I

# "THREE WAYS"
## *ACQUISITION AND RELEASE OF SPOUSES, ANIMALS AND POSSESSIONS IN THE KIDDUSHIN TRACTATE OF THE JERUSALEM TALMUD* *

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### 1.- The two *Torahs*

As is well known, according to tradition, Moses received the *Torah*, "the teaching", from the Lord on Mount Sinai, already written on two stone tablets. Descending the mountain, the prophet became angry upon seeing his people worshiping the golden calf, and he shattered the tablets. When he returned to the mountain, God calmed his spirit and dictated to him the Torah again, this time to be written down personally by the prophet. According to the sages, this conveys the idea that divine commandments come from the Most High but must then be freely and responsibly accepted by man. In addition to the written Torah, the Lord also provided an oral Torah, instructing that it should be transmitted orally from generation to generation without being written down.
After the destruction of the Second Temple by Titus' army in 70 A.D, and the complete destruction of Jerusalem following the Bar Kokhba revolt of 132-135 A.D (when the Jews once again would rise against Rome under Emperor Hadrian), the Jewish people lost their national sovereignty in the Land of Israel. This sovereignty was only regained after nearly nineteen centuries of countless sufferings. Faced with the painful prospect of exile and dispersion, in order to prevent this heritage of wisdom from being lost, the sages of the time allowed the oral teachings to be written down as well. This led to the creation of the so-called *Mishnah* (which means "repetition", *deutérosis* in Greek), primarily by Rabbi Judah known as "*Hanasi*", "the President", "the Patriarch" (also called "*Rabbenu HaKadosh*", "Our Holy Rabbi"), as he was the leader of the group of Teachers (*Tannaim*) tasked with this compilation. He is said to have reached an agreement to this effect with the Roman authorities.
In the *Torah,* the normative part (so-called *halachah*, meaning "path": the right way to follow, consisting of the observance of divine precepts, counted by Maimonides as 613) represents a minority of the five books (Genesis, Exodus, Leviticus, Numbers, Deuteronomy), while the majority is represented by the narrative part, the so-called *haggadah* (writing with a variety of purposes: historical, homiletic, moral, sapiential, poetic, allegorical). The *Mishnah*, on the other hand, has predominantly legal content, as it represents an in-depth study and completion of the *halachah*, containing a multitude of legal norms.

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It is divided into six "orders" (*sederìm*), each of them comprising different tractates: *Zeraìm* (seeds), *Moed* (appointed time, meaning the festivals), *Nashìm* (women), *Nezikìn* (damages), *Kodashìm* ("holy things"), and *Tohorot* ("Purities"). The six orders were originally divided into sixty tractates, later becoming sixty-three.

## 2.- *Mishnah* and *Ghemarah*

Although, according to tradition the writing of the *Mishnah* should faithfully correspond to the text of the Oral *Torah* received along with the Written Torah, it is evident that it represents an update and an adaptation to changing times. In this respect, a parallel can be drawn with the Roman legend that the Twelve Tables were destroyed during the sack of Rome by the Gauls in 390 BC, making necessary their rewriting. Similarly, the contents of the new version of the decemviral text (actually, the new versions, as there would have been many) would have been much more modern than the original ones from 451-450 BC, whose true nature we can only imagine.
The *Mishnah* contains all the civil, criminal, and religious rules that the Jewish people are obligated to observe. The oral laws not included in it were written down under the name *Baraita* in additional tractates collectively called *Tosefta* ("addition").
Its writing dates back to the period between the second half of the second century and the beginning of the third century, and it occurred in various locations in the Near East, which are widely debated. An initial collection of written laws was made by Rabbi Akiva (a supporter of Bar Kochba, leader of the desperate revolt of 132-135) and his disciple Rabbi Meir (illegitimate descendant, according to tradition, of Emperor Nero). This collection was named *Mishnat Rabbi Akiva* and is believed to have been fully incorporated into the *Mishnah*.
The *Mishnah*, in turn, was extensively commented upon by rabbis in the *ghemarah* ("completion"), which collects various disputes regarding the correct interpretation and application of the precepts in daily life. While the *Mishnah* is written in Hebrew (though quite different from the older Hebrew of the Torah and other Sacred Scriptures, therefore referred as "Mishnaic Hebrew"), the *ghemarah* is written in Aramaic (which was, like Latin and Greek, a "third" language spoken by various populations).

## 3.- The two *Talmudìm*.

The *Mishnah* and the *ghemarah* were later compiled by Masters known as *Amoraìm* into two large, unified collections called *Talmùd* (study). These collections show the clear distinction between the *Mishnah* (which, as divine law, can be freely interpreted but never altered by humans, much like the Written *Torah*) and the *ghemarah*, which, being human commentary, can be corrected and contradicted. As a result, their scope is much wider than that of the *Mishnah*. Editions of the *Talmud* typically place the words of the *Mishnah* at the center of the page, framed by those of the *Ghemarah*, in a sort of precursor to the modern "hypertext" of computer language, as I have noted elsewhere.
A fundamental characteristic of the *Talmùd* is that it is an 'open' set of books, without a definitive and unchangeable version.

ISSN: 3034-9125

The text can always be enriched with new comments and interpretative hypotheses, and even today, new literary editions are being produced (one particularly important edition is being done in Italy). As it is written, "there is no end to the *Talmud Torah*" (T.J., *Peah* 1.1).
*Talmùd* (also divided into six *sederim*, like the *Mishnah*, and into a multitude of tractates), exists, as mentioned, in two different versions.
The most important and well-known version is certainly the one primarily developed in the rabbinical academies of Babylonia, known as the Babylonian *Talmùd* (*Talmùd Bavli*). This version undoubtedly represents the most important legal reference text for observant Jews of all nations and generations. It was mainly compiled in the fifth century, based on earlier collections, and underwent a general revision around the mid-sixth century (during the same period in which, not far away, in Constantinople and Berytus, the *Corpus iuris civilis* was being compiled, without any coordination between the two groups of editors: these were evidently, times marked by the need for systemising and codification efforts).
In addition to the Babylonian *Talmud*, another *Talmud* was also compiled at the beginning of the fifth century in the rabbinical academies (*yeshivòt*) of Eretz Israel (especially those in Yavne, Lod, and Kinneret [Tiberias]). This version is known as the Jerusalem *Talmud* (*Talmùd Jerushàlmi*). It is much shorter and remained incomplete, since its compilation was interrupted around the mid-fifth century during the time of Emperor Theodosius I. This was after the edicts of Arcadius and Honorius, the dissolution of the Jewish Patriarchate (420 AD), and the transfer of the Masters to Babylonia, where the study continued under Sassanid rule.

## 4.- The *Posekìm*

The two *Talmùds* represent the foundation of Jewish law and the primary reference point for the jurisdiction exercised by the *Posekìm,* the "decisors". It is important to remember that while the literal contents of the *Torah* and the *Mishnah* are immutable by humans, their interpretation is always free and changeable. At the basis of the Talmudic text is always the 'dispute' (*machloket*), the controversy, the continuous dialectic between differing opinions. There is never a "last word" in rabbinic interpretation.
The connections between the first and second *Talmùds* are not always clear, nor are the different working methods of the compilers, often leaving room for hypotheses. Sometimes the contents of the various texts are similar, if not identical, while at other times significant differences emerge. It is evident that the greater success of the Babylonian *Talmud* has somewhat overshadowed its "poor relative", which has often been considered outdated by its "older brother". This is a mistake, as the Jerusalem *Talmud* possesses undeniable traits of originality and autonomy, making its study absolutely useful and necessary. Some of its contents are not found in the Babylonian collection and offer highly interesting insights.
As Luciano Baruch Tagliacozzo pointed out, it is especially important to remember that, unlike the Babylonian *Talmud*, the Jerusalem *Talmud* "retains the tractates concerning the Land of Israel, which will once again become the prevailing Jewish law at the time of the Jews' return to their homeland. In our days, therefore, in Israel, the study and publication of the *Talmud Yerushalmi* are being

ISSN: 3034-9125

revived". According to Jacob Neusner, "the *Mishnah* represents the philosophy, the *Talmùd Yerushalmi* the religion, and the *Talmud Bavli* the theology of the Jews".
"This statement", Tagliacozzo notes, "can be understood only by remembering how much the Jewish 'faith', called *Emunah*, is tied to the Land of Israel. According to a tradition attributed to the Vilna Gaon, "the two *Talmudìm* face each other, and their wings are joined at the top, like the Cherubim on the Ark of the Covenant".

## 5.- The *Kiddushin* tractate

The significance of the Jerusalem *Talmud i*s particularly evident in the case of the *Kiddushìn* tractate, "Consecrations", which comments on the corresponding *Kiddushin* tractate of the *Mishnah*, the seventh and final one of the third *seder* (order), *Nashìm* (Women). The title is improperly translated as "Betrothal" (a relationship subject to blessings), and would properly indicate, as noted by Alfredo Mordechai Rabello, the "destination of the bride". However, this title is decidedly restrictive, as the book deals with topics that go beyond the specific subject of marriage.
We were very pleased and proud – my colleague Francesco Fasolino and I, with the help of the younger scholars Giovanbattista Greco and Mariateresa Amabile – to have edited, and published in the *Itinerari del diritto* series, directed by Fasolino, Andrea Lovato, and myself, among the research produced by the University of Salerno within the framework of the PRIN project on "Crime and Madness in the Ancient World", the unpublished Italian translation of the tractate done with great expertise and historical and legal sensitivity by Dr. Luciano Baruch Tagliacozzo. This work has allowed and will allow a wider audience of legal history enthusiasts - those not specifically educated in the diverse reality of Jewish law and lacking the philological tools necessary to read the text in its original language - to approach topics of extreme interest, capable of stimulating significant considerations in terms of historical-legal comparison.

## 6.- The number Three

Of particular interest is the recurrence in the tractate of the number "three", intended to emphasise the triple mode of consolidating relationships that can generally be defined as "belonging", both in the family sphere and in terms of ownership. According to the Talmudists, there are always, essentially, "three ways" to acquire "something" (or "someone"): acquisition through money, document, or possession.
Fasolino and I wrote in the preface of the volume the following words: "Rightly placed by the Italian poet Ugo Foscolo alongside justice and religion (but in first place of the triptych), among the three unavoidable foundations of every human civilization ('Since the day that weddings, courts, and altars…' [*I sepolcri*]), marriage has always been a multifaceted institution, aimed at producing multiple effects on both personal and patrimonial levels.
Those who read these pages – so full of meanings, suggestions, questions – will see how many analogies and how many differences exist, for example, between Jewish and Roman marriage ('*consortium omnis vitae*') and their different methods of realization. They will see, among other things, that

ISSN: 3034-9125

in both systems, marital ties could be consolidated through a purchase of the bride, a contract, or a *de facto* relationship, but that the specific modalities of these forms (payment of the price, form of the transaction, type, and duration of the relationship) appear to be very different. Also, the importance given to the will of the spouses and their families appears to be different.
It will also be particularly interesting to analyse the analogies and differences between the interpretive techniques used by Roman jurists and the Talmudists".
Behind the clear simplicity of the number three, therefore, seems to lie a great multiplicity of situations, as well as the relevance of other numbers.
Therefore, let's try to make a few observations regarding the meaning and content of this number three, and its possible 'multiplications'.

## 7.- Three ways, two ways

As always in the *Talmùd*, the text of the tractate, in the first chapter, begins by quoting the content of the *Mishnah*, the written Oral Law, and then proceeds to comment on it (*Ghemara*). The Mishnah, as reported, begins by clarifying that a woman can get married in only three ways, while the bond can be dissolved (the expression used, literally, is "return to herself", as the woman regains her previous status) in two:

1.1. *A woman can get married in three ways, and she returns to herself in two ways. She is acquired with money, with a document, and with sexual intercourse.*

The *Mishnah* then specifies the different quantifications of the price, calculated by the school of *Shammai* in a *dinar* (approximately 120 grams of silver) and by the school of Hillel in a *perutah* (a measure of lower value).

The dissolution of the bond occurs only in two ways:

*She returns to herself through divorce or by the death of the husband.*

The *Mishnah* also refers to levirate marriage, which consists of the obligation – if a husband of a still fertile woman dies without having left any children – of his brother to marry her so that the child born from the union can inherit from the deceased first husband.
The *Ghemarah*'s commentary clarifies anything that could be confusing from the text of the *Mishnah*. It is specified that the indication "in three ways" does not mean that all three conditions must occur, as one of them is enough.
It is then clarified that the basis for payment in money is derived from an interpretation of Deuteronomy 24:1 (which simply states "When a man takes a wife"), and that the necessity of sexual intercourse is deduced from the meaning to be attributed to Deuteronomy 24:1-2, which speaks simply of "cohabitation". Cohabitation without carnal relations does not constitute a form of marriage.
It is further clarified that divorce does not involve payment of money. However, repudiation by the husband requires a written document, which must be handed to the woman, to induce her to leave the marital home. The woman will then be free to marry another man.

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Just as divorce requires a document, the same happens for marriage (in the absence of one of the other two modalities).
There is also a minority opinion, attributed to Rabbi Abin, which marks a difference based on the woman's status: if she is Jewish, she could only be married with money; if she is a Canaanite, she would not be acquirable with payment, but only through sexual intercourse.
Even the sister-in-law, married under the levirate rule, does not require payment, but only sexual intercourse (presumably because marriage, in this case, represents a duty on the part of the deceased husband's brother).
As for the divorce, it is specified that it must be formalized in a written document.
It is also stated that the Canaanite maidservant can be taken as a wife through possession, use (*chazakah*). The *chazakah* may coincide with sexual intercourse, but it may also be considered as the woman's act of taking care of her husband (clarified by Tagliacozzo, such as dressing him, tying his sandals, etc.).

## 8.- Adultery

The *Ghemarah*, after reaffirming that Jewish marriage is accomplished in the three indicated ways (money, document, sexual intercourse), then focuses on the marriage rules for non-Jews. Unlike the part concerning the rules for Israelites, this part of the tractate does not indicate how the bond should be formalised; instead, it deals with the crime of adultery.
It is clarified that this crime must always be punished, as it consists in the violation of a universal law, valid for all nations (a precept that will later be included in the seven so-called "Noahide laws", given by God first to Adam and then to Noah, and binding for all humanity: the obligation to establish courts, the prohibition of idolatry, blasphemy, murder, theft, incest, adultery, and the prohibition of eating of animals that are still alive).
While adultery must always be punished, the necessary legal kinds of process are different. For Jews, the law requires a double consistent testimony as the basis for the accusation and the verdict of guilt pronounced by a court of twenty-three judges. Furthermore, before execution, the woman must have been warned to desist from her sinful conduct, and only then she can be subjected to the prescribed punishment, which for Jews is stoning.
For a gentile (and her accomplice lover), on the other hand, a single testimony will be enough, as well the verdict of a single judge, and there will be no need for prior warning. In the event of conviction, there are differing opinions regarding the mode of execution: some suggest by sword, while others suggest by strangulation.
It is then clarified that certain relations – such as homosexual relations or intercourse with animals – are equally prohibited and punished for both Jews and Noahides.
Although marriage is practiced by all peoples of the Earth, "consecrations" (*kiddushìn*) are exclusive to the Jewish people.
From this assumption a rabbinic dispute is reported, with some sages arguing that, just as marriage exists for all peoples of the world, so does divorce, while others argue that since *kiddushìn* is an exclusively Jewish institution, and divorce is connected to it, non-Jews would not be aware of it:

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*Rabbi Yohanan of Sepphoris, Rabbi Aha, Rabbi Hanina, in the name of Rabbi Shemuel, say: "Ha-Shem, God of Israel, has given divorce for the Israelites, not for the peoples of the world".*

Various opinions are then reported regarding the amount of money needed to accomplish the marriage. While some sages do not indicate any difference between the price of acquiring a free bride and a maidservant, others indicate distinctions: for a free woman, a silver *dinar* is required, while for a maidservant, the lower value of a *perutah* or two *ma'ah*.

## 9.- Utensils

The question then arises whether, instead of money, one can get married by paying the bride's father with utensils. According to some interpretations, the answer is affirmative; one can pay the bride's father by giving him for example terracotta vessels (a possibility that obviously makes the list of the three necessary ways to marry appear less restrictive, and the indication of "money" less indisputable).
Rather singular is the statement that a member of one school is not prohibited from marrying a member of an opposing school:

*The School of Shammai never refused to marry women of the School of Hillel, nor did the School of Hillel refuse women of the School of Shammai, but they acted in truth and peace, as it is written, 'Therefore love truth and peace*' (Zechariah 8:18).

The fact that two Jews, belonging to rival rabbinical schools, both very recognized and esteemed, could marry each other should be obvious and taken for granted. But apparently, the aversion between the different schools must have appeared, at least in some circles and at some times, as something very radical, like "Capulets and Montagues", to the extent that someone would assume that it was impossible for members of opposing congregations, to contract a valid marriage.
It would be absurd to imagine a similar prohibition among members of, for example, the opposing Roman juridical sects of the Sabinians and Proculians. The peaceful wish, drawn from the book of Zechariah ("*Therefore love truth and peace*") seems, in fact, to cover a reality of harsh and violent opposition, so profound that it would even suggest the idea of a possible prohibition (at least in practice) against a "Romeo and Juliet" who, betraying their duty of loyalty to their own side, dared to cross over to the 'enemy' side.

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## 10.- Levirate marriage

Once again in the *Ghemarah* of the first chapter, the topic of levirate marriage (*Yibbum*) is revisited. It is clarified that the obligation of the brother of a deceased husband to marry the widow, exists only if the couple has got no children; otherwise, the woman will be free to take as her husband whoever she wishes, even a stranger:

*Rabbi Huna says that a verse indicates that death permits this, as it is written: "If brothers are living together and one of them dies without a son, his widow must not marry outside the family. Her husband's brother shall take her and marry her and fulfil the duty of a brother-in-law to her". (Deuteronomy 25:5). This implies that if she has a son, death permits (her to marry a stranger)*.

However, it is noted that the widow cannot marry a High Priest, who can only marry a virgin woman. It is clarified that sexual intercourse is enough to conclude the marriage. According to some sages, the so-called *ma'amar*, or the official declaration "I take you as my wife according to the laws of Moses and Israel", is not necessary. According to others, however it is necessary, in the case of marriage by payment of money, the *ma'amar* must specify it.

## 11.- Slaves and "half-slaves"

The issue of a woman being a "half-slave" is then raised:

*Rabbi Chiya says in the name of Rabbi Yohanan: "If a woman is half slave and half free, we are uncertain about her marriage".*

This case, Tagliacozzo explains, may concern the condition of a female servant who is inherited by two brothers, with only one deciding to redeem her while the other refuses to do so. It is worth noting that such a situation would not be possible in Roman law, which recognizes the limits imposed on the freed slave, the *libertus*, but not the condition of "semi-slavery". The uncertainty regarding the legality of the marriage of such a woman suggests that even from a Jewish perspective, the case appears unusual.
Other uncertainties arise regarding the status of a male slave:

*So, if a slave divorces his wife, we are uncertain about his divorce. Certainly, he does not divorce with a divorce decree.*

It is then noted that the female slave, upon the death of the master, will regain her freedom. It is however guaranteed in any case with the arrival of the sabbatical year, i.e., the seventh year after the beginning of her slavery:

*How will she become free? With the death of her master or with the completion of these six years.*

ISSN: 3034-9125

Again, the difference from Roman law is significant. The Roman *servus* is certainly not emancipated upon the death of his master (unless the master has made a special provision for this in his will), but passes into the ownership of his inheritors, and the sabbatical year does not exist. Although manumission was a common practice, there has never been, in Roman law, a time limit to the bond, which legally ended only with the death of the slave, not of the *dominus*.
The *Mishnah* then deals with the acquisition of the Jewish slave ('*eved ivri*) and his release. In this case, there are not three ways of acquisition, but only two.

*A Jewish slave can be acquired in two ways: by money or by a written document, and can be freed in two ways: with the arrival of the Jubilee or by paying a sum of money. However, a Jewish female slave has an advantage as she can also become free by the appearance of the signs of puberty. A slave who has his ear pierced* (as indicated in Exodus 21:6-7, if he refuses to be voluntarily released at the seventh year) *is acquired by piercing his ear and becomes free with the arrival of the 'Yovel'* – or Jubilee, which occurs every fifty years, or, according to other interpretations, every forty-nine – *or upon the death of his master.*

Therefore, in contrast to Roman law and other ancient and modern legal systems, the servant is not inherited by the heirs. His bond is personal and exclusive to his master and cannot be transmitted to others. The *ghemarah* reaffirms the principle that the servant can be kept to work for a maximum of six years (except in the case of the pierced ear), and on the seventh year, with the arrival of the sabbatical year, he must be set free.
It is important to note that the sabbatical year has a different timing for each servant, as it occurs seven years after the start of servitude, while the Jubilee is simultaneous for everyone. If a slave is acquired two or three years before the Jubilee, his bond cannot last more than two or three years. Additionally, a female slave acquired as a servant will be freed upon reaching puberty. If a female slave becomes ill and is unable to work, she must be set free. However, a runaway female slave must not be freed. In Roman, Greek and Hellenistic law, obviously, nothing of similar did ever exist.
It is also established that a master can arrange for a female slave to marry his son, and there is discussion as to whether this arrangement can also apply to his grandson, the son of his son. The opinions of the sages on this matter seem to be divided, as also divided are their opinions on whether the consent of the son (or grandson) is necessary and whether he must be an adult or he can also be a minor. There is no reference to the consent of the female slave.

## 12.- The marriage of minors

Regarding the marriage of minors, there is also mention of a groom who is only nine years old. In these cases, marriage is obviously understood as a preventive bond, intended to take effect upon reaching puberty. There is also discussion about what are the physical signs that determine puberty, considered to coincide with adulthood.
One also wonders, in case the marriage was contracted before puberty, whether reaching adulthood has retroactive effects, and therefore whether the marriage can be considered valid from the beginning:
*Rav Mana asks: "If the signs appear at the right time, is he considered a man retroactively or from that moment onwards?"*

ISSN: 3034-9125

There is a tendency to allow the marriage of prepubescent children, mentioning as an evidence improbable examples of early fatherhood:

10 *A Baraita mentions that Achaz became a father at nine years old, Haran at six, and Caleb at ten years old.*

13.- Masters, fathers, husbands.

In certain passages, a clear subjection of women (whether in conditions of freedom or servitude) to the master, father, or husband seems to arise.
The master can sell his female servant, and the father his own daughter, just as they can give her in marriage. Of course, if they have sold her to one man, they cannot give her in marriage to another, as it would be a fraud against the buyer.
Even a husband can sell his own wife as a slave, through a way of "designation". However, contrary opinions are reported:

10 b *"As a slave": the verse says that if a man sells his wife as a slave, this means that a father can sell his daughter. And he gives her to him with the designation, words of Rabbi Meir. But the Chakamim say that the act is invalid.*

However, the various limits to the relationship of servile subjection are pointed. The Jewish servant (*'eved ivrì*) will be automatically freed at the end of the sixth year of servitude, or upon the death of his master, or at the arrival of the *Yovèl*. The prepubescent female servant becomes free upon reaching puberty (differently, it is clarified, what applies to paternal power, which does not cease with the daughter's reaching of puberty). And it is repeated that only by a deliberate decision of the own servant, he can remain in permanent slavery.

11a *The Torah* (Exodus 21:6) *states: "But if the servant declares, 'I love my master and my wife and children and do not want to go free,' then his master must take him before the judges. He shall take him to the door or the doorpost and pierce his ear with an awl. Then he will be his servant for life".*

This must have been an act of particular solemnity and importance (as it contradicts the principle that the status of slavery cannot be eternal), to the point that the sages describe even the type and size of the awl that must be used to pierce the ear. And it is expressly said to be a disgraceful and unholy choice:

11b *but it is a disgrace for him and his family.*

Why should his ear be pierced? The answer is clear and explicit:

*The disciples asked Rabbi Yohanan Ben Zakay: "Why is the ear of the Jewish slave pierced instead of other body parts?". He replied to them: "Because the ear heard from Mount Sinai: 'You shall have no other gods before me'. This means that one should not remove the yoke of Heaven from oneself to assume the yoke of a human being. This ear, which heard from Mount Sinai for the Israelites 'belong*

ISSN: 3034-9125

*to me as servants'* (Leviticus 25:55), *if it goes to take another master, is pierced because it did not observe what it heard".*

14.- Servants, land, animals.

The *Mishnah* establishes that the Canaanite servant, like the bride, is acquired in three ways and is liberated in two:

11 a, b *A Canaanite servant is acquired by money, by a written document, or by taking possession (chazaqà), and is released by money, by others (i.e., money paid by others), or by a document.*

The *ghemarah* draws a parallel between the acquisition of a slave and the acquisition of land:

11 *b The Torah regarded the possession of slaves as that of land. Just as the ownership of land is acquired by money, by a document, or by taking possession, so a Canaanite slave is acquired by money, by a document, or by taking possession.*

But regarding the equation of slaves with land, as well as their legal nature, there are dividing opinions in rabbinic interpretation:

11 b *There is a Mishnah that speaks of Canaanite slaves, saying that they are like the land. There is a Mishnah that says they are like movable property. There is a Mishnah that says they are neither like land nor like movable property.*

*It is said: "Rabbi Isaac and Rabbi Imi say that a widow seized one of her slaves". This case came before Rabbi Isaac. He said, "she seized a slave." Rabbi Imi took her away from the woman because the widow believed that she was her property, but she was not her property, a slave is not like land.*
It is clarified that the liberation of a slave by a document consists in the delivery of a written act by the master, confirming the liberation.
Then comes the unique and problematic case of the "half slave".

12 *Rabbi Abun says that ... a person can emancipate half of his slave. Why do the Rabbis disapprove of liberating half of a slave? The Rabbis allow it in the case where the slave is owned by two people. But in the case where the slave is entirely one's property, the situation is different because he is owned on both the right and left sides.*

Nothing similar can obviously be conceived in Roman or Greek and Hellenistic law, neither is testified in other ancient legal systems.
Maybe this difference can be understood considering how profoundly different the status of the Hebrew 'slave' (*'eved*) is from the others, while it does not properly consist in a kind of ownership of a man over another man, but rather in a simply duty of temporary service in benefit of someone else. And it may seem possible to acquire or to release only a part of somebody's work, time and services.

ISSN: 3034-9125

Next comes the question whether freedom can be attributed to a fetus while still in the womb of a slave mother. The issue appears controversial, but the prevailing opinion is that the status of the mother cannot be different from the status of the fetus, as it is considered a part of her body. Therefore, either freedom will be given to both or neither of them. The question then arises as to how animals should be acquired. The *Mishnah* indicates a difference based on size, and reports controversies in this regard:

14 a: *Large animals are acquired by passing, small animals by lifting them. This is the opinion of Rabbi Meir and Rabbi Liezer, but the Chakamim say that small animals are acquired by pulling them.*

In the case that an animal is borrowed and dies of natural causes, the borrower must swear that the death was not his fault, but he must still give a compensation to the owner. In case the animal is stolen, the sages propose different rules: some argue that the living animal or its value should be returned, others that

*the thief must pay back double* (Exodus 22:3).

15.- Immovable and movable property.

The *Mishnah* also provides three ways of acquiring immovable property:

15 *Immovable property is acquired with money, by a written document, or by taking possession of it. Property that is not immovable can be acquired by 'meshichà' (literally meaning pulling the object). Movable property is acquired along with immovable property, with money, with a written document, and by taking possession of it.*

The *Gemarah* reaffirms this principle:

16 b *land is acquired with money, through a document, or through possession.*

It also mentions, however, the requirement of a testimony:

*With money, as the verse says (Jeremiah 32:44): "Fields will be bought for silver, and deeds will be signed, sealed and witnessed".*

Some commentators claim that walking on someone else's land is sufficient to take possession of it and, therefore, acquire it, although this opinion seems to be controversial:

*Rabbi Liezer says: "possession is acquired by walking (on the land)". As narrated in a 'Baraita', if one walks on a field, he acquires the place on which he has walked; these are the words of Rabbi Liezer.*

Acquisition through a document seems to be related to the need to take possession of what has been purchased. It is clarified that if ten fields are acquired with a single document, once the buyer takes possession of one of them, he takes possession of all, therefore acquiring full ownership. But if payment has been made only for one of them, only that one is acquired. However, on this point, the

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tractate reports conflicting opinions. Then, the acquisition of movable property is revisited, reminding, once again, that their acquisition occurs in three ways:

*with money, with a document, with possession.*

It is then asserted that, in the case of items of different values, it should be assumed that the one of greater value should be acquired with money, while for the one of lesser value, the single taking of possession may be enough.

16.- Duties towards parents and children.

The tractate then changes its subject completely, moving on to examine the duties towards parents and children, distinguishing between the situation of males and females.

*Mishnah: For all duties of a parent towards the child, men are responsible, and women are exempt. All duties towards the father imposed on the child, are obligatory for both males and females.*

The *ghemarah* then recalls that the father has the obligation to circumcise the son on the eighth day, to teach him a trade and to find him a wife. The children's duties of respect towards the father are specified, and this seems to mean that the respect towards the father is more important than that towards the mother:

*Not to sit in his father's place, not to speak in his place, nor to contradict his words, nor to change his words.*

But disrespect towards both parents is anyway considered a very serious sin:

*A man shall fear his mother and his father.*
*It is written: "A man shall fear his mother and his father and shall fear his God." That means that the Torah equates the respect due to the father with the respect due to God. It is written: "Whoever curses his father, or his mother shall be put to death".*

Other topics are then discussed, such as the difference between observing the commandments inside and outside the land of Israel, the inheritance of the land, the favourable fate reserved for those who faithfully fulfil the commandments, the reward and punishment for men in the future world for their actions, and the possible forgiveness of sins.

17.- Proxy marriage, *ghet*, marriage restrictions.

The discussion then returns to marriage, clarifying that both the man and the woman can marry either in person or through a representative (*shaliach*). Even the father can betroth his daughter while she is still a minor either personally or through a representative, and the functions and responsibilities of the *shaliach* are illustrated. It is then discussed the possibility, for a woman that is separated from her previous husband, to marry without an explicit divorce document (*ghet*). It is said that this is possible if the bond has been dissolved by a sage rabbi.
It is clarified that it is not possible to marry simultaneously a woman and her daughter or sister, as it would involve prohibited relationships (28 a).

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18.- Betrothal and patrilineal descent.

After recalling the duty to sacrifice the firstborn of animals, the discussion moves to betrothal contracted with a promise of money. If the money is not actually paid, the betrothal is not valid. It is clarified that a betrothal contracted under conditions is not valid:

*If someone says to a woman: "You shall be betrothed to me after I proselytise" or "after you proselytise", or "after I have obtained freedom from slavery", or "after you have obtained freedom from slavery", "after your husband has died" or "after your sister has died", or "after you have performed Halizah with your brother-in-law", he is not betrothed, he has said nothing.*

The status of the unborn child is then defined, which follows the status of the father, if the marriage took place regularly. The son of an Israelite will therefore also be an Israelite. It must be pointed out in this respect, that the tractate follows the custom of patrilineal descent, that was in use in the Land of Israel before the fall of the Second Temple and the beginning of the diaspora, when the matrilineal mechanism (still in use to this day) would have been established.

19.- Five questions.

In summary, these are the main contents of the tractate *Kiddushin*. From their overall examination, five basic questions emerge:
a) What was the working method used by the compilers?
b) What is the age of the collected texts?
c) What is the systematic order of the tractate?
d) What was its purpose?
e) What does its lecture suggest on the comparative field, in comparison with the institutions of Roman and Greek law and other legal systems of the ancient Near East?

20. a) Casuistic method.

Regarding the first question, as we have already mentioned, it is evident that the tractate discusses a number of various topics, even without any mutual connection, and its contents go far beyond the single subject indicated in the title, namely the "consecrations" of the matrimonial bond. It deals, in fact, with the acquisition of movable and immovable property, family relationships, slavery, patrilineality, and other issues.
It is evident that it is an assembly of rabbinic responses elaborated in different contexts, according to a "casuistic" method, with the responses given, case by case, to various questions. It is a collection, a compilation of various tractates, not a whole and organic text.

21.- b) Stratification.

Regarding the age of the tractates, it is also evident that the collected materials date back to different periods, and many texts must have been written before the fall of the Second Temple. As argued elsewhere, it can be considered as true that many of the contents of the *Mishnah* were put into writing

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in the land of Israel before the dispersion that followed the fall of the Temple in 70 AD, particularly in the years after Jesus predication and death. As noted by Tagliacozzo, the *Talmud* (both the Jerusalem and Babylonian versions) discusses, as if still relevant, institutions that were no longer practiced at the time it was written, such as slavery (although Jewish slavery was much different and less oppressive than Roman one), polygamy, which had fallen into disuse almost everywhere before the Common Era (although formally abolished only in the XI century, by Rabbi Ghershom decree), and patrilineal descent (also abandoned after 70 AD).
Additionally, the scholar points out, "all these works do not take into account the fall of the Temple at all. The Law is eternal, the Temple can fall for contingent reasons, but it is destined to be rebuilt (*T. Y., Bavà Metzià*)". However, it is likely that the reference to outdated institutions can be attributed to the fact that the texts dealing with them were written when they were still in effect, at least in some circles. The tractate is a stratification of writings dating back to different periods, the oldest of which can probably be traced back to the last decades of the ancient era, perhaps to the reign of Herod (37-4 BC).

22.- c) Memorandum.

The tractate, as we have seen, insists that the acquisition of spouses, animals, and objects would take place in three ways: by document, money, or by taking possession (the possession is understood, in the case of the bride, as a sexual intercourse). But on closer observation, the indicated modes of acquisition are far more than three, since there is also mention, for instance, of the father's decision, delivery of utensils, marriage by proxy, and testimony. Moreover, the association between sexual intercourse and possession of land or objects is also questionable, as it implies a 'reified' perception of women, certainly not in line with Jewish tradition.
It can be assumed, therefore, that the emphasis on the "three ways" and the number three primarily represent a mnemonic and didactic device, a sort of "memorandum" useful to learn and remember the contents of the tractate, regardless of its actual content. If this is true, this repeated reference should be attributed to the moment when the various materials were put together and compiled, as already mentioned, between the end of the 2nd and the beginning of the 3rd century AD.

23. d) Timeless Law.

But what could we consider that was the purpose of the tractate? Was it intended for practical application in resolving disputes, was it to be used in trials and courts (the *Batèi Din*)? Or was it rather a simple collection of ancient material, whose value was essentially, or mainly of historical testimony? Was it supposed to contain "positive law" or not? Ù
There is no clear answer to this question, just as there is no clear answer for the entire Ta-Na-K (one of the ways of referring in Hebrew to the part of the Bible that Christians call the "Old Testament", derived from the acronym Ta [*Torah*] - Na [*Nevìm*, Prophets] and K [*Ketuvìm*, Writings]) and for the entire two *Talmuds*. And, as is well known, it would also be difficult to give an answer to a similar question, regarding for example the value of the contents of the Theodosian Code or the entire *Corpus iuris civilis*.

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The *Mishnah*, like the written Torah, is the word of God, and it is always "positive law" (or, better said, "eternal law", or "timeless"), even if, due to changed historical circumstances, it does not find practical application. It can never be cancelled. As for the *Ghemarah*, its commentary is human word, and it can always be contradicted and overtaken by other interpretations. But it will never be abolished, cancelled, because the *Talmud* is an open text, an 'hypertext', meant to be continuously interpreted and actualized, but never erased. It will be up to the interpreter, from time to time, to decide whether and which of its contents should or can find practical use and application, and in what way and to what extent.

24. e) Comparison.

Regarding the utility of the tractate on the comparative field, it gives many suggestions, particularly concerning the similarity between Jewish, Roman and Hellenistic Law.
Also in Roman, as well as in Jewish law, there are mostly three ways of acquisition and release of the bride, by payment (*coemptio*), formal act (*confarreatio*), simple cohabitation (*usus, adfectio*). But in both legal systems, they become, in the course of time, many more, with the extensive use, in later ages, of written documents. But the "three ways" are different, the written document does not belong to classic Roman law, and *cohabitatio* and *adfectio* meant much more than a simple sexual intercourse. Was the number "three" used to facilitate a comparison between the two legal systems? It is possible, although not probable, while an influence of Roman law on the *Kiddushìn* tractate does not appear. Certainly, the elements of difference between Roman and Hebrew law seem to be much more than the similarities.
But an element of similarity certainly exists, and it consists in the controversial debate mentioned in the *ghemarah.* Just as classical Roman law was created mainly through the free debate among the jurists, from which the *ius controversum* was generated*,* so the *ghemarah* was the result of the *machloket,* the free debate among the sages. But this does not depend on an imitation of the ones by the others. It is rather a consequence of the similarity between the function of the *iuris consulti* and of the Jewish sages, both devoted to the individual and free research of new legal and practical solutions, without bonds of doctrinal obedience and submission.

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