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TOSEFTA GITTIN
AN ANNOTATED TRANSLATION
AND
INTRODUCTION

by

CYRUS ARFA

Thesis submitted in partial
fulfillment of requirements
for the Degree of Master of
Arts in Hebrew Letters and
Ordination.

Hebrew Union College
Jewish Institute of Religion
February 19, 1960

Referee,
Prof. Alexander Guttmann

DIGEST

The Tractate Gittin deals mainly with the disannulment of marriages by divorce and incidental references are also made to other documents and to the manumission of slaves.

The tractate is based on Deuteronomy 24:1-4 and the principal matters dealt with in these nine chapters are here summarized. 1. Credentials of the Get and of witnesses; nullifying a non-delivered Get. 2. Authentication by witnesses; Get must be written and signed in one day; qualified authorised writers, valid materials, reliable authorised intermediaries. 3. Get must be specifically drawn up for the woman concerned; authorised bearer or substitute. 4. Cancellation of a Get before delivery; a widow's dowry and support; captive's, and slave's, status. 5. Regulations concerning alimony, damages, debt, dowry, usurper's use of produce, confiscated property, transactions with minors or the deaf and dumb. 6. Husband's right to disannul the Get before its delivery; divorcing a minor. 7. A demented man's order to have a Get drawn up is void; procedure in writing a Get if he is stricken dumb; other similar conditions and validity; Get and questions of conditions. 8. Validness of a Get and relative positions, on presentation, of man and wife; invalidation of a Get with

mis-stated names or if mis-dated. 9. Any infraction of the essential pronouncement 'Thou art free to marry any man' of the Get when presented renders it of no effect.

The summary refers to the subject matter of the tractate. However, I feel that a digest of a known work that has been translated must also include a digest of the general observations of the translator regarding the translation as it bears on the relationship between Tosefta and Mishna.

In translating Tosefta Gittin (from the Zuckermann edition and utilizing the commentaries in the Alfasi edition of the Tosefta as aids) it can be demonstrated that the Tosefta cannot be an independent work since so many passages are unintelligible without reference to the Mishna. This argument touches on two of the most important problems related to the Tosefta. What is the relationship of the Tosefta to the Mishna and what was the purpose of the compilation of the Tosefta? It may be assumed as the name indicates, the Tosefta was intended primarily to be a supplement to the Mishna. The students of the Academy of Rabbi were not blind to the fact that the Mishna was too succinct in some places and required elucidation and supplementing. In order to remedy this shortcoming the Tosefta was compiled and arranged like the Mishna according to treatises, chapters and halachah. Hence the bulk of the statements in the Tosefta are

halachic while the Midrashic and Agadic material constitutes a minor part of the work. However, in the Mishna, the Midrashic and Agadic passages occupy proportionately a much smaller part than in the Tosefta.

By a comparative study of Tosefta and Mishna the reader can become acquainted with these and other problems. Thus when comparing sequence of chapters between Mishna and Tosefta the following observations are to be noted. The order of the Tosefta is either better or worse than that of the Mishna, or just as perspicuous. When the order in the Tosefta seems to be more confused, it sometimes is due to the fact that the Tosefta has been expanded by later additions and thereby disorder was brought into the sequence of the paragraphs. We may conclude that the discrepancy in sequence are due to the fact that the compiler took over a series of statements from an earlier source without making any changes which would be necessary to make it logically fit in its new location.

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INTRODUCTION

There are many problems which confront the scholars when they try to answer the following questions regarding the Tosefta. Does the Tosefta refer to a more complete form of a collection of baraitot than does the Mishna? Was there more than one author to the Tosefta? Is Rabbi Hiyya bar Abba the author because he is mentioned in the Tosefta and therefore we assume that the final redaction of the Tosefta must be attributed to a later hand? What is the purpose of the Tosefta? Is it a commentary on the Mishna or a continuation of the Mishna? What is the relation of the Tosefta to the Talmudic Baraitot?

These and many other questions and problems regarding the nature and scope of the Tosefta have given rise to many solutions attempted by various scholars at different periods. The purpose of this introduction is not to directly answer these questions or to give the views of the different scholars, but to show by contrast, by a comparative study of Mishna and Tosefta, the differences between these two bodies of literature.

Having translated Tosefta Gittin from the Zuckermandel edition, (Pasewalk, 1880) and compared it with the text of the Mishna, and having also read the works of other scholars, I am able to corroborate the findings of Dr. Alexander A. Guttman (Das Redactionelle Und Sachliche

Verhaetnis Zwischen Misna Und Tosephta) regarding the relationship of Tosefta and Mishna.

I. Tosefta is a collection of Tannaitic passages that

- a) are not in Mishna at all
- b) are incomplete in Mishna
- c) are in another version
- d) are in another form
- e) The editor of the Tosefta wanted to collect all material not in the Mishna or in variant forms.

II. The different terms given for Tosefta: "explanations", "notes", "marginal notes", "marginal glosses", or "scholia" which are used very often in scientific literature are unclear.

III. The Tosefta is an independent work but at the same time a supplement to the Mishna. From this point of view the parallel passages have to be evaluated.

IV. The Tosefta also has corrupt passages which may be due to poor copying but gives us no clue to the nature and character of the Tosefta.

V. Both the original Tosefta and Mishna material come from various sources.

VI. The Mishna offers us a short selection of Tannaitic material with special reference to prevailing Halacha with every possible exclusion of the exegetical apparatus and exemplary material. For this reason the

Mishna omits much material.

VII. Wherever the Mishna editor has a choice of several texts, he always chose a shorter version and even when there was a shortened version, he shortened it even further.

VIII. Consideration of the parallel passages between Mishna and Tosefta show that apart from a few exceptions the Tosefta offers something new in the parallel passages in comparison to the Mishna. The new material can be grouped together in the following ways:

1. Expansion of parallel passages in Tosefta.

- a) Passages where Tosefta accepts Mishnaic passages but adds a definition.
- b) Tosefta adds a rule or a generalization.
- c) Tosefta adds an explanation.
- d) Passages where Tosefta adds a practical example or an expansion of practical example given in Mishna.
- e) Tosefta enlarges on Midrashic elements in Mishna.
- f) Tosefta includes a decision not given in Mishna.
- g) Tosefta gives the author.
- h) Tosefta adds a controversy or enlarges upon controversy not given in Mishna.
- i) Where the parallel passage is limited

in application by Tosefta .

- j) Supplementing of parallel passages saying with $\overline{\text{לללללל}}$.
- k) Supplementing Mishna with ^atangential material .
- l) Completion of Mishnaic material by greater generalization via new cases .

2. In the Tosefta we have statements critical of the Mishna text and contents.

- a) The Tosefta passages give a different author .
- b) The Tosefta repeats the Mishna saying in a different version .
- c) The acceptance $\overline{\text{לללללל}}$ לל by Tosefta as an indication of a special kind of variance .
- d) Passages in Tosefta which repeat the Mishna but omit certain elements and take up only one part of the Mishna passage .
- e) There are Tosefta passages which are identical with Mishna .
- f) There are Tosefta passages which are variants .

In order to make the Tosefta Passages understandable in their relation to the corresponding Mishna Passages, I list the references to the Tosefta Passages that belong to the Mishna Passages indicated.

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1	1a, 1b, 1c, 1d, 1e
2	3c, 3d
3	2, 3a, 3b
4	
5	4a, 4b, 4c
6	5, 6-9
<u>Chapter II</u>	<u>Chapter II</u>
1	1, 2a, 2b
2	2c, 2d
3	3, 4a, 4b, 4c, 4d
4	
5	5
6	
7	6a, 6b
<u>Chapter III</u>	<u>Chapter II, III</u>
1	7a, 7b, 8, 9, 10a
2	10b, 10c
3	11a, 11b, 11c

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Chapter IV

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Chapter V

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3e

Chapter IV, V

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Chapter V, 1a, 1b, 2b,

1c, 1d, 2a

Mishna

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Chapter VI

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Chapter VII

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3

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5

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Chapter VIII

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4a, 4b, 5

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2c, 2d, 3

4a

5

9a, 9b

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9c, 9b

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Chapter IX

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9, 10, 11a

11b, 11c, 12, 13

TRACTATE TOSEFTA GITTIN

CHAPTER I

Tosefta 1

If one brings a bill of divorce by means of a ship, it is as if he brings (a bill of divorce) from outside the Land (of Israel). It is necessary for him to say: "In my presence was it written and in my presence was it signed."

(If one brings a bill of divorce) from Trans-Jordan, it is as if he brings it from the Land of Israel. It is not necessary for him to say: "In my presence was it written and in my presence was it signed."

If one brings a bill of divorce from a foreign country and did not say: "In my presence was it written and in my presence was it signed," if he can confirm the signatures it is valid, if he cannot, it is invalid. They only said that it is necessary to say: "In my presence was it written and in my presence was it signed" in order¹ to make matters easy for him.

If one brings a bill of divorce from a foreign country and it was not written and signed in his presence, he must return it to its place of origin and summon a court and have the signatures verified. He then brings it (to the Land of Israel) and says: "I am an agent of the court."

In the Land of Israel, an agent may send another agent (in his place). Rabban Simon ben Gamliel says regarding bills of divorce, a messenger cannot delegate another messenger.

At first they (the sages) said (that if he brings the bill of divorce) from one land to another (it is necessary for him to say: "In my presence was it written, etc."), and later they said (if he brings it) from one district to another (he must say: "In my presence was it written, etc."). Rabbi Simon ben Gamliel says (if he brings a bill of divorce) from one jurisdiction to another (he must say: "In my presence was it written, etc.")).

Tosefta 2

There is a stringency (concerning bills of divorces written) in a foreign country which does not apply to (a bill of divorce when in) the Land of Israel. (There is a stringency regarding a bill of divorce when written) in the Land of Israel which does not apply to a (bill of divorce written in a) foreign country. If a man brings (a bill of divorce) from (one place to another within) the Land of Israel, he does not have to say: "In my presence was it written and in my presence was it signed." Though (the bill of divorce) be disputed, it is valid.

Tosefta 3

If one brings a bill of divorce from a foreign

country and cannot say: "In my presence was it written and in my presence was it signed"; if he has signatures of witnesses on it, then the signatures should be verified.

How are the signatures verified? When witnesses declare that it is our handwriting, it is valid. (If they declare) "It is our handwriting but we know not the man nor the woman", it is valid. (If they declare) "It is not our handwriting", but others testify that it is their handwriting and it is identified by other documents, it is valid.

Rabbi Meir says that Acre is like the Land of Israel in regard to bills of divorce. The sages say that Acre and her surroundings count as outside the Land of Israel in regard to bills of divorce.

It happened that a certain man from the village of Sawsai brought a bill of divorce before Rabbi Ishmael. Said Rabbi Ishmael to him: "Where are you from?" Said he: "From the village of Sawsai, a suburb of Acre." Said Rabbi Ishmael: "Even you must say: 'In my presence was it written and in my presence was it signed', and you will not need witnesses." After he departed, said Rabbi Illyai: "Rabbi, the village of Sawsai is within the Land of Israel and nearer to Tzipori more than to Acre!" Said Rabbi Ishmael: "Since the matter had already been settled in
2
a permissive way, let it stand that way.

Tosefta 4

Rabbi Judah says, although his two witnesses are Samaritans, (the bill of divorce is) valid. Said Rabbi Judah. It happened that they once brought (a bill of divorce) before Rabban Gamliel at the village of Othnai. The signatures therein were of Samaritan witnesses and he pronounced it valid.

Any writ that is drawn up in the records-offices of non-Jews, even if they that signed it were non-Jews, Rabbi Akiba validates all (such writs). The sages invalidate all except ³ bills of divorce and writs of manumission of bondmen.

Rabbi Elazar ben Rabbi Jose said that Rabban Simon ben Gamliel told the sages in Tzidon that Rabbi Akiba and the sages were not divided in opinion concerning writs drawn up in the records-offices of non-Jews which are valid. They disagree when (the writs are) prepared by (non-Jewish) laymen. Rabbi Akiba validates all (writs) and the sages invalidate all (writs) except ⁴ bills of divorce and writs of manumission of bondmen. Rabban Simon ben Gamliel says that even bills of divorce and writs of manumission of bondmen are valid in a place where there are no Israelites to sign.

Tosefta 5

Said Rabbi Elazar: "I said to Rabbi Meir. 'Why

(should the owner be able to retract the writ of liberation to a bondman?) It is an advantage allotted to the bondman while not in his presence!" (Rabbi Meir) said to us: "It is not an advantage but a disadvantage (to the bondman). For if he were a bondman to a Priest, he would be disqualified from eating heave-offering." We said (to Rabbi Meir): "What would be if the owner does not wish to feed or provide (for his bondman), (in which case) he has the authority to do so." Said (Rabbi Meir) to us: "The bondman of a Priest which fled and the wife of a Priest which rebelled, these two eat from the heave-offering. But concerning a woman (receiving a bill of divorce) it is not so. You cause a disadvantage to her with regard to her food (she receives no support) and she is disqualified from (eating) heave-offering."

Tosefta 6

If one says: "Give this maneh to Mr. 'x' to whom I'm indebted"; (if one says) "carry this maneh to Mr. 'x' to whom I'm indebted": (if one says) "give this maneh to Mr. 'x' for the pledge he deposited with me"; (if one says) "carry this maneh to Mr. 'x' for the pledge he deposited with me"; if the sender wishes to retract, he may not do so, and he (the sender or the agent) is responsible for the maneh until the person (Mr. 'x') receives it.

Tosefta 7

(If one says) "give this maneh to Mr. 'x'"; (if one says) 'carry this maneh to Mr. 'x'"; (if one says) "give this writ of donation to Mr. 'x'"; (if one says) "carry this writ of donation to Mr. 'x'"; if the sender wishes to retract he may do so. (If the agent) found (Mr. 'x') dead, he returns (the maneh or the writ of donation) to the sender. If (the sender) is dead, he gives it to his heirs.

Tosefta 8

(If one says) "acquire title of this maneh for Mr. 'x'" or "receive this maneh for Mr. 'x'". (If one says) acquire this writ of donation for Mr. 'x'" or "receive this writ of donation for Mr. 'x'"; (If the sender) wishes to retract he cannot do so. (If the agent) found (Mr. 'x') dead, he gives it to his inheritors. If after (Mr. 'x's') death (the sender) says: "Take possession of this maneh for Mr. 'x'", (the maneh) is returned to the sender because one does not allot a privilege to a dead man.

Tosefta 9

(If one says) "carry this maneh to Mr. 'x'" or "take this maneh to Mr. 'x'", this maneh shall be in the possession of Mr. 'x'. If the sender dies, his inheritors cannot retrieve the maneh (from the agent). It is not necessary to say (that this applies) if he (the sender) says "acquire

it for him" or "receive it for him".

CHAPTER II

Tosefta 1

If one brings a letter of divorce from a foreign country and he gave it to her and did not say to her : "In my presence was it written and in my presence was it signed", (the agent can) take (the bill of divorce) from her after a number of years and (then) give it to her and say: "In my presence was it written and in my presence was it signed".

Tosefta 2

A woman is considered trustworthy when she claims that: ("This bill of divorce which you have given me was torn."⁵ (The bill of divorce) is licit. However, if the bill of divorce becomes torn⁶ it is not licit.

Rabbi Simon ben Elazar says that (the agent) pastes the torn pieces (of the bill of divorce) and gives it to her and says to her: "In my presence was it written and in my presence was it signed."

If one says: "In my presence was it written," and another says: "In my presence was it signed," it is not licit. If two say: "In our presence it was written," and another say, "In my presence was it signed," it is not licit. But Rabbi Judah makes (this last case) legal.

Rabbi Simon says that even if (the bill of divorce

is written on one day and signed one day afterward, it is licit.

If (a bill of divorce is) written in one city it should not be signed in another city. If (however) they sign it (in another city) it is licit. If (the bill of divorce was) written in the Land (of Israel) and signed in a foreign country, it is necessary (for the agent) to say: "In my presence was it written and in my presence was it signed." (If the bill of divorce was written) in a foreign country and signed in the Land (of Israel) it is not necessary (for the agent) to say: "In my presence was it written and in my presence was it signed."

Tosefta 3

If they wrote (the bill of divorce) with congealed blood or congealed fat of milk on olive leaves or carob leaves or on cucumber leaves or on anything which is permanent,⁷ it is licit. When one writes on leek-skin or on onion-leaves, or on leaves of shoots, or on leaves of herbs and upon anything which is not permanent with something which is permanent, it is not licit. (The bill of divorce is licit) when it is written with something which is permanent on something which is permanent.

Tosefta 4

He who cuts something like the shape of writing (on the parchment of the bill of divorce and perforates

it), (the bill of divorce is) invalid. (However), he who makes impressions of the shape of writing (and does not perforate the parchment), the (bill of divorce is) valid.

Rabbi Jose the Galilean says that a bill of divorce has the special character that it is not (written on anything) alive. (This then teaches us to) exclude (any bills of divorce written on) anything alive.⁸

Rabbi Judah, the son of Petairah says "a bill of divorce has the special character of being detached from the ground," (this teaches us to) exclude (a bill of divorce) which is attached to the ground.

If they wrote (a bill of divorce) on a gazelle's horn and then cut it and signed and gave it to her, it is not licit. Because scripture says

וְכָתַב בָּהּ כְּתֹבָת הַפְּטוּת וְנָתַן בְּיָדָהּ

"...that he writeth her a bill of divorcement, and giveth it in her hand..."⁹ Just as (the act of) giving (refers to a bill of divorce) which is detached, so (does the act of) writing refer to a detached (bill of divorce).

(If the bill of divorce is) on a cow's horn, and he gave her the cow, (if the bill of divorce is written) on the hand of a bondman, (and the husband) gave her the bondman, she acquires them. If he then says: "Here is your bill of divorce and the rest is your Ketubah." Her bill of divorce and Ketubah is (considered) received.

(If one says) "here is your bill of divorce on the condition that you return to me the paper"; (or if one says) "behold you are divorced on the condition that the paper belongs to me"; or if he wrote it to her upon her hand, she is not divorced.

Tosefta 5

All are qualified to receive for her the bill of divorce save a deaf mute, a mentally deficient person, or a minor.

Tosefta 6

All are considered reliable to bring her a bill of divorce even her son, her daughter and even five women who are not considered trustworthy (because they are hostile to her and) say: "her husband is dead" and are accounted reliable when they bring her a bill of divorce.

Rabbi Simon ben Elazar says in the name of Rabbi Akiba that a woman is considered trustworthy to bring her own letter of divorce ¹⁰ from a conclusion a minori ad majus. If her co-wife who is not considered trustworthy (because of her hostility) when she says "her husband is dead" and she is accounted reliable to bring her a bill of divorce, how much the more so, she that is trustworthy to say "her husband is dead", it is certainly more proper that she is accounted reliable to bring her own bill of divorce.

It is sufficient for the law which is derived by conclusion a minori ad majus to be as strict as the law from which it is derived. (You cannot go beyond the latter).

Just as her co-wife (on presenting the bill of divorce) must say: "In my presence was it written and in my presence was it signed," so must she say likewise: (upon presenting her own bill of divorce) "in my presence was it written and in my presence was it signed."

Tosefta 7

A bill of divorce which they wrote not explicitly for a woman is not licit. Scripture says: "And he writeth her"¹¹, (that is to say) explicitly for her. The manumission of a bondman which they wrote not explicitly (for the bondman) is not licit.

Scripture says: "Or her freedom is not given her."¹² And over there, Scripture says: "And he writeth her",¹³ Just as וְהָיָה "her" (in Deuteronomy) which is stated explicitly for her. So is וְהָיָה "her" (in Leviticus) is stated explicitly for her.

The Scroll of a Sota which they wrote not explicitly for her is not licit. Scripture says: "And the Priest shall do unto her"¹⁴ in order that all her deeds (be recorded) explicitly for her.

If a scribe writes (a letter of divorce) which is

not written explicitly for a woman, and witnesses sign it explicitly for a woman, although it is written and signed, given to him and he gives it to her, it is not licit.

The bill of divorce is licit only when he tells the scribe "write" and tells the witnesses "sign".

Tosefta 8

Furthermore, even if he wrote in his own handwriting to the scribe that he should write (the bill of divorce) and the witnesses to sign it, although it was written and signed and given to him, and he gave it to her, it is not valid unless his (the husband's) voice is heard saying to the scribe "write" and to the witnesses "sign".

Tosefta 9

If "A" borrows from "B" a thousand Dinar against a note, and "A" paid "B" back; and "A" wishes to borrow from "B" a second time; "B" should not return to "A" his first note because this would injure the privilege of
15
the purchasers.

Tosefta 10

"A" pledged his house to "B" and "A" pledged his field to "B". "A" paid back his loan on the pledge and requests a second loan. "B" should not return to "A" the first note of indebtedness because this would injure the privilege of the purchasers who follow him.

Said Rabbi Judah: "It happened that Ben Krara wrote bills of divorces in the evening and his actions came to the attentions of the sages who invalidated them. Rabbi Elazar declared all of them licit save bills of divorces and manumission of slaves."

Tosefta 11

If an agent were bringing a bill of divorce and he lost it and then found it after a lapse of time, although he recognizes its distinguishing marks, it is not licit. (The reason being that) there are no distinguishing marks whatsoever (which are considered as a means of identification) when found after a lapse of time ¹⁶ now that another person has had the opportunity to go to the same place. ¹⁷ (If the sender) placed (the bill of divorce) in a strong box, chest or (portable) turret and locked it in the presence of the agent and the key was lost and then found, the bill of divorce is licit.

Tosefta 12

(Regarding the statements of Rabbi Elazar ben Perata, in Mishna 3:4) three cases were added to them. If debris of a fall-in covered a person; if a wild beast stalked a man and mauled him (or dragged him away); if robbers kidnapped a person; to them we apply the more strict rulings for the living and the more stringent rulings for the dead. (In such a case) the daughter of an Israelite

wedded to a Priest and the daughter of a Priest wed to an Israelite, must not eat from the heave-offering of the Priest's-due. (However) the bondman of a Priest that fled, and the wife of a Priest which rebelled, they may eat from the heave-offering of the Priest's-due (if the Priest is presumed to still be living.)

A man slayer should not leave the boundary of his place of refuge¹⁸ because the high Priest is presumed to be alive.¹⁹

Tosefta 13

(If one says) "carry this bill of divorce to (my) wife with the condition that she pay to my father and my brother, 200 zuz," the agent may delegate his order to another agent. (But if he says to the agent) "on the condition that she pay you 200 zuz, the agent may not delegate his order to another because the sender trusted to him alone.

(If one says) "carry this bill of divorce to (my) wife, the agent may delegate to another. (However, if one says) "You carry this bill of divorce to (my) wife," the agent may not delegate to another because (the sender) did not trust anyone else but him.

CHAPTER III

Tosefta 1

If one lent money to a Priest or to a Levite or to a poor man (so that he may separate therefrom what would be their lot)²⁰ and they died, he needs to obtain authorization²¹ from the heirs if they inherit. Rabbi says, he needs (to obtain authorization) from all the heirs.

Rabbi Elazar ben Jacob says: "If one lent money to a Priest or to a Levite (so that he may separate therefrom what would be their lot) in the presence of the court, and they died, they separate therefrom for them with the authorization of the tribe concerned (e.g. tribe of Levi).

If one lent money (so that he may separate therefrom what would be his lot) in the presence of the court, and he died, they separate for him with the permission of all the poor people. Rabbi Acha says with the permission of the poor people of Israel.

If one lends money to a poor man (so that he may separate what would be his lot of לשם פדיון) and he became rich, you do not separate for him that which is lost (to him since he became rich and cannot be eligible for

לשם פדיון) and the poor man is entitled to whatever he has in his possession.

If one lends money to a Priest, or to a Levite or to a poor man so that he may separate therefrom what

would be their lot on the presumption that they are still living, the Sabbatical year ²² does not cancel the debt. If the lender wishes to retract (the loan he) may do so. If the lender has given up hope of recovering his money, you do not separate (from the levies of the produce of the field) because one does not separate (from that which he has given up as) lost to him.

(If one says) "take possession of this maneh for Mr. 'x' the son of David, that which is his lot," if the sender wishes to retract he may not do so.

(If one says), take possession of this maneh (from the) tithed money that you hold for me, he need not (hesitate to take for) fear that it might be the Priest's-due of the tithe.

(If one says, "take possession of this maneh from the) tithed measure that you hold for me;" (And he) took his money, he must take into consideration that it might be the Priest's-due of the tithe.

(If one says "take possession of this maneh from the) measured tithe which you hold for me," and he went and gave it to somebody else, there is no legal claim against him.

Tosefta 2

If one put aside produce so that he might separate therefrom Priest's-due and tithes; or if one put aside

money so that he might use it for the separation of second tithe, he may separate on the assumption that they are still there. We need not take into consideration that the grain was attacked by worms or that the wine became sour or that the money became rusty. If he went (to examine) and found that it was decayed and sour, he must take into consideration (the possibility of having consumed untithed grain) from the time that the grain may have been attacked by worms, or the wine to have become sour, or the money to have become rusty.

Rabbi Judah says, during three periods they examine wine. If the wine spoiled then he must assume that this was for the past twenty-four hours. These are the words of Rabbi Eliezer.

CHAPTER IV

Tosefta 1

If he reached his wife first (before the bill of divorce reached her) or if he sent another messenger to her and he (the husband or the other messenger to her and he (the husband or the other messenger as the case may be) said to her: "You cannot be divorced with the bill of divorce that I have sent to you; it is void," then it is nullified.

Aforetime, one would convene a court (of three judges to nullify the bill of divorce) in another place (where the wife or messenger was not present) and cancel the bill of divorce. If the court nullified it, it is nullified according to Rabbi. Rabban Simon ben Gamliel says he cannot nullify it and neither can he add additional stipulations.

If one says to two agents "give this bill of divorce to my wife", he may nullify it when one agent is not in the presence of the other according to Rabbi. Rabban Simon ben Gamliel says that he cannot nullify it unless in the presence of the two agents. However, if he said to each one separately (give this bill of divorce to my wife), the husband may nullify it even though (it was not nullified at the same time) in the presence of the two agents.

Tosefta 2

If a bondman (who was the property of a Jew or Jews) was taken captive and they (others not his owners) ransomed him; if as a bondman (they ransomed him) he remains a bondman and his master pays for the ransom money. If (he is ransomed) as a free man, he must not be enslaved and his former master need not pay his ransom money. Rabban Simon ben Gamliel says in either case he should not ²³ remain a bondman and his master pays his ransom money.

Just as Israelites are commanded to ransom free men, so are they commanded to ransom their bondman.

Tosefta 3

Which is the vow, that does not require the examination of a sage? ²⁴ (When the husband) says "□□□" ²⁵ forbidden is my wife to me so that I shall have no pleasure from her for she has stolen from my pocket and has beaten my son" and it became known to him that she did not beat his son nor steal (from his pocket).

Rabbi Eliezer says, in such a case, the husband may not take her back because of public weal. Regarding what case does this refer to? When the husband vows and then divorces her. However, if he divorces her and then vows he may take her back.

If he vows to divorce his wife and subsequently

regrets he may take her back. If he vows nazariteship or
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 to offer a sacrifice or to take an oath ("if I do not
 divorce you" and subsequently regrets) he may take her
 back.

Why did they say that if he divorced his wife because of evil repute, (i.e. adultery) he may not take her back? (The reason being that) if one divorced his wife because of her ill repute and she married another man and bore children and then his (the first husband's) accusations turned out to be false, he would then say: "If I would have known that these accusations were false, even if a man were to give 100 maneh (to obtain a divorce) for my wife, I would have never divorced her." Her children (from the second husband) would be illegitimate and her bill of divorce nullified.

Why did they say if one divorce his wife because (of a vow she made and to which he objected), he may not take her back? (The reason being that) he who divorces his wife because of a vow, and she then married again and bore children and then it became known that her vow was null and void (to begin with) he would say: "If I would have known that the vow was null and void, even if someone were to give me 100 maneh (to obtain a divorce) for my wife, I would never have divorced her. Then the bill of divorce would be nullified and the child (from

her second husband would be) illegitimate.

Rabbi Elazar, the son of Rabbi Jose says: Why did they (the sages) say if one divorces his wife because of her evil repute, he may not take her back? In order that the daughters of Israel should not be guilty of immoral conduct.²⁷ He therefore says to her: "Be it known to you that a woman who is divorced because of her evil repute, the husband may not take her back."

And, thus, Rabbi Elazar the son of Rabbi Jose says: "Why did they say that a woman who was divorced because of a vow (she made which her husband objected to) that he may not take her back? In order that the daughters of Israel should not make vows without restraint, therefore the husband says to her: 'Be it known to you that a woman who is divorced because of a vow, the husband cannot take her back.'"

If one divorces his wife because she is sterile, and she married another and bore children and she then claimed her ketubah from her first husband - in the name of Rabbi Meir, they said: the divorced husband tells her: "Your silence is of greater advantage to you than your speech."²⁸

Rabbi Elazar, the son of Rabbi Simon says that if one divorces his wife because she is sterile, her ketubah is given to her because we assume that she is "kosher" (i.e. capable of conception and is therefore considered

a אִשָּׁה לֵוִיָּהּ וְאִשָּׁה זָרָה וְאִשָּׁה אֲרָמִית וְאִשָּׁה עֲרָבִית וְאִשָּׁה יְבוּסִית וְאִשָּׁה חֲזָקִית וְאִשָּׁה אֲרָמִית וְאִשָּׁה עֲרָבִית וְאִשָּׁה יְבוּסִית וְאִשָּׁה חֲזָקִית uncertain sterile woman.)

Tosefta 4

One does not swallow golden dinarim (from the booty which the enemy takes for spoil) during wartime for fear of the risk of life (by choking).

Rabban Simon ben Gamliel says, they also must not help in the escape of captives for the benefit of the (remaining) captives, (in order to prevent maltreatment of those still in captivity).

Tosefta 5

Afore time they (the sages) used to say if one cause uncleanness (to his fellow's Priest's-due) or if one mixed Priest's-due (with his fellow's אִשָּׁה non-holy produce); they now also say even if one mingled libation wine (which is prohibited to Jews with his fellow's wine) by error, he is exempt (from having to pay damages). If he did it wantonly he is liable (and must make good the loss) out of consideration for the public weal (for he should not have acted thus to another's hurt).

Tosefta 6

The Priest who rendered any sacrifice in the Temple unfit by error are exempt (from paying damages). If they acted so wantonly, they are culpable (and must compensate the owners by bringing other sacrifices) out of consideration

for the public weal.

The agent of a court who beat a person with the authority of the court and injured him by error, the agent is exempt (from paying damages). If he injured him wantonly, he is culpable (and pays damages), out of consideration for the public weal.

If a skilled physician who heals with the authority of the court and causes damage by error, he is exempt (from paying damage). If he does it wantonly, he is culpable (and pays damage) out of consideration for the public weal.

Tosefta 7

He who severs the embryo in the stomach of a woman with the authority of the court and causes damage by error, he is exempt (from paying damages). If he did it wantonly, he is culpable (and pays damages) out of consideration for the public weal.

CHAPTER V

Tosefta 1

In the Land of Judah, the law regarding the "Sicaricon" (purchase of confiscated property)²⁹ does not apply in order to maintain the social welfare of the state. Under what circumstances does this hold true?³⁰ It holds true with regard to those slain before the war and during the war. However, the law regarding the purchase of confiscated property does apply to those slain following the war and upwards. If one purchased from the usurping holder of confiscated property and then purchased from the original holder, the sale is valid. (If one purchased) from the original holder and then purchased it from the usurping holder of the confiscated property, the sale is invalid. If the original owner assessed for him a mortgage, the sale is valid. This is in accordance with an earlier Mishna. Our Rabbis have stated, he purchases and it is not withheld (i.e. it is valid). He gives the original owner a quarter of the land and a quarter of the money (when he buys from an usurping occupant of confiscated property) and the original owners have the upper hand if he has the means to repurchase it and is also given priority to purchase it.

Rabbi convened a court, and they decided by vote that if it had been in the usurping holder's hands for

twelve months, whosoever was first to purchase, gives a quarter of the land and one fourth of the money to the original owner, but the original owners have the upper hand if he has the means to repurchase it and is given priority to purchase it.

Tosefta 2

The law regarding the purchase of confiscated property does not apply to: (1) an estate when a tenant tills the owner's ground for a certain share in the produce; (2) a tenant who pays the landlord a certain rent in kind, irrespective of the yield in crops; (3) or to moveable goods.

He who takes possession (of the estate) because of indebtedness, or because of ³¹anporeth, the law regarding the purchase of confiscated property does not apply.

Anporeth ³²forces the owner to wait twelve months (before he receives a quarter of the land from the possessor of the confiscated property).

Rabbi Simon ben Elazar says if he purchased land which is in her ketubah and then he went and purchased it from the husband, his purchase stands.

If he purchases it from the husband and then went and purchased it from the wife, his sale is invalid (since she may have sold it under duress). If she assessed for him mortgaged property from her ketubah, his purchase is

valid.

Tosefta 3

The purchases or sales of moveable property effected by children ³³ are valid but not with immoveable property.

Rabbi Simon ben Gamliel says: They only say (that they validate the purchases and sales of) children according to the present situation (i.e. it is the usual case although smaller children also can buy or sell chattels).

Tosefta 4

A poor person who removes (olives from an olive tree) and throws one after another beneath him, whatever is beneath him, comes under the law of complete theft.

In a city wherein there are Israelites and non-Jews, the leaders of the city collect taxes from both Israelites and non-Jews for the sake of peace. You provide for the poor among the non-Jews for the sake of peace.

Tosefta 5

You arrange funerals, eulogies for non-Jewish dead and you comfort the non-Jewish bereaved, and you bury the dead of non-Jews for the sake of peace.

CHAPTER VI

Tosefta 1

(If a woman says to an agent), "Bring on my behalf, my bill of divorce," (and the agent goes to the husband and says) that his wife had said to him: "Bring on my behalf my bill of divorce;" (and the husband says) "carry (this bill of divorce) and give it to her," or "take possession for her" (this bill of divorce); if he wishes to withdraw (the bill of divorce before she receives it) he may withdraw.³⁴

(If a woman says to an agent), "Accept my bill of divorce on my behalf," (and the agent goes to her husband and says) that his wife had said to him "accept on my behalf my bill of divorce," (and the husband says) "Give her" - "accept for her" or "take possession for her" (this bill of divorce) if the husband wishes to retract (the bill of divorce before she receives it) he may not retract. This is the opinion of Rabbi.

Rabbi Nathan says, (If the husband say) "carry and give her" (the bill of divorce). If he wishes to retract, he may do so. If he says "Accept it for her and take possession of it for her," if he wishes to retract, he may not do so.

Rabbi says (that the husband) may not withdraw (the bill of divorce before she receives it) unless he

says (to the agent): "I do not want you to accept it on her behalf (as she has bid you) but take it and give it to her."

Tosefta 2

(If a woman says to an agent) "Accept on my behalf my bill of divorce" (and the agent goes to the husband and says) that his wife had said to him "bring on my behalf my bill of divorce" (and the husband says) "carry it and give it to her" or "accept it on her behalf" or "take possession of it for her", if the husband wishes to withdraw, he may not withdraw.

(If a woman says to an agent) "Receive on my behalf my bill of divorce" or "take on my behalf my bill of divorce" or "let my bill of divorce be in your hands", it is as if she says (to the agent) "accept on my behalf".

(If one says to an agent) "Carry this bill of divorce to my wife" (or to the father of a betrothed girl, who is twelve years and one day and cannot receive her bill of divorce and say) "here is your daughter's bill of divorce" (or to the brother if there is no father) "here is your sister's divorce" and the agent went and gave it to her, it is licit.

They said to the husband, "We will write your wife's divorce" or (they said to the agent) "carry his wife's bill of divorce" or (they said bring this bill

of divorce to the father and say) "here is your daughter's bill of divorce", or (to the brother and say) "here is your sister's bill of divorce", and the agent went and gave it to her, it is not licit. Even though the former (witnesses) were the same as the latter, and even though they were two brothers and another one combines with them,
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 (it is valid).

If a minor (a girl under twelve years) is capable of looking after her bill of divorce she may be divorced. A minor cannot appoint an agent until she is capable of showing two hairs (which is a sign of maturity).

Tosefta 3

In what way does a minor know how to look after her bill of divorce? When she is given her bill of divorce or anything else and can produce it after an hour.

Tosefta 4

If the woman said: "Accept on my behalf my letter of divorce in such-and-such a place;" and they accepted it on her behalf elsewhere, it is illegal. Rabbi Elezar makes it licit unless he says "I do not want you to accept (the bill of divorce), unless it is from "x" place." In all instances if the bill of divorce reached her hand, she is then divorced.

Tosefta 5

(If the husband say to witnesses in the technical formula of Get: "Tarchee"! "Divorce my wife"! They (the witnesses) write out a bill of divorce and give it to her. (If they say) "behold, here is your bill of divorce" and the wife say: "Give it to (agent) 'x'," she is not divorced (because she did not make agent 'x' a שליח but שליח דלכנה). (But if she says: "Give it to agent 'x'"), "that he accept it for me", she is divorced.

Tosefta 6

If one says to two people, "Give this bill of divorce to my wife on the condition that she wait two years for me." He retracted (and sent two other men) and said to the latter (give this bill of divorce to my wife) on the condition that she pay two hundred zuz. His last condition does not invalidate the first condition and she has the authority to either wait or pay.³⁶

Tosefta 7

If one say to two men "Give this bill of divorce to my wife on the condition that she wait two years for me." He retracted (and sent two other men) and said to the latter, "Give this bill of divorce to my wife on the condition that she wait three years." His last condition nullifies the first condition.³⁷ And none of the former men can combine with the latter men to give her the bill

of divorce.

If one say: "Here is your bill of divorce on the condition that you will not marry my father or brother;" if one say: "Here is your bill of divorce on the condition that you don't have coition with my father and brother; it is not a (valid) bill of divorce since she might have coition with them,³⁸ or she may have been forcibly seduced and thus cannot keep her promise.

(If one says: "Here is your bill of divorce) on the condition that you marry Mr. 'x';" or "this one do not marry." If she marries (Mr. 'x'), it is a legal bill of divorce.

(If one says, "here is etc.") on the condition that you have coition with 'x'." If she has coition with 'x', it is a (valid) bill of divorce. If she does not, it is not a (valid) bill of divorce.

If one says to two others:³⁹ "Deliver this bill of divorce to my wife" or "write a bill of divorce to my wife" or to three others "deliver this bill of divorce to my wife" or "write this bill of divorce to my wife." These people write and deliver (the bill of divorce to his wife). If they know not how, they should learn (how to draw up and write a bill of divorce).

Tosefta 8

(If the witnesses or agents) know the man (and

that his name is so and so) and they know not the woman, they write and deliver (the bill of divorce at the husband's request to his wife and they do not have to suspect whether or not she is his wife or that he is divorcing another woman).

(If the witnesses or agents) know the woman and know not the husband, they write but do not deliver (the bill of divorce for fear that he might have changed his name to be the husband of another woman).

And, if the husband says to them "write" and did not say "deliver", even though they know both the husband and wife, they "write" but do not deliver it.

Tosefta 9

If one shouts from the top of a mountain saying: "Whosoever hears my voice, let him write a bill of divorce to my wife and deliver it," let them write it and deliver it.

Rabban Simon ben Gamliel says. If a certain man in sound health says: "Write out a bill of divorce for my wife" and then went up to the top of the roof (after the bill of divorce was written) and fell off (and died), you write and deliver the bill of divorce when he is alive, if after a lapse of time (he went up to the roof) and fell (and died), you write it out but you don't deliver it.

(Rabban Gamliel) say perchance the wind might have

forced him down (and it may be taken for granted that he had intended to add to it and deliver it to her since he did not say "deliver it" but "write it".)

Tosefta 10

(If one say to his wife) "Here is your bill of divorce of the condition that you eat swine's meat" or "on the condition that you eat the Priest's-offering" and if she be a Nazarite "on the condition that you drink wine." If she has eaten (swine's meat) and drank (wine), it is a (licit) bill of divorce. If she did not (eat swine's meat or drink wine) it is not a divorce.

Tosefta 11

(If a Priest say to his wife) "This shall be your bill of divorce one hour before my death" or (if he say) to his bondwoman, "This shall be your bill of freedom one hour before my death," these people shall not eat from the Priest's-offering because he may die after (any) hour.

Tosefta 12

If one says to ten people, "Carry this bill of divorce to my wife," one may carry it on behalf of the ten. (If one say) "All of you (ten) carry (this bill of divorce to my wife)" one person gives it in the presence of the ten. Therefore, if one of the ten died, this bill of divorce is void.

CHAPTER VII

Tosefta 1

If a man was crucified or being cut to death and motioned (to his friends) and said "write a bill of divorce to my wife." They write and deliver the bill of divorce any time that there is in him life.

If he were ill or became speechless (and his friends said to him "Shall we write out a bill of divorce for you") and he inclined his head (in approval), they must test him three times (by suitable questions) whether for 'no' he meant 'no' and for 'yes' he meant 'yes'. (If the test proved that he wanted the bill of divorce to be carried out) his wishes are carried out. Just as you would examine him (if he were ill or speechless) in cases of divorce, so must you examine him in regard to purchases, gifts, inheritance, and in giving testimony.

Tosefta 2

(If a man said to his wife) "This is your bill of divorce from today if I die from this illness" or "if I die from this illness this is your letter or divorce from today till after death"; this is a legal bill of divorce.

(If a man said to his wife) "This is your bill of divorce if I die from this illness" and a house fell on him, or a snake bit him and he died, it is not a legal bill of divorce because he did not die from said illness.

(If a man said to his wife) "This is your bill of divorce if I do not recover from this illness" and a house fell on him or a snake bit him and he died, this is a legal divorce because he did not recover from said illness.

Tosefta 3

If one said to his wife "This is your bill of divorce from today till after my death", Rabbi says it is a legal bill of divorce and the sages say it is not legal. If he dies, she has to perform Chalizah but she must not contract ⁴⁰ Leveratic union.

Similarly (if a man says) to his bondwoman "This is your letter of emancipation from this day till after my death", Rabbi says this is a licit letter of emancipation and the sages say that the manumission of bondmen are just like bills of divorce.

If a man says "Make my bondman 'x' a free man (from this day till) after my death" he has said naught (i.e. his statement does not free the slave), but they force the inheritors (after his death) to uphold the wishes of the deceased (i.e. to free the slave).

Tosefta 4

(If a man said to his wife), "This is your bill of divorce from this day if I die from this illness", in the intervening time (from the moment of his statement to the time of his death) he has the right of possession of

whatever she finds, and the works of her hands, and of interference with her vows. These are the words of Rabbi Meir. Rabbi Judah says that it is uncertain. Rabbi Jose says that sexual contact is suspended, and the sages say that she is divorced from everything only if he dies.

She must not be in his company (after he had delivered to her the bill of divorce with the statement "From this day if I die...") in the presence of her young son because she feels no shame to cohabit in his presence.

If they saw her in his company in darkness or that she slept at the bottom part of the bed, although he is awake and she is asleep or though she is awake and he is asleep, we do not take into consideration that they were occupied in an extraneous matter, but we comprehend the situation as coming under the category of coition, and we do not take into consideration as coming under the category of betrothal (of a second marriage). Rabbi Jose, the son of Rabbi Yehuda says that we take into consideration that it is a betrothal.

If two people saw that she was in his company, she must receive a second bill of divorce from him. If one (saw her in his company) she does not require a second bill of divorce from him. (What happens) if one (saw her in his company) in the morning, and another one (saw her in his company) at dusk? This was the case. He came and

asked Rabbi Elezar ben Thadden and the sages and they said that she does not need a second bill of divorce from him.

Tosefta 5

(If a man said to his wife) "Let this be your bill of divorce on the condition that you give me two hundred zuz" and he died. If she gave him, she is not delegated to contract Leviratic union. If she did not (give him the two hundred zuz) she must contract Leviratic union. Rabbi Simon ben Gamliel says that she should give the money to his father, or to his brother, or to one of the inheritors (and she becomes divorced).

(If a man said to his wife) "Let this be your bill of divorce on the condition that you give me two hundred zuz" and the bill of divorce got torn or was lost, this is a licit bill of divorce and she cannot marry again until she has given (the two hundred zuz).

(If a man said to his wife) "Let this be your bill of divorce when you will give two hundred zuz" and the bill of divorce was torn or lost, if she gave (him the two hundred zuz) the bill of divorce is licit, if she did not give it to him, it is not licit.

(If a man said to his wife) "Let this be your bill of divorce on the condition that you give me two hundred zuz" and then retracted and said "let this be your bill of divorce (to take effect) immediately, he has said

naught (and his second statement is disregarded). In what manner can he correct the matter? He takes it from her, and then again gives it to her and says to her, "This is your bill of divorce to take effect immediately."

Tosefta 6

(If a man said to his wife), "Behold, this is your bill of divorce on condition that you serve my father and on the condition that you nurse my son" and he gave her the bill of divorce, she is immediately divorced unless (he made a double stipulation) saying "if you don't serve" or "don't nurse", (then you are not divorced). These are the words of Rabbi Meir. The sages say, if the condition was fulfilled she is divorced, and if not, she is not divorced. Rabban Simon ben Gamliel says that in Scripture, there are no conditions given unless they are doubly stipulated with two alternatives.⁴¹

(If a man said to his wife), "Behold this is your bill of divorce" on the condition that you nurse my son twenty four months, (it is licit). These are the words of Rabbi Meir. Rabbi Judah says eighteen months. Rabban Simon ben Gamliel says we begin to count (the years) from the hour of the child's birth.

If a man said to his wife, "Behold this is your bill of divorce on the condition that you serve my father and on the condition that you nurse my son" and she served

the father one hour and she nursed the son one hour, since the condition was fulfilled the bill of divorce is legal (and she is divorced).

(If a man said to his wife), "Behold this is your bill of divorce on the condition that you serve my father and on the condition that you nurse my son" and they both died. Since the conditions were not fulfilled, it is not a legal bill of divorce (and she is still married). These are the words of Rabbi Meir. And the sages say that (in such a case) she can say "bring your father and I will serve him" or "bring your son and I will nurse him." (And, then she becomes legally divorced).

(If a man said to his wife) "Behold this is your bill of divorce on the condition that you serve my father" and the father said, "it is not my desire that you serve me", since the condition was not fulfilled, it is not a legal bill of divorce. Rabban Simon ben Gamliel says that if the father said it without outbreak of violence (i.e. if there was no provocation from her towards him) it is a licit bill of divorce. However, if the father said it with an outbreak of temper, it is not a legal bill of divorce.

(If a man said to his wife) "Behold this is your bill of divorce on the condition that you serve my father two years and on condition that you nurse my child two years" and even if during the two years the bill of divorce

got torn or was lost, it is a legal bill of divorce. For if a person says "on condition..." it is as if he says "to take effect from now."

(If a man said to his wife), "Behold this is your bill of divorce when you will serve my father for two years and when you will nurse my son two years" and the bill of divorce got torn or was lost during the two years, it is not a legal bill of divorce.⁴² (However, if a man said "behold this is your bill of divorce) after (you have served my father for) two years (and after you have nursed my son for two years, and the bill of divorce got torn or lost during the two years) it is a licit bill of divorce.

(If a man said unto his wife) "This is your bill of divorce on the condition that you serve my father two years and on the condition that you nurse my son two years" and even though the condition was fulfilled after death (it is not a licit bill of divorce because it is not possible to fulfill the condition after death).

Tosefta 7

(If a man said to his wife) "Behold this is your bill of divorce on condition that you don't go to your father's house from this moment and until thirty days", or "on condition that you don't drink wine from now until thirty days", this is a licit bill of divorce.

(If a man said to his wife), "This is your bill of divorce on condition that you do not climb this tree," or "on condition that you do not climb this wall" and the tree was cut and the wall is torn down, the bill of divorce is licit.

(If a man said to his wife) "This is your bill of divorce on the condition that you climb this tree," or "on the condition that you climb this wall," and the tree was cut and the wall fell, it is not a licit bill of divorce.

Tosefta 8

(If a man said to his wife) "This is your bill of divorce on the condition that you will not fly in the air," or "on the condition that you do not cross the great sea by foot", this is a legal bill of divorce. ".....on the condition that you will fly in the air," or "on the condition that you cross the great sea by foot," it is not a licit bill of divorce. Rabbi Judah ben Taimah says in such a case it is a licit bill of divorce.

Rabbi Judah ben Taimah stated a general rule. Any condition stipulated in a bill of divorce which is impossible for the wife to fulfill, and the husband made this condition with her, he only intended to fool her, whether the husband says it orally or via a writ.

Tosefta 9

The village of Authanai is in the Galil and Antipatris is in Judah.⁴³ (While travelling between) these two places,⁴⁴ the more strict opinion is applied to him (and) she is considered as being doubtfully divorced.

(If a man said to his wife), "This is your letter of divorce if I go from Judah to Galil" and he reached Antipatris (on the border of Judah near Authanai on the border of Galil) and he returned, his condition is null (and his bill of divorce void). (If a man said to his wife) "Here is your bill of divorce if I go from the Galil to Judah" and he reached Kefar Authanai and returned, his condition is null (and his bill of divorce void). (If a man said to his wife) "Here is your bill of divorce if I go and sail to a foreign country, and he came to the part where the boats sail and then returned, his condition is null (and his bill of divorce void).

Tosefta 10

(If a man said to his wife) "This is your bill of divorce so long as I shall be out of your sight thirty days," and he kept on coming and going (during this period) and since he did not associate with her (by staying alone when they might have had coition and thus disannul the bill of divorce) it is a licit bill of divorce. She may not marry until the thirty day period of being out of

her sight have passed.

Tosefta 11

(If a man said unto his wife) "Behold, here is your bill of divorce if I do not come from this moment to twelve months" and he died during the twelve month period. She may not marry (her brother-in-law if there is one until the twelve months are over) and our Rabbis say that she may marry and if the bill of divorce is torn or lost in the twelve months, it is not a (licit) bill of divorce. If it is lost after twelve months, it is licit.

Tosefta 12

(If a man said to his wife), "Let this be your divorce on condition that you give me 200 zuz" and then said out of generosity "here is your bill of divorce without any conditions," he has said naught (and his statement is disregarded). How does he do it? He takes the money from her and then again gives it to her and says to her, "Behold it is given to you (in generosity). "

CHAPTER VIII

Tosefta 1

Rabbi Elazar says (that if one threw a bill of divorce), even though it is closer to her than to him ⁴⁵ and a dog came and took it, she is not divorced (because she was not there). If the husband is inside and the wife is outside (of the house) and he threw (a bill of divorce) to her, as soon as it has crossed the threshold (of the house) to the street, she is divorced.

If he said to her "Collect this bond (of indebtedness)" or if she found it behind him (hanging from his back) and she reads it, and behold it was her bill of divorce and then the husband said: "Here is your bill of divorce," Rabbi says it is a licit bill of divorce. Rabbi Simon ben Elazar says that it is not a licit bill of divorce unless he tells her at the time he gives it to her, "Here is your bill of divorce!" If he placed it in her hand while she was asleep and she awakes and reads it and behold it was her bill of divorce and he then said to her: "Here is your bill of divorce," Rabbi says it is a licit bill of divorce. Rabbi Simon ben Elazar says that it is not licit unless he says to her "Here is your bill of divorce" at the time he gives it to her.

Tosefta 2

If she were standing on top of (her own) ⁴⁶ roof,

and he threw the bill of divorce to her, once it reaches the roof level, (within three handbreadths above the level of the roof), she is divorced. If he were above, and he threw it to her (in her own court yard) and she was on the ground, as soon as it has left the domain of the roof, even if (the lettering or the writing on the bill of divorce were) blotted out or if it were burned (in the flame of a fire that burned it up after he threw it), she is divorced.

(If a man said to his wife) "Take possession⁴⁷ of your bill of divorce" and then took it from her hand and threw it in the sea or river and then says to her, "it was a blank paper", or "a writ which is void", the husband is not considered trustworthy to interdict.

Tosefta 3

The School of Shammai says that a man may not release his wife with an old bill of divorce (which he had prepared but had then gone back to his wife) in order that the bill of divorce may not be older than her son (who was born afterwards and to prevent ignominy which would be attached to him if the old bill of divorce was licit).

If one wrote (a bill of divorce) dating it according to a governor, or according to a commander or there were two rulers present and he wrote (the document) according to one of them, it is licit.

If he wrote it according to the name of his paternal grandfather,⁴⁸ it is licit. If he wrote it in the name of the father of the family,⁴⁹ it is void. However, if they were called by his name,⁵⁰ it is licit.

Tosefta 4

A proselyte who changed his name for the sake of non-Jews (and writes a bill of divorce or document) it is licit. And we say the same for a feminine proselyte.

All bills of divorce which come from foreign countries (outside the Land of Israel) although their names are non-Jewish, the (bills of divorce) are licit because Israelites who live in foreign countries, their names are like the names of non-Jews.

Tosefta 5

He has two wives. One in Judah and one in Galil. And he has two names. One in Judah and one in Galil. He divorced his wife in Judah in his Galilean name or his wife in Galil in his Judean name, the bill of divorce is void. And if he said, I am so-and-so from Judah with a second name that I use in Galil, or he was in another place (other than the Galil and Judah) and wrote his name from one of them (from Judah or Galil) it is licit. Rabban Simon Gamliel says, though he writes his Judean name in Galil and his Galilean name in Judah, (the bill of divorce) is licit.

Tosefta 6

Regarding all the prohibited degrees of marriage of whom it is enacted that their fellow wives are permitted (to be taken in marriage without having first to perform Chalitzah), if these fellow wives went and were taken in marriage but they (the women of the forbidden degrees - חֲלִיטָז) themselves were found to be sterile, they (the co-wives) must go forth (because their marriage was invalid) and all thirteen conditions (enumerated in Mishna 8:5) are applied to them. These are the words of Rabbi Meir spoken in the name of Rabbi Akiba. The sages say that there is no bastard born to the sister-in-law (אֵלֶּיָּהוּ who marries a stranger).

Tosefta 7

If one marries his levirate sister-in-law (thus freeing her co-wife for universal wedlock) and her fellow-wife went and wedded to another and this former was found to be barren,⁵¹ the latter must go forth and the thirteen (conditions enumerated in Mishna 8:5) are attached to her. These are the words of Rabbi Meir in the name of Rabbi Akiba. The sages, however, say that there is no issue of a bastard born to the sister-in-law.

Tosefta 8

If a man gives his wife a bill of divorce without witnesses, the School of Shammai say that she is rendered

ineligible for Priestly status (i.e. to be married to a Priest). If he went to a scribe and took her bill of divorce and then gave it to her and said "Here is your bill of divorce," Rabbi Jose says she is divorced. Rabbi Judah says she is not divorced. Rabbi says, she is divorced provided that they were engaged in conversation on that subject (of divorce), and if they were not, she is not divorced.

Rabbi Simon ben Elazar said that the School of Shammai and the School of Hillel were not divided in opinion regarding one who divorced his wife who then lodged (stayed the night) with him in an inn (where there were none to testify that they had copulated). (They agree that) she does not need a second bill of divorce from him. Regarding what issue were they in disagreement? When he had sexual intercourse with her.

Tosefta 9

52

(When the wife has either) an ordinary bill of divorce with the signature of one witness, or a folded bill of divorce, ⁵³ with the signatures of two witnesses, ⁵⁴ she is divorced and the thirteen (enumerated conditions listed in Mishna 8:5) are applied to her. These are the words of Rabbi Meir. The sages say the witnesses only sign for the sake of the common weal (therefore the above bills are valid).

A *ḥḥ ḥḥ* "tied up bill of divorce" needs seven folds and for six witnesses you need six folds, and for five witnesses you need five folds, four witnesses needs four folds, three witnesses three folds, and two witnesses and less, one near kin may complete it when he is eligible to bear witness.

CHAPTER IX

Tosefta 1

If one divorced his wife and said to her (as he delivered the bill of divorce to her hand) "You are permitted to any man save to so-and-so," Rabbi Eliezar allows her to be free to be married to any man save the one stipulated by the husband. Rabbi Eliezar admits that if she married another person and then became a widow or a divorcee, she is permitted to wed the forbidden person (whom she was not earlier permitted to because of the stipulation in her bill of divorce from her first husband). After the death of Rabbi Eliezar, four sages assembled to refute his words. They were Rabbi Tarphon, Rabbi Jose the Galilean, Rabbi Elazar ben Azarya and Rabbi Akiba.

Rabbi Tarphon said. She went and married the brother (of the person she was forbidden to according to the stipulation in the divorce) and he died without issue. How can she marry the brother-in-law (who is forbidden to her)? Did he not make a stipulation contrary to what is written in the Torah and whoever makes a condition contrary to that which is written in the Torah, his condition is nullified. From this we derive that this is no final (valid) divorce.

Tosefta 2

Said Rabbi Joseph the Galilean. Where do we find in Scripture an *אשה* (a woman forbidden to a man and visa versa on account of consanguinity) which is permitted to one man and forbidden to another. If she is permitted to one man, she is permitted to all men. If she is forbidden to one man, she is forbidden to all men. From this we derive that this is no final (valid) divorce.

Tosefta 3

Rabbi Elazar ben Azarya says that a "divorce" is something (a condition) which (if fulfilled) severs definitely the connection between him and her.⁵⁵ Said Jose the Galilean, I like the opinion of Rabbi Elazar ben Azarya.

Rabbi Simon ben Elazar said. She⁵⁶ went and wed a second time to another and was divorced and the second husband said (when giving her the bill of divorce) "you are permitted to any man." How can the second husband permit (her to marry any man) that the first husband forbade (her to marry so-and-so). We derive from this that this is no final (valid) divorce.

Tosefta 4

Said Rabbi Akiba, this person to whom she was forbidden (by the husband's stipulation of the divorce) was a priest, then he (the husband who divorced her) dies,

is the result not that she is, a widow for this particular priest but is a divorcee for all his brother-priests?

Another interpretation. Where is the Torah more strict? Regarding the category of a divorcee or the category of a widow? The (status of a) divorcee is more stringent (than the status of) a widow. If a widow, whose status is more lenient is forbidden to the man to whom she was permitted, then a divorcee whose status is more stringent, certainly should become forbidden to the man to whom she was permitted.⁵⁷ This shows that there was no valid divorce.

Tosefta 5

Another explanation. She went and she was married to another and she had children by him and he died. When she goes to marry the person who is forbidden to her (by the stipulation of the first husband's bill of divorce), would the children of the first husband not be bastards? Thus we derive that this is not a final (legal) divorce.

Tosefta 6

A bill of divorce which has no date Rabban Saul says, even if he wrote therein "I have divorced you today," it is licit. If he wrote there ("you're divorced from) the day that so-and-so reads our writ," it is licit.

Tosefta 7

A bill of divorce which has no witnesses (i.e. signatures) thereon, and was delivered to her in the presence of witnesses, in the name of Rabbi Elazar they said, they bring the witnesses to court and they do not have to bring the bill of divorce and she may claim (her ketubah) from mortgaged property.

Tosefta 8

A bill of divorce (whose essential formula i.e. the date, the name of the husband and the woman or "behold you are permitted to any man") has an erased part or a letter is suspended in any of the (above mentioned) essential data, it is not licit. If these blemishes are not in the essential parts of the bill of divorce, it is licit. If he restores (the erasures or suspended letters) on the bottom margin, it is licit even if it is part of the essential formula.

Tosefta 9

A bill of divorce wherein the witnesses signed (immediately) after a salutation (affixed to the bill of divorce) is not licit because their signatures refer to the greeting only. However, if he repeated one or two matters regarding the contents of the bill of divorce, it is licit.

Tosefta 10

If he wrote it on one page and the witnesses signed it on another page it is invalid. If they repeated one or two words regarding the subject of the bill of divorce, it is licit.

Tosefta 11

If one made distant the signatures of the witnesses from the writing (equal to the) fullness of two lines (of writing) it is invalid. Less than this, it is licit. How far away may the signatures be from the writing and yet be considered licit? When they can be read together. This is according to Rabbi. Rabbi Simon ben Elazar says the fullness of one line. Rabbi Dustai the son of Rabbi Yonai says the fullness of the signature of two witnesses.

Five witnesses (signed a bill of divorce). The first three were found to be kin or invalid (as witnesses), the bill of divorce is established with the remaining signatures.

If they wrote in five languages and five witnesses signed it in five languages, the bill of divorce is licit. If it be torn, it is licit. If it becomes torn, it is invalid. If there is a rent made by the court, it is invalid.

Tosefta 12

(If the bill of divorce contains therein) a

disintegrating part, decay, or it became perforated like a sieve, it is valid. If the writing was blotted out or blurred but its outlines are preserved, if it can be read it is licit; if not, it is void.

Tosefta 13

(If one says) "I am a witness and signed as a witness" (but he did not sign his name) or his handwriting was proven from other documents, the bill of divorce is licit. If not, it is not licit. Rabbi Simon ben Gamliel says that they ordained a great reform in demanding that witnesses write out their name when signing the bills of divorce.

FOOTNOTES

1. Otherwise, he would have to verify the signatures.
2. Since a lenient decision has already been rendered, let it stand.
3. Variant reading "The sages invalidate all bill of divorce and writs of manumission of bondmen."
4. Ibid.
5. The bill of divorce does not contain the rent made in court for cancellation. It is an accidental rendering.
6. When a bill of divorce is rendered lengthwise and crosswise, it is nullified.
7. Any suitable leaf which lasts for a long time excluding greens, e.g., spinach, cabbage.
8. Rabbi Jose the Galilean, disputes the Tanna in Mishna 3 who claims that the bill of divorce may be written on a living cow's horn or on the hand of a bondman. He reasons from the verse in Deuteronomy 24:1;

וַיִּכְתֹּב בִּילְיָהּ וְנָתַן לָהּ

"That he writeth her a bill of divorcement". He then expounds from this verse that just as the וְנָתַן is a bill of divorce which does not contain in it something which is alive, so must it be with other bills of divorce.

9. The two words, וְנָתַן... וְנָתַן "and he writeth and giveth" (Deut. 24:1) are crucial to the argument. Just as

(the act of) giving (refer to a bill of divorce which is) detached, so (does the act of) writing (refer to) a detached (bill of divorce).

10. She brought the bill of divorce as an agent who carries it and she is not immediately divorced when she receives it; e.g., the husband says to her: "You will not be divorced until you reach 'x' place. When you reach 'x' place, you appoint an agent who carries it and then you receive your bill of divorce from him." Or he says: "When you reach 'x' place, you give your bill of divorce to the court and they appoint an agent who will take the bill of divorce and carry it to you and you will receive it from him." In such a case she must say: "In my presence was it written" before it leaves her hand and the second agent upon giving her the bill of divorce says: "I am an agent of the court."
11. Deut. 24:1
12. Leviticus 19:20
13. Deut. 24:1
14. Numbers 5:30
15. The reason being that even on the same day "A" should not lend to "B" a second time because "B" would have a cancelled note of indebtedness and he would be in a position to collect from certain buyers.
16. This is the case when the marks of identification

are not clear. However, in such a case, if the agent says that there is a perforation on said letter in bill of divorce, the bill of divorce is returned to the agent even after a lapse of time.

17. And perhaps may have made erasure or insertions on the bill of divorce, and thus making it invalid. However, if no lapse of time occurred, the bill of divorce is returned to the agent and considered his.
18. Numbers 35 ff.
19. Otherwise the stricter ruling is applied to him
20. That is, (a) in the case of the priest, an amount equivalent to the value of the ~~נזיל~~ due to be set aside and reserved towards the repayment of the loan, (b) in the case of the Levite, a sum equivalent to the worth of the ~~נזיל~~ to be put away for the repayment of the debt, and (c) the equivalent value of the ~~נזיל~~, in the case of the poor man, to be separated for reducing the loan.
21. The authorization is necessary in order to know whether the time desired to repay the debt or to submit to the process of separation .
22. Deut. 15:1
23. Variant readings exclude ~~אף~~ - not. Mishna reads:
"In either case he must remain etc."
24. Which a husband has the power to cancel.

25. נזיר is a נזיר substitute word for נזיר and used for a vow of abstinence and for the consecration of an object. See Medarim 1:1,2; 11:1ff.
26. See Medarim 1:1
27. Literally - dissolute illicit sexual relations.
28. The divorced husband thus intimates that by raising her claim, she may endanger her legal status, i.e. he could plead that had he known what would have happened he would not have divorced her, and so the divorce is null rendering the second union illegal and making the children illegitimate.
29. קרקע נזופה (a) property forfeited to the Roman government; (b) the law dealing with the purchase of confiscated property; (c) the holder or possessor of confiscated property. If a slayer or assassin 'A' appropriated the field of 'B' a Jew during the war against Jews and sold it to a Jew 'C', then 'B' cannot sue 'C' for restoration of the property because 'B' had probably given it away to 'A' (a non-Jew) to save his own life, and thus 'A' is the legal possessor; but when the threat against Jews was past and 'A' misappropriated any land from 'B' and sold it to 'C', then the law of קרקע נזופה applies, and 'B' can claim possession from 'C'. Compare נזיר 1:2; 2:3.
30. Probably during the period following the Bar Kochba rebellion and at the time of the Hadrianic persecutions.

Some take it to refer to the period following the destruction of the Second Temple.

31. Anporeth - ^{אנפורה} - an agreement of term payments with the condition of forfeiture on missing one term.
32. If the Anporeth occurs during the twelve month period, the property reverts back, if after the twelve month period, the new owner gives a quarter to the original owner.
33. Children six or seven years of age, if they understand the idea of purchase and sale, otherwise of eight and nine years.
34. Because the messenger is sent by the wife who is instructed to "bring" the bill of divorce and not to "accept" it on her behalf. Bringing it means that he is ^{אנפורה} ^{אנפורה} and not acting for her person.
35. See Mishna Gittin 6:2
36. This is the case before she receives the first condition. If she receives the first condition, she cannot choose.
37. Because he added one year to the first condition and it is now another subject.
38. And a woman can be acquired as a wife by means of intercourse - Deut. 24:1
39. Being that they are both witnesses and messengers, one should write the bill of divorce and both should

sign even though the husband failed to say
"write!"

40. Deut. 25:5-10
41. Leviticus 33ff, Deut. 11ff
42. The husband did not say "on condition" and therefore the divorce is completed on fulfillment of the condition. When the bill of divorce is torn it is not legal. The bill of divorce must be legal and established during the time when the divorce proceeding is consummated.
43. Auvthanai is on the border of Galil and Antipatris is on the border of Judah and they are near one to the other. If the husband made two stipulations and said: "If I reach the Galil forthwith, it will be your divorce and if not I stipulate until thirty days that even if I do not reach the Galil - let it be your divorce." The husband would then go from Judah to the Galil and reach Antipatris and then return immediately. If so, he did not reach the Galil because Antipatris is on the border of the Land of Judah and being that he did not as yet reach the Galil and he also did not tarry thirty days, his bill of divorce is null. However, if he reached Auvthanai on the border of Galil, the bill of divorce is valid. See Mishna 7:7.
44. If he went from Judah to the Galil and passed

Antipatris (on the border of Judah) but has not yet reached Auvthanai (on the border of Galil), it is doubtful whether he reached the Galil and whether or not it is a legal bill of divorce. However, if he reached Auvthanai, the bill of divorce is null.

45. By 2,000 cubits.

46. This refers to אֲשֶׁר בְּיָדָהּ 'עֲצָה' (property of plucking), Usufruct property. This is a wife's property which the husband may use and benefit from without being responsible for any damage, loss or depreciation. If he divorces her or she dies, he loses all interest in it. אֲשֶׁר בְּיָדָהּ 'עֲצָה' differs from אֲשֶׁר בְּיָדָהּ אֲשֶׁר בְּיָדָהּ (property of flock and iron), which is a term used to designate a woman's property which, if she is divorced or dies, the husband must restore in full for which he is responsible for loss, damage or deterioration with all his landed property.

47. אֲשֶׁר בְּיָדָהּ אֲשֶׁר בְּיָדָהּ Git. 64a "carry" (the bill of divorce) is equal to "take possession".

48. Although he did not write his real name but that of his family name and his hanicha (the name given to him) is from his paternal grandfather, it is licit for three generations and you may write the bill of divorce using the hanicha even though he is not called or known by this hanicha.

49. Because it is more than three generations. It is

derived from Scripture ^{הוא נקרא בשם אביו}

Thus you are ^{הוא נקרא בשם אביו} and are not called by the surname (of the family) only until three generations.

50. He is called by the same hanicha, and because he is called by this hanicha, then when he wrote in the bill of divorce his hanicha, it is licit and there is no change in name.
51. The Leviratical marriage with a sterile woman is void; and the fellow-wife should have performed chalitzah or have contracted leviratic union, but having been married to someone else instead of the ^{אחיו} (the brother-in-law) without chalitzah, she must be set free from the man who had been hers and from the ^{אחיו} to whom she must be married.
52. There are two kinds of bills of divorces: (a) ^{הוא נקרא בשם אביו} an 'ordinary bill of divorce' and (b) ^{הוא נקרא בשם אביו} a 'tied bill of divorce'. In the latter a part of the ^{הוא נקרא בשם אביו} is written out. This is folded down and a witness signs on the back. This procedure is repeated and again folded over and signed on the reverse side. This may be repeated several times. If a folded part is omitted by the signature of a witness, this part is termed ^{הוא נקרא בשם אביו} bald, bare, hence the expression ^{הוא נקרא בשם אביו}. The sages instituted the ^{הוא נקרא בשם אביו} which took time to draw up in order to

give a man an opportunity to retract before it was too late.

53. Ibid.

54. נ"ו 77 צ"ז needs three witnesses.

55. e.g., a condition that she will drink no wine for the next thirty days after the lapse of time the letter of divorce takes its effect retroactively. This is opposite to a condition wherein she will abstain from wine the rest of her life in which case the letter of divorce cannot take effect.

56. She is divorced from her first husband with the stipulation that she is permitted to any man save so-and-so.

57. Variant reading: Whereas it is not so stringent with a widow because she is forbidden from him which is (ordinarily) permitted to her; with a divorcee it is more stringent. A fortiori she has become forbidden to that which is permitted her.