

אילו הן הנשרפין פרק תשיעי

(fol. 26c) **משנה א:** אילו הן הנשרפין הבא על אשה ובתה וכת כהן שאזנה. יש בכלל אשה ובתה בתו ובת בתו ובת בנו ובת אשתו ובת בתה ובת בנה. ואילו הן הנשרפין הרוצח ואנשי עיר הנדחת.

Mishnah 1: The following are to be burned: one who copulates with a woman and her daughter,¹ and the daughter of a Cohen who committed adultery². In the category of *a woman and her daughter* are included his daughter, his daughter's daughter, his son's daughter, his wife's daughter, her daughter's daughter, and her son's daughter³. The following are to be beheaded: the murderer,⁴ and the inhabitants of a seduced town⁵.

1 Lev. 20:14.

independent Mishnah mss. include mention of the mother and the grandmother-in-law.

2 Lev. 21:9.

3 Lev. 18:17 includes relations with a woman and her granddaughter with the prohibition of a woman and her daughter. The Mishnaïot in the Babli and most

This is logically redundant.

4 Chapter 7, Note 4.

5 Deut. 13:16; Halakhot 7:1,10;7,8.

(26d line 21) **הלכה א:** אילו הן הנשרפין כול'. תמן תנינן.

Halakhah 1: "The following are to be burned," etc. There, we have stated⁶:

6 The entire following Halakhah is a copy of *Yebamot* 11:1, explained there in Notes 4-65. The text here does not always follow the same order as given there. The Notes here are restricted to indicate where

the text of *Yebamot* (Y) was preferred for translation. The corruptions in the *Sanhedrin* text make it clear that the Y text is original.

(26d line 21; Y 11c 1.58) נושאין על האנוסה ועל המפיתה. כיני מתנייתין. נושאין אחד האנוסה ואחד המפיתה. אנס אשה מותר באמה. פיתה אשה מותר בבתה.

"One may marry [relatives of] a rape victim or a seduced woman." So is the Mishnah: One may marry after⁷ a rape or after a seduction. If he raped a

woman, her mother is permitted. If he seduced a woman, he daughter is permitted.

7 The reading of Y אחר clearly is the correct one, not אחד “one,” as written here.

הַאֲנִיס וְהִמְכִּתָּה עַל הַנְּשִׂאָה חַיִּיב. אָמַר רַבִּי יוֹחָנָן. דִּרְדָּךְ נִישְׂוֹאִין שָׁנָּה. נָשָׂא אִשָּׁה וְאַחֵר כֶּדָּה אֶנֶס אֶת אִמּוֹתָיִי. נָשָׂא אִשָּׁה וְאַחֵר כֶּדָּה פִּיתָה אֶת בִּתָּהּ חַיִּיב.

“He who rapes or seduces [a relative of] a married woman is [criminally] liable.” Rabbi Johanan said, one stated this for marriage. If he married a woman and then raped her mother, he is [criminally] liable. If he married a woman and then seduced her daughter, he is [criminally] liable.

אָמַר רַבִּי לֵעָזָר. סוּמְכוֹס וְרַבִּי יוֹחָנָן בֶּן נוּרִי אָמְרוּ דְּבַר אֶחָד. דִּתְנִינָן תַּמָּן. שְׁחָטָהּ וְאֶת בִּתָּהּ וְאַחֵר כֶּדָּה שְׁחָט אֶת בִּתָּהּ סוּפֵג אֶת הָאֲרָבָעִים. סוּמְכוֹס אוֹמֵר מִשּׁוּם רַבִּי מֵאִיר. סוּפֵג אֶת שְׁמוֹנִים. תַּמָּן תְּנִינָן. רַבִּי יוֹחָנָן בֶּן נוּרִי אוֹמֵר. הִבָּא עַל חֲמוּתוֹ חַיִּיב עָלֶיהָ מִשּׁוּם חֲמוּתוֹ וְאִם חֲמוּתוֹ וְאִם חֲמִיו. אָמְרוּ לוֹ. שְׁלֹשֶׁתָּן שֵׁם אֶחָד הֵן: רַבִּי יִנְדָּה בַר פָּזִי בָּשָׂם רַבִּי יוֹחָנָן. מוֹדָה סוּמְכוֹס לְרַבִּי יוֹחָנָן. אֲשַׁכַּח תִּנִּי. עוֹד הִיא בְּמַחְלֻקָּתָהּ. מֵאִי טַעַמָּא דְּרַבִּי יוֹחָנָן בֶּן נוּרִי. מֵה אִשָּׁה וּבִתָּהּ וּבִת בִּתָּהּ בְּשִׁנִּי לְאוּיָן. אִף אִשָּׁה (וּבִתָּהּ) וּבִת בִּתָּהּ בְּשִׁנִּי לְאוּיָן. מֵה טַעַמּוֹ דְּרַבִּינָן. מֵה בֵּת בִּתָּהּ וּבִת בִּתָּהּ בְּלֹא אֶחָד אִף אִשָּׁה וּבִת בִּתָּהּ וּבִת בְּנָה בְּלֹא אֶחָד.

Rebbi Eleazar said, Symmachos and Rebbi Johanan ben Nuri said the same thing, since we stated there: “If he slaughtered her, her daughter’s daughter, and afterwards her daughter, he absorbs forty [lashes]. Symmachos said in Rebbi Meir’s name, he absorbs eighty.” There, we have stated: “Rebbi Johanan ben Nuri said, he who copulates with his mother-in-law may be liable because of his mother-in-law, his mother-in-law’s mother, and his father-in-law’s mother. They said to him, all three fall under the same law.” Rebbi Jehudah bar Pazi in the name of Rebbi Johanan: Symmachos agrees with Rebbi Johanan. It was found stated: it still is in dispute. What is Rebbi Johanan ben Nuri’s reason? Since a woman and her daughter and a woman and her daughter’s daughter fall under two separate prohibitions, also a woman and (her daughter) [her son’s daughter]⁸ and her daughter’s daughter fall under two separate prohibitions. What is the reason of the rabbis? Since a woman and her daughter and a woman and her daughter’s daughter fall under one and the same prohibition, also a woman and her son’s daughter and her daughter’s daughter fall the under same prohibition.

8 Text of Y. The text of *Sanhedrin* (in preceding sentence.
parentheses) simply is a copy of the

וְאֶת־אִמָּהּ זִמָּה הִיא. בְּכוֹלֵהֶם כְּתִיב שְׂכִיבָה וְכָה כְּתִיב לְקִיחָהּ. לְלַמֶּדֶךָ שְׂאִינוּ חַיִּיב עַל הַשְּׁנִינָה עַד שֶׁתִּהְיֶה לְקִיחָהּ לוֹ. אִי אֵינוּ מִתְחַיֵּב עָלֶיהָ אֶלָּא עַל דָּרָךְ נִשְׁוֹאֵין. לְמַדְנָהּ שְׂאִין קִידוּשִׁין מִתּוֹפְסִין בְּעֶרְוֹת. וְהַכְּתִיב לֹא־יִקַּח אִישׁ אֶת־אִשְׁתּוֹ אָבִיו וְלֹא יִגְלֶה בְּנָהּ אָבִיו. בָּא לְהוֹדִיעַךָ שֶׁהִנֵּה מוֹתֵר בָּהּ עַד שֶׁלֹּא נִשְׂאֵת לְאָבִיו. וְהַכְּתִיב וְאִישׁ אֶשֶׁר יִקַּח אֶת־אִשְׁתּוֹ אֲחִיו. מָה הוּא בָּא לְהוֹדִיעַךָ. שֶׁהִנֵּה מוֹתֵר בָּהּ עַד שֶׁלֹּא נִשְׂאֵת לְאָחִיו. וְתוֹבֵן עַל דִּי יִיבֹם. וְהַכְּתִיב וְאִשָּׁה אֶל אָחוּתָהּ לֹא תִקַּח. בָּא לְהוֹדִיעַךָ שֶׁהִנֵּה מוֹתֵר בָּהּ עַד שֶׁלֹּא נִשְׂאֵת אָחוּתָהּ. וְתוֹבֵן לְאַחֵר מִיִּתֵּת אָחוּתָהּ. וְהַכְּתִיב וְאִישׁ אֶשֶׁר־יִקַּח אֶת־אָחוּתוֹ בֶּת־אָבִיו אִי בֶּת־אָמִו וְרָאָה אֶת־עֶרְוָתָהּ וְהָיָה תְּרָאָה אֶת־עֶרְוָתוֹ חֲסֵד הוּא. שֶׁלֹּא תֹאמְרוּ. קִין נָשָׂא אֶת אָחוּתוֹ. הֶבֶל נָשָׂא אֶת אָחוּתוֹ. חֲסֵד עֲשִׂיתִי עִם הָרִאשׁוֹנִים שֶׁיִּבְנֶה הָעוֹלָם מֵהֶם. אֲמַרְתִּי עוֹלָם חֲסֵד יִבְנֶה. וְהַכְּתִיב אֶלְמָנָה וְגֵרֹשָׁה וְחִלְלָה זֹנֶה אֶת־אֶלְהָ לֹא יִקַּח. בָּא לְהוֹדִיעַךָ שְׂאִם קִידְשָׁה תִּפְסִי בָּהּ קִידוּשִׁין.

It is written, *the genitals of a woman and her daughter you shall not uncover*, and it is written, *if a man take a woman and her mother, it is taboo*. Everywhere is written *lying with*, but here is written *taking*, to teach you that he cannot be [criminally] liable for the second woman unless she be taken by him. Or maybe he is [criminally] liable only by marriage? We already said that there is no valid incestuous marriage. But is it not written: *Nobody may marry his father's wife, and he should not uncover his father's garment's corner*? This comes to tell that she was permitted to him before his father married her. But is it not written: *If a man take his brother's wife*? This comes to tell you that she was permitted to him before his brother married her. This is understood by levirate. But is it not written: *You should not take a woman in addition to her sister*? This comes to tell you that she was permitted to him before he married her sister. This is understood after her sister's death. But is it not written: *A man who would take his sister, his father's daughter or his mother's daughter, it is heshed*? That you should not say that Cain married his sister, Abel married his sister, *it is charitable*, I was charitable with the first generations so the world could be inhabited; *I said, the world was built on heshed*. But is it not written: *Widow, divorcee, and desecrated, these he shall not take*? This comes to tell you that if he became betrothed to her, the betrothal is valid.

(26d line 51, Y 11d l.26) רב הונא אמר. עד קדון בת בתו לנישואין. בת בתו מן האונסין. כתיב ערות בת-בנך או בת-בתך לא תגלה ערותך. מה אנו קיימין. אם לנישואין הרי כבר אמור. אלא אם אינו ענין לנישואין תגיהו ענין לאונסין. עד קדון בת בתו. בתו מניין. רב אמר. אם על בת בתו הוא מוזהר על בתו לא כל-שכן. אם על בת בתו הוא עניש כרת לא כל-שכן על בתו.

מנא ליה. אשכח תני חזקיה. ובת איש כהן כי תחל לזנות. מה תלמוד לומר איש. אלא להביא הבא על בתו מן האונסין שהוא בשריפה.

(Rav Huna said:)⁹ so far his daughter's daughter from marriage. His daughter's daughter from a rape? It is written, *the genitals of your son's daughter or your daughter's daughter you shall not uncover*. Where do we hold? If from marriage, it already had been said. So it cannot refer to marriage but must refer to rape. So far about his daughter's daughter; from where his daughter? Rav said, if he is forewarned about his daughter's daughter, so much more for his daughter! If for his daughter's daughter he is subject to punishment (by extirpation)⁹, so much more for his daughter!

¹⁰From where does he have this? If was found stated by Hizqiah: *And if the daughter of a Cohen man start to whore*¹¹. Why does the verse say *man*? To include one who copulates with his daughter from a rape among the burned¹².

9 Missing in Y, probably spurious.

10 Missing in Y. Rav's argument is rejected in the Babli 76a since it violates a fundamental principle of criminal law that no act is punishable which is not listed as punishable in the written law. Therefore one needs a verse which punishes sexual relations with an illegitimate daughter.

11 Lev. 21:9.

12 The verse states clearly that the

priesthood is inherited from the male line.

A daughter of a Cohen who is not the daughter of the Cohen's wife still is a Cohen's daughter and subject to the rules of the priesthood. But the Babli 76a rejects the argument given here since the verse states that the Cohen's daughter has to be burned because *she desecrates her father*; this excludes an incestuous relationship, in which the father desecrates his daughter.

(26d line 59, Y 11d l.15) רב חונה שמע כולהון מן הכא. ערות אשה ובתה לא תגלה. וכתיב ואיש אשר נקח את-אשה ואת-אמה זמה היא. זמה זמה לגזירה שנה. מה למתן שלשה דורות אף למעלן שלשה דורות. מה למתן בלא תעשה אף למעלן בלא תעשה. מה למסור דרך

נישואין אף למעלן דרך נישואין. מה למטון בשריפה אף למעלן בשריפה. מה למטון עשה בת זכר כבת נקיבה אף למעלן נעשה בת זכר כבת נקיבה.

¹³Rav Huna understood all of these [rules] from this verse: *The genitals of a woman and her daughter you should nor uncover. And it is written, if a man take a woman and her daughter, it is taboo.* Taboo-taboo for an equal cut. Since there are three generations downwards, so there are three generations upwards. Since there is a prohibition downwards, there is a prohibition upwards. Since downwards one requires marriage, so upwards one requires marriage. Since downwards they are burned, so upwards they are burned. Since downwards He gave the male's daughter the same status as the female's daughter, so upwards we give the male's daughter the same status as the female's daughter.

13 The changes from or additions to the text in Y are underlined. It is clear that the *Yebamot* text is the correct one, where in the references to *Lev. 20:14* “upwards” and

“downwards” have to be interchanged and in the last sentence “mother” replaces “daughter”.

((26d line 65, Y 11d l.21)) וּכְרַבִּי מֵאִיר. דְּרַבִּי מֵאִיר אָמַר. גְּזִירָה שְׁנֹה בְּמָקוֹם שְׁבָא. דּוֹר שְׁלִישִׁי לְמִטָּה מְנִיין שְׁהוּא בְּלֹא תַעֲשֶׂה. (וּכְרַבְנִין דִּינּוּן אֶמְרִין. גְּזִירָה שְׁנֹה בְּמָקוֹם שְׁבָא. דּוֹר שְׁלִישִׁי לְמִטָּה מְנִיין שְׁהוּא בָּא בְּלֹא תַעֲשֶׂה.) וּכְרַבְנִין דִּינּוּן אֶמְרִין. גְּזִירָה שְׁנֹה קְאָמוֹר בָּהּ. דּוֹר שְׁלִישִׁי לְמַעְלָה מְנִיין שְׁהוּא בְּשָׂרִיפָה. בֵּין כְּרַבְנִין בֵּין כְּרַבִּי מֵאִיר דּוֹר שְׁלִישִׁי לְמִטָּה מְנִיין שְׁהוּא בְּלֹא תַעֲשֶׂה. אָמַר רַבִּי יוֹסִי. מִכֵּינּוּ דְּכִתִּיב זָמָה זָמָה כְּמִי שְׁכֻלְהֶם קָאן.

And following Rabbi Meïr? Since Rabbi Meïr said, a *gezerah šawah* is at the place it comes from, from where is the third generation downwards forbidden? (And following the rabbis, who say, a *gezerah šawah* is at the place it comes from, from where is the third generation downwards forbidden?)⁹ And following the rabbis, who say, a *gezerah šawah* is said about them, from where is the third generation upwards punished by burning? Both for Rabbi Meïr and the rabbis, from where that the third generation downwards is forbidden? (Rabbi Yose said,)⁹ since it is written *taboo-taboo*, it is as if all were there.

((26d line 71, Y 77d l.46)) אָמַר רַבִּי יוֹסִי בִּירְבִי בּוּן. עוֹד הוּא אֵית לִיה אֲזַהְרָה מִן תַּפְּנוּ. אֶל-תַּחֲלִל אֶת-בֵּתְךָ לְהַזְנוֹתָהּ.

¹⁴Rebbi Yose ben Rebbi Abun said, one may even understand this from the warning: *Do not desecrate your daughter to force her into prostitution.*

14 This sentence is quite out of place here; in *Yebamot* it follows the paragraph after the next. All sexual offenses against a daughter are covered by *Lev.* 19:29; punishment only has to be specified in different cases. Babli 76a.

בְּתֻלָּה בֵּת בְּתֻלָּה לֹא תִגְלֶהּ. וְיִימָר קָרְיָא עֲרוֹת אִשָּׁה וּבֵת בְּתֻלָּה לֹא תִגְלֶהּ וְאֶנָּן אֶמְרִין. בְּתֻלָּה לֹא תִגְלֶהּ בֵּת בְּתֻלָּה לֹא תִגְלֶהּ. (26d line 73, Y 11d l.37)

Rebbi Haggai asked before Rebbi Yose: Why do we not say, “your daughter you should not uncover, your daughter’s daughter you should not uncover”? He said, if it were written “the genitals of a woman and her daughter’s daughter you shall not uncover,” we would have said “your daughter you should not uncover, your daughter’s daughter you should not uncover”.

שְׁנַיִם לְאוֹיֵן וְכֶרֶת אֶחָד לְאוֹיֵן חוֹלְקִין אֶת הַהֶכְרֶת. וְיָמָּה טַעְמָא. עַל-בֶּשֶׂר אָדָם לֹא יִיטָף וּבְמִתְכַּוִּינָתוֹ לֹא תַעֲשֶׂוּ כְמוֹהוּ גוֹי. וְכִתְיֵב אִישׁ אֶשֶׁר יִרְקַח כְּמוֹהוּ גוֹי. הִדָּא אֶמְרֵהּ. שְׁנֵי לְאוֹיֵן וְכֶרֶת אֶחָד חוֹלְקִין אֶת הַהֶכְרֶת.

If there are two prohibitions and one liability to extirpation, the prohibitions split the extirpation. What is the reason? *On human flesh it may not be rubbed and in its proportions you should not make [a compound] like it*, etc.. And it is written: *A man who would compound like it*, etc. This implies that for two prohibitions and one liability to extirpation, the prohibitions split the extirpation.

בְּעוֹן קוֹמֵי רַבִּי אֲבָהוּ. הֵבִיא עַל אִשָּׁה וְלִדְהָ בֵּת וְחִזֵּר וּבָא עָלֶיהָ חִיָּב עָלֶיהָ מִשּׁוּם אִשָּׁה וּבֵתָהּ וּבֵת בְּתֻלָּה לֹא תִגְלֶהּ וְאֶנָּן אֶמְרִין. אֶמְרֵהּ לֹא תִגְלֶהּ הֵנָּה זְמָנָה הִיא: כּוֹלְהֶם מִשּׁוּם זִמְנָה.

They asked before Rebbi Abbahu: If [a man] copulated with a woman, she had a daughter, and after that he came and copulated with the latter. Is he [criminally] liable about her because of a woman and her daughter, her daughter’s daughter, and her son’s daughter? He said to them, *they are relatives, it is taboo*, all because of taboo.

27a line 5, Y 11d 1.47) מה טעמא דרבי יהודה. לא יקח איש את-אשת אביו לא וגלה כנף אביו. זו אנוסתו. מה מקיימין רבנן כנף. תמן אמרין ולא ידעין אין שמועה זו. כנף זו שהיא זקוקה לאביו. ולא כך אינו חייב עליה משום אשת אביו. אמר רבי הילא. להתריוה. שאם התירו בו משום אשת אב לזקה. משום כנף לזקה. מודה רבי יודה במכות. מודה רבי יודה בקרבן. מודה רבי יודה בשאך כל-האנשים שהוא פטור. מודה רבי יודה שאם קידשה תפסו בה קידושין.

What is the reason of Rabbi Jehudah? *A man may not take his father's wife, and he should not uncover his father's wing;* that is his rape victim. How do the rabbis explain "his father's wing"? There, they say and they do not know the origin of the tradition, that refers to a wing which is in need of his father. Would he not anyhow be [criminally] liable for her because of "his father's wife"? Rabbi Hila said, because of forewarning; if he was warned because of his father's wife he will be whipped, and because of his father's wing he will be whipped. Rabbi Jehudah agrees about whipping. Rabbi Jehudah agrees about sacrifice. Rabbi Jehudah agrees about all other men¹⁵ that he is free. Rabbi Jehudah agrees that if he marries her preliminarily that the preliminary marriage is legally valid.

15 Probably for האנשים one should read any close relative except his father, and even האנסים "the rapists." A man can have marry her. In Y the reading is הספיקות "the relations with a woman raped or seduced by doubts" (see there, Note 61.)

27a line 12 Y 11d 1.54) רבי חגי בעא קומי רבי יוסי. מהו שיהא הוולד ממזר כרבי יודה. אמר ליה. לא-יבוא פצויע-דכּה וכו' שפכה בקהל יי הפסיק הענין. ויפסיק הענין לענין אשת אב. אשת אב בכלל כל-העצירות הייתה ויצאת מכללה ללמד על כל-העצירות לממזר. ויצא אנוסה ותלמד על כל-האנוסים לאסור. אשת אב בכלל כל-העצירות הייתה ויצאת מכללה ללמד על כל-העצירות לממזר. אית לך מימר הכא. אנוסה בכלל הייתה ויצאת מכללה ללמד על כל-האנוסים. ויצא אשת אב ותלמד על כל-אנוסתה. אמר ליה. אם אשת אב היא אינה אנוסה. ואם אנוסה היא אינה אשת אב.

¹⁶Rebbi Haggai asked before Rabbi Yose: Is the child a bastard following Rabbi Jehudah? He said to him, *No one with a damaged testicle or with cut-off penis may marry into the Eternal's congregation* interrupts the argument. It interrupted the argument in the matter of the father's wife. The father's wife was part of the set of all incest prohibitions; it was selected from

this set to teach about bastardy for all incest prohibitions. Similarly, let the rape victim be selected to teach a prohibition concerning all rape victims. The father's wife was part of the set of all incest prohibitions; it was selected from this set to teach about bastardy for all incest prohibitions. Can you say here that the rape victim was in the set, that it could teach a prohibition concerning all rape victims? Why cannot the father's wife be selected to teach about the rape victim in her case? He said to him, if she is his father's wife, she is not his rape victim; if she is the father's rape victim, she is not his wife.

16 In this paragraph, the indications of who is the speaker of each sentence are given in *Yebamot* 11:1, Notes 62-65.

משנה ב: רוצח שֶהִכָּה אֶת רֵעֵהוּ בְּאֶבֶן אוֹ בְּבָרָזֶל וְכָבַשׁ עָלָיו לְתוֹךְ הַמַּיִם אוֹ לְתוֹךְ הָאֵוֶר וְאֵינוֹ יָכוֹל לָעֵלוֹת מִשָּׁם וְיָמָת חַיָּב. דִּחְפוֹ לְתוֹךְ הַמַּיִם אוֹ לְתוֹךְ הָאֵוֶר וְיָכוֹל הוּא לְעֵלוֹת מִשָּׁם וְיָמָת פָּטוּר. שִׁסָּהּ בּוֹ אֶת הַכֶּלֶב שִׁסָּהּ בּוֹ אֶת הַנֶּחֱשׁ פָּטוּר. הַשִּׂיד בּוֹ אֶת הַנֶּחֱשׁ רַבִּי יְהוּדָה מַחֲיִיב וְחַכְמִים פּוֹטְרִין. (fol. 26c)

Mishnah 2: A murderer who attacked someone with a stone or an iron¹⁷, or forced him under water or into fire so he could not escape from there and died, is [criminally] liable. If he pushed him into water or fire and he could have escaped from there by himself but died, he is not [criminally] liable¹⁸. If he provoked a dog or a snake against him, he is not [criminally] liable¹⁸. If he let a snake bite him¹⁹, Rabbi Jehudah declares him [criminally] liable but for the Sages he is not [criminally] liable.

17 These are the cases described in the Torah, *Num.* 35:16,17.

18 This is a case of indirect causation, not covered by biblical law.

19 The murderer held the poisonous snake until it started to bite the victim. For

R. Jehudah it is a case of murder, for the Sages one of indirect causation.

הלכה ב: רוצח שֶהִכָּה אֶת רֵעֵהוּ כּוֹל. כּוֹתֵיב וְאִם בְּאֶבֶן יָד אֲשֶׁר־יָמוּת בּוֹ הִכָּהוּ וְיָמָת מוֹת־יוֹמָת הַמִּכָּה רוֹצֵחַ הוּא מוֹת יוֹמָת הַרוֹצֵחַ: אוֹ בְּכֶלֶךְ עֶדֶד אֲשֶׁר־יָמוּת בּוֹ הִכָּהוּ וְיָמָת רוֹצֵחַ הוּא מוֹת יוֹמָת הַרוֹצֵחַ: כְּשֶׁהוּא בָּא אֶצֶל הַבָּרָזֶל אֵינוֹ אוֹמֵר לֹא שִׁמּוֹת בּוֹ וְלֹא שֶׁלֹּא יָמוּת בּוֹ. אֶלָּא אֲפִילוֹ צִינּוּרָה קִטְנָה דְּהִיא יָכֻלָּה מְקוֹם גּוֹ וְנִשְׁטָא וּמִקְטְלִינָהּ. וְהוּא שְׂיָהָא בְּאֶבֶן כְּדִי

לְהַמִּיתוֹ. בְּעֵץ כְּדֵי לְהַמִּיתוֹ. כְּוֹנֵנוּ כְּנֶגֶד הַסּוּס. כְּוֹנֵנוּ כְּנֶגֶד הַחֵץ. כְּוֹנֵנוּ כְּנֶגֶד הַרֹמֶחַ. הַעֲמִידוֹ
בְּצִינָה. הַשְׁקָה אוֹתוֹ מִיַּם רָעִים. הָעֶבֶר אֶת הַתְּקָרָא מֵעָלָיו וְיָרְדוּ גִשְׁמִים וְהָרְגוּהוּ. פְּתַק אֲמַת
הַמַּיִם עָלָיו וּבָאוּ עָלָיו הַמַּיִם וְשָׁטְפוּהוּ.

Halakhah 2: “A murderer who attacked someone,” etc. It is written²⁰: *If he hit him with a lethal stone in his hand so that he died, (the hitter shall die, he is a murderer.)*²¹ *the murderer shall be put to death. Or he hit him with a lethal wooden implement in his hand so that he died, the murderer shall be put to death*²². When He comes to iron²³, He does not speak of lethal or not lethal, but even a small hook when applied to the esophagus could kill him; but a stone must be lethal, wood must be lethal²⁴. If he put him in front of a horse²⁵, in front of an arrow, in front of a spear, put him out in the cold, gave him bad water to drink, removed the ceiling over him and the rains came down and killed him, or he opened a water canal whose waters swept over him²⁶.

20 Num. 35:17.

21 Num. 35:21; the quote is not appropriate

22 Num. 35:18.

23 Num. 35:16. Babli 76b.

24 Prosecution of murder with a stone or wood is possible only if the stone or wood can be classified as lethal; otherwise the murderer can claim that the slain person was the victim of an accident.

25 In the following cases, it is presumed that the murderer somehow immobilized his victim. In these cases, the murderer is guilty if the horse already was galloping, or the arrow or spear already flying, etc. Then the action of the murderer is murder. But according to the Mishnah, tying a person as a target for other people's future shots is indirect causation. Babli 77a.

26 It is murder if the first wave of water is lethal.

(27a line 30) מַה טַּעֲמָא דְרַבִּי יוֹדָה. מִפְּנֵי הָאֶרֶס הַנֶּתֶן בֵּין הַנִּקְבִּים. מַה טַּעֲמוֹן דְּרַבְּנִין.
לְעוֹלָם אֵין הָאֶרֶס נֶתֶן בֵּין הַנִּקְבִּים עַד שְׁיִחְזוֹר וְיִקְיָא.

What is Rabbi Jehudah's reason? Because of the poison in the hollow teeth²⁷. What is the reason of the rabbis? There is no poison in the hollow teeth until it excretes it.

27 For R. Jehudah, the moment when the snake starts biting, the poison starts to flow. Therefore holding a snake is no different

from holding a dagger. The rabbis hold that the snake has to push out the poison by the action of some of its muscles; this makes the

action of the murderer indirect causation;
Babli 78a.

(fol. 26c) **משנה ג:** המכה את חברו בין באבן בין באגרופ ואמדהו למיתה והקל ממה שהיה ולאחר מכן הכביד ומת חיוב. רבי נחמיה אומר פטור שרגלים לדבר:

Mishnah 3: If somebody injures another person by a stone or with his fist²⁸ and they expected him to die, but he got better and only afterwards deteriorated and died; he is [criminally] liable. Rabbi Nehemiah declares him not liable since it is not unsubstantiated²⁹.

28 The language is from *Ex. 21:18*. death was not caused by the injury; for the

29 For R. Nehemiah it is probable that the rabbis the opposite is true.

(27a line 32) **הלכה ג:** המכה את חברו כול. כיני מתניתא. רבי נחמיה פוטר וחכמים מחייבין. שרגלים לדבר. רבני אמרין. שני אמודין רבים על עומד אחד. רבי נחמיה אומר. עומד האמצעי רבה על שניהן. מה טעמה דרבי נחמיה. אם ילקום והתהלך בחיו על משענתו ונקח המכה. וכי עלתה על דעתך שיהא זה מהלך בשוק והלה נהרג על ידו. אלא אפילו מת בעמידה ראשונה פטור. מה טעמון דרבנין. ולא ימות ונפל למשכב. וכי אין אנו יודעין שאם לא ימות ונפל למשכב. אלא בשלא אמדהו למיתה. אם בשלא אמדהו למיתה בדא כתיב אם ילקום והתהלך בחיו על משענתו ונקח המכה. הא אם לא קם חיוב. אלא בשעמידהו למיתה. אם בשעמידהו למיתה בדא כתיב רק שבתו יתן ורפא ורפא: רבי הילא בשם רבי שמעון בן לקיש. חידוש מקרא הוא שיתן. רבי אבהו בשם רבי יוסי בן חנינה. עומד שלטעות הייתה. מה מפקה מבניהון. הקל ממה שהיה ואחר כך הכביד ומת חיוב. רבי נחמיה פוטר. שרגלים לדבר. מאן דאמר. חידוש מקרא הוא שיתן. נתן נתן. לא נתן מהו שיתן. מאן דאמר. עומד שלטעות היה. לא נתן אין אומרים לו שיתן. נתן מהו שישטול. מתניתא מסייעה לדין ומתניתא מסייעה לדין. מתניתא מסייעה לרבי יוסי בר חנינה. אמדהו לחיים ומת. מאימאי מונין לו. משכיבד. הך אמרה. עומד שלטעות הייתה. ואין תימר. חידוש מקרא הוא שיתן. נתן משעה הראשונה. לית כאן משכיבד אלא משעה הראשונה. הך אמרה. חידוש מקרא הוא שיתן. ואין תימר. עומד שלטעות הייתה. נתן עד שעה שנימות.

Halakhah 3: “If somebody injures another person,” etc. So is the Mishnah: ³⁰“Rabbi Nehemiah declares him not [criminally] liable but the Sages declare him [criminally] liable since it is not unsubstantiated.” The

Sages say, two estimations have precedence over one estimation; Rabbi Nehemiah says, the intermediate estimation has precedence over the two. What is Rabbi Nehemiah's reason? *If he gets up and walks outside on his cane, the attacker is exonerated.* Could you think that this one walks in the market and the other one is executed because of him? But even if he dies according to the first estimation, he cannot be prosecuted. What is the rabbi's reason? *If he does not die but is bedridden.* Would we not know that even if he does not die that he will be bedridden? But if they did not estimate that he would die. If they did not estimate that he would die, that is what is written: *If he gets up and walks outside on his cane, the attacker is exonerated.* Therefore, if he does not get up, [the attacker] is [criminally] liable. But if they estimated that he would die? If they estimated that he would die, that is what is written: *But he has to pay for his disability and the medical costs.* Rabbi Hila in the name of Rabbi Simeon ben Laqish: It is an extraordinary decree of Scripture that he has to pay. Rabbi Abbahu in the name of Rabbi Yose ben Hanina: It was an erroneous estimation. What is the difference between them? "But he got better and only afterwards deteriorated and died; he is [criminally] liable. Rabbi Nehemiah declares him not liable since it is not unsubstantiated." For him who said, it is an extraordinary decree of Scripture that he has to pay; if he paid, he paid. If he did not pay, does he have to pay? For him who said, it was an erroneous estimation; if he did not pay, one does not order him to pay. If he paid, can he take it back? A *baraita* supports one and a *baraita* supports the other. A *baraita* supports Rabbi Yose bar Hanina: If they estimated that he would live but he died, from when does one count for him? From the moment he turns worse³¹. This implies that the estimate was wrong. If you would say, it is an extraordinary decree of Scripture that he has to pay, he should pay from the first moment. A *baraita* supports Rabbi Simeon ben Laqish: If they estimated that he would die but he lived, from when does one count for him? From the moment he turns worse. Rabbi Yose said, it does not say here "from the moment he turns worse" but "from the moment he turns better." That means, it is an extraordinary decree of Scripture that he has to pay. But if you say, it was an erroneous estimation, he has to pay until [the victim] dies.

30 The entire Halakhah is also *Nazir* 9:5, in *Sanhedrin*.

explained there in Notes 163-186 with due 31 A Genizah reading: "improves" (*Nazir* Note 179).

הכּהוּ עַל יָדוֹ וְצָבַת. אֶמְרִין אֲסִיָּא. אִין מְקַטְעָא גִידִיה חַיִּי הוּא. מָהוּ שְׂיִתְּהוּ דְּמִי הִיד. נִישְׁמַעִינָה מִן הָדָא. וְכִי יִנְצוּ אֲנָשִׁים. וְכִי-יָרִיבוּן אֲנָשִׁים. הִיא מְרִיבָה הִיא מִצּוּת. מָה תִּלְמוּד לֹמַר כִּי יִנְצוּ כִּי יָרִיבוּן. כִּי יָרִיבוּן כִּי יִנְצוּ. אֶלָּא לִיתְּהוּ הַמִּתְּפִיין עַל שְׂאִינוּ מִתְּפִיין וְאֵת שְׂאִינוּ מִתְּפִיין עַל הַמִּתְּפִיין. נִיחָא אֵת הַמִּתְּפִיין עַל שְׂאִינוּ מִתְּפִיין. וְאֵת שְׂאִינוּ מִתְּפִיין עַל הַמִּתְּפִיין. אִם שְׂאִינוּ מִתְּפִיין הוּא מִתְּחִיב לֹא כָּל-שָׂבֶן עַל הַמִּתְּפִיין. אֶלָּא כִּינִי. הִכּהוּ עַל יָדוֹ וְצָבַת. אֶמְרִין אֲסִיָּא. אִין מְקַטְעָא גִידִיה חַיִּי הוּא. מָהוּ שְׂיִתְּהוּ דְּמִי הִיד. כְּמָה דִּתְּ אֶמַר תִּפְּנִין. חִידוּשׁ מְקַרָּא הוּא שְׂיִתְּהוּ דְּמִי הִיד. וּמָה חִידוּשׁ מְקַרָּא הוּא שְׂיִתְּהוּ דְּמִי הִיד.

³⁰If he hit him on his hand and it withered. The physicians said, if his hand is amputated he will live. Does he have to pay for the hand? Let us hear from the following: *If people quarrel, if people brawl*. Is not brawl quarrel? Why does the verse say, *if people quarrel, if people brawl*? To apply the rules of the intended to the unintended and of the unintended to the intended. One understands from the intended to the unintended. Of the unintended to the intended? It must be the following: If he hit him on his hand and it withered. The physicians said, if his hand is amputated he will live. Does he have to pay for the hand? Since you say there, it is an extraordinary decree of Scripture that he pay for the hand, so here it is an extraordinary decree of Scripture that he pay for the hand.

משנה ד: נִתְּפִינוּ לְהַרֹג אֶת הַבְּהֵמָה וְהָרַג אֶת הָאָדָם לְנִכְרִי וְהָרַג אֶת יִשְׂרָאֵל לְנִפְלִים וְהָרַג בֶּן קִיָּמָא פְּטוּר. (fol. 26c)

Mishnah 4: If one intended to kill an animal but he killed a human, a Non-Jew but he killed a Jew, a stillborn³² but he killed a viable baby, he is not criminally liable³³.

משנה ה: נִתְּפִינוּ לְהַכּוֹתוֹ עַל מִתְּנִי וְלֹא הָיָה בָּהּ כְּדִי לְהַמִּית עַל מִתְּנִי וְהִלְכָה לָהּ עַל לְבוֹ וְהָיָה בָּהּ כְּדִי לְהַמִּית עַל לְבוֹ וְנָמַת פְּטוּר. נִתְּפִינוּ לְהַכּוֹתוֹ עַל לְבוֹ וְהָיָה בָּהּ כְּדִי לְהַמִּית עַל לְבוֹ וְהִלְכָה לָהּ עַל מִתְּנִי וְלֹא הָיָה בָּהּ כְּדִי לְהַמִּית עַל מִתְּנִי וְנָמַת פְּטוּר. נִתְּפִינוּ לְהַכּוֹת אֶת הַגָּדוֹל וְלֹא הָיָה בָּהּ כְּדִי לְהַמִּית אֶת הַגָּדוֹל וְהִלְכָה לָהּ עַל הַקָּטָן וְהָיָה בָּהּ כְּדִי לְהַמִּית אֶת הַקָּטָן וְנָמַת פְּטוּר.

נִתְכַּוֵּן לְהַכּוֹת אֶת הַקֶּטָן וְהָיָה בָּהּ כְּדֵי לְהַמִּית אֶת הַקֶּטָן וְהִלָּכָה לָהּ עַל הַגְדּוּל וְלֹא הָיָה בָּהּ כְּדֵי לְהַמִּית אֶת הַגְדּוּל וּמָת פְּטוּר.

Mishnah 5: If one intended to hit someone on his hips where it would not have been enough to kill but it went on his heart where it was enough to kill and he died, he cannot be prosecuted. If one intended to hit someone on his heart where it would have been enough to kill but it went on his hips where it was not enough to kill but he died, he cannot be prosecuted. If one intended to hit someone big whom it would not have been enough to kill but it went on somebody small whom it was enough to kill and he died, he cannot be prosecuted. If one intended to hit someone small whom it would have been enough to kill but it went on somebody big whom it was not enough to kill but he died, he cannot be prosecuted.

32 A newborn who is not expected to live for 30 days is considered stillborn.

33 Biblical law provides sanctions for murder and unintentional homicide, but not for intentional homicide that fails to qualify as murder. Similarly, biblical law is not

applicable to Gentiles (*Tanhuma Mišpatim* 3, based on *Ex.* 21:1). These cases cannot be tried in rabbinic court; they are cases for the king's police powers or extrajudicial powers of the communal court (Mishnah 10).

(27a line 66) **הַלָּכָה ז':** נִתְכַּוֵּן לְהַרוֹג אֶת הַבְּהֵמָה כּוֹל. רַבִּי יִצְחָק שָׁאֵל. עֲמִדוּהוּ לְחַיִּים וּמָת. וְדָרְךְ הַחַיִּים לְמוֹת. מִפְּנֵי דְכָתִיב רַק שְׁבִתּוֹ יִתֵּן וְרָפָא יִרְפָּא חַיִּב לִיתֵּן לוֹ שְׁבִתָּ וְרִיפּוּי. רַבִּי יִצְחָק שָׁאֵל. עֲמִדוּהוּ לְמִיתָה וְחָיָה... וְאִין דָּרְךְ הַמֵּתִים לְחַיּוּת. מִפְּנֵי דְכָתִיב רַק שְׁבִתּוֹ יִתֵּן וְרָפָא יִרְפָּא חַיִּב לִיתֵּן לוֹ שְׁבִתָּ וְרִיפּוּי.

Halakhah 4: “If one intended to kill an animal,” etc. Rabbi Isaac asked: If they estimated that he would survive but he died; is it not common for the living to die? Since it is written³⁴ *but he has to pay for his disability and the medical costs*, he is liable to pay for disability and medical costs³⁵. Rabbi Isaac asked: If they estimated that he would die but he survived; is it not common for the dying to live. Since it is written *but he has to pay for his disability and the medical costs*, he is liable to pay for disability and medical costs³⁶.

34 *Ex.* 21:19.

we have a principle that nobody subject to

35 This still belongs to Halakhah 3. Since

criminal punishment pays damages, why

was it stated earlier that if medical opinion was that the victim would survive, the attacker has to pay the victim's expenses and loss of earnings even though in the end he faces prosecution for murder? His monetary obligation starts immediately with

the act of aggression; he faces trial only after the victim's death.

36 The moment it becomes clear that the aggressor does not face criminal charges, the monetary obligations are activated.

משנה ו: נִתְּפוֹן לְהַכּוֹתוֹ עַל מְתָנָיו וְהָיָה בָּהּ כְּדֵי לְהַמִּית עַל מְתָנָיו וְהִלָּכָה לָהּ עַל לִבּוֹ וְנָמַת חֵיבָב. נִתְּפוֹן לְהַכּוֹת אֶת הַגָּדוֹל וְהָיָה בָּהּ כְּדֵי לְהַמִּית אֶת הַגָּדוֹל וְהִלָּכָה לָהּ עַל הַשֵּׁטָן וְנָמַת חֵיבָב. רַבִּי שְׁמַעוֹן אוֹמֵר אֶפְלוּ נִתְּפוֹן לְהַרְגוֹ אֶת זֶה וְהָרַג אֶת זֶה פְּטוּר:

Mishnah 6: If one intended to hit someone on his hips where it was enough to kill but it went on his heart and he died; [or] if one intended to hit someone big and it was enough to kill but it went on somebody small and he died; he is [criminally] liable³⁷. Rabbi Simeon says, even if he intended to kill one person but killed another, he is not criminally liable³⁸.

37 These cases all fit the definition of premeditated murder.

is killed instead of an animal, but even if a different human is killed than the intended

38 Cf. Mishnah 4 and Note 33. In his opinion, not only is it homicide if a human

victim. In Tosephta 12:4 he is opposed by R. Jehudah.

הלכה ו: נִתְּפוֹן לְהַכּוֹתוֹ עַל מְתָנָיו כּוֹל. חִזְקִיָּה שָׁאַל. זָרַק אֶת הָאֶבֶן וְהָיָה בָּהּ כְּדֵי לְהַמִּית. הַמִּית אֶת זֶה וְשִׁיבֵר אֶת כִּילָיו שְׁלָלָהּ. בָּזָה חִידֵּשׁ הַכֶּתוֹב וּבָזָה לֹא חִידֵּשׁ. חִזְקִיָּה שָׁאַל. זָרַק אֶת הָאֶבֶן וְלֹא הָיָה בָּהּ כְּדֵי לְהַמִּית. הַמִּית אֶת זֶה וְשִׁיבֵר אֶת כִּילָיו שְׁלָלָהּ. בָּזָה חִידֵּשׁ הַכֶּתוֹב וּבָזָה לֹא חִידֵּשׁ.

Halakhah 6: "If one intended to hit someone on his hips," etc. Hizqiah asked: If one threw a deadly stone which killed one person and broke another's vessels, did the verse give the law for one but not for the other?³⁹ Hizqiah asked: If one threw a stone which was not deadly but which killed one person⁴⁰ and broke another's vessels, did the verse give the law for one but not for the other?

39 In *Ex.* 21:22-23 it is spelled out that in case of injuries, payment is due only if there

is no criminal case. But this refers only to one person. If the stone had killed one

person and broke the same person's vessels, no payment for the vessels would be due. But this says nothing about the obligations of the thrower towards a third person, not involved in the personal injury case.

40 Assuming that in the previous case the law was that the thrower could not be sued

by the owner of the vessels, the question remains open whether he can be sued if the thrower cannot be sued for murder (*Num.* 35:17) but only sued for money by the heirs of the slain person. In the Babli 79b both questions are answered in the negative.

אמר רבי שמעון. אילין דבית רבי תניין. אפלו נתפון להרוג את זה והרג את זה פטור. ואתיא דבי רבי כרבי נתן. דתני בשם רבי נתן. היה עומד בצד סיעה שלבני אדם. אמר. לאחד מהם אני מתפון להרוג. אפלו נתפון להרוג את זה והרג את זה פטור.

Rebbi Simeon⁴¹ says, those of the House of Rebbi state: even if he intended to kill one person but killed another, he is not criminally liable⁴². The House of Rebbi follows Rebbi Nathan, as it was stated in the name of Rebbi Nathan: If one was standing next to a group of people and said, I am intending to kill one of you⁴³. Even if he intended to kill one person but killed another, he is not criminally liable.

41 This R. Simeon must be the Amora R. Simeon ben Laqish; he cannot be the Tanna R. Simeon ben Iohai mentioned in the Mishnah, who lived a full generation before Rebbi.

42 He cannot be prosecuted for premeditated murder unless he stated before

witnesses the name of the person whom he intended to kill. All other cases are cases of willful homicide, not covered by biblical law (Note 33).

43 But he did not specify whom he intended to kill.

(fol. 26c) **משנה ז:** רוצח שנתערב באחרים כולן פטורין. רבי יהודה אומר כונסין אותן לכיפה. כל חייבי מיתות שנתערבו זה בזה ידונו בקלה. הנסקלין בנשרפין רבי שמעון אומר ידונו בסקילה שהשריפה חמורה וחכמים אומרים ידונו בשריפה שהסקילה חמורה.

Mishnah 7: If a murderer was mixed up with others, none of them are criminally liable⁴⁴. Rebbi Jehudah says, one keeps them in jail⁴⁵. Any condemned to death who were mixed up with others⁴⁶ shall be executed by the easier way. Those to be stoned with those to be burned, Rebbi Simeon says

they shall be stoned because burning is more painful, but the Sages say they shall be burned since stoning is more painful.

משנה ח: אמר להן רבי שמעון אילו לא היתה שריפה חמורה לא ניתנה לבת כהן שאינה. אמרו לו אילו לא היתה סקילה חמורה לא ניתנה למגדף ולעובדי עבודה זרה. הנהרגין בחנקין רבי שמעון אומר בסניף וחכמים אומרים בחנק:

Mishnah 8: Rabbi Simeon told them, if burning were not more painful it would not have been prescribed for a Cohen's daughter who committed adultery. They answered him, if stoning were not more painful, it would not have been prescribed for the blasphemer and those who worship strange cults. Those to be slain with those to be strangled, Rabbi Simeon says by the sword, but the Sages say by strangulation⁴⁷.

44 Since nobody can be convicted if he witnesses.

was not identified by witnesses.

46 Also condemned to death.

45 Until each person be identified by

47 Mishnah 7:1.

(27b line 3) **הלכה ז:** רוצח שנתערב באחרים כול'. אמר רבי יוחנן. ברוצח שנתערב בכשירין הוא מתניתא. רבי שמעון בן לקיש אמר. ברוצח שלא נגמר דינו שנתערב ברוצח שנגמר דינו הוא מתניתא. שמואל אמר. בשור בשוורים הוא מתניתא. אם בשור בשוורים הוא מתניתא בדא תנינן כונסין אותו לכיפה.

Halakhah 7: "If a murderer was mixed up with others," etc. Rabbi Johanan said, the Mishnah deals with a murderer mixed up with innocent people⁴⁸. Rabbi Simeon ben Laqish said, the Mishnah deals with a murderer being tried mixed up with a murderer who already was convicted. Samuel said, the Mishnah deals with a bull mixed up with other bulls. If the Mishnah referred to a bull⁵⁰ mixed up with other bulls, would we state about them that "one keeps them in jail"?

48 In this interpretation, R. Jehudah allows the police to arrest innocent people and keep them in prison until they have proven their innocence.

49 In the Babli, 79b, this is Samuel's interpretation. What is given here as

Samuel's is in the Babli attributed to R. Simeon ben Laqish.

50 A bull which has killed a human and must be stoned by the verdict of a court of 23. Humans can be identified by witnesses; cattle all look alike.

(27b line 7) רבי שמעון אומר. חמורה שריפה מסקילה. ורבנין אמרין. חמורה סקילה משריפה. רבי שמעון אומר. חמור חנק מהרג. ורבנין אמרין. חמור הרג מחנק.

Rebbi Simeon says, burning is worse than stoning, but the rabbis teach that stoning is worse than burning. Rebbi Simeon says, strangulation is worse than decapitation; but the rabbis teach that decapitation is worse than strangulation⁵¹.

51 Halakhah 7:1, first sentences.

(fol. 26d) **משנה ט:** מי שנתחייב שתי מיתות בית דין יידון בחמורה. עבר עברה שיש בה שתי מיתות יידון בחמורה. רבי יוסי אומר יידון בזיקה הראשונה שבאת עליו:

Mishnah 9: Somebody who was found guilty of two death penalties shall be convicted to the more painful one. One who committed one crime punishable by two death penalties shall be convicted to the more painful one. Rebbi Yose says, he shall be convicted for the first connection.

משנה י: מי שלקה ונשנה בית דין מכניסים אותו לכיפה ומאכילין אותו שעורין עד שקריסו מתבקעת. ההורג נפש שלא בעדים מכניסין אותו לכיפה ומאכילין אותו לחם צר ומים לחץ:

Mishnah 10: If somebody was repeatedly whipped, the court sends him to jail⁵² where he is fed barley until his belly bursts. One sends the murderer without witnesses to jail and feeds him scanty bread and sparing water⁵³.

52 For the third conviction of the same cation.
kind. These rules have no biblical justifi- 53 Is. 30:20.

(27b line 10) **הלכה ט:** מי שנתחייב שתי מיתות בית דין כול. תמן תנינן. תני. רבי יוסי אומר יידון בזיקה הראשונה שבאת עליו. כיצד. חמותו ונעשית אשת איש הרי זו בשריפה. אשת איש ואחר כך נעשית חמותו בחניקה. בא על חמותו. והיי דא לה חמותו וכלותו. היך עבדא. גבר נסב איתא ולברתיה דאחנה ולברתיה דאיתתיה. אתא על סבתא חייב עליה משום חמותו ואם חמותו ואם חמיו. חמותו וכלותו כאחת מה אמר בה רבי יוסה. חומר בקל מה אמר בה רבי יוסי. שני איסורין כאחת מה אמר בה רבי יוסי.

Halakhah 9: “Somebody who was found guilty of two death penalties,” etc. There⁵⁴ it was stated that one states: “Rebbi Yose says, he shall be

convicted for the first connection.” How is this? His mother-in-law⁵⁵ who then became a married woman⁵⁶ is [executed] by burning. As a married woman⁵⁷ who later became his mother-in-law it is by strangulation, if he copulated with his mother-in-law. How with his mother-in-law and daughter-in-law? How can this be? A man married a woman, and her brother’s daughter, and the woman’s daughter. If he copulated with the old woman⁵⁸ he is liable for her because of his mother-in-law, the mother of his mother-in-law, and the mother of his father-in-law. If his mother-in-law is simultaneously his daughter-in-law⁵⁹, how does Rabbi Yose treat this? The more severe and the lesser, how does Rabbi Yose treat this⁶⁰? Two simultaneous prohibitions, how does Rabbi Yose treat this⁶¹?

54 In Babylonia, Babli 81a.

55 Who was a widow or a single parent at the moment of his marriage.

56 If he sleeps with her after her remarriage.

57 If she was forbidden to him as a married woman before his marriage.

58 The first wife’s mother who is his other two wives’ grandmother.

59 He married a woman whose mother was married to his son.

60 The Babli indicates that R. Yose might

accept that a more general and more stringent prohibition supersedes the more narrow one. The Yerushalmi strongly disagrees, as explained in the next paragraph.

61 In the example of the man with three wives his mother-in-law who is the mother of his father-in-law is doubly forbidden in the same degree. For which crime does he have to be prosecuted first and, since a person can be executed only once, the only time?

אָמְרִין. כְּמָה דְּאַשְׁתְּאֵלֶת עַל דְּרַבִּי יוֹסִי בְּדִ אֲשֶׁת־אֵלֶת עַל דְּרַבִּי יִשְׁמַעְאֵל. דִּתְנִי
בְּשֵׁם רַבִּי יִשְׁמַעְאֵל. נִתְּאֲלָמְנָה וְנִתְּגַרְשָׁה נִתְּחַלְלָה זִינָת וְאַחַר בְּדִ בָּא עָלֶיהָ אִינוּ חַיִּיב אֶלָּא אַחַת.
זִינָת וְנִתְּחַלְלָה וְאַחַר בְּדִ בָּא עָלֶיהָ חַיִּיב עַל כָּל־אַחַת וְאַחַת. נִתְּאֲלָמְנָה וְנִתְּגַרְשָׁה כְּאַחַת מֶה
אָמַר בָּהּ רַבִּי יִשְׁמַעְאֵל. חוֹמֶר בְּקָל מֶה אָמַר בָּהּ רַבִּי יִשְׁמַעְאֵל. שְׁנֵי אִיסוּרִין כְּאַחַת מֶה אָמַר
בָּהּ רַבִּי יִשְׁמַעְאֵל.

They said, what was asked of Rabbi Yose also can be asked of Rabbi Ismael since it was stated in the name of Rabbi Ismael: If she became widowed, divorced, desecrated, and a whore in this order⁶²: when afterwards he copulated with her, he is liable only once. If she whored, was desecrated⁶³, and after that he copulated with her, he is liable for every single

[transgression]. If she became widowed and divorced simultaneously⁶⁴, how does Rabbi Ismael treat this? The more severe and the lesser, how does Rabbi Ismael treat this⁶⁰? Two simultaneous prohibitions, how does Rabbi Ismael treat this⁶¹?

62 This refers to *Lev. 21:14*, speaking of the High Priest: *A widow, divorcee, desecrated woman, whore, these he may not take.*

A desecrated woman is one who had forbidden sexual contact with a Cohen, e. g., a divorcee who is forbidden to a common priest. A whore is a woman who slept with a man whom she could not marry, e. g., a close relative or a Gentile.

Since the verse treats the four prohibitions as one, a High Priest who inadvertently sleeps with a woman who became forbidden to him on all four counts in the order enumerated in the verse has to bring a single purification offering.

In the Babli, *Qiddušin* 77a, the argument is the opposite one. A widow is forbidden only to the high priest. A divorcee is also forbidden to a common priest. A desecrated woman of priestly descent in addition of being barred from marrying a priest is barred from eating heave. A whore may also be forbidden to an Israel; in case she was a married woman

who committed adultery she becomes forbidden to her husband. Since the prohibitions cover an ever wider circle, they are cumulative. Therefore, for the Babli, a High Priest who sleeps with a divorcee who afterwards became a widow is liable only for one purification offering, whereas the next sentence shows that for the Yerushalmi he is liable for two.

63 A whore is forbidden to a priest. If he sleeps with her the first time, he desecrates her. If then she again sleeps with a priest, this one sleeps with a woman who first whored and then became desecrated.

64 If a first man had contracted with her a legally defective preliminary marriage and then a second man contracted a clearly legal preliminary marriage, the first man has to divorce her and the second may marry her (Babli *Gittin* 89b). If then the second man dies exactly at the moment when she receives the first man's bill of divorce, she becomes simultaneously a widow and a divorcee.

רַב אֶמֶר. בְּמִפְנֵימַי עָדִיו הִיא מִתְנַיֶּתָא. רַבִּי יוֹסִי בֶן חֲנִינָה אָמַר. בְּשָׂאִינוּ יָכוֹל לִקְבֹּל הִתְרִיָּה. (27b line 23)

Rav said, the Mishnah [deals with the case that the crime was committed] inside from the witnesses. Rabbi Yose ben Hanina said, when he could not receive warning⁶⁵.

65 This refers to Mishnah 10. While for all other death penalty cases one can be satisfied with letting Heaven mete out the penalty (*Ex.* 23:7), no commonwealth can exist which lets 99.99% of all murders go unpunished. It is agreed that the death penalty cannot be imposed if not all conditions for such a judgment are satisfied. A rabbinic court cannot be oblivious of *Deut.* 19:15 which clearly requires two eye witnesses for criminal conviction and excludes circumstantial evidence and testimony of a single witness. It is explained that a sentence of life in jail can

be imposed on the testimony of two witnesses whose testimony would be inadmissible in a death penalty case. According to Rav, one possible scenario is that of Halakhah 4:11, where two witnesses testify that the accused entered a room where the victim was alive, left with a bloody sword, and the victim was found inside stabbed to death. R. Yose ben Hanina points to another scenario, where there were eye witnesses to the murder but it had not been possible to deliver the statutory warning before the murder was committed.

משנה יא: הַגּוֹנֵב אֶת הַקְּסוּוֹה וְהַמְקַלֵּל בְּקֶסֶם וְהַבּוֹעֵל אֶרְמִית פּוֹגְעִין בָּהּ. כֹּהֵן שִׁשְׁמִשׁ בְּטוֹמְאָה אֵין אַחֲיוּ הַכֹּהֲנִים מְבִיאִין אוֹתוֹ לְבֵית דִּין אֶלָּא פִּירְחֵי כְּהוּנָה מוֹצִיאִין אוֹתוֹ חוּץ לְעִזָּרָה וּמַפְצְעִין אֶת מוֹחוֹ בְּגִזְזֵירֵין. זָר שִׁשְׁמִשׁ בְּקוּדֶשׁ רַבִּי עֲקִיבָה אוֹמֵר בְּחִנֶּק וְחִכָּמִים אוֹמְרִים בִּידֵי שָׁמַיִם: (fol. 26d)

Mishnah 11: He who steals the chalice⁶⁶, or who curses by charms, or who copulates with a Gentile woman, one⁶⁷ strikes him. If a priest officiated while impure, his brother priests do not bring him to court but the young priests take him outside the courtyard and smash his brain with bats⁶⁸. A non-priest who officiated in the Temple: Rabbi Aqiba said, by strangulation, but the Sages say, by the hands of Heaven.

66 A Temple vessel.

67 In all other sources of the Mishnah, and an indirect quote in the Hahakhah: Zealots hit him, referring to *Num.* 25:11 where Phineas is praised for being a zealot by killing the chieftain who copulated with the Midianite princess. The Babli 82a makes clear that the offender may be killed

with impunity only during the act. If the parties are still together naked but not engaged in actual intercourse, killing them is prosecutable murder.

68 These are straight pieces of lumber which are impervious to impurity. The offending priest is killed without his executioners becoming impure.

(27b line 25) **הלכה יא:** הגויב את הקסונה כול. קסונה. קיסטא. רב יהודה אמר. כלי משל בית המקדש היה. כמה דתימר ואת קשות הנסך.

Halakhah 11: “He who steals the chalice,” etc. *cista*⁶⁹. Rav Jehudah said, it was a Temple vessel, as one says *and the libation chalices*⁷⁰.

69 Also cf. Greek *κίστη* “basket, hamper; writing case; voting urn” .

70 *Num.* 4:7. The same explanation in the Babli, 81b.

(27b line 25) המקלל בקסם. כגון אילין נפתיי דמקלליו לקנינך קיינך קנויך.

“He who curses by a charm.” Like those Nabateans who curse “your creator, your smith, your acquisition”⁷¹.

71 Explanation of J. Levy in his Dictionary, based on Arabic קני “to acquire, to create”, קני “smith; any craftsman”; a similar but Hebrew formulation in the Babli

81a. He also notes that the words might be קונם, קונח, substitutes for others, similar to קונס used for קרבן in vows (cf. Mishnah *Nedarim* 1:2).

(27b line 25) הבועל ארמית. תני רבי ישמעאל. זה שהוא נושא גויה ומוולד בנים ומעמיד אויבים ממנה למקום. קתיב וירא פינחס בן-אלעזר בן-אהרן הכהן. מה ראה. ראה את המעשה ונזכר להלכה הבועל ארמית הקנאים פוגעין בהן. תני. שלא כרצון חכמים. ופינחס שלא כרצון חכמים. אמר רבי יודה בר פזי. ביקשו לנדותו אילולי שקפצה עליו רוח הקודש ואמרה והיתה לו ולזרעו אחליו ברית כהונת עולם וגו'.

“One who copulates with a Gentile woman,” etc. Rabbi Ismael stated: This is one who marries a Gentile woman, sires children, and from her raises enemies of the Omnipresent⁷².

⁷³It is written: *Phineas ben Eleazar ben Aharon the priest saw*. What did he see⁷⁴? He understood what happened and remembered practice: “One who copulates with a Gentile woman, zealots strike him.” It was stated: not with the agreement of the Sages⁷⁵. Would Phineas act against the Sages? Rabbi Jehudah bar Pazi said, they wanted to excommunicate him had not the Holy Spirit jumped on him and declared that *an eternal covenant of priesthood shall be for him and his descendants after him*⁷⁶, etc.

72 In *Megillah* 4:10 (Babli 25a) this is R. Ismael's explanation of *Lev.* 18:21, giving one's descendants to the Moloch.

73 Babli 82a, *Num. rabba* 20(26), *Tanhuma Balaq* 21, *Tanhuma Buber Balaq* 30. *Num.* 25:7.

74 Since Zimri did his deed in public, everybody saw.

75 Since in most cases the zealot's intervention would be first degree murder.

76 *Num.* 25:12.

(27b line 34) מַה טַּעְמִיָּה דְרַבִּי עֲקִיבָה. נֶאֱמַר כָּאֵן מוֹת־יִמּוֹת וְנֶאֱמַר לְהֵלֵךְ כָּל הַקָּרֵב | הַקָּרֵב אֶל־מִשְׁכַּן יְיָ יָמוֹת וְגו'. מַה טַּעְמוֹן דְרַבִּינִי. נֶאֱמַר כָּאֵן מוֹת־יִמּוֹת וְנֶאֱמַר לְהֵלֵךְ וְהָאֵר הַקָּרֵב יִמּוֹת. מוֹסָב שְׁיִלְמִד יִמּוֹת מִיִּמּוֹת וְאֵל יִלְמִד יִמּוֹת מִיִּמּוֹת.

What is Rabbi Aqiba's reason? It says here, *dying he shall be put to death*⁷⁷, and it says there, *anybody acceding to the Eternal's abode will die, etc.*⁷⁸ What is the rabbis' reason? It says here, *dying he shall be put to death*, but it says there, *any outsider coming close shall be put to death*⁷⁹. It is better to compare *shall be put to death* with *shall be put to death* and not *shall be put to death* with *shall die*⁸⁰.

77 E. g. *Lev.* 20:10. An unspecified death penalty is by strangling;

78 *Num.* 17:28. While the verse speaks of the access of non-priests to the Sanctuary, it supports only the rabbis' argument since it clearly refers to Heaven's actions. The parallel in the Babli 84a (*Sifry Deut.* 116, end) makes more sense.

79 *Num.* 18:7. This verse supports R. Aqiba.

80 To transfer the interpretation of one word to another verse, the word has to be in the same grammatical form. It is clear that the positions of יָמוֹת and יִמּוֹת have to be switched.