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PURCHASE OF GOODS THROUGH ANOTHER'S POSSESSION AND THE CONDITION OF
THE WIFE IN THE *BAVA METSIA* TRACTATE OF THE JERUSALEM TALMUD*

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In the first chapter of the *Bava Metsia* (“the middle gate”) tractate of the Jerusalem Talmud, translated into Italian for the first time, it deals with the purchase of a lost item whose owner is unknown, through the possession by a person connected to another and who can, in some way, be considered subordinate to them. The effect of acquiring ownership of the good will thus be determined in favour of this superior person.

The passage provides useful elements for reconstructing family relationships in the environments and era in which the tractate was written (presumably at the Rabbinical Academies of Galilee, during a period not precisely specified between the late 3rd and the late 4th century CE).

It first clarifies the general principle, which dates back to the *Mishnah*, also common in Roman law and in current European positive law, according to which whoever acquires possession of a lost object (thus *res nullius*: it's not specified that it must be impossible to trace the owner, but this is assumed) also acquires ownership of it:

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We learned from the Mishnah: “if someone sees a lost object and takes it (literally: ‘it falls on them’), they acquire possession; whoever acquires possession also has the (ownership) right.”

But it might happen that the apprehension was done by someone else, whose status seems inadequate to allow acquiring ownership for themselves. It's obvious, even if not specified, that the object is found in a public or open space, because if it had been found inside private property, it would obviously have belonged to the owner.

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Halachah 1.5: Mishnah: *Objects found by one's minor son or daughter, or by one's Canaanite servant (male or female), or by one's wife, belong to him. Objects found by one's Jewish servant (male or female), and those found by a divorced wife, even if the husband has not yet paid the “ketubah,” belong to them.*

The word *ketubah* — literally “writing”— generally refers to the written marriage contract. This contract specifies how much the husband (or his family) must pay to “buy” the wife (the so-called *mohar*), and how much the wife's father must give the husband to support the marriage (essentially, the “dowry”). This latter sum, in case of divorce, must be returned to the wife. Over time, the *mohar* became merely symbolic, while the amount given to the husband is real, so the term *ketubah* can also refer—as in this case—to the money that must be returned to the woman in case of divorce. This institution gradually gained great importance and has been considered a fundamental tool for protecting women, to be safeguarded in case of the dissolution of marriage.

So, the *Mishnah* distinguishes between different categories of people who take possession of a lost item, indicating different effects depending on who finds it:

a) If the item is found by a minor son or daughter, a Canaanite servant, or the wife, it becomes the property of the father, the master, or the husband, respectively.

b) If, instead, it is found by a Jewish servant (*èved ivri*) or the ex-wife, it belongs to the one who found it. It is specified that a repudiated wife becomes the owner even if the husband had not yet fulfilled the obligation to return the *ketubah*.

c) Obviously, if the item is found by a father, a master, a husband, or even an unmarried adult man without children or servants, the item is theirs.

Apparently, the Mishnah seems to implicitly indicate a reduction of legal capacity for certain individuals (minor children, Canaanite servants, wife), who would not have the ability to acquire things for themselves.

The following *Ghemara* tries to better define this stated principle:

Ghemara: *The Mishnah says: "the object found by your son or daughter" refers to the case where (the children) do not depend on their father for support, but if they do depend on the father, the object found belongs to the father.*

So the distinction between a "minor" or "adult" child isn't really about age, but about whether they are financially independent or still depend on their father for support.

Different opinions are then reported regarding the hypothesis that the object is found by a friend or companion. The matter should be an obvious solution (why should the possession of a free and adult man benefit someone else?), and the fact that it is raised probably suggests that the finder had been asked to do some work, in a friendly way, for a friend, during which they came across the lost object:

Resh Lakish says that a person cannot acquire an object found for their companion. Rabbi Hilà says: this is not so according to Rabbi Shimon's opinion. But it is so according to the opinion of the "baraita" taught by Rabbi Hoshià.

In the next passage, it is stated that if a worker finds an object while carrying out their work, it belongs to the employer:

If someone hires a worker to do any job, whatever the worker finds belongs to the homeowner.

But this principle is questioned:

Resh Lakish says: if a person has permission to terminate their contract (then why) does the found object belong to their employer?

The fact that the assigned work is temporary seems to justify that the lost object could become the property of the worker.

The next passage considers the case of a change in the assigned duties:

What's the difference between a Hebrew male or female servant and a Canaanite male or female servant? Rabbi Yochanan says: in the case of a Hebrew servant, as long as the master hasn't assigned them to a different task, anything they find belongs to them. But in the case of a Canaanite servant, as long as the master hasn't assigned them to a different task, anything they find belongs to their master.

The gist of the passage seems to be that the 'eved ivri (unlike the Canaanite servant) does become the owner of a lost object, but only if they take it while performing the work assigned to them by the master. If they switch tasks, they can't go back to the place where they saw the object and take it.

Later in the *Ghemara*, there's an apparently 'servile' view of the wife, who seems to be somewhat forcibly assigned by her husband to this or that task, just like a servant:

They asked: but even regarding one's wife, as long as her husband hasn't assigned her to another task, does the object found belong to the husband?

In fact, the wife's status seems lower than that of a Hebrew servant, whereas it should be equivalent to that of a Canaanite slave. If she finds a lost object while performing tasks on behalf of her husband, the object—if the answer to the question posed is yes—will belong to the husband. The fact that she did it while carrying out work assigned to her by her husband seems, in terms of her right of acquisition, irrelevant.

The *Ghemara* in *Bava Metsia* emphasizes this point:

Another Mishnah teaches us (M., Ketubah 5.6): the husband can assign his wife to work with wool, but (if he has done so) he cannot assign her to do other kinds of work.

This passage seems to put limits on the husband's power to change the tasks assigned to his wife at will, but the husband's right to give work-related instructions to his wife, like a factory supervisor, remains unlimited.

The continuation of the *Ghemara* seems to raise some doubts regarding this condition of the wife's subordination:

Rabbi Ba Bar Mina and Rabbi Yassa, in the name of Rabbi Yochanan, said: the object found by the wife has a different meaning. What is the different meaning of the object found by the wife? Rabbi Hagay says: in relation to family disputes. Rabbi Yossa says: to prevent her from taking the husband's property, saying 'I found this object.'

The dispute, as reported, seems to indicate that the principle serves to protect family peace, preventing the wife from abusively taking the husband's possessions. A peace, evidently, based on the undisputed predominance of the husband.

The *Ghemara* then deals with the case in which the object is found in the presence of witnesses:

They asked: what if it happens in the presence of witnesses? Rabbinic law forbids taking it in that case.

The passage seems to reaffirm the subjection of the woman: the witnesses saw that the woman found the object, and that it therefore belongs to the husband, not to her.

It then moves on to the case of a find made by a divorced woman whose divorce has not yet been finalized:

Rabbi Yusnà, in the name of Rabbi Ahà, says: if a man who has divorced his wife has not returned the "ketubah" to her, he is obliged to provide for her support until he has given her the last "perutà" (coin) of the "ketubah". Rabbi Yossè says: this is what our "Mishnah" says: the object found by a divorced woman, even though she has not been paid the "ketubah", belongs to her.

The passage is clear and states that a divorced woman no longer has any subjection to her husband, so anything she finds that was lost belongs to her, not to the ex-husband. This is true even if the money owed to her has not been fully returned.

At the end of the *Ghemara*, a doctrinal dispute is reported:

Rabbi Hoshaià says: don't say that someone is obligated to support his wife with maintenance until he has paid her the last 'perutah,' because in that case any objects she finds would belong to him. She demands payment, and the Mishnah considers it necessary.

The meaning of the words seems to be this: to hold that the husband has the obligation to support the divorced wife until the *ketubah* is fully paid would not benefit the woman, because by still considering her bound to the husband, any lost items she finds would not belong to her, but to the ex-husband. But the *Mishnah* clarifies that a divorced wife must receive full payment of what she is owed, and even if this hasn't happened yet, any lost items she finds still belong to her, not her husband (which isn't said in this passage, but was stated earlier).

From the passages examined, it seems there's a kind of personal subjection affecting not only servants (Canaanites and Jews) and children who are financially dependent on their father, but also the wife herself, who seems relegated to a condition of forced work, like a servant.

Of course, Jewish law never knew anything like the Roman *patria potestas*, *manus maritalis*, *dominica potestas*. The life of the wife, just like that of children and servants (both Jewish and Canaanite), remains sacred and inviolable.

And it should be remembered that the distinction between wife and husband appears in Jewish law in a way very different from what happens in Roman or Greek law, based on a distinction of roles that is mostly religious and ritual.

There are *mitzvòt* that must be observed by men and not by women, and vice versa.

On the property and work front, however, the wife's condition seems clearly inferior, even though she is the recipient of certain protective measures, especially in cases of divorce.

Of course, the passages analyzed need to be seen in the specific context of the *Bava Metsia* tractate and should be interpreted (as positive law) in light of the later, varied rabbinic jurisprudence.

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SOMMARIO

Da alcuni passi del trattato *Bava Metsia* del Talmud di Gerusalemme sembra emergere una posizione servile della moglie, obbligata a svolgere le funzioni a lei assegnate dal marito. D'altra parte, la moglie appare anche destinataria di misure di tutela e protezione, soprattutto nel caso di divorzio.

ABSTRACT

From some passages of the *Bava Metsia* tractate of the Jerusalem Talmud, a servile position of the wife seems to emerge, obliged to carry out the functions assigned to her by her husband. On the other hand, the wife also seems to be the recipient of measures of protection and safeguarding, especially in the case of divorce.

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KEYWORDS

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Contributo, come da regolamento, non sottoposto a referaggio “double blind”.