her", that is cohabitation. "And take her as a wife for himself", that is "bespeaking". I might think that just as cohabitation is final so "bespeaking" is final; the verse says "and take her in levirate." This directs the entire paragraph towards levirate. Cohabitation is final, "bespeaking" is not final. Then what is "bespeaking" good for? To forbid her to his brothers.

Rebbe Simeon says, "bespeaking" either acquires or does not acquire. What is the argument of Rebbi Simeon? "Her levir shall come upon her", that is cohabitation. "And take her for himself", that is "bespeaking". Just as cohabitation is final so "bespeaking" is final. Or "her levir shall come upon her", then she has been acquired by him and "bespeaking" was of no use to her.

134"Her levir shall come upon her", that is cohabitation. "And take her as a wife for himself", that is "bespeaking". I might think that just as cohabitation is final so "bespeaking" is final; the verse says "and take her in levirate." This directs the entire paragraph towards levirate. Cohabitation is final, "bespeaking" is not final. Then what is "bespeaking" good for? To forbid her to his brothers.
Rebbi Eleazar ben Arakh says, "bespeaking" acquires a sister-in-law completely. What is the argument of Rebbi Eleazar ben Arakh? "And take her as a wife for himself", the same expression is used as for the preliminary marriage of a woman. Just as preliminary marriage acquires completely, so "bespeaking" acquires a sister-in-law completely. What is the formula for "bespeaking" a sister-in-law? "You are betrothed to me by money or money's worth."

The text is from Yebamot, Notes 12-20, and Chapter 5:1 (ן). Chapter 2:1 (א), explained there in

Rebbi Isaac asked: Why do we not say: "either by her own halisah or that of her co-wife?" He turned around and said: Did we state "by her own halisah"? Not "by her own halisah"! But here either by her own halisah or that of her co-wife. But did we not state, "by intercourse"? Can you say, either by her own intercourse or the intercourse of her co-wife? The Mishnah speaks of one sister-in-law; the problem arises for two sisters-in-law.

This refers to the last sentence in the Mishnah, that the widow of the childless man can regain her autonomy by halisah. Mishnah Yebamot 4:1 states that for the House of Hillel the levirate marriage or halisah of one wife of the deceased childless brother forbids all her co-wives to the levir's brothers and,
therefore, frees the co-wives to marry any other man.

136 It is only stated "by halîṣah," not indicating who performs it; it could be a co-wife.

137 One has to assume that the Mishnah is formulated in a uniform style. It is clear that a man cannot marry a group of women by sleeping with one of them, even though he could marry all women in the group by giving valuables to one of them if the others empower her to act for them (Note 115). If "intercourse" in the first case means a personal act, then halîṣah in the last case also means a personal act.

Rebbi Samuel bar Rav Isaac asked: How can a hāruphah slave girl acquire her autonomy in such a way that she would be freed from flogging, and [free] the one who had intercourse with her from a reparation sacrifice? It is obvious that she cannot leave by a bill of divorce since Rebbi Hiyya said in Rebbi Johanan's name: If a person who is half slave and half free entered a preliminary marriage, one does not consider his marriage. In parallel, if he divorced one does not consider
his divorce. It is obvious that she can leave by a bill of divorce at least since (Rebbi Ḥiyya said in Rebbi Johanan’s name: If a person who is half slave and half free entered a preliminary marriage, one does not consider his marriage. In parallel, if he divorced one does not consider his divorce. It is obvious that she can leave by a bill of divorce at least)\(^{140}\). Rebbi Yose said in Rebbi Johanan’s name: Aquila the proselyte translated before Rebbi Aqiba "and she is a slave girl נַפְרָת to a man"\(^{141}\), by "one who was pounded before a man"\(^{142}\), as you say, "she spread morsels on it"\(^{143}\). Rebbi Ḥiyya said in Rebbi Johanan’s name: So Rebbi Eleazar ben Rebbi Simeon explained it before the Sages. "And she is a slave girl נַפְרָת to a man", by "one who was pounded before a man", as you say, "in morsels by a pestle."\(^{144}\)

138 Cf. Lev. 19:20-22. The slave girl has a status approximating that of married woman but sleeps with another man. By rabbinic interpretation, the girl is whipped and the man has to bring a reparation sacrifice. The exact meaning of the root נַפְרָת is in doubt, in view of the multiple meanings of Arabic نـا ف..раб، rabbinic interpretations are given at the end of this paragraph and the next. If she were an unattached slave, she could not marry and, therefore, could have guiltless sex with any man of her choosing. The Jewish man who slept with her would be guilty of violating Deut. 23:18 for which he could be whipped if the act was observed by two witnesses, but no sacrifice would be due.

139 Gittin 4:5, Notes 140-141. In this interpretation the girl is partially manumitted and engaged to be married by a free Jewish man after her complete manumission. Since in her present state she cannot be legally married, neither can she be divorced.

140 The meaning of this sentence is unclear. The text in parentheses is dittography inserted by the corrector.


142 She was betrothed by intercourse.

143 25. 17:19. The identification of
π and π is routine in rabbinic derivations but etymologically unfounded. Modern dictionaries treat ηιπ as derived from a hypothetical root i'T, not ηιπ.

Pr. 17:19. Aquila translates γηισά by ἐν μέσῳ ἐμπτισσομένων "in the midst of pounded things". Both verses are quoted in the same sense in the Babli, Keritut 11a, that a man who sleeps with a haruphah slave girl is guilty only if the girl had previously slept with her assignee, not if she is a virgin. (This agrees with the deriva-
tion of ηιπ accepted by Gesenius, from Accadic harāpu, Arabic خَرَف "to pluck, to harvest", that the slave girl "had been plucked by a man," Lev. 19:20.) The tradent there is R. Isaac; Aquila is not mentioned [since in the Babli’s tradition he did not translate following R. Aqiba but R. Eliezer and R. Joshua, one generation earlier (Megillah 3a).]

[{One is tempted to find in Bin the root of Greek Χαρυβδις, a dangerous whirlpool between Italy and Sicily, personified as a dangerous female being who "plucks men" (E. G.).]}

Can she regain her autonomy through her master’s death or by the end of six years? What is the problem? Following Rebbi Aqiba? But Rebbi Aqiba said that the verse speaks about a woman half slave and half free engaged to be married by a free man. Therefore, his problem is following Rebbi Ismael, since Rebbi Ismael said that the verse speaks about a Canaanite slave girl married to a Hebrew slave, since this is marriage sanctioned by the Torah: "If his master give him a wife." But his problem is whether she regains her autonomy through her master’s
death or by the end of six [years] for him who says that the Hebrew slave
does not serve the heir\textsuperscript{149}.

145 The häruphah slave girl, to be
able to sleep with whomever she
pleases.

146 Babli Keritut 11a. Her situation
can be remedied only by her full
manumission, Mishnah Gittin 4:5.

147 Meaning: originally Gentile.

148 \textit{Ex.} 21:4. Since the children
born from this union are slaves, the
woman cannot be a Hebrew slave girl.
Since the woman is called "wife", she is
required to be faithful by biblical
standards. The question is whether this
kind of marriage is terminated auto-
matically, without any formality, at the
moment the Hebrew slave regains his
freedom. At the same moment, the
slave woman becomes forbidden to him
since any sexual relations between
people who could not legally be
married is qualified as \textit{qādeš} (Deut.
23:18).

149 As explained in the next Hala-
khah. The question is not answered
since it can never arise in the future
(Note 152).

\textbf{Mishnah 2: }A Hebrew slave\textsuperscript{150} is acquired by money or a document;
he regains his autonomy by years\textsuperscript{151}, or the Jubilee\textsuperscript{152}, or reduction of the
amount\textsuperscript{153}. The Hebrew slave girl\textsuperscript{154} in addition regains her autonomy by
indicators of puberty\textsuperscript{155}. The pierced slave is acquired by piercing\textsuperscript{156}; he
regains his autonomy in the Jubilee or by the master's death\textsuperscript{157}.

150 The rules are based on \textit{Ex.} 21:2-
\textit{Lev.} source clearly refers to the person
who sells himself as indentured servant
because he cannot fend for himself. Ex. 22:2 provides for judicial sale of the thief who cannot pay the required double restitution.

Separate rules for the Hebrew slave acquired by a Gentile are given in Lev. 25:47-54. In that case, the slave regains his freedom automatically only in the Jubilee year but the family can force his redemption by repaying the portion of his buying price not amortized by the time passed (Lev. 25:50).

151 The maximum time of a contract of an indentured servant was 6 years; Ex. 21:2, Deut. 15:12.

152 Lev. 25:40. Since the Jubilee brings back everybody to his ancestral land, everybody is presumed to be able to feed himself. The dependence of the rules of the Hebrew slave on the Jubilee implies that Hebrew slavery disappeared with the Jubilee; it never existed during the Second Commonwealth and is not to be re-instituted in the times of the Messiah (Ševi'it 10:3, Notes 83-88; Gitiṭin 4:3, Note 65). The discussion about the rules of Hebrew male slavery are a purely theoretical reconstruction of the past whose interest is not in statements but in the rules of inference.

153 If the slave or his family buy his freedom, the master is required to accept payment proportional to the time not yet served.

154 While the rules for the Hebrew slave girl are not tied to the Jubilee, the verses Deut. 15:12,17 equate the rules for male and female slaves. Therefore, all the detailed rules developed in this Halakhah are purely theoretical interpretations of the biblical text; they never were operational within the rabbinic framework.

155 While a father can forcibly marry off his daughter until she has reached adulthood (12 years six months and one day) he cannot sell her into slavery beyond adolescence (12 years and a day if she shows signs of puberty). He cannot sell her to work for longer than he had the right to sell.

156 The slave who does not want to regain his freedom after six years, whose earlobe is pierced (Ex. 21:6, Deut. 15:17).

157 Ex. 21:5, Deut. 15:16 make it clear that the relationship of the "pierced" slave to his master is a personal one, not transferable to his heirs.
Halakhah 2: "A Hebrew slave is acquired by money," etc. It is written:

"If your Hebrew brother or sister be sold to you," he bracketed the male Hebrew with the female. Since the female Hebrew can be acquired by money or contract, also the male Hebrew can be acquired by money or contract. One understands money since it is written: "She leaves gratis, without money [due]." From where by contract? The female Hebrew is inferred from the free woman, and the male Hebrew from the female. This is a combination of inferences. That follows Rebbi Aqiba who accepts combination of inferences. Following Rebbi Ismael who rejects combination of inferences? It was found that Rebbi Ismael stated: In the case of the word "free" is inferred from the female. Everywhere Rebbi Ismael rejects combination of inferences and here, he accepts combination of inferences? Rebbi Ismael stated it in the name of the
Sages\textsuperscript{164}. From where is it derived for Rebbi Ismael? "Sending away, sending away." Since "sending away" mentioned there means by a contract, also "sending away" here means by a contract\textsuperscript{165}. But it does not compare. There it is to gain autonomy, here it is to be acquired by others! Rebbi Mattaniah\textsuperscript{166} said, "sale, sale\textsuperscript{167}. Since "sale" mentioned there means by a contract, "sale" here also means by a contract. But since there\textsuperscript{168} it is possible by possession, then here it should be possible by possession. Rebbi Hiyya bar Ada\textsuperscript{169} said, the male Hebrew is like the female Hebrew\textsuperscript{170}.

158 From here on there exists a parallel text of an Ashkenazi ms. edited with partial variant readings by J. Sussman in \textit{Kobez al Yad} xii (xxii), Jerusalem 1994, pp. 112 ff. In the Notes, this text will be referred to as A, the Leiden ms. as L.

159 \textit{Deut.} 15:12. The Babli, 14b, points out that the verse only covers persons sold by others, the girl by her father and the man by the court, not the person who sells himself. \textit{Sifry Deut.} 118 disputes the entire argument and holds that the female had to be mentioned separately from the male since the rules of her acquisition and liberation are distinct from those of the male. (E. g., the female cannot sell herself; the adult female cannot be a Hebrew slave.)

160 \textit{Ex.} 21:11. Since after six years, or after she reached adulthood, she leaves without payment, it follows that her work was worth money; cf. Note 18.

161 \textit{Ex.} 21:10 equates the marriage of the Hebrew slave girl to her master to the latter's marriage with another, free, woman. (Babli 16a; \textit{Mechilta dR. Šimon b. Jochai}, ed. Epstein-Melamed, p. 167).


The problem before the rabbis of the second and third generations of Tanna'im was to derive a consistent
legal system which intellectually could compete with the Roman law from the scattered remarks offered in the Biblical text. R. Ismael allows no more than one intermediate step between biblical text and legal statement.

163 The expression יָשֶׂן is used in Ex. 21:2,5 in reference to the male Hebrew slave. In R. Ismael's opinion, the הָּרֶעָפָה slave girl is a former Gentile who needs manumission (Notes 147,148) and יָשֶׂן mentioned in Lev. 19:20 is her bill of manumission. Since the Gentile slave girl can be manumitted by a document, it is concluded that the Hebrew slave can be acquired by a document. As noted later, this is a non sequitur.

164 This translation follows the sentence structure of A.

165 Divorce, which requires a written document, is called "sending away" (of the wife) in Deut. 24:1. Therefore, the "sending away" of the Hebrew slave (Deut. 15:12,13) also refers to a written document. As noted immediately, this only would prove that the master can terminate the indenture by a written document, not that he could acquire the Hebrew's services by a document.

166 In A: "Rebbi said, a baraita." This reading is preferable since a fifth-generation Amora is unlikely to appear in a Tanna'itic discussion.

167 In Lev. 25:42 it is stated that a Hebrew "shall not be sold as in the sale of a [Gentile] slave." In Deut. 15:12 it says, "If your Hebrew brother or sister be sold to you." It is an accepted principle (Sifry Deut. 72, Yerushalmi Baba batra 8:5 (16b), Babli Temurah 5a) that if the verse notes that "something shall not be done," if it is done it is sinful but legally valid since an invalid action does not have to be forbidden. Since the Gentile slave can be bought by contract (Mishnah 3), the Hebrew slave also can be bought by contract. The question remains whether he can be bought by contract without the buyer sinning.

168 Since the laws regarding Gentile slaves in general follow the rules of real estate, undisturbed possession for three years accompanied by a claim of rightful acquisition legally establishes ownership. Nobody claims that the same holds for Hebrew slaves.

169 A: R. Hiyya bar Abba (an Amora of the third generation). The reading of L is the only one acceptable, referring to R. Hiyya bar Ada I, of the generation of transition between Tanna'im and Amoraim.

170 This essentially is the argument
given at the start of this paragraph, male, is to transfer the rules of
collection from the female to the male.

Note 159. The reason for the female to be mentioned in Deut. 15:12 at the start of rules mostly dealing only with the
female, is to transfer the rules of acquisition from the female to the male.

"By money". "The money of his sale price shall be" he can be redeemed by money, not by produce nor by vessels. Everywhere you treat money's worth like money, but here you do not treat money's worth like money. Rebbi Abba Mari said, there is a difference, because the verse repeated "money, of money". Rebbi Hyya bar Ada said, but if he wants to reduce, he can leave for the reduced amount even for produce, even for vessels. Rebbi Yudan, Rebbi Mattaniah's father, said that this is only if he did not give them their money's worth. But if he gave them their money's worth, it is like money.

171 In L the word is partially vocalized, by the rules of grammar it should be because it changed. 172 Lev. 25:50, speaking of the redemption of a Hebrew slave from his Gentile master by his family.
The first \( \eta \theta_3 \) is from Lev. 25:50, the second (read \( \text{ככשכ} \) for \( \text{ככשכ} \) Lev. 25:52, about the same subject. The repetition shows that the redemption can be forced only by payment in cash.

Text of A: א"ר חייא בר Ada preferred over L: "Even R. Hiyya bar Ada will agree."

The cash requirement applies only to redemption by his family. If the slave himself buys his freedom, he can offer valuables instead of money.

If the parties agree on a fixed monetary value for the objects given in payment, it counts as cash payment. In the Babli (8a, argument of Rav Joseph; 16a, a \textit{baraita}) this is the interpretation of Lev. 25:52, against the Yerushalmi (Note 174).

"By a document." Rebbi Abbahu said, by a money document\(^{178}\); therefore not by a gift document\(^{179}\), since maybe he would renege. But then, could he not renege even with a money document? He said to him\(^{180}\), maybe there comes a year of famine and his master reneges\(^{181}\).

\(^{178}\) A written contract which promises the slave a fixed sum of money, presumably at the end of his period of service.

\(^{179}\) The slave agrees to serve without remuneration.

\(^{180}\) R. Abbahu to the person raising the question.

\(^{181}\) It is not a problem of the prospective slave's reneging, but his master's. If in a year of famine the cost of the slave's upkeep exceeds the value of his work, the master might be tempted to get rid of the slave. But if there is an IOU in the slave's hand, he can be sure to be kept for the full period. Therefore, with a money document the slave has the intent from the start to be acquired by the master.
The order of sale\textsuperscript{182} is the following: I X sold my daughter to Y. The order of preliminary marriage is the following: I X gave my daughter to Y in preliminary marriage. Rebbi Haggai asked before Rebbi Yose: If he switched and said, I Y acquired X's daughter, I Y took X's daughter in preliminary marriage? He said to him, what is the difference\textsuperscript{183}? But if he changed the language of sale to that of preliminary marriage or vice-versa, he did not do anything.

\textsuperscript{182} The required text in a contractual sale or marriage of an underage girl by her father. This is the only relevant case possible in law after the disestablishment of the Jubilee.

\textsuperscript{183} The marriage of the underage girl is purely a matter of contract between two adults; the girl is not involved and it does not matter which party writes the contract. This is in contrast to the marriage of an adult woman where a text "I, X, am taking you, Y, as preliminarily wedded wife" is valid, but "I, Y, am agreeing to be your, X's, preliminarily wedded wife" is invalid.
It is written: "Six years he shall work." How much does he work? I could think that he leaves at the end of six years. The verse says, "and in the seventh he shall leave." I could think that he leave at the end of seven years. The verse says, "six years he shall work." How is that? He works the entire six and leaves at the start of the seventh. "And in the seventh he shall leave." The seventh from the sale and not the Seventh of the world. Do you say, the seventh from the sale and not the Seventh of the world? Since it says, "six years he shall work," this spells out six years. How can I confirm "and in the seventh he shall leave?" The seventh from the sale and not the Seventh of the world. Say it is the opposite. Rebbi Ze'ira said in the name of Rav Huna: It is written: "and in the seventh," "and in the seventh." Rebbi Huna said, if you say, in the Seventh of the world, what would the Jubilee free? Rebbi Johanan bar Marius said, this follows him who said that the Jubilee does not become
part of a Sabbatical period\textsuperscript{190}. But following him who said that the Jubilee becomes part of a Sabbatical period, sometimes it falls in the middle of a Sabbatical period\textsuperscript{191}. The rabbis of Caesarea say, even following him who said that the Jubilee becomes part of a Sabbatical period, we could deduce from here that the Sabbatical year frees the slaves and the Jubilee the pierced ones\textsuperscript{192}.

\textbf{184} Vocalization of the ms. (As usual in Medieval European texts, \textit{patah} takes the place of \textit{qāmas})

\textbf{185} Ex. 21:2.

\textbf{186} In \textit{Mekhilta dR. Šim'on b. Jochai} (ed. Epstein-Melamed) p. 160 the argument is made that the slave should leave only at the end of the year since debts are remitted only at the end of the Sabbatical. A similar argument is presupposed here.


\textbf{188} It seems that the correct interpretation is the one given by \textit{Qorban Ha'edah}: One has to read the word \textit{קָנֵה́ כֶּנֶּסֶי} as if it were written twice with two different meanings. "Six years he shall work, including the Sabbatical; but in the seventh he shall leave."

\textbf{189} Since the 49th year of a cycle is a Sabbatical, if the slaves left then, nobody would be freed in the 50th, the Jubilee.

\textbf{190} The Sabbatical period following the first Jubilee starts only in year 51; there is a Jubilee in every year which is a multiple of 50 in the Jubilee calendar; Babli \textit{Nedarim} 61a. This is the calendar also underlying the Saducee Jubilee.

\textbf{191} Since year 49 was a Sabbatical, the next Sabbatical is in year 55, and the next Jubilee in year 100 is in year 2 of the Sabbatical cycle. The Jubilee in year \( n \cdot 50 \) falls on year \( n \) (mod 7) of a Sabbatical cycle, it will eventually fall on any of the years of the cycle.

\textbf{192} The preceding argument cannot be used to prove that the "seventh" mentioned in the verse is not the Sabbatical; the argument at the start of the paragraph is the only valid one. (The emendation of this sentence by the classical commentaries has to be rejected since the text is confirmed by A.)
From where even if he fell ill? The verse says, "in the seventh year he shall leave into freedom gratis." I could think, even if he fled; the verse says, "six years he shall work." What did you see to include this and to exclude that? After the verse included, it excluded. I am including the one who remains in his power and am excluding the one who is not in his power. Rebbi Abun bar Hiyya said that Rav Hoshaiya asked: I understand that if he fell ill and fled afterwards, he has to make up [the time lost]. If he fled and then fell ill? Rebbi Hiyya bar Ada said, let us hear from the following: "If a woman rebels against her husband, one writes him a bill of rebellion on her ketubah." And Rebbi Hiyya stated:
One writes a bill of rebellion on the *ketubah* of a menstruating woman or a sick one, a preliminarily married one and one waiting for her levir\(^{196}\).

Where do we hold? If she rebelled against him while she was menstruating, the Torah instructed her to rebel\(^{197}\). But we must hold that she rebelled when she was not menstruating and then started menstruating. Here she is unable to rebel, nevertheless you say, one writes\(^{198}\). Here also, if he rebelled and then fell ill he has to make up. For he can say to him, if you had stayed with me, you would not have become sick. Rebbi Hinena said, that argument even works in the first case. If he fell ill and fled afterwards\(^{199}\), he has to make up, since he can say to him, if you had stayed with me, you would have recuperated sooner.

\(^{193}\) He could not work the entire six years. Nevertheless, he leaves on time.

The same argument in the Babli, 17a. In *Mekhilta dR. Sim'on b. Jochai*, p. 161, the word "gratis" is interpreted to mean that the master has no regress on the slave for his medical costs.

\(^{194}\) Babli 16b; *Massekhet 'Avadim* 1.

\(^{195}\) A rewording of Mishnah *Ketubot* 5:9, Notes 199-100. The wife refuses marital relations with her husband; the court deducts from her future claim of *ketubah*.

\(^{196}\) *Ketubot* 5:10, Babli *Ketubot* 63b.

\(^{197}\) Since sexual relations with menstruating women are forbidden.

\(^{198}\) Once she refused marital relations, one fines her by reducing the sum due from her *ketubah* the entire time she had no relations, irrespective of the cause. By analogy, the runaway slave has to make up the time lost, including the time he was ill and could not have worked while in his master's house.

\(^{199}\) If he was ill when he fled, he has to make up even the times of his sickness.
"He regains his autonomy by years." Some Tannaim state: He may be sold for less than six [years], but he cannot be sold for more than six. But some Tannaim state: He may not be sold for less than six [years] or more than to [year] seven. Rebbi Jeremiah said, the reason of that Tanna: Sometimes he is sold two or three years before the Jubilee; then the Jubilee arrives and frees him automatically.  

200 Word missing in A. If the word is accepted in the text, "seven" would have to be corrected to "six." But the reading "seven" is confirmed by A.  

201 Even though formally he was sold for six years. Babli 15a; Sifra Behar Pereq 7(4) in the name of the Tanna R. Eliezer ben Jacob.
"Or the Jubilee," as it is written, "in the Jubilee he shall leave."202 "Or reduction of the amount," as it is written: "If there still are many years."203 Do we not know that if there are many there are not few, and if there are few there are not many? Rebbi Hila said, sometimes the years are worth more than the wages, sometimes the wages are worth more than the years. How do you explain the following? If he was sold for a mina each and improved so that now he is worth 200 each, from where that one computes for him only by a mina each? The verse says, "according to the years he shall compute his redemption." We learned that one sold to a Gentile is advantaged when he comes to be redeemed. From where that one sold to an Israel is advantaged when he comes to be redeemed? "Hireling, hireling" for an equal cut. Since the hireling is advantaged in redemption when he is sold to a Gentile, so too the hireling is advantaged in redemption when he is sold to an Israel. Rebbi says, why does the verse say "he shall be redeemed, he shall be redeemed," three times? To add all redemptions that they have to follow this order.

202 Lev. 25:31. This quote does not make sense since it refers to real estate transactions. The correct quotes are Lev. 25:40 for the slave sold to an Israel and Lev. 25:53 for the one sold to a Gentile. Babli 16a.

203 Lev. 25:51-52; Sifra Behar Pereq 8(5). The biblical text is unusually wordy, stating that the redemption price is high if many years of service remain and low if few years remain.

204 The Greek Mvâ of 100 drachmas each, not the Babylonian נף of 60 śeqel.

205 Lev. 25:52. In the Babli 20a and 'Arakhin 30a, the proof is from v. 51: "He shall compute the amount of his redemption from the amount for which he was bought." There is an additional text: From where that if he was sold for 200 denars each but now he is worth only a mina, one computes a
mina per year, the verse says "according to the years he shall compute his redemption." If this passage also was in the Yerushalmi text, it must have disappeared already from the common source of A and L.

206 In that his redemption price is determined by law from the original sale price; there can be no haggling over the amount.

207 The slave has to be treated like a hireling; Lev. 25:53 for the one sold to a Gentile, Lev. 25:40 for the one sold to an Israel. Sifra Behar Pereq 8(6).

208 Lev. 25:48 once, v. 49 twice. The entire list of relatives who might force a redemption on an unwilling master could have been written in one sentence.

209 Sifra Behar Pereq 8(3), an anonymous statement.

"If he be not redeemed by these" 210. Rebbi Yose the Galilean says, by these to freedom, by all others to servitude 212. Rebbi Aqiba says, by these to servitude, by all others to freedom. Rebbi Abbahu in the name of Rebbi Johanan: Both interpret the same verse: "Unless he be redeemed by these." Rebbi Yose the Galilean interprets: "Unless he be redeemed by these" but by others he is made to serve before he leaves 213. Rebbi Aqiba interprets: "Unless he be redeemed by these", by these he completes 213a
before he leaves. The words of the Sages? Rebbi Yasa in the name of
Rebbi Johanan: In both cases to freedom. It was stated thus: "If his
hand achieves, his own hand. "Or he found for his redemption."
Since his own hand achieves for himself, what others achieve also is for
himself.

210  Lev. 25:54.
211  Babli 15b, Sifra Behar Pereq 9(1).
212 "These" are the family members mentioned in vv. 48-49, who are
required to buy him back from the Gentile. If he is bought from the
Gentile by an unrelated Jew, he has to serve as a Hebrew slave either for six
years or until the Jubilee,
213 The verse reads: "Unless he be redeemed by these, he leaves in the
Jubilee year." If "these" are the modalities of redemption detailed in
vv. 48-52, then the meaning is that the
Hebrew slave of the Gentile leaves his
service in the Jubilee year. But if "these" are persons, then there must be
a case when the slave is redeemed
from the Gentile and nevertheless has
to serve until the Jubilee.
213a The translation follows A.
214 In the Babli: R. Hyya bar Abba.
215 They read "these" as the modal-
ities of his redemption, Note 213.
216 Lev. 25:26, referring to the right
of a farmer to buy back his ancestral
land for the prorated price the buyer
had paid.
217 Sifra Behar Pereq 5(2).
Rebbi Jacob bar Aha in the name of Rebbi Johanan: Following him, who said "for servitude" 218, he makes up before he leaves 219. But was it not stated: After he redeemed him it is as if he were sold to him, he enslaves him before he leaves 220. Rebbi Abba Mari said, there is no "enslaves him before he leaves", only "he makes up before he leaves." If his relatives want to redeem him from the first [master's], they redeem. If his relatives want to redeem him 221 from the second [master's], they cannot redeem 222. Rebbi Yose in the name of Rebbi Johanan: That follows him 223 who said: "by these to freedom, by all others to servitude."

218 Either R. Yose the Galilean or R. Aqiba.
219 He serves until the Jubilee or until he has served a total of six years.
220 This seems to mean that he has to serve the Jew who buys him a full six years, irrespective of how long he served the Gentile.
221 It would be reasonable to vocalize active לָקֵץ but ms. A clearly reads niph'al לָקֵץ. Yerushalmi Hebrew usually avoids qal, replacing it in general by pi'el, sometimes by niph'al.
222 There is no verse authorizing the premature release of a Hebrew slave from a Hebrew master.
223 R. Yose the Galilean; but the authorized interpretation is that of the Sages.
Samuel bar Abba asked before Rebbi Yose: There it is written "he computes" and here it is written "he computes". Here you compute months and years so he may leave, there you do not compute months and years so he may leave. He said to him, the difference is that the Torah compared him to the hireling. Since the latter computes months and years and leaves, so this one computes months and years and leaves.

224 The person who sells of his ancestral property until the Jubilee "computes the years of sale" when he buys the property back (Lev. 25:27). Since sale of agricultural property is a sale of harvests (Lev. 25:15) it is clear that the right of redemption can be exercised only between harvest and the next sowing. Only full years are counted. But the redemption of the Hebrew slave of a Gentile is possible at all times and, therefore, the amount due changes every month.

225 Lev. 25:53, even though the verse refers to "a hireling on a yearly contract."

226 "She leaves gratis," these are the days of adulthood; "without money," these are the indicators [of adolescence.] Could He not have mentioned only one of them? If only one of them were mentioned,
would I not have said that if she leaves with indicators [of adolescence], then certainly in the days of adulthood? But in that case I would have said that they are identical with the days of adulthood. Would this not be logical? She is emancipated from the power of the father and she is emancipated from the power of the master; since she is emancipated from the power of the father by some indicators [of adulthood], she is emancipated from the power of the master by the same indicators. Therefore, it was necessary to say, "she leaves gratis," these are the days of adulthood, "without money," these are the indicators [of adolescence.] Or maybe the other way around? Rebbi Tanhuma in the name of Rebbi Huna: "Without money." At a place where there is money for the father, there is no money for the master.

226 Mekhilta dR. Ismael, Neziqin 3; Mekhilta dR. Šim'on b. Jochai p. 168; Midrash Wehizhir Mišpaṭim p. 130; alluded to in Babli Qiddūšin 4a.

227 Ex. 21:11. Here starts the discussion of the rules for the girl sold by her father.

228 The indicators of adolescence are two pubic hairs after the girl has reached the age of 12 years and one day (cf. Nedarim 10:1, Note 1.) An adolescent is legally responsible for her actions but still under her father's authority (cf. Yebamot 1:2, Note 159). She becomes an independent adult six months after becoming an adolescent. (A male becomes an adult only at age 13 years and one day if he did grow two pubic hairs.) Since the adult girl is not under her father's authority, she cannot be under the authority of a master to whom she was given by her father even though she remains legally married by biblical standards if she was married off by her father when underage or adolescent. The double expression in the verse is taken to mean that the master's authority ends when she reaches the stage of adolescent.

229 When the text of the laws was given to Moses.

230 It would be reasonable to emend בגר to keep unity of style
(Qorban Ha'edah), but A confirms the text as it stands.

231 Babli Ketubot 46b, as proof that the father retains the right to marry off his daughter and pocket the valuables offered for the preliminary marriage, even though the master's authority already expired at the girl's adolescence.

"If he did not allot her, he must let her be redeemed." This teaches that he cannot allot her for himself unless there is time for her handywork to be worth a perutah and that a perutah be left to be deducted, the words of Rebbi Yose ben Rebbi Jehudah. But the Sages say, he allots any time until sundown. Rebbi Hyya bar Ada said, everybody agrees that for a Hebrew slave only if a perutah's worth is left. Rebbi Yose ben Rebbi Jehudah says it correctly, what is the rabbis' reason? There is no money left, there is no handiwork left? Rebbi Ze'ira said, he allots her by speech.

232 Ex. 21:8. Mekhilta dR. Sim'on b. Jochai p. 166; Babli 19a. "Allotment" is the legal term for the preliminary marriage of the slave girl to her master or his son.

233 If he wants to marry her but first extract the maximum of work from the girl, he must divide the money.
he paid by the number of days of her prospective servitude and marry her as long as at least a *perutah* is not worked off by her. (Since she works at most 6 years, at most 2190 days, if the buying price was at least 11.5 denars he can marry her early on the last day of her servitude.)

Babli 19b.


236 The money he paid to the father was not given for preliminary marriage but to acquire the right to make her his wife by declaration (Interpretation of Maimonides; cf. S. Z. Brauda, *Moriah* 23 fasc. 6-7, 2000, p. 100-107.)

Rebbi Hoshiaia stated: How does he allot her? He tells her in front of two [witnesses]: "You are allotted to me." In Rebbi Yose ben Rebbi Jehudah's opinion, he gives her money for the allotment at the end. In the rabbis' opinion, the money for allotment was given at the first hour.

What is the difference between them? Her earning power. For him who says, he gives her money for the allotment at the end, her earning power belongs to her husband. For him who says, the money for allotment was given at the first hour, her earning power belongs to her father.
Even for him who says, the money for allotment was given at the first hour, her earning power belongs to her husband. It is as if he said: "You are preliminarily married to me on condition that your earning power belong to me."

237 Babli 19b, an anonymous tannaitic statement. Since "allotment" legally is preliminary marriage, it has to follow the latter's formal rules.

238 This word, קן, is correctly missing in A and in the quote of this passage in Rashba's Novellae to Qiddusin, 19b. The money was not given to her but to her father.

239 At the moment of the original sale.

240 From the moment of "allotment", she has to be treated as fiancée and can no longer be used as a slave. But anything she completed before this moment rightfully belongs to her master who now is her husband, since he paid for it.

241 Since it turns out that the money was not given for her work but for qiddusin, the father should have the right to claim the proceeds of anything she earned during her years of servitude, since the earnings of the daughter belong to the father until either she is married or becomes an adult (Ketubot 4:2, Note 30). That would create an impossible situation.

242 The father, by agreeing to the sale, agreed to the stipulation.

If he was married to her sister who died. For him who says, he gives money for the allotment at the end, she needs additional money. For him who says, the money for allotment was given at the first hour, she does
not need additional money. Even for him who says, the money for allotment was given at the first hour, she needs additional money. Why? Everybody agrees that preliminary marriage is impossible in an incestuous relationship\textsuperscript{244}.

At the moment of sale, the future master could not possibly think of allotting her for himself since she was forbidden to him, \textit{Lev. 18:18}. Therefore, the money was given only for her services as a slave. \textsuperscript{244} The master could not have acquired the right of allotment from the father while the girl was forbidden to him by an incest prohibition; he has to buy this right after the death of his first wife.

\textit{Is Rebbi Yose ben Rebbi Jehudah of the opinion that the "allotment" discussed here is preliminary marriage by biblical standards}\textsuperscript{245}? Rebbi Abun said, it turns out that Rebbi Yose ben Rebi Jehudah agrees with
Rebbi Simeon ben Eleazar. As it was stated246: By the deposit you hold for me247; if she went and found that it was stolen or lost, if there was a *perutah's* worth left, she is preliminarily married; otherwise, she is not preliminarily married. By the loan you are holding from me, if she went and found that it was stolen or lost, even if there was no *perutah's* worth left, she is preliminarily married248. Rebbi Eleazar ben Rebbi Simeon says in the name of Rebbi Meir, a loan is like a deposit: If there was a *perutah's* worth left, she is preliminarily married; otherwise, she is not preliminarily married249. Just as Rebbi Eleazar ben Rebbi Simeon equates loan and deposit, so Rebbi Yose ben Rebbi Jehudah equates "allotment" and loan250.

245 Does R. Yose ben R. Jehudah require that a *perutah* be left in the end because he holds that "allotment" not only is preliminary marriage but also must follow all rules of preliminary marriages? Then it is difficult to understand why separate biblical rules are given in this case.

246 Babli 47a, Tosephta 3:1.

247 There should be an initial clause: "You are preliminarily married to me for the value of . . ." It is assumed that the deposit was given on condition that she would be responsible only if she misused it, not if it was lost without her fault or stolen. If nothing was left, she received nothing and could not possibly be married.

248 Since she does not have to repay the loan, she received value and is married.

249 As the Babli explains, 47a, a loan is given to be spent. For R. Meir, nobody can marry except by offering some tangible value.

250 He considers the purchase price as a loan to the father which is going to be repaid by the daughter's work. Therefore she cannot be married if she is not freed from a *perutah's* worth of work by the "allotment".
If he allots her to his son. He allots her to his son but may not allot her to his brother. He should be able to allot her to his brother by an argument *de minore ad majus*! If he may allot her to his son who may not take his place for halisah and levirate, should it not be logical that he may allot her to his brother who may take his place for halisah and levirate? No. If you would accept the son since he will take [the father's] place in a field of inheritance, what can you say about his brother who will not take his place in a field of inheritance? Would it be reasonable that he may allot her to him? The verse says, "if he allots her to his son." He allots her to his son but may not allot her to his brother.

This and the following paragraphs are paralleled in Yebamot 10:14.
"If he allots her to his son;" but he may not allot her to his grandson.

Samuel bar Abba asked before Rebbi Ze'ira: In matters of inheritance you recognize the grandson like a son but here you do not recognize the grandson like a son? Rebbi Ze'ira said, if anybody explains this matter, I shall pour him spiced wine. Rebbi Nahum answered: In matters of inheritance where the brother can take the place of a son and all others can take the place of a son, the grandson takes the place of a son. But here, where neither the brother nor any other relative can take the place of a son, the grandson cannot take the place of a son. The rabbis of Caesarea answered: In matters of impurity you consider a brother like a son and all [near] relatives like a son but not a grandson like a son. They said, there went the spiced wine.
"If he allots her to his son;" with [the girl’s] agreement. Rebbi Johanan said, there is no agreement here. Rebbi Jacob bar Aha said so, the statement follows Rebbi Yose ben Rebbi Jehudah. Rebbi Samuel bar Eudaimon said, even if you say the statement follows Rebbi Yose ben Rebbi Jehudah, is he not a minor? "If he allots her to his son;" with [the latter’s] agreement. Rebbi Johanan said, he allots her to his minor or adult son, with or without the latter’s agreement. Rebbi Simeon ben Laqish said, he allots her only to his adult son with the latter’s agreement.
"A male nine years and one day old makes a widow for the High Priest or a divorcee or one who performed halîsah for a common priest." In the opinion of Rebbi Simeon ben Laqish who must explain this for a marriage, she should also be free from levirate or halîsah, as we have stated: "If he married a woman, that one is free from levirate or halîsah." Rebbi Abin said, following Rebbi Simeon ben Laqish it comes following Rebbi Yose ben Rebbi Jehudah, as it was stated so: If a male nine years and one day old up to twelve years and one day old grew two pubic hairs, they are warts. Rebbi Yose ben Rebbi Jehudah said, they are indicators [of puberty]. Rebbi Jacob ben Rebbi Abun in the name of Rebbi Yose ben Hanina: Only if they were still there at the time of indicators.

Rebbi Yose asked: When they remained until the time of indicators, does he retroactively become a man or from that time onward? For
Rebbi Abun it is obvious that he becomes a man retroactively, so certainly also for the future, for he explains the position of Rebbi Simeon ben Laqish by Rebbi Yose ben Rebbi Jehudah. Why does Rebbi Yose not explain the position of Rebbi Simeon ben Laqish by Rebbi Yose ben Rebbi Jehudah since he asked, when they remained until the time of indicators, does he retroactively become a man or from that time onward? Rebbi Mana said, because he had difficulty. Rebbi Yose asked before me: When they remained until the time of indicators, does he retroactively become a man or from that time onward? One understands the case of a widow. But a divorcee? Explain it if he copulated with her after he became an adult and divorced her. Halisah? Explain it if he copulated with her, died, and the [adult] brothers performed halisah; she had halisah because of him. In that case, even if he was younger than nine years!! Rebbi Samuel ben Eudaimon said, that is correct. But because in all cases one stated "nine", one stated this with them.

253 Here ends fragment A.

Rebbi Jehudah ben Pazi in the name of Rebbi Joshua ben Levi: Rebbi Yose ben Jehudah learned from Ahaz, as it was stated: Ahaz produced a child at age nine, Haran at age six, and Caleb at age ten following him who identifies Caleb ben Heşron with Caleb ben Yephuneh.
If he sold her to one and gave her in preliminary marriage to another, the father played with the master, the words of Rebbi Yose ben Rebbi Jehudah; but the Sages say that the father did not play with the master. It is as if somebody said to a woman, "you are preliminarily married to me after 30 days," since if somebody said to a woman, "you are preliminarily married to me after 30 days," and another came and married her preliminarily (after) 30 days, is she not preliminarily married to the second man? "From now after 30 days." Since if somebody said to a woman, "you are preliminarily married to me from now after 30 days," and another came and married her preliminarily within the 30 days, is she not preliminarily married to both of them? From then when he wants. Everybody agrees that if he definitively married her off, the father played with the master.

254 The father. The same statement is in the Babli, 19b.
255 She is preliminarily married to the other man and the master lost his right of allotment.
256 The master did not lose his right of allotment.
257 This should read: "Within".
258 Mishnah 3:1. Since R. Yose ben R. Jehudah holds that the money paid for the services of the girl is not given for preliminary marriage but only to
acquire the right of allotment, the girl was not married at the time the second man gave money for preliminary marriage. Since nobody can marry an already married woman, the master has lost his right of allotment.

259 Mishnah 3:1. The Sages hold that the original price was given for preliminary marriage at the time chosen by the master. If another man gives her money for preliminary marriage before the master exercises his right of allotment, both have equal rights to her and neither can marry her without the other writing a bill of divorce. A third man can marry her only if both divorce her.

260 It is the Sages’ interpretation of the sale contract, that the buyer can activate his right of allotment any time he chooses.

261 If the second man combined preliminary and definitive marriage at the same time, nothing can undo a definitive marriage except divorce or death. However, this statement is problematic both for R. Yose ben R. Jehudah and for the Sages.

A reasonable interpretation of the position of R. Yose ben R. Jehudah would be that the sales contract, by which the master acquires the right of allotment, implies that the father surrendered his right to marry off his daughter. One must assume that the contract explicitly excluded this interpretation.

For the Sages it really should not make any difference whether preliminary and definitive marriages are performed together or not; the potential preliminary marriage of the master in any case precedes any action by the second man. One must assume that the Yerushalmi holds that in addition to the cases mentioned in the Mishnah, definitive marriage frees the girl from the ownership of her master (cf. Note 279). In that case, even though the act of preliminary marriage created the impossible situation described in the text, the definitive marriage solved the problem by eliminating the master’s ownership and with it his right of allotment. The only recourse the master has is to sue the father for the value of services lost. (Explanation of S. Z. Brauda, loc. cit. Note 236).
only as a slave girl: this teaches that he may sell her on condition that he not have the right of allotment over her, the words of Rebbi Meïr. But the Sages say, he did not do anything, for he stipulated against what is written in the Torah, "and the stipulation of anybody who stipulates against what is written in the Torah is invalid." But does Rebbi Meïr not agree that "the stipulation of anybody who stipulates against what is written in the Torah is invalid"? He accepts it if it is impossible to keep the stipulation in the end, but here it is possible to keep the stipulation in the end. Do the rabbis not agree about a stipulation which it is possible to keep in the end? They agree to it in money matters, but this is a personal matter. But did we not state: A person may marry a woman and stipulate with her that she have no claim.
on him for food, clothing, or marital relations\textsuperscript{268}? One understands food and clothing. But are marital relations not a personal matter? Rebbi Hiyya bar Ada said, explain it for an underage girl\textsuperscript{269}. How can that Tanna explain "as a slave girl"\textsuperscript{270}? He may sell her as a widow to the High Priest, as a divorcee or one who received \textit{hālisah} to a common priest\textsuperscript{271}. How can that Tanna explain "as a servant"? Rebbi Yose ben Rebbi Abun said, explain it by a widow from preliminary marriage\textsuperscript{272}. But was it not stated: A person may sell his daughter into marriage\textsuperscript{273} and repeat, into servitude and repeat, into marriage after servitude, but not into servitude after marriage\textsuperscript{274}? Rebbi Johanan said, these are different Tannaïm. He who states "a widow to the High Priest" agrees to servitude after marriage; he who does not state "a widow to the High Priest" does not agree to servitude after marriage. How does the latter Tanna explain "as a servant"\textsuperscript{275}? Rebbi Mattaniah said, explain it if [the master] was married to her sister\textsuperscript{271}.

\begin{itemize}
\item[262] Babli 19b; \textit{Mekhilta dR. Šim'on b. Jochai}, p. 165.
\item[263] \textit{Ex.} 21:7
\item[264] Mishnah \textit{Baba mesi'a} 7:14.
\item[265] Since the Mishnah is anonymous and is based on R. Meir's compilation, it is assumed that it represents R. Meir's position.
\item[266] This is explicitly stated in \textit{Baba mesi'a} 7:14. Since the master is not required to marry his servant, he will not infringe on any biblical obligation by agreeing not to marry her. Everybody will agree that if a man marries a woman on condition that she be freed from levirate or \textit{hālisah} if he should die childless, the stipulation is invalid since it infringes on obligatory biblical law.
\item[267] For which it is formulated in Mishnah \textit{Baba mesi'a} 7:14; cf. \textit{Ketubot} 5:10 Note 227 where all references are given.
\item[268] In the Babli, 19b, it reads: "A person may marry a woman and stipulate with her that she have no
claim on him for food, clothing, or marital relations; she is married and the stipulations are void, the words of R. Meir; R. Jehudah says, in money matters his stipulation is valid." As noted in *Ketubot* 5:10 Note 227, R. Jehudah’s opinion is accepted in the Yerushalmi as generally valid.

Who does not expect sexual relations.

R. Meir who denies the ability of the father to exclude allotment.

The father may sell her to a person unable to marry her by biblical law (Babli 19b; *Mekhilta dR. Sim'on b*, Jochai, p. 165).

Since an underage girl is emancipated from her father by definitive marriage (*Ketubot* 4:3, Note 42), the girl sold as a widow or divorcée must be a widow or divorcée after preliminary marriage only. The mention of *hâtîsah* is a slip of the pen because of the usual combination of the terms; for the House of Hillel *hâtîsah* is possible only after definitive marriage (*Yebamot* 1:6, Note 192).

Preliminary, not definitive.

Babli 18a; *Massekhet 'Avadim* 1.

As servant only, excluding the possibility of marriage; cf. Note 243.

Rebbi Simeon ben Yohai stated: Just as he cannot sell her into servitude after marriage, so not into servitude after servitude.276. What is Rebbi Simeon ben Iohai’s reason? "By his being unfaithful to her."277 Once he can be unfaithful to her, he cannot be unfaithful to her a second time. How do the rabbis explain Rebbi Simeon ben Iohai’s reason? "She being in his garment," from the moment that [her master] spread his garment on her, her father no longer has any power over her.
276 Babli 18b. In Mekhillta dR. Ismael, Neziqin 3, this is ascribed to R. Yose the Galilean and derived from the singular used in Ex. 21:7.

277 He reads כנביה as verbal form derived from the root כנב "to be unfaithful, traitorous", referred to the father. In the Babli, 18b, this is R. Aqiba's opinion.

278 He reads כנ交流合作 as nominal form derived from כנ交流合作 "garment", referring to the master as husband. They hold that the girl sold into servitude is emancipated even by preliminary marriage. In the Babli this is the position taken by R. Eliezer; anonymous in Mekhillta dR. Shimon b. Jochai, p. 166.

Rebbi Simeon ben Lakish asked before Rebbi Johanan: Should not the Hebrew slave girl leave by definitive marriage, by an argument de minore ad majus? Since indications [of puberty] which do not emancipate her from her father's power, free her from her master's power279, is it not...
logical that definitive marriage, which emancipates her from her father's power, shall free her from her master's power? He said to him, I have only the Mishnah: "The Hebrew slave girl in addition regains her autonomy by indicators of puberty." Bar Pedaiah said, the Hebrew slave girl leaves at the death of her master. What is the reason? "Also your slave girl you shall treat in the same way;" and it is written: "He shall be for you a permanent slave." He bracketed the Hebrew slave girl with the "pierced slave". Since the "pierced slave" leaves at his master's death, the Hebrew slave girl also leaves at her master's death. It turns out that Bar Pedaiah parallels the following Tanna, as it was stated: The Hebrew slave serves the son but not the daughter; the Hebrew slave girl serves the daughter but not the son. Some Tanna'im state: The Hebrew slave girl as well as the Hebrew slave serve neither the son nor the daughter. How does the Tanna confirm "your slave girl you also shall treat in the same way"? He explains it about the allowance, as it was stated: The following are given allowances: The one who leaves after six years or in the Jubilee, and the Hebrew slave girl who becomes autonomous by indicators of puberty. But one does not give allowances to one who leaves by the reduction of the amount or following the master's death.

279 An adolescent girl remains in her father's power for six months after her formal puberty (Nedarim 10:1, Note 1) but leaves servitude at the actual onset of puberty.

280 In the Babli, 17b, "R. Pada".

281 Deut. 15:17, making it clear that the servitude of the "pierced slave" is personally to his master; cf. Note 157. By consensus of all sources, the final clause of that verse, speaking of the Hebrew slave girl, cannot refer to the piercing of the earlobe since this would contradict Ex. 21:5.
HALAKHAH 2

282 Babli 17b; Sifry Deut. #122; Mekhilta dR. Ismael, Neziqin 2; Mekhilta dR. Sim'on b. Jochai p. 164.
283 The one indentured for six years, not the "pierced slave" (parallel sources cf. Note 282).
284 In the Babli 17b: Neither son nor daughter.
285 The "pierced slave", not the one indentured for six years. This is Bar Pedaiah's statement.
286 A supply of produce, required to be given the departing slave by Deut. 15:14. This is the standard interpretation (Babli 17b; Sifry Deut. #122).
287 Who buys his freedom by repaying the amount given for his services reduced proportionally to the time served.
288 In the Babli, 16b, and Sifry Deut. #119, the person leaving at his master's death is entitled to an allowance. The Yerushalmi restricts allowances to persons serving a predetermined period. (In Masekhet 'Avadim 2, allowances are given only to those sold by the court.)

It is written: "His master shall bring him to the judges, or he shall bring him to the door."

289 How is that? The one who was sold by the court, "his master shall bring him to the judges." The one who sold himself, "or he shall bring him to the door."
290 Rebbi Immi asked: It is obvious that...
the court writes the contract for him who was sold by the court. Who is writing the contract for him who sells himself? It is written: "It shall not be hard in your eyes to send him away free from you; for twice the hire of a hireling he served you for six years." The hired hand works during the day; he does not work in the night. The Hebrew slave works both day and night. It is written: "He shall not treat him harshly before your eyes," and you say so? Rebbi Immi in the name of Rebbi Johanan: His master marries him to a Canaanite slave; it turns out that he serves him day and night. Rebbi Abba bar Mamal asked before Rebbi Immi: Think of it, if he was buying a Cohen! He answered him: Would the case of an Israel not also be permission of something prohibited following Rebbi Simeon? Rebbi Abba bar Mamal here changed his mind.

290  Mekhilta dR. Ismael Neziqin 2; but in Mekhilta dR. Sim' on b. Jochai p. 163 (Midrash Haggadol Deut. 15:17) even the private act of piercing needs a public act in court.
291  No answer is given since in a private transaction any one of the parties may write the contract.
292  Lev. 25:53.
293  It certainly is forbidden to ask more than a full day's work from any slave, whether Hebrew or not.
294  Since in the night he produces slave children for his master.
295  Since a Cohen may not marry a divorcee, certainly a slave woman is forbidden to him.
296  The slave woman is not more strictly forbidden to the Cohen than she is to the Israel. According to R. Simeon, children of a Gentile father and a Jewish mother have no family relationship with their father; children of a Jewish father and Gentile mother have no family relationship with their father; the latter statement includes slave women who as yet are not fully Jewish (cf. Yebamot 4:15,7:6 Note 135). Therefore, if the slave woman is temporarily permitted to the Israel, she also is temporarily permitted to the
Cohen slave. The woman is not married to the slave in legal terms since at the moment when the slave regains his freedom she automatically becomes forbidden to him and permitted to others without a bill of divorce.

In the Babli, 21b, only Rav holds that the Canaanite woman was permitted to the Cohen while Samuel disagrees.

Rebbi Jehudah ben Rebbi Abun\textsuperscript{297} preached: The earlobe was pierced, lest a Cohen become disqualified. Rebbi Meïr says, he was pierced at his cartilage. Therefore, Rebbi Meïr says that a Cohen cannot be pierced lest he become blemished and be disqualified for service\textsuperscript{298}. Could not the cartilage be pierced less than the size of a vetch seed? Maybe it would result in the size of a vetch seed. Let it be the size of a vetch! The Torah said, "he shall return to his inheritance\textsuperscript{299}," as he was. He cannot be pierced unless he had a wife and children\textsuperscript{300}. "By an awl"\textsuperscript{301}. Not only an awl, from where even a buck-thorn, even a thorn, even glass? The verse says, "he pierces"\textsuperscript{302}. This follows Rebbi Aqiba.

\textsuperscript{297} In the Babli, 21b, and \textit{Sifry Deut.} \#122, he seems to be identified as R. Jehudah (bar Ilai); explicitly so in \textit{Mekhilta dR. Ismael Neziqin} 2. The opinion ascribed here to R. Meir there is that of the anonymous Sages.

\textsuperscript{298} Mishnah \textit{Bekhorot} 6:1 notes that both sacrificial animal and priest are
disqualified for Divine service if the cartilage of their ears be punctured in the size of a vetch seed.

299 *Lev. 25:27.* This is the wrong quote since it refers to real estate returned to its original owner in the Jubilee. The verse referring to the Hebrew slave released in the Jubilee is *v. 41,* "he shall return to his family, to his forefathers' inheritance he shall return." The inheritance of a priest is the Divine service (*Num. 18:20)*.


301 *Ex. 21:6.*

302 This interpretation seems to be the reason for the masoretic accents which introduce a dividing accent: "he shall pierce his ear, with an awl", taking "as an awl" as an afterthought. The Babli, 21b, refers to *Deut 15:17:* "You shall take the awl," anything that can be used to serve as an awl.

Following Rebbi Ismael? Rebbi Ismael stated 303: At three places teaching circumvents Scripture and at another place the interpretation.
The Torah said, "in a scroll\textsuperscript{304}\), but practice said on anything separated from the ground. The Torah said, "in dust\textsuperscript{305}\), but practice said in anything on which plants grow\textsuperscript{306}. The Torah said, "with an awl\), but practice said, even a buck-thorn, even a thorn, even glass. And at one place the interpretation\textsuperscript{307}: Rebbi Ismael stated: "It shall be on the seventh day that he shave all his hair\textsuperscript{308}," inclusion. "His head, his beard, and his eyebrows," detail. Since it continues "and all his hair he shall shave," it repeats inclusion. Inclusion, detail, and inclusion is judged only by what is similar to the detail\textsuperscript{309}. Since the detail is explained as place of bunching and exposed, it should refer only [hair growing] in bunches at exposed places. But practice is that he shaves to be like a gourd\textsuperscript{310}. "With an awl", since an awl is made of metal, so anything made of metal\textsuperscript{311}. Rebbi Yose said, this is a large drill\textsuperscript{312}. Rebbi Yose ben Rebbi Jehudah says, that is the engraving-knife. "He shall bring him to the door\textsuperscript{313}" I could think, even if it was lying flat. The verse says, "or to the door-post". Since the door-post is upright, so also the door has to be upright\textsuperscript{314}: a shame to him and to his family\textsuperscript{315}.

\textsuperscript{303} Babli \textit{Sotah} 16b; \textit{Sifry Deut.} #122.

\textsuperscript{304} This is a wrong quote, referring to \textit{Num.} 6:23, the text of the incantations required in the rite of the wife suspected of infidelity. But that text has to be written on a scroll; cf. \textit{Sotah} 2:4, Notes 143-144. Here, it should say \textit{יַבָּא} "book", referring to the divorce document mentioned in \textit{Deut.} 24:1 which can be written on anything not connected to the ground; Mishnah \textit{Gittin} 2:3. The quote is correct in the sources quoted in the preceding Note.

\textsuperscript{305} \textit{Lev.} 17:13. The blood of slaughtered wild animals or birds has to be covered "in dust".

\textsuperscript{306} Mishnah \textit{Hulin} 6:6.

\textsuperscript{307} R. Ismael's own hermeneutical rules.

\textsuperscript{308} \textit{Lev.} 14:9, speaking of the ritual purification of the healed sufferer
from skin disease. All the quotes are from this verse.

309 By the seventh hermeneutical rule one has to try to find an intentional definition of the properties common to the examples given as detail; these then are the properties referred to by the inclusions.

310 Shaving completely every exposed hair; Mishnah Nega'im 14:4. (Sifra Mezora' Pereq 2 disagrees with the baraita here and the Mishnah and holds that the insistence on the shaving of all hair in both inclusions requires that any single one of the properties mentioned in the analysis of the detail, hair growing in bunches or visible, has to be shaved but nothing else. The Tanna of Sifra holds that practice follows interpretation closely.)

311 In Babylonian sources, Babli 21b, Mekhilta dR. Ismael Neziqin 2, Sifry Deut # 122, this is an argument of Rebbi, in Mekhilta dR. Sim'on b. Jochai,

312 In Sifry Deut # 122, Midrash Haggadol Deut. on Deut. 15:17: This is the large awl. The Yerushalmi text seems to be the original.


314 Babli 22b, Mekhilta dR. Ismael Neziqin 2, Mekhilta dR. Sim'on b. Jochai p. 163.

315 They violated their obligation to support their relative when he could not fend for himself.
It was stated: Rebbi Eliezer ben Jacob says, why at the door? Because by the door they went from servitude to freedom. The students asked Rabban Johanan ben Zakkai: Why should the slave be pierced in his ear rather than in any of his other body parts? He said to them, the ear which heard at Mount Sinai: "You shall have no other powers besides Me," and removed from himself the yoke of the Kingdom of Heaven but accepted the yoke of flesh and blood; the ear which heard before Mount Sinai: "For the Children of Israel are My servants," and went and acquired another master; therefore the ear should come and be pierced for he did not follow what his ear heard.

316 By the blood of the Passover sacrifice on the doorposts in Egypt, Ex. 12:7.  
317 Babli 22b; Mekhila dR. Ismael Neziqin 2.  
317 The slave.

"His ear." Since "his ear" mentioned there means the right ear, also here the right ear.

"If the slave says saying, two sayings, one at the end of the sixth year and one at the start of the seventh year. One at the end of the sixth year, while he still is in his servitude and one at the start of the seventh year, "I will not go free."
"I love my master, my wife, and my children." This teaches that he cannot be pierced unless he have a wife and children, unless he love his master and his master love him; unless the property be blessed because of him as it is said: "For he feels well with you."

318  Ex. 21:6.
319  This may refer either to the induction ceremony of the priests (Lev. 8:23,24) or the purification of the sufferer from skin disease (Lev. 14:14,17,25,28). In both cases, it is spelled out that blood was given on the right ear's cartilage.
320  Mekhilta dR. Ismael, Neziqin 2; Sifry Deut. #122.
321  Ex. 21:5. The interpretation of the emphatic infinitive construction as additional condition is characteristic of R. Aqiba's interpretation; it is rejected by R. Ismael who considers it a regular feature of biblical syntax.
322  The slave has to give notice of his intention to remain in his servile state while he still is indentured and has to repeat it at the moment he should become free again. Babli 22a, Mekhilta dR. Ismael, Mišpāṭim 2; Mekhilta dR. Šim'on b. Jochai p. 162; Sifry Deut. #121.
323  This is the statement required at the time of his planned release.
324  Ex. 21:5.
325  Mekhilta dR. Ismael, Mišpāṭim 2; Mekhilta dR. Šim'on b. Jochai p. 162; Sifry Deut. #121; Midrash Tanna'im preserved in Midrash Haggadol Deut. 15:17. The last source is the only one which explicitly refers the mention of "the wife" to the Canaanite slave given to him by his master (cf. Rashi to Ex. 21:5), not to the Jewish wife and her children who also have to be sustained by his master (Ex. 21:3).

"He regains his autonomy in the Jubilee," as it is written: "He leaves in the Jubilee together with his children." "Or at the master's death," as it is written: "He shall be for you a perpetual slave," all the days of his master's lifetime.
326 Lev. 25:54. The text is misquoted; it reads "he leaves in the Jubilee year."

327 Deut. 15:17. In contrast to the slave indentured for six years, the "pierced slave" does not serve the son.

Mishnah 3: A Canaanite slave is acquired by money, or contract, or possession. He gains his autonomy by money through a third party or a document by himself, the words of Rebbi Meïr. But the Sages say, by money also by himself or a document through a third party, if only the money comes from a third party.

328 Any Gentile slave is called "Canaanite" since Canaan was called "a slave of slaves to his fellow men" (Gen. 9:25).

329 A slave who becomes ownerless by the death of his intestate owner who dies without heirs can be acquired by anybody who makes him perform a slave's duties for himself. Also, a person who claims to have bought a slave from another party will have his ownership confirmed by the court if he can show three years of uncontested ownership. Cf. Ketubot 5:5, Note 100.

330 R. Meïr holds that any property of the slave's is his master's. If the slave receives monies from other people on condition that they not be his master's property, the condition is not operative. The slave cannot buy his freedom with his master's money.

331 By manumission, the slave (who had been circumcized as a Jew's slave) becomes a full Jew. As such, he is
permitted to marry a Jewish partner but is prohibited promiscuity. R. Meïr holds that people prefer promiscuity to the discipline of marriage; for him, manumission has detrimental aspects. Since nobody can legally act to another person's detriment without that person's authorization, a third party cannot accept a document of manumission without the slave's authorization.

332 If a slave receives money on condition that it not be his master's, the condition is valid. The slave may use that money to buy his freedom.

333 They hold that the prohibition of promiscuity is a small price to pay for freedom and the possibility of marriage. Since a person can legally act to another person's benefit without that person's authorization, a third party can accept a document of manumission without the slave's authorization.

Halakhah 3: "A Canaanite slave is acquired by money," etc. It is written334: "They shall be inherited by your children after you, to be possessed as inheritance" This brackets slaves with landed property. Since real estate can be acquired by money, or contract, or possession, so a Canaanite slave can be acquired by money, or contract, or possession.

334 Lev. 25:46, speaking of Gentile Babli, 22b, Bekhorot 13a; Sifra Behar slaves. The same argument in the Parašah 6(4).

עבד כלני כקול בכסףikel. חתוב ותרתת אלול (59d line 48) שדוחו בכסףسكن פספר ותבאותה. טמיין שארת הכותה לקשת הכותה שראוי עידי נון. הכותה דא difíc שרה. עידיแดות. אא אזינאק עדני שרה. כבר חתוב לקחת בכסף הכותה.
From where that landed property is bought by money, or contract, or possession? "Fields will be bought by money, writing on a scroll and signing, and testifying of witnesses." "And signing," these are the witnesses on the contract. "And testifying of witnesses," these are the witnesses to possession. Or maybe these are only the witnesses on the contract? These are already written: "Writing on a scroll and signing."

Cf. Babli 26a.

A parallel text for this and the following paragraphs is in Halakhah 5 (Note 479); variants are noted there.

Jer. 32:44. A prophetic text cannot really serve as legal source but it can demonstrate practice. Since the speaker in this verse is God, the practice is accepted by Heaven.

Rebbi Yasa in the name of Rebbi Mana; Rebbi Tanhum, Rebbi Abbahu in the name of Rebbi Johanan: Real estate cannot be bought for less than a perutah. What is the reason? "Fields will be bought by money." This disagrees with what Rebbi Hanina said: Any seqalim mentioned in the Torah are tetradrachmas, in the Prophets pounds, and in the Hagiographs centenarii. Rebbi Jehudah bar Pazi said, except for the seqalim paid to Ephron, which were centenarii. What is the reason? "For full money he shall give it to me." There is no comparison...
since here it is written "money" but there "šeqalim". They objected, is there not the rapist\textsuperscript{343}, for whom "money" is written and you say "šeqalim"?

337 R. Mana I.
338 Anything less than the smallest coin is not money.
339 Babli Bekhorot 50a. There, the statement of R. Jehudah bar Pazi is ascribed to R. Hanina. In Gen. rabba 58(9), the statement of R. Jehudah bar Pazi is in the name of R. Yudan.
340 A Roman \textit{libra}, Greek λίτρα, of 96 denarii or 24 tetradrachmas.
341 A noun, meaning "100 pieces" formed in vulgar Latin from the classical adjective centenarius, "consisting of a hundred", in this case 100 \textit{librae}. The same meaning, 100 lb., is found in Middle High German zëntenære, zëntner.

343 Deut. 23:29; the extra fine the rapist of a virgin pays is "50 silver pieces"; cf. Ketubot 3:1, Note 1.

This does not follow Rebbi Eliezer, for Rebbi Eliezer said that walking acquires, as it was stated: \textsuperscript{344}If one walked across a field in length and breadth, he acquired up to the place he walked to, the words of Rebbi Eliezer. But the Sages say that he did not acquire up to the moment he acted in possession\textsuperscript{345}. Everybody agrees that if somebody sells a path to another, when the latter went, he acquired. What is the reason? "Arise, walk in the Land in length and breadth, for I shall give it to you."
One assumes either that the field is ownerless or that the acquirer has a claim of possession that would give him squatter's rights; cf. Ketubot 5:5, Note 100.

In R. Eliezer's opinion, the rules of acquisition of a Canaanite slave are not identical with those for real estate; he will reject deriving legal rules from a verse in the Prophets.

He performed some agricultural work on the property.


A Mishnah says that slaves follow the rules of real estate. A baraita states, neither the rules of real

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344 Babli Baba batra 100a. One
estate nor the rules of movables.

A Mishnah says that slaves follow the rules of real estate, as we have stated there: "Possession of houses, cisterns, ditches, and caves, bath houses, and dovecots, olive presses, and irrigated fields, and slaves."

A baraita states, slaves do not follow the rules of movables. As it is stated: What is possession of a slave? He tied his shoe for him, or untied his shoe, carried his things to the bath. Rebbi Simeon says, if he lifted him, that is possession. If he lifted his master, there is no stronger possession than this.

A statement of the rabbis says that slaves follow the rules of movables. For Rebbi Yose said in the name of rabbis, there is no lien for a gift; one does not collect from slaves as from real estate. Rebbi Mana asked Rebbi Shammai, who are those rabbis? He told him, Rebbi Isaac and Rebbi Immi. A 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.

Not of real estate, as it was stated: Real estate and slaves; he took possession of the real estate. If you say that slaves follow the rules of real estate, when he took possession of the real estate he would have taken possession of the slaves, since Rebbi Yasa said in the name of Rebbi Johanan: If he had two fields, one in Judea and one in Galilee. If he took possession of the one in Judea with intention to take possession also of that in Galilee, or of the one in Galilee with intention to take possession also of that in Judea, he acquired.

Not of movables. If you say that slaves follow the rules of movables, when he took possession of the movables he would have taken possession
of the slaves, since we did state there: "For property that is not
354 guaranteed will cause guaranteed properties to be objects of swearing
355 about them."

347 Mishnah Baba batra 3:1. The Mishnah discusses how to establish title
in the absence of a deed.
348 Babli 22b; Tospehta 1:5. Movables are acquired by actually
taking them. Similarly, ownerless slaves are acquired by having them
carry the new master's property.
349 This statement has no connection with the remainder of the text. If
real estate is sold, the seller accepts responsibility to indemnify the buyer if
the latter should lose the real estate because of foreclosure of a pre-existing
lien, whether or not this is spelled out in the sale contract. For a gift of real
estate, the donor accepts responsibility only if this is so stated in the deed. In
the Babli, Baba batra 128a, this is a matter in dispute; the ultimate
authority Rav Nahman agrees with the ruling of the Yerushalmi.
350 While slaves can be given in chattel mortgage, they are not subject
to blanket liens which cover all the debtor's real estate. In particular, at
places where a woman's ketubah is a lien only on her husband's real estate,
the ketubah cannot be collected by the widow or divorcée by taking slave girls
from the estate.
351 Ketubot 9:3, Notes 111-112.
352 Like Ptolemaic and Roman laws, rabbinic civil law is based on the
distinction between ownership and possession. Paying for an acquisition
conveys ownership but the transfer of property rights and liabilities requires
an act of possession (cf. Halakhot 4,5).

Taking possession by use (cf. Note 30) of a piece of real estate establishes
possession of all real estate and movables included in one sale contract.
Similarly, movables are taken into possession by moving one piece; this
simultaneously gives possession of all items included in the sale. Since taking
possession of slaves is by individual action only, in this respect they follow
neither the rules of real estate nor those of movables. Taking possession
of slaves does not induce possession of either real estate or movables covered
by the same sales contract; Babli Baba qama 12a.
253 In the Babli, Baba qama 12a.
this is a statement of Samuel, the Babylonian expert on civil law.

354 I. e., movables which have no title guarantee.

355 Mishnah 1:5; Šebuot 6:5.

Property claims about real estate and slaves, in contrast to movables, cannot be adjudicated by having the parties swear about ownership and responsibility.

"By money." Rebbi Jeremiah said, from another person to his master, therefore not from his master to another person. Rebbi Ze'ira said, even from his master to another person. What brings this? From his master to himself. Rebbi Jeremiah asked before Rebbi Ze'ira: "Here you have money that your field shall be unencumbered." He answered, it is unencumbered. "That it be ownerless?" He answered, it is not ownerless. What is the difference between the cases? Here he advantaged a thinking person, there he did not advantage any thinking person. Think of it, if he was deaf-mute? He said to him, "a man." Think of it, if he was underage? He said to him, one usually grows up. Rebbi Jonah said, Rebbi Ze'ira follows Rebbi Simeon ben Eleazar, since Rebbi Simeon ben Eleazar says in the name of Rebbi Meir:
Even with a contract through others, not by himself\textsuperscript{366}. Does not his master deliver a document to others that his slave regain his freedom? Here also, his master gives money to others that his field become ownerless\textsuperscript{367}.

356 Here starts the discussion of the manumission of a slave according to R. Meïr.

357 A third party gives money to the master to buy the slave's freedom. This works even if the transaction is purely symbolic and only a \textit{perutah} changes hands. But the master cannot give a \textit{perutah} to a third person as a symbol of the slave's manumission.

358 The result of the transaction between master and third party is the freedom of the ostensibly uninvolved slave.

359 A third party can give money to a creditor to satisfy the mortgage on a field since even R. Meïr will agree that a person can legally act to another person's benefit without that person's authorization.

Some commentators are emending "field" to "slave" in the entire paragraph.

360 A person gives money to the owner of a piece of real estate for the latter to renounce his ownership. It is clear that if the former owner renounces his ownership by explicit declaration, the land becomes ownerless. Here the money is given without the owner's saying a word.

361 The action is not valid in law.

362 The beneficiary of a sane person's action.

363 Who is unable to act in law; cf. \textit{Ketubot} 1:2 Note 134, \textit{Yebamot} 14:1.

364 In \textit{Lev.} 25:17, the word "man" is used to describe the agent in a real estate transaction. The deaf-mute is a man even if he is unable to act in law.

365 Only a minority of children die before reaching puberty. (The Babli would reject this argument since it insists that R. Meïr requires rules also to be valid for a minority. For the rabbis who dispute R. Meïr's position, a minor can acquire but not renounce ownership; \textit{Sukkah} 46b.)

366 He disagrees with the Mishnah. Since R. Meïr states that the hand of the slave is the hand of his master (see below and \textit{Ketubot} 6:1, Note 10), a document delivered by the master to the slave is a document delivered by
the master to himself and cannot have any validity. The bill of manumission must be delivered through the agency of a third person whose acceptance of the bill sets the slave free. The Tanna of the Mishnah holds that "he receives simultaneously his hand and his freedom." The Babli, 24a, reports a similar opinion of R. Simeon bar Eleazar in the name of R. Meir regarding a wife's ability to contract without her husband.

This justifies R. Ze'ira's earlier remark that a slave can be manumitted by his master's giving a coin to a third party.

Rebbi Abun said, it follows Rebbi, since Rebbi said that a person can free half of his slave. But do the rabbis not hold that a person can free half of his slave? They admit it for a slave held in partnership. But there is a difference for a slave who entirely belongs to him, for it is as if he gave something from his right into his left hand. Does Rebbi hold that it is not as if he gave something from his right into his left hand? He admits it if he gave to him through a third party. Do the rabbis not hold that he may give to him through a third party? The rabbis hold that one who can acquire by himself can acquire through a third party; one who cannot acquire by himself cannot acquire through a third party. Rebbi says, even though he cannot acquire by himself, he can acquire through third parties.
The statement of R. Simeon ben Eleazar that R. Meïr requires the intervention of a third party in the manumission of a slave by document.

Babli Gitin 23b, 41b; in Temurah 25b ascribed to R. Meïr. It is clear that "half of his slave" means "any part of his slave." Why would anybody want to partially emancipate his slave? By Mishnah Gitin 4:5, the master is then forced to emancipate the slave completely and the slave has to write an IOU for the part of him that was not manumitted. If the slave is not worth his upkeep, the slave has no interest in being freed but his master is interested in getting rid of him and even having the chance of collecting some money from the IOU. (In Roman law, partial emancipation is accepted by Ulpian I 18 but rejected by most other earlier authorities. The Mishnaic law also appears in Egyptian sources and is incorporated in Justinian’s Code; cf. R. Taubenschlag, The Law of Greco-Roman Egypt in the Light of the Papyri, New York 1944, p. 75.)

Since the partial owner eliminates all of his ownership in the slave.

Since for R. Meïr the slave’s hand is his master’s hand.
If he picked up a find and said, for the purpose that I own it rather than my master. Does he and his master own it automatically or does he own it but not his master? Let us hear from the following: "If a person is by a vow prevented from benefitting his son-in-law but wants to give money to his daughter, he says to her: These coins are given to you as a gift on condition that your husband have no claim to them, except what you put into your mouth." It was stated: "Neither do you". Rebbi Ze'ira said, who stated "neither do you"? Rebbi Meir since Rebbi Meir makes the hand of a slave the hand of his master. For a gift [we follow] Rebbi Meir that the wife's hand is her husband's hand; for a find [do we follow] the rabbis? Rebbi Ze'ira said before Rebbi Mana, is there not a difference, for he is as if he acquired by somebody else's opinion? He said to him, is it not a case a fortiori? Since in her case, when she would acquire by somebody else's opinion, you say that what a wife acquired, her husband acquired: here where he acquires by his own opinion, a fortiori what the slave acquired his master must acquire.

The slave picks up something that was lost in the public domain and, therefore, is ownerless. By the act of lifting, the finder acquires as property (Mishnah Baba mešia' 1:1.)

Mishnah Baba mešia' 1:5 gives the master ownership of the finds of his Cannanite slave. The question is whether this is always the case automatically or whether it is only the default option, valid unless the slave stipulates that it be his own property before he picks up the object. The question has to be asked for the anonymous majority who hold that a third party may give something to a slave on condition that his master have no part in it.

Mishnah and Halakhah Nedarim 11:5 (4), Notes 69-70.

Everything remains the father's property until the food is eaten. But for the rabbis, a wife can acquire independent from her husband; Babli
Since the Mishnah is formulated anonymously, it represents practice. The name probably should be "Ezra". If the person who lost the article realizes his loss and gives up hope of recovery, he implicitly agrees to transfer his property rights to the finder. A conscious transfer of property by the father.

Why did we not state: By important limbs that do not regenerate? Rebbi Johanan ben Marius said, because of the disagreement. Some Tannaim state that he needs a bill of manumission; some Tannaim state that he does not need a bill of manumission.

Ex. 21:26-27 prescribes that a slave who lost an eye or a permanent tooth by his master's action must be given his freedom. "Tooth and eye" is generalized as "permanent deficiency involving a visible essential limb." (Mekhilta d'R. Ismael Neziqin 9). R. Meïr in Babli Gittin 42b; cf. Gittin 4:4, Note 100.
It is obvious that a slave may accept a gift by one third party to another\textsuperscript{383}, by a third party to his master, [but] not from his master to himself\textsuperscript{384}. From a third party to himself is in dispute between Rebbi Meïr and the Sages. If one said: Here [I am giving] you this money on condition that your master have no power over it, the slave acquired it and with him his master, the words of Rebbi Meïr. But the Sages say, the slave acquired it [but not]\textsuperscript{385} his master\textsuperscript{386}. What is the problem? From
his master to a third party. Since the slave may receive from a third party for his master, may he receive from his master for a third party? Let us hear from the following:\textsuperscript{387} \textsuperscript{388} "If somebody borrowed a cow and [the lender] sent her to him through his slave, his son, or his agent." Does this not mean that the slave is able to transfer rights from his master to a third party? Rebbi Eleazar said, explain it for a Hebrew slave. Rebbi Johanan said, you have to explain if for a Canaanite slave; explain it that he said, open [the gate] for her and she will come by herself, as we have stated: "If he led her, drew her to himself, called her and she followed him, he is responsible as a borrower." Rebbi Zeïra understood it from here: "But he cannot make them acquire through his underage son or daughter or his Canaanite male or female slave, because their hand is not like his hand." Does this not imply that a slave is not able to transfer rights from his master to another person? Explain it following Rebbi Meïr since Rebbi Meïr makes the hand of the slave the hand of his master. But did we not state "his wife"? Rebbi Meïr holds that the hand of the wife is the hand of her husband! Rebbi Hananiah said in the name of Rebbi Phineas, explain it following the Tanna who stated: "His wife cannot redeem Second Tithe for him. Rebbi Simeon ben Eleazar says in the name of Rebbi Meïr, his wife can redeem Second Tithe for him." For that Tanna, Rebbi Meïr makes the hand of the slave the hand of his master but not the hand of the wife the hand of her husband! Rebbi Zeïra understood it from here: "But he cannot make them acquire through his underage son or daughter or his Canaanite male or female slave, because their hand is not like his hand." Does this not imply that a slave is not able to transfer rights from his master to another person? Explain it following Rebbi Meïr.
since Rebbi Meïr makes the hand of the slave the hand of his master. But did we not state "his wife"? Rebbi Meïr holds that the hand of the wife is the hand of her husband! Rebbi Ḥananiah said in the name of Rebbi Phineas, explain it following the Tanna who stated: "His wife cannot redeem Second Tithe for him. Rebbi Simeon ben Eleazar says in the name of Rebbi Meïr, his wife can redeem Second Tithe for him." For that Tanna, Rebbi Meïr makes the hand of the slave the hand of his master but not the hand of the wife the hand of her husband!

383 Since gifts can be given without the recipient's knowledge, the master A could accept B's gift to C without asking C. Therefore, the slave can do the same in his master's stead.

384 A direct gift from the master to his slave is "a gift from the master's right to his left hand" (Note 371).

385 Word missing in ms., corrected in editio princeps.

386 Quoted but in the end rejected in the Babli, 23b. The only gift which the Babli removes from the master is one given to the slave for the purpose of buying the latter's freedom. Since the slave did not acquire the money, his master has no claim.

387 Mishnah Baba mešia' 8:4. The borrower of livestock is responsible if the animal is injured or dies while in his custody (Ex. 22:13). The responsibility of the borrower starts at the moment when he takes control of the animal. As long as the animal is driven by the owner's slave, it is in the owner's hand and the borrower is not responsible. But (as stated in the part of the Mishnah not quoted here) if the borrower said, send it to me through your slave and something happens on the way, the borrower is responsible.

388 The text from here to the end of the paragraph is from Ma'aser Šeni 4:4 (א, Notes 91-97), Erubin 7.

389 The reading in Qiddušin is a scribal error, not translated.

390 The normal Yerushalmi spelling.
Rebbi Ze'ira and Rebbi Hiyya in the name of Rebbi Johanan: It is reasonable that a slave be able to accept a bill of manumission\textsuperscript{391} since a bill of manumission applies to him. But he should not be able to accept a bill of divorce\textsuperscript{392} since a bill of divorce does not apply to him. If you say, is that not a \textit{baraita}? "Your are a slave but your child is free; if she was pregnant, she acquired for him." They considered her fetus as one of her limbs\textsuperscript{393}. Rebbi Abba bar Hiyya in the name of Rebbi Johanan\textsuperscript{394}: It is reasonable that a slave be able to accept a bill of manumission but he should not be able to accept a bill of his equal\textsuperscript{395}. If you say, the preceding \textit{baraita}? "You are a slave but your child is free; if she was pregnant, she acquired for him." They considered her fetus as one of her limbs.

\textsuperscript{391} The bill of manumission of another owner's slave, even following R. Meir. Babli \textit{Gittin} 23b.

\textsuperscript{392} \textit{Gittin} 2:6, Notes 129,130; Babli 23b.

\textsuperscript{393} As explained below, this rule follows Rebbi who permits partial manumission, but R. Johanan claims that his statement is accepted by everybody. Therefore, the \textit{baraita} is no support for the first statement of R. Johanan; Babli \textit{Gittin} 23b, \textit{Temurah} 25a.

\textsuperscript{394} He presents an alternate version of what R. Johanan said.

\textsuperscript{395} A slave cannot accept the bill of manumission of a fellow slave of the same master since his hand is his master's hand. It is necessary to emphasize that the slave can validly receive only the bill of another master's slave.
For my slave girl X I want a document that she should not be enslaved. Rebbi Eleazar and Rebbi Simeon ben Yaqim brought a case before Rebbi Johanan. He said, he has no power to enslave. What are her children? Slaves. What did he retain for her? Her earnings. Rebbi Abba and Rebbi Yose both said, this follows Rebbi who said that a person frees half of his slave. If he wrote all his possessions jointly to two of his slaves, both are free and both have to free one another. Rav Jehudah in the name of Samuel, Rebbi Abbahu in the name of Rebbi Johanan: This follows Rebbi who said that a person frees half of his slave. Rebbi Ze'ira said to Rebbi Abba: Does this not imply that one slave accepts from his master for another one? He answered, what do you think? Since they acquired the properties they went free? No, simultaneously slaves and properties went free.

A man writes in his will that the girl who cared for him cannot be used for servile tasks by his heirs. The heirs have to support her but cannot require any work from her. (The Babli, Gittin 40a, disagrees and holds that the slave girl must be freed by the heirs. Only if the testator said that "she should be treated well", she remains a slave but cannot be forced to do any work she...
dislikes.)

397 The heir.

398 Born after her original master's death. The Babli, loc. cit., agrees.

399 She pockets all she earns while being supported by the heir.

400 Babli Gittin 42a, which notes that if the properties were not given jointly but half to one and half to the other, they would remain slaves and get nothing since they could not free one another.

401 If the two slaves have to free one another, it seems to imply that by accepting the will each of them was instrumental in freeing half of the other. This would contradict the earlier statement that a slave cannot be part of the manumission of another slave of the same master.

402 The argument proposed in the previous Note is impossible since a half-free slave is unable to act in law. As the Babli formulates it, "his bill of manumission and his hand are simultaneous." The baraita can only be satisfactorily explained following the rabbis who oppose R. Meïr and hold that a slave can accept his own bill since by the bill he is able to act in law.

403 The words of Rebbi Yose the Galilean. But the Sages say, he did not do anything. Rebbi Eleazar said, so did Rebbi Hoshiaia, the father of the Mishnah, explain: Both are free. Rebbi Immi in the name of Rebbi Johanan: Both are slaves. According to Rebbi Johanan, it is "You are free but your child will be a slave," her child is like her, the words of Rebbi Yose the Galilean. But the Sages say, he did not do anything. Rebbi Eleazar said, so did Rebbi Hoshiaia, the father of the Mishnah, explain: Both are free. Rebbi Immi in the name of Rebbi Johanan: Both are slaves. According to Rebbi Johanan, it is
understandable; there is a disagreement. What is the disagreement following Rebbi Eleazar? But it must be so\textsuperscript{406}: His words stand, the words of Rebbi Yose the Galilean\textsuperscript{407}. But the Sages say, he did not do anything. What means "he did not do anything"? Rebbi Eleazar said, so did Rebbi Hoshai, the father of the Mishnah, explain: Both are free. Rebbi Immi in the name of Rebbi Johanan: Both are slaves\textsuperscript{408}. Following Rebbi, since Rebbi said that a person can free half of his slave\textsuperscript{407}.

\textsuperscript{403} The unborn child.

\textsuperscript{404} In this version (the only one quoted in the Babli, Temurah 25b), R. Yose the Galilean disagrees with Rebbi and holds that a slave partially freed is totally freed. He also holds that the fetus is part of the mother; the opposing view, that a fetus has a life of its own, is only found in the Babli (loc. cit. Note 393).

\textsuperscript{405} He reputedly was one of the first collectors of the Tosephta, illustrating the Mishnah.

\textsuperscript{406} Corrected version of the baraita.

\textsuperscript{407} As mentioned at the end of the paragraph, he follows Rebbi and admits freeing a slave limb by limb.

\textsuperscript{408} Following the Sages who admit partial manumission only in the case of a slave jointly owned by several persons, Note 370.

Mishnah 4: Large animals by handing over\textsuperscript{409} and small\textsuperscript{410} by lifting, the words of Rebbi Meir and Rebbi Eleazar. But the Sages say, small animals are taken possession of by drawing near\textsuperscript{411}.

\textsuperscript{409} Actual possession of cattle or horses is obtained by the buyer grasping either the animal’s hair or any saddle, bridle, or belt tied to it.
Talmudic civil law, in parallel to Ptolemaic law in Egypt, is based on the distinction between ownership and possession. Ownership can be acquired by a monetary transaction but possession, including transfer of responsibility, requires a separate act. While acquisition, as a private act between consenting adults, is essentially unregulated, taking possession must follow specific rules.

410 Sheep and goats.

411 By making the animal walk according to the buyer's will, but also by lifting the animal.

Halakhah 4: "Large animals are taken possession of by handing over," etc. Rebbi Huna said, the halter gives possession only for property of the proselyte\(^412\). Rav Hizqiah, Rebbi Abba: Rebbi Eleazar asked, if there were ten camels tied one to another and he handed him the halter of one of them. Did he take possession of all of them or only of the one of which he handed him [the halter]\(^413\)? Rav Hisda said: "Draw\(^414\) this animal to take possession of it, he took possession. To take possession of its offspring, he did not take possession\(^415\). To take possession of it together with its offspring, he took possession\(^416\)." If somebody said to another person, draw this animal close to take possession of its load, would he not take possession\(^417\)? Rebbi Yose said, that is, if the animal was not...
pregnant. But if it was pregnant, they considered it as if carrying a load.

412 Who failed to start a Jewish family and whose property becomes ownerless at his death; cf. Note 30. In the Babli, *Baba mešia‘* 8b, Rav Huna states: that "a halter from another person takes possession except in case of a find and property of a proselyte." On basis of this quote, all commentators and editors delete נִיָּךְ "only" in the present text. The deletion is unjustified; the texts in Yerushalmi and Babli are not comparable.

In the Babli, the formulation makes it clear that the buyer either receives the animal’s halter from the seller or is instructed to take it. Since both a lost article and the estate of an intestate heirless person are ownerless, there is nobody who could hand over the halter or authorize its use. Therefore, only actual moving of the animal can be an act of simultaneous acquisition and taking in possession. While the text of the Babli is beyond doubt, confirmed by Rashi’s translation of מָטִיסָה רַבּ by *chevêtre*, it is quoted in Tosaphot *Baba batra* 75b, s. v. מָטִיסָה מָטִיסָה as אֶיֶה אֵעָה, "handing over by another person", which is correct in meaning if not in text. By contrast, neither handing over nor third person is mentioned in the Yerushalmi. The Yerushalmi asserts that in acquiring and taking possession of ownerless property, taking up the halter is enough, but not in course of formal taking possession of property acquired from a prior owner.

413 It is assumed that even if the first camel took a step under the influence of its new owner, the other nine did not move.

414 The seller instructs the buyer to proceed to take possession of the animal he bought.

415 Moving an animal which he did not buy does not give possession. In the parallel *Baba batra* 3:1, fol. 13d l. 66, "he took possession." The reading of *Baba batra* is incomprehensible.

416 In taking possession of a group of animals, it is enough to move one of them. This answers R. Eleazar’s question. In *Baba batra*: "He did not take possession," cf. Note 415.

417 If he also bought the animal, moving it moves the load and all is taken in possession. The Babli, *Baba mešia‘* 9b, disagrees.
418 If the offspring are already born, they are independent animals which must be acquired by themselves.

419 In *Baba batra* (Note 415), R. Nasa notes that a fetus is part of his mother’s body (Note 404).

420 Rebbi Abba, Rav Huna in the name of Rav: One who handles a wine-skin and it splits in his hand is not responsible for it. Rebbi Yose ben Rebbi Abun, it is necessary even if he takes it in the store when he had no other intention than that no other person should take it. Can he take possession at a minimal rate? Rebbi Haggai said in the name of Rebbi Yose: A Mishnah says that it cannot become his possession at a minimal rate, as we have stated there: "If somebody sells his wine to a Non-Jew. If he fixed the price before he measured, the proceeds are permitted; if he measured before he fixed the price, the proceeds are forbidden." If you say that it can come into his possession at a minimal rate, even if he measured before he fixed the price, it should be as if he fixed the price before he measured and the proceeds would be permitted.
A parallel is in 'Avodah zarah 5:10 (t).

When no price had been agreed upon. Therefore, handling of the wine skin by the prospective buyer cannot be taking possession.

It was handled in preparation of a buy.

Is it possible to take possession now of a commodity whose price will be determined at a future rate, e.g., the lowest price at which the commodity will be traded in the market (the commodities exchange) during the next 30 days. This is a futures contract which cannot be enforced (cf. Ketubot 5:5, Note 116.

Mishnah 'Avodah zarah 5:10.

The Non-Jew is assumed to use his wine for libations, among other things. Since a libation makes the wine an instrument of pagan worship, it will be forbidden to a Jew and all proceeds received for it are forbidden (Deut. 13:18).

The Non-Jew owed the price to the Jew before he went and took possession of the wine. What the Jew sold was wine, not an article of pagan worship.

If the Non-Jew handled the wine before the price was fixed, the Jew sold an article of pagan worship.

Or any rate to be determined in the future.

Since he could have transferred possession to the Non-Jew before the latter handled the wine. The Babli, 'Avodah zarah 72a, rejects the argument since it may be that the seriousness of the prohibition of pagan worship might override rules of contracts.

Samuel said, if somebody take a small gold vessel and it be snatched, who is responsible for it? Rebbi Samuel ben Eudaimon said, that is at Tyre or a similar place, at Caesarea or a similar place. But here, so far it usually would be recovered.
If the person handling the vessel was not the owner. Big cities where thieves easily find fences.

Rebbi Simeon ben Laqish in the name of Rebbi Yannai: If somebody sold a flock to another person, when [the seller] delivered the *maškokît*, [the buyer] took possession. What is *maškokît*? Some say, the shepherd's staff. But some say, a whistle. And some say, the bell-wether.

Of sheep or goats. It is difficult to explain the feminine form chosen for "bell-wether". In the parallel Baba batra 3:1 (13d 1.), the bell-wether is called *τητιθ ήν ήν* "the large ram", and instead of "whistle" one has *πανδούρα*, Latin *pandura*, a three-stringed musical instrument, invented by Pan. [Also compare Latin *pandus, -a, -um* "bent, crooked, curved" as reference to shepherd's crook? (E. G.)] In the Babli, Baba qama 52a, only tambourine and bell-wether ("the ram at the head of the flock") are offered as explanations of *maškokît*.

Rebbi Jacob bar Aha, Rebbi Simeon bar Abba in the name of Rebbi Joshua ben Levi: If somebody sell a cistern, when he handed over its pail [the buyer] took possession. Rebbi Immi in the name of Rebbi Johanan:
If somebody sell a house, when [the buyer] stored there, he took possession. Rebbi Jehudah ben Pazi asked, what if he handed over the key? Rebbi Zachariah, son-in-law of Rebbi Levi, said: This is a disagreement between Rebbi Simeon and the Sages, as we have stated there: "If somebody hand over the key to his house to an 'am ha'ares, the house is pure since he handed to him only the guarding of the key." It was stated: "Rebbi Simeon declares impure."

434 The Babli, Baba qama 51b, requires a declaration by the seller that the pail is handed over for possession.

435 In the Babli, Baba qama 51b/52a, handing over the key as sign of transfer of possession is undeniably a valid action.

436 Mishnah Tahorot 7:1.

437 A person who does not keep the rules of ritual purity. If he did enter the house, any movables (food and vessels) he touches there would become impure.

438 Tosephta Tahorot 8:1. He implies, against the other Tanna, that handing over the key implies permission to use the house.
Rebbi Abbahu said in the name of Rebbi Simeon ben Laqish: He who sells the tithes of his field to another person did not do anything; the future children of his slave girl to another person, he did not do anything; the fetus of his animal to another person, he did not do anything; the airspace of his dry land to another person, he did not do anything. But he may sell him a field and reserve the tithes for himself; a slave girl and reserve her children for himself; an animal and reserve her fetus for himself. Is it not impossible for a person to sell the airspace of his dry land to another person? Explain it if he tells him, tear out some grasses from that dry land to acquire its airspace. And here there is real estate before him and he says, pluck something from the ground so that one tenth of it be acquired by you.

439 This paragraph is from Demay 6:3 (ד), Notes 79-83, which has an intelligible text.

440 Translation of the text in Demay. The text here reads: "The children of another person's slave girl" which does not make sense.

441 Translation of the text in Demay. The text here reads: "A tenth of its surface area", which is inappropriate.

442 Rebbi Samuel, Rebbi Ze'ira, Rebbi Hiyya bar Ashi said in the name of Rav: Drawing close does not acquire in a courtyard which belongs to...
neither of them. But Rebbi Hiyya stated in disagreement: "Under which circumstances did they say that movables are acquired by drawing close? In the public domain or in a courtyard which belongs to neither of them. But in the buyer's domain he acquired the moment he accepted it. In the seller's domain he does not acquire unless either he lifts it up or moves it out of its prior owner's domain. In a domain where it was deposited he does not acquire unless he either is explicitly empowered or he leases its place."

442  *Gittin* 8:1, Notes 17-21.

"But the Sages say, small animals are taken possession of by drawing near." What is the reason of the rabbis? "Draw near and take for yourselves small animals for your families." As Rav Jehudah sent to ask: By what means is possession of large animals established? He answered, by handing over; and asked, is that not the Mishnah? There are Tanna'im who switch the attributions. Rav Jehudah asked Rebbi
Eleazar: If a firstborn became "torn" within thirty days\textsuperscript{446}? He answered, he is as if dead\textsuperscript{447} and free from the five tetradrachmas of a son. \textsuperscript{448}Rav Jehudah sent and asked Rebbi Eleazar: A placenta which was delivered partially today and partially tomorrow? He answered, for pure blood she counts from the first day, for impure blood from the second day. Rebbi Mattaniah said, that is, if no child was produced with it. But if there was a child, both for pure and impure blood she counts only from the moment of birth of the child.

\textsuperscript{443} Ex. 12:21.

\textsuperscript{444} As the later text shows, probably one should read here: "To ask R. Eleazar." According to the Babli, Baba qama 11b, the messenger was Ulla.

\textsuperscript{445} Obviously, Rav Jehudah was supposed to have studied the Mishnah. But he was not sure about the references to large and small domesticated animals and asked for the correct text from the Babylonian R. Eleazar in Galilee where the latter had access to the traditions of the school of Rebbi.

\textsuperscript{446} A firstborn son has to be redeemed (Ex. 13:13,34:20); this is specified in Num. 3:40,47 to apply to firstborn sons above the age of one month and the redemption money, 5 biblical $\text{SEQALIM}$ (Note 122), has to be given to a priest. A human who develops a defect which makes his long-term survival impossible is called "torn", a term used in parallel with the talmudic interpretation of "torn" animals forbidden as food (Ex. 22:30).

\textsuperscript{447} This parallels the rabbinic theory that a person who kills a "torn" human cannot be convicted of first-degree murder (Babli Sanhedrin 78a).

\textsuperscript{448} In the Babli, Menahot 37a/b, the rule is derived from Num. 18:15 (cf. also Sifry Num. #118.)

\textsuperscript{449} Niddah 3:4, Notes 103-104; the parallel in the Babli is Baba qama 11a.
Rav Jehudah sent to Rebbi Eleazar: If a keeper give to another keeper\textsuperscript{449}. He answered, the first is responsible. Rebbi Johanan said, the second\textsuperscript{450} is responsible. Rebbi Simeon ben Laqish said, the second is responsible. \textsuperscript{451}There, 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 Yose said, how can this person make a deal with another's cow? But the cow's [price] has to be restituted to the owner." Rebbi Hila in the name of Rebbi Yannai: Only if he gave permission to lend to others. Also Rebbi Hiyya 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 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 second case teaches about the first, that if he wants to force the wife to swear, 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 the entire time it is leased to him. Rebbi Ze'ira asked Rebbi Abinna: If the owners borrowed it and it died? He said to him, we hold that 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.

449 And something happens to the object to be kept, who is responsible?
450 This must read: "The first", as shown by the last statement in the paragraph and shown in Ketubot 9:5, Notes 128-146 (variant readings given there).
452 Translation of נשים in the Ketubot text, instead of "been made to swear" which does not fit here.

Rav Jehudah sent asking from Rebbi Eleazar: If brothers split [the estate] and then one of them entered a levirate marriage? He answered, the property of the deceased is like common property. Ulla bar Ismael said, it is found that in Rebbi Eleazar’s opinion there is no difference whether they split and then one of them entered a levirate marriage or one of them entered a levirate marriage and then they split, but all of them share in the property of the deceased. Why did he not say so? He answered what was asked of him. And why did he not ask?
Because of what Rebbi Abinna said in the name of Rebbi Assi⁴⁵⁶: If a first-born shared as a common son, it is *prima facie* evidence that he renounced his prerogative⁴⁵⁷.

⁴⁵³ The father died and then one of the brothers died childless. The brother who married the widow inherits the childless brother’s property. If the deceased brother was not married, it is clear that the father’s inheritance is distributed among the surviving brothers. The problem is whether the brother who marries the widow only gets the deceased brother’s property or also has a claim to the share the brother would have had if he had not died.

⁴⁵⁴ The estate of the deceased brother has no claim on the father’s inheritance.

⁴⁵⁵ Equally.

⁴⁵⁶ Babli *Baba batra* 126a; Yerushalmi *Ketubot* 4:13, Notes 257-258.

⁴⁵⁷ The claim to a double portion. Similarly, if the brother who married the widow did not put forth his deceased brother’s claim at the moment of distribution, he is presumed to have waived his claim.

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Rav Jehudah sent and asked Rebbi Eleazar: Brothers who split⁴⁵⁸? He answered, they divide what they are wearing but not what their sons and
daughters are wearing. Rebbi Immi said, if one makes an appraisal for his wife, this is counted for himself and becomes part of the common estate to be distributed. If one makes a necklace for his wife, this is not of the common estate to be distributed if it is to be used on weekdays. But if it is made to be used on holidays, it becomes part of the common estate to be distributed. Rebbi Mana said, holiday dresses are distributed. Sabbath dresses are problematic. It is obvious for Rebbi Abin that both holiday and Sabbath dresses become part of the common estate and are distributed. Rebbi Ze'ira asked before Rebbi Mana: What about spherules? He answered, you understand this since you own many spherules. He said to him, they become part of the common estate to be distributed.

458 Brothers who all were living and working together on the father's estate. During their father's lifetime, they had no independent income. Sometime after the father's death they decided to split the estate.

459 Since all they have came from the father's estate, even what they are wearing is part of the estate. However, their children's clothing is property of the children and cannot be counted in the estate. The Babli Baba qama 11b agrees. It notes that if the oldest brother had been made to wear more distinguished clothing in order to represent the entire family before the authorities, the extra expenditure was made on behalf of the estate and cannot be debited to the brother.

460 It is difficult to understand what is meant. The word נִשְׁפֹּת has two meanings, (1) appraisal (of real estate, of dowry, etc.), (2) mole (on the skin). Neither of the meanings is appropriate here. It seems that meaning (1) is derived from Accadic šāmum "buy, object of acquisition; price of object". Following the first meaning of the Accadic word, one speaks of clothing which one of the brothers bought for his wife with his father's money, as distinct from clothing made by home manufacture. In making an inventory of the estate, these clothes are debited.
to the brother.

460a Latin *catella.*

461 Small jewellery objects become property of the women and are not to be counted.

462 They are not distributed but are counted as part of the husband's part in the estate.

463 Greek βωλοι, Latin *bolae,* "spherules" of glass or metal beads, used for jewellery, also kind of precious stones.

Rav Jehudah sent and asked Rebbi Eleazar: May one foreclose slaves with real estate? He answered, one may foreclose slaves with real estate\(^{464}\). Rebbi Eleazar instructed those from the House of Rebbi Yannai to foreclose slaves with real estate\(^{465}\).

464 Since mortgages usually were written as liens on the entire real estate of the debtor (the Byzantine mortgage *omnium bonorum*, derived from Ptolemaic Egyptian practice), not on a specific parcel, the question arises whether slaves can be treated as real estate since for them the rules of possession are derived from the rules of real estate. In the Babli, *Baba batra* 128a, the Babylonian Rav Nahman rules against the Yerushalmi rule, represented there by the Galilean Rebbi Abba. (The Galilean rule could not be based on Egyptian precedents since mortgages in Egypt had to be registered with the registrar of deeds, restricted to real estate.)

465 His ruling was in practice, not only theoretical.
Rav Jehudah sent and asked Rebbi Eleazar: The extortionist, and the robber, and the thief\textsuperscript{466}? He answered, it is assumed that the owners do not deal with the dead animal\textsuperscript{467}. From where that the owners do not deal with the dead animal? Rebbi Abba bar Mamal said, "alive, he shall pay double\textsuperscript{468}," but not dead animals. That refers to theft; for robbery? Rebbi Abun said, "he shall return the robbed object which he robbed\textsuperscript{469}," as it was.

\textsuperscript{466} The owner obtained a court order of restitution for anything taken unlawfully. If the thing was broken in the meantime or if it was livestock it died (cf. Ex. 21:35), is the thief or robber obligated to pay for the entire damage or may he return the damaged object and pay only the difference between the original value and the amount recoverable from sale of the damaged object?

\textsuperscript{467} In the Babli, \textit{Baba qama} 11a, Ulla in the name of R. Eleazar represents the opposite opinion. The opinion expressed here is accepted by the Babylonian authorities as judicial practice. The paragraph is discussed in \textit{Tosaphot Baba mesia' 96b/97a, s. v. V'T.}

\textsuperscript{468} Ex. 22:3, speaking of the thief of livestock.

\textsuperscript{469} Lev. 5:23.

\textit{Mishnah 5:} Guaranteed properties\textsuperscript{470} can be acquired by money, or contract, or possession\textsuperscript{329}. Not guaranteed properties\textsuperscript{471} can be acquired only by drawing close\textsuperscript{472}. Not guaranteed properties can be acquired...
together with guaranteed properties by money, or contract, or possession\textsuperscript{473}. Not guaranteed properties can force [the owner of] guaranteed properties to swear about them\textsuperscript{474}.

\begin{itemize}
\item \textbf{470} Real estate which normally is sold with a title guarantee.
\item \textbf{471} Movables.
\item \textbf{472} For this Tanna, there is no transfer of possession of movables except by delivery.
\item \textbf{473} Taking possession of a piece of real estate transfers possession of all things included in the sale.
\item \textbf{474} Monetary claims which cannot be proven or disproved are settled by an oath taken by the defendant. The verse, Ex. 22:8, specifies that the oath is required for "ox, donkey, sheep, garment, or anything lost," excluding real estate (Mishnah \textit{Shevuot} 6:7). But if the dispute was about both movables and real estate, since one party has to swear about the movables, it can also be made to include a statement about the real estate.
\end{itemize}

Halakhah 5: "Guaranteed properties," etc. In earlier times, transfer of possession was effected by taking off a shoe. That is what is written\textsuperscript{475}: "This was earlier in Israel about redemption and exchange, a person would take off his shoe." Who took it off? There, they say Rav and Levi\textsuperscript{476}, one said the acquirer, and one said the transferer. It turns out that this disagreement parallels the following disagreement which was stated: Boaz was giving to the redeemer; Rebbi Jehudah said that the redeemer gave to Boaz.
In the Babli, *Baba mezia' 47a*, the first opinion is attributed to Rav, the second to Levi. In the Babli, the transaction is not considered as archaic but as current practice, meaning that claims can be validly transferred following Rav when the transferrer moves some of the acquirer’s movable property.

Then they changed it to clipping. 478What is clipping? If a man sold his inherited field, his relatives brought amphoras, filled them 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 brought it back, they were doing the same and saying, X returned to his inheritance. Rebbi Yose ben Rebbi Abun said, also if a man married an unsuitable woman, his relatives brought amphoras, filled them 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.
Then they changed it to acquisition by money, by document, or by possession. By money: 479 "Fields will be bought by money," that is money. "Writing on a scroll and signing", these are the witnesses on the contract. "And testifying of witnesses," these are the witnesses to possession. Or maybe these are only the witnesses to the contract? These are already written: "Writing on a scroll and signing."

Rebbi Yasa in the name of Rebbi Mana bar Tanhum, Rebbi Abbahu in the name of Rebbi Johanan: Real estate cannot be bought for less than a
perutah. What is the reason? "Fields will be bought by money." This disagrees with what Rebbi Hanina said: All *seqalim* mentioned in the Torah are tetradrachmas, in the Prophets pounds, and in the Hagiographs *centenarii*, except for the *seqalim* paid to Ephron. What is the reason? "For full money he shall give it to me." There is no comparison since here it is written "money" but there "*seqalim*. They objected, is there not the rapist, for whom "money" is written and you say "*seqalim*.

This does not follow Rebbi Eliezer, for Rebbi Eliezer said that walking acquires. If one walked across a field in length and breadth, he acquired up to the place he walked, the words of Rebbi Eliezer. But the Sages say that he did not acquire up to the moment he acted in possession. Everybody agrees that if somebody sells a path to another, when the latter went, he acquired. What is the reason? "Arise, walk in the Land, etc."
By document. Rebbi Jeremiah thought to say, by a contract without obligating money\footnote{480}, but with a contract obligating money he did not acquire until he paid. Rebbi Jonah and Rebbi Yose both said, he acquired even if he did not pay\footnote{481}. A baraita supports Rebbi Jonah and Rebbi Yose: \footnote{482}"If he sold him ten fields together, when he took possession of one of them, he took possession of all of them. But if he only paid the amount for one \textit{or} wrote the deed\footnote{483} only for one of them he acquired only the one which was sold to him." Does there exist a deed without money\footnote{484}? If you say, we hold that he paid for all of them, did it not say: "the amount of one"? It must be one or the other\footnote{485}.

\footnote{480} The deed of a gift transfers possession but a sales contract does not. The Babli, 26a, endorses this opinion in the name of Samuel.

\footnote{481} If the document mentions the transfer of possession; cf. \textit{Sefer Ha'ittur} I, p. 13a, Note 7.

\footnote{482} Babli 27a; Tosephta \textit{Baba batra} 2:12. These texts do not refer to a sale document in the Greek style.

\footnote{483} Greek ὀνή, cf. \textit{Gitin} 4:6, Note 167. The Hellenistic ὀνή was a transfer of title; cf. Taubenschlag (Note 369), pp. 155, 206. It is asserted here that if the transfer was made conditional upon payment, the transfer of title was restricted to the amount paid.

\footnote{484} There does, in the transfer of real estate from living parents to children in the form of a fictitious sale; cf. Taubenschlag p. 155. This practice is discussed in the next paragraph.

\footnote{485} The \textit{or} in the second sentence is an exclusive "or"; the second clause is independent of the first. It follows that if the contract was written for all properties, it transfers possession of all of them.
"By money." Rebbi Abba was of the opinion, by money if there was no intention to write a deed. But if money was given with the intention to write a deed for him, possession was transferred only when the deed was written\textsuperscript{486}. Rebbi Jonah and Rebbi Yose disagree\textsuperscript{487}. It follows that Rebbi Abba parallels Samuel and Rav Huna Rebbi Johanan.

Rebbi Abba parallels Samuel. Samuel asked Rav Huna: He was slaughtering sacrifices while being occupied\textsuperscript{488}? He answered, "for your intention\textsuperscript{489}," this excludes one otherwise occupied. If one wrote a gift in the language of a sale\textsuperscript{490}? He answered, he made it ride on two racing horses; Rebbi Abba\textsuperscript{491} said this; Samuel did not accept it. What means "he
made it ride on two shining racing horses”? They wanted to say, one brings two crazy horses and makes it ride on both. One goes in one direction and the other in another; he has nothing in his hand. Rebbi Yose from Mamelia said, he doubly empowered him, for there is a title guarantee in a sale but none for a gift; the seller did not sell everything but the giver of a gift gave everything.

And Rav Ḥuna parallels Rebbi Johanan. A person, when he lay dying, said: my property should be given to X. Afterwards he said: write and deliver. Rebbi Eleazar and Rebbi Simeon bar Yaqim brought the case before Rebbi Johanan who said: If he said to transfer to him, everybody agrees that he entered into possession. If the transfer was to be in writing, everybody agrees that nobody transfers rights in writing after his death. Who would notify the greatness? Explain it if witnesses know. Think of it, if no witnesses know it? Rebbi Yose said, the field remains in the hand of its proprietors; the burden of proof is on the claimant.

Since proving title is difficult without a written deed, the buyer has no intention of accepting title without the deed. Therefore, transfer of possession is possible only by delivery of the deed unless one explicitly stipulates otherwise. In the Babli, 26a, this is a statement of Rav (Rebbi Abba bar Ayvo).

Since they are the collectors of the material in the Yerushalmi, their opinion is accepted as practice; it is not mentioned in the Babli for whom Samuel is the deciding authority in civil law.

He was occupied in slaughtering profane animals when he also slaughtered an animal dedicated as sacrifice without realizing it. Is this valid slaughter? The scenario is really impossible since the slaughter of profane animals is forbidden in the holy precinct, as is the slaughter of sacrifices outside. A Temple slaughterer has to
learn his trade outside the holy precinct.

490 Is a deed valid if it formulates a gift in the language of a fictitious sale? Starting here there is a shortened version, formulated differently, in Baba batra 8:5.
491 Since Rav was Rav Huna’s teacher, this reference must be to Rav, in whose name the expression is quoted in Babli Baba batra 152a.
492 Since sale and gift follow different rules, a gift formulated as sale is invalid.
493 The seller is required to indemnify the buyer if the latter loses his land because of foreclosure of a mortgage owed by the seller. A gift is given without such guarantee.
494 A sale document is interpreted minimally: the seller of a parcel is not presumed to have sold a cistern or any other building on the parcel unless it be mentioned in the deed (Mishnah Baba batra 4:2; cf Tosaphot Qiddusin 26a s. v. but a gift document is interpreted maximally. In this interpretation of Rav, confirmed by the Babli Baba batra 152a, the holder of the deed is doubly privileged. In the Babli, Samuel is quoted as being unable to decide whether the deed is judged as sale or gift. Since Samuel is quoted as disagreeing, he must hold with R. Abba that if a deed is intended, only the deed will transfer possession.
495 If the first time he stated that the person designated should be his heir, the latter will inherit if the dying person made it clear that the deed will only be written as proof of title, not as means of transfer of property.
496 If the document was a deed, not a will, intended to convey possession but not delivered during the donor’s lifetime, it cannot be delivered after death (Babli Baba batra 135b).
497 If the donor intended his orally conveyed gift to convey possession, how can the recipient prove his title?
498 In this case, the legal heirs.
499 Baba qama 5:1 (21b l. 70), Babli Baba qama 27b,46b, Baba batra 92b.
From where that non-guaranteed property may be acquired together with guaranteed property, by money, document, or by possession? Rebbi Yose in the name of Hizqiah; Rebbi Jonah, Rebbi Hanina Tortaya in the name of Hizqiah, it is written (2Chr. 21:3): "Their father gave them many gifts, silver and gold and delicacies, with fortified cities in Jehudah." So far real estate and movables were at the same place. If real estate was at one place and movables elsewhere? Rebbi Abin bar Hiyya said, let us hear from the following: Rebbi Eliezer said to them, it happened that a man from Meron was dwelling in Jerusalem, who was rich in movables. He wanted to distribute them, to give them as gifts. They said to him, you cannot do that except if you acquire real estate. What did he do? He
went and bought a rock near Jerusalem and said: The Northern part I give to X with a hundred amphoras of wine, the Southern part I give to Y with a hundred amphoras of oil. The matter came before the Sages and they upheld his words.

Rebbi Hananiah said before Rebbi Mana: But was he not bedridden? For in general a person might give property rights only in writing, and here even orally. In general, a person might give only if real estate and movables are at the same place; here, however, the real estate was at one place and the movables elsewhere. He said to him: But is there a difference for Rebbi Eliezer? Is not the sick person for Rebbi Eliezer like the sick person for the rabbis? He said to him: The sick person for Rebbi Eliezer is like the healthy person for the rabbis.

This paragraph and the following are from Peah 3:8, Notes 134-147. The second paragraph has no connection to the topics discussed here; this shows that the original place of the texts was in Peah.

There, we have stated: "Any real estate is subject to peah and first fruits, the words of Rebbi Aqiba." What is the use of "any" real estate? Rebbi Mattaniah said, explain it if it had space for one stalk but a pearl was hidden in it.
Rebbi Yasa in the name of Rebbi Johanan: If two fields were involved\textsuperscript{502}, one in Judea and one in Galilee. If he took possession of the one in Judea with the intent of taking possession of the one in Galilee, or the one in Galilee with the intent of taking possession of the one in Judea, he took possession. But in [the case of] property of a proselyte\textsuperscript{503} he did not acquire even the boundary strip between them\textsuperscript{504}. Rebbi Ze'ira asked before Rebbi Yasa: If he intended to acquire starting from the boundary strip and below\textsuperscript{505}? Rav Hisda said, property of a proselyte which he took possession of in the North with the intent of also acquiring that in the South, or in the South with the intent of acquiring also that in the North, but did not have the intent of acquiring the strip in the middle\textsuperscript{506}, he did not acquire unless he also intended to acquire the middle part\textsuperscript{507}. A baraita\textsuperscript{508} disagrees with Rav Hisda: If a proselyte died and Jews plundered his property, if one takes possession of the ground he is obligated for everything\textsuperscript{509}. If he took possession of standing grain, he is obligated for fallen stalks, forgotten sheaves, and peah but freed from
tithes. Does not the air separate between stalks? There, we have stated: "If he tore off anything connected to the ground, he took possession." Samuel said, he took possession only of that leaf. But did we not state: "If it was connected to the ground and he tore off anything, he took possession"? Rebbi Yose said, Rebbi Eudaimon the emigrant confirmed it: Samuel will agree, for proselyte’s property.

501 This is Babli terminology, for Yerushalmi הני. The sentence was added by the corrector; obviously it was added as an (unnecessary) emendation of the text, not from a different ms.

502 In a real estate transaction; the seller expects the buyer to take possession of both fields; cf. Note 345.

503 Who dies intestate without Jewish heirs and whose property now is ownerless. The rules of taking possession of ownerless property are more strict than those of taking possession of what was bought since the agreement of the seller to the transfer of the property is missing.

504 If the proselyte owned two adjacent fields; the Jew took possession of both of them by doing some agricultural work on both but he did not walk the boundary strip with the intent of acquiring it; the strip is not automatically acquired with the fields since it is not subject to agricultural activities such as ploughing, weeding, or harvesting; cf. Note 353.

505 The question is not answered; cf. Peah 2:1, Note 16. In the Babli, Baba batra 52b, the question is undecided, i.e., anybody laying claim to the strip would have to prove his claim by other means.

506 I. e., the boundary strip in between.

507 Also quoted in Baba batra 3:1 (13d l. 55). In the Babli, Baba batra 55a, R. Johanan states that the boundary strip separates properties of the intestate proselyte. He also states Rav Hisda’s position even for commercial real estate transactions (Baba batra 53a/b).

508 Tosephta Peah 2:10.

509 Tithes and all obligatory gifts to the poor.

510 Since single stalks can be picked up by the owner, not subject to the law
of gleanings reserved for the poor, if the air separates the ownerless stalks, the entire crop would be exempt from that law. This contradicts Rav Hisda who holds that any ground not taken in possession separates properties of the intestate proselyte.

511 Mishnah Baba batra 5:9, speaking of a transaction involving a field of flax.

512 He emigrated from Galilee to Babylonia.

513 A proselyte’s standing crop cannot be acquired by harvesting a single stalk, but only by taking the entire crop. Otherwise, it can be acquired only by taking possession of the land and paying taxes on it. In the Babli, Baba batra 87a, Rav Sheshet explains the problem away by postulating that the seller of the crop also sold a perutah’s worth of ground and that the movable crop was taken as possession together with the fictitious real estate.

Rebbi Johanan asked: Can movables be taken into possession by dragging? Rebbi Abba bar Mamal said, what is his problem? With hard hides. But soft hides are not taken into possession until lifted. A baraita disagrees with Rebbi Abba bar Mamal: If somebody steals another person’s pouch and removes it on the Sabbath, he is obligated since he already is obligated for the theft of the wallet before he comes in conflict with the holiness of the Sabbath. But if he was dragging it until he left, he is free since the obligations of capital crime and restitution...
fall on him simultaneously\(^5\). Therefore, if the obligations of capital crime and restitution do not fall on him simultaneously he is obligated\(^5\).

Rebbi Mattania said, explain it with large pouches which usually are dragged\(^5\).

514 Which are too heavy to be lifted.

515 Movables which can be lifted are taken into possession only by being picked up and then moved; heavy movables can be taken into possession simply by being moved on the ground.

516 Tosephta *Baba qama* 9:19. A person committing two crimes simultaneously can be prosecuted only for the more serious crime even if this prosecution is impossible because of external circumstances (for example, if the rabbinic court has only civil but no criminal jurisdiction, or if the civil offense can be proven by the standards of civil procedure but the criminal act cannot be proven by the stricter standards of criminal law; cf. *Terumot* 7:1, Notes 51-71, paralleled in *Ketubot* 3:1, Note 30.)

Since the thief incurred the liabilities for his theft the moment he took the pouch in his victim’s room but he violated the Sabbath prohibition only when he left and transported the pouch from a private to the public domain, the capital crime of violating the Sabbath is not connected with the theft. Paralleled in Babli *Sabbaṭ* 91a, *Ketubot* 31a, where some unconnected problems are raised about the Sabbath prohibition of moving between domains; *Baba batra* 86a, *Sanhedrin* 72a; a different version in *Baba qama* 3:4 (3c l. 58ff.).

517 Dragging a person’s pouch in that person’s domain does not transfer possession to the person dragging.

518 If the theft happened on a weekday and the thief only dragged, never lifted, the pouch, he nevertheless is obligated for double restitution. He cannot be liable for double restitution unless he took possession. This seems to contradict R. Abba bar Mamal.

519 And therefore acquired by dragging. In *Baba batra* 86a, in the name of Rav Ada bar Mattanah.
From where did they learn rollover of oaths? From the suspected wife: Amen from this man, Amen from any other man. That refers to subjects he is able to make her swear about. What about subjects he is not able to make her swear about? Rebbi Yose ben Rebbi Abun said, let us hear from the following: "Amen that I was not deviant preliminarily married and married, waiting for the levir and taken in." Can he make her swear when she is preliminarily married or waiting for the levir? Nevertheless one rolls over.

This paragraph and the next are the Babli, the parallel is Qiddusin 27b. from Sotah 2:5 (מ. Notes 166-174). In

(60d line 37)
Some Tannaim state: Since this one is subject to curse and oath, so also all who have to swear are under curse and oath. Some Tannaim state: This one is subject to curse and oath, but no others who have to swear are under curse and oath. They wanted to say, the one who said, since this one is subject to curse and oath, so also all who have to swear are under curse and oath, is understandable. The one who said, this one is subject to curse and oath, but no others who have to swear are under curse and oath, can you infer for rollover only but not for oath? Some Tannaim state: Since this one is subject to Amen, Amen, so also all who have to swear are under Amen, Amen. Some Tannaim state: This one is subject to Amen, Amen, but no others who have to swear are under Amen, Amen. They wanted to say, the one who said, since this one is subject to Amen, Amen, so also all who have to swear are under Amen, Amen, is understandable. The one who said, this one is subject to Amen, Amen, but no others who have to swear are under Amen, Amen, did one not infer rollover of oaths from the suspected wife? Can you infer for rollover only but not for Amen, Amen?
Mishnah 6: If anything is given instead of money, if one entered in possession, the other is obligated for its exchange\(^{521}\). How is this? If an ox was exchanged for a cow, or a donkey for an ox, if one entered in possession, the other is obligated for its exchange. Possession of Heaven is by money\(^{522}\), possession of an individual by taking hold. A promise to Heaven is like delivery to an individual\(^{523}\).

521 If property is acquired by payment in kind, only one of the parties has to execute an act of taking possession. The other party then automatically is in possession and also assumes liability. This is not simple barter but exchange of money’s worth against money’s worth.

522 For the Temple, possession comes together with ownership by payment; it does not need a separate act on entering into possession.

523 Anything vowed to Heaven is as if delivered; the promise cannot be retracted.
Halakhah 6: "If anything is given instead of money," etc. There, we have stated524: "This is the principle: All movables acquire one another." Rebbi Abba, Rav Huna in the name of Rav: Even heaps among heaps525. Rebbi Eleazar said to him, we have stated only: "If anything is given instead of money," anything that needs estimation. It turns out that Rebbi Abba follows Rebbi Johanan and Rebbi Eleazar his own opinion, as we have stated there526: "Brothers having common property who are obligated for agio527 are free from animal tithe528, but if they are obligated for animal tithe they are free from agio529." Rebbi Eleazar said, only if they exchanged kid goats against rams and rams against kid goats. But if they exchanged kid goats against kid goats and rams against rams, that was [the recipient's] part from the first moment530. Rebbi Johanan said, even if they exchanged kid goats against kid goats and rams against rams, they are buyers531. But we have stated there: "The buyer and the recipient of a gift are free from animal tithe. Brothers having common property who are obligated for agio are free from animal tithe." When they split and then joined again. "But if they are obligated for animal tithe they are free from agio." If they never split.

524  Mishnah *Baba mesia‘* 4:1. Legal tender coin is not "movables" (Babli 28a/b): payment transfers ownership but not possession. The exchange of movables transfers both ownership and possession.

525  A heap of grain at one place may be exchanged for a heap of grain at another place even if it is impossible to assign an exact price to either of them.

526  Mishnah *Seqalim* 1:7, *Hulin* 1:7, *Bekhorot* 9:3. Tradition held that firstlings are sanctified only if they...
belong to a single owner. The same is stated for animal tithe (Lev. 27:32); it is due only if the herd belongs to a single individual.

527 Cf. Note 122. The annual Temple tax, half a holy shekel (cf. Note 353) per person, had to be given as a coin (Sheqalim 1:6, 46 l. 32; cf. all sources quoted in Tanhuma Buber Ky Tissa 7, Note 46.) If payment was not made in the correct coin, an agio had to be paid to the Temple's collectors. Only one agio was due per household, when the father paid the tax for himself and all adult males in his house. (Liddell and Scott compare the Greek word κολλυβος to Hebrew יָלֶין, "exchange, substitution").

528 If brothers are obligated to pay separate agios, they do not form a household. The flock they own as inheritance from their father therefore is held in partnership and is free from the duty of animal tithe.

529 If their father's inheritance was not distributed, they still form their father's family, pay the Temple tax together, and are obligated for animal tithe.

530 It turns out that it was his from the moment of the father's death. Then the animals never had multiple owners. In the Babil, Bekhorot 52b, the opinion attributed here to R. Eleazar is ascribed to Rav Anan; R. Eleazar there requires that not all brothers receive the same number of animals.

531 In all cases of liquidation of an inheritance with multiple heirs. This principle is accepted in the Babil in R. Johanan's name (Besah 37b, Gitin 25a,48a, Baba qama 69b, Bekhorot 52b,57a).
Rebbi Abba in the name of Rav Jehudah in the name of Samuel: One has a cow and one a donkey. They exchanged one for the other. The donkey's owner took the cow. When the cow's owner came to take the donkey and found that it had died, the donkey's owner has to bring proof that his donkey was alive at the moment he took the cow. For the burden of proof is on the claimant except for barter. And anybody who does not agree to this does not know anything about civil law. Rebbi Zeira said, I do not agree. Rebbi Abba said to Rebbi Zeira: A Mishnah disagrees with Samuel. "If she had bodily defects, as long as she is in her father's house, the father has to prove." Not the husband has to prove to regain the [money given] for preliminary marriage from the father. The students of Rebbi Jonah said, explain it if little money was involved. An example: Rebbi Huna, Rebbi Phineas, and Rebbi Hizqiah went to visit Rebbi Yosef to learn from him. They said to him, the Mishnah supports Samuel: "Once she entered the husband's domain, the husband has to prove." Would not the father have to prove, to extract the ketubah from the husband's possession? He answered them, does not Samuel agree that if the cow's owner took possession of the donkey, he has to prove that it was defective before it came into his possession? And this one, when he took her in it is as if he drew close.
532 Shortened versions of this paragraph are in *Baba mešia* 4:1 (9c l. 36), Babli *Ketubot* 67a/b.

533 Then automatically the donkey became the possession of its new owner.

534 In case one party had no opportunity to inspect the object given in barter before the transfer of possession.

535 For him, the burden of proof is always on the claimant, without exception. In *Baba mešia*, he is reported to note that apparently he does not understand civil law.

536 *Ketubot* 7:9. The husband divorces his wife because of bodily defects without paying the *ketubah*. If the defects are discovered between preliminary and definitive marriages, the father (of the underage bride) has to prove that at the moment of preliminary marriage the girl was without blemish in order to collect the *ketubah*. After definitive marriage, the husband has to prove that she was defective even before the preliminary marriage in order to avoid paying the *ketubah*.

537 The Babli, *loc. cit.*, notes that it is not obvious that money given for preliminary marriage can be recovered, even if the marriage was entered into under false premises.

538 Not worth the bother of a court battle. Then only the father's claim on the husband for the *ketubah* money remains; the father is the claimant who has to bring proof.

539 In *Baba qama*: R. Yose.

540 The question is, who is considered the claimant? The husband, who wants to avoid paying the *ketubah* which became due at the moment of divorce, or the father who would have to collect the money.

541 Since possession implies not only rights but also liabilities, the act of taking possession eliminates the liabilities of the previous owner. The owner of the cow should have inspected the donkey before moving the cow; afterwards he certainly is the claimant.

542 In this respect, definitive marriage of a woman entails transfer of liabilities to the husband, parallel to the transfer of liabilities for livestock by taking possession.
Rabbi Abba, Rav Hamnuna, Rav Ada bar Ahava in the name of Rav: If he sold a cow for money, then grabbed him and said, give me that money. He answered, for what do you need it? He said, to buy a donkey for myself. If the owner of the cow took possession of the donkey, the cow was not taken into possession. Was the donkey taken into possession? Rabbi Abba said, it was taken into possession. Rabbi Yose said, it was not taken into possession. Rabbi Abba thought that this was barter, but it was not barter. Rabbi Mana in the name of Rabbi Yose: Sometimes it is a new deal for one party and a new deal for the other party. How is that? He sold him a cow for money; he left the money standing with him. The next day, he found him standing there and said, what are you doing here? He said, I want to collect the money. He answered, for what do you want it? He said, to buy myself a donkey. He answered, there is a donkey before you. If either one of them drew, the other one did not enter into possession; each one has to take possession separately.
543 In the Babli, *Baba meši’a* 47a, Rav Ada bar Ahava has a similar statement which however refers to true barter.

544 The seller of the cow.

545 The buyer of the cow.

546 Obviously, something is missing in this sentence. The seller stated that he needed the money to buy a donkey, the buyer sold him a donkey for the money he owed him. Then sale of the cow and purchase of the donkey are two unrelated operations.

547 If the deal had be agreed upon but was not yet executed.

548 If the buyer of the cow took possession of it.

549 He drew the animal close to himself in order to take possession. Since there are two separate deals, it needs two separate actions to take possession.

The Mishnah: "Possession of Heaven is by money, possession of any individual by taking hold." How? If the treasurer paid with Temple money for movables, they are in the Temple’s possession anywhere they are, for it is written: "The Eternal’s are the earth and what fills it, dry land and its inhabitants."

550 Without a separate act of taking possession. The seller cannot retract the sale. Babli 28b; Tosephta Qiddusin

551 *Ps.* 24:1, *‘Arakhin* 4:4.
"A promise to Heaven is like delivery to an individual." How? If he bought a cow from the Temple for 200. If he did not have occasion to pay the 200 until the going rate was a mina, he has to pay 200. That means, a promise to Heaven is like delivery to an individual. A cow from the Temple for a mina. If he did not have occasion to pay the mina until the going rate was 200, he has to pay 200. That is what is written 552: "He has to add a fifth of its estimated value, then it is delivered to him." Therefore, if he adds, it is delivered to him; if he does not add, it is not delivered to him. 553'This steer as elevation offering, or this house as a qorban,' they are in the Temple's possession wherever they are, for it is written: "The Eternal's are the earth and what fills it," etc. But among private persons one obtains possession only be taking hold."
activated by time[^555], men and women are equally obligated. For any prohibition, whether or not activated by time, men and women are equally obligated except for "do not destroy", "do not shear,"[^556] and "do not become impure for the dead."[^557]"  

[^554]: Which either depends on the time of day or the calendar date. This rule admits of quite a few exceptions.  
[^555]: E. g., the obligation to give charity and do charitable work.  
[^556]: Not to destroy one's beard or shear the sideburns. Lev. 19:27, inappropriate for women.  
[^557]: Lev. 21:1. In general, holiness prohibitions valid for priests do not apply to their daughters and only partially to their wives.

משנת הֶסְמִיכוֹת הַהָנֵנַפְס הַמָּקֵפֵרָתָּה הַמַּקְפֵּרָתָּה הַמַּקְפֵּרָתָּה הַמַּקְפֵּרָתָּה הַמַּקְפֵּרָתָּה הַמַּקְפֵּרָתָּה הַמַּקְפֵּרָתָּה הַמַּקְפֵּרָתָּה הַמַּקְפֵּרָתָּה הַמַּקְפֵּרָתָּה

Mishnah 8: Leanings[^558] and weavings[^559], presentations[^560], taking of fistfuls[^561], burnings[^562] and neck breakings[^563], sprinklings[^564] and receptions[^565] apply to men but not to women except for the flour offerings of the suspected wife and the nezirah; those do weave.

[^558]: The obligatory leaning on the head of the sacrifice (Lev. 1:4, 3:2,8,13; 4:4,15,24,29,33).
[^559]: The prescribed motions for selected sacrifices of purification (Lev. 8:27; 14:12,24; Num. 5:25; 6:19).
[^560]: Presentations to the altar, mainly of flour offerings (Lev. 2:6; 6:7).
[^561]: The fistful burned on the altar of flour offerings; Lev. 6:8.
[^562]: Bringing meat, flour, or incense and putting it in the fire on the altar.
[^563]: Of bird sacrifices; Lev. 1:15, 5:8.
[^564]: Of blood on the walls of the altar, Lev. 1:5,11; 3:2,8,13; 4:6,7,17,18, 25,30,34; 5:9.
[^565]: Receiving the blood of slaughtered sacrifices in a sanctified vessel. All these actions are restricted to male Aharonides except for leanings and weavings, which are prescribed for the public.
Halakhah 7: "Any commandment the father has to fulfill towards his son," etc. 566 "To circumcise him, to redeem him, to teach him Torah, to teach him a trade, and to marry him to a wife. Rebbi Aqiba says, also to teach him to swim in water." To circumcise him, "on the eighth day, he shall circumcise the flesh of his foreskin.567" "To redeem him," as is written: "Any firstborn human among your sons you shall redeem.568" To teach him Torah, "you shall teach them to your sons.569" To teach him a trade, Rebbi Ismael stated: "Choose life,570," that is a trade. To marry him to a wife, "make it known to your children and grandchildren.571" When do you have children and grandchildren: if you marry off your sons when young. Rebbi Aqiba says, also to swim in water. "That you shall live together with your descendants.572" How is this? Is it a commandment or is it obligatory? Let us hear from the following: Bar Tarima came to Rebbi Immi and said to him, talk to my father that he should marry me to a woman. He talked to [the father], but the latter refused. That means it
is a commandment, for if it were obligatory, he should have forced him. From where that if his father did not do these things for him, he is required to do them himself? The verse says a human you shall redeem, "you shall circumcise" them, "you shall study them," "you shall know yourself," "that you shall live." instructed in Torah (Babli 29b).

566 Babli 29a,30b; Tosephta 1:11; Mekhilta d.R. Ismael, Pisha 18.
567 Lev. 12:3. The masculine form of the verb implies that the father, who otherwise is not mentioned in the paragraph, is obligated to circumcise his son.
570 Deut. 30:19.
571 Deut. 4:9.
572 A meritorious deed.
573 Gen. 17:11.
574 Deut. 4:9; reading "הומך" instead of "הומך".
575 The Babli, 29a-30a, in most cases quotes different verses to the same effects.
There, we have stated: "The father bestows on his son beauty, strength, riches, wisdom, and years." From where beauty? "May Your deeds appear on Your servants, and Your glory on their sons." Strength, "strong on earth will be his descendants." Riches, "I was young and became old, but never saw a just man abandoned and his descendants in need of bread." Wisdom, "you shall teach your sons to argue about them." Years, "that your and your sons' days be many." And just as he inherits five qualities, so he owes him the following five things. He feeds him, he gives him to drink, he clothes him, he puts on his shoes, he leads him. That is what is written: "This should fall on Joab's head: sufferer from flux and from skin disease, holding the distaff, falling by the sword, and senseless." Sufferer from flux, weak. From skin disease, abandoned. Holding the distaff, uneducated. Falling by the sword, short lived. Without bread, poor. When Solomon came to kill Joab, he said to him: Your father gave me five sentences; accept them and I can be killed. He accepted them and all of them came to pass on the House of David. Sufferer from flux was Rehabeam: "King Rehabeam with difficulty climbed on his chariot to flee to Jerusalem;" some say, he suffered from flux; some say, he was weak. Suffering from skin disease was Uziahu: "King Uziahu suffered from skin disease until the day of his death." Holding the distaff was Joash: "They punished Joash."
Rebbi Ismael stated: 589 This teaches that they gave him over to hardened hoodlums who had never known a woman and they raped him the way women are raped. That is what is written: "Israel's pride will testify against it." 590 Israel's pride will be raped in its face. Falling by the sword, this is Josiah, as is written: "The archers shot at king Josia," 591 and Rebbi Johanan said, this teaches that they made his body like a sieve. 592 Rebbi Ismael stated: 300 arrows were shot at the Eternal's anointed. Without bread, that is Jehoiachin: "And his meal, a permanent meal was given to him." 593

576 Mishnah Idiut 2:9.
577 Ps. 90:16.
578 Ps. 112:2.
579 Ps. 37:25.
580 Deut. 11:21.
581 Peah 1:1, Note 119; Babli 31b.
582 25. 3:29.
583 This is a slip of the pen; later it is quoted in the language of the verse, "without bread".
584 Cf. Lev. 13:46.
585 The Babylonian version is in the Babli, Sanhedrin 48b, and Num. rabba 23(13).
586 1K. 12:18.
587 2 Chr. 26:21.
588 2 Chr. 24:24.
589 Mekhilta dR. Ismael, Amaleq 1; Tankuma Bešallah 25.
590 Hos. 5:5, repunctuating ננ to נו.
591 2 Chr. 35:23. In the text: o'fn.
592 Babli Mo'ed qatan 28b; Thr. rabbati on 1:18.
593 2 K. 25:30. He never had any money of his own. A completely different interpretation of the verse in Midrash Shemuel 18(5).
What is the start of bathing? Rebbi Zeriqan in the name of Rebbi Hanina: When he opened his belt. Rav said, when he took off his shoe. Rebbi Joshua ben Levi used to hear the lesson of his grandson every Friday. Once he forgot and went bathing in the public baths of Tiberias; he was

594 There, we have stated: "If they started, one does not interrupt."
leaning on Rebbi Hyya bar Abba's shoulder. He remembered and left the public bath. He said, so it was: Rebbi Eleazar bar Yose said, he had taken off [his clothes]. Rebbi Hyya bar Abba said to him, did our teacher not teach us, "if they started, one does not interrupt"? He said to him, Hyya my son, is that unimportant in your eyes? For anyone who hears the lesson from his grandson is as if he heard it from Mount Sinai.

What is the reason? "You shall make them known to you sons and grandsons," etc. "the day when you stood before the Eternal, your God, at Horeb." Like the day when you stood before the Eternal, your God, at Horeb. Rebbi Hizqiah bar Jeremiah, Rebbi Hyya in the name of Rebbi Johanan: If you can link the tradition back to Moses, link it. Otherwise take either the very first or the very last [source]. Giddul said, anybody who quotes somebody should consider it as if the author of the quote stood before him. What is the reason? "Only in image a man wanders."

"Many a man professes good will, but where will you find one you can trust?" That is Rebbi Ze'ira, as Rebbi Ze'ira said, we do take the traditions of Rav Sheshet into account since he is blind. And Rebbi Ze'ira said to Rebbi Yasa, does the Rabbi know Bar Pedaiah, that you quote in his name? He said to him, Rav Ada bar Ahawa said it in his name.

594 The origin of this text is in Sabbath 1, to Mishnah 2.
595 The Mishnah contains a list of things one should not do on Friday afternoon, but if one started one does not have to interrupt. One of these is going to the public bathhouse.
596 The portion of the Torah to be read on the Sabbath.
597 In Sabbath: He remembered that he had not heard the lesson from his grandson, returned and left.
598 In Sabbath: How was it? Rebbi Derose said, he was anointing himself. Rebbi Eleazar .
599 From Sabbath, instead of the unintelligible יָּאָב written here.
600 Deut. 4:10.
601 Missing in *Sabbat*, probably correctly.

602 In *Sabbat*: R. Hizqiah, R. Jeremiah, R. Hiyya. This is the only correct text.

603 In *Sabbat* added: What is the reason? "The day when you stood," Up to the day when you stood before the Eternal, your God, at Horeb. (Referring to the verse quoted earlier, Note 600. Since Moses was speaking to the second generation, not present at Sinai, it proves that a person can be present at Sinai by connecting with the teachings from Sinai.)

604 Ps. 39:7.

605 This is a non sequitur. The intelligible text is in *Sabbat*: "Many a man professes good will," these are all other people, "but where will you find one you can trust?" That is R. Ze'ira.

606 This text is unacceptable for reasons of chronology. The correct text is in *Sabbat*: "He said to him, R. Johanan said it in his name. R. Ze'ira asked R. Abba bar Zavda: Did you know Rav (a chronological impossibility), that you are quoting in his name? He answered, Rav Ada bar Ahava said it in his name."

Commandments which the son is obligated to fulfill towards his father.

What is fear? He may not sit in his place and may not speak in his stead nor contradict his words. What is honor? He feeds and gives him to drink, clothes him, covers him, and puts on his shoes, leads him out and in. From whose money? Huna bar Hiyya said, from the old man's. Some
want to say, from his own. Did not Rebbi Abbahu say in the name of Rebbi Yose bar Hanina: From where do we know that even if his father tells him to throw the wallet into the sea that he should obey him? That is, if he has another one and if it helps to quiet his father's spirit. Both men and women. Only the man has the power in his hand, but the woman does not have the power in her own hand because others have disposition over her. If she is widowed or divorced, the power is in her own hand.

607 This is from *Peah* 1:1, Notes 117-124. Leiden ms. text 3, Rome ms. R. This is a quote out of context, repeated in the following paragraphs which copy *Peah* 1:1, Notes 98-137. A few sentences from *Peah* which are missing in the text have been given in brackets.
[They asked Rebbi Eliezer,] how far does honoring father and mother go? He said to them, you are asking me? Go and ask Dama ben Netinah. Dama ben Netinah was the head of the city council. Once his mother was slapping him in front of the entire council and a slipper fell from her hand, and he handed it back to her so that she should feel no inconvenience. Rebbi Hizqiah said: He was a Gentile from Ascalon and the head of the city council. He never sat on the stone on which his father used to sit and when his father died, he worshipped the stone. Once the jaspis of Benjamin was lost. They inquired, who would have one of similar quality? They were informed that Dama ben Netinah did. They went to him and agreed on 100 denars. He went to the upper floor to bring it and found his father sleeping. Some say that the key to the chest was in his father’s fingers; some say his father’s foot was resting on the chest. He descended to them and told them: I could not bring it to you. They thought, maybe he wants more money, and raised the price to two hundred, then to a thousand. When his father woke up from his sleep, he went up and brought it to them. They wanted to give him according to the amount last mentioned, but he refused. He said: Do I sell my father’s honor for money? I will not have any advantage from honoring my father. What reward did the Holy One, praise to Him, give him? Rebbi Yose bar Abun said: The following night, his cow gave birth to a red heifer and Israel gave him its weight in gold and took it. Rebbi Sabbatai
said (Job 37:23), it is written: "Justice and much charity He will not suppress." The Holy One, praise to Him, will not wait to give the reward for good deeds to the Gentiles.

Rebbi Tarphon’s mother went to promenade in her backyard on the Sabbath when her slipper broke. Rebbi Tarphon went and put his two hands under her feet and she walked on them until she got to her couch. Once the Sages came to visit him. She told them: Pray for my son Tarphon because he honors me too much. They asked her, what did he do for you? She told them what had happened. They said to her, even if he did this a million times, he did not yet reach even half of the honor that the Torah requires.
Rebbi Ismael’s mother came, spoke, and complained to our teachers about him. She said to them: Scold my son Ismael because he does not honor me! At that, the faces of our teachers became saffron colored. They said, is it possible that Rebbi Ismael does not honor his parents? They said to her, what did he do to you? She said, when he comes from the house of assembly, I want to wash his feet and drink from it, and he refuses. They said, since it is her wish it is her honor.

Rebbi Mana said: The millers are correct when they say that each and every person has in his chest that which is appropriate for him. Rebbi Tarphon’s mother said so and they answered her appropriately, Rebbi Ismael’s mother said so and they answered her appropriately. Rebbi Zeira was sorry and said, if only I had father or mother that I could honor them and inherit paradise. When he heard these two instructions, he said: Praise to the All-Mercifull that I have neither father nor mother. I could not have done as Rebbi Tarphon did and I could not accept what Rebbi
Ismael accepted. Rebbi Abun said, I am free from honoring father and mother. They said, his father died when his mother was pregnant and she died in giving birth.

Some person might serve his father fattened meat and inherit hell. Some person might bind his father to the grindstone and inherit paradise. How does one serve his father fattened meat and inherit hell? A person used to serve his father fattened chickens. One day, his father said to him: My son, from where do you get the money for these? He said to him: Old man, old man, eat and shut up just as dogs eat and are silent. It turns out that he serves his father fattened meat and inherits hell. How does one bind his father to the grindstone and inherits paradise? A person was a miller at a grindstone; there came a requisition for millers. He said: Father, go and grind in my stead. If it should come to pass that anyone be degraded, it is better that it should happen to me rather than to you. If it should come to pass that anyone be beaten, it is better that it should happen to me rather than to you. It turns out that he binds his father to the grindstone and inherits paradise.
It is said (Lev. 19:3): "Everybody must fear his mother and his father," and it is said (Deut. 6:13): "You must fear the Eternal, your God, and serve Him." This brackets the fear of father and mother with the fear of the Omnipresent. [It is said (Ex. 20:12): "Honor your father and your mother," and it is said (Prov. 3:9): "Honor the Eternal with your property." This brackets the honor of father and mother with the honor of the Omnipresent.] Is is said (Ex. 21:17): "He who curses his father or his mother shall be put to death," and it is said (Lev. 24:19): "Everybody who curses his God must bear his sin." This brackets cursing father and mother with cursing the Omnipresent. It is impossible to speak about hitting relative to the Deity. All this is logical since all three of them are partners in him.

What is fear? He may not sit in his place and may not speak in his stead nor contradict his words. What is honor? He feeds and gives him to drink, clothes him and puts on his shoes, leads him out and in. From whose money? Huna bar Hiyya said.

This is a truncated repetition of the text at Note 607.
The words of Rebbi Hiyya bar Abba disagree, for Rebbi Hiyya bar Abba said that Rebbi Yudan, son of Rebbi Simeon bar Iohai’s daughter, stated: Honoring father and mother is great because the Holy One, praise to Him, preferred it over His own honor. It is said (Ex. 20:12): "Honor your father and your mother," and it is said (Prov. 3:9): "Honor the Eternal with your property." How do you honor Him? From your property! One gives gleanings, forgotten sheaves, and peah, one gives terumah, the First and Second Tithes and the tithe for the poor, hallah, one makes a sukkah, and lulav, shofar, and tefillin, and zizit, one feeds the hungry and gives to drink to the thirsty. If you have the wherewithal, you are obliged for all of these; if you have nothing, you are not obliged even for one of them. But when it comes to honoring father and mother, whether you own property or you do not, you must honor father and mother, even if you are a beggar at people’s doors.
609 From here on there exists a fragmentary in this paragraph, continuous in the following.

Rebbe Aha in the name of Rebbi Abba bar Cahana: It is written (Prov. 5:6): "She does not smooth the way of life, her tracks deviate and you will not notice it." The Holy One, praise to Him, moved the rewards of those who fulfill the commandments (to the future world) so that they should act in faith. Rebbi Aha in the name of Rebbi Isaac: It is written (Prov.
4:23): "Observe carefully everything which must be kept, for from it comes life," observe carefully all the things you were told in the Torah, for you do not know from which of them life will come to you. Rebbi Abba bar Cahana said, the verse equals the easiest commandment with the most difficult one. The easiest commandment is sending away [the mother] from the nest. The most difficult one is honoring father and mother. For both of them it is written: "Your days will be lengthened."

Rebbi Abun said, if for anything that is repayment of debt it is written (Deut. 5:16): "That you shall be well and that your days shall be lengthened," so much more something that involves monetary loss and personal danger. Rebbi Levi said, this one is greater; repaying a debt is greater than fulfilling an obligation that does not involve repaying a debt.

Rebbi Simeon ben Iohai stated: Just as their rewards are the same, so their punishments are identical. (Prov. 30:17) "The eye that scoffs at the father and despises to obey the mother," the eye that scoffs about honoring father and mother and despises the commandment not to take the mother with the chicks, "the river ravens should pick it out," the cruel raven should come, pick it out, and not have any enjoyment from it, "the sons of the eagle should eat it," the merciful eagle should come and enjoy it.
Rebbi Yannai and Rebbi Jonathan were sitting together. There came a man and kissed Rebbi Jonathan’s foot. Rebbi Yannai said to him: What kindness did he pay you back for from former days? He said to him: He once came and complained to me about his son that he should support him and I told him, go, assemble a congregation and humiliate him. He said to him, why did you not force him? He said to him, does one force him? He said to him, you still have questions about that? One said, Rebbi Jonathan changed his opinion and fixed it as a tradition in his own name. The result is: Rebbi Jacob bar Aha, Rebbi Samuel bar Nahman in the name of Rebbi Jonathan, one forces the son to feed his father. Rebbi Yose bar Abun said, if only all my traditions were so clear to me as this one: One forces the son to feed his father.

609a S. Assaf (Responso Geonica 1942, p. 105; Courts and their organization, Jerusalem 1924, p. 25-26) reads: "Go, arrest the congregation and humiliates him." He sees here a reference to the practice known from Galilean and Medieval Ashkenazic sources (rejected by Babylonian Geonim) that a person whose grievances are not addressed by the court may publicly request the congregation to stop their prayers until his complaint is heard (in Ashkenazic practice before the Qaddiś which introduces the main prayer.)
What is a positive commandment that is activated by time? For example, sukkah, and shofar, and lulab, and tefillin. What is a positive commandment that is not activated by time? For example, lost articles, sending away the [mother from the] nest, railing, and zizit.611 Rebbi Simeon exempts women from zizit because it is a positive commandment activated by time." Rebbi Simeon said to them: Do you not agree with me that it is a positive commandment activated by time? Because a nightgown is exempt from zizit. Rebbi Hila said: The reason of the rebbis is that, if a garment is designated both for daytime and for night, it needs zizit.
Rebbi Eleazar said: The Passover sacrifice of women is voluntary but one pushes the Sabbath away for it. Rebbi Jacob bar Aha in the name of Rebbi Eleazar: The Passover sacrifice by women and slaves is voluntary; certainly one does push the Sabbath away for it. What is their mazzah? He said to him, it is obligatory. Rebbi Ze'ira said, this is in dispute. Rebbi Hila said, it is everybody's [opinion]. A baraita supports the one and a baraita supports the other. A baraita supports Rebbi Ze'ira: Lettuce, mazzah and Passover sacrifice are obligatory in the first night; on all other days they are voluntary. A baraita supports Rebbi Hila: It was said: "Do not eat leavened matter with it," and it was said: "For seven days you shall eat with it mazzot, the bread of deprivation." Anybody under the prohibition of leavened matter is
under the obligation to eat mazzah, and women, being under the prohibition of leavened matter, are under the obligation to eat mazzah. But did we not state: "For any positive commandment triggered by time, men are obligated but women are free"? Rebby Mana said, it is a positive commandment which is implied by a prohibition.

The origin of this paragraph is Pesahim 8:1 (35d l. 35 fl.), noted . This sentence contradicts everything a student of the Babli would expect. Most commentators either emend the passage or explain it away. But since there are three witnesses to the text, emendation is not an acceptable option. In the Babli, 91b, R. Eleazar declares a woman to be obligated for Passover like men. However, this statement is obtained by an editorial re-interpretation of R. Eleazar's statement.

In the Babli and its related texts, it is taken for granted that women present in Jerusalem on Passover eve are obligated to take part in the Passover meal, based on Ex. 12:4 which designates the participants as "persons", not "men" (Mekhilta dR. Ismael, Pisha 3, Mekhilta dR. Šim'on b. Jochai p. 10; cf. Mishnah Pesahim 8:1,7, Tosephta Pesahim 8:10; Babli Pesahim 91a/b.) But it is to be noted that missing the sacrificial meal is a deadly sin only for men (Num. 9:13); only men are required (and permitted) to make up the missed sacrifice on the 14th of Iyar (Num. 9:13; Tosephta Pisha 8:10).

The statement means that an unaffiliated female, living neither in her father's nor a husband's house, is not obligated to seek a group with which to celebrate Passover. It would be considered most inappropriate if a single woman would join a group of men unrelated to her. But since she is included in the circle of celebrants of Passover by biblical law, if she alone or a group of similarly situated women want to organize their own Passover sacrifice and meal, they are authorized to do so.

If the 14th of Nisan is a Sabbath, the public Passover sacrifice has precedence over the Sabbath (Mishnah Pesahim 6:1). Since women are biblically empowered to celebrate Passover, the rule applies also to groups of women.

Circumcised slaves are included in the group of Passover celebrants in Ex. 12:44. The owner of uncircumcised
slaves is prohibited from celebrating Passover.

616 Are women and slaves obligated to eat mazzah, a commandment triggered by the calendar?

617 R. Eleazar (the Amora) to R. Jacob bar Aha.

618 Pesahim Tosephta 2:22, Babli 91b. The Passover sacrifice is forbidden after the first night. The Tanna who holds that women are obligated for the sacrifice will hold that they are obligated to eat mazzah; he who holds that their Passover celebration is voluntary (R. Simeon in the Tosephta) must hold that their eating mazzah is voluntary.

619 Deut. 17:3.

620 Rules stated in the same verse must be of one and the same category.

621 In the Babli, 91b, this is a statement of R. Eleazar, probably the Tanna. In Sifry Deut. 130, its contrapositive is a statement of R. Simeon.

622 The other two sources add: It is more weighty since . . . That probably is the correct text.

623 And therefore follow the rules of prohibitions, obligatory for women; Note 620.
Does it follow him who says the *Pesah* of women is voluntary? It was stated: "A woman may make the First *Pesah* by herself and the Second joining others, the words of Rebbi Meïr. Rebbi Yose says, a woman may make the Second *Pesah* by herself, and certainly the First. Rebbi Eleazar ben Rebbi Simeon says, a woman may make the First *Pesah* joining others but does not make the Second." What is the reason of Rebbi Meïr? (Ex. 12:3) "Every man a sheep for the family," if they want "a sheep for the house." What is the reason of Rebbi Yose, "Every man a sheep for the family," *a fortiori* "a sheep for the house." What is the reason of Rebbi Eleazar ben Rebbi Simeon? "Every man", not woman. How do the rabbis uphold "man"? A man, not a minor. Rebbi Jonah said, even according to him who says it is an obligation, it is different here since the occasion was news, lest it become an obligation.

This paragraph is not only in *Pesahim* (ג) but also in *Hallah* 4:12, Notes 194-202 (ר) and refers to Mishnah *Hollah* 4:12 which states that a certain Joseph Hakohen was refused permission to celebrate the Second Passover with his wife and children.

The entire quote referring to R. Eleazar ben R. Simeon is missing in G.
"Except 'do not destroy', 'do not shear', and 'do not become impure for the dead'." Issy says, also because of "do not make a bald spot." What is the reason? "They shall not make a bald spot." One subject to the rules of the beard is subject to the rules of the bald spot; women who have no beard are free from the rules of the bald spot. And also from the following: "sons," not daughters. Rebbi Eleazar said, women are obligated by the rules of the bald spot. What is the reason? "For you are a holy people for the Eternal, your God." Both men and women. How does Rebbi Eleazar explain "sons"? When they do the will of the Holy One, praise to Him, they are called sons, but when they do not do the will of the Holy One, praise to Him, they are not called sons. Rav was ordering his students, there came Rav Hamnuna ordering the colleagues: Order you wives not to tear out their hair when standing by a deceased,
that they should not make a bald spot. What is a bald spot? There are Tannaîm who stated: Any size. There are Tannaîm who state: The size of a peeled grain. The one who says, any size, because the meaning of "bald spot" is of any size. The one who says, a peeled grain, for it is said here "to make a bald spot", and it says there, a bald spot. Since "bald spot" mentioned there means in the size of a peeled grain, here also it means the size of a peeled grain. Rebbi Yose bar Mamal: A Cohenet is permitted to leave the Land. What is the reason? "Say to the Cohanim," not to the Cohanot. If it were otherwise, what would we say? Since she is included in the decision, she may not leave. If you say so, you push aside the paragraph of impurities.

626 Deut. 14:1: "You are children of the Eternal, your God; do not injure yourselves, do not make a bald spot between your eyes for a deceased."
The same argument in the Babli, 35b.
627 Lev. 21:5, speaking of Cohanim: "They may not make a bald spot on their head; the sideburn of their beard they shall not shave."
628 What is missing here is an argument why rules promulgated for Cohanim are valid for all Israelites; cf. Sifry Deut. 96; Sifra Emor Pereq 1(3).
629 Deut. 14:2. The expression "people" applies to both men and women, even hermaphrodites and the sexless.
630 Babli 36a. In this interpretation, when Jesus insists on his being the Father's son, he implies that the rest of the people do not obey God's will.
631 Lev. 13:42,43. As with all skin diseases, the disease at a bald spot is diagnosed as such once it has reached the size of a peeled grain; Mishnah Nega'im 4:5,6.
632 In the Genizah text, the rule is traced to R. Eleazar, in line with the other rules of this section.
633 Since the "Land of the Gentiles" is impure, a Cohen is not permitted to leave the Land of Israel except in extraordinary circumstances. But the special laws for Cohanim promulgated in Lev. 21 do not apply to their wives and daughters, who cannot serve in the Sanctuary.
634 Lev. 21:1.
635 It is difficult to know what this means; the word is missing in the
Genizah text. Probably one should read "inflicting injury on oneself", or in Rashi’s words esgratiner (égratigner), "to slit", forbidden in Deut. 14:1 to all of Israel.

Since the general prohibition of Deut. 14:1, applicable also to women, is also the particular prohibition of Lev. 21:5, one might think that all special rules of Lev. 21 apply to everybody. Then the special position of Cohanim in rules of impurity would be abolished.

"The Cohen puts his hands under hers and performs the weave."

Does the Cohen put his hands under hers? Is that not objectionable? He brings a kerchief. Does that not separate? He brings an elderly Cohen. You may even say, a young man, since bad inclinations do not happen at that hour. Rebbi Hiyya stated: It happens. If the suspected wife has no hands, two priests weave in her stead.

This refers to Mishnah 8, suspected wife. The text is from Sotah speaking of the flour offering of the 3:1 (ט), Notes 8-14.
which does refer to the Land is obligatory only in the Land, except 'orlah\(^{638}\) and kilaim\(^{639}\). Rebbi Eliezer says, also new grain\(^{640}\).

\(^{638}\) Even though the commandment is formulated with a reference to the Land (Lev. 19:23), it has to be applied in a modified form outside the Land; cf. Mishnah 'Orlah 3:9.

\(^{639}\) The prohibitions of cross-breeding of animals and wearing a mixture of wool and linen (a prerogative of the priests serving in the Sanctuary) do not refer to the Land. The prohibition of kilaim in agriculture outside the Land is rabbinic in character.

\(^{640}\) The prohibition of grain of the new harvest before the 'Omer sacrifice, while referring to the Land, is written in the holiday catalogue of Lev. 23 which is presumed not to be bound to the Land. In Mishnah 'Orlah 3:8, the obligation of 'orlah outside the Land is tradition, not Holy Writ.
obligations depending on the Land only apply in the Land, but we might think that obligations not depending on the Land also should only apply in the Land. The verse says (Deut. 11:16-18) "Be careful, lest your heart be seduced . . . and the Eternal's rage be inflamed against you, etc. Put these words on your hearts;". Even if you are exiled. (Deut. 11:18) "Put these words on your hearts and your persons." You have to say, for example tefillin and the study of Torah. Just as tefillin and the study of Torah do not depend on the Land and apply both in the Land and outside the Land, so everything not depending on the Land applies both in the Land and outside the Land.

641 This entire Halakhah except the 4-20); readings given by The last paragraph is from Ṣevi'it 6:1 (Notes Genizah text is again indicated by G.

This entire Halakhah except the 4-20); readings given by The last paragraph is from Ṣevi'it 6:1 (Notes Genizah text is again indicated by G.
If it is so, they should have been freed once they were redeemed. It is written (Neh. 8:17): "All the congregation coming from captivity ... since the days of Joshua bin Nun." Why Joshua? Rebbi Hillel, the son of Samuel ben Nahmani: The verse damaged the reputation of the just person in his grave for the reputation of the just person in his time; it compares their coming in the days of Ezra to the coming in the days of Joshua. As at the coming in the days of Joshua they had been free and became obligated, also at the coming in the days of Ezra they had been free and became obligated. How did they become obligated? Rebbi Yose ben Hanina said, they became obligated by the words of the Torah; that is what is written (Deut. 30:5): "The Eternal, your God, will bring you to the Land that your fathers inherited and you will inherit it." Just as the inheritance of your fathers was by the words of the Torah, so your inheritance is by the words of the Torah. "He will be good to you and give increase to you more than to your forefathers." Your fathers had been free and became obligated, also you had been free and became obligated. On your fathers there was no yoke of government, but you [are obligated] even though there is on you the yoke of government. Your fathers did become obligated only after fourteen years, seven they conquered and seven they distributed, but you became obligated [immediately when you entered. Your fathers did become obligated only after they had acquired all, but you become obligated]642 for every single piece at the moment you acquire it.

642 The Genizah text shows that this argument from Ševi'it belongs to the text here also. The text here is an abbreviation of the original from Ševi'it.
Rebbi Eleazar said, they accepted the tithes voluntarily. What is the reason? (Neh. 10:1) "In view of all this, we execute a contract and sign."

How does Rebbi Eleazar uphold (10:37): "The first-born of our cattle and flock"? Since they accepted upon themselves matters they were not obligated for, even matters they were obligated for the Omnipresent credited to them as if they were accepted voluntarily.
How does Rabbi Yose bar Hanina explain "In view of all this, we execute a contract and sign"? Since they accepted [the obligations] with good grace, the verse credits it to them as if they had accepted it voluntarily. How does Rabbi Eleazar explain "more than your forefathers?" He explains it for the future since Rabbi Helbo, Simeon bar Abba said in the name of Rabbi Johanan: Your forefathers inherited the land of seven peoples, but you will in the future inherit the land of ten peoples. The three others are (Gen. 15:19) "the Qenites, the Qenizites and the Qadmonites." Rabbi Jehudah said, [these are] Arabia, Salmaia and Nabataea. Rabbi Simeon says, Asia, Spain, and Damascus. Rabbi Eliezer ben Jacob says, Asia, Cartagena, and Thrace. Rabbi says, Edom, Moab, and the best of Ammon. "More than your forefathers": Your forefathers, even though they were redeemed, were later subjugated again. But you when you are redeemed will not be subjugated again. What is the reason? (Jer. 30:6) "Inquire and see whether a male gives birth." Just as a male cannot give birth so you, after you are redeemed, will not be subjugated again.
643 "Rebbi Eliezer says, also new grain." What is the reason of Rebbi Eliezer? (Lev. 23:14) "In all your dwelling places," both inside and outside the Land. How do the rabbis explain the reason of Rebbi Eliezer, "in all your dwelling places"? New grain from here which was exported. Rebbi Jonah asked: Why did we not state hallah with these? Rebbi Yose said to him, our Mishnah only deals with something which applies to Israel and the Gentiles. But hallah only applies to Israel, not to Gentiles. What is the reason? (Num. 15:20): The first of your dough," not of Gentiles.

643 This text is from ‘Oriah 3:8 (62b, line 37) (9); Notes 158-160.

Mishnah 10: Everybody who keeps one commandment they treat well and prolong his life; he will inherit the Land. But everybody who
does not keep one commandment they do not treat well, do not prolong his life, and he does not inherit the Land. Anybody who knows neither Scripture nor Mishnah nor a trade is not part of civilization, but about one who holds on to these three, the verse says: "The triple cord will not easily break."

644 The Heavenly court.
645 This probably is the Future World, in Psalms called "the Lands of Life."
646 Of this part of the Mishnah there exist versions widely differing in text but identical in meaning.

647 Which lets him earn an honest living.
648 Eccl. 4:12. The person studying Scripture and tradition, and earning an honest living, will not easily sin. This formulation is that of the Tosephta, 1:17.
Halakhah 10: "Everybody who keeps one commandment they treat well," etc. 

649 "Therefore anybody who is passive and refrains from sinning they reward like one who fulfills a commandment," and you say so? But we hold with one who is 50-50. If he keeps one commandment, they treat him well and prolong his life; he will inherit the Land. But if he commits one sin, they do not treat him well, do not prolong his life, and he does not inherit the Land. There, we have stated: "Therefore anybody who is passive and refrains from sinning they reward like one who fulfills a commandment." Rebbi Ze'ira said, one who had occasion to commit a possible sin and did not act. Rebbi Yose ben Rebbi Abun said, one who chose one commandment which he never violated in his lifetime. What kind? Mar Uqban said, for example the honor of father and mother. Rebbi Mana said, "Happy are those on a straight path, who walk in the Eternal's Torah," as if they did walk in the Eternal's Torah. Rebbi Abun said, "Also they did no evil, in His path they went," as if they went in His path. Rebbi Yose ben Rebbi Abun said, what is written? "Happy the man who did not walk in the council of the wicked;" since he did not walk in the council of the wicked it is as if he walked in the council of the just.

649 Mishnah Makkot 3:17.
650 Mishnah Makkot contradicts the Mishnah here since there one is rewarded for not sinning while here one is only rewarded for doing good.
651 In the Heavenly accounting, he collected as many merits as demerits. If he now collects one merit, he is one of the Just and takes his place in Paradise; if he sins once he is of the sinners and has lost his share in the Future Life. If he does not do anything, his fate remains suspended; cf. Babli 39b.
652 He refrained from acting out of religious scruple when there was a possibility that the intended act was permitted because possibly it was
forbidden. His inaction is a very meritorious act.

653 Which is extremely difficult to keep at all times; cf. Halakhah 7.

654 *Ps.* 119:1. If they walk in the Eternal's Torah, they certainly are on the right path. The verse can only mean that somebody choosing the right path, even if he is far from being perfect, is considered walking totally in the Eternal's Torah. This gives a biblical source for the Mishnah.

655 *Ps.* 119:3. In order to be counted with those who walk in the Eternal's way it is enough to refrain from evil; this explains the Mishnah in Makkot.

656 *Ps.* 1:1. The argument is better in the Genizah text: "It does not say, 'Happy the man who walks in the council of the just,' but..."
Ben Azai preached: "A dead fly will permanently spoil perfumer's oil." Does not one dead fly spoil perfumer's oil? And this person by one sin spoiled all merits he had. Rebbi Aqiba preached: "So the abyss opened wide and its mouth swallowed the one without law." It does not say "without laws", but "without law", him who has not a single merit that should help him on the scale of merit. That is, for the Future World. But in this world, even if 999 angels plead for his conviction and one angel pleads for his acquittal, the Holy One, praise to Him, lends His weight to the scale of merit. What is the reason? "If there is for him one
angel out of a thousand, to tell a man his straightness. He will act with him in grace and say, let him be redeemed, not go down to destruction; I found weregilt. Rebbi Johanan said, if you find a saying of Rebbi Eliezer, son of Rebbi Yose the Galilean, bend your ear like this funnel and listen, since Rebbi Johanan reported that Rebbi Eliezer, the son of Rebbi Yose the Galilean, said: Even if 999 angles plead for his conviction and one angel pleads for his acquittal, the Holy One, praise to Him, lends His weight to the scale of merit. Not only this entire angel, but if 999 aspects of that angel plead for conviction and one aspect for acquittal, the Holy One, praise to Him, lends His weight to the scale of merit. What is the reason? It does not say, "if there is for him one angel of a thousand," but "one out of a thousand", one aspect out of a thousand aspects of that angel. What is written afterwards? "He will act with him in grace and say, let him be hurt, not go down to destruction; I found weregilt." "Let him be hurt," by suffering. "I found weregilt," he found means to redeem himself. That is, in this world. But in the Future World, if he has a majority of merits, he inherits paradise; a majority of sins, he inherits hell. If he was 50-50. Rebbi Yose ben Hanina said, "he carries his iniquity." Rebbi Abbahu said, it is written: "He carries." What does the Holy One, praise to Him, do? He grabs one of his demerits, and the merits decide. Rebbi Eleazar said: "You, Eternal, are acting in grace, for You will complete for everybody according to his deeds." And if he has none, You will give him from Yours. That is Rebbi Eleazar's opinion, for Rebbi Eleazar said, "You, Eternal, are acting in grace," this teaches that He turns to the aspect of grace.

From here to the end of the Halakhah, there are parallel texts in Peah 1:1 (Notes 209-213, 16b 1. 43 ff., 657) and Sanhedrin 10:1 (27c 1. 41 ff., 666).
The introduction is missing in both texts; this indicates that the original place of the text is here in Qiddusin.

658 *Eccl.* 10:1; the translation follows Ibn Ezra.

659 Who has exactly as many merits as he has demerits. The Babylonian sources, Babli 40b, Tosephta 1:14, base a formally similar argument on *Eccl.* 9:18; but the Babli does not make the difference between the Worlds that are the main thrust of this paragraph.


661 The image is always that the deeds of a person are weighed on scales in Heavenly court; the person is found innocent if the scale containing his merits tilts the balance in his favor.

A different interpretation is in the Babli, *Sanhedrin* 111a.


663 R. Eliah Wilna points out that the Talmud reads פְּנֵי עָשָׂר as Aramaism, equivalent to Hebrew פְּנֵי עָשָׂר (cf. Onqelos and Pseudo-Jonathan to Ex. 21:25).

664 *Ex.* 34:7, *Micah* 7:18. R. Yose ben R. Hanina holds that the person with an equal number of merits and demerits is found guilty. But in *Peah* 1:1, *Sanhedrin* 10:1, and the Babli, *Ros Haššanah* 17a, R. Yose ben R. Hanina is credited with the opinion attributed here to R. Abbahu, who is not mentioned in the other sources.

Everybody seems to agree that in the Heavenly Court, no more than one transgression will be forgiven.

665 R. Abbahu holds that the person with an equal number of merits and demerits is found not guilty.

666 Babli *Ros Haššanah* 17b.

667 *Ps.* 62:13.

668 He also holds that the person with an equal number of merits and demerits is found not guilty.
Rebbi Jeremiah said that Rebbi Samuel bar Rav Isaac asked about: "Justice watches over the one ambling in simplicity but evil falsifies sin." "Evil pursues the sinners but He well rewards the just." "He watches over the feet of His pious, but the wicked will be silenced in darkness, etc." "If He scoffs with the scoffers, but to the meek He gives kindness." "Sages inherit honor, but shame lifts the silly." Fencing makes a fence, and doors entry. And so it is, fencing makes a fence and a door entry. But Rebbi Jeremiah asked in the name of Rebbi Samuel bar Rav Isaac: If somebody guards himself once, twice, and three times from a sin, from then on the Holy One, praise to Him, will guard him. What is the reason? "Lo, all this God will work, twice or three times with a man."

668 For chronological reasons, this title from י on is the only correct one.
669 Prov. 13:6. This and the following verses seem to imply that a person is just not by his own merit but only by God’s grace, whereas the wicked are destined to be wicked. This kind of predestination certainly contradicts the doctrine of personal responsibility which rabbinic interpretation finds in Deut. 11:26-28, 30:15-20.
671 Is. 2:9. This and the following verses are not in the Genizah fragment. In Peah, the order of the verses is slightly different.
672 Prov. 3:34.
673 Prov. 3:35.
674 A popular adage to the effect that a good fence warns away potential trespassers but an open door invites thieves. If the just are fenced in from the start but the wicked left open to sin, there is no personal merit in good behavior.
675 If a person from personal initiative guards himself a few times from sinning in a particular way, then it becomes an automatic habit and in the future will not require additional will power. In the Babli, Yoma 86b, the Tanna R. Yose ben R. Jehudah is quoted as inferring that the same kind of sin is forgiven by the Heavenly Court a maximum of three times. Sabbat 104a, Yoma 38b, R. Simeon ben Laqish quotes Prov. 3:34 to the effect that Heaven will make it easy for the just to be just, for the wicked to be wicked.

Rebbi Zeira said, but only if the person does not revert678. What is the reason? It does not say "The triple thread will never snap" but rather "The triple thread will not quickly snap." If you work on it, it will split. Rebbi Huna said in the name of Rebbi Abbahu: There is no forgetting before the Holy One, praise to Him, but for Israel He becomes forgetful. What is the reason? It is written664 "He forgets"679 sin." And so David says680: "You forgot Your people's sin, You covered up all their misdeeds, Selah."

677 Here ends the Genizah fragment.
678 Here begins the discussion of the quote at the end of the Mishnah
679 Replacing מוש "to lift, carry" by מוש "to forget".
680 Ps. 85:3.
Mishnah 1: A man may contract a preliminary marriage either in person or through an agent, and a woman may be taken in preliminary marriage either in person or through an agent. A man may give away his adolescent daughter in preliminary marriage himself or through his agent. If a man say to a woman: Be married to me preliminarily by this date fruit, be preliminarily married by that one, she is preliminarily married if one of them was worth a perutah, otherwise she is not preliminarily married. By this and by that one, she is preliminarily married if together they are worth a perutah, but if she was eating immediately what she received, she is not preliminarily married unless one of them was worth a perutah.

1 Since the groom is not permitted to live with the bride before the definitive marriage, the preliminary marriage is a legal, not a personal, act and may be executed either by the principal or by his duly appointed representative. For the same reason, a woman may appoint a representative to agree on her behalf to the stipulations proposed by the groom.

2 Who still can be married off by her father without necessarily being
asked, while she is able to act in law in other respects; cf. Chapter 1, Note 228, *Yebamot* 1:2, Note 159.

3 Two separate gifts of less than a *perutah* each do not add up to one gift of a *perutah*.

4 If the entire gift was given, or at least promised, as a whole, it does not matter of how many individual pieces it is composed.

5 If the dates were not promised as a bunch but given as "this and this and this" and the first date was already eaten by the time the second was received, they cannot be counted together since a nonexisting object cannot be counted together with an existing one. But if ten dates were promised at the outset in so many words and the prospective bride ate each one as soon as she received it, she is preliminarily married as soon as together they had represented a *perutah’s* worth.

Halakhah 1: "A man may contract a premininary marriage either in person or through an agent," etc. From where that a person’s agent may act in his stead? Rebbi Eleazar said: "The entirety of the assembly of the congregation of Israel shall slaughter it in the evening." But do all of them slaughter? Does not one slaughter for the many? From here [it follows that] a person’s agent may act in his stead. And that would be the same as: "Everybody should take for himself a sheep for the family, a
sheep to a house. Did everyone take? Did not one take for the many? From here [it follows that] a person's agent may act in his stead. Rebbi Yose said, there is a difference, for a person may slaughter the Passover sacrifice of another without the latter's knowledge. If you wanted to say that a person may separate the Passover sacrifice for another without the latter's knowledge, you cannot say so, for Rebbi Ze'ira said in the name of Rebbi Eleazar that a person may slaughter the Passover sacrifice of another without the latter's knowledge, but nobody may separate the Passover sacrifice for another without the latter's knowledge.

6 Since preliminary marriage is an act prescribed by biblical standards, one has to ascertain that agency is admissible in the fulfilment of biblical decrees. (Agency always is direct representation as in Egyptian and Roman law (cf. R. Taubenschlag, *The Law of Greco-Roman Egypt in the Light of the Papyri*, New York 1944, §37). Indirect representation is authorized only if it unquestionably is to the benefit of the person represented; cf. *Giṭṭin* 1:6, Note 174.)

7 *Ex. 12:6.*

8 Since the Passover sacrifice is not an individual but a family affair, it is obvious that only one person can slaughter for his entire family.

9 *Mekhila Bo, Masekhet Depisha* Chap. 5 (ed. Horovitz-Rabin, p. 17) as tanna'ītic statement; in the Babli attributed to R. Joshua ben Qorḥa. The parallel discussion in the Babli, 41a-42a, is a long-winded, possibly Saboraic, affair.

10 *Ex. 12:3.* The same argument applies as for the other verse. Then the question arises, at least for the school of R. Aqiba, why the same rule has to be expressed by two separate verses. This contradicts R. Aqiba's axiom that the Torah text admits of no redundancies.

11 In *Mekhila Bo, Masekhet Depisha* Chap. 3 (ed. Horovitz-Rabin, p. 11) this also is a tanna'ītic statement, not the subject of a discussion.

12 The people participating in the Passover meal do not have to know who prepared it. Therefore, the
slaughterer does not have to be the agent of every participant; the verse Ex. 12:6 does not prove the thesis for which it was quoted.

13 *Pesahim* 8:1 (35d l. 13), Babli *Nedarim* 36a. A person who was not inscribed beforehand in the list of participants cannot join the Passover celebration; Mishnah *Zebahim* 5:8. Only Ex. 12:3 is a proof; there is no redundancy.

The House of Shammai say, an agent may not testify as witness. But the House of Hillel say, an agent may testify as witness14. How is that? If he sent two15, in the opinion of the House of Shammai there is an agent and two witnesses16. In the opinion of the House of Hillel, all three can be agents and all three can be witnesses17. Rebbi Abun bar Hiyya said, the matter is reasonable if the preliminary marriage was executed by document. But if he executed the preliminary marriage by money, he became an interested party in his testimony18. Rebbi Yose said, since the Torah made him trustworthy19, even if he executed the preliminary marriage by money, he did not become an interested party in his testimony. Rebbi Abba said, there came a case before Rav who admitted the agent as witness20. A person deposited his amphoras in another's
The case came before Rebbi Jeremiah who admitted the agent as witness and made him swear [by the testimony of] the porter.

In the Babli, 43a, the tannaïtic tradition is declared to be unclear. The problem is that if an agent acts instead of the principal, he should be disqualified from acting as a witness if the principal is unable to testify. Since relatives are disqualified as witnesses and everybody is a relative of himself, an agent should be disqualified in any suit involving the principal’s money.

In the quote of this baraita in the Babli, 43a, "three". Qorban Ha’edah reads the statement as "two [in addition to the agent]."

Only one of the three may be appointed as agent to reserve the option of proving a case in court by witnesses.

At the same time agents and witnesses.

If he did not deliver the money to the prospective bride, he would have to pay back the consignor; his testimony is self-serving and therefore barred.

All commentators have great difficulty with this statement, from Tosaphot (43b s. v. רבי יוסי) and Rashba (Novellae, 43a s. v. הרשע) to the commentators of Maimonides (ad Ḳesef 3:16) and the standard commentators of the Yerushalmi (משנה פרשיא בכFramebuffer. In fact, R. Yose’s remark is incompatible with the Babli’s treatment of the subject in 43a/b. R. Yose seems to argue that the monetary aspect is irrelevant. The main consequence of preliminary marriage is to forbid the woman to any man other than her fiancé; this is not a matter of civil law. It is a principle in both Talmudim that in matters of prohibitions a single witness has standing by biblical law (cf. Sotah 6:2, Note 26). Since the agent has standing in biblical law to force her to go to court if she wants to marry any other man, he also has standing to join another witness in the related financial case.

Since the normal case is preliminary marriage by money, it must be assumed that the case before Rav was of this kind. Since Rav was the foremost authority in Babylonia, his decision was obligatory precedent in Babylonia.
21. He said that all amphoras in his corral were his own property. This is a purely financial case, where R. Yose’s argument is irrelevant.

22. The person hired to deliver the amphoras to the corral was admitted as witness in court, even though his testimony was partly self-serving since he would have been liable as a thief had he failed to deliver the amphoras.

Since R. Jeremiah had a low opinion of everything Babylonian, it follows that the rule admitting an agent as witness is accepted both in Babylonia and in Galilee.

Some baraita implies that the agent of a person acts in his stead, and some baraita implies that the agent of a person does not act in his stead. "If he definitively will substitute, if he himself will dissolve." We may hold that a person’s agent cannot act in his stead because Scripture excluded him. "He shall lean his hand, not the hand of his son nor the hand of his slave nor the hand of his agent." We may hold that a person’s agent can act in his stead but Scripture excluded him. "His master shall pierce his ear with an awl;" "his master" but not the latter’s son, "his master" but not the latter’s agent. We may hold that a person’s agent can act in his stead but Scripture excluded him. Some Tannaim state: "He shall pierce", to include the agent. This follows Rebbi...
Aqiba. Following Rebbi Ismael? "His master", anybody acting on his master’s authority.  

23 Everybody agrees that there exist situations in which an agent acts with the full authority of a principal and others where only the person himself can act. The question is, what is the normal case and what is the exception?

24 This seems to be a quote from Lev. 27:10, but there the masoretic text is רמא נר. If the word רמא is not a slip of the scribe’s pen, the reference might be to רמא נר ('he himself may exchange it') in the same verse. There is no explicit baraita in rabbinic literature which would invalidate substitution by agent; the double expression is always interpreted as an addition in R. Aqiba’s system. In Sifra Behuqqotay Pereq 9(6), the double expression is interpreted to include a woman for her own sacrifice and an heir for an inherited one. Since the agent is not mentioned, he is excluded. In the Babli, Temurah 2a, the statement of Sifra is characterized as R. Meïr’s.  

25 Num. 30:14. This does not refer to an infinitive construction but to the use of the word רמא, instead of the simple נר. In R. Aqiba’s system, suffixes always carry a special meaning. The argument is explicit in the Babli, Nazir 12b, where the Tanna R. Joshia quotes Num. 30:14 to prove that a husband cannot delegate his power over his wife’s vows to an attorney. R. Jonathan holds that an agent always can act for his principal.  

26 Lev. 1:4;3:2,8,13;4:24,29,33, a necessary action to validate a sacrifice. The repetition of his hand in all these verses is taken in the Babli, Menahot 93b, as proof that any agency is impossible for animal sacrifices.  

27 This formulation is in Sifra Wayyiqra Pereq 4(2).  


30 This opinion is not found in any parallel source.
We have stated: "A preliminarily married adolescent girl, or her father, can accept her bill of divorce." Rebbi Simeon ben Laqish said, like the disagreement about divorce is the disagreement about preliminary marriage. Rebbi Johanan said, everybody agrees about preliminary marriage that her father contracts but not she herself. Rebbi Simeon ben Laqish agrees about a definitive marriage that she is not empowered to marry herself off and to let her father lose her earnings. In the opinion of Rebbi Johanan she has no legal standing relative to her father and cannot appoint an agent. In the opinion of Rebbi Simeon ben Laqish she does have legal standing relative to her father and can appoint an agent. A Mishnah disagrees with Rebbi Johanan: "A man contracts a preliminary marriage either in person or through his agent and a woman contracts a preliminary marriage either in person or through her agent." He explains
it about an adult woman. But did we not state: "If an underage girl said, accept the bill of divorce for me, it is no valid bill of divorce until it reaches her hand." He explains it about an orphan. But did we not state: "If her father said to [an agent]: Go and receive my daughter's bill of divorce, if [the husband] wants to retract he cannot retract." He explains that the Mishnah deals with cases; the first part about an orphan and the second part if she has a father. A Mishnah disagrees with Rebbi Simeon ben Laqish. "A man may contract a preliminary marriage for his adolescent daughter either by himself or by his agent." He explains that following Rebbi Jehudah, since Rebbi Jehudah said, "no two hands can acquire together." Rebbi Yose said, a rabbi came out from the assembly and said, a case was decided following Rebbi Johanan. Can one rely on that? It was no question of relying on him since it was as from the sea to the frying pan.

31 From Gittin 6:2, Notes 55-69. Variant readings are given there.

Rav Hamnuna in the name of Rebbi Assi: If an underage girl married herself off preliminarily with two pubic hairs, her father repudiates the marriage but not she herself. This follows neither Rebbi Johanan nor Rebbi Simeon ben Laqish. If following Rebbi Johanan, there is no place for repudiation. If following Rebbi Simeon ben Laqish, the marriage is

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valid by biblical standards. It follows only Rebbi Johanan. Even though Rebbi Johanan says that everybody agrees about preliminary marriage that her father contracts but not she herself, he agrees in this case that the father repudiates on her behalf.

32 The Babylonian, Rav Assi in the Babli.
33 This statement seems to be a contradiction in terms. The definition of an underage girl is a female who does not yet have two pubic hairs. The interpretation can be either that she contracted the marriage when she was underage but now, when the case comes to court, she already became an adolescent (R. Moses Margalit) or, preferably, that she is an adolescent (Chapter 1, Note 228) who, while legally responsible, still is under her father's authority in marital matters (R. David Fraenkel). In either case it is presumed that the father was not informed of the preliminary marriage at the time it was contracted.

In the Babli, 46a, Rav Assi's statement is that only the father has the right to annul her marriage but not she herself, since she unlawfully arrogated to herself the rights of an adult. In the Babli, practice is decided following Rav that both her father and herself have the right to unilaterally terminate the irregular preliminary marriage.

34 Repudiation of a marriage is possible only for an orphan girl who was married off by her mother or brothers, who can walk out of a marriage by a simple declaration as long as she is formally underage, i.e., did not grow two pubic hairs (Yebamot Chapter 13). In the present case, the expression "repudiates" would seem to be inappropriate but it is justified in the Babli (46a) by reference to Ex. 22:16 which uses the verb נפק to describe the father's veto of the marriage of his daughter to her seducer.

35 Since only the father has the right to contract the marriage of his underage or adolescent daughter, there is no marriage and the transaction does not have to be nullified.

36 Since he holds that there is an opinion which gives the adolescent girl the right to marry on her own, he would have to require a valid bill of divorce to dissolve the marriage.
37 R. Johanan agrees that the marriage contracted by an adolescent on her own is valid if it is not countermanded by her father. She herself cannot walk out of a union contracted by herself as an adolescent.

Since this statement cannot hold for a marriage contracted by an underage girl without her father's knowledge, it seems that the interpretation of R. Moses Margalit cannot be sustained.

Rebbi Abba bar Cahana and Rebbi Jacob bar Idi in the name of Rebbi Joshua ben Levi: If she was preliminarily married with agreement but definitively married without agreement: there was such a case and the father came and removed her from the bridal chamber. Rebbi Jacob bar Aha in the name of Rebbi Joshua: He had an indication that Rebbi Joshua ben Levi disagreed with Rebbi Simeon ben Laqish. But this does not disagree. Just as Rebbi Simeon ben Laqish said there, she is not empowered to marry herself off and let her father lose her earnings, so Rebbi Joshua ben Levi said here, she is not empowered to marry herself off and let her father lose her earnings. Rebbi Abba bar Cahana and Rebbi Jacob bar Idi came in the name of Rebbi Joshua ben Levi: If she was preliminarily married without agreement and was being definitively...
married without agreement: there was such a case and the father came and annulled her preliminary marriage\textsuperscript{45}.

38 An underage or adolescent girl.
39 The father’s agreement.
40 Even an adolescent is emancipated from her father’s power only by definitive marriage, not by the preliminary. Therefore, she cannot contract the definitive marriage on her own.
41 This name probably is corrupt.
42 R. Abba bar Cahana justified himself for quoting R. Joshua ben Levi whom he could not have known by quoting an attached lemma to the effect that the latter ruled differently from what R. Simeon ben Laqish would expound a generation later.
43 Two paragraphs earlier.
44 Her earnings are her father’s before and her husband’s after definitive marriage. Therefore, it is understandable that the father will want to give his adolescent daughter in preliminary marriage, for which he is paid, but refuse to let her enter definitive marriage before she reaches adulthood and he anyhow loses the right to her earnings.
45 Then automatically the definitive marriage cannot proceed.
If she was preliminarily married with agreement but definitively married without agreement, may she eat heave? Rav said, she does eat; but Samuel said, she may not eat. Rebbi Mana said, Rav’s reason is that if she was preliminarily married with agreement, the permanence of the status quo implies the assumption that he definitively married her with agreement. Rebbi Yose ben Rebbi Abun said, Rav’s reason is that by the earlier Mishnah, a preliminarily married daughter of an Israel may eat heave. What is the difference between them? Her earnings. According to Rebbi Mana, for Rav her earnings belong to her husband; according to Rebbi Yose ben Rebbi Abun, for Rav her earnings belong to her father. If she should die, who inherits from her? According to Rebbi Mana, for Rav her husband inherits; according to Rebbi Yose ben Rebbi Abun, for Rav her father inherits if she dies. Rebbi Yose ben Rebbi Abun stated, for Rav her husband inherits if she dies. If she was preliminarily married without agreement and definitively married without agreement, may she eat heave? Samuel said, she does eat. Come and see: If she was preliminarily married with agreement and definitively married without agreement, Samuel says that she may not eat; here he says she may eat? Samuel treats her as an orphan.

46 If the bride was an Israel but the groom a Cohen. The wife of a Cohen is a member of his family and as such entitled to eat heave (Num. 18:11).
47 The father’s agreement to the preliminary marriage implies his acquiescence in a definitive marriage unless he explicitly objects. A definitive marriage without consent or objection by the father is marriage with consent. The treatment of this topic in the Babli, 45b, is not comparable to the argument here since the Babli distinguishes between a marriage in the presence of the father and one contracted when the father
was on a far away trip. The Babli notes that Rav in a real case followed Samuel's opinion, attributed in the Babli to Rav Assi.

48 Only the preliminary marriage is an act of acquisition which brings the bride into the husband's family; cf. *Ketubot* 5:3, Note 66. The denial of heave to the bride before the definitive marriage is a later rabbinic institution; Mishnah *Ketubot* 5:4.

49 By biblical standards, definitive marriage is irrelevant for the bride to be able to eat heave.

50 Since the earnings are the husband's from the moment of definitive marriage which for R. Mana is valid unless vetoed explicitly.

51 One would have to say that the father might have the right to the earnings, since R. Yose ben R. Abun does not say that the definitive marriage is invalid, only that its status is irrelevant.

52 For the wife's estate, the same rules apply as for the wife's earnings.

53 The prior speculation about the difference between the two arguments attributed to Rav is false; R. Yose ben R. Abun also will agree that the definitive marriage is valid unless explicitly vetoed by the father. He only stated that the problem of validity of the definitive marriage is irrelevant for the problem of heave.

54 In the Babli, 45b, this is attributed to Rav Huna.

55 Since everything was done without consulting the father, one may assume that the latter would have indicated his disapproval had he disapproved. His silence therefore is considered as formal approval and the under-age girl is emancipated from him; she becomes "an orphan during the father’s lifetime" (cf. *Gittin* 6:1, Note 20). The same argument is given in the Babli.

Mishnah: "Be married to me preliminarily by this date fruit," etc. The Mishnah [presents the case] that she said, I cannot accept this one, try that one; I cannot accept this one, try that one56. "By this and by that one and
by that one. 57" Who is the Tanna of Wawim? Rebbi Jehudah. But for Rebbi Meïr, either this or this or that one. 58.

56 In this interpretation, if the man said: Be preliminarily married to me by this, by that one, etc., she would be married if all dates together were worth a *perutah*. If the preliminary marriage must be mentioned every time, it must be that the proposal was rejected in between. Then not any date but specifically the last one must be worth a *perutah*.

57 The triple mention is the version of the Mishnah in the Babli and most independent Mishnah mss.

58 The positions of Rebbis Jehudah and Meïr about the interpretation of conjunctions in multiple statements are discussed in Gittin 9:7, Notes 93-101.
Rebbi Jeremiah\(^6\) in the name of Rav: "Be preliminarily married to me by this tetradrachma after thirty [days].’ Even if she spent it within the thirty [days], she is preliminarily married; also Rebbi Simeon ben Eleazar\(^6\) will agree to this.” What is the difference between this and a loan? A loan was not given for preliminary marriage, while this was given from the start for preliminary marriage. But did we not state: "If she was eating right away she is not preliminarily married unless one of them was worth a perutah”? Then even if a perutah’s worth was not left, she should be preliminarily married! He explains that as earlier.\(^6\) If it refers to the earlier statement, did we not state: "If she was eating immediately she is not preliminarily married unless one of them was worth a perutah”? Rebbi Eleazar said, it follows Rebbi Simeon ben Eleazar, as it was stated: "Be preliminarily married to me by the deposit you hold for me; if she went and found that it was stolen or lost, if there was a perutah’s worth left, she is preliminarily married; otherwise, she is not preliminarily married. By the loan you are holding from me, if she went and found that it was stolen or lost, even if there was no perutah’s worth left, she is preliminarily married. Rebbi Eleazar ben Rebbi Simeon says in the name of Rebbi Meïr, a loan is like a deposit: If there was a
perutah's worth left, she is preliminarily married; otherwise, she is not preliminarily married." Rebbi Eleazar said, Rebbi Simeon ben Eleazar follows Rebbi Meïr. Just as Rebbi Meïr said that anybody who deviates from the orders of the owner is called a robber, so Rebbi Simeon ben Eleazar says here, anybody who deviates from the orders of the owner is called a robber. For he explains it to be for a loan when the lender said, buy wheat for me, but he bought barley for him. That is difficult: can one pay for a preliminary marriage with robbed money? Rebbi Yose asked: One understands that a person may invest a perutah to gain a denar; would he invest a perutah to gain a perutah?

Some Tannaim state: One may preliminarily marry with a robbed item; some Tannaim state: One cannot preliminarily marry with a robbed item. Rebbi Mana said, the one who said that one may preliminarily marry with a robbed item refers to an item which he has a chance to recoup from her hand. The one who said that one cannot preliminarily marry with a robbed item refers to an item which he has no chance to remove from her hand.

Rebbi Yose ben Rebbi Abun in the name of Rebbi Samuel bar Rav Isaac: the one who said that one may preliminarily marry with a robbed item refers to an item which the owner gave up hope to recover. The one who said that one cannot preliminarily marry with a robbed item refers to an item which the owner did not give up hope to recover.

59 This word is an echo of the preceding text. Instead of nanna nVaix later in this paragraph, one should read either active or passive rtw. 61 Whose opinion will be discussed later in this paragraph.

60 Rav Jeremiah, the colleague of Rav. 62 If the creditor forgives a loan to his prospective bride, she receives real value. Nevertheless, RR. Meïr and Simeon ben Eleazar hold that there is
no marriage if nothing of the original loan is left in the fiancée's hand. But if the money was given specifically for preliminary marriage, there is no restriction on its use. The Babli agrees, 59a, in the names of both Rav and Samuel. The Babli raises the additional problem, whether the woman may have second thoughts and return the money's worth before the end of the thirty days if at the start she accepted it.

63 Forgiving the loan, while it might involve considerable value, is only invalidating a sheet of paper which in itself is not worth a perutah.

64 If all dates were given for the preliminary marriage and all were eaten, in what is this different from the tetradrachma which was spent before the marriage entered into force?

65 In the preceding paragraph; the woman explicitly rejected every gift as inadequate.

66 Even if the dates were referred to as given together.

67 The Mishnah, while formulated anonymously, only represents the opinion of R. Simeon ben Eleazar.

68 Halakhah 1:1, Notes 246-249.

69 In asserting that Mishnah 2:1 follows R. Simeon ben Eleazar in Tosephta 3:1, R. Eleazar holds that both can be analyzed in the same way.

70 Baba meseʾa 6:3 (11a l. 13), Babli 78a/b. If raw wool was given to the dyer to be died red and he died it black, for R. Meir the dyer acquired the wool as a robber and has to pay the value of the raw wool to his client. R. Jehudah holds that the wool remains the property of the consignor but the dyer is paid only an amount which protects the consignor from loss. (Mishnah Baba qama 9:6)

71 The Tosephta quoted from 1:2.

72 It would be natural to read the text as מַיֶּה "the borrower". This is the reading of the commentaries who are led to extraordinary intellectual acrobatics to make sense of the text. If מַיֶּה is read as a verbal noun derived from pi'el, parallel to Babylonian מַיָּה, everything becomes simple.

73 R. Simeon ben Eleazar follows R. Meir only in a very special case. He will agree in general with the anonymous majority that forgiving a loan represents enough monetary value to create a valid marriage. He only holds that if the borrower violated the terms of the loan, there no longer exists a loan but rather lender's money in the borrower's hand, i. e., a deposit.

74 This question is asked against R. Meir's position in general. It is understandable that for the anonymous
majority the woman is married, since the profit she gains from not having to repay the entire loan is certainly worth an extra perutah. Therefore, even if we note that a loan was given to be spent and cannot retroactively be given as a marriage present, the additional profit for the woman makes her marriage worthwhile. But for R. Meîr, who holds that only the unspent part of the loan can be a marriage gift, there is no additional profit for the woman and one may ask why R. Meîr does not have a general statement that forgiving a loan can never be a valid marriage present.

75 He refers to the situation described by R. Eleazar, that the loan given to the woman turned into robbed property in her hand. If the prospective groom has documents to prove his case in court, the woman is a robber and he has a good chance to recoup his property in court, he offers her real value and the marriage is valid. But if all he has is a moral claim, that has no monetary value and cannot be used as a marriage present.

76 This opinion does not disagree with R. Mana's but refers to a different situation: The man is a robber and offers his prospective bride an object which he obtained by robbery. He can use the object for a preliminary marriage if and only if it is his both in ownership and in possession. The robber, who is in possession by the act of robbing, becomes owner at the moment the prior owners give up hope of recovery (cf. Giittin 4:4 Note 88, 5:6 Note 169).
Rebbi Abbahu in the name of Rebbi Johanan: The baraita\textsuperscript{71} if he said to her, by the deposit you are holding for me. But if he said, by everything which I deposited with you, she is not preliminarily married unless all of it is available\textsuperscript{77}. What is the difference between this and a loan? A loan was given to be spent\textsuperscript{78}; this was not given to be spent\textsuperscript{79}. But did we not state: "If she was eating right away she is not preliminarily married unless one of them was worth a perutah." Then even if a perutah’s worth was left, she should not be preliminarily married unless all of them were available! He explains that as earlier\textsuperscript{65}. If it refers to the earlier statement, did we not state: "If she was eating immediately she is not preliminarily married unless one of them was worth a perutah"\textsuperscript{66,80}?

Rebbi Abun said, were we not of the opinion to say, who is the Tanna of Wawim? Rebbi Jehudah\textsuperscript{58}. Rebbi Johanan said: The words of Rebbi Jehudah imply comprehensive one sacrifice, in detail three sacrifices\textsuperscript{81}. Just as he says there, comprehensive one sacrifice, in detail three sacrifices, so he says here, comprehensive one preliminary marriage, in detail three preliminary marriages\textsuperscript{82}.

\textsuperscript{77} Since he insists that everything shall be her property, she cannot be married if anything does not become her property because it is lost.

\textsuperscript{78} Babli 47a; M\textit{oed qatan} 2:3 (81b l. 27).

\textsuperscript{79} It is at the disposal of the depositor at any moment.

\textsuperscript{80} If the dates were stated as given together, the marriage should be possible if all of them come into the woman’s hand together.

\textsuperscript{81} Cf. \textit{Gittin} 9:7. If A sues B for wheat, barley, and spelt, and B denies falsely in court that he owes any, he has to atone by one sacrifice. But if he
enters three separate denials, he owes three separate sacrifices.

As explained earlier, the Mishnah is explained to refer to the case that the woman rejects all dates except the last. Then each is given as a separate gift; one cannot require that all of them should have been together.

"Be preliminarily married to me by this tetradrachma," and she said, "throw it into the sea or the river," she is not married.
person," she is married. In either case nothing came into her hand; in one case you say, she is married; in the other case you say, she is not married! Rebbi Abbahu said in the name of Rebbi Johanan: She wants to be married and be seen as benefiting the poor. Rebbi Phineas said, this can be interpreted either following Rebbi Ze'ira or Rebbi Ila.

83 As it was stated: "One may say to his worker: Here you have a denar, use it for food, here you have a denar, use it for drink, and not be worried about either the Sabbatical year, tithes, or wine for libations. But if he told him, go and buy yourself a loaf and I shall give you the money, go and buy yourself a revi'it of wine and I shall give you the money, he has to worry because of the Sabbatical year, tithes, and wine used for libations." Rebbi Ze'ira said, the grocer becomes the agent of the employer to let the worker acquire. 85[Rebbi Hila said, the worker] acquired for the employer from the grocer and then acquires it himself.

Here also, in the opinion of Rebbi Ze'ira the husband becomes the wife's agent to benefit the poor. Rebbi Hila said, the poor person acquired it for the wife from her husband and afterwards acquired it for himself.

84 What is the difference between them? If the grocer was deaf-mute. According to Rebbi Ze'ira, he does not have to worry because a deaf-mute cannot become an agent; according to Rebbi Hila, he does have to worry.

If the worker was deaf-mute. According to Rebbi Hila, he does not have to worry because a deaf-mute cannot acquire; according to Rebbi Ze'ira, he does have to worry.

83 This text is from Demay 6:12, Notes 205-214 (n). The insert given in the next paragraph shows that this is a genuine quote, not a copy.
This also is from Demay.

Text missing here, added from Demay.

A superficially similar text is in the Babli, 8b, and Tosephta, 2:8. The big difference is that in the Babylonian texts the woman took the coin and threw it into the sea whereas in the Yerushalmi the woman never touched the coin. It is a recognized principle that actions speak louder than words; if a marriage gift is offered to a woman and she reacts by throwing it away, she certainly is not married. This has nothing to do with the problem treated in the present paragraph.

From the moment the coin was given as charity.

Therefore, the coin became the woman's property in her future husband's hand; the objection raised at the start is baseless.

But then the woman is not married if the coin is given to a deaf-mute beggar.

If he grabbed a tetradrachma from her hands, returned it to her, and at the moment of delivery said to her: "You are preliminarily married to me", then she is preliminarily married. By what was she preliminarily married? Rebbi Haggai in the name of Rebbi Pedat: She wants to be preliminarily married to him and he would owe her a tetradrachma. Rebbi Yose said, if this had been formulated for a vessel, it would be understandable. A tetradrachma can be exchanged.

Since it was her money, she did not receive anything. In addition, it is questionable whether one may use robbed property as marriage gift.

In the Babli, 13a, she is only married if she had previously agreed to be married to him.

She accepts the coin as a
marriage gift, not as return of stolen goods. Therefore, the husband now owes her another tetradrachma.

Nobody insists that payment be made with a particular coin. He disputes that the husband owes another coin. The fact that she does not have to go to court to retrieve her coin is worth a perutah.

94“Hold this tetradrachma for me’ and at the moment of delivery he said, ‘lo, you are preliminarily married to me,’ she is preliminarily married. After delivery, if she agrees, she is preliminarily married, otherwise she is not preliminarily married. ‘Here is the tetradrachma which I owe you,’ and at the moment of delivery he said, ‘lo, you are preliminarily married to me,’ if she agrees, she is preliminarily married, otherwise she is not preliminarily married. If after delivery he said, ‘lo, you are preliminarily married to me,’ she is not preliminarily married even if both parties agree. What can he do? He should take the coin back, deliver it again and say, ‘lo, you are preliminarily married to me.’ ‘Be preliminarily married to me by this mina,’ if it turns out that a denar was missing, she is not preliminarily married. If one denar was bad, she is
preliminarily married if he replaces it. If he was counting the coins into her hand, she can change her mind any time before he finishes." Rebbi Eleazar said, she is preliminarily married by the first [coin]; the remainder is a condition⁹⁹. Rebbi Johanan said, only after he completes [the count]¹⁰⁰. It was said that Rebbi Johanan changed his mind about this.

94 Tosephta 2:7-9; Babli 12b, 13a, 8a.
95 Unless she objects in word or deed. She is married if she remains silent.
96 But not if she remains silent.
97 Since there is no mina given to her.
98 Counterfeit or underweight.
99 Babli 8a, 47a. It is understood that he asked the woman to be married by a mina, not this mina. Then the first coin establishes the marriage, the remainder is the husband's debt to be liquidated.
100 He seems to hold that the start of delivery is an obligation to finish it at that time. This opinion is not mentioned in the Babli since it is retracted here.

A person gave a pledge to another; the other reneged on it¹⁰². Rebbi Abba, Rebbi Hila, and Rebbi Jacob bar Aha all three say it was a deal about flax seed¹⁰³ and he had given partial payment. The case came before Rebbi Johanan¹⁰⁴, who said: Either he delivers the entire contract
or one may turn him over to "Him Who exacted retribution." Rebbi Hiyya bar Joseph said, either he delivers for the amount of the pledge or one may turn him over to "Him Who exacted retribution." Rebbi Hiyya bar Joseph agrees with Rebbi Johanan in a sale which is not usually split, such as of a cow or a stole. Is a woman usually acquired split? Rebbi Haggai and Rebbi Yudan both said, a sale usually may be split, the acquisition of a wife cannot be split.

101 A different version is in Baba mesi'a 4:2 (9c).
102 In Baba mesi'a: A person made a down payment, the seller then annulled the contract. Here also "reneged" does not mean that the seller claimed not to have received a pledge, but that he refused to honor the contract.
103 In Baba mesi'a: "silk".
104 In Baba mesi'a: Before R. Hiyya bar Joseph and R. Johanan. This also is required by the context here.
105 It was stated in Mishnah 1:5 that possession of movables is obtained only by an act of moving. The buyer does not acquire possession by paying the price for the object bought. It is possible for the seller to take the money but then to renege on the deal, not deliver the merchandise but return the money. The injured buyer cannot force the execution of the contract but can go to court and have the court declare that "He Who exacted retribution from the generation of the Flood and of the generation of the Tower of Babylon will in the future exact retribution from him who does not keep his word."
106 R. Johanan here decides following R. Eleazar in the previous paragraph: Even a partial payment validates the entire deal. He should hold that the woman who starts to accept partial payment for the promised marriage gift is married. R. Hiyya bar Joseph represents the position first ascribed to R. Johanan, that financial deals are not completed until the entire debt be paid.
107 A down payment for a cow requires the delivery of the entire cow.
108 The position of R. Eleazar in the preceding paragraph is universally accepted.
Mishnah 2: "Be preliminarily married to me by this cup of wine," but it turned out to be honey; "of honey" but it turned out to be wine; "by this silver denar," but it turned out to be of gold, "gold denar" but it turned out to be of silver; "on condition that I be poor", but he turned out to be rich; "rich" but he turned out to be poor; she is not preliminarily married. Rebbi Simeon said, if he tricked her by understatement she is preliminarily married.

Mishnah 3: "On condition that I be a Cohen," and he turned out to be a Levite; "a Levite" and he turned out to be a Cohen; "a Gibeonite" and he turned out to be a bastard, "a bastard" and he turned out to be a Gibeonite; "a Gibeonite" and he turned out to be from a walled city; "from a walled city" and he turned out to be from a village; "on condition that my house be close to the public baths" and it turned out to be far, "far" and it turned out to be close; "on condition that I have a grown-up daughter or slave-girl" and it turned out that he had none, "on condition that I have not" and it turned out that he did have; "on condition that I
have children" and it turned out that he had none, "on condition that I not have children" and it turned out that he did have. If all these cases she is not preliminarily married even if she says, I had the intention to be preliminarily married to him regardless. The same holds if she misinformed him.

109 If he gave a gold denar pretending it was of silver or pretended to be poor when he was rich.

110 A Cohen has many more rights than a Levite but a Cohen's wife is subject to many more restrictions than a Levite's.

111 For Gibeonites, cf. Chapter 4, Notes 48ff.; Yebamot 2:4, Note 72. Both Gibeonites and bastards (children of adulterous or incestual unions) are precluded from marrying in the congregation.

112 In rabbinic Hebrew, any unwalled place is called יֵשָׁבָה.

113 She can do the household chores. In some Mishnah mss. one reads חַנָּן, "hairdresser."

114 If the husband already has children, the second wife is not in danger of a levirate marriage. But the existence of children from a prior marriage may cause trouble.

Halakhah 2: "Be preliminarily married to me by this cup of wine," etc. If this cup and its contents together have the value of a perutah, she is preliminarily married; otherwise she is not preliminarily married.

"Acquire it and its contents," if its contents are worth a perutah, she is preliminarily married; otherwise she is not preliminarily married; she acquired only its contents.
This text seems to be elliptic. It probably should be understood in the context of Tosephta 2:3:

Be preliminarily married to me by this cup of wine. If it and its contents together are worth a perutah, she is preliminarily married; otherwise she is not preliminarily married; she acquired it and its contents. "By its contents," if its contents are worth a perutah, she is preliminarily married; otherwise she is not preliminarily married; she acquired only its contents.

The Babli, 48b, notes that every statement has to be interpreted in context. If the cup was filled with water, it is understood that the cup was given. If wine, only the contents are intended. If any fluid used as spice, not intended to be used immediately, both cup and contents are given.

"Rebbi Simeon said, if he tricked her by understatement she is preliminarily married." Rebbi Johanan said, Rebbi Simeon agrees that she is not preliminarily married if he tricked her by misstating his personal status. Rebbi Yose said, the Mishnah says this: "On condition that I be a Cohen,' and he turned out to be a Levite."

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115 This text seems to be elliptic. It probably should be understood in the context of Tosephta 2:3:

116 This shorter version is that of the Mishnah in the Babli.

117 In the Babli, 49a, and the Tosephta, 2:5, this is a tannaïtic statement.

118 R. Simeon disagrees only in Mishnah 2, about monetary affairs, not in Mishnah 3, in matters of personal status.
One understands "Cohen and he turns out to be a Levite.\textsuperscript{119}" "Levite and he turns out to be a Cohen\textsuperscript{120}? She may say, I do not want one who is haughty towards me\textsuperscript{121}. One understands "from a walled city" and he turned out to be a villager; "from a village" and he turned out to be from a walled city? She may say, I want to be in a quiet place. "On condition that my house be close to the public baths" and it turned out to be far. One understands "close and it turned out to be far." "Far and it turned out to be close"? She can say, I want to take a walk\textsuperscript{122} going and returning. "On condition that I have a daughter or slave-girl hairdresser" and it turned out that he had none, that one understands. "On condition that I have" and it turned out that he did not have? Think of it, if he had one at the end of the world\textsuperscript{123}! Rebbi Abba bar Mamal said, so is the Mishnah: "A daughter to dress your hair, and a slave-girl to serve you.\textsuperscript{124}"

\textsuperscript{119} If he is less than he represented himself to be, there is no reason to validate the marriage.

\textsuperscript{120} Why can we not assume that normally a woman will be glad to get a husband of higher social standing than he represented himself to be.

\textsuperscript{121} In the Babli, 49a, this argument is attributed to Ulla.

\textsuperscript{122} This translation is pure speculation. It does not seem that this assertion is identical to סצז as asserted by
the dictionaries and commentators. In Arabic, \textit{kashfUSH li ASHEH PLOPINI} means "look through almost closed eyelids; put on many garments; be dark (night)". Perhaps cf. \textit{to be beautiful}.

123 What difference would it make to the woman?

124 The Babli, 49a, notes that while this looks like a monetary stipulation, it is one of personal service and R. Simeon is correct in not objecting.

\textit{Mishnah 4:} Somebody said to his agent: "Go and marry me preliminarily to woman X at place Y"; if he went and married him preliminarily at another place, she is not preliminarily married. "She is at place Y;" if he married him preliminarily at another place, she is preliminarily married\textsuperscript{125}.

125 The geographical information is but an indication where the agent may discharge his commission.

\textit{Halakhah 4:} "Somebody said to his agent: "Go and marry me preliminarily to woman X," etc. The Mishnah does not follow Rebbi Eleazar\textsuperscript{126}. But following Rebbi Eleazar she is preliminarily married unless [the husband] tells [the agent]: Do not preliminarily marry me to..."
her except at place X and he went and executed the preliminary marriage at another place.

"She is preliminarily married," Rebbi Eleazar agrees that he only indicates a place; the rabbis agree that he only indicates a place.

126 Both paragraphs parallel Gittin 6:5.
127 The Babli agrees, 59a.

Tanna R. Eleazar is in Mishnah Gittin

Mishnah 5: If somebody performed preliminary marriage with a woman on condition that she had no obligation of vows on her and it turns out that she had vows to fulfill, she is not preliminarily married. If he married her definitively without inquiry and she had vows to fulfill, she should leave without ketubah. For all defects which disqualify a priest disqualify a woman.

128 This Mishnah is severely truncated. It is identical to Mishnah Ketubot 7:8 (Notes 101-105). The missing part, which explains the last sentence, reads: "If somebody performed preliminary marriage with a woman on condition that she had no bodily defects and it turned out that she did have bodily defects, she is not preliminarily married. If he married
Halakhah 5: "If somebody performed preliminary marriage with a woman etc. We have stated defects. Which vows? Rebbi Johanan in the name of Rebbi Simeon ben Yoṣadaq: If she vowed not to eat meat, 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 to her, "on condition that you have no vow on you," then even if she made a vow not to eat carob fruit it is a vow.

Halakhah is from Ketubot 7:9, Notes 110-143. The minor differences in readings are noted there.
"If she went to an Elder and he dissolved her vow, she is preliminarily married. To a doctor and he healed her, she is not preliminarily married."

What is the difference between the Elder and the doctor? The Elder uproots the vow from its start; the doctor heals only for the future. Some Tanna'im state: Even if she went to an Elder and he dissolved her vow, she is not preliminarily married. The *baraita* follows Rebbi Eleazar, as we have stated there: "Rebbi Eleazar said, it would have been logical about a vow which has to be investigated by a Sage, because the Elder uproots the vow from its start. Why did they forbid a vow which has to be investigated by a Sage? Because of a vow which does not have to be investigated by a Sage. Some Tanna'im state: She is allowed to marry without a bill of divorce. Some Tanna'im state: She is forbidden to marry without a bill of divorce. They wanted to say that he who says, she is allowed to marry without a bill of divorce is Rebbi Eleazar, and he who says, she is forbidden to marry without a bill of divorce are the rabbis. Everything follows the rabbis. He who says, she is forbidden to marry without a bill of divorce, 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. What is the reason of him 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 became bastards. Therefore she is forbidden to marry without a bill of divorce.

"If he married her definitively without inquiry". 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 definitively silently. 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 he 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.
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 Hamai 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." Is this not 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." Rebbi Eleazar bar Hanina said, for example such a Gordianic denar: its measure is half a ubiquitous gold piece. Rebbi Radifa, Rebbi Jonah: Rebbi Jeremiah asked: A bald woman with a row of hair going from one ear to the other? 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 beautiful for a woman and a defect for men, and we did not state: In addition, for a man women's breasts.

**Mishnah 6**: Somebody who preliminarily marries two women with the value of a *perutah*, or one woman with the value of half a *perutah*\(^{129}\), is not preliminarily married even if afterwards he sent presents\(^{130}\), since he
sent them based on the earlier preliminary marriage. The same holds for an underage boy who contracted a preliminary marriage.

129 Even though it is possible to contract a multiple polygamous marriage with a group of women by giving the marriage gift to one of them who acts as the agent for all of them, the gift must be worth as many perutot as there are women to be married.

130 Worth much more than a perutah.

131 If he contracts the preliminary marriage when underage and sends presents to the woman after he came of age he is not preliminarily married.
Halakhah 6: "If somebody preliminarily marries two women with the value of a perutah," etc. It was stated\textsuperscript{132}: "In all these cases, if they had intercourse they acquired\textsuperscript{133}. Rebbi Simeon [ben]\textsuperscript{134} Jehudah says in the name of Rebbi Simeon: In all these cases, if they had intercourse they did acquire\textsuperscript{135} since his intercourse was predicated on the preceding preliminary marriage.\textsuperscript{136}" What did they acquire\textsuperscript{137}? Rebbi Hiyya in the name of Rebbi Johanan: They acquired for restrictions\textsuperscript{138}. Rebbi Hiyya in the name of Rebbi Johanan: With any condition which refers to a preceding action\textsuperscript{139}, she is preliminarily married for restrictions. Rebbi Mana asked before Rebbi Yudan: Who is the Tanna who stated: "Any condition which refers to a preceding action is invalid"\textsuperscript{140}? This does not follow Rebbi Simeon\textsuperscript{141}. Rebbi Yudan in the name of Rebbi Johanan: She is preliminarily married for restrictions. How is that: "I am marrying you preliminarily by intercourse on condition that rains should fall."\textsuperscript{142} If rain fell, she is preliminarily married, otherwise she is not preliminarily married. Rebbi Hiyya in the name of Rebbi Johanan: In matters of a preliminary marriage by a loan\textsuperscript{143} for restrictions, for real estate it was not acquired\textsuperscript{144}, for movables one does not deliver him to "Him Who exacted retribution."\textsuperscript{145} If [the buyer] insists on the deal? Let us hear from the following: "You have wine to get from me, when he had no wine."\textsuperscript{146} Therefore, if he had wine he would be obligated to deliver. Rebbi Hiyya stated, if he has wine he is obligated to deliver. Rebbi Samuel ben Rav Isaac did (not)\textsuperscript{147} say there\textsuperscript{148}: You should know that Rebbi Hiyya instructed following Rebbi Johanan that a preliminary marriage by a loan is for restrictions. Rebbi Ze'ira resented it. Why? Because they were restrictive in practice and he taught them leniency\textsuperscript{149}?"
Rebbi Yose ben Rebbi Abun said, they were lenient in practice\textsuperscript{150} and he taught them to be restrictive, that if another man came and married her preliminarily, his marriage would hold. Rebbi Yudan ben Rebbi Hanan said, if there is a doubt between adultery and no adultery, decide on no adultery\textsuperscript{151}.

\textsuperscript{132} Tosephta 4:4; Babli \textit{Ketubot} 73b.

\textsuperscript{133} The invalid marriage was validated retroactively by the couple living together.

\textsuperscript{134} Reading of the parallel sources. The ms. tradition of the names in the mss. of the Babli is varied and quite uncertain.

\textsuperscript{135} In the Babylonian sources (Note 132): Did not acquire. Probably the text here should not be emended.

\textsuperscript{136} Since preliminary marriage is a formal act of acquisition, it needs intention of the acquirer. If there is no intention because the acquirer wrongly thought that he already had acquired, there is no acquisition. This is the reasoning behind the Babylonian statements.

\textsuperscript{137} Since the argument of R. Simeon is based on generally accepted principles, it is difficult to see what he understands by "acquiring".

\textsuperscript{138} A single woman can be married to any man not forbidden to her by incest prohibitions. A married woman cannot be married by any other man; if another man gives her a gift for preliminary marriage and she accepts it, these actions have no consequence whatsoever in law. But a woman preliminarily married for restrictions is not married in this sense. As explained later in the Halakhah, if another man performs preliminary marriage with her, his action is potentially valid in law; the woman is forbidden to both men until at least one of them validly divorces her. But for the anonymous Tanna the marriage is unconditionally validated by intercourse.

\textsuperscript{139} If the preliminary marriage was performed unconditionally and then the husband added a condition, that condition is invalid, as stated later. But in marriage law, the condition is considered valid if it causes any trouble.

\textsuperscript{140} Mishnah \textit{Baba mesi'a} 7:14. In contract law, an action already completed cannot retroactively be made conditional. If someone married
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a woman and after the fact declares that the marriage shall be valid only if she will support him, the marriage is valid but she has no obligation to support her husband.

141 Since (Note 139) he accepts legal consequences of conditions attached after the act.

142 One has to wonder why this marriage should not be invalidated as an idolatrous act or at least as rainmaking by sympathetic magic.

143 Which is invalid for R. Meïr, cf. Note 62. It is decided here that a preliminary marriage for which nothing of value changes hands is valid only as a restriction (Note 138).

144 If a debt be liquidated by handing over real estate without a contract, the deal is invalid.

145 Cf. Chapter 1, Note 106. A contract for sale of movables for which no money changes hands and no action of acquisition is performed is unenforceable. (The entire statement with slight variations is quoted in Sefer Ha'ittur 1, nb b, Note 6.)

146 This refers to Mishnah Baba mešī'a 5:1: A person made a contract for later delivery of grain at the then going rate of 25 denars a kur (30 se'ah). The buyer demanded delivery when the going rate was 30 denars a kur, in order to sell the grain and invest the proceeds in wine. The seller told him that he was ready to take the grain at 30 denars and to give him wine instead. If the seller actually has the wine, this is a valid deal. But if the seller has no wine at that moment, the deal would be an illegal circumvention of the prohibition of interest payments.

147 It seems best to delete this word. The emendation of the standard commentaries, to read נשל for של does not make sense since נשל "he sent (by letter) said (in person)" is a contradiction in terms.

148 "There" usually refers to Babylonia.

149 They considered preliminary marriage by cancellation of a debt as invalid. R. Samuel ben Rav Isaac gave them a handle to validate the marriage.

150 They considered preliminary marriage by cancellation of a debt as valid. R. Samuel ben Rav Isaac instructed them to consider the marriage only probationary; if another man interferred between preliminary and definitive marriages, a bill of divorce would be required from at least one of the men involved.

151 This is the same statement as the preceding. In a case where it is doubtful whether a woman is married
and therefore immune to all proposals of marriage by another man, or is not married and open to such proposals, one has to decide that she might be open to proposals and eventually require bills of divorce from all parties involved.

Mishnah 7: If somebody preliminarily marries a woman and her daughter\(^{152}\) or two sisters\(^{153}\) simultaneously\(^{153}\), they are not preliminarily married\(^{154}\). It happened to five women, among them two sisters, that a man collected a bag of figs from their own property in the Sabbatical year and said: All of you are preliminarily married to me by this bag, and one of them accepted for all of them. Then the Sages said, the sisters are not preliminarily married\(^{156}\).

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152 Forbidden in Lev. 18:17.
153 Forbidden in Lev. 18:18.
154 If the action was not simultaneous, the first marriage would be valid and the second meaningless because impossible.
155 Since the simultaneous marriage to two closely related women is impossible, it is invalid, and the two women may marry other men without bills of divorce.
156 The invalidity of the act for the two sisters has no influence on the validity for the others. Naturally the woman who acts as recipient cannot be one of the sisters.
Halakhah 7: "If somebody preliminarily marries a woman and her daughter," etc. Rebbi Hiyya bar Abba said, one understands from this five rules: One understands that five women can be preliminarily married simultaneously. That a woman may receive her own wedding gift and that of her companion. And one may use the spoils of robbery for a preliminary marriage. And one may preliminarily marry using produce acquired by a prohibited act. And preliminary marriage is impossible in incest situations.

157 Since the Mishnah stated that the figs were the property of the women being married. It also states that this happened in a Sabbatical year. Since the produce of a Sabbatical year is ownerless, the Mishnah seems to contradict itself. One will have to explain that the women collected the figs and acquired them by the act of collection. Then the man came and took them away from them. The Mishnah only implies that a woman may be preliminarily married by objects robbed from herself since by accepting marriage she forgives the robber. It does not imply that objects obtained by robbery can be used to marry an uninvolved woman.

The Babli, 52a, comes to an opposite conclusion. It assumes that the figs grew in the women's orchard and were collected as ownerless produce by the man. Then the conclusion is that in any other year the marriage would have been invalid, even involving the owners of the robbed object.

158 Sabbatical produce can only be used to be eaten under the rules of the Sabbatical. Using such produce for an act of acquisition is illicit. Nevertheless, the act remains valid.
Rebbi Eleazar said, sisters are not preliminarily married but in the case of purification sacrifices it atoned\(^{159}\). How is that? If one slaughtered two purification offerings for one transgression\(^{160}\), the altar selects that which is appropriate\(^{161}\); both are forbidden to be eaten\(^{162}\). If one slaughtered two reparation offerings for one damage, the altar selects that which is appropriate; both are forbidden to be eaten\(^{163}\). Rebbi Ze'ira in the name of Rebbi Johanan: If the first\(^{164}\) one was slaughtered not for its purpose but the second for its purpose, it did atone since the first, which was not for its purpose, becomes acceptable only through the purpose stated later\(^{165}\). But if the first was slaughtered for its purpose but the second not for its purpose: if the first atoned for what may the second atone? For impurity which occured between the first and the second\(^{166}\). But for Passover sacrifices it did not atone\(^{167}\) since the Passover sacrifice is only for the meat to be eaten. This does not follow Rebbi Nathan since Rebbi Nathan said, one fulfills one’s duty by sprinkling [the blood] without eating\(^{168}\).
If a person simultaneously slaughters two purification sacrifices for one transgression, he has fulfilled his obligation. (Mishnah Me'ilah 1:2 describes this situation: A person dedicated an animal as purification sacrifice. Then this animal was lost, another was dedicated as replacement, and then the first one was found before the second was sacrificed. Each of the animals becomes the replacement of the other.) This statement is nontrivial since as a general rule an animal dedicated as purification sacrifice but whose owner then used another animal for the same purpose can no longer be used for anything.

Simultaneously.

Expression of Mishnah Zebahim 9:1. Since both sacrifices have equal standing, there is no reason to prefer one to the other. Only selected parts of the purification offering are given to the altar; the remainder of the meat has to be eaten by the priest (Lev. 6:17-23).

The priests are commanded to eat the meat of the animal which effects the purification. But in this case it is impossible to determine which animal effects the purification.

The rules of reparation sacrifices follow those of purification sacrifices; Lev. 7:7.

This deals with a separate case, that the animals were slaughtered one after the other.

Mishnah Zebahim 1:1 states that both purification and Passover sacrifices which were slaughtered not for their stated purpose are invalid and cannot be offered to the altar. Normally, a purification offering which is invalidated at the time of slaughter is burned outside the Temple precinct and another sacrifice is required independent of the first. But if the second sacrifice is slaughtered correctly immediately after the first, when its flesh is still in the Temple precinct, then the correct slaughter of the second rehabilitates the first, both sacrifices have their selected parts offered on the altar, and both are forbidden as food to the priests.

This answer makes more sense in Sebuot 1:4 (33b 1.4) where the relative merit of the purification sacrifices on New Year's day are discussed, one required for the New Moon and one for the holiday. If one sacrifice purifies, what is the use of the second? To atone for impurities which might have occurred in the meantime. In the case discussed here, the second sacrifice is invalid and useless.
167 The Passover sacrifice does not atone. He holds that people who bring a Passover sacrifice which cannot be eaten did not fulfill their duty.

Mishnah Pesahim 7:4.

168 Pesahim 7:5 (34b l. 45), Babli 78b.

Mishnah 8: If somebody uses his portion either from most holy or simply holy sacrifices for preliminary marriage, she is not preliminarily married. From Second Tithe there is no preliminary marriage whether unintentionally or intentionally, the words of Rebbi Meir. Rebbi Jehudah says, intentionally he performed preliminary marriage, unintentionally he did not perform preliminary marriage. From Temple property, intentionally he performed preliminary marriage, unintentionally he did not perform preliminary marriage, the words of Rebbi Meir. Rebbi Jehudah says, unintentionally he performed preliminary marriage, intentionally he did not perform preliminary marriage.

169 The parts of most holy sacrifices (purification and reparation sacrifices) that are eaten are reserved for male Cohanim in the Temple precinct, off limits to women. The Cohen's part of simple sacrifices (well-being sacrifices) are eaten by the Cohen's family in purity. Since a woman by preliminary marriage becomes "bought by the Cohen's
money", she might eat from these parts. But everybody agrees that sacrificial meat never is the Cohen's property but that the Cohanim "eat from the Almighty's table." Since the Cohen's part is not his property, it cannot be used in a marriage transaction. Cf. Ma'aser Šeni 1:2, Note 65.

170 Which is eaten by the farmer's family in Jerusalem; cf. Introduction to Tractate Ma'aser Šeni. (First Tithe is profane in the Levite's hand.)

171 At the moment of the transaction neither man nor woman was aware that the gift was one of Second Tithe.

172 He holds that Second Tithe is Heaven's property in the hand of the farmer.

173 In his opinion, Second Tithe is the farmer's property but is reserved for sanctified use. If the farmer intentionally misused Second Tithe as marriage gift, he desecrated it. The tithe becomes profane and the farmer has to replace it in the statutory amount of 125%.

174 If the use was unintentional, the tithe is not desecrated but cannot be used.

175 The intentional use of Temple property for private purposes is sacrilege and desecrates the property, which becomes profane.

176 In R. Me'ir's opinion, Temple property becomes profane only by intentional profanation.

177 He extends the rules of Lev. 5:14-16 to all Temple property. The inadvertent use of Temple property constitutes larceny which requires a reparation offering and restitution in the amount of 125%, but the object taken becomes profane and, therefore, can be used as marriage gift.

178 Since intentional sin cannot be atoned for by sacrifice (Num. 15:30), the rules of Lev. 5:14-16 cannot apply.
Rebbi Eleazar said, it is everybody’s opinion. Rebbi Johanan said, it is in dispute. There, we have stated: "One may sell a firstling unblemished alive, blemished alive or slaughtered, and one may use it for preliminarily marrying a woman."

Rebbi Jehudah bar Pazi in the name of Rebbi Joshua ben Levi: Alive, but not slaughtered. And Rebbi Jehudah bar Pazi said, Rebbi Meir learns all sacrifices from animal tithe. Just as one may not become betrothed to a woman with animal tithe, so no sacrifices may be used to become betrothed to a woman. Rebbi Jehudah learns all dedicated things from the firstling. Just as one may become betrothed to a woman with a firstling, so all sacrifices may be used to become betrothed to a woman. The opinion of Rebbi Jehudah bar Pazi is inverted. There, he says, alive or slaughtered. But here, he says alive, but not slaughtered. There in his...
own name, here in the name of Rebbi Joshua ben Levi. Even if you say there and here in his own name; if he becomes betrothed while it is still alive and with what is scheduled to fall to him. After slaughter, what is the reason of Rebbi Joshua ben Levi? (Num. 18:18): "Their meat shall be for you, like the breast of weaving." And what is the reason of Rebbi Jehudah ben Pazi? "Shall be for you", even after slaughtering. How does Rebbi Joshua ben Levi uphold "shall be for you"? He added another **being** that it should be eaten during two days and one night.

179 The statement that the Cohen's share of simple sacrifices may not be used as a marriage gift.

180 Mishnah Ma'aser Šeni 1:2, Notes 43-44. The firstling becomes the Cohen's property at the rancher's corral, outside the Temple precinct.

181 From here to the end of the paragraph, the text is from *Ma'aser Šeni* 1:2, Notes 63-69 (א). The only major addition is a quote of the Mishnah here.

182 The text is misquoted here, correct in *Ma'aser Šeni*. 
There, we have stated: "Hallah of the am haaretz, food containing heave, food bought with money of the Second Tithe, and the remainders of flour sacrifices are free from demay."

It was stated: "Concerning all of these, if he gave a name to their heave of the tithe or Second Tithe, what he did is done." Rebbi Eleazar said, with the exception of the remainders of flour sacrifices. Rebbi Jeremiah said, the rest is in dispute. Rebbi Yose asked, what dispute? Where are we standing, if according to Rebbi Meïr, both for Second Tithe and for the remainders of flour sacrifices, he did not do anything. If according to Rebbi Jehudah, what he did is done. Rebbi Mana said, I went to Caesarea and heard Rebbi Hizqiah who was sitting there, stating: "If [a priest] preliminarily marries by means of his share in the holiest sacrifices or simple holy sacrifices, she is not married." Rebbi Eleazar said, that is everybody's opinion. Rebbi Johanan said, it is in dispute. I said to him, from whom did you hear this, and he said, from Rebbi Jeremiah. I said, this explains the matter! Rebbi Jeremiah, who heard that Rebbi Eleazar said, it is everybody's opinion, he says it is in dispute. Rebbi Yose, who did not hear that, asked which dispute? If according to Rebbi Meïr, both for tithe and for the remainders of flour sacrifices, he did not do anything; if according to Rebbi Jehudah, what he did is done.
When Rebbi Meïr expired, Rebbi Jehudah decided and said, Rebbi Meïr’s students shall not enter here. Symmachos squeezed by and entered. He said, "Most holy sacrifices for preliminary marriage," how could a woman enter the Temple courtyard? He said to him, if he contracts preliminary marriage through an agent. By what does he contract preliminary marriage? Rebbi Eleazar said, by its body. Rebbi Johanan said, by the goodwill created. Or we might say that they do not disagree. When Rebbi Eleazar said, by its body, [he meant] by the expected goodwill from it. Rebbi Hizqiah, Rebbi Bevai in the name of Rebbi Eleazar: One may contract preliminary marriage with a perutah from Second Tithe.

185 Babli 52b, Nazir 49b. In the version of the Babli, Symmachos quoted R. Meïr’s Mishnah in R. Jehudah’s school, R. Jehudah objected that most holy sacrifices are distributed at a place reserved to male Cohanim, and R. Yose gave the answer attributed here to R. Jehudah.
sacrifices since all are forbidden.

186 According to the Babli, it also could be a transaction between an unmarried Cohen and the Cohen father of an underage girl. Then not even an agent is needed.

187 The meat itself, given from one Cohen to another. Then the question arises with whom a Cohen possibly could trade most holy meat.

188 The goodwill created by a gift of meat might be worth a perutah. Goodwill is immaterial, not subject to the restrictions imposed on sancta.

189 To avoid the question raised in Note 187.

190 Second Tithe is agricultural produce. It may be redeemed by money, which transfers the sanctity from the produce to the coin (Deut. 14:25). But only the original produce is called "holy" (Deut. 26:13); the replacement is functionally but not intrinsically holy. Therefore, the money may be given as marriage gift to a woman in Jerusalem who may buy food with it for consumption in purity.

"With Second Tithe." Rebbi Abbahu in the name of Rebbi Johanan: He did not intend to transgress the words of the Torah.191 Rebbi Ze'ira said, in one case he did not intend, in one case she did not intend.192 Rebbi Jonah said, the sanctified he did not intend, Second Tithe she did not intend.193 Rebbi Abin said, the sanctified neither he nor she did intend;194 Second tithe he did intend but she did not.194,196

191 One has to explain why Second Tithe cannot be used as marriage gift in error according to R. Jehudah. If the groom did not intend to acquire the Second Tithe, he cannot give it away.

192 The rules for both Temple
property and Second Tithe can be explained in the same way. R. Jonah and R. Abin try to understand what R. Ze’ira meant.

193 Misappropriation of Temple property is characterized as a sin in Lev. 5:15-16. One cannot assume that a man intentionally wants to sin. Therefore, for R. Meir one has to assume that the marriage is invalid, for R. Jehudah that it is valid. Both will agree that if the groom is interviewed and he insists that he intentionally misused Temple property, then for R. Meir the marriage is valid, for R. Jehudah it is invalid (Notes 175,177).

194 No woman wants to be married by produce which she will be obligated to bring to Jerusalem before it can be used. According to the undisputed opinion of R. Eleazar (Note 190), the Mishnah must speak of produce which is Second Tithe, not of money for which the tithe was redeemed.

195 Nobody wants to start his marriage with a blatant sin.

196 In the Babli, 53b, this opinion is attributed to R. Johanan.

197 But did we not state: “In error,” that excludes intention? That you say for the additional fifth and the sacrifice, but profaned it is.

198 Rebbi Hama bar Uqba in the name of Rebbi Yose ben Hanina: The excluded well-being offerings become profane without redemption. But did we not state:

199 "From the sancta," not all sancta? That you say for the additional fifth and the sacrifice, but profaned it is.
This explains why for R. Meïr a marriage effected by intentional misuse of Temple property is valid.

Sifra Wayyiqra Parašah 11(8), (Babli Pesahim 32b) referring to Lev. 5:15 dealing with larceny committed with sacrifices or Temple property, explicitly restricted to unintentional sin.

Since intentional sin is excluded from expiation by sacrifice, the rules of Lev. 5:14-16 do not apply.

Well-being offerings, which remain the property of the donor and of which only a small part is given to the altar and the priests, is excluded from the rules of Lev. 5:14-16, as will be explained immediately following.

Sifra Wayyiqra Pereq 20(1), referring to Lev. 5:15, speaking of larceny committed "from the Eternal’s sancta". In rabbinic interpretation, prefix מ or מ always implies "some, not all". In this case, the verse is taken to refer to "the Eternal’s sancta", no part of which is private property. This excludes well-being and other simple sacrifices but includes sacrifices given to the priests since these offerings always remain Heaven’s property (cf. Note 169).

There, we have stated: "An animal that is found as from Jerusalem to Migdal-Eder in every direction." The elder Rebbi Hoshiaia said, this was taught for their monetary value. Rebbi Johanan said to him, does one say to a person, go and commit larceny with sacrifices? But in...
every case\textsuperscript{206} they followed the majority of cases: If most are male, they are elevation offerings, if most are female, well-being offerings. But do not well-being offerings come from males and females? What does he do? He redeems them as profane and then turns them into elevation offerings\textsuperscript{207}. This is difficult. Can a purification offering\textsuperscript{208} become an elevation offering? Rebbi Hanina said, it is a stipulation by the court that all redundant animals should be brought as elevation offerings\textsuperscript{209}. Rebbi Yose said to Rebbi Jacob bar Hama, is that not intentional [misuse]? He said to him, since it is a stipulation by the court, it is not intentional [misuse]. Rebbi Ze'ira said, as you say there, it is a stipulation by the court that lost animals should be brought as elevation offerings\textsuperscript{210}.

\textsuperscript{202} Mishnah \textit{Seqalim} 7:4. The present paragraph has a parallel there in Halakhah 7:6 of which, however, it is not a direct copy.

\textsuperscript{203} If an animal which is a potential sacrifice (cattle, sheep, or goats) is found ownerless near Jerusalem, one may assume that it was dedicated as sacrifice but escaped from its owner. Elevation offerings must be male (\textit{Lev.} 1:2,10); well-being sacrifices can be of either gender. Most well-being offerings were bought from redemption monies of Second Tithe. The Mishnah prescribes that male animals be used for elevation offerings, females for well-being offerings.

\textsuperscript{204} It is impossible to say that a male animal which was found ownerless should be taken as elevation offering since it might have been dedicated as well-being offering. The animal should be redeemed and the redemption money used for an elevation offering. The same argument is given in the Babli, 55a.

\textsuperscript{205} It is impossible to redeem an unblemished dedicated animal (\textit{Lev.} 27:10). Any redemption is both sinful and ineffective. R. Hoshia'h's rule seems to be impossible.

\textsuperscript{206} The animal itself should be used for what was its most probable dedication.

\textsuperscript{207} One follows both R. Hoshia'h and R. Johanan. The animal is first
redeemed and then rededicated; this precludes the sin of freeing a dedicated animal and removes the prior specific dedication. (In the Babli, 55b, R. Johanan holds that the redemption of unblemished animals is never possible. He requires that the animal be put out to graze until it develops a blemish; then it can be redeemed and the proceeds used for another sacrifice.)

This reading is unacceptable since purification offerings are female (Lev. 4:28,32). One must read: "well-being offering." This argument is missing in Seqalim.

Therefore, it is part of every dedication of any male animal that, if not needed for its original purpose, it should be used as an elevation offering.

It is also part of every dedication of any male animal that, if lost and then found by another person, it should become an elevation offering.

Mishnah 9: If a man performs preliminary marriage using 'orlah, or kilaim of a vineyard, or an ox sentenced to be stoned, or a calf whose neck was broken, or the birds of a sufferer from skin disease, the hair of a nazir, or the first-born of a she-ass, or meat cooked in milk, or profane meat slaughtered in the Temple precinct, [the woman] is not preliminarily married. If he sells any of these items and uses their proceeds for preliminary marriage, she is preliminarily married.

The fruit of a tree in the first three years after planting whose usufruct is forbidden (Lev. 19:23-24; cf. Introduction to Tractate 'Orlah.) The entire list consists of items forbidden for usufruct. Since marriage is to the man's advantage, items forbidden for usufruct cannot be used as marriage
gifts.

212 While mixtures of seeds are always forbidden (cf. Introduction to Tractate Kilaim), only foreign produce in a vineyard is forbidden for usufruct (Deut. 22:9).

213 An animal which killed a human (Ex. 21:28,29).

214 To atone for an unsolved murder (Deut. 21:1-9); cf. Tractate Sotah, Chapter 9.

215 The two birds the recovered sufferer from skin disease needs for his purification (Lev. 14:1-7).

216 Which must be burned when his sacrifice is cooked, Num. 6:18.

217 This is forbidden for usufruct only before it was redeemed by a lamb, or whose neck broken. Ex. 13:11-13.

The question of the biblical root of the prohibition of usufruct is raised in the Halakhah.


219 Forbidden for usufruct by rabbinic interpretation.

220 While the sale is sinful, the coins received in payment are not forbidden.

Halakhah 9: "If a man performs preliminary marriage using 'orlah, or kilaim of a vineyard," etc. The first-born of a she-ass, Rebbi Eleazar said,
may be used to preliminarily marry a woman; Rebbi Johanan said, it may not be used to preliminarily marry a woman. Rebbi Immi in the name of Rebbi Eleazar: The first-born of a she-ass may be used to preliminarily marry a woman by an argument *de minore ad majus*. Since you say that a firstling, whose prohibition cannot be lifted during its lifetime, can be used to preliminarily marry a woman, this one, whose prohibition can be lifted during its lifetime, not so much more? What is the difference between them? If somebody transgressed and redeemed it without the knowledge of its owner. Rebbi Eleazar said, it is not redeemed. Rebbi Johanan said, it is redeemed. A *baraita* supports Rebbi Eleazar and disagrees with him. A *baraita* supports Rebbi Eleazar: If somebody steals the first-born of another person's she-ass, he has to pay double restitution. The end disagrees with him: For even though he has no interest in it now he will later. The Mishnah disagrees with Rebbi Eleazar: One may not use the first-born of a she-ass to preliminarily marry a woman. Rebbi Eleazar explained that, after breaking of [the foal's] neck. For Rebbi Eleazar said, everybody agrees that after its neck was broken it cannot be redeemed.

221 The firstlings of cattle, sheep, or goats (the animals admitted to the altar) must be given to a Cohen. If without blemish, the animal must be sacrificed and eaten by Cohanim. If blemished, it remains the property of the Cohen and may be eaten by any Jew. In both cases, the living animal cannot be used for any work. The only use permitted is as sanctified or profane food; as far as use goes it is forbidden during its lifetime and becomes permitted by slaughter. But the firstling of a she-ass is supposed to be redeemed by the gift of a lamb to a Cohen; by this act, the donkey becomes totally profane and can be put to work immediately.

222 What additional differences does one find between Rabbis Eleazar
and Johanan?

223 A third party gave a lamb to a Cohen to redeem the firstborn of the she-ass, without knowledge of the latter's owner.

224 For R. Eleazar the unredeemed donkey is his owner's property; it cannot be redeemed without the owner's knowledge. For R. Johanan the unredeemed donkey is not the owner's property, being forbidden for the latter's usufruct, but it can be redeemed by a third party.

225 Quoted in the Babli, Bekhorot 11a. The translation follows the Babli in reading \( \text{"in it" instead of \"son\" of the ms.} \)

226 This implies that the unredeemed firstling represents property value, agreeing with R. Eleazar.

227 The second half of the baraita quoted, Note 225.

228 Since by giving a lamb to the Cohen the owner can establish ownership of the donkey. This agrees with R. Johanan's opinion that the unredeemed firstling donkey is not his owner's property.

229 A paraphrase of Mishnah 9.

230 If the owner prefers to break the neck of his firstling donkey rather than give a lamb to a Cohen, R. Eleazar agrees that by this act he has lost his ownership and the carcass is forbidden for any usufruct. The Babli agrees in the name of Babylonian authorities, 57b; Bekhorot 10b.
One may not use the first-born of a she-ass to preliminarily marry a woman, but Rebbi Simeon permits it. That disagrees with Rebbi Eleazar in two respects. If during its lifetime, it disagrees following the rabbis; if after breaking its neck, it disagrees following Rebbi Simeon. Rebbi Hanina in the name of Rebbi Yudan: Explain it that it died. If he broke its neck, it is forbidden for usufruct, but Rebbi Simeon permits it.

"Breaking the neck, breaking the neck." Since "breaking the neck" mentioned there implies that one has to break its neck, bury it, and it is forbidden for usufruct, so "breaking of the neck" mentioned here implies that one has to break its neck, bury it, and it is forbidden for usufruct.

Following Rebbi Eleazar it is understandable. He permits during its lifetime; he needs an argument to forbid it after the breaking of the neck. Following Rebbi Johanan it is difficult. If it is forbidden during its lifetime, not so much more after breaking of its neck? There came Rebbi Jacob bar Aha in the name of Rebbi Johanan, Rebbi Ze'ira in the name of the rabbis: It is needed following the rabbis, lest you say that since the Torah combined the breaking of its neck with its redemption, it is forbidden for usufruct, so "breaking of the neck" makes it profane. Do we find anything whose lifting makes profane and which is forbidden for usufruct? They objected: There is tevel containing the tithe of the poor which becomes totally profane by its containing the tithe of the poor.
lifting; but Rebbi Abba, Rav Huna said in the name of Rebbi: A person eating produce which is tevel for the tithe of the poor is guilty of a deadly sin. The rabbis of Caesarea in the name of Rebbi Jeremiah: So the rabbis answer Rebbi Simeon: Do we find anything that needs redemption and is permitted for usufruct? He replied to them: There is the first-born human who needs redemption and is permitted for usufruct.

This is a new baraita; in slightly different formulation it appears in the Babli, Bekhorot 10b-11a.

The baraita does not specify the status of the firstling. It is clear that after redemption the firstling is profane and can be used as a marriage gift. If the baraita speaks of the living unredeemed firstling, it contradicts R. Eleazar’s statement that it can be given as marriage gift. If it refers to the dead firstling, the assertion that R. Simeon permits its use contradicts the statement that everybody prohibits the dead firstling.

It died a natural death before being redeemed. In this version, R. Simeon will agree that usufruct is forbidden after its neck was broken. This is the Babli’s explanation, loc. cit. Note 230.

A new baraita, Babli Bekhorot 10b; Mekhilta dR. Ismael Pisha 18 (Horovitz-Rabin p. 71); Mekhilta dR. Simeon ben Iohai 13:13 (Epstein-Melamed p. 43). Then the comparison is between breaking the neck of the firstling and of the calf which atones for an unsolved murder. Since the calf has to be buried and its grave is forbidden for all usufruct (Sotah 9:5, Note 132) it is clear that the carcass itself is forbidden for all usufruct.

Added from all parallel sources and a Genizah fragment.

The prohibition of usufruct of the firstling after its neck was broken is far from clear from the biblical text. Redemption by a lamb or breaking the neck are mentioned in the same verse (Ex. 13:13, 34:20); one might assume that both follow the same rule. The same explanation is given in the Babli, Bekhorot 10b.

A Genizah fragment adds here:
Therefore it was necessary to say "breaking the neck, breaking the neck." R. Jacob bar Aha in the name of Rebbi Y[ohanan]... one undertands this for the Sages.

The text seems to be redundant; its omission in the Leiden text may be original.

237 This challenges R. Johanan's position that the living unredeemed firstling is forbidden for ususfruct. In comparable cases, untithed produce (tevel) or sacrificial animals which developed a blemish, redemption transfers holiness to the redeeming object. But in the case of the donkey both it and the redeeming lamb are totally profane.

238 In general, tevel is produce from which either the required heave or the tithe was not taken; its consumption is sinful. The tithe of the poor is due in the third and sixth years of a Sabbatical cycle, when no Second Tithe is due. Its only claim to biblical status is from Deut. 14:28. Second Tithe, which must be eaten near the Sanctuary, has a status of holiness; produce from which Second Tithe was not taken is recognized as tevel (Ma'aser Šeni 3:5, Notes 61ff.) But the tithe of the poor is totally profane; produce from which this tithe was not taken is referred to as tevel only here.

239 It seems that one should read "Rav" instead of "Rebbi".

240 Any dedicated animals which become disqualified as sacrifices are forbidden for all use before being redeemed.

241 A first-born human male whose father did not redeem him by giving five šeqalim to a Cohen must redeem himself when adult, but nowhere is there any restriction on his earning power before redemption.

κρά̂-visible

יהוֹנאתון. רבי חָגוֹגִי אָמַר. בַּעֲזָרָא מַהְמָכָּה בָּפַּרְאָה. רֵבי שֵׁיָּה בָּשֶׁם רֶבֶּי שְׁנֵהוֹא. בֵּשָׁלָה.(63a line 72)

"If he sells any of these items and uses their proceeds for preliminary marriage, he is married." Rebbi Ḥaggai in the name of Rebbi Ze'ira: Because it is not its proceeds. Rebbi Ḥanina said, this means that one cannot marry preliminarly with [the proceeds of] robbery242.
This paragraph is quoted by Rosh (Qiddusin 2, #31) as follows:

"Rebbi Haggai in the name of Rebbi Ze'iri: Because [the prohibition of usufruct] is not transferred to its proceeds. Rebbi Hanina said, this means that one can marry preliminarily with [the proceeds of] robbery."

However, Ran (Novellae Baba mesi'a 7:1), Rashba (Novellae ad 57b), Ritba (Novellae ad 56b), and Meïri (Bet Habehira Qiddusin, ed. A Sopher, p. 261) all read the statement of R. Haggai in the version of the Leiden ms. but that of R. Hanina in the version of Rosh. [It seems that most authors did not have access to the Yerushalmi but copied from Ran (R. Nissim Gerondi); they cannot be counted as independent sources.] His arguments and those of the other medieval authorities are discussed in great detail and at length by J. Rosanes (Mishneh Lammelekh, Maimonides Hilkhot Iššūt 5:7). In the opinion of the Babli (Rashi Hulin 4a, 'Avodah zarah 54a), the prohibition of usufruct is not transferred to the (illegitimate) proceeds except in the cases of idols and Sabbatical produce. However, our ms. sources (including the Constantinople print edition) do not support Ran's reading of R. Hanina; one has to accept the ms. reading as it stands.

The statement of R. Haggai is straightforward and was explained by Ran. Since objects forbidden for usufruct are worthless, the money received by the seller was not payment for the object. Since it was necessary to point out that the marriage was valid, it follows that if the money had been given in exchange for an object acquired unlawfully, the marriage would be invalid.
Mishnah 10: If a man perform preliminary marriage using heaves\textsuperscript{243}, or tithes\textsuperscript{244}, or gifts to priests\textsuperscript{245}, or money for purification\textsuperscript{246}, or the ashes of purification\textsuperscript{247}, she is married even if he is an Israel\textsuperscript{248}.

243 Which can be consumed only by a Cohen.

244 Which either are given to a Levite, or a poor person, or must be eaten in purity in Jerusalem.

245 From slaughtered profane animals, prescribed in Deut. 18:3.

246 It is not clear what this money represents; probably the sums of restitution mentioned in Lev. 5:16, Num. 5:8; cf. 2K. 12:17. In the Babli, most independent Mishnah mss., and in the Halakhah one reads מִי חַשָּׁא "purification water", the water used in the purification rite of Num. 19.

247 Ashes from the burning of the Red Cow, Num. 19. This is very precious material.

248 While an Israel and his wife have no use for most of these items, they can sell them to Cohanim. The items have value and can be used as marriage gifts.

249 Rebbi Yose ben Rebbi Hanina said, a person gives his tithes for the benefit of goodwill. What is the reason of Rebbi Yose ben Rebbi Hanina? (Num. 5:10) "Everybody shall be the owner of his holy things." How does Rebbi Johanan explain this? He may give them to whomever he likes.

249 This text is from Demay 6:3, explained there in Notes 59-76 and Nedarim 11:3, Note 46. It seems that the text in Demay is the original source.
A Mishnah disagrees with Rebbi Yose ben Rebbi Haninah: "A vow that no Cohanim or Levites should have any advantage from me: they should take against his will." He explains it about a person who says, I cannot possibly give them any gifts. You should know that this is so, since we have stated: "These Cohanim and Levites should [not] have any advantage from me; let others take." A baraita disagrees with Rebbi Johanan: "One may say, here you have a tetradrachma and give this firstling to my daughter's son, a Cohen." He explains, if he already wanted to give it to two Cohanim and that daughter's son was one of them; then one said, here you have a tetradrachma and give it whole to my daughter's son, a Cohen.
They asked before Rebbi Zeïra: a Cohen to an Israel, Rebbi forbids. What does Rebbi Yose say? He did not respond. Rebbi Hizqiah in the name of Rebbi Aha said, so he said to them: In the opinion of Rebbi Yose ben Rebbi Hanina, why is a Cohen to an Israel forbidden, not because it looks badly? Also Rebbi Johanan holds that from an Israel to an Israel it is forbidden because it looks badly. In addition, because of the following, as it was stated: "Cohanim and Levites who help at the threshing floor have no right either to heave or to tithe, and if the farmer gave, it is desecrated, as it is said (Lev. 22:15): 'They should not desecrate the sanctified things of the Children of Israel,' but they do desecrate them! In addition, they said that their heave is no heave, their tithes are no tithes, their dedications are no dedications, and about them the verse says (Micha 3:11): 'Their heads judge for bribes, their priests instruct for hire, etc.' The Omnipresent brings over them three catastrophes; that is what is written (Micha 3:12): 'Therefore, because of you Zion will be ploughed over as a field, Jerusalem will be desolate, and the Temple Mount a wooded hill.'
A Mishnah disagrees with Rebbi Johanan: "If a man performs preliminary marriage using heaves, or tithes, or gifts to priests, or water for purification, or the ashes of purification, she is married even if he is an Israel." He explains it with heave he inherited from his maternal grandfather, a Cohen.
Mishnah 1: If somebody said to another: go and marry me preliminarily to woman X, and [the agent] went and married her preliminarily himself, she is preliminarily married\(^1\). Also, if somebody said to a woman, you are preliminarily married to me after thirty days and another man married her preliminarily within these thirty days, she is preliminarily married to the second man\(^2\); as a daughter of an Israel married to a Cohen she may eat heave\(^3\). From today and after thirty days, and another man married her preliminarily within these thirty days, she is and is not preliminarily married\(^3\). As a daughter of an Israel married to a Cohen or daughter of a Cohen married to an Israel she may not eat heave\(^4\).

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\(^1\) A person who accepts agency does not by this act lose the ability to legally act in his own behalf. As long as the agent did not sign a contract which subjects him to a fine unless he execute what he promised, the principal may consider him a trickster but has no legal recourse.
2 At the moment at which the second man married her, she was legally single; his marriage is valid. After thirty days, when the first man’s preliminary marriage should enter into force, she already is a married woman. The preliminary marriage of a married woman to another man is nonexistent in law. It is not forbidden; only actions which exist in law can be forbidden.

3 If the groom is a Cohen, she is married to the Cohen; the existence of the first man is irrelevant. But if the first man gave her a wedding gift and said: you are preliminarily married to me now but the mutual legal obligations shall start only after 30 days (which would give the groom 13 months to arrange the definitive wedding), and if within these thirty days another man preliminarily married her unconditionally, neither of the two marriages can be unquestionably valid. Therefore, she needs valid bills of divorce from both men. [In Gittin 7:3 (Note 80) Rebbi disagrees and holds that the preliminary marriage of the second man disappears at the end of 30 days; this opinion is adopted by Samuel in the Babli, 59b, but not mentioned in the Yerushalmi Qiddusin.]

4 The daughter of an Israel can eat heave only if she is certainly married to a Cohen; the daughter of a Cohen can eat heave only if she certainly is not married outside the clan.
for me goods X, and [the agent] went and bought [the merchandise] for himself, he looks out for himself and is rewarded since his acquisition is valid, but he behaved treacherously. Rebbi Ze'ira cursed those who saw another person trying to buy certain goods and outbid him. Rebbi Abun in the name of Rebbi Ze'ira: Also about one who organizes a group against another, the rabbis quote: "A person who prevents a good thing coming to his neighbor abandons the fear of the Almighty."

5 Babli 58b.

6 The Babli, 59a, agrees in general but points out that an agent must have some flexibility in warding off claims by third parties; it might be to the advantage of the principal if the agent acquires for himself rather than let the property fall into hostile hands.

7 S. Lieberman [Tarbiz 4 (1937), p. 379] explains that simply by having a group of people showing interest, even if no competing bid ensues, the hand of the seller is strengthened and the buyer forced to increase his bid.

8 Job 6:14, interpretation of Targum. (In a Genizah fragment: "The rabbis of Caesarea quote.")

If the agent was not identified as such by the witnesses and he says, I married her preliminarily for myself, but she says, to the first, the second is like one who says to a woman: I married you preliminarily but she says, you did not marry me preliminarily. Also it is as if she said to the first, you married me preliminarily but he says, I did not marry you
preliminarily. If she says, I do not know, the presumption is in favor of the second. If the agent was identified as such by the witnesses and he says, I married her preliminarily for myself, but she says, to the first, the presumption is in favor of the first. If she said, I do not know, both of them give a bill of divorce or, if they so desire, one gives a bill of divorce and the other marries definitively.

9 The witnesses to the preliminary marriage say that they did not know that the male was appointed as agent and, therefore, they did not listen carefully whether the male stated that he was marrying the woman for himself or for a third party.

10 The case treated in Mishnah 11. The party which asserts the existence of the marriage is forbidden to marry any close relative of the other party. The party which denies the existence of a marriage is not forbidden to marry any close relative of the other party.

11 If the ceremony was not announced as one of marriage by proxy and nobody noticed anything unusual in the formulas being used, it was not a marriage by proxy and the woman is certainly married to the agent.

12 If the agent was announced as a proxy and nobody noticed anything out of the ordinary, it was a marriage by proxy.

Therefore, if the second died within thirty days or divorced her, the preliminary marriage of the first is activated after thirty days. If he died after thirty [days] without having divorced her, the preliminary marriage of the first is not activated. That is what Rebbi Hiyya stated: With any
condition which was fulfilled\textsuperscript{15}, even if later it becomes moot, she is preliminarily married. But with any condition which was not satisfied at the moment of preliminary marriage, even if later it became moot, she is not preliminarily married.

13 Referring to the second part of the Mishnah, about the man who stipulated that the preliminary marriage be effective only after 30 days.

14 If the second man was preliminarily married to her at the end of 30 days, the first preliminary marriage would be marriage to an already married woman; it is null and void. It cannot be reactivated even if the second man later dies.

15 At the time of the activation of the preliminary marriage.

Rebbi Abbahu in the name of Rebbi Johanan: "This animal shall be an elevation sacrifice after thirty days." If he sold it within the thirty days, it is sold; its dedication sanctifies\textsuperscript{16}. If he bought it back within the thirty days, the dedication as elevation sacrifice applies to it. After thirty days, the dedication as elevation sacrifice no longer applies\textsuperscript{17}. But an elevation sacrifice cannot be compared to a woman\textsuperscript{18}. Could an elevation sacrifice
be compared to a woman? Rebbi Ḥiyya bar Ada said, explain it that the second man died but he had a brother. Since she is a candidate for levirate, the preliminary marriage of the first cannot be valid. Could an elevation sacrifice be compared to a woman? Rebbi Mattania said, explain it that he dedicated an animal with a permanent defect. Rebbi Abun bar Ḥiyya asked before Rebbi Ze'ira: There you say, my promise to Heaven is like my delivery to a private person, and here, you say so? He answered him: there, immediately, but here if he says, after thirty days.

16 Since nobody can dedicate anything which is not his, the first dedication was invalidated by the sale; the buyer may use the animal for any sacrifice, not just as elevation sacrifice (*Nazir* 2:9, Note 120).

17 Since at the end of 30 days the animal was neither his property nor in his possession.

18 As R. Abun bar Ḥiyya notes later in this paragraph, dedications follow rules quite different from acquisitions; it is difficult to understand why the dedicated animal could validly be sold.

19 He died childless. While the widow is not automatically married to the levir, she is prevented from marrying any other man unless she receives *halîsah* from him. Therefore, the preliminary marriage of the first is void even if the second man, whose preliminary marriage was valid immediately, dies within the thirty days.

20 Then the dedication was not as elevation sacrifice but stipulated that the animal be sold and the money used as elevation sacrifice. In that case, it would not be necessary that the original owner buy the animal back but only that the buyer renounce his property rights before the end of 30 days.

21 Mishnah 1:6. If the animal is immediately delivered to the Temple, it cannot be sold.

22 Mishnah 1:6 does not exclude the case that a dedication (and the corresponding virtual delivery) be deferred.
Rebbi Abbahu in the name of Rebbi Johanan: "This shall be an elevation sacrifice for thirty days," it is an elevation sacrifice for thirty days; after thirty days it automatically becomes profane. What is its status regarding larceny? Rebbi Johanan said, the larceny is clear. Rebbi Ze'ira, Rebbi Hila both say, the larceny is in doubt. "You are preliminarily married to me for thirty days," she is preliminarily married.

What is the difference between dedication and woman? We find that a dedication can be eliminated without redemption but we do not find that a woman could leave without a divorce document. Where do we find that a dedication can be eliminated without redemption? Following Rebbi Simeon, since Rebbi Simeon says, "they enter without paying." Rebbi Yose ben Rebbi Abun said, explain it according to everybody regarding a bought field. "This is your bill of divorce for thirty days": it is no bill of divorce. Rebbi Isaac ben R. Eleazar said, when do you say that she is preliminarily married? If he effectuated the preliminary marriage by money. But if he effectuated the preliminary marriage by a document,
since marriage documents were inferred from divorce documents and in the case of a divorce she is not divorced, so in the case of a preliminary marriage she is not preliminarily married.

23 A different version, describing an animal designated as (most holy) elevation offering for 30 days and afterwards as (simply holy) well-being offering, is quoted as tannaïtic text in the Babli, Nedarim 29a.

24 An animal dedicated as sacrifice is forbidden for all use; it cannot be used for work, nor can it be shorn for its wool. The question is whether illicit use of an animal temporarily declared a sacrifice triggers the penalties spelled out in Lev. 5:14-16.

25 Since during the 30 days it is a sacrifice, if it was used then all the penalties are due.

26 If the animal was sacrificed during the thirty days, any prior use was larceny. But if the animal was not sacrificed, then it reverts to profane status and its use was not illegitimate; it would be forbidden to dedicate an animal to atone for the larceny. The prior use was an "evil that cannot be corrected."

27 Permanently, even after 30 days.

28 Mishnah 'Arakhin 7:4. If a field donated to the Temple was not redeemed before the Jubilee year, it becomes profane property of the Cohanim (Lev. 27:21). In R. Simeon's opinion, the reversion to profane status is automatic; the Cohanim to whom it is distributed do not have to redeem it from the Temple treasury.

29 A field which was not a family heirloom but bought from another owner automatically reverts to its hereditary owner in the Jubilee year. Even if in the meantime the field was given to the Temple by the buyer, it reverts without payment (Lev. 27:24).

30 Since it is implied that after 30 days there should be no divorce, it is invalid. A divorce must be irrevocable to be valid (Gittin 4:8, Note 192). A shortened version of the text is discussed by Ran, Nedarim 29a.

31 Chapter 1, Note 21.
Rebbe Abbahu in the name of Rebbi Johanan: "This animal shall be an elevation sacrifice after thirty days;" if he sold it during the thirty days, it is not sold; its dedication does not sanctify. For which purpose did he say: "after thirty"? To reserve for himself shearing and work. "Pick from this field that it should be acquired by you after thirty days;" if he sold it within thirty days it is not sold, if he dedicated it it is not sanctified. Why did he say, after thirty days? To reserve usufruct for himself. "Here you have this tetradrachma that your field should be mine after thirty days," if he sold it within thirty days it is not sold, if he dedicated it it is not sanctified. What is the difference between this and a woman? But if he sold it, it is sold.

32 It seems that this name is incorrect since earlier R. Abbahu stated that the animal may be validly sold (Note 16). Since the name tradition in the first case is confirmed by a parallel, the quote here is the one to be questioned.

33 This Amora holds that even "a delayed promise to Heaven is like an immediate delivery to a private person" (Note 21).

34 For the first 30 days.

35 This is authorization of transfer of ownership following Mishnah 1:5. Title to the field is transferred immediately even if actual possession by the buyer is deferred.

36 The seller.

37 The seller may harvest the field for the next 30 days.
While real estate may be acquired by money (Mishnah 1:5), the language implies that both ownership and possession will be deferred for 30 days.

Since it is stated in the Mishnah that money given now for a later acquisition of a woman in preliminary marriage does not prevent her from marrying another man in the meantime.

To exclude any sale to a third party, either ownership or possession must have been transferred at the moment of transaction.

"Here you have money that your slave shall become acquired by me after thirty days.\(^{41}\)" Some Tannaim stated: The first [owner] is subject to "a day or two\(^{42}\). But some Tannaim stated: The second [owner] is subject to "a day or two". Some Tannaim stated: Neither the first nor the second [owners] are subject to "a day or two". But some Tannaim stated: Both first and second [owners] are subject to "a day or two". He\(^{43}\) who says, the first [owner] is subject to "a day or two", "if he dies in his possession\(^{44}\)." He\(^{45}\) who says, the second [owner] is subject to "a day or two", "for he is his money\(^{46}\)." He\(^{47}\) who says, both first and second [owners] are subject to "a day or two", the first because of "if he dies in his possession," the second because of "for he is his money." He\(^{48}\) who says, neither the first nor the second [owners] are subject to "a day or two", for he is not the first’s money and does not die in the possession of the second.
As explained in this paragraph, ownership is transferred immediately but possession is deferred for thirty days.

Ex. 21:20-21. Killing a slave is murder. But if the slave dies because of a punishment he receives from his owner and lives at least 24 hours after the punishment, the owner’s act is not prosecutable.

In the Babli, Baba batha 50a, R. Meir.

Ex. 21:20, the verse which declares the owner guilty of murder if he kills his slave.

In the Babli, R. Jehudah.

Ex. 21:21, the verse which exempts the owner from prosecution if the slave lives for 24 hours. "His money" indicates ownership.

In the Babli, R. Yose.

In the Babli, R. Eleazar.

As daughter of an Israel married to a Cohen she may eat heave. Some Tannaim state: She may not eat heave. Rebbi Hila said, the one who says that she may eat heave refers to the case that the second man is a Cohen, but the one who says that she may not eat heave refers to the case that the second man is not a Cohen.

If the first man wanted the preliminary marriage to be valid only after 30 days, cf. Note 3.
"From today and after 30 days." Rebbi Abbahu in the name of Rebbi Johanan: Even preliminary marriages of a hundred men apply to her. Rebbi Eleazar said, it was necessary [to state], even if the second preliminarily married her absolutely. Rebbi Isaac bar Tebele asked before Rebbi Eleazar: As you take it; what the first acquired, he acquired; the remainder the second finished. He answered, is this kind of argument applicable to incest prohibitions? How is that? To any woman who is not acquired by one man only, even preliminary marriages of a hundred men apply.

50 This refers to the case where a sequence of men said: "from now and after 30 days," cf. Note 3. In this case, she is married to none of them completely; cf. Yeabmot 3:5, Notes 102-105 (5:1, end; Nedarim 10:6 Note 59); Babli 60a.

51 The interpretation of R. Abbahu is not the only one possible. Since the Mishnah mentions the condition "from now and after 30 days" only for the first man, it is quite possible that the second marries her unconditionally. Then no other man can join the list of suitors but nevertheless the woman is still "married and not married".

52 ητι?Β3 is a technical term implying that a certain conclusion follows from two mutually exclusive premises.

53 This elliptic statement can be explained as follows (R. Moses Margalit): If the statement of the first groom, "from today and after 30 days", means that he requires 30 days to make up his mind and might annul the preliminary marriage, then it is obvious that the second contracted a valid marriage and the first is eliminated. But if "from today and after 30 days" means that he wants to be married now but his obligations start only after 30 days, the first acquired the right to preliminarily marry the woman after 30 days. If now the second man marries her unconditionally within the thirty days, which the first cannot hinder, his acquisition should have eliminated the option which the first had acquired.

54 Incest and adultery prohibitions are so serious that no kind of intellectual acrobatics is applicable to them.
A student asked before Rebbi Ze'ira: If he gave it to her in the morning on condition that he divorce her in the afternoon\(^{55}\)? A certain David was of the opinion that anything acquires\(^{56}\); Rebbi Ze'ira said that after thirty days he acquires absolutely\(^{57}\). But if the second one added absolute acquisition, I am reading for her: "Her first husband who had sent her away cannot return to take her back.\(^{58}\)

55 From the following it seems that the question was about a case in which A gave a wedding gift to a woman stating that she should be preliminarily married to him "from now after a specified time" but divorcing her before the end of the stated period. B preliminarily married the same woman after A's conditional marriage but before the divorce. The Mishnah refers to the situation after the end of the 30 day period, when both preliminary marriages are in conflict. That situation may be rectified by at least one divorce. But in the situation described here, the question remains whether a divorce is possible for a marriage which has not yet started.

56 Therefore, a divorce is possible also for a partial marriage.

57 He questions the possibility of divorce of a not yet existing marriage.

A Genizah fragment adds a sentence which was lost by the Leiden scribe by homeoteleuton:

If she was divorced by the first, she is permitted to the second; if she was divorced by the second, she is permitted to the first. If she was divorced by both of them, she is permitted to anybody [she likes]. If the second did not add absolute acquisition:
The first two sentences are the conclusion of the previous text. The last sentence is the introduction to the following text. The text does not add anything to the understanding of the Leiden text.

58 Deut. 24:4. If the second preliminary marriage was unconditional and the second man died, the first who had given a divorce whose validity may be suspect cannot marry the woman, since for the rule that a divorcée married to another man may not be taken back by her first husband, the divorce and the preliminary marriage to the second man was real.

If both were Cohanim or brothers, both are forbidden. If there were three brothers; two of them contracted a preliminary marriage with her and then died. That is what Rebbi Hiyya stated: The wife of one deceased contracts levirate marriage but not the wife of two deceased men. If they were brothers, both contracted a preliminary marriage with her and then one of them died. Is she permitted to the second? As you take it, what he had acquired, he had acquired; the rest he inherits from his brother. Rebbi Jehudah ben Pazi said, she is forbidden to him. Rebbi Yose said, the reason of Rebbi Jehudah ben Pazi is that the aspect acquired in any sister-in-law who is not totally inside [the family] is considered to be under the incest prohibition and an incest prohibition...
frees the co-wife. Rebbi Hanina said, Rebbi Jehudah ben Pazi said it correctly. Does she not become his because of his brother? To his brother she was forbidden; to him she should be permitted?

59 Here starts a discussion of the statement of the Mishnah that the situation can be resolved if one of the men writes a bill of divorce and the other marries the woman. There are cases in which both must divorce and neither of them can marry: A Cohen may not marry a divorcee; this includes a woman who is divorced without ever being really married. The wife of a brother is prohibited to her brother-in-law except in the case of a required levirate marriage. In the case of the Mishnah, if the two men are brothers, the woman is forbidden to either of them as the brother's wife.

60 Yebamot 3:10, Note 137.

61 The argument is that the surviving brother should be allowed to marry both in his own right and as levir.

62 Yebamot 2:2, Note 55. The argument of Note 61 is invalid: Levirate is possible only if the brother's marriage was undoubtedly valid.

"A daughter of a Cohen married to an Israel may not eat heave." This is a necessary statement, even in case the second man is a Cohen.

63 The statement of the Mishnah seems to be trivial since the daughter of a Cohen married to an Israel is excluded from heave by biblical decree (Lev. 22:12). It is stated here that she is excluded even if the claim of the Israel on her is only one of partial marriage.
Mishnah 2: If somebody says to a woman: You are preliminarily married to me on condition that I give you 200 zuz\(^{64}\), she is preliminarily married and he is obligated to give\(^{65}\). On condition that I give you within the next 30 days; if he gave her within 30 days she is preliminarily married; otherwise she is not preliminarily married. On condition that I owe 200 zuz, she is preliminarily married if he has it. On condition that I show you 200 zuz, she is preliminarily married once he shows it to her\(^{66}\); but if he showed it on his bank she is not preliminarily married\(^{67}\).

\(^{64}\) Accadic züzum, the half-sheqel piece, identified with the Roman denarius.

\(^{65}\) It is understood that he also gave a perutah’s worth at the time he contracted the preliminary marriage. There is no time limit set for the liquidation of the claim. However, it seems that if she has to sue him in court for the 200 zuz, the preliminary marriage is invalidated.

\(^{66}\) He assures her that she is marrying a person of means; nevertheless it is not sufficient that he prove to her that he has the means; in order to be married she must be shown the actual coins.

\(^{67}\) If he is a banker, handling his depositors’ money, he cannot show anything which is not his own capital invested in his business.
Halakhah 2: "If somebody says to a woman: You are preliminarily married to me," etc. 68 There, we have stated: "This is your bill of divorce on condition that you give me 200 zuz, she is divorced and has to pay. If she did not manage to pay before he died, it was stated: Rabban Simeon ben Gamliel says, she pays his father or his brother and is free from halîsah and levirate marriage. The same holds for preliminary marriage: "You are preliminarily married to me on condition that I give you 200 zuz;" if he did not manage to pay before he died, Rabban Simeon ben Gamliel says, his father or his brothers pay and she is subject to halîsah or levirate marriage.

68 This is a reformulation of the first paragraph of Gittin, Halakhah 7:5, Notes 116-118. In the Babli, 60b, the rabbis who disagree with Rabban Simeon ben Gamliel hold that the conditional divorcee never is subject to halîsah or levirate marriage.
Rebbi Abbahu in the name of Rebbi Johanan: The following is the contract text: "I, X son of Y, contract a preliminary marriage with you, Z, daughter of U, on condition that I give you property A and definitively marry you by day B. If that day should pass without me having taken you in, I shall have no claim on you." If anything intervened beyond his control? Rebbi Johanan said, matters beyond his control are as if he were inactive. Rebbi Simeon ben Laqish said, matters outside his control are as if he had acted. In the opinion of Rebbi Simeon ben Laqish, what would be necessary? "If that day should pass without you having taken me in, I shall have no claim on you." When Rebbi Johanan was dying, he told his daughters to act following Rebbi Simeon ben Laqish. He said, sometime in the future there might be a court which follows him; then his descendants might be in danger of bastardy.

69 This text is also in Gittin 7:6, Notes 132-139; the contract text also in Eruvin 3 and later in Halakhah 3. A. Gulak (Tarbiz 5, 1934, pp. 126-133) has discussed the text in detail.

The term σύμφωνον "agreement" appears in Egyptian papyri of the Byzantine period (after the middle of the fifth Century C. E.) and later in Justinian's legislation to designate special stipulations within a written contract [R. Taubenschlag (Chapter 1, Note 369) p. 224]. In earlier Greek sources one finds only the adjective σύμφωνος, α, ov "agreeing". Since the authorities quoted in the Talmud belong to the third Century, the term must have been in use in the Hellenistic world long before it appeared in surviving papyri.

As a special stipulation, the symphön contract has to be executed concurrent with the preliminary marriage; otherwise it could not undo the marriage without a divorce. This supplementary contract fulfills the same role as the Alexandrian Ketubah (Yebamot 15:3, Note 34, and the sources quoted there.)

On the other hand, the delivery of property by the groom as pledge first is documented in Hammurabi's laws; it
appears in Roman contracts as *arra* (or *arrha*) sponsalicia (*arra* = ἀρραβόν = under the influence of Eastern usage).

If the appointed time has arrived and he says, I gave, but she says, I did not receive: Rebbi Abun said, since he tries to wrest the contract from the woman’s hand, the burden of proof is on him. Think of it, maybe there was no contract? Rebbi Yose said, since he tries to forbid her to anybody, he has to prove that they entered into the contract. A case came before Rebbi Abbahu; he said to him, go and deliver. He answered, Rabbi, I did not acquire a wife and you say to me, go and deliver! Rebbi Abbahu said, it never happened to me that one got the better of me except this one. He rephrased and said: If he changed his mind, he shall deliver. If she changed her mind, she shall deliver. Is that not his former judgment? He rephrased to give it the status of a court document.

follows Gulak, Note 69. The paragraph is also discussed by Nachmanides, Nissim Gerondi (Ran), and Yom Tov ben Abraham Ishibli (Ritba) in their...
Novellae to 60a.

72 And for some reason the engagement was dissolved.

73 The valuable object promised in the additional contract.

74 The text of the contract specifies that the valuable object remain the woman’s property even if the marriage be cancelled.

75 If there is no written document in the woman’s hand, the burden of proof is on her, not him.

76 If they were married, and therefore she is forbidden to any man in the world except her husband, he has to show that the conditions of the contract were adhered to.

77 In which the symphôn stipulations were not satisfied and the marriage did not take place.

78 The woman stated that she did not receive the symphôn gift; absent proof to the contrary, she has to be believed.

79 She has to return the gift or prove that she never received it. [Both Hammurabi’s codex (§§159-161) and the Corpus Iuris (V,1,5) double the value of the arra which has to be returned if the woman’s party decides not to proceed with the marriage. Talmudic law does not seem to have adopted this clause; it would be difficult to read it into R. Abbahu’s decision.]

While the Babli does not know the institution of symphôn, A. Gulak sees in the rules of symphôn the precursor of the Medieval contracts of promise of marriage.

80 He still insists that the man has to deliver the valuable object if he cannot prove prior delivery.

81 As explained in the next paragraph, the symphôn was drawn up by three witnesses who could act as a court. A court document whose genuineness was attested to cannot be attacked in court.
The following is the way of contracting: One witness for the groom and one witness for the bride; these two together select a third in order to have two witnesses for each side\(^2\). That is, if not both of them agree. But if both of them agree, both may invalidate the preliminary marriage\(^3\). As, e. g., \(^4\)"If he said, I copulated, but she says, I was not copulated with. Even if he changed his story and then said, I did not copulate, he cannot be believed since from the start he had said, I copulated. But if from the start he said that he had not copulated, the two together can uproot the presumption." If there was one witness for the groom, one witness for the bride, and the groom signed personally: Rebbi Abbahu said, it is a symphôn\(^5\), Rebbi Abba said, it is preliminary marriage\(^6\), for I am saying that he did not really intend a symphôn but thought that it would permit her sister to him\(^7\).

\(^2\) We do not find in any other talmudic document that the witnesses testify for one party. The witnesses are supposed to testify to the genuineness of the document, equally for both sides. Each side chooses one representative and both together choose a third in the constitution of a court of arbitration (Mishnah Sanhedrin 3:1). The procedure justifies R. Abbahu’s position in the preceding paragraph that every symphôn has the status of a court document.

\(^3\) If there is a symphôn, both parties can agree to call off the marriage. If there is a dispute, the document has to be submitted to the competent local court to determine that the relationship can be terminated without a divorce.

\(^4\) This has nothing directly to do with the topic of symphôn. The reference is to Ye' bamot 13:16, Notes 133-134: A levirate marriage can be contracted only by sexual relations. If
the sister-in-law was living in the levir's house but claims that he never slept with her, she might be able to force him to give her halîsah. If they both agree, the court must accept their statement even though it may seem unlikely that a man would not sleep with a woman available to him. Similarly in the present case, even though a court will be reluctant to free a preliminarily married woman without a bill of divorce, if both parties agree to the existence of a symphôn, the court will have to hold that the preliminary marriage be void since it was conditional and the condition was not fulfilled.

85 Since there are three signatures, as required.
86 The groom may not appear as judge in his own case. Since the formal conditions of symphôn are not satisfied, there is no symphôn and the preliminary marriage is unconditional. The groom might have wanted a document which would allow him to marry the bride's sister if for some reason the preliminary marriage would end in divorce. But preliminary marriage triggers all incest prohibitions; a symphôn is valid only to cancel a preliminary marriage if all rules are carefully observed as required for a court document.

(63d line 46)

rebbe hanina said, it was symphôn in his opinion and preliminary marriage in her opinion, only if it be with his and her agreement. If it was symphôn in his opinion and preliminary marriage in her opinion, rebbi hanina said, it was symphôn in his opinion and preliminary marriage in her opinion, rebbi hanina said, it was
is symphôn, Rebbi Haggai in the name of Rebbi Ze'ira said, it is preliminary marriage. Rebbi Hanina was taking up arms against Rebbi Haggai, when Rebbi Hila said to him, accept Haggai, for Haggai is a thinking man; this is what Rebbi Ze'ira said. In the first Adar\(^91\), Rebbi Hila died. In the second Adar, a case came before Rebbi Hananiah, the colleague of the rabbis, and he wanted to rule following Rebbi Haggai. Rebbi Samuel bar Immi told him, Rebbi Hila was wrong when he told you, accept Haggai, for Haggai is a thinking man\(^92\). Rebbi Haggai said, a Mishnah\(^93\) supports him: "You married me preliminarily', and he says, 'I did not marry you preliminarily.' He is permitted her relatives but she is forbidden his relatives." Rebbi Borqai asked before Rebbi Mana: Is it the same with symphôn\(^94\)? He answered, a symphôn is not doubtful but the rules are identical for symphôn and\(^95\) preliminary marriage.

88 While preliminary marriage essentially is a unilateral act by the groom where the woman only has a right of refusal but no active role, a symphôn is a contract between parties of equal standing.

89 As A. Gulak (loc. cit. Note 69) points out, since the disagreement is about the nature of the contract, not its contents, it is clear that even for the woman the preliminary marriage is conditional and will be void if any of the conditions were not satisfied. The difference in the status of the contract is that in case of preliminary marriage, the woman would have to return the arra and would have no right unilaterally to cancel the marriage.

90 As shown subsequently in the paragraph, he really is the later R. Hananiah, not the earlier R. Hanina.

91 In an intercalary year, when the 12th month is reduplicated as "second Adar" to make sure that Passover fall after the spring equinox.

92 Since R. Haggai reported R. Ze'ira's opinion, rather than his own.

93 Mishnah 3:11. R. Haggai on his own shows that the Mishnah supports R. Ze'ira since it shows that one party can accept the consequences of preliminary marriage without imposing
the same consequences on the other party. Since (Note 89) the preliminary marriage even in the woman’s opinion was conditional, the ability of the groom to unilaterally terminate the relationship is not impaired if one rules following R. Ze’ira.

94 Do the rules of Mishnah 3:11 also apply to symphôn?

95 Reading רחא as רח(ה), not רח (A. Gulak; cf. also S. Lieberman, "אחת-רחא," Tarbiz 4, 1933, pp. 377-378.)

If he performed a preliminary marriage during the validity of the *symphôn*, this is unconditional preliminary marriage. If he divorced, the students of Rebbi Jonah said, divorce touched her; Rebbi Jonah said, divorce did not touch her. When Rebbi Jonah died, his students acted following him. They said, since after 30 [days] she would leave without a bill of divorce, how can you say that divorce touched her? But divorce did not touch her. If he died during the time stipulated in the *symphôn*, Rebbi Abbahu said, she is permitted to marry; Rebbi Abba said, she is not permitted to marry. Rebbi Mana asked the family of Rebbi Yose’s father: How did your master usually act? He said to him, when it was a long time, he said that she should go and marry immediately. If the time was short, he said, what is the hurt if she waits? If he sent things...
during the validity of the *symphôn*, Rebbi Mana said, [it follows the rules of] *symphôn*; Rebbi Abba said, [it follows the rules of] preliminary marriage. The rabbis take note of Rebbi Mana's opinion.

96 Probably this should be ‘לוכי’ to be read ‘לוכי* (Qorban Hâ'edah).

97 An unnecessary procedure since based on the *symphôn* he could proceed immediately with definitive marriage, retroactively validating the *symphôn* as preliminary marriage. His action overrides the *symphôn*.

98 During the period specified in the *symphôn*. This also is unnecessary since the contract permits each party to declare its unwillingness to proceed with the marriage, thereby eliminating the preliminary marriage.

99 She is forbidden to marry a Cohen.

100 It is as if a man not married to a woman divorces her; she is not touched by that action and free to marry a Cohen.

101 Or any other period specified in the *symphôn* as final term for the definitive marriage.

102 This discussion presupposes the opinion of Rabban Simeon ben Gamliel (Note 68) that the family of a man who dies after conditional preliminary marriage has the option to fulfill the conditions and force the widow to contract levirate marriage with the brother of the deceased. If a *symphôn* follows the rules of conditional preliminary marriage, the woman cannot marry another man without the family of the deceased giving up their option. The widow/bride naturally could exercise her option to invalidate the *symphôn*, but then she will have to return the *arra*.

103 If the end of the period specified in the *symphôn* was far off, to require the woman to wait would be an unreasonable burden on her.

104 In addition to the contractual *arra*, the groom sent additional gifts to his prospective bride. If these are also considered *arra*, the bride keeps them if the marriage does not take place by the action of the groom; if they are engagement presents they have to be returned.

105 If the marriage does not take place, it would be incumbent upon the man to prove in court that the gifts were specifically designated as engagement presents, not *arra*. 
Mishnah 3: "On condition¹⁰⁶ that I possess a bet kor of arable land," she is preliminarily married if he owns it. "On condition that I possess it at place X," she is preliminarily married if he owns it at place X, otherwise she is not preliminarily married. "On condition that I shall show you a bet kor of arable land," she is preliminarily married and he has to show her¹⁰⁷, but if he showed it in the valley¹⁰⁸ she is not preliminarily married.¹⁰⁹Rebbi Meïr says, any condition which is not formulated in the manner of the condition imposed on the tribes of Gad and Reuben is invalid¹¹⁰, as it is said¹¹¹: "Moses said to them, if the tribes of Gad and Reuben cross over . . . but if they will not in arms cross over with you, etc." Rebbi Hananiah ben Gamliel said, that formulation was necessary¹¹² for otherwise one would have understood that even in the Land of Canaan they should not inherit.

¹⁰⁶ He gives the woman a perutah as marriage gift and specifies that he preliminarily marries her as owner of a bet kor, 30 bet se'ah or 75,000 square cubits of agricultural land. If he actually is the owner of the land, she is married immediately; he can show her the title to his land later.

¹⁰⁷ Since he said "to show", it means that she has to see it with her own eyes; it is not enough for him to prove his ownership to her.

¹⁰⁸ Kv'ei everywhere means open agricultural land not easily accessible.
In all these conditions, a claim of ownership is understood.

109 In the independent Mishnah mss. and later in the Halakhah here starts a new Mishnah 4.

110 He requires that a condition spell out (1) what happens if the condition is satisfied, (2) what happens if the condition is not satisfied, and (3) the positive statement has to precede the negative. For him the simple formulation of the Mishnah is unacceptable.

111 Num. 32:29-30.

112 The involved formulation of the deed of Transjordan to the tribes of Gad and Reuben was necessary under the circumstances. A simple condition is valid; it is not necessary for a man to say: "Be preliminarily married to me on condition that I possess a bet kor of arable land, but be not preliminarily married to me if I do not possess a bet kor of arable land."

Halakhah 3: "On condition that I possess a bet kor of arable land," etc. Rebbi Hananiah the son of Rebbi Hillel asked: If somebody said, my son A should perform action X and receive property Y, and the rest of my sons shall inherit my properties; if he performs, he takes, but if he does not perform, he does not take. Or maybe it is a difference since it is written: "To give to Nine and a half tribes." It is as if he said, my son A should perform action X and receive property Y, and the rest of my sons shall inherit my properties; if he performs, he takes, but if he does not perform, he does not take from here or from there.
113 He asks against R. Hanaiah ben Gamliel.

114 This does not disinherit A from sharing with his brothers.

115 Num. 34:13. This verse clearly excludes the Transjordan tribes from property in Canaan. Therefore, R. Hanaiah ben Gamliel’s argument is correct.

116 There, we have stated: “A person can impose a condition of his ‘eruv.” So is the Mishnah: “A person can impose a condition of his
'eruvin.' Rebbi Eleazar said, who is the Tanna of "if they came", "if they did not come"? Rebbi Meïr! Which Rebbi Meïr? The colleagues say, Rebbi Meïr of Qiddusin. As it was stated: If somebody say to a woman: You are preliminarily married to me on condition that there will be rain. If rain fell, she is preliminarily married, otherwise she is not preliminarily married. Rebbi Meïr says, she is preliminarily married whether or not rain fell unless he doubled his condition. Everybody agrees that if he said, after rainfall, if it rained she is preliminarily married, otherwise she is not preliminarily married. Rebbi Yose said, it follows Rebbi Meïr in Eruvin, as we have stated there: "If it be in doubt, Rebbi Meïr and Rebbi Jehudah say, he is a camel-donkey driver." Rebbi Yose said, Rebbi Meïr said this only as a restriction. Rebbi Mana said, that is correct. He cannot acquire his 'eruv since he is not able to enjoy it. [Why not] like the people of his place? If he had decided to leave his place. And here, she is not preliminarily married to the first, since no rain came. She is not preliminarily married to the second, since [the first] did not double his condition. Rebbi Haggai asked before Rebbi Yose: Is this "if" not a reaction? He answered, there is a difference since the land was in their hand and he wanted to take it away from them.
distance greater than 2'000 cubits from the boundary of the built-up domain in which one resides. Since by tradition the diameter of the encampment of the Israelites in the desert was 12 mil, 24'000 cubits (Shevi'it 6:1, Note 28), and certainly the Israelites were able to freely move in their camp on the Sabbath, it is clear that the restriction to 2'000 cubits is purely rabbinical. Therefore, it is open to manipulation. One of the accepted ways of manipulation is for a person to deposit some food, the 'eruv, at the border of the permitted domain and declare that he intends to consider the place of that food as dwelling for the coming Sabbath. Then he still can move freely in the built-up domain, which is counted only as 4 cubits, but he has an additional 2'000 cubits on the other side of the 'eruv, but nothing on the opposite side of the built-up area.

Mishnah 'Eruvin 3:5 permits a person to prepare a number of 'eruvin which are mutually exclusive, and say: "If attackers appear in the East, my 'eruv in the West shall be active; if they appear in the West, my 'eruv in the East shall be active; if there is no danger, I shall be like the other inhabitants of my place."

Since there are at least two. This remark belongs to 'Eruvin, not to Qiddusin.

121 He will hold that even if there was only one 'eruv, it has to be spelled out that the 'eruv shall be invalid if there is no danger; otherwise the person making the 'eruv can never keep the Sabbath with the other inhabitants of his place.

122 Mishnah 'Eruvin 3:5 is a direct application of Mishnah Qiddusin 3:3 and the baraita quoted in the sequel.

123 If a perutah changed hands and a definite time was given for the duration of the condition.

124 If it was not stated explicitly that there was no marriage without rainfall, the condition is void and the marriage valid unconditionally.

125 If the perutah is given with the understanding that it is counted as marriage gift when it rained before a fixed date, that explains the modalities of the preliminary marriage, it is not a condition.

126 Mishnah 'Eruvin 3:4. Somebody put an 'eruv near the Sabbath boundary. If it was somehow moved and now it is not clear whether it is inside or outside the Sabbath boundary: If it is still within the boundary, the person making it can reach it on the Sabbath and it is valid. If it is outside, it cannot
be reached and is invalid. If it is in doubt, according to rabbis Meïr and Jehudah, the person making it can only move in the domain permitted both if the ‘eruv is valid and if it is invalid.

127 The donkey driver has to go behind his animal; it will not move otherwise. The camel driver has to go in front of his animal and draw it by its bridle; it will not move otherwise. The camel-donkey driver cannot function at all; the usual Babli expression "donkey-camel driver" describes one who cannot move from between the animals as similar to the person with an ‘eruv in doubt who cannot leave the four cubits at which he started the Sabbath.

128 R. Meïr requires a double formulation of a condition only for marriage and divorce, not for ‘eruvin. While this is also the opinion of Rif, most interpreters of the Babli hold that a double formulation is always required. Cf. Sefer Ha’ittur I, p. 74 ff.

129 The fact that the person with the ‘eruv in doubt is a donkey-camel driver has nothing to do with the requirement of a double formulation. The ‘eruv cannot be valid if the person cannot reach it on the Sabbath; the person cannot have the domain available to the other residents since he had decided not to be part of the population for the coming Sabbath.

130 A hypothetical case in which a first man contracted a preliminary marriage conditioned upon the timely arrival of rains, when a second man contracted an unconditional preliminary marriage with the same woman before the arrival of rains. Since she was not married when the second man came, it is impossible to say that the latter’s preliminary marriage were invalid. It is also impossible to say that it were valid, since the first man’s condition was not stated in the double formulation required by R. Meïr; she needs divorces from both men.

131 This question is directed against R. Hanaiah ben Gamliel. What was the necessity of the double formulation in the case of the tribes Gad and Reuben? The question should be asked not for the negative part but for the positive; was it necessary to state that the tribes will get the Transjordan territory if they come to fight in Canaan?

132 They already were in possession; to make this possession conditional needed the involved formulation.
Rebbi Jehudah bar Sisin\textsuperscript{133}, Rebbi Jehudah bar Pazy in the name of Rebbi Aha. They formulated the \textit{symphôn} according to Rebbi Meïr\textsuperscript{134}. Rebbi Hananiah, the colleague of the rabbis, asked: Why does it have to follow Rebbi Meïr but not also the rabbis? Did not Rebbi Abbahu say in the name of Rebbi Johanan: The following is the contract text: "I, X son of Y, contract a preliminary marriage with you, Z, daughter of U, on condition that I shall give you property A and definitively marry you by day B. If that day should pass without me having taken you in, I shall have no claim on you." Why can he not say "on condition" but not double his stipulation? If he did not double his stipulation, could this eliminate the preliminary marriage\textsuperscript{135}? Rebbi Yose ben Rebbi Abun said, everywhere Rebbi Meïr holds that from "no" you infer "yes", except here\textsuperscript{136}? Rebbi Mattaniah said, one is more restrictive in matters of incest and adultery.
An Amora of this name is not otherwise documented in Talmudic literature. Probably the reading of ר' Jehudah ben Shalom is correct.

Since it states both that there is preliminary marriage if the conditions are satisfied but none if they are not satisfied.

Even the rabbis must require an extra stipulation which will eliminate the preliminary marriage if the conditions are not satisfied.

The Babli (Nedarim 11a, 13b; Sevu'ot 36a) emphatically holds that R. Meïr requires a double formulation since he does not infer a positive statement from a negative one. For example, a statement "this shall for me be not profane" implies a dedication for the rabbis but not for R. Meïr.

Mishnah 4: If a person contracts a preliminary marriage with a woman and then says, I was of the opinion that she was a Cohenet but she is a Levite, a Levite but she is a Cohenet, poor but she is rich, rich but she is poor, she is preliminarily married since she did not trick him.

His relations with other people opinions, as long as he alone is are not influenced by his erroneous responsible for them.

Halakhah 4: Rebbi Meïr says, any condition," etc. Rebbi Eleazar said, she is preliminarily married as if by witnesses. Rebbi Samuel in the name of Rebbi Ze'ira: She is preliminarily married as a restriction.
A woman preliminarily married with a condition that was not expressed in double form and was not satisfied. He holds that for R. Meïr she is married unconditionally. In the opinion of Nachmanides (reported in Sefer Hatterumot 51:6) the statement does not refer to the preceding Mishnah, but to Mishnah 4: Even if there are witnesses who can testify that the groom told them that he was going to marry a Cohenet, as long as she did nothing to suggest that idea to him, she is validly married.

For him R. Meïr agrees that the woman cannot be married if the stipulation was not fulfilled. But he will hold that if a second man married her, she needs a bill of divorce from both of them since both of them have equal claim on her.
Rebbi Jacob bar Aha in the name of Rebbi Immi: Reuben owes to Simeon; he transferred [the debt] to Levi\textsuperscript{140}. Levi became poor\textsuperscript{141}; then Reuben owes nothing to Simeon. That is, if it was not done in bad faith, but if it was done in bad faith, he is obligated.

Similarly, the pedlars directed the village wax chandlers to a merchant. The merchant absconded. The case came before Rebbi Mana, who said, if it is a matter of pennies, they were negligent\textsuperscript{142}. If it is a matter of denars, it is the way of merchants to move around.

A person met another in the market place. He said to him, give me the linen which you hold for me. The other responded, give me the denar which you hold for me. The first said, give me the linen and deduct the denar. The case came before Rebbi Mana, who said to him, you admitted that you owe him a denar; he did not admit anything about the linen. Go and give him the denar! Rebbi Jacob bar Aha said, Rebbi Immi\textsuperscript{143} will agree that this is not the law but that he obligated him lest the other deny his liability for the linen.

A person owed another one 100 denars on a document\textsuperscript{144}. He sent 50 with an agent and instructed him: If he does not surrender the document, do not give him anything. The case came before Rebbi Immi. He said, go and give it, for we know. Think of it, Rebbi Immi [might die]\textsuperscript{145}! One writes for him a proclamation of the court\textsuperscript{146}.

If one accepts for another person, the rabbis here say, what he accepted, he accepted for the claimant.

\textsuperscript{140} And Simeon accepted the assignment, thinking that Levi had good credit. The case belongs here because it frees Reuben from liability as long as he did nothing to inflate Levi's credit in Simeon's eyes.
Levy and Kohut explain as Greek ἀπορεώ, "to become poor".

The wax-chandlers should have collected their debt expeditiously; but for a large debt the pedlars remain obligated.

One is tempted to read "R. Mana" for "R. Immi".

Greek χάρτης, Latin charta, "papyrus, roll of papyrus".

Reading of the Geniza fragment. It makes more sense than the reading "who said" of L. The emendation of Pene Moshe, המ instead of המ, is confirmed by the Genizah text as to meaning but not as to formulation.

The agent was not empowered to pay the 50 denars without getting the document; the creditor was not willing to give the document for less than full payment. R. Immi told him to deliver the document and receive a court document instead which documented the remaining claim.
Rebbi Dositheos ben Rebbi Yannai and Rebbi Yose ben Kipper descended to collect there for the colleagues when they were slandered. They asked but were not given anything. Then they came and wanted to take it back from them. They answered, we already acquired it. They said, we wish for you to accept it in good faith; they answered, we are unpaid trustees. They approached Rebbi Dositheos ben Rebbi Yannai who told them, there it is, all of it. They took Rebbi Yose ben Kipper, whipped him with ropes, and took it from him. When they returned here, he went to his father and told him, look what your son did to me! He asked him, what did he do to you? He answered, if he had taken my position, they could not have taken anything from us. He asked him, why did you act in such a way? He said, I saw that they were a unanimous court, their hats were a cubit wide, they were directing blows, my brother Yose was bound and the whip ascended and descended. I said, does my father have another Dositheos? Rebbi Haggai said, you say that for somebody who cannot give a warranty in good faith. But if somebody gives a warranty in good faith, one takes from this one and gives to the other.

If somebody forgave a bond to another person: Rebbi Hanania and Rebbi Mamal: one said it is forgiven; the other said it is not forgiven unless he handed over the bond.

Text and translation are from Gittin 1:6, Notes 181-199 (v). The Genizah text simply refers to the Gittin text, reserving less than one line for the entire quote.
Mishnah 5: If somebody say to a woman: You are preliminarily married to me after I convert, or after you are converted, after I am freed, or after you are freed, after your husband has died, or after your sister has died, or after your levir has given you halîsah, she is not preliminarily married. Similarly, if somebody say to another, if your wife have a daughter, she shall be preliminarily married to me, he did not say anything.

148 While marriage exists for Gentiles, preliminary marriage is a uniquely Jewish institution. If one or both parties are Gentile, no preliminary marriage is possible.

149 A slave cannot marry. Therefore, if one or both parties are servile, no preliminary marriage is possible.

150 A married woman cannot marry another party. A preliminary marriage in anticipation of the husband's death is impossible.

151 If the man was once married to a woman, her sister is forbidden to him during the woman's lifetime. This is the only incest prohibition of Lev. 18 for which no criminal penalty is indicated in Lev. 20. But Lev. 18:18 is read as: "A woman in addition to her sister you are unable take, to be co-wives, to uncover her nakedness in addition to her, during her lifetime." The act of preliminary marriage is here defined as impossible during the sister's lifetime.

152 This Tanna follows the majority interpretation of Deut. 25:5, which reads: "If brothers dwell together and one of them die without children, the widow of the deceased is unable to be an outside man's." Cf. Yebamot 1:1, Notes 93-103; Note 166 below.

153 A marriage contract cannot be concluded as a futures contract on anything which does not yet exist. The Mishnah in the Babli states in addition that if the wife of the prospective father-in-law was visibly pregnant, the
contract is valid. The Halakhah shows that the Yerushalmi clearly holds that a woman is said to exist only from the moment of her birth, not while she still is in her mother's womb.

Halakhah 5: "If somebody say to a woman," etc. They asked before Rebbi Johanan: What is the difference between this and one who says, "this shall be heave for this standing produce after it has been cut"154? He said to them, there, it is in his power to cut; but here, it is not in his power to be freed155. Rebbi Ephes asked, think of it, if she was his slave girl156? Rebbi Abba bar Mamal said, "after you are freed", she is made dependent on another person's will157.

154 It is impossible to give heave from standing grain since the obligation of heave starts only at the end of the harvesting process. Nevertheless, the farmer can set aside a certain amount for heave at the start of the harvest to cover everything he will harvest in the future. Then why is it impossible for somebody who at the moment is unable to contract a preliminary marriage to give a gift which is to become a marriage gift as soon as the obstacle to his contracting is removed? The same question is asked in the Babli, 62a.

155 But it is uniquely in the power of the slave’s owner, or, in the case of Gentiles, in the power of the rabbinic court to whom they must apply for conversion.

156 Since it is in his own power to free her. In the Babli, 62b, the question is attributed to R. Abba bar Mamal.

157 In the case of the owner
marrying his own slave girl, it is purely a matter of formulation. By making it conditional, "if you be set free", he abdicates his own power. The Yerushalmi will agree that if the owner simply marries his slave girl, without mentioning her need to be freed, by one action he sets her free and marries her (R. Moses Isserles in Sulhan 'Arukh Yore Dea' 267:58). (The classical commentators of the Yerushalmi incorrectly read the Babli's explanation into the Yerushalmi text.)

The elder Rebbi Hoshia and Rebbi Jehudah Neśia were sitting together. They said, let us say something on the subject of preliminary marriage. If somebody say to his wife, here you have a perutah that you should be preliminarily married to me after I have divorced you, what is the rule? They laughed and got up. Rebbi Yose said, why did they laugh? Did not Rebbi Abba bar Mamal say, "after you are freed", she is made dependent on another person's will; and here "after you are divorced," she is made dependent on another's will. If you want to find a difficulty, ask the following: A person went to preliminarily marry a
woman. Another person overtook him and said to her, you should know that the man who is coming to preliminarily marry you has a bad mind. In the future he will abandon you. But here you have this perutah that you should be preliminarily married to me after he will have divorced you\textsuperscript{158}. What is the rule?

\textsuperscript{158} Translation follows the Genizah text.

The Babli, 62b, takes R. Hoshiaia's question seriously. Naturally, the answer to the question as stated is simply that the action is invalid since a married woman cannot marry again while married, not even her own husband.

In the opinion of the Babli, the reason is that while the husband can divorce her unilaterally, he cannot marry her again against her will. This is the "other will" which is involved here.

\textsuperscript{161} It was shown in 3:1 that if a man gives a gift for preliminary marriage stipulating that the marriage be valid only after 30 days, and another man came, married, and divorced her within those thirty days, the first man's marriage is valid. The problem naturally is that "30 days" is an objective standard, not depending on another's will; but the clause "if the other man will have divorced you" makes it dependent on another's will and invalidates the preliminary marriage.

There\textsuperscript{162}, it was stated: "These orchard trees shall be qorbân if they are not cut, this garment shall be qorbân if it is not burned." And it was burned. Were they sanctified retroactively? He committed larceny. If you say that it refers to the future, he did not commit larceny.
162 Mishnah *Nedarim* 3:6 and the relevant Halakhah (Notes 110-121). The text here does not make any sense and is not intended to make any sense. The Genizah fragment starts the quote of the Mishnah; the missing part of the line contained an instruction to continue the text in *Nedarim*. The same is intended here. We have a quote of the start of the Mishnah and a few words from the first paragraph of the Halakhah, ending with a complete copy of the last sentence, a sign that the copy now starts in earnest. It is clear that both scribes of the Genizah and the Leiden mss. considered the *Nedarim* text as the original for *Qiddusin*. For the reader’s convenience, here is the text omitted by the scribes:

Halakhah 6: "These orchard trees shall be *qorbân*, etc. If he saw the king’s cutting crew coming near, if he saw fire coming near, and he said: These orchard trees shall be *qorbân* if they are not cut, this garment shall be *qorbân* if it is not burned or torn. Were they sanctified retroactively or only for the future? What is the difference? If he used them. If you say that they are sanctified retroactively, he committed larceny. If you say that it refers to the future, he did not commit larceny.

Hizqiah said, if he redeemed them they revert to their sanctity. Rebbi Johanan said, if he redeemed them they are redeemed. The Mishnah disagrees with Rebbi Johanan: "These have no redemption." He
explains thus: After they were cut they do not need redemption. Rebbi Yose said, what Hizqiah said refers to the case that he himself redeemed them. But if another person redeemed them, the sanctity is removed from them. The argument of Rebbi Yose is switched: There, he says that if another redeemed them, the sanctity is removed from them, but here, he says that if she was married to another man the qiddusin [of the first] were not removed! All that is questionable for him is if he gave her two perutot, one for the moment and one for after he divorced her; what is the situation?

163 Clearly, the spelling in *Nedarim* word is in *Nedarim*.

164 A Babli word; the Yerushalmi

165 *Nedarim* 3:6, Notes 114-121.

Rebbi Yannai said: More than 30 Elders voted: from where that qiddushin have no legal effect on a sister-in-law? The verse says, "the wife of the deceased may not belong to any outside unrelated man", that she cannot have any existence with an outsider. Rebbi Johanan said to
him, is that not a Mishnah? "Or after your levir will have performed halîsah with you, she is not preliminarily married." And Rebbi Yannai praised him "those who pour out gold from the wallet," "my son, they should not be removed from your eyes," "get wise, my son, and make me happy, that I can answer those who insult me", "give to the wise that he shall become wiser," "let the wise listen that he increase in knowledge."
Rebbi Simeon ben Laqish said, after all these praises I can explain it following Rebbi Aqiba since Rebbi Aqiba said that there exists a bastard from a sister-in-law!

166 Yebamot 1:1 (מ), Notes 95-100. paragraph again is only worth one line's mention.

167Samuel said, in our poverty, she needs a bill of divorce from him. Rebbi Yose ben Rebbi Abun said, the Mishnah [said], "after your levir has given you halîsah"; but if he said, "after your levir has died," she is preliminarily married168. 169Rebbi Hiyya stated: A one-day-old girl can be preliminarily married by money; a girl of three years and one day can be preliminarily married by intercourse." Rebbi Mana said, the Mishnah implies this: "Similarly, if somebody say to another, if your wife have a
daughter, she shall be preliminarily married to me, he did not say anything," because she does not exist. Therefore, if she does exist, she is preliminarily married.

167 Here starts the discussion of the Mishnah dealing with the widow of a childless man. Samuel disagrees with the Mishnah; his position is accepted in the Babli as practice (Yebamot 92b). While the marriage of the widow outside the family without halîsah certainly is sinful, it nowhere in the biblical text is punished as a criminal act; for Samuel this indicates that such a marriage should not be void by biblical standards.

168 He holds that the Mishnah can be explained following Samuel. Even though the marriage by the widow of the childless man outside the family is valid, the marriage conditional on the action of the levir is invalid as explained by R. Abba bar Mamai. Therefore, the marriage conditioned on an act of God is valid, in particular also since after the death of the levir it no longer is sinful.

169 Here starts the discussion of the Mishnah dealing with the newborn girl.

Mishnah 6: If somebody says to a woman, be preliminarily married to me on condition that I speak for you to the government, or work for you as a worker, she is preliminarily married if he did speak for her to the government or did work for her as a worker; otherwise she is not
preliminarily married. On condition that my father agree; if the father agreed, she is preliminarily married, otherwise she is not preliminarily married. If the father died, she is preliminarily married; if the son died, one instructs the father to say that he does not agree.

170 As the Halakhah explains, there are two possible interpretations of this Mishnah, depending on whether or not a *perutah* changes hands at the moment. The problem does not arise in the Babli, which instead of "be preliminarily married to me" reads "you are preliminarily married to me"; that language implies that (a) at least a *perutah* changes hands at the moment of engagement and (b) the marriage, if valid, is in effect from the moment of giving. Both implications are absent in the Yerushalmi version.

171 One interprets "on condition that my father agree" as "if my father does not object". Since the father died, he can no longer object.

172 If the father has other sons, one tells him to free the woman from the obligation of levirate by rejecting the preliminary marriage.
Halakhah 6: "If somebody says to a woman, be preliminarily married to me," etc. Rav said, we deal with the case that he gave her a perutah's worth. Rebbi Immi asked (before Rebbi): Do we not always deal with the case that he gave her a perutah's worth? But so it is: "By what I shall speak for you to the government; if he did speak for her to the government for a perutah's worth she is preliminarily married, otherwise she is not preliminarily married." "By what I shall work for you as a worker; if he did work for her as a worker for a perutah's worth, she is preliminarily married, otherwise she is not preliminarily married." Rebbi Abba in the name of Rav: Only if she set aside a tetradrachma in her chest for him. With what did he effectuate the preliminary marriage? As we have stated there: "If anything is bartered instead of money, if one party entered in possession, the other is obligated for its trade-in."

173 In the Babli, 63a, the uncontested opinion of R. Simeon ben Laqish.
174 This should be deleted with G.
175 In all preceding cases, if it says "be preliminarily married to me on condition", it was understood that the proposal was accompanied by a marital gift. Then the present Mishnah would be unnecessary. But the new facet of this Mishnah is that preliminary marriage may be effected with lawyer's or worker's fees.
176 The lawyer or the worker have to present the bill for their work; if the bill amounts to at least a perutah, she is married by the forgiving of the bill if she had the money to pay. This formulation avoids the problem of the Babli, that marriage cannot be effectuated by forgiving a loan, and the fee due a professional might be considered a loan slowly accruing through delivery of his services.
177 Mishnah 1:6, Note 521. By writing the bill, the lawyer puts a monetary value on his services.
"On condition that my father agree; if the father agreed, she is preliminarily married; if the father does not agree, she is not preliminarily married;" silently he does not agree.178. "If the father died, she is preliminarily married;" silently he agreed.179. "If the son died, one instructs the father to say that he does not agree;" silently he agreed. Rebbi Johanan asked Rebbi Yannai, can the Mishnah say so? He answered him, do you ask wretched Yannai to explain Qiddusin? Rebbi Yannai returned and explained the Mishnah: "On condition that my father agree; if the father agreed, she is preliminarily married; otherwise she is not preliminarily married," he said on condition that [the father] express his opinion but he did not.180. "If the father died, she is preliminarily married;" as if he had given his opinion.181. "If the son died, one instructs...
the father to say that he does not agree;" as if he had given his opinion\textsuperscript{182}. Rebbi Ze'ira said [before Rebbi Yasa]\textsuperscript{183}: Can Rebbi Yannai explain the Mishnah as he wishes? He answered him, so says Rebbi Simeon ben Laqish, Rebbi does not refrain from stating generality and detail simultaneously\textsuperscript{184}. Rebbi Yose said, the Mishnah states thus: "On condition that I have a bet kor of arable land", a generality; "at place X", a detail\textsuperscript{185}.

178 This is an example of the problem of the undistributed middle, frequently discussed in the Babli but rarely in the Yerushalmi. The Mishnah is silent on the status of the marriage if the father refuses to express an opinion. The formulation "if the father agreed" seems to imply that failure to give a positive reply is a rejection. If the formulation had been "unless the father objects," the father's silence would have signified assent.

179 According to the argument of the preceding Note, if the father died without expressing an opinion, the marriage should be invalid. The second and third clauses of the Mishnah seem to contradict the first.

180 One has to read the first clause as explained in Note 178, that there is no undistributed middle but the son made the validity of the marriage dependent on the explicit acceptation by his father. The father's silence means rejection.

181 If the father died before he had an opportunity to react, the court may assume that he might have assented if he had lived; the woman is married to the extent that if another man married her preliminarily before the first one married her definitively, she would need a bill of divorce from both of them.

182 Even if the father had given his initial consent, if the son died before the definitive marriage the court will instruct the father to refuse to accept the marriage in order not to forbid the woman to a Cohen. This clause has nothing to do with the problem of the undistributed middle.

183 Reading of G. The text of L is unacceptable; R. Ze'ira cannot ask his student's student R. Yose but he can ask his teacher and R. Simeon ben Laqish's
The three clauses of this part of the Mishnah refer to three different situations. In the first clause, a very restrictive interpretation is appropriate, in the second a very general one, in the third even a prior acceptance is turned into a rejection. This agrees with the general style of the Mishnah.

Mishnah 3:3. The example does not quite fit the problem, but the general thrust is clear.

Mishnah 7: "I preliminarily married off my daughter but I do not know to whom I married her preliminarily," and somebody comes and says, I married her preliminarily, he is believed\(^{186}\). This one says, "I married her preliminarily," and that one says, "I married her preliminarily," both give a bill of divorce or, if they so wish, one gives a bill of divorce and the other marries her definitively. "I preliminarily married off my daughter, married her preliminarily and received her bill of divorce while she was underage," and [now] she still is underage, he is believed\(^{187}\). "I preliminarily married off my daughter, married her preliminarily and received her bill of divorce while she was underage," and [now] she is an adult, he is not believed\(^{188}\). "She had been kidnapped\(^{189}\) and I ransomed her," he is not believed whether she is underage or adult.
186 Since the father has the right to marry off his underage daughter, if he believes that the person claiming her is his son-in-law, he has the right to marry her to him.

187 Since he has the right to marry his daughter to a man whose intercourse will make her unfit for the priesthood, he can also declare her unfit for the priesthood as divorcee without producing proof.

188 Since he does not have the right to marry off his adult daughter, he cannot declare her ineligible for the priesthood without producing proof.

189 And presumed raped, which forbids her to a Cohen.
"If one says, I preliminarily married off my daughter", etc. About what is he trustworthy? Samuel says, he is trusted to give a bill of divorce. Assi said, he is trusted to marry. Rav Huna said in the name of Rav: He is trusted to marry. Rebbi Johanan said, he is trusted to marry but one does not infer anything for another case from this ruling. What means, one does not infer anything for another case from this ruling? I sold one of my fields but I do not remember to whom I sold it. If someone comes and says, I bought it, he is not trusted in any way. In preliminary marriage, the same holds true. "I betrothed one of my daughters but I do not remember to whom I betrothed her. If someone comes and says, I married her preliminarily," he is not trusted in any way. The Mishnah disagrees with Rav: "If somebody brings a bill of divorce from overseas and says, it was written and signed in my presence, he shall not marry that woman." There, she is considered by everybody to be a married woman. Here, she is considered to be a married woman only by two persons. One waits until these two come and say, this is the man who gave her qiddushin. The Mishnah disagrees with Samuel: "This one says, I married her preliminarily, and that one says, I married her preliminarily. Both of them give a bill of divorce, but if they agree, one gives a bill of divorce and the other one marries." He explains this, if [the father] says, I did betrothe her to one of these two but I do not remember which one it was. Rebbi Ze'ira, Rebbi Yasa, in the name of Rebbi Johanan: If one of them jumped the gun and married her, one does remove her from him. That is, if this one says, I married her preliminarily, and that one says, I married her preliminarily, and one of them jumped the gun and married
her definitively. But if he said, I married her preliminarily and then married her definitively, and another one comes and says, I married her preliminarily, he is not trusted in any way. It was stated thus: If after the marriage another man comes and says, I married her preliminarily, he is not trusted in any way.

190 The (unetymological) Babylonian version of Galilean u'B'ìi
192 Ye'batot 2:11 (ב) (Notes 184-195). G simply has a note: "One
195). G simply has a note: "One

Mishnah 8: If somebody said when dying, I have children, he is believed; I have brothers, he is not believed.

Mishnah 9: If somebody preliminarily marries off his daughter without mentioning her name, the adult ones are not included. If somebody has two groups of daughters from two wives and he says, I preliminarily married off my older daughter, but he does not know.
whether the oldest of the older ones, or the oldest of the younger ones, or the youngest of the older ones who is older than the oldest of the younger ones, all are forbidden\(^{197}\) except the youngest of the younger ones, the words of Rebbi Meïr. Rebbi Yose says, all are permitted except the oldest of the older ones\(^{198}\).

Mishnah 10: I preliminarily married off my younger daughter, but he does not know whether the youngest of the younger ones, or the youngest of the older ones, or the oldest of the younger ones who is younger than the oldest of the older ones, all are forbidden except the oldest of the older ones, the words of Rebbi Meïr. Rebbi Yose says, all are permitted except the youngest of the younger ones.

Mishnah 11: If somebody says to a woman, I married you preliminarily, but she says, you did not marry me preliminarily\(^{199}\), he is forbidden her relatives\(^{200}\) but she is permitted his relatives. I she says, you married me preliminarily but he says, I did not marry you preliminarily, she is forbidden his relatives but he is permitted her relatives.
193 His childless widow is free to marry outside the family; she does not have to investigate whether his claim is true. The Torah empowers a father to recognize a son (Deut. 21:17); the court is not empowered to require additional proof (cf. Babli Baba batra 134b).

194 If he dies childless and had married his wife without telling her that he had brothers, he cannot now subject her to levirate with a brother-in-law she might be unable to locate since her husband's uncorroborated statement cannot undo the *prima facie* presumption created at the time of his marriage (cf. Ketubot 1:4, Note 177; 5:5 Note 100; Gittin 3:4, Notes 92 ff.)

195 Since the father has no right to marry off his adult daughter. The Babli, 64b, points out that even if the adult daughter appoints her father as agent to find her a husband, the father cannot contract the preliminary marriage without mentioning that he is an agent. Then the name of the principal automatically has to be stated.

196 When he took the money or signed the contract, he did not mention her name and now he does not remember which girl he had in mind when he contracted the marriage.

197 They are forbidden to marry. None of them can marry an outsider for she may already be married. She cannot marry the man her father contracted with for he may be her sister's husband. That man has to write a separate bill of divorce for every girl.

198 Since only she is unequivocally determined by the predicate "old".

199 And there is no witness present to support either of the parties.

200 While in the absence of witnesses he cannot force the woman to be married to him, since he declares himself to be married to her he has to observe all incest prohibitions which would follow from the marriage if it were real.

> הלכה י: קדישתיה איה בתי קפצוות כל בבי קדישתי איה בתים. קפצוות בוככל תגרות בוככל.フゥרקע בהתי. איפיל קפצוות יאוני בוככל. טירשטי איה בתי. קפצוות בוככל תגרות יאוני בוככל. טירש怊 בהתי. איפיל קפצוות יאוני בוככל. קדישתיה איה בתי. קדישתיה לאום מקפצוותCAM. והוא. הבשלתי לאום
Halakhah 10: "I preliminarily married off my younger daughter," etc. "I preliminarily married off my daughter." The underaged are included\textsuperscript{201}, the adults are excluded\textsuperscript{202}. "My daughter was preliminarily married," even the underaged are not included\textsuperscript{203}. "I accepted my daughter’s bill of divorce," the underaged are included, the adults are excluded. "My daughter was divorced," even the underaged are not included. "I preliminarily married off my daughter to one of those disqualified for her," he is believed. "I made her sleep with one of those disqualified for her," he is not believed. "She had been kidnapped and I ransomed her," whether she is underage or adult or had intercourse with one of those disqualified for her, he is not believed.

\textsuperscript{201} Since Scripture bases the rules of a criminal procedure on the uncorroborated statement of a father who says "I gave my daughter to this man" (\textit{Deut. 22:16}), it is concluded that his statement concerning a daughter over which he has the power to give her away into marriage has to be accepted by the court without further documentation or corroboration.

\textsuperscript{202} Since the father has no right to give her away into marriage.

\textsuperscript{203} The language seems to imply that the father was not involved in the marriage. But an underage girl cannot be legally wedded without her father arranging the marriage. For illegal acts, the father’s standing is no different from any other person in the world; one needs two independent witnesses. The father, being his daughter’s relative, is automatically disqualified as a witness.
So is the Mishnah: "If somebody said when dying, I have children, he is believed; I have brothers, he is not believed;" Rav said, since it is in his hand to divorce, he is to be believed. The word of Samuel agrees with this. A Persian when dying said to them: Give this man’s wife a bill of divorce. They asked him, why? Because of your wretched brother? After he died, the case came before Samuel who said, since it was in his hand to divorce, he is to be believed. Rebbi Johanan said, he is not to be believed. Ulla descended there and said this in the name of Rebbi Johanan; they ganged up on him. Think of it, if he was a Cohen?

204 One is not forced to say that the man married under false pretenses when he did not inform his bride of the existence of a brother; that now he cannot change her situation while maintaining the validity of his marriage, since he could conditionally divorce his wife, the divorce becoming active a moment before his death, and thereby protect her from the complications of levirate (in particular, in this case where the widow would be bound to an unknown brother-in-law whom she might be unable to locate).

205 His own.

206 There is no reason to believe that the bill of divorce was not written and duly delivered. Samuel’s decision was that the estate, after payment of the widow's claims, has to be held by a court-appointed trustee for the brother as next of kin.
In Babylonia he proclaimed the Babylonian authorities Rav and Samuel to be in error.

The Babylonian scholars.

This is R. Johanan's and Ulla's argument against Rav and Samuel:

Since a Cohen may not give his wife a conditional bill of divorce without forbidding her permanently to himself, and civil law does not make any difference in the personal standing of the parties, the Babylonian argument is invalid; the Mishnah is justified.

In the Babli, Baba batra 134b/135a, R. Johanan holds that a man who says that he divorced his wife cannot be believed without corroborating evidence. Then he cannot be believed if unexpectedly he declares to have a brother.

Rav Sheshet objected: Does not the Mishnah disagree? "You married me preliminarily but he says, I did not marry you preliminarily; he is permitted her relatives but she is forbidden his relatives." They said, so did it happen: Simeon bar Abba brought a bill of divorce and delivered it in front of one witness. The case came before Rebbi Johanan, who said, a single witness in marital matters is nothing.

Did not Rebbi Hyya bar Assi in the name of Assi say: a single witness in marital
matters is nothing? Rav said, one who performs a preliminary marriage in front of a single witness did not do anything\textsuperscript{214}. Samuel said, he who performs a preliminary marriage without prior negotiation is whipped, but the preliminary marriage holds. Mar Uqba in the name of Samuel said three things: He who performs a preliminary marriage without prior negotiation is whipped\textsuperscript{215}; one who sleeps with his betrothed in his father-in-law's house\textsuperscript{216} is whipped; one who insults the court bailiff\textsuperscript{217} is whipped.

\textsuperscript{210} The language is unusual; how can one object if no statement was yet enunciated? But it is impossible to move the question after the statements of Rav and Samuel because of the concurrent testimony of G (which admittedly is fragmentary at this point.)

\textsuperscript{211} Mishnah 12; the order of arguments is that of the Mishnah in the Babli.

Rav Sheshet's point is that the case treated in the Mishnah simply cannot happen. Either there are witnesses to the marriage, then there can be no dispute; or there are no witnesses, then there is no marriage.

\textsuperscript{212} There was no delivery, the woman is not yet divorced. The agent has to take the document back and deliver it anew in front of two witnesses.

\textsuperscript{213} Unfortunately, these names are missing in G; there is an outside chance that the reference is to Rav Hiyya bar Ashi, student of Rav.

\textsuperscript{214} In the Babli, 65a, this is a statement of Rav Nahman in the name of Samuel; it is stated explicitly that this holds even if the parties agree.

\textsuperscript{215} In the Babli, 12b, this is attributed to Rav and rejected as practice in Nahardea, Samuel's place. Probably this means that a betrothal is possible at the second, but not the first, date.

\textsuperscript{216} As was the custom in Mishnaic times in Judea (Ketubot 1:5; Mishnah and Note 208).

\textsuperscript{217} Who acts in an official capacity.
Halakha: "If somebody has two groups of daughters," etc. Rav Hama said, two of two.218. Rebbi Jacob bar Aha said, for example I, who have two of two. The Mishnah [speaks of] him who has two groups of daughters from two wives, but if he has only one group and he said, the older, he married off only the oldest; if he said, the younger, he married off only the youngest.

218 Even R. Meir will agree that if one wife has more than two daughters, the intermediate ones will neither be called "old" or "young" but be specified by name. Therefore, the whole disagreement is about a man who has two daughters each from two wives.
There, we have stated: "Until before Passover", Rebbi Meïr says, until it comes, Rebbi Yose says, until it passed." Rebbi Jeremiah asked before Rebbi Ze'ira: The opinion of Rebbi Meïr seems inverted; the opinion of Rebbi Yose seems to be inverted. The opinion of Rebbi Yose seems inverted: There, he says "until all the elder possibilities are exhausted, until all the younger possibilities are exhausted," and here, he says so? He said to him: Since Ben Azai and Ben Zoma died, the perseverers disappeared; no perseverer was there until Jeremiah appeared. Rebbi Abba, son of Rebbi Hiyya bar Abba, said, why does he needle him? Did not great mountains find this difficult, did not Rebbi Eleazar already ask before Rebbi Johanan, does not the opinion of Rebbi Meïr seem to be inverted? He said to him, it is not inverted, the Mishnah is inverted, for in the House of Rebbi they stated: "Until before Passover', Rebbi Meïr says, until it passed, Rebbi Yose says, until it comes." He said: We ask "until before", and you say so? He said to him, this is a Nabatean expression, "much before Passover". Rebbi Abin said, everybody agrees that he is permitted on Passover\(^{46}\). Where do they disagree? The day before Passover. One of them says, until it passed, the other until it comes.

\(^{219}\) This is essentially *Nedarim*, entire reference to this text seems to Halakhah 8:3 (Notes 36-45). In G, the have been in one missing line.
Halakhah: "If somebody says to a woman," etc. Rebbi Yossi said, it is reasonable that Rebbi Meir not disagree in this case. Rebbi Mana said, the entire series implies that he disagrees. Since there, where they are all older and younger, you say that Rebbi Meir disagrees, so here, where all are old compared to young or young compared to old, he certainly disagrees.

220 This refers to the next Mishnaiot 12 and 13, where the question is whether the mother or a daughter was being married. There, R. Meir's name is not mentioned. R. Yose implies that the Mishnah is R. Meir's.

221 Reading with G for "nothing" of L.

222 The case of two groups of girls from different mothers.

223 R. Mana seems to imply that also in Mishnah 11, and certainly in Mishnaiot 12 and 13, R. Meir imposes incest restrictions on all parties, including those who deny being parties to a marriage.

Mishnah 12: "I am preliminarily married to you," but she says, you are only preliminarily married to my daughter; he is forbidden the relatives of...
the old woman, and the old woman is permitted his relatives; he is permitted the relatives of the young woman, and the young woman is permitted his relatives.

Mishnah 13: "I am preliminarily married to your daughter," but she says, you are only preliminarily married to me; he is forbidden the relatives of the young woman, and the young woman is permitted his relatives; he is permitted the relatives of the old woman, and the old woman is forbidden his relatives.

Since he claims marriage with her daughter, he is forbidden the relatives he could not marry had the claim been true (cf. Mishnah Yebamot 4:7). While all relatives of the mother's are also relatives of the daughter's, the lists of forbidden unions are different in the two cases.

She did not claim being party to a marriage; it was her mother who claimed for herself but the mother's action cannot impair the daughter.

Halakhah 13: "I am preliminarily married to your daughter," etc. Rav Huna said, one induces him to give a bill of divorce, and one forces him to pay a fine. Think of it, if he was a Fellow and knew that he would be obligated for a bill of divorce and a fine; if he went and married her sister, would one force the divorce of the certain because of the doubtful?
It is not clear from this text to which woman the bill of divorce has to be given. If sense is to be made of the text, one has to read it in the light of the Babli, 65a, where Samuel states that if a woman claims to be preliminarily married to a man, which claim he denies, one has to try to make him give her a bill of divorce to free the woman for marriage to another. In the case of the Mishnah, the bill of divorce would be for the mother; the daughter is not mentioned in the discussion. Rav, the teacher of R. Huna, states that if he gave the bill of divorce on his own initiative, one can force him to pay the divorce settlement required by the law of ketubah.

Rav Ḥuna's statement is rejected as impractical. Assuming that the man either is reasonably well trained in the law or has access to legal advice, he can avoid being badgered into offering a bill of divorce and then forced to pay a hefty sum by threatening to marry the woman's sister. Since the Mishnah permits him to marry the sister, one cannot ask him to give a divorce to his sister-in-law since by that act he would prohibit his prospective wife to himself. It is in the interest of the woman desiring the bill of divorce to make it clear that she has no monetary claims. (Explanation of D. Fraenckel.)

The last sentence cannot be read as declarative: "one forces the divorce of the certain because of the doubtful", meaning that the man would be barred from marrying the sister because of the unproven claim of the woman, since this would contradict both the Mishnah which permits the woman's relatives to the man, and the general principle that in marriage matters only those statements count which can be backed up by the testimony of two witnesses. The case cannot be compared to Yebamot 3:4 where a man is forced to divorce his (rabbinically) preliminarily married wife and give halîṣah to her sister.

"Fellow" is used here not in the technical sense of a person observing the laws of ritual purity (cf. Introduction to Tractate Demay), but somewhat learned in the law.
Mishnah 14: In any case of a not sinful preliminary marriage, the child follows the father. Who is this? A priestly, or Levitic, or Israel woman married to a Cohen, a Levite, or an Israel. And in any case of a sinful preliminary marriage, the child follows the blemished part. Who is this? A widow [married to] a High priest, a divorcee or one who has received halîsah to a common priest, a bastard or a Gibeonite to an Israel, the daughter of an Israel to a Gibeonite or a bastard.

Mishnah 15: In any case where a preliminary marriage with him is impossible but with others is possible, the child is a bastard. Who is this? This is one having sexual relations with any woman forbidden in the Torah because of incest or adultery. And in any case where a preliminary marriage is impossible with anybody, the child follows the mother. Who is this? The child of a slave girl or a Gentile woman.

228 The child belongs to the same marriage class (detailed in Mishnah 4:1) as his father.
229 As the Halakhah points out, this list is far from complete; it contains only those cases in which there is absolutely no controversy.
230 The divorcee is forbidden to any Cohen by biblical decree (Lev. 21:7); the woman having received...
halisah is a divorcee only by common practice. The child is "desecrated" in the sense of Lev. 21:7; the marriage prohibition is transferred to future generations.

231 Who is forbidden any endogamous marriage, Deut. 23:3.


233 The child is a bastard in all cases of adultery; in cases of incest only those mentioned as deadly sins in Lev. 18,20; cf. Mishnah Yebamot 2:5.

234 Since preliminary marriage is a uniquely Jewish institution, Gentiles are automatically excluded since for them only definitive marriage exists (cf. Chapter 1, Notes 33-39.) The Jewish father cannot have any family relationship with his Gentile child: The widow of a man having only had a child with a Gentile woman is the widow of a childless man and subject to levirate marriage: Mishnah Yebamot 2:5.
Halakhah 14: "In any case of a not sinful preliminary marriage," etc. Rebbi Simeon ben Laqish asked before Rebbi Johanan: If a proselyte married a bastard girl, there is no sinful preliminary marriage\(^2\), but the child follows the blemished part? He answered, everywhere Rebbi taught, he explained: "Who is this? A priestly, or Levitic, or Israel woman married to a Cohen, a Levite, or an Israel."\(^2\) Rebbi Abin understood this from the second part: (In any case of a not sinful preliminary marriage, the child follows the father.) [In any case of a sinful preliminary marriage, the child follows the blemished part.]\(^2\) Rebbi Simeon ben Laqish asked before Rebbi Johanan: If a proselyte married a bastard girl, there is no sinful preliminary marriage, but the child follows the blemished part? He answered, everywhere Rebbi taught, he explained: "Who is this? A widow married to a High priest, a divorcee or one who has received halîsah to a common priest, a bastard or a Gibeonite to an Israel, the daughter of an Israel to a bastard or a Gibeonite."\(^2\) Could he not have objected to him: In the case of a disqualified priest married to the daughter of an Israel there is no sinful marriage but the child follows the blemished part? In the case of a man taking back his divorcee after she had been remarried, there is (no) sinful marriage but the child is unblemished since Rebbi Hiyya said in the name of Rebbi Johanan: The daughter of a man taking back his divorcee after she had been remarried is enabled for the priesthood. What is the reason? [For she is an abomination,] \(^2\) she is an abomination but her children are not an abomination\(^2\).

235 The first half of the line is must have read יִשָּׁר instead of יַשֶּׁר missing in G but obviously the text.
236 Following the rabbis in Halakhah 4:1 (Yebamot 8:2, Note 151), whose opinion is that of R. Yose in the Babli, 72b; for R. Jehudah the marriage would be sinful but not punishable, not included in the list of Mishnah 14 (Maimonides, Issure Bi'ah 15:7).

237 He pointedly avoids taking a position about marriages permitted to proselytes.

238 The text in parentheses is from L, the one in brackets from G. It is obvious that the G text is correct.

239 Halakhah 4:6. The question is not answered since the case presents a genuine inconsistency in the Mishnah.

240 Text of L; the interpretation has to follow G.

241 Deut. 24:4; quote missing in L; it is in Yebamot 4:13, Note 207.

242 The marriage of the remarried divorcee is sinful but not incestuous; the formulation of the Mishnah correctly excludes this case.

243 As noted in G, this paragraph is in Notes 10-14; a slightly different text, quoted in Yebamot 9:1, explained there.
A proselyte came to Rebbi Yose and asked him, is it permitted to marry a bastard girl? He answered him, it is permitted. He continued and came to Rebbi Jehudah, who answered him, it is permitted but you should know that the children of such a man would be bastards before Heaven. He returned to Rebbi Yose and told him, since you knew that, why did you permit it to me at the start? He replied, I answered you what you asked me. Rebbi Yose said, the proselyte can be compared to cotton. If one wants to use it with wool it is permitted, with linen it is permitted.

244 The language is somewhat difficult since for R. Jehudah proselytes are part of the "Congregation of the Eternal" (Deut. 23:3), to whom marriage with bastards is forbidden (Yebamot 8:2, Note 151; Qiddušin Halakah 4:1, Note 105). But even R. Jehudah will agree that marriage of a proselyte with a bastard is not punishable.

245 From his point of view, he is obligated to point out the implicit punishment meted out by Heaven for such an illicit union.

246 Since he holds that proselytes are not part of the "Congregation of the Eternal", he is not obligated to point out that the children of the proselyte will remain outside the congregation if he marries a bastard.

247 Which is neutral for the
prohibition of sa'atnez. While wool may be mixed with cotton; cf.
and linen cannot be mixed, either one
Introduction to Tractate Kilaim.

One understands "the daughter of an Israel to a bastard or a Gibeonite," for it is written: "A bastard shall not come into the Eternal's congregation." Why does the verse say: "of his shall not come"? To disqualify. Rebbi Abbu said, what means "ITDD? "A strange defect." This disagrees with
what Rebbi Jehudah ben Pazi\textsuperscript{250} said, "God installs singles\textsuperscript{251} as heads of families," even if there is a male bastard at one end of the world and a female bastard at the other, the Holy One, praise to Him, brings them and copulates them with one another. Rav Huna said, a bastard does not live more than thirty days.\textsuperscript{252} In the days of Rebbi Berekhiah, a Babylonian immigrated here\textsuperscript{253}; he was informed that this was a bastard. He\textsuperscript{254} said to him, support me\textsuperscript{255}. He\textsuperscript{255} told him, tomorrow you will stand up in the community and I shall look for an allowance for you. He came and sat during the sermon. When he\textsuperscript{245} finished the sermon, he said, our brothers, support this man for he is a bastard. After the congregation had left, he\textsuperscript{254} said to him, rabbi, I requested material support from you but you destroyed this man's life. He\textsuperscript{255} answered, by your life, life\textsuperscript{256} I gave you for Rebbi Abba, Rav Huna, said in the name of Rav: A bastard lives only thirty days. When? If he is not publicly known. But when he is publicly known, he survives.

Marrying a bastard, while sinful, is not punishable. Therefore, one might assume the children of a bastard not to be bastards; they are not conceived in deadly sin. But Deut. 23:3 disqualifies the children from marrying in the congregation: "A bastard shall not come into the Eternal's congregation, even the tenth generation of his shall not come into the Eternal's congregation."

It seems that G had here another derivation, of which no trace is left in L and editio princeps.

The word for "bastard" has no etymology in the Pentateuch (following J. Barth, the root is גֶּז to be dirty).

In Gen. rabba 65(2), this is attributed to the Tanna R. Jehudah (bar lla).
and as a Jew is unable to contract marriage with a Gentile (but cf. Halakhah 15).

252 This sentence is missing in G; it is superfluous here but will be quoted later in a fitting context.

253 When at the end of the Fourth Century, Jews usually emigrated from the hostile Christian Roman empire to the more welcoming Persian empire.

254 The bastard.

255 R. Berekhiah.

256 Following the reading of G.

257 When Rebbi Ze'ira immigrated here, he heard voices call "he-bastard, she-bastard". He said, what is this? There goes that of Rav Huna, since Rav Huna said, no bastard lives more than thirty days. Rebbi Jacob bar Aha said to him, I was with you when Rebbi Abba, Rav Huna said in the name of Rav: No bastard lives more than thirty days, when? If he is not publicly known. Therefore, if he is publicly known, he lives.

257 This is from Yebamot 8:3, Note 201; an addition to Rav Huna's
מונותת שיאן יל עטינ קדושין. אבל יהם של קדושין על ארוסים וЊתל
 دمشق. אוף כל-שיאן יל עטינ קדושין חידל שלמה. רבי שמיעון בן
 ימואיה. ויה. מתה את אביו מונותת שיאן יל עטינ קדושין. אבל ים
 של קדושין על ארזים חודל שלמה. ינא כי העבד שיאן יל עטינ לאל 앞
 אזורים קדושין. מחוז רבי שמואל בר אבא על חמה טניינ קדשיםיה.
 זרי יבגא ביאש רבי. כי היעב שיאן על תי-יאל קדושין חודל שלמה.
 רבי. קינש חידל ביאש רבי עם שיאן חודל שלמה. רבי שמעון זכ溢价
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ופסיקו ואל תמא בעה בהלות"
It was stated: "If a Gentile or a slave had intercourse with a Jewish woman, the child is a bastard; Rebbi Simeon ben Jehudah says in the name of Rebbi Simeon, the child is not a bastard, for a bastard is only from a woman forbidden to him by an incest prohibition for which the penalty is extirpation." Both of them explained the same verse, "nobody may take his father's wife, etc." Rebbi Meir explains: Since his father's wife is special in that he cannot have preliminary marriage with her, but she could have preliminary marriage with others, and the child is a bastard, so in all cases in which she cannot have preliminary marriage with him, the child is a bastard. Rebbi Simeon ben Jehudah explains: Since his father's wife is special in that she cannot have preliminary marriage with him, but she could have preliminary marriage with others, and the child is a bastard; this excludes the Gentile and the slave who cannot contract preliminary marriage with her or with others. Rebbi Samuel bar Abba questions that first Tanna: The sister-in-law who whored cannot have preliminary marriage with him or with others, but the child is qualified! Rebbi Yannai in the name of Rebbi: If a Gentile or a slave had intercourse with a Jewish woman, the child is a bastard. Rebbi Johanan and Rebbi Simeon ben Laqish both say, the child is a bastard. Rebbi Jacob bar Aha, Rebbi Simeon bar Abba, Rebbi Joshua ben Levi, in the name of Rebbi (Yannai ben) Rebbi: The child is neither qualified nor disqualified but dirtied. Rebbi Jonathan went with Rebbi Jehudah Nešia to the hot springs of Gadara. There, he instructed: The child is qualified. Rebbi Ze'ira said, this child improves as time goes by. Rebbi declared the child dirtied, his grandson declared him qualified. Rebbi Abba bar Zavda instructed in the name of all rabbis: The
child is qualified. Rebbi Bevai said before Rebbi Ze'ira in the name of Rebbi Hanina: The child is qualified. Rebbi Ze'ira said, if it is from that, one does not learn from a declaration. Rebbi Hizqiah said, I know the story from beginning to end. Rebbi Hama bar Hanina went up to the hot springs of Gadara. He visited his father who said to him: Be careful, because there are those who are disqualified, lest you injure them.

258 *Yebamot* 7:6 (Note 129), *Ketubot* 3:1 (Note 22), *Gittin* (Note 123); Babli *Yebamot* 45a. The entire baraita in Tosephta 4:15.

259 Mishnah *Yebamot* 4:14.

260 In G, the following is a statement by R. Abbahu in the name of R. Johanan.

261 A parallel discussion, among different Tannaïm, is reported in *Yebamot* 4:15 (Notes 211-218). The prohibition of the father's wife (who is not the mother) is repeated in *Deut.* 23:1 from *Lev.* 18:8, 20:11, to be connected with the exclusion of the bastard from endogamous marriage. *Deut.* 23:3. It is understood that a man's child from his father's wife is a bastard. The problem is to discern the legal principle which implies that the child is a bastard.

262 This text, adopted by the *editio princeps*, is the corrector's text. The second clause and a logical connection are missing from the scribe's original text which makes no sense as it stands:

Rebbi Meïr explains: Since his father's wife is special in that he cannot have preliminary marriage with her, but if she could have preliminary marriage with him, the child is a bastard.

Reading of G (lacunae in the text filled in brackets):

Rebbi Meïr explains: Since his father's wife is special in that he cannot have preliminary marriage with her, so in any case in which she cannot have preliminary marriage with him, the child is a bastard.
It seems that the original text underlying L was the text of G.

263 *Yebamot* 1:1, Notes 93-94. The widow of the childless man is obligated to definitively marry his brother in levirate; by biblical standards this requires no preliminary marriage. By the same token, she is unable to contract preliminary marriage with any other man before being released by *halisah* (cf. *Halakhah* 5, Note 166). Any sexual relations she might have during the time she is waiting for her levir are sinful but neither adulterous nor punishable.

264 To contract marriage "in the Eternal's congregation."

265 There is no R. Yannai ben Rebbi. Later the statement is quoted in the name of R. Gamliel (IV) ben Rebbi. G is illegible at this point.

266 If the child is female, she is not eligible as marriage partner of a Cohen.

267 Even for a Cohen.

268 Children of Jewish women from Gentile fathers.

269 Even though Rebbi Simeon ben Jehudah said in the name of Rebbi Simeon: If a Gentile or a slave came to a daughter of Israel, the child is acceptable; they agree that if she was female, she is blemished for the priesthood. Even though Rebbi Joshua said, the child of him who sleeps...
with his sister is acceptable, he agrees that if the child was female she would be blemished for the priesthood. A man came to Rav and said, since the children of this man's mother are from an Aramean? He said, acceptable. Rav Hama bar Guria said to him, let your feet carry you away before Samuel comes and declares you blemished. Even though Rav said, if a Gentile or a slave came to a daughter of Israel, the child is acceptable, he agrees that if it was a female, she would be blemished for the priesthood.

259 This paragraph is from Yebamot that source.
4:15, Notes 215-218. G only refers to
Rebbi Jacob bar Aha said: There, they state that the one who disqualifies, disqualifies from an unmarried woman, and the one who qualifies, qualifies even from a married woman. Rebbi Tanhum bar Pappus sent and asked Rebbi Yose about two cases from Alexandria, one involving an unmarried woman, the other a married woman. About the married woman, he wrote him: "A bastard shall not come into the Eternal's congregation." About the unmarried woman he wrote, be inventive, for your are not forewarned about the holy daughters of Israel. He said to Rebbi Mana, take and sign; he signed. He said to Rebbi Berekhiah, take and sign, but he did not agree. After they ended the session Rebbi Mana was standing with Rebbi Berekhiah and asked him, why did you not sign? He answered, did not Rebbi Jacob bar Aha say that there, they state that the one who disqualifies, disqualifies from an unmarried woman, and the one who qualifies, qualifies even from a married woman? He said, praised be the Merciful that I had not heard this doctrine, for if I had heard this doctrine I would not have signed and people would have said that the student disagrees with his teacher. Mar Uqban said, here, you say that the one who disqualifies, disqualifies from an unmarried woman, and the one who qualifies, qualifies from an unmarried woman, but about a married woman, nothing was said. The next morning he came and wanted to sign. He said to him, there is no space.

270 In Babylonia; Babli Yebamot 45b.
271 R. Meir who declares the child of a Gentile and a Jewish woman a bastard, does so even if the woman was single. R. Simeon ben Jehudah who declares the child qualified does so even if the mother was a Jewish woman married to a Jew. Practice in the Babli is decided according to R.
Simeon ben Jehudah.

272 Deut. 23:1. He decided against the Babylonian practice.

273 The expression מבדין is a *hapax legomenon*. It can be derived from Aramaic יְבִי "to invent a story", or from a multiplicity of Arabic roots. In G one reads "you should recognize that", meaning that both the girl and her child can marry in the congregation. The only argument one has for the text of L is that it is *lectio difficilior*.

274 Rebbi Yose (the Babli, *Yebamot* 45b, is undecided whether it was R. Yose bar Abin or R. Yose bar Zavida) who declared the child of the married woman a bastard and that of the single woman qualified. He collected signatures from the members of his Academy to stress the importance of his decision.

275 How can you qualify the child of the unmarried woman if the child of the married woman is a bastard?

276 R. Mana, the student of R. Yose.

277 R. Berekhiah, who had heard from Mar Uqban that R. Yose decided correctly according to the Galilean tradition.

278 R. Yose, who apparently was offended by R. Berekhiah's behavior. R. Berekhiah was a great preacher but no great authority in law.
Rebbi Hiyya bar Abba went to Tyre. When he came before Rebbi Johanan, he asked him, what case did you handle? He said to him, a proselyte who had been circumcised but had not immersed himself. He asked him, why did you not injure him? Rebbi Joshua ben Levi told him, leave him alone, he acted correctly not to injure him. The argument of Rebbi Joshua ben Levi seems inverted. There, Rebbi Jacob bar Aha, Rebbi Simeon bar Abba, Rebbi Joshua ben Levi, in the name of Rebbi Gamliel ben Rebbi: The child is neither qualified nor disqualified but dirtied. And here, he says so? Did we not state: If a proselyte was circumcised but not immersed, immersed but not circumcised, everything depends on circumcision, the words of Rebbi Eliezer. Rebbi Joshua says, immersion also is necessary. But Rebbi Joshua ben Levi follows what Bar Qappara stated, as Bar Qappara stated: A proselyte who was circumcised but not immersed is qualified since there is no proselyte who did not immerse himself for his emission of semen. Is that not difficult? The cleansing from a minor impurity is counted for him for a major impurity? Rebbi Yose ben Abun said, since either one is for the holiness of Israel, it is counted for him.

279 From the context it seems clear that the proselyte had married a Jewish wife and R. Hiyya bar Abba declared the child qualified to marry in the congregation even though his teacher R. Johanan held that the child of a Gentile and a Jewish mother was a bastard.

280 And declare the child a bastard since the father did not complete the process of conversion.

281 Of the generation of R. Johanan's teachers.

282 Then at least R. Hiyya bar Abba
should have declared any female child ineligible for the priesthood.

283 The statement of the baraita is missing in G.

284 Circumcision is mentioned in Ex. 12:48 as formal requirement for conversion, but nothing else.

285 Since all the Children of Israel, when they were converted to the Jewish faith at Mount Sinai, had to immerse themselves, Ex. 19:10.

286 Which is required even for lawful intercourse, Lev. 15:16,18.

287 The essence of immersion in water is not the fact of immersion but the intent of the action. The impurity of an emission is minor since it can be remedied immediately. The entrance of a proselyte into the Jewish system of impurity is a major undertaking. How can a routine immersion be the equivalent of a major ceremony?

288 The argument is quoted in the Babli, Yebamot 45b, in the name of R. Joshua ben Levi; a similar principle is promulgated by Rav Assi for a woman proselyte who follows the rules of family purity.

"Who is this? The child of a slave girl or a Gentile." There, we have stated: "Except what he has from a slave girl or a Gentile."

289 A slave woman: "The woman and her children shall belong to her owner." A Gentile woman. Rebbi Johanan [said] in the name of Rebbi Simeon ben Ioḥai, it is written: "You shall not conclude marriage with them, your daughter you shall not give to his son". And it is written: "For he will divert your son from following Me." Your son from a Jewish...
woman is called your son; but your son from a Gentile woman is not called your son but her son.

Jacob from Kefar Naboraia went to Tyre. They came to ask him, may one circumcise the son of a Gentile woman on the Sabbath? He wanted to permit it from the verse: "They determined their genealogies for their families according to their fathers’ houses." Rebbi Haggai heard it and said, he shall come and be whipped. He said to him, for what reason do you whip me? He said, from what is written: "Now we shall make a covenant to send away all foreign women and those born to them, etc". He said, you want to whip me based on tradition? He said, "and it should be done according to the Torah." He said to him, from which teaching? He said, from that which Rebbi Johanan said in the name of Rebbi Simeon ben Ioḥai, it is written: "You shall not conclude marriage with them," etc.291 He said to him, whip your whipping, because it is good to impress.
Mishnah Yebamot 2:6. As long as the mother is Jewish, there is no difference between legitimate and illegitimate children; but children from a Gentile or servile mother are not their father's children.

From here to the end of the Halakhah, the text is from Yebamot 2:6 (ב), Notes 140-146. G only has a note to continue the text in Yebamot.

Mishnah 15: Rebbi Tarphon says, bastards can cleanse themselves. How is this? If the bastard married a slave girl, the child is a slave. When he is manumitted, the son is a free person\textsuperscript{292}. Rebbi Eliezer said, he is a slave and a bastard\textsuperscript{293}.

\textsuperscript{292} Naturally, the son is not legally his father's son and heir; he cannot inherit except by a will. But he will be able to marry in the congregation.

\textsuperscript{293} In his opinion, manumission of the slave will not remove the stigma of bastardy.
Halakhah 15: "Rebbi Tarphon says, bastards can cleanse themselves;" etc. So is the Mishnah: A bastard is permitted to marry a slave girl\(^{294}\).

Rav Jehudah in the name of Samuel: Practice follows Rebbi Tarphon\(^{295}\).

Rebbi Simlai instructed in Antiochia\(^{296}\), Rebbi Simai instructed in Kefar Seforaia\(^{297}\): Practice follows Rebbi Tarphon.

\(^{294}\) This is not an emendation of the Mishnah, but a logical inference. In general, a Jew is not allowed to sleep with a slave girl since any sexual relations with a person whom he could not marry violate Deut. 23:18. But R. Tarphon implies that the informal marriage of a bastard with a slave girl (or a free Gentile woman) has rabbinic blessing since 1) the bastard is precluded from contracting a marriage with members of the congregation and

2) having the possibility of sexual relations is a basic human right (Gen. 1:28). The Babli agrees, 69a.

\(^{295}\) Babli, 69a.

\(^{296}\) According to the Babli, his landlord was a bastard; he counseled him how to have marriageable children.

\(^{297}\) The name of the locality cannot be determined either from L (different versions of scribe and corrector) or from G.
It was stated in the name of Rebbi Meïr: It can happen that a man and a woman give birth to five nations. How is this? [A Gentile] had a male and a female slave who had children: these are Gentiles. If one of them became Jewish, one is a proselyte and one a Gentile. If their master converted and converted them as slaves, [any children] are slaves. Rebbi Ze'ïra said, this implies that if a Gentile had intercourse with a slave girl, the child is a slave. "If he manumitted the slave girl and she had a son, the child is a bastard. If afterwards he manumitted the slave and he begat a child, he is a freed slave.

It can happen that a man sells his father to pay his mother's ketubah. How is this? Somebody has a male and a female slave and they have a son. He manumitted the female slave, married her, and willed all his property to her son. That is one who sells his father to pay his mother's ketubah."

298 Tosephta 5:11-12; in slightly different form Babli Yebamot 99a.
299 A nation is defined here as a group of people following identical marriage rules.
300 Reading of G and Tosephta; implied by L.
301 As far as Jewish marriage laws are concerned, there is no difference between a Gentile free person and a Gentile slave.
302 One of the children.
303 If the parents become slaves in a Jewish household, the children will be slaves under Jewish law.
304 This rule is presupposed everywhere in the Yerushalmi. Since the slave girl cannot marry and is forbidden as sex partner to any free Jew by Deut. 23:18, she has the right to freely associate both with slaves and Gentiles. The children of the slave...
mother always inherit their mother’s status; Mishnah 3:15.

305 Once the woman is freed, if she continuous to live with the slave who was her de-facto husband as a slave, the child is a bastard for R. Meïr (Note 99a).

306 Following Mishnah 3:15, there is marriage without sin; the child obtains the status of his father.

307 Tosephta 5:13; Babli Yebamot 99a.

308 "Rebbi Meïr says, bastards will not be purified in the future, since it is said: ‘The bastard will dwell in Ashdod’; one carried garbage to garbage and deviant to deviant. Rebbi Yose says, bastards will be purified in the future, since it is said: ‘I shall pour upon you pure water [and purify you].’ Rebbi Meïr said to him, but it says only "from all your impurities and all your abominations I shall purify you." Rebbi Yose said to him, if it had only said, "from all your impurities and all your abominations" and then stopped, I would have agreed with you. But since it adds "I shall purify you", from bastardy. Rebbi Huna said in the name of Rav Joseph, practice in the future will not follow Rebbi Yose."
308  Tosephta 5:4, Babli 72b, in different formulation.
310  Ez. 36:25.
311  Quoted in G; the "etc." in L is better talmudic style, not quoting the part of the verse to which one really refers.
312  A repetition not logically necessary.
313  G adds: "The generations are wretched."
Mishnah 1: Ten marriage classes returned from Babylonia: Priests, Levites, Israel, desecrated priests\(^1\), proselytes, freedmen, bastards\(^2\), dedicated ones\(^3\), silenced ones\(^4\), foundlings. Priests, Levites, and Israel are permitted to marry one another. Levites, Israel, proselytes, freedmen, and desecrated priests are permitted to marry one another\(^5\). Proselytes, freedmen, bastards, silenced ones, and foundlings are permitted to marry one another.

1 Descendants of the forbidden union of a priest and a divorcee or a prostitute.
2 Descendants of an adulterous or incestuous union involving a deadly sin.
4 As explained in Mishnah 2, children with a known mother but unknown father.
5 The marriage class of the child being that of the father by Mishnah 3:14.
Halakhah 1: "Ten marriage classes returned from Babylonia," etc.

Priests, Levites, and Israel, as described: "There came of the Children of Israel, and of the priests, the Levites, both the servants and the doorkeepers, and the Temple slaves, to Jerusalem in the seventh year of king Artaxerxes."

6 Ezra 7:7. This is clearly a copyist's error; it must read "singers" as in the masoretic text. Even at the end of the Second Temple period, levitic singers and doorkeepers formed two clearly identified classes in the Temple service. All the distinctions in marriage classes here are clearly attributed to Ezra, not to the early returnees under Sheshbazzar and Zerubabel.

7 This quote seems to be missing in G.

8 Desecrated priest." Following "from the sons of Cohanim, the family Havaya, the family Haqqoṣ, they tried to find their genealogical documents; but they were not found and they were freed from priesthood.
And the tiršata\textsuperscript{11} told them. Why was he called hattiršata? Because they permitted him to drink of the wine\textsuperscript{12}. Hatiršata, "I was the king's cup bearer." "That they should not eat from what was dedicated as holy\textsuperscript{13}." Therefore, from outside\textsuperscript{14} holy food they might eat? Rebbi Yose said, great is the permanence of the status quo ante\textsuperscript{15}. Since they were used to eat there\textsuperscript{16}, they may also eat here. One understands there, as it is written: "Put up signposts for yourself\textsuperscript{17}." What can one say here\textsuperscript{18}? Following him who said, they accepted tithes voluntarily\textsuperscript{19}. "Until a priest will be appointed for urim and tummim." But were there any urim and tummim then, in the Second Temple\textsuperscript{20}? But [he is] like a person who says until the dead will be resurrected, until David's son\textsuperscript{21} will come.

\textsuperscript{9} Ezra 2:61-63. The verses prove that there were desecrated priests coming from Babylonia, as asserted in the Mishnah.

\textsuperscript{10} Not mentioned here is the statement that their problem was rooted in the fact that their ancestors 500 years earlier had married the daughters of Barzilai the Gileadite; this is the subject of the following paragraph. The quote then shows that the category of "desecrated priest" is hereditary.

\textsuperscript{11} The Persian title of the governor, "the one to be feared". The title is applied to Nehemiah in 8:9; therefore, traditionally the appellation is interpreted as a kind of nickname of Nehemiah (as is explicit in G) and as such the Iranian word is read as an Aramaic pun. It is clear from Neh. 7 that the title in Ezra 2 cannot apply to Nehemiah; it probably refers to Sheshbazzar.

\textsuperscript{12} As cup-bearer to the Persian monarch, Nehemiah certainly had to taste the wine to make sure it was not poisoned. But drinking Gentile wine is forbidden in rabbinic Judaism. Since Nehemiah shows himself to be strictly orthodox in Ezra and Nehemiah, the natural assumption is that he had obtained a special dispensation from the religious authorities of the time. The interpretation reads the name ἐβδομάδας (which never appears without
initial η) not as a noun with definite article but a composite αὔτον·ρήξε "permitted drinker." The explanation is quoted by Rashi, 69b, s.v. ἀνωτάτη.

13 It seems that the Yerushalmi is in disagreement with the vocalization by the Masoretes. In the Pentateuch, to which the verses clearly are referring, masoretic vocalization strictly differentiates between the noun ἁγία "sancta, sacrifices" and the superlative adjective ἁγιότατον "most holy". Since the mss. of the Ben-Asher tradition uniformly write ἁγιότατον in the verse here, it is clear that the masoretic interpretation of the verse forbade all holy food to the desecrated priests, whether Temple sacrifices or "outside sancta", i.e., heave and tithes. But the Yerushalmi, based on the Mishnaic distinction between ἁγιότατον "most holy sacrifices", destined exclusively for the altar and/or legitimate priests in the Temple precinct, ἁγίαντες ὄνειρα "simple sacrifices" (well-being offerings) shared between altar, priests, and the donor's family, and ἁγιότατον "outside sancta", here reads ἁγιότατον "most holy sacrifices." This immediately raises the question why desecrated priests are not summarily excluded from all holy food (as they are in rabbinic practice). As far as the fragmentary text of G can be interpreted, this is exactly the question asked, which is missing in L and editio princeps: "[If they are genuine priests] they should eat Temple sancta; if they are not genuine priests [they should be excluded from all sancta.]" The Yerushalmi is quoted by Rashi as explanation of the Babli, 69b s.v. ἀνωτάτη.

14 Maybe better: "Borderline sancta."

15 Cf. Gittin 3:4 Note 87, Ketubot 5:5 Note 100, Yebamot 15:12 Notes 181. An echo of the discussion here is in the Babli, 69b.

16 In Babylonia, an impure country, where heaves and tithes were given to the priests as a remembrance of biblical rules, not a biblical obligation.

17 Jer. 31:20. The verse is read as exhortation to symbolically observe in the diaspora also those biblical precepts which are intrinsically bound to the Land (Threni rabbati 1:62).

18 Since heave and heave of the tithe in the Land require genuine purity and genuine priests.


20 The urim wetummim oracle was never part of the High Priest's vestment in the Second Temple since its nature was unknown.

21 The Messiah.
22 Did those daughters of Barzilai's convert in the name of Heaven or not? If you say that they converted in the name of Heaven should not [their descendants] eat most holy sacrifices? But if you say that they converted not in the name of Heaven, then [their descendants] should not eat even outside sancta. Even if you say that they converted in the name of Heaven, is a female proselyte not like a prostitute for the priesthood? Explain it that they were not daughters but daughters of daughters. But if they were daughters of daughters, they are like Israel! But following Rebbi Simeon, since Rebbi Simeon said, a proselyte who converted at less that three years and one day of age. She had no intent to immerse herself but [her mother] immersed her; if then later she immerses herself for the holiness of Israel, each of them then becomes a proselyte and a proselyte is like a prostitute for the priesthood.

22 Cf. the discussion in pp. 17-20 of Introduction to Talmudic Literature in the first volume, Berakhot, of this edition of the Yerushalmi.

23 There seems to be no indication in the Bible that Barzilai was not
Jewish. But in 2S. 17:27 Barzilai the Gileadite is associated with Şobi ben Naḥaš from Rabbat Ammon in providing for David’s army in his flight from Absalom. Since Şobi is characterized as a Gentile, the implication here is that Barzilai also was a Gentile and this is used to explain why some 500 years later Barzilai’s descendants could not serve as priests.

24 I.e., were honest converts to be counted as Jews.

25 A conversion for the only purpose of being able to be married to a Jewish partner is considered to be invalid; the person so converted then remains Gentile. The Babli disagrees; a conversion is valid and irrevocable if it satisfies the minimal legal conditions imposed on the act: Yeḥamot 24b; Seder Eliahu Rabba Chap. 29.

26 Lev. 21:7 forbids only a whore, a desecrated woman, and a divorcée as marriage partners to the Cohen. Now the divorcée and the desecrated are Jewish born; they cannot be proselytes. The legal definition of a "whore" is a person who had sexual relations with a man whom she could not possibly marry. Since a Gentile is excluded from preliminary marriage, a Gentile woman who is presumed to have had sexual experience when very young, automatically qualifies as whore under this definition.

27 The daughters of Barzilai married not priests but courtiers of David's court (1K. 2:7). Then their children were regular Israelites according to Mishnah 3:14 and could marry priests.

28 Their descendants then would have been genuine priests able to serve in the Temple.

29 This sentence is obviously incomplete; one must add "may marry into the priesthood", cf. Bikkurim Halakhah 1:5; Babli Yeḥamot 60b, Qiddušin 76b,78a.

30 This explains the attitude of the rabbis who oppose R. Simeon. They agree that by biblical standards, the proselyte toddler could be married to a priest as explained by R. Simeon in Bikkurim Halakhah 1:5. But they require a conscious act for a rabbinically valid conversion and this is impossible for a toddler. If later the adolescent girl immerses herself for the impurity of menstruation, this is a conscious act and counts fully as valid conversion (cf. Halakhah 3:14, Note 278.) But at that time, the girl is much older than three years and R. Simeon's argument does not apply. It follows that the daughters of Barzilai, even if
converted as toddlers, were rabbinically prohibited to priests. The priests who married them, presumably for their money and standing at court, therefore created a class of rabbinically desecrated priests who could be barred from Temple sancta (in the formulation of G) but not from outside sancta.

Any person who converts because of love, i.e., a man because of a woman or a woman because of a man, or proselytes of the king's table, or lion proselytes, or the proselytes of Mordechai and Esther, one does not accept. Rav said, they are proselytes; one does not reject them in the way one has to reject proselytes from the start. But one accepts them; they need to be received in a friendly way; perhaps they became proselytes for God.

31 People who convert in order to obtain a government post.
32 The ancestors of the Samaritans who converted because of fear of the lions (2K. 17:25 ff.)
33 "And many of the people of the land became Jewish, for the fear of the Jews fell on them" (Esth. 8:17).
34 This is rabbinic practice.
35 This is the translation of the text of L. The text is problematic since perhaps is Babylonian Aramaic. According to G, one has to read: "They have to be approached a second time, to convert them for the name [of Heaven]." While the text of L represents rabbinic practice from the
Middle Ages, the text of G has no echo text of L has to be preferred in rabbinic literature. Therefore, the

36"Proselytes," meaning "everyone who separated himself from the impurities of the peoples of the earth to join them." Freedmen, as in "and all the Gibeonites, etc." Bastards. Rebbi Simeon said, it is written: "And the following came up from Salt Hill, Ploughing Hill." From Salt Hill, that is Babylon. Ploughing Hill refers to silenced ones and foundlings. Kerub means the bastards; the young are those who go after their eyes; Addon, for they were saying, there is no judgment and no Master. Rebbi Hizqiah changed the wording: These are those who went after their eyes and said, there is no judgment and no judge. And Immer, who rebelled against God by their evil deeds. Rebbi Abbun in the name of Rebbi Phineas: They publicized themselves like the seam of a garment. Rebbi Levi in the name of Rebbi Simeon ben Laqish: They would have been worthy of being turned into a salt hill, but Divine justice was silent for them. Ploughing Hill.
One continues to prove that in fact all categories of people enumerated in the Mishnah were among the returnees from the Babylonian captivity.

Ezra 6:21. In the Babli, 70a, the verse is applied to both proselytes and freedmen.

G shows that the reference is to Ezra 2:58, Neh. 7:60; the freedmen are the "sons of Solomon's servants" mentioned in that verse. In both cases, MT is without initial י.

Ezra 2:60 = Neh. 7:61. The subject are people for whom it is questionable whether they should be able to contract Jewish marriages. The place names have not been identified. A similar homiletic interpretation of the same verse is in the Babli, 70a.

"Ploughing" as metaphor for illicit sexual activity is hinted at in Jud. 14:18. In Karaite theory, the forbidden ploughing on the Sabbath (Ex. 34:21) is the sex act.

As in the interpretation of Cherubim as "like youngsters", represented as baby angels, כ is taken as prefix, not part of the root.

Cf. Soiah Mishnah 1:8.

Reading the place name בֶּרִשָׁת as noun בֶּרִשׁ.

Accadic/Aramaic אָמֶר "lamb", homiletically identified with Hebrew אָמֶר (in Galilean pronunciation which identified אָמֶר) "to rebel" (cf. Ps. 107:11).

Identifying אָמֶר "lamb" and Aramaic/Syriac אָמֶר (חָמֶר) "knot, seam, flounce", in addition to Hebrew אָמֶר "maxim, saying". The sermon uses Immer as acoustic echo of all these meanings.
לכש פל יפתח הלבבות גורה. מה כחוב בחריה. התחא את לכבשוע הזר מאחר לשם הפסים גורה. עזרו פליפי גורה מדינתי. ט(coeff) טすことים גורה._mock-up
לירבע שחבל. ויקווע רבייבס ופלטוש לא חפה גורה. עזרו שופדי כימי.Mock up
כי חכם חוח ינני את האירא. בזאג פסקיו עאם בריבס איגן שהן עניות. בקך זעך בקץ-זרה לא
 степениייה חוח ינני את אירא מתכלב כמיות שקר. התחיל שלח באזרים (הנזכור). חזה את דרבת ג'בש תד
את פתיי באזרים (הנזכור). אאמר רבי אדלר. קתיבב שבקש את ע"כ-עניין
האזרא יאשר מחפשו פעל. זה אסיר משפטו פעל. שוחה עשהועשה משפטו פעל.
казанה. ליומרים כי על שאול על בחל חכמה. על שאול שאול שאול אשיר אשר
ולבבית חכמה עלא אשיר חמה אתngaabo. שאלה זיבור (ברק) לא. חמה קכס
לברית שאול. יאמרו לי. על אשיר חמה מופן שבצעה אונש. שאלה בכריב
עצימו ישראליים פנו פנינו (投融资) השופט. אאמר ל. חמה התחדש בן דוד.
יאמר לי. יהיה הול שבעה אונשא מכני (投融资) להברה שאול בוחר.
יאמר ל. המה חינהו כלע (אותיות) ממקסיקו. סחיב לכל הקס וידוח. התחדש
יאמר ל. איז חינהו כלע (אותיות)獴ע. אם כל הקס וידוח. התחדש
יאמר ל. גם חינהו כלע (אותיות)獴ע. אם כל הקס וידוח. התחדש
לילים את כל (אותיות)獴ע. סחיב לכל חרכה. והואה אומד. איינן כל חרכה
ע dịואל עונ יבין. איינן כל חרכה. והואה אומד. איינן כל חרכה
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לילות את כל (אותיות)獴ע. סחיב לכל חרכה. והואה אומד. איינן כל חרכה
48["The dedicated ones"]49. Rebbi Immi in the name of Rebbi Joshua ben Levi, because of: "At that moment Joshua dedicated them as hewers of wood and drawers of water for the congregation." One understands "for the congregation." But "for the Eternal’s altar"51? But Joshua kept them in limbo. He said, I shall not include nor exclude them. But he who sometime in the future will build the Temple, if he wants to include them he may include, exclude them he may exclude. David came and excluded them as it is said52: "But the Gibeonites are not part of the Children of Israel." Why did he exclude them? Because "there was a famine in David’s time, three years year after year." David said, for four sins the rains are locked away. For the sins of foreign worship, incest and adultery, murder, and the sins of those who publicly promise money for welfare but do not pay. From where for the sin of foreign worship? "Beware, lest you be seduced" etc. What is written afterwards? "The Eternal’s rage will be inflamed against you and he locks the sky, etc." From where for the sins of the incestuous and adulterers? "You distorted the Land by your immorality and your evil deeds." What is the
punishment? "Rainshowers were withheld, there was no late rain," etc. From where because of the murderers? "Because blood will distort the Land." From where for the sins of those who publicly promise money for welfare but do not pay? "Clouds and wind but no rain means the man who prides himself by lying gifts." David checked his entire generation and did not find one of these. He turned to ask the urim and tummim. That is what is written: "David asked before the Eternal" by urim and tummim. 

Rebbi Eleazar said, "Ask the Eternal, all the meek of the Land, who execute His Law." What means "Whose Law is Work"? He enforces His Law and this is His Action. "The Eternal said, because of Saul and the House of blood guilt." "Because of Saul," whom you did not grant the last favor, "and because of the House of blood guilt, for he had killed the Gibeonites." David sent and called them, what is between you and the house of Saul? They told him, because he killed seven of our men, two hewers of wood, two drawers of water, a religious leader, a scribe, and a beadle. He asked them, what do you want now? They said to him: "May there be given to us seven men of his sons and we shall hang them before the Eternal on the hill of Saul, the elected of the Eternal." He said to them, what use is it for you that they be killed? Take silver and gold for yourselves! But they answered, "there is no money for us from Saul and his house." He said, maybe they are afraid; he separated them and spoke to each one separately, trying to mollify him by himself, and asked him: What use is it for you that they be killed? Take gold and silver! But he said, "there is no money for us from Saul and his house." It is written "for me." At this moment, David said that the Holy One gave three good gifts to Israel: They are merciful, decent, and
charitable. From where that they are merciful? "He gave you mercy." From where that they are decent? "That His fear should be on your faces. This is a sign, for a decent person does not sin. About anybody indecent it is clear that his ancestors did not stand on Mount Sinai. From where that they are charitable? "The Eternal, your God, kept for you covenant and charity." But these, nothing of this in found in them. Immediately he went to exclude them as it is said: "But the Gibeonites are not of the Children of Israel." And Ezra also excluded them, as it is said: "And the dedicated ones dwelt in the Ophel." Also in the future the Holy One, praise to Him, will exclude them as it is written: "One crossing the city they cause to be lost."

46 There seems to be no verse to which this quote would apply.
47 In this paragraph, all the notes "as it is said" are additions by the corrector of L.
48 To this and the following paragraph there exists an almost parallel text in Sanhedrin 6:9 (1), an enlarged version in the Babli Yebamot 78b-79a and Num. rabba 8(4), and a shortened version in Midrash Samuel 28[5].
49 Reading of G; in L: "It was stated". The following text deals with the identity of "the dedicated ones", their exclusion from the Jewish marriage community, and proof that they were among the returnees from Babylon.
50 Jos. 9:27.
51 This is also mentioned in Jos. 9:27, but the service in the Tabernacle is reserved for priests and Levites. The statement is interpreted to mean that their status will only be determined when the Eternal's altar is given its permanent place.
52 2S. 21:2.
53 2S. 21:1.
54 In 1 "three" and this also seems to be the reading underlying the Babli's version and Pirqe R. Eliezer Chapter 17. The number is 4 in Ta'anit 3:3 (66c l. 29).
55 Deut. 11:16-17.
56 Jer. 3:2-3. While the prophet obviously speaks of Baal worship, all
his imagery is that of sexual transgressions. Quoted in the name of R. Jehudah in *Sifra Qedošim Pereq* 7(4).

57 *Num.* 35:33.


59 In MT, there is a lacuna in 2S. 21:1 between "David asked before the Eternal," and "The Eternal said, because of Saul and the House of blood guilt." It is explained that he asked by applying the *urim and tummim* oracle. In the Babli and the sources dependent on it, R. Eleazar explains that "asking before the Eternal" means applying the *urim and tummim* oracle since in *Num.* 27:21 it says, "before Eleazar the priest he shall stand and ask the *urim and tummim*."

60 *Zeph.* 2:3. The homily is slightly more explicit in the Babli, where it is credited to R. Simeon ben Laqish. It addresses a seeming inconsistency in 2S. 21:1 where God's answer is that the famine is a punishment for two crimes, the first "about Saul" and the second "about the House of blood guilt because he killed the Gibeonites." The verse of the prophet is read to mean that even at the moment a person is judged for his misdeeds his "works", his good deeds, are mentioned in the Heavenly court. But here the sin "about Saul" was not Saul's but David's and the entire people's since they let him be buried in Transjordan and did not bring him to his proper burial in his ancestral land until prodded by the absence of rain (2S. 21:14, where the coming of rain is described as a direct consequence of the proper burials given to Saul and Jonathan.)

61 While the Babli certainly reads with the Masoretes יְהִי, it might be that the Yerushalmi reads יְהִי.


63 2S. 21:4.

64 In 2S. 21:4, the *Ketib* is "for me" but the *Qere* "for us". The homily explains both readings; both are correct.

65 In 2S. 21:4, the *Ketib* is "for me" but the *Qere* "for us". The homily explains both readings; both are correct.

66 In addition to the sources mentioned in Note 48, the following is also in *Midrash Psalms* 1,17.


69 *Deut.* 7:12.

70 *Neh.* 3:26, 11:21. The emphasis is on their dwelling separately.

71 This quote (as well as the version of G) is clearly corrupt; it tele-
Ezechiel, in his description of the future Israel, gives Jerusalem a strip of land from the Mediterranean to the Dead Sea, which will be cultivated by the Temple workers to provide food for the city. The verse is taken out of context and, in Galilean dialect, י and נ are identified, changing "cultivate" into "getting lost". The city worker is the dedicated one.

(Ez. 48:19) "The city worker will cultivate it, from all the tribes of Israel." (Interpretation) 'He will cause him to be lost from all the tribes of Israel.'
It is written: "The King said, I shall give." "The King took the two sons of Rispah bat Ayah whom she had born to Saul, Admoni and Mephiboshet," etc. "Michal, Saul's daughter, did not have a child until the day of her death," and you say so? Say now that they were sons of Merab but Michal raised them, so they were named after her. "He gave them into the hand of the Gibeonites who hanged them on the mountain before the Eternal; all seven fell together." Defective without . That refers to Mephiboshet ben Jonathan ben Saul, who was great in the Torah and David intended to save him from their hand. David said, I let them pass by the altar and anyone received by the altar will be mine. He let each pass by the altar, prayed for him, and the altar moved and received him. This is what is written: "I shall call to the Most High God, to the Power Who has the ultimate decision about me!" For the Holy One, praise to Him, agreed with David. "They were killed on the first days of harvest;" it is written "the barley harvest." "Rispah bat Ayah took a sack and laid it out on the rock." What means: "On the rock"? Rebbi Hoshaiya said, she was reciting: "The rock, perfect is His action." Rebbi Abba bar Zamina in the name of Rebbi Hoshaiya: Sanctification of the
Name is greater than desecration of the Name. Referring to desecration of the Name it is written: "Do not leave his corpse on the gallows overnight." But referring to sanctification of the Name it is written: "From the start of harvest until water was poured on them." This teaches that they were hanging from the sixteenth of Nisan to the seventeenth of Marheshwan. The passers-by were saying: How did these people sin that the rules of justice were changed for them? They were answered: Because these had attacked attached proselytes. They would say that even for those who did not convert for the sake of Heaven, the Eternal avenged their blood; if one would convert for the sake of Heaven not so much more? There is no Power like your God and no people like your people. Many converts were converted at that time; that is what is written: "Solomon counted all proselytes and appointed from them 70,000 carriers and 80,000 hewers of stone in the mountains."

72 A similar text is in 2 S. 20:6.
73 Here ends the Genizah fragment.
74 2 S. 20:8. In the MT אורים not אורים. The verse ends: "And the five sons of Mikhal, Saul's daughter, which she had borne to Adriel ben Barzilai from Meholah." Adriel's wife was Merab, Saul's elder daughter (1 S. 18:19).
75 2 S. 6:23. In the opinion of the Yerushalmi (Sukkah 5:4, 55c l. 22; Sanhedrin 2:4, 20b l. 57) she died in childbirth. In the opinion of the Babli (Sanhedrin 21a) she earlier had a child in Hebron.
76 2 S. 20:9.
77 In the MT, the word is written with an extra ר, correctamente spelled in G and T. The correct text seems to that of G and T: "One is missing", referring to Mephiboshet ben Jonathan.
78 Ps. 57:3.
79 2 S. 20:10.
80 Deut. 32:4, the verse which opens the traditional burial service called "justification of the (Divine) judgment." This is alluded to...
not only here (and in the sources mentioned in Note 48) but also in the Babli, 'Avodah zarah 18a.

81 Deut. 21:23.
82 The first day of the barley harvest, Lev. 23:14.
83 The year is declared one of drought if the rains did not start by the 17th of Marheshwan (Mishnah Ta'anit 1:4).

84 The word was changed by the corrector. Probably one should read "cursed", Jos. 9:33.
85 2Chr. 2:16-17.

Rav Huna said that in the days of Rebbi Eleazar ben Azariah they tried to include them. Rebbi Abbahu inverts the wording: In the days of Rebbi Eleazar they said, who could purify the altar's part? That implies that Joshua excluded them. He excluded them only as disqualified for marriage. If you would say, disqualified (because of sins) then the rapist of a Gibeonite girl should not have to pay the fine, but we have stated: The rapist of a Gibeonite girl has to pay the fine." Rebbi Eleazar said, he
cursed them as a snake, as it is said: "But now you are cursed." And it is written: "The people of Israel said to the Hiwwite. But were they Hiwwites? They acted like the snake which said, I know that the Holy One, praise to Him, did say "because on the day you eat from it, you will die a death." I shall go and trick them so that they eat and will be punished and I shall inherit the earth for myself. So these people acted; they said, we know that the Holy One, praise to Him, said to Israel: "You shall certainly ban them, the Hittite, the Emorite, and the Perizite, as the Eternal, your God, has commanded you." And it is written: "You shall not conclude a covenant with them." We shall go and trick them that they conclude a covenant with us. As you take it, if they kill us, they violate their oath. If they let us live, they violated the [divine] decision. In any case, they will be punished and we shall inherit the Land.

86 To permit marriage with Gibeonites.

87 R. Eleazar ben Azariah vetoed the admission of Gibeonites into the Jewish marriage pool by arguing that Jos. 9:23,27 implies that Joshua made the Gibeonites Temple slaves, in addition to their being the people’s slaves by Jos. 9:21. Now the servitude to the people had certainly lapsed. The "dedicated ones" returned from Babylonia as free men and one had to assume that already in the time of the Judges they had regularly been manumitted in this respect. But nobody could manumit Temple slaves, and marriage with slaves was impossible. In this version, the exclusion of Gibeonites from the Jewish marriage pool is a legal necessity which cannot be changed.

88 It seems that one should read with the parallel in Ketubot 3:1 (27a l. 59), Notes 16-19, נבירה "slavery" instead of נביאה "sins".

89 Implied by Mishnah Ketubot 3:1. The same Mishnah states that the statutory fine is not applicable to the rape of a virgin slave girl. If Gibeonites were excluded as Temple slaves, they should be classified with slaves in matters of the fine (and be
excluded from marriage in all its forms. Cf. Tosafot Yebamot 79a, s.v. O'rnn. It follows that R. Abbahu's argument is rejected.

90 Jos. 9:23.
91 Jos. 9:7.
92 In 25. 20:2, they are described as Emorites.

93 In Amaraic אֹרְנָה. The name of Eve, אָדָמָה, instead of the Hebrew אָדָם, hints at her relationship with the snake.

94 Gen. 2:17.
95 Misquoted from Deut. 20:17.
96 Deut. 7:2.

97 Rav Nahman bar Jacob said, one accepts proselytes from Kurds and Palmyrenians. Rebbi Abbahu in the name of Rebbi Johanan: A Mishnah said that the proselytes from Palmyra are acceptable. There, we have stated: "All stains coming from Petra are pure." Therefore, the proselytes from Palmyra are acceptable.

97 This paragraph and the next are The full comparison of the texts of the from Yebamot 1:6, Notes 229-242 (N). next paragraph is given there.
Rebbi Jacob bar Aha presented traditions: Of Rebbi Hanina and Rebbi Joshua ben Levi, one declares permissible and the other admits. He who declares permissible admits. But he who admits does not declare admissible. Rebbi Yose ben Rebbi Abun in the name of Rebbi Nahman: Babylonia, as far as family pedigree is concerned, extends up to the yzq canal. Rebbi Yose ben Rebbi Abun said, of Rav and Samuel, one said up to the yzq canal, the other said up to the Wani canal. Rav Jehudah said, between the rivers is like Nahardea as far as family pedigree is concerned. Rebbi Hanina ben Beroqa in the name of Rav Jehudah: The people of Moesia are questionable only because of doubts of desecrated women. The Cohanim amongst them did not care about divorcees. There they said, Moesia is dead, Media sick, Elam and gbby dying. The maritime district is the purple-blue of Babylonia. Šny', gbby', and srry are purple-blue of the maritime district.
Rebbi Jacob bar Aha in the name of Rebbi Josia: The eleventh generation of bastards is qualified following Rebbi Simeon; he does not use [the principle of *gezerah šawah* for] "the tenth, the tenth." It was stated: Rebbi Eleazar ben Rebbi Simeon says, in the eleventh generation of bastards, the males are forbidden but the females permitted. Rebbi Samuel ben Rebbi Yose ben Rebbi Abun said, it turns out that Rebbi Eleazar ben Rebbi Simeon follows the argument of Rebbi Meir. As Rebbi Meir said, a *gezerah šawah* is as if written in a verse, so Rebbi Eleazar ben Rebbi Simeon says, a *gezerah šawah* is as if written in a verse. Here also, the males are forbidden but the females permitted. In that case, even immediately? Only from the tenth onward.

The following four paragraphs are from *Yebamot* 8:3, Notes 193-212.
They asked Rebbi Eliezer, what is the status of the eleventh generation of a bastard? He said to them, bring to me a third generation and I shall declare him pure, for he would not live. Rebbi Eliezer parallels Rebbi Hanina? As Rebbi Hanina said, once every sixty to seventy years the Holy One, praise to Him, brings a plague into the world to eliminate the bastards and he takes the qualified ones with them in order not to publicize the sinners. This parallels what Rebbi Levi said in the name of Rebbi Simeon ben Laqish: "In the place where the ascent offering has its throat cut before the Eternal, the purification sacrifice has its throat cut," in order not to publicize the sinners. "Also He is wise and brings evil;" could one better understand "also He is wise and brings good"? But to teach you that even the evil that the Holy One, praise to Him, brings to the world, He brings in wisdom. "His word He did not remove, He overcomes the house of evildoers and accomplices of workers of iniquity."99

Rav Huna said, no bastard lives more than thirty days. When Rebbi Ze'ira immigrated here, he heard voices call "he-bastard, she-bastard". He said, what is this? There goes that of Rav Huna, since Rav Huna said, no bastard lives more than thirty days. Rebbi Jacob bar Aha said to him, I was with you when Rebbi Abba, Rav Huna said in the name of Rav: No
bastard lives more than thirty days, when? If it is unknown. Therefore, if it is known, he lives.

99 In *Yebamot*, the statement of R. Laqish is repeated here.

Levi in the name of R. Simeon ben 100 Cf. Chapter 3:14, Notes 242-247.

Rebbi Yasa in the name of Rebbi Joḥanan: In the future, the Holy One, praise to Him, will only deal with the tribe of Levi. What is the reason? "The refiner will sit, the purifier of silver, and will refine them," etc. Rebbi Ze'ira said, like a man who only drinks from a clean cup. Rebbi Hoshia said, because we are not 101 Levites, should we lose? Rebbi Hanina the son of Rebbi Abbahu said, also in the future, the Holy One, praise to Him, will deal with them charitably. What is the reason? "They will be for the Eternal presenters of an offering in charity."

101 In *Yebamot*: "we are". Cohen, therefore also a Levite.

According to the Babli, he was a
Rebbi Johanan said, one does not investigate a family in which a family disqualification has disappeared. Rebbi Simeon ben Laqish said, a Mishnah says so: "There was a family Bene Serifa in Transjordan who were forcibly distanced by Ben Sion. Another [family] was there who were forcibly integrated by the people of Sion. Nevertheless, the Sages did not want to make their names public. But the Sages transmit them to their sons and students two times in a Week. Rebbi Johanan said, by the Temple service, I know them and the leading personalities of the generation have disappeared in them. Rebbi Joshua ben Levi said, Pashhur ben Immer had 5000 slaves, and their traces have disappeared in the high priesthood. These are the insolent in the priesthood. Rebbi Eleazar said, their main training: "Your people is like quarrelsome priests." Rebbi Abbahu said, Samaritans disappeared in thirteen villages in the times of [persecution]. They said, is one of them.
102 The text of "by Ben Sion" is confirmed by all sources of Mishnah Idiut 8:7.

103 The translation follows which alone makes sense.

104 This place is unidentified, just as is the corresponding one in ה.

105 Rebbi Hanina said, the Mishnah does not follow Rebbi Jehudah, since Rebbi Jehudah said that four congregations are called "congregation", the congregation of Cohanim, the congregation of Levites, the congregation of Israelites, the congregation of converts. They objected to Rebbi Jehudah, but is it not written, "one injured in his testicles or with amputated urethra should not come into the Eternal’s congregation"? That refers to bodily blemishes. But is it not written, "children that will be born to them in the third generation may enter the Eternal’s congregation"? That is a positive commandment. But the rabbis said, there are three congregations, the congregation of Cohanim, the congregation of Levites, the congregation of Israelites; "they shall not come, they shall not come, they shall not come."

105 This text is from Yebamot 8:2, explained there in Notes 150-155.
Mishnah 2: What is a silenced one? Anyone who knows his mother but not his father. But a foundling is one collected from the public domain who knows neither his father nor his mother. Abba Shaul called the silenced one "investigated one".

Halakhah 2: "What is a silenced one," etc. What means "investigated one"? Investigate him. One has to apply the rules detailed in Ketubot 1:8,9 to determine whether or not the child is to be treated as a bastard. In the interpretation of the Babli, 74a, Abba Shaul holds that the unmarried mother is to be believed if she states that the child is not the result of an incestuous relationship.

The brother of Rebbi Jehudah bar Zavdi in the name of [Rav]: As long as a baby lies in the public domain, either his father or his mother can testify about him. Once he was collected from the public domain, one needs two witnesses; its father and mother are like two witnesses.
The rabbis of Caesarea in the name of Rav Ḥisda\(^{110}\): That is, if the baby is not moving. But a baby which is moving needs two witnesses; its father and mother are like two witnesses. This parallels what Rebbi Yannai said: property rights on jumping calves and lambs cannot be proven by possession\(^{111}\).

107 This is the reading later in the Halakhah, in *Baba batra* 3:1, and in the Babli, 73b, against the reading here "ר" meaning "Rebbi".

108 As long as the baby was not taken up, it is not called a foundling and one of the parents is empowered to declare it his child and not a bastard.

109 Once it is designated a foundling, it needs two witnesses to admit it to the Jewish marriage pool. If two people declare that they are its parents, they really disqualify themselves as witnesses since close relatives cannot testify. Nevertheless, they are admitted as if they were true and independent witnesses.

110 In *Baba batra* 3:1, the rule is attributed directly to Rav Ḥisda. This may support S. Lieberman’s contention that Tractate *Neziqin* was edited by the rabbis of Caesarea.

In the Babli, 73b, Rava restricts this rule to years of famine or similar situations where the parents may be expected to be unable to care for their child.

111 If the ownership of an independently moving calf or lamb is in dispute, one cannot say that the person in whose herd it is at the moment is in possession and any other claimant has to bear the burden of proof since the animal could have wandered with the herd; the situations of both the person in possession and the claimant are equal and ownership has to be proven independently.
Rebbi Abba in the name of Rav Hisda: Three are trustworthy immediately\(^\text{113}\): a midwife, a caravan, and the one who purifies her colleagues. A midwife: "The midwife took and wound a red string [around his hand] to indicate that this one was born first\(^\text{114}\)." A caravan, as Rebbi Abba, the brother of Rebbi Jehudah bar Zavdi said in the name of Rav: As long as a baby lies in the public domain, either its father or its mother can testify about him. Once it was collected from the public domain, one needs two witnesses; its father and mother are like two witnesses. The one who purifies her colleagues, as we have stated there\(^\text{115}\): "Three women sleep on one bed. If blood was found under one of them, all three are impure\(^\text{116}\). If one of them checked herself out and found herself impure\(^\text{116}\), she is impure and the other two are pure." Rebbi Abba said, only within 24 hours\(^\text{117}\).

\(^{112}\) The same statements are in the Babli, 73b.

\(^{113}\) They are trustworthy only immediately; after some time they must be treated under the rules which require two independent witnesses.

\(^{114}\) Gen. 38:28, quoted incompletely. In a multiple birth, the midwife has the authority to determine which child was born first, which may determine inheritance rights. The Babli empowers the midwife to testify who is whose child in case several women give birth in the same room.

\(^{115}\) Mishnah Niddah 9:4.

\(^{116}\) In the impurity of menstruation.

\(^{117}\) The Babli emphatically disagrees and requires that the checking be done immediately upon leaving the bed.
Mishnah 3: Any who are forbidden to marry in the congregation are permitted to marry one another but Rebbi Jehudah forbids. Rebbi Eliezer says, certain with certain are permitted, certain with questionable, questionable with certain, and questionable with questionable are forbidden. The following are questionable: the silenced one, the foundling, and the Samaritan.

118 Even a bastard who is certainly forbidden may marry a foundling whose status is only questionable, as already stated in Mishnah 1.

119 This clause was inserted only as a memory help; "certain with questionable" is the same as "questionable with certain"; it does not make any difference who is the male and who the female.

120 Who are Jewish but do not follow the rabbinic rules of marriage and divorce. The child of a Samaritan divorcee from a second husband might be a bastard by rabbinic rules.

Rebbi Jeremiah said, as a matter of principle, an Israel with an injured testicle may marry a female bastard. Rebbi Yose said, it applies...
only to family disabilities, not to bodily defects. The strength of Rebbi Yose comes from the statement of Rebbi Hilqiah, Rebbi Simon in the name of Rebbi Joshua ben Levi: One did state this only for an Israel with an injured testicle, but not a Cohen, since, as you say there, if he is certainly a Cohen he is forbidden to marry a convert; here also, he is certainly an Israel and forbidden to marry a female bastard.

121 The entire Halakhah is from Yeboamot 8:2, Notes 136-155 (9).
[In the opinion of Rebbi Jehudah, may a male bastard not marry a female bastard?] Let us hear from the following, as Rebbi Immi said, Rebbi Jacob from Gebal stated before Rebbi Johanan, Rebbi Isaac bar Tevele in the name of Rebbi Simeon ben Laqish: Rebbi Jehudah stated that a male bastard should not marry a female bastard so that bastards should disappear from the world. Similarly, is an Ammonite man forbidden to marry an Ammonite woman? Was that needed for the rabbis? For if Rebbi Jehudah thought that this disqualified converts from any of the Eternal's congregations, then [the Ammonite] could not marry an Ammonite woman since for her he would be of the Eternal's congregation. He could not marry an Egyptian woman since for her he would be of the Eternal's congregation. Rebbi Mattania said, one frees a slave girl and marries her to him. Similarly, could an Egyptian man not marry an Egyptian woman? Let us hear from the following, as Rebbi Abbahu stated before Rebbi Johanan: "Rebbi Jehudah said, Benjamin, an Egyptian convert, was a student of Rebbi Aqiba. He said, I am an Egyptian convert married to an Egyptian convert. My son is an Egyptian convert; I shall marry him to an Egyptian convert so that my grandson will be qualified to marry into the congregation. Rebbi Aqiba said to him, my son, it is not so. But you marry him to the daughter of an Egyptian woman convert so that there should be three generations on either side."

122 A Babylonian expression; this has the correct Yerushalmi version.
123 Text inserted by the corrector, Babylonian spelling.
124 Missing here, added from . Since the paragraph is the answer to the question asked in this sentence, it is clear that this is the source and the text here the copy.
Rav Jehudah in the name of Rav: Practice follows Rebbi Eliezer. The words of the Sages? Rebbi Jeremiah in the name of Rebbi Samuel bar Rav Isaac: "No bastard shall marry into the Eternal’s congregation". He cannot marry into a congregation which is certain. He may marry if the membership in the congregation is questionable.

There, we have stated: "If it is doubtful whether [the child is] a nine-months’ child of the first [brother] or a seven-months’ of the second, he has to divorce her, the child is legitimate, and they are obligated for a reparation offering for a possible sin." It was stated: "The first son could be [High] Priest, any second son possibly is a bastard. Rebbi Eliezer ben Jacob said, there is no such thing as a possible bastard." Rebbi Eliezer ben Jacob agrees in cases of doubt of Samaritans and desecrated persons. This refers to what we have stated there: "Ten classes returned from Babylonia." In the opinion of Rebbi Eliezer ben Jacob, eight.
opinion of Rabban Gamliel and Rebbi Eliezer, nine. In the opinion of the rabbis, ten.

If the male child is legitimate and his father a Cohen, he is a Cohen. The emphasis is on the fact that the child in theory could be High Priest.

Mishnah 4: One who comes to marry a woman from a priestly family has to check four mothers who are eight: Her mother, and her maternal grandmother, her mother’s paternal grandmother and great-grandmother. But for a levitic or Israel woman one adds another generation.

Since only in priestly families the women may become disqualified, the Cohen who wants to be sure that his descendants will be qualified to serve in the Temple is asked to verify that in generations back no divorcee or otherwise disqualified woman married into his fiancée’s family.
The positions mentioned in the Yerushalmi Mishnah are underlined. Even though priestly disqualifications do not apply to these women.

Halakhah 4: "One who comes to marry a woman from a priestly family," etc. Rebbi Johanan said, this is Rebbi Meïr's, as we have stated:
"What is qualified dough? Anyone about whom there is [no suspicion of descent from] a desecrated one, a bastard, or a Gibeonite. Rebbi Meir says, the daughter of any woman not tainted with any 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. Rav said, these are the words of Rebbi Meir, but the Sages say, he checks from which family one marries into the priesthood and marries. Through whom does he check? Rebbi Haggai in the name of Rebbi Josia: He checks through his female relatives. To Rebbi Hama came an old man; he asked him: Does one marry into the priesthood from this family? He answered: yes, and he was making a match based on this information. Rav said to his son Hiyya: Descend a degree to marry a wife. Rebbi Idi said, the following is a frequent saying of the rabbis: "If the woman was not impure but she is pure. If she was not impure, she is pure. Not like Pappos ben Jehudah who locks the door before his wife. One said to him, did your forefathers act like this? A Cohen came to Rebbi Johanan and said to him: I acted on the Mishnah when I married a woman from a priestly family and checked after her four mothers which are eight. He said to him, if the origin was defective, who would inform you?

129 Ketubot 1:9 (Notes 248-254); a slightly different version in the Tosephta 5:2, Babli Ketubot 14a.
130 As dough is kneaded from different ingredients, so a dough woman is descended from both more and less qualified sources; cf. Ketubot 1:9 Note 251. [For "mixture of dough" used as simile for lineage, perhaps also cf. Swiss-German expression vom Teig "from the dough", meaning "from (the best) families". (E.G.)]
131 Until he finds the source of the trouble.

132 The interpretation of the position of the Sages.

133 All women in a family from whom one married into the priesthood are qualified unless her personal disqualification be known. In the Babli, 76b, Rav's statement is stronger: A presumption of legitimacy applies to all families (unless anything derogatory be known).

134 Testimony by females is close to hearsay evidence, but sufficient to qualify a marriage. The language of the statement is derived from Mishnah Ketubot 1:9, dealing with a woman's bodily defects.

135 Interpretation of Pene Moshe. Qorban Ha'eda reads: Rebbi saw an old man coming. Both interpretations are possible; in neither case is the text idiomatic Aramaic.

136 R. Hama.

137 Rav had married a noble woman and relative who gave him a hard time.

138 Num. 5:28.

139 They reject the Mishnah and hold that anybody can marry any woman about whose family nothing derogatory is known.

140 Cf. Sotah 1:7, Note 260. He did not permit his wife to talk to any male except himself.

141 Jews do not lock up their wives in a harem; Sotah 1:7; Babli Gittin 90a.

142 If there was a problem a few generations earlier, would you know?

143 "But for Levites or Israel one adds another generation." Does it not turn out that one is more stringent for an Israel than for a Cohen?

144 Rebbi Yose ben Abun said, in both cases the Sages demanded a fine so that everybody should cling to his tribe and family.
This quote is different from the Mishnah which speaks of a Cohen marrying a non-priestly wife whereas here one refers to a non-priest marrying a priestly wife. The Tosephta, 5:4, straddles the issue, mentioning "a Levite (f. singular) and Israels (m. plural)".

In a different situation R. Yose ben R. Abun gives the same explanation in Ketubot 1:5, end. He seems to think that in Herodian times and later the priests had a tendency to develop into a separate caste.

Both the cases mentioned in the Mishnah and the one mentioned in the quote. 

Mishnah 5: One does not investigate from the altar and before, or from the podium and before. From every family whose ancestors were known as public officials and welfare administrators one marries into the priesthood; no investigation is necessary. Rebbi Yose says, also anybody signing as witness in the ancient archive of Sepphoris. Rebbi Hanina ben Antigonos says, also anyone who ever was registered in the king's army.

The daughters of priests accepted for service in the Temple are automatically qualified to be married by priests. 

The same holds for daughters of Levitic men accepted as singers in the Temple. One has to assume that the same holds for Levites serving in other
functions in the Temple.

148 The Babylonian Mishnah adds: "Nor from the Synhedrion and before." This addition is unnecessary since it is implied by the next sentence.

149 Greek ἀρχεῖον. It seems that only select families were admitted to be notaries to certify deeds in Sepphoris.

150 Greek στρατιά.

Halakhah 5: "One does not investigate from the altar and before," etc. It is written: "You certainly shall put a king over you." This refers not only to a king; from where to add public officials, administrators of welfare, clerks of the court, and those who whip with a lash; from where? The verse says, "from amidst your brothers you shall appoint a king over you," anybody whom you appoint over you shall only be from the select among your brethren. Rebbi Samuel bar Nahman in the name of Rebbi Jonathan: "Their distinguished lineage in the army in war." The merit of their lineage supports them in war. So far from tradition; from the words of the Torah? "No bastard shall come into the Eternal's congregation." "No person injured in his testicles shall come, etc." What is written afterwards? "When you encamp against your enemies, etc."
151 Deut. 17:15.
152 Employees of the criminal court.
153 He can be called your brother only if he belongs to your marriage group. Therefore, anybody whose daughter cannot be married by anybody, including priests, is excluded from public office. In the Babli, 76b, it is inferred from this argument that only children of a Jewish mother can be appointed to public office.
154 1Chr. 7:40. This refers to the statement of R. Hanina ben Antigonus and a hypothetical army of the Messiah. In the Babli, 76b, "the king’s army" is interpreted as David’s army as described in 1Chr.
155 Prophets and Hagiographs, which do not have standing as sources of the law.
156 Deut. 23:3.
157 Deut. 23:2. The spelling supports the Yemenite tradition.
158 Deut. 23:10, directly after the end of the rules of exclusion from endogamous marriage. It is explicit in the Babli (Yebamot 4a) that the order of verses in Deut. is important for the correct interpretation. The implication is that only persons of impeccable lineage should be admitted to the Eternal’s army.

משנה 6: בֶתּ בְּנֵי זָכָר פָּסוֹלוֹת מֵאָכִּהוֹת לְעֹלָם. יַשְׁרֵיאֵל שֵׁשְׁשָׁא

The daughter of a male desecrated priest is always disqualified for the priesthood. The daughter of an Israel who married a desecrated woman is qualified for the priesthood. The daughter of a
desecrated priest who married an Israel woman is disqualified for the priesthood. Rebbi Jehudah says, the daughter of a male proselyte is like the daughter of a desecrated priest. Rebbi Eliezer ben Jacob said, the daughter of an Israel who married a proselyte is qualified for the priesthood and the daughter of a proselyte who married an Israel woman is qualified for the priesthood, but the daughter of a proselyte who married a proselyte is disqualified for the priesthood, both proselytes and freedmen, even for ten generations, unless the mother be from Israel. Rebbi Yose says, even the daughter of a proselyte who married a proselyte is qualified for the priesthood.

159 Desecrated priests and their descendants can marry Israel or Levite partners without sin. According to Mishnah 3:14, the children have the status of the male, qualified Israel for an Israel father and desecrated priest for a desecrated father.

160 This statement has no basis in the Torah; it accepts as law Ez. 44:22 which instructs priests to marry only "virgins from the seed of Israel and widows of priests."

161 Even if she was conceived after both partners became Jewish. He accepts as "seed of Israel" the child of either a male or a female Israel.

162 If they married after conversion, as Jews, their children are "the seed of Israel".
"The daughter of a desecrated priest," etc. Rav Hamnuna in the name of Rav: Daughter, daughter's daughter, forever. Rebbi Johanan in the name of Rebbi Ismael: "In his clans." Since by "in his clans" said there males are forbidden and females permitted, so by "in his clans" said here males are forbidden and females permitted. What is the difference between them? A Cohen who came to a divorcee and fathered a son; the son went and fathered a son and a daughter. In the opinion of Rav the son, the son's daughter, the daughter's son, and the daughter are forbidden. In the opinion of Rebbi Johanan the son's daughter is forbidden, the daughter's son is permitted. The Mishnah disagrees with Rav: "The daughter of an Israel who married a desecrated woman is qualified for the priesthood." He explains it, a broomstick desecrated one. The Mishnah disagrees with Rebbi Johanan: "Rebbi Jehudah says, the daughter of a male proselyte is like the daughter of a desecrated priest." He explains that Rebbi Jehudah only comes to add. If he had said that the daughter of a desecrated priest is like the daughter of a male proselyte, you would have had a point.

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163 All descendants of a desecrated priest are desecrated, both male and female, for all generations.
164 In Lev. 21:1 it is stated that a Cohen may not defile himself by impurity "in his clans". A female member of a priestly family is under no such constraint. It is claimed that in v. 4, in which a Cohen is warned not to enter a marriage which would desecrate him, the expression "in his clans" similarly frees female members of a priestly family from the disability of desecration.
165 Rav and R. Johanan.
166 In fact, all descendants in all
degrees are desecrated.

167 Following the Mishnah, if she married an Israel or a Levite.

168 Rav will hold to his position that all descendants of a desecrated priest remain desecrated and the females forbidden to the priesthood. But he notes that there is a category of desecrated women who are not descendants of desecrated priests, viz., women having had sexual relations with men whom they could not not have married (such as women raped by Gentiles.) He will agree that the daughter of such a woman, whom he calls "broomstick desecrated", born as a regular Jew and married to an Israel, is qualified for the priesthood. (Explanation of Qorban ha'edah.)

Since יַהֲלַלְתָּה עַבְרִי does not make much sense, one might read יַהֲלַלְתָּה "desecrated by intercourse."

169 Since R. Jehudah holds that Ez. 44:22 prohibits the daughter of a proselyte from an Israel mother to the priesthood, how could he agree that the daughter of a desecrated woman from an Israel is qualified for the priesthood?

170 He does not disagree with the anonymous Tanna; he only comes to add rules about proselytes not mentioned by the anonymous Tanna.

171 Example. The elder Rebbi Hoshiaia and Rebbi Judah Neśia were sitting together. Rebbi Johanan ran und whispered into Rebbi Hoshiaia's ear: May a Cohen who is injured in his testicles marry the daughter of
converts? He asked him, what did he tell you? He answered, a question which a carpenter, son of carpenters, cannot resolve. He did not ask me about a convert, since she is like a whore for him. He did not ask about an Israelite daughter, whom he will desecrate. He asked only about the daughter of converts! Is the daughter of converts not an Israel? You have to explain it following Rebbi Jehudah, who said, the daughter of a male convert has the status of the daughter of a desecrated male.

171 From here to the end of the Halakah, the text is from Yeimot 8:2 (א), explained in Notes 156-164; partially from Bikkurim 1:5 (ב), Notes 87-106. The Leiden ms. in Bikkurim only notes the first few words and then writes "one continues this in Qiddushin 4:7." The full text was added by someone who prepared the ms. for the Venice printer; that text must have come from another ms. since not all deviations from L can be explained by copyists' errors.

If a Cohen had intercourse with a divorcee and fathered a daughter, what is the status of the daughter's daughter? Rebbi Hanania and Rebbi Mana, one said she is qualified, the other said she is disqualified. The one who said that she is qualified asked the one who said that she is disqualified: Is the daughter of a male desecrated priest not disqualified? Is the broomstick desecrated one not disqualified? Why is she disqualified?
This paragraph is not a copy of the corresponding paragraph in Yebamot (1. Note 171).

Assuming the mother was married to an Israel.

Following R. Johanan.

Following Rav.

This is explicit in the Mishnah.

Since she is qualified by Mishnah 3:14, she does not appear in any list of disqualified women. (Cf. Note 168.)

"Rebbi Eliezer ben Jacob says," etc. There, we have stated: "Rebbi Eliezer ben Jacob says, the daughter of proselytes should not marry into the priesthood unless her mother be from Israel" They all interpret the same verse (Ez. 44:22): "Only virgins from the seed of the House of Israel." Rebbi Jehudah says, unless his father be from Israel. Rebbi Eliezer ben Jacob says, either her father or her mother. Rebbi Yose says, unless they are born in the holiness of Israel. Rebbi Simeon says, unless they
grow the hymen in the holiness of Israel. It was stated in the name of Rebbi Simeon: "A girl which became a proselyte being less than three years and one day of age is acceptable for the priesthood since it was said (Num. 31:18): 'All the female children unfit for sleeping with a male you shall let live for yourselves,' and Phineas was with them." How do the rabbis explain? You shall let live as slaves and slave girls for yourselves.

Rebbi Yose, Rebbi Yasa in the name of Rebbi Johanan; Rebbi Jonah, Rebbi Hiyya in the name of Rebbi Johanan: Practice follows Rebbi Yose. Hanin bar Abba in the name of Rav: Practice follows Rebbi Yose, but Cohanim are used to follow Rebbi Eliezer ben Jacob. A Cohen married the daughter of proselytes. The case came before Rebbi Abbahu who let him kneel before the low bench. Rebbi Bevai said to him, did the Rabbi not teach us that practice follows Rebbi Yose? He answered, but are not Cohanim used to follow Rebbi Eliezer ben Jacob? He retorted, Rebbi,
does one whip because of what one is used to do? He said to him, if you
look at it in such a way, you have appeased me and I shall let him get up.
After he got up, he said to him, since the lash was withdrawn I am
permitted to have her.

Rebbi Jacob bar Idi in the name of Rebbi Joshua ben Levi: It happened
that a family in the South had a bad reputation. Rebbi sent Romanus to
investigate them. He investigated and found that a grandmother had been
converted at less than three years and a day of age, and he declared them fit for the priesthood. Rav Hoshiaia said, he declared them fit following Rebbi Simeon. Rebbi Ze'ira said, here it is everybody's opinion since Rebbi Ze'ira said in the name of Rav Ada bar Ahava, Rebbi Judan brings it in the name of Rebbi Abbahu in the name of Rebbi Johanan: The child of an adult is fit since it is a prohibition deduced from a positive commandment. (Lev. 21:13) "But he shall take a wife in her virginity."

Any prohibition deduced from a positive commandment is a positive commandment. Analogously, (Lev. 21:14) "only a virgin from amidst his people he shall take as wife," not a proselyte. Is any prohibition deduced from a positive commandment a positive commandment? Rebbi Hoshiaia objected: But the second generation of an Egyptian is a prohibition deduced from a positive commandment! Rebbi Hoshiaia turned around and said, a positive commandment for Israel cannot be compared to a positive commandment for Cohanim. A positive commandment for Israel implies a prohibition for everybody. A positive commandment for Cohanim implies a prohibition for Cohanim but a permission for Levites and Israel.

Mishnah 7: If somebody says, this my son is a bastard, he cannot be believed¹⁷⁹. Even if both of them say about the fetus in her belly that he is a bastard, they cannot be believed¹⁸⁰. Rebbi Jehudah says, they are believed¹⁸¹.
179 Since a father is a relative of his wife’s child, he is unable to testify about him.

180 Both parents agree. They cannot testify even before the child’s birth when the child does not yet have a personality in the legal sense that the formal rules of testimony would be applicable to him.

181 Even the father alone is able to declare his son illegitimate by the power invested in him by Deut. 21:17.

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Halakhah 7: "If somebody says, this my son is a bastard, he cannot be believed," etc. There, we have stated: "If somebody said, this is my son, he is to be believed." Rebbi Abbahu in the name of Rebbi Johanan: To give him, but not to take from him. Rebbi Yose said, is that not the Mishnah: "Even if both of them say about the fetus in her belly that he is a bastard, they cannot be believed"? Maybe it was said following Rebbi Jehudah, for Rebbi Jehudah said, they can be believed; Rebbi Abbahu in the name of Rebbi Johanan: To give him, but not to take from him. Rebbi Hizqiah said, still it is a baraita: "For he has to recognize the
firstborn, the son of the hated one. If they maintained that he was his son but at the moment of his death he said that he was not his son, he cannot be believed. That he was not his son but at the moment of his death he said that he was his son, he is believed. Some Tanna'im state on the first case that he is believed. Rebbi Hisqiah, Rebbi Zeriqan in the name of Rebbi Huna: If they maintained that he was from his slave girl, he is believed. If he was standing next to the customs collectors and said, he is my son, but later he said, he is my slave, he is believed. He is my slave, but later he said, he is my son, he is not believed. Some Tanna'im state, he is believed. Rebbi Mana said, because of those Samaritans who use their sons as slaves.

182 Mishnah Baba batra 8:8, dealing with rights of inheritance.
183 Make him a legal heir.
184 The Mishnah makes the statement of R. Johanan superfluous.
185 The statement of R. Abbahu in the name of R. Johanan.
186 Deut. 21:17. Quoting a verse is obviously not quoting a baraita. Probably the baraita quoted in the Babli, 78b, Sifry Deut. 217 is meant: "For he has to recognize the firstborn, the son of the hated one; he has to make him recognized by others; this implies that a person is believed if he says, this son of mine is the firstborn. Rebbi Jehudah says, just as a man is believed if he says, this son of mine is the firstborn, so he is believed if he says that he is the son of a divorcée or one who had received halīṣah, but the Sages say, he is not believed."
187 The parents.
188 Once a person has obtained public recognition as a son, the presumption of permanence of the status quo ante requires valid testimony by two independent witnesses to change that status; cf. Gitiṭin Chapter 3.
189 Since the dying person also could have given an unrelated person a part of his estate.
190 If the father acknowledged that he had fathered the child with his slave girl and everybody assumed that he had manumitted the pregnant girl in
order to be the legal father of the child but on his deathbed he acknowledged that he never manumitted the girl and, therefore, his child is not his child in Jewish law (Mishnah Yebamot 2:5), he must be believed since his statement now is compatible with his earlier statements.

191 When he would have to pay customs duty for the importation of a slave but not for an accompanying son.

192 We believe him that he was cheating on the customs.

193 Nobody pays custom duties which he is not obligated for.

194 In Baba batra: The Nabateans.

It was stated: He is believed about the adult but is not believed about the young. Who is adult? Rebbi Ze'ira said, any one who has a wife and children; Rebbi Abbahu, any one who has a wife. A baraita disagrees with Rebbi Abbahu: A proselyte who was circumcised but did not immerse himself but has children; if he said, I was circumcised but did not immerse, he is believed and one immerses him even on the Sabbath because of parsimony, the words of Rav Jehudah. What does Rebbi Abbahu do with this? He explains it, because who cares?

195 According to the Tosephta, 5:5, the author of this statement is R. Jehudah.

196 It is clear that this sentence is corrupt and one must read: He is believed about the young but is not believed about the adult. Even R. Jehudah will agree that the Torah gives the father only the right to recognize or to refuse to recognize his child; the moment other people are involved, the usual rules of judicial
proof must apply. Since the father does not have the right to declare his grandchildren as bastards, he has lost the right to declare his child a bastard the moment the child has children.

197 Since by declaring his son a bastard, the father would forbid the son to his daughter-in-law; he would infringe upon the rights of a third party and cannot be believed.

198 Also quoted in the Babli, Yebamot 47b.

199 He is Jewish for R. Jehudah but still Gentile for R. Yose.

200 To avoid problems with handling food when he or his family are present. Since for R. Yose, immersion of a circumcised proselyte changes him from Gentile to Jew, this could not be done on the Sabbath. One has to assume that the father admitted that he never was immersed only after he and his children already were known as Jews. Then he can no longer testify to disqualify his children from prospective Jewish marriages; he must be accepted as a Jew.

201 This certainly must read "Rebbi" since the Babylonian Amora Rav Jehudah cannot be the author of a baraita.

202 Since the baraita implies that one immerses him on the Sabbath only because he has children; does this not prove R. Ze'ira's point?

203 Since the author of the baraita is R. Jehudah for whom immersion is unnecessary, there is no problem of Sabbath desecration involved and he will agree that in order to satisfy even the followers of R. Yose, the proselyte should immerse himself at the first opportunity. This explanation is attributed to R. Jehudah himself in the Babli, loc. cit.

Mishnah 8: If somebody empowered his agent to contract preliminary marriage for his daughter and then went himself and contracted for her, if
he was first, his preliminary marriage is valid\textsuperscript{204}, but if his agent was first, that preliminary marriage is valid\textsuperscript{205}. If precedence cannot be established, both give a bill of divorce or, if they agree, one gives a bill of divorce and one marries definitively.

\textsuperscript{204} Appointing an agent does not abolish the intrinsic right of a father to contract for his underage daughter’s marriage (to a different person).

\textsuperscript{205} If the father himself would marry his daughter successively to two different men, the second marriage would be nonexistent. The actions of father and agent can be considered as if all were actions of the father himself.

\textsuperscript{206} \textbf{Halakhah 8:} “If somebody empowered his agent,” etc. It was stated: "If a man and a woman come from overseas; he says, she is my wife, and..."
she says, he is my husband. One will not execute anybody because of her
being a married woman\textsuperscript{207}. If they become generally known\textsuperscript{208}, one will
execute because of her being a married woman." How long does it take
to be generally known? Rebbi Jonah, Rebbi Abba, Rebbi Hyya in the
name of Rebbi Johanan: Up to thirty days\textsuperscript{209}. There\textsuperscript{210}, we have stated:
"A toddler who is found near cake-dough with a piece of dough in his
hand\textsuperscript{211}, Rebbi Meïr declares pure\textsuperscript{212} but the Sages declare it impure, for
toddlers will slap their hands on cake-dough\textsuperscript{213}.") Does one burn because
of general knowledge\textsuperscript{214}? Rebbi Yose in the name of Rebbi Ze’ira: Rebbi
Johanan and Rebbi Simeon ben Laqish disagree. Rebbi Johanan said, one
executes because of general knowledge. Rebbi Simeon ben Laqish said,
one does not execute because of general knowledge. Rebbi Yose ben
Rebbi Abun in the name of Rebbi Ze’ira: Everybody agrees that one
executes because of general knowledge. Where do they disagree? About
burning. Rebbi Johanan said, one executes because of general knowledge
but one does not burn because of general knowledge\textsuperscript{215}. Rebbi Simeon
ben Laqish said, since one executes because of general knowledge, one
also burns because of general knowledge. And from where that one
executes because of general knowledge? Rebbi Samuel, the son of Rebbi
Yose ben Rebbi Abun said, it is written\textsuperscript{216}: "He who hits his father or his
mother shall be put to death." But is it certain that this one is his father?
Is it not only general knowledge that he is his father\textsuperscript{217}? But it says, one
executes. So here also\textsuperscript{218} one executes.

\textsuperscript{206} In the ms. but not in \textit{editio princeps}, Halakhah 8 follows Halakhah
\textsuperscript{10} The theme of Halakhah 8 agrees
\textsuperscript{207} If somebody commits adultery
with the woman, he cannot be prosecuted in the absence of proof (by witnesses or documents) that the woman actually is a wife, not a concubine.

208 Public knowledge creates *prima facie* evidence which is valid as long as it is not rebutted by legal proof to the contrary; cf. *Ketubot* 5:5, Note 100.

209 Once a couple has lived in town as husband and wife for thirty days, adultery by another man with the wife is a capital crime since it seems unlikely that she would be able to prove that she is not married. Once *prima facie* evidence is established, husband and wife are barred from testifying in the matter since they are presumed related to each other.

210 Mishnah *Tahorot* 3:8.

211 The dough is supposed to be made in the purity of heave. The toddler is assumed to be impure unless he was immersed in a *miqveh* and then watched every moment lest he touch anything which would make him impure. If the toddler took the cake dough by himself, the cake dough is impure. If it is known that he was handed the piece of dough by a pure adult, the rest of the cake dough remains pure.

212 R. Meir is reluctant to accept that anything which happens most of the time happens all the time unless the contrary be known. Since some toddlers do not touch anything impure and some toddlers do not play with dough if they see it, it is not said that the cake dough has to be impure.

213 The cake dough is impure by *prima facie* evidence unless proven to be otherwise.

214 If the cake dough was made of heave material.

215 Babli 80a; cf. also *Demay* 6:6, Note 138.

216 Ex. 21:15.

217 This is not really a proof since fatherhood is not only a matter of public knowledge but also of probability since "most intercourse of an adulteress is still with her husband" (*Sotah*, Yerushalmi 1:7 Note 265, Babli 27a; Tosephta Yebamot 12:8.)

218 In the matter of the couple who married at another place and declare themselves husband and wife; Babli 80a.
Mishnah 9: Similarly, if a woman empowered her agent to contract preliminary marriage for her and then went and contracted for herself, if she was first, her preliminary marriage is valid, but if her agent’s was first, that preliminary marriage is valid. If precedence cannot be established, both give a bill of divorce or, if they agree, one gives a bill of divorce and one marries definitively.

Halakhah 9: "Similarly, if a woman empowered her agent," etc.

219 Does this not disagree with Rebbi Johanan, since Rebbi Johanan said that a person invalidates agency by a declaration? He explains it by the stringency of the rules of adultery and incest. Rebbi Yose ben Rebbi Abun understood this from the latter part: "Similarly, if a woman empowered her agent to contract preliminary marriage for her and then went and contracted for herself." Does this not disagree with Rebbi Johanan, since Rebbi Johanan said that a person invalidates agency by a declaration? He explains it by the stringency of the rules of adultery and incest.
Since the argument is repeated for Mishnah 9, it is clear that the Halakhah refers both to Mishnah 8 and Mishnah 9. The statement of R. Johanan is in Gittin 4:1, see Notes 2-3 there for explanation.

Mishnah 10: If somebody left for overseas together with his wife; he returns with his wife and her children and says, "the wife with whom I left for overseas is this one and those are her children," he does not have to bring proof either about the wife or the children. "She died and those are her children," he has to bring proof about the children but not about the wife.

"I married a wife overseas, this is she and those are her children," he has to bring proof about the wife but not about her children. "She died and those are her children," he has bring proof both about the wife and about the children.

A Cohen who wants to find matches for his children as members of the priestly clan.

Even if nobody recognizes her anymore.
Halakhah 10: "If somebody left for overseas together with his wife," etc. Rebbi Abbahu in the name of Rebbi Johanan: They considered a man and his wife as two witnesses$^{224}$ since it is general knowledge that a woman will not be silent about another woman's children. Rebbi Abun referred this to the later statement: "I married a wife overseas, this is she and those are her children;" Rebbi Abbahu in the name of Rebbi Johanan: They considered a man and his wife as two witnesses since it is general knowledge that a woman will not be silent about another woman's children$^{225}$.

$^{224}$ In order to let a person marry a Jewish partner, the court will need to have either generally accepted knowledge that the person is Jewish and is not a bastard, or to require testimony to this effect. A man and his wife are really barred from testifying about their children but since a woman is not supposed to raise another woman's children as her own, her assertion can be believed.

$^{225}$ Therefore, once the foreign woman has been accepted as his legitimate wife, no proof is needed about the children. In the language of the Tosephta (5:8): "A woman is believed if she says: These are my children."
Halakhah 11: ""I married a wife overseas." It was stated: If he brought proof about the older ones, he still has to bring proof about the younger ones. Why? Rebbi Jonah said, I say that perhaps she was divorced in the meantime.

226 If the wife had died.
227 They could be children of the same woman but the older ones would be priests, the younger ones desecrated as children of a divorcee married to a priest. The Babli, 79b, disagrees and holds that once the wife has been found acceptable for the priesthood, no proof about her children is needed. It refers "older" and "younger" to children from different mothers.

Mishnah 11: One man should not be alone with two women but one woman may be alone with two men. Rebbi Simeon says, he may be alone with two women as long as his wife is with him; he can sleep with them in a hostelry because his wife will watch over him. A man can be alone with his mother or his daughter and sleep with them with their skins touching; once they grew up each one sleeps in his garment.
And a bachelor shall not be a school teacher; a woman shall not be a school teacher. Rebbi Eliezer says, also a man without a wife shall not be a school teacher.

Rebbi Jehudah says, a bachelor shall not be a shepherd and two bachelors shall not sleep under one cover, but the Sages permit.

Anybody whose occupation is with women should never be alone with women. And a man should not teach his son a craft for women.

Rebbi Meir says that a man should try to teach his son a clean and easy trade and pray to Him to Whom riches and properties belong since there is no trade in which poverty and riches are not found, for neither poverty nor riches come from the trade. Rebbi Simeon ben Eleazar says, did you ever see a wild animal or a bird which had a trade? And they sustain themselves without pain. But they were created only to serve me and sustain themselves without pain, and I was created to serve my Maker, it should be logical that I should be able to sustain myself without pain; only I worsened my deeds and destroyed my sustenance.
Abba Gorion from Sidon says in the name of Abba Shaul234: A man should not teach his son to be a donkey driver, a camel driver, a hairdresser, a sailor, a potter, a shepherd, or a grocer, since their occupations are those of robbers. Rebbi Jehudah says in the latter’s name: Most donkey drivers are wicked235, most camel drivers are in order236, most sailors are pious; the best of physicians goes to hell237, the qualified among the butchers is an associate of Amaleq238.

228 In a locked room.
229 Where everybody sleeps in the same room.
230 Because of the mothers of the schoolchildren.
231 If he is married but his wife lives at another place, he is considered unmarried in this respect.
232 They hold that Jews never engage in bestiality or homosexual acts.
233 This list is different in different Mishnah mss. It seems that both "hairdresser" and "potter" should be deleted and replaced by רבי or רבי "teamster". But the text could also be a conflation of two different texts, one denigrating trades that have a reputation of dishonesty and one that serves women (Babli 82a) like jewelers, hairdressers, etc. For a better text cf. below, 66c l. 26.
234 In the Babli: Abba Guria.
235 They are always hitting their animal.
236 Camels will walk by themselves a certain number of steps and have to be led gently.
237 He will be punished for every patient of his who dies because he did not give him the best of care.
238 He is a professional killer.
Halakhah 11: "One man should not be alone with two women," etc.

Rebbi Abun said, when has this been said? With decent men. But with profligates she should not be alone even with a hundred men. It was stated: A one day old child who died is for his father, his mother, and all his relatives like one fully grown. Not only if he died when one day old but even if he was alive when his head and most of his body were born. He is carried out at the bosom and buried by one woman and two men; Abba Shaul says even one man and two women. It is obvious that Rebbi Simeon will agree with Abba Shaul but Abba Shaul does not need to agree with Rebbi Simeon since there is no sexual desire in the cemetery.

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239 That a woman can be alone with two men.
240 In the Babli, 80b, this is a statement of Rav Jehudah in the name of Rav.
241 A similar text is quoted in the Babli, 80b.
242 They have to observe all the rules of the impurity of the dead and of mourning.
243 From the moment his life is independent and it is no longer permitted to destroy the fetus to save the mother's life (Mishnah Ahilut 7:6).
244 He does not need a bier and ten adults like a grown-up. Since he died before he had occasion to sin, his soul is pure and ready to enter Paradise without human intercession.
245 In all other situations, Abba
Shaul agrees with the anonymous Tanna. In the Babli, Abba Shaul’s statement is rejected by reference to a story which R. Hananel (quoted by Tosaphot s.v. כ) identifies as that of The Widow of Ephesus.

Rebbi Johanan in the name of Rebbi Simeon ben Iohai\(^246\): "If your brother, your mother’s son, or your son, or your daughter incites you\(^247\)." "Your mother in secret," "your daughter in secret." A man can be alone with his mother and live with her\(^248\), with his daughter and live with her, with his sister and does not live with her, and sleep with them with their skins touching. Rebbi Halaphta ben Shaul stated: The daughter with her father up to the age of three years and one day\(^249\); the son with his mother up to the age of nine years and one day\(^250\). If they get older, each one sleeps in his own clothing. It was stated\(^251\): If two people sleep in the same bed, each one covers himself with his own garment and recites (the Šema’\(^252\); if his son or daughter were small it is permitted. There, they say: A man with his wife is permitted\(^253\). Rebbi Jacob bar Aha in the name of Rebbi Eleazar: A man with his wife is problematic\(^254\).
So also in *Sotah* 1:1, Note 38. In the Babli 80b, R. Johanan in the name of R. Ismael, in *Sanhedrin* 21b, *Avodah zarah* 36b, in the name of R. Simeon ben Yosadaq. The latter attribution probably is the correct one; in these two quotes also the verse correctly is called "a hint", not a proof.

247 *Deut.* 13:7. As usual, the reference is to the part of the verse not quoted; in this case that the inciting happens "in secret".

248 In a one-room apartment.

249 The day she becomes nubile.

250 Before that day, his sex act has no legal consequences (Mishnah *Yebamot* 10:6).

251 Similar statements are in *Berakhot* 24a.

252 Which, as a holy text, it is forbidden to recite in the presence of nudity.

253 Even if both are naked under the same bedsheet, since "his wife is part of his body" (Babli *Berakhot* 24a).

254 Even if his wife is part of his body, he could recite the Šema' while lying close to her only if she would not represent a sexual attraction to him. This is not a desirable situation.

New paragraph. "And a bachelor shall not be a school teacher; a woman shall not be a school teacher, etc." It was stated: Rebbi Eliezer says, also a man with a wife and children shall not be a school teacher if they are not with him at that place. Rebbi Yudan ben Rebbi Ismael acted accordingly in the case of a Mishnah teacher.
New paragraph. "Rebbi Jehudah says, a bachelor shall not be a shepherd and two bachelors shall not sleep under one cover, but the Sages permit." Does not Rebbi Jehudah say it correctly? What is the rabbi's reason? Perish the thought! Jews are not suspected either with males or with animals. But did we not state: "A bachelor shall not be a school teacher"? Because his mother or his sister will come with him.

255 Suspecting the unmarried school teacher to be a pedophile with young males.

256 He is only suspected to be susceptible to the lure of heterosexual relations. The same argument is in the Babli, 82a, where also it is indicated that a female school teacher is not suspected of being attracted to her male students but to their fathers.

New paragraph. "A man should not teach his son a craft for women," etc. It was stated: A man should not teach his son to be a donkey driver, a camel driver, a sailor, a potter, a teamster, a shepherd, or a grocer, since their occupations are those of robbers.
New paragraph. Abba Orion from Sidon says in the name of Abba Shaul\textsuperscript{234}: Most donkey drivers are wicked\textsuperscript{235}, most camel drivers are in order\textsuperscript{236}, most sailors are pious, most bastards are intelligent, most slaves are beautiful, most sons look like their mother's brothers. The qualified physicians go to hell\textsuperscript{237}, the qualified among the butchers is an associate of Amaleq\textsuperscript{238}. Rebbi Simeon ben lohái stated: Kill the best of Gentiles\textsuperscript{257}, smash the head of the best of snakes; the best qualified among women is a sorceress. Blessed is he who does the will of the Omnipresent.

\textsuperscript{257} He spent 14 years in a cave on the run from the Roman government. In Mekhîlta dR. Ismael, Bešallah 1; Mekhîlta dR. Simeon bar lohái p. 51; Tanhuma Bešallah 8, his proof is from Ex. 14:7, where Pharao mobilized 600 chariots and it is argued that the horses to draw the chariots must have belonged to "those who feared the word of the Eternal" (Ex. 9:20); but that verse refers only to domestic animals which at that time did not include horses used only by the military.

Rebbi Meïr says\textsuperscript{258}: A person can earn his livelihood from anywhere. Blessed is he who sees his parents in an esteemed trade; woe to him who sees his parents in a degrading\textsuperscript{259} trade.

\textsuperscript{258} Cf. Tosephta 5:14. \textsuperscript{259} In G: despised.
New paragraph. "Rebbi Meir says that a man should try to teach his son a clean trade," etc. What should a man do? A person should try and teach his son an unassuming trade and pray for mercy to Him to Whom riches belong since there is no trade in which poor and rich people are not found, for everything depends on a person’s merit.  

Rebbi Simeon ben Eleazar in the name of Rebbi Meir: Did you ever see a lion porter, a (lion) maker of fig cakes, a fox grocer, a wolf selling pots? And they sustain themselves without pain. Why were they created? Only to serve me, and I was created to serve my Maker. Is it not an argument de minore ad maius? Since they were created to serve me and sustain themselves so without pain, should it not be logical that I, who was created to serve my Maker, should be able to sustain myself without pain?
What caused me to have to sustain myself with pain? One has to say, my sins. Because I worsened my deeds and destroyed my sustenance.

260 Tosephta 5:15, Babli 82b.
261 Reading of G and the parallel sources.

Mishnah 12: Rebbi Nehorai says: I am leaving aside all trades in the world and teach my son only Torah, for a man eats from its rewards in this world and the capital remains for the future world. But with other trades it is not so, for if a person is afflicted with sickness, or old age, or a measure of suffering, and cannot continue in his trade, he dies, abandoned, from hunger. But the Torah is different, it guards him from all evil in his youth and gives him a future and hope in his old age. What does it say about his youth? "Those who trust in the Eternal will renew strength,
they rise on wings like an eagle, they run without effort, they walk without tiring.\textsuperscript{262} What does it say about his old age? "They still bear fruit in old age, fat and invigorated they will be.\textsuperscript{264} So it says about our father Abraham, peace on him: "Abraham was old, came into days, and the Eternal blessed Abraham with everything.\textsuperscript{265} We find that our father Abraham kept the entire Torah before it was given, as it is said: "As a reward because Abraham listened to My voice and kept My watch, My commandments, My laws, and My teachings.\textsuperscript{266}"

\textsuperscript{262} This really is frowned upon, \textsuperscript{264} Ps. 92:15.  
\textsuperscript{265} Gen. 24:1.  
\textsuperscript{263} Is. 40:31.  
\textsuperscript{266} Gen. 26:5.
Halakha 12: "Rebbi Nehorai says: I am leaving aside all trades in the world and teach my son only Torah." For all trades support a person only in his youth as long as he is in possession of his powers. But if a person is afflicted with sickness or a measure of suffering, and cannot continue working, he dies from hunger. But the Torah is different, it honors him and guards him from all evil in his youth and gives him a future and hope in his old age. What does it say about his youth? "Those who trust in the Eternal will renew strength, they rise on wings like an eagle, they run without effort, they walk without tiring." What does it say about his old age? "They still bear fruit in old age, fat and invigorated they will be." So you find about the patriarch Abraham who kept the Torah before it came into the world, as it is said: "As a reward because Abraham listened to My voice and kept My watch, My commandments, My laws, and My teachings." Also it made him great and blessed him in his youth and gave him a future and hope in his old age. What does it say about his youth? "Abraham was very wealthy with livestock, silver, and gold." And about his old age, what does it say? "Abraham was old, came into days, and the Eternal blessed Abraham with everything."
text of L should be interpreted as the doctrine of pre-existence of the "came into this world", not excluding Torah in the abstract prior to Creation.

Rebbi Hizqiah, Rebbi Cohen in the name of Rav. It is forbidden to dwell in a city which has neither a medical man, nor a public bath, nor a court lashing and jailing\(^270\). Rebbi Yose ben Rebbi Abun said, also it is forbidden to dwell in a city which has no vegetable garden\(^271\). Rebbi Hizqiah, Rebbi Cohen in the name of Rav: Every person will have to justify himself for everything his eye saw and which he did not eat\(^272\). Rebbi Eleazar took note of this statement and saved coins from which he ate every kind once a year.

\(^{270}\) A different version is in the Babli, Sanhedrin 17b.
\(^{271}\) In the Babli, this is a Tannaitic statement attributed to R. Aqiba. A diet without fruit and vegetables is unhealthy.
\(^{272}\) Since asceticism is sinful; cf. Nedarim 1:1, Note 95.
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- The table lists Talmudic sources and their corresponding page numbers.
- The sources include Yebamot, Ketubot, Sotah, Ketubot, Nedirim, Gitiin, Babatha Qama 9:6, and Babatha Meš'la 1:5.
- The Tosephta section lists pages from Peah 2:10 to Qiddušin 1:5.
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