

THE TERMINOLOGY OF CASE-CITATION IN THE BABYLONIAN TALMUD

*A Study in the Limitations of Form Criticism*¹⁾

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Since the era of the Geonim, through the many authors of Introductions and methodological manuals for Talmudic study, a large portion of Talmudic research has been concentrated on questions of terminology. By means of a careful examination of the use of the more and less common technical terms, scholars try to enter into the minds of the redactors of the Talmud, to establish the structure of the *sugyah* according to its various strata, and even to distinguish between its different constituent sources. In the present study I will discuss one particular type of Talmudic source; namely, the cases that are cited in the Babylonian Talmud. The conclusions of this paper will be based on an examination of all the relevant material found in TB Tractate *Neziqin* (*B.Q.*, *B.M.* and *B.B.*). All examples will be drawn from this tractate.

The question of terminology can be viewed in the light of some central methodological problems: It is clear that not all the cases found in TB reached the last redactors through the same channels. A large part was apparently preserved in court archives, but not all the material comes from courts, and it is reasonable to suppose that

¹⁾ Most of the material in this article is derived from my M.A. thesis on *Case Citation in the Babylonian Talmud*, written under the direction of Prof. E. S. Rosenthal of the Talmud Dept., Hebrew University, Jerusalem.

The abbreviations employed here are mostly conventional ones; the following however should be noted:

DS—R. RABBINOWICZ, *Variae Lectiones (Diqduqé Soferim)* New York 1960.
DS to *Keth.*—*The Babylonian Talmud with Variant Readings etc., Tractate Kethuboth*, ed. M. HERSHLER (2 vols.) Jerusalem 1972-77.

HG—*Halakboth Gedoloth*: HGB—J. HILDESHEIMER ed., *Der Vaticanische Handschrift der Halakboth Gedoloth*, Berlin 1885-1886. HGW—Warsaw 1874.

HP—*Halakboth Pesuqot*, ed. S. SASOON, Jerusalem 1950.

References to the *Sheiloth* are to standard editions unless otherwise indicated.

there were in the Academies other sorts of collections that included various kinds of cases. It is not always easy to distinguish between native Babylonian sources and sources involving Babylonian scholars that in fact reached the TB *via* the Palestinian Talmud. With respect to questions such as these, there is an obvious importance to the study of the terminology and literary forms of the cases. Perhaps we will succeed in isolating some external signs, by means of which we shall be able to distinguish between the different sources of the cases in TB and to determine which belong to court records, which to collections of exempla of scholars, which sources were composed in Babylonia and which in Palestine, etc.

At first glance, it appears possible to describe a prototypical formula of a case whose origin is the Babylonian Jewish court. The pattern goes: "bhw' gbr' [bhy' ytt'] . . . 't' [t'y|tw] lqmyb drb X . . ."—"A certain man [woman etc.] . . . He [She etc.] came before Rab X etc."

It would seem that the consistent use of this pattern would point to a common literary source²). Cases of this type are almost always self-contained literary units, and can be understood even when removed from their present contexts in the Talmudic *sugyoth*. (This is not so, for example, in the cases which use the expressions "hwb 'wbd'" or "R. X 'bd' wbd'"—where the formulation of the cases is such that they have no meaning outside the broader literary context). It would seem that cases using the above pattern emanate from a common source.

Unfortunately, it is easy to see that many cases that conform to this typical pattern do not in fact come from Babylonian court-rooms. Among them are some aggadic tales, and also some Palestinian cases. For example, *B.M.* 60b: "A certain old slave . . . came before Raba . . . came before R. Pappa etc."; *B.B.* 9a: "A certain poor man . . . who came before R. Pappa etc."—In both instances we are dealing with aggadic stories unconnected to the courts or to judicial questions. The same phenomenon occurs in Palestinian cases, as in *B.Q.* 90b: "A certain man boxed . . . came before R. Judah Nesi'a"; *B.B.* 33b ff.; and many others. In none of these cases do we find formal differences to distinguish the Palestinian from the Babylonian

²) It is interesting to compare the earliest Hebrew translations of these Aramaic formulas. In the Geonic *Hilkeboth Re'u* the translator uses the customary Tannaïtic formula "m'sh b'hd. . . b' l'pny r. X," instead of his usual literal renderings. *Sefer Webizbir* employs a number of different equivalents: "bhw' str mtnb (II, p. 27a)"; "bhw' swr" (II p. 9a); "w'mrw hkmym hlkb lm'sb" (II p. 107a); "wbry hlkb lm'sb" (I p. 55b); "m'sh b'dm 'hd" (II p. 107a); "m'sh b'fbh 'hd" (II p. 76b), etc.

cases. Where we are able to compare to parallels in TP or Palestinian Midrashic literature, it is obvious that the Babylonians reworked the material completely in their own dialect and according to the customary terminology, though some traces of Western Aramaic do remain in the dialogue of Palestinian speakers in TB (*Suk.* 44b *et al.*).

Furthermore, when we compare the variant readings in the MSS and medieval authorities, we see that the textual situation in TB is not consistent, and that there are great variations in the employment of the important formulas.

Indeed, we find that as important an expression as “*’t’ lqmyh drb X,*” which seems to serve as a dependable distinguishing mark of historical cases (as opposed to theoretical formulations) suffers from textual variations; sometimes it is found in printed editions and is omitted in MSS, and *vice versa*³).

As examples of the severe methodological difficulties involved in the establishing of a correct text, we will look at two typical *sugyoth*:
Firstly, B.M. 17a:

<p><i>Standard text (so approximately in MSS and printings):</i></p> <p>... Such as: Shabbetai b. R. Marinos wrote to his daughter-in-law a cloak of fine wool in her <i>kethubbah</i>, and he pledged himself to it. Her <i>kethubbah</i> was lost.</p> <p style="padding-left: 40px;">He said to her: I made you no such obligation.</p> <p>Witnesses came and said: Yes, he did write it to her.</p> <p style="padding-left: 40px;">In the end he said to them: I have already paid it.</p> <p>He came before R. Hiyya.</p> <p>He said to him: You have been confirmed as a liar regarding this cloak.</p>	<p><i>Principal variants from Alfasi (=Asberi):</i></p> <p>He came before R. Hiyya (<i>’t’ lqmyh dr-hyy’</i>).</p> <p>Said R. Hiyya to him: Go give it to her.</p>
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³) For example, the phrase is added in various witnesses: *B.M.* 42a (“*’rypy d’wrbyy*”) *contra* *HGB* p. 373; *B.M.* 81b (*DS* n. ζ ; cf. *DS* to *Keth.* p. 191 n. 13); 83a n. *b*; *B.B.* 32b (*DS* n. *l*); 61b (*DS* n. *b*); 168a (*DS* n. *q*).

In the following examples the phrase is found in printed editions and not in other witnesses: *B.Q.* 117a (cf. *HGB* p. 365 l. 15); *B.M.* 49b (cf. *Sheiloth Wayehi* ed. MIRSKY p. 253, according to MS *V*); 83b (*DS* n. ζ); 97a (“*’dwwl’*,” cf. *Sefer Metiboth* ed. LEWIN p. 73).

For some interesting related phenomena see: *B.Q.* 99b (cf. *HGB* p. 359, end); *B.M.* 24b (and *DS* n. *n*); 83a (*DS* p. 233 n. *g*); 106b (*DS* n. *l*); *B.B.* 33b (*DS* n. *y*); 60b (*DS* n. *b*).

The reading in the Alfasi and Asheri is opposed to all the MSS except for MS Escorial G-1-3. It does however agree approximately with the reading of *Mishpetei Shebu'oth* of R. Hai Gaon⁴⁾ and *HG* (both recensions)⁵⁾. In both these versions, "He said to her: I made you no such obligation" is brought after "They came before R. Ḥiyya". From R. Ḥananel's commentary it seems that he had our version before him, though it is interesting to note that he does not mention at all the sentence "They came before R. Ḥiyya," and R. Ḥiyya's name does not appear until the last sentence: "R. Ḥiyya said: You have been confirmed a liar etc."

An impression is created therefore that "ו' לqmyb dr. hyy" is a marginal addition that was inserted into the body of the text, ending up in different places in various traditions. Such, in any case, is the standard philological explanation for this kind of "wandering" sentence. It is easy to understand the Geonic tradition that inserted the phrase at the beginning of the case in order to conform it to the halakhic conclusion: "...and this applies only where he made the denial *before the court*." Further support for this impression might be found in the different wording of *HGB* (Spanish recension)⁶⁾, which reads "ו'י' ת'ת'יב" instead of "ו'ת' לqmyb dr. hyy"; it is missing the sentence "Said R. Ḥiyya: Go give it to her"⁷⁾. It would appear from this that the sentence "Go give it to her" might also be a Geonic addition. It is possible that the original text contained neither "... I made no such obligation", nor "Said R. Ḥiyya: Go give it to her," and that they were to be understood from the end ("You have been confirmed a liar" etc.). It is also possible, moreover, that "ו' לqmyb dr. hyy" was originally found only at the end, as is the case in most witnesses, and was afterwards moved forward for the sake of clarity and in order to place the whole case within the context of a courtroom⁸⁾.

Our second example is from *B.M.* 68b:

"The sons of R. Ḥlish had a bond produced against them...said Raba etc."

⁴⁾ II, 12 (near end).

⁵⁾ *HGW* p. 91b; *HGB* p. 363.

⁶⁾ v. *HGB* *ibid.*, n. 85.

⁷⁾ See also *Or Zaru'a* par. 47.

⁸⁾ In *HP* p. 78 we read: "ו'ר'ק' ל'ב'ת'ב'ת' ו'י' ת'ת'יב ו'מ' ל' ל' ה'י'ו' . . . ו'ת'ו' ש'ב'ד' . . . ו'פ'ר'ת' ו'י' qmyb drby hyy ו'מ' ל'w." So, more or less, in *Hilkhoth Re'u* p. 60.

From the comments of some of the medieval commentators it appears that their texts, unlike ours, contained the sentence “*’t lqmyb drb*” (He came before Raba”). Were the phrase found only in Nahmanides (“*’t ’wbd’ qmyb drb*”) it could have been understood to be just Nahmanides’ own paraphrase. But it shows up again in the commentaries of Adret and pseudo-Ishbili. The real Ishbili actually draws conclusions from the fact that the case was brought to trial⁹). The sentence in question appears also in a responsum of Alfasi quoted in *Shiṭṭab Mequbbeṣeth*, though it is missing in a responsum of R. Hai Gaon in *Sha’arei Sedeq* IV, 8, vi.

I have not found the sentence in any of the codices of the Talmud, but it does appear in a *Genizah* fragment Oxf. Bodl. (62) 2826/20.

It is also common to find variations between “*’t lqmyb d-*” and “*’t ldyn’ (l)qmyb d-*”¹⁰) or “*tb’yb ldyn’ qmyb d-*”¹¹). The root “*T*” is frequently exchanged with “*ZL*”¹²) (or “*Z*”) ¹³). There is no differentiation at all between the singular “*’t lqmyb*” and the plural “*’tw lqmyb,*” and the forms interchange indiscriminately. There is rarely any semantic significance: When in sing., it refers to the plaintiff who initiated the action; when in pl., the subjects are *all* the litigants¹⁴). There are also frequent confusions of masculine (“*’t*”) and fem. forms (“*’ty*”, “*’ty’*”) ¹⁵), but in most such cases the fem. forms are probably original¹⁶), and were afterwards cor-

⁹) “. . . Except that the language of the *Gemara* does not fit such an interpretation, since ‘who came before Raba’ implies that he came to court”.

¹⁰) See *B.Q.* 58b (*DS* n. *l*, so too in Escorial MS); *B.B.* 29b (*DS* n. *p* and n. *t*); 30a (*DS* n. *g*) and many others.

¹¹) *B.B.* 5a (*DS* n. *g*); 151a (*DS* n. *y*; n. *k*); 170a (n. *t*); 171b (*DS* n. *s*). The fem. form “*’ty’ tb’yb ldyn’ lqmyb*” appears in *MSS* in *B.M.* 17a (*DS* n. *d*); *B.B.* 151b (*DS* n. *n*); 169b (*DS* n. *y*). See also *B.Q.* 99b: “*bhy’ ytt’ hwy’ dyn’r’ lr. hyy’ m. lb. . . lmr’ ’ty’ mrb lyb* etc.” (So in *Genizah* fragment Oxf. Bodl. 2833/19. This fragment contains several interesting phenomena; e.g. the entire subsequent anonymous discussion is introduced by the word “*myr.*”)

¹²) *B.B.* 34b (*DS* n. *p*); 151a (*DS* n. *w*); 155b (*DS* n. *d*). Cf. *B.M.* 51a: “*tdryb lqmyb.*” *contra*: “*xl lqmyb*” in *HGB* p. 378. Cf. *B.Q.* 27b (*DS* n. *p*).

¹³) *B.Q.* 48b in *Genizah* fragment Camb. T-S Add. 1236. Compare EPSTEIN in *JQR* n.s. v p. 244 (par. 21); *REJ* LXXIII p. 37; *A Grammar of Babylonian Aramaic* (1960) pp. 19, 57, 58 Heb. See also KUTSCHER in *Lesbonenu* XXVI p. 176; E. S. ROSENTHAL in *Peraqim* II, n. 30.

¹⁴) See *B.M.* 17a (*DS* n. *d*); 31b (*DS* n. *b*); 69a (*DS* n. *d*); *B.B.* 9a (*DS* n. *d*); 29b (*DS* n. *t*); 34b (*DS* n. *p*); 40b (*DS* n. *d*); 126b (*DS* n. *t*); 155b (*DS* n. *’*); 159b (*DS* n. *m*).

¹⁵) See *B.B.* 153a (*DS* n. *l*).

¹⁶) Linguists have seen the disappearance of the fem. forms as an actual linguistic feature of Bab. Aramaic, not merely a textual error. They disagree whether it

rupted by copyists unfamiliar with these relatively rare forms. There is no differentiation between “‘t’ *lqmyb*” and “‘d’*t*’ *lqmyb*,” according to which the phrase would appear respectively as a principal or subordinate clause¹⁷). “*lqmyb*” and “*qmyb*” are also interchangeable forms.

We encounter a similar problem as we try to study the other most common feature in the terminology of the cases in TB: the phrase “*hbw*’ *gbr*’.” We immediately notice that the “*gbr*” comes and goes in different versions without any rhyme or reason¹⁸). There are other combinations of “*hbw*” and “*hby*” at the beginnings of cases that undergo interesting textual variations:

B.M. 60b — “*hbw*’ ‘*bd*’ *sb*”’, as against “*hbw*’ *gbr*”’¹⁹).

B.M. 109b — “*hbw*’ *ftl*”’—“*ftl*”’ is missing in other texts²⁰).

B.B. 9a — “*hbw*’ ‘*ny*”’. “‘*ny*”’ is not in some versions²¹).

B.B. 153a — “*hby*’ *mtnt*”’. “‘*mtnt*”’ is missing in some texts²²).

Ibid. — “*hbw*’ (sic!) *mtnt*”’. “‘*mtnt*”’ is again missing in some texts, while in others “‘*ftl*”’ appears in its place²³).

The conclusion that emerges from all this is that, of all the features that might be regarded as characteristic terminology of the cases in TB, there is not a single one that does not frequently get replaced by

is a phonetic or morphological development. See KUTSCHER in *Lesbonenu* XXVI p. 168 ff.; *ibid* XXXV p. 36 ff.; *contra* BEN-ASHER, *ibid*, p. 279 ff. V. also M. SOKOLOW *ibid* p. 235 ff.

¹⁷) E.g. *B.B.* 9a (*DS* n. *s*); 153a (*DS* n. 1) and many others. It should be noted that in all the above examples we offered only a sampling of variants listed in *DS* to *B.Q.*, *B.M.* and *B.B.* Even there not all instances were recorded (not even those in the Munich MS). Had we tried to add evidence from other witnesses (Escorial MS, MS Paris 1337, *Genizah* fragments, Geonic lit.) the lists could have been enlarged by scores.

¹⁸) E.g. *B.M.* 96b, in the case before Rab, “*gbr*” is omitted in Munich MS (not listed in *DS*). In *HP*, “*gbr*” is also missing from the case on that page judged by Raba, and in R. Pappa’s case on 97a (cf. *Metiboth ad loc.*). Note two other examples on *B.M.* 104b (*DS* n. *b*).

In the following examples the “*gbr*” does not appear in printed editions, but is found in other versions: *B.B.* 12b (*DS* n. *f*); 132b (*DS* n. *t*); 143b (*DS* n. *s*); cf. *B.B.* 29b (*DS* n. *f*); *B.Q.* 117b (*DS* n. *k*) and many more.

¹⁹) *DS* n. *g*.

²⁰) *DS* n. *f*; cf. p. 109a: “*hbw*’ *ftl*”’—Here “*hbw*” is missing in *DS* n. *b*. The “*hbw*” is frequently the only external mark distinguishing between an “historical” case, as opposed to hypothetical formulations of law (cf. the formula: “*h’y m’n* etc.”).

²¹) *DS* n. *s*.

²²) *DS* n. *m*.

²³) *DS* n. *’*; cf. *Sheilt.* (MIRSKY) *Mishpatim* p. 176 l. 16 (*MS*’).

variants in different witnesses, though the variants rarely affect the actual meaning of the passages. Sometimes, however, a minor straying from the standard formula is all that is needed to cast suspicion on the assumption that a given text is a case at all. Except where names of litigants are supplied, the sentence "He came before Rab X" often looks like the only certain sign that a case is actual and not just hypothetical. Yet we have seen that this sentence can be suspected of being a scribal insertion. Other factors, less critical, can also have a significant part to play in shaping our literary analysis of a given *sugyah*, particularly when the wording of a case shows other signs of the typical terminology of the theoretical give-and-take of the Academies: such expressions as "mwtby" ²⁴), "mtqyp lb" ²⁵), "ytyb r. X wq' m'yyn bb (wqmyb'y' lyb)" ²⁶); or the posing of a hypothetical question ²⁷), etc.

This is not to imply that the above critique has the power to invalidate Form Criticism as a valuable means of cutting through the literary history of Talmudic passages. The intention is only to suggest that the study of terminology cannot be divorced from the study of the textual traditions of the Talmud as a whole. Students of the Talmud through the ages have felt free to exploit their mastery of the Talmudic language and method, and to allow themselves freedom in transmitting and emending texts. This situation must be taken into account before we can begin to draw conclusions from Talmudic terminology. Textual analysis must in any case go beyond the recording of variants, and must strive for an understanding, insofar as such is possible, of the processes by which textual traditions come to be. Only then will we be able to accurately evaluate the findings of Form Criticism as applied to the Talmud.

²⁴) *B.M.* 109b *et al.*

²⁵) *B.Q.* 115a (cf. *Aghmati* p. 55b); *B.B.* 12b, 151a (cf. *DS* n. g) etc.

²⁶) *B.Q.* 62a (and *DS*); *B.M.* 77b, 97a (*DS* n. p) etc.; *B.Q.* 116b, 117b.

²⁷) *B.B.* 34b ("...Do we seize or not?..." etc.)