

## בן סורר ומורה פרק שמיני

(fol. 26a) **משנה א:** בן סורר ומורה מאימתי נעשה בן סורר ומורה משניבא שתי שערות ועד שיקנין זקן התחתון ולא העליון אלא שדבריו חכמים בלשון נקייה. שנאמר כִּי־הִנֵּה לְאִישׁ בֶּן. בן ולא בת. בן ולא איש. הקטן פטור שלא בא לכלל המצות:

**Mishnah 1:** The deviant and rebellious son<sup>1</sup>. When can one become a deviant and rebellious son? From the moment he grows two [pubic] hairs to when he sports a beard, the lower, not the upper<sup>2</sup>, because the Sages used clean language<sup>3</sup>. For it is written: *If a man have a [deviant and rebellious] son*<sup>4</sup>. A son but not a daughter, a son but not a father<sup>5</sup>. The underage [son] is not liable since he does not have any obligation<sup>6</sup>.

1 Who has to be stoned according to Mishnah 7:5.

2 If the pubic area is fully covered by hair.

3 To avoid mentioning genitals.

4 *Deut.* 21:18.

5 From the moment that a son is sexually mature, he can no longer be tried as deviant and rebellious son.

6 An underage child never has any obligation; his parents have the duty to educate him.

(26a line 45) **הלכה א:** בן סורר ומורה כול. רבי זעירא רבי אבהו רבי יוסי בן חנינה בשם רבי שמעון בן לקיש. כתוב וכיגד איש על־רעהו להורגו בערמה. מאימתי הוא נעשה איש. משנייד. מאימתי הוא מזיד. משתתפשט הכף. משל בשל הזרע מבפנים חשחירה הקדירה מבחוץ. אמר רבי זעירא. תנא רבי שילא בר בינא. כִּי־הִנֵּה לְאִישׁ בֶּן. לא שיהא הבן אב. מכין שהוא ראוי לבוא על אשה ולעברה ה"י די ליה אב ולא בן. ואמרה תורה. בן ולא אב. ואמרה כ"י דמר רבי יסא בשם רבי שבת. כל־גמיו שלבן סורר ומורה אינו אלא ששה חדשים בלבד.

**Halakhah 1:** "The deviant and rebellious son," etc. Rabbi Ze'ira, Rabbi Abbahu, Rabbi Yose ben Hanina in the name of Rabbi Simeon ben Laqish. It is written: *If a man would concoct against his neighbor to kill him slyly*<sup>7</sup>. When does he become a man? When he concocts. When is he done cooking? When his *palm*<sup>8</sup> expands. A simile: If the seed is fully cooked inside, the pot becomes black on the outside. Rabbi Ze'ira said that Rabbi Shila bar Bina

stated: *If a man have a son*, not that the son be a father. From the moment that he may come to a woman and make her pregnant, he is a potential father, not a son<sup>9</sup>. But the Torah said, a son, not a father. It parallels what Rabbi Yasa said in the name of Rabbi Sabbatai: The entire period of a “deviant and rebellious son” is only six months<sup>10</sup>.

7 Ex. 21:14. The argument is an almost untranslatable pun, identifying the two meanings of the root נד “to plot, to be mischievous” and “to cook” (Babli 69a). (Gesenius-Buhl also notes the two meanings for the root; modern Jewish lexicographers following Ben Jehudah prefer to derive the *hapax* “to cook” from a root נד.)

8 Palm as anatomic detail denotes the *mons veneris* of a woman (*Yebamot* 1:2, Note 143); it is used here for the corresponding pubic area of the man.

9 While it is accepted that from the age of 9 years a male may be able to have full intercourse with a woman (*Yebamot* 3:10 Note 143), he cannot be held responsible for his actions before he reaches age 13.

Therefore, he can be a responsible father only at age 13. The Babli (68b,69b) and the Yerushalmi (*Yebamot* 10:14, Notes 209-211; copied *Qiddushin* 1:2 59c l. 26, p. 73) recognize the fact that an underage male may become a father. The son born to an underage father can never become *deviant and rebellious* since he is not the son of a *man* as required by the verse.

10 Since everywhere in talmudic literature the period between onset of female puberty and full feminine development is taken to be six months, the same is asserted here for the male. In the Babli, 69a, R. Sabbatai determines this period as three months.

26a line 53) אָמַר רַבִּי יֵסָא. כָּל-אֵילָן מִיֵּלֵיאָ לֹא מִסְתַּבְּרִין דְּלֹא חִילּוּפִין. תַּנִּי. תִּדַּע לָךְ שֶׁהוּא כו. מִי הִיָּה בְּדִין שֶׁיֵּהָא חֵיב הֵבֵן אוֹ הֵבֵת. הוּי אֹמֵר. הֵבֵת. וְכִטְרָה הִתּוֹרָה אֶת הֵבֵת וְחֵיבָהָ אֶת הֵבֵן. מִי הִיָּה בְּדִין שֶׁיֵּהָא חֵיב קִטּוֹן אוֹ גְּדוֹל. הוּי אֹמֵר. גְּדוֹל. כִּטְרָה הִתּוֹרָה אֶת הִגְדוֹל וְחֵיבָהָ אֶת הִקְטָן. מִי הִיָּה בְּדִין שֶׁיֵּהָא חֵיב הַגּוֹנֵב מִשְׁלָאֲחָרִים אוֹ הַגּוֹנֵב מִשְׁלָאֲבִיו וְאִמּוֹ. הוּי אֹמֵר. הַגּוֹנֵב מִשְׁלָאֲחָרִים. כִּטְרָה הִתּוֹרָה הַגּוֹנֵב מִשְׁלָאֲחָרִים וְחֵיבָהָ הַגּוֹנֵב מִשְׁלָאֲבִיו וְאִמּוֹ. לְלַמֵּד שֶׁכִּפּוֹל אֵינוֹ אֶלָּא בְּגִזֵּירַת מֶלֶךְ.

Rabbi Yasa said, all these rules would be reasonable if they were the opposite. It was stated: You should know that this is the case. Who according to reason should be guilty, son or daughter? One would say, a daughter<sup>11</sup>. But the Torah freed the daughter and declared the son guilty<sup>12</sup>. Who according to reason should be guilty, the younger or the older? One would say, the older. But the Torah freed the older and declared the younger

guilty<sup>12</sup>. Who according to reason should be guilty, one who steals from others or one who steals from father or mother? One would say, one who steals from others. But the Torah freed the one who steals from others and declared the one who steals from father or mother guilty<sup>13</sup>. To teach that all of these [rules] are only the King's decisions<sup>14</sup>.

11 Who in her youth has to be obedient to  
her parents and later in life to her husband.

13 Mishnah 5.

14 Even though this seems to contradict  
Halakhah 7.

12 As stated in the Mishnah.

**משנה ב:** מאימתי הוא חייב משפאכל טרטימר בשר וינשתה חצי לוג יין באיטלקי. רבי יוסי אומר, מנה בשר ולוג יין. אכל בחבורת מצוה אכל בעבור החדש אכל מעשר שני בירושלם. אכל נבלות וטרפות ושקצים ורמשים. אכל דבר שהוא מצוה ודבר שהוא עברה אכל כל-מאכל ולא אכל בשר שתה כל-משקה ולא שתה יין אינו נעשה בן סוטר ומורה עד שפאכל בשר וינשתה יין שנאמר וזלל וסבא. ואף על פי שאין ראיה לדבר זכר לדבר שנאמר אל-תהי בסובאי יין בזוללי בשר למו:

**Mishnah 2:** When is he guilty? From the moment he eats a fourfold<sup>15</sup> portion of meat and drinks half a *log* of wine. Rabbi Yose says, a *mina* of meat<sup>16</sup> and a *log* of wine. If he ate in a company of obligation<sup>17</sup>, or at the lengthening of a month<sup>18</sup>, or ate Second Tithe in Jerusalem, or ate torn or carcass meat, abominations and crawling things, i. e., if he ate anything which either is an obligation or anything forbidden, or ate any food but not meat, or drank any drink but not wine, he does not turn into a deviant and rebellious son unless he ate meat and drank wine, since it is said: *gorging and drinking to excess*<sup>4</sup>. Even if it is not proof, there is a hint in what is said: *Do not be among those who drink wine excessively, nor with those who are gorging themselves on meat*<sup>19</sup>.

15 Greek τετραμορία “fourfold portion”, cf. H. and E. Guggenheimer, Sinai 83(1978) p. 191. A *baraita* in the Babli (*Pesahim* 86b, *Besah* 25b) states that a civilized person drinks a

cup of wine (a quarter *log*, about 130 cm<sup>3</sup>) in two sips. One becomes deviant in drinking half a *log* in one gulp; this is the fourfold amount of a civilized person. The “fourfold amount” of meat is defined in the Halakhah

(and the Babli) as half a Roman pound. Therefore, a civilized person will eat meat in portions no larger than  $1\frac{1}{2}$  Roman oz. per bite. The amount mentioned in the Mishnah refers to a single bite or sip, not the total amounts consumed during a meal (Maimonides *Mamrim* 7:2).

The form טרטימר instead of טרטרמר is not unusual since Greek words copied into Aramaic or Hebrew often exhibit metathesis if one of the consonants λμνρ is involved [H. and E. Guggenheimer, למילון התלמודי יב, *Lešonenu* 39(1975) 59-60.]

16 A Greek *mina* of 100 drachmas, not a

Semitic *maneh* of 60 šeqels (between 120 and 240 drachmas), cf. Note 20.

17 In modern Hebrew this is called סעודת מצוה "a meal of obligation", the festive meal at religious occasions such as weddings, circumcisions, redemption of firstborns, etc.

18 Before the publication of the calendar computations the Synhedrion, and its successor, the Academy of Tiberias, had to determine for every month whether it should have 29 or 30 days. This meeting always was the occasion of a festive meal.

19 *Prov.* 23:20.

(26a line 61) הלכה ב: מאימתי הוא חייב כול'. אמר רבי יוסי. טרטימר חצי לטרא הוא.

**Halakhah 2:** "When is he guilty," etc. Rabbi Yose said<sup>20</sup>, the fourfold portion is half a Roman pound.

20 The Amora R. Yose determines the amount required by the Sages as half that indicated by the Tanna R. Yose, a statement ascribed in the Babli to his teacher's teacher R. Ze'ira. His statement implies that, as a weight, a mina (100 drachmas) was identified with the pound of 12 ounces, i. e. 96 denars. Since other talmudic data indicate that as a coin, *drachma* in the Eastern Roman Empire was the name of the

silver denar, one has to assume that *mina* as a weight simply was a name for the Roman pound. [D. Sperber (*Roman Palestine 200-400, Money and Prices*, Ramat Gan 1974) consistently writes *mina* for the weight and *maneh* for the coin. But since a talmudic מנה always denotes 100 denars, there is no reason not to read the word as Mvā, מנה.]

(26a line 62) אינו חייב עד שיאכלנו מהובקב. אכלו חי פלב הוא. אכלו מבושל בר נש הוא. אכלו הסוקים מהו. גידים הרפים מה הן. רבי יוחנן אמר. נימני עליהן. רבי שמעון בן לקיש אמר. אין נימני עליהן. רבי יעקב בר אבהו בשם רבי זעירא. איתפלגון רבי יוחנן ורבי שמעון בן לקיש. דתנינן תמן. אילו שעורו תיהן כבשרן. אמר רבי יוחנן. עוד זה לא שנו אלא לאיסור ולטומאה. הא ללקות לא. רבי שמעון בן לקיש אמר. משנה תמימה שנה רבי. בין לאיסור בין לטומאה. מחלפה שיטתיה דרבי שמעון בן לקיש. תמן הוא עבד לה בשר. וכן לא עבד לה בשר. אמר רבי יודה בר פזי. שנייא היא תמן שהוא עור וסופו להקשות. כל שכן מחלפה

שִׁטְיָתָהּ דְּרַבִּי שְׁמַעוֹן בֶּן לֵקִישׁ. וְמָה תִּמְן שְׁסוּפוֹ לְהַקְשׁוֹת הוּא עֲבַד לָהּ בָּשָׂר. כָּאֵן שְׂאִין סוּפוֹ לְהַקְשׁוֹת לֹא כָּל־שֶׁכֶן. אָמַר רַבִּי אֲבָהוּ. טַעְמָא דְּרַבִּי יוֹדָה בֶּר פָּזִי וְאֵכְלוּ אֶת־הַבָּשָׂר. לֹא גִידִים.

He is guilty only if he ate it rare<sup>21</sup>. If he ate it raw, he is a dog. If he ate it cooked, he is a human. If he ate cartilage<sup>22</sup>, what is the rule? What is the rule about soft sinews? <sup>23</sup>Rebbi Johanan said, one subscribes to them; Rebbi Simeon ben Laqish said, one does not subscribe to them. Rebbi Jacob bar Aha in the name of Rebbi Ze'ira: Rebbi Johanan and Rebbi Simeon ben Laqish disagreed about what is stated there<sup>24</sup>: "The following have their hides treated like their flesh." Rebbi Johanan said, this was only said as prohibition and regarding impurity, but not for flogging. Rebbi Simeon ben Laqish said, Rebbi stated a complete Mishnah, not only for prohibition and regarding impurity<sup>25</sup>.

The reasoning of Rebbi Simeon ben Laqish seems inverted. There, he treats it as flesh, but here, he does not treat it as meat<sup>26</sup>. Rebbi Judah bar Pazi said, there is a difference, since there one refers to skin which in the end will become hard. This emphasizes that the reasoning of Rebbi Simeon ben Laqish seems inverted! Since there, where in the end it will harden, he treats it as flesh, here where in the end it will not harden<sup>27</sup>, not so much more? Rebbi Abbahu<sup>28</sup> said, the reason of Rebbi Judah bar Pazi is: *they shall eat the meat in that night*<sup>29</sup>, not sinews.

21 Superficially grilled. Eating grilled meat rare is not human. In the Babli (70a) this is called "cooked and uncooked".

22 The word הסוקים is a *hapax* and probably corrupt. It is translated as if it were written חסוכים.

23 This text to the end of the paragraph is a shortened form of a discussion in *Pesahim* 7:11 (35a l. 62); the final result there and here is that the discussion is irrelevant for the rules regarding the deviant and rebellious son, which implies that for the *fourfold portion* nothing can be included that is not regularly counted as food.

The paschal lamb may be eaten only by persons who had subscribed to it, i. e., who were part of the group for whom the lamb was slaughtered during the afternoon of the 14<sup>th</sup> of Nisan. The lamb should be eaten in small quantities at the end of the meal; the minimum quantity per person is the volume of an average olive (כִּזַּיִת). The question now arises whether barely edible parts, such as cartilage and soft sinews, can be used to fulfill the duty of eating from the paschal lamb and the number of subscribers increased accordingly.

24 Mishnah *Hulin* 9:2. Mishnah 9:1 states that in general the hide of an animal is

subject to the rules of impurity of food, but not to those of impurity of carcasses. Then Mishnah 2 lists some animals whose hides follow the rules of flesh in all respects (general consensus exists only for humans and domesticated pigs.) R. Johanan holds that for eating pigskin one never can be prosecuted, while R. Simeon ben Laqish holds that eating pigskin, not yet transformed into leather, is as punishable as eating pork.

25 In *Pesahim* it is stated explicitly that the differences among the rabbis are about whipping offenders.

26 "There" is *Hulin*, "here" is *Pesahim*.

27 Animal hide will become inedible; soft sinews and cartilage will remain edible after cooking.

28 In *Pesahim*" R. Abun".

29 Ex. 12:8, a verse about the paschal lamb, irrelevant for the rules about the deviant and rebellious son.

74) (26a line 74) אָכַל בְּחִבּוּרֵת מִצָּנֶה. אָכַל בְּעִבּוּר הַחֹדֶשׁ. אָכַל מִעֶשֶׂר שְׁנֵי בִירוּשָׁלַם. וְיִסְרּוּ אוֹתוֹ וְאֵינָנוּ שׁוֹמְעֵי בְּקוֹלָם. יֵצֵא זֶה שֶׁהוּא שׁוֹמֵעַ בְּקוֹל אָבִיו שְׁבַשְׁמִים.

"If he ate in a company of obligation<sup>17</sup>, or at the lengthening of a month<sup>18</sup>, or ate Second Tithe in Jerusalem." *They would discipline him*, but he does not listen to their voice<sup>30</sup>. This excludes one who listens to the voice of his Father in Heaven<sup>31</sup>.

30 A slight misquote from *Deut.* 21:18, for: *but he does not listen to the voice of his father or his mother.*

31 Cf. *Qiddushin* 1:2, Note 630.

76) (26a line 76) אָמַר רַבִּי יוֹחָנָן. אִם הִזְכִּירוּךְ לְבוּלֵי יְהִיָּה יִרְדּוּ בְּעַל גְּבוּלֶךָ. אָמַר רַבִּי יוֹחָנָן. קוֹבְלִין לְרִשּׁוֹת לְהִיפָטֵר מִבוּלֵי. אָמַר רַבִּי יוֹחָנָן. לוֹוִין בְּרִיבִית לְחִבּוּרֵת מִצָּנֶה וְלִקְדֻשׁ הַחֹדֶשׁ. רַבִּי יוֹחָנָן תָּנָה עָלֶיךָ לְכַנְשָׁתָא בְּצִפְרָא וּמִלְקֻט פִּירוּרִין וְאַבְכִּיל וְאָמַר. יְהִי חֶלְקִי עִם קָאָן דְּקִדְּשׁ יִרְחָא הָכָא רומשית.

<sup>32</sup>Rebbi Johanan said, if you were nominated for the city council, may the Jordan be the master of your border<sup>33</sup>. Rebbi Johanan said, one complains to the government to be freed from the city council<sup>34</sup>. Rebbi Johanan said, one borrows against interest for a company of obligation and the sanctification of the month. Rebbi Johanan used to go to the assembly hall in the morning<sup>35</sup>, collect the crumbs, and eat them, saying: May my part be with those who in the evening were sanctifying the month.

32 This paragraph does not belong here. It is a slight reformulation of a paragraph in *Mo'ed qatan* 2:3 (81b l. 33). There it was stated that one is permitted to earn money on the intermediate days of a holiday in order to have more money to spend on festive meals. The connection to this Chapter is that the deviant and rebellious son is absolved if he partakes of festive meals.

33 Since the Roman government never allowed local taxes, it appointed rich people

to the council (βουλή); these had to provide public services at their own expense. To avoid such an onerous *leiturgia*, one is permitted to leave the Land of Israel.

34 While in general one should avoid contact with Roman imperial officials, it is permitted to file complaints to make oneself undesirable, so as not to be considered for a council appointment.

35 Before he became a member of the body fixing the calendar.

(26b line 4) אָכַל נְבִלּוֹת וְטֵרֵפוֹת שְׂקָצִים וְרָמָשִׁים. וְיִסְרֵי אֲתָו וְלֹא יִשְׁמַע בְּקוֹלָם. יֵצֵא זֶה אֶפִּילוֹ בְּקוֹל אָבִיו שֶׁבִּשְׂמִים אֵינוֹ שׁוֹמֵעַ.

"Or ate torn or carcass meat, abominations and crawling things." *They would discipline him*, but he would not listen to their voice<sup>30</sup>. This excludes one who even to the voice of his Father in Heaven<sup>31</sup> does not listen<sup>36</sup>.

36 Babli 70b.

(fol. 26a) **משנה ג:** גָּנַב מִשְׁלַּ אָבִיו וְאָכַל בְּרִשּׁוֹת אָבִיו מִשְׁלַ אֲחֵרִים וְאָכַל בְּרִשּׁוֹת אֲחֵרִים מִשְׁלַ אֲחֵרִים וְאָכַל בְּרִשּׁוֹת אָבִיו אֵינוֹ נֶעְשֶׂה בֶּן סוֹרֵר וּמוֹרֵה עַד שֶׁיִּגְנוֹב מִשְׁלַ אָבִיו וְיֹאכַל בְּרִשּׁוֹת אֲחֵרִים. רַבִּי יוֹסִי בִּי רַבִּי יְהוּדָה אוֹמֵר עַד שֶׁיִּגְנוֹב מִשְׁלַ אָבִיו וּמִשְׁלַ אִמּוֹ:

**Mishnah 3:** If he stole from his father and ate at his father's property, or from others and ate at others' property, or from others and ate at his father's property, he is not treated as deviant and rebellious son unless he stole from his father and ate at others' property<sup>37</sup>. Rabbi Yose ben Rabbi Jehudah says, unless he stole both from his father and his mother<sup>38</sup>.

37 That he stole money from his father to which he has easy access and ate at other's premises where does not have to fear to be easily discovered. The facility of the crime will turn him into a habitual criminal (Babli

71a).

38 Since in the relevant paragraph the Torah insists to mention the mother on equal footing with the father. If the mother has no separate property of her own, there is a

question whether according to this opinion rebellious (Note 50).  
the son can never become deviant and

7) (26b line 7) **הלכה ג:** גָּנַב מִשְׁלָאָבִיו כּוּל'. אֲזַהְרָה לְגַנִּיבָה הָרְאוּשָׁנָה מִנִּיין. לֹא תִגְנוּבוּ. אֲזַהְרָה לְגַנִּיבָה שְׁנִינָה מִנִּיין. לֹא תִגְנוּבוּ. לֹא תִגְנוּבוּ עַל מִנְתָּ לְמַקְט. לֹא תִגְנוּבוּ עַל מִנְתָּ לְשִׁלְסָם תְּשִׁלּוּמֵי כָּפֶל. עַל מִנְתָּ לְשִׁלְסָם תְּשִׁלּוּמֵי אַרְבָּעָה וְחֲמִשָּׁה. בֵּן בִּגְבָג אוֹמֵר. לֹא תִגְנוּב אֶת שְׁלָךְ מֵאַחֵר הַגָּנֵב. שְׁלֹא תִרְאֶה גֹזֵב.

רבי בא רבי יוחנן בשם רב הושעיה. אינו חייב עד שיתגנב מעות. רבי זעירה בשם רבי הושעיה. אינו חייב עד שישלול מעות. מהו שישלול מעות. מה אנו קיימין. אם בהו דאמר. הא לך חמשה וזהב לי תלתא. שטי הוא. הא לך תלתא וזהב לי חמשה. בר נש הוא. אלא כי נן קיימין בהו דמר. הא לך חמשה וזהב לי חמשה.

הי דינו גנב והי דינו גזלן. אמר רבי הילא. גנב בפני עדים גנב. בפני הפעלים גזלן. רבי זעירה בעי. מעתה אפילו נתפסו לגזילה ולבג עליה אין זה גזלן. והידינו גזלן על דעתיה דרבי זעירה. רבי שמואל בר סוסרסא בשם רבי אבהו. עד שיגזלנו בפני עשרה בני אדם. בניין אב שפכולן ויגזול את החמית מיד המצלי ויהרגו בחניתו:

1 תגנובו | א תגנוב 2 שנייה | א השנייה תגנובו | א תגנוב 3 תגנוב | א תגנוב 5 רב | א ר' זעירה | א זעירא 6 שילול | א עד שילול בהו | א באו 7 שטי | א שוטה 8 בהו | א באו 9 הי דינו | א הידינו (2 times) גזלן | א גזולן 10-9 ר' זעירה בעי | א אמר ר' זעירה 10 לגזילה | א לגזילה ולבעליה | א ולבעילה אולה זה | א - והידינו | א והי דינו דעתיה | א - 11 שיגזלו | א שיגזול 12 ויהרגו בחניתו | א וגי

**Halakhah 3:** “If he stole from his father,” etc. <sup>39</sup>From where a first warning about stealing: *you shall not steal*<sup>40</sup>. From where a second warning about stealing: *you shall not steal*<sup>41</sup>. *You shall not steal*, in order to aggravate; *you shall not steal*, in order to pay double restitution, in order to pay quadruple or quintuple restitution. Ben Bagbag says, do not steal your own property from the thief, lest you be seen stealing.

Rebbi Abba, Rebbi Johanan in the name of Rav<sup>42</sup> Hoshai: he is guilty only if he steals money. Rebbi Ze'ira in the name of Rebbi Hoshai: he is guilty only if he shows contempt for money. What means showing contempt for money? Where do we hold? If about him who says, here you have five and give me for three, he is an idiot. Here you have three and give me for five, he is a regular person. But we deal with one who says, here you have five and give me for five<sup>43</sup>.

What is a thief and what is a robber<sup>44</sup>? Rebbi Hila said, if he stole in the presence of witnesses, he is a thief, in the presence of the owners he is a

robber. Rabbi Ze'ura asked<sup>45</sup>; but if he intended to rob in front of its owners, he is not a robber. What is a robber according to Rabbi Ze'ura? Rabbi Samuel ben Sosarta in the name of Rabbi Abbahu: only if he rob in the presence of ten people. The prototype for all these: *He robbed the spear from the hand of the Egyptian and killed him with his own spear*<sup>46</sup>.

39 This Halakhah also is Halakhah 11:2 (א); only the second paragraph is relevant here.

40 As in 11:2 one should read *do not steal* לֹא תִגְנוֹב, Ex. 20:16. The Ten Commandments only refer to the worst of crimes; *stealing* referred to there is kidnapping of humans, a capital crime (Babli 86a, *Bava mesia`* 61b).

41 Stealing as a civil offense is prohibited in Lev. 19:11. The remainder of the paragraph is a *baraita* also in *Sifra Qedošim Parašah* 2(2), Tosephta *Bava qamma* 10;37-38, Babli *Bava qamma* 27b (*Tanhuma Noah* 4). Stealing is forbidden even if one intends to return the stolen goods after teaching the owner a lesson, or to have a pretext to give a poor person money in the shape of a fine.

42 With 11:2 read "Rebbi".

43 Since he has money, he has the urge to spend all of it even if it means that he buys more than he actually needs.

44 With 11:2 read: "R. Ze'ira said."

45 While the thief pays double to quintuple restitution, the robber only has to return the robbed goods. The distinction between thief and robber has far-reaching consequences. The thief takes by stealth, the robber in public. The question is, what is the definition of "in public"?

46 2S. 23:21. R. Ze'ira insists that the characteristic of the robber is not that he takes by force, even in the presence of the owners, but that he does it in public. As always, "in public" is defined as in the presence of ten adult males. Babli *Bava qamma* 79b.

מִשְׁנָה ד' הָיָה אָבִי רוֹצֵה וְאִמּוֹ אֵינָה רוֹצֵה אָבִי אֵינִי רוֹצֵה וְאִמּוֹ רוֹצֵה אֵינִי נֶעֱשֶׂה בֶן סוֹרֵר וּמוֹרֵה עַד שֶׁיְהִי שְׂנֵיהֶם רוֹצִים. רַבִּי יְהוּדָה אוֹמֵר אִם לֹא הָיְתָה אִמּוֹ רְאוּיָה לְאָבִי אֵינִי נֶעֱשֶׂה בֶן סוֹרֵר וּמוֹרֵה. (fol. 26a)

**Mishnah 4:** If his father was willing but not his mother, or his father unwilling but his mother willing, he cannot be treated as deviant and rebellious son unless both be willing<sup>47</sup>. Rabbi Jehudah says if his mother was inappropriate for his father<sup>48</sup>, he cannot be treated as deviant and rebellious son.

47 The son can be brought before the court only by unanimous consent of his parents. This usually is derived from *Deut.* 21:20 where the parents have to complain that the son does not listen to their voice. The singular used, voice, implies common voice. (The Babli 71a infers that the parents

actually have to speak with one voice; their voices have to sound the same. This is not mentioned in Yerushalmi or *Sifry*.)

48 Usually this means that his mother is (biblically or rabbinically) forbidden to his father. Here one could not exclude the disqualification of a mismatch.

(26b line 22) **הלכה ד:** הָיָה אָבִיו רוֹצֶה כּוֹל. אָמַר רַבִּי יוֹחָנָן. וְאֶפִּילוּ אֵין אָמֹן רְאוּיָהּ לְאָבִיו. וְכָל־מָה שֵׁינֵשׁ לְאָמֹן לֹא מִשְׁלָאָבִיו הֵם. אָמַר רַבִּי יוֹסִי בִּירְבִּי בּוֹן. תִּיפְתָּר בְּהוּ דְהִבְתָּ נְסֻבָּה דִּיּוֹרִין וְעִבְדָּת שֶׁרוּ וְגַב מְנָהוּן.

**Halakhah 4:** “If his father was willing,” etc. Rabbi Johanan said, even if his mother was not suitable for his father<sup>49</sup>. But is not all of his mother’s property also his father’s<sup>50</sup>? Rabbi Yose ben Abun said, explain it about one who took in lodgers, made repasts, and he stole from there.<sup>51</sup>

49 Practice should not follow R. Jehudah.

50 Only if his mother be married to his father; an illegitimate son is not excluded either from inheritance or filial obligations. The question is relevant only for R. Jehudah in Mishnah 3, who requires that the son had stolen from his mother’s property which was

not his father’s.

51 This explanation really is unnecessary; in Tractate *Ketubot* many exceptions are noted to the rule that the husband has the usufruct of the wife’s property or the right to her earnings.

(fol. 26a) **משנה ה:** הָיָה אֶחָד מֵהֶם גֵּידִים אוֹ חִיגָר אוֹ אֵילָם אוֹ סוּמָא אוֹ חֲרָשׁ אֵינוּ נִעְשֶׂה בֶּן סוֹרֵר וּמוֹרֶה שְׁנֵאֲמַר וְתַפְּשׁוּ בּוֹ אָבִיו וְאָמֹן וְלֹא גִידְמִין. וְהוֹצִיאֻ אוֹתוֹ וְלֹא חִיגָרִים וְאֲמָרֹי וְלֹא אֶלְמִין בְּגִנּוּ זֶה וְלֹא סוּמִים אֵינֶנּוּ שְׁמֵעַ בְּקוֹלָנוּ וְלֹא חֲרָשִׁים. מִתְרִין בּוֹ בְּפִי שֶׁלֶשָׁה וּמִלְקִין אוֹתוֹ. חֲזֹר וְקִילְקֵל גְּדוֹן בְּעֶשְׂרִים וּשְׁלֹשָׁה. וְאֵינוּ נִסְקָל עַד שֶׁיְהִיוּ שָׁם שְׁלֹשָׁה הָרָאוּשׁוֹנִים שְׁנֵאֲמַר בְּגִנּוּ זֶה זֶה הוּא שְׁלֹקָה בְּפִינֵיכֶם.

**Mishnah 5:** If one of them<sup>52</sup> was one-armed, or lame, or mute, or deaf, he cannot be tried as deviant and rebellious son, as it is said:<sup>53</sup> *His father and mother shall grab him*, not one-armed ones, *bring him out*, not lame ones, and *say*, not mute ones, *this son of ours*, and not blind ones<sup>54</sup>, *he does not listen to our voice*, not deaf ones. One warns him before three [judges] and whips him.

If he becomes a repeat offender, he is tried by 23 but cannot be stoned unless the original three were present, since it is said *this son of ours*, this is the one who was whipped before you<sup>55</sup>.

52 Of the parents.

where in the room he is.

53 *Deut.* 21:19.

54 The original judges become the

53 Blind persons cannot point their fingers at the accused, they cannot know

witnesses who can testify to a proper warning given to the deviant son.

(26b line 25) **הלכה ה'**: הָיָה אֶחָד מֵהֶם גֵּידִים כּוֹל'. כָּשֶׁם שֶׁאֵת דּוֹרֵשׁ בְּאָבִיו וּבְאִמּוֹ כֶּן אֵת דּוֹרֵשׁ בְּזָקְנֵי בֵּית דִּין. שֶׁנֶּאֱמָר וַיֵּצְאוּ פָּרֹט לְחִיגָרִים. וְאָמְרוּ פָּרֹט לְאִילָמִים. נָדִינוּ לֹא שֶׁפָּכֹו פָּרֹט לְגִידִמִּים. וְעֵינֵינוּ לֹא רָאוּ פָּרֹט לְסוּמִיּוֹן. מִגִּיד הַכְּתוּב כָּשֶׁם שֶׁזָּקְנֵי בֵּית דִּין שְׁלִמִיּוֹן בְּצֶדֶק כֶּן הֵם צָרִיכִין לְהִיּוֹת שְׁלִמִיּוֹן בְּאִיבָרֵיהֶן.

**Halakhah 5:** “If one of them was one-armed.” etc. Just as one explains for his father and mother, so one explains for the Elders of the Court,<sup>56</sup> as it is said<sup>57</sup>: *They shall go out*, to exclude lame ones; *and say*<sup>58</sup>, to exclude mute ones; *our hands did not spill*, to exclude one-armed ones; *and our eyes did not see*, to exclude blind ones. The verse tells you that just as the Elders of the Court must be unblemished morally, so they must be unblemished physically<sup>59</sup>.

56 The Supreme Court.

59 Rejected by the Babli, 36b. Moses, the

57 *Deut.* 21:2.

president of the first Supreme Court, had a

58 *Deut.* 21:7.

speech defect.

(26b line 29) אָמַר רַבִּי יוֹחָנָן. מִת אֶחָד מִן הָרִאשׁוֹנִים אֵינוֹ נִסְקֵל. וְלֹא מִתְּנִיתָא הִיא. אֵינוֹ נִסְקֵל עַד שֶׁיְהִי שֵׁם שְׁלֹשָׁה הָרִאשׁוֹנִים. אָמַר רַבִּי הוֹשַׁעְיָה. שֶׁלֹא תֵאמַר. יַעֲשֶׂה דִין שִׁנִּי רִאשׁוֹן. לְפִיכָּךְ צָרָךְ מִתְּנִיתָהּ.

Rebbi Johanan said, if one of the first [judges] died, he cannot be stoned. Is that not the Mishnah: “he cannot be stoned unless the original three were present”? Rebbi Hoshaia said, you should not say that the second trial should become the first<sup>60</sup>; therefore, one had to state this.

60 If a member of the original court had died, the second court cannot warn and whip

the deviant son and set him up to be executed by a third court.

(fol. 26a) **משנה ו:** ברח עד שלא נגמר דינו ואחר כך הקיף זקן התחתון פטור. ואם משנגמר דינו ברח ואחר כך הקיף זקן התחתון חייב:

**Mishnah 6:** If he escaped before sentence was passed and then grew the lower beard, he is not liable<sup>61</sup>; but if he escaped after sentence was passed and then grew the lower beard, he is liable.

61 If he is recaptured, he needs a new trial. But since by then he already is an adult able to have children, he cannot be tried as a deviant and rebellious son. If sentence already was passed, no new trial is needed; the prior sentence can be carried out.

(26b line 32) **הלכה ו:** ברח עד שלא נגמר דינו כול'. אמר רבי יאשיה. סח לי זעירה משם אנשי ירושלים. שלשה הן שאם בקשו למחול מוחלין. ואילו הן. סוטה וכן סוחר ומונה וזקן ממרא על פי בית דין.

סוסה. ולא מתניתא היא. שבעלה אינו רוצה להשקותה. סברין מימר. עד שלא נכתבה המגילה. אתא מימר. ואפילו משנכתבה המגילה. ובשלא נמחקה המגילה. אבל אם נמחקה המגילה לא בדא.

בן סוחר ומונה. ולא מתניתא היא. הנה אביו רוצה ואמו אינה רוצה. אמו רוצה ואביו אינו רוצה. סברין מימר. עד שלא עמד בדין. אתא מימר לך. ואפילו עמד בדין. ובשלא נגמר דינו. אבל אם נגמר דינו לא בדא.

זקן ממרא. הנה דתימר שלא להורגו. אבל להחזירו לא היו מחזירין אותו למקומו. וכשבאתי אצל רבי יהודה בן בתיירה לנציבין על שנים הודה לי ועל אחד לא הודה לי. על זקן ממרא לא הודה לי כדי שלא ירבו מחלוקות בישאל.

**Halakhah 6:** “If he escaped before sentence was passed,” etc.<sup>62</sup> Rabbi Joshua said, Ze’ira told me in the name of the people of Jerusalem: In three cases, if they want to forgive, they may forgive. These are: The suspect wife, the deviant son, and the Elder rebelling against the [Supreme] Court.

The suspect wife, is that not a Mishnah, “one whose husband refuses to let her drink”? They wanted to say, before the scroll was written. He comes to tell, even after the scroll was written. But it does not apply to the case where the scroll had been erased<sup>63</sup>.

The deviant son, is that not a Mishnah, “if his father was willing but not his mother, or his mother willing but his father unwilling”? They wanted to

say, before he was tried. He comes to tell, even after he was tried. But it does not apply to the case where judgment had been passed.

The rebellious Elder<sup>64</sup>; that means not to kill him. But they cannot let him return to his place.

<sup>65</sup>But when I came to Rabbi Jehudah ben Bathyra at Nisibis, he agreed with me in two cases and disagreed in one. He disagreed about the rebellious Elder, lest quarrels increase in Israel<sup>66</sup>.

62 This paragraph is quoted in *Sotah* 4:3, Notes 39-41. This is one of the few cases where the Leiden ms. does not copy the text but simply refers to it by "etc." The parallel quotes in the Babli are *Sotah* 25a, *Sanhedrin* 88a.

63 In the ordeal of the suspected adulteress, if the text of the curses involving the Divine Name has been erased, the procedure is irreversible, just as a judicial procedure is after judgment was passed.

64 Who refuses to follow the ruling of the Supreme Court sitting on the Temple

Mount, *Deut.* 17:8-13. Even if he is not executed, he has to be stripped of his judicial functions.

65 This continues the statement of Rabbi Joshua which was interrupted by the discussion of the three cases. In the Babli, the dissenters are "my colleagues in the South."

66 The suspected adulteress and the deviant and rebellious son can be prosecuted only on request of the injured party; refusal to obey the instructions of the Supreme Court must be prosecuted automatically.

וַאֲיֵן כָּאֵן בָּעַל לְהַשְׁקוּתָהּ הַחֲזִירְתָּהּ הַתּוֹרָה לְסַפִּיקָהּ וְסַפִּיקָהּ לְסַפִּיקָהּ. וְסַפִּיקָהּ לְחֻדְיָהּ. הוֹאִיל (26b line 46) מָה טַעְמוֹן דְּבֵית שְׁמַי. הִבָּא לִי בְּעָלִי וְאֵנִי שׁוֹתָהּ. מָה טַעְמוֹן דְּבֵית הֵלֵל. הוֹאִיל

What is the reason of the House of Shammai? "Bring me my husband and I shall drink." What is the reason of the House of Hillel? Since there is no husband to let her drink, the Torah returns her to a state of doubt, which induces another doubt, which remains a doubt<sup>67</sup>.

67 This paragraph has nothing to do with the current subject but belongs to *Sotah* 4:3. It was omitted there together with the preceding four paragraphs.

If a husband suspects his wife of adultery and warns her in the presence of two adult witnesses not to be with her suspected paramour, then if there is

circumstantial evidence of adultery but no proof which would hold up in court, the wife is forbidden to her husband until she undergoes the ordeal by drinking the magic water in the Temple court (*Num.* 11:5-31). If the ordeal confirms her adultery, she is divorced as adulteress without any money.

The ordeal must take place in the presence of the husband. If the husband dies before the ordeal can take place, the woman cannot drink. The House of Shammai rules that she is a widow, entitled to all benefits due to a widow, since the death of her husband barred her from clearing her name without

her fault. The House of Hillel hold that as suspected adulteress she cannot go to court to collect money from the heirs to the estate since only valid claims can be enforced in court; it is not the heirs' doing that she cannot prove her case (*Sotah* 4:1 Notes 13-16).

הפוגמת כתובתה לא תיפטר אלא בשבועה. תני הפוגמת לא הפוגמת. כיצד. היתה כתובתה מאתים והיא אומרת מנה נפרעת שלא בשבועה. מה בין הפוגמת ומה בין הפוגמת. אמר רבי חנינה. [פוגמת]<sup>68</sup> בא משא ומתן בינתיים. פוגמת לא בא משא ומתן בינתיים.

<sup>69</sup>There, we stated: "If she had compromised her *ketubah*, she shall not be able to collect without an oath." It was stated "compromised", not that she reduced [her *ketubah*]. How? If her *ketubah* was 200 but she claims a mina, she is paid without an oath. What is the difference between one who did compromise and one who claims less? Rabbi Hanina said, if she compromises there was a transaction between them; if she claims less there was no transaction between them.

רבי ירמיה בעי. כמה דת מר תמן. ועד אחד מעידה שהיא פרועה לא תיפטר אלא בשבועה. ודכרתה ועד אחד מעידה שהיא פרועה לא תיפטר אלא בשבועה. אמר רבי יוסי. בשעה שעד אחד מעידה שהיא פרועה אינו מכחיש שנים. ובשעה שמעיד שהיא פרועה מכחיש את שנים.

Rabbi Jeremiah asked: Since we stated there: "If one witness testified that [the *ketubah*] was paid, she shall not be able to collect without an oath"; should it be similar that if one witness testifies that [the *ketubah*] was reduced, she shall not be able to collect the reduced amount without an oath? Rabbi Yose said, at the moment when one witness testified that it was paid, he does not contradict two [witnesses]; but when he testifies that it was reduced he would contradict two [witnesses.]

תני. והנפרעת שלא בקניו לא תיפטר אלא בשבועה. ונפרעים מאדם שלא בקניו. אמר רבי ירמיה. תיפטר בשטר שהריבית אוכלת בו. רבית דין גובין ריבית. תיפטר שערב לו מגוי.

<sup>70</sup>It was stated: "If she collects in his absence, she shall not be able to collect without an oath." Can one collect from a person in his absence?

Rebbi Jeremiah said, explain it about a contract for which interest is due. Would the court collect interest? Explain that it was guaranteed for a Gentile.

וְהִתְנִי. יוֹרֵשׁ שְׁפָגַם אָבִיו שְׁטֵר חוּב הֵבֵן גּוֹבָה בְּלֹא שְׁבוּעָה. בְּזֶה נִפְה כֹּחַ הֵבֵן מִכֶּחָ הָאֵב. שֶׁהָאֵב אֵינוֹ גּוֹבָה אֶלָּא בְּשְׁבוּעָה. אָמַר רַבִּי לֵעָזָר. וְנִשְׁבַּע שְׁבוּעַת יוֹרֵשׁ. שֶׁלֹּא פִּיקְדָנוּ אָבָא וְשֶׁלֹּא אָמַר לָנוּ אֲנִי וְשֶׁלֹּא מְצִינוּ שְׁטֵר בֵּין שְׁטֵרוֹתָיו שֶׁלֹּאבָא שְׁשֵׁטֵר זֶה פְּרוּעַ. הָא אִם נִמְצָא פְּרוּעַ. רַב הוֹשִׁיעָה בְּעֵי. מִתְּנִיתָא דְּבֵית שְׁמַי. דְּבֵית שְׁמַי אוֹמְרִים. נוֹטְלוֹת כְּתוּבָתָהּ וְלֹא שׁוֹתָהּ. אָמַר רַבִּי יוֹסִי. טַעֲמוֹן דְּבֵית שְׁמַי הָבָא לִי בְּעָלִי וְאֲנִי שׁוֹתָהּ. בְּרַם הִכָּא בְּדִין הִיא אֶפִּילוּ אָבִי לֹא יִשְׁבַּע. תִּקְנָה תִּקְנֵנוּ בּוֹ שִׁישְׁבַּע. בּוֹ תִּיקְנֵנוּ וּבִבְנֵנוּ לֹא תִּיקְנֵנוּ. כִּיֹּן שְׁמֵת הָעֵמֻדָּת אֶת בְּנוֹ עַל דִּין תוֹרָה.

It was stated: If an heir's father held a partially paid promissory note, the son collects without swearing. In this the son's power is greater than the father's since the father can collect only by swearing. Rebbi Eleazar said, nevertheless he has to execute an heir's oath, "that our father did not charge us, that our father did not tell us, that we did not find a document among our father's documents stating that this note was paid." Therefore, if there was a document, the note was paid. Rebbi Hoshai asked, does the *baraita* follow the House of Shammai? For the House of Shammai say, "she collects her *ketubah* and does not drink." Rebbi Yose said, there the reason of the House of Shammai is: bring my husband and I shall drink! But here, it would be in order that even his father would not have to swear. They instituted a rule that he has to swear. They instituted this for him, but not for his son. When he died, you put his son on the biblical rule.

נִתְחַיֵּב אָבִיו שְׁבוּעָה בְּבֵית דִּין וּמֵת אֵין בְּנוֹ גּוֹבָה. דִּלֹּא כֵן מָה נֵן אָמְרִין. לֹשׁ אֲדָם מוֹרִישׁ שְׁבוּעָתוֹ לְבָנוּ. אָמַר רַבִּי בָּא. הִכִּין אֶתְאָמְרַת. פָּגַם אָבִיו שְׁטֵר בְּבֵית דִּין וּמֵת אֵינוֹ גּוֹבָה. רַב חֲסִידָא בְּעֵי. בְּגִין דְּהִלִּיד תַּרְתִּין פְּסִיעֵן הוּא מִפְּסִיד. אֵילוּ פָּגְמוּ חוּץ לְבֵית דִּין אֶת אָמַר. גּוֹבָה. מִפְּנֵי שֶׁפָּגְמוּ בְּבֵית דִּין אֶת מֵר. אֵינוֹ גּוֹבָה.

If a father became obligated to swear in court and died, his son cannot collect. If it were otherwise, what could we say? Can a man let his son inherit an obligation to swear? Rebbi <sup>71</sup>Ba said, it was said as follows: if a man compromised his document in court, his son cannot collect. <sup>72</sup>Rav Hisda asked: Because he walked two steps, does he lose? If he compromised it outside the court, he collects. Because he compromised it in court, he cannot collect?

- 68 Needed word added from the text in *Ketubot*. text here is secondary as shown by a few omissions.
- 69 The text from here to the end of the Halakhah is mainly from *Ketubot* 9:7, Notes 167-185. It has no connection with the theme in *Sanhedrin*, only a tenuous one with the previously quoted text from *Sotah*. The
- 70 This paragraph is from *Ketubot* 9:9, Notes 200-204.
- 71 In *Ketubot*: Abun.
- 72 This is also quoted in *Ševuot* 7:6 (38a l. 25).

(fol. 26a) **משנה ז:** בן סוֹרֵר וּמוֹרֵה נָדוֹן עַל שֵׁם סוֹפוֹ. אֶמְרָה תּוֹרָה יָמוּת זָכָאי וְאֵל יָמוּת חַיִּיב. שְׁמִיטָתוֹ שֶׁל רִשְׁעִים הִנִּיחַ לָהּ וְהִנִּיחַ לְעוֹלָם וְלִצְדִּיקִים רַע לָהּ וְרַע לְעוֹלָם. יֵינוֹ וְשִׁנְיָה לְרִשְׁעִים הִנִּיחַ לָהּ וְהִנִּיחַ לְעוֹלָם וְלִצְדִּיקִים רַע לָהּ וְרַע לְעוֹלָם. פֶּזִיר לְרִשְׁעִים הִנִּיחַ לָהּ וְהִנִּיחַ לְעוֹלָם וְלִצְדִּיקִים רַע לָהּ וְרַע לְעוֹלָם. כִּינוֹס לְרִשְׁעִים רַע לָהּ וְרַע לְעוֹלָם וְלִצְדִּיקִים הִנִּיחַ לָהּ וְהִנִּיחַ לְעוֹלָם. שִׁקָּט לְרִשְׁעִים רַע לָהּ וְרַע לְעוֹלָם וְלִצְדִּיקִים הִנִּיחַ לָהּ וְהִנִּיחַ לְעוֹלָם:

**Mishnah 7:** The deviant and rebellious son is judged because of his end; the Torah said, it is better that he should die innocent rather than guilty, for death of the evildoers is an enjoyment for them and enjoyment for the world, but concerning the just it is bad for them and bad for the world. Wine and sleep of the evildoers is an enjoyment for them and enjoyment for the world, but concerning the just it is bad for them and bad for the world. Scattering of the evildoers is an enjoyment for them and enjoyment for the world, but concerning the just it is bad for them and bad for the world. Coming together of the evildoers is bad for them and bad for the world, but concerning the just it is an enjoyment for them and enjoyment for the world. Quiet of the evildoers is bad for them and bad for the world, but concerning the just it is an enjoyment for them and enjoyment for the world.

(26b line 74) **הלכה ז:** בן סוֹרֵר וּמוֹרֵה כו'. צָכָה הַקְדוּשׁ בְּרוּךְ הוּא שְׁסוּף זֶה עֲתִיד לְגַמֵּר נִיכְסֵי אָבִיו וְאֵת נִיכְסֵי אִמּוֹ וַיּוֹשֵׁב לוֹ בְּפֶרֶשֶׁת דְּרָכִים וּמִקְפָּח אֶת הַבְּרִיּוֹת וְהוֹרֵג אֶת הַנְּפִשׁוֹת וְסוֹפוֹ לְשַׁפֵּחַ אֶת תִּלְמוּדוֹ. וְאֶמְרָה תּוֹרָה מוֹטֵב שְׂיָמוּת זָכָאי וְאֵל יָמוּת חַיִּיב. שְׁמִיטָתוֹ שֶׁל רִשְׁעִים הִנִּיחַ לָהּ וְהִנִּיחַ לְעוֹלָם וְלִצְדִּיקִים רַע לָהּ וְרַע לְעוֹלָם.

**Halakhah 7:** “The deviant and rebellious son,” etc. The Holy One, praise to Him, saw that this one in the end will waste his father’s and his

mother's properties, will sit at road crossings, rob people, and kill them, and in the end will forget all he has learned<sup>73</sup>. Therefore, the Torah said, he should die innocent rather than die guilty, for death of the evildoers is an enjoyment for them and enjoyment for the world, but concerning the just it is bad for them and bad for the world.

73 And therefore descend to the level of animals. While the opinion voiced in the Babli (71a) that “the case of the deviant and rebellious son never happened and never will happen” is not found in the Yerushalmi, the detailed rabbinic rules certainly are intended to make sure it never can happen in rabbinic Judaism. But apart from offering

ample material for sermons, the rules clearly are intended to show that in biblical law the father has no power over the life of his children; any action against a child needs not only the consent of the mother but a court proceeding, in stark contrast to ancient Roman law (Babli 72a).

וְיִשְׁנָה לְרָשָׁעִים הַנִּינְיָה לְהֵן וְהַנִּינְיָה לְעוֹלָם וְלִצְדִּיקִים רַע לְהֵן וְרַע לְעוֹלָם. אָמַר רַבִּי אֲבָהוּ. וּבִלְבָד יֵין עִם רוֹב שְׁנִינָה. אָמַר רַבִּי יוֹנָתָן. יְשִׁינִים הֵן קִימָעָא שְׁתֵּתָא דְעֵתָן מִיּוֹשְׁנָתָא. (26c line 3)

“Wine and sleep of the evildoers is an enjoyment for them and enjoyment for the world, but concerning the just it is bad for them and bad for the world.” Rabbi Abbahu said, only wine with an excess of sleep<sup>74</sup>. Rabbi Jonathan said, they sleep a little so they can concentrate better.

74 Even the just have to sleep and to drink some wine, as long as one does not

drink so much that he has to sleep off his alcohol.

מִשְׁנָה ח: הֵבֵא בַמַּחְתֶּרֶת נִידוֹן עַל שֵׁם סוֹפוֹ. הִזָּה בָּא בַּמַּחְתֶּרֶת וְשָׁבַר אֶת הַחֲבִית אִם יֵשׁ לוֹ דָּמִים חַיִּיב אִם אֵין לוֹ דָּמִים פָּטוּר: (fol. 26a)

**Mishnah 8:** The intruder by stealth is judged because of his end<sup>75</sup>. If in the course of a burglary he broke an amphora, if he has blood-guilt attached to him<sup>76</sup>, he is liable<sup>77</sup>; if he has no blood-guilt attached to him, he is not liable<sup>78</sup>.

75 Ex. 22:1 permits the residents of a house to kill the stealth intruder since it is assumed that he would kill anybody offering

resistance to his burglary.

76 If the sun shone on him, Ex. 22:2.

77 Ex. 22:2.

78 Since he can be killed, his burglary is 102.  
the equivalent of a capital crime cf. Note .

(26d line 5) **הלכה ח:** הבא במחתרת כול. תני רבי ישמעאל. זה אחד משלשה מקורות שנאמרו בתורה כמשל. אם יקום והתהלך בחוץ על משענתו. אם במחתרת ימצא הגנב. אם זרחה השמש עליו דמים לו. וכי עליו לבדו החמה זורחת. והלא על כל-באי העולם זורחת החמה. אלא מה זריחת החמה מיוחדת שהוא שלום לכל-באי העולם. כך כל-זמן שאף יודע שאף שלום ממנו בין ביום ובין בלילה ההורגו נהרג. פעמים שהוא בא לגנוב פעמים שהוא בא להרוג. אמרת שאם בא לגנוב ונדאי והרגו והורגו נהרג. פעמים שהוא בא להרוג נהרג. מיכן את דן לפיקוח נפש. לומר. מה עבודה זרה מיוחדת שהיא מטמאה את הארץ ומחללת את השם ומסלקת את השכינה ודוחין בה את הספק. כל-שכן לפיקוח נפש שידחה את הספק.

**Halakhah 8:** “The intruder by stealth,” etc. <sup>79</sup>Rebbi Ismael stated: This is one of three verses<sup>80</sup> which in the Torah have been formulated as a simile: *If he gets up and walks outside on his support*<sup>81</sup>. *If the thief is found in the digging, if the sun shone on him, he has blood*<sup>77</sup>. Does the sun shine only on him? Does the sun not shine on all beings in the world? But just as sunshine is special in that it brings peace to the entire world, so in any case in which you know that you are at peace with him, whether it be day or night his killer will be killed<sup>82</sup>. If sometimes he comes to steal, sometimes he comes to kill, you say that if certainly he comes to steal, his killer will be killed<sup>83</sup>? Since sometimes he comes to kill, he may be killed. From here you argue about danger to life, to say that just as (foreign worship)<sup>84</sup> is special in that it defiles the Land, desecrates the Name, removes the Divine Presence, and doubts are disregarded, so much more that doubts have to be disregarded in cases of danger to life<sup>85</sup>.

79 Parallel texts are in the Babli 72a, *Mekhilta dR. Ismael Mišpatim* 13, *dR. Simeon ben Iohai* p. 192, *Sifry Deut.* 217; partially *Yerushalmi Ketubot* 4:4 (Notes 88-93).

80 To the verses *Ex.* 21:19 and 22:2 mentioned here one has to add *Deut.* 22:17.

81 *Ex.* 21:19.

82 The Babli, 79b, states that if a father intrudes in the son's home, the son does not have the right to kill him. The Yerushalmi does not have this good opinion of family relationships, cf. the next paragraph.

83 In *Tosephta* 11:9, this is a declarative sentence; the next sentence is missing there.

84 Obviously, *foreign worship* has to be

deleted since Mishnah 9 states clearly that a person intent on idolatry cannot be killed before he acts. One must read דמים שפיכות "bloodshed" which defiles the Land (*Num.* 35:33; Babli *Šabbat* 33a, *Yoma* 85a); by Mishnah 9 a person intent on committing murder may be killed by any bystander before he commits the murder. If a person with a drawn sword runs after another, it is only a surmise but one which allows the

bystander to kill the attacker; maybe the pursuer would not kill his victim. This is the "action in doubt" referred to in this sentence.

85 The Sabbath must be desecrated for the possibility of saving a life. For example, if there was a landslide on the Sabbath and it is only surmised that somebody was buried in it, one starts digging without delay.

26d line 17) כתיב אם-במחתרת ימצא הגנב והכה ומת אין לו דמים. תני רבי חייה. במחתרת אין לו דמים חוץ למחתרת יש לו דמים. תני רבי שמעון בן יוחי. אפילו חוץ למחתרת אין לו דמים. לפי שפמונו של אדם חביב עליו כנפשו. חמי ליה אזיל בעי מיסב ממוניה מיינה וקאים עליו וקטליה. רב הונא אמר. נטל את הכיס והפך את פניו לצאת והלך לו ועמד עליו והרגו אין ההורג נהרג. מה טעמא דרב הונא. כי יחם לבבו. רב אמר. כל-דייתי עלי אגא קטל ליה חוץ מהננה בן שילא דאגא ידע דלא אתי אלא מיסב מגוסתיה מיניי. אמר רבי יצחק. מכין דאברי ליביה עליו למיעבד ליה דא מילתא אין זה הננה בן שילא.

It is written: *If the thief was found in a tunnel, was smitten, and died, there is no blood-guilt*<sup>75</sup>. Rabbi Hiyya stated: In the tunnel<sup>86</sup> there is no blood-guilt, outside the tunnel there is blood guilt. Rabbi Simeon ben Iohai stated: Even outside the tunnel there is no blood-guilt, for a person's property is beloved by him like his own soul. He<sup>87</sup> sees him<sup>88</sup>, that he<sup>88</sup> comes to take his<sup>87</sup> money away from him, stands up against him<sup>88</sup> and kills him<sup>88,89</sup>. Rav Huna said, if he took a wallet, turned to leave and went, if then one stood up against him and killed him<sup>88</sup> the killer will not be killed. What is Rav Huna's reason? *For his temper is hot*<sup>90</sup>. Rav said, I would kill anybody who would come against me, except Hanania ben Shila<sup>91</sup>, of whom I know that he would come only to take his meal from me. Rabbi Isaac said, if he has the temerity to do something like that, he cannot be Hanania ben Shila<sup>92</sup>.

86 From חתר "to undermine". The thief digs under the wall to enter the house.

87 The property owner.

88 The thief.

89 A similar statement is anonymous in

the Babli, *Yoma* 85b.

90 *Deut.* 19:6, another case of non-prosecutable homicide.

91 A cousin of Rav, lover of roast pigeon

(Babli *Pesahim* 10:8).

92 Therefore, any thief caught in a house may be killed by the owner.

**משנה ט:** ואילו שִׁמְצִילִין אוֹתוֹ בְּנֶפֶשׁ. הַרֹדֵף אֶחָד חֲבִירוֹ לְהוֹרִגוֹ אַחֵר הַזֶּכֶר וְאַחֵר נְעָרָה הַמְּאוֹרָסָה. אֲבָל הַרֹדֵף אַחֵר הַבְּהֵמָה וְהַמְחַלֵּל אֶת הַשָּׁבֶת וְהַעוֹבֵד עֲבֹדָה זָרָה אֵין מְצִילִין אוֹתוֹ בְּנֶפֶשׁ:

**Mishnah 9:** The following ones one saves at the cost of their own persons<sup>93</sup>: He who pursues another to kill him, the male<sup>94</sup>, or the preliminarily married virgin girl<sup>95</sup>. But he who pursues an animal<sup>96</sup>, or who desecrates the Sabbath, or who worships strange worship, one may not save at the cost of their own persons.

93 Preferably by injuring him; if this is not possible by killing him (Babli).

94 In order to commit homosexual rape.

95 Whose rape is equated with murder, *Deut.* 22:26.

96 To commit bestiality. It is not permitted to kill a person intending to commit a capital crime; only a person bent on committing murder or a crime against a human comparable to murder has to be killed if caught *in flagranti*.

**הלכה ט:** (26c line 26) אֵילוּ שִׁמְצִילִין אוֹתוֹ בְּנֶפֶשׁ כּוֹל. הַרֹדֵף אֶחָד חֲבִירוֹ לְהוֹרִגוֹ בֵּין בֵּיתוֹ בֵּין בִּשְׂדֵה מְצִילִין אוֹתוֹ בְּנֶפֶשׁ. אֶחָד הַרֹדֵף אַחֵר חֲבִירוֹ לְהוֹרִגוֹ וְאֶחָד הַרֹדֵף אַחֵר כָּל-שָׂאֵר עֲבִירֹת שְׁבִתוֹרָה מְצִילִין אוֹתוֹ בְּנֶפֶשׁ. אֲבָל אִם הָיְתָה אֶלְמָנָה לְכַהֵן גָּדוֹל. גְּרוּשָׁה וְחַלּוּצָה לְכַהֵן הַדִּיּוֹט. מִמְּזֻרָת וְיִתְיָנָה לְיִשְׂרָאֵל. בֵּית יִשְׂרָאֵל לְנִתִּין וְלִמְמוֹזֵר. אֵין מְצִילִין אוֹתוֹ בְּנֶפֶשׁ. נַעֲשֶׂה הַמַּעֲשֶׂה אֵין מְצִילִין אוֹתוֹ בְּנֶפֶשׁ. אִם יֵשׁ שָׁם מוֹשִׁיעִים אֵין מְצִילִין אוֹתוֹ בְּנֶפֶשׁ. רַבִּי יוֹדֶה אוֹמֵר. אִם אֶמְנָה. הֵנַח לוֹ. אֵין מְצִילִין אוֹתוֹ בְּנֶפֶשׁ. שָׂאֵם מִמַּחֲיוֹן הֵן עַל גְּדִי נִמְצָאוּ בְּאֵין לִידֵי שְׁפִיכוֹת דָּמִים.

**Halakhah 9:** “The following ones one saves at the cost of their own persons” etc. <sup>97</sup>“He who pursues another to kill him, whether in a house or on the field one saves at the cost of his own person, both him who pursues another to kill him or him who pursues any of the transgressions<sup>98</sup> in the Torah one saves at the cost of his own person. But if it was a widow for a High Priest, a divorcee or one who had received *halīṣah* for a common priest, a bastard or a Gibeonite for an Israel, an Israel woman for a bastard or a Gibeonite, one does not save him at the cost of his own person<sup>99</sup>. If the deed

had been done, one does not save him at the cost of his own person<sup>100</sup>. If there are people to save her, one does not save him at the cost of his own person<sup>100</sup>. Rabbi Jehudah says, if she<sup>101</sup> said, let him do it, one does not save at the cost of his own person. For if they would injure him, they through him would come to spill blood.”

97 Similar texts are in the Babli 73a, Tosephta 11:10-11.

98 The parallel texts and the continuation of the *baraita* make it likely that one should not read עבירות “transgressions” but גריות “nakednesses; acts of incest and adultery which constitute either capital crimes or deadly sins.”

99 Sexual offenses which are simple misdemeanors cannot be prevented by killing the offender.

100 This is a case for the police and regular administration of justice.

101 The victim of sexual aggression who is afraid she might be killed.

26c line 35) פשיטא דא מילתא. רוצח ששיבר את הכלים או שהזיק חייב לשלם. הנה משבר עד שהוא מגיע לעיר. רבי זעירא ורבי הושעיה. חד אמר. נותן דמים. וחרנא אמר. אינו נותן דמים. ורודף שנעשה נרדף מהו להציל את הרודף בנפשו שלנרדף. גדול שנעשה קטון מהו להציל את הגדול בנפשו שלקטן. התיב רבי ירמיה. והתנינן. יצא ראשו ורובו אין נוגעין בו. שאין דוחין נפש מפני נפש: רבי יוסי בירבי בון בשם רב חסדא. שנייא היא תמן שאין את יודע מי הרג את מי.

The following is obvious: A murderer who broke vessels or otherwise caused damage is liable to pay<sup>102</sup>. If he continued to break until he came to the town, Rabbi Ze'ira and Rabbi Hoshia: One said, he pays, the other said, he does not pay. If the pursuer becomes the pursued, may one save the pursuer through the person of the pursued<sup>103</sup>? An adult (who became)<sup>104</sup> a minor, may one save the adult through the person of the minor? Rabbi Jeremiah objected, did we not state<sup>105</sup>: “If his head and most of his body were born, one does not touch him, for one does not push aside one life for another.” Rabbi Yose ben Rabbi Abun said in the name of Rav Hisda: It is different there since you do not know who is killing whom<sup>106</sup>.

102 Since no crime can be punished more than once (*Terumot* 7:1 Notes 3-73, *Ketubot* 3:1 Note 29; Babli *Ketubot* 32b, *Bava gamma* 36a, *Makkot* 7b, 13b), any damage

done during the commission of a crime cannot be recovered from the criminal. Any damage caused before and after the crime has been committed can be recovered. The

only question, the subject of the next two sentences, is whether the pursuit of the victim is part of the crime and protects the murderer from damage claims or not.

103 If the intended victim gets hold of a weapon and turns against the aggressor, is there any cause for the uninjured to act? The question is not answered.

104 From the following text it seems clear that one has to read: If an adult was pursued by a minor, may one save the adult through the minor's life? In a parallel text, *Šabbat* 14 (14d l. 67), the question is attributed to

Rav Hisda, mentioned later here also.

105 Mishnah *Ahilut* 7:6. If the life of the mother is endangered during childbirth, the attendants must kill the fetus by cutting it into pieces and removing it. But if head and torso are already outside, so that the baby is breathing on his own, he cannot be killed even if he is endangering his mother's life. This is a case of a minor pursuing an adult.

106 Since the life of the baby is equally endangered, one cannot conclude that a minor intent on murder may not be killed by bystanders.

תני רבי לעזר בירבי שמעון אומר. ההולך לעבוד עבודה זרה מצילין אותו  
בנפשו. אם מפני כבוד בשר ודם מצילין אותו בנפשו לא כל-שכן מפני חי העולמים.

It was stated<sup>107</sup>: “Rebbi Eleazar ben Rebbi Simeon says, one who goes to worship a strange worship is saved at the cost of his own person.” If one saves at the cost of his own person to protect the honor of flesh and blood<sup>108</sup>, so much more because of the Life of the World<sup>109</sup>.

107 Tosephta 11:12 in the name of R. Eleazar ben R. Sadoq.

108 To save a woman from being raped.

109 Cf. *Daniel* 12:7. The vocalization חי is standard Sephardic; traditional Ashkenazic

is חי (cf. M. Hershler, *Siddur of R. Solomon ben Samson of Garmaise including the Siddur of the Haside Ashkenas*, Jerusalem 1971, pp. 21-22.)