

HEBREW UNION COLLEGE - JEWISH INSTITUTE OF RELIGION
NEW YORK SCHOOL

INSTRUCTIONS FROM AUTHOR TO LIBRARY FOR THESES

AUTHOR PAMELA J. WAX

TITLE "The Daughters of Tzelopchad Revisited:
The Daughter in Jewish Inheritance Law"

TYPE OF THESIS: D.H.L. () Rabbinic (X)

Master's () D. Min ()

1. May Circulate (X)

2. Is restricted () for ___ years.

Note: The Library shall respect restrictions placed on theses for a period of no more than ten years.

I understand that the Library may make a photocopy of my thesis for security purposes.

3. The Library may sell photocopies of my thesis. X
yes no

3/17/94
Date

Pamela J. Wax
Signature of Author

Library
Record

Microfilmed

Date

March 1, 1995

[Signature]
Signature of Library Staff Member

Thesis
1994
(Rab)
Wax

THE DAUGHTERS OF TZELOPCHAD REVISITED:
THE DAUGHTER IN JEWISH INHERITANCE LAW

PAMELA J. WAX

Thesis Submitted in Partial Fulfillment of
Requirements for Ordination

Hebrew Union College-Jewish Institute of Religion
Graduate Rabbinic Program
New York, New York

1994
Advisor: Dr. Michael Chernick

In memory of my parents,

Hershel ben Moshe v'Sarah z"l and
Hinda Chaya bat Tzvi v'Sarah z"l

who wrote me into their hearts and into their will,

who bequeathed an estate of spiritual riches
I continue to sift through;

from whom I've inherited a passion for justice and tzedakah,
a love of classical music, gardens, games, puzzles, and old movies,
an understanding of loyalty, integrity, and meaningful friendships,
the determination to keep thrashing through the bulrushes,
the ability to ask hard questions and to laugh in spite of the pain,
and my identity as a Jew.

May they rest in peace.

And in honor of

Hoglah, Milcah, Noah, Tirzah and Mahlah,
the daughters of Tzelopchad,
who paved the way.

In a way, an inheritance can stand for
what was best about a parent.
It is pure care,
pure love,
pure provision of opportunity.
At its best, an inheritance symbolizes
one of the great gifts a parent can give --
the opportunity for a child to do
or become what she or he wants,
and to choose without interference.

(Marcia Millman, Warm Hearts and Cold Cash, p. 26.)

TABLE OF CONTENTS

<u>ACKNOWLEDGEMENTS</u>	ii
<u>INTRODUCTION</u>	1
<u>CHAPTER 1. Inheritance in the Bible</u>	5
The Rabbis Encounter the Daughters of Tzelopchad	8
Importance of Sons and the Relevance of Family Land	14
<u>CHAPTER 2. Accommodating the Daughters of Israel</u>	20
Maintenance of the Daughter and <u>Ketubat Benin Nukbin</u>	22
Dowry	32
<u>Parnasat ha-Bat/Issur Nekhasim</u>	37
A Critique of Dowry, <u>Parnasat ha-Bat</u> , and <u>Issur Nekhasim</u>	42
The Mother's Estate	45
<u>CHAPTER 3. Attempts to Change the Inheritance Laws</u>	48
<u>CHAPTER 4. Wills and Gifts: Dispositions in Contemplation of Death</u>	57
<u>Mamon</u>	61
<u>Dina d'Malchuta Dina</u>	64
The Introduction of Wills and Gifts	65
Possible Reasons for the Acceptance of Wills	68
<u>Diateke, Matanah, Matanat Shekhiv Me'ra, and Matanat Bari</u>	72
The <u>Shetar Hatzi Zakhar</u>	76
<u>CONCLUSION</u>	80
<u>APPENDICES</u>	84
<u>BIBLIOGRAPHY</u>	96

ACKNOWLEDGEMENTS

I wish to thank Dr. Michael Chernick who skillfully played the many roles of a thesis advisor: critic, motivator, cheerleader, and study partner. I am very grateful for his support and encouragement.

I also wish to thank four friends without whom I could not have completed the work at hand:

Andrea Frisch, who travelled from Westchester to Brooklyn nearly every weekend for over two months to keep me company, and to comfort, encourage, shop, and do dishes as I fought and cried my way through this thesis. Words cannot express my gratitude for such devoted friendship.

Rabbi Oren Postrel, who diligently read and edited my manuscript, and upon whom I could depend for a hot meal and words of encouragement so I wouldn't starve.

David Dantowitz, who offered technical Macintosh support and for whom no computer question was considered too stupid or insignificant.

Lisa Edwards, whose almost-daily telephone check-ins were often my only lifeline to hope, sanity, and the outside world.

INTRODUCTION

I was raised in a home in which my parents were Jewishly unaffiliated and non-practicing, but in which I was inculcated with a strong social action consciousness and an identity as a "cultural" Jew. I came myself as a teenager, during my mother's long illness, to seek a spiritual and intellectual home within Judaism. On Shabbat Pinchas in the summer of 1986 I had a bat mitzvah at the age of twenty-six in a beautiful eucalyptus grove behind my home in California. I chose that particular Shabbat because of its Torah portion and the story of the daughters of Tzelopchad. Like the daughters of Tzelopchad, I felt that I had been denied a rightful inheritance. I interpreted that inheritance to be my proper share in the life of my people, and I viewed the bat mitzvah itself as a statement of reclamation. I therefore likened my own journey as a woman and a Jew to Mahlah, Noah, Hoglah, Milcah, and Tirzah's impassioned plea for justice and sensitivity to their situation.

Because I was at that time reading the story as personal Torah, I read their story as a success story, and it offered me great hope. Now I understand that the victory of those five women was Pyrrhic to some extent, for it did not at all insure equality for those who followed after them.

It is nearly eight years since my first prolonged encounters with the daughters of Tzelopchad, and I find that I again liken myself to them, but now for different reasons. Since that time, I, too, have been left bereft of parents, and just as the daughters pleaded with Moses for a share of their father's portion so that his name would not be lost, I

demand that the memory of my parents not be forgotten. In my personal case there was no doubt that I was one of three heirs, despite the fact that I have a brother. However, like the daughters of Tzelopchad, I feel outraged by the implication that daughters do not and should not inherit equally with sons. This outrage is not only based on a sense of justice and equity; it is also because of my personal belief and experience that inheritance eases the grief -- that knowing one's parents have made attempts to provide for their children, is a constant source of comfort after they are no longer alive. Jewish daughters throughout the ages have therefore been denied that healing tool.

I wished to explore the story of the daughters of Tzelopchad -- and the fate of Jewish daughters at large --- in light of Rabbinic Jewish law (and medieval Jewish law, when appropriate). Discussions in the Mishna and in both the Babylonian and Jerusalem Talmuds (particularly in tractates Baba Batra and Ketubot) elucidate the Rabbis' conservatism on the matter of inheritance law and their often vehement allegiance to the strictest possible reading of it, whereby a daughter could not be considered an heir when she had at least one brother, or when she had nieces or nephews who could inherit in her brother's (their father's) stead.

The Toraitic inheritance law placed daughters after sons in the line of succession. It was a Rabbinic innovation to introduce a son's offspring as precedent heirs to daughters, thereby misreading the original legislation. One of the reasons why the Rabbis apparently held a position which denied a daughter a share in her family's estate, was the expectation -- expressed in Bible and seized upon by the Rabbis --

that daughters would marry, thereby taking sacred family property to another tribe or family. This position is explored more fully in Chapter 1. In the same chapter, I also discuss the various routes which the Rabbis might have taken to circumvent the Toraitic law and to provide for daughters in inheritance law, had they been so inclined.

In Chapter 2, I discuss the various accommodations which the Rabbis created to offer a daughter "something," if not a full share in her father's estate. Provisions such as maintenance and dowry are studied. The Rabbis themselves often questioned whether or not these provisions in fact made the daughters de facto heirs, the implication of which they wished to avoid. Occasionally, there were what I consider "reasonable" voices in the literature (R. Zechariah b. Hakkazzab and R. Papa are the most notable examples) who unsuccessfully attempted to change the inheritance laws to benefit daughters. These examples as well as a highly polemical Pharisaic-Sadducean debate and an equally polemical debate between Jew and Christian on the matter of daughters in inheritance law are explored in Chapter 3.

In Chapter 4 in a discussion of dispositions in contemplation of death, we explore the Rabbis' greatest challenge. At times I had to chuckle at their attempts to straddle and harmonize two contradictory institutions: intestate versus testamentary inheritance. How were they to allow for testamentary wills and gifts in Jewish law, while at the same time insure that fathers would die intestate, whereby there would remain an estate for sons or other rightful heirs to inherit according to the laws of yerushah? Great condemnation is expressed for those who used testamentary statements to bypass the laws of inheritance, though

such provisions had been integrated into Jewish law for that very purpose. (Nor would they allow the mamon principle or the dictum dina d'malchuta dina which were applied in other fiscal matters, to be employed in relation to inheritance law, which was not deemed a civil matter.) For all of the vehemence against circumvention of the laws of verushah, we must assume that testaments such as wills and gifts were, nonetheless, used to provide for a daughter. The medieval institution of shetar hatzi zakhar ("half a male's portion") was a testamentary provision which was created specifically with her needs in mind. Despite its best intentions, however, the shetar hatzi zakhar also fell short of the mark, as will be demonstrated in Chapter 4.

None of the Jewish literature I have found on the subject of death of a parent and its concomitant grief has taken into consideration the emotional and psychological issues pertinent to inheritance, nor, in turn, has the Jewish literature on inheritance referred to the psychological and emotional responses to grief. Of course, this is due to the legal nature of this literature: it is literature meant to guide one's actions rather than one's feelings. In addition to analyzing these laws on the basis of modern notions of equity and egalitarianism, I will also explore the potential psychological ramifications of these laws: are they helpful to the grieving process or do they inhibit grieving? Could compensatory accommodations like dowries or gifts adequately serve as a replacement for inheritance? The Conclusion will explore these and other issues which may concern the modern Jew in regard to death of a parent, grief, and inheritance law.

CHAPTER 1

Inheritance in the Bible

What child does not wonder at some point about his or her own position in the family? No child among other siblings escapes the inevitable encounters with sibling rivalry: we know ourselves to be the favorite or we feel ourselves to be unloved, for us the world was created, or we are but dust and ashes. These feelings are tied to our sense of security: how loved we feel ourselves to be, how sure we are of our parents' sense of fairness. Yet Genesis, the first book of our sacred text, does nothing to reassure us about fairness and equality where children and parents are concerned. From our earliest encounters with the the book of Genesis, we are made well aware of the Biblical concern with matters of inheritance and succession. In Genesis there is always a favorite, there is jealousy, and there are the numerous permutations on the theme of brother vying with brother: Isaac and Ishmael, Jacob and Esau, Joseph and his brothers. Even the Great Parent favored Abel to Cain, for inexplicable reasons.¹

Such intrigues regarding inheritance and succession, parental favoritism, and sibling relationships began with our patriarch Abraham, considered the first Hebrew. In Genesis 15:3, Abraham speaks with God concerning his expectation that his servant Eliezer will be his heir. God assures him that he will himself sire a rightful heir. In Genesis 21:10, Sarah demands that Abraham "Cast out that slave-woman and her son, for the son of that slave shall not share in

¹ Nor do we leave sibling rivalry behind when we move beyond the Book of Genesis. According to Rabbi Larry Kushner (notes for Parashat ha-Shavua class, October 24, 1991) we are a religion that has perhaps sacralized "dysfunctional" family life in order to validate and sanctify our own imperfect family lives.

the inheritance with my son Isaac." Abraham, in complying with Sarah's demand, effectively disinherits his firstborn son⁴.

The story doesn't end there. In Genesis 24:36, Abraham's servant declares: "And Sarah, my master's wife, bore my master a son in her old age, and he has assigned to him everything he owns."

In Genesis 25:5-6, "Abraham willed all that he owned to Isaac; but to Abraham's sons by concubines Abraham gave gifts while he was still living..."

These few brief passages intimate some of the technical issues which will arise in later Rabbinic law: the notion of assigning one's estate while still alive and the difference between will and gift.

In Genesis, we are repeatedly confronted with the usurpation of firstborn status by a younger son. The classic and most vivid case is, of course, that of Jacob and Esau, wherein Jacob steals both his older brother's blessing and birthright. Deuteronomic Jewish law specifies that the firstborn is to receive a double portion, and Rabbinic law goes to great lengths to prevent any changes to this Toraitic law.

While most of the non-legal Biblical material which refers to inheritance concern sons, there are three references to daughters that are worth noting: in Job, in Genesis, and, most importantly, the story of the daughters of Tzelopchad in Numbers. In Job 42:15, the reference is: "Nowhere in the land were women as beautiful as Job's daughters to be found. Their father gave them estates together with their brothers." In Genesis 31:14 we read, "Then Rachel and Leah answered [Jacob] saying, 'Have we still a share in the inheritance of

⁴ Some scholars will cite the Code of Hammurabi to explain the cultural background for this request, wherein a son of a concubine was not entitled to inheritance. This law may be compared to later Jewish law, wherein any son, even issue from an illicit relationship, was entitled to inheritance. See Maimonides' Mishneh Torah, Hilchot Nahalot (Inheritance Laws), chapter 4.

our father's house? Surely, he regards us as outsiders, now that he has sold us and has used up our purchase price. Truly, all the wealth that God has taken away from our father belongs to us and to our children."

Both of these passages offer us glimpses of pre-legal or extra-legal modes of inheritance that included daughters. Perhaps the author of Job was making a purposeful gibe against the existing inequities of Jewish law vis-a-vis daughters. As far as the Genesis passage is concerned, we may wish to read it in the context of dowry, the institution that in later Jewish law serves to provide for daughters in lieu of inheritance. On the other hand, being without brothers, we might hypothesize that Rachel and Leah were, indeed, the true heirs to their father's estate.

Despite these two allusions to a more egalitarian division of a parent's estate, the legal material in Deuteronomy and Numbers makes clear the limits of a daughter's rights in the Jewish laws of inheritance. Not only do they never merit the status of first-born, thereby being unable to inherit a double portion of their father's estate, but daughters also do not inherit equally with their brothers. This latter law was derived from the claim of Mahlah, Noah, Hoglah, Milcah, and Tirzah, collectively known as the daughters of Tzelopchad. At the entrance of the Tent of Meeting, these five daughters of Tzelopchad petitioned before Moses, Eleazar the priest, the chieftains, and the whole assembly to grant them a stake in their father's estate: "Let not our father's name be lost to his clan just because he had no son! Give us a holding among our father's kinsmen!"³

³ Numbers 27:4

This being a case not provided for in the original legislation, Moses brought their case before God Who declared,

The plea of Tzelopchad's daughters is just: you should give them a hereditary holding among their father's kinsmen; transfer their father's share to them. Further, speak to the Israelite people as follows: "If a man dies without leaving a son, you shall transfer his property to his daughter. If he has no daughter, you shall assign his property to his brothers. If he has no brothers, you shall assign his property to his father's brothers. If his father had no brothers, you shall assign his property to his nearest relative in his own clan, and he shall inherit it." This shall be the law of procedure for the Israelites, in accordance with the Lord's command to Moses.⁴

The Biblical text indicates that daughters and sons were not equal in regards to inheritance. This is interesting considering the fact that other ancient Near Eastern cultures did bequeath equally to daughters and sons.⁵ As we shall see in Baba Batra and the later Codes, this disparate law of succession was maintained in post-Biblical times, albeit with clarifications of other potential cases: what happens if a man dies leaving a daughter and his son's son? what if he dies leaving a daughter and his son's daughter? Yet this Biblical setting in which Mahlah, Noah, Hoglah, Milcah, and Tirzah pleaded their case has certain particularities which the Rabbis didn't consider in their later elaborations on inheritance law.

The Rabbis Encounter the Daughters of Tzelopchad

First of all, the inheritance to which the daughters laid claim was not nahalah, their father's personal property, but rather ahuzzah, a

⁴ Numbers 27:7-11 (See Appendix I for Hebrew text)

⁵ A fascinating look at inheritance in different cultures can be found in James Hastings' Encyclopedia of Religion and Ethics.

stake in their father's share of the Promised Land which was to be apportioned to the tribal clans. According to Jacob Milgrom in his commentary to the Book of Numbers, "The Karaites, in keeping with their strict adherence to biblical law, interpret this literally. They apply it solely to the ancestral inheritance in the Holy Land but not to real estate elsewhere or to movable property, in which case daughters inherit equally with sons."⁶ The Rabbis might have employed the same scriptural exegesis but did not, relying instead on an inequitable inheritance law which not only deprived a daughter of a share in her father's estate if she had a brother, but also placed her brother's offspring before her in the line of succession. The Rabbis might have declared this inheritance law to be of its own time, not binding on future generations. Such an argument would have been buttressed by their own interpretations of Numbers 36:3-6, wherein the daughters of Tzelopchad were commanded to marry within their tribe: the Rabbis read the Numbers passage as "advice" rather than as a commandment and even considered this advice to be only a temporary provision.⁷ Additionally, as the Karaites after them, the Rabbis might have declared that the sons' inheritance stipulated land, but that daughters were entitled to movables and money. (In fact, a daughter could not even receive her maintenance out of movables.)⁸ The Rabbis, however, chose not to find potential loopholes to a discriminatory inheritance policy. The question is: why not? What caused their conservatism on this matter?

⁶ Jacob Milgrom, The JPS Torah Commentary: Numbers, p. 484. See also, p. 231 for clarification of the terms ahuzzah and nahalah.

⁷ Baba Batra 120a

⁸ This matter will be discussed further in Chapter 2.

Second, the daughters of Tzelopchad did not argue for their own sakes, but rather for their father's. There is seemingly no consideration in this Biblical text for the daughters' well-being or for the ethics of inheritance differentiated by gender, (after all, the text makes clear that the daughters only inherit because there are no sons, i.e., by default). The decision to grant them land seems based on the principle of kavod ha-met or perhaps kibud ha-av, rather than on a principle of gender equality.

Third, however, the Torah itself attests that the inheritance law in Numbers 27 is not comprehensive, since the law is further amended in Numbers 36 wherein the daughters are directed to marry within their tribe. This further clarification of the law came in response to the objection of the clan leaders who feared that should these daughters of Tzelopchad "marry persons from another Israelite tribe, their share will be cut off from our ancestral portion and be added to the portion of the tribe into which they marry; thus our allotted portion will be diminished."⁹ From this passage we not only gain further evidence that the inheritance attained by the daughters was tribal rather than personal, but we are offered another potential route which the Rabbis might have chosen in order to modify inheritance law to their own time: by seeing a progressive legislation regarding inheritance in the Torah itself, based on new claims and considerations. Also noteworthy is that these elders did not object to the daughters inheriting; rather, they feared the loss of ancestral land. After the exile, when "tribalness" waned in favor of am echad, the Jewish people as a unit, what remained fearful in the possibility of daughters inheriting -- and why?

⁹ Numbers 36:3

Fourth, why does the reading of the Biblical text presume that when there are both sons and daughters, the sons must take precedence? Indeed, there were occasional Rabbinic voices suggesting or supporting such a position of equality. As will be discussed in Chapter 3, R. Papa read the passage from Numbers 27:8, "If a man die, and have no son, then ye shall cause his inheritance to pass unto his daughter" to mean that "if there be a son, the son is to be the heir; if there be a daughter, the daughter is to be the heir....if there be a son and a daughter... both together should inherit."¹⁰

Another opinion in support of equality between sons and daughters in inheritance was logically concluded from the equality of sons and daughters in other spheres. In the case of a potential levirate marriage, for instance, a widow was exempt from such a marriage whether she had borne either a son or a daughter. It was therefore reasoned: "Since in respect of levirate marriage a son and a daughter have the same standing, a son and a daughter must have the same standing also in the case of inheritance."¹¹

However, these and other voices supporting a daughter's inheritance rights were either ignored or ridiculed. The Yerushalmi rejected the lenience of R. Papa by stating that it was "the sages of gentiles" who say that "the son and daughter are equal" when it comes to inheritance.¹² Additionally, there was an attempt to justify the inequitable inheritance law on the basis that a son was closer kin than was a daughter.¹³

¹⁰ Baba Batra 110a-b

¹¹ Baba Batra 109a

¹² Yerushalmi Baba Batra 8:1

¹³ Baba Batra 110b

Despite compelling reasons to allow daughters to inherit, and despite ways in which they might have interpreted the law in Numbers to suit this aim, the Rabbis made no radical changes regarding the rights of daughters to inherit from their fathers. In fact, the Rabbis created a law that was harsher to daughters than that imposed by Torah. Torah law outlined the order of succession as being the deceased's sons, followed by the deceased's daughters, followed by the deceased's brothers. Rabbinic law, as stated in Mishna Baba Batra 8:2, however, created a concept of yerushah ba-kever (inheritance from the grave), whereby the deceased's son's issue, son or daughter, would take precedence to an actual daughter in the event that the son himself were no longer alive to inherit the father's estate directly. The mishna reads as follows:

The order of inheritance is as follows: "If a man die and he have no son, then you shall cause his inheritance to pass unto his daughter."¹⁴ A son takes precedence over the daughter, and all the offspring of a son take precedence over the daughter; a daughter takes precedence over the brothers, and the offspring of a daughter take precedence over the brothers; brothers take precedence over the father's brothers, and the offspring of brothers take precedence over the father's brothers. This is the general principle: whoever has precedence in an inheritance, his offspring have also precedence, and the father has precedence before all his offspring.¹⁵

Any of these reasons -- that the inheritance which the daughters of Tzelopchad received was tribal rather than personal, or that it only pertained to the inheritance of the land itself, or that where there are both sons and daughters they are meant to share the inheritance --

¹⁴ Numbers 27:8

¹⁵ Mishna Baba Batra 8:2 (See Appendix I for Hebrew text)

might have undercut the Rabbis' determination to carry this discriminatory inheritance law into their own day. Instead they compounded the inequality by interpreting the law even more strictly and adding two additional laws, to wit: (1) that only paternal family would be acknowledged as family, and (2) that a deceased son's offspring precede a daughter in the estate of their father.

In addition to these legal changes, the Rabbis constructed a further aggadic reinterpretation of the biblical text in order to reinforce their position:

The daughters of Tzelopchad took three shares of the inheritance: the portion of their father who was one of those that went out of Egypt, and his portion among his brothers in the property of Hephher, and because he was the firstborn he took a double share.¹⁶

By positing that the daughters inherited their father's share from their grandfather Hephher's estate and not just his share of the land as a member of his tribe, it seems that the Rabbis purposefully misread the biblical text wherein the law might apply solely to the ancestral inheritance in the Holy Land. In its reinterpretation, it became a living law rather than an obsolete one (as the Karaites would have had it). The gemara goes so far as to say that the daughters' plea was not in reference to a share in the division of the land but to taking a share in the possessions of Hephher!¹⁷

As will be discussed in this work, available "loopholes" in the law, such as dina d'malchuta dina ("the law of the land is the law") or the principle of mamon,¹⁸ whereby a stipulation contrary to Torah was

¹⁶ Mishna Baba Batra 8:3 (See Appendix I for Hebrew text)

¹⁷ Baba Batra 118a

¹⁸ These concepts will be discussed in Chapter 4.

valid if it concerned a monetary matter were not applied to the law of succession.

Importance of Sons/Relevance of Family Land

Rachel's cry, "Give me children, lest I die,"¹⁹ and Abraham's "O Lord God, what can You give me, seeing that I shall die childless"²⁰ offer poignant expression to the human will to procreate and to live on through future generations. The Talmud went so far as to state that one who is childless is counted among the four types of living men who are considered as dead.²¹

Because it was seen as such a misfortune for a man to die without children to succeed him, the custom of levirate marriage was instituted, whereby the wife of the deceased was married to her brother-in-law. Any children of this marriage would succeed to the name of the woman's first husband. The brother's duty as surrogate to his deceased sibling was a serious one. As described in Deuteronomy, he would be publicly shamed if he refused to fulfill this obligation:

If he insists, saying 'I do not want to marry her,' his brother's widow shall go up to him the presence of the elders, pull the sandal off his foot, spit in his face, and make this declaration: Thus shall be done to the man who will not build up his brother's house! And he shall go in Israel by the name of the "family of the unsandaled one".²²

¹⁹ Genesis 30:1

²⁰ Genesis 15:2

²¹ Nedarim 64b

²² Deuteronomy 25:8-10

Likewise, we learn that Onan's early death was because he refused to "raise up seed to his brother" in his levirate marriage to Tamar.⁴³ Furthermore, Tamar's deception in taking Judah as a substitute husband yabam was deemed justified because of the significance attached to her bearing children in the name of her deceased husband.

The desire to produce heirs resulted in interesting attempts in the Tanakh to provide them. For instance, Abraham thought to make his servant Eliezer his heir,⁴⁴ but God replied that Abraham would have his own issue. Soon after we are told why it is important for Abraham (or anyone) to have children, for God says of Abraham: "For I have singled him out, that he may instruct his children and his posterity to keep the way of the Lord by doing what is just and right, in order that the Lord may bring about for Abraham what He has promised him."⁴⁵

Perhaps even more striking than Abraham's desire to make his servant Eliezer his heir were the efforts of Sheshan to create male heirs. In 1 Chronicles 2:34, we are informed that Sheshan had only daughters, that he married one of them to his slave Jarha, and that she bore a son. Furthermore, in 1 Chronicles 23:22, "Eleazar died having no sons but only daughters; the sons of Kish, their kinsmen, married them." Both of these examples, in making explicit the preference for sons rather than daughters and in keeping the daughters' marriages "within the family," takes us one step further in understanding succession and inheritance in the Jewish context.

⁴³ Genesis 38:9-10

⁴⁴ Genesis 15:2-3

⁴⁵ Genesis 18:19

Sons, apparently, were considered "safe" heirs, not only because they insured the perpetuation of the family name, but also because they insured the integrity of the family property. With daughters there was always the expectation that they would marry outsiders who would then succeed to the family property. In the two situations cited above from Chronicles, the estates of Sheshan and Eleazar were protected from outsiders by the marriages of the daughters to "insiders." As we have already seen, this custom of marrying female heirs to kinsmen (those within the tribe) was legalized in Numbers 36.

The preoccupation with survival and tribal integrity which resulted in measures to curtail a daughter-heir's freedom to choose a husband was not only a Biblical concern; it concerned the Rabbis as well. In the following Talmudic passage, the Rabbis use a Biblical proof text to confirm their worst fears about a daughter's potential inheritance. The context of the Biblical proof text was granting wives from other tribes to six hundred remaining Benjaminites so that the Benjaminites would not die out.

"And they said: 'They that are escaped must be as an inheritance for Benjamin, that a tribe be not blotted out from Israel.'" (Judges 21:17). R. Isaac of the school of R. Ammi said: This teaches that a stipulation was made concerning the tribe of Benjamin that a son's daughter is not to be heir together with his brothers.²⁶

The law set down in the book of Numbers regarding the daughters of Tzelopchad, and the codification of the law afterwards, placed daughters after sons but prior to the deceased's brothers in the line of

²⁶ Baba Batra 116a (See Appendix I for Hebrew text.) See also Baba Batra 111b-113a for further discussions of transferring property between tribes.

succession. The Rabbis' interpretation of the passage in Judges obfuscates that chain because of severe circumstance. But as with the Rabbinic interpretation of Numbers 27, we must question the notion that the inheritance in the land of Israel can or should be likened to inheritance in a father's personal property. Nonetheless, the Rabbis and most commentators do not make such a distinction. According to the Soncino commentary to this Talmudic passage:

The surviving brothers are to inherit all the estate, including the share of their dead brother, though he is survived by a daughter. This provision had to be made at a time when only six hundred men of the tribe of Benjamin survived, all of whom had married wives from other tribes. The entire possessions of the tribe having been divided and distributed between six hundred men only, the share of each individual was considerable, being a six-hundredth part of the property of the tribe. Should any daughters have inherited such a share, and then have married a member of another tribe, a large portion of the lands of the tribe would have passed over to those of another tribe. Hence the provision that a son's daughter is to have no share in the inheritance.²⁷

While it also unfortunately served to inhibit the prospect of daughters inheriting, this desire to maintain the integrity of family property through its retention by sons was clearly an important value in the Bible. This value coincided with the theory of divine ownership, whereby a man could only dispose of his share by passing it to next-of-kin. If he were driven to poverty, he was technically only leasing, not selling, his property until the Jubilee, at which time the land would revert to him or to his descendants.²⁸ If one couldn't sell his estate, in that it was land given by God to the tribes of Israel,

²⁷ Notes to Baba Batra 116a in Soncino commentary

²⁸ Leviticus 25:23. See also Yerushalmi Ketubot 9:1 regarding inheritance in Jubilee year.

neither could it be bequeathed, for it was not to be considered private property. Therefore, movables could be divided among heirs, but estates of property (immovables) were not divided among them.⁴⁹

According to one scholar, after a father's death the brothers all lived together on the property. This communal living situation to maintain the integrity of the family estate perhaps explains the passage in Deuteronomy 25:5, which introduces the law of levirate marriage: "The brothers dwelt together and one died..."⁵⁰ The land on which the widow lived on, which was her husband's, was the same land on which his brother(s) lived. In marrying the widow, the brother-in-law is presumably displacing neither her nor himself from their home. "All in the family" takes on a new meaning.

Apparently, it was considered a commandment to maintain family land. In I Kings 21:2-3, Ahab asked to buy Naboth's vineyard, but Naboth replied: "The Lord forbid that I should give up to you what I have inherited from my fathers." The importance of family land is further portrayed in Ezekiel 46:16-18:

If the prince makes a gift to any of his sons, it shall become the latter's inheritance; it shall pass on to his sons; it is their holding by inheritance. But if he makes a gift from his inheritance to any of his subjects, it shall only belong to the latter until the year or release. Then it shall revert to the prince; his inheritance must by all means pass on to his sons. But the prince shall not take property away from any of the people and rob them of their holdings. Only out of his own holdings shall he endow his sons, in order that My people may not be dispossessed of their holdings.

⁴⁹ See Mishna Baba Batra 8:8-9, in Appendix II, for later renditions of the same theme.

⁵⁰ Pinchas Ne'eman discusses this point in his Hebrew article "Yerushat ha-Bat ba-Torah u'ba-Halachah."

In Jeremiah 32:6-14, likewise, we learn that the prophet, as kinsman, had first bid on the property of Hanamel and that his buying it was a "duty of redemption" and "the word of the Lord." (Similarly, does the story of Ruth revolve around a kinsman redeeming the property of the deceased Elimelech.)

In the apocryphal Book of Tobit, the law commanding that a woman marry a kinsman was even more strictly interpreted to include death for a transgressor. An angel said to Tobit's son Tobias:

Brother, we will stop today with Raguel, for he is your relative. He has an only daughter, named Sarah. I am going to tell him to give her to you in marriage, for you have a right to have her, for you are her only relative....For I know that by the Law of Moses Raguel cannot marry her to anyone else under pain of death, for it is your right and no one else's to have her.³¹

While this information may establish some of the social, economic, and theological reasons which may have prompted the Rabbis to perpetuate an unequal relationship between sons and daughters vis-a-vis inheritance, it does nothing to shed light on the practicalities of my thesis, a daughter's inheritance. For there is no doubt but that there were fathers throughout the ages who, like Job, wished to give to their daughters as well as to their sons, hukat mishpat³² or not. As we shall soon see, accommodations were made to alleviate this unfortunate situation.

³¹ The Book of Tobit, 6:9-12, in The Apocrypha, translated by Edgar J. Goodspeed, p. 118.

³² Hukat mishpat, a term often translated as "a statute of judgment" refers to a law with an inexplicable (non-rational) basis. The use of this term in reference to inheritance law will be discussed in Chapter 4.

CHAPTER 2

Accommodating the Daughters of Israel: Maintenance, Ketubat Benin Nukbin, Dowry, Parnasat ha-Bat/Issur Nekhasim, the Mother's Estate

As has been discussed earlier, the Tannaim who set down the Mishna's ladder of succession need not have read the original Torah law regarding the yerushah (inheritance) of daughters in quite so limited a fashion. For many reasons they might have considered it a "law of its time" or a "law for eretz yisrael." The latter would have paved the way, for instance, for the Amoraim to allow dina d'malchuta dina ("the law of the land is law") to play a role in the Diaspora.¹

Failing these alternative interpretations which would have remained true to the Torah text while making daughters equal heirs with their brothers, the rabbis from the Mishna and forward devised other ways to compensate daughters for not receiving yerushah from their father's estate when their brothers were the rightful heirs. The most obvious of these is, of course, the institution of dowry, provided during a father's lifetime before his daughter's marriage. However, a father's financial obligation to support his daughters survived beyond his own life, and after a father died, there were other institutions which would provide for a daughter's economic needs. These included mezonot (maintenance), parnasat ha-bat (alternatively named issur nekhasim), and ketubat benin nukbin, a clause in the mother's ketubah which would provide maintenance for her orphaned daughters from her deceased husband's estate. As for a

¹ This concept is discussed in Chapter 4.

mother's estate, the final provision to be discussed in this chapter, a daughter received a share only if she had no brothers to inherit it.

At times it seems that with these provisions the halachah overextended itself in its attempts to provide for daughters. It is probable, at these times, that the Rabbis were indeed attempting to compensate for inequities by formulating certain kinds of "affirmative action programs." There are those who believe that the Jewish inheritance laws favored women.² Such a position relies on the fact that wives and daughters play the role of creditors, whose liens on the deceased's estate precede any disbursement of inheritance to sons.³ Whether or not such compensations succeeded in equalizing the economic treatment of sons and daughters will be explored throughout this chapter.

To be considered, as well, are the various family relationships that are enhanced or complicated by these provisions. Did a predetermined inheritance law promote or detract from shalom bayit (peace in the home)? On the one hand, some might argue that to have the distribution of the family's estate governed by strict Jewish law rather than by feelings of love or fair-mindedness or on the basis of a particular child's needs, may actually have maintained shalom bayit

² This is the position of Moshe Meiselman. See chapter 15, "Inheritance by Women" in his The Jewish Woman in Jewish Law in which he says, "The area of inheritance has often been cited by feminist critics as an area of serious discrimination against women. A careful and close examination will offer convincing evidence that the inheritance laws are one-sided — but in favor of women rather than against them" (p. 84). His optimism also leads him to state hyperbolically that "the fact that daughters do not inherit if there are sons seems *prima facie* to be a gross inequity, but on deeper investigation it will be seen to be a great blessing" (p. 88). His position is that the laws of inheritance "reflect the real needs of both men and women" (p. 94).

³ Baba Batra 139b

and have prevented some of the hurtful shows of favoritism made apparent, for instance, in the book of Genesis.⁴ On the other hand, and more probable in my opinion, is the likelihood that the perpetuation of a gender-based hierarchy within the family accomplished just the opposite, creating resentment between sisters and brothers. It is hard to imagine that the picture of warm family life which Jews today like to project could have existed in Rabbinic times.

Following is a description, with appropriate citations, for each of the institutions which were created for the express purpose of providing for daughters. The Rabbinic discussions of maintenance and dowry are found primarily in the Talmudic Tractates Ketubot and Baba Batra.

Maintenance of the Daughter and Ketubat Benin Nukbin

While the Mishna states that a father is not legally obligated to maintain his minor daughter while he is alive, it did become a condition after his death.⁵ This condition was an element of her mother's ketubah, known specifically as ketubat benin nukbin, to be discussed below. Even during his life, the father was pressured, if not legally obligated, to maintain his daughter on the basis of "moral duty," and a wealthy man could be "compelled against his wish" to provide maintenance for his children.⁶ Despite this statement about

⁴ Such a potential peace would surely not, however, have survived the introduction of wills and gifts into Jewish law, wherein a father could, in effect, circumvent the strict order of succession. See Chapter 4 for further discussion of wills and gifts.

⁵ Mishna Ketubot 4:6

⁶ Ketubot 49b

the wealthy man, maintenance was not based on the financial status of a father, but rather on what the children needed; maintenance for one's children after the age of six was therefore linked to the concept of tzedakah.

In contrast to this notion of "moral duty," R. Johanan b. Beroka took the rigid approach that "it is a legal obligation to feed one's daughters after their father's death, but during the lifetime of their father neither sons nor daughters need be fed."⁸ R. Meir and R. Judah each viewed maintenance of one's children during one's life as a "meritorious act," but disagreed about whether a son or a daughter took precedence.⁹ One anonymous ruling states, "As regards succession, a son has preference; as regards maintenance, a daughter is given preference."¹⁰ Elsewhere we find, "As the sons cannot be heirs except after the death of their father, so the daughters cannot claim maintenance except after the death of their father."¹¹ It has therefore been made clear that just as orphaned daughters are not entitled to inheritance (unless she has no brothers), neither are orphaned brothers entitled to maintenance. Yerushah was considered an institution for males; mezono was a provision for females. There was a mishnaic statement, which went without comment in the gemara, to the effect that daughters were of greater importance than sons since they were fed at the expense of the sons, but not at the expense of other daughters.¹² Such a statement seems to be an attempt

⁸ Ketubot 49b, Ketubot 65b, Eben Ha-ezer 71:1, Eben Ha-ezer 82:7

⁹ Ketubot 49a

¹⁰ Ketubot 49a, Baba Batra 141a

¹¹ Baba Batra 141a

¹² Baba Batra 131b

¹³ Mishna Baba Batra 8:8

to whitewash the inequities between sons and daughters vis-a-vis inheritance by deeming the statutes of maintenance preferential treatment for daughters.¹³ In fact, maintenance was only a feeble attempt to compensate daughters for their lack of standing in inheritance law. It is implied elsewhere that daughters are especially subject to disgrace in "the real world," and that maintenance, therefore, served as a form of protective legislation.¹⁴ Consequently, it was only because of her already-diminished status in her own family, in Jewish law, and in the world at large that a daughter's maintenance was at all necessary.

Maintenance provided daughters with food, clothing and shelter. (If she died, she was also entitled to burial.) This privilege lasted either until she came of age or until she married (though even here there was some discussion of whether the privilege ended at betrothal or at marriage).¹⁵ Where the estate was small, the maintenance of the daughters was deemed more essential than the sons' right to inheritance. According to Mishna Baba Batra 9:1,

If one died and left sons and daughters, then if the estate be large, the sons inherit and the daughters must be supported; but if the property were small, the daughters must be maintained, and the sons may go begging at the doors.¹⁶

¹³ I refer you to Baba Batra 141 a for discussion of whether or not a daughter is preferable to a son.

¹⁴ Baba Batra 141a "It is a meritorious act to feed one's sons and how much more so one's daughters in order that they not be degraded."

¹⁵ Ketubot 68b

¹⁶ Mishna Baba Batra 9:1, Ketubot 108b (See Appendix III for Hebrew text)

Admon balked at such a condition: "Am I to be the loser because I am a male?" The law remained, however, and even a step-daughter was to be maintained from the estate by her step-brothers.¹⁷ Nonetheless, Admon's concluding comment to the mishna sparked some interesting reactions in the gemara.¹⁸ Abaye explains Admon's statement as follows: "Am I to be the loser because I am a male and am capable of engaging in the study of Torah?" (Raba, however, disagrees that male heirship is linked with engagement in Torah study. He interprets Admon as follows: "Am I, because I am a male and am entitled to be heir in the case of a large estate to be the loser in the case of a small estate?") The attempt to find a logical reason for male precedence as heirs is made also in Baba Batra 110b. There, the fact that a son is entitled to take his father's place in designating a Hebrew handmaid or in redeeming a field of possession is suggested as possible reasons for his precedence as an heir.

Though the mishna cited above states that daughters would take precedence over sons in the case of a small estate (and the Rabbis, of course, attempt to determine what exactly constitutes a small as opposed to a large estate),¹⁹ elsewhere we learn, however, that a widow would take precedence if the estate were not large enough to provide maintenance for both the widow and any orphaned daughters:

For R. Abba said in the name of R. Assi that the relationship between a widow and her daughter, in the case of a small estate, has been put on the same basis as that of the relationship between a daughter and brothers. As in the case of the relationship between a daughter and brothers, the daughter is maintained out of the estate while the brothers have

¹⁷ Baba Batra 140a-b

¹⁸ Baba Batra 140b

¹⁹ Baba Batra 139b

to go begging at doors, so in the case of the relationship of a widow and her daughter, the widow is maintained, and the daughter may go begging at doors.²⁰

A daughter's maintenance out of her father's estate was, then, certainly not assured. If need be, the community's poor funds were responsible for maintaining a daughter "in accordance with the respect due to her",²¹ and she received preference over her orphaned brothers. (This issue of kavod for both orphaned boys and girls is taken up by the gemara.²² Additionally, if her brother were an adult, the Shulhan Arukh states that he could increase the amount of his sister's maintenance above the minimum if he so wished.²³

We are inclined, I believe, to classify orphaned boys and girls together, but the situation of orphaned daughters was actually more akin to that of widows than it was to that of their orphaned brothers. Mothers and daughters found themselves in the same uncomfortable predicament when the male head-of-household died. Both became creditors on the estate, dependent on the heirs (sons or brothers) for their maintenance. According to Louis Epstein, author of The Jewish Marriage Contract, "The fortune of the widow and that of the orphan girl were so akin to each other that both the statutory and the ketubah provisions for them run parallel throughout Jewish law."²⁴

²⁰ Baba Batra 140b (See Appendix III for Hebrew text)

²¹ Mishna Ketubot 6:5; Ketubot 67a

²² Ketubot 67b

²³ Eben ha-Ezer 112:21

²⁴ Epstein, p. 185

From our contemporary standpoint, it is rather disturbing to consider that a mother would be so dependent on her son(s) for support, or a daughter on her brother(s). There were, nonetheless, limits placed on the male heirs' authority in regard to the orphaned daughters. For while the heirs received the financial and legal obligations of their father's estate (such as the payment of any outstanding debts and the obligation to maintain the widow and any orphaned sisters), they did not inherit their father's privileges in connection to his daughters. For instance, a daughter's earnings or any proceeds from damages due her would not belong to her brother(s) as they would have to her father. While this may provide little consolation, it does seem to reflect a small attempt to emancipate the daughter financially.

The concern for widows and orphans certainly predates our Rabbinic texts. Biblical passages commanding justice and compassion for the widow and the orphan abound. Mistreatment of these disadvantaged individuals could result in God's wrath, as expressed in Exodus 22:21-23:

You shall not ill-treat any widow or orphan. If you do mistreat them, I will heed their outcry as soon as they cry out to Me, and My anger shall blaze forth and I will put you to the sword, and your own wives shall become widows and your children orphans.²⁵

In contrast, just treatment of widows and orphans would result in God's blessing, as expressed in Deuteronomy 24:19:

When you reap the harvest in your field and overlook a sheaf in the field, do not turn back to get it; it shall go to the stranger, the fatherless, and the widow - in order that the Lord your God may bless you in all your undertakings.²⁶

²⁵ Exodus 22:21-23 (See Appendix III for Hebrew text)

²⁶ Deuteronomy 24:19 (See Appendix III for Hebrew text)

According to Torah, it is God who provides widows and orphans with food and clothing, befriending the stranger. "You, too, must befriend the stranger, for you were strangers in the land of Egypt".²⁷ While we are familiar with this grouping of widows and orphans with strangers, perhaps less familiar is the comparison to the Levites:

Then the Levite, who has no hereditary portion as you have, and the stranger, the fatherless, and the widow in your settlements shall come and eat their fill, so that the Lord your God may bless you in all the enterprises you undertake.²⁸

What is fascinating about this text is its seemingly unconscious equation of the landlessness of the Levites with the situation of the widow and orphan. Levites, who are impoverished for religious reasons, are equated with widows and orphans, who are impoverished by circumstance. For the Rabbis, the fact that widows and female orphans were not heirs of real property was precisely what created the very situation which they sought to redress by their various compensatory legislations. In other words, it is a paradoxical situation which spans the generations: poverty and landlessness demanded compassion and justice for the Levites in the Biblical setting, but being just and compassionate in a Rabbinic setting did not include granting property to widows and female orphans. This same Biblical passage also serves, I believe, as a proof text to foil the Rabbis' insistence on maintaining the discriminatory inheritance law against daughters throughout time: were the Levites mandated to remain

²⁷ Deuteronomy 10:17-19 (See Appendix III for Hebrew text)

²⁸ Deuteronomy 14:29

landless throughout time, or was their loss of a claim upon tribal land considered a time-bound and eretz-visrael-bound commandment?

Returning, however, to the Rabbinic texts and to the issue of maintenance for the daughter, a question arose about whether or not a father could refuse to have his daughters maintained out of his estate. Because such maintenance was already considered a stipulation of her mother's ketubah, any annulment on her father's part, or even a waiver by her mother, would not be honored. Though a statement of a dying man was usually to be regarded as a moral obligation, as will be discussed in the chapter on wills, if he said "give no more" in regard to maintenance, he was not to be obeyed, and "his children are to be given all that they require".²⁹ In fact, a daughter was entitled to this maintenance even if her parents divorced.

The clause in a woman's ketubah known as ketubat benin nukbin was a provision which guaranteed support for her orphaned daughters out of her husband's estate should he predecease her. Obviously, this ketubat benin nukbin clause was only necessary when there were sons; if there were only daughters, they were heirs to the estate and did not have need for maintenance.

If this ketubat benin nukbin clause was not explicitly written into the ketubah, it was understood to be implied.³⁰ Therefore, as stated earlier, a man could not alter his obligations to his minor, unmarried daughter(s), as this was considered part of the contract between him and his wife. The formulation of the clause found in Yerushalmi Ketubot 34d reads: "The female children which thou shalt beget by

²⁹ Ketubot 70a

³⁰ Baba Batra 131a

me shall dwell in my house and be supported out of my estate and be clothed at my expense until they are married." Elsewhere, however, the clause is modified so that the support ends when the daughter comes of age.³³ Since a bogeret (twelve years and one day old) was considered independent from her father (and was often married by this age, in any case), the prevailing logic held that she should not expect anything from his estate. Another potential qualification of the daughter's maintenance from her father's estate was a declaration at the time of marriage stating that he would only support daughters while his wife remained with him. If she died, he was no longer obligated to support their daughters.³⁴ Again, our modern sensibilities about grief might lead us to question such hard-headed (and hard-hearted) practicality: might not possessing something from her father's estate hold sentimental value unrelated to the practicalities of a legal division of property? It seems that this ketubat benin nukbin clause sanctioned a situation in which mothers and daughters constituted a sub-set of the nuclear family, so that a man could disavow certain financial obligations to his daughters if his wife died.

The ketubat benin nukbin clause is not found in current ketubot. In certain respects the clause resembled the ketubat benin dikrin, also a relic, which provided certain guarantees to sons regarding succession to their parents' property. What the ketubat benin dikrin accomplished was to specify that a mother's possessions could be given only to the sons to whom she had given birth, rather than having her possessions enter into the husband's general estate upon

³³ Ketubot 53b, Tosefta Ketubot 4:17, Yerushalmi Ketubot 29b

³⁴ Mishna Ketubot 12:1, Eben Ha-Ezer 114:11

her death and potentially being inherited by children of another wife. The Rabbis therefore claim in Ketubot 52b that the ketubat benin dikrin for male children was actually instituted for the benefit of daughters, "so that a man might thereby be encouraged to give to his daughter as much as to his son." They based this opinion on the understanding that according to the above-stated provision of the ketubat benin dikrin, any dowry that would be given "to his daughter will remain the property of her own children and will not pass through her husband to the children of his other wives."⁴⁴

In comparing the two clauses, the Rabbis noted that the ketubat benin dikrin referred to inheritance,⁴⁴ while the ketubat benin nukbin referred to maintenance or gift.⁴⁵ This led the Amoraim to question whether the provisions were made by a single court or by two different ones. For us, it is important to note the care that the Rabbis took to disavow the impression that a daughter was in any way being considered or treated as a legal heir by virtue of her receiving such maintenance. Even though the ketubat benin nukbin was not a gift (which was voluntary), but a right (which was obligatory), it seems in this particular case that the Rabbis may have been concerned about stating that a daughter had a right to any part of her father's estate. Interestingly, we will find in the discussion of gifts, however, that the greatest condemnation was saved for those who used the institution of gifts as a way to bypass the legal order of succession. Any criticism of maintenance that we have encountered thus far (and any criticism of dowry, as I will demonstrate below), on the basis that

⁴⁴ Notes in Soncino commentary to Ketubot 52b

⁴⁵ Mishna Ketubot 4:10, Ketubot 52b

⁴⁶ Mishna Ketubot 4:11, Ketubot 52b

it diminishes the property due a son, has been mild compared to the approbations rendered in the case of gift-giving.³⁶

One further Rabbinic discussion regarding the maintenance of daughters was whether maintenance was to be taken from movable or immovable property. This topic will be discussed in relation to parnasah, below.

Dowry (ketubah/tzon barzel/nedunya)

Various terms are used in Rabbinic literature to describe the institution of dowry. Dowry is understood to be the gifts given to a daughter prior to her marriage. Because of this association between dowry and marriage, the ketubah was viewed as the record of the gifts given as dowry. Though Maimonides makes it clear that a wife's property at the time of her marriage, "even though registered in the ketubah document, is nevertheless called not ketubah, but dowry,"³⁷ the word ketubah was nonetheless used in Talmudic literature to denote dowry.³⁸ The term tzon barzel (iron sheep) is a more technical term for the property which a woman would bring to her marriage as a dowry, as it refers specifically to property to which her husband would have rights (as opposed to melog, which represented the bride's private possessions).³⁹ The term nedunya was primarily used in post-Talmudic literature and only three times in Talmud itself.⁴⁰

* This will be discussed in Chapter 4.

³⁷ Maimonides, *Ishut* 16:1

³⁸ *Shabbat* 130a; *Yevamot* 66b

³⁹ A succinct explanation of tzon barzel and melog can be found in Maimonides, *Ishut* 16:1-2.

⁴⁰ *Taanit* 24a; *Baba Metzia* 74b; *Ketubot* 54a

As previously demonstrated, the Rabbinic halachah made clear that a daughter could not inherit her father's estate if there were a son or issue from the son. Such a ruling may have been due, in part, to the expectation that daughters would marry and leave home, thereby being unable to "succeed" their fathers as fully as their brothers might. Therefore dowry may have been created to substitute for succession. Yet the dowry did not belong to a bride in the way that inheritance would belong fully to a son. The fact that a husband would have rights to a wife's dowry as implied by the institution of tzon barzel makes suspect its use as an appropriate substitute for inheritance, for, as Epstein claims, "the husband's tenancy, therefore, came to be conceived as an ownership of the wife's dowry."⁴¹ Paradoxically, the wife's dowry would have no value to her personally unless she were divorced or widowed.⁴²

In the Yerushalmi Ketubot 4:11, attention is paid to the gray lines between inheritance and dowry (called ketubah in this text) and between inheritance and gifts. A discussion ensues about R. Johanan b. Beroka's original statement in Mishna Baba Batra 8:5 about "illegal transfers of verushah." The Rabbis express confusion about whether such a transfer was an actual case of inheritance, or whether it concerned gift or donation.

Said R. Yose b. R. Bun, "Thus he said to him, 'I erred in what I taught you. This is not a case of a gift but of inheritance.'" Said R. Zeira, "A more lenient ruling applies in the case of the conditions of a ketubah.....Said R. Jeremiah before R. Zeira, "And I should be surprised if rabbis compared a ketubah to

⁴¹ Epstein, op. cit., p. 95.

⁴² Epstein, op. cit., pp. 100-2

yerushah. They indeed are not to be compared. For yerushah derives from the authority of the Torah, while provision of the ketubah derives from the authority of scribes."⁴³

In the opinion of R. Jeremiah, then, dowry was quite different from inheritance. His reason for such a distinction, however, was not based on the merits of either provision, but rather on the ruling authority for each one, whether Toraitic or Rabbinic.

While one secondary effect of inheritance may be to provide an opportunity for a child to stand on his/her own in the world, the provision of dowry merely allowed the daughter to move from her father's to her husband's house, seemingly never learning skills for independent living. (However, should she have reached majority before being married, the daughter -- whether her father were alive or not -- became completely independent.) As stated in Mishna, "She continues under the authority of the father until she enters into the control of the husband at wedlock."⁴⁴ Even with the best intentions, then, dowry could not truly serve as an adequate substitute for inheritance because of her husband's title to it.

Yet the purpose of dowry has been two-fold over time: both as a substitute for yerushah and as an inducement for a suitable marriage partner. In Ketubot 52b we are taught "that a father must provide for his daughter clothing and covering and must also give her a dowry so that people may be anxious to woo her and so proceed to marry her." We find on the same page, however, references to dowry as a form of inheritance:

⁴³ Yerushalmi Ketubot 4:11 (See Appendix III for Hebrew text)

⁴⁴ Mishna Ketubot 4:5

Seeing that the All-Merciful ordained that a son shall be heir; a daughter shall not, would the Rabbis proceed to make a provision whereby a daughter shall be the heir?..... But should not then a daughter among sons also be heir? The Rabbis have treated [the dowry] like nahalah.⁴¹

In evidence, however, was the letter-of-the-law contingent which disapproved of the provision of dowry for that very reason: it made daughters quasi-heirs and thereby lessened the estate of the sons. In an aggadic passage in Ketubot 52b-53a, R. Papa confronted Judah b. Meremar on the latter's disapproval of the practice of dowry. "Is it because Samuel said to Rab Judah, 'Sharp-toothed one, keep away from transfers of inheritance even though they be from a bad son to a good son....and moreso from a son to a daughter?'" Judah b. Meremar's opinion remained unchanged.⁴²

A telling comment concerning a daughter's status appears also in Ketubot 69a wherein Amemar ruled that "a daughter has [the legal status of] an heiress," then withdrew his opinion when R. Ashi ruled that she had the legal status of a creditor.⁴³

The confusing nature of dowry and exactly where daughters "fit" extended beyond these brief interchanges between R. Papa and Judah b. Meremar or between Amemar and R. Ashi. I am reminded of an anthropological study in which the author hypothesizes about the Biblical approach to "ambiguity" and states of liminality, stating that "we find in any culture worthy of the name various provisions for

⁴¹ Ketubot 52b (See Appendix III for Hebrew text)

⁴² Ketubot 52b-53a, Baba Batra 133b. This passage will be discussed further in Chapter 4.

⁴³ Ketubot 69a

dealing with ambiguous or anomalous events."⁴⁸ I venture to say that we find the same passion for categorization of "ambiguous or anomalous events" throughout Rabbinic literature. In our case, daughters seem to present an enigma to the Rabbis. The Rabbis were conflicted about the status of the daughter vis-a-vis her father's estate and vis-a-vis her brothers who would ultimately inherit that estate. For the Rabbis she was either an heir by another, lesser name; she was "like" an heir; or she was just altogether "other," like a creditor. Was dowry her just due, or did it serve to blur the lines between legal and non-legal heirs?

This sort of categorization -- the attempt to clarify the ambiguous or anomalous -- encroaches upon other areas of the debate on daughters and her economic well-being. For instance, the Rabbis asked whether the daughter could take her dowry from movables or whether it had to be from real estate. They wanted to know whether she could resume her former "maintainable" status if she were to return to her father's house once married, or whether she would be freed at that time from the authority of both husband and father or brothers. They also attempted to define subtle differences between mezonot and parnasah. If there were an appreciation in the value of the estate, the Rabbis asked whether daughters could benefit from the surplus.⁴⁹ Attention to the details of categorizing a daughter was to be found in aforementioned discussions, such as that of determining whether an orphaned daughter was more akin to an orphaned brother or to a widow; whether it was more important to maintain a

⁴⁸ Mary Douglas, Purity and Danger, p. 39

⁴⁹ Baba Batra 139b

son or a daughter; and whether a son-heir would be entitled to the proceeds of his sister's handiwork as his father would have been.

While defining questions such as these are found throughout the Talmud and are reflective of Rabbinic intellect and logical bent, I suggest that in the case of a daughter the questions (and their often subtle responses) serve also to clarify the ambiguity of her status and to classify new contingencies pertaining to her situation and status.

Parnasat ha-Bat Issur Nekhasim

Dowry, as stated above, is given to a daughter while her father is still alive. The question arose: What, if anything, is she entitled to after his death? The mishna which first addressed this dilemma reads:

If an orphan was given in marriage by her mother or her brothers with her consent, and they assigned to her a hundred, or fifty zuz, she may, when she attains her majority, recover from them the amount that was due to her. R. Judah ruled: If a man had given his first daughter in marriage, the second must receive as much as he had given to the first. The Sages, however, said: Sometimes a man is poor and becomes rich, or rich and becomes poor. The estate should rather be valued and she be given.⁵⁰

"The amount that was due her" refers to parnasat ha-bat. The Rabbis determined that after her father's death, an unmarried daughter was entitled to this parnasah which was recognized as her father's obligation to deliver a dowry. Originally, her share was measured by how much her already-married sisters had received. Later, there was an attempt to determine her father's sentiments and inclinations by speaking with those who knew him.⁵¹ Ultimately, a legally prescribed proportion of ten percent was declared:

⁵⁰ Mishna Ketubot 6:6; Ketubot 68a (See Appendix III for Hebrew text.)

⁵¹ Ketubot 68a

Rabbi said: A daughter who is maintained by her brothers is to receive a tenth of the estate, and Raba stated that the law is in agreement with Rabbi."

(Raba's statement is slightly different elsewhere, where it states: "Both Abaye and Raba ruled: Up to a tenth of his wealth." Was he willing to grant her less than ten percent?)" This provision therefore came to be known as issur nekhasim (literally, "one tenth of assets") because the Rabbis determined ten percent of the estate to be a daughter's proper share for the parnasah.

The Rabbis were vigilant as to the effect of such legislation on the financial prospects for any sons, so it was perhaps inevitable that they would present the hypothetical situation of a family with ten daughters and one son.

They asked before Rabbi, According to your statement, if a man had ten daughters and one son, the son should receive no share at all on account of the daughters. He replied: What I mean is this: The first receives a tenth of the estate, the second [receives a tenth] of what was left, and the third [gets a tenth] of what was left, and then they divide again into equal shares.⁵²

The mathematical logic of such a scheme would be to assure that some assets would remain in the estate for the son's verushah. In Nedarim 39b this same logic is applied to the situation of a sick man: it was asked why the man would not be cured if sixty people were to visit him, each taking away with them one-sixtieth of his pain. It was decided that, as in the case of the ten daughters, they would each depart with only a percentage of the sickness that was left -- one-

⁵² Ketubot 68a

⁵³ Ketubot 52b

⁵⁴ Ketubot 68a. See also Yerushalmi Ketubot 6:6. (See Appendix III for Hebrew text.)

sixtieth of what was left after the previous visitor took one-sixtieth -- therefore leaving some remainder for the sick man (just as some of the estate would be left, then, for the brother after each of the daughters took their shares). What the rabbis did not raise in this fascinating statement about percentages and proportional diminishment is the fact that, assuming the estate would not appreciate in value, the oldest daughter would receive more than any younger sisters. This law, then, institutionalized a parallel to primogeniture for daughters. Yet, having initially divided the estate proportionally on the basis of age, the daughters were ultimately to redivide it so that all would share equally: "then they divide again into equal shares".⁵⁵ Such a conception of sisterly equality is also evident in Mishna Ketubot 4:10, 6:6, 13:3, wherein a younger sister was entitled to the same size dowry as an older sister who had received one while their father was still alive.⁵⁶

The purpose of Rabbi's statement was, however, to insure that a brother with ten sisters would have an estate to inherit once each of the daughters received her parnasah. Sharing the Talmud's concern with the protection of the son's stake in his father's estate, the Shulhan Arukh states unequivocally that a daughter's share for parnasah may not exceed one-tenth of the estate.⁵⁷ Furthermore, once a daughter had received her share, she could get no more; should the estate appreciate in value, the sons would receive the benefit of that surplus.⁵⁸

⁵⁵ Ketubot 68a This is a feminist statement par excellence. Were sons asked to redivide double portion?

⁵⁶ Mishna Ketubot 4:10; 6:6; 13:3

⁵⁷ Eben ha-Ezer 113, per Ketubot 52b

⁵⁸ Baba Batra 139b

Once the amount of parnasah was determined, the Rabbis wished to determine the daughter's right to parnasah once she came of age. From Ketubot 68b:

Our Rabbis taught: The daughters, whether they had attained their adolescence before they married or whether they married before they had attained their adolescence, lose their right to maintenance but not to their allowance for parnasah; so Rabbi. R. Simeon b. Eleazar said: If they also attained their adolescence, they lose the right to their parnasah.... R. Nahman stated: Huna told me, The law is in agreement with Rabbi.⁵⁹

An objection to this law was raised in connection to the original mishna, wherein a daughter could recover any share due her above the fifty or one hundred zuz given at the time of her marriage. The implication in the mishna is that the daughter must demand her parnasah -- her brothers need not offer it unbidden.⁶⁰

The sometimes subtle differences between maintenance and parnasah were not lost on the Rabbis. Repeatedly, they would demarcate the boundaries between one and the other.⁶¹ Unlike maintenance, parnasah was not assured. In fact, a father could refuse to provide the parnasah, which he could not do in the case of maintenance. Furthermore, the monies for each were to be drawn from different kinds of property, as described in Ketubot 68b:

R. Huna stated in the name of Rabbi: A parnasah is not the same as that conferred by a condition in a ketubah (i.e. ketubat benin nukbin or maintenance). What is meant by "is not the same as that conferred by a condition in a ketubah"? Should it be suggested

⁵⁹ Hebrew text can be found in Appendix III

⁶⁰ Ketubot 68b

⁶¹ Ketubot 68a, 69a, 69b, 50b, 51a

that whereas for the allowance for a parnasah even property pledged may be seized, [for the fulfillment of an obligation under] the terms of a ketubah no pledged property may be seized, what does this teach us? Surely it is a daily occurrence [that pledged property] is seized for parnasah but not for maintenance. [Should it], however, [be suggested that] whereas for a parnasah movable objects also may be seized, [for the fulfillment of an obligation under] a condition in a ketubah only real estate, but not movable objects also may be seized, [it may be objected that,] according to Rabbi, for the one as well as the other [movable objects] may be seized. For it was taught: Both landed property and movable property may be seized for the maintenance of a wife or daughters; so Rabbi. What, then, is meant by "Parnasah is not the same as that conferred by a condition in a ketubah?" As it was taught: If a man said that his daughters must not be maintained out of his estate he is not to be obeyed. [If, however, he said that] his daughters shall not receive their parnasah out of his estate he is obeyed, because [the right to] parnasah is not the same as that conferred by a condition in a ketubah.⁶²

This discussion from the Babylonian Talmud assumes that maintenance is a right, while dowry is a forfeitable privilege. In contrast, the Jerusalem Talmud expressed an opposing viewpoint:

R. Hisda says: "When they reach maturity they lose their claim on mezonot (support). If they get married, they lose their claim for parnasah (a dowry). R. Hiyya taught: If they reached maturity but had not gotten married or got married but had not reached maturity they lose their claim on mezonot but do not lose their claim for parnasah."⁶³

Despite the discrepancies between these two approaches to dowry and maintenance, the underlying message is that neither of these entitlements was assured. As a result, their effectiveness as true

⁶² Ketubot 68b (Hebrew text can be found in Appendix III)

⁶³ Yerushalmi Ketubot 4:12 (See Appendix III for Hebrew text.)

substitutes for inheritance was diminished. Maintenance, in any case, merely covered physical sustenance and was not meant to provide any future security, as inheritance would. Additionally, there were a number of circumstances which could imperil a daughter's collection of these entitlements: (1) if the estate were too small to support both her and her mother; (2) if the brothers were to sell the estate;⁶⁴ (3) if there were to be only encumbered property, from which she could not collect her maintenance;⁶⁵ (4) if her father had stipulated against parnasah either before his marriage or on his deathbed, which was considered a valid stipulation;⁶⁶ (5) if she failed to request her parnasah, she forfeited it;⁶⁷ (6) if she were to marry while still a minor, she would lose maintenance from her brothers; (7) if she were not in possession of the ketubah (which her mother may have sold), she could not collect her maintenance from it.⁶⁸ (This last stipulation is found in medieval, not Rabbinic, law.)

All of these factors lead us to an understanding of a daughter's economic rights in her family-of-birth and how very fragile those rights could be.

A Further Critique of Dowry, Parnasat ha-Bat, and Issur Nekhasim

In I Kings 9:16, the word used for dowry is shiluhim, from the root "to send off." It was assumed that a daughter would leave her parents' house to join her husband, and she, therefore, would receive

⁶⁴ Baba Batra 139b. It's a legal sale and daughters then can't get maintenance from estate.

⁶⁵ Maimonides, Ishut 18:13

⁶⁶ Ketubot 68b, Eben Ha-ezer 112:10; 113:10; Ishut 20:10

⁶⁷ Ishut 20:14; Eben Ha-ezer 113:17

⁶⁸ Ishut 19:12

a share of the estate at that time, as a "send-off." Sons, on the other hand, did not leave their parents' home. Upon their father's death sons would succeed to the head of household, assuming their father's responsibilities and inheriting the remainder of the estate. Such protocol seems perfectly logical in a Biblical setting, at which time a woman's marriage bound her to the husband's family and severed her ties with her own family-of-birth.

In the Biblical Book of Ruth, Naomi enjoined her widowed daughters-in-law Orpah and Ruth to return to their original families because she had no other sons to offer them as husbands. We must infer from this interchange that leaving one's husband's family upon widowhood was not customary, and that Orpah would not have returned home without Naomi's imprecations that she do so. We may presume that such a return to one's family-of-origin was more common by Rabbinic times, as we saw a Talmudic discussion earlier which concerned whether a daughter would be entitled to maintenance if she were to return home after having been married.

The Biblical view, therefore, conceptualized a woman marrying and joining her husband in a far-off land. Such journeys certainly did not remain the normal course of events, involving such a sundering of ties to one's family-of-origin. As time passed and the nature of Jewish community changed, traveling to Aram-naharaim to find an appropriate wife, as Eliezer did to find Rebekah for Isaac, was no longer necessary. By Rabbinic times, in-laws certainly could be found living in the same communities with one another, or certainly in close proximity.

When a married daughter remained in close proximity to her parents, I submit that dowry could not have been an appropriate substitute for inheritance, for social, theological, as well as psychological reasons. If we give credence to the argument that dowry was essentially created in Jewish law to compensate for verushah (or, at the very least, that it came to be considered such a substitute), and we further hold that it was given to a daughter at marriage because of an outdated expectation that she would be relocating far from home, we are essentially conceding that the timing of her acquisition was based on circumstances that may have had little to do with marriage, *per se*. (Though the Rabbis claimed in ketubot 52b that dowry served to woo a potential husband, this was apparently not the raison d'être of a dowry.) I suggest that the bestowal of a share in her father's estate was given before a daughter's marriage because of a presumption that she would not be near at hand to collect it at such time as her father died. Such timing presumably also served to divert insinuations that dowry transgressed inheritance law.

It may seem a point of minutiae to quibble about the "when" of the bestowal. Why not be satisfied with the fact that daughters were, in essence, receiving a share of their father's estate, though it was called something other than verushah? First of all, as indicated above, a dowry ultimately did not remain a bride's alone; her husband had claims to it. Second, I propose that the emotional and psychological effect of the two forms of provision are quite different. A gift prior to marriage is a celebratory gesture, while a gift following death is a source of comfort and healing. I suggest that a

daughter is denied an opportunity for healthy grieving by not receiving something from her parents at the time of their deaths. This subject will be taken up again in the concluding chapter.

Mother's estate

The provisions discussed heretofore concern the father's estate. Indeed, most of the textual material regarding inheritance law concerns the patriarchal estate, and we may assume that his would typically be appraised at a much higher value than would that of his wife. However, there also existed the estate of the mother. One might think that the mother's estate would be the one provision which a daughter might call her own, one which she did not have to share, or demand, or lose upon marriage or majority. Unlike the father's estate, there was no Toraitic law to prevent the passing of a mother's estate to her daughters; there were not the same pressures on the mother's estate to conform to tribal allegiances. And yet, the Rabbis determined that a daughter was not to be the recipient of her mother's estate! Perhaps, then, she could share it with her brother(s)? But even that accommodation to the daughter was not to be. Just as with her father's estate, a daughter could inherit her mother's only when there were no brothers. (One tradition has Rab supporting her equality with sons in the mother's estate, while another denies it.)

Much of the discussion from Baba Batra 111a on the subject of the mother's estate is provided in the next chapter, in reference to R. Zechariah b. Hakkazzab's most refreshing opinion on the matter, abridged here: "Both a son and a daughter have equal rights in the

inheritance of a mother's estate."⁶⁶ However, there is more to this Rabbinic discussion than R. Zechariah b. Hakkazzab:

Our Rabbis taught: "And every daughter that possesses an inheritance (yoreshet nahalah) in the tribes of the children of Israel (Numbers 36:8); how can a daughter inherit from two tribes? Obviously only when her father is from one tribe and her mother from another tribe, and both died, and she inherited from them. From this one may only derive the law in respect of a daughter. Whence may the law respecting a son be derived? (One may derive it by an inference from minor to major: If a daughter, whose claims upon her father's property are impaired, has strong legal claims upon the property of her mother, should a son, whose claims upon the property of his father are strong, not justly have strong legal claims upon the property of his mother? And by the same argument: As there, a son takes precedence over a daughter, so here, a son takes precedence over a daughter."⁶⁷

The argument is stated yet again later when R. Judah ha-Nasi poses the question to R. Yannai:

Whence that a son takes precedence over a daughter in a mother's estate? He replied to him: From "tribes" (Numbers 36:8) [where the plural indicates that] the mother's tribe is to be compared to the father's tribe: as [in the case of] the father's tribe, a son takes precedence over a daughter, so [in the case of] the mother's tribe, a son takes precedence over a daughter.⁷¹

Later in this discussion between Judah and Yannai we are provided with information that does differentiate the dispensation of a father's estate from that of the mother's: a first-born son does not receive a

⁶⁶ Baba Batra 115a; Tosefta Baba Batra 7:10

⁷⁰ Baba Batra 111a (See Appendix III for Hebrew text)

⁷¹ Baba Batra 111a (See Appendix III for Hebrew text)

double portion in his mother's estate as he does from his father's. One tradition has Rab supporting her equally with sons, another denies it.

There are two oddities regarding the mother's estate: (1) that it could not be used for the purpose of providing a daughter's dowry, since the dowry was presumed to be the father's responsibility, and (2) that the mother's estate could not be "inherited from the grave," which means that the descendants of a deceased heir would not share equally with living heirs. Because all offspring of a son precede a daughter in the inheritance of a father's estate, this latter point would be especially beneficial to the interests of daughters, as it would provide her with a greater potential stake in her mother's estate than she would have had in her father's. The problem for daughters which was created by the rule of "inheritance from the grave" will be more fully discussed in Chapter 3 in a debate between the Pharisees and the Sadducees concerning a father's estate, wherein the deceased son's daughter (a granddaughter to the deceased property owner) would precede the daughter in inheriting the estate (the son having "inherited from the grave"). Such a problem would therefore not occur in the estate of the mother, since "inheriting from the grave" would not be recognized.

CHAPTER 3

Rabbinic and Non-Rabbinic Attempts to Change the Inheritance Laws for Daughters

According to the ladder of succession, all of a son's offspring would precede a daughter in the inheritance of their father's estate. In an unusually polemical sugya, the Pharisees, usually the champions of the oppressed and the more lenient interpreters of the law, made a strict reading of this law, denying a daughter a share in her father's estate when her deceased brother had issue (in this case, a daughter). The Sadducees took the position that the two women, daughter and granddaughter, may share in the estate together. In this unusual case, it appears that the Sadducees were the voice of reason. What emerges from a study of the passage below is that the two factions were apparently not arguing about women's inheritance rights at all.

The passage in question appears in Baba Batra 115b-116a:

R. Huna said in the name of Rab: Anyone, even a prince in Israel, who says that a daughter is to inherit with the daughter of the son, must not be obeyed; for such is only the practice of the Sadducees. As it was taught: On the twenty-fourth of T'ebeth we returned to our law; for the Sadducees having maintained that a daughter inherited with the daughter of the son, R. Johanan b. Zakkai joined issue with them. He said to them: "Fools, whence do you derive this?" And there was no one who could reply a word, except one old man who prated at him and said: "If the daughter of his son, who succeeds by virtue of his son's right, is heir to him, how much more so his daughter who derives her right from himself!" He read for him this verse, "These are the sons of Seir the Horite, the inhabitants of the land: Lotan and Shobal and Zibeon and Anah" and it is written, "And these are the children of Zibeon: Aiah and Anah"

But this teaches that Zibeon had intercourse with his mother and begat Anah. Is it not possible that there were two Anah? Rabbah said: I would say something which King Shapur could not have said; and who is he? Samuel; others say R. Papa, who said: I would say something which King Shapur could not have said - and who is he? Raba; "Scripture says: 'This is Anah' : The same Anah that was before." He said unto him: O master, do you dismiss me with such? He said to him: Fool, shall not our perfect Torah be as your idle talk! The reason why a son's daughter inherits is because her claim is valid where there are brothers, but can the same be said of the [deceased's] daughter whose right is impaired where there are brothers? Thus they were defeated. And that day was declared a yom tov.¹

I included the long repartee within the sugya above in order to present the full build-up to its powerful conclusion: "Thus they were defeated. And that day was declared a yom tov." That the conclusion to this argument resulted in a holiday attests to the seriousness of the issue at hand. Nor was the debate limited to the Babylonian Talmud. The Yerushalmi and the Tosefta join in the debate between Pharisee and Sadducee. In the Yerushalmi, the Sadducees are negatively compared to the sages of gentiles, whose inheritance law apparently allowed for the equality of sons and daughters:

The sages of gentiles say: The son and daughter are equal. For they interpret the language of Scripture as follows: "and had no son," meaning, if he indeed had a son, then the son and the daughter inherit on equal terms.....The Sadducees argue as follows: "The daughter of the son and the daughter should be equivalent to one another." For they interpret the passages as follows: "Now if the daughter of the son - who inherits on the strength of my son - will inherit me, my daughter - who inherits on the strength of direct relationship to me - is it not a matter of logic that she, too, should inherit me?" They said to him, "No, if you have stated that the daughter of the son inherits, who does so only through a stronger claim than the brothers of the father, will

¹ See Appendix IV for Hebrew text

you say so in the case of the daughter, who inherits solely through her standing in relationship to the deceased (grandfather)?

The argument that a daughter is in closer relationship to the deceased than a granddaughter does not convince the Pharisees. In Tosefta a similar argument is fought between the Boethusians and the Pharisees. The Boethusians were a sect whose theological views closely resembled those of the Sadducees:

The Boethusians say, "We complain against you, Pharisees. Now if the daughter of my son, who inherits on the strength of my son, who inherits on my account, lo, she inherits me - my daughter, who comes on my account, logically should inherit me." Say Pharisees, "No. If you have said so in regard to the daughter of the son, who shares with the brothers, will you say so of the daughter, who does not share with the brothers?"¹

(On the surface, the Sadducees (or Boethusians) look to be the heroes, the voice of reason in an otherwise absurd situation. Why should a granddaughter precede to an inheritance before a daughter? Again, the Rabbis insisted on compounding the absurdity. At first glance, we might assume that the Sadducees recognized this injustice and tried to correct it. With all we know about the Pharisees and the Sadducees, however, their respective stances in this case seem odd and strangely disconcerting at best.

When we look more closely at the specificity of the case in question, however, we notice that it does not concern itself with the

¹ Yerushalmi Baba Batra 8:1. This full text conflates the two discussions concerning a daughter's inheritance rights which appear separately in the Bavli - that of the Pharisees/Sadducees and that of R. Zechariah. (See Appendix IV for partial Hebrew text.)

² Tosefta Yadayim 2:20. (See Appendix IV for Hebrew text.)

equality of daughters and sons at all times, but only with this case about a son's daughter inheriting before the daughter. We also notice just how factional this argument was. In the Babylonian Talmud, a day of celebration to commemorate this legal victory was instituted. Why were the Pharisees so vehemently against sharing an inheritance between a daughter and a granddaughter? And why was their victory commemorated with such hoopla? A number of explanations have been suggested.

Firstly, and perhaps most obviously, is the fact that the Sadducees were more influenced by Roman law than were the Pharisees, who made a concerted effort to prevent such assimilation of ideas. In Roman law, as well as Greek, daughters and sons were equal in inheritance law.⁴ To defeat the assimilation of a strong foreign element would certainly have seemed a victory well worth celebrating.

Secondly, it has been suggested that the Pharisees were fighting from a socio-economic standpoint, in that their constituents were the small landowners who would be more hurt by a division of property. The Sadducees were large landowners who could afford to take a position in which property might be divided among several parties.⁵ To support this explanation, we might wish to look at Mishna Baba Batra 8:8 and 8:9 (see Appendix II) in which the Hillelites and the Shammaites argue about dividing an estate when it is unclear who the rightful heirs are. In each case the Hillelites (successors to the Pharisees) prevail in their decisions to prevent the division of land.

⁴ See Hastings, "Inheritance," in Encyclopedia of Religion and Ethics. Also see Louis Finkelstein, The Pharisees regarding Sadducean relationship to the Romans, p. 139.

⁵ Support for this position can be found in Finkelstein, p. 140; Zeev Falk, "Yerushat Ha-Bat v'ha-Almanah," p. 13-14.

Thirdly, it has been argued that the Pharisees wished to promote their belief in the world-to-come through this ruling. By emphasizing inheritance from the grave, whereby a granddaughter received her grandfather's estate through her deceased father, the Pharisees lent credence to their belief in the eternity of the soul and the world-to-come.⁶ (Such inheritance from the grave, as discussed in Chapter 2, was not recognized in the inheritance of a mother's estate.)

Fourthly, a more far-fetched reason may have been the Sadducean "anxiety to defend against the attacks of the Pharisees the validity of Herodian succession to the Hashmonean throne through Mariamne, the daughter of Alexander and granddaughter of Hyrcanus."⁷

The controversy between the two sects is not limited to this sugya. In Baba Batra 111a another apparent defender of daughters' inheritance rights is also summarily dismissed, despite several attempts to have his perspective justified and followed. This R. Zechariah b. Hakkazzab was also name-called and disparaged. The case in question concerned the inheritance of a mother's estate. Zechariah b. Hakkazzab apparently ruled that a son and a daughter would be equal recipients in this inheritance, as distinct from the son's precedence in taking a father's estate. (A son's right to his mother's estate is argued by a kal v'homer hermeneutic.) Three rabbis (to whom honor is due for their support of a daughter's inheritance rights) attempted to decide cases in accordance with R. Zechariah b. Hakkazzab, and all three were roundly ridiculed:

⁶ This idea was presented by Ephraim Urbach, The Halakhah: Its Sources and Development, and will be discussed more fully in Chapter 4.

⁷ Soncino notes to Baba Batra 116a; Finkelstein, p. 842 (note 66).

R. Nittai intended to decide a case in accordance with R. Zechariah b. Hakkazzab. Samuel said to him: In accordance with whom? In accordance with Zechariah? Zechariah is nothing.

R. Tabla decided a case in accordance with R. Zechariah b. Hakkazzab. R. Nahman said to him: What is this? He replied unto him: That which R. Hinena b. Shelemia said in the name of Rab, the halachah is in accordance with R. Zechariah b. Hakkazzab. He said to him: "Withdraw, or I shall pull R. Hinena b. Shelemia from your ears."

R. Huna b. Hiyya intended to decide a case in accordance with R. Zechariah b. Hakkazzab. R. Nahman said to him: "What is this?" He replied: "That which R. Huna said in the name of Rab, the halachah is in accordance with Zechariah b. Hakkazzab." [R. Nahman] said to him: "I will send to him." [R. Huna b. Hiyya] grew embarrassed. He said to him: "Now, had R. Huna been dead, you would have continued to oppose me." And whose opinion did he adopt? That of Rab and Samuel both of whom said: "The halachah is not in agreement with R. Zechariah b. Hakkazzab."⁸

Zechariah b. Hakkazzab was greatly abused by his colleagues for his position. In the Jerusalem Talmud three different Rabbis say, "The law is not in accord with R. Zechariah b. Hakkazzab," seemingly paralleling the three in the Babylonian Talmud who tried to try cases in his name. He is further demeaned as a Babylonian by a Palestinian Amora:

Said to them R. Aha: 'Our brethren abroad are mediocre, and they err in the law.'⁹

Zechariah's argument proves the illogic of the law regarding a mother's estate, but the established Rabbinic leadership dismissed him as a "nothing." The law regarding a father's estate was based on a fear

⁸ Baba Batra 111a (Hebrew text can be found in Appendix IV)

⁹ Yerushalmi Baba Batra 8:1; see Appendix IV for Hebrew text

of losing property to another tribe, but such reasoning cannot be applied to the mother's estate. The Rabbis provide no good reason for a daughter's inability to inherit it, but there are a number of good guesses. It has been suggested, for instance, that Zechariah's opinion was too close to the Sadducean, and that it was rejected for that reason. In his book The Pharisees, Louis Finkelstein suggests that Zechariah b. Hakkazzab was himself a patrician.¹⁰ Also, there may have been an attempt to distance Jewish law from the Roman or Greek on the subject of a mother's estate. Furthermore, it is possible that the sons won out again merely by default, due to the already strong tradition of male precedence in inheritance. This battle also demonstrates the Rabbis' authority to silence a minority or a threatening voice. They may have been afraid that giving the daughters even a small slice of the inheritance pie would have opened the door to further changes ("transgressions," in their mind) in inheritance law.

Where does this leave us in regard to R. Papa, another apparently ally of a daughter's right to inherit? In Baba Batra 110a-b, R. Papa debates Abaye on the meaning of the Biblical verse, Numbers 27:8: "If a man die, and have no son, then ye shall cause his inheritance to pass unto his daughter." This passage has always been read to mean that where there is a son, the son takes precedence. R. Papa suggests:

Might it not be inferred that if there be a son, the son is to be the heir; if there be a daughter, the daughter is to be the heir....if there be a son and a daughter, neither the one nor the other should inherit all, but both together should inherit.¹¹

¹⁰ Finkelstein, p. 142.

¹¹ Baba Batra 110a-b; see Appendix IV for Hebrew text

Unfortunately, Abaye remained unconvinced by R. Papa's argument, and this attempt to support a daughter's equality in inheritance failed, as well.

The inheritance rights of daughters surfaced as a polemical issue not only between Pharisee and Sadducee, but also between Jew and Christian. In Shabbat 116a-b, antagonisms rear between Old and New Testaments on the question of whether a daughter could inherit when there was a son.

Imma Shalom, R. Eliezer's wife, was R. Gamaliel's sister. Now a certain philosopher lived in his vicinity, and he bore a reputation that he did not accept bribes. They wished to expose him, so she brought him a golden lamp, went before him and said to him, "I desire that a share be given me in my father's estate." "Divide," ordered he. Said he (R. Gamaliel) to him, "It is decreed for us, 'Where there is a son, a daughter does not inherit.'" "Since the day that you were exiled from your land the Law of Moses has been taken away and another book given, wherein it is written, 'A son and a daughter inherit equally.'" The next day, he (R. Gamaliel) brought him a Lybian ass. Said he to them, "Look at the end of the book wherein it is written, 'I came not to destroy the Law of Moses nor to add to the Law of Moses,' (Matthew 5:17) and it is written therein, 'A daughter does not inherit where there is a son.'" Said she to him, "Let thy light shine forth like a lamp." Said R. Gamaliel to him, "An ass came and knocked the lamp over."¹²

Though there is apparently no actual reference in the New Testament suggesting that daughters and sons inherit equally, words to that effect are put in the philosopher's mouth. Perhaps it is upon this philosopher that the Yerushalmi Baba Batra 8:1 meant to level its disdain: "The sages of gentiles say, 'The son and daughter are equal.'" Because the Jews would naturally wish to distance themselves as much

¹² Shabbat 116a-b; see Appendix IV for Hebrew text

as possible from the practices of the Christians, I consider this interchange "a cheap shot," which is arguably even more far-reaching and harmful to the cause of daughters' inheritance rights than the Pharisaic victory had been. I hold this opinion not only because the battle-lines are drawn between Jew and Christian (in which case the claim on behalf of a daughter's equality is bound to lose because it was painted as "other"), but also because this passage refers to all of inheritance law, not just to a particular case like that of inheriting from the grave (the Pharisee/Sadducee debate) or that of a mother's estate (the Zechariah b. Hakkazzab argument). While this is an aggadic passage rather than a halachic one, it nonetheless serves as an important source of information regarding the depth of emotion invested in this issue of a daughter's inheritance rights, or lack thereof. R. Gamaliel's ridicule of the philosopher recalls the ridicule of Zechariah b. Hakkazzab, above, and makes a mockery of egalitarianism, as we have come to know it in our times. In these often heated discussions about a daughter's inheritance rights, rivalries between Pharisee and Sadducee, Palestinian and Babylonian, and Jew and Christian are exposed. The subject was a very political one which apparently greatly threatened the power elite, who were afraid of change and the undermining of laws which they held inviolable.

CHAPTER 4

Wills and Gifts: Dispositions in Contemplation of Death

The "heroes" of Chapter 3, R. Papa or Zechariah b. Hakkazzab, may not have succeeded in improving a daughter's lot in Jewish inheritance law, but other changes took place which surely affected a daughter's potential gain in her father's estate. These changes had to do with dispositions in contemplation of death, specifically gifts (which might take effect immediately upon testamentary statement to that effect) and wills (later called "a gift of a dying man"), which would take effect after death, and therefore occur at the same time as the normal laws of inheritance.

By its very definition, a will designates one's heirs and what they will inherit. Because the Rabbis considered these to be prescribed and apparent facts, delineated by the laws of succession as derived from Numbers 27:9-11 and Deuteronomy 21:16-17 and later codified in the Mishna, a provision for wills belatedly entered Jewish law. We therefore have the opportunity to witness in the literature the evolutionary changes to this institution. The influence of Greek and Roman law undoubtedly had a significant effect on the introduction of wills to Judaism; in fact, the Greek word diateke (διαθήκη) was the only one originally known to denote "will".

The Rabbis' initial resistance to wills went hand-in-hand with their conservatism regarding inheritance. Their disdain for any transgression of inheritance law was often specifically levied against those who willed or gifted property to others than legal heirs. Such

disdain for those who transgressed the Biblical law of inheritance manifests itself in various forms in the literature. The gentlest expression of this disapproval recurs with the phrase lo amar klum she-hitneh al mah she-katuv ba-torah ("one who stipulates against what is written in Torah has said nothing"). This phrasing is used, for instance, in Mishna Baba Batra 8:5:

If one say, "My son so-and-so, that is the firstborn, shall not take a double portion," or "My son so-and-so shall not inherit with his brothers," he has said nothing, because he has made a condition contrary to what is written in the Law.....If one say, "So-and-so shall inherit from me", when there is a daughter, or, "My daughter shall inherit from me," when there is a son, he has said nothing, since he has made a provision contrary to what is written in the Law.¹

A harsher criticism is offered by another phrase, repeated later in the same mishna: "the spirit of the sages finds no pleasure in him." This expression was used to express displeasure concerning a man who gave his estate to strangers and disregarded his children. While giving such gifts was deemed legal ("what is done is done"), it was, nonetheless, discouraged.

One notable exception to this general discouragement was the stance taken by R. Simeon b. Gamaliel, who supported disinheritance of certain legal heirs. He said: "If his children did not conduct themselves in a proper manner he will be remembered for good." In a response in the gemara to R. Simeon b. Gamaliel's mishnaic statement, Samuel said to Rab Judah:

"You sharp-toothed one, keep away from transfers of inheritance even from a bad son to a good son, much more from a son to a daughter."²

¹ See Appendix V for full Hebrew text.

² Baba Batra 133b. See Appendix V for Hebrew text.

Apparently, a bad son was still preferable to a daughter vis-a-vis inheritance (likewise was an illegitimate son still considered a legitimate heir). In Ketubot 53a, Samuel's quote is repeated with an added rationalization for granting inheritance to a bad son: "because one never knows what issue might come forth from him."³ Here, the hope for worthy grandchildren to carry on the family legacy was an emotional bribe to keep inheritance law intact. This so-called emotional bribe was successfully used in Nedarim 48b:

A certain man had a son who used to carry off bundles of flax. Thereupon his father forbade his property to him. "But," said others to him, "What if the son of your son is a scholar?" He replied, "Let him acquire it, and if my grandson be a scholar, it shall be his."⁴

On the other side of the coin was the fear of sons that they might be disinherited if they behaved badly towards their fathers. The possibility of disinheritance therefore may have served as a deterrent to rebellious or ungrateful sons and as a means of instilling a sense of kibud av. In Sifre Deuteronomy, for instance, the following parable is related:

A person was standing and deprecating his father in the market. The listeners said to him, "Idiot, who are you deprecating? Your father? Listen, he has put much effort and toil into your upbringing that if you have not hitherto honored him, you should start now, so that he should not write all his possessions to another."⁵

³ See Appendix V for Hebrew text.

⁴ See Appendix V for Hebrew text.

⁵ Sifre Deuteronomy, Section 309, p. 348, translation cited in Urbach, p. 225.

The Rabbis, however, did not seem to support disinheritance. Simeon b. Gamaliel apparently got no official support for his opinion regarding the disinheritance of children. There are, however, scattered aggadic references in Rabbinic literature to such disinheritance, including the well-known stories of Rabbi Akiba's wife and the story of Eliezer ben Hyrcanus' father disinheriting him until he came to appreciate his son's scholarship.⁶ In each case, however, the parent ultimately reinstated the child as an heir, in accordance with Jewish law.

The illegal transfer of inheritance from sons to daughters was, characteristically, considered a disinheritance of sons, as opposed to a provision to redress the concerns of daughters. Samuel's vehement opposition to such a transfer was echoed by R. Johanan in the name of R. Simeon b. Yohai:

The Holy One, blessed be He, is filled with wrath against anyone who does not leave a son to be his heir, for it is said, "And you shall cause his inheritance to pass unto his daughter" (Numbers 27:8), and by the expression of *העברה* ("causing to pass"), *עברה* ("wrath") is implied, for it is said, "That day is a day of wrath!" (Zeph. 1:15)⁷

There were apparently some who could not tolerate even the modicum of lenience allowing daughters to inherit where there were no sons. Commenting on the same passage in Numbers, R. Ishmael noted yet another interpretation for "you shall cause to pass":

⁶ In the case of R. Akiba's wife, found in Nedarim 50a, we must assume that she was either an only child or a daughter among other daughters to have merited the status of heir in the first place.

⁷ Baba Batra 141a. Hebrew text can be found in Appendix V.

Scripture has treated this particular case of inheritance differently from all other matters of inheritance which are listed in the Torah. For in the case of all the others, it is written, "And you shall give," while in this case it is written, "You shall cause to pass." It is passing from the normal course of the law for the daughter to inherit.⁸

While the Rabbis never explicitly focused on the fact that the Biblical inheritance law was declared as a hukat mishpat, a hok being one of those unquestioned and inexplicable laws like that of kashrut, we must assume that it provided a crucial part of the subtext to their restraint in tampering with inheritance law as it affected daughters. In his Hilchot Nahalot, Maimonides certainly noted the relevance of the appellation hukat mishpat:

One cannot cause his estate to descend to someone who is not potentially his heir; nor can he deprive the heir of the inheritance even though this is a money matter. For it says in the scriptural section dealing with inheritance, "And it shall be unto the children of Israel a hukat mishpat" (Numbers 27:11); that is to say, this statute cannot be altered and no stipulation can affect it. Whether he gives instructions whilst healthy or whilst on his death-bed, whether orally or in writing, they are not valid.⁹

Mamon

As was mentioned earlier, the Rabbis considered stipulations which contradicted Torah law to be void. Variations on the formula kol ha-matneh al mah she-katuv ba-torah are found in several places in Rabbinic literature to enforce boundaries of halachic development and innovation. It was used, as stated earlier, to nullify a father's denial of a double portion to his firstborn son, his disinheritance of a

⁸Yerushalmi Baba Batra 8:1. This Hebrew text was included in Appendix IV.

⁹Maimonides, Mishneh Torah, Hilchot Nahalot, 6:1

son, or his improper designation of a daughter as heir.¹⁰ Additionally, the formulaic statement kol ha-matneh was used in reference to a husband's stipulating his intention to withhold food, clothing, or conjugal rights from his wife, for these were considered Toraitic injunctions essential to her ketubah.¹¹ Likewise, a husband who renounced his rights to his wife's estate would nonetheless inherit it upon her death, since he would still be her legal heir according to Torah law.¹²

The phrase "Whoever makes a stipulation against what is written in the Torah, his stipulation is void" is repeated in various other circumstances, as well: one may not make a condition claiming that the Sabbatical year will not cancel his debt;¹³ one may not declare oneself to be a nazirite on condition that he may drink wine or have contact with the dead;¹⁴ and one may not make a condition before a woman's marriage that she be exempted from a potential levirate marriage, nor may she enter into levirate marriage with one to whom she is forbidden.¹⁵ In cases involving contracts between husbands and wives (such as a husband renouncing his claim on his wife's estate or a wife renouncing her ketubah rights to food, clothing, or conjugal relations), the belief that freedom of contract might be allowed was possibly impelled by the example of Mishna Baba Metzia 7:10-11 and Baba Metzia 94a in which the prescribed Toraitic laws regarding bailee culpability could be changed if the parties agreed.

¹⁰ Mishna Baba Batra 8:5

¹¹ Gittin 84b; Ketubot 56a-b; Kiddushin 19b; Yerushalmi Kiddushin 1:2

¹² Mishna Ketubot 9:1; Yerushalmi Ketubot 9:1; Tosefta Ketubot 9:2; Yerushalmi Baba Batra 8:5

¹³ Makkot 3b

¹⁴ Nazir 11a; Tosefta Nezirut 2:2

¹⁵ Tosefta Kiddushin 3:7; Yerushalmi Gittin 9:1; Tosefta Gittin 7:1

Perhaps the example set by Baba Metzia paved the way to another Rabbinic exception to kol ha-matneh. For as uncompromising as the Rabbis seemed to be on the subject of stipulations contrary to Torah law, there came to be a condition under which Torah law could, in fact, be circumvented. This condition, in the name of R. Judah, could be invoked in the event that the Torah law in question concerned a "monetary matter" (mamon), as alluded to by Maimonides in the passage above. R. Judah, therefore, considered a wife's ketubah to be a matter of mamon, wherein she could renounce her rights to food and clothing.¹⁶ He was bitterly opposed by R. Meir on this issue, but his became the accepted view.

Such a division between religious and civil matters, wherein it was clear what was and what was not a matter of mamon, was not easily applied to inheritance law. It has already been well demonstrated how conservative the Rabbis were in this sphere of Jewish law, and they were consequently none too anxious to deem inheritance law a civil matter whose Toraitic injunctions could be overturned on the basis of the mamon principle. One would think that a son could pronounce his intention to share his inheritance with his sister, or could renounce his rights to a double portion, just as a wife could renounce her rights to her ketubah, but there is no indication in the literature that that such a stipulation would have been valid.¹⁷ This is despite the fact that in Baba Batra 113b, the Rabbis themselves admit that inheritance law is, indeed, a civil matter!

¹⁶ Ketubot 56a; Baba Batra 126b; Baba Metzia 94a

¹⁷ In Baba Batra 126b we learn that a father may not stipulate that his son won't get a double portion, but we are not given a case of a son's own renunciation.

It is none other than R. Judah, the creator of the mamon principle, who cites a case to support this position:

"And it shall be unto the children of Israel a hukat mishpat," the whole section has been proclaimed to be judicial. And in accordance with Rab Judah who said: Three persons who came to visit a sick man may, if they wish, write down [his instructions with reference to the disposal of his estate or], if they prefer it, give judgment. Two may write down but may not give judgment.

Just as it was difficult for the Rabbis to categorize daughters within this system, inheritance law itself was not easily categorized as either religious or civil law. It was primarily viewed as sacred, untouchable territory, and yet it certainly had its "mundane," financial aspects which caused it to resemble civil law.

As will be discussed in the following pages, as the laws of wills and gifts became more entrenched in Jewish law, inheritance law lost some of its religious flavor and became much more aligned with civil property law. The issue of mamon therefore becomes a more relevant one, which cannot be so easily dismissed on the basis of the so-called religious basis of inheritance law. Indeed, while Maimonides remained strictly aligned with the Rabbis' conservative reading of inheritance law and of the inapplicability of the mamon principle to it, both the Shulhan Arukh and the Tur were more lenient interpreters of the law and followed R. Judah's opinion in respect to all financial matters.

Dina d'Malchuta Dina

When it was applied, the concept of dina d'malchuta dina, (the law of the land is the law), meant that a particular law would be

obeyed by Jews as the law of the land, and therefore as Jewish religious law.¹⁸ It was decided that this concept could be applied only to fiscal matters such as taxes, in which the government had an interest, but could not be applied to civil law between two Jews, since such an allowance would lead to the dissolution of the entire Jewish civil law. While there were some leniencies allowed in the application of dina d'malchuta dina, all commentators seem to agree that it could not be applied to the law of inheritance. It is therefore a concept, like that of mamon, which demonstrates the seeming immutability of the inheritance law, an immutability which is, ironically, belied by the innovation of wills and gifts.¹⁹

The Introduction of Wills and Gifts in Contemplation of Death

Despite the apparent severity of the law in regard to inheritance and the Rabbis' various posturings to express their dismay at any changes to this law, changes nonetheless did occur. While the inheritance law itself remained intact, the appearance of wills and gifts in contemplation of death meant that the legal heirs could stand to lose their previous exclusive claim on their father's estate. In effect, the law now provided for the possibility of a total undermining of the intent of inheritance law in that all or part of the estate could be gifted or willed to others than the legal heirs. As Reuven Yaron states in his study of this subject, "Evidently a man is able to pass over his descendants completely. From one extreme -- a detailed law of

¹⁸ The main sources of this dictum are to be found in Baba Kama 113a, Nedarim 28a, Baba Batra 54b and 55a, and Gittin 10b.

¹⁹ For further discussion of dina d'malchuta dina, see I. Grunfeld, The Jewish Law of Inheritance, chapter 2, and the article "Dina d'malchuta dina" in The Encyclopedia Judaica

succession, any deviation from which was impossible -- the law has swung to the other."²⁰

A strict reading of Torah law would allow only for legal heirs to inherit according to prescribed rules of division: all sons would divide the estate equally, with the firstborn son getting a double portion. If there were only daughters, they would divide the estate equally. This form of division might be referred to as "passive" inheritance, as it occurred without any particular action on the part of the property owner. "Active" inheritance, on the other hand, was the next stage in the law, and is demonstrated in Mishna Baba Batra 8:5, wherein one could give one legal heir more than another legal heir, if -- and only if -- the contract were stated in the form of a gift, rather than in the form of inheritance. Yet, a third variation on the law was testamentary succession, wherein one could gift even to non-heirs.²¹

As we shall see, the Rabbis did not readily reconcile these changes with their unwavering commitment to the prescribed laws of succession. Yet, having made a sea-change, they even went so far as to allow deception in the exclusion of proper heirs, as is apparent from the following baraita:

He who was writing a will and was afraid of the heirs,
[the scribe and the witnesses] go to visit him like
ordinary visitors and hear what he has to say inside,
then they go out and write the will outside.²²

Before the Rabbis even considered legalizing wills or gifts to improper heirs, there already existed a Tannaitic opinion which

²⁰ Reuven Yaron, Gifts in Contemplation of Death in Jewish and Roman Law, p. 39.

²¹ The notion of active versus passive yerushah was presented by Isaac Herzog, The Main Institutions of Jewish Law, Vol. I, p. 297.

²² Tosefta Baba Batra 8:8 (See Appendix V for Hebrew text)

allowed a man to gift more of his estate to one legal heir over another. In Mishna Baba Batra 8:5, the usage of the phrase "one who stipulates against what is written in Torah has said nothing" is applied to four different circumstances: not giving a double portion to the firstborn son, disinheriting a son, bequeathing one's estate to an illegal heir when there was a daughter, or bequeathing the estate to a daughter when there was a son. However, in this same mishna, it is stated:

If one dispose of his estate to his sons by word of mouth, and gave more to one son and apportioned less to another, or made the firstborn alike with them, his words are valid; but if he said, "by inheritance," he has said nothing. If he wrote either in the beginning, or in the middle, or at the end, "as a gift," his words are valid.²³

Already in the mishna, then, the ground was paved for a circumvention of Jewish inheritance law through the provision of gifts, either verbally or in writing, when the disposition was clearly stated to be a gift. (If one said "inherit," even by mistake, it was considered an invalid testament.) It was also possible at this stage to deed one's property to others and to pass over one's children, but, as stated earlier, the one who did so did not merit "the pleasure of the Sages." Also noted in this mishna is the statement of Johanan ben Baroka regarding provisions contrary to Torah law:

If he said it concerning one qualified to inherit from him, his words are valid, but if concerning one not qualified to be his heir, his words are not valid.

We find in the gemara various attempts to interpret Johanan ben Baroka's statement. Was it merely a repetition of what had already been stated beforehand regarding gifts, or was he adding a new

²³ Mishna Baba Batra 8:5 can be found in Appendix V in the Hebrew.

element to the discussion? If the latter, does "one qualified to inherit him" include potential heirs (such as daughters, grandchildren, brothers, etc.)? Was there perhaps a redactional error, and was he responding, then, to the statement which followed, rather than preceded, his own?

If one deed his property to others and passed over his children, what he has done is done, but the Sages find no pleasure in him.

While the halachah is in agreement with Johanan ben Baroka,²⁴ the Rabbis merely understood him to be restating the obvious in the mishna: that his statement "applies only in a case in which the man spoke of one son among others, or one daughter among others".²⁵ I therefore prefer to think that he was, in fact, responding to the later statement regarding the possibility of non-heirs inheriting. If I am correct in this assessment, his position was quite radical: Johanan ben Baroka was putting on record that he preferred to see potential heirs (including daughters) as heirs than to see strangers who would never possibly be in the line of succession be the recipients of an estate.

Possible Reasons for the Acceptance of Wills

Yaron estimates the adaptation of wills to a Jewish context to have taken place around 100 B.C.E., basing his estimate on the fact that Ben Sira (writing around 200 B.C.E.) did not know of such a development, that the early Hasmoneans would have been hostile to such foreign influences, and yet that the word diateke, which comes down to us in the Tannaitic literature is Greek, evidencing a Hellenistic institution that was new to Jewish law. He further conjectures that the

²⁴ Baba Batra 130a

²⁵ Yerushalmi Ketubot 4:11

"accumulation of wealth and the consequently ever stronger desire of property-owners to be given a free hand in disposing of it in contemplation of death" in addition to "growing contact with the Hellenistic world, in which wills and gifts in contemplation of death were long established" were important factors in establishing this new practice. Notably, he also considers the desire to provide for one's daughters and widow to be an important factor in the acceptance of these new provisions, as well.²⁶

Furthermore, the injection of a moral notion is found in the literature: that a dead man's request should be fulfilled as a religious duty.²⁷ Kavod ha-met -- deemed one of the highest of Jewish values because one acts on behalf of another without expectation of reward in return -- was gaining in importance. The obligation to fulfill a dead man's request was expressed, for instance, in the following passage:

A dying man once instructed those around him that a palm tree shall be given to his daughter, but the orphans proceeded to divide the estate and gave her no palm tree...They must give her a palm tree and divide the estate all over again.²⁸

According to Urbach, the formulation of the concept of the world-to-come and the desire to be rewarded in the next world also played a role in the changes regarding wills. He points out that the laws of inheritance in Greece and Rome were fixed by cultic considerations, and suggests that the same was true of Jewish law.²⁹

²⁶ Yaron, pp. 18-19.

²⁷ Gittin 14b-15a

²⁸ Ketubot 109b

²⁹ Urbach, p. 229.

As was already established in Chapter 1, the notion on which the ancient laws of inheritance were based was the perpetuation of the deceased's name on his property. This idea was connected, Urbach claims, with the Biblical view of reward and punishment in which the reward or punishment due an individual was expressed by the continuity of his life on earth (e.g. the perpetuation of his name through his property).³⁰

In the century prior to the destruction of the Temple, however, the notion of reward and punishment after death was introduced by the Pharisees. The Jew now aspired to a portion in the world-to-come rather than to perpetuation in this world. As a result, concepts of inheritance and ancestral holdings were now applied to life in the world-to-come.

Future reward now assumed its place at the side of reward in this world as is clear from the mishna: "The disciples of Abraham our father enjoy this world and inherit the world to come, as it is written, 'That I may cause those that love Me to inherit substance and that I may fill their treasures' (Proverbs 8:21)," and the promise that "a person would inherit two worlds - this world and the world to come" - continued to be a motif in exhortations to observe the Lord's commandments.... Achievement of a portion in the world-to-come did not depend on the perpetuation of one's name on his ancestral property but on his earthly deeds by which he could merit such a portion."³¹

Additionally, an ascetic movement after the destruction of the Temple began preaching renunciation of ownership and in connection with the doctrine of martyrdom, there was little room left for a positive view of life in this world. Interestingly, Urbach notes that because people wanted to "store up wealth in the world-to-come,"

³⁰ Urbach, p. 228.

³¹ Urbach, p. 229-230.

there was an increased tendency to distribute all their wealth to zedakah. A special takkanah had to be introduced to limit one's charitable distributions to one-fifth of his belongings.

This "religious" interpretation of the changes in inheritance laws does not preclude historical causes as well. Indeed, the original fixed order of inheritance had become economically untenable: due to continued divisions in the ancestral holdings, the parcels of land held by farmers became so small that working them was hardly economically viable. But Urbach emphasizes that despite changes in the tribal nature of Jewish society and despite the economic problems involved, it was primarily the development of the theory of reward and punishment which deprived the original laws of inheritance of their significance. Consequently, early Rabbinic law heralded three major developments in the inheritance laws: the institution of a will, the ability of a female heir to marry whomever she so chose (not just a "kinsman"), and the possibility of disinheriting a son.

An additional theological reason for the changing attitude toward Jewish inheritance law was surely the dissolution of the Jubilee laws and the notion now of private property. The Biblical value that the land belonged to God and was merely on loan to us here on earth probably played a lesser role in Jewish notions of property. Therefore, the concept of a world-to-come as it touched upon inheritance possibly filled a theological void in relation to property ownership and distribution.

While Urbach placed a great emphasis on theology in explaining the new changes in Jewish law regarding gifts and wills, others saw more mundane reasons for the changes. Zeitlin believed that gifts and wills came into being to circumvent primogeniture, whereby a

father could divide property equally among his sons.²⁰ His was certainly a more conservative reading of the socio-historical factors leading to such a change than was Yaron's assertion that the "unsatisfactory state of the law of succession, as far as daughters and widows were concerned" was a reason.²¹ Though such changes did serve to advance the financial and social standing of women, I found no direct statements to the effect that these changes were devised with that purpose in mind. Rather, the implication was that the changes were made for the benefit or peace-of-mind of the testator himself.

Diateke, Matanah, Matanat Shekhiv Mera, and Matanat Bari

The term diateke, meaning "will," is found primarily in Tannaitic texts and refers to a written disposition in contemplation of death. In the literature, it was often compared and contrasted with the institution of simple gifts, or matanot. Post-tannaitic literature used this general term diateke more sparingly, differentiating the type of disposition more specifically on the basis of the testator's state of health: shekhiv mera (one lying on his deathbed) or bari (a healthy person). It is helpful to think of the institutions of will (diateke) and gift (matanah) to be the first phase of the evolutionary change in Jewish law regarding testamentary succession. In the second phase, diateke came to be known as matanat shekhiv mera and a simple gift came to be known as matanat bari.

Testamentary succession, whereby a property owner could divide his estate as he wished as long as he worded his testament properly, is a general term for the provisions of will/matanat shekhiv mera and

²⁰ Solomon Zeitlin, "Testamentary Succession," p. 581.

²¹ Yaron, p. 18.

gift matanat bari. Under what circumstances the property was transferred and acquired was emphasized in the law, which shifted the concerns of inheritance law to those of property law. Following are some of the ground-rules for a proper dispensation of property:

(1) the testament of a shekhiv mera should be verbal; the testament of a bari should be written down;

(2) if the testament of a shekhiv mera is written down, it is considered a matanat bari. Consequently, for the gift to be valid as a matanat bari, the dying man must have retained some property for himself (as if he expected to recover from his illness);¹²

(3) a gift/matanat bari takes effect immediately, whereas a diateke matanat shekhiv mera takes effect only after the shekhiv mera dies;

(4) the shekhiv mera must have forfeited control of his estate, proving that he expected to die;

(5) a matanat shekhiv mera is retractable, but a matanat bari is not;¹³

(6) the shekhiv mera must die of the illness in question for his testament to be valid, and his gift must be fully defined;

(7) the testaments, whether oral or written, must not use any phrasing that indicates "inheritance." However, if one used wording that included both "inherit" and "gift," it is deemed valid.

R. Eleazar's minority opinion expressed in Mishna Baba Batra 9:7 was that the verbal instruction of a shekhiv mera was no more legal than that of a bari, and that certain modes of acquisition were necessary depending on whether the gifted property was movable or immovable. Therefore, he deemed the following case regarding a mother's matanat shekhiv mera to her daughter to be illegal:

¹² Mishna Baba Batra 9:6

¹³ Mishna Baba Batra 8:6, 8:7, 9:6; Tosefta Baba Batra 8:10; Baba Batra 135b; Yerushalmi Peah 3:9; Baba Metzia 19

[The Sages] said to [Eleazar]: "The mother of the sons of Rokhel once fell ill, and she said, 'Let my brooch which is worth twelve maneh be given to my daughter,' and when she died, her instructions were carried out." [Eleazar] replied to them: "The sons of Rokhel, may their mother bury them!"

It is not clear whether R. Eleazar's disdain for the sons is due to his interpretation of an improper mode of acquisition, or whether the fact that a daughter received a gift -- which would otherwise have gone to the sons -- incited his anger. This case was reviewed by the Sages again in Gittin 14b-15a, wherein it becomes evident that R. Eleazar was not alone in his opinion that the sons had acted improperly by giving their sister the brooch. In this setting, in fact, we are informed that R. Nathan and R. Jacob also held with R. Eleazar, "that although the owner dies we do not say that it is a religious duty to carry out his wishes." It is hard to imagine that their disavowal of a heretofore highly-touted Rabbinic injunction to carry out a dead person's request was not somehow related to the fact that this case concerned a daughter, or a mother and a daughter. Nonetheless, through this story we are able to ascertain both that a woman can be a shekhiv mera and that a daughter, where the proper protocol is followed, may be the recipient of such a gift.

Yet my skepticism about the Rabbis' true intentions vis-a-vis the role of daughters remains, even in the case of gifting.

Once a certain person said, "My estate to my sons."
He had a son and a daughter. Do people call a son
"sons? Perhaps, they do not call a son "sons" and his
intention was to include his daughter in the gift?"

²⁴ Mishna Baba Batra 9:7

²⁵ Baba Batra 143b

While the possibility that the father may have meant to include his daughter was forwarded, the Rabbis ultimately dashed this possibility. For what follows the text above are two biblical prooftexts in which banim mean "sons" and not the more inclusive "children".

In another passage, the gift of a dying man is compared with the right of daughters to inherit where there are no sons, as originally expressed in Numbers 27:8:

R. Zera said in the name of Rab: Whence that the matanat shekhiv mera is loraitic? For it is said, "Then you shall cause his inheritance to pass unto his daughter" implying that there exists another transfer which is like this one. And which is it? It is the gift of a dying man.³⁹

While it seems possible that the two are compared because neither requires a symbolic acquisition,⁴⁰ what is most striking is that matanat shekhiv mera and legal succession are being compared at all, meaning that for all their nay saying about the undermining of legal succession, the Rabbis knew very well that testamentary succession was an important and necessary supplement to laws of verushah.

Nonetheless, the Rabbis had certain reservations about gifting one's property during one's lifetime (matanat bari), as opposed to its being distributed after one's death (matanat shekhiv mera). The following two passages shed light on one potential problem:

Three vent their grievances at the law and are not answered: he who has money and lends it without witnesses; he who acquires a master for himself; and a henpecked husband. What is meant by "he who acquires a master for himself"? Some say: He who attributes his wealth to a Gentile; others: He who transfers his property to his children in his lifetime....⁴⁰

³⁹ Baba Batra 147a

⁴⁰ See Soncino commentary to this passage

⁴⁰ Baba Metzia 75b

Come and hear: R. Hanina and R. Jonathan were once standing together when a man approached them and bending down, kissed R. Jonathan upon his foot. "What is this?" said R. Hanina to [R. Jonathan]. The other replied: "This man assigned his estate to his sons in writing and I compelled them to maintain him."¹

We cannot determine how justified such fear of greedy, ungrateful children may have been. What these passages do indicate, however, is that transference of property before death was practiced. Therefore, we can also assume that daughters were often the recipients of this property, therefore making it possible for a father to circumvent the exclusionary laws of succession that would otherwise actuate upon his death.

The Shetar Hatzi Zakhar

Though these testamentary laws ultimately served a daughter's interests, they were not created with her needs in mind. In fact, the few passages cited which concern gifting to daughters indicate that the Rabbis were still none-too-keen on granting her much slack. A much more significant change in favor of daughters came in medieval Jewish law with the testamentary provision of shetar hatzi zakhar ("deed of half the male share"), in which a daughter was granted half of a son's portion. References to this document are found in the Rema's (Moses Isserles) gloss to the Shulhan Arukh. While she still did not receive a portion equal to her brothers' under this new provision in the law, there no longer seemed to be the condemnation attached to her being like an heir. In Hoshen Mishpat, for instance, we learn that the daughter's right to her father's estate under the shetar "is like general inheritance rules," meaning she

¹ Ketubot 49b-50a

would share both the rights and the disabilities which her brothers would encounter in taking their inheritance. However, she would be subject to one additional disadvantage unlike that of her brothers

The one who writes to his daughter that she will take after his death like half a male's share, it follows a rule like general inheritance rules. Therefore, a creditor or a ketubah precede to this gift, and the same rule applies to her dowry. As long as the giver is alive he can sell the estate even though he wrote to her "from today and after death." And the daughter cannot take anything but the property that he had when he gave it, and not afterwards, since one cannot transfer something that had not yet come into the world.⁴²

Apparent from this text is the fact that a creditor or the mother's ketubah take priority to this shetar, just as they would to inheritance. (We may recall here Admon's objection in Mishna Baba Batra 8:5 to a daughter's lien on her father's estate for her maintenance needs, which potentially made beggars of her brothers if the estate were small.) Additionally, the daughter's dowry (which amounted to no more than ten percent of the estate) took precedence to this shetar hatzi zakhar if the estate were not large enough to support both expenditures. If this were the case, we may therefore assume that neither would there be enough in the estate for sons to take their inheritance. However, one additional disability which the daughters would encounter with this shetar, which their brothers would not, concerns the proceeds in any appreciation of the estate. Because inheritance laws devolve upon the father's death, anything in the estate at that time -- and anything due the estate -- was potentially

⁴² Shulhan Arukh, Hoshen Mishpat, 281:7 (Rema). See Appendix V for Hebrew text.

inheritance for the sons, once all debts had been paid. Because it was written before death, however, the shetar hatzi zakhar apparently could include only what existed in the estate at the time the deed was written. Therefore, the daughter would not benefit from any appreciation in the value of the estate in the period after the deed was written.

This same point was understood differently by the Rema elsewhere, however. In Eben Ha-ezer, he stated:

Since the [shetar hatzi zakhar] is written to [the daughters] by way of an admission of debt in which the father owes them a certain amount, he cannot fulfill his obligation until he gives to them as he would to the males. In this way, he can transfer to them even what is not yet in his possession, that is, debts destined to be paid to him or which he already has in his possession."

Because this shetar hatzi zakhar was a new provision created by the medievalists, different customs relating to it were apparently being practiced.

In another section of Eben Ha-ezer, the Rema states that a daughter who remained childless would not be entitled to her shetar, and it seems that this document was given to her at the time of her marriage.⁴⁴ Therefore, for all of its improvements over Rabbinic law, the shetar hatzi zakhar still remained an inadequate substitute for a son's inheritance. To our modern egalitarian sensibilities, a daughter should not be penalized by her father for remaining unmarried and/or childless, for reasons including modern understandings of

⁴⁴ Shulhan Arukh, Eben ha-Ezer, 108:3 (Rema) See Appendix V for Hebrew text.

⁴⁵ Eben ha-Ezer 89:1

alternative lifestyles and of infertility, in addition to the fact that such restrictions were not placed on the son's right to his inheritance. The question about a daughter's share in unrealized property remains problematic, as does the implication in the very name of this document: her portion is only half a male's share.

CONCLUSION

This study of daughters and Jewish inheritance law had to cover a lot of material, both Biblical and Rabbinic, to make itself understood. Not only did we need to have a grounding in inheritance law as it affected both daughters and sons, but we also had to learn about some of a father's legal responsibilities to his children, as well as some of the customs of marriage, including dowry and two clauses in a ketubah known as ketubat benin dikrin and ketubat benin nukbin. Dowry was apparently used as a substitute for inheritance for a daughter, and the ketubat benan nukbin provided for a minor or unmarried daughter's maintenance if her father died, maintenance being another provision which the Rabbis compared and contrasted with inheritance. Furthermore, we got some theology lessons on the sacredness of family property and the Pharisaic belief in the world-to-come, which seem to have affected perceptions of one's property and changes in testamentary inheritance law. We had to learn a little bit about property law in order to understand what was meant by movables and immovables, and modes of acquisition. We also received a political education, seeing some of the polemics in the debate on daughters in inheritance law, in which name-calling and ridicule between different groups -- Pharisee and Sadducee, Jew and Christian, and even Palestinian and Babylonian Jew -- made clear how deeply entrenched were the "believers" in the rightness of their cause, so that any attempt to change the law was rejected out-of-hand. We learned about two principles, one called mamon which allows for a circumvention of Torah law if applied to a civil money matter, and one called dina d'malchuta dina ("the law of the land is law"), neither of

which were applicable to inheritance law, which further proved inheritance law to be one of the most conservative sectors of Jewish law. Ultimately, we took a look at dispositions in contemplation of death and saw how the introduction of testamentary succession dramatically changed the nature of inheritance law, making way for a total overthrow of the preexisting system of intestate inheritance law.

Much of my criticism of the so-called accommodations made to a daughter concerned their inability to compensate for her sense of loss when her father (or mother) died. I believe that inheritance, delivered after the death of a parent or loved one, has the potential to serve as a source of comfort for the mourners. Was only her brother's grief to be assuaged at that time of deepest grief? As the "true" heir, he was the one who apparently was reckoned closer kin. (This sense of son as "closer kin" also rings true when we consider the fact that it was the son's, not the daughter's, responsibility to recite mourner's kaddish for the parent.) While he may not have been closer emotionally-speaking, he nonetheless reaped the benefits.

In a midrash on Genesis 24:11, we are taught that God performed an act of nihum avelim by blessing Isaac after Abraham's death. Having previously argued that land originally was not personal, but divine, and that personal family property, by extension, came to be considered sacred, I venture to say that a son's inheritance in his father's estate was tantamount to God blessing him. He was seen as closer kin not only to his father, but to God, as well.

With the introduction of gifts and wills, a major change had taken place in Jewish inheritance law. Matanat shekhiv mera, especially, brought with it the possibility that a daughter would

receive a gift after her father had died (as opposed to dowry which, even when given after his death, was tied to the rite of marriage -- presumably a celebratory event -- and not to the rite of death). Such testamentary dispositions allowed for an institutionalization of shetar hatzi zakhar in the Middle Ages, wherein a daughter would be entitled to half a male's share after her father's death.

My concern, as evidenced throughout this thesis, has been the lack of consciousness on the part of the Rabbis that inheritance is not just a legal matter, but a deeply emotional matter as well, having deep spiritual and psychological meaning. Money is fraught with deep emotion, and I can't imagine that it is only us moderns who have emotional issues about money. According to Mishna Avot 5:10, it is only the pious who say, "Mine is yours and yours is yours." Unfortunately, too few of us are pious. Money has a symbolic meaning for people beyond its literal one, and this symbolic meaning, if acknowledged at all, is too often belittled. Yet, depending on one's family history and individual psyche, money can serve as a symbol of security, autonomy, power, or self-worth. Therefore, parting with money or inheriting it can be fraught with a myriad of emotions. Compound money neurosis with death, and I daresay we have a maelstrom of flying emotion. (I can picture a great Woody Allen routine on this topic!)

Yet, as I mentioned in the Introduction, the Jewish literature on death (even contemporary studies) does not give heed to inheritance, and, on the other hand, the legal texts on inheritance are devoid of most any reference to death, or grief, or difficult family situations in dividing an estate, or stories about what one does after receiving such an estate. While the Talmud does discuss how to divide the estate (and

therefore alludes to potential problems, i.e. whether a son need support a step-mother or step-sisters, for instance). I did not come across much aggadic material about a So-and-so with such-and-such a problem. Where were the spiritual descendants of the daughters of Tzelopchad -- were there no daughters who made claim on their own account? Rokhel wished to give some of her estate to her daughter, but this matanat shekhiv mera was berated by the Rabbis.¹ Imma Shalom² is the only woman with a voice in all of the cited literature on daughters, and she supported the status quo.

In light of current understandings of grief, of family dynamics, and of feminism, I believe that daughters have been greatly wronged by Jewish inheritance law. I remain indebted to the five daughters of Tzelopchad for raising their voices in protest and being the first to draw our attention to this injustice.

¹ Mishna Baba Batra 9:7, see Chapter 4

² Shabbat 16a-b, see Chapter 3

Appendix I

(for Chapter 1)

Numbers 27:7-11

בן בנות צלפחד דברת נתן נתן להם אחות נחלה בתוך אד
אביהם ובעברת את נחלת אביהן לחן. ואל בני ישראל תדבר
לאמר איש כי ימות ובן אין לו ובעברתם את נחלתו לבתו. ואם
אין לו בת ונתתם את נחלתו לאחיו. ואם אין לו אחים ונתתם את
נחלתו לאח אביו. ואם אין אחים לאביו ונתתם את נחלתו
לשאה חקרב אליו ממשפחתו וירש אתה ודתה לבני ישראל
לחקת משפט כאשר צוה ייחזק את משפט.

Mishna Baba Batra 8:2

סדר נחלות כך הוא, איש כי ימות ובן אין לו ובעברתם את
נחלתו לבתו, בן קודם לבת וכל יוצא ירכוש של בן קודמן לבת.
בת קודמת לאחין, יוצא ירכוש של בת קודמן לאחין, אחין
קודמן לאח האב, יוצא ירכוש של אחין קודמן לאח האב. זה
חכלל. כל הקודם בנחלה יוצא ירכוש קודמן, ואחב קודם לכל
יוצא ירכוש.

Mishna Baba Batra 8:3

בנות צלפחד נמלו שלשה חלקים בנחלה, חלק אביהן שיהיה
עם יוצא מצרים, וחלקו עם אחיו בבכור חפר, ושניה בבור
נומל שני חלקים.

Baba Batra 116a

ויאמר ייחזק פלגה לבנין ולא ימחה שבט משראל אמר
רבי יצחק דבי רבי אמר מלמד שחתנו על שבט בנימן שלא
תירש בת חק עם האדון.

Appendix IIMishna Baba Batra 9:8

In the case where a house collapsed upon a man and his father or upon a man and those whose heir he is, and that person had against him the claim of a woman's ketubah or that of a creditor; and in the first case, the heirs of the father plead that the son died first and the father afterwards, while the creditors plead that the father died first and the son afterwards, Bet Shammai hold that the amount in dispute is to be divided, and Bet Hillel hold that the estate is to remain in its former status.

Mishna Baba Batra 9:9

If the house collapsed upon a man and his wife and the heirs of the husband plead that the wife died first and that the husband died afterwards, while the heirs of the wife plead that the husband died first and that the wife died afterwards, Bet Shammai hold that the estate is to be divided and Bet Hillel hold that possessions are to remain with those who are in their established right of ownership, the ketubah in the possession of the heirs of the husband; and the property that comes in and goes out with her in the possession of the heirs of the father.

Appendix III

(for Chapter 2)

Mishna Baba Batra 9:1

מ' שמת ותייח בנים ובנות בזמן שתכסים מרבין הבנים י"ר
 והבנות יזנו. נכסים מעטין הבנות יזנו והבנים ישאלו על
 הפתחים. אדמון אמר בשביל שאני זכר הפסדתי? אמר
 רבן גמליאל האה אפי' את דברי אדמון

Baba Batra 140b

דאמר רבי אבא אמר רבי אסי ע"א אלמנה אצל חבת כבת
 אצל האחין בנכסים מעטין מה בת אצל אחין חבת נזונת
 ואחין ישאלו על הפתחים אפי' אלמנה אצל חבת אלמנה
 נזונת וחבת תשאל על הפתחים. אדמון אמר בשביל שאני
 זכר הפסדתי וכו'. מאי קאמר אמר אביי חכי קאמר בשביל
 שאני זכר וראוי אפי' לעסוק בתורה הפסדתי אמר ליה רבא
 אלא מעתה מאן דעסק בתורה הוא דרית דלא עסק
 בתורה לא ירית אלא אמר רבא חכי קאמר בשביל שאני
 זכר וראוי אפי' לירש בנכסים מרבין הפסדתי בנכסים
 מעטין

Exodus 22:21-23

כל אלמנה ויתום לא תעון. אם עה תענה אתו כי אם צעק
 יצעק אלי שמע אשמע צעקתו. וחרה אפי' וחרגתי אתכם
 בחרב ודודו נשיכם אלמנות ונשיכם יתמים.

Deuteronomy 24:19

כי תקצר קצירך בשדך ושכחת עמר בשדה לא תשוב
 לקחתו לגר ליתום ולאלמנה יודה למען יברך ייחזקאלך
 בכל מעשה ידך.

Deuteronomy 14:29

ובא חלו כי אין לו חלק ונחלה עמך וחגר ויתום ואלמנה
 אשר בשעריך ואכלו ושבעו למען יברך ייחזקאלך בכל
 מעשה ידך אשר תעשה.

Yerushalmi Ketubot 4:11

אמר רבי יוס' בי רבי בון אבין אמר ליה מעתי מעות
שמעתי לכם לית כאן יסלון אלא ירתון. אמר ר' זעירא קל
הוא בתנאי כתובה לפי שבכל מקום אין אדם מזכה אלא
בכתובה ובאן אפילו בדברים לפי שבכל מקום אין אדם
מזכה אלא למי שחוא בעולם ובאן למי שאינו בעולם. אמר
ר' ירמיה קומ רבי זעירא ותמה אלא איך רבין מדמו
כתובה לירושלם לא דמי דירושלם מדבר תורה כתובה
מדבריהן ותימר אבן אפילו תימר כתובה מד"ת לא מוח
בתנאי כתובה שחוא מדבריהן.

Ketubot 52b

אמר רבי יוחנן משום רבי שמעון בן יוחאי מפני מה התקינו
כתובת בין דברין כדי שיקפוץ אדם ויכתב לבתו כבנו. ומ
אבא מדי דרחמנא אמר ברא לירות ברתא לא תירות ואתו
רבין ומתקי דתירות ברתא. האנמי דארייתא הוא דכתיב
"קחו נשים וחוליה בנים ובנות וקחו לביכס נשים ואת
בנותיכם תנו לאנשים". בשלמא בנים בידה קימי אלא
בנותי מ' קימי בידה הא קא משמע לן תלבשח וניכסח
וניתיב לה מדי כי חכי דקפצי עלח ואתו נסבי לח ועד כמח
אביי ורבא דאמרי תחייחו עד לעשור נכס ואמא דאב
לירות דבעל לא לירות אס' בן אב נמי ממע לוא כתב
ואמא דכא דכתב אב לכתוב בעל דכא דלא כתב אב לא
לכתוב בעל לא פלוג רבין. בת בין הבנים נמי תירות בנחלה
שויה רבין בת בין הבנות תירות לא פלוג רבין. ותיגבי
ממלמל ככתובה שויה רבין תמרוף ממעבד ירתון תנן
ואמא אף על גב דליכא מתר דנר במקום דקא מעקרא
נחלה דארייתא לא תקינו רבין.

Mishna Ketubot 6.6 (Ketubot 68a)

יתומה שהשיאתה אמה או אודה מרעתה וכתבו לה במאה או
בממעים זו יכולה היא משתגרל לחוצא מן מה שראוי
להתקן לה רבי יחודה אומר אם השיא את הבת הראשונה
נתן לשניה בדרך שנתן לראשונה וחכ"א פעמים שאדם עי'
והעשיר או עשיר וחצי אלא שמן את הנכסים ונותנין לה.

Ketubot 68a

והתניא רבי אומר בת תניזנות מן האחין נוסלת עשור נכסים
ואמר רבא חלכתא כרבי.

Ketubot 68a

אמרו לו לרבי לדברך מ' שש לו עשר בנות וכן אין לו לבן
במקום בנות כלום. אמר להן כך אי' אומר ראשונה נוסלת
עשור נכסים שניה במה ששירה ושלישית במה ששירה
וחוזרות וחולקות בשוה.

Ketubot 68b

ת"ר הבנות בין בגרו עד שלא נישאו ובין נישאו עד שלא בגרו
איבדו מזונותיהן ולא איבדו פתסתן דברי רבי. ר' שמעון בן
אלעזר אומר אף איבדו פתסתן כיצד הן עושות שוכרות
להן בעלים ומוציאין להן פתסתן אמר רב נחמן אמר ל'
חונא חלכתא כרבי.

Ketubot 68b

אמר רב חונא אמר רבי פתסה אינה כתנא כתובח מא
אינה כתנא כתובח אי' מא דאלו פתסה מרפא ממעבד
ותנא כתובח לא מרפא ממעבד מא קמל' הא מעשים
בכל יום מציאין לפתסה ואין מציאין למזונות ואלא דאלו
פתסה גביא נמי מממלט' ותנא כתובח ממקרקע גביא
מממלט' לא גביא לרבי אד' ואד' מגבא גביא דתניא אחד
נכסים שש להן אחריות ואחד נכסים שאין להן אחריות
מוציאין למזון האשה ולבנות דברי רבי אלא מא פתסה
אינה כתנא כתובח לכדתניא האמר אל' יזנו בנותיו מנכסו
אין שמעין לו אל' יתפתסו בנותיו מנכסו שמעין לו
שחפתסה אינה כתנא כתובח.

Yerushalmi Ketubot 4.12

רב חסדא אמר בגרו איבדו מזונות נישאו איבדו פתסתן. תני
ר' ידיה בגרו לא נישאו נישאו לא בגרו איבדו מזונותן ולא
איבדו פתסתן

Baba Batra 111a

דתנו רבנן ז"ל כל בת יורשת נחלה מממנות בני ישראל ודיאך
בת יורשת שני ממנות אלא זו שאביה משבם אחד ואמה
משבם אחד ומתו וירשתו ואין לי אלא בת בן מין אמרת קל
וחומר ומה בת שחורע כחה בכס האב יפה כחה בכס
האם בן שיפה כחה בכס האב אינו דין שיפה כחה בכס
האם וממקום שבאת מה לחלק בן קודם לבת אף כאן בן
קודם לבת.

Baba Batra 111a

מין לבן שקודם לבת בכס האם? אמר ליה: דכתיב ממנות
מקדש משה האם למשה האב מה משה האב בן קודם לבת
אף משה האם בן קודם לבת.

Appendix IV

(for Chapter 3)

Baba Batra 115b-116a

אמר רב חננאל אמר רב כל האומר תירש בת עם בת חבן
 אפילו נשיא שבישראל אין שומעין לו שאין אלא מעשה
 צדוקין דתניא בארבעה ועשרים במסכת תבוא לרננא שהו
 צדוקין אומרין תירש חבת עם בת חבן נמפל לחן רבן יוחנן
 בן זכאי אמר להם שומים מנין זה לכם ולא דה אדם
 שחזירה דבר חוץ מזקן אחד שדיח מפטפט כנגדו ואמר
 ומה בת בנו חבאה מכח בנו תירשנו בתו חבאה מכחו לא כל
 שכן קרא עליו את המקרא וזה אלה בני שער החור יושבי
 הארץ לומן ושובל וצבעון ועה וכתוב אלה בני צבעון ואה
 ועה אלא מלמד שבא צבעון על אמו וחולד עה ודלמא תר
 עה חו אמר רבא אמנא מלתא דלא אמרה שבור מלכא
 ומנו שמואל איבא דאמר אמר רב פפא אמנא מלתא דלא
 אמרה שבור מלכא ומנו רבא אמר קרא חוא עה חוא עה
 דמע קרא אמר ליה רבי בבך אתה פוסתי אמר לו שומה
 ולא תהא תורה שלמה שלנו כשחיה במלה שלכם מח לבת
 בנו שכן יפה כחה במקום האדון תאמר בביתו שחורע כחה
 במקום אדון ונצחום ואותו דיום עשאחו יום פייב.

Yerushalmi Baba Batra 8:1

כתיב איש כי ימות וכן אין לו והעברתם את נחלתו לבתו. תני
 ר' שעאל שנה חכתוב נחלה זאת מכל נחלות שבתורה
 שבבוקל כתוב ונתתם וכאן כתוב והעברתם. עבר חדרן חוא
 שתחא חבת יורשת. חכמי העכו"ם אמרין בן ובת שוין
 כאחת דאנון דרש וכן אין לו חא אם יש לו שניחן שוין
 חתיבן וחכמיב ואם אין לו בת חא אם יש לו שניחן שוין ואתון
 מדין דלית בר אף חבא לית בר. הצדוקין אמרין בת חבן
 וחבת שניחן שוין דאנון דרש מח בת בנו חבאה מכח בני
 יורשתני בתי חבאה מכוח אינו דין שתירשני. אמרו לחן לא
 אם אמרתם בבית חבן שאינה באח אלא מכח האחים.
 תאמרו בבית שאינה באח אלא מכח חזק.

Tosefta Yadayim 2:20

אומרים ביהות"ס קובלני עליכם פרושים מה את בת בני
 הבא מבח בני שבא מבח חר' יורשתני בתי הבאה מבח אינו
 דין שתירשני אומרין פרושין לא אם אמרתם בבית חבן שכן
 חולקין עם האדון תאמרו בבית שאן חולקת עם האדון.

Baba Batra 111a

רב ניתא סבר למעבד עובדא בר' זכריה בן הקצב אמר
 ליה שמואל כמאן זכריה אפס זכריה רבי מבלא עבד
 עובדא ברבי זכריה בן הקצב אל רב נחמן מא האי אל
 דאמר רב חננא בר שלמא משמיה דרב חלכה ברבי
 זכריה בן הקצב אמר ליה זיל אהדר בך וא לא מפיקנא לך
 רב חננא בר שלמא מאוניך רב חננא בר חייא סבר למעבד
 עובדא ברבי זכריה בן הקצב אמר ליה רב נחמן מא האי
 אמר ליה דאמר רב חננא אמר רב חלכה בר' זכריה בן
 הקצב אמר ליה אשלח ליה איכסוף אמר ליה השתא כי נח
 נפשיה דרב חננא אתירסת לקבלי אחיכו כמאן סברה כי
 הא דרב ושמאל דאמר תרוייהו אין חלכה בר' זכריה בן
 הקצב.

Yerushalmi Baba Batra 8:1

אדנו שבחוצה לארץ הדימות חן וכן מועין.

Baba Batra 110a-b

אמר ליה רב פפא לאבי אמא א איכא בן לירות בן איכא
 בת תירות בת איכא בן ובת לא האי לירות ולא האי לירות
 ולא מאן בן לירות אמו בר קשא דמתא לירות חכי פא
 אמנא איכא בן ובת לא האי לירות כוליה ולא האי לירות
 כוליה אלא כי חדדי לירותו אל אבי ואצטרך קרא
 לאשמועין דכא דלית ליה אלא חד ברא לרתינחו לכולחו
 נכס ודלמא האי קמיל דבת נמי בת ירושה היא החוא מוכל
 בת ירושת נחלה נפקא רב אחא בר יעקב אמר מחבא למח
 יגרע שם אבינו מתוך משפחתו כי אין לו בן מעמא דאין לו בן
 הא יש לו בן בן קודם ודלמא בנות צלפחד חוא דקאמר חכי
 ניתנה תורה ונתחדשה חלכה אלא מחזורתא כדשנין
 מעקרא.

Shabbat 116a-b

אמא שלום דביתו דרבי אליעזר אחתיה דרבן גמליאל
 הואי הוה החוא פלוסופא בשבבותיה דהוה שקל שמא דלא
 מקבל שוחדא. בעו לאחוכי ביה אציילא ליה שרגא דרחבא
 ואזול לקמיה אמרה ליה בענא תיפלגי לי שבס דבי נש
 אמר לחו פלוגו. א"ל כתיב קן במקום ברא ברתא לא תירח.
 א"ל מ' יומא דגליתון מארעכון אתנמלית אורייתא דמשה
 ואיתיה בת ספרא אחרתי וכתיב ביה ברא וברתא כחדא
 ירתון. למחר הדר עיל ליה אהו חמרא לובא. אמר לחו
 שפילית לספיה דספרא וכתב ביה אא לא למפחת מ'
 אורייתא דמשה אתיתי וכתיב ביה במקום ברא ברתא לא
 תירח. אמרה ליה נחור נחורך כשרגא. א"ל רבן גמליאל
 אתא חמרא ובמש לשרגא

Appendix V

(for Chapter 4)

Mishna Baba Batra 8:5

האומר איש פלוני בני בכור לא ימל פי שנים, איש פלוני בני
לא ירש עם אחיו, לא אמר כלום שהתנה על מה שכתוב
בתורה. המחלק נכסיו לבניו על פיו, רבה לאחד, ומעט
לאחר, וחשוא לחן את הבכור, דבריו קימן. ואם אמר משום
ירשה לא אמר כלום. כתב בין בתחלה בין באמצע בין
בסוף משום מתנה דבריו קימן. והאומר איש פלוני יירשני
במקום שיש בת, בתי תירשני במקום שיש בן, לא אמר כלום
שהתנה על מה שכתוב בתורה. רבי יוחנן בן ברוקא אומר
אם אמר על מ' שחוא ראוי לירשה דבריו קימן ועל מ' שאינו
ראוי לירשה אין דבריו קימן. הכותב את נכסיו לאחרים
ותניח את בניו מה עשה עשו אבל אין רוח חכמים נוחה הימנו.
רבן שמעון בן גמליאל אומר אם לא היו בניו נוחגין כשורה
זכור למסב.

Baba Batra 133b

תא שמע דאמר ליה שמואל לרב יחודה: שינא לא תיחוי בי
עבור אחסתא ואפילו מברא בישא לברא סבא וכל שכן
מברא לברתא.

Ketubot 53a

שינא לא תיחוי בעבור אחסתא אפילו מברא בישא לברא
סבא דלא ידעא מא זרעא נפיק מניה וכל שכן מברא
לברתא.

Nedarim 48b

חחוא גברא דהיה ליה ברא דהיה שממ כיפי דכיתנא
אסרנחו לעבסה עליה. אמר ליה וא חוא בר בריך צורבא
מרבן מא? אמר לחון לקי חרין וא חוא בר בר צורבא
מרבן לקייה.

Baba Batra 141a

והא אמר ר' יוחנן משום רשב"י כל שאנו מביחין לו'רמ'ן
 הקב"ה מלא עליו שברה שנאמר ויד עברתם את נחלתו
 לבתו ואין העברא אלא עברה שנאמר ויום עברה דו'ם'
 החא לעין י'רשה בן ערף ליה לעין החוחה בתו ערפא
 לה

Mishneh Torah, Hilchot Nahalot, 61

אין אדם יבול גחורש למי שאנו ראי' לו'רמ'ן ולא לעקור
 ה'רשה מן ה'ורש אף על פי שזה ממון חא לפי שנאמר
 בפ'ש'ת נחלות וחתה לבני ישראל לחוקת משפ'ם לומר
 שחוקה זו לא נשתנה ואין חתנא מועיל בה בין שצח וחא
 ברא בין שזה שכיב מרע בין על פה בין בכתב אנו מועיל

Baba Batra 113b

י'חתה לבני ישראל לחוקת משפ'ם ארעה כל הפרשה
 בולה גדות דין וכדרב י'חידה דאמר רב י'חידה שלשה
 שנים לבקר את החלקה רצ' כותבין רצ' עשין דין שנים
 סתבין ואין עשין דין

Tosefta Baba Batra 88

הכותב ד'יתיק וזה מ'רירא מן ה'ורשין נכסין אצלו
 במבקרין אותו שמעין דבריו מלפ'ן ווצאן וכותבין מבחוץ

Ketubot 109b

החא דאמר לה דקלא לברת אכול יתם פלג עבס לא
 יתם לה דקלא סבר רב י'ספי למי'ר דינו מ'תיתן. אל אבי'
 מ' דם חתם כל חד וחד מצ' מ'חד לה חכא דקלא גבי'ח
 חא מא תקט'י'ח לתם לה דקלא ול'חדה ול'פלג מ'רשא

Mishna Baba Batra 9:7

אמר ל' מעשה באן של בי' חכל ש'דתה חולה ואמרתי תנו
 כבית לבד וזה בשנים עשר מ'ח ומ'תה, וק'ס את דבריה.
 אמר לון בי' חכל תקברם אמן

Baba Batra 143b

ההוא דאמר להו נכסי לבני חוה ליה ברא וברתא מן קר
אנש לברא בני (ולסלוק לברתא מעשור קאתי) או דלמא
לא קר אנש לברא בני ולמשכח לברתא במתנה קאתי.

Baba Batra 147a

איך דירא אמר רב מנין למתנת שכיב מרע שדיא מן התורה
שנאמר זהעברת את נחלתו לבתו יש לך העברה אחרת
שדיא בזו ואיזו? זו מתנת שכיב מרע.

Baba Metzia 75b

תנו רבנן שלשה צעקין ואין נעין ואלו הן: מי שיש לו מעות
ומלוה אותן שלא בעדים, וחקונה אחר לעצמו, ומי שאשתו
מושלת עליו. קונה אחר לעצמו מאי היא? איכא דאמר תולה
נכסו בכר, איכא דאמר חבובת נכסו לבין בחיו.

Ketubot 49b-50a

תש דרבי תניא ור' יונתן חוה קיימ אתא ההוא גברא גודן
ונשקה לר' יונתן אברעה. אמר ליה ר' תניא מאי האי? אל
כותב נכסו לבניו הוא ועשיתנו לזניה.

Shulchan Arukh, Hoshen Mishpat, 281: 7

הכותב לבתו שחקק לאחר מותו כחצי חלק זכר דינו כדחשה
בעצמא ובעל חוב וכתובת קודמן למתנה זו וכן עמור נכס
הבת. וכל ימי חיותו יכול למכור הנכסים אף על פי
שכתב לה "מחיים ולאחר מיתה". ואין הבת נוסלת אלא
בנכסים שהיו לו בשעת נתינת אבל לא אחר כך דאין אדם
יכול לחקק דבר שלא בא לעולם.

Shulchan Arukh, Eben Ha-ezer, 108:3

משום דכותב לחם דרך חודאה שדיב לחם סך מה ולא
יפטר אלא כשנותן לחם כמו חזכרים ובדרך זה יכול לחקק
אף מה שלא ברשותו וכן ראינו מוחזק.

BIBLIOGRAPHY

Albeck, Shalom, "Acquisition," in Encyclopedia Judaica, Keter Publishing House, Jerusalem, 1972.

Bakar, David, And They Took Themselves Wives: The Emergence of Patriarchy in Western Civilization, Harper and Row, San Francisco, 1979.

Brooks, Roger, The Talmud of the Land of Israel: A Preliminary Translation and Explanation, Vol. 2, Peah, University of Chicago Press, Chicago, 1990.

Budd, Philip J., "The Daughters of Zelophehad," in Word Biblical Commentary, Vol. 5, Word Books, Waco, TX, 1984.

Caro, Joseph, Shulhan Arukh, Hoshen Mishpat, Jerusalem, 1975.

Caro, Joseph, Shulhan Arukh, Eben ha-Ezer, Jerusalem, 1975.

Cohn, Haim Hermann, "Admission," in Encyclopedia Judaica, Keter Publishing House, Jerusalem, 1972.

DeSpelder, Lynne Ann and Strickland, Albert Lee, The Last Dance: Encountering Death and Dying, Mayfield Publishing, Palo Alto, CA, 1983.

Douglas, Mary, Purity and Danger: An Analysis of the Concepts of Pollution and Taboo, Ark Paperbacks, London, 1966.

Ehrman, A. Babylonian and Jerusalem Talmud: Oiddushin, El-Am-Hoza'a Leor Israel, Tel Aviv, 1968.

Elon, Menahem, editor, The Principles of Jewish Law, Keter Publishing House, Jerusalem, 1975.

Epstein, Rabbi Dr. I., ed., Baba Bathra: Hebrew-English Edition of the Babylonian Talmud, Soncino Press, London, 1989.

Epstein, Rabbi Dr. I., ed., Baba Kamma: Hebrew-English Edition of the Babylonian Talmud, Soncino Press, London, 1977.

Epstein, Rabbi Dr. I., ed., Baba Metzia: Hebrew-English Edition of the Babylonian Talmud, Soncino Press, London, 1986.

Epstein, Rabbi Dr. I., ed., Gittin: Hebrew-English Edition of the Babylonian Talmud, Soncino Press, London, 1977.

Epstein, Rabbi Dr. I., ed., Kethuboth: Hebrew-English Edition of the Babylonian Talmud, Soncino Press, London, 1989.

Epstein, Rabbi Dr. I., ed., Kiddushin: Hebrew-English Edition of the Babylonian Talmud, Soncino Press, London, 1989.

Epstein, Rabbi Dr. I., ed., Nedarim: Hebrew-English Edition of the Babylonian Talmud, Soncino Press, London, 1985.

Epstein, Rabbi Dr. I., ed., Shabbath: Hebrew-English Edition of the Babylonian Talmud, Soncino Press, London, 1972.

Epstein, Louis M., The Jewish Marriage Contract: A Study in the Status of the Woman in Jewish Law, The Century Press, Boston, 1927.

Falk, Zeev, "Yerushat Ha-Bat V'ha-almana b'Mikra u'v'Talmud," Tarbitz 23 (1951/1952): 9-15.

Finkelstein, Louis, The Pharisees, Jewish Publication Society, Philadelphia, 1962.

Goodman, Philip and Hanna, The Jewish Marriage Anthology, JPS, Philadelphia, 1965.

Goodspeed, Edgar J., The Book of Tobit, in The Apocrypha: An American Translation, Random House, New York, 1938.

Gordis, Robert, "The Ethical Dimension in the Halakhah," in Conservative Judaism 26 (Spring 1972): 70-73.

Grunfeld, Isadore, The Jewish Law of Inheritance, Targum Press, Oak Park, MI, 1987.

Hastings, James, ed., "Inheritance," Encyclopedia of Religion and Ethics, Volume VII, Charles Scribners' Sons, New York, pp. 295-311.

Hauptman, Judith, "Women's Liberation in the Talmudic Period: An Assessment," in Conservative Judaism 26 (Summer 1972): 22-28.

Herzog, Isaac, The Main Institutions of Jewish Law, Soncino Press, London, 1936.

Horowitz, George, The Spirit of Jewish Law, Central Book Co., NY, 1953.

The Jerusalem Bible: The Holy Scriptures, Koren Publishers, Jerusalem, 1989.

Kirschenbaum, Aaron, Equity in Jewish Law: Beyond Equity: Halakhic Aspirationism in Jewish Civil Law, Yeshiva University Press, NY, 1991.

Kirschenbaum, Aaron, "Orphan," in Encyclopedia Judaica, Keter Publishing House, Jerusalem, 1972.

- Klagsbrun, Francine, Mixed Feelings. Bantam Books, NY, 1992.
- Lew, Mayer S., The Humanity of Jewish Law. Soncino Press, London, 1985.
- Levi, Eliezer, Mishnah M'foreshet, Seder Nashim, Sinai, Tel Aviv, 1972.
- Levi, Eliezer, Mishnah M'foreshet, Seder Nezikin, Sinai, Tel Aviv, 1972.
- Maimonides, Mishneh Torah, Hilchot Ishut, Moznaim Publishing, Jerusalem, 1990.
- Maimonides, Mishneh Torah, Hilchot Kinyan, Moznaim Publishing, Jerusalem, 1990.
- Maimonides, Mishneh Torah, Hilchot Nahalot, Moznaim Publishing, Jerusalem, 1990.
- Meiselman, Moshe, Jewish Woman in Jewish Law. Yeshiva University Press, NY, 1978.
- Milgrom, Jacob, The JPS Torah Commentary: Numbers, JPS, Philadelphia, 1990.
- Millman, Marcia, Warm Hearts and Cold Cash: The Intimate Dynamics of Families and Money. The Free Press, NY, 1991.
- Ne'eman, Pinchas, "Yerushat Ha-Bat ba-Torah u'ba-Halachah." Beth Mikra 47 (September 1971): 476-489.
- Neusner, Jacob, The Talmud of the Land of Israel: A Preliminary Translation and Explanation, Vol. 22, Ketubot, University of Chicago Press, Chicago, 1985.
- Neusner, Jacob, The Talmud of the Land of Israel: A Preliminary Translation and Explanation, Vol. 25, Gittin, University of Chicago Press, Chicago, 1985.
- Neusner, Jacob, The Talmud of the Land of Israel: A Preliminary Translation and Explanation, Vol. 26, Oiddushin, University of Chicago Press, Chicago, 1984.
- Neusner, Jacob, The Talmud of the Land of Israel: A Preliminary Translation and Explanation, Vol. 30, Baba Batra, University of Chicago Press, Chicago, 1984.
- Neusner, Jacob, ed., The Tosefta: Nashim, Ktav Publishing House, New York, 1979.

- Neusner, Jacob, ed., The Tosefta: Neziqin, 1981, Ktav Publishing House, New York, 1981.
- Neusner, Jacob. "Women in the System of Mishnah." Conservative Judaism 33 (Winter 1980): 3-13.
- Plaut, Gunther, ed., Torah: A Modern Commentary, UAHC Press, NY, 1981.
- Pritchard, James B., ed., Ancient Near Eastern Texts Relating to the Old Testament, Princeton University Press, 1955.
- Rackman, Emanuel, "A Jewish Philosophy of Property: Rabbinic Insights on Intestate Succession." Jewish Quarterly Review 77 (October 1976-January 1977): 65-89.
- Scheftelowitz, Erwin Elchanan, The Jewish Law of Family and Inheritance and Its Application in Palestine, Sefer Press, Tel Aviv.
- Schereschewsky, Ben Zion, "Dowry," in Encyclopedia Judaica, Keter Publishing House, Jerusalem, 1972.
- Schereschewsky, Ben Zion, "Parent and Child," in Encyclopedia Judaica, Keter Publishing House, Jerusalem, 1972.
- Schreiber, Aaron M., Jewish Law and Decision-Making: A Study Through Time, Temple University Press, Philadelphia, 1979.
- Shilo, Shmuel, "Dina de Malkhuta Dina," in Encyclopedia Judaica, Keter Publishing House, Jerusalem, 1972.
- Shilo, Shmuel, "Succession," in Encyclopedia Judaica, Keter Publishing House, Jerusalem, 1972.
- Shilo, Shmuel, "Wills" in Encyclopedia Judaica, Keter Publishing House, Jerusalem, 1972.
- Sigal, Phillip, "Elements of Male Chauvinism in Classical Halakhah." Judaism 24 (Spring 1975): 226-244.
- Snaith, Norman Henry, "The Daughters of Zelophehad." Vetus Testamentum 16 (1966): 124-127.
- Stone, Michael E., "Property," in Encyclopedia Judaica, Keter Publishing House, Jerusalem, 1972.
- Tanakh: A New Translation of The Holy Scriptures, Jewish Publication Society, Philadelphia, 1985.
- Urbach, Efraim E., The Halakhah: Its Sources and Development, Masadah, Jerusalem, 1981.

Weingreen, J., "The Case of the Daughters of Zelophchad." Vetus Testamentum 16 (1966): 518-522.

Yaron, Reuven, Gifts in Contemplation of Death in Jewish and Roman Law. Clarendon Press, Oxford, 1960.

Zeitlin, Solomon, "Testamentary Succession," in The Seventy-Fifth Anniversary Volume of the Jewish Quarterly Review, ed. by Abraham Neuman and Solomon Zeitlin, Jewish Quarterly Review, Philadelphia, 1967, pp. 574-581.