

THE JERUSALEM TALMUD  
FOURTH ORDER: NEZIQIN  
TRACTATES *SANHEDRIN*, *MAKKOT*,  
AND *HORAIOT*

STUDIA JUDAICA  
FORSCHUNGEN ZUR WISSENSCHAFT  
DES JUDENTUMS

BEGRÜNDET VON  
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HERAUSGEGEBEN VON  
G. STEMBERGER

BAND LI

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DE GRUYTER



# THE JERUSALEM TALMUD

תלמוד ירושלמי

FOURTH ORDER: NEZIQIN

סדר נזיקין

TRACTATES *SANHEDRIN*, *MAKKOT*,  
AND *HORAIOT*

מסכתות סנהדרין מכות והוריות

EDITION, TRANSLATION, AND COMMENTARY

BY

HEINRICH W. GUGGENHEIMER

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## Preface

The present volume is the twelfth in this series of the Jerusalem Talmud, the second in a three-volume edition, translation, and Commentary of the Fourth Order of this Talmud. The principles of the edition regarding text, vocalization, and Commentary have been spelled out in detail in the Introduction to the first volume. The text in this volume is based on the manuscript text of the Yerushalmi edited by J. Sussman for the Academy of the Hebrew Language, Jerusalem 2001. The text essentially represents an outline, to be fleshed out by a teacher's explanation. The translation should mirror this slant; it should not endow the text with literary qualities which the original does not possess. In particular, the translation is not intended to stand separate from the Commentary.

The extensive Commentary is not based on emendations; where there is no evidence from manuscripts or early prints to correct evident scribal errors, the proposed correction is given in the Notes. As in the preceding volumes, for each paragraph the folio and line numbers of the Krotoschin edition are added. It should be remembered that these numbers may differ from the *editio princeps* by up to three lines. It seems to be important that a translation of the Yerushalmi be accompanied by the text, to enable the reader to compare the interpretation with other translations.

Unfortunately, the technical progress of computer systems combined with the ephemeral nature of magnetic storage media has made it impossible to continue using the multi-lingual word processor used for the previous volumes. The look of the pages therefore has changed. Since the new word processor allows for masoretic accents, biblical quotations are now given with the accents, except for words which differ (usually by *plene* spelling) from the masoretic texts. Since the quotes are part of oral tradition, the deviations in spelling are examples of substandard spelling, rather than changes in the text.

Again, I wish to thank my wife, Dr. Eva Guggenheimer, who acted as critic, style editor, proof reader, and expert on the Latin and Greek vocabulary. Her own notes on some possible Latin and Greek etymologies are identified by (E. G.).

I sincerely thank the staff of the Jewish Division of the New York Public Library for providing me with a copy of the Genizah text of Tractate *Makkot*.

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## Introduction to Tractates Sanhedrin and Makkot

The name *Sanhedrin* (Greek συνέδριον, “council”) originally referred to the council of the High Priest as head of state. Talmudic tradition, which carefully obliterated all references to political institutions, turned the word into a name for the supreme judicial authority centered at the Temple. This reflects the reality of life under the last Hasmoneans, Herod and his successors, and the Roman governors before the Jewish revolt when the people essentially considered the political powers as alien forces irrelevant to private and religious lives. Whether this council, which for example set the calendar, was a generally accepted Jewish or a sectarian pharisaic institution is difficult to decide. By the time of the formulation of the Mishnah, under the Severan emperors, popular idealization of the past had turned the Synhedrion into a Supreme Court of 71 members, successor to Moses’s Council<sup>1</sup>, directing a full judicial system of courts of 23 members each, which eliminated the need for any political administration. In this popular remembrance, King David was imagined as head of the council, executing its decrees.

The greater part of Tractate *Sanhedrin* together with its appendix *Makkot* is devoted to the hypothetical construction of a system of criminal courts and rules of criminal justice. Neither the New Testament nor Josephus or any other contemporary ancient source give any indication that the full system ever was in actual use; the Ben Shetah legend detailed in Chapter 6 indicates the same. The notice in the Talmudim that criminal jurisdiction was taken from the Jews 40 years before the destruction of the Temple refers to the jurisdiction of the political powers, not the pharisaic-rabbinic courts.

In the absence of a historical record, the theory is developed that procedural law may be disregarded in emergency situations<sup>2</sup>, and only

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1. *Num.* 11:16,17,245,25.

2. Cf. Chapter 6, Note 96.

emergency situations make it to the historical record. In addition, the Tractate institutes courts of three judges for civil matters. There one really considers two very different institutions: First, communal courts to adjudicate both matters of personal status and of civil disputes. These are considered only implicitly in the Tractate; their development is Babylonian, in particular from Gaonic Babylonia where each Jewish community had a court subject to the supervision of one of the great Yeshivot. We do not know the exact meaning of ordination and the title “Rebbi” expressing ordination in the 150 years between its introduction at Jabneh and the formulation of the Mishnah. But in Mishnaic and later Talmudic times, this title and the corresponding Babylonian title “Rav” designated a person competent to act as communal judge with powers of compelling attendance, in Palestine in matters of personal status and in Babylonia in all intra-communal matters<sup>3</sup>.

While one may assume that these courts developed their own formal procedures, there is little evidence of their procedural law in any of the Talmudim. This makes it difficult for rabbinic courts to function in a modern world unless they develop their own written procedures as happened with the system of rabbinic courts in Israel. The other aspect, panels of arbitration, is more prominent and better developed, reflecting the actual situation in Mishnaic and Talmudic times, and is in continuous use since Talmudic times, amply documented in the Responsa literature.

The first Chapter mainly determines the competence of each court, whether of 3, 23, or 71 members. Since one of the competences of a court of three members is fixing the calendar (Halakhah 2), and this competence essentially determined the status of the Patriarch in Mishnaic times, the prerogative of the Patriarch’s court and his power of ordination, i. e., appointing judges, are detailed in Halakhah 2. The later Halakhot clearly are an attempt to project the Mishnaic theory into the situation of the First Commonwealth.

The second Chapter discusses first the status of the High Priest as a consequence of the biblical restrictions imposed on him. This is followed by

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3. Cf. *Gittin* 4:2 Note 17, the Introduction to Tractate *Neziqin* (pp. 4-5) and in the following, 3:10.

similar rules regarding the King. The first part of these rules clearly refers to the non-Davidic Kings of the Second Commonwealth who considered themselves to be above the law and who, therefore, are considered unfit to administer justice. Later Mishnaïot (5,6) and the corresponding Halakhot again are an attempt to describe First Commonwealth situations.

The first part of the third Chapter takes up the constitutions of panels of arbitration. These are supposed to render binding verdicts; committees to work out compromises may have an even number of members. The basic rule is that each party appoint one judge, subject to rules of eligibility. The two then together choose an independent third member. A party may also choose to bring the case before a local permanent rabbinic court. If one tries to bring the matter before a far-away court of higher standing, he can be forced to go before the local court who then has to present written protocols to the far-away authority for final determination. This rule turned out to be a very efficient way to guarantee the functioning of communal courts or panels of arbitration in the absence of any official courts of appeal but a general possibility of submitting a case to a recognized authority<sup>4</sup>. It has been suggested that the disappearance of government-sanctioned courts can be dated to the appearance of the ban (נְדִי, נְזָר) as a way of enforcing religious discipline, probably starting from the time of Simeon ben Šetah. Therefore, the ban in its forms and rules is not treated in Sanhedrin.

Persons can be disqualified as judges or witnesses either because they are relatives of one of the parties (Halakhah 7), or because they are convicted felons (a biblical disqualification), or because their honesty is suspect since they earn their livelihood dishonestly (a rabbinic disqualification, Halakhah 6). This leads to a digression about the observance of the (today purely rabbinic) institution of the Sabbatical year and the parameters of the obligation to prefer martyrdom to breaking biblical law under Gentile oppression.

The second part of the Chapter discusses the interrogation of witnesses, mostly in criminal cases. The biblical decree that a verdict must be based on the testimony of two witnesses calls for rules about how two witnesses for the

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4. Chapter 3, Note 13.

same circumstance are treated and how “same circumstance” is defined. In addition the Halakhah states that eavesdropping evidence in general is rejected (it is admitted as a great exception in a charge of missionary activity for idolatry.) The Chapter ends with the possibility of asking for a retrial in a civil suit if new evidence is uncovered. There is no provision for a superior appeals court.

The Fourth Chapter starts by emphasizing the differences between criminal and civil trials. Civil cases are decided by a simple majority of the judges; criminal convictions need a qualified majority. Since it is emphasized that criminal trials need a detailed written report of all proceedings, one may infer that such a report is not needed in civil cases. In criminal cases, the most junior judges are polled first about their verdict, to avoid them being influenced by the opinions of their senior colleagues.

The final part of the Chapter treats the interrogation of witnesses. Oaths are admitted in rabbinic courts only by parties to civil suits, either to deny or to affirm monetary claims. Witnesses testify without oaths; therefore, judicial admonitions about the importance of testimony and the severity of the crime of perjury are absolutely necessary.

Chapter five is devoted to the details of procedure in criminal cases; in particular the difference between facts that must be determined without ambiguity (the identity of persons, place, and date of the crime) and those where discrepancies between testimonies might be reconciled by judicial arguments. The main rule in such cases is that criminal intent can be proven only by testimony of two witnesses to the effect that the accused was warned not to commit the crime just before he actually committed it. This practically excludes convictions by biblical standards and turns the long list of death penalties in the Pentateuch into lists of sins which might deprive the unrepentant sinner of his part in the Future World.

Chapter six is devoted to the (hypothetical?) details of the stoning procedure, in particular the convict’s confession before execution which assures him of being admitted to Paradise. This indicates that the Chapters to the end of the Tractate should be read as theological treatises and pleadings against the imposition of any death penalty. In addition, the Chapter contains

the Simeon ben Šetah legend (which most historians accept at face value) and a shortened version of the Gibeonite story from *Qiddušin* 4:1.

Chapter seven starts with a systematic description of the death penalties prescribed in the biblical text: stoning, burning (which is explained as not burning), decapitation, and an unspecified death penalty which is identified as strangling. Just as a conviction needs two separate testimonies about warning and action, so a prohibition must be mentioned twice in the biblical text, once for the prohibition and once for determination of the penalty. This leads to a discussion of a number of hermeneutical principles needed for the understanding of the biblical text. The second part of the Chapter is devoted to discussion of crimes connected with idolatry, such as Moloch worship and sorcery.

Chapter eight is devoted to the rules of the deviant and rebellious son<sup>5</sup>, a case which in the opinion of the Babli never happened in practice. On a more practical level, it also discusses the rules by which one may protect one's house by killing a stealthy intruder<sup>6</sup>.

Chapter nine discusses the cases punishable by "burning", mostly of incest, and by decapitating, of murder. In addition, it is recognized that dangerous criminals who clearly cannot be sentenced to death by biblical standards must be kept in jail even though there is no biblical sanction for jail sentences.

The first part of Chapter ten (in most Babli sources Chapter eleven) asserts that all of Israel, including those who committed deadly sins, have part in the Future World. The Mishnah quotes exceptions to this rule; all of these are refuted in the Halakhah. The only persons excluded are those who deny the existence of a Future World and probably those who die unrepentant. Even people guilty of capital crimes have part in the Future World. This certainly holds for those executed for their crimes (Chapter 6:3) but also for those who confess on their death bed. This denies part in the Future World to evildoers who die suddenly and painlessly. Rabbinic Judaism (except for some Medieval aberrations) always rejected systematic theology. This Chapter is

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5. *Deut.* 21:21.

6. *Ex.* 22:1.

the closest approximation one has to such a theology and its theodicy as far as is possible in a world of thought based on aphorisms<sup>7</sup>. In this setting, Aramaic texts are sermon concepts, homiletics. Hebrew texts should be considered as serious theological arguments.

The second part of the Chapter deals with the detailed rules for destroying a town which publicly adopts idolatry<sup>8</sup>, a case that in all likelihood never happened.

The eleventh Chapter returns to the topics of Chapters seven to nine in discussing the death penalty cases in which the biblical text does not specify the method of execution, which by rabbinic tradition means execution by strangulation. One topic is that of the lower court judge who disregards the decision of the High Court<sup>9</sup>. This does not establish the High Court as an appeals instance but requires that differences of opinions in lower courts, acting as judges and jury, be brought to the High Court *before* verdict is rendered<sup>4</sup>.

The last Mishnah of the Chapter introduces the topic of the first Chapter of *Makkot*. In the Babli, the Savoraic introduction to *Makkot* clearly states that it is a separate Tractate following *Sanhedrin*. The Genizah text of *Makkot* and some ancient references treat *Makkot* as *Sanhedrin*, Chapters Twelve to Fourteen. Since it is good Mishnaic style to introduce a change of topic in the middle of a Chapter, the fact that the last Chapter of *Sanhedrin* in the Leiden ms. introduces the topic of the first Chapter of *Makkot* indicates that the separation of the text into two Tractates is due to the influence of the Babli.

Biblical law requires that a perjured witness be subject to the penalty which would have been imposed on the accused had his testimony been true<sup>10</sup>. But there are cases in which this cannot be done. The case treated in *Sanhedrin* is that of an adulterous daughter of a Cohen. The adulteress cannot be convicted unless the adulterer also be convicted. But the adulterer's penalty is strangulation while the adulteress's is burning which is more severe

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7. Cf. H. Guggenheimer, *Die dialektische Philosophie im Talmud*, Proceedings of the XIth International Congress of Philosophy, Bruxelles 1953, vol. XII, pp. 190-194.

8. *Deut.* 13:13-19

9. *Deut.* 17:8-12.

10. *Deut.* 19:18-21.



than strangulation. The perjured witness can be sentenced to the adulterer's penalty, but not the adulteress's.

The first Chapter of *Makkot* (*Sanhedrin* 12) deals with cases in which the prospective penalty awaiting the accused cannot be imposed on the perjured witness; then the perjurers are whipped. The main example are two witnesses who accuse a Cohen of being desecrated as son of a woman forbidden to his father. If the accusation stands, the man is stripped of his priestly status and all his descendants also are desecrated<sup>11</sup>. If the perjured accusers are not priests, they cannot be declared desecrated. But even if the accusers are priests, it is impossible to declare them desecrated since there is no reason to declare their children as desecrated but qualified priests cannot be children of disqualified ones. In all such cases, the perjured accusers are whipped.

Chapter two (*Sanhedrin* 13) treats the rules of exile for the homicide and the cities of refuge<sup>12</sup>. The treatment implies that actual vendetta killings for homicide were no longer considered real possibilities. What in the Bible is protection against clan vendetta becomes a very restricted form of punishment.

In the Leiden ms., Chapter Three (*Sanhedrin* 14) has only the Mishnah. The Genizah text has a theologically important homiletic Halakhah to the last Mishnah, the existence of which was deduced by S. Lieberman<sup>13</sup> from early Medieval quotes long before the Genizah text was identified.

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11. Since his daughters may legally marry Israel husbands, their sons will be Israel without any disabilities; Mishnah *Qiddušin* 3:14.

12. *Num.* 35:9-34; *Deut.* 19:1-10.

13. *Tarbiz* 5 (5694), pp. 109-110.



## דיני ממונות פרק ראשון

**משנה א:** דיני ממונות בשלשה גזלות וחבלות בשלשה נזק וחצי נזק תשלומי כפל ותשלומי ארבעה וחמשה. האונס והמפתה והמוציא שם רע בשלשה דברי רבי מאיר וחכמים אומרים המוציא שם רע בעשרים ושלשה שיש בו דיני נפשות.

**Mishnah 1:** Money matters<sup>1</sup> are judged by three [judges]; robberies<sup>2</sup> and injuries<sup>3</sup> by three [judges], damages<sup>4</sup>, half damages<sup>5</sup>, double restitution<sup>6</sup> quadruple and quintuple restitution. The rapist<sup>7</sup>, the seducer<sup>8</sup>, and the calumniator<sup>9</sup> are judged by three [judges], the words of Rebbi Meïr; but the Sages say that the calumniator is judged by 23 because it might be a capital case<sup>10</sup>.

1 Not only litigation involving loans, inheritances, gifts, or real estate, but also distribution of public funds (cf. Mishnah *Peah* 8:7).

2 Including fraud.

3 Inflicted on humans.

4 Caused on living or inanimate property.

5 Caused by somebody's animals (cf. Mishnaïot *Bava qamma* 1:4-5).

6 To be paid by the thief of inanimate objects, Mishnah *Bava qamma* 7:1. The thief of livestock pays quadruple or quintuple restitution.

7 Who has to pay under four different categories (Mishnah *Ketubot* 4:1).

8 Who has to pay under three different categories.

9 Who accuses his wife not to have been a virgin (*Deut.* 22:13-19).

10 Since the woman is stoned if the husband's accusation is proved correct

(*Deut.* 22:20-21) and the biblical text implies that the court which might sentence the husband to a fine is the one which might pass a death sentence, the case has to be tried in a tribunal empowered to try capital cases.

According to rabbinic principles, *Deut.* 22:13-21 cannot refer to a husband accusing his wife of not being a virgin since 1° by marriage, the husband became his wife's relative and relatives are barred from appearing as witnesses; his case could not be heard. 2° there is no verse threatening a woman with death if she married when not a virgin. Therefore, the rabbinic interpretation of the paragraph is that the husband presents witnesses to the fact that his wife committed adultery while preliminarily married to him. A preliminarily married woman is married in respect

to criminal but not civil law (cf. Introduction to Tractate *Qiddušin*).

Another aspect of criminal law in this case is the law of perjury, *Deut.* 19:18-19. Since the husband's witnesses intended to

have the woman stoned, if they are shown to be perjured they themselves are stoned.

Therefore, the case may be heard only in a court competent to impose death sentences.

(18a line 21) **הלכה א:** דיני ממונות בשלשה כול. מנן תיתי ליה. והיו אלה לכם לחקת משפט. הייתי אומר. אחד דיני ממונות ואחד דיני נפשות בדרלשה ובחקירה. ומניין לדיני ממונות שהן בשלשה. ונקרב בעל הבית אל האלהים ריבה בה דיין אחד. עד האלהים הרי שנים. אשר ירשיעון אלהים הרי כאן שלשה. דברי רבי יאשיה. רבי יונתן אמר. הראשון תחלה נאמר ואין דורשין תחילות. אלא עד האלהים הרי אחד. אשר ירשיעון אלהים הרי שנים. אין בית דין שקול מוסיפין עליהן עוד אחד. הרי שלשה. רבי אומר. בשנים הכתוב מדבר. אתה אומר בשנים או אינו אלא באחד. כשהוא אומר אשר ירשיעון אלהים אין כתוב כאן אלא אשר ירשיעון אלהים. אין בית דין שקול מוסיפין עליהן עוד אחד. הרי שלשה.

**Halakhah 1:** “Money matters are judged by three [judges],” etc. From where comes this? *These shall be the laws of procedure to you*,<sup>11</sup> I would say that both civil cases and criminal cases are subject to the rules of verification and examination<sup>12</sup>.

<sup>13</sup>From where that civil cases are heard by three [judges]? *The owner shall go to the judge*,<sup>14</sup> he added here one judge. *Before the judge*,<sup>15</sup> these are two. *Whom the judges will find guilty*, these are three<sup>16</sup>, the words of Rabbi Joshua. Rabbi Jonathan said, the first mention introduces the subject; one does not infer anything from introductions<sup>17</sup>. But *before the judge*, there is one. *Whom the judges will find guilty*, there are two. No court may be even-numbered,<sup>18</sup> so one adds another one; this makes three.

Rebbi said, the verse speaks about two. You say about two, or maybe it is only about one? What He said, it is not written “whom the judge will find guilty” but *whom the judges will find guilty*.<sup>19</sup> No court may be even-numbered, so one adds another one; this makes three.

11 *Num.* 35:29. The chapter covers the rules of levitic cities, laws of property, and of the homicide, criminal law.

12 Mishnah 4:1. *Examination* refers to cross-examination relating to questions which answer to “who”, “when”, and “where”. *Interrogation* refers to answers to

“how”. The distinction between the two is in regard to rules about discrepancies in testimony between different witnesses, Mishnah 5:1. The verse makes it clear that the rules also apply to lawsuits about subjects not covered by the detailed list in the Mishnah.

13 Babli 3b.

14 Ex. 22:7.

15 Ex. 22:8.

16 Since the paragraph mentions *judge* three times.

17 This is a generally accepted principle (Babli *loc. cit.*). The expression which

introduces a subject always is necessary and cannot be considered additional or extraneous to the subject at hand.

18 The duty of the court is to decide matters based on incomplete information. The possibility of a deadlock would defeat the purpose for which the court was convened. Therefore, no court may be even-numbered. If any of the judges did abstain from voting, the case would have to be tried anew with another judge substituting for the abstaining judge.

19 The plural in this sentence alone implies that at least two judges are involved.

18a line 31) רַבִּי אֲבָהוּ בִּעֵי. וְכַרְבֵּי דִינֵי מְמוֹנוֹת בְּחִמְשָׁה וְשִׁנְיָמָר בְּכ"ג. אֲשַׁכַּח תַּנִּי רַבִּי חִזְקִיָּה. הוֹאִיל וְאִמְרָה תוֹרָה. הָרוּג עַל פִּי מַטִּים הָרוּג עַל פִּי עֲדִים. מֵה עֲדִים שְׁנַיִם אִם מַטִּים שְׁנַיִם. אִין בֵּית דִּין שְׁקוּל מוֹסִיפִין עֲלֵיהֶן אַחֵר. הָרִי חֲמִשָּׁה.

Rebbi Abbahu asked. According to Rebbi<sup>20</sup>, should not civil suits be heard by five; should sentence not be passed by 23<sup>21</sup>? It was found stated by (Rebbi)<sup>22</sup> Hizqiah: Since the Torah said, kill by a vote of the majority<sup>23</sup>, kill by the testimony of witnesses. Since witnesses must be two<sup>24</sup>, a majority also must be two<sup>25</sup>. No court can be even-numbered; one adds another one. This makes five.

20 Who in Tosephta 1:1 requires five judges to hear civil cases.

21 Rebbi probably also will agree that common practice was to hear cases by a panel of three judges. If one already deviates from traditional practice, should not Num. 35:29 be interpreted as requiring identical procedural law for both civil and criminal cases?

22 Probably one should read דְּבִי instead of רַ' (רַבִּי) and translate “the House of Hizqiah,” referring to one of the twin sons

of the Elder Rebbi Hiyya, known as the last person who formulated *baraitot*. The fourth generation *Rebbi* Hizqiah would be much too late. The *baraita* is found in both *Mekhiltot* (dR. Ismael, ed. Horovitz-Rabin p. 323, dR. Simeon ben Iohai ed. Epstein-Melamed p. 214.)

23 Majority rule for judicial sentences is introduced in Ex. 23:2: “to bend after the many.” The same verse forbids a guilty verdict by a simple majority: “Do not follow the majority in bad things.” Since the plural used for “many” implies at least two, it

follows that a guilty verdict by a majority of one is an acquittal, while by a majority of two it is a guilty verdict.

24 Since unanimity is not required, the court would have to be composed of at least

4, hence 5, members. The majority accepts this interpretation of *Ex. 23:2* for criminal cases only.

(18a line 35) לֹא הָיוּ גְזִילוֹת הָיוּ חֲבֻלוֹת. אֲשֶׁכַח תִּנִּי רַבִּי שְׁמַעוֹן בֶּן יוֹחִי. וְאַלְהֵם הַמִּשְׁפָּטִים אֲשֶׁר תִּשְׁטִים לִפְנֵיהֶם. אֵתָא מִימָר לָךְ כִּפְשׁוּטָה דְקָרִיָא. וְתִיָא כְרַבִּי יוֹסִי בַר חֲלַפְתָּא.

רַבִּי יוֹסִי בַר חֲלַפְתָּא אָתָּו תִּרְיוּ בַר נֶשׁ מִיּוֹדִין קוֹמוּ. אָמַרִי לֵיהּ. עַל מִנָּת שֶׁתִּדְיִנְנוּ דִּין תוֹרָה. אָמַר לוֹן. אֲנִי אֵינִי יוֹדֵעַ דִּין תוֹרָה אֶלָּא הַיּוֹדֵעַ מִחֻשְׁבוֹת יִפְרַע מֵאוֹתָן הָאֲנָשִׁים. מִקְבָּלִין עֲלֵיכוֹן מִה דָּנָא אָמַר לָכוֹן.

רַבִּי עֲקִיבָה כֹּד הָוָה בַּר נֶשׁ אֶזֶל בְּעֵי מִיּוֹדִין קוֹמִיָה הָוָה אָמַר לֵיהּ. הָוִי יוֹדֵעִין לִפְנֵי מִי אָתָּם עוֹמְדִין. לִפְנֵי מִי שְׁאָמַר וְהָיָה הָעוֹלָם. שְׁנַאֲמַר וְעָמְדוּ שְׁנֵי־הָאֲנָשִׁים אֲשֶׁר־לָהֶם הָרִיב לִפְנֵי יי. וְלֹא לִפְנֵי עֲקִיבָה בֶּן יוֹסִף.

תִּנִּי. קוֹדֵם לְאַרְבָּעִים שָׁנָה עַד שֶׁלֹּא חָרַב הַבַּיִת נִיטְלוּ דִּינֵי נַפְשׁוֹת וּבִימֵי שְׁמַעוֹן בֶּן שִׁטְחַ נִיטְלוּ דִּינֵי מְמוֹנוֹת. אָמַר רַבִּי שְׁמַעוֹן בֶּן יוֹחִי. בְּרִיד רַחֲמָנָא דְלֵי נָא חֲכִים מִיּוֹדִין.

Do not robberies and injuries fall under the same rules<sup>26</sup>? It was found that Rabbi Simeon ben Iohai stated: *These are the procedures which you shall put before them.* It serves to explain to you the plain sense of the verse<sup>27</sup>. This follows Rabbi Yose bar Halaphta.

Rebbi Yose bar Halaphta, when two people came before him for judgment and told him, “on condition that you judge us by the law of the Torah,” told them, “the law of the Torah I do not know<sup>28</sup>, but He Who knows thoughts should collect from those people<sup>29</sup>. You have to accept what I shall tell you.”

When a person came to Rabbi Aqiba to have a suit decided before him, he told him: “You should know before Whom you are standing, before Him Who commanded and the world came into existence, as it is said: *The two people who are quarrelling shall stand before the Eternal*,<sup>30</sup> not before Aqiba ben Joseph.”

It was stated<sup>31</sup>: Forty years before the Temple was destroyed, criminal jurisdiction was removed from Israel<sup>32</sup>, and in the days of Simeon ben (Šetah)<sup>33</sup> civil jurisdiction was removed. Rabbi Simeon ben Iohai said, praised be the Merciful<sup>34</sup>, for I am not intelligent enough to judge<sup>35</sup>.

26 The same question is asked in the Babli, 2b. In contrast to the Babli, here it is understood that torts do not necessarily follow the same rules as disputes over money, and it is not obvious that a panel of three judges would be sufficient for these.

27 Ex. 21:1. As in Ex. 21-23, pure money matters are treated first, then torts. The order of the Mishnah follows the order of topics in these chapters.

28 He knew the theoretical law of the Torah but not necessarily the application to the case before him, since that would have presumed perfect and complete information. But the judge, by biblical decree, is dependent on what is told him in court. The information given to him by necessity is incomplete.

29 Who either lie in court or withhold information.

30 Deut. 19:17. The verse continues: "before the priests and the judges."

31 The correct version of this *baraita* is in 7:2; the first part is also quoted in the Babli, *Šabbat* 15a. The second part never applied in Babylonia.

32 When Judea came under direct Roman rule.

33 One has to read with 7:2: Simeon ben Iohai, as confirmed by the next sentence. The removal of civil cases to Roman courts cannot be dated to the reign of Alexander Yannai, Simeon ben Shetah's brother-in-law, but to Hadrian, in the aftermath of the war of bar Kokhba.

34 For preventing me to have to act as a judge.

35 From his time on, rabbinic jurisdiction in Palestine was limited to courts of arbitration which are not representatives of God and therefore under less pressure to render absolutely correct judgment.

18a line 46) שְׁנַיִם שֹׁדְנֵי דִינֵיהֶן דִּין אֵלָא שְׁנִקְרָאוּ בֵּית דִּין חֲצוּף. רַבִּי יוֹחָנָן וְרִישׁ לְקִישׁ תְּרִיהוּן מְרִין. אֶפְלוּ שְׁנַיִם שֹׁדְנֵי אִין דִּינֵיהֶן דִּין. תַּמָּן תַּנִּינָן. הִיָּה דָן אֶת הַדִּין. זִכָּה אֶת הַחֵיב חַיִּיב לְצָאִי. טָמֵא לְטָהוֹר טִיהַר לְטָמֵא. מָה שַׁעֲשֹׂה עָשׂוּי וְיִשְׁלַם מִבֵּיתוֹ. רַבִּי בָּא בְּשֵׁם רַבִּי אֲבָהוּ. בְּשִׁאמְרוּ לוֹ. הֲרִי אֶת מְקוּבֵּל עֲלֵינוּ כְּשָׁנִים. מָה אֲנִן קִיָּמִין. אִם בְּשִׁטָּעָה וְדָנָן מְשִׁיקוֹל הִדְעַת. בְּדָא מָה שַׁעֲשֹׂה עָשׂוּי. אִם בְּשִׁטָּעָה וְדָנָן דִּין תוֹרָה. בְּדָא וְשִׁלַּם מִבֵּיתוֹ. רַבִּי בָּא בְּשֵׁם רַבִּי אֲבָהוּ. בְּשִׁאמְרוּ לוֹ. הֲרִי אֶת מְקוּבֵּל עֲלֵינוּ כְּשִׁלְשָׁה עַל מִנְתַּ שְׁתַּדִּינְנוּ דִּין תוֹרָה. וְטָעָה וְדָנָן מְשִׁיקוֹל הִדְעַת. מָה שַׁעֲשֹׂה עָשׂוּי. מִפְּנֵי שִׁטָּעָה וְדָנָן מְשִׁיקוֹל הִדְעַת. וְשִׁלַּם מִבֵּיתוֹ. שְׁהָגִים דְּעָתוֹ לְדוֹן יְחִידִי דִין תוֹרָה. דְּתַנִּינָן. אֵל תְּהִי דָן יְחִידִי. שְׂאִין דָן יְחִיד אֵלָא אֶחָד.

Samuel said, if two men acted as judges, their judgment stands, but they are called an insolent court<sup>36</sup>. Rabbi Johanan and Rabbi Simeon ben Laqish both are instructing: Even<sup>37</sup> if two men acted as judges, their judgment is no judgment<sup>38</sup>. There, we have stated<sup>39</sup>: "If he rendered judgment, acquitted the guilty and condemned the innocent, declared the pure impure or the impure pure, what he did is done but he has to pay from his own pocket." Rabbi

Abba in the name of Rabbi Abbahu: if they told him, we accept you as if you were two<sup>40</sup>. What are we dealing with? If his error was that he judged them on his discretion<sup>41</sup>, then what he did is done. If his error was that he judged them by Torah law<sup>42</sup>, why should he pay from his own pocket? Rabbi Abba in the name of Rabbi Abbahu: if they told him, we accept you as if you were three on condition that you judge us by Torah law. He erred and judged them on his discretion. What he did is done, but since he erred and judged them on his discretion, he has to pay from his own pocket<sup>43</sup> because he was presumptuous to judge alone by Torah law, as we have stated<sup>44</sup>: “Do not judge sitting alone, for only One judges sitting alone.”

36 Babli 3a,5b,30a,87b; *Ketubot* 22a. Cf. *Berakhot* 7:1, Note 18.

37 Even if the parties accepted them as judges.

38 In the Babli, this opinion is represented by Rava (5b) and R. Abbahu (87b), the student of R. Johanan and R. Simeon ben Laqish.

39 Mishnah *Bekhorot* 4:4. The Mishnah refers to a person who did not pass the required examinations and was not formally qualified as a judge.

40 Since R. Abbahu follows his teachers and holds that any judgment passed by a court of two judges is void, as well as from the following quote, it is clear that one has to read “three” in place of “two”.

41 If there exists no clear precedent for the case; different schools promulgate different rules and he followed a minority opinion because it seemed to him to be the correct one, his judgment is valid but there is no reason why he should have to pay. The Babli, 33a, declares a judgment against a clear majority of opinions as an error in law.

42 If his judgment contradicted a Mishnah or a clear precedent, in Israel a judgment of the Patriarch’s court or in Babylonia a concurrent judgment of both Yeshivot, his judgment is void (cf. *Ketubot* 9:2, Note 100). If any money changed hands as a consequence of the erroneous judgment, it has to be returned.

43 As a fine.

44 Mishnah *Avot* 4:8.

(18a line 56) אָמַר רַבִּי יְהוֹנָתָן בֶּן פִּזִּי. אִם הִקְדוּשׁ בְּרִיךְ הוּא אֵין דָּן יְחִידִי. שְׁנַאֲמַר וְכָל-צָבָא הַשָּׁמַיִם עוֹמְדִים עָלָיו מִימֵינוֹ וּמִשְׁמָאלוֹ. אֵילּוּ מִטְּוִין לְכָף זְכוּת וְאֵילּוּ מִטְּוִין לְכָף חוֹבָה. אִם עַל פִּי שְׁאֵין דָּן יְחִידִי חוֹתֵם יְחִידִי. שְׁנַאֲמַר אַבְל־אֶגִּיד לָךְ אֶת-הַרְשׁוּם בְּכֶתֶב אֱמֻנָה. אָמַר רַבִּי יוֹחָנָן. לְעוֹלָם אֵין הִקְדוּשׁ בְּרִיךְ הוּא עוֹשֶׂה בְּעוֹלָמוֹ דָּבָר עַד שֶׁנִּמְלָךְ בְּבֵית דִּין שְׁלֻמְעֵלָן. מַה טַעַם. וְאֵמֶת הַדָּבָר וְצָבָא גָדוֹל. אֵימָתִי חוֹתֵמוֹ שְׁלֵהִקְדוּשׁ בְּרִיךְ הוּא אֱמֻנָה. בְּשַׁעֲהָ שֶׁנִּמְלָךְ בְּבֵית דִּין



שְׁלֵמֵעָלָיו. אָמַר רַבִּי לְעֶזֶר. כָּל־מְקוֹם שֶׁנֶּאֱמַר יי אֱלֹהִים הוּא וּבֵית דִּינוֹ. וּבְנִין אֵב שֶׁכּוֹלֵם וְיִי דִבֵּר עָלָיו רָעָה.

מָהוּ חוֹתְמוֹ שֶׁלְהַקְדוֹשׁ בְּרוּךְ הוּא. רַבִּי בִּיבִי בְּשֵׁם רַבִּי רְאוּבֵן. אָמַר. מָהוּ אָמַר. אָמַר רַבִּי בִּין. שְׁהוּא אֱלֹהִים חַיִּים וּמְלִךְ עוֹלָם. אָמַר רִישׁ לְקִישׁ. אֶל־יִי רִישִׁיה דְּאֶלְפָּה־בֵּיטָא. מִסְּ בְּאֶמְצָעִיתָא. תִּלּוֹ בְּסוּפָה. לּוֹמַר אֲנִי יי רִאשׁוֹן שְׁלֵא קִיבַלְתִּי מֵאַחֵר. וּמִבְּלַעְדִּי אֵין אֱלֹהִים שְׁאִין לִי שׁוֹתֵף. וְאֶת־אַחֲרוֹנִים אֲנִי־הוּא. שְׁאִינִי עֲתִיד לְמוֹסְרָהּ לְאַחֵר.

Rebbi Jehudah ben Pazi said, even the Holy One, praise to Him, does not judge alone, as it is said<sup>45</sup>: *all the hosts of Heaven were standing by Him, to His right side and to His left*. These vote to acquit, those to convict. Even though He does not judge alone, He signs alone, as it is said: *really I shall tell you what is noted in true writing*.<sup>46</sup>

Rebbi Johanan said, the Holy One, praise to Him, never does anything in His world unless He took counsel with the Heavenly Court<sup>47</sup>. What is the reason? *True is the statement and a large host*.<sup>48</sup> When is the seal of the Holy One, praise to Him, true? When He took counsel with the Heavenly Court. Rebbi Eleazar said, any place where it is said “the Eternal, Almighty,”<sup>49</sup> it is He and His Heavenly Court. The paradigm of all is: *and the Eternal spoke evil about him*.<sup>50</sup>

What is the seal of the Holy One, praise to Him? Rebbi Bevai in the name of Rebbi Reuben, “true.”<sup>51</sup> What means “true”? Rebbi Abun said, that He is a Living Power and the King of this World. Rebbi Simeon ben Laqish said, א is the start of the alphabet, מ the middle,<sup>52</sup> and ת the end. To say, *I, the Eternal, am First*,<sup>53</sup> I did not receive anything from another. *Besides Me there is no supreme power*,<sup>54</sup> for I have no co-owner. *And with the last, I shall be*,<sup>53</sup> I shall not in the future turn it over to anybody else.

45 *IK*. 22:19. In MT, “was standing.”

46 *Dan*. 10:21.

47 Babli 38b.

48 *Dan*. 10:1.

49 In *Lev. rabba* 24(2) in the name of R. Eliezer, in *Num. rabba* 3(3) in the name of “the rabbis”: Any place where it is said “and the Eternal.” Since the verse quoted in support refers to this version, the editor of

the Žitomir-Wilna edition changed the text here. It is more likely that the text originally read “the Eternal of hosts” and the proof text was *Jer*. 11:17.

50 *IK*. 22:23.

51 Babli *Šabbat* 55a, in the name of R. Hanina, a midrash on *IK*. 22:23.

52 Since the Hebrew alphabet has 22 letters, the middle is between the 11th (k) and the twelfth (l) letter.

53 *Is.* 41:4.

54 *Is.* 44:6. The verse probably should have been quoted three times.

(18a line 69) רבי בא ורבי בנימין בר יפת הווי דיין קומי רבי יצחק ונפק דינא עם רבי בנימין. אַתא רבי בא בעי מיטרוף. עַל רבי אמי ואלף. מומחה שְׂכַפֵּף וְדָן דינו דין. רבי אבהו הוה יתיב דיין בכנישתא מדרתא דקיסרין לגרמיה. אַמְרין ליה תלמידוי. וְלֹא כֹן אֵלְפֹן רַבִּי. אֵל תְּהִי דָן יְחִידִי. אָמַר לוֹן. כִּינֹן דְּאַתּוֹן חֲמוּ לִי יְתִיב דִּינֹן לְגַרְמִי וְאַתּוֹן לְגַבִּי קָמִי שְׂקִיבְלוּ עֲלֵיהּ. וְתִנִּי כֹן. בְּמָה דְּבָרִים אַמּוּרִים. בְּזִמְן שְׁלֹא קִיבְלוּ עֲלֵיהּ. אֲבָל אִם קִיבְלוּ עֲלֵיהּ דָן אֲפִילוּ יְחִידִי.

Rebbi Abba and Rebbi Benjamin bar Jepheth had a lawsuit before Rebbi Isaac; the judgment was for Rebbi Benjamin. Rebbi Abba wanted to complain<sup>55</sup>; Rebbi Immi came and taught: If an expert<sup>56</sup> forced his opinion as a judgment, his judgment stands.

Rebbi Abbahu was sitting as sole judge in the inclining<sup>57</sup> synagogue of Caesarea. His students said to him, did the rabbi not teach<sup>44</sup>: “Do not judge sitting alone”? He told them, since you see me sitting alone as a judge and they come to me, it is because they accepted this. It was stated thus<sup>58</sup>: “When was this said? If they did not accept it. But if they accepted it, he even judges as sole judge.”<sup>59</sup>

55 After the fact, he wanted to invalidate the judgment because R. Isaac sat as sole judge.

56 A person who passed the required examinations and was ordained as a judge, in Palestine by the Patriarch, in Babylonia

by the Head of the Diaspora.

57 A synagogue built on an incline in his hometown of Caesarea Philippi on the slopes of the Golan Heights.

58 Babli 5a, *Rosh Haššanah* 25b.

59 Since he is acting as an arbitrator.

(18a line 76) רבי יוחנן אַזל מידון קומי רבי חייה רבה. אייתיב גביה חד תלמיד. וְלֹא כֹן תִּנִּי. אַב וְגַבְו הָרַב וְתִלְמִידוֹ שְׁיָהּ נִימְנִין אַחַד. יִימַר חֲבֵר וְתִלְמִיד הָיָה. כְּרַבִּי לַעְזֹר לְרַבִּי יוֹחָנָן. גִּזְרֵי דִין נִפְקִין מִן דָּרַב לְגַרְמִיָּה. מִן דְּרַבִּי אַחָא לְגַרְמִיָּה. מִן דְּרַבִּי יוֹנָה וְרַבִּי יוֹסִי לְגַרְמִיָּהוּ.

Rebbi Johanan went with a lawsuit before the Elder Rebbi Hiyya. He took a student to sit with him. But did we not state: “A father and his son, a teacher

and his student, the two are counted as one.<sup>60</sup> Let us say that he was both student and colleague, like Rabbi Eleazar to Rabbi Johanan<sup>61</sup>.

Judgments were rendered by Rav alone, by Rav Aha alone, by Rabbi Jonah and Rabbi Yose by themselves<sup>62</sup>.

60 Tosephta 7:2; Babli 36a. The son or the student cannot be counted on for an independent opinion.

opinions and, more importantly, will not be afraid publicly to state them.

61 Where both Talmudim report many disagreements between them. At this stage, the former student will have independent

62 The head of a Talmudic Academy everywhere is empowered to sit as sole judge.

(18b line 4) תָּמַן תִּנֵּינָן. הַנּוֹטָל שְׂכָרוֹ לְדוֹן דִּינֵי בְּטִילִין. כִּינֵי מִתְּנִיתָא. הַחֲשׂוֹד לִטּוֹל שְׂכָרוֹ יָדוּ.

חַד בַּר נָשׁ אָזַל מִיּוֹדוֹן קוֹמֵי רַב הוּנָא. אָמַר לֵיהּ. אֵייתִי לִי בַר נָשׁ דִּיסוֹק תְּחוּתֵי לְדִיקְלָא. רַב הוּנָא הָנָה רַעִי תוֹרִין וְהָנָה יָדַע שְׁהָדוּ לְחַד בַּר נָשׁ. אָמַר לֵיהּ. אֵתָא שְׁהָדָה עָלַי. אָמַר לֵיהּ. הֵב לִי אֶגְרִי. וְתֵנִי כֵן. נִתְּנִין לְדִינָן שְׂכָר בְּטִילוֹ וְלַעֲד שְׂכָר עֲדוּתוֹ.

There, we have stated<sup>63</sup>: “If somebody takes a fee to judge, his judgments<sup>64</sup> are invalid.” So is the Mishnah: “He who is suspected of taking a fee<sup>65</sup> but he judges.”

A person brought a suit before Rav Huna<sup>66</sup>, He told him, bring me a person who climbs the date palm instead of me.

Rav Huna was a cowherd when he knew testimony for a person, who told him, come and testify for me. He answered him, give me my wages. It was stated thus: “One pays the judge for his time and the witness for his testimony.

63 Mishnah *Bekhorot* 4:6, Babli *Bekhorot* 29a, *Ketubot* 105a, *Qiddushin* 58b.

65 It takes an action of a supervising authority to invalidate his judgments.

64 The plural implies that all his judgments are invalid, even those for which he did not take money.

66 Who started out poor as an agricultural worker and only became rich when middle aged. Babli *Ketubot* 105a.

(18b line 9) חַד בַּר נָשׁ סָאֵב לְחַד כְּהֵן. אֵתָא עוֹבְדָא קוֹמֵי רַבִּי יִצְחָק וְאוֹכְלִיהּ חוּלִין. סָבְרִין מִימַר שְׂוִיזָאִין לֹא דְמִי תְרוּמָה מִתּוֹכָם.

A person made a Cohen impure<sup>67</sup>. The case came before Rabbi Isaac who made him eat profane food<sup>68</sup>. They wanted to say that one deducts the price of heave from the amount<sup>69</sup>.

67 He made it impossible for him to eat heave, which must be eaten in purity. One has to assume that the impurity was that of corpses, which can be dissolved only by sprinkling with water containing the ashes of the red cow, which at that moment had become unavailable; cf. *Berakhot* 1:1, Note 3.

68 He forbade the Cohen to eat heave; this is a biblical rule agreed to by everybody. It is implied that he required the offending party to pay for the Cohen's food since heave, permitted only to Cohanim, is sold at a discount.

Impurity of persons and food is *invisible damage* which according to the Babli, *Gittin* 53a, can be punished only by a rabbinic fine. According to the Babli, *Sanhedrin* 8a, fines can be imposed only by a panel of three ordained judges. Since it is implied here that R. Isaac was sitting as sole judge, the Yerushalmi strongly disagrees with the Babli. (Cf. *Bava qamma* 9:2, Note 24.)

69 The guilty party only had to pay the difference between profane and sanctified food, i. e., the additional cost incurred by the victim.

הרי זה כמנעץ לפני המקום. שנאמר וביצע ברוך נאצי יי. אלא יקוב הדין את החר כשעשה משה. אבל אהרן משים שלום. שנאמר בשלום ובמישור הלך איתי. (18b line 11)

It was stated<sup>70</sup>: Rabbi Eliezer ben Rabbi Yose the Galilean says, the person who arranges a compromise is sinning<sup>71</sup>, and the one who praises a compromiser is like a blasphemer before the Omnipresent, as it is said<sup>72</sup>: *he who blesses a compromiser slanders the Eternal!* The law should pierce the mountain, as Moses did<sup>73</sup>. But Aaron promoted peace<sup>74</sup>, as it is said<sup>75</sup>, *in peace and straightness he went with Me*.

70 Tosephta 1:2, Babli 6b, *Yebamot* 92a.

71 It is clear from the following paragraphs and the parallels, that the statement is interpreted to apply to cases where either the trial already has started or where existing law allows a clear decision.

72 *Ps.* 10:3.

73 Who ordered all people with suits to appear before him for judgment (*Ex.* 18:16) and did not invite them to an arbitration panel.

74 The midrash (*Avot dR. Nathan* I 12, II 24) explains that he dissuaded people from going to court. This is preferable according to everybody.

75 *Mal.* 2:6.

(18b line 14) תני. רבי ליעזר בן יעקב אומר. מה תלמוד לומר ובצע' ברוך נאץ יי. משלו משל למה הדבר דומה. לאחד שגנב סאה חיטין והוליכה לנחתום והפריש חלתה והאכילה לבניו. הרי זה מברך ואינו אלא מנעץ.  
רבי מאיר אומר. מה תלמוד לומר ובצע' ברוך נאץ יי. אילו אחי יוסף. שנאמר מה בצע כן נהרג את אחינו וגו'.

It was stated<sup>70</sup>: <sup>76</sup>“Rebbi Eliezer ben Jacob says, why does the verse say<sup>72</sup>, *he who blesses unlawful gain slanders the Eternal*? They gave a parable, to what can this be compared? To one who stole a *se'ah* of wheat, brought it to the baker, separated its *hallah*<sup>77</sup>, and fed it to his children. He pronounces blessings but it is blasphemy.

<sup>78</sup>Rebbi Meir says, why does the verse say<sup>72</sup>, *he who blesses unlawful gain slanders the Eternal*? These are Joseph's brothers, as it is said<sup>79</sup>: *What is the gain if we slay our brother, etc.*”

76 Babli *Bava qamma* 94a. In other Yerushalmi sources (*Hallah* 1:9 Notes 218-221; *Šabbat* 13:3 14a l. 50) it is an Amoraic statement.

77 To avoid committing a deadly sin. If he recites the required blessing, he commits an intentional sin; if he induces the baker to

recite the blessings, the baker commits an unintended sin and the thief violates the commandment not to put a stone in the way of a blind man.

78 In the Tosephta (1:3) an anonymous statement.

79 *Gen.* 37:26.

(18b line 19) רבי יהושע בן קרחה אומר. מצוה לבצע. שנאמר אמת ומשפט שלום. כל מקום שיש אמת אין משפט שלום. יש שלום אין משפט אמת. ואי זהו אמת שיש בו משפט שלום. הוי אומר. זה בצויע.

דן את הדין זיכה את הזכיי חייב לחייב. מעלה עליו הכתוב כילו עשה צדקה עם הזכיי וכלו עשה צדקה עם החייב. צדקה עם הזכיי. שהחזיר לו קמונו. ועם החייב. שהוציא גזילו מתחת ידו. אמר רבי אבהו. משפט משפט אמורין בפרשה. אמת ומשפט שלום שפטו בשעריהם:

<sup>80</sup>“Rebbi Joshua ben Qorha says, it is a good deed to mediate a compromise, as it is said<sup>81</sup>: *Truth and judgment of peace*. If there is truth, there is no judgment of peace. If there is peace, there is no judgment of truth.

What is truth containing a judgment of peace? I am saying, this is compromise.”

<sup>82</sup>“If somebody judged correctly, absolved the innocent and condemned the guilty, the verse counts it as if he practiced kindness both towards the innocent and towards the guilty. Kindness towards the innocent, because he returned his money to him. And towards the guilty, for he removed the proceeds of robbery from his hands.”<sup>83</sup> Rebbi Abbahu said, *judgment* and *judgment* is written in the verse<sup>81</sup>: “Truth and judgment of peace judge in your gates.”

80 Tosephta 1:3.

81 *Zach.* 8:16, cf. *Ta'aniot* 4:2 (68a l. 75), *Megillah* 3:7 (74b l. 48).

82 Tosephta 1:4, a statement of Rebbi; the same in the Babli 6b.

83 And therefore protects him from the judgment of Heaven.

84 Each referring to one aspect of the act of judging.

(18b line 26) רבי זכריה בְּעֵי קוֹמִי רַבִּי אֲמִי. עֲבָדִין עוֹבְדֵי כָהֵן תִּנְיָא. תִּנְיָ. רַבִּי שְׁמֵעוֹן בֶּן מְנַסֵּיָא אָמַר. פְּעָמִים שְׁאַתָּה רִשְׁאֵי לְבָצַע. פְּעָמִים שְׁאַין אַתָּה רִשְׁאֵי לְבָצַע. כִּי־צַד. שְׁנִים שְׁבָאוֹ אֶל הַדִּין. עַד שֶׁלֹּא שָׁמַע דְּבָרֵיהֶן אוֹ מִשְׁשָׁמַע דְּבָרֵיהֶן וְאִינוּ יוֹדַע הֵיכָן הָדִין נוֹטָה רִשְׁאֵי לֵאמֹר לָהּ. צָאוּ וּבְצִעוּ. מִשְׁתַּשְׁמַע דְּבָרֵיהֶן וְיֹדַע אַתָּה הֵיכָן הָדִין נוֹטָה אֵין אַתָּה רִשְׁאֵי לְבָצוּעַ. שְׁנַאֲמַר פּוֹטֵר מִים רֵאשִׁית מִדּוֹן וְלִפְנֵי הַתְּגַלָּע הָרִיב נָטוּשׁ. עַד שֶׁלֹּא תִתְּגַלַּע הָרִיב אַתָּה רִשְׁאֵי לְנוֹטָשׁוֹ. מִשְׁתַּתְּגַלַּע הָרִיב אֵין אַתָּה רִשְׁאֵי לְנוֹטָשׁוֹ. אָמַר רַבִּי מִתְּנָהּ. אִף הִפְרָשָׁה<sup>85</sup> צָרִיכָה הִכְרַע הַדַּעַת.

Rebbi Zachariah asked before Rebbi Immi: Does one act following that Tanna, as it was stated: <sup>86</sup>“Rebbi Simeon ben Menassiah says, sometimes you are empowered to propose a compromise, sometimes you are not empowered to propose a compromise. How is this? Two come before a judge; before he heard their arguments, or after he heard their arguments but does not know how to correctly apply the law, he may tell them, go and work out a compromise. After you heard their arguments and know how to correctly apply the law, you may not propose a compromise, as it is said<sup>87</sup>: *One may remove the beginning of a quarrel like water; before it becomes manifest, the quarrel may be abandoned.* Before the quarrel became manifest, you are permitted to abandon it; after the quarrel became manifest, you are not

permitted to abandon it.” Rabbi Mattaniah said, even compromise needs intelligent decision<sup>88</sup>.

85 Read with the parallel sources:  
הפְּשָׁרָה.

86 Tosephta 1:6, Babli 6b.

87 Prov. 17:14.

88 He objects to the statement that the judge should send the parties away to work out a compromise on their own; he requires the judge to guide them towards a reasonable compromise.

(18b line 34) רבי יהודה בן לקיש אָמר. שְׁנַיִם שָׂבָאוּ אֶל הַדִּין אֶחָד רָדָּ וְאֶחָד חָזַק. עַד שֶׁלֹּא שָׁמַע דְּבָרֵיהֶן רִשְׁאֵי לוֹמַר לָהֶן. אֵינִי נֹזֵק לָכֶם. שְׁמָא יִתְחַיֵּב הַחֹזֵק וְיִהְיָ חָזַק אוֹיְבוֹ. מִשְׁשִׁמַּע דְּבָרֵיהֶן אֵין רִשְׁאֵי לוֹמַר לָהֶן. אֵינִי נֹזֵק לָכֶם. שְׁנַאֲמַר לֹא תִגְוֹרוּ מִפְּנֵי־אִישׁ.

רבי יהושע בן קרחה אומר. הרי שהיה יושב אצל הדיין וראה זכות לעני וחובה לעשיר. מניין שלא ישתוק. שְׁנַאֲמַר לֹא תִגְוֹרוּ מִפְּנֵי־אִישׁ. אֶל תִּכְנִס דְּבָרֶיךָ מִפְּנֵי אִישׁ.

ויהו הדיינין יודעין את מי הו דנין ולפני מי הו דנין. ויהיו העדים יודעין את מי מעידין ולפני מי מעידין. לפני מי שְׁאָמַר וְהָיָה הָעוֹלָם. שְׁנַאֲמַר וְעַמְדוֹ שְׁנֵי־הָאֲנָשִׁים אֲשֶׁר־לָהֶם הָרִיב לִפְנֵי יי ואומר אֱלֹהִים נָאב בְּעַד־ת־אֵל. וכן יהושפט אומר לשופטים ראו מה־אתם עושים כי לא לאדם תשפטו כי ליי. וכי אִפְשָׁר לְבָשָׁר וְדָם לְדוֹן אֶת בּוֹרְאוֹ. אֵלָּא אָמַר הַקָּדוֹשׁ בְּרוּךְ הוּא. אֲנִי אֶמְרִית דִּיהָא לְרֵאשִׁיבָא ק' דִּינָרִים וְלִשְׁמַעוֹן וְלֹא כָלוּם. וְאֵת נוֹטְלָן מִזָּה וְנוֹתֵן לָזָה. עָלֵי לְשָׁלֵם לוֹ וְלִפְרַע מֵאוֹתוֹ הָאִישׁ.

תני. רבן שמעון בן גמליאל אומר. הדין בשלשה ופְּשָׁרָה בשניים. יפה כח הפְּשָׁרָה מִכֹּחַ הַדִּין. שְׁשָׁנִים שָׁדְנוּ יְכוּלִין לַחְזוֹר בָּהֶן וּשְׁנַיִם שְׁפָשְׁרוּ אֵין יְכוּלִין לַחְזוֹר בָּהֶן.

<sup>89</sup>“Rebbi Jehudah ben Laqish said: If two people appeared before a judge, one decent and one aggressive. Before he started to hear their arguments, he may tell them, I will not hear your case, lest the aggressive one lose his case and become his enemy. After he started hearing their arguments, he may not tell them, I will not hear your case, for it is said,<sup>90</sup> *do not be afraid of anybody*.

<sup>91</sup>“Rebbi Joshua ben Qorha says, if somebody<sup>92</sup> was sitting next to a judge and saw a benefit for the poor and a detriment for the rich, from where that he should not keep silent? For it is said<sup>90</sup>, *do not be afraid of anybody*.

<sup>97</sup>The judges have to know with Whom they judge, and the witnesses have to know before Whom they are testifying: before Him Who commanded and the world came into existence, as it is said<sup>30</sup>, *the two people who are quarrelling shall stand before the Eternal*, and it is said<sup>93</sup>, *the Almighty stands*

in the assembly of the judges. So Josaphat told the judges, *look what you are doing, for you do not judge for man, but for the Eternal*<sup>94</sup>. How is it possible for flesh and blood to judge his Creator? But the Holy One, praise to Him, said: I said that Reuben should have 100 denars and Simeon nothing. You take from one and give it to the other<sup>95</sup>. I have to repay it to him, and will Myself be paid by this man<sup>96</sup>.

It was stated<sup>97</sup>: “Rabban Simeon ben Gamliel says, judgment is passed by three [judges], a compromise is made by two<sup>98</sup>. The compromise is stronger than the judgment in that two [judges] who judged can repeal their judgment<sup>99</sup> but two who negotiated a compromise cannot repeal<sup>100</sup>.

89 Tosephta 1:7, *Tanhuma Mišpatim* 6, *Sheiltot Mišpatim* 58, and in all Medieval quotes; only in Babli 6b both in the Munich ms. and *editio princeps* incorrectly: R. Simeon ben Laqish.

90 *Deut.* 1:17.

91 Tosephta 1:8.

92 In a similar, anonymous, *baraita* in the Babli (*Ševuot* 31a): A student sitting before his teacher. This probably has to be understood here.

93 *Ps.* 82:1.

94 *2Chr.* 19:6.

95 Incorrectly.

96 The judge.

97 Tosephta 1:9.

98 This also is the text of the Babli, 5b. But in the Tosephta: Just as judgment is rendered by three [judges], so compromise is made before three [judges].

99 Since is was rendered in regular fashion.

100 From the moment a party acquired what was awarded to him by the compromise, since this is a monetary transaction following the rules of *Qiddušin* 1:4-6.

18b line 50) האונס והמפתה כול'. רבי מנא אמר. בנערה מאורסה פליגי. רבי מאיר אומר. מפסדת כתובתה בשלשה ונסקלת בעשרים ושלשה. וחכמים אומרים. מקום שנסקלת שם מפסדת כתובתה. אבל במוציא שם רע כל-עמא מודו מקום שהעדים נסקליו שם הבעל לוקה ונותן מאה סלע. אמר ליה רבי יוסי בירבי בון. הן תניננה פלגה את עבד פלגיה. אלא במוציא שם רע פליגי. רבי מאיר אומר. הבעל לוקה ונותן מאה סלע בשלושה. והעדים נסקליו בעשרים ושלשה. ורבנין מרין. מקום שהעדים נסקליו שם הבעל לוקה ונותן מאה סלע. אבל בנערה מאורסה כל-עמא מודו מקום שנסקלת שם מפסדת כתובתה. ותייא דרבי מנא קרבי זעירא ודרבי יוסי בירבי בון קרבי אבהו.

1 פליגי | כ פליגין 2 בעשרים ושלשה | כ בשלשה ועשרים 3 שם | כ שם היא הן תניננה פלגה את עבד פלגיה | כ אין דלא תנינה פליגא<sup>101</sup> 5 פליגא | כ פליגין הבעל | כ - 6 מרין | כ אמר 7 ותייא | כ ואתייא



“The rapist and the seducer,” etc. <sup>102</sup>Rebbi Mana said, they disagree about the preliminarily married adolescent female. Rebbi Meïr says, she loses her *ketubah* in a court of three and is stoned in a court of 23; but the Sages say, at the same place which sentences her to be stoned she loses her *ketubah*. But in the case of the calumniator, everybody agrees that by the court in which the witnesses are stoned, the husband is flogged and pays 100 tetradrachmas. Rebbi Yose ben Rebbi Abun said to him, would they differ where it was not stated? But they differ about the calumniator! Rebbi Meïr says, he is flogged and pays 100 tetradrachmas by the judgment of three and the witnesses are stoned by the judgment of 23; but the rabbis say, by the court in which the witnesses are stoned, the husband is flogged and pays 100 tetradrachmas. But in the case of the preliminarily married adolescent female, everybody agrees that at the same place which sentences her to be stoned she loses her *ketubah*. It turns out that Rebbi Mana follows Rebbi Ze‘ira and Rebbi Yose ben Rebbi Abun follows Rebbi Abbahu.

101 The *Ketubot* text is intelligible in contrast to the *Sanhedrin* text. The translation is taken from *Ketubot*.

explained there in Notes 113-116. The *Ketubot* (כ) text is original since only there is the disagreement between Rebbis Ze‘ira and Abbahu being explained.

102 This paragraph is from *Ketubot* 4:4,

רבי אבהו שאל. שור הנסקל כרבי מאיר מהו שיתן הכסף בשלשה ויסקל בעשרים ושלשה. אמר ליה רבי יוסי בירבי בון. שור הנסקל כולו כמון הוא וגזירת הכתוב הוא שייסקל. (18b line 60)

<sup>103</sup>Rebbi Abbahu asked: Following Rebbi Meïr, should an ox which is stoned<sup>104</sup> have to pay damages<sup>105</sup> by a court of three and be stoned by 23? Rebbi Yose ben Rebbi Abun told him, the rules of an ox which is stoned are all about money<sup>106</sup>; it is a decision of the verse that it should be stoned.

103 The paragraph is repeated in Halakhah 4.

104 The animal which killed a human (*Ex.* 21:28).

105 Not the ox but its owner.

106 Since fines and corporal punishment are mutually exclusive (*Terumot* 7:1 Notes 19-70; *Gittin* 5:5 Note 136), it is clear that stoning the ox is a fine imposed on its owner.

(fol. 17d) **משנה ב:** מכות בשלשה משום רבי ישמעאל אמרו בעשרים ושלשה. עבור החדש בשלשה עבור השנה בשלשה דברי רבי מאיר. רבן שמעון בן גמליאל אומר בשלשה מתחילין ובחמשה נושאים ונותנים וגומרין בשבעה. ואם גמרו בשלשה מעוברת.

**Mishnah 2:** Whipping by three [judges]; in the name of Rabbi Ismael they said, by 23<sup>107</sup>. The lengthening of a month by three [judges]<sup>108</sup>, the intercalation of a year by three [judges]<sup>109</sup>, the words of Rabbi Meir. Rabban Simeon ben Gamliel says, one starts with three, one discusses with five, and one votes with seven<sup>110</sup>. But if they voted with three, it is intercalated.

107 The imposition of corporal punishment needs an official court of duly ordained judges. The Mishnah is a reconstruction of what was assumed to be the historic procedure; R. Ismael lived about 70 years after the removal of criminal jurisdiction from Jewish courts and R. Meir, represented by the anonymous opinion, more than 100 years afterwards. But the prescription of the Mishnah certainly was followed by the autonomous Jewish courts under the Parthians.

108 Whether a thirtieth day should be counted for the current month. Fixing the calendar was the sole privilege of a committee of the Patriarch's court as a successor to the Synhedrion. The current computed calendar was promulgated by such a court in the middle of the Fourth Century (*Eruvin* 3:11 21c l. 24).

109 In the current calendar, the addition of 30 days to the lunar year, labelled as "First Adar."

110 A committee of three has to decide whether the year be a candidate for intercalation; an enlarged committee of five has to do the detailed computations; a further enlarged committee of seven has to confirm the computations. Intercalated months in the lunar year are necessary to keep Passover in the "month of spring" as required by *Ex.* 13:4.

There is no basic disagreement between R. Meir and Rabban Simeon, since the latter agrees that in an emergency situation, a duly empowered committee of three is competent. Since Rabban Simeon was the Patriarch of the restoration during the second half of the Second Century, his procedure was the one actually used.

(18b line 63) **הלכה ב:** מכות בשלשה כול. רבי אבהו בעי. מכות בעשרים ושלשה. פועמים שמת ממכותיו והרי יש בו דיני נפשות.

**Halakhah 2:** "Whipping by three [judges]," etc. Rabbi Abbahu asked: Should not a sentence of whipping be passed by 23 [judges], since sometimes he might die from the whippings, so that it is a case of potential death sentence<sup>111</sup>.

111 He holds that R. Ismael's position is the only reasonable one. But since the problem is purely theoretical (Note 32), it is not pursued further.

18b line 65) בַּר קַפָּרָא שָׁמַע כּוֹלְהוֹן מִהֶדָּא. וַיִּבְרַךְ יי וַיִּשְׁמְרֵךְ: מִכּוֹן שְׁמִיתִיחִילִין בְּשִׁלְשָׁה. וְאֵר "פָּנִי אֵלֶיךָ וַיַּחַד: מִכּוֹן שְׁנוּשָׁאִין וְנוֹתְנִין בְּחִמְשָׁה. וְשָׂא יי פָּנִי אֵלֶיךָ וַיִּשְׁם לָךְ שְׁלוֹם. מִכּוֹן שְׁגוּמְרִין בְּשִׁבְעָה.

רבי יהושע בן לוי שָׁמַע כּוֹלְהוֹן מִהֶדָּא. וַיִּקַּח רַב־טַבָּחִים אֶת־שְׁלֹשֶׁת שְׁמַרֵי הַסֵּף: מִכּוֹן שְׁמִיתִיחִין בְּשִׁלְשָׁה. וְחִמְשָׁה אֲנָשִׁים מֵרָאִי פְּנֵי־הַמֶּלֶךְ. מִכּוֹן שְׁנוּשָׁאִין וְנוֹתְנִין בְּחִמְשָׁה. וְשִׁבְעָה אֲנָשִׁים מֵרָאִי פְּנֵי־הַמֶּלֶךְ. מִכּוֹן שְׁגוּמְרִין בְּשִׁבְעָה.

אָמַר רַבִּי יוֹנָתָן. מִיכּוֹן לְסִנְהֶדְרִין גְּדוּלָּה שְׁלֹכַל־יִשְׂרָאֵל. וַיִּקַּח שֵׁר הַטַּבָּחִים אֶת־שְׁנֵי כֶּהֱן הָרֹאשׁ וְאֶת־צַפְנִיָּה כֶּהֱן הָרִי שְׁנִים. וְשִׁבְעָה אֲנָשִׁים מֵרָאִי פְּנֵי־הַמֶּלֶךְ הָרִי תִשְׁעָה. וְשָׁשִׁים אִישׁ מֵעַם הָאָרֶץ הָרִי שְׁבַעִים חֹסֵר אֶחָד. וּמִן־הָעִיר סָרִיס אֶחָד הָרִי שְׁבַעִים. אֵת תְּנִי תִנִּי. שְׁבַעִים וְאֶחָד. וַיִּקַּח רַב־הַטַּבָּחִים אֶת־שְׁלֹשֶׁת שְׁמַרֵי הַסֵּף וְשִׁבְעָה מֵרָאִי פְּנֵי־הַמֶּלֶךְ וְשָׁשִׁים אִישׁ מֵעַם הָאָרֶץ. וּמִן־הָעִיר לָקַח סָרִיס אֶחָד. הָרִי שְׁבַעִים וְאֶחָד. וְלָמָּה קוֹרִיחוֹ סָרִיס. שְׁמִסְרָס אֶת הַהֶלְכָּה.

קָתוּב אֶחָד אוֹמֵר חֲמִשָּׁה וְכָתוּב אֶחָד אוֹמֵר שְׁבַע. לִהְיֵא שְׁנֵי סוֹפְרֵי הַדִּינִים.

Bar Qappara understood everything from here: *May the Eternal bless you and preserve you*, from here that one starts with three. *May the Eternal illuminate His Presence for you and be gracious to you*, from here that one continues with five. *May the Eternal turn His Presence to you and give you peace*, from here that one finishes with seven<sup>112</sup>.

Rebbi Joshua ben Levi understood everything from the following: *The chief executioner took . . . the three guards of the threshold*<sup>113</sup>, from here that one starts with three. *And five men from the king's entourage*<sup>114</sup>, from here that one continues with five. *And seven men from the King's entourage*<sup>115</sup>, from here that one finishes with seven<sup>116</sup>.

Rebbi Jonathan said, from there the great Synhedrion of all of Israel. *The minister of the executioners took Seraiah the Chief Priest and Zephania the priest*<sup>113</sup>, these are two. *And seven men from the king's entourage*<sup>115</sup>, this makes nine. *And sixty men from the People of the Land*<sup>117</sup>, this makes seventy minus one. *And from the city one eunuch*<sup>115</sup>, this makes seventy. There are Tanna'im who state seventy-one: *The chief executioner took . . . the three guards of the threshold, and seven men from the king's entourage, and sixty men from the People of the Land, and from the city he took one eunuch*, this

makes seventy-one. And why is he called a eunuch? Because he transposes practice<sup>118</sup>.

One verse says *five*, the other verse says *seven*. The latter includes the two clerks of court.

112 From the verses of the priestly blessings, *Num.* 6:24-26, which have 3, 5, and 7 words respectively, one may infer that proceeding by 3,5,7 will give a blessed result. In the Babli, 10b, this argument is attributed to early Amora'im; in *Megillah* 23a it is applied to the number of people called to read from the Torah.

113 *Jer.* 52:24.

114 *2K.* 25:19.

115 *Jer.* 52:25.

116 Cf. Babli 10b. According to Rashi *ad loc.*, the verses describe the members of

king Sedekia's court and therefore are appropriate to the determination of the calendar which is a governmental exercise.

117 *2K.* 25:19, *Jer.* 52:25.

118 In rabbinic Hebrew, סרס "to castrate" is also used in the sense of "to transpose words or letters". While in the verse he is described as minister of defense, he is taken here as president of the court who can transpose precedents to apply to other cases. Cf. *Tosafot Megillah* 21b, s. v. כנגד.

3) לית כָּאן עִיבוֹר הַחוּדָשׁ אֶלָּא קִידוּשׁ הַחוּדָשׁ. שְׁמוּאֵל אָמַר. אִין קִידוּשׁ הַחוּדָשׁ פְּחוּת מִעֲשָׂרָה. חֲבִירִים מָהוּ לִיכְנֹס לְקִידוּשׁ הַחוּדָשׁ. אָמַר רַבִּי הוֹשִׁיעִיה. חֶבֶר הוּינָא וְאֶעֱלִי רַבִּי שְׁמוּאֵל בַּר רַב יִצְחָק לְקִידוּשׁ הַחוּדָשׁ וְלִי נָא יָדַע אִין סְלִקִית מִמְּוִינָא אִין לָא. פְּשִׁיטָא דְלָא סְלִיק. לָמָּה. בְּגִין דְּהִנֵּה חֲתִינְהָ. אוּ מִשּׁוּם שְׂאִין חֲבִירִין נִכְנָסִין לְקִידוּשׁ הַחוּדָשׁ. אָמַר רַבִּי כְּהֵנָּא. חֶבֶר הוּינָא וְאֶעֱלִי רַבִּי תַנְחוּם בַּר חִיָּה לְקִידוּשׁ הַחוּדָשׁ וְסְלִקִית מִמְּוִינָא. הִדָּא אָמְרָה שְׁחֲבִירִים נִכְנָסִין לְקִידוּשׁ הַחוּדָשׁ.

חֲבִירִים מָהוּ לִיכְנֹס לְעִיבוֹר שְׁנָה. נִישְׁמַעִינָה מִהֵדָּא. מַעֲשֶׂה בְּרַבִּין גְּמִלְיָאֵל שְׁאָמַר. יְקָרְוָנִי שְׁבַעָה זְקִינִים לְעֵלְיָהָ. וְנִכְנָסוּ שְׁמוֹנָה. אָמַר. מִי הוּא שְׁנִכְנָס שְׁלָא בְּרִשּׁוֹת. עֲמַד שְׁמוּאֵל הַקָּטָן עַל רִגְלָיו וְאָמַר. אֲנִי עֲלִיתִי שְׁלָא בְּרִשּׁוֹת. הִלְכָּה נֶצְרָכָה לִי וְנִכְנָסְתִּי לְשָׂאוֹל עֲלִיָּה. אָמַר לוֹ רַבִּין גְּמִלְיָאֵל. וְמָה אֶלְדָּד וּמִידָד שְׁכָל־יִשְׂרָאֵל יוֹדְעִים שְׂאִילוּ הֵן שְׁנִים אֲמַרְתִּי שְׂאֵתָה אֶחָד מֵהֶן. וְאֶפְּלִי כֵן לֹא עִיבְרוּהָ בְּהוּא יוֹמָא וְאֶפְּלִיגוּ בְּמִילִי דְּאוּרִיָּא וְעִיבְרוּהָ בְּיוֹמָא דְּבִתְרָא.

There is no lengthening of the month, but sanctification of the month<sup>119</sup>. Samuel says, sanctification of the month needs no less than ten [participants]<sup>120</sup>. Should Fellows<sup>121</sup> be able to enter for the sanctification of the month? Rabbi Hoshaia said, I was a Fellow and Rabbi Samuel bar Rav Isaac took me to the sanctification of the month, but I do not know whether I was counted or not. It is obvious that he was not counted<sup>122</sup>, but why? Was it

because he was his son-in-law<sup>123</sup>, or because Fellows are not able to enter for the sanctification of the month? Rabbi Cahana said, I was a Fellow when Rabbi Tanhum bar Hiyya took me to the sanctification of the month and I was counted. This implies that Fellows enter for the sanctification of the month.

Are Fellows able to enter for the intercalation of the year? Let us hear from the following: <sup>124</sup>It happened that Rabban Gamliel said, call seven Elders to a meeting on the upper floor, but eight entered. He asked, who is the one who entered without permission? Samuel minor<sup>125</sup> stood up and said, I came up here without permission since I have a practical problem and I have to ask advice on it. Rabban Gamliel told him, you compare to Eldad and Medad; if I had said “two”, you would have been one of them. Nevertheless, they did not intercalate on that day but talked about themes in the Torah and intercalated the next day<sup>126</sup>.

119 Babli 10b. In the absence of a computed calendar, the lengthening of the month is automatic. If the Synhedrion does not declare the 30<sup>th</sup> of a month as the 1<sup>st</sup> of the next, the 31<sup>st</sup> automatically is the first of the next month since no lunar month has more than 30 days. Therefore, action by the Synhedrion is needed not to lengthen, but to shorten the month and to designate the 30<sup>th</sup> as a semi-holiday.

120 To make it a public event. In contrast to the intercalation of the year, the determination of the month has to be made public as soon as possible.

121 Members of the Academy who are pledged to follow the rules of fellowship (cf. Introduction to Tractate *Demay*) but have not yet reached the status of rabbi.

122 If the chair of the meeting had asked him for his opinion, he would have

remembered.

123 Since relatives are barred from sitting together as judges and R. Hoshia was R. Samuel's son-in-law, he could not participate even if qualified.

124 Babli 11a.

125 He is called “minor” because of all people called Samuel only the prophet of the same name reached a higher state of holiness.

126 To protect the secrecy of the algorithm with which the years of intercalation were computed. This supports the contention of the Yerushalmi Gaon Eviatar haCohen in his Epistle that during the entire time of the Second Temple the calendar was computed and testimony about the new moon was only used as confirmation of the computation (M. Gil, *Palestine during the first Moslem period*, vol. 2, Tel Aviv 1983).

(17 line 18c) תָּנִי סְנֵהֲדִרִין שָׁרְאוּ אֶת הַהוֹרָג. אֵיךְ תִּנְיִי תִנְיִי. שְׁנֵים נִעְשִׂין עֲדִים וּמַעֲדִין בְּפָנֵי הַשָּׂאֵר. אֵיךְ תִּנְיִי תִנְיִי. כּוֹלֵן עֲדִים וּמַעֲדִין בְּפָנֵי אֲחֵרִים. רַבִּי יְהוּדָה בֶּר פָּזִי בָשֶׁם רַבִּי זְעִירָה. קָשָׁם שְׁחֹלְקִין כָּאֵן כֶּף חֹלְקִין בְּעֲדוֹת הַחוּדָשׁ.

וְיָקוּם חֵד וְיָתִיב חֵד וְיָקוּם חֵד וְיָתִיב חֵד. שְׁנֵינָא הֵיא שְׁאִין הָעֵד נִעְשֶׂה דִּין. רַב הוּנָא הֵנָּה יָדַע שֶׁהָדוּ לְחַד בֶּר נֶשׁ. אֲזַל בְּעֵי מִיּוֹדוֹ קוֹמִיָּה וְכָפַר בֵּיהּ. אָמַר רַבִּי שְׁמוּאֵל בֶּר רַב יִצְחָק. בְּגִין דְּאֵת יָנַע דְּרַבִּי הוּנָא אֵינְשָׁא רַבָּה אֶת כָּפַר בֵּיהּ. מָהוּ דִּינִיָּל וְיִסְהוּד עֲלֶה קוֹמִי בֵּית דִּין חוּרִין. אָמַר לֵיהּ רַב הוּנָא. וְעָבְדִין כֵּן. אָמַר לֵיהּ. אֵין. וְשָׂרָא רַב הוּנָא גְרַמִּיָּה מִן הַהוּא דִּינָא וְאֲזַל וְאִסְהִיד קוֹמִי בֵּית דִּין חוּרִין.

1 רב חונא | ר כהדא רב חונה 2 קומיָה | ר קומי אמי | ר אמי ליה 3 דר' חונא אינשא רבא | ר דרב חונא בר נשא רבא מהו דיניל | ר מה אילו ייול 3 וישהוד | ר וישהוד 4 חונא | ר חונה (פעמים) 5 ואסהיד | ר ואסהיד חורין | ר חורין

<sup>127</sup>It was stated: If the Synhedrion<sup>128</sup> saw the killer. Some Tanna'im state: two of them become witnesses and testify before the rest of them<sup>129</sup>. There are Tanna'im who state that they all are witnesses and have to go and testify before other [judges]<sup>130</sup>. Rabbi Jehudah ben Pazi in the name of Rabbi Ze'ira: As they differ here, so they differ about testimony for the New Moon<sup>131</sup>.

<sup>132</sup>Why cannot always one stand up and one sit down<sup>133</sup>? There is a difference because a witness cannot be a judge<sup>134</sup>. Rav Huna knew testimony for somebody. He<sup>135</sup> came and wanted to have the suit judged before Rav Huna, and denied all. Rabbi Samuel ben Rav Isaac told him, because you know that (Rebbi) [Rav]<sup>136</sup> Huna is an important person<sup>137</sup> you deny everything. What if Rav Huna went and testified against you in another court? Rav Huna asked him, does one do that? He answered, yes. Rav Huna recused himself from that suit, went, and testified before another court<sup>138</sup>.

127 This paragraph has parallels in *Roš Haššanah* 3:1, *Sotah* 9:1 (Notes 18-19). The two are copies of one another; the text here is a reformulation.

128 In the other sources, "a court". The text here is influenced by the sequel which deals with a court empowered to treat calendar matters, the Synhedrion.

129 After addition of another two judges to complete the required number of judges.

130 They hold that a witness is automatically disqualified as a judge since he has an opinion about the case before the start of the proceedings.

131 Whether members of the Synhedrion who saw the New Moon may act as witnesses before their colleagues.

132 This paragraph is a parallel to the text in *Roš Haššanah* 3:1 (58d l.2), noted 8.

133 This refers to Mishnah *Roš Haššanah* 3:1 which prescribes that if three members

of the Court saw the New Moon, one of them may sit with two others as a court and the other two who saw the New Moon appear as witnesses before them. The question arises, why does one have to call two others; would one not be sufficient if alternately one stands up as a witness and one sits down as a judge.

134 Even if one does not hold that a potential witness be automatically disqualified as a judge, he must hold that once a person acted as a witness he is disqualified as a judge.

135 Rav Huna knew testimony for a creditor. The debtor required that the suit be heard in Rav Huna's court. He knew that

Rav Huna, as judge, could not act as witness and was prevented from using his knowledge in his judgment. He thought it was safe to deny any debt.

136 The correct title is in ר.

137 As Rav's successor, he was Chief Judge of all courts under the jurisdiction of the Academy of Sura. The debtor assumed that a Chief Judge could not appear in a lower court.

138 This decides practice. A judge who knows of the case has to disqualify himself and appear as a witness in another court. The Babli agrees, *Roš Haššanah* 25b, *Bava qamma* 90b.

18c line 26) תני רבי שמעון בן יוחי. וקדשתם את שנת החמשים שנה. שנים אתה מקדש ולא חדשים. והתנינו. ראש בית דין אומר. מקדש. מהו מקדש. מקיים. תני. לקידוש החדש מתחילין מגדול. אומר רבי חיה בר אבא. מתנייתא אמרה כן. ראש בית דין אומר. מקדש. תני. לעיבור החדש מתחילין מן הצד. אומר רבי בבידא. וההו ביתא דלרע לא נהיגין כן. ולא שמע דמר רבי חיה נר מריא ורבי יונה ורבי בא בר חיה בשם רבי יוחנן. לעיבור החדש מתחילין מגדול. לעיבור שנה מתחילין מן הצד. וכבר נכנס רבי יוחנן והיה קטן שבכולם. אמרו לו. אמור. הרי השנה מקודשת בעיבורה. אמר. הרי השנה מקודשת בעיבורה. אמר רבי יונתן. ראה לשון שלימדנו בן הנפח. אילו אמר. בעיבורה. הייתי אומר. אילו אחד עשר יום שהחמה עודפת על לבנה. אלא בעיבור. שהוסיפו לה חכמים שלשים יום. רבי יעקוב בר אחא רבי יסא בשם רבי יוחנן. לעיבור הולכין אחר המינוי. לבית הועד הולכין אחר הרגל. והוא שיש כל-אחד מדבר במקומו וחותרם. כגון רבי חנינה פתח. רבי יוחנן וריש לקיש חותמין. רבי בא בר זבדא פתח. רבי יסא ורבי אמי חתמין. רבי חניי פתח. רבי יונה ורבי יוסי חתמין. רבי כהנא אימני קומי רבי יעקוב בר אחא ועל רבי יעקוב בר אחא קמיה מנייה לעיבורה. אמר. אכן מרה דשמעתא לא מקיים לה.

1 יוחי | ר יוחי א' אתה מקדש | ר מקדשין | 2 ולא | ר ואין מקדשין | והתנינו | ר והא תנינו | 3 מגדול | ר מן הגדול | 4 החדש | ר השנה | ביתא | ר בייא | 5 מריא | ר מדיא | ר' יונה | ר' יונה | ר' בא בר חיה | ר' בא בר חיה בשם ר' חיה | 6 לעיבור | ר לקידוש שנה | ר השנה | 7 והיה קטן שבכולם | ר והוא היה הקטן שבהן | 8 בעיבורה | ר בעיבור | 9 לבנה | ר הלבנה בכל שנה | יום | ר יום ועיבורה | 11 הרגל | ר הרגל | שיש | ר שיהא | אחד | ר אחד ואחד | וחותרם | ר - | וריש לקיש חותמין | ר ור' שמעון בן לקיש חתמין

12 ר' יסא ור' אמי | ר' חייה ור' אסי ור' אימי 13 יוסי | ר' יסא אימי | ר' איתמני קומי | ר' קדמי מן ועל  
 | ר' אעל קמיה מנייה | ר' קגמי מנייה 14 אכן | ר' הכין דשמעתא | ר' דשמעתא

<sup>138</sup>Rebbi Simeon ben Iohai stated: *You shall sanctify the Fiftieth Year*<sup>140</sup>. You shall sanctify years but not months<sup>141</sup>. But did we not state<sup>142</sup>: “The president of the court says: sanctified”? What means sanctified? Confirmed<sup>143</sup>. It was stated: For sanctifying months one starts<sup>144</sup> with the most senior person. Rebbi Hiyya bar Ada said, the Mishnah says this: “The president of the court says: sanctified.” It was stated, for intercalation of the (month) [year]<sup>145</sup> one starts from the side<sup>146</sup>. Rebbi Zebida said, but this lower house<sup>147</sup> do not proceed in this way, for they did not hear what Rebbi Hiyya bar Marius<sup>148</sup> and Rebbi Jonah, Rebbi Abba bar Hiyya said in the name of Rebbi Johanan: For lengthening the month one starts with the most senior person, for intercalating the year one starts from the side. When Rebbi Johanan was participating as the most junior person, they told him, say: “this year is sanctified in its intercalation.” He said, “this year is sanctified in intercalation.” Rebbi Jonathan said, look at the language which the smith’s son<sup>149</sup> taught us. If he had said, “in its intercalation,” I would have said that this refers to the eleven days by which the solar year exceeds the lunar one, but [he said] “in intercalation”, that the Sages added thirty days to it<sup>150</sup>. Rebbi Jacob bar Aha, Rebbi Yasa in the name of Rebbi Johanan: For intercalation one follows the date of ordination. In the Academy one follows usage; each one gives his opinion at his place and sums up. For example, Rebbi Hanina<sup>151</sup> started, Rebbi Johanan and Rebbi Simeon ben Laqisch summed up. Rebbi Abba bar Zavda started, Rebbi Yasa and Rebbi Immi<sup>152</sup> summed up. Rebbi Haggai started, Rebbi Jonah and Rebbi Yose summed up. Rebbi Cahana was ordained before Rebbi Jacob bar Aha, but Rebbi Rebbi Jacob bar Aha participated in intercalation before Rebbi Cahana was invited. He said, the person who formulated the tradition does not respect it for himself<sup>153</sup>.

139 This and the following paragraphs are copied from *Roš Haššanah* 2:6 (ר), which is the original source.

140 *Lev.* 25:10.

141 The “sanctification of the month” (Note 119) really is a sanctification of the

Day of the New Moon (*Num.* 28:11-15), not of the entire month. But the Jubilee year itself is holy.

In the Babli 10b, this is in the name of R. Eliezer or R. Eleazar; in *Roš Haššanah* 8b in the name of “the rabbis.”



142 Mishnah *Roš Haššanah* 2:8.

143 The day is confirmed as one of additional religious services.

144 Polling the judges' opinions.

145 The text in brackets, from *Roš Haššanah*, is the correct one. The *Sanhedrin* text, in parentheses, is a scribal error.

146 The senior judge sat in the middle, the most junior judge sat on the last chair to his left or right. One starts polling the most junior judge.

147 The Patriarch's court, the only one empowered to determine the calendar, was held in low esteem by him.

148 It is impossible to determine whether מרייא or מדייא is the correct reading.

149 R. Johanan bar Nappaha, "son of the bellows-blower."

150 Any intercalary year has an additional month of 30 days; in the computed calendar this is Adar I.

151 He probably is R. Hinena, the student of R. Johanan in Tiberias, not R. Hanina, his teacher at Sepphoris

152 This is the correct text, not "R. Hiyya, R. Yasa, and R. Immi" as in *Roš Haššanah* since R. Hiyya (bar Abba), while also a student of R. Yasa, is not known to have participated in an Academy with him.

153 By his own teaching in the name of R. Johanan, he should have insisted that R. Cahana be invited first.

(18c line 44) רבי חייה בר ויה הנה קאים מצלי. אעל רב כהנא וקם ליה מן חורי מצלי. חסל רבי חייה ויתייב ליה בגין דלא מיעבר קומוי. שרי רב כהנא מאריז בצלותיה. כיון דחסל אמר. כן אתון נהגין לצעורי רבכון. אמר ליה. אנא מבית עלי קאתינא. דכתוב בהו אס'תכפר עון בית'עלי בגבוח ובמנחה. בגבוח ובמנחה אין מתכפר. אבל מתכפר בתפילה. וצלי עלוי וזכה למייסב עד דאתעבדון טופרי סומקין כהנא רקקה.

1 ווא | ר בא | ר | ר' מן חורי מצלי | ר מצלי מן אחוריי | חסל | ר מן דחסל | 2 ר' חייה | ר | ר' חייה בר בא מן צלותיה ויתייב | ר יתיב | ר מיעבר | ר מיעבר שרי רב כהנא | ר' ר' כהנא | כיון | ר מן | אמר | ר' ר' כהנא אמ' ליה | 3 כן | ר הכין | נהגין לצעורי רבכון | ר נהגין גביכון מצערי רב רבכון | ליה | ר ליה. ר'. מבית עלי קאתינא | ר מדבית עלי | דבית בהו | ר וכתוב על בית עלי | 4 ובמנחה | ר ובמנחה עד עולם | מתכפר | ר מתכפר לו (2x) | 5 טופרי סומקין | ר טופרי סומקין | רקקה | ר דקקה

<sup>154</sup>Rebbi Hiyya bar Abba was standing praying. Rav<sup>155</sup> Cahana came and stood behind him in prayer. When Rebbi Hiyya had finished, he sat down in order not to walk by him. Rav Cahana spent a long time praying. After he finished, he told him, is that your way to make your teacher suffer? He told him, I am a descendant of the House of Eli, of whom it is written<sup>156</sup>: *if the sin of the House of Eli would be atoned for by sacrifice and offering*. By sacrifice and offering it cannot be atoned for, but it can be atoned for by prayer<sup>157</sup>. He prayed for him, he reached old age while his fingernails remained red like those of a small child<sup>158</sup>.

154 This paragraph is inserted only because R. Cahana, a very minor figure, was mentioned before and there was a story known about him. In the Babli, *Berakhot* 27a, it is told that R. Jeremiah bar Abba was praying behind Rav, and that Rav remained immovable until R. Jeremiah had finished praying, from which it is inferred that one may not walk by a person standing in silent prayer.

155 The person here must be *Rebbi* Cahana, as correctly identified in *Roš Haššanah*, not one of the Rav Cahanas mentioned in the Babli, one of which was a student (and possibly stepson) of Rav, one generation before R. Hiyya bar Abba, and the other a contemporary of Rav Ashi, five

generations later. Nevertheless, this *Rebbi* Cahana is characterized as a Babylonian, first by his use of the prefix ק for the present participle and also because only Babylonian families of priests trace their family back to the priest Eli of Shiloh, whose male descendants are cursed to die young.

156 *I.S.* 3:14.

157 In the Babli, *Roš Haššanah* 18a, the verse is applied to the family of Rabba bar Nahmani, who could prolong life by Torah study and charity work.

158 Translation of the text of ר, רקקה, rather than the text here, רקקה “exceedingly thin”.

(18c line 50) ריש לקיש אקדמון ליה חד סב בעיבור ואעלוגיה מן ההוא תרעא דלהן. אמר. כן יהא בשכרן. ולא שמיצ. דמר רבי קריספדא בשם רבי יוחנן. מעשה ועיברו את השנה שלשה רועי בקר. חד אמר. בכיר ולקיש באדר מינץ. וחד אמר. תור באדר בעריה ימות ובטל תינתא לשלח משכיה. וחד אמר. קדום באדר פח בלועד: פוק לקיבליה. ונן חמין הדין שתא ולית בה חד מינהון. ועיברו השנה על פיהם. אמר רבי חלבוביית דין הסכים עמהן. ולא כן אמר רבי זעירא. והוא שניהו הכל מודין מצד אחד. כין דאילין מודין לאילין ואילין לאילין קמי שכולם מודין מצד אחד.

1 ריש | ר' שמעון בן | בעיבור | ר' לעיבורא | דלהן | ר' דהל | 2 דמר | ר' דאמ' | קריספדא | ר' קריספא ועיברו | ר' שעברו | את | ר' - 3 חד | חד מיטון | ולקיש | ר' לקיש | וחד | ר' וחורנה | 3-4 תור באדר ... קדום באדר | ר' switched positions | 3 בעריה | ר' בעדריה | ובטל | ר' ובטל | ישלח משכיה | ר' משכיה | ישלח פח בלועד | ר' פוח לוחד | פוק | ר' ופוק | לקיבליה | ר' לקובליה | ונן | ר' ואנן | הדין | ר' - 5 ולית | ר' דלית | השנה | ר' את השנה | ובית דין הסכים | ר' והסכים | בית דין | ולא | ר' לא | 6 זעירא | ר' זעורה | והוא | ר' והן | הכל מודין מצד | ר' כולם מורין מטעם | כיון | ר' מכיוון | מודין | ר' מורין | לאילין | ר' מודי לאילין | 7 שכולם מודין מצד | ר' שכולן מורין מטעם

They preferred an old man to Rabbi Simeon ben Laqish for intercalation but had to remove him by the other door<sup>159</sup>. He said, this is their reward<sup>160</sup>. Did he not hear what Rabbi Crispus<sup>161</sup> said in the name of Rabbi Johanan: It happened that the year was intercalated by three cow hands. One said, in Adar, early and late grain<sup>162</sup> sprout together. One said, in Adar the ox will die

naked<sup>163</sup> and try to strip off his hide under the fig tree. One said, if in Adar the East wind<sup>164</sup> blows, open your jaws and go towards it. And we see that this year nothing of these applies. They intercalated the year on their word. Rabbi Helbo said, because the Court agreed with them<sup>165</sup>. Rabbi Ze'ira said, but they all have to agree to the same reason<sup>166</sup>. But since they all agree with one another it was that they all agreed as to the reason<sup>167</sup>.

159 He turned out not to have the required qualifications.

160 The embarrassment of having to remove a member of the Court is deserved punishment for the powers-that-be who neglected R. Simeon ben Laqish.

161 The form קריספדא is Babylonian. The story is anonymous in Babli 18b.

162 Barley and wheat.

163 In *Roš Haššanah* בעדריה "in its herd".

In Adar (about March) sometimes it is cold and cattle might die; sometimes it is hot,

cattle look for shade under trees and rub themselves against them as if they tried to remove their hides.

164 The start of the Hamsin season.

165 The cow hands might have provided the arguments but the action was the Court's; the story is irrelevant for R. Simeon ben Laqish's complaint.

166 How could they follow the cow hands if each of them gave a different reason?

167 All three of them agreed to all three reasons.

59) (18c line 59) וְרִישׁ לְקִישׁ מִקְפִּיד עַל הָדָא מִיִּלְתָּא. חָשַׁשׁ עַל מָה דְּמַר רַבִּי לְעֶזֶר. דְּמַר רַבִּי לְעֶזֶר. וְהִיָּתָה יָדִי עַל הַנְּבִיאִים הַחֲזִים שְׁנֵא בְּסוּד עָמִי לֹא־יְהִי זֶה עִיבּוּר וּבִכְתָּב בֵּית־יִשְׂרָאֵל לֹא יִכְתְּבוּ זֶה הַמִּנּוּי. וְאֶל־אֲדָמַת יִשְׂרָאֵל לֹא יָבוֹאוּ זֶה אֶרֶץ יִשְׂרָאֵל. רַבִּי לְעֶזֶר כִּד סֵלֶק הָכָא אֲמַר. הָא גְבִי תָדָא. כִּד מְנוּנְיָה אֲמַר. הָא גְבִי תִרִי. כִּד אָעַל לְעִיבּוּרָא אֲמַר. הָא גְבִי תִלֶּת.

1 רישׁ | ר' שמעון בן מקפיד | ר מקפד | על מה דמר | ר להיא דאמ' | דמר | ר דאמ' | 2 בסוד | ר והקסקים  
קִנְבִּי בְּסוּד עִיבּוּר | ר סוד העיבור | 3 ר' לעזר | ר ואמ' ר' לעזר | סלק הכא אמ' | ר סלקית להכא אמרית  
4 גבי | ר גבי מנוניה אמ' | ר מנוני אמרית | גבי תרי | ר גבי תרתי | אעל | ר עלית | אמ' | ר אמרית | גבי  
תלת | ר תלתיהו גבי

Why was Rabbi Simeon ben Laqish offended by this? He was worried about what Rabbi Eleazar said, since Rabbi Eleazar said<sup>168</sup>: *My hand will be against the prophets who see . . . vain things, in my people's council*<sup>169</sup> *they shall not be*; that is [the secret of]<sup>170</sup> intercalation; *in the documents of the House of Israel they will not be inscribed*; that is ordination; *and to the earth of Israel they shall not come*; that is the Land of Israel. When Rabbi Eleazar came here, he said, I have one. When they ordained him, he said, I have two.

When he was asked to participate in the intercalation, he said, I have all three [with me]<sup>170</sup>.

168 Ez. 13:9. In the Bali, *Ketubot* 112a.

170 From the text in *Roš Haššanah*.

169 Identifying biblical סוד "council" with rabbinic סוד "secret".

(18c line 64) רבי בא בר זבדא בשם רב. טעמא דרבי לעזר בירבי צדוק בשעה שרואין בית דין שלמעלה דין שלמסן שמקדשין אותו גם הם מקדשין אותו.

Rebbi Abba bar Zavda in the name of Rav: The reason of Rebbi Eleazar ben Rebbi Sadoq: When the Heavenly Court sees that the earthly Court sanctifies it, they also sanctify it<sup>171</sup>.

171 This is a slightly garbled reformulation of the corresponding paragraph in *Roš Haššanah*; it has no relevance here. The reference is to Mishnah *Roš Haššanah* 2:8 where Rebbi Eleazar ben Rebbi Sadoq says that the New Moon after a month of 30 days

does not need sanctification by the Court since it was sanctified by Heaven. In *Roš Haššanah* one reads: When the Heavenly court sees that the Earthly Court *did not* sanctify (the 30<sup>th</sup> day), they (automatically) sanctify (the 31<sup>st</sup> day.)

(18c line 66) רבי לעזר בשם רבי חנינה. מעשה בעשרים וארבע קריות שלבית רבי שנכנסו לעבר שנה בלוד ונכנסה בהן עין רע ומתו כולם בפרק אחד. מאותה שעה עקרוה מיהודה וקבעוה בגליל. בעיין מיעקר אף אהן סימנא. אמר לון רבי סימון. אין אנו מניחין ביהודה אפילו זכר. והרי מצינו שקידשו את השנה בבגלת. הדיא בעלת זימנין מיהודה וזימנין מדין. אלתסה וגבתון ובגלת הרי הן מיהודה. בגלתה ועיין ועצם הרי מדין. והרי מצינו שקידשו את השנה בבגלת. מימר. בתים מיהודה ופדות מדין. רבי ירמיה בעא קומי רבי זעירא. ולוד לאו מיהודה היא. אמר ליה אין. ומפני מה אין מעברין בה. אמר ליה. שהן גסי רוח ומעוטי תורה. הפיד אפוי וחמא רבי אחא ורבי יודה בן פזי. אמר ליה. איטא עבדתני מבזה רבון.

Rebbi Eleazar in the name of Rebbi Hanina. It happened that 24 people appointed by the House of Rebbi entered to intercalate the year at Lydda when an evil eye entered with them and they all died at the same time. From that time on they removed it from Judea and established it in Galilee. They also wanted to remove the signal<sup>172</sup>. Rebbi Simon told them, do we not even want to leave a remembrance in Judea? But we find that they intercalated the year at Ba'alat. This Ba'alat is sometimes [mentioned as being] in Judea,

sometimes in Dan. *Elteqe, and Gibbeton, and Ba'alat* are from Judea<sup>173</sup>. *Ba'alah, and Iyyim, and Asem*<sup>174</sup> are from Dan, and we find that they intercalated the year at Ba'alat. Let us say that the houses were in Judea and the fields in Dan. Rabbi Jeremiah asked before Rabbi Ze'ira: Is Lydda not in Judea<sup>175</sup>? He answered, yes. Then why does one not intercalate there? He told him, because they are coarse of spirit and have little learning<sup>176</sup>. He turned his face and saw Rabbi Aha and Rabbi Judah ben Pazi<sup>177</sup>. He said to him, presently<sup>178</sup> you made me insult rabbis.

172 They wanted to drop the condition of agriculture in Judea from consideration in deciding on intercalation, as described in the next paragraph.

173 *Jos.* 19:44, in the list of cities of *Dan*.

174 *Jos.* 15:29, in the list of cities of *Jehudah*. Probably the reference should have been to v. 24, mentioning the town of *בְּעִלֹת*.

175 In post-biblical Judea; it was in biblical Benjamin (*1Chr.* 8:13).

176 While before the war of Bar Kokhba it was one of the main seats of learning.

177 Rabbis of Lydda.

178 Greek *ἔτα*. Since the word is also found in Syriac, it is not impossible that two native Babylonians used it when speaking to one another.

1) (18d line 1) עַל שְׁלֹשָׁה סִמְנֵינִי מֵעֲבָרִין אֶת הַשָּׁנָה. עַל אֲבִיב וְעַל הַתְּקוּפָה וְעַל פִּירוֹת הָאֵילָן. עַל שְׁנַיִם מֵעֲבָרִין עַל אֶחָד אֵין מֵעֲבָרִין. וְאִם עֵיבְרִיהָ הָרִי זֶה מְעוֹבְבֶרֶת. וְכִשְׁהִיא אֲבִיב אֶחָד מֵהָרִי הִי שְׁמַחִין. רַבָּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר. אִף עַל הַתְּקוּפָה.

<sup>179</sup>For three indications one intercalates a year: because of fresh grain<sup>180</sup>, the equinox<sup>181</sup>, and tree fruits<sup>182</sup>. One intercalates because of two of them, because of a single one does not intercalate; but if they intercalated, it is intercalated. If fresh grain was one of the reasons, everybody was happy<sup>183</sup>. Rabban Simeon ben Gamliel said, also<sup>184</sup> because of the equinox."

עַל שְׁלֹשׁ אֲרָצוֹת מֵעֲבָרִין לְשָׁנָה. עַל יְהוּדָה וְעַל עֶבֶר הַיַּרְדֵּן וְהַגָּלִיל. עַל שְׁתַּיִם מֵעֲבָרִין עַל אֶחָד אֵין מֵעֲבָרִין. וְאִם עֵיבְרִיהָ אֵינָה מְעוֹבְבֶרֶת. וְכִשְׁהִי יְהוּדָה אֶחָד מֵהָרִי הִי שְׁמַחִין מִפְּנֵי שְׁהַעוֹמֵר בָּא מִמֶּנָּה.

"For three regions one intercalates a year, because of Judea, Transjordan, and Galilee<sup>186</sup>. One intercalates because of two of them, while because of one of them one does not intercalate; if they did intercalate it is not

intercalated<sup>187,188</sup>. If Judea was one of the reasons, everybody<sup>189</sup> was happy since the 'Omer was brought from there.

אין מעברין לא מפני הצינה ולא מפני הגשמים. ואם עיברה אינה מעוברת. אין מעברין לא מפני הגדיים ולא מפני הגוזלים ולא מפני החלב. וכילם סעד לשנה. ואם עיברה מעוברת. רבי ינאי אמר משום רבן גמליאל שהיה אומר. אימריא רביכין וגוזליא דקיין ושפר באפוי ובאפי חבירי מוספא על שתא דא תלתין יומין.

<sup>190</sup>“One intercalates neither because of the cold, nor because of the rains<sup>191</sup>; if they did intercalate it is not intercalated<sup>188</sup>. One intercalates neither because of kid goats nor because of pigeon chicks, nor because of milk [lambs]<sup>192</sup>; but all of them are ancillary reasons for the year. <sup>193</sup>Rebbi Yannai<sup>194</sup> said that Rabban Gamliel<sup>195</sup> used to say: The sheep are thin and the pigeon chicks small; it appears good in my eyes and in those of my colleagues to add thirty days to the year.”

תני. אמר רבי יודן. מעשה ברבן גמליאל וזקנים שהיו יושבין על גב מעלה בהר הבית ויוחנן סופר הלך יושב לפניו. אמר לו רבן גמליאל. כתוב. לאחנא בני דרומא עילאה לאחנא בני דרומא ארעיא שלמכון וסגא. מודענא לכו דמטא זמן ביעורא. לאפוקי מעשרייא מעומרי שובליא. ולאחמא בני גלילא עילאה ובני גלילא ארעיא שלמכון וסגא. מודענא לכו דמטא זמן ביעורא. תפקון מעשרייא ממעטני זיתא. לאחמא בני גלותא דבבל בני גלותא דמדי בני גלותא דיוון ושאר כל-גלותא דישאל שלמכון וסגא. מודענא לכו דאימריא רביכין וגוזליא דקיין וימנא דאביבא לא מטא ושפר מילתא באפי ובאפי חבירי מוספא על שתא דא תלתין יומין.

<sup>196</sup>“Rebbi Jehudah said: it happened that Rabban Gamliel and the Elders were sitting on stairs on the Temple Mount<sup>197</sup>; their scribe Johanan was sitting before them when Rabban Gamliel said to him, write: To our brothers in the Upper Southland and the Lower Southland<sup>198</sup>, may you have much peace. We inform you that the time of liquidation has come, to deliver tithes from the sheaves of grain. To our brothers in the Upper Galilee and the Lower Galilee<sup>199</sup>, may you have much peace. We inform you that the time of liquidation has come, to deliver tithes from the olive presses. To our brothers in the diaspora of Babylonia, the diaspora of Media, the diaspora of Greece, and all other diasporas of Israel, may you have much peace. We inform you that the sheep are thin, the pigeon chicks small, and springtime has not

arrived; it appears good in my eyes and those of my colleagues to add thirty days to this year.”

אין מעבירין את השנה אלא אם כן היתה חסירה רוב החודש. וכמה רוב החודש. י"ז יום. רבי יהודה אומר שתי ידות החודש כ"א יום. אמר רבי שמואל בר נחמן. והוא שיקרב העומר סוף ניסן שלתקופות. אמר רבי יוסי. עד הפסח. אמר רב מתניה. והוא שיטלו לילב בסוף תשרי שלתקופות.

<sup>200</sup>“One does not intercalate a year unless it be missing most of a month. How much is most of a month? 16 days<sup>201</sup>. Rabbi Jehudah says two thirds of a month, 21 days.” Rabbi Samuel bar Nahman said, only that the *’Omer* should be brought at the end of Nisan of equinoxes<sup>202</sup>. Rabbi Yose said, before Passover<sup>203</sup>. Rav Mattaniah said, only that *lulav* be taken at the end of Tishre of equinoxes<sup>204</sup>.

אין מעבירין לשנה לא פחות מחודש ולא יותר על חודש. ואם עיברה אינה מעוברת.

<sup>205</sup>“One intercalates a year neither less than a month, nor more than a month; if it was intercalated<sup>206</sup>, it is not intercalated.”

179 The following paragraphs are all in the Tosephta, Chapter 2, 2-11. The present paragraph and the following also are in the Babli, 11b.

180 Since the celebration of the festival of unleavened bread requires the offering of fresh barley grain in the *’omer* ceremony (*Lev.* 23:9-14), the lunar year has to be adjusted so that Passover be celebrated in the “month of fresh grain” (*Ex.* 13:4-5).

181 As explained later, the verses *Ex.* 13:4-5 are interpreted to mean that the spring equinox must fall before Passover, but no more than 30 days earlier.

182 If it seems likely that the fruits will not be edible by Pentecost, the start of the season for First Fruits.

183 It is forbidden to eat from new grain before the *’omer* ceremony, *Lev.* 23:14. If the year was intercalated because new grain

was not ready, it imposed no restrictions on people since new grain was not available anyhow.

184 Rashi in his Commentary wants to delete אף “also”, since it does not make much sense in the context. But since the text is confirmed by three sources, it cannot be deleted.

185 The Babli is undecided as to whether Rabban Gamliel refers to the reasons for intercalations, that the date of the equinox is sufficient as single reason for intercalation, or to reasons for joy.

186 Since the *’omer* can be offered from any place in the Holy Land if barley is not ripe in Judea. Transjordan is defined as that part East of the Jordan which is included in the legal definition of the Land of Israel, cf. *Ševi’it* 6:1, Notes 32-51.

187 In the Tosephta: “it is intercalated.” The sentence is missing in the Babli, which has to be read as tacit endorsement of the Tosephta (or better, the Tosephta has to be read as explaining the Babli’s position.)

188 Since intercalation was the prerogative of the Synhedrion, the expression “it is not intercalated” can only mean that in this case the intercalation is revocable, in contrast to other cases where it is irrevocable once announced.

189 In Judea, where one could expect cheap new grain after Passover.

190 Babli 11a.

191 The convenience of travelers, pilgrims for the Passover festival, should not be a consideration.

192 Most private obligations of sacrifices are satisfied either with a couple of pigeons or with offerings of lambs and kid goats. It is desirable that there be an ample supply available for pilgrims at Passover time, but this is not an absolute necessity.

193 The text of the Babli makes clear that this sentence explains what is meant by “ancillary reasons for intercalation.”

194 The Tanna.

195 In both Babylonian sources, Rabban Simeon ben Gamliel. The Yerushalmi version is preferable, as shown by the later text of Rabban Gamliel 1’s proclamations.

196 Babli 11b, Tosephta 2:6.

197 Since they assembled outside the Temple precinct, the procedure is to be dated to the time of the Roman procurators who had taken over criminal jurisdiction “40 years before the destruction of the Temple” (Note 31).

198 The grain growing areas South of Lydda, both in the hills (the Upper) and near

the coast (the Lower). Heave and tithes, which have to be separated immediately after processing, have to be delivered before the holiday, and Second Tithe, in years 1,2,4,5 of the Sabbatical cycle, taken to Jerusalem for the holiday celebration.

199 For definition of these regions see *Ševi`it* 9:2, Notes 40-41.

200 Babli 13a, Tosephta 2:7.

201 The version of the Tosephta implies that a month has to be added if otherwise the Spring equinox would fall on the 17<sup>th</sup> of Nisan or later, for R. Jehudah on the 22<sup>nd</sup> or later.

202 “Nisan of the equinox” is the solar period 30 days from the equinox. He is more restrictive and holds that the equinox must fall on or before (but no more than 30 days before) the 15<sup>th</sup> of the lunar Nisan. “At the end” means “after the first.” (Today’s computed calendar sometimes violates this rule.)

203 Since the Passover day is the 14<sup>th</sup> of Nisan, he requires the Spring equinox not to fall after this date. He is reputed to be the editor of the computed calendar, which however has come to us only through the works of authors living several hundred years later.

204 He requires in addition that the fall equinox be no later than the 15<sup>th</sup> of Tishre. In our computed calendar, this rule is violated about once in a 19 year period.

205 Babli 11a, Tosephta 2:8. The Tosephta here follows the Yerushalmi text, which allows for a “month”, i. e., either 29 or 30 days. The Babli prescribes 30 days; it notes 29 as permissible only for Rabban Simeon ben Gamliel (II). The computed calendar in this matter follows the Babli.



206 For a different number of days.

(18d line 28) אין מעברין לא בשביעית ולא במוצאי שביעית. ואם עיברה הרי זו מעוברת. אימתי רגילין לעבר. בערבי שביעיות. רבי זעירא בשם רבי אבהו. הדיא דתימר עד שלא התיר רבי לישח נרק מחוץ לארץ לארץ. אבל משהתיר רבי לישח נרק מחוץ לארץ לארץ היא שביעית היא שאר שני שבוע.

<sup>207</sup>“One intercalates neither in a Sabbatical year nor the year following a Sabbatical; but if it was intercalated it is intercalated. When does one usually intercalate? The year preceding a Sabbatical.” Rabbi Ze’ira said in the name of Rabbi Abbahu, that is before Rabbi permitted to import produce from outside the Land into the Land. But since Rabbi permitted to import produce from outside the Land into the Land, there is no difference between a Sabbatical and the remaining years of the Sabbatical cycle.

207 Babli 12a, Tosephta 2:9, *Nedarim* 6:13, *Šeqalim* 1:2 (46a 1.51). The text from here to the end of the Halakhah is essentially copied in *Nedarim*, explained in Notes 83-141. The short parallel in *Šeqalim* belongs to a different tradition. The

paragraphs are alternately shortened and extended; they cannot be considered exact copies of one another. The Notes to the text following are restricted to indicate deviations from the text in *Nedarim*.

(18d line 32) הרי רבי מאיר אומר. הרי הוא אומר. ואיש בלא מבעל שלשה ויבא לאיש האלהים לחם בכורים עשרים לחם וגו'. והואיל והיתה השנה צריכה להתעבר מפני מה לא עיברה אלישע. אלא מלמד שהיו שני רעבון והיו קופצים לגרנות.

<sup>208</sup>Rabbi Meir used to say: it is said, *a man came from Baal Shalisha and brought to the Man of God first fruit bread, twenty loaves*, etc. Since the year should have been intercalated, why did Elisha not intercalate? This teaches that it was a year of famine and people were eager for threshing floors.

(18d line 36) אית תני תני. אין מעברין מפני הטומאה. רבי יוסי אומר מעברין. שכן מצינו בחזקיה שעיבר מפני הטומאה. שנאמר כי מרבית העם מאפרים ומנשה ויששכר וזבולון לא הטירו כי אכלו את הפסח בלא כתיוב כי התפלל יחזקיהו לאמר יהנה הטוב יכפר בעד. רבי שמעון אומר. אף על פי שעיברו ניסן אין מעובר אלא אדר. רבי שמעון בן יהודה אומר משום רבי שמעון. עישה יחזקיהו לציבור לעשות פסח שני.

Some Tannaïm state: "One does not intercalate because of impurity." Rabbi Yose<sup>209</sup> says, one intercalates, since we find that Hezekiah intercalated because of the impurity, as it is said: *For most of the people from Ephraim, Manasse, Issachar, and Zevulun had not been purified, for they ate the Passover contrary to what is written, for Hezekiah had prayed, saying, the Eternal, the Benevolent, will pardon this.* Rabbi Simeon says, even though he intercalated Nisan, it was Adar which was intercalated. Rabbi Simeon ben Jehudah said in the name of Rabbi Simeon: Hezekiah forced the community to celebrate the Second Passover."

(18d line 41) אֵת תַּנְיִי תַנִּי. מַעֲבְרִין מִפְּנֵי הַטּוּמְאָה. אֵת תַּנְיִי תַנִּי. אֵין מַעֲבְרִין. מֵאֵן דָּאָמַר אֵין מַעֲבְרִין. מִינָה כִּי־אָכְלוּ אֶת־הַפֶּסַח בְּלֹא כִכְתוּב. וּמֵאֵן דָּמַר מַעֲבְרִין. מֵה מְקַיִם בְּלֹא כִכְתוּב. מִפְּנֵי שֶׁעִיבְרוּ נִסָּן וְאֵין מַעֲבְרִין אֲלָא אֲדָר. וְתַנִּיא כִּי דָמַר רַבִּי סִימּוֹן בְּרַ זְבִיד. גּוֹלְגּוֹלֶת אֲרָנָן הִיבּוּסִי מִצָּאוֹ תַחַת הַמִּזְבֵּחַ.

Some Tannaïm state: One intercalates because of impurity. Some Tannaïm state: One does not intercalate. He who says, one does not intercalate, from the following: *for they ate the Passover contrary to what is written.* How does the one who says one does not intercalate, explain *contrary to what is written*? They intercalated in Nisan but one intercalates only in Adar. This follows what Rabbi Simon bar Zavdi said: they found the skull of Ornan the Yebusite under the altar.

(18d line 46) כְּתִיב כָּל־לִבָּבוֹ הֵלִין לְדְרוֹשׁ הָאֱלֹהִים וְלַעֲשׂוֹת וּלְלַמֵּד בְּיִשְׂרָאֵל חֹק וּמִשְׁפָּט. רַבִּי סִימּוֹן בְּרַ זְבִיד וְרַבִּי שְׁמוּאֵל בְּרַ נַחֲמָן. חַד אָמַר. אֲפִילוּ כַּמָּה עָשָׂה לְטַהֲרֵת הַקּוֹדֶשׁ לֹא יָצָא יָדִי טַהֲרֵת הַקּוֹדֶשׁ. וְחַד אָמַר. אֲפִילוּ כָל־מַעֲשִׂים טוֹבִים שֶׁעוֹשִׂין לְטַהֲרֵת הַקּוֹדֶשׁ לֹא יָצָא יָדִי טַהֲרֵת הַקּוֹדֶשׁ. כְּתִיב וַיַּחֲלִיז בְּאֶחָד לַחֹדֶשׁ הָרִאשׁוֹן לְקַדֵּשׁ וּבָיִים שְׁמוֹנֶה לַחֹדֶשׁ גָּאוּ לְאוֹלָם יי וַיִּקְדָּשׁוּ אֶת־בֵּית־יי לְנִמְסִים שְׁלֹשָׁה וּבָיִים שֶׁעָשָׂה לַחֹדֶשׁ הָרִאשׁוֹן כִּלְפֵי וְהִלָּא לְיוֹם אֶחָד הָיוּ יְכוּלִין לְבָעַר כָּל־עֲבוּדָה זָרָה שֶׁהָיָה שָׁם. אָמַר רַבִּי אִידִי. מִפְּנֵי צִלְמֵי כַּשְׂדִּים שֶׁהָיוּ חֲקוּקִים בְּשֹׁשׂוֹר.

It is written<sup>211</sup>: *With all his heart he prepared himself to seek God,* to act, and to teach law and justice in Israel. Rabbi Simon bar Zavdi and Rabbi Samuel bar Nahman. One said, with all he did for the purity of the Temple, he did not fully establish the purity of the Temple. One said, with all the good

works he did, he did not fully do his duty for the purity of the Temple. It is written<sup>212</sup>: *They started on the first of the first month, and on the eighth day they entered the Eternal's Hall and sanctified the Eternal's House for three days; on the sixteenth of the month they finished.* Could they not have eliminated all idolatry from there in one day? Rabbi Idi said, because of Chaldean idols which were engraved in vermillion.

שְׁשֶׁה דְּבָרִים עָשָׂה חִזְקִיָּהוּ. עַל שְׁלֹשָׁה הוֹדוּ לוֹ וְעַל שְׁלֹשָׁה לֹא הוֹדוּ לוֹ. גִּירָר עֲצָמוֹת אָבִיו עַל מִיטַת חֲבָלִים וְכִיתַת נָחַשׁ הַנְּחוּשֶׁת וְגָנַז טַבֵּלָה שְׁלֹרֶפוֹאוֹת. וְהוֹדוּ לוֹ. סָתַם מִימֵי גִיחוֹן הָעֶלְיוֹן וְקִיצֵץ דְּלָתוֹת הַהֵיכָל וְעִבֵּר נִסָּן בְּנִיסָן. וְלֹא הוֹדוּ לוֹ.

Six things did Hezekiah do; with three they agreed, with three they did not agree. He dragged his father's bones on a bier of ropes, he smashed the bronze snake, and he hid the table of medicines; they agreed. He closed the upper Gihon spring, and he cut down the Temple doors, and he intercalated Nisan in Nisan; they disagreed.

18d line 57) אֵין מְעַבְרִין קוֹדֵם רֹאשׁ הַשָּׁנָה וְאִם עִיבְרוּהָ אֵינָה מְעוֹבְרָת. אֲבָל מִפְּנֵי הַדּוּחַק מְעַבְרִין אַחֵר רֹאשׁ הַשָּׁנָה מִיָּד. אִף עַל פִּי כֹן אֵינוֹ מְעוֹבֵר אֲלָא אֲדָר. רַבִּי אוֹמֵר נִסָּן לֹא נִתְעַבֵּר מִיָּמָיו. וְהִתְנַנֵּן. אִם בָּא הַחוֹדֶשׁ בְּזִמְנוֹ. אִם בָּא. לֹא בָא. רַב אֲמַר. תִּשְׁרִי לֹא נִתְעַבֵּר מִיָּמָיו. וְהִתְנַנֵּן. אִם הָיָה הַחוֹדֶשׁ מְעוֹבֵר. אִם הָיָה. לֹא הָיָה.

One does not intercalate before New Year's Day; if they did intercalate it would be invalid. But for an urgent need one may intercalate immediately after New Year's Day. Nevertheless, only Adar is intercalated.

<sup>213</sup>Rebbi says, Nisan was never lengthened. But did we not state: "If the New Moon appeared in time"? If it would appear; it did not appear. Rav said, Tishre was never lengthened. But did we not state: "If the month was long"? If it would be, it never was.

18d line 62) וְכִשְׁקִידְשׁוּ אֶת הַשָּׁנָה בְּאוֹשָׁה בַּיּוֹם הָרִאשׁוֹן עִבֵּר רַבִּי יִשְׁמַעֵאל בֶּן רַבִּי יוֹחָנָן בֶּן בְּרוּקָה וְאֲמַר כְּדָבָרֵי רַבִּי יוֹחָנָן בֶּן נוּרִי. אֲמַר רַבֵּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל. לֹא הֵייוּ נוֹהֲגִין כֹּן בְּיָבֵנָה. בַּיּוֹם הַשֵּׁנִי עִבֵּר רַבִּי חֲנַנְיָה בֶּן רַבִּי יוֹסִי הַגָּלִילִי וְאֲמַר כְּרַבִּי עֲקִיבָה. אֲמַר רַבֵּן שְׁמַעוֹן בֶּן

גמליאל. כִּדְ הֵינּוּ נוֹהֲגִי בַּבִּבְנָה. וְהִתְנִי. קִידְ שׁוּהוּ בְּרֹאשׁוֹן וּבִשְׁנֵי. רַבִּי זְעִירָא בְּשֵׁם רַב חֲסִידָאִי. אוֹתָהּ הִשְׁנָה נִתְקַלְקְלָה. מֵה בְּרֹאשׁוֹן וּמֵהוּ בִּשְׁנֵי. רַבָּא בְּשֵׁם רַב. שָׁנָה א' וְשָׁנָה ב'. וְהִתְנִי קִידְ שׁוּהוּ בְּיוֹם הָרֹאשׁוֹן וּבְיוֹם הַשְּׁנִי.

“When they sanctified the year at Usha, on the first day Rabbi Ismael, the son of Rabbi Johanan ben Beroqa, led and recited following the opinion of Rabbi Johanan ben Nuri. Rabban Simeon ben Gamliel said, we did not follow this at Jabneh. On the second day, Rabbi Hananiah, the son of Rabbi Yose the Galilean, led and recited following Rabbi Aqiba. Rabban Simeon ben Gamliel said, this we did follow at Jabneh.” But does this not mean that they sanctified it on the first and the second day? Rabbi Ze’ira in the name of Rav Hisda: That year was disorganized. What is “on the first, on the second”? Rav Abba in the name of Rav: The first year, the second year! But was it not stated: the first day, the second day?

(18d line 64) קִידְ שׁוּהוּ קוֹדֵם זְמַנוּ אוֹ לְאַחַר עִיבוּרוֹ יוֹם אֶחָד. יָכוֹל יֵהָא מְקוֹדֵשׁ. תִּלְמוּד לומר אוֹתָם. אוֹתָם אֵלֶּא הֵם. אֵין אֵלֶּה הֵן מוֹעֲדֵי. קוֹדֵם לְזְמַנוּ כ"ט יוֹם. לְאַחַר עִיבוּרוֹ ל"ב יוֹם. וּמִנֵּיין שְׁמַעְבְּרִין אֶת הַשָּׁנָה עַל הַגְּלִיּוֹת שְׁגָלוּ וְאֲדִין לֹא הִגִּיעוּ. תִּלְמוּד לומר בְּנֵי יִשְׂרָאֵל מַעְדִּי. עֲשֵׂה מוֹעֲדוֹת שְׁעֲשׂוּ כָל־יִשְׂרָאֵל. אָמַר רַבִּי שְׁמוּאֵל בַּר נַחֲמָן. וְהֵן שֶׁהִגִּיעוּ לְהֵרָא פָּרָת.

If they sanctified it before its time or after its lengthening, should I assume it was lengthened? The verse says, *them, them*; not *these are My holidays*? Before its time, the 29<sup>th</sup> day; after its lengthening, the 32<sup>nd</sup> day. From where that one intercalates for the year because of the diaspora<sup>215</sup> who set out but did not yet arrive? The verse says, *the Children of Israel*. Make the holidays so they can be observed by all of Israel. Rabbi Samuel bar Nahman said, only if they had reached the river Euphrates.

(18d line 75) אֵין מַעְבְּרִין אֶת הַשָּׁנָה אֵלֶּא בִּיהוּדָה. וְאִם עִיבְרִיהָ בְּגָלִיל מַעְבְּרָתָהּ. הָעִיד חֲנִינָה אִישׁ אוֹנוּ שְׂאֵם אֵינָה יָכוֹלָה לְהִתְעַבֵּר בִּיהוּדָה שְׁמַעְבְּרִין אוֹתָהּ בְּגָלִיל. אֵין מַעְבְּרִין אוֹתָהּ בְּחוּצָה לְאֶרֶץ. וְאִם עִיבְרִיהָ אֵינָה מַעְבְּרָתָהּ. אֶת חֲמִי. בְּגָלִיל אֵין מַעְבְּרִין בְּחוּצָה לְאֶרֶץ מַעְבְּרִין. בְּגָלִיל אֵין מַעְבְּרִין וְאִם עִיבְרִיהָ מַעְבְּרָתָהּ. בְּחוּצָה לְאֶרֶץ אֵין מַעְבְּרִין וְאִם עִיבְרִיהָ אֵינָה מַעְבְּרָתָהּ. בִּיכוּלִין לַעֲבֹר בְּאֶרֶץ יִשְׂרָאֵל. אָבֵל בְּשֹׁאֵינָן יָכוֹלִין לַעֲבֹר בְּאֶרֶץ יִשְׂרָאֵל שְׁמַעְבְּרִין אוֹתָהּ בְּחוּצָה לְאֶרֶץ.

“One intercalates a year only in Judea, but if it was intercalated in Galilee it is validly intercalated. Hanina from Ono testified that, if it cannot be intercalated in Judea, one intercalates in Galilee.” One does not intercalate a year outside the Land; if it was intercalated, it is not validly intercalated. Look at it, one does not intercalate in Galilee; could one intercalate outside the Land<sup>217</sup>? One does not intercalate in Galilee; but if it was intercalated it is validly intercalated. One does not intercalate outside the Land; if it was intercalated it is not intercalated if it was possible to intercalate in the Land of Israel; but if one cannot intercalate in the Land of Israel, one intercalates it outside the Land.

6) (19a line 6) ירמיה עיבר בחוצה לארץ. יחזקאל עיבר חוצה לארץ. ברוך בן נריה עיבר בחוצה לארץ. חנניה בן אחי רבי יהושע עיבר בחוצה לארץ. שלח ליה רבי ג' איגרון גבי רבי יצחק ורבי נתן. בחדא כתב. לקדושת חנניה. וחדא כתב. גדלים שהינחת נעשו תישים. ובהדא כתב. אם אין את מקבל עליך צא לך למדבר האטד ותהי שוחט ונחונין זורק. קרא קדמייתא ואוקרון. תנייתא ואוקרון. תליתא בעא מבסרתהון. אמרין ליה. לית את דכבר אוקרתנין. קם רבי יצחק וקרא באריתא אלא מועדי חנניה בן אחי רבי יהושע. אמרין אלה מועדי יי. אמר לון. גבן. קם רבי נתן ואשלים. כי מבבל תצא תורה ודבריהם מנהר פקוד. אמרין ליה. כי מציון תצא תורה ודבריי מירושלם. אמר לון. גבן. אזל קבל עליהון גבי רבי יהודה בן בתירה לנציבין. אמר ליה. אחריהם אחריהם. אמר ליה. לי נא ידע מה תמן. מה מודע לי דאינון חכמין מחשבה דכותי. מכין דלא ידעי מחשבה דכותיה ישמעון ליה. ומכין דאינון חכמין מחשבה דכותיה ישמע לון. קם ורכב סוסא. הו דמטא מטא הו דלא מטא נהגין בקילקול.

Jeremiah intercalated outside the Land. Ezechiel intercalated outside the Land. Baruch ben Neriah intercalated outside the Land. Hanania the nephew of Rabbi Joshua intercalated outside the Land. Rabbi sent him three letters through Rabbi Isaac and Rabbi Nathan. In one he wrote, to His holiness Hanania. And in one he wrote, the kid goats you left behind became rams. And in one he wrote, if you do not accept, go to the thistle desert, do the slaughtering and let Onias sprinkle. After the first [letter], he honored them. After the second, he honored them. After the third, he wanted to disgrace them. They said to him, you cannot do that since you already did honor us. Rabbi Isaac rose and read in the Torah: These are the holidays of Hanania the

nephew of Rabbi Joshua. They said to him, *the holidays of the Eternal*. He told them, that is with us. Rabbi Nathan rose and concluded: For from Babylonia will Torah go forth and the Eternal's word from Nahar-Peqod. They said to him, *for from Zion will Torah go forth and the Eternal's word from Jerusalem*. He told them, that is with us. He went to complain about them to Rabbi Jehudah ben Bathyra at Nisibis. He said to him, follow them, follow them. He said to him, I do not know whom I left there. Who would tell me that they are knowledgeable in computations as I am? If they did not know the computations, they should listen to him. Since they are knowledgeable in computations as he is, he has to listen to them. He got up and rode on a horse. Where he reached, he reached. Where he did not reach, they continued to follow the corrupt [calendar].

(19a line 21) כְּתִיב אֶל־יֵתֵר זִקְנֵי הַגּוֹלָה. אָמַר הַקָּדוֹשׁ בְּרוּךְ הוּא. בְּיוֹתֵר הֵן עָלֵי זִקְנֵי הַגּוֹלָה. חֲבִיבָה עָלַי כֵּת קִטְנָה שֶׁבְּאַרְצָא יִשְׂרָאֵל מִסְנֵה־דָרִין גְּדוֹלָה שֶׁבְּחוּצָה לְאַרְצָא. כְּתִיב הַחֲרָשׁ וְהַמְסַגֵּר אֶלָּף. וְאַתָּה מִרְ הַכִּין. רַבִּי בִּרְכָּיָה בָּשֵׁם רַבִּי חֵלְבּוֹ וְרַבָּנָן. הַחֲרָשׁ אֶלָּף וְהַמְסַגֵּר אֶלָּף. וְרַבָּנָן אָמְרִי. כּוֹלְהוֹן אֶלָּף. רַבִּי בִּרְכָּיָה בָּשֵׁם רַבִּי. אֵילּוֹ הַחֲבִירִים. וְרַבָּנָן אָמְרִין. אֵילּוֹ הַבּוֹלְבוֹטִין.

It is written: *to the outstanding Elders in the diaspora*. The Holy One, praise to Him, said: The Elders of the diaspora are very dear to me. But more beloved by Me is a small group in the Land of Israel than a great Synhedrion outside the Land. It is written: *The craftsmen and the smiths one thousand*, and you say so? Rabbi Berekhiah in the name of Rabbi Helbo and the rabbis. Rabbi Berekhiah said, one thousand craftsmen and one thousand smiths. But the rabbis say, together one thousand. Rabbi Berekhiah in the name of Rabbi [Helbo said]<sup>218</sup>, these are the Fellows; but the rabbis say, these are the councilmen.

(19a line 27) רַבִּי הוֹשַׁעְיָה כִּד הָהָא מְקַבֵּל שֶׁהָדִיא בְּעֵינֵי טַב הָהָא אָמַר לוֹן. הֵיוּ יִדְעִין כִּמְהָ עֲדוּת יוֹצֵא מִפִּיכֶם. כִּמְהָ שְׂכָר בְּתִים יוֹצֵא מִפִּיכֶם. אָמַר רַבִּי אֲבוּנָא. וְאִין פִּינֵי אֲפִילוּ בְּדִינֵי נִפְשוֹת. בֵּת שְׁלֹשׁ שָׁנִים וְיוֹם אֶחָד בָּא עָלֶיהָ הָרִי זֶה בְּסִקִּילָה. נִמְלְכוּ בֵּית דִּין לַעֲבָדוֹ וְבָא עָלֶיהָ אֵינוֹ בְּסִקִּילָה. אָמַר רַבִּי אֲבִין. אֶקְרָא לְאַלְהִים עֲלֵינוֹן לְאֵל גָּמָר עָלֵי. בֵּת שְׁלֹשׁ שָׁנִים וְיוֹם אֶחָד נִמְלְכוּ בֵּית דִּין לַעֲבָדוֹ אִין הַבְּתוּלִין חוּזְרִין. וְאִם לֹא הַבְּתוּלִין חוּזְרִין.

Rebbi Hoshaia, when he received witnesses at Kallirhoë, used to say to them: you should know the importance of the testimony that comes from your mouths; how much rent money depends on your mouths. Rebbi Abuna said, if it is so, it is even a matter of criminal law. If somebody sleeps with a girl three years and one day old, he is stoned. The court decides to lengthen, if he sleeps with her he is not stoned. Rebbi Abun said, *I am calling to Almighty God, to the God Who decides with me*. If a girl is three years and one day old, if the court decides to lengthen her hymen does (not) repair itself, otherwise it does [not] repair itself<sup>219</sup>.

208 This paragraph has been shortened and become incomprehensible. Cf. *Nedarim* 6:13, Notes 86-88. Both Talmudim always assume that a prophet by his office must have been a member of the High Court.

209 In *Nedarim*: R. Jehudah. This seems to be the correct quote.

210 *2Chr.* 30:18.

211 There is no such verse in the Bible. The text is a combination of *2Chr.* 30:19 and *Ezra* 7:10.

212 *2Chr.* 29:16.

213 This and the following paragraphs also are found in *Ševi'it* 10:2 (Notes 41-55) and *Roš Haššana* 3:1 (58c l. 51).

214 *Lev.* 23:2. The verse which prescribes publication of the dates of festivals traditionally is spelled defectively אֲתֶם “them” as if it were אַתֶּם “you”, empowering the High Court to decree the times even in disagreement with the astronomical data.

215 The Babylonians who come to Jerusalem in caravans to celebrate Passover.

216 The full text of the verse, *Num.* 23:44, is quoted in the other sources, resulting in an intelligible argument.

217 Why has the prohibition of intercalation outside the Land to be mentioned at all? Could this prohibition not be inferred from the rule for Galilee?

218 Added from the consensus of the parallel texts, missing here.

219 The text here obviously is wrong, but is correct in the parallel texts. It is talmudic doctrine that a girl becomes nubile one day after her third birthday. If she should have been raped before that day, her hymen will regrow and she remains a virgin; after that day the deflowering is definitive. It is stated that her body will follow the calendar decreed by the court.

**משנה ג:** סמיכת הזקנים ועריפת העגלה בשלשה דברי רבי שמעון. ורבי יהודה אומר בחמשה. החליצה והמאונין, בשלשה. נטע רביעי ומעשר שני שאין דמיו דועין בשלשה (fol. 17d)

וְהִקְדָּשׁוֹת בְּשִׁלְשָׁה. וְעָרְכֵי הַמִּיטְלָטְלִין בְּשִׁלְשָׁה. רַבִּי יְהוּדָה אֹמֵר אֶחָד מֵהֶן כֹּהֵן. וְהִקְדָּשׁוֹת  
תִּשְׁעָה וְכֹהֵן. וְאָדָם כְּיוֹצֵא בָּהֶן.

**Mishnah 3:** The leaning of Elders<sup>220</sup> and the breaking of the calf's neck<sup>221</sup> by three [judges], the words of Rabbi Simeon, but Rabbi Jehudah says, by five. *Halisah*<sup>222</sup> and repudiations<sup>223</sup> by three [judges], [redemption of] the growth of the fourth year<sup>224</sup> and Second Tithe<sup>225</sup> whose value is not known by three [appraisers], also of Temple dedications<sup>226</sup> by three. Estimations of movables<sup>227</sup> by three [appraisers], Rabbi Jehudah says that one of them must be a Cohen; of real estate<sup>228</sup> nine and a Cohen. The same holds for humans<sup>229</sup>.

220 *Lev.* 4:15. If the High Court realized that they had erred in a ruling and permitted something which is biblically prohibited, they have to bring a purification sacrifice and a deputation of the Court has to lean with their hands on the head of the sacrificial animal while confessing their error, as detailed in Tractate *Horaiot*.

221 The ritual of atonement for an unsolved murder, *Deut.* 21:1-9, *Soṭah* Chapter 9.

222 The ceremony by which the widow of a childless man is freed from levirate marriage, which requires involvement of "the Elders", *Deut.* 25:5-9.

223 The repudiation of a marriage by an underage girl, married off by her mother or brothers after her father's death and whose marriage during her minority is valid only rabbinically; cf. *Yebamot* Chapter 13.

224 The fruits of a tree in the fourth year after planting, the first year they are permitted as food, have to be eaten in holiness by the rules of Second Tithe (*Lev.* 19:24; *Ma'aser Šeni* Chapter 5). They may be redeemed under the rules of Second

Tithe, the sanctity being transferred to the redemption money.

225 Cf. *Ma'aser Šeni* 4:2, Note 51. Second Tithe remains the farmer's property but must be eaten in purity at the site of the Temple. If there is any danger of spoilage in transport, the produce may be redeemed and the sanctity transferred to the redemption money, *Deut.* 14:22-26; cf. Introduction to Tractate *Ma'aser Šeni*.

226 Property donated to the Temple which will be sold by the Temple treasurer upon appraisal by a committee of three; *Lev.* 27:11.

227 If a person makes a vow to donate the estimated value of a person to the Temple, the amount payable is specified in *Lev.* 27:2-7 depending on age and sex. If the person wants to pay with movables in lieu of money, their value has to be determined by a committee of three. These rules are detailed in Tractate *Arakhin*.

228 *Lev.* 27:14-25. In all verses speaking of redemption of property donated to the Temple, "the Cohen" is mentioned in the singular.



229 Somebody promising to pay to the      sold as a slave.  
Temple the value a person would fetch if

(19a line 33) **הלכה ג:** סמיכת הזקנים ועריפת העגלה בשלשה דברי רבי שמעון. ורבי יהודה אומר בחמשה. מה טעמא דרבי שמעון. וסמכו שנים. אין בית דין שקול מוסיפין עליהן עוד אחר הרי שלשה. מה טעמא דרבי יהודה. וסמכו שנים. וקני שנים. אין בית דין שקול מוסיפין עליהן עוד אחד. הרי חמשה. ובעגלה ערופה מה טעמא דרבי שמעון. וקניד שנים. ושלפיד שנים. אין בית דין שקול מוסיפין עליהן עוד אחד הרי חמשה. מה טעמא דרבי יהודה. וקניד ושופיד שנים. אין בית דין שקול מוסיפין עליהן עוד אחר הרי שלשה. אמר רבי. נראין דברי רבי יהודה בערופה דלא דריש ונצאו. ונראין דברי רבי שמעון בסמיכה דלא דריש וסמכו. אין תימר. נראין דברי רבי יהודה בערופה כמו די דרש וסמכו ונצאו. אשכח תימר. ונצאו שנים. וקניד שנים. ושלפיד שנים. אין בית דין שקול מוסיפין עליהן עוד אחד. הרי כאן שבעה. מה מקיים רבי שמעון וקניד ושלפיד. וקניד שנה שופיד. תני רבי לעזר בן געקב אומר. וקניד. זה בית דין הגדול. ושלפיד. זה מלך וכהן גדול.

**Halakhah 3:** “The leaning of Elders and the breaking of the calf’s neck by three [judges], the words of Rabbi Simeon, but Rabbi Jehudah says, by five.”

<sup>230</sup>What is the reason of Rabbi Simeon? “[The Elders] shall lean,” two. No court has an even number of members; one adds another one; that makes three. What is the reason of Rabbi Jehudah? “They shall lean,” two. “The Elders,” two. No court has an even number of members; one adds one; that makes five. And for the calf whose neck is broken, <sup>231</sup>what is the reason of Rabbi Simeon? “Your Elders,” two, “and your judges,” two. No court has an even number of members; one adds one; that makes five. What is the reason of Rabbi Jehudah? “Your elders, your judges,” two. No court has an even number of members; one adds another one; that makes three. Rabbi said, the words of Rabbi Jehudah are reasonable for the breaking of the neck, for he does not refer to “they shall go out.” The words of Rabbi Simeon are reasonable for the leaning of the hands, for he does not refer to “they shall lean.” If you would say that the words of Rabbi Jehudah are reasonable for the calf whose neck is broken, if he refers to “they shall lean”, he also should refer to “they shall go out.” It turns out that you have to say “they shall go out” two, “your Elders” two, “and your judges” two. No court has an even number of members; one adds one more; that makes seven. How does Rabbi

Simeon explain “your Elders and your judges”? Your Elders who are your judges. It was stated: Rabbi Eliezer ben Jacob says “your Elders,” that is the High Court; “and your judges,” these are king and High Priest.

230 A very similar text is in *Sotah* 9:1. The commentary, Notes 32-45, also applies here. In the Babli, the parallels are *Sanhedrin* 13b, *Sotah* 44b.

231 The arguments of rabbis Simeon and Jehudah have to be switched; cf. *Sotah* 9:1 Note 33. The argument of R. Jehudah

(attributed here to R. Simeon) is explicit in Mishnah *Sotah* 9:1. The corrected text, treating R. Jehudah’s opinion before R. Simeon’s, follows the Babli which as a matter of principle insists on strict chronological order.

(19a line 47) תַּנִּי הַסְמִיכוֹת בְּשִׁלְשָׁה. לֹא סְמִיכָה הִיא סְמִיכוֹת. תַּמָּן קָרִי לְמִנּוּיָה סְמִיכוֹתָא. אָמַר רַבִּי בָּא. בְּרֵאשׁוֹנָה הָיָה כָּל־אֶחָד וְאֶחָד מְמַנֶּה אֶת תַּלְמִידָיו. כְּגוֹן רַבִּין יוֹחָנָן בֶּן זְבִי מִינָּה אֶת רַבִּי לִיעֶזֶר וְאֶת רַבִּי יְהוֹשֻׁעַ. וְרַבִּי יְהוֹשֻׁעַ אֶת רַבִּי עֲקִיבָה. וְרַבִּי עֲקִיבָה אֶת רַבִּי מֵאִיר וְאֶת רַבִּי שְׁמַעוֹן. אָמַר. יֵשֶׁב רַבִּי מֵאִיר תַּחֲלִילָה. נִתְכַּרְכְּמוּ פָּנֵי רַבִּי שְׁמַעוֹן. אָמַר לוֹ רַבִּי עֲקִיבָה. דִּינָּךְ שְׂאֵנִי וּבּוֹרְאָךְ מִכִּירִין כּוֹחֶךְ. חֲזָרִי וְחַלְקִי כְּבוֹד לְבֵית הָזֶה. אָמְרוּ. בֵּית דִּין שְׁמִינָה שְׁלֹא לְדַעַת הַנָּשִׂיא אֵין מִינּוּי מִינּוּי וְנָשִׂיא שְׁמִינָה שְׁלֹא לְדַעַת בֵּית דִּין מִינּוּי מִינּוּי. חֲזָרִי וְהִתְקִינוּ שְׁלֹא יִהְיֶה בֵּית דִּין מְמַנִּין אֶלָּא מְדַעַת הַנָּשִׂיא וְשְׁלֹא יִהְיֶה הַנָּשִׂיא מְמַנֶּה אֶלָּא מְדַעַת בֵּית דִּין.

It was stated: Leanings by three [judges]. Is not leaning the same as leanings<sup>232</sup>? There<sup>233</sup>, they call ordination “leaning”.

Rebbi Abba said, in earlier times<sup>234</sup>, every one was ordinating his students; for example Rabban Johanan ben Zakkai ordained Rebbi Eliezer and Rebbi Joshua<sup>235</sup>, Rebbi Joshua Rebbi Aqiba, and Rebbi Aqiba Rebbi Meïr and Rebbi Simeon<sup>236</sup>. He said, Rebbi Meïr shall preside; the face of Rebbi Simeon became yellow. Rebbi Aqiba told him, it is enough that I and your Creator recognize your power<sup>237</sup>.

They changed and honored this dynasty<sup>238</sup>, saying: If a court ordained without the consent of the Patriarch, their ordination is no ordination, but if the Patriarch ordained without consent of the court, his ordination is ordination. They changed again<sup>239</sup> and instituted that neither shall the Court ordain without consent of the Patriarch, nor the Patriarch without consent of the Court.

232 What does the *baraita* imply that is not implied by the Mishnah?

233 In Babylonia, ordination is called “leaning of the hands,” in imitation of *Num.* 27:23. In the Babli, 13b, this usage is labelled as that of the Galilean R. Johanan. Modern usage naturally follows the Babli.

234 Before the war of Bar Kokhba.

235 Before his time, one finds neither formal ordination nor the title “Rebbi”.

236 In the tradition of the Babli, both were ordained, together with three others, by R. Jehudah ben Bava. This tradition is questioned by the Babli itself, *loc. cit.*; its

historical accuracy is in doubt since it counts among the five also R. Jehudah, who belongs to the school of R. Eliezer, not R. Joshua.

237 In the tradition of both Talmudim, R. Simeon is a higher authority than R. Meïr; cf. *Terumot* 3:1, Note 25.

238 In the time of the reconstruction after the war of Bar Kokhba, when the authority of the Patriarch became a political necessity. The dynasty is Hillel’s family, reputed to be of Davidic descent.

239 Under Rebbi’s successors, who had neither learning nor standing to act alone.

19a line 56) תַּנִּי. בְּרֵאשׁוֹנָה הָיָה כּוֹתֵבִין שְׁטָרֵי חֲלִיצָה. בְּמוֹתֵב פְּלוֹנִי וּפְלוֹנִי חֲלָצָה פְּלָנִית בֵּת פְּלוֹנִי לְפְלוֹנִי בֶן פְּלוֹנִי בְּפָנֵינוּ. דְּקָרְבַת לְקַדְמָנָא וְשֵׁרֶת קִינָה מַעֲלִי רִגְלָהּ דִּימִינָא וְרִקְתָּ קַדְמָנָא רֹקֵא דְמִתְחַזִּי לָנָא עַל אֶרְעָא וְאַמְרַת כְּכָה יַעֲשֶׂה לְאִישׁ אֲשֶׁר לֹא יִבְנֶה אֶת־בֵּית אָחִיו.

It was stated: From earlier times<sup>240</sup>, one was writing documents of *halīṣah*<sup>241</sup>: Before X and V<sup>242</sup> did Z daughter of U perform *halīṣah* for V son of W, by coming before us, removing his shoe from his right foot, spitting before us visible spittle on the ground, and saying: *So shall be done to the man unwilling to build his brother’s house*<sup>243</sup>.

240 Meaning that the text is traditional; its first author is unknown. The parallel in *Mo’ed qatan* 3:5 (82a l. 48) does not have the introduction. [The text in *Mo’ed qatan* is somewhat shortened in the Leiden ms. and *editio princeps* but the full text is in the Ashkenazic fragments published by J. Sussman, *Kobez al Yad* 12(1994) p.70.] A

somewhat enlarged text in the Babli, *Yebamot* 39b. is ascribed to R. Jehudah.

241 Needed by the widow to be able to remarry in another jurisdiction.

242 There should be three names mentioned here since the court must have three members.

243 *Deut.* 25:9.

19a line 60) תַּנִּי. בְּרֵאשׁוֹנָה הָיָה כּוֹתֵבִין שְׁטָרֵי מִיאוּנִין. בְּמַעֲמַד פְּלוֹנִי וּפְלוֹנִי מִיאָנָה פְּלָנִית בֵּת פְּלוֹנִי בְּפְלוֹנִי בֶן פְּלוֹנִי בְּפָנֵינוּ. לֹא רָעִינָא בֵּיהּ לֹא שְׁוִיִּיהָנָא לֵיהּ לֹא צְבִינָא לְהַתְנַסָּבָא לֵיהּ.

It was stated: From earlier times<sup>240</sup> one was writing documents of repudiation<sup>223</sup>: Before X and Y<sup>242</sup> did Z daughter of U repudiate V son of W,

by coming before us: I do not like him, I do not want to stay with him, I do not agree to be married to him<sup>244</sup>.

244 In the Babli, *Yebamot* 107b, this is the required oral declaration of repudiation. The Babli has no document of repudiation; neither have medieval formularies.

(19a line 63) אָמַר רַבִּי יוֹחָנָן הַקָּדוֹשׁ שְׁפָדִיּוֹ יוֹתֵר עַל דָּמּוֹ הָרִי זֶה פָּדִי. וּמַעֲשֵׂר שִׁנִּי שְׁפָדִיּוֹ יוֹתֵר עַל דָּמּוֹ הָרִי זֶה אֵינוֹ פָּדִי. מַה בֵּין הַקָּדוֹשׁ מַה בֵּין מַעֲשֵׂר שִׁנִּי. אָמַר רַבִּי לָא. הַקָּדוֹשׁ יֵשׁ לוֹ תוֹבָעִין מַעֲשֵׂר שִׁנִּי אֵין לוֹ תוֹבָעִין. רַבִּי יוֹנָה בָּעָא. כָּמֵאן דָּמַר. אֵינוֹ כְּנֻסְיָא. בְּרַם כָּמֵאן דָּמַר. כְּנֻסְיָא הוּא. מַה בֵּין הַקָּדוֹשׁ מַה בֵּין מַעֲשֵׂר שִׁנִּי. אָמַר רַבִּי יוֹסִי. וְלֹא כִּבְרַת נֶאֱמַר טַעֲמָא. הַקָּדוֹשׁ יֵשׁ לוֹ תוֹבָעִין מַעֲשֵׂר שִׁנִּי אֵין לוֹ תוֹבָעִין.

רַבִּי יִצְחָא בָּעָא קוּמִי רַבִּי אֲמִי. נִבְדַּק אוֹתוֹ הָאִישׁ וְאָמַר. לֹא נִתְכַּוְּנִיתִי. אָמַר לֵיהּ. לְכִי בְּדִק. אָמַר רַבִּי יוֹחָנָן הַקָּדוֹשׁ שְׁפָדִיּוֹ וְלֹא הוֹסִיף חוּמֶשׁ הָרִי זֶה פָּדִי. וּמַעֲשֵׂר שִׁנִּי שְׁפָדִיּוֹ וְלֹא הוֹסִיף חוּמֶשׁ אֵינוֹ פָּדִי. מַה בֵּין מַעֲשֵׂר שִׁנִּי לְהַקָּדוֹשׁ. אָמַר רַבִּי לָא. שְׁכֵן אֲדָם מְצוּי לְהוֹיָת מִרְבָּה בְּהַקְדִּישׁוֹ. רַבִּי יוֹנָה בָּעָא. כָּמֵאן דָּמַר. אֵינוֹ כְּנֻסְיָא. בְּרַם כָּמֵאן דָּמַר. כְּנֻסְיָא. מַה בֵּין הַקָּדוֹשׁ לְמַעֲשֵׂר שִׁנִּי. אָמַר רַבִּי יוֹסִי. וְלֹא כִּבְרַת אֲמַרְתָּ טַעֲמָא. שְׂאֲדָם מְצוּי לְהַרְבּוֹת בְּהַקְדִּישׁוֹ.

<sup>245</sup>Rebbi Johanan said, if somebody redeemed Temple dedications for more than their worth, it is redeemed<sup>246</sup>. But if somebody redeemed Second Tithe for more than its worth, it is not redeemed. What is the difference between dedications and Second Tithe? <sup>247,253</sup>Rebbi La said, dedications have claimants, Second Tithe has no claimant. Rebbi Jonah asked, that is following him who says that it is not his property<sup>249</sup>. But for him who says it is his property, what is the difference between dedications and Second Tithe? Rebbi Yose said, the reason has already been explained: dedications have claimants, Second Tithe has no claimant.

<sup>250</sup>Rebbi Ze'ira asked before Rebbi Immi: If the person was checked and he said, that was not what I intended? He answered him, when he will be checked.

Rebbi Johanan said, if somebody redeemed Temple dedications without adding its fifth it is redeemed<sup>251</sup>. But if somebody redeemed Second Tithe dedications without adding its fifth, it is not redeemed<sup>252</sup>. What is the difference between dedications and Second Tithe? <sup>248</sup>Rebbi La said, because a person usually adds to his dedications. Rebbi Jonah asked, that is following

him who says that it is not his property<sup>249</sup>. But for him who says it is his property, what is the difference between Second Tithe and dedications? Rabbi Yose said, did you not already give the reason? Because a person usually adds to his dedications.

245 This piece is a composite of two paragraphs in *Ma'aser Šeni* 4:3, Notes 63-68. In the order of subjects, the sources differ from one another.

246 These rules are purely rabbinical in character.

247 This is a *non sequitur*. The text in *Ma'aser Šeni* shows that the text is garbled; the text which belongs here is the other one starting with "R. La said," with Note 248.

248 If a person overpays for redemption of his Temple dedications, it is a natural thing to do. But if he overpays for Second Tithe, the amount set aside for consumption in Jerusalem would be a mixture of sacred and profane money.

249 This refers to R. Meïr's opinion regarding Second Tithe; cf. *Ma'aser Šeni* 4:3, Note 67.

250 This belongs after the text noted <sup>248</sup> and refers to the answer given in Note 248 (cf. *Ma'aser Šeni* 4:3 Note 66.)

251 Even though adding the fifth in general is a biblical obligation; *Lev.* 27:13,15,19.

252 Even though the obligation of adding a fifth to the redemption money (*Mishnah Ma'aser Šeni* 4:2) is not supported by a verse.

253 This is the appropriate answer to the question following Note 252. The Temple treasurer may attach the dedicator's property to collect the fifth; redemption of Second Tithe is a private matter.

הרי (19a line 76) תני. ההקדשות בשלשה. הדין דתימר במקדיש גוף השדה. אבל אם אמר. הרי עלי מנה להקדש. נישמעניה מהדא ערכים המיטלטלין בג'. וכי יש ערכים שאין מיטלטלין. רבי יעקב בר אחא רבי שמעון בר ווא בשם רבי חנינה. האומר. ערפי עלי. ובה לסדרו מקרקע. שמין לו בעשרה. ממטלטלין בשלשה. האומר ערפי עלי. אינו כאומר. דמי שדי עלי. אבל אם אמר. הרי עלי מנה להקדש. שמין לו בשלשה. לכשיצאשיר נידון בהשג יד.

2 בג' בשלשה וכי | מ - שאין | מ שאין 3 ווא | מ בא האומ' | מ באומ' ערכי | מ הרי ערכי 4 מקרקע | מ מן הקרקע ממטלטלין בשלשה | מ מן המטלטלין שמין לו בשלשה ערכי | מ הרי ערכי 5 מנה | מ מאה מנה

It was stated: "Temple dedications by three [appraisers]." That is, if one dedicated the body of a field. But if he said, I am vowing a mina for the Temple, <sup>254</sup>let us hear from the following: "Appraisal of movables by three [appraisers]." Do there exist appraisals not of movables<sup>255</sup>? Rabbi Jacob bar Aha, Rabbi Simeon bar Abba in the name of Rabbi Hanina: If somebody says, I am vowing my appraisal, and comes to settle his debt by real estate,

one appraises it by ten [people], by movables by three<sup>257</sup>. Is one who says, I am vowing my appraisal not like one who says, I am vowing my field's value<sup>256</sup>? But if he said, I am vowing a mina for the Temple, one appraises him by three [people]. Should he become rich, he will be judged by what he can afford<sup>257</sup>.

254 From here to the end of the Halakhah there exists a copy in *Megillah* 4:4 (75b l. 16ff., מ).

255 By definition, "appraisals" refers to the sums of money detailed in *Lev.* 27:1-8. Money always is movable.

256 Since the rules of appraisal are the same in both categories.

257 This is difficult to understand; since the text is confirmed by two copies, it cannot be emended. By biblical law, a reduction of payments for the poor is mandated only for appraisals (*Lev.* 27:8),

not for dedications of specified sums. The reduction, based on what he can afford, is determined by a committee of three which must include a Cohen. If the poor person paid only part of the reduced sum and then becomes rich, the original sum is reinstated as soon as he can afford it. If the poor person made his vow (in the *Megillah* version for 100 minas) in order to induce God to make him rich so he may fulfill his vow, it might be in the interest of the Temple to wait with the collection of the debt until the person became affluent.

(19b line 6) תני. העבדים והשטרות והמטלטלין אין להן איגרת בקורת. רבי יודן בר פזי אמר. אכרזה. עולה בר ישמעאל אמר. עבדים שלא יכרחו. השטרות והמטלטלין שלא יגנבו. רבי בא בר כהנא בעא קומי רבי יוסי. לית הדא אמרה שעבדים ניפדין בשלשה. אמר ליה. אין. והתניין בקרקעות תשעה וכהן ואדם כיוצא בהן. אמר ליה. אכין. אדם דכא בן חורין הוא. חנינה בן שלמיה אמר בשם רב. אתא עובדא קומי רבי ובעא למיעבד כרבנן. אמר ליה רבי לעזר בן פרטא בן רבי לעזר בן פרטא. רבי. לא כן לימדתנו משום זקינך. אלא אם עשו איגרת בקורת. אמר ליה. אין. וחזר ועבד כרבן גמליאל.

1 העבדים והשטרות והמטלטלין | מ עבדים ושפחות ומיטלטלין | בקורת | מ ביקורת - | כמ מהו איגרת ביקורת בן | כמ בר 2 אמ' | כ אומ' השטרות והמטלטלין | כ ושטרות ומטלטלין מ שפחות ומיטלטלין יגנבו | מ יגנבו 3 כהנא | כמ כהן יוסי | מ יוסה שעבדים נפדין | כ שהעבד נפדה 4 והתניין | מ אמ' ליה. והא תניין בקרקעות | מ ובקרקעות דכא | כ שכן מ דהכא 5 חנינה | מ חנינה בן | כמ בר אמ' | מ למיעבד | כמ מיעבד 6 בן בן | כמ בן בנו של משום | כמ בשם | מ אם | כמ בן | 7 אמ' ליה. אין. | כ וקיבלה מ - | וחזר | וחזר ביה גמליאל | כמ שמעון בן גמליאל

<sup>258</sup>It was stated: One does not make public tender for slaves, securities, and movables. [What is public tender?] Rabbi Jehudah ben Pazi said, announcement. Ulla bar Ismael said, slaves lest they flee, securities and

movables lest they be stolen. Rabbi Abba bar Cohen asked before Rabbi Yose: Does this not imply that a slave be redeemed in front of three people? He answered him, yes. But did we not state: “Real estate nine and a Cohen. The same holds for humans”? He answered him, but the human here is a free person.

Hanania bar Šelemiah in the name of Rav: A case came before Rabbi who wanted to act following the rabbis. Rabbi Eleazar ben Proteus, the grandson of Rabbi Eleazar ben Proteus, said to him: Rabbi, did you not teach us in your grandfather’s name, “except if he offered public tender”? He answered, yes, changed his mind, and acted following Rabban Gamliel.

258 The origin of these paragraphs is in *Ketubot*. The sentence in brackets is not in the text here, it is from *Ketubot*, but is necessary to provide continuity of the text. found in *Megillah*, makes sense only in

**משנה ד:** דיני נפשות בעשרים ושלשה. הרובע והתרבע בעשרים ושלשה שְׁנֵי אֲמָר וְהָרִגְתָּ אֶת־הָאִשָּׁה וְאֶת־הַבְּהֵמָה וְאָמַר וְאֶת־הַבְּהֵמָה תִּהְיֶה. שור הנסקל בעשרים ושלשה שְׁנֵי אֲמָר הַשּׁוֹר יִסָּקַל וְגַם־בְּעֵלָיו יוֹמָת כְּמִיתַת הַבְּעֵלִים כִּן מִיתַת הַשּׁוֹר. הַזָּאֵב וְהָאֲרִי הַדּוֹב וְהַנֶּמֶר וְהַבְּרָדָלֵס וְהַנֶּחֱשׁ מִיתָתוֹ בְּעֵשְׂרִים וְשָׁלֹשׁ. רַבִּי לִיעֶזֶר אָמַר כָּל הַקּוֹדֵם לְהַרְגֵן זָכָה. רַבִּי עֲקִיבָה אָמַר מִיתָתוֹ בְּעֵשְׂרִים וְשָׁלֹשׁ.

**Mishnah 4:** Capital crimes [are judged] by 23. The participants in active or passive bestiality<sup>259</sup> [is judged] by 23, as it is said, *you shall slay the woman and the animal*<sup>260</sup>, and it says, *and you shall slay the animal*<sup>261</sup>. The bull to be stoned<sup>262</sup> [is judged] by 23, as it is said, *the bull shall be stoned, also its owner shall die*<sup>263</sup>; like the owner’s death sentence so is the ox’s death sentence. The wolf and the lion, the bear, and the tiger, and the panther, and the snake are sentenced to death by 23<sup>264</sup>. Rabbi Eliezer says, anyone quick to kill them is meritorious<sup>265</sup>; Rabbi Aqiba says, they are sentenced by 23.

259 Whether human or animal; the additional statement is needed only for the animal.

260 Lev. 20:16. Since woman and animal are mentioned together, the animal can be condemned only by a court empowered to

judge the woman who had sex with the animal.

263 Ex. 21:29.

261 Lev. 20:15, about male bestiality.

264 He does not need permission; it is no case for a court.

262 Which had killed a human.

19b line 15) **פסקא**. דייגי נפשות בעשרים ושלשה. רבי אבהו שאל. שור הנסקל קרבי מאיר מהו ליתן כסף בשלשה ויסקל בעשרים ושלשה. אמר ליה רבי יוסי בירבי בון. שור הנסקל כולו קמון הוא וגזירת הכתוב שישקל.

**Paragraph.** “Capital crimes [are judged] by 23.”<sup>265</sup> Rebbi Abbahu asked: Following Rebbi Meir, should an ox which is stoned have to pay damages by a court of three and be stoned by 23? Rebbi Yose ben Rebbi Abun told him, the rules of an ox which is stoned are all about money; it is a decision of the verse that it should be stoned.

265 End of Halakhah 1, Notes 103-106.

19b line 18) אגנטוס הגמון שאל לרבי יוחנן בן זכאי. השור יסקל וגם בעליו יומת. אמר ליה. שותף ליסטים כליסטים. וכשנצא אמרו לו תלמידיו. רבי. לזה דחיתה בקנה. לנו מה את משיב. אמר להן. כתוב השור יסקל וגם בעליו יומת. כמיתת הבעלים כך מיתת השור. הקיש מיתת בעלים למיתת השור. מה מיתת הבעלים בדרשה וחקירה בעשרים ושלשה. אף מיתת השור בדרשה וחקירה בעשרים ושלשה.

General<sup>266</sup> אגנטוס asked Rebbi<sup>267</sup> Johanan ben Zakkai: *the bull shall be stoned, also its owner shall die*<sup>263</sup>? He answered, the robber's<sup>268</sup> partner is like the robber. When he had left, his students asked him, rabbi, this one you pushed away with a cane<sup>269</sup>; what are you telling us? He said to them, it is written, *the bull shall be stoned, also its owner shall die*, like the owner's death sentence so is the ox's death sentence. Since the owner's death sentence would be by a court of 23, investigation<sup>270</sup> and cross-examination<sup>271</sup>, so the ox's death sentence is by a court of 23, investigation and cross-examination<sup>272</sup>.

266 Greek ἡγεμῶν “leader, commander.” In 19c l. 61 (Note 366) his name is Antoninus, in 19d l. 4 (Note 373) Antigonos. The story has many parallels in which various forms of the name appear.

Jastrow and Krauss think of Quietus, a general of Trajan not likely to have conversed with a person who died under Vespasian. A Genizah text shows that אגנטוס is the correct form. {Perhaps it is not



a name but a title, εὐγενής “noble, well-born.”(E. G.)}

267 His title should be Rabban.

268 Greek, ληιστής, ληϊστής.

269 Since the owner is not executed, the answer cannot be correct.

270 An exact investigation into the circumstances of the crime; the evaluation

of the evidence is within the purview of the court.

271 The determination when, where, and how the crime was committed.

Discrepancies in testimony about these questions make prosecution impossible; cf. Mishnah 5:1-2.

272 *Mekhilta dR. Simeon ben Iohai* 21:29.

(fol. 17d) **משנה ה:** אין דנין לא את השבט ולא את נביא השקר ולא את כהן הגדול אלא על פי בית דין של שבעים ואחד. ואין מוציאין למלחמת הרשות אלא על פי בית דין של שבעים ואחד. אין מוסיפין על העיר ועל העזרות אלא על פי בית דין של שבעים ואחד. אין עושין סנהדריות לשבטים אלא על פי בית דין של שבעים ואחד. אין עושין עיר הנדחת בספר ולא שלש אכל עושין אחת או שתים. בית דין של שבעים ואחד. ואין עושין עיר הנדחת בספר ולא שלש אכל עושין אחת או שתים.

**Mishnah 5:** One judges neither a tribe<sup>273</sup>, nor a false prophet<sup>274</sup>, nor the High Priest<sup>275</sup>, except by the court of 71 [judges]. One may start a war of choice<sup>276</sup> only by the court of 71 [judges]<sup>334</sup>. One may add to the City<sup>277</sup> or to the Temple courtyards only by the court of 71 [judges]. One appoints high courts for the tribes<sup>278</sup> only by the court of 71 [judges]. One declares a town as deviant<sup>279</sup> only by the court of 71 [judges]; one does not declare a border town as deviant, nor three together, but one may declare one or two.

273 According to the Halakhah, either the head of the tribe or a case in which one of the parties is a tribe. The only court of 71 members was the Supreme Court, Mishnah 6.

274 *Deut.* 18:20.

275 Accused of a crime.

276 Any war except a defensive war started by an outside attacker.

277 The part of Jerusalem where sacrifices may legally be eaten. Cf. Mishnah *Ševuot* 2:2.

278 Required by *Deut.* 16:19.

279 A town collectively practicing idolatry, which must be destroyed, *Deut.* 13:13-19.

(19b line 24) **מתני'.** אין דנין לא את השבט כול'. איתא חמי. שנים אין דנים לא כל-שכן שבט. אמר רבי מתתיהו. בנשיא שבטים היא מתניתא. אמר רבי ליעזר. בחורש שבין שני שבטים היא מתניתא.

**Mishnah:** “One judges neither a tribe,” etc. Come and look: One does not try two people together<sup>280</sup>, so much less an entire tribe? Rabbi Mattaniah said, the Mishnah speaks of the head of the tribe<sup>281</sup>. Rabbi Eliezer<sup>282</sup> said, the Mishnah speaks about a forested area between two tribes<sup>283</sup>.

280 Mishnah 6:8.

282 Read: R. Eleazar.

281 A criminal trial. In the Babli, 15b, this is reported in the name of a Rav Mattanah.

283 A border dispute.

(19b line 26) אמר רבי זירא. נאמר כאן ודון ונאמר להלן ודון בודון דברו הנביא. מה ודון שנאמר להלן בנביא השקר הכתוב מדבר. אף ודון שנאמר כאן בנביא השקר הכתוב מדבר. אצר רבי חזקיה. נאמר כאן דיבר ונאמר להלן אשר ידבר הנביא בשם יי. מה דיבר שנאמר להלן בנביא השקר הכתוב מדבר. אף דיבר שנאמר כאן בנביא השקר הכתוב מדבר.

Rebbi Ze'ira said, it says here “criminal” and it says there “criminal”, *the prophet said it criminally*<sup>284</sup>. Since about “criminal” used there, the verse speaks about a false prophet, also about “criminal” used here, the verse speaks about a false prophet<sup>285</sup>. Rebbi Hizqiah said, it says here “spoke” and it says there, *that the prophet would speak in the Eternal's name*. Since about “spoke” used there, the verse speaks about a false prophet, also about “spoke” used here, the verse speaks about a false prophet.<sup>286</sup>

284 *Deut.* 18:22, the law of the false prophet. “Here” refers to the judge who refuses to obey the rulings of the Supreme Court, who acts criminally in his disobedience and is tried before the Supreme Court, *Deut.* 17:8-12.

285 The verse does not speak about a false prophet but about a lower court judge who refuses to accept the authority of the Supreme Court. What is meant is that the procedural details given for the treatment of the rebellious judge also apply to the

treatment of the false prophet. The argument is known as הקש “trap”. If the same word is used in two contexts, details found in one context and left indeterminate in the other can be transferred from one to the other. As a hermeneutic principle, *heqqesh* should be used only if the word in question is not loaded with additional meaning. But in *Sifry Deut.* 178, the expression “criminal” is interpreted to mean that the false prophet may be prosecuted

only if criminal intent can be shown, not if he acted in error.

In the Babli, 16a, the argument is in the name of R. Yose ben Hanina.

286 It seems that the *heqdeš* should not be about the verb דָּבַר but the noun דָּבָר

“pronouncement”, referring to the judgment of the Supreme Court in case of the rebellious judge, *Deut.* 17:10, and the false prophet who pronounces in the Eternal’s name, *Deut.* 18:20.

(19b line 32) **מתני'.** אין מוציאין למלחמת הרשות אלא על פי בית דין של ע"א. רבי יהודה אומר. פתחילה. ויעל דוד בדבר גד זה מלך ונביא. יחל שלמה לבנות את ביתי אליהו ישראל בהר המורלה אשר נראה לו אילו אורים ותומים. לדיד אביהו זה סנהדרין. שאל אביד וגדד זקנד ולאמרו לו. השיר וילך אחריהם הושעלה נחצי שרי יהודה. תודות ואעמדה שתי תודות גדולות ותהלוכות למיין מעל החומה לשער האשפות. אמר רבי שמואל בר יודן. מה כתוב מהלכות לא תהלכות. אלא בניטלות על ידי אחר.

רב הונא בר חייה בשם רב מיייתי לה דבר תורה. ככל אשר אני מראה אותך את תבנית המשכן ואת... כל-כלי וכן תעשה: כן תעשו לדורות. משה זה מלך ונביא. אחר אילו אורים ותומים. אספה-לי שבעים איש מזקני ישראל זה סנהדרין. שאל אביד וגדד וגו'. השיר וילך אחריהם הושעלה נחצי שרי יהודה. תודות ואעמדה שתי תודות גדולות ותהלוכות למיין מעל החומה לשער האשפות. אמר רבי שמואל בר יודן. מה כתוב מהלכות לא תהלכות. אלא בניטלות על ידי אחר.

**Mishnah.** “One may start a war of choice only by the court of 71 [judges]<sup>287</sup>. <sup>288</sup>Rebbi Jehudah says, as at the start: <sup>289</sup>*David ascended following Gad’s word, that is king and prophet.* <sup>290</sup>*Solomon started to build the Temple of the Eternal, Israel’s God, on Mount Moriah where He had appeared to him, there are Urim and Tummim.* <sup>290</sup>*To his father David, this is the Synhedrion,* <sup>291</sup>*ask your father and he will tell you, your Elders and they will speak to you.* Song, *after them went Hoshiaia and half the officers of Judea*<sup>292</sup>. Thanksgiving sacrifices, *I put up two large thanksgiving sacrifices being in procession going to their right on the wall going to the dung gate*<sup>293</sup>. Rebbi Samuel bar Yudan said, what is written, walking? No, being in procession, only being taken by others<sup>294</sup>.

Rav Huna bar Hiyya<sup>295</sup> in the name of Rav quotes it from the words of the Torah. *As all that I am showing you, the shape of the building and the shape . . . of all its vessels, so you shall execute*<sup>296</sup>. So you shall execute in all generations. Moses is king and prophet. Aaron represents Urim and

Tummim. *Assemble for me seventy men from the Elders of Israel*<sup>297</sup>, that is the Synhedrion; *ask your father and he will tell you*, etc. Song, *after them went Hoshiaia and half the officers of Judea*. Thanksgiving sacrifices, *I put up two large thanksgiving sacrifices being in procession going to their right on the wall going to the dung gate*. Rabbi Samuel bar Yudan said, what is written, walking? No, being in procession, only being taken by others.

287 This probably should be deleted.

288 The following four paragraphs do not refer to the quote of the Mishnah but are a commentary to Mishnah *Ševuot* 2:2: "One only adds to the city and the Temple courtyards by king and prophet, Urim and Tummim, the Synhedrion of 71 members, two thanksgiving sacrifices, and song." Only the walled part of the city of Jerusalem counts as "before the Eternal", where family sacrifices may be consumed (*Deut.* 12:18,14:23); the suburbs are "countryside" which does not count for pilgrimage and sacrifice. Since there were no Urim and Tummim in the Second Temple, Pharisees did not consume sacrifices in the parts of Jerusalem which were added in Hasmonean and later times (Note 306).

In *Ševuot*, only beginning and end of the discussion here are quoted as a reference.

289 *2S.* 24:19, speaking of David going to buy the Temple area.

290 *2Chr.* 3:1. The verse is misquoted in several places.

291 *Deut.* 32:7. The persons one asks to get definitive answers to all questions of religion are the members of the High Court of 71 members.

292 *Neh.* 12:32. This refers to the members of the Synhedrion walking behind the thanksgiving sacrifices (*Ševuot* 15b); the musical part of the ceremony is described in verses 41,42.

293 *Neh.* 12:31.

294 In his opinion, the sacrifices were not walked on the wall but were carried. In the opinion of the Babli, *Ševuot* 15a and Tosephta *Sanhedrin* 3:4, not the animals were carried but the leavened bread required for a thanksgiving sacrifice (*Lev.* 7:13). It is possible that this is meant here.

295 In the Babli, *Sanhedrin* 16b, he is referred to as Rav Shimi bar Hiyya (in one ms. Shimi bar Ashi; this can be disregarded, replacing a *hapax* by a frequently quoted name).

296 *Ex.* 25:9. The final clause in the sentence seems to be redundant; it is explained as referring to future buildings.

297 *Num.* 11:16.

(19b line 46) כִּיצַד הָיוּ מְהֻלָּכוֹת. רַבִּי חִיָּה רַבָּה וְרַבִּי שְׁמַעוֹן בְּרַבִּי. חַד אָמַר. זֶה כִּנְגֵד זֶה. וְחִרְנָא אָמַר. זֶה אַחֵר זֶה. וְשִׁנְיָהּ מִקְרָא אֶחָד דּוֹרְשִׁין. וְהַתּוֹדָה הַשְּׁנִיתָה הַהוּלָכֶת לְמוֹל וְאֵי אַחֲרֶיהָ. מֵאן דָּמַר. זֶה כִּנְגֵד זֶה. וְהוּא יֵשֵׁב מִמְּלִי. וּמֵאן דָּמַר. זֶה אַחֵר זֶה. וּמִלֵּק אֶת־רֹאשׁוֹ מִמוֹל עָרְפוֹ. וּמֵאן דָּמַר. זֶה כִּנְגֵד זֶה. נִמְצָא כָּל־מִקּוֹם וּמִקּוֹם מִתְּכַפֵּר בְּתוֹדָה אַחַת. וּמֵאן דָּמַר. זֶה אַחֵר זֶה. נִמְצָא

קל-מקום ומקום מתכפר בשתי תודות. מאן דמר. זו אחר זו. יאות דתנינן. הפנימית נאכלת וחיצונה נשרפה. ומאן דמר. זו כנגד זו. אי זו היא הפנימית. זו ששמוכה לבית. רבי יסא בשם רבי יוחנן. על פי נביא נאכלת. אמר רבי יצחק. תניי תמן. נביא יש כאן אורים ותומים למה אני צריך. אשכח תני. רבי יהודה אומר. צריך אורים ותומים.

<sup>298</sup>How did the processions go? The elder Rabbi Hiyya and Rabbi Simeon ben Rabbi. One said, one opposite the other; the other said, one after the other; both are explaining the same verse: *The second thanksgiving sacrifice went לְמִוֶּלַח and I after it*<sup>299</sup>. He who said, one opposite the other, *and he dwells opposite me*<sup>300</sup>. But he who said, one after the other, *he should break off its head behind its neck*<sup>301</sup>. For him who said, one opposite the other, it turns out that every place was purified by one thanksgiving sacrifice<sup>302</sup>; for him who said, one after the other, it turns out that every place was purified by two thanksgiving sacrifices<sup>303</sup>. For him who said, one after the other, this is correct following what he had stated: “the inner one is being eaten, the outer one is being burned.”<sup>304</sup> For him who said, one opposite the other, what is the inner one? The one closer to the Temple. Rabbi Yasa in the name of Rabbi Johanan: It was eaten on the instruction of a prophet<sup>305</sup>. Rabbi Ze’ira said, they state there: Since a prophet is there, for what do I need Urim and Tummim<sup>306</sup>? It was found stated: Rabbi Jehudah says, Urim and Tummim are needed<sup>307</sup>.

298 Ševuot 15b, the entire paragraph.

299 Neh. 12:38, in MT למואל. According to Gesenius, one has to read מואל as contraction of מואל “not first, not with it”. This justifies both meanings quoted here, “opposite” and “after”.

300 Num. 22:5.

301 Lev. 5:8.

302 In principle, one sacrifice would suffice if the procession went around the entire wall.

303 Since we do not expect two sacrifices for the same purpose, one has to find differences of purpose for the two.

304 Tosephta 3:4, Megillat Ta’anit 6. The Babli, *loc. cit.*<sup>299</sup> suggests that the first makes sacrifices possible; therefore, it has to be burned outside the Temple. The second one then is a legitimate thanksgiving sacrifice, most of which has to be eaten by the priests as public well-being sacrifice (Mishnah Zevahim 5:5).

305 Who defined the meaning of “inner” and “outer”?

306 The nature of the Urim and Tummim oracle already was no longer known when the Second Temple was built; Nehemiah (7:65) uses the expression “the coming of a Cohen with Urim and Tummim” as

synonym with “the coming of the Messiah.”

The requirement of Urim and Tummim disqualifies all parts of Jerusalem not forming part of Solomon’s city.

307 In the Babli, *Ševuot* 16a, it is a dispute among Babylonian Amoraïm whether Nehemiah’s ceremony, without king and

oracle, was a valid dedication of the rebuilt city of Jerusalem or whether it was a token ceremony to re-establish the intrinsic sanctity of Jerusalem created by Solomon’s Temple. The quote here, from an otherwise unknown *baraita*, qualifies the second opinion as minority opinion of a Tanna.

(19b line 56) אָמַר רַבִּי אֲבָהוּ. אֵתְּפִלְגֵּנוּ רַבִּי יוֹחָנָן וְרִישׁ לְקִישׁ. חָד אָמַר. בּוֹנִין וְאַחֵר בֶּדֶּ  
מִקְדִּישִׁין. וְתִרְנָה אָמַר. מִקְדִּישִׁין וְאַחֵר בֶּדֶּ בּוֹנִין. מָאן דָּמַר. בּוֹנִין וְאַחֵר בֶּדֶּ מִקְדִּישִׁין. אִין  
רוֹאִין אֶת הַמַּחֲצוֹת כְּאֵלֵי הֶן עוֹלוֹת. בִּיקְשׁוּ לְהוֹסִיף עַל הֵיכַל בְּמָה מוֹסִיפִין. בְּשִׁתֵּי הַלֶּחֶם.  
וּמִקְדִּישִׁין בְּיוֹם טוֹב. אֶלָּא בְּלֶחֶם הַפָּנִים. וּמִקְדִּישִׁין בְּשַׁבָּת. אֶלָּא בְּלֵילִיהָ. וּמִקְדִּישִׁין  
בְּלֵילִיהָ. אָמַר רַבִּי יוֹסִי בִּירְבִי בּוֹן. בְּמִנְחַת מֵאֶפֶה. נִיחָה בְּעֲלִיתָן מִן הַגּוֹלָה שֶׁהִקְרִיבוּ וְאַחֵר בֶּדֶּ  
קִידָשׁוֹ. בְּהַכְנִסְתָּן לְאַרְץ בְּמָה קִידָשׁוֹ. אָמַר רַבִּי יוֹסִי בִּירְבִי בּוֹן. בְּשִׁתֵּי תוֹדוֹת הַבָּאוֹת מִנוֹב  
וְגִבְעוֹן.

Rebbi Abbahu said, Rebbi Johanan and Rebbi Simeon ben Laqush disagreed. One said, one builds and afterwards one dedicates<sup>308</sup>. The other one said, one dedicates and afterwards one builds<sup>309</sup>. For him who says, one builds and afterwards one dedicates, one does not say that the partitions are as if built up<sup>310</sup>. If one desires to add to the Temple Hall, by which means does one add<sup>311</sup>? By the two loaves<sup>312</sup>. Does one dedicate on a holiday<sup>313</sup>? Then by the Shew Bread. Does one dedicate on the Sabbath<sup>314</sup>? Then in the night<sup>315</sup>. Does one dedicate in the night<sup>316</sup>? Rebbi Yose ben Rebbi Abun said, with a baked flour offering<sup>317</sup>. One understands that on their return from the diaspora they sacrificed and then dedicated. When they entered the Land,<sup>318</sup> with what did they dedicate? Rebbi Yose ben Rebbi Abun said, with two thanksgiving sacrifices coming from Nob<sup>319</sup> and Gibeon.

308 One builds as if the buildings were profane. Only when the Temple enclosure is complete does one dedicate the Temple area, and when the walls of Jerusalem are rebuilt does one dedicate the city. During the building period one is not restricted by all the rules applying to the Temple area. This is possible since the dedication by

Solomon was annulled by the destruction of the Temple. One has to assume that it is possible to dedicate the area of the altar and its enclosure without dedicating the Temple, as done in the time of the first return from Babylonia under Cyrus, *Ezra* 3:3,6.

309 He holds that the dedication by Solomon is permanent. Therefore, any

building must be done under restrictive rules (but it can be built in stages, cf. Mishnah *Idiut* 8:6). If the outline of the Temple enclosure or the original city walls was still visible in Zerubabel's time, no rebuilding was necessary in order to restore the service of the altar.

310 They actually have to be restored before Temple service can be resumed whole or in part.

311 In imitation of the rules given for dedication of the city of Jerusalem under Nehemiah, any dedication must involve a sacrifice. The Babli, *loc. cit.*<sup>299</sup>, insists that the sacrifice be used in the place to be dedicated. This leads to a catch-22 situation since a sacrifice can be dedicated only after the dedication of the holy place. There is no reason to assume that the Yerushalmi accepts this reasoning.

312 The two loaves of leavened bread dedicated on Pentecost to permit use of new wheat, *Lev.* 23:17. This is in imitation of the leavened bread used for the dedication of the city, cf. <sup>295</sup>. A parallel discussion is in the Babli, *Ševuot* 15a/b.

313 Since the dedication has far-reaching legal consequences, it has the status of an acquisition, which is not acceptable on

Sabbath or holiday, *Is.* 58:13. In addition, the Babli points out that the dedication of the leavened breads is the slaughter of the accompanying well-being sacrifice; then the dedication would not be by bread.

314 The Shew Bread is removed from the sanctuary on the Sabbath, *Lev.* 24:8. It becomes available for secondary use on the Sabbath, when it cannot be so used.

315 The following evening, after the end of the Sabbath.

316 *Ex.* 30:2 prescribes that the Tabernacle be erected during daytime. This rule then is extended to include all building activity of the Temple.

317 The daily flour offering of the High Priest, *Lev.* 6:12-16.

318 When they entered the Land, they had the Tabernacle which was dedicated in the desert. What one asks here is, how was Solomon's Temple dedicated?

319 The priests' settlement at Nob already was destroyed at the time when the priests from Nob resided at Anatot. The active place of worship was Gibeon, but "Nob and Gibeon" is used as a legal term to indicate the status of holy places after the destruction of Shiloh, before the building of the Temple; cf. Mishnah *Zevahim* 14:7.

התחתונה והעליונה אין קדושתה גמורה. שני בצים היו שם. התחתונה והעליונה אין קדושתה גמורה. (19b line 64) אבא שאול אומר. שני בצים היו שם. התחתונה והעליונה אין קדושתה גמורה. התחתונה נתקדשה בכולן. והעליונה בעלייתן מן הגולה לא במקל ולא באורים ותומים. לפיכך התחתונה עם הארץ אוכלין שם קדשים קלין ומעשר שני וחבירם אוכלין שם קדשים קלין אבל לא מעשר שני. והעליונה עם הארץ אוכלין שם קדשים קלין אבל לא מעשר שני. וחבירם אוכלין שם קדשים קלין ומעשר שני. מפני מה לא קדשוה. מפני שהיתה תורפת ירושלם שם והיתה יכולה ליכבש משם.

<sup>320</sup>Abba Shaul says, two subdivisions<sup>321</sup> were there, the lower and the upper, whose sanctification was not complete. The lower one was dedicated

with a full ceremony, but the upper one only when they came from the diaspora, without a king and without Urim and Tummim. Therefore, in the lower one the vulgar<sup>322</sup> eat family sacrifices and Second Tithe; Fellows eat there family sacrifices but not Second Tithe<sup>323</sup>. In the upper one, the vulgar eat family sacrifices but not Second Tithe<sup>324</sup>; Fellows eat there family sacrifices and Second Tithe<sup>325</sup>. Why did they not sanctify it? Because it was the vulnerable spot of Jerusalem; it could be conquered from there<sup>326</sup>.”

320 This *baraita* exists in another three versions: Tosephta 3:4 (T), Babli *Sevuot* 15b (B), *Megillat Ta'anit* 6 (M). A detailed discussion of all four texts, to be used with due caution, is in Note 22 to volume 3 of H. Graetz's *Geschichte der Juden*.

321 ביצין corresponds to the readings of B,T, ביציעין, ביציעין, ביציעין by degeneration of the guttural. One has to accept Graetz's derivation from בצע “to split” against Rashi's *marais* “marsh.” M has “places on the Mount of Olives”, an emendation by a person who did not understand the text.

322 For the notions of “vulgar” and “Fellow”, cf. Introduction to Tractate *Demay*, p. 349.

323 Since family sacrifices have more holiness than Second Tithe, one has to

accept the reading of M: “family sacrifices and certainly Second Tithe.”

324 Because these were living quarters in the expanding city.

325 Read with B,T,M: “neither family sacrifices nor Second Tithe.”

327 This defines the “upper subdivision” as the suburb between the second, Herodian wall and the incomplete third wall of Agrippas I. The lower subdivision then is the part of the old city between the Hasmonean and Herodian walls. Since the third wall could not be completed, the dedicated part of the city could not be expanded there. The subdivision is called *upper* because it slopes upwards from the Damascus gate to the North. The lower subdivision could have been dedicated by a ceremony imitating Nehemiah's.

(19b line 71) אין עוֹשִׂין סְנֵהֲדָרִיּוֹת לְשִׁבְטִים. תִּלְמוּד לומר לְשִׁבְטִים וְשִׁפְטִים אֶת־הָעָם.  
אין עוֹשִׂין עִיר הַנִּדְחָת. רַבִּי יוֹחָנָן בֶּן־שֵׁם רַבִּי הוֹשַׁעְיָה. תִּלְתָּא אֲמֹרִין. חַד אָמַר. אַחַת עוֹשִׂין  
שְׁתֵּים אֵין עוֹשִׂין. וְחֲרָנָא אָמַר. הַסְמוּכוֹת עוֹשִׂין הַמְּפֹזְרוֹת אֵין עוֹשִׂין. וְחֲרָנָא אָמַר. מְפֹזְרוֹת  
אֵין עוֹשִׂין כָּל־עֵקֶר שְׁמָא נְפֻצוּ גוֹיִים וְנִבְּאוּ לְאַרְץ יִשְׂרָאֵל. וְאֵית דְּבָעִי מִימַר. שְׁמָא נְפֻצוּ  
הָאֻיָּבִים וְנִבְּאוּ לִידֵי קֶרְחָה.

“One only appoints high courts for the tribes.” The verse says<sup>327</sup>, *for your tribes, they shall judge*.



“One only declares a town to be deviant.” Rabbi Johanan in the name of Rabbi Hoshai: <sup>328</sup>Three Amora'im, one says, one makes<sup>329</sup> one but not two. The other said, clusters one makes<sup>330</sup>, dispersed ones one does not make. The other said, dispersed<sup>331</sup> one does not make at all, lest Gentiles spread and come to the Land of Israel; some want to say that enemies should not spread and lay waste.

327 *Deut.* 16:18. For the argument behind the quote, cf. *Makkot* 1:17 (Note 74), Babli 16b.

328 In the Babli, 16b, the first opinion is attributed to Rav, the converse of the second to R. Simeon ben Laqish, the third opinion to R. Johanan.

329 No court is empowered to declare more than one town as deviant at the same time.

330 Two neighboring towns can be considered as one. There is no need to emend the Yerushalmi to follow the Babli.

332 This should read, or be interpreted as, “border town” as in the Mishnah.

**משנה ו' סנהדרין גדולה היתה של שבעים ואחד וקטנה של עשרים ושלשה. ומניין לגדולה שהיא של שבעים ואחד. שנאמר אסף לי שבעים איש מזקני ישראל ומשה על גביהן הרי שבעים ואחד. רבי יהודה אומר. שבעים. ומניין לקטנה שהיא של עשרים ושלשה. שנאמר ושפטו העדה והצילו העדה עדה שופטת ועדה מצלת הרי כאן עשרים. ומניין לעדה שהיא עשרה. שנאמר עד מתי לעדה הרעה הזאת יצאו יהושע וכלב.**

**Mishnah 6:** The High Synhedrion<sup>332</sup> had 71 members and a lower one 23 members. From where that the High Court has 71 members? For it is said<sup>333</sup>: *Assemble for me 70 men of the Elders of Israel*, and Moses was presiding, that makes 71. Rabbi Jehudah says, 70<sup>334</sup>. From where that a lower court has 23 members? For it is said, *the congregation shall judge, the congregation shall save*<sup>335</sup>. One congregation judges, one congregation saves, this makes twenty. And from where that a congregation consists of ten persons? As it is said, *how long this evil congregation*<sup>336</sup>, without Joshua and Caleb.

332 As usual in rabbinic sources, the political institution of the Synhedrion is identified with the juridical of the High

Court, projecting Jabneh arrangements into Temple times.

333 *Num.* 11:16.

334 He is known for the correctness of his historical traditions. For the political functions of a Synhedrion, an even number of members is acceptable. The judicial functions were exercised by committees of

23 each.

335 *Num.* 35:24,25 speaking of the trial of the homicide; cf. *Sifry Num.* #160.

336 *Num.* 14:27, interpreted as speaking of the ten bad spies.

(19c line 2) **מתני'.** סנהדרין גדולה כול'. רבי בא רבי יסא בשם רבי יוחנן. נאמר כאן עדה ונאמר להלן עד-מתי לעדה הרעה. מה לעדה האמורה להלן עשרה אף כאן עשרה. אמר רבי סימון. נאמר כאן תוד' ונאמר להלן תוד'. מה תוד' שנאמר להלן עשרה אף כאן עשרה. אמר ליה רבי יסא בירבי בון. אם מתוד' את' יליף לה סגין אינון. אלא נאמר כאן בני ישראל ונאמר להלן בני ישראל ובזאב בני ישראל לשבד. מה בני ישראל שנאמר להלן עשרה אף כאן עשרה.

**Mishnah:** “The High Synhedrion,” etc.<sup>337</sup> Rebbi Abba, Rebbi Yasa in the name of Rebbi Johanan: It says here “congregation”, and it says there “congregation”, *how long the evil congregation*. Since “congregation” there means ten, so here also ten.

Rebbi Simon said, it is said here “amid”, and it is said there “amid”. Since “amid” there means ten, so here also ten. Rebbi Yose ben Rebbi Abun told him, if you want to infer from “amid”, there are too many. But it is said here “the sons of Israel”, and it is said there, “the sons of Israel”, *the sons of Israel came to buy grain*. Since “the sons of Israel” there were ten, so here also ten.

337 This is not a repetition of the Mishnah. The paragraph really does not refer to the qualifications of a court but to the requirement of having 10 adult males in attendance for religious observations of a

“congregation.” The paragraph is an almost complete quote from *Berakhot* 7:3, Notes 106-108, is repeated in *Megillah* 4:4 (75b l. 7), *Babli* 23b, and is alluded to in *Sanhedrin* 4:10.

(fol. 18a) **משנה ז'** ומניין להביא עוד שלשה. ממשמע שנאמר לא תהיה אחרי רבים לרעות שומע אני שאמר יהיה עמהם לטובה. אם כן למה נאמר אחרי רבים להטות. לא כהטייתך לטובה הטייתך לרעה. הטייתך לטובה על פי (עד) אחד, הטייתך לרעה על פי שנים ואין בית דין שקול מוסיפין עליהן עוד אחד הרי כאן עשרים ושלשה. וכמה זה בעיר ותהא ראוייה לסנהדרין מאה ועשרים. רבי נחמיה אומר מאתים ושלשים כדי שרי עשרות.

**Mishnah 7:** From where that one adds another three<sup>338</sup>? From the interpretation of what is said<sup>339</sup>, *do not follow the majority to be unfavorable*, I understand that He said, follow them to be favorable. Then why was it said, *to bend after the majority*? Your bending to be favorable is not equal to your bending to be unfavorable. Your bending to be favorable shall be by one [vote] (witness), your bending to be unfavorable shall be by two. Since no court may be even-numbered, one adds another one to obtain 23. How many people shall live in a town that it may have a criminal court? 120. Rabbi Nehemiah said 230, that they might be commanders over tens<sup>340</sup>.

338 Since Mishnah 6 established that a criminal court must have 20 judges/jurors.

339 Ex. 23:2: *Do not follow the majority to do evil; do not testify in a quarrel, to bend, to twist after the majority.* This is read to mean that for acquittal one vote is enough but that for conviction one needs a qualified

majority even without the one judge who is voting. Cf. *Mekhilta dR. Ismael Mišpaṭim* 20, dR. Simeon ben Iohai 23:2 (in the name of Rebbi.)

341 Since the verse requires that judges be outstanding personalities, Ex. 18:21, *Deut.* 1:15, each judge must be qualified at least to be the leader of ten men.

9) (19c line 9) **מתני'.** ומניין להביא עוד שלשה כול'. אומר רבן שמעון בן גמליאל. בראשונה לא היו חותמין על כתובת נשים כשירות אלא כהנים לויים וישראלים משיאין לכהונה. אומר רבי יוסי. בראשונה לא היתה מחלוקת בישראל אלא סנהדרין שלע"א היתה יושבת בלשכת הגזית. ושני בתי דינין של שלשה שלשה היו יושבין אחד בחיל ואחד בבהר הבית. ובתי דינין שלכ"ג היו יושבין בכל עיירות ארץ ישראל. צריך אחד מהן לשאול דבר הלכה הנה בא ושואלה בבית דין שבעירו. אם שמעו אמרו לו ואי לא הנה הוא ומופלג שלחן באין ושואלין אותה בבית דין הסמוך לעירו. אם שמעו אמרו להן ואי לא הנה הוא ומופלג שלחן באין ושואלין אותה בבית דין שבהר הבית. אם שמעו אמרו להן ואי לא הנה הוא ומופלג שלחן באין ושואלין אותה בבית דין שבחיל. אם שמעו אמרו להן ואם לאו הנה הוא ומופלג שלחן באין ושואלין אותה בבית דין הגדול שבלשכת הגזית שממש תורה יוצאה ורוחת לכל ישראל. שנאמר מן המקום ההוא אשר יבחר יי וגו'. סנהדרין שבלשכת הגזית אף על פי שהיתה שלע"א לא היו פחותין מכ"ג. צריך אחד מהן לצאת הנה מסתכל. אם יש שם כ"ג הנה יוצא ואם לאו לא הנה יוצא. והיו יושבין מתמיד שלש שנה עד תמיד שלבין הערבים. ובשבתות ובמים טובים היו יושבין בבית המדרש שבהר הבית. נשאלה הלכה. אם שמעו אמרו להן ואי לא עומדין על המנין. רבי המצפון זיכר. רבי המחזיקין חיוב. רבי המטהרין טהרה. רבי המטמאין טימא. שממש תורה יוצאה ורוחת לכל ישראל. משרבו תלמידי שמי והלל שלא שימשו רביהו כצורכן רבי

הַמַּחֲלֻקוֹת בְּיִשְׂרָאֵל וְנִעְשׂוּ שְׁתֵּי תוֹרוֹת. וּמִשָּׁם הָיוּ שׁוֹלְחִין בְּכָל-עֵינִיּוֹת שְׁבָאֲרָץ יִשְׂרָאֵל וְכָל-מִי שֶׁהָיוּ מוֹצְאִין אוֹתוֹ חָכָם עָנְיוֹ שְׂפּוֹי עֵין טוֹבָה נֶפֶשׁ שְׁפִלָּה רוּחַ וְמוֹכָה לֵב טוֹב יֵצֵר טוֹב חֶלֶק טוֹב הָיוּ מוֹשִׁיבִין אוֹתוֹ בְּבֵית דִּין שְׁבֹהֵר הַבֵּית וְאַחֵר כֵּן בְּבֵית דִּין שְׁבִחִיל וְאַחֵר כֵּן בְּבֵית דִּין הַגְּדוֹל שְׁבִלְשָׁכַת הַגְּזִית.

**Mishnah:** “From where that one adds another three, etc. It was stated:

<sup>341</sup>Rabban Simeon ben Gamliel said, in earlier times the *ketubah* of qualified women<sup>342</sup> was signed only by priests, Levites, or Israel whose daughters were qualified to marry into the priesthood.

<sup>343</sup>Rebbi Yose said, in earlier times there was no disagreement in Israel<sup>344</sup> but the Synhedrion of 71 members were sitting in the free-stone hall<sup>345</sup>; two courts of three<sup>346</sup> members each were sitting, one in the glacis<sup>347</sup> and one on the Temple Mount<sup>348</sup>; and a court of 23 was sitting in every town of the Land of Israel. If somebody had a question of religious practice, he went and asked it from the court in his town. If they had heard [the answer], they told him; otherwise he and their distinguished member went and asked a court in their neighborhood. If these had heard [the answer], they told him; otherwise he and their distinguished member went and asked from the court on the Temple Mount. If these had heard [the answer], they told him; otherwise he and their distinguished member went and asked from the court on the glacis. If these had heard [the answer], they told him; otherwise they together entered the High Court in the free-stone hall since from there instruction came accepted in all of Israel, as it is said: *From this place which the Eternal will choose*<sup>349</sup>. Even though the Synhedrion in the free-stone hall had 71 members, those present never numbered less than 23. If one of them had to leave, he was looking around; if 23 others were present, he would leave, otherwise he would not leave<sup>350</sup>. They were in session from the daily morning sacrifice to the daily evening sacrifice. On Sabbaths and holidays, they were sitting in the study hall on the Temple Mount<sup>348</sup>. If a question of practice came up, if they had heard the answer, they told them; otherwise they prepared to vote. If a majority was for acquitting, they acquitted. If a majority<sup>351</sup> was for a guilty verdict, they rendered a verdict of guilty. If a majority was for declaring pure, they declared pure. If a majority was for declaring impure, they declared impure. From the time that there were many students of Shammai and Hillel

who did not study enough under their teachers, many disagreements arose and two doctrines developed<sup>352</sup>. From there<sup>353</sup>, they were sending to all towns in the Land of Israel; any time they found a person who was wise, meek, even-tempered, benevolent, pleasing, humble, good-hearted, with good intentions, and well endowed, they were placing him on the court of the Temple Mount<sup>354</sup>, from there to the court on the glacis, and from there to the High Court in the free-stone hall.

341 Tosephta 7:1, *Hagigah* 2:9.

342 Whose offspring were qualified to marry into the priesthood. In Temple times, this could serve as proof of qualification; cf. *Qiddušin* 4:4.

343 Most of the following text also is in the Babli, 88b. R. Yose, the collector of most of the material of *Seder 'Olam*, represents a very idealized past.

345 A patently incorrect statement. The ancient rabbinic disagreement about the treatment of private sacrifices on holidays is the topic of *Hagigah* 2; the statement declares all non-rabbinic sects as non-Jewish.

345 Adjacent to the Temple, built into the Herodian Temple wall, constructed from large rectangular stones without mortar.

346 Read: 23. However, A. Weiss (לשאלת) טיב בית דין של שבעים ואחד, ספר היובל לכ' לי יושבין מימינו וזקנים משמאלו מפני כבוד הזקן. New York 1946) insists

that the only courts of 23 in Jerusalem were committees of the court of 71.

347 The space between the Temple wall and a smaller wall surrounding the Temple areas.

348 Outside any enclosure.

349 *Deut.* 17:10. Disobedience of a High Court ruling is only a capital crime if the ruling was delivered from "the place", from a court sitting in a room partially on Temple grounds. When the High Court lost its standing as court of criminal appeals (Note 31) and left the free-stone hall, it also lost its ability to prescribe practice *ex cathedra*.

350 Babli *Soṭah* 45a.

351 In his theory, on appeal only a simple majority is needed.

352 Babli *Soṭah* 47b.

353 The free-stone hall.

354 In all three Babylonian texts, the person is appointed judge in his town and the appeals courts replenished from sitting judges.

19c line 36) סנהדרין היתה כחצי גורן עגולה והנשיא יושב באמצע כדי שיהיו רואין אותו ושמעין קולו. אמר רבי לעזר בירבי צדוק. כשהיה רבן גמליאל יושב בבינה היה אבא ואחיי יושבין מימינו וזקנים משמאלו מפני כבוד הזקן.

The Synhedrion was like a threshing floor in the shape of a semi-circle; the president sat in the middle so they might see him and hear his voice.

Rebbi Eleazar ben Rebbi Sadoq said, when Rabban Gamliel was sitting at Jabneh, my father and his brother were sitting to his right and the Elders to his left, to honor the old man<sup>355</sup>.

355 The "old man" was R. Sadoq, a Zakkai's school in pre-war Jerusalem. member already of Rabban Johanan ben

(19c line 39) כְּמָה הֵן שׁוֹפְטֵי יִשְׂרָאֵל. שְׁבַע רִיבּוֹא וּשְׁמוֹנוֹת אֲלָפִים וְשֵׁשׁ מֵאוֹת. שְׁרֵי אֲלָפִים שֵׁשׁ מֵאוֹת. שְׁרֵי מֵאוֹת שֵׁשֶׁת אֲלָפִים. שְׁרֵי חֲמִשִּׁים י"ב אֲלָף. שְׁרֵי עֶשְׂרוֹת ס' אֲלָף. נִמְצָאוּ שׁוֹפְטֵי יִשְׂרָאֵל. ז' רִיבּוֹא וּשְׁמוֹנוֹת אֲלָפִים וְשֵׁשׁ מֵאוֹת. מֶה טַעֲמָא דְרַבִּי נְחֶמְיָה. וְהוּא שְׁיָהָא שָׁם בֵּית דִּין שְׁלֹכ"ג. וְהִנְדִּינוּ וְהָעִידִים וְזוֹמְמִיָּהוּ וְזוֹמְמֵי זוֹמְמִיָּהוּ וְחָזְנוּ וְסוֹפְרֵיהֶן וְשָׁמְשׁוּ. מֶה טַעֲמָא דְרַבָּנָן. וְהוּא שְׁיָהָא שָׁם י"ב סְנֵהֲדָרִיּוֹת שֶׁל י"ב שְׁבֵטִים.

<sup>356</sup>How many were the judges of Israel<sup>357</sup>? 78'600. Appointed over a thousand, 600. Appointed over a hundred, 6'000. Appointed over fifty, 12'000. Appointed over ten, 60'000. It turns out that the judges of Israel were 78'600.

<sup>358</sup>What is the reason of Rebbi Nehemiah? That there should be a court of 23, and the parties, and the witnesses, and the witnesses for perjury, and the witnesses for perjury of the witnesses for perjury, and the rabbi, and the clerks of court, and the beadle. What is the reason of the rabbis? That there might be twelve courts for the twelve tribes.

356 Halakhah 10:2 Note 214. Babli 18a, *Tanhuma Mišpaṭim* 6 (a *Šeilta*).

357 Appointed by Moses. The numbers are inexact since in no census were there exactly 600'000 men.

358 This paragraph is thoroughly corrupt. In the Babli, 17b, a very forced count connects the 120 men required by the rabbis

to a court of 23 acting as a law school to 3•23 = 69 students. Cf. also Tosephta 3:9. If one adds to the 35 people enumerated for R. Nehemiah the 69 law students mentioned in Mishnah 4:10, one arrives at a minimum number attributed in the Tosephta to R. Jehudah; but no emendation can be trusted.

(19c line 46) וּמִשָּׁה עַל גְּבִיָּהֶן. דְּבַר תִּקְנָה עָשָׂה מִשָּׁה. בְּשָׁעָה שְׁאַמֵּר לוֹ הַקְדוּשׁ בְּרִידָה הוּא פְּקוּד כָּל-בֶּכֶר זָכָר בְּבִנֵי יִשְׂרָאֵל אָמַר. אִי זֶה מְקַבֵּל עָלָיו לִיתֵּן חֲמִשָּׁת שְׁקָלִים לְגוּלְגוּלְתָּ. מֶה עָשָׂה. נָטַל כ"ב אֲלָף פִּיטְסִיקוֹ וְכָתַב עֲלֵיהֶן בֶּן לִוי. וְרַע"ג וְכָתַב עֲלֵיהֶן חֲמִשָּׁת שְׁקָלִים. וְהִטִּילָן לְקַלְפֵי. אָמַר לָהֶן. בּוֹאוּ וּטְלוּ פִיטְסִיקִים. כָּל-מִי שֶׁעָלָה בְּיָדוֹ בֶּן לִוי הִזָּה אוֹמֵר לוֹ. קָבֵר פְּדִאָד

בן לוי. וְכָל־מִי שֶׁעָלָה בְּיָדוֹ חֲמִשָּׁת שֶׁקֶלִים הָיָה אוֹמֵר לוֹ. מָה אֶעֱשֶׂה לָךְ מִן הַשְּׂמִימִים הָאֵלֶּה. רַבִּי יְהוּדָה וְרַבִּי נְחֻמָּה מְתִיב תַּנְיָא לְחִבְרִיָּא. אֵילּוּ כְּתִבְתָּנִי לְוִי סִילְקֵת. אֶלָּא קִדְ עֲשֵׂה. נָטַל כ"ב אֶלֶף פִּיטְקִין וְכָתַב לְוִי וּמֵאֵתִים וְשִׁבְעִים וְשָׁלֹשָׁה כְּתִב עֲלֵיהֶן חֲמִשָּׁת שֶׁקֶלִים וְהִטִּילָן לְקַלְפִּי. אָמַר לָהֶן. בּוֹאוּ וִטְלוּ פִיטְקִיכֶם. כָּל־מִי שֶׁעָלָה בְּיָדוֹ לְוִי אָמַר לוֹ. קָבֵר פְּדָאָד בֶּן לְוִי. וְכָל־שֶׁעָלָה בְּיָדוֹ חֲמִשָּׁת שֶׁקֶלִים הָיָה אוֹמֵר לוֹ. מָה אֶעֱשֶׂה מִן הַשְּׂמִימִים הָאֵלֶּה. מְתִיב תַּנְיָא לְחִבְרִיָּא. הִגַּע עֲצָמָךְ שֶׁעָלָו כּוֹלָם לְוִי. אָמְרוּ לוֹ. מַעֲשֵׂה נֶס הָיָה וּמִסְוָגִין עָלָי. אָמַר רַבִּי שְׁמוּאֵל. עַל דַּעֲתִיָּה דְתַנְיָא אַחוּרִיָּא מַעֲשֵׂה נִיסִין. עַל דַּעֲתִיָּה דְתַנְיָא קְדָמִיָּא אֵינוּ מַעֲשֵׂה נִיסִין. אָמְרוּ לֵיה. כּוֹלְהוֹן מַעֲשֵׂה נִיסִין הֵיוּ וּמִסְוָגִין עָלָי.

"And Moses was presiding."<sup>359</sup> Moses found a way to settle things. When the Holy One, praise to Him, told him, *count all male firstborns among the Children of Israel*<sup>360</sup>, he said, who will consent voluntarily to give five sheqel per head? What did he do? He took 22'000 tickets<sup>361</sup> and wrote on them "Levite" and 273 on which he wrote "five sheqel" and put all of them in an urn<sup>362</sup>. He told them, come and take your ticket. To any one who drew a ticket saying "Levite" he said, a Levite already redeemed you. To anybody who drew a slip saying "five sheqel" he said, what can I do, it is from Heaven; Rabbi Jehudah<sup>363</sup>. But Rabbi Nehemiah the Tanna objected to the colleagues: If you had given me the possibility of a Levite, it would have come up for me.<sup>364</sup> But the following is what he did. He took 22'000 tickets<sup>365</sup> and wrote on them "Levite" and two hundred seventy three on which he wrote "five sheqel" and put all of them in an urn. He told them, come and take your ticket. To any one who drew a slip saying "Levite" he said, a Levite already redeemed you. The anybody who drew a ticket saying "five sheqel" he said, what can I do, it is from Heaven. The Tanna objected to the colleagues: Think of it, if all came up as "Levite"<sup>366</sup>? They told him, it was miraculous and they came up alternatingly. Rabbi Samuel said, in the opinion of the second Tanna, it was a miracle. In the opinion of the first Tanna, it was not a miracle<sup>367</sup>. They told him, it was a miracle in any case since they came up alternatingly.

359 *Tanhuma Bemidbar* 21, *Tanhuma Buber Bemidbar* 25, *Num. rabba* 4(9), shortened Babli 17a.

360 *Num.* 3:40. The reference should have been to vv. 46,47 where Moses was commanded to collect 5 *sheqel per person* from 273 of the 22'273 firstborn of the 11

tribes. The other 22'000 were redeemed by the service of 22'000 Levites. Since he was instructed to take the 5 *šeḡel* from 273 persons, he could not simply collect 1'365 *šeḡel* from 22'273 persons.

361 Greek τιττάκιον “ticket, label, etc.”

362 Greek κάλπη, “urn”.

363 The Midrash sources make it clear that the preceding was R. Jehudah's opinion; the following is R. Nehemiah's. The Babli only mentions R. Jehudah's opinion.

364 Since there were only 22'273 tickets, it was a mathematical necessity that 273 people would have to pay. The distribution of these was a pure matter of probabilities; there is no reason to invoke Heaven in the matter.

365 The parallel sources, and the paragraph after the next, make it clear that one has to read: 22'273 tickets reading “Levite”.

366 Assuming that the tickets in the urn are well mixed and all tickets have the same probability to be drawn, the probability that in 22'273 drawings of 22'546 tickets no slip of “5 *šeḡel*” or that all of the 273 extra tickets would be drawn is practically zero. (The first probability starts with a string of 117 zeroes after the decimal point, the second with 639.) If all 273 extra tickets were actually drawn, it was a clear sign from Heaven.

367 While in the first scenario by necessity 273 tickets of “5 *šeḡel*” were drawn, these slips were drawn with approximately constant frequency, about 122.6 per 10'000 draws, against the probabilistic frequency of 121.1 per 10'000. One cannot say that alternately “Levite” and “5 *šeḡel*” were drawn since then the drawing would have ended after 546 draws.

(19c line 61) אַנטונינוס הַגִּמּוֹן שָׁאַל אֶת רַבֵּן יוֹחָנָן בֶּן זַכַּאי. בְּכָל חֲסִירֵין וּבִפְרָט וְתִירֵין. אָמַר לֵיהּ. אוֹתָן שְׁלֹשׁ מֵאוֹת וְתִירֵין בְּכוֹרֵי כְּהוּנָה הֵיוּ וְאִין קְדוֹשׁ מוֹצִיא קְדוּשָׁה.

<sup>368</sup>General Antoninus<sup>369</sup> asked Rabban Johanan ben Zakkai: The sum is deficient, the details are excessive. He told him, these 300 were firstborn of the priesthood; no holy one redeems a holy one<sup>370</sup>.

368 Babli *Bekhorot* 5a, *Num. rabba* 4(7).

369 In *Bekhorot* קוֹנְטְרוֹקוֹס, in *Num. rabba* הוֹנְגְטִיס; cf. Note 267.

370 In the census reported in *Num.* 3, the families of the Levites were reported as Gershon 7'500, Qehat 8'600, Merari 6'200,

for a total of 22'300. But in the summation in v. 39 only 22'000 are reported and this number reappears as the number of Levites freeing firstborns from payment. Instead of “priesthood” one has to read “Levites”.

(19c line 61) כִּיּוּצָא בּוֹ וְלֵאמָר יִי אֱלֹהֵי מֹשֶׁה אֶסְפֶּה-לִּי שְׁבָעִים אִישׁ מִזִּקְנֵי יִשְׂרָאֵל. אָמַר מֹשֶׁה. אִם אֶטוּל ו' מִכָּל-שִׁבְט הָרִיע"ב. י' מו' וּב' מֵה' אִי זֶה שִׁבְט מְקַבֵּל עָלָיו לִהְיוֹת פָּגוּם. מֶה עָשָׂה. נִטַּל שְׁבָעִים פִּיטְקִין וְכָתַב עָלֵיהֶן זָקוֹן וּב' חֶלֶק וְהִטִּילוּ לְקַלְפֵּי. אָמַר לָהֶן. בּוֹאוּ וְטלוּ פִיטְקֵיכֶם. קָל- שְׁעָלָה בִּידוֹ זָקוֹן הָיָה אוֹמֵר לוֹ. מִיּוֹד מִן הַשָּׁמַיִם. וְכָל-מִי שְׁעָלָה בִּידוֹ חֶלֶק הָיָה אוֹמֵר לוֹ.



מה אַעֲשֶׂה וּמִן הַשָּׁמַיִם הוּא. רַבִּי יוֹדָה וְרַבִּי נְחֻמָּה מְתִיב תִּנְיָא לְחִבְרִיָּא. אֵילֹו כְּתִבְתִּנִּי זָקֹן סִלְקָת. אֶלָּא כִּדְ עָשָׂה. נָטַל ע"ב פִּיטְקִין וְכָתַב עֲלֵיהֶן זָקֹן וְשָׁנִים חֲלָקִין וְהִסְטִילָן לְקַלְפִּי. אָמַר לָהֶן. בּוֹאוּ וְטֹלוּ פִיטְקִיכֶם. מִי שֶׁעָלָה בְּיָדוֹ זָקֹן אָמַר לוֹ. כָּבֵר מֵינּוּד מִן הַשָּׁמַיִם. וּמִי שֶׁעָלָה בְּיָדוֹ חֶלֶק הָיָה אָמַר לוֹ. וְמִה אַעֲשֶׂה וּמִן הַשָּׁמַיִם הוּא. מְתִיב תִּנְיָא לְחִבְרִיָּא. הִגַּע עֲצָמָךְ שֶׁעָלוּ כּוֹלֶם זָקֹן. אָמְרוּ לֵיהּ. מַעֲשֶׂה נִיסִין הָיָה וּמִסִּוּרָגִין עָלוּ. אָמַר רַבִּי שְׁמוּאֵל. קִשְׁיָתִיה קוּמִי רַבִּי אֲבָהוּ. עַל דַּעְתִּיה דְּתִנְיָא אַחֲרֵינָא מַעֲשֶׂה נִיסִים. עַל דַּעְתִּיה דְּתִנְיָא קִדְמִיָּא אֵינוּ מַעֲשֶׂה נִיסִים. אָמַר לֵיהּ. מַעֲשֶׂה נִיסִין הָיוּ וּמִסִּוּרָגִין עָלוּ.

<sup>371</sup>Similarly. *the Eternal said to Moses, assemble for Me seventy men of the Elders of Israel*<sup>334</sup>. Moses said, if I am taking six per tribe, there will be 72, ten of six each and two of five, which tribe will agree to be discriminated against? What did he do? He took 70 tickets and wrote on them "Elder", two he left blank, and put them in an urn. He told them, come and take your ticket. To any one who drew a slip saying "Elder" he said, from Heaven they appointed you. To anybody who drew a blank slip he said, what can I do, it is from Heaven; Rabbi Jehudah<sup>363</sup>. But Rabbi Nehemiah the Tanna objected to the colleagues: If you had given me the possibility of an Elder, it would have come up for me.<sup>364</sup> But the following is what he did. He took 72 tickets and wrote on them "Elder" and two blank ones and put all of them in an urn. He told them, come and take your ticket. To any one who drew a slip saying "Elder" he said, from Heaven they appointed you. The anybody who drew a blank slip he said, what can I do, it is from Heaven. The Tanna objected to the colleagues: Think of it, if all came up as "Elder"? They told him, it was miraculous and they came up alternately<sup>373</sup>. Rabbi Samuel said, I objected before Rabbi Abbahu: in the opinion of the second Tanna, it was a miracle. In the opinion of the first Tanna, it was not a miracle. He told him, it was a miracle in any case since they came up alternately<sup>374</sup>.

371 *Tanhuma Beha'alotekha* 11, *Tanhuma Buber Beha'alotekha* 22, *Sifry Num.* 95, *Num. rabba* 15(14), *Yalqut Šim'ony* 736, *Babli* 17a.

372 From here on there exists a Genizah fragment (L. Ginzberg, *Yerushalmi Fragments from the Genizah*, New York 1909, p. 256 ff.) where, however, few lines are

complete. Its readings are noted G only in paragraphs where they are reasonably complete and mark a genuine difference in the text.

373 The probability of at least one of the blank tickets remaining in the urn, assuming uniform distribution (thorough mixing) of the tickets, was 0.14316.

374 I. e., about evenly spaced.

(19d line 3) שאל אנטיגנס הגמון לרבן יוחנן בן זכאי. משה רבכם או גנב היה או לא היה בקי בחשבון. דכתיב בקע לגלגלת. אין תעבד קנטירא מאה ליטרין חד מן אישתא גנב. ואין תעבדיניה שיתין ליטרין פלגא גנב. אמר ליה. משה רבן גזבר נאמן ובקי בחשבון היה. אמר ליה. והכתיב ויחוששת התנופה עשרים ככר. והיידא לון סלקין תשעין ושית ליטרין ואית עבד ליה פרוטרוט. אמר ליה. משום דלא סליק קינטירא. ואין תימר דסליק קינטירא פלגא גנב. אמר ליה. והכתיב ואתהאלף ושבוע המאות וחמשה ושבועים. והיידא לון סלקין שבועים וחד ליטרין ואת עבד ליה פרוטרוט. אמר ליה. משום דלא סליק קינטירא פלגא גנב. אמר ליה. והכתיב והשקל עשרים גרה עשרים שקלים חמשה ועשרים שקלים עשרים וחמשה שקלים המנה יהיה לכם. כפרו של הקדוש ברוך הוא כפול היה. אמר ליה. גיזבר נאמן ובקי בחשבון היה.

1 שאל אנטיגנס הגמון לרבן | G | אגנטס האגמון שאל את רבן | לא | G | שלא | 2 בחשבון | G | בחשבונות לגולגלת. אין תעבד קנטירא | G | ואין תעבד קינטירא. | 3 תעבדיניה שיתין | G | תעבדינה אישתין | נאמן | G | נאמן היה | 4 והכת' | G | - עשרים ככר | G | שבעים וגו' | והיידא לון | G | והיידילון | ושית | G | ושת | 5 קינטירא | G | קינטירא | קינטירא | G | קנטיר | פלגא | G | ופלגה | 6 וחמשה ושבועים | G | וגו' | והיידא לון | G | והיידילון | שבועים וחד | G | שובעין וחדה | 6 ליה | G | לה (twice) | קינטירא פלגא | G | קנטירא פלגא | 9 כפול היה. אמ' ליה | G | ... כפול הוא אמר לה משה רבכון

<sup>375</sup>General Antigonos<sup>376</sup> asked Rabban Johanan ben Zakkai: Your teacher Moses either was a thief or he did not know how to compute, for it is written: *a beqa` per head*<sup>377</sup>. If you make the *centenarius* 100 pounds,<sup>378</sup> he stole one sixth. If you make it 60 pounds, he stole half. He answered him, our teacher Moses was a trustworthy treasurer expert in computations. He answered him, is it not written, *they contributed bronze twenty talents*<sup>379</sup>; for us that makes 96 pounds<sup>380</sup> and he mentions them in detail. He answered back, because it does not add up to a *centenarius*; if you would say that it added up to a *centenarius*, he would have stolen half. He told him, but it is written *I '775*, would that not make 71 pounds<sup>381</sup> and he mentions it in detail. He answered back, if you would say that it added up to a *centenarius*, he would have stolen half. He told him, but it is written, *the sheqel is 20 gera, twenty sheqel, twenty-five sheqel, twenty-five sheqel the maneh*<sup>382</sup> shall be for you<sup>383</sup>; the talent of the Holy One, praise to Him, was double. He answered back, he<sup>384</sup> was a trustworthy treasurer and expert in computations.

375 A different version is in the Babli, *Bekhorot* 5a.

376 In G, אגנטוס, cf. Note 267.

377 The discussion is about *Ex.* 38:25,26 (in the LXX, ed. A. Rahlfs, 39:2,3) where it is stated that the Temple tax of a *beqa'*, half a *sheqel*, paid by 603'550 men came to 100 *kikkar* 1775 *sheqel*. The LXX follows rabbinic tradition in identifying the *beqa'*, the Babylonian *zuz*, with the drachma, i. e., the *sheqel* with the *dupondius*, and the *kikkar* (Accadic *gaggarum* "disk") with the talent of 60 minas or 6'000 drachmas, i. e. 3'000 *sheqel* (cf. *Qiddušin* 1:1, Note 122.) But in *Qiddušin* 1:3 Note 339 it is declared that any *sheqel* mentioned in the Torah is a Roman tetradrachma. Then the silver contributed should have been twice the recorded amount, 201 talents 550 *sheqel*.

378 The *libra* weighing 100 *drachmae* is the natural weight equivalent of the Greek *mina* in coin. The *centenarius*,

"hundredweight", 100 pounds, is taken as the equivalent of the talent. But if by *sheqel* a tetradrachma is meant, a talent should have been 120 *mina*, not 60 as usual, and not 100 as presumed here. Computed from above, one-sixth is missing in the latter, half in the former case.

379 A scribal error; in the verse (and G): 70 talents. The total recorded was 70 talents, 2'400 *sheqel*.

380 Since 25 *tetradrachma* make a *mina*, 2'400 *drachma* are 96 *mina*. Nevertheless, the verse mentions *sheqel*, not *mina*.

381 @ 25 *tetradrachma* each.

382 The Babylonian *mina*.

382 *Ez.* 45:12; the correct text, intended here, is: 20 *sheqel*, 25 *sheqel*, 15 *sheqel* make a *maneh*, for a total of 60. Therefore, it is impossible to identify the Greek *mina* as 25 *sheqel*. Cf. *Qiddušin* 1:2 Note 204.

383 Read with G: "Your teacher Moses."

## כהן גדול פרק שני

(fol. 19d) **משנה א:** כהן גדול דן ודנין אותו מעיד ומעידין אותו. חולץ וחולצין לאשתו ומינבמין לאשתו. אבל הוא אינו מינבם מפני שהוא אסור באלמנה. מת לו מת אינו יוצא אחר המטה אלא הן ניכסין והוא נקלה. הן ניגליו והוא נכסה. ויוצא עמהן עד פתח העיר דברי רבי מאיר. רבי יהודה אומר אינו יוצא מן המקדש שנאמר ומן המקדש לא יצא.

**Mishnah 1:** The High Priest judges and one judges him; he testifies and one testifies against him<sup>1</sup>. He gives *halisah* and one gives *halisah* to his wife, and one marries his wife in levirate marriage<sup>2</sup>. But he may not marry in levirate marriage since a widow is forbidden to him.<sup>3</sup> If a family member of his dies, he cannot follow the bier but if they<sup>4</sup> are unseen he can be seen; if they are seen he must be unseen. He leaves with them up to the city gate, the words of Rabbi Meir; Rabbi Jehudah said, he does not leave the Temple since it is said: *The Sanctuary he shall not leave*<sup>5</sup>.

1 These statements are only necessary as contrast to the rules for the king, to whom they do not apply (Mishnah 3).

2 If his brother dies childless, he gives *halisah* to his sister-in-law, which will be allowed to marry anybody but a Cohen. If he dies childless, any brother not appointed

High Priest in his stead may marry his widow.

3 Lev. 21:14.

4 The people carrying the bier. The High Priest may never be seen together with them.

5 Lev. 21:12.

(19d line 58) **הלכה א:** כהן גדול דן ודנין אותו כול'. ניחא דן. דנין אותו. וימנה לו אנטלר. הגע עצמך שנפלה לו שבועה. ואנטלר בשבועה. דיני ממונות שלו בכמה. בכ"ג. נישמעניה מהדא. אין מלך יושב בסנהדרין ולא מלך וכהן גדול יושבין בעיבור. רבי חנינה ורבי מנא. חד אמר. אין מלך יושב בסנהדרין מפני החשד. ולא בעיבור מפני החשד. ולא מלך וכהן גדול יושבין בעיבור. שאין כבוד המלך לישב בשבועה. תא חמי. בשבועה אין כבוד לישב לא כל-שכן שלשה. הדא אמרה דיני ממונות שלו בעשרים ושלשה.

**Halakhah 1:** “The High Priest judges and one judges him,” etc. One understands that he judges. Why does one judge him<sup>6</sup>? Can he not appoint a plenipotentiary<sup>7</sup>? Think of it, if an oath should be imposed on him, may a plenipotentiary take the oath?

His monetary suits are heard by how many? By 23, as we understand from the following<sup>8</sup>: “The king may not sit in the Synhedrion, neither king nor High Priest may participate in intercalations.” Rabbi Hanina<sup>9</sup> and Rabbi Mana, one said the king does not sit in the Synhedrion because of suspicion<sup>10</sup>; he cannot participate in intercalations because of suspicion<sup>11</sup>. <sup>12</sup>Neither king nor High Priest may participate in intercalations since it is not to the king’s honor to sit with seven, so much less with three. This implies that his monetary suits are heard by 23<sup>13</sup>.

6 Why can he be compelled to appear in court in person?

7 In G אנטליר which S. Lieberman (*Greek and Hellenism in Jewish Palestine*, Jerusalem 1963, pp. 10-11) reads as *antellar* as a composite of Greek ἐντέλλω “enjoin, command, invest with legal powers” with Latin suffix *-arius* “belonging to, invested with,” etc.

8 Tosephta 2:15.

9 In G correctly Hananiah, the contemporary of R. Mana II.

10 That the judges do not dare to voice an opinion contradicting the king.

11 Since the king can be expected to favor adding a 13<sup>th</sup> month every year so that all contracts for services which his government has concluded will be extended for another month without him having to pay for it.

12 The second opinion is missing here. In G it is extended for three lines but no intelligible text can be extracted from the few remaining words. G in all cases says “the king of Israel”.

13 This is unknown to the Babli.

(19d line 66) אָמַר רַבִּי לֵעָזֵר. כֹּהֵן גָּדוֹל שֹׁחֵט מֶלֶקִין אוֹתוֹ וְאֵין מַעֲבִירִין אוֹתוֹ מִגְדִּילָתוֹ. אָמַר רַבִּי מֵנָא. כְּתִיב כִּי יָזַר שֹׁמֵן מִשְׁחַת אֱלֹהֵיוּ עָלָיו אֲנִי יי. כְּבִיכּוֹל מָה אֲנִי בִקְדוּשָׁתִי אֶף אֶהְרֹן בִּקְדוּשָׁתוֹ. רַבִּי חֲנִינְה כְּתוּבָא רַבִּי אַחָא בְּשֵׁם רִישׁ לְקִישׁ. כֹּהֵן גָּדוֹל שֹׁחֵט מֶלֶקִין אוֹתוֹ. אֵין תִּימַר בְּכ”ג. נִמְצְאָת עֲלֵיתוֹ וְרִידָתוֹ. וְרִישׁ לְקִישׁ אָמַר. נִשְׂיָא שֹׁחֵט מֶלֶקִין אוֹתוֹ בְּבֵית דִּין שְׁלֹשָׁה. מִה מִחֲזֹר לֵיה. אָמַר רַבִּי חֲנִי. מִשָּׁה. אֵין מִחֲזֹרִין לֵיה דִּי קָטַל לוֹן. שְׁמַע רַבִּי יוֹדֵן נִשְׂיָא וְכַעַס. שְׁלַח גִּיתוֹן לְמִיתָפוֹס לְרִישׁ לְקִישׁ. טָרְפוֹן. עֶרֶק לָדָא מִגְדָּלָא. וְאֵית דְּמָרִין לְהָדָא כְּפַר חִטָּיָא. לְמַחֵר סָלַק רַבִּי יוֹחָנָן לְבֵית וַעֲדָא וְסָלַק רַבִּי יוֹדֵן נִשְׂיָא לְבֵית וַעֲדָא. אָמַר לֵיה. לְמָה לֵיה מָרִי אָמַר לוֹן מִיָּלָה דְּאוּרִיָּא. שְׂרִי טַפַּח בְּחָדָא דִּיה. אָמַר לֵיה. וּבְחָדָא טַפַּחִין.

אָלָא אָמַר לֵיהּ. לֹא וְלֹא בִן לְקִישׁ לֹא. אָמַר לֵיהּ. אָלָא אָנִי מִפְתָּחָהּ. אָמַר לֵיהּ. בְּהָדָא מְגִדְלָא. אָמַר לֵיהּ. לְמַחֵר אָנָּא וְאַתָּה נִיפּוּק לְקַדְמִיָּה. שְׁלַח רַבִּי יוֹחָנָן גָּבִי רִישׁ לְקִישׁ. עֲתִיר לָךְ מִיִּלָּה דְאֹרִיָּא דְנִשְׁיָא נְפִיק לְקַדְמָךְ. נִפְק לְקַדְמוֹן וְמַר. דִּיגְמָא דִּידְכוֹן דְּמִיָּא לְבִירִיתְכוֹן. כִּד אָתָּא רַחֲמֵנָא לְמַפְרוֹק יֵת יִשְׂרָאֵל לֹא שְׁלַח לֹא שְׁלִיחַ וְלֹא מְלָאךְ אָלָא הוּא בְּעֶצְמוֹ. דְּכַתִּיב וְעִבְרָתִי בְּאַרְצ־מִצְרָיִם. הוּא וְכָל־דְּרָגוֹן דִּידֵיהּ. אָמַר לֵיהּ. וַיְמַה חֲמִית מִימַר הָא מִיִּלְתָּא. אָמַר לוֹן. מַה אָתוֹן סָבְרִין. מַה דְּחִיל מִינְכוֹן הוּיָנָא מְנַע אוֹלְפִנִי דְרַחֲמֵנָא. דְּמַר רַבִּי שְׁמוּאֵל בַּר רַב יִצְחָק אֵל בְּנֵי כִי לֹא־טוֹבָה הַשְׁמוּעָה.

2 בקדושתו | Gה בגדולתי 3 בקדושתו | Gה בגדולתו - | Gה אמ' ר' אבון. קדוש יהיה לך. כביכול אני בקדושתו אף אהרן בקדושתו ריש | Gה ר' שמעון בן גדול | Gמשיח אותו | Gה אותו בבית דין ה שלשלה | Gשל שלשה 4 בכ"ג | ה בבית דין שלכ"ג | G בבית דין שלעשרים ... ירידתו | Gה ירדה לו וריש | Gה ר' שמעון בן 5 מחזור | Gה מחזירן משה | ה מוטב דינון די קטל לון | ה גו קטלון ליה | Gה דו קטלון 6 יודן נשייא | ה יודה נשיאה גנתון | Gה גותיין למיתפוס לריש לקיש | ה למיתפש ית ר' שמעון בן לקיש | G למתפוס לר' שמעון בן לקיש טרפון | ה - ערק | Gה וערק לדא | G בהדה מוגדלא | Gה דמוגדלא דמרין להדא | ה דאמרין ברה | G דמרין בהדה 7 חטיא | G חטייה סלק | Gה סליק וועדא | G וועדא (2 times) וסלק ר' יודן נשייא | ה סליק ר' יודה נשייא 8 ליה | Gה לית דאוריאי | G דאורייה בהגא | G בהדה ובחדא | G ובחדה - | G ידי 9 לא ולא | ה לאו. אין לא | G לא ואין לו אלא אני מפתחה | ה ואנו מפתחה | G והנו מופתחה בהדא מגדלא | ה ברא דמוגדלא 10 ניפוק | ה נפיק ריש | Gה ר' שמעון בן 11 נשייא | G נשייא ומר | ה מר לבירייתכון | ה לבירייתכון 12 למפרוק | ה למפרק ישראל | Gה ישראל ממצרים הוא | ה הקב"ה 13 דרגון | ה גורגון

<sup>14</sup>Rebbi Eleazar said, if a High Priest sinned, one whips him but does not remove him from his elevated status<sup>13</sup>. Rebbi Mana said, it is written<sup>5</sup>: *For the crown of his God's ointment is on him, I am the Eternal*; if one could compare it, just as I am in My Sanctity, so Aaron is in his sanctity<sup>15</sup>. Rebbi Hanina the scribe, Rebbi Aha in the name of Rebbi Simeon ben Laqish: if a High Priest sinned, one whips him<sup>16</sup>. If you would say by 23, his elevation would be his degradation<sup>17</sup>. And Rebbi Simeon ben Laqish said, if a patriarch sinned, one whips him by a court of three [judges]. Does one return him? Rebbi Haggai said, by Moses, if one would return him, he would kill them. Rebbi Jehudah the Prince<sup>18</sup> heard this and became angry. He sent Goths<sup>19</sup> to catch Rebbi Simeon ben Laqish. They beat him. He fled to Magdala, some say to Kefar Hitim<sup>20</sup>. The next day, Rebbi Johanan went to the assembly hall, when Rebbi Jehudah the Prince also went to the assembly hall. He<sup>21</sup> said to him, why is the master not<sup>22</sup> telling us words of instruction? He<sup>23</sup> started clapping with one hand. He<sup>21</sup> asked, does one clap with one? He<sup>23</sup> answered

him, no, but without ben Laqish there is nothing<sup>24</sup>. He<sup>21</sup> told him, I shall free him. He<sup>23</sup> said to him, in Magdala. He<sup>21</sup> told him, tomorrow I and you will go out to meet him. Rabbi Johanan sent to Rabbi Simeon ben Laqish, prepare<sup>25</sup> for yourself some words of instruction since the Patriarch will go out to meet you. He went out to meet them and said, your example is similar to that of your Creator. For when the Merciful went to liberate Israel [from Egypt]<sup>26</sup>, He sent neither messenger nor angel but He went Himself, as is written: *I shall pass through the Land of Egypt*<sup>27</sup>, He and all His Court<sup>28</sup>. He asked him, why did you say these things<sup>29</sup>? He told him, what are you thinking? That for fear of you I would refrain from the teachings of the Merciful? As Rabbi Samuel ben Rav Isaac said, *No my sons, because the reputation is not good*<sup>30</sup>.

14 There exists a copy of this paragraph in *Horaiot* 3:2 (ה). It is missing in the Yerushalmi reproduced in the *editio princeps* of the Babli. A different version is in *Midrash Samuel* 7(5).

15 The two other sources read: I in My Greatness, also Aaron in his greatness. R. Abun said (*Lev.* 21:8), *holy he shall be to you*, if one could compare it, as I Am in My Holiness, so Aaron is in his holiness.

16 In the two other sources: by a court of three judges. The sequel requires this text.

17 Since so many people would sit in judgment over him.

18 R. Jehudah II.

19 Following the reading of the other two sources. Krauss conjectures that the inserted ם indicates nasal pronunciation, but by the evidence of the other two sources גנתי instead of גנתי seems to be a scribal error. [Instead of Goths they might have been *Gaetuli*, a people from Northwestern Africa (E. G.).]

20 Magdala is on Lake Genezareth, Kefar Hittim in the hills overlooking Tiberias.

21 R. Jehudah the Prince.

22 Translated following G.

23 R. Johanan.

14 Following the text of the other two sources. The text of the Leiden ms. is unintelligible.

25 Translated following G. The text of the other two sources, "get rich", does not make much sense.

26 Added from the other two sources.

27 *Ex.* 12:12.

28 Translated following Eliahu Fulda and H. L. Fleischer in *Levy's Dictionary*. A similar explanation of the verse is found in the Passover Haggadah (*Mekhilta dR. Ismael*, ed. Horovitz-Rabin, p. 23; cf. H. Guggenheimer, *The Scholar's Haggadah* pp. 298-299.)

Here ends the Geniza fragment. The text in *Horaiot* has additions both at this point and at the end of the paragraph which, while relevant, in the absence of a confirming Genizah text cannot be added here.

29 About whipping the Patriarch.

30 *IS. 2:24*. The explanation of the verse is missing; it is given in *Horaiot*. The verse about the misdeeds of Eli's sons ends, *מַעֲבִירִים עִם יי*

*by the Eternal's people*, which he interprets as *being removed by the Eternal's people*, implying that the High Priest has to be removed if he sins.

20a line 9) רבי לעזר בשם כהנא. למעלן. למעלן מקנה שפה. למטון. למטון מקנה שפה. רבי יוחנן אמר. למטון ממש. רבי יוחנן סלק מבקרה לרבי חנינה גו אסטורטה. שמע דדמך. אמר. שלח ואיתי לי מנוי טביא דשובתא ובזעיה. רבי יוחנן פליג על רבי יודן בתרתי. ואתיא דרבי לעזר בשם כהנא כרבי יודה. ואי<sup>31</sup> כרבי יודה לא יפרוס<sup>32</sup> כל-עיקר. לא אתיא דלא אלא על אביו ועל אמו כרבי מאיר. דתני. על פלהמתים אין מבדיל קנה שפה אלא על אביו ועל אמו. דברי רבי מאיר. רבי יודן אומר. כל-קורע שאינו מבדיל קנה שפה הרי זה קורע שלתפלות. מאי קדון. חומר הוא בכהן גדול שיהא מבדיל קנה שפה.

2 סלק | ה סליק מבקרה | ה למבקרא | גו | ה כד הוה | גו | אמ' | ה - 3 ובזעיה | ה ובזעו | ר' יודן | ה דר' יודה | ה בתרתי | ה תרתין 4 ואי | ה אין יפרוס | ה יפרוס | דלא | ה דא 5 כר' מאיר | ה כדברי ר' מאיר אין | ה אינו 6 דברי | ה כדברי 7 חומר | ה אי'

<sup>33</sup>Rebbi Eleazar in the name of Cahana: On top, high starting with the seam<sup>34</sup>, below, low starting with the seam. Rebbi Johanan said, really low<sup>35</sup>. Rebbi Johanan was going up the mountain<sup>36</sup> to visit Rebbi Hanina; on the road he heard that he had died. He sent, brought his good Sabbath garment, and tore it. Rebbi Johanan disagrees with Rebbi Jehudah in two things, but Rebbi Eleazar in the name of Cahana follows Rebbi Jehudah<sup>37</sup>. If following Rebbi Jehudah, he should not tear at all! This refers only to his father or mother, following Rebbi Meïr, as it was stated: One tears the seam for nobody who died except for father and mother, the words of Rebbi Meïr. Rebbi Jehudah says, any tear which does not completely sever the seam is a frivolous tear. How is that? It is a stringency for the High Priest that he shall sever the seam completely<sup>38</sup>.

31 A Babylonism.

32 A scribal error, corrected in the parallel source.

33 This and the following paragraphs refer to Mishnah *Horaiot* 3:6; the origin is to be found there in Halakhah 3:6 (ה). The Yerushalmi printed in the Babli *editio princeps* from a ms. different from the

Leiden one, only quotes the first sentence; it eliminated the remark "continue in Sanhedrin." The paragraph also appears in *Mo'ed qatan*, copied twice in the Leiden ms. The text there is a reformulation, not a copy.

Mishnah *Horaiot* 3:6 reads: "The High Priest tears his clothes below, the simple priest above. The High Priest



officiates when he is a fresh mourner but may not eat; the simple priest neither officiates nor eats.” The High Priest is forbidden to let his hair grow or tear his clothes (*Lev. 21:10*). R. Meïr interprets the verse to mean that in mourning he may not tear his garment in the way other people do [*Sifra Emor Parashah 2(3)*]. The Mishnah is R. Meïr’s. It is obvious that one speaks here of the High Priest’s personal belonging, not his robes of office, which may not be torn (*Ex. 28:32,29:23*).

34 He insists that a valid tear in mourning must sever the thread of the seam. If the cloth of the garment is folded over and then sewn, the tear must reach the place where the cloth is only a single layer.

In Babylonia, the Palestinian קנה שפה was understood as קמי שפה “in front of the seam” (*Mo’ed qatan 22b*), correctly interpreted in the Rashi commentary edited by E. Kupfer (Jerusalem 1961). Cf. *Horaiot* 3:6, Note 201.

35 Without any minimal depth.

36 From Tiberias below Sea level to Sepphoris on a hilltop.

37 R. Jehudah does not require tearing one’s clothing in mourning except for his parents, but if one tears he requires severing the seam.

38 This is the text here, in *Horaiot*, and in the first version of the Halakhah in *Mo’ed qatan* 3:8, but in the second version and in *editio princeps* one reads: “that he may not sever the seam completely.” This seems to be the correct version. The point is made that *Lev. 21:10* does not use the frequently used verb קרע “to tear” but the infrequent פרס “to tear in little pieces”. The is interpreted in *Sifra Emor Parashah 2(3)* to mean that the High Priest is not totally forbidden to rend his garments, only he may not do what everybody does. If he rends it, it may only be at the bottom, where few people will notice, and it may not be deep.

18) כהן גדול מקריב אוגן ולא אוכל. דברי רבי מאיר. רבי יהודה אומר. כל־אותו היום. רבי שמעון אומר. גומר כל־העבודה שיש בידו ובא לו. בין רבי מאיר לרבי שמעון חדא. בין רבי יודה לרבי שמעון חדא. בין רבי מאיר לרבי יודה הכנסה. רבי יעקב בן דסאי. מפסיק ביניהון. רבי מאיר אומר. הנה בפנים הנה יוצא. הנה בחוץ הנה נכנס. רבי יהודה אומר. הנה בפנים הנה נכנס. הנה בחוץ לא הנה נכנס. רבי שמעון אומר. גומר כל־העבודה שיש בידו ובא לו. רבי יוסי בירבי בון בשם רב הונא. מתניתא לריש לקיש. ומן־המקדש לא יצא. עמהן אין יצא. יוצא הוא אחריהן. הן ניכסין והוא נגלה ויוצא עמהן עד פתח העיר. דברי רבי מאיר. רבי יודן אומר. אינו יוצא מן המקדש. שְׁנֵאֵמַר וּמִן־הַמִּקְדָּשׁ לֹא יֵצֵא. יצא לא הנה חוץ.

1 יהודה | ה יודה 2 שיש בידו | ה שבידו 3 בן דוסאי | ה בר דסיי מפסיק | ה מפסק 4 היה נכנס | ה לא היה נכנס יהודה | ה יודה 5 נכנס | ה יוצא כל | ה את כל 6 הונא | ה חונא לריש לקיש | ה דר שמעון 7 הן ניכסין | ה אלא הן נכנסין והוא יוצא. הן ניכסין 8 יודן | ה יודה שנה | ה כת יצא | ה למד אלא לא יצא. יצא

<sup>39</sup>“The High Priest sacrifices while in deep<sup>40</sup> sorrow but does not eat, the words of Rabbi Meïr; Rabbi Jehudah says, the entire day<sup>41</sup>. Rabbi Simeon says, he completely finishes the service he is engaged in and then leaves.” Between Rabbi Meïr and Rabbi Simeon there is one [difference], between Rabbi Jehudah and Rabbi Simeon there is one [difference]<sup>42</sup>. Between Rabbi Meïr and Rabbi Jehudah is entering<sup>43</sup>. Rabbi Jacob ben Dositheos: interruption is between them. Rabbi Meïr says, if he was inside, he leaves; if he was outside, he did [not]<sup>44</sup> enter. Rabbi Jehudah says, if he was inside, he enters<sup>45</sup>; if he was outside, he did not enter. Rabbi Simeon says, he completely finishes the service he is engaged in and then leaves. Rabbi Yose ben Rabbi Abun in the name of Rav Huna: a *baraita* is from Rabbi Simeon ben Laqish<sup>46</sup>: <sup>47</sup>*The Sanctuary he shall not leave*, he may not leave with them, but he may leave after them. If they<sup>4</sup> are unseen he can be seen; he leaves with them up to the city gate, the words of Rabbi Meïr; Rabbi Jehudah said, he does not leave the Temple since it is said: *The Sanctuary he shall not leave*<sup>5</sup>. If he left, he may not return.”

39 Tosephta *Zevahim* 11:3.

40 “Deep sorrow” is the period between the death of a close relative and his burial. This is a period of biblically mandated mourning in which consumption of sanctified food is forbidden, *Deut.* 26:14. A simple priest, who is required to defile himself for the burial of a close relative, automatically is barred from the holy precinct until he is purified from the impurity of the dead. The High Priest is prohibited from defiling himself and from leaving the holy precinct (*Lev.* 21:12). The question remains, what is his status on that day?

41 Everybody agrees that if a High Priest is engaged in Divine Service when he is informed of the death of a close relative, he finishes his task. R. Simeon requires that upon completion he leave immediately; if he

was informed while idle he also must leave immediately. R. Meïr holds that if he was in the precinct, he can start sacrificing even after being informed but then has to leave; if he was outside he cannot enter. R. Jehudah does not require him to leave.

42 For R. Jehudah, he does not have to leave after finishing his task. In fact, there are two differences since for R. Jehudah he is permitted to start after being informed of the death, but not for R. Simeon.

43 Whether he has to leave after finishing. The verse seems to support R. Jehudah, *Lev.* 21:12: *The holy precinct he may not leave*.

44 Reading from *Horaiot*.

45 If he was in the Temple precinct, he may start serving; if he was outside, he may not enter, since *Lev.* 21:12 does not apply to his situation.

46 In *Horaiot*: R. Simeon. The name tradition here is quite corrupt. R. Yose bar Abun of the last generation of Galilean Amora'im was a student of R. Jacob bar Dositheos. Also he cannot speak in the name of the second generation Babylonian Rav Huna; one has to read *Rebbi* Huna

against both mss. sources. R. Simeon ben Laqish cannot formulate a *baraita*; neither *baraita* nor Mishnah address R. Simeon's opinion.

47 A similar text is in *Sifra Emor Parashah* 2(8).

(20a line 28) רבי אבהו בשם רבי לעזר. אין אנינה אלא למת בלבד. דכתיב ואנו ואבלו פתחיה. התיב חיה בר אדא. והכתיב ואנו הדייגים. אמר רבי חנינה. כיני מתניתא. אין אנינה טומאה אלא למת בלבד. תני. אי זו היא אנינה. משעת מיתה עד שעת קבורה. דברי רבי. וחכמים אומרים. כל-אותו היום. אשכח מר קולות וחומרות על דעתיה דרבי. קולות וחומרות על דעתיה דרבנן. מה מפקה מביניהון. מת ונקבר בשעתו. על דעתיה דרבנן אסור כל-אותו היום. על דעתיה דרבי אסור אלא אותה שעה בלבד. מת ונקבר לאחר ג' ימים. על דעתיה דרבנן אסור כל-אותו היום. על דעתיה דרבי אסור עד שלשה ימים. אתא רבי אבהו בשם רבי יוחנן ורב חסדא תריהון מרין. מודה רבי לחכמים שאין אסור אלא אותו היום בלבד. כהדא דתני. רבי אומר. תדע לך שאין אנינות לילה תורה. שהרי אמרו. אונן טובל ואוכל פסחו לערב. והרי אמרו אנינות תורה. רבי יסא ברבי בון בשם רבי חונא. תיפתר שנקבר בדמדומי חמה.

2 חייה | פה ר' חייא הדייגים | פה הדייגים ואבלו כל משליכי חכה | כיני | ה - 3 אנינת טומאה | פה אנינות טמאה תני | ה - 4 מר | ה אמר פ חמר על דעת דר' | פה על דר' 5 על דעת דרבנן | פה על דרבנן מת | פ קלת על דרבנן. מת 6 ג' | ה שלשה 7 שלשה | ה ג' 8 ורב | ה רב חסדא | פ חונא 10 אנינות תורה | ה אנינות היום תורה ר' חונא | ה רב חונא פ רב חסדא 11 בדמדומי חמה | פה עם דמדומי חמה. ולית מן שמע מינה כלום

<sup>48</sup>Rebbi Abbahu in the name of Rebbi Eleazar: “Deep sorrow”<sup>49</sup> is only for the dead, for it is written<sup>50</sup>: *Its gates are in deep sorrow and mourning*. Hiyya bar Ada objected: Is it not written<sup>51</sup>: *the fishermen are in deep sorrow*? Rebbi Hanina said, so is the *baraita*: there is no deep sorrow in impurity except for the dead. It was stated<sup>52</sup>: “What is deep sorrow? From the moment of death until the moment of burial, the word of Rebbi. But the Sages say, the entire day.” It turns out that one describes leniencies and stringencies following Rebbi, leniencies and stringencies following the rabbis. What is the difference between them? If he died and was buried within the hour. Following the rabbis, he is forbidden the entire day; following Rebbi he is forbidden only that hour. If he died and was buried after three days.

Following the rabbis, he is forbidden the entire day; following Rabbi he is forbidden up to three days. There came Rabbi Abbahu in the name of Rabbi Johanan, and Rav Hisda, both of whom said that Rabbi agrees with the Sages that he is forbidden only during the first day, as it was stated<sup>53</sup>: Rabbi said, you know that deep mourning in the night is not biblical, since they said<sup>54</sup>, “the deep mourner immerses himself and eats his Passover sacrifice in the evening.” But they said, deep mourning [during daytime]<sup>55</sup> is biblical. Rabbi Yose ben Rabbi Abun in the name of Rabbi Huna: Explain it<sup>56</sup> that he was buried close to sundown [and one cannot infer anything.<sup>55</sup>]

48 In addition to the parallel in *Horaiot*, there exists one in *Pesahim* 8:7 36a l. 76 ff. (א).

49 In its legal implications, that the person not only be forbidden to eat sanctified food but also cannot be counted in a quorum for religious services; cf. *Berakhot* 3:1, Note 42.

50 *Is.* 3:26. The gates of Jerusalem are in sorrow because all its men are dead.

51 *Is.* 19:8. The fishermen are in *deep sorrow* (and they *mourn* as quoted in the two parallel texts) because the Nile dried up. This proves that both terms used for the religious obligations of a person whose close relative died are used in the Bible also to describe other situations.

52 *Babli Zevahim* 100b; a suspect text in *Semahot* 4:4.

53 *Babli Zevahim* 100b.

54 Mishnah *Pesahim* 8:8. This naturally presupposes that the person was not defiled by the impurity of the dead; otherwise, he would have to observe a seven day cleansing period. If he had no occasion to be near the corpse, the biblical prohibitions upon the deep mourner lapse at sundown.

55 Inserted from the parallel sources, necessary for understanding the text.

56 The Mishnah in *Pesahim* only refers to the unlikely case that the deep mourner was not defiled with the impurity of the dead in a case in which both Rabbi and the Sages will agree on the duration of the deep sorrow.

**משנה ב:** וכשהוא מנחם את אחרים דרך כל העם עוברין בזה אחר זה והממונה ממצעו בינו לבין העם. כשהוא מתנחם מאחרים כל העם אומרים לו אנו כפרתו והוא אומר להן התברכו מן השמים. וכשמברין אותו כל העם מסובין על הארץ והוא מיסב על הספסל:

**Mishnah 2:** If he<sup>57</sup> consoles others, common behavior requires the people to come in single file and the executive officer<sup>58</sup> becomes a partition between himself and the people. If he is consoled by others, everybody tells him, we

are his<sup>59</sup> atonement; he answers them, may you be blessed by Heaven. If one brings him the first meal<sup>60</sup>, the people sit in a circle on the ground and he sits in their circle on a footstool<sup>61</sup>.

57 The High Priest makes a visit of condolence.

58 The organizer of the Temple service walks to his left; all other people are required to make a single file to the organizer's left, to make sure that nobody touch the High Priest and defile him.

59 Meaning "your."

60 Mourners are not permitted to prepare their own first meal after the burial. The

people who bring him the food are supposed to eat with him. This is an Amoraic statement in the Babli (*Mo'ed qatan* 27b) but is implied as an ancient custom in 2S. 3:35, *Ez.* 24:17.

61 Latin *subsellium*. Probably the vocalization should be ספסל.

(20a line 41) **הלכה ב:** וְכָשָׁהוּא מְנַחֵם אֶת אֲחֵרִים כּוֹל. הָדָא אָמְרָה. סְפָסֶל אֵין בּוּ מִשּׁוּם כְּפִיט הַמִּיטָה. כִּהֵּן גָּדוֹל חֵיב בְּכִפּיט הַמִּיטָה.

**Halakhah 2:** "If he consoles others," etc. This implies that a footstool is not meant by "overturning the couch." The High Priest is obligated to overturn his couch<sup>62</sup>.

62 The mourner is not permitted to sit comfortably on a couch; cf. *Berakhot* 3:1, Notes 36-41. The prestige of the High

Priest's office does not permit him to sit on the floor.

(20a line 43) תַּנִּי אֵין מוֹצִיאִין אֶת הַמֵּת סְמוּךְ לַקֶּרֶת שְׁמַע אֵלָּא אִם כֵּן הִקְדִּימוּ שְׁעָה אַחַת אוֹ אֶחָד שְׁעָה אַחַת כְּדִי שִׁיקְרָאוּ וְיִתְפָּלְלוּ. וְהַתִּנִּין קָבְרוּ אֶת הַמֵּת וְחִזְרוּ. תִּיפְתָּר בְּאֵינוֹן דְּהוּיִן סָבְרִין דְּאֵית בָּהּ עֵנָה וְלִית בָּהּ עֵנָה.

<sup>63</sup>It is stated: "One does not take the dead for burial close to the recitation of the *Shema* unless one do it one hour in advance or one hour afterwards, so that they may recite and pray." But did we not formulate: "When they buried the dead and returned"? Explain it for those who thought that they had a free period but they did not have a free period.

תני ההספד וכל העוסקין בהספד מפסיקין לקרית שמע ולא לתפילה. מעשה היה והפסיקו רבותינו לקרית שמע ולתפילה. והתנינו אם יכולין להתחיל ולגמור. מתניתא ביום ראשון. מה דתני ביום שיני.

It is stated: The eulogizer and all who participate in a eulogy interrupt for the recitation of *Shema* but do not interrupt for prayer. It happened that our teachers interrupted for the recitation of *Shema* and prayer. Did we not state: "If they are able to start and finish"? Our Mishnah refers to the first day; that the Tanna stated for the second day.

אמר רבי שמואל בר אבדימא זה שנקנס לכנסת ומצאן עומדין לתפילה. אם יודע שיוכל לגמור עד שלא יתחיל שלח ציבור לענות אמן ותפלל. ואם לאו אל יתפלל. באי זה אמן אמרו. תרין אמורין. חד אמר שלחאל הקדוש. וחד אמר שלשומע תפילה. בחול.

Rebbi Samuel ben Eudaimon said: He who enters the synagogue and finds them standing and praying; if he knows that he could start and finish before the reader starts, so that he may answer "Amen", he may pray, otherwise he should not pray. About which "Amen" did the speak? Two Amora'im, one says the Amen of "the Holy King", the other says the Amen of "Who listens to prayer."<sup>64</sup> On weekdays.

תני רבי יהודה אומר. היו כולן עומדין בשורה. משום כבוד חייבין. משום אבל פטורין. ירדו לספד. הרואין פנים פטורין. ושאין רואין פנים חייבין. והדא דתנינן. קשמנחם אחריס כל העם עוברין בזה אחר זה והממונה ממצעו בינו לבין העם. כמשנה הראשונה. והא דתנינן. הפנימין פטורין והחיצוני חייבין. כמשנה הראשונה. אמר רבי חנינה. בראשונה היו משפחות עומדות והאבלין עוברין. משרבת תחרות בציפורין התקין רבי יוסי שיהיו משפחות עוברות והאבלין עומדין. אמר רבי שמואל דסופפתא. חזרי הדברים ליושנן.

It is stated: Rebbi Jehudah says, if they are all standing in one row, those who are standing because of honor are obligated, those because of mourning are exempt. When they descend for a eulogy, those who see inside are exempt, those who do not see inside are obligated. It would be what we stated: "If he consoles others, the people come in single file and the executive officer becomes a partition between himself and the people," the first teaching<sup>65</sup>. And what we stated: "the innermost are exempt and the outer ones obligated," is the first teaching.

Rebbi Hanina said: Originally, all families were standing still and the mourners passed between them. When competition increased in Sepphoris, Rebbi Yose ben Halaphta instituted that the families should pass by and the mourners stand still. Rebbi Samuel Sofefta said: Matters returned to their original state.

63 From here to the end of the Halakhah, the text is from *Berakhot* 3:2, Notes 123-135. The last two paragraphs have been shortened to become partially unintelligible; they are intended to refer the student to the text in *Berakhot*.

64 A sentence has been omitted: R. Phineas said, the Amen of “the Holy King”

refers to the Sabbath, that of “He Who listens to prayer” refers to *weekdays*. Only the last word was left.

65 Half a paragraph has been omitted (*Berakhot loc. cit.* Notes 132-133) that practice had changed in Mishnaic times. The practice of Temple times is not necessarily relevant for later generations.

מִשְׁנָה ג: מֶלֶךְ לֹא דָן וְלֹא דָנִין אוֹתוֹ לֹא מַעֲיֵד וְלֹא מַעֲיָדִין אוֹתוֹ לֹא חוֹלֵץ וְלֹא חוֹלְצִין (fol. 19d)  
אֶת אִשְׁתּוֹ לֹא מַיִיבָם וְלֹא מַיִיבִין אֶת אִשְׁתּוֹ. רַבִּי יְהוּדָה אוֹמֵר אִם רָצָה לְחַלּוֹץ וּלְיִיבָם זָכוֹר  
לְטוֹב. אֲמָרוּ לוֹ אִם רָצָה אֵין שׁוֹמְעִין לוֹ. וְאֵין נוֹשְׂאִין אֶת אֲלֻמָּתוֹ. רַבִּי יְהוּדָה אוֹמֵר. נוֹשֵׂא  
הוּא הַמֶּלֶךְ אֲלֻמָּתוֹ שֶׁל מֶלֶךְ. שֶׁכֵּן מַצִּינוּ בְּדוֹד שֶׁנִּשְׂאָ אֲלֻמָּתוֹ שֶׁל שְׂאוֹל שֶׁנֶּאֱמַר וְאֶתְנָה לָּהּ אֶת  
בֵּית אֲדֹנֶיהָ וְאֶת נָשֵׁי אֲדֹנֶיהָ בְּחִיקָה:

**Mishnah 3:** The king does not judge<sup>66</sup>, nor may one judge him;<sup>67</sup> he does not testify, nor may one testify against him; he does not give *halīṣah*, nor does one give *halīṣah* to his wife<sup>68</sup>. He does not marry in levirate, nor may one marry his wife in levirate. Rebbi Jehudah says, if he wants to give *halīṣah* or marry in levirate, let his good deeds be remembered. They told him, even if he wants to, one does not listen to him<sup>69</sup>. One may not marry his widow; Rebbi Jehudah says, a king may marry a king’s widow<sup>70</sup>, since we find that David married Saul’s widow, as it is said<sup>71</sup>: *I gave your master’s house to you and your master’s wives on your breast*.

66 In the theory of the Yerushalmi this is biblical law, even though historically the administration of justice was the hallmark of kingship. Historically, the explanation of

the Babli (19a) has much to recommend it, that the Mishnaic theory of kingship, positing total separation of the executive from the judiciary, is a reaction to the

misrule of the later Hasmoneans and the Herodians.

67 This would be too dangerous for judges and witnesses.

68 The ceremony would not be consistent with the dignity of his office/

69 The king is obliged to sustain his dignity.

70 This seems to have been Solomon's interpretation when he ordered Adoniah killed for asking Avishag's hand (1K. 2:22).

71 2S. 12:8.

(20a line 60) **הלכה ג:** מלך לא דן ולא דנין אותו כול'. לא דן. והכתוב ויהי דוד עשה משפט וצדקה לכל עמו. ותימר הכן. אמור מעתה. הנה דן הדין. ויפה הזכיר וחיבב החיבב. הנה החיבב עני נותן לו משלו. נמצא עושה דין לזה וצדקה לזה. רבי אומר. הנה דן ויפה הזכיר וחיבב החיבב. מעלה עליו המקום כילו עשה צדקה עם החיבב שהוציא גזילה מידו.

**Halakhah 3:** "The king does not judge, nor may one judge him;" etc. But is it not written<sup>72</sup>: *David administered justice and charity for his entire people*, and you say so? One has to say that he judged by the law, cleared the innocent and condemned the guilty. <sup>73</sup>If a poor person was found liable, he paid from his own money; in that he was administering justice for one party and charity for the other. Rabbi said, if somebody judged, cleared the innocent and condemned the guilty, the Omnipresent will credit him with acting charitably with the guilty by taking the ill-gotten goods out of his hand<sup>74</sup>.

72 2S. 8:15.

73 Babli 6b, the statements to the end of the paragraph. *Deut. rabba* 5(3).

74 Rabbi (in *Deut. rabba* Rav Nahman) objects to the first explanation since

essentially it is a dishonest way of solving disputes. He declares correct judgment in money matters to be an exercise in charity. Cf. Chapter 1, Note 82.

(20a line 65) על שם מלפניד משפטי יצא. רבי יצחק בשם רבי. המלך והציבור נידונין לכל-יום. שנאמר. לעשות משפט עבדו ומשפט עמו ישראל דבר-יום ביומו.

"One may not judge him." Because *from You my judgment will come*<sup>75</sup>. Rabbi Isaac in the name of Rabbi: *To provide the judgment of His servant and the judgment of His people Israel day by day*<sup>76</sup>.

75 Ps. 17:2. Only God judges the king.

76 1K. 8:59.



(20a line 68) רבי יודן אומר אם רצה לחלוץ ולקיים זכור לטוב. אמרו לו אם אתה אומר כן נמצאת פוגם כבוד המלך.

אין נושאין לא אלמנתו ולא גרושתו של מלך. על שם ותהינה צרות עד-יום מותן אלמנות חיות: רבי יודה בר פזי בשם רבי יוחנן. מלמד שהיה דוד מקלעתן ומקשטתן ומכניתן לפניו בכל-יום ואומר ליצרו הרע. תאבדה דבר האסור לה. חיד שפני מתאיבד דבר המותר לה. רבני דקיסרין אמרין. אסורות ממש היו. ומה כלי הדייט שנשתמש בהן הדייט אסור למלך להשתמש בו. כלי המלך שנשתמש בהן הדייט אינו דין שיהא המלך אסור לשמש בהן.

“Rebbi Jehudah says, if he wants to give *halifṣah* or marry in levirate, let his good deeds be remembered.” They told him, if you say so, you injure the king’s prestige.

One marries neither the king’s widow nor his divorcee, because *they were secluded to the day of their death, living in widowhood*<sup>77</sup>. Rebbi Jehudah bar Pazi in the name of Rebbi Johanan: This teaches<sup>78</sup> that David had them braided and adorned, and brought them before himself every day and told his evil inclination, you desire something which is forbidden to you,<sup>79</sup> by your life, I shall make you desire what is permitted to you. The rabbis of Caesarea said, they actually were forbidden to him. If a private person’s vessel used by a private person is forbidden for the king’s use<sup>80</sup>, *a fortiori* the king is forbidden to use the king’s vessels which were used by a private person.

77 2S. 20:3, speaking of David’s concubines with whom Absalom had slept in public.

78 He reads צרות not as “bound” but “tied, braided”.

79 Since the concubines were not legally his wives, Absalom sinned by raping them, but they remained permitted to David by

rabbinic rules. It was voluntarily that David refrained from sleeping with them.

80 Since the king is prohibited from marrying his childless brother’s widow, it follows that the only women permitted to a king are either virgins or widows and divorcees of kings.

(20b line 1) רבי יודן אומר. נושא הוא המלך אלמנת המלך. שפנינו בידו שנשא אלמנת שאול. שנאמר. ואתנה לה את-בית אדניך ואת-נשי אדניך בחיקך. זו רצפה ואביגיל ובת שבע.

“Rebbi Jehudah says, a king may marry a king’s widow, since we find that David married Saul’s widow, as it is said: *I gave your master’s house to you*

and your master's wives on your breast.” This refers to Riṣpah<sup>81</sup>, Abigail and Batseba<sup>82</sup>.

81 Saul's concubine, cf. *Yebamot* 2:4, Note 116.

82 These two examples refer to the preceding paragraph and show that the argument of the rabbis of Caesarea is wrong.

David married Abigail, Nabal's widow, when already he claimed kingship (in the interpretation of the next paragraphs) and Batseba, Uriah's widow, when actually he was king.

(20b line 4) שְׁלֹשָׁה בָּנִים הָיוּ לְחֶצְרוֹן. דְּכָתִיב וּבְנֵי חֶצְרוֹן יִרְחֻמָּאֵל וְאֶת־רָם וְאֶת־כְּלוּבָי. הוּא יִרְחֻמָּאֵל קִדְמוּי אֶלָּא שְׁנָשָׁא אִשָּׁה גּוֹיָה לְהַתְעֵטֵר בָּהּ. דְּכָתִיב וַתְּהִי אִשָּׁה אַחֶרֶת לִירְחֻמָּאֵל וַיִּשְׁמָה עֵטְרָהּ הִיא אִם אוֹנָם. שְׁהִכְנִיסָה אֶנְיָה לְתוֹךְ בֵּיתוֹ. וְרָם הוֹלִיד אֶת־עַמִּינָדָב. וְעַמִּינָדָב הוֹלִיד אֶת־נַחֲשׁוֹן וְנַחֲשׁוֹן הוֹלִיד אֶת־שַׁלְמָה. וְשַׁלְמוֹן הוֹלִיד אֶת־בָּעָז וּבָעָז נָשָׂא אֶת רוּת.

<sup>83</sup>Hesron had three sons, as it is written<sup>84</sup>: *The sons of Hesron Yerahmeël, and Ram, and Kelubai*<sup>85</sup>. Yerahmeël should have been first,<sup>86</sup> but he married a Gentile woman to crown himself with her, as it is written<sup>87</sup>: *Yerahmeël had another*<sup>88</sup> *wife; her name was Crown, she is the mother of Onam*, for she brought deep sorrow to his house<sup>89</sup>. *And Ram fathered Amminadav, Amminadav fathered Nahshon, Nahshon fathered Salma, Salmon fathered Boaz*<sup>90</sup>, and Boaz married Ruth.

83 This paragraph is inserted as preface to the story about Nabal and David, induced by the mention of Abigail in the preceding sentence.

84 A shortened quote from *IChr.* 2:9.

85 He is Kaleb ben Hesron, presumed ancestor of Nabal.

86 As the firstborn, he should be first in the genealogical list, but his descendants are listed last, vv. 25 ff. The role of firstborn

was taken over by Ram, the ancestor of David.

87 *IChr.* 2:26.

88 Interpreting “another” as “foreign”.

89 Deriving אִם אוֹנָם from the root “to be in deep sorrow”.

90 *Ru.* 4:19-21, but probably *IChr.* 2:10-11 was intended.

(20b line 14) הָא נָבֵל אֶתִּי מִן דְּכְלוּבָי. אָמַר נָבֵל. לֵית בִּישְׁרָאֵל בְּרַם טָבִין סָגִין מִינִי. הָדָא הִיא דְּכָתִיב וְאִישׁ בְּמַעֲוֹן וּמַעֲשָׂהוּ בְּכַרְמֶל וְהָאִישׁ גְּדוֹל מְאֹד וְהוּא כְּלוּבָי. דְּאֶתִּי מִן כְּלוּבָי. וַיִּשְׁמַע דָּוִד בְּמַדְבָּר קִיגוּזָא נָבֵל. וְאַמְרַתָּם כֹּה לָחִי. לְקִיּוּמָא. וְאַתָּה שְׁלוֹם וְגו'. אָמַר רַבִּי יוֹסֵפָא בְּרַם שׁוֹנָם. נַעֲשֵׂי מַחְנָה. וַיַּעַן נָבֵל אֶת־עַבְדֵּי דָּוִד וְגו'. וּמִנֵּין לְדִינִי נִפְשׁוֹת שְׁמִתְחִילִין מִן הַצֵּד. תָּנָא

שמואל הזקן קומי רבי אחא. ויאמר דוד לאנשיו וגו'. ויעט בהם. מהו ויעט בהם. אפחין במילין. ועתה דעי ורא' מה-תעש' ותפגוש אתם: גילת שוקה והלכו לאורה. ותפגוש אתם: הוקרו כולם. וחד אמר אף לשקר שמרתי וגו'. משתין בקיר: מה עיסקיה דכלבא משתין בכתלא. אפילו על כלבא לי נא חייס. ותרא אביגיל את-דוד וגו'. אמרה ליה. מרי דוד. אנא מה עבדית. בניי מה עבדון. בעיריי מה עבד. אמר לה. מפני שקילל מלכות דוד. אמרה ליה. ומלך אתה. אמר לה. ולא משחני שמואל למלך. אמרה לו. עדיין מוניטא דמרון שאול קיין. ואני אמתך. מלמד שתבעה לתשמיש. מיד הוציאה כתמה והראת לו. אמר לה. וכי רואין כתמין בלילה. אמרה ליה. ולא נשמעו אונקד מי שפיד מדבר. כתמין אין רואין בלילה ודיני נפשות דיני בלילה. אמר לה. כבר נגמר דינו מבעוד יום. אמרה לו. ולא-תהיה זאת | לך לפיקה.

אמר רבי לעזר. פיקפוקי דברים הזה שם. רבי לוי הוה עבר פרשתא. והוה רבי זעירא מפקד לחבריאי. עלון ושמעון קליה דרבי לוי דרש. דלית איפשר ליה דהוא מפקא פרשתא דלא ריבון. געל ואמר לון. לא. ושמע רבי זעירא נמר. אוף באגדתא אית ריבון. לפיקה. פיקפוקי דברים הזה שם.

אמרה ליה. כד תפיק פקפוקך יהו אומרים עליך. שופך דמים אתה. ולמכשול עון. אתה עומד להיכשל באשת איש. מוטב אחת ולא שתיים. עתידה רובה מן הדה מייתי לא תהא דא כדא. ולשפוד דם. עומד אתה למלוד על ישראל והו אומרים עליך. שופך דמים הנה. והדא דתימר. כל-המקלל מלכות בית דוד חייב מיתה. אדיין מחוסר כסא את. וזכרת את-אמתך: מלמד שפקרה עצמה. וכיון שפקרה עצמה פגמה הכתוב. בכל-קריא את קרי אביגיל בר מהדין פסוקא ויאמר דוד לאביגל ברוך יי. מבוא בדמים. דם נדה ושפיכות דמים.

<sup>91</sup>This Nabal<sup>92</sup> was a descendant of Kelubai. Nabal said, nobody in Israel comes from a better family than I. That is what is written<sup>93</sup>: *A man from Ma'on had his business in Karmel; the man was exceedingly rich, a Kalebite, a descendant of Kelubai. David heard in the prairie that Nabal was shearing*<sup>94</sup>. *Tell him, to life*<sup>95</sup>! For long life. *Peace be with you*, etc. Rabbi Justus from Sunem said, they formed a camp<sup>96</sup>. *Nabal answered David's servants*<sup>97</sup>, etc. From where that in criminal trials the voting starts from the side? Samuel the Elder stated before Rabbi Aha: *David told his men*<sup>98</sup>, etc. *He flew at them*<sup>99</sup>. What means *he flew at them*? He made them fly with words<sup>100</sup>. *Now know this and consider what to do*<sup>101</sup>. *She fell in with them*<sup>102</sup>, she bared her thigh and they walked by its light<sup>103</sup>. *She fell in with them*, they all were recognizable<sup>104</sup>. [David] said, *was it in vain that I watched*<sup>105</sup>, etc.? *Pissing on a wall*<sup>106</sup>; why does he refer to the dog pissing on a wall? Even

with the dog I shall not have mercy. *Abigail saw David*<sup>107</sup>, etc. She told him, my lord David, what did I do, what did my children do, what did my animals do? He answered her, because he insulted the kingdom of David. She asked him, are you a king? He told her, did not Samuel anoint me as king? She answered him, our Lord's Saul's coin<sup>108</sup> is still circulating. *And I am your servant*<sup>109</sup>; this proves that he asked her for sex<sup>110</sup>. Immediately, she brought out her stains<sup>111</sup> and showed him. He said, does one investigate stains in the night? She retorted, may your ears hear what your lips say! Stains one does not investigate in the night, does one judge capital cases in the night? He answered, his sentence was already passed in daytime. She retorted, *may this not be פיקה for you*<sup>112</sup>.

<sup>113</sup>Rebbi Eleazar said, matters of reproach are there. Rebbi Levi was reviewing the lesson, when Rebbi Ze'ira commanded the colleagues to come and hear the voice of Rebbi Levi sermonizing, for it was impossible that the lesson would be finished without new insight. He came and told them, *not be*; Rebbi Ze'ira heard it and said, even in his *aggadah* there is new insight. לפיקה matters of reproach are there.

She told him, when you emerge from your tribulations, one will say of you that you that you are a murderer. *And a stumbling block for sin*<sup>112,114</sup>. You are set up to stumble over a married woman, better one than two. In the future it will be enough to bring one, and not to add *spilling blood*. Are you ready to rule over Israel when they will say about you that you were a spiller of blood? Even though anybody who curses the dynasty of David incurs the death penalty<sup>115</sup>, still you are missing the throne. *But remember your servant*<sup>112</sup>, this proves that she showed herself licentious<sup>116</sup>. Since she showed herself licentious, the verse damaged her. In all verses one reads Abigail, except for this verse<sup>117</sup>: *David said to Abigal, praised be the Eternal, etc., to come into blood guilts*, the blood of menstruation and the spilling of blood<sup>118</sup>.

91 A Hebrew version of most of the story is in *Midrash Samuel* (ed. Buber) 25.

92 "Scoundrel". But the name seems to be Arabic نبل "possessed of superior qualities, generous, noble."

93 *IS*. 25:2.

94 *IS*. 25:4.

95 *IS*. 25:6.

97 This is a side remark; it is more explicit in *Erubin* 1, 19c l. 75. In v. 4, it is

stated that David sent 10 men to Nabal; in v. 6 it is stated *they encamped*. He concludes that the legal definition of a camp (for the religious obligations in wartime) refers to a minimum of 10 men.

97 *IS*. 25:10.

98 *IS*. 25:13. The argument is quoted in the Babli, 36a, in the name of R. Johanan. The verse explains that David told his men to gird their swords; he girded his sword last. This is read to mean that he first polled his men whether Nabal should be executed for the crime of *lèse-majesty*; he gave his vote last.

99 *IS*. 25:14.

100 Rashi quotes this in his Commentary to the verse.

101 *IS*. 25:17.

102 *IS*. 25:20.

103 Since in v. 3 she is described as a radiant beauty.

104 In the dark of the night.

105 *IS*. 25:21.

106 *IS*. 25:22.

107 *IS*. 25:23.

108 Latin *moneta*.

109 *IS*. 25:25.

110 Since in each sentence she repeats that she only is his servant, she has to emphasize that she is not going to be his companion.

111 Indicating that she was not available since she was menstruating, and treating him as a rabbi, competent to decide whether blood was menstrual or not (cf. Introduction to Tractate *Niddah*.)

112 *IS*. 25:31.

113 A paragraph inserted to discuss the meaning of the *hapax* פִּקָּה. It is assumed that the root פק is the same which appears reduplicated in the rabbinic Hebrew verb פקפק ("to doubt", Arabic "to dote"). In the Babli, a parallel argument is in *Megillah* 14b.

114 In the verse: *a stumbling block of my lord's heart*.

115 In imitation of Roman law; Babli *Megillah* 14a.

116 She indicated her desire to be his wife when she still was married to Nabal.

117 *IS*. 25:32.

118 *IS*. 25:33; explaining the plural "bloods" used in the verse. Babli *Megillah* 14b.

**משנה ד:** מֵת לֹו מֵת אֵינוּ יוֹצֵא מִפֶּתַח פְּלוֹטוּרִין שָׁלוֹ. רַבִּי יְהוֹנָתָן אוֹמֵר אִם רוֹצֶה לְצִאת אַחֵר הַמֵּיטָה יוֹצֵא שָׁבוֹן מְצִינֵי בְדוּד שֶׁנֶּצֶא אַחֵר מִיטָתוֹ שֶׁל אֲבִנֵּר שֶׁנֶּאֱמַר וְהַמֶּלֶךְ דָּוִד הֵלֵךְ אַחֲרֵי הַמֵּיטָה. אָמְרוּ לוֹ לֹא הָיָה הַדָּבָר אֶלָּא לְפִי־ס. וְכַשְּׁמִבְרִין אוֹתוֹ, כָּל הָעָם מְסוּבִין עַל הָאֶרֶץ וְהוּא מִסֵּב עַל הַדֶּגֶשׁ:

**Mishnah 4:** If a relative of his<sup>119</sup> died, he does not leave his palace<sup>120</sup>.

Rebbi Jehudah says, if he wants to follow the bier, he may follow it, as we find that David followed Abner's bier, as it is said<sup>121</sup>: *King David followed*

*the bier*. They told him, this was only to quiet<sup>122</sup>. When one brings him the first meal<sup>60</sup>, the people sit in a circle on the floor and he sits in their circle on a couch<sup>123</sup>.

119 The king's.

120 Latin *palatium*, "palace". The ending *-orium* may have been added in parallel to *praetorium* "official residence of the governor of a province".

121 2S. 3:31.

122 To quell rumors that the king was involved in Abner's murder.

123 For the particular kind of couch mentioned here; cf. *Berakhot* 3:1, Note 31.

(20b line 40) **הלכה ד:** מת לו מת אינו יוצא מפתח פלטורין שלו. הדא אמרה. דרגש יש בו משום כפיית המיטה. המלך אינו חייב בכפיית המיטה.

**Halakhah 4:** "If a relative of his died, he does not leave his palace." This implies that a *dargesh* is included in overturning one's bed<sup>124</sup>. The king is not required to overturn his bed.

124 Since it is mentioned that the king is required to sit on a *dargesh* when receiving condolence visits, one implies that no other mourner may sit on this kind of couch since the king in mourning is not required to sit or sleep on an overturned coach. However, it

is spelled out elsewhere (*Berakhot* 3:1 Note 31, *Mo'ed qatan* 5:1 83a l. 11, *Nedarim* 7:5 Note 49; Babli *Sanhedrin* 20a) that a *dargesh* is turned 90° in contrast to other couches which are turned upside down.

(20b line 42) אית תנאי תני. הנשים מהלכות תחילה והאנשים אחריהם. ואית תנאי תני. אנשים תחילה והנשים אחריהם. מאן דמר הנשים תחילה. שהן גרמו מיתה לעולם. מאן דמר האנשים תחילה. מפני כבוד בנות ישראל שלא יהו מביטין בנשים. והכתיב והמלך דוד הלך אחרי המיטה: אמרו לא היה הדבר אלא לפיכך. מאן דהנה מפיס לנשיא הנה מפיס לגובריא ומאן דהנה מפיס לגובריא הנה מפיס לנשיא.

Some Tanna'im state<sup>125</sup>: Women go first<sup>126</sup>, after them men. But some Tanna'im state: Men first, women after them. He who says women first, since they caused death to the world. He who says men first, for the honor of the daughter of Israel, lest people<sup>127</sup> look at women. But was it not written: *King David followed the bier*<sup>121,128</sup>. They said, this was only to quiet. Whoever was calming the women was calming the men, and whoever was calming the men was calming the women.

- 125 *Gen. rabba* 17(13). *entire* includes women. But it still is  
 126 In a funeral procession, they precede undecided who went first. In the Babli, 20a,  
 the bier. the verse is quoted as proof that the women  
 127 The onlookers. must have preceded the bier since the king  
 128 In v. 32 it says that David cried at immediately followed it.  
 Abner's grave, and so did the entire people;

(20b line 48) כְּתִיב וַיִּסּוּב דָּוִד וּגְו'. מִהוּ הָרִיקִים. אָמַר רַבִּי בָּא בַר כְּהֵנָּא. הָרִיקִים שֶׁבְּרִיקִים זֶה אֲרֻכְסֻטִּס. אָמְרָה לֹו. הַיּוֹם נִגְלָה כְּבוֹד בֵּית אָבָא. אָמְרוּ עָלָיו עַל בֵּית שְׁאוּל שְׁלֵא רָאוּ אוֹתוֹ לֹא עָקֵב וְלֹא גֹדֵל מִימֵיהֶן. הֵדָא הוּא דְכְּתִיב וַיָּבֹא אֶל־גְּדֵרֹת הַצֹּאן. רַבִּי בִּוֵּן בִּירְבִּי לַעֲזָר. גְּדֵר לַפְּנִים מִגְדֵּר הִיא. וַיָּבֹא שְׁאוּל לְהִסָּד אֶת־רִגְלָיו. הִנֵּה חֲמִי לִיה מְשַׁלְּשֵׁל צָבָחַר וּמִסְלִיק צָבָחַר. אָמַר. אֲרוּר מִנֶּע בְּהֵדִין צְנִיעָה. הֵדָא דוּ מַר לִיה. הִנֵּה הַיּוֹם הָיָה אֲשֶׁר רָאוּ עֵינֶיךָ וּגְו'. וְאַחוּס עֲלִיד אֵין כְּתִיב כָּאֵן אֶלָּא וַתִּחַס עֲלִיד. צְנִיעִיתָּהּ הִיא חֲסָה עֲלִיד. וַיֵּאמֶר דָּוִד אֶל־מִיכָל וּגְו'. וְעַם הָאֲמָהוֹת אֲשֶׁר אָמַרְתָּ עִמָּם אֲכַבְּדָהּ; שְׂאִינָן אֲמָהוֹת אֶלָּא אִמָּהוֹת. וּבִמָּה נִאֲנָשָׁה. וְלִמִּיכָל בֵּת־שְׁאוּל לֹא־הָיָה לָהּ וּלְדָ. וְהַכְּתִיב וְהַשְׁשִׁי יִתְרָעַם לְעִגְלָה אֲשֶׁתוֹ. אֶלָּא שְׁנַעַת כְּעִגְלָה וְמָתָה.

<sup>129</sup>It is written: *David turned*<sup>130</sup>. Who are the “empty ones”<sup>131</sup>? Rabbi Abba bar Cahana said, the most empty one, that is the dancer<sup>132</sup>. She told him, today the honor of my father's house became obvious. One said about the family of Saul that one never saw a heel or a thumb of them. That is what is written: *He came to the sheep fences*<sup>133</sup>. Rabbi Abun ben Rabbi Eleazar: That was a fence inside a fence<sup>134</sup>. *Saul came to spread his feet*<sup>135</sup>. He saw him how he lifted a little and covered a little. He said, one who would touch such modesty would be cursed. That is what he told him, *behold, what your eyes saw today*<sup>136</sup>, etc. Is it not written “I had mercy on you” but *it had mercy on you*<sup>137</sup>, your modesty had mercy on you. *David told Michal*<sup>138</sup>, etc. *With the servant girls you mentioned, with them I shall be honored*<sup>139</sup>, for they are not servant girls but mothers. How was she punished? *Michal, Saul's daughter, had no child*<sup>140</sup>. But is it not written: *The sixth Yitre'am, of his wife Calf*<sup>141</sup>. She mood like a calf and died.

129 A somewhat more explicit version of this is in *Sukkah* 5:4 (55c l. 7); a different version of this and the following paragraphs is found in the last part of *Num. rabba* 4.

130 *1Chr.* 16:43. Probably what was intended was 2S. 6:20 (correctly quoted in *Sukkah*), the end of the story of the transfer of the Ark to the City of David.

131 2S. 6:20, where Michal criticizes David for dancing in the street.

132 Greek ὁρχηστῆς, οὐ, ὁ.

133 1S. 24:3.

134 This explains the plural used in the verse and shows that Saul went to relieve himself in the cave guarded from the outside by a double fence. In the Babli, *Berakhot* 62b, this is quoted as tannaitic text.

135 1S. 24:10.

136 2S. 6:21.

137 2S. 6:22.

138 2S. 6:23. The verse ends: *up to the day of her death*, implying that she died in childbirth.

139 2S. 3:5. Only Michal is called "David's wife" (1S. 25:44). The problem that Yitre'am was born in Hebron is not addressed; it is discussed in the Babli, 21a.

(20b line 58) אין לך אדם בישראל שביזה עצמו על המצות יותר מדוד. מפני מה ביזה עצמו על המצות. שהיו מביטין בארון ומתים. דכתיב וַיִּזְבַּח בְּאַנְשֵׁי בֵּית־שֹׁמֶשׁ וגו'. רבי חנינה ורבי מנא. חד אמר. ויזבחו בעם שבועים איש זו סנהדרין. וחמשים אלה שהיו שקולין כנגד חמשים אלה. וחד אמר. ויזבחו בעם שבועים איש זו סנהדרין. וחמשים אלה מעם הארץ. כתיב שיר המעלות לדוד יי לאגבה לבי בשעה שמשחני שמואל. ולא דמו עיני בשעה שהרגתי את גולית. ולא הלכתי בגדולות בשעה שהעלתי הארון. ובנפלאות ממני בשעה שהחזירוני למלכותי. אלא אם לא שיויתי ודוממתי כגמול על אמו כגמול על נפשי. כהו ינוקא דנחית ממעי אמיה כן הוות נפשי עלי.

<sup>140</sup>No person in Israel was abasing himself before the Commandments more than David. Why was he abasing himself before the Commandments? Because people were looking at the Ark and dying, as it is written<sup>141</sup>: *He smote of the people of Bet Shemesh, etc.*

Rebbi Hanina and Rebbi Mana<sup>142</sup>. One said, *He smote among the people seventy men*, that is the Synhedrion. And *50'000 men*<sup>143</sup>, for they were worth 50'000. The other said, *He smote among the people seventy men*, that is the Synhedrion. And *50'000 men* from the people of the Land.

It is written<sup>143a</sup>: *A song of ascent of David. O Eternal, my heart was not haughty when Samuel anointed me; my eyes were not overbearing when I slew Goliath; and I did not decide on matters too great when I brought up the Ark; and wonderful for me, when He brought me back to my kingdom. But rather I prayed, and silenced my soul like a baby by its mother, like a baby my soul is for me. Like a baby delivered from his mother's womb is my soul for me.*



140 Since the preceding paragraph speaks of the introduction of the Ark into Jerusalem, one continues with sermons about the Ark.

141 *IS. 6:19*. There, it is stated explicitly, *because they were staring at the Eternal's ark*.

143 A different interpretation is in the Bab-

li, *Sotah* 35b, also by Galilean Amoraim.

143 The conjunction ו is not in the masoretic text. The quote is correct in the existing mss. (Munich and Rome) of *Babli Sotah*, incorrect in the Bomberg *Babli* of 1520-23.

143a *Ps.* 131.

(fol. 19d) **משנה ה:** ומוציא למלחמת הרשות על פי בית דין של שבעים ואחד. ופורץ לעשות לו דרך ואין ממחין בידו. דרך המלך אין לו שעור. וכל העם בוזזין ונותנין לפנני, והוא נוטל חלק בראש.

**Mishnah 5:** He goes to a war of choice<sup>144</sup> by the word of the Court of 71<sup>145</sup>. He breaches fences on his way and one may not protest against him. The king's highway has no measure<sup>146</sup>. When all people plunder<sup>147</sup>, it is put before him and he selects his part first.

144 Any war which is not purely defensive.

145 A misnomer for the Synhedrion, the High Priest's Council when the latter was head of the Commonwealth. The confusion in terminology was caused by the Court of

Jabneh which took over the name of Synhedrion.

146 Cf. *Mishnah Bava batra* 6:7.

147 In war, if orders are given to plunder the enemy.

(20b line 69) **הלכה ה:** ומוציא למלחמת הרשות כול. דכתיב על פני יצאו ועל פני יבואו. ופורץ לעשות לו דרך. דכתיב נהגו לפני המקנה ויאמרו זה שלל דוד.

**Halakhah 6:** "He goes to a war of choice," etc. For it is written<sup>148</sup>: *on his saying they shall go out, on his saying they shall return*. "He breaches fences on his way," for it is written: *they drove before [this] flock and said, this is David's booty*<sup>149</sup>.

148 *Num.* 27:21. The verse subordinates the political leader, Joshua, to the High

Priest, Eleazar. It is presumed that the High Priest act on advice of his Council.

149 /S. 30:20. What the verse really proves is that the total booty is called “the king’s booty”, implying that he has the right to first select his share.

(20b line 71) הוא הלה עם דוד באפס דמים. רבי יוחנן אמר. בחקל סומקתה. ורבי שמואל אמר. שמשם נפסקו דמים. ופולשתיים נאספים וגו'. רבי יעקב דכפר חנון אמר. עד שישו היו אלא שהיתה ענבה שלהן יפה כשלשעורין. אמר רבי לוי. אילו הן הפולשתיים שהיו באין וקופין כשעורין והלכו להן נמוכין כעדשין. כותב אחד אומר. ותהי שם חלקת השדה מליאה שעורים. וכתוב מליאה עדשים. רבי שמואל בר נחמן אמר. שנה אחת היתה ושתי שדות היו. אחת שעורים ואחת עדשים. פשיטא ליה לאביד וליתן דמים. דילמא פשיטא ליה לאביד שלא ליתן דמים. אי זה מהן יאבד ואי זה מהן יתן דמים. שלעך שישו ושלשעורין. אלא שלעך שישו מאכל אדם. ושלשעורין מאכל בהמה. שלעך שישו אינה חייבת בחלה ושלשעורים חייבת בחלה. עד שישו אין עומר בא ממנה. שעורים עומר בא ממנה. ורבנן אמרין. שדה אחת חושתי שנים היו. הנה למד משלשעורין ואין למידין משנה לחבירתה. ויתצבו בתוך החלקה ויצילוה. כותב אחד אומר ויצילוה וכותב אחד אומר ויצילה. אלא מלמד שהחזירה לבעליה והיתה חביבה עלי כשדה מליאה כרסום.

כתיב ויתאז דוד ויאמר מי ישקני מים מבזר בית לחם וגו'. רבי חייה בר בא אמר. הלכה נצרכה לו. ויבקעו שלשה. ולמה שלשה. שאין הלכה מתבררת פחות משלשה. ולא אבה דוד לשנות. לא אבה דוד שתיקבע הלכה על שמו. ויסד אותם לוי. קבעה מסכת לדורות. ופורץ לעשות לו דרך.

בר קפרא אמר. חג הנה וניסוף המים הנה והיתר במה הנה. ויבקעו שלשה. ולמה שלשה. אחד הורג ואחד מפנה הרועים ואחד מכניס צלוחית בטהרה. כותב אחד אומר וינסוף אותם לוי. וכותב אחד אומר וינסוף. מאן דמר וינסוף מסייע לרבי חייה בר בא. מאן דמר וינסוף מסייע לבר קפרא. רבי הונא בשם רבי יוסי. הילכות שבויים נצרכה לו. רבי שמעון ברבי אומר. בניין בית המקדש נתאנה.

<sup>150</sup> *He was with David at Efes Dammim*<sup>151</sup>. Rabbi Johanan said, at the red field<sup>152</sup>. But Rabbi Samuel said, from there the money stopped.<sup>153</sup> *The Philistines assembled*<sup>151,154</sup>, etc. Rabbi Jacob from Kefar Hanan said, they were lentils but a kernel was as good as a barley grain. Rabbi Levi said, this describes the Philistines who came straight as barley and went away low as lentils, as one verse says, *there was a field full of barley*<sup>151</sup>, and one said, *full of lentils*<sup>154</sup>. Rabbi Samuel bar Nahman said, it was one year but concerning two fields, one of barley and one of lentils. It was obvious to him that he might destroy it and pay for the damage. Perhaps it was obvious to him<sup>155</sup> that he might destroy it and not pay for the damage? Which one might he destroy

and for which one would he have to pay? For the one of lentils or the one of barley? For the one of lentils grows human food, the one of barley animal feed. The one of lentils will not be obligated for *hallah*<sup>156</sup>, barley will be obligated for *hallah*. The *`omer* comes from barley<sup>157</sup>; *`omer* cannot be brought from lentils. But the rabbis said, it was one field and two years. Does one infer from last year, or does one not infer from one year to the next? *They stood up in the property and saved it*<sup>158</sup>. One verse says, *they saved it*, and one says, *he saved it*<sup>159</sup>. This shows that he returned it to its owner and it was dear to him as if it had been a field of saffron.

It is written: *David had a desire and said, who would give me to drink from the cistern of Bethlehem*<sup>160</sup>, etc. Rabbi Hiyya bar Abba said, he questioned practice<sup>161</sup>. *Three broke through*. Why three? For no practice can be elucidated by less than three [opinions]. *But David refused to drink*. David did not want that the practice would be attached to his name<sup>162</sup>. *He poured it out for the Eternal*, he fixed it as a tractate for all generations, “he breaches fences on his way.”

Bar Qappara said, it was the feast of Tabernacles, the time of water libations<sup>163</sup>, and a time when private altars were permitted<sup>164</sup>. *Three broke through*. Why three? One was slaying, one was removing the corpses, and the third brought the flask in purity.

One verse says, *he made a libation for the Eternal*, but another verse says, *he covered*. He who says *וַיִּסַּךְ*, supports Rabbi Hiyya bar Abba<sup>165</sup>. He who says, *he made a libation*, supports Bar Qappara. Rabbi Huna in the name of Rabbi Yose: He had a problem with the rules of captives<sup>166</sup>. Rabbi Simeon ben Rabbi said, he desired to build the Temple<sup>167</sup>

150 Parallel texts are in *Ruth rabba* 5(1), *Midrash Samuel* 10(1), *Yalqut Samuel* #165.

151 *1Chr.* 11:13. In the entire section, the verses are not quoted exactly.

152 He explains the reading of the masoretic text, *פַּס דָּמִים* “a red strip.”

153 He reads *אֵין דָּמִים* “no money” in rabbinic Hebrew, to explain that the king does not pay for damage he inflicts on

private property in the course of his activities on behalf of the people in war or peace. The storytelling is incidental to the attempt to find biblical justification for the rules of the Mishnah. There is no claim of historical validity.

154 *2S.* 23:11.

155 To David, who would be incapable of doing anything unlawful. The Mishnah does

not address the problem of indemnity for the exercise of the power of eminent domain.

156 The heave required to be taken from bread dough; cf. Introduction to Tractate *Hallah*.

157 The flour offering permitting the use of new grain, *Lev.* 23:9-14.

158 *1Chr.* 11:14.

159 *2S.* 23:12.

160 *2S.* 23:15-16; *1Chr.* 11:17-18.

161 One of the rules of the Mishnah, to ask the opinion of the Sages of a mythical Bethlehem. Rabbinic interpretation systematically reduces David to a rabbi, negates all qualities of a warrior, and tries to eliminate all memories of a warlike past.

162 Since the rules of the Mishnah are all anonymous.

163 The water libation at Tabernacles (Mishnah *Sukkah* 4:9), a purely pharisaic practice without biblical sanction, to ask for ample rains in the winter season. Cf. Note 161.

164 After the destruction of Shiloh, before the building of the Temple in Jerusalem, there was no central sanctuary which could claim exclusivity by deuteronomic rules.

According to all opinions, private altars were biblically permitted in that period (Mishnah *Zevahim* 14:7). The pharisaic water libation was a public offering not appropriate for a private altar. It has to be assumed that in this interpretation David acted as king; his altar could represent the nation by public offerings.

165 He does not read the masoretic נִסַּךְ from the root נָסַךְ “to pour, offer a libation” but נִסַּךְ, root סָכַךְ “to cover”.

166 Probably what is the prerogative of the king in appropriating female prisoners of war. Rabbinic theory explains that Tamar was not David’s daughter but the daughter of David’s wife Ma’akha from the time before the latter was taken prisoner by David and forcibly converted by the rules of *Deut.* 21:10-14 (Babli 21a); therefore, she was unrelated to Amnon who could have married her under rabbinic rules.

167 It is unclear to what this may refer, but in any case it would be a case for the Sages of Bethlehem before the capture of Jerusalem.

(fol. 19d) **משנה ו:** לא ירבה לו נשים אלא שמונה עשרה. רבי יהודה אומר מרבה הוא לו ובלבד שלא יהו מקסירות את לבו. רבי שמעון אומר אפילו אחת ומסירה את לבו הרי זה לא ישאנה. אם כן למה נאמר ולא ירבה לו נשים דאפילו כאביגיל.

**Mishnah 6:** *He shall not add wives*<sup>168</sup>, only eighteen<sup>169</sup>. Rabbi Jehudah says, he may have many on condition that they not deflect his mind<sup>170</sup>. Rabbi Simeon says, he should not marry even one if she deflects his mind<sup>171</sup>. Then why was it said, *he shall not add wives*? Even one like Abigail<sup>172</sup>.

**משנה ז:** לא ירבה לו סוסים אלא כדי מרכבתו. וכסף וזהב לא ירבה לו מאד אלא כדי ליתן אפסנייא. וכותב לו ספר תורה לשמו. יוצא למלחמה והוא עמו נכנס והוא עמו. יושב בדין, הוא אצלו. מסב והוא כנגדו שנאמר והיתה עמו וקרא בו כל ימי חייו.

**Mishnah 7:** *He shall not add horses<sup>173</sup>, over and above what he needs for his chariots. And silver and gold he shall not add excessively<sup>168</sup>, over and above what he needs for his payroll<sup>174</sup>. And he shall write a Torah scroll<sup>175</sup> for himself. If he goes to war, it is with him; if he returns, it is with him; if he sits in court, it is with him; if he sits down for dinner, it is with him, as it is said: It shall be with him, and he shall read in it all the days of his life<sup>176</sup>.*

**משנה ח:** אין רוכבין על סוס ו אין יושבין על כסאו ואין משתמשין בשרביטו ואין רואין אותו כשהוא מסתפר ולא כשהוא ערום. ולא בבית המרחץ שנאמר שום תשים עליך מלך שתהא אימתו עליך.

**Mishnah 8:** One does not ride on his horse, nor does one sit on his throne, nor does one use his scepter. One may not see him when he is barbered, nor when he is naked, nor when he is in the bath, as it is said<sup>177</sup>: *You certainly shall put a king over you*, that his fear be upon you.

168 Deut. 17:17.

169 This is the number of wives David could have had, as explained in the Halakhah.

170 Deut. 17:17 reads: *And he shall not add wives, lest his mind be deflected* (from his religious duties.) If the prohibition were absolute, it would not need a rationale.

171 R. Simeon in principle objects to R. Jehudah's argument. For him, every biblical commandment has a rationale indicated in the text, even if it is not explicit (Babli 21a). Therefore, *lest his mind be deflected* is a commandment in itself. Hence, 18 wives is

the maximum permitted to a king under any circumstances.

172 Who prevented David from sinning, cf. Halakhah 3. Since she predicted that David would be king, she is counted as a prophetess (*Seder Olam* Chap. 2).

173 Deut. 17:16.

174 Greek οὐσιώνιον, Latin *obsonium*, "victuals, allowance, gratuity", here taken as allowances for everybody on the king's payroll.

175 Deut. 17:18.

176 Deut. 17:19.

177 Deut. 17:15.

**הלכה ו:** לא ירבה לו נשים כול'. רב כהנא אמר. על שם הששי יתקעם לעגלה. וימה כתיב תמן. ואם-מקט ואוספה לך כהנה וכהנה:

**Halakhah 6:** “He shall not add wives,” etc. Rav Cahana said<sup>178</sup>, because of the sixth Yitream by Eglā<sup>139</sup>. What is written there? *At least, I shall give you twice as many*<sup>179</sup>.

178 Babli 21a.

179 2S. 12:8. The verses 2S. 3:2-5 prove that David had six wives in Hebron. The prophet Nathan then told David that God

would have given him an addition of twice as many wives, for a total of  $3 \times 6 = 18$ , had he not sinned with Batseba. Therefore, 18 wives for a king have Divine sanction.

(20c line 24) לא ירבה לו סוסים אלא כדי מרכבתו. על שם ויעקר דוד את-כל-הרכב וגו'. וכסף וזהב לא ירבה לו מאד אלא כדי ליתן אפסניא. רבי יהושע בן לוי אמר. ובלבד אפסניא של שנה זו בלבד.

“*He shall not add horses over and above what he needs for his chariots.*” As in *David destroyed all the chariots*,<sup>180</sup> etc. “*And silver and gold he shall not add excessively over and above what he needs for his payroll.*” Rabbi Joshua ben Levi said, but only for this year’s payroll.

180 2S. 8:4. As usual, the argument is about the part of the verse which is not quoted: *but he reserved from them 100*

*chariots*. This shows that chariots and horses needed for the army are permitted.

(20c line 27) אמר רבי אהא. אמר שלמה. שלשה דברים ששחקה עליהן מידת הדין חיללתים. לא ירבה לו נשים. וכתוב והמלך שלמה אהב נשים נכריות. רבי שמעון בן יוחי אמר. אהב ממש לזנות. חנניה בן אחי רבי יהושע אומר. על שם לא תתחתן בם. רבי יוסי אומר. למושכן לדברי תורה ולקרבן תחת כנפי השכינה. רבי ליעזר אומר. על שם גם-אותו החטאיו הנשים הנכריות: אשכח תימר. רבי שמעון בן יוחי וחנניה ורבי ליעזר חדא. ורבי יוסי פליג על תלתייהו.

לא ירבה לו סוסים. וכתוב ויהי לשלמה ארבעים אלף אוריות סוסים למרכבו ושנים-עשר אלף פראים. בטלגים היו. וההדיוט מותר בכיולן.

וכסף וזהב לא ירבה לו מאד. וכתוב ויתן המלך את-הכסף בירושלם כפאבנים. ולא היו נגבבות. אמר רבי יוסי בן חנינה. אבני עשר אמות ושמונה אמות. תני רבי שמעון בן יוחי. אפילו משקלות שהיו בימי שלמה לא היו של כסף אלא שלזהב. ומה טעם. אין כסף נחשב בימי שלמה.

Rebbi Aha said: Solomon said, three things I desecrated where I got the better of the law<sup>181</sup>. *He shall not add wives*, and it is written: *King Solomon*

loved foreign women<sup>182</sup>. Rabbi Simeon ben Iohai said, he really made love to them immorally<sup>183</sup>. Hananiah, Rabbi Joshua's nephew, says, because *you shall not intermarry with them*<sup>184</sup>. Rabbi Yose said, to draw them to the words of the Torah and bring them under the Wings of the Divine Presence<sup>185</sup>. Rabbi Eliezer said, because *also the foreign wives made him sin*<sup>186</sup>. It turns out that one may say that Rabbi Simeon ben Iohai, Hananiah, and Rabbi Eliezer mean the same. Rabbi Yose disagrees with all three of them.

*He shall not add horses*, and it is written: *Solomon had 40'000 horse stables for his chariot, and 12'000 riders*<sup>187</sup>. They were idle<sup>188</sup>. A private person is permitted all of these<sup>189</sup>.

*And silver and gold he shall not add excessively*, and it is written: *The king made silver in Jerusalem to be like stones*<sup>190</sup>. Were they not stolen? Rabbi Yose ben Hanina said, they were stones of ten cubits and eight cubits<sup>191</sup>. Rabbi Simeon ben Laqish stated: In Solomon's times, even weights were not of silver but of gold. Why? *Silver was not valuable in Solomon's times*<sup>192</sup>.

181 *Eccl. r. 2(3)*, *Tanhuma Ahare Mot 1*, *Tanhuma Buber Ahare Mot 2*, *Pesiqta dR. Cahana (Buber) Ahare Mot 168b-168a*.

Most of the verses quoted in these paragraphs are also quoted in the Babli, 21b. Cf. also *Cant. rabba 1(10)*.

182 *1K. 11:1*.

183 He did not marry them but slept with them unmarried to increase his sexual enjoyment.

184 *Deut. 7:3*. He agrees with R. Simeon ben Iohai and notes that by behaving immorally he avoided violating the law. In *Num. r. 10(8)* only Hanania and R. Yose are mentioned.

185 He married all those women with good intentions but violated *Deut. 17:17*. The expression "to take shelter under the Wings

of the Divine Presence" for "to convert to Judaism" is from *Ru. 2:12*.

186 *Neh. 13:26*. He violated Mishnah 7 according to all authorities quoted there.

187 *1K. 5:6*.

188 If all of the chariots and horses had been for military purposes, it would not have been sinful. A Genizah fragment inserts a rhetorical question. Were the 40'000 stables not adequate since it also is written (*1K. 4:20*) that Israel were *many, like the sand at the seashore*? The answer is that the horses and carriages were sinful since the riders were idle most of the time.

189 Wives, horses, and money are limited only for a king.

190 *1K. 10:27, 2Chr. 1:15*.

191 A silver block of 8 cubits side length would weigh 1.7 metric tons.

192 *1K. 10:21, 2Chr. 9:27*.

(20c line 40) כְּתוּב לְשׁוּק אֶמְרָתִי מְהוּלָּל. אָמַר הַקְדוּשׁ בְּרוּךְ הוּא לְשִׁלְמָה. מַה עֲטָרָה זֹאת בְּרֹאשָׁךְ. רַד מִכֶּסֶּאִי. רַבִּי יוֹסִי בֶן חֲנִינָה אָמַר. בְּאוֹתָהּ שָׁעָה יָרַד מִלְּאָךְ וְנִדְמָה כְּדַמוֹת שְׁלֹמֹה וְהִעֲמִידוּ מִכֶּסֶּאִי וְנִשְׁבַּ תַּחְתָּיו. וְהָיָה מִחֲזָר עַל בְּתִי כְּנִסְיוֹת וּבְתִי מִדְּרָשׁוֹת וְאוֹמַר אֲנִי קוֹהֶלֶת הַיְיָ מֶלֶךְ עַל-יִשְׂרָאֵל בִּירוּשָׁלַם: וְהָיוּ מְרִין לִיה. מִלְכָּא יְתִיב עַל בְּסִילָיוֹן דִּידִיהָ וְתִימַר אֲנִי קוֹהֶלֶת. וְהָיוּ מִכִּין אוֹתוֹ בְּקִנָּה וּמִבִּיאִין לִפְנֵי קַעֲרַת גְּרִיסִין. בְּאוֹתָהּ שָׁעָה אָמַר וְהָ-הִנֵּה חֲלָקִי. אֵית דְּמָרִין. חוּטָרָא. וְאֵית דְּמָרִין. קִנְיָא. וְאֵית דְּמָרִין. קוּשְׁרֵתִיָּה. וּמִי קִיטְרָגוּ. אָמַר רַבִּי הוֹשִׁיעַ בֶּן לִי. יו"ד שְׁבִינְרָבָה קִיטְרָגוּ. תִּנִּי רַבִּי שְׁמַעוֹן בֶּן יוֹחִי. עָלָה סֶפֶר מִשְׁנֵה תוֹרָה וְנִשְׁתַּטַּח לִפְנֵי הַקְדוּשׁ בְּרוּךְ הוּא. אָמַר לִפְנֵי. רַבּוֹן הָעוֹלָם. כְּתִבְתָּהּ בְּתוֹרָתָךְ. כָּל-דֵּינֵינִקִּי שֶׁבְּטָלָה מִקְצָתָהּ בְּטָלָה כּוֹפֶלֶת. וְהָיָה שְׁלֹמֹה מִבְּקֵשׁ לַעֲקוֹר יו"ד מִמֶּנִּי. אָמַר לָהּ הַקְדוּשׁ בְּרוּךְ הוּא. שְׁלֹמֹה וְאַלְף כִּיּוּצָא בּוֹ בְּטִילִין וְדָבָר מִמֶּךָ אֵינוֹ בְּטָל.

רַבִּי הוֹנָא בְּשֵׁם רַבִּי אֲחָא. יו"ד שְׁנִטְל הַקְדוּשׁ בְּרוּךְ הוּא מֵאַמְנוֹ שָׁרָה נִיתָן חֲצִיו עַל שָׁרָה וְחֲצִיו עַל אֲבָרָהֶם. תִּנִּי רַבִּי הוֹשִׁעִיָּא. עָלָה יו"ד וְנִשְׁתַּטַּח לִפְנֵי הַקְדוּשׁ בְּרוּךְ הוּא וְאָמַר. רַבּוֹן הָעוֹלָמִים. עֲקֵרְתָּנִי מִן הַצִּדְקָת הָאֵלֹהִים. אָמַר לוֹ הַקְדוּשׁ בְּרוּךְ הוּא. צָא לָךְ. לְשַׁעֲבֵר הֵייתָ נֶתוּן בְּשֵׁם נְקִיבָה וּבִסּוּף תִּיבָה. חֲיִיד שְׁאֵנִי נוֹתֵנָךְ בְּשֵׁם זָכָר וּבְרֹאשׁ תִּיבָה. הֵדָא הוּא דְכְּתִיב וַיִּקְרָא מֹשֶׁה לְהוֹשִׁיעַ בֶּן-נִין וְהוֹשִׁיעַ:

<sup>181</sup>It is written<sup>193</sup>: *To amusement I said, be praised.* The Holy One, praise to him, said to Solomon: What is this crown on your head? Descend from My throne! Rabbi Yose ben Hanina said, at that moment an angel came down looking like Solomon, removed him from his throne, and sat in his stead. He was going around in synagogues and houses of study, saying *I am Ecclesiastes, I used to be king over Israel in Jerusalem*<sup>194</sup>. They were telling him, the king sits on his chair of honor<sup>195</sup> and you say, *I am Ecclesiastes*? They hit him with a stick and brought a dish of split beans before him. At that moment, he said: *that is my part*<sup>196</sup>. Some say, a staff. Others say, a rod. Others say, with his belt. <sup>197</sup>Who had accused him? Rabbi Joshua ben Levi said, יָרְבֵּה <sup>160</sup>accused him. Rabbi Simeon ben Iohai stated: The book Deuteronomy ascended, bowed down before the Holy One, praise to Him, and said to Him: Master of the Universe, You wrote in Your Torah that any disposition<sup>198</sup> which is partially invalid is totally invalid, and now Solomon wants to uproot a יָרְבֵּה from me! The Holy One, praise to Him, said to it: Solomon and a thousand like him will disappear but nothing from you will disappear.



Rebbi Huna in the name of Rebbi Aha: The י which the Holy One, praise to Him, lifted from our mother Sarah was given half to Sarah and half to Abraham<sup>199</sup>. Rebbi Hoshaiah stated: The י ascended, bowed down before the Holy One, praise to Him, and said to Him: Master of the Universes, you uprooted me from this just woman<sup>200</sup>! The Holy One, praise to Him, said to him: leave. In the past you were the last letter of a woman's name. By your life, I shall make you the first letter of a man's name. That is what is written: *Moses called Hoshea bin Nun Yehoshua*<sup>201</sup>.

193 *Eccl.* 2:2.

194 *Eccl.* 1:12.

195 Latin *bisellium*; cf. Löw in Krauss's *Lehnwörter*.

196 *Eccl.* 2:10.

197 *Cant. r. ad* 5:10, *Lev. r.* 19(2), *Ex. r.* 6(1). Solomon is accused of wanting to remove the imperative from *Deut.* 17:17.

198 Greek διαθήκη "will, disposition".

199 In the Alexandrian system, the numerical value of י is 10, that of ה is 5. Therefore, the *gematria* of the two former names אברהם שרי of Abraham and Sarah is identical to that of the new names אברהם שרה.

200 By changing שרי into שרה.

201 *Num.* 13:16.

וּמַגִּיהִין (20c line 58) וְכֹתֵב לוֹ סֵפֶר תּוֹרָה לְשֵׁמוֹ. שְׁלֹא יִהְיֶה נִיאוֹת לֹא בְּשִׁלְאָבֵינוּ וְלֹא בְּשִׁלְרָבֵנוּ. וּמַגִּיהִין אוֹתוֹ מִסֵּפֶר עֲזָרָה עַל פִּי בֵּית דִּין שְׁלֵע"א.

*And he shall write a Torah scroll for himself.*<sup>202</sup> That he should use neither his father's nor his teacher's. One proofreads it from the Temple scroll under the supervision of the court of 71<sup>203</sup>.

202 Babli 21b, Tosephta 4:7.

whose daughters are qualified to marry priests.

203 In the Tosephta: It is proofread first by priests, then by Levites, then by Israel

(20c line 60) יוֹצֵא לְמַלְחָמָה וְהִיא עִמּוֹ. שְׁנַאֲמַר וְהִיטָה עִמּוֹ וְקָרָא בּוֹ כָּל-יָמֵי חַיָּיו. וְהָרִי הַדְּבָרִים קֹל וְחוֹמֶר. וְכֵן אִם מֶלֶךְ יִשְׂרָאֵל שֶׁהָיָה עֶסוֹק בְּצָרָתִי יִשְׂרָאֵל נֶאֱמַר בּוֹ וְקָרָא בּוֹ כָּל-יָמֵי חַיָּיו. הַהֲדִיּוֹט עַל אַחַת כַּמָּה וְכַמָּה. כִּיּוֹצֵא בּוֹ נֶאֱמַר בִּיהוֹשֻׁעַ וְהִגִּיתָ בּוֹ יוֹמָם וְלַיְלָה. וְהָרִי הַדְּבָרִים קֹל וְחוֹמֶר. וְכֵן אִם יְהוֹשֻׁעַ שְׁעוֹסֵק בְּצָרָתִי יִשְׂרָאֵל נֶאֱמַר בּוֹ וְהִגִּיתָ בּוֹ יוֹמָם וְלַיְלָה. הַהֲדִיּוֹט לֹא כָל-שָׁבוֹן.

“If he goes to war, he carries it with him for it is said: *It shall be with him, and he shall read in it all the days of his life*. Is there not an inference *de minore ad majus*? Since for a king of Israel, who was occupied by the needs of Israel, is it said that *he shall read in it all the days of his life*, a private person so much more. Similarly, it was said to Joshua: *You shall meditate about it day and night*<sup>204</sup>. Is there not an inference *de minore ad majus*? Since for Joshua, who is occupied by the needs of Israel, it is said: *you shall meditate about it day and night*, then certainly a private person.

204 Jos. 1:8.

(20c line 65) מֶלֶךְ יִשְׂרָאֵל אֵין רוֹכְבִּין עַל סוּסוֹ וְאֵין יוֹשְׁבִין עַל נִסְלוֹ וְאֵין מְשַׁתְּמְשִׁין לֹא בְּכִתְרוֹ וְלֹא בְּשֶׁרְבִיטוֹ וְלֹא בְּאַחַד מִכָּל מְשַׁמְשָׁיו. וְכִשְׁמַת כּוֹלֵן נִשְׂרָפִין לְפָנָיו. שְׁנַאֲמַר בְּשָׁלוֹם תָּמוּת וּבְמִשְׁרָפוֹת אֲבוֹתֶיךָ יִשְׂרָפוּ עֲלֶיךָ.

<sup>205</sup>One does not ride on a horse of a king of Israel, nor does one sit in his chair<sup>195</sup>, nor does one use his crown or his scepter, or any of his personal utensils. When he dies, all these are burned before him, as it is said<sup>206</sup>: *You shall die in peace and like the burnings of your forefathers they will burn for you*.

205 An abbreviated version of Tosephta 206 Jer. 34:5.  
4:2.

(20c line 68) וְאֵין רואִין אוֹתוֹ עָרוֹם וְלֹא כְּשִׁמְסִתְפָּר וְלֹא בְּבֵית הַמֶּרְחָץ. עַל שֵׁם מֶלֶךְ בְּנִפְּיוֹ תִּחְיֶינָה עֵינֶיךָ. רַבִּי חֲנִינְיָה סָלַק גָּבִי רַבִּי יוֹדֵן נִשְׁיֵא. נָפַק לְגַבִּיָּה לְבוּשׁ אוֹתִינִיתִיהָ. אָמַר לֵיהּ. חֲזוֹר וּלְבוּשׁ לְגִין דִּידֶךָ. מִשּׁוּם מֶלֶךְ בְּנִפְּיוֹ תִּחְיֶינָה עֵינֶיךָ. רַבִּי יוֹחָנָן סָלַק גָּבִי רַבִּי יוֹדֵן נִשְׁיֵא. נָפַק לְגַבִּיָּה בְּחִלּוּקָא דְּכִתְנָא. אָמַר לֵיהּ. חֲזוֹר וּלְבוּשׁ חִלּוּקָךְ דְּעִימָרָא. מִשּׁוּם מֶלֶךְ בְּנִפְּיוֹ וּגְרָ. מִי נָפַק אָמַר לֵיהּ. אֵייתִי עֲטַעֲמָה. אָמַר לֵיהּ. שְׁלַח וְאֵייתִי לִי מִנְחָם טָלְמָא. דְּכִתְיֵב וְתוֹרַת־חֹסֶד עַל־לְשׁוֹנָה: מִי נָפַק חֲמָא רַבִּי חֲנִינְיָה בַּר סִיסִי מִפְּצָע קִיסִין. אָמַר לֵיהּ. רַבִּי. לִית הוּא כְּבוֹדֶךָ. אָמַר לֵיהּ. וַיֵּמָר נִיעָבִיד וְלִית לִי מָאן דְּמִשְׁמָשִׁינִי. אָמַר לֵיהּ. אֵין לָא הָוָה לָךְ מָאן דְּמִשְׁמָשִׁךְ לָא מְקַבֵּלָא עֲלֶךָ מוֹתְמִינֵיָא.

One may not see him when naked, nor when he is being barbered, nor when he is in his bath, because *your eyes shall see the king in his beauty*<sup>207</sup>. Rabbi Hanina went to visit Rabbi Jehudah the Prince<sup>208</sup>. He came to meet him

dressed in sail-cloth. He told him, go and wear your *labin*<sup>209</sup>, because of *your eyes shall see the king in his beauty*<sup>210,211</sup>.

Rebbi Johanan went to visit Rebbi Jehudah the Prince. He came to meet him dressed in a linen gown. He told him, go and wear your woolen gown, because of *the king in his beauty*. When he left, he told him, bring <sup>212</sup>עטעמה. He answered, send and get Menahem Ptolemy, for it is written: *Graceful teaching is on her tongue*<sup>213</sup>.

Leaving, he saw Rebbi Hanina bar Sisi splitting wood. He told him, Rebbi, that is not fitting for you. He answered, what can I do? I have nobody to serve me. He retorted, if you have nobody to serve you, you should not have accepted ordination<sup>214</sup>.

207 Is. 33:17. The Babli, 22b, infers from the verse that a king has to get a haircut every day.

208 Rebbi's grandson.

209 Greek ὀθονή "sail-cloth".

210 Latin *lacinia, ae*, "edge, corner of garment, garment with fringes, ornament", generally "garment" (E. G.).

(In other occurrences the word לבין means "bottle", Greek λάγυνος, λάγηρος.)

211 The Patriarch, as member of the Davidic dynasty, should uphold the dignity of his family at all times.

212 The meaning and etymology of this word is totally unknown. The commentators see a connection with the word טעם "taste".

It may have been a question about politics since the verse quoted is explained in *Midrash Prov.* as referring to good political advice. Menahem Ptolemy is only mentioned in *Eccl. r. ad* 5:10, in a discussion with R. Hanina, noting that good-looking food tastes better than undistinguished food, therefore it is possible to read the passage as an exhortation to the Patriarch to also show his status by his table.

213 *Pr.* 31:26.

214 An ordained rabbi should at all times uphold the dignity of the office. Similarly, the Babli (*Qiddušin* 70a) frowns upon an ordained rabbi engaged in bodily labor in public.

20d line 2) תירגם יוסי מעוני בכנישתא בטיבא. שמעו זאת הכהנים. למה לית אתון לעין באורייתא. לא יהבית לכו כ"ד מתנתא. אמרו ליה. לא יהבין לך כלום. והקשיבו בית ישראל. למה לית אתון יהבין כ"ד מתנתא דפקידית נתכון בסיני. אמרו ליה. מלכא נסיב כולה. ובית המלך האזינו כי לכם המשפט. לכם אמרתי וזה משפט הכהנים. עתיד אני לישוב עמך בדין ולפסקן ולאבדן מן העולם. שמע רבי יודן נשיא וכעס. דחל וערק. סלקון רבי יוחנן וריש לקיש לפייס ליה. אמרו ליה. רבי. גברא רבא הוא. אמר ליה. איפשר כלמאן דנא שאיל הוא מגיב לי. אמרו ליה. אין. אמר ליה. מהו דין דכתיב כי זנתה אלים. וכי שרה אמינו זונה

הִיִּיתָה. אָמַר לִיה. קִבַּת כֶּן אִמָּה. כְּדוֹר כֶּן הַנְּשִׂיא. כְּנִשְׂיָא כֶּן הַדּוֹר. כְּמִזְבֵּחַ כְּהֶנֶּזִּי. כְּהֶנֶּזִּי אָמַר  
כֶּן. כְּגִנְתָּא כֶּן גִּנָּה. אָמַר לִיה. לֹא טַב דְּקָלִיל לִי דְלָא בְּאַפּוּי חַד זָמָן. אֶלָּא בְּאַפּוּי תַלְתָּא זִמְנִין.  
אָמַר לִיה. מָהוּ דִּין דְּכַתִּיב הִנֵּה כָּל־הַמִּשְׁלָל עָלֶיךָ יִמְשׁוּל לְאִמֹּר כְּאַמָּה בְּתָה. וְכִי אִימִינוּ לָאָה  
זוֹנָה הִיִּיתָה. דְּכַתִּיב וַתֵּצֵא דִּינָה. אָמַר לִיה. לָפֻד דְּכַתִּיב וַתֵּצֵא לָאָה לְקַרְאָתָהּ. פֶּשְׁטִין יֵצִיאָה  
מִיֵּצִיאָה.

<sup>215</sup>Yose from Maon interpreted<sup>216</sup> in the synagogue of Tiberias: *Listen to this, you priests*<sup>217</sup>, why do you not study Torah? Did I not give you 24 gifts<sup>218</sup>? They told him, they do not give us anything. *And hearken, House of Israel*, why do you not give the 24 gifts which I commanded you at Sinai? They told him, the king<sup>219</sup> takes everything. *Listen, king's court, for yours are legal proceedings*, for you I did say, *these are the priests' legal rights*<sup>220</sup>; in the future I shall sit in judgment over you, to stop them and to eliminate them from the world. Rabbi Jehudah the Prince heard this and became angry. He<sup>221</sup> was afraid and fled. Rabbi Johanan and Rabbi Simeon ben Laqish went to appease him. They told him, Rabbi, he is a great man. He<sup>222</sup> asked them, would it be possible that he<sup>221</sup> could answer any question which I would ask him? They told him, yes. He asked him: What is that which is written<sup>223</sup>: *For their mother whored?* Was our mother Sarah a whore? He answered, like daughter like mother<sup>224</sup>, *like mother like daughter*, like generation like the prince, like the prince like the generation, like the altar like its priests. Cahana used to say<sup>224</sup>, like the garden like its gardener. He told them, not only did he curse me once in my absence, but he cursed me three times in my presence! He asked him, what is that which is written<sup>225</sup>: *Anybody wanting to formulate a simile about you will state as follows: like mother like daughter*; was our mother Leah a prostitute since it is written<sup>226</sup>, *Dinah went out?* He told him, for it is written<sup>227</sup>, *Leah went out towards him*. One identifies *going out* with *going out*.

215 A similar paragraph is in *Gen. r.* 80(1).

216 In the Talmudim, תרגום is only used for interpretation or translation of Scripture. One has to assume that Yose from Maon was reading *Hos. 5* as *Haftara* to *Gen. 34* in the Palestinian 3½ year cycle of Torah reading (cf. J. Mann, *The Bible as Read and*

*Preached in the Old Synagogue I*, Cincinnati 1940). One also has to assume that the Aramaic translator of the *Haftara* had the freedom to expound upon the verses read, similar to what is described in the New Testament (*Luke 4:17-20*).

217 *Hos. 5:1*.

218 The 24 emoluments of priesthood; cf. *Hallah* 4:11 (Note 146) and the sources quoted there.

219 The Patriarch was responsible for collecting the taxes due from the Jewish population in Palestine; there is an intentional ambiguity whether *king* refers to the Roman Emperor or the Davidic Patriarch.

220 *Deut.* 18:3.

221 Yose the Maonite.

222 The Patriarch.

223 *Hos.* 2:7.

224 The text is confirmed by a Genizah fragment (M. Sokoloff, *The Genizah Fragments of Bereshit Rabba*, Jerusalem 1982, p. 167.) The reading in the printed

editions of *Gen. rabba* אָמַר "here, they say" has to be rejected as *lectio facilior*.

225 The Genizah fragment shows that instead of "like daughter like mother", the text read כְּבֵית כְּאֻמָּה "like dynasty like people, like generation like Prince" with the quote from the verse missing, a much more insulting formulation.

226 *Ez.* 16:44.

227 *Gen.* 34:1, the starting verse for the sermon. In both Galilean and Babylonian Aramaic is the prostitute called נִקְתָּ בְּרָא "the one who goes out."

228 *Gen.* 30:16. Leah certainly went out to have sexual relations, with her husband.

רַבִּי חִזְקִיָּה הָיָה מְהַלֵּךְ בְּאוֹרְחָא. פָּגַע בּוֹ חַד כּוֹתֵי. אָמַר לֵיהּ. רַבִּי. אַתָּה הוּא רַבְהוֹן דִּיהוּדָאִי. אָמַר לֵיהּ. אֵין. אָמַר לֵיהּ. חֲמִי מַה כְּתִיב שׁוֹם תַּעֲשִׂים עָלֶיךָ מֶלֶךְ. אֲשִׁים אֵין כְּתִיב אֶלָּא תַּעֲשִׂים. דְּאַתָּה שׁוֹי עָלֶךְ.

Rebbi Hizqiah was walking on a road when he met a Samaritan who asked him, Rabbi, are you not the head of the Jews? He answered him, yes. He said to him, look what is written: *You certainly shall put a king over yourself*<sup>77</sup>. It does not say "I shall put", but "you shall put", you appoint him over yourself<sup>229</sup>.

229 For him the role of king and all appointed officers, including rabbis, is one

of human convention, without religious meaning.

## דיני ממונות פרק שלישי

(fol. 20d) **משנה א:** דיני ממונות בג'. זה בורר לו אחד וזה בורר לו אחד ושניהן בוררין להן עוד אחד דברי רבי מאיר. וחכמים אומרים שני הדיינים בוררין להן עוד אחד.

**Mishnah 1:** Money matters by three [judges]. Each party selects one judge and both together select a third, the words of Rabbi Meïr<sup>1</sup>. But the Sages say, the two judges together select a third.

1 The “court” is a panel of arbitration. The parties have the option to go before the permanent court of the community but are not required to do so.

(21a line 5) **הלכה א:** דיני ממונות בשלשה כול'. אמר רבי זירא. שמתוך שפיררו מרדף זכותו. מאי טעמא דרבי מאיר. כדי שיתבחרו שלשתן מדעת אחת. ומאי טעמו דרבנן. לאו כוילה מיעד מיבחר ומייסב מה דאת בעי אלא אנא ואת מבחרין ומסבין מה דנן בעיין. וקשיא על דרבנן. מת אחד לא נמצאו שלשתן מתבחרין מדעת אחת.

**Halakhah 1:** “Money matters by three,” etc. Rabbi Ze’ira said, because he selected him, he will take care of his interests<sup>2</sup>. What is Rabbi Meïr’s reason? So that all three should be chosen unanimously. What is the rabbis’ reason? “I do not trust you to select and let me sit with whom you want, but I and you shall select and empanel whom we want.”<sup>3</sup> It is difficult for the rabbis: If one of them<sup>4</sup> dies, will not all three have been chosen through the choice of one person?

2 The arbitration judgment will be acceptable to all parties since each party expects his point of view to be forcefully represented. The Babli, 23a, holds that the judgment will be just since each party is represented in the panel of arbitrators.

3 The judges cannot be forced to sit with a third judge who is not agreeable to them.

4 If one of the original judges dies after the third has been chosen, his replacement who is chosen by one party only and is forced upon the two judges already empaneled. The situation preferred by Rabbi Meïr may develop also if the rabbis are followed.

(fol. 20d) **משנה ב:** זה פוסל דיינו של זה וזה פוסל דיינו של זה דברי רבי מאיר. וחכמים אומרים אימתי בזמן שהוא מביא עליהן ראיה שהן קרובין או פסולין אבל אם היו קשרים או מומחין מפי בית דין אינו יכול לפסלן.

**Mishnah 2:** Each of them disqualifies the other's judge, the words of Rabbi Meir. But the Sages say, when is this? If he brings proof that they are relatives<sup>5</sup> or disqualified<sup>6</sup>. But if they are unexceptionable or qualified by the court<sup>7</sup> he cannot disqualify them.

5 Anybody not acceptable as a witness in a case is unacceptable as a judge; cf. Mishnah 7.

6 A felon or a person disqualified under the rules of Mishnah 6.

7 He passed bar examinations.

(21a line 9) **הלכה ב:** זה פוסל דיינו של זה כול. כיני מתניתא. זה פוסל דיינו של זה. הא דיינו לא. ריש לקיש אמר. בארכאות שבסוריא אמרו. הא בדיני תורה לא. רבי יוחנן אמר. אפילו בדיני תורה. היך אמרין. תרין בני נש הוה לן דין באנטוכיא. אמר חד לחבריה. מה דרבי יוחנן אמר מקבל עלי. שמע רבי יוחנן ומר. לא כל-מיניה מטורפא בעל דייניה אלא שמעין מיליהון תמן ואין הוות צורכא כתבין ומשלחין עובדא לרבנן. אמר רבי לעזר. זה אומר. בטיבריא. וזה אומר. בציפורי. שומעין לזה שאמר. בטיבריא.

ולעולם זה פוסל וזה מביא. אמר רבי זירא. בטפילה שנו. אמר רבי לא. והאי דמר רבי לעזר. זה אמר בטיבריא. וזה אמר בציפורי. באינון דהווין יהיבין בחדא משכנא. מן הקא להקא ז' מילין. מן הקא להקא ט' מילין. אמר רבי יוסי. ואת שמע מינה. תרין בני נש הוה לון דין בטיבריא. זה אומר. בבית דין הגדול. וזה אומר. בבית דין הקטן. שומעין לזה שאמר. בבית דין הגדול.

**Halakhah 2:** "Each of them disqualifies the other's judge," etc. So is the Mishnah: Each of them disqualifies the *other's* judge, but not his own.

Rebbi Simeon ben Laqish said, they spoke about Syrian courts<sup>8</sup>, but not about following Torah law<sup>9</sup>. Rabbi Johanan said, even following Torah law<sup>10</sup>. How was this said? Two people had a case in Antioch. One said to the other, I am accepting everything which Rabbi Johanan will decide<sup>11</sup>. Rabbi Johanan heard it and said, he is not empowered to tear apart his opponent<sup>12</sup>, but they shall hear their arguments there and if need be they should write and send the case before the rabbis<sup>13</sup>.

Rebbi Eleazar said, if one says in Tiberias, but the other said in Sepphoris, one listens to the one who says in Tiberias<sup>14</sup>.

Can he forever disqualify and have the other appoint [a replacement]<sup>15</sup>? Rabbi Ze'ira said, they taught this about subsidiaries<sup>16</sup>.

Rebbi La said, what Rebbi Eleazar said about “one said in Tiberias, but the other said in Sepphoris,” is about those who live at the same place<sup>17</sup>, from where to [Sepphoris] it is seven *mil*, but from there to [Tiberias] it is nine *mil*<sup>18</sup>. Rebbi Yose said, one understands from this, that if two people had a case in Tiberias; one of them said in the permanent court, but the other said in an *ad hoc* court; one listens to the one who said in the permanent court<sup>19</sup>.

8 Greek ἀρχεῖον, cf. *Gittin* 1:5, Note 107.

9 *Ad hoc* courts formed by ignorant people.

10 In a court of arbitration it makes no difference whether a judge be learned in the law or not.

11 Implying that he wants the case to be tried before the permanent court of the Academy in Tiberias.

12 By forcing him to spend money and time in travelling from Antioch to Tiberias.

13 If one party wants to try a case out of town, the other party can appeal to the local permanent court to try the case in town, subject to submitting arguments in dispute to an out-of-town court of appeals; Babli 31b.

14 Between the court of the Academy in Tiberias and the local court in Sepphoris,

precedence must be given to the court of the Academy.

15 According to R. Meïr, cannot one party endlessly drag out the case by objecting to the other's choice of judges?

16 R. Meïr permits rejections without cause only for judges not learned in the law. The other party can cut short the selection process either by appointing a judge learned in the law or by removing the case to the permanent local court.

17 And their village had no permanent local court.

18 A small inconvenience must be accepted in order to bring the case before the most competent court nearby.

19 Even though the Mishnah prescribes *ad hoc* courts of arbitration for monetary disputes, the party who wants to bring the case before the permanent rabbinic court of the community can force the opposing party to agree to his choice.



(fol. 20d) **משנה ג:** זה פוסל עדיו של זה וזה פוסל עדיו של זה דברי רבי מאיר. וחכמים אומרים אימתי בזמן שהוא מביא עליהם ראיה שהן קרובים או פסולין. אבל אם היו כשרים או מומחין מפי בית דין אינו יכול לפוסלן:

**Mishnah 3:** Each of them disqualifies the other's witnesses, the words of Rabbi Meir. But the Sages say, when is this? If he brings proof that they are relatives<sup>5</sup> or disqualified<sup>6</sup>. But if they are unexceptionable or qualified by the court<sup>7</sup> he cannot disqualify them.

(21a line 22) **הלכה ג:** זה פוסל עדיו של זה כולו. ריש לקיש אמר. ביני מתנייתא. עדו. הא עדיו לא. ורבי יוחנן אמר. אפילו עדיו. דתני. לעולם מוסיפין דינים עד שיגמר הדין והדין יוכלין לחזור בהן. נגמר הדין אין יכולין לחזור בהן. מודה רבי יוחנן שאם אין שם אלא הן שאין יכולין לפוסלן. אמר זעירה. והוא ואחד מן השוק מצטרפין לפסול עדות זה. רבי חנינה בעי. ואין עד אחד זקקו לשבועה בכל מקום. אמר רבי זעירא. פסול צריך לפסול בבית דין. קרוב אין צריך לפסול בבית דין. אמר רבא בר בינא בשם רב. שלשה כגמר דין.

**Halakhah 3:** "Each of them disqualifies the other's witnesses," etc. Rabbi Simeon ben Laqish said, so is the Mishnah: "His witness," but not his witnesses<sup>20</sup>. But Rabbi Johanan said, even his witnesses<sup>21</sup>, as it was stated<sup>22</sup>: "One always adds judges until judgment is rendered, and the judges may change their opinions. After judgment is rendered they may no longer change their opinions." Rabbi Johanan agrees, that if these were the only ones<sup>23</sup>, he cannot disqualify them. Ze'ira said, he and a person from the street can team up to disqualify this testimony<sup>24</sup>. Rabbi Hanina asked, does not one witness force an oath everywhere<sup>25</sup>? Rabbi Ze'ira said, by disqualification one can only be disqualified by a court<sup>26</sup>. A relative does not have to be disqualified by the court<sup>27</sup>. Rava bar Binah said in the name of Rav: Three are like final judgment<sup>28</sup>.

20 Since a single witness is never decisive, one of the parties can claim that a single witness appearing for one of the parties was unacceptable as a witness (Mishnah 6) without presenting formal proof. But if two witnesses are appearing together, only formal proof of ineligibility is

admissible since "two or three witnesses are sufficient to confirm anything" (*Deut.* 19:15).

21 Even the credibility of a pair of witnesses can be attacked, under the conditions spelled out later in the Halakhah.

22 It seems that a text similar to Tosephta 6:4 is intended. That Tosephta states first that “One always may add judges until judgment is rendered.” If after hearing the case, the arbitration panel is split, one judge voting for each side, but the third cannot decide how to vote, then each of the parties has to select an additional judge. In case of an evenly split court one always adds two new judges until a majority verdict is reached. After a lengthy discussion of the deadlines to be imposed for the presentation of witnesses, the Tosephta concludes: “Witnesses can always change their testimony before being cross-examined; after they were cross-examined they can no longer change their testimony; this is a matter of principle.” R. Johanan holds that as long as witnesses may change their testimony, their credibility can be attacked.

23 If the other side’s case depends on the testimony of one pair of witnesses, the other party has a monetary interest in seeing them disqualified. Therefore, the party to the dispute is barred from appearing as a witness against any of the witnesses since his testimony would be tainted (Babli 23b).

24 Ze’ira (in the Babli he is called Ze’iri) explains what it means that “a party to a suit may disqualify the other side’s witness.” He and another witness may appear before the

permanent communal court as witnesses to ask for a judgment which will disqualify the witness for the other side. Even if the other side has alternative witnesses, one should disqualify the party as a tainted witness. He is admitted only because the opposing party, by presenting a multitude of witnesses, cast doubt on the reliability of their own witnesses.

25 Since *Deut.* 19:15 spells out that “a single witness is insufficient for any conviction,” instead of saying that “a single witness is unacceptable,” it follows that a single witness is acceptable for anything short of a conviction. In money matters this implies that a single witness to a claim can force a party to swear to dispute the claim (*Sifry Deut.* 188; Babli *Ketubot* 87b).

26 Only a permanent communal court is qualified to bar a person from being a witness, based on Mishnah 7.

27 A person can be an acceptable witness for anybody but his close relatives. This case of disability is a matter of showing facts; it does not need the formal proclamation of a court.

28 This has nothing to do with the Mishnah; it refers to the Tosephta quoted earlier, Note 22. As soon as a verdict is reached, one can no longer add judges. A verdict is rendered by three voting judges.

**משנה ד:** אָמַר לוֹ נֹאמֵן עַל אֲבֵא נֹאמֵן עַל אֲבִיד נֹאמֵן עַל שְׁלֵשָׁה רוֹעֵי דְקָר רַבִּי מֵאִיר אֹמֵר יָכוֹל לַחְזֹר בּוֹ. וְחֻכָּמִים אֹמְרִים אֵינוּ יָכוֹל לַחְזֹר בּוֹ. (fol. 20d)

**Mishnah 4:** If somebody said, I am accepting my father; I am accepting your father<sup>29</sup>; I am accepting three cowboys<sup>30</sup>; Rabbi Meïr says, he may change his opinion, but the Sages say, he may not change his opinion.

29 These are disqualified by biblical law to serve as judges. They may be accepted on an arbitration panel as free

choice of the parties.

30 They are illiterate and ignorant of the law.

**הלכה 4:** (21 a line 30) נִאָמַן עָלַי אָבִי כֹל. אָמַר לוֹ. נִאָמַן עָלַי אָבִי. קִיבֵּל עָלָיו בְּפָנֵי שְׁנַיִם יָכוֹל הוּא לְחַזֹּר בּוֹ. בְּפָנֵי שְׁלֹשָׁה אֵין יָכוֹל לְחַזֹּר בּוֹ. שְׁמוּאֵל אָמַר. בְּשָׂלָא נָטַל מִזָּה וְנָתַן לָזֶה. אָבֵל נָטַל מִזָּה וְנָתַן לָזֶה יָכוֹל הוּא לְחַזֹּר בּוֹ. רַבִּי יוֹחָנָן וְרִישׁ לְקִישׁ אָמְרִי. אָפִילוּ נָטַל מִזָּה וְנָתַן לָזֶה יָכוֹל הוּא לְחַזֹּר בּוֹ. קִיטָּה בַּמִּקְטִיָּה דְּנָקוּם. קִיבֵּל עָלָיו יָכוֹל לְחַזֹּר בּוֹ.

**Halakhah 4:** “I am accepting my father,” etc. If somebody said, I am accepting your father,<sup>31</sup> if he accepted in the presence of two others, he may retract<sup>32</sup>; in the presence of three<sup>33</sup>, he may not retract. Samuel said, as long as he did not take from one and give to the other<sup>35</sup>; but if he took from one and gave to the other, he may retract. Rabbi Johanan and Rabbi Simeon ben Laqish say even if he took from one and gave to the other, he may retract<sup>36</sup>.<sup>37</sup> “If he hit him with a mace that he should agree; if he accepted he may renege.”

31 The discussion is based on R. Meïr’s point of view.

32 This is an agreement which according to R. Meïr can be rescinded.

33 If these three are persons qualified to act as judges, they act as a court and once a panel of arbitration is empanelled by a court it cannot be changed.

34 I. e., as long as judgment was not rendered.

35 The context requires that one read: “but if he took from one and gave to the other, he may *not* retract.” This is Samuel’s opinion in the Babli, 24b.

36 Their opinion is not mentioned in the Babli.

37 This sentence is corrupt, and probably belongs to the next Halakhah.

A similar text is in Tosephta 5:1: “If somebody became obligated to swear and the other party instead required him to make a vow for his life, or by קִיטָּה וּבַמִּקְטִיָּה R. Meïr and the Sages disagree whether he may retract his agreement.” D. Pardo declares the Tosephta text as unintelligible. *Arukh s.v. קטו* points to *Thr. r. 1(30) ad 1:3* where קטו or קטיתא means “a bat”. This would give as meaning of the Tosephta: “be exposed to *the mace and the bat* in my hands.” The explanations in the standard commentaries are pure conjectures.

(fol. 20d) **משנה ה:** הִיָּה חַיִּב לַחֲבֵרוֹ שְׁבוּעָה וְאוֹמֵר לוֹ דֹּר לִי בְחַיִּי רֵאשֶׁן רַבִּי מֵאִיר אוֹמֵר יָכוֹל לַחֲזוֹר בּוֹ. וְחֻכְמִים אוֹמְרִים אֵינוּ יָכוֹל לַחֲזוֹר בּוֹ:

**Mishnah 5:** If one was obligated to swear to another, who asked him to make a vow “by his life”<sup>38</sup>, Rabbi Meïr says, he may change his opinion<sup>39</sup>, but the Sages say, he may not change his opinion.

38 He asked him to replace the oath by a vow not subject to dissolution. The claimant was afraid to be guilty of “putting a stumbling stone in the path of a blind man” if the other party was making a false oath because of him.

39 And require a formal oath.

(21a line 35) **הלכה ה:** הִיָּה חַיִּב לַחֲבֵרוֹ שְׁבוּעָה כּוֹל. רַבִּי חִיָּיָה בַר אֲבָא אָמַר. בְּשֹׁאֵמֵר לוֹ. יֹאמֵר לִי אֲבִיד וְאֵין לִי עֵמֶד עֵסֶק. אֲבָל אִם אָמַר לוֹ. יֹאמֵר אֲבִיד וְאֵין מְקַבֵּל עָלַי. עֵלָא הִיָּה רוֹצֶה לְהוֹדוֹת לוֹ. רַבִּי יוֹסִי בֶן חֲנִינָה אָמַר. וְאִפְּלוּ אָמַר לוֹ. יֹאמֵר לִי אֲבִיד וְאֵין מְקַבֵּל עָלַי. לֹא מְצִינוּ עֲדוּת יוֹצֵא מִפִּי קָרוֹב.

**Halakhah 5:** “If one was obligated to swear to another,” etc.<sup>40</sup> Rabbi Hiyya bar Abba said, if he told him, let your father tell it to me, then I shall have no claim on you<sup>41</sup>. But if he told him: Let you father tell it, then I shall accept it; he seeks a pretext to confess to him<sup>42</sup>. Rabbi Yose ben Hanina said, even if he told him, let you father tell it to me, then I shall accept it. We never find that testimony be accepted from the mouth of a relative<sup>43</sup>.

40 This paragraph refers to Mishnah 4.

41 The claimant tells the defendant that if the defendant’s father states that his son owes nothing, he will retract his suit. R. Meïr lets him change his mind.

42 The defendant tells the claimant that if the claimant’s father states that the sum is due to his son, the defendant will pay. R.

Hiyya sees this as a confession cloaked in a face-saving device; R. Meïr will agree with the Sages that this is irrevocable.

43 While R. Hiyya bar Abba’s argument may be correct, his conclusion is not, since as a matter of principle we never accept a relative’s testimony to be determining in law.

(fol. 20d) **משנה ו:** אֵילוֹ הֵן הַפְּסוּלִין הַמְּשַׁחֲקִים בְּקוֹבְצֵי וְהַמְּלִיָּה בְּרַבִּית וּמִפְּרִיחֵי יוֹנִים וְסוֹחְרֵי שְׁבִיעִית וְעֹבְדִים. אָמַר רַבִּי שְׁמַעוֹן מִתַּחֲלָה לֹא הָיוּ קוֹרִין אוֹתָן אֶלָּא אוֹסְפֵי שְׁבִיעִית. מִשְׁרְבוּ

האֲנָסִין חֲזָרוּ לְקָרוֹתָן סוֹחְרֵי שְׁבִיעִית. אָמַר רַבִּי יְהוּדָה אִימְתִּי. בְּזֶמֶן שֶׁאֵין לָהֶם אוֹמְנוֹת אֵלָּא הֵיא אֲבָל יֵשׁ לָהֶן אוֹמְנוֹת שְׁלֵא הִיא הָרִי זֶה כְּשֶׁר:

**Mishnah 6:** The following are disqualified: The dice-player<sup>44</sup>, the lender on interest<sup>45</sup>, participants in pigeon contests<sup>46</sup>, dealers in sabbatical produce<sup>47</sup>, and slaves<sup>48</sup>. Rabbi Simeon said, earlier they were listing harvesters of sabbatical produce; but since the increase of oppressors they returned to list only dealers in sabbatical produce<sup>49</sup>. Rabbi Jehudah said, when? If he has no profession but this; but if he has another profession, he is qualified<sup>50</sup>.

44 Since the player with honest dice will lose as often as he wins, he cannot possibly live off the income from his wagers. A gambler living off his gambling by necessity must be dishonest.

45 The lender on interest to Jews shows that he is willing to break the law for monetary gain; he will be willing to commit perjury for a fee.

46 Or any sport where money is made by betting.

47 He is willing to break the law for monetary gain.

48 Since a slave has no *persona* in law, he could commit perjury with impunity.

49 Biblical law requires that the produce of fields in a Sabbatical year be abandoned,

available to anybody. Therefore, originally the owner of a field who harvested the field for his own use was branded as a scofflaw disqualified as witness or judge. But when Palestine was turned into a Roman province and, after the war of Bar Kokhba, the *annona*, contribution of produce, was imposed yearly, it was necessary to permit harvesting in the Sabbatical year in order to deliver the *annona* and prevent confiscation of the land by the government. Therefore, only actual trade in sabbatical produce was sinful, not harvesting.

50 An occasional gambler and occasional trader in sabbatical produce are qualified.

(21a line 40) **הלכה ו:** אֵילּוּ הֵן הַפְּסוּלִין. הַמְּשַׁחֵק בְּקוֹבְנָא כּוּל. הַמְּשַׁחֵק בְּקוֹבְנָא זֶה הַמְּשַׁחֵק בְּפִסְיָסִין. אֶחָד הַמְּשַׁחֵק בְּפִשְׁפִּישִׁין וְאֶחָד הַמְּשַׁחֵק בְּקִלְפֵי אֲגוּזִין וְרִימוֹנִים לְעוֹלָם אֵין מְסַבְּלִין אוֹתָן עַד שֶׁיִּשְׁבֵּר פְּסִיפְסִיו אוֹ יְקַרַע שְׁטְרוֹתָיו וְיַבְדֵּק וְיַחְזְרוּ בָּהֶן חֲזָרָה גְּמוּרָה.

**Halakhah 6:** “The following are disqualified: The dice-player,” etc.<sup>51</sup> The dice player is the one who plays with small stones<sup>52</sup>.<sup>53</sup> “Not only the player with stones, even one who plays with shells of nuts or pomegranates is not accepted unless he break his stones or tear up his IOU’s<sup>54</sup>, and be checked out and repent in complete repentance.”

51 Parallels to the first part of this Halakhah are found in *Roš Haššanah* 1:9 and *Ševuot* 7:4.

52 Greek ψῆφος “pebble, cube; the stones used for mosaics and tokens used in elections.” Rashi defines as “marbles”.

53 Similar texts are in the Babli 25b,

Tosefta 5:2.

54 This should be part of a separate sentence, as in the parallel Yerushalmi texts, Babli, and Tosefta.

The lender on interest cannot repent unless he tear up his IOU's and repent in complete repentance.

(21a line 44) ומפריחי יונים. אחד הממרה יונים ואחד הממרה שאר בהמה חיה ועוף אין מקבלין אותן עד שישברו פגמיו ויחזרו בהן חזרה גמורה.

“Participants in pigeon contests.”<sup>55</sup> 53 Whether one bets on pigeons or bets on any other domesticated animal, wild animal, or bird, he is not accepted unless he break his tools of the catch and repent in complete repentance.

סוחרים שביעית. אי זהו תגר שביעית. זה שיושב ובטל כל-שני שבו. כיון שבא שביעית התחיל מפשט גדיו ונושא ונותן בפירות שביעית. ולעולם אין מקבלין אותן עד שתגיע שביעית אחרת ויבדק ויחזור בו חזרה גמורה. תני. רבי יוסי אומר. שתי שביעיות. רבי נחמיה אומר. חזרת ממון לא חזרת דברים. שיאמר להם. הא לכם ר' זו וחלקים לעניים מה שכנסתי מפירת עבירה. הוסיפו עליהן הרועין והחמקנין והגזלנין וכל החשודין על הממון עדותן בטילה. אמר רבי אבהו. ובלבד ברועין בהמה דקה.

“Dealers in sabbatical produce.”<sup>53a</sup> 53a Who is a dealer in sabbatical produce? One who sits idle all the years of a sabbatical cycle. As soon as the sabbatical year starts, he becomes active and trades in sabbatical produce. One does not accept them before another sabbatical year starts and he can be checked out that he repented in complete repentance.” It was stated: Rabbi Yose says, two sabbatical periods. <sup>56</sup>“Rebbi Nehemiah says, repentance in money, not repentance in words; that he say to them, here are 200 denars, distribute them to the poor, for I earned them from forbidden produce.” <sup>57</sup>They added shepherds, extortionists, and any who are suspect in money matters, that their testimony be invalid. Rabbi Abbahu said, only shepherds of small animals<sup>58</sup>.

55 The parallel sources show that there is a sentence missing here: “This is one who bets on pigeons.” Organizing pigeon contests is not dishonest, but making a

living by betting on animal contests would be impossible for honest betters.

56 Tosefta 5:2.

57 A similar text in the Babli, 25b.

58 Sheep and goats which are destructive of vegetation in agricultural areas. Herders of sheep and goats are acceptable only in regions devoid of agriculture. The Babli notes that robbers and other felons are

excluded by biblical law (*Ex.* 23:2). It concludes that Mishnah and *baraitot* refer to actions classified as extortion or robbery only by rabbinical standards.

54 (21a line 21) אָמַר רַב הוּנָא. מֵאֵן תִּנָּא מִפְּרִיחֵי יוֹנִים. רַבִּי לִיעֶזֶר. דְּתִנֵּינָן תַּמָּן. מִפְּרִיחֵי יוֹנִים פְּסוּלִין מִן הָעֵדוּת. אָמַר רַבִּי מִנְא קוּמִי רַבִּי יוֹסִי. עוֹד הָדָא דְסִנְהֶדְרִי כְּרַבִּי לִיעֶזֶר. אָמַר לֵיהּ. דְּבָרֵי הַכֹּל הֵיא. הָכָא אָמַר רַבִּי יוֹסִי. יוֹדְעִין הֵיִינוּ שְׁפָסוּל מַעֲדוֹת מָמוֹן. מִי בָא לְהָעִיד. אֶלָּא כְּשֶׁם שְׁפָסוּל מַעֲדוֹת מָמוֹן כִּד פְּסוּל מַעֲדוֹת נֶפְשׁוֹת. וְעִידֵי הַחוּדָשׁ כְּעִידֵי נֶפְשׁוֹת אִינוּן. דְּתִנֵּינָן. זֶה הַכֹּל. כָּל-עֲדוֹת שְׂאִין אִשָּׁה כְּשִׁירָה לָהּ אִף הֵן אִינוּן כְּשִׁירִין לָהּ. מֵאֵן תִּנָּתֵהּ. רַבִּינִין. רַבִּינִין. כְּרַבִּי לִיעֶזֶר. מוֹדִין לֵיהּ וּפְלִיגִין עָלוּהִי. רַבִּי הוּנָא בְּשֵׁם רַב הוּנָא אָמַר. כּוֹלָה כְּרַבִּי לִיעֶזֶר. וְאִתֵּיָא אֵילִין פְּלוּגְתָא כְּאֵילִין פְּלוּגְתָא. דְּתִנֵּי. עַד זֹמָם פְּסוּל מִכָּל-עֲדוּת שְׁבִתוֹרָה. דְּבָרֵי רַבִּי מֵאִיר. אָמַר רַבִּי יוֹסִי. בְּמָה דְּבָרִים אָמוּרִים. בְּזֶמֶן שְׁנַמְצָא זֹמָם בְּעֲדוֹת נֶפְשׁוֹת. אֲבָל אִם נִמְצָא זֹמָם בְּעֲדוֹת מָמוֹן אִין פְּסוּל אֶלָּא מֵאוֹתָהּ עֲדוֹת בִּלְבַד. וְתֵיָא דְרַבִּי יוֹסִי כְּרַבִּינִין וְדְרַבִּי מֵאִיר כְּרַבִּי לִיעֶזֶר.

Rav Huna said: Who is the Tanna of “participants in pigeon contests”? Rabbi Eliezer, as we have stated there<sup>59</sup>: “Participants in pigeon contests are disqualified from testimony.” Rabbi Mana said before Rabbi Yose: Is that statement in *Sanhedrin* Rabbi Eliezer’s<sup>60</sup>? He told him, it is everybody’s opinion. <sup>61</sup>So said Rabbi Yose: We knew that he was disqualified for testimony in money matters. What does he<sup>62</sup> come to testify about? For as he is disqualified in money matters, so he is disqualified to testify in criminal trials. The witnesses for the New Moon are held to the standards of criminal trials, as we have stated<sup>63</sup>: “This is the principle: Any testimony for which a woman is not qualified, they<sup>64</sup> are not qualified for.” Who stated this? The rabbis<sup>65</sup>! Do the rabbis follow Rabbi Eliezer? They agree with him and disagree with him. Rabbi Huna<sup>66</sup> in the name of Rav Huna said: It follows Rabbi Eliezer in everything. It turns out that this disagreement<sup>67</sup> parallels another disagreement, as it was stated<sup>68</sup>: A perjured witness is disqualified for any and all testimony required by the Torah, the words of Rabbi Meïr. Rabbi Yose said, when has this been said? When he was found perjured in criminal matters. But if he was found perjured in money matters, he is disqualified

only from that particular testimony. It turns out that Rabbi Yose parallels the rabbis and Rabbi Meïr Rabbi Eliezer.

59 Mishnah *Idiut* 2:7, formulated as testimony in R. Aqiba's court in the name of R. Eliezer.

60 If this represents a minority opinion, it should have been labelled as such.

61 There is a sentence missing here. found in *Roš Haššanah*: What is meant by "it is everybody's opinion? That is what R. Yose meant to say:". It makes clear that one refers to the statement of the Amora R. Yose. The entire discussion does not refer to the Mishnah in *Sanhedrin* but the one in *Roš Haššanah*. The text in *Roš Haššanah*

has to be considered as the original.

62 The witnesses mentioned in the Mishnah *Roš Haššanah*.

63 Mishnah *Roš Haššanah* 1:10.

64 The people disqualified in Mishnah *Sanhedrin* 3:6.

65 In the anonymous Mishnah.

66 In *Roš Haššanah*: R. Jonah. In *Ševuot*: R. Huna.

67 R. Eliezer and the rabbis, R. Meïr and R. Yose (the Tanna).

68 *Tosephta Makkot* 1:11, in the name of R. Jehudah (student of R. Eliezer's student.)

(21a line 67) רבי שמעון אומר. מתחילה לא היו קורין אותן אלא אוספי שביעית. משרבו האנסיין חזרו לקרותן סוחרים שביעית. אמר רבי יודן. אימתי. בזמן שאין להן אלא היא. אבל יש לו אומנות שלא היא הרי זה כשר: היך עבדא. יושב וכתל כל-שני שבו. כיון שפאת שביעית התחיל פושט את גדי ונושא ונותן בפירות שביעית. אם יש עמו מלאכה אחרת כשר. ואם לאו פסול. אבל אם היה עוסק במלאכתו כל-שני שבו. כיון שפאת שביעית התחיל מפשט את גדי ונושא ונותן בפירות שביעית אף על פי שאין עמו מלאכה אחרת כשר. רבי בא בר זבדא רבי אבהו בשם רבי לעזר. הלכה כרבי יהודה דמתניתין. איקלס רבי בא בר זבדא דמר שמועה משום דזעיר מיניה.

תני רבי חייה לחומר. היך עבדא. יושב ועוסק במלאכתו כל-שני שבו. כיון שפאת שביעית התחיל מפשיט את גדי ונושא ונותן בפירות שביעית. אף על פי שיש עמו מלאכה אחרת פסול. לא בדא רבי בא בר זבדא רבי אבהו בשם רבי לעזר. הלכה כרבי יהודה דמתניתין. תמן רבי בא בר זבדא דמר שמועה משום זעיר מיניה. אף הכא כן. אמר רבי יוסי בירבי בון. תמן אין מלכות אונסת. ברם הכא המלכות אונסת.

<sup>69</sup>Rebbi Simeon says, earlier they were listing harvesters of sabbatical produce; but since the increase of oppressors they returned to list only dealers in sabbatical produce. Rabbi Jehudah said, when? If he has no profession but this; but if he has another profession, he is qualified." How is this implemented? If he was sitting idle all the years of the sabbatical cycle but



when the Sabbatical began he became active and traded in sabbatical produce. If at the same time he is engaged in another occupation, he is qualified; otherwise he is disqualified. But if he was working in his profession all the years of the sabbatical cycle and when the Sabbatical began he became active and traded in sabbatical produce, even if he has no other profession on the side he is qualified. Rabbi Abba bar Zavda, Rabbi Abbahu in the name of Rabbi Eleazar: Practice follows Rabbi Jehudah<sup>70</sup> of our Mishnah. Rabbi Abba bar Zavda was praised for formulating the tradition in the name of a person younger than himself.

Rabbi Hiyya stated restrictively. How is this implemented? If he was working in his profession all the years of the sabbatical cycle but when the Sabbatical began he became active and traded in sabbatical produce. Even if he has another profession on the side he is disqualified. This is not what Rabbi Abba bar Zavda, Rabbi Abbahu said in the name of Rabbi Eleazar: Practice follows Rabbi Jehudah of our Mishnah. Rabbi Abba bar Zavda was praised for formulating the tradition in the name of a person younger than himself. Here also should it be so? Rabbi Yose ben Rabbi Abun said, there the government is not oppressive, here the government is oppressive.

(21b line 6) בְּרֵאשׁוֹנָה כְּשֶׁהִיָּתָה הַמַּלְכוּת אוֹנֶסֶת הוֹרִי רַבִּי יַנָּאי שֶׁיְהוּ חוֹרְשִׁים חֲרִישָׁה הָרֵאשׁוֹנָה. חֵד מְשׁוּמֵד הָיָה אֵי־עֶבֶר שְׁמִיעָתָא. חֲמַתּוֹן רַמְיִין קוֹבְעָתִיהָ. אָמַר לוֹן. הֶסְטוּ. שָׂרָא מֵרַא.<sup>71</sup> שָׂרָא לְכוֹן מִרְמָא קוֹבְעָת.

When the government was oppressing the first time, Rabbi Yannai instructed to plough a single ploughing<sup>72</sup>. An apostate was passing by; he saw the putting up of the harrow. He said to them, hey you! Is it permitted for you to plough? Is it permitted for you to put up the harrow?

(21b line 9) אָמַר רַבִּי יַעֲקֹב בַּר זִבְדִּי. קִשְׁיָתָה קוֹמִי רַבִּי אֲבָהוּ. לֹא כֵן אָמַר זְעִירָא וְרַבִּי יוֹחָנָן בְּשֵׁם רַבִּי יַנָּאי רַבִּי יִרְמְיָה רַבִּי יוֹחָנָן בְּשֵׁם רַבִּי שְׁמַעוֹן בֶּן יְהוֹצָדָק. נִמְנוּ בַּעֲלִית בֵּית נִתְּזָה בְּלוֹד. עַל הַתּוֹרָה מְנִיין. אִם אָמַר גּוֹי לִישְׂרָאֵל לַעֲבוֹר עַל אַחַת מִכָּל־מִצְוֹת הָאֲמּוּרוֹת בַּתּוֹרָה חוּץ מִעֲבוֹדָה זָרָה וְגִילּוֹי עֲרִיזוֹת וּשְׁפִיכוֹת דָּמִים יַעֲבוֹר וְאֵל יִיְהוָה. הֲדָא דְתִימַר בֵּינֵינוּ לְבִין עַצְמוֹ. אֲבָל בְּרַבִּים אֲפִילוֹ עַל מִצְוָה קֻלָּה אֵל יִשְׁמַע לוֹ. כְּגוֹן פְּפוֹס וְלִילִינִים אַחֲיוּ שְׁנִתְּנוּ לָהּ מִים בְּכָלִי זְכוּכִית צְבוּעָה וְלֹא קִיבְלוּ מֶהָן. אָמַר. לֹא אֵיתְּבוּנוּן מִשְׁמַדְהֶתּוֹן אֱלָא מִגְּבִי אֲרֻנוּיִן. כְּמָה הֵן רַבִּים. רַבְּנֵן דְּקִסְרִין אֲמִרִין. עֲשֶׂרָה. דְּכָתִיב וְלֹקֵד שְׂתִי בַתּוֹךְ בְּנֵי יִשְׂרָאֵל.

Rebbi Jacob bar Zavdi said, I asked before Rebbi Abbahu: Did not [Rebbi] Ze'ira and Rebbi Johanan in the name of Rebbi Yannai, Rebbi Jeremiah, Rebbi Johanan in the name of Rebbi Simeon ben Yehosadaq, say that they voted on the upper floor of the Nitzah house in Lydda: About all the Torah, if a Gentile tells a Jew to transgress any commandment of the Torah except those concerning idolatry, incest and adultery, and murder, he should transgress and not be killed<sup>73</sup>. That is in private, but in public he should not follow him even for the slightest commandment, as exemplified by Pappos and his brother Julianus to whom they gave water in a colored glass and they did not accept.

He said, they do not intend to lead you to apostasy, they only want to collect *annona*.

What means "in public"? The rabbis of Caesarea say ten, as it is written<sup>74</sup>: *I shall be sanctified in the midst of the Children of Israel*.

(21b line 17) רבי בינא זעירא חמוניה פרי חורי חמרא בשבבא. רבי יונה ורבי יוסי הורון מיפי לארטקינס בשובבא. אמר רבי מני. קשיטה קומי רבי יונה אבא. לא כן אמר רבי זעירא רבי יוחנן בשם רבי ינאי רבי ירמיה רבי יוחנן בשם רבי שמעון בן יהוצדק. נמנו בעלמית בית נתנה בלוד וכול'. לא איתכון משמדתהון אלא איתכון מיכול פיתא חמימא. כמה הו רבים. רבנו דקיסרין אמרי. עשרה. דכתיב ולקדשתי בתוך בני ישראל.

They saw the young Rebbi Bina collecting donkey's dung on the Sabbath. Rebbi Jonah and Rebbi Yose permitted baking for Ursicinus on the Sabbath. Rebbi Mana said, I asked before my father Rebbi Jonah, did not Rebbi Ze'ira and Rebbi Johanan in the name of Rebbi Yannai, Rebbi Jeremiah, Rebbi Johanan in the name of Rebbi Simeon ben Yehosadaq, say that they voted on the upper floor of the Nitzah house in Lydda, etc.? He said, he did not intend to lead you to apostasy, he only wanted to eat warm bread..

What means "in public"? The rabbis of Caesarea say ten, as it is written<sup>74</sup>: *I shall be sanctified in the midst of the Children of Israel*.

(21b line 23) רבי אבינא בעא רבי אמי. גוים מהו שיהו מצוין על קידוש השם. אמר ליה ולקדשתי בתוך בני ישראל. ישראל מצוין על קידוש השם ואין ה גוים מצוין על קידוש השם. רבי יוסי בשם רבי לעזר שמע לה מהדא. לדבר הוה יסלח יי לעבדך וגו'. ישראל מצוין על קידוש השם ואין הגוים מצוין על קידוש השם.

Rebbi Abinna asked Rebbi Immi: Are Gentiles required to sanctify the Name? He answered him: *I shall be sanctified in the midst of the Children of Israel*. Israel are required to sanctify the Name; the Gentiles are not required to sanctify the Name. Rebbi Nissai in the name of Rebbi Eleazar understood it from the following: *May the Eternal forgive His servant for this*, etc. Israel are required to sanctify the Name; the Gentiles are not required to sanctify the Name.

(21b line 28) רבי בא בר זמינא הנה מחיט גבי חד בר נש ברומי. אייתי ליה בשר נבילה. אמר ליה. אכול. אמר ליה. לי נא אכיל. אמר ליה. אכול דילא כן אנא קטיל לך. אמר ליה אין בעית מיקטול קטול דלי נא אכיל בשר נבילה. אמר ליה. קאן מודע לך דאילו אכלתה הוינא קטלין לך. או יהודי יהודי או ארמאי ארמאי. אמר רבי מנא. אילו הנה רבי בא בר זמינא שמע מליהון דרבנין מיזל הנה בהדא.

Rebbi Abba bar Zemina was working as a tailor for somebody in Rome. He brought him carcass meat and told him to eat. He said to him, I will not eat. He said to him, eat! Otherwise I shall kill you. He said to him, if you have to kill, kill, for I shall not eat carcass meat. He said to him, certainly you should know that I would have killed you, had you eaten. Either one is a Jewish Jew or an Aramean Aramean. Rebbi Mana said, if Rebbi Abba bar Zemina had understood the words of the rabbis, he would have been gone.

69 This and the following paragraphs are from *Ševi'it* 4:2, Notes 20-34. A few passages are reformulated.

70 Babli 26b.

71 Read with the *Ševi'it* text מרדי "to plough".

72 Babli 26a. This dates the change in Roman taxation policy to the end of the Severan dynasty. For הסטר cf. *Ševi'it* 4:3, Note 23.

73 Babli 74a.

74 *Lev.* 22:32.

75 *2K.* 5:18.

(21b line 34) רבי ירמיה סבר מימר. בטל הדין בטילה גזירתא. רבי יוסי סבר מימר. לעולם הגזירה במקומה עד שיעמוד בית דין אחר ויבטלה. ודכוותה. מאימתי אדם זוכה לפירותיו בשביעית. רבי ירמיה סבר מימר. משיתגנם לתוך כילו. רבי יוסי סבר מימר. אפילו נתנוין בתוך כילו לא זכה. סבר דינון דידיה ולית אינון דידיה.

<sup>76</sup>If somebody improved [his field] today, what is the rule? Rebbi Jeremiah was of the opinion that when the reason disappeared, the ordinance

is void. Rabbi Yose was of the opinion that even if the reason disappeared, the ordinance stands until another court abolishes it.

<sup>77</sup>Similarly, how does an owner acquire his own produce in a Sabbatical year? Rabbi Jeremiah wanted to say, from the moment he put it into his vessel. Rabbi Yose was of the opinion that even if he put it into his vessel he did not acquire, for he thinks that it is his but it is not his.

76 The paragraph is a reformulation of one in *Ševi'it* 4:2, Notes 35-37. The prohibition to work after the Sabbatical a field which was improved in the Sabbatical is purely rabbinical.

77 *Ševi'it* 4:2, Note 43, *Ketubot* 9:3 Notes 109-110. The connection with the preceding is a leniency of R. Jeremiah opposed by R. Yose.

(21b line 38) רבי מנא כד אעל פרוקלא בצפורי הורי מפקא נחתומיא בשוקא. רבנין דגולה הורו מיכי חמיע בפסחא.  
אמר רבי יוסי בירבי בון. אנלי פירמלך שמור. אני פי מלך מלכי המלכים אשמור. שאמר לי בסיני אנכי יי אלהיך. ועל דברת. לא יהיה לך אלהים אחרים על-פני שבעת אלהים. לא תשא את-שם יי אלהיך לשוא. בדרך הזה נבוא ההוא נברא וההו כלבא שניהן שוין.  
רב יהודה בשם רב. הלכה כרבי יהודה.

When Proclus<sup>78</sup> entered Sepphoris, Rabbi Mana instructed the bakers to present their wares in the market. The rabbis of Newe<sup>79</sup> instructed to bake leavened on Passover.

<sup>80</sup>Rabbi Yose ben Abun said: *I shall keep the King's sayings*<sup>81</sup>, Who told me at Sinai *I am the Eternal, your God*<sup>82</sup>, *on the pronouncement*<sup>81</sup>, *you shall not have other gods before Me*<sup>83</sup>, *of God's oath*<sup>81</sup>, *do not take the Name of the Eternal, your God, in vain*<sup>84</sup>. In this matter we come together, this man<sup>85</sup> and this dog<sup>86</sup> are both equal.

Rav Jehudah in the name of Rav: Practice follows Rabbi Jehudah.

78 Grätz (*Geschichte der Juden*<sup>3</sup> p. 314) reads *Proculus* and identifies him as an officer of Ursicinus's army (under the emperor Gallus.)

79 Sometimes called *Niniveh*, a place *Nova* in the Golan.

80 The old Midrashim, *Lev. r.* 33:6, shorter *Cant. r. ad* 2:14, *Eccl. r. ad* 8:2 quote this in the name of the older R. Levy. Possibly there is no claim of originality asserted here for R. Yose ben R. Abun, three generations after R. Levy, but the sermon is

quoted as objection to the lenient rulings mentioned before.

81 *Eccl.* 8:2.

82 *Ex.* 20:2.

83 *Ex.* 20:3.

84 *Ex.* 20:7.

85 The speaker.

86 Nebuchadnezzar, who is said to have barked like a dog during his spell of insanity, *Lev. r.* 33(6).

**משנה ז** (fol. 20d) ואילו הן הקרובין אחיו ואחיו אביו ואחיו אמו ובעל אחותו ובעל אחות אביו ובעל אחות אמו ובעל אמו וחמיו ואגיסו הן ובניהן וחתניהן וחורגו לבדו. אמר רבי יוסי זו משנת רבי עקיבה. אבל משנה ראשונה דודו וכן דודו. וכל הראוי לירשו וכל הקרוב לו באותה שעה. היה קרוב ונתרחק הרי זה כשר. רבי יהודה אומר אפלו מתה בתו ויש לו בנים ממנו הרי זה קרוב:

**Mishnah 7:** The following are the relatives:<sup>87</sup> His brother, his father's brother and his mother's brother <sup>88</sup>, his sister's husband, his father's sister's husband and his mother's sister's husband, his father-in-law, and his brother-in-law <sup>89</sup>; these, their sons and sons-in-law, but his steps<sup>90</sup> alone. Rabbi Yose said, this is Rabbi Aqiba's teaching; but the original Mishnah was: His uncle and his uncle's son<sup>91</sup>, and anybody in line to inherit from him, and any related to him at that moment<sup>92</sup>. If he had been related but became unrelated, he is qualified. Rabbi Jehudah says, even if his daughter had died but he had children from him, he remains a relative<sup>93</sup>.

87 Since women are barred from giving formal testimony, only the males are enumerated.

88 The father's brother is a relative; so is the father himself. He is mentioned in some Mishnah mss.

89 אגיס is the Syriac form; the usual Babylonian is גיס. In Syriac the word denotes the wife's sister's husband. This is the meaning presumed in the Halakhah, but here it includes the wife's brother.

90 His wife's son from a previous marriage.

91 Quoted as relative *par excellence* in *Lev.* 25:29.

92 Any man married to a woman who is a possible heir (as defined in Mishnah *Bava batra* 8:1) is barred to act as witness. At the dissolution of the marriage, by death or divorce, the relationship is terminated.

93 Since the grandchildren are possible heirs, they are barred from being witnesses, and so is their father. This holds true even if the grandchildren all are female.

(21b line 40) **הלכה ז:** אילו הן הקרובין כול'. מפנין דתנינן אחיו מה צורכה למתני אחי אביו. לומר בנו וחתנו של חתן.

אחי אביו. מפנין דתנינן אחי אביו מה צורכה למתני אחי אמו. לומר בנו וחתנו של חתן. אחי אמו. מפנין דתנינן בעל אחותו מה צורכה למתני בעל אחות אביו. לומר בנו וחתנו של חתן.

בעל אחות אביו. מפנין דתנינן בעל אחות אביו. מה צורכה למתני בעל אחות אמו. לומר בנו וחתנו של חתן.

בעל אחות אמו. ונתנינן חורגו לבדו. רב אמר. אם חתן חמותו אסור בעל חורגתו לא קל-שכן. תיפתר שיש לה בנים וחתנים ממנה.

אגיסו. אית תני תני. יש לו בנים וחתנים. ואית תני תני. אין לו בנים וחתנים. מאן דמר יש לו בנים וחתנים. ממנה. ומאן דמר אין לו בנים וחתנים. ממקום אחר.

**Halakhah 7:** “The following are the relatives,” etc. Since we have stated “his brother,” why does one have to state “his father’s brother”<sup>94</sup>? To include the son-in-law’s son-in-law<sup>95</sup>.

“His father’s brother”. Since we have stated “his father’s brother,” why does one have to state “his mother’s brother”<sup>96</sup>? To include the son-in-law’s son-in-law<sup>97</sup>.

“His mother’s brother”. Since we have stated “his sister’s husband,” why does one have to state “his father’s sister’s husband”<sup>98</sup>? To include the son-in-law’s son-in-law<sup>97</sup>.

“His father’s sister’s husband”. Since we have stated “his father’s sister’s husband,” why does one have to state “his mother’s sister’s husband”? To include the son-in-law’s son-in-law<sup>99</sup>.

“His mother’s sister’s husband”. But did we not state: “his stepson alone”<sup>100</sup>? Rav said, if his mother-in-law’s son-in-law<sup>101</sup> is forbidden, then certainly his stepdaughter’s husband<sup>102</sup>. Explain it that she has sons and sons-in-law from him<sup>103</sup>.

“His brother-in-law”. Some Tannaïm state: Including sons and sons-in-law; but some Tannaïm state: Excluding sons and sons-in-law. He who said, including sons and sons-in law, from her<sup>104</sup>. But he who said, excluding sons and sons-in law, from another family<sup>105</sup>.

94 Two unexpressed principles are symmetry: If A is disqualified for B, then B underlying the discussion. The first is is disqualified for A. The second one is that

for the definition of "relative", there is no difference between male and female.

[It has to be noted that for the definition of incestuous relations, both principles are accepted by Sadducees and rejected by Pharisees. The father's sister is biblically forbidden (*Lev.* 18:12); the brother's daughter, for whom the husband would be the father's brother, is biblically forbidden by Sadducees and Karaites, permitted (and recommended) by Pharisees and rabbinic Jews. The Midrash which asserts that Sarah was not Abraham's paternal half-sister but his niece (*Yebamot* 10:17 Note 210) is more an anti-Sadducee polemic than a genuine interpretation of the biblical text.]

Since the Mishnah states that sons and in-laws of disqualified relations are also disqualified, the mention of the brother implies that the nephew is also disqualified. But for the nephew, the original person is the father's brother; why does he have to be mentioned?

95 The Mishnah by implication disqualifies the cousin (or cousin's husband); this disqualification is not implied by the disqualification of the brother (Babli 28a).

96 In the Babli, 28a, the mention of the mother's brother is taken as proof of the second rule of Note 92. The same is implied here.

97 The same argument as before, to disqualify cousins from the mother's side.

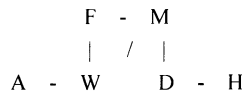
98 This question presupposes that any person disqualified for A also is disqualified for A's son (Babli 28a). A's sister's husband is the father's sister's husband for A's son.

99 This probably is a scribal error, copied from the preceding paragraph. The only reasonable answer would be: to show that in matters of disqualification as witnesses, relations by females are the equivalent of relations by males.

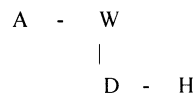
100 Excluding the stepson's wife and his descendants and in-laws.

101 Husband of his father-in-law's stepdaughter.

102 Since it was established that females be treated like males in this matter, the status of the mother-in-law is that of the father-in-law, and her children and children-in-law also are disqualified. Let A be the person in question, W his wife, F, M, his father and mother, D the mother-in-law's daughter from another man, and H the daughter's husband. The relationship between A and H can be given by a diagram:



On the other hand, the relationship between a man and his stepdaughter's husband can be described by



This graph clearly is a subgraph of the preceding (up to labelling, replacing F,M by A,W). Therefore, if the first graph describes a disqualifying relationship, *a fortiori* the second also describes one.

103 Since the preceding argument leads to a result contradicting the Mishnah, the premiss of the argument is shown to be false. The only siblings of a person's wife disqualified as witnesses are her full or

paternal siblings. “She” in this sentence is the mother-in-law.  
104 His wife’s sister.

105 Another wife. In the Babli, 28b, there is a dispute whether “he alone” refers to the stepson or *any* brother-in-law.

(21b line 55) רב נפק למיתרי משכין לרבי חייה רבה. עבר בחד אתר ואשכח רבי יוחנן ותיב ומקשי. תינין. חורגו לבדו. אשת חורגו מהו. בעל חורגתו מהו. אשה קבעלה ובעל קאשתו. וקמת אשת חורגו כחורגו והבעל קאשה.  
רב חסדא בעי. דור שלישי מהו שיהא מותר באשת ראשון. משה מהו שיהא מותר באשת פינחס. ריש לקיש אמר. מקבלין דור שני ודור שלישי מדוחק. רבי יוחנן אמר. אפילו מריח.

Rav went to sell hides<sup>106</sup> for the elder Rabbi Hiyya. He passed by a place where he found Rabbi Johanan sitting and asking: We have stated, “his stepson alone.” What is the situation of his stepson’s wife, his stepdaughter’s husband? A woman is like her husband and the husband is like his wife<sup>107</sup>. Therefore, the situation of his stepson’s wife is that of his stepson, and the husband is like his wife<sup>108</sup>.

Rav Hisda asked: If the third generation permitted the first generation’s wife<sup>109</sup>? Is Phineas’s wife permitted to Moses<sup>110</sup>? Rabbi Simeon ben Laqish said, one accepts the second and third generations with difficulty<sup>111</sup>. Rabbi Johanan said, even with ease<sup>112</sup>.

106 Text and meaning are in doubt. One might read מיתרי משכין “to span hides”; this does not make much sense. *Nimmuqe Yosef* (Commentary to Alfasi, 6b in the Wilna ed.) reads למזבן משכין “went to sell a pledge”. This agrees with the following possessive, לרבי חייה. The parallel source in the Babli, 28a/b reads: רב איקלע למזבן גיילי. “Rav happened to be selling parchment.”

107 The Babli 28b treats the two statements as different; one does not necessarily imply the other.

108 A person is disqualified from being a witness for or against his stepson’s wife or stepdaughter’s husband, but not for or

against the stepchild’s children or children-in-law.

109 The brother’s children are disqualified by the Mishnah. What about the grandchildren?

110 The question is formulated as one of permitted marriages. This does not fit the context, since that problem was discussed in *Yebamot* 2:4. With all commentators one has to read the question whether Moses be qualified to testify for the wife of Phineas, his brother’s grandson.

111 A court will accept testimony from persons one generation removed from the Mishnaic disqualifications only if no other



witnesses are available.

Mishnah is qualified.

112 Any testimony not disqualified by the

(21b line 61) כְּהֵדָא אָגִיסִיָּה דְרַב הוּנָא הֵינָה לִיה דִּין עִם חַד בְּרִנְשׁ. אָמַר. כָּל־מָה דְרַב הוּנָא  
אָמַר אָנָּה מְקַבֵּל עָלֵי. שְׁמַע רַב הוּנָא וְאָמַר כְּהֵדִין. יוֹדְעִי כְּשֵׁם שְׁאָמְרוּ מְלַמְעֵלָן כֹּן אָמְרוּ  
מְלַמְטָן. רַב יְרֵמְיָה בְּשֵׁם רַב. הִלְכָּה כְּרַבִּי יוֹדָה.

<sup>113</sup>As the following: A brother-in-law<sup>114</sup> of Rav Huna's had a case with some person. He said, I am accepting anything which Rav Huna will decide<sup>115</sup>. Rav Huna heard it and said, this is it<sup>116</sup>. I know that just as they said for the preceding generations, so it is for the following<sup>117</sup>. Rav Jehudah in the name of Rav: Practice follows Rabbi Jehudah<sup>118</sup>.

113 This refers to the last part of the Mishnah, the statement of R. Jehudah.

114 The husband of one of Rav Huna's sisters and one of the sisters had died. He had been a relative but now became unrelated.

115 Since Rav Huna was no longer a relative, he was qualified to be a judge.

116 The statement of the Mishnah.

117 The Mishnah refers to the relation between a person and his son-in-law, two different generations. Since R. Jehudah

states that if there be grandchildren, the son-in-law remains related, it follows that the anonymous Tanna holds that in all cases the son-in-law becomes unrelated at the moment his marriage is dissolved by death or divorce.

118 This is also quoted in the Babli, 28b, as Rav's opinion. The school of Samuel, represented by Rav Nahman, holds that practice does not follow R. Jehudah. Rav Nahman's rulings have the status of Supreme Court decisions in Babylonia.

(fol. 20d) **משנה ח:** האוהב והשונא. אוהב, זה שושבין. שונא כל שכלא דבר עמו שלשה ימים  
באיבה. אמרו לו לא נחשדו ישראל על כך:

**Mishnah 8:** <sup>119</sup>The lover and the hater<sup>120</sup>. The lover, that is the best man. The hater, anyone who did not talk to him for three days because of ill-will. They told him, Israel are not suspected of this<sup>121</sup>.

(21b line 65) **הלכה ח:** האוהב והשונא כול'. רבי טבליי רבי אבינא בשם רב. בשבעת ימי  
משפחה שנו.

**Halakhah 8:** “The lover and the hater,” etc. Rabbi Tevelai, Rabbi Abinna in the name of Rav: They stated this for the seven days of wedding festivities<sup>122</sup>.

119 The Mishnah is a continuation of R. Jehudah’s statement.

120 Are disqualified as witnesses.

121 To testify falsely because of this. But a judge emotionally involved with one of the parties is disqualified (Babli 29a).

122 The best men are disqualified only during the festivities. Rav’s opinion is quoted in the Babli, 29a, where a later authority restricts R. Jehudah’s rule to the wedding day only.

(fol. 20d) **משנה ט:** כיצד בודקין את העדים. היו מכניסין אותן ומאיימין עליהן ומוציאין אותן לחוץ ומשייירין את הגדול שבהן ואומר לו אמור היאך אתה יודע שזה חייב לזה. אם אמר הוא אמר לי שאני חייב לו איש פלוני אמר לי שהוא חייב לו לא אמר כלום עד שיאמר בפנינו הודה לו שהוא חייב לו מאתים זוז.

**Mishnah 9:** How does one check out the witnesses? One brings them to court and instills fear into them<sup>123</sup>, then removes them<sup>124</sup> but retains the greatest among them<sup>125</sup>. One says to him, tell why you know that this person owes to the other one. If he said, he himself confessed to me that he owes the money<sup>126</sup>, or another person told me that he owes it<sup>127</sup>, he did not say anything until he says, before us<sup>128</sup> he confessed to him that he owed him 200 denar.

123 Since witnesses are not interrogated under oath, they have to be informed of the gravity of the crime of perjury.

124 This also is the reading of Alfasi and Rosh. Maimonides and the Venice text of the Babli read: One removes everybody.

125 The witnesses are interrogated separately.

126 He might have said this either to establish credit or to publicize his needy status in order that no public service should be required of him.

127 Hearsay has to be disregarded.

128 At least two witnesses, whose word confirms everything by biblical standards.

(21b line 66) **הלכה ט:** כיצד בודקין את העדים כול'. רבי יוסי בשם רבי יוחנן. אם היה מתבון למסור לו עדות עדות קיימת.

**Halakhah 9:** “How does one check out the witnesses,” etc. Rabbi Yose in the name of Rabbi Johanan: If he had intended to appoint them as witnesses, their testimony is valid<sup>129</sup>.

129 Testimony that the debtor admitted to the debt (Note 126) is to be accepted if the debtor explicitly stated that he made the statement to his listeners for the purpose of testimony. There must be two listeners (Halakhah 10, Note 180).

(21b line 68) כִּיצַד דָּנִין. הַדִּינִין יוֹשְׁבֵין וְהַנִּדְוִינִין עוֹמְדִין וְהַתּוֹבֵעַ פּוֹתֵחַ בְּדַבְּרֵי רֵאשׁוֹן שְׁנָאִמְר מִי־בִעַל דְּבָרִים יָגֵשׁ אֲלֵיכֶם.  
וּמִנֵּיין שְׁהַמוּצִיא מִחֲבִירוֹ עָלָיו הָרְאִיָּה. רַבִּי קְרִיסְפָּא בָּשֵׁם רַבִּי חֲנִנְיָה בֶן גַּמְלִיאֵל. יָגֵשׁ אֲלֵיכֶם. יָגִישׁ רְאִיָּתִיו.  
רַבִּי יוֹחָנָן בְּעֵי. בִּיבְמָה מִי מְרַדֵּף אַחֵר מִי. הַתִּיב רַבִּי לַעְזָר. וְהַכְּתִיב וְעָלְתָהּ וּבִמְתָּו הַשְּׁעָרָה. אָמַר רַבִּי יוֹחָנָן. יָפָה לִּימְדֵנִי רַבִּי לַעְזָר.  
רַבִּי בְּרֻקָּה וְרַבִּי חֲלָבּוֹ רַבִּי פָּא בָּשֵׁם רַבִּי יַנָּאי. הַתּוֹבֵעַ תּוֹבֵעַ וְהַנִּתְבָּע מְשִׁיב וְהַדִּינִין מְכַרְעִי. אָמַר רַבִּי סִימוֹן. צְרִיד הַדִּינִין לְשׁוֹת טַעֲנוֹתֵיהֶן. שְׁנָאִמְר וְנָאִמְר הַמֶּלֶךְ זֹאת אִמְרָת זֶה־בְּנֵי הַחַי וּבְנֵי הַמֵּת וְגו'.

How does one judge? The judges are sitting<sup>130</sup>, the parties are standing, and the claimant starts first with his words, as it is written<sup>131</sup>: *He who has something to say shall present before you*<sup>132</sup>.

From where that the burden of proof is on the claimant? Rabbi Crispus in the name of Rabbi Hanina ben Gamliel: *Shall present before you*, shall present his proofs<sup>133</sup>.

<sup>134</sup>Rabbi Johanan asked, in the case of a sister-in-law, who runs after whom? Rabbi Eleazar answered: *His sister-in-law shall come to the gate*<sup>135</sup>. Rabbi Johanan said, Rabbi Eleazar taught me correctly.

Rabbi Berekhiah and Rabbi Helbo, Rabbi Abba in the name of Rabbi Yannai: The claimant claims, the respondent responds, and the judge decides. Rabbi Simon said, the judge has to repeat their arguments<sup>136</sup>, as it is said<sup>137</sup>: *The king*<sup>138</sup> *said, this one says, my son is the living and yours is the dead one*, etc.

130 They have to sit during the entire proceedings.

132 Tosephta 6:3.

133 Babli Bava qamma 46b.

131 A misquote from Ex. 24:14.

134 A slight reformulation of a text in

*Yebamot* 12:7, Notes 123-124.

135 *Deut.* 25:7.

136 To give each party the opportunity to complain that its arguments were not

understood correctly by the judges.

137 *1K.* 3:23.

138 Solomon, acting as judge.

21c line 1) רב הוּנָא כַּד הָוָה חָמִי סְהָדֵי מְכוּוֹנָא הָוָה חֲסָר וְכַד הָוָה חָמִי חֵכֵן הָוָה מְכוּוֹן. רַב הוּנָא מֵיִקֵּל לְדִיּוּנָא דְאָמַר. מְקַבְּלִין עֲלֵיכוֹן חַד סְהִיד. אֶלָּא יִימְרוּן אִינוּן. רַב הוּנָא כַּד הָוָה יָדַע זְכוּ לְבַר נֶשׁ בְּדִינָא וְלֹא הָוָה יָדַע לֵיהּ הָוָה פִּתְחָ לֵיהּ. עַל שֵׁם פִּתְחָ פִּקֵּד לְאַלְמָּ.

When Rav Huna saw that witnesses said exactly the same, he was investigating<sup>139</sup>. When he saw them essentially identical, he determined the common element<sup>140</sup>. Rav Huna made light of a judge who said, “accept a single witness,” but they should say it themselves<sup>141</sup>. When Rav Huna realized an argument in favor of a person who himself did not know it, he guided him<sup>142</sup>, following<sup>143</sup> *open your mouth for the dumb*.

139 Witnesses using exactly the same language either bear false witness or they went over their testimony beforehand. Then they can be counted only as one witness, not as the biblically required two.

140 He summarized the common points.

141 Two independent witnesses are absolutely necessary only in criminal trials. Civil suits may be determined on the basis of documents or, with the agreement of the

parties, single witnesses. But accepting a single witness cannot be suggested by the court.

142 Since the parties are not supposed to consult lawyers, the judge may by a Socratic dialogue with the parties steer one of the parties to a certain argument which the latter did not see before.

143 *Prov.* 31:8.

21c line 4) רַבִּי אַבְהוּ בָּשֵׁם רַבִּי יוֹחָנָן. הַמְכַמֵּין עֵינָיו אַחֲרֵי גִידָר לֹא עָשָׂה כָּלִים. כִּהְדָּא. חַד בֵּר נֶשׁ אֲשֶׁנָּח לְמִיגוּס גּוֹ אַרִיסְטוֹן. אָמַר לֵיהּ. הֵב לִי מַה דְּאֵתָ חֵיב לִי. אָמַר לֵיהּ. אִין. בְּתַר דְּקִמּוֹן אָמַר לֵיהּ. לִי נָא חֵיב לָךְ כָּלִים. אָמַר לֵיהּ. אֵית לִי סְהִידִין. אָמַר לֵיהּ. לֹא אֶמְרִית אֶלָּא בְּגִין דְּלֹא מַעֲרִיבָב מְגוּסְתָּד. אֵתָא קוּמִי רַבִּי אָמִי וְמַר. הָדָא דְּמַר רַבִּי יוֹחָנָן. הַמְכַמֵּין עֵינָיו אַחֲרֵי גִידָר לֹא עָשָׂה כָּלִים.

Rebbi Abbahu in the name of Rebbi Johanan: He who hides his witnesses behind a wall did not do anything<sup>144</sup>. As in this case: A man happened to prepare food for a meal<sup>145</sup>. He said to another, give me what you owe me. That one answered, yes. When he rose, he told him, I do not owe you

anything. He answered, I have witnesses. The other said, I said that only in order not to spoil your food. The case came before Rabbi Immi, who said, this is what Rabbi Johanan said, he who hides his witnesses behind a wall did not do anything<sup>146</sup>.

144 Babli 29a.

145 Greek ἄριστος.

146 What a person says not in the presence of witnesses must be interpreted following the speaker's explanation.

(fol. 20d) **משנה י:** הוי מכניסין את השני ובדקין אותו. אם נמצאו דבריהם מכוונים נושאין ונותנין בדבר. שנים אומרים זכאי ואחד אומר חייב זכאי. שנים אומרים חייב ואחד אומר זכאי חייב. אחד אומר זכאי ואחד אומר חייב ואחד אומר איני יודע יוסיפו הדיינין: ואפלו שנים מוצין או מחיבין ואחד אומר איני יודע יוסיפו הדיינין:

**Mishnah 10:** One calls in the second [witness] and examines him. If their testimonies are found consistent, one argues the case. Two<sup>147</sup> say not guilty<sup>148</sup> and one says guilty, he is not guilty. Two say guilty and one says not guilty, he is guilty. One says not guilty, one says guilty, and one says “I do not know”, they shall add judges. Even if two say not guilty or guilty but one says “I do not know”, they shall add judges<sup>149</sup>

147 Of the judges.

148 Since one deals with civil cases, this means that the claim is rejected.

149 Since the judge who does not vote is considered absent, judgment cannot be given by two judges. There must be three voting judges for the verdict to stand..

(21c line 10) **הלכה י:** הוי מכניסין את השני כול'. שעירים. מיעוט שעירים שנים. מה תלמוד לומר שני. שיהו שניהן שוין.

קבשים. מיעוט קבשים שנים. מה תלמוד לומר שני. שיהו שניהן שוין.

מיעוט צפרים שנים. מה תלמוד לומר שתי. שיהו שוות. מיעוט חוצצרות שתיים. מה

תלמוד לומר שתי. שיהו שוות.

התיב רבי חגי לרבי יסא. והקתיב ועמדו שני האנשים. מעתה מיעוט אנשים שנים. מה

תלמוד לומר שני. שיהו שוין. והקתיב לא תטה משפט גר יתום. הרי גר דן עם מי שאינו גר.

יתום דן עם מי שאינו יתום. אם כן למה נאמר שני. מופנה להקיש ולדון ממנו גזירה שוה. נאמר כאן שני ונאמר להלן וישארו שני-אנשים. מה להלן אנשים ולא נשים אף כאן אנשים ולא נשים ולא קטנים. הרי למדנו שאין האשה דנה. ולא מעידה. רבי יוסי בי רבי בון בשם רב יוסי. נאמר כאן שני ונאמר להלן שני. מה להלן על-פי שנים עדים אף כאן על-פי שנים עדים. אם כן מה תלמוד לומר שני. שלא יהא אחד עומד ואחד יושב. אחד אומר כל-צרכו ואחד אומר לו. קצר דבריד. אמר רבי יהודה. שמעתי שאם רצה הדיין להושיב את שניהן מושיב. רבי ישמעאל אומר. אומרין לו. לבוש כשם שהוא לבוש או הלבישהו כשם שאת לבוש. אמר רבי בא בשם רב הונא. צריכין העדים לעמוד בשעה שמעידין. שנאמר ועמדו שני-האנשים. רבי ירמיה בשם רבי אבהו. אף הנידונין צריכין לעמוד בשעה שמקבלין דינן. שנאמר אשר-להם הריב לפני יי.

**Halakhah 10:** “One calls in the second [witness],” etc. <sup>150</sup>Rams<sup>151</sup>, the minimum of rams are two. Why does the verse say *two*? That both be equal<sup>152</sup>.

*Sheep*, the minimum of sheep are two. Why does the verse say *two*? That both be equal<sup>153</sup>.

The minimum of *birds* are two. Why does the verse say *two*? that both be equal<sup>154</sup>. The minimum of *trumpets* are two. Why does the verse say *two*? that both be equal<sup>155</sup>.

Rebbi Haggai objected to Rebbi Yasa. Is there not written: *The two men shall stand*<sup>156</sup>? Now, is not two the minimum of “men”? Why does the verse say *two*? That both be equal? But it is written<sup>157</sup>: *Do not bend the lawsuit of the proselyte, the orphan, . . .* That means that a proselyte can have a lawsuit against one who is not a proselyte, an orphan may have a lawsuit against one who is not an orphan. Then why is there written *two*? It is free to be combined and to infer from it an *equal cut*<sup>158</sup>. It is said here *two* and it is said there *two men were left*<sup>159</sup>. Since there one speaks of men but not women, also here men but not women nor underaged.<sup>160</sup> From this we learn that a woman may not be a judge<sup>161</sup> and may not be a witness.

Rebbi Yose ben Rebbi Abun in the name of Rav Joseph. It is said here *two* and it is said there<sup>162</sup> *two*. Since there it must be by the testimony of two witnesses, also here by the testimony of two witnesses. Then why does the verse say *two*? Lest one of them be standing while the other be sitting; one

says everything he has to say, but to the other one says, make your statement short<sup>161</sup>.

Rebbi Jehudah said, I heard that if the judge wants to let both of them sit, he may tell them to sit down<sup>163</sup>. Rebbi Ismael says, one says to him,<sup>164</sup> either you dress as he is dressed or pay him to be dressed as you are.

Rebbi Abba said in the name of Rav Huna: The witnesses have to stand while testifying, for it is said: *the two men shall stand*. Rebbi Jeremiah in the name of Rebbi Abbahu: Also the parties have to stand at the moment the verdict is given, as it is said<sup>165</sup>: *who have the quarrel before the Eternal*<sup>165</sup>.

150 There are two parallels to this text. The one in *Ševu'ot* 4:1 is almost identical with the present text; the one in *Yoma* 6:1 is slightly rewritten (or changed in transmission.) The *Ševu'ot* text seems to be the original of most of the Halakhah.

As explained in the author's *Logical problems in Jewish tradition* (in: *Confrontations with Judaism*, ed. Ph. Longworth, London 1966, pp. 171-196, mainly p. 174), talmudic interpretation of pentateuchal verses operates on a *principle of definiteness*: The language always is definite. Since the sequence of integers has a smallest but no largest element, an indefinite plural means "two". Therefore, the explicit mention of "two" always implies some special meaning.

151 *Lev.* 16:5,7,8 speaking of the rams used in the service of the Day of Atonement.

152 Babli *Yoma* 62b, *Sifra Ahare Parašah* 2(1).

153 The daily sacrifice required *two sheep* (*Ex.* 27:38, *Num.* 28:3). In both verses, the numeral is שנים (Babli *Yoma* 62b).

154 The birds required for the purification of the person healed from skin disease, *Lev.*

14:4. Babli *Yoma* 62b, Mishnah *Nega'im* 14:1, *Sifra Mesora* Introduction 11.

155 The trumpets to be sounded at the time of sacrifices, *Num.* 10:2. *Sifry Num.* 74.

156 *Deut.* 19:17. The verse can be read either as referring to the parties in a lawsuit or to the witnesses in a civil or criminal suit. Cf. Babli *Ševu'ot* 30a.

157 *Deut.* 24:17.

158 Cf. *Berakhot* 1:1 Note 70, *Nedarim* 1 Notes 18,159, *Nazir* 4:1 Note 23, *Logical problems* (Note 150) pp. 185-186. Two identical expressions, written in two different connections, each of which is *free*, i. e., not used for an inference not otherwise possible, can be used to transfer rules from one connection to the other. This hermeneutical principle is accepted by all rabbinic schools.

159 *Num.* 11:27. Since Eldad and Medad are mentioned by name in the verse, it is obvious that two men are meant.

160 Only people potentially acceptable for Moses's council of 70 Elders.

161 Babli *Ševu'ot* 30a, *Sifry Deut.* 190.

162 *Deut.* 19:15. The verse explicitly speaks of witnesses.

163 Babli *Ševu`ot* 30a, Tosephta *Sanhedrin* 6:2, *Sifra Qedošim Pereq* 4(4).

164 A person appearing in court dressed better than usual.

165 Babli *Ševu`ot* 30a.

(21c line 30) כתיב לא־יומְתוּ אָבוֹת על־בָּנִים. וְהֵלֵא כָּבֵד נֹאמֵר אִישׁ בְּחֻטָּאָו יוֹמֵת: מֵה תִלְמִיד לומֵר לא־יומְתוּ אָבוֹת על־בָּנִים. לא־יומְתוּ אָבוֹת בְּעֵדוֹת בָּנִים וּבָנִים לא־יומְתוּ בְּעֵדוֹת אָבוֹת. מְנִיין שֶׁלֹא יִהְיוּ הָעֵדִים קְרוֹבִין שְׁלֵמִידוּנִין.

וּמְנִיין שֶׁלֹא יִהְיוּ הָעֵדִים קְרוֹבִין זֶה לָזֶה. הִגַּע עֲצָמָךְ שְׁאֵם הוֹזְמוּ לֹא מִפִּיָּהוּ נִהְרְגִין. וּמְנִיין שֶׁלֹא יִהְיוּ הָעֵדִים קְרוֹבִין שְׁלֵמִידוּנִים. הִגַּע עֲצָמָךְ שְׁאֵם הוֹזָם אֶחָד מֵהֶן כָּלוּם נִהְרַג עַד שְׁיִזְזוּם חֲבִירוֹ. אִם אֶת אוֹמֵר כֵּן לֹא הִזָּה נִהְרַג עַל פִּי.

וּמְנִיין שֶׁלֹא יִהְיוּ הַדִּינִיין קְרוֹבִין זֶה לָזֶה. אֶמְרָה תוֹרָה. הָרוּג עַל פִּי עֲדִים. הָרוּג עַל פִּי דִינִיין. מֵה עֲדִים אֵין קְרוֹבִין זֶה לָזֶה אֶף דִּינִיין אֵין קְרוֹבִין זֶה לָזֶה.

אֵין לִי אֶלָּא אָבוֹת וּבָנִים. שְׁאֵר קְרוֹבִין מְנִיין. אָמַר רַבִּי זְעִירָא וּבָנִים. לְרֵבּוֹת שְׁאֵר קְרוֹבִין. עַד כְּדוֹן כְּרַבִּי עֲקִיבָה.

<sup>166</sup>It is written<sup>167</sup>: *Fathers shall not be killed because of sons*. Is it not already written, *each one should be killed for his own crime*<sup>167,168</sup>? Why does the verse say, *fathers shall not be killed because of sons*? Fathers shall not be killed on the testimony of sons, and sons shall not be killed on testimony of fathers<sup>169</sup>. From here<sup>169a</sup> that witnesses shall not be relatives of the accused.

From where that witnesses may not be relatives of one another? Think of it, if they be found perjured, would they not be killed by their testimony<sup>170</sup>? From where that witnesses may not be relatives of the judges? Think of it, if one of them be found perjured, he could not be killed unless the other also was found perjured. If you say so, would he not be killed by his sentence<sup>170</sup>?

From where that judges may not be relatives of one another? The Torah said, kill on the testimony of witnesses, kill on the sentence of judges. Since witnesses may not be relatives of one another, neither may judges be relatives of one another<sup>171</sup>.

So far<sup>167</sup> only fathers and sons; from where the other relatives? Rabbi Ze'ira says, *and sons* includes the remaining relatives.

So far according to Rabbi Aqiba<sup>172</sup>.

166 This section also has an almost identical copy in *Ševuot* 4:1.

167 *Deut.* 24:16.

168 A slight misquote.



169 Babli 17b, *Sifry Deut.* 280.

169a Read with *Ševuot* 4:1 מניין מכן.

170 Cf. *Gittin* 9:8, Note 128. Formal perjury, “plotting”, is testimony which is impossible, i. e., where it was proven that the witnesses were not at the place about which they testify at the time they assert to have seen the object of their testimony. If only one witness was perjured, there is only one valid witness and his testimony is worthless by biblical standards; for worthless testimony there can be no biblical punishment. Therefore, if the two perjured witnesses were related, each would be convicted by his relatives’ testimony; this is forbidden by *Deut.* 24:16. But testimony

which would not expose the witnesses to the penalty of perjury is worthless. The Babli, 28a, points out that this argument also eliminates a single relative among the witnesses.

171 *Deut.* 24:16 is indeterminate enough to include both testimony and sentence by relatives.

172 Who will consider any *prefixed* ו which is not 100% necessary for the understanding of the text as an addition which invites extension of the rules. The statement attributed here to the late Amora R. Ze’ira is formulated in *Sifry Deut.* 280 as tannaïtic, representing R. Aqiba’s opinion.

21c line 40) כְּרָבִי יִשְׁמַעֲעַל מְנִיין. תַּנִּי רַבִּי יִשְׁמַעֲעַל. וְשִׁפְטוֹ הָעֵדָה וְהַצִּילוּ הָעֵדָה. שְׁלֹא יִהְיֶה הָעֵדָה לֹא קְרוֹבִי מִכָּה וְלֹא קְרוֹבִי מוֹפָה. אָמַר רַבִּי יוֹסִי. אִם אוֹמֵר אֶת כֹּן נִמְצָאת אוֹמֵר. בֵּית דִּין גּוֹאֲלֵי הַדָּם. מִיכֹן שְׁלֹא יִהְיֶה הַדִּינִין קְרוֹבִי הַנִּידוֹנִין. וּמְנִיין שְׁלֹא יִהְיֶה הָעֵדִים קְרוֹבִי הַנִּידוֹנִין. אָמְרָה תוֹרָה. הָרוֹג עַל פִּי עֵדִים. הָרוֹג עַל פִּי דִינִין. מִהַ הַדִּינִין אֵינָן קְרוֹבִי הַנִּידוֹנִין. אִף הָעֵדִים לֹא יִהְיֶה קְרוֹבִי הַנִּידוֹנִין. וּמְנִיין שְׁלֹא יִהְיֶה הָעֵדִים קְרוֹבִין זֶה לָזֶה. הִנֵּעַ עֲצָמָךְ שְׁהוֹמִי לֹא מִפִּתּוֹן הוֹן נִהְרָגִין.

<sup>173</sup>From where following Rabbi Ismael? Rabbi Ismael stated: *The congregation shall judge*<sup>174</sup>; *the congregation shall save*<sup>175</sup>. The congregation be neither relatives of the murderer nor relatives of the murdered. Rabbi Yose said, otherwise you would say that the court is engaged in vendetta<sup>176</sup>. This implies that the judges may not be related to the accused. And from where that the witnesses may not be related to the accused? The Torah said, kill on the testimony of witnesses, kill on the sentence of judges. Since judges may not be related to the accused, neither may witnesses be related to the accused. From where that witnesses may not be relatives of one another<sup>171</sup>? Think of it, if they be found perjured, would they not be killed by their testimony<sup>170</sup>?

173 A slightly changed parallel is in *Ševu’ot* 4:1.

174 *Num.* 35:24, about the trial of the homicide who fled to a city of asylum. R.

Ismael objects to R. Aqiba's inferences from additional *ו, את* etc. and insists that any interpretations of verses conform to the plain sense of the verse within the purview

of his hermeneutical rules.

175 *Num.* 35:25.

176 This gives the missing argument in R. Ismael's statement.

(21c line 47) בְּפֶשְׁרִים וְלֹא בְּפִסּוּלִים. שְׁנֵאמַר אִם-לֹא יִגִּיד וְנִשְׁאַ עֲוֹנוֹ: אֶת שְׁמִגִּיד וְחִבְרִירו מְשַׁלֵּם מָמוֹן. יֵצֵא פֶסוּל שְׁאֶפִּילוּ מִגִּיד אֵין חִבְרִירו מְשַׁלֵּם מָמוֹן.

בְּפִנֵּי בֵּית דִּין. לְהוֹצִיא עַד אֶחָד. בְּשִׁאמְרוּ לוֹ. הֲרִי אֶת מְקוֹבֵל עֲלֵינוּ כְּשֵׁנִים. כֹּזֵל יִהְיֶה חֵיב. תִּלְמִיד לֹמֵר אִין רָאָה אִין דִּעַ. אֶת שֶׁהוּא כָּשֶׁר לְהַעֲדֵד עֲדוֹת תִּנּוּרָה. יֵצֵא עַד אֶחָד שְׁאֵין כָּשֶׁר לְהַעֲדֵד עֲדוֹת תִּנּוּרָה.

שְׁלֹא בְּפִנֵּי בֵּית דִּין. אִם-לֹא יִגִּיד וְנִשְׁאַ עֲוֹנוֹ: אֶת שְׁמִגִּיד וּמְשַׁלֵּם מָמוֹן. יֵצֵא חוּץ לְבֵית דִּין שְׁאֶפִּילוּ מִגִּיד אֵין חִבְרִירו מְשַׁלֵּם מָמוֹן.

<sup>177</sup>“Qualified one but not disqualified one.” For it is said, *if he does not tell, he has to bear his punishment*. If he told, the other would have to pay money. This excludes one where the other would not have to pay money even if he told<sup>178</sup>.

“Before the court.” To exclude a single witness. If they told him that they would accept his word as if there were two [witnesses], would he be guilty? The verse says, *if he had seen or known*. One who is qualified to testify according to biblical standards; this excludes a single witness who is not qualified to testify according to biblical standards<sup>179</sup>.

“Outside of court.” *If he does not tell, he has to bear his punishment*. If he told, one would have to pay money. This excludes outside of court where the other would not have to pay money even if he told.

177 These paragraphs all start with quotes from Mishnah *Ševu`ot* 4:1; they are copied from the Halakhah there. The object of discussion is *Lev.* 5:1: *If a person sinned when he heard the sound of an imprecation, being a witness, either having seen or known, if he does not tell he has to bear his punishment*. If one of the parties in a civil suit addresses a potential witness and by an oath tells him to appear as a witness in court, if the person so addressed refuses to

appear or to testify he has to confess his sin (5:5) and bring a sacrifice graded according to his means (5:6-13). Mishnah *Ševu`ot* 4:1 details the rules under which a person may be declared guilty of violating the oath put on him.

178 A person disqualified as witness never has to appear in court. Babli *Ševu`ot* 30a.

179 *Deut.* 19:15.

(21c line 54) ומניין לשני עדים. הוא ועד אחר הרי כאן שנים. וכרבי ישמעאל. דרבי ישמעאל אמר. כל מקום שכתוב בתורה עד סתם הרי הוא בכלל שני עדים עד שיודיעך הכתוב שהוא עד אחד. אשכח תני רבי ישמעאל. עד אחד מהו לחייב עליו משום שבועת ביטוי. אופשר לומר אחר ראוי לצרפו ולחייבו משום שבועת עדות ואף מחייבו משום שבועת ביטוי. קרוב מהו לחייב עליו משום שבועת ביטוי. יבא כהדא דמר רבי בא (בר) שמואל. שבועת שנתן פלוני לפלוני מנה. נמצא שלא נתן. מאחר שאין בידו לבא אין בידו לשעבר. או כהדא. אמר לו. היכן שורי. אמר לו. איני יודע מה אתה סח. והוא שמת או נשבר או נשבה או אבד. משביעך אני. ואמר אמן. פטור. רב אמר. פטור משבועת פיקדון וחייב משבועת ביטוי. אמר רבי יוחנן. מאחר שמצוה להפיסו אין חייב משום שבועת ביטוי. על דעתיה דרב אינו מצוה להפיסו. מפיסו על האמת ואינו מפיסו על השקר. תני רבי ישמעאל. ונשא עינו. קרבן. מנן ליה בית דין. ילפין אגדה אגדה. מה אגדה שנתמר להלן בית דין אף כאן בית דין.

From where two witnesses<sup>180</sup>? He and another make two<sup>181</sup>. Or following Rabbi Ismael, as Rabbi Ismael said, any place where the Torah mentions a witness without further determination it implies two witnesses<sup>182</sup> unless the verse informs you that a single witness is meant. It was found stated in the name of Rabbi Ismael: Can a single witness be found guilty of a blurted oath<sup>183</sup>? Since it is possible to say that another person could team up with him, then he would be subject to the oath of testimony, how could you find him guilty of a blurted oath<sup>184</sup>?

Should a relative be found guilty of a blurted oath<sup>185</sup>? Does it follow what Rabbi Abba said (ben) [in the name of]<sup>186</sup> Samuel: <sup>187</sup>“An oath that X gave a *mina* to Y,” and it turns out that X had not given; since there is nothing in the future there is nothing in the past. Or the following: <sup>188</sup>“One said to another, ‘where is my ox?’ He responded, ‘I do not know what you are referring to.’ It so happened that it had died, or was wounded, or captured, or lost. ‘I require you to swear,’ the other said ‘Amen’. He is not liable.<sup>189</sup>” Rav said, he is not liable for a keeper’s oath<sup>190</sup> but is liable because of a blurted oath<sup>191</sup>. Rabbi Johanan said, since it is a religious duty to appease him<sup>192</sup>, he is not liable because of a blurted oath. In Rav’s opinion, is there no religious duty to appease him? One appeases with truthful statements, not with lies.

Rebbi Ismael stated: *He has to bear his punishment*<sup>193</sup>, a sacrifice<sup>194</sup>. From where that one needs a court<sup>195</sup>? One learns “telling, telling”<sup>196</sup>. Since *telling* mentioned there is before a court, also telling here is before a court.

180 The sacrifice for disregarding an imprecation is due only if two witnesses can testify that the potential witness acknowledged the oath put on him.

181 This is R. Aqiba’s argument. Since it is written in *Lev. 5:1* *and he is a witness*, the copula implies the existence of a counterpart, a second witness.

182 Since a single witness is declared insufficient in *Deut. 19:15*, any mention of valid testimony in the biblical text must refer to two witnesses; cf. *Sotah* 6:2 Note 23; Babli 30a, 31b, *Sotah* 2b.

183 This refers to *Lev. 5:4*: *Or a person who blurts out swearing from his lips, to worsen or to improve, for anything a human might blurt out in an oath, and it slipped his mind but then he remembered and became guilty of one of these*. A blurted oath is one which could have been avoided by some reflection.

184 By its nature, a blurted oath is totally disconnected from any judicial procedure.

185 If only two witnesses are known to the party putting an imprecation on those who would not testify and one of these is a relative who could not testify, is the imprecation a blurted oath?

186 From the text in *Ševu’ot*. Samuel only had daughters.

187 Since *Lev. 5:4* sanctions only future-directed thoughtless oaths, *to worsen or to improve*, in Samuel’s opinion oaths that refer to past acts only are not included

in the category of blurted oaths. They are meaningless oaths which might not be reparable by a sacrifice.

188 Mishnah *Ševu’ot* 8:3. The person spoken to was an unpaid keeper responsible only if he appropriated another’s property for his own use, not if it was otherwise lost (*Bava mesi’a* 7:9).

189 If the keeper maintains that he never received the ox when he had in fact received it, but it died or was lost under circumstances which do not make the keeper responsible for the loss, he does not have to bring the sacrifice for a false oath since his lie did not result in monetary loss to another person.

190 Since he could have told the truth and still not be liable for damages.

191 Since what he pronounced was an oath which resulted from speaking before thinking.

192 The keeper is under a religious obligation to tell the truth to the ox’s owner.

193 *Lev. 5:1*.

194 This supports Rav, that a sacrifice is due for any untruthful oath.

195 That a sacrifice is required only for oaths connected with judicial proceedings.

196 The only *legal* texts in the Pentateuch which use the root נגד are *Lev. 5:1* and *Deut.*

17:9-11. The latter text contains the rules of the Supreme Court and the punishment for disobeying its rulings.

(69 line 21c) כְּהָדָא. אִין מְקַבְּלִין עֲדִים אֶלָּא אִם כּוֹן רְאוּ שְׁנֵיהּ כְּאַחַת. רַבִּי יְהוֹשֻעַ בֶּן קֶרְחָה אָמַר. אֶפִּילוּ בְּזֶה אַחֵר זֶה. רַבִּי יִרְמְיָה בְּשֵׁם רַב. מוֹדִין חֲכָמִים לְרַבִּי יְהוֹשֻעַ בֶּן קֶרְחָה בְּעִידֵי כְּכֹרֶה וּבְעִידֵי חֲזָקָה. רַבִּי בָּא בְּשֵׁם רַבִּי יִרְמְיָה. אִף בְּעִידֵי סִימָנִין כּוֹן. מַה דְּפִשְׁטָא. בְּשִׁטָּה אָמַר. רְאִיתִי שְׁתֵּי שְׁעָרוֹת בְּגָבּוֹ. וְזֶה אָמַר. רְאִיתִי שְׁתֵּי שְׁעָרוֹת בְּגָבּוֹ. אֶחָד אָמַר. רְאִיתִי שְׁעָרָה אַחַת בְּגָבּוֹ. וְאַחַד אָמַר. רְאִיתִי שְׁעָרָה אַחַת בְּכָרְסוֹ. וְלֹא כְּלוּם. בְּלִשְׁכּוֹן גָּבּוֹ וְגָבּוֹ. שְׁנַיִם אֲמָרִים רְאִינוּ שְׁעָרָה אַחַת בְּכָרְסוֹ. רַב יוֹסִי וְרַב הוֹשִׁיעָה בֶּר רַב שְׁמִי. חַד אָמַר. פְּסוּל. וְחַד אָמַר. כָּשֶׁר. מֵאֵן דְּמַר פְּסוּל. בְּמַעֲיָד עַל חֲצִי סִימָן. וּמֵאֵן דְּמַר כָּשֶׁר. אֲנִי אָמַר. שְׁמָא נִשְׂרֹו. אֶחָד אָמַר. שְׁתֵּי שְׁעָרוֹת בְּגָבּוֹ. וְאַחַד אָמַר. שְׁנַיִם בְּכָרְסוֹ. רַבִּי בָּא אָמַר. דְּבָרִי הַכֹּל כָּשֶׁר. אָמַר רַבִּי חֲגַי. דְּבָרִי הַכֹּל פְּסוּל. רַבִּי יוֹסִי אָמַר. בְּמַחְלוּקַת. אָמַר רַבִּי [יוֹסִי] לְרַבִּי חֲגַי. הָא רַבִּי יוֹדֵן אָמַר דְּכוּתָא. אָמַר לִיה. וְעַל רַבִּיה אֲנָא פְּלִיג בְּלִשְׁכּוֹן עֲלוֹי. אָמַר רַבִּי מְנָא. יְאוּת אָמַר רַבִּי חֲנָא. אִילוּ שְׁטַר שְׁחִתוּם בְּאַרְבַּעַת חוֹתָמוֹת זֶה מַעֲיָד עַל שְׁנַיִם וְזֶה מַעֲיָד עַל שְׁנַיִם וְקָרָא וְקָרָא עָלָיו עָרַעַר שְׁמָא כְּלוּם הוּא. וְאִין כְּלִיחֻתִּימָה צָרִיכָה שְׁנֵי עֲדִים. וְהָכָא כְּלִיחֻתִּימָה צָרִיךְ שְׁנֵי עֲדִים. רַבִּי חֲנָא וְרַבִּי חֲזָקָה וְרַבִּי חֲזָקָה וְרַבִּי חֲזָקָה. אִילוּ אֶחָד מַעֲיָד שְׁאֲכָלָה שְׁנָה רַאשׁוֹנָה שְׁנִיָּה וּשְׁלִישִׁית וְאַחַד מַעֲיָד שְׁאֲכָלָה רַבִּיעִית חֲמִישִׁית וְשִׁישִׁית שְׁמָא כְּלוּם הוּא. וְאִין כְּלִיחֻתִּימָה וְחֲזָקָה צָרִיךְ שְׁנֵי עֲדִים. וְהָכָא כְּלִיחֻתִּימָה וְחֲזָקָה צָרִיךְ שְׁנֵי עֲדִים.

<sup>197</sup>Or like the following. “One accepts the witnesses’ testimony only if they saw it together. Rabbi Joshua ben Qorha says, even if they saw it one after the other.” Rabbi Jeremiah in the name of Rav: The Sages agree with Rabbi Joshua ben Qorha with regard to witnesses of firstlings and witnesses of squatters’ rights. Rabbi Abba in the name of Rabbi Jeremiah: the same holds for testimony regarding signs. In that case, it is obvious if one says, I saw two hairs on his back and the other says, I saw two hairs on his side. If one says, I saw one hair on his back and the other says, I saw one hair on his belly, that is nothing; so much more his back and his side. Two are saying, we saw one hair on his back; and two are saying, we saw one hair on his belly. Rav Yose and Rav Hoshia ben Rav Shammai, one said, it is invalid, but the other said, it is valid. He who says it is invalid considers him as one who testifies to half a sign. He who says it is valid? I say, maybe they were rubbed off. One says, two hairs on his back; and one says, two on his belly<sup>198</sup>. Rabbi Abba said, everybody agrees that this is valid. Rabbi Haggai said, everybody agrees that this is invalid [testimony]. Rabbi Yose said, this is in disagreement. Rabbi [Yose]<sup>199</sup> said to Rabbi Haggai, does not Rabbi Yudan

follow my opinion? He answered, I am disagreeing with his teacher, so much more with him. Rabbi Mama said, Rabbi Haggai was correct. If a document was signed by four seals, if one person verified the signature of two [witnesses], and another those of the other two, and the document was attacked, is that worth anything? Does not every single signature need two witnesses? And here, every single hair needs two witnesses. Rabbi Hinena learns it (because of)<sup>200</sup> [from the years of] squatting rights. If one [witness] testified that he ate from the property the first, second, and third years and another testified that he ate it the fourth, fifth, and sixth years, is that worth anything? Does not every single year need two witnesses? And here, every single hair needs two witnesses.

197 This text is an incomplete copy of a text in *Sotah* 1:1, Notes 56-71 (*Ketubot* 2:4, *Ševu'ot* 4:1).

198 It is obvious that one has to read with

the *Sotah* text: *Two say one hair*.

199 From the text in *Sotah*, missing here.

200 Text here, to be replaced by the *Sotah* text in brackets.

(21d line 13) כְּהֵדָא. אֵין שׁוֹמְעִין מִן הָעֵדִים אֶלָּא אִם כֹּן בָּאוּ שְׁנֵיהֶן כְּאַחַת. רַבִּי נֶתָן אוֹמֵר. שׁוֹמְעִין דְּבָרֵי רֵאשׁוֹן וְלִכְשִׁיבּוֹא שְׁנֵי שׁוֹמְעִין אֶת דְּבָרָיו. רַבִּי יוֹנָתָן הוּא יְתִיב מִקְשִׁי. אִיפְשָׁר אֵית הִכָּא בַּר נֶשׁ דְּשָׁמַע הִלְכָּה כְּרַבִּי נֶתָן. אָמַר לֵיהּ רַבִּי יוֹסִי בַּר חֲנִינָה. הָא רַבִּי שְׁמַעוֹן בַּר יָקִים. אָמַר יָקִים לְעִיל. כִּינן דְּסָלַק אָמַר לֵיהּ. שְׁמַעְתָּ הִלְכָּה כְּרַבִּי נֶתָן. אָמַר לֵיהּ. שְׁמַעְתִּי מוֹדָה רַבִּי יְהוֹשֻׁעַ בֶּן קֶרְחָה לְרַבִּי נֶתָן. אָמַר לֵיהּ. לֵהֲדָא צוֹרְכָה. אָמַר לֵיהּ. וְלֹא אֵיתְפְּנוּ רַבִּי יוֹסִי בַּר חֲנִינָה אֶלָּא מִסְקָא רַבִּי שְׁמַעוֹן בַּר יָקִים לְעִיל בְּגִין דְּהוּא אִינְשָׁא רַבָּא.

<sup>201</sup>And the following. One does not listen to the witnesses unless they come together; Rabbi Nathan says, one listens to the first and when the second comes, one listens to what he has to say. Rabbi Jonathan was sitting and asking, maybe somebody is here who heard that practice follows Rabbi Nathan? Rabbi Yose bar Hanina told him, that is Rabbi Simeon ben Yaqim. He said, may he come up<sup>202</sup>. When he came up, he asked him, did you hear that practice follows Rabbi Nathan? He answered, I heard that Rabbi Joshua ben Qorha agrees with Rabbi Nathan. He said, do we need this<sup>203</sup>? He said, Rabbi Yose ben Hanina only intended to elevate Rabbi Simeon bar Yaqim because he was an important person.

201 From here on, there is no parallel in *Sevu'ot*. The entire story is told in the Babli, 30 a/b, about R. Johanan instead of R. Jonathan.

202 Sit with the ordained judges.

203 This is obvious since R. Joshua ben Qorha does not require the witnesses to testify from the same point of view. Since he accepts testimonies which are consistent but not identical, he also must accept testimonies that are not synchronous.

(21d line 21) רב חסדא בעי. מהו לקבל עדים שלא בפני בעל דין. רבי יוסי בשם רבי שבתי. מקבלין עדים שלא בפני בעל דין ועבדין ליה גזר דין. אם בא וערער ערערו קיים. אדם ששאלו אתו בית דין ג' פעמים ולא בא. רבי יהושע בן לוי אמר. מקבלין העדות שלא בפני בעל דין ועבדין ליה גזר דין. כהדא כהנא דמדן ושבע ירתו לרבי יאשיה וקביל רבי לעזר סהדו דלא באפוי וזכי לרבי יאשיה. ולא עוד אלא דשבע ספרים. כתב רבי לעזר לירתו. ספרים שזכת בהן ארץ ישראל אין מוציאין אותן חוצה לארץ. רבי יוסי בשם רבי לעזר. אם כתב על מנת להוציא מוציא. רבי חייה בר בא בעא קומי רבי יוסי. מהו להוציא. אמר ליה. לעובדא את שאל לי. אמר ליה. לא. ובאיש לרבי זעירא דלא אמר ליה עובדא בגין מידע מהו אמר.

Rav Hisda asked: May one receive witnesses not in the presence of one of the parties? Rabbi Yose<sup>204</sup> in the name of Rabbi Sabbatai: One may receive witnesses not in the presence of the parties and even issue a decision, but if [the absent party] appeals, their appeal must be heard. If a person was summoned by the court three times and did not appear, Rabbi Joshua ben Levi said that one may receive witnesses not in the presence of the parties and issue a decision<sup>205</sup>. As the following: Cahana<sup>206</sup> died and had willed his estate to Rabbi Joshia. Rabbi Eleazar heard witnesses<sup>207</sup> not in the presence [of the heirs] and handed the estate to Rabbi Joshia. Not only that, but the estate contained Torah scrolls. Rabbi Eleazar wrote to his heirs<sup>208</sup>: Scrolls won by the Land of Israel cannot be taken outside. Rabbi Nissai in the name of Rabbi Eleazar: If they were written for export, they can be exported. Rabbi Hiyya bar Abba asked before Rabbi Yasa: May one export? He asked him, do you ask me in a practical case? He answered, no<sup>209</sup>. Rabbi Ze'ira was dissatisfied<sup>210</sup> that he had not asked in a practical case, to know what he would have said.

204 Probably one should read *Yasa* for 136b, Note 2.  
*Yose*; cf. *Diquqe Soferim Bava gamma* p.

205 The Babli restricts hearing witnesses not in the presence of both parties to this and similar cases; *Bava qamma* 112b.

206 A Babylonian without relatives in Galilee.

207 That Cahana's will conformed to the law of death-bed wills which supersedes the rights of heirs.

208 In Babylonia.

209 R. Yasa did not answer a purely theoretical question. Therefore, we do not know whether the other students of R. Eleazar accepted R. Eleazar's position.

210 R. Hiyya bar Abba's student and successor.

(21d line 32) רבי ירמיה הנה ליה דין עם חד בר נש וקבלון לשהדינא דלא באפוי דרבי ירמיה וחייבון לרבי ירמיה. והנה יתיב ומצטער. איפשר מקבלין עדים בלא בעל דין. רבי הונא רבי פינחס רבי חזקיה חיקוק לא עלון בפירקא בההוא יומא. דחק רבי הונא ואעל ושכח לרבי ירמיה מצטער ואמר. איפשר מקבלין עדים בלא בעל דין אפילו עמקו באותה העיר. אמר ליה. כן חמתו דעתו דרבנן.

Rebbi Jeremiah<sup>211</sup> had a suit against a certain person. They accepted testimony not in the presence of Rebbi Jeremiah, and decided against Rebbi Jeremiah. He was sitting despondent; is it possible that one accepts witnesses not in the presence of the parties? Rebbi Huna, Rebbi Phineas, and Rebbi Hizqiah from Huqoq did not go to the lecture<sup>212</sup> on that day, but Rebbi Huna pushed, went in, and found Rebbi Jeremiah despondent; is it possible that one accepts witnesses not in the presence of the parties even if they are present with them in the same city? He told him, this is seen to be the rabbis' opinion<sup>213</sup>.

211 A born Babylonian.

212 During the half-yearly study sessions.

213 Since the decision always could be reversed on appeal and the rabbinic court anyhow acted only as an arbitration panel, in

contrast to Babylonia where most of the time the rabbinic court had government backing in civil cases. Cf. the Introduction to Tractate *Neziqin*, pp.3-4.

(fol. 20d) **משנה יא:** גמרו את הדבר היו מכניסין אותו. הגדול שבדיינין אומר איש פלוני אתה זכאי איש פלוני אתה חייב. ומניין פשיצא לא יאמר אני הוא המזכה וחברי מחייבין ומה אעשה ורבו עלי. על זה נאמר הולך רכיל מגלה סוד:



**Mishnah 11:** When they have come to a decision, they bring the parties in. The chief judge says, Mr. X, you are not guilty, Mr. X, you are guilty. From where that afterwards, one may not say, I had found for you but my colleagues found you guilty, but what can I do since they were a majority against me? On such a one it was said: *The gossip uncovers secrets*<sup>214</sup>.

(21d line 38) **הלכה יא:** גמרו את הדבר כול'. אמר רבי יוחנן. כופין את המחייב שיקטוב זכאי. רבי שמעון בן לקיש אמר. המחייב כותב חייב והמזכה כותב זכאי. מתניתא פליגא על ריש לקיש. מניין קשיצא לא יאמר. אני מזכה וחבריי מחייבין. מה עבד לה רבי יוחנן. דלא יהא מאן דהוא מימר. כמה בעית לפלוני מזכה לפלוני בדינא ולא שבקון לי. מאי טעמא דריש לקיש. דלא ייתי חורן ויסבור דכוותיה וייצר. אוף פלו הנה תמן אוף הוא טעה.

**Halakhah 11:** “When they have come to a decision,” etc. Rabbi Johanan said, one forces the one who finds guilty to write “not guilty.”<sup>215</sup> Rabbi Simeon ben Laqish says, the one who finds guilty, writes “guilty”; the one who finds not guilty, writes “not guilty.”<sup>216</sup> The Mishnah disagrees with Rabbi Simeon ben Laqish: “From where that afterwards, one may not say, I had found for you but my colleagues found you guilty.” What does Rabbi Johanan do with this? That nobody could say, I really wanted to justify X in his suit but they did not let me do it<sup>217</sup>. What is Rabbi Simeon ben Laqish’s reason? That no other person should come, reason as he did, and say, also that one was there and he erred<sup>218</sup>.

214 *Prov.* 11:13. Since this is from the Hagiographs, it does not have the force of a Torah verse.

215 The decision has to be signed by all three judges, Babli 30a.

216 The dissenter may write a dissenting opinion, Babli 30a.

217 His rule enforces the Mishnah.

218 The dissenting opinion might in the course of history become the majority opinion; then its author should get due credit.

(fol. 20d) **משנה יב:** כל־זמן שמיביא ראיה סותר את הדין. אמרו לו כל־ראיות שיש לך הבא מכאן עד שלשים יום. הביא בתוך שלשים יום סותר לאחר שלשים יום אינו סותר. אמר רבן שמעון בן גמליאל מה יעשה לא מצא בתוך שלשים ומצא לאחר שלשים. אמרו לו הבא עדים

אָמַר אֵין לִי עֲדִים הִבָּא רֵאשִׁי אָמַר אֵין לִי רֵאשִׁי וּלְאַחַר זָמַן מָצָא רֵאשִׁי וּמָצָא עֲדִים הֲרִי זֶה אֵינוֹ כָּלוּם.

**Mishnah 12:** Any time one produces a proof he may demand a new trial<sup>219</sup>. If they told him, produce all your proofs within thirty days, if he produced within thirty days, he gets a new trial, after thirty days he does not get a new trial. Rabban Simeon ben Gamliel said, what can one do if he did not find within thirty [days] but found after thirty [days]<sup>220</sup>? If they told him, produce witnesses; he said, I have no witness; produce proofs; he said, I have no proofs. If later he found a proof, or he found witnesses, this is irrelevant<sup>221</sup>.

219 The person who lost a civil suit may request a new trial based on new documentary evidence ("proof") or new witnesses.

220 He is entitled to a new trial if he can explain the delay. In general, practice

follows Rabban Simeon ben Gamliel in the Mishnah.

221 The court has to assume that the documents are forged and the witnesses false.

(21d line 45) **הלכה יב:** כָּל־זָמַן שֶׁהוּא מְבִיא רֵאשִׁי כו'. אָמַר רַבִּי אוֹשְׁעִיָּא. תָּמַן שֶׁאִפְשָׁר לָהֶן לְהוֹסִיף דִּנְיָן אֵילּוּ כְּנֻגַּד אֵילּוּ. בְּרַם הָכָא אֵי אִפְשָׁר לָהֶן לְהוֹסִיף. רַבִּי יוֹחָנָן וְרִישִׁי לְקִישׁ תְּגִירְהוּן מִרִּין. אֶפִּילוּ הָכָא אִפְשָׁר לָהֶן לְהוֹסִיף.

**Halakhah 12:** "Any time one produces a proof," etc.<sup>222</sup> Rabbi Oshaiah said, there<sup>223</sup>, where it is possible to add, they continue to argue. But here it is impossible to add<sup>224</sup>. Rabbi Johanan and Rabbi Simeon ben Laqish both teach that even here it is possible to add<sup>225</sup>.

222 The discussion of Mishnah 12 is in Halakhah 13. Therefore, the indication of a new Halakhah here is erroneous; the reference still is to Mishnah 11, in reference to a split decision of the court.

223 Mishnah 5:7, referring to criminal proceedings. If the court has the maximum number of members, 71, and 35 each are for conviction and acquittal while one is undecided, they have to continue to argue

until the undecided judge makes up his mind.

224 He holds that in civil trials one never adds judges. Therefore, even if there are only three judges, they have to continue to argue among themselves until each one has made up his mind.

225 They hold that the rules of adding judges are identical for civil and criminal trials (Maimonides, *Hilkhot Sanhedrin* 8:2).

(fol. 20d) **משנה יג:** אָמַר רַבִּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל מַה יַּעֲשֶׂה לֹא הָיָה יוֹדֵעַ שֶׁיֵּשׁ לוֹ עֵדִים וּמִצָּא עֵדִים וְלֹא הָיָה יוֹדֵעַ שֶׁיֵּשׁ לוֹ רֵאיוֹה וּמִצָּא רֵאיוֹה. אָמְרוּ לוֹ הֲבֵא עֵדִים אָמַר אֵין לִי עֵדִים הֲבֵא רֵאיוֹה אָמַר אֵין לִי רֵאיוֹה. רֵאיוֹה שְׁמַתְחִיב בְּדִין וְאָמַר קִרְבוּ כְּלוּנִי וּכְלוּנִי וְהַעֲדוּנִי אוֹ שְׁהוּצִיא רֵאיוֹה מִתּוֹךְ אֶפְנֵדוֹ הֲרִי זֶה אֵינוֹ כְּלוּם:

**Mishnah 13:** Rabban Gamliel said, what should he do who did not know that he had witnesses but found witnesses; he did not know that he had proof, but he found proof<sup>226</sup>? If they told him, produce witnesses; he said, I have no witness; produce proofs; he said, I have no proofs; when he saw that the decision would go against him he said, X and Y shall come and testify for me, or he produced proof from his money belt, this is irrelevant<sup>221</sup>.

226 This refers to the last case in Mishnah knowledge of the witnesses or documents  
12. Late submissions must be accepted if within the period allotted him by the court.  
the litigant can prove that he had no

(21d line 48) **הלכה יג:** אָמַר רַבִּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל כּוֹל. רַבִּי יוֹחָנָן בְּשֵׁם רַב הוֹשַׁעְיָה. תִּלְתָּא אַמּוּרִין. חַד אָמַר. כָּל-זְמַן שְׁמַבִּיא רֵאיוֹה סוֹתֵר אֶת הַדִּין. וְחַד אָמַר. הֲבִיא בְתוּךְ ל' סוֹתֵר. לְאַחַר ל' אֵינוֹ סוֹתֵר. וְחַד אָמַר. לְעוֹלָם אֵין סוֹתֵר עַד שֶׁיִּבְיֵא רֵאיוֹה שְׁלֹא הָיָה יוֹדֵעַ בָּהּ כָּל-עֵיקָר. וְהַתִּינִין. אָמַר רַבִּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל. מַה יַּעֲשֶׂה לֹא הָיָה יוֹדֵעַ שֶׁיֵּשׁ לוֹ עֵדִים וּמִצָּא עֵדִים. שֶׁיֵּשׁ לוֹ רֵאיוֹה וּמִצָּא רֵאיוֹה כּוֹל. רַבִּי לֹא וְרַבִּי זִירָא. חַד אָמַר. עַד שֶׁיִּבְטֹל רֵאיוֹתָיו. וְחַד אָמַר. עַד שֶׁיִּכְפּוֹר בְּרֵאיוֹתָיו.

**Halakhah 13:** “Rabban Simeon ben Gamliel said,” etc. Rabbi Johanan in the name of Rav Hoshaiiah: Three Amoraïm<sup>227</sup>. One said, any time he brings proof he can demand a new trial. The other said, if he brought within 30 days<sup>228</sup>, he can demand a new trial, after 30 days he cannot demand a new trial. The other said, he never can demand a new trial unless he prove that he absolutely had no knowledge of it<sup>226</sup>. But did we not state: “Rabban Gamliel said, what should he do who did not know that he had witnesses but found witnesses; that he had no proof, but found proof?” Rabbi La and Rabbi Ze’ira: One said, unless he voided his proofs<sup>229</sup>; the other said, until he disclaimed his proofs<sup>230</sup>.

227 They explain Rabban Simeon ben Gamliel’s words. 228 Of judgment rendered.

229 Rabban Simeon ben Gamliel will agree that he is restricted in asking for a new trial if he himself had belittled the

possibility of finding other proof in a statement before the court.

230 He had affirmed before the court that there was nothing to be added.

(21d line 56) רבי לוי הנה ליה דין עם חד בר נש על עסק בתיים. והוון דיניין קומי רבי לעזר. לאחר גמר דין הביא ראיה. שאל לרבי יוחנן. אמר ליה. כל זמן שמביא ראיה סותר הדין. רבי אבמכיס הנה ליה דין עם חד בר נש על עסק ריחיא. והוון אידניין קומי רבי לעזר. לאחר גמר דין הביא עדים. שאל לרבי יוחנן. אמר ליה. אדיין את לזו. כל זמן שמביא ראיה סותר את הדין. ולמה תרין עובדין. רבי לוי לא איתעבד ליה גזר דין. רבי אבמכיס איתעבד ליה גזר דין.

Rebbi Levi had a suit against a certain person about houses; they had it judged before Rebbi Eleazar. After a decision was reached he presented proof. He<sup>231</sup> asked Rebbi Johanan, who told him, any time one brings proof<sup>232</sup> he can demand a new trial. Rebbi Eumachos had a suit against a certain person about mills; they had it judged before Rebbi Eleazar. After a decision was reached he presented witnesses. He asked Rebbi Johanan, who said to him, is that still a problem for you? Any time one brings proof he can demand a new trial. Why did it need two cases? In Rebbi Levy's case, no formal verdict had been rendered, in Rebbi Eumachos's case, a formal verdict had been rendered<sup>233</sup>.

231 R. Eleazar.

232 Since in the next case, the same expression of "proof" is used in connection with witnesses, it seems that it refers not to the actual proof submitted to the court but to the justification, submitting proof that the

new material was unknown to the litigant during the trial.

233 Since in both cases it seems that the additional material was submitted close to the time of the trial, R. Johanan did not indicate which of the three Amora'im he was following. His instruction is binding precedent.

(21d line 63) אשר הדיניין מהו שיהא צריך בית דין. רבי הושעיה בשם שמואל רב בניי בשם שמואל. חד אמר. יתקיים או בכתב ידי עדם או בכתב ידי הדיינים. וחד אמר. אפילו בכתב אחד ובדין אחד.

Does a judicial confirmation need a court<sup>234</sup>? Rabbi Hoshai in the name of Samuel, Rav Bannai in the name of Samuel. One said, it should be confirmed either by the handwriting of the witnesses or the handwriting of the judges<sup>235</sup>; the other said, even with one handwriting and one judge<sup>236</sup>.

234 A mortgage foreclosure was certified by a certain court which confirmed the genuineness of document and claim. The property to be foreclosed was in the domain of another court. Does the second court have to ascertain that the certification be genuine or do we assume that court documents cannot be forged and the second court has to authorize the foreclosure?

235 Either the genuineness of the mortgage or the genuineness of the judicial endorsement has to be determined.

236 Two signatures have to be confirmed, but it may be the signature of one witness and one judge since the judges by their endorsement become witnesses to the genuineness of the document. This is the final determination of the Babli, *Ketubot* 21a.

## אחד דיני ממונות פרק רביעי

**משנה א:** אחד דיני ממונות ואחד דיני נפשות בדרישה ובחקירה שפאמר משפט אחד יהיה לכם. מה בין דיני ממונות לדיני נפשות. דיני ממונות בשלשה ודיני נפשות בעשרים ושלשה. דיני ממונות פותחין בין לזכות בין לחובה ודיני נפשות פותחין לזכות ואין פותחין בחובה.

**Mishnah 1:** Both civil suits and criminal suits require cross-examination and investigation<sup>1</sup>, as it is said: *One set of rules shall be for you*<sup>23</sup>. What is the difference between civil suits and criminal suits? Civil suits are tried before three judges, criminal suits before 23. In civil suits one starts with arguments either for acquittal or conviction; in criminal courts one starts with arguments<sup>4</sup> for acquittal but not for conviction.

1 Cross-examination is the interrogation of witnesses which changes from trial to trial. Investigation is the determination of answers to the obligatory questions enumerated in Mishnah 5:1.

2 Lev. 24:22.

3 A verdict for the plaintiff means monetary loss for the defendant. A verdict

for the defendant means no money for the plaintiff. Therefore, it is irrelevant which side of the argument is discussed first among the judges.

4 In the discussion by the judges after all evidence was presented.

(22a line 47) **הלכה א:** אחד דיני ממונות כול'. אמר רבי יוחנן. בשביל לחוס על ממון ישראל אמרו. היאך אתה יודע שזה חייב לזה. רבי חייב בר פא בעא קומי רבי יוסי. היך עבדין עובדא. אמר ליה. קרבי יוחנן. דרבי יוחנן אמר. בשביל לחוס על ממון ישראל אמרו. היאך אתה יודע שזה חייב לזה. זעיר בר חנינא בשם רבי חנינה ורב יהודה. חד אמר. ודרשת וחקרת ושאלת היטב. וחד אמר. צדק צדק תרדף. הא כיצד. אם את רואה הדין שיוציא לאמיא חקריהו ואם לאו צדקיהו.

רב הונא פד הנה חמי שהדיו מכוונא הנה חקר וכד הנה חמי הכו והכו הנה מכוון.

**Halakhah 1:** “Both civil suits,” etc. Rabbi Johanan said, to protect Israel’s money they said, “tell why you know that this person owes the

other.<sup>5</sup>” Rabbi Hiyya bar Abba asked before Rabbi Yasa<sup>6</sup>: What does one do in practice? He answered, following Rabbi Johanan, as Rabbi Johanan said, to protect Israel’s money they said, “tell why you know that this person owes the other.”

Ze’ir bar Hinena in the name of Rabbi Hanina and Rav Jehudah, one said: *You shall cross-examine, investigate, and inquire well*<sup>7</sup>. The other said, *equity, equity you shall pursue*.<sup>8</sup> How is that? If you see that the verdict will be the truth, investigate it<sup>9</sup>; otherwise, act in equity.<sup>10</sup>

<sup>11</sup>When Rav Huna saw that witnesses said exactly the same, he was investigating. When he saw them essentially identical, he determined the common element.

5 While the Mishnah requires the same kind of cross-examinations and determinations in civil as in criminal cases, R. Johanan holds that by rabbinic *fiat*, witnesses in civil cases are not to be subjected to cross-examinations that stray from the main topic. While it is necessary in criminal trials to disqualify any witness whose testimony is not 100% consistent (since God has promised to punish every evildoer who escapes human justice, *Ex.* 23:7), excessively rigid standards in civil cases would prevent most owners of capital from lending it, therefore leading to the ruin of the poor. It is in the public interest that claims be swiftly and easily adjudicated. The question quoted (Mishnah 3:9) is the paradigm for any questions to be asked.

6 One has to read יוסי for יסא. R. Hiyya bar Abba was R. Yasa’s student and R. Yose’s teacher’s teacher.

7 *Deut.* 13:15, referring to a criminal case.

8 *Deut.* 16:20, referring to all judicial proceedings.

9 In criminal cases, there is an obligation on the judges to ascertain the truth as well as possible. In the Babli, 32a, the duty to careful investigation is emphasized in all cases where the judges suspect foul play by one of the parties; cf. Note 10.

10 In civil cases, the judges have to ascertain that the judgment be equitable.

11 Halakhah 3:9, Notes 139-140.

22a line 55) כִּיצַד פּוֹתְחִין לְזָכוֹת. אוֹמְרִין. אֵיפֶשֶׁר שָׁזָה הָרֶג אֶת הַנֶּפֶשׁ. אָמַר רַבִּי יוֹסִי. אֵין כֵּינִי. אָמַר אֶחָד מִן הָעֲדִים. לֹשׁ לִי לְלַמֵּד עָלַי זָכוֹת. וְכֵן חֲבִירִי וְסִינְעוּ. וְיֵשׁ בָּאֵן סִינְעוּ. אִם אוֹמַר אֶת כֵּן לֹא נִמְצְאָתָּ חָב לַדִּינִים. וְיֵשׁ עֲדִים לְשִׁקְרוֹ.

How does one start for acquittal? One says, is it possible that this one be a murderer<sup>12</sup>? Rabbi Yose said, if this is so, if one of the witnesses said, I have

something to say in his defense, and his colleague comes to support him, is that support? If you say so, would you not put guilt on the judges, to lead witnesses to lie?

12 If the judges in their discussions say this, after the evidence was heard, nothing bad can be said. R. Yose reads the question as one directed towards eye witnesses to a murder. An intimation by the judges that

they do not believe the witnesses may lead them to lie to exonerate the murderer; this would make the judges accomplices of the murderer after the fact.

22a line 58) אָמַר רַבִּי יוֹחָנָן. כָּל-שְׂאִינֵי יוֹדְעִי לְדוֹן אֶת הַשֶּׁרֶץ לְטָהָר וּלְטָמְאָו מֵאַה כְּעִמִּים אֵין יָכוֹל לְפָתוּחַ בְּזָכוֹת. כִּי צַד דָּנִין הַשֶּׁרֶץ. אָמַר רַבִּי יֵנְאִי. מֵה אִם הִנָּחַשׁ שְׂמִמִּית טָהוֹר. עֲקָבָר שְׂאִין מִמִּית אֵינוֹ דִּין לְהִיּוֹת טָהוֹר. אוֹ חִילּוֹף. עֲקָבָר שְׂאִין מִמִּית טָמֵא. נָחַשׁ שְׂמִמִּית אֵינוֹ דִּין לְהִיּוֹת טָמֵא. הִתִּיב רַבִּי פִּינְחָס. הָרִי עֲקָבָר מִמִּית וְהָרִי הוּא טָהוֹר. אֲשַׁכַּח תִּנִּי אָמַר. הוּא נָחַשׁ הוּא עֲקָבָר.

אָמַר רַבִּי. תִּלְמִיד וְנֹתִיק הֵיךְ לְרַבִּי וְהֵיךְ מְטָהֵר אֶת הַשֶּׁרֶץ וּמְטָמֵא ק' כְּעִמִּים. אָמְרִין. הֵהוּא תִּלְמִידָא לָא הֵנָּה יָדַע מוֹרִיָּה. אָמַר רַבִּי יַעֲקֹב בַּר דִּסְאִי. הֵהוּא תִּלְמִידָא קְטוֹעַ מִטּוֹרָא דְסִינֵי הֵנָּה.

Rebbi Johanan said, anybody who cannot argue for the crawling animal to make it pure a hundred times cannot start arguing for acquittal<sup>13</sup>. How does one argue about a crawling animal? Rebbi Johanan said, since a snake which kills<sup>14</sup> is pure, a rat which does not kill logically should be pure. Since a rat which does not kill is impure, a snake which kills logically should be impure. Rebbi Phineas objected: Is there not the scorpion which kills and is pure? It was found that a Tanna said, snake and scorpion both follow the same rules.

<sup>15</sup>Rebbi said, Rebbi [ ] had a self-confident student who was arguing for purity or impurity of the crawling animal a hundred times. They said, this student never could instruct<sup>16</sup>. Rebbi Jacob bar Dositheos said, this student was cut-off from Mount Sinai<sup>17</sup>.

13 In the Babli, 17a, Rav states that anybody who cannot argue for the purity of crawling animals is not a candidate for membership in the Synhedrion. *Lev.* 11:29-38 describes the impurity of eight particular crawling animals (mostly

reptiles). The list includes the rat. (For some reason, the commentator to the Babli 91a, probably Rashi's son-in-law Jehuda ben Nathan, defines עֲקָבָר as *écureuil*, "squirrel".) All other crawling animals,



including snakes (*Lev. 11:42*), are forbidden as food but their carcasses are not impure.

14 It kills both humans and domestic animals, thereby causing the severe impurities of corpses and animal carcasses. For logical consistency, the agent of impurity should be impure; Babli *Eruvin* 13b.

15 In the Babli *Eruvin* 13b, Rabbi *Johanan* said, Rabbi *Meir* had a student by the name of Symmachos who could give 49 reasons for everything pure and 49 reasons for everything impure. [In *Midrash Tehillim*, ed. Buber p. 108 Note 37, it is R. Aqiba's student Rabbi *Meir*.] Since Symmachos is praised, the stories are not parallel and the names cannot be copied. It

is clear that the second "Rebbi" needs to be followed by a name.

The same Babli also quotes a *baraita* that at Jabneh there was a self-confident (ותיק ואثق) student who could give 150 reasons for the purity of crawling animals. This is the parallel to the *baraita* here.

16 A Sophist cannot come to a clear decision of what is right.

17 Even though all future Jewish souls, including proselytes, participated in receiving the Torah at Mount Sinai, that student was excluded as not being Jewish. (Cf. H. Guggenheimer, *The Scholar's Haggadah*, Northvale NJ 1995, p. 308-309.)

**משנה ב:** דיני ממונות מטין על פי עד אחד בין לזכות בין לחובה ודיני נפשות מטין על פי עד אחד לזכות ועל פי שנים לחובה. (fol. 21d)

**Mishnah 2:** Civil suits are decided<sup>18</sup> by one witness<sup>19</sup> whether for credit or debit; criminal suits are decided by one witness<sup>19</sup> for acquittal and two for conviction<sup>20</sup>.

18 The use of the verb נטה "to bend" referring to judicial decision is from *Ex. 23:2*.

19 This is a rather frequent scribal error (including the *editio princeps* of Maimonides's Code) induced by the common expression "one witness". Decisions are not made by witnesses but by

votes of judges. The word "witness" has to be deleted both times (cf. *Diqduqe Soferim Sanhedrin* p. 87, Note 1.)

20 If 12 judges vote for conviction and 11 for acquittal, it is a potential mistrial. A difference of two votes between those voting for conviction or acquittal is possible only if an odd number of judges abstain.

**הלכה ב:** דיני ממונות מטין כול. אמר רבי ינאי. אילו ניתנה התורה חתוכה לא היתה להגל עמידה. מה טעמא. וידבר יי אל-משה. אמר לפניו. רבונו של עולם. הודיעני היאך היא ההלכה. אמר לו. אחרי רבים להטות: רבי המוצין זכו. רבי המחייבין חייבו. כדי

שְׁתֵּהָא הַתּוֹרָה נִדְרָשֶׁת מ"ט פְּנִים טָמְא וּמ"ט פְּנִים טָהוֹר. מִנִּיין וּדְגֵלָה. וְכֵן הוּא אוֹמֵר אֲמָרוֹת  
 יי אֲמָרוֹת טָהוֹרוֹת כִּסְף צָרוּף בְּעֵלִיל לְאַרְצָא מְזִיקָה שְׁבַעֲתַיִם: וְאוֹמֵר מִישְׁרִים אֶהְיֶה:

**Halakhah 2:** "Civil suits are decided," etc. Rabbi Yannai said, if the Torah had been given decided<sup>21</sup>, no foot could stand. What is the reason? *The Eternal spoke to Moses*<sup>22</sup>. He said before Him: Master of the Universe, inform me what is the practice. He told him, *to bend*<sup>23</sup> *after the majority*.<sup>18</sup> If there was a majority for acquitting, they acquitted; if there was a majority for convicting, they convicted; so that the Torah<sup>24</sup> could be explained in 49 ways impure and 49 ways pure, the numerical value of<sup>25</sup> וּדְגֵלָה. And so it says<sup>26</sup>: *the commands of the Eternal are pure sayings; molten silver in an earthenware crucible, refined sevenfold*. And it says<sup>27</sup>, *the straightforward love You*.

21 חתך "to cut" in this connection is a translation of Latin *decidere* (literally "to cut off; settle, decide.) There is no reason why R. Yannai could not have acted as a Roman Judge, just like his contemporary R. Jonathan (cf. *Bava batra* 3:4 and *Introduction to Tractate Neziqin*.) R. Yannai counts it as an advantage that the Torah is formulated as a set of potentially ambiguous principles rather than a collection of court decisions which would represent unchangeable precedents.

22 *Qorban He'edah* takes this as a reference to Ex. 12:1, where v. 2 continues: *This month is for you the beginning of months; first it shall be for you of the year's months*. The two clauses in the verse have different status. In the first part, God designated the first month of the year of the Exodus. In the second part, Moses and his successors are commanded to determine every year which month should be "first". The Torah does not give an algorithm to determine which lunar month has to serve as

"Spring Month" (Ex. 13:4). Any calendar system agreed to by Moses's successors has divine sanction. (The current method, concentrating on designating the seventh month, from time to time yields rather questionable results.)

23 This is the opposite of rigidity. The understanding of Torah and with it the entire code of behavior required by it is a function of time. While precedents should be overthrown only for very weighty reasons, no rule is invariable for all times.

24 That means, every precept in the Torah can be explained as having 49 different negative and 49 different positive aspects.

25 *Cant.* 2:4: "His banner over me is love." The numerical value is  $6+4+3+30+6 = 49$ .

26 *Ps.* 12:7. "Sevenfold" is interpreted as  $7^2 = 49$ .

27 *Cant.* 1:4. Since מִישְׁרִים is a plural, it indicates that the Torah has a plurality of straightforward interpretations.

fol. 21d) **משנה ג:** דיני ממונות מחזירין בין לזכות בין לחובה. דיני נפשות מחזירין לזכות ואין מחזירין לחובה.

**Mishnah 3:** Civil suits can be retried<sup>28</sup> both for credit and for debit. Criminal suits can be retried for acquittal<sup>29</sup> but not for conviction.

28 As explained in 3:10-13, civil suits can be re-opened if new documents or new witnesses become available.

29 Appeals and retrials are possible only after conviction but never after acquittal.

(22a line 74) **הלכה ג:** דיני ממונות מחזירין בין לזכות בין לחובה כול. הרי שניצא מבית דין זכאי ומצאו לו חובה. שומע אני שניחזירוהו. תלמוד לומר צדיק אל תהרוג. הרי שניצא מבית דין חייב ומצאו לו זכות. שומע אני שלא ניחזירוהו. תלמוד לומר ונקי אל תהרוג. וכול אם צדק בדינך יצדק בדיני. תלמוד לומר כי לא אצדיק רשע: אמר רבי יצחק. אמר לי רבי יוסי. לא שנייא אלא אפילו נדבכה בטעות מחזירין אותו.

**Halakhah 3:** “Civil suits can be retried both for credit and for debit,” etc.  
<sup>30</sup>If he left the court being acquitted, and they found reasons for conviction, could I understand that one returned him? The verse says<sup>31</sup>, *do not slay the acquitted*. If he left the court being convicted, and they found reasons for acquittal, could I understand that one should not return him? The verse<sup>31</sup> says, *but do not slay the innocent*. I could think that if he is acquitted in your court, he is acquitted in My court; the verse<sup>31</sup> says, *I shall not acquit the wicked*.

Rebbi Isaac said, Rebbi Yose told me: There is no difference; if the acquittal was in error<sup>32</sup>, one retries him.

30 Babli 33b, *Mekhilta dR. Ismael Mišpatim* 20 (p.327-328), *dR. Simeon ben Iohai* 23:7; shortened *Sifry Deut.* 144.

31 *Ex.* 23:7.

32 For example, if the clerk of court made an error in tallying the votes. The Babli, 33b, holds that a retrial is possible if an acquittal was in clear violation of a biblical verse.

fol. 22a) **משנה ד:** דיני ממונות הכל מלמדין זכות וחובה. דיני נפשות הכל מלמדין זכות ואין הכל מלמדין חובה.

**Mishnah 4:** In civil suits, anybody<sup>33</sup> may argue for credit or debit. In criminal suits, anybody may argue for acquittal but not everybody may argue for conviction<sup>34</sup>.

33 Every judge.

34 As explained in Mishnah 5.

(22b line 4) **הלכה ד:** דיני ממונות הכל מלמדין זכות וחובה כול. רבי מי בעא קומי רבי יוחנן. אפילו נואף ונואפת. אמר ליה. אתקלף מרקיעך.

**Halakhah 4:** “In civil suits, anybody may argue for credit or debit,” etc. Rabbi Immi asked before Rabbi Johanan: Even an adulterer and an adulteress<sup>35</sup>? He told him, your patch came off<sup>36</sup>.

35 It is obvious that this Halakhah does not refer to Mishnah 4. From the parallel in the Babli, 33b, where R. Hiyya bar Abba asked and received an insulting answer, one might refer to the preceding statement in Halakhah 3, whether adulterers who were acquitted after the adultery was proven may be retried. This interpretation requires one to adopt the Babli’s explanation of R. Yose’s statement.

If the Halakhah belongs to Mishnah 5, the question might be whether a judge who argued for acquittal in the case of an adulterer may argue for conviction in the following trial of the adulteress. Halakhah 9 and Tosephta 7:2 prescribe that adulterer and adulteress have to be tried separately on different days.

36 The question is stupid; it is as if you had a hole in your pants.

(fol. 22a) **משנה ה:** דיני ממונות המלמד זכות מלמד חובה והמלמד חובה מלמד זכות ודיני נפשות המלמד חובה מלמד זכות. אבל המלמד זכות אינו יכול לחזור וללמד חובה.

**Mishnah 5:** In civil suits, one who argued for credit may argue for debit and one who argued for debit may argue for credit; but in criminal suits one who argued for conviction may argue for acquittal but one who argued for acquittal is barred from arguing for conviction.

(22b line 6) **הלכה ה:** דיני ממונות המלמד זכות כול. רבי אמר. ובלבד שלא יהו מחוסרין לומר. איש פלוני אתה זכאי ואתה חייב. אבל אם היו מחוסרין במשה ובמתן לא בדה. רבי יוסי בן חנינה אמר. אפילו מחוסרין במשה ומתן.

**Halakhah 5:** “In civil suits, one who argued for credit,” etc. Rabbi said, if they only miss saying, Mr. X, you are acquitted, or you are convicted; it

does not apply to the discussion<sup>37</sup>. Rabbi Yose ben Hanina said, it also applies to the discussion<sup>38</sup>.

37 A judge who argued for acquittal during the discussion is barred from voting for conviction during the final vote but a judge originally arguing for acquittal may change his mind during the discussion and later argue for conviction. In the Babli, 34b,

Rav reads the Mishnah as implying that during the discussion, a person arguing for acquittal cannot then argue for conviction but the next day he may vote for conviction.

38 A judge originally arguing for acquittal cannot later argue for conviction.

**משנה ו:** דְּיָנִי מְמוֹנוֹת דְּנִין בַּיּוֹם וְגוֹמְרִין בַּלַּיְלָה וְדִינֵי נַפְשוֹת דְּנִין בַּיּוֹם וְגוֹמְרִין בַּיּוֹם. (fol. 22a)

**Mishnah 6:** Civil suits are tried during the day and may be decided in the night but criminal suits are tried during the day and decided during daytime.

**הלכה ו:** דְּיָנִי מְמוֹנוֹת דְּנִין בַּיּוֹם כו'. מְנַלְךָ. וְשִׁפְטוֹ אֶת־הָעָם בְּכָל־עֵת. וְאֵית קָרִי לְשַׁעֲבֵר. אָמַר רַב שְׁמוּאֵל בְּרַב יְצָחָק. בֵּינֵי מִתְנִיתָא. שָׂאֵם טַעֵי וְדָנוּ בַּלַּיְלָה שְׂדִינָם דִּין. תִּלְמוּד לֹאִמַר וְשִׁפְטוֹ אֶת־הָעָם בְּכָל־עֵת. אָמַר. הָא אֲמִירָה.

**Halakhah 6:** “Civil suits are tried during the day,” etc. From where this? *They judged the people at all times*<sup>39</sup>. But this is a verse about what happened<sup>40</sup>! Rav Samuel<sup>41</sup> ben Rav Isaac said: so is the *baraita*: If they erred and judged in the night, their judgment stands, as the verse said: *they shall judge the people at all times*<sup>42</sup>. He<sup>43</sup> said, that is a statement<sup>44</sup>.

39 Ex. 18:26.

40 Information about what Moses had people do in the desert is quite different from prescription of future organization of courts. The context makes it clear that courts organized on Jethro's suggestion only handled civil suits *between a man and his neighbor*.

41 The name must be either *Rebbi Samuel bar Rav Isaac* or *Rav Nahman bar Rav Isaac*; cf. *Bava gamma* 9:1, Note 12.

42 Ex. 18:22, the prescription of future organization. The Babli, 34b, disagrees and permits only finishing a trial which started during daytime.

43 The person who had raised the objection in the first place. In *Bava gamma* 9:1 (Note 16) the expression is used by Rav Nahman bar Jacob.

44 A true statement. *Tosaphot Yebamot* 104a s. v. מַר feel forced to emend the text. This is unnecessary.

(fol. 22a) **משנה ז:** דיני ממונות גומרין בו ביום בין לזכות בין לחובה. ודיני נפשות גומרין בו ביום לזכות וביום שלאחריו לחובה. לפיכך אין דנין לא בערב שבת ולא בערב יום טוב:

**Mishnah 7:** Civil suits are decided on the same day, whether for credit or debit. But criminal suits are decided the same day for acquittal, the next day<sup>45</sup> for conviction. Therefore one does not judge on Sabbath eve or holiday eve<sup>46</sup>.

45 If there be a majority for conviction, one puts off the final vote for reasons for acquittal might be found in the meantime.

46 Neither judgment can be rendered nor the judgment executed on a Sabbath or holiday. The possibility of a trial taking longer than one day is not contemplated.

(22b line 13) **הלכה ז:** דיני ממונות גומרין בו ביום כול'. תני. העד אין מלמד לא זכות ולא חובה. מנלו. ועד לא יענה בנפש למות: ומנין שאף הוא אין מלמד לא זכות ולא חובה. תלמוד לומר והוא לא יענה בנפש למות: ריש לקיש אמר. פעמים שאדם רואה את עצמו מודים ומפליג דבריו שלא נמות.

**Halakhah 7:** "Civil suits are decided on the same day," etc. It was stated<sup>47</sup>: A witness may not argue either for acquittal or conviction<sup>48</sup>. From where this? *A witness shall not argue about anybody on trial for his life*<sup>49</sup>. And from where that he himself may not argue either for acquittal or conviction? The verse says, one *shall not argue about anybody on trial for his life*<sup>50</sup>. Rabbi Simeon ben Laqish said, sometimes a person sees himself set up by perjured witnesses and he speaks much lest he be put to death<sup>51</sup>.

47 A similar *baraita* is quoted in the Babli, 33b, where, however, a dissent is noted.

48 In the formulation of the Babli: A witness cannot turn judge.

49 *Num.* 35:30. In the Babli, R. Yose ben Jehudah reads the verse only as prohibiting a witness from arguing for conviction.

50 This is not a verse. *Num.* 35:30 reads: *A single witness may not argue . . .* This is

split into two sentences: A witness may not, a single person may not.

51 While in the Babli, 34a, R. Simeon ben Laqish is quoted as sustaining the opinion that the accused may not testify for himself since he is party to the proceedings, here it seems clear that he gives the accused the right to point out to the judges the fact that he is accused because of perjured (or otherwise tainted) testimony.

(22b line 17) ומניין שצריך שני ימים סמוכין זה לזה.

רבי חזקיה רבי אחי בשם רבי אבהו. אסור לדון דיני ממונות בערב שבת. והדא מתניתא פליגא. לפיכך אין דנין לא בערב שבת ולא בערב יום טוב. דיני נפשות. הא דיני ממונות דנין. ותיגי רבי חייה כן. דנין דיני ממונות בערב שבת ואין דנין דיני נפשות בערב שבת. אמר. כאן להלכה כאן למעשה.

1 אחי | כב אחא אבהו | כ אבהו אמ' והדה | כב והא 3 ואין דנין | כב אבל לא בערב שבת. אמר | כ - 4 למעשה | כב לדבר תורה

וידונו אותו בערב שבת ויגמר דינו בשבת וייהרג למוצאי שבת. אם אומר את כן נמצא דינו משתקע. ריש לקיש בעי. וידונו אותו בשבת ויגמר דינו בשבת וייהרג בשבת. מה אם עבודה שדוחה שבת רציחת מצוה דוחה אותה. שנאמר מעם מזבחי תקחני למות. שבת שהעבודה דוחה אותה אין דין שתהא רציחת מצוה דוחה אותה. רבי לא בשם רבי ינאי. מיכן לבתי דינין שלא יהו דנין בשבת. מאי טעמא. נאמר כאן בכל מושבותיכם ונאמר להלן והיו אליהם לכהן לחוקת משפט לדתיכם בכל מושבותיכם: מה להלן בבית דין הכותב מדבר. אף כאן בבית דין הכותב מדבר.

From where that one needs two consecutive days<sup>52</sup>?

<sup>53</sup>Rebbi Hizqiah, Rebbi Aha, said in the name of Rebbi Abbahu: It is forbidden to judge money matters on Friday. Does not a Mishnah object: "Therefore one does not judge [criminal matters] on Sabbath eve or holiday eve"? Hence, one judges money matters! Also, Rebbi Hiyya stated thus: One judges money matters on Friday but not criminal matters. One is for practice, the other for action.<sup>53a</sup>

Could one not judge him on Fridays, pass sentence on the Sabbath, and execute him after the Sabbath? If you say so, it turns out that his judgment is delayed<sup>54</sup>. Rebbi Simeon ben Laqish asked, could he not be judged on the Sabbath, have his sentence passed on the Sabbath, and be executed on the Sabbath? Temple service, which supersedes Sabbath prohibitions<sup>55</sup>, is pushed aside by obligatory executions, since it is said, *from My altar take him to be executed*<sup>56</sup>. Therefore the Sabbath, which is pushed aside by Temple service, logically should be pushed aside by obligatory executions<sup>57</sup>.

Rebbi La in the name of Rebbi Yannai: This<sup>58</sup> implies that courts may not sit on the Sabbath; what is the reason? It is said here, *in all your dwellings*<sup>59</sup>, and it is said there, *these shall be for you legal procedures for your generations in all your dwellings*<sup>60</sup>. Since there the verse refers to courts, so also here the verse refers to courts.

52 Since the Mishnah requires sentence to be passed on the day immediately following, there should be some biblical justification. The continuation of the argument shows that a reference is missing which would imply that justice delayed is justice denied.

53 The same text is found in *Ketubot* 1:1 (Notes 43-46, ב) and *Besah* 5:2 (64 l. 59, ב).

53a "Practice" means "code of practice", "action" means actual procedure. The parallel sources read: "one is for practice, the other for words of Torah", meaning that in theory one may judge but in practice one does not.

54 This argument really implies that capital crimes be tried only by the Supreme Court whose decrees are final.

55 The Sabbath Temple service, as prescribed in *Num.* 28:10, requires slaughtering and burning. For any other purpose, these are deadly sins and capital crimes if done on the Sabbath.

56 *Ex.* 21:14. The verse is read, not as a denial of asylum for any murderer, but as a commandment to immediately execute a

Cohen even if he was officiating when convicted of murder. (The non-Cohen would commit a deadly sin by touching the altar.)

57 The argument deserves no refutation since the relation "stronger than" underlying an argument *de minore ad majus* is not transitive (*a* stronger than *b*, *b* stronger than *c* does not imply *a* stronger than *c*. Babli *Šabbat* 132b; cf. H. Guggenheimer, *Logical Problems in Jewish Tradition*, in: *Confrontations with Judaism*, London 1967, pp. 182-183.) The Babli, 35b, disproves the argument at length.

58 Mishnah 6.

59 *Ex.* 35:3, the prohibition to start a fire on the Sabbath.

60 *Num.* 35:29, the law of homicide and murder. The argument (Babli 35b) goes as follows. Some capital crimes are punished by burning. *Ex.* 35:3, which has been shown to be applicable to court proceedings, forbids executing a convicted criminal who has to be burned. Therefore no capital punishment can be executed on the Sabbath.

**משנה ח:** דִּינֵי מְמוֹנוֹת הַטְּהָרוֹת וְהַטְּמְאוֹת מִתְחִילִין מִן הַגָּדוֹל דִּינֵי נִפְשוֹת מִתְחִילִין מִן הַצָּד. הַכֹּל כְּשִׁירִין לְדוֹן דִּינֵי מְמוֹנוֹת וְאֵין הַכֹּל כְּשִׁירִין לְדוֹן דִּינֵי נִפְשוֹת אֶלָּא כְּהֹנִים לְוִיִּים וְיִשְׂרָאֵלִים הַמְּשִׁיאִין לְכַהֲנָהּ:

**Mishnah 8:** In cases of money matters, purity, and impurity, one starts with the greatest<sup>61</sup>. In criminal cases, one starts from the side<sup>62</sup>. Everybody is qualified to judge money matters but not everybody is qualified to judge criminal matters, but only Cohanim, Levites and Israel whose daughters may marry into the priesthood<sup>63</sup>.



- 61 The most respected among the judges is requested to give his opinion first. junior members of the court be influenced by the authoritative voice.
- 62 In criminal cases, the most respected judge has to give his opinion last, lest the
- 63 None of whose known ancestors are bastards or desecrated priests.

(22b line 31) **הלכה ח:** דיני ממונות הטהרות והטמאות כול. רבי אומר. לא תענה על-דבר. רב כתיב. שלא תענה אחר הרב אלא קודם לרב. רבי יוסי בן חנינה אומר. לא תענה על-דבר. רב כתיב. שלא תענה קודם לרב אלא אחר הרב. רב אומר. לא תענה. אפילו אחר מאה. דברי רבי פינחס.

**Halakhah 8:** “In cases of money matters, purity, and impurity,” etc. Rabbi says, *do not argue about a quarrel*<sup>64</sup>. It is written *against the greatest*<sup>65</sup>, that one does not argue after the greatest, only prior to the greatest. Rabbi Yose ben Hanina said, *do not argue about a quarrel*. It is written *before the greatest*<sup>66</sup>, that one does not argue prior to the greatest, only after the greatest<sup>66</sup>. Rav said, *do not argue*, even after a hundred<sup>67</sup>, the words of Rabbi Phineas<sup>68</sup>.

64 Ex. 23:2.

65 The word is written defective. The masoretic text follows the Talmudim in this (Babli 36a). It is difficult to decide whether the pronunciation of “the greatest” was רב or רב.

66 Depending on how one understands the word על, one comes to opposite conclusions. R. Yose ben Hanina denies that there be a difference in procedures between civil and criminal cases.

67 He denies that the verse has any relevance for judicial procedures; he reads it as an injunction not to change one’s mind even in the face of a hundred opposing opinions unless one is convinced that his earlier opinion was incorrect.

68 No Tanna “R. Phineas” is known, nor any such Amora in the first generation. Either the name has to be deleted or the reference is to R. Phineas ben Ya’ir.

(22b line 35) רבי חלקיה בשם רבי סימון. איתפלגון רבי יוחנן וריש לקיש. חד אומר. דינינו כדיניהן. וחד אומר. אין דינינו כדיניהן. קמא דמר דינינו כדיניהן. ביחא. ומאן דמר אין דינינו כדיניהן. מה מקיים ולאמר יהודה. ולאמר ממוכן. ראו דברי יהודה. ראו דברי ממוכן.

Rebbi Hilqiah in the name of Rabbi Simon: Rabbi Johanan and Rabbi Simeon ben Laqish disagreed<sup>69</sup>. One said, our procedures are like their procedures, and one said, our procedures are not like their procedures<sup>70</sup>. He who said, our procedures are like their procedures, is understandable. He who said, our procedures are not like their procedures, how does he understand

*Jehudah said*<sup>71</sup>, *Memukhan said*<sup>71</sup>? They agreed with what Jehudah said, they agreed with what Memukhan said<sup>73</sup>.

69 A more complete list of names is in the parallel, *Midrash Esther ad* 1:13.

70 Whether in Gentile courts the presiding judge also votes last in criminal proceedings.

71 When the brothers discussed what to do with Joseph, Jehudah volunteered his plan not to kill Joseph (*Gen.* 37:26) even though he was the fourth of the brothers (but the oldest, Reuben, was absent.) Since this

happened before the revelation of Sinai, one has to assume that the brothers followed general Noahide rules.

72 *Esth.* 1:13. In the trial of Washti, the last named of the Persian grandees gave his opinion first.

73 Since in both cases no other opinions are recorded, we do not know in which order they spoke. Only the opinion which was agreed to in the end is mentioned.

(22b line 39) וּמִנֵּיין שְׁמִיתְחִילין בְּדִינֵי נִפְשֹׁת מִן הַצֵּד. תֵּנָא שְׁמוּאֵל הָזֶקֶן קוּמִי רַבִּי אָחָא. וְיֹאמַר דָּוִד לְאַנְשֵׁי חֲנָנִי | אִישׁ חֲרָבוֹ. וְאַחֲרֵי כֵן יֵשְׁבוּ בְּדִין עַל נָבָל. רַבִּי תִימְאָה בַר פִּפְיִס בָּשָׂם רַב הוֹשְׁעִיָּה. אֵף בְּפִסּוּל מִשְׁפָּחָה מִתְחִילין מִן הַצֵּד.

<sup>74</sup>From where that in criminal trials the voting starts from the side? Samuel the Elder stated before Rabbi Aḥa: *David told his men, each gird his sword*<sup>75</sup>, and after this<sup>76</sup>, they were sitting in judgment about Nabal.

Rebbi Thema bar Pappaias in the name of Rav Hoshia: Also when disqualifying families<sup>77</sup> one starts from the side.

74 This is quoted in Halakhah 2:3 (Note 98).

75 *IS.* 25:13.

76 When everybody had given his opinion that Nabal should be killed, David girded his sword in assent.

77 A determination that daughters of a certain family cannot be married either by

born Jews since they are descended from a bastard, or by priests since they are descended from a desecrated priest or a woman desecrated by a priest. All restrictions of criminal cases apply here, in the only cases heard by Amoraic courts in Palestine under the rules of criminal trials.

(22b line 42) הִכָּל כְּשִׁירִין לְדוּן דִּינֵי מְמוֹנוֹת. רַבִּי יְהוֹנָדָה אוֹמֵר. אֶפִּילוּ מִמְּזִירִין. רַבִּי יְהוֹנָדָה אוֹמֵר. אִין מְדַקְדְּקִין בְּיֵין נִסָּד.

“Anybody is qualified to judge money matters.” Rabbi Jehudah says, even bastards<sup>78</sup>. Rabbi Jehudah says, one does not investigate about libation wine<sup>79</sup>.

78 In the Babli, 36b, this is a statement of Rav Jehudah.

79 Wine used in a pagan libation ceremony. The statement is out of place here; it is included as one of R. Jehudah's lenient rulings.

The rules of Gentile wine are the main topic of Tractate *Avodah zarah*. Wine used in a pagan ceremony, even only an

invocation at a pagan dinner, is forbidden biblically for all usufruct. All other Gentile wine is only forbidden rabbinically. Since the wine is forbidden anyhow, R. Jehudah states that one does not have to investigate whether the rigid biblical rules apply to a given wine; one follows the rabbinic rules unless it be known that the wine is biblically forbidden.

(fol. 22a) **משנה ט:** סנהדרין היתה כחצי גורן עגולה כדי שיהיו רואין זה את זה. ושני סופרי דינין עומדין לפניו אחד מימין ואחד משמאל וכותבין דברי מזכין ודברי מחייבין. רבי יהודה אומר שלשה היו. אחד כותב דברי מחייבין ואחד כותב דברי מזכין והשלישי כותב דברי מזכין ודברי מחייבין.

**Mishnah 9:** The Synhedrion was like a semicircular threshing floor<sup>80</sup>, so that they could see one another. Two court reporters were standing before them, one to the right and one to the left, and they wrote down the arguments of those who argued for acquittal and those who argued for conviction. Rabbi Jehudah says, there were three. One wrote the arguments for conviction, one wrote the arguments for acquittal, and one wrote the arguments for acquittal and for conviction.

80 Not to mention the objectionable word "amphitheater". It is not clear whether this applies only to the original Synhedrion, the High Priest's council, or to any court empowered to try capital cases. It did apply

to the Academy of Jabneh, constituted by Rabban Johanan ben Zakkai after the destruction of Jerusalem, but probably not to any of its successor academies.

(22b line 44) **הלכה ט:** סנהדרין היתה כחצי גורן עגולה כול. כתיב לא תטה משפט אביון בריבו: בריבו אי אתה מטה. אבל אתה מטה בדינו שלשור. רבי אבהו בשם רבי יוחנן. ובלבד בדברים שבו דיני ממונות לדיני נפשות. כמה אינון. אגן תנינן. תשע. תני רבי חייה. חד-עשר. הי דינין תרתי אחרנייתא. הסרים וכל-מי שלא ראה לו בנים קשר לדון דיני ממונות ולא דיני נפשות. רבי אבהו בשם רבי יוחנן. אף פחות מכן עשרים ושלא הביא שתי שערות קשר בדיני ממונות ולא בדיני נפשות. ויושב בדינו שלשור. רבי יוסי בן חנינה אמר.

תלת עשרה. והי דינו תרתי אחרנייתא. דנין שני דיני ממונות ביום אחד ואין דנין שני דיני נפשות ביום אחד. אמר רבי אבין. אפילו נזאף ונאפך.

**Halakhah 9:** “The Synhedrion was like a semicircular threshing floor,” etc. It is written: *Do not bend your destitute’s proceeding in his trial*<sup>81</sup>. In his trial you do not bend; you may bend in the ox’s trial<sup>82</sup>. Rabbi Abbahu in the name of Rabbi Johanan: But only in those rules which are different for civil and criminal suits. How many are these? We have stated nine<sup>83</sup>; Rabbi Hiyya stated eleven. Which rules are the last two? The castrate and one who never had children<sup>84</sup> is qualified to judge civil suits but not criminal suits. Rabbi Abbahu in the name of Rabbi Johanan: Also one who is less than twenty years of age or who does not have two pubic hairs<sup>85</sup> is qualified to judge civil suits but not criminal suits. Rabbi Yose ben Hanina said thirteen. Which rules are the last two? One judges two civil suits on one day but one does not try two criminal suits on one day. Rabbi Abin said, even adulterer and adulteress<sup>86</sup>.

81 *Ex.* 23:6. The protection accorded defendants in criminal trials cannot be made dependent on the defendant’s status.

82 While the ox who killed a human is on trial for its life, the rules are those of civil suits since the ox represents its owner’s money.

83 In Mishnaïot 1-7. The Babli, 36b, points out that there is another difference stated in Mishnah 8, but the exclusion of bastards is implicit already in the choice of 23 judges since these judges must in theory be qualified to serve in Moses’s council.

84 The Babli, 36b, also excludes men too

old to remember the trouble they had in raising their children, who also would be inclined to cruelty.

85 Although he is past age 20 he still is infantile; cf. *Yebamot* 10:17 Notes 221-227.

86 Where the proof of guilt of one person equally applies to the other. In the Babli, 46a, Rav Hisda restricts this to the case where the statutory punishments are different, such as adultery with a Cohen’s daughter, where the adulterer is strangled but the adulteress burned. There is no reason to transfer this statement to the Yerushalmi. Cf. Note 35.

**משנה י:** ושלש שורות של תלמידי חכמים יושבין לפניו וכל אחד ואחד מכיר את מקומו. צרכו לסמוך סומכין מן הראשונה. אחד מן השנייה בא לו לראשונה ואחד מן השלישית בא לו לשנייה. ובוררין להן עוד אחד מן הקהל ומושיבין אותו בשלישית. ולא היה יושב במקומו של ראשון אלא יושב במקום שהוא ראויו:

**Mishnah 10:** Three rows of students of the Sages<sup>87</sup> were sitting before them; each one of them knew his place<sup>88</sup>. If they needed to ordain,<sup>89</sup> they ordained one from the first row. One of the second row came to sit in the first, and one of the third came to sit in the second<sup>90</sup>. They chose a person from the general public and placed him in the third row; he did not sit in the place of the one promoted but in the place befitting him<sup>91</sup>.

87 Each criminal court was supposed to function as a law school.

88 Determined by their standing in examinations.

89 If there was a vacancy on the bench.

90 Not that he came by himself but was promoted by the court according to his standing.

91 By the result of the entrance examination.

הלכה י: שֶׁלֹּשׁ שְׁרוּת שֶׁלֹּתְלָמִיד חֲכָמִים כֹּל'. רַבִּי בָּא בֵּר יָסָא בְּשֵׁם רַבִּי יוֹחָנָן. נֶאֱמַר בָּאן עֵדָה וְנֶאֱמַר לְהֵלֵךְ עֵדָה. מִיֵּיתִי לָהּ רַב מִמֶּתְנִיתָא. מִתְנִיתָא אֶמְרָה. הָיוּ זָנְבִי לְאַרְיוֹת וְלֹא רֹאשׁ לְשׁוּעָלִים. מִתְלָא אֶמְרָה. הָיוּ רֹאשׁ לְשׁוּעָלִים וְלֹא זָנְבִי לְאַרְיוֹת. דִּתְנִינָן. צִרְכֵּי לְסִמּוּךְ סוּמְכִין מִרְאשׁוֹנָה.

**Halakhah 10:** “Three rows of students of the Sages,” etc. Rabbi Abba (bar) [Rebbi]<sup>92</sup> Yasa in the name of Rabbi Johanan: It says here *congregation*, and it says there *congregation*.

Rav brought it from a Mishnah; the Mishnah says “be a tail of lions and not a head of jackals.”<sup>93</sup> The parable says, be a head of jackals but not a tail of lions. But we have stated: “If they needed to ordain, they ordained one from the first row.”<sup>94</sup>

92 This is a quote from Halakhah 1:6, Note 338. One has to read with the text there, R. Abba, R. Yasa, rather than introduce an otherwise unknown R. Abba bar Yasa. In the opinion of the Babli, the law school had room for 3 times 23 students. It seems that the Yerushalmi agrees; therefore the derivation of the number 23 of

members of the court is hinted at by the quote of its first sentence.

93 *Avot* 4:15.

94 The Mishnah does not require that the occupant of the first seat of the first row be ordained; it could be anyone from the first row. Therefore, the last seat in the first row is better than the top seat in the second row.

מִשְׁנֵה יֵא: בְּצִד מְאִימִין עַל עֲדֵי נִפְשׁוֹת הָיוּ מְכַנְסִין אוֹתָן וּמְאִימִין עֲלֵיהֶן שְׂמָא תֵּאמְרוּ מֵאֲמֵד וּמִשְׁמוּעָה עַד מִפִּי עַד וּמִפִּי אָדָם נֶאֱמָן שְׂמֵעָתָם אוֹ שְׂמָא אֵי אֲתָם יוֹדְעִין

שְׁסוּפִינוּ לְבִדּוּק אֶתְכֶם בְּדִרְשָׁה וּבִחְקִירָה. הָיוּ יוֹדְעִין שֶׁלֹּא כְּדֵינִי מְמוֹנוֹת דֵּינִי נִפְשׁוֹת. דֵּינִי מְמוֹנוֹת אָדָם נוֹתֵן מָמוֹן וּמִתְכַּפֵּר לוֹ. דֵּינִי נִפְשׁוֹת דָּמוֹ וְדָם זִרְעִיּוֹתָיו תִּלְוִינָן בּוֹ עַד סוֹף כָּל־הַדּוֹרוֹת. שֶׁכֵּן מְצִינוּ בַּסֵּן כְּשֶׁהֵרָג אֶת אָחִיו שֶׁנֶּאֱמַר בּוֹ קוֹל דְּמֵי אָחִיךָ צֹעֲקִים אֵלַי מִן־הָאֲדָמָה: אֵינוֹ אוֹמֵר דָּם אֶחָד אֶלָּא דְּמֵי אֶחָד דָּמוֹ וְדָם זִרְעִיּוֹתָיו. דָּבָר אַחֵר דְּמֵי אֶחָד שֶׁהִיָּה דָּמוֹ מוֹשְׁלֵךְ עַל הָעֵצִים וְעַל הָאֲבָנִים.

**Mishnah 11:** How does one instill fear in witnesses in criminal cases<sup>95</sup>? One brings them in and instills fear in them. Maybe you would testify by a guess, or by a rumor, or from the mouth of a witness, or you heard it from a trustworthy source<sup>96</sup>, or maybe you do not know that we shall examine you by cross-examination and interrogation<sup>1</sup>. You should know that criminal trials are not like civil trials. In civil trials a person<sup>97</sup> pays money and is forgiven. In criminal trials, his blood and the blood of all his descendants hang in the balance, to the end of all generations. So we find when Cain slew his brother, it is said: *The sounds of your brother's bloods cry to me from the earth*<sup>98</sup>. It does not say *your brother's blood* but *your brother's bloods*, his blood and that of his descendants. Another explanation<sup>99</sup>: *Your brother's bloods*, the blood was splashed on trees and stones.

95 A criminal trial is one where the punishment is either death or flogging. Flogging is potentially life-threatening. A crime for which the punishment is a fine is tried as civil infraction under the rules of civil suits.

96 This still is hearsay evidence which is

inadmissible.

97 On whose incorrect testimony another person was found owing money.

98 Gen. 4:10; cf. *Gen. rabba* 22(21).

99 This is a possible correct interpretation of the verse, not to be used as sermon in court. Cf. *Gen. rabba* 22(22).

(22b line 58) **הַלָּכָה יֵא:** כִּי־צַד מֵאִימִין כּוֹל'. כִּי־צַד מֵאוֹמֵד. לֹא תֵאֱמַר. רֹאִינוּהוּ רוֹדֵף אַחֲרָיו וְסִיף בְּיָדוֹ. נִכְנָס לַחֲרוֹבָה אַחֲרָיו. נִכְנָסוּ אַחֲרָיו וּמִצָּאנוּהוּ הָרוּג. רֹאִינוּהוּ יוֹצֵא וְהִסִּיף מִטְּפִטְפֵּת דָּם. אָמַר רַבִּי שִׁמְעוֹן בֶּן שִׁשְׁתִּי. אָרְאָה בְּנִחְמָה אִם לֹא רֹאִיתִי רוֹדֵף אַחֵר אַחֵר נִכְנָס לַחֲרוֹבָה. נִכְנָסְתִּי אַחֲרָיו וּמִצָּאנוּהוּ הָרוּג וְזֶה יוֹצֵא וְסִיף מִנִּטְף דָּם. אָמַרְתִּי לוֹ. אָרְאָה בְּנִחְמָה שֶׁזֶה הָרוּג. אֲבָל מָה אֶעֱשֶׂה שָׂאִין דָּמָךְ מְסוּר בְּיָדִי אֶלָּא הִיֹּדֵעַ מִחֻשְׁבוֹת וְפָרַע מֵאוֹתוֹ הָאִישׁ. לֹא הִסְפִּיק לְצֹאת מִשָּׁם עַד שֶׁהִכִּישׁוּ נֶחֱשׁ וְנִמַּת.

**Halakhah 11:** “How does one instill fear,” etc. What is meant by a guess? <sup>100</sup>“Do not say, we saw him with a sword in his hand running after another person. He entered a ruined building after him; we entered after him

and found him slain. We saw him coming out and his sword was dripping blood<sup>101</sup>. Simeon ben Shetah<sup>102</sup> said: May I not see consolation<sup>103</sup> if I did not see one running after another person into a ruined building. I entered after him and found him slain while the other left with his sword dripping blood. I said to him, may I not see consolation if you did not kill him. But what can I do since your blood is not delivered into my hands. But He Who knows thoughts may collect from that person. He did not manage to leave before a snake bit him and he died.

100 Babli 37b, Tosephta 8:3.

101 A death sentence can never be pronounced on circumstantial evidence.

102 The head of the Synhedrion under his sister Queen Salome (Shalomsion).

103 I. e., may I not have part in the Future Life if . . .

(fol. 22a) **משנה יב:** לפיכך נברא האדם יחידי בעולם ללמד שקל-המאבד נפש אחת מעליו עליו כאילו איבד עולם מלא. וכל-המקיים נפש אחת מעליו עליו כאילו קיים עולם מלא. ומפני שלום הבירות, שלא יאמר אדם לחברו אבא גדול מאביך ושלא יהו המינין אומרים הרבה רשויות יש בשמים.

**Mishnah 12:** Therefore man was created single in the world to teach that for anybody who destroys a single life it is counted as if he destroyed an entire world, and for anybody who preserves a single life it is counted as if he preserved an entire world. And because of peace among men, that nobody could say to another, my father was greater than your father. And that sectarians<sup>104</sup> could not say, there are a plurality of powers in Heaven.

104 In general, מין denotes a Jewish Christian. If Jesus was identical in nature with God, he could not have been created or born. If Jesus was similar in nature to God, his creation would contradict the thesis of

unique creation of man. If Jesus was simply referring to himself as God's son in the meaning of *Deut.* 11:1, he is no power in Heaven.

(22b line 65) **הלכה יב:** לפיכך נברא האדם כול'. אדם נברא יחידי בעולם מפני המשפחות שלא יהו מתגרות זו בזו. והלא דברים קל וחומר. ומה אם בזמן שהיו בני אב אחד מתגרות זו

בְּזוֹ. אֵילּוּ הָיוּ בְּנֵי שְׁנַיִם עַל אַחַת כְּמָה וְכְמָה. דָּבָר אַחֵר. שֶׁלֹּא יִהְיוּ הַצְדִּיקִים אוֹמְרִים. אֲנִי בְּנִי צְדִיק וְאַתֶּם בְּנֵי רָשָׁעִים.

**Halakhah 12:** “Therefore man was created,” etc.<sup>105</sup> “Man was created single in the world because of the families, lest they should attack one another. Is that not argument *de minore ad majus*? Since now that they are all descendants of one father they attack one another, if they had been descendants of two not so much more? Another explanation: The just ones should not say, we are the descendants of a just man, but you are the sons of evildoers<sup>106</sup>.”

105 Babli 38a, Tosephta 8:4.

106 There is no predestination, genetic or otherwise.

(fol. 22a) **משנה יג:** וְלִהְיִיד גְּדוּלָּתוֹ שֶׁל מֶלֶךְ מַלְכֵי הַמְּלָכִים הַקְדוּשׁ בְּרוּךְ הוּא שְׁאֵדָם טוֹבֵעַ כְּמָה מִטְבָּעוֹת בְּחוֹתָם אֶחָד וְכוּלָּן דּוֹמִין זֶה לָזֶה. וּמֶלֶךְ מַלְכֵי הַמְּלָכִים הַקְדוּשׁ בְּרוּךְ הוּא טוֹבֵעַ כָּל-אֶדָם בְּחוֹתָמוֹ שֶׁל אֶדָם הָרִאשׁוֹן וְאֵין אֶחָד דּוֹמֶה לַחֲבֵרוֹ. לְכִיכָּךְ כָּל-אֶחָד וְאֶחָד חַיִּיב לוֹמַר בְּשִׁבְלִי נִבְרָא הָעוֹלָם.

**Mishnah 13:** And to proclaim the greatness of the King over kings of kings, the Holy One, praise to Him. For a man coins many coins with one die; they are one like the other. But the King over kings of kings, the Holy One, praise to Him, stamps every man with the stamp of the first man, but no one is like any other. Therefore, everybody is required to say, the world was created for me.

(22b line 70) **הלכה יג:** וְלִהְיִיד גְּדוּלָּתוֹ שֶׁל מֶלֶךְ מַלְכֵי הַמְּלָכִים הַקְדוּשׁ בְּרוּךְ הוּא כּוּל'. לִהְיִיד גְּדוּלַּת מֶלֶךְ מַלְכֵי הַמְּלָכִים שֶׁמְחוֹתָם אֶחָד טוֹבֵעַ כָּל-הַחוֹתָמוֹת וְאֵין אֶחָד מֵהֶן דּוֹמֶה לַחֲבֵרוֹ. שְׁנֵאֲמַר תִּתְּהֵפֹךְ כְּחוֹמֶר חוֹתָם. וּמִפְּנֵי מָה שֵׁינָה פְּרָצוּפִיהֶן. שֶׁלֹּא יִהְיֶה אֶדָם קוֹפֵץ וְהוֹלֵךְ לֵאשֹׁת הַחֵבִירוֹ אוֹ לְשֹׁדֵה הַחֵבִירוֹ. תֵּנִי בִשֶׁם רַבִּי מֵאִיר. שֶׁלֹּשָׁה דְּבָרִים שֵׁינָה הַקְדוּשׁ בְּרוּךְ הוּא בְּבְנֵי אֶדָם. מִרְאָה פָּנִים וְדַעַת וְקוֹל. מִרְאָה וְדַעַת מִפְּנֵי הַגּוֹלְגִינִי. וְקוֹל מִפְּנֵי הָעֵרֹוּה. אָמַר רַבִּי יִצְחָק. אֵפִילוּ תִּינָתֵא אוֹ חִסְתָּא לֹא דְמֵינָא לַחֲבֵירֶתָהּ. אֶדָם נִבְרָא בְּעֶרֶב שָׁבֵת כְּדִי שְׂיִכְנֹס תַּחֲלִילָה לְמַצּוּהָ. דָּבָר אַחֵר. לָמָּה נִבְרָא בְּאַחֲרֹנָהּ. מִשָּׁל לְמֶלֶךְ שֶׁעָשָׂה סְעוּדָה. כְּשִׁמְתִּיקוֹן הַסְעוּדָה מִזְמִין הָאוֹרְחִין. כִּד חֲכָמוֹת בְּנֵתָה בֵּיתָה. זֶה הַקְדוּשׁ בְּרוּךְ הוּא שֶׁבָּנָה אֶת הָעוֹלָם בְּחִכְמָה. שְׁנֵאֲמַר יי



בְּחִכְמָה יִסַּד-אֶרֶץ וגו'. חֲצִבָּה עֲמוּדֶיהָ שְׂבָעָה. אֵילֵי שְׂבָעַת יָמֵי בְּרֵאשִׁית. טִבְחָה טִבְחָה מִסְכָּה  
יִנָּה. אֵילֵי יָמִים וְנִהְרֹת וְכָל-צֹרֵכֵי הָעוֹלָם. מִי־פָתִי יִסַּר הִנֵּה. זֶה אָדָם וְחַיָּה.

**Halakhah 13:** “And to proclaim the greatness of the King over kings of kings, the Holy One, praise to Him,” etc.<sup>106</sup> To proclaim the greatness of the King over kings of kings Who from one die coins all seals and no one is like the other, as it is said: *The seal turns around like clay*<sup>107</sup>. Why did He change their looks<sup>108</sup>? That no man should jump and go to another’s wife or another’s field. It was stated in the name of Rabbi Meir: Three things did the Holy One, praise to Him, diversify in humans: looks of the face, understanding, and voice. Looks and understanding because of the robbers, voice because of forbidden women. Rabbi Isaac said, even a fig tree or a wheat plant is not identical to any other. Man was created Sabbath Eve so from the start he should enter with a commandment<sup>109</sup>. Another explanation: Why was he created last? A parable of a king who made a banquet. After he had ordered the meal, he invited the guests.<sup>110</sup> So *wisdom built her house*, that is the Holy One, praise to Him, Who created the world in wisdom, as it is said, *the Eternal in wisdom based the earth*<sup>111</sup>, etc. *She quarried its seven pillars*, these are the seven days of creation. *She slaughtered her slaughtering, mixed her wine*, these are seas and rivers and all the needs of the world. *Any silly one shall come here*, that is Adam and Eve.

106 Babli 38a, Tosephta 8:5,6,9.

109 To celebrate the Sabbath.

107 Job 38:15; cf. Kilaim 9:4 Note 78.

110 Prov. 9:1,2,4.

108 Greek πρόσωπος.

111 Prov. 3:19.

**משנה יד:** וְשָׂמָא תֹאמְרוּ מָה לָנוּ וְלַצָּרָה הַזֹּאת וְהֵלֵא כְּבֵר נֹאמֵר וְהוּא לֵד אִו רָאָה אִו  
נִדָּע וגו'. שָׂמָא תֹאמְרוּ מָה לָנוּ לְחֹיִב בְּדָמוֹ שֶׁל זֶה וְהֵלֵא כְּבֵר נֹאמֵר וּבִבְאֻד רְשָׁעִים רָנָה:

**Mishnah 14:** Maybe you will say, why should we go to all this trouble? There already is written: *If he is a witness, or saw, or knew*<sup>112</sup>, etc. Maybe you will say, why should we be guilty of this man’s blood? There already is written: *In destruction of evildoers is clamor*<sup>113</sup>.

112 Lev. 5:1. As usual, the implication is *sin*.  
 from the part of the verse which is not 113 Prov. 11:10.  
 quoted: *If he do not tell, he has to bear his*

הָרִינָה (22c line 8) **הַלְכָה יִד:** שָׁמָּה תֹאמְרוּ מָה לָנוּ וְלָצָרָה כֹּל. כְּתִיב וַיַּעֲבֹר הָרִינָה בְּמַחְנֶה. מִהוּ  
 הָרִינָה. הִירִינִי. וְכֵן הוּא אוֹמֵר בְּצֵאתָ לִפְנֵי הַחַיִּיץ וְגו'. לְלַמֶּדֶךָ שְׂאֵף מִפֶּלֶת הַרְשָׁעִים אֵינָה  
 שְׂמִיחָה לִפְנֵי הַמָּקוֹם.

**Halakhah 14:** “Maybe you will say, why should we go to all this trouble,” etc. It is written: *The clamor erupted in the camp*<sup>114</sup>. What is “the clamor”? Quiet<sup>115</sup>. And so it says, *when they went in front of the armed forces*<sup>116</sup>, to teach that even the downfall of the evildoers is no joy before the Omnipresent.

114 1K. 22:36.

115 According to N. Brüll, *Jahrbuch für jüdische Geschichte und Literatur* 1, p. 134, this is Greek εἰρήνη “peace, quiet”. Cf. also *Pesiqta dR. Cahana* 20 (ed. S. Buber p. 141a Note 10, as explanation of the verbal form רָנִי Is. 54:1). The death of the evil king Ahab (v. 35) brought quiet to everybody.

116 2Chr. 20:21. The argument is from the part of the verse which is not quoted. When the Levites went before the army against the Moabites and Edomites, they sang: *give praise to the Eternal, for His Grace is forever*, intentionally changing the traditional text (*Ps.* 118:1,136:1), *give praise to the Eternal for He is good, for His Grace is forever*.

## היו בודקין פרק חמישי

**משנה א:** היו בודקין אותו בשבע הקירות באי זו שבוע באי זו שנה באי זה חודש בכמה בחודש באי זה יום באי זו שעה באי זה מקום. רבי יוסי אומר באי זה יום באי זו שעה באי זה מקום מפירין אתם אותו והתיריתם בו. העוֹבֵד עֲבֹדָה זָרָה אֶת מָה עֹבֵד וּבִמָּה עֹבֵד:

<sup>0</sup>**Mishnah 1:** They were investigating him in seven ways<sup>1</sup>: In which Sabbatical period, in which year<sup>2</sup>, in which month, which day of the month, which day, which hour, at which place<sup>3</sup>? Rabbi Yose said, which day, which hour, which place<sup>4</sup>, do you recognize him, and did you warn him<sup>5</sup>? If one worshipped idols, what did he worship and how did he worship<sup>6</sup>?

0 For this Chapter and the next, there exists a Genizah text, published by M. Assis in *Tarbiz* 47 (1977) 29-90, 321-329, compared to the Leiden text. Additions from this text will be denoted G.

1 The number seven may be taken from Roman law, formulated in Quintilian's hexameter which enumerates the questions to be answered in a trial: *Quis, quid, ubi, quibus auxiliis, cur, quomodo, quando?* "Who? What? Where? By means of what? For what purpose? How? When?" But questions 4,5,6 are reserved for cross-examination, not investigation (cf. Chapter 4, Note 1) (E. G.).

2 In the Sabbatical period. It is clear from this Mishnah that for capital crimes there is no statute of limitations.

3 The Mishnah is a direct continuation of the preceding Chapter. Testimony is acceptable in court only if given under the possible penalties of perjury. But the only

way the biblical penalties can be imposed is that the witnesses are proven not to have been at the indicated place of the crime at the time indicated. Therefore, exact determination of time and place are prerequisites to the trial.

4 He has only three questions before the actual crime is investigated.

5 A conviction in biblical law is possible only if criminal intent is proven. This is provable only by two witnesses who testify that they saw the defendant intent on committing a crime and informed him that his intended action was prohibited and that he exposed himself to such and such penalties.

6 Actions which imitate worship of Heaven or are specific for a certain deity are capital crimes; any other actions are punishable only by whipping or not at all (Mishnah 7:12).

22c line 55) **הלכה א:** **היו בודקין אותו בשבע חקירות כול'.** ולא תנינן. באי זה יובל. שאין הדבר מצוי. אשכח תני. רבי שמעון בן יוחי אומר. אף באי זה יובל. וקיימונה בהוא דעאל ובהוא דנפק.

**Halakhah 1:** “They were investigating him in seven ways,” etc. But we did not state, in which Jubilee period? For that is not current<sup>7</sup>. It was found stated: Rabbi Simeon ben Iohai says, also in which Jubilee period<sup>8</sup>? We confirmed that in a year which started or concluded [a Jubilee period]<sup>9</sup>.

7 Since the Jubilee was not observed during Second Temple times (cf. *Ševi'it* 1:1 Note 7, *Qiddušin* 1:2 Notes 190-191) except possibly for the determination of Sabbatical periods, one cannot assume that the witnesses were able to determine the year by its position in a Jubilee period.

8 Cf. Babli 40b.

9 At least during the existence of the Temple, close to the beginning or the end of

a Jubilee period everybody can be assumed to be alerted to the change in computation of Sabbatical periods induced by the (not observed) Jubilee. Everybody agrees that after the destruction of the Temple, the determination of the Jubilee period was meaningless. Therefore, the Mishnaïot dealing with procedures in criminal trials are attempts of reconstruction of Hasmonean or even earlier procedures.

22c line 57) מניין לשבע חקירות. תנא שמואל תזקן קומי רבי אחא. ודרשת וחקרת ושאלת היטב והנה אמת נכון. אמר ליה. לא תהא קרא ואזיל אלא ודרשת וחקרת ושאלת היטב והוגד לך ושמעת ושאלת היטב. היטב היטב לגזירה שנה. ליתן [ל] כל-אחת ואחת שמועה שאלה דרישה וחקירה. רבי יצחק מקשי לה. הוון תפיסין בחד ליסטיס דטיבריא אמרין. קדון קטול קדון קטל. ומניין לזה שבע חקירות. איסי אומר. כל-זמן שאילו העדים יכולין להזדמם על אותו העדות אין ההורג נהרג.

From where the seven investigations? Samuel the Elder stated before Rabbi Aha: *You shall inquire, investigate, ask in depth, and behold, the matter is well founded*<sup>10</sup>. He told him, this verse does not work<sup>11</sup>; but: *you shall inquire, investigate, ask in depth; it will be told to you, you shall listen, ask in depth*<sup>12</sup>. In depth, in depth for an equal cut, to require in each case listening, asking, inquiry, and investigation<sup>13</sup>. Rabbi Isaac asked about this: If they caught an armed robber in Tiberias and said, this is the murderer, this is the murdered; why does this need seven investigations<sup>14</sup>? Issi said, any time that the witnesses could not be proven perjured, the murderer cannot be executed on that testimony<sup>15</sup>.

10 *Deut.* 13:15. The judicial inquiry is described by seven words.

11 At least another word has to be added to reach the next dividing accent; stopping at נכון is unjustified. On the other hand, the two words דרשת היטב represent a single notion.

12 *Deut.* 17:4.

13 Both verses 13:15 and 17:4 mention five notions each of inquiry; eliminating the words appearing twice one is left with seven

different words. Babli 40a, *Sifry Deut.* 93.

14 Is the situation not obvious?

15 Since perjured witnesses in a capital case can be executed if it was shown that they could not have seen the act since at the pretended time they were at another place, a criminal trial can proceed only if the witnesses can be made to testify about the exact time and place where the observed criminal act took place.

22c line 65) מכירין אתם אותו. מה היה. גוי היה או ישראל היה. נישמענה מהדא דמר רבי יוחנן. נהרג מטיבירא לצפורי חזקה שישאל היה.

“Do you recognize him?” Who was he, a Gentile<sup>16</sup> or an Israel? Let us hear from what Rabbi Johanan said: If he was slain between Tiberias and Sepphoris, it is *prima facie* evidence that he was an Israel<sup>17</sup>.

16 Then it would be a case for the king's court, not the Sanhedrin.

17 In order to remove the case to a police court, the defendant would have to prove

that the slain person was a Gentile. As a practical matter, an unknown corpse found on the road between Tiberias and Sepphoris is a *corpse of obligation* (*Nazir* 7:1).

22c line 67) התריתם בו. מניין להתרייה. רבי שמואל בר נחמן בשם רבי יונתן. ואיש אשר יקח את אחותו. תסד הוא. אמר רבי בון. קנן נשה אחותו. הבל נשה אחותו. תסד עשיתי עם הראשונים שייבנה עולם מהן. כי-אמרת עולם תסד יבנה.

תני. רבי שמעון בן יוחי אומר. על-פי | שנים עדים יומת המות. [וכי] המות מת. אלא להודיעו באי זה מיתה מת. תני. רבי יודה בירבי אלעאי אומר. וכי-גזז איש על-דעהו להורגו בערמה. שיערימוהו באי זה מיתה מת.

היתה מיתתו בחמורה והתרו בו בקלה. יכול מימר. אילו הנה ידע שפיתתו בחמורה לא הנה עבד הדא מילתא. היה מיתתו בקלה והתרוהו בו בחמורה. על דעתיה דרבי יודן בירבי אלעאי שיערימוהו באי זה מיתה מת.

היו מתרין בו ושותק. מתרין בו ומרכין בראשו. אף על פי שאומר יודע אני. פטור. עד שיאמר. על מנת כן אני עושה. ראוהו שופך דם. אמרו לו. הוי יודע שכן ברית הוא והתורה אמרה שפך דם האדם באדם דמו ישפך. אף על פי שאמר. יודע אני. פטור עד שיאמר. על

מִנֶּת כֵּן אֲנִי עוֹשָׂה. רְאוּהוּ מְחַלֵּל שָׁבֵת. אָמְרוּ לוֹ. הֲנִי יוֹדֵעַ שֶׁהוּא שָׁבֵת וְהַתּוֹרָה אָמְרָה מְחַלְלֶיהָ מוֹת יוֹמָת. אַף עַל פִּי שֶׁאָמַר. יוֹדֵעַ אֲנִי. פְּטוּר. עַד שֶׁיֹּאמַר. עַל מִנֶּת כֵּן אֲנִי עוֹשָׂה.

“Did you warn him?” From where warning? Rabbi Samuel bar Nahman in the name of Rabbi Jonathan: <sup>18</sup>*A man who would take his sister . . . , it is hesed. Rabbi Bun said, 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 to be built on hesed*<sup>19</sup>.

It was stated: Rabbi Simeon ben Iohai said, *by the mouth of two witnesses shall the dead die*<sup>20</sup>. Does he die when dead? But to tell him by which kind of death he will be executed.

It was stated: Rabbi Jehudah ben Rabbi Illai said, *and if a man intentionally kill his neighbor knowingly*<sup>21</sup>; they shall inform him by which kind of death he will be executed.

If his death should have been a severe one<sup>22</sup> but they warned him about an easy one. He could say that had he known that his death was to be severe, he would not have committed that crime. If his death should have been an easy one but they warned him about a severe one; in the opinion of Rabbi Jehudah ben Rabbi Illai they have to inform him by which kind of death he will be executed<sup>23</sup>.

“If they warned him and he remained silent, they warned him and he nodded his head, even if he said, I know, he cannot be prosecuted unless he say: for that purpose I am doing it.<sup>24</sup>” “If they saw him spilling blood; they told him, know that he is a son of the Covenant<sup>25</sup> and the Torah said, *he who spills a man’s blood, by man his blood shall be spilled*<sup>26</sup>, even if he said, I know, he cannot be prosecuted unless he say: for that purpose I am doing it<sup>27</sup>.” “If they saw him desecrating the Sabbath; they told him, know that today is Sabbath and the Torah said, *its desecrators shall be put to death*<sup>28</sup>, even if he said, I know, he cannot be prosecuted unless he say: for that purpose I am doing it<sup>29</sup>.”

18 Lev. 20:17. In a slightly different setting, this paragraph also is in *Yebamot* 11:1, Notes 25-26. Incest with one’s sister is criminal (although by the earthly court

only punishable by flogging) while it was permitted to earlier generations. Therefore, it cannot be assumed that everybody knows it to be prohibited. People found engaged in

incestuous acts cannot be prosecuted unless before the act informed of its criminality.

19 Ps. 89:3.

20 Deut. 17:6. In the Babli, this is an Amoraic argument. The verse is read as: *by the mouth of two witnesses shall the dead kill himself*, i. e., in the presence of two witnesses he accepts to be killed.

21 Ex. 21:14, Babli 41a. Babli and *Mekhilot* read the verse as freeing the mentally disabled from prosecution.

22 Mishnah 7:1, Note 1.

23 R. Jehudah finds the warning deficient, preventing the imposition of a death

sentence. By contrast, in the Babli, 80b, it is stated as commonly accepted that a warning about a painful death implies the same of an easy one.

24 Tosephta 11:2. Cf. also Note 20.

25 A Jew.

26 Gen. 9:6. The quote seems to be slightly out of place since it is directed at Gentile criminal courts which are not under the severe restrictions imposed at Torah courts.

27 Tosephta 11:4.

28 Ex. 31:14.

29 Tosephta 11:3.

רבי חייה בר גמדה שאל. מקושש משום מה מייחב. משום תולש או משום קוצר. נישמעניה מהדא. ויהי בגי' ישראל במדבר וימצאו. מלמד שמצאוהו תולש עצים מן השקסע.

רבי חייה בר גמדה שאל. מקושש במה היא מיתתו. בסקילה. נישמעניה מהדא. יודעין היי שמקושש חייב מיתה ולא היו יודעין במה היתה מיתתו. אשכח תנא רבי חייה. הוציא את המקלל מחוץ למחנה. במה היתה מיתתו. בסקילה.

Rebbi Hiyya bar Gamda asked<sup>30</sup>: What was the gatherer's guilt? Because of tearing off or because of reaping<sup>31</sup>? Let us hear from the following: *The Children of Israel were in the desert when they found . . .* This teaches that he was tearing wood off the ground<sup>32</sup>.

Rebbi Hiyya bar Gamda asked: How was the gatherer put to death<sup>33</sup>? By stoning. Let us hear from the following<sup>34</sup>: "They knew that the gatherer should be executed but they did not know how he should be put to death." It was found that Rebbi Hiyya stated: *Take the blasphemer outside the camp*<sup>35</sup>. How was he put to death? By stoning.

30 His question is about the degree of specificity required in the warning delivered to a person ready to commit a crime punishable by death. Is it sufficient to deliver a general warning as described in the preceding paragraph (Note 27) or does one

have to specify the exact paragraph of the law being violated? In the case of the Sabbath, is it enough to warn a person not to do any work or does he have to be warned about which of the 39 prohibited types of work he is going to perform? The biblical

evidence about the gatherer (*Num.* 15:32-36) shows that the Tosephta was correct in requiring only a general warning.

31 In the list of the forbidden categories of work (Mishnah *Šabbat* 7:2-4) only reaping is mentioned, which means cutting off the produce from its root. All forms of harvesting are forbidden as derivatives of reaping. The question remains whether a warning about tearing off from the ground would also cover reaping; a warning about reaping certainly covers all forms of harvesting.

32 *Sifry Num.* 113.

33 According to R. Jehudah, he could not

be put to death if the specific way of execution was not known even though the fact that violating the Sabbath was known to be a capital crime.

34 *Sifra Emor Parashah* 14(5).

35 *Lev.* 24:14. This proves that from the pentateuchal stories nothing can be inferred for the rules of procedure required at later times. While it was known that a Sabbath infraction was punishable by death (Note 28), nothing was known about the penalty for blasphemy. Therefore, the first time these crimes occurred after the epiphany on Sinai, the law was only being formed; it was not yet consolidated (Babli 78b).

אֶת מָה עָבַד. לַפְעוֹר אוֹ לַמֶּרְקוּלִיס. בְּמָה עָבְדָהּ. בְּעַבְדוּתָהּ עָבְדָהּ אוֹ בְּעַבְדוּת גְּבוּהָ. נִישְׁמָעִינָהּ מִהֶדָּא. מַעֲשֵׂה שְׂבָאוֹ שְׁנַיִם וְאַמָּרֵי. רָאִינוּ זֶה עוֹבֵד עַבְדָּה זָרָה וְאֵין אָנוּ יוֹדְעִין פְּעוֹר הָיָה אוֹ מֶרְקוּלִיס הָיָה. דִּנְיָן אוֹתוֹ בְּשִׁתְיָהּ וּבְאֵי זֶה מִזְדָּכָה פּוֹטְרִין אוֹתוֹ.

“What did he worship?” *Peor* or Mercury<sup>36</sup>? “And how did he worship?” In its proper worship or the worship of Heaven<sup>37</sup>? Let us hear from the following: It happened that two [witnesses] came and said, we saw that this one was worshipping idols, but we do not know whether it was *Peor* or Mercury<sup>38</sup>. One judges him for both and for the one in which he was found innocent one lets him go<sup>39</sup>.

36 As explained in Mishnah 7:12, the worship of *Ba'al Pe'or* was by defecating in front of his statue; the worship of *Mercurius*, the Greek *Hermes*, was by throwing an additional stone on the heap surrounding the *Hermes*, the pillar representing the divinity. Both forms of worship would be an insult if performed for any other idol and, therefore, not punishable.

37 Any imitation of Temple worship for an idol is a capital crime. Any other sort of worship is punishable only if ordinarily it was performed for that idol.

38 Clearly, this is inadmissible testimony.

39 Since the accused must be found innocent of one of two mutually exclusive allegations, one may accept the witnesses by basing a trial on their testimony even if a not-guilty verdict is a foregone conclusion.



(fol. 22c) **משנה ב:** כל המרבה בבדיקות הרי זה משובח. מעשה ודק בן זכאי בעוקצי תאנים. ומה בין חקירות לבדיקות. אלא שבחקירות אחד אומר איני יודע עדותו בטילה. בבדיקות אומר אחד איני יודע ואפלו שנים אומרים אין אנו יודעין עדותו קיימת. אחד חקירות ואחד בבדיקות בזמן שהן מכחישין זה את זה עדותו בטילה:

**Mishnah 2:** Anybody who adds inquiries<sup>40</sup> is praiseworthy. It happened that Ben Zakkai<sup>41</sup> cross-examined about fig stalks. What is the difference between investigations and cross-examinations? In investigations, if one said “I do not know”, their testimony is worthless<sup>42</sup>. In cross-examinations, if one said “I do not know”, or even two say “we do not know,” their testimony remains valid<sup>43</sup>. Both in investigations and cross-examinations, if they contradict one another their testimony is worthless<sup>44</sup>.

40 About the details of the crime which are investigated after time and place have been established.

41 According to the Babli, 41a/b, it is possible that he is Rabban Johanan ben Zakkai. During the time that capital jurisdiction was still in the hands of a Jewish court, not yet in that of the Roman governor, he was not yet the head of the Synhedrion and, therefore, had no title.

42 As testimony which cannot be shown to be perjured.

43 The credibility of the witnesses may be impaired. This is a matter to be decided by the judges, not an absolute obstacle.

44 A conviction requires testimony by two witnesses. If there are conflicting testimonies and the judges believe one of them, no conviction could result since it would be based on the word of one witness alone.

(22d line 18) **הלכה ב:** כל המרבה בבדיקות כול. במה לקטן. בעוקציהן לקטן. במה אכלו. בגלעיניהן.

**Halakhah 2:** “Anybody who adds inquiries,” etc. How did he pluck them<sup>45</sup>? He plucked them with their stalks. How did he eat them? With their pits<sup>46</sup>.

45 An example of Ben Zakkai’s inquiry; cf. Babli 41a.

46 Referring to olives.

(22d line 19) תמן תנינן. מי שהיו שתי כתי גדים מעידין. אילו מעידין שני שיתים ואילו מעידין שני חמש. בית שמאי אומרים. נחלקה עדותן. אין כאן נזירות. ובית הלל אומרים. יש בכלל חמש שיתים. ויהא נזיר שיתים: רב אומר. בכלל נחלקו. אבל בפרט כל-עמא מודי

נחלקה העדות. ורבי יוחנן אומר. במונה נחלקו. אבל בכולל כל-עמא מודו שיש בכלל חמש שתיים. הידינו כולל והידינו מונה. כולל. אהן אומר תרתי ואהן אומר חמש. מונה. אהן אומר תדא תרתי. ואהן אומר תלת ארבעי.

<sup>47</sup>There, we have stated: “If two groups of witnesses were testifying against a person, one group say that he vowed *nazir* twice, the others say that he vowed *nazir* five times. The House of Shammai say, the testimony is split and there is no *nezirut* there. But the House of Hillel say, five contains two; he should be a *nazir* twice.” Rav said, they differ in the overall testimony. But in detail, everybody agrees that the testimony is split. Rabbi Johanan said, they differ in counting. But in an overall testimony, everybody agrees that five contains two. What is overall and what is counting? Overall, this one says two, the other one says five. Counting, this one says one, two, the other one says three, four.

47 Parallel texts to this and the following paragraphs are in *Yebamot* 15:5

(Notes 115-134) and *Nazir* 3:7 (Notes 110-112).

(22d line 26) רב אומר. הכחיש עדות בתוך עדות לא בטלה העדות. ורבי יוחנן אומר. הכחיש עדות בתוך עדות בטלה העדות. דברי הכל הכחיש עדות לאחר עדות לא בטלה העדות. חיליה דרבי יוחנן מהדא. דמר רבי בא בר חייה בשם רבי יוחנן. הויחזק המונה. זה אומר. מן הכיס מנה. וזה אומר. מן הצרור מנה. הכחיש עדות בתוך עדות אוף רב מודה שבטלה העדות. מה פליגי. בשחיו שתי כיתי עדים. אחת אומרת. מן הכיס מנה. ואחת אומרת. מצרור מנה. הכחיש עדות בתוך עדות בטלה עדות. וקרב לא בטלה עדות. אחת אומרת. לתוך חיקו מנה. ואחת אומרת. לתוך פונדו מנה. דברי הכל הכחיש עדות בתוך עדות לא בטלה העדות. אחד אומר. בסייף הרגו. ואחד אומר. במסל הרגו. הכחיש עדות בתוך עדות אוף רב מודה שבטלה העדות. מה פליגי. בשחיו שתי כיתי עדים. אחת אומרת. בסייף. ואחת אומרת. במסל. הכחיש עדות בתוך עדות בטלה עדות. וקרב לא בטלה עדות. אחת אומרת. לצפון נטה. ואחת אומרת. לדרום פנה. דברי הכל הכחיש עדות לאחר עדות לא בטלה העדות. חיליה דרב מהדא דתינן תמן. רבי יודן ורבי שמעון אומרי. הואיל וזו וזו מודות שאינו קיים ונשא. ולא שמיע דמר רבי לעזר. מודה רבי יהודה ורבי שמעון בעדים. מה בין עדים ומה בין צרה. לא עשו דברי צרה בחבירתה כלום. אמר רבי יוחנן. אין אמרה רבי לעזר מיני שמעה ואמרה. מתניתא פליגא על רב. אחד חקירות ואחד בדיקות בזמן שהן מכחישין זה את זה עדותן בטילה. מה עבד לה רב. אמר רבי מנא. פתר לה רב עד בעד. אמר רבי אבין. אפילו יפתר פת בכת שמיא היא לדיני נפשות. דכתיב צדק צדק תרדוף.

Rav said, if testimony was contradictory in its essence, the testimony is not void. Rabbi Johanan said, if testimony is contradictory in itself, the testimony is void. In the opinion of everybody, if testimony was contradictory in aspects that belong after the fact, the testimony is not void. The strength of Rabbi Johanan is consistent with what Rabbi Abba bar<sup>48</sup> Hiyya said in the name of Rabbi Johanan, if it was agreed that he counted but one [witness] said, he counted from a wallet, and the other said, he counted from a bundle, that contradicts the essence of the testimony, and Rav will agree that the testimony be void. Where do they disagree? If there were two groups of witnesses, one says he counted from a wallet and the other says he counted from a bundle. That contradicts the essence of the testimony: the testimony is void, but according to Rav, the testimony is not void. One said, he counted into his bosom, but the other said, he counted into his money-belt: everybody agrees that this contradicts the essence of the testimony but the testimony is not void. If one [witness] said, he killed him with a sword, the other [witness] said, he killed him with a mace, that contradicts the essence of the testimony; Rav will agree that the testimony be void. Where do they disagree? If there were two groups of witnesses, one says he killed him with a sword and the other says, he killed him with a mace. That contradicts the essence of the testimony, the testimony is void, but according to Rav, the testimony is not void. One says, he turned to the North and one says, he ran away to the South, everybody agrees that the testimony was contradictory in aspects that belong after the fact, and the testimony is not void. The strength of Rav comes from what we have stated there: "Rabbi Jehudah and Rabbi Simeon say, since both agree that he is not alive they can be remarried." He did not hear that Rabbi Eleazar said, Rabbi Jehudah and Rabbi Simeon concede in the case of witnesses. What is the difference between witnesses and the co-wife? They do not consider the co-wife's words compared to those of her companion. Rabbi Johanan said, if Rabbi Eleazar said this, he said it because he had heard it from me. The Mishnah disagrees with Rav: "Both in investigations and cross-examinations, if they contradict one another their testimony is worthless." What does Rav do with this? Rabbi Mana said, Rav will explain it as referring to single witness against single witness. Rabbi

Abun said, even if you say groups and groups. There is a difference in criminal cases, as it is written: *Justice, justice you shall pursue.*

48 Read with the parallel sources: R. Abba, R. Hiyya.

**משנה ג:** אָחד אומר בשנים בחדש ואחד אומר בשלשה בחדש עדותן קימת שזה יודע בעבורו של חדש וזה לא ידע. אחד אומר בשלשה ואחד אומר בהמשה עדותן בטילה. אחד אומר בשתי שעות ואחד אומר בשלש שעות עדותן קימת. אחד אומר בשלש ואחד אומר בהמש עדותן בטילה. רבי יהודה אומר קיימת. אחד אומר בהמש ואחד אומר בשבע עדותן בטילה שבחמש חמה במזרח ובשבע במערב:

**Mishnah 3:** One says, on the second of the month, but the other says, on the third of the month<sup>49</sup>, their testimony may be valid, since one knew about the addition to the month but the other did not know<sup>50</sup>. One says on the third, the other says on the fifth, their testimony is invalid<sup>51</sup>. One says, at two hours<sup>52</sup> but the other said at three hours, their testimony is valid<sup>53</sup>. One says at three but the other says at five, their testimony is invalid; Rabbi Jehudah says it is valid. One says at five but the other says at seven, their testimony is invalid since at five hours the sun is in the East but at seven in the West<sup>54</sup>.

49 In the investigation of the date on which the alleged crime was committed.

50 In the absence of a published calendar, one cannot assume that everybody knew when a thirtieth day was added to a month. In the published calendar used today, only the eighth and ninth months are variable but the Mishnaic calendar (Babli *Arakhin* 8b-10a) admitted up to four variable months. It is up to the court to determine whether the witnesses intended to testify about one and the same day.

51 Two days' difference cannot be explained away.

52 The time between sunrise and sunset is divided into 12 hours. At all calendar dates, 6 hours is about noontime. At the equinoxes, 2 hours is 8 am, 3 hours 9 am, 5 hours 11 am, 7 hours 1 pm.

53 From people who have no watches.

54 The last statement is needed only for R. Jehudah. R. Jehudah does not accept testimony that differs by two hours in all cases; he notes that daylight between 9 am and 11 am is not very different; but the shadows are quite different between am and pm hours.

(22d line 49) **הלכה ג:** אחד אומר בשנים בחדש כול. עד היום. רבי יסא בשם רבי יוחנן. עד רוב החדש. אומר רבי יוחנן. כגון העירונין הללו. וחכמים אומרים. אינן כלום. ואמר רבי יסא. כגון אגא דמן יומי לא צלית מוספא דלא ידע אימת ירחא.

**Halakhah 3:** “One says, on the second of the month,” etc. Until when<sup>55</sup>? Rabbi Yasa in the name of Rabbi Johanan: Up to the greater part of the month<sup>56</sup>. Rabbi Yose said, e. g., those village dwellers<sup>57</sup>. But the Sages say, it is nothing<sup>58</sup>, and Rabbi Yasa said, for example I, who never in my life prayed *musaf*<sup>59</sup>, since I do not know when the month starts<sup>60</sup>.

55 May one assume that people do not know which day of the month a given day is.

56 After the 16<sup>th</sup>, everybody knows how the month was determined.

57 They have a need to know the day of the week, but not of the month.

58 It is unclear whether the Sages object to the Mishnah or to R. Johanan's statement.

From R. Yasa it seems that they object to R. Johanan.

59 The additional prayer which distinguishes the morning service of the New Moon from the weekday services.

60 He and his colleague Immi (Ammi) never were part of the Academy of Tiberias; it seems that they never were invited to the meetings at which the calendar was determined. This was his way of protesting.

(22d line 52) רבי מאיר אומר. משש שעות ולמעלה מדבריהן. רבי יודה אומר. משש שעות ולמעלה מדברי תורה. מאי טעמא דרבי מאיר. אף ביום הראשון. זה המשה עשר. יכול משתחשף. תלמוד לומר אף חלק. הא כיצד. תן לו שעה אחת קודם שקיעת החמה. מאי טעמא דרבי יהודה. אף ביום הראשון. זה ארבעה עשר. יכול כל-היום. תלמוד לומר אף חלק. חציו לחמץ וחציו למצה. מחלקת שיטת רבי מאיר. תמן אומר. אף לרבות. וקא אומר. אף למעט. אמר רבי שמואל בר אבדומי. מיעטו שאינו מחמץ. רבי מאיר אומר. לא-תאכל עליו חמץ. על אכילתו. רבי יהודה אומר. לא-תאכל עליו חמץ. על עשייתו.

רבי יודן אית ליה עשה ולא תעשה על אכילתו. עשה ולא תעשה על ביעורו. עשה על אכילתו. שבעת ימים תאכל-עליו מצות. לא חמץ. כל-לא תעשה שבא מכח עשה עשה הוא. ולא תעשה על אכילתו. לא-תאכל חמץ. עשה על ביעורו. שבעת ימים תשביתו שאר מנתיכם. לא תעשה על ביעורו. שבעת ימים שאר לא ימצא בבתיכם.

הא רבי מאיר אומר. משש שעות ולמעלה מדבריהן. ששית אסורה משום גדר. חמישית למה. משום גדר. ויש גדר לגדר. אלא חמישית מתחלקה בשביעית. מחלקה שיטת רבי יהודה. תמן אומר. אין חמישית מתחלקת בשביעית. וקא אומר. חמישית מתחלקת בשביעית. אמר רבי יוסי. תמן מסור לנשים והן עצילות. הקא הדבר מסור לבית דין והן זריזין. אמר

רבי יוסי בִּירְבִי בִּן. תִּמְנָן תְּחִילַת חֲמִישִׁית סוּף שְׁבִיעִית. הִכָּא סוּף חֲמִישִׁית תְּחִילַת שְׁבִיעִית.  
וְתִנִּי כו. תְּחִילַת חֲמִשׁ בְּמִזְרַח וְסוּף שְׁבַע חֲמָה בְּמַעֲרָב. לְעוֹלָם אֵין חֲמָה נוֹטָה לְמַעֲרָב  
אֲדָא בְּסוּף שָׁנָע.

<sup>61</sup>Rebbi Meïr says, from noontime on it is from their words; Rebbi Jehudah says, from noontime on it is biblical<sup>62</sup>.

What is Rebbi Meïr's reason? *Only on the first day*<sup>63</sup>, that is the fifteenth<sup>64</sup>. I could think at nightfall; the verse says *only*, to separate<sup>65</sup>. How is this? Give it one hour before sundown<sup>66</sup>.

What is Rebbi Jehudah's reason? *Only on the first day*<sup>63</sup>, that is the fourteenth. I could think the entire day; the verse says *only*, to separate. Half for leavened matter, half for *mazzah*.

Rebbi Meïr's argument seems inverted. There, he said *only* to add; here he said *only* to diminish<sup>67</sup>. Rebbi Samuel bar Eudaimon said, he diminished, lest it be for<sup>68</sup> leavened matter.

Rebbi Meïr said, *do not eat leavened matter with it*<sup>69</sup>, while it is eaten. Rebbi Jehudah said, *do not eat leavened matter with it*, while it is prepared<sup>70</sup>.

Rebbi Jehudah has both a positive and a negative commandment concerning its eating<sup>71</sup>, a positive and a negative commandment concerning its<sup>72</sup> removal. A positive commandment concerning its eating, *seven days you shall eat unleavened bread for it*<sup>69</sup>, not leavened. Any prohibition which is implied by a positive commandment has the status of positive commandment<sup>73</sup>. A negative commandment concerning its eating, *do not eat leavened*<sup>74</sup>. A positive commandment concerning its removal, *seven days . . . you shall remove sour dough from your houses*<sup>63</sup>. A negative commandment concerning its removal, *for seven days sour dough shall not be found in your houses*<sup>75</sup>.

Now Rebbi Meïr says, after noontime it is forbidden because of their words. The <sup>76</sup>(sixth) [seventh] hour it is forbidden because of a fence. Why the (fifth) [sixth]? Because of a fence. Is there a fence around a fence? But the (fifth) [sixth] may be confounded with the seventh<sup>77</sup>.

Rebbi Jehudah's argument seems inverted. There<sup>78</sup>, he says that the fifth cannot be confounded with the seventh. But here<sup>79</sup>, he says that the fifth can be confounded with the seventh. Rebbi Yose said, there<sup>80</sup> the matter is given

over to women who are lazy, here<sup>81</sup> the matter is given over to the court who is careful. Rabbi Yose ben Rabbi Abun said, there<sup>81</sup> it is a matter between the beginning of the fifth and the end of the seventh hour. Here<sup>79</sup> it is between the end of the fifth and the start of the seventh<sup>82</sup>. It also was stated thus<sup>83</sup>: At the start of the fifth hour, the sun is in the East, and the end of the seventh the sun is in the West. The sun never starts setting before the end of the seventh hour.

61 Most of this text belongs to *Pesahim* 1:4. The scribe of the Leiden ms., after the text translated here in the first 5 paragraphs, wrote: "one continues in *Sanhedrin* until 'the sun never starts setting'." The corrector who prepared the ms. for the Venice printer added the omitted portion; his text differs from the one given here by both an addition and a lacuna. It is impossible to decide whether the corrector's *Pesahim* text is copied from a different ms. or represents the corrector's emendations of the *Sanhedrin* text. In neither text is the use of references "here" and "there" (either *Pesahim* or *Sanhedrin*) completely consistent.

62 The main topic of the following section is the prohibition of leavened matter on Passover. It is agreed by everybody that leavened matter must be disposed of by noontime (the end of the sixth hour) of the 14<sup>th</sup> of Nisan. In Mishnah *Pesahim* 1:4, R. Meïr states that "one eats [leavened bread] during all of the fifth hour (between 10 and 11 am local time) and burns the remainder at the start of the sixth hour (shortly after 11 am). R. Jehudah says, one eats during the entire fourth hour (9 to 10 am local time), one suspends leavened matter during the fifth hour and burns the remainder at the start of the sixth. ("Suspending" means that eating leavened matter is forbidden but usufruct is permitted.)

The anonymous majority in *Sanhedrin* 5:3 is presumed to represent R. Meïr's opinion. The question now remains whether the disagreement between R. Meïr and R. Jehudah in *Sanhedrin* is the same as in *Pesahim* or not.

63 Ex. 12:15: *Seven days you shall eat mazzot; only on the first day you shall eliminate sour dough from your houses . . .* 78 might also be translated as "certainly".

64 Ex. 12:14 states: *This day shall be a remembrance for you; you shall keep it as a holiday of pilgrimage for the Eternal . . .* Num. 28:15-16 require that the 14<sup>th</sup> of Nisan be *pesah* for the Eternal; starting from the 15<sup>th</sup> for seven days it is the holiday of *mazzot*. Since *pesah* (i. e., the day of the slaughter of the *pesah* sacrifice) is connected inextricably with the holiday of *mazzot*, the reference in v. 14 to the "first day" is intrinsically ambiguous, whether it refer to *pesah* or to the holiday.

65 A similar argument is in the Babli, *Pesahim* 4b, *Mekhilta dR. Ismael* (ed. Horovitz-Rabin p. 28), *Mekhilta dR. Simeon b. Iohai* (ed. Epstein-Melamed p. 17).

66 I. e., the only biblical requirement is that all leavened matter be completely disposed of before the holiday at sundown.

67 It seems that this refers to Ex. 12:16: . . . *no work shall be done [on the holidays], only what may be eaten by any soul, it alone*

*may be made by you.* Everybody agrees that food may be prepared on a holiday. According to R. Meïr (i. e., the anonymous opinion in Mishnah *Megillah* 1:8) *only* food may be prepared, not preparations necessary for the preparation of food. According to R. Jehudah (*Megillah* 1:8), anything that in the end leads to preparation of food is permitted on a holiday. R. Meïr reads *only* as a restriction in v. 16 and as an addition in v. 15!

68 Read with the *Pesahim* text במחמ instead of מחמ. The extension of a prohibition parallels the restriction of a permission.

69 *Deut.* 16:3, referring to the *pesah* sacrifice which is slaughtered on the afternoon of the 14<sup>th</sup> and eaten in the night of the 15<sup>th</sup>.

70 In the afternoon of the 14<sup>th</sup>. This supports R. Jehudah's contention that leavened matter is biblically forbidden in the afternoon of the 14<sup>th</sup>; *Sifry Deut.* 130.

71 "It" here refers to *mazzah*.

72 "It" here refers to leavened matter.

73 It is not an indictable offense; cf. *Bikkurim* 1:5, Note 103. If a positive commandment is in conflict with a negative one (a prohibition), the positive is stronger. But an obligation which is both positive and negative is stronger than anything else.

74 *Deut.* 16:3; the word גלי is missing here, supplied in *Pesahim*.

75 *Ex.* 12:19.

76 The numerals in parentheses are from *Sanhedrin*; those in brackets are the corrected ones from *Pesahim*. For R. Meïr, the biblical prohibition of leavened matter starts at the 11<sup>th</sup> hour (5 pm local time). The

earlier afternoon hours, including the 7<sup>th</sup>, are rabbinically forbidden as a "fence around the law". Then it is difficult to understand why leavened matter has to be burned *at the start* of the 6<sup>th</sup>, extending the rabbinic prohibition for another hour as a fence around the fence, a practice generally rejected.

77 It is not a fence around a fence but consistent with the opinion of the Sages (R. Meïr) in *Sanhedrin* 5:3. In a society without watches the difference between 11am and 12am is not generally recognized; a prohibition enforced after noontime must practically be enforced starting from 11am.

78 This is here, in the Mishnah *Sanhedrin*. R. Jehudah agrees that while without watches people cannot distinguish between two morning or two afternoon hours, he explicitly agrees that people distinguish between fifth (10-11am) and seventh (12am-1pm).

79 In *Pesahim* he requires one to stop eating leavened matter two hours before the start of the seventh hour when the biblical prohibition begins.

80 In *Pesahim* one speaks of household chores.

81 In *Sanhedrin* the Mishnah does not require the court to accept any testimonies where the witnesses differ widely in fixing the time of a crime; R. Jehudah admonishes the court under certain circumstances to investigate whether the witnesses do not in reality testify about the same time; Babli *Pesahim* 12b.

82 In *Pesahim* the period of doubt is little more than 60 min., in *Sanhedrin* close to 180 min. The apparent inconsistency is due to the informal use of "hour."



83 A similar *baraita* is in *Pesahim* 12b.

(fol. 22c) **משנה ד:** היו מכניסין את השני ובודקין אותו. נמצאו דבריהן מכניסין פותחין בזכות. אמר אחד מן העדים יש לי ללמד עליו זכות או אחד מן התלמידים יש לי ללמד עליו חובה משתקין אותו. אמר אחד מן התלמידים יש לי ללמד עליו זכות מעלין ומושיבין אותו ביניהן ולא היה יורד משם כל היום כולו. אם יש ממנו בדבריו שומעין לו. אפילו אמר הוא יש לי ללמד על עצמי זכות שומעין לו ובלבד שיש ממנו בדבריו:

**Mishnah 4:** They brought in the second [witness] and examined him. If their testimonies were coherent, one starts with arguing for acquittal<sup>84</sup>. If one of the witnesses said, I have an argument for his acquittal<sup>85</sup>, or one of the students said, I have an argument for his conviction, one forces them to be silent. If one of the students said, I have an argument for his acquittal, one brings him up and lets him sit among them<sup>86</sup>. He was not demoted from there the entire day; if his argument has substance, one listens to him. Even if he<sup>87</sup> said, I have to argue for my acquittal, one listens to him if there is substance to his words.

**משנה ה:** אם נמצאו לו זכות פטרוהו. ואם לאו מעבירין דינו למחר. ומזדווגין זוגות זוגות ממעטין במאכל ולא היו שותין זין כל היום ונושאים ונותנים בדבר כל הלילה ולמחרת משפיעין ובאים המזקה אומר אני הוא המזקה ומזקה אני במקומי. והמחייב אומר אני הוא המחייב ומחייב אני במקומי. המלמד חובה מלמד זכות. אבל המלמד זכות אינו יכול לחזור וללמד חובה. ואם טעו בדבר שני סופרי הדנין מזכירין אותו.

**Mishnah 5:** If they found him innocent, they free him. Otherwise they hold his case over to the next day, split into groups of two, eat little and refrain from wine the entire day, and discuss during the entire night<sup>88</sup>. The next morning they start early. One who voted for acquittal says, I am for acquittal and I remain for acquittal. One who voted for conviction says, I am for conviction and I remain for conviction. He who voted for conviction may vote for acquittal; but he who voted for acquittal may not change and vote for conviction. If they erred in the matter, the two clerks of court will remind them.

84 Mishnah 4:1.

argues for acquittal undermines his own

85 A witness for the prosecution who

testimony. Anyhow, no witness can become

judge in the same case (Halakhah 5).

86 The judges.

87 The accused.

88 The topic of discussion is not mentioned; it seems to be the case under

consideration. In the Tosephta, the judges are required to review the legal background, if a murder case the laws of murder, if an incest case the laws of incest.

(22d line 75) **הלכה ד'**: הוּי מְכַנְסִין אֶת הַשֵּׁנִי כו'. תַּנִּי. אִם מִצָּאוּ לוֹ זְכוּת פְּטָרוֹהוּ וְאִם לֹא מַעֲבִירִין דִּינוֹ וּמַדְוִיגִין זִיגוֹת וּמְמַעֲטִין בְּמֵאֶכָּל וְלֹא הִיוּ שׁוֹתִין יָנ וְנוֹשְׂאִין וְנוֹתְנִין כָּל הַלְּיָלָה. וְלִמְחַר מְשַׁכְּמִין וּבָאִין. וְחֻזְגִי כְּנִסְיוֹת מְחַזְרִין אַחֲרֵיהֶן וְאוֹמְרִין. אִישׁ פְּלוֹנִי לְבָן אִישׁ פְּלוֹנִי. וְהוּא אוֹמֵר. בְּמִקוּמִי אָנִי.<sup>89</sup> מַחֲזִיב הֵייתִי וּמַחֲזִיב אָנִי. מְזַכֶּה הֵייתִי וּמְזַכֶּה אָנִי. מַחֲזִיב הֵייתִי וּמְזַכֶּה אָנִי. שׁוֹמְעִין לוֹ. מְזַכֶּה הֵייתִי וּמַחֲזִיב אָנִי. לִמַּד תְּחִילָה. תַּנִּי. טַעַה אֶחָד מִן הַדִּינִין. אִם הָיָה מְזַכֶּה סוֹפְרִי הַדִּינִין מְזַכְרִין אוֹתוֹ. אִם הָיָה מַחֲזִיב אוֹמְרִין לוֹ. לִמַּד תְּחִילָה.

**Halakhah 4:** “They brought in the second,” etc. It was stated<sup>89</sup>: “If they found him innocent, they freed him; otherwise they hold his case over, split into groups of two, eat little and refrain from wine, and discuss during the entire night. The next morning they start early, the beadles of the synagogues come for them. They ask, Mr. X [ben Mr. Y. He says, present.]<sup>90</sup> I was for conviction and I still am for conviction; or I was for acquittal and I still am for acquittal; I was for conviction and now I am for acquittal; one accepts his vote. I was for acquittal and now I am for conviction; argue as before.”<sup>91</sup> It was stated: If one of the judges erred, the clerks of court remind him. If he was for conviction, they tell him, argue as before.

89 Tosephta 9:1.

Tosephta.

90 Addition from the Genizah text (Note 0); not absolutely necessary for the understanding of the text and not in the

91 In the Tosephta: “They tell him, consider your earlier argument.” This is understood here.

(23a line 6) אָמַר רַבִּי לֹא. מִפְּנֵי מַה כּוֹתְבִין דְּבָרֵי הַמְּזַכֶּה. מִפְּנֵי הַמַּחֲזִיב. שְׂמָא תִּיטְרֹף דְּעָתוֹ. וְאִין חֲלִיף מִיֵּלָא יִמְרוֹן לֵיהּ. הָדָא אֶמְרַת הָדָא לֹא אֶמְרַת. [הָדָא אֶמְרָה].<sup>92</sup> צְרִיכָה שְׁנֵי [כִּיתִּי]<sup>93</sup> עָדִים. נִמְצָא דִּינוֹ מִשְׁתַּקֵּעַ. רַבִּי יוֹדִי בִּירְבִי בּוֹן אָמַר. מִפְּנֵי הַמְּזַכֶּה.

Rabbi La said, why does one record the argument of him who argues for acquittal? Because of him who argues for conviction, maybe his memory will fail him. If he switches his argument, they could say to him, this you said, this you did not say. [Does this mean] that it needs two [groups of] witnesses<sup>92</sup>? It

would mean that the trial would be extended. Rabbi Yose ben Rabbi Abun said, because of him who argues for acquittal<sup>93</sup>.

92 The text in brackets is from the Genizah; it is not a better text. The Leiden text seems to follow R. Jehudah (Mishnah 4:9) who requires that the arguments of each judge be recorded by two scribes, i. e., two witnesses who may prevent him from changing his mind. The Genizah text asks whether if an acquitting judge now wants to

vote for conviction one has to start the entire proceedings anew. This would preclude pronouncing sentence on that day and would amount to forbidden procrastination in administering justice.

93 Mishnah 5 alone is justification enough.

מִשְׁנָה ו: וְאִם לֹא עוֹמְדִים לְמִנְיָן. שְׁנֵי עֶשֶׂר מְצִינִין וְאַחַר עֶשֶׂר מְחַיִּיבִין זָכָא. שְׁנֵים עֶשֶׂר מְחַיִּיבִין וְאַחַד עֶשֶׂר מְצִינִין וְאַפְלוּ עֲשָׂרִים וְשָׁנִים מְצִינִין אוֹ מְחַיִּיבִין וְאַחַד אוֹמֵר אֵינִי יוֹדֵעַ יוֹסִיפוּ הַדִּינִים. (fol. 22c)

**Mishnah 6:** If they found him innocent, they free him; otherwise they tally the vote. If twelve are for acquittal and eleven for conviction, he is found innocent. If twelve are for conviction and eleven for acquittal<sup>94</sup>, or even twenty-two are for acquittal or conviction and one says, I do not know<sup>95</sup>, they shall add judges.

94 A criminal conviction needs a qualified majority of at last two (Mishnah 4:2). Since there was no majority for acquittal, the accused is neither acquitted nor convicted; this is a case of a hung court.

95 A judge who abstains in the final vote is counted not present. Then the court is no longer composed of 23 members; there is a mistrial.

9 (23 line) **הלכה ה:** אִם מְצָאוּ לוֹ זָכוּת פְּטָרוֹהוּ כֹל. תִּנְי. אֶחָד מִן הָעֲדִים שָׁאָמַר. יֵשׁ לִי לְלַמֵּד עָלָיו זָכוּת. וְבֵא חֲבִירוֹ וְסִייעוּ וְבֵא חֲבִירוֹ וְסִייעוּ. אֶת מִי מְמַנִּין. לְרֹאשׁוֹן לְשֵׁנִי לְשֹׁנִי. נִשְׁמָעִינָה מִהֶדָּא דְּרַבִּי יוֹחָנָן. וְהוּא שָׁנְדָּכָה מִפִּי עֲצָמוֹ אֵין מוֹשִׁיבִין אוֹתוֹ דִּין. הָרִי שָׁנְדָּכָה מִפִּי עֲצָמוֹ וְנִמְצָא עַד וְדִין לֹא מְצִינוּ עַד נִעֲשֶׂה דִין.

**Halakhah 5:** “If they found him innocent, they free him,” etc. It was stated: If one of the witnesses said, I have an argument for his acquittal, and another came to support him, (and another came to support him,)<sup>96</sup> whom do

you co-opt <sup>97</sup>? Let us hear from the following of Rabbi Johanan: If somebody was acquitted following his own pleading, one does not place him with the judges. Therefore, if he was acquitted following (his own)<sup>98</sup> pleading, then one person would be simultaneously witness and judge. We do not find that anybody can be both witness and judge.

96 Corrector's addition, to be deleted.

Only R. Yose ben R. Jehudah admits pleading by a witness (Tosephta 9:4).

97 Following Mishnah 4 which, however, speaks of law students, not of witnesses.

98 This must read: "the witness".

(23a line 14) אומרים בדיני ממונות. נזדקן הדין. [ואין אומרים בדיני נפשות נזדקן הדין].<sup>99</sup>  
והגדול שבדינין אומר. נזדקן הדין.

In civil suits one declares the judgment as definitive<sup>99</sup> [but in criminal suits one does not declare the judgment as definitive.]<sup>100</sup> The greatest among the judges declares the judgment as definitive <sup>101</sup>.

99 A strictly literal translation would be: "the judgment became old." The interpretation of this otherwise unknown expression follows Rav Ashi in the Babli, 42a. The case can neither be appealed nor retried.

100 Addition also found in the Babli, implied by the preceding sentence. As long as a criminal sentence was not executed, the trial may be re-opened at any time if a new argument for acquittal can be presented.

101 Babli 42a.

(fol. 22c) **משנה ז:** עד כמה מוסיפין שנים שנים עד שבעים ואחד. שלשים וששה מצפין ושלשים וחמשה מחייבין זכאי. שלשים וששה מחייבין ושלשים וחמשה מצפין דנין אילו כנגד אילו עד שיראה אחד המחייבין את דברי המצפין:

**Mishnah 7:** Up to what number does one add? [One adds] two and two up to 71<sup>102</sup>. If 36 vote for acquittal and 35 for conviction, he is found innocent. If 36 vote for conviction and 35 for acquittal<sup>102</sup>, they have to continue to argue with one another until one of the voters for conviction is convinced by the arguments of those in favor of acquittal.

102 The size of the Supreme Court is the upper limit for the size of any court.

103 This is a *de facto* vote for acquittal since for conviction a majority of two votes

is required and the judges voting for acquittal are barred from changing their vote. Since no judges can be added, the

only way to conclude the trial is for one of the convicting judges to become one of the acquitting.

ה'לכה ז' עד כמה מוסיפין כול'. תני. כמה מוסיפין דיינין. שאם היו שנים מן הרשונים קוצין ואחד מן האחרונים ליגמר הדין בשלשה. אמר רבי לא. מכין שניא דינו ליגמר בארבעה אין גומרין אותו בשלשה.

**Halakhah 7:** “Up to what number does one add,” etc.<sup>104</sup> It was stated: Why does one add judges? For if there were two of the original judges voting affirmatively<sup>105</sup>, together with one of the later ones judgment will be rendered by three. Rabbi La said, since the judgment can be rendered by four, one does not render it by three<sup>106</sup>.

104 This and the next paragraph refer to Halakhah 3:3; the subject is civil suits.

105 Even if two judges vote for the claimant but the third abstains, no judgment can be rendered by a court of two.

106 Although only one additional judge is needed, one always adds two. If only one

judge were added, he would be unable to change the outcome; he is not really a judge of equal standing with the others. But two judges could force the addition of another two by voting for the defendant.

23 line 18) אמר רבי יוסי. ותשמע מיניה. שלשה שדנו ומת אחד מהן. חותמין בשנים וכותבין. אף על פי שחתמנו בשנים בשלשה דנו. אמר רבי חיי. מותיתא אמרה כן. הדיינין חותמין בו מלמטה או העדים. ולמידין מידת הדין מפרוזבול. אשבח תני. הוא למד מידת הדין מפרוזבול.

Rebbi Yose said, one understands from here:<sup>107</sup> If three sat in judgment and one of them died, two sign and note: Even though we are two who sign, we were three in judging. Rabbi Haggai said, a Mishnah implies this: “The judges sign at the bottom or the witnesses.” Does one learn court documents from *prozbol*? It was found stated: This about court documents he inferred from the rules of *prozbol*.

107 This is from *Ševi'it* 10:3, Note 91 where *prozbol* is explained. The text there

and in the Babli, *Ketubot* 22a, is in the name of the earlier Amora R. Abba.

(12a line 22) לֹא רָאָה. רַבִּי יוֹחָנָן אָמַר. זָכָאִי. רִישׁ לְקִישׁ אָמַר. חַיִּיב. אָמַר לִיה רַבִּי יוֹחָנָן.  
וְהָלֹא זָכָאִי הוּא. וְלָמָּה דִּנּוּ יָלוּ כְּנֶגֶד אֵילָּו. שְׁלֹא יִירָאָה דִּין זֶה יוֹצֵא מִעֲמֻעָם.

If nobody changes his opinion<sup>108</sup>? Rabbi Johanan said, he is acquitted<sup>109</sup>.  
Rabbi Simeon ben Laqish said, he is convicted<sup>110</sup>. Rabbi Johanan said to him,  
is he not acquitted<sup>111</sup>? Why do they have to continue to argue with one  
another? So the judgment should not be in question<sup>112</sup>.

108 This refers to the Mishnah. If no one voting for conviction changes his mind, at the end of the day judgment must be rendered. What is the practical consequence of 36 votes for conviction, 35 for acquittal?

109 Since the votes for conviction fall short of the majority required, it is an automatic acquittal (Babli 42a).

110 Since there is a majority for conviction, there can be no acquittal. R. Simeon ben Laqish will agree that if it is a capital case, the accused cannot be executed except the missionary for idolatry (Tosephta 10:12).

111 Mishnah 4:2.

112 To discourage any attempt at a retrial.

## נגמר הדין פרק שישי

(fol. 23a) **משנה א:** נגמר הדין מוציאים אותו לסוקלו. בית הסקילה היה חוץ לבית דין שנאמר הוצא את המקלל אל מחוץ למחנה. ואחד עומד על פתח בית דין והסוּדְרין בגידו והסוס רחוק ממנו כדי שיהא רואהו. אומר אחד יש לי ללמד עליו זכות הלה מניף בסוּדְרין והסוס רץ ומעמידו. אפילו הוא אומר יש לי ללמד על עצמי זכות מחוּדְרין אותו ואפילו ארבעה וחמשה פעמים ובלבד שיהא ממש בדבריו.

**Mishnah 1:** If sentence was passed<sup>1</sup>, one brings him out to be stoned. The place for stoning was outside the court as it is said: *Bring the blasphemer outside the camp*<sup>2</sup>. One person was standing outside the court building with towels in his hand<sup>3</sup>; a horse<sup>4</sup> was standing ready at a distance but so he could see him<sup>5</sup>. If one said<sup>6</sup>, I have an argument in his favor, that one waves his towels, the horse gallops and stops him<sup>7</sup>. Even if he himself says, I have an exculpatory argument for myself, one returns him<sup>8</sup> even four or five times, on condition that his argument be substantial.

1 If in a capital case the accused was condemned to death. In the list of biblical death penalties (Mishnah 7:1) stoning is mentioned first; therefore, the details of the stoning procedure are explained first.

2 Lev. 24:14. A walled city is the equivalent of the desert "camp"; the execution took place outside the city walls (*Ketubot* 4:6, Note 132). However, the unfaithful preliminarily married virgin was stoned in front of her parents' house (*Deut.* 22:21, Tosephta 10:10, Babli 45b) and the idolator at his place of worship (*Deut.* 17:5; *Sifry Deut.* 148; Babli *Ketubot* 45b).

3 Latin *sudarium*, -i, n.; in the Talmudim used for any rectangular piece of cloth too

small to cover the body. Here it is used for signal flags.

4 Meaning: a man on a horse.

5 The horse was stationed on the road to the place of execution as far away as possible so that the rider still could see the person holding the signal flags.

6 One of the judges or of the law students remaining in the court building.

7 The procession to the place of execution cannot start until the judges reassemble and decide whether the new argument is weighty enough to restart the deliberations towards a new vote.

8 To the court building to present his case to the judges.

(23b line 14) **הלכה א:** נגמר הדין כול'. מתניתין או כרבי או כרבנן בעיר שלגוים. דתני בשערך. רבי אומר. בשערך. בשער שנמצא בו. אתה אומר כך או אינו אלא בשער שנידונו בו. נאמר כאן בשערך ונאמר להלן כי נמצא בקרבך באתך שערך. מה שערך האמור להלן שער שנמצא בו אף שערך האמור כאן שער שנמצא בו. ורבנן אמרי. בשערך. בשער שנידונו בו. אתה אומר כך או אינו אלא בשער שנמצא בו. נאמר כאן בשערך ונאמר להלן והוצאת את האיש ההוא או את האשה ההוא אל שערך. מה שערך האמור להלן שער שנידונו בו. אף שערך האמור כאן שער שנידונו בו.

**Halakhah 1:** “If sentence was passed,” etc. The Mishnah<sup>9</sup> either follows Rabbi or the rabbis in a Gentile city<sup>10</sup>. As we have stated: Rabbi said<sup>11</sup>, *at your gates*<sup>12</sup>, at the gate they were found. You are saying so, or maybe at the gate they were judged? It is said here, *at your gates*, and it says there, *if there be found in your midst, at one of your gates*<sup>13</sup>. Since *gates* mentioned there refers to the gate where he was found, *gates* mentioned here also refers to the gate where he was found. But the rabbis say, *at your gates*, at the gate where he was judged. You are saying so, or maybe at the gate where he was found? It is said here, *at your gates*, and it says there, *take this man or this woman . . . to your gates*<sup>14</sup>. Since *gates* mentioned there refers to the gate where he was judged, *gates* mentioned here also refers to the gate where he was judged.

9 The Mishnah has a blanket statement which treats all kinds of stoning in the same way (cf. Note 2). While it is not specified where the stoning takes place, it is clear that it cannot be in front of the court building, where the rabbis require the idolator to be stoned.

10 The rabbis agree that in a city whose majority population is Gentile and idolatrous, a stoning for idolatry must take place in the Jewish quarter [Tosephta Chapter 10 in the *editio princeps* (10:4 in the Wilna ed.), missing in Zuckerman's edition, Halakhah 10:10.]

11 A similar text is anonymous in *Sifry Deut.* 148.

12 The paragraph about punishment for idolatry (*Deut.* 17:2-7) mentions that idolatry was practiced *at your gates* (v. 2) and that the idolator should be stoned *at your gates* (v. 5). The context indicates that the first *gate* is the place of worship, the second the place of execution. But the talmudic doctrine of unique meaning of lexemes requires that *at your gates* have the same meaning in both cases. Either the meaning in v. 5 is induced by that of v. 2 (Rabbi) or that in v. 2 by v. 5 (the rabbis). On methodological grounds, Rabbi's position is preferred in the Babylonian sources (*Ketubot* 45b and *Sifry*).

13 *Deut.* 17:2.

14 *Deut.* 17:5.



23b line 23) אָמַר רַבִּי יוֹחָנָן. כִּתְחִילָה בֵּין יֵשׁ מִמֶּשׁ בְּדַבְּרֵיוּ בֵּין לֹא שׁוֹמְעִין לוֹ. מִיָּכָן וְהִילָךְ יֵשׁ מִמֶּשׁ בְּדַבְּרֵיוּ שׁוֹמְעִין לוֹ וְאִם לֹא אֵין שׁוֹמְעִין לוֹ. אָמְרִי. וְהוּא שָׁיֵשׁ בְּדַבְּרֵיוּ הָאֲחֵרוֹנִים מִמֶּשׁ. חֲזָקָה שָׂאֵל. הֲרִי שְׁהִיָּה יוֹצֵא לִיהָרֵג וְנִשְׁתַּתֵּק. כֵּן אֲנִי אוֹמְרִים. הָא לֹא נִשְׁתַּתֵּק הִיָּה לוֹ לִלְמַד עַל עֲצָמוֹ זְכוּת. שָׁמַע רַבִּי יוֹחָנָן וְמַר. הָא שְׂאֵלְתָא דְחַמְרָא. אֵלָא כִּינִי. הֲרִי שְׁהִיָּה יוֹצֵא לִיהָרֵג וְאָמַר. יֵשׁ לִי לִלְמַד עַל עֲצָמֵי זְכוּת וְנִשְׁתַּתֵּק. כֵּן אֲנִי אוֹמְרִים. הָא אֵילוּ לֹא נִשְׁתַּתֵּק הִיָּה לוֹ לִלְמַד עַל עֲצָמוֹ זְכוּת. אָמַר. הָא אָמִינָה.

Rebbi Johanan said, the first time one listens to him whether or not his arguments are substantial<sup>15</sup>. After that, if his arguments are substantial<sup>16</sup> one listens to him, otherwise one does not listen to him. They said, only if his later arguments are substantial<sup>17</sup>.

Hizqiah asked: If he was led out to be executed when he became paralyzed, do we say that had he not become paralyzed, he would have argued for his acquittal? Rebbi Johanan heard this and said, this is a donkey's question<sup>18</sup>. But it must be: If he was led out to be executed and said, I have to argue for my acquittal: when he became paralyzed, do we say that had he not become paralyzed, he would have argued for his acquittal? He said, that is a statement<sup>19</sup>.

15 In the Tosephta (9:4): The first three times. In the Babli (45a) Rav Pappa's statement parallels that of R. Johanan here.

16 As the Babli points out, this implies that some persons learned in the law are always near the condemned for preliminary evaluation of his arguments.

17 The statement of the Mishnah that the court is reconvened only if the arguments presented be substantial, refers only to the second and following times, not to the first appeal.

18 It is stated in Mishnah 2 that the entire world is invited to present exculpatory arguments. Do we say that because somewhere in the world a person may be paralyzed now, one can never execute anybody? (Babli 43a in the name of Babylonian scholars.)

19 Hizqiah agrees with the reformulation and its consequence, viz., that the execution cannot proceed. The Babli leaves it as an open question.

(fol. 23a) **משנה ב:** אִם מָצְאוּ לוֹ זְכוּת פְּטָרוֹהוּ וְאִם לֹא יוֹצֵא לִסְקָל. וְהִכְרוּזוּ יוֹצֵא לִפְנֵי אִישׁ פְּלוֹנִי כֵּן פְּלוֹנִי יוֹצֵא לִסְקָל עַל שֶׁעָבַר עֲבָרָה פְּלוֹנִית וּפְלוֹנִי וּפְלוֹנִי עָדִיו וְכָל־מִי שֶׁהוּא יוֹדֵעַ לוֹ זְכוּת יָבוֹא וְיִלְמֹד:

**Mishnah 2:** If they found him innocent<sup>20</sup>, they free him, otherwise he is led to be stoned. The herald<sup>21</sup> goes before him: “X ben Y is led to be stoned because he committed crime Z; U and V testified against him<sup>22</sup>. Anybody who knows of his innocence shall come and argue.”

20 Upon reconsideration.

22 The call is for witnesses who can prove the original witnesses to be perjured.

21 Greek ἀγγεῖ.

(23b line 31) **הלכה ב:** אם מצאו לו זכות כול. תני. שור היוצא ליסקל ונמצאו עידיו זוממין. רבי יוחנן אמר. כל־הקודם בו זכה. ריש לקיש אמר. הפקר טעות הוא. וכן עבד היוצא ליסקל והקדישו בעליו. רבי יוחנן אמר. זכה לעצמו. ריש לקיש אמר. ייאוש שלקטעות הוא.

**Halakhah 2:** “If they found him innocent,” etc. <sup>23</sup>It was stated: If a bull was led out to be stoned when its witnesses were found to be perjured, Rabbi Johanan said, the first to come acquires it; Rabbi Simeon ben Laqish said, it was a false declaration of ownerlessness<sup>24</sup>. Similarly, if a slave was led out to be stoned when his owner dedicated him to the Temple<sup>25</sup>, Rabbi Johanan said, he acquired himself; Rabbi Simeon ben Laqish said, it was false despair.

23 Better versions of this paragraph are in 10:8 Note 337, *Bava qamma* 4:9 Notes 122-125.

24 This is Babylonian spelling. The Yerushalmi form is הבקר.

25 One has to read with the parallel

sources: When his witnesses were found perjured. At the moment the slave is condemned to death, he loses all value for his owner; valueless objects cannot be dedicated. Therefore the dedication is the equivalent of declaring the slave ownerless.

(fol. 23a) **משנה ג:** רחוק מבית הסקילה עשר אמות אומר לו התודה שכן דרך כל־המומתין מתודין שכל־המתודה יש לו חלק לעולם הבא. שכן מצוינו בעכו שאמר לו יהושע בן־שִׁים־נָא כבוד ליי אלהי ישראל ותן־לו תודה והגד־נָא לי מה עשית אל־תבחד ממני: ויען עָבוֹ אֶת־יְהוֹשֻׁעַ ויאמר אִמְנָה אֲנִי חֲטָאתִי לִי אֱלֹהֵי יִשְׂרָאֵל וְכָזָאת וְכָזָאת עָשִׂיתִי: וּמִיָּיִן שֶׁנִּתְפַּכֵּר לוֹ וְדִוּוֹ שֶׁנֶּאֱמַר וַיֹּאמֶר יְהוֹשֻׁעַ מָה עָבַרְתָּנוּ יַעֲקֹבִי בְּיָמֵינוּ הַזֶּה. הַיּוֹם הַזֶּה אַתָּה עָכֹר וְאִי אַתָּה עָכֹר לַעֲתִיד לְבוֹא.

**Mishnah 3:** Ten cubits' distance from the place of stoning one tells him: confess! So is the way of any dying person to confess, since anyone who confesses has part in the World to Come. For so we find about Achan to

whom Joshua said, *my son, honor the Eternal, the God of Israel, confess to Him, and tell me what you did, do not hide it from me. Achan answered Joshua and said, in fact I sinned against the Eternal, the God of Israel, and such and such I did*<sup>26</sup>. From where that his confession atoned for him? For it is said, *Joshua said to him, how did you devastate us; may the Eternal devastate you on this day*<sup>27</sup>. This day you are devastated; you are not devastated in the Future World.

26 Jos. 7:19-20.

27 Jos. 7:25.

**הלכה ג:** רחוק מבית הסקילה עשר אמות כול'. את מוצא ששם מעל עכן בחרם התחיל יהושע מפיס לפני הקדוש ברוך הוא ואומר. רבונן של עולם. הודיעני מי זה האיש. אמר לו הקדוש ברוך הוא. איני מפרסם כל ברירה ולא עוד אלא נמצאתי אומר לשון הרע. אלא לך והעמיד את ישראל לשבטיו והפל עליהן גורלות. מיד אני מוצאו. הלא היא דכתיב וישכם יהושע בבקר ויקרב את ישראל לשבטיו וילכד עכו ברכמי בן-זרח למטה יהודה: אמר לו עכן. מה. בגורל אתה תופשיני. לית בכל-ההו דרא פשר אלא את ופיחס. אסקון נידון ביניכון. פנטוס דמתפיס חד מיכון. ולא עוד אלא למשה רבך לית מידמוד אלא תלתין או ארבעין יומין. לא בן אלפן משה רבן על-פי | שנים עדים. שריתה טעי. באותה שעה צפה יהושע ברוח הקודש שהוא מחלק לישראל את הארץ בגורל. הלא היא דכתיב וישלך להם יהושע גורל. אמור מעתה. אנו מוציאין שם רע על הגורלות. ולא עוד אלא שאם נתקיימו עכשיו יהיו כל-ישראל אומרים. בדיני נפשות נתקיימו כל-שכן בדיני ממונות. ואם בטלו עכשיו יהיו כל-ישראל אומרים. בדיני נפשות בטלו כל-שכן בדיני ממונות. באותה שעה התחיל יהושע מפיס לעכן ומשבע ליה באלהי ישראל ואומר לו. בנל שים-נא כבוד ליי אלהי ישראל. ויען עכן את-יהושע ויאמר. אמנה. מהו אמנה. קושטא. אנכי חטאתי ליי אלהי ישראל. אמר ליה. מה אנא בעי מינדך הלא ואת אמרת לי תרתי. אמר ליה. אני הוא שמעלתי בחרם מדון ובחרם יריחו. אמר רבי תנחומא. בארבעה חרמים מעל. בחרם כנעני מלך ערד. בחרם סיחון ועוג. בחרם מדון. בחרם יריחו. ומניין שכיפר לו וידיחו. שנאמר ובני זרח זמרי ואיתן וגו'. רבי יהושע בן לוי אמר. זמרי זה עכן שעשה מעשה זמרי. רבי שמואל בר נחמן אמר. הימן זה עכן. אמנה אנכי חטאתי. פולס חמשה. וכי איני יודע שהו חמשה. אלא מלמד שאף עכן יש לו חלק לעתיד לבוא.

**Halakhah 3:** “Ten cubits’ distance from the place of stoning,” etc. You find that when Achan stole from the ban, Joshua started supplicating before the Holy One, praise to Him, and said: Master of the Universe, inform me who is the man. The Holy One, praise to Him, answered: I never publicize

any creature. In addition, would I not be guilty of slander<sup>28</sup>? But go and let Israel stand up by its tribes and throw lots, then immediately I shall draw him out. That is what is written: *Joshua got up early in the morning and summoned Israel by its tribes. Achan ben Karmi ben Zerah from the tribe of Jehudah was caught*<sup>29</sup>. Achan told him, how? Do you catch me by lots<sup>30</sup>? There is nobody more pious in the present generation than you or Phineas. Let lots be thrown between you, certainly<sup>31</sup> one of you will be caught. Not only this, but your teacher Moses died only 30 or 40 days ago. Did not our teacher Moses instruct us: *By the testimony of two witnesses*<sup>32</sup>? You started erring. At that moment did Joshua have a vision by the holy spirit how he distributes the Land to Israel by lots. That is what is written: *Joshua threw lots for them*<sup>33</sup>. This means, we are giving lots a bad name. Not only this, but if lots are confirmed now, all of Israel will say, since the lots were true in criminal matters, so much more in money matters. But if they are repudiated now, all of Israel will say, since the lots were repudiated in criminal matters, so much more in money matters. At that moment, Joshua started supplicating Achan, entreated him in the name of Israel's God, and said to him: *my son, honor the Eternal, the God of Israel, . . . Achan answered Joshua and said, in fact*<sup>26</sup>. What means אָחָן? Truth<sup>34</sup>. *I sinned against the Eternal, God of Israel*. He told him, I asked you for one and you are answering me two<sup>35</sup>? he answered, I stole from the ban of Midian and the ban of Jericho. Rabbi Tanhuma said, he stole from four bans: The ban of the Phoenician, king of Arad, the ban of Sihon and Og, the ban of Midian, the ban of Jericho.

From where that his confession atoned for him? It is said<sup>36</sup>, *the sons of Zerah: Zimri and Ethan*, etc. Rabbi Joshua ben Levi said, Zimri is Achan who behaved like Zimri<sup>37</sup>. Rabbi Samuel bar Nahman said, *Heman*<sup>38</sup> that is Achan, *omna* I sinned. *Altogether five*. Did I not know that they were five<sup>39</sup>? But it teaches that Achan also has part in the World to Come<sup>40</sup>.

28 Babli 11a, 43b. An expanded version in *Tanhuma Mas`e* 5.

29 *Jos.* 7:16.

30 The entire procedure described in *Jos.* 7:16-26 cannot be justified either in pentateuchal or in rabbinic law.

- 31 Greek πάντως. The outcome of drawing of lots is essentially predetermined by the set from which the lot is drawn.
- 32 Deut. 19:15.
- 33 Jos. 18:10.
- 34 Deriving אמנה from the root אמן.
- 35 Referring to the doubling *such and such* in v. 7:20.
- 36 The assassin of king Ela, 1K. 16:10. In Jos. 7:19, the son of Zerah and father of Carmi is called *Zavdi*, not *Zimri*. This underlies the talmudic doctrine that all of Chronicles is to be explained alegorically.
- 38 Aramaic הִימָן is Hebrew נֶאֱמָן, cf. Note 34.
- 39 Since the verse enumerates five sons of Zerah.
- 40 Since he is counted together with Ethan and Heman, the composers of psalms. Tosephta 9:5.

מִשְׁנָה ד': וְאִם אֵינוּ יוֹדְעִים לְהִתְנַדֵּוֹת אוֹמְרִים לוֹ אָמור תְּהֵא מִיתַתִּי כְּפָרָה עַל כָּל עֲוֹנוֹתַי. רַבִּי יְהוּדָה אוֹמֵר אִם הָיָה יוֹדְעִי שֶׁהוּא מְזוּמָם אוֹמֵר תְּהֵא מִיתַתִּי כְּפָרָה עַל כָּל עֲוֹנוֹתַי חוּץ מֵעֶוֶן זֶה. אָמְרוּ לוֹ אִם כֵּן יִהְיֶה כָּל-אָדָם אוֹמֵר כֹּךְ כִּדִּי לְנִקּוֹת אֶת עַצְמִי:

**Mishnah 4:** If he does not know how to confess, one tells him, say: "My death shall be atonement for all my sins." Rabbi Jehudah said, if he knows that he was the victim of perjurers, he says: "My death shall be atonement for all my sins except this one."<sup>41</sup> They told him, if so, everybody would say so to declare themselves innocent<sup>42</sup>.

41 For which he is being stoned.

42 And to declare the witnesses perjured and the judges bribed or incompetent.

הַלְכָה ד': וְאִם אֵינוּ יוֹדְעִים לְהִתְנַדֵּוֹת כּוֹל. מַעֲשֵׂה בְּאֶחָד שֶׁהָיָה יוֹצֵא לִיהָרֵג. אָמְרוּ לוֹ. אָמור. תְּהֵא מִיתַתִּי כְּפָרָה עַל-כָּל עֲוֹנוֹתַי. אָמַר. תְּהֵא מִיתַתִּי כְּפָרָה עַל-כָּל עֲוֹנוֹתַי חוּץ מִן עֶוֶן זֶה. אִם עָשִׂיתִי אֶל יִמְחוֹל לִי. וּבֵית דִּין יִשְׁאָל יְהֵא נָקִי. וְכִשְׁבָּא דְּבַר אֶצֶל חֲכָמִים זָלְגוּ עֵינֵיהֶם. אָמְרוּ. לְהַחֲזִירוֹ אִי אֶפְשָׁר שְׂאִין לְדַבֵּר סוּף. אֶלָּר הָרִי דְּמִו תִּלְוִי בַּצֹּר עֲדִים.

**Halakhah 4:** "If he does not know how to confess," etc. <sup>43</sup>"It happened that one was led out to be executed. They told him, say: 'My death shall be atonement for all my sins.' He said, 'my death shall be atonement for all my sins except for this sin; if I committed it, He<sup>44</sup> should never forgive me, but the court of Israel is innocent.' When the case came before the Sages, their tears flowed. They said, it is impossible to reopen the case<sup>45</sup>, since it would never end. But this person's blood hangs on the witnesses' necks."

- 43 Babli 44b, Tosephta 9:5. accompanied by any argument or proof of  
 44 God. perjury. The Babli version is very difficult  
 45 Since the statement was not at this point.

(fol. 23a) **משנה ה:** רחוק מבית הסקילה ארבע אמות מפשיטין את בגדיו. האיש מכסין אותו  
 מלפניו והאשה מלפניה ומאחריה דברי רבי יהודה. וחכמים אומרים האיש נסקל ערום ואין  
 האשה נסקלת ערומה:

**Mishnah 5:** At a distance of four cubits from the place of stoning one removes his clothes. One covers a man in front, a woman one covers front and back, the words of Rabbi Jehudah; but the Sages say, a man is stoned naked<sup>46</sup>, but no woman is stoned naked<sup>47</sup>.

46 Except for a loin cloth.

47 She may not be touched by men.

(23c line 16) **הלכה ח:** אמר רבי אליעזר כול. מחלפה שיטת רבי יהודה. תמן אמר. אם היה  
 שערה נאה לא היה סותרו. וכא הוא אומר אכין. הכא מקל-מקום למיתה אזלה. ברם תמן  
 שאם תימצא טהורה ויתגרו בה פירחי כהונה. מחלפה שיטת רנן. תמן אמרין. האיש נסקל  
 ערום ואין האשה נסקלת ערומה. וכא אינון אמרין הכין. הכא ואהבת לרעך כמוך. ברור לו  
 מיתה יפה. ברם תמן ניוסרו כל הנשים.

<sup>48</sup>**Halakhah 8:** “Rebbi Eliezer said,” etc. The argument of Rabbi Jehudah seems inverted. There, he says: “If her hair was beautiful, he did not uncover it.” And here, he says so? Here, anyhow she goes to her death, but there, maybe she will be found to be pure and the young priests would attack her. The argument of the rabbis seems inverted. There<sup>49</sup>, they say: “A man is stoned naked, but no woman is stoned naked.” And here<sup>50</sup>, they say so? Here, *you shall love your neighbor as yourself*, choose for him a decorous death. But here, *all women should be taught*.

48 For the rest of this Chapter, Mishnaiot and Halakhot do not fit together in the ms. and *editio princeps*. The quotes at the start refer to the Mishnaiot indicated by the Halakhah; the text has been placed after the Mishnah to which it belongs. The text in

this Halakhah is essentially a copy from *Sotah* 1:5, Notes 226-232.

49 This should be “here”, showing that the original is in *Sotah*.

50 This should be “there”.

(fol. 23a) **משנה ו:** בית הסקילה היה גבוה שתי קומות ואחד מן העדים דוחפו על מתניו. נהפך על לבו והפכו על מתניו אם מת בה יצא. ואם לא נוטל את האבן ונותנה על לבו. אם מת בה יצא ואם לאו העד השני נוטל את האבן ונותנה על לבו. אם מת בה יצא ואם לאו רגמיתו בכל ישראל שנאמר יד העדים תהיה בו בראשנה להמיתו ויד כל העם באחרונה.

**Mishnah 6:** The place of stoning was two man-sizes high; one of the witnesses pushed him at his hips<sup>51</sup>. If he fell on his breast, he turns him around on his back. If he died from this, it is sufficient; otherwise he takes the stone<sup>52</sup> and puts it on his breast. If he died from this, it is sufficient; otherwise the second witness takes the stone and puts it on his breast<sup>53</sup>. If he died from this, it is sufficient; otherwise the stoning is on all of Israel as it is said: *The witnesses' hand shall be first on him to kill him, the hand of the entire people afterwards*<sup>54</sup>.

51 As both Talmudim state, *Ex. 19:13* implies that throwing down is part of stoning.

52 According to Tosephta 9:6, a stone

which needed two people to be lifted.

53 This sentence is missing in all parallels; it may be a case of dittography.

54 *Deut. 17:7*.

(23c line 6) **הלכה ז:** כל הנסקליו נתליו דברי רבי ליעזר כול. תני. וכמלוא קומתו שלנופל הרי חמשה. הכא אתמר. וכמלוא קומת הנופל הרי חמשה. ובבור שלניקין אתמר. עד עשרה טפחים. לא דומה נופל מדעת לנופל שלא מדעת. רבי יונתן בן חלי רבי אבדומי בן ברתיה דרבי טבי בשם רבי יאשיה. אילין דחבטין תורא בחיליה אין בו משום ריסוק איברים. ביומו דרבי פינחס חבטו תורא בחיליה. אמר לון. בחייכון שרוניה. שרוניה וקום וערק. אמר. ברוך שפחר בחכמים ובדבריהם. דאמרי. אילין דחבטין תורא בחיליה אין בו משום ריסוק איברים.

**Halakhah 7:** “All those stoned are hanged, the words of Rabbi Eliezer,” etc. It was stated<sup>55</sup>: “Adding his own height, these are five.” Here you say, adding his own height, these are five. But for a pit in matters of damages, you say even ten handbreadths<sup>56</sup>. One cannot compare one who falls consciously, and one who falls accidentally.

Rebbi Jonathan ben Hali, Rebbi Eudaimon the son of Rebbi Tabi's daughter, in the name of Rebbi Josia: Those who throw down an ox with all their might<sup>57</sup> do not cause any of its limbs to break<sup>58</sup>. In the days of Rebbi Phineas they threw down an ox with all their might. He told them, By your

lives, free it. They freed it, it got up and fled. He said, praised be He Who selected the Sages and their pronouncements, for they say, those who throw down an ox with all their might not cause any of its limbs to break.

55 In the Babli, 45a, and Tosephta 9:6, the height of the fall is  $3 = 2+1$  man-sizes.

56 A pit 10 handbreadths deep ( $1\frac{2}{3}$  cubits) already is life-threatening (Mishnah *Bava qamma* 5:7).

57 Cattle is slaughtered lying down. To push down an ox for slaughter may need great force; does one have to limit the force for fear of causing injuries to the ox, which would make it unfit as food?

58 Babli *Hulin* 51b.

(23c line 14) ומניין שטעון סקילה. שפאמער סקול יסקל. ומניין שטעון דחיה. שפאמער ירה ירה. ומניין שטעון דחיות. תלמוד לומר ירה.

<sup>59</sup>From where that he needs to be stoned? For it is said<sup>60</sup>, *by stoning he be stoned*. From where that he needs to be pushed? For it is said, *by pushing he be pushed*. <sup>61</sup>From where that he needs two pushings? The verse says, *to be pushed*.

59 Babli 45a; *Mekhilta dR. Ismael Yitro* 3 (p. 212); *Mekhilta dR. Simeon ben Johai Yitro* p. 141.

60 Ex. 19:13.

61 In the parallel sources: From where that is is sufficient if he dies from being pushed? In the opinion of *Pene Moshe*, the second pushing is the turning on his back if he lands on his face.

(fol. 23a) **משנה ז:** כל הנסקלין נתלין דברי רבי אליעזר וחכמים אומרים אינו נתלה אלא המגדף והעובד עבודה זרה. האיש תולין אותו פניו כלפי העם והאשה פניה כלפי העץ דברי רבי ליעזר וחכמים אומרים האיש נתלה ואין האשה נתלית.

**Mishnah 7:** Anyone who was stoned is hanged<sup>62</sup>, the words of Rabbi Eliezer. But the Sages say, only the blasphemer and the idolator are hanged. A man is hanged face to the people and a woman face to the pole, the words of Rabbi Eliezer. But the Sages say, a man is hanged<sup>63</sup>, a woman is not hanged.

**משנה ח:** אמר להו רבי אליעזר מעשה בשמעון בן שטח שתלה נשים באשקלון. אמרו לו שמונים נשים תלה ואין דנין שנים ביום אחד.



**Mishnah 8:** Rabbi Eliezer said, it happened that Simeon ben Shetah hanged women in Ascalon. They told him, he hanged eighty women, but one does not try two on the same day<sup>64</sup>.

**משנה ט:** כיצד תולין אותו. משקעין את הקורה בארץ והעץ יוצא ממנו. ומקיף שתי ידיו זו על גבי זו ותולה אותו. רבי יוסי אומר הקורה מטה על הכתל ותולה אותו כדרך שהטבחין עושין. תולין ומתירין אותו מיד ואם לן עובר עליו בלא תעשה שנאמר לא תלין נבלתו על העץ כי קבור תקברנו ביום ההוא כי קללת אלהים תלי תלוי כלומר מפני מה זה תלוי. מפני שברך את השם ונמצא שם שמים מתחלל:

**Mishnah 9:** How does one hang him? One sinks a stake into the ground, wood is sticking out from there. One binds both hands, one on top of the other, and hangs him. Rabbi Yose says, the beam is leaning on the wall<sup>65</sup>; one hangs him in the way butchers do. One hangs him and takes him down immediately; if he were left overnight, one would transgress a prohibition, as it is said<sup>67</sup>: *Do not leave his corpse on the wood overnight, but certainly bury him on the same day, for a hanged person is blasphemy*. This means, why was he hanged? Because he blasphemed; it turns out that the name of Heaven would be desecrated<sup>68</sup>.

62 *Deut. 21:22* is read as a requirement that the corpse of the criminal be hanged after execution, not as recognizing hanging as a legitimate form of execution.

63 Since *Deut. 21:21* refers to a man being executed.

64 In addition, he used hanging as a form of execution, which is forbidden.

65 By his hands.

66 He rejects a form which might resemble a Roman cross. He requires the

corpse to be hung from a horizontal beam like an animal carcass.

67 *Deut. 21:23*.

68 This is the rabbis' reason to restrict hanging to the blasphemer and those guilty of related crimes (Mishnah 7, Halakhah 9, *Sifry Deut. 221*). The verse is read following the Roman custom of noting the condemned person's crime on his cross, restricting hanging to crimes having an element of blasphemy.

(23b line 66) **הלכה ה:** רחוק מבית הסקילה ארבע אמות כול'. אומר רבי יהודה בר טבאי. אראה בנחמה אם לא הרגתי עד זומם. שהיו אומרים. עד שיהרג. שנאמר נפש תחת נפש. אומר לו שמעון בן שטח. אראה בנחמה אם לא מעלים עליך כאילו שפכת דם נקי. באותה שעה קיבל עליו שלא יורה אלא מפני שמעון בן שטח.

**Halakhah 5:** “At a distance of four cubits from the place of stoning,” etc.  
 69. “Rebbi Jehudah ben Tabbai said, may I never see consolation if I did not execute a perjured witness, for they were saying, until he was executed, as it is said, *a life for a life*. Simeon ben Shetah told him, may I never see consolation if it is not held against you that you spilled innocent blood. At that time, he took it upon himself not to teach except what he heard from Simeon ben Shetah.”

69 Babli *Makkot* 5b, Hagigah 16b; Tosephta 6:6. The text is badly truncated; following the parallel sources it should read approximately:

Jehudah ben Tabbai said, may I never see consolation if I did not execute a perjured witness, for the Sadducees were saying, a perjured witness is not executed unless the accused was executed, as it is said, *a life for a life*. Simeon ben Shetah told him, may I never see consolation if it is not held against you that you spilled innocent blood since no perjured witness is executed unless both of them are shown to

be perjured. At that time, he took it upon himself not to teach except what he heard from Simeon ben Shetah.

This is the first of a series of treatments of the Simeon ben Shetah legend (Mishnah 8) before one returns to a discussion of the Mishnah.

If only one of the witnesses is found perjured, neither his testimony nor that of the other witness can be used against the accused since both are testimonies of single witnesses unsupported by a second witness. The case against the accused has to be dismissed; there is no case.

שְׁמַעוֹן בֶּן שֵׁטָח הָיָה יָדָיו חֲמוּמוֹת. אֶתֶר סִיעַת לִצְנִין אָמְרִי. הָבִי עֲצָה נִסְחָד עַל בְּרִיָּה וְנִיקְטְלִינֶיהָ. אֶסְהִידוּ עָלָיו. וְנִגְמַר דִּינוֹ לִיהָרֵג. מִי נָפַק לְמִיתָקְטֵלָא אָמְרִי לִיהָ. מְרִי שִׁיקְרִין אֲנִי. בָּעָא אָבוֹי מִחֲזֹרְתִיָּה. אָמַר לִיהָ. אָבָא. אִם בִּיקְשֶׁתָּה לְבוֹא תְשׁוּעָה עַל נְדָךְ עֲשֵׂה אוֹתִי כְּאַסְקוּפָה.

Simeon ben Shetah's hands were hot<sup>70</sup>. There came a group of scoffers who said, let us take counsel, testify against his son, and kill him. They testified against him. He was sentenced to be executed. When he was taken to be killed, they told him, our Master, we are liars<sup>71</sup>. His father wanted to return him<sup>72</sup>; he told him, my father, if you want that salvation come through you<sup>73</sup>, treat me as a target<sup>74</sup>.

70 He was quick in persecuting persons not conforming to pharisaic standards (cf. H. Graetz, *Geschichte der Juden* 3-1<sup>5</sup>, p. 146).

71 They could confess their perjury with impunity. By Sadducee standards, a false witness in a capital case cannot be punished

as long as the victim was not executed. By pharisaic standards, no self-incrimination is admissible in court.

72 To have the conviction overturned, Halakhah 1.

73 By strict pharisaic (rabbinical) rules, witnesses cannot change their story once the

phase of testimony was concluded and deliberations started (*Bava mesia`* 1:2 Note 30; *Ševi`it* 10:5 Note 96). By the strict letter of the law, there was no ground for reconsideration.

74 Greek σκοπός, Latin *scopus*, “goal, target” (E. G.).

75 (23b line 75) **הלכה ו:** בית הסקילה היתה גבוהה כול. מעשה בחסיד אחד שהיה מהלך בדרך וראה שני בני אדם נזקקין לכלבה. אמרו: נו ידעין די גברא חסידא אזיל ומסחיד גלן ומרן דוד קטיל לן. אלא ניקדימיה וניסהוד גלוי. אסחידו עליה. ונגמר דינו ליהרג. הוא שדוד אמר. הצילה מחרב נפשי מיד-כלב ויחידתי: מחרב. מחרב אוריה. מכלב. מכלבו שלחסיד. רבי יודה בן פזי סלק לעליתא דבי מדרשא וראה שני בני אדם נזקקין זה לזה. אמרו ליה. רבי. הב דעתך דאת חד ואנן תרי.

**Halakhah 6:** “The place of stoning was two man-sizes high,” etc. It happened that a pious man was walking on the road when he saw two people having sex with a bitch. They said, we know that this is a pious man, he will go, testify against us, and our lord David will kill us<sup>75</sup>. Therefore, we shall be quicker than him and testify against him. They testified against him and he was sentenced to be executed. That is what David said<sup>76</sup>, *Rescue my soul from the sword, From the dog my only one! From the sword, Uriah’s sword. From the dog, the pious man’s dog.*

Rebbi Jehudah ben Pazi went to the upper floor of the House of Study and saw two men in homosexual activity. They said to him, Rebbi! Realize that you are one and we are two!

75 Which the king by his police powers could do on the information of one witness.

76 *Ps.* 22:21.

(23c line 26) **אית תניי תני.** יהודה בן טבאי נשיא. אית תניי תני. שמעון בן שטח נשיא. מאן דמר. יהודה בן טבאי נשיא. עובדא דאלקסנדראה מסייע ליה. והוון בני ירושלם כותבין. מירושלם הגדולה לאלקסנדראה הקטנה. עד מתי בעלי שרי בתוכך ואני יושבת עגימה בביתי.

## Text of G

מֵאֵן דְּמַר. יְהוּדָה בֶּן טַבַּי נָשִׂיא. עוֹבְדָא דְאַלְכְסַנְדְּרִיָּה מְסִייעַ לִיה. וּמֵאֵן דְּמַר. שְׁמַעוֹן בֶּן שֵׁטַח נָשִׂיא. עוֹבְדָה דְאַשְׁקְלוֹן מְסִייעַ לִיה. יְהוּדָה בֶּן טַבַּי הוּוֹן בְּנֵי יְרוּשָׁלַם בְּעִינֵן מִמְּנִיתִיה נָשִׂיא וְלֹא קִבֵּל עָלוּי. עָרַק וְאַזַּל לְאַלְכְסַנְדְּרִיָּה. וְהוּוֹן בְּנֵי יְרוּשָׁלַם כּוֹתְבִין. מִיְּרוּשָׁלַם הִגְדוּלָה לְאַלְכְסַנְדְּרִיָּה הַקְטָנָה. עַד מֵתִי בְּעָלִי שָׂרִי בְּתוֹכָךְ וְאַנִּי יוֹשֶׁבֶת עֲגוּמָה בְּבֵיתִי. פֶּרֶשׁ מִיְּתִי לִיה גּוֹ אֶסְרֵטָא. אָמַר. דְּכִירָה מְרֵתָא דְבִייתָא דִּיאֻת קִבְּלָתוֹן וְחִסְדָּה הָיוּת. אָמַר לִיה חַד מִן תַּלְמִידוֹי. חַדָּא עֲנֵנָא הָיוּת שׁוּוֹרָה. אָמַר לִיה. אֵית גְּבָךְ תַּרְתֵּי. חַדָּא דְאַסְתַּכְּלַת בָּהּ וְחַדָּא דְחִשְׁדָּתֵנִי דְאַסְתַּכְּלִית בָּהּ. מָה אָמְרִית יָאָה בְּרִינָאָה לָא אָמְרִית וְאַלָּא יָאָה בְּעוֹבְדָה. וְאַקְפֵּד עָלוּי וְמִית.

Some Tannaïm state: Jehudah ben Tabbai was president; some Tannaïm state, Simeon ben Shetaḥ was president<sup>77</sup>.

<sup>78</sup>What happened in Alexandria supports him who said, Jehudah ben Tabbai was president, since the people from Jerusalem did write: From the great Jerusalem to the small Alexandria: How long still will my husband live in your midst and I am sitting sorrowful in my house?

## Text of G

<sup>79</sup>What happened in Alexandria supports him who said, Jehudah ben Tabbai was president; what happened in Ascalon supports him who said, Simeon ben Shetaḥ was president. The people of Jerusalem wanted to appoint Jehudah ben Tabbai as president<sup>80</sup>, but he fled and went to Alexandria. The people from Jerusalem did write: From the great Jerusalem to the small Alexandria: How long still will my husband live in your midst and I am sitting sorrowful in my house? He took leave and started on the road trip<sup>81</sup>. He said, I remember the lady of the house who received us well and was so gracious. One of his students told him, one of her eyes was damaged. He told him, you have sinned twice; first that you looked at her, and second that you suspected me of having looked at her. I did not say that she was beautiful in looks; I only said that she was beautiful in her deeds. He was taking offense and he died<sup>82</sup>.

77 This refers to Mishnah *Hagigah* 2:2 (Babli *Hagigah* 16b) where early disagreements between the presidents of the Supreme Court and their deputies over an

aspect of Temple service are reported. The paragraph shows that this and the following paragraphs are originally from *Hagigah* (77d l. 33). In the Babli, Joshua ben

Perahia everywhere replaces Jehudah ben Tabbai.

The Aramaic of the following texts shows that one deals with popular tales.

78 This is a short excerpt of the text in *Hagigah*; the full text is given in G. But since the introductory sentence makes sense only in *Hagigah*, it may well be that the short reference here is original since the interest of the Halakhah is in the Simeon ben Shetah story, and the Genizah text is an enlargement. Therefore, each text is presented separately.

79 *Hagigah* 2:2 (77d l. 33), Babli *Sotah*

47a (in the edition of the Complete Israeli Talmud, p. 301 ff.). The paragraph was eliminated by the censor from the printed editions of the Babli starting with the Basel edition since the Babli named the wayward student ישו "Jesus".

80 The information of the Babli, that he fled when king Yannai turned against the Pharisees, is generally accepted as historical.

81 In the Babli, he went by ship.

82 Jehudah ben Tabbai took offense; the student died.

(23c line 30)<sup>83</sup> ומאן דמר. שמעון בן שטח נשיא. עובדה דאשקלון מסייע ליה. תרין תלמידין  
היו באשקלון אכלין כחדא ושתיין כחדא ולעיינ באורייתא כחדא. מית חד מינון ולא אתגמל  
חסד. מית בר מעיין מופס ובטילת כל מדינתא מגמליניה חסד. שרי ההוא תלמידא בכי  
ואמר. ווי. דילמא לית לשונאי ישראל כלום. איתחמיה ליה בחלמיה ואמר. לא תיבזי בני  
מריה. דין עבד חד זכו ואזל ביה ודין עבד חד חובה ואזל ביה. ומה חובה עבד. חס דלא עבד  
חובה מן יומי. אלא זימנא חדא הקדים תפילין שקלאש לתפילין שקליד. ומה זכו עבד בר  
מעין מופס. חס ליה דלא עבד זכו מן יומי. אלא זימנא חדא עבד ארסטון לבולבוטייא ולא  
אתון. אמר. ויתון מיסכניי ויכלוניה דלא לישלקל. ואית דמרין. הנה סגי באורחא והנה  
תחות שיחיה חד עיגול. ונפל ונסתתיה חד מספן ולא מר ליה מידי בגין דלא מסמקא אפוי.  
וחמא ההוא תלמידא גו גנין גו פרדיסין גו מבויעין דמיא. וחמא לבר מעיין מופס קיים על גיף  
נהרא. בעי ממטי מיא ולא מטי. וחמא למרין בת עלי בצלים תליא בחיטי ביזיאי. ואית  
דמרין. תרעת גהינם קביעא גו אידנה. אמר לון. [למה. אמרין ליה. בגין דהנות ציימא  
ומפרסייה למגילתה. ואית דמרין. דהנות ציימא חד יום ומקצה לה תרי. אמר לון.]<sup>84</sup> עד  
אימת פדין. אמרי ליה. עד דייטי שמעון בן שטח נסבין לה מן גוא אידנה ויהבין לה גו  
אידניה. אמר לון. ומה הוא סורחניה. אמרי ליה. דנדר על נפשיה ואמר. אי אתעביד נשיא  
קטלי לכל-תרשייא. והיידן עביד ליה נשיא ולא קטלון. אלא תומנין נשים במערת אשקלון  
מחבלין עלמא. זיל ומר ליה. אמר לון. גברא רבא הוא ולית הוא מהימנתי. אמרי ליה. ענינון  
הוא סגי ומהימנתי. ואין לית מהימנתי אפיק עיניך ויבא גוא נדר. אפיק עיניה ויהב גו דיה.  
אמרי. חזרת ואשתנות לחבירתה. אזל ומר ליה. בעא מייעבד סימניה קומי אמר ליה. לית  
את צרי. אנא ידע דת גברא חסידא. אף על פי כן בליבי חשבית בפומי לא אמרית. והנה  
יום סגריר. נטל תמנין גיברין בחירין לבושין מאנין קזין ונסב עמון תמנין קידרין חדתין.

אמר לו. כד נא צפר לבשין מניכון. וכד נא צפר תנינות עולה. כיון דאעל למערת אשקלון  
אמר. אוים אוים. פתחיו לי. מן דידכון אנא. כיון דכנס. חדא אמרה מה דאמרה ומייתי  
פיתה. חדא אמרה מה דאמרה ומייתי תבשילה. חדא אמרה מה דאמרה ומייתי חמרא.  
אמרין ליה. מה אית[ת] בך עבד. אמר לו. אי בי עבדנא צפר תרין זימני ומעיל להכא תומנין  
גוברין בחירין לבושין מאנין נקיים חדי ומחדי לכו. אמרין ליה. לון נן בעיין. כיון דצפר לבשו  
מנין נקיים. כיון דצפר תנינו עליו כולהו כחדא. רמו לון. כלחד מיכון וטול חדא ויטלטלינה  
מארעא. ולא מצלח מי די עבדה. והנה אמר להאי דאיתת פיתה. איתת פיתה. ולא מתייא.  
והוא אמר. איתת לצליבא. איתת תבשילה. ולא מתייא. והוא אמר. איתת לצליבא. איתת  
חמר. ולא מתייא. והוא אמר. איתת לצליבא. כן עבד לכולהי. היינו דתנינן. שמונים נשים  
תלה שמעון בו שטח באשקלון. ואין דנין שנים ביום אחד. אלא שהשעה צריכה לכו.

What happened in Ascalon supports him who said, Simeon ben Shetah was president. Two students were in Ascalon. They ate together, drank together, and studied Torah together. One of them died, and nobody attended his funeral. The son of Ma'yan<sup>84</sup> the publican died; the entire city stopped working to attend his funeral. The other student started crying and said woe, do the haters of Israel<sup>85</sup> have no hope? It was shown to him in his dream and said, do not denigrate your Master's children. This one did one good deed and died with it, the other one committed one sin and died with it<sup>86</sup>. What sin did he commit? Far be it that he committed a sin, but once he put on his head phylacteries before his arm phylacteries<sup>87</sup>. What good deed did the son of publican Ma'yan do? Far be it that he committed a good deed, but once he prepared a breakfast for the city council but they did not show up. He said, let the poor come and eat it, so it should not go to waste. Some say, he was walking in the street, having a loaf under his shoulder. It fell down<sup>88</sup> and a poor person picked it up. He did not say anything in order not to embarrass him. This student saw gardens and water sources. He saw the son of Ma'yan the publican standing on the river bank trying in vain to reach the water. He also saw Miriam, Onion-leaf's daughter, hanging on her breast nipples; but some say, the door of Hell was fixed in her ear. He asked, [why? They told him, because she fasted and made herself famous among her neighbors. Some say, she fasted one day and was dissolute two days. He asked them]<sup>G</sup> for how long? They told him, when Simeon ben Shetah comes, we shall remove it from her ear and put it in his ear. He asked them, what is his misdeed? They

told him, because he made a personal vow that if he were elected president, he would kill all sorcerers. But now he was made president and he did not kill them. In fact, there are eighty women in the cave of Ascalon who hurt the world; go and tell him! He told them, he is an important personality, he will not believe me. They told him, he is very meek and will believe you. In case that he will not believe you, take out one of your eyes and put it in your hand. He took out one of his eyes and put it in his hand. They said, return it; it was even with the other. He went and told him. He wanted to perform his miracle before him, but he told him, you do not need to. I know that you are a pious person. Even though I intended so in my thoughts, I never spoke it with my mouth<sup>91</sup>. It was a day of rainstorms. He took eighty select men in clean garments and took with them eighty amphoras<sup>92</sup>. He told them, when I whistle once, put on your garments. When I whistle for the second time, come. When he came to the cave of Ascalon, he said אִים, אִים<sup>93</sup>, open for me, I am one of yours. When he entered, one said what she said and produced bread. One said what she said and produced a dish. One said what she said and produced wine. They asked him, what can you do? He told them, when I whistle twice, I shall bring here eighty select men in dry garments for your pleasure and entertainment. They told him, we desire them. When he whistled, they put on their garments; when he whistled for the second time, they all entered together. He made them a sign for each one to grab one of them and lift her from the earth<sup>94</sup>. Then they did not succeed in what they were trying to do. He told the one who brought bread, bring bread! She did not succeed. He said, take her to be crucified<sup>95</sup>. Bring a dish! She did not succeed. He said, take her to be crucified. Bring wine! She did not succeed. He said, take her to be crucified. This he did to all of them. That is what we have stated: "Simeon ben Shetah hanged eighty women in Ascalon, but one does not try two on the same day." But the hour needed it<sup>96</sup>.

83 Single letters added in brackets are added from *Hagigah* (Note 77) for correct spelling. The text, including the addition from G, is a slight reformulation of the text in *Hagigah*.

84 "The source", a symbolic name to contrast with the punishment of his son by eternal thirst.

85 I. e., the Jews. It is common that bad things should be said of your enemies, not of

yourself.

86 It is a general answer to the question “why do the just suffer and the wicked enjoy their lives?” that the wicked enjoy the rewards for their few good deeds and the just are punished for their few sins in this world, to create a clean slate for reward and punishment in the World to Come.

87 *Ex.* 13:9,16 require that the sign (*tefillin*, phylacteries) carried by the faithful be on the arm before being put on the head. The repetition emphasizes the importance of this feature.

88 And he would not have eaten it afterwards.

89 In the Future World.

90 Fasting without repentance is sinful (*Nedarim* 9:1 Note 25.)

91 He never made a vow valid in the eyes of the earthly court; he understood that the Heavenly Court uses other yardsticks for pious people. Since *Deut.* 23:22 declares an unfulfilled vow to fill the vower with sin; the fear of accidental, undeclared vows underlies a number of Jewish rituals.

92 I. e., he took 80 fresh garments in 80 amphoras to protect them from the rain.

93 The meaning of these words is unknown. Neither Rapoport's ἅγιον, ἅγιον (holy, holy) nor Levy's ὁμοία, ὁμοία (equals, equals), nor Dalmann's ὡή or Jastrow's εὔαν (hallo!) make any sense in the context. But compare Greek εὐοῖ, Latin *euhoē*, *euoe*, *ēvoe*, shout of joy at the festivities of Dionysos-Bacchus, possibly intended for emphasis on the idolatrous aspects of sorcery (E. G.). If the witches spoke Phoenician or Hebrew, the expression could be part of a Semitic oath formula from the root ימץ like أَيْمَنَ الله “by God”.

94 Their witchcraft was an expression of chthonic powers which were only active while they were in connection with the earth. This in itself is proof of forbidden sorcery.

95 Which is not a form of execution sanctioned by the Torah.

96 He acted under the king's police powers, disregarding all judicial rules.

23c line 69) תַּיִן. רַבִּי אֶלְעָזָר בֶּן יַעֲקֹב אָמַר. זֶה חוּמָר בְּמַחֲלָל מִבְּמַגְדֵּף וְזֶה זֶה חוּמָר בְּמַגְדֵּף מִבְּמַחֲלָל. בְּמַגְדֵּף כְּתִיב לֹא-תֵלִין נִבְלָתוֹ עַל-הָעֵץ. וּבְמַחֲלָל כְּתִיב וַתִּקַּח רָצְפָה בַת-אַלִּיָּה אֶת-הַשֶּׁק וַתִּטֶּהוּ עַל הַצֹּר מִתְחִילָת קִצִּיר עַד נִתְדַּבְּרִים עֲלֵיהֶם. מִלְּמִד שֶׁהָיוּ תֵלִיִין מִיֹּ"ו בְּנִיסָן עַד י"ז בְּמַרְחֶשֶׁן.

<sup>97</sup>It was stated: Rabbi Eliezer ben Jacob said, this is worse for the desecrator<sup>98</sup> than for the blasphemer and worse for the blasphemer than the desecrator. About the blasphemer it is written<sup>67</sup>: *Do not leave his corpse on the gallows overnight*. But about the desecrator it is written<sup>99</sup>: *Rispa bat Aya took sackcloth and spread it on the rock from the start of harvest until water*



was poured on them. This teaches that they were hanging from the sixteenth of Nisan to the seventeenth of Marheshwan.

97 Here starts the discussion of the duty to see to the immediate burial of a corpse, and the difficulty of reconciling this biblical duty with king David's conduct in the matter of the Gibeonites and king Saul's sons (2S. 21). The argument in the following text is a shortened and partially elliptic rewriting of *Qiddušin* 4:1. The commentary for the full text of *Qiddušin* 4:1 (Notes 46-85) may

serve here also. Other parallels are Babli *Yebamot* 78b-79a, *Num. rabba* 8(4), *Midrash Samuel* 28(5).

98 The person who desecrates the Name of God; he committed the one sin which in Judaism can only be atoned for by death (Babli *Yoma* 87a).

99 2S. 20:10.

74) (23c line 23) כְּתִיב וַיִּתְּלֵם יְהוֹשֻׁעַ בַּיּוֹם הַהוּא חוֹטְבֵי עֲצִים וְשׂוֹאְבֵי מִים לַעֲדָה. נִיחָא לַעֲדָה. וּלְמִזְבֵּחַ יִי. אֵלְכָא שְׁתַּלְיָן וְהוֹשַׁע בְּרִיפָן<sup>100</sup>. אָמַר. אֲנִי [לֹא] מִרְחִיקָן וְלֹא מְקַרְבָן. אֵלְכָא מִי שְׁעִתִּיד לְבָנוֹת בֵּית הַבְּחִירָה דְּאֵת<sup>101</sup> דְּעִתּוֹ לְקָרֵב וְאֵת דְּעִתּוֹ לְרַחֵק וְרַחֵק. וְכֹא דוֹד וְרִיחֶק. וְהַגְבְּעוֹנִים לֹא מְבַגְּי יִשְׂרָאֵל הֵמָּה. וְלָמָּה רִיחֶק. עַל שֶׁם וַיְהִי רָעַב בִּימֵי דָּוִד שְׁלֹשׁ שָׁנִים וּגו'. אָמַר דָּוִד. בָּעוֹן ג' דְּבָרִים גְּשָׁמִים נִעְצְרִין. עֲבוּדָה זָרָה וְגִילּוֹי עֲרִיזוֹת וְשִׁפְכוּת דְּמִים. עֲבוּדָה זָרָה דְּכִתִּיב פֶּן-יִפְתָּהּ לְבַבְכֶם וְסָמִיד לִיה וְעֶצֶר אֶת-הַשְּׂמִלִּים. גִּילּוֹי עֲרִיזוֹת דְּכִתִּיב וַיִּמְנָעוּ רִבִּיבִים וּמִלְקוֹשׁ לֹא הֵיךְ וּמִצַּח אִשָּׁה זֹנֶה הֵיךְ לָד. שִׁפְכוּת דְּמִים שְׁנֵאמַר כִּי הַדָּם הוּא יַחֲנִיף אֶת-הָאָרֶץ. וְיֵשׁ אוֹמְרִים. אִף פּוֹסְקֵי צְדָקָה בְּרַבִּים וְאִינוּ נוֹתְנִין. דְּכִתִּיב נְשִׂאִים וְרוּחַ וְגִשָׁם אֵיין אִישׁ מִתְּהַלֵּל בְּמִיתַת-שָׁקָר. בְּדֹק דָּוִד בְּכָל-דְּרָכָיו וְלֹא מִצָּא אֶחָד מֵהֶן. הִתְחִיל שׂוֹאֵל בְּאוֹרִים וְתוֹמִים. הִדָּא הוּא דְּכִתִּיב וַיִּבְקֹשׁ דָּוִד אֶת-פָּנָי יִי. אָמַר רַבִּי לֵעָזֵר. כְּתִיב בִּקְשׁוּ יִי כָל-עַנְיֵי אָרֶץ אֲשֶׁר מִשְׁפָּטוֹ פָּעַל וּגו'. וַיֹּאמֶר יִי עַל שְׂאוּל וְעַל בֵּית הַדְּמִים עַל-אֲשֶׁר-הִמִּית אֶת-הַגְּבָעוֹנִים: עַל שְׂאוּל. שְׂלֹא עֲשִׂיתֶם עִמּוֹ חֶסֶד. וְעַל בֵּית הַדְּמִים עַל-אֲשֶׁר-הִמִּית אֶת-הַגְּבָעוֹנִים: שְׁלַח דָּוִד וְקִרְאֵן. אָמַר לָהֶם. מַה לָּכֶם וּלְבֵית שְׂאוּל. אָמְרוּ לוֹ. עַל יְדֵי שְׁהִמִּית מִמֶּנּוּ שְׁבָעָה אֲנָשִׁים שְׁנֵי חוֹטְבֵי עֲצִים וְשְׁנֵי שׂוֹאְבֵי מִים וְסוֹפֵר וְחָזֵן וְשִׁמְשׁ. אָמַר לוֹן. מַה תּוֹן בָּעוֹן. אָמְרוּ לִיה. יִתֵּן לָנוּ שְׁבָעָה אֲנָשִׁים... וְהוֹקְעָנוּם לִי בְּגִבְעוֹן. אָמַר לוֹן. וְיִמָּה הִנְיָה יֵשׁ לָכוֹן אִין אִינוּן מִתְקַטְלִין. סְבוּ לָכוֹן כְּסָף וְדִהֵב. אָמְרוּ לִיה. אִין לָנוּ כְּסָף וְזָהָב עִם-שְׂאִיל וְעִם-בִּיטוֹ. אָמַר. דִּילְמָא בְּהִתִּין אִילִין מִן אִילִין. הִנּוּ נָסִיב כָּל-יָחַד וְחָד מִינוּן וּמְפִיִּיס לִיה קוֹמִי נִפְשִׁיה וְהוּא לֹא מְקַבֵּל עָלוּי. הִדָּא הוּא דְּכִתִּיב אִין-לָנוּ כְּסָף וְזָהָב. אִין לִי כְּתִיב. בְּאוֹתָהּ שְׁעָה אָמַר דָּוִד. שְׁלֹשׁ מִתְנוֹת טוֹבוֹת נָתַן הַקְּדוֹשׁ לְיִשְׂרָאֵל. בּוֹיִשְׁנִין וְרַחֲמִין וְגוֹמְלֵי חֶסְדִּים. בּוֹיִשְׁנִין דְּכִתִּיב לְבַעֲבוֹר תִּהְיֶה יִרְאָתוֹ עַל-פְּנֵיכֶם וּגו'. רַחֲמִין דְּכִתִּיב וְנָתַן-לָךְ רַחֲמִים וְרַחֲמָנָא וְהַרְבֵּד. גּוֹמְלֵי חֶסְדִּים דְּכִתִּיב וְשִׁמְרִי יִי אֶלְהִיד לָךְ אֶת-הַבְּרִית וְאֶת-הַחֶסֶד. וְאִילּוּ אִין בְּהוֹן אַחַת מֵהוֹן וְרִיחֶק. וְהַגְּבָעוֹנִים לֹא מְבַגְּי יִשְׂרָאֵל הֵמָּה. וְאִף עֲזָרָא בָּא וְרִיחֶק. וְהַנְּתִילִים הֵי יוֹשְׁבֵים

בְּעוֹפֶל וְצִיחָא וְגִישָׁפָא מִן הַגְּבֻעוֹנִים. וְאִף לְעֵתִיד הַקְּדוֹשׁ בְּרוּךְ הוּא מְרַחֵק. דְּכָתִיב וְהֶעֱבֹד הָעִיר יַעֲבֹדוּהוּ מִכָּל שְׂבָטֵי יִשְׂרָאֵל: יַאֲבִידוּהוּ מִכָּל־שְׂבָטֵי יִשְׂרָאֵל.  
וַיֹּאמֶר הַמֶּלֶךְ אֲנִי אֶתָּן. וַיִּקַּח הַמֶּלֶךְ אֶת־שְׁנֵי בָנֵי רָצָפָה. וּלְמִיכָל בֶּת־שָׁאוּל לֹא־הָיָה לָהּ וְנָלָד. וַהֲיָמָר אָבָן. אָמַר מֵעַתָּה. בְּנֵי מֶרֶב הֵיוּ וְגִידְלָתָם מִיכָל וְנִקְרְאוּ עַל שְׁמָהּ. וַיִּתְּנָם הַמֶּלֶךְ בְּיַד הַגְּבֻעוֹנִים וַיִּזְקִיעוּם בְּהָר־לְפָנַי יִי וַיִּפְּלוּ שְׁבַעֲתָם יָחִיד. שְׁבַעֲתָם כְּתִיב חֹסֶר חֵד. זֶה מְפִיבוֹשֶׁת שְׁנֵתְפַלֵּל עָלָיו דָּוִד וּקְלָטוֹ הַמְּזֻבָּח. אָמַר לָהּ. הֲרִינִי מַעֲבִירָן לִפְנֵי הַמְּזֻבָּח. כָּל־שְׁהַמְּזֻבָּח קוֹלָטוֹ הָרִי הוּא שְׁלֹו. מִפְּנֵי מְפִיבוֹשֶׁת שֶׁהָיָה גְדוֹל בְּתוֹרָה. וְהֶעֱבִירוֹ לִפְנֵי הַמְּזֻבָּח וּקְלָטוֹ. אָמַר רַבִּי אֲבִין. אֶקְרָא לְאַלְהִים עָלָיו לֹאֵל גּוֹמֵר עָלָי. שֶׁהִסְכִּים הַקְּדוֹשׁ בְּרוּךְ הוּא עִם דָּוִד. וְהִמָּה הוֹמָתוֹ בִּימֵי קִצִּיר בְּתַחֲלִילַת קִצִּיר שְׁעָרִים. וַתִּקַּח רָצָפָה בֶּת־אֵלָה אֶת הַבָּגָד וַתִּטְהֹר לָהּ עַל הַצּוּר. מָהוּ עַל הַצּוּר. אָמַר רַבִּי הוֹשַׁעְיָה. שֶׁהָיְתָה אוֹמֶרֶת הַצּוּר תְּמִים פָּעֻלֹו. רַבִּי נָא בֵּר זְמִינָא בְּשֵׁם רַבִּי הוֹשַׁעְיָה. גְּדוֹל הוּא קִידוֹשׁ הַשֵּׁם מַחֲלִיל הַשֵּׁם. בְּקִידוֹשׁ הַשֵּׁם כְּתוּב לֹא־תִלְוִין נִבְלָתוֹ. וּבַחֲלִיל הַשֵּׁם כְּתוּב וַיְהִי תְלֹוּיִם עַד נִתְּדָ־מִים עֲלֵיהֶם. מִלְּמַד שֶׁהֵיוּ תְלֹוּיִן מִי"ו בְּנִיסָן עַד י"ז בְּמֶרְחָשׁוֹן. וְהֵיוּ הַעוֹבְרִין וְשׁוֹבִין אוֹמְרִים. מָה חֲטָאוּ שֶׁנִּשְׁתַּנָּה עֲלֵיהֶן מִדַּת הַדִּין. וְהֵיוּ אוֹמְרִים לָהּ. עַל שֶׁפָּשְׁטוּ יְדֵיהֶן בְּגָרִים אֲרוּרִים. וְהָיָה דְּבָרִים קֹל וְחוֹמֶר. וּמָה אֵילֹו שְׁלֹא נִתְּגִיירוּ לְשׁוּם שְׂמִים תְּבַע הַקְּדוֹשׁ בְּרוּךְ הוּא דָּמָן. הַמְתַּגִּיירִין לְשׁוּם שְׂמִים לֹא כָל־שָׁכָן. הַרְבֵּה גָרִים נִתְּגִיירוּ בְּאוֹתוֹ הַיּוֹם. שֶׁנֶּאֱמַר וַיִּסְפֹּר שְׁלֹמֹה כָּל־הָאֲנָשִׁים הַגִּירִים וַיַּעַשׂ מֵהֶם שְׁבָעִים אֶלְקָיָ נוֹשֵׂא סִבָּל וְגו'.

It is written<sup>102</sup>: *At that moment Joshua dedicated them as hewers of wood and drawers of water for the congregation.* One understands “for the congregation.” But “for the Eternal’s altar”? But Joshua kept them in limbo. He said, I shall [neither]<sup>103</sup> exclude nor include them. But he who sometime in the future will build the Temple, if he wants to include he may include, if he wants to exclude he may exclude. David came and excluded them as it is said<sup>104</sup>: *But the Gibeonites are not part of the Children of Israel.* Why did he exclude them? Because *there was a famine in David’s time, three years year after year.* David said, for three sins the rains are locked away: Foreign worship, incest and adultery, and murder. Foreign worship, as it is written<sup>105</sup>: *Beware, lest you be seduced* and next to it, *He locks the sky up.* Incest and adultery, as it is written<sup>106</sup> *Rain-showers were withheld, there was no late rain, for you had the forehead of a whoring woman.* Murder, as it is written<sup>107</sup>: *Because blood will distort the Land.* Some say, also those who publicly promise money for welfare but do not pay, as it is written<sup>108</sup>: *Clouds and wind but no rain means the man who boasts with lying gifts.* David checked on all

his ways and did not find any of them. He turned to ask the Urim and Tummim. That is what is written<sup>104</sup>: *David asked before the Eternal*. Rabbi Eleazar said, it is written<sup>109</sup>: *Ask the Eternal, all the meek of the Land, who execute His Law*, etc. <sup>104</sup>*The Eternal said, because of Saul and the House of blood-guilt, for he had killed the Gibeonites. Because of Saul, whom you did not grant the last favor, and because of the House of blood-guilt, for he had killed the Gibeonites*. David sent and called them. He asked them, what is between you and the House of Saul? They told him, because he killed seven of our men, two hewers of wood, two drawers of water, a scribe, a religious leader, and a beadle. He asked them, what do you want now? They said to him, *May there be given to us seven men . . . and we shall hang them before the Eternal in Gibeon*<sup>110</sup>. He said to them, what use is it to you that they be killed? Take silver and gold for yourselves! But they answered, *there is no silver or gold for us from Saul and his house*<sup>111</sup>. He said, maybe they are afraid one of the other; he dealt which each of them separately, trying to mollify him by himself, but nobody accepted it. That is what is written, *there is no silver or gold for us*, it is written *for me*. At this moment, David said that the Holy One gave three good gifts to Israel: They are decent, merciful, and charitable. Decent, for it is written<sup>112</sup>: *that His fear be on your faces*. Merciful, for it is written<sup>113</sup>: *He gave you mercy, had mercy on you and increased you*. Charitable, for it is written<sup>114</sup>: *The Eternal, your God, kept for you covenant and charity*. But these, nothing of this is found in them; he excluded them: *But the Gibeonites are not of the Children of Israel*<sup>104</sup>. And Ezra also excluded them, as it is said:<sup>115</sup> *And the dedicated ones dwelt in the Ophel; Ziha and Gishpa were of the dedicated ones*. Also in the future, the Holy One, praise to Him, will exclude them as it is written<sup>116</sup>: *The city worker will cultivate it, from all tribes of Israel*. He will eliminate them from all tribes of Israel.

<sup>117</sup>*The king said, I shall give*<sup>110</sup>. *The king took the two sons of Rispah bat Ayah*<sup>118</sup>. *Michal, Saul's daughter, did not have a child*<sup>119</sup>, and you say so? Say now that they were sons of Merab but Michal raised them, so they were named after her. *The king gave them into the hand of the Gibeonites who hanged them on the mountain before the Eternal*<sup>120</sup>. *All seven* is written

defective of one letter. That refers to Mephiboshet, for whom David prayed and whom the altar received. He told them, I let them pass by the altar and anyone whom the altar receives will be his, because of Mephiboshet who was great in Torah. He let him pass by the altar, which received him. Rabbi Avin said, *I shall call to the Most High God, to the Power Who has the ultimate decision over me*<sup>121</sup>. For the Holy One, praise to Him, agreed with David. *They were killed on the day of harvest . . . at the start of the barley harvest*<sup>120</sup>. *Rispa bat Ayah took a garment and laid it out on the rock*<sup>122</sup>. What means *on the rock*? Rabbi Hoshia said, she was reciting: *The rock, perfect is His action*<sup>123</sup>. Rabbi Abba bar Zamina in the name of Rabbi Hoshia: Sanctification of the Name is greater than desecration of the Name. Referring to sanctification of the Name it is written: *Do not leave his corpse overnight*<sup>67</sup>. But referring to desecration of the Name it is written that they were left hanging *until water was poured on them*<sup>120</sup>. This teaches that they were hanging from the sixteenth of Nisan to the seventeenth of Marheshwan. The passers-by were saying: How did these people sin that the rules of justice were changed for them? They were answered: Because these had attacked cursed proselytes. Is that not an argument *de minore ad majus*? Since even for those who did not convert for the sake of Heaven, the Eternal avenged their blood; if one would convert for the sake of Heaven not so much more? Many converts were converted at that time; that is what is written<sup>124</sup>: *Solomon counted all proselytes . . . and appointed from them 70'000 carriers, etc.*

100 Reading with the *Qidduṣin* text: בדופן.

101 Reading with the *Qidduṣin* text: ואת.

102 *Jos.* 9:27.

103 Added from the *Qidduṣin* text.

104 *2S.* 21:1-2.

105 *Deut.* 11:16-17.

106 *Jer.* 3:2-3.

107 *Num.* 35:33.

108 *Prov.* 25:14.

109 *Zeph.* 2:3.

110 *2S.* 21:6.

111 *2S.* 21:4.

112 *Ex.* 20:20.

113 *Deut.* 13:18,

114 *Deut.* 7:12.

115 *Neh.* 3:26, 11:21.

116 *Ez.* 48:19.

117 Several passages in this paragraph are truncated; refer to the *Qidduṣin* text.

118 *2S.* 21:8.

119 *2S.* 6:23.

120 *2S.* 21:9.

121 *Ps.* 57:3.

122 *2S.* 21:10.

123 *Deut.* 32:4.124 *2Chr.* 2:16-17.

(fol. 23a) **משנה י:** אמר רבי מאיר בזמן שאתם מצטער שכינה מה הלשון אומרת. כביכול קלני מראשי קלני מזרועי. אם כך אמר הכתוב מצטער אני על דמן של רשעים קל וחמר על דמן של צדיקים שנשפך.

**Mishnah 10:** Rabbi Meïr said: When a human suffers, how does the Divine presence<sup>125</sup> express Itself? If it could be said<sup>126</sup>, my head is light, my arm is light<sup>127</sup>. If Scripture says so, I am suffering about the blood of evildoers, so much more if blood of the just is spilled.

125 The *Šekhinah* is God's Presence among men, *Ex.* 29:46.

behavior cannot be attributed to the *Šekhinah*, but if it could, one could say . . .

126 The usual expression to justify an anthropomorphism. We know that human

127 This translation is tentative; see the Halakhah.

(23d line 50) **הלכה י:** אמר רבי מאיר כול. אנו תנינן. קליני. אית תניי תני. קל אני. מאן דמר קליני. לית הוא אלא קליל. מה דמר. קל אני. לית הוא אלא קטיל. מתניתא דלא כרבי מאיר דאמר. אף המגדף עובר בלא תעשה.

**Halakhah 10:** “Rabbi Meïr said,” etc. We have stated קלני. Some Tannaïm state קל אני.<sup>128</sup> He who says קלני uses only an expression of lightness. He who says קל אני uses a language of load.

The Mishnah does not follow Rabbi Meïr because he said, also for the blasphemer one violates a prohibition<sup>129</sup>.

128 It seems that one should follow R. David Fraenckel and switch the references. This also would follow Talmudic style: readings AB are discussed as BA: “He who says קל אני (I am light) uses an expression of lightness. He who says קליני (I am not light) uses a language of load.”

The Babli, 46b, only discusses the second alternative, or a possibility of

deriving the expression from the root קלל “to curse.”

129 It is a question of interpretation of *Deut.* 21:23: *Do not leave his corpse on the gallows overnight (a prohibition), but burying you shall bury him on the same day (a positive commandment).* It is agreed that the positive commandment applies to all burials (Mishnah 11). The question is the domain of applicability of the prohibition.

In Mishnah 9, the rabbis hold that only people attacking the essence of the faith are hanged. The question remains what their position is about witnesses who falsely accuse somebody of blasphemy. It may be that *Sifry Deut.* 221, which excludes the perjured witnesses from being hanged,

represents R. Meir's position, which is not documented elsewhere. Then the sentence should be read: *Only for the blasphemer does one violate the prohibition* . . . , since only concerning the blasphemer there is a duty to hang his corpse.

(fol. 23a) **משנה יא:** וְלֹא זֶה בְּלִבָּד אֶלָּא כָּל הַמֵּלִין אֶת מִתּוֹ עוֹבֵר בְּלֹא תַעֲשֶׂה. הֲלֵינוּ לִכְבוֹד לְהֵבִיא לוֹ אֶרֶז וְתַכְרִיכִין אֵינוֹ עוֹבֵר עָלָיו בְּלֹא תַעֲשֶׂה. וְלֹא הָיוּ קוֹבְרִין אוֹתוֹ בְּקִבְרוֹת אֲבוֹתֵיהֶן. אֶלָּא שְׁנֵי קִבְרוֹת הָיוּ מִתּוֹקְשֵׁין לְבֵית דִּין אֶחָד לְנִסְקָלִין וְלַנִּשְׁרָפִין וְאֶחָד לְהִיָּהָרִין וְלַחֲנָקִין:

**Mishnah 11:** Not only this, but anybody who leaves his dead<sup>130</sup> overnight violates a prohibition. If he left him overnight for his honor, to provide him with a coffin and shrouds<sup>131</sup>, he does not violate a prohibition in his regard. They did not bury them<sup>132</sup> in their family graves, but two graves<sup>133</sup> were prepared, one for those stoned or burned, the other for those beheaded or strangled<sup>134</sup>.

130 Any deceased whose burial is his personal responsibility.

131 These are examples rather than an exhaustive list of reasons for a delayed funeral.

132 People executed by a court verdict.

133 In all printed Babli editions בְּתֵי קִבְרוֹת “cemetaries”. This reading has no parallel

in Babli mss. (*Diqduqe Soferim* 36a Note 5). Maimonides's autograph Mishnah text has קְבִירוֹת, read קְבִירוֹת “burial sites”. This seems to be the best reading.

134 The sins of those executed by the two cruel methods are incomparably worse than those of persons executed by the two swift methods.

(23d line 53) **הלכה יא:** וְלֹא זֶה בְּלִבָּד כּוֹל'. תִּנִּי. הַמַּעֲבִיר אֶרֶז מִמָּקוֹם לְמָקוֹם אֵין בּוֹ מִשּׁוּם לִיקוּט עֲצָמוֹת. אָמַר רַבִּי אֶחָא. הָדָא דְתִימָר בְּאֶרֶז שִׁישׁ. אֶבֶל בְּאֶרֶז עֵץ יֵשׁ בּוֹ מִשּׁוּם לִיקוּט עֲצָמוֹת. אָמַר רַבִּי יוֹסִי. אֶפִּילוּ בְּאֶרֶז עֵץ אֵין בּוֹ מִשּׁוּם לִיקוּט עֲצָמוֹת. אִי זֶהוּ לִיקוּט עֲצָמוֹת. אָמַר רַבִּי חֲנִינִי. וְהוּא שְׁשֻׁמֵּעַ לְמַחֵר. אֶבֶל בּוֹ בַּיּוֹם יֵשׁ שְׁמוּעָה לְלִיקוּט עֲצָמוֹת. תִּנִּי נִיקוּמְכִי קוּמִי רַבִּי זְעִירָא. אֵין שְׁעוֹר לְלִיקוּט עֲצָמוֹת. רַבִּי מְנִי הוֹרִי לְרַבִּי לֹא דְכַפְרָא לְקִרְוֵעַ וְלַהֲתַאֲבֵל כְּרַבִּי אֶחָא וְלֹא לִיטְמוֹת כְּרַבִּי יוֹסִי.

תני. ליקוטי עצמות כשמוען. אי זהו ליקוט עצמות. המלקט עצם עצם משיתאכל הבשר. תני. ליקוט עצמות אין אומרים עליהן קינים ונהי ולא ברכת אבילים ולא תנחומי אבילים. אילו הן ברכת אבילים. שאומרים בבית הקנסת. אילו הן תנחומי אבילים. שהן אומרים בשורה. תני. אבל אומרים עליהן דברים. מה הן דברים. רבנו דקיסרין אמרין. קילסיין.

**Halakhah 11:** “Not only this,” etc. It was stated: <sup>135</sup>If somebody transports a coffin from one place to the other, the rules of collecting bones do not apply<sup>136</sup>. Rabbi Aha said, this means in a marble<sup>137</sup> coffin. But in a wooden coffin, the rules of collecting bones do apply. Rabbi Yose said, even for a wooden coffin the rules of collecting bones do not apply. What is “collecting bones”<sup>138</sup>?

Rebbi Haggai said, only if he heard it the next day. But on the same day notice must be taken of collecting bones<sup>139</sup>. Nikomachos stated before Rebbi Ze'ira: Collecting bones has no [minimal] amount<sup>140</sup>. Rebbi Mani instructed Rebbi La from Kufra<sup>141</sup> to tear his garment and mourn following Rebbi Aha<sup>142</sup>, not to pollute himself following Rebbi Yose<sup>143</sup>.

It was stated: Collecting bones, following the information<sup>144</sup>. What is collecting bones? One collects every single bone after the flesh has rotted away<sup>138</sup>.

It was stated: When collecting bones one does not recite lamentations and wailing, nor the benediction of mourners, nor consolation of mourners. The benediction of mourners, what is said in the synagogue. Consolation of mourners, what is said in the row<sup>145</sup>. It was stated: But one spoke words on the occasion. What are words? The rabbis of Caesarea said, eulogies<sup>146</sup>.

135 The Halakhah really belongs to the next Mishnah, which refers to collecting bones. The text as it stands here is missing a few lines which in part make it incomprehensible. The origin is in *Mašqin* (*Mo'ed qatan*) 1:5 (80d ll. 1-14); it also is found in *Pesahim* 8:7 (36b ll. 22-37).

136 This refers to Mishnah *Mo'ed qatan* 1:3: “R. Meir says, a person may collect his parents’ bones on a semi-holiday because it makes him happy; R. Yose says, it is an

occasion of mourning. Halakhah 12 (*Mo'ed qatan* 1:5) determines that the day of collecting the bones (transferring them from burial in the ground to an ossuary to be stored in a cave) is a day of mourning (prohibited one a semi-holiday) but the day following is a holiday since the person is assured that his parents were freed from punishment in the world of souls. [Only extremely vicious souls are punished in eternity, cf. Chapter 10. For all other

evildoers, the punishment in hell is for 12 months or until the flesh has disappeared from the bones, whichever comes sooner. For this reason, a mourner may not recite the prayer for the dead (customary since the last millennium) for more than 11 months; if he did recite it in the 12th month he would declare his parent an evildoer, in itself a sin.]

137 In the parallels: stone.

138 The missing answer, found in the parallels, is: One transports them in an ἐπικάρσιον (“cloth hanging down”, used for striped cloth) from place to place.

139 The text to which this remark belongs again is missing. It starts with the sentence of Note 144.

In case of a death, the relatives near the deceased have to see to his burial and start the mourning rites immediately. Those farther away have to start when they are informed. There is a difference in the rules between “recent information” (within 30 days of the death) or “distant information” (after 30 days). The same is true for collecting the bones. Not only the person actually collecting the bones has to observe the rites of mourning, but all his close relatives who in theory also could have collected the bones. But since the day

following already is a day of joy (Note 136), only information which reaches the relative on the day itself forces the recipient to observe mourning.

140 Mourning while collecting the bones is required even for a single bone. In the parallels, this is the answer to the question: Is there a minimal amount required when collecting bones?

141 In the parallels: R. Mana instructed R. Hillel from Kifra.

142 Transporting a wooden coffin is subject to all rules of mourning.

143 A Cohen is not permitted to transport a wooden coffin, even if it is for one of the close relatives for whom he is obligated to pollute himself.

144 Cf. Note 139.

145 After burial, the participants in the funeral form two rows; the mourners walk in between while the participants recite formulas of consolation; cf. *Berakhot* 3:2, Note 121.

146 Praises of the deceased. According to H. L. Fleischer, this word קיליס, which also exists in Syriac, and a related verb in Arabic are derived from Greek καλῶς! “beautiful, excellent.”



**משנה יב:** נִתְעַכַּל הַבֶּשֶׂר הָיָה מְלַקְטִין אֶת הָעֲצָמוֹת וְקוֹבְרִין אוֹתָן בְּמִקְוֶה. וְהַקְרֹבִין בָּאִין וְשׂוֹאֲלִין אֶת שְׁלוֹם הָעֲדִים וְאֶת שְׁלוֹם הַדִּינִין כְּלוֹמַר דָּעוּ שְׂאִין בְּלִבֵּנוּ עֲלֵיכֶם שְׂדִין אֶמֶת דְּנִתָּם. וְלֹא הָיָה מִתְאַבְּלִין אֶבֶל אוֹנֵנִין שְׂאִין אֲנִיָּה אֶלָּא בְּלֵב:

**Mishnah 12:** If the flesh has rotted away, one collects the bones and buries them at their place<sup>146</sup>. The relatives come<sup>147</sup> and greet the witnesses and judges, implying that “we hold no grudge against you because you delivered a true judgment.” They did not mourn but were in deep sorrow<sup>148</sup>, since deep sorrow is only in the mind.

146 The bones of the person executed are exhumed from the court’s burial site and reburied in the family grave or cave.

147 Immediately after the execution.

148 The day of execution itself, when the deep mourner is barred from all religious acts (*Deut.* 26:14). Mourning rites only start after burial.

**הלכה יב:** נִתְעַכַּל הַבֶּשֶׂר כּוֹל. תִּנִּי. בְּרֵאשׁוֹנָה הָיָה מְלַקְטִין אֶת הָעֲצָמוֹת וְקוֹבְרִין אוֹתָן בְּמַהְמוּרוֹת. נִתְעַכַּל הַבֶּשֶׂר הָיָה מְלַקְטִין אוֹתָן וְקוֹבְרִין אוֹתָן בְּאַרְזִים. אוֹתוֹ הַיּוֹם מִתְאַבֵּל וְלִמְחָר הֵיךְ שָׂמֵחַ. לּוֹמַר שֶׁיִּנְחִיחוּהוּ אֲבוֹתָיו מִן הַדִּין.

**Halakhah 12:** “If the flesh has rotted away,” etc.<sup>149</sup> It was stated: In earlier times, they were collecting the bones after burying them in ditches<sup>150</sup>. When the flesh had rotted away, they collected them and buried them in cedar wood. On the day itself he was mourning, the day after he was happy<sup>151</sup>, implying that his parents were at rest<sup>152</sup> from judgment.

149 The parallel is in *Mašqin* (*Mo’ed qatan*) 1:5 (80c l. 74). The subject is a common person, not a criminal.

150 The translation is tentative; the word appears only in this *baraita* and *Ps.* 140:11.

151 Cf. Note 136. In the Babli, *Mo’ed qatan* 8a, the quote appears in a different context.

152 Reading יִנְחֹו with the parallel text.

(23d line 68) וְלֹא עוֹד אֶלָּא הָיָה קוֹבְרִין אוֹתָן בְּכַף עֲצָמָן. הַנִּסְקָלוֹ בְּנִשְׁרָפִין וְהַנֶּהָרְגִין בְּנִחְנָקִין. הוּא שְׂדוֹד אוֹמֵר אֶל־תֵּאֲסוּף עִם־חַטָּאִים נִפְשִׁי. הַנִּסְקָלוֹ וְהַנִּשְׁרָפִין. וְעִם־אֲנָשִׁי דְּמִים חִיִּי. הַנֶּהָרְגִין וְהַנִּחְנָקִין.

<sup>153</sup>Not only this, but they were buried separately, those stoned with the burned, those beheaded with the strangled. This as what David said<sup>154</sup>, *Do not*

*collect my soul with sinners, those stoned or burned; nor my life with men of blood guilt, those beheaded or strangled.*

153 This refers to the end of Mishnah 11. 154 Ps. 26:9.

(23d line 71) רבי אבהו מטיחיה אוניס. אצל ליה חד מינוק. עלון רבי יונה ורבי יוסי מי חמי ליה אפין. מאימתייה עליה לא אמרו ליה מילא דאורייתא. אמר לון. משנחיו רבנן מימר מילא דאורייתא. אמרו ליה. אשנח מרן. אמר לון. מה אם רשות שלמטון שיש בו כזב ושקר וגניבות דעת ומשוא פנים ומקח שוחד והיום עודנו ומחר איננו נאמר בה הקרובין באין ושואלין שלום הדניין והעדים לומר שאין בליבנינו עליכם כלום. שדין אמת דנתתם. רשות שלמעלן שאין בה לא כזב ולא שקר ולא גניבות דעת ולא משוא פנים ולא מקח שוחד והוא חי וקיים לעולם ולעולמי עולמים. על אחת כמה וכמה שחייבים אנו לקבל עלינו מידת הדין. ואומר ונתן-לך רחמים ורחמך והרף-ך פאשר נשבע לאבותיך:

An accident happened to Rabbi Abbahu; he lost a baby. Rabbi Jonah and Rabbi Yose ascended<sup>155</sup> to visit him. Out of respect for him,<sup>156</sup> they did not speak to him words of Torah. He told them, would the rabbis think saying a word of Torah? They answered, think of it, our teacher. He said to them: If about a terrestrial authority, where one finds lies, and untruth, and misleading statements, and favoritism, and bribery, and they are here one day and gone the next, it was said: "the relatives come and greet the judges and witnesses, implying that we hold no grudge against you because you delivered a true judgment," the Heavenly authority, before which there are no lies, no untruth, no misleading statements, no favoritism, and no bribery, and He exists forever in all worlds, so much more are we obligated to accept His judgment. And it is said<sup>113</sup>, *May He give you mercy, have mercy on you, and make you increase as He has sworn to your ancestors.*

155 They came from Tiberias below sea level to Caesarea Philippi in the foothills of the Golan Heights to offer their

condolences.

156 The great man of the generation of their teachers.

## ארבע מיתות פרק שביעי

(fol. 24a) **משנה א:** ארבע מיתות נמסרו לבית דין סקילה שרפה הרג וחנק. רבי שמעון אומר שרפה סקילה חנק והרג. זו מצות הנסקליו:

**Mishnah 1:** Four kinds of execution was the court empowered to impose: Stoning, burning, decapitation, and strangling. Rabbi Simeon says: Burning, stoning, strangling, and decapitation<sup>1</sup>. The preceding was prescribed for stoning.

1 They differ in the evaluation of which condemned, starting with the worst and type of execution inflicts more pain on the ending with the easiest.

(24b line 9) **הלכה א:** ארבע מיתות נמסרו לבית דין כול. ולרשות לא ניתן אלא דין הרג בלבד. סקילה מניין. וסקלקלם באבנים ומתו: שריפה. שנאמר באש ישרפו אותו ואתהו. הרג. נאמר כאן נקימה ונאמר להלו והבאתי עליכם חרב נקמת נקם-ברית. מה נקימה האמורה להלו חרב. אף נקימה האמורה כאן חרב. חנק. לית משכח ליה. אמרת. כל-מיתה האמורה בתורה סתם אין אתה רשאי להחמיר עליה אלא להקל עליה ותלוי אותה בחנק.

**Halakhah 1:** “Four kinds of execution was the court empowered to impose,” etc. But to the government<sup>2</sup> only decapitation was given.

From where stoning? *You shall stone them with stones that they die*<sup>3</sup>. Burning, for it is written, *in fire you shall burn him and them*<sup>4</sup>. Avenging is written here<sup>5</sup>, and there it is written: *I shall bring over you a sword which avenges the vengeance of the Covenant*<sup>6</sup>. Since avenging mentioned there is by the sword, also avenging mentioned here is by the sword. Strangling? You do not find it<sup>7</sup>. You say that for any death penalty mentioned in the Torah with no particular indication, you are not empowered to make it more stringent, but only to make it less so; they assigned this to strangling.

2 The Roman Imperial government. When Caracalla extended Roman citizenship to all free inhabitants of the empire, he thereby abolished crucifixion (except for slaves).

3 Deut. 17:5.

4 Lev. 20:14.

5 Ex. 21:20. The slave slain by his master shall be avenged. Babli 52b; the

Babli text in *Mekhilta dR. Ismael* p. 273, dR. *Simeon bar Iohai* p. 175.

6 Lev. 26:25.

7 It is not mentioned anywhere in biblical literature as a recognized form of execution. The Babli's discussion, 52b, is inconclusive.

(24b line 15) רבי שמעון אומר. שריפה חמורה מסקילה. ורבנין מרין. סקילה חמורה משריפה. רבי שמעון אומר. חנק חמורה מהרג. ורבנין מרין. הרג חמור מחנק. רבי שמעון דרש. כל-שם בת כהן בשריפה. ורבנין מרין. כל-שם ארוסה בסקילה. רבי שמעון דרש. מה בת כהן שהחמירה תורה בארוסה שתהא בשריפה היקילה בנשואה שתהא בסקילה. בת ישראל שהיקילה תורה בארוסה שתהא בסקילה אינו דין שנקל עליה בנשואה שתהא בהריגה. ורבנין דרשין. מה אם בת ישראל שהחמירה התורה בארוסה שתהא בסקילה היקילה בנשואה שתהא בשריפה. בת כהן שהיקילה התורה בארוסה שתהא בשריפה אינו דין שנקל בנשואה שתהא בחניקה.

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 strangulation<sup>1</sup>.

Rebbi Simeon explained that any reference to “Cohen’s daughter” implies burning, but the rabbis teach that any reference to “preliminarily married” implies stoning<sup>8</sup>.

Rebbi Simeon explained: The Torah was stringent with a Cohen’s daughter and ordered that as preliminarily married she be burned, but was lenient with the definitively married one that she be stoned<sup>9</sup>. The Torah was lenient with the preliminarily married daughter of an Israel and ordered that she be stoned; it is logical that we be lenient with the definitively married one that she be decapitated<sup>10</sup>. But the rabbis explain, since the Torah was stringent with the preliminarily married daughter of an Israel and ordered that she be stoned, it was lenient with her in her definitively married status to be burned<sup>11</sup>. The Torah was lenient with the daughter of a Cohen in her preliminarily married status and ordered that she be burned; it is logical that we be lenient with her in her definitively married status that she be strangled<sup>12</sup>.

8 Adultery by a preliminarily married virgin is punishable by stoning (*Deut.* 22:24), by a definitively married woman by

“death” (*Lev.* 20:10), which by the preceding argument means the least painful of the four kinds of execution. *Lev.* 21:9

prescribes death by burning for the whoring daughter of a Cohen. The status (unmarried, preliminarily or definitively married) of the Cohen's daughter is not spelled out. Since sexual activity of an unmarried woman is nowhere in the Bible classified as a capital crime [*Sifra Emor Perek 1*(15)], it is assumed that the Cohen's daughter mentioned in the verse cannot be unmarried (virgin or widowed). The problem remains whether *Lev. 21:9* refers to a preliminarily or definitively married woman.

For R. Simeon, who holds that burning is more painful than stoning, *Lev. 21:9* refers to any adulterous daughter of a Cohen, irrespective of the status of her marriage (*Babli 50a*). For the rabbis who hold that stoning is more painful than burning, *Lev. 21:9* cannot refer to a preliminarily married maiden since then it would treat a Cohen's daughter more leniently than an Israel's, which contradicts the entire tenor of *Lev. 21:1-9*.

The formulation of the rabbis' position is not quite correct since *Deut. 22:24* applies only to a preliminarily married maiden (between the ages of 12 and 12 years 6 months; cf. *Yebamot 1:3*, Notes 159-160). In the text following, "preliminarily

married" means "preliminarily married maiden"; "definitively married" means "definitively married or adult preliminarily married".

9 This statement contradicts the assertion in the previous paragraph that R. Simeon applies *Lev. 21:9* to any married daughter of a Cohen; it also contradicts both the principles that (1) penalties must be spelled out in Scripture, cannot be inferred by hermeneutical rules, and (2) in any argument *de minore ad majus* only the data of the rules which are compared can be used; only identical terms can be transferred. Both objections again lead to the conclusion that R. Simeon cannot differentiate between a preliminarily and a definitively married daughter of a Cohen.

10 This is no logical argument at all but a clear reference to biblical verses; cf. Note 8. The only inference is that for R. Simeon the standard method of execution must be beheading.

11 A clear scribal error; it must be "strangled" (Note 8).

12 This proves that at the end of the preceding sentence one has to read "strangled".

רַבִּי אֶבְרָהָם בֶּשֶׁם רַבִּי יוֹסִי בֶן חֲנִינָה. כָּל-מִיתָה שֶׁהִיא לְמִטָּה מִמִּיתַת אָבִיהָ בְּשָׂרֶיהָ. כָּשֶׁהִיא אֶצֶל אָבִיהָ עִם אָבִיהָ בְּשָׂרֶיהָ וְעִם חֲמִיהָ בְּסָקִילָה. אֶת-אָבִיהָ הִיא מַחֲלֶלֶת בְּאֵשׁ תִּשְׁרֹף: רַבִּי לֵיעָזָר אוֹמֵר. עִם אָבִיהָ בְּשָׂרֶיהָ עִם חֲמִיהָ בְּסָקִילָה. הִיא בְּשָׂרֶיהָ וְאִין בּוֹעֵלָה בְּשָׂרֶיהָ. הִיא בְּשָׂרֶיהָ וְאִין זֹמְמִיהָ בְּשָׂרֶיהָ. כִּיּוֹצֵא כֵּהֶם בְּשָׂרֶיהָ הִיא וְהִן בְּשָׂרֶיהָ. כִּיּוֹצֵא כֵּהֶן בְּסָקִילָה הִיא וְהִן בְּסָקִילָה. כִּיּוֹצֵא כֵּהֶן בְּחֶזֶק הִן בְּשָׂרֶיהָ וְהִוא בְּחֶזֶק.

Rebbi Abbahu in the name of Rebbi Yose ben Hanina: Anyone who is executed less cruelly than her father's death is by burning<sup>13</sup>. As long as she is with her father, with her father she is burned, with her father-in-law stoned.

*With her father she is desecrating, in fire she should be burned*<sup>14</sup>. Rabbi Eliezer says, with her father she is burned, with her father-in-law stoned<sup>15</sup>. She by burning, her paramour not by burning<sup>16</sup>. She by burning, her perjured witnesses not by burning. Similarly by burning, she and they by burning. Similarly by stoning, she and they by stoning. Similarly by strangulation, they by burning but he by strangulation<sup>17</sup>.

13 The discussion follows the rabbis, for whom stoning is more severe than burning. The statement is a little more explicit in the Babli, 51a.

A definitively married Israel woman who commits adultery is strangled, except that if she commit incest with her father both are burned (*Lev.* 20:14). As a preliminarily married maiden she would be stoned. Therefore, it is clear that for the rabbis the daughter of a Cohen is burned only if either she commits incest with her father or adultery when definitively married.

14 *Lev.* 21:9, reading אֶת as “with”. The quote with the following two sentences is a *baraita*, *Sifra Emor Pereq* 1(19); *Tosephta* 14:17.

15 *Lev.* 20:12. From *Lev.* 20:27: *they shall be put to death, by a stone they shall be stoned, their blood be on them*, it is inferred that any expression “their blood be on them” means execution by stoning. Babli 54a.

16 The singular used in *Lev.* 21:9 implies that only she is executed by burning; her paramour is punished, like any adulterer with a married woman, by strangulation (Babli 51a).

17 The last three sentences are repeated as last sentences of this Tractate, *Halakhah* 11:8; *Tosephta* 14:17. “They” are perjured witnesses who falsely accuse her. If they accuse her of adultery as a definitively married woman, then the perjured witnesses are strangled, the prescribed punishment of the paramour. If they accuse her of incest with her father, they are burned, the prescribed punishment of her father. If they accuse her of adultery as preliminarily married maiden, they are stoned, the prescribed punishment both of her and her paramour.

The last sentence cannot stand as it appears here. In Chapter 11, one reads קִינָה וְהוּא בְּחִנּוּק הִיא וְהוּא בְּחִנּוּק “similarly by strangulation, she and they by strangulation.” In the *Tosephta* קִינָה וְהוּא בְּחִנּוּק הִיא וְהוּא בְּחִנּוּק “similarly by strangulation, he is burned and they by strangulation.” One sees that none of the scribes understood what he was writing. One may read in Chapter 11 “*he* and they by strangulation,” or in the *Tosephta* “*she* is burned and they strangled”. In the text here, one has to read: “*she* by burning but he (or *they*) by strangulation.”

עֲבֹדָה זָרָה הִיא בְּסָקִילָה. יֵצְאוּ לִידֹן בְּסָקִילָה שְׂבָמִיתוֹת בְּשָׂרֶיהָ. לֹא דִינָהּ שְׂאֵת מוֹצִיאָהּ לִידֹן (24b line 32) רַבִּי אֶבְרָהָם בֶּן יוֹסִי בֶן חֲנִינָה. רַבִּינּוּ דְרָשִׁין. אֲנָשֵׁי עִיר הַנִּדְחָת בְּכָל עוֹבְדֵי

בַּקֵּלָה שְׁבִמִיתוֹת בְּשָׂרִיפָה אֶלָּא שְׂאֵת מוֹצִיאָן לְדוֹן בַּקֵּלָה שְׁבִמִיתוֹת בְּחִנִּיקָה. רַבִּי שְׁמַעוֹן דְּרַשׁ. נָבִיא הַשֶּׁקֶר בְּכָל עוֹבְדֵי עֲבֹדָה זָרָה הָיוּ בְּשָׂרִיפָה. יֵצְאוּ לִידוֹן בַּקֵּלָה שְׁבִמִיתוֹת בְּסָקִילָה. לֹא דִיּוֹד שְׂאֵת מוֹצִיאָן לִידוֹן בַּקֵּלָה שְׁבִמִיתוֹת בְּסָקִילָה אֶלָּא שְׂאֵת רוֹצֵה לְהוֹצִיאָן לְדוֹן בַּקֵּלָה שְׁבִמִיתוֹת בְּהָרִיקָה.

רַבִּי שְׁמוּאֵל בַּר סוֹסְרִטַּאי בְּשֵׁם רַבִּי אֲבָהוּ מִחֶלֶף. רַבִּנּוּן דְּרַשִּׁין. נָבִיא הַשֶּׁקֶר בְּכָל עוֹבְדֵי עֲבֹדָה זָרָה הָיָה בְּסָקִילָה. יֵצֵא לִידוֹן בַּקֵּלָה שְׁבִמִיתוֹת בְּשָׂרִיפָה. לֹא דִיּוֹד שְׂאֵת מוֹצִיאָן בְּשָׂרִיפָה אֶלָּא שְׂאֵת מוֹצִיאָן לִידוֹן בַּקֵּלָה שְׁבִמִיתוֹת בְּחִנִּיקָה.

רַבִּי שְׁמַעוֹן דְּרַשׁ. אֲנָשִׁי עִיר הַנִּדְחָת בְּכָל עוֹבְדֵי עֲבֹדָה זָרָה הָיוּ בְּשָׂרִיפָה. יֵצְאוּ לִידוֹן בַּקֵּלָה שְׁבִמִיתוֹת בְּסָקִילָה. לֹא דִיּוֹד אֶלָּא שְׂאֵת מוֹצִיאָן לִידוֹן בַּקֵּלָה שְׁבִמִיתוֹת בְּהָרִיקָה.

Rebbi Abbahu in the name of Rebbi Yose ben Hanina: The rabbis explain that the inhabitants of a seduced city<sup>18</sup> should have been included in the category of idolaters, by stoning. They were treated to a less painful way of execution; that should be by burning<sup>19</sup>. It is not enough that you decree for them an easier death by burning, but should you have them judged by the easiest way, by strangulation<sup>20</sup>? Rebbi Simeon explained: The false prophet<sup>21</sup> should have been included in the category of idolaters, by burning<sup>22</sup>. He was treated to a less painful way of execution, which should be by stoning. It is not enough that you decree for them an easier death by stoning, but you have him judged by the easiest way, by beheading<sup>23</sup>.

Rebbi Samuel ben Sosartai in the name of Rebbi Abbahu switches the arguments. The rabbis explained: The rabbis explain that the false prophet should have been included in the category of idolaters, by stoning. He was treated to a less painful way of execution, [this should have been] by burning. It is not enough that you decree burning for them, but you have him judged by the easiest way, by strangulation<sup>24</sup>. Rebbi Simeon explained: The inhabitants of a seduced city should have been included in the category of idolaters, by burning. They were treated to a less painful way of execution; that should be by stoning<sup>22</sup>. This is not enough for you but you have them judged by the easiest way, by beheading<sup>25</sup>.

18 A city which by vote of city council and population decides to become pagan. Its inhabitants have to be killed by the sword

(Deut. 13:13-19). Individual apostates to paganism have to be stoned (Deut. 17:5).

19 Just one degree less than stoning.

20 This is the rabbis' argument to prove that beheading is worse than strangulation. If the punishment of the inhabitants of the seduced city were the easiest way of execution, the verse simply should have decreed the unspecified death penalty. Since beheading was specified, it must be worse than the unspecified death penalty.

The reason behind the argument is R. Ismael's tenth hermeneutical principle [*Sifra Wayyiqra Pereq 1(2)*], that special treatment for a crime already treated in general always expresses a leniency, not greater strictness.

21 *Deut.* 13:2-6. He is described as a missionary for paganism; his sentence is "death" which means strangulation for R. Simeon.

22 This makes no sense since it contradicts *Deut.* 17:5. The first two sentences of the argument attributed to R. Simeon are simply taken from the rabbis'

argument with stoning and burning switched, even though the argument is irrelevant.

23 Since the rabbis must agree that the false prophet be executed in the least painful way, they agree that once a punishment is reduced, it may be reduced to the lowest level; the rabbis' argument in Note 20 is contradicted. The mention of death by the sword in *Deut.* 13:16 may be an example of the third hermeneutical rule, "a general principle exemplified once".

24 This adapts for the rabbis the argument ascribed to R. Simeon in the preceding paragraph.

25 In this version, the arguments of both parties are completely parallel; each one is consistent within its own system. Both systems are compatible with the biblical verses.

**משנה ב:** (fol. 24a) מִצוֹת הַנִּשְׁרָפִין הֵיוּ מִשְׁקָעִין אוֹתוֹ בְּזָבֵל עַד אֲרֻכּוֹבוֹתָיו וְנוֹתְנִין סוּדָרִין קָשָׁה לְתוֹךְ הַרְקָה וְכוּרָף עַל צִנְאוֹרוֹ. זֶה מוֹשֵׁף אֶצְלוֹ וְזֶה מוֹשֵׁף אֶצְלוֹ עַד שֶׁהוּא פוֹתֵחַ אֶת פִּי וּמַדְלִיק אֶת הַפִּתְיִלָּה וְזוֹרְקָה לְתוֹךְ פִּי וְיוֹרֶדֶת לְתוֹךְ מַעֲיוֹ וְחוֹמֶרֶת אֶת בְּנֵי מַעֲיוֹ. רַבִּי יְהוֹנָדָה אוֹמֵר אִם הוּא אִם מִת בְּיָדָם לֹא הָיוּ מִקְיָמִין בּוֹ מִצוֹת שְׂרָפָה אֶלָּא פוֹתְחִין אֶת פִּי בְּצַבֵּת שְׁלֵא בְּטוֹבָתוֹ וּמַדְלִיק אֶת הַפִּתְיִלָּה וְזוֹרְקָה לְתוֹךְ פִּי וְיוֹרֶדֶת לְתוֹךְ מַעֲיוֹ וְחוֹמֶרֶת אֶת בְּנֵי מַעֲיוֹ. אָמַר רַבִּי אֱלֵעָזָר בֶּן צְדוֹק מַעֲשֶׂה בְּבֵית כֹּהֵן שֶׁזָּנְתָה וְהַקִּיפִיהָ חֲבִילִי זְמוּרוֹת וּשְׂרָפִיהָ. אָמְרוּ לוֹ מִפְּנֵי שְׁלֵא הָיָה בֵּית דִּין שֶׁבְּאוֹתָהּ שָׁעָה בְּקִי:

**Mishnah 2:** The order of burning: One makes him sink into manure up to his knees<sup>26</sup>, puts a stiff cloth into soft ones and winds them around his throat. One person draws in his direction, the other draws in his direction until he opens his mouth<sup>27</sup>. Then one lights a wick<sup>28</sup> and throws it into his mouth that it enters his innards and chars his intestines. Rabbi Jehudah says, in that case, if he would die in their hands they would not have fulfilled the duty of



burning<sup>29</sup>; one opens his mouth forcefully with tongs, lights a wire and throws it into his mouth that it enters his innards and chars his intestines. Rabbi Eleazar ben Sadoq said, it happened that a Cohen's daughter whored; they surrounded her with firewood and burned her. They told him, because the court at that time was incompetent<sup>30</sup>.

26 To make the condemned lose partial consciousness from the methane gas coming from the manure.

27 The two witnesses stand to either side of the condemned and choke him to force him to open his mouth. The coarse cloth is the one which chokes; the soft cloth is to shield the skin from injury. The entire procedure is modelled on the death of Nadab and Abihu (*Lev. 10:1-6*) which is called "burning" (v. 6) but whose bodies were not

injured externally (v. 5), and similarly the deaths of the 250 followers of Korah (*Num. 16:35*); Babli 52a.

28 Not really a wick but either liquid metal (Babli 52a) or burning oil.

29 By refusing to open his mouth, the condemned could force his executioners to choke him to death, which is considered the least painful kind of execution.

30 Not incompetent but Sadducee (or in any case anti-Pharisee).

מצינו שבשפעה שסתם חזקיהו את מוצא מימי גיחון העליון במנים דקים סתמן. (24b line 45) **הלכה ב:** מצות הנשרפין כול'. ויתן קשה בפני עצמו. אמר. שלא מות. שכן

**Halakhah 2:** "The order of burning," etc. Why does one not use the hard cloth alone? One said, that he should not die<sup>31</sup>; as we find that when Hezekias closed the waters of the upper Gihon spring<sup>32</sup>, he stopped it with soft clothing.

31 To avoid strangling him.

32 2Chr. 32:2,4.

מזהו בפתיקה (24b line 47) רבי קריספא בשם רבי יוחנן. בפתיקה שלבצע היא מתניתא. מהו בפתיקה שלבצע. רבנין דקיסרין אמרו. אבר וקסיטיריון מעורבין. אמר רבי יוסי בירבי בון. אתיא כמאן דמר. מדליק את הפתיקה וזורקה לתוך פיו. ברם כמאן דמר. יורדת לתוך מעיו וחומרת את בני מעיו. בפתיקה שלפנפס היא מתניתא.

<sup>33</sup>Rebbi Crispus in the name of Rabbi Johanan: The Mishnah speaks of a *ba'as*<sup>34</sup> wire. What is a *ba'as* wire? The rabbis of Caesarea say, a mixture of lead and tin<sup>35</sup>. Rabbi Yose ben Rabbi Abun said, this follows him who said, "one lights a wire and throws it into his mouth." But for him, who says, "it enters his innards and chars his intestines," the Mishnah speaks of a wick of Naphtha<sup>36</sup>.

33 From here to the middle of Halakhah 5 there exists a (frequently lacunary) Genizah text (G) in pure Galilean spelling (L. Ginzberg, *Yerushalmi Fragments*, pp. 258-259).

34 Usually, בעץ is translated as “tin.” But since the pure metal appears in the text under its Greek name, the Hebrew word

(and its Aramaic counterpart אַבְצָא) denote the commercial product, a lead-tin alloy.

35 Greek αασσίτερος, ὁ, “tin”. In G: וקסיטיר.

36 The Babli, 52a, only recognizes a wire of lead.

(24b line 52) תִּנִּי. קוֹדֵם לְאַרְבָּעִים שָׁנָה עַד שֶׁלֹא חָרַב הַבֵּית נִיטְלוּ דִּינֵי נִפְשוֹת מִיִּשְׂרָאֵל. בִּימֵי רַבִּי שְׁמַעוֹן בֶּן יוֹחִי נִיטְלוּ דִּינֵי מְמוֹנוֹת מִיִּשְׂרָאֵל. אָמַר רַבִּי שְׁמַעוֹן בֶּן יוֹחִי. בְּרִידָה רַחֲמָנָא דְלֵי נָא חֲכִים מִידוֹן.

<sup>37</sup>It was stated: Forty years before the Temple was destroyed, criminal jurisdiction was removed from Israel, and in the days of Simeon ben Iohai civil jurisdiction was removed from Israel. Rabbi Simeon ben Iohai said, praised be the Merciful, for I am not wise enough to judge.

37 Halakhah 1:1, Notes 31-35.

(24b line 54) אָמַר רַבִּי לְעֶזְרָא בִּירְבִּי צְדוֹק. תִּינוּק הָיִיתִי וְרוֹכֵב עַל כְּתִיפּוֹ דְאַבָּא. וְרָאִיתִי בֵּית כֹּהֵן שְׂאִינָת וְהַקִּיפּוּהָ חֲבִילֵי זְמוּרוֹת וּשְׁרָפוּהָ. אָמְרוּ לוֹ. תִּינוּק הָיִיתָ וְאַיִן עֲדוּת לְתִינוּק. כִּד חֲמָא הָא מִילְתָּא לֹא הָוֵה פְּחוּת מִבֶּן עֶשְׂרִי שָׁנִין. כִּד הָוֵה מְהֻלָּךְ עִם רַבִּי לֹא הָוֵה פְּחוּת מִן תַּלְתֵּין שָׁנִין. דְּלֵית אֹרְחָא דְגִבְרָא רַבָּא מְהֻלָּךְ עִם בַּר נֶשׁ פְּחוּת מִן תַּלְתֵּין שָׁנִין. וְתִנִּי כֵן. אָמַר רַבִּי. מַעֲשֵׂה שְׁהִייתִי אֲנִי בָּא וְרַבִּי אֶלְעָזָר בִּירְבִּי צְדוֹק מִבֵּית שִׁירִין וְאַכְלֵנוּ תַּאֲנִים וְעֲנָבִים עָרָא חוּץ לְסוּכָּה.

“Rebbi Eleazar ben Rebbi Sadoq said, I was a child riding on my father’s shoulder when I saw the daughter of a Cohen who had whored; they surrounded her with firewood and burned her. They told him, you were a child; a child cannot testify.”<sup>38</sup> When he saw this, he<sup>39</sup> was no less than ten years old. When he walked with Rebbi, he must have been no less than thirty years old since it is not fitting for a great personality to be accompanied by anybody less than thirty years of age. As we have stated: “Rebbi said, I was coming from bet Sirin with Rebbi Eleazar ben Rebbi Sadoq when we ate figs and grapes outside the tabernacle<sup>40</sup>.”

38 Babli 52b, Tosephta 9:11.

39 This is rather old for a child riding on his father's shoulder. Probably it means "older than 5 years." [More than 150 years separate the burning reported by R. Eleazar

ben R. Sadoq I from R. Eleazar ben R. Sadoq II accompanying Rabbi.]

40 On Tabernacles, only full meals have to be eaten in the *sukkah*; snacks may be eaten outside.

(fol. 24a) **משנה ג:** מצות הנֶהֱרָגִין. הָיוּ מְתִיזִין אֶת רֹאשׁוֹ בְּסִיף כְּדָרֵךְ שֶׁהַמְּלָכוֹת עוֹשֶׂה. רַבִּי יְהוּדָה אֹמֵר, נִיּוּל הוּא זֶה אֶלָּא מֵינִים אֶת רֹאשׁוֹ עַל הַסֵּדֶן וְקוֹצֵץ בְּקוֹפֵץ. אָמְרוּ לוֹ אֵין מִיתָה מְנוּלָת מָוֹ.

**Mishnah 3:** The order of beheading. They were chopping off his head with a sword just as the [Roman] government does. Rabbi Jehudah says, this is ugliness but one puts his head on the block and cuts it with a butcher knife. They told him, there is no death uglier than this.

(24b line 62) **הלכה ג:** מצות הנֶהֱרָגִין כול. מוֹדָה רַבִּי יְהוּדָה שֶׁאֵין מִיתָה מְנוּלָת מָוֹ. אֶלָּא שֶׁאֲמָרָה תוֹרָה וּבִחְקוֹתֵיהֶם לֹא תִלְכוּ: אָמַר רַבִּי יוֹחָנָן. וְתֵי כֹן. וְרִצַּח הָרוּצָה. בְּמָה שֶׁרִצַּח. יָכוֹל אִם הָרָגוּ בְּסִיף יִהְיֶה בְּסִיף. בְּמִשְׁקֵל יִהְיֶה בְּמִשְׁקֵל. נֶאֱמַר כָּאֵן נִקְיָמָה וְנֶאֱמַר לְהִלֵּן וְהַבִּיאֵנִי עֲלֵיכֶם חֶרֶב נִקְמָת נֶקֶם-בְּרִית. מִה נִקְיָמָה שֶׁנֶּאֱמָרָה לְהִלֵּן בְּחֶרֶב. אֵף נִקְיָמָה שֶׁנֶּאֱמָרָה כָּאֵן מִיתָה בְּחֶרֶב. יָכוֹל וְטָלִינוּ מִבֵּין הָאֲגָפִיִּים. נֶאֱמַר כָּאֵן וּבִעֲרַת הָרָע מִקֶּרְבֶּךָ: וְנֶאֱמַר לְהִלֵּן וְאֵתָה תִּבְעֶר הַדָּם הַנֶּזְקִי מִקֶּרְבֶּךָ. הַבְּעָרָה הַבְּעָרָה. עֲרִיפָה עֲרִיפָה. מִה הַבְּעָרָה שֶׁנֶּאֱמָרָה לְהִלֵּן מִלְּהָרֹף אֵף כָּאֵן מִלְּהָרֹף. מִה עֲרִיפָה שֶׁנֶּאֱמָרָה לְהִלֵּן הַתִּזָּת הָרֹאשׁ אֵף כָּאֵן הַתִּזָּת הָרֹאשׁ.

**Halakhah 3:** "The order of beheading," etc. <sup>41</sup>"Rebbi Jehudah agrees that there is no death uglier than this but the Torah said<sup>42</sup>, *in their statutes you shall not walk*." Rabbi Johanan said, also it was stated thus: *One shall murder the murderer*<sup>43</sup>, the way he murdered. I could think that if he killed with a sword, one should kill him with a sword, with a rod one should kill him with a rod? Avenging is written here<sup>5</sup>, and there it is written: *I shall bring over you a sword which avenges the vengeance of the Covenant*<sup>6</sup>. Since avenging mentioned there is by the sword, also avenging mentioned here is by the sword. I could think that he<sup>44</sup> should kill him between the arms? It is said here<sup>45</sup>, *you shall eliminate the evil from your midst*, and it is said there<sup>46</sup>, *you shall eliminate the innocent blood from your midst*. Elimination, elimination;

breaking the neck, breaking the neck<sup>47</sup>. Since elimination here is at the neck, also there it is at the neck. Since breaking the neck there implies chopping off the head, also here chopping off the head.

41 Babli 52b; Tosephta 9:11.

42 Lev. 18:3.

43 Num. 35:30: *Any homicide; following witnesses one shall murder the murderer.*

44 The avenger.

45 Deut. 19:19. Since this refers to perjured witnesses, it includes all kinds of death penalties.

46 Deut. 21:9.

47 By the doctrine of invariability of

lexemes the meaning of “elimination” must be the same in Deut. 19:19 and Deut. 21:9. That of “breaking the neck” in Deut. 21:4 is defined by “neck” in Lev. 5:8. Since elimination in Deut. 21 is by breaking the neck, Deut. 19:19 also must refer to the neck. Since strangulation is not mentioned in the Pentateuch, the only method of execution to which this may refer is beheading.

**משנה ד:** מַצוֹת הַנִּחְנָקִין הָיוּ מְשַׁקְעִין אוֹתוֹ בְּזָבֵל עַד אֶרְכּוֹבוֹתָיו. וְנוֹתְנִין סִידְרֵין קִשָּׁה לְתוֹךְ הַרְקָה וְכוּרֶךְ עַל צְנֹאָרוֹ. זֶה מוֹשֵׁךְ אֶצְלוֹ וְזֶה מוֹשֵׁךְ אֶצְלוֹ עַד שֶׁנִּפְשׁוּ יוֹצֵאָהּ;

**Mishnah 4:** The order of the strangled: One makes him sink into manure up to his knees<sup>26</sup>, puts a stiff cloth into soft ones and winds them around his throat. One person draws in his direction, the other one draws in his direction until he expires.

**הלכה ד:** מַצוֹת הַנִּחְנָקִין כּוֹל. חֲנֹק לִית מִשְׁפָּחָה. אֶמְרָתָה. הָרִי זֶה מֵיתָה בְּתוֹרָה. כָּל־מֵיתָה שֶׁנִּצְאָמְרָה בְּתוֹרָה סֵתָם אֵין אֵת רִשְׁאֵי לְמוֹשָׁכָה לְהַחֲמִיר עָלֶיהָ אֶלָּא לְהַקֵּל עָלֶיהָ. דְּבָרֵי רַבִּי יִאֲשִׁיָּהּ. אָמַר לוֹ רַבִּי יוֹנָתָן. לֹא מִפְּנֵי שֶׁהִיא קֹלָה אֶלָּא שֶׁנִּצְאָמְרָה סֵתָם. כָּל־מֵיתָה שֶׁנִּצְאָמְרָה סֵתָם אִי אֵתָהּ רִשְׁאֵי לְהַחֲמִיר עָלֶיהָ אֶלָּא לְהַקֵּל עָלֶיהָ. תָּלוּ אוֹתָהּ בַּחֲנֹק.

**Halakhah 4:** “The order of the strangled,” etc. Strangling? You do not find it<sup>7</sup>. This refers to death penalty in the Torah. For any death penalty mentioned in the Torah with no particular indication, you are not empowered to try to make it more stringent, only to make it less so, the words of Rabbi Josia. Rabbi Jonathan said to him, not because it is the least painful, but because it is mentioned in the Torah with no specific indication. For any death penalty mentioned in the Torah with no particular indication, you are not

empowered to try to make it more stringent but only to make it less so; they ascribed this to strangling.

48 Babli 52b.

49 He agrees with R. Simeon that beheading is the least painful.

50 This seems to be a *non sequitur*. The text is confirmed by the Genizah fragment; this forbids emendations. In the Babli (*loc. cit.*), Rabbi Jonathan is quoted as stating that “because it is mentioned in the Torah with no particular indication, it is strangling.” This statement is omitted by R. Hananel in

his commentary to the Babli.

Probably the text should be interpreted as follows. An unspecified death penalty cannot be one of the three specified ones, otherwise the exact method of execution would have been mentioned. Therefore, one must rely on tradition to specify the method which, however, has to approximate the least painful of the specified ones in severity.

24c line 3) אַמְרֵת. סֵדֶר חֲנֹק כִּדְּ הָיָא. זֶה מוֹשֵׁף אֶצְלוֹ וְזֶה מוֹשֵׁף אֶצְלוֹ. כִּהְנָא בְּעָא קוּמִי רַב. תִּמְן אֶת מַר. זֶה מוֹשֵׁף הִילָךְ וְזֶה מוֹשֵׁף הִילָךְ. וְכָא אֶת מַר. זֶה מוֹשֵׁף אֶצְלוֹ וְזֶה מוֹשֵׁף אֶצְלוֹ. אִמַר לִיה. תִּמְן זֶה מִלְפָּנֵי וְזֶה מִלְאַחֲרָיו. בְּרַם הָכָא דִּין מִן דִּין סִיקְרָא וְדִין מִן דִּין סִיקְרָא.

You said, the order of strangling is the following: “One person draws in his direction, the other one draws in his direction.” Cahana asked before Rav: There<sup>51</sup>, you say, “one draws in *one* direction, the other draws in *one* direction.” But here, you say, “one draws in *his* direction, the other draws in *his* direction.”<sup>52</sup> He told him, there one is in front, the other in the back. But here, one is on one side, the other one is on the other side.

51 Mishnah *Zavim* 3:2. The sufferer from gonorrhea causes impurity to everything he sits on and everything which is moved either by his force or on which he sits (*Lev.* 15:10). For example, a sufferer from gonorrhea and a pure person sit in the same boat but do not touch at all. The moment the boat moves, the pure person and his garments become impure. This impurity is known as מְדַרְס “caused by] stepping upon.” The Mishnah

refers to two persons, one suffering from gonorrhea and one pure, who together are splicing the same rope, working at different ends. Since each of them moves the rope in his direction, the pure person and his garments become impure the moment the impure person moves the rope while the pure one is holding it.

52 Why the change in language?

(fol. 24a) **משנה ה'**: אֵילּוּ הֵן הַנִּסְקָלִין. הַבָּא עַל הָאִם וְעַל אִשָּׁת אָב וְעַל הַכֹּלֶה וְעַל הַזָּכָר וְעַל הַבְּהֵמָה וְהָאִשָּׁה הַמְּבִיאָה עָלֶיהָ אֶת הַבְּהֵמָה וְהַמְּגֵדֵף וְהַעֹבֵד עֲבֹדָה זָרָה וְהַנּוֹתֵן מִזְרָעוֹ לַמִּלֵּךְ וְבַעַל אוֹב וְיִדְעוֹנִי וְהַמַּחֲלֵל אֶת הַשָּׁבֶת וְהַמְּקַלֵּל אָבִיו וְאִמּוֹ וְהַבָּא עַל נַעֲרָה הַמְּאוּרָסָה וְהַמְּסִית וְהַמְּדִים וְהַמְּכַשֵּׁף וְבֵן סוֹרֵר וּמוֹרֵה.

**Mishnah 5:** The following are stoned: A male having sexual relations with the mother, or the father's wife<sup>53</sup>, or the daughter-in-law, or a male, or an animal; or a female bringing an animal onto herself<sup>54</sup>. Also the blasphemer<sup>55</sup>, the worshipper of idols<sup>56</sup>, he who gives one of his descendants to the Moloch<sup>57</sup>, and the necromancer, and the medium<sup>58</sup>. Also one who desecrates the Sabbath<sup>59</sup>, or who curses father or mother<sup>60</sup>, or who has sexual relations with a preliminarily married maiden<sup>8</sup>, or who leads astray<sup>61</sup>, or who seduces<sup>62</sup>, or the sorcerer<sup>63</sup>, or the deviant and rebellious son<sup>64</sup>.

53 Even if she is not his mother, *Lev.* 20:11. One infers from *Lev.* 20:27 that *their blood be on them* means that the punishment is stoning (Halakhah 9).

54 *Lev.* 20:12,13,15,16.

55 *Lev.* 24:23. It is a capital crime only if the Divine Name (which today is unknown) was used in the blasphemy.

56 *Deut.* 17:5.

57 *Lev.* 20:2.

58 *Lev.* 20:27. The necromancer is the person who raises the spirits of the dead; cf.

1*S.* 28. The medium is one who incorporates a spirit which predicts the future, speaking from the medium's body, not his mouth.

59 *Num.* 15:36.

60 *Lev.* 20:9.

61 The missionary for another faith who addresses individuals in private; *Deut.* 13:11, cf. Mishnah 16.

62 He acts in public; Halakhah 16.

63 Halakhah 19.

64 *Deut.* 21:21.

(24c line 7) **הלכה ה'**: אֵילּוּ הֵן הַנִּסְקָלִין כֹּל'. לָכֵן צָרִיכָה בְּהֶעָלֶם אֶחָד. אֲבָל בְּשֵׁנֵי הָעֲלִימוֹת. שֶׁכֵּן אֲפִילוּ בְּאִשָּׁה אַחַת בָּא עָלֶיהָ וְחֹזֵר וּבָא עָלֶיהָ בְּהֶעָלֶם אֶחָד. חַיִּיב עַל כָּל־אַחַת וְאַחַת. רַבִּי שְׁמַעוֹן בְּרִיהַ דְּרַבִּי הֶלֶל בֶּן פִּזִּי בָּעָא קוּמִי רַבִּי הֶלֶל בֶּן פִּזִּי. מִתְּנִיתָא בְּאִשָּׁה אַחַת שְׁנַיִם לָהּ שְׁמוֹת הָרֶבָּה. אֲבָל אִם הָיוּ נָשִׁים הָרֶבָּה וְהָעֲלִימוֹת הָרֶבָּה בְּהֶעָלֶם אֶחָד הוּא. אָמַר לִיה. לָכֵן צָרִיכָה בְּהֶעָלֶם אֶחָד. דְּאִיתְּפִלְגוּן. הוּא בְּהֶעָלֶם אֶחָד וְהִיא בְּחִמּוּשָׁה הָעֲלִימוֹת. רַבִּי יוֹחָנָן אָמַר. הוּא מְבִיא קָרְבָּן אֶחָד וְהִיא מְבִיאָה ה' קָרְבָּנוֹת. רַבִּי שְׁמַעוֹן בֶּן לָקִישׁ אָמַר. כָּשֶׁם שְׂאִינוּ מְבִיא [אֶלָּא]<sup>6</sup> קָרְבָּן אֶחָד כִּד אֵינָה מְבִיאָה אֶלָּא קָרְבָּן אֶחָד. שְׁלֵא תֵּאמַר. יַעֲשׂוּ נָשִׁים הָרֶבָּה וְהָעֲלִימוֹת הָרֶבָּה בְּהֶעָלֶם אֶחָד אֵינוּ חַיִּיב אֶלָּא אַחַת. לָפִיּוֹם כִּד צָרָךְ מִימַר. חַיִּיב עַל כָּל־אַחַת וְאַחַת.

**Halakhah 5:** “The following are stoned,” etc. <sup>65</sup>It is necessary in one forgetting<sup>66</sup>, but in two forgettings? Since even for one woman, if he had relations with her several times in one forgetting, he is liable for each one<sup>67</sup>.

Rebbi Simeon ben Rebbi Hillel ben Pazi asked before Rebbi Hillel ben Pazi: The Mishnah refers to one woman who is forbidden under many names<sup>65</sup>. But if there were many women, or many forgettings, is that in one forgetting<sup>68</sup>? He told him, it is necessary to state for one forgetting, since they disagreed: He acts in one forgetting but she in five forgettings. Rebbi Johanan said, he brings one sacrifice but she brings five sacrifices<sup>69</sup>. Rebbi Simeon ben Laqish said, since he brings [only]<sup>70</sup> one sacrifice, she brings only one sacrifice; lest you say that many women, or many forgettings, be treated as one forgetting. Therefore, it is necessary to say<sup>71</sup>, he is liable for each one.

<sup>65</sup> This Halakhah refers more to Mishnah *Keritut* 1:1 (for which no Yerushalmi exists) than to the present Mishnah which rather serves as a header for the following Mishnaïot (6-19) which take up all cases mentioned in the Mishnah. Since the rules of evidence essentially guarantee that nobody can be executed, it is asserted, and shown in detail in the following Halakhot, that a criminal who escapes the earthly court is condemned by the Heavenly court to extirpation. If a sin punishable by extirpation was committed inadvertently, it can be atoned for by a purification sacrifice. (No sin committed intentionally can be atoned for by a sacrifice.) *Keritut* 1:1 contains a list of 36 sins punishable by extirpation, including those mentioned in the Mishnah here. That the number 36 is mentioned in the Mishnah is interpreted to mean that for each category a separate sacrifice is needed. For example, a person who inadvertently sleeps with a woman who is his mother married to his father has to

bring two sacrifices, one for sleeping with his mother and one for his father's wife.

<sup>66</sup> It is emphasized repeatedly (*Lev.* 4:13, 5:2,3) that an inadvertent sin, for which atonement by a sacrifice is possible, must involve an element of forgetting, either of the law which forbids the action, or of the identity of the person with whom the forbidden act was committed; this includes ignorance of the law or identity of the person. It is clear that a sacrifice is possible only if the person realizes the criminality of his act, i. e., he came to know the law or the identity. If then he forgets the information again, a new situation is created which is not a continuation of the previous one. This is a major topic of Tractate *Ševu'ot*.

It seems that הָעֵלִים, הָעֵלִימוֹת are Babylonisms in the text; G writes עֵלִים, עֵלִימוֹת, יַעֲלִימוֹת.

<sup>67</sup> It seems impossible to make sense of this sentence. The most probable emendation is to read “two forgettings”, see the preceding Note.

68 If in ignorance of the law, he slept with many menstruating women, or with several of his sisters, does this trigger the obligation of one or of several sacrifices? Similarly, if he repeatedly inadvertently slept with the same forbidden woman but in the intervals had realized the criminal character of his deed, does this trigger the obligation of one or of several sacrifices?

69 In the Babli, *Keritot* 15a, this is a tannaïtic statement. The dissenting opinion is not mentioned there.

70 The word is missing in the Leiden ms., in G only the last  $\alpha$  is clearly readable but the reconstruction of the word is quite certain.

71 In the missing Halakhah to *Keritot* 1:1, it is stated that the number of possible cases is stated to stress that each sin represents a different obligation, following R. Johanan. In both questions of Note 68 the answer is that several sacrifices are required.

24c line 7) אָמַר רַבִּי בִּזְוִי בִּר חֵיטָא. תִּנִּי רַבִּי שְׁמַאֵל בֶּן. לֹא תִנְחָשׁוּ וְלֹא תַעֲוִנְנִי: וְהָלֹא הִנֵּחִישׁ וְהִעֲיִינוּ בְּכֹל הָיוּ וְנִצְאוּ מִן הַכֹּל לְחֻלּוֹק עַל הַכֹּל. כָּל בְּהִיבָרָת וּפְרָט בְּהִיבָרָת. מִיִּלְתִּיָּה דְרַבִּי יוֹחָנָן אָמַר. כָּל וּפְרָט הוּא. דְּמַר רַבִּי אֲבָהוּ בְּשֵׁם רַבִּי יוֹחָנָן. כִּי כָּל־אִשָּׁר יַעֲשֶׂה מִכָּל הַתּוֹעֲבוֹת הָאֵלֶּה וְנִכְרַתִּי וְגו'. וְהָלֹא אֲחוֹתוֹ בְּכֹל הָיִית וְנִצְאָת מִן הַכֹּל לְחֻלּוֹק עַל הַכֹּל. הַתֵּיב רַבִּי לְעֶזְרָא. וְהַתֵּיב עֲרוֹת אֲחוֹת אִמָּךְ וְעֲרוֹת אֲחוֹת אָבִיךָ לֹא תִגְלֶה. אָמַר לִיה. לְצוּרָךְ יֵצֵאת לִידוֹן בְּעֶרְוָה. וְהַתֵּיב וְאִישׁ אִשָּׁר־יִשְׁכַּב אֶת־אִשָּׁה דָּוָה וְגִלְתָּה אֶת־עֲרוֹתֶיהָ אֶת־מִקְוָהּ הִנֵּה וְהָיָה גִילְתָּה אֶת־מִקְוָהּ דְּמִיָּה. אָמַר לִיה. לְצוּרָךְ יֵצֵאת לִידוֹן בְּעֶרְוָה. שְׁלֹא תֹאמַר. הוּאִיל וְאִין חִיבִין עָלֶיהָ אֲלֵא מִשּׁוּם טוּמְאָת עֶרְוָה לֹא נַעֲשֶׂה בָּהּ אֶת הַמַּעֲרָה כְּגוּמַר. לְפִיּוּ כִּן צְרִיךְ מִימַר. [חִיב עַל כָּל־אַחַת וְאַחַת]. וְהַתֵּיב וְאִישׁ אִשָּׁר יִשְׁכַּב אֶת־דֹּדֵתוֹ עֲרוֹת דֹּדוֹ גִּלְתָּה. אָמַר לִיה. לְצוּרָךְ יֵצֵאת לִידוֹן בְּעֶרְוָה. דְּאָמַר רַבִּי יוֹדִן. כָּל־אַתֵּר דְּתִימַר עֲרִירִים יְהִי הוּוֹן בְּלֹא וּלְדָ. וְכָל־אַתֵּר דְּתִימַר עֲרִירִים מְוֹתוֹ קוֹבְרִין אֶת בְּנֵיהוֹן.

<sup>72</sup>Rebbi Abun bar Hiyya said<sup>73,74</sup>: Rebbi Ismael stated so: *You shall not divine nor cast spells*<sup>75</sup>. Were not divination and spellbinding included in the general class but were mentioned separately to be treated differently from the general case? In general by extirpation, the separate cases for extirpation<sup>76</sup>. A statement of Rebbi Johanan says, it is a case of general case and detail<sup>77</sup>, as Rebbi Abbahu said in the name of Rebbi Johanan, *for anybody who would perform any of these abominations will be extirpated*<sup>78</sup>, etc. Was not his sister included in the general class<sup>79</sup>? Rebbi Eleazar objected: Was it not written, *the nakedness of your mother's sister and your father's sister you shall not uncover*<sup>80</sup>? He told him, it was stated separately for a reason, to judge it by touching<sup>81</sup>. But is it not written<sup>82</sup>: *A man who would lie with an unwell*



woman, who uncovered her nakedness, he touched her source, and she uncovered the source of her blood? He told him, it was stated separately for a reason, to judge it by touching. That you should not say, since one is guilty about her already by the impurity of touching, we should not treat the one who touched equal to the one who had full intercourse. Therefore, it was necessary to say it<sup>83</sup>. But is it not written<sup>84</sup>: *A man who would sleep with his aunt uncovered his uncle's nakedness*? He told him, it was stated separately for a reason, to judge it by destruction<sup>85</sup>, as Rebbi Yudan said, at all places where *they will be destroyed* is mentioned, they will be childless; where *they shall die destroyed* is mentioned, they shall bury their children.

72 This paragraph and the following almost to the end of the Halakhah have a slightly more complete parallel in *Šabbat* 7:2 (9c l.62-9d l.59).

73 In *Šabbat*, there is here a sentence connecting the text to the preceding discussion, not applicable here. This shows that the text here is not a mechanical copy of the text in *Šabbat*.

74 One of R. Ismael's hermeneutical principles is that "a detail which was singled out from a general class was singled out not for itself but as an example for the entire class." In *Šabbat*, R. Abun bar Hiyya is reported here to have stated that according to R. Ismael this holds only for a single detail, not for two or more. (As a statement of R. Johanan see below, Notes 95 ff.).

75 *Lev.* 19:26. Divination is an attempt to predict the future by magical means; spellbinding is practical witchcraft. Both are particular examples of the prohibition of witchcraft (*Ex.* 22:17), but no penalty is indicated.

76 To use witchcraft is a capital crime as indicated in the Mishnah; in the absence of witnesses there is an automatic Divine

verdict of extirpation. But the special cases of divination and spellbinding only trigger a verdict of extirpation; they are not cases for the human court. This illustrates R. Ismael's principle. In *Sifra Qedošim Pereq* 6(2), R. Ismael and R. Aqiba identify divination and spellbinding as examples of make-believe witchcraft which according to Mishnah 19 is not punishable by the human court. Automatically, these are separate examples of sins which require a purification sacrifice if done without criminal intent. A person who unintentionally acts as sorcerer, divinator, and spellbinder has to bring three sacrifices.

77 The wording might be slightly misleading. There is a hermeneutical principle (#5 on R. Ismael's list) which states that a general expression followed by particulars only refers to the particulars. This presupposes that both general expression and details are in the same paragraph. For example, *Lev.* 1:2 describes sacrificial animals as *animals, cattle, sheep, or goats*. In the context, "animals" means "cattle, sheep, and goats". In the discussion here, the details are mentioned in paragraphs

other than the one describing the general category. Then one has to find a reason why the details have to be mentioned separately.

78 *Lev.* 18:29. This verse decrees a general verdict of extirpation on any violation of sexual taboos spelled out in *Lev.* 18, whether or not they are criminally punishable.

79 The sister is forbidden in *Lev.* 18:9 but in the chapter about penalties, *Lev.* 20:17, the punishment is reserved for Heaven.

80 A misquote from *Lev.* 18:7,8. It seems that in G the verses were quoted correctly. It is incorrect also in *Šabbat*. It seems from the context that the text in G is a learned scribe's correction of the original which, however, did not refer to *Lev.* 18:7,8 but to *Lev.* 20:19: *The nakedness of your mother's sister and your father's sister you shall not uncover, for his close relative he touched, their sin they have to carry.* Cf. Babli *Yebamot* 54a.

81 *Lev.* 20:19 makes two statements: The punishment is reserved for Heaven and the sin is committed the moment the genitals of the parties touch, without any penetration.

*Mishnah Yebamot* 6:2 extends the equivalence of touching and penetration to all sexual offenses.

82 *Lev.* 20:18. The implications are the same as for v. 19.

83 In G and *Šabbat*: "Therefore, it was necessary to say that he is liable for each one," cf. Note 71. It is possible to justify the addition by noting that *Lev.* 18:29 decrees separate extirpation and, therefore, separate sacrifices for unintentional sin, for each separate category of incest.

84 *Lev.* 20:20.

85 In *Šabbat* there is a reference here to *Lev.* 20:21. This also is missing in G, showing that the text here is secondary to that in *Šabbat*, since *Lev.* 20:20 says *they shall die destroyed* whereas v. 21 notes *they shall be destroyed*. The difference is explained in the following statement by R. Yudan. The Babli (*Yebamot* 55a) applies both statements to both verses.

86 The Amora. His counterpart in the Babli is the third generation Amora Rabba (Rav Abba bar Nahmani).

(24c line 33) אָמַר רַבִּי יוֹסִי. דִּדְתָּו לְצוּרָךְ יָצָאת. לְמַעַט אֶת אִשְׁתּוֹ אָחִיו מֵאִמּוֹ. מִה טַעֲמָא. נֶאֱמַר כָּאן דִּדְתָּו וְנֶאֱמַר לְהֵלֵךְ אִי-דִידוֹ אִוּ בֶן-דִּידוֹ וְנֶאֱלָפ. מִה דִּידוֹ שְׁנֶאֱמַר לְהֵלֵךְ בְּאִחִי אָבִיו מֵאִבִּי הַכְּתוּב מִדְּבַר. אִף דִּדְתָּו שְׁנֶאֱמַרָה כָּאן בְּאִשְׁתּוֹ אָחִי אָבִיו מֵאִבִּי הַכְּתוּב מִדְּבַר. אִף אִשְׁתּוֹ אָחִיו לִמְדָה מִדִּדְתָּו. מִה דִּדְתָּו שְׁנֶאֱמַרָה לְהֵלֵךְ בְּאִשְׁתּוֹ אָחִי אָבִיו מֵאִבִּי הַכְּתוּב מִדְּבַר. אִף אִשְׁתּוֹ אָחִיו שְׁנֶאֱמַרָה כָּאן בְּאִשְׁתּוֹ אָחִיו מֵאִבִּי הַכְּתוּב מִדְּבַר. עַד כְּדוֹן כְּרַבִּי עֲקִיבָה. כְּרַבִּי יִשְׁמַעֲאֵל. תִּנִּי רַבִּי יִשְׁמַעֲאֵל. נֶאֱמַר כָּאן אִשְׁתּוֹ אָחִיו וְנֶאֱמַר לְהֵלֵךְ וְאִישׁ אֲשֶׁר יִקַּח אֶת-אִשְׁתּוֹ אָחִיו נָדָה הוּא. מִה נִידָה יֵשׁ לָהּ הֵיטֵר אַחֵר אִיסוּרָה. אִף אִשְׁתּוֹ אָחִיו [מֵאִבּוֹ] יֵשׁ לָהּ הֵיטֵר [לְאַחֵר אִיסוּרָה]. יָצָאת אִשְׁתּוֹ אָחִיו מֵאִמּוֹ שְׁאִין לָהּ הֵיטֵר אַחֵר אִיסוּרָה.

Rebbi Yose said, it was necessary that *his aunt* be mentioned separately, to exclude his mother's brother's wife<sup>87</sup>. What is the reason? It is said here *his aunt*, and it is said there<sup>88</sup>, *either his uncle or his uncle's son shall free*

him. Since by *his uncle* mentioned there, the verse understands his father's paternal brother, also by *his aunt* mentioned here, the verse speaks of his father's paternal brother's wife. Also *his brother's wife*<sup>89</sup> can be inferred<sup>90</sup> from *his aunt*. Since by *his aunt* mentioned there, the verse speaks of his father's paternal brother's wife, also by *his brother's wife* mentioned here, the verse speaks of his paternal brother's wife. So far following Rabbi Aqiba. Following Rabbi Ismael? Rabbi Ismael stated: It is said here *his brother's wife* and it is said there<sup>91</sup>, *a man who would take his brother's wife, she is niddah*<sup>92</sup>. Since a menstruating woman will be permitted after being forbidden, also his [paternal] brother's wife may be permitted [after being forbidden.<sup>93</sup>] This excludes his maternal brother's wife, who cannot be permitted after being forbidden<sup>94</sup>.

87 From punishment by loss of children (rejected in the Babli, *Yebamot* 55a).

88 *Lev.* 25:49. Since the subject of the entire Chapter is inheritance, it is understood that only the male line is addressed.

89 Who is forbidden in *Lev.* 18:16.

90 The reading of G and *Šabbat*, למידה, seems preferable.

91 *Lev.* 20:21, the penalty clause referring to the prohibition formulated in *Lev.* 18:16.

92 In biblical Hebrew, the meaning of the root נדד is the same as Arabic نَدَد "to separate, to disperse". This applies both to the menstruating woman (*Lev.* 18:19), who is forbidden relations with her husband, and to the person excommunicated (מְנַדֵּה) who is

separated from the community. In rabbinic Hebrew, the word נדה is used exclusively for the menstruating woman; this is the reference made here, even though the argument is equally valid for the excommunicated person. (Babli *Yebamot* 54b.)

93 The words in brackets are added from G and *Šabbat*. The menstruating woman is permitted after her purification; the brother's wife *may be* permitted, viz., if the brother dies childless. In the latter case, "brother" means paternal brother (*Yebamot* 1:1, Note 45).

94 But for whom no punishment is spelled out.

וְהָא רַבִּי יוֹחָנָן מְקַשֵּׁי לָהּ מִנֵּן תִּיתִי לִיהּ. רַבִּי אֲבָהוּ בָּשֵׁם רַבִּי לְעֹזֵר בָּשֵׁם רַבִּי הוֹשְׁעָנָה. שְׁנֵי לְאוּיִן וְכֵרֶת אֶחָד לְאוּיִן חוֹלְקִין אֶת הַהֶכְרֶת. מֵה טַעַם. עַל-בֶּשֶׁר אָדָם לֹא יִישָׁדּוּ יִבְמַתְכֶּנְתּוּ לֹא תַעֲשֶׂוּ כְמוֹהוּ. וְכֵתוּב אִישׁ אֲשֶׁר יִרְכָּח כְּמוֹהוּ וְאֲשֶׁר יִתֵּן מִמֶּנּוּ עַל-זָרָה וְנִכְרָת מֵעַמּוּי. הָרִי כֹאן שְׁנֵי לְאוּיִן וְכֵרֶת אֶחָד. לְאוּיִן חוֹלְקִין אֶת הַהֶכְרֶת. וְעוֹד מִן הַדָּא. שְׁמוּאֵל בַּר אֲבָא בְּעָא קוּמִי רַבִּי זְעוּרָה. וְיִצְאֻי שְׁלָמִים וְיַחֲלֻקוּ עַל כָּל-הַקָּדָשִׁים בְּטוּמְאָה. אָמַר לִיהּ (24c line 44)

לְצוּרָד יֵצֵא. לְמַעַט קִדְּשֵׁי בֶדֶק הַבַּיִת [לְמַעֲיֵלָה]<sup>95</sup> שֶׁאֵין חֲיִינָיו עָלֵיהֶן מְשׁוּם פִּיגוּל וְנוֹתֵר וְטָמֵא. וְלֹא מִתְּנִיתָא הִיא. קִדְּשֵׁי הַמִּזְבֵּחַ מִצְטָרְפִין זֶה עִם זֶה לְמַעֲיֵלָה וְחֲיִיבֵין עָלֵיהֶן מְשׁוּם פִּיגוּל נוֹתֵר וְטָמֵא. מִה שֶׁאֵין כּוֹן בְּקִדְּשֵׁי בֶדֶק הַבַּיִת מִכֵּין שֶׁאֵינָן מִצְטָרְפִין (אֵינָן) חוֹלְקִין. אָמַר רַבִּי חֲנִינָה. וְכֵן הִיא צְרִיכָה לֵיהּ. וַיַּחֲלֶקוּ וְלֹא יִצְטָרְפוּ.

But Rabbi Johanan himself had a problem: from where does one prove it<sup>95</sup>? Rabbi Abbahu in the name of Rabbi Eleazar in the name of Rabbi Hoshai: Two prohibitions and one extirpation, the prohibitions split the extirpation<sup>96</sup>. For example<sup>97</sup>, *it should not be used to be rubbed on anybody's skin and in its proportions you shall not imitate it*, and it is written, *a person who would compound similarly, or who would put it on a stranger, will be extirpated from his people*, that is two prohibitions and one extirpation. The prohibitions split the extirpation<sup>98</sup>. Also from the following: Samuel bar Abba asked before Rabbi Ze'ura, should not well-being sacrifices, being treated separately, split all *sancta* regarding impurity<sup>99</sup>? He told him, it was necessary that they be treated separately, to eliminate *sancta* destined for the upkeep of the Temple [regarding larceny]<sup>100</sup>, lest one be liable for them because of mushiness<sup>101</sup>, leftovers<sup>102</sup>, and impurity. But is that not a Mishnah? "All *sancta* destined for the altar combine with one another with respect to liability for mushiness, leftovers, and impurity<sup>103</sup>," in contrast to *sancta* destined for the upkeep of the Temple<sup>104</sup>. Since they do not combine, they do (not)<sup>105</sup> split<sup>106</sup>. Rabbi Hanina<sup>107</sup> said, what he really questioned, should they not split but combine<sup>108</sup>?

95 This refers to the paragraph before the last, where R. Johanan explained that the sister had a special role in the list of incest prohibitions, to deduce that from the different levels of punishment the blanket decree of extirpation really represents separate decrees for each kind of infraction. In *Šabbat*, the name is Ismael; this may be the correct attribution, cf. Note 124.

96 This answers R. Johanan's question. It is rather frequent to find verses containing multiple prohibitions covered by one mention of extirpation where the context

makes it clear that each single infraction triggers extirpation.

97 Ex. 30:32,33 regarding the holy oil. Only v. 33 is discussed.

98 A person who inadvertently compounds aromatic oil in the same composition as holy oil and uses it on people has to bring two sacrifices. The argument is repeated in Halakhah 9:1 (end of fol. 26d) and accepted in the Babli, *Makkot* 14b.

99 Impurity of well-being sacrifices, the only ones available to lay people, is treated

at length in *Lev.* 7:11-27. Impurity of sacrifices available to priests is treated in *Lev.* 22:1-16. One should assume that a priest who inadvertently eats a combination of impure well-being and other sacrifices has to bring separate purification sacrifices; but this is not the case.

100 The text in brackets is found in G and in *Šabbat*. While misuse of all kinds of sacrifices is also larceny, it is punishable only if the monetary value of the misuse is at least one *perutah*. Misuse of one half *perutah*'s worth of Temple donations and one half *perutah*'s worth of sacrifices is not punishable.

101 Sacrificing with the intent of eating of the sacrificial meat out of its time and place.

102 Eating of sacrificial meat after its allotted time.

103 This shows that well-being and other sacrifices are equal in the hand of the Cohen.

104 Mishnah *Me'ilah* 4:1. The categories of mushiness, leftovers, and impurity do not

apply to monetary gifts to the Temple. Anything donated to the Temple which is not a sacrifice or a temple vessel is sold by the Temple treasurer and thereby reverts to fully profane status.

105 The word is not in G and *Šabbat*; it should be deleted.

106 Somebody committing simultaneous larceny involving gifts to the Temple and sacrifices has to atone separately for the two offenses.

107 G reads: *Hinena*, preferable for chronological reasons.

108 The question remains unanswered why the rules for well-being are no different from those for other sacrifices even for Cohanim. In *Šabbat*, R. Hanina's statement is an assertion that the rules *are* different for well-being and other sacrifices. This would agree with the Babli, *Me'ilah* 15a, that in fact well-being and purification offerings do not combine; the contrary statement of the Mishnah is classified as a rabbinic stringency.

(24c line 55) כָּלֵל בַּעֲשֵׂה וּפְרֵט בְּלֹא תַעֲשֶׂה. מִילְתִּיהָ דְרַבִּי לֵעֲזֹר אֲמַרְהָ. כָּלֵל וּפְרֵט הוּא. רַבִּי לֵעֲזֹר אָמַר. לֹקֵקוֹ עַל יְדֵי חֲרִישָׁה בְּשִׁבְיעִית. רַבִּי יוֹחָנָן אָמַר. אִין לֹקֵקוֹ עַל יְדֵי חֲרִישָׁה בְּשִׁבְיעִית. מַה טַּעְמָא דְרַבִּי לֵעֲזֹר. וְשִׁבְתָּהּ הָאֶרֶץ שִׁבְתָּ לִּי כָּלֵל. שְׂדֵד' לֹא תִזְעַע וְכִרְמֶךָ לֹא תִזְמֹר פֶּרֶט. הִזְרַע וְהִזְמִיר בְּכָלֵל הִיוּ. וְלִמָּה נִצָּאוּ. לְהַקִּישׁ אֲלֵיהֶם. אֵלֶּא מַה הִזְרַע וְהִזְמִיר מִיִּיחָדִין שֶׁהוּא עֲבוּדָה בְּאֶרֶץ וּבְאֵילָן. מַה עֲבַד לָהּ רַבִּי יוֹחָנָן. שְׁנֵי דְבָרִים הֵן. וְשְׁנֵי דְבָרִים שְׁנִיצָאוּ מִן הַכָּלֵל חוֹלְקִין. עַל דַּעֲתִיהָ דְרַבִּי אֶלְעָזָר אֵינִן חוֹלְקִין. וְאֵית לִיהָ. לְחֻלּוֹק אֵינִן חוֹלְקִין הָא לְלַמֵּד מִלְמָדֵין. עַל דַּעֲתִיהָ דְרַבִּי יוֹחָנָן אֵינִן מִלְמָדֵין. שְׁנִיָּא הִיא שְׂכָלֵל בַּעֲשֵׂה וּפְרֵט בְּלֹא תַעֲשֶׂה. וְאֵין עֲשֶׂה מִלְמַד עַל לֹא תַעֲשֶׂה וְאֵין לֹא תַעֲשֶׂה מִלְמַד עַל עֲשֶׂה. עַל דַּעֲתִיהָ דְרַבִּי לֵעֲזֹר עֲשֶׂה מִלְמַד עַל לֹא תַעֲשֶׂה אֲבָל לֹא תַעֲשֶׂה אֵינִן מִלְמַד עַל עֲשֶׂה. עַל דַּעֲתִיהָ דְרַבִּי יוֹחָנָן נִיחָא מוֹתֵר לַחֲפוּר בֵּה בּוֹרוֹת שִׁיחִין וּמַעְרוֹת. עַל דַּעֲתִיהָ דְרַבִּי לֵעֲזֹר מְהוּ לַחֲפוּר בֵּה בּוֹרוֹת שִׁיחִין וּמַעְרוֹת. כָּשֶׁם שְׁאֵין מִלְמָדֵין לַעֲנִיָּין אִיסוּר כְּדִ

לַעֲנִיךָ הֵיטֵר לֹא יִלְמְדוּ. אָמַר רַבִּי בָּא קִרְתַּגְינָא. טַעֲמָא דְרַבִּי יוֹחָנָן נֶשֶׁשׁ שְׁנִימִ' תִּזְרַע שְׂדֵךְ לֹא בְּשַׁבִּיעִית וְנֶשֶׁשׁ שְׁנִימִ תִּזְמַר כְּרַמָּךְ לֹא בְּשַׁבִּיעִית. כָּל- לֹא תַעֲשֶׂה שֶׁהוּא בֹא מִכֶּחָ עֲשֶׂה עֲשֶׂה הוּא וְעוֹבֵר בְּעֲשֶׂה. רַבִּי יִרְמְיָה אָמַר. עוֹבֵר בְּעֲשֶׂה. רַבִּי יוֹסִי אָמַר. אֶפְיָלוּ בְּעֲשֶׂה אֵין בּוֹ. וְהִכְתִּיב מֶלֶא וְשַׁבְתָּה הָאֶרֶץ שַׁבַּת לֵי. לַעֲנִיךָ לֹא תַעֲשֶׂה שָׁבוּ.

יְהִי לֹקֵחַ עַל הַתּוֹסֵף. רַבִּי יוֹחָנָן פֶּתֵר מִתְּנִיתָא זָכוֹל יְהִי לֹקֵחַ עַל יְדֵי חֲרָשָׁה בְּשַׁבִּיעִית. הֲרִי רַבִּי לְעֹזֵר פֶּתֵר מִתְּנִיתָא זָכוֹל יְהִי לֹקֵחַ עַל אִיסוּר שְׁנֵי פְרָקִים הֲרֵאשׁוֹנִים. אֵית תַּנְי תַּנְי נֶשֶׁשׁ שְׁנִימִ' תִּזְרַע שְׂדֵךְ וְנֶשֶׁשׁ שְׁנִימִ תִּזְמַר כְּרַמָּךְ. וְאֵית תַּנְי תַּנְי שְׂדֵךְ לֹא תִזְרַע וְגו'. מֵאן דְּמַר נֶשֶׁשׁ שְׁנִימִ' מְסִיעַ לְרַבִּי יוֹחָנָן. וּמֵאן דְּמַר שְׂדֵךְ לֹא תִזְרַע מְסִיעַ לְרַבִּי לְעֹזֵר.

מִתְּנִיתָא מְסִיעָא לְרַבִּי לְעֹזֵר. הַשְׁמַר בְּלֹא תַעֲשֶׂה. פֶּן לֹא תַעֲשֶׂה. וְכַתּוּב שֵׁם תַעֲלֶה עוֹלוֹתֶיךָ וְשֵׁם תַעֲשֶׂה. שֵׁם תַעֲלֶה זֶה הַעֲלִיָּה. וְשֵׁם תַעֲשֶׂה זֶה הַשְׁחִיטָה וְזִרְקָה. מָה הַעֲלִיָּה שֶׁהִיא בְּעֲשֶׂה הֲרִי הִיא בְּלֹא תַעֲשֶׂה. אִף שְׁחִיטָה וְזִרְקָה שֶׁהִיא בְּעֲשֶׂה יְהִי בְּלֹא תַעֲשֶׂה. בְּגִין דְּכַתִּיב שֵׁם תַעֲלֶה וְשֵׁם תַעֲשֶׂה. הָא אֵילּוּ לֹא כְּתִב שֵׁם תַעֲלֶה וְשֵׁם תַעֲשֶׂה אֵין עֲשֶׂה מְלַמֵּד עַל לֹא תַעֲשֶׂה וְאֵין לֹא תַעֲשֶׂה מְלַמֵּד עַל עֲשֶׂה. מָה עָבַד לֵה רַבִּי יוֹחָנָן. שְׁלֹא תֹאמַר כִּמְה דְּתִימַר גְּבִי שַׁבַּת חִפְר חֲרָץ נֶעַץ אֵינוֹ חִיב אֲלָא אַחַת. וְדִכְוֹנָתָה שְׁחַט וְהַעֲלָה לֹא יִהְיֶה חִיב אֲלָא אַחַת. לְפִימִי כֶּן צָרָךְ מִימַר. חִיב עַל-כֵּל אַחַת וְאַחַת.

If He stated a general principle as a positive commandment but the detail as a prohibition<sup>109</sup>, the word of Rabbi Eleazar is that this is a general principle followed by a detail<sup>110</sup>. <sup>111</sup>Rebbi Eleazar said, one whips for ploughing in the Sabbatical year. Rebbi Johanan said, one does not whip for ploughing in the Sabbatical year. What is Rebbi Eleazar's reason? *The Land shall keep a Sabbath for the Eternal*<sup>112</sup>, a general principle. *Your field you shall not sow, your vineyard you shall not prune*<sup>113</sup>, detail. The sower and the pruner were included in the general case; why were they mentioned separately? To include with them; since the sower and the pruner are particular in that they perform work on the ground or on a tree, I have only what is work on the ground or on a tree. How does Rebbi Johanan treat this? They are two different things, and two different details for one general principle do divide. In Rebbi Eleazar's opinion they do not divide<sup>114</sup>. But he holds that because they do not divide, they are for making inferences. In Rebbi Johanan's opinion, they are not for making inferences. There is a difference here because He stated a general principle as a positive commandment but the detail as prohibitions. No positive commandment allows inferences for a prohibition and no prohibition allows inferences for a positive commandment.

In Rabbi Eleazar's opinion a positive commandment allows inferences for a prohibition but no prohibition allows inferences for a positive commandment. In Rabbi Johanan's opinion it is obvious that one may dig cisterns, ditches, and caves during it. In Rabbi Eleazar's opinion, may one dig cisterns, ditches, and caves during it? Just as one cannot make inferences for prohibitions, so one should not be able to make inferences for permissions<sup>115</sup>. Rabbi Abba from Carthage said, Rabbi Johanan's reason is *six years you shall sow your field*, not in the Sabbatical; and *six years you shall prune your vineyard*<sup>116</sup>, not in the Sabbatical. Any prohibition inferred from a positive commandment is a positive commandment; one violates a positive commandment<sup>117</sup>. Rabbi Jeremiah said, one violates a positive commandment. Rabbi Yose said, there is not even a positive commandment. But is it not written that *the Land shall rest as a repose for the Eternal*? That is for the prohibition implied by it<sup>118</sup>.

<sup>119</sup>[I could think that] they should be giving lashes for the addition. Rabbi Johanan explains the *baraita*: I could think that one gives lashes for ploughing during the Sabbatical year, but Rabbi Eleazar explains the *baraita*: I could think that one gives lashes for the first two terms<sup>120</sup>. Some Tanna'im state: *Six years you shall sow your field, and six years you shall prune your vineyard*; but some Tanna'im state: *Your field you shall not sow*, etc. He who says *six years* supports Rabbi Johanan; he who says *your field you shall not sow* supports Rabbi Eleazar.

A *baraita* supports<sup>121</sup> Rabbi Eleazar: *Be on guard*, a prohibition. *Lest*, a prohibition. And it is written<sup>122</sup>: *There, you shall offer your elevation offerings and there you shall make. There, you shall offer*, that is the offering; and *there you shall make*, that is slaughtering and sprinkling. Just as offering is a positive commandment and a prohibition, so slaughtering and sprinkling which are positive commandments should be covered by a prohibition. Because it is written *there you shall offer, and there you shall make*. Therefore, if *there you shall offer, and there you shall make* were not written, no positive commandment would allow inferences for a prohibition and no prohibition would allow inferences for a positive commandment. How does Rabbi Johanan handle this? That you should not say as you say referring to the Sabbath: If one dug a hole, made a ditch, or dug to put in a pole, he is

guilty only of one offense<sup>123</sup>. Similarly, if he slaughtered and offered, he should be guilty only of one offense; therefore, it was necessary to say, he is liable for every single action<sup>124</sup>.

109 The vocalization and, consequently, the interpretation of כלל and פרט as verbs rather than nouns, is from G. Here ends the Genizah fragment.

110 If a pentateuchal verse partially is an exhortation to action and partially a prohibition, it nevertheless forms a logical unit.

111 From here to the end of the Halakhah there also is a parallel in *Kilaim* 8:1, Notes 20-36 (Babli *Mo'ed qatan* 3a). The text in *Kilaim* practically is identical with that in *Šabbat*; the text here is slightly abbreviated. The punishment for violating a biblical prohibition for which no penalty is specified is by flogging. The problem is that ploughing is not specifically mentioned in *Lev.* 25.

112 *Lev.* 25:3.

113 *Lev.* 25:4.

114 To require separate atonement if performed inadvertently.

115 For R. Johanan, if ploughing is not sanctionable, digging for other than agricultural purposes certainly is permitted. But for R. Eleazar digging is work on the ground (in the language of his argument) but not in the field (as forbidden in the verse.)

116 *Lev.* 25:3.

117 As such it is not sanctionable; cf. *Halakhah* 5:3, Note 73.

118 He takes R. Eleazar literally at his word. If *Lev.* 25:3-4 represents a general principle followed by a detail (even if the principle is a positive commandment and the detail a

prohibition) then by R. Ismael's hermeneutical rule אין בכלל אלא מה שבפרט "general principle followed by detail: the general principle only applies to the detail", nothing not mentioned in the verse is prohibited.

119 This paragraph is slightly shortened from *Kilaim* and *Šabbat*, explained in *Kilaim* 8:1, Notes 26-28. As the other sources show, the first sentence is a rhetorical question from a *baraita* referring to rabbinic additions to Sabbatical prohibitions. The words in brackets represent the introductory formula יכול added from the parallel sources, "I could think that . . ." which has to be disproved. Since this formula is central to the understanding of the paragraph, one has an additional indication of the secondary character of the text here.

120 The prohibition of agricultural work after the harvest of the preceding year, different for work on the ground or on trees.

121 In both parallels: *disagrees with*. The latter is the correct version as explained at length in *Kilaim* 8:1 Note 29 and refers to *Sifry Deut.* 70-71. The example refers to sacrificing outside the Temple district (or another holy place designated by God) and is missing in *Kilaim*. The statement itself is found in the Babli, *Zebahim* 106a.

122 *Deut.* 12:13-14: Be on guard, and do not offer your elevation sacrifices at any place which you see. Only at the place which the Eternal will choose . . . there you



7:2). Different actions all of which are classified under the same category are considered one and the same violation of the Sabbath. The activities quoted here are all derivatives of ploughing (Babli *Šabbat* 73b).

124 In the Babli, *Zebahim* 107b, according to one opinion this is R. Ismael's position.

1 זעירא | זעירא חייא | זעירא חייא    2 זומר | זומר    3 זעורה | זעירא (twice)  
זומר | הזומר דיילמא | זשמה נוטע | ד' הנוטע    4 ויצאת | יצאת    6 זעורה | זעירא

125 This paragraph is from *Kilaim* (7) 8:1, Notes 33-36.

(fol. 24a) **משנה ו**: הָבָא עַל הָאֵם חַיִּיב עֲלֶיהָ מְשֻׁם אִם וּמְשֻׁם אִשֶּׁת אָב. רַבִּי יְהוּדָה אוֹמֵר אֵינוֹ חַיִּיב אֶלָּא מְשֻׁם הָאֵם בַּלְבָּד.

**Mishnah 6:** A person having sexual relations with the mother is guilty because of mother and because of father's wife<sup>126</sup>. Rabbi Jehudah say, he is guilty only because of mother<sup>127</sup>.

**משנה ז:** הָבָא עַל אִשְׁתּוֹ אָב חַיִּיב עָלֶיהָ מְשֻׁם אִשְׁתּוֹ אָב וּמְשֻׁם אִשְׁתּוֹ אִישׁ בֵּין בְּחַיֵּי אָבִיו בֵּין לְאַחֵר מִיַּת אָבִיו בֵּין מִן הָאִירוּסִין בֵּין מִן הַנִּשְׁוּאִין.

**Mishnah 7:** A person having sexual relations with the father's wife is guilty because of father's wife and because of married woman, whether during his father's lifetime or after his father's death<sup>128</sup>, whether preliminarily married or definitively married.

126 If he committed the incest in ignorance either of the person or the law, he owes two purification sacrifices.

127 He holds that *Lev. 18:7* only forbids the mother; *18:8* only forbids the step-mother.

128 But if the widowed stepmother is not remarried, he is not guilty for sleeping with

an otherwise married woman. Similarly, a man sleeping with his daughter-in-law (*Halakhah 8*) is not guilty of adultery with a married woman if at the moment of the crime she was not married to anybody. Neither the prohibition of the stepmother nor that of the daughter-in-law are removed by divorce and remarriage to a third party.

(24d line 21) **הַלָּכָה ו:** הָבָא עַל הָאִם כּוֹל. **הַלָּכָה ז:** הָבָא עַל אִשְׁתּוֹ אָב כּוֹל. אֲזִיְהָרָה לְבָא עַל הָאִם מְנִיין. עֲרוֹת אִמָּךְ לֹא תִגְלֶה. כָּרַת מְנִיין. כִּי כָל-אִשָּׁר יַעֲשֶׂה מִכָּל הַתּוֹעֲבוֹת הָאֵלֶּה וְנִכְרְתוּ הַנִּפְשׁוֹת הָעוֹשׂוֹת מִקֶּרֶב עִמָּם: אֲזִיְהָרָה לְבָא עַל אִשְׁתּוֹ אָב מְנִיין. עֲרוֹת אִשְׁתְּ-אָבִיךָ לֹא תִגְלֶה. כָּרַת מְנִיין. כִּי כָל-אִשָּׁר יַעֲשֶׂה וְגו'. עוֹנֵשׁ מְנִיין. וְאִישׁ אִשָּׁר לִשְׁכַּב אֶת-אִשְׁתּוֹ אָבִיו עֲרוֹת אָבִיו גָּלָה מוֹת-יָוָמְתוֹ וְגו'.

**Halakhah 6:** "A person having sexual relations with the mother," etc.

**Halakhah 7:** "A person having sexual relations with the father's wife," etc. From where the warning<sup>129</sup> for a person having sexual relations with the mother? *Your mother's nakedness you shall not uncover.*<sup>130</sup> From where extirpation? *For anybody who would commit any of these abominations, the guilty persons will be extirpated from their people*<sup>131</sup>.

From where the warning for a person having sexual relations with the father's wife? *Your father's wife's nakedness you shall not uncover.*<sup>132</sup> From where extirpation? *For anybody who would commit,*<sup>131</sup> etc. Punishment from where? *A man who would sleep with his father's wife, his father's nakedness he uncovered; they shall be put to death,*<sup>133</sup> etc.

129 A prohibition the penalty for which is not spelled out carries a penalty of flogging (*Deut.* 25:21). For any more serious infraction the pentateuchal style requires that separate verses must spell out (1) the prohibition, (2) the penalty to be imposed by the court, (3) the penalty imposed by Heaven in case the crime was not observed by two blameless adult male witnesses and, therefore, no court case was possible. In case of sexual crimes this would mean that the witnesses have to see the sex act. For a civil case, such as a husband wishing to divorce his wife because of her adultery,

without paying her *ketubah*, it is enough for witnesses to testify to her going to a room with another man, locking the door, and extinguishing the lights. But this is not enough for a criminal conviction.

130 *Lev.* 18:7.

131 *Lev.* 18:29.

132 *Lev.* 18:8

133 *Lev.* 20:11. Even R. Jehudah will agree that this verse also refers to the mother. The verse ends: *their blood be on them*. In the next Halakhah it will be determined that this expression implies stoning; cf. Babli 54a.

הַבָּא עַל כְּלָתוֹ חַיִּב עָלֶיהָ מְשֻׁם כְּלָתוֹ וּמְשֻׁם אִשָּׁת אִישׁ בֶּן בְּרִי בְּנֵי בֵּן  
לְאַחֵר מִיֵּת בְּנֵי בֵּן מִן הָאִירֹסִין בֶּן מִן הַנִּשְׁוִאִין.

**Mishnah 8:** A person having sexual relations with his daughter-in-law is guilty because of his daughter-in-law and because of a married woman, whether during his son's lifetime or after his son's death<sup>128</sup>, whether preliminarily married or definitively married.

הַבָּא עַל כְּלָתוֹ כּוֹל. אֲזַהְרָה לְבֹא עַל כְּלָתוֹ מְנִיין. עֲרֹת כְּלָתָהּ לֹא  
תִּגְלֶה. כָּרַת מְנִיין. כִּי כָּל-אִישׁ אֲשֶׁר יַעֲשֶׂה מִכָּל הַתּוֹעֵבוֹת הָאֵלֶּה וְנִכְרְתוֹ. עוֹנֵשׁ מְנִיין. וְאִישׁ  
אֲשֶׁר יִשְׁכַּב אֶת-כְּלָתוֹ וּגְרִי.

**Halakhah 8:** From where the warning<sup>129</sup> for a person having sexual relations with his daughter-in-law? *Your daughter-in-law's nakedness you shall not uncover*.<sup>134</sup> From where extirpation? *For any man who would commit any of these abominations will be extirpated*,<sup>131,135</sup> etc. Punishment from where? *A man who would sleep with his daughter-in-law*<sup>136</sup> etc.

134 *Lev.* 18:15.

136 *Lev.* 20:12.

135 The verse is slightly misquoted.

(24d line 30) תַּנִּיתָהּ הִכָּא תַּנִּיתָהּ בְּכָרִיתוֹת. נִיחָא בְּכָרִיתוֹת. שְׁהוּא מְבִיא קָרְבָּן וְחוֹזֵר וּמְבִיא קָרְבָּן. אֵית לָךְ מִימַר בְּסִנְהֶדְרִין. שְׁהוּא נִסְקַל וְחוֹזֵר וְנִסְקַל. אָמַר רַבִּי יִידֵן אָבִי דְרַבִּי מַתִּינְיָהּ. לְהַתְרִינָהּ אֵיתָאמְרַת. שָׂאם הִתְרִי בּוּ מִשּׁוּם אִשְׁתָּא אֲב לֹקָה. מִשּׁוּם אִם לֹקָה. וְיִתְרִי בּוּ מִשּׁוּם אִשְׁתָּא אִישׁ. אָמַר רַבִּי אֲבוּן. תִּיפְתָּר בְּכַנּוּיָהּ.

We have it stated here, we have it stated in *Keritot*<sup>137</sup>. One understands in *Keritot*<sup>138</sup> that he brings one sacrifice and then has to bring a second. What can you say in *Sanhedrin*<sup>139</sup>? That he is stoned and then stoned again? Rabbi Yudan, Rabbi Mattaniah's father, said: explain it for warnings<sup>140</sup>. For if they warned him because of the father's wife, he is hit,<sup>141</sup> because of the mother, he is hit. Could they not also warn him because of a married woman? Rabbi Abun said, explain it if she was unmarried<sup>128</sup>.

137 The multiple transgressions committed by one act mentioned in the last three Mishnaot are also implied by Mishnah *Keritot* 1:1.

138 If the sin was committed inadvertently, one act may require multiple sacrifices for atonement.

139 A person can be executed only once.

140 Since a person can only be convicted if he was warned in appropriate fashion (Halakhah 5:1), he will be convicted for the single transgression about which he had been warned.

141 As the commentaries point out, one cannot translate לֹקָה by "being flogged", since one refers to capital crimes.

(24d line 34) תַּפְּסֵן תַּנִּינֵן. רַבִּי יְהוּדָה אוֹמֵר. אִם לֹא הָיְתָה אִמּוֹ רְאוּיָה לְאָבִיו אֵינוּ חַיִּב אֶלָּא אַחַת. הֵא אִם הָיְתָה אִמּוֹ רְאוּיָה לְאָבִיו חַיִּב שְׁתֵּים. רַבִּי אֲבָהוּ בְּשֵׁם רַבִּי יוֹחָנָן. לֹא שְׁנִיָּא. בֵּין שְׁהָיְתָה אִמּוֹ רְאוּיָה לְאָבִיו בֵּין שְׁאִין אִמּוֹ רְאוּיָה לְאָבִיו אֵינוּ חַיִּב אֶלָּא אַחַת. טַעְמִיָּה דְרַבִּי יוֹחָנָן. אִמָּךְ הִיא. מִשּׁוּם אִמּוֹ אֲתָה מְחַיִּבּוּ. עָרָה אֶת כָּל־הַפְּרָשָׁה לָאִם. רַבִּי בּוּן בֵּר חִינָה בְּעָא קוּמִי רַבִּי זְעִירָא. מָה רָאָה רַבִּי יוֹחָנָן לְתַפּוּשׁ אֶת הָאִם וּלְהַנִּיחַ אֶת אִשְׁתָּהּ הָאֵב. אָמַר לֵיהּ. דְּהוּא סָבַר כְּרַבִּי יִשְׁמַעְאֵל. דְּרַבִּי יִשְׁמַעְאֵל דָּרַשׁ. עֲרֹנָת אִשְׁת־אֲבִיד. בְּזָכוֹר הַכְּתִיב מִדְּבַר. וְאִין אָבִיו בְּכָל־ל הַזָּכוֹר. אֶלָּא לְחַיִּבּוּ שְׁתֵּים. דְּתַנִּי. הֵבֵא עַל אָבִיו חַיִּב עָלָיו שְׁתֵּים. וְנִיתְנִי. שְׁלֹשִׁים וְשֶׁבַע כְּרִיתוֹת בְּתוֹרָה. רַבִּי מִנָּא אָמַר. כָּל־שֵׁם זָכוֹר אֶחָד. עֲרֹנָת אִשְׁת־אֲבִיד בְּאִשְׁתָּא אֲב הַכְּתִיב מִדְּבַר. עֲרֹנָת אִמָּךְ זֶה אִמּוֹ שְׁהִיא אִשְׁתָּא אָבִיו. אִמּוֹ שְׁאִינָהּ אִשְׁתָּא אָבִיו מְנִיין. אִמָּךְ הוּא לֹא תִגְלָה עֲרֹנָתָהּ: מָה עָבַד לָהּ רַבִּי יִשְׁמַעְאֵל. פֶּתַר לָהּ לְאַחַר מִיתָהּ. וְלִית לֵיהּ לְרַבִּי עֲקִיבָה כּוּן עֲרֹנָת אֲבִידָהּ הִיא: לֹא שְׁנִיָּא בֵּין בְּחַיָּיהּ בֵּין לְאַחַר מִיתָהּ. רַבִּי עֲקִיבָה דָּרַשׁ. עֲרֹנָת אִשְׁת־אֲבִיד. בְּאִשְׁתָּא אֲב הַכְּתִיב מִדְּבַר. עֲרֹנָת אִמָּךְ זֶה אִמּוֹ שְׁהִיא אִשְׁתָּא אָבִיו. אִמּוֹ שְׁאִינָהּ אִשְׁתָּא אָבִיו מְנִיין. אִמָּךְ הוּא לֹא תִגְלָה עֲרֹנָתָהּ: מָה עָבַד לָהּ רַבִּי יִשְׁמַעְאֵל. פֶּתַר לָהּ לְאַחַר מִיתָהּ. וְלִית לֵיהּ לְרַבִּי עֲקִיבָה כּוּן עֲרֹנָת אֲבִידָהּ עֲרֹנָת אִמָּךְ. מָה אֲבִיד כָּל־שְׁהוּא אֲבִיד בֵּין לְעוֹשׁ בֵּין לְאַזְהָרָה. אִף אִמָּךְ

כל־שהיא אמד בין לעונש בין לאזהרה. לא מסתברה דדריש אהן קרינה. אלא רבי יודה דלית ליה אמו שהיא אשת אביו צריך מידרוש ערנת אביד וערנת אמד. מה אביד כל־שהוא אביד בין לעונש בין לאזהרה. אף אמד כל־שהיא אמד בין לעונש בין לאזהרה. אמר רבי זעירה. הדיא אמרה. למידין מגזירה שנה אפילו מופנה מצד אהד. אמר ליה רבי יודן. לית דא פשיטא על דרבי עקיבה. דרבי עקיבה אמר. גזירה שנה אף על פי שאינה מופנה.

<sup>142</sup>There, we have stated<sup>143</sup>: Rabbi Jehudah says, if his mother was not fit for his father, he is liable only for one [sacrifice]. Therefore, if his mother was fit for his father, he is liable for two. Rabbi Abbahu in the name of Rabbi Johanan: There is no difference. Whether his mother was fit for his father or unfit for his father, he is liable only once. The reason of Rabbi Johanan<sup>144</sup>: *Your mother is she*, you find him guilty because of his mother; this directs the entire chapter towards his mother<sup>145</sup>. Rabbi Abun bar Hiyya asked before Rabbi Ze'ira: What caused Rabbi Johanan<sup>144</sup> to concentrate on the mother and to leave the father's wife aside? He told him, for he argues with Rabbi Ismael, as Rabbi Ismael explained: *Your father's wife's nakedness*<sup>146</sup>; the verse refers to the male. Is not his father included in the category of the male<sup>147</sup>? Only to make him liable twice, as we have stated: A person having sexual relations with his father is doubly liable about him<sup>148</sup>. Then should we not state "thirty-seven extirpations in the Torah"<sup>149</sup>? Rabbi Mana said, all denotations of males are one.

<sup>150</sup>*Your father's wife's nakedness*; the verse refers to the father's wife. *Your mother's nakedness*, that is his mother who is his father's wife. From where his mother who is not his father's wife? *Your mother is she; do not uncover her nakedness*. How does Rabbi Ismael treat this? He explains it to apply after [the father's] death<sup>151</sup>. Does Rabbi Aqiba not explain *she is your father's nakedness*<sup>152</sup>? There is no difference whether during lifetime or after death. Rabbi Aqiba explains: *Your father's wife's nakedness*<sup>146</sup>, the verse refers to the father's wife. *Your mother's nakedness*, that is his mother who is his father's wife. From where his mother who is not his father's wife? *Your mother is she; do not uncover her nakedness*. How does Rabbi Ismael treat this? He explains it to apply after [the father's] death<sup>153</sup>. Does not Rabbi Aqiba treat *your father's nakedness, your mother's nakedness*<sup>154</sup>? Since *your father* refers to your father in any capacity<sup>155</sup> both for punishment<sup>156</sup> and

warning, so also *your mother* refers to one's mother in any capacity both for punishment and warning. Is it not reasonable to explain that verse except following Rabbi Jehudah who because he does not accept "his mother who is his father's wife"<sup>157</sup> must explain that *your father's nakedness, your mother's nakedness* refers to your father in any capacity both for punishment and warning, so also *your mother* refers to your mother in any capacity both for punishment and warning. Rabbi Ze'ira said, this implies that one infers from parallel language<sup>158</sup> even if it is free only from one side<sup>159</sup>. Rabbi Yudan said to him<sup>160</sup>, this is obvious for Rabbi Aqiba since Rabbi Aqiba infers from parallel language even if it is not free<sup>161</sup>.

142 These two paragraphs are partially corrupt. In a few places, the required corrections are obvious; other passages are not so simple. The text was treated at length by M. Assis *לפירוש של סוגיא אחת בירושלמי* Sinai 99(1986) pp. 110-127. The parallel in the Babli is 53a-54a.

143 In the Yerushalmi תמן תנין always introduces a Mishnah quote. Already J. N. Epstein in *מבוא לנוסח המשנה* p. 150 has noted that one should read תמן תנין "there (in Babylonia) one states." The Babylonian *baraita* is quoted in the Babli, 53a.

144 It seems that one has to read "R. Jehudah" since R. Johanan opposes the conclusion of the argument.

145 This is only the end of an argument which can be reconstructed from *Sifra Qedošim Pereq* 9(12). Lev. 18:7 reads: *Your father's nakedness and your mother's nakedness you shall not uncover; she is your mother, do not uncover her nakedness*. The unusual wordiness of the verse has to be explained. Later in the paragraph there is disagreement whether *your father's nakedness* refers to homosexual relations or

describes a woman other than the mother who had sexual relations with the father. R. Jehudah opts for the first alternative. The mother then is singled out; she is equally forbidden whether she is or ever was his father's wife or not, just as the father is forbidden whether he ever was married to his mother or not. This excludes any possibility to charge relations with her as father's wife as a separate crime.

146 Obviously one has to read *your father's nakedness* (v. 7) instead of a quote from v.8.

147 Since homosexual intercourse also is a capital crime.

148 Babli 54a; Tosaphot s. v. הבא.

149 Mishnah *Keritot* 1:1 lists 36 separate cases of extirpation; homosexual acts with the father are not listed.

150 This text is repeated later as R. Aqiba's opinion. Since R. Ismael was quoted as opposing this interpretation, it is not his opinion. The text is dittography from the following.

151 Why is the mother mentioned twice, once in parallel with the father and once separately?

152 *Lev.* 18:8, referring to the stepmother.

153 Dittography from above.

154 M. Assis here sees a lacuna referring to the earlier statement that the mother remains equally forbidden whether or not the father is alive. This is not a necessary inference.

155 Whether married, seducer, rapist or paying for sexual services.

156 Punishment is spelled out in *Lev.* 20:11, warning in 18:7.

157 He rejects the interpretation that the first mention of *your mother* in v. 7 refers to the father's wife, the second mention to a mother not married to his father.

158 גזירה שוה "equal cut" is the transfer of rules from one law to another if identical language was used. The majority opinion accepts inferences from "equal cut" only if (a) there exists a tradition that the words in question were written for this purpose and

(b) no other inferences are drawn from the expressions in question (*Babli Niddah* 22b). Property (b) is meant if an expression is called "free". The equal cut here is the use of *your father's nakedness* both in v.7 and v.8. As we have seen, in v.7 the expression clearly is not "free".

159 M. Assis rightly points out that it is not free even in v.8 since the expression is used to forbid the stepmother after the father's death.

160 As M. Assis points out, the statement also is quoted in *Yoma* 8:3 (45a l. 48) where R. Yudan's statement is an independent remark. Since R. Yudan lived a generation after R. Ze'ira, the *Yoma* version has to be accepted.

161 This statement is unknown to Babylonian sources; the statement of the Babylonian R. Ze'ira is found in the *Babli, Šabbat* 64a, *Niddah* 22b.

24d line 60) רבי ירמיה בעי. הבא על אמו מהו שיהא חייב משום אשת איש. תא חמי. אילו בא אחר עליה חייב משום אשת איש בנה לא כל-שכן. התיב רבי יוסי. הרי חורגה הרי הוא חייב עליה משום אשת איש. ובנה אינו חייב עליה משום אשת איש. דתני. אף בשאך כל-הערים כן. חמותו ואשת איש את תופשו משום חמותו. כלאו ואשת איש את תופשו משום פלתו. אחותו ואשת איש את תופשו משום אחותו. מבריו מן החמורה ומקנתו בקלה לית זכיל. דתני. הבא על אחותו חייב עליה משום אחותו ומשום בת אשת אביו. רבי יוסי בירבי יודה אומר. הבא על אחותו אינו חייב עליה אלא משום שם אחד בלבד. וכן הבא על פלתו. רבי ירמיה רבי אבהו בשם רבי יוחנן. אתניא דרבי יוסי בירבי יודה בשיטת רבי יודה אביו. כמה דרבי יודה תופש שם ראשון. כן רבי יוסי בירבי יודה תופש שם ראשון. חזר רבי ירמיה רבי אבהו בשם רבי יוחנן. לית לרבי יוסי בירבי יודה בשיטת רבי יודה אביו. תמן אמו בלא אשת אביו חייב. אשת אביו בלא אמו חייב. ברם הכא מצינו בת אשת אביו בלא אחותו הוא מותר בה.

Rebbi Jeremiah asked: Is a person having sexual relations with his mother guilty [of adultery] with her as a married woman<sup>162</sup>? Come and see: if a third

person had sexual relations with her, would he not be guilty [of adultery] with her as a married woman? Her son not so much more? Rabbi Yose objected: is not her stepson guilty [of adultery] with her as a married woman, but her son is not guilty [of adultery] with her as a married woman<sup>163</sup>? As we have stated:<sup>164</sup> Also with all other cases of incest and adultery the situation is the same. His mother-in-law as a married woman, you catch him because of his mother-in-law<sup>165</sup>. His daughter-in-law as a married woman, you catch him because of his daughter-in-law<sup>166</sup>. His sister as a married woman, do you catch him because of his sister? You smuggle him away from the serious crime and strike him for the easier one<sup>167</sup>; this you cannot do as we have stated: A person having sexual relations with his sister is liable because of her as his sister and as a daughter of his father's wife<sup>168</sup>. Rabbi Yose ben Rabbi Jehudah says, a person having sexual relations with his sister<sup>169</sup> is only liable because of her as his sister; the same is true for his daughter-in-law. Rabbi Jeremiah, Rabbi Abbahu in the name of Rabbi Johanan: Rabbi Yose ben Rabbi Jehudah follows the argument of his father Rabbi Jehudah. Just as Rabbi Jehudah accepts the description mentioned first, so Rabbi Yose ben Rabbi Jehudah accepts the description mentioned first. Rabbi Jeremiah, Rabbi Abbahu in the name of Rabbi Johanan turned around: Rabbi Yose ben Rabbi Jehudah does not follow the argument of his father Rabbi Jehudah. There he is liable because of his mother, who is not his father's wife; he is liable because of his father's wife who is not his mother. But here we find that he is permitted his father's wife's daughter, who is not his sister<sup>170</sup>.

162 This is a question only for R. Jehudah; for the majority it already was answered positively, Note 128.

163 To make sense of this objection, one has to read אִשָּׁת אָב "the father's wife" instead of אִשָּׁת אִישׁ "a married woman". R. Jehudah in the Mishnah explicitly declares the prohibition of the father's wife inapplicable to the mother.

164 A similar text is in Tosephta 10:2.

165 The mother-in-law is forbidden as the wife's mother (*Lev.* 18:17); the penalty for the willful crime is burning (20:14), more serious than strangling, the penalty for adultery (20:10).

166 The penalty is stoning (20:10). Even though the question here is about the number of sacrifices due for an unintended crime, the more serious crime is the only one counted. But, naturally, if in case of intentional crime the warning was given



only about adultery, not about any incestuous aspect, the perpetrator is tried for adultery. This *baraita* contradicts the Mishnah.

167 Adultery is a capital crime; sleeping with one's sister is punishable only by Heaven, not the human court.

The verb קטר used here is Greek  $\kappa\epsilon\upsilon\tau\rho\acute{o}\omega$  "to strike with a stick" (to goad an animal.)

168 The sister is always characterized as *your father's daughter* or *your mother's daughter* (18:9,20:17), describing the full

sister or the maternal half-sister, or *your father's wife's daughter from your father* (18:11), describing the paternal half-sister.

It seems that there is no biblical penalty attached to relations with the paternal extramarital half-sister. Babli *Yebamot* 22b.

169 The unmarried sister.

170 Children from previous marriages who are not related to one another are encouraged to marry. Rav was the son of R. Hiyya's unrelated half-brother and half-sister from previous marriages of his parents.

**משנה ט:** (fol. 24a) הבא על הזכר ועל בהמה והאשה המביאה את הבהמה. אם אדם חטא בבהמה מה חטאת. אלא לפי שבאת לאדם תסקלה על ידה לפיכך אמר הכתוב תיסקל. דבר אחר שלא תהא הבהמה עוברת בשוק ויאמרו זו היא שנסקל אש פלוני על ידיה:

**Mishnah 9:** A man who had sexual relations with a male or an animal, or a woman who brings an animal [upon herself]<sup>171</sup>. If a human sinned, what did the animal sin<sup>172</sup>? But because it caused a mishap to a human, therefore the verse decreed that it should be stoned. Another explanation: Lest the animal be seen in public and people say, this is the one because of which X was stoned.

171 These are to be stoned, Mishnah 5.

172 *Lev. 20:15* decrees that a male who had relations with an animal shall be killed together with the animal, while v. 16 decrees that a woman who had relations with an

animal shall be stoned together with the animal. The two verses are considered a unit, so that *killing* in v. 15 is read as *stoning*.

**הלכה ט:** (24d line 76) הבא על הזכר. אזהרה לבא על הזכר מניין. ואת־זכר לא תשכב משכבי אשה. פרת מניין. כי כל־אשר יעשה מכל התועבות האלה ונכרתו וגו': עונש מניין. ואיש אשר ישכב את־זכר משכבי אשה תועיבה עשו שניהם מות יומתו דמיהם בם: את וליו דמיהם בם מדימיהם בם. עד דודן לשוכב. לנשכב מניין. ואת־זכר לא תשכב משכבי אשה.

קָרִי בִיה. לֹא תִשְׁכַּב. עַד קְדוֹן כְּרָבִי עֲקִיבָה. כְּרָבִי יִשְׁמְעָל. לֹא־יִהְיֶה קֹדֶשׁ מִבְּנֵי יִשְׂרָאֵל. כָּרַת לִנְשָׁכָב כְּרָבִי יִשְׁמְעָל מִנִּין. רַבִּי יִרְמְיָה בָּשֶׁם רַבִּי אֲבָהוּ. נֹאמֶר כָּאֵן קֹדֶשׁ וְנֹאמֶר לְהֵלֵךְ וְגַם־קֹדֶשׁ הָיָה בְּאַרְצָךְ. אֶת־לְמַד קֹדֶשׁ מִקֹּדֶשׁ וְקֹדֶשׁ מִתּוֹעֵבָה. רַבִּי חִיָּיָה בַר אֲדָא בָּשֶׁם רַבִּי חֲנִינָה. תּוֹעֵבָה מִתּוֹעֵבָה. אָמַר רַבִּי יוֹסִי בְּרַבִּי בּוּן. מִתְּנִיתָה אֶמְרָה כּו'. תּוֹעֵבָה עָשׂוּ שְׁנֵיהֶם. שְׁנֵיהֶם בְּסִקִּילָה. שְׁנֵיהֶם בְּאַזְקָרָה. שְׁנֵיהֶן בְּהִכָּרַת.

**Halakhah 9:** “A man who had sexual relations with a male.” From where the warning<sup>173</sup> for a person having sexual relations with a male<sup>173</sup>? *With a male you shall not sleep in women’s ways*<sup>174</sup>. From where extirpation? *For anybody who would commit any of these abominations will be extirpated*<sup>131,135</sup>, etc. Punishment from where? *A man who would sleep with a male in women’s ways, an abomination did both of them commit; they shall be put to death; their blood be on them*<sup>175</sup>. You learn *their blood be on them* from *their blood be on them*<sup>15</sup>. That is for the active one. For the passive one from where? *With a male you shall not sleep in women’s ways*, read: *to be slept with*<sup>176</sup>. So far following Rabbi Aqiba. Following Rabbi Ismael? *There shall be no qadeš among the sons of Israel*<sup>177</sup>. From where extirpation for the passive homosexual following Rabbi Ismael? Rabbi Jeremiah in the name of Rabbi Abbahu. It says here *qadeš* and it says there, *also a qadeš was in the land*<sup>178</sup>. You learn *qadeš* from *qadeš* and *qadeš* from *abomination*<sup>179</sup>. Rabbi Hiyya bar Ada in the name of Rabbi Hanina: *Abomination* from *abomination*<sup>180</sup>. Rabbi Yose ben Rabbi Abun said, a *baraita*<sup>181</sup> states this: *Both committed an abomination*<sup>174</sup>. Both are stoned, both are subject to warning, both by extirpation.

173 The form זָכָר denotes, if not the penis, then the male as appendix to his sex organ.

174 Lev. 18:22. A general parallel to this paragraph is in the Babli, 54b.

175 Lev. 20:13.

176 The unvocalized text תִּשְׁכַּב can be read either with the masoretes as active תִּשְׁכַּב “you shall sleep” or as passive תִּשְׁכַּב “you shall be slept with”. The nonstandard vocalization in the text is from the ms. (Babli 54b).

177 Deut. 23:18. The identification of the *qadeš* as the male prostitute follows later from the verse in *Kings*.

178 1K. 14:24.

179 It is assumed that *qadeš* means the same in both verses. Also, *qadeš* must refer to the male since the feminine form *qadešah* is explicitly mentioned in Deut. 23:18. 1K. 14 continues: *They did all the abominations of the peoples whom the Eternal had uprooted from before the Children of Israel.*

These *abominations* are referred to in *Lev.* 18:29 and the only abominations unique to a male are homosexuality and active bestiality. In the Babli, 54b, both R. Ismael's and R. Aqiba's statements are quoted as *baraitot*; partially also in *Sifra Qedošim Pereq* 9(12).

180 In *Lev.* 20, the expression *abomination* is only used for the homosexual. This implies that the *qadeš* in *1K.* 14:24, and therefore in *Deut.* 23:18 is engaged in homosexual acts.

181 Not recorded elsewhere.

(25c line 11) אֶזְהָרָה לְבָא עַל הַבְּהֵמָה מִנִּיּוֹ. וּבְכָל-בְּהֵמָה לֹא-תִתֵּן שְׂכָבְתְּךָ לְטִמְאָה-בָּהּ. כָּרַת מִנִּיּוֹ. בִּי כָל-אִשָּׁר יַעֲשֶׂה מִכָּל הַתּוֹעֵבוֹת הָאֵלֶּה וְנִכְרְתוֹ וְגו': עוֹנֵשׁ מִנִּיּוֹ. וְאִישׁ אֲשֶׁר יִתֵּן שְׂכָבְתּוֹ בְּבְהֵמָה מוֹת יוּמָת: אֶת יָלְדֵי דְמִיָּהֶם בָּם מִדְּמִיָּהֶם בָּם. עַד דָּדוֹן כָּרְבִי עֲקִיבָה. כָּרְבִי יִשְׁמַעְיָאֵל. רַבִּי יִשְׁמַעְיָאֵל מִן אֶתְרִיָּה וְרַבִּי עֲקִיבָה מִן אֶתְרִיָּה. כָּרַת לְנִשְׁכָּב עַל דָּרְבִי יִשְׁמַעְיָאֵל לִית מִשְׁכַּח. עוֹנֵשׁ לְנִשְׁכָּב בֵּין עַל דָּרְבִי יִשְׁמַעְיָאֵל בֵּין עַל דָּרְבִי עֲקִיבָה לִית מִשְׁכַּח. וְכַתִּיב זִבְחָ לְאֱלֹהִים יִחְרָם. מִה זֶה בְּסִקִּילָה וְכָרַת אִף זֶה בְּסִקִּילָה וְכָרַת. מִה נִפְקָא מִבִּיּוּהוּן. שְׂכָב אֶת הַזָּכּוֹר וְנִשְׁכָּב מִמֶּנּוּ. עַל דַּעֲתִיָּה דָּרְבִי יִשְׁמַעְיָאֵל אֵינוֹ חֵיב אֶלָּא אַחַת. עַל דַּעֲתִיָּה דָּרְבִי עֲקִיבָה חֵיב שְׁתֵּי. שְׂכָב אֶת הַבְּהֵמָה וְנִשְׁכָּב מִמֶּנָּה. בֵּין עַל דַּעֲתִיָּה דָּרְבִי עֲקִיבָה בֵּין עַל דַּעֲתִיָּה דָּרְבִי יִשְׁמַעְיָאֵל חֵיב שְׁתֵּי. שְׂכָב אֶת הַזָּכּוֹר וְאֶת הַבְּהֵמָה חֵיב שְׁתֵּי. נִשְׁכָּב מִן הַזָּכּוֹר וּמִן הַבְּהֵמָה חֵיב שְׁתֵּי. שְׂכָב שְׁנֵי זָכָרִים כְּאַחַת. מֵאַחַר שְׁמִתְחַיִּיבִין עַל יְדוֹ שְׁנֵי חֵיב שְׁתֵּי. נִשְׁכָּב מִשְׁנֵי זָכָרִים כְּאַחַת. מֵאַחַר שְׁמִתְחַיִּיבִים עַל יְדוֹ שְׁנֵי חֵיב שְׁתֵּי. תִּנִּי. הַזָּכּוֹר לֹא עָשָׂה בּוֹ הַקָּטָן כְּגִדּוֹל וְהַבְּהֵמָה עָשָׂה בָּהּ הַקָּטָן כְּגִדּוֹלָה. אָמַר רַבִּי לַעֲזֹר. לְעוֹלָם אֵינוֹ מִתְחַיֵּב עָלֶיהָ עַד שֶׁתִּהְיֶה בֵּת שְׁלֹשׁ שְׁנִים וְיוֹם אֶחָד.

From where the warning<sup>129</sup> for a person having sexual relations with an animal? *Do not give your emission into an animal to defile yourself by it*<sup>182</sup>. From where extirpation? *For anybody who would commit any of these abominations will be extirpated*<sup>131,135</sup>, etc. Punishment from where? *A man who would sleep with a animal shall be put to death*<sup>183</sup>. You infer *their blood be on them* from *their blood be on them*<sup>15,184</sup>. So far following Rabbi Aqiba. Following Rabbi Ismael? Rabbi Ismael from his source<sup>179</sup> and Rabbi Aqiba from his source<sup>185</sup>. Extirpation for a male passive partner is not found for Rabbi Ismael<sup>186</sup>. Punishment for a male passive partner is not found for Rabbi Ismael or Rabbi Aqiba<sup>187</sup>, but it is written: *One who sacrifices to the forces of nature shall be banned*. Since this one is in for stoning and extirpation, also that one is in for stoning and extirpation<sup>188</sup>. What is the difference between them? If one had active homosexual relations followed by passive ones, in

Rebbi Ismael's opinion he is liable only once; in Rebbi Aqiba's opinion he is liable twice<sup>189</sup>. If one had active relations with an animal followed by passive ones. Both in Rebbi Aqiba's as in Rebbi Ismael's opinions he is liable twice<sup>190</sup>. If he had active homosexual relations with both a male and an animal he is liable twice. If he had passive homosexual relations with both a male and an animal he is liable twice. If he had simultaneous active sexual relations with two males, since both of them became guilty because of him, he is liable twice. If he had simultaneous passive sexual relations with two males, since both of them became guilty because of him, he is liable twice

It was stated: For males, an underage boy does not have the status of an adult<sup>191</sup>; a young animal has the status of a fully grown one. Rebbi Eleazar said, he cannot become liable because of it unless it be three years and one day of age<sup>192</sup>.

182 Lev. 18:23. The entire paragraph has a parallel in the Babli, 54b.

183 Lev.20:15. The corresponding verse for a woman is 20:16.

184 The expression is used only in v. 16. It is implied that the punishment for male bestiality cannot be less than that of female bestiality.

185 R. Ismael includes bestiality in the actions of a *qadeš*. R. Aqiba always refers to Lev. 18:29.

186 The Babli disagrees and finds the passive participant in bestiality in Ex. 22:18.

187 In Lev. 20.

188 The worshipper of the forces of nature is banned Ex. 22:19, but as adherent of foreign worship he is stoned. It is implied that the death penalty decreed in the preceding verse, *anybody lying with an animal shall be put to death*, for the passive participant in bestiality also must be executed by stoning.

189 In the Babli, 54b, the attributions are switched. One has to follow the classical commentaries in correcting the Yerushalmi following the Babli since, as explained in Notes 175-178, R. Aqiba finds the prohibition of active and passive homosexuality in the same verse whereas R. Ismael defines the passive homosexual as *qadeš*. Therefore, combined active and passive homosexual activity violates one verse for R. Aqiba, two for R. Ismael.

190 For both R. Aqiba and R. Ismael both Lev. 18:22 (or 23) and Ex. 22:18 are violated. The Babli disagrees, 54b.

191 Sexual relations with males under the age of nine years and one day, and females under three years and one day, are not considered as sexual activities; cf. *Ketubot* 1:3 Notes 147,152.

192 This does not refer to bestiality but to homosexuality. Homosexual relations of a male with an underage boy are not punishable unless the boy is at least three

years and one day of age, i. e., that a valid sex act would have been performed if the child had been a girl. In the Babli, 54b/55a,

Samuel derives this from *Lev. 18:22* where homosexual acts are called *lyings in woman's way*.

(25a line 28) רבי בון בר חייא בעא מרבי זעירא. מה ראה רבי ישמעאל ורבי עקיבה ליחלק בזכור ובבהמה ובשאר כל-העצרות לא נחלקו. אמר ליה. שכל-העצרות כתוב בהן שאר בשר ואילו אין כתוב בהן שאר בשר. התיבין. הרי נידה אין כתוב בה שאר בשר ונחלקו עליה. רבי ירמיה בשם רבי אבהו. מכין דכתיב קריבה קריבה. כמי שכולהם כאן וכולהם כאן. רבי חייא בר אבא בשם רבי חנינה. ואל-אשה בנדת טומאתה לא תקרב לגלות ערותה: אמר רבי יוסי בירבי בון. היא כל תקרב היא כל תגלה.

Rebbi Abun bar Hiyya asked of Rebbi Ze'ira: For what reason did Rebbi Ismael and Rebbi Aqiba disagree about a male and an animal but did not disagree about any incest prohibition<sup>193</sup>? He told him, because for all incest prohibitions it is written *blood relative*,<sup>194</sup> and about these it is not written *blood relative*. They objected: About the menstruating woman it is not written *blood relative*; did they disagree about her<sup>195</sup>? Rebbi Jeremiah in the name of Rebbi Abbahu: For it is written *approach, approach*; it is as if all were here and there<sup>196</sup>. Rebbi Hiyya bar Aba in the name of Rebbi Hanina: *To the wife in the separation of her impurity you shall not come near to uncover her nakedness*<sup>197</sup>. Rebbi Yose ben Rebbi Abun said, "not to come near" is "not to uncover."<sup>198</sup>

193 For all other sexual prohibitions they agree that the warnings and punishments equally apply to both partners.

194 The introductory clause *Lev. 18:6: No human shall come near to his blood relative to uncover nakedness* refers to both sexes. The detailed prohibitions always are formulated for the male and mention the female's nakedness, but here nakedness is mentioned without any pronoun, masculine or feminine.

195 Both agree that for both partners the warning is *Lev. 18:19* and the punishment, explicitly for both sexes, is *20:18*.

196 The singular in *18:19* is equivalent to the plural used in *18:6*; it is as if "blood relative" were written there.

197 *Lev. 18:19*. The verse seems to refer exclusively to the male; it is quoted as an objection.

198 Since "not to uncover" is used in *20:18* explicitly for both sexes, "not to come near" in *18:19* also must apply to both sexes.

(25a line 35) אֲזַהְרָה לְאִשָּׁה הַמְבִיאָה אֶת הַבְּהֵמָה עָלֶיהָ מִנִּיּוֹ. וְאִשָּׁה לֹא־תַעֲמֹד לִפְנֵי בְּהֵמָה לְרַבְּעָה תִּבָּל הוּא: כָּרַת מִנִּיּוֹ. בִּי כָּל־אִשָּׁר יַעֲשֶׂה מִכָּל הַתּוֹעֵבוֹת הָאֵלֶּה וְנִכְרָתוֹ: עוֹנֶשׁ מִנִּיּוֹ. וְאִשָּׁה אִשָּׁר תַּעֲמֹד לִפְנֵי בְּהֵמָה לְרַבְּעָה אוֹתָהּ וְהָרַגְתָּ אֶת־הָאִשָּׁה וְאֶת־הַבְּהֵמָה מוֹת יוֹמָתוֹ דְּמִיָּהֶם בָּם: אֶת־וְלִיף הָרִיגָה מִהָרִיגָה. סָקִילָה מִסָּקִילָה. דְּמִיָּהֶם בָּם מִדְּמִיָּהֶם בָּם.

From where the warning<sup>129</sup> for a woman bringing an animal upon herself? *A woman should not stand before an animal to be impregnated; it is mixture*<sup>199</sup>. Extirpation from where? *For anybody who would commit any of these abominations will be extirpated*<sup>131,135</sup>. Punishment from where? *If a woman stood before an animal to be impregnated, you should slay the woman and the animal; dying they shall be put to death, their blood be on them*<sup>200</sup>. One infers slaying from slaying, stoning from stoning, *their blood be on them from their blood be on them*<sup>201</sup>.

199 Lev. 18:19.

200 Misquoted from Lev. 20:16.

201 Both for male and female bestiality it is said that the animal has to be *slain*; this shows that in both cases the animal has to be

killed in the same way. Stoning is to be inferred from *their blood be on them* (Notes 15,184) referring to the female; this then is transferred also to apply to the male.

(25a line 41) רַבִּי בָּא בַר מַמַּל בָּעֵי. הִגַּע עֲצָמָד שָׁבָא עָלֶיהָ שׁוּגְגָה. הָרִי הִיא נִסְקָלָת עַל יָדוֹ וְהוּא פְטוּר. רַבִּי שְׁמַעוֹן בָּעֵי. הִגַּע עֲצָמָד שְׁחָרַשׁ בָּהּ בְּשִׁבְתָּ. הָרִי הוּא נִסְקָל עַל יָדָהּ וְהִיא פְטוּרָה. לִית לָךְ אֶלָּא כְּהֵדָא דְּמַר רַבִּי שְׁמוּאֵל בַּר רַב יִצְחָק. כִּסְפָּם וְזָהָבָם עָשׂוּ לָהֶם עֲצָבִים לְמַעַן יִכְרֹתוּן אִין כְּתוּב כָּאן אֶלָּא לְמַעַן יִכְרֹת. כָּאִינֵשׁ דְּמַר. שְׁחִיק טִימִיָּא דְּכָלָן. דִּיאִפִּיק בְּרִיָּה לְעִבְדָּא בִּישָׁא.

Rebbi Abba bar Mamal asked: Think of it, if he erroneously has sexual relations with it<sup>202</sup>. Should it be stoned because of him while he is not liable<sup>203</sup>? Rebbi Simeon asked: Think of it, if he used it to plough on the Sabbath. Is he not being stoned while it is not liable<sup>204</sup>? You have only, as Rebbi Samuel ben Rav Isaac explained: <sup>205</sup>*With their silver and gold they made idols for themselves*; it is not written “that they be extirpated” but *that he be extirpated*<sup>206</sup>. As if a person say: the bones of X be ground up for he led his son to evil ways.

202 If a male thought that bestiality was not forbidden.

203 Instead of simply stating that the verse requires that the animal be killed, the

Mishnah states two different reasons for it. The first reason, that it led a human into sin, applies even if the human is not prosecutable because he was not duly warned of the criminality of the intended act. The second reason, that the animal was known as the one for which a human was stoned, does not apply. Babli 55b in the name of Babylonian Amora'im.

204 The second reason stated in the

Mishnah would apply here, but no animal can be stoned for a Sabbath violation.

Since R. Simeon is quoted after R. Abba bar Mamal, it seems that he is to be identified with R. Simeon ben Laqish.

205 *Hos.* 8:4.

206 It is possible that of a group of criminals only one actually is prosecutable.

There is nothing remarkable if human and animal are treated differently.

(fol. 24a) **משנה י:** המגדף אינו חייב עד שיפרש את השם. אמר רבי יהושע בן קרחה בכל יום דנין את העדים בכינוי יפה יוסה את יוסה. נגמר הדין לא היו הורגין בכינוי אלא מוציאים את כל-האדם לחוץ ומשירין את הגדול שבהן ואומר לו אמור מה ששמעת בפרוש. והוא אומר והדינים עומדין על רגליהן וקורעין ולא מאחין. והשני אומר אף אני כמוהו והשלישי אומר אף אני כמוהו:

**Mishnah 10:** The blasphemer is not liable unless he explicitly use the Name<sup>207</sup>. Rabbi Joshua ben Qorha said, during the trial one deals with the witnesses by substitute name, may Yose hit<sup>208</sup> Yose. At the end of the proceedings one does not sentence him to death by substitute name but one dismisses the public, retains the most prestigious among them<sup>209</sup> and says to him, tell us explicitly what you heard. He says it while the judges are standing; they tear their garments<sup>210</sup> and never mend them<sup>211</sup>. The second one<sup>209</sup> says, also I [heard] like him; the third<sup>209</sup> one says, also I [heard] like him.

207 The Tetragrammaton in its original pronunciation, now lost.

208 An expression of curse, *Deut.* 28:22.

209 The witnesses.

210 Since everybody who hears a

blasphemy using the Name has to rend his garment, as if a close relative had died.

211 As for garments rent because of the death of a parent, the tear cannot be mended invisibly.

(25a line 46) **הלכה י:** המגדף אינו חייב כול. אזהרה למגדף מניין. אלהים לא תסלל. כרת מניין. איש איש כירקלל אלהיו ונשא חטאו. עונש מניין. ונוקב שם יי מות יומת. וברבי

יִשְׁמַעְעָל. דְּרַבִּי יִשְׁמַעְעָל אָמַר. בְּדִינֵי הַכְּתוּב מִדְּבַר. אִם עַל הַדִּינִים הוּא מְזַהֵר לֹא כָּל-שֹׁכֵן עַל הַכִּינוּיִם. אִם עַל הַכִּינוּיִם הוּא עוֹנֵשׁ כָּרַת לֹא כָּל-שֹׁכֵן עַל שֵׁם הַמֵּיוֹחַד. אֵית תִּנְי תִּנְי. עַל הַכִּינוּיִם בְּאִזְהָרָה וְכָרַת. עַל שֵׁם הַמֵּיוֹחַד בְּמִיתָה. אֵית תִּנְי תִּנְי. עַל הַכִּינוּיִם בְּאִזְהָרָה וְעַל שֵׁם הַמֵּיוֹחַד בְּמִיתָה וְכָרַת. מֵאן דְּמַר. עַל הַכִּינוּיִם בְּאִזְהָרָה וְכָרַת. אֱלֹהִים לֹא תִקְלָל. וְעוֹד אִישׁ אִישׁ כִּי־יִקְלָל אֱלֹהִי וְנִשָּׂא חֲטָאוֹ. בְּכָרַת. וְעַל שֵׁם הַמֵּיוֹחַד בְּמִיתָה. וְנוֹקֵב שֵׁם־יְיָ מוֹת יוֹמָת. וּמֵאן דְּמַר. עַל הַכִּינוּיִם בְּאִזְהָרָה. אֱלֹהִים לֹא תִקְלָל. וְעַל שֵׁם הַמֵּיוֹחַד בְּמִיתָה וְכָרַת. וְנוֹקֵב שֵׁם־יְיָ מוֹת יוֹמָת. אִישׁ אִישׁ כִּי־יִקְלָל אֱלֹהִי וּגו'.

**Halakhah 10:** “The blasphemer is not liable,” etc.<sup>212</sup> From where a warning for the blasphemer? *You shall not curse God*<sup>213</sup>. Extirpation from where? *Anybody who curses his God shall bear his sin*<sup>214</sup>. Punishment from where? *He who curses the Name of the Eternal shall be put to death*<sup>215</sup>. But according to Rabbi Ismael, since Rabbi Ismael said that the verse refers to judges<sup>216</sup>? If he is warned about judges, then so much more about [divine] substitute names<sup>217</sup>. If he is subject to extirpation for substitute names, so much more for the Unique Name.

Some Tanna'im state: for substitute names warning and extirpation, for the Unique Name the death penalty. Some Tanna'im state: for substitute names warning, for the Unique Name the death penalty or extirpation<sup>218</sup>. He who says, for substitute names warning and extirpation, *you shall not curse God* and *anybody who curses his God shall bear his sin* by extirpation; for the Unique Name the death penalty, *he who curses the Name of the Eternal shall be put to death*. He who says, for substitute names warning, *you shall not curse God*, for the Unique Name the death penalty or extirpation, *he who curses the Name of the Eternal shall be put to death; anybody who curses his God shall bear his sin*<sup>219</sup>, etc.

212 The parallel in the Babli is 56a.

213 Ex. 22:27. Since *El* means “power”, *Elohim* as a plural of majesty means “superior power”; in this case “supreme power” in contrast to *elohim aherim* which are not other gods” but “other powers”, such as the rain worshipped by Semites as Baal and by the Greeks as Zeus.

214 Lev. 24:15. In Num. 9:13, referring to the Second Passover, it is spelled out that “carrying one’s sin” is equivalent to “being subject to extirpation” [*Sifra Emor Pereq* 19(6), in the name of R. Jehudah.]

215 Lev. 24:16.

216 He reads Ex. 22:27 as referring to judges, who are called *elohim* in Ex. 22:7, Ps. 82:1. Babli 66a, *Mekhilta dR. Ismael*



*Mišpatim* 19 (p. 317). The previous argument is R. Aqiba's.

217 Any reference to the Deity other than the Tetragrammaton, the Unique name.

Babli 56a, *Mekhilta dR. Simeon ben Iohai* p.

213. The argument seems to contradict the principle that "one may not punish on the basis of a logical argument" (cf. Halakhah 7:1 Note 9). But since the argument refers

only to warning and Heavenly retribution, not to penalties imposed by the court, there is no contradiction.

218 *Sifra Emor Pereq* 19(5), opinion of the rabbis opposing Rabbi Meir who equates the Unique Name and its substitute names.

219 The same group of verses can lead to two different conclusions without possibility of deciding between them.

25a line 57) רבי ירמיה בשם רבי שמואל בר רב יצחק. זאת אומרת שדינן מספק. היך עבידא. פלוני הרג את הנפש. והא נידון עד שגבואו עדי. אמר ליה רבי יוסי. ותפושין בר נשא בשוקא ומבזין ליה. אלא כיני. פלוני הרג את הנפש והרי עדיי שהרג את הנפש. יהא תפוש עד שגבואו עדי.

Rebbi Jeremiah in the name of Rebbi Samuel bar Rav Isaac: This<sup>220</sup> implies that one proceeds on the basis of a doubt. How is this? "X killed a person." One proceeds to try him until his witnesses come. Rebbi Yose said to him, does one arrest a person in the market and insult him<sup>221</sup>? But is it as follows: "X killed a person, and there are witnesses." Let him be put under arrest until his witnesses come.

220 The Mishnah which states that the trial of the blasphemer proceeds before the court did hear the exact wording of the offensive statement.

221 The court, acting as inquisitor, cannot arrest a person without a reasonable probability of conviction.

25a line 61) ואמרין ליה. גדי. אלא אותו השם שאמרתיו לפניכם אותו קלל. ובו קלל. ואין העדים צריכין לקרוע שכבר קראו בשעה ששמעו.

רבי שמעון בן לקיש אמר. מכן לדיינים שקיבלו עדות עומדין שדינן דין. את שמע מינה שית. את שמע מינה כהיא דאמר רבי שמואל בר רב יצחק. ואת שמע מינה כהיא דאמר רבי שמעון בן לקיש. ואת שמע מינה. שומע מפי שומע חייב לקרוע. ואת שמע מינה. מכן לעד שהעיד עדותו השיני אומר. אף אני כמוהו. והשלישי אומר. אף אני כמוהו. ואת שמע מינה שהוא אחד מן הקרעים שאין מתאחין. ואת שמע מינה. מכין שיהי יודעין משעה הראשונה שהוא שם המיוחד שהוא צריך לקרוע.

רבי חייה אמר רבי יסא מקושי. תנינן. הכרוז יוצא לקנין. איש פלוני בן פלוני יוצא ליסקל על שער עברה פלונית. ופלוני ופלוני עדין. כל מי שיודע לו זכות יבוא וילמד. שמענו. שומע מפי שומע צריך לקרוע. שמענו. שומע מפי שומע ושומע מפי שומע צריך לקרוע. מהו לקרוע על קילת השם. נישמענה מן הדא. ויהי כשמעל המלך חזקתה את דברי רב שקה ויקרע את בגדיו. מהו לקרוע על קילת הגוי. מאן דאמר. רב שקה גוי היה. קורעין. מאן דמר. ישאל היה. אין קורעין. תני רבי הושעיה. אחד השומע קילת השם מישאל ואחד השומע מפי הגוי חייב לקרוע. מה טעמא. הנה יי אלהי כל־בשר הממני יפלא כל־דבר:

Does one tell him, blaspheme<sup>222</sup>? But that Name which I am saying before you, that one he cursed or by that one he cursed<sup>223</sup>. But the witnesses need not rend their garments since they already rent them when they heard it the first time. Rabbi Simeon ben Laqish said, from here<sup>224</sup> that in case the judges heard testimony while standing, their judgment is valid.

You infer six statements from this<sup>224</sup>. One infers the statement of Rabbi Samuel bar Rav Isaac<sup>220</sup>, and one infers the statement of Rabbi Simeon ben Laqish. Also one infers that he who hears from one who heard has to rend<sup>225</sup>, and one infers that if one witness testified, the second one says, I testify to the same, and the third says, I testify to the same<sup>226</sup>. Also one infers that this is one of the tears which are not mended<sup>211</sup>, and one infers that even when they know from the start that it is the Unique Name, they have to rend.

Rebbi Hiyya said that Rabbi Yasa asked: We have stated<sup>227</sup>: “The herald goes before him: ‘X ben Y is led to be stoned because he committed crime Z; U and V testified against him. Anybody who knows of his innocence shall come and argue.’” We inferred that he who hears from one who heard has to rend. Does he who hears from one who heard from one who heard have to rend<sup>228</sup>?

Does one have to rend one’s garments for blasphemy?<sup>229</sup> Let us hear from the following: *When king Hezekias heard the words of Rab Šake, he rent his garment*<sup>230</sup>. Does one have to rend for a Gentile’s blasphemy? According to him who said that Rab Šake was a Gentile, one rends. According to him who said that Rab Šake was an Israel, one does not rend<sup>231</sup>. Rabbi Hoshiaia stated: Both one who heard blasphemy from an Israel or one who heard from the mouth of a Gentile has to rend his garment. What is the reason? *Since I am the Eternal, God over all flesh, should anything be extraordinary for me*<sup>232</sup>?

222 This is a question about the Mishnah. How can the court require the witness to sin by repeating the entire blasphemy?

223 The witness is not asked to blaspheme. The text of the blasphemy except for the Name had been testified to earlier; now it is only necessary to confirm that the Name was used, which alone makes the blasphemy a capital crime.

The text makes it clear that blasphemy is not only cursing God by His Name but also cursing another person using the Name, including any magical practices using the Name.

224 From the Mishnah.

225 Since the judges have to tear their garments, even though they are hearing the blasphemy only indirectly.

226 This statement seems to apply only to the case of the blasphemer. Witnesses have to be heard one at a time (5:3-4) to determine that they are not perjured. The speaking of the Name is the only case in which witnesses appear together, after having been interrogated separately about all other aspects of the case. However, the Babli (60a) reads the statement as implying

that by biblical standards a witness may state that his testimony is identical with that of the first witness and that the rules of 5:3-4 are rabbinic only.

227 Mishnah 6:2.

228 Does everybody who hears the herald have to rend his garment? Since this is not mentioned in the Mishnah, the implied answer to the question is negative.

229 Finally one asks why one has to rend his garment when he hears blasphemy since this obligation is not mentioned in the Torah.

230 *2K. 19:1*. Since the king heard the blasphemy from his ministers, it proves that one has to rend his garment even if he hears it indirectly. Babli 69a.

231 On the one hand, it is not likely that a high official of the king of Assyria was not an Assyrian. On the other hand, why should a high Assyrian official be able to speak Hebrew unless he was a Jewish apostate? *Mo'ed qatan* 3:6 (83b l. 32); Babli 60a. M. Cogan and H. Tadmor, *II Kings*, The Anchor Bible vol. 11 (1988) p. 230.

232 *Jer. 32:26*.

רבי יוסה רבי ירמיה בשם רבי חייה בר בא רבי חזקיה רבי  
ירמיה בשם רבי יוחנן. משרבו הגוֹדֵפִים פִּסְקוּ מִלְקָרֵעַ. מִהוּ לְקָרֵעַ עַל הַכִּינוּיִן בְּזִמְן הָהָא.  
נִשְׁמָעִינָה מִהֶדָּא. רבי שְׁמַעוֹן בֶּן לָקִישׁ הָיָה מְהַלֵּךְ בְּאַיִסְרָטָא. פָּגַע בֵּיהּ חַד כּוּתִי וְהָיָה מְגִדֵּף  
וְהוּא קָרַע מְגִדֵּף וְהוּא קָרַע. נָחַת לֵיהּ מִן חֲמִירָא וְיָהֵב לֵיהּ מִרְתּוּקָא גּוֹ לִבְיָהּ. אָמַר לֵיהּ. בֵּר  
כּוּתִי. אֵית לֵאמָרָא מֵאִינוֹן מִסְפָּקָא לִי. מִילְתִּיהּ הָדָא אָמַרָה שְׁקוּרְעִין עַל הַכִּינוּיִין וְשְׁקוּרְעִין  
בְּזִמְן הָהָא.

Does one rend his garment nowadays<sup>233</sup>? Rabbi Yose, Rabbi Jeremiah in the name of Rabbi Hiyya bar Abba, Rabbi Hisqiah, Rabbi Jeremiah in the name of Rabbi Johanan: When blasphemers proliferated, they stopped rending<sup>234</sup>. Does one rend for substitute names today? Let us hear from the

following: Rabbi Simeon ben Laqish was travelling on the highway. He met a Samaritan who was repeatedly blaspheming, and he was rending. He dismounted from the donkey and gave him a blow on his heart saying to him: Samaritan! Does your mother have garments to supply me with? [His word] This implies<sup>235</sup> that one rends for substitute names<sup>236</sup> and rends his garments at the present time.

233 Since the pronunciation of the Name is unknown, an obligation to rend one's garments would imply that it applies to substitutes of the Name. The paragraph has a parallel in *Mo'ed qatan* 3:6, 83b l. 38.

234 The same statement in the Babli 60a in the name of R. Hiyya (bar Abba). The implication is that the status of substitute

names is the same as that of the Name.

235 The scribe wrote *הדא אמרה* "this implies". The corrector added *מילתיה* but then forgot to cross out *הדא*. One should read either "his word" or "this".

236 Disagreeing with R. Johanan and the latter's student R. Hiyya bar Abba.

(fol. 24a) **משנה יא:** העוֹבֵד עֲבֹדָה זָרָה אֶחָד הָעוֹבֵד וְאֶחָד הַזֹּבֵחַ וְאֶחָד הַמְקַטֵּר וְאֶחָד הַמְנַסֵּף וְאֶחָד הַמְשַׁתְּחֶה וְהַמְקַבֵּל עָלָיו לְאֵלוֹהַּ וְהַאֲמִיר לוֹ אֱלִי אֲתָהּ.

**Mishnah 11:** The worshipper of strange worship<sup>237</sup> whether he worships<sup>238</sup>, or sacrifices<sup>239</sup>, or burns incense, or makes a libation, or prostrates himself; also one who accepts it as a god and says to it: you are my god<sup>240</sup>.

**משנה יב:** אֲבָל הַמְגַפֵּף וְהַמְנַשֵּׁק וְהַמְכַבֵּד וְהַמְרַבֵּץ הַמְרַחֵץ הַסֵּף הַמְלַבִּישׁ וְהַמְנַעִיל עוֹבֵר בְּלֹא תַעֲשֶׂה. הַנּוֹדֵר בְּשִׁמּוֹ וְהַמְקַיֵּם בְּשִׁמּוֹ עוֹבֵר בְּלֹא תַעֲשֶׂה. הַפּוֹעֵר עֲצָמוֹ לְבַעַל פְּעוֹר זֶה הֵיא עֲבֹדָתוֹ. הַזֹּרֵק אֶבֶן לְמַרְקוּלִיס זֶה הֵיא עֲבֹדָתוֹ:

**Mishnah 12:** But one who embraces<sup>241</sup>, or kisses, or sweeps clean<sup>242</sup>, or sprinkles water<sup>243</sup>; one who washes, rubs with oil, clothes, or puts shoes on it, violates a prohibition<sup>244</sup>. He who makes a vow in its name or keeps one in its name violates a prohibition. One who defecates in front of *Baal Pe'or* follows its worship<sup>245</sup>. One who throws a stone at a statue of Mercury follows its worship<sup>246</sup>.

237 Who is mentioned in Mishnah 5 as subject to stoning.

238 In a way customary for the worship of the idol even if it does not resemble any

approved worship of Heaven.

239 Any of the acts required in the Temple proffered to an idol is a capital crime even if ordinarily this is not the worship of this idol.

240 Without any other action.

241 A statue.

242 The floor on which the statue stands.

243 To settle the dust on the dirt floor on which the statue is standing.

244 The penalty would be flogging, not stoning.

245 While in later biblical texts (*Is.* 5:14,

*Job* 6:10) **פער פער** means “to open one’s

mouth wide”, in rabbinic Hebrew it always means “to defecate”. Therefore *Ba'al Pe'or* is interpreted as a deity worshipped by defecating in front of it. The defecation then becomes a capital crime.

246 While in general throwing a stone at an idol would be a commendable sign of disrespect, throwing a stone at a Hermes stele is a capital crime.

(25b line 10) **הלכה יא:** העובד עבודה זרה כול'. אזהרה לעובד עבודה זרה מניין. לא תעבדם. ברת מניין. אתי הוא מגדף ונכרתה. ולא מגדף כתוב. כאדם שהוא אומר לחבירו. גידפתה את כל-הקערה ולא שירתה בה כלום. משל רבי שמעון בן לעזר אומר. לשנים שהיו יושבין וקערה שלגריסין ביניהון. פשט אחד את ידי וגידף את כל-הקערה ולא שייר בה כלום. כך המגדף והעובד עבודה זרה אינו משייר לאחרי מצה. עונש מניין. והוצאת האיש ההוא או את-האשה ההיא אשר לעשו את-הדבר הזה אל-שעריך וגו' עד וסקלתם אותם באבנים ומתו:

**Halakhah 11:** “The worshipper of strange worship,” etc. From where warning about strange worship? *Do not worship them*<sup>247</sup>. Extirpation from where? *He blasphemed the Eternal and will be extirpated*<sup>248</sup>. But is there not written “blasphemed”? As one would say to another, you scraped out the entire pot<sup>249</sup> and did not leave anything; a parable which Rabbi Simeon ben Eleazar formulated: Two people were sitting with a pot of porridge between them. One of them stretched out his hand, scraped out the entire pot, and did not leave anything in it. So both the blasphemer and the worshipper of strange worship do not leave any commandment as residue<sup>250</sup>.

From where the punishment? *You shall lead out that man, or that woman, who did this deed to your gates, etc., up to and stone them with stones until they die*<sup>251</sup>.

247 *Ex.* 20:5, *Deut.* 5:9 the Second Commandment.

248 *Num.* 15:30. The verse describes any person who sins intentionally as a

blasphemer. The verse decrees extirpation as punishment for any willful deed for which a sacrifice would be required if done inadvertently, in case it cannot be

prosecuted in court for lack of witnesses.

The traditional interpretation of the purification sacrifices prescribed in *Num.* 15:22-29, which differ from those prescribed under similar headings in *Lev.* 4:1-5:14, assigns the sacrifices prescribed in *Num.* exclusively to sins of idolatry; those of *Lev.* to the atonement of all other transgressions (*Sifry Num.* 111-112). Therefore, the following verse 15:30 can also be interpreted as specifically referring to idolatry.

249 It seems that in Galilean dialect גדף

جفف “to blaspheme” was pronounced like

גדף “to fly quickly” and this in turn sounded like גרף “to scoop out with a shovel, to scratch out completely.” The parallel in the Babli, *Keritut* 7b, formulates גרפת הקערה “you scratched out the pot” and Rashi comments: ד can be replaced by ר.

250 Obeying a Divine command after blaspheming or worshipping a strange deity is an empty gesture, devoid of all value.

251 *Deut.* 17:5.

(25b line 18) לא תַעֲבֹדֵם. הִייתִי אוֹמֵר. עַד שִׁיעָבוֹד כָּל-עֲבֹדָה זָרָה שְׁבָעוֹלָם. תִּלְמִיד לֹא־תִשְׁתַּחֲוֶה לָהֶם. הַשְׁתַּחֲוִיָּה בְּכָל הַיּוֹמָה וְלַמָּחָה נִצָּאָתָה. לְהַקִּישׁ אֵלֶיהָ. אֵלָּא מֵהַשְׁתַּחֲוִיָּה מִיּוֹחֲדָת מַעֲשֶׂה יָחִיד וְחִיבִין עָלֶיהָ בִּפְנֵי עֲצָמָה. אִף אֲנִי אֲרַבָּה כָּל-מַעֲשֶׂה וּמַעֲשֶׂה שְׁלֹשׁ בָּהּ חִיבִין עָלָיו בִּפְנֵי עֲצָמוֹ. אִף עַל גֵּב דְּרַבִּי שְׁמַעוֹן בֶּן לָעֶזֶר אָמַר. זֵיבִחַ וְקִיטֵר וְנִיסָד בְּהֶעֱלֵם אֶחָד אֵינוֹ חֵיב אֵלָּא אַחַת. מוֹדָה שָׂאֵם עֲבֹדָה בְּעֲבֹדָתָהּ בְּעֲבֹדָת הַגְּבוּיָה בְּעֲבֹדָת הַשְׁתַּחֲוִיָּה שֶׁהוּא חֵיב עַל כָּל-אַחַת וְאַחַת. כְּדָמַר רַבִּי שְׁמוּאֵל בְּשֵׁם רַבִּי זְעִירָא. וְלֹא יִזְבְּחוּ עוֹד אֶת-זִבְחֵיהֶם לְשִׁעִיָּם. אֲמָרוּ לֵיהּ. מַטִּי תְנֶה לְקַדְשִׁים.

*Do not worship them*<sup>247</sup>. Should I say, not unless he worshipped every single strange worship in the world? The verse says, *do not prostrate yourself before them*<sup>247</sup>.<sup>252</sup> Prostration was included<sup>253</sup>; why is it mentioned separately? To tie to it: Prostration is special in that it is the act of a single person and is punishable separately, so I am adding any single act that one is liable for separately. Even though Rabbi Simeon ben Eleazar said<sup>254</sup>, if one sacrificed, and burned incense, and poured a libation in one forgetting<sup>255</sup> he is liable only for one; he agrees that if one worshipped it in its proper worship which is identical with the worship of Heaven like prostrating, he is liable for each single action<sup>256</sup>. As Rabbi Samuel said in the name of Rabbi Ze'ira: *They should not continue to offer their sacrifices to spirits*.<sup>257</sup> They said to him, turn and refer it to sacrifices<sup>258</sup>.

252 The argument is hinted at in the Babli, 60b.

253 Even though in the verse prostrating is mentioned before worshipping, it clearly is

an act of worship and on purely logical grounds would not have to be mentioned separately.

254 Halakhah 13, 25c l. 18, the entire argument is attributed to R. Jehudah ben Tanhum.

255 If he was oblivious to the fact that worshipping other gods was forbidden, he only has to bring one purification sacrifice.

256 Applying any forms of worship of Heaven to any other purpose is sinful. Therefore, using it for pagan worship is not the same as accepting pagan rites of other forms.

257 *Lev. 17:7.*

258 The paragraph forbids any sacrificial act outside the holy precinct. It is not applicable to the question at hand.

25b line 27) רַבִּי יִסָּא בָּשֵׁם רַבִּי יוֹחָנָן. זֵיבְחָהּ לָהּ טָלָהּ בְּעַל מוֹם חֵיב. מַאי כְדוֹן. כִּי דָמַר רַבִּי הִילָא. לֹא־תַעֲשׂוּן לָן לִי אֱלֹהֵיכֶם: כָּל־לִי אֱלֹהֵיכֶם לֹא־תַעֲשׂוּן בָּן.

Rebbi Yasa in the name of Rebbi Johanan: If he sacrificed a defective lamb to it, he is guilty<sup>259</sup>. From where this? As Rebbi Hila said, *do not do such to the Eternal, your God*<sup>260</sup>. Anything that you might do for the Eternal, your God, you may not do in this case.

259 It is forbidden to sacrifice defective animals to God (*Lev. 22:20*). Nevertheless, if regular pagan worship does not include animal sacrifices but a Jew chooses to sacrifice a defective animal to that idol, he is guilty of idolatry. The Babli, *Avodah zarah* 51a, quotes R. Abbahu in the name of R. Johanan in the opposite sense.

260 *Deut. 12:4*. The paragraph deals with the destruction of places of pagan worship.

It is interpreted to mean that anything similar to Temple worship, even if executed in an unacceptable way, is forbidden as pagan worship. *Sifry Deut. 81* follows the Yerushalmi: "Anything which cannot be sacrificed in the Temple but somebody sacrificed it as foreign worship, if its kind might be sacrificed to God he is guilty; otherwise he cannot be prosecuted."

25b line 31) רַבִּי בִּין בְּרַ חֵינָה בְּעֵא קוּמִי רַבִּי זְעִירָה. לֹא תַעֲבֹדִם כָּלָל. לֹא־תִשְׁתַּחֲוֶה לָהֶם פָּרֹט. כִּי לֹא תִשְׁתַּחֲוֶה לְאֵל אַחֵר חֹזֵר וְכָלָל. כָּלָל וּפָרֹט וְכָלָל אִין בְּכָלָל אֵלָא מַה שְּׁבַפְרִט. רַבִּי בִּין בְּרַ קְהִנָּה בְּעֵא קוּמִי רַבִּי הִילָא. לֹא־תַעֲשׂוּן לָן כָּלָל. זֵיבְחָהּ לְאֱלֹהִים יַחֲרֹם פָּרֹט. בִּלְתִּי לִי לְבַדּוּ. חֹזֵר וְכָלָל. כָּלָל וּפָרֹט וְכָלָל וְהַכֹּל בְּכָלָל. וְרִיבָה אֶת הַמִּגְפָּף וְהַמִּנְשֶׁק. אָמַר לִיה. לֹאִי זֶה דָּבָר נְאֻמָּרָה הַשְׁתַּחֲוִיָּה. לֹא לְלַמֵּד עַל עֲצָמוֹ שְׁהוּא מַעֲשֶׂה. הַמִּגְפָּף וְהַמִּשְׁתַּחֲוִיָּה שְׁאִין מַעֲשֶׂה.

Rebbi Abun bar Hiyya asked before Rebbi Ze'ira: *Do not worship them*<sup>247</sup>, a principle. *Do not prostrate yourself before them*<sup>247</sup>, a detail. *For you shall not prostrate yourself before another god*<sup>261</sup>; He again stated the principle. Principle, detail, and principle: is nothing covered but the detail<sup>262</sup>?

Rebbi Abun bar Cahana asked before Rebbi Hila: *Do not do such*<sup>260</sup>, a principle. *One who sacrifices to gods shall be banned*<sup>263</sup>, a detail. *Only for the Eternal alone*<sup>263</sup>, He again stated the principle. Principle, detail, and principle; is not everything included<sup>264</sup>? Does it not add one who embraces and one who kisses<sup>268</sup>? He told him, why is prostrating mentioned? Not to infer from it that it is an action? He who embraces and he who (prostrates himself)<sup>266</sup> do not exemplify actions.

261 Ex. 34:14.

262 Since in the Ten Commandments prostrating is mentioned before worshipping, the order really should be detail, principle, principle. Also, in our text of the *Introduction to Sifra*, “principle, detail, principle has to be judged in light of the detail,” adding anything similar to detail. The passage supports the thesis of Menahem Cahana [קיום לתולדות התפתחותה] ספר זיכרון, של מידת כלל ופרט בתקופת התנאים א. אדרעי, מ. בראשי, י. לוניסון, ed. לתרצה ליפשיץ Jerusalem 2005, pp. 173-216] that only the list of hermeneutical rules is original but the detailed interpretation of the rules is Babylonian (following R. Aqiba), never accepted in the Yerushalmi. The latter does not differentiate between כלל ופרט, פרט וכלל, and in all cases reduces the validity of the principle to the case of the

detail. The question naturally deserves no answer since it is not כלל ופרט וכלל but פרט וכלל, which is not the subject of any hermeneutical rule.

263 Ex. 22:19.

264 This statement is not found elsewhere in talmudic texts. But in R. Aqiba's system of additions (רבי) and subtractions (מעוט), addition + subtraction + addition implies that almost everything corresponding to the broad description of the additions is included (Tosephta *Ševu'ot* 1:7, Babli *Nazir* 35b).

265 But according to Mishnah 12, embracing or kissing an idol is not a capital crime.

266 It is clear that one has to read ומשקשקש “and kisses” instead of ומשתחויה “and prostrates himself”. Embracing and kissing are not acts of worship.

(25b line 36) מניין לאומר לו. אלי אתה. רב אבון בשם רבנן דתמן. וישתחויו לו ויזבחו לו ויאמרו אלה אלהיך ישראל וגו'. מעתה אינו מתחייב עד שיזבח ויקטר ויאמר. אמר רבי יוסי. לא בא הכתוב להזכיר אלא גנין של ישראל. וישתחויו לו ולא לגבוה. ויזבחו לו לא לגבוה. ויאמרו לו. לא לגבוה. מאי כדון. נאמר כאן אמירה ונאמרה במסית. מה אמירה האמורה במסית עשה בה אמירה כמעשה. אף אמירה האמורה כאן נעשה בה אמירה כמעשה.

כתוב וילך ויעבד אלהים אחרים וישתחויו להם ולעמם | או לזר. אמר רבי זעורה. לשמש אין כתוב כאן אלא ולעמם. אין כאן כלל ופרט אלא ריבויים. התיב רבי אבא בר



זמינא קומי רבי זעורה. והא כתוב כל אשר-לו סנפיר וקשקשת וכל אשר אין-לו סנפיר וקשקשת. מעתה אין פאן כלל ופרט אלא ריבויים. אלא בגין דכתב וי'. אמר רבי יוחנן בר מריא. כל-הו דאנא משכח וי' אנא מחיק ליה. אמר רבי שמואל בר אבדומא. הייתי אומר. מה שבגמלים יהוא אסורין ומה שבגגיות ושביבירים יהוא מותרין. תלמוד לומר וכל-אשר בגמלים. ריבה.

רבי שמואל בר נחמני בשם רבי הושעיה. האומר לו. אלי אתה. מחלוקת רבי וחכמים. השתחוה לה מהו. רבי יוחנן אמר. דברי הכל מודין בכפיפת קומה שהוא חייב. מה בין המעלה והמוריד קומתו והמעלה והמוריד שפתותיו. רבי יוחנן אמר. כמחלוקת. וריש לקיש אמר. כמחלוקת. אמר רבי זעירא. קריא מסייע לריש לקיש. תורה אחת יהיה לכם לעושה בשגגה. אין לי אלא דבר שהוא מעשה. המגפף והמשתחוה שאינו מעשה מניין.

From where about him who says, “you are my god”<sup>267</sup>? Rav Abun in the name of the rabbis there<sup>268</sup>: *They prostrated themselves before it, and sacrificed to it, and said, these are your gods, Israel.* Then he should not be guilty unless he sacrifice, burn incense, and declare. Rabbi Yose said, the verse is written only for the disgrace of Israel. *They prostrated themselves before it*, not before Heaven. *And sacrificed to it*, not to Heaven. *And said*, not to Heaven. What about this<sup>269</sup>? *Saying* is mentioned here and *saying* is said about one who leads astray<sup>61,270</sup>. Since for *saying* mentioned about one who leads astray, saying is equated with acting, also for the *saying* mentioned here, we have to equate saying with acting.

It is written<sup>271</sup>: *He went and worshipped other powers and prostrated himself before them, and to the sun, and to the moon.* Rabbi Ze'ira said, it is not said *to the sun* but *and to the sun*. That is not principle and detail but addition<sup>272</sup>. Rabbi Abba bar Zemina objected before Rabbi Ze'ura; is it not written *any which have fins and scales, and any which do not have fins and scales*<sup>273</sup>? Then this is not principle and detail but additions since there is written *and*<sup>274</sup>? Rabbi Johanan bar Marius said, anywhere I am encountering *and*, I am deleting it<sup>275</sup>. Rabbi Samuel ben Eudaimon said, I would have said that anything in the oceans is forbidden, what is in barrels and vivaria<sup>276</sup> should be permitted. The verse says, *and anything which lives in water*, an addition<sup>277</sup>.

Rabbi Samuel bar Nahmani in the name of Rabbi Hoshai: If one says to it, you are my god, there is disagreement between Rabbi<sup>278</sup> and the Sages. If

he (prostrated himself)<sup>266</sup>, what is the rule? Rabbi Johanan said, everybody agrees that if he lowered his body<sup>279</sup>, he is guilty. What is the difference between raising and lowering his body, and raising and lowering his lips<sup>280</sup>? Rabbi Johanan said, following disagreement<sup>281</sup>. Rabbi Simeon ben Laqish said, following the distinction<sup>282</sup>. Rabbi Ze'ira said, a verse supports Rabbi Simeon ben Laqish: *One rule should be for you, for the one acting in error*<sup>283</sup>. This only refers to what represents an action. The one who embraces (and who prostrates himself)<sup>266</sup>, which are not action, from where<sup>284</sup>?

267 That it is a capital crime.

268 Ex. 32:8, speaking of the Golden Calf.

269 How does the verse imply that declaring one's allegiance to another power constitutes a capital crime?

270 An example of *הקשה* "trapping", or *בגין* *אחד*, *אב מכתוב אחד*, the third hermeneutical rule. Since in one case it is established that by talking alone one may commit a capital crime, in all other cases where talking is equated to actions constituting capital crimes, it is a capital crime in itself.

271 Deut. 17:3. If not for R. Ze'ira's interpretation, one would translate *or to the sun, or to the moon*.

272 By the rule *כלל ופרט אין בכלל אלא מה שבפרט* "principle, detail, and principle: nothing is covered but the detail," the verse seems to imply that only worship of sun or moon are capital crimes, not the worship of other gods (cf. Note 213). Since the detail is not standing alone but is connected to the general category by *and*, even R. Ismael will agree that the verse adds the worship of celestial bodies as bodies, rather than deities, to the definition of pagan worship.

273 Lev. 11:9: *This you may eat from anything which is in the water: Any with fin and scale in the water*, in seas and rivers,

*those you may eat*. On the face of it, the verse declares a principle of what may be eaten from the water, followed by a detail, from lakes (standing water) and rivers (flowing water).

274 As explained later, the preceding argument would allow to eat seafood grown in barrels and aquariums, against the received rules, unless one accepts every *and*, even those needed by the rules of grammar, as additions. This may be R. Aqiba's approach; it certainly is unacceptable for R. Ismael's hermeneutical rules. Babli *Hulin* 66b.

275 This is essentially R. Ismael's approach that "the Torah speaks human speech;" no word needed by the basic rules of grammar and syntax carries a hidden meaning.

276 Latin *vivarium* "game, fish preserve".

277 Because of the introductory clause, the verse must be read as principle, principle, and detail; this does not fit the scheme of "principle and detail" but the wordiness must be interpreted as intended to cover all possible cases.

The verse as quoted does not exist; in Lev. 11:9-10, Deut. 14:9 one reads *מכל אשר במים*, the partitive *mem* indicating that not

everything living in the water can be eaten, but not referring to the varieties of water.

278 This disagreement is not mentioned in any other source. It is possible that a name should be inserted here.

279 This is prostrating which by the verse was defined as an idolatrous act.

280 This is declaring the idol as one's god, which also can be done by only moving body parts, the lips. In the Babli, 65b, R. Johanan extends his argument by criminalizing a person who prevents his ox from eating while threshing by shouting at it.

281 The nature of this disagreement cannot be determined. It is possible that R. Johanan by his argument implies that embracing and kissing idols are capital crimes.

282 The distinction made in the Mishnah between idolatrous acts which are capital crimes and those which are simple transgressions.

283 *Num.* 15:29; the reference to idolatrous acts is explained in Note 248.

284 Therefore, embracing and kissing cannot be capital crimes since they do not fit the criterion for a purification sacrifice in case the act was unintentional.

**משנה יג:** הנותן מזרעו למולך אינו חייב עד שיקסור למולך ויעביר באש. מסר למולך ולא העביר באש. העביר באש ולא מסר למולך אינו חייב עד שיקסור למולך ויעביר באש. בעל אוב זה פיתום והמדבר משחיו וידעוני זה המדבר בפיו. הרי אלו בסקילה והנשאף בהן באזהרה: (fol. 24a)

**Mishnah 13:** One who gives any of his descendants to the Moloch is only guilty if he delivers him to the Moloch and makes him pass through fire. If he delivered him to the Moloch but did not make him pass through fire, or made him pass through fire but did not deliver him to the Moloch, is only guilty if he delivers him to the Moloch and makes him pass through fire.

The necromancer is the Πύθων<sup>285</sup> and one who<sup>286</sup> speaks from his armpit. The medium<sup>58</sup> speaks through his mouth. These are stoned but one who consults them is forewarned<sup>287</sup>.

285 Πύθων, -ωνος, ό, "the serpent Python", a spirit of divination. The plural πύθωνες "ventriloquists".

286 In the Babli and the independent Mishnah mss: the Πύθων who speaks from

his armpit.

287 While turning to necromancers and fortune-tellers is repeatedly forbidden (*Lev.* 19:31, *Deut.* 18:10-11), no punishment is spelled out in the biblical text.

(25b line 56) **הלכה יג:** הנותן מזרעו למולך. אזהרה לנותן מזרעו למולך מניין. ומזרעו לאיתנו להעביר למולך. פרת מניין. כי מזרעו נתן למולך ונכרתה. עונש מניין. איש איש מבני ישראל ומן הגר | הגר בישאל אשר יתן מזרעו למולך מות יומת עם הארץ יגמוהו באביו ומזרעו לאיתנו. יכול אפילו מסר ולא העביר יהא חייב. תלמוד לומר ומזרעו לאיתנו להעביר. יכול אפילו מסר והעביר שלא למולך יהא חייב. תלמוד לומר ומזרעו לאיתנו להעביר למולך. יכול אפילו מסר והעביר למולך שלא באש יהא חייב. תלמוד לומר לא ימצא בך מעביר בנזבתו באש. עברה עברה לגזירה שוה. מה העברה שנאמרה להלן באש אף כאן באש. נמצאתה אומר. לעולם אינו חייב עד שימסור ויעביר באש למולך. רבי נסה בשם רבי לעזר. לעולם אינו מתחייב עד שימסרנו לכופרים ויטילנו ויעבירו. העבירו כדרכו מהו. היה מושכו ומעבירו. תני. העבירו ברגלו פטור. רבי לעזר בירבי שמעון מחייב. אחד המולך ואחד שאר עבודה זרה. רבי לעזר בירבי שמעון אומר. אינו חייב אלא למולך בלבד. אינו חייב אלא על יוצאי ירכו. אמר רבי יוחנן. טעמא דרבי לעזר בירבי שמעון מהכא. לא ימצא בך בגופך לא ימצא מעביר. והכרתי אותו מקרב עמו: לרבות שאר עבודה זרה בהיפך. עונש מניין. מזרעו נתן למולך מות יומת. והוא שהעביר עצמו. לא ברגלו הוא עובר. מפני שהעביר את עצמו. אבל אם היה מושך בו ומעבירו חייב. מה היא דאמר רבי לעזר בירבי שמעון. העבירו ברגלו פטור. בהוא דעבירה מזקר.

**Halakhah 13:** “One who gives any of his descendants to the Moloch.”

From where a warning not to give any of his descendants to the Moloch? *Do not give any of your descendants to the Moloch*<sup>288</sup>. Extirpation from where? *For he gave one of his descendants to the Moloch*<sup>289</sup> *and shall be extirpated*<sup>290</sup>. Punishment from where? *Each one of the Children of Israel, or of the sojourner in Israel, who would give any of his descendants to the Moloch shall be made to die; the people of the Land shall smash him with stones*<sup>291</sup>. *Do not give any of your descendants*, I could think that he was guilty if he handed over but did not make him pass<sup>292</sup>; the verse says: *Do not give any of your descendants to pass through*. I could think that he was guilty if he handed over and made him pass through but not for the Moloch; the verse says: *Do not give any of your descendants to pass through for the Moloch*<sup>293</sup>. I could think that he was guilty if he handed over and made him pass through for the Moloch but without fire; the verse says: *among you, nobody should be found to make his son or his daughter pass through fire*<sup>294</sup>. Passing through, passing through as an equal cut<sup>295</sup>. Since “passing through” mentioned there is through fire, so “passing through” mentioned here also is through fire. You

have to say that he is not guilty unless he handed over and made him pass through fire for the Moloch.

Rebbi Nasa in the name of Rebbi Eleazar: He is guilty only if he hand him over to the priests, takes him, and makes him pass. What if he lets him walk normally? It was stated: one was drawing him and made him pass through. It was stated: if he made him walk through on his feet he is not prosecutable<sup>296</sup>. Rebbi Eleazar ben Rebbi Simeon declares him guilty. Whether for the Moloch or for any other foreign worship; Rebbi Eleazar ben Rebbi Simeon says, he is guilty only for the Moloch<sup>297</sup>, he is guilty only for his descendants. Rebbi Johanan said, Rebbi Eleazar ben Rebbi Simeon's reason is from here: *It shall not be found in you*<sup>298</sup>, from your body you should not be found making pass through.

*I shall extirpate him . . . from among his people*<sup>299</sup>. To include all other foreign worship for extirpation<sup>300</sup>. From where punishment? *Of his descendants he gave to the Moloch*<sup>289</sup>, *death he shall be made to die*<sup>291</sup>, if he made him pass through himself. Does he not pass through on his feet? Because he made him pass through himself, but if he was drawing him and made him pass through, he is guilty. What does Rebbi Eleazar ben Rebbi Simeon mean, if he made him walk through on his feet he is not prosecutable? He has to make him pass through jumping.

288 Lev. 18:21.

289 Lev. 20:3

290 A wrong quote from Lev. 20:5. It should read: *I shall extirpate him*.

291 Lev. 20:2.

292 In the interpretation of the Talmudim, the child was handed over to the Moloch priests and then made to pass or be carried between two fires. It is not assumed that the child was burned since that would be murder which in itself is a capital crime and would obviate the discussion of the exact conditions which make Moloch worship a capital crime. In the Babli, 64b, it is assumed that there is one fire in a ditch and

the Moloch worship requires to jump, not to walk, over the fire. This interpretation also is possible for the Yerushalmi.

The paragraphs have a parallel in the Babli, 64b, partially with different attributions.

293 Since passing through (or jumping over) fire is characteristic for Moloch worship and not part of worship of Heaven, doing this for any other deity is forbidden foreign worship, subject to divine extirpation, but not a prosecutable capital crime.

294 Deut. 18:10. In the Moloch paragraphs in Lev., the nature of "passing

through” is never spelled out; by the doctrine of invariability of lexemes it is only made definite in this quote. *Sifra Qedošim Parašah* 10(3).

295 Cf. 3:10, Note 158.

296 Babli 64b. In neither Talmud is it totally clear whether father or priests make the child pass through or over the fire.

297 Babli 64a.

298 The word בך in *Deut.* 18:10 is read as *in you*; this is interpreted to describe one's bodily issue, the children.

299 A not quite correct quote from *Lev.* 20:5.

300 In the Moloch paragraph *Lev.* 20:1-5 extirpation is mentioned twice, in vv. 3 and 5. One refers to Moloch worship; the other then must refer to any other worship using fire. *Sifra Qedošim Parašah* 10(15).

25c line 1) רבי בון בר חייא בעא קומי רבי זעירא. מסר ולא העביר תפלוגתא דחזקיה ורבי יוחנן. גאיתפלוגין. טבח ולא מכר. חזקיה אמר חייב. ורבי יוחנן אמר פטור.

Rebbi Abun bar Hiyya asked before Rebbi Ze'ira: If he handed over but did not make to pass through,<sup>391</sup> is that the disagreement between Hizqiah and Rebbi Johanan? Fore they disagreed: If he slaughtered but did not sell, Hizqiah said he is liable, but Rebbi Johanan said, he is not liable<sup>392</sup>.

301 At the start of the Halakhah it was noted that if somebody handed over his child to the Moloch priests but did not make him pass over the fire, he is not guilty under the Moloch paragraph. One has to read that to mean that the intent had been for a full Moloch ceremony but that for some reason it was not executed. Then the question here is, whether there is any guilt in handing over the child knowing that the ceremony cannot be performed.

302 The thief of livestock who *slaughters and sells* stolen animals is liable to fourfold or fivefold restitution (*Ex.* 21:37). The question arises whether stealing and slaughtering an animal which cannot be sold, e. g., one dedicated as sacrifice but still in its owner's hand, triggers liability for quadruple or only double restitution. The problem is not mentioned elsewhere; a related one is in *Ševu'ot* 8:8. The comparison of civil and criminal law is unfounded; the question merits no answer.

25c line 4) רבי בא רבי חייא בשם רבי יוחנן. ראה לשון שלמידתך התורה. מולך. כל-שתמליכהו עליך. אפילו קיסם אפילו צרור. והכרתיו אותו מקרב עמו. לרבות שאר עבודה זרה בהיפך. רבי נסה בשם רבי לעזר. לרבות שאר עבודה זרה לבנים ולבנות. דתני. אחד המולך ואחד שאר עבודה זרה. בין שעבדה בבנים ובבנות בין שעבדה באבות ובאמהות. חייב. אמר רבי זעירא. בשאין עבודתה לכו פטור. אמר רבי הילא. אפילו עבודתה לכו חייב שתים. מתניתא מסייעא לרבי הילא. מולך בכלל עבודה זרה היה ונצא

לִידוֹן לְהַקְלֵל עָלָיו שְׁלֵא יִהְיֶה חַיִּיב אֶלָּא עַל יוֹצְאֵי יִרְכּוֹ. אָמַר רַבִּי תַנְחוּם בְּרַי יְרֵמְיָה. אֵתִיבָא דְרַבִּי לְעֶזֶר בִּירְבִּי שְׁמַעוֹן קְשִׁיטָה רַבִּי שְׁמַעוֹן אָבִי. כְּמָה דְרַבִּי שְׁמַעוֹן אָמַר. מוֹלֵךְ בְּכָלֵל עוֹבְדֵי עֲבוּדָה זָרָה הֵיךְ. נֶצָא לִידוֹן לְהַקְלֵל עָלָיו שְׁלֵא יִהְיֶה חַיִּיב אֶלָּא עַל יוֹצְאֵי יִרְכּוֹ. כֵּן רַבִּי לְעֶזֶר בִּירְבִּי שְׁמַעוֹן אָמַר. בְּכָלֵל עוֹבְדֵי עֲבוּדָה זָרָה הֵיךְ. נֶצָא לִידוֹן לְהַקְלֵל עָלָיו שְׁלֵא יִהְיֶה חַיִּיב אֶלָּא עַל יוֹצְאֵי יִרְכּוֹ.

אָמַר רַבִּי תַנְחוּם בְּרַי יוֹדָן. אִף עַל גַּב דְרַבִּי לְעֶזֶר בִּירְבִּי שְׁמַעוֹן אָמַר. זִיבְחָ וְקִיטֵר נִיטֵר בְּהַעֲלֵם אֶחָד אֵינוֹ חַיִּיב אֶלָּא אַחַת. מוֹדָה שְׂאֵם עֲבָדָה בְּעֲבוּדָתָהּ בְּעֲבוּדַת הַגְּבוּהָ בְּעֲבוּדַת הַשְׁתַּחֲוִיָּה שֶׁהוּא חַיִּיב עַל כָּל־אַחַת וְאַחַת. מְנִיין שְׂאֵם עֲבָדָה בְּעֲבוּדָתָהּ בְּעֲבוּדַת הַגְּבוּהָ בְּעֲבוּדַת הַשְׁתַּחֲוִיָּה שֶׁהוּא חַיִּיב עַל כָּל־אַחַת וְאַחַת. רַבִּי שְׁמוּאֵל בְּשֵׁם רַבִּי זְעוּרָה. וְלֹא־זִיבְחֵי עוֹד אֶת־זִבְחֵיהֶם לְשַׁעֲרֵם. אָמְרוּ לֵיהּ. מַטִּי תִנָּה לְקַדְשִׁים.

רַבִּי יִסָּא בְּשֵׁם רַבִּי יוֹחָנָן. זִיבְחָ לֵה טֹלָה בַעַל מוֹם חַיִּיב. מַאי כְדוּן. כְּדָאֻמַּר רַבִּי הִילָא. לֹא־תַעֲשִׂינּוּ כֵּן לִי אֱלֹהֵיכֶם: כְּלִי אֱלֹהֵיכֶם לֹא־תַעֲשִׂינּוּ כֵּן.

אָמַר רַבִּי פִּינְחָס קוֹמִי רַבִּי יוֹסֵה בְּשֵׁם רַב חֲסִידָא. הֵיכִי עֲבוּדָתָהּ בְּבָנִים וּבָבוֹת וְעֲבָדָה בְּאָבוֹת וּבְאִמָּהוֹת חַיִּיב שְׁתֵּימָם. וְהֵיכִי רַבִּי זְעוּרָה חֲדִי בָּהּ. סָבַר מִימַר. בְּשִׁטָּתָהּ רַבִּי הִילָא רַבִּיֵּה אִיתְאַמְרַת. וְעַל דְרַבִּי לְעֶזֶר בִּירְבִּי שְׁמַעוֹן אִיתְאַמְרַת. אָמַר לֵיהּ. וַיִּמָּה בְּיָדָהּ. וְעַל דְרַבִּינּוּ אִיתְאַמְרַת. אָמַר לֵיהּ. וְלִהְדָא צוּרְכָתָהּ.

Rebbi Abba bar Hiyya in the name of Rebbi Johanan<sup>303</sup>: Look at the expression which the Torah taught you, *Moloch*; anything that you make king over yourself, even a chip of wood, even a pebble<sup>304</sup>. *I shall extirpate him from amidst his people*, to include all other foreign worship in extirpation<sup>300</sup>. Rebbi Nasa in the name of Rebbi Eleazar: to include all other foreign worship relating to sons and daughters, as it was stated: He is guilty whether for the Moloch or any other foreign worship, whether he worshipped them with sons and daughters, or worshipped them with fathers and mothers. Rebbi Ze'ira said: if its worship did not prescribe this; but if its worship did prescribe it, he is free from prosecution<sup>305</sup>. Rebbi Hila said, even if its worship did prescribe it, he is twice guilty<sup>306</sup>. A *baraita* supports Rebbi Hila: The Moloch was included in all other foreign worships; it is mentioned separately to be lenient in this regard that he be guilty only for his descendants<sup>307</sup>.

Rebbi Tanḥum bar Jeremiah said, it follows that Rebbi Eleazar ben Rebbi Simeon follows the argument of his father Rebbi Simeon. Just as Rebbi Simeon said, the Moloch was included in all other foreign worships; it is mentioned separately to be lenient in this regard that he be guilty only for his

descendants, so Rabbi Eleazar ben Rabbi Simeon said, the Moloch was included in all other foreign worships; it is mentioned separately to be lenient in this regard that he be guilty only for his descendants<sup>298</sup>.

Rebbi Tanḥum ben Yudan said, even though Rabbi Eleazar ben Rabbi Simeon said<sup>254</sup>, if one sacrificed, and burned incense, and poured a libation in one forgetting<sup>255</sup> he is liable only for one; he agrees that if one worshipped it in its proper worship which is identical to the worship of Heaven like prostrating, he is liable for each single action<sup>256</sup>. From where that if one sacrificed, and burned incense, and poured a libation in one forgetting he is liable only for one; he agrees that if one worshipped it in its proper worship which is identical with the worship of Heaven like prostrating, he is liable for each single action? As Rabbi Samuel said in the name of Rabbi Ze'ira: *They should not continue to offer their sacrifices to spirits*<sup>257</sup>. They said to him, turn and refer it to sacrifices.

Rebbi Yasa in the name of Rabbi Johanan: If he sacrificed a defective lamb to it, he is guilty<sup>259</sup>. From where this? As Rabbi Hila said, *do not do such to the the Eternal, your God*<sup>260</sup>. Anything that be for the Eternal, your God, you may not do.

Rebbi Phineas said before Rabbi Yose in the name of Rav Hisda<sup>308</sup>: If its worship prescribed sons or daughters but he worshipped it with fathers or mothers, he is twice guilty. Rabbi Ze'ira enjoyed this; he thought that this was said following his teacher's Rabbi Hila's system and referred to Rabbi Eleazar ben Rabbi Simeon. He told him, what do you have in your hand? It referred to the rabbis! He answered, did you need it for this<sup>309</sup>?

303 In the Babli, 64a, this is a tannaïtic statement attributed to R. Hanina ben Antigonus.

304 Since the root *mlk* of "Moloch" means "to rule".

305 He holds that Moloch worship is defined by its rules, not by the name given to the deity being worshipped. Since R. Eleazar ben R. Simeon was quoted earlier that in Moloch worship one is guilty only

for his descendants; if the rules of worship require descendants, the rules of Moloch worship apply. But if the Moloch rules are applied to the worship of a deity whose published rules do not include the Moloch rules, then it is an act of idolatry irrespective of the nature of the participants.

306 Once for idolatry and once for following the Moloch rules.

307 The following paragraph shows that



this *baraita* must be attributed to R. Simeon.  
 308 The name tradition here is impossible.  
 R. Phineas, student of the last generation  
 Amora R. Yose who was R. Ze'ira's  
 student's student, could not have been R.  
 Ze'ira's discussion partner and was an  
 unlikely source for the statement of the

second generation Rav Hisda.

309 Since the rabbis do not accept that the  
 rules of the Moloch include any leniency, it  
 is obvious that a person who worships any  
 other deity by the Moloch ritual is guilty  
 both of idolatry and of following the  
 Moloch.

(25c line 31) אֶזְהָרָה לְבַעַל אוֹב מְנִיין. אֶל־תִּפְנֶנּוּ אֶל־הָאוֹבוֹת. כָּרַת מְנִיין. הַנֶּפֶשׁ אֲשֶׁר תִּפְנֶנָּה  
 אֶל־הָאוֹבוֹת וְאֶל־הַיִּדְעוֹנִים וגו'. עוֹנֵשׁ מְנִיין. וְאִישׁ אוֹר־אִשָּׁה כִּי־יִהְיֶה בֵּהֶם אוֹב אוֹ יִדְעוֹנֵי מוֹת  
 יִמָּוֶת. וְלָמָּה לֹא תִּנָּן יִדְעוֹנֵי בְּכָרִיתוֹת. רַבִּי חִזְקִיָּה בִּשְׁם רִישׁ לְקִישׁ. מִפְּנֵי שֶׁנִּכְלְלוּ כוֹלָם בְּלֹא  
 אֶחָד אֶל־תִּפְנֶנּוּ אֶל־הָאוֹבוֹת וגו'. רַבִּי יִסָּא בִּשְׁם רִישׁ לְקִישׁ. שֶׁהוּא בֹלֵא תַעֲשֶׂה שֶׁהוּא בֹא מִכַּח  
 עֲשֶׂה. אָמַר רַבִּי זְעִירָה קוֹמִי רַבִּי יִסָּא. הֵכֵן לֹא אֵתָא מִתְּנֵי בַר נֵשׁ מִתְּנֵי יִדְעוֹנֵי בְּכָרִיתוֹת אֶלָּא  
 אֵת. אָמַר לֵיהּ. כִּמָּה דְאִישְׁתַּעֲי קָרָא אִישְׁתַּעֲיִית מִתְּנִיתָה. אוֹב אוֹ יִדְעוֹנֵי.

אוֹ<sup>325</sup> זֶה פִּיתוּם הַמְדַּבֵּר מִשִּׁיחוֹ. וְיִדְעוֹנֵי זֶה הַמְדַּבֵּר בְּפִיו. הֲרִי אֱלוֹי בִּסְקִילָה וְהַנֶּשְׂאָל בִּהּ  
 בְּאֶזְהָרָה: וְדָרַשׁ אֶל־הַמֵּתִים. אֵת תִּנִּי תִנִּי. זֶה הַנֶּשְׂאָל בְּגוֹלְגוֹלָתָה. אֵת תִּנִּי תִנִּי. זֶה הַנֶּשְׂאָל  
 בְּזִכּוּרוֹ. מֶה בֵּין הַנֶּשְׂאָל בְּגוֹלְגוֹלָתָה לַמַּעֲלָה בְּזִכּוּרוֹ. שֶׁהַנֶּשְׂאָל בְּגוֹלְגוֹלָתָה עוֹלָה כְּדָרְכּוֹ וְעוֹלָה  
 בִּשְׁבֻתָּ וְהַדִּיּוֹט מַעֲלָה אֶת הַמָּלָךְ. וְהַמַּעֲלָה בְּזִכּוּרוֹ אֵינוֹ עוֹלָה כְּדָרְכּוֹ וְאֵינוֹ עוֹלָה בִּשְׁבֻתָּ וְאֵין  
 הַדִּיּוֹט מַעֲלָה אֶת הַמָּלָךְ.

אָמַר רַבִּי הוּנָא. קָרִינָא מְסִייעַ לְמָאן דְאָמַר. אוֹב זֶה הַמַּעֲלָה בְּזִכּוּרוֹ. מֶה טַעְמָא. קִסְמִי  
 נָא לִי בְּאוֹב וְהַעֲלֵי לִי אֶת אֲשֶׁר־אָמַר אֱלֹהִים: מֶה אֵת שָׁמַע מִינָהּ. אָמַר רַבִּי מְנָא. מִיכּוֹן דְּהִנֵּת  
 יְדָעָה מִלְּפָנֶיךָ מִלִּין סָגִין. מֵאִי כְדוֹן. וְהִיא כְּאוֹב מֵאַרְצֵי קוֹלָךְ.

מִיִּלְיָהוֹן דְּרַבְנִין מְסִייעֵן לְרַבִּי יִסָּא. דְאָמַר רַבִּי יִסָּא בִּשְׁם רַבְנִין. מִפְּנֵי שֶׁהוּא מְקַטִּירִין  
 לְשָׂדִים. רַבִּי הִילָא בִּשְׁם רַבִּי יִסָּא. מִפְּנֵי שֶׁנִּכְלְלוּ כוֹלָן עַל יְדֵי מַעֲשֶׂה.

From where the warning about the necromancer? *Do not turn to the necromancers*<sup>326</sup>. From where extirpation? *A person who would turn to necromancers and mediums*<sup>327</sup>, etc. Punishment from where? *A man or woman, impersonating a necromancer or a medium, shall be put to death*<sup>328</sup>. Why is the medium not mentioned in *Keritut*<sup>329</sup>? Rabbi Hizqiah in the name of Rabbi Simeon ben Laqish: Because they are taken together in one prohibition, *do not turn to the necromancers*<sup>330</sup>, etc. Rabbi Yasa in the name of Rabbi Simeon ben Laqish: Because it is a prohibition implied by a positive commandment<sup>331</sup>. Rabbi Ze'ira said before Rabbi Yasa: No person except you thought of stating the medium in this way in *Keritut*. He told him,

because as the verse formulated it so the Mishnah formulates it, *a necromancer or a medium*<sup>330</sup>.

“The necromancer is the *πύθων*<sup>285</sup> and one who<sup>286</sup> speaks from his armpit. The medium<sup>58</sup> speaks through his mouth. These are stoned but one who consults them is forewarned<sup>287</sup>. *And one who asks the dead*<sup>332</sup>.<sup>333</sup> Some Tannaïm state: this is one who interrogates a skull. Some Tannaïm state: this is one who interrogates his<sup>334,173</sup> masculinity. What is the difference between one interrogated by his skull or one raised by his masculinity? The one interrogated by his skull rises normally, rises on the Sabbath, and a commoner can raise a king. But one raised by his masculinity does not rise normally<sup>335</sup>, does not rise on the Sabbath, and a commoner cannot raise a king.

Rebbi Huna said, a verse supports him who said, the necromancer is the one who raises by his masculinity. What is the reason? *Please apply necromancer's magic and raise for me whom I shall tell you*<sup>336</sup>. What do you understand from here? Rebbi Mana said, it implies that she was competent in many ways<sup>337</sup>. What about it? *Your voice will be from the earth like that of a necromancer*<sup>338</sup>.

The words of the rabbis support Rebbi Yasa, as Rebbi Yasa said in the rabbis' name: Because they burn incense to spirits<sup>339</sup>. Rebbi Hila in the name of Rebbi Yasa: Because they all were included by actions<sup>340</sup>.

325 Read אור.

326 Lev. 19:31. Here starts the discussion of the second part of the Mishnah.

327 Lev. 20:6.

328 Lev. 20:27.

329 Mishnah *Keritot* 1:1 mentions only the necromancer, not the medium.

330 In *all* pentateuchal verses mentioning אור it is paired with קְדַעְנִי (the verses quoted plus *Deut.* 18:11). Babli 65b.

331 Cf. 5:3, Note 73. This formulation does not make any sense, as indicated by R. Ze'ira's question. It should have been formulated: Because the medium is treated as an appendix to the necromancer. The

medium never creates an obligation for a purification offering if one for necromancy already was established; he cannot be mentioned in *Keritot* 1:1 separately from the necromancer.

332 *Deut.* 18:11. No criminal sanction is spelled out for this.

333 Tosephta 10:7, explaining the term “interrogating the dead”. In the Babli, 65b, the same *baraita* explains the term “necromancer”.

334 The dead.

335 The dead appears feet up, head down.

336 *1S.* 28:8.

337 Since Saul had to request a particular

method, the woman must have been competent in all sorts of sorcery. She realized that her customer was Saul because she recognized Samuel whose status was that of a king.

338 *Is.* 29:4.

339 This returns to the statement of R. Yasa in the first paragraph here. The user of necromancy is a potential candidate for a

purification offering since it depends on an action, viz., burning incense to spirits. But a medium who is totally passive does not qualify.

340 A different formulation of the argument of Note 339; all transgressions mentioned in *Keritut* 1:1 involve some action.

(fol. 24a) **משנה יד:** המְחַלֵּל אֶת הַשַּׁבָּת בְּדָבָר שְׁחִיבִין עַל יָדוֹנוֹ כָּרַת וְעַל שְׁגָגָתוֹ חֲטָאָתָּהּ. וְהַמְקַלֵּל אָבִיו וְאִמּוֹ אֵינוֹ חַיִּיב עַד שֶׁיִּקְלָלֵם בְּשֵׁם. קָלָלָם בְּכַנּוּי רַבִּי מֵאִיר מְחִיב וְחֲכָמִים פּוֹטְרִין:

**Mishnah 14:** One who desecrates the Sabbath<sup>59,341</sup> by something which if performed intentionally makes him liable to extirpation, or to a purification sacrifice if in error. But he who curses father or mother<sup>60</sup> is guilty only of he cursed them by the Name<sup>207</sup>. If he cursed them by a substitute name, Rabbi Meïr declares him guilty but the Sages free him from prosecution.

**משנה טו:** הַבָּא עַל נַעֲרָה הַמְאֻרְסָה אֵינוֹ חַיִּיב עַד שֶׁתִּהְיֶה נַעֲרָה בְּתוּלָה מְאֻרְסָה בְּבֵית אָבִיהָ. בָּאוּ עָלֶיהָ שְׁנַיִם הָרָאוּשׁוֹן בְּסָקִילָה וְהַשְּׁנִי בְּחִנֶּק:

**Mishnah 15:** One who has sexual relations with a preliminarily married adolescent<sup>7</sup> is only liable if she was an adolescent, a virgin, and preliminarily married, in her father's house. If two [men] had relations with her, the first one is stoned, the second is subject to strangling<sup>342</sup>.

341 If duly warned by two witnesses about the criminality of his intent, he can be prosecuted if in the absence of witnesses he would be subject to Divine extirpation. But if he violates any of the positive

commandments for the Sabbath he cannot be prosecuted by biblical standards; for violating a simple prohibition he at most could be sentenced to 39 lashes.

342 As a common adulterer.

(25c line 51) **הלכה יד:** הַמְחַלֵּל אֶת הַשַּׁבָּת כּוֹל. אֲזֵהָרָה לְמַחְלֵל מְנִיין. לֹא־תַעֲשֶׂה כָל־מְלָאכָה. כָּרַת מְנִיין. כִּי כָל־הַעֲשֶׂה בָּהּ מְלָאכָה וְנִכְרְתָהּ. עוֹנֵשׁ מְנִיין. מְחַלֵּלָהּ מוֹת יוֹמָת.

וְנִתְּנִי שְׁלֹשִׁים וְשִׁבְעַת כְּרִיתוֹת בְּתוֹרָה. אָמַר רַבִּי יוֹסִי בִּירְבִּי בּוֹן. שָׁאֵם עָשָׂה כּוֹלֵן בְּזִדּוֹן שֶׁבֶת וּבְזִדּוֹן מִלְּאָכָה שֶׁהוּא חַיִּיב עַל כָּל־אַחַת וְאַחַת.

**Halakhah 14:** “One who desecrates the Sabbath,” etc. From where warning for the desecrator? *Do not perform any work*<sup>343</sup>. From where extirpation? *For any who would perform work on it would be extirpated*<sup>344</sup>. From where punishment? *Its desecrator shall be made to die the death*. Should we not state 37 kinds of extirpation in the Torah<sup>345</sup>? Rabbi Yose ben Rabbi Abun said, because if he performs all of them, intentionally on the Sabbath and intentionally for the work, he is liable for each one singly.

343 Ex. 20:10.

344 Ex. 31:14.

345 This is a copy from Halakhah 9, Note 149. The question should be that in *Keritut* 1:1 74 kinds of extirpation should be mentioned since, as R. Yose ben Abun explains, each one of the 39 categories of work forbidden on the Sabbath defines its own obligation for a purification sacrifice if

the person was aware that it was Sabbath and that he was performing this kind of work, and only had forgotten that it was forbidden. Then a single person could be obligated for up to 39 sacrifices for desecrating a single Sabbath. But if he simply had forgotten that it was Sabbath, a single sacrifice is due and this is what is counted in *Keritut*.

(25c line 55) אֲזַהְרָה לְמַקְלָל אָבִיו וְאִמּוֹ מִנִּיין. אִישׁ אָמֹ וְאָבִיו תִּירָא. עוֹנֵשׁ וְכָרַת מִנִּיין. וּמַקְלָל אָבִיו וְאִמּוֹ מוֹת יוּמָת. וְאֹמֵר בִּי כָל־אֲשֶׁר יַעֲשֶׂה מִכָּל הַתּוֹעֲבוֹת הָאֵלֶּה וְנִכְרַת.

From where a warning for the one who curses father or mother? *Everybody has to fear his mother and father*<sup>346</sup>. From where punishment and extirpation? *And he who curses his father or mother shall be made to die the death*<sup>347</sup>. And it says, *for anybody who would commit any of these abominations will be extirpated*<sup>349,131</sup>.

346 Lev. 19:3.

347 Ex. 21:17.

348 A verse introduced by “and it says” is quoted as indirect support of a thesis, not a proof. The verse decrees extirpation only

for sexual crimes; it precedes Lev. 19:3 by 4 verses. But cursing or injuring father or mother are the only capital crimes for which no verse decrees extirpation. One might consider cursing a parent as an abomination.

(25c line 58) הָבָא עַל נִעְרָה הַמְּאוֹרָסָה. רַבִּי יְסָא בִּשְׁם רַבִּי יוֹחָנָן רַבִּי חִיָּה בִּשְׁם רַבִּי לֵעָזֵר. דְּרַבִּי מֵאִיר הִיא. בְּרַם לְרַבְּנִין אֶפְּלִי קִטְנָה. מַה טַּעְמָא דְּרַבִּי מֵאִיר. נִעַר חֹסֵר אָמֹר בְּכַרְשָׁה.

מה מקיימין רבנן נער. רבי אבהו בשם ריש לקיש. נערה אחת שלימה אמורה בפרשה ולימדה על כל-הפרשה כולה שהיא גדולה. מתיב רבי מאיר לרבנן. הרי המוציא שם רע הרי אין פתוב בו אלא נער והיא גדולה. שאין קטנה נסקלת. מה עבדין לה רבנן. אמר רבי אבין. תיפתר שפא עליה דרך זכרות. רבי יעקב בר אבא בעא קומי רב. הבא על הקטנה מהו. אמר ליה. בסקילה. הבא על הבוגרת מהו. אמר ליה. אני אקרא נערה ולא בוגרת. וקרא נערה ולא קטנה. ולית מודה לי שהיא בקנס. אמר ליה. תחת אשר עינה. לרבות את הקטנה לקנס. וקרא תחת אשר עינה. לרבות את הבוגרת בקנס. אמר רב. אף על גב דנצחי רבי יעקב בר אבא בדינא הלכה הבא על הקטנה בסקילה והיא פטורה. רבי אבון בשם רבי שמואל. ולמה לא פתר ליה מן הדא. ומת האיש אשר שכב עמה לבדו. וכי אין אנו יודעין שאין לנערה חט מות. ומה תלמוד לומר ולנער לא-תעשה דבר אין לנערה חטא מות. אלא מקו הבא על הקטנה בסקילה והיא פטורה.

<sup>349</sup>“One who has sexual relations with a preliminarily married maiden.”

Rebbi Yasa in the name of Rebbi Johanan, Rebbi Hiyya in the name of Rebbi Eleazar: This is Rebbi Meir's. But for the rabbis even if she is a minor. What is Rebbi Meir's reason? “*Lad*” is written defectively in the paragraph. How do the rabbis explain “*a lad*”? Rebbi Abbahu in the name of Rebbi Simeon ben Laqish: Once in the paragraph it is written *a young woman*; this teaches that in the entire paragraph she is an adult. Rebbi Meir objected to the rabbis: In the matter of the calumniator, *a lad* is written and she is an adult since a minor is not stoned? What do the rabbis do with this? Rebbi Abin said, explain it that he came to her as a male.

Rebbi Jacob bar Abba asked before Rav: What is the law of him who comes to a minor? He said to him, by stoning. What is the law of him who comes to an adult? He said to him, I am reading *an adolescent*, not an adult. Read *an adolescent*, not a minor! Do you not agree with me that she has the right to a fine? He answered, *because he mistreated her*, that includes a minor for a fine. Read *because he mistreated her*, that includes an adult for a fine! Rav said, even though Rebbi Jacob bar Abba won the logical argument, practice is that he who comes to a minor is [punished] by stoning but she is free. Rebbi Abun in the name of (Rebbi)<sup>350</sup> Samuel. Why? He understood it from the following: *The man who had lain with her alone shall die*. Do we not know that the girl has not committed a capital crime? Why does the verse say, *do not do anything to the girl; the girl has not committed a capital crime*?

That includes him who has sexual relations with a [preliminarily married] underage girl; he is stoned and she is free.

349 This text is also in *Ketubot* 3:9, explained there with a list of readings in Notes 126-135. The parallel in the Babli is 66b.

that the speaker is Samuel, Rav's contemporary, and not the later Galilean R. Samuel. *Sifry Deut* 243 disagrees with Samuels' argument.

350 It is clear from *Ketubot* and the Babli

(fol. 24a) **משנה יז:** המסית זה הדייט המסית את ההדייט. אמר לו יש יראה במקום פלוני כך אוכלת כך שותה כך מטיבה כך מריעה. כל חייבי מיתות שבתורה אין מכמינן עליהם חוץ מא. אמר לשנים והן עדיין, מביאין אותו לבית דין וסוקלין אותו.

**Mishnah 16:** The one who leads astray<sup>351</sup> is a commoner who leads a commoner astray, by saying to him: There is something to worship at place X; it eats such and such, drinks such and such; it gives such and such benefits, can do such and such evil. For no capital crime in the Torah may one use entrapment<sup>352</sup>, except for this one. If he said it to two persons, they become his witnesses, bring him to court, and stone him.

**משנה יז:** אמר לאחד הוא אומר יש לי חברים רוצים בכך. אם הנה ערים ואינו מדבר בפניהם מכמינן מאחורי הגדר והוא אומר לו אמור מה שאמרת לי בייחוד והלה אומר לו והוא אומר לו היאך נניח אלהינו שבשמים ונעבוד עצים ואבנים. אם חזר בו מוטב. אם אמר כך היא חובתנו וכך לפה לנו העומדין מאחורי הגדר מביאין אותו לבית דין וסוקלין אותו.

**Mishnah 17:** If he said this to a single person, he should tell him, I have friends who also want this<sup>353</sup>. If he was sly<sup>354</sup> and did not talk in their presence, one sets a trap behind a wall<sup>355</sup>; he tells him, repeat what you told me alone; then he tells him, how can we abandon our God in Heaven and worship wood and stones<sup>356</sup>? If he repents, it is good<sup>357</sup>; if he says, it is our duty, or so it is good for us, those who stand behind the wall bring him to court and stone him.

**משנה יח:** האומר אעבוד אלה ואעבוד גלף ונעבוד. אבנא אלה ואבנא גלף ונבנא. אקטיר אלה ואקטיר גלף ונקטיר. אנסא אלה ואנסא גלף וננסא. אשתחא אלה ואשתחא גלף ונשתחא. המדיח זה האומר גלף ונעבוד עבודה זרה:

**Mishnah 18:** He says, I shall worship, I shall go and worship, let us go and worship; I shall sacrifice, I shall go and sacrifice, let us go and sacrifice; I shall burn incense, I shall go and burn incense, let us go and burn incense; I shall pour libations, I shall go and pour libations, let us go and pour libations; I shall prostrate myself, I shall go and prostrate myself, let us go and prostrate ourselves. The seducer<sup>351</sup> is one who says, let us go and profess a strange worship.

351 The one who leads astray (Note 61) presents a problem for law enforcement since a single listener cannot appear in court as a witness. In the Babli, the seducer (Note 62) is one who openly propagates another faith, who is easily prosecuted. But in the Yerushalmi the difference between *him who leads astray* and the *seducer* is that the former speaks Hebrew while the latter speaks in the vernacular.

352 By the prosecution, as spelled out in Mishnah 17.

353 In order to have him speak before two

witnesses.

354 He knows that if he only speaks to a single listener, he may with impunity try to convert a thousand people since no two of them can testify to the same occurrence and, therefore, cannot appear as witnesses in court.

355 A rural wall of stones without mortar.

356 This is the required warning, *viz.*, that apostasy is a crime.

357 Then he cannot be prosecuted since what he said was before he was duly warned, which is not prosecutable in court.

(25c line 74) **הלכה יו:** המסית זה הדייט כול. הא חכם לא. מכנין שהוא מסית אין זה חכם. מכנין שהוא ניסית אין זה חכם. כיצד עושין להערים עליו. מכמינין עליו שני עדים בבית הפנימית ומושיבין אותו בבית החיצון ומדליקין את הנר על גביו כדי שיהיו רואין אותו ושומעין את קולו. שכן עשו לבן סוטדא בלוד והכמינו עליו שני תלמידי חכמים והביאווהו לבית דין וסקלוהו. וכה את אמר הכן. שנייא היא דאמר. אני. ואמר אף הקא. אני. שלא יערים. ויערים. שלא ילך ויסית עצמו ויסית אחרים עמו.

2 ניסת | ניסית מכמינין | מכמינים עדים | י עדים בני אדם 3 את הנר | י נר 4 סוטדא | י סטרא והכמינו | י שהכמינו 5 את אמר | י תמר ואמר אף | י אף שלא יערים. ויערים | י - 6 ילך ויסית עצמו ויסית | י יברח וילך לו וילך ויסית את

**Halakhah 16:** “The one who leads astray is a commoner,” etc.

<sup>358</sup>Therefore, not a Sage? Since he seduces, he is not a Sage. Since he is seduced, he is not a Sage. What does one do to outwit him? One hides two witnesses in an inner room and puts him into the outer room, lights a candle near him so they can see him and hear his voice. That is what they did to Ben Sateda in Lydda, where they hid two Sages, brought him to court, and stoned

him. And here, you say so? It is different because he said, “I am”. Here also, “I am”? That he should not get wise to it. And what if he got wise to it? That he should not go away, and continue to seduce himself and others with him.

358 The parallel text is in *Yebamot* 16:6 (י) here, you say so?” and the answer to it make Notes 125-132. The text there is the sense. original, since only there the question “and

25d line 5) מְסִית אוֹמֵר בְּלָשׁוֹן גְּבוּהָ וְהַמְדִּיחַ אוֹמֵר בְּלָשׁוֹן זָמוּד. מְסִית שְׁאֵמַר בְּלָשׁוֹן זָמוּד; נֶעֱשָׂה מְדִיחַ. וּמְדִיחַ שְׁאֵמַר בְּלָשׁוֹן גְּבוּהָ נֶעֱשָׂה מְסִית. מְסִית אוֹמֵר בְּלָשׁוֹן הַקּוֹדֵשׁ וּמְדִיחַ אוֹמֵר בְּלָשׁוֹן הַדְּיוּט. מְסִית שְׁאֵמַר בְּלָשׁוֹן הַדְּיוּט נֶעֱשָׂה מְדִיחַ. וּמְדִיחַ שְׁאֵמַר בְּלָשׁוֹן הַקּוֹדֵשׁ נֶעֱשָׂה מְסִית.

The one who leads astray says it aloud, the seducer speaks in a low voice. One who leads astray who spoke in a low voice becomes a seducer; a seducer who spoke in a low voice becomes one who leads astray. The one who leads astray speaks in Hebrew, the seducer speaks in a vernacular. One who leads astray who spoke in a vernacular becomes a seducer; a seducer who spoke in Hebrew becomes one who leads astray<sup>351,359</sup>.

345 Since one who leads astray and the seducer are two different biblical categories, condemned if the paragraph under which he is condemned is not determined. a missionary for paganism cannot be

(fol. 24b) **משנה יט:** המכשף העושה מעשה ולא האוחז את העינים. רבי עקיבה אוֹמֵר מְשׁוּם רַבִּי יְהוֹשֻעַ שְׁנֵי לֹקְטִים קְשׁוּאִין אֶחָד לֹקֵט פְּטוּר וְאֶחָד לֹקֵט חַיִּב. הָעוֹשֶׂה מַעֲשֶׂה חַיִּב וְהַאֲחִיז אֶת הָעֵינִים פְּטוּר:

**Mishnah 19:** The sorcerer is one who does a deed<sup>360</sup> but not one who creates an illusion<sup>361</sup>. Rabbi Aqiba says in the name of Rabbi Joshua: Two are collecting green melons<sup>362</sup>; one who collected cannot be prosecuted, the other one is guilty. The who does a deed is guilty; he who creates an illusion cannot be prosecuted.

360 To convict somebody of sorcery, to be punished by stoning (Mishnah 5), the



witnesses have to prove that he created something contradicting the laws of nature; at the end of the Halakhah this seems to be restricted to the creation of a parentless living creature.

361 In this matter, visual impressions do not count.

362 In modern Hebrew “zucchini”; cf. *Kilaim* Chapter 1, Note 38.

10) **הלכה יט:** המכשף העושה מעשה כול. מכשפה לא תחיה: אחד האיש ואחד האשה. אלא שלמדנו: התורה דרש ארץ מפני שרוב הנשים כשפניות. אמר רבי לעזר. מכשף בסקילה. מה טעמא דרבי לעזר. נאמר פאן מכשפה לא תחיה. ונאמר להלן אם-בהמה אם-איש לא יחיה. מה לא יחיה שנאמר להלן בסקילה אף פאן בסקילה. מה טעמון דרבינו. נאמר פאן מכשפה לא תחיה. ונאמר להלן לא תחיה כל-נשמה. מה לא תחיה שנאמר להלן מיתה בחרב. אף לא תחיה שנאמר פאן מיתה בחרב. אמר רבי עקיבה. מן הדבר הזה אני מכריעו. מוטב שילמד לא תחיה מלא תחיה ואל יוכיח לא יחיה. מה טעמא דרבי יהודה. נאמר פאן מכשפה לא תחיה ונאמר להלן כל-שכב עם-בהמה מות יימת: מה מיתת הבהמה בסקילה אף פאן נסקילה.

**Halakhah 19:** “The sorcerer is one who does a deed,” etc. *A sorceress you shall not let live*<sup>363</sup>, whether man or woman, but the Torah taught you the way of the world that most women have a tendency to sorcery<sup>364</sup>. Rabbi Eliezer said, a sorcerer is [executed] by stoning. What is Rabbi Eliezer’s reason? It says here, *a sorceress you shall not let live*, and it says there, *whether human or animal they shall not live*<sup>365</sup>. Since *shall not live* there means by stoning, also here by stoning. What is the rabbis’<sup>366</sup> reason? It says here, *a sorceress you shall not let live*, and it says there, *you shall not let live anybody*<sup>367</sup>. Since *you shall not let live* there means death by the sword, also *you shall not let live* here means death by the sword. Rabbi Aqiba said, from this argument I am deciding. It is preferable to learn *you shall not let live* from *you shall not let live* rather than from *shall not live*. What is Rabbi Jehudah’s reason<sup>368</sup>? It says here, *a sorceress you shall not let live*, and it says there, *anybody lying with an animal shall die the death*<sup>369</sup>. Since the execution of the animal is by stoning, so here also by stoning<sup>370</sup>.

363 Ex. 22:17.

364 Babli 67a and *Mekhilta dR. Simeon ben Iohai*, ad loc., the first part only in *Mekhilta dR. Ismael*, ad loc.

365 Ex. 19:13. The verse requires *stoning* or *shooting* the transgressor.

In the Babylonian sources (Babli and the two *Mekhillot*), this argument is

attributed to R. Aqiba, who in the Yerushalmi rejects it.

366 There “rabbis” oppose the Mishnah and decree beheading for the sorcerer; in Babli and *Mekhilta dR. Simeon ben Iohai* the author is R. Yose the Galilean, in *Mekhilta dR. Ismael* it is R. Ismael.

367 *Deut.* 20:16.

368 The student of R. Eliezer’s student gives the final argument for the Mishnah. In the Babli (here and *Berakhot* 21b) and

*Mekhilta dR. Simeon ben Iohai* his argument is attributed to Ben Azzai, in *Mekhilta dR. Ismael* to R. Yose the Galilean.

369 *Ex.* 22:18, the verse following the one about the sorceress. Since in v. 17 the method of execution is not indicated, the instruction of v. 18 is interpreted in the light of *Lev.* 20:15-16 and applied to both verses.

370 Since for animals the only explicitly mentioned example of execution is the stoning of the notorious bull.

רבי לעזר ורבי יהושע ורבי עקיבה עלון למסחי בהדין דימוסין דטיבריא. חמתון חד מיניי. אמר מה דמר ותפשייתון כיפה. אמר רבי ליעזר לרבי יהושע. מה יהושע בן חנניה. חמי מה דאת עבד. מי נפק אהן מינייא אמר רבי יהושע מה דמר ותפש יתיה תרעה. והנה כל-מאן דעליל הנה יהיב ליה חד מרתוקה וכל-מאן דנפק הנה יהיב ליה בנתיקא. אמר לון. שרון מה דעבדתון. אמרין ליה. שרי ואנן שריי. שרון אילין ואילין. מן דנפקון אמר רבי יהושע לההוא מינייא. הא מה דאת חכם. אמר נחות למא. מן דנחתין למא אמר ההוא מינייא מה דאמר ואיתבזע ומא. אמר לון. ולא כן עבד משה רבכון בנמא. אמרין ליה. לית את מודה לון דהליך משה רבן בגויה. אמר לון. אין. אמרין ליה. והליך בגויה. הליך בגויה. גזר רבי יהושע על שרה דינמא ובלעיה.

Example. Rabbi Eliezer, Rabbi Joshua, and Rabbi Aqiba went to bathe at the public baths<sup>371</sup> of Tiberias. A Minean<sup>372</sup> saw them, said what he said, and the cupola caught them<sup>373</sup>. Rabbi Eliezer said to Rabbi Joshua:<sup>374</sup> Joshua ben Hanania, look what you can do. When this Minean was leaving, Rabbi Joshua said what he said and the door trapped him. Anybody who entered hit him with his fist, anybody leaving hit him when forcing the door open. He told them, undo what you did; they told him, you undo, then we shall undo. They mutually undid. When they left, Rabbi Joshua said to this Minean, is that all you are wise to? He answered, let us go down to the sea. When they had descended to the sea, this Minean said what he said and the sea was split. He told them, is that not what your teacher Moses did to the sea? They answered, do you not agree that our teacher Moses walked through it? He said to them, yes. They told him, enter it. He entered it. Rabbi Joshua commanded the prince of the sea<sup>375</sup> who swallowed him.

371 δημόσια (*scil.*, βαλανεῖα).

372 A Jewish heretic; a name frequently but not exclusively applied to Jewish Christians.

373 They were put under a spell so they could not leave the space under the cupola of the main room of the thermal baths.

374 In the rules of witchcraft all Sages of his generation were students of R. Eliezer, as told at the end of the Halakhah.

375 The angel running the Sea of Genesareth. The idea of angels running natural phenomena is a Jewish adaptation of the Greek myth of gods of the sea and nymphs of sources.

25d line 33) דלמא. רבי לעזר ורבי יהושע ורבן גמליאל סלקון לרומי. עלון לחד אתר ואשכחון מיינוקא עבדין גבשושין ואמרין הכין. בני ארעא דישראל עבדין ואמרין. ההו תרומה וזהו מעשר. אמרין מסתברא דאית הקא והודאין. עלון לחד אתר ואשכחון בחד כיי<sup>376</sup>. יתבון למיכל והנה כל-תבשיל דהנה עליל קומיהון אי לא הוון מעלין ליה בחד קיטון לא הנה מיינתי ליה קומיהון. וחשון דילמא דאינון אכלין זבחי מתים. אמרין ליה. מה עסקך דכל-תבשיל דאת מיינתי קומינן אין לית את מעייל להו קיטונא לית את מיינתי לו קומינן. אמר לון. חד אבא גבר סב אית לי וגזר על נפשיה דלא נפק מן הדא קיטונא כלום עד דייהימי לחכמי ישראל. אמרין ליה. עול ואמור ליה. פוק הקא לגביהון דאינון הקא. נפק לגבון. אמרין ליה. מה עיסקך. אמר לון. עלון על ברי דלא מוליד. אמר רבי לעזר לרבי יהושע. מה יהושע בן חנניה. חמי מה דאת עבדי. אמר לון. אייתון לי זרע דכיתון. ואיתון ליה זרע דכיתון. איתחמי ליה זרע על גבי טבלה. איתחמי מרבץ ליה. איתחמי דסלקת. איתחמי מתלש ביה. עד דאסק חדא איתא בקלעיתא דשערה. אמר לה. שרי מה דעבדתין. אמרה ליה. לי נא שרייה. אמר לה. דלא כן אנא מפרסם לין. אמרה ליה. לי נא נכלה דאינון מטלקין בינא. וגזר יהושע על שריא דקמא ופלטון. וצלון עלוי וזכה למוקמי לרבי יודה בן בתירה. אמר. אילו לא עלינו לכאן אלא להעמיד הצדיק הזה דינינו.

Example. Rabbi Eliezer, and Rabbi Joshua, and Rabban Gamliel travelled to Rome. They came to a place where they found children making stone heaps and saying as follows: What they do in the Land of Israel is to say, this is heave, this is tithe. They said, it is clear that Jews live here. They entered a place and were received at a house. They sat down to eat. It happened that no dish was brought to them unless it was brought [first] to a certain bedroom<sup>377</sup>. They became afraid that perhaps they were eating offerings to the dead<sup>378</sup>. They asked him, why is it that you bring no dish before us unless you brought it first to that bedroom? He told them, I have an old father who vowed not to leave that bedroom until he might see the Sages of Israel. They told him, go and tell him to come out because they are here. He came out; they asked him,

what is your problem? He told them, pray for my son because he is sterile. Rabbi Eliezer said to Rabbi Joshua.<sup>374</sup> Joshua ben Hanania, look what you can do. He told them, bring me linseed; they brought him linseed. It appeared to them as if he was sowing it on a table<sup>379</sup>. It appeared as if he was watering it; it appeared to grow; it appeared that he was plucking out of it, until there appeared a woman with braided hair. He told her, undo what you did. She answered, I shall not undo. He told her, then I shall make you known. She said, I cannot, because they<sup>380</sup> were thrown into the sea. Rabbi Joshua commanded the prince of the sea<sup>375</sup> who disgorged them. Then they prayed for him and he had the merit of raising Rabbi Jehudah ben Bathyra<sup>381</sup>. They said, if we came here only to bring the just person to the world, it would have been enough.

376 Read בַּי for בֵּית.

377 Greek κοιτών.

378 Since it is not usual to eat in a bedroom, they were afraid that the food was first offered to a corpse in a pagan ceremony which would make the food forbidden to them.

379 Latin *tabula*.

380 The charms used for the spell put on the son to make him sterile.

381 The family Ben Bathyra is placed in both Talmudim (cf. *Berakhot* 3:4 Note 391) at Nisibis in Kurdistan, not on the road from Palestine to Rome. The source of the stories, characterized as non-legal texts by their Aramaic language, is a problem because it mixes Palestinian חַמִּי “to see” with the Babylonian meaning “to decree” of the root גִּיר instead of Galilean “to decide”.

(25d line 53) אָמַר רַבִּי יְהוֹשֻעַ בֶּן חֲנַנְיָה. יָכִיל אֲנִי נָסִיב קֶרֶן וְאַבְטִיחִין וְעָבִיד לֹון אֵילִין טַבִּין וְהִידְנוּ עֲבִידֵין אֵילִין וְטַבִּין. אָמַר רַבִּי יֵנָא. מִחֻלָּה הָיִנָּה אֲסָרְטָא דְּצִיפּוֹרִי וְחִזִּית חַד מִינֵי נָסִיב חַד צָרִיר וְזָרַק לֵיהּ לְרֹמָא וְהָהּ נָחַת וּמִתְעַבֵּד עָגֹל. וְלֹא כֹן אָמַר רַבִּי לְעֶזֶר בְּשֵׁם רַבִּי יוֹסִי בֶר זִמְרָא. אִם מִתְפַּנְסִין הֵן פֶּל-בָּאֵי עוֹלָם אֵינֶן יְכִילִין לְבִרְאוֹת יְתוֹשׁ אֶחָד וְלִזְרוֹק בּוֹ נִשְׁמָה. נִימַר. לֹא נִסְבָּה הוּא מִיֵּינָא חַד צָרוֹר וְזָרַק לְרֹמָא וְנָחַת וּמִתְעַבֵּד חַד עָגֹל. אֵלָּא לְסָרִיָּה קָרָא וְנָגַב לֵיהּ עָגֹל מִן בְּקוֹרְתָא וְאֵייתִי לֵיהּ. אָמַר רַבִּי חֲנַנְיָא בִּירְבִי חֲנַנְיָה. מְטִיִּיל הָיִנָּה בְּאֵילִין גּוֹפְתָא דְּצִיפּוֹרִין וְחִמִּית חַד מִינֵי נָסִיב חַדָּא גּוֹלְגָלָא וְזָרַק לְרֹמָא וְהִיא נָחַת וּמִתְעַבֵּד עָגֹל. אֲתִית וְאַמְרִית לְאַבָּא. אָמַר לִי. אֵין אֶקְלִית מִינָה מַעֲשֶׂה הוּא. וְאֵילָא אֲחִזִּית עֵינִים הוּא.

Rabbi Joshua ben Hanania said: I am able to take gourds and watermelons and turn them into rams and deer who would produce rams and deer. Rabbi

Yannai said, I was walking on a road in Sepphoris when I saw a Minean<sup>372</sup> taking a pebble, throwing it into the air, after which it came down transforming itself into a calf. But did not Rabbi Eleazar say in the name of Rabbi Yose ben Zimra: If all people of the world came together, they could not create one mosquito and bring it to life<sup>382</sup>. Let us say that this Minean did not take a pebble, threw it into the air, after which it came down transforming itself into a calf, but he called on his genie<sup>383</sup> who stole a calf for him from a cattle barn and brought it to him.

Rebbi Hinena ben Hanania said: I was promenading at Gufta<sup>384</sup> of Sepphoris when I saw a Minean taking a skull, throwing it into the air, after which it came down transforming itself into a calf. I went and told it to my father. He said, if you ate from it, it was an action; otherwise it was an illusion.

382 Since the objection is not raised against R. Joshua, plants are recognized as living things parallel to animals. Babli 67b.

383 Both vocalization and translation are tentative.

384 An unidentified suburb of Sepphoris; cf. *Kilaim* 9:4 Note 85.

(25d line 65) אָמַר רַבִּי יְהוֹשֻעַ בֶּן חֲנַנְיָה. שְׁלֹשׁ מֵאוֹת פְּרָשִׁיּוֹת הָיָה רַבִּי לִיעֲזָר דּוֹרָשׁ בְּפֶרֶשֶׁת מִכְשֶׁפָּה וּמְכֻלָּם לֹא שָׁמַעְתִּי אֵלָּא שְׁנֵי דְבָרִים. שְׁנַיִם לֹקֶטִין קִישׁוּאִין אֶחָד לֹקֶט פְּטוֹר וְאֶחָד לֹקֶט חַיִּב. הָעוֹשֶׂה מַעֲשֶׂה חַיִּב וְהַאֲחִז אֶת הָעֵינַיִם פְּטוֹר. אָמַר רַבִּי דְרֹסָא. תִּשְׁעָ מֵאוֹת פְּרָשִׁיּוֹת הָיוּ. שְׁלֹשׁ מֵאוֹת לְחַיִּיב וְשְׁלֹשׁ מֵאוֹת לְפְטוֹר וְשְׁלֹשׁ מֵאוֹת לְחַיִּיב שְׁהוּא פְטוֹר.

Rebbi Joshua ben Hanania said: Rabbi Eliezer used to explain 300 chapters in the matter of the sorceress, but from all of them I understood only two things: "Two are collecting green melons<sup>382</sup>; one who collected cannot be prosecuted, the other one is guilty. He who does a deed is guilty; he who creates an illusion cannot be prosecuted." Rabbi Darosa said, there were 900 chapters. 300 where one is guilty, 300 where one is free<sup>385</sup>, and 300 where one is guilty but cannot be prosecuted.<sup>386</sup>

385 Creating the illusion of witchcraft is not forbidden.

386 Forbidden action which nevertheless cannot lead to prosecution. A similar

situation exists for Sabbath prohibitions where only a small part of Sabbath violations are of the kind that could be prosecuted in court. Babli 68a.

## 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 הִזָּה בְּדִין שֶׁיֵּהָא חֵיב הֵבֵן אוֹ הֵבֵת. הוּי אוֹמֵר. הֵבֵת. וְפִטְרָה הַתּוֹרָה אֶת הַבֵּת וְחֵיבָהָ אֶת הֵבֵן. מִי הִזָּה בְּדִין שֶׁיֵּהָא חֵיב קֶטוֹן אוֹ גָּדוֹל. הוּי אוֹמֵר. גָּדוֹל. פִּטְרָה הַתּוֹרָה אֶת הַגָּדוֹל וְחֵיבָהָ אֶת הַקָּטָן. מִי הִזָּה בְּדִין שֶׁיֵּהָא חֵיב הַגּוֹנֵב מִשְׁלָאֲחָרִים אוֹ הַגּוֹנֵב מִשְׁלָאֲבֵיו וְאָמַר. הוּי אוֹמֵר. הַגּוֹנֵב מִשְׁלָאֲחָרִים. פִּטְרָה הַתּוֹרָה הַגּוֹנֵב מִשְׁלָאֲחָרִים וְחֵיבָהָ הַגּוֹנֵב מִשְׁלָאֲבֵיו וְאָמַר. לְלַמֵּדךְ שֶׁכּוֹלֵן אֵינוֹ אֵלָּא בְּגִזְרַת 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 כלב 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 תִּמְנֹן שֶׁסּוֹפּוֹ לְהַקְשׁוֹת הוּא עֲבָד לָהּ בָּשָׂר. כָּאֵן שְׂאִין סוֹפּוֹ 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 (כִּזְיִת). 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 מִצָּנָה. אָכַל בְּעֵבֹר הַחֹדֶשׁ. אָכַל מִעֶשֶׂר שְׁנֵי בִירוּשָׁלַם. וְיִסְרּוּ אוֹתוֹ וְאַיִנָּנוּ שׁוֹמֵעַ 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 לְבוֹלֵי יְהִיָּה יִרְדּוּ בְּעַל גְּבוּלָךְ. אָמַר רַבִּי יוֹחָנָן. קוֹבְלִין לְרִשּׁוֹת לְהִיפָטֵר מִבוֹלֵי. אָמַר רַבִּי יוֹחָנָן. לוֹוִין בְּרִיבִית לְחִבּוּרֵת מִצָּנָה וְלִקְדֻשׁ הַחֹדֶשׁ. רַבִּי יוֹחָנָן הָיָה עָלִיל לְכִנְשָׁתָא בְּצִפְרָא וּמִלְקֵט פִּירוּרִין וְאַבְיָל 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 אָתָּו 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 לְשִׁלָּם תְּשִׁלּוּמֵי כָּפֶל. עַל מִנְתָּ לְשִׁלָּם 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 שיגנוב מעות. רבי זעירה בשם רבי הושעיה. אינו חייב עד שיזלזל מעות. מהו שיזלזל 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 החנית 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': הִנֵּה אָבִי רוֹצֶה וְאִמִּי אֵינָה רוֹצֶה אָבִי אֵינוֹ רוֹצֶה וְאִמִּי רוֹצֶה אֵינוֹ נֶעֱשֶׂה בֶן סוֹרֵר וּמוֹרֵה עַד שֶׁיְהוּ שְׂנִיָּהֶם רוֹצִים. רַבִּי יְהוֹדָה אוֹמֵר אִם לֹא הִיָּתָה אִמּוֹ רְאוּיָה לְאָבִי אֵינוֹ נֶעֱשֶׂה בֶן סוֹרֵר וּמוֹרֵה.

**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 שֵׁיִשׁ לְאָמֹן לֹא מִשְׁלָאֲבִיו הֵם. אָמַר רַבִּי יוֹסִי בִּירְבִּי בּוֹן. תִּיפְתָּר בְּהוּ דְהִבְתָּ נְסֻבָּה דִּיִּירִין 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 שְׁמַע בְּקִלְגּוֹ וְלֹא חֲרָשִׁים. מִתְּרִין בּוֹ בְּפִגִּי שֶׁלֶשָׁה וּמִלְקִין אוֹתוֹ. חֲזֹר וְקִילְקֵל גְּדוֹן בְּעֶשְׂרִים וּשְׁלֹשָׁה. וְאֵינוּ נִסְקָל עַד שֶׁיְּהִיוּ 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 בְּאֵבִי וּבְאֵמוּ כֶּף אֵת דּוֹרֵשׁ בְּזִקְנֵי בֵּית דִּין. שֶׁנֶּאֱמַר וַיֵּצֵאוּ פֶּרֶט לַחֲיִיגִרִים. וְאָמְרוּ פֶּרֶט לְאִילָמִים. נָדִינוּ לֹא שֶׁפָּכֹו פֶּרֶט לְגִידִמִּים. וְעֵינֵינוּ לֹא רָאוּ פֶּרֶט לְסוּיָמִין. מִגִּיד הַכֶּתֹּוב כָּשֶׁם שֶׁזִּקְנֵי בֵּית דִּין שְׁלִמִין בְּצִדָּק כֶּף הֵם צְרִיכִין לְהִיּוֹת שְׁלִמִין בְּאִיבְרֵיהֶן.

**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. מִתְּ אֶחָד מִן הָרִאשׁוֹנִים אֵינוֹ נִסְקֵל. וְלֹא מִתְּנִיתָא הִיא. אֵינוֹ נִסְקֵל עַד שֶׁיְהִי שֶׁם שְׁלֹשָׁה הָרִאשׁוֹנִים. אָמַר רַבִּי הוֹשַׁעְיָה. שְׁלֹא 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 Hoshia 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 sentence already was passed, no new trial is trial. But since by then he already is an needed; the prior sentence can be carried adult able to have children, he cannot be out. tried as a deviant and rebellious son. If

(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 סורר ומונה זקן 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 סורר 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 שְׁמִי. 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 תיפדע 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 תיפדע אלא בשבועה. ודכרתה ועד אחד מעידה שהיא פרועה לא תיפדע 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 תיפדע אלא בשבועה. ונפרעים מאדם שלא בקניו. אמר רבי ירמיה. תיפתר בשטר שהריבית אוכלת בו. רבית דין גובין ריבית. תיפתר 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 נִפְהָ כֹחַ הֵבֵן מִכֶּחָ הָאֵב. שֶׁהָאֵב אֵינוֹ גּוֹבָה אֶלָּא בְּשְׁבוּעָה. אָמַר רַבִּי לֵעָזָר. וְנִשְׁבַּע שְׁבוּעַת יוֹרֵשׁ. שֶׁלֹּא פִּיקְדָנוּ אָבָא וְשֶׁלֹּא אָמַר לָנוּ אֲנֵא 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 הִיָּה 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. דִּלָּא כֵן מָה נֵן אָמְרִין. לֹשׁ אֲדָם מוֹרִישׁ שְׁבוּעָתוֹ לְבָנוֹ. אָמַר רַבִּי בָּא. הִכִּין אֶתְאָמְרַת. פָּגַם אָבִיו שְׁטֵר בְּבֵית דִּין וּמֵת אֵינוֹ גּוֹבָה. רַב חֲסִידָא בְּעֵי. בְּגִין דְּהִלֵּיד תַּרְתִּין פְּסִיעֵן הוּא מִפְּסִיד. אֵילוּ פָּגְמוּ חוּץ לְבֵית דִּין אֶתְאָמַר. גּוֹבָה. מִפְּנֵי שֶׁפָּגְמוּ בְּבֵית דִּין אֶתְאָמַר. 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 רֹשָׁעִים הִנִּיחַ לָהּ וְהִנִּיחַ לְעוֹלָם וְחֻצְדִּיקִים רַע לָהּ וְרַע לְעוֹלָם. יֵינוֹ וְשִׁנְיָה לְרֹשָׁעִים הִנִּיחַ לָהּ וְהִנִּיחַ לְעוֹלָם וְחֻצְדִּיקִים רַע לָהּ וְרַע לְעוֹלָם. פֶּזִיר לְרֹשָׁעִים הִנִּיחַ לָהּ וְהִנִּיחַ לְעוֹלָם וְחֻצְדִּיקִים רַע לָהּ וְרַע לְעוֹלָם. כִּינוֹס לְרֹשָׁעִים רַע לָהּ וְרַע לְעוֹלָם וְחֻצְדִּיקִים הִנִּיחַ לָהּ וְהִנִּיחַ לְעוֹלָם. שֶׁקֶט לְרֹשָׁעִים רַע לָהּ וְרַע לְעוֹלָם וְחֻצְדִּיקִים 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 בְּכַרְשֵׁת דְּרָכִים וּמִקְפָּח אֶת הַבְּרִיּוֹת וְהוֹרֵג אֶת הַנְּפִשׁוֹת וְסוֹפוֹ לְשַׁפֵּחַ אֶת תַּלְמוּדוֹ. וְאֶמְרָה תּוֹרָה מוֹטֵב שְׁיָמוּת זָכָאי וְאֵל יָמוּת חַיִּיב. שְׁמִיטָתוֹ שֶׁל רֹשָׁעִים הִנִּיחַ לָהּ וְהִנִּיחַ לְעוֹלָם וְחֻצְדִּיקִים 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 לְרֵשָׁעִים הַנִּינְיָה לָהֶן וְהַנִּינְיָה לְעוֹלָם וְלִצְדִּיקִים רַע לָהֶן וְרַע לְעוֹלָם. אָמַר רַבִּי אֲבָהוּ. וּבִלְבָד יִין 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.

**משנה ח:** הַבָּא בַּמְחֲתָרֶת נִידוֹן עַל שֵׁם סוֹפוֹ. הִזָּה בָּא בַּמְחֲתָרֶת וְשָׁבַר אֶת הַחֲבִית אִם יָשׁ 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 ילקים 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 בְּנִפְשׁוֹ. הַרֹדֵף אֶחָד חֲבִירוֹ לְהוֹרְגוֹ אַחֵר הַזֵּכֶר וְאַחֵר נְעָרָה הַמְּאוֹרָסָה. אֲבָל הַרֹדֵף אַחֵר הַבְּהֵמָה וְהַמְחַלֵּל אֶת הַשַּׁבָּת וְהַעוֹבֵד עֲבֹדָה זָרָה אֵין מְצִילִין אוֹתוֹ בְּנִפְשׁוֹ:

**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 בְּנִפְשׁוֹ כו'. הַרֹדֵף אֶחָד חֲבִירוֹ לְהוֹרְגוֹ בֵּין בֵּיתוֹ בֵּין בִּשְׂדֵה מְצִילִין אוֹתוֹ בְּנִפְשׁוֹ. אֲחָד הַרֹדֵף אַחֵר חֲבִירוֹ לְהוֹרְגוֹ וְאֶחָד הַרֹדֵף אַחֵר כָּל-שָׂאֵר עֲבִירֹת שְׁבִתוֹרָה מְצִילִין אוֹתוֹ בְּנִפְשׁוֹ. אֲבָל אִם הָיְתָה אֶלְמָנָה לְכַהֵן גָּדוֹל. גְּרוּשָׁה וְחִלּוּצָה לְכַהֵן הַדִּיּוֹט. מִמְּזֻרָת וְנִתְיָנָה לְיִשְׂרָאֵל. בֵּית יִשְׂרָאֵל לְנִתְיָן וְלִמְזוֹר. אֵין מְצִילִין אוֹתוֹ בְּנִפְשׁוֹ. נִעְשָׂה הַמֵּעֲשָׂה אֵין מְצִילִין אוֹתוֹ בְּנִפְשׁוֹ. אִם יֵשׁ שָׁם מוֹשִׁיעִים אֵין מְצִילִין אוֹתוֹ בְּנִפְשׁוֹ. רַבִּי יוֹדֶה אוֹמֵר. אִם אֶמְנָה. הֵנַח לוֹ. אֵין מְצִילִין אוֹתוֹ בְּנִפְשׁוֹ. שָׂאֵם מִמַּחֲיוֹן הֵן עַל גְּדִי נִמְצְאוּ 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.)

## 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,<sup>1</sup> and the daughter of a Cohen who committed adultery<sup>2</sup>. 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 daughter<sup>3</sup>. The following are to be beheaded: the murderer,<sup>4</sup> and the inhabitants of a seduced town<sup>5</sup>.

1 Lev. 20:14.

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

2 Lev. 21:9.

This is logically redundant.

3 Lev. 18:17 includes relations with a woman and her granddaughter with the prohibition of a woman and her daughter.

4 Chapter 7, Note 4.

The Mishnaot in the Babli and most

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 stated<sup>6</sup>:

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 מתניתין. 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 after<sup>7</sup> 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 הַנְּשׂוּאָה חַיִּיב. אָמַר רַבִּי יוֹחָנָן. דִּרְדָּה נִשְׂוֵאִין שָׁנָה. נָשָׂא אִשָּׁה וְאַחֵר כֶּדָּה אֶנֶס אֶת אִמּוֹתָיִי. נָשָׂא אִשָּׁה וְאַחֵר כֶּדָּה פִּיתָה אֶת בִּתּוֹתָיִי.

“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 בִּתּוֹ וְאַחֵר כֶּדָּה שָׁחַט אֶת בִּתּוֹתָיִי סוּפֵג אֶת הָאֲרָבָעִים. סוּמְכוֹס אֹמֵר מִשּׁוּם רַבִּי מֵאִיר. סוּפֵג אֶת שְׁמוֹנִים. תַּמָּן תְּנִינָן. רַבִּי יוֹחָנָן בֶּן נוּרִי אֹמֵר. הִבָּא עַל חֲמוּתוֹ חַיִּיב עָלֶיהָ מִשּׁוּם חֲמוּתוֹ וְאִם חֲמוּתוֹ וְאִם חֲמִיו. אָמְרוּ לוֹ. שְׁלֹשָׁתָן שֵׁם אֶחָד הֵן: רַבִּי יִצְחָק בַּר פִּזִּי בָּשָׂם רַבִּי יוֹחָנָן. מוֹדָה סוּמְכוֹס לְרַבִּי יוֹחָנָן. אֲשַׁכַּח תֵּנִי. עוֹד הִיא בְּמַחְלֻקָּתָהּ. מֵאִי טַעֲמָא דְּרַבִּי יוֹחָנָן בֶּן נוּרִי. מֵה אִשָּׁה וּבִתּוֹתָיִי וּבִתּוֹ בְּשִׁנִּי לְאִוִּין. אִף אִשָּׁה (וּבִתּוֹתָיִי) וּבִתּוֹ בְּשִׁנִּי לְאִוִּין. מֵה טַעֲמוֹ דְּרַבִּינָן. מֵה בֵּית בִּתּוֹתָיִי וּבִתּוֹ בְּנָה בְּלֹא אֶחָד אִף אִשָּׁה וּבִתּוֹ 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]<sup>8</sup> 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 מִתְחַיֵּיב עָלֶיהָ אֶלָּא עַל דָּרָךְ נִשְׁוֹאֵיין. לְמַדְנִי שְׂאִין קִידוּשִׁין מִתּוֹפְסִין בְּעֶרְוֹת. וְהַכְּתִיב לֹא־יִקַּח אִישׁ אֶת־אִשְׁתּוֹ אָבִיו וְלֹא יִגְלֶה כְּנָן אָבִיו. בָּא לְהוֹדִיעַךָ שֶׁהִנֵּה מוֹתֵר בָּהּ עַד שֶׁלֹּא נִשְׁאֵת לְאָבִיו. וְהַכְּתִיב וְאִישׁ אֶשֶׁר יִקַּח אֶת־אִשְׁתּוֹ אֲחִיו. מָה הוּא בָּא לְהוֹדִיעַךָ. שֶׁהִנֵּה מוֹתֵר בָּהּ עַד שֶׁלֹּא נִשְׁאֵת לְאָחִיו. וְתוֹבֵן עַל דִּי יִיבֹם. וְהַכְּתִיב וְאִשָּׁה אֲחוֹתָהּ לֹא תִקַּח. בָּא לְהוֹדִיעַךָ שֶׁהִנֵּה מוֹתֵר בָּהּ עַד שֶׁלֹּא אֲחוֹתָהּ. וְתוֹבֵן לְאַחֵר מִיִּתֵּת אֲחוֹתָהּ. וְהַכְּתִיב וְאִישׁ אֶשֶׁר־יִקַּח אֶת־אֲחוֹתוֹ בֶּת־אָבִיו אִי בֶּת־אָמִו וְרָאָה אֶת־עֶרְוָתָהּ וְהָיָה תְּרָאָה אֶת־עֶרְוָתוֹ חֹסֵד הוּא. שֶׁלֹּא תֹאמְרוּ. קִין נָשָׂא אֶת אֲחוֹתוֹ. הֶבֶל נָשָׂא אֶת אֲחוֹתוֹ. חֹסֵד עָשִׂיתִי עִם הָרִאשׁוֹנִים שֶׁיִּבְנֶה הָעוֹלָם מֵהֶם. אֲמַרְתִּי עוֹלָם חֹסֵד יִבְנֶה. וְהַכְּתִיב אֶלְמָנָה וְגֵרוּשָׁה וְחִלְלָה זֹנֶה אֶת־אֶלְפָּה לֹא יִקַּח. בָּא לְהוֹדִיעַךָ שְׂאִם קִידְשָׁה תְּפָסִי 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:)<sup>9</sup> 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)<sup>9</sup>, so much more for his daughter!

<sup>10</sup>From where does he have this? If was found stated by Hizqiah: *And if the daughter of a Cohen man start to whore*<sup>11</sup>. Why does the verse say *man*? To include one who copulates with his daughter from a rape among the burned<sup>12</sup>.

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 למסו 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.

<sup>13</sup>Rav 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. (וּכְרַבִּנִין דִּינִין אֶמְרִין. גְּזִירָה שְׁנֹה בְּמָקוֹם שְׁבָא. דּוֹר שְׁלִישִׁי לְמִטָּה מְנִיין שְׁהוּא בָּא בְּלֹא תַעֲשֶׂה.) וּכְרַבִּנִין דִּינִין אֶמְרִין. גְּזִירָה שְׁנֹה בְּאִמּוֹר בָּהּ. דּוֹר שְׁלִישִׁי לְמַעְלָה מְנִיין שְׁהוּא בְּשָׂרִיפָה. בֵּין כְּרַבִּנִין בֵּין כְּרַבִּי מֵאִיר דּוֹר שְׁלִישִׁי לְמִטָּה מְנִיין שְׁהוּא בְּלֹא תַעֲשֶׂה. אָמַר רַבִּי יוֹסִי. מִכֵּינּוּ דְּכִתִּיב זָמָה זָמָה כְּמִי שְׁכֻלְהֶם כָּאֵן.

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?)<sup>9</sup> 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,)<sup>9</sup> since it is written *taboo-taboo*, it is as if all were there.

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



<sup>14</sup>Rebbi 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 חֹלְקִין אֶת הַהֶכְרֶת. וְיָמָּה טַעְמָא. עַל-בֶּשֶׂר אָדָם לֹא יִיטָף וּבִמְתַכְּוִינָתוֹ לֹא תַעֲשֶׂוּ כְמוֹהוּ וְגו'. וְכִתְיֵב אִישׁ אֶשֶׁר יִרְקַח כְּמוֹהוּ וְגו'. הִדָּא אֶמְרֵהּ. שְׁנֵי לְאוֹיֵן וְכֶרֶת אֶחָד חֹלְקִין 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 קוֹמִי רַבִּי אֲבָהוּ. הֵבִיא עַל אִשָּׁה וְלִדְהָ בֵּת וְחִזֵּר וּבָא עָלֶיהָ חִיָּב עָלֶיהָ מִשּׁוּם אִשָּׁה וּבֵתָהּ וּבֵת בְּתֻלָּה לֹא תִגְלֶהּ וְאֶנָּן אֶמְרִין. אֶמְרֵהּ לֹא תִגְלֶהּ הֵבִיא זִמְנָה הִיא: כּוֹלָהֶם 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.

אָביו: זוֹ אָנוּסְתוֹ. מִה מְקוּיָמין רַבְנֵינוּ כִּנְיָ. תִּמְנוֹ אֲמָרִין וְלֹא יִדְעִין אִין שְׁמוּעָה זֹ. כִּנְיָ זֹ שֶׁהוּא זְקוּקָה לְאָביו. וְלֹא כִּד אִינוּ חַיִּיב עָלֶיהָ מִשּׁוּם אִשְׁתּוֹ אָביו. אָמַר רַבִּי הִילָא. לְהַתְרִיחָהּ. שָׂאֻם הִתְרִי בֹ מִשּׁוּם אִשְׁתּוֹ אָב לֹקָה. מִשּׁוּם כִּנְיָ לֹקָה. מוֹדָה רַבִּי יוֹדָה בְּמַכּוֹת. מוֹדָה רַבִּי יוֹדָה בְּקָרְבָן. מוֹדָה רַבִּי יוֹדָה בְּשֹׂאֵר כָּל־הָאֲנָשִׁים שֶׁהוּא פָטוּר. מוֹדָה רַבִּי יוֹדָה שָׂאֻם קִידָשָׁה תַּפְסוּ בָּהּ קִידוּשִׁין.

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 men<sup>15</sup> that he is free. Rabbi Jehudah agrees that if he marries her preliminarily that the preliminary marriage is legally valid.

15 Probably for the 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.)

אָמַר לֵיהּ. לֹא־יָבוֹא פְּצוּע־דָּבָה וְכִרְוֹת שְׂפָכָה בְּקַחַל יֵי הַפְּסִיק הָעֵנִינּוּ. וְיִפְסִיק הָעֵנִינּוּ לְעֵנִינּוּ אִשְׁתּוֹ אָב. אִשְׁתּוֹ אָב בְּכָל־כֹּל הָעֵרִיּוֹת הֵייתָה וְיִצְאָת מִכָּל־כֹּל לְלִמּוֹד עַל כָּל־הָעֵרִיּוֹת לְמַמְזֹר. וְיִצְאָת אָנוּסָה וְתִלְמִיד עַל כָּל־הָאֲנוּסִים לְאִסּוּר. אִשְׁתּוֹ אָב בְּכָל־כֹּל הָעֵרִיּוֹת הֵייתָ וְיִצְאָת מִכָּל־כֹּל לְלִמּוֹד עַל כָּל־הָעֵרִיּוֹת לְמַמְזֹר. אִיתָ לָךְ מִימַר הָכָא. אָנוּסָה בְּכָל־כֹּל הֵייתָ וְיִצְאָת מִכָּל־כֹּל לְלִמּוֹד עַל כָּל־הָאֲנוּסִים. וְיִצְאָת אִשְׁתּוֹ אָב וְתִלְמִיד עַל כָּל־אָנוּסָתָהּ. אָמַר לֵיהּ. אִם אִשְׁתּוֹ אָב הִיא אִינָה אָנוּסָה. וְאִם אָנוּסָה הִיא אִינָה אִשְׁתּוֹ אָב.

<sup>16</sup>Rebbi Haggai asked before Rebbi Yose: Is the child a bastard following Rebbi 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 וְנָמַת חַיָּב. דִּחְפוֹ לְתוֹךְ הַמַּיִם אוֹ לְתוֹךְ הָאֵוֶר וְיָכוֹל הוּא לְעֵלוֹת מִשָּׁם וְנָמַת פָּטוּר. שִׁסָּהּ בּוֹ אֶת הַכֶּלֶב שִׁסָּהּ בּוֹ אֶת הַנֶּחֱשׁ פָּטוּר. הַשִּׁיד בּוֹ אֶת הַנֶּחֱשׁ רַבִּי יְהוּדָה מַחֲיִיב וְחַכְמֵי פוּטְרִין.

**Mishnah 2:** A murderer who attacked someone with a stone or an iron<sup>17</sup>, 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] liable<sup>18</sup>. If he provoked a dog or a snake against him, he is not [criminally] liable<sup>18</sup>. If he let a snake bite him<sup>19</sup>, 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. כּוֹתֵב וְאֵם בְּאֶבֶן יָד אֲשֶׁר־יָמוּת בּוֹ הַכּוֹהֵן וְיָמוּת מוֹת־יוֹמָת הַמִּכָּה רוֹצֵחַ הוּא מוֹת יוֹמָת הַרוֹצֵחַ: אוֹ בְּכֶלֶךְ עַד־יָד אֲשֶׁר־יָמוּת בּוֹ הַכּוֹהֵן וְיָמוּת רוֹצֵחַ הוּא מוֹת יוֹמָת הַרוֹצֵחַ: כְּשֶׁהוּא בָּא אֶצֶל הַבָּרָזֶל אֵינוֹ אוֹמֵר לֹא שְׂמִיּוֹת בּוֹ וְלֹא שְׂלֹא יָמוּת בּוֹ. אֶלָּא אֲפִילוֹ צִיּוֹנָה קִטְנָה דְּהִיא יָכֻלָּה מְקִים גּוֹ וְנִשְׁטָא וּמְקַטְלִינָהּ. וְהוּא שְׂיָהָא בְּאֶבֶן כְּדִי

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

**Halakhah 2:** “A murderer who attacked someone,” etc. It is written<sup>20</sup>: *If he hit him with a lethal stone in his hand so that he died, (the hitter shall die, he is a murderer.)*<sup>21</sup> *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*<sup>22</sup>. When He comes to iron<sup>23</sup>, 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 lethal<sup>24</sup>. If he put him in front of a horse<sup>25</sup>, 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 him<sup>26</sup>.

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) מֶה טַעֲמָא דְרַבִּי יוֹדָה. מִפְּנֵי הָאֶרֶס הַנֶּתֶן בֵּין הַנִּקְבִּים. מֶה טַעֲמוֹן דְּרַבְּנִין.  
לְעוֹלָם אֵין הָאֶרֶס נֶתֶן בֵּין הַנִּקְבִּים עַד שְׁיִחְזוֹר וְיִקְיָא.

What is Rabbi Jehudah's reason? Because of the poison in the hollow teeth<sup>27</sup>. 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 fist<sup>28</sup> 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 unsubstantiated<sup>29</sup>.

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 עמדוהו למיתה. אם בשלא עמדוהו למיתה בדא כתיב אם ילקום והתהלך בחיו על משענתו ונקח המכה. הא אם לא קם חיוב. אלא בשעמדוהו למיתה. אם בשעמדוהו למיתה בדא כתיב רק שבדנו 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 לדיו ומתניתא מסייעה לדיו. מתניתא מסייעה לרבי יוסי בר חנינה. אמדוהו לחיים ומת. מאימאי מונין לו. משכיבד. הדיא אמרה. עומד שלטעות הייתה. ואין תימר. חידוש מקרא הוא שיתן. יתן משעה הראשונה. מתניתא מסייעה לרבי שמעון בן לקיש. עמדוהו למיתה ותיק. מאימאי מונין לו. משכיבד. אמר רבי יוסי. לית כאן משכיבד אלא משעה הראשונה. הדיא 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: <sup>30</sup>“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 worse<sup>31</sup>. 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 שְׂיִתְּן דְּמֵי 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 לִיתָן 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. הִכּוּ עַל יָדוֹ וְצָבַת. אֶמְרִין אֲסִיָּא. אִין מְקַטְעָא גִידִיה חַיִּי הוּא. מָהוּ שְׂיִתְּן דְּמֵי הִיד. כְּמָה דִּתְּ אֶמַר תִּפְּן. חִידוּשׁ מְקַרָּא הוּא שְׂיִתְּן דְּמֵי הִיד. וּמָה חִידוּשׁ מְקַרָּא הוּא שְׂיִתְּן דְּמֵי הִיד.

<sup>30</sup>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? 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 לְהַרוֹג אֶת הַבְּהֵמָה וְהָרַג אֶת הָאָדָם לְנִכְרִי וְהָרַג אֶת יִשְׂרָאֵל לְנִפְלִים וְהָרַג בֶּן קִיָּמָא פְטוּר. (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 stillborn<sup>32</sup> but he killed a viable baby, he is not criminally liable<sup>33</sup>.

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

נִתְכַּוֵּן לְהַכּוֹת אֶת הַקֶּטָן וְהָיָה בָּהּ כְּדֵי לְהַמִּית אֶת הַקֶּטָן וְהִלָּכָה לָהּ עַל הַגְדּוֹל וְלֹא הָיָה בָּהּ כְּדֵי לְהַמִּית אֶת הַגְדּוֹל 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) **הלכה ז:** נִתְכַּוֵּן לְהַרוֹג אֶת הַבְּהֵמָה כּוֹל. רַבִּי יִצְחָק שָׁאֵל. עֲמִדוּהוּ לְחַיִּים וּמָת. וְדָרַךְ הַחַיִּים לְמוֹת. מִפְּנֵי דְכָתִיב רַק שְׂבָתוֹ יִתֵּן וְרָפָא יִרְפָּא חַיִּב לִיתֵּן לוֹ שְׂבָת וְרִיפּוּי. רַבִּי יִצְחָק שָׁאֵל. עֲמִדוּהוּ לְמִיתָה וְחָיָה... וְאִין דָּרַךְ הַמֵּתִים לְחַיּוֹת. מִפְּנֵי דְכָתִיב רַק שְׂבָתוֹ יִתֵּן וְרָפָא יִרְפָּא חַיִּב לִיתֵּן לוֹ שְׂבָת 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 written<sup>34</sup> *but he has to pay for his disability and the medical costs*, he is liable to pay for disability and medical costs<sup>35</sup>. 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 costs<sup>36</sup>.

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 חֵיב. נִתְּפוֹן לְהַכּוֹת אֶת הַגָּדוֹל וְהָיָה בָּהּ כְּדֵי לְהַמִּית אֶת הַגָּדוֹל וְהִלָּכָה לָהּ עַל הַשֵּׁטָן וְנָמַת חֵיב. 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] liable<sup>37</sup>. Rabbi Simeon says, even if he intended to kill one person but killed another, he is not criminally liable<sup>38</sup>.

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<sup>39</sup>? Hizqiah asked: If one threw a stone which was not deadly but which killed one person<sup>40</sup> 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 Simeon<sup>41</sup> says, those of the House of Rebbi state: even if he intended to kill one person but killed another, he is not criminally liable<sup>42</sup>. 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 you<sup>43</sup>. 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 liable<sup>44</sup>. Rebbi Jehudah says, one keeps them in jail<sup>45</sup>. Any condemned to death who were mixed up with others<sup>46</sup> 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 strangulation<sup>47</sup>.

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 people<sup>48</sup>. 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 bull<sup>50</sup> 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 strangulation<sup>51</sup>.

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 jail<sup>52</sup> where he is fed barley until his belly bursts. One sends the murderer without witnesses to jail and feeds him scanty bread and sparing water<sup>53</sup>.

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. There<sup>54</sup> it was stated that one states: “Rebbi Yose says, he shall be

convicted for the first connection.” How is this? His mother-in-law<sup>55</sup> who then became a married woman<sup>56</sup> is [executed] by burning. As a married woman<sup>57</sup> 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 woman<sup>58</sup> 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-law<sup>59</sup>, how does Rabbi Yose treat this? The more severe and the lesser, how does Rabbi Yose treat this<sup>60</sup>? Two simultaneous prohibitions, how does Rabbi Yose treat this<sup>61</sup>?

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 דְּאַשְׁתָּאֵלֶת עַל דְּרַבִּי יוֹסִי בְּדִ אֲשֶׁת־אֵלֶת עַל דְּרַבִּי יִשְׁמַעְאֵל. דִּתְנִי  
בְּשֵׁם רַבִּי יִשְׁמַעְאֵל. נִתְּאֻלְמְנָה וְנִתְּגַרְשָׁה נִתְּחַלְלָה זִינָת וְאַחֵר בְּדִ בָּא עָלֶיהָ אִינוּ חַיִּיב אֶלָּא אַחַת.  
זִינָת וְנִתְּחַלְלָה וְאַחֵר בְּדִ בָּא עָלֶיהָ חַיִּיב עַל כָּל־אַחַת וְאַחַת. נִתְּאֻלְמְנָה וְנִתְּגַרְשָׁה כְּאַחַת מֶה  
אָמַר בֵּה רַבִּי יִשְׁמַעְאֵל. חוֹמֵר בְּקַל מֶה אָמַר בֵּה רַבִּי יִשְׁמַעְאֵל. שְׁנֵי אִיסוּרִין כְּאַחַת מֶה אָמַר  
בֵּה 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 order<sup>62</sup>: when afterwards he copulated with her, he is liable only once. If she whored, was desecrated<sup>63</sup>, and after that he copulated with her, he is liable for every single

[transgression]. If she became widowed and divorced simultaneously<sup>64</sup>, how does Rabbi Ismael treat this? The more severe and the lesser, how does Rabbi Ismael treat this<sup>60</sup>? Two simultaneous prohibitions, how does Rabbi Ismael treat this<sup>61</sup>?

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 warning<sup>65</sup>.

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.

מִשְׁנָה יא: הַגּוֹיֵב אֶת הַקְּסוּוֹה וְהַמְקַלֵּל בְּקֶסֶם וְהַבּוֹעֵל אֶרְמִית פּוֹגְעִין בָּהּ. כֹּהֵן שֶׁשִּׁמֵּשׁ בְּטוֹמְאָה אֵין אַחֲיוּ הַכֹּהֲנִים מְבִיאִין אוֹתוֹ לְבֵית דִּין אֶלָּא פִּירְחֵי כְּהוּנָה מוֹצִיאִין אוֹתוֹ חוּץ לְעִזָּרָה וּמַפְצְעִין אֶת מוֹחוֹ בְּגִזְזֵי־רֵין. זֶר שֶׁשִּׁמֵּשׁ בְּקוּדֶשׁ רַבִּי עֲקִיבָה אוֹמֵר בְּחֶזֶק וְהַכֹּהֲנִים אוֹמְרִים בִּידֵי שָׁמַיִם: (fol. 26d)

**Mishnah 11:** He who steals the chalice<sup>66</sup>, or who curses by charms, or who copulates with a Gentile woman, one<sup>67</sup> 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 bats<sup>68</sup>. 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*<sup>69</sup>. Rav Jehudah said, it was a Temple vessel, as one says *and the libation chalices*<sup>70</sup>.

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”<sup>71</sup>.

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 Omnipresent<sup>72</sup>.

<sup>73</sup>It is written: *Phineas ben Eleazar ben Aharon the priest saw*. What did he see<sup>74</sup>? 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 Sages<sup>75</sup>. 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*<sup>76</sup>, 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*<sup>77</sup>, and it says there, *anybody acceding to the Eternal's abode will die, etc.*<sup>78</sup> 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*<sup>79</sup>. 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*<sup>80</sup>.

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.

## כל ישראל פרק עשירי

(fol. 27b) **משנה א:** כל־ישראל יש להם חלק לעולם הבא. ואילו שאין להן חלק לעולם הבא האומר אין תחיית המתים מן התורה ואין תורה מן השמים ואפיקורוס. רבי עקיבה אומר אף הקורא בספרים החיצונים והלוחש על המכה ואומר כל־המחלה אשר שמתי במצרים לא אשים עליך כי אני יי רפאך. אבא שאול אומר אף ההוגה את השם באותיותיו.

**Mishnah 1:** All of Israel<sup>1</sup> have a part in the World to Come. But the following have no part in the World to Come: One who says that the resurrection of the dead is not biblical<sup>3</sup>, or that the Torah is not from Heaven, or the Epicurean<sup>4</sup>. Rabbi Aqiba says, also one who reads outside books<sup>5</sup>, or who whispers over a wound<sup>6</sup> and says, *any sickness that I put on Egypt I shall not put on you, for I am the Eternal, your Healer*. Abba Shaul said, also one who pronounces the Name<sup>7</sup> by its letters.

1 Even those executed for a capital crime. In contrast to Christian (Pauline) teaching that everybody is damned unless he be saved by his particular faith, it is asserted that everybody is saved except when he denies himself salvation .

2 In the Babli and the independent Mishnah mss. the statement is proved by quoting *Is. 60:21*.

3 Since he denies the existence of the World to Come, it cannot exist for him.

4 Who holds that the world is an

assembly of atoms subject to random effects.

5 Sectarian religious literature.

6 Or any sick person. It is blasphemous to use biblical verses to heal through miracles.

7 YHWH, whose vocalization does not follow grammatical rules. In cabbalistic invocations of the Name, therefore, one never mentions the letters of the Name in straight sequence but says: YH in WH.

(27c line 28) **הלכה א:** אילו שאין להן חלק לעולם הבא כול. הוסיפו עליהן הפורק עול והמיפר ברית והמגלה פנים בתורה אין להן חלק לעולם הבא. הפורק עול. זה שהוא אומר. יש תורה ואיני סופנה. המיפר ברית. זה שהוא מושך לו ערלה. המגלה פנים בתורה. זה שהוא אומר. לא ניתנה תורה מן השמים. ולא כבר תניתה. האומר אין תורה מן השמים. תני רבי חנינה ענתניה קומי רבי מנא. זה שהוא עובר על דברי תורה בפרהסיא כגון יהוקים בן לאשיהו מלך יהודה וחביריו.

**Halakhah 1:** "The following have no part in the World to Come," etc.

<sup>8</sup>They added one who tears away the yoke, one who breaks the Covenant, and one who finds aspects in the Torah, to those who have no part in the World to Come. He who tears away the yoke is one who says the Torah is obligatory but I cannot stand it. He who breaks the Covenant is one who pulls himself a prepuce. He who finds aspects in the Torah is one who says that the Torah was not given from Heaven. But did we not state separately: "He who says that the Torah is not from Heaven?" Rabbi Hanina Entanaya stated before Rabbi Mana: This is one who publicly transgresses the words of the Torah in the manner of Joiakim ben Josia, king of Judah, and his circle.

8 This and the following paragraphs are readings are noted.  
from *Peah* 1:1 (Notes 199-213,P) and For this paragraph, cf. Babli 99a, *Sifry*  
partially also from *Qidduṣin* 1:10 (Notes *Num.* 112, Mishnah *Avot* 3:15.  
657-680,Q), where the differences in

וְחַד אָמַר. כְּקִלּוֹת. וְחַד אָמַר. רַבִּי יוֹנָה וְרַבִּי יוֹסֵה. רַבִּי יוֹנָה וְרַבִּי יוֹסֵה. עֲבוּדָה זָרָה וְגִילּוֹי עֲרִיּוֹת. אִם בָּאוּתוֹ שְׁעָשָׂה תְּשׁוּבָה. אֵין כְּל־דָּבָר עוֹמֵד בְּפָנָי כְּל־בְּעָלֵי תְּשׁוּבָה. אֶלָּא כִּן אֶנּוּ קִיָּמִין בָּאוּתוֹ שְׁלֹא עָשָׂה תְּשׁוּבָה וּמֵת בְּהִיבָרָת.

Idolatry and incest and adultery. Rabbi Jonah and Rabbi Yose, one said, like the easy ones<sup>9</sup>, and one says, like the hard ones. What are we talking about? If he repented, there is nothing that stands in the way of those who repent. But what we are talking about is one who did not repent and died through extirpation.

9 As explained in *Peah* and qualified in that they will not diminish his bliss in the  
the next paragraph, easy sins are those for World to Come. Hard ones are those for  
which a person is punished in this world so which a person will suffer in Hell.

הָזֶה כְּדִי לִיתֵּן לוֹ שְׂכָרוֹ מִשְׁלָם לְעֵתִיד לָבוֹא. רַבּוֹ עֲבוּרֹת וּמִיַּעֲוֹת זָכוֹת נוֹתֵנִין לוֹ שְׂכָר מִצֻּוֹת קִלּוֹת שְׁיֵשׁ בְּגִדּוֹ בְּעוֹלָם הָזֶה כְּדִי לִפְרַע מִמֶּנּוּ מִשְׁלָם לְעֵתִיד לָבוֹא.

A majority of merits and a minority of transgressions: they<sup>10</sup> let him pay for the minority of transgressions in this world in order to give him his complete recompense in the Future World. A majority of transgressions and a

minority of merits: they give him the reward for his merits in this world in order to make him pay completely in the Future World.

#### 10 The Heavenly Court.

היה רבוי זכויות יורש גן עדן. רבוי עבירות יורש גיהנום. היה מעוין. אמר רבי יוסי בן חנינה. נושא עוונות אין כתוב כאן אלא נשא עון. הקדוש ברוך הוא חוטף שטר אחד מן העבירות והזכויות מכריעות. אמר רבי לעזר. ולך יי חסד כי אתה תשלם לאיש כמעשהו. מעשהו אין כתוב כאן אלא כמעשהו. ואין לית ליה אתי יהיב ליה מן דידיה. היא דעתיה דרבי לעזר. דרבי לעזר אמר ורב חסד מטה כלפי חסד.

He who has a preponderance of merit inherits paradise. He who has a preponderance of sins inherits hell. What if he is in equilibrium? Rabbi Yose ben Hanina said, it does not say “He lifts sins” but rather *He lifts sin*<sup>11</sup>. The Holy One, praise to Him, removes one document from the sins and the merits tilt. Rabbi Eleazar said, *kindness is Yours, o Master, because You repay everyone according to his deeds*<sup>12</sup>, and if he has none, You give him from Yours. This is the opinion of Rabbi Eleazar, because Rabbi Eleazar said, *and much kindness*<sup>13</sup>, He turns towards kindness.

11 Ex. 34:7, Micha 7:18.

12 Ps. 62:13.

13 Ex. 34:7.

תצור תם דרך ורשעה תסלף חטאת. חטאים תרדף רעה ואת צדיקים ישלם טוב. אם ללצים הוא ילך ולעגנים יתרחק. רגל חסידיו ישמר ורשעים בחושך יתמו. כבוד חכמים יתחלף וכסילים מרים קלון. וסיגין סיגה ותרעין תריעה. וכיני. סיגין סיגה ותרעין תריעה. אלא כיני. רבי ירמיה בשם רבי שמואל בר רב יצחק. שומר אדם את עצמו מן העבירה פעם ראשונה שנייה ושלישית. מכן והילך הקדוש ברוך הוא משמרו. מה טעם. הן כל אלה יפעל אל פגממים שלוש עם גבר. אמר רבי זעירא. ובלחוד דלא יתיב ליה. ומה טעם. והחוט המשוכל לא לעולם ינתק אין כתוב כאן אלא לא במהרה ינתק. אין אטרחת עלוי הוא מוסק.

Rebbi Jeremiah said that Rebbi Samuel bar Rav Isaac asked: *Justice protects the one on the straight path but sin destroys the sinner*<sup>14</sup>. *Evil deeds will pursue the sinner but He will reward the just*<sup>15</sup>. *While He makes scoffers targets of scoffing, He will bestow grace on the meek*<sup>16</sup>. *He will watch over the feet of his pious ones, but evildoers will be silent in the darkness*<sup>17</sup>. *The wise will inherit honor, but shame will mark the stupid ones*<sup>18</sup>. Fences are

made fences and doors doors. Is it so that fences make fences and doors doors? But so it is: Rabbi Jeremiah in the name of Rabbi Samuel ben Rav Isaac: If a person is careful the first, second, and third times not to commit a sin, then in the future the Holy One, praise to Him, will watch over him. What is the reason? *All this God will do twice, three times with a man*<sup>19</sup>. Rabbi Ze'ira said, but only if the person does not revert [to sin]. What is the reason? It does not say *the triple thread* "will never snap" but rather *will not quickly snap*<sup>20</sup>. If you work on it, it will split.

14 Prov. 13:6.

17 1 Sam. 2:9.

20 Eccl. 4:12.

15 Prov. 13:21.

18 Prov. 3:35.

16 Prov. 3:34.

19 Job 33:29.

שְׂכַחָהּ. כְּבִיכּוּל הָא בְּשִׁבִּיל יִשְׂרָאֵל נַעֲשֶׂה שְׂכַחָן. מַה טַּעַם. נוֹשֵׂא עוֹן. נוֹשֵׂא כְּתִיב. וְכֹן דְּוִד אָמַר נִשְׂאֵת עֵן עֲמֹד כְּסִיף כָּל־חַטָּאתָם סֵלָה:

Rebbi Huna said in the name of Rebbi Abbahu: There is no forgetting before the Holy One, but for Israel He becomes forgetful. What is the reason? *He forgives sin*<sup>21</sup>; "He forgets"<sup>22</sup> is written. And so David said, *You forgot Your people, You covered up all their misdeeds, Selah*<sup>23</sup>.

21 Identifying the Hebrew root נשא "to carry" with the Aramaic נשי "to forget."  
22 Ps. 85:3.

שְׂאֵל רַבִּי מִתִּיה בֶּן חֲרָשׁ אֶת רַבִּי אֶלְעָזָר בֶּן עֲזַרְיָה בִּישִׁיבָה אָמַר לוֹ. שְׂמַעְתָּה אֶרְבָּעָה חֲלוּקֵי כִפְרָה שֶׁהֵיָה רַבִּי יִשְׁמַעֲאֵל דּוֹרָשׁ. אָמַר לוֹ. שְׁלֹשָׁה הֵן חוּץ מִן הַתְּשׁוּבָה. כְּתוּב אֶחָד אוֹמֵר שׁוּבוּ בָנִים שׁוֹבִיָּים אֶרְפָּה מְשׁוּבוֹתֵיכֶם. וְכְתוּב אֶחָד אוֹמֵר כִּי־בָיִים הִנֵּה יִכְפֹּר עֲלֵיכֶם לְטַהֵר אֶתְכֶם וְגו'. וְכְתוּב אֶחָד אוֹמֵר וּפְקַדְתִּי בְשֶׁבֶט פִּשְׁעֶם וּבִגְנָעִים עֲוֹנָם. וְכְתוּב אֶחָד אוֹמֵר אִם־יִכְפֹּר הָעוֹן הִנֵּה לָכֶם עַד־תָּמוּתוֹן וְגו'. כִּיצַד. הָעוֹבֵר עַל מִצְוֹת עֲשֶׂה וְשֵׁב מִדְּאִינוּ זֶה מִמְקוֹמוֹ עַד שְׁיִמְחוּל לוֹ הַקְדוּשׁ בְּרוּךְ הוּא. וְעָלִיו הוּא אוֹמֵר שׁוּבוּ בָנִים שׁוֹבִיָּים אֶרְפָּה מְשׁוּבוֹתֵיכֶם. הָעוֹבֵר עַל מִצְוֹת בְּלֹא תַעֲשֶׂה הַתְּשׁוּבָה תוֹלָה וְיוֹם הַכִּיפּוּרִים מִכְפֵּר. וְעָלִיו הוּא אוֹמֵר כִּי־בָיִים הִנֵּה יִכְפֹּר עֲלֵיכֶם וְגו'. הָעוֹבֵר עַל הַכְרִיתוֹת וּמִיתוֹת בֵּית דִּין בְּמִזֵּד הַתְּשׁוּבָה וְיוֹם הַכִּיפּוּרִים מִכְפֵּרִין מִחֲצָה וְהַיְיִסּוּרִין מִכְפֵּרִין מִחֲצָה. וְעָלִיו הוּא אוֹמֵר וּפְקַדְתִּי בְשֶׁבֶט פִּשְׁעֶם וְגו'. אָבֵל מִי שֶׁנִּתְחַלֵּל בּוֹ שֵׁם שְׁמַיִם אֵין כֹּחַ בַּתְּשׁוּבָה לְתַלּוֹת וְלֹא יוֹם הַכִּיפּוּרִים לְכַפֵּר וְלֹא

הַיִּסּוּרִין לְמַרְקָא. אֵלֶּא הַתְּשׁוּבָה וַיּוֹם הַכִּיפּוּרִים מְכַפְּרִין שְׁלִישׁ וַיִּסּוּרִין שְׁלִישׁ וּמִיתָה מְמַרְקָת שְׁלִישׁ. וְעַלֵּי הוּא אֹמֵר אִם יִכְפֹּר הָעוֹן הַזֶּה לָכֶם עַד-תְּמוּתוֹן. הָא לְמַדְנִי שֶׁהַמִּיתָה מְמַרְקָת.

1 אלעזר | ש לעזר שמעתה | ו שמעת 2 הם | ו הן 3 ארפה משבותיכם | וש - 4 לטהר אתכם וגו' | וש - 5 וגו' | וש - כיצד | ו הא כיצד העובר | וש עבר מיד | ש - 6 הקב"ה | וש - ועליו | וש עליו הוא | ש הכת' ארפה משבותיכם | וש - 7 מצות | ו מצוה - | ש ושב מיד ועליו | וש עליו הוא | וש הכת' 8 וגו' | ש - העובר | ש עבר 9 והייסורין | ו והייסורין בשאר ימות השנה ועליו | וש עליו הוא | ש הכת' 10 וגו' | וש ובנגעים חטאתכם בתשובה | ו לא בתשובה | ש לתשובה יום | ש ליום ו ביום 11 הייסורין | ש לייסורין התשובה | וש תשובה מכפרין שליש | ש תולין וייסורין שליש | ו והייסורין מכפרין שליש ש - 12 שליש | ו בייסורין | וש תשובה מכפרין שליש | ש תולין וייסורין שליש | ו עליו

<sup>23</sup>Rebbi Matthew ben Harash asked Rebbi Eleazar ben Azariah in the Academy<sup>24</sup>. He told him, did you hear the four types of Atonement which Rebbi Ismael explained? He answered him, there are three in addition to repentance. One verse says<sup>25</sup>, *return, naughty children, I shall heal your waywardness*. But another verse says<sup>26</sup>, *for on that day, He shall pardon you, to cleanse you*. And another verse says<sup>27</sup>, *I shall visit their crime with the rod, and their iniquity with plagues*. And another verse says<sup>28</sup>, *the iniquity of this people shall not be atoned for until you die*. How is this? If somebody violates a positive commandment and repents, immediately before he moves from there the Holy One, praise to Him, would forgive him. About this one it says, *return, naughty children, I shall heal your waywardness*. If one transgresses a prohibition, repentance suspends judgment, and the Day of Atonement pardons. About this one it says, *for on that day, He shall pardon you*, etc. If one intentionally transgressed [sins punishable by] extirpations or death penalties, repentance and the Day of Atonement pardon half, and sufferings pardon half. About this one it says, *I shall visit their crime with the rod*, etc. But by whom the Name of Heaven was desecrated, there is no power in repentance to suspend judgment, nor in the Day of Atonement to pardon, nor in sufferings to scour; but repentance and the Day of Atonement pardon a third, and suffering a third, and death scours<sup>29</sup> a third. About this one it says, *the iniquity of this people shall not be atoned for until you die*. From this we learn that death scours.

23 The same text in *Yoma* 8:8 (45b l.70, י), *Ševuot* 1:9 (33b l.60, ש); similar texts in the Babli *Yoma* 86a, *Tosephta Yom Hakippurim* 5:6, *Mekhilta dR. Ismael Yitro*

7, *Avot dR. Nathan A* 29, *Midrash Mishle* 10(6) [*Yalqut Šim'on y Jeremiah* 269, *Wehizhir* part I p. 54].

24 In Babylonian sources he either asked

- R. Eleazar ben Azariah in Rome or R. Eleazar the Caper grower in Laodicea. vessel by scouring. In the *Ševuot* text, punishment for behavior that amounts to Desecration of the Name, i. e., unethical behavior by reputedly religious persons, can be suspended by repentance and the Day of Atonement, but only death in suffering scouris.
- 25 *Jer.* 3:22. describe the thorough cleansing of a metal
- 26 *Lev.* 16:30.
- 27 *Ps.* 89:33.
- 28 *Is.* 22:14.
- 29 The root מרק is used in *Lev.* 6:21 to

(27d line 1) אָמַר רַבִּי יוֹחָנָן. זֶה דְּבַרִּי רַבִּי אֶלְעָזָר בֶּן עֲזַרְיָה וְרַבִּי יִשְׁמָעֵאל וְרַבִּי עֲקִיבָה. אֲבָל דְּבַרִּי חֲכָמִים. שְׁעִיר הַמִּשְׁתַּלַּח מְכַפֵּר. כִּיצַד הוּא מְכַפֵּר. רַבִּי זְעִירָא אָמַר. כָּל-שֶׁהוּא כָל-שֶׁהוּא. רַבִּי חֲנִינָה אָמַר. בְּסוּף. מָה מִפְּקָא מִבְּיַחְיוֹן. מֵת מֵיָד. עַל דְּעִתִּיהָ דְּרַבִּי זְעִירָא כְּבָר כְּפָר. עַל דְּעִתִּיהָ דְּרַבִּי חֲנִינָה לֹא כִיפָר. אָמַר רַבִּי חֲנִינָה. מִתְּנִיתָא מְסִייעָה לְרַבִּי זְעִירָה. חוֹמֵר בְּשַׁעִיר מָה שְּׂאִין כֵּן בְּיוֹם הַכִּיפּוּרִים וּבְיוֹם הַכִּיפּוּרִים מָה שְּׂאִין כֵּן בְּשַׁעִיר. שְׂוִים הַכִּיפּוּרִים מְכַפֵּר בְּלֹא שְׁעִיר וְשַׁעִיר אֵינוֹ מְכַפֵּר בְּלֹא יוֹם הַכִּיפּוּרִים. חוֹמֵר בְּשַׁעִיר שֶׁהַשְּׁעִיר מְכַפֵּר מֵיָד וְיוֹם הַכִּיפּוּרִים מִשְׁתַּחֲשָׁד. אָמַר רַבִּי הוּנָא. אֵיתְתַּבַּת קוּמִי רַבִּי יִרְמְיָה וְאָמַר. תִּיפְתֵּר שֶׁהָיָה בְּדַעְתּוֹן לְהַבִּיא שְׁעִיר אַחֵר וְלֹא הִבִּיאוּ. אָמַר רַבִּי יוֹסֵה בֶן יוֹסֵה. וְאִין הִקְדוּשׁ בְּרוּךְ הוּא רֹאָה אֶת הַנוֹלָד. וְיִכְפֵּר מֵיָד.

1 אלעזר |וש לעזר 2 - |ו אם אין שעיר היום מכפר ש ואם אין שעיר יום הכיפורים מכפר זעירא |ו זעורה ש זירא כל 'הוא |ו - 3 חנינה |וש חנניה אמ' |ו או' מפקא מביניהון |ש ביניהון מיד |ו מרד זעירא |ו זעורה ש זירא כפר |ו כיפר ש כיפר מיד 4 חנינה |וש חנניה חנינה |ו זעורה ש זירא מתנית' |ש ומתנית' זעירה |ו חנניה ש חנינה 5 כן |ו - (twice) שיום |ו יום 6 אינו |ש אין ושעיר |ו והשעיר שהשעיר |ש והשעיר 7 הונא |ו חונה איתתבת |ש איתתב ואמ' |ש ומר 8 אמ' |ו - בן יוסי |ו ביר' בן בעי ש -

<sup>30</sup>Rebbi Johanan said, these are the words of Rebbi Eleazar ben Azariah, Rebbi Ismael, and Rebbi Aqiba. But the words of the Sages are that the sent-away ram<sup>31</sup> pardons. How does it pardon? Rebbi Ze'ira said, by and by. Rebbi Hanina said, at the end<sup>32</sup>. What is the difference between them? If somebody died in-between<sup>33</sup>. In the opinion of Rebbi Ze'ira, he already was pardoned. In the opinion of Rebbi Hanina, he was not pardoned. Rebbi Hanina said, a *baraita* supports Rebbi Ze'ira<sup>34</sup>: There is strength in the ram which is not in the Day of Atonement, and in the Day of Atonement which is not in the ram, for the Day of Atonement pardons without a ram, but the ram does not atone except on the Day of Atonement. There is strength in the ram, for it pardons immediately but the Day of Atonement only at nightfall. Rebbi Huna said, the question was raised before Rebbi Jeremiah<sup>35</sup> and he said, explain it if they intended to bring another ram but they did not bring it<sup>36</sup>.

Rebbi Yose ben Yose said, but does the Holy One, praise to Him, not see into the future? Then He should pardon immediately<sup>37</sup>.

30 *Yoma* 8:8 (45c l.12, ו), *Ševuot* 1:9 (33b l.75, ש).

31 The scapegoat which carries the sins to the desert. The other two sources have a statement that in the absence of a scapegoat the day of Atonement alone pardons. This is necessary for an understanding of the text.

32 The moment when the scapegoat falls down the cliff (אֶרֶץ גְּזֵרָה the cut-off land"), *Lev.* 16:22.

33 In the time interval between the High Priest's confession which puts the sins on the ram and its arrival at the cliff.

34 *Tosephta Kippurim* 4:16. Rashi deleted the parallel quote from the Babli *Ševuot* 13b, s. v. דתניא חומר בשעיר.

35 Is not the ram atoning when there is a Temple, the Day of Atonement when there is none?

36 In case the original ram developed a bodily defect before it was sent away, a substitute has to be chosen. If none was found, the Day must pardon even if there is a Temple.

37 The questioner (Note 35) is correct.

(27d line 12) כְּתִיב כִּי דְּבִרֵּי בְּזָה. אִין לִי אֱלָא בְּזָמֵן שְׂבִיזָה דְּבִרֵּי תוֹרָה. מְנִיין אֶפְּלִי כֶּפֶר בְּמִקְרָא אֶחָד בְּתַרְגּוּם אֶחָד בְּקַל וְחוּמְרָא אֶחָד. תִּלְמוּד לוימר וְאֶת־מִצְוֹתֵי הַפֶּרֶ. בְּמִקְרָא אֶחָד וְאַחֲוֹת לוֹטָן תִּמְנָע. בְּתַרְגּוּם אֶחָד וְיִקְרָא לֹךְ לְבָן יִגַּר שְׁהִדוּתָא. בְּקַל וְחוּמְרָא אֶחָד כִּי שְׂבָעָתִים יָקֻם קָדוֹן וְגו'.

דְּבִר אַחֵר. כִּי דְּבִרֵּי בְּזָה. זֶה שְׁהוּא מְזָכִיר דְּבִרֵּי תוֹרָה בְּמָקוֹם מְטוּנָן. כְּהִדָּא רַבִּי אֵילָא וְחִבְרִיָּא יְתִיבִין קוּמִי פוֹנְדְּקִיָּה בְּרַמְשָׁא. אֶמְרִין. מַהוּ מֵימַר מִילָא דְּאוּרִיָּא. אֶמְרִין. מִכֵּינן דְּאֵילֵי הָרָה אִימְמָא הוּיִנן חֲמִי מַה קוּמִינן. בְּרַם קְדוֹן אֶסִיר.

<sup>38</sup>It is written<sup>39</sup>: *For he showed contempt for the Eternal's Word*. Not only if he was contemptuous of the teachings of the Torah, from where if he denied one verse, one Aramaic expression, one argument *de minore ad majus*? The verse says, *His command he violated*. One verse, *Lotan's sister was Timna*<sup>40</sup>. One Aramaic expression, *Laban called it Y'gar Sah'duta*<sup>41</sup>. One argument *de minore ad majus*: *For Cain would be avenged sevenfold*, etc.<sup>42</sup>.

Another interpretation: That is one who mentions teachings of the Torah at a filthy place. <sup>43</sup>As the following: Rebbi Hila and the colleagues were sitting in front of a hostelry in the evening. They asked, may one say words of the Torah? They said, since if it were daytime we would see what is before us, therefore now it is forbidden.



- 38 Babli 99a, *Sifry Num.* 112. violates the formal rules of an argument *de*  
 39 *Num.* 15:31. *minore ad majus*, the verse is Divine  
 40 *Gen.* 36:22; cf. *Gen. rabba* 82(15). approval of poetry.  
 41 *Gen.* 31:47. In *Gen. rabba* 72(12) the 43 *Berakhot* 3:5 (Notes 222-223), Babli  
 expression is characterized as Syriac. *Berakhot* 24b.  
 42 *Gen.* 4:24. While Lemekh's song

27d line 12) בַּר קַפָּרָא אָמַר. אַחַז וְכָל־מַלְכֵי יִשְׂרָאֵל הִרְשָׁעִים אֵין לָהֶן חֵלֶק לְעוֹלָם הַבָּא. מַה טַּעַם. כָּל־מַלְכֵיהֶם נָפְלוּ אֵין־קוֹרָא בְּהֶם אֱלֹהֵי מַתִּיבִין לֵיהּ. הֲרֵי הוּא נִמְנָה בַּפְּטִיָּה שֶׁל מַלְכִּים. בַּיָּמֵי עֲזַרְיָהוּ יוֹתָם אַחַז יִחְזַקְיָהוּ מַלְכֵי יְהוּדָה; אָמַר לוֹן. מִפְּנֵי שֶׁהָיָה בּוּ בּוֹשֶׁת פָּנִים. מַה בּוֹשֶׁת הָיָה בּוּ. רַבִּי אֲחָא בְּשֵׁם רַבִּי לָעָזָר רַבִּי יוֹסִי בְּשֵׁם רַבִּי יְהוֹשֻׁעַ בֶּן לֵוִי. אֶת מוֹצֵא בְּשַׁעַה שֶׁהָיָה הִנְבִּיא בָּא לְקַטְרְגוֹ הָיָה בּוֹרַח לְמָקוֹם טוֹמְאָה וְכוּבֵשׁ אֶת פָּנָיו בְּמָקוֹם טוֹמְאָה. לֹאמַר שֶׁאֵין שְׂכִינָה שׁוֹרָה בְּמָקוֹם טוֹמְאָה. הִדָּא הִיא דְּכֹתִיב וַיֹּאמֶר יְיָ אֱלֹהֵי־יִשְׂרָאֵל יֵצֵא־נָא לְקִרְיַת אֲחָז אֲתָהּ וּשְׂאֵר יְשׁוּבֵי בִגְדֵי אֶל־קִצָּה תַעֲלֶה הַפְּרִיכָה הַעֲלִינָה אֶל־מִסְלַת שְׂדֵה כּוֹבֵס. אֵל תְּהִי קוֹרָא כּוֹבֵס אֶלָּא כּוֹבֵשׁ. שֶׁהָיָה כּוֹבֵשׁ פָּנָיו וּבּוֹרַח מִמֶּנּוּ. הָא כִּי־צַד. בְּשַׁעַה שֶׁהָיָה הִנְבִּיא בָּא לְקַטְרְגוֹ הָיָה בּוֹרַח לְמָקוֹם טוֹמְאָה וְכוּבֵשׁ אֶת פָּנָיו בְּמָקוֹם טוֹמְאָה. רַבִּי יְהוּדָה אָמַר. מִפְּנֵי שֶׁנִּתְיַסֵּר בְּבִנו הַהִבְכּוֹר. מַה טַּעַם. וַיִּהְיֶה זְמָרִי גְבוּר אֶפְרָיִם וְגו'. רַבִּי יְהוֹשֻׁעַ רַבָּה אָמַר. מִפְּנֵי שֶׁהָיָה אָבִיו צָדִיק. וּמִנְשָׂה לֹא הָיָה אָבִיו צָדִיק. מִנְשָׂה אָבִיו צָדִיק וּבְנֵי רָשָׁע. יִחְזַקְיָהוּ אָבִיו רָשָׁע וּבְנֵי רָשָׁע. הוּא שֶׁיִּחְזַקְיָהוּ אָמַר הִנֵּה לְשָׁלוֹם מִרְלֵי מָר. מִר לִי מִלְפָּנֶיךָ מֵאֲחָז. מִר לִי מֵאַחֲרַיִי מִמִּנְשָׁה. אַחַז אָבִיו צָדִיק וּבְנֵי צָדִיק. הִדָּא הִיא דְּכֹתִיב. יְדֹ לֵד לֹא־יִנְקָה רָע וְזָרַע צָדִיקִים נִמְלֵט; וְזָרַע צָדִיק נִמְלֵט אֵין כְּתוּב כָּאֵן אֶלָּא וְזָרַע צָדִיקִים נִמְלֵט. זָרַע שֶׁהוּא מוֹטֵל בֵּין שְׁנֵי צָדִיקִים נִמְלֵט.

<sup>44</sup>Bar Qappara said, Ahaz and all evil kings of Israel have no part in the World to Come. What is the reason? *All their kings fell, not one of them calls to Me*<sup>45</sup>. They objected to him: Is he not mentioned in the era<sup>46</sup> of kings, *in the days of Uzziah, Yotham, Ahaz, Yehizqiah the kings of Jehudah*<sup>47</sup>? He answered them, because he showed shame. How did he show shame? Rabbi Aha in the name of Rabbi Eleazar, Rabbi Yose in the name of Rabbi Joshua ben Levi: You find that when the prophet came to accuse him<sup>48</sup>, he fled to an impure place and buried his face in an impure place, implying that the Divine Presence does not dwell at an impure place. That is what is written<sup>49</sup>: *The Eternal said to Isaiah, please go out towards Ahaz, you and your son Še'ar Yašuv, to the end of the canal of the upper pond, to the path of the fuller's field.* Do not read *fuller's* but *suppressing*<sup>50</sup>. He hid his face and fled before him. (How is that? When the prophet came to accuse him, he fled to an

impure place and buried his face in an impure place.)<sup>51</sup> Rabbi Jehudah<sup>52</sup> says, because he was made to suffer about his firstborn son. What is the reason? *Zimri, the strongman of Ephraim, killed*<sup>53</sup> etc. Rabbi Hoshai the Elder said, because his father was just.<sup>54</sup> But was Manasse's father not just<sup>55</sup>? Manasse's father was just but his son was evil. Hezekias's father was evil and his son was evil. That is what Hezekias says<sup>56</sup>: *Behold, about peace, bitter is bitter for me*. Bitter before me, from Ahaz. Bitter after me, from Manasse. Ahaz's father was just and his son just, that is what is written<sup>57</sup>: *hand to hand will not cleanse evil, but the seed of the just will escape*. [Rabbi Phineas said.]<sup>58</sup> it is not written "the seed of a just will escape" but *the seed of the just will escape*. The seed lying<sup>59</sup> between two just men will escape<sup>60</sup>.

44 A complete parallel to this paragraph is in *Lev. rabba* 36(3); a short reference is in the Babli, 104a.

45 *Hos.* 7:7. This seems to contradict *Mishnah* 2, where only two kings of Israel are denied part in the World to Come.

46 Greek ὑπατεία, ἡ, "consulate", for which years are counted.

47 *Is.* 1:1.

48 In the Midrash, "to needle him". The change from קנטר to קטר may be a scribal error.

49 *Is.* 7:3.

50 The argument suggests that under the influence of the Greek, שש, שש all sounded the same.

51 The repetition of the sentence looks like dittography, but it also appears in the Midrash text.

52 He is Rabbi. R. Jehudah ben Rabban Simeon, as spelled out in the Midrash and required for chronological reasons.

53 *2Chr.* 28:7. The name should be זכרי not זמרי.

54 From here on exists a Genizah fragment (G): L. Ginzberg, *Yerushalmi Fragments*, New York 1909, pp. 260-264.

55 *Mishnah* 2 declares that Manasse has no part in the World to Come. It implies that Ahaz has part in the World to Come.

56 *Is.* 38:17.

57 *Prov.* 11:21. The first part of the verse has differing interpretations below and in *Midrash Prov.* 11:21, Babli *Berakhot* 61a, *Eruvin* 18b, *Sotah* 4b.

58 Addition from G. In the Midrash: R. Simon.

59 In G: "planted between" מושתת.

60 The Babli 104a states categorically that the good deeds of the son save the father from judgment but the merits of the father cannot save the son. This is the basis of the *Qaddish* ritual of modern Judaism.

לִיטוֹל שְׁכָרָה מִיָּד. אָמַר רַבִּי סִימוֹן. כְּאִינֶשׁ דְּאָמַר. הָא שְׂקָא וְהָא סְלָעָא וְהָא סְאָתָא. קוּם (27d line 40) דְּבַר אַחֵר. יָד לֵיד לֹא יִנְקָה רַע. אָמַר רַבִּי פִינְחָס. זֶה שְׁהוּא עוֹשֶׂה צְדָקָה וּמִבְּקָשׁ

כול. תדע לך שהוא כן. שהרי אבות העולם אילו ביקשו ליטול שכר מצות שעשו בעולם הזה מאיכן היתה הזכות קיימת לבניהם אחריהם. הוא שמשנה אמר לישראל וזכרתי את-בריתי יעקב וגו'.

עד איכן היתה זכות אבות קיימת. רבי תנחומא אמר לה בשם רבי חייה רבה. בר נחמן אמר לה בשם רבי ברכיה. רבי חלבו בשם רבי בא בר זבדא. עד יואחז. ויחזן יי אותם וירחמם וגו' עד-עתה: עד אותה שעה זכות אבות קיימת. שמואל אמר. עד הושע. ועתה אגלה את-נבולתיה לעיני מאהביה ואיש לא-יצילנה מידי. ואין איש אלא אברהם. כמה דת מר ועתה השב אשת-האיש כרנביא הוא. ואין איש אלא יצחק. כמה דת מר מיהאיש הלזה ההלך בשדה לקראתנו. ואין איש אלא יעקב. כמה דתימר ויעקב איש תם. רבי יהושע בן לוי אמר. עד אליהו. ויהי | בעלות המנחה ויגש אליהו הנביא ויאמר יי אליה אברהם יצחק וישאל היום יודע כי-אתה אלהים בשראעל ואני עבדך וגו'. רבי יודן אמר. עד חזקיהו. למרבה המשנה ולשלוש אירוקי. אמר רבי אחא. זכות אבות לעולם קיימת. כי אל רחום יי אלהיך וגו' עד ולא ישכח את-ברית אבותיך. מלמד שהברית כרותה לשבטים. רבי יודן בר חנן בשם רבי ברכיה. אמר הקדוש ברוך הוא לישראל. בניי. אם ראיתם זכות אבות שמטה וזכות אמהות שנתמוטטה לכו והידבקו<sup>61</sup> בחסד. מה טעם. כי ההרים למושו והגבעות תמוטטנה. כי ההרים למושו זה זכות אבות. והגבעות תמוטטנה זה זכות אמהות. מיכן ואילך וחסדי מאתך לא ימושו וברית שלומי לא תמוט אמר מרחמך יי.

<sup>62</sup>Another explanation: *Hand to hand will not cleanse evil*. Rabbi Phineas said, that is one who gives alms and expects an immediate reward. Rabbi Simon said, like a man who says, here is a sack, here is a tetradrachma, and here is a *se'ah*, go and fill it. You should know that this is so, for if the patriarchs had demanded to receive the reward in this world for the good deeds which they did, from where would their merit remain for their descendants after them? That is what Moses told Israel<sup>63</sup>: *I shall remember My covenant with Jacob*, etc.

<sup>64</sup>How far did the merit of the forefathers extend? Rabbi Tanhuma said in the name of the Elder Rabbi Hiyya, (Bar) [Rebbi]<sup>65</sup> Nahman said it in the name of Rabbi Berekhiah, Rabbi Helbo in the name of Rabbi Abba bar Zavda, up to Joahaz. *The Eternal was compassionate about them and had mercy for them* etc., *up to now*<sup>65</sup>. Up to that moment, the merit of the forefathers existed.

Samuel said, up to Hosea's [time]. *But now, I shall uncover her scandalous behavior before the eyes of her lovers, and no man may save her from My hand*<sup>66</sup>. Man can only mean Abraham, as you say, *but now return the*

man's wife, for he is a prophet<sup>67</sup>. Man can only mean Isaac, as you say, who is this man coming in the field towards us<sup>68</sup>? Man can only mean Jacob, as you say, but Jacob was a simple man<sup>69</sup>.

Rebbi Joshua ben Levi said, up to Elijah: *It was when the time of the afternoon service came that Elijah the prophet approached and said, O Eternal, God of Abraham, Isaac, and Jacob, today it shall be proclaimed that You are God in Israel and I am Your servant*<sup>70</sup> etc.

Rebbi Yudan said, up to Hezekias, *to increase dominion and peace without end*<sup>71</sup>.

<sup>72</sup>Rebbi Aha said, the merit of the forefathers extends forever: *For the Eternal is a Merciful Power*, etc., up to *and He shall not forget your forefather's covenant*<sup>73</sup>. This teaches that the covenant was sealed with the tribes. Rebbi Yudan bar Hanan in the name of Rebbi Berekhiah: The Holy One, praise to Him, said to Israel: If you see that the merit of the fathers reels, and the merit of the mothers trembles, go and cling to grace. <sup>74</sup>*For mountains may reel, and hills tremble; for mountains may reel, this is the fathers' merit, and hills tremble, this is the mothers' merit. After that, but My Grace will not leave you and My Covenant of Peace will not reel, says the One Who has mercy on you, the Eternal.*

61 Vocalization of G.

62 *Lev. rabba* 36(3).

63 *Lev.* 26:42.

64 *Lev. rabba* 36(5).

65 *2K.* 13:23.

66 *Hos.* 2:12.

67 *Gen.* 20:7.

68 *Gen.* 24:65.

69 *Gen.* 25:27.

70 *1K.* 18:36. Since Elijah's prayer was granted, this gives a *terminus post quem*.

71 *Is.* 9:6.

72 *Sifra Behuqqotai Pereq* 7(11), *Ex. rabba* 44(3). The argument really is not about the patriarchs' merits but about the validity of the Covenant.

73 *Deut.* 4:31.

74 *Is.* 54:10.

הַאֲפִיקוּרוֹס. רַבִּי יוֹחָנָן וְרַבִּי לֵעָזָר. חַד אָמַר. כִּהֵּן דְּאָמַר. אֶהְיֶה סִפְרָא. וְחִרְנָה  
אָמַר. כִּהֵּן דְּאָמַר. אֵילִין רַבִּינִין. רַבִּי אֶלְעָזָר וְרַבִּי שְׁמוּאֵל בְּרַבִּי נַחֲמָן. חַד אָמַר. לְכִיפָה  
שְׁלֶאֱבָנִים. כִּינּוּן שְׁתִּירוּעָה אַחַת מֵהֶן נִתְרוּעְעוּ כּוֹלָן. וְחִרְנָה אָמַר. לְבִית שְׁהוּא מִלָּא תִבְּן. אִף  
עַל גּוֹ דְּאֵת מַעֲבַר לִיה מִינָה אֶהְיֶה מוֹצֵא דְּבִגְיָה הוּא מְרַעֵרע כִּתְלִינָא.

“The Epicurean.” Rabbi Johanan and Rabbi Eleazar, one said, like him who said “this book”<sup>75</sup>, and one said, like him who said “these rabbis”<sup>76</sup>. Rabbi Eleazar and Rabbi Samuel ben Rabbi Nahman, one said, [it<sup>77</sup> is comparable] to a stone cupola. If one stone is weakened, all are weakened. The other said, [it is comparable] to a house full of chaff. Even if one removes it from there one finds that it weakened the walls.

75 Speaking of the Torah.

is not sufficiently respectful towards his

76 In a contemptuous way. In the Babli

teacher.

100a, a person is defined as Epicurean who

77 The influence of an Epicurean.

(27d line 70) רב אמר. קורח עשיר גדול היה. תיסברין שלפרכעו נגלה לו בין מגדול ובין הים. רב אמר. קורח אפיקורסי היה. מה עשה. עמד ועשה טלית שכולן תכלת. אתא גבי משה. אמר ליה. משה רבינו. טלית שכולה תכלת מהו שתהא חייבת בציצית. אמר לו. חייבת דכתיב גדלים תעשה לגד וגו'. בית שהוא מלא ספרים מהו שיהא חייב במזוזה. אמר לו. חייב במזוזה. דכתיב וכתבתם על-מזוזות ביתך וגו'. אמר לו. בהרת כגריס מהו. אמר לו. טמא פרחא כבולו. אמר לו. טהור. באותה שעה אמר קורח. אין תורה מן השמים ולא משה נביא ולא אהרן כהן גדול. באותה שעה אמר משה. רבון כל-העולמים. אם נברא לארץ פה מששת ימי בראשית הרי מוטב. ואם לאו יברא לה מעבדשי. ואם-בריא יברא יי. אמר רבי שמעון בן לקיש. שלשה כפרו בנבואתן מפני פורקניה ואילו הן. משה ואליהו ומיכה. משה אמר. אם-כמות כל-האדם ימותון אלה וגו'. אליהו אמר. עניני יי עניני וידעו העם הנה. ואם לאו ואתה הסבת את-לבם אחורנית: מיכה אמר. אם-שוב תשוב בשלום לא-דבר יי בי.

וירדו הם וכל-אשר להם חיים שאלה. רבי ברכיה בשם רבי חלב. אף שמויתיהם פרחו מתוך טמסותיהם. אמר רבי יוסי בר חנינה. אפילו מחט שהיתה שאולה בגד ישראל מידם אף היא נבלעה עמהן. דכתיב וירדו הם וכל-אשר להם חיים שאלה. וימי נתפלל עליהם. רבי שמואל בר נחמן אמר. משה נתפלל עליהם. יחי ראובן ואלימות. רבי יהושע בן לוי אמר. חנה נתפללה עליהן. היא דעתיה דרבי יהושע בן לוי. דאמר רבי רבי יהושע בן לוי בשם רבי יוסי. כך היתה (דעתו) [עדתו] שלקרח שוקעת ויורדת עד שעמדה חנה ונתפללה עליהם ואמרה: יי ממית ומחיה מוריד שאול ועל:

Rav said, Korah was very rich; the treasury<sup>78</sup> of Pharaoh was discovered by him between Migdol and the Sea.

<sup>79</sup>Rav said, Korah was an Epicurean. What did he do? He went and made togas completely of blue wool. He came before Moses and asked him, does a

toga made completely out of blue wool need *sisit*? He answered, it is an obligation since it is written<sup>80</sup>: *braids you shall make for yourselves*. Does a house full of Torah scrolls need a *mezuzah*? He answered, it needs a *mezuzah* since it is written<sup>81</sup>, *you shall write them on the door-posts of your house*, etc. He asked him, what is the rule for a white spot the size of a bean<sup>82</sup>? He answered him, it is impure. If it spread over his entire body? He answered him, it is pure<sup>83</sup>. At that moment, Korah said that the Torah is not from Heaven, nor is Moses a [true]<sup>G</sup> prophet, nor Aaron a High Priest. <sup>84</sup>Then Moses said, Master of all worlds! If a mouth of the earth had been created during the Six Days of Creation, it is fine. Otherwise it should be created now: *If the Eternal would create a Creation*<sup>85</sup>.

Rebbi Simeon ben Laqish said, three [persons] were untrue to their prophetic insights because of *ponaria*<sup>86</sup>, viz., the following: Moses, Elijah, and Micha. Moses said, *if an everyman's death these should die*<sup>87</sup>, etc. Elijah said, *hear me, o Eternal, hear me, so this people will know*, otherwise *You would have turned their hearts backwards*<sup>88</sup>. Micha said, *if you would return in peace, the Eternal did not speak through me*<sup>89</sup>.

<sup>90</sup>*They and everything that belonged to them descended alive into the pit*. Rebbi Berekhiah in the name of Rebbi Helbo, even their names flew away from their papyrus rolls<sup>90a</sup>. Rebbi Yose ben Hanina said, even one of their needles that was in the hand of an Israel as a loan was swallowed up with them, for it is written: *They and everything that belonged to them descended alive into the pit*. Who prayed for them? Rebbi Samuel bar Nahman said, Moses prayed for them, *Reuben shall live and not die*<sup>91</sup>. <sup>92</sup>Rebbi Joshua ben Levi said, Hannah prayed for them. This is Rebbi Joshua ben Levi's opinion, as Rebbi Joshua ben Levi said in the name of Rebbi Yose: Korah's (opinion) [band]<sup>G</sup> was continuously sinking until Hannah stood up and said, *the Eternal kills and brings to life, He sends down into the pit and lifts*<sup>93</sup>.

78 Greek θησαυρός. In the Babli 110a Korah found Joseph's treasures. In the Babli 110a he found the treasures of Joseph.

79 Similar texts are in *Tanhuma Qorah* 2 (Buber 4), *Num. rabba* 18(2), *Midrash Prov.*

11(27).

80 *Deut.* 22:12. While from *Num.* 15:37-41 one might free a blue toga from exhibiting a blue thread, this verse makes it clear that a knotted appendage is needed.

- 81 *Deut.* 6:9, 11:20. possibility what they prophetically knew  
 82 *Lev.* 13:18-23. By rabbinic was a certainty.  
 interpretation, a white spot indicates skin  
 87 *Num.* 16:29.  
 disease only if it is at least the size of a  
 88 *IK.* 18:37.  
 Cilician bean.  
 89 *IK.* 22:28.  
 83 *Lev.* 13:13. 90 *Num.* 16:33.  
 84 Cf. *Num. rabba* 18(15), *Midrash Prov.* 11(27). 90a Greek τόμος, "piece, roll of papyrus, volume".  
 85 *Num.* 16:30. 91 *Deut.* 33:6, this refers to Datan and  
 86 Latin *poenariae* (scil., *actiones*) Abiram from the tribe of Reuben.  
 "criminal" (actions), a post-Augustean word  
 92 *Midrash Shemuel* ed. Buber 5(12).  
 (E.G.). The criticism levelled at Moses,  
 93 *IS.* 2:6. She was married to a  
 Elijah, and Micha (i. e., Michaihu ben descendant of Korah's (2 *Chr.* 6:18-23).  
 Nimla) is that they formulated as a

28a line 17) רבי עקיבה אומר. אף הקורא בספרים החיצונים. כגון ספרי בן סירה וספרי בן לענה. אבל ספרי הומירוס וכל הספרים שנכתבו מיכן והילך הקורא בהן פקורא באיגרת. מאי טעם. ויותר מאלה בני הזהר וגו'. להגיון נתנו. ליגיעה לא ניתנו.

"Rebbi Aqiba says, also he who reads outside books."<sup>94</sup> For example, the books of Ben Sirach and Ben Laana<sup>95</sup>. But the books of Homer and all books written from now on, one who reads them is like one who reads a letter. What is the reason? *More than these, my son, be careful*<sup>96</sup> etc. They are given to be read, not given for exertion.

- 94 Babli 100b, *Eccl. rabba* 12(13). books forbidden to study are non-canonical  
 95 The name of the second, otherwise books claiming biblical status.  
 unknown, author is בן לענא in G and בן תגלא in B and in the Midrash. Rav Saadya Gaon in his  
 96 *Eccl.* 12:12. The reference is to the  
 end of the verse, not quoted here: להגרה. The quote leads to a digression about *Eccl.* 12:11.

28a line 20) דברי חכמים פדרבונות. אמר רבי חונה. פדרור נאות. תמן קריין למרגליתא דירה. דבר אחר. פדרבונות. פכדור הנה בין הבנות. מה הפדור הנה מקלטות מיד ליד וסופה לנותן ביד אחד. כך משה קבל תורה מסיני ומסרה ליהושע ויהושע לזקנים וזקנים לנביאים ונביאים מסרה לאנשי כנסת הגדולה. דבר אחר. פדרבונות. שלשה שמות יש לו. מרדע דרבן ומלמד. מרדע שהוא מורה דיעה בפרה. דרבן שהוא משרה בינה בפרה. מלמד שהוא מלמד את הפרה לחרוש בשביל ליתן חיים לבגליה. אמר רבי חמא בר חנינה. אם לפרתו עושה





הַגְּבוּרָה. נִתְּנוּ מְרוּעָה אֶחָד. וְאֵין אֶחָד אֶלָּא הַקָּדוֹשׁ בְּרוּךְ הוּא. כַּמָּה דָּת מִרְשָׁמֵעַ? שְׁרָאֵל יִי אֱלֹהֵינוּ יִי אֶחָד:

<sup>97</sup>*The words of the Sages are like goads*; Rabbi Huna said, like a pearl. There, they call a pearl *dirah*<sup>98</sup>.

Another explanation, *like goads*, like a girl's ball. Just as this ball is caught from hand to hand but in the end will come to rest in one hand, so "Moses received the Torah from Sinai and transmitted it to Joshua, Joshua to the Elders, the Elders to the Prophets, and the Prophets transmitted it to the Men of the Great Assembly<sup>99</sup>."

Another explanation, *like goads*. It has three names, *mardea`*, *dār<sup>e</sup>vān*, *malmad*. *Mardea`*, because it teaches knowledge to the cow<sup>100</sup>. *Dār<sup>e</sup>vān*, because it plants understanding in the cow. *Malmad*, because it teaches the cow to plough, to keep its owners alive. Rabbi Hama bar Hanina said, if a person makes a goad for his cow, certainly [he has to make one] for his bad inclinations which will remove him from this world and the World to Come.

<sup>97</sup>*And like planted nails*. Why does he not say, "like fixed nails and planted trees"? They chose and selected the iron and improved the planting of iron rods.

Another explanation, *and like planted nails*. Just as this nail, once it has been fixed, if you then remove it from its place, its place remains visible; so everybody against whom the rabbis<sup>101</sup> stretched out their hand<sup>102</sup>, even if afterwards they took him back, in the end he will take what is coming to him from their hands.

Another explanation, *and like planted nails*; it is written *watches*<sup>103</sup>. Since there are 24 watches, there should be 24 nails<sup>104</sup>. How many nails should it have? Rabbi Johanan said five, corresponding to the five books of the Torah. Rabbi Hinena said seven, *corresponding to your days are your steps*<sup>105</sup>. Rabbi Aḥa explained following Rabbi Hanina: nine. Rabbi put eleven on one [shoe] and thirteen on the other, for the number of watches. Rabbi Yose ben Hanina said, a crooked nail is not counted with the nails<sup>106</sup>. Rabbi Abba bar Zavda asked before Rabbi Ze'ira<sup>107</sup>: may one put all of them on one boot? He told him, it is permitted. May one put all of them on one sandal? He told him, it is

permitted. It was stated: One does not scrape<sup>108</sup> old boots or sandals but one may anoint them or dip them in water. Rabbi Crispus in the name of Rabbi Johanan: The students of the Elder Rabbi Hiyya say that those of first rank said, one may scrape, those of second rank said, one may not scrape. They asked Rabbi, who told them, one does not scrape. Rabbi Ze'ira said, here goes one of the students of the Elder Rabbi Hiyya<sup>109</sup>. Rabbi Hiyya bar Ashi said, we used to sit before Rav and were anointing and rinsing, but not scraping. It was stated: A person should wear new boots and sandals only if he walked in them during daytime<sup>110</sup>. How far should he walk? The people from the house of Bar Qappara said, from the House of Study of Bar Qappara to the House of Study of Rabbi Hoshai<sup>111</sup>. The Sepphoreans say, from the Babylonian synagogue to Rabbi Hama bar Hanina's house. The Tiberians say, from the Academy to Rabbi Hoshai's store. It was stated<sup>112</sup>: Nobody should anoint his foot in a shoe or sandal but he may anoint his foot and step into his shoe or his sandal. One may anoint himself and roll on a tarpaulin without worry. One should not put it on a marble slab to roll himself in it, but Rabban Gamliel permits it.

Another explanation, *and like planted nails*. If words about Torah are spelled out clearly by their authors, they are sweet to their listeners like well-ordered saplings. But if they come out confused, they are as bitter for their listeners as nails.

<sup>97</sup>*Masters of assembly*<sup>113</sup>. "Assembly" only means the Synhedrion, as you say: *Assemble for Me seventy men from the Elders of Israel*<sup>114</sup>.

Another explanation, *masters of assembly*, it was said in an assembly. Rabbi Simeon ben Laqish said, if somebody told me that Chronicles<sup>115</sup> was to be found in Babylonia, I would go and fetch it from there. But now, if all our rabbis came together, they could not bring it from there.

<sup>98</sup>*They were given from one shepherd*. The Holy One<sup>116</sup> said, if you heard something<sup>117</sup> from the most insignificant one of Israel and it gave you satisfaction, it should not be in your eyes as if you heard it from an insignificant one but from an important one; and not as if you heard it from an

important one but from a Sage; and not as if you heard it from a Sage but from a prophet; and not as if you heard it from a prophet but from a shepherd (and shepherd only means Moses, as it is said<sup>118</sup>: *He remembered the days of old, Moses with his people; where is He Who brought them up from the Sea with his people's shepherd; where is He Who gave His Holy Spirit in its midst*); not as if you heard it from a shepherd but from Divinity. *They were given from one shepherd*, but "One" is only the Holy One, praise to Him, as it is said<sup>119</sup>: *Hear, o Israel, the Eternal is our God, the Eternal is One*.

97 The following is a series of homilies on *Eccl.* 12:11, without direct connection with the theme of the Chapter; cf. Note 96. Parallels are found in *Pesiqta rabbati* 3 (ed. Ish-Shalom 7b-8a); *Midrash Qohelet* 12:11-12; *Lev. rabba* 129(6), *Num. rabba* 13:11-13).

98 In Babylonia one uses the Arabic דִּיקָה. Read דורה with G.

99 Mishnah *Avot* 1:1.

100 It already is noted in the *Pesiqta* that מרדע is a Mishnaic, not a biblical word.

101 Plural of רבי as recognized by E. S. Rosenthal (M. Cahana in *Mehqere Talmud* I, ed. Y. Sussman, D. Rosenthal, Jerusalem 1990, p. 6 Note 17).

102 They put him in ban.

103 Cf. also E. Porath, *Mishnaic Hebrew*, Jerusalem 1938, p. 130 Note 4.

The *watches* are the 24 clans of priests (*1Chr.* 24), each of which was serving in the Temple for one week.

104 The following has a parallel in *Šabbat* 6:1 (8a l. 21 ff.), Babli *Šabbat* 60b. It is forbidden to wear nail-studded work-boots on the Sabbath. But it is permitted to wear shoes decorated with nails. There are different traditions about the number of nails which will constitute a decoration.

105 *Deut.* 33:24.

106 In the Babli, the equivalent of כלבת is כלבוס.

107 For reasons of chronology, one has to switch the position of the names, as in *Šabbat*: The third generation R. Ze'ira asked the second generation R. Abba bar Zavda. Here ends the Genizah fragment.

108 Again this belongs to the rules of the Sabbath (Babli *Šabbat* 141b); it is forbidden to scrape off dirt from one's shoes on the Sabbath.

109 Rabbi certainly is of the authorities of first rank.

110 On Friday.

111 In the village of Dabbara (Golan) where the lintel of Bar Qappara's House of Study was excavated.

112 The following is from *Ševi'it* 8:8, Notes 119-124. Olive oil produced in the Sabbatical year has to be used for the personal needs of man or animal; it is permitted to use it to daub one's body but not to prepare leather or leather products.

113 The translation chosen follows the explanation given here as second possibility. Rashi (following Dunash), Ibn Janah, and Qimhi: "collectors." Levy/Torczyner: "set in frames."

114 *Num.* 11:16.

115 Not the book of Chronicles but a coherent interpretation of its genealogical part, known as ‘book of genealogies’ (Babli *Pesahim* 62b).

116 One has to add, “praise to him.”

117 An explanation of a topic in the Torah.

118 *Is.* 63:11

119 *Deut.* 6:4.

(28a line 76) והלוחש על המכה ואומר כל־המחלה אשר־שמתי במצרים לא־אשים עליך כי אני יי רפאך: רב אמר. ובלבד ברוקק. רבי יהושע בן לוי אמר. אפילו אמר נגע צרעת כי תהיה באדם ורוקק אין לו חלק לעתיד לבוא.

אבא שאול אומר אף ההוה את השם באותיותיו. רבי מנא אמר. בגון אילין כותאי דמשתבעין. רבי יעקב בר אבא אמר. נכתב ביה"ד ה"א ונקרא בא"ל"ף דל"ת.

“One who whispers over a wound and says, *any sickness that I put on Egypt I shall not put on you, for I am the Eternal, your Healer.*” Rav said, only one who spits. Rabbi Joshua ben Levi said, even if he only said, *damage by skin disease if it be on a human*<sup>120</sup> and spits, he has no part in the Future World<sup>121</sup>.

Abba Shaul said, also one who pronounces the Name<sup>7</sup> by its letters. Rabbi Mana said, for example, those swearing Samaritans<sup>122</sup>. Rabbi Jacob bar Aha said, it is written as *yod he* but read as *alef dalet*<sup>123</sup>.

120 *Lev.* 15:26.

121 Using verses as part of magical rites is an unpardonable sin (in the absence of genuine repentance.)

122 It is not known what Samaritans did in those days. Modern Samaritans use the equivalent of *the Name* for all mentions of

the Name.

123 The Name has to be pronounced as if written אדני. It seems that he prohibits *any* pronunciation of YHWH even if demonstrably unhistorical (cf. *Berakhot* 1:1, Note 14.)

(fol. 27b) משנה ב: שלשה מלכים וארבעה הדיוטות אין להם חלק לעולם הבא. שלשה מלכים אחאב ירבעם מנשה. רבי יהודה אומר מנשה יש לו חלק לעולם הבא שנאמר ויתפלל אליו ויעתר לו וישמע תחנונו וישיבהו וירושלים למלכותו. אמרו לו למלכותו השיבו. לא השיבו לחיי העולם הבא. ארבעה הדיוטות בלעם ודואג אחיתפל וגחזי:

**Mishnah 2:** Three kings and four private persons have no part in the Future World<sup>123</sup>. Three kings: Ahab, Jeroboam, Manasse. Rabbi Jehudah

says, Manasse has part in the Future World, as it is said:<sup>124</sup> *he prayed to Him. He let Himself be petitioned, and heard his supplications, and returned him to Jerusalem, to his kingdom.* They told him, He returned him to his kingdom; He did not return him to life in the Future World<sup>125</sup>. Four private persons: Bileam and Doëg<sup>126</sup>, Ahitophel<sup>130</sup> and Gehazi<sup>131</sup>.

123 Out of all persons mentioned in the Hebrew Bible.

124 *2Chr.* 33:13.

125 R. Jehudah's position is that of the author of Chronicles, the rabbis' that of the author of Kings (*2K.* 21).

126 While in the Talmudim *Doëg the Edomite* is treated as a Jew, his being grouped in the Yerushalmi Mishnah with the

Midianite Bileam, separate from the two Israelites, may indicate that for the Yerushalmi Mishnah Gentiles (at least those who are descendants of Abraham) have part in the Future World unless they act to lose it.

127 The paradigmatic suicide.

128 Who was cursed by Elisha.

(28b line 6) **הלכה ב:** שלשה מלכים וארבעה הדיוטות כול'. וכולהם חידשו עבירות.

**Halakhah 2:** "Three kings and four private persons," etc. All of these invented new kinds of sins.

(28b line 7) וכי מה עשה ירבעם. על שעשה שני עגלי זהב. והלא כמה עגלים עשו ישראל. תני רבי שמעון בן יוחי. שלשה עשר עגלים עשו ישראל ואחד דימוסין לכולן. ומה טעם ויאמר אי אלה אלהיך ישראל. הרי לשנים עשר שבטים. זה אלהיך הרי דימוסין אחת לכולן.

So what did Jeroboam do<sup>129</sup>? Because he made two golden calves. But did Israel not make many calves<sup>130</sup>? Rabbi Simeon ben Iohai stated: Thirteen calves did Israel make<sup>131</sup>; of these one was common property<sup>132</sup> to all of them. What is the reason? *They said, these are your gods, Israel*<sup>133</sup>; this refers to the twelve tribes. *This is your god*<sup>134</sup>, i. e., one common property for all of them.

129 To commit a new kind of sin.

130 The sin is not new; for the Yerushalmi Jeroboam has part in the World to Come.

131 Not a single golden calf but 13.

132 Greek θεμόσιος, -α, -ον, adj.

"belonging to the people". Also used as noun.

133 *Ex.* 32:4,8.

134 *Neh.* 9:18.

(28b line 11) וְכִי מָה עָשָׂה אַחָאב. כְּתוּב וַיְהִי הַנֶּקֶל לְכַתּוֹ בְּחַטָּאוֹת יִרְבָּעָם בֶּן-נִבְט. וַהֲלֹא קוֹלוֹתָיו שֶׁל אַחָאב הֵם כְּחוֹמְרוֹתָיו שֶׁלִּירְבָּעָם. וְלָמָּה נִמְנָה יִרְבָּעָם תַּחֲלִילָה. שֶׁהוּא הִתְחִיל בְּקִלְקָלָה תַּחֲלִילָה. מָה הָיָה אַחָאב עֲבִיד. הָיָה מְקַשֵּׁט גְּרָמִיָּה בְּכָל-יוֹם וְקָאִים לִיה קוֹמֵי חֵיָאֵל אֶסְרִיטִילָטִיָּה. וְהוּא אָמַר לִיה. בְּכַמָּה אָנָּה טֹב יוֹמָא דִּין. וְהוּא אָמַר לִיה. כּוֹ וְכוּ. וְהוּא מִפְּרִישׁ טִימִיתִיָּה לְעִבּוּדָה זָרָה. הִדָּא הוּא דְּכְתִיב יַעֲזֹב הַתְּמַכְרָךְ לַעֲשׂוֹת הָרָע בְּעֵינֵי יִי. רַבִּי לִוי עֲבַד דְּרִשׁ הַדִּין קִרְיָא אֲשֶׁתָּא יֶרֶחִין לִגְנָאִי. רַק לֹא-הָיָה כְּאַחָאב אֲשֶׁר הִתְמַכָּר לַעֲשׂוֹת הָרָע בְּעֵינֵי יִי. אֲתָא לְגַבִּיָּה בְּלִילָא. אָמַר לִיה. מָה חָטִית לָךְ וַמָּה סָרְחִית קְדָמָךְ. אֵית לָךְ רִישִׁיָּה דְּפָסוּקָה וְלִית לָךְ סוֹפִיָּה אֲשֶׁר-הִסְתָּה אוֹתוֹ אֵיזְבֵּל אֲשֶׁתּוֹ. עֲבַד דְּרִשׁ לִיה שֶׁתָּא יֶרֶחִין לִשְׁבָּח. רַק לֹא-הָיָה כְּאַחָאב אֲשֶׁר-הִסְתָּה אוֹתוֹ אֵיזְבֵּל אֲשֶׁתּוֹ:

So what did Ahab do<sup>129</sup>? It is written<sup>135</sup>: *If it would have been too easy to follow the sins of Jeroboam ben Nevat.* Are not the light sins of Ahab the serious sins of Jeroboam? Why was Jeroboam counted first<sup>136</sup>? Because he started the misconduct. What did Ahab do? He adorned himself every day and stood before his army commander<sup>137</sup> Hiel, asking him, for how much am I good today? He answered him, so and so much; then he donated its value<sup>138</sup> to foreign worship. That is what is written<sup>139</sup> *Because you sold yourself to do evil in the Eternal's eyes.*

Rebbi Levi continued for six months to explain the following verse to shame<sup>140</sup> *There never was anyone like Ahab who sold himself to do evil in the Eternal's eyes.* He came to him at night<sup>141</sup> and asked him, how did I sin against you, what did I do before you? You have the first part of the verse, but you do not have the end of the verse: *whom his wife Jezebel had misguided.* He<sup>142</sup> continued for six months to explain it as praise, *only one should not be like Ahab . . . whom his wife Jezebel had misguided.*

135 1K. 16:31.

136 This shows that the Mishnah underlying the Halakhah was not the Mishnah as quoted in the ms. but followed the order of the Yerushalmi: Jeroboam, Ahab, Manasse.

137 The word probably represents Greek στρατηλάτης "army commander".

138 Greek τίμησις "estimation, valuation".

139 1K. 21:20.

140 1K. 21:25.

141 This shows that Ahab has part in the World to come, against the Mishnah.

142 R. Levi.

(28b line 22) כְּתוּב בְּיָמָיו בְּנֵה חֵיטָל בֵּית הָאֵל וְאֶת־יְרִיחוֹ בְּאַבְיָרִים בְּכָרוֹ יִסְדָּהּ וּבִשְׁגוֹב צָעִירוֹ הַצֵּיב דִּלְתִּיהָ. חֵיטָל מִן יְהוֹשָׁפָט. יְרִיחוֹ מִבְּנֵי־מִן. אֵלָּא שְׁמַגְלָלִין זְכוֹת עַל דִּי זָכֵא וְחוּבָה עַל דִּי חֵיב. וְכֵן הוּא אוֹמֵר בְּאַבְיָרִים בְּכָרוֹ יִסְדָּהּ וּבִשְׁגוֹב צָעִירוֹ הַצֵּיב דִּלְתִּיהָ. בְּאַבְיָרִים בְּכָרוֹ לֹא הָיָה מֵאִין לְלַמֵּד. וּבִשְׁגוֹב הָרָשָׁע הָיָה לוֹ מֵאִין לְלַמֵּד. לְפִי שְׂרָצוּ לְרִבּוֹת אֶת מִמוֹן וְשִׁלְטָה בְּהוֹן מֵאִירָה וְהָיוּ מִתְמַטְּסִין וְהוֹלְכִין. לְקִיָּים מַה שֶּׁנֶּאֱמַר כְּדָרָךְ יִי אֲשֶׁר דָּבָר בִּינְךָ יְהוֹשָׁע בֶּן־נוּן. כְּתוּב וַיֹּאמֶר אֱלֹהֵיו הַתְּשִׁבִי מִתּוֹשָׁבִי גִלְעָד אֶל־אַחֲאֵב חִי־יִי אֱלֹהֵי יִשְׂרָאֵל אֲשֶׁר עֲמַדְתִּי לְפָנָיו אִם־יִהְיֶה הַשָּׁנִים הָאֵלֶּה טַל וּמָטָר כִּי אִם־לִפִּי דְּבָרִי. וְכִי מַה עֲנִיין זֶה אֶצֶל זֶה. אֵלָּא אֲמַר הַקְדוֹשׁ בְּרוּךְ הוּא לֹא־לֵהוּ. הַדִּין חֵיטָל גִּבְרָא רַבָּא הוּא. אֵיזִיל חֲמִי לֵיה אֲפִין. אֲמַר לֵיה. לִי נָה מִיזַל. אֲמַר לֵיה. לְמָה. אֲמַר לֵיה. דְּנָא מִיזַל וַיִּנּוּן אֲמַרִין מִילִין דְּמַכְעִיסִין לָךְ וְלִנְהָ וְכִיל מִישְׁבּוֹל. אֲמַר לֵיה. וְאִין אֲמַרִין מִילָה דְּמַכְעָסָה לִי כִּלְמָה דְּאֵת גִּזְרָא אֲנָא מְקִיָּים. אֲזַל וְאִשְׁכַּחוֹן עֲסִיקוֹן בְּהוֹן קָרִינָא וְיִשְׁבַּע יְהוֹשָׁע בַּעַת הָהִיא לֵאמֹר אֲרוּר הָאִישׁ לִפְנֵי יִי אֲשֶׁר קִוִּים וּבְנָה אֶת־הָעִיר הַזֹּאת אֶת־יְרִיחוֹ בְּבִכְרוֹ וְיִסְדָּנָהּ וּבְצָעִירוֹ יַצִּיב דִּלְתִּיהָ. אֲמַר. בְּרִיד הוּא אֱלֹהֵהוֹן דְּצִדִּיקִינָא דְּמְקִיָּים מִיִּלִּי דְּצִדִּיקָא. וְהָיָה תִּמְן אַחֲאֵב. אֲמַר לוֹן אַחֲאֵב. וְכִי מִי גְדוֹל מִמִּי מִשָּׁה אוֹ יְהוֹשָׁע. אֲמַרִין לֵיה. מִשָּׁה. אֲמַר לוֹן. בְּתוֹרָתוֹ שְׁלֹמֹשָׁה כְּתוּב הַשְׁמָרְוּ לָכֶם פְּרִיפְתָה לְבַבְכֶם וְסִרְתֶּם וְעַבְדְּתֶם אֱלֹהִים אֲחֵרִים וְהַשְׁתַּחֲוִיתֶם לָהֶם: וְיָמָה כְּתִיב בְּתַרְיָה. וְתָרָה אֶרֶץ־יִי בָכֶם וְעֶצֶר אֶת־הַשָּׁמַיִם וְלֹא־יִהְיֶה מָטָר. וְלֹא הִינַחְתִּי עֲבוּדָה זָרָה בְּעוֹלָם שְׁלֹא עֲבַדְתִּי אוֹתָהּ. וְכִלְטָבוֹן וְנִחְמוֹן דְּאֵית בְּעֻלְמָא אֲתוֹן בְּדָרִי. מִילּוּי דְּמִשָּׁה לֹא קָמוּ וּמִילּוּי דִּיהוֹשָׁע מְקִיָּים. אֲמַר לֵיה אֱלֹהֵיו. אִם כְּדָבְרִיד חִי־יִי אֱלֹהֵי יִשְׂרָאֵל אֲשֶׁר עֲמַדְתִּי לְפָנָיו אִם־יִהְיֶה הַשָּׁנִים הָאֵלֶּה טַל וּמָטָר כִּי אִם־לִפִּי דְּבָרִי כִּיֵּן שְׁשָׁמַע כֵּן הַתְּחִיל בּוֹכָה. הִדָּא הִיא דְּכְתִיב וְהָיוּ מִשְׁמָע אַחֲאֵב אֶת־הַדְּבָרִים הָאֵלֶּה וְיִקְרַע אֶת בְּגָדָיו וְיִשָּׁם־שָׁק עַל־בָּשָׂרוֹ וְיִצְוִם וְיִשְׁכַּב בְּשָׁק וְיִהְלֵךְ אֵט: כְּמָה נִתְעַנָּה. שְׁלֹשׁ שָׁעוֹת נִתְעַנָּה. אִם הָיָה לְמוֹד לֹכֵל בְּשִׁלֵּשׁ הָיָה אוֹכֵל בְּשִׁשׁ. אִם לְמוֹד לֹכֵל בְּשִׁשׁ הָיָה אוֹכֵל בְּתִשְׁעִי. וְיִהְלֵךְ אֵט. מָהוּ עֵט. רַבִּי יְהוֹשָׁע בֶּן לֵוִי אֲמַר. שְׁהָיָה מְהֵלֵךְ יָחַף. כְּתִיב וְהָיָה דְּבַר־יִי אֶל־אֱלֹהֵיו הַתְּשִׁבִי לֵאמֹר: הִרְאִיתִי כִּי־נִכְנַע אַחֲאֵב מִלְּפָנָי. אֲמַר הַקְדוֹשׁ בְּרוּךְ הוּא לֹא־לֵהוּ. רָאָה מִנָּה טוֹבָה שְׁנַתִּי בְּעוֹלָמִי. אֲדָם חוּטָא לְפָנֵי כְּמָה וְעוֹשָׂה תְּשׁוּבָה וְאֵין מְקַבְּלוֹ. הִדָּא הִיא דְּכְתִיב הִרְאִיתִי כִּי־נִכְנַע אַחֲאֵב מִלְּפָנָי. חֲמִית אַחֲאֵב עֲבַד תְּשׁוּבָה. לָעוֹן כִּי־נִכְנַע אַחֲאֵב מִפְּנֵי לֹא־ אֲבִיא הַרְעָה בְּיָמָיו בִּימֵי בָלוֹ אֲבִיא הַרְעָה עַל־בֵּיתוֹ:

It is written<sup>143</sup>: *In his days did Hiel from Bet-El build Jericho; with his first-born Aviram he set the foundation and with his youngest son Seguv he put in the doors.* Hiel is from the descendants of Josaphat<sup>144</sup>, Jericho is in the territory of Benjamin. Only that good deeds are put in the hands of the worthy and bad deeds in the hands of the unworthy; therefore, it is said, *with his first-born Aviram he set the foundation and with his youngest son Seguv he put in the doors.* If it was not appropriate for him to learn from his firstborn Aviram, should he not have learned from the wicked Seguv<sup>145</sup>? Because they

wanted to make more money<sup>146</sup>, the curse ruled over them and they were continuously weakened to confirm what was said<sup>143</sup>, *following the word of the Eternal, the God of Israel, which He had spoken through Joshua ben Nun.*

It is written<sup>147</sup>: *Elijah the Tisbite, from the inhabitants of Gilead, said to Ahab: By the Living Eternal, the God of Israel, before Whom I stood, there will not be dew or rain in the coming years except by my word.* What is the connection between these<sup>148</sup>? The Holy One, praise to Him, had said to Elijah: this Hiel is an important personality, go and pay a visit of condolence. He answered, I do not want to go. He asked, why? He said, for if I go and they say things that enrage You, I shall not be able to bear it. He told him, If they say anything that would enrage Me, anything that you decide I shall fulfill. He went and found them discussing the verse<sup>149</sup>: *At that time, Joshua imprecated as follows: Cursed be the man before the Eternal who would build this town, Jericho; with his first-born he shall put in the foundation and with his youngest set the doors.* He said, praised be the God of the just, Who fulfills the words of the just. Ahab also was there. Ahab said to them, who is greater, Moses or Joshua? They told him, Moses. He said to them, in Moses's Torah it is written<sup>150</sup>: *Watch yourselves, lest your hearts be seduced, you deviate, and worship other powers and bow down before them.* What is written next? *The rage of the Eternal will burn against you, He will lock up the sky and there will be no rain.* But I did not leave any strange worship that I would not have worshipped, and all good and comforting things came in my generation. He did not uphold the words of Moses; would He uphold Joshua's words? Elijah told him, it is as you say, *by the Living Eternal, the God of Israel, before Whom I stood, there will not be dew or rain in the coming years except by my word.* When he heard this, he started crying. That is what is written<sup>151</sup>: *When Ahab heard these words, he tore his garments, put sackcloth on his flesh, fasted, slept in sackcloth and went at.* How long did he fast? He fasted for three hours. If he was used to eat at 6 o'clock, he ate at noontime. If he was used to eat at noontime, he ate at three p.m. *He went at.* What is *at*? Rabbi Joshua ben Levi said, he went barefoot<sup>152</sup>.

It is written:<sup>153</sup> *The word of the Eternal went to Elijah the Tisbite as follows: Did you see that Ahab surrendered before me?* The Holy One,



praise to Him, said to Elijah: See the good part which I put in My world. A person may sin greatly before Me, but if he repents I am accepting him<sup>141</sup>. That is what is written, *did you see that Ahab surrendered before Me?* You saw that Ahab repented. *Because Ahab surrendered before me, I shall not bring the evil in his days; in his son's days I shall bring the evil over his dynasty.*

143 *IK*. 16:34; cf. Babli 113a, Tosephta 14:6-9.

144 Identifying this Hiel with Yehiel, *2K*. 21:2.

145 The death of the firstborn could have been an accident; the death of the youngest certainly must be ascribed to Joshua's curse. (It is presumed here that the children died a natural death, not that they were killed by their father as building sacrifice.)

146 The rebuilding of Jericho was a real estate investment.

147 *IK*. 17:1, the verse immediately following 16:34; the medieval division into chapters is misleading.

148 *IK*. 17:1, and *IK*. 16:34.

149 *Jos*. 6:26.

150 *Deut*. 11:16-17.

151 *IK*. 21:27. This belongs to the Nabot affair, not the drought.

152 The early Medieval translator Daud ben Abraham Alfasi in his *Jamu`* (S. L. Skoss, *Kitab Jamu` Al Alfaz*, New Haven 1935) accepts the Jerushalmi's explanation. נחמיה אלון, האגרון (לב) Rav Saadya Gaon (סעדיה גאון, יום תשכט *رفق* as *אט* translates

“to be sweet. Compare Arabic *اُطَّ* “to creak, to groan”.

153 *IK*. 21:28-29.

(28b line 57) וְכִי מָה עָשָׂה אֲחִי. עַל יְדֵי שְׂבִנָּה כֶּסֶף בְּעֶזְרָה. הִדָּא הֵיא דְכְּתִיב וְאֵת אוֹלָם הַכֶּסֶף אֲשֶׁר בָּנוּ בְּבֵית וגו'. רַבִּי חוּנְיָה בְּשֵׁם רַבִּי לֵעָזֵר. לָמָּה נִקְרָא שְׁמוֹ אֲחִי. שְׁאֲחִי בְּבֵיתִי כְּנִסְיוֹת וּבְבֵיתִי מִדְּרָשׁוֹת. לָמָּה הִנֵּה אֲחִי דוֹמָה. לְמַלְךְ שֶׁהִנֵּה לוֹ בֶּן וּמִסְרֹו לְפִידְגוּגוֹ וְהִנֵּה מִבְּקָשׁ לְהוֹרְגוֹ. אָמַר. אִם אֲנִי הוֹרְגוֹ הָרִי אֲנִי מִתְחַיֵּב מִיתָה. אֶלָּא אֲנִי מוֹשֵׁף אֶת מִינִיקוֹתוֹ מִמֶּנּוּ וּמַעֲצָמוֹ הוּא מֵת. כֵּךְ אָמַר אֲחִי. אִם אֵין גְּדוּלִים אֵין תִּילָשִׁים. אֵין אֵין תִּילָשִׁים אֵין צֶאֱן. אִם אֵין צֶאֱן אֵין רוּעָה. אִם אֵין רוּעָה אֵין עוֹלָם. אִם אֵין עוֹלָם כְּבִיכּוֹל. כֵּךְ הִנֵּה אֲחִי סְבוּר בְּדַעְתּוֹ לומר. אִם אֵין קְטָנִים אֵין גְּדוּלִים. אִם אֵין גְּדוּלִים אֵין חֲכָמִים. אִם אֵין חֲכָמִים אֵין נְבִיאִים. אִם אֵין נְבִיאִים אֵין רוּחַ הַקּוֹדֶשׁ. אִם אֵין רוּחַ הַקּוֹדֶשׁ אֵין בֵּיתִי כְּנִסְיוֹת וּבֵיתִי מִדְּרָשׁוֹת. כְּבִיכּוֹל אֵין הַקּוֹדֶשׁ בְּרוּךְ הוּא מְשַׁרְה שְׂכִינְתּוֹ עַל יִשְׂרָאֵל. רַבִּי יַעֲקֹב בַּר אַבְבִּי בְּשֵׁם רַבִּי אֲחָא מִיְיְתִי לָהּ מִן הִדָּא וְחִיכִיתִי לִי הַמְּסִתִּיר פְּנֵי מַבֵּית יַעֲקֹב וְקִיּוּיִתִּי לוֹ. אֵין לָךְ שַׁעֲה קֶשֶׁה בְּעוֹלָם מֵאוֹתָהּ שַׁעֲה שְׁאָמַר לוֹ הַקּוֹדֶשׁ בְּרוּךְ הוּא לְמִנְשָׁה וְאֶנְכִּי הַסֵּתֵר אֲסִתִּיר פְּנֵי בָּיִת הַהוּא. מֵאוֹתָהּ שַׁעֲה וְקִיּוּיִתִּי לוֹ שְׁאָמַר לוֹ בְּסִינִי כִּי לֹא תִשְׁכַּח מִפִּי זֶרְעוֹ. וְכֵּה אֲתָּ מוֹעִיל. הִנֵּה אֶנְכִּי וְהִזְלִידִים אֲשֶׁר

נְתַן־לִי יְיָ. וְכִי יִלְדִי הָיִי וְהָלֵא תִלְמִידִי הָיִי. אֶלֶּא מִלְמֵד שֶׁהָיִי חֲבִיבִי עָלַי וְהָיָה קוֹרָא אוֹתָם בְּנִי.

<sup>154</sup>But what did Ahaz do? He built a throne in the Temple Court. That is what is written: “The throne-hall which they built in the Temple,<sup>155</sup>” etc. Rabbi Onias in the name of Rabbi Eleazar. Why is he called “the grabber<sup>156</sup>”? For he grabbed synagogues and houses of study<sup>157</sup>. To what may Ahaz be compared? To a king who had a son whom he entrusted to his pedagogue<sup>158</sup>. The latter wanted to kill him. He said, if I kill him, I will be put to death. But I shall draw his wet-nurse away from him and he will die of himself. So Ahaz said, if there are no kid goats there are no he-goats. If there are no he-goats there are no goats. If there are no goats there is no shepherd<sup>159</sup>. If there is no shepherd there is no world; if it were thinkable that there be no world. So Ahaz was thinking, if there are no children<sup>160</sup> there are no adults. If there are no adults, there are no Sages. If there are no Sages, there are no prophets. If there are no prophets, there is no Holy Spirit. If there is no Holy Spirit, there are no synagogues and no houses of study. If it were thinkable, the Holy One, praise to Him, will not let His Presence rest over Israel.

Rebbi Jacob bar Abbai in the name of Rebbi Aha brings it from the following<sup>161</sup> *I shall wait for the Eternal, Who hid His Face from the House of Jacob, and put my hope in Him*. There was no worse moment in the world than when the Holy One, praise to Him, said to Moses<sup>162</sup>: *I shall certainly hide My Face at that time*. From that moment on, *I put my hope in Him, Who said at Sinai,*<sup>163</sup> *for it shall not be forgotten by his descendants*. What would its use be<sup>164</sup>? *Behold, I and the children which the Eternal has given me*. Were they his children? Were they not his students? But this teaches he loved them as if they were his sons and called them “my sons”.

154 *Gen. rabba* 42(4), *Esther rabba* Introduction, *Lev. rabba* 11, *Ruth rabba* 1(7).

155 This exists no such verse. Probably, as indicated by *Qorban ha`Edah*, the reference is to 2K. 16:18: The Sabbath shelter which they had built in the temple . . .”

156 אָרַז “to grab”.

157 To close them down.

158 Greek παιδαγωγός, the slave accompanying the child.

159 God.

160 Going to school.

161 That Ahaz had eliminated all religious instruction, *Is.* 8:17.

162 *Deut.* 31:18.



כְּתִיב וַיְהִי דְבַר־יְהוָה אֶל־יִשְׁעִיָּהוּ הַנָּבִיא לֵאמֹר: לֵךְ וְאָמַרְתָּ אֶל־חִזְקִיָּהוּ נָגִיד עַמִּי כֹה־אָמַר  
 יִי אֱלֹהֵי דָוִד אֲבִיךָ שְׁמַעְתִּי אֶת־תַּפְלִתְךָ רָאִיתִי אֶת־דַּמְעָתְךָ הַנָּלִי יוֹסֵף עַל־גִּמְיָד חֲמֵשׁ עֶשְׂרֵה שָׁנָה:  
 אָמַר לִיה. וַיְכַדּוּן אָמְרִית לִיה הַכִּין. וַיְכַדּוּן אֲנָא מִימַר לִיה הַכִּין. אָמַר לִיה. גְּבָרָא רַבָּה הוּא וְלִית  
 הוּא מְהִימָנִי. אָמַר לִיה. עֵינֵינוּן סָגִי הוּא וְהוּא מְהִימָן לָךְ. וְלֹא עוֹד אֶלָּא עַדִּינוּן לֹא יִצָּאת  
 הַבָּרָה בְּעִיר. וַיְהִי יִשְׁעִיָּהוּ לֹא יִצָּא חָצֵר הַתִּיכְנָה. הָעִיר כְּתִיב.

What did Manasse do? It is written<sup>165</sup>: *In these days, Hezekias became critically ill, etc., for you will die, you will not live. For you will die, in this world, you will not live, in the Future World.* He asked him, why? He answered him, because you did not want to have children<sup>166</sup>. He asked him, why do you not want to have children? He answered him, I saw that I will have an evil son; therefore, I do not want to have children. He told him, marry my daughter<sup>167</sup>, maybe descending from me and you he will become a good person. Nevertheless the result was only a bad person. That is what is written<sup>168</sup>, *but my vessels, his vessels are bad.* He told him, I am not listening to you, I only am jumping on what my ancestor said, who told me<sup>169</sup>, if you see bad dreams or bad visions do jump onto three things and you will be saved. These are: prayer, giving alms, and repentance. All three from one verse<sup>170</sup>: *If My people, over whom My Name is called, are subdued and they will pray*, that refers to prayer, *and they will ask before me*, that refers to giving alms, as you say<sup>171</sup>, *I, by giving alms, shall see Your Face, I shall be satiated in waking by Your image. They shall repent their evil ways*, that is repentance. If they did this, what is written there? *I shall listen from Heaven, forgive their sins, and heal their land.* Immediately, he turned, as is written.

<sup>172</sup>*Hezekiah turned his face to the wall.* Which wall did he lift his eyes to? Rabbi Joshua ben Levi said, he lifted his eyes to Rahab's wall, *for her house was on the wall of the fortification; she lived on the wall.* He said before Him: Master of all worlds, Rahab saved two souls for You, and see how many souls You saved for her. That is what is written<sup>174</sup>: *The youths, the spies, came and led out Rahab, and her father's house, and her mother, and her brothers, and all of hers, and all her families they brought out and left them outside of Israel's camp.* Rabbi Simeon ben Iohai stated, even if her family was 200 persons strong and they furthermore were related to other families, all of

whom were saved by her merit. My forefathers who brought to You all these proselytes so much more that You should spare my life.

Rebbi Samuel bar Nahman said, he lifted his eyes to the wall of the woman from Sunem, as it was said<sup>175</sup>: *Let us make a small upper storey on the wall and put there a bed, a table, a chair, and a lamp.* He said before Him: Master of all worlds, the woman from Sunem made one wall for Elisha and You revived her son. My forefathers who built for You all this glory, so much more that You should spare my life.

Rebbi Hinena bar Pappus said, he lifted his eyes to the wall of the Temple.<sup>176</sup> *When they put their lintel next to My lintel, their doorposts next to My doorpost, with the wall between Me and them.* They were important people; they could not go and pray in the Temple every time, so they prayed in their house and the Holy One, praise to Him, considers it as if they had prayed in the Temple. My forefathers who built for You all this glory, so much more that You should spare my life.

But the rabbis say, he lifted his eyes to the walls of his heart.<sup>177</sup> *My innards, my innards I make tremble, the walls of my heart are in uproar; my heart is beating inside me, I cannot be silent.* He said before Him: Master of the world, I checked all my 248 limbs<sup>178</sup> that You gave me and I did not find one of them I offended you with; so much more that You should spare my life.

It is written<sup>179</sup>: *The Word of the Eternal was to the prophet Isaiah as follows: Go and tell Hezekias, My people's leader . . . so says the Eternal, your ancestor David's God, I heard your prayer, I saw your tear; now I am adding fifteen years to your days.* He told Him, first I told him one way, now I have to tell him this? He told Him, he is a great personality and will not believe me. He answered him, he is a very meek person and will believe you. Not only that, but the rumor has not yet spread in the city: *Isaiah had not yet left the middle courtyard*; "city" is written<sup>180</sup>.

165 2K. 20:1, Is. 38:1.

166 Babli Berakhot 10a.

167 Manasse was born after Hezekias's illness; his mother's name is given without patronymic.

168 Is. 32:7.

169 A slightly different version is in Ta'anot 2:1 (65b l.3), Eccl. rabba 7(29), Tanhuma Noah 8. The Yerushalmi version is the basis of a central piece of the

Ashkenazic service of New Year's day (in the Eastern European version also of the Day of Atonement). The Babli version (*Roš Haššanah* 16b) is quite different.

170 *2Chr.* 7:14.

171 *Ps.* 17:15.

172 *Is.* 38:2.

173 *Jos.* 2:15.

174 *Jos.* 6:25.

175 *2K.* 4:10.

176 *Ez.* 43:8.

177 *Jer.* 4:19.

178 Mishnah *Ahilut* 1:8.

179 *2K.* 20:4-5.

180 *Courtyard* is *Qere*, *city* is *Ketib*. The rumor is that Isaiah told the king that he would die. The prophet does not have to fear that his credibility was impaired.

28c line 44) כַּד דָּקַם מִנְשָׁה הָיָה פְּרִי חֹרֵי יִשְׁעֵיהּ. בְּעֵי מִיקְטְלִינִיהּ וְהוּא עָרַק מִן קַדְמוּי. עָרַק לְאַרְזָא וּבִלְעֵי אַרְזָא. חֲסַר צִיצִיתָא דְגִילְתִּיהּ. אֲתָנוּ וְאַמְרִינוּ קַדְמוּי. אָמַר לוֹן. אֲזִלוּ וְנִסְרוּ אַרְזָא. וְנִסְרוּ לְאַרְזָא וְאִיתְחַמֵּי דְמָא נָגַד. וְלֹא-אֲבָה יִי לְסַלְחָ. מֵיכֹן שְׁאִין לוֹ חֶלֶק לְעֵתִיד לְבוֹא. וְהָא כְּתִיב מְלֶכֶד חֲטָאוֹת מִנְשָׁה בְּרִיחִיקְלֵהוּ מֶלֶךְ יְהוּדָה. נִימַר. עַד דְּלֹא יַחֲזוֹר בֵּיהּ. עַל כָּל-הַכְּעָסִים אֲשֶׁר הִכְעִיסוּ מִנְשָׁה. נִימַר. עַד שְׁלֹא עָשָׂה תְּשׁוּבָה. וְהָא כְּתִיב כִּי הוּא אֲמִין הִרְבָּה אֲשַׁמָּה: לֹא הוֹסִיף אֶלָּא חֵידוּשׁ. וְהַכְּתִיב וְגַם דָּם נָקִי שָׁפַךְ מִנְשָׁה הִרְבָּה מְאֹד עַד אֲשֶׁר-מִלְּאָ אֶת-יְרוּשָׁלַם פֶּה לֶפֶה. וְכִי אֶפְשָׁר לְבָשָׁר וְדָם לְמַלְאוֹת אֶת-יְרוּשָׁלַם דָּם נָקִי פֶה לֶפֶה. אֶלָּא שְׁהַרְגָּ אֶת יִשְׁעֵיהּ שְׁהִיָּה שְׁקוּל כְּמִנְשָׁה. דְּכְתִיב בֵּיהּ פֶּה אֶל-פֶּה אֶדְבָּר-בּוֹ.

When Manasse became king, he was wild<sup>181</sup> after Isaiah; he wanted to kill him, but he fled before him. He fled to a cedar tree, the cedar swallowed him, except to a *sisit* of his coat. They came and reported it before him. He said, go and cut down the cedar. They cut down the cedar and blood was seen flowing<sup>182</sup>. *But the Eternal did not want to pardon*<sup>183</sup>: from here that he has no part in the Future World. And is it not written<sup>184</sup>, *in addition to the sins of Manasse ben Hezekias, the king of Jehudah*. Let us say, before he changed his ways. *Because of all the rages by which Manasse enraged him*<sup>185</sup>. Let us say, before he repented. But is it not written<sup>186</sup>: *For he, Amon, increased in criminality*. He did not add, but he found new ways. And is there not written<sup>187</sup>: *Also innocent blood did Manasse spill, a great deal, until he filled Jerusalem from mouth to mouth?* How is it possible for flesh and blood to fill Jerusalem with innocent blood from mouth to mouth? But he slew Isaiah who was equal to Moses, about whom is written<sup>188</sup>: *Mouth to mouth I would speak to him*.

181 This word may be read either as Aramaized פָּרָא "wild" or as Latin *ferus* "wild" (E. G.).

182 The story is hinted at in the Babli 103b, *Yebamot* 49b.

183 2K. 24:4.

184 A misquote of *Jer.* 15:4.

185 2K. 23:26, an almost correct quote.

186 2*Chr.* 33:23.

187 2K. 21:16.

188 *Num.* 12:8.

(28c line 55) כְּתוּב וַיִּדְבֹּר יְיָ אֶל־מְנַשֶּׁה וְאֶל־עַמּוֹ וְלֹא הִקְשִׁיבוּ: וַיָּבֵא עֲלֵיהֶם אֶת־שָׂרֵי הַצָּבָא אֲשֶׁר לְמֶלֶךְ וַיִּלְכְּדוּ אֶת־מְנַשֶּׁה בַּחֲחִים. מִהוּ בַּחֲחִים. בְּכִירו־מְנִיקָיָא. אָמַר רַבִּי לִוִּי. מוֹלָא שְׁלַחְנוּשֶׁת עָשׂוּ לוֹ וְנָתְנוּ אוֹתוֹ בַּתּוֹכָהּ וְהָיוּ מְסִיקִין תַּחְתָּיו. כִּינּוּ שָׂרָא שְׁצָרְתוֹ צָרָה לֹא הָיִיחַ עֲבוּדָה זָרָה בַּעֲוֹלָם שְׁלֹא הִזְכִּירָהּ. כִּינּוּ שְׁלֹא הוֹאִיל לוֹ כָּלוּם אָמַר. זְכוּר אֲנִי שֶׁהָיָה אָבִי מִקְרָה אוֹתִי אֶת הַפְּסוּק הָזֶה בְּבֵית הַכְּנֶסֶת בְּצַר לָךְ וּמִצְאִיךְ כָּל הַדְּבָרִים הָאֵלֶּה בְּאַחֲרִית הַיָּמִים וְשִׁבְתָּ עַד־יֵי אֶלְהִיד וְשִׁמְעֶתָ בְּקוֹלוֹ: כִּי אֵל רַחוּם יְיָ אֱלֹהֶיךָ לֹא יִרְפֶּךָ וְלֹא יִשְׁחִיתֶךָ וְלֹא יִשְׁכַּח אֶת־בְּרִית אֲבוֹתֶיךָ אֲשֶׁר נִשְׁבַּע לָהֶם: הָרִי אֲנִי קוֹרָא אוֹתוֹ. אִם עוֹנָה אוֹתִי מוֹטָב וְאִם לֹא הָא הָא כָּל־אִפְיָא שְׁוִין. וְהָיוּ מִלְּאָכֵי הַשָּׂרֵת מִסְתַּמִּין אֶת הַחֲלוּנוֹת שְׁלֹא תַעֲלֶה תַפִּילְתּוֹ שְׁלַמְנָשָׁה לַפְּנֵי הַקְּדוֹשׁ בְּרוּךְ הוּא. וְהָיוּ מִלְּאָכֵי הַשָּׂרֵת אוֹמְרִים לַפְּנֵי הַקְּדוֹשׁ בְּרוּךְ הוּא. רְבוּנוּ שְׁלַעֲלוּס. אָדָם שֶׁעָבַד עֲבוּדָה זָרָה וְהָעָמִיד צָלַם בְּהִיכָל אֶתְּהָ מְקַבְּלוֹ בַּתְּשׁוּבָה. אָמַר לֵהוּן. אִם אֵינִי מְקַבְּלוֹ בַּתְּשׁוּבָה הָרִי אֲנִי נוֹעֵל אֶת הַדֶּלֶת בְּפָנֶי כָּל־בַּעֲלֵי תְשׁוּבָה. מִה עָשָׂה לוֹ הַקְּדוֹשׁ בְּרוּךְ הוּא. חֲתִיר לוֹ חֲתִירָה מִתַּחַת כֶּסֶּא הַכְּבוֹד שֶׁלוֹ וְשִׁמְעָה תַחֲנִיטָה. הִדָּא הִיא דְּכָתִיב וַיִּתְּפַלֵּל אֱלֹהֵי וַיַּעֲתֵר לוֹ וַיִּשְׁמַע תַּחֲנִיטָה וַיִּשְׁיבֶיהָ. אָמַר רַבִּי לֵעָזָר בִּירְבִּי שְׁמַעוֹן. בַּעֲרִיָּא צוֹחִין לַחֲתִירָתָה עֲתִירָתָה. וַיִּשְׁיבֶיהָ יְרוּשָׁלַם לְמַלְכוּתוֹ. בְּמָה הִשְׁיבּוּ. שְׁמוּאֵל בַּר בִּינָא בְּשֵׁם רַבִּי אֲחָא. בְּרוּחַ הַשִּׁיבּוּ. כְּמָה יֵת מַר מְשִׁיב הָרִיחַ. וַיִּנְדַע מְנַשֶּׁה כִּי יְיָ הוּא הָאֱלֹהִים: בְּאוֹתָהּ שָׁעָה אָמַר מְנַשֶּׁה. אֵית דִּין וְאֵית דִּין.

<sup>189</sup>It is written<sup>190</sup>: *The Eternal spoke to Manasse and to his people but they did not listen. He brought over them the generals of the king [ ]*<sup>191</sup>; *they caught Manasse in hōhīm*. What are *hōhīm*? Handcuffs<sup>192</sup>. Rabbi Levi said, they made a bronze mule<sup>193</sup> for him, put him inside, and started heating it from below. When he realized that he was in real trouble, he did not forget any strange worship but appealed to it. Since this did not help him any, he said, I remember that my father let me read the following verse in the synagogue<sup>194</sup>: *When you are in straits, and all these things will find you in the future, then return to the Eternal, your God, and listen to His voice. For the Eternal, your God, is a merciful power. He will not let you slacken, He will not destroy you, nor will He forget the covenant of your forefathers which He concluded with them.* I shall call to Him. If He hears me, it is good; otherwise all faces

are the same. The angels on duty closed all windows that Manasse's prayer should not ascend before the Holy One, praise to Him. The angels on duty said to the Holy One, praise to Him: Master of the Universe, would You receive in repentance a man who worshipped other powers and put up an idol in the Temple Hall? He told them, If I would not receive his repentance, I would close the door in front of all repenting sinners. What did the Holy One, praise to Him, do for him? He dug out a tunnel under His Seat of Glory and accepted his supplication. That is what is written<sup>195</sup>: *He prayed to Him, He had mercy on him, He accepted his supplication, and He returned him*. Rabbi Eleazar ben Rabbi Simeon said, in Arabia a tunnel is called *`atharta*<sup>196</sup>. *He returned him to Jerusalem, to his kingship*<sup>197</sup>. How did He return him? Samuel bar Bina in the name of Rabbi Aha: He returned him by the wind, as one says, "He returns wind."<sup>197</sup> At that moment, Manasse said, there is judgment and there is a judge<sup>198</sup>.

189 A parallel text is *Pesiqta dR. Cahana, Šuva* (ed. Buber p. 162a, Note 102). Similar texts are in *Deut. rabba* 2, *Ruth rabba* ad 2:14. A quote is in *Pirque R. Eliezer* 43.

190 *2Chr.* 33:10-11.

191 Both ms. and *editio princeps* lack "of the king of Assyria".

192 Literally "hand-handcuffs"; probably a hybrid from Greek *χείρ* "hand" and Latin *manicae*, *-arum* (Byzantine *μανίκιον*, Soph. 732) "handcuffs". The combined word is not documented in Greek or Latin literature (E.G.).

193 Interpretation of J. Levy, *Dictionary* vol. 3 p. 48a, confirmed by Targum. The story is inspired by what is told of Phalaris, tyrant of Agrigentum.

194 *Deut.* 4:30-31.

195 *2 Chr.* 33:13.

196 Probably *عائور* "a dangerous place".

The explanation, quoted in support of the story about the angels, is unnecessary since the word *ויעתר* also appears in *Gen.* 25:21.

197 From the daily prayer for rain in the rainy season. The identification of *נשב* and *שב* in a sermon is possible only if the duplication of consonants was no longer audible in speech.

198 Therefore Manasse died a believer; in the opinion of the author of *Chronicles*, he has part in the Future World. The Mishnah follows the opinion of the authors of *Kings* and *Jeremiah*.

וְכִי מָה עָשָׂה בְּלִעָם הַרְשָׁע. עַל יְדֵי שְׁנֵתוֹ עֲצָה לְבָלֵק בֶּן צַפּוֹר לְהַפִּיל אֶת יִשְׂרָאֵל  
בְּחָרֶב. אָמַר לוֹ. אֱלֹהֵי שְׂלֹאֻמָּה זֶה הוּא שׁוֹנֶה אֶת זְנוּתוֹ. אֶלָּא הָעֲמִידוֹ בְּנוֹתֵיכֶם בְּזִימָה וְאַתֶּם  
שׁוֹלְטִין בָּהֶן. אָמַר לֵיהּ. וּמִשְׁמַע לִי אִינוּן. אָמַר לֵיהּ. אֲקִים בְּנֵתְךָ קוֹמוּי וִינוּן חֲמִין וְשָׁמַעִין



לָךְ. הָדָא הוּא דְכְתִיב רָאשׁ אוֹמוֹת בֵּית-אֶבְרָם בְּמִדְיָן הוּא: מָה עָשׂוּ. בְּנוּ לָהּ קִינְקִלִין מִבֵּית הַיְשִׁימוֹן עַד הַר הַשְּׁלָל וְהוֹשִׁיבוּ בָּהֶן נָשִׁים מוֹכְרוֹת מִיַּיִן כִּסְדִּינִי. הוֹשִׁיבוּ אֶת הַזְקִינָה מִבְּחוּץ וְאֶת הַנְּעִרָה מִבְּפָנִים. וְהָיוּ יִשְׂרָאֵל אוֹכְלִין וְשׁוֹתִין. וְהָיָה אֶחָד מֵהֶן יוֹצֵא לְטִיֵּל בְּשׁוּק וְלִיקַח לוֹ חֶפֶץ מִן הַחֲנוּנִי. וְהָיְתָה הַזְקִינָה מוֹכֶרֶת לוֹ אֶת הַחֶפֶץ בְּשִׁוּיָּהּ וְהַנְּעִרָה אוֹמֶרֶת לוֹ. בֹּא וְטוֹל לָךְ בְּפָחוּת. כֹּן בָּיִם הָרָאשׁוֹן וְכֹן יוֹם הַשִּׁנִּי וְכֹן בָּיִם הַשְּׁלִישִׁי. וְהָיְתָה אוֹמֶרֶת לוֹ. מִיָּכֹן וְהִילָךְ אֶתָּה כְּבֹן בֵּית. הִיכָנֶס וּבֹר לָךְ. וְכִינֹן שֶׁהָיָה נִכְנֵס הָיָה שֵׁם צָרְצוֹר מְלֵא יַיִן מִן הַיַּיִן הָעֲמוּנִי שֶׁהוּא קֹשֶׁה וְהוּא מְפַתֶּה אֶת הַגּוֹף לָזְנוֹת. וְהָיָה רִיחוֹ מְפַעֵפֶע. וְאִדִּיּוֹ לֹא נֶאֱסָר (וַיֵּנֶס שְׁלֹגוֹם) יַיִן נֶסֶד עַל יִשְׂרָאֵל. וְהָיְתָה אוֹמֶרֶת לוֹ. רְצוֹנְךָ לְשִׁתּוֹת כּוֹס יַיִן. וְהוּא אוֹמֵר לָהּ. הֵינִי. וְהָיָה נוֹתֵנָת לוֹ וְהוּא שׁוֹתָה. וְכִינֹן שֶׁהוּא שׁוֹתָה הָיָה הַיַּיִן בּוֹעֵר בּוֹ כְּכִרְסָה שֶׁלְּחִכְנָה. וְהוּא אוֹמֵר לָהּ. הִישְׁמָעִי לִי. וְהָיָה אוֹמֶרֶת לוֹ. רְצוֹנְךָ שֶׁאֲשַׁמְעֶךָ לָךְ. וְהוּא אוֹמֵר. הֵינִי. מִיָּד הָיְתָה מוֹצִיָּאָה לוֹ טָפּוֹס שֶׁלְּפָעוֹר מִתּוֹךְ חִיקָה שֶׁלָּהּ וְהָיְתָה אוֹמֶרֶת לוֹ. הַשְׁתַּחֲוֶה לָּהּ וְאֲנִי נִשְׁמָעֶת לָךְ. וְהוּא אוֹמֵר לָהּ. וְכִי לַעֲבֹדָה זָרָה אֲנִי מִשְׁתַּחֲוֶה. וְהָיְתָה אוֹמֶרֶת לוֹ. אֵין אֶת מִשְׁתַּחֲוֶה אֶלָּא בְּמַגְלָה עֲצָמָךְ לוֹ. זֶה הָיָה שֶׁאֲמָרוּ חֲכָמִים. הַפּוֹעֵר עֲצָמוֹ לְבַעַל פְּעוֹר זֶה הָיָה עֲבֹדָתוֹ. וְהוֹרֵק אֶבֶן לְמַרְקוּלִים זֶה הָיָה עֲבֹדָתוֹ: וְהָיָה שֵׁם צָרְצוֹר מְלֵא יַיִן מִן הַיַּיִן הָעֲמוּנִי שֶׁהוּא קֹשֶׁה שֶׁהוּא מְפַתֶּה אֶת הַגּוֹף לָזְנוֹת וְהָיָה רִיחוֹ מְפַעֵפֶע. וְאִדִּיּוֹ לֹא נֶאֱסָר יַיִן נֶסֶד עַל יִשְׂרָאֵל. וְהָיְתָה אוֹמֶרֶת לוֹ. רְצוֹנְךָ לְשִׁתּוֹת כּוֹס יַיִן. וְהוּא אוֹמֵר הֵינִי. וְהָיָה נוֹתֵנָת לוֹ וְהוּא שׁוֹתָה. כִּינֹן שֶׁהוּא שׁוֹתָה הָיָה הַיַּיִן בּוֹעֵר בּוֹ כְּכִרְסָה שֶׁלְּעִכְנָה. וְהוּא אוֹמֵר לָהּ. הִישְׁמָעִי לִי. וְהָיְתָה אוֹמֶרֶת לוֹ. הִינֹר מִתּוֹרֶת מִשָּׁה וְאֲנִי נִשְׁמָעֶת לָךְ. הָדָא הוּא דְכְתִיב הִכְמָה בָּאוּ בְּעַל-פְּעוֹר וַיִּנְזְרוּ לְבוֹשֶׁת וַיְהִי שִׁיקּוּצִים כְּאֶהֱבָם: עַד שֶׁנַּעֲשׂוּ שִׁיקּוּצִים לְאֲבֵיהֶם שֶׁבְּשָׂמִים.

<sup>199</sup>But what did the evil Bileam do? Because he counseled Balaq ben Sippor to fell Israel by the sword. He told him, the God of this people hates whoring. If you put up your daughters for whoring, you may rule over them. He answered, but will they listen to me? He told him, put your own daughter up, they will see and listen to you. That is what is written<sup>200</sup>: *he is the head of related tribes in Midian*. What did they do? They built dining rooms<sup>201</sup> from Bet Hayyešimon<sup>202</sup> to the Snow Mountain<sup>203</sup> and installed there women selling pastries. They put an old woman outside and a young girl inside. Israel were eating and drinking. If one of them went to stroll around, to buy himself something from the grocer, the old woman would offer to sell to him for the going price, but the girl told him, come and take it for less. This happened that first day, the second day, the third day. After that, she told him, from now on you are like a member of the family; enter and select for yourself. When he entered, there was a pitcher full of wine, of the strong Ammonite

wine which seduces the body to whoring. Its smell was seething and (Gentile wine) [libation wine] was not yet forbidden for Israel<sup>204</sup>. She told him, maybe you want to drink a cup of wine? He answered her, yes. She gave to him and he drank. When he drank, the wine was burning in him like a viper's poison<sup>205</sup>; he told her, consent to me. She told him, do you want me to consent to you? He answered, yes. Immediately she took out a shape of Pe'or from her bosom and told him, bow down before this one and I shall consent to you. But he answered her, should I bow down before foreign worship? She told him, you do not bow down, you only strip for it. This is what the Sages said<sup>206</sup>, "one who defecates in front of *Baal Pe'or* follows its worship. One who throws a stone at a statue of Mercury follows its worship."

<sup>207</sup>There was a pitcher full of wine, of the strong Ammonite wine which seduces the body to whoring. Its smell was seething and libation wine was not yet forbidden for Israel. She told him, maybe you want to drink a cup of wine? He answered her, yes. She gave to him and he drank. When he drank, the wine was burning in him like a viper's poison<sup>205</sup>; he told her, consent to me. She told him, do you want me to consent to you? He answered, yes. She told him, make a vow to deny the teachings of Moses and I shall consent to you. That is what is written<sup>208</sup>: *They came to Baal-Pe'or, made vows for the shame, and turned into abominations like their love life.*

199 *Sifry Num.* 131-132 (*Yalqut Hosea* 526). Slightly different formulations in *Tanhuma Balaq* 18, *Num. rabba* 20; Babli 106a. Referred to in *Pirque R. Eliezer* 47.

200 *Num.* 25:15.

201 Latin *coenaculum* "upper storey room; dining room; garret". Secondary Babli קלעים "partition wall, partition gobelin".

202 In the biblical text בית הישימות.

203 The Hermon.

204 The text in parenthesis is the scribe's original text, the one in brackets his correction. Formally, the original text is the only correct one. Wine used in idolatrous

libations is forbidden for all usufruct as תרומה, *Deut.* 13:18. The prohibition of the consumption of other Gentile wine is attributed to Daniel (*Dan.* 1:8); it is not Mosaic. The corrected text and its parallel sequel adopt popular language which calls יין נסוד what correctly should be called סתם יין "their unspecified wine".

205 Read כריסה.

206 Mishnah 7:12 (Notes 238,239).

207 Duplication of previous text.

208 *Hos.* 9:10.

31) (28d line 28d) אמר רבי לעזר. מה המסמר הזה אי אפשר לו לפרוש מן הדלת בלא עץ כך אי אפשר לפרוש מן הפעור בלא נפשות. מעשה בסובתא מאולם שהשכיר חמורו לגויה אחת להשתחוות לפעור. כיון שהגיעו לביתו שלפעור אמרה לו. המתן לי כאן עד שאיכנס ואשתחוה לפעור. כיון שיצאת אמר לה. המתני לי כאן עד שאיכנס ואעשה כמות שעשית. מה עשה. כנס ועשה את צרכי וקינח עצמו בחוסמו שלפעור. והי הכל מקלסין לפניו ואומרים. לא עשה אדם כשם שעשה זה. מעשה במנחם איש גופתא אריח שהיה מגלגל בחבית ובא אליו שרו שלפעור בלילה. מה עשה. נטל את השפוד ועמד עליו וברח ממנו. בא אליו בלילה השני אמר לו. מנחם. מה אתה מקללני. נתיירא ממנו ואמר לו. עוד אני מקללך. מעשה בשלטון אחד שבא ממדינת הים להשתחוות לפעור. אמר להן. הביאו לי פר אחד איל אחד כבש אחד להשתחוות לפעור. אמרו לו. אין אתה זקוק לכל-אילן. אין את אלא כמגלה עצמו לו. מה עשה. גירר בהם סניגורים והיו מכין אותן ומפציען את מוחיהן בגזירין ואומרים להן. אי לכם ולטעותכם.

Rebbi Eleazar said, just as a nail cannot be taken out of a door without [loss of] wood, so it is impossible to get rid of *Pe`or* without [loss of] life.

It happened that Sabbatai from Ulam leased his donkey to a Gentile woman to bow down before *Pe`or*. When they arrived at *Pe`or`'s* temple, she told him, wait here for me while I am entering and bowing down before *Pe`or*. After she came out, he told her, wait here for me while I am entering and do what you did. What did he do? He entered, relieved himself, and cleansed himself on *Pe`or`'s* nose. All were praising him and said, nobody yet had done what this man did<sup>209</sup>.

It happened that Menahem from Guvta-Ariah was occupied with amphoras when the spirit of *Pe`or* came to him in the night. What did he do? He took a spit, stood up against him; he fled. He came to him in the second night and asked him, Menahem, why do you curse me? He was afraid of him and promised him, I shall not curse you in the future<sup>210</sup>.

It happened that a ruler came from overseas to bow down before *Pe`or*. He told them, bring one bull, one ram, and one sheep, to bow down before *Pe`or*. They told him, you have no need for all of these; you only have to strip yourself for him. What did he do? He provoked סניגורים<sup>211</sup> against them; they were hitting them and smashing their brains with bats, saying to them: woe to you and your error.

209 He committed a deadly sin of idol worship while intending to debase the idol.  
 210 The story is fragmentary. It may be influenced by Christian beliefs that the old gods were turned into demons.

211 Elsewhere, סיגור is συνηγορος "advocate, intercessor". In *Sifry* סנגודים, in *Yalqut* סנגלים. According to the context, pretorians must be intended.

48) 28d line (ה'קע וְהִנֵּקֶה אֹתָם לִי נֶגֶד הַשָּׁמַשׁ. אָמַר לוֹ. הוֹשֵׁב אֶת רִאשֵׁיהֶם דִּינִינִים עֲלֵיהֶם וַיְהִי הוֹרְגִים בַּחֲטָאִים נֶגֶד הַשָּׁמַשׁ. הָדָא הֵיא דְכְּתִיב וַיֹּאמֶר מֹשֶׁה אֶל-שׁוֹפְטֵי יִשְׂרָאֵל הֲרֹגוּ אִישׁ אֶנְשֵׁי הַנִּצְמָדִים לְבַעַל פְּעֹר: כִּמָּה הֵם שׁוֹפְטֵי יִשְׂרָאֵל. שֶׁבַע רִיבּוֹא וְשִׁמוּנֵת אֲלָפִים וְשֵׁשׁ מֵאוֹת. שְׁרֵי אֲלָפִים שֵׁשׁ מֵאוֹת. שְׁרֵי מֵאוֹת שֵׁשֶׁת אֲלָפִים. שְׁרֵי חֲמִשִּׁים שָׁנִים עֶשֶׂר אֲלָף. שְׁרֵי עֶשְׂרֹת שָׁשִׁים אֲלָף. נִמְצְאוּ שׁוֹפְטֵי יִשְׂרָאֵל שֶׁבַע רִיבּוֹא וְשִׁמוּנֵת אֲלָפִים וְשֵׁשׁ מֵאוֹת. אָמַר לוֹ. כָּל-יָחִיד מֵיִנְכוֹן וְקִטּוֹל תִּרְיִי. נִמְצְאוּ הוֹרְגִין חֲמֵשׁ עֶשְׂרֵה רִיבּוֹא וְשִׁבְעַת אֲלָפִים וּמֵאוֹתָם. וְהִנֵּה אִישׁ מִבְּנֵי יִשְׂרָאֵל בָּא וַיִּקְרַב אֶל-אַחִיו אֶת-הַמִּדְיָאֲנִית לְעֵינֵי מֹשֶׁה. מָהוּ לְעֵינֵי מֹשֶׁה. כְּאִינֶשׁ דָּמַר. הָא גו עֵינֵי דְמֹשֶׁה. אָמַר לוֹ. אֵין צִיפּוּרָה מִדְיָאֲנִית וְאֵין טְלוּפִיָּה סְדוּקוֹת. זֶו טְהוּרָה וְזֶו טְמִיאָה. וְהִנֵּה שָׁם פִּינְחָס. אָמַר. אֵין כָּאֵן אָדָם שֶׁיִּהְיֶה גִיטָה עַל יָדוֹ. אֵיכּוֹן הֵן הָאֲרִיּוֹת. גִּיר אֲרִיָּה וְהִיזְדָּח. יָדָן גִּיר אֲרִיָּה. בִּנְיָמִין וְאַבְיָטָר. כִּיֹּן שְׂרָאָה פִּינְחָס שָׂאִין אָדָם מִיִּשְׂרָאֵל עוֹשֶׂה כְּלוּם. מִזֵּד עֲמֹד פִּינְחָס מִתּוֹךְ סִנְהֶדְרִין שְׁלוֹ וְלִקְחָה אֶת הָרוֹמַח בְּיָדוֹ וַיִּתֵּן אֶת הַבְּרֹזֶל תַּחַת פְּסִיקִיָּא שְׁלוֹ. הַתַּחֲלִיל מִסִּתְמָךְ עַל עֵץ שְׁלָה עַד שֶׁהִגִּיעַ לַפֶּתַח. כִּיֹּן שֶׁהִגִּיעַ לַפֶּתַח אָמְרוּ לוֹ. מֵאִיִּין וְלֵאמֹר פִּינְחָס. אָמַר לָהֶן. אֵין אֲתָם מוֹדִין לִי שֶׁשִּׁבְטוֹ שְׁלָלִי אֶצֶל שְׁבִטוֹ שֶׁלְשִׁמְעוֹן בְּכָל-מְקוֹם. אָמְרוּ. הִנֵּיחוּ לוֹ שְׁמָא הִתִּירוּ פְּרוּשִׁים אֶת הַדָּבָר. כִּיֹּן שֶׁנִּכְנַס עֲשֶׂה לוֹ הַקְדוּשׁ בְּרוּךְ הוּא שֶׁשֶׂה נִיסִים. הֵנִס הָרָאשׁוֹן. וַיִּרְכֹּן לִפְרוֹשׁ זֶה מִזָּה וְהַדְּבִיקוֹן הַמִּלְאָךְ זֶה לָזֶה. הֵנִס הַשֵּׁנִי. כִּיֹּן אֶת הָרוֹמַח כְּנֶגֶד הַקִּיבָּה שְׁלָה כְּדִי שֶׁתִּהְיֶה זָכְרוֹתוֹ נִרְאִית מִתּוֹךְ קִיבָּה שְׁלָה מִפְּנֵי הַנוֹקְרֵינִי שֶׁלֹּא יְהוּ אוֹמְרִים. אֵף הוּא בֵּין כְּתִיפֵי נִכְנָס עֲמָהוּ וְעֲשֶׂה אֶת צִרְכּוֹ. הֵנִס הַשְּׁלִישִׁי. סֵתֵם הַמִּלְאָךְ אֶת פִּיהוּ וְלֹא הָיוּ יְכוּלִין לְצוּחַ. הֵנִס הָרְבִיעִי. לֹא נִשְׁמָטוּ מִן הַזֵּיִן אֶלָּא עֲמָדוֹ בְּמִקּוֹמָן. הֵנִס הַחֲמִישִׁי. הִגְבִּיעַ לוֹ הַמִּלְאָךְ אֶת הַשְּׁקוֹף כְּדִי שֶׁיִּצְאוּ שְׁנֵיהֶן בֵּין כְּתִיפֵי. הֵנִס הַשִּׁישִׁי. כִּיֹּן שֶׁיִּצְא אֶת הַנֶּגֶף שֶׁהוּא מְחַבֵּל בָּעַם מָה עֲשֶׂה. הַשְּׁלִיכוּ לְאַרְץ וְעֲמֹד וְנִתְפַּלֵּל. הָדָא הֵיא דְכְּתִיב וַיַּעֲמֹד פִּינְחָס וַיַּפְלֵל וַיִּתְעַצֵּר הַמַּגֵּפָה.

It is written<sup>212</sup> *The rage of the Eternal was kindled against Israel. The Eternal said to Moses: Take all the heads of the people and hang them for the Eternal before the sun.* What he told him was, install their heads as judges over them and let them execute the sinners<sup>213</sup> at daytime. That is what is written: *Moses told the judges of Israel: each one should kill his men who cling to the Ba'al Pe'or*<sup>214</sup>. How many were the judges of Israel<sup>215</sup>? 78'600. Heads of thousands, 600. Heads of hundreds, 6'000. Heads of fifties, 12'000.

heads of tens, 60'000. It turns out that the judges of Israel were 78'600. He told them, each of you should execute two. It turns out that the number of the killed was 157'200.

*Behold, a man from the Children of Israel came and introduced to his brothers the Midianite woman, to the eyes of Moses*<sup>216</sup>. What means to the eyes of Moses<sup>217</sup>? Like a man who says, that is in your eyes, Moses. He told him, is not Zippora a Midianite, and are not her hooves split<sup>218</sup>? This one is pure, that one is impure? There, Phineas was present. He said, is there nobody who would kill him or be killed? Where are the lions? *A lion whelp is Jehudah*<sup>219</sup>; *Dan is a lion whelp*<sup>220</sup>; *Benjamin a rapacious wolf*<sup>221</sup>. When Phineas saw that nobody of Israel did anything, he immediately rose from his court, took the spear in his hand, and put its iron under his belt<sup>222</sup>. He was leaning on its wood until he arrived at his door. When he arrived at his<sup>223</sup> door, they<sup>224</sup> asked him, where to, Phineas? He said to them, do you not agree that everywhere the tribe of Levi is with the tribe of Simeon? They said, let him, maybe the Pharisees permitted the matter<sup>225</sup>. When he entered, the Holy One, praise to Him, performed six wonders for him<sup>226</sup>. The first miracle: usually they would separate, but the angel glued the one to the other<sup>227</sup>. The second miracle: He directed the spear into her belly to that his penis should be seen inside her belly because of the fault-finders, lest they say that he muscled himself in with them and satisfied himself<sup>228</sup>. The third miracle: the angel closed their mouths, so they could not cry. The fourth miracle: they did not slip from the weapon but stayed in place. The fifth miracle: The angel lifted the lintel so that both of them were carried out between his shoulders. The sixth miracle: When the plague started to destroy the people, what did he do? He threw them on the ground and prayed. That is what is written: *Phineas stood and prayed; the plague was arrested*<sup>229</sup>.

212 Num. 25:3-4.

213 Not the heads; cf. the Targumim.

214 Num. 25:5.

215 Halakhah 1:7, Note 356.

216 Num. 25:6.

217 The text does not say *before his eyes* but *in his eyes*.

218 The sign of a kosher animal.

219 Gen. 49:9.

220 Deut. 33:22.

221 Gen. 49:27.

222 Latin *fascia* "band, girdle".

223 Zimri ben Salu's.

224 The tribe of Simon, protecting their

head.

225 Echoing a popular opinion that the “oral law” can be made to adapt to all circumstances, moral or immoral.

226 Babli 82b, in the name of R. Johanan.

227 If they were not killed in the act, the

killing would have been murder.

228 In the Babli: Thus Phineas had direct proof in court that the killing was justified.

Phineas’s act established a rule of law which could never be used again.

229 *Ps.* 106:30.

29a line 2) כְּשֶׁבָּאוּ יִשְׂרָאֵל לְנִקּוּם נִקְמַת מִדִּין מִצָּאוֹ שֵׁם בִּלְעָם בֶּן בְּעוֹר. וְכִי מָה בָּא לַעֲשׂוֹת. בָּא לִיטּוֹל שָׂכָר עֲשָׂרִים וָאַרְבָּעָה אֲלֵף שְׁמֹתָיו מִיִּשְׂרָאֵל עַל יָדוֹ בְּשִׂיטִים. אָמַר לִיה פִּינְחָס. לֹא דִבְרִינִי עֲבַדְתָּ וְלֹא דִבַּלְקָ עֲבַדְתָּ. לֹא דִבְרִינִי עֲבַדְתָּ. דָּמַר לָהּ. לֹא תִיזִיל עִם שְׁלוּחֵי בִלְק וְאַזְלוּתָ. וְלֹא דִבַּלְקָ עֲבַדְתָּ. דָּאֻמַּר לָהּ. אִיזִיל לִמִּיט יִשְׂרָאֵל וּבִרְכַּתְנֹן. אִף אֲנִי אֵינִי מְסַפֵּחָּ שְׂכָרָהּ. הִדָּא הֵיא דְכְּתִיב וְאַתְּ בִּלְעָם בֶּן-בְּעוֹר הַקּוֹסֵם הֲרָגוּ בְּנֵי-יִשְׂרָאֵל עַל חֲלָלֵיהֶם. מָהוּ עַל חֲלָלֵיהֶם. שְׁהִיָּה שְׂקוּל כְּגֵד כָּל-חֲלָלֵיהֶם. דָּבָר אַחֵר. עַל חֲלָלֵיהֶם. מָה חֲלָלֵיהֶם אֵין בְּהֹן מִמָּשׁ אִף הוּא אֵין בּוֹ מִמָּשׁ. דָּבָר אַחֵר. עַל חֲלָלֵיהֶם. שְׁהִיָּה צָר כְּגֵד כָּל-חֲלָלֵיהֶם. וְהִנֵּה פִינְחָס מְרָאָה לוֹ אֶת הַצִּיץ וְהוּא שׁוֹקֵעַ וְיִוְרֵד. דָּבָר אַחֵר. עַל חֲלָלֵיהֶם. אֶלָּא מְלִמֵּד שְׁנֵתָנוּ לוֹ יִשְׂרָאֵל שְׂכָרוֹ מוֹשְׁלָם וְלֹא קִיפְחוּהוּ.

When Israel came to exact vengeance from Midian, they found there Bileam ben Beor. What did he do there? He came to collect his wages for the 24'000 of Israel who died at Shittim. Phineas told him, you followed neither your Creator nor Balaq. You did not follow your Creator, Who told you, do not go with Balaq's emissaries, but you went. You did not follow Balaq who told you to come and curse Israel, but you blessed them. I also will not hold back your wages. That is what is written: *The Children of Israel slew Bileam ben Beor the sorcerer on top of their slain*<sup>230</sup>. What means *on their slain*? That he was as important as all their slain. Another explanation, *on their slain*. Just as their slain were irrelevant, so he was irrelevant. Another explanation, *on their slain*. He was flying over their corpses, but Phineas showed him the [High Priest's] diadem and he fell down. Another explanation, *on their slain*. This teaches that Israel paid him his wages in full and did not hold back.

230 *Jos.* 13:22. The masoretic text, as represented by the Aleppo and Leningrad codices, reads אל-חלליהן, not על- One finds על-חלליהן in *Num.* 31:8, not referring to

Bileam but to the five tribal heads of Midian which in *Num.* are titled “kings” but in *Jos.* “princes of Sihon”. *Jos.* describes the situation before the arrival of the Children of

Israel, *Num.* the actual situation after the fall of Sihon. One may read the following explanations as a polemic against opinions like that of M. Noth (*Das Buch Josua*,

*Tübingen* 1938, p. 50) that אל-חלחיו is a gloss, taken from *Num.* 31:8 and inserted in the wrong place.

(29a line 14) דואג אדם גדול בתורה היה. באו ישראל ושאלו את דוד. לחם הפנים מהו שידחה את השבת. אמר להם. סידורו דוחה את השבת לא לישנו ולא עריכתו דוחין את השבת. והנה שם דואג ואמר. מי הוא זה שבא להורות לפני. אמרו לו דוד בן ישי הוא. מיד הלך ונתן עצה לשאול מלך ישראל להמית את נוב עיר הכהנים. הלא היא דכתיב ויאמר המלך לרצים הניצבים עליו סובו והמיתו | כהני יי כי גסידם עסדוד וגו' עד ולא גלו את-אזניו. מי היו. אמר רבי שמואל בר רב יצחק. אבנר ועמשא היו. אמרו לו. כלום אית לך עליון אלא הדין זנרה והדין כלינרין. הא טריפין לך. ולא-אלו עבדי המלך לשלוח את-גדס בכהני יי. ויאמר המלך לדויליג. אמר רבי יהודה בר פזי. לדויליג כתיב. אמרו לו. מתפשטה כדג. אתה עברתה רבתה. טוב אתה ופגע בכהני יי. וישב דואג האדומי ויפגע בכהנים וגו'. לא כן תני רבי חייה. אין ממנין שני כהנים גדולים כאחת. אלא מלמד שהיו כולם ראויין להיות כהנים גדולים. כיצד נתרחק. רבי חנינה ורבי יהושע בן לוי. חד אמר. אש יצאה מבית קודש הקדשים וליהטה סביבותיו. ותרנה אמר. תלמידים וותיקים נדונוגו לו והיו למידיס והוא שכת. לקיים מה שנאמר תיל בלע ויקאצו מבטנו וירשינו אל:

Doëg was a man great in Torah. Israel came and asked David, does the showbread supersede the Sabbath<sup>231</sup>? He told them, its arrangement supersedes the Sabbath, but neither its kneading nor its forming supersedes the Sabbath. Doëg was there and said, who is the one who comes to instruct in my presence<sup>232</sup>? They told him, it is David ben Jesse. He went immediately and counseled Saul, the king of Israel, to kill the priests of Nob, the city of priests. This is what is written<sup>233</sup>: *The king said to the runners who stood by him, surround and kill the priests of the Eternal for they also are involved with David, etc., up to they did not inform me.* Who were they? Rabbi Samuel bat Rav Isaac said, they were Abner and Amasa. They told him, you have us indebted to you only for this belt<sup>234</sup> and this כלינרין<sup>235</sup>. Here they are torn for you. <sup>233</sup>*The king's servants did not want to kill the priests of the Eternal. The king said to Doyeg.* Rabbi Jehudah bar Pazi said, it is written *to Doyeg*. They told him, you are caught like a fish; you committed a great sin<sup>236</sup>. <sup>237</sup>*Turn you and smite the priests of the Eternal. Doëg the Edomite turned and smote the priests, etc.* But did not Rabbi Hiyya state,

“one does not appoint two High Priests together”? But this teaches that all of them were qualified for the High Priesthood. How was he removed<sup>238</sup>? Rabbi Hanina and Rabbi Joshua ben Levi: One said, fire came from the Holiest of Holies<sup>239</sup> and burned around him. But the other said, competent students came to him, they were learning but he was forgetting<sup>240</sup>, to confirm what is written<sup>241</sup>: *The property swallowed by him he throws up; God removes it from his belly.*

231 The only place where Doëg is mentioned is *IS.* 21-22. Since it is stated in 21:7 that David was given showbread still hot when removed from the Tent of Meeting, it must have been on the Sabbath (*Lev.* 24:8). Since the High Priest earlier had indicated misgivings about giving him holy bread, he must have convinced the High Priest by learned arguments that what he asked for was permitted.

232 It is implied that Doëg claimed status as the generations's teacher. That would make asking anybody else for religious instruction in his presence a deadly sin [*Gittin* 1:2 (Note 94), *Ševi'it* 6:1 (Notes 23-30).]

233 *IS.* 22:17.

234 Greek ζωνάριον, τό “belt”.

235 According to *Arukh*, one should read כְּלִינִיךְ χαλινάριον “bridle”. Levy prefers to read כְּלִינִידִין χαλινάριον “upper garment,

blanket.” This fits better into the context. They tell the king that they do not need his salary.

236 In Chapter 21, he is called דוּאָג, in Chapter 22 mostly דוּי. This must be explained; the second form of the name is derived from דָּג “fish”. The episode is an illustration of the maxim that calumny (לְשׁוֹן הָרַע) is a deadly sin.

237 *IS.* 22:18. It is stated that Doeg slew 85 men wearing the *ephod*, a vestment by pentateuchal rules appropriate only for the High Priest.

238 What visible sign was given that he had no part in the Future World.

239 *IS.* 21 makes it clear that there was a Holy Tent at Nob, even though the Ark was still at Qiryat Yearim.

240 Babli 106b.

241 *Job.* 20:15.

אֲחִיתוֹפֶל אָדָם גִּבּוֹר בַּתּוֹרָה הָיָה. כְּתוּב וַיּוֹסֶף עוֹד דָּוִד אֶת־כָּל־בְּחִיר בְּיִשְׂרָאֵל (29a line 31) שְׁלֹשִׁים אָלֶף: רַבִּי בְּרָכְיָה בֶּשֶׁם רַבִּי אֲבָא בַר כְּהֵנָּה. תִּשְׁעִים אָלֶף זָקִינִים מִיָּנָה דָּוִד בְּיוֹם אֶחָד וְלֹא מִיָּנָה אֲחִיתוֹפֶל עִמָּהּ. הֵדָּא הֵיא דְכְּתִיב וַיּוֹסֶף עוֹד דָּוִד אֶת־כָּל־בְּחִיר בְּיִשְׂרָאֵל שְׁלֹשִׁים אָלֶף: וַיּוֹסֶף תַּלְתִּין. עוֹד תַּלְתִּין. וּפְשׁוּטֵי דְקָרְיָה תַּלְתִּין. הָרִי תִשְׁעִין. אֶת מוֹצָא בִּשְׁעָה שְׁבָא דָּוִד לְשֹׂאת אֶת אֲרוֹן בְּרִית יי לֹא נִשְׁאָר כְּתוּרָה. וַיִּרְכְּבוּ אֶת־אֲרוֹן בְּרִית הָאֱלֹהִים עַל עֲגֹלָה חֲדָשָׁה וְגו'. וְהוּא אֲרוֹנָא טַעִין כְּהֵנִיָּא לְרֹמָא וִטְרִין לֹן לְאַרְעָא. טַעִין כְּהֵנִיָּא לְרֹמָא וִטְרִין לֹן לְאַרְעָא. שְׁלַח דָּוִד וְאִיִּיתִי לְאַחִיתוֹפֶל. אָמַר לֵיה. לֵית אֶת אָמַר לִי מַה לְדִין אֲרוֹנָה דִּי טַעִין



כְּהִנִּיָּא לְרוּמָא וּטְרִיף לֹון לֹאֲרַעָא. טַעֲוִין כְּהִנִּיָּא לְרוּמָא וּטְרִיף לֹון לֹאֲרַעָא. אָמַר לִיה. שְׁלַח שְׂאֵל לְאֵילִין חֲכִימִיָּא דְּמִנִּיתָא. אָמַר דָּוִד. מָאן דִּידַע לְמִקְמַתָּא וְלָא מִיִּקְמָהּ יְהֵא סוֹפִיָּה מִתְחַנְקָא. אָמַר דְּבַר קוּמוּי וְהוּא קָאִים. הָדָא הֵיא דְכְּתִיב וַיְהִי כִּי צִצְדוּי נִשְׁאִי אֶרְוֹן־יִי שִׁשָּׁה צַעֲדִים וַיִּזְבַּח שׁוֹר וּמְרִיא: רַבִּי חֲנִינָה וְרַבִּי מְנָא. חַד אָמַר. עַל כָּל־צַעֲדָהּ וַצִּעֲדָהּ שׁוֹר וּמְרִיא וּבִסּוּף שְׁבַע פָּרִים וְשְׁבַע אֵילִים. וְחֲרָנָה אָמַר. עַל כָּל־צַעֲדָהּ וַצִּעֲדָהּ שְׁבַע פָּרִים וְשְׁבַע אֵילִים וּבִסּוּף שׁוֹר וּמְרִיא. אָמַר הַקְדוּשׁ בְּרוּךְ הוּא לְאַחִיתוֹפֶל. מִיָּלָא דְּמִיִּנְקִיָּא אָמְרִין בְּכִישְׁתָּא בְּכָל־יּוֹם לֹא אָמַרְתָּ לִיה. וְלִבְנֵי קֹהֵת לֹא נָתַן כִּי־עֲבֹדֹת הַקֹּדֶשׁ עֲלֵהֶם בְּכַתֵּף יִשְׂאֹו: וְדָא אָמַרְתָּ לִיה. וְכֹן אֵת מוֹצֵא בְּשַׁעָה שְׁבָא דָּוִד לְחַפּוֹר תִּימְלוּסִים שְׁלֵבִית הַמִּקְדָּשׁ חִפּוֹר חֲמִשׁ עֶשֶׂר מֵאוּנוֹן דְּאָמִין וְלֹא אֲשַׁכַּח תְּהוֹמָה וּבִסּוּפָא אֲשַׁכַּח חַד עֲצִיץ וּבַעַז מִירְמִיתִיָּה. אָמַר לִיה. לִית אֵת יָכִיל. אָמַר לִיה. לָמוּה. אָמַר לִיה. דָּנָא הָכָא כְּבִישׁ עַל תְּהוֹמָה. אָמַר לִיה. וּמִן אִימֹת אֵת הָכָא. אָמַר לִיה. מִן שַׁעֲתָא דְּשַׁמְעַ רַחֲמֵנָא קְלִיָּה בְּסִינֵי אֲנָכִי יִי אֶלְהִיד רַעֲדַת אֲרַעָא וְשׁוֹקַעַת וְאֵנָּה יְהִיב הָכָא כְּבִישׁ עַל תְּהוֹמָא. אֵף עַל גִּב כֹּן לֹא שְׁמַע לִיה. כִּיֹּון דִּירְמִיָּה סְלִיק תְּהוֹמָה וּבַעַז מְטַפָּא עֲלֵמָא. וְהוּא אֲחִיתוֹפֶל קָאִים תַּמָּן. אָמַר. כְּדוֹן דָּוִד מִתְחַנֵּק וְאֵנָּה מְלִיד. אָמַר דָּוִד. מָאן דִּחֲסֵם דִּידַע מִקְיַמְתִּיָּה וְלֹא מְקִים לִיה יְהֵא סוֹפִיָּה מִתְחַנְקָא. אָמַר מַה דְּאָמַר וְאוֹקְמִיָּה. הִתְחִיל דָּוִד אוֹמֵר שִׁירָה. שִׁיר הַמַּעֲלוֹת. שִׁיר לְמִאָּה עוֹלוֹת. עַל כָּל־מִאָּה אִמָּה הָיָה אוֹמֵר שִׁירָה. אֵף עַל גִּב כֹּן הָיָה סוֹפִיָּה מִתְחַנְקָה. אָמַר רַבִּי יוֹסִי. הָדָא הֵיא דְּמִתְלָא אָמְרָה. צְרִיד בַּר נִשׁ חֲשִׁישׁ עַל לוֹטִיָּה דְּרַבָּה אֶפִּילוּ עַל מַגֵּן. רַבִּי יִרְמְיָה בְּשֵׁם רַבִּי שְׁמוּאֵל בַּר יִצְחָק. מְגִילָה שְׁמִסֵּר שְׁמוּאֵל לְדָוִד אָמְרָה אֲחִיתוֹפֶל בְּרוּחַ הַקְדוּשׁ. וְמַה הָיָה אֲחִיתוֹפֶל עֹבִיד. כִּד הָיָה בַּר נִשׁ אֲזַל מִמֶּלֶךְ בֵּיה הָיָה אָמַר לִיה. אֲזַיל עֹבִיד כֹּן וְהָכֹן. וְאִין לִית אֵת מְהִימָן לִי אֲזַל וְשְׂאִיל בְּאוֹרִים וְתוֹמִים. וְהָיָה אֲזַל שְׂאֵל וּמִשְׁכַּח לִיה כֹּן. הָדָא הֵיא דְכְּתִיב וַעֲצַת אֲחִיתוֹפֶל אֲשֶׁר יַעַץ בְּיָמִים הָהֵם כָּאֲשֶׁר יִשְׂאֵל וְגו' אִישׁ קָרִי וְלֹא כְּתִיב. לֹא יִכְלוּ הַכְּתוּבִים לְקוּרֹתוֹ אִישׁ.

Ahitophel was a man great in Torah. It is written<sup>242</sup>: *David again assembled all young men in Israel, 30'000*. Rabbi Berekhiah in the name of Rabbi Abba bar Cahana<sup>243</sup>: Ninety thousand Elders did David ordain on one day, but he did not ordain Ahitophel with them<sup>244</sup>. That is what is written: *David again assembled all young men in Israel, 30'000*. He added, 30'000. Again, 30'000, and the simple sense of the verse, 30'000; together 90'000. You find that at the moment when David came to carry the Ark of the Eternal's Covenant, he did not carry it following the Torah<sup>248</sup>. *They moved the Ark of God's Covenant on a new car*<sup>245</sup>, etc. The Ark lifted the Cohanim up and tore them down to the ground; lifted the Cohanim up and tore them down to the ground. David sent and brought Ahitophel. He told him, can you not tell me why the Ark lifted the Cohanim up and tore them down to the ground, lifted the Cohanim up and tore them down to the ground? He answered, send

and ask all the wise men whom you ordained. David said, any man who knows how to put this in order but does not put it in order should end up strangled. He said something in front of it and it was steadied. That is what is written<sup>246</sup>: *It was when the carriers of the Eternal's Ark took six steps that he sacrificed a bull and a fattened calf*. Rabbi Hanina and Rabbi Mana, one said, for every step a bull and a fattened calf and at the end seven oxen and seven rams; but the other said, for every step seven oxen and seven rams and at the end a bull and a fattened calf<sup>247</sup>. The Holy One, praise to Him, said to Ahitophel: Something which the schoolchildren say every day in assembly you did not say to him: *to the Bene Qehat he did not give; for the service of the holy [vessels] is on them, they should carry on the shoulder*<sup>248</sup>. But so you told him.

<sup>249</sup>Similarly you find that when David started to excavate the foundations<sup>250</sup> of the Temple, he dug down fifteen hundred cubits and did not find the abyss. At the end he found a clay pot and wanted to lift it. It told him, you cannot lift me. We asked, why? It answered, because I am here suppressing the abyss. He asked it, since when are you here? It answered, from the Moment that the Merciful spoke on Sinai: *I am the Eternal, your God*<sup>251</sup>, the earth trembled and sank down, and I was put here to suppress the abyss<sup>252</sup>. Nevertheless, he did not listen to it; when he lifted it the abyss rose and threatened to flood the world. Ahitophel was standing there. He said, now David will be strangled and I shall rule. David said, any Sage who knows how to put this in order but does not put it in order should end up strangled. He said what he said<sup>253</sup> and it was steady. David started to sing *a song of ascent*, a song for a rise of 100 [cubits]. For each hundred cubits he composed a song. Nevertheless, he ended up strangled. Rabbi Yose said, that is what the proverb says, a person has to worry about the curse of a rabbi, even if it is for nothing<sup>254</sup>.

Rebbi Jeremiah in the name of Rebbi Samuel bar Rav Isaac: The scroll which Samuel handed over to David, Ahitophel composed it by the Holy Spirit<sup>255</sup>. What did Ahitophel do? If anybody asked for his counsel in anything and he gave his advice, he said go and do such and such, and if you do not believe me ask the Urim and Tummim. He went, asked, and found it

correct<sup>256</sup>. That is what is written<sup>257</sup>: *The counsel of Ahitophel which he gave in those days*, etc. *Man* is read but not written<sup>258</sup>; the verses could not call him “a man.”<sup>259</sup>

242 2S. 6:1. The verse is written in military language but does not appear in a military context.

243 *Num. rabba* 4(21),12(25); *Midrash Samuel* 24(5).

244 Justifying Ahitophel's hatred of David. He had enough reason as Batseba's grandfather.

245 2S. 6:3.

246 2S. 6:13; 2 *Chr.* 15:20. The two verses contradict one another.

247 To explain both verses (Note 246). Babli *Sotah* 35b.

248 *Num.* 7:9.

249 Differently Babli *Sukkah* 53a; hinted at *Makkot* 11a.

250 Greek θεμελίωσις; cf. *Sotah* 6:2 Note 17.

251 *Ex.* 20:2.

252 Cf. Babli *Avodah zarah* 3a, *Midrash*

*Tehillim* 74 #4. The reference is to *Ps.* 76:9: *The earth was fearful and quiet*. The earth was fearful because it was created on condition that Israel accept the Torah; when Israel accepted the Ten Commandments the earth became quiet since its continued existence was assured. The cover on the abyss sits on the waters of the Deluge (*Gen.* 7:11).

253 A magical spell.

254 Babli *Berakhot* 56a, *Makkot* 11a.

255 The blueprint for building the Temple (*1Chr.* 28:11).

256 *Midrash Tehillim* 3(4). (We do not find that the oracle could be used for anything but affairs of state.)

257 2S. 16:23.

258 Babli *Nedarim* 37b.

259 In *Midrash Tehillim* 3(4): “but an angel.”

שְׁלֶשָׁה (29a line 71) כִּי לֹא-נִעְשְׂתָה עֲצָתוֹ וַיַּחְבֹּשׁ אֶת חֲמוֹרוֹ וּגְוִי. שְׁלֶשָׁה דְּבָרִים צִוָּה אַחִיתוֹפֶל אֶת בְּנָיו. אָמַר לָהֶם. אֵל תִּמְרְדוּ בְּמַלְכוּת בֵּית דָּוִד. דֹּאשְׁכֶּהוּ דְּקוֹדֶשׁא בְּרִיךְ הוּא נָסִיב לָהוֹן אַפִּין אֲפִילוּ בְּפִרְהָסִיא. וְאֵל תִּשְׂאוּ וְתִתְּנוּ עִם מִי שֶׁהִשְׁעָה מִשְׁחָקָא לוֹ. וְאִם הֵיטָה הֶעֱצָרַת בְּרוּרָה זָרְעוּ חֲטִים יָפוֹת. וְלֹא יִדְעִין אִם בְּרוּרָה בְּטֵל וְאִם בְּרוּרָה בְּשָׂרָב.

How was he removed<sup>238</sup>? *When Ahitophel saw that his counsel was not taken, he saddled his donkey*<sup>260</sup>, etc.

Three things did Ahitophel command his sons: Do not rebel against the dynasty of David, since we find that the Holy One, praise to Him, shows them favor even when they acted brazenly<sup>261</sup>. Do not have dealings with anybody who has a lucky streak<sup>262</sup>. And if Pentecost was clear, sow wheat of the best quality<sup>263</sup>. But we do not know whether clear from dew or clear from *šarav*<sup>264</sup>.

260 2S. 17:23. He committed suicide; therefore his death could not scour off his sins, Note 29. A parallel to this paragraph is in the Babli, *Bava batra* 147a.

261 Greek παρρησία, as in the case of Batseba.

262 Since the other party would win in court or in contract negotiations.

263 The next fall planting season.

265 The dry wind from the East, Arabic *hamsin*.

(29b line 1) גִּיחָזִי אָדָם גִּיבּוֹר בַּתּוֹרָה הָיָה. אֶלֶּא שֶׁהָיוּ בּוֹ שְׁלֹשָׁה דְּבָרִים. עֵין צָרָה וּפְרוֹץ בְּעֶרְוָה וְלֹא הָיָה מוֹדָה בַּתְּחִיטֵי הַמַּתִּים. עֵין צָרָה. בְּשַׁעָה שֶׁהָיָה אֶלִישָׁע יָתִיב בְּתִינְיָיָה הָיָה גִּיחָזִי יָתִיב לִיָּה עַל תַּרְעָא וְתַלְמִידֵיָּא חֲמִיין לִיָּה וְאֶמְרִין. גִּיחָזִי לֹא אָעַל וְאָנָּן עָלֵינוּ. וְהָיָה תַנְיִין מִתְאַמֵּר וְיָבַר נֶשׁ לֹא מִתְהַנֵּי כְּלוּם. כִּינּוּן שֶׁנִּתְרַחֵק מִה כְּתִיב תַּמָּן. וְאֶמְרִין בְּנֵי-הַנְּבִיאִים אֶל-אֶלִישָׁע הַנֶּה-נָּא (וּגו') הַמְּקוֹם אֲשֶׁר אֲנַחְנוּ יוֹשְׁבִים שָׁם לְפָנֶיךָ צָר מִמֶּנּוּ. לֹא אֶסְחִין אוֹכְלוֹסִיָּא וְתַלְמִידֵיָּא דְהוּוֹן תַּמָּן.

<sup>266</sup>Gehazi was great in Torah, but three things were the matter with him: He was grudging, dissolute in sexual matters, and denied the Resurrection of the Dead.

Grudging. When Elisha sat and formulated his teachings, Gehazi sat outside the door. The students saw him and said, Gehazi did not find room inside, could we find room inside? His<sup>267</sup> statements were said without anybody profiting from them. Once he was removed, what is written there? *The prophecy students said to Elisha (etc.,) the place where we are sitting is too narrow for us*<sup>268</sup>. It does not contain the general population<sup>269</sup> and the students who were there.

266 Babli 107b.

lowing Gehazi's dismissal.

267 Elisha's, who had no listeners.

269 Greek ὄχλος, "multitude".

268 2K. 6:1, the verse immediately fol-

(29b line 9) וּפְרוֹץ בְּעֶרְוָה. שֶׁכֵּן הַשּׁוֹנְמִית אוֹמֶרֶת לְאִישָׁהּ הִנֵּה-נָא יִדְעֵתִי כִי אִישׁ אֱלֹהִים קָדוֹשׁ הוּא עוֹבֵר עָלֵינוּ תַמִּיד: אָמַר רַבִּי יוֹנָה. הוּא קָדוֹשׁ וְאֵין תַּלְמִידוֹ קָדוֹשׁ. אָמַר רַבִּי אֲבִיוֹן. שֶׁלֹּא הֵבִיט בָּהּ מִיָּמִיו. וְרַבִּין דְּקִיְסָרִין אֶמְרִין. שֶׁלֹּא רָאָת טִיפַת קָרִי עַל בְּגָדָיו מִיָּמָיו. אִמְתִּיָּה דְרַבִּי שְׁמוּאֵל בַּר רַב יִצְחָק אֶמְרָה. אָנָּא הוּיָנָא מְשֻׁגָּה מְנוּי דְמָרִי. מִן יוֹמָיו לֹא חֲמִית מִקְלָא בִישָׁא בְּמְנוּי דְמָרִי. כְּתִיב וַיֵּגֶשׁ גִּיחָזִי לְהַדְּפָהּ. מָהוּ לְהַדְּפָהּ. אָמַר רַבִּי יוֹסִי בֶן חֲנִינָה. שֶׁנִּתְּנוּ לָדוֹ בְּהוֹד שְׁבִיפָּהּ. כִּין דְּדִיָּהּ.

<sup>270</sup>Dissolute in sexual matters. For the woman of Shunem said to her husband: *Lo, I know that he is a holy man of God*<sup>271</sup>. Rabbi Jonah said, he is holy, but his student is not holy. Rabbi Abun said, because he never looked at her. But the rabbis of Caesarea say, he never had an involuntary emission. The slave girl of Rabbi Samuel ben Rav Isaac said, I was washing my master's garments. I never saw a bad thing on my master's garments. It is written: *Gehazi drew near to push her away*<sup>272</sup>. What is *להדפה*? Rabbi Yose ben Hanina said, he put his hand on her beauty spot, between her breasts.

270 *Yebamot* 2:4 (Notes 81-85), *Lev. rabba* maid is given justification.  
24(6). The text here seems to be original 271 *2K. 4:9*.  
since only here (and *Lev. rabba*) the 272 *2K. 4:27*.  
observation of R. Samuel bar Rav Isaac's

(29b line 16) וְלֹא הָיָה מוֹדָה בְּתַחֲמִית הַמֵּתִים. אֶת מוֹצֵא בְּשָׁעָה שֶׁבָּא אֶלְיָשָׁע לְהַחְיֹת אֶת בִּנְיָה שְׁלִשְׁוִינְמִית אָמַר לוֹ קַח מִשְׁעָנְתִּי בְּיָדְךָ וְלֹא כִי תִמְצָא אִישׁ לֹא תִבְרָכְנוּ וְכִי יִבְרָכְךָ אִישׁ לֹא תִעֲנֶנּוּ. וְהוּא לֹא עָבַד בֶּן אֶלְעָא כְּד פָּגַע בַּר נֶשׁ וְאָמַר לִיה. מֵאִינ וְלֵאִינ גַּחְזִי. וְיָאָמַר לִיה. אֶנָּה אֲזִיל מַחְיָה מֵתִים. וְיָאָמַר לִיה. לֵית דְּמַחְיָה מֵתִים אֶלְעָא הַקְדוֹשׁ בְּרוּךְ הוּא. דְּכָתִיב בֵּיה יִי מִמֵּית וּמַחְיָה מוֹרִיד שְׁאֵזֵל וְיַעֲלֵל. אֲזִיל לִיה וְלֹא עָבַד כְּלָוִים. אֲזִיל לְגַבְיָה אָמַר לִיה. אֶנָּה יָדַע אֵילוּ הָיָה דְּמִיד לֹא הָיָה מִיתָעַר עַל קִדָּךְ.

And denied the Resurrection of the Dead. You find that at the time when Elisha came to resurrect the Shunamite's son, he told him<sup>273</sup>: *Take my support staff in your hand and go, and if you meet a man do not greet him, or if a person greets you do not answer him*. But he did not do that, but when a person met him and asked, from where and to where, Gehazi? He told him, I am going to resurrect the dead. This one would tell him, only the Holy One, praise to Him, can resurrect the dead, as it is written<sup>274</sup>: *The Eternal kills and gives life, brings down to the pit and lifts up*. He went there and did not do anything. He returned to him and said to him, I know that if he really were dead, he would not wake up through you.

273 *2K. 4:29*.

274 *1S. 2:6*.

(29b line 24) אֶת מוֹצֵא בְּשָׁעָה שֶׁבָּא נְעָמָן שֶׁר צָבָא מֶלֶךְ אֲרָם אֶצֶל אֶלְיָשָׁע בָּא אֵלָיו בְּסוּסֵי וְיִבְרָכְבּוּ. אָמַר רַבִּי יוֹחָנָן. בְּסוּסֵי כְּתִיב. בָּעָא מֵיתָן לִיה דְּהַב וְכֶסֶף אֶסְטָלִיוֹן וּלְבוּשֵׁינִי אֲבָנִים

טובות ומרגליות. ולא קיבל עליו. הָדָא הִיא דְּכְתִיב וַיִּפְצַר-בּוֹ לַקַּחַת וַיִּמָּאֵן: אֵתָא גִיחָזִי וְאַמְרַן חִי־יֵי כִּי־אִם־רַצְתִּי אַחֲרָיו וְלִקְחֹתִי מֵאִתּוֹ מֵאוּמָה: מוֹמָה כְּתִיב. אֵזֶל וּמָטָה בֵּיהּ וְנָסַב מֵה דְּנָסַב וְאַטְמָרוֹן בְּעִלְיָתָהּ. אֵתָא גַבְהָ אֶלְיָשָׁע. אָמַר לִיהּ. מֵאֲנִן וְלֵאֲנִן גִּחָזִי. מֵיִאֲנִתָּה מִתּוֹן שְׂכָרוֹ שְׁלַצְדִּיקִים. אָמַר לוֹ. לֹא־הִלְזָה עֲבָדָךְ אֲנִה וְאַנְהּ: וַיֹּאמֶר לֹא־לְבִי הִלְזָה כְּאִשָּׁר הִפְדָּאִישׁ מַעַל מְרַכְבָּתוֹ לְקִרְאָתָךְ הֵלֵת לַקַּחַת כֶּסֶף וְזָהָב הָעַת לַקַּחַת אֲבָנִים טוֹבוֹת וּמְרַגְלִיּוֹת. לְפִיכָךְ צָרְעַת נַעֲמָן תִּדְבַּק־בְּךָ. כְּתִיב וְאַרְבָּעָה אֲנָשִׁים הָיוּ מְצוֹרְעִים פָּתַח הַשָּׁעַר וְגו'. וְיָמִי הֵי. רַבִּי יְהוּדָה בְּשֵׁם רַב. גִּיחָזִי וּשְׁלֹשֶׁת בָּנָיו הָיוּ.

You find [written] when Na'aman, the army commander of the king of Aram, came to him with his horses and his chariot. Rabbi Johanan said, it is written *with his horse*<sup>275</sup>. He wanted to give him gold and silver, stolas and garments, precious stones and pearls, but he did not accept. That is what is written<sup>276</sup>: *He insisted that he take, but he refused*. Gehazi came and said, *by the living Eternal, if I would run after him and take anything from him*<sup>277</sup>. “A defect” is written<sup>278</sup>. He went, met him, took what he took, and hid it in his upper storey. He came to Elisha, who asked him, *from where* to where, *Gehazi?* You refused the reward of the just<sup>279</sup>! He answered<sup>280</sup>, *your servant did not go here or there. But he said, did not my thoughts go when a man turned from his carriage towards you; is it time to take silver and gold; is it time to take precious stones and pearls?* Therefore, *Na'aman's skin disease shall cling to you*. It is written<sup>281</sup>: *Four men afflicted with skin disease were at the door of the gate*. Who were they? Rabbi<sup>282</sup> Jehudah in the name of Rav: They were Gehazi and his three sons.

275 The actual *Ketib* in all sources of 2K. 5:9.

276 2K. 5:16.

277 2K.5:20; *Num. rabba* 7(6). The invocation of the Name in a dishonest enterprise is blasphemy.

278 A *Ketib* מומה “its defect” for *Qere* מאומה “anything” is not in Eastern (Aleppo and Peterburg) codices but it is an old

Ashkenazic (Rashi *ad loc.*) and Provençal [*Num. rabba* 7(6)] tradition; cf. Y.S.R. Norzi, *ad loc.* מנחת שי.

279 He lost his reward in the Future World.

280 2K.5:23-24. In v. 24, Gehazi's skin disease is declared hereditary.

281 2K.7:3.

282 Read: Rav Jehudah. In the Babli (107b): R. Johanan.

36) (29b line 36) כְּתִיב וַיָּבֹא אֶלְיָשָׁע דְּמָשֶׁק וּבֶן־הֶדְד מֶלֶךְ־אַרַם חֹלָה וְגו'. מָה אֵזֶל בְּעִי מֵעֶבֶד תַּפְּנוֹ. אֵזֶל בְּעִי מִקְרָבָא לְגִיחָזִי וְאַשְׁכְּחִיהּ מוֹחֶלֶט. מֵיכָן שְׂדוּחִין בְּשִׁמְאֵל וּמִקְרָבִין בְּמִין. אָמַר רַבִּי

יוֹחָנָן. בַּחוּץ לֹא־יָלֵן גֵּר דִּלְתֵּי לְאוֹרֵחַ אֶפְתָּח: מִיֵּכֶן שְׂדוּחִין בְּשִׁמְאֵל וּמִקְרָבִין בְּנִמְיוֹן. לֹא כָשֶׁם שְׁעִשָּׂה אֱלִישָׁע שְׂדָחָה אֶת גִּיחֲזִי בְּשִׁתֵּי יָדָיו. שְׁנֵי חִלָּאִים חִלָּה אֱלִישָׁע. אֶחָד כְּדָרָךְ כָּל־הָאָרֶץ. וְאֶחָד שְׂדָחָה אֶת גִּיחֲזִי.

It is written<sup>283</sup>: *Elisha came to Damascus when Ben-Hadad the king of Aram was sick*. What did he come to do there? He went to bring back Gehazi but found him absolutely impure<sup>284</sup>. From here that one should push away with one's left hand but bring back close with one's right. Rabbi Johanan said, *the stranger should not stay outside overnight; my doors I opened for the guest*<sup>285</sup>. From here that one should push away with one's left hand but bring back close with one's right. Not as Elisha did who pushed Gehazi away with both hands. Elisha was sick with two sicknesses<sup>286</sup>. One in the ways of the world, and one because he pushed Gehazi away.

283 2K. 8:7.

284 Most rules of skin-disease (*Lev.* 13:1-46) define two stages of the diagnosis. In the first one, the sufferer is quarantined (מִסְקָר). If he be found pure, a simple immersion in water will make him ritually pure. But if he was found impure after quarantine, he is *absolutely impure* and can regain purity only by the elaborate ceremony described in *Lev.* 14. For an inhabitant of the Northern kingdom, this would present almost insurmountable difficulties. (Na'aman as a Gentile did not

need any ceremony.) Elisha is faulted for not helping Gehazi to repent and regain his purity.

285 *Job* 31:32.

286 In the Babli 107b: three sicknesses; the two mentioned here and an additional one for sending the bears against the children. In 2K. 13:14 it is mentioned that Elisha fell ill "with the sickness which would cause his death". This implies that it was not his only sickness; he must have been sick at least twice.

רַבִּי חֲנִינָה וְרַבִּי יְהוֹשֻׁעַ בֶּן לֵוִי. בְּשַׁעַה שֶׁנִּמְנָנוּ וְאָמְרוּ. שְׁלֹשָׁה מַלְכִּים וְאֶרְבָּעָה הַדִּיּוֹטוֹת אֵין לָהֶם חֶלֶק לְעוֹלָם הַבָּא. יֵצֵתָה בֵּת קוֹל וְאָמְרָה הַמַּעֲמֹד יִשְׁלַמְנָה כִּי־מֵאִסְתָּ אֶלָּא כִּי־אַתָּה תִּבְחָר וְלֹא־אֲנִי וּמֵה־יִדְעָתָ דְּבָר: בִּקְשׁוּ לְצַרְף אֶת שְׁלֹמֹה עֲמֹהָן. בָּא דָוִד וְנִשְׁתַּתַּח לַפָּנִיָּה. וְיֵשׁ אֲמָרִים. אֲשֶׁר יָצֵאת מִבֵּית קְדָשִׁי הַקְדָּשִׁים וְלִהְיֶטָה סְבִיבוֹתֵיהֶם. הָדָר עִילָה. הִנֵּה יִלְךְ מִצְלִי וּמִתְעַנֶּה. כִּיֵּן שֶׁנִּמְנָה עֲמֹהָן צָלִי וְלֹא אִיתְעַנִּי. דּוֹרְשֵׁי רְשׁוּמוֹת אָמְרוּ. כּוֹלָהֶם יֵשׁ לָהֶם חֶלֶק לְעוֹלָם הַבָּא. מֵה טַעַם. לִי גִלְעָד | וְלִי מִנְשָׁה וְאֶפְרַיִם מְעוֹז רֹאשִׁי הַהוּנָה מְחוּקָקִי: מוֹאָב | סִיר רַחֲצִי עַל־אֲדָמוֹס אֲשֶׁלִּיד נַעֲלִי. לִי גִלְעָד זֶה אֲחָאָב מֶלֶךְ יִשְׂרָאֵל שֶׁנֶּפֶל בְּרִמּוֹת גִּלְעָד. לִי מִנְשָׁה כְּשִׁמוּעוֹ. אֶפְרַיִם מְעוֹז רֹאשִׁי זֶה יִרְבֵּעַם בֶּן נִבְט אֶפְרַתִּי. הַהוּנָה מְחוּקָקִי זֶה אֲחִיתוֹפֶל. מוֹאָב | סִיר רַחֲצִי זֶה גִיחֲזִי. עַל־אֲדָמוֹס אֲשֶׁלִּיד נַעֲלִי זֶה דּוֹאָג הָאֲדוּמִי. אָמְרוּ יִשְׂרָאֵל לִפְנֵי

הַקְדוּשׁ בְּרוּךְ הוּא. רַבּוֹן כָּל־הָעוֹלָמִים. מִה נִעְבֵּיד וְדוּד מִלֶּךְ יִשְׂרָאֵל מִיִּקְל לֹן. אֲנִשְׁי דְּמִים וּמִרְמָה לֹא־יִחַצְצוּ יְמֵיהֶם. אָמַר לֹן. עָלִי לַעֲשׂוֹתָן רְעִים אִילוּ לְאִילוּ. עָלִי־פְלֶשֶׁת אֲתָרוּעָה עָלִי פְלֶשֶׁת הַתְּרַעָעִי. עָלִי לְפֶלֶשׁ לָהֶם מַעֲשִׂים טוֹבִים וְלַעֲשׂוֹתָן רִיעִים אִילוּ לְאִילוּ.

<sup>287</sup>Rebbi Hanania and Rebbi Joshua ben Levi: at the time when they voted and said that three kings and four private persons had no part in the Future World, there came a disembodied voice and said<sup>288</sup>, *does it pay for you that you oppose, that you choose, not I, and what can you say*<sup>289</sup>? They wanted to include Solomon with them<sup>290</sup>. David came and bowed down before them, but some say that fire came out of the Holiest of Holies and flared around them. Hadar Illa was used to be answered when he prayed. From the time he voted with them he prayed but was not answered. The interpreters of hints say, all of them have part in the Future World. What is the reason? *Mine is Gilead, mine is Manasse, Ephraim my main fortress, Jehudah is my scepter, Moab my washing trough, at Edom I shall throw my shoe*<sup>291</sup>. *Mine is Gilead*, that is Ahab, king of Israel, who fell at Ramot Gilead. *Mine is Manasse*, its plain meaning. *Ephraim my main fortress*, that is Jeroboam ben Nevat the Ephraimite. *Jehudah is my scepter*, that is Ahitophel. *Moab my washing trough*, that is Gehazi<sup>292</sup>. *At Edom I shall throw my shoe*, that is Doëg the Edomite. Israel said before the Holy One, praise to Him: Master of all Worlds, what can we do if David, King of Israel, cursed them? *Men of blood and deceit shall not live to half of their days*<sup>293</sup>! He told them, it is up to Me to make them friends one to the other. *For me Peleshet is friendly; to me Peleshet makes friends*<sup>294</sup>; it is up to Me to lead them to good deeds<sup>295</sup> and to make them friends one to the other.

287 *Num. rabba* 14(1).

288 *Job* 34:33.

289 It is presumptuous for a human theologian to pretend to know God's judgment.

290 *Babli* 104b.

291 *Ps.* 60:9-10, 108:9-10.

292 Whose sin was connected with Na'aman's washing.

293 *Ps.* 55:24. In the *Babli*, 69b, 106b, the verse is read as meaning that Doëg and Ahitophel did not live to age 35.

294 The root פלש in addition to "invade" can mean "to clear a path".



**משנה ג:** דור המבול אין להם חלק לעולם הבא ואין עומדין בדין שנאמר לא ידון רוחי באדם לעולם. אנשי סדום אין להם חלק לעולם הבא אבל עומדין בדין. רבי נחמיה אומר, אילו ואילו אינן עומדין בדין שנאמר על כן לא יקומו רשעים במשפט וחסאים בעדת צדיקים. על כן לא יקומו רשעים במשפט זה דור המבול. וחסאים בעדת צדיקים אלו אנשי סדום. אמרו לו בעדת צדיקים אינן עומדין אבל עומדין הן בעדת רשעים.

**Mishnah 3:** The generation of the Deluge has no part in the World to Come and they do not stand in judgment, as it is said<sup>296</sup>: *My Spirit shall not judge man forever*. The people of Sodom have no part in the World to Come but they stand in judgment. Rabbi Nehemiah says, neither of them stands in judgment, as it is said<sup>297</sup>: *Therefore, evildoers shall not rise in judgment, nor sinners in the company of the just*. Therefore, evildoers shall not rise in judgment, that is the generation of the Deluge, nor sinners in the company of the just, these are the people of Sodom. They said to him, in the company of the just they will not rise; they will stand in the company of evildoers.

296 Gen. 6:3.

297 Ps. 1:5.

**הלכה ג:** דור המבול אין להם חלק לעולם הבא. ואין רואין לעתיד לבוא. מה טעם. וימח את כל היקום בעולם הזה. וימחו מן הארץ לעתיד לבוא.

**Halakhah 3:** “The generation of the Deluge has no part in the World to Come,” and will not see the future<sup>298</sup>. What is the reason? <sup>299</sup>*He wiped off all that was standing in this world; they were wiped off from the Land*<sup>300</sup>, in the future.

298 In contrast to most other sinners whose souls will take part in Eternal Life after having been punished for their sins, these souls will be completely destroyed. Babli 108a.

299 Gen. 7:23.

300 The double mention of “wiping off” in one verse implies that each of them must have another object. In Psalms, “the Land” usually refers to the Future Life; the Land of the Living to Paradise, the Land without attribute to the Netherworld.

(29b line 62) **תני.** רבי נחמיה אומר. ממשמע שנאמר לא ידון רוחי באדם לעולם. רבי יהודה אומר. לא ידון לו רוחי. שאני נותן רוחי בהם בשעה שאני נותן רוחי בבני אדם. רבי שמעון אומר. לא ידון לו רוחי. שאני נותן רוחי בהם בשעה שאני נותן מתן שכל צדיקים. אחרים אומרים. לא ידון לו רוחי. שאני מחזירה לנדה. רבי יהושע בן לוי אמר. עישר זריבתן

לחולטטנית. מה טעם. בעת יורבו נצמתו בחימו נדעכו ממקומם: מהו בחימו. בריתוחו. אמר רבי יוחנן. כלטיפפה וטיפפה שהיה הקדוש ברנן הוא מוריד עליהן הנה מרתחה בתוך גיהנם ומורידה עליהן. הלא היא דכתיב בחימו נדעכו ממקומם: והנה בירבי חזקה ורבי אמרין. הקדוש ברנן הוא דן את הרשעים בגיהנם שנים עשר חודש. פתחילה הוא מכניס בהן חכך ואחר כך הוא מכניסן לאור והן אומרים. הוי הוי. ואחר כך הוא מכניסן לשלג והן אומרים. ווי ווי. מה טעם. ונעלגי | מבזר שאון מטיט היין. מהו מטיט היין. מקום שהן אומרין בו הוי. ויקבלו דינם ויהא להן חלק לעולם הבא. על שם ילץ לאשמע גערה:

<sup>301</sup> It was stated: Rabbi Nehemiah says, one understands it from what was said<sup>296</sup> *My Spirit shall not judge man forever*. Rabbi Jehudah says, *My Spirit shall not judge him*, for I shall not give My Spirit into them when I shall give My Spirit into people<sup>302</sup>. Rabbi Simeon says, *My Spirit shall not judge him*, for I shall not give My Spirit into them when I shall distribute the rewards of the just. Others say, *My Spirit shall not judge him*, I shall not bring it back into its sheath<sup>303</sup>.

Rebbi Joshua ben Levi said, mainly their<sup>304</sup> scalding was parboiling. What is the reason? *At the time when they were scalded they shrank; in its heat they disappear from their place*<sup>305</sup>. What is *in its heat*? In their boiling. Rebbi Johanan said, every single drop which the Holy One, praise to Him, rained on them, He brought to a boil in Hell and rained it on them<sup>306</sup>. That is what is written, *in its heat they disappear from their place*.

Jehudah ben Rebbi Hizqiah and Rebbi<sup>307</sup> said, the Holy One, praise to Him, judges the evildoers in Hell for twelve months. First He brings the itch on them; then He brings them into fire and they say woe, woe; after that He brings them into snow and they say wai, wai. What is the reason? *He brought me up from the noisy pit, from miry mud*<sup>308</sup>. What is *from יין mud*? From a place where one says woe.

Why could they not receive their punishment<sup>309</sup> and then take part in the World to Come? Because *the scoffer will not hear rebuke*<sup>310</sup>.

301 Babli 108a, Tosephta 13:6, *Gen. rabba* 26(6), 28(3).

302 At the resurrection. The interpretations differ in formulation, not in meaning.

303 In the container where souls are kept to be born or resurrected.

304 The generation of the flood.

305 *Job* 6:17.

306 *Gen. rabba* 28(9) [M. Sokoloff, *The*

*Geniza Fragments of Bereshit Rabba* (Jerusalem 1982) p. 120].

307 Probably one should read “Jehudah and Hizqiah, the sons of R. Hiyya”, or a name in missing here. In Mishnah *Idiut* 2:10, the Babli, *Šabbat* 33b, and *Thr. rabba* 1(42), the statement is anonymous. In *Gen. rabba* 28(7) it is attributed to R. Johanan, a student of Hizqiah.

The statement is the basis of the rule that prayers for deceased parents may be

said only for 11 months, so as not to declare one’s parents as evildoers.

308 *Ps.* 40:3.

309 This refers to the statement of the Mishnah that the people of the Deluge have no part in the World to Come, i. e., that their souls were destroyed.

310 Since the goal of punishment is reform, punishment of scoffers is useless. Their souls, instead of being punished, must be destroyed.

אֲנָשֵׁי סְדוֹם אֵין לָהֶם חֵלֶק לְעוֹלָם הַבָּא וְאֵין רוֹאִין לְעֵתִיד לְבוֹא. מֵאֵי טַעְמָא. וְאֲנָשֵׁי סְדוֹם רָעִים וְחַטָּאִים לִי מֵאֵד: רָעִים וְחַטָּאִים בְּעוֹלָם הַזֶּה. לִי מֵאֵד לְעֵתִיד לְבוֹא. דְּבָר אַחֵר. רָעִים אֵילוּ לְאֵילוֹ. וְחַטָּאִים בְּגִילוי עֲרִיוֹת. לִי בַעֲבוּדָה זָרָה. מֵאֵד בְּשִׁפְחוֹת דָּמִים.

<sup>311</sup>“The people of Sodom have no part in the World to Come,” and they will not see the future. What is the reason? *The people of Sodom were very evil and sinful against the Eternal*<sup>312</sup>. *Evil and sinful* in this world, *against the Eternal very much* in the future.

<sup>313</sup>Another explanation. *Evil* against one another, *and sinful* in incest and adultery, *against the Eternal* in foreign worship, *very much* in spilling blood.

311 Babli 109a; Tosephta 13:8. The paragraph also is part of the Mishnah in the Babli and the independent Mishnah mss. not

from the Maimonides tradition.

312 *Gen.* 13:13.

313 *Gen. rabba* 41(10).

מִשְׁנֵה ד': דוֹר הַמִּדְבָּר אֵין לָהֶן חֵלֶק לְעוֹלָם הַבָּא וְאֵין עוֹמְדִין בְּדִין שְׁנַאֲמַר בַּמִּדְבָּר הַזֶּה יִתְּמוּ וְשָׁם יָגִתוּ דְּבָרֵי רַבִּי עֲקִיבָה. רַבִּי אֱלִיעֶזֶר אָמַר עֲלֵיהֶם הוּא אָמַר אֶסְפוּ לִי חֲסִידֵי כוֹרְתֵי בְרִיתִי עַל זִבְחָה.

**Mishnah 4:** The generation of the desert has no part in the World to Come, as it is said<sup>314</sup>: *in this desert they shall be terminated and there they will die*, the words of Rabbi Aqiba. Rabbi Eliezer says, about them it says<sup>315</sup>, *assemble for Me My lovely ones, who sealed My Covenant by a sacrifice*<sup>316</sup>.

**משנה ה':** עדת קורח אינה עתידה לעלות שְׁנֵאֲמַר וַתִּכָּס עֲלֵיהֶם הָאֶרֶץ וַיֵּאבְדוּ מִתּוֹךְ הַקֹּהֶל דְּבַר רַבִּי עֲקִיבָה. רַבִּי אֱלִיעֶזֶר אוֹמֵר עֲלֵיהֶם הוּא אוֹמֵר יֵי מִמִּית וּמִחְיָה מוֹרִיד שְׂאוֹל וְעַל

**Mishnah 5:** The band of Korah will not be resurrected in the future, as it is said<sup>317</sup> *the earth covered them; they were lost from among the congregation*, the words of Rabbi Aqiba. Rabbi Eliezer says, about them it says<sup>93</sup>, *the Eternal kills and brings to life, He sends down into the pit and raises up*.

314 Num. 14:35. The argument in the longer text of the Mishnah in the Babli is reproduced here at the start of the Halakhah. In all these cases, the double emphasis in the verse is interpreted that the first expression refers to this world, the second to the World to Come.

315 Ps. 50:5.

316 The ceremony described in Ex. 24:1-9 guaranteed their eternal life. Since R. Aqiba war R. Eliezer's student, the inversion of the chronological order clearly indicates that the latter's opinion is accepted as practice.

317 Num. 16:33.

(29c line 6) **הלכה ד':** דור המדבר אין להן חלק לעולם הבא ואין רואין לעתיד לבוא. שְׁנֵאֲמַר בַּמִּדְבָּר הָזֶה יִתְמוּ וְשָׁם יָמָתוּ. וַתִּכָּס עֲלֵיהֶם הָאֶרֶץ וַיֵּאבְדוּ מִתּוֹךְ הַקֹּהֶל דְּבַר רַבִּי עֲקִיבָה. רַבִּי אֱלִיעֶזֶר אוֹמֵר עֲלֵיהֶם הוּא אוֹמֵר אֶסְפוּ לִי חֲסִידֵי כֹהֲנֵי בְרִיתִי עַל זֶבֶח. רַבִּי יְהוֹשֻׁעַ אוֹמֵר. נִשְׁבַּעְתִּי וְאֶקְיָמָהּ. פְּעָמִים שְׁאֵינִי מְקַיֵּם. חֲנֻנָּה בֶן אָחִי רַבִּי יְהוֹשֻׁעַ אוֹמֵר. כְּתוּב אֲשֶׁר-נִשְׁבַּעְתִּי בְּאֶפֶי. בְּאֶפֶי נִשְׁבַּעְתִּי חוֹזֵר אֲנִי בִי. תִּנִּי. רַבִּי שְׁמַעוֹן בֶּן מִנְסִיָּה אוֹמֵר. עֲלֵיהֶם הוּא אוֹמֵר אֶסְפוּ לִי חֲסִידֵי וְגו'. חֲסִידֵי שְׁעָשׂוּ עִמִּי חֶסֶד. כֹּהֲנֵי בְרִיתִי שֶׁנִּכְרְתוּ עַל יָדִי. עַל זֶבֶח שְׁעִילוֹ אוֹתִי וְנִזְבְּחוּ עַל שְׁמִי. תִּנִּי. רַבִּי יְהוֹשֻׁעַ בֶּן קֶרְחָה אוֹמֵר. עַל הַדּוֹרוֹת הַלָּלוּ הוּא אוֹמֵר וּפְדוּלֵי יֵי יְשׁוּבוֹ. רַבִּי אוֹמֵר. אֵילֹו וְאֵילֹו יֵשׁ לָהֶן חֶלֶק לְעוֹלָם הַבָּא. וְיָמָה טַעַם. וְהִנֵּה | בַּיּוֹם הַהוּא יִתְקַע בְּשׁוֹפָר גְּדוֹל וְכָאֵז הָאוֹבָדִים בְּאֶרֶץ אֲשׁוּר. אֵילֹו עֲשֶׂרֶת הַשְּׂבָטִים. וְהַנְּדָחִים בְּאֶרֶץ מִצְרַיִם זֶה דּוֹר הַמִּדְבָּר. אֵילֹו וְאֵילֹו וְהַשְּׁתַּחֲוִי לִי בְּהַר הַקֹּדֶשׁ וּבִירוּשָׁלַיִם:

**Halakhah 4:** <sup>318</sup>“The generation of the desert has no part in the World to Come,” and will not see the future, as it is said: *in this desert they shall be terminated and there they will die. In this desert they shall be terminated*, in this world, *and there they will die, in the future*; and so He says<sup>319</sup>, *what I swore in My rage, lest they come to My rest*, the words of Rabbi Aqiba. Rabbi Eliezer says, about them it says, *assemble for Me My lovely ones, who sealed My Covenant by a sacrifice*. Rabbi Joshua said, *I swore and I shall keep it*<sup>320</sup>; sometimes I do not keep it. Hanania the son of Rabbi Joshua's brother says, it

is written: *what I swore in My rage*; I swore in My rage, I am changing My mind.

It was stated: Rabbi Simeon ben Menassia says, about them it says *assemble Me My lovely ones*, who performed acts of love for Me<sup>321</sup>. *The executors of My Covenant*, who were extirpated by Me. *By sacrifice*, they elevated me and were sacrificed for My name.

It was stated: Rabbi Joshua ben Qorha says, about these generations He says<sup>322</sup>, *those freed by the Eternal shall return*. Rabbi says, these and those<sup>323</sup> have part in the World to Come. What is the reason? <sup>324</sup>*It shall be on that day, a great ram's horn will be blown, and those lost in the land of Assyria will come*, these are the Ten Tribes, *and those displaced in the land of Egypt*, that is the generation of the desert. These and those *will bow down before the Eternal on the Holy Mountain [and] in Jerusalem*.

318 Babli 110b, Tosephta 13:9-12.

an act of love of God.

319 Ps. 95:11.

322 Is. 35:10.

320 Ps. 119:106; cf. *Eccl. rabba* 10(23) *ad* 10:20. In a more adequate context the verse is quoted in *Hagigah* 1:8.

323 The generation of the desert and the Ten Tribes (Mishnah 6).

324 Is. 27:13; cf. *Eccl. rabba* 1(20).

321 In *Jer.* 2:1, the Exodus is described as

עַדֵּת קוֹרַח אֵין לָהֶן חֵלֶק לְעוֹלָם הֵבֵא וְאֵינֶן רוֹאִין לְעֵתִיד לָבוֹא. מֶה טַעַם. וְתַבְּסָא עֲלֵיהֶם הַמִּדְבָּר בְּעוֹלָם הַזֶּה. וְיֵאבְדוּ מִתּוֹךְ הַקָּהָל לְעֵתִיד לָבוֹא. תִּינִי. רַבִּי יְהוּדָה בֶּן בִּתְיָרָה אָמַר. מִמֶּשְׁמַע שְׁנֵאֲמַר תֵּלְעִיתִי כִּשְׁה אֲבִיד בְּקֶשׁ עֲבִידָךְ. מֶה עֲבִידָה הָאֲמִוְרָה לְהֵלֶן סוּפָה לְהִתְבַּקֵּשׁ אֶף עֲבִידָה הָאֲמִוְרָה כָּאֵן סוּפָה לְהִתְבַּקֵּשׁ.

<sup>325</sup>The band of Korah will not have part in the Future World and not be resurrected in the future. What is the reason? <sup>317</sup>*The desert covered them*, in this world; *they were lost from among the congregation*, in the future. It was stated: Rabbi Jehudah ben Bathyra says, one understands from what is said, *I erred like a lost sheep; look after Your servant*<sup>326</sup>, that just as the lost object mentioned there at the end will be searched for, so also the lost object mentioned here at the end will be searched for<sup>327</sup>.

325 Babli 109b, Tosephta 13:9.

327 By the doctrine of invariability of lexemes.

326 Ps. 119:176.

(29c line 25) מי נתפלל עליהם. רבי שמואל בר נחמן אמר. משה נתפלל עליהם. יחי ראובן ואל ימות. רבי יהושע בן לוי אמר. חנה נתפללה עליהן. היא דרבי יהושע בן לוי. דאמר רבי רבי יהושע בן לוי. כך היתה עזתו של קרח שוקעת ויורדת עד שעמדה חנה ונתפללה עליהן ואמרה יי ממת ומחיה מוריד שאול ויעל:

Who prayed for them? Rabbi Samuel bar Nahman said, Moses prayed for them, *Reuben shall live and not die*<sup>91</sup>. <sup>92</sup>Rabbi Joshua ben Levi said, Hannah prayed for them. This follows Rabbi Joshua ben Levi, as Rabbi Joshua ben Levi said: Korah's band was continuously sinking until Hannah stood up and said<sup>93</sup>, *the Eternal kills and brings to life, He sends down into the pit and lifts up*.

(fol. 27b) **משנה ו:** עשרת השבטים אינן עתידין לחזור שנאמר וישלכם אל ארץ אחרת כיום הזה. מה היום הזה הולך ואינו חוזר אף הן הולכין ואינן חוזרין דברי רבי עקיבה. רבי אליעזר אומר, כיום הזה מה היום מפיל ומאיר אף הן כשהיה אפלה להן עתידה ליאור להן:

**Mishnah 6:** The Ten Tribes will not return in the future, as it is said<sup>328</sup>, *He threw them into another country like this day*. As this day passes and does never return, so they go, never to return, the words of Rabbi Aqiba. Rabbi Eliezer says, *like this day*, as the day gets dark and then light, so also they for whom there was darkness there will be light in the future.

328 Deut. 29:27.

(29c line 29) **הלכה ו:** עשרת השבטים כול'. עשרת השבטים אין להן חלק לעולם הבא ואינן רואין לעתיד לבוא. מה טעם. וישלכם אל ארץ אחרת כיום הזה. מה היום הולך ואינו חוזר אף הן הולכין ואינן חוזרין דברי רבי עקיבה. רבי שמעון בן יהודה איש כפר אבוס אמר משום רבי שמעון. אם היו מעשיהן כיום הזה אינן חוזרין ואם לא חוזרין הן.

**Halakhah 6:** "The Ten Tribes," etc. <sup>330</sup>The Ten Tribes have no part in the World to Come, and will not see the future. What is the reason? *He threw them into another country like this day*. As the day passes and does never return, so they go, never to return, the words of Rabbi Aqiba. Rabbi Simeon ben Jehudah from Kefar-Ikos said in the name of Rabbi Simeon: If their

behavior remains as on this day, they will not return; otherwise, they will return.

330 Babli 110b, Tosephta 13:12.

(29c line 34) רבי חזקיה רבי אבהו בשם רבי לעזר. אם באין הן גירי צדק לעתיד לבוא אנטוליניוס בא בראש כולם. מה את שמע מינה. שראו אותו יוצא במנעל פחות ביום הכיפורים. את שמע מינה שכן אפילו יריאי שמנים יוצאין בכך. אית מילין אמרין דלא איתגנייר אנטוליניוס. ואית מילין אמרין שנתגנייר אנטוליניוס. אנטוליניוס אתא גבי רבי. אמר ליה. חמי מיכלתי מן לוויתן בעלקמא דאתי. אמר ליה. אין. אמר ליה. מן אימור פיסחא לא אוכלתני ומן לוויתן מיכלתי בעלקמא דאתי. אמר ליה. ומה נעביד לך ובאימור פיסחא כתיב וכל-עַרְל לא-יֵאכַל בו: הָדָא אַמְרָה דְּלֵא אִיתְגַּיִיר אַנטוליניוס. כִּינן דְּשַׁמַּע כֵּן אָזַל וְגִייר גְּרַמְיָה. אֶתְא גְּבִי רַבִּי. אֶמַר לֵיהּ. חָמִי גְזִירְתִּי. אֶמַר לֵיהּ. בְּדִידִי לֹא אִיסְתַּכְלִית מִן יוֹמוֹי וּבְדִידֶךָ אָנָּא מְסַתְּכָלָא. הָדָא אַמְרָה דְּאִיתְגַּיִיר אַנטוליניוס. וְלָמָּה נִקְרָא רַבֵּינוּ הַקְדוּשׁ. שְׁלֵא הִבִּיט בְּמִילְתּוֹ מִיָּמִיו. וְלָמָּה נִקְרָא שְׁמוֹ נְחוּם אִישׁ קוֹדֵשׁ קְדוּשִׁים. שְׁלֵא הִבִּיט בְּצוּרַת מְטִבַּע מִיָּמִיו. אַנטוליניוס אֶתְא גְּבִי רַבִּי. אֶמַר לֵיהּ. צְלִי עָלִי. אֶמַר לֵיהּ. וְשִׁיבִינֶךָ מִן הָדָא צִינְתָּא. דְּכָתִיב לִפְנֵי קֳרָתוֹ מִי יַעֲמוּד. אֶמַר לֵיהּ. רַבִּי. לִית הָדָא צְלוּ יַתִּיר. כִּיסִּיתִיךָ תַּכְסָּה וְהָא צִינְתָּא אָזְלָה. אֶמַר לֵיהּ. וְשִׁיבִינֶךָ מִן הָדָא שׁוּרְבָא דְנִפְק בְּעַלְמָא. אֶמַר לֵיהּ. הָא צְלוּ. כְּדוֹן תִּשְׁתַּמַּע צְלוּתִיךָ. דְּכָתִיב וְאִין נִסְתָּר מִחֻמְתּוֹ.

<sup>331</sup>Rebbi Hizqiah, Rebbi Abbahu in the name of Rebbi Eleazar: When in the Future World the proselytes come, Antoninus comes at the head of all of them. How do you understand this? Since they saw him walking with a slight shoe on the Day of Atonement<sup>332</sup>, what do you infer since even God-fearing people go outside thus. There is information that Antoninus did not become a proselyte, and there is information that Antoninus did become a proselyte. Antoninus came to Rebbi and asked him, can you see me eating from the Leviathan<sup>333</sup> in the World to Come? He said, yes. He told him, from the Passover lamb you would not let me eat, but from Leviathan you make me eat in the World to Come? He answered, what can we do for you since about the Passover lamb it is written that *no uncircumcised man may eat from it*<sup>334</sup>. This implies that Antoninus did not become a proselyte. When he heard this, he went and became a proselyte. He came to Rebbi and said to him, look at my circumcision. He answered him, at mine I never looked<sup>335</sup>, and at yours I should look? This implies that Antoninus became a proselyte.

Why is he called our holy teacher? Because he never in his life looked at his circumcision. And why is his name Nahum the holiest of holies<sup>336</sup>? Because he never in his life looked at the figure on a coin.

Antoninus came to Rabbi; he said to him, pray for me. He said to him, may He save you from the cold, as it is written<sup>337</sup>, *who can withstand His cold?* He said, is that not a superfluous prayer? You cover yourself with an outer garment and the cold will go away. He said to him, may He save you from the hot wind that comes into the world. He said, that is a prayer; may your prayer be heard, as it is written<sup>338</sup>, *nothing is hidden from His heat*.

331 It is difficult to understand why this digression about a crypto-Jewish Roman emperor was inserted here. It is futile to try to determine to whom one refers; cf. *Kilaim* 9:4, Note 79. It was implied already in Halakhah 1 that Gentiles may have part in the World to Come.

A parallel, in slightly different order, is in *Megillah* 1:13. For the first sentence, cf. *Lev. rabba* 3(20), *Midrash Ps.* 22(29).

332 The wearing of leather shoes is forbidden on the Day of Atonement (except where it is necessary, as when walking on muddy streets.) That Antoninus did not wear leather shoes on the Day of Atonement is no proof that he became a proselyte since many "God-fearing people", Gentiles known

as "Friends of the Synagogue", do the same.

333 The just feasting on Leviathan meat in the World to Come are also mentioned in *Lev. rabba* 22(7), *Babli Bava batra* 74b-75a.

334 *Ex.* 12:48.

335 It is indecent to look at sexual organs. References to this insert are *Megillah* 1:13 (72b l.57, 3:3 74a l.39); *Avodah zarah* 3:1 (42c l.5); *Babli Šabbat* 118b, *Pesahim* 104a; the text here is copied by Tosaphot *Ketubot* 30a s.v. הכל.

336 An otherwise unknown personality.

337 *Ps.* 147:17.

338 *Ps.* 19:7.

בִּי יוֹחָנָן אֲמַר. עֲדָתוֹ שְׁלִיחוֹתָן בֶּן קָרַח אֵין לָהֶן חֶלֶק לְעוֹלָם הַבָּא. מִה טַעַם. בִּי בְּגָדוֹ קִיּוּבִים זָרִים יִלְדוּ עֵתָהּ וְאֶחָלָם חוֹדֵשׁ אֶת־חֻלְקֵיהֶם. (29c line 52)

Rabbi Johanan said, the group of Johanan ben Qareah<sup>339</sup> has no part in the World to Come. What is the reason? *They were traitors to the Eternal for they produced foreign children. Now a new Moon shall eat their parts*<sup>340</sup>.

339 Who flouted Jeremiah's advice and fled to Egypt, 2K. 42.

340 *Hos.* 5:7.



29c line 54) רבי לעזר ורבי יהודה. חד אמר. לא גלו עד שנעשו ערלים. וחרנה אמר. לא גלו עד שנעשו ממזרים. מאן דאמר. ערלים. למילה ולמצות. ומאן דאמר. ממזרים. מבבותיהם. אמר רבי יוחנן. לא גלו ישראל עד שנעשו עשרים וארבע כיתות שלמינים. מה טעמא. בן-אדם שולח אני אותך אל-בני ישראל אל-גוים המורדים אשר מרדו-בי. אל גוי המורד אין כתוב כאן אלא אל-גוים המורדים אשר מרדו-בי הנה מבבותיהם פשעו בי עד היום הזה: רבי ברכיה ורבי חלבו בשם רבי שמואל בר נחמן. לשלש גליות גלו ישראל. אחת לפני מנהר סנבטיון ואחד לדפני שלאנטוקא ואחת שיצד עליהם הענו וכסה אותם. כשם שגלו לשלש גליות כך גלו שבת ראובן וגד וחצי שבת מנשה לשלש גליות. מה טעם. בדרך אחרת הלכת ונתתי כוסה בידך: וכשהו חוזרין הן חוזרין משלש גליות. מה טעם. לאמר לאסורים יאיו אילו שגלו לפני מנהר סנבטיון. לאשר בחושך הגלו אילו שיצד עליהם הענו וכסה אותם. על-דרכים ירעו ובכל-שפיים מרעיתם אילו שגלו לדפני שלאנטוקא.

Rebbi Eleazar and Rebbi Jehudah. One said, they were exiles only when they were uncircumcised<sup>341</sup>. The other said, they were exiled only when they were bastards. He who says uncircumcised, for circumcision and commandments<sup>342</sup>. But he who says bastards, from their fathers<sup>343</sup>. Rebbi Johanan said, Israel was exiled only after they formed 24 heretical sects. What is the reason? *Son of man, I am sending you to the Children of Israel, to rebellious peoples who rebelled against Me*<sup>344</sup>. It is not written "to a rebellious people" but *to rebellious peoples who rebelled against Me; they and their fathers have acted criminally against Me up to this day*.

Rebbi Berekhia and Rebbi Helbo in the name of Rebbi Samuel bar Nahman. Israel was exiled to three diasporas<sup>345</sup>: one inside the river Sanbation<sup>346</sup>, one to Daphne of Antiochia<sup>347</sup>, and one on whom the Cloud<sup>348</sup> descended and covered them. Just as they were exiled to three diasporas, so the tribes of Reuben, Gad, and half the tribe of Manasse were exiled into three diasporas. What is the reason? *You went in the way of your sister and I gave her cup into your hand*<sup>349</sup>. So when they return, they will return from three diasporas. What is the reason? <sup>350</sup>*To tell the prisoners, leave, those who were exiled inside the river Sanbation; those in darkness, become visible, those upon whom the Cloud descended and covered them; on the roads they are grazing and on all plains is their pasturage, those who were exiled to Daphne of Antiochia.*

341 After a digression, one returns to the Ten Tribes.

342 The question is whether people suspected of being descendants of the Ten Tribes, who did not join in the return of Judeans and who clearly will not follow rabbinic rules for marriage and divorce, can be allowed to marry rabbinic Jewish partners. The first opinion states that while they cannot be expected to follow biblical commandments, they are eligible as marriage partners once their Israelite identity is ascertained or they undergo regular conversion (even if this is intrinsically futile for descendants of Jews in the female line.)

343 In this opinion, all descendants of the Ten Tribes are barred from marrying Jewish

partners other than bastards or proselytes.

344 *Ez.* 2:3.

345 Since each tribe is called גוי “a people” (*Gen.* 35:11), the plural implies that it counts for at least two, for a total of at least 24. Possibly this is a take-off on the multiplicity of Christian sects.

346 A river which stops flowing on the Sabbath. *Plinius, Hist. nat.* XXXI,2; *Sanhedrin* 65b; *Gen. rabba* 11(6),73(5); *Pesiqta rabbati* 23 [ed. Ish-Shalom Note 79].

347 Site of an Aphrodite shrine of famously ill repute. Cf. Note 343.

348 The Divine Cloud of Exodus (*Ex.* 14:19) and Temple (*IK.* 8:10-11).

349 *Ez.* 23:31.

350 *Is.* 49:9.

(fol. 27b) **משנה ז:** אֲנָשִׁי עִיר הַנְּדָחָת אֵין לָהּ חֵלֶק לְעוֹלָם הַבָּא שֶׁנֶּאֱמַר יֵצְאוּ אֲנָשִׁים בְּנֵי בְלִיעֵל מִקֶּרֶבְךָ וַיְדִיחוּ אֶת יוֹשְׁבֵי עִירָם לְאֻמּוֹר. הָא אֵין נִהְרֵגִין עַד שֶׁיְהִיוּ מְדִיחִים מֵאוֹתָהּ הָעִיר וּמֵאוֹתוֹ הַשָּׁבֶט וְעַד שֶׁיִּדְחַר רֹבָה וְעַד שֶׁיְדִיחוּהָ אֲנָשִׁים. הַדִּיחוּהָ נָשִׁים וּקְטָנִים אוֹ שֶׁהִדְחָ מְעוּטָה אוֹ שֶׁהִיוּ מְדִיחוּהָ מִחוּצָה לָהּ הָרִי אֵילוּ בְּיַחֲדִים צָרִיכִים שְׁנֵי עֲדִים וְהַתְרִיחָ לְכָל־אֶחָד וְאֶחָד. זֶה חוֹמֶר בְּיַחֲדִים מִבְּמִרְבָּיִם שֶׁהִיחִידִים בְּסִקְלָהּ לְפִיכָךְ מְמוֹנָם פֶּלֶט וְהַמְרוּבִים בְּסִיף לְפִיכָךְ מְמוֹנָן אֶבֶד:

**Mishnah 7:** The people of a seduced town<sup>351</sup> have no part in the World to Come, as it is said<sup>352</sup>: *Useless men*<sup>353</sup> *left your midst*<sup>354</sup> *and seduced the inhabitants of their town as follows.* Therefore they cannot be executed unless the seducers be from that town and from that tribe, unless the majority was seduced, unless the seducers were men. If women or minors seduced them, or if a minority were seduced, they are single individuals<sup>355</sup> and need two witnesses and warning for each single one. This is more stringent for individuals than for the multitude since individuals are stoned, therefore their

money escapes<sup>356</sup> while the multitude is executed by the sword, therefore their money is lost<sup>357</sup>.

351 Who according to Mishnah 9:1 are executed by the sword.

352 *Deut.* 13:14.

353 They left their faith, therefore they cannot receive the reward of the faithful.

354 I. e., from their tribe.

355 They must be prosecuted for idolatry on an individual basis.

356 It is inherited by the heirs.

357 It must be destroyed by fire and is forbidden for all usufruct, *Deut.* 13:17-18.

**הלכה ז:** אֲנָשֵׁי עִיר הַנִּדְחָת כּוֹל. עִיר וְלֹא כְּפָר. עִיר וְלֹא כְּרֶדֶךְ. וְהִיא שְׁתֵּהָא מִחֲמִשָּׁה עַד עֶשְׂרָה. דְּבָרֵי רַבִּי מֵאִיר. רַבִּי יְהוּדָה אוֹמֵר. מִמָּאָה עַד רִיבּוֹ שְׁלִשְׁבָּט. שְׁנִים שֶׁהִדִּיחוּ אֶת שְׁנִים שֶׁהִדִּיחוּ אֶת שְׁנִים מָהוּ לִיתֵן עֲלֵיהֶם תּוֹרַת הַמִּדְיָחִין תּוֹרַת הַנִּדְחִים. הֵיוּ שָׁם גָּרִים וְתוֹשְׁבִים מָהוּ שִׁנְשָׁלִימוּ לָרוֹב. הֵיוּ שָׁם בִּבְרִים שְׁלַחְיָה וְשְׁלֻעוֹפוֹת וְשִׁלְדָּגִים עוֹף שֶׁהוּא טָס לְמַעַלָּה מִעֶשְׂרָה מָהוּ.

**Halakhah 7:** “The people of a seduced town,” etc. A town but not a village, a town but not a fortified place<sup>358</sup>. This means, from five to ten<sup>359</sup>, the words of Rabbi Meïr; Rabbi Jehudah says, from one hundred up to a majority of the tribe. If two seduced two, is it possible to try the two who had seduced two both as seducers and as seduced<sup>360</sup>? If there were proselytes and residents<sup>361</sup>, are they counted for the majority? If there were menageries<sup>362</sup> for wild animals, birds, or fish<sup>363</sup>; birds flying higher than ten [handbreadths]<sup>364</sup>, what are the rules<sup>365</sup>?

358 As noted in the dictionaries, both the etymology and the exact meaning of עִיר are unknown. For R. Meïr, עִיר is a village and כְּפָר a hamlet; this is the usual meaning of the words in the Babli. For R. Jehudah, עִיר is any larger settlement. In the Babli, 15b, this is a dispute between authorities of the generation between Tannaïm and Amoraïm. The opinion of R. Jehudah here is adopted there by R. Jonathan while R. Yoshia defines עִיר as a settlement of between 10 and 100 households.

359 Households.

360 Since *men* are mentioned in the verse, the seducers, to be stoned, cannot be less than two. On the other hand, if they did seduce only a few people and the majority was seduced by others, they are not seducers of the עִיר and may be tried as inhabitants, to be decapitated.

361 Resident Gentiles.

362 Latin *vivarium*, -ii, n.

363 These are not domesticated animals; the question is whether they have to be destroyed as property.

364 The airspace above ten handbreadths is

a separate domain. This is important mainly for the rules of the Sabbath but is noted also in property cases.

365 Since (Tosephta 14:1) the case of the seduced city never arose and never will arise, no answers are required.

(29d line 1) רַבִּי שִׁמְעוֹן אוֹמֵר. חֲמוּרָה שְׂרִיפָה מִסְקִילָה. וְרַבָּנִין אֲמָרִין. חֲמוּרָה סְקִילָה מִשְׂרִיפָה. רַבִּי שִׁמְעוֹן אוֹמֵר. חֲמוּר חָנֹק מִהָרֶג. וְרַבָּנִין אֲמָרִין. חֲמוּר הָרֶג מִחָנֹק.

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 strangulation<sup>366</sup>.

366 Chapter 7:1, Note 1 (24b l. 15)

(fol. 27c) **משנה ח:** הַכָּה תִּכָּה אֶת־יוֹשְׁבֵי הָעִיר הַהִוא לְפִי־חֶרֶב. הַחֲמֻרָה וְהַנֶּגְמָלֶת הָעוֹבֶרֶת מִמָּקוֹם לְמָקוֹם הָרִי אֵלּוּ מִצִּילִין אוֹתָן. הַחֲרֹם אוֹתָהּ וְאֶת־כָּל־אֲשֶׁר־בָּהּ וְאֶת־בְּהֶמְתָּהּ לְפִי־חֶרֶב. מִיִּכְאֹן אֲמָרוּ נִכְסֵי צְדִיקִים שְׁבִתוּכָה אוֹבְדִין וְשִׁבְחוּכָה לָהּ פְּלִיטִין וְשֶׁל רָשָׁעִים בֵּין מִתּוֹכָהּ בֵּין מִחוּצָהּ לָהּ אוֹבְדִין:

**Mishnah 8:** *Slaying you shall slay the inhabitants of that town by the sword*<sup>367</sup>. A caravan of donkeys or of camels which passes from place to place saves them<sup>368</sup>. *Destroy it and all which is in it, including its domestic animals*<sup>369</sup>, *by the sword*. From here they said, the properties of just people in its midst are lost, what is outside escapes; that of evildoers both inside and outside is lost.

367 Deut. 13:16.

368 The Yerushalmi gives no indication as to what this means. The Babli (112a) holds that temporary residents after 30 days become voting citizens of the town; if they do not follow the permanent inhabitants into apostasy, they will deprive the apostates of a majority and the rules of the seduced town

cannot be applied. But it might be that the Yerushalmi follows *Sifry Deut.* 94 that if at the moment of judgment there are people in town to whom the judgment does not apply, it cannot be executed since the verse requires that only the inhabitants of *that* town be killed.

369 As property, cf. Note 363.

(29d line 3) **הלכה ח:** הכה תכה את־יושבי העיר ההוא לפי־חֶרֶב כול. רבי שמעון אומר. בהמתה ולא בכורות ולא מעשרות שבתוכה. שללה לא כסף הקדש ומעשר שיני שבתוכה. רבי יוסי בן חנינה בעי. שיער צדקניות שבתוכה מהו. נישמעינה מהדא. רבי שמעון אומר. בהמתה ולא בכורות ומעשרות שבתוכה. שללה לא כסף הקדש ומעשר שיני שבתוכה. קדשי עיר הנדחת. רבי יוחנן אמר. אין מועלין בהן. ורבי שמעון בן לקיש אמר. מועלין בהן. מתיב רבי יוחנן לרבי לקיש. על דעתך דת מר. מועלין בהן. ניתני. שש חטאות מתות. אמר ליה. שכן אפילו עולה בדא מתה. רבי הילא בשם רבי שמעון בן לקיש. מועלין בהן משום קדשי משומד. וקרבן. על שם זבח ופעים תועיבה. אמר רבי עקיבה. אוף בהדא אינפלקון. שור שהוא יוצא ליסקל ונמצאו עידי זוממין. רבי יוחנן אמר. כל־הקודם בו זכה. רבי שמעון בן לקיש אמר. ייאוש שלטעות הנה. וכן עבד שהוא יוצא ליהרג ונמצאו עידי זוממין. רבי יוחנן אמר. זכה לעצמו. רבי שמעון בן לקיש אמר. ייאוש שלטעות הנה.

**Halakhah 8:** *Slaying you shall slay the inhabitants of that town by the sword, etc.* <sup>370</sup>Rebbi Simeon says, *its domesticated animal*, not first born or tithes found there; *its booty*, not Temple money or Second Tithe found there<sup>371</sup>. Rebbi Yose ben Hanina asked: What is the status of hair of its just women<sup>372</sup>? Let us hear from the following: Rebbi Simeon says, *its domesticated animal*, not first born or tithes found there; *its booty*, not Temple money or Second Tithe found there.

The *sancta* of a seduced town<sup>373</sup>, Rebbi Johanan said, one cannot commit larceny with them; Rebbi Simeon ben Laqish said, one can commit larceny with them. Rebbi Johanan objected to Rebbi Simeon ben Laqish: According to your opinion that one can commit larceny with them, should one not state that “six purification offerings are left to die”<sup>374</sup>? He answered, because in this case even an elevation offering dies<sup>375</sup>. Rebbi Hila in the name of Rebbi Simeon ben Laqish: One can commit larceny with them because of *sancta* of an apostate. Should they not be sacrificed? Because of *the sacrifice of an evildoer is an abomination*<sup>376</sup>.

Rebbi Uqba said, also in the following they disagree: <sup>377</sup>If a bull was led out to be stoned when its witnesses were found to be perjured, Rebbi Johanan said, the first to come acquires it; Rebbi Simeon ben Laqish said, it was false despair. Similarly, if a slave was led out to be executed when its witnesses were found to be perjured, Rebbi Johanan said, he acquired himself; Rebbi Simeon ben Laqish said, it was false despair.

370 Tosephta 14:5.

371 All the items enumerated are Heaven's property. While the second part of the verse insists that the *town's property* must be destroyed, Heaven's property cannot be destroyed. The disposal of Heaven's property is discussed in Mishnah 9. Babli 112b.

372 Since a woman could cut off her hair and sell it to a wig-maker, it represents value. Should the woman be forced to cut off her hair before she is forced to leave town following the conviction of the town for organized idolatry? Since Temple money must be taken out undamaged, so the just woman must be taken out unhurt. The

Babli, 112a, somewhat disagrees.

373 Once an animal has been dedicated as sacrifice, all private use of it is larceny (*Lev.* 5:14-16).

374 Mishnah *Temurah* 4:1 enumerates 5 kinds of purification offerings which can neither be redeemed nor sacrificed. An animal dedicated by an idolator of a seduced town should be added as sixth kind. Babli 112a.

375 Mishnah *Temurah* 4:1 only treats cases particular to purification offerings.

376 *Prov.* 21:27. The Babli, *Hulin* 5a, finds the same result in *Lev.* 1:2.

377 *Bava qamma* 4:9, Notes 122-125

**משנה ט:** וְאֶת־כָּל־שְׁלָלָהּ תִּקְבּוּץ אֶל־תּוֹדֹת רְחֹבָהּ. אִם אֵין לָהּ רְחוּב עוֹשִׂין לָהּ רְחוּב. הִנֵּה רְחוּבָהּ חוּצָה לָהּ כּוֹנְסִין אוֹתוֹ לְתוֹכָהּ שֶׁנֶּאֱמַר אֶל־תּוֹדֹת רְחֹבָהּ וְשָׂרְפֶתָּ בָאֵשׁ אֶת־הָעִיר וְאֶת־כָּל־שְׁלָלָהּ וְלֹא שָׁלַל שְׂמִים. מִכָּאן אָמְרוּ הַהִקְדִּישוֹת שֶׁבָּהּ יִפְדּוּ וְתִרְוּמוֹת יִירָקְבוּ מִעֶשֶׂר שָׁנִי וְכִתְבֵי הַקּוֹדֶשׁ יִגָּזוּ.

**Mishnah 9:** *All its spoils you shall collect in its public square*<sup>378</sup>. If it has no public square, one creates a public square in it. If its public square was outside, one collects it<sup>379</sup> inside, for it is said: *In its public square you shall burn the town and all its spoils in fire*; its spoils but not Heaven's spoils. From here they said that dedicated objects in it shall be redeemed, heavens shall be left to rot, Second Tithes and Holy Scriptures shall be put away<sup>371</sup>.

**משנה י:** כָּלִיל לַיהוָה אֵלֶּהֶּן אֲמַר רַבִּי שְׁמַעוֹן אִם אֵתָּה עוֹשֶׂה דִין בְּעִיר הַנִּדְחָת מַעֲלָה אֵין עֲלֶיהָ כָּאֵלוֹ אֵתָּה מַעֲלָה עוֹלָה כָּלִיל לִפְנֵי. וְהִיתָה תֵּל עוֹלָם לֹא תִבְנֶה עוֹד. לֹא תִיעֲשֶׂה אֶפְלוֹ גִּזְוֹת וּפְרִדָּסִים דְּבָרֵי רַבִּי יוֹסִי הַגָּלִילִי. רַבִּי עֲקִיבָה אוֹמֵר לֹא תִבְנֶה עוֹד לְכַמוֹ שֶׁהִיתָה אֵינָה נִבְנִית אֲבָל נַעֲשִׂית הִיא גִּזְוֹת וּפְרִדָּסִים.

**Mishnah 10:** *Totally for the Eternal, your God.* Rabbi Simeon said, if you judge the seduced town, I will credit it for you as if you brought an entire elevation offering before Me. *It shall be an eternal mound, it shall not be*

*rebuilt*. It should not even be made into gardens and orchards, the words of Rabbi Yose the Galilean. Rabbi Aqiba says, it shall not be rebuilt as it was but it may be made into gardens and orchards<sup>380</sup>.

**משנה יא:** וְלֹא־יִדְבַק בְּיָדָךְ מְאוּמָה מִן־הַחֲרָם לְמַעַן יָשׁוּב ה' מִחֲרוֹן אָפוֹ וְנָתַן־לָךְ רַחֲמִים וְרַחֲמֶנּוּ וְהִרְגָּד וְגו'. שָׁכַל זְמַן שֶׁהִרְשָׁעִים בְּעוֹלָם חָרוֹן אַף בְּעוֹלָם אֲבָדֵי רִשְׁעִים מִן הָעוֹלָם נִסְתַּלַּק חָרוֹן אַף מִן הָעוֹלָם:

**Mishnah 11:** *Nothing of what should be destroyed shall stick to your hands, so the Eternal may change from His anger to grant you mercy, have mercy on you and increase you, etc.* Any time evildoers are in the world, anger is in the world; when the evildoers are lost from the world, anger passes away from the world.

378 Deut. 13:17-18.

380 R. Yose the Galilean reads תַּל with the

379 One extends the territory of the town to include the public square.

Accadic as *ruin*, R. Aqiba with the Arabic as *mound, butte*.

(29d line 18) **הלכה ט:** וְאֵת־כָּל־שְׁלָלָהּ תִּקְבֹּץ כּוֹל. אָמַר רַבִּי שְׁמַעוֹן. קָל וְחוֹמֶר בְּדִבְרֵים. מָה אִם נִכְסִים שָׁאִין בָּהֶן דָּעִית לֹא לְטוֹבָה וְלֹא לְרָעָה וְעַל יְדֵי שֶׁנִּגְרַמוּ לְצַדִּיקִים לְדוֹר עִם הָרָשָׁעִים אֲמָרָה תוֹרָה שִׁישְׁרָפוּ. הַמִּתְכַּנְּנִין לְהַטּוֹת אֶת הַבֵּירוֹ וּמִטָּהוּ מִדֶּרֶךְ טוֹבָה לְדֶרֶךְ רָעָה עַל אַחַת כְּמָה וְכִמָּה. אָמַר רַבִּי לֵעָזֵר. מוֹכִיחַ בְּדִבְרֵי בְלוּט שֶׁלֹּא יָשֵׁב בְּסֻדּוֹם אֶלָּא מִפְּנֵי מְמוֹנוֹ אִף הוּא יֵצֵא וְיָדִיו עַל רֹאשׁוֹ. הֵדָּא הָא דְכִתְיִב מִהֵרָּה הִמְלִיט שְׁמָהּ. וְיִיָּד שְׂאֵת מִמֶּלֶט אֶת נַפְשָׁהּ.

**Halakhah 9:** *All its spoils you shall collect, etc.* Rabbi Simeon said, is there not an argument *de minore ad majus* about this? Since properties, which have no knowledge of good or bad, but because they caused the just to dwell with the evildoers the Torah said, should be burned, if somebody has the intention of influencing his neighbor and influences him from good ways to bad ones, not so much more? Rabbi Eleazar said, the matter is demonstrated by Lot who dwelt in Sodom only because of his money but left there with his hands on his head. This is what is written<sup>381</sup>: *Quickly escape to there*; it is enough for you that you escape with your life.

(29d line 25) כְּתוּב בְּלִמְיֹי בְּנֵה חֵיטָל בֵּית הָאֵלִי אֶת־יְרִיחוֹ. חֵיטָל מִן דִּיהוֹשָׁפָט. יְרִיחוֹ מִן דְּבִנְיָמִין. אֶלָּא מִלְּמַד שֶׁמִּגְלָגְלִין אֶת הַחוֹבָה עַל יְדֵי חֵיב. וְכֵן הוּא אוֹמֵר בְּאַבְרָהָם בְּכָרוֹ יִסְדָּהּ וּבְשָׁגִיב צָעִירוֹ. [בְּאַבְרָהָם בְּכָרוֹ לֹא הָיָה מֵאִין לְלַמֵּד. וּבְשָׁגִיב] הִרְשָׁע הָיָה לוֹ מֵאִין לְלַמֵּד. לָפִי

שָׂרְצוּ לְרִבּוּת אֶת מְמוֹנָן נְשָׁלְטָה בָּהֶן מְאִירָה וְהָיָה מִתְמוּטְטִין וְהוֹלְכִין. לְקַיִם מֶה שֶׁנֶּאֱמַר כְּדָבָר  
יִי אֱשֶׁר דִּבֶּר בְּיַד יְהוֹשֻׁעַ בֶּן־נֹון.

<sup>382</sup>It is written<sup>143</sup>: *In his days did Hiel from Bet-El build Jericho*. Hiel is from the descendants of Josaphat, Jericho is in the territory of Benjamin. Only that bad deeds are put in the hands of the unworthy; therefore, it is said, *with his first-born Aviram he set the foundation and with his youngest son Seguv he put in the doors*. [If it was not appropriate for him to learn from his firstborn Aviram, should he not have learned from]<sup>383</sup> the wicked Seguv? Because they wanted to make more money, the curse ruled over them and they were continuously weakened to confirm what was said<sup>143</sup>, *following the word of the Eternal, the God of Israel, which He had spoken though Joshua ben Nun*.

29d line 30) קָלִיל לַיהוָה אֱלֹהֶיךָ. וְלֹא־יִדְבֶּק בְּיָדְךָ. תִּנְיִי. רַבִּי שְׁמַעוֹן בֶּן אֶלְעָזָר אוֹמֵר. לֹא  
אוֹתָהּ בָּנוּ אֶלָּא עִיר אַחֲרֵת בָּנוּ. מֵאַחֵר שֶׁהָיָה נִבְנִית מוֹתֵר אֶת לִישָׁב בָּהּ. רַבִּי יוֹסִי וְרַבִּי יְהוֹשֻׁעַ  
בֶּן קֶרְחָה אוֹמְרִים. מֶה תִּלְמֹד לֹמֵר וּבָנָה אֶת־הָעִיר הַזֹּאת אֶת־יְרִיחוֹ. אֶלָּא שְׁלֹא יִבְנֶה עִיר  
אַחֲרֵת וְיִקְרָא שְׁמָהּ יְרֵחוֹ. יְרֵחוֹ וְיִקְרָא שְׁמָהּ עִיר אַחֲרֵת. וְכֵן הוּא אוֹמֵר. לֹא תוֹסִיפוּן לָשׁוּב  
בְּבִרְךָ הַזֶּה עוֹד. לִישִׁיבָה אֵין אֶת חוּזָר. חוּזָר אֶת לִסְחוּרָה וְלִפְרָקְמִטָּא וְלִכְבוּשׁ אֶת הָאָרֶץ.

*Totally, for the Eternal, your God. Nothing of what should be destroyed shall stick to your hands.* It was stated<sup>384</sup>: Rabbi Simeon ben Eleazar says, they did not rebuild it but built another town. After it was built, you are permitted to dwell there<sup>385</sup>. Rabbi Yose<sup>386</sup> and Rabbi Joshua ben Qorha say, why does the verse say<sup>143</sup>, *who would build this town, Jericho?* That one may not build another town and call it Jericho, or Jericho and call it another town. And so He says<sup>387</sup>, *you shall not continue to return on this way*, you may not return for dwelling; you may return for peddling, business<sup>388</sup>, or to conquer the land<sup>389</sup>.

381 Gen. 19:22.

382 Halakhah 2, Notes 143-146.

383 The addition in brackets is only in a Genizah fragment.

384 Tosephta 14:10.

385 As the Tosephta points out, the students of prophecy lived at Jericho, 2K. 2:5.

386 The Tanna.

387 Deut. 17:16.

388 Greek *πραγματεία*.

389 The verse prohibits return to Egypt to procure war materiel. It seems that the inference is based on a derivation of the word לָשׁוּב not from the root שׁוּב but from יֵשֵׁב.



## ואילו הן הנחנקין פרק אחד עשר

(fol. 29b) **משנה א:** ואילו הן הנחנקין המכה אביו ואמו וגו' נפ'ש מישראל וזקן ממרא על פי בית דין ונביא השקר והמתנבא בשם עבודה זרה והבא על אשת איש וזוממי בת כהן ובוועלה.

**Mishnah 1:** But the following are strangled<sup>1</sup>: One who hits his father or his mother<sup>2</sup>, and one who kidnaps a person from Israel<sup>3</sup>, and the Elder who rebels against the Court<sup>4</sup>, and the false prophet<sup>5</sup>, and one who prophesies in the name of foreign worship<sup>6</sup>, and one who copulates with a married woman<sup>7</sup>, and the perjured witness of a Cohen's daughter and her paramour<sup>8</sup>.

1 Since no particular form of execution is prescribed for them.

2 Ex. 21:15.

3 In order to sell him or her as a slave, Ex. 21:16, Deut. 24:7.

4 The Supreme Court sitting in the Temple court. Deut. 17:12.

5 Deut. 18:20-22.

6 Deut. 13:6.

7 Deut. 22:22. This also applies to the woman.

8 Even though the adulterous daughter of a Cohen is burned, there is no verse to apply the same punishment to the adulterer. Since witnesses to adultery are witnesses simultaneously to both parties, they cannot be punished more than the adulterer would be.

(30a line 13) **הלכה א:** ואילו הן הנחנקין כול'. אזהרה למכה אביו ואמו מניין. ארבעים יכנו לא יוסיף. מה אם מי שהוא מצווה להכות הרי הוא מצווה שלא להכות. מי שאינו מצווה להכות אינו דין שיהא מצווה שלא להכות.

**Halakhah 1:** But the following are strangled," etc. From where warning<sup>9</sup> for one who hits his father or his mother? *Forty times he shall hit him, he may not add*<sup>10</sup>. Since one who is commanded to hit is commanded not to hit, one who is commanded not to hit *a fortiori* is commanded not to hit<sup>11</sup>.

9 Cf. Chapter 7, Note 129.

10 Deut. 25:3, speaking of punishment decreed by the court.

11 It is sinful to hit anybody one is not commanded to hit. But only hitting a parent may be a capital crime. *Mekhilta dR. Ismael*

*Mišpatim* 5 (ed. Horovitz-Rabin p. 266). The argument establishes a guide for ethical behavior; it is not one in criminal law for which only explicit verses may form the basis.

30a line 16) אינו חייב עד שיעשה בהן חבורה. כאי זה חבורה. כחבורת שבת כחבורת נזקין. אין תימר כחבורת שבת. אפילו לא חיסר. ואין תימר כחבורת נזקין. עד שעה שישחר.

“He is not punishable unless he inflict a wound on them<sup>12</sup>.” What kind of wound? A wound for the laws of the Sabbath, a wound for the law of torts? If you say, as a wound for the laws of the Sabbath, even if he did not cause them to miss anything<sup>13</sup>; if you say, as a wound for the laws of torts, only if he caused them to miss something<sup>14</sup>.

12 Mishnah 2.

14 Some particle of skin or blood. Cf.

13 It is a desecration of the Sabbath to cause a contusion. Mishnah *Sabbat* 14:1.

*Bava qamma* 8:1, Notes 15-17.

**משנה ב:** המכה אביו ואמו אינו חייב עד שיעשה בהן חבורה. זה חומר במקל מבמכה שהמקל לאחר מיתה חייב והמכה לאחר מיתה פטור. וגונב נפש מ ישראל אינו חייב עד שיכניסנו לרשותו. רבי יהודה אומר עד שיכניסנו לרשותו וישתמש בו שנאמר והתעמר בו ומכרו. הגונב את בנו רבי יוחנן בן ברוקה מחייב וחכמים פוטרין. גנב מי שחציו עבד וחציו בן חורין רבי יוחנן בן ברוקה מחייב וחכמים פוטרין:

**Mishnah 2:** One who hits his father or his mother is not punishable unless he inflict a wound on them. The following is more aggravating about one who curses<sup>15</sup> than one who hits, in that one who curses is punishable even after death, but one who hits after death cannot be prosecuted. And one who kidnaps a person from Israel is not punishable unless he bring him into his property<sup>16</sup>. Rabbi Jehudah says, unless he bring him into his property and use him, as it is said, *and enslaved him or sold him*. One who kidnaps his own son, Rabbi Johanan ben Beroqa<sup>17</sup> declares punishable but the Sages make him not prosecutable. One who kidnapped a person half slave and half free Rabbi Johanan ben Beroqa declares punishable but the Sages make him not prosecutable.

15 Father or Mother; Mishnah 7:14.

shows that in the last sentence also here one

16 Or sells him as a slave.

has to read *R. Jehudah*, not *R. Johanan ben*

17 The Babylonian attributions in the last two cases are different. The Halakhah

Beroqa.

(fol. 29b) **הלכה ב:** המכה אביו ואמו כול'. אזהרה לגניבה הראשונה מניין. לא תגנוב. אזהרה לגניבה השנייה מניין. ולא תגנובו. לא תגנוב על מנת למקט. לא תגנובו על מנת לשלם תשלומי כפל על מנת לשלם תשלומי ארבעה וחמשה. בן בגבג אומר. לא תגנוב את שלך מאחר הגנב. שלא תראה גנב.

רבי בא רבי יוחנן בשם רבי הושעיה. אינו חייב עד שייגנוב מעות. רבי זעירא רבי יוחנן בשם רבי הושעיה. אינו חייב עד שיוזל מעות. מהו עד שיוזל מעות. מה נן קיימין. אם באו דאמר. הא לך חמשה וזהב לי תלתא. שוטה הוא. הא לך תלתא וזהב לי חמשה. בר נש הוא. אלא כי נן קיימין באו דמר. הא לך חמשה וזהב לי חמשה.

היידינו גנב והיידינו גזלן. אמר רבי הילא. גנב בפני עדים גנב. בפני הבעלים גוזלן הוא. אמר רבי זעירא. מעתה אפילו נתבונן לגזילה ולבעילה אולה אין גוזלן. והיידינו גוזלן על דרבי זעירא. רבי שמאל בר סוסרטא בשם רבי אבהו. עד שגזול בפני גשרה בני אדם. בניין אב שבכילן ויגזול את החנית מיד המצרי וגו'.

<sup>18</sup>From where a first warning about stealing: *you shall not steal*. From where a second warning about stealing: *you shall not steal*. *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 back from the thief, lest you be seen stealing.

Rebbi Abba, Rebbi Johanan in the name of Rebbi Hoshia: he is punishable only if he steals money. Rebbi Ze'ira in the name of Rebbi Hoshia: he is punishable 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.

What is a thief and what is a robber? 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. Rebbi Ze'ira asked: but if he intended to rob (for copulation)<sup>18</sup>, he is not a robber. What is a robber according to Rebbi Ze'ira? Rebbi Samuel ben Sosarta in the name of Rebbi 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*, etc.

- 17 The entire paragraph is from Halakhah 8:3, Notes 38-43. “for sexual intercourse” instead of לבעילה “in front of its owners” as in Halakhah 8:3.
- 18 A copyist’s error who wrote לבעילה

34) (30a line 34) מה טעמא דרבי יוחנן בן ברוקה. מבני ישראל. מה טעמון דרבנן. מאחיו. לא מבניו. מה טעמא דרבי יהודה. מאחיו. מפילו מקצת אחיו. מה טעמון דרבנן. מאחיו. עד שיהא כולו אחיו.

What is the reason of Rabbi Johanan ben Beroqa? *Of the Children of Israel*. What is the reason of the rabbis? *Of his brothers*, not his sons<sup>20</sup>.

What is the reason of Rabbi Jehudah? *Of his brothers*, even partially his brother. What is the reason of the rabbis? *Of his brothers*, unless he be totally his brother.

20 Deut. 24:7 reads: *If a man be found kidnapping one of his brothers, of the Children of Israel, and enslaves him or sells him, the kidnapper shall die; you shall eliminate evil from Israel*. This paragraph speaks of the son, the next (cf. Note 17) of the half-emancipated slave. *Sifry Deut. 273* parallels the first paragraph but in the case

of the semi-emancipated slave treats the rabbis’ as unanimous opinion. The Babli 86a finds a reason to exclude the semi-emancipated slave from the partitive *mem* in the verse *of the Children of Israel*, which implies “not all of the Children of Israel.”

**משנה ג:** זקן ממרא על פי בית דין שנאמר כי יפלא ממך דבר למשפט בין־דם | לדם בין־דין לדין. שלשה בתי דינין היו שם. אחד על פתח הר הבית. ואחד על פתח העזרה. ואחד בלשכת הגזית. באין לזה שעל פתח הר הבית ואומר כן דרשתי וכך דרשו חבירי כן למדתי וכך למדו חבירי. אם שמעו אמרו להם. ואם לאו באין לזה שעל פתח העזרה ואומר כן דרשתי וכך דרשו חבירי כן למדתי וכך למדו חבירי. אם שמעו אמרו להם. ואם לאו איילו ואילו באין לבית דין הגדול שבלשכת הגזית שמשם תורה יוצאה לכל ישראל, שנאמר מן המקום ההוא אשר יבחר ה'.

**Mishnah 3:** The Elder who rebels against the Court, as it is said: *If a law case is too difficult for you, whether blood and blood, or case and case*<sup>21</sup>, etc. Three courts were there, one at the entrance of the Temple Mount, one at the entrance of the Temple courtyard, and one in the ashlar hall. They come to

the one at the entrance to the Temple Mount and he says, so I argued and so my colleagues argued, so I taught and so my colleague taught. If they had heard it<sup>22</sup>, they tell them; otherwise they come to the one at the entrance of the Temple courtyard and he says, so I argued and so my colleagues argued, so I taught and so my colleagues taught. If they had heard it, they tell them; otherwise these and those<sup>23</sup> come to the Supreme Court in the ashlar hall, for from there instruction goes out to all of Israel as it is said<sup>24</sup>, *from that place which the Eternal will choose*.

**משנה ד:** חזר לעירו וְשָׁנָה וְלִמַּד כְּדָרְךָ שֶׁהִיָּה לְמוֹד פְּטוּר. הוֹרָה לַעֲשׂוֹת חַיִּיב שְׁנֵאמַר וְהָאִישׁ אֲשֶׁר יַעֲשֶׂה בְּדוֹן וּגו'. אֵינוֹ חַיִּיב עַד שִׁיֹּרֶה לַעֲשׂוֹת. תִּלְמִיד שֶׁהוֹרָה לַעֲשׂוֹת פְּטוּר נִמְצָא חוֹמְרוֹ קוּלוֹ:

**Mishnah 4:** If he returned to his town<sup>25</sup>, repeated and taught as was his custom, he cannot be prosecuted. If he instructed to act, he is punishable, as it is said<sup>4</sup>, *but the man who would act criminally* etc. He is not punishable unless he instruct to act. A student who instructed to act cannot be prosecuted; it turns out that his severity is his leniency<sup>26</sup>.

25 The representative of the lower court who had been told by the Supreme Court that his opinion was wrong.

worse than the qualified judge who does not obey the rulings of the Supreme Court. But his punishment is reserved for Heaven, not

26 A person unqualified to judge who nevertheless judges commits a grievous sin,

the human court.

(30a line 37) **הלכה ג:** זָקֵן מִמָּרָא כוּל'. **הלכה ד:** חֲזַר לְעִירוֹ וְשָׁנָה וְלִמַּד כוּל'. כְּתִיב כִּי יִפְלֹא מִמֶּךָ דָּבָר לְמִשְׁפָּט. מֵגִיד שֶׁבְּמוֹפֶלֶא שְׁבִבִית דִּין הִכְתוּב מִדְּבַר. מִמֶּד זֶה עָצָה. דְּבַר זֶה אֲגִידָה. בֵּין-זֶם | לָזֶם בֵּין זֶם נִידָה לָזֶם בְּתוּלִים. בֵּין זֶם נִידָה לָזֶם זִיכָה לָזֶם צָרַעַת. בֵּין-דִּין לְדִין. בֵּין דִּינֵי מְמוֹנוֹת לְדִינֵי נַפְשׁוֹת. בֵּין-דִּין לְדִין. בֵּין הַנִּסְקָלִין לְנִשְׁרָפִין לְנִהְרָגִין וְלַחֲנָקִין. בֵּין נִגְעַל לִנְגַע. בֵּין מְצוּרַע מוֹסָר לְמְצוּרַע מוֹחֵלֵט. בֵּין נִגְעַל לִנְגַע. בֵּין נִיגְעֵי אָדָם לְנִיגְעֵי בְּגָדִים לְנִיגְעֵי בְּתִים. דְּבָרֵי זֶה הַשְׁקִיטֵי סוּסָה וְעָרִיפֵת הַעֲגָלָה וְטָהֳרֵת הַמְצוּרַע. רִיבוֹת אֵילֵי הָעֲרָכִים וְהַחֲרָמִים וְתַתְּמוּרוֹת וְהַקְדִּישׁוֹת. וְקִמְתָּ. וְקִמְתָּ מִבֵּית דִּין. וְעֲלִיתָ זֶה הַעֲלִיָּה.

**Halakhah 3:** “The Elder who rebels,” etc. **Halakhah 4:** “If he returned to his town, repeated and taught as was his custom,” etc. <sup>27</sup>It is written<sup>20</sup>: *If something is being distinguished for you in law*, this shows that the verse speaks about the distinguished member of the court<sup>28</sup>. *For you*, this is

counsel. *Something* is sermonizing<sup>29</sup>. *Whether blood and blood*, whether menstrual blood or blood of virginity; whether menstrual blood, blood of flux, or blood of skin disease<sup>30</sup>. *Whether case or case*, between those who are stoned, or burned, or decapitated, or strangled<sup>31</sup>. *Whether defect or defect*, between a quarantined sufferer from skin disease or an absolute one<sup>31,32</sup>; *whether defect or defect*, between defects of humans or of garments or of houses<sup>33</sup>. *Words*, that is the drinking of the suspected adulteress, breaking the neck of the calf, and the purification of the sufferer from skin disease<sup>34</sup>. *Quarrels*, these are estimations, bans, and dedications<sup>35</sup>. *You shall get up*, from the court, *and rise*, this is the ascent<sup>36</sup>.

27 This *baraita* exists in two other versions, Babli 87a and *Sifry Deut.* 152. It is the subject of a study by E. A. Finkelstein, HUCA XXXII (1961) א-כה.

28 The person representing the lower court before the Supreme Court has to be its most distinguished member.

29 In the parallel sources: This is practice. Since the verse defines the areas of competence of the Supreme Court, it is difficult to see what the legal relevance of *aggadah* could be unless one subscribes to Maimonides's opinion that all interpretations of biblical verses by the hermeneutical rules are rabbinic in character, *i. e.*, *aggadic*.

30 As Finkelstein points out, the plain text of the verse seems to restrict the objects of appeal to purely legal cases; the interpretation given here extends it to all areas of life.

31 This sentence is missing in the parallel

sources; it already is contained in the other explanations of the same clause.

32 Cf. Chapter 10, Note 284.

33 *Lev.* 13,14.

34 While the suspected adulteress drinks water with which written words were obliterated (*Num.* 5:23) and the expiation of an unsolved murder case requires the priests to recite words (*Deut.* 21:7-8), the purification of the sufferer from skin disease is a wordless ceremony. Rashi in the Babli explains that skin disease is punishment for calumniating. One could explain that the first step in the purification is a declaration by a priest that the skin disease was healed and his command to assemble the items necessary for purification (*Lev.* 14:3-4).

35 *Lev.* 27; all of these need dedications by explicit declaration.

36 Climbing up all the way to Jerusalem.

מה (30a line 46) דָּבַר אַחֵר. וְעָלִיתָ מִיֵּכוֹן לְבֵית הַבְּחִירָה שֶׁלֹּא יִבְנֶה אֶלָּא בְּגוּבָהוּ שְׁלֵעוּלָם. כִּי בֵּהָר קָדְשִׁי בֵּהָר מְרוֹם יִשְׂרָאֵל אֲשֶׁתִּלָּנוּ וְנִשְׂא עֲנָן וְעָשָׂה כָּרִי וְגו'. וּבֵאתָ לְרִבּוֹת בֵּית דִּין שְׁבִיבָנָה. רַבִּי זְעִירָא אוֹמֵר. לְשִׁאִילָה.

Another explanation: *You shall get up*, from here that the Temple should be built only on the height of the world<sup>37</sup>. What is the reason? *For on My Holy Mountain, on the mountain of the height of Israel shall I plant it, that it may sprout branch and carry fruit*<sup>38</sup>. *And you shall come*<sup>39</sup>, to include the court at Jabneh. Rabbi Ze'ira says, to ask<sup>40</sup>.

37 When in fact the Temple Mount is conspicuously lower than the surrounding hills, to indicate that it is not a Canaanite High Place.

38 Ez. 17:23. For different approaches to the same statement, cf. Note 27, Babli *Qidduṣin* 69a, *Zevahim* 54b, *Sifry Deut.* 37, end.

39 *Deut.* 17:9.

40 As Mishnah 6 shows, disobedience to a court not sitting in the ashlar hall is not a crime punishable by a human court; but

nevertheless the obligation to ask the opinion of the Supreme Court in cases of doubt remains as long as such a court exists.

Since Rabban Johanan ben Zakkai asked for "Jabneh and its Sages" from Vespasian, it follows that even during the times of the Temple an important academy existed at Jabneh (and since Miriam the Hasmonean in her will had given Jabneh to Empress Livia, this was the only place in all of Judea which Vespasian could not give away without declaring himself as emperor.)

30a line 50) זָקוּן מִמָּרָא שֶׁהוֹרָה לַעֲשׂוֹת וְעָשָׂה חַיִּיב. הִנֵּה וְלֹא עָשָׂה פְטוּר. הוֹרָה עַל מִנָּה שֶׁלֹּא לַעֲשׂוֹת פְטוּר. הוֹרָה עַל מִנָּה לַעֲשׂוֹת אֶף עַל פִּי שֶׁלֹּא עָשָׂה חַיִּיב. אָמַר רַבִּי הִילָא. תִּנֵּי רַבִּי יִשְׁמַעֲלָל כֵּן. אֲשֶׁר יַעֲשֶׂה. לֹא הוּא שֶׁיַּעֲשֶׂה. רַב הוֹנָא אָמַר. הִנֵּה מְלַמֵּד הִלָּכָה וְכֵן וְאַחֲרֵי כֵן אִירֶע לוֹ בּוֹ מַעֲשֶׂה. עוֹשִׂין לוֹ מַעֲשֶׂה. אִם עַד שֶׁלֹּא עָשָׂה לִימַד. עוֹשִׂין לְאַחֲרִים וְלֹא עוֹשִׂין לַעֲצָמוֹ.

A rebellious Elder who instructed to act and acted is punishable. If he instructed but did not act, he is not prosecutable. If he instructed not for application, he is not prosecutable. If he instructed for application, even if he himself did not act, he is punishable<sup>41</sup>. Rabbi Hila said, Rabbi Ismael stated thus: *Who would act*<sup>4</sup>, even if he did not act himself.

Rav Huna said, if he was instructing for practice and later a case came up, one acts on his instruction. If he taught it on the occasion of a case, one acts on it for others but not for himself<sup>42</sup>.

41 Babli 88b. *Sifry Deut.* 155 infers from *Deut.* 17:12 which decrees the death penalty for the person who acts against the judgment

which *he* heard from the Supreme Court that any person acting on instructions from a person who *heard* from the Supreme Court

cannot be prosecuted. Therefore, the actions of persons acting on the instructions of a judge are considered actions of the judge, not those of his officers.

42 This is a general legal principle, applicable to civil as well as to criminal law. A legal doctrine formulated before a case

arose can be applied to any case. But a doctrine formulated in the discussion of a case cannot be applied if the party formulating it is party to the case; that would be a conflict of interest (Babli *Yebamot* 77a in the name of Rav, Rav Huna's teacher.)

30a line 55) רבי שמעון בן מנסיא אומר. הנוי והפח והעושר והחכמה והשיבה והכבוד והבנים לצדיקים נאה להם ונאה לעולם. מה טעם. עטרת תפארת שיבה בדרך צדקה תימצא. עטרת זקנים בני בנים ותפארת בנים אבותם: תפארת בחורים כוחם והדר זקנים שיבה: ואומר ונגד זקניו קבד: תני. רבן שמעון בן גמליאל אומר. אילו שבע מידות שקמו חכמים בצדיקים כולן נתקיימו ברבי ובניו. רבי יוחנן אומר. כל שבע מידות שאמרו חכמים בצדיקים הוי ברבי. מאן רבי. הוא רבי הוא רבי יהודה הנשיא. אמר רבי אבהו. הוא רבי הוא רבי יודן הנשיא הוא רבינו.

<sup>43</sup>Rebbi Simeon ben Menasia says: Beauty, and vigor, and riches, and wisdom, and white hair, and honor, and children, are an adornment for the just. What is the reason? *A crown of glory is white hair; on the way of piety it is found*<sup>44</sup>. *A crown of the elderly are grandchildren; the glory of children are their parents*<sup>45</sup>. *The glory of the young is their force; the splendor of the elderly is white hair*<sup>46</sup>. And it says, *before his Elders in honor*<sup>47</sup>. <sup>48</sup>It was stated: Rabban Simeon ben Gamliel says, these seven qualities which the Sages enumerated for the just were all realized by Rebbi and his sons. Rebbi Johanan said, all seven qualities which the Sages enunciated about the just were in Rebbi. Who was Rebbi? Rebbi is Rebbi Jehudah the Prince. Rebbi Abbahu said, Rebbi is Rebbi Yudan the Prince, is Our Teacher<sup>49</sup>.

43 Mishnah *Avot* 6:8, Tosephta *Sanhedrin* 11:8. In these sources, the original author is R. Simeon ben Iohai.

44 *Prov.* 16:31.

45 *Prov.* 17:6.

46 *Prov.* 20:29.

47 *Is.* 24:23.

48 This sentence has to be deleted since

Rebbi's father cannot speak about his son and grandsons. Since Rebbi was the last of the Tanna'im, only amoraic statements about him are legitimate.

49 It is not clear whether he refers to R. Jehudah I ben Simeon, mentioned by R. Johanan, or to R. Jehudah II ben Gamliel.



(fol. 29d) **משנה ה:** חומר בדברי סופרים מבדברי תורה האומר אין תפילין כדי לעבור על דברי תורה פטור חמש טקפות להוסיף על דברי סופרים חייב:

**Mishnah 5:** [Denial] about words of the Sopherim is more serious than about words of the Torah. He who says that there are no phylacteries, to transgress the words of the Torah, is not prosecutable. Five compartments to add to the words of the Sopherim is punishable<sup>50</sup>.

**משנה ו:** אין ממיתין אותו לא בבית דין שבעירו ולא בבית דין שגבולה אלא מעלין אותו לבית דין הגדול שבירושלם ומשמרין אותו עד הרגל וממיתין אותו ברגל שנאמר וכל העם ישמעו ויראו דברי רבי עקיבה. רבי יהודה אומר אין מענין את דינו של זה אלא ממיתין אותו מיד וכותבין ושולחין שליחים בכל המקומות איש פלוני בן איש פלוני נתחייב מיתה בבית דין:

**Mishnah 6:** One executes him not at the court in his town, nor at the court at Jabneh<sup>51</sup> but one transports him to the Supreme Court in Jerusalem, keeps him until a holiday of pilgrimage, and executes him on the holiday<sup>52</sup> as it is said, *the entire people shall see and fear*<sup>53</sup>, the words of Rabbi Aqiba. Rabbi Jehudah says, one does not procrastinate in his case but executes him immediately, writes, and sends messengers to all places: Mr. A son of Mr. B was found guilty to be executed by the court.

50 The person who denies a verse in the Torah (in this case *Deut.* 6:8,11:18; *Ex.* 13:16) is harmless since every schoolchild knows better. But the details of the construction of phylacteries are purely traditional, viz., that the phylacteries on the arm have to be put into one box but those of the head into four compartments. As Y. Yadin has noted in his publication on the phylacteries from the Judean desert, they are

made in the way of rabbinic phylacteries (at least as they used to be made until 200 years ago, with boxes of 1 cm edge length) but the text contains many more than the authorized verses. These *tefillin* therefore have to be classified as non-rabbinical.

51 The nearby court of appeals.

52 On holiday eve when everybody had arrived.

53 *Deut.* 17:13.

(30a line 64) **הלכה ה:** חומר בדברי סופרים כול'. **הלכה ו:** אין ממיתין אותו כול'. חבירא בשם רבי יוחנן. דודים דברי סופרים לדברי תורה וחביבים דברי תורה. וחכמים כיון הטוב. שמעון בר בא בשם רבי יוחנן. דודים דברי סופרים לדברי תורה וחביבים יותר מדברי תורה. פריטובים דודים מין: רבי בא בר כהן בשם רבי יודה בר פזי. תדע לך שדברי סופרים חביבין מדברי תורה. שהרי רבי טרפון אילו לא קרא לא היה עובר אלא בעשה. ועל ידי שעבר על דברי בית הלל נתחייב מיתה. על שם ופרצ גדר ישכנו נחש.

2 וחכך | ת וחכך 3 בא | ת הוא וחביבים | ע ואמונים 4 ר' יודה | ע - שדברי סופרים חביבין | ת  
שחביבין דברי סופרים ע חביבין יותר

**Halakhah 5:** “[Denial] about words of the Sopherim is more serious,” etc. **Halakhah 6:** “One executes him not,” etc. <sup>54</sup> The colleagues in the name of Rabbi Johanan: The words of the Sopherim are related to the words of Scripture and are pleasant like the words of Scripture; *your throat is like good wine*<sup>55</sup>. Simeon bar Abba in the name of Rabbi Johanan: The words of the Sopherim are related to the words of Scripture and are more pleasant than the words of Scripture, *for your friendship is better than wine*<sup>56</sup>. Rabbi Abba bar Cohen in the name of Rabbi Judah bar Pazi: You may know that he words of the Sopherim are more pleasant than the words of Scripture, because if Rabbi Tarphon did not recite at all he would only have transgressed a positive commandment. But because he transgressed the words of the House of Hillel he should have suffered death since it says, *if one breaches a wall he will be bitten by a snake*<sup>56</sup>.

54 This and the next paragraphs are from 55 Cant. 7:10

Berakhot 1:7 (Notes 182-191) (ת). It is 56 Cant. 1:2.

copied again in Avodah zarah 2:8 41c l. 46 57 Eccl. 10:8.

(ע).

(30a line 73) תני רבי ישמעאל דברי תורה יש ביהן איסור ויש ביהן היתר. יש ביהן קוללים ויש ביהן חומרים. אבל דברי סופרים כולן חומר. תדע לך שהוא כן. דתנינן תפן. האומר. אין תפילין כדי לעבור על דברי תורה פטור. חמש טוספות להוסיף על דברי סופרים חייב. אמר רבי חנינא בריה דרבי אבא בשם רבי תנחום בר חינה. חמורים דברי זקנים מדברי נביאים. דכתיב אל-תטיפו וטיפו. וכתיב אטוף לך לין ולשכר וגו'. נביא וזקן למה הן דומין. למלך ששלח שני פלמנטרין שלו למדינה. על אחד מהן כתוב. אם אינו מראה חותם שלי וסמנטרין שלי אל תאמינו לו. ועל אחד כתוב. לא יאמרו עליך וסמנטרין שלי וסמנטרין שלי תאמינו לו. כך נביא כתוב ונתן אליך אות או מופת. ברם הקא. על-פי התורה אשר יורוד.

1 קוללים | ת קולין ע קלין 2 סופרים | ע סופרין חומר | ת חומרין הן תדע לך שהוא כן | ע - 4 חנינא | ת חנינה ע חנינה בריה דר' אבא | ע בשם ר' אבדי חמורים | ע חמורים 5 טיפון | ת טיפון אל טיפון לאלה לא יסג כלמות 6 ששלח | ת ששולח ע ששלח פלמנטרין | ת פלמנטרין ע סימנטרין כתוב | ת כתב 7 כתוב | ת כתב וסימנטרין שלי | ת - תאמינו | ת האמינוהו בלי חותם וסימנטרין ע האמינו

Rebbi Ismael stated: In the Torah there are forbidden matters and permitted matters. There are easy parts and severe parts. But in the words of the Sopherim all are severe. You can realize that this is so since we have

stated: "He who says that there are no phylacteries, to transgress the words of the Torah, is not prosecutable. Five compartments to add to the words of the Sopherim is punishable." Rabbi Hinena, the son of Rabbi Ada, in the name of Rabbi Tanhum bar Hiyya: The words of the Sages carry more weight than those of the prophets since it is written, *do not preach, they preach*<sup>58</sup>. And it is written, *I shall preach to you for wine and liquor*<sup>59</sup>. The relation of prophet and scholar can be compared to the case of a king who sent two *diplomatarii*<sup>60</sup> to a province. About one of them it was written, if he does not show you my seal and *σημαντήριον*<sup>61</sup>, do not believe him. About the other it was written, even if he does not show you my seal and *σημαντήριον*, believe him. So about a prophet is written, *he gives you a sign or miracle*<sup>62</sup>. But here it is written, *according to the teachings that they will teach you*<sup>63</sup>.

58 *Micha* 2:6.61 "Seal" in Greek; *Berakhot* 1:7 Note59 *Micha* 2:11.

190.

60 A person authorized to use the imperial mail; *Berakhot* 1:7 Note 189.62 *Deut.* 13:2.63 *Deut.* 17:11.

30b line 8) התורה אָמַרָה. אַרְבַּע טוֹטְפוֹת שֶׁלֹאֲרַבֵּעַ פְּרָשִׁיּוֹת. עֲשֹׂאן חֲמֵשׁ טוֹטְפוֹת שֶׁלֹאֲרַבֵּעַ פְּרָשִׁיּוֹת חֵיב. רַבִּי בָּא רַבִּי יוֹחָנָן בְּשֵׁם רַבִּי הוֹשַׁעְיָה. אֵינוֹ חֵיב עַד שִׁיּוּרָה בְּדָבָר שֶׁעִיִּקְרוּ מִדְּבָרֵי תוֹרָה וּפִירוּשׁוֹ מִדְּבָרֵי סוֹפְרִים. כְּגוֹן הַנְּבִילָה כְּגוֹן הַשָּׂרָץ שֶׁעִיִּקְרוּ מִדְּבָרֵי תוֹרָה וּפִירוּשׁוֹ מִדְּבָרֵי סוֹפְרִין. אָמַר רַבִּי זְעִירָא. לְעוֹלָם אֵינוֹ חֵיב עַד שֶׁיִּכְפּוֹר וְיוֹרָה בְּדָבָר שֶׁעִיִּקְרוּ מִדְּבָרֵי תוֹרָה וּפִירוּשׁוֹ מִדְּבָרֵי סוֹפְרִין. כְּגוֹן הַנְּבִילָה וְכְגוֹן שָׂרָץ שֶׁעִיִּקְרוּ מִדְּבָרֵי תוֹרָה וּפִירוּשׁוֹ מִדְּבָרֵי סוֹפְרִין. וְהוּא שֶׁיִּגְרַע וְיוֹסִיף בְּדָבָר שֶׁהוּא מְגַרֵעַ וְהוּא מוֹסִיף. זָחָלִין אַפִּי דָּרַב הוֹשַׁעְיָה. אָמַר לֵיהּ. צְרִידָא לָךְ שֶׁחֵק לָךְ. לֹא צְרִידָא לָךְ הַפְּלִיג עֲלֶיךָ. תֵּלֶת עֲשָׂרָה שָׁנִין עָבַד גְּלִיל קוֹמֵי רַבִּיָּה דְּלֹא צְרִידָא לֵיהּ. רַבִּי שְׁמוּאֵל בְּשֵׁם רַבִּי זְעִירָא. אֵילוֹ לֹא דִּיּוֹ אֶלָּא שֶׁהִיא מְקַבֵּל פְּנֵי רַבּוֹ. שֶׁכָּל־הַמְקַבֵּל פְּנֵי רַבּוֹ כְּאֵילוֹ מְקַבֵּל פְּנֵי שְׂכִינָה. הֵתִיב רַבִּי בְּרַכְיָה. וְהָא תַנְיִן. גּוֹפָה שֶׁלִּבְהֶרֶת כְּגֵרִיס הַקִּילְקִי מְרֻבָּע. אָמַר רַבִּי אֲבָמֵר. מָאן דְּאָמַר דְּכֵן. הֵתִיב רַבִּי בָּא בַר מַמְל. וְהָא תַנִּין. שְׁתֵּי פְרָשִׁיּוֹת שֶׁבְּמִזְוָה. אָמַר לֵיהּ. הֵיא תְּפִלְיָן הֵיא מִזְוָה. הֵתִיב רַב הַמְנוּנָא. וְהָא תַנִּין. בְּצִיצִית אַרְבַּע אַצְבָּעוֹת שֶׁלֹאֲרַבֵּעַ חוּטִין. עֲשֹׂאן שְׁלֹשׁ אַצְבָּעוֹת שֶׁלֹאֲרַבֵּעַ חוּטִין. אָמַר לֵיהּ. גֵּרַע וְלֹא הוֹסִיף. הֵתִיב רַבִּי חֲנִי קוֹמֵי רַבִּי יוֹסִי. וְהָא תַנִּין. שְׁלִישׁ לְרַבִּיכָה שְׁלִישׁ לַחֲלוֹת שְׁלִישׁ לְרַקִּיקִים. שִׁילְשָׁן שְׁלִישׁ לְרַבִּיכָה שְׁלִישׁ לַחֲלוֹת שְׁלִישׁ לְרַקִּיקִים. אָמַר לֵיהּ. מִיִּגְרַע מִן הַרְבִּיכָה וּמוֹסִיף עַל הַחֲלוֹת וְעַל הַרְקִיקִין.

The Torah said, four compartments for four paragraphs<sup>64</sup>. If he made five compartments for four paragraphs, he is punishable. Rabbi Abba, Rabbi Johanan in the name of Rabbi Hoshai: He is punishable only if he instructs in a matter whose root is from the Torah but whose explanation is from the words of the Sopherim; for example, the carcass; for example, the crawling animal, whose root is from the words of the Torah<sup>65</sup> but whose explanation is from the words of the Sopherim. Rabbi Ze'ira said, he never is punishable unless he deny and instruct in a matter whose root is from the Torah but whose explanation is from the words of the Sopherim; for example, the carcass; for example, the crawling animal, whose root is from the words of the Torah but whose explanation is from the words of the Sopherim, on condition that he simultaneously deduct in a matter which permits subtraction and addition<sup>66</sup>.

The face of Rav<sup>67</sup> Hoshai lit up<sup>68</sup>. He<sup>69</sup> told him, do I need you that you enjoy it? I do not need you, I am adding to your statement. Thirteen years he<sup>69</sup> went and came before his teacher even though he did not need him. Rabbi Samuel in the name of Rabbi Ze'ura: Was it not enough for him to have paid his respects to his teacher since anybody who pays his respects to his teacher is as if he paid his respects to the Divine Presence.

Rabbi Berekhiah objected, did we not state<sup>70</sup>, “the body of *baheret* is the square area of a split cilician bean”? Rabbi Abba Mari said, one who said it is pure<sup>71</sup>. Rabbi Abba bar Mamal objected, did we not state<sup>72</sup>, “two paragraphs in the *mezuzah*”? He told him, phylacteries and *mezuzah* are the same<sup>73</sup>. Rav Hamnuna objected, was it not stated<sup>74</sup>: The *sisit* must be four finger lengths for four threads? He told him, in that he diminished but did not add<sup>75</sup>. Rabbi Haggai objected before Rabbi Yose, was it not stated<sup>76</sup>, one third for the scalded<sup>77</sup>, one third for round cakes, one third for flat cakes. If he used it in thirds, one third for the scalded, one third for round cakes, one third for flat cakes? He told him, he subtracts from the scalded and adds for round cakes and flat cakes<sup>78</sup>.

64 The word סִטָּה (Ex.13:16, Deut. 6:8,11:18) “head *tefillin*” is confirmed by the Babli’s use, *Šabbat* 57a, as “woman’s

headband”. A fancy etymology, which reads the number 4 into the word, to support the statement that head phylacteries must be

made with four compartments (*Sanhedrin* 4b, *Zevahim* 37b, *Menahot* 34b) is rabbinic.

65 The different kinds of impurity of dead animals are described in *Lev.* 11 but the details, in particular the minimal quantities which induce impurity, are rabbinic.

66 R. Ze'ira restricts the original saying of R. Hoshiaia, which was extended by R. Johanan to include impurity of dead animals. In the Babli 88b it is asserted that in the interpretation here ascribed to R. Ze'ira the only crime a rebellious Elder could be charged with was to instruct to make head phylacteries not with four but with five compartments. Then he obviously adds to the number of compartments but at the same time, since one of the four texts now has to occupy two compartments, he eliminates the rule which determines the order in which the texts have to be placed into compartments. This is simultaneously adding and subtracting; from the following discussion (Notes 63-71) it follows that this also is the interpretation required for the Yerushalmi. It is clear that *tefillin* of the kind found in the Judean desert (Note 50) are not considered.

67 This should read "Rebbi".

68 He was happy that R. Johanan quoted him even though the extension to include carcasses and dead crawling animals was not his formulation.

69 R. Johanan.

70 Mishnah *Nega'im* 6:1; cf. *Nedarim* 3:2 Note 49, *Ma'aserot* 5:7 Notes 122-125.

*Baheret* is a skin disease in which white spots appear on the skin (*Lev.* 13). The minimum size of such a spot which makes its bearer impure is that of a "square split cilician bean" which is defined as 36

(hairwidths)<sup>2</sup>. All questions are directed to R. Ze'ira; one tries to find a law other than that of phylacteries where a ruling by a rebellious Elder could simultaneously add and subtract from the received norm.

It was shown in *Ma'aserot*, by a question of R. Berekhiah, that *square* cannot mean that the white spot be an exact square, since nothing in biology exhibits geometrically straight lines and right angles. Therefore, the question can only be whether the spot must contain a square of minimal size or only have surface area of 36 (hairwidths)<sup>2</sup>.

71 For ms. דכן "pure" (*Mishnah Idiut* 8:4) *editio princeps* has הכן "so", which made the clause incomprehensible. In *Ma'aserot* and *Nedarim*, it was determined that the Mishnah has to be read as referring to surface area. An elder who would read the Mishnah as requiring a white spot containing a square of minimal size would actually declare most impure spots as pure. This is diminution; nothing is added.

72 Mishnah *Menahot* 3:7. Again the obligation to write words of the Torah on one's doorposts is biblical (*Deut.* 6:9, 11:19) while the selection of the texts and the details are rabbinic. If one put the two texts into two cases instead of writing them on one sheet of parchment, it would be simultaneously adding and subtracting.

73 It is agreed that instead of "only *tefillin*" one should accept "only *tefillin* and *mezuzot*" as possible objects of the Elder's misdeeds since both are mentioned together in the biblical texts.

74 *Menahot* 41b, *Bekhorot* 39b, determining the minimal length of the

unknotted part of the *sisit*, the threads to be attached to the corners of one's rectangular garment.

75 This is pure diminution; nothing is added.

76 Mishnah *Menahot* 7:1, *Menahot* 89a, *Sifra Saw Perez* 11(6). The rules of a thanksgiving sacrifice (*Lev. 7:12-14*) require three kinds of unleavened oiled breads in addition to a set of leavened bread. The rabbinic interpretation requires that the flour be divided into three equal parts but that half

of the oil be used on the unleavened bread scalded in hot water like a bagel, the rest being used for the other two kinds. If instead somebody instructed also to distribute the oil evenly, would he not subtract from one kind and add to the others?

77 Explanation of Rashi in *Menahot*.

78 The questioner considered all three kinds of *mazzah* as one commandment when in fact they are three different obligations; there is no simultaneity for one obligation.

**משנה ז:** וְנָבִיא הַשֶּׁקֶר וְהַמְתַּנְבֵּא עַל מָה שֶׁלֹּא שָׁמַע וּמָה שֶׁלֹּא נֶאֱמַר לוֹ. אֲבָל הַכּוֹנֵשׁ אֶת נְבוֹאָתוֹ וְהַמּוֹתֵר עַל דְּבָרֵי נָבִיא וְנָבִיא שֶׁעָבַר עַל דְּבָרֵי עֲצֻמוֹ מִיתָתוֹ בְּיַד שְׁמַיִם שֶׁנֶּאֱמַר אֲנֹכִי אֶדְרוֹשׁ מַעֲמוֹ: (fol. 29d)

**Mishnah 7:** And the false prophet and one who prophesies what he did not hear and what was not said to him<sup>79</sup>. But as to one who suppresses his vision, and one who disregards the prophet's words, and a prophet who transgressed his own word, their death is by the Hand of Heaven as it is said, *I shall ask it from him*<sup>80</sup>.

79 These are cases for the human court.

80 *Deut. 18:19*, cf. *Sifry Deut. 177*.

(30b line 29) **הלכה ז:** וְנָבִיא הַשֶּׁקֶר כּוֹל. הַמְתַּנְבֵּא עַל מָה שֶׁלֹּא שָׁמַע. כְּצִדְקָה בֶּן כְּנַעֲנָה. וּמָה שֶׁלֹּא נֶאֱמַר לוֹ. כְּחֻנְיָה בֶּן עֲזַר. רַבִּי יְהוֹשֻׁעַ בֶּן לִוִּי אָמַר. חֻנְיָה בֶּן עֲזַר נָבִיא אֱמֻת הָיָה אֲלֵא שֶׁהָיָה לוֹ קִיבוּסָת וְהָיָה שׁוֹמֵעַ מִה שֶׁיִּרְמְיָה מְתַנְבֵּא בְּשׁוֹק הָעֵלְיוֹן וַיּוֹרֵד וּמְתַנְבֵּא בְּשׁוֹק הַתַּחְתּוֹן. אָמַר לִיה חֻנְיָה בֶּן עֲזַר. כָּל-סִמָּא דְּמִילְתָא לֹא דָא הִיא אֲלֵא לָכִי מְלָאָת לְבַבִּי שְׂבָעִים שָׁנָה אֶפְקוּד אֲתָכֶם. כָּל-יָמָיו שֶׁלְּמִנְשָׁה אֵינָן אֲלֵא חֲמִשִּׁים וְחֲמִשׁ שָׁנָה. צֵא מִהָן עֲשָׂרִים שָׁאִין בֵּית דִּין שֶׁלְּמַעַלָּה עוֹנְשִׁין וְכוּרְתִּים. וְשִׁתִּים שֶׁלְּאַמּוֹן וְשִׁלְשִׁים וְאַחַת שֶׁלְּאַשִׁינּוֹ. הֵדָא הָא דְּכָתִיב וַיְהִי | הַשָּׁנָה הַהִיא בְּרֵאשִׁית מִמְּלֶכֶת צִדְקִיָּהוּ מֶלֶךְ-יְהוּדָה בְּשָׁנָה הַחֲמִשִּׁית בְּחוּדָשׁ הַחֲמִישִׁי אָמַר אֵלֵי חֻנְיָה בֶּן-עֲזַר הִנְבִּיא אֲשֶׁר מַגְבֵּעוֹן בֵּית יִי לַעֲיִנִּי הַכְּהִמִּים וְכָל-הָעָם לֵאמֹר: כֹּה-אָמַר יִי צְבָאוֹת אֱלֹהֵי יִשְׂרָאֵל לֵאמֹר שְׂבָרְתִּי אֶת עוֹל מְלֶךְ בָּבֶל בְּעוֹד | שְׁנָתִים יָמִים אֲנִי מוֹשִׁיב אֶל-הַמִּקְדָּשׁ הַזֶּה אֶת-כָּל-כֶּלֶךְ בֵּית יִי אֲשֶׁר לָקַח נְבוּכַדְנֶאצַּר מֶלֶךְ-בָּבֶל מִן-הָעִיר הַזֹּאת

וַיִּבְיֹאֵם בְּבֶלְ: אָמַר לוֹ יְרֵמְיָהּ. אֶתְּהָ אֹמֵר. בְּעִיד | שְׁנֵתִים יָמִים אֲנִי מְשִׁיבִי וְגו'. וְאֲנִי אֹמֵר  
 שְׁנֵבֻכַדְנֶאצַּר בָּא וְנוֹטֵל אֶת הַשָּׂאֵר. בְּבֶלְהָ יִבְיָאוּ וְשָׁמָּה יִהְיוּ וְגו'. אָמַר לוֹ. תָּנוּ סִימָן לְדַבְרֶיךָ.  
 אָמַר לֵיהּ. אֲנִי מִתְנַבֵּא לָרָעָה וְאֵינִי יָכוֹל לִיתֵּן סִימָן לְדַבְרִי. שֶׁהַקְדוֹשׁ בְּרוּךְ הוּא אֹמֵר לְהַבִּיאַ  
 רָעָה וּמִתְנַחֵם. וְאַתָּה מִתְנַבֵּא לְטוֹבָה. אֶתְּהָ הוּא שְׂאֵת הוּא צִירְךָ לִיתֵּן סִימָן לְדַבְרֶיךָ. אָמַר לוֹ.  
 לֹא. אֶתְּהָ הוּא שְׂאֵת צִירְךָ לִיתֵּן סִימָן לְדַבְרֶיךָ. אָמַר לוֹ. אֵין כֵּינִי הָרִי אֲנִי נוֹתֵן אוֹת וּמוֹפֵת  
 בְּאוֹתוֹ הָאִישׁ. הַשָּׁנָה הַהִיא הוּא מֵת. כִּי סָרָה דְבַר עַל יִי. וְהָיָה לֵיהּ כֵּן וַיָּמָת חֲנַנְיָהּ הַנְּבִיא  
 בַּשָּׁנָה הַהִיא בְּחוֹדֶשׁ הַשְּׁבִיעִי: שָׁנָה אַחֲרֵת הָיְתָה וְתֵּם מֵר הַכִּין. אֱלֹהִים מְלַמֵּד שְׁמֵת בְּעָרֵב רֹאשׁ  
 הַשָּׁנָה וְצָנָה אֶת בְּנָיו וְאֶת בְּנֵי בֵיתוֹ לְהַסְתִּיר אֶת הַדְּבָר שֶׁיִּצְיָאוּהוּ אַחֵר רֹאשׁ הַשָּׁנָה בַּשָּׁבִיל  
 לַעֲשׂוֹת נְבוֹאָתוֹ שֶׁל יְרֵמְיָהּ שֹׁקֵר.

**Halakhah 7:** “And the false prophet,” etc. “And one who prophesies what he did not hear,” like Sedekias ben Kenaana<sup>81</sup>. “And what was not said to him,” like Hanania ben Azzur. Rabbi Joshua ben Levi said, Hanania ben Azzur was a true prophet;<sup>82</sup> only he took instruction<sup>83</sup> and heard what Jeremiah prophesied in the upper market; he went and prophesied in the lower market. Hanania ben Azzur told him, is not the essence<sup>84</sup> of the matter *only once seventy years will be fulfilled for Babylon, I shall remember you*<sup>85</sup>. In all, the days of Manasse were 55 years. Deduct from them 20 years for which the Heavenly Court does not punish or extirpate, add the two of Amon and 31 of Josia<sup>86</sup>. That is what is written<sup>87</sup>: *At the beginning of the reign of Sedekias the king of Jehudah, in the fifth*<sup>88</sup> *year, in the fifth month, Hanania ben Azzur, the prophet from Gibeon, said to me in the House of the Eternal, before the priests and all the people, as follows: So said the Eternal of Hosts, the God of Israel, as follows. I broke the yoke of the king of Babylon; in another two years I shall return to this place all the Temple vessels which Nebuchadnezzar, the king of Babylon, took from this city and brought to Babylon.* Jeremiah told him, you are saying that *in another two years I shall return*, etc. But I say that Nebuchadnezzar will come and take the remainder. *To Babylon they will be brought and stay there*<sup>89</sup>, etc. He<sup>90</sup> said to him, give a sign. He<sup>91</sup> answered, I am prophesying bad things and cannot give a sign for my words since the Holy One, praise to Him, said to bring evil and might refrain from it<sup>92</sup>. But you prophesy good things; you are obligated to give a sign. He<sup>90</sup> said to him, no, it is you who has to give a sign for your words. He<sup>91</sup> answered, if it is so, I shall give a sign and miracle in the person of that

man; this year he dies, for he spoke obstinately about the Eternal. This happened to him; *Hanania the prophet died in this year, in the Seventh month*<sup>93</sup>. This was another year and you are saying so? But it teaches that he died on the Eve of New Year's Day and ordered his sons and wife to hide the matter, that they should bury him after the new Year in order to falsify Jeremiah's prophecy.

81 /K. 22:11, Babli 89a.

82 Since Jeremiah called him a prophet.

83 Deriving the unexplained דבוסת from Arabic قنس which among other meanings also signifies "to take instructions from somebody." The background is explained in the Babli, 89a: Since Hanania had heard Jeremiah predict the downfall of Elam, which the talmudic authors take as an ally, not an adversary, of Babylonia, and concluded that if the ally fell, the principal would fall with him.

84 Explaining סמא either from Arabic سماء "to be high" or from Latin *summa*.

85 Jer. 29:10.

86 This follows the author of Kings who puts all blame for the Babylonian exile on Manasse. While the numbers add up to 68, they make no sense. Manasse became king at age 12, therefore he was responsible during 47 years of kingship. (For the doctrine that people become responsible

adults in the eyes of Heaven at age 20, cf. *Bikkurim* 2:1, Note 13, Babli *Šabbat* 89b.) Josia became king at age 8; his 31 years therefore should be reduced to 23 but, since he was the only good king following Manasse, he should not be counted at all. Adding then 2 for Amon, 11 for Joyakim, and 5 for Sedekias, one only obtains 65 years (or 66 if a full year is counted for Joyachin.)

87 Jer. 28:1-3.

88 In the verse: fourth.

89 Jer. 27:22.

90 Hananiah.

91 Jeremiah.

92 This is generally accepted; repentance always may avert evil.

93 Jer. 28:17. While the Talmud assumes that the "Day of Remembrance," the first of the seventh month, always was New Year's Day, it is clear that Jer. follows the Judean calendar which starts the year in Spring.

הָיָה. אֶת מוֹצֵא בִשְׁעָה שְׁאִמְרָ לֹ הַקֹּדֶשׁ בְּרוּךְ הוּא קוֹם לָךְ אֶל־יִנְיָהָ הָעִיר הַגְּדוֹלָה וְקָרָא עָלֶיהָ כִּי־עָלְתָה לְרַעְתָּם לְפָנָי: אָמַר יוֹנָה. יוֹדַע אֲנִי שֶׁהַגּוֹיִם קְרוּבֵי תְשׁוּבָה הֵן. וְהָרִינִי הוֹלֵךְ וּמִתְנַבֵּא עָלֶיהֶם וְהֵם עוֹשִׂים תְּשׁוּבָה וְהַקֹּדֶשׁ בְּרוּךְ הוּא בָּא וּפּוֹרֵעַ מִשׁוֹנְאֵיהֶן שְׁלִישְׁרָאֵל. וְמָה עָלִי לַעֲשׂוֹת. לְבָרוּחַ. וְקָם יוֹנָה לְבָרוּחַ תְּרַשִּׁישָׁה מִלִּפְנֵי יְיָ וַיֵּרֶד יָכֹ וַיִּמְצָא אִנְיָה | בָּאָה תְּרַשִּׁישׁ וַיִּתֵּן שְׂכָרָה וַיֵּרֶד בֵּה וְגו'.



“And one who suppresses his prophecy,” like Jonah ben Amitai<sup>94</sup>. Rabbi Jonah said, Jonah ben Amitai was a true prophet. You find that when the Holy One, praise to Him, told him, *get up and go to the great city of Nineveh and call out over it that their evil came before Me*<sup>95</sup>, Jonah said, I know that Gentiles are close to repentance; if I would go and prophesy for them and they repented, the Holy One, praise to Him, would make himself paid from the haters of Israel<sup>96</sup>. What can I do? I must flee! *Jonah got up to flee to Tarshish from before the Eternal; he descended to Jaffa, found a ship destined for Tarshish, paid his fare and entered it,*<sup>97</sup>” etc.

94 Babli 89a; Tosephta 14:15.

96 I. e., punish Israel for not repenting.

95 *Jonah* 1:2.

97 *Jonah* 1:3.

זֶה (30b line 63) וְהַמְּוֹתֵר עַל דְּבָרֵי הַנְּבִיא. כְּעִידוֹ הַחוּצָה. אָמַר רַבִּי שְׁמוּאֵל בֶּר רַב יִצְחָק. זֶה אֲמַצְיָה כֹהֵן בֵּיתֶאֱל. אָמַר רַבִּי יוֹסִי. פִּיתְפוּתֵי בָצִים הָיָה שָׁם. וְאִי זֶה זֶה. זֶה יְהוֹנָתָן בֶּן גֵּרְשׁוֹם בֶּן מְנַשֶּׁה.

“And one who disregards the prophet’s words.” Like the seer Ido<sup>98</sup>. Rabbi Samuel bar Rav Isaac said, this is Amasiah the priest of Bethel. Rabbi Yose said, this is breaking of eggs<sup>99</sup>; who is it? He is Jonathan ben Gershom ben Manasse<sup>100</sup>.

98 The text is lacunary. One must read with the Tosephta (14:15) and the Babli (89b): One who disregards the prophet’s words, like the companion of Micha (*IK*. 20:35) and the prophet who disregards his own words like the seer Ido (mentioned in *2Chr.* 12:15 who in all talmudic sources is identified as the anonymous “prophet from Jehudah” in *IK*. 13). R. Samuel bar Rav Isaac said, the old prophet living in Bethel (*IK*. 13:11) is Amasiah the priest of Bethel (*Am.* 7:12).

99 R. Samuel bar Rav Isaac spoke in error; the old prophet at the time of Jeroboam I cannot be the priest at the time of Jeroboam II.

100 Jonathan ben Gershom ben Moses, as asserted in an anonymous note (*Berakhot* 9:3, Note 135). To support this assertion, the next paragraph is a rearrangement of a text in *Berakhot* 9:3 (Notes 128-135); it lacks the punch line that Jonathan was the old prophet.

אֵת מוֹצֵא בְּשָׁעָה שָׁבָא דָּוִד וּמָצְאוֹ שְׁהוּא עוֹבֵד עֲבוּדָה זָרָה אָמַר לוֹ. אֵתָּה בֶּן בְּנֵי שְׁלֹאֲתוֹ צִדִּיק וְאֵת עוֹבֵד עֲבוּדָה זָרָה. אָמַר לוֹ. מְסוּרֶת בְּיָדֵי מַאֲבֵי אֲבָא. מְכוּר עֲצָמָךְ לְעֲבוּדָה

זָרָה וְאֵל תַּצְטַרְדָּ לְבָרִיּוֹת. אָמַר לוֹ. חֵס וְשָׁלוֹם לֹא אָמַר לָךְ כֵּן אֶלָּא מְכוֹר עֲצָמְךָ לַעֲבוֹדָה שֶׁהִיא זָרָה לָךְ וְאֵל תַּצְטַרְדָּ לְבָרִיּוֹת. כִּיּוֹן שֶׁרָאָה דָּוִד שֶׁהָיָה הִמָּמוֹן חֲבִיב עָלָיו מִיָּנְהוּ קוֹמֵס תִּיסוּוֹרִין עַל בֵּית הַמִּקְדָּשׁ. הִדָּא הָא דְכָתִיב וְשָׁבוּאֵל בֶּן־גֵּרְשׁוֹם בֶּן־מִנְשֵׁה נִגִּיד עַל־הָאוֹצְרוֹת: שְׁבוּאֵל שֶׁשָּׁב אֶל אֵל בְּכָל־כּוֹחוֹ. נִגִּיד עַל־הָאוֹצְרוֹת. שֶׁמִּיָּנְהוּ קוֹמֵס תִּיסוּוֹרִין עַל־הָאוֹצְרוֹת.

חֲבִרִיָּא בְּעוֹן קוֹמִי רַבִּי שְׁמוּאֵל בַּר נַחֲמָן. כּוֹמֵר לַעֲבוֹדָה זָרָה וְהָאֲרִיז יָמִים. אָמַר לוֹן. עַל שֶׁהָיָה עֵינֵי צָרָה בַּעֲבוֹדָה זָרָה שְׁלוֹ. וְיָמָּה הָיָה עֵינֵי צָרָה בַּעֲבוֹדָה זָרָה שְׁלוֹ. הֵנָּה בַּר נִשׁ מִיָּתִי לִיָּה תוֹר אוֹ אִימֵר אוֹ גָּדִי לַעֲבוֹדָה זָרָה וְאָמַר לִיָּה. פִּיִּסְיָה עָלַי. וְהוּא אָמַר לִיָּה. לָמָּה. וְכִי מָה מוֹעִילָה לָךְ. אֵינָה אוֹכֶלֶת וְאֵינָה שׁוֹתָה וְלֹא מְטִיבָה וְלֹא מְרִיעָה. וְהוּא אָמַר לִיָּה. הֵיךְ נִעֲבִיד. וְהוּא אָמַר לִיָּה. אֵיזֵל וְאֵינִי לִי חַד פִּינֵךְ דְּסוֹלֶת וְעֶשֶׂר בִּיעֵין עָלָיו וְנָא מִפִּיִּס לִיָּה עָלָךְ. כִּיּוֹן דְּהָרָה אֲזֵל הָנָה אֲכִיל לוֹן. אֲתָא חַד בַּר פַּחִין וְאָמַר לִיָּה כֵּן. אָמַר לִיָּה. אִם אֵינָה מוֹעִילָה כָּלִים מָה אַתָּה עֲבִיד הָכָא. אָמַר לִיָּה. בְּגִין חַיִּי.

מִתְבִּיב לְרַבִּי שְׁמוּאֵל בַּר נַחֲמָן. וְהָא כְּתִיב עַד־יֹס גְּלוֹת הָאֲרֶץ. אָמַר לוֹן כִּיּוֹן שְׁמַת דָּוִד וְעַמֵּד שְׁלָמָה וְהַחֲלִיף כָּל־סִינְקְלִיטִין שְׁלוֹ חֲזָר לְקִילְקוּלוֹ.

You find that when David came and found him serving foreign worship, he asked him: You are the grandson of that righteous man and you worship idols? *He*<sup>100a</sup> said to him, *I have a tradition from my grandfather, sell yourself to foreign worship rather than need other people.* He said to *him*: Heaven forbid! He did not say so, but rather sell yourself to work that is strange to you rather than need other people. When David saw that *he* loved money, he made *him* Count<sup>100b</sup> of the Temple treasuries. That is what is written, *Shabuel ben Gershom ben Moshe, overseer of the treasuries.* “Shabuel” because he returned to God with all his might; “overseer of the treasuries” that he made him Count of the treasuries.

The colleagues asked before Rabbi Samuel ben Nahman: *He* was a priest of idol worship and lived so long? He said to them, because *he* was grudging to his idol. How was *he* grudging to his idol? If a man came to sacrifice an ox, a sheep, or a goat to the idol and told him: Make it favorably inclined towards me, *he* would say, what use does it have for you? It never eats, nor drinks, nor does good or evil. He said to *him*, what should we do? *He* said to him, go, make, and bring me a wooden vessel full of fine flour and put on it ten eggs, then *I* shall make it favorably inclined towards you. After he left, *he* would eat it. One day, a son of pashas came and *he* said that to him. He said

to him, if it is of no use, what are *you* doing here? *He* answered him, because of my livelihood.

They objected to Rabbi Samuel bar Nahman: *Until the day the Land went into exile.* He said to them, when David died, Solomon rose and exchanged all his counselors<sup>100c</sup>. *He* returned to his former bad ways.

100a *Italics* show that Jonathan is the speaker.

The combination תִּסְוִיָּוִין עַל-הָאֻצְרוֹת is a Greek-Hebrew double expression.

100b Latin *comes* “associate, partner”, a Byzantine title for a high-level bureaucrat.

100c A description of Byzantine practices.

(30c line 9) וְנָבִיא שֶׁעָבַר עַל דְּבָרֵי עֲצָמוֹ. כְּחִבְרֵי שְׁלֵמִיכָה. הִדָּא הֵיא דְכְּתִיב וְנָבִיא אֶחָד זָקֵן יֵשֵׁב בְּבֵית-אֵל וַיָּבֹא בָנוּ וַיְסַפְּרוּ לָנוּ אֶת-כָּל-הַמַּעֲשֵׂה אֲשֶׁר-עָשָׂה אִישׁ-הָאֱלֹהִים וְגו'. וַיֹּאמֶר לָהֶם אֲבִיָּהֶם אִי-גָּה הִדְרָךְ הַלֵּךְ וְגו'. וַיֹּאמֶר אֶל-בָּנָיו חֲבֹשׁוּ-לִי אֶת הַחֲמֹר וְגו'. וְלֵךְ אַחֲרַי אִישׁ הָאֱלֹהִים וְלִמְצָאָהוּ יוֹשֵׁב תַּחַת הָאֵלֶּה וְגו'. וַיֹּאמֶר לָךְ אֹתִי הַבִּיטָה וְאָכַל לֶחֶם: וַיֹּאמֶר לֹא אוֹכַל לָשׁוּב וְגו' עַד וַיֹּאמֶר לוֹ גַּם-אֲנִי נָבִיא כְּמוֹךָ וּמִלְאָךְ דָּבָר אֲלֵי בְדָבָר יִי לֵאמֹר וְגו' עַד וַיֹּאכַל לֶחֶם בְּבֵיתוֹ וַיֵּשֶׁת מִיָּם כִּיחֹשׁ לוֹ: מָה הוּא כִּיחֹשׁ לוֹ. שִׁיקָר בֵּינָהּ. וַיֵּלֶי הֵם יוֹשְׁבִים עַל הַשְּׁלֶחָן וַיְהִי דָבָר יִי אֶל-הַנָּבִיא אֲשֶׁר הֵשִׁיבוֹ: אֲשֶׁר הוֹשֵׁב אֵין כְּתוּב כָּאֵין אֶלָּא אֲשֶׁר הֵשִׁיבוֹ. וְהָרִי הַדְּבָרִים קָל וְחֹמֶר. וְיָמָּה אִם מִי שֶׁהֵאָכִיל אֶת חֲבִירוֹ לֶחֶם שֶׁקָּר זָכָה שְׁנֵיתִיחַד עָלָיו הַדִּיבֵר. הַמֵּאָכִיל אֶת חֲבִירוֹ לֶחֶם אֲמַת עַל אַחַת כְּמָה וְכְמָה.

“And a prophet who transgressed his own word,” like the companion of Micha<sup>101</sup>. That is what is written<sup>102</sup>: *An old prophet was dwelling at Bethel; his son came and told him all the actions which the man of God had wrought, etc. Their father asked them, which way did he go, etc. He told his sons, saddle the donkey for me, etc. He followed the man of God and found him sitting under the terebinth, etc. He said to him, come with me to my house and eat. He told him, I cannot return, etc., up to he said to him, I also am a prophet like you and an angel spoke to me the words of the Eternal as follows, etc., up to he should eat food and drink water; he tricked him.* What means “tricked him”? He lied to him. *While they were sitting at table, the word of the Eternal came to the prophet who had turned him back.* It is not written “who had returned,” but “who had turned him back.” Is that not an argument *de minore ad majus*? Since one who fed his neighbor food in falsehood was

worthy of the Word to be addressed to him, one who feeds his neighbor food in truth, so much more.

101 This should read: “the prophet Ido” (Note 91).

102 /K. 13:11-20. The verses obviously are quoted from memory.

(30c line 21) כְּתוּב וְאִישׁ אֶחָד מִבְּנֵי הַנְּבִיאִים אָמַר אֶל־רֵעֵהוּ בְּדִבְרֵי יְיָ וְגו'. וַיֹּאמֶר לוֹ יַעֲנֵן אֲשֶׁר לֹא־שָׁמַעְתָּ בְּקוֹל יְיָ הַנֶּזֶק הוֹלֵךְ מֵאֵתִי וְהַכֹּף הָאֶרְיָה וְיִלְכֹךְ מֵאֵתוֹ וַיִּמְצָאֵהוּ הָאֶרְיָה וַיִּכְהֶה: וַיִּמְצָא אִישׁ אֲחֵר וַיֹּאמֶר הַכִּינִי נָא וַיִּכְהֶהוּ וְגו'. וְיִלְכֹךְ הַנְּבִיא וַיַּעֲמִיד לְמַלְכֶּךָ עַל־הַדָּרָךְ וַיִּתְחַפֵּשׂ בְּאַפֵּר עַל־עֵינָיו: וַיְהִי הַמֶּלֶךְ עוֹבֵר וְהוּא צֹעֵק אֶל־הַמֶּלֶךְ וְגו'. וַיְהִי עֲבָדָךְ עֹשֶׂה הִנֵּה וְהִנֵּה וְגו'. וַיִּמְהָר וַיִּסָּר אֶת־הָאֶפֶר מֵעַל עֵינָיו וְגו'. וַיֹּאמֶר לוֹ כֹּה אָמַר יְיָ יַעֲנֵן אֲשֶׁר שְׁלַחְתָּ אֶת־אִישׁ־חֲרָמִי מִיָּד וְהִיתָה נִפְשְׁךָ תַּחַת נִפְשׁוֹ וְעַמְּךָ תַּחַת עַמּוֹ: וְכְתוּב וַיִּצֹשׂ אִישׁ הָאֱלֹהִים וַיֹּאמֶר כֹּה־אָמַר יְיָ וְלָקַח וַיֹּאמֶר וַיֹּאמֶר שְׁנֵי פְעָמִים. אֲלָא בְּאֻמְרָהּ רֵאשׁוֹנָה אָמַר לוֹ. אִם בָּא בְּךָ הַדָּד מֶלֶךְ אָרָם תַּחַת יָדְךָ אֵל תַּחוּס עָלָיו וְאֵל תַּחֲמוֹל עָלָיו. וּבְאֻמְרָהּ הַשְּׁנִיָּה אָמַר לוֹ יַעֲנֵן אֲשֶׁר שְׁלַחְתָּ אֶת־אִישׁ־חֲרָמִי וְגו'. כִּמְהָ מַצִּידוֹת וְחֲרָמִים עֲשִׂיתִי לוֹ עַד שְׁמֹסְרֵתִי תַּחַת יָדְךָ וְשְׁלַחְתּוֹ וְהָלַךְ בְּשָׁלוֹם. לְפִיכָךְ וְהִיתָה נִפְשְׁךָ תַּחַת נִפְשׁוֹ וְעַמְּךָ תַּחַת עַמּוֹ: אֵת מוֹצֵא בְּשָׁעָה שְׂפִיָּאֵי יִשְׂרָאֵל לְמִלְחָמָה לֹא מֵת מִכּוֹלָם אֲלָא אֶחָאֵב מֶלֶךְ יִשְׂרָאֵל בַּלְבָּד. וְהָדָא הֵיא דְכְּתוּב וְאִישׁ מִשְׁדֵּךְ בְּקִשְׁתִּי לְתוֹמֹו וַיֵּךְ אֶת־מֶלֶךְ יִשְׂרָאֵל בֵּין הַדְּבָקִים וּבֵין הַשְּׂרִיָּן וַיֹּאמֶר לְרַכְבּוֹ הַפּוֹךְ יָדְךָ וְהוֹצִיאֵנִי מִן־הַמִּחְנֶה כִּי הִחַלְתִּי: כֹּה אֲנִי מְקַיֵּים וְעַמְּךָ תַּחַת עַמּוֹ: רַבִּי יוֹחָנָן בְּשֵׁם רַבִּי שְׁמַעוֹן בֶּן יוֹחִי. אוֹתָהּ הִטִּיפָה שְׂפִיָּאֵת מֵאוֹתוֹ צְדִיק כִּיפָּרָה עַל כָּל־יִשְׂרָאֵל.

It is written<sup>103</sup>: *One of the young prophets said to his neighbor by the Word of the Eternal, etc. He told him, since you did not listen to the Word of the Eternal, when you depart from me the lion will hit you; he departed from him, the lion found him and hit him. He found another man, said to him, hit me, and he hit him*<sup>104</sup> etc. *The prophet went, stood in the king's way, and had disguised himself by a band over his eyes. When the king passed by, he cried to the king, etc. Your servant went to and fro, etc. He told him, so says the Eternal: Because you sent away from your hand the man whom I had banned, your life will be for his life, and your people for his people. And it is written*<sup>105</sup>: *The man of God approached and said, so says the Eternal. Why two times “and said”?* But in the first address he told him, if Ben Hadad falls into you hand, do not have mercy on him and do not spare him. In the second address he told him, *because you sent away from your hand the man whom I had banned, how many traps and hunting nets*<sup>106</sup> *I made for him until I*

delivered him into your hand, and you sent him away and he went in peace. Therefore, *your life will be for his life, and your people for his people*.

You find that when Israel went to war, nobody of them died but Ahab, the king of Israel. That is what is written<sup>107</sup>: *A man shot from his bow without aiming and hit the king of Israel between the joints of his armor; he told the driver, take me out of the camp because I became sick*. How can I confirm *your people for his people*? Rabbi Johanan in the name of Rabbi Simeon ben Iohai: That drop of blood which was drawn from the just man<sup>108</sup> did atone for all of Israel.

103 1K. 20:35-42.

104 The quote stops short of *he injured him* which later (Note 101) will be shown to be essential.

105 *Threni rabbati* 1(43). The full verse reads: *The man of God approached and said to the king of Israel and said...*

106 Identifying חרם “ban” with חרם

חרם “netting”.

107 1K. 22:34.

108 The prophet who was injured (Note 103). The suffering of the Just as atonement for the entire people is an idea found in apocryphal literature such as IV Maccabees; in rabbinic texts otherwise only in Midrash literature [*Tanhuma Wayyaqhel* 9 = *Ex. rabba* 35(4), *Lev. rabba* 2(1).]

**משנה ח:** המתנבא בשם עבודה זרה ואומר קד אִמְרָה עֲבוֹדָה זָרָה אֶפְלוּ כִּיּוֹן אֶת הַהִלְכָה לְטָמֵא אֶת הַטָּמֵא וּלְטָהֵר אֶת הַטָּהוֹר. הָבָא עַל אִשֶּׁת אִישׁ כִּיּוֹן שֶׁנִּכְסְהָ לְרִשּׁוֹת הַבַּעַל מִן הַנִּישׁוּאִין אִף עַל פִּי שְׁלָא נִבְעֵלָה הָבָא עֲלֶיהָ הָרִי זֶה בְּחִנְקוֹ. וְזֹמְמִי בֵּת כֹּהֵן וּבֹעֲלָהּ. הָא כָּל־הַזֹּמְמִין מִקְדָּיִמִּין לְאוֹתָהּ מִיָּתֶה חוּץ מִזֹּמְמִי בֵּת כֹּהֵן וּבֹעֲלָהּ:

**Mishnah 8:** One who prophesies in the name of foreign worship<sup>109</sup> and says, so speaks the foreign worship, even if he stated practice correctly to declare the impure impure and the pure pure. One who copulates with a married woman, from the moment she is in the husband's domain for definitive marriage even if she did not have intercourse<sup>110</sup>, one who copulates with her is strangled. And the false witnesses of a Cohen's daughter and her paramour. Therefore all false witnesses are executed by that death except for the false witnesses of a Cohen's daughter and her paramour<sup>111</sup>.

109 Who is strangled, Mishnah 11:1.

110 The preliminarily married virgin and her paramour are stoned. But once she entered the place where the definitive marriage is scheduled to take place, even though she still is a virgin, her adultery is punished by strangulation. This presupposes that the definitive marriage is celebrated on the husband's property.

111 The whoring daughter of a Cohen is burned only if she committed adultery while married (Chapter 7, Notes 8-12). But the adulterer with a married woman is strangled.

The perjured witnesses have to be executed in the way the adulterer would have been executed had their testimony stood up in court since (*Deut.* 19:19) *you shall do to him what he intended to do to his brother*. Therefore, it is impossible to punish the perjured witnesses of a Cohen's daughter by exactly the death they intended to bring her to. This is the introduction to the next Chapter (*Makkot* 1 - *Sanhedrin* 12) which starts by exploring the punishment of perjured witnesses accusing a Cohen of breaking priestly rules.

הכל היה (30c line 41) הלכה ח: והמתנבא בשם עבודה זרה עול. אמר רבי יוסי בן חנינה. הכל היה בכלל לא-תענה ברעך עד שקר. יצא לידון בין באות בין במופת בין בעבודה זרה בין בשאר כל-המצות. אלא שעבודה זרה בין שנתכוון לעקור את כל-הגוף בין שלא נתכוון לעקור את כל-הגוף דברי רבי שמעון פוטרין אותו. ודברי חכמים סוקלין אותו. אבל בשאר כל-המצות דברי חכמים סוקלין אותו ודברי רבי שמעון גבין ליה פיונטייה.

**Halakhah 8:** “One who prophesies in the name of foreign worship,” etc.

<sup>112</sup>Rebbi Yose ben Hanina said, everything was included in *do not testify against your neighbor as a false witness*. It came to judge whether by sign, or by miracle, whether about foreign worship or any other commandment. But about foreign worship, whether he intended to uproot the entire body or did not intend to uproot the entire body, by the words of Rebbi Simeon one does not prosecute him, but by the words of the Sages one stones him. For any other commandment by the words of the Sages one stones him, by the words of Rebbi Simeon he should understand his *pywnt*.

112 This paragraph is thoroughly corrupt; the meaning can be understood approximately by reference to Tosephta 14:13: “He who prophesies to uproot one of the words of the Torah is punishable. Rebbi Simeon says, if he prophesies to uproot one of the words of the Torah but affirms others he cannot be prosecuted; but about foreign

worship, even if he endorses it today but reneges tomorrow he is punishable.”

With *Qorban Ha'edah* it seems that the quote from the Ten Commandments (*Ex.* 20:16) was induced by the parallel text at the beginning of the next Halakhah and should be replaced by *Deut.* 18:22. The argument would go as follows: In *Deut.*

18:20-22, the court is commanded to punish the false prophet by a death sentence. The manner of execution is not specified; this implies that it must be by strangling. But in 13:2-12 the punishment of strange worship (idolatry) is stoning.

A person can be punished as a false prophet only if first he had established his credentials as a prophet by a sign or a miracle (*Deut.* 13:2, 18:22; Note 106). Then if the prophet argues for idolatry, even if he does not abolish any commandment of the Torah, he has to be punished (even if he propagates foreign worship in the name of the Eternal; Babli 89b). If he tells others not to obey some of the precepts of the Torah, for the Sages he is punishable, but not for R.

Simeon. The prophet can be prosecuted only if he induces others to neglect Torah precepts, not if he himself seemingly violates them by Divine Command, as Elijah did on Mount Carmel, sacrificing on an altar which was authorized only for him.

*Qorban Ha'edah* gives a reconstruction of the paragraph which is not impossible but not supported by any parallel evidence.

In the word פִּינִיטִיָּה the ending יָה is the possessive suffix "his". For the remaining פִּינִיטִי the best available conjecture is Kohut's, Latin *punitio*, -onis "punishment" [or *poenaria* (*actiones*), punishable (actions) (E. G.)].

וְהַנְּבִיא שֶׁנִּתְּנָבֵא בְּתַחֲלִילָה. אִם נָתַן אוֹת וּמוֹפֶת שׁוֹמְעִין לוֹ וְאִם לֹא אֵין שׁוֹמְעִין לוֹ. שְׁנֵי נְבִיאִים שֶׁנִּתְּנָבֵאוּ כְּכַדְּךָ אֶחָד. רַבִּי צִחְקִי וְרַבִּי הוֹשִׁעִיָּה. חֵד אָמַר. צָרִיד לִיתֵּן אוֹת וּמוֹפֶת. וְתַרְנָה אָמַר. אֵינוּ צָרִיד לִיתֵּן אוֹת וּמוֹפֶת. מְתִיב מָאן דְּאָמַר צָרִיד לְמָאן דְּאָמַר אֵינוּ צָרִיד. וְהָא כְּתִיב וַיֹּאמֶר חִזְקִיָּהוּ אֶל־יְשַׁעְיָהוּ מֶה אוֹת. אָמַר לֵיהּ. שְׁנִיָּא הֵיא תַמָּן דִּי עֶסֶק בְּתַחֲלִיית הַמּוֹתִים. יַחֲיִינוּ מִיּוֹמָיִים בְּיוֹם הַשְּׁלִישִׁי יִקְמִינוּ וְנַחֲמָה לְפָנֵינוּ:

If a prophet starts to prophesy, one listens to him if he gives a sign or miracle; otherwise one does not listen to him<sup>113</sup>. Two prophets who prophesied indentially, two prophets who prophesied in the same sense<sup>114</sup>? Rabbi Isaac and Rabbi Hoshai: One said, each one has to provide a sign or a miracle; the other said, not each one has to provide a sign or a miracle<sup>115</sup>. The one who said he did objected to the one who said he did not: Is it not written<sup>116</sup>, *Ezekias said to Isaiahs, what is the sign?* He told him, that is different since he was occupied in reviving the dead. *He shall revive us after two days; on the third day He will lift us up and we shall live before Him*<sup>117</sup>.

113 *Deut.* 13:2. It is no disrespect to Heaven if one disregards the sayings of an unqualified prophet.

114 This reading (*Pene Moshe*) is

preferable to reading אֶחָד כְּכַדְּךָ "in the same fortified place" (*Qorban Ha'edah*).

115 But the accredited prophet can legitimate his companion.

116 2K. 20:8.

117 Hos. 6:2. The verse is the basic source for the belief that the resurrection has to be on the third day, or that souls have to suffer punishment for their misdeeds while alive for two days and on the third day are

admitted to Paradise (*Berakhot* 5:2 Note 64; *Ta'anot* 1:1 63d 1.52). Ezekias was declared ready to die (2K. 20:1) and was well enough to go to the Temple on the third day; this shows that his recovery was indeed a resurrection.

30c line 54) אָמַר רַבִּי יְהוּדָה בֶּן פָּזִי. לֹא סוּף דָּבָר לַחֲוָפָה אֶלָּא אֶפִּילוּ לְבֵית שְׁנֵי בּוֹ חוּפָה. בְּעֵצָה הָדָא מִלְתָּא. טְרִיקְלִין וְקִיטוֹן. חוּפָה וְקִיטוֹן. נִכְנָסָה לְטְרִיקְלִין. לֵי דָא מִלְתָּא. לְיוֹרְשָׁה. רַבִּי יוֹחָנָן אָמַר. לְיוֹרְשָׁה. רִישׁ לְקִישׁ אָמַר. לְהִפָּר נְדָרֶיהָ. אָמַר רַבִּי זְעִירָא. אִף עַל גַּב דְּרַבִּי שְׁמַעוֹן בֶּן לְקִישׁ אָמַר לְהִפָּר נְדָרֶיהָ. מוֹדָה שְׁאִינוּ מֵיפָּר לָהּ עַד שְׁתִּיכְנָס לַחֲוָפָה. אָמַר רַבִּי הוּנָא. קָרִינָא מְסִינָע לְרַבִּי שְׁמַעוֹן בֶּן לְקִישׁ. לְזִנּוֹת בֵּית אַבִּיהָ. פֶּרֶט שְׁמִסְרוּהָ שְׁלוּחֵי הָאָב לְשְׁלוּחֵי הַבַּעַל. שְׁלֹא תִהְיֶה בְּסָקִילָה אֶלָּא בְּחִנֶּק.

<sup>118</sup>Rebbi Jehudah ben Pazi said. not only to the bridal chamber but also to a house containing the bridal chamber<sup>119</sup>. The following is problematic: Dining room<sup>120</sup> and bedroom<sup>121</sup>, bridal chamber and bedroom; if she entered the dining room, for which consequence<sup>122</sup>? Rebbi Johanan said, to inherit from her<sup>123</sup>. Rebbi Simeon ben Laqish said, to dissolve her vows<sup>124</sup>. Rebbi Ze'ira said, even though Rebbi Simeon ben Laqish said, to dissolve her vows, he agrees that he cannot actually dissolve them before she enters the bridal chamber<sup>125</sup>. Rebbi Huna<sup>126</sup> said, a verse supports Rebbi Simeon ben Laqish: *to whore in her father's house*<sup>127</sup>. This excludes the case where the father's agents handed her over to the husband's agents, that she could not be stoned, but is strangled<sup>128</sup>.

118 This now refers to the adulterous definitively married woman. A closely related text is *Ketubot* 4:7, Notes 154-160.

119 Where the definitive marriage is contracted. This חוּפָה is not the wedding canopy used today, but a room where the newlyweds will consummate the marriage and spend the following week.

From here to the end of *Sanhedrin-Makkot* (except *Makkot* 1:13-2:7) there exists a Genizah fragment (G) edited

(with readings compared to the Krotoschin Yerushalmi) by S. Wieder, *Tarbiz* 17 (1946) 130-135.

120 Greek τρικλίνιον, τό, Latin *triclinium*.

121 Cf. Chapter 7:19, Note 363.

122 Before the definitive marriage ceremony.

123 As definitive husband, if the woman died before entering the bridal chamber. Since this idea is not followed up, it does not represent practice. In *Ketubot*, the name



is R. Eleazar. Therefore, the illegible name in G cannot be emended to “R. Johanan” as given in *Tarbiz* 17.

124 *Nedarim*, Chapters 10,11.

125 If the time allotted to the husband to dissolve his wife’s vows elapses between the arrival of his bride at his home when she stated the fact of her vows and the definitive

marriage ceremony, he lost his right of dissolution.

126 In G, “Huna” is corrected to “Jonah”.

127 *Deut.* 22:21.

128 A preliminarily married virgin who no longer is in her father’s charge is treated in criminal law as if she already were definitively married. Babli *Ketubot* 49a.

כִּיּוֹצֵא בָהֶם בְּשָׂרִיפָה הִיא וְהֵן בְּשָׂרִיפָה. כִּיּוֹצֵא בָהֶן בְּסָקִילָה הִיא וְהֵן בְּסָקִילָה. (30c line 61)  
כִּיּוֹצֵא בָהֶן בְּחֶנֶק הִיא וְהֵן בְּחֶנֶק.

Similarly by burning, she and they by burning. Similarly by stoning, she and they by stoning. Similarly by strangulation, she and they by strangulation<sup>129</sup>.

129 This refers to the perjured witnesses. The text is a copy from Halakhah 7:1, Note 17; *Tosephta* 14:17. If no man is involved, the perjured witnesses are punished by what the woman would have suffered had their testimony been truthful.



## מסכת מכות

### כיצד העדים פרק ראשון

(fol. 30d) **משנה א:** כיצד העדים נעשים זוממין מעידים אנו באיש פלוני שהוא בן גרושה או בן חלוצה אין אומרין ייעשה זה בן גרושה או בן חלוצה תחתיו אלא לוקה ארבעים. מעידים אנו באיש פלוני שהוא חייב גלות. אין אומרים יגלה זה תחתיו אלא לוקה ארבעים. מעידין אנו באיש פלוני שגירש את אשתו ולא נתן לה כתובתה והלא בין היום ובין למחר סופו לתן לה כתובתה. אלא אומדים כמה אדם רוצה ליתן בכתובתה של זו שאם נתאלמנה או נתגרשה ואם מתה יירשנה בעלה.

**Mishnah 1:** How are plotting witnesses treated<sup>1</sup>? “We testify about this man that he is the son of a divorcee or a woman who had received *halisah*.<sup>2</sup>” One does not say that he should be decreed to be the son of a divorcee or a woman who had received *halisah* in his stead, but he is flogged 40 [lashes]<sup>3</sup>.

“We testify about this man that he is obligated to go into exile<sup>4</sup>.” One does not say, this one should go into exile in his stead but he is flogged 40 [lashes]<sup>5</sup>.

“We testify about this man that he divorced his wife but did not pay her *ketubah*.<sup>6</sup>” Would he not finally have to pay her *ketubah* today or tomorrow? But one estimates how much would a man be willing to pay for the *ketubah* of this woman in case she would be widowed or divorced, but if she died her husband would inherit from her.

1 It is one of the Ten Commandments not to testify falsely. In addition, *Deut.* 19:16-20 prescribes that a “plotting” false witness has to be punished by the penalty which would have been imposed on his victim had his testimony been found true. By rabbinic definition, a “plotting” witness is one whose testimony not only is false but shown to be impossible, in that there are witnesses to the fact that he testified to be eye witness of a fact which he could not have seen since at the time it was supposed

to have happened he was at another place (*Sanhedrin* Chapter 5, Note 3). There are cases when plotting perjury is proven but the penalty cannot be imposed. Then the false witness must be punished for breaking the Eighth Commandment, which is the standard punishment decreed for breaking any prohibition for which the penalty was not specified, fixed in *Deut.* 25:3 as at most 40 lashes (which, because the court marshal might err in his count, is limited to 39 lashes).

The Babli (2b) disagrees with this explanation; it classifies simple perjury as “actionless crime” for which no penalty is possible; this clearly is not the Yerushalmi’s position (cf. *Ketubot* 4:4 Note 196.)

2 The son of a Cohen from a woman he is prohibited from marrying (*Lev.* 21:7,14) is desecrated; he cannot function as a priest and the priestly revenues are forbidden to him. The divorcee is biblically forbidden to the Cohen. The widow receiving *halisah* from the former husband’s brother is forbidden rabbinically; her son is rabbinically desecrated, which for practical consequences does not make any difference.

3 If the witness is not a Cohen, declaring him as son of a divorcee would not change his status at all. If he is a Cohen, declaring

him as son of a divorcee would punish not only him but also his descendants, against the biblical text as explained in the Halakhah.

4 The unintentional homicide (*Num.* 35:9-34).

5 As explained in the Halakhah, the perjurer is barred from fleeing to a city of refuge.

6 When in fact the woman is still married to her husband. Then the witness could be fined only if in the future the *ketubah* would not be paid, i. e., if the woman stayed married to her husband and predeceased him. He can be fined the current discounted expected value of such a *ketubah*.

(31a line) **הלכה א:** כִּי־צַד הַעֲדִים נֶעֱשִׂים זִמְמִין כֹּל'. אָמַר רַבִּי יוֹסִי בֶן חֲנִינָה. הַכֹּל הִיָּה בְּכָל לֹא־תַעֲנֶה בְּרַעַן עַד שֶׁקָּר. יֵצֵא וְנֶעֱשִׂיתָם לוֹ כְּאִשֶּׁר זָמַם לַעֲשׂוֹת לְאַחֵיו. אֶת שְׁאֵת כָּוֹל לְקִיִּים בּו וְנֶעֱשִׂיתָם לוֹ כְּאִשֶּׁר זָמַם וְגו' אֶת מְקִיִּים בּו (לֹא־תַעֲנֶה) וְנֶעֱשִׂיתָם לוֹ כְּאִשֶּׁר זָמַם לַעֲשׂוֹת. וְאֵת שְׁאֵין אֶת יָכוֹל לְקִיִּים בּו וְנֶעֱשִׂיתָם לוֹ כְּאִשֶּׁר זָמַם לַעֲשׂוֹת לְאַחֵיו (אֵין) אֶת מְקִיִּים בּו לֹא־תַעֲנֶה בְּרַעַן. דְּבַר אַחֵר. וְנֶעֱשִׂיתָם לוֹ. לֹא לְרַעַן.

**Halakhah 1:** “How are plotting witnesses treated,” etc. Rabbi Yose ben Hanina said, everything was included in *do not testify against your neighbor as a false witness*. As an exception, *do to him as he plotted to do to his neighbor*. If you can satisfy *do to him as he plotted* then fulfill (*do not testify*)<sup>7</sup> [*do to him as he plotted to do*]<sup>8</sup>. But if you cannot satisfy *do to him as he plotted to do to his neighbor* then (do not)<sup>7</sup> satisfy *do not testify against your neighbor*<sup>1</sup>.

Another explanation: *Do to him*, not to his descendants<sup>3</sup>.

7 Text of the Leiden ms., to be deleted.

8 Text of G, to be accepted.

(31a line 13) רַבִּי יְהוֹשֻׁעַ בֶּן לֵוִי אָמַר. וְנֶעֱשִׂיתָם לוֹ. שְׁנֵי דְּבָרִים מְסוּוִּרִין לְבֵית דִּין אֶת תּוֹפֵס אֶחָד מֵהֶן. יֵצֵא דְּבַר שְׁהוּא מְסוּר לְשָׂמִים.

Rebbi Joshua ben Levi said, if two alternatives are presented to the court, one chooses one of them<sup>9</sup>. This excludes matters in the Power of Heaven<sup>10</sup>.

9 As a general principle, no crime can be punished by more than one punishment. There never can be separate penalties for testifying falsely (*Ex.20:13*) and plotting (*Deut. 19:19*). This justifies the alternative

presented in the preceding paragraph.

The text is copied from *Terumot* 7:1 Note 14; also *Bava qamma* 7:2, Note 30.

10 This sentence refers to the topic in *Terumot*; it is irrelevant here.

31a line 14) כְּתוּב וְלֹא־יִחַלֵּל זֶרְעוֹ בְּעַמּוּי. אֵין לִי אֶלָּא זֶרַע שֶׁהוּא מִתְחַלֵּל. הִיא עֲצָמָהּ מְנִיין. וְדִין הוּא. מָה אִם הַזֶּרַע שֶׁלֹּא עָבַר עֲבִירָה הָרִי הוּא מִתְחַלֵּל. הִיא שֶׁעָבְרָה עֲבִירָה אֵינוֹ דִין שֶׁתִּתְחַלֵּל. הוּא עֲצָמוֹ יוֹכִיחַ. שֶׁעָבַר עֲבִירָה וְאֵינוֹ מִתְחַלֵּל. לֹא. אִם אֲמַרְתָּה בְּאִישׁ שֶׁאֵינוֹ מִתְחַלֵּל בְּכָל־מְקוֹם תֹּאמַר בְּאִשָּׁה שֶׁהִיא מִתְחַלֵּלָת בְּכָל־מְקוֹם. הוּאִיל וְהִיא מִתְחַלֵּלָת בְּכָל־מְקוֹם דִין הוּא שֶׁתִּתְחַלֵּל. וְאִם נִפְשָׁךְ לֹא־יִחַלֵּל. אֵף מִי שֶׁהִיא כְּשֶׁר וְנִתְחַלֵּל.

בְּרַפְדִּיָּה אָמַר. הַמְחַלֵּל לֹא נִתְחַלֵּל הֵיאָדָּה זֶה מִתְחַלֵּל.

<sup>11</sup>It is written<sup>12</sup>: *He shall not desecrate his issue in his people*. Not only his issue will be desecrated; from where also she<sup>13</sup>? Is this not a logical inference? Since the issue, which did not sin, is desecrated, should she, who committed a sin<sup>14</sup>, not logically be desecrated? He himself is a counter example, since he committed a sin but was not desecrated<sup>15</sup>. No. If you argue about a man who is not desecrated in any circumstance, what can you say about a woman who is desecrated in many circumstances<sup>16</sup>? Since she is desecrated in many circumstances, it is logical that she should be desecrated. If you wish you can say “not to desecrate”, *not to desecrate*, about somebody who was qualified and became desecrated<sup>17</sup>.

Bar Pedaya said, the desecrator was not desecrated: how can this one be desecrated<sup>18</sup>?

11 Babli *Qiddušin* 77a, *Sifra Emor Pereq* 2(7-8).

12 *Lev. 21:15*. This verse is written for the High Priest, but it is applied to all priests who marry women forbidden to them.

13 In *Lev. 21:7,14* the “desecrated woman” is mentioned in the list of women

forbidden to the Cohen. The verse implies that the daughter of a Cohen from an illicit union is conceived desecrated. There is no verse which spells out the conditions under which a woman otherwise may become desecrated. There is a verse which specifies that the daughter of a Cohen married to a

non-Cohen or mother of a non-Cohen child is disqualified from priestly revenues (*Lev.* 22:12-13), but not desecrated. Since the “desecrated woman” is always mentioned together with the prostitute, it is inferred that sexual offenses of a woman desecrate her.

14 On the face of it, the verses only imply that the male Cohen who marries an unsuitable woman commits a sin. Since both *Lev.* 21:7, addressed to the common priest, repeat the verb “do not marry”, this is read to mean that the first mention is the prohibition for the male to marry, the second the prohibition for the female to agree to be married (*Yebamot* 9:1 Note 13, *Qidduṣin* 3:14 Note 243; *Sifra Emor Pereq* 1(12), Babli *Yebamot* 84b).

15 Since the verse emphasizes that his children will be desecrated, it implies that the father himself is not desecrated (even if he consorts with a Gentile or a slave); *Sifra Emor Pereq* 2(8). The son of a Cohen from an illicit union is desecrated from conception; he does not *become* desecrated. This implies that no male Cohen may *become* desecrated; he may, however,

become unfit for his office.

16 In order to avoid circular reasoning it is necessary to classify “disqualified” with “desecrated”. Then it follows that there exist classes of females desecrated for the priesthood without equivalent among males.

17 The text of this sentence is in doubt. There is no biblical verb חיל “to profane” as required by the reading here and in the Babli. In *Sifra*, most texts read יחלל both times; but from Ravad’s commentary one sees that the first time he read יחלל (*Num.* 30:3), identical in meaning with יחלל.

As explained in Note 16, actively “to desecrate” implies the existence of an object which is not yet desecrated. Since any child of the illicit union of a Cohen is intrinsically desecrated, it cannot be *made* desecrated. Since the male is not desecrated, the use of the active יחלל therefore implies that the female is desecrated.

18 This refers back to the Mishnah. Since the male is not desecrated by marrying a divorcee, the Cohen who is a perjured witness cannot be declared desecrated.

עֲדִים שְׁנֵדָמְמוּ רַבִּי יוֹחָנָן אָמַר. שֶׁקֶר שֶׁקֶר. עֲדִים שְׁנֵדָמְמוּ וְחִזְרוּ וְנִשְׁתַּקְּרוּ. רַבִּי יוֹחָנָן אָמַר. שֶׁקֶר שֶׁקֶר. רַבִּי לֵעֶזֶר אָמַר. רִשְׁעָה רִשְׁעָה. נֶאֱמַר רִשְׁעָה בְּמַחֲוִיבֵי מִיתוֹת וְנֶאֱמַר רִשְׁעָה בְּמַחֲוִיבֵי מִכּוֹת. מֵהָ רִשְׁעָה שְׁנֵאֲמַר בְּמַחֲוִיבֵי מִיתוֹת אֵין מָמוֹן אֶצְלָהּ מִיָּדָהּ. אִף רִשְׁעָה שְׁנֵאֲמַר בְּמַחֲוִיבֵי מִכּוֹת אֵין מָמוֹן אֶצְלָהּ מִכּוֹת.

Witnesses found guilty of plotting. Rabbi Johanan said, *falsehood, falsehood*<sup>19</sup>. Witnesses found guilty of plotting and then found guilty of lying<sup>20</sup>. Rabbi Johanan said, *falsehood, falsehood*. Rabbi Eleazar said, *evildoer, evildoer*. <sup>21</sup>It is said *evildoer* for death penalty cases, and it is said *evildoer* for cases of whipping. Since for the *evildoer* subject to the death

penalty there is no fine accompanying the death penalty, so for the *evildoer* subject to whipping there is no fine accompanying whipping.

19 *Deut. 21:18: Behold, a witness of falsehood is the witness, falsehood he spoke about his brother.* The repetition of the term indicates that every single falsehood in testimony subjects the witness to a separate penalty.

20 In the same testimony, the witnesses were found guilty of “plotting”, of rendering impossible testimony, and then of false (but possible) testimony. If this is a civil case, where the witnesses have to pay for

“plotting”, can they still be flogged for false testimony? R. Johanan says yes, R. Eleazar and R. Simeon ben Laqish say no, as discussed at length in *Terumot* 7:1 Notes 7-29, in particular Note 19 (*Ketubot* 3:1 Note 29).

21 The text is from *Terumot* 7:1 Notes 21-23. The murderer is called *evildoer* in *Num. 35:31*, the person subject to flogging in *Deut. 25*.

בר פדיא אמר. הוא נגיס לא זוממין. (31a line 27)

ואין משלמין כל-הכתובה אבל משלמין טובת הנזית כתובה. כיצד. אומרים כמה אדם רוצה ליתן בכתובתה שקלו שמה תמות בחיי בעלה וירשנה בעלה או שמה זמות בעלה בחייה וירש הלה את כתובתה. לפיכך הוא משלם.

Bar Pedaia said, *he shall flee*<sup>22</sup>, not his plotters.

<sup>6</sup>They do not pay the entire *ketubah*, but they pay the personal benefit of the *ketubah*. How? One asks, how much would a person pay for the *ketubah* of this [woman], maybe she would die during her husband's lifetime and her husband would inherit from her, or maybe her husband would die during her lifetime and this one would inherit her *ketubah*. Accordingly<sup>23</sup> he has to pay.

22 *Deut. 19:5*, speaking of the homicide. Cf. Notes 4,5.

23 לפי כך read לפיכך.

**משנה ב:** מעידים אנו באיש פלוני שהוא חייב לחברו אסף זוז על מנת ליתנם מכן ועד שלשים יום והוא אומר מכן ועד עשר שנים אומד כמה אדם רוצה ליתן ויהיו אסף זוז בנדון בין ליתנה מכן ועד שלשים יום בין ליתנם מכן ועד עשר שנים:

**Mishnah 2:** “We testify against this man that he owes another 1'000 denars payable within 30 days” but he says, within ten years<sup>24</sup>. One estimates

how much a person would be willing to pay to have 1'000 denars at his disposal to return them after ten years instead of returning them after thirty days.

**משנה ג:** מעידין אנו באיש פלוני שהוא חייב לחברו מאתים זה ונמצאו זוממין לוקין ומשלמין שלא השם הקביאו לידי מכות מביאו לידי תשלומין דברי רבי מאיר. וחכמים אומרים כל המשלם אינו לוקה:

**Mishnah 3:** “We testify against this man that he owes another 200 denars” and they are found to be plotting, they are flogged and have to pay since the title which brings him to flogging is not the one which brings him to restitution<sup>25</sup>, the words of Rabbi Meir. But the Sages say, anybody who pays is not flogged<sup>9</sup>.

**משנה ד:** מעידין אנו באיש פלוני שהוא חייב מלקות ארבעים ונמצאו זוממין לוקים משומנים משום לא תענה ברעך עד שקר ומשום ועשיתם לו כפאשר זמם לעשות לאחיו דברי רבי מאיר. וחכמים אומרים אינן לוקין אלא ארבעים.

**Mishnah 4:** “We testify against this man that he is liable to be flogged 40 lashes” and they are found plotting, they are whipped 80 because of *do not testify against your neighbor as a false witness* and because of *do to him as he plotted to do to his neighbor*, the words of Rabbi Meir. But the Sages say, they only are flogged 40 times<sup>9</sup>.

**משנה ה:** משלשים בממון ואין משלשים במכות. כיצד העידוהו שהוא חייב לחברו מאתים זה ונמצאו זוממין משלשין ביניהם. העידוהו שהוא חייב מלקות ארבעים ונמצאו זוממין כל אחד ואחד לוקה ארבעים:

**Mishnah 5:** One distributes money but one does not distribute floggings. How? If they testified that he owes another person 200 denars and were found plotting, one distributes between them<sup>26</sup>. If they testified that he is liable to be flogged 40 lashes and were found plotting, each one of them is flogged 40 lashes.

24 The witnesses found to be plotting wanted to deprive their victim of the use of 1'000 denars for almost ten years.

25 They are flogged for false testimony

and have to pay restitution as plotters.

26 There must be at least 2 witnesses for their testimony to be heard. If there were  $n$  witnesses, each one has to pay  $200/n$  denars.



31) line 31a הלכה ב: מעידין אנו באיש פלוני כול'. הלכה ג: מעידין אנו באיש פלוני כול'. הלכה ד: מעידין אנו כול'. הלכה ה: משלשין בממון כול'. רבי בא בר ממל רב עמרם רב מתנה בשם רב. המלוה את חבירו על מנת שלא לתובעו השביעית משמטתו. והא תנינן השוחט את הפרה וחילקה בראש השנה. ומר רבי לעזר. רבי יהודה היא. וראוי הוא לתובעו בראש השנה. כיי דמר רבי בא בשם רבי זעירא. מכין שאינו ראוי לתובעו כמי שאינו ראוי להאמינו. וכיון שאינו ראוי להאמינו כמי שאינו ראוי ליתן לו מעות. וכאן הואיל והוא ראוי ליתן לו מעות ולא נתן נעשית הראשונה מלנה.

2 רב עמרם | 7G עמרם מתנה | 7 מתי | 3 השביעית | 7 שביעית והא תנינן | 7 והתני | 4 ומר | 7 ואמ' יהודה | 7 יודה השנה | G שנה | 5 דמר | 7 דאמ' זעירא | G זעורה שאינו | 7 שהוא (twice) G שאת (first time only) | 6 שאינו | 7 שהוא (twice) | G וכאן | G וכן מעות | 7 - 7 הראשונה | 7 ראשונה רבי יוסי בירבי בון בשם רב. המלוה את חבירו על מנת שלא תשמטונו שמטתו אין השביעית משמטתו. והא תנינן. בין נותנן מיכן ועד שלשים יום בין נותנן מיכן ועד עשר שנים: ויש עשר שנים בלא שמטתו. רבי הונא אמר. אתפלגון רב נחמן ורב ששת. חד אמר. במלוה על המשכון. וחרנה אמר. בכותב לו פרוזבול.

1 תשמטונו | 7 תשמטונו | G תשמטונו | שמטתו | 7 שביעית [תיקון המגיה] | 2 נותנן | 7 נותנן | G נותן | בין נותנן | 7 ובין נותנן | G בין נותן | 3 עשר | 7 י' | ר' הונא אמ' | 7 אמ' ר' הונא | G רב הונא אמ' | נחמן | 7G נחמן בר יעקב

תני. שלשים יום לא איתי. מהו שלשים יום לא איתי. שמואל אמר. המלוה את חבירו סתם אינו רשאי לתובעו עד שלשים יום. עאל רבי יהודה ומר טעמא. קרבה שנת השבע שנת השמיטה. לא היא שנת השבע היא שנת השמיטה. ומה תלמוד לומר קרבה שנת השבע שנת השמיטה. שלא תאמר. כל שלשים יום אין רשאי לתובעו. לאחר ל' יום בהשמת כספים הוא לא יגבנו. לפום קד צרד מימר קרבה שנת השבע שנת השמיטה. ולא כן אמר רבי בא בר ממל רב עמרם רב מתנה בשם רב. המלוה את חבירו על מנת שלא לתובעו השביעית משמטתו. אשכח תני רבי ישמאל. קרבה שנת השבע שנת השמיטה. לא היא שנת השבע היא שנת השמיטה. ומה תלמוד לומר קרבה שנת השבע שנת השמיטה. שלא תאמר. כל שש שנים פרמו לפניו שדחו לפניו ולאחר שש שנים בהשמת כספים הוא לא יגבנו. לפום קד צרד מימר קרבה שנת השבע שנת השמיטה.

1 איתי | 7G איתי (twice) מהו | G מהו המלוה | G המלוה | 2 אינו | 7 שאינו רשאי | G רשאי ר' יהודה | G רב יהודה | 3 היא שנת השמיטה | 7 ולא היא שנת השמיטה ומה | 7 מה | 4 תאמר | G תומר אין | 7G אינו רשאי | G רשאי כהשמת | 7 בהשמת | 5 יגבנו | 7G יגבנו לפום | G לפום | 6 רב עמרם | 7G עמרם | 8 היא | 7 - 7 תאמר | G תומר | 9 כרמו לפניו שדחו לפניו | 7 שדחו לפניו כרמו לפניו יגבנו | 7G יגבנו לפום | G לפום

<sup>27</sup>Rebbi Abba bar Mamal, Rav<sup>28</sup> Amram, Rab Mattanah in the name of

Rav: If somebody makes a loan to another person stipulating that he won't press for repayment, the Sabbatical will remit it. Did we not state: "If somebody slaughters a cow and divides it up on New Year's Day"? And Rebbi Eleazar said, this follows Rebbi Jehudah. But can he require payment

on New Year's Day? As Rabbi Abba said in the name of Rabbi Ze'ira: Since he could not ask him for payment, it is as if he could not believe him. And since he could not believe him, it is as if he could not pay him. And here, because he could have given him but did not give, the first [debt] is turned into a loan.

Rabbi Yose ben Rabbi Abun in the name of Rav: If somebody gives a loan to a person on condition that the Sabbatical not remit it, the Sabbatical does not remit it, as we have stated: "to return them after ten years instead of returning them after thirty days". Are there ten years without a Sabbatical? Rabbi<sup>29</sup> Huna said, Rav Nahman and Rav Sheshet disagreed. One of them said, if the loan was given on a pledge; but the other said, if he writes him a *prozbul*.

It was stated: "For thirty days he will not come." What means "for thirty days he will not come"? Samuel said, if somebody gives a loan to a person without specifying details, he has no right to ask for payment until after 30 days. Rabbi<sup>29</sup> Jehudah came and explained: *The Sabbatical year, the remitting year, is close*. Is not the Sabbatical year the remitting year? Why does the verse say, *the Sabbatical year, the remitting year, is close*? Lest you say, I am not permitted to ask for payment until after 30 days; after 30 days the debt will be remitted and I will not collect. Therefore, it must say, *the Sabbatical year, the remitting year, is close*. Did not Rabbi Abba bar Mamal, Rav Amram, Rav Mattanah say in the name of Rav: If somebody makes a loan to another person stipulating that he will not press for repayment, the Sabbatical will remit it? It was found stated by Rabbi Ismael: *The Sabbatical year, the remitting year, is close*. Is not the Sabbatical year the remitting year? Why does the verse say, *the Sabbatical year, the remitting year, is close*? Lest you say, the entire six years his vineyard is available, his field is available but after six years the debt is remitted and I cannot collect. Therefore, it must say, *the Sabbatical year, the remitting year, is close*.

27 This Halakhah also is Halakhah *Ševi'it* 10:2 (7), explained there in Notes 57-68. In G, the first paragraph is Halakhah 2, the remainder Halakhah 3.

28 This is his Babylonian title; in the Yerushalmi he seems not to carry a title; cf. the variant readings.

29 Read: "Rav", cf. the variant readings.

**משנה ו:** אין העדים נעשים זוממים עד שישזמו את עצמן. כיצד אמרו מעידין אנו באיש פלוני שהרג את הנפיש אמרו להן היאך אתם מעידים שהרי הנהרג הזה או ההורג הזה עמנו אותו היום במקום פלוני אין אילו זוממין. אבל אמרו להן היאך אתם מעידין שהרי אתם הייתם עמנו אותו היום במקום פלוני הרי אלו זוממין ונהרגין על פיהן:

**Mishnah 6:** Witnesses become plotters only by their own testimony. How is this? If they said, we testify against this man that he killed a person; [others] told them, how can you testify, for this murder victim or this murderer was with us at such place on that day; they are not plotters<sup>30</sup>. But if they told them, how can you testify, for you were with us at such place on that day; they are plotters and are executed on their testimony<sup>31</sup>.

**משנה ז:** באו אחרים והזימום באו אחרים והזימום אפילו מאה כולם ייהרגו. רבי יהודה אומר, איסטיסית היא זו אינה נהרגת אלא כת הראשונה בלבד:

**Mishnah 7:** If others came and they showed them to be plotters, if others came and they showed them to be plotters, even a hundred, all should be executed<sup>32</sup>. Rabbi Jehudah says, this is <sup>33</sup>איסטיסית; only the first group is executed.

30 The testimony may be implausible but it is not impossible. The court may reject the testimony but it cannot be sanctioned.

31 If the witnesses were shown to have been far from the place of the crime at the date of the crime, the testimony is impossible; they are plotters and must be punished according to the law of plotters. But this must be based on the testimony of the witnesses in the required investigations (Mishnah *Sanhedrin* 5:1), not by circumstantial evidence.

32 The first group of witnesses accuses A to have murdered B at a certain place at a certain time. A second group testifies that the first witnesses were with them at another place, more than a day's trip away, at that time. Groups 3-99 support group 1, and group 2 shows all of them to be plotters.

(Explanation of Alfasi and Maimonides.)

33 Alfasi and Maimonides read the word as *isatis* "indigo", that the second group which taints the others' testimony "tints" them. This is rejected by *Arukh*, based on a Gaonic responsum which identifies *איסטיסית* with קוביסיסית "gambling". R. Hananel and Maimonides read the word as *אסטסיס*, the Syriac form of Greek στάσις "conspiracy", or possibly ἀστασία "uncertainty" (Levy, who also considers the forms ἀσταθής, ἄστατος). Rashi considers the word as *עדות סתיה* "incredible testimony" that the second group should be able to testify against all others. In *Tosephta* 1:10, Zuckermann notes the readings *איסטיסית*, *איצטניסית*. Brüll proposes *astutia*.

(31a line 59) **הלכה ו:** אין העדים נעשין זוממין כול'. רבי בא בר ממל. והוא שנהרג. אבל אם לא נהרג לא. קדא היא דתנינן. אינה נהרגת אלא כת הראשונה בלבד: רבי בון בר חייה בעא קומי רבי זעירא. היו עומדין ומעידין עליו שהרג את הנפש בלוד. באו אחרים ואמרו להן. היאך אתם מעידין שהרי אתם הייתם עמנו בחמשה בחודש בקיסרי. ובאו באו אחרים ואמרו להן. היאך אתם מעידין שהרי אתם הייתם עמנו בעשרה בחודש בציפורי. ההורג אינו נהרג שמה עדים זוממין הן. והעדים אינן נהרגין שמה אמת אמרו.

**Halakhah 6:** “Witnesses become plotters,” etc. Rabbi Abba bar Mamal: Only if he was killed. But not if he was not killed. That is what we have stated: “Only the first group is executed.”<sup>34</sup>

Rebbi Abun bar Hiyya asked before Rebbi Ze'ira: If they were standing, testifying that he killed a person in Lydda<sup>35</sup>. Others came and told them, how can you testify since you were with us in Caesarea<sup>36</sup> on the fifth of the month? Then others came and told them, how can you testify since you were with us in Sepphoris on the tenth of the month<sup>37</sup>? The murderer cannot be executed since possibly they are plotting witnesses. The witnesses cannot be executed since possibly they are telling the truth.

34 This refers to Mishnah 7. Since R. Jehudah holds that wholesale disqualifications are not believable, why should the first group of witnesses be condemned when all others, testifying to the same facts, are not? The answer is that if the third group comes before the first is condemned and executed, nobody is condemned. Babli 5b in the name of R. Abbahu.

35 Presumably on the first of the month.

36 In G: קיסרי, Caesarea Philippi, more than a five days' walk from Lydda. Caesarea Maritima is less than two days from Lydda.

37 This is difficult to understand since Sepphoris is reachable from both Caesareas in two to three days. One has to assume that round numbers were chosen to make memorization easy.

The third group of witnesses testifies to undercut the credibility of the second.

(fol. 30d) **משנה ח:** אין העדים זוממים נהרגין עד שייגמר הדין שהרי הצדיקין אומרים עד שייהרג שניאמר נפש תחת נפש. אמרו להן חכמים והלא כבר נאמר ונעשיתם לו כאשר זמם לעשות לאחיו והרי אחיו קיים. אם כן למה נאמר נפש תחת נפש. יכול משקבלו עדותן ייהרגו תלמוד לומר נפש תחת נפש הא אינן נהרגין עד שייגמר הדין:

**Mishnah 8:** Plotting witnesses cannot be executed unless judgment was rendered, for the Sadducees say, unless he was executed, for it says, *a life for a life*<sup>38</sup>. The Sages told them, was it not already said, *do to him as he plotted to do to his brother*<sup>39</sup>, does this not imply that his brother is alive? Then why does it say, *a life for a life*? I could think that they would be executed once they had testified, but the verse says, *a life for a life*; i. e., they cannot be executed unless judgment was passed<sup>40</sup>.

**משנה ט:** על פי שנים עדים או שלשה עדים יומת המת אם מתקיימת העדות בשנים לפי פירט הכתוב בשלשה אלא להקיש שלשה לשנים. מה שלשה מצימין את השנים אף השנים יזמו השלשה. ומניין אפילו מאה תלמוד לומר עדים.

**Mishnah 9:** *By the words of two witnesses or three witnesses shall a death sentence be imposed*<sup>41</sup>. If testimony is confirmed by two, why did the verse mention three? Only to compare three to two. Since three may prove that two are plotters, two also may prove that three are plotters. And from where even a hundred? The verse says “witnesses”<sup>42</sup>.

**משנה י:** רבי שמעון אומר מה שנים אינו נהרגין עד שיהיו שניהן זוממין אף שלשה אינו נהרגין עד שיהיו שלשתן זוממין. ומניין אפילו מאה תלמוד לומר עדים.

**Mishnah 10:** Rabbi Simeon says, since two are executed only if both are plotters, so three are executed only if all three are plotters. And from where even a hundred? The verse says “witnesses”<sup>42</sup>.

**משנה יא:** רבי עקיבה אומר לא בא השלישי אלא להחמיר עליו ולעשות דינו כיוצא באילו. אם כן ענש הכתוב לניטפל לעוברי עברה בעוברי עברה על אחת כמה וכמה ישלם שקר לניטפל לעושה מצוה בעושה מצוה.

**Mishnah 11:** Rabbi Aqiba says, the third is only mentioned to punish him harshly and to identify his judgment with that of the others. If the verse in this way punished the accessory of criminals like criminals<sup>43</sup>, so much more it will reward the accessory to one who keeps the commandments as one who keeps the commandments.

38 This is a misquote. It should be נפש נפש תחת נפש (Lev. 24:18) which applies to an animal.

39 Deut. 19:19. It says “he plotted”, not “he did”. This implies that the plot was

discovered before it succeeded.

40 The court might not believe the witnesses even if no formal perjury was proved. Then the testimony becomes irrelevant and cannot be sanctioned. If no

sentence had been passed on the accused, it is impossible to sentence the witnesses to the same penalty.

41 *Deut.* 19:15. Criminal sentences can be imposed only on the basis of oral testimony, not of circumstantial evidence.

42 The repetition, *two witnesses or three witnesses*, when it could have been “two or three witnesses”, implies that any number of witnesses have the same status as do two.

43 Since the third witness is not essential for proof in court.

הַלכָּה ח: אין העדים האומנים. אמר רבי זעירא. הָדָא אָמְרָה. עַד זֹמָם אֵינוֹ נִפְסָל בְּבֵית דִּין אֲלָא מַעְצָמוֹ הוּא נִפְסָל. פֶּתַר לָהּ בְּהִתְרִיחָהּ. וְתַנִּי כֹן. אָמַר רַבִּי יוֹסִי. בְּמָה דְּבָרִים אָמּוּרִים. בְּשִׁתִּי כִּיתִי עֵידוּת וּבִשְׁתִּי הִתְרִיּוֹת. אֲבָל בְּעֵדוּת אַחַת וּבְהִתְרִיָּה אַחַת כָּל-עֵדוּת שֶׁבִּטְלָה מִקְצָתָהּ בִּטְלָה כּוֹלָהּ. הֵי עוֹמְדִין וְיַמְעִידִין עָלָיו בְּעֵשְׂרָה בְּנִיסָן שָׁגַב אֶת הַשּׁוֹר בְּאַחַד בְּנִיסָן וְטָבַח וַיִּכְרַח בְּחִמְשָׁה בְּנִיסָן וְהוֹזָמוּ בְּאַחַד עֶשֶׂר בְּנִיסָן. כָּל-עֵדוּת שֶׁהִעִידוּ מִב' בְּנִיסָן עַד חֲמִשָּׁה בְּנִיסָן לְמַכְרַע הָרִי אֵילּוּ פְסוּלִין. אָמַר רַבִּי בָּא בַר מַמַּל. תִּיכְפֹּתֶר בְּמַעֲדִין עָלָיו בְּכָרָךְ אֶחָד וְלִית שְׁמַע מִינָּה כְּלוּם. וְתַנִּי כֹן. הֵי הֵן הָרֵאשׁוֹנִים וְהֵן הָאַחֲרֹנִים. הוֹזָמוּ בְּרֵאשׁוֹנָה אֵין בְּכָךְ כְּלוּם. בְּשִׁנִּיָּה הָרִי הֵיא לֹא עֵדוּת אַחַת. בְּשִׁלִּישִׁית הָרִי הֵיא לֹא כְּשִׁתִּי עֵדוּת. וְהִכִּי. אִמַּ" בְּמַעֲדִין עָלָיו בְּכָרָךְ אֶחָד לִית שְׁמַע מִינָּה כְּלוּם. לֹא אֲתִיָּא אֲלָא עַל יְדֵי עֵדוּת סָגִין. אָמַר רַבִּי זְעִירָא. הָדָא אָמְרָה. עַד זֹמָם אֵינוֹ נִפְסָל בְּבֵית דִּין אֲלָא מַעְצָמוֹ הוּא נִפְסָל.

**Halakhah 8:** “Plotting witnesses cannot be”. <sup>45</sup>Rebbi Ze'ira said, this implies that a plotting witness is not disqualified by the court but is disqualified by himself. Explain it by warning, as it was stated: “Rebbi Yose said, when has this been said? For two testimonies with two warnings. But for one testimony and one warning<sup>46</sup> any testimony which is partially disqualified is totally disqualified.” What does it mean, “if it is partially disqualified it is totally disqualified”? If they were standing and testifying against him on the tenth of Nisan that he had stolen an ox on the first of Nisan, and slaughtered or sold it on the fifth of Nisan. They were shown to be plotting on the eleventh of Nisan. Any testimony which they delivered between the second and the fifth of Nisan<sup>47</sup> is retroactively disqualified. Rebbi Abba bar Mamal said, explain it if they deliver their testimony in one group and you cannot infer anything, as we have stated<sup>48</sup>: “They were the first and they were the later [witnesses]. If they were shown to be plotting at first, there is nothing. At the second time, there is one testimony<sup>49</sup>. At the third time, there are two testimonies. How? If they testify on one occasion, you

could not infer anything. It only comes based on multiple testimonies.  
<sup>50</sup>Rebbi Ze'ira said, this implies that a plotting witness is not disqualified by the court but is disqualified by himself.

44 Scribal error for םא, correct in G and *Bava qamma*.

45 The entire Halakhah is copied from *Bava qamma* 7:4, explained there in Notes 45-51. (Babli *Bava qamma* 72b/73a).

46 Warnings given to the witnesses that perjury is a crime and punishable.

47 In G and *Bava qamma*: between the tenth and the fifteenth of Nisan. This is the correct reading. Testimony of perjured witnesses must be struck from court records from the date of the testimony, not the date of the discovery of the fact of perjury. Babli

*Sanhedrin* 27a.

48 Tosephta *Bava batra* 2:9; testimony to affirm title to real estate by proving three years of undisturbed possession.

49 Here ends the first sheet of G.

50 This sentence, which affirms the correctness of R. Ze'ira's statement, against R. Abba bar Mamal, is found only here. In contrast to the disqualifications listed in Mishnah *Sanhedrin* 3:6, perjured witnesses are automatically disqualified from the moment of perjury, without any action by the court.

**משנה יב:** מה שנים נמצא אחד מהן קרוב או פסול עדותו בטילה אף שלשה נמצא אחד מהן קרוב או פסול עדותו בטילה. ומניין אפילו מאה תלמוד לומר עדים.

**Mishnah 12:** Since the testimony of two [witnesses] is invalid if one of them is found to be a relative or a disqualified person<sup>51</sup>, the same holds for three if one of them is found to be a relative or a disqualified person. From where even for a hundred? The verse says<sup>42</sup>, *witnesses*.

**משנה יג:** אמר רבי יוסי במה דברים אמורים בדיני נפשות אבל בדיני ממונות תתקיים העדות בשאר. רבי אומר אחד דיני ממונות ואחד דיני נפשות בזמן שהיתרו בהן. אבל בזמן שלא הותרו בהן מה יעשו שני אחיו שראוי באחד שהרג את הנפש:

**Mishnah 13:** Rebbi Yose said, when has this been said? In criminal trials, but in civil trials the testimony should be upheld by the remaining [witnesses]<sup>52</sup>. Rebbi says, both in criminal and in civil trials, if they warned them<sup>53</sup>. But if they did not warn them, what should two brothers do who were eye-witnesses to a murder?

51 If one witness is disqualified by the rules of Mishnah *Sanhedrin* either 3:6 or 3:7, there is only one testimony, insufficient by biblical standards.

52 Since *Deut.* 19:19 is formulated for criminal trials, the argument that any number of witnesses have the same status as two witnesses is not necessarily true for civil trials. In money matters, any two qualified witnesses can testify. For example, it is admissible that marriage contracts be signed first by two qualified

witnesses and after them by any number of family members of both sides (cf. *Gittin* 8:12, Note 105).

53 If in a criminal case a disqualified person or two related persons both warned the perpetrator not to engage in criminal behavior, their action makes them witnesses and all witnesses have to be disqualified under the argument of Mishnah 12. But if they were eye witnesses but not those who delivered the warning, they are not forced to testify; the trial may proceed without them.

5 (31b line 5) **הלכה יג:** אמר רבי יוסי במה דברים אמורים כול'. נאמר דיני ממונות ואל נאמר דיני נפשות. שאילו נאמר דיני ממונות ולא נאמר דיני נפשות הייתי אומר. דיני ממונות הקלים שלשה מזמין את השנים ושנים אין מזמין את השלשה. מניין אפילו מאה. תלמוד לומר עדים. או אילו נאמר דיני נפשות ולא נאמר דיני ממונות הייתי אומר. דיני נפשות החמורים שנים מזמין את השלשה שלשה אין מזמין את השנים. מניין אפילו מאה. תלמוד לומר עדים.

**Halakhah 13:** “Rebbi Yose said, when has this been said?”<sup>54</sup> It should have been said for civil trials and would not have been needed for criminal trials. If it had been said for civil trials, not for criminal trials, I would have said that in the relaxed standards of civil trials three [witnesses] may prove two [witnesses] to be plotting but two may not prove three to be plotting. From where even a hundred? The verse says, *witnesses*<sup>42</sup>. Or if it had been said for criminal trials, not for civil trials, I would have said that according to the stringent standards of criminal trials two [witnesses] may prove three [witnesses] to be plotting; three may not prove two to be plotting<sup>55</sup>. From where even a hundred? The verse says, *witnesses*<sup>42</sup>.

54 The argument refers to all Mishnaot 9-13. The requirement of “two witnesses or three witnesses” for criminal convictions is written in *Deut.* 17:6, 19:15. (In addition, rendering judgment in a criminal trial on the basis of a single testimony is forbidden in *Num.* 35:30.) While in both verses of *Deut.*

the background clearly is that of criminal trials, the redundancy is taken as a sign that in civil trials (not on arbitration panels) the biblical rules of evidence of criminal trials have to be followed. The Babli disagrees in the name of Rav Nahman (6b).

55 It seems to be clear that in this



sentence the positions of “two” and “three” completely parallel to the preceding one. have to be switched, resulting in a sentence

**משנה יד:** (fol. 30d) **היו שנים רואין אותו מחלון זה ושנים רואין אותו מחלון זה ואחד מתרה** **בו באמצע בזמן שמקצתן רואין אילו את אילו הרי עדות אחת. ואם לאו הרי אילו שתי עדות. לפיכך אם נמצאת אחת מהן זוממת הוא והן נהרגין והשנייה פטורה.**

**Mishnah 14:** If two [witnesses] saw him from one window, two from another window, and a person in the middle gives the warning<sup>56</sup>, if partially they can see one another<sup>57</sup> then this is one testimony. Otherwise, these are two testimonies. Therefore, if one [group] of them is found plotting, he<sup>58</sup> and they are executed; the second [group] is not prosecutable<sup>59</sup>.

56 To a potential criminal not to engage testimony of the witnesses not found to be in criminal activity. perjured.

57 If one of each group of witnesses sees the other or the person in the middle sees one of each group. 59 If after the convicted person was executed the second group also was found plotting, they cannot be executed (Mishnah

58 The criminal, convicted on basis of the 8).

**הלכה יד:** (31b line 12) **היו שנים רואין אותו מחלון זה ושנים רואין אותו מחלון זה ואחד מתרה בו באמצע. בזמן שמקצתן רואין אילו את אילו הרי עדות אחת ואם לאו הרי אילו שתי עדות. הא אם היו שלשה שלשה לא בדא. אמר רבי יוסי. תנינן שלשה שלשה לא בדא. תנינן הקא מה דלא תנינן בכל סנהדרין. הוא והן נהרגין והשנייה פטורה.**

**Halakhah 14:** “If two [witnesses] saw him,” etc. Rabbi Jeremiah said, look how we are stating here: “If two [witnesses] saw him from one window, two from another window, and a person in the middle gives the warning, if partially they can see one another then this is one testimony. Otherwise, these are two testimonies.”<sup>60</sup> Therefore, if they were three each, this does not apply. Rabbi Yose said, we stated “three each not so.”<sup>61</sup>

We state here what was not stated in all of *Sanhedrin*: “he and they are executed; the second [group] is not prosecutable.”<sup>62</sup>

60 It is not clear what the argument is; there are at least two very different explanations. In the opinion of *Pene Moshe*, R. Jeremiah points out that if the single person in the middle sees each group of witnesses, then the testimony is one of “three and three”, i. e., the person in the middle with each one of the groups of two witnesses. It is a single testimony; if one group is found plotting, the entire testimony becomes invalid and nobody can be executed. The criminal cannot be convicted since there is no testimony; the witnesses cannot be executed because not all of them

have been shown to be plotting.

Others explain that if in each window there are three witnesses and the person in the middle only sees one in each, the two groups of two witnesses that are not seen by the person in the middle form two independent groups of witnesses; the person in the middle does not connect them. In any case, the Babli will not agree (6b).

61 A *baraita* confirms the interpretation, whatever it may be.

62 To contemplate that the rules require a clear miscarriage of justice.

**משנה טו:** רבי יוסי בן רבי יהודה אומר לעולם אינו נהרג עד שיהיו שני עדיו מתירין בו שנאמר על פי שנים עדים. דבר אחר על פי שנים עדים שלא תהא סנהדרין שומעת מפי היתרגמן: (fol. 30d)

**Mishnah 15:** Rabbi Yose ben Rabbi Jehudah<sup>63</sup> says, nobody can be executed unless his two witnesses warned him<sup>64</sup>, as it is said: *By the mouth of two witnesses*<sup>64</sup>. Another explanation: *By the mouth of two witnesses*, that the court may not hear from the mouth of an interpreter<sup>65</sup>.

63 In the Babli and most independent Mishnah mss: “R. Yose” (i. e., ben Halaphta). The reading of the Yerushalmi in Mishnah and Halakhah contradicts Mishnah 2:6. Since the statement of R. Yose ben R. Jehudah is not discussed in Halakhah 2:6, the correct attribution there cannot be determined. Since his statement is not accepted as practice in the Babli, it seems that “R. Yose ben R. Jehudah” is the

correct attribution here.

64 Warning by a single person is invalid, even if witnessed by two persons.

65 Testimony and cross examinations are possible only if all judges understand the witnesses without translator. The Babli (6b) permits cross-examination using a translator if the witnesses’ answers are directly understood by the judges.

(31b line 18) **הלכה טו:** רבי יוסי בי רבי יהודה אומר כול. תני רבי הושענה. הפסוק הזה אמור בשתי כיתי עדים. קיינים עד-חמס באיש. עד זומם שהוא עונה באיש. לענות בו. לא בעידותו. עדים זוממין מהו שיהיו צריכין לקבל התרייה. רבי יצחק בר טבליי בשם רבי לעזר. עדים זוממין אינן צריכין לקבל התרייה. אמר רבי אבהו. לא חישוין לון. אמר רבי יעקב בר דסי. ואית נכולין סגין מאן אילין חמין חביריהו נפקין מיקטלא ולא אמרין כלום.

**Halakhah 15:** “Rebbi Yose ben Rebbi Jehudah says,” etc. Rebbi Hoshiaia stated: The following verse is said about two groups of witnesses. *If an oppressive witness arises against a man*, a plotting witness who answers to a man. *Answering him*, not his testimony<sup>66</sup>.

Do plotting witnesses have to be warned? Rebbi Isaac bar Tevlai in the name of Rebbi Eleazar: Plotting witnesses do not have to accept warning<sup>67</sup>. Rebbi Abbahu said, we do not take notice of this. Rebbi Jacob bar Dassai said, and there are very cunning people who even if they see their comrades being led out to be killed do not say anything<sup>68</sup>.

66 While testimony may not stand up under cross-examination, the worst that can happen to a witness in that case is that the court does not believe him. A criminal conviction can only follow if the new group of witnesses *answer him*, the plotting witness, by showing that he could not have been present at the place of the alleged crime or transaction. This paragraph belongs to Mishnah 6.

67 In the Babli, *Ketubot* 32a, this is an anonymous statement accepted without discussion.

68 It is not clear whether this statement supports R. Eleazar or R. Abbahu. In the first case, he argues that a special warning about penalties of plotting perjury is unnecessary since the bad guys automatically will stay away as far as possible from the court. In the second case he wants to point out that good people will not be kept away from being witnesses by being admonished by the court about penalties of plotting perjury, and it is a good thing that bad people will be frightened away.

(fol. 30d) **משנה יו:** מי שנגמר דינו וברח ובא לפני אותו בית דין אין סותרין את דינו. כל מקום שצמדו שנים ואמר מעידין אנו באיש פלוני שנגמר דינו בבית דינו של פלוני ופלוני ופלוני עידי הרי זה ייהרג.

**Mishnah 16:** If somebody escaped after sentence was passed, if he is returned to the same court, his case is not reopened. Anywhere two [people]

will come forward and say, we testify against this man that he was condemned in court X on the testimony of Y and Z, he shall be executed.

(31b line 25) **הלכה י:** מי שנגמר דינו כול. כתב כל נכסיו לשני בני אדם כאחת היו העדים כשירין לזה ופסולין לזה. רבי הילא אמר. אתפלגון רבי יוחנן ורבי שמעון בן לקיש. חד אמר. מאחר שהן פסולין לזה פסולין לזה. וחרנה אמר. כשירין לזה ופסולין לזה. רבי מנא לא מפרש. רבי אבון מפרש. רבי יוחנן אמר. מאחר שהן פסולין לזה פסולין לזה. רבי שמעון בן לקיש אמר. כשירין לזה ופסולין לזה. אמר רבי לעזר. מתניתא מסייעה לרבי יוחנן. מה השנים נמצא אחד מהן קרוב או פסול עדותן בטילה אף השלשה נמצא אחד מהן קרוב או פסול עדותן בטילה. מניין אפילו מאה תלמוד לומר עדים. רבי יעקב בר אהא אמר. אתפלגון רבי חנינה חברון דרבנין ורבנין. חד אמר. יאות אמר רבי לעזר. וחרנה אמר. לא אמר רבי לעזר יאות. מאן דאמר. יאות אמר רבי לעזר. נעשית כעידות אחת וכהתרייה אחת. וכל עדות שבטלה מקצתה בטלה כולה. מאן דאמר. לא אמר רבי לעזר יאות. נעשית כשתי כיתי עדים כשירין לזה ופסולין לזה.

**Halakhah 16:** “Whose sentence was passed,” etc. <sup>69</sup>If somebody wrote all his property over to two persons in one document and the testimony of the witnesses was valid for one but invalid for the other. Rabbi Hila said, Rabbi Johanan and Rabbi Simeon ben Laqish disagreed; one said, since it is invalid for one it is invalid for the other, but the other said, it is valid for one and invalid for the other. Rabbi Mana did not specify; Rabbi Abun specified: Rabbi Johanan said, since it is invalid for one it is invalid for the other; but Rabbi Simeon ben Laqish said, it is valid for one and invalid for the other. Rabbi Eleazar said, the Mishnah supports Rabbi Johanan: “Since the testimony of two [witnesses] is invalid if one of them is found to be a relative or a disqualified person<sup>51</sup>, the same holds for three if one of them is found to be a relative or a disqualified person. From where even for a hundred? The verse says<sup>42</sup>, *witnesses*.” Rabbi Jacob bar Aha said, Rabbi Hanina the colleague of the rabbis and the rabbis disagree. One says, the argument of Rabbi Eleazar is correct, but the other says, the argument of Rabbi Eleazar is not correct. For him who says, the argument of Rabbi Eleazar is correct, it is a single testimony and a single warning, and any testimony which is partially disqualified is totally disqualified<sup>70</sup>. For him who says, the argument of Rabbi Eleazar is not correct, it is as if two groups of witnesses came, valid for one and invalid for the other.

69 This paragraph refers to Mishnah 12, 1:1 (Notes 20-21).  
 not 16. It is also found in *Ketubot* 11:6, 70 Tosephta *Bava qamma* 6:23.  
 explained there in Notes 94-102, and *Gittin*

**משנה יז:** סנהדרין נוהגת בארץ ובחוץ לארץ. סנהדרין ההורגת אחד בשבוע נקראת חבלנית. רבי לעזר בן עזריה אומר אחד לשבעים שנה. רבי טרפון ורבי עקיבה אומרים אילו היינו בסנהדרין לא נהרג בה אדם מעולם. רבן שמעון בן גמליאל אומר אף הו מרבין שופכי דמים בישאראל:

**Mishnah 17:** Criminal courts apply in the Land and outside the Land. A criminal court which hands out a death sentence once in a Sabbatical period is called terrorist. Rabbi Eleazar ben Azariah said, once in seventy years. Rabbi Tarphon and Rabbi Aqiba say, if we had been members of a criminal court, nobody ever would have been condemned to death there. Rabban Simeon ben Gamliel said, they would have increased the number of murderers in Israel.

**הלכה יז:** סנהדרין נוהגת בארץ כול. סנהדרין נוהגת בארץ ובחוץ לארץ. דכתיב והיו אלה לכם לחוקת משפט לדתיתכם בכל מושבותיכם: ומה תלמוד לומר שופטים ושטרים תתן להם בכל שטריהם. בערי ארץ ישראל. אלא שבערי ארץ ישראל מושבין דיננים בכל-עיר ועיר ובחוץ לארץ מושבין אותן פלכים פלכים. תני. רבי דוסתאי בירבי ינאי אומר. מצנה לכל-שפט שיהא דן את שפטו. דכתיב שפטים ושטרים תתן להם בכל-שטריהם אשר יי אלהיהם נתן להם לשפטים.

**Halakhah 17:** “Criminal courts apply in the Land,” etc.<sup>71</sup> “Criminal courts apply in the Land and outside the Land, as it is written<sup>72</sup>: *This shall be for you a law statute for your generations, in all your dwellings.* And why does the verse say<sup>73</sup>, *judges and marshals you shall appoint for yourself in all your gates*, in the towns of the Land of Israel. Only that in the Land of Israel one installs judges in every town and outside the Land one appoints them by circuits.” It was stated: <sup>74</sup>“Rabbi Dositheos ben Rabbi Yannai says, there is an obligation for every tribe to judge his own tribe, as it is written<sup>73</sup>: *Judges and marshals you shall appoint for yourself in all your gates which the Eternal, your God, gives you for your tribes.*”

71 Tosephta *Sanhedrin* 3:10, Babli 7a.

72 *Num.* 35:29.

73 *Deut.* 16:18.

74 *Sifry Deut.* 144, Babli *Sanhedrin* 16b.

There and in the sources given in Note 71 the author is Rabban Simeon ben Gamliel.

The difference between the any-

mous Tanna of the first Tosephta and R.

Dositheos b. Yannai / Rabban Simeon ben

Gamliel is that according to the first Tanna

the claimant in a civil suit has the choice of

the jurisdiction to file his suit whereas the

dissenters restrict him to courts of his own

tribe (L. Finkelstein, Commentary to *Sifry*).

תַּנִּי רַבִּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל. מַחְוִיבֵי מִיתוֹת שֶׁבָּרְחוּ מִן הָאֶרֶץ לְחוּצָה לָאֶרֶץ (31b line 46)  
מִמֵּיתִין אוֹתָן מִיד. בָּרְחוּ מִחוּצָה לָאֶרֶץ לָאֶרֶץ אֵין מִמֵּיתִין אוֹתוֹ מִיד אֶלָּא דָּנִין אוֹתָן כְּתַחֲלִילָה.

<sup>75</sup>Rabban Simeon ben Gamliel stated: People sentenced to death who fled from the Land to outside the Land one executes immediately. People sentenced to death who fled from outside the Land to the Land one does not execute immediately but gives them a new trial.

75 Tosephta *Sanhedrin* 3:11 in the name of R. Dositheos ben Jehudah. Babli 7a in the name of R. Jehudah b. Dositheos in the

name of R. Simeon ben Shetah (*editio princeps*) but R. Dositheos ben Jehudah in the name of R. Simeon (Munich ms.).

## אילו הן הגולין פרק שני

(fol. 31b) **משנה א:** אילו הן הגולין ההורג נפש בשגגה. היה מעגל במעגילה ונפלה עליו והרגתו היה משלשל בחבית ונפלה עליו והרגתו היה יורד בסולם ונפל עליו והרגו הרי זה גולה. אבל אם היה מושך במעגילה ונפלה עליו והרגתו היה דולה בחבית ונפסק החבל ונפלה עליו והרגתו היה עולה בסולם ונפל עליו והרגו הרי זה אינו גולה. זה הכלל כל שבדרך הורדתו גולה ושלל בדרך הורדתו אינו גולה.

**Mishnah 1:** The following are exiled: the unintentional homicide<sup>1</sup>. If he was rolling with the roller<sup>2</sup> when it fell on somebody and killed him, or lowering an amphora when it fell on somebody and killed him, or was descending on a ladder when he fell on somebody and killed him, he is exiled. But if he was drawing the roller when it fell on somebody and killed him, or lifting an amphora when it fell on somebody and killed him, or was climbing a ladder when he fell on somebody and killed him, he is not exiled. This is the principle, by anything lowered, he is exiled, if it is not lowered, he is not exiled<sup>3</sup>.

1 The rules of exile of the unintentional homicide are detailed in *Num. 35, Deut. 19:1-10*.

2 The roller is used to smoothe the surface of a roof after waterproofing.

3 The rules of *Num. 35* essentially absolve the homicide from exile if there was a freak accident, where nobody could have expected a deadly outcome. Then when the theme is taken up again in *Deut.*, v. 19:5 gives as example that two people

go to cut down a tree, one swings his axe to cut the tree when the blade comes off the handle (or jumps off the tree to be cut) while the axe is lowered and kills the other person. The verse ends with an emphatic statement, *this one has to flee to a city of asylum to stay alive*. This is read to mean that exile is appropriate only if the impetus given to the deadly object is reinforced by gravity, not if it is attenuated by it.

(31c line 43) **הלכה א:** אילו הן הגולין כול. רבי יהודה פוטר עד שיפיל את כל-החבל. רבי שמעון פוטר עד שיתיר את כל-המחלצון. מאי דמר רבי שמעון בפסיקת החבל. מה דמר רבי יהודה בשמיטת המחלצון.

רבי ירמיה בעא קומי רבי אבהו. הנה מעגל במעגילה כדרך הליכתה והוציא הלה את ראשו והטיחה לו. אמר ליה. היא עליה היא ירדה. רבי ירמיה בעא קומי רבי אבהו. הנה מעגל במעגילה כדרך הליכתה והושיט התינוק את ידו ורצצה. אמר ליה. אטרוחת ביה. היא עליה היא ירדה.

**Halakhah 1**<sup>4</sup>: “The following are exiled,” etc. Rabbi Jehudah declares him not liable unless the entire rope falls from his hand<sup>5</sup>. Rabbi Simeon declares him not liable unless he let go the trowel completely<sup>6</sup>. What Rabbi Simeon said refers to breaking of the rope. What Rabbi Jehudah said, was about letting the trowel go<sup>7</sup>.

Rebbi Jeremiah asked before Rebbi Abbahu: If one was using a roller going forward when another person stuck out his head and the roller hit him. He told him, there is no difference between upward and downward movement<sup>8</sup>.

Rebbi Jeremiah asked before Rebbi Abbahu: If one was using a roller going forward when a child stuck out his hand and it was smothered. He told him, you are bothering me about this; there is no difference between upward and downward movement<sup>9</sup>.

4 This note is found only in the *editio princeps*; it is missing in the ms.

5 This refers to the case of a person lowering a load by means of a rope when the load comes crashing down and kills somebody. If he loosens his grip, the homicide is due to his negligence and he is exiled. If the rope breaks (assuming he was not negligent in using a rope not suitable for its task by common engineering standards), it is an act of God and he is not liable.

6 Both Rashi (French *trueille*) and the `Arukh (Italian *cazzuola*) define this as builder's trowel (Babli 9b). If the builder is standing on a roof and lets go of the trowel

which falls down and kills, he is negligent. But if the tool breaks (assuming it was well maintained), it is an act of God and he is not liable.

7 Meaning that the argument of R. Jehudah applied to R. Simeon's case would have resulted in R. Simeon's statement and vice-versa.

8 This is a personal injury case, not one of homicide. The particular distinction derived from *Deut.* 19:5 is not applicable.

9 If there is no negligence on the part of the operator, he is not liable and the distinction becomes meaningless.



(fol. 31b) **משנה ב:** נִשְׁמַט הַבְּרָזֶל מִקֶּטֶהוּ וְהָרַג רַבִּי אוֹמֵר אֵינוֹ גּוֹלָה. וְחֻכָּמִים אוֹמְרִים גּוֹלָה. מִן הָעֵץ הַמִּתְבַּקֵּעַ רַבִּי אוֹמֵר גּוֹלָה. וְחֻכָּמִים אוֹמְרִים אֵינוֹ גּוֹלָה:

**Mishnah 2:** If the iron slipped off the handle and killed, Rabbi said he does not go into exile, but the Sages say he does go. From the wood to split, Rabbi says he goes into exile, but the Sages say, he does not go<sup>10</sup>.

10 This is a matter of interpretation of *Deut. 19:5* as explained in the Halakhah (Babli 7b/8a, *Sifry Deut.* 183.) The Babli points out that for the Sages indirect causation is not punishable as negligence, while for Rabbi it is.

(31c line 50) **הלכה ב:** נִשְׁמַט הַבְּרָזֶל מִקֶּטֶהוּ כו'. מֵה טַעֲמָא דְרַבִּי. נֹאמֵר כָּאן נִשְׁיֵלָה וְנֹאמֵר לְהֵלֶן כִּי יִשָּׁל זִיתָד. מֵה נִשְׁיֵלָה שְׁנֵאמְרָה לְהֵלֶן נִשְׁיֵרָה אִף כָּאן נִשְׁיֵרָה. מֵה טַעֲמוֹן דְּרַבְּנִין. נֹאמֵר כָּאן נִשְׁיֵלָה וְנֹאמֵר לְהֵלֶן וְנִשָּׁל יְיָ אֱלֹהֶיךָ אֶת־הַגּוֹיִם הָאֵל מִפְּנֵיךָ וְגו'. מֵה נִשְׁיֵלָה שְׁנֵאמְרָה לְהֵלֶן מִכָּה אִף כָּאן מִכָּה.

**Halakhah 2:** “If the iron slipped off the handle,” etc. What is Rabbi’s reason? It is said here<sup>11</sup> getting lost and it says there<sup>12</sup>, *for your olives will fall off*. Since getting lost there means falling off, here also it means falling off. What is the rabbis’ reason? It is said here getting lost and it says there<sup>13</sup>, *the Eternal, your God, will eliminate these peoples before you*. Since getting lost there means taking a hit, here also taking a hit.

11 In *Deut. 19:5*: וְנִשָּׁל הַבְּרָזֶל מִן־הָעֵץ *the iron was lost from the wood*. The wood

might either be the handle or the tree to be felled. Cf. Arabic نسل “to beget, procreate; to pluck; to unravel, untwist, fray; to molt;

to fall out” (1<sup>st</sup> conjugation).

12 *Deut. 17:40*. נשר is Mishnaic Hebrew for all material shed by a plant.

13 *Deut. 7:22*.

(fol. 31b) **משנה ג:** זָרַק אֶת הָאֶבֶן לְרִשּׁוֹת הָרַבִּים וְהָרַג הָרִי זֶה גּוֹלָה. רַבִּי אֱלִיעֶזֶר בֶּן יַעֲקֹב אוֹמֵר אִם מִשְׁנֵצָאֵת הָאֶבֶן מִדָּוִד וְהוֹצִיָא הִלָּה אֶת רִאשׁוֹ וְקִיבְלָה הָרִי זֶה פְטוּר.

**Mishnah 3:** If one threw a stone into the public domain and it killed someone, he is exiled<sup>14</sup>. Rabbi Eliezer ben Jacob says, if after the stone left his<sup>15</sup> hand, the other one stuck out his head and received it, he<sup>15</sup> is not liable.

14 As negligent homicide.

15 The thrower's.

31c line 55) **הלכה ג:** זרק את האבן כול. תני רבי אליעזר בן יעקב ומצא. שיהא מצוי לו בשעה שהוא הורגו. ויש רשות לזרוק את האבן לרשות הרבים. אמר רבי יוסי בירבי בון. תפתר שיהיה כותלי גוהא.

**Halakhah 3:** “If one threw a stone,” etc. Rabbi Eliezer ben Jacob stated, *it found*. That he should have been there at the moment he killed him<sup>16</sup>. But is there permission to throw the stone into the public domain? Rabbi Yose ben Abun said, explain it if his wall was inclined<sup>17</sup>.

16 *Deut. 19:5 reads: If somebody goes with another to a forest to cut down trees; his hand was coming down with the axe to cut the tree, the iron was lost from the wood, found the other, and he died; this one has to flee to one of these towns and live.* If the person killed was not in the trajectory of the flying object at the start, the thrower is not guilty of negligent homicide. (Babli 8a; *Sifry Deut.* 183).

17 The wall of his property tilted towards the outside and threatens to fall into the public domain. The owner of the wall throws stones into the overhang to support the wall to remove the danger to the public. The anonymous Tanna assumes that the stones will have to be carried there, not thrown. (Babli 8a, in the name of R. Samuel bar Rav Isaac).

(fol. 31b) **משנה ד:** זרק את האבן לחצירו והרג אם יש רשות לניזק ליכנס לשם גולה. ואם לאו אינו גולה. שנאמר ואשר יבא את רעהו ביער. מה היער רשות לניזק ולמזיק ליכנס לשם. יצא חצר בעל הבית שאין רשות לניזק ולמזיק ליכנס לשם. אבא שאול אומר מה חסבת עצים רשות. יצא האב המכה את בנו והרב הרודה את תלמידו ושליח בית דין:

**Mishnah 4:** If he threw the stone into his own courtyard and it killed, if the person damaged had the right to enter there, he is exiled, but if not, he is not exiled, as it is said, *if somebody goes with another to a forest*<sup>16</sup>. Since the forest is a place where the person injured and the one causing the injury both may enter, this excludes a private courtyard where the person injured and the one causing the injury may not enter together. Abba Shaul says, since cutting down trees is a voluntary act, this excludes a father who hits his son<sup>18</sup>, a teacher who disciplines his student, and the court bailiff<sup>19</sup>.

- 18 In the course of his duty as educator. flogging people.  
 19 Acting on the orders of the court in

(31c line 58) **הלכה ד'** זרק את האבן לחבירו כול'. אמר רבי ינאי. טבח שהוא מקצב והיכה בין מלמעלה בין מלמטה גולה. ואתיא כיי דמר רבי הונא. טבח שהוא מקצב והכה לפניו למטון גולה למעלה אינו גולה. לאחריי למעלה גולה למטון אינו גולה. אמר רבי יצחק. כל מילה ומילה לדעתיה. ישב לו על גבי מיטה ביום ואין דרך התינוק לינתן על גבי מיטה ביום גולה. בלילה ודרך התינוק הנתון על גבי מיטה בלילה אינו גולה. ישב לו על גבי עריסה ביום ודרך התינוק לינתן על גבי עריסה בלילה גולה. בלילה ואין דרך התינוק לינתן על גבי עריסה בלילה גולה.

אמר רבי יוסי בר חנינה. הנה עומד ומבקע עצים בחצירו ונכנס הפועל ליטול שקרו נתזה הבקעת עליו והזקתו חיב. ואם מת אינו גולה. שאינו כיער. תני רבי חנינה פטור. ולא פליגי. מה דמר רבי יוסי בן חנינה. בשלא ראו אותו. ומה דתני רבי חייה. בשלא ראו אותו. אם בשלא ראו אותו פטור שפטר לו היפנס חיב. תני רבי חייה. פטור. פנין שאמר לו היפנס צריך לשמר את עצמו. ואית דבגי מימר. פנין שאמר לו היפנס נעשית כחצר שותפין. רבי חייה בשם רבי יוחנן. השותפין קונין זה מזה בחצר. וממחין זה על ידי זה בחצר. וחיבין זה בנזקי זה. (ולא כן אמר רב. ממלא את כל דשות הרבים. וזו אינה ממלאה את כל דשות הרבים. מכין שדרכו לחלף בחצר כמי שהיא ממלא את כל החצר.

1 בר | בן ליטול | ק לתבוע נתזה | ק ונתזה 2 עליו | ק - שאינו כיער | ק - תני | ק והתני חנינה | ק חייה פליגי | ק פליגי 3 בן חנינה | ק - בשלא ראו אותו | ק בשראו דתני | ק דמר בשראו אותו | ק בשלא ראו 4 ראו אותו | ק ראו תני | ק והתני היכנס | ק הכנס לשמר את | ק לשמור 6 שותפין | ק השותפין ר' חייה בשם ר' יוחנן | ק דמר ר' יוחנן בשם ר' חייה 6 וממחין זה על ידי זה | ק - זה | ק וזה 7 ממלא | ק בממלא את | ק - (twice) אינה ממלאה | ק ממלא מכין | ק אמ' מכין 8 שדרכו | ק שדרכו את | ק -

**Halakhah 4:** If he threw the stone into his (comrade)<sup>20</sup>, etc. Rabbi Yannai said, a butcher who was cutting up [a carcass] and hit somebody whether raising or descending has to go into exile. This follows what Rabbi Huna said: A butcher who was cutting up [a carcass] and hit somebody in front of him in a descending motion goes into exile, in an ascending motion does not go into exile. In his back, in an ascending motion he goes into exile, in a descending motion he does not go into exile<sup>21</sup>. Rabbi Isaac said, each case goes by its circumstances. If somebody sat on a bed during the day, and it is not usual to find a baby in a bed during the day, he goes into exile. During the night, when it is usual to find a baby in a bed during the night, he does not go into exile. If somebody sat on a crib during the day, and it is usual to find a baby in a crib during the day, he does not go into exile. During

the night, when it is not usual to find a baby in a crib during the night, he goes into exile<sup>22</sup>.

<sup>23</sup>Rebbi Yose ben Hanina said, if he was splitting wood in his courtyard, when a worker entered to collect his wages, and a splinter ricocheted and injured him, he is liable. If he died, he does not go into exile, for it is not like a forest. Rebbi Hanina<sup>24</sup> stated, he is not liable. They do not disagree. What Rebbi Yose ben Hanina said, when they did not see him. But what Rebbi Hiyya stated, when they saw him<sup>25</sup>. When they did not see him, from the moment he told him: enter, should he not be liable? Rebbi Hiyya stated, he is not liable. Since he told him: enter, he has to take precautions. Some would say, since he told him to enter, it becomes like the courtyard of partners. Rebbi Hiyya<sup>26</sup> in the name of Rebbi Johanan: Partners acquire from one another in a courtyard; they object to one another in a courtyard<sup>27</sup>, and are mutually liable for damages. But did not Rav say, if he filled the entire public domain? This did not fill the entire public domain! Since they usually walk in the entire domain, it is as if he had filled the entire domain<sup>28</sup>.

20 A scribal error, חבירו "his comrade" for חצירו "his courtyard."

21 (Babli 7b). A butcher is cutting up a cattle carcass into quarters using a meat cleaver. He holds the cleaver behind his back, raises it over his head, and brings it down in front to split the animal. Therefore, the ascending motion behind his back is a necessary prelude to the descending motion in front, and is part of a descending motion in the sense of Mishnah 1. An ascending motion in front and the following descending motion in his back are both classified as ascending; an accident during this motion does not qualify to send the perpetrator into exile.

22 A person sits on a bed or a crib without looking whether a baby is lying there and by his action kills the baby. If he could reasonably have expected to find a

baby there, his action is murder; otherwise it is involuntary homicide which qualifies for exile. During the day, the baby is put in a movable crib, so the mother can have him close by at all times. During the night, the baby is in his mother's bed (*IK*. 3:19).

23 This is from *Baba qamma* 3:8 (ק, Notes 112-117). While the origin of the text clearly is in *Bava qamma*, neither text is a copy of the other; they are derived from a common source. "Liable" and "not liable" refer to the payments due for personal injury claims.

24 Read with ק "R. Hiyya" (the Elder).

25 The occurrences of "liable" and "not liable" should be exchanged, following ק.

26 R. Hiyya bar Abba.

27 In a condominium courtyard, only outdoor activities (other than access to the

houses built around the courtyard) agreeable to all parties can be performed. Cf. *Nedarim* 5:1 (Note 4).

28 This refers to Halakhah *Bava qamma* 3:6 (Note 104). Would the right of access

given to the worker be restricted to a narrow path of shortest access? The answer is negative; also in this aspect the property owner is liable.

**משנה ה:** האב גולה על ידי בנו והבן על ידי האב. הכל גולים על ידי ישראל וישראל גולים על ידיהם חוץ מעל ידי גר תושב. וגר תושב גולה על ידי גר תושב.

**Mishnah 5:** The father is exiled for his son, and the son for the father<sup>29</sup>. Everybody<sup>30</sup> is exiled for an Israel, and an Israel for everybody except a sojourner. A sojourner is exiled for a sojourner<sup>31</sup>.

**משנה ו:** הסוֹמֵא אינו גולה דברי רבי יהודה. רבי מאיר אומר גולה. השוֹנֵא אינו גולה. רבי יוסי בן רבי יהודה אומר השוֹנֵא נֶהְרַג מִפְּנֵי שֶׁהוּא כְּמוֹעֵד. רבי שמעון אומר יש שוֹנֵא גולה ויש שֶׁאֵינוֹ גולה. כל שֶׁהוּא זָכוֹל לומר לְדַעַת הָרֵג אֵינוֹ גולה. וְשֶׁלֹא לְדַעַת הָרֵג הָרֵי זֶה גולה:

**Mishnah 6:** A blind person is not exiled, the words of Rabbi Jehudah; Rabbi Meir says, he is exiled<sup>32</sup>. Rabbi Yose ben Rabbi Jehudah<sup>33</sup> says, the hater is executed for he is as if notorious<sup>34</sup>. Rabbi Simeon says, there is a hater who is exiled and one who is not exiled. In any case where one can say that he killed intentionally, he is not exiled; unintentionally, he is exiled.

29 If the father kills his son unintentionally. If he kills him during a punishment for educational reasons he is not liable for any penalty (Note 18); if he kills him otherwise intentionally he must be prosecuted for murder and the perpetrator is barred from the cities of refuge even if no conviction is possible, e.g., for lack of eye witnesses or warning. Similarly, a son is exiled for the unintentional killing of his father.

30 Adult Israel, Samaritan, or circumcised

slave of a Jewish master.

31 A Gentile observing the Noahide commandments.

32 They disagree about the interpretation of *Num.* 35:23.

33 In the later editions of the Babli: R. Yose, by actions of editors who held that R. Simeon, contemporary of R. Jehudah, could not react to an opinion of the latter's son.

34 He does not need warning and in his opinion cannot claim that he did it unintentionally.

31d line 1) **הלכה ה:** האב גולה על ידי הבן כול'. אמר רבי זעורא. תנא רבי שילא בר בינה. כלפי שנאמר גואל הדם הוא ימית את הרצח. הרי מי שהכה את בנו אין בנו השני נעשה גואל הדם להמית את אביו. אבל אם שהכה את אחיו אחיו השני נעשה גואל הדם להמית את אחיו. תני רבי ליעזר בן יעקב. כלפי שנאמר גואל הדם הוא ימית את הרצח. הרי מי שהכה את בנו בנו השני נעשה גואל הדם להמית את אביו. אבל אם שהכה אחיו אין אחיו השני נעשה גואל הדם להמית את אחיו. ומניין אפילו אמר. שאני יכול להקבילו. תלמוד לומר בפגועוֹבוֹ הוא ימיתני:

**Halakhah 5:** “The father is exiled for the son,” etc. Rabbi Ze’ira said that Rabbi Shila bar Binah stated: Even though it be written<sup>35</sup>, *the redeemer of the blood*<sup>36</sup> *himself shall kill the murderer*, nevertheless if somebody smote his son, his second son does not become the redeemer of the blood to kill his father. But if a brother smote his brother, the second brother becomes the redeemer of the blood to kill his brother. Rabbi Eliezer ben Jacob stated: Even though it be written, *the redeemer of the blood himself shall kill the murderer*, nevertheless if somebody smote his son, his second son becomes the redeemer of the blood to kill his father. But if a brother smote his brother, the second brother does not become the redeemer of the blood to kill his brother<sup>37</sup>.

And from where even if he said, I cannot face him<sup>38</sup>, the verse says<sup>35</sup>, *when he comes upon him he shall kill him*<sup>36</sup>.

35 Num. 35:19.

36 The closest family member of the murder victim is required to lead the execution of the duly convicted murderer. Num. 35:30 requires that the killing of the murderer be in the presence of witnesses; this implies that the killing be in execution of a court order (*Sifry Num.* 161).

37 The Babli 12a simply notes the

existence of contradictory interpretations, without attaching names to the traditions. R. Eliezer ben Jacob probably is the second of this name, of the fourth generation of Tanna'im. R. Shila bar Binah (Avinna) belongs to the generation of transition from Tanna'im and Amora'im.

38 That he is forced to witness the execution, *Sifry Num.* 160.

31d line 10) והסומא. אמר רבי בא. מאן תנא סומא. רבי יודה. דרבי יודה פוטר מכל-מצות האמורות בתורה. דתינין תמן. רבי יודה אומר. כל שלא ראה מאורות מניין לא יפרוש את שמעו: הא אם ראה פורש. ושניהן מקרא אחד דרש. בלא ראות. רבי מאיר אומר. לרבות את הסומא. רבי יודה אומר. פרט לסומא. מחלפה שיטתיה דרבי מאיר. תמן הוא

אָמַר פֿאַר וְכָא הוּא אָמַר לְרַבּוֹת. אָמַר רַבִּי חֲנִינְיָה בְּרִיהַ דְּרַבִּי הִלֵּל. בְּיוֹשֵׁב בְּבֵית אֶפֶל הִיא מִתְּנִיתָא. כִּדְ אָנּוּ אוּמְרִים. הַיּוֹשֵׁב בְּבֵית אֶפֶל לֹא יִפְרוֹשׁ אֶת שְׁמַע: בְּרַם הָכָא בִּלְא רְאוּת לְרַבּוֹת אֶת הַסּוּמָא. מַה מְקַיְּמִין רַבְּנִין בִּלְא רְאוּת. לְהַבִּיא אֶת הַמִּכָּה בְּלֵילָה.

“And the blind person.” Rabbi Abba said, who stated “the blind person”? Rabbi Jehudah, for Rabbi Jehudah frees him from all obligations of the Torah<sup>39</sup>, as we have stated there<sup>40</sup>: “Rabbi Jehudah said, anyone who never saw light in his life may not cover the *Shema*’.<sup>41</sup>” Therefore, if he saw once he may cover. And both of them explained the same verse, *without seeing*<sup>42</sup>. Rabbi Meïr says, to include the blind person. Rabbi Jehudah says, excluding the blind person.

<sup>43</sup>The argument of Rabbi Meïr seems inverted. There he says, excluding, but here he says, to include. Rabbi Hanina the son of Rabbi Hillel said, the Mishnah is about one sitting in a dark house. So we are saying, “one sitting in a dark house may not cover the *Shema*’.<sup>44</sup>” But here, *without seeing*, to include the blind person. How do the rabbis read *without seeing*? To include one who smites in the night<sup>45</sup>.

39 *Sotah* 2:6 (Note 201), Babli *Bava qamma* 87a.

40 *Megillah* Mishnah 4:7.

41 He cannot lead the congregation in the recital of the benedictions before and after the recitation of the *Shema*’ since they start with a praise of God for the creation of the celestial shining bodies. The majority opinion holds that while a blind person cannot see the sun’s light, he profits from it since other people who can see can help him during daylight.

42 *Num.* 35:23, part of the definition of involuntary homicide. Babli 9b, *Sifry Num.*

160. As the Babli explains, the double restriction mentioned by the verse, *unintentional, without seeing*, has to be read as an inclusion.

43 A parallel to this paragraph is in *Megillah* 4:7. One has to read “Jehudah” for Meïr, as in *Megillah*, since only for R. Jehudah are two opinions recorded. Also “there” means *Makkot*, “here” *Megillah*.

44 In his explanation, R. Jehudah does not exclude the blind person but one born and raised in a cave who never saw daylight.

45 He is included in the list of the exiled together with the blind person.

**משנה ז:** לְאַיְכּוֹן גּוֹלִין לְעָרֵי מִקְלָט. לְשֵׁלֶשׁ שְׁבַעֲבָר הֵיכָדוֹן וּלְשֵׁלֶשׁ שְׁבַעֲרָץ כְּנָעוֹן שֶׁנֶּאֱמַר אֵת שְׁלֹשׁ הָעָרִים תִּתְּנוּ מֵעַבֵּר לַיַּרְדֵּן וְגו'. עַד שֶׁלֹּא נִבְחָרוּ שְׁלֹשׁ שְׁבַעֲרָץ יִשְׂרָאֵל לֹא הָיוּ שְׁלֹשׁ שְׁבַעֲבָר הֵיכָדוֹן קוֹלָטוֹת שֶׁנֶּאֱמַר שֵׁשׁ עָרֵי מִקְלָט תִּהְיֶינָה. עַד שֶׁיְהוֹי שִׁשְׁתֹּן קוֹלָטוֹת כְּאַחַת:

**Mishnah 7:** Where are they exiled to? To the cities of refuge. To the three in Transjordan and the three in the Land of Canaan, as it is said<sup>46</sup>: *Three cities you shall designate in Transjordan*, etc. As long as those in the Land of Israel had not been selected<sup>47</sup>, those in Transjordan were not receiving, as it is said<sup>48</sup>, *there shall be six cities of refuge*, not until all six were receiving together<sup>49</sup>.

**משנה ח:** וּמִכְנוֹנוֹת לָהֶן דְּרָכִים מֵאֵל לְזוֹ שֶׁנֶּאֱמַר תִּכְנֶן לָךְ הַדֶּרֶךְ וְשִׁלְשֶׁת אֶת־גְּבוּל אֶרְצְךָ. וּמוֹסְרֵין לָהֶן שְׁנֵי תַלְמִידֵי חֲכָמִים שָׁמָּה יִהְרְגֻנוּ בַּדֶּרֶךְ וַיְדַבְּרוּ אֵלָיו. רַבִּי מֵאִיר אוֹמֵר אִף הוּא מִדְּבָר עַל יְדֵי עֲצָמוֹ שֶׁנֶּאֱמַר וְזֶה דְּבַר הַרוֹצֵחַ:

**Mishnah 8:** Roads were maintained from one to the other, as it is said<sup>50</sup>: *Maintain the road for yourselves, and divide the domain of your Land into three parts*<sup>51</sup>. One sends with them<sup>52</sup> two scholars lest he<sup>53</sup> kill him<sup>52</sup> on the road, to argue with him. Rabbi Meïr says, he<sup>53</sup> may argue for himself as it is said<sup>54</sup>, *this is the word of the homicide*.

**משנה ט:** רַבִּי יוֹסִי בֶּן רַבִּי יְהוֹדָה אוֹמֵר בִּתְחִלָּה אֶחָד שׁוֹגֵג וְאַחַד מֵזִיד מִקְדִּימִין לְעָרֵי מִקְלָט וּבֵית דִּין שׁוֹלְחִין וּמְבִיאִין אוֹתוֹ מִשָּׁם. מִי שֶׁנִּתְחַיֵּב מִיָּתֶה הֶרְגוּהוּ וְשֶׁלֹּא נִתְחַיֵּב מִיָּתֶה פְטָרוּהוּ וְשֶׁנִּתְחַיֵּב גְּלוּת מִחֲזִירִין אוֹתוֹ לְמִקְוֵמוֹ שֶׁנֶּאֱמַר וְהָשִׁיבוּ אוֹתוֹ הָעֵדָה אֶל עִיר מִקְלָטוֹ. אֶחָד מְשֻׁחַּם בְּשֶׁמֶן הַמִּשְׁחָה וְאַחַד הַמְרוּבָּה בְּבָגָדִים וְאַחַד שֶׁעָבַר מִמְּשִׁיחָתוֹ. רַבִּי יְהוֹדָה אוֹמֵר אִף מְשֻׁחַּם מִלְחָמָה מִחֲזִיר אֶת הַרוֹצֵחַ. לְפִיכֵךְ אֵימוּתֵיהֶן שֶׁל כֹּהֲנִים מְסַפְּקוֹת לָהֶן מִחִיָּה וְכִסּוּת כִּדִּי שֶׁלֹּא יִתְפַּלְלוּ עַל בְּנֵיהֶן שְׁיָמוּתוּ.

**Mishnah 9:** Rabbi Yose ben Rabbi Jehudah says, at the start both the involuntary and the voluntary [homicide] go to the city of refuge; the court sends and brings them back from there. If one is found guilty by a death sentence, they execute him. If he is found not guilty in a capital case, he is freed. If he is found guilty to be exiled they return him to his place as it is said<sup>55</sup>, *the community shall return him to his city of refuge*.

Not only<sup>56</sup> a [High Priest] anointed with the anointing oil<sup>57</sup>, but also one wearing the many vestments<sup>58</sup>, and one deposed from his office<sup>59</sup>. Rabbi Jehudah says, also the one anointed for war<sup>60</sup> returns the homicide. Therefore,



the mothers of the [High] Priests support them with food and clothing, so they should not pray for the death of their sons.

**משנה י:** נגמר דינו ומת כהן גדול הרי זה אינו גולה. אם עד שלא נגמר דינו מת כהן גדול ומינו אחר תחתיו ולאחר מיכן נגמר דינו חוזר במיתתו של שני:

**Mishnah 10:** If sentence had been passed when the High Priest died, he is not exiled. If sentence had not yet been passed when the High Priest died, and sentence was passed after a successor had been appointed, he returns after the death of the second.

**משנה יא:** נגמר דינו בלא כהן גדול ההורג כהן גדול וכהן גדול שהרג אינו יוצא משם לעולם. ואינו יוצא לא לעדות מצוה ולא לעדות ממון ולא לעדות נפשות ואפילו ישראל צריכין לו ואפילו שר צבא ישראל כיוצא בן צרויה אינו יוצא משם לעולם שנתאמר שמה. שם תהא דירתו ושם תהא מיתתו ושם תהא קבורתו

**Mishnah 11:** If sentence was passed when there was no High Priest, or one who killed a High Priest, or a High Priest who killed, can never leave from there.

He<sup>52</sup> cannot leave from there, neither for a testimony of obligation,<sup>61</sup> nor a testimony in a civil suit, nor a testimony in a criminal suit, not even if Israel needs him like Joab ben Šeruya<sup>62</sup>, he cannot ever leave from there, as it is said *there*<sup>55</sup>. There shall be his dwelling, there he shall die, there he shall be buried.

**משנה יב:** כשם שהעיר קולטת בן תחומה קולט. רוצח שניצא חוץ לתחום ומצאו גואל הדם רבי יוסי הגלילי אומר מצוה ביד גואל הדם ורשות ביד כל-אדם. רבי עקיבה אומר רשות ביד גואל הדם וכל אדם אין חייבין עליו.

**Mishnah 12:** Just as the city grants asylum, so does its domain grant asylum<sup>63</sup>. If a murderer left the domain and was found by the avenger of the blood, Rabbi Yose the Galilean says, it is the obligation of the avenger of the blood and the right of everybody<sup>64</sup>. Rabbi Aqiba says, it is the right of the avenger of the blood and nobody would be liable because of him.

**משנה יג:** אילן שהוא עומד בתוך התחום ונפו נוטה חוץ לתחום או עומד חוץ לתחום ונפו נוטה בתוך התחום הכל הולך אחר הנוף. הרג באותה העיר גולה משכונה לשכונה. וכן לוי גולה מעיר לעיר:

**Mishnah 13:** If a tree stands inside the domain but its crown is outside the domain, or the tree stands outside the domain but its crown is inside the domain, everything follows the crown<sup>65</sup>.

If somebody killed in one of these cities, he is exiled from quarter to quarter; but a Levite<sup>66</sup> who killed is exiled from one city to another.

**משנה יד:** פִּיּוּצָא בּוֹ רוֹצֵחַ שֶׁנֶּלֶקָה לְעִיר מְקוֹלֵט וְרָצוּ אֲנָשֵׁי הָעִיר לְכַבְּדוֹ יֹאמְרוּ לָהֶם רוֹצֵחַ אֲנִי. אָמְרוּ לוֹ אַף עַל פִּי כֹן יִקְבַּל מֵהֵן שֶׁנֶּאֱמַר וְזֶה דְּבַר הָרָצֵחַ.

**Mishnah 14:** Similarly<sup>67</sup>, a homicide exiled to a city of refuge whom the citizens of the town wanted to honor, should say to them, I am a homicide. If they tell him, anyway, he should accept, for it is said<sup>68</sup>, *this is the word of a homicide*.

**משנה טו:** וּמַעֲלוֹת הֵיוּ שֶׁכָּר לְלוּיִם דְּבָרֵי רַבִּי יְהוּדָה. רַבִּי מֵאִיר אוֹמֵר לֹא הֵיוּ מַעֲלוֹת לָהֶן שֶׁכָּר. וְחוֹזֵר לְשַׁרְרָה שֶׁהָיָה בָּהּ דְּבָרֵי רַבִּי מֵאִיר. רַבִּי יְהוּדָה אוֹמֵר לֹא הָיָה חוֹזֵר לְשַׁרְרָה שֶׁהָיָה בָּהּ:

**Mishnah 15:** They<sup>68</sup> were paying rent to the Levites, the words of Rabbi Jehudah. Rabbi Meir said, they were not paying rent. He returns to the office he held earlier<sup>69</sup>, the words of Rabbi Meir; Rabbi Jehudah says, he does not return to the office he held earlier.

46 Num. 35:14.

47 Jos. 20:7. *Sifry Num.* 160.

48 Num. 35:13.

49 Giving asylum to the involuntary homicide.

50 Deut. 19:3.

51 Divide both the Land of Israel and Transjordan into three Voronoi domains each so that the nearest city of refuge always was indicated on the sign posts.

52 The homicide.

53 The avenger of the blood.

54 Deut. 19:4.

55 Num. 35:25.

56 The homicide may return to his home town upon the death of the High Priest (Num. 35:28).

57 A High Priest of the period of Judges or Kings, anointed from the vial prepared by Moses (Ex. 30:22-33).

58 A High Priest of Second Temple times, wearing an imitation of the High Priest's robes.

59 A High Priest of Herodian times or later, when High Priests usually were appointed annually.

60 To exhort the army, Deut. 20:2.

61 A religious act, neither civil nor criminal; e. g., to testify to the appearance of the New Moon.

62 David's general.

63 Every city of refuge also is a Levitic city (Num. 35:6). Each Levitic city was surrounded by a greenbelt of 2'000 cubits,

having the same status as the city itself (*Lev.* 35:4-5; *Sotah* 5:4 Notes 107-111.) The avenger of the blood has no right to pursue the homicide into the city's domain.

64 To kill the homicide who left the city of refuge (in the Babli: intentionally).

65 If most of the crown is outside (inside), the entire tree is considered outside (inside). In the Babli, the crown is only taken as an extension of the tree.

66 Whose city it is. Only a Levite can be a permanent resident of a city of refuge.

67 This makes no sense here; it is copied from the identical Mishnah *Sevi'it* 10:8.

68 The feminine form of the verb is confirmed by the readings of Maimonides

and Rashi, as well as the Munich ms. of the Babli. In the Babli, the question is raised whether the homicide (reading מעלים) pays rent or his hometown (reading מעלות) pays indemnity to the Levites in either the city of refuge or the 42 additional Levitic cities which also serve as cities of asylum. Since neither *Sifry* nor the Yerushalmi mention this, it seems that the Yerushalmi recognizes only the six cities of refuge as proper places of asylum.

69 The public office held by the homicide before his exile. The question is whether the homicide is barred from holding public office upon his return.

18) **הלכה ז:** לאיכן גולין כול'. שלש עיירות הפריש משה בעבר הירדן. ומשפאו לארץ הפרישו עוד שלש. אילו ואילו לא היו קולטות עד שכיבשו וחילקו. כיון שכיבשו וחילקו נתחייבה הארץ בשמיטין וביובלות והיו אילו ואילו קולטות. שלש ערים שהפרישו בארץ ישראל היו מכוונות כנגד שלש ערים שהפריש משה בעבר הירדן בשתי שורות שלקברם. את חברון ביהודה כנגד בצר במדבר. ואת שכם בהר אפרים כנגד ראמות בגלעד. את קדש בגליל כנגד גולן בבשן. עד שלא הפרישו שכם בהר אפרים לא היתה קולטת. הפרישו קרית יערים ותחתיה עד שכיבשו את שכם. עד שלא הפרישו קדש בגליל לא היתה קולטת. הפריש גמלה ותחתיה עד שכיבשו את קדש.

ושלשת. שיהו משולשות. כדי שתהא מחברון ליהודה כמחברון לשכם ומחברון לשכם כמשכם לקדש.

נפלה אחת מהן בונין אותה מאותו השבט. ומניין אף בשאר כל השבטים. תלמוד לומר שש. שיהו מכוונות וקולטות כראשונות.

הערים הללו אין בונין אותן לא כרבים גדולים ולא עיירות קטנות אלא בינוניות. אין בונין אותה אלא על השוק. אם אין שם שוק עושין לשם שוק. אין בונין אותם אלא על הפנים. אם אין שם מים מביאין לשם מים. נתמעטו דייריהן מביאין אחרים תחתיהן. אם אין שם אוכלוסין מביאין לשם כהנים לויים וישראלים.

אין עושין בתוך לא בית הבד ולא בית הבצירה. דברי רבי נחמיה. וחכמים מתירין. אין מפשילין בתוך חבלים. ואין עושין בתוך כלי זכוכית בשביל להרגיל את הרגל לשם.

**Halakhah 7:** “Where are they exiled to,” etc. <sup>70</sup>“Three cities did Moses designate in Transjordan<sup>71</sup>. When they came to the Land they designated another three<sup>72</sup>. Neither of them were giving asylum until after they conquered and divided<sup>73</sup>. After they conquered and divided, the Land became obligated for Sabbaticals and Jubilees and these and those<sup>74</sup> were giving asylum. The three cities which they designated in the Land of Israel were parallel to the three cities which Moses had designated in Transjordan like two rows in a vineyard. Hebron in Judea parallels Beşer in the desert. Sichem on Mount Ephraim parallels Ramot Gilead. Qedesh in Galilee parallels Golan in Bashan. (Before) [even though]<sup>75</sup> they had designated Sichem on Mount Ephraim it could not give asylum; they designated Qiryat-Yearim in its place until they conquered Sichem<sup>76</sup>. (Before) [even though]<sup>75</sup> they had designated Qedesh in Galilee it could not give asylum; they designated Gamla in its place until they conquered Qedesh.<sup>77</sup>”

“*Divide into three parts*<sup>51</sup>. That it should be from Hebron to (Jehudah)<sup>78</sup> as from Hebron to Sichem and from Hebron to Sichem as from Sichem to Qedesh.”

“If any of them collapsed, one rebuilds it from the same tribe. And from where also from other tribes? The verse says, *six*<sup>79</sup>. That they should be parallel and receiving like the earlier ones.”

“One builds these cities not as great fortified places or small villages but in average sizes. One only builds them around a market place. If they have no market place one creates a market place for them. One only builds them near water. If they have no water one brings water to them<sup>80</sup>. If the number of households declined, one brings others there. If the number of inhabitants declined, one brings there Cohanim, Levites, and Israel<sup>81</sup>.”

“One builds in them neither an olive press nor a wine press<sup>82</sup>, the words of Rabbi Nehemiah, but the Sages permit it. One does not braid ropes there, nor does one manufacture glass, in order not to attract visitors.<sup>83</sup>”

70 Tosephta 3:1-4, 8-9. Babli 9b-10a.

rededicated by Josua, *Jos.* 20:8. *Sifry Num.*

71 *Deut.* 4:41.

160.

72 *Jos.* 20:7.

74 The towns dedicated by Moes and

73 Since the Transjordan towns are

Joshua.

75 The text in parentheses, to be deleted, is from the ms., the one in brackets from the Tosephta.

76 The king of Sichem is not listed among the kings vanquished by Josua (*Jos.* 12).

77 This is difficult to understand since the king of Qedesh is listed in *Jos.* 12. Gamla is not a biblical name; it was situated on the Eastern shore of the sea of Galilee.

78 Read with the Tosephta and the Babli: From the Southern border to Hebron.

79 *Num.* 35:15.

80 By aqueduct.

81 Even though they are Levitic cities. Levitic cities were not renewed in the Second Commonwealth; in talmudic times we only hear of priestly villages in Galilee, quite different from the biblical towns

enumerated in *Jos.* The parallel mention of דוירין “apartment dwellers” (Hebrew) and ὄχλος “multitude” expresses the same idea twice in different languages.

82 Presses for hire to be used by the surrounding agricultural population. The idea is that one does not want to attract too much traffic. A small number of people can be controlled; an “avenger of the blood” going after one of the homicides can be evicted or at least be warned that any killing within the asylum domain is murder. Greater traffic makes this impossible. The Sages hold that local traffic is acceptable; only manufactures that attract exporters have to be discouraged.

83 Here the Sages agree.

(31d line 40) רבי יוחנן שלח לרבנני דתמן. תרתין מילין אתון אמרין בשם רב ולית אינון כן. אתון אמרין בשם רב. ופת תואר לא התירו בה אלא בעילה ראשונה בלבד. ואני אומר. לא בעילה ראשונה ולא בעילה אחרונה אלא לאחר כל המעשים. ואחר כן תבוא אליה ובעלתה. אחר כל המעשים.

ואתון אמרין בשם רב. סבור היה יואב שקרנות המזבח קולטות ואינו קולט אלא גגו. של שילו קולט. ושלבית העולמים אינו קולט. ואני אומר. לא מזבח קולט ולא גגו קולט לא של שילו קולט ולא שלבית העולמים קולט. אין לך קולט אלא שש ערי מקלט בלבד. ואיפשר יואב דכתיב ביה תחבמוני ראש השלישי היה טועה בדבר זה. אמר רבי תנחומא. לסנהדרין ברת. כהדא דתני. הרגי בית דין נכסיהן ליורשין. הרגי מלכות נכסיהן למלכות. אמר יואב. מוטב שאיהרג בבית דין ויירשוני בניי ואל יהרגני המלך ויירשני. כד שמע שלמה כן אמר. לממונו אני צריך. מיד והסירותי דמי חנם. אין ממונו חנם. וישלח ביד בניהו ויפגע בו וימיתיהו ויסקרוהו בביתו במדבר. וכי מדבר היה ביתו. אלא ללמדך שפינן שמת יואב שר צבא ישראל נעשו ישראל כמדבר. אין תימר. שהיה בוז ובזנה להן דימוסיות ומרחצאות. שבה. ואין תימר. שהיה בוז ומאכיל חכמים ותלמידיהם. שבה שבחים. ומניין שהיתה סנהדרין גדולה אצל המזבח. ולא תעלה במעלות על-מזבחי. ומה כתיב תמן. ואליה המשפטים אשר תשים לפניהם.

Rebbi Johanan sent to the rabbis there<sup>84</sup>: Two things you say in the name of Rav which are not so. You say in the name of Rav that only the first copulation with the beautiful woman<sup>85</sup> is permitted. But I am saying, the first or the later copulations are permitted only after all ceremonies; *after that you may come to her and copulate with her*<sup>86</sup>, after all ceremonies.

Also you say that Joab was of the opinion that the horns of an altar give asylum<sup>87</sup> but only its top gives asylum; in fact only the top of the one in Shilo gives asylum, but that of the Temple does not give asylum. But I am saying that neither the altar gives asylum, nor does its top give asylum, nor the one in Shilo gives asylum, nor that of the Temple gives asylum. Nothing except the six cities of refuge give asylum. Is it possible that Joab, about whom it is written, *the most wise, head of the third*<sup>88</sup> should err in this matter? Rebbi Tanhuma said, he fled to the Sanhedrin, because it is stated: The property of people executed by the court goes to their heirs; the property of people executed by the government goes to the government<sup>89</sup>. Joab said, it is better that I should be executed by the court and my sons will inherit from me than that the king should execute me and inherit from me. When Solomon heard this he said, do I need his money? Immediately, *I shall remove the blood for free*<sup>90</sup>, but his money is not free. *He sent through Benaiahu who smote him and killed him; they buried him in his house in the wilderness*<sup>91</sup>. Was his house a wilderness? But to tell you that when Joab the commander of Israel's army died<sup>92</sup>, Israel was turned into a wilderness. If you say that he collected booty to build public baths and baths<sup>93</sup>, this is worthy of praise. But if you say that he collected booty to support Sages and their students, it is worthy of the highest praise<sup>94</sup>. And from where that the Supreme Sanhedrin is near the altar? *Do not ascend on my altar by stairs*. What is written next? *These are the rules of law you shall put before them*<sup>95</sup>.

84 Babylonia.

85 The female prisoner of war whom her captor desires, *Deut.* 21:10-14. The Babli *Qiddušin* 21b (*Tosaphot* 22a s. v. נש) seems to permit a first copulation before the woman undergoes formal conversion even

for a Cohen to whom the convert will be forbidden.

86 *Deut.* 21:13, after full conversion. The Babli (*Qiddušin* 68a) reads the verse as: *after that you may copulate with her as her husband*, meaning that valid marriage is possible only after conversion.

87 *IK*. 2:28, Babli 12a.

88 2S. 23:8. Joab himself is not mentioned in the Chapter. Targum Jonathan and the Babli (*Mo'ed qatan* 16b) read the expression as referring to David.

89 This projects Roman practice into Jewish law.

90 *IK*. 2:31. In the MT, confirmed by LXX, נְהַסִּירָהּ. The blood is the innocent blood of Abner and Amasa.

91 A combination of *IK*. 2:29,34.

92 Here starts the second sheet of the Genizah fragment (G).

93 A double expression of Greek (*Sanhedrin* 7:19, Note 357) and Hebrew terms for public baths.

94 Babli *Sanhedrin* 49a refers to *1Chr*. 11:8 as proof that Joab used his riches to support scholars.

95 *Ex*. 20:23, 21:1.

(31d line 60) [נִגְמַר דִּינוֹ וּמַת כְּהֵן גָּדוֹל הָרִי זֶה אֵינוֹ גּוֹלָהּ]. תִּנִּי רַבִּי לִיעָזָר בֶּן יַעֲקֹב אֹמֵר. מִקְלָט מִקְלָט כְּתוּב בְּפֶרֶשֶׁת דָּרְכִים. כְּדִי שְׂיֵהָא הָרוֹצֵחַ רוֹאֶה אֶת הַכְּתוּב וְהוֹלֵךְ. אָמַר רַבִּי אֲבוּן. כְּמִין יָד הָיְתָה מִרְאֶה לָהֶן אֶת הַדֶּרֶךְ. אָמַר רַבִּי פִּינְחָס. טוֹב וְשֹׁר. לָמָּה הוּא טוֹב. שֶׁהוּא יָשָׁר. וְלָמָּה הוּא יָשָׁר. שֶׁהוּא טוֹב. עַל־כֵּן יוֹרָה חֲטָאִים בְּדֶרֶךְ. שְׁמוּרָה דֶּרֶךְ תְּשׁוּבָה. שְׂאֵלוֹ לַחֲכָמָה. חוּטָא מְהוּ עוֹנֵשׁוֹ. אֶמְרָה לָהֶם. חֲטָאִים תִּרְדּוּ רָעָה. שְׂאֵלוֹ לְנְבוּאָה. חוּטָא מְהוּ עוֹנֵשׁוֹ. אֶמְרָה לָהֶן. הַנֶּפֶשׁ הַחֲטָאָת הִיא תִּמּוּתִי. שְׂאֵלוֹ לְקוּדְשָׁא בְּרִיךְ הוּא. חוּטָא מְהוּ עוֹנֵשׁוֹ. אָמַר לָהֶן. יַעֲשֶׂה תְּשׁוּבָה וְיִתְפַּכֵּר לוֹ. הֵינֵנוּ דְכָתִיב. עַל־כֵּן יוֹרָה חֲטָאִים בְּדֶרֶךְ. יוֹרָה לַחֲטָאִים דֶּרֶךְ לַעֲשׂוֹת תְּשׁוּבָה. כְּתִיב כְּצִפּוֹר לְנֹד כְּדָרְדָּר לְעוֹף בֶּן אִישׁ נוֹד מִמְקוֹמוֹ.

["If sentence had been passed when the High Priest died, he is not exiled."] <sup>96</sup> It was stated <sup>97</sup>: "Rebbi Eliezer ben Jacob says, 'refuge, refuge' was written at crossroads, so that the homicide might see what was written and continue." Rebbi Abun said, a sign-post was directing them <sup>98</sup>.

<sup>99</sup>Rebbi Phineas said, *good and straightforward* <sup>100</sup>. Why is He good? Because He is straightforward. And why is He straightforward? Because He is good. *Therefore, He teaches the way to the sinners*. He instructs in the way of repentance.

<sup>101</sup>They asked Wisdom, what is the punishment of the sinner? She told them, *evil will pursue sinners* <sup>102</sup>. They asked Prophecy, what is the punishment of the sinner? She told them, *the sinning soul is the one which will die* <sup>103</sup>. They asked the Holy One, praise to Him, what is the punishment of the sinner? He said to them, let him repent and it will be atoned for him. That is what is written, *therefore, He teaches the way to the sinners* <sup>100</sup>, the way to repentance.

<sup>104</sup>It is written: *Like a bird to move, like a swallow to fly*, so is a man moving from his place.

96 Added from G; referring to Mishnah 10 even though the Halakhah refers to Mishnah 8.

97 Babli 10b, Tosephta 3:5.

98 He does not assume that everybody be literate.

101 There exist various versions of this homily. In G, the text reads:

שָׁאֵלוּ לַתּוֹרָה. הַחוּטָא בְּמַהוּ עוֹנֵשׁ. אֲמַרָה לָהּ יְבִיא קֶרְבָּן וְיִתְכַפֵּר לוֹ. שָׁאֵלוּ לַנְּבוּאָה. הַחוּטָא מִהוּ עוֹנֵשׁ. אֲמַרָה. הַנֶּפֶשׁ הַחַטָּאת הִיא תָמוּת: שָׁאֵלוּ לְדָוִד הַחוּטָא בְּמַה עוֹנֵשׁ. אֲמַר לָהּ יִתְּמוּ חַטָּאִים | מִן־הָאָרֶץ וּגְ: שָׁאֵלוּ לַחֲכָמָה. חוּטָא מִהוּ עוֹנֵשׁ. אֲמַרָה לָהּ. חַטָּאִים תִּרְדָּף רָעָה וּגְ: שָׁאֵלוּ לַקּוֹדֶשׁא בְּרִיד הוּא. חוּטָא מִהוּ עוֹנֵשׁ. אֲמַר לָהּ. יַעֲשֶׂה תְשׁוּבָה וְאֵי מְקַבֵּל דְּכֶתִיב. טוֹב וְיִשָּׁר יִי. לָמָּה הוּא טוֹב.

They asked the Torah, what is the punishment of the sinner? She told them, he shall bring a sacrifice and it will be atoned for him. They asked Prophecy, what is the punishment of the sinner? She told them, *the sinning soul is the one which will die*. They asked David, what is the punishment of the sinner? He told them, *may sins vanish from the earth* etc. They asked Wisdom, what is the punishment of the sinner? She told them, *evil will pursue sinners*. They asked the Holy One, praise to Him, what is the punishment of the sinner? He said to them, let him repent and I will accept.. That is what is written, *good and straightforward is the Eternal*. (Why is he good?)

A slightly different version of G's text is in *Pesiqta dR. Cahana Shuva* (ed. Buber p. 158b), quoted in *Yalqut Shimony* (Psalms 702, Ezekiel 358).

102 *Prov.* 13:21.

103 *Ez.* 18:4.

104 The continuation of the quote is not a verse; it seems to be the invention of a copyist who did not understand it. In G, the

This paragraph is shortened in G, it is only hinted at in the Babli, 10b (in the name of Rav Hama bar Hanina), extended in *Midrash Tehillim* 25[10].

100 *Ps.* 25:8.

quote "*Like a bird to move, like a swallow to fly*, etc.", is a paragraph by itself. In the Babli 11a, the quote *like a bird to move, like a swallow to fly, so undeserved curse will not happen* (*Prov.* 26:2) is quoted in reference to Mishnah 9. Why do the mothers of the High Priests have to support the exiled homicides if their prayers would be ineffective?

(31d line 69) [נִגְמַר דִּינוּ בְּלֹא כֹהֵן גָּדוֹל]. וְתִמְרַ אֲכָן. תִּפְתָּר שְׁהִיָּה עֵת וְעוֹנָה. כִּי דָמַר רַבִּי יוֹסִי בֶן חֲלַפְתָּא. עֵיתִים הֵן לַתְּפִילָּה. אֲמַר דָּוִד לִפְנֵי הַקָּדוֹשׁ בְּרִיד הוּא. רַבּוּן הָעוֹלָמִים. בְּשַׁעָה שָׁאֵי מִתְפַּלֵּל אֵלֶיךָ תִּהְיֶה עֵת רָצוֹן. דְּכֶתִיב וְאֵי תִפְלִתִי־לָךְ | יִי עֵת רָצוֹן.

[If sentence was passed when there was no High Priest.]<sup>105</sup> And you say so <sup>106</sup>? Explain it that it was time and period <sup>107</sup>. As Rabbi Yose ben Halaphta



says, there are times for prayer. David said before the Holy One, praise to Him: Master of Universes, at the moment when I am praying to You it should be a moment of goodwill. As is it written <sup>108</sup>: *But I, my prayer is to You at a time of goodwill.*

105 Added from G, referring to Mishnah 11, even though the discussion continuous about Mishnah 9.

106 This continues from Note 104. Why are the priests' mothers worried?

107 The prayers of the exiles might be

heard even if it was not their special merit that made the prayers effective. The Babli 11a holds that the prayers of the exiles may be effective if the High Priests fail to uphold very high standards of conduct.

108 Ps. 69:14.

רבי שמואל בר נחמן בשם רבי יונתן. כל מקום שנאמר דיבור חידוש מקרא (נש) שם. והא כתיב וידבר אלהים (כול' גרשה) אל-לח ואל-בני אתו לאמר. מה חידוש מקרא יש שם. חידוש בו אבר מן החי. והא כתיב ויפל אברם על-פניו וידבר אתו אלהים לאמר: מה חידוש מקרא יש שם חידוש בו את המילה. והא כתיב דבר שלח יי בניעקב וג' מה חידוש מקרא יש שם חידוש בו את ה. לה. והא כתיב וידבר אלהים אל-משה ויאמר אליו אני יי. מה חידוש מקרא יש שם חידוש בו קידוש השם. והא כתיב וידבר יהוה אל-יהושע לאמר: מה חידוש מקרא יש שם. און תימר שש ערי מקלט. כבר נתנו למשה מסיני. אלא אף הוא נאמר לו דבר שלא נאמר למשה ולס אל-אחת | מהערים האלה ועמד פתח וג' ונתנו-לו מקום וישב עמם: מהו וישב עמם: רבניו דקיסרין בשם רבי שילה. שאים היה תלמיד חכם עושין לו בית וועד.

<sup>109</sup>Rebbi Samuel bar Nahman in the name of Rebbi Jonathan: At every occasion where *dibbur*<sup>110</sup> is said, there is a new biblical commandment. But is it not written, *God spoke* (etc., repetition) [to Noah (and his sons with him as follows)]<sup>111</sup>? What new biblical commandment is there? He newly introduced limb of a living animal. But is it not written, *Abram fell on his face and God spoke to him as follows*<sup>112</sup>? What new biblical commandment is there? He newly introduced circumcision. But is it not written, *a word the Eternal sent to Jacob*<sup>113</sup>? What new biblical commandment is there? He newly introduced . . .<sup>114</sup> But is it not written<sup>115</sup>, *God spoke to Moses and said to him, I am the Eternal*? What new biblical commandment is there? He newly introduced Sanctification of the Name. But is it not written<sup>116</sup>, *the Eternal spoke to Joshua as follows*? What new biblical commandment is there? If you want to say the six cities of refuge, were they not already given to Moses at Sinai?

But even to him was spoken what was not said to Moses: *He shall flee to one of these cities and stand at the gate etc., and they shall give him a place that he stay with them.*<sup>117]</sup> What means *that he stay with them?* The rabbis of Caesarea in the name of Rabbi Shila<sup>118</sup>: If he is a scholar, they make him a house of assembly<sup>119</sup>.

109 This paragraph is very much truncated in the Leiden ms.; after the introduction is noted “repetition”, i. e., it is found elsewhere and needs no repetition here. But the paragraph is not known from any other place in the Yerushalmi; it is preserved almost completely in the Genizah fragment [G]. Already in 1934 S. Lieberman discovered the full text in *Yalqut Makhiri Isaiah (Tarbiz 5, p. 109.)* The Genizah text is given here in brackets; at one place where it is illegible it is completed from *Yalqut Makhiri* in the Notes.

110 If God addresses a human using the root דבר instead of אמר, it is a sign that a new commandment is contained in the following paragraph.

111 *Gen. 8:15.* The scribe, quoting from memory, erroneously added the end of v. 9:8.

112 *Gen. 17:3.*

113 *Is. 9:7.*

114 As the editor of G noted, the illegible word here seems to be מילה, belonging to the preceding sentence. Following *Yalqut*

*Makhiri* one has to read: The ischiatic tendon. The verse is also quoted in the Babli, *Hulin* 91a, to prove that the ischiatic tendon remains forbidden in Israel even though its prohibition was not repeated in the Torah after the epiphany of Sinai (in contrast to circumcision, which is mentioned in *Lev. 12:3.*) As S. Lieberman noted, the argument is correctly explained by Maharsha (R. Samuel Eliezer Idels) in his Notes to *Hulin*: The prohibition of the ischiatic tendon is the only commandment (דבר) which the Eternal sent through Jacob. The Babli is completely intelligible only on the basis of the Yerushalmi here.

115 *Ex. 6:2*, the only case of דבר to Moses not in connection with a commandment.

116 *Jos. 20:1*, introduction to the designation of cities of refuge; the reason for placing the paragraph in this Halakhah.

117 *Jos. 20:4.*

118 A student of R. Simeon ben Laqish.

119 Where others can come and profit from his knowledge (Babli 10a).

(31d line 76) [כְּשֶׁם שֶׁהָעִיר קוֹלָטָת כֶּד הָיָה תַּחֲנוּמָה קוֹלָטָה]. שְׁלֹשׁ עָרִים הִפְרִישׁ מִשָּׁה בְּעֶבֶר הַיַּרְדֵּן. מִשְׁבָּאֵי לְאָרֶץ הִפְרִישׁוּ עוֹד שְׁלֹשׁ. וְלַעֲתִיד לָבוֹא מִפְּרִישִׁין עוֹד שְׁלֹשׁ. שֶׁנֶּאֱמַר שְׁלֹשׁ שְׁלֹשׁ שְׁלֹשׁ. הָרִי ט'. אָבָא שְׂאוּל אוֹמֵר. שְׁלֹשׁ. שְׁלֹשׁ שְׁלֹשְׁלֹשׁ שְׁלֹשׁ הָרִי ט'. וְעוֹד הָרִי י"ב. רַבִּי נְהוֹרָאִי אוֹמֵר. שְׁלֹשׁ שְׁלֹשׁ שְׁלֹשׁ הָרִי ט'. וְעוֹד הָרִי י"ב. עַל הַשְּׁלֹשׁ הָרִי ט"ו. כְּתוּב שֶׁשֶׁ-עָרֵי מִקְלָט תִּהְיֶינָה לָכֶם: שִׁיחֵי שְׁשָׁתָן קוֹלָטוֹת כְּאַחַת. וְתִימֵר אֲכֹן. וְתִיָּא כִּי דָמַר רַבִּי שְׂמוּאֵל [בַּר

יִינָא בְּשֵׁם רַבִּי אֶחָא. חֲמִשָּׁה דְּבָרִים חֲסַר מִקְדָּשׁ אַחֲרוֹן מִמִּקְדָּשׁ רִאשׁוֹן. דְּכָתִיב עָלֵינוּ הָהָר וְהַבָּאֲתָם עָצָו וְגו' עַד וְאֶפְבְּדָהּ. וְאֶפְבְּדָהּ כְּתוּב חֲסַר ה"א. אֵילֵינוּ ה' דְּבָרִים שְׁחָסַר מִקְדָּשׁ אַחֲרוֹן מִמִּקְדָּשׁ רִאשׁוֹן. וְאֵילֵינוּ הָר. אֵשׁ. אֶרֶץ. אֲנִימִים וְתוֹמִים. שְׁמֵן הַמִּשְׁחָה וְרוּחַ הַקּוֹדֶשׁ.

<sup>120</sup>[Just as the city grants asylum, so does its domain grants asylum.]

<sup>121</sup>“Three cities did Moses designate in Transjordan. When they came to the Land they designated another three. In the future there will be another three, as it is said *three, three, three*<sup>122</sup>. This makes nine. Abba Shaul says, *three*. Three of three times three makes nine. *Additional* makes twelve. Rabbi Nehorai says, *three, three, three* make nine. *Additional* makes twelve. *To these three* makes fifteen.” It is written<sup>123</sup>: *Six cities of refuge there shall be for you*, that all six of them give asylum simultaneously. And you say so<sup>124</sup>? It follows what Rabbi Samuel [ben Aina]<sup>125</sup> said in the name of Rabbi Aha: Five things was the last Temple missing which were in the first Temple, as it is written<sup>126</sup>: *Go to the mountain, bring wood, etc., up to I may be honored*. It is written *I shall be honored*, without the letter *he*<sup>127</sup>. These are the five things which the last Temple was missing which were in the first Temple. They are: The fire<sup>128</sup>, the Ark<sup>124</sup>, Urim and Tummim<sup>129</sup>, anointing oil<sup>124</sup>, and the Holy Spirit<sup>130</sup>.

120 Reference to Mishnah 12, found only in G.

121 Tosephta 3:10, *Sifry Deut.* 185. The Tosephta credits Abba Shaul with the statement quoted here for R. Nehorai. *Sifry* quotes R. Nehorai and (Rebbi) Shaul, in inverse order.

122 *Deut.* 19:9. It is written there in v. 7, “three cities you shall designate”. Since it is already reported in *Deut.* 4:41-43 that Moses designated three cities in Transjordan, v. 19:7 must refer to the three cities which Joshua designated. Therefore 19:9 must refer to another three cities situated in the Northern part of the Land of Promise (*Num.* 34:1-15) that never was part of the historical Land of Israel. In the

opinion of Abba Shaul this Northern part, promised only if the *entire* people keep *all* biblical commandments, was as wide as the Cis- and Transjordan parts of the Land of Israel, and therefore needed not three but six additional cities of refuge. It is difficult to make sense of R. Nehorai’s statement.

In the text probably one should read *three* (*Deut.* 19:7), *three, the three* (*Deut.* 19:9). The words עַד “additional”, עַל אֵלֶּה “to these” are in *Deut.* 19:9. In the Constantinople edition, the argument of Abba Shaul for the first 9 is identical to that of the anonymous Tanna; this might be *lectio facilior*.

123 *Num.* 35:13.

124 If this refers to the previous statement,

then it is pointed out that *Num.* 35:13, which limits the number to six, cannot be squared with *Deut.* 19:9 which suggests nine. The question can be directed only at the anonymous Tanna who requires 9, and R. Nehorai who requires 15 cities, but not at Abba Shaul who envisages two pairs of six cities each.

Another interpretation (*Pene Moshe*) has this sentence starting a new paragraph, referring to Mishnah 9, and wonders why a High Priest of Second Temple times, who was not anointed with the holy oil compounded by Moses (*Ex.* 30:22-33) should have the power to free the exiled homicide. It is stated there in v. 23 that only Moses himself could compound this oil and in v. 31 that it should be used for all subsequent generations. By tradition, Josiah buried the oil flask together with the Ark of

the Covenant in the Temple Mount (*2Chr.* 35:3) after the prophetess Hulda informed him of the imminent destruction of the Temple.

125 Added from G (and the parallels, *Ta'anot* 2:1, *Horaiot* 3:2, as well as the Babli, *Yoma* 21b). Only R. Samuel bar Aina is known as student of R. Aha.

126 *Hag.* 1:8.

127 *Ketib* וְאֶבְדָּה *Qere* וְאֶבְדָּה. Both spellings make sense. The missing ה is interpreted in the Alexandrian system of numeration as "5".

128 The Heavenly fire (*2Chr.* 7:1).

129 Which are mentioned as worn by the High Priest (*Ex.* 28:30) but for which no description or instructions are given.

130 The spirit of prophecy.

(32a line 10) [אֵילָן שֶׁהוּא עוֹמֵד בְּתוֹךְ הַתְּחוּמִּים וְנוֹפֵא נֹטֶה חוּץ לַתְּחוּמִּים]. אָמַר [רַבִּי] אַבְי. תִּלְמִיד חָכָם צָרִיד לְפָרֶסֶם אֶת עֲצָמוֹ. הִיד בְּרֵשׁ דְּחָכָם חָדָא מִיכְלָה וְאֵזִיל לְאַתֵּר וְאִינוּן מִיִּקְרוּי לֵיהּ בְּדִ הָהּ חָכָם תִּרְיוּ מִיכְלָה צָרִיד מִימַר לֹן חָדָא מִיכְלָה אֲנָא חָכָם. רַב הוּנָא אָמַר. אוֹמֵר בְּשִׁפְהָ רַפָּה וְהִזְמִין פְּשׁוּטָה לְקַבֵּל.

<sup>131</sup>[If a tree stands inside the domain but its crown is outside the domain.] [Rebbi]<sup>132</sup> Abbai said, a scholar has to make his qualifications known. <sup>133</sup>If he knows one collection and he comes to a place where they honor him as if he knew two, he has to tell them, I know one collection. <sup>134</sup>(Rav Huna said, he says it in a soft voice and his right hand is stretched out to receive.)

131 From G, a quote from Mishnah 13. The discussion refers to Mishnah 14 which also is Mishnah *Ševi'it* 10:8 (Note 67), viz., the case that a homicide is honored.

132 From G. In *Ševi'it* 10:8 the speaker is R. Yose (the Amora).

133 Halakhah *Ševi'it* 10:8, Note 123. He

has memorized and completely mastered one collection of Tannaitic statements.

134 This does not belong here; it has been copied from *Ševi'it* 10:7. If a lender is offered repayment of a loan in a Sabbatical, when it should be forgiven, he may say softly that he observes the Sabbatical,

implying that he will not urge repayment      voluntary liquidation of the debt.  
while at the same time accepting the

(32a line 14) מה טעמא דרבי יודה. כי יחם לבבו.

אמר רבי אבהו. וחוזר במיתתו של שליש. אמר רבי אבהו. צרכו לדבר שולחין ומביאין אותו משם. אמר רבי יוסי. מתניתין לא אמרה כן. אלא אפילו ישראל צריכין לו. אפילו שר צבא כיוצא בן צרויה אין יוצא משם לעולם. שנאמר שמה. שם תהא דירתו כול.

What is Rabbi Jehudah's<sup>135</sup> reason? *For his blood is hot*<sup>136</sup>.

Rebbi Abbahu said, but he returns upon the death of the third<sup>137</sup>. Rebbi Abbahu said, if they need it<sup>138</sup>, they send and bring him from there. Rebbi Yose said, our Mishnah does not say so, but "even if Israel needs him like Joab ben Seruya<sup>62</sup>, he cannot ever leave from there, as it is said *there*<sup>55</sup>. There shall be his dwelling, etc."

135 In G: R. Huna. If the reference is to Mishnah 12, it should be "R. Yose the Galilean." If the reference is to the anonymous statement in Mishnah 8, the attribution to R. Jehudah might be correct.

136 Deut. 19:6.

137 In G: "the second." This reading has to be rejected since it is that of Mishnah 10. It rather seems to refer to Mishnah 11, about one who killed a High Priest, or a homicidal High Priest.

138 In G: If they (the High Court or the government) need *him* (the homicide.)

(32a line 18) [מעלות היו שָׂכָר לְלוֹיִם]. תִּנִּי רַבִּי יוֹדָה אוֹמֵר. לְמַחְלוֹקֶת נִיתְּנָה. רַבִּי יוֹסִי אוֹמֵר. לְבֵית דִּירָה נִיתְּנָה. וְתִיָּא דְרַבִּי יוֹסִי כְרַבִּי יוֹדָה. וְדַרְבִּי מֵאִיר כְּדַעְתִּיהָ. דִּתִּנִּין. מַעְלוֹת הֵיוּ שָׂכָר לְלוֹיִים דְּבָרֵי רַבִּי (מֵאִיר) [יְהוֹדָה]. רַבִּי (יְהוֹדָה) אוֹמֵר לֹא הֵיוּ מַעְלוֹת שָׂכָר לְלוֹיִם.

<sup>139</sup>[They<sup>68</sup> were paying rent to the Levites.] <sup>140</sup>It was stated: Rebbi Jehudah says, they were given to be distributed. Rebbi Yose said, they were given as dwellings. It turns out that Rebbi Yose holds with Rebbi Jehudah, and Rebbi Meïr follows his own opinion as we have stated: "They<sup>68</sup> were paying rent to the Levites, the words of Rebbi (Meïr) [Jehudah]. Rebbi (Jehudah) [Meïr] said, they were not paying rent to the Levites."

139 The text in brackets is from G. Here starts the discussion of Mishnah 15. The text in parentheses is from the Leiden ms. The correct quote of the Mishnah is in G.

140 *Ma'aser Seni* 5:8, Notes 165-167. The question is whether individual houses in Levitic cities were private or tribal property, as explained there. Even though three

sources (the Leiden ms. here and in *Ma'aser Šeni* and G here) confirm the text “R. Yose said, they were given as dwellings” one must read “R. Meïr”, as shown. R. Yose holds with R. Jehudah in Mishnah *Ma'aser*

*Šeni* 5:9. In the Babli (13a) it is held that the six cities of refuge were tribal property; for the other 42 Levitic cities the dispute is not resolved.

(32a line 22) רָבָא בָּשֶׁם רַבִּי יוֹדָה רַבִּי זְעִירָא בָּשֶׁם מֵר עוֹקְבָא. אֵין מְקַדְדִין אֶלָּא בְּחֶבֶל שְׁלֶחֶם־שֵׁשִׁים אַמָּה. רַבִּי זִירָא בָּשֶׁם רַב חֲסָדָא אוֹמֵר. אֵין מְקַדְדִין לֹא בְּעָרֵי הַלְוִיִּם וְלֹא בְּמִקְוֹם עֵגְלָה עֲרוּפָה. וְתֵינִיא כְּמֵאן דְּאָמַר. אֶלֶף אַמָּה מִגֶּרֶשׁ וְאַלְפִיִּים תַּחֲוִים שָׁבֵת. בְּרֵם כְּמֵאן דְּמַר. אֶלֶף מִגֶּרֶשׁ וְאַלְפִיִּים שְׂדוֹת וְכַרְמִים. כָּלִים לְמִדּוֹ לְתַחֲוִים שָׁבֵת לֹא מִתַּחֲוִים עָרֵי לְוִיִּים. לְעִישָׁק אֵין מְקַדְדִין לְטַפִּילָה מְקַדְדִין.

וּמַנִּין שְׁלֹא יְהוּ קוֹבְרִין בְּעָרֵי הַלְוִיִּם. רַבִּי אֲבָהוּ בָּשֶׁם רַבִּי יוֹסִי בַר חֲנִינָה. וּמִגֶּרֶשֶׁיהֶם יִהְיוּ לְבִהֲמֹתָם וְלִכְרוּשָׁם וְלִכָּל חַיֵּיהֶם: לַחַיִּים נִיתְּנוּ וְלֹא לְקַבְרָהּ נִיתְּנוּ.

<sup>141</sup>Rebbi Abba in the name of Rebbi Jehudah, Rebbi Ze'ira in the name of Mar Uqba: One strip-measures only with a rope of 50 cubits. Rebbi Ze'ira in the name of Rav Hisda: One strip-measures neither for the Levitic cities nor for the place of breaking the calf's neck. This would be acceptable for him who says, 1000 cubits of open space and 2000 cubits of Sabbath domain. But for him who says, 1000 cubits of open space and 2000 cubits of fields and vineyards, did they not learn the Sabbath domain from the Levitic cities? For the main thing one does not strip-measure; does one strip-measure for the derivative?

From where that one does not bury in Levitic cities? Rebbi Abbahu in the name of Rebbi Yose bar Hanina: *And their open spaces shall be for their animals, and their property, and all their lives*<sup>142</sup>. They were given for living; they were not given for burial.

141 This text is also in *Sotah* 5:5, explained in detail in Notes 120-123 and *Eruvin* 5 (22d l. 26). In these sources, the deviations from the text here and the inclusion of the remark about burial, irrelevant for the topics of the other quotes, make it clear that the text here is the source.

The problem is whether the 1000 or

2000 cubits of surrounding territory given to Levitic cities (*Num.* 35:4,5) have to be measured with a measuring rope hugging the terrain or with ropes following the terrain being held horizontally each time. This second way, called “strip-measuring” amounts to measuring the distances on a map onto which the geographic features

have been orthogonally projected. The Babli (*Eruvin* 58b) and also the Yerushalmi *Eruvin* (5, 22d l. 9) more reasonably require that strip-measuring be done by ropes four cubits long.

142 *Num.* 35:3. The Babli, 12a, exempts homicides from burial outside the town limits on the basis of Mishnah 11.

## אילו הן הלוקין פרק שלישי

(fol. 32a) **משנה א:** ואילו הן הלוקין הבא על אחותו ועל אחות אביו ועל אחות אמו ועל אחות אשתו ועל אשת אחיו ועל אשת אחי אביו ועל הנידה. אלמנה לכהן גדול גרושה וחלוצה לכהן הדיוט. אלמנה וגרושה חייבין עליה משום שני שמות. גרושה וחלוצה אינו חייב אלא משום שם אחד בלבד:

**Mishnah 1:** The following are flogged<sup>1</sup>: He who copulates with his sister<sup>2</sup>, or his father's sister, or his mother's sister<sup>3</sup>, or his wife's sister<sup>4</sup>, or his brother's wife<sup>5</sup>, or his father's brother's wife<sup>6</sup>, or a menstruating woman<sup>7</sup>. A widow for the High Priest<sup>8</sup>, or a divorcee<sup>9</sup> or one having received *halisah* for a common priest. For a widow and divorcee one is liable because of two categories<sup>10</sup>. For a divorcee having received *halisah* one is only liable for one category<sup>11</sup>.

**משנה ב:** הטמא שאכל את הקודש והבא אל המקדש טמא האוכל חלב ודם ונותר ופגול וטמא השוחט והמזגה בחוץ והאוכל חמץ בפסח. והאוכל והעושה מלאכה ביום הכיפורים והמפסס את השמן והמפסס את הקטורת והסד בשמן המשחה והאוכל גבילות וטריפות שקצים ורמשים. אכל טבל ומעשר ראשון שלא ניטלו תרומתו ומעשר שני והקדש שלא נפדו. כמה יאכל מן הטבל ויהא חייב. רבי שמעון אומר כל שהוא וחכמים אומרים כזית. אמר להן רבי שמעון אין אתם מודין לי באוכל (גבילה) [נמלה] כל שהוא שהוא חייב. אמרו לו מפני שהוא כביריתיה. אמר להן אף חיסה אחת כביריתיה:

**Mishnah 2:** An impure person who ate holy food<sup>12</sup>, or who came into the Temple when impure<sup>13</sup>. One who eats fat<sup>14</sup>, or blood<sup>15</sup>, or leftover, or *piggul*<sup>16</sup>, or impure<sup>17</sup> [sacrificial meat]. One who sacrifices outside<sup>19</sup>, or one who eats leavened matter on Passover<sup>20</sup>. One who eats or does work on the Day of Atonement<sup>21</sup>, and one who compounds the oil<sup>22</sup>, or compounds the incense<sup>23</sup>, and who rubs with the anointing oil<sup>22</sup>, and one who eats carcass<sup>24</sup> or torn meat<sup>25</sup>, abominations and crawling things<sup>26</sup>. If one ate *tevel*<sup>27</sup> or first tithe from which heave was not taken<sup>28</sup>, or second tithe<sup>29</sup> or dedicated food<sup>30</sup> which was not redeemed. How much does he have to eat from *tevel* to be liable? Rabbi Simeon says, anything; but the Sages say, the volume of an olive. Rabbi Simeon told them, do you not agree that one who eats (carcass meat)



[an ant]<sup>31</sup> is liable? They told him, because it is a creature. He answered them, also a grain of wheat<sup>32</sup> is a creature.

**משנה ג:** האוכל ביעורים עד שלא קרא עליהן. קדשי קדשים חוץ לקלעים. קדשים קלין ומעשר שני חוץ לחומה. השובר את העצם בפסח טהור הרי זה לוקה ארבעים. אבל המותר בטהור והשובר בטמא אינו לוקה ארבעים:

**Mishnah 3:** One who eats First Fruits before he recited over them<sup>33</sup>, or most holy sacrifices outside the Temple enclosure<sup>34</sup>, or simple sacrifices or Second Tithe outside of the wall<sup>35</sup>. One who breaks a bone of a pure Passover sacrifice is flogged 40 [lashes]<sup>36</sup>. But one who leaves over of the pure<sup>37</sup> or breaks a bone of the impure<sup>38</sup> is not flogged 40 [lashes].

**משנה ד:** הנוטל אם על הבנים רבי יהודה אומר לוקה ואינו משלח. ורבנן אומרים משלח ואינו לוקה. זה הכלל כל מצוה בלא תעשה שיש בה קום ועשה אין חייבין עליה:

**Mishnah 4:** He who takes the mother with the young, Rabbi Jehudah says he is flogged but does not have to send away. But the Sages say, he sends away and is not flogged<sup>39</sup>. This is the principle: One is not liable for any prohibition coupled with a positive commandment.

**משנה ה:** הקורח קרחה בראשו והמקיף פאת ראשו והמשחית פאת זקנו והשורט שריטה אחת על המת חייב. שרט שריטה אחת על חמשה מתים או חמש שריטות על מית אחד חייב על כל אחת ואחת. על הראש שתיים אחת מכאן ואחת מכאן ועל הזקן שתיים מכאן ושתיים מכאן ואחת מלמטה. רבי אלעזר אומר אם נטלן כולן כאחת אינו חייב אלא אחת. ואינו חייב עד שישלנו בתער. רבי לעזר אומר אפלו לקטו במלקט או ברהיטני חייב:

**Mishnah 5:** One who shaves a bald spot on his head<sup>40</sup>, and who shaves off his sideburns, and who shaves off the corners of his beard,<sup>41</sup> and one who scratches one scratch for a deceased is liable. If he scratched one scratch for five deceased, or five scratches for one deceased, he is liable for each single one<sup>42</sup>; for the head two, one for each side; for the beard two on each side and one for the chin<sup>43</sup>. Rabbi Eleazar<sup>44</sup> says, if he removed all at once he is liable only once. He is liable only if he took them off with a razor; Rabbi Eleazar says, even if he took them off with pincers or a plane.

**משנה ו:** הכותב כתובת קצקע כתב ולא קיעקע קיעקע ולא כתב אינו חייב עד שיקתוב ויקעקע בדין ובכחול ובכל דבר שהוא רושם. רבי שמעון בן יהודה אומר, אינו חייב עד שיקתוב שם השם שנאמר וכתובת קעקע לא תתנו בכם אני ה':

**Mishnah 6:** One who writes a tattoo. If he designed but did not tattoo, or tattooed but did not design, he is not liable until he design and permanently color with ink of *kohl* or anything that leaves a mark. Rabbi Simeon ben Jehudah says, only if he writes the Name, as it is said<sup>45</sup>, *a tattoo design you shall not put on yourselves, I am the Eternal*.

**משנה ז:** נזיר שֶהֵיָה שוֹתֶה בַּיּוֹם כָּל הַיּוֹם אֵינוֹ חַיִּיב אֶלָּא אַחַת. אָמְרוּ לוֹ אֵל תִּשְׁתֶּה אֵל תִּשְׁתֶּה וְהוּא שוֹתֶה חַיִּיב עַל כָּל אַחַת וְאַחַת:

**Mishnah 7:** <sup>46</sup>If a *nazir* was drinking wine a whole day long, he is liable only once. If one told him, do not drink, do not drink, if then he drinks he is liable for every single occasion.

**משנה ח:** הָיָה מִיִּטְמֵא לַמֵּתִים כָּל-הַיּוֹם אֵינוֹ חַיִּיב אֶלָּא אַחַת. אָמְרוּ לוֹ אֵל תִּיטְמֵא אֵל תִּיטְמֵא וְהוּא מִיִּטְמֵא חַיִּיב עַל כָּל אַחַת וְאַחַת

**Mishnah 8:** <sup>47</sup>If he was defiling himself with corpses a whole day long, he is liable only once. If one told him, do not defile yourself, do not defile yourself, if then he defiles himself he is liable for every single occasion.

**משנה ט:** הָיָה מְגַלֵּחַ כָּל הַיּוֹם אֵינוֹ חַיִּיב אֶלָּא אַחַת. אָמְרוּ לוֹ אֵל תְּגַלֵּחַ אֵל תְּגַלֵּחַ וְהוּא מְגַלֵּחַ חַיִּיב עַל כָּל אַחַת וְאַחַת.

**Mishnah 9:** <sup>48</sup>If he was shaving a whole day long, he is liable only once. If one told him, do not shave, do not shave, if then he shaves he is liable for every single occasion.

**משנה י:** הָיָה לְבוֹשׁ בְּכֻלָּאִים כָּל הַיּוֹם אֵינוֹ חַיִּיב אֶלָּא אַחַת. אָמְרוּ לוֹ אֵל תִּלְבֹּשׁ אֵל תִּלְבֹּשׁ וְהוּא פּוֹשֵׁט וְלּוֹבֵשׁ חַיִּיב עַל כָּל אַחַת וְאַחַת:

**Mishnah 10:** If he was dressed in *kilaim* a whole day long, he is liable only once<sup>49</sup>. If one told him, do not dress, do not dress, and he took off and put on, he is liable for every single occasion.

**משנה יא:** יֵשׁ חוֹרֵשׁ תֵּלֵם אֶחָד וְחַיִּיב עָלָיו מְשֻׁם שְׂמוֹנָה לְאִיּוֹן. הַחוֹרֵשׁ בְּשׂוֹר וְחִמּוֹר וְהוּן מוֹקֵדִשִׁים בְּכֻלָּאִים בְּכָרִם וּשְׂבִיעִית וַיּוֹם טוֹב וְכֶהֱן וְנָזִיר וְאַף בֵּית הַטּוֹמֵאָה. חוֹנִיָּה בֶן חֲכִינָאִי אוֹמֵר אֵף הַלּוֹבֵשׁ כְּלָאִים. אָמְרוּ לוֹ אֵינוֹ הֵשֵׁם. אָמַר לָהֶן אֵף לֹא הַנָּזִיר הוּא הֵשֵׁם:

**Mishnah 11:** One might plough a single furrow and be liable because of it for eight prohibitions. If one ploughs with an ox and a donkey which had been sanctified for *kilaim* in a vineyard, in a Sabbatical year, on a holiday, he is a Cohen and a *nazir* at an impure place<sup>50</sup>. Onias ben Hakhinai said, also if

he wore *kilaim*. They told him, this is not of the same category. He told them, neither is the *nazir* of the same category.

**משנה יב:** כמה מלקין אותו, ארבעים חסר אחת. שנאמר במספר ארבעים. מניין שהוא סמוך לארבעים. רבי יהודה אומר ארבעים שלמות. ואיכן הוא לוקה את היתרה בין כתיביו:

**Mishnah 12:** How much is he flogged? Forty minus one, as it is said: *in number: forty*<sup>51</sup>, a number close to forty. Rabbi Jehudah says, he is flogged a full forty. Where is he flogged the extra one<sup>2</sup>? Between his shoulders.

**משנה יג:** אין אומדין אותו אלא במכות הראויות להשתלש. אמדוהו לקבל ארבעים. לוקה מקצת ואמרו שאינו יכול לקבל ארבעים פטור. אמדוהו לקבל שמונה עשרה משלקה אמרו יכול הוא לקבל ארבעים פטור. עבר עבירה שיש בה שני לאוין אמדוהו אומד אחד לוקה ופטור. ואם לאו לוקה ומתרפא וחוזר ולוקה:

**Mishnah 13:** One estimates him only for floggings divisible by three<sup>52</sup>. If they estimated that he could receive forty; after he was flogged some, they<sup>53</sup> said that he could not withstand forty, he is not liable. If they had estimated him for eighteen; after he was flogged they said that he could withstand forty, he is not liable<sup>54</sup>. If he committed a transgression which involved two prohibitions, if they estimated him in one estimation he is flogged and then is no longer liable; otherwise<sup>55</sup> he is flogged, recovers, and is flogged a second time.

**משנה יד:** כיצד מלקין אותו כופת שתי ידיו על העמוד היקף והילך וחנון הכנסת אוזניו בבגדיו אם נקרעו נקרעו ואם נפרמו נפרמו. עד שהוא מגלה את לבו והאבן נתונה מאחוריו. חנון הכנסת עומד עליה ורציעה של עגל בידו כפילה אחד לשנים ושנים לארבעה ושתי רציעות עולות ויורדות בה:

**Mishnah 14:** How does one flog him? One binds both his hands on both sides of a pillar. The beadle grabs his clothing. If it tore, it tore; if it unravelled, it unravelled, until he uncovers his heart. A stone is put behind him on which the beadle stands with a strip of calf's leather in his hand, folded one into two and two into four, and two strips<sup>56</sup> go up and down in it.

**משנה טו:** ידה טפח ורחבה טפח ומנעת על פי כריסו. ומכה שלש מלפניו ושתי ידות מאחוריו. ואינו מכה אותו לא עומד ולא יושב אלא מוטה, שנאמר והפילו השופט והכהו לפניו וגו'. והמכה מכה בידו אחת בכל כחו:

**Mishnah 15:** The handle is one hand-breadth long; its width is one hand-breadth, and it reaches to his belly. He flogs him one third on his front

and two thirds on his back. He flogs him neither standing nor sitting but bending down as it is written<sup>51</sup>, *the judge shall make him fall and flog him on his front* etc. The person who flogs, flogs with one hand with full force.

**משנה יו:** והקורא קורא אם-לא תשמר לעשות את-כל-דברי התורה וגומ'. והפלא יי את-מכותך וגו', וחוזר לתחלת המקרא. ואם מת תחת ידו פטור. הוסיף לו רצועה אחת ומת הרי זה גולה על ידו. נתקלקל בין בריעי בין במים פטור. רבי יהודה אומר האיש בריעי והאשה במים:

**Mishnah 16:** The reader reads<sup>57</sup> *if you will not observe to fulfill all the words of this Torah* etc.; *the Eternal will your flogging exemplary*, etc. and returns to the beginning of the verse. If he<sup>58</sup> died under his hand, he<sup>59</sup> is not liable. If he<sup>59</sup> added a single strip and he<sup>58</sup> died, he<sup>59</sup> is exiled because of him<sup>58</sup>. If he<sup>58</sup> dirtied himself whether by feces or by urine, he is no longer liable<sup>60</sup>. Rabbi Jehudah says, a man by feces, a woman by urine.

**משנה יז:** כל חיבי כריתות שלקו נפטרו ידי כריתתן שנאמר ונקלה אחד לעיניך. משלקה הרי הוא כאחד דברי רבי חנניה בן גמליאל. ומה אם העובר עברה אחת נפשו נקלה עליה. העושה מצוה אחת על אחת כמה וכמה שתינתן לו נפשו. רבי שמעון אומר מקומו הוא למד שנאמר ונכרתו הנפשות העושות העושה מקרב עמו. ואומר אשר יעשה אותם האדם וחי בהם. הא כל-היושב ולא עבר עברה נותנין לו שכר כעושה מצוה.

**Mishnah 17:** All those subject to extirpation are no longer liable to extirpation once they were flogged, as it is said, *your brother would be despicable in your eyes*<sup>60</sup>. After he was flogged, he is your brother<sup>61</sup>, the words of Rabbi Hanania ben Gamliel. And since one who commits a transgression may lose his soul because of it, if one fulfills a commandment certainly his soul shall be given to him. Rabbi Simeon says, from its place<sup>62</sup> it can be inferred as it is written, *the souls of the perpetrators will be extirpated*, and it says, *that a human shall do and live in them*. Therefore, to anybody who quietly does not transgress a prohibition is given reward like somebody keeping the Commandments.

**משנה יח:** רבי שמעון ברבי אומר הרי הוא אומר רק חזק לבלתי אכל הדם כי הדם הוא הנפשו. ומה אם הדם שנפשו של אדם חתה ממנו הפורש ממנו מקבל שכר. גזל ועריות שנפשו של אדם מתאנה להן ומחמדתן הפורש מהן על אחת כמה וכמה שיוצא לו ולדורותיו ולדורות דורותיו עד סוף כל הדורות:

**Mishnah 18:** Rabbi Simeon ben Rabbi says, does it not say<sup>63</sup>, *only be strong not to eat blood, for blood is the life?* Since one who desists from blood, from which a person recoils, receives reward, if one desists of robbery and sexual offenses, which a person desires and cherishes, certainly he should acquire the merit for himself, his descendants, and his descendants' descendants to the end of all generations.

**משנה יט:** רבי חנינא בן עקשנה אומר רצה הקדוש ברוך הוא לזכות ישראל לפיכך הרבה להם תורה ומצוות שנאמר יי חפץ למען צדקו יגדיל תורה ויאדיר:

**Mishnah 19:** Rabbi Haninah ben Aqashiah says: The Holy One, praise to Him, wanted to increase the merit of Israel; therefore He multiplied for them teaching and commandments, as it is written<sup>64</sup>, *the Eternal desires for the sake of His justice to make His instruction great and prodigious.*

1 As a matter of principle, all transgressions of biblical prohibitions are punishable by flogging unless specifically exempted. The rules are spelled out by Maimonides in his Commentary to this Mishnah. It is understood that a sentence of flogging can be passed only after a trial based on the testimony of two witnesses both to the fact of the crime and the necessary warning given to the perpetrator.

A crime punishable by the death penalty can never lead to a sentence of flogging, even if the death penalty cannot be imposed because of a material or technical obstacle. Crimes punishable by extirpation or Death by the Hand of Heaven are subject to flogging, since in this case the earthly punishment guarantees the sinner his part in the World to Come (Mishnah 17).

A crime punishable by a fine cannot lead to punishment by flogging. Crimes done by speech without accompanying action are not punishable by flogging, except swearing falsely, substituting

sacrifices (*Lev.* 27:10), and cursing using the Name which is a potential capital crime.

A crime connected to a positive commandment cannot lead to punishment by flogging as long as the positive commandment still can be executed (Mishnah 4).

The infraction of a positive commandment cannot be punished. For example, the High Priest is commanded to marry a virgin. He is prohibited of marrying a widow, divorcee, or desecrated woman (*Lev.* 21:13-14). If he marries a woman who is not forbidden but not a virgin, he cannot be punished.

A prohibition understood by inference, not written explicitly, cannot be punished.

2 *Lev.* 20:17. The list starts with sexual transgressions punishable by Heaven.

3 *Lev.* 20:19.

4 *Lev.* 18:18. This is a simple prohibition.

5 *Lev.* 20:21.

6 *Lev.* 20:20.

- 7 *Lev.* 20:18.
- 8 *Lev.* 21:14, a simple prohibition.
- 9 *Lev.* 21:7. The clause about *halisah*, the freeing of the widow of a childless man from levirate marriage, is in dispute; the majority holds that the prohibition of the widow after *halisah* is rabbinic.
- 10 If the High Priest marries a widow who had been a divorcee.
- 11 Since *halisah* is forbidden only as a kind of divorce.
- 12 *Lev.* 7:20,21; transgressions punishable by extirpation.
- 13 *Num.* 19:13.
- 14 *Lev.* 7:25.
- 15 *Lev.* 7:27.
- 16 *Lev.* 19:8.
- 17 "Leftover" refers to meat from acceptable sacrifices which was not eaten during the statutory time limit. *Piggul* is a sacrifice which was offered with the idea in mind (of the offerer or the officiating priest) that it should be eaten out of its allotted time (or place); *Lev.* 7:18,19:8. The root of *piggul* probably is *פגל* "to be soft".
- 18 *Lev.* 7:19.
- 19 *Lev.* 17:4.
- 20 *Ex.* 12:19.
- 21 *Lev.* 23:29-30.
- 22 *Ex.* 30:33. The anointing oil in the proportions spelled out there.
- 23 For profane purposes, *Ex.* 30:38. Incense had to be compounded fresh every year.
- 24 *Deut.* 14:21, a simple prohibition.
- 25 *Ex.* 22:30, a simple prohibition.
- 26 *Lev.* 11:11,44.
- 27 Fully harvested produce of which the priests' heave was not taken; *Lev.* 22:10.
- 28 The obligation is *Num.* 18:28, the penalty *Num.* 18:32.
- 29 Outside the place of the Sanctuary it needs redemption, *Deut.* 14:24.
- 30 Donated to the Temple to be sold for its value, not dedicated to the altar; *Lev.* 27:11.
- 31 In *editio princeps* and ms., נבילה "carcass meat". In all other sources נמלה "ant". The latter reading is the only one which makes sense since it both is forbidden (*Lev.* 11:42) and much less than the size of an olive.
- 32 Given as heave (biblically restricted to grain, wine, and olive oil).
- 33 First Fruits have to be eaten by the priest (*Deut.* 12:17) after the Temple ceremony. This point is in dispute between R. Aqiba and others.
- 34 They are restricted to priests (*Lev.* 10:15).
- 35 *Lev.* 10:14 for priests, *Deut.* 12:17 for others.
- 36 *Ex.* 12:46.
- 37 Example of a prohibition subordinated to a positive commandment; cf. Note 1.
- 38 It lost its holiness.
- 39 *Deut.* 22:6-7.
- 40 *Lev.* 21:5, *Deut.* 14:1.
- 41 *Lev.* 19:27.
- 42 Since *Lev.* 19:28 forbids a single scratch for a single deceased.
- 43 The five corners of a beard are: near the ear on each side, the cheekbone on each side, and the chin.
- 44 Most sources read: R. Eliezer.
- 45 *Lev.* 19:28. Tattooing has two parts: making a scratch and coloring it with permanent color. It is not too clear which

name is intended.

46 Mishnah *Nazir* 6:4.

47 Mishnah *Nazir* 6:6.

48 Mishnah *Nazir* 6:5.

49 *Lev.* 19:19. Cf. Introduction to Tractate *Kilaim*.

50 Ploughing with ox and donkey, *Deut.* 22:10. Growing *kilaim* in a vineyard, *Deut.* 22:9; it makes growth and vines forbidden

for all use. Sabbatical year *Lev.* 25:4 (the verse only forbids sowing). Holiday, *Ex.* 12:16. Cohen in an impure place, *Lev.* 21:1.

51 *Deut.* 25:2-3. Since "40" is the only number in the text, it is read as standard punishment subject to medical evaluation. (Also in *2Cor.* 11:24 it is not clear whether 40-1 is the real number or simply is the standard expression for flogging.)

52 As described later, for one stripe in the front one hits two in the back, for a total number divisible by 3. Therefore, the 40<sup>th</sup> can be neither in front nor in back.

53 The medical experts.

54 For further flogging.

55 If he is tried for only one

transgression, he later can be tried for another transgression based on the same facts.

56 Two double strips of calf hide and two single strips (of donkey hide).

57 *Deut.* 28:58-59 contain a total of 34 words. One adds the first 5 words of 28:58 a second time for a total of 39 words, one word for each stroke.

58 The culprit.

59 The beadle.

60 Since *Deut.* 25:3 prohibits to degrade the criminal, the flogging must stop immediately.

61 As your brother, he has part in the World to Come; Mishnah *Sanhedrin* 10:1. Since extirpation implies denial of the World to Come, it is eliminated.

62 *Lev.* 18 ends (v. 29) with extirpation for transgressors but starts with assurances of Eternal Life for those who live by the Torah (v. 5).

63 *Deut.* 12:23.

64 *Is.* 42:21.

לְרִבִּי חֲנִינְיָהּ בֶּן עֲקִשָּׁה אוֹמֵר רָצָה הַקָּדוֹשׁ בְּרוּךְ הוּא ג'. מִפְּנֵי מָה מְכַנִּים שְׁמוֹ שֶׁל הַקָּדוֹשׁ בְּרוּךְ הוּא וְקוֹרִין אוֹתוֹ מְקוֹם לוֹמֵר שֶׁהוּא מְקוֹמוֹ שֶׁל עוֹלָמוֹ וְאֵין עוֹלָמוֹ מְקוֹמוֹ. רִבִּי חוּנָה בִּשְׁם רִבִּי אִיפְּי כְּתוּב מְעוֹנָה אֶלְהִי קָדֵם לוֹמֵר שֶׁהוּא מְעוֹנוֹ שֶׁל עוֹלָמוֹ וְאֵין עוֹלָמוֹ מְעוֹנוֹ. רִבִּי יוֹסֵה בֶּן חֲלַפְתָּה אָמַר כְּתוּב וַיֹּאמֶר יְיָ הִנֵּה מְקוֹם אֲתִי לוֹמֵר שֶׁהוּא מְקוֹמוֹ שֶׁל עוֹלָמוֹ וְאֵין עוֹלָמוֹ מְקוֹמוֹ. אָמַר רִבִּי יִצְחָק כְּתִיב י' בָּם סִינִי בִקְדָשׁ: לֹא מִסְתַּבֵּרָה אֶלָּא קוֹדֶשׁ בְּסִינִי. לוֹמֵר שֶׁהוּא מְקוֹמוֹ שֶׁל עוֹלָמוֹ וְאֵין עוֹלָמוֹ מְקוֹמוֹ. אָמַר רִבִּי יוֹדֵן לְגִיבּוֹר שֶׁהוּא רוֹכֵב עַל הַסּוּס וְכִילִיו מְשׁוֹפָעִים הֵלֶךְ הֵלֶךְ לֹא שֶׁהַסּוּס סוֹבֵל אֶת הַגִּיבּוֹר אֶלָּא שֶׁהַגִּיבּוֹר הוּא סוֹבֵל אֶת הַסּוּס. אָמַר רִבִּי אֲחָא כְּתִיב י' חֶפֶץ לְמַעַן צִדְקוֹ לְמַעַן צִדְקוֹ לְמַעַן צִדְקָה בְּשִׁבִּיל לְזִכְוֹתָהּ אֲמַרְתִּיהָ לָּהּ.

זבינו להשלים בשלום נזכה ונחיה להשלים ללמד וללמד את כל ש' סדרי משנה בשלום אמן

ברוך יי לעולם אמן ואמן ברוך שם כבוד מלכותו לעולם ועד

<sup>65</sup>["Rebbi Hananiah ben Aqashiah says: *The Holy One, praise to Him, wanted* etc." Why does one use a substitute name for the Name of the Holy One, praise to Him, and calls Him Place? To say that He is the Place of the world but the world is not His place.

<sup>66</sup>Rebbi Huna in the name of Rebbi Immi: It is written<sup>67</sup>, *dwelling is the Primordial God*, to say that He is the dwelling of the world but the world is not His dwelling.

Rebbi Yose ben Halaphta said, it is written: <sup>68</sup>*The Eternal said, there is a place with Me*; to say that He is the Place of the world but the world is not His place.

Rebbi Isaac said, it is written<sup>69</sup>: *The Eternal is there, Sinai in the Holy*. Would "the Holy in Sinai" not have been more reasonable? To say that He is the Place of the world but the world is not His place.

<sup>70</sup>Rebbi Yudan said, [a parable of] a hero riding on a horse with his weapons hanging down at both sides. It is not that the horse puts up with the hero, but the hero puts up with the horse.

Rebbi Aha said<sup>64</sup>, *the Eternal desires for the sake of His justice*. For His justice? In order to justify you! In order to give merit to you I told it to you<sup>71</sup>.

<sup>72</sup>We had the merit to finish in peace. May we be worthy and live to finish studying and teaching all six orders of the Mishnah in peace, Amen.

Praise to the Eternal forever, Amen and Amen<sup>73</sup>. Praise to the Name of the glory of His Kingdom forever and ever<sup>74</sup>.]

65 This Halakhah is preserved only in G, but it is quoted in the name of the Yerushalmi in the book האמונה והבטחון "Faith and Trust" from the cabbalistic circle of Nachmanides [Chapter 15; in H. D. Chavel's edition of *The Works of Nachmanides*, vol. 2 (Jerusalem 1964) p.399.] Parallel texts are in *Gen. rabba* 68(10), copied in *Yalqut Shimony* 117, and *Pesiqta rabbati Ten Commandments* (ed. Ish-Shalom p. 104b). It is of great

theological significance in that it proclaims not only God's Omnipresence but also His Existence outside of space and time and the possibility of the simultaneous existence of an infinity of different worlds.

66 In *Gen. rabba* and *Pesiqta*, they are credited with the statement of the preceding paragraph. "Faith and Trust" quotes the text here.

67 *Deut.* 33:27. In *Gen. rabba* and *Pesiqta* quoted by R. Isaac.



68 *Ex.* 33:21. In *Gen. rabba* and *Pesiqta* quoted by R. Huna, R. Immi but *Yalqut* R. Yose ben Halaftha.

69 *Ps.* 68:18. In *Gen. rabba* quoted by R. Isaac; anonymous in *Pesiqta*, missing in *Yalqut*. In *Emunah weBittahon* R. [ ] in the name of R. Jacob.

70 In *Gen. rabba* in the name of R. Abba bar Yudan, in *Pesiqta* more elaborated, in the name of R. Yudan, anonymous in *Yalqut*.

71 The context in *Is.* makes it clear that *יְקָרָא* should not be translated as in the homiletic use of the verse “His justice” but “his justification” referring to God’s servant.

72 The Colophon of the scribe, not part of the Talmud text.

73 *Ps.* 89:53.

74 The required eulogy after the recitation of *Deut.* 6:4.



## Introduction to Tractate Horaiot

Tractate Horaiot is an appendix to the Order *Neziqin*; its arguments mostly are more appropriate for the Fifth Order, *Qodashim*. In the introductory part of *Leviticus*, containing the rules of private sacrifices, the rules for private purification offerings (*Lev.* 4:27-35), discussed at length in Tractate *Zevahim*, are preceded by rules for the official purification offerings of the anointed High Priest (4:1-12), the Synhedrion as representatives of the people (4:13-21), and the Prince (4:22-26). They are followed by the rules of public or private purification offerings for compromising Temple purity (5:1-13); the same rules apply to private offerings for unintended breaches of obligations affirmed by oaths. The detailed explanation of the rules preceding and following those for private purification offerings are the topic of *Horaiot*. The discussion of the rules for the High Court which became aware that it had ruled wrongly in a practical case can qualify as appendix to *Sanhedrin*, those of atonement for breaches of oaths as appendix to *Ševuot*.

The conditions which trigger the obligations for these sacrifices and their consequences are treated in the first two Chapters, with special emphasis on the implications of erroneous High Court rulings on individuals in the first and breaches of Temple purity in the second Chapters. The third Chapter starts by noting that in *Lev.* 4:1-12 the High Priest is called the Anointed Priest. It is inferred from *Ex.* 30:34 that the only person empowered to compound the anointing oil was Moses. The High Priests of the Second Temple were invested, not anointed; the rules of *Lev.* 4:1-12 did not apply to them. Similarly, the rules for the Prince did apply only those who were kings with divine (prophetic) sanction. The rules for the *Sanhedrin* apply only to the High Court sitting in the Temple compound. Therefore, it is likely that the only part of the discussion of the first two Chapters which refers to practices in force during the Second Temple period were the rules developed in interpretation of *Lev.* 5:1-13.

Most of the third Chapter is devoted to the rules of precedence in religious ceremonies. These rules are of practical importance. The Tractate closes with a homily in praise of the study of Torah.

In addition to the Leiden ms., the text of the Tractate was printed, from a different source, in the original Venice edition of the Babli. This is treated as a separate source and its (sometimes superior) readings are noted in the text. The text is much shorter than the Leiden text since as a rule it does not copy passages which appear elsewhere in the Yerushalmi; it only contains remarks which direct the reader to the parallel occurrences, and also is lacunary at other places. In later editions the text was completed (and otherwise changed) following the Venice print of the Yerushalmi; these texts cannot be used as independent sources. For a small part of Chapter Three there also exists a Genizah fragment. The text from the Babli is noted B if there are other texts to be considered; otherwise its readings are noted following the quotes from the Leiden text without indication of the source.

## הורו בית דין פרק ראשון

(fol. 45c) **משנה א:** הורו בית דין לעבור על אחת מכל-מצות האמורות בתורה והלך היחיד ועשה שוגג על פיהם בין שעשו ועשה עמהו בין שעשו ועשה אחריהו בין שלא עשו ועשה פטור מפני שתלה בבית דין. הורו בית דין ונדע אחד מהן שטעו או תלמיד שהוא ראוי להוריה והלך ועשה על פיהם בין שעשו ועשה עמהם בין שעשו ועשה אחריהם בין שלא עשו ועשה הרי זה חייב מפני שלא תלה בבית דין. זה הפלל התולה בעצמו חייב והתולה בבית דין פטור:

**Mishnah 1:** If the Court<sup>1</sup> ruled to violate one of the commandments spelled out in the Torah<sup>2</sup> and a single person went and acted inadvertently<sup>3</sup> following their pronouncement, whether they acted and he acted simultaneously with them, or they acted and he followed their example, or they did not act but he did, he is not liable<sup>4</sup> since he depended on the Court. If the Court ruled but one of them knew that they erred, or a student worthy of ordination<sup>5</sup> went and acted following their pronouncement, whether they acted and he acted simultaneously with them, or they acted and he followed their example, or they did not act but he did, he is liable<sup>4</sup> since he did not depend on the Court. This is the principle: The person depending on himself is liable<sup>6</sup>, but one depending on the Court is not liable.

1 The High Court.

2 A commandment clearly spelled out, like the prohibition of eating blood, where the biblical text does not imply an authorization of the rabbinical authorities to define the parameters of the obligation.

3 When the Court realized its error and changed its ruling, the person acting in good faith on their prior ruling is now faced with the fact that his act violated a biblical commandment, against his intention.

4 For a purification sacrifice (*Lev.*

4:27-35) or, in the absence of a Temple, repentance and an expiatory action.

5 He knows how to answer when asked any question of religious law.

6 This rule, which declares that no instruction of the High Court supersedes one's own certain knowledge, does not contradict the law of the rebellious Elder (*Sanhedrin* Chapter 8) since by definition the rebellious Elder came to ask the High Court; in the matter he came to ask, his knowledge is not independent of the Court.

45c line 59) **הלכה א:** הורי בית דין כול. נִפְּשׁ כִּי־תִחַטָּא. אַחַת תִּחַטָּא. בְּעִשׂוּתָהּ תִּחַטָּא. הָרִי אִילּוּ מִיַּעוּטִין. הַתּוֹלָה בְּעֶצְמוֹ חַיִּיב וְהַתּוֹלָה בְּבֵית דִּין פָּטוּר: בְּכָל־אַתֶּר אֶת מֶר. מִיַּעוּט אַחֵר מִיַּעוּט לְרִבּוּת. וְכֹא אֶת מֶר. מִיַּעוּט אַחֵר מִיַּעוּט לְמַעַט. אָמַר רַבִּי מִתְּנֶה. שְׁנִינָא הִיא. דִּכְתִּיב מִיַּעוּט אַחֵר מִיַּעוּט אַחֵר מִיַּעוּט.

1 כי - | 2 והתולה - | את מר | איתמר 3 את מר | איתמר שנייא | שניה 4 אחר | לאחר (2 times)

**Halakhah 1:** <sup>7</sup>“If the Court ruled.” etc. *A person who would transgress; one would transgress; acting he would transgress*; these are restrictions<sup>8</sup>: the person depending on himself is liable, but one dependent on the Court is not liable. Everywhere it is said that a restriction after a restriction is an addition, but here it is said, a restriction after a restriction is to reduce? Rabbi Mattaniah said, it is different here since there is written a restriction after a restriction after a restriction<sup>9</sup>.

7 The text is that of the Leiden ms., the readings are those of the Yerushalmi text in the Bomberg Babli of 1520.

8 The quotes are correct in the Yerushalmi text of the Babli *editio princeps*, but the first of the quotes in the Leiden ms. is a misquote, referring to *Lev.* 4:2 instead of 4:27. The basic text is in *Sifra Wayyiqra Paraṣah* 7(1), referred to in Babli 2b, discussed in detail *Šabbat* 93a.

Chapter 4 in *Lev.* treats the purification sacrifices for unintentional sin first by the High Priest (vv. 1-12), then the High Court (13-21), then a chief, identified in Mishnah 3:3 as a king (22-26), and finally by a commoner (27-35). V. 27 reads: *If one person of the populace transgresses inadvertently, by acting on one prohibitions of the Eternal, and feels guilt.* It is noted that the sentence seems to be unnecessarily wordy. Why does it not say simply, “if somebody inadvertently transgresses a prohibition of the Eternal”? The

additional words must have a meaning; they describe restrictions. In Babli *Šabbat* 93a one derives from the insistence that *one* person commit the sin that a violation of a commandment cannot be prosecuted if committed by two persons acting in common, so that no single person commits a punishable act but the combined result is a clear violation.. Such a violation cannot be atoned for by a purification sacrifice. It also is clear that only *acts* are punishable.

In the context here the additional terms are interpreted to mean that only a person acting on his own is required to offer a purification sacrifice; this excludes one who is told by a religious authority that his act is permitted.

9 It is a generally recognized principle that a double restriction is an addition and a double addition a restriction (*Peah* 6:9 Note 154, *Yebamot* 12:1 Note 10, *Sotah* 9:2 Note 63, *Roš Haššanah* 1:1 56a 1.58, *Megillah* 4:4 75b 1.14; Babli *Megillah* 23b, *Yoma* 43a, *Bava qamma* 15b, *Bava*

*batra* 15a, *Sanhedrin* 15a,44b,66a, *Makkot* 9b, *Ševuot* 7b, *Menahot* 9b,67a, *Hulin* 132a.) The principle is extended here to read that any even number of restrictions (additions) is an addition

(restriction) while any odd number of restrictions (additions) is a restriction (addition); cf. Rashi in *Sanhedrin* 15a s. v. חמשה.

(45c line 63) רבי חגי שאל לחבריה. מניין לאוכל בְּרִשׁוֹת שֶׁהוּא פָּטוּר. מִה בֵּין סָבוּר שֶׁהוּא חוֹלִין וְנִמְצָאת תְּרוּמָה שֶׁהוּא חַיִּיב. מִה בֵּין הַמַּחֲזִיק בְּעֶצְמוֹ שֶׁהוּא כֹהֵן וְנִמְצָא יִשְׂרָאֵל שֶׁהוּא פָּטוּר. אָמְרוּ לֵיהּ. מִן הוֹרִיזוֹת בֵּית דִּין. אָמַר לוֹ. אוֹף אֶנָּה צְרִיכָה לִי. מִה בֵּין סָבוּר שֶׁהוּא חוֹל וְנִמְצָאת שֶׁבֶת שֶׁהוּא חַיִּיב. מִה בֵּין סָבוּר שֶׁהוּא פָּסֵחַ וְנִמְצָא שְׁלָמִים שֶׁהוּא פָּטוּר. אָמְרוּ לֵיהּ. מִן הַשּׁוֹחֲט בְּרִשׁוֹת. אָמַר לוֹ. אוֹף אֶנָּה צְרִיכָה לִי. מִה בֵּין סָבוּר שֶׁהוּא מוֹתֵר וְנִמְצָא אֲסוּר שֶׁהוּא חַיִּיב. מִה בֵּין סָבוּר שֶׁהוּא חֶלֶב וְנִמְצָא שׁוֹמֵן שֶׁהוּא פָּטוּר. לֹא אָמְרוּ לֵיהּ כָּלִים. אָמַר לוֹ. נִימָא לָכוֹן מֵינָן. אֹה הוֹדַע אֱלֹיו חֲטָאתוֹ וְהִבִּיא. אַעַל רַבִּי יוֹסִי. אָמְרוּ לֵיהּ. קָשִׁי לוֹן הִדָּא מִיִּלְתָּא. אָמַר לוֹ. וְלָמָּה לֹא אֲגִיבְתוּנִיה מִן הִדָּא אֹה הוֹדַע אֱלֹיו חֲטָאתוֹ וְהִבִּיא. אָמְרוּ לֵיהּ. חַגִּי קִשְׁיָתָה חַגִּי קִיִּמְתָּה.

1 חגי | חגי לחבריה | לחבריה מניין | מנין 3 אמרו | אמרו חוריות | חורית אוף | אף 4 אמרו | אמרו 6 אמרו | אמרו 7 נימא לכוון מנין | נמר לכוון אנו | אעל | על דעתיה ר' | דר' אמרו | אמרו 8 הדא | הא אגיבתוניה | אגבתני 9 קיימתה | קיימה

<sup>10</sup>Rebbi Haggai asked the colleagues: From where that he who eats with permission be not liable<sup>11</sup>? What is the difference between him<sup>12</sup> who thought that it was profane but it turned out to be heave, who is liable, and him who thought that he was a Cohen but it turned out that he was an Israel, who is not liable<sup>13</sup>? They said to him, by the instruction of the court. He said to them, still I am having a problem. What is the difference between him who thought that it was weekday but it turned out that it was Sabbath<sup>14</sup>, who is liable, and him who thought that it was a Passover sacrifice but it turned out to be a well-being offering, who is not liable<sup>15</sup>. They said to him, because he slaughtered with permission. He said to them, still I am having a problem. What is the difference between him who thought that it was permitted but it turned out to be forbidden<sup>15</sup>, who is liable, and him who thought that it was forbidden fat<sup>16</sup> and it turned out to be permitted fat, who is not liable. They did not answer at all. He told them, let me tell you from myself<sup>17</sup>: *Or his transgression in which he sinned was made known to him; he has to bring*<sup>18</sup>. Rebbi Yossi came to visit them; they told him, that problem is hard for us. He asked them, why did you not answer him, *or his transgression in which he*

sinned was made known to him; he has to bring? They told him, Haggai asked the question, Haggai gave the answer.

10 This paragraph has a parallel in *Terumot* 8:1, Notes 14-22. As explained there, the background of the paragraph in *Terumot* is different from the one presumed here; therefore at a place where the readings there and here seem to be opposite to one another, both are correct in their settings.

11 Referring to Mishnah *Terumot* 8:1; a childless woman of non-priestly birth, married to a Cohen, was eating heave in purity, as is her right and duty, when she was informed of her husband's death. By this death she returns to her non-priestly status and heave is forbidden to her. Nevertheless, she is not liable for a reparation sacrifice nor to pay for the heave eaten in error. This is the topic of *Terumot* 8:1, it is not followed up here.

12 An Israel to whom heave is forbidden, Mishnah *Terumot* 6:1.

13 He had been told from childhood that he was a Cohen; he was stripped of his priesthood by a court on the testimony of two witnesses that one of his female ancestors had been forbidden to her Cohen husband. His case is not different from that of the woman in Note 12.

14 This is a paradigm of an inadvertent sin as mentioned in *Lev.* 4:27.

15 Cf. *Terumot* 8:1, Note 18. The Passover sacrifice must be slaughtered in the afternoon of the 14<sup>th</sup> of Nisan, whether Sabbath or weekday. A festival well-being offering may not be slaughtered on the Sabbath. If the 14<sup>th</sup> was a Sabbath and somebody slaughtered a sheep in the Temple courtyard thinking that it was a designated Passover sacrifice when in fact it had been designated as a well-being offering, R. Joshua, an overriding authority, declares him not liable (Mishnah *Pesahim* 6:4).

16 Fat of animals which would be burned on the altar if these animals were sacrifices, and the fat into which ischiatic tendons are embedded, is forbidden for human consumption. All other fat is permitted. If a person intended to commit a sin but, unknown to him at the time, failed to commit the sin, he is not liable for a purification sacrifice.

17 Translated using the Bomberg Babli text.

18 *Lev.* 4:28. Since he was informed that he failed to commit the sin, he cannot bring a purification sacrifice. His repentance for his sinful intent will be a private matter between him and God.

(45c line 75) על דעתיה דרבי ישמעאל דלא מפנה אהן קרייה במחוייבי חטאות ואשמות ונדאין שער עליהן יום הכיפורים נחא. על דעתיה דרבי עקיבה דמפנה אהן קרייה במחוייבי חטאות ואשמות ונדאין שער עליהן יום הכיפורים. דתני. מניין למחוייבי חטאות ואשמות ונדאין שער עליהן יום הכיפורים שהן חייבין להביא לאחר יום הכיפורים וחייבי אשמות



תְּלוּיִן פְּטוּרִין. תִּלְמוּד לומר אִזְ הוֹדַע אֵלָיו חֲטָאתוֹ וְהִבִּיא. אַף לְאַחַר יוֹם הַכִּפּוּרִים. מִן הַדָּא. נִפְשׁ כִּי־תִחַטָּא. אַחַת תִּחַטָּא. בְּעִשׂוֹתָהּ. הָרִי אֵילֹו מִיעוּטִין. הַתּוֹלָה בְּעֶצְמוֹ חֵיב. הַתּוֹלָה בְּבֵית דִּין פְּטוּר:

1 קרייה | קריה במחוייבי | חטאות ואשמות וודאין | אשמות וחטאות ודיין 2 דמפנה | דו מפנה  
אהן | קרייה במחוייבי חטאות ואשמות וודאין | קריה במחוייבי אשמות וחטאות ודיין 3 למחוייבי חטאות  
ואשמות וודאין | למחוייבי אשמות וחטאות ודיין 5 תלוין | תלוין 6 כי | - אחת תחטא | - אילו מיעוטין  
אלו מעוטין

In the opinion of Rabbi Ismael, who does not refer this verse to those obligated for purification sacrifices and certain reparation sacrifices for whom the Day of Atonement had passed, it is understandable<sup>19</sup>. But what is the opinion of Rabbi Aqiba, who refers this verse to those obligated for purification sacrifices and certain reparation sacrifices for whom the Day of Atonement had passed, as we have stated<sup>20</sup>: From where that those obligated for purification sacrifices and certain reparation sacrifices for whom the Day of Atonement had passed, are obligated to bring them after the Day of Atonement, but those obligated for suspended reparation offerings are no longer liable? The verse says<sup>18</sup>, *or his transgression in which he sinned was made known to him; he has to bring*, even after the Day of Atonement.<sup>21</sup> From the following: *A person who would transgress; one would transgress; acting he would transgress*; these are restrictions<sup>8</sup>: the person depending on himself is liable, {but one dependent}<sup>9</sup> on the Court is not liable.

19 This paragraph has no direct connection with the theme of the Mishnah, but is added here to elucidate Lev. 4:27. Since our halakhic Midrashim are all from the school of R. Aqiba, we have to accept the occasional indications of the Yerushalmi on the interpretations of the school of R. Ismael. For him, the verses 4:27-28 detail the conditions on which a private person is permitted and obligated to bring a purification offering.

20 Mishnah Keritot 6:4; *Sifra Wayyiqra* 2 Paršetaḥ 3(1), 6(1), *Ahare Mot Parašah* 4(8).

Reparation sacrifices are required (1)

for sins against a fellow man after restitution (Lev. 5:20-26; Num. 5:5-10), (2) misappropriation of *sancta* (Lev. 5:14-16), (3) to regain sanctified status after skin disease (Lev. 14). A *suspended* reparation sacrifice is due if a person suspects that he may have committed an inadvertent sin, without having proof either way. Since the sin is forgiven on the Day of Atonement (with due repentance), such a sacrifice cannot be offered after that day since the scapegoat carries away *all* iniquities (Lev. 16:21).

21 This copy from the first paragraph has no discernible meaning here.

אין חייבין אלא על דבר שהיה גלוי להן ונכסה מהן. ומה טעם. ונעלם דבר. דבר שהיה גלוי להן ונכסה מהן. על דעתיה דרבי ישמעאל דו אמר. ונעלם ממנו. מכלל שהיה יודע. והוא ידע. הרי שתי ידיעות. על דעתיה דרבי עקיבה דו אמר. ונעלם ממנו ונעלם ממנו שני פעמים. מכלל שבאת לו ידיעה בתחילה וידיעה בסוף והעלם בינתיים. תלמוד לומר ונעלם ממנו. דבר שהיה גלוי להן ונכסה מהן.

1 ונכסה | ומכוסה ומה טעם. ונעלם דבר. דבר שהיה גלוי להן ונכסה מהן | - 4 שבאת לו | שהיתה מהן | מהם

<sup>22</sup>They only are liable<sup>23</sup> for something<sup>24</sup> that was clear to them and then covered from them<sup>25</sup>. What is the reason? *something was hidden*<sup>26</sup>, something that was clear to them and then hidden from them. <sup>27</sup>In the opinion of Rabbi Ismael who said, *it became hidden from him*, therefore he had known, *and he knew*<sup>28</sup>, these are two knowledges<sup>29</sup>. In the opinion of Rabbi Aqiba who said, *it became hidden, it became hidden*, two times<sup>30</sup>, therefore he had knowledge at the beginning and knowledge at the end and oblivion in between, <sup>31</sup>something that was clear to them and then hidden from them.

22 Here one returns to a discussion of the theme of the Tractate, viz., the obligation of the High Court, as representatives of the people, to offer a purification sacrifice for a wrong ruling as described in Lev. 4:13-21.

It is sinful to bring an animal into the Temple precinct which is not dedicated as a sacrifice. For voluntary offerings this presents no problem; one simply has to dedicate them when bringing. But for obligatory offerings it implies that a sacrifice may be presented only if all conditions which make it obligatory are actually fulfilled.

23 To bring the sacrifice.

24 An official ruling by the Court.

25 They forgot either a precedent or their own ruling.

26 Lev. 4:13. An erring High Priest (Lev. 4:1-12) or ruler (22-26) have to offer a sacrifice if they err inadvertently; the

condition that a ruling must have been forgotten is introduced only for the Court.

27 There is no problem with the explanation just given. One tries to connect the statement with a discussion about similar rules regarding sacrifices due for violations of either Temple purity or oaths (Lev. 5:1-13), where the same condition is mentioned in Lev. 5:2,3,4. R. Ismael and R. Aqiba differ in *Sevuot* 1:2 about the interpretation of the verses, but not about the actual rules.

28 Lev. 5:4: . . . *an oath which a man would utter without thinking, it became hidden from him, and he knew and realized his guilt* . . .

29 One when he uttered the oath and one when he remembered it, separated by a period of oblivion.

30 R. Aqiba and R. Ismael actually are not differing in their interpretations; only R. Aqiba argues about violations of

Temple purity (*Lev. 5:2-3*) where in both verses oblivion is mentioned but not remembering. However, in Babylonian sources [*Ševuot* 14b, *Keritut* 19a, *Sifra Wayyiqra* 2, *Pereq* 12(7)], R. Ismael is

reported to read one about oblivion the impurity and the second oblivion about being in the Temple.

31 Returning to our topic, Note 22.

45d line 19) אין חייבין עד שיעורו לביטל מקצת ולקיים מקצת. שמואל אומר. והן שהורו מותר. אבל אם הורו פטור לא בדא. אין חייבין עד שתהא הורגה מלשפת הגזית. אומר רבי יוחנן. טעמיה דהך תניינא מן המקום ההוא אשר יבחר יי. אומר רבי מנא בר תנחום. נכנסו מאה. עד שיעורו כולן. תמן אומר רבי זעירא. והוא שיהא כולן מורין מצד אחד. וכא מה. 1 שהורו | שהן 2 שתהא הורגה | שתבוא הוריה 3 דהך תניינא | דהרן תניינא מנא | מונא 4 שיהא | שהיו וכא מה | והכא אומר כן

They are not liable unless they void part and confirm part<sup>32</sup>. Samuel said, only if they ruled that it was permitted; but not if they ruled that it was not prosecutable<sup>33</sup>. They are not liable unless instruction was given from the ashlar hall<sup>34</sup>. Rabbi Johanan said, the reason of this Tanna: *From that place which the Eternal will choose*<sup>35</sup>. Rabbi Mana bar Tanhum said, if a hundred came together, only if they ruled unanimously<sup>36</sup>. There<sup>37</sup>, Rabbi Ze'ira said, only if they all rule for the same reason. And here, what<sup>38</sup>?

32 If they declared a biblical prohibition as void, nobody would follow them since even schoolchildren would know that this is wrong. But if they were to abolish traditional restrictions, they would be followed. This is explicit in Mishnah 3; cf. Babli 4a, Tosephta 1:7, *Sifra Wayyiqra* 2, *Parašah* 4(7).

33 This is a commentary on the preceding sentence. Abolishing a biblical commandment entirely means declaring the prohibition as void; declaring it valid but unenforceable means partly confirming it.

34 The seat of the High Court; *Sanhedrin* Chapter 1, Note 345.

35 *Deut.* 17:10.

36 The ruling triggers the obligation of a

purification sacrifice only if it was unanimous, including the opinions of the law students sitting before the 72 members of the Court. Mishnah 4 requires in addition that the president of the court be present and voting [*Babli* 4b, *Sifra Wayyiqra* 2, *Parašah* 4(4).]

37 *Sanhedrin* 1:2, Note 166. He holds that a ruling of the High Court to intercalate a month based on the testimony of laymen is valid only if it not only is unanimous in fact but also in reason. Concurrent opinions, reaching the same conclusion for different reasons, invalidate the judgment. Why is this not mentioned here? The text confirms the reading of the ms. in *Roš Haššanah* (2:6 58b l.25) against the one in *Sanhedrin*.

38 B has the usual formula, “and here he says so?”

(45d line 19) הַלֵּךְ הַיָּחִיד וְעָשָׂה שׁוּגֵג עַל פִּיָּהּ. וְכִי יֵשׁ זָדוֹן שְׁגָגָה לְיָחִיד אֶצֶל הוֹרִיט בֵּית דִּין. רַבִּי אִמִּי בָּשָׂם רַבִּי שְׁמַעוֹן בֶּן לָקִישׁ. מִתְּנִיתָא כְּגוֹן שְׁמַעוֹן בֶּן עֲזַאי יוֹשֵׁב לְפָנֶיהָ. מָה אָנוּ קוֹיָמִין. אִם בְּיָדָע כָּל־הַתּוֹרָה וְאִינוּ יוֹדְעִים אוֹתוֹ דְּבַר אֵין זֶה שְׁמַעוֹן בֶּן עֲזַאי. וְאִם בְּיָדָע אוֹתוֹ דְּבַר וְאִינוּ יוֹדְעִים כָּל־הַתּוֹרָה שְׁמַעוֹן בֶּן עֲזַאי הוּא אֶצֶל אוֹתוֹ דְּבַר. אֶלָּא כִּי נֵן קוֹיָמִין בְּיָדָע כָּל־הַתּוֹרָה וְבִידָע אוֹתוֹ דְּבַר. אֶלָּא שְׁהוּא כְּטוּעָה לומֵר. הַתּוֹרָה אֶמְרָה אַחֲרֵיהֶם אַחֲרֵיהֶם. וְאִם בְּטוּעָה לומר הַתּוֹרָה אֶמְרָה אַחֲרֵיהֶם אַחֲרֵיהֶם. אֵין זֶה שְׁמַעוֹן בֶּן עֲזַאי. כִּהְדָּא דִּתְנִי. יָכוֹל אִם יֵאמְרוּ לָךְ עַל יָמִין שְׁהִיא שְׂמָאל וְעַל שְׂמָאל שְׁהִיא יָמִין תִּשְׁמַע לָהֶם. תִּלְמִיד לומר לְלֶכֶת יָמִין וְשְׂמָאל. שְׁיֵאמְרוּ לָךְ עַל יָמִין שְׁהוּא יָמִין וְעַל שְׂמָאל שְׁהִיא שְׂמָאל. מָאי כְּדוֹן. רַבִּי יוֹסִי בָּשָׂם רַבִּי הִילָא. לָפִי שְׁבָכְל־מְקוֹם שׁוּגֵג פְּטוֹר וּמִזִּיד חַיִּיב. וְכָא אֶפְּלִיז מִזִּיד פְּטוֹר. מִפְּנֵי שְׁתַּלָּה בְּבֵית דִּין.

1 הורית | הורית 2 אימי | אמי מתני | מתניא 3 התורה | התורה כולה 4 אלא | ואלא 5 ובידע | וידע כטועה | טועה 6-5 אחריהם | אחריהן (X 4) 7 תשמע | שתשמע 8 שיאמרו | עד שיאמרו שהוא | שהיא 9 הילא | לא

“And a single person went and acted inadvertently<sup>3</sup> following their pronouncement.” Is there an intentional inadvertent action concerning an instruction by the Court<sup>39</sup>? Rabbi Immi in the name of Rabbi Simeon ben Laqish: Our Mishnah, for example, if Simeon ben Azzai<sup>40</sup> was sitting before them. Where do we hold? If he knows the entire Torah but does not know this detail, he is not Simeon ben Azzai. If he knows this particular subject but not the entire Torah, he is Simeon ben Azzai for this particular subject. But we must hold that he knows the entire Torah and knows the particular subject, but he errs to believe that the Torah said, after them, after them<sup>41</sup>. If he errs to believe that the Torah said, after them, after them, he is not Simeon ben Azzai. As we have stated, I could think that if they tell you about right that it is left, and about left that it is right, you should listen to them? The verse says, “to go to the right or to the left;<sup>42</sup>” that they should tell you about the right that it is right, and about the left that it is left<sup>43</sup>. What about it<sup>44</sup>? Rabbi Yose in the name of Rabbi Hila: Because everywhere for an inadvertent sin one is not liable but for an intentional one is liable, and here even intentionally he is not liable<sup>45</sup>.

39 The formulation of the Mishnah does not make any sense. The person who

follows the instructions of the Court does

this intentionally; how can he be inadvertent?

40 The paradigm of the know-all; he was ready to answer any question about religious law on the spot. The Babli knows of a number of famous rabbis who tried to imitate him but quickly were confronted with a question they could not answer. He never was ordained; therefore he could not have been part of the Court, but as an outsider he could have pointed out the Court's error.

41 This is the expression which R. Jehudah ben Bathyra used to convince Hanania ben Hanania, the foremost authority in Babylonia, to accept the overriding authority of the patriarch's court in Palestine (*Nazir* 6:13, Note 128; *Sanhedrin* 1:2, p. 36).

42 A misquote of *Deut.* 17:11.

43 This is the opposite of the teachings of *Sifry Deut.* 154, *Cant. rabba* 1(18), which require one to follow the instructions of the rabbis even if they tell him to believe that left is right. Sound methodology would require one to follow the Talmud in preference to Midrashim. The *Sifry* text seems to be formulated as a polemic against the Yerushalmi.

44 Since the first explanation of the Mishnah was found to be untenable, what would be a reasonable explanation?

45 Any action following the wrong teachings of the High Court has the status of unintended action even if it was intended. "Liable" and "not liable" here refer to criminal responsibility, not to obligations to offer sacrifices.

45d line 31) חֲבֵרִיָּא בְּשֵׁם שְׁמוּאֵל. יָחִיד מְשָׁלִים לְרֹב הַצִּיּוֹר הִיא מִתְּנִיתָא. אֲבָל כָּל-יָחִיד  
וְיָחִיד שֶׁעָשָׂה בְּכַנִּי עֲצָמוּ פָטוֹר. אָמַר רַבִּי יוֹחָנָן אֶפִּילוּ כָל-יָחִיד וְיָחִיד שֶׁעָשָׂה בְּכַנִּי עֲצָמוּ מְבִיא  
כְּשֶׁבָה וְשֶׁעִירָה. וְקָשָׁא עַל דַּעְתֵּיהּ דְּשְׁמוּאֵל לֹא נִמְצָא כָל-יָחִיד וְיָחִיד מִתְּכַפֵּר לוֹ בְּשֶׁנִּי חֲטָאוֹת.  
רַבִּי זְעִירָא בְּשֵׁם שְׁמוּאֵל. הַיָּחִיד תָּלוּי. אֲכָלוּ רֹב. בֵּית דִּין מְבִיאֵין. אֲכָלוּ מִיעוּט. הַיָּחִיד מְבִיא.  
כָּל-הַהוֹרִיָּה שֶׁבֵּית דִּין פָּר אֵין הַיָּחִיד מְבִיא כְּשֶׁבָה וְשֶׁעִירָה.

1 חֲבֵרִיָּא | חֲבֵרִיא | יָחִיד | יָחִיד 2 וְיָחִיד - | 3 בְּשֶׁנִּי | בְּשֶׁנִּי 5 הַהוֹרִיָּה | הוֹרִיָּה פֶר | מְבִיאֵין פֶר  
וְשֶׁעִירָה | וְכָל הוֹרִיָּה שֶׁבֵּית דִּין מְבִיאֵין פֶר הַיָּחִיד מְבִיא כְּשֶׁבָה אוֹ שֶׁעִירָה שְׁמוּאֵל פֶתֶר מִתְּנִיתָא בְרוּב וּמִיעוּט  
אֲכָלוּ רֹב הוֹאִיל וְאֵין בֵּית דִּין מְבִיאֵין פֶר הַיָּחִיד מְבִיא כְּשֶׁבָה אוֹ שֶׁעִירָה

The colleagues in the name of Samuel. The Mishnah deals with an individual who complements the multitude<sup>46</sup>. But any individual who acted on his own is not liable<sup>47</sup>. Rabbi Johanan said, even any single individual who acted on his own brings a female sheep or goat<sup>48</sup>. It is difficult. In Samuel's opinion, would any single individual be atoned by two sacrifices<sup>49</sup>? Rabbi Ze'ira in the name of Samuel: The individual is suspended<sup>50</sup>. If a majority ate, the court brings. If a minority ate, each individual brings. For any ruling for which the court [bring] a bull, the individual does not bring a female sheep or goat<sup>51</sup>.

<sup>52</sup>For any ruling for which the court bring a bull, the individual does not bring a female sheep; for any ruling for which the court does not bring a bull, the individual brings a female sheep or goat. Samuel explains the Mishnah by majority and minority. If a majority ate<sup>53</sup>, since the court does not bring a bull, an individual brings a female sheep or goat.

46 As explained at the end of the paragraph (Babli 2b in the name of R. Jehudah). His problem with the prior explanation is that it does not fit the setting of the Mishnah. Since we are referring to sacrifices, the inadvertent sinner, while he is immune to prosecution, is obligated to bring a purification sacrifice; the intentional sinner, who can be punished, is barred from bringing a sacrifice. Therefore, if one compares the intentional to the unintentional sinner, the opposite of the argument of R. Hila should be formulated. (In contrast to the Babli, the Yerushalmi does not care for chronological consistency; Samuel of the first generation opposes R. Hila of the third.)

47 Tosephta 1:2. If somebody acted in parallel with the ruling of the court but following his own interpretation of the biblical law, he is not liable for a purification sacrifice since in fact he is barred from offering one, and since he happened to act in parallel with the Court's ruling neither is he prosecutable. Both interpretations of פטור are possible here. There is no reason to change the

text which is confirmed by the two Yerushalmi texts and the Tosephta.

48 Since acting on a faulty interpretation is qualified as acting in error, which for an individual requires the offering of a female sheep or goat (Note 51).

49 Since, as is explained next, Samuel makes the Court's offering dependent on whether a majority of the people acted on their instructions or not, it could be that after a number of individuals brought their own sacrifices it turns out that in the end a majority forces the Court to bring its own. But there cannot be more than one sacrifice for one infraction. Since the purification offering is eaten by the priests, it cannot be retroactively nullified. 50 The problem raised in the previous Note cannot occur. The individuals are prevented from bringing their own sacrifices until the situation is cleared.

51 Lev. 27:35.

52 Translation of the text of B, expanding the last sentence of the Leiden ms.

53 Referring to the standard example, that the Court allowed some forbidden fat (Note 14) to be eaten.

(45d line 42) רַבִּי יוֹחָנָן פָּתַר מִתְּנִיתָא בְּהוֹרִיית בֵּית דִּין. הוֹרִי בֵּית דִּין לְעֹקֹר אֶת כָּל-הַגּוֹי. הוֹאִיל וּבֵית דִּין מְבִיאִין פֶּר אֶין הַחֲדִיד מְבִיא כְּשֶׁבָה וּשְׁעִירָה. הוֹרִי לְבָטֹל מִקְצֵת וּלְקַיֵּים מִקְצֵת. הוֹאִיל וְאֵין בֵּית דִּין מְבִיאִין פֶּר הַחֲדִיד מְבִיא כְּשֶׁבָה וּשְׁעִירָה.

שמואל אָמַר מִתְּנִיתָא. אַדִּין אָנִי אֹמֵר. מִיעוּט הִקְהֵל שְׁעָשׂו חִיבִין שְׂאִין בֵּית דִּין מְבִיאִין עֲלֵיהֶן פֶּר. תִּלְמוּד לֹמַר עִם הָאָרֶץ. אֶפִּילוּ כֹּלֹ. אֶפִּילוּ רֹבּוּ. רַבִּי יוֹחָנָן פֶּתַר מִתְּנִיתָא. אַדִּין אָנִי אֹמֵר. מִיעוּט הִקְהֵל שְׁעָשׂו בְּלֹא הוֹרִיָּה חִיבִין. שְׂכָן בְּהוֹרִיָּה אִין בֵּית דִּין מְבִיאִין פֶּר. שְׂמוּאֵל אָמַר. אֲבָל הֵן מְבִיאִין כְּשֶׁבָה וְשַׁעֲרָה. רַבִּי יוֹחָנָן אָמַר. לֹא הֵן מְבִיאִין כְּשֶׁבָה וְשַׁעֲרָה. עַל דְּעִתִּיה דְּשְׂמוּאֵל דּוּ יִלְף לָהּ חִיב מַחֲיֵב נִחָא. עַל דְּעִתִּיה דְּרַבִּי יוֹחָנָן דּוּ יִלְף לָהּ חִיב מִפְּטוֹר. מִתְּנִיתָא אֲמַרָה פְּלִגָא עַל שְׂמוּאֵל. אִין הוֹדַע אֱלִין חֲטָאתוֹ אֲשֶׁר חָטָא וְהִבִּיא. נִצָּא הַמְּשׁוּמֵר. מִתְּנִיתָא פְּלִגָא עַל שְׂמוּאֵל. נָפֶשׁ כִּי־תִחַטָּא. אַחַת תִּחַטָּא. בְּעִשׂוּתָהּ. הִרִי אֵילֹו מִיעוּטִין. הַתּוֹלָה בְּעִצְמוֹ חִיב. הַתּוֹלָה בְּבֵית דִּין פְּטוֹר: הֵדָא פְּלִגָא עַל שְׂמוּאֵל וְלִית לָהּ קִיּוּם.

1 בהורית | בשעירה | 2 ושעירה | או שעירה | 3 ושעירה | או שעירה | 4 אמ' | פתר | אדין | אדין מיעוט  
| משם מיעוט | 5 עליהן פר | פר עליהן כולו | מקצתו אפי' | ואפילו אדין | אדין | 6 הוריה | הוריה  
בית דין | - | 7 הן | היו ושעירה | - | 8 חייב מחייב | חייב מחייב | על | אלא על | 9 אמרה | - | 10  
משומר | משומד | כי -

Rebbi Johanan explains the Mishnah by instruction from the Court. If the Court ruled to eliminate the entire body, since the Court has to bring a bull a private person does not have to bring a female sheep or goat. If they ruled to confirm part and to eliminate part, since the Court does not bring a bull a private person has to bring a female sheep or goat<sup>54</sup>.

Samuel spoke about the Mishnah: "I still am saying, if a minority acted they are liable because the Court will not bring a bull for them. The verse says<sup>55</sup>, [from] the people of the Land. Even [all of them] (part of them)<sup>56</sup>, even most of them." Rebbi Johanan explains the Mishnah: I still am saying, if a minority acted without ruling they are liable because with instruction the Court will not bring a bull<sup>57</sup>. Samuel said, but they bring a female sheep or goat. Rebbi Johanan said, they do not bring a female sheep or goat<sup>58</sup>. According to Samuel, who infers liability from liability, it is understandable. According to Rebbi Johanan, who infers liability from exemption<sup>59</sup>? The statement of a *baraita*<sup>60</sup> disagrees with Samuel. *Or his transgression in which he sinned was made known to him*<sup>18</sup>; this excludes the apostate. A *baraita* disagrees with Samuel, "A person who would transgress; one would transgress; acting he would transgress; these are restrictions<sup>8</sup>: the person depending on himself is liable, but one dependent on the Court is not liable." This disagrees with Samuel and cannot be confirmed<sup>61</sup>.

54 Even though the text is confirmed by B, it cannot be accepted since Mishnah 3 explicitly states the opposite (Note 32), and R. Johanan does not disagree with an anonymous Mishnah. Therefore, one has to switch the place of the statements “bring” and “do not bring”. He disagrees with Samuel in that he does not require that a majority of the people act upon the instructions of the Court. If a single person consciously commits a sin by acting upon their instruction, the individual is barred from bringing a sheep and the Court is required to bring a bull.

55 *Lev.* 4:27.

56 The text is a *baraita* in *Sifra Wayyiqra* 2, *Parašah* 7(5), quoted in the Babli, 2b. Usually, a prefix מ “from” is interpreted to mean “not all”. This is behind the reading of B. The reading of the ms., in brackets, is that of *Sifra* and the Babli; it means that without instruction from the Court, any number of the people, maybe all except the members of the Court, may be required to bring private purification offerings simultaneously. This would not be a case that *all of the congregation of Israel err* (*Lev.* 4:13); this expression is reserved for pronouncements of the Court.

57 A person acting on the instructions of the Court can never bring a purification offering since his action is not inadvertent. If the conditions for such an

offering by the Court are not satisfied, no sacrifice at all is due or possible for the action.

58 This is a repetition of their prior positions. For Samuel, a private offering is due if and only if there is no Court offering. For R. Johanan, no offering is possible for action on the instruction of the Court, independent of what the Court has or does not have to do.

59 Samuel is understandable; either the rules of the Court sacrifice or those of the private one do apply; never both together nor none of them. But might R. Johanan, who accepts a situation where both the individual and the Court are exempted from bringing an offering, have a situation where both apply simultaneously? The question is not answered.

60 *Sifra Sifra Wayyiqra* 2, *Parašah* 7(7), quoted in the Babli, 2a. The apostate wants to forget; even if he really forgot it was desired by him; he never qualifies for a purification offering, even if his transgression happens to be in a situation for which the Court would have to bring an offering if its conditions were fulfilled.

61 If the Court permitted certain intrinsically forbidden things and an individual acted on his own but did what they had allowed, then both the Court and the individual have to bring sacrifices for the same kind of action.



(fol. 45c) **משנה ב:** הורו בית דין וידעו שטעו וחזרו בהן בין שהביאו כפרתן ובין שלא הביאו כפרתן והלך ועשה על פיהן רבי שמעון פוטר ורבי לעזר אומר ספק. איזהו ספק ישוב לו בתוך ביתו חייב. הלך לו למדינת הים פטור. אמר רבי עקיבא מודה אני בזה שהוא קרוב לפטור מן החובה. אמר לו בן עזאי מה שנה זה מן היושב בביתו שהיושב בביתו איפשר הנה לו שישמע וזה לא הנה איפשר לו שישמע:

**Mishnah 2:** If the Court gave an instruction; then they realized that they erred and reversed themselves<sup>62</sup>; whether they brought their atonement or they did not bring their atonement<sup>63</sup>, another person went and acted on their instructions<sup>64</sup>, Rabbi Simeon declares him not liable, but Rabbi Eliezer<sup>65</sup> says, it is in doubt. What is the doubt? If he remained at home, he is liable; if he went overseas he is not liable. Rabbi Aqiba said, I agree in this case that he is closer to not being liable than being liable. Ben Azzai asked him, what is the difference between him and the one staying at home? For one who stays at home might be informed<sup>66</sup> but the other one could not be informed.

62 Publicly.

63 The sacrifice prescribed in *Lev.* 4:13-21.

64 He followed the original instructions after the Court had reversed itself. R. Simeon holds that the responsibility remains the Court's as long as not all of Israel were duly informed of the new ruling.

65 One should read with the Babli and many independent Mishnah mss. "R. Eleazar" (ben Shamua'), since the third

generation R. Simeon cannot be quoted preceding the first generation R. Eliezer.

66 It would be his duty to stay informed. The one who is far away is still depending on the earlier ruling of the Court; he is not liable for a sacrifice according to everybody. The difference between R. Aqiba and ben Azzai is that the latter requires a sacrifice from anyone who could have known of the reversal whereas the former requires it only from one who should have known.

(45c line 51) **הלכה ב:** הורו בית דין וידעו שטעו כול'. רבי אימי בשם רבי שמעון בן לקיש. מתניתא גגון שמעון בן עזאי יושב לפניו. מה נן קיימין. אם בשסילקו תבטלו הוריות. אם בשסילקו אותו תבטל הוריות. אלא כי נן קיימין בשעה עומד בתשובתו וזה עומד בתשובתו. הוריותו אצלו אינה הוראה. שלא סילקו אותו. אצל אחרים הוריה. שלא סילקו. לית הך פליגא על רבי מנא בר תנחום. דרבי מנא בר תנחום אמר. נכנסו מאה. עד שיעורו כולן. פתר לה בשלא נכנס. אם בשלא נכנס. מעבב. פתר לה קרבי. דרבי אמר. אין לך מעבב אלא מופלא שלבית דין (בלוד). והא רבי מנא בר תנחום אמר. נכנסו מאה. עד שיעורו כולן. אף בחזרה נן או רוב. כת פשיטא לך רוב. מה רוב. רוב ההוריה רוב המשתתף. היך עבדא.

72 Read יִּדּ “if it is” for יָד “group” in the text. The reading of B, צִיִּיתִי “they obey” might be acceptable; since

everywhere a majority opinion of religious authorities is to be followed, it is obvious that a retraction by a majority has to be followed. The original instruction

also would have had to be followed if rendered by a majority of the Court; it is only the obligation of a sacrifice which is triggered by a unanimous vote.

(45d line 64) הפריש חטאתו. נתחרש או נשטה או נשתמד או שהזרו בית דין מותר לאכול חלב. רבי יוחנן אמר. נדחית חטאתו. רבי שמעון בן לקיש אמר. לא נדחית חטאתו. רבי יוסי בירבי בון אמר. רבי אחא מחלף שמועתא דלא אתי מילתיה דרבי יוחנן פליגא על מילתיה. דמר רבי שמעון בר בא בשם רבי יוחנן. כוס זורקין עליו מדם חטאתו ומדם אשמו. רבנן דקיסרין אמרין. רבי חייה אמי מחלף. וחד אמר באן תנייה.

1 נשטה | נשתטה 2 נדחית | נדחת (2) יוסי | יוסה 3 ביר' | בר' אתי | תהא מילתיה | מילתא 4 דמר | דאמר כוס | הגוסס 5 אמי | ור' אמי חד כאן | כהן

<sup>73</sup>If somebody had selected his purification sacrifice when he became a deaf-mute, or insane, or an apostate, or the Court rules that fat may be eaten, Rabbi Johanan said, his sacrifice of purification is pushed aside<sup>74</sup>, Rabbi Simeon ben Laqish said, his sacrifice of purification is not pushed aside. Rabbi Yose ben Rabbi Abun said, Rabbi Aha switches traditions, to avoid that a word of Rabbi Johanan contradict his own word. For Rabbi Simeon bar Abba said in the name of Rabbi Johanan: One sprinkles the blood of a purification sacrifice or a reparation sacrifice for a person [terminally ill]<sup>75</sup>. The Rabbi of Caesarea said, Rabbi Hiyya and [Rebbi] Immi, [one] switches and one says like [this] Tanna.

<sup>73</sup> This paragraph also is in *Gittin* 7:1, explained there in Notes 10-21. In the translation, the words in brackets follow the text of B. The ms. text here has quite a number of scribal errors. A parallel is in

the Babli, *Zebahim* 12b.

<sup>74</sup> This version is confirmed in the Babli, 11a.

<sup>75</sup> In the ms: "a cup".

(45d line 70) מאן דמחלף לית ליה באילין קישואייה. כמאן דמר. לא נדחית חטאתו. מי מקבלה הימנינו. ימתין עד שיעזרו בהן בית דין. אלא כשהיה כהן עבד והקריב וכיפר. היה שמעון בן עזאי. מי מקבלה הימנינו. ימתין עד שיעזרו בהן בית דין. כמאן דמר. לא נדחית חטאתו.

1 מאן | מן קישואייה | קשואייה כמאן | כמן 2 הימנינו | ממנו וכיפר | וכפר 3 כמאן | כמן

He who switches has none of these difficulties<sup>76</sup>. For him who says, his sacrifice of purification is not pushed aside<sup>77</sup>, who would accept it from him?

He has to wait until the Court retracts, or if he was a Cohen who served, sacrificed, and atoned<sup>78</sup>. If he was Simeon ben Azzai<sup>79</sup>, who would accept it from him? He has to wait until the Court retracts, for him who says, his sacrifice of purification is not pushed aside.

76 The one difficulty pointed out in the previous paragraph that R. Johanan accepts the sacrifice on behalf of a dying person even though the sacrifice of a dead person is impossible. The second difficulty is that R. Johanan permits the writing and delivery of a divorce document to a wife whose husband became insane after he had ordered the document to be written.

77 If the sacrifice becomes invalid, there is no problem. But since a purification sacrifice cannot be offered voluntarily, even according to him who said that the sacrifice remains valid, are the officiating priests not required to refuse the sacrifice

after the Court ruled that the action for which it is offered was not forbidden?

78 A layman can do nothing but wait whether the Court change its mind. But a Cohen can bring his own sacrifice and eat its meat for atonement if at the moment of the action it would have been sinful for anybody. Since he does not have to explain his reasons to a priest, he is not dependent on the Court.

79 A layman who knows that the Court erred is not freed from an obligation to bring a sacrifice by the Court's ruling; nevertheless he cannot find a priest who would accept it before the Court changes its mind.

(45d line 74) תולדות הוריה כהוריה. הוריה בהוריה מה הן שיעטרפו. היד עבדא. אכלו ציבור חלבים והפרישו קרבנותיהן. אין תימר. תולדות הוריה כהוריה. בית דין חייבין. אין תימר. אין תולדות הוריה כהוריה. בית דין פטורין. כתי פשיטא לך. תולדות הוריה כהוריה. הוריה בהוריה מה הן שיעטרפו. היד עבדא. הורו בית דין. חלב כוליא שולמין מותר ושלשמאל ולו מכסה אסור. חזרו והחליפו. אכלו רוב בראשונה ורוב בשנייה. אין תימר. מצטרפין. חייבין אחת. ואין תימר. אין מצטרפין. חייבין שתיים. שתי הוריות בעבודה אחת מה הן שיעטרפו. היד עבדא. אכלו רוב ושטו רוב. על דעתיה דרבי מאיר חייבין אחת. על דעתיה דרבי שמעון חייבין שתיים. אכלו מיעוט בראשונה ומיעוט בשנייה. על דעתיה דרבי מאיר חייבין. ועל דעתיה דרבי שמעון פטורין.

1 הוריה | הוריה (all occasions) מה הן | מהו (all occasions) 2 קרבנותיהן | קרבנותיהם אין | אי (all occasions) 3 פטורין | פטורין כתי | כני 4 חלב - | 5 ולו | ושל | וכל | וכל 7 בעבודה | בעבירה

Are consequences of a ruling like the ruling? Do ruling within ruling combine<sup>80</sup>? How is that? If the public ate forbidden fat and designated their sacrifices. If you say that consequences of a ruling are like the ruling, the

Court is liable<sup>81</sup>. If you say that consequences of a ruling are not like the ruling, the Court is not liable. The following should be obvious to you: the consequences of a ruling are like the ruling<sup>82</sup>. Do ruling within ruling combine with each other? How is that? If the Court ruled that the fat in the right side kidney was permitted but that of the left side and its cover<sup>83</sup> was forbidden; then they reversed themselves and said the opposite. Most ate the first time, and most the second time. If you say that they combine, they are liable for one. But if you say that they do not combine, they are liable for two<sup>84</sup>. Do two instructions about one kind of work<sup>85</sup> combine? How is that? If a majority ate and a majority slaughtered<sup>86</sup>. In Rabbi Meir's opinion they are once liable; in Rabbi Simeon's opinion they are twice liable<sup>87</sup>. If a minority ate the first time and a minority the second time. In Rabbi Meir's opinion they are liable; in Rabbi Simeon's opinion they are not liable<sup>88</sup>.

80 The meaning of these expressions will be explained by examples in the text.

81 Most of the people ate forbidden fat (which makes the sinner subject to extirpation and therefore requires a sacrifice if inadvertent, Mishnah 3:7) without a ruling of the Court, and they already had dedicated their sacrifices when the Court ruled that eating fat is permitted. When it rescinded its ruling, it turned out that in the meantime nobody had acted on their instruction. According to the opinion that the ruling of the Court pushed aside the dedicated sacrifices, the Court certainly has to bring their own sacrifice since they invalidated the private sacrifices. But if one holds that the private sacrifices were re-installed upon rescission, then if the rule is that consequences of instructions are like instructions, the Court still is liable for a sacrifice for preventing the purification offerings to be brought in the meantime,

even though this was not included or intended in the original ruling. Otherwise, the private offerings will now be brought and the Court's ruling is eliminated without further consequences.

82 This should not be so obvious since it implies that a purification sacrifice which for outside reasons could not be offered is reinstated when the outside reason disappears.

83 The fat in lumps outside the kidney which is forbidden together with the fat embedded in the kidney lobes.

84 If the Court followed one wrong decision with another wrong one on the same subject, it is an unresolved question whether they have to offer one or two sacrifices when they finally see their errors.

85 In B: "Two instructions about one kind of *sin*." While the text as it stands is difficult, the text of B is impossible since, as explained in *Makkot* 3:11, while

committing one sin one may commit any number of others at the same time.

The following example makes it clear that instead of “two instructions about one kind of work” one has to read “one instruction about two kinds of work.”

86 It seems that one contemplates the case that the Court decided that one does not have to keep the Day of Atonement. This one instruction implicitly allows both work (slaughter) and eating on that day; both are sins punishable by extirpation.

87 The difference between R. Meïr, the presumed author of the anonymous statement in Mishnah 3:3, and R. Simeon

is that R. Meïr holds that the sin determines the sacrifice whereas R. Simeon holds that the status of the sinner at the moment he becomes aware of his sin is determining. Since the Court issued one statement, they have to bring one sacrifice. Since the people became aware of two kinds of sins, two sacrifices are due. This shows that R. Simeon does not hold that the consequences of an instruction have the status of the instruction.

88 If the two majorities together form a majority, the conditions for the Court to be liable are satisfied; for R. Simeon the two minorities cannot be combined.

(46a line 10) אָמַר רַבִּי זְעִירָא וְשָׁהוּת בִּינְיָהוּן. רַבִּי מֵאִיר אָמַר. נוֹתְנִין לוֹ שָׁהוּת עַד שְׁיִשְׁמַע. רַבִּי שִׁמְעוֹן אוֹמֵר. עַד שְׁיִשְׁפַּע. וְתֵינִי כֵן. הוֹרִי בֵּית דִּין בְּשׁוּק הָעֶלְיוֹן וְיָחִיד בְּשׁוּק הַתַּחְתּוֹן. בֵּית דִּין בְּבֵית וְיָחִיד בְּעֶלְיָהּ. פְּטוֹר עַד שְׁיִשְׁמַע מִכֹּחַ.

1 ביניהון | ביניהן מאיר | - אמ' | אומר 2 שישפע | שישמע ממש

Rebbi Ze'ira said, the time span is between them<sup>89</sup>. Rebbi Meïr said, one gives him time until he may hear. Rebbi Simeon said, until he must have heard, and we have stated so: If the Court instructed in the upper market and a single person was in the lower market, or the Court on the ground floor and a single person on the upper floor, he is not liable until he actually heard.

89 This refers back to the Mishnah, about a person who acted on the Court's instruction after the Court reversed itself. It is stated in *Sifra Wayyiqra* 2, *Paršetaḥ* 7(3) that R. Simeon does not hold him liable (for a sacrifice) but R. Meïr does. It is explained that neither does R. Simeon free him forever nor R. Meïr hold him

liable immediately, but R. Meïr holds him liable if he could have heard, and R. Simeon only if he had ample time to be informed. The reading of the ms., עד שְׁיִשְׁפַּע, i. e., “until he had ample (time to be informed)” is preferable over that of B, “until he actually was informed.”

(46a line 13) עַל דַּעְתִּיהָ דְּרַבִּי עֲקִיבָה אֲדִינָן הוּא סָפֵק. אָמַר רַבִּי בּוֹן בֶּר רִחִיָּה. בְּעוֹמֵד בֵּין שְׁנֵי תַּחֲנוּמִין. בֵּין שְׁנֵי תַּחֲנוּמֵי אֶרֶץ יִשְׂרָאֵל לְתַחֲנוּמֵי אֶרֶץ יִשְׂרָאֵל.

רבי אמי בשם רבי שמעון בן לקיש. להורייה הילכו אחר ושיבת ארץ ישראל. לטומאה הילכו אחר רוב נכנסין לעזרה. מה. כל-פית וכת משערין אלא כת הראשונה בלבד. אמר רבי יוסי בירבי בון. עד שהן מבחוץ הן משערין עצמן. רבי יהושע בן לוי. ליראייה הילכו מלבוא חמת עד נחל מצרים. רבי תנחומא בשם רבי חנא. טעמא דרבי יהושע בן לוי ויגעש שלמה בעת ההיא | את-ה' וכל-ישראל עמו וגו'.

1 עקיבה | עקיבא | אדין | אדין | חייא | חייא שני | - 2 ארץ ישראל (2<sup>nd</sup>) | חוצה לארץ | 3 - | אמר להורייה | להורייה | הילכו | הלכו | 4 לעזרה | בעזרה | אלא | או אין משערין אלא | 5 יוסי ביר' | יוסה בר הן | היו לוי | לוי אמר | לראייה | לראייה | הילכו | הלכו | מלבוא | מלבא | 6 וכל ישראל עמו וגו' | בחדש

In Rabbi Aqiba's opinion it remains a doubt<sup>90</sup>. Rabbi Abun bar Hiyya said, if he stands between two domains, between two domains of the Land of Israel and domains of the Land of Israel<sup>91</sup>.

<sup>92</sup>Rebbi Immi in the name of Rabbi Simeon ben Laqish. For instructions they considered the settlement of the Land of Israel<sup>93</sup>. For impurity they considered the majority of those coming to the Temple precinct<sup>94</sup>. How? Do they estimate every group or only the first group? Rabbi Yose ben Rabbi Abun said, when they are still outside they estimate themselves<sup>95</sup>. Rabbi Joshua ben Levi: For appearance<sup>96</sup> they consider from Levo-Hamat to the brook of Egypt. Rabbi Tanhuma in the name of Rabbi Huna: The reason of Rabbi Joshua ben Levi is, *at that time Solomon celebrated the holiday, and all of Israel*, <sup>97</sup>etc.

90 This refers to R. Aqiba's statement in the Mishnah. Even though the position of one who could have known but did not inform himself looks as if he should not be liable, a doubt remains and in fact he has to bring a suspended reparation offering (cf. Note 19).

91 The reading in B is: Between domains of the Land of Israel and domains outside the Land. In this version, "overseas" mentioned in the Mishnah is interpreted to mean, "outside the Land." The text of the ms. is to be read to mean that a person living outside of urban centers in the Land of Israel has the same status as a city dweller on an

overseas trip, since he is far from sources of information.

92 This paragraph is also in *Pesahim* 7:6 (34c line 66), following the wording of B.

93 The definition of "majority" which would trigger the liability of the Court for a sacrifice for issuing false instruction counts only the Jewish population of the Land of Israel. Since the verse from *1 Kings* is not quoted here (in contrast to the Babli, 3a), the definition of the Land of Israel is that given in *Sevi'it* 6:1, Notes 31-51.

94 *Babli Pesahim* 94b. A private sacrifice may be presented in the Temple only by a person ritually pure. But the

Passover lamb has the status of a public sacrifice; if most of the public are impure (of a kind which cannot be remedied by simple immersion in water), the sacrifice is slaughtered and eaten in impurity (cf. *Nazir* 9:2 Note 66.)

95 Since the Temple courtyard was rather small, the Passover lambs were slaughtered in three groups. Making the count depending on the composition of the groups would lead to the paradoxical situation that a first group might be permitted to slaughter and eat the lamb in impurity while from a second group only

the pure members are admitted and have to follow the rules of purity. Also, it is impossible to make the decision depending on “those in the Temple court” since only pure persons could enter the Temple precinct in the absence of a *prior* finding that most of Israel were impure.

96 The assembly of all of Israel in a Sabbatical year (*Deut.* 31:10-13) could proceed in impurity if most of Israel in the domain of Solomon’s empire were impure.

97 *IK*. 8:65 (misquoted in B.)

**משנה ג:** הורי בית דין לעקור את כל הגוף אֶמְרוּ אִין נִידָה בַּתּוֹרָה אִין שֶׁבֶת בַּתּוֹרָה. אִין עֲבוּדָה זָרָה בַּתּוֹרָה הָרִי אֵילוּ פְּטוּרִין. הוֹרִי לְבָטֵל מִקְצֵת וּלְקַיֵּים מִקְצֵת הָרִי אֵילוּ חֵיבִין. כִּי־צִד אֶמְרוּ יֵשׁ נִידָה בַּתּוֹרָה אֲבָל הִבָּא עַל שׁוֹמֶרֶת יוֹם כָּנָגֵד יוֹם פְּטוּר. יֵשׁ שֶׁבֶת בַּתּוֹרָה אֲבָל הַמוֹצֵיא מִרְשׁוֹת הַיָּחִיד לְרִשׁוֹת הָרַבִּים פְּטוּר. יֵשׁ עֲבוּדָה זָרָה בַּתּוֹרָה אֲבָל הַמְשַׁתְּחִינָה פְּטוּר. הָרִי אֵילוּ חֵיבִין שְׁנֵאֲמַר וְנִעְלַם דָּבָר. דָּבָר וְלֹא כָל־הַגּוֹי.

**Mishnah 3:** If the Court ruled to uproot an entire subject; if they said, the menstruating woman is not mentioned in the Torah, Sabbath is not mentioned in the Torah, idolatry is not mentioned in the Torah, they are not liable<sup>98</sup>. If they ruled to eliminate part and to confirm part, they are liable. How is that? If they said, the menstruating woman is mentioned in the Torah but one who copulates with one who is watching a day to the next day is not liable<sup>99</sup>; Sabbath is mentioned in the Torah but one who brings from a private domain to a public domain is not liable<sup>100</sup>; idolatry is mentioned in the Torah but one who prostrates himself is not liable<sup>101</sup>; these are liable for it is said<sup>102</sup> *something was hidden*, something but not an entire subject.

98 Since anything written in the Torah is public knowledge and nobody would listen to them.

99 In rabbinic medical theory, the minimum time which must elapse between one menstrual period and the



next is the seven days of the *niddah* (Lev. 15:19) followed by another 11 days. If a woman has a discharge on one of these 11 days, she is not classified as *niddah* but as *zavah*, whose rules are spelled out in Lev. 15:25-30. Since the verse speaks of a discharge of *many days*, it is concluded that the full rules of *zavah* only apply after 3 days. For the first and second discharges in that 11 day period, the woman is called “watching one day to the next day”. For a day she is under the rules of *niddah* (Lev. 15:25) and therefore forbidden to her husband. But since the verse uses the expression *all the days of the flow of her impurity shall be like the days of her menstruation*, one could think that she is impure only during the day and not during the following night, or that a discharge during the night does not make her impure. This is clearly a matter of rabbinic interpretation.

100 The pentateuchal root of the prohibition to carry from a private to the public domain is Ex. 16:29, *nobody should go out from his place*, which is explained in Jer. 17:22 by *do not move a load from your houses*. Since as a matter of principle prophetic utterances should not be used as legal texts, the ruling of the Court could not be dismissed out of hand.

101 This is more difficult to understand since Deut. 17:3 clearly defines prostrating oneself in idolatry as a capital crime. Therefore, one has to agree with Maimonides's Commentary that the Court changed the definition of “prostration”, e. g., ruling that kneeling down, bowing the head to the ground, is not punishable as long as one does not lie on the ground with outstretched hands and feet.

102 Lev. 4:13. *Sifra Wayyiqra* 2, *Parašah* 4(7-8).

(46a line 22) **הלכה ג:** הוורו בית דין לעקור את כל הגוף כולו. רבי חזקיה אמר. מדבר. לא כל-דבר. אמר רבי הילא. ממצות. לא כל-מצות. וכתוב כן. כפי דמר רבי אמי בשם רבי יוחנן. גורעין לדרוש מתחילת הפרשה עד סופה. רבי חנניה בשם רבי ירמיה. ואפילו באמצע תיבה. ויצקת עליה שמן מנחה היא: לרבות כל-המנחות ליציקה.

1 את כל הגוף | - ר' חזקיה אמר. מדבר. לא כל דבר | - 2 ר' | - לא | ולא כן. כפי דמר | ה' אמר 3 מתחילת | מתחלת ר' חנניה בשם ר' ירמיה. ואפי' | ר' יוסה בו חנינה אמר אפי' 4 מנחה היא | ויצקת שמן מנחה

**Halakhah 3:** “If the Court ruled to uproot an entire subject,” etc. Rabbi Hizqiah said, “of a subject,” not the entire subject. Rabbi Hila said, “of the commandments”, not entire commandments<sup>103</sup>. <sup>104</sup>Is that written? As Rabbi Immi said in the name of Rabbi Johanan: For interpretation, one removes from the beginning of the paragraph to its end. Rabbi Hananiah in the name of Rabbi Jeremiah: Even a middle word. *You have to pour oil on it, it is a flour offering*, to include all flour offerings for pouring<sup>105</sup>.

103 In *Lev.* 4:13, R. Hizqiah reads וְנָעַלְם as מְדַבֵּר, presupposing a script which does not differentiate between regular and final *mem*. R. Hila's comment is really unnecessary since מְדַבֵּר-מִצְוֹת already means "of any commandments" but not entire commandments. In all situations, prefix *mem* is read as partitive, some but not all; cf. *Nazir* 5:4 Note 105.

104 The following text also is found in *Sotah* 5:1, explained in Notes 8-10, *Nazir* 5:1 Note 56.

105 *Sifra Wayyiqra* 1 *Pereq* 12 on *Lev.*

2:6. The ms. text follows the argument of *Sifra* while B reproduces the text of *Sotah* and *Nazir*. The argument of *Sifra* has no connection with the theories of RR. Johanan and Jeremiah; it is a straightforward reading of the verse. Since it is stated that one has to pour oil on the bread crumbs *because it is a flour-offering*, it follows that a flour-offering requires pouring oil over it unless it be explicitly excluded as in the purification offering of v. 5:11.

(46a line 27) וְלֹא נִמְצְאָתָּ עוֹקֵר כָּל-שֵׁם שׁוֹמֵרֶת יוֹם כְּנֶגֶד יוֹם. בְּשֹׁאֲמָרוֹ. הַלִּילָה מוֹתֵר וְהַיּוֹם אֲסוּר. וְלֹא נִמְצְאָתָּ עוֹקֵר כָּל-שְׁחִיחָה. שְׁמוּאֵל בַּר אֲבָא אָמַר. בְּשֹׁאֲמָרוֹ. אִמָּה מוֹתֵרֶת וְשִׁתִּי אֲמוֹת אֲסוּרוֹת. וְלֹא נִמְצְאָתָּ עוֹקֵר כָּל-שֵׁם הַשְּׁתַּחֲוִיָּה. בְּשֹׁאֲמָרוֹ. מוֹתֵר לְהַשְׁתַּחֲוֹת וְאֲסוּר לְשׁוֹחֵ. וְלֹא נִמְצְאָתָּ עוֹקֵר כָּל-שֵׁם הוֹצָאָה. אָמַר רַבִּי שְׁמוּאֵל בַּר רַב יְצַחְקִי. בְּשֹׁאֲמָרוֹ. גְּרוּגֶרֶת מוֹתֵרֶת וְשִׁתִּי גְּרוּגֶרֶת אֲסוּרוֹת. וְאֵתִיָּא כְּמָאן דְּמַר. הַכְּנָסָה וְהוֹצָאָה אַחַת הִיא. בְּרַם כְּמָאן דְּמַר. הַכְּנָסָה וְהוֹצָאָה שְׁתֵּי הֵן. וְלֹא נִמְצְאָתָּ עוֹקֵר כָּל-שֵׁם הַכְּנָסָה. אָמַר רַבִּי יוֹסִי. לֹא שְׁהוּרִי מוֹתֵר לְאֶכּוֹל חֶלֶב. יוֹדְעִין הֵי שְׁאֲסוּר לֹכֵל חֶלֶב. וְהַתּוֹרָה נִתְּנָה רְשׁוּת לְבֵית דִּין לְהוֹרוֹת. רַבִּי בּוֹן בַּר חִיָּה בְּעֵי. כְּזֵית הַיּוֹם וְכִשְׁנֵי אֵיתִים לְמַחֵר. הֵיךְ עֲבִידָא נְבִיא וּמַדִּיחִי. יְכֹוֹל אִם יֵאמְרוּ לָךְ. אֵל תִּתֵּן תְּפִילִין הַיּוֹם תֵּן לְמַחֵר. תִּשְׁמַע לָהֶם. תִּלְמוּד לומר לְלַכֵּת בָּהֶם. בְּכִילָן וְלֹא בְּמַקְצָתָן. הָרִי עֲקֹרְתָּ שֵׁם כָּל-אוֹתוֹ הַיּוֹם. וְתִי מַר אֵין כָּאן עֲקִירֶת גּוֹף. וְכֹא אֵין כָּאן עֲקִירֶת גּוֹף. שְׁמַע לָהּ מִן דְּבִתְרָה. שְׁמוּאֵל בַּר בָּא אָמַר. בְּשֹׁאֲמָרוֹ. אִמָּה מוֹתֵרֶת וְשִׁתִּי אֲמוֹת אֲסוּרוֹת. הָרִי עֲקֹרְתָּ שֵׁם כָּל-אוֹתָהּ הָאִמָּה. וְתִי מַר אֵין כָּאן עֲקִירֶת גּוֹף. וְכֹא אֵין כָּאן עֲקִירֶת גּוֹף.

1 בשאמרו | כשאמרו (all occurrences) 2 כל | כל שם אבא | בא 3 השתחוויה | השתחווה 4 גרוגרת | כגרוגרת 5 אסורות | אסורה ואתייה כמאן | ותיייה כמאן | כמן 6 יוסי | יוסי 8 חייה | חייה וכשני | ושתי יאמרו | יאמר 9 למחר | תפילין 10 עקרת | עקרתה ות מר | ותימר גוף | הגוף 11 עקרת | עקרתה 12 גוף | הגוף (twice)

But would you not have eliminated the entire notion of one who watches a day for the next day<sup>106</sup>? If they said, the night is permitted but the day is forbidden. Would you not have eliminated the entire notion of bending? Samuel bar Abba said, if they said, one cubit is permitted but two are forbidden<sup>107</sup>. Would you not have eliminated the entire notion of prostrating? If they said, it is permitted to prostrate oneself but forbidden to sink down<sup>108</sup>.

Would you not have eliminated the entire notion of taking out? Rabbi Samuel ben Rav Isaac said, if they said, one dried fig is permitted but two dried figs are forbidden<sup>109</sup>. This follows him who said that bringing in and taking out are the same<sup>110</sup>. But for him who said that bringing in and taking out are two notions, would you not have eliminated the entire notion of bringing in? Rabbi Yose said, not that they said that it was permitted to eat fat; they knew that it is forbidden to eat fat, but the Torah gave permission to the Court to instruct<sup>111</sup>. Rabbi Abun bar Hiyya asked, the [amount of] an olive today and of two olives tomorrow<sup>112</sup>? What about a prophet and seducer<sup>113</sup>? I could think that if they said to you, do not put on phylacteries today, put them on tomorrow<sup>114</sup>, that you should listen to them. The verse says<sup>115</sup>, *to walk in them*, in all of them, not only in part of them; you would have eliminated the notion of that entire day. You can say that this is not elimination of the entire subject. And here it is not elimination of the entire subject<sup>116</sup>. Rabbi Mana understood it from the following<sup>107</sup>; Samuel bar Abba said, if they said, one cubit is permitted but two are forbidden. You can say that this is not elimination of the entire subject. And here it is not elimination of the entire subject.

106 The literal text of the Mishnah could be read as a hypothetical ruling that there be no restriction on relations between a man and a temporary *zavah*. But since the verse declares the one who watches a day for the next day as being under the rules of *niddah* for whom such relations are forbidden (*Lev.* 18:19), such a ruling would in effect eliminate all rules for the one who watches a day for the next day. Cf. Note 99. Babli 4a.

107 It is not at all clear to what the *hapax* שחיה refers. Since in the Mishnah the Sabbath is mentioned in second place, a reasonable reference would be to Mishnah *Šabbat* 1:1 which describes forbidden transactions on the Sabbath as, e. g., a

person standing behind a window handing a parcel to another who is standing outside. While the distance by which the parcel is moved is irrelevant in practice since only the fact counts that it is transported across the border line between public and private domains, a ruling that a minimum distance be required for the transfer to be a violation of Sabbath law is thinkable.

108 While prostrating oneself before an idol is certainly subject to a biblical prohibition, there is no biblical definition of what constitutes prostrating. Since *IK.* 19:18 shows that going down on one's knees is forbidden worship, it is possible to imagine a ruling that going down on

one's knees is prosecutable but other forms of prostration are not.

109 This refers to the prohibitions of the Sabbath. While the prohibition of moving things from one place to another is only one of the 49 categories of forbidden actions, its rules in effect cover half of Tractate *Šabbat* and all of Tractate *’Eruvin*. Moving minute quantities from domain to domain is not punishable. For example, transporting vegetable seeds in a volume less than that of a dried fig is not punishable (Mishnah *Šabbat* 9:7). The long list of minimal quantities is traditional, not biblical. A wrong ruling in these matters does not abolish the principle that some minimal quantity is defined for everything.

110 Everybody agrees that “transporting” for the rules of the Sabbath comprises taking up, moving, and putting down. There is a discussion at the start of Tractate *Šabbat* (1:1, 2b 1.11 ff.) whether the inclusion of putting down is scriptural or is a matter of indirect inference. If one accepts that “taking up” implies “putting down”, then the formulation of the Mishnah covers rulings both about taking up and putting down; but if the biblical status of “putting down” is different from “taking up”, the latter should have been mentioned. An answer is unnecessary since the consensus is that “taking up” implies “putting down”.

111 While fat is not mentioned in the Mishnah, R. Yose explains how the Court might be liable for a false ruling concerning fat. The only fat (חֵלֶב) forbidden for consumption is (a) fat of domestic animals which for any sacrifice

would be burned on the altar and (b) the fat in which the hip tendons are embedded. All other fat is permitted (שֵׁנִי). The exact definition of each category is a matter of rabbinic tradition and as such within the purview of the Court.

112 He asks whether the entire discussion about abolishing an entire commandment or only a detail makes any sense. If they would permit eating one olive-sized piece of *hēlev* today, two tomorrow, etc., they might come to disestablish the entire commandment by a succession of steps, none of which can be classified as total negation of the commandment.

113 To whom the distinction between abolishing a commandment and modifying it also applies, Babli 4b, *Sanhedrin* 11:8, Note 112 (Tosephta *Sanhedrin* 14:13).

114 This would be a situation in which the accredited prophet could eliminate a commandment in steps, similar to the Court ruling on fat. Since phylacteries are mentioned in connection with the study of Torah (*Deut.* 6:8, 11:18), wearing them is a daily biblical commandment.

115 There is no such verse. The reference is to *Deut.* 13:6 where the reading is לִלְכָּתָּהּ בָּהָּ.

116 Since R. Bun bar Hiyya’s question could have been asked about any example in the Mishnah, but the Mishnah makes a distinction between eliminating and modifying a commandment. It is true that a modification is only a modification even if its open-ended iteration could result in eliminating the commandment.

**משנה ד:** (fol. 45c) הורו בית דין ונדע אחד מהן שטעו ואמר להן טועני אתם או שלא היה מופלג של בית דין שם או שהיה אחד מהן גר או ממזר או נתין או זקן שלא ראה לו בנים הרי זו פטור שנתאמר כאן עדה ונתאמר להלן עדה. מה עדה האמורה להלן פולן ראויין להוריה. אף עדה האמורה כאן כולן ראויין להוריה.

**Mishnah 4:** If the Court ruled but one of them knew that it was in error and he told them, you are erring<sup>117</sup>, or that the distinguished member of the Court was not there<sup>118</sup>, or that one of them was a proselyte, or a bastard, or a Gibeonite<sup>119</sup>, or a childless old man<sup>120</sup>, it is not liable since it is said here “congregation” and it is said there “congregation”<sup>121</sup>. Since in the congregation mentioned there, all of them were worthy of ordination, also the congregation here all have to be worthy of ordination.

117 Then the ruling of the Court is not unanimous; no sacrifice is due; Note 36.

118 The ruling is not *ex cathedra*, Note 71.

119 While they can be civil judges, they are not eligible for the High Court as explained in the Halakhah.

120 He should not be member of a

criminal court since he never raised children and as a consequence never learned to have a positive attitude towards misbehaving people.

121 “Here” is *Lev. 4:13*; “there” is *Num. 35:12,24,25* containing the rules of criminal courts.

**הלכה ד:** (46a line 43) הורו בית דין ונדע אחד מהן שטעו כול. מתניתא דרבי. דרבי אמר. אין לך מערב אלא מופלג שלבית דין (בלוד). כתיב והיה אם מעיני העדה. מי שהוא עשוי עינים לעדה. כתיב והתיצבו שם עמך. מה את לא גר ולא נתין ולא ממזר. אף הן לא גרים ולא נתינים ולא ממזרים ולא עבדים. נחא גר. ממזר. בית דין ממנין ממזירין. רב חננא אמר. בשעברו ומינה. רבי חנניה רבי מנא. חד אמר. בתוך שבועים. וחרנה אמר. חוץ לשבועים. כאן דמר. חוץ לשבועים. נחא. ומאן דמר. בתוך שבועים. הא חוץ לשבועים לא. מפנין שאינו ראוי להוריה נעשה כאבן.

1 דר' | כר' 2 בלוד | בלבד כת' | וכתוב 3 כת' | וכתוב את | אתה הן | הם 4 ממזירין | ממזרים חונא | חונא 5 חנניה | חנינא ר' | ור' וחרנה | וחרנא מאן | מן 6 דמר | דאמר ומאן דמר | ומן דאמר 7 להורייה | להוריה

**Halakha 4:** “If the Court ruled but one of them knew that it was in error,” etc. The Mishnah is Rabbi’s, since Rabbi said, no one invalidates but the distinguished member of the Court (at Lydda) [only]<sup>71</sup>. It is written<sup>122</sup>: *If from the eyes of the congregation*, from him who is appointed as eyes of the congregation. It is written<sup>123</sup>, *they shall stand there with you*. Just as you are

neither proselyte, nor Gibeonite, nor a bastard<sup>124</sup>, so they should be neither proselytes, nor Gibeonites, nor slaves, nor bastards. Rav Huna said, when they breached the rules and appointed<sup>125</sup>. Rabbi Hanania, Rabbi Mana. One said, as part of the Seventy; the other said, apart from the Seventy<sup>126</sup>. He who said, apart from the Seventy, is understandable. But he who said, as part of the Seventy, therefore not apart from the Seventy? Since he is not suitable for ordination, he is considered like a stone<sup>127</sup>.

122 *Num.* 15:24, detailing the rules governing the sacrifice of a goat if the Court unintentionally permitted idolatry. This is taken as biblical proof that the Court cannot rule in the absence of its president.

123 *Num.* 11:16, the appointment of the 70 Elders, the paradigm for the High Court. Babli 4b

124 As son of a man and his aunt, Moses would have been a bastard if his parents had married after the promulgation of

Torah laws.

125 The exclusion of proselytes, Gibeonites, and bastards is strongly recommended but a breach does not invalidate the appointment.

126 He holds that the exclusion is prescriptive; an appointment would be invalid.

127 If their vote cannot be counted, then automatically not all who are present are voting; therefore the false ruling will never trigger the obligation of a sacrifice.

**משנה ה:** הורו בית דין שוגגין ועשו כל הקהל שוגגין מביאין פרה. מזידין ועשו שוגגין מביאין כשבה או שעירה. שוגגין ועשו מזידין הרי אילו פטורין: (fol. 45c)

**Mishnah 5:** If the Court ruled in error and the public acted in error, they have to bring a bull; intentionally but they acted in error, they bring a female sheep or goat; in error but they acted intentionally, they are not liable<sup>128</sup>.

128 All purification sacrifices have a stated prerequisite, viz., that the sin to be expiated was committed unintentionally (*Lev.* 4:2,13,22,27). If both Court and public acted in error, the conditions for a sacrifice by the Court are satisfied. If the Court intentionally gave a false ruling, their sin cannot be atoned by a sacrifice;

the public are forced to bring individual sacrifices. If the Court ruled in error but the public, although realizing the error, intentionally followed the false ruling, the Court cannot bring a sacrifice since the public did not follow their intent, and the public is barred from any sacrifice since they did not act in error.

(46a line 52) **הלכה ה:** הורו בית דין שוֹגְגִין כול'. לית הָדָא פְּלִיגָא על רבי שמעון בן לקיש. דמר רבי אמי בשם רבי שמעון בן לקיש. מתניתא כגון שמעון בן עזאי יושב לפניו. ומזידין ועשו שוֹגְגִין. וכי יש זדון לשגגה לַיָּחִיד אֶצֶל הוֹרֵית בֵּית דִּין. חֲבֵרִיָּא בשם רבי שמעון בן לקיש. בְּשֵׁלָא קִיבְלוּ רוב הַצִּיבּוֹר עֲלֵיהֶן. רבי זְעִירָא בשם רבי שמעון בן לקיש. בְּשֵׁבַע טו בהוריתן. מה מִפְקָה מִבְּיַחְיוֹן. קִיבְלוּ עֲלֵיהֶן וְחִזְרוּ וּבָעֲטוּ. על דעתן דחֲבֵרִיָּא כִּין שְׁבַע טו פְּטוּרִין. על דְּעִתִּיָּה דְרָבִי זְעִירָא מִכֵּין שְׁקִיבְלוּ עֲלֵיהֶן מִשְׁעָה ראשונה הָרִי אֵילֵי חִיבִין.

2 דמר | דאמר 3 לשגגה | שגגה הורית | חֲבֵרִיָּא | חֲבֵרִיָּא 4 קיבלו | קבעו עליהן | עליהם  
5 בהוריתן | בהוריתן קיבלו | קבלו דחֲבֵרִיָּא | דחֲבֵרִיָּא 6 שקיבלו עליהן | שקבלו עליהם

**Halakhah 5:** “If the Court ruled in error,” etc. Does this not disagree with Rabbi Simeon ben Laqish? Since Rabbi Immi said in the name of Rabbi Simeon ben Laqish: Our Mishnah, for example, if Simeon ben Azzai<sup>40</sup> was sitting before them<sup>129</sup>. “Intentionally but they acted in error.” Is there intentional misdeed or error with respect of an instruction by the Court<sup>130</sup>? The colleagues in the name of Rabbi Simeon ben Laqish: If not most of the public accepted it<sup>131</sup>. Rabbi Ze’ira in the name of Rabbi Simeon ben Laqish, if they rebelled against their instruction<sup>132</sup>. What is the difference between them? If they first accepted and then rebelled. In the opinions of the colleagues, since they rebelled, they are not liable<sup>133</sup>. In the opinion of Rabbi Ze’ira, since at the first moment they accepted it, those are liable<sup>134</sup>.

129 He would immediately have pointed out the error; then one would be back at the situation of Mishnah 4; the case of Mishnah 5 never could arise.

130 It already was stated in Mishnah 1 that a person acting upon the instructions of the Court is never liable for a purification offering, irrespective of the quality of the Court’s ruling. Why should the individual be held liable?

131 Then the main condition for a sacrifice of the Court is not fulfilled; auto-

matically there is no valid ruling of the Court, only actions of individuals.

132 A High Court without authority is no High Court; it cannot claim to be the subject of *Lev. 4:13*.

133 Since at the moment a sacrifice would be due the conditions are not met, the Court is no longer liable.

134 Since the authority of the Court is acknowledged, a later rejection does not change the fact of the Court’s false ruling, and the Court is liable.

(fol. 45c) **משנה ו:** הורו בית דין וְעָשׂוּ כָל־הַקֹּהֵל אוֹ רוֹבָן עַל פִּיָּהֶן מִבִּיאִין פָּר. וּבַעֲבוּדָה זָרָה מִבִּיאִין פֶּר וְשָׁעִיר דִּבְרֵי רַבִּי מֵאִיר. רַבִּי יְהוּדָה אוֹמֵר שְׁנַיִם עֶשֶׂר שָׁבָטִים מִבִּיאִין שְׁנַיִם עֶשֶׂר פָּרִים וּבַעֲבוּדָה זָרָה שְׁנַיִם עֶשֶׂר שָׁבָטִים מִבִּיאִין שְׁנַיִם עֶשֶׂר פָּרִים וְשְׁנַיִם עֶשֶׂר שְׁעִירִים. רַבִּי שְׁמַעוֹן אוֹמֵר שְׁלֹשָׁה עֶשֶׂר פָּרִים. וּבַעֲבוּדָה זָרָה שְׁלֹשָׁה עֶשֶׂר פָּרִים וְשְׁלֹשָׁה עֶשֶׂר שְׁעִירִים פֶּר וְשָׁעִיר לְכָל־שָׁבָט פֶּר וְשָׁעִיר לְבֵית דִּין.

**Mishnah 6:** If the Court ruled and all the public or a majority acted on their instruction, they bring a bull; or in a matter of idolatry a bull and a goat<sup>135</sup>, the words of Rabbi Meir. Rabbi Jehudah says, the Twelve Tribes bring twelve bulls and in a matter of idolatry the Twelve Tribes bring twelve bulls and twelve goats<sup>136</sup>. Rabbi Simeon says, thirteen oxen, and in a matter of idolatry thirteen bulls and thirteen goats; a bull and a goat for each tribe; a bull and a goat for the Court.

135 Sacrifices for unintended sins committed by the entire community are prescribed both in *Lev.* 4:13-31 (a bull) and *Num.* 15:22-26 (a bull as elevation offering and a goat as purification offering). The verses in *Num.* are interpreted to refer to the sin of idolatry since that is the only sin by which in one action one violates *all* commandments (*Num.* 15:22).

Since the sacrifice for violating all commandments cannot be less than that for violating one commandment, it is logical that the sacrifice for idolatry must be more than the regular sacrifice *Lev.* 4:13-31. (*Sifry Num.* 111)

136 As discussed in the Halakhah, this is a problem of definition of עֵדָה and קֹהֵל.

(46a line 60) **הלכה ו:** הורו בית דין וְעָשׂוּ כָל־הַקֹּהֵל כו'. מֵאִן תִּנָּה רֹב. רַבִּי מֵאִיר. דִּתְנִי. הִיא מִחֲצִית כָּל־הַשָּׁבָטִים הִיא מִחֲצִית כָּל־שָׁבָט וְשָׁבָט וּבִלְבָד רֹב. רַבִּי יוֹדָה אוֹמֵר. חֲצִי כָל־שָׁבָט וְשָׁבָט וּבִלְבָד רֹבִי שָׁבָטִים שְׁלִימִים. שָׁבָט אֶחָד גּוֹרֵר כָּל־הַשָּׁבָטִים. רַבִּי מֵאִיר אוֹמֵר. כָּל־הַשָּׁבָטִים קְרוּיִין קֹהֵל. רַבִּי יוֹדָה אוֹמֵר. כָּל־שָׁבָט וְשָׁבָט קְרוּי קֹהֵל. וְאַתִּינָא דְרַבִּי שְׁמַעוֹן כְּרַבִּי יוֹדָה. כְּמָה דְרַבִּי יוֹדָה אָמַר. כָּל־שָׁבָט וְשָׁבָט קְרוּי קֹהֵל. כֵּן רַבִּי שְׁמַעוֹן אוֹמֵר. כָּל־שָׁבָט וְשָׁבָט קְרוּי קֹהֵל. מָה בִּינְיָהוּ. גְּרִירָה. רַבִּי יוֹדָה אוֹמֵר. שָׁבָט אֶחָד גּוֹרֵר כָּל־הַשָּׁבָטִים. רַבִּי שְׁמַעוֹן אוֹמֵר. אֵין שָׁבָט אֶחָד גּוֹרֵר אֶת כָּל־הַשָּׁבָטִים. מוֹדָה וְהוּא שֶׁתִּהְיֶה הוֹרִינָה מִלְשַׁכַּת הַגִּזִּית. אָמַר רַבִּי יוֹסִי. טַעְמִיָּה דְהֵין תִּנְיָא מִן־הַמִּקּוֹם הַהוּא אֲשֶׁר יִבְרַח יי. רַבִּי אֲבָוִן בִּשְׁם רַבִּי בִּנְיָמִין בַּר לִוִּי. קָרִינָא מְסִינָא לְמָאן דְּמַר. כָּל־שָׁבָט וְשָׁבָט קְרוּי קֹהֵל. דְּכָתִיב גְּוִי וְקִתְּלָה גּוֹיִם יִהְיֶה מִמֶּךָ. וְאַדִּין לֹא נוֹלֵד בִּנְיָמִין. אָמַר רַבִּי חִיָּה בַר בָּא. כְּשֶׁם שֶׁהוּן חִלְקִין כָּאֵן כָּד הוּן חִלְקִין בְּטוֹמָאָה. דִּתְנִי. הִנֵּה צִיבוּר חֲצִיין טְהוֹרִין וְחֲצִיין טְמֵאִין. הַטְהוֹרִין עוֹשִׂין אֶת הָרָאשׁוֹן וְהַטְמֵאִין עוֹשִׂין אֶת הַשֵּׁנִי. רַבִּי יוֹדָה אוֹמֵר. הַטְהוֹרִין עוֹשִׂין לְעֶצְמָן וְהַטְמֵאִין עוֹשִׂין לְעֶצְמָן.



אָמרוּ לוֹ. אִין הַפֶּסַח לַחֲצֵאִין אֹו כּוֹלֵן יַעֲשׂוּ בְטוּמְאָה אֹו כּוֹלֵן יַעֲשׂוּ בְטָהֳרָה. מִינּוּ אָמְרוּ לוֹ. כָּרְבִי יוֹדָה. דִּתְנִי. נִיטְמָאֵת אַחַת מִן הַחֲלוֹת אֹו אֶחָד מִן שְׂיָרִים רַבִּי יוֹדָה אֹומר שְׁנִיָּהּ יֵצֵא לְבֵית הַשְּׂרִיפָה. שְׂאִין קָרְבָן צִבּוֹר חֲלוֹק. וְחֻכְמִים אֹמְרִים. הַטְּמָא בְטוּמְאָתוֹ וְהַטְּהוֹר יֵאָכֵל: רַבִּי יוֹסִי בְרַבִּי בּוֹן בְּשֵׁם רַבִּי יוֹחָנָן אָמַר. מִינּוּ אָמְרוּ לוֹ. חֻכְמִים שְׁהֵן כְּשִׁישִׁית רַבִּי יְהוּדָה.

1 מאן | מן 2 יודה | יהודה 3 רובי | רוב שלימין | שלמין 4 יודה | יהודה ואתיא | ותיא גר' ר' 5 כר' ר' יודה | יהודה אמ' | אומר 6 בניהון | בניחם גרירה | גרירא יודה | יהודה ר' | ור' 7 את | - | אע"ג דרבי יהודה אומר שבת אחד גורר כל השבטים שתהא | שתייה הוריה | הוריה 8 יוסי | יוסה דהין | דההין 9 קרייא | קרא מסייע | מסייעא 10 ואדיין | ואדין חייה | חייה חלוקין כאן | כן 11 טהורין | טמאין טמאין | טהורין את | אותו את 12 שני | שני יודה | יהודה 13 לחצאין | בא לחצאין כולן | כולו (2 times) מינו | מנו 14 יודה | יהודה (2 times) נטמאת | נטצית אחד מן ישרים | אחת מן הסדרים שניהן | שניהם 16 יוסי | יוסה בר' | בר אמ' | - | מינו | מנו שהן | שהן עושין

**Halakhah 6:** “If the Court ruled and all the public acted,” etc.<sup>137</sup> Who stated “a majority”? Rabbi Meïr, as it was stated: Either half of the tribes or half of each tribe, if only it be a majority<sup>138</sup>. Rabbi Jehudah says, half of each tribe, but only a majority of entire tribes<sup>139</sup>. One tribe drags all tribes<sup>140</sup>.

Rabbi Meïr says, all tribes are called “the public”<sup>141</sup>. Rabbi Jehudah says, each single tribe is called “public”. And Rabbi Simeon follows Rabbi Jehudah. Just as Rabbi Jehudah said, each single tribe is called “public”, so Rabbi Simeon says, each single tribe is called “public”. What is between them? Dragging. Rabbi Jehudah says, one tribe drags all tribes<sup>140</sup>. Rabbi Simeon says, one tribe does not drag all tribes<sup>142</sup>. [Even though Rabbi Jehudah says, one tribe drags all tribes,]<sup>143</sup> he agrees that only if the ruling came from the ashlar hall<sup>144</sup>. Rabbi Yose said, the reason of that Tanna: *From this place which the Eternal will choose*<sup>145</sup>. Rabbi Abun in the name of Rabbi Benjamin ben Levi: The verse supports him who said that each tribe is called “public”, as it is written<sup>146</sup>: *A people and a public of peoples will come from you*, and Benjamin was not yet born.

Rabbi Hiyya bar Abba said, just as they differ here, so they differ about impurity<sup>137</sup>, as we have stated: If the public was half pure and half impure; pure [people] celebrate the first [Passover] and impure the second. Rabbi Jehudah said, the pure ones celebrate for themselves, and the impure ones celebrate for themselves<sup>147</sup>. They told him, there is no split Passover; either all celebrate in impurity or all celebrate in purity. Who is “they told him”? Following Rabbi Jehudah? As it was stated<sup>148</sup>: “If one of the loaves or one of the (leftovers) [orders]<sup>149</sup> became impure, Rabbi Jehudah said, both have to be

brought to be burned<sup>150</sup> for a public offering cannot be split. But the Sages say, the impure in its impurity, and the pure shall be eaten.<sup>151</sup>” Rabbi Yose ben Rabbi Abun said in the name of Rabbi Johanan, who is “they told him”? The Sages<sup>152</sup> who argue like Rabbi Jehudah.

137 The entire Halakhah is shortened from *Pesahim* 7:6. *Num.* 9:9-14 prescribes that individuals who were impure on Passover have to bring their Passover sacrifice a month later, on the Second Passover celebrated on the 14<sup>th</sup> of the Second Month. It is concluded that if the entire people are impure, the Second Passover is impossible and everybody celebrates the (First) Passover in impurity in the Temple. The problem then arises which percentage of the people have to be impure so that they represent the entire people; just as here the question is, how many people do have to follow the erroneous ruling of the Court so that “all of Israel were in error” (*Lev.* 4:13).

138 He holds that everywhere 50%+1 represent “all”; Babli 5b.

139 The language is somewhat self-contradictory. He also requires that a majority of Israel follow the erroneous ruling but in addition he demands that in a majority of tribes a majority follow the ruling. Babli 5b.

140 If one tribe has more members than all the others together, the action of one tribe triggers the obligation of all of them. He does not hold that the law about erroneous rulings of the High Court became moot with the exile of the Ten Tribes. Even later, when the tribe of Jehudah represented the overwhelming majority of Israel, a majority of the people

can be considered a majority of all twelve tribes and the majority of Judeans triggers the obligation for all tribes.

141 The purification sacrifice for an erroneous ruling by the Court has to be brought by “the public” (*Lev.* 4:14). The difference of opinions in the Mishnah is traced to different interpretations of this notion. R. Meir holds that only the entire people of Israel qualify as “public”; RR. Jehudah and Simeon consider each tribe as a separate public. (Babli 5b, *Pesahim* 80a, *Menahot* 15a).

142 Therefore he requires a separate sacrifice for the people of Israel in their entirety.

143 Missing in the ms., from B and the *Pesahim* text; required by the context.

144 Even though each tribe has to bring its own sacrifice, the ruling of a tribal High Court cannot trigger an obligation of any other tribe; only the Court sitting at the central sanctuary has this power.

145 *Deut.* 17:10.

146 *Gen.* 35:11, said to Jacob after the birth of 11 sons. Babli 5b.

147 Both offer their sacrifices in the Temple, in separate groups. For this to happen, the number of pure people in Jerusalem on the 14<sup>th</sup> of Nisan must be *exactly* equal to the number of impure ones.

148 Mishnah *Menahot* 2:2.

149 The text in parentheses is from the

ms.; the text in brackets is from B, the text in *Pesahim*, and all sources of the Mishnah; it is the only one which makes sense.

The Mishnah speaks of the two public cereal offerings which have to be baked, viz., the weekly show-bread and the two leavened loaves presented at Pentecost. The 12 show-breads were presented in two rows, here called "orders" (*Lev.* 24:6).

150 Outside the Temple precinct.

151 By the officiating priests.

152 Since the opinions of R. Jehudah and his opponents in *Pesahim* are the opinions of his opponents and R. Jehudah in *Menahot*, both seem to contradict themselves. One has to conclude that they agree in principle and they only differ about the practical applications of their theory. In this sense, B reads: The Sages acting in the sense of R. Jehudah.

**משנה ז:** (fol. 45c) הורו בית דין ועשו שבעה שבטים או רובן על פיהן מביאין פר ובעבודה זרה מביאין פר ושעיר דברי רבי מאיר. רבי יהודה אומר שבעה שבטים שחטאו מביאין שבעה פרים. ושאר שבטים שלא חטאו מביאין על ידיהן פר פר שאף אילו שלא חטאו מביאין על ידיהן פר פר על ידי החוטאים. רבי שמעון אומר שמזנה פרים. ובעבודה זרה שמזנה פרים ושמונה שעירים פר ושעיר לכל שבט ופר ושעיר לבית דין.

**Mishnah 7:** If the Court ruled and seven tribes or a majority<sup>153</sup> acted on their saying they bring a bull and for idolatry they bring a bull and a goat, the words of Rabbi Meir. Rabbi Jehudah says, the seven tribes who sinned bring seven bulls, and the remaining tribes who did not sin bring because of them a bull each, for also those who did not sin each bring a bull because of the sinners. Rabbi Simeon says eight bulls<sup>154</sup>, and for idolatry eight oxen and eight goats, a bull and a goat for each tribe and a bull and a goat for the Court.

153 Either seven tribes who form a majority of the tribes or a majority of the people of Israel irrespective of tribes.

154 As stated in the preceding Halakhah,

he disputes that innocent tribes should be dragged with the sinners into offering sacrifice.

**הלכה ז:** (46b line 7) הורו בית דין ועשו שבעה שבטים כול. תני. רבי שמעון בן אלעזר אומר משמו. חטאו ששה והן רובו. הא שבעה אף על פי שאין רובו הרי אילו חייבין. אמר רבי לעזר. לא מר אלא ששה והן רובו. הא חמשה אף על פי שהן רובו הרי אילו פטורין. אמר רבי יוסי ברבי בון. מתניתא אמרה כן. מחצית שבטים ובלבד רוב אוכלוסין. ודכותה. מחצית

אוֹכְלוֹסִין וּבִלְבָד רֹב שְׁבֵטִים. רַבִּי יוֹסִי בְּרַבִּי בּוֹן אָמֵר. שְׂאִילְתָּא דְּכֹהֵן הַמְּשִׁיחַ מִן. הַדָּא הוֹרִיית בֵּית דִּין הַגָּדוֹל הוֹרִיית בֵּית דִּין קָטָן.

2 הא | או אילו | אלו 3 לעזר | אלעזר מר | אמרו אילו | אלו 4 יוסי | יוסה בר' בון | בר רבי ודכותה | ודכותה 5 יוסי | יוסה 6 הורית | הורית (twice)

**Halakhah 7:** “If the Court ruled and seven tribes acted,” etc. It was stated: Rabbi Simeon ben Eleazar says in his<sup>155</sup> name, if six sinned and they are a majority. Therefore seven even though they do not form a majority are liable<sup>156</sup>. Rabbi Eleazar said, he only said “six and they are a majority”. Therefore for five, even though they are a majority, they are not liable. Rabbi Yose ben Rabbi Abun said, a *baraita* said so: Half of the tribes on condition that they be most of the population. And similarly, half of the population on condition that they be most of the tribes.

<sup>157</sup> Rabbi Yose ben Rabbi Abun said, the question of the Anointed Priest, is it as from the High Court or a lower court?

155 In the name of R. Meïr, Tosephta 1:7; *Sifra Wayyiqra* 2, *Parašah* 4(17); Babli 3a, 5b.

156 In the Babli, *Menahot* 45a, this is the conclusion of R. Johanan. Since in the next sentence R. Eleazar disagrees, one

has to assume that the name originally was stated here also.

157 This does not belong here but at the end of Halakhah 2:1, speaking of rulings by the High Priest.

(fol. 45c) **הלכה ח:** הוֹרִי בֵּית דִּין שֶׁל אֶחָד מִן הַשְּׁבֵטִים וַעֲשֶׂה אוֹתוֹ הַשְּׁבֵט עַל פִּיהֶם אוֹתוֹ הַשְּׁבֵט הוּא חֵיב וְשָׂאֵר כָּל הַשְּׁבֵטִים פְּטוּרִין דְּבָרֵי רַבִּי יְהוֹדָה. וְחֻכְמִים אוֹמְרִין אִין חֵיבִין אֶלָּא עַל הוֹרִית בֵּית דִּין הַגָּדוֹל בִּלְבָד שְׂנֵאמֵר וְאִם כָּל־עֵדֶת יִשְׂרָאֵל יִשְׁגּוּ וְנִעְלַם דְּבַר מַעֲיִנִי הָעֵדָה. וְלֹא עֲדַת אוֹתוֹ הַשְּׁבֵט:

**Halakhah 8:** If the Court of one of the tribes<sup>158</sup> ruled and that tribe acted on their pronouncement, that tribe is liable but any other tribes are not liable, the words of Rabbi Jehudah<sup>159</sup>. But the Sages say, they are only liable for a ruling by the High Court, as it is said, *if the entire congregation of Israel be in error, and something was hidden from the eyes of the congregation*<sup>160</sup>, not the congregation of that tribe.

[illegible][illegible][illegible]

138 The tribal High Court.  
139 Since he holds that the expression  
לְכָל־שִׁבְטֵי־יִשְׂרָאֵל refers to each of the tribes.  
140 Lev. 4:13. The verse is misquoted;  
the masoretic text reads לְכָל־הָעָם "the public"  
is copied.

1 ציבור | צבור אחד | אחד מהן | שיביאו | מהשבי הגולה הביאו עולות 2 איפשר | אפשר יודה | יהודה 3 חייה | חייא 4 הוריית | הורית הייתה | היתה 4 למד | לא אמר | בוקינים | בוקנים אין | ואין 5 בוקינים | בוקנים יוסי | יוסה חייה | חייא 6 ולא | אלא | יוסי למד | יוסה לא אמר | חי | הוא 7 ואין | וכת' | דכת' 8 אין | ואין 9 לה | ליה

**Halakhah 8:** “If the Court of one of the tribes ruled,” etc. <sup>164</sup>Rebbi Meïr says, it is the Court’s obligation. Rebbi Jehudah says, it is the public’s obligation. Rebbi Simeon said, it is an obligation of the Court and an obligation of the public. What is Rebbi Meïr’s reason? It is said here *from the eyes*<sup>165</sup>, and it is said there *from the eyes*<sup>166</sup>. Since *from the eyes* said there refers to the Court, here it also refers to the Court<sup>167</sup>. What is Rebbi Jehudah’s reason? It is said here *from the eyes*, and it is said there *from the eyes*. Since *from the eyes* said there refers to the public, here it also refers to the public<sup>168</sup>. What is Rebbi Simeon’s reason? It is said here *from the eyes*, and it is said there *from the eyes*. Since *from the eyes* said there refers to the Court, also *from the eyes* here refers to the Court. Since *from the eyes* said there refers to the public, here it also refers to the public<sup>169</sup>. For him who says, it is the Court’s obligation, the Court has to bring<sup>170</sup>. For him who says, it is the public’s obligation, who brings<sup>171</sup>? As we have stated<sup>172</sup>, “one imposes and collects, the words of Rebbi Meïr; Rebbi Jehudah says, they are brought from the Temple tax”. For him who says, it is the Court’s obligation, the Court has to lay their hands on. For him who says, it is the public’s obligation, who lays their hands on<sup>173</sup>? As we have stated, three from every tribe,<sup>174</sup> led by the president of the Court, lay their hands on the head of the bull. “*Their hands*, the hands of each single one. *Their hands on the head of the bull*; the bull needs laying on of hands but the goats of idolatry do not need laying on of hands, the words of Rebbi Jehudah. Rebbi Simeon said, the bull needs laying on of hands by the Elders but the goats of idolatry do not need laying on of hands by the Elders; for Rebbi Simeon says, every public purification offering whose blood is brought inside<sup>175</sup> needs laying on of hands.<sup>176</sup>” One objected to Rebbi Jehudah, is it not written, *they presented the goats of the purification offering*<sup>177</sup>? Rebbi Hiyya in the name of Rebbi Johanan, it was a temporary ruling<sup>178</sup>.

Rebbi Johanan asked: If one of the public died, can it be brought in his stead<sup>179</sup>? They answered, is it not written, *those who came from captivity*<sup>180</sup>?

Is a purification offering an elevation offering? But just as an elevation offering is not eaten, this purification offering was not eaten<sup>161</sup>. Rabbi Jehudah says, they brought it for idolatry; Rabbi Hizqiah, Rabbi Jeremiah, Rabbi Hiyya in the name of Rabbi Johanan, it was a temporary ruling<sup>178</sup>. Rabbi Jeremiah (learned) [did not say]<sup>163</sup> so but the bull needs laying on of hands by the Elders while the goats of idolatry do not need laying on of hands by the Elders. By whom? Rabbi Jeremiah wanted to say, by Aaron and his sons. Rabbi Yose told him, Rabbi Hiyya also stated, *he shall put his hands on, they shall put their hands on*<sup>182</sup>, to include the goats of idolatry for laying on hands but not by the Elders. Rabbi Yose (learned) [did not say]<sup>163</sup> so but the living [goat] needs laying on of hands by Aaron, but the goats of idolatry do not need laying on of hands by Aaron. It is written so, “*Aaron shall lean with both his hands on the living goat’s head*; the living [goat] needs laying on of hands by Aaron, but he goats of idolatry do not need laying on of hands by Aaron.<sup>183</sup>” What does Rabbi Jeremiah do with this? He explains it, for a common priest<sup>184</sup>.

161 To delete.

162 This is a quote from *Num.* 8:12, not fitting for the context.

163 The text in the Babli shows that one has to read למר i. e. לאמר.

164 The Halakhah does not refer to Mishnah 8 but to Mishnaïot 6-7, to explain why R. Meïr requires only one bull, R. Jehudah 12, and R. Simeon 13.

165 *Lev.* 4:13.

166 *Num.* 15:24.

167 This argument is difficult to explain. In *Sifra Wayyiqra* 2 *Parašah* 4(2), the expression עֲדַת יִשְׂרָאֵל used in *Lev.* 4:13 is explained as referring to the High Court, the selected group from Israel, based on v. 15 which makes it clear that the bull has to be presented by the Elders, the members of the High Court. Then R. Meïr’s argument is to infer from *Lev.* 4:13

to *Num.* 15:24: Since the bull is the responsibility of the Court, the goat for idolatry also must be the responsibility of the Court.

168 His argument is straightforward. Since the entire paragraph *Num.* 15:22-26 speaks only about עֲדָה, without any mention of the Elders, it is addressed to the public. Then the use of parallel terms is taken to transfer the setting to *Lev.* 4:13.

169 He accepts arguing both from *Lev.* 4:13 to *Num.* 15:24 and vice versa.

170 They have to pay for the bull from their own money and present it in the Temple.

171 Who has to pay and who has to officiate?

172 One imposes a tax and collects from everybody. In all other sources, Babli 3b, *Menahot* 52a; Tosephta *Šeqalim* 2:6, the

argument is between R. Jehudah and R. Simeon. This is the reasonable reading since for R. Meïr the Court pays from their own means.

173 Since obviously not every single Israelite can be called to lay his hands on the bull.

174 This follows R. Simeon in *Sifra Wayyiqra 2 Pereq 6(2)*; R. Jehudah requires five.

175 The only sacrifices whose blood is brought inside the sanctuary to be sprinkled on the incense altar are the purification offerings of the High Priest and the Community as well as the offerings of the Day of Atonement. The body of any such sacrifice must be burned outside the holy precinct (*Lev. 6:23,16:27*).

176 *Sifra Wayyiqra 2 Pereq 6(3)*; Tosephta *Menahot 10:9*; Babli *Menahot 92a*.

177 *2Chr. 29:23*. As usual, the argument is from the part of the verse which was not quoted: *they presented the goats of the purification offering before the king and the public; they laid their hands on them*. The goats were offered by Josiah to atone for the idolatry of his father Ahas.

178 A temporary deviation from Torah norms acceptable by prophetic instruction as long as it does not violate prohibitions. The absence of a bull and the presence of multiple goats both deviate from Torah prescriptions.

179 This is a question for RR. Jehudah and Simeon. If a person dedicated an animal as a purification offering but died before it was sacrificed, the animal cannot be sacrificed without its owner nor can it

be redeemed or used for any profane or holy purpose whatsoever. If the bull really is the obligation of the public and paid by the public's money, it should become unusable if anybody who gave money for the sacrifice (*Note 172*) died before the ceremony was held. Practically, this would make the ceremony impossible.

180 *Ezra 8:35: Those who came from captivity, from the diaspora, sacrificed elevation offerings to the God of Israel, twelve bulls for all of Israel, 96 goats, 77 sheep, purification goats twelve, all of it an elevation offering for the Eternal*. An elevation offering is completely burned; the meat of a purification offering is eaten by the priests. To call a purification offering an elevation offering is a contradiction in terms.

181 Babli 6a. Since they brought 12 goats, R. Jehudah has Ezra's authority for his position. This interpretation justifies the reading of *Num. 15:24* by the Mishnah. That verse requires the congregation to bring *a bull as elevation offering and a goat as purification offering*. If a purification offering which may not be eaten can be called an elevation offering, it is possible to identify this bull with the one prescribed in *Lev. 4:13*. V. 24 requires the congregation (i. e., its Elders) to proffer the sacrifices but v. 25 requires the Cohen to conduct the entire ceremony. Both the opinions that the Elders do the laying on of their hands as also that the Cohen has to do it have biblical support.

182 *Lev. 16:21* prescribes that Aaron has to lay his hand on the live goat. Since the



entire service of the Day of Atonement is by the unaided High Priest, the mention of the name seems to be superfluous; it could as well have said "he has to lay his hands on." It is concluded (next Note) that this is the only case in which the High Priest is required to lay his hands on. In parallel, one may read *Lev. 4:15* where the Elders of the congregation are required to lay

their hands on the bull, that they are not required to lay their hands on the goat.

183 *Sifra Ahare Mot Parašah* 4(4).

184 Since neither the High Priest nor the Elders are empowered but *Num. 15:25* requires the participation of a common priest, all biblical requirements are satisfied by having the common priest do the entire ceremony.

46b line 46) רבי זעירא בשם רב המנונא קרבי מאיר. תני תמן. הורי בית דין ועשו קהל. מת אחד מבית דין פטורין. מת אחד מן הציבור חייבין. אמר להן רבי מאיר. אם לאחרים הוא פטור לא כלשפן על עצמו. אמרו לו. ופטור לאחרים שיש להן במה לתלות ואל ופטור לעצמו שאין לו במה לתלות.

1 המנונא כר' מאיר | אדא ברבי מאיר | תני | תניי | מת | ומת | 2 להן | להם | הוא | יהא | 3 להן | להם | לתלות | להתלות | 4 לתלות | להתלות |

רבי זעירא בשם רב חסדאי. תני תמן. הורי בית דין ועשו הן ונדעו מה הורי. טעו מה הורי שגו מה הורי יכול יהו חייבין. תלמוד לומר לומר ונדעה החטאת ולא שיונדעו החוטאין. מה נפשד. חלב קרבי יהושע אתנא היא בשחורי ולא ידעו מה הורי אם עבדה זרה אם שאר כל-המצות. אם עבדה זרה בפר אם שאר כל-המצות בשעיר. ספק פר ושעיר שניני קרבן הוא והוא פטור.

1 חסדאי | חסדי | תני | טעו | וטעו | 2 שגו | ושגגו | שיוודעו | שיוודעו | החוטאין | החוטאים | 3 חלב | חלב | הורי | חייבין | שבת | הורי | חייבין. | אמר | רבי | בון | בר | חייא | ותניא | כר' | אליעזר | ברם | כר' | יהושע | לא | אתנא | אמר | רבי | יסה | ברם | 4 ושעיר | ספק | פר | ושעיר |

Rebbi Ze'ira in the name of Rav Hamnuna: Following Rebbi Meir<sup>185</sup>. There, it was stated: If the Court ruled and the public acted<sup>186</sup>. If a member of the Court died, they are not liable. If a member of the public died, they are liable<sup>187</sup>. Rebbi Meir told them, if he<sup>188</sup> relieves others of their liability, not so much more for himself? They told him, he can relieve others from their liability since they have where to hang on; he cannot relieve himself of liability since he has nothing to hang on.

Rebbi Ze'ira in the name of Rav Hisdai. There, it was stated<sup>189</sup>: "If the Court ruled, and they themselves acted, and they realized what they ruled about. If they erred in what they ruled, would they be liable? The verse says, *if the sin became known*<sup>190</sup>, not that the sinners became known." Anyway you take it<sup>191</sup>, if about fat [<sup>192</sup>they ruled they are liable, if about Sabbath they ruled

they are liable. Rabbi Abun bar Hiyya said, this follows Rabbi Eliezer<sup>193</sup>; it does not follow Rabbi Joshua. Rabbi Yose said, but] it follows Rabbi Joshua if they ruled and they did not know whether about idolatry or about any other commandment<sup>194</sup>. If about idolatry by a bull, if about any other commandment a goat<sup>195</sup>. Since it is in doubt whether a bull or [a bull and<sup>196</sup>] a goat, it is a difference in sacrifice and he<sup>197</sup> is not liable.

185 The following *baraita* can be understood only following R. Meïr who declares the bull to be the exclusive responsibility of the Court.

186 *Sifra Wayyiqra 2 Paršetaḥ* 4(10). The Court is not liable as long as the public did not act on their instructions.

187 If a member of the Court died, the bull becomes a purification sacrifice whose part-owner had died; it cannot be brought nor sacrificed. While the sacrifice is brought for the benefit of the public, the public has no monetary interest in the bull following Rabbi Meïr. For him, all the public does is trigger the obligation.

188 If a member of the Court acted on his own faulty ruling, the bull cannot relieve him of the obligation for a private purification sacrifice since the bull only is intended to shield those who acted on instructions of the Court. He himself does not depend on the Court and still is liable (Mishnah 1; Note 191).

189 Babli 5a, *Sifra Wayyiqra 2 Paršetaḥ* 4(12).

190 *Lev.* 4:14. V. 13 makes it clear that the actions of the people trigger the obligation of the bull, not the actions of the court when it is not followed by the people.

191 This refers to another situation which

is described at the end. The court ruled, they were followed by the people, they realized their error but know they cannot decide which paragraph of the law they misinterpreted. In the Babli 5a, *Ševuot* 18b, *Keritut* 19a, R. Eliezer is quoted to hold that if one is not sure of the exact category of the sin committed it does not matter as long as all of them require a sacrifice. R. Joshua holds that a purification sacrifice is possible only if the legal definition of the transgression is known, as in all cases the verse requires that the sin be known (*Lev.* 4:14 for the court, v. 23 for the prince, v. 28 for a private person; cf. Note 22.) From the text here it seems that the Yerushalmi tradition switches the names.

192 Text of B, missing in the ms. The text must be supposed also for the ms. since otherwise the reference to R. Joshua is unmotivated.

193 Who in the Yerushalmi version prohibits the Court from offering the bull if they cannot define exactly which commandment had been breached.

194 The argument in Note 191 is valid only if the different infractions all carry the same penalty. But if there is a question about which sacrifice to offer, no sacrifice is possible. Purification (and reparation) offerings cannot be brought as

voluntary offerings since in contrast to these all voluntary offerings need gifts of flour and wine. Therefore one could not bring both kinds of sacrifice stipulating that the inappropriate one should be considered as voluntary.

195 Clearly, one has to switch the

positions of “bull” and “goat”.

196 Text of B, more correct since the bull for unspecified sins is a purification offering and that for idolatry an elevation offering.

197 The Court.

## הורה כהן משיח פרק שני

(fol. 46b) **משנה א:** הורה כהן משיח לעצמו ועשה שוגג מביא פר. שוגג ועשה מזיד מזיד ועשה שוגג פטור שהורנית כהן משיח לעצמו בהורנית בית דין לציבור:

**Mishnah 1:** If the Anointed Priest<sup>1</sup> ruled for himself in error and acted in error, he brings a bull<sup>2</sup>. If in error but he acted intentionally, or intentionally and he acted in error, he is not liable<sup>3</sup> since the ruling of the Anointed Priest for himself is like the ruling of the Court for the public.

1 This is the expression used in *Lev.* 4:1-12 for the High Priest. Since the verse refers here to “the Anointed Priest” while in *Lev.* 21:10 he is called “the High Priest”, it is inferred (*Mishnah* 3:4, *Megillah* 1:9) that High Priests of the Second Temple who were not anointed were not entitled to this ceremony. The Anointed has to confess his sin while leaning with his hands on the bull’s head. The remainder of the ceremony, as also

that of the Court’s bull, may be performed by a common priest. *Sifra Wayyiqra* 2 *Parashah* 3(6).

2 As described in *Lev.* 4:1-12, his private purification offering.

3 He cannot bring a purification offering unless it was an unintentional act. If he ruled wrongly but then did not act on his ruling because he did not trust his judgment, no sacrifice is due or possible.

(46c line 15) **הלכה א:** הורה כהן משיח כול. לְפָשׁ אִם הִכְהֵן הַמְשִׁיחַ. הָרִי מְשִׁיחַ כְּיָחִיד. מֵה יָחִיד אִם אָכַל בְּהוֹרֵנִית בֵּית דִּין פְּטוּר. אִף זֶה אִם אָכַל בְּהוֹרֵנִית בֵּית דִּין פְּטוּר. מֵה יָחִיד אִם אָכַל בְּלֹא הוֹרֵנִית חֵיב. אִף זֶה אִם אָכַל בְּלֹא הוֹרֵנִית חֵיב. תִּלְמוּד לומר לְאִשְׁמַת הָעֵם. הָרִי אֲשַׁמְתוֹ כְּאִשְׁמַת הָעֵם. מֵה הָעֵם אֵינָן חֵיבִין אֶלָּא אִם כֵּן הוֹרִי. אִף זֶה אֵינָן חֵיבִין אֶלָּא אִם כֵּן הוֹרִי. אֵית תִּנְיִי תִנְיִי. הָעֵם בֵּית דִּין. מֵה הָעֵם הוֹרִי הֵן וְעָשׂוּ אֲחֵרִים חֵיבִין אִף זֶה הוֹרִי הוּא וְעָשׂוּ אֲחֵרִים יְהֵא חֵיב. תִּלְמוּד לומר אֲשֶׁר חָטָא. עַל מֵה שֶׁחָטָא הוּא מְבִיא וְאֵינוּ מְבִיא עַל מֵה שֶׁחָטָאוּ אֲחֵרִים. אֵית תִּנְיִי תִנְיִי. הָעֵם צִיבּוּר. מֵה הָעֵם הוֹרִי אֲחֵרִים וְעָשׂוּ הֵן חֵיבִין אִף זֶה הוֹרִי אֲחֵרִים וְעָשׂוּ הוּא יְהֵא חֵיב. תִּלְמוּד לומר אֲשֶׁר חָטָא. עַל מֵה שֶׁחָטָא הוּא מְבִיא. אֵינוּ מְבִיא עַל מֵה שֶׁחָטָאוּ אֲחֵרִים. רַבִּי יַעֲקֹב בְּשֵׁם רַבִּי לֵעָזֵר. וְהוּא שֶׁיְהֵא יוֹדֵעַ לִישָׁא וְלִיתֵן בְּהִלְכָּה. דְּלֹא כֵן מֵה כֵן אֲמָרִין. וְיֵשׁ שׁוֹטִים מוֹדִין. מְשִׁיחַ שֶׁאָכַל בְּהוֹרֵנִית בֵּית דִּין פְּטוּר. בְּהוֹרֵנִית מְשִׁיחַ אַחֵר חֵיב. בְּהוֹרֵנִית בֵּית דִּין פְּטוּר. שְׂאִין הוֹרֵנִית אֲחֵרִים אֶצֶל הוֹרֵנִית כּוֹלֵן. בְּהוֹרֵנִית מְשִׁיחַ אַחֵר חֵיב. וְהוּא שֶׁהוֹרֵה כְּיוֹצֵא בּוֹ.

1 כול' וכו' הרי - 2 בהוריית | בהורית | בהוריית | בהוראת מה | או מה 3 בלא הוריית | בלי הוראה (2)  
 5 הן - הוא - 7 ציבור | צבור 8 אינו | ואינו 9 יעקב | יעקב בר אחא לעזר | אלעזר 10 אמרין |  
 קיימין בהוריית | בהוראת בהוריית | בהורית 11 בהוריית | בהוריית אחרים | הוריתו הוריית כולן  
 { הוריתן כלום בהוריית | בהורית }

**Halakhah 1:** “If the Anointed Priest ruled,” etc. *A person; if the Anointed Priest.*<sup>4</sup> This makes the Anointed like a private person<sup>5</sup>. Since the private person is not liable if he ate<sup>6</sup> on the Court’s ruling, also neither is this one liable if he ate on the Court’s ruling. Since the private person is liable if he ate without a ruling, this one also should be liable if he ate without a ruling<sup>7</sup>; the verse says, *for the fault of the people*. As the people<sup>8</sup> are liable only if they issued a ruling, this one also is liable only if he issued a ruling. There are Tannaïm who state that *the people* are the Court. Since the people<sup>8</sup> are liable if they instructed and others acted, this one also should be liable if he ruled and others acted. The verse says, *as he sinned*. He brings for what he sinned but he does not bring for what others sinned. There are Tannaïm<sup>9</sup> who state that *the people* are the public. Since the people are liable if others ruled and they acted, this one also should be liable if others ruled and he acted. The verse says, *as he sinned*. He brings for what he sinned but he does not bring for what others sinned<sup>10</sup>. Rabbi Jacob<sup>11</sup> in the name of Rabbi Eleazar. Only if he is competent to argue about practice<sup>12</sup>. Otherwise, would we say the incompetents give instructions?

The anointed who ate following the Court’s prescript is not liable; following another Anointed’s prescript he is liable. Following the Court’s prescript he is not liable, since the prescript of others is nothing<sup>13</sup> compared to their prescripts<sup>14</sup>. Following another Anointed’s prescript he is liable, on condition that he instructed similarly<sup>15</sup>.

4 Lev. 4:2,3.

5 In v. 2, the High Priest is mentioned as “a person”; only in v. 3 as Anointed. It is concluded that the Anointed Priest follows the rules of private persons unless there is an indication to the contrary. Babli 7b, *Sifra Wayyiqra 2 Parṣeta* 2(1).

6 Taking eating forbidden fat as standard example of a forbidden action.

7 The question is raised why does the Mishnah require a sacrifice only if the Anointed Priest first gives an inadvertent wrong instruction and then acts on it without realizing his error? This mixes required features of the purification offerings both of the Court (only after issuing a prescript, not acting on it themselves) and the private person (not

instructing anybody but acting).

8 This argument identifies “the people” as the Court.

9 Babli 7a, *Sifra Wayyiqra 2 Pereq* 2(1,4).

10 Including the Court. Since the High Priest is mentioned before the Court, his purification offering cannot be dependent on the Court’s ruling.

11 In B: R. Jacob bar Aha. It is impossible to decide which reading is preferable or whether the same person is meant in both sources.

12 This shows that the rules are applicable to the High Priests of the Second Temple, who were invested but not anointed. The High Priests of the First Temple were supposed to be the

guardians of the Law. The Hasmonean kings and the later High Priests mostly had no claim to learning.

13 The translation follows B. The text of the ms., “since the prescript of others is by all their prescripts” does not make any sense.

14 As explained in Note 10, the High Priests cannot be made dependent on the prescripts of others. The High Priest is “not dependent on the Court” *ex officio*. But as explained earlier, he cannot bring his purification offering unless his action was based on his own ruling.

15 It is not required that the High Priest have original thoughts when acting; he is presumed to follow (correct) precedent.

**משנה ב:** הוֹרָה בְּכִנִּי עֲצָמוֹ וְעָשָׂה בְּכִנִּי עֲצָמוֹ מִתְכַּפֵּר לוֹ בְּכִנִּי עֲצָמוֹ. הוֹרָה עִם הַצִּיּוֹר וְעָשָׂה עִם הַצִּיּוֹר מִתְכַּפֵּר לוֹ עִם הַצִּיּוֹר. שָׂאִין בֵּית דִּין חִיּוּבִין עַד שְׁיֹרֵי לְבָטֵל מִקְצֵת וּלְקַיִּים מִקְצֵת. וְכֵן הַמְּשִׁיחַ. וְלֹא בְּעִבּוּדָה זָרָה עַד שְׁיֹרֵי לְבָטֵל מִקְצֵת וּלְקַיִּים מִקְצֵת: (fol. 46c)

**Mishnah 2:** If he ruled for himself and acted for himself, it is atoned for himself. If he ruled with the public and acted with the public, it is atoned for him with the public<sup>16</sup>. As the Court is not liable unless they instruct to void part and confirm part, so is the Anointed<sup>17</sup>. Also for idolatry they are not liable unless they instruct to void part and confirm part<sup>18</sup>.

16 As shown in the preceding paragraph, his sacrifice is reserved for inadvertent sins peculiar to himself. Even if he concurred with an erroneous ruling by the Court, a separate offering would be inappropriate. This differs from the ritual of the Day of Atonement where the High Priest has to atone for himself (*Lev. 16:6*)

before he can officiate for the other priests (v. 11) and the people (v. 15). But here he is not acting on behalf of others.

17 All rules established in Chapter 1 for the Court’s bull apply to the High Priest’s bull. In the verse (*Lev. 4:20*) it is formulated the other way: All rules of the High Priest’s bull apply to the Court’s.

18 The rules concerning general an argument similar to Chapter 1, Note infractions are transferred to idolatry by 167.

(46c line 31) **הלכה ב:** הורה בפני עצמו כול'. הורי בית דין והורה אחריהן והחליף. פשיטא נעשית אצלו כעקירת גוף. אלא הורה הוא תחילה והורי בית דין אחריהן והחליפו. אפילו כן נעשית אצלו כעקירת גוף. או מאחר שהורה הוא תחילה ונדחה הוריתו בהוריתו ואינה נעשית אצלו כעקירת גוף. הורי בית דין והורה אחריהן. פשיטא אבל בהורית בית דין פטור. אבל משחזרו בהן בית דין חייב. אמר רבי יוסי. ולא מתניתא היא. הורה בפני עצמו מתכפר לו בפני עצמו. מפני שהורה בפני עצמו ועשה בפני עצמו. אבל אם הורה עם הציבור ועשה עם הציבור מתכפר לו עם הציבור. מפני שהורה עם הציבור ועשה עם הציבור. אבל הורה בפני עצמו מתכפר לו בפני עצמו.

1 הלכה ב. הורה בפני עצמו כול'. - 2 אחריהן | אחריו 3 נעשית | נעשת ונדחה הוריתו בהוריתו | תדחה הוריתו להוריתו 4 נעשית | נעשת 5 משחזרו | משהורו חייב | - יוסי | יוסה היא | - | ועשה בפני עצמו 6 הורה | היה 7 מפני | אמר רבי מנא דשלחת קודמין היא ואמור דברתא הורה עם הציבור ועשה עם הציבור מתכפר לו עם הציבור. מפני אבל | אבל אם 8 - | ועשה בפני עצמו

**Halakhah 2:** “If he ruled for himself,” etc. The Court ruled, he ruled following them, and then changed. It is obvious that for him it is the equivalent of uprooting the whole<sup>19</sup>. But if he ruled first, the Court then ruled following him, and afterwards they reversed themselves. Nevertheless is it for him the equivalent of uprooting the whole<sup>20</sup>, or because he ruled first, but his ruling was overturned by their ruling, for him it should not be the equivalent of uprooting the whole<sup>21</sup>? If the Court ruled and he ruled following them, it is obvious that he is not liable if he ate<sup>22</sup> according to the ruling of the Court<sup>23</sup>. But after the Court reversed itself, he is liable<sup>24</sup>. Rabbi Yose said, is that not the Mishnah? “If he ruled for himself [and acted for himself]<sup>25</sup>, it is atoned for himself.” Because he ruled for himself and acted for himself. “But if he ruled with the public and acted with the public, it is atoned for him with the public.”<sup>26</sup> Because he ruled with the public and acted with the public, but “if he ruled for himself [and acted for himself]<sup>25</sup>, it is atoned for himself.”

19 R. Moses Margolis (*Pene Moshe* and *Mar'eh Happanim*), the author of the only complete Commentary to *Hora'ot*, explains that the Court and the High Priest originally issued consistent rulings. Then the High Priest changed his mind, and

issued a new ruling on the same subject so that the two inconsistent prohibitions together amount to a complete removal of a biblical prohibition which according to Mishnah 1:3 prevents atonement by a sacrifice. It is difficult to find this in the

language of the paragraph since it says clearly that the High Priest changed his mind, i. e., he permits what the Court forbade and the Court forbids what the High Priest forbade; neither of the parties uproots the entire commandment.

Therefore, it seems that at first the High Priest followed the High Court's ruling, as stated in the text, but then reversed himself and opposed the High Court's ruling. Then irrespective of the topic of the dispute, the High Court uprooted *Deut.* 17:8-13. If the Court stays with its pronouncement, the High Priest is barred from rehabilitating himself by a sacrifice.

20 If he continues to adhere to his own ruling after the Court reversed itself.

21 Since he first ruled by scriptural authorization. The question remains unanswered.

22 Forbidden fat which the Court had permitted; the standard example of a sin atonable by a sacrifice.

23 Since he follows the public, his action in performing the rites for the Court's

offering also atones for him as noted in the Mishnah.

24 Since the Temple is adjacent to the Court's seat, he will know immediately of the Court's decision and, therefore, his later actions are not covered by the Court's offering (*Halakhah* 1:2). The text in the Babli lacks the last word; this text has to be read as a question: "But after the Court reversed itself? Rabbi Yose said, is that not the Mishnah? . . .", i. e., the answer to the question is obvious. There is no material difference in the meaning of the two texts.

25 Addition from B.

26 B here has an additional text:

Rebbi Mana said, what you want to prove from the first part [of the Mishnah] is stated in the later part, "if he ruled with the public and acted with the public, it is atoned for him with the public."

In this text, the quote of the same statement preceding the statement of R. Mana (II, student of R. Yose and R. Jonah) should be omitted.

**משנה ג:** אין חייבין אלא על העולם דבר עם שגגת המעשה וכן המשיח. ולא בעבודה זרה אלא על העולם דבר עם שגגת המעשה.

**Mishnah 3:** They<sup>27</sup> are liable only for forgetting a topic<sup>28</sup> with action in error; the same applies to the Anointed. Also for idolatry<sup>29</sup> only for forgetting a topic with action in error.

27 The High Court.

28 There must be an element of oblivion in their ruling; either forgetting a certain

law or that it applies in the given situation.

29 Since it was stated in *Halakhah* 1:8



that the special offerings required for the sin of idolatry follow the rules of the bull

required for all other infractions.

**הלכה ג:** אין חייבין אלא על העלם דבר כול'. רבי זעירא בשם רב ירמיה. מתניתא רבי מאיר או דייק רבי מאיר. אמר רבי יוסי. רבי מאיר דאמר. חובת בית דין היא. אמר רבי מנא כרבי מאיר. תני תמן. הורי בית דין ועשי קהל. מת אחד מבית דין פטורין. מת אחד מן הציבור חייבין. אמר להן רבי מאיר. אם לאחרים הוא פטר לא כל-שכן על עצמו. אמרו לו. פטור לאחרים שיש להן במה לתלות. ואל פטור לעצמו שאין לו במה לתלות. רבי ירמיה בעא קומי רבי זעירא. מה כרבי. אין. משיח בשיגגת מעשה הוא. ואין כרבנן. בהעלם דבר הוא. אמר רבי הונא. על רבנן נצרכה. שלא תאמר. משיח נעבדה זרה. רבי אמר. בשיגגת מעשה. ורבנן אמרין. בהעלם דבר. אמר מה לקל מה בגין דלא תנינו משיח. והא קדמיתא לא תנינו משיח ומשיח בכלל. וכן אף על גב דלא תנינו משיח משיח בכלל.

1 רב | רבי 2 מתניתא | מתניתא או דייק | הייך | יוסי | יוסה 3 תני | תני 4 הציבור | הצבור להן | להם פטור | פטור על עצמו | לעצמו 5 לתלות | להתלות 6 אין. משיח בשיגגת | דרבי אמר משוח בשגגת 7 הונא | חייא תאמר | תימר 7 ורבנן | הרבנן מי לקל מה | לון 8 קדמיתא | קדמייתא וכא | והא תנינה לא תנינו משיח ומשיח בכלל ובא

**Halakhah 3:** “They are liable only for forgetting,” etc. Rabbi Ze’ira in the name of Rav Jeremiah. The Mishnah<sup>30</sup> is Rabbi Meir’s or has inferences like Rabbi Meir<sup>31</sup>. Rabbi Yose said, Rabbi Meir who said, it is an obligation of the Court.<sup>32</sup> Rabbi Mana said, following Rabbi Meir. There, it was stated: If the Court ruled and the public acted. If a member of the Court died, they are not liable. If a member of the public died, they are liable. Rabbi Meir told them, if he relieves others of their liability, not so much more for himself? They told him, he can relieve others of their liability since they have where to hang on; he cannot relieve himself of liability since he has nothing to hang on.

Rabbi Jeremiah asked before Rabbi Ze’ira: Maybe following Rabbi? If<sup>33</sup> the Anointed, error in action it is. But if the rabbis, oblivion of a topic it is. Rabbi Huna<sup>34</sup> said, it was needed for the rabbis. That you should not say, the Anointed and idolatry: Rabbi said, in acting in error; the rabbis said, in forgetting a topic. He said [ ]<sup>35</sup>, because we did not state about the Anointed. But in the former<sup>36</sup>, we did not state about the Anointed but the Anointed is included, and here, even though we did not state about the Anointed, the Anointed is included.

30 The spelling in B is a scribal error.

31 It is difficult to make sense of this statement. The version of B is straightforward: "Which R. Meïr?" Meaning, which statement of R. Meïr fits the Mishnah? The answer to this question is given by R. Yose. Since the Mishnah refers to the Court's, not to the public's monetary responsibility, it must accept R. Meïr's position which, being formulated as anonymous doctrine, becomes practice.

32 This text is from Halakhah 1:8, Notes 185-188. (There, R. Ze'ira reports in the name of a Sage whose identity is not clear.)

33 There is a lacuna in the text which must be filled by the text of B:

[Does it follow Rabbi, for Rabbi said,] the Anointed refers to the case of action in error, but for the rabbis, it refers to forgetting a topic.

In contrast to the Mishnah, which for the High Priest as for the Court requires both an element of oblivion and acting in error, Rabbi points out that for the Court, the forgetting is the Court's but the action in error is the public's. Rabbi compares the status of the High Priest to that of the Court. Since for general errors the Mishnah states that the same rules apply

to the High Priest as to the Court, the argument must be about the sin of idolatry where the High Priest is not mentioned. The rabbis note that the High Priest does not have the status of the Court vis-a-vis the public; his rulings are private, not public actions. Therefore, he cannot be held responsible unless he act. They do not deny that an element of oblivion is required to trigger the obligation of the purification sacrifice.

34 The reading "R. Huna", a student of R. Jeremiah, is preferable to the reading of B: "R. Hiyya", the teacher of R. Ze'ira.

35 The text of the ms., "what for easy what" seems corrupt. It is better to follow the reading of B: "He said to them, why? Because ... ". The Anointed is not mentioned in the last sentence of the Mishnah, but this does not mean that the rule given there does not apply to him.

36 In Mishnah 2, in the last sentence about idolatry the High Priest is not mentioned but everybody agrees that it also applies to him; so the parallel sentence in Mishnah 3 also must apply to him. The Mishnah strictly follows the rabbis, not Rabbi.

(fol. 46b) **משנה ד:** אין חייבין אֶלָּא על דָּבָר שֶׁזָּדוֹנוֹ כָּרַת וְשִׁגְגָתוֹ חֲטָאת וְכֵן הַמָּשִׁיחַ. וְלֹא בְעִבּוּדָה וְזֶה אֶלָּא על דָּבָר שֶׁזָּדוֹנוֹ כָּרַת וְשִׁגְגָתוֹ חֲטָאת:

**Mishnah 4.** They<sup>27</sup> are liable only for something which when intentional is punishable by extirpation<sup>37</sup> and when unintentional by a purification sacrifice<sup>38</sup>. The same applies to the Anointed. Also for idolatry<sup>29</sup> only for



מעניי מעניי מה מעניי שנאמר להלן משיח בשגגת המעשה הוא אף מעניי שנאמר כאן בשגגת המעשה הוא לפום כן לא דריש רבי מעניי מעניי אמר רבי יוסה אין ידרוש רבי מעניי מעניי מה מעניי שנאמר להלן דבר שיש בו מיתת בית דין אף מעניי שנאמר כאן דבר שיש בו מיתת בית דין לפום כן לא דריש רבי מעניי מעניי ולית סופיה רבי מדרוש מעניי מעניי דלכו מנן ליה היחיד והנשיא והמשיח לא מעניי אמר ר' חנינא דלכו מנן ליה עד שיוירו לבשל מקצת ולקיים מקצת לא מעניי דל כן מנן ליה הורית בית דין גדול הורית בית דין קטן לאו מעניי מעניי אמר רבי חנינא קומי רבי מנא. ולית סופיה דרבי מדרוש מעניי מעניי אמר ליה מה את בעי מרבי רבי כדעתיה דרבי אמר משיח בשגגת מעשה הוא ואין כתיב ודון שגגה ליחיד אלא בית דין בלבד אותו מיעט קרבנו למצוה יחידית שלא יכנס מדמו לפניו מה כרבי דרבי אמר משיח בשגגת מעשה הוא ואין כרבנו העולם דבר הוא אמר ר' הונא על רבנו נצרכה שלא תימר הואיל והוא בהכרת יכנס דמו לפני לפניו לפום כן צריך מימר אותו מיעט קרבנו למצוה יחידית שלא יכנס דמו לפניו.

**Halakhah 4:** “They are only liable for something which when intentional is punishable by extirpation,” etc. <sup>39</sup>*The commandments of the Eternal*<sup>40</sup>. I could think that this also includes those who eat abominations and crawling things. <sup>41</sup>It says here *from the eyes* and it says there *from the eyes*. Just as *from the eyes* mentioned there means something which is punished by extirpation in case of intentional sin<sup>42</sup> and needs a purification sacrifice for an inadvertent sin, so *from the eyes* mentioned here means something which is punished by extirpation in case of intentional sin and needs a purification sacrifice for an inadvertent sin. Or since *from the eyes* mentioned there means something that can lead to the death penalty, so *from the eyes* mentioned here should mean something that can lead to the death penalty<sup>43</sup>?

<sup>44</sup>Rebbi Yose ben Hanina said, from a place where all incest prohibitions were taken as one set [of sins] causing extirpation, the (married woman) [father’s wife] came out to tell you about the bastard.

<sup>45</sup>Rebbi said *over which, over her*. Since *over her* mentioned there refers to something which is punished by extirpation in case of intentional sin and needs a purification sacrifice for an inadvertent sin, so *over which* mentioned here means something for which one is punished by extirpation in case of intentional sin and needs a purification sacrifice for an inadvertent sin. Why does Rebbi not infer from *from the eyes, from the eyes*?

<sup>46</sup>[Rebbi Ze’ira said: If Rebbi would infer from *from the eyes, from the eyes*, then *from the eyes* mentioned there for the Anointed refers to action

in error; also *from the eyes* mentioned here would have to refer to action in error. Therefore, Rabbi will not infer from *from the eyes, from the eyes.*]

Rebbi Yose said: If Rabbi would infer from *from the eyes, from the eyes*, then since *from the eyes* mentioned there means something that can lead to the death penalty, so *from the eyes* mentioned here means something that can lead to the death penalty<sup>47</sup>. Therefore, Rabbi does not infer from *from the eyes, from the eyes.* (Does Rabbi not have a book) [Will Rabbi not in the end have]<sup>48</sup> to infer *from the eyes, from the eyes?*

<sup>49</sup>For if it is not so, from where would we have the rules for the individual, the chief, and the Anointed? Not from *from the eyes, from the eyes?*

<sup>50</sup>For if it is not so, from where would we have “unless they ruled to eliminate part and to confirm part”? Not from *from the eyes, from the eyes?*

For if it is not so, from where would we have [the difference between] a ruling of the High Court and a ruling of a lower court<sup>51</sup>? Rebbi Hanania<sup>52</sup> said before Rebbi Mana: Would not Rabbi in the end have to infer from *from the eyes, from the eyes?* He told him, what do you want from Rabbi? Rabbi follows his own opinion, since Rabbi said, the Anointed refers to action in error. Intentional error is only written for the Court<sup>46</sup>.

<sup>53</sup>*It.* It specifies about his sacrifice that for the singular commandment its blood should not be brought into the Sanctuary. Does this follow Rabbi, as Rabbi said, the Anointed refers to action in error; if it would follow the rabbis, there must be an instance of forgetting. (Rav) [Rebbi]<sup>54</sup> Huna said, it was needed for the rabbis. Lest you say, because there is extirpation<sup>55</sup> its blood should be brought into the Sanctuary. Therefore, it was necessary to say *it*, it specifies his sacrifice that for the singular commandment its blood should not be brought into the Sanctuary.

39 Cf. *Yebamot* 4:15, Notes 219-227.

40 Since the introduction to the rules of purification sacrifices, *Lev.* 4:2, seems to prescribe such a sacrifice for *all the Commandments of the Eternal*, it needs an argument why in all four cases (the High

Priest, the High Court, Prince, and commoner) simple transgressions are excluded.

41 Cf. *Halakhah* 1:8, Notes 145 ff. Here also one compares the transgressions for which the Court has to bring a bull to the

sin of idolatry for which a bull and a goat are required.

42 The punishment for idolatry in the absence of witnesses or warning.

43 The punishment for idolatry if there are witnesses for warning and deed.

44 This is a wrong quote from *Yebamot* (Note 220). The father's wife who is not the mother is forbidden in *Deut.* 23:1 (in addition to *Lev.* 18:8, 20:11). The bastard is mentioned in *Deut.* 23:3; it is inferred that the bastard is a child from a forbidden union exemplified by the father's wife.

One may assume that the intended quote from *Yebamot* was the answer given there to the question: "R. Yose ben Hanina said, from the place from which idolatry was singled out to teach about all who are subject to extirpation (*Num.* 15:31), there was no mention of anything but extirpation (*Num.* 15:30-31). But the death penalty is written elsewhere (*Lev.* 20:2, *Deut.* 17:5)." (Note 226).

45 Babli 8a, *Yebamot* 9a. In *Lev.* 4:14, speaking of the Court's sacrifice, it is said, *and the sin became known concerning which (עֲלֵיָהָ) they had sinned.* In *Lev.* 18:18 one reads: *Do not marry a woman in addition to her sister, to make them co-wives, to uncover her nakedness over her (עֲלֵיָהָ) during her lifetime.* *Lev.* 18:29 is a blanket warning that all sexual crimes mentioned in the Chapter are punishable by extirpation. The wife's sister is not mentioned in the list of punishments in *Lev.* 20. Therefore this is a reference only to divine extirpation; even with witnesses and due warnings no death penalty is involved (*Sanhedrin* 7:5,

Note 78).

46 Text found only in B. Since the argument of R. Ze'ira is identical to that of R. Mana (student of R. Ze'ira's student), the text is suspect. In Halakhah 3 it was established that Rabbi requires the High Priest to bring a sacrifice for an erroneous action even without an element of oblivion. If Rabbi would accept transfer of the argument of Halakhah 1:8, Notes 165ff. to the problem here, he would have to hold that the same applies to the Court. But since forgetting is mentioned in the verse speaking of the Court, this would disprove his thesis. Therefore, Rabbi cannot accept the application of the argument of Halakhah 1:8 to the problem of Mishnah 2:4.

47 He accepts the question (Note 43) as valid.

48 The text in parentheses is from the ms., the one in brackets from B. It seems that the ms. text is a scribal error.

49 Text of the ms. Since Rabbi only denies that for the High Priest's offering an element of oblivion is necessary, for all others he accepts the reasoning of *Sifra Wayyiqra* 2 *Parašah* 4(6) that from a comparison with the rules for unintentional idolatry it is established that both oblivion and unintentional action are needed. The connection is established by *from the eyes, from the eyes.*

50 Text of B. But in Halakhah 3, there is no reference to inferences from idolatry.

51 The fact that the court mentioned in *Lev.* 4 is the High Court is proven from *Num.* 15:24. The connection is established by *from the eyes, from the eyes.*

52 This is the correct attribution, not R. Hanina as in B.

53 *Sifra Wayyiqra 2 Parašah 3(7)*. The reference is to *Lev. 4:5: The Anointed Priest shall take of the bull's blood and bring it to the Tent of Meeting*. "To bring it" could have been expressed as וְהָבִיאוֹ, but it is given as וְהָבִיאוֹ. The choice of a separate word for "it" is read as emphasizing that precisely *this* blood is brought into the sanctuary, not blood of similar sacrifices. The one sacrifice similar to the bull of the High Priest and the one of the Court which follows the same rule (*Lev. 4:16*, where the language

is: *of the bull's blood*) is the bull offered for inadvertent idolatry. The latter is called "the singular commandment" both because it requires a rite of atonement different from all other commandments as also it is the only sin which in one act violates all commandments (cf. *Halakhah 1:6*, Note 135).

54 The text in parentheses is from the ms., the (correct) one in brackets from B. Cf. Note 34.

55 For idolatry which cannot be prosecuted in court for lack of eye witnesses or due warning.

מִשְׁנֵה ה': אֵין חֵיבִין עַל עֲשֵׂה וְעַל לֹא תַעֲשֶׂה שְׁבִמְקֻדָּשׁ וְאֵין מְבִיִּין אֲשֶׁם תְּלִי עַל עֲשֵׂה וְעַל לֹא תַעֲשֶׂה שְׁבִמְקֻדָּשׁ. אֲבָל חֵיבִין עַל עֲשֵׂה וְעַל לֹא תַעֲשֶׂה שְׁבִנְדָה וּמְבִיִּין אֲשֶׁם תְּלִי עַל עֲשֵׂה וְעַל לֹא תַעֲשֶׂה שְׁבִנְדָה. וְאֵי זֶה הִיא מִצְוַת עֲשֵׂה שְׁבִנְדָה פְּרוֹשׁ מִן הַנִּדָּה. וּמִצְוַת לֹא תַעֲשֶׂה לֹא תִבּוֹא אֶל הַנִּדָּה:

**Mishnah 5:** They are not liable for a positive commandment or a prohibition in the Temple<sup>56</sup>; one does not bring a suspended reparation sacrifice for a positive commandment or a prohibition in the Temple. But they are liable for a positive commandment or a prohibition about the menstruating woman<sup>57</sup>; one brings a suspended reparation sacrifice for a positive commandment or a prohibition about the menstruating woman. What is the positive commandment about the menstruating woman? Separate from the menstruating woman<sup>58</sup>. The prohibition, do not copulate with a menstruating woman<sup>59</sup>.

56 At least not for any incorrect ruling regarding impurity in the Temple or of sacrifices. A private person who unintentionally violates any of those rules is required to offer a sacrifice, as

described in *Lev. 5*, whose value depends on the wealth of the offerer. The sacrifices prescribed in *Lev. 4* for the High Priest, the Court, the Prince, and private persons, all are of fixed value. It will be

argued that both the sacrifice of the Court as also “suspended” sacrifices, those offered for suspected sins, are possible only under circumstances in which the certainly sinning individual would be liable for a fixed-value offering.

57 That means any sin which if committed unintentionally requires a

fixed-value offering. The Mishnah does not refer to the standard example, eating prohibited fat, since there no positive commandment is involved.

58 As will be explained in the Halakhah.

59 A rather weaker statement than *Lev.* 18:19.

הלכה ה: ואין חייבין על עשה ועל לא תעשה שבמקדש כול. כהנא אמר. איפשר שאלא היה בה ידיעה בתחילה וידיעה בסוף והעלם בינתיים. התיב רבי שמואל בר אבדימי קומי רבי מנא. ויהא כן במזורים. אמר ליה. אנו בעי נבנסין ואת מייתי לך מזורים. מאי קדון. אמר רבי שמואל בר רב יצחק. מצוות מצוות. מה מצוות שנאמר להלן בקבועה אף כאן בקבועה.

1 כהנא B כהנא אמר B - איפשר B אפשר אי אפשר 2 היה B היתה בינתיים B בינתים התיב B אויב אבדימי B אבדמי ש אבדימי 3 מנא B מנא ויהא B ויהא במזורים B המזורים בעי B בעין ש בעי נכנסין B לכנסיה מזורים ש מזרין מאי B מי 4 מצוות מצוות B מצות מצות מצוות B מצות בקבועה ש בקבוע 5 בקבועה ש בקבוע

**Halakhah 5:** “They are not liable for a positive commandment or a prohibition in the Temple,” etc. <sup>60</sup>Cahana said, is it impossible that there was knowledge at the beginning and knowledge at the end and oblivion in between<sup>61</sup>? Rabbi Samuel ben Eudaimon objected before Rabbi Mana: Could that be for the teachers<sup>62</sup>? He told him, we have a problem with those entering and you bring us teachers? What about it? Rabbi Samuel bar Rav Isaac said, *commandments, commandments*. Since *commandments* mentioned there are about fixed-value [offerings], here also about fixed-value [offerings]<sup>63</sup>.

60 This paragraph also is Halakhah 2:4 in *Ševuot* (ש).

61 He questions why it should be impossible to bring a suspended sacrifice for violating the Temple’s sanctity by impurity. In the introduction to the rules of the variable-value reparation offering (*Lev.* 5:3), one of the cases for such an offering is described as *or if he touch a human’s impurity, any impurity that make him impure, and it was hidden from him,*

*and then he knew and was guilty*. It is clear that causing damage by impurity is subject to a sacrifice only if there was knowledge of the impurity interrupted by a period of unawareness. Why should it be impossible that this condition be satisfied for one entering the Temple while impure?

62 Since the Mishnah is formulated for the Court, why can it not be read as addressing only the teachers of the law



but not all impure individuals? But for issuing a ruling a suspended reparation sacrifice is impossible; therefore, the Mishnah refers not only to the Court but to everybody.

63 The introduction to the rules of the suspended reparation sacrifice (*Lev. 5:17*) reads: *But if a person sin, violating one of the commandments of the Eternal that are prohibitions; if he is unsure whether he be guilty and have to carry his sin.* The introduction to the rules of the fixed-rate

purification sacrifices of an individual reads: *But if a person of the people of the Land sin inadvertently, violating one of the commandments of the Eternal that are prohibitions, and is guilty.* The parallel language implies parallel rules; suspended sacrifices are possible only for suspected sins whose atonement would be covered by the rules of *Lev. 4*, not *Lev. 5*. A different argument with identical result is in *Sifra Wayiqra 2, Parašah 12(10)*.

46d line 8) וְאִין חֵיבִין עַל כָּל־מִצְוֹת עֲשֵׂה שְׁבוּתָהּ. אָמַר רַבִּי מִתְּנִיָּה. לֹא אֶתִּין מִתְּנִי אֶלָּא מִלָּה דְּמִיָּא לְמִלָּה. הִיךְ עֲבִידָא. נִכְנָס לְמִקְדָּשׁ טָמֵא חֵיב. נִכְנָס סְהוּר וְנִטְמָא. בָּא לוֹ בְּאַרוּכָה חֵיב וּבִקְצָרָה פָּטוּר. וְדִכּוּתָהּ. הִיךְ מְשַׁמֵּשׁ עִם הַטְּמֵאָה חֵיב. הִיךְ מְשַׁמֵּשׁ עִם הַטְּהוֹרָה וְאִמְרָה לוֹ. נִטְמָאֲתִי. בָּא לוֹ בְּאַרוּכָה חֵיב וּבִקְצָרָה פָּטוּר. אִי זֶה הִיא קִצְרָה שְׁלֹו. יֵצֵן. 1 כל | - מתני | - 2 מילה דמיא למילה | מלה דמיא למלה 3 ובקצרה | בקצרה ודכותה | ודכותה 4 ובקצרה | בקצרה זו | זה שלו | שלא

But one never is liable for any positive commandment in the Torah<sup>64</sup>! Rebbi Mattaniah said, we only came to state matters similar to the matter<sup>65</sup>. How is that? If he entered the Temple impure, he is liable<sup>66</sup>. If he entered pure but became impure, if he leaves on a long path he is liable, on a short one not liable<sup>67</sup>. Similarly, if he was having sex with an impure woman, he is liable. If he was having sex with a pure one and she said to him, I became impure, if he leaves on a long path he is liable, on a short one not liable<sup>68</sup>. What is his shortcut? He shall cool down<sup>69</sup>.

64 Since the rules for purification sacrifices clearly say that they are for inadvertent violations of prohibitions. *Sifra Wayiqra 2 Paršeta 1(6)*.

65 The only positive commandments which can lead to the liability for a purification sacrifice are special obligations to take steps to avoid certain prohibitions. The only examples are impurity in the Temple and relations with a menstruating

woman; cf. Note 70.

66 There are many verses forbidding entry into the holy precinct to impure people, each one for a specific impurity. For impurity of the dead, the sufferer from skin disease, and the sufferer from gonorrhea *Num. 5:2* (taking together *Num. 19:20, Lev. 13:46, 15:15*); for the woman after childbirth *Lev. 12:4*. The general prohibition covering all impurities is *Lev.*

15:31 as noted in the next paragraph.

67 Babli *Ševuot* 14b. There and in *Nazir* 3:5 (Note 68) it is stated that the person noticing his impurity must leave in less time than is needed to prostrate himself.

68 The Babli, *Ševuot* 18a, last line in the

Wilna ed., objects to a time limit in this case while agreeing with the practice as explained in the next paragraph.

69 He must remain immobilized until his erection has disappeared.

(46d line 14) אִי זֶה הָיָה מְצוּת עֲשֵׂה שְׁבִנְדָה. אָמַר רַבִּי אֲבִין. וְהִזְרַתְּם אֶת-בְּנֵי-יִשְׂרָאֵל מִטּוּמְאָתָם. רַבִּי יוֹנָתָן שָׁלַח שְׁאֵל לְרַבִּי שְׁמַעוֹן בִּירְבִּי יוֹסִי בֶן לִקּוּנְיָא. אֲזַהְרָה לְמַשְׁמֵשׁ עִם הַטְּמֵאָה מְנִיין. וְיִבְעָא כִּפְהָ מְזוּרֹק בְּתַרְיָה. אָמַר לֵיהּ. מִיָּלָא דְמִיִּינוּקִיָּא אֲמַרְיִן בְּכַנְשָׁתָא בְּכָל-יוֹם אֶתְ שְׁאֵל לִי. וְאֶל-אִשָּׁה בְּנִידַת טוּמְאָתָהּ לֹא תִקְרָב לְגִלּוֹת עֲרוּתָהּ. אָמַר לֵיהּ. לֹא צָרִיכָה לֵיהּ הִדָּא. וְלִית צוֹרֶכָא דְלָא. הִנֵּה מַשְׁמֵשׁ עִם הַטְּמֵאָה חֵיב. הִנֵּה מַשְׁמֵשׁ עִם הַטְּהוֹרָה וְאֲמַרָה לוֹ. נְטִמְאָתִי. פִּירֵשׁ מִיד. מָהוּ שְׁיָהָא חֵיב. אָמַר לֵיהּ. אֲנָא וְאֶת צָרִיכָא לָךְ. נִצָּא לַחוּץ וְנִלְמַד. נִפְקִין וְשְׁמַעוֹן קָלִיהּ דְּתַנְיָא תַּנִּי כְּהֵדָא דְחֻזְקָהּ. וְאִם שָׁכַב לְשֹׁבֵב אִישׁ אוֹתָהּ. אִין לִי אֶלָּא מַשְׁמֵשׁ עִם הַטְּמֵאָה חֵיב. הִנֵּה מַשְׁמֵשׁ עִם הַטְּהוֹרָה וְאֲמַרָה לוֹ. נְטִמְאָתִי. פִּירֵשׁ מִיד. מָהוּ שְׁיָהָא חֵיב. תִּלְמִיד לּוֹמֵר. וְתַנִּי נְדָתָהּ. וְאֶפְלִי פִירְשָׁה עָלֶיךָ נְדָתָהּ. מָה יַעֲשֶׂה. רַב הוֹשַׁעְיָה רַב וְהוֹדָה בְּשֵׁם שְׁמוּאֵל. יָצָן. לֹא הֵיכָן. אָמַר רַבִּי יוֹסִי. קוּרָא אֲנִי עָלֶיךָ אֶל תִּקְרָב. אֵל תִּפְרוֹשׁ. קָרִיבָה פְּרִישָׁה. רַב הוֹנָא בְּשֵׁם רַב אֲבָא. כְּהֵדָא הָאוּמָרִים קָרַב אֱלִיד אֶל-תַּגְעָה בִּי כִּי קִידְשִׁתִּיד. אָמַר רַבִּי זְעִירָא. יְהָא רֹאֵה אֶת הַחֶרֶב כִּילִּי מַחְתָּבַת בְּבִשְׂרוֹ. וְכָל-עַמָּא רַבִּי זְעִירָא. רַבִּי תַנְחוּמָא בְּשֵׁם רַב חֵינָה. יְטוּחַ רָאשֵׁי עֶצְבֻּעוֹתָיו בְּכוֹתֵל וְיִהְיָ מִיָּצוֹן.

כְּתִיב וַתִּשָּׁב בְּאִיתָךְ קִשְׁטוֹ. רַבִּי שְׁמוּאֵל בֶּר נַחֲמָן. נִמְתַּחַה הַקִּשְׁט וְחִזְרָה. אָמַר רַבִּי אֲבִין. נִתְפָּאָר זֶרַעוֹ וְנָצָא לוֹ בְּצִיפְרָנִי גְדִי. וְנִפְּאָר זֶרַעִי גְדִי. רַב חֵינָה בְּשֵׁם רַב מִתְּנָה. תִּלְחָה עֵינָיו וְרָאָה אִיקוּנִין שְׁלֹאֲבִין. מִיד הֵיכָן. מִידֵּל אֲבִיר יַעֲלֶקֶב. אָמַר רַבִּי אֲבִין. אֵף אִיקוּנִין שְׁלֹחֶחַל רָאָה. מַשֶּׁם רָעָה אֲבִין יִשְׂרָאֵל.

1 אבין | אבון 2 מטומאותם | מטומאותם יוסי | יוסה לקוניא | לקוניא 3 הטמאה מניין | הנדה מנין ובעא | וטען מילא דמיינוקיא | מלה דמיינוקיא בכנשתא בכל יום | בכל יום בכנשתא 5 צריכה | נצרבא ולית | לית 6 מהו | הוא 7 נפקין | נפקון קליה | קריה דתניא | תניי שכב | שכוב איש | - אותה | אותה ותהי נדה עליו וטמא וגו' 9 מהו | מניין נדתה | נדתה עליו פירשה | פירסה עליו נדתה | נדתה עליו 10 בשם | - היצן | הצן יוסי | איסי 11 תפרוש | תפרש פרישה | פריסה 12 קידשתיך | קדשתיך זעירא | זעורא 13 ר' | רב יטוח | יטיח ויהא מיצן | והוא מצן 14 אבון | יצחק 16 שלאביו | של אביו יעקב אבין | בון

“What is the positive commandment about the menstruating woman?”  
 Rabbi Abin said, *Keep the Children of Israel away from their impurities*<sup>70</sup>.  
 Rabbi Jonathan sent to ask Rabbi Simeon ben Rabbi Yose bar Lakonia, from where a warning for one having sex with an impure woman? He wanted to throw a stone after him; he told him, you are asking me something that children recite every day in the synagogue<sup>71</sup>: *To a woman in the separation of*

*her impurity you shall not come near to uncover her nakedness*<sup>72</sup>. He answered him, that is not my problem. My only problem is rather “if he was having sex with an impure woman, he is liable. If he was having sex with a pure one and she said to him, I became impure,” if he separates immediately, is he liable<sup>73</sup>? He told him, I and you have the same problem. Let us go out and learn. They went out and heard the voice of a Tanna who stated following Hiskiah: *If lying a man will lie with her*<sup>74</sup>. Not only that if he was having sex with an impure woman, he is liable. If he was having sex with a pure one and she said to him, I became impure, if he separates immediately, is he liable? The verse says, *her secretion shall be*<sup>74</sup>, even if her secretion starts<sup>75</sup> with him. What should he do? Rav Hoshai, Rav Jehudah in the name of Samuel, he shall cool down. If he did not cool down? Rabbi Yose said, for him I am reading *do not come near*<sup>72</sup> as “do not separate”. Closeness is separation. Rav Huna in the name of Rav Abba: *Those who say, be close to yourself, do not touch me for I sanctified you*<sup>76</sup>. Rabbi Ze'ira said, he should imagine that a sword is cutting into his flesh. Is everybody Rabbi Ze'ira? Rabbi Tanhuma in the name of Rav Huna: He shall press his fingertips on the wall, then he will cool down<sup>77</sup>.

<sup>78</sup>It is written: *His bow was sitting immobile*. Rabbi Samuel bar Nahman: his bow was spanned and relaxed. Rabbi Abun said, his semen spread out and came out from under his fingernails, *the arms of his hands were excited*. Rav Huna in the name of Rav Mattanah, he lifted his eyes, saw the picture<sup>79</sup> of his father, and cooled down immediately, *from the hands of the noble Jacob*. Rabbi Abin said, he also saw the picture of Rachel, *from there the shepherd, the rock of Israel*.

70 Lev. 15:31. The verse continues: *Lest they die in their impurities when they defile My abode which is in their midst*. This is the positive commandment not to defile the Temple. The verse concludes the chapters on impurities created by the human body (childbirth, skin diseases, male and female venereal diseases, menstruation, and sexual relations with a

menstruating woman). Therefore it also is the positive commandment regarding the menstruating woman and is interpreted to forbid sexual relations with a woman close to the expected onset of her menses. The question about the woman experiencing a discharge during sex must refer to an unexpected event. Babli Ševuot 18b, most of the paragraph.

71 Serving as elementary school under the system of compulsory elementary education instituted by Joshua ben Gamla.

72 *Lev.* 18:19.

73 As the Babli explains, interrupting the coition during an erection is pleasurable for the male and therefore forbidden under the circumstances. The end of the erection must precede the separation.

74 *Lev.* 15:24.

75 The rabbinic expression for the onset on the menses is פֶּרֶס נִדָּה, “breaking through”.

76 *Is.* 65:5. Also in the Babli the verse

is quoted in support of the interpretation of the root קרב as “to separate”.

77 Babli *Ševuot* 18a.

78 An explanation of the difficult verse *Gen.* 49:24 as describing Joseph’s reaction to the advances of Potiphar’s wife, as appendix on the difficulties of eliminating an unwanted erection. *Gen. rabba* 98(24).

79 Greek εἰκότιον. It would not be impossible to vocalize אֵיקוֹנִין. In B: “The picture of our father Jacob; immediately he cooled down.”

מִשְׁנָה ו: אֵין חֵיבִין עַל שְׁמִיעַת הַקּוֹל וְעַל בִּיטּוֹי שְׁפָתַיִם וְעַל טוּמְאַת מְקֻדָּשׁ וְקֻדְשִׁיו. וְהַנָּשִׂא כְּיוֹצֵא בָהֶם דְּבָרֵי רַבִּי יוֹסִי הַגָּלִילִי. רַבִּי עֲקִיבָה אוֹמֵר הַנָּשִׂא חֵיב בְּכוֹלֵן חוּץ מִשְׁמִיעַת קוֹל שֶׁהִמְלִיךְ לֹא דָן וְלֹא דִּנֵּן אוֹתוֹ לֹא מַעֲיֵד וְלֹא מַעֲיָדִין אוֹתוֹ:

**Mishnah 6:** They are not liable for hearing a sound, or expression of the lips, or the impurity of the Temple and its *sancta*<sup>80</sup>. The same applies to the Prince<sup>81</sup>, the words of Rabbi Yose the Galilean. Rabbi Aqiba says, the Prince is liable for all of them except the hearing of a sound since the king does not judge, nor may one judge him; he does not testify, nor may one testify against him<sup>82</sup>.

80 As explained in the preceding Halakhah, the Court does not bring a sacrifice for a false ruling in a case subject to a sacrifice which depends on the wealth of the person. These are enumerated in *Lev.* 5:1-4; the Mishnah uses the biblical expressions to characterize the different categories.

“Hearing of a voice” refers to *Lev.*

5:1: *If a person sin, for he heard the sound of an imprecation when he is a witness, or saw, or knew; if he does not tell he has to bear his iniquity.* If a person is asked by another to testify in his case before the court; he refuses and assents to an oath to the effect that he does not know about the case, if that was a lie he is subject to the variable reparation offering for swearing falsely.

“Expression of the lips” (v.4) refers to an oath made by a person on his own initiative but not kept since he forgot about his own oath. This also subjects the maker to the same obligation.

Improper handling of impurity

because of oblivion is mentioned in vv. 2-3.

81 He is identified with the king.

82 Mishnah *Sanhedrin* 2:3. He extends the rules created for the non-Davidic kings to all kings.

(46d line 37) **הלכה ו:** אין חייבין על שמיעת קול אלה כול. אמר רבי יוחנן. טעמא דרבי יוסי הגלילי. ואם-דל הוא ואין דו-משנה. את שהוא ראוי לבוא לידי דלות. נצא משיח שאינו ראוי לבוא לידי דלות. רבי שמעון בן לקיש אמר. והיה כייאושם לאחת מאלה. את שהוא חייב על כולן חייב על מקצתו. ואת שאינו חייב על כולן אינו חייב על מקצתו. רבי יצחק שאל. מעתה לא יטמא בצרעת. שאינו ראוי בקלות וכן דלות וכן דלי דלות. רב הושעיה בעי. מעתה אשה לא תהא חייבת על ביאת המקדש. אין האשה מביאה. רבי יוסי בשם רבי יוחנן. טעמא דרבי עקיבה. זה קרבן אהרן ובניו. זה הוא מביא. אינו מביא עשירית האיפה אחרת. רבי זעירא בעא קומי רבי יסא. ואינו מביא נדבה. אמר ליה. אין. חובה אינו מביא נדבה הוא מביא. ביני מתניתא שהמלך לא מעיד ולא מעידין אותו:

2 לבוא | לבא שאינו | שאין 3 דלות | דלות התיב' והרי נשיא הרי אינו ראוי לבא לידי דלות 5 בקלות וכן | לבא 6 אין | שאין יוסי | יוסה 7 עקיבה | עקיבא האיפה | איפה 8 יסא | יוסה

**Halakhah 6:** “They are not liable for hearing the sound of an imprecation,” etc. Rabbi Johanan said, the reason of Rabbi Yose the Galilean is, *if he is poor and cannot afford it*<sup>83</sup>. Somebody who is apt to fall into poverty; this excludes the Anointed<sup>84</sup> who is not apt to fall into poverty. [<sup>85</sup>They objected: There is the prince who is not apt to fall into poverty.] Rabbi Simeon ben Laqish said, *it shall be if he becomes guilty of any of these*<sup>86</sup>. He who can be liable for all of them is liable for part of them; but one who cannot be liable for all of them is not liable for part of them<sup>87</sup>. Rabbi Isaac asked: Then he should not become impure by skin disease since he is not apt (easily and then) [to fall]<sup>88</sup> into poverty or the deepest of poverty<sup>89</sup>. Rav Hoshia asked: Then a woman should not be liable for entering the Temple. Does the woman not bring<sup>90</sup>?

Rebbi Yose in the name of Rabbi Johanan: The reason of Rabbi Aqiba, *this is the offering of Aaron and his sons*<sup>91</sup>. This one he brings; he does not bring another tenth of an *ephah*. Rabbi Ze'ira asked before Rabbi Yasa<sup>92</sup> may he not bring a voluntary offering? He told him, yes. He does not bring an obligatory one; he may bring a voluntary one.

So is the Mishnah, <sup>93</sup>“since the king does not testify, nor may one testify against him.”

83 *Lev.* 14:21. This is a wrong quote since it refers to the sacrifice of the healed sufferer from skin disease. The expression used in *Lev.* 5 is לֹא־תִגִּיעַ יְדֵי אֶל־אִשָּׁה “if it is out of his reach” for the poor person and יָדָאֵל־אִשָּׁה “if he cannot afford” for the poorest.

84 He is not mentioned in our Mishnah text, but Mishnah 8 states that the High Priest is exempt according to everybody; only for the king does R. Aqiba disagree; Babli 9a. According to Tosephta 1:10, the king is exempted only for disregarding a request for testimony and the High Priest for violations of impurity (since his diadem is a permanent atonement for imperfect sacrifices, *Ex.* 28:38.)

The High Priest is required (*Lev.* 21:10) to be the richest priest; if he is not, the other priests have to make him so. R. Joseph David Sinzheim (*Yad David* on *Horaiot*) notes that the High Priest had the choice always to officiate at the burning of incense. Any other priest was given only a once in a lifetime occasion for this (Mishnah *Yoma* 2:4) since presenting the incense made the presenter rich (explicit in the Babli, implicit in the Yerushalmi, *Yoma* Halakhah 2:4, 40a 12). The king natu- rally has taxing powers.

Since king and High Priest are never able to bring a sacrifice according to the rules of the poor (*Lev.* 5:7-10) or the very poor (vv. 11-13), they are prohibited from ever bringing a sacrifice depending on the offerer’s wealth.

85 Text of B. It seems that this text presupposes a Mishnah mentioning only the Anointed; no such Mishnah is known.

86 *Lev.* 5:5.

87 Since the king is exempt from testimony and the High Priest for violations of impurity (Note 84), neither of them is qualified to bring a sacrifice for all cases enumerated in vv. 1-4; they are not under the rules of vv. 6-7.

88 The text in brackets, from B, is the only one making sense; the text of the ms., in parentheses, seems to be a scribal error.

89 Since the verse quoted at the start of the Halakhah refers to the poor sufferer healed from skin disease. But there is no verse requiring that the sufferer from skin disease be able to bring all possible sacrifices; the question does not deserve an answer.

90 Since a woman cannot be a formal witness in court, she cannot be the subject of an imprecation forcing her to testify. But the question is moot since women after childbirth are ordered in *Lev.* 12:6-8 to bring a sacrifice after being impure.

91 *Lev.* 6:13, the daily flour offering of the High Priest, identical in quantity to the variable sacrifice of the very poor. Babli 9a.

92 This is the correct attribution, against the text of B.

93 The fact that he does not judge is irrelevant for our topic (and certainly not true for Davidic kings.)

(fol. 46c) **משנה ז:** כל מצות שבתורה שחייבין על זדוןן כרת ועל שגגתן חטאת היחיד מביא כשבה ושעירה והנשיא שעיר ומשיח ובית דין מביאין פר. ובעבודה זרה היחיד והנשיא והמשיח מביאין שעירה. ובית דין פר ושעיר פר לעולה ושעיר לחטאת:

**Mishnah 7:** For all commandments of the Torah where one is liable to extirpation for willful infraction and a purification sacrifice for unintentional infraction, the individual brings a sheep or a she-goat<sup>94</sup>, the Prince a he-goat<sup>95</sup>, and the Anointed or the Court bring a bull<sup>96</sup>. For idolatry the individual, the Prince, and the Anointed bring a she-goat, the Court bring a bull as elevation offering and a goat as purification sacrifice<sup>97</sup>.

**משנה ח:** אשם תלוי היחיד והנשיא חייבין ומשיח ובית דין פטורין. אשם ונדאי היחיד והנשיא והמשיח חייבין ובית דין פטורין. על שמיעת הקול וביטוי שפתיים וטומאת מקדש וקדשיו בית דין פטורין היחיד והנשיא והמשיח חייבין אלא שאין כהן גדול חייב על טומאת מקדש וקדשיו דברי רבי שמעון. ומה הן מביאין קרבן עולה ויורד. רבי אליעזר אומר הנשיא מביא שעיר:

**Mishnah 8:** For a suspended reparation sacrifice the individual and the Prince are liable but the Anointed and the Court are not liable<sup>98</sup>. For a certain reparation sacrifice the individual, and the Prince, and the Anointed are liable but the Court is not liable<sup>99</sup>. For hearing a sound, or expression of the lips, or the impurity of the Temple and its *sancta*, the Court is not liable, the individual, and the Prince, and the Anointed are liable<sup>100</sup> but the Anointed is not liable for the impurity of the Temple and its *sancta*, the words of Rabbi Simeon<sup>84</sup>. What do they bring? A variable sacrifice. Rabbi Eliezer says, the Prince brings a goat<sup>101</sup>.

94 Lev. 4:28,32.

95 Lev. 4:23

96 Cf. Mishnaot 1:6, 2:1.

97 Num. 15:22-25.

98 Mishnah 5.

99 The reparation sacrifices for robberies or defrauding (Lev. 5:20-26), larceny of *sancta* (Lev. 5:14-16), the semi-

manumitted slave girl (Lev. 19:20-22), the *nazir* (Num. 6:12), and the healed sufferer from skin disease (Lev. 14:1-32). Since no extirpation is involved, the Court is not liable for a sacrifice in case they rule wrongly in one of these matters.

100 Mishnah 6.

101 This is qualified in the Halakhah.

(46d line 48) **הלכה ז:** כל מצות שבתורה כול. **הלכה ח:** אשם תלוי היחיד והנשיא חייבין כול. נקט. לרבות הנשיא. ירבה המשיח. בחטאה בשגגה. את שהוא בשגגת מעשה. יצא משיח

שְׁאִינוּ בְּשִׁגְגַת מַעֲשֶׂה. וְכַרְבִּי דוּ אָמַר מְשִׁיחַ בְּשִׁגְגַת מַעֲשֶׂה הוּא. אֵת שֶׁהוּא בְּשִׁגְגַת מַעֲשֶׂה לְכָל־הַדְּבָרִים. יָצָא מְשִׁיחַ שְׁאִינוּ בְּשִׁגְגַת מַעֲשֶׂה לְכָל־הַדְּבָרִים. נִפְשׁ. לְרִבּוֹת הַנְּשִׂיא וְהַמְּשִׁיחַ. הִכָּא אֵת מֵר. לְרִבּוֹת הַנְּשִׂיא. וְכָא אֵת מֵר. לְרִבּוֹת מְשִׁיחַ. כְּחֻטָּאת אִשָּׁם. מֵה חֻטָּאת מְכַפֶּרֶת וּמְמַלְקֶת. אִף אִשָּׁם מְכַפֵּר וּמְמַלְקֶה. יָצָא אִשָּׁם תְּלוּי שֶׁהוּא מְכַפֵּר וּמְשִׁיחַ.  
2 הנשיא | את הנשיא ירבה | וריבה 3 הוא | - את | או 5 אשם | ואשם

**Halakhah 7:** “For all commandments of the Torah,” etc. **Halakhah 8:** “For a suspended sacrifice the individual and the Prince are liable,” etc. *A person, to include the Prince*<sup>102</sup>. Should it include the Anointed? “*And sinned inadvertently*.”<sup>103</sup> Any depending on acting inadvertently. This excludes the Anointed who is not depending on acting inadvertently<sup>104</sup>. But following Rabbi who said, the Anointed is depending on acting inadvertently<sup>105</sup>? One dependent on acting inadvertently in any situation. This excludes the Anointed who is not dependent on acting inadvertently in any situation. *A person, to include the Prince and the Anointed*<sup>106</sup>. Here you say, to include the prince, and there you say, to include the Anointed? *Like the purification sacrifices is the reparation sacrifice*<sup>107</sup>. Just as the purification sacrifice atones and wipes clean, also the reparation sacrifice atones and wipes clean. This excludes the suspended reparation sacrifice which atones but leaves a residue<sup>108</sup>.

102 Lev. 5:17, the introduction to the rules for the suspended reparation sacrifice.

103 Lev. 5:15. There are two problems with this quote: The first that it is a misquote, it reads *בְּחֻטָּאתָּהּ בְּשִׁגְגָהּ* not *בְּחֻטָּאתָּהּ בְּשִׁגְגָהּ*. This is easily explainable since in talmudic times under the influence of Greek every ב sounded like v. The serious problem is that the quote is from the paragraph detailing the rules of the fixed reparation sacrifice for larceny committed with *sancta*. It seems that the quote from Lev. 5:17 refers to the full text *וְאִם־לֹפֶשׁ* in addition, if a person . . . which in *Sifra Wayyiqra* 2 Parašah 12(1) is explained as

meaning that the rules of the suspended reparation sacrifice, vv. 17-19 are an appendix to the rules of the reparation sacrifice for larceny involving *sancta*, vv. 14-16.

104 He is liable for a sacrifice only if there is an element of ruling falsely, Mishnah 3.

105 Halakhah 3. Rabbi declares him liable for a bull and a goat without an element of ruling falsely in case the subject was idolatry, not in any other case. This permits to formulate the preceding argument so it remains valid even for Rabbi.

106 Lev. 5:20, the introduction to the



rules for the reparation sacrifice for monetary offenses.

107 Lev. 7:7.

108 If at the end it becomes clear that a sin had been committed which qualifies for a purification offering, the suspended

offering did not take its place, and a second sacrifice is due. Therefore the rules for the suspended sacrifice are separate from those of other reparation sacrifices.

(46d line 55) כִּינִי מִתְנִיתָא. אֶלְא שְׁאִין כְּהוּ גְדוּל חַיִּיב עַל טוּמְאָת מִקְדָּשׁ וְקִדְּשִׁי. דְּבָרֵי הַכֹּל. וְהַנְּשִׂא עַל שְׁמִיעַת קוֹל. דְּבָרֵי רַבִּי שְׁמַעוֹן. אָמַר רַבִּי יוֹחָנָן. וְיִמְרֵי הַמִּקְדָּשׁ לֹא יֵצֵא וְלֹא יִחַלֵּל. הָא אִם יֵצֵא אֵינוֹ מִחַלֵּל. רַבִּי אֲשִׁיָּאן רַבִּי יוֹנָה רַבִּי בִּרְכָנָא מִקְשִׁי. וְהַכְּתִיב אֶלְמִנָּה וְגִרּוּשָׁה וְיִחַלְלָהּ וְלֹא אֶת-אֵלֶּה לֹא יִקָּח. הָא אִם לָקַח אֵינוֹ מִחַלֵּל. מֵאֵי כְדוֹן. אָמַר חִזְקִיָּה. וְנִכְרְתָהּ הַנֶּפֶשׁ הַהוּא מִתּוֹךְ הַקֹּהֵל. אֵת שְׁקָרְבָנוּ שְׁוֵה לַקֹּהֵל. יֵצֵא מְשִׁיחַ שְׁוֵה קָרְבָנוּ לַקֹּהֵל. הַתִּיבּוֹן. הָרִי נִשְׂיָא לֹא שְׁוֵה קָרְבָנוּ לַקֹּהֵל. שְׁוֵה בְּיוֹם הַכִּיפּוּרִים. הָרִי אַחֲיוּ הַכֹּהֲנִים לֹא שְׁוֵה בְּיוֹם הַכִּיפּוּרִים. שְׁוֵה בְּשַׁעַר מִזְבֵּחַ הַשָּׁנָה. אָמַר רַבִּי יוֹדָן בַּר שְׁלֹמֹם. שְׁוֵה בְּמִתֵּן דָּמִים בְּחוּץ. 2 קול | הקול 3 אשיאן | אישיא 4 מאי | מיי אמר | תני 6 הרי | והרי שוה | שוה הרי | והרי 7 בר | בר

So is the Mishnah: “but the Anointed is not liable for the impurity of the Temple and its *sancta*, everybody’s opinion, and neither is the Prince for hearing a sound, the words of Rabbi Simeon.”<sup>109</sup> Rabbi Johanan said, and the Sanctuary he shall not leave, nor desecrate. Therefore, if he left, he would not desecrate<sup>110</sup>. Rabbi Ashian<sup>111</sup>, Rabbi Jonah: Rabbi Abun bar Cahana found a difficulty. Is it not written, *a widow, or a divorcee, or a desecrated, a harlot, these he shall not marry*, therefore if he married he would not desecrate<sup>112</sup>? What about it? <sup>113</sup>Hizqiah said, *this person would be extirpated from the community*<sup>114</sup>. One whose sacrifice is identical to that of the community. This excludes the Anointed whose sacrifice is not equal to that of the community<sup>115</sup>. They objected, is not also the Prince’s sacrifice not equal to that of the community<sup>116</sup>? It is equal on the day of Atonement<sup>117</sup>. But his brothers the priests are not equal on the day of Atonement! They are equal on the other days of the year<sup>118</sup>. Rabbi Yudan bar Shalom said, they are equal in that the blood is given outside<sup>119</sup>.

109 Babli 9a; Tosephta 1:10. The Babli 9b points out that there are three levels of variable sacrifices and the argument of Note 84 excludes only the sacrifice of the

very poor for the High Priest. In R. Simeon’s opinion, the High Priest is still liable at least for a poor man’s sacrifice for disregarding a summons to testify.

110 *Lev. 21:12*. The argument seems to be: If the High Priest does not leave the Sanctuary, he has no occasion to desecrate it. Therefore the verse is read as: *and the Sanctuary he shall not leave; he will not desecrate*. The implication would be that the High Priest not only is exempt from bringing a sacrifice (which is a dubious distinction since it denies him a means of atonement) but his infraction of the Sanctuary's purity does not need atonement.

111 A student of R. Jonah's. The reading of B, R. Joshua, referring to an Amora preceding R. Jonah by two generations, is impossible.

112 *Lev. 21:13*. The next verse gives the reason for the prohibition: So he may not desecrate his descendants. Since the child of a Cohen from a woman forbidden to him by the special rules of the priesthood is desecrated, R. Johanan's interpretation of v. 12 is shown to be unacceptable.

113 A slightly different version of the following is in the Babli, 9b.

114 *Num. 19:19*. The entire Chapter deals with the preservation of the purity of the Sanctuary (*Sifry Num. 129*).

115 By his office he is excluded from being one of the community. His sacrifice is either a bull or nothing; the sacrifice of a member of the community is the variable offering (a female sheep or goat, or two pigeons, or flour.)

116 It always is a goat.

117 On that day, the High Priest brings three sacrifices (*Lev. 16*) cf. Note 16. The first one for himself and his family; the second for his fellow priests and their families, and the third a double offering for the people. There the king (unless he is a usurping High Priest and king) is included with the people.

118 The lesser priests are subject to the rules of the variable value sacrifice.

119 On the Day of Atonement, only the blood of the first and third sacrifices are brought inside the Temple to purify the incense altar; the blood of the second sacrifice, the atonement of the priests, is sprinkled on the large outside altar like any other sacrifice. Similarly, the blood of the prince's purification sacrifice is treated like that of a commoner, to be sprinkled on the outside altar.

(46d line 65) אָמַר רַבִּי יוֹחָנָן. לֹא אָמַר רַבִּי לִיעֶזֶר אֶלָּא מִפְּנֵי כְּרִיתוֹ. רַב הוֹשַׁעְיָה בְּעֵי. מַעֲתָה אֶפִּילוּ בְּקוֹבְעָה. אָמַר רַבִּי יוֹנָה. מִיסְבוֹר סָבַר רַבִּי הוֹשַׁעְיָה שְׁנַעֲקָר מִכָּל-הַפָּרָשָׁה. אֶלָּא כִּהְדִּיט עֲשִׂיר עֲבִיד לִיה רַבִּי לִיעֶזֶר. אִין כִּהְדִּיט עֲשִׂיר עֲבִיד לִיה רַבִּי לִיעֶזֶר אֶפִּילוּ עַל שְׁמִיעַת קוֹל וְעַל בִּטּוֹי שְׁפָתַיִם. דְּתֵנִי. לֹא נִחְלְקוּ רַבִּי אֶלְעָזָר וְחֻכְמַיִם עַל עַל שְׁמִיעַת קוֹל וְעַל בִּטּוֹי שְׁפָתַיִם שְׁאִינוּ מִבֵּיא שְׁעִיר אֶלָּא שְׁעִירָה. וְעַל מָה נִחְלְקוּ. עַל טוּמְאַת מִקְדָּשׁ וְקִדְּשֵׁי. שְׂרָבִי לִיעֶזֶר אוֹמַר. הוֹאִיל וְהוּא בְּהִיכָרַת לָמָּה אִינוּ מִבֵּיא שְׁעִיר אֶלָּא שְׁעִירָה. הַתִּיבּוֹן. הָרִי מְשִׁיחַ וְעִבּוּדָה זָרָה הָרִי אִינוּ מִבֵּיא שְׁעִיר אֶלָּא שְׁעִירָה.

1 ליעזר | אליעזר הושעיה | הושעיה 2 בקבועה | כן בקבועה הושעיה | הושעיה 3 ליעזר | אליעזר (2X)  
 4 קול | הקול ביטוי | בטוי אלעזר | אליעזר 5 קול | הקול ביטוי | בטוי 6 ליעזר | אלעזר בהיכרת |  
 בהכרת למה | ולמה

Rebbi Johanan said, Rebbi Eliezer said this only because of his extirpation<sup>120</sup>. Rebbi Hoshiaa asked: If so, then even for a fixed [sacrifice]<sup>121</sup>? Rebbi Jonah said, Rebbi Hoshiaa is of the opinion that he is uprooted from the entire paragraph; but Rebbi Eliezer treats him like a rich commoner<sup>122</sup>. Rebbi Mana said, if Rebbi Eliezer treats him like a rich commoner, then also for hearing a sound, or expression of the lips<sup>80</sup>, as it was stated: Rebbi (Eleazar) [Eliezer] and the Sages did not differ about hearing a sound, or expression of the lips, that he does not bring a male goat but a she-goat<sup>123</sup>. About what did they differ? About impurity of the Sanctuary and its *sancta*, where Rebbi Eliezer says since he is subject to extirpation why should he not bring a male goat instead of a she-goat<sup>124</sup>? They objected: Is there not the Anointed in the case of idolatry where he does not bring a male goat but a she-goat<sup>125</sup>.

120 Of all the sins calling for a variable sacrifice, only infractions of the purity of the sanctuary or of sacrifices are punished by extirpation. Therefore R. Eliezer lets him bring the fixed-value sacrifice prescribed for the Prince for all other cases of possible extirpation.

The entire paragraph has an inconclusive parallel in the Babli 9b.

121 If the argument of R. Johanan were correct, R. Eliezer also should require that the prince bring a he-goat, not a she-goat, as the fixed-value sacrifice required for inadvertent idolatry, against Mishnah 7.

122 R. Hoshiaa's argument is unacceptable since only R. Yose the Galilean denies the Prince any variable-

value sacrifice; we follow R. Aqiba who is granting him a sacrifice for any sin but freeing him from any obligation regarding a summons to testify.

123 In fact only for expression of the lips.

124 Since the king cannot become poor, he should not be under the rules of variable-value sacrifices.

125 Not only the Anointed but also the Prince are included in the rules for the individual inadvertently committing idolatry. Since there are no exceptions for the rules of *Num.* 15, the argument made for R. Eliezer does not hold. In addition,; the she-goat of *Lev.* 5 is a reparation sacrifice but his he-goat of *Lev.* 43 a purification sacrifice.

## כהן משיח שחטא פרק שלישי

(fol. 47a) **משנה א:** כהן משיח שחטא ואחר כך עבר ממשיחותו. וכן נשיא שחטא ואחר כך עבר מגדולתו. כהן משיח מביא פר. והנשיא מביא שעיר:

**Mishnah 1:** An Anointed Priest who sinned and then was removed from his anointed status, or a Prince who sinned and then was removed from his exalted status. The Anointed Priest brings a bull and the Prince brings a goat<sup>1</sup>.

**משנה ב:** כהן משיח שעבר ממשיחותו ואחר כך חטא וכן הנשיא שעבר מגדולתו ואחר כך חטא כהן משיח מביא פר והנשיא כהדיוט:

**Mishnah 2:** An Anointed Priest who was removed from his anointed status and then sinned, or a Prince who was removed from his exalted status and then sinned: The Anointed Priest brings a bull and the Prince is like a commoner<sup>2</sup>.

1 Since at the moment of the sin they became obligated for the sacrifices, a later change of status has no influence. The difference between ecclesiastical and political offices will become clear in Mishnah 2.

2 Again the moment of the sin determines the kind of sacrifice. Priestly offices follow the rule that "one rises in holiness; one does not descend;" the

former Anointed Priest remains in his status. He cannot officiate as Anointed Priest since another one holds the office; neither can he officiate as common priest since he may not descend in rank. The same is true for an unanointed High Priest. But a politician who loses his rank is free to run for any other office; his sacrifice is a female goat or sheep like everybody else's.

(47a) **הלכה א:** כהן משיח שחטא כול. **הלכה ב:** כהן משיח שעבר ממשיחותו כול. אמר רבי לעזר. כהן גדול שחטא מלקין אותו ואין מעבירין אותו מגדולתו. אמר רבי מנא. כתיב כי נזר שמו משחת אלהיו עליו אגן יי. כביכול מה אני בגדולתי אף אהרון בגדולתו. אמר רבי אבון. קדוש יהיה לך. כביכול אני בקדושותי אף אהרון בקדושתו. רבי חנינה כתובא רבי אחא בשם רבי שמעון בן לקיש. כהן משיח שחטא מלקין אותו בבית דין שלשלשה. אין תימר בבית דין שלכ"ג. נמצא עלמיתו ורידה לו. רבי שמעון בן לקיש אמר. נשיא שחטא מלקין אותו בבית דין שלשלשה. מה מחזירין ליה. אמר רבי חגי. מוטב דיעון מחזירין ליה דו קטלון ליה. שמע רבי יודה נשיאה וכעס. שלח גותיין למיתפש ית רבי שמעון בן לקיש. וערק בדא דמוגדלא.

וְאֵת דְּמָרִין בְּרָה דְּכֹפֵר חִיטָּיָא. סָלִיק רַבִּי יוֹחָנָן לְבֵית וּוְעָדָא. סָלֵק רַבִּי יוֹדָה נְסִינָא לְבֵית וּוְעָדָא. אָמַר לֵיהּ. לָמָּה לֵּית מָרִי אָמַר לוֹן מִיִּלָּה דְּאוּרִינָא. שְׂרִי טַפַּח בְּחָדָא נְדִיהָ. אָמַר לֵיהּ. וּבְחָדָא נְדָא טַפְחִין. אָמַר לֵיהּ. לָא. אִין לֹא בֹן לְקִישׁ לֹא. אָמַר לֵיהּ. לֹא. אָמַר לֵיהּ. וְאִנּוּ מִפְתָּחָא. אָמַר לֵיהּ. בְּרָא דְמוֹנְדָּלָא. אָמַר לֵיהּ. אָנָּא וְאַתָּה נָפִיק לְקַדְמִיָּה. שְׁלַח רַבִּי יוֹחָנָן גְּבִי רַבִּי שְׁמַעוֹן בֶּן לְקִישׁ. עָתִיד לֵךְ מִיִּלָּה דְּאוּרִינָא דְּנִשְׁינָא נָפִיק לְקַדְמָא. נָפִיק לְקַדְמוֹן. מַר. דִּיגְמָא דִּיכֹחֵן דְּמִי לְבָרִיכֹן. כִּד אָתָּא רַחֲמָנָא לְמַפְרָק יֵת יִשְׂרָאֵל מִמַּצָּרִים לֹא שְׁלַח לֹא שְׁלִיחַ וְלֹא מִלְאָךְ. אֱלֹא הַקְדוּשׁ בְּרוּךְ הוּא בְּעַצְמוֹ. דְּכֹתִיב וְעַבְדִּי בְּאֶרֶץ-מִצְרַיִם בְּלִלְיָהּ הָיָה. וְלֹא עוֹד אֱלֹא הוּא וְכָל-דּוֹרְגוֹן דִּינְדִּיהָ. אֲשֶׁר הִלְךְ אֱלֹהִים אִין כְּתוּב כָּאֵן אֱלֹא אֲשֶׁר הִלְכוּ-אֱלֹהִים. אָמַרִין לֵיהּ. מַה חֲמִיטָה מִימּוֹר לֹן הָדָא מִיִּלְתָּא. אָמַר לוֹן. מַה אַתּוֹן סְבָרִין. מַה דְּחִיל מֵינְכוֹן הוּינָא מִנֵּעַ אוּלְפִינְיָה דְּרַחֲמָנָא. אָמַר רַבִּי שְׁמוּאֵל בְּרַב רַב יַחֲזֵק אֶל בְּנֵי כִי לֹא טוֹבָה הַשְׁמוּעָה וְגו'. מַעֲבִירִים עִם-יִי. מַעֲבִירִין אוֹתוֹ.

**Halakhah 1:** “An Anointed Priest who sinned,” etc. **Halakhah 2:** “An Anointed Priest who was removed from his anointed status,” etc.

<sup>3</sup>Rebbi Eleazar said, if a High Priest sinned, one whips him but does not remove him from his elevated status. Rebbi Mana said, it is written: *For the crown of his God's ointment is on him, I am the Eternal*; if one could compare it, just as I am in My Greatness, so Aaron is in his greatness. Rebbi Abun said, it is written<sup>4</sup>: *Holy shall he be for you*; if one could compare it, I am in My Sanctity, so Aaron is in his sanctity. Rebbi Ḥanina the scribe, Rebbi Aḥa in the name of Rebbi Simeon ben Laqish: if an Anointed Priest sinned, one whips him in a court of three [judges]. If you would say in a court of 23, his elevation would be his degradation. Rebbi Simeon ben Laqish said, if a patriarch sinned, one whips him in a court of three [judges]. Does one return him? Rebbi Haggai said, better if one did return him, he would kill them. Rebbi Jehudah the Prince heard this and became angry. He sent Goths to catch Rebbi Simeon ben Laqish. He fled to Magdala, some say to Kefar Hiṭṭim. Rebbi Johanan went to the assembly hall; Rebbi Jehudah the Prince also went to the assembly hall. He said to him, why is the master not telling us words of instruction? He started clapping with one hand. He asked, does one clap with one? He answered him, no, but without ben Laqish there is nothing. He said, no. He told him, I shall free him. He said to him, in Magdala. He told him, I and you will go out to meet him. Rebbi Johanan sent to Rebbi Simeon ben Laqish, prepare for yourself some words of instruction

since the Patriarch will go out to meet you. He went out to meet them and said, your example is similar to that of your Creator. For when the Merciful went to liberate Israel from Egypt, He sent neither messenger nor angel but He went Himself, as is written: *I shall pass through the Land of Egypt in that night, not only He but all His Court*. It is not written in this context “when Power went” but *when Powers went*<sup>5</sup>. They asked him, why did you say these things? He told them, what are you thinking? That for fear of you I would refrain from the teachings of the Merciful? As Rebbi Samuel ben Rav Isaac said, *No my sons, because the reputation is not good, etc., you remove the Eternal’s people*<sup>6</sup>, one removes him.

3 A slightly enlarged version of a paragraph in *Sanhedrin* 2:1, Notes 14 ff. The paragraph is missing in B, as in all similar cases it was added by later editors of the Babli from the Yerushalmi. Only the few added verses are indicated here. The additions are printed in a different

typeface. In a few places, the text here is slightly shortened.

4 Lev. 21:8.

5 2S. 7:23.

6 *IS*. 2:24. This quote is the gist of the entire sermon, missing in *Sanhedrin*.

**משנה ג:** חטאו עד שלא נתמנו ואחר כך נתמנו הרי אילו כהדיוט. רבי שמעון אומר אם נודע להם עד שלא נתמנו חייבין ומשנתמנו פטורין. ואי זה הוא הנשיא זה המקלף שנאמר ויעשה אחות מכל-מצות יי אלהיו נשיא שאין על גביו אלא ה' אלהיו. ואי זה הוא המנשיא זה המנשיא בשמן המשחה ולא המרוצה בבגדים.

**Mishnah 3:** If they sinned before being appointed; when afterwards they were appointed, they remain commoners<sup>1,7</sup>. Rebbi Simeon says, if it became known to them before they were appointed, they are obligated; if after they were appointed they are not liable.

Who is the Prince? This is the king, as it is said<sup>8</sup>, *if he transgressed one of the commandments of the Eternal, his God*; a Prince who has none above him but the Eternal, his God.

And who is the Anointed? This is one anointed with the anointing oil, not one clothed in multiple garb<sup>9</sup>.

**משנה ד:** אין בין כהן המשוח בְּשֵׁמֶן הַמִּשְׁחָה לַמְרוֹבֶה בְּגָדִים אֶלָּא פֶּר הַבָּא עַל כָּל הַמִּצְוֹת. וְאִין בֵּין כֹּהֵן מְשֻׁמֵּשׁ לְכֹהֵן שֶׁעֶבֶר אֶלָּא פֶּר יוֹם הַכִּיפּוּרִים וְעִשְׂרִית הָאִיפָה.

**Mishnah 4:** The only difference between the priest anointed with the anointing oil and the one clothed in multiple garb is the bull brought for all commandments<sup>10</sup>. And the only difference between an officiating High Priest and a deposed one is the bull of the Day of Atonement<sup>11</sup> and the tenth of an *ephah*<sup>12</sup>.

**משנה ה:** זֶה נֶזֶה שְׁוִוִּין בְּעִבּוּדֵי יוֹם הַכִּיפּוּרִים וּמִצְוִוִּין עַל הַבְּתוּלָה וְאַסּוּרִין עַל הָאֵלֶּמָּה וְאִינוּ מִיִּטְמְאִין בְּקִרְוֵיָהּ וְלֹא פּוֹרְעִין וְלֹא פּוֹרְמִין וּמִחֲזִירִין אֶת הַרֹצֵחַ:

**Mishnah 5:** Both are equal in the office of the day of Atonement<sup>13</sup>, commanded about the virgin<sup>14</sup>, and prohibited for a widow<sup>15</sup>, and do not defile themselves for close relatives<sup>16</sup>, and may not let their hair grow<sup>17</sup> or rend their garments<sup>18</sup>, and let the homicide return<sup>19</sup>.

7 For the purposes of this sacrifice.

8 Lev. 4:22.

9 Making the anointing oil was commanded personally to Moses (Ex. 30:25). All High Priests up to the time of king Josiah were anointed with it. Since that time, the oil was no longer available; it cannot be reconstituted. The later High Priests were inducted into their office by investiture with the High Priest's garments.

10 The rules about the High Priest's purification sacrifice explained in Chapter 2 became obsolete with the destruction of the First Temple and could be restored to validity only if a dig on the Temple Mount would recover the flask containing the original oil. The High Priests of the Second Temple had the status of commoners in this respect.

11 Which has to be acquired by the High Priest with his own money together with a goat (Lev. 16:3).

12 The personal daily offering of the High Priest, Lev. 6:12-16, of about 3.84 l of fine flour.

13 If the acting High Priest becomes impure or otherwise incapacitated, a former High Priest can replace him without special dedication. No common priest can perform any of the prescribed acts of the Day of Atonement.

14 Lev. 21:13. This applies only if the High Priest marries while High Priest. If he married a widow while a common priest, he still may be elevated to High Priest.

15 Lev. 21:14.

16 Lev. 21:11.

17 Lev. 21:10.

18 Lev. 21:10. These are forbidden as mourning rites.

19 Num. 35:25 (where anointing is mentioned), 32 (where anointing is not mentioned).

56) **הלכה ג:** חטאו עד שלא נתמנו כול'. חבריא אמרין טעמא דרבי שמעון. משם שהגדולה מכפרת. אמר רבי יוסי. שאין חטאו וידעתו שוין. מה מפקה מביניהון. רישא דפירקא. כהן משיח שחטא ואחר כך עבר ממשיחותו. וכן נשיא שחטא ואחר כך עבר מגדולתו. כהן משיח מביא פרה והנשיא מביא שעיר: חטאו בספק. מאן דמר. משם שהגדולה מכפרת. כשם שהיא מכפרת על הנדאי כך היא מכפרת על הספק. מאן דמר. אין חטאו וידעתו שוין. אין חטאו וידעתו שוין. חטאו עד שלא נתמנו משנתמנו עברו. מאן דמר. משם שהגדולה מכפרת. כיפרה הגדולה על הראשון והייב על השני ועל השלישי. מאן דמר. אין חטאו וידעתו שוין. חטאו על שמיעת קול ועל ביטוי שפתיים ועל טומאת מקדש וקדשיו. מאן דמר. אין חטאו וידעתו שוין. הרי חטאו וידעתו שוין. מאן דמר. משם שהגדולה מכפרת. אפילו כן הגדולה מכפרת.

1 משם | כשם 2 יוסי | יוסה רישא | רישיה 3 ממשיותו | ממשיותו 4 מאן | מן משם | כשם 5 מאן | ומן 6 משנתמנו | ומשנתמנו מאן | מן 7 משם | כשם השיני | השני מאן | מן 8 קול | הקול 9 מאן | מן (2) משם | כשם

**Halakhah 3** “If they sinned before being appointed,” etc. The colleagues say that the reason of Rabbi Simeon is because greatness atones<sup>20</sup>. Rabbi Yose said, because his sin and his knowledge are not equal<sup>21</sup>. What is the difference<sup>22</sup> between them? Referring to the beginning of the Chapter: “An Anointed Priest who sinned and then was removed from his anointed status, or a Prince who sinned and then was removed from his exalted status. The Anointed Priest brings a bull and the Prince brings a goat;” if there is any doubt whether they sinned. He who said, because greatness atones; just as it atones for the certain [sin] so it atones for the doubt. He who said, because his sin and his knowledge are not equal; his sin and his knowledge are not equal<sup>23</sup>. If they sinned before they were appointed and after they were appointed they breached, for him who said, because greatness atones, greatness atoned for the first, but he is liable for the second and the third<sup>24</sup>. For him who said, because his sin and his knowledge are not equal<sup>25</sup>. If they sinned regarding hearing a sound, or expression of the lips, or the impurity of the Temple and its *sancta*, for him who said, because his sin and his knowledge are not equal, here his sin and his knowledge are equal<sup>26</sup>. For him who said, because greatness atones, even in this case greatness atones<sup>27</sup>.

20 As will become clear later (Note 29), it is not the high office which atones but the appointment to high office. This is the

Babli's interpretation of /S. 13:1, that Saul was 1 year old when he became king; his sins were remitted and he was



innocent like a one year old baby (*Yoma* 22b).

The colleagues are Rav Hanania and Rav Oshia, two Babylonians of the third generation of Amoraim who lived in Galilee but never held office there.

21 This is the only opinion mentioned in the Babli, 3a. Since the status of the individual at the moment of the sin determines the appropriate sacrifice, if later his status changes he is prevented from sacrificing.

22 Are there practical differences depending on which doctrine one chooses? Since only R. Simeon's opinion is discussed, it seems that the Yerushalmi accepts his as practice, as far as these rules have practical applications.

23 There is no practical difference between rulings based on the colleagues' or R. Yose's opinions.

24 The first case occurred before he was appointed, the second while he was in office, the third after he was removed from office. According to the colleagues,

the induction into exalted office cancels the previous sins; once he entered office no further benefits accrue; cf. Note 29.

25 No detail is given since the answer is complicated; the problem is taken up again in Note 64. There is no sacrifice possible if the status of the sinner has changed between the date of the sin and the realization that it happened. The only problem is that of a sin committed in stage 1 which becomes known in stage 3; whether or not a sacrifice is possible depends on the difference between R. Johanan and R. Simeon ben Laqish in 1:2, cf. there Note 74; cf. also the following Note 61.

26 A sacrifice of variable value is required in all three cases; for R. Simeon under the restrictions of Chapter 2, Note 84.

27 The complications discussed in Chapter 2 regarding the variable sacrifice become irrelevant by the elevation of a person to exalted status.

47a line 68) אָמַר רַבִּי מִתְּנִיָּה. לְעוֹלָם אֵין הַגְדִּילָהּ מִכִּפָּרֶת עַד שֶׁתִּיּוֹדַע לוֹ גְּדִילָתּוֹ. אֲכַל חֲצִי זֵית עַד שֶׁלֹּא נִתְּמַנָּה וְחֲצִי זֵית מִשְׁנֵתְמַנָּה. אֲפִילוּ בְּעֵלֶם אֶחָד פְּטוּר. סָפֵק חֲצִי זֵית עַד שֶׁלֹּא נִתְּמַנָּה וְסָפֵק חֲצִי זֵית מִשְׁנֵתְמַנָּה. מִבֵּיא אֲשֶׁם תְּלִי. מְצִינוּ דָּבָר עֵיקְרוֹ פְּטוּר סְפִיקוֹ חֵיב. וְלֹא אֲשַׁכְּחֶנּוּ כֵּן. אֲכַל שְׁנֵי זֵיתִים וְנִתְּוֹדַע לָךְ בְּוֹדִיּוֹ שֶׁלֹּאֶחָד מֵהֶן. שְׁנֵי עֲמִיד לוֹ בְּסִפִּיקוֹ. רַבִּי יַעֲקֹב דְּרוֹמִיָּא בָּעָא קוֹמִי רַבִּי יוֹסִי. מַה נִּכְשָׁן. חֵלֵב אֲכַל כִּיפָּר. אָמַר רַבִּי יוֹסִי. כָּל־דָּבָר שֶׁנִּרְאָה עָלָיו לְהֵבִיא אֲשֶׁם תְּלִי יֵדִיעַת סְפִיקָה קוֹבְעֶתוֹ לְחֻטָּאוֹ. הֲרִי מְצִינוּ דָּבָר עֵיקְרוֹ פְּטוּר וְסְפִיקוֹ חֵיב. וְכָא עֵיקְרוֹ פְּטוּר וְסְפִיקוֹ חֵיב.

1 מתניא | מתניא 2 גדולתו | שגגתו אפילו בעלם אחד פטור. ספק חצי זית עד שלא נתמנה וספק חצי זית משנתמנה | - 28 3 עיקרו | שעיקרו ספיקו | וספיקו 4 אשכחן | אשכחן אכל | אלא אכל ומתודע לך בודייו | ונדע לו בודאי שני | את השני ספיקו | ספקו 5 דרומיאי | דרומיאי יוסי | יוסה (2X) כיפר | כפר שומן אכל כפר 6 ספיקה | ספקו ספיקו | ספקו 7 ספיקו | ספקו

Rebbi Mattania said: Greatness cannot atone (until his greatness becomes known to him) [unless his error became known to him.]<sup>29</sup> If he ate half the

volume of an olive before he was appointed and half the volume of an olive after he was appointed, even in one oblivion he is not liable<sup>30</sup>. A doubt of half the volume of an olive before he was appointed and a doubt of half the volume of an olive after he was appointed: he brings a suspended reparation offering<sup>31</sup>. Do we find anything where for the actual offense he is not liable but for a doubt he is liable? We do not find this! If he ate the volume of two olives, the true nature of one of them became known to him, the other remained for him in doubt<sup>32</sup>. Rabbi Jacob the Southerner asked before Rabbi Yose: As you take it, if he ate forbidden fat, it atoned. [If he ate permitted fat, it atoned.]<sup>33</sup> Rabbi Yose said, anything which convinced him to bring a suspended reparation offering, the knowledge of the doubt establishes his transgression<sup>34</sup>. So we find a case where for the actual offense he is not liable but for a doubt he is liable<sup>35</sup>.

28 Omission because of homeoteleuton.

29 The text in parentheses is from L, the one in brackets is from B. It seems that the latter is the correct one. Since it was established in the preceding paragraph that in the opinion of the colleagues it is the act of elevation which wipes off earlier guilt, only those transgressions which are known to the person being elevated are being atoned for. The argument is also acceptable to R. Yose since once the transgression became known to the person, it determines the sacrifice which he is obligated to bring. If then his status changes, he might be prevented from ever bringing this sacrifice.

30 While the consumption of any forbidden food is sinful, the transgression is prosecutable, or if committed inadvertently requires a sacrifice, only if the amount consumed was at least the volume of an olive (except if one ate a

complete being, such as an ant.) All transgressions committed during one period of oblivion are added together, on condition that their accumulation result in one and the same sacrifice. But if his appointment changes the nature of the sacrifice, the partial transgressions cannot be added.

31 Since the appointment does not change the nature of the required suspended reparation sacrifice (except that the Anointed Priest is not liable for possible infractions relating to the purity of the Temple and its *sancta*.)

32 This now refers to anybody and is not subject to varying purification sacrifices. If he ate two different foods, for one it became known to him that it was forbidden, the other is only suspected of not being kosher. Then for the forbidden food he is liable to bring a purification sacrifice, for the suspected one a suspended reparation sacrifice. Bringing

a suspended reparation sacrifice implies an obligation to bring a purification sacrifice if it should become clear that a sin had actually been committed.

33 The text in brackets is from B; it makes for a smoother reading but one could argue that it is redundant.

R. Jacob's argument is that a second purification sacrifice (and possibly the suspended reparation sacrifice) should be unnecessary (and therefore impossible) since if the two kinds of food were both known to be not kosher and they were eaten in one period of oblivion, one purification sacrifice would be prescribed. If the second food turned out to be kosher,

no sacrifice would be needed.

34 The previous argument is rejected. The obligation of sacrifices is fixed at the moment the person realizes the sinfulness of his actions. Since at that moment, the status of the second food remained in doubt, it required a suspended reparation sacrifice. But a suspended reparation sacrifice carries with it the implicit obligation of a purification sacrifice in case the situation could be cleared up.

35 In case of a certain violation, one sacrifice would have been due. Because of the doubt, two or three are due now. The previous statement is disproved.

1 (47b line 1) אָכַל כְּזֵית עַד שֶׁלֹּא נִתְמַנָּה וְכֵזִית מִשְׁנֵתִּמְנָה. בְּהֶעֱלֵם אֶחָד אֵינוֹ חַיִּיב אֶלָּא אַחַת. סָפֵק כְּזֵית עַד שֶׁלֹּא נִתְמַנָּה וְסָפֵק כְּזֵית מִשְׁנֵתִּמְנָה. בְּהֶעֱלֵם אֶחָד אֵינוֹ חַיִּיב אֶלָּא אַחַת. בְּשָׁנִי הֶעֱלִימוֹת חַיִּיב שְׁתֵּי.

3 העלימות | העלמות

אָכַל שְׁלֹשָׁה זֵיתִים וְסָבּוּר שֶׁהָיוּ שְׁנַיִם. הִפְרִישׁ חֲטָאת כְּדָרְבֵי יוֹחֵנָן. דָּרְבֵי יוֹחֵנָן אָמַר. נִתְכַּפֵּר מִקֶּצֶת הַחֵט נִתְכַּפֵּר כּוֹלּוֹ. רַבִּי שְׁמַעוֹן בֶּן לָקִישׁ אָמַר. נִתְכַּפֵּר מִקֶּצֶת הַחֵט לֹא נִתְכַּפֵּר כּוֹלּוֹ.

1 וסבור | סבור כר' יוחנן | אחת כפר דר' | ר' 2 החט | החטא (2x)

אָכַל חֲמִשָּׁה זֵיתִים וְנִתְוֹדַע לוֹ בְּסָפֵק כָּל-אֶחָד וְאֶחָד. וְאַחֵר כִּף נִתְוֹדַע לוֹ בֵּית דִּין. רַבִּי שְׁמַעוֹן בֶּן לָקִישׁ אָמַר. וְדִיעַת סָפִיקוֹ קוֹבְעָתוֹ לְחֲטָאוֹ. רַבִּי יוֹחֵנָן אָמַר. אֵין וְדִיעַת סָפִיקוֹ קוֹבְעָתוֹ לְחֲטָאוֹ. רַבִּי יוֹסִי בִּירְבִּי בּוֹן בָּשָׁם רַבִּי שְׁמוּאֵל בֶּר רַב יִצְחָק. מוֹדָה רַבִּי שְׁמַעוֹן בֶּן לָקִישׁ בְּכֹהֵן מְשִׁיחַ שְׁאֵין וְדִיעַת סָפִיקוֹ קוֹבְעָתוֹ לְחֲטָאוֹ. וְיָמָּה טַעַם. בְּחֲטָאת כֹּהֲנִים. אֵת שֶׁהוּא מִבְּיָא אֲשֶׁם תְּלוֹי סָפִיקוֹ קוֹבְעָתוֹ לְחֲטָאוֹ. וְאֵת שְׁאֵינוֹ מִבְּיָא אֲשֶׁם תְּלוֹי אֵין סָפִיקוֹ קוֹבְעָתוֹ לְחֲטָאוֹ.

1 ונתוודע | ונתוודע | נתוודע | בית דין | בודאי 2 קובעתו | קובעת 3 קובעתו | קובעת יוסי | יוסי בשם | אמ' ר' שמעון בן לקיש | ריש לקיש 4 קובעתו | קובעת ומה | מה שהוא מביא | שמביא 5 קובעתו | קובעת

מִחֲלָפָה שִׁטְיָתִיהָ דְּרַבִּי שְׁמַעוֹן בֶּן לָקִישׁ. תַּמָּן הוּא אָמַר. וְדִיעַת סָפִיקוֹ קוֹבְעָתוֹ לְחֲטָאוֹ. וְכָא אָמַר. אֵין וְדִיעַת סָפִיקוֹ קוֹבְעָתוֹ לְחֲטָאוֹ. תַּמָּן אָשְׁמוּ קוֹבְעוֹ. וְכָא מָה אֵית לָךְ.

1 אמר | אמר 2 וכא אמ' | והא הוא אמר | קובעו | קובעתו

מחלפה שיטתיה דרבי יוחנן. תמן הוא אמר. נתכפר מקצת החט נתכפר כולו. וכא הוא אמר אכן. לא אמר רבי יוחנן אלא בידיעה אחרונה שאין בזה שום קרבן.  
 1 אמ' | אומר החט | החטא וכא | והא 2 אמ' אכן | אומר הכן | אחרונה | האחרונה שום | חיוב

One ate the volume of an olive before he was appointed and the volume of an olive after he was appointed. If it was in one oblivion, he is liable only for one [sacrifice]<sup>36</sup>. If the volume of an olive was in doubt before he was appointed, and the volume of an olive was in doubt after he was appointed, in one oblivion he is liable only for one, in two forgettings he is liable for two [sacrifices].<sup>37</sup>

One ate the volume of three olives but was of the opinion that he ate only two. {He selected a sacrifice following Rabbi Johanan.<sup>38</sup>} [If he selected one sacrifice, this atones.<sup>39</sup>] For Rabbi Johanan said, if part of the sin was atoned for, all of the sin was atoned for. Rabbi Simeon ben Laqish said, if part of the sin was atoned for, not all of the sin was atoned for.

One ate five times the volume of an olive; he separately realized a doubt about each one. Afterwards it became known to him (in court) [as a certainty.<sup>40</sup>] Rabbi Simeon ben Laqish said, the knowledge about his doubt determines his kind of transgression. Rabbi Johanan said, the knowledge about his doubt does not determine his kind of transgression<sup>41</sup>. Rabbi Yose bar Abun in the name of Rabbi Samuel bar Rav Isaac: Rabbi Simeon ben Laqish agrees that for the Anointed Priest the knowledge about his doubt does not determine his kind of transgression<sup>42</sup>. What is the reason? *Like purification offering, like reparation offering*<sup>43</sup>. The knowledge about his doubt determines his kind of transgression for one who brings a suspended reparation offering. The knowledge about his doubt does not determine his kind of transgression for one who does not bring a suspended reparation offering.

The argument of Rabbi Simeon ben Laqish seems to be inverted. There he says, the knowledge about his doubt determines his kind of transgression. But here he says, the knowledge about his doubt does not determine his kind of transgression. There, his reparation offering determines it. Here what do you have<sup>44</sup>?

The argument of Rabbi Johanan seems to be inverted. There, he said, if part of the sin was atoned, all of the sin was atoned. And here he says so? Rabbi Johanan said this only for the last realization which does not require any sacrifice<sup>45</sup>.

36 The moment of realization of the transgression determines the kind of sacrifice required. Since the Anointed and the king are forbidden to offer the sacrifice of a commoner and vice-versa, only one sacrifice is possible.

37 Since a suspended reparation sacrifice is authorized for everybody, it can be offered both by a commoner and by an Anointed Priest or a king. But it was established earlier that elevation starts new obligations of sacrifices. Therefore, obligations of suspended reparation sacrifices before and after elevation cannot be combined.

38 Text of L.

39 Text of B. The two texts have the same meaning; B's is more easily understood. The Babli, *Šabbat* 71b, switches the attributions between RR. Johanan and Simeon ben Laqish.

For R. Simeon ben Laqish, the dedication of the sacrifice to atone for two infractions requires a new sacrifice for the third. For R. Johanan, the one sacrifice automatically is valid for the third also.

40 The text in parentheses is from L, the one in brackets from B. Since the testimony as to the occurrence of a sinful act by a single witness in court is sufficient to obligate the perpetrator for a sacrifice (even though a single witness is not admissible in any criminal procedure and may be contradicted by an oath in

civil proceedings) the text in parentheses has to be preferred as *lectio difficilior* while the meaning for the English reader is more easily understood from the text of B.

41 The problem discussed here has no direct connection with change of status; it applies as well to a commoner who progressively becomes aware of multiple transgressions of the same kind; *Ševuot* 2:1 (33d l. 10) Babli *Keritut* 18b, *Ševuot* 19b. The Babli finds here a tannaitic controversy. It was stated that the awareness of a transgression determines the obligation of a purification sacrifice, but the obligation of a suspended reparation sacrifice may cover separate incidents. The question then arises what are the obligations if the doubts about a single suspended reparation sacrifice are resolved on different occasions? (In the Babli, R. Simeon ben Laqish's opinion is attributed to Rabbi, that of R. Johanan to Rabbi's teachers R. Yose ben R. Jehudah and R. Eleazar ben R. Simeon.)

In the example, the doubt is whether he ate permitted or prohibited fat.

42 The paragraph is referred to in *Ševuot* 2:1.

Since the Anointed Priest is barred from bringing a reparation sacrifice, the knowledge of the doubt has no influence on his status.

43 *Lev.* 7:7. The verse appears in a

different context, i. e., that the technicalities of purification and reparation sacrifices are identical [*Sifra Saw Pereq* 9(1)]. In Maimonides's opinion, the quote here is an allusion, not a proof.

43 The origin of this paragraph is in *Ševuot* 2:1; therefore "there" means here, "here" means *Ševuot* 2:1. As explained in Note 42, information which does not imply any obligation for a sacrifice cannot influence any further such obligation. The problem discussed in *Ševuot* 2:1 refers to impurity of the Sanctuary, violations of which category are atoned for by a variable sacrifice (*Lev.* 5:1-13) and do not call for a suspended reparation sacrifice in case of doubt. Therefore, information of a doubt in this case does not imply any obligation for a sacrifice.

44 R. Simeon ben Laqish is not inconsistent. Here, he holds that the

moment which determines one's obligation for a reparation offering also determines the conditions for a future purification offering. But in *Ševuot* 2:1, the doubt arises about impurity of the Sanctuary which is not subject to a suspended reparation offering. There is no sacrifice which could define future obligations.

45 This paragraph also appears in *Ševuot* 2:1; its original place is here. In the case of three olives he holds that the supplementary information about the third olive is irrelevant since the purification sacrifice for the first two also covers the third. In the case of the volume of five olives, the supplementary information that he ate forbidden fat triggers the obligation of a purification sacrifice which did not exist before; it is relevant.

רבי יוסי (47b line 19) הכל מודין שאם היתה ראשונה קיימת שהיא נדחית. מה יעשה בה. רבי יוסי אומר. תלויה בכפרה. אומר רבי זעירא. כל-שלא נראית לא היא ולא דמיה מתה מיד. 1 מודין | מודים נדחית | נדחת יוסי | יסה 2 אמ' | אומר מתה | מיתה

Everybody agrees that if the first one was still in existence it is pushed aside<sup>46</sup>. What should be done with it? Rabbi Yose said, it is suspended for atonement<sup>47</sup>. Rabbi Ze'ira said, where neither itself nor its blood are usable it dies immediately<sup>48</sup>.

46 In the case of three volumes of olive size R. Johanan asserts that if a sacrifice was brought for the first two before the person was informed of the third, no additional sacrifice is needed. But if the animal was only dedicated to atone for two and before it was slaughtered its owner was informed of the third, it is asserted that the dedication becomes

invalid and a new animal is needed even according to R. Johanan. (Therefore, a careful person will formally dedicate his animal at the last possible moment, just before entering the Temple precinct. An intention to use the animal, short of formal dedication, is no obstacle to using it for another purpose.)

47 It should be left to graze until it

develops a bodily defect or becomes too old to serve as sacrifice, then be sold and its proceeds used to buy the new purification sacrifice.

While both sources here read “R. Yose”, the only acceptable reading is that of L in the next paragraph, “R. Yasa”, of the generation of R. Ze’ira’s teachers. R. Yose was the student of R. Ze’ira’s

student R. Jeremiah.

48 He objects that the animal now has the status of a purification sacrifice whose owner’s sin was atoned for by another animal, which has to be left to die (Mishnah *Temurah* 2:2) since it can neither be redeemed, nor used, nor allowed to produce young which would perpetuate its impossible situation.

(47b line 21) אַכַּל חֲמִשָּׁה זֵיתִים וְנוֹדַע לוֹ בְּסַפִּיקוֹ מִשְׁנֵתִמְנָה וּבְבֵית דִּין מַעֲבֵר. עַל דְּעֵתִיָּה דְרַבִּי שְׁמַעוֹן בֶּן לִקְיִשׁ פְּטוֹר. עַל דְּעֵתִיָּה דְרַבִּי יוֹחָנָן חֵיִיב. כֵּן אָמַר רַבִּי שְׁמַעוֹן בֶּן לִקְיִשׁ לְפָטוֹר וְלֹא לְחַיִּיב. אֲלֵא כִינִי. אַכַּל חֲמִשָּׁה זֵיתִים וְנִתְּנוּדַע לוֹ בְּסַפִּיקוֹ עַד שֶׁלֹּא נִתְּמַנָּה וְנִדְּיָו מִשְׁנֵתִמְנָה. עַל דְּעֵתִיָּה דְרַבִּי שְׁמַעוֹן בֶּן לִקְיִשׁ דּוֹ אָמַר. דִּיעֵת סַפִּיקוֹ קוֹבָעָתוֹ לְחֻטָּאוֹ. דּוֹ אָמַר. חֵיִיב. עַל דְּעֵתִיָּה דְרַבִּי יוֹחָנָן דּוֹ אָמַר. אֵין דִּיעֵת סַפִּיקוֹ קוֹבָעָתוֹ לְחֻטָּאוֹ. דּוֹ אָמַר. פְּטוֹר. הַכֹּל מוֹדִין שֶׁאִם הָיְתָה רֹאשׁוֹנָה קִיָּמָת שְׁהִיא נִדְּחִית. מַה גַּעֲשֶׂה בָּהּ. רַבִּי יִסָּא אָמַר. תְּלוּיָהּ בְּכַפְרָה. אָמַר רַבִּי זְעִירָא. כָּל־שֶׁלֹּא נִרְאִית לֹא הִיא וְלֹא דְמִיָּה מִתָּה מִיָּד.

1 וְנוֹדַע | וְנִתְּנוּדַע | בְּסַפִּיקוֹ | וּבְבֵית דִּין מַעֲבֵר | וּבְדִין מַשְׁעֵבֵר | 2 שְׁמַעוֹן בֶּן לִקְיִשׁ פְּטוֹר | יוֹחָנָן חֵיִיב | יוֹחָנָן חֵיִיב | שְׁמַעוֹן בֶּן לִקְיִשׁ פְּטוֹר וְלֹא | לֹא | 3 לְחַיִּיב | לְחַיִּיב כִינִי | כִּי וְנִתְּנוּדַע | וְנִתְּנוּדַע בְּסַפִּיקוֹ | בְּסַפִּיקוֹ וְנִדְּיָו | וּבְדִין | 4 דּוֹ אָמַר | דָּאִמַר | סַפִּיקוֹ קוֹבָעָתוֹ | סַפִּיקוֹ קוֹבָעָתוֹ | דּוֹ | כֵּן | 5 סַפִּיקוֹ | סַפִּיקוֹ | דּוֹ | כֵּן מוֹדִין | מוֹדִים | 6 נִדְּחִית | נִדְּחִית יִסָּא | יִסָּה

If he ate five times the volume of an olive; the doubt became known to him before he was appointed (and in court) [as the certainty]<sup>40</sup> after he was removed<sup>49</sup>. In the opinion of Rebbi Simeon ben Laqish he is not liable; in the opinion of Rebbi Johanan he is liable<sup>50</sup>. Did Rebbi Simeon ben Laqish state to free from liability, not rather to insist on liability<sup>51</sup>? But it must be as follows: He ate five times the volume of an olive. The doubt became known to him before he was appointed; the certainty after he was appointed. Following the opinion of Rebbi Simeon ben Laqish who said, the knowledge about his doubt determines his kind of transgression, he must say<sup>52</sup> that one is liable<sup>53</sup>. Following the opinion of Rebbi Johanan who said, the knowledge about his doubt does not determine his kind of transgression, he must say that one is not liable<sup>54</sup>.

Everybody agrees that if the first one was still in existence it is pushed aside<sup>46</sup>. What should be done with it? Rebbi Yasa said, it is suspended for

atonement<sup>47</sup>. Rabbi Ze'ira said, if neither itself nor its blood are usable, it dies immediately<sup>48</sup>.

49 One now applies the preceding discussion to the Mishnah, following R. Simeon who insists that the status of the person at the moment at which he receives the information determines his liability.

50 In this interpretation, since according to R. Simeon ben Laqish the obligation of a suspended sacrifice implies that of the corresponding purification sacrifice, the prior obligation which was eliminated by the appointment is not re-instituted by removal from office. For R. Johanan the status of the suspended sacrifice is irrelevant for the purification offering. Since after removal the person is again under the rules of a commoner, his obligation is not changed.

51 Since the original statement of R. Simeon ben Laqish referred to a case where he is more restrictive than R. Johanan, it is inadmissible to quote him in

support of a more lenient position. In the case considered there is unanimity that for a transgression committed as a commoner, which could not have been atoned for while one was elevated, the original obligation of a purification sacrifice of a female sheep or goat is re-instituted.

52 The construction in L is rather awkward; that of B is more smooth, but this probably indicates that the text of B is babylonized.

53 Since the obligation preceded the elevation it cannot be removed following R. Simeon.

54 Since the obligation of a purification sacrifice became known when the person was prohibited from offering a commoner's sacrifice, following R. Simeon the person is prevented from offering any sacrifice.

(47b line 31) אָכַל חֲצִי זֵית עַד שֶׁלֹּא נִתְמַנָּה וְחֲצִי זֵית עַד מִשְׁנִיתָמָנָה חֲצִי זֵית שְׁעָבַר. הוֹאִיל וּבֹא חַיִּיב קָרְבָּן בִּינְתֵימִים מִצְטָרְפִין. נִישְׁמָעִינָה מִן הַדָּא. הָיוּ לִפְנֵינוּ שְׁלֹשָׁה. אָכַל אֶת הָרֹאשׁוֹן וְלֹא נִתְוַדַּע לוֹ. שֵׁנִי וְשְׁלִישִׁי הִעְלִימוּ שְׁקִירָאשׁוֹן. נִתְוַדַּע לוֹ עַל הָרֹאשׁוֹן וְלֹא נִתְוַדַּע לוֹ עַל הַשֵּׁנִי. שְׁלִישִׁי בְּהִעְלָמֹו שְׁלֹשִׁי. וְאַחֵר כִּד נִתְוַדַּע לוֹ עַל כּוֹלָהֶם. רַבִּי יוֹחָנָן אָמַר. חַיִּיב עַל הָרֹאשׁוֹן וְעַל הַשֵּׁנִי וּפְטוּר עַל הַשְּׁלִישִׁי. אָמַר רַבִּי יוֹסִי. שֵׁנִי לְדַעְתּוֹ הַדָּבָר תָּלוּי. רָצָה מִתְכַּפֵּר לוֹ עַל הָרֹאשׁוֹן. רָצָה מִתְכַּפֵּר לוֹ עַל הַשְּׁלִישִׁי. חֲבֵרִיא מְדַמֶּינָא לָהּ לְאַרְבָּעָה חֲצִי זֵיתִים. אִם הָיָה פִּיקֻחַ מִבֵּית קָרְבָּן אֶחָד. וְאִם לֹא מִבֵּית שְׁנֵי קָרְבָּנוֹת. הֵיד עֲבִידָא. מִבֵּית עַל הָרֹאשׁוֹן וְעַל הַשֵּׁנִי אֶחָד. עַל הַשְּׁלִישִׁי וְעַל הַרְבִּיעִי אֶחָד. רַבִּי יוֹסִי מְדַמָּה לָהּ לְזֵיתִים שְׁלִימִים. אִם הָיָה פִּיקֻחַ מִבֵּית שְׁנֵי קָרְבָּנוֹת. וְאִם לֹא מִבֵּית אֶחָד. מִבֵּית עַל הָרֹאשׁוֹן וְעַל הַשֵּׁנִי אֶחָד וְעַל הַשְּׁלִישִׁי וְעַל הַרְבִּיעִי אֶחָד. אִם הָיָה עַל הָאֲמָצְעִים פְּטוּר עַל הָרֹאשׁוֹן וְעַל הַרְבִּיעִי. רַבִּי יוֹסִי מְדַמֶּי לָהּ לְזֵיתִים שְׁלִימִים. אִם הָיָה פִּיקֻחַ מִבֵּית שְׁנֵי קָרְבָּנוֹת וְאִם לֹא מִבֵּית



שְׁלֹשָׁה קֶרְבָּנוֹת. הֵיךְ עֲבִידָא. מִבֵּיא עַל הָרֹאשׁוֹן וְעַל הַשֵּׁנִי אֶחָד וְעַל הַשְּׁלִישִׁי וְעַל הָרְבִיעִי אֶחָד. אִם הִבִּיא עַל הָאֲמֻצָּעִים חֵיב עַל הָרֹאשׁוֹן בְּפָנָי עֲצָמוֹ וְעַל הָרְבִיעִי בְּפָנָי עֲצָמוֹ.

1 חצי זית שעבר | וחצי זית משעבר | ובא | ולא בא | 2 בינתיים | בינתיים | נישמענה | נשמע | הדא | הדא  
שלשה | שלשה זיתים | 3 נתודע | נתודע (X2) | שני ושלישי העלימו שלראשון | שני בהעלמו של ראשון  
השני | השני | 4 בהעלמו שלשני | בהעלמו של שני | נתודע | נתודע | 5 השני | השני | יוסי | יוסי  
לדעתו | לדעת זה | הדבר | דבר | 6 חברייא מדמייא | חברייא מדמייא | חצי | חצי | זיתים | זיתים | 7 פיקח |  
פיקח | שני | שני | 8 על | על | ר' יוסי מדמה לה לזיתים שלימים. אם היה 9 פיקח מביא שני קרבנות. ואם  
לאו מביא שלשה קרבנות. היך עבדא. מביא על הראשון ועל 10 השני אחד ועל השלישי ועל הרביעי אחד | -  
11 שלימים | שלימים | פיקח | פיקח | שני קרבנות | קרבן אחד | 12 שלשה | ב' אחד | -

<sup>55</sup>If one ate half the volume of an olive before he was appointed, half the volume of an olive after he was appointed, half the volume of an olive after he was removed from office. Since [no]<sup>56</sup> obligation of a sacrifice came in between, do they combine? Let us hear from the following<sup>57</sup>: Before him were three [olive sized pieces]<sup>58</sup>. He ate the first but did not realize it; the second (and the third)<sup>59</sup> while he was oblivious of the first. He was informed of the first but was not informed of the second. [He ate] the third while oblivious of the second. Afterwards he was informed about all of them. Rabbi Johanan said, he is liable for the first and the second but not liable for the third<sup>60</sup>. Rabbi Yose said, the second depends on his intention. If he wishes, he atones for it with the first; if he wishes, he atones for it with the third<sup>61</sup>. The colleagues compare it to four half-olives<sup>62</sup>. If he was intelligent, he brings one sacrifice; otherwise, he brings two sacrifices. How is that? He brings one for the first and the second together; one for the third and fourth together. (Rabbi Yose compares it to full olive sizes. If he was intelligent, he brings two sacrifices; otherwise, he brings three sacrifices. How is that? He brings one for the first and the second together, and one for the third and fourth together.)<sup>63</sup> If he brought for the middle ones, he is not liable for the first and the fourth<sup>64</sup>. Rabbi Yose compares it to full olive sizes. If he was intelligent, he brings two sacrifices; otherwise, he brings three sacrifices. How is that? He brings one for the first and the second together, and one for the third and fourth together. If he brought for the middle ones, he is liable for the first separately and for the fourth separately<sup>65</sup>.

55 A similar problem is treated in the Babli, 11a.

56 Text of B, necessary in the text.

Since no full olive-sized piece of forbidden food was eaten while the person was in his privileged appointed status, the

previous argument that the new obligation of sacrifices invalidates the old one does not apply. The question is raised whether the two unrelated episodes of a commoner's obligation can be added. In the Babli, the question remains undecided in principle.

57 Cf. Babli *Šabbat* 71b.

58 Text of B.

59 Text of L. It is preferable to delete it since if the second and third olives are eaten under similar circumstances, the remaining text of the statement becomes redundant.

60 When he became obligated for a purification sacrifice for the first piece, he did not know of his obligation for the second. Following R. Simeon, the obligation for the first piece and the future one for the second are incompatible. But if the information about the second and the third reaches him after the third had been eaten, one sacrifice covers both of them.

61 He disputes R. Johanan's interpretation of R. Simeon's position. Since the first and second pieces were eaten in ignorance, even if the information reached the perpetrator piecemeal, one sacrifice still may cover both. The argument for using one and the same sacrifice for the second and third pieces is the same as that given by R. Johanan.

62 He ate pieces 1,2,3,4 in a situation when while eating piece *i* he was informed about the forbidden character of piece *i*-2 but not yet about piece *i*-1. (If one of these numbers be 0 or negative, the relative information is void.) Then one sacrifice covers pieces 1 and 2 which were eaten in ignorance. But since at the time he was eating piece 3 he already was informed about piece 1, the sacrifice for 1 and 2 cannot be applied to 3. Since he was informed about 2 but not 3 when he ate 4, the last two pieces can be atoned for by one sacrifice.

63 This text, missing in B, is an intrusion of the later text into the current discussion; it should be disregarded.

64 The intelligent person will dedicate his sacrifice for pieces 2 and 3. Then 1 is a single half-olive which does not qualify for a sacrifice. The same holds true for 4. Since the information about 1 was available when 4 was consumed, 1 and 4 do not combine.

65 The situation contemplated by R. Yose is parallel to that considered by the colleagues but this time each of the pieces has the full volume of an olive. Then each piece itself qualifies for a sacrifice. The second best solution of the colleagues now becomes the best for R. Yose; their best now is the second best.

47b line 49) רבי יצחק שאל. אף באכילת פֿרסים כן. אמר רבי יוסי. כל־זה שאילתה דרבי יצחק לית היא כלום. וכתוב באכילת פֿרסים הדבר תלוי. אילו אכל חצי זית בתוך כדי פרס זה וחצי זית בתוך כדי פרס זה שפֿמא כלום הוא. אכל כמה זיתים וכמה פֿרסים בהיעלם אחד אינו חייב אלא אחת. רבנן דקיסרין אמרי. עד דין מדמה לה לחלבים ודמינה לשבת. אילו ארג חוט אחד בתוך כדי בגד זה וחוט אחד בתוך כדי בגד זה שפֿמא כלום הוא. ארג כמה

חוטין בַּכֶּמֶה בְּגָדִים בְּהִיעָלָם אֶחָד אֵינוֹ חַיִּיב אֶלָּא אַחַת. הָרִי בָּא חַיִּיב בְּקֶרֶבָן בִּנְיָיִם וְתִימָר מִצֶּטֶרְפִּין. אָמַר רַבִּי אֲבוּן. תִּמְנָן חַיִּיב בְּקֶרֶבָן. בָּרַם הָכָא קֶרֶבָן.

1 פרסים | פרסיים יוסי | יוסה כל זה שאילתה | בלדה שאילתה 2 לית | ולית וכתוב | וכי פרסים | פרסיים פרס | אכילת פרס 3 פרס | אכילת פרס וכמה | בכמה 4 קיסרין | קסרין אמרי | אמרין דין | דמזמה | דמזמה ודמינה | דמינה 6 בהיעלם | בהעלם בינתיים | בינתיים 7 אבון | בון חייב בקרבן | חייב בקרבן קרבן | שינוי קרבן

Rebbi Isaac asked: Is it the same with the eating of half loaves<sup>66</sup>? Rebbi Yose said, this question of Rebbi Isaac is nothing. (Is it written) [Does]<sup>67</sup> the matter depend on eating half loaves? If one ate the volume of half an olive during the time allotted for this half loaf and another volume of half an olive during the time allotted for that half loaf, is that anything<sup>68</sup>? If one ate the volume of several olives during times allotted for several half-loaves in one oblivion, he is liable only for one [sacrifice]<sup>69</sup>. The rabbis of Caesarea say, instead of comparing it to kinds of fat, why not compare it to [the laws of] Sabbath<sup>70</sup>? If he wove a single thread for one cloth and a single thread for another cloth, is that anything? If he wove several threads for several pieces of cloth in one oblivion, he is liable only for one [sacrifice]. Was there not an obligation for a sacrifice in the meantime, and you say that they are counted together<sup>71</sup>? Rebbi Abun said, there it is about the obligation of a sacrifice; but here [a change]<sup>72</sup> of sacrifice.

66 פָּרֶס is the technical term for half a loaf of bread. (The punctuation פָּרֶסִים is the ms.'s. The term is derived either from Hebrew פָּרַס "to break bread" or Latin *pars* "part, share, portion" of food). The time needed to eat half a loaf serves as definition of the time needed for a minimal meal. For example, any person entering an infected house becomes impure (*Lev.* 14:46) but his garments also become a source of original impurity only if he stays there for a meal, i. e., the time needed to eat half a loaf (v. 47). Tosephta *Nega'im* 7:10 (Mishnah *Eruvin* 8:2) defines the loaf in question as baked from wheat flour in the volume of a third of a

*qab*. Halakhah *Terumot* 5:3 (Note 44) estimates a *modius*, 4 *qab*, as the volume of 96 eggs. This makes a פָּרֶס a piece of bread baked from the volume of 4 eggs of wheat flour. The sources give no indication of a translation of this definition into terms of time.

Snacks eaten at times separated by more than the time needed to eat a *peras* must be counted as separate meals. Therefore, eating forbidden food triggers the obligation of a purification sacrifice only if the volume of an entire olive was eaten in the time needed to eat a *peras* (Mishnah *Keritot* 3:3).

67 The text in parentheses is from L, the

one in brackets from B. It seems that the scribe of L read וִי instead of וְיִ and unthinkingly interpreted כ' as the common abbreviation of כְּתִיב.

68 As explained in Note 56, no atonable sin was committed.

69 As explained before, if an atonable sin was committed, any number of sins corresponding to the same definition committed during one spell of oblivion are atoned for by one sacrifice.

70 This remark does not fit in here; it shows that the text was taken from *Šabbat* 1:1 (2b line 32 ff.) where R. Yose's (the Amora's) remark here is put in the mouth of R. Yudan (the Amora) to explain the opinion of R. Yose (the Tanna) about violations of Sabbath prohibitions. It is forbidden to transport goods from one place to another on the Sabbath. "Transporting" means taking up the goods, moving them from one domain to another, and unloading. If any of the three actions be missing, no prosecutable sin was committed. In addition, for each kind of goods the Mishnah specifies minimal amounts. If less than the amount specified was transported while the person was oblivious of the Sabbath, no purification offering is required. On the other hand, if any number of transports were executed within one period of oblivion, only one sacrifice is needed. R. Yose the Tanna then specifies that repeated transports of less than a minimal amount add up to an atonable sin only if the different pieces were transported between the same domains [*Šabbat* 1:1

(2b line 22), Babli *Šabbat* 80a, *Bava batra* 55b, *Keritut* 17a.] This is compared to the rules specifying purification sacrifices for eating pieces of forbidden fat. The rabbis of Caesarea object that there is no proof that the rules of the Sabbath be identical to the rules for other biblical prohibitions, but the rules detailed for transporting are paralleled by rules for other kinds of activities on the Sabbath. Mishnah *Šabbat* 13:1 states that weaving is forbidden and the threshold for an action requiring a purification sacrifice is weaving two threads. For the majority, weaving two threads in one oblivion triggers the obligation of a sacrifice, for R. Yose only if the two rows were added to the same piece of cloth.

71 Now one returns to the problem posed in the preceding paragraph, of the person who ate three half-olive sized pieces of forbidden fat while he was in different states for possible purification sacrifices. Is it possible to decide between R. Johanan on one side and R. Yose (the Amora) and the colleagues on the other? For the latter, it should make sense to combine the two pieces eaten while the person was a commoner. This is rejected, since the two states of commoner are separated by an interval in which the purification offering had to be different, everybody will agree that the three half sized pieces do not add up to one full sized piece.

72 Text of B, forgotten by the scribe of L.

47b line 59) אַכַּל כְּזֵית עַד שֶׁלֹּא נִתְמַנֶּה וְכֵזֵית מִשְׁנֵתִמְנֶה וְכֵזֵית מִשְׁעֶבֶר. עַל דַּעְתּוֹן דְּחִבְרִיָּא דִּינּוּן אָמְרִין. מִשָּׁם שֶׁהַגְּדוּלָּה מְכַפֶּרֶת. כִּיפְרָה הַגְּדוּלָּה עַל הָרָאוּשׁוֹן וְחֵיב עַל הַשֵּׁינִי וְעַל הַשְּׁלִישִׁי. עַל דַּעְתֵּיהּ דְּרַבִּי יוֹסִי דִּי אָמַר. אֵין חֲטָאוּ וְיִדְעֵתוּ שְׁוִין. חֵיב עַל הָרָאוּשׁוֹן וְעַל הַשֵּׁינִי וּפְטוֹר עַל הַשְּׁלִישִׁי. אַכַּל כְּזֵית. סָפֵק עַד שֶׁלֹּא נִתְמַנֶּה סָפֵק מִשְׁנֵתִמְנֶה. סָפֵק עַד שֶׁלֹּא נִתְגַּיֵּיר סָפֵק מִשְׁנֵתִגַּיֵּיר. סָפֵק עַד שֶׁלֹּא הִבִּיא שְׁתֵּי שְׁעָרוֹת סָפֵק מִשְׁהִבִּיא שְׁתֵּי שְׁעָרוֹת. מִבִּיא אֶשֶׁם תְּלוּי.

1 דעתון | דעתין | דחברייא | דחבריא 2 הגדולה | גדולה 3 יוסי | יוסה

From the start of line 4 to the end of the discussion, the text is missing in B. There is a Note: here is a lacuna "חסרון יש כאן".

If one ate the volume of an olive before he was appointed, the volume of an olive after he was appointed, and the volume of an olive after he was removed from office. In the opinion of the colleagues who say, because high office atones<sup>70</sup>, the office atoned for the first and he is liable for the second and the third<sup>73</sup>. In the opinion of Rabbi Yose who said, because his sin and his knowledge are not equal<sup>21</sup>, he is liable for the first and the second, but not liable for the third<sup>74</sup>.

He ate the size of an olive. If it is in doubt whether he ate before he was appointed or after he was appointed<sup>75</sup>, or whether it was before he converted or after he converted<sup>76</sup>, or whether it was before he had grown two pubic hairs or after he had grown two pubic hairs<sup>67</sup>, he brings a suspended reparation sacrifice<sup>78</sup>.

73 As explained at the start of the chapter, it is not the high office but the appointment to high office which atones; the occupant of a high office is responsible for his actions like everybody else.

74 It is difficult to make sense of this statement. If the information became known in stage three, which seems to be the hypothesis, there can be no sacrifice for unresolved sins committed in stage 2. The only problem would be a sin committed in stage 1, for which a sacrifice in stage 3 was ruled out by R. Abun in the preceding paragraph. The author of this

paragraph seems to disagree with R. Abun.

75 In the first case, a purification sacrifice is needed but not in the second, both for the colleagues and R. Yose.

76 The Gentile is not required to observe biblical commandments except the Seven Noahide commandments. In no case is a purification sacrifice possible for an unconverted Gentile.

77 The child before puberty is not obligated for any commandment. It is his parents' duty to educate him in the observation of commandments, but a parent cannot bring a purification sacrifice

for any action of his child.

78 This means that a reparation sacrifice is required not only in case the criminality

of the act is in question but even if the possibility of a purification sacrifice is in doubt.

47b line 66) אָכַל סֶפֶק כְּזֵית וְאִין יָדוּעַ אִם בְּיוֹם הַכִּיפּוּרִים אָכַל אִם קֹדֶם יוֹם הַכִּיפּוּרִים אָכַל. סֶפֶק כִּפָּרָה כִּיפָּר. אִם אִם בְּיוֹם הַכִּיפּוּרִים אָכַל אִם לְאַחַר יוֹם הַכִּיפּוּרִים אָכַל. חֲבֵרִיָּא אָמְרִין. סֶפֶק כִּפָּרָה כִּיפָּר. אָמַר רַבִּי מִתְנִיָּה. לְעוֹלָם אִין סֶפֶק כִּפָּרָה מִכִּפָּר אֶלָּא עַל מִינֵי דְמִים. מִתְנִיָּתָא מְסִינָא לְחֲבֵרִיָּה. שָׁבֵת וְיוֹם הַכִּיפּוּרִים וְעֶשֶׂה מְלָאכָה בֵּין הַשְּׁמָשׁוֹת. מֵה נִפְשָׁד. יוֹם הַכִּיפּוּרִים הוּא כִּיפָּר. חוֹל הוּא מוּתָּר. וְהִתְנִי וְאָכַל. אָמַר רַבִּי יוֹסִי בְּרַבִּי בּוֹן. בְּאַכִּילַת הַיֵּתֶר.

If he ate a full olive sized piece<sup>80</sup> but there is doubt whether he ate it on the Day of Atonement or before the Day of Atonement. The atonement atones for the doubt<sup>81</sup>. Whether he ate it on the Day of Atonement or after the Day of Atonement. The colleagues say, atonement atones for the doubt<sup>82</sup>. Rabbi Mattaniah said, the atonement atones only for doubt of the kinds of blood<sup>83</sup>. A Mishnah supports the colleagues: “Sabbath and the Day of Atonement and he worked in twilight.<sup>84</sup>” As you take it, if it was the Day of Atonement, it atoned. If it was weekday, it is permitted. But did we not state “he ate”<sup>85</sup>? Rabbi Yose ben Rabbi Abun said, eating permitted [food].

80 Kosher food, which only is forbidden on the Day of Atonement.

81 Cf. Chapter 1, Note 19.

82 If the food was eaten in the twilight at the end of the Day of Atonement and the next day already had started, no sin was committed (*Lev.* 23:32). If it still was the day of Atonement, doctrine is that in the absence of a scapegoat the end of the day provides the Atonement [*Yoma* 8:8 45c l. 15; *Sevuot* 1:9 33c l. 3, lacunary *Sanhedrin* 10:1 Note 34; *Tosefta Kippurim* 4:17].

83 R. Mattaniah holds that the Day of Atonement only eliminates a suspended reparation sacrifice which certainly was due. But in the case where the doubt

arises whether it was the Day of Atonement or not, there is no prior obligation and, therefore, it cannot be eliminated.

84 *Mishnah Keritot* 4:2. The Mishnah deals with a case which is impossible in our computed calendar, where the Day of Atonement was either Friday or Sunday and somebody was doing some forbidden work during the twilight between the days. R. Joshua, the overriding authority, holds that in this case no suspended sacrifice is due since one may assume that part of the work was done on the day of Atonement; this part of an unintended sin then is eliminated, leaving an incomplete work for the Sabbath which needs no

sacrifice (Note 60). This shows that the colleagues are correct in extending the power of the Day of Atonement.

85 The questioner thinks that the food in question was forbidden fat. In that case,

the Day of Atonement cannot eliminate the obligation of a suspended sacrifice for the following night. The answer is that in contrast to the cases considered earlier, one supposes that kosher food was eaten.

(47b line 74) אָכַל חֲמִשָּׁה זֵיתִים וְנִתְּוָדַע לוֹ בְּסָפִיקוֹ עַד שֶׁלֹּא נִתְּמַנָּה וּבִבְיַת דִּין מִשְׁמַתְמָנָה. עַל דַּעְתָּיה דְּרַבִּי שְׁמַעוֹן בֶּן לָקִישׁ חֵיב. עַל דַּעְתָּיה דְּרַבִּי יוֹחָנָן פְּטוּר. כֵּן אָמַר רַבִּי שְׁמַעוֹן בֶּן לָקִישׁ לְחֵיב וְלֹא לְפְטוּר. אֲלָא כֵּינִי. אָכַל חֲמִשָּׁה זֵיתִים וְנִתְּוָדַע לוֹ בְּסָפִיקוֹ מִשְׁנֵתְמָנָה וּבִבְיַת דִּין מִשְׁעֵבֶר. עַל דַּעְתָּיה דְּרַבִּי שְׁמַעוֹן בֶּן לָקִישׁ דּוּ אָמַר. נִתְּכַפֵּר מִקֻּצַּת הַחֵט לא נִתְּכַפֵּר כּוּלּוֹ. דּוּ אָמַר. פְּטוּר. עַל דַּעְתָּיה דְּרַבִּי יוֹחָנָן דּוּ אָמַר. נִתְּכַפֵּר מִקֻּצַּת הַחֵט נִתְּכַפֵּר כּוּלּוֹ. דּוּ אָמַר. חֵיב. הַכֹּל מוֹדִין שֶׁאִם הָיְתָה רְאשׁוֹנָה קִיּוּמָה נִתְּכַפֵּר. מֵה יַעֲשֶׂה בָּהּ. רַבִּי יִסָּא אָמַר. תִּלְמִיךָ בְּכַפֵּרָה. אָמַר רַבִּי זְעִירָא. כָּל־שֶׁלֹּא נִרְאִיתָ לֹא הִיא וְלֹא דְמִיָּה מִתָּה מִיָּד.

If he ate five times the volume of an olive; the doubt became known to him before he was appointed, and (in court)<sup>86</sup> after he was appointed. In the opinion of Rabbi Simeon ben Laqish he is liable; in the opinion of Rabbi Johanan he is not liable<sup>87</sup>. Did Rabbi Simeon ben Laqish state to insist on liability, not rather to free from liability<sup>88</sup>? But it must be as follows: He ate five times the volume of an olive<sup>89</sup>. The doubt became known to him after he was appointed; (in court)<sup>86</sup> after he was removed. Following the opinion of Rabbi Simeon ben Laqish who said, if the sin was partially atoned for it was not totally atoned, he must say<sup>42</sup> that he is not liable<sup>90</sup>. Following the opinion of Rabbi Johanan who said, if the sin was partially atoned for it was totally atoned, he must say that one is liable<sup>94</sup>.

Everybody agrees that if the first one was still in existence it is pushed aside<sup>46</sup>. What should be done with it? Rabbi Yasa said, it is suspended for atonement<sup>47</sup>. Rabbi Ze'ira said, if neither it nor its blood are usable it dies immediately<sup>48</sup>.

86 Cf. Note 30. It seems that one should read "its certainty".

87 Since R. Simeon ben Laqish holds that his status at the moment of the first notification determines his obligation for sacrifices (Note 43), he became obligated

for a purification offering. If now he is not a commoner, he is obligated for an exalted person's purification offering. For R. Johanan who disagrees (Note 44), the knowledge of the doubt does not determine the obligation when he is informed

of the certainty. Following R. Simeon, action and information referred to different status; no sacrifice is possible.

88 This is the reverse of the question asked in Note 41; in any case the argument is inconclusive since the exact position of R. Simeon ben Laqish is unknown.

89 Before he was appointed.

90 One does not argue directly from R. Simeon ben Laqiah's statement but from his argument, based on the principle stated, in the case of three pieces when he realized only that he had eaten two (Note 19). R. Simeon ben Laqish holds that the

moment of first information determines his status for sacrifices. Since he was informed of a transgression as a commoner when he was exalted and therefore prevented of bringing a sacrifice, had he then been informed of the certainty, the additional information reaching him after he reverted to commoner status cannot change the situation. R. Johanan, who in the situation of Note 29 extends the validity of the sacrifice, will allow the information reaching him as a commoner to determine the sacrifice due for an act committed as a commoner.

(47c line 9) מוֹדָה רַבִּי יוֹחָנָן שֶׁאִם הָיְתָה רֵאשׁוֹנָה קַיִמָּת שֶׁהִיא נִדְחִית. מֶה יַעֲשֶׂה בָּהּ. רַבִּי יִסָּא אָמַר. תִּלְוֶיהָ בְּכַפָּרָה. אָמַר רַבִּי זְעִירָא. כָּל־שֶׁלֹּא נִרְאִית לָא הִיא וְלֹא דְמִיָּה מִתָּה מִיָּד. מוֹדָה רַבִּי יוֹחָנָן שֶׁאִם הָיְתָה רֵאשׁוֹנָה קַיִמָּת שֶׁהִיא נִדְחִית. מֶה יַעֲשֶׂה בָּהּ. רַבִּי יִסָּא אָמַר. תִּלְוֶיהָ בְּכַפָּרָה. לָפֹס כֵּן רַבִּי יוֹסִי בִּירְבִּי בּוּי הָיָה עָלֶיהָ. אָכַל חֲמִשָּׁה זֵיתִים וְנִתְּנָדַע לוֹ בְּרֵאשׁוֹן וּמִבֵּיא קָרְבָּן. בְּשִׁנֵּי וּמִבֵּיא קָרְבָּן. בְּשִׁלִּישִׁי וּמִקָּרִיב קָרְבָּן. בְּרִבְעִי וּמִקָּרִיב קָרְבָּן. בְּחֲמִשִּׁי וּמִקָּרִיב קָרְבָּן. רַבִּי יוֹחָנָן אָמַר. נִתְּכַפֵּר לוֹ בְּרֵאשׁוֹן שֶׁהוּא לִפְנֵי אֲכִילַת כּוֹלֵהֶם וְהִשָּׁאֵר יִפְלוּ לִנְדָּבָה. רַבִּי שְׁמַעוֹן בֶּן לָקִישׁ אָמַר. נִתְּכַפֵּר לוֹ בְּאַחֲרוֹן שֶׁהוּא לְאַחֲרֵי אֲכִילַת כּוֹלֵהֶם וְהִשָּׁאֵר יִדְחוּ. רַב חֲסִדָּא וְרַב הִמְנוּנָא. רַב חֲסִדָּא קָרְבִּי יוֹחָנָן. רַב הִמְנוּנָא קָרְבִּי שְׁמַעוֹן בֶּן לָקִישׁ. מִתֵּיב רַב חֲסִדָּא לְרַב הִמְנוּנָא. וְהָא מִתְּנִיתָא מְסִייעָה לָךְ וּפְלִגָּא עָלֶי. אִם הָיְתָה יְדִיעָה בֵּיתַיִם. כָּשֶׁם שֶׁהוּא מִבֵּיא חֲטָאת עַל כָּל־אַחַת וְאַחַת כֶּךָ יוֹא מִבֵּיא אֶשֶׁם תְּלוּי עַל כָּל־אַחַת וְאַחַת. אֵילוּ תִּנָּא אֶשֶׁם וְקָם לֵיהּ. יֵאוּת. אָמַר רַבִּי חִינְנָה. אֶפִּילוּ כֵּן לִצְדִּין דְּתִימַר כֵּן.

Rebbi Johanan agrees that if the first one was still in existence it is pushed aside. What should be done with it? Rebbi Yasa said, it is suspended for atonement. Rebbi Ze'ira said, if neither it nor its blood are usable it dies immediately<sup>91</sup>.

Does Rebbi Johanan agree that if the first one was still in existence it is pushed aside<sup>92</sup>? What should be done with it? Rebbi Yasa said, it is suspended for atonement<sup>93</sup>. Therefore Rebbi Yose ben Rebbi Abun discussed it. If he ate five times the volume of an olive<sup>94</sup>, the first became known to him and he brought a sacrifice. The second, and he brought a sacrifice. The third,



and he offered a sacrifice. The fourth, and he offered a sacrifice. The fifth, and he offered a sacrifice. Rabbi Johanan said, his sin is atoned for by the first which precedes the eating of all of them; the remainder shall fall to voluntary offerings<sup>95</sup>. Rabbi Simeon ben Laqish said, his sin is atoned for by the last which follows the eating of all of them; the others shall be set aside<sup>96</sup>. Rav Hisda and Rav Hamnuna. Rav Hisda like Rabbi Johanan; Rav Hamnuna like Rabbi Simeon ben Laqish. Rav Hisda remarked to Rav Hamnuna, there is a Mishnah which seems to support you and disagrees with me<sup>97</sup>: “If there was awareness in between, just as he brings a purification sacrifice for each single one, so he brings a suspended reparation sacrifice for each single one<sup>98</sup>.” If he had stated the reparation sacrifice and stopped<sup>99</sup>! Rabbi Hinena said, even so, for all eventualities you may say so<sup>100</sup>.

91 It seems that this paragraph is superfluous text. The scribe copied the preceding text with the wrong start and then copied again the (almost) correct text in the next paragraph.

92 R. Yose ben R. Abun will show that the often repeated statement that “everybody agrees” is false; R. Johanan disagrees; the explanation given in Note 36 has to be amended.

93 These two sentences are copied from the previous statement; they are copied to point out that R. Ze'ira's statement is disregarded since it would lead to a complication in R. Simeon ben Laqish's statement.

94 While he ate the five pieces, he was oblivious either of the fact that these were forbidden fat or of the law that certain kinds of fat are forbidden. Then he was informed of the forbidden character of these pieces one by one and immediately after each information dedicated an animal but did not sacrifice yet.

95 The argument is the same as in the case of three pieces discussed earlier; one constructs a case for five only because for R. Johanan in the case of three only one animal was needed. One could have done with four pieces.

For R. Johanan, the validity of the dedication of the first animal can be extended to cover all five pieces. The other four animals cannot be used, but dedicated animals cannot become undedicated. They are sent to graze until they either develop a defect which makes them unfit for the altar or they exceed the age limit for sacrificial animals (Mishnah *Parah* 1:1) when they can be sold and the money used for voluntary elevation offerings.

96 Since for him dedications cannot be extended, only the last animal can legitimately be sacrificed. The others have to be sent to graze.

97 Mishnah *Keritot* 4:2.

98 Since temporary oblivion is a prere-

quisite for the possibility of a purification sacrifice, sins committed when there was an interval of awareness between them cannot be atoned for by one and the same sacrifice. This rule is extended to suspended sacrifices. Since in the case in question the selection of new sacrifices was in response to information, one should read the Mishnah as forbidding the extension of the meaning of dedications.

99 The formulation of the Mishnah and the explanation given in the preceding Note are all wrong. The verses introducing purification sacrifices emphasize that these atone only for *unintentional* sins. The requirement of *oblivion* is only mentioned for the suspended reparation

sacrifice (*Lev. 5:17*). The Mishnah should have mentioned suspended sacrifices first. Since purification sacrifices were mentioned first, the Mishnah cannot be read as referring to the effect of information after the fact, only to information reaching the person between two intrinsically forbidden acts.

100 Rav Hisda's objection is well taken. The formulation of the Mishnah is elliptic. One should read it as follows: "Just as he brings a purification sacrifice for each single one if there was awareness of *certainty* in between, so he brings a suspended reparation sacrifice for each single one if there was awareness of *doubt* in between."

על (47c line 21) אֲשֶׁר נָשִׂיא יִחַטָּא. אָמַר רַבִּן יוֹחָנָן בֶּן זָכָאִי. אֲשֶׁרִי שֶׁהִנָּשִׂיא שְׁלוֹ מִבֵּיא חֲטָאָת. עַל

שִׁינְגָנוּ הוּא מִבֵּיא לֹא כָל־שָׁכֵן עַל זִדּוֹנוֹ. נָשִׂיא שְׁלוֹ מִבֵּיא חֲטָאָת. לֹא כָל־שָׁכֵן הִהְדִּיּוּט.

1 אשר | כתוב אשר אשר | אשרי הדור שלו | - 2 ההדיוט | הדיוט

נָשִׂיא. יָכוֹל נָשִׂיא שֶׁבִטִּים כְּנָחֲשׁוֹן. תִּלְמִיד לּוֹמֵר וְעֵשָׂה אַחַת מִכָּל־מִצְוֹת יִי אֱלֹהֵיוּ. וְלִהְיוֹן

הוּא אוֹמֵר לְמַעַן יִלְמַד לִירְאָה אֶת־יִי אֱלֹהֵיוּ. אֱלֹהֵיוּ לְגִזְרָה שׁוֹה. מִה אֱלֹהֵיוּ שֶׁנֶּאֱמַר לִהְיוֹן

נָשִׂיא שְׁאִין עַל גִּבּוֹ אֶלָּא אֱלֹהֵיוּ. אִם אֱלֹהֵיוּ שֶׁנֶּאֱמַר כָּאן נָשִׂיא שְׁאִין עַל גִּבּוֹ אֶלָּא אֱלֹהֵיוּ.

1 נשיא | - 2 אלהיו | אלהיו אלהיו 3 אלהיו | יי אלהיו (2x)

אֲשֶׁר | יֵשׁ צָדִיקִים וְגו'. אֲשֶׁרִי־הֵם הַצְדִּיקִים שֶׁמִּגִּיעַ אֲלֵיהֶם כְּמַעֲשֵׂה הַרְשָׁעִים בְּעוֹלָם הָזֶה.

וְיִי לְרָשָׁעִים שֶׁמִּגִּיעַ אֲלֵיהֶם כְּמַעֲשֵׂה הַצְדִּיקִים בְּעוֹלָם הָזֶה.

1 אשר | כתי אשר וגו' | אשר מגיע אליהם כמעשה הרשעים ויש רשעים שמגיע אליהם כמעשה הצדיקים הזה

הזה כן 2 ווי | ואכלי

מִלֶּךְ. יִשְׂרָאֵל וּמִלֶּךְ יְהוּדָה שְׁנֵיהֶן שְׁוִין. לֹא זֶה גָדוֹל מִזֶּה וְלֹא זֶה גָדוֹל מִזֶּה. וּמִה טַעַם.

וּמִלֶּךְ יִשְׂרָאֵל וּמִלֶּךְ יְהוּדָה וְגו' בְּגוֹרָן. כְּבִגְדָן. אָמַר רַבִּי יוֹסִי בִּירְבִּי בּוֹן. וּבִלְחֹד עַד דִּיהוּא בֶּן

נִמְשִׁי. וּמִה טַעַם. בְּנֵי רִבְעִים יִשְׁבּוּ לָךְ עַל־כִּסֵּא יִשְׂרָאֵל. מִכָּן וְאֵילָף בְּלִיסְטִיָּא הָיוּ נוֹטְלִין

אוֹתָהּ.

1 שניהן | שניהם ומה טעם | מאי טעמא 2 ומלך יהודה וגו' | ויהושפט מלך יהודה יושבים יוסי ביר' בון |

יוסה רבי דיהוא | יהוא 3 בני | בנים ואילך | והלך בליסטיא | בליסטיא

[It is written]<sup>101</sup>: *If the Prince sin.*<sup>102</sup> Rabban Johanan ben Zakkai said,

fortunate [is the generation]<sup>101</sup> whose Prince brings a purification sacrifice.

He brings it for his inadvertent sin, not so much more for his intentional one<sup>103</sup>? If its Prince brings, not so much more the commoner?

“The Prince.” I could think a tribal chieftain like Nahshon; the verse says, “if he transgressed one of the commandments of the Eternal, his God<sup>8</sup>”; and further it says, *that he may learn to fear the Eternal, his God*<sup>104</sup>. “His God, [his God]” for an equal cut. Since “his God” mentioned there refers to a Prince over whom there is only [the Eternal]<sup>101</sup> his God, so also “his God” mentioned here refers to a Prince over whom there is only [the Eternal]<sup>101</sup> his God<sup>95</sup>.

[It is written:]<sup>101</sup> *There are just people*<sup>106</sup> [to whom happens what should happen to evildoers and there are evildoers to whom happens what should happen to just people.]<sup>101</sup> It is fortunate for just people if to them happens in this world what should happen to evildoers; woe to evildoers if to them happens in this world what should happen to just people<sup>107</sup>.

A king of Israel and a king of Jehudah are both equal, neither of them is greater than the other. What is the reason? *The king of Israel and [Josaphat]<sup>101</sup> the king of Jehudah [were sitting]<sup>101</sup> in the threshing floor*<sup>108</sup>. As in a threshing floor<sup>109</sup>. Rabbi Yose ben Rabbi Abun said, but only up to Jehu ben Nimshi. What is the reason? *Your descendants in the fourth generation will sit on the throne of Israel*<sup>110</sup>. After that they were taking it by robbery.

101 From B, missing in L.

102 Lev. 4:22. The sermon is mentioned in the Babli 10, Tosephta *Bava qamma* 7:5, *Sifra Hova (Wayyiqra II) Parašah* 5(1). It is standard homiletics to derive the conjunction אֲשֶׁר from the root אָשַׁר “to be fortunate.”

103 There is no formal atonement for intentional sin. If the Prince is aware of his unintentional missteps, he will be careful to avoid intentional ones.

104 Deut. 17:19. This is justification for the short statement in the Mishnah. Babli 11a/b, *Sifra Hova (Wayyiqra II) Parašah* 5(1).

105 Since the paragraph in *Deut.* refers to the king, not the Prince.

106 Eccl. 8:14. Since the parallel in the Babli, 10b, also has only a short quote, it seems that the extensive quote of the verse in B is secondary. *Eccl. rabbati* 8(15), wording of B.

107 This is a continuation of Rabban Johanan ben Zakkai’s homily about אֲשֶׁר, אֲשֶׁר. The Just who are poor and unhappy in this world have already been punished for their sins and will go to the World to Come for unlimited eternal bliss. (The Babli somewhat disagrees.) The evildoers who have received the reward of their

good deeds in this world will go to the World to Come for unmitigated pain.

108 1K. 22:10.

109 They sat together in a circle (Mishnah *Sanhedrin* 4:9) so that none had any advantage over the other. Babli *Hulin* 5a (*Lev. rabba* 11(8); *Ecccl. rabbati* 1(30)).

110 2K. 15:12. Jeroboam became king

with prophetic sanction; Ba'sha at least had prophetic acknowledgment; Omri was appointed by popular acclaim, and Jehu by prophetic anointment. All permanent kings of Israel from Jeroboam I to Jeroboam II's son had religious sanction. After that the kings of Israel with only one exception murdered their predecessors.

47c line 33) ואי זה הוא משיח. המשוח בשמן המשחה כול. אמר רב חונה. כל-אותן ששה חדשים שהיה דוד בורח מפני אבשלום שעורה הוות מתכפר לו כהדיוט.

1 ואי | אי משיח | משוח | חונה | חונא | אותן | - 2 אבשלום | אבשלום בנו | שעורה הוות מתכפר לו | היה מתכפר בשעירה

תני. רבי יודה בירבי אלעאי אומר. שמן המשחה שעשה משה בהר מעשה ניסים נעשו בה מתחילה ועד סוף. שמתחילה לא היה בו אלא שנים עשר לוג. שנאמר ושמן זית הין: אם לסוף בו את העצים לא היה ספק. על אחת כמה וכמה שהאור בולע והיורה בולעת והעצים בולעין. ממנו נמשחו המשפך וכל-בילוי. המזבח וכל-בילוי. מנורה וכל-בילוי. פיור וכנו. ממנו נמשחו אהרן כהן גדול ובניו כל-שבעת ימי המילואים. ממנו נמשחו כהנים גדולים ומלכים. מלך בתחילה טעון משיחה. מלך בן מלך אין טעון משיחה. שנאמר קום משיחהו כיהה הוא. זה טעון משיחה ואין בניו טעון משיחה. אבל כהן גדול בן כהן גדול אפילו עד עשרה דורות טעון משיחה. וכולו קיים לעתיד לבוא. שנאמר שמן משחת-קודש יהיה זה לי לדורותיכם:

1 יודה | יהודה בהר | - מעשה | - 2 מתחילה | מתחלה | שמתחילה | שמתחלה היה | היו 3 ספק | מספיק 4 ממנו | וממנו (X2) מנורה | המנורה 5 כהן גדול | - ממנו | וממנו כהנים גדולים ומלכים | מלכים וכהנים גדולים 6 אין | אינו שנ' דכתי' קום | ויאמר ה' קום משיחהו | משחהו 7 ואין | אין בניו | בנו כהן גדול | כתי' גדולי' 8 טעון | טעוין | לדורותיכם | לדורותיכם

אין מושחין את המלכים אלא על גבי המעיין. שנאמר והרכבתם את-שלמה בלי וגו' ומשח אותו שם צדוק הכהן ונתן הנביא למלך על-ישראל. אין מושחין את המלכים אלא מפני המחלוקת. מפני מה נמשח שלמה. מפני מחלוקתו שלאדוניו. ויאש מפני עתליה. ויהוא מפני יורם. לא כן כתוב קום משיחהו כיהה הוא. זה טעון משיחה ואין מלכי ישראל טעוין משיחה. ולא ראשיהו גנזו. הדיא אמרה. באפי-בלסמון נמשחו. ויאחז מפני הוויקיס אחיו שהיה גדול ממנו שתי שנים. אין מושחין מלכים אלא מן הקרן. שאול ויהוא נמשחו מן הפך היתה מלכותו מלכות עוברת. דוד ושלמה נמשחו מן הקרן היתה מלכותו מלכות קיימת. אין מושחין מלכים כהנים. רבי יודה ענתודריא. על שם לא-יסור לשבט מיהודה. אמר רבי חייה בר בא. למען יאריץ ימים על-ממלכתו הוא ובניו בקרב כל-ישראל: מה כתיב בתריה. לא-יהיה לכהנים הלויים.

1 את המלכים | מלכים | המעיין | מעין | וגו' | על הפרדה אשר לי והורדתם אותו אל גיחון 2 ונתן הנביא למלך על ישראל | וגו' 3 שלאדוניו | של אדוניה | ויאש | ויאש | ויהוא | יהוא | ואין | ואין בנו טעון משיחה.

זה טעון משיחה ואין 5 באפלטמון | באפי בלסמון 7 מלכות | - 8 יודה ענתודריא | יודן ענתריה 9  
בא | אבא

וְהִכְתִּיב הַבְּכוֹר יוֹחָנָן. הַבְּכוֹר לַמַּלְכוּת. וְהִכְתִּיב הַשְּׁלִישִׁי צִדְקָהוּ הַרְבִּיעִי שְׁלוֹם: שְׁלִישִׁי לַמַּלְכוּת. רְבִיעִי לַתּוֹלְדוֹת. צִדְקָהוּ שְׁצִידֵק עָלָיו אֶת הַדִּין. שְׁלוֹם שְׁבִנְמִי שְׁלָמָה מַלְכוּת בֵּית דָּוִד. לֹא שְׁלוֹם הָיָה שְׁמִיָּה וְלֹא צִדְקָה הָיָה שְׁמִיָּה אֲלָא מִתְנִיָּה. הֵדָּא הָא דְכְּתִיב וַיִּמְלֹךְ מֶלֶךְ-בָּבֶל אֶת-מִתְנִיָּה דָּוִד תַּחְתָּיו וְגו'.

1 והכת' | אמר ר' יוחנן הוא יהואחז הוא יוחנן והכת' השלישי | והשלישי הרביעי | והרביעי 2 לתולדות | לתולדות 3 הוה שמיא | היה שמו הוה שמיא | - 4 תחתיו | -

“And who is the Anointed? This is one anointed with the anointing oil,” etc. Rav Huna said, the entire six months during which David was in flight before his son Absalom, his sins would have been atoned for by a female goat for a commoner<sup>111</sup>.

<sup>112</sup>It was stated: Rabbi Jehudah bar Ilai says: The anointing oil made by Moses on the Mountain<sup>113</sup> was from beginning to end a series of miracles since there were only twelve *log* to start with, as it was said: *and olive oil one hin*<sup>114</sup>. It would not have been enough to rub the wooden planks with it; so much more since the fire swallows, the kettle swallows, wood absorbs! From it the Tabernacle and all its vessels were anointed, the altar and all its vessels, the candelabra and all its vessels, the wash basin and its base. From it Aaron the High Priest and his sons were anointed all of the seven days of induction; from it all high priests and kings were anointed. A king who is first needs anointing; a king who is a king's son does not need anointing, for it is said: *Do anoint him, for this one is it*<sup>115</sup>, this one needs anointing, but his son does not need anointing. But a High Priest who is the son of a High Priest needs anointing even for ten generations. Nevertheless, it is there for the future, as it was said: *a holy anointing oil will this be for Me, for all your generations*<sup>116</sup>.

One anoints kings only at a spring, as it was said: *Let Solomon, my son, ride on my mule and take him down to the Gihon; there Sadoq the priest and Nathan the prophet shall anoint him as king over Israel*<sup>117</sup>. One anoints kings only because of disputes. Why was Solomon anointed? Because of the dispute of Adoniah, Joash because of Athaliah, Jehu because of Joram. Is it not written, *do anoint him, for this one is it*, this one needs anointing, but the kings of Israel do not need anointing? <sup>118</sup>But did not Josiah hide it? That means that they anointed with balsamum. Joahaz because of his brother

Joakin who was two years his elder. One anoints kings only from a horn. Saul and Jehu were anointed from a can because their kingdom was temporary; David and Solomon were anointed from a horn because their kingdom was permanent. One does not anoint priests as kings. Rabbi Jehudah Antordiya said, because of *the scepter shall not be removed from Jehudah*<sup>119</sup>. Rabbi Hiyya bar Abba said, because of *he shall have many days of his kingdom, he and his sons in the midst of Israel*<sup>120</sup>. What is written after that? *The levitic Cohanim should not*<sup>121</sup>.

Rebbi Johanan said, Johanan is Joahaz. But is it not written: *The first born Johanan*<sup>122</sup>, the first in kingdom. <sup>123</sup>*The third Sedekiah, the fourth Shallum? Sedekiah*, because he accepted the judgment on himself, *Shallum*, because in his days the dynasty of David was completed. <sup>124</sup>His name was neither Shallum nor Sedekiah but Mattaniah. That is what is written: *The king of Babylon made his uncle Mattaniah king in his stead*<sup>125</sup> etc.

111 The same statement also is found in *Roš Haššanah* 1:1 (56b l. 49). A king who is not in control of his government does not have the status of king [Cf. *Sanhedrin* 2:4 (Note 108)].

112 This text is part of a longer text found in *Sotah* 8:3, Notes 69-92 (L. Ginzberg, *Yerushalmi Fragments from the Genizah*, New York 1909, p. 214), and, what seems to be the original source, *Šeqalim* 6:1, 49c l. 52 ff., Babli *editio princeps* 9d l. 21. Only the biblical quotes and major deviations from the *Sotah* text are noted here.

113 In *Sotah* and *Šeqalim*: “in the desert.” The place is not mentioned in B.

114 *Ex.* 30:24.

115 *Is.* 16:12.

116 *Ex.* 30:31.

117 *1K.* 1:33-34.

118 In all other sources, this follows the quote about the sons of Josiah. If Josiah had buried the holy oil together with the ark, how could his son have been anointed?

119 *Gen.* 49:10.

120 *Deut.* 17:20.

121 *Deut.* 18:1.

122 *1Chr.* 3:15.

123 There the introduction is missing, that R. Johanan identified Sedekiah and Shallum as one and the same person. In the Babli 11b this and the following are a tannaitic statement.

124 In the *Šeqalim* text of the Babli *editio princeps* the statement is attributed to R. Simeon ben Laqish.

125 *2K.* 24:17.

הַמְּשֻׁחִים בְּשֶׁמֶן הַמִּשְׁחָה. בְּבִינֵי הָרָאשִׁוֹן. לְמַרְוֵבָה בְּבִגְדִים. בְּבִינֵי הָאֲחֵרֹן.  
וְאֵתָאִי כִּי דָמַר רַבִּי אֵינָא בְּשֵׁם רַבִּי אֶהָא. חֲמִשָּׁה דְּבָרִים הָיָה בְּבֵית הַמִּקְדָּשׁ הָאֲחֵרֹן חֲסֵר מִן

הראשון. מאי טעמא. עליו הוה נהבאתם עץ וגו' אַכְבַּד חסר ה'. אלו ה' דברים שהיו בית המקדש האחרון חסר מן הראשון. ואילו הן. אש וארון ואורים ותומים ושמן הקודש.

1 בבנין | בבנין (x2) למרובה | מרובה 2 ואתאי כיי | ואתי כי ר' אינא | ר' שמעון בר ינא בבית | בית 3 מ"ט | דכתי' וגו' | ובנו את הבית וארצה בו אכבד | ואכבד חסר ה' | כתיב חסר אלו | הרי אלו שהיו | שהיה 4 ואילו | ואלו הקודש | המשחה ורוח הקודש

<sup>126</sup>The anointed with the anointing oil," in the first Temple. "The one clothed in multiple garb," in the later Temple. It follows what Rabbi Ina<sup>127</sup> said in the name of Rabbi Aha: In five things was the later Temple deficient compared with the first. What is the reason? *Go to the mountain, bring wood, etc. I should be honored* is missing a<sup>128</sup> ה. These are the five things in which the later Temple was deficient compared with the first. And these are it: The fire<sup>129</sup>, the ark, Urim and Tummim<sup>130</sup>, the (holy) oil [of anointing and the holy spirit.]<sup>131</sup>

126 Here starts the discussion of the last sentence of the Mishnah, which continues with discussion of Mishnah 4 (= Mishnah Megillah 1:12).

127 In the Babli (*Yoma* 21b) and the Horaiot text in the Babli, as well as the parallels in *Makkot* 2:7 (explained in Notes 125-130), *Ta'anit* 2:1 (65a l. 60): R. Samuel bar Aina. Since the latter name appears as that of a student of R. Aha several times in different Tractates but "R. Ina" only here, the reading of B is preferable.

128 Hag. 1:8. אכבד is the *Ketib*, אכבדה the *Qere*. In the Alexandrian system of numeration by letters, ה' is 5.

129 The fire on the outer altar in the first Temple was of divine origin (2Chr. 7:1), but not that of the second Temple.

130 The oracle whose nature was unknown in later times.

131 Text of B; a necessary addition since the text of L mentions only 4 items. The list in the Babli is slightly different. The holy spirit is that of prophecy.

(47b line 68) תני. כהן המשח מביא פך. אין מרובה בגדים מביא פך. ודלא כרבי מאיר. מה טעמיה דרבי מאיר. משח. ומה תלמוד לומר כהן. להוציא למרובה בגדים. מה טעמיה דרבנן. משח. יכול זה המלך. ומה תלמוד לומר כהן. לרבות מרובה בגדים. הכא אתמר. להוציא למרובה בגדים. וקא אתמר. לרבות מרובה בגדים. אמר רבי הילא. כל מדרש ומדרש לענינו. אילו נאמר משח ולא נאמר כהן. הייתי אומר. על העלם דבר מביא פך ועל שגגת המעשה מביא שעיר. הוי צורך הוא שפאמר כהן. או אילו כהן ולא משח. הייתי אומר. זה המלך. אם תאמר. בפר קדמה פרשת המלך שיוטל על העלם דבר מביא פך ועל שגגת המעשה מביא שעיר. הוי צורך הוא שפאמר משח וצורך הוא שפאמר כהן.

<sup>132</sup> גרסינן במגלה מן ריש הלכה ועד סופה ועוד היא בכפורים

<sup>133</sup>It was stated: The Anointed Priest brings a bull, the one clothed in multiple garb does not bring a bull. This disagrees with Rebbi Meïr. What is Rebbi Meïr's reason? *The Anointed*. Why does the verse say *priest*? To exclude the one clothed in multiple garb. What is the rabbis' reason? *The anointed*. I could think that this is the king. Why does the verse say, *priest*? To include the one clothed in multiple garb. Here you say, to exclude the one clothed in multiple garb. But there you say, to include the one clothed in multiple garb. Rebbi Hila said, each inference refers to its meaning. If it had said *the Anointed* but not *priest*, I would have said, he brings a bull for forgetting a topic, but for acting in error he brings a goat. Therefore it is necessary that it mention *priest*. But if it had mentioned *priest* but not *the Anointed*, I would have said, this refers to the king. If you would say by a bull, preceding the paragraph about the king, assuming that for forgetting a topic he brings a bull but for acting in error he brings a goat. Therefore it is necessary that it mention *the Anointed* and that it mention *priest*.

132 Note of B: "One studies all this in *Megillah* (Halakhah 1:12) from beginning of the Halakhah to its end; in addition it (partially) is in *Kippurim*." The text of B continues with the quote later of Mishnah *Yoma* 1:1.

133 The text and the following paragraphs up to the quote from *Idiut* 5:6 is from *Megillah* 1:12. The secondary character of the text here is shown by the thorough

corruption of the present paragraph compared to the parallel text in *Megillah* and partially *Sifra Hovah* (*Wayyiqra* 2) *Paršeta* 2(6). One might conjecture that the editor of B neither did want to rearrange the text nor print it in disorder. The text of *Megillah* is readily understandable; it also explains the mutilated text here. The additional text is given in a different typeface.

תני. כהן המשים מביא פרה. אין המרוצה בגדים מביא פרה. ודלא כרבי מאיר. דרבי מאיר אמר. המרוצה בגדים מביא פרה. מה טעמיה דרבי מאיר. משית. ומה תלמוד לומר כהן. לרבות את המרוצה בגדים. מה טעמיה דרבנן. משית. יכול זה המלך. תלמוד לומר כהן. אי כהן יכול את המרוצה בגדים. תלמוד לומר משית. או יכול שאני מרצה את משנה מלכותה. תלמוד לומר משית. שאין על גבי משית. מוחלפה שיפתון דרבנן. הקא כתיב משית והקא כתיב משית. הקא אינו אמרין. לרבות מרוצה בגדים. והקא אינו אמרין. להוציא את המרוצה בגדים. אמר רבי אילא. כל מדרש ומדרש בענינו. תמן כל הפרשה אמונה באהרן. לארזה דבר נאמר כהן. לרבות את המרוצה בגדים. ברם הקא אין הפרשה אמונה באהרן. אילו נאמר משית ולא נאמר כהן. הייתי אומר. לעולם על העולם דבר מביא פרה ועל שגגת מעשה מביא שעיר. הוי צורך הוא שיאמר כהן. או אלו נאמר כהן ולא נאמר משית. הייתי אומר. זה המלך. אין תאמר. כבר קדמה פרשת המלך. הייתי אומר. על העולם דבר מביא פרה ועל שגגת מעשה מביא שעיר. הוי צורך הוא שיאמר משית וצורך הוא שיאמר כהן.



It was stated: The Anointed Priest brings a bull, the one clothed in multiple garb does not bring a bull. This disagrees with Rebbi Meïr, for Rebbi Meïr said, the one clothed in multiple garb brings a bull<sup>134</sup>. What is Rebbi Meïr's reason? *The Anointed*. Why does the verse say *priest*? To add the one clothed in multiple garb<sup>135</sup>. What is the rabbis' reason? *The anointed*. I could think that this is the king. The verse says, *priest*. If priest, I could think the one clothed in multiple garb. The verse says, *anointed*<sup>136</sup>. Then I could think that I am adding also the one anointed for war<sup>137</sup>. The verse says, *Anointed*; one who has no anointed person over him. The argument of the rabbis seems inverted. Here<sup>138</sup> is written *anointed* and there is written *anointed*. Here they say, to include the one clothed in multiple garb<sup>139</sup>. But here<sup>140</sup> they say, to exclude the one clothed in multiple garb. Rebbi Hila said, each inference refers to its meaning. There the entire paragraph is said for Aaron. Why is said *priest*? To include the one clothed in multiple garb<sup>141</sup>. But here the paragraph does not mention Aaron. If it had said *the Anointed* but not *priest*, I would have said, he brings a bull for forgetting a topic, but for acting in error he brings a goat<sup>142</sup>. Therefore it is necessary that it would mention *priest*. But if it had mentioned *priest* but not *the Anointed*, I would have said, this refers to the king<sup>143</sup>. If you would say already this<sup>144</sup> precedes the paragraph about the king<sup>145</sup>, I would have said that for forgetting a topic he brings a bull but for acting in error he brings a goat. Therefore it is necessary that it mention *the Anointed* and that it mention *priest*.

134 The definite article used in *Lev.* 4:3, *the* priest, would alone have sufficed to characterize the High Priest, biblically distinguished from all others.

135 Tosephta 2:3.

136 The double restriction, *the* priest (the High Priest), *anointed*, makes it clear that only an anointed high priest is meant. The rabbinic disagreement implies that no High Priest of Second Temple times ever brought a purification sacrifice for himself.

137 The one mentioned in *Deut.* 20:3 charged with addressing the army. He also is called *the* priest (*Sotah* Chapter 8) and bound by all restrictions imposed on the High Priest in *Lev.* 21:10-15 (Tosephta 2:1).

138 *Lev.* 6:15, on the daily flour sacrifice

of the High Priest.

139 Mishnah 4 mentions the daily offering of a tenth of a *ephah* as duty of the High Priest clothed in multiple garb [*Sifra* *Saw Pereq* 5(1)].

140 In the Chapter on purification sacrifices.

141 Aaron and his successors are mentioned in v. 13. In v. 15, the mention of "the priest, anointed from his descendants in his stead" does not seem to require a mention of anointing as a definition.

142 As explained in Chapter 2:3, The High Priest may offer a bull only for his forgetting a topic in religious law. One could argue that for simple acting in error, he should bring a commoner's sacrifice (or, since a male is mentioned, the goat

characterized earlier as sacrifice for inadvertent idolatry.) The specific mention of *priest* bars him from a commoner's sacrifice.

143 Since *Cohen* may simply mean "public servant" (2S. 8:18).

144 The unintelligible בפר in the text here is a plausible misreading for כפר.

145 Which is only the third in the Chapter. The argument is parallel to that mentioned in Note 131.

2) אָמַר רַבִּי יוֹחָנָן עֵבֶר וְהֵבִיא עֲשִׂירֶת הָאֵיפָה שְׁלֹו קֶשֶׁר. (47d line 2)

Rebbi Johanan said, if he transgressed and offered his tenth of an *ephah* it is valid<sup>145</sup>.

145 This refers to the statement in Mishnah 4 that the only difference between acting and emeritus High Priests are the High Priest's bull on the Day of Atonement and the daily flour offering of a tenth of an *ephah*. It is now stated that

if the ex-High Priest, who, as will be explained later in the Halakhah, should be unfit to serve as High Priest and is barred from serving as common priest, nevertheless acts as High Priest, the offering is legitimate.

3) מִתְקַיֵּינִי לֹו כֹהֵן אַחֵר תַּחֲתָיו שְׁמָא יִאָרַע בּוֹ פָּסוּל. מֵה. מִיִּיחָדִין לִיהָ עִימָיָה. אָמַר רַבִּי חֲגִי. מִנְשָׁה. דִּינֵנוּן מִיִּיחָדִין לִיהָ עִימָיָה דּוֹ קָטִיל לִיהָ. אוֹתוֹ. אָחָד מוֹשְׁחִין וְאֵין מוֹשְׁחִין שְׁנִיִּים. אָמַר רַבִּי יוֹחָנָן. מִכְּגִי הָאֵיבָה.

1 מתקנינו | מתקנין מייחדין | מיוחדין | מייחדין | אין מייחדין | מיוחדין | דו | דהוא | ליה | לו עימיה

<sup>146</sup>“One arranges for another Cohen as his replacement, maybe a disqualification of his will happen.<sup>147</sup>” How? Does one leave them alone together? Rebbi Haggai said, by Moses<sup>148</sup>! If one would leave them alone together, he would kill him! *Him*<sup>149</sup>. One anoints one, one does not anoint two. Rebbi Johanan said, because of rivalry<sup>150</sup>.

146 From here on there is a parallel in *Yoma* 1:1 (38c l. 72 ff.).

147 Mishnah *Yoma* 1:1. Since the entire service of the Day of Atonement is valid only if conducted by the High Priest, a replacement must be available in case the High Priest becomes impure or otherwise incapacitated. The High Priest undergoes a week of preparation for the service, to

train for a very crowded program. The question then arises whether the designated backup also has to undergo the same training, possibly at the same place.

148 In *Yoma* “because of”, a scribal error. “By Moses” was a preferred expression of R. Haggai’s.

149 *Lev.* 6:12; the offering of the High Priest starting with the day he is anointed

for his office. *Sifra Saw Parašah* 3(3). The singular indicates that only one High Priest can be appointed at one time. This implies that the reserve appointee for the day of Atonement cannot have the status of High Priest unless he actually is needed.

150 He disagrees and holds that while the two could not have been anointed on the same day, they could have been anointed on different days. The rule that the back-up Cohen has lower status is practical, not biblical, as is the entire institution of the back-up.

6) (47d line 6) עָבַר זֶה וְשִׁימָשׁ זֶה. הָרֹאשׁוֹן כָּל־קְדוּשַׁת כְּהוֹנָה עָלָיו. הַשֵּׁנִי אֵינוֹ כָּשֵׁר לֹא לַכֹּהֵן גָּדוֹל וְלֹא לַכֹּהֵן הַדְּיוּט. אָמַר רַבִּי יוֹחָנָן. עָבַר וְעָבַד עֲבוֹדָתוֹ פְּסוּלָה. עֲבוֹדָתוֹ מִשְׁלֵם מִנְשִׁמְעֵינָה מִן הָדָא. מַעֲשֶׂה בֶּבֶן אֵלֶם בְּצִיפּוֹרִים שְׂאִירַע קָרִי בִכְהֵן גָּדוֹל בְּיוֹם הַכִּיפּוּרִים וְנִכְנַס בֶּן אֵלֶם וְשִׁימָשׁ תַּחְתָּיו. יָצָא וְאָמַר לְמַלְךְ. פֶּר וְאֵיל הַקָּרִיבִים הַיּוֹם מִשְׁלָמִי הֵן קָרִיבִין. מִשְׁלֹ אוֹ מִשְׁלָכְהוֹ גָּדוֹל. וְיָדַע הַמֶּלֶךְ מָהוּ שׁוֹאֵל. אָמַר לוֹ. לֹא דִינָךְ שְׂשִׁימָשֶׁת שְׁעָה אַחַת לִפְנֵי מִי שְׂאָמַר וְהָיָה הָעוֹלָם. וְיָדַע בֶּן אֵלֶם שֶׁהוֹסַע מִכְּהוֹנָה גָּדוֹלָה.

1 זה | אחר זה | קדושת | מצות | השני | השני | כשר | ראוי | 2 פסולה | כשרה | עבודתו | עבודה | משל | של | 3 הדא | הדא | אלם | אלם | בציפורים | מציפורי | גדול | - | בן | - | 4 אלם | - | תחתיו | תחתיו | בכהונה | יצא | - | הקריבים | הקריבים | קריבין | - | משלו | משלי | 5 שעה אחת לפני מי שאמר והיה העולם | - | לפני מי שאמר והיה העולם שעה אחת | 6 אלם | אלם | מכהונה הגדולה | מן הכהונה

If one was incapacitated and the other officiated. The first has all the sanctity of the High Priesthood on him; the second one is qualified neither as High Priest nor as common priest<sup>151</sup>. Rabbi Johanan said, if he transgressed and officiated, his officiating is (invalid) [valid]<sup>152</sup>. Whose officiating? <sup>153</sup>Let us hear from the following: It happened to Ben Illem from Sepphoris<sup>154</sup> that the High Priest experienced an emission of semen on the Day of Atonement<sup>155</sup>; Ben Illem entered and officiated in his stead. He went out and asked the king: “The bull and the ram which are brought today, from whose property are they offered? From his or from the High Priest’s?”<sup>156</sup> The king understood what he was asking and answered him, “is it not enough for you that you served once before Him Who spoke and the world was created?” Ben Illem understood that he was removed from the High Priesthood.

151 As the Babli explains (*Yoma* 12b), “one increases in sanctity but never decreases” (cf. *Bikkurim* 3:3, Note 57; *Yoma* 3:8 41a l. 10, *Megillah* 1:12 72a l. 47, *Sevuot* 1:8, 33b l.13). Since the service of the Day of Atonement is valid

only if performed by the High Priest, the substitute becomes a temporary High Priest. He cannot act as a High Priest if the actual High Priest’s temporary disability is removed and he is permanently barred from acting as a

common priest. As the Babli points out, if the High Priest dies, the substitute automatically becomes his successor.

152 The text in parentheses is that of L, the one in brackets that of B as well as the parallels in *Megillah* and *Yoma* and the Babli (*Yoma* 13a). The text of L cannot be correct since it is held in general that a doubt about the legitimacy of officiating in the Temple does not invalidate the offering (*Terumot* 8:1, Note 26).

153 The case is told not only in the two parallels in *Megillah* and *Yoma*, but also in abbreviated form in the Babli, *Yoma* 12b where, however, the ruling is not the king's (necessarily of the Herodian dynasty) but "the rabbis'." There is no reason to doubt the historicity of the Yerushalmi version.

154 This translation follows B and the parallels. The text of L, "in Sepphoris", is impossible.

155 The High Priest is taken to live in the Temple, and therefore deprived of sexual activity, for seven days preceding the Day of Atonement. In the night of the Day of Atonement he is deprived of sleep (*Yoma* Mishnah 1:7) to avoid the danger of him having an involuntary emission. If he has one anyhow, he is disqualified for the entire day even if he immediately purifies himself in a *miqweh* since the disqualification by temporary impurity is not removed by the removal of the impurity until the following sundown (*Lev.* 22:7; cf. *Ma'aser Seni* 3:2, Notes 21-22.)

47d line 14) מַעֲשֶׂה בְּשִׁמְעוֹן בֶּן קִמְחִית שֶׁצָּא לְטִייל עִם הַמֶּלֶךְ עַרְב יוֹם הַכִּיפּוּרִים עִם חֲשִׁיכָה. וְנִתְּנָה צִינוּרָה שֶׁלְרוֹק מִפִּי עַל בִּגְדָיו וְטָמְאָתוֹ. וְנִכְנַס יְהוּדָה אָחִיו וְשִׁימַשׁ תַּחְתָּיו. אוֹתוֹ הַיּוֹם רָאָת אִימָן שְׁנֵי בָנִיהָ כֹהֲנִים גְּדוֹלִים. שֶׁבָּעָה בָּנִים הָיוּ לָהּ לְקִמְחִית וְכוֹלֵן שִׁימַשׁ בְּכַהוּנָה גְּדוֹלָה. שָׁלְחוּ וְאָמְרוּ לְקִמְחִית. מָה מַעֲשִׂים טוֹבִים יֵשׁ בְּיָדֶיךָ. אָמְרָה לָהּ. יָבוֹא עָלַי אִם רָאִי קוֹרוֹת בֵּיתִי שֶׁעֲרוֹת רֹאשִׁי וְאִמְרַת חֲלוֹקִי מִיָּמַי. אָמְרָיו. כָּל־קִמְחִיָּה קִימְחִין וְקִמְחָא דְקִימְחִית סוֹלֶת. קָרָאִי עָלֶיהָ הַפְסִיק הָיָה כָּל־כְּבוֹדָהּ בַּת־מֶלֶךְ פְּנִימָה מִמִּשְׁבָּצוֹת זָהָב לְבוּשָׁה:

1 המלך | מלך הערבי 2 צינורה | צינורא | יהודה | יודה ושימש | - 3 אימן | אמן

The remainder of the text (to line three of the next paragraph) is missing in B without indication of a lacuna.

<sup>156</sup>It happened that Simeon ben Qimhit went out for a walk with the <sup>157</sup>king on the Day of Atonement at sundown and a drop of spittle squirted on his garment and defiled him. His brother Jehudah entered and officiated in his stead. On that day their mother saw two of her sons as High Priests. Qimhit had seven sons; all of them served as High Priests<sup>158</sup>. They sent and asked Qimhit, what good deeds are in your hand? She told them, there should come over me if the beams of the roof of my house ever saw the hair on my head or the seam of my undershirt<sup>159</sup>. They said, all flours are flour but Qimhit's flour

is fine flour<sup>159a</sup>. They recited about her the verse<sup>160</sup>: *All the honor of the king's daughter is inside; gold settings her garments*<sup>161</sup>.

156 In addition to the two parallels there is a short version in the Babli, *Yoma* 47a. There, the names are Ismael and Joseph. The passages are discussed in detail by Grätz, *Geschichte der Juden* vol. 3/2<sup>1</sup> Note 19/II. Josephus transscribes קְהָחִית as τοῦ Καμύδου.

157 The text is not clear here. The text of L is also found in the parallel in *Yoma*. The text of B, “with the Arab (Nabatean) king” is also the text of *Megillah*. In the Babli, “with an Arab on the Day of Atonement”. (For some reason, the Russian censor of the Wilna Babli changed “Arab” into “a nobleman”.) The confusion comes from the similarity if ערב “evening” and ערבי “Arab.” The explicit reference to sundown should argue for the version of L. If the Arab was not converted to Judaism, the High Priest would have had to leave the holy precinct on the Day of Atonement, a most unlikely happening before he had finished all his duties.

The version of the text presupposes that the king had immersed himself in a *miqweh* so he could enter the restricted area on the Temple Mount. Nevertheless, (Mishnah *Hagigah* 2:7) “The garments of the vulgar are severely impure for Pharisees; the garments of Pharisees are severely impure for those eating heave; the garments of those eating heave are severely impure for those sacrificing.” The severe impurity of מְדַרְס referred to here is the impurity of seats or beds used

by a sufferer from gonorrhea or a menstruating woman, which makes anyone touching it impure and requires immersion in water and waiting until sundown. Since the king could not sacrifice on the Day of Atonement, he could not have immersed himself with the intention which would make him co-pure with the High Priest. Since the incident happened at sundown, the High Priest was automatically disqualified for the next 24 hours.

While a living Gentile is not under the rules of biblical impurity, rabbinically every Gentile is impure and this impurity cannot be removed by immersion in water (Babli *Avodah zarah* 36b).

158 Under the Herodian kings, when the High Priesthood was conferred and removed at the whim of the king.

159 It is indecent for a married woman to be seen in public with uncovered hair. She was clothed at home as she was for the street and never undressed except in the dark. The Babli notes that many women follow this custom.

159a A pun on the name of *Qimhit* “flour lady”.

160 *Ps.* 45:14.

161 According to Rashi’s commentary in *Yoma*, the argument means that the reward of a woman who behaves with dignity in her home is that her son will be High Priest whose garment is adorned with golden settings for precious stones. (Cf. *Tanhuma Wayyislah* 6, *Bemidbar* 3.)

47d line 22) יָכוֹל לֹא יִהְיֶה מְשֹׁחַ מִלְחָמָה מִפְּנֵי עֲשִׂירִית הָאֵיפָה שָׁלוֹ. תִּלְמוּד לומר תַּחֲתָיו מִבְּנָיו. אֶת שְׁבָנוֹ עוֹמֵד תַּחֲתָיו מִבְּיָא עֲשִׂירִית הָאֵיפָה. וְאֵת שְׂאִין בְּנוֹ עוֹמֵד תַּחֲתָיו אֵינוֹ מִבְּיָא עֲשִׂירִית הָאֵיפָה. וּמִנֵּיין לְמִשְׁוֹחַ מִלְחָמָה שְׂאִין בְּנוֹ עוֹמֵד תַּחֲתָיו. תִּלְמוּד לומר שְׁבָעַת יָמִים לְכַנֵּסם הַכֹּהֵן וְגו'. אֶת שְׁהוּא בָּא אֶל אוֹהֶל מוֹעֵד לְשֶׁרֶת בְּקוֹדֶשׁ בְּנוֹ עוֹמֵד תַּחֲתָיו. וְאֵת שְׂאִינוֹ בָּא אֶל אוֹהֶל מוֹעֵד לְשֶׁרֶת בְּקוֹדֶשׁ אֵין בְּנוֹ עוֹמֵד תַּחֲתָיו. וּמִנֵּיין שְׁהוּא מִתְמַנֶּה לְהִיּוֹת כֹּהֵן גָּדוֹל. פִּינְחָס בֶּן-אֶלְעָזָר נָגִיד הָיָה עֲלֵיהֶם לְפָנִים יְיָ עֲמוֹ: רַבִּי יוֹסִי כֹד הָיָה בְּעֵי מִקְנֶתְרָה לְרַבִּי לְעֶזֶר בִּירְבִּי יוֹסִי הָיָה אָמֵר לֵיהּ. לְפָנִים עֲמוֹ: בִּימֵי זִמְרִי מִיָּחָה. וּבִימֵי פִילָגֶשׁ בְּגִבְעָה לֹא מִיָּחָה.

3 ומניין | מנין 4 וגו' | תחתיו מבניו וגו' ואת שאינו | ושאינו 5 ומניין | ומנין 6 פינחס | דכתי' פנחס עליהם | - יי' ה' מקנתרה | מקנתרה 7 עמו | ה' עמו

I could think that the one anointed for war<sup>137</sup> should (not)<sup>162</sup> bring his tenth of an *ephah*<sup>139</sup>. The verse says<sup>138</sup>, *in his stead, of his sons*. One whose son will stand in his stead brings a tenth of an *ephah*. But one whose sons will not stand in his stead does not bring a tenth of an *ephah*. From where the anointed's for war son will not stand in his stead? The verse says<sup>163</sup>, *seven days shall the priest wear them*, etc. If one officiates in the Tent of Meeting, his son will stand in his stead. But one who does not officiate in the Tent of Meeting, his son will not stand in his stead. From where that he can be appointed as High Priest<sup>164</sup>? [As is written,]<sup>165</sup> *Phineas the son of Eleazar was leader over them; in earlier times the Eternal was with him*. When Rabbi Yose wanted to needle<sup>166</sup> Rabbi Eleazar ben Rabbi Yose<sup>167</sup>, he said to him, “before, he was with him.” In the days of Zimri<sup>168</sup>, he protested. In the days of the concubine at Gibeā<sup>169</sup>, he did not protest.

162 Text of L, missing in the two parallels and contradicted by the following text.

163 *Ex.* 29:30. As often, the proof is from the part of the verse not quoted: *Seven days the priest shall wear them who of his sons will stand in his stead to officiate in the Sanctuary*. The only hereditary office in Divine Service is that of the High Priest. *Babli Yoma* 72b/73a.

164 Since the Anointed for War is under the restrictions valid for the High Priest one has to ascertain that his office be subordinate, not coordinate, to the High

Priesthood and that an appointment to High Priesthood does not violate the rule that one may not reduce the holiness of one's position (Note 151).

165 *1Chr.* 9:20. The leader of the priests is the High Priest. Phineas was appointed Anointed for War by Moses, *Num.* 31:6.

166 Hebrew verb built on a Greek root; cf. *Berakhot* 3, Note 96.

167 R. Yose seems to have complained about a lack of leadership on the part of his son.

168 *Num.* 27:1-15.

169 *Jud.* 19-21. In the opinion of *Seder Olam*, based on the teachings of R. Yose the Tanna (who is meant here), the affair at Gibe'a happened at the start of the

period of the Judges, when Phineas was High Priest. Cf. the author's edition of *Seder Olam* (Northvale NJ 1998), pp. 122-123.

(47d line 31) וּמִנֵּיין שֶׁהָיָה עוֹבֵד בְּשִׁמוֹנָה. רַבִּי בָּא בֵּר חֵיפָה בְּשֵׁם רַבִּי יוֹחָנָן. וּבִגְדֵי הַקּוֹדֶשׁ אֲשֶׁר לְאַהֲרֹן יְהוֹי לְבָנָיו אַחֲרָיו. וּמָה תִּלְמִיד לומר אַחֲרָיו. לְגִדּוּלָה שֶׁלְאַחֲרָיו. וּמִנֵּיין שֶׁהוּא נִשְׁאַל בְּשִׁמוֹנָה. רַבִּי יִרְמְיָה רַבִּי אִימִי בְּשֵׁם רַבִּי יוֹחָנָן. וּבִגְדֵי הַקּוֹדֶשׁ אֲשֶׁר לְאַהֲרֹן יְהוֹי לְבָנָיו. וּמָה תִּלְמִיד לומר אַחֲרָיו. לְקִדּוּשָׁה שֶׁלְאַחֲרָיו. בְּכִמָּה הוּא נִשְׁאַל. אֵינִי יָתִיד הוּא רַבְּבָהוּ שֶׁעָלָה מִתְנִיטָא דְּבֵר קִפְרָא מִדְּרוֹמָא וְתָנָא. אֵינִי עוֹבֵד לֹא בְּאַרְבָּעָה שְׁלֹכְהוֹן הָדִיט וְלֹא בְּשִׁמוֹנָה שְׁלֹכְהוֹן גָּדוֹל. אָמַר רַבִּי בָּא. בְּדִין הָיָה שֶׁיֵּהָא עוֹבֵד בְּאַרְבָּעָה. וְלָמָּה אָמְרוּ אֵינִי עוֹבֵד. שֶׁלֹּא יְהוֹי אֹמְרִין. רָאִינוּ כְּהֵן הָדִיט פְּעָמִים שֶׁהוּא עוֹבֵד בְּשִׁמוֹנָה כְּכֵהֵן גָּדוֹל. אָמַר רַבִּי יוֹנָה. וְלֹא בְּכִנִּים הוּא עוֹבֵד. וְהָלֵא בְּחוּץ הוּא נִשְׁאַל וְטוֹעִין דְּבֵר מִבְּפָנִים לְבָחוּץ. וְכִי רַבִּי טְרַפּוֹן רָבִן שֶׁלְכָל־יִשְׂרָאֵל לֹא טָעָה בֵּין תְּקִיעַת הַקֹּהֶל לְתְּקִיעַת קָרְבָּן. דְּכָתִיב וּבָנִי אַהֲרֹן הַכֹּהֲנִים יִתְקַעוּ בַּחֲצוֹצְרוֹת. תְּמִימִם לֹא בְּעָלֵי מוֹמִין. דְּבָרֵי רַבִּי עֲקִיבָה. אָמַר לוֹ רַבִּי טְרַפּוֹן. אֶקְפֹּח אֶת בְּנֵי אִם לֹא רָאִיתִי שֶׁמָּעוֹן אַחִי אִימָה חִיגָר בְּאַחַת מִרְגְּלָיו וְעוֹמֵד בְּעֶזְרָה וְחֲצוֹצְרָתוֹ בִּידוֹ וְתוֹקֵעַ. אָמַר לוֹ רַבִּי עֲקִיבָה. שָׁמָּה לֹא רָאִיתוֹ אֶלָּא בְּשַׁעַת הַקֹּהֶל. וְאַנִּי אֹמֵר. בְּשַׁעַת קָרְבָּן. אָמַר לוֹ רַבִּי טְרַפּוֹן. אֶקְפֹּח אֶת בְּנֵי שֶׁלֹּא הִיטִיתָה יָמִין וּשְׂמָאל. אָנִי הוּא שֶׁשִּׁמְעָתִי וְלֹא הָיָה לִי לִפְרֹשׁ. וְאַתָּה דוֹרֵשׁ וּמִסְבִּים שְׁמוּעָה. הָא כָּל־הַפּוֹרֵשׁ מִמֶּךָ כְּפוֹרֵשׁ מִחֵייו.

1 ומניין | מנין | חייה | חייה 2 ומה | מה | ומנין | ומנין 3 אימי | אימי 4 ומה | מה 5 lines missing  
10 עקיבה | עקיבא | בני | בני 11 אימה | אמה 12 עקיבה | עקיבא 13 בני | בני היטית | היטית  
14 שמועה | על השמועה

<sup>170</sup> And from where that he officiated in eight? Rabbi Abba bar Hiyya in the name of Rabbi Johanan: *And Aaron's holy garments shall be for his descendants in his stead*<sup>163</sup>. Why does the verse say, *in his stead*? For greatness after him. And from where that he was asked in eight? Rabbi Jeremiah, Rabbi Immi in the name of Rabbi Johanan: *And Aaron's holy garments shall be for his descendants in his stead*. Why does the verse say, *in his stead*? For holiness after him. In what was he asked? They brought it, a Mishnah of Bar Qappara came from the South which stated: He officiates neither in the four of a common priest nor in the eight of a High Priest. Rabbi Abba said, it would be logical that he officiate in four<sup>176</sup>. Why did they say that he did not officiate? Lest people say, we saw a simple priest who sometimes officiated in eight like a High Priest<sup>177</sup>. Rabbi Jonah said, would he not officiate inside and would he not be asked outside? Does one

err between inside and outside? But did Rabbi Tarphon, the teacher of all of Israel, not err between blowing for assembly and the blowing for a sacrifice? As it is written: *The descendants of Aaron, the priests, shall blow the trumpets*<sup>178</sup>, blameless ones, not with bodily defects, the words of Rabbi Aqiba. Rabbi Tarphon said to him, I would hit my sons<sup>179</sup> if I did not see Simeon, my mother's brother, lame in one of his legs, standing in the Temple court with his trumpet in his hand and blowing! Rabbi Aqiba answered him, maybe you saw him only at the time of assembly<sup>180</sup>; but I was saying, at the time of sacrifices<sup>181</sup>. Rabbi Tarphon said to him, I would hit my sons but you did not deviate right or left. I am the one who heard but I could not explain. You derive it and agree with tradition. Therefore, anybody who separates from you is as if he separated himself from his life<sup>182</sup>.

170 The text here up to the quote from Bar Qappara's Mishnah is corrupt, contradictory in itself and mostly missing in B. Since it is a careless copy of the text in *Yoma* (1:1 38b l. 26) and *Megillah* (2:12 71a l. 75), an explanation must be based on that text. The paragraph discusses the rules for the priest Anointed for War. It starts with an assertion that the Anointed for War officiates in the Temple in the High Priest's garb while later it is asserted without dissent that he

he barred from any service in the Sanctuary. The entire topic is a reconstruction of the environment in which one has to place David's inquiries to God as recorded in the books of Samuel.

A consistent whole is found in the *Yoma/Megillah* text. In the following, standard font is used for the *Yoma* text; where the *Megillah* text deviates, it is given in different typeface.

מַנִּין שְׁהִיָּה (שְׁהוּא) נִשְׁאֵל בְּשִׁמוּנָה. ר' בָּא רַבִּי חִיָּה בָּשֵׁם רַבִּי יוֹחָנָן. וּבִגְדֵי הַקּוֹדֶשׁ אֲשֶׁר לְאַהֲרֹן יְהִי לְבָנָיו אַחֲרָיו. מֵה תִלְמוּד לומר אַחֲרָיו. אֶלָּא לְגִדּוּלָה שְׁלֹא אַחֲרָיו. וּמַנִּין (מַנִּין) שְׁהוּא עוֹבֵד בְּשִׁמוּנָה. רַבִּי יְרֵמְיָה ר' אִימִי בָּשֵׁם רַבִּי יוֹחָנָן. וּבִגְדֵי הַקּוֹדֶשׁ אֲשֶׁר לְאַהֲרֹן יְהִי לְבָנָיו. מֵה תִלְמוּד לומר אַחֲרָיו. אֶלָּא לְקִדּוּשָׁה (לְגִדּוּלָה) שְׁלֹא אַחֲרָיו. אָמַר לִיה רַבִּי יוֹנָה. עַמּוּד הֵייתִי. לֹא אָמַר עוֹבֵד אֶלָּא נִשְׁאֵל. וּבִמָּה (בְּמָה הוּא) נִשְׁאֵל. אֵייתִי רַב הוֹשַׁעִיָּה מִתְּנִיתָ דָּבָר קִפְרָא מִן דְּרוּמָא (דְּרוּמָה) וְתָנָא. וְחֻכְמִים אוֹמְרִים. אֵינוֹ עוֹבֵד לֹא בְּשִׁמוּנָה שֶׁל כֹּהֵן גָּדוֹל וְלֹא בְּאַרְבָּעָה שֶׁל כֹּהֵן הַדִּיּוֹט.

And from where that he was asked in eight<sup>171</sup>? Rabbi Abba Rabbi Hiyya in the name of Rabbi Johanan: *And Aaron's holy garments shall be for his descendants in his stead*<sup>163</sup>. Why does the verse say, *in his stead*? For greatness after him<sup>172</sup>. And from where that he officiated



in eight<sup>173</sup>? Rabbi Jeremiah, Rabbi Immi in the name of Rabbi Johanan: *And Aaron's holy garments shall be for his descendants*. Why does the verse say, *in his stead*? For holiness after him. In what was he asked<sup>174</sup>? Rabbi Jonah said to him<sup>175</sup>, I was with you; he did not say "officiated" but "was asked". Rav Hoshia brought a Mishnah of Bar Qappara from the South which stated: He officiates neither in the four of a common priest nor in the eight of a High Priest.

171 The Anointed for War has two jobs. One is to address the army as described in *Deut.* 20:1-9, the other to ask the Urim and Tummim oracle on behalf of the army commander. Since this oracle is mentioned only in connection with the High Priest's garments (*Ex.* 28:30) it is obvious that the Anointed for War must wear one of these garments for the oracle. But since all eight garments of the High Priest form an indivisible unit, he must wear all of them.

172 *Ex.* 29:30 continues: *To be anointed in them and inducted into office*. Since the one Anointed for War is anointed, he seems to qualify.

173 This seems logical. Since the Anointed for War is required to wear the High Priest's garb, "one increases in sanctity but does not decrease" (cf. Note 151). Otherwise one will have to disqualify the Anointed for War from all office in the Sanctuary.

174 If R. Jeremiah, in opposition to R. Abba bar Hiyya, speaks about officiating, what is his opinion about inquiring from the Urim and Tummim?

175 The name of R. Jonah's interlocutor is not given. It must be another student of R. Jeremiah (R. Yose?) since he points out that the words of his teacher were incorrectly transmitted and that R. Jeremiah's statement was identical with

that of R. Abba bar Hiyya, the companion of R. Jeremiah's teacher R. Ze'ira. In the Babli, *Yoma* 73a, the students of R. Johanan already point out that R. Johanan only gave his opinion on interrogation of the oracle, not of officiating.

176 He holds that as a matter of principle, the Anointed for War could use the eight garments of the High Priest strictly for his duties outside the sanctuary and still be a common priest inside without violating the principle of Note 151. The Babli disagrees (*Yoma* 73a) and bases the rule strictly on that principle.

177 In contrast to the Babli, this would be strictly a rabbinic rule, not based on biblical principles, and therefore not a historical reconstruction by a new rule for the days of the Messiah.

178 *Num.* 10:8.

179 His oath formula, cursing himself if his statement should be found false. Babli *Šabbat* 17a.

180 The command to call all the community in the desert by the sound of trumpets (*Num.* 10:3) is extended to use trumpets to introduce the public Torah reading in the Temple at Tabernacles in the Sabbatical Year (*Deut.* 31:10-13).

181 *Num.* 10:10; cf. *Sanhedrin* 3:3 Note 155.

182 A similar text in *Sifry Num.* 75 (a better text *Yalqut* 725).

47d line 49) וְכִפֹּר הַכֹּהֵן אֶשֶׁר־יִמָּשַׁח אוֹתוֹ. מִה תִּלְמֹד לֹמֵר. לְפִי שְׂכַל־הַפֶּךְ־שָׁה נֶאֱמָרָה בְּאַהֲרֹן. אֵין לִי אֶלָּא מִשּׁוּחַ בְּשִׁמּוֹן הַמִּשְׁחָה. מְרוּבָה בְּגָדִים מְנִיין. תִּלְמֹד לֹמֵר וְאֶשֶׁר יִמָּלֵא אֶת־לֵוִי. וּמְנִיין לְרִבּוּת אַחֵר הַמִּתְמַנֶּה. תִּלְמֹד לֹמֵר וְכִפֹּר הַכֹּהֵן. בְּמָה הוּא מִתְמַנֶּה. רִבְנִין דִּקְזִיסְרִין בְּשֵׁם רַבִּי חִיָּה בַר יוֹסֵף. בְּפָה. אָמַר רַבִּי זְעִירָא. הִזְדָּא אֶמְרָה שְׁמַמְנִין זְקִינִים בְּפָה. אָמַר רַבִּי חִיָּה בַר אֲדָא. מִתְנִיתָא אֶמְרָה כֵּן. חֲזֹר בְּדָ בְּאַרְבָּעָה דְּבָרִים שְׁהֵייתָ אוֹמֵר וְנִעְשָׂךְ אַב בֵּית דִּין לְיִשְׂרָאֵל.

1 נאמרה B | כולה אמורה ו אמורה 2 B | מושח | אהרן עצמו מניין לרבות כהן אחר ת"ל אשר ימשח אותו אין לו אלא מושח מניין B | מנין 3 ומנין B | ומנין כהן המתמנה | ו המתכפר מתמנה | ו מתכפר 4 חייה | ו חייה זעירא | מתמנה | ו המתכפר זעירא | זקנים | מו זקן 5 חייה B | חייה בך B - 8 לישראל | ו עלך ישראל מ -

*The priest shall atone who was anointed*<sup>183</sup>. Since the entire chapter is said about Aaron, from where [to include another priest? The verse says, *who was anointed*;<sup>184</sup> not only the anointed with the anointing oil; from where the one clothed in multiple garb? The verse says, *who was inducted into office*. And from where another who was appointed<sup>185</sup>? The verse says, *the priest shall atone*<sup>186</sup>. How is he being appointed? The rabbis of Caesarea in the name of Rabbi Hiyya bar Joseph, by mouth<sup>187</sup>. Rabbi Ze'ira said, this implies that one may ordain Elders by word of mouth. Rabbi Hiyya bar Ada said, a Mishnah says so: "Recant the four things that you are used to say and we shall make you president of the Court for Israel."<sup>188</sup>

183 Lev. 16:32. The problem is the legitimacy of a priest appointed *ad hoc* as High Priest to conduct the service of the Day of Atonement for which common priests are disqualified.

184 From B and the parallels in *Yoma* (י) and *Megillah* (מ) (Note 170). The first 30 verses of the Chapter mention Aaron exclusively.

185 In an emergency of the Day of Atonement where no formal session of a court can be held. Even when anointing

oils was available, simple investiture was enough.

186 Since it does not stress "the High Priest", it follows that any priest can be appointed to fill the office.

187 It does not need the laying on of hands nor a document of appointment. (Tosaphot *Yoma* 12b s, v. כהן).

188 Mishnah *Idiut* 5:6. The oral promise was irrevocable.

Here end the parallels in *Yoma* and *Megillah*.

47d line 56) הוּא. לֹא הִמָּלֵךְ. הוּא. לֹא הִנָּשִׂיא. הוּא. לְרִבּוּת כֹּהֵן מִשּׁוּחַ מִלְחָמָה. אֶשָּׁה בְּבִתּוּלָיָה יִקָּח. פֶּרֶט לְבִגְדֵי שְׂכָלוֹ בְּתוּלָיָה. רַבִּי לֵעָזָר וְרַבִּי שְׁמַעוֹן מְכַשִּׁירֵין בְּבִגְדֵי רַבִּי

יִצְחָק שָׁאֵל. אֵף בְּשָׂאָר כָּל-הַדְּבָרִים כֵּן. קוֹמֵץ וְאַחֵר מִקְטִיר. וּמִקְבֵּל וְאַחֵר זֹרֵק. שׁוֹרֵף וְאַחֵר יִזֶּה. רַבִּי יַעֲקֹב בַּר אִידִי בִשְׁם רַבִּי יִצְחָק. עָשׂוּ אוֹתָהּ חֲטָאת גְּדוּלָּה שְׁלֹא נוֹדְעָה לְרַבִּים. הִדָּא אֲמַרְהּ. קוֹמֵץ וְאַחֵר מִקְטִיר. מִקְבֵּל וְאַחֵר זֹרֵק. שׁוֹרֵף וְאַחֵר יִזֶּה. רַבִּי בְּרַכְיָה רַבִּי יַעֲקֹב בַּר אִידִי יִצְחָק שָׁאֵל. הִיָּה עוֹמֵד וּמִקְרִיב עַל גְּבִי הַמִּזְבֵּחַ וְנוֹדֵעַ שֶׁהוּא בֶּן גְּרוּשָׁה אוֹ בֶּן חִלְצָה. מִתְּ עֶבֶד לָהּ. שְׁמֹת וְיַחְזִיר הַרֹצֵחַ לְמִקְוָמוֹ אוֹ יַעֲשֶׂה כְמוֹ שְׁנִגְמָר דִּינוֹ בְּלֹא כְהֵן גְּדוּל. וְאֵל יִצָּא מִשֵּׁם לְעוֹלָם.

1 - | הלכה זה וזה שוין בעבודת יום הכיפורים וכו'. המלך | על המלך 2 לעזר | אלעזר 3 ואחר | ואחר כך (3) 4 יזה | מזה בשם - | חטאת | כחטאת גדולה | גזולה | הדא | הכא 5 אמרה | אמרין ואחר | אחר כך (3X) יזה | מזה ר' יעקב | ור' יעקב 6 מת | מה את שמת | כמי שמת 7 ויחזור | ומחזי

[Halakhah: "Both are equal in the office of the day of Atonement," etc.]<sup>189</sup> <sup>190</sup>He, not the king. *He, not the chieftain*<sup>191</sup>. *He, to include the priest Anointed for War*<sup>192</sup>. *A woman in her virginity he shall marry*; this excludes an adult whose hymen has atrophied. Rabbi Eleazar and Rabbi Simeon qualify the adult<sup>193</sup>.

<sup>194</sup>Rabbi Isaac asked, are these things so in all other things? He takes the fist full and the other burns it; he receives and the other throws, he burns and the other sprinkles? Rabbi Jacob bar Idi in the name of Rabbi Isaac: They made it like a (great) [robbed]<sup>195</sup> purification sacrifice which was not publicly known. This implies that he takes the fistful and the other burns it, he receives and the other throws, he burns and the other sprinkles.

<sup>196</sup>Rabbi Berekhiah, Rabbi Jacob bar Idi: Rabbi Isaac asked. If he was standing sacrificing on the altar when it became known that he was the son of a divorcee or the son of a woman having received *halisah*, how do you treat him? [As if]<sup>197</sup> he had died and the homicide might return to his home town or should he be treated as one whose trial had been concluded without a High Priest and he never can leave from there?

189 The beginning of the discussion of Mishnah 5 is noted only in B.

190 *Sifra Emor Paraṣah* 2(7), on *Lev.* 21:13. Since the High Priest was mentioned in the preceding verses, the pronoun is unnecessary by the rules of grammar. It is added for emphasis; only the High Priest is restricted to marrying a virgin.

191 Since the king was mentioned separately, נָשִׂא here cannot be identified as the king; it must be a tribal chieftain.

192 Since the rules of the High Priest were tied in *Lev.* 21:10 to wearing the High Priest's garments and the Anointed for War is required to wear these when asking the oracle, he is bound by all rules enumerated in vv. 10-15.

193 *Lev.* 21:14. The parallels in the Babli, *Yebamot* 59a, *Ketubot* 97b, identify the first opinion as R. Meïr's. It is agreed that if a girl is fully grown, the breaking of her hymen may not be noticed by the man.

194 The interpretation of this paragraph depends on whether one considers the texts of L and B as two different texts or that the correct text is that of B, except for the name tradition identical with *Terumot* 8:2, Notes 29-31, with the text of L badly corrupted. Since in the characterization of the sacrifice, the text of L is certainly corrupt, the second alternative has much to commend itself. In the text itself, the crucial point is whether to read אחר as אחר "another" or אחר "after". Since the text of L, but not that of B, refers to the High Priest, in the absence of a clear solution

both texts are presented and explained.

In the text of L one refers to the statement in the Mishnah that an acting High Priest and a deposed one are equal in all but the service of the Day of Atonement. The question is whether the acting High Priest may take the required fist full of incense and the deposed one then may bring the incense to the inner altar and burn it there; or the acting High Priest receive the blood of his sacrifices and the deposed one sprinkle of the blood on the walls of the altar. The question is not asked anywhere else and the positive answer is difficult to accept. Therefore, it is better to accept the text of B, even though it does not refer to the High Priest, as necessary introduction to the following paragraph which does.

That text reads:

Rebbi Isaac asked, does this apply to the remaining actions? He took the fist full and afterwards burned it; he received and afterwards threw it, he burned and afterwards sprinkled? Rebbi Jacob bar Idi in the name of Rebbi Isaac: They made it like a robbed purification sacrifice which was not publicly known. This implies that if he took the fistful afterwards he burns it, if he received [the blood] afterwards he throws [it on the walls of the altar], he burned [the red cow] he afterwards sprinkles [water with its ashes to purify others].

As explained in *Terumot*, the question is asked about a Cohen who is informed that he is disbarred from the priesthood because of his birth from a woman forbidden to priests when he had completed one sacral action which by necessity must be followed by a different one. The answer is that the desecrated

son of a Cohen who innocently started officiating may officiate to the end even though in the future he will be barred from officiating.

196 The reference is to Mishnah *Gittin* 5:5, as explained in *Terumot*. The text of L is in parentheses, the correct text in brackets is from B. The point of the

argument is missing here in both texts, that the purification offering is acceptable (i., e., that the Temple authorities are prohibited from inquiring into the way the offerer acquired his animal.)

197 *Terumot* 8:2, Notes 32-33,40. If the High Priest after his elevation was found to be desecrated by his birth and thereby is removed, is this considered to be his

death as far as the Sanctuary is concerned and releases any homicide sentenced during his tenure of office from the city of refuge or is his tenure as High Priest erased from the annals of the Sanctuary (*Makkot* 2:10-11)? No answer is given here; the first eventuality is chosen in *Terumot*.

(fol. 47a) **משנה ו:** כהן גדול פוֹרֵם מִלְמָטוֹן וְהַהֲדִיּוֹט מִלְמָעָלָו. כֹּהֵן גָּדוֹל מִקְרִיב אוֹיֵן וְלֹא אוֹכֵל וְהַהֲדִיּוֹט לֹא מִקְרִיב וְלֹא אוֹכֵל:

**Mishnah 6:** The High Priest rends his garment below, the common priest above<sup>198</sup>. The High Priest sacrifices while in deep mourning but does not eat; the common priest neither sacrifices nor eats<sup>199</sup>.

198 Rending one's garment is a required mourning rite for a close relative (as defined in *Lev.* 21:2-3). The High Priest is forbidden any mourning rites, including rending his garment (Mishnah 5). One allows him to make a tear at the bottom of his robe where nobody will notice it.

199 "Deep mourning" is the time between the death of a close relative and his burial (on the same day or the following night).

Since the High Priest is forbidden to leave the Sanctuary (*Lev.* 21:12) he must be permitted to officiate. But eating *sancta* while in deep mourning is forbidden to everybody (*Deut.* 26:14), including the High Priest (*Lev.* 10:19-20). The common priest is required to defile himself for the burial of a close relative (*Lev.* 21:1-2); automatically he is excluded from the Sanctuary and all its service.

(47d line 66) **הלכה ו:** כהן גדול פוֹרֵם מִלְמָטוֹן כּוֹל. רַבִּי לַעֲזֹר בְּשֵׁם כֹּהֵנָא. לְמַעַלָּן לְמַעַלָּן מִקְנֵה שְׁפָה. לְמָטוֹן מִקְנֵה שְׁפָה. רַבִּי יוֹחָנָן אָמַר. לְמָטוֹן מִמָּשׁ. רַבִּי יוֹחָנָן סָלִיק לְמִבְקָרָה לְרַבִּי חֲנִינָה. כִּד הֵוָה גּוֹ אִיסְטֶרְטָה שְׁמַע דְּדָמָן. שְׁלַח וְאִתִּי מְנִי טַבִּינָא דְשׁוֹבְתָא וּבִזְעָן. רַבִּי יוֹחָנָן פְּלִיג עַל דְּרַבִּי יְהוֹדָה תְּרִיתִין. וְאִתִּינָא רַבִּי לַעֲזֹר בְּשֵׁם כֹּהֵנָא כְּרַבִּי יוֹדָה. אִין כְּרַבִּי יוֹדָה לֹא יִפְרוֹם כְּלִיעִיקָר. לֹא אִתִּינָא דָא אֶלָּא עַל אֲבִיו וְעַל אִמּוֹ כְּדָבְרִי רַבִּי מֵאִיר. דִּתְנִי. עַל כְּלִיעִיקָרִים אִינוּ מְבָדִיל קִנָּה שְׁפָה אֶלָּא עַל אֲבִיו וְעַל אִמּוֹ. כְּדָבְרִי רַבִּי מֵאִיר. רַבִּי יוֹדָה אוֹמַר. כְּלִיעִיקָרִעַ שְׁאִינוּ מְבָדִיל קִנָּה שְׁפָה הָרִי זֶה קָרַע שְׁלִתְפְּלוּת. מֵאִי כְּדוֹן. אוֹמַר הוּא בְּכֵהוּ גָדוֹל שְׁיָהָא מְבָדִיל קִנָּה שְׁפָה.

1 לעזר | אליעזר | למעלן למעלה מקנה שפה | למעלה למעלה מקמי שפה<sup>201</sup> 2 למטן למטן מקני שפה | למטה למטה מקמי שפה | למטן | למטה למטה | סליק | סלק 3 כד הוה | - איסטריטא | אוסטריטא דשבתא | דשבתא The remainder of the Halakhah is missing.

<sup>200</sup>Rebbi Eleazar in the name of Cahana: On top, high starting with the seam, below, low starting with the seam. Rebbi Johanan said, really low. Rebbi Johanan was going up to visit Rebbi Hanina; on the road he heard that he had died. He sent, brought his good Sabbath garment, and tore it. Rebbi Johanan disagrees with Rebbi Jehudah in two things, but Rebbi Eleazar in the name of Cahana follows Rebbi Jehudah. If following Rebbi Jehudah, he should not tear at all! This refers only to his father or mother, following Rebbi Meïr, as it was stated: One tears the seam for nobody who died except for father and mother, the words of Rebbi Meïr. Rebbi Jehudah says, any tear which does not completely sever the seam is a frivolous tear. How is that? It is said<sup>202</sup> for the High Priest that he shall sever the seam completely.

200 The entire Halakhah is from *Sanhedrin* 3:1, Notes 33-56.

202 This is a simple copyist's error for חומר "a stringency".

201 Cf. *Sanhedrin* 3:1, Note 34.

(47d line 75) כהן גדול מקריב אוגן ולא אוכל. דברי רבי מאיר. רבי יודה אומר. כל-אותו היום. רבי שמעון אומר. גומר כל-העבודה שבגדו ובא לו. בין רבי מאיר לרבי שמעון חדא בין רבי יודה לרבי שמעון חדא. בין רבי מאיר לרבי יודה הכנסה. רבי יעקב בר דסיי. מפשק ביניהון. רבי מאיר אומר. הנה בפנים הנה יוצא. הנה בחוץ לא הנה נכנס. רבי יודה אומר. הנה בפנים הנה יצא. הנה בחוץ לא הנה נכנס. רבי שמעון אומר. גומר כל-העבודה שבגדו ובא לו. רבי יוסי בירבי בון בשם רב חונא. מתניתא דרבי שמעון. ומן המקדש לא יצא. עמהן אינו יצא. יוצא הוא אחריתו. אלא הן נכנסין והוא יוצא. הן נכנסין והוא נגלה ויוצא אחריתו עד פתח העיר. דברי רבי מאיר. רבי יודה אומר. אינו יוצא מן המקדש. כתיב ומן המקדש לא יצא. למד אלא לא יצא. יצא לא היה חוזר.

"The High Priest sacrifices while in deep sorrow but does not eat, the words of Rebbi Meïr; Rebbi Jehudah says, the entire day. Rebbi Simeon says, he completely finishes the service he is engaged in and then leaves." Between Rebbi Meïr and Rebbi Simeon there is one [difference], between Rebbi Jehudah and Rebbi Simeon there is one [difference]. Between Rebbi Meïr and Rebbi Jehudah is entering. Rebbi Jacob ben Dositheos: interruption is

between them. Rabbi Meïr says, if he was inside, he leaves; if he was outside, he does not enter. Rabbi Jehudah says, if he was inside, he (leaves); if he was outside, he does not enter. Rabbi Simeon says, he completely finishes the service he is engaged in and then leaves. Rabbi Yose ben Rabbi Abun in the name of Rav Huna: a *baraita* is from Rabbi Simeon: “*The Sanctuary he shall not leave*, he may not leave with them, but he may leave after them. (But they enter and he leaves). If they are unseen he can be seen; he leaves with them up to the city gate, the words of Rabbi Meïr; Rabbi Jehudah said, he does not leave the Temple since it is said: *The Sanctuary he shall not leave*. If he left, he may not return.”

(48a line 11) רבי אבהו בשם רבי לעזר. אין אָנינה אַלא לְמַת בְּלָבָד. דְּכָתִיב וְאָנֹכִי וְאָבְלִי פְתִיחָהּ. הָתִיב רַבִּי חִיָּה בַר אֲדָא. וְהָכָתִיב וְאָנֹכִי הַדִּיגִים וְאָבְלִי כָּל־מְשָׁלִיכִי בִּנְאוֹר חֶכֶךְ. אָמַר רַבִּי חִנְיָה. מִתְּנִיתָא אִין אָנינה טְמֵאָה אַלא לְמַת בְּלָבָד. אִי זֶה הִיא אָנינה. מְשַׁעַת מִיתָה וְעַד שְׁעַת קְבוּרָה. דְּבָרֵי רַבִּי. וְחֻכָּמִים אוֹמְרִים. כָּל־אוֹתוֹ הַיּוֹם. אֲשֶׁכַּחַת אָמַר קוּלַת וְחוּמְרַת עַל דְּרָבִי. קוּלַת וְחוּמְרַת עַל דְּרָבָנָן. מַה מִּפְקָה מִבְּיַיְהוֹן. מִת וְנִקְבֵּר בְּשַׁעֲתוֹ. עַל דַּעֲתָהוֹן דְּרָבָנָן אֲסוּר כָּל־אוֹתוֹ הַיּוֹם. עַל דַּעֲתָיָה דְּרָבִי אֲסוּר אַלא אוֹתָהּ הַשְּׁעָה בְּלָבָד. מִת וְנִקְבֵּר לְאַחַר שְׁלֹשָׁה יָמִים. עַל דַּעֲתָהוֹן דְּרָבָנָן אֲסוּר כָּל־אוֹתוֹ הַיּוֹם. עַל דַּעֲתָיָה דְּרָבִי אֲסוּר עַד ג' יָמִים. אֲתָא רַבִּי אֲבָהוּ בְּשֵׁם רַבִּי יוֹחָנָן רַב חֲסִידָא תִּרְיָהוֹן אָמְרִין. מוֹדָה רַבִּי לְחֻכָּמִים שְׂאִין אֲסוּר אַלא אוֹתוֹ הַיּוֹם בְּלָבָד. כִּהָדָא דִּתְנִי. רַבִּי אוֹמַר. תִּדַּע לָךְ שְׂאִין אָנִינּוּת לְלֵלָה תוֹרָה. שְׁהָרִי אָמְרוּ. אוֹיֵן טוֹבֵל וְאוֹכֵל פְּסָחוֹ לְעֶרֶב. וְהָרִי אָמְרוּ. אָנִינּוּת יוֹם תוֹרָה. רַבִּי יוֹסִי בִּירְבִי בּוֹן בְּשֵׁם רַב הוּנָא. תִּיפְתֵּר שְׁנִקְבֵּר בְּדַמְדוּמֵי חֲמָה. וְלִית שְׂמַע מִינָה כְּלוּם.

Rebbi Abbahu in the name of Rabbi Eleazar: “Deep sorrow” is only for the dead, for it is written: *Its gates are in deep sorrow and mourning*. Rabbi Hiyya bar Ada objected: Is it not written<sup>51</sup>: *the fishermen are in deep sorrow, mourning are all who throw a fish-hook into the Nile*? Rabbi Hanina said, so is the *baraita*: there is no deep sorrow in impurity except for the dead. It was stated: “What is deep sorrow? From the moment of death until the moment of burial, the word of Rabbi. But the Sages say, the entire day.” It turns out that one describes leniencies and stringencies following Rabbi, leniencies and stringencies following the rabbis. What is the difference between them? If someone died and was buried within the hour. Following the rabbis, he is forbidden the entire day; following Rabbi he is forbidden only that hour. If

the person died and was buried after three days. Following the rabbis, he is forbidden the entire day; following Rabbi he is forbidden up to three days. There came Rabbi Abbahu in the name of Rabbi Johanan, and Rav Hisda, both of whom said that Rabbi agrees with the Sages that he is forbidden only during the first day, as it was stated: Rabbi said, you know that deep mourning in the night is not biblical, since they said, “the deep mourner immerses himself and eats his Passover sacrifice in the evening.” But they said, deep mourning during daytime is biblical. Rabbi Yose ben Rabbi Abun in the name of Rabbi Huna: Explain it that the person was buried close to sundown and one cannot infer anything.

**משנה ז:** כָּל הַתָּדִיר מִחֲבִירוֹ קוֹדֵם אֶת חֲבִירוֹ. וְכָל הַמְקֻדָּשׁ מִחֲבִירוֹ קוֹדֵם אֶת חֲבִירוֹ. פֶּר הַמִּשְׁחִים וּפֶר הָעֵדָה עוֹמְדִין פֶּר הַמִּשְׁחִים קוֹדֵם לְפֶר הָעֵדָה בְּכָל מַעֲשֵׂיוֹ: (fol. 47a)

**Mishnah 7:** Anything which is more frequent than another precedes the other<sup>203</sup>. Anything more holy than another precedes the other<sup>204</sup>. If the bull of the Anointed and the bull of the community are standing, the Anointed's bull precedes the community's bull in all its ceremonies<sup>205</sup>.

**משנה ח:** הָאִישׁ קוֹדֵם לָאִשָּׁה לְהַחְיוֹת וּלְהַשִּׁיב אֲבֵדָה וְהָאִשָּׁה קוֹדֶמֶת לָאִישׁ לְקָסוֹת וּלְהוֹצִיָּאָה מִבֵּית הַשָּׂבִי. בְּזִמְנָן שֶׁשְׁנֵיהֶם עוֹמְדִים לְקַלְקֵלָה הָאִישׁ קוֹדֵם לָאִשָּׁה:

**Mishnah 8:** The man precedes the woman to be kept alive<sup>206</sup> and to regain his lost property<sup>207</sup>. But the woman precedes the man for clothing<sup>208</sup> and to be freed from captivity<sup>209</sup>. At a time when both are used for immorality<sup>210</sup>, the man precedes the woman.

**משנה ט:** כֹּהֵן קוֹדֵם לְלֵוִי לֵוִי יִשְׂרָאֵל יִשְׂרָאֵל לְמִמָּזֵר וּמִמָּזֵר לְנִתְיָן וְנִתְיָן לְגֵר וְגֵר לְעֶבֶד מְשֻׁחָרֵר. אִימָתִי בְּזִמְנָן שֶׁכּוֹלֵן שְׂוִין. אֲבָל אִם הָיָה מִמָּזֵר תִּלְמִיד חֹכֵם וְכֹהֵן גָּדוֹל עִם הָאָרֶץ מִמָּזֵר תִּלְמִיד חֹכֵם קוֹדֵם לְכֹהֵן גָּדוֹל עִם הָאָרֶץ:

**Mishnah 9:** A priest precedes a Levite, a Levite an Israel, an Israel a bastard, a bastard a Gibeonite<sup>211</sup>, a Gibeonite a proselyte<sup>212</sup>, a proselyte a manumitted slave. When? If they are all equal<sup>213</sup>. But if the bastard was learned and the High Priest ignorant, the learned bastard precedes<sup>214</sup> the ignorant High Priest.



203 Anything which is done more frequently is executed before anything less frequent is done. The statement of the Mishnah is repeated in *Zebahim* 10:1, where the implications for the Temple service are detailed. For example, if New Year's Day falls on a Sabbath, the first sacrifices are the daily offerings (offered 365 days a year), followed by the Sabbath sacrifice (52 times), then the New Moon sacrifice (12 times), and last the New Year's Day sacrifice (1). Synagogue practice imitates this rule.

204 For example, if a person brings animals for a purification sacrifice, an elevation sacrifice, and a well-being sacrifice to the Temple, they have to be offered in this order (Mishnah *Zebahim* 10:2).

205 The rules for the Court's (the community's) purification sacrifice (*Lev.* 4:13-21) are dependent on the Anointed's sacrifice (*Lev.* 4:1-12). If they are offered simultaneously then the Anointed's has

precedence.

206 This usually is interpreted to mean that if a man and a woman are simultaneously in mortal danger, the man has to be saved first. But it also could mean that if a man and a woman are looking for a livelihood, the man has to be considered first.

207 Cf. Mishnah *Bava Mesia'* 2:13.

208 A poor man will not be hurt by appearing in rags. A woman cannot possibly be seen in rags.

209 A woman is more likely to be raped in captivity than a man.

210 If they are forced into prostitution, the man is in addition forced into homosexuality.

211 The bastard has (in general) genuinely Jewish parents; the Gibeonites became Jewish by deceit.

212 The Gibeonite's parents were Jewish, the proselyte's not.

213 In religious learning.

214 In honor due to him.

48a line 25) **הלכה ז:** כל התדיר מחבירו כול. לפי שזה מכפר וזה מכפר. מוטב שיקדום המכפר למתכפר. כמה דכתיב וכפר בעדו ובעד ביתו ובעד כל-קהל ישראל: נדבת משיח ונדבת נשיא. נדבת משיח קודמת. נדבת ציבור ונדבת נשיא. נדבת נשיא. קודמת. נדבת משיח ונדבת ציבור מי קודם. נישמעניה מן הדא. נדבת משיח וישעירי עבודה זרה עומדין. ישעירי עבודה זרה קודמין מפני שדמן נכנס לפנים. לא מר אלא שדמן נכנס לפנים. הדא אמרה. נדבת משיח ונדבת ציבור נדבת משיח קודמת. היה שם פרה עבודה זרה וישעירי הדא עמו וחסאת אחרת. פרה קודם לשעיר. וישעיר קודם לחסאת אחרת. וחסאת אחרת קודמת לפר. היד עבדה. אמר רבי יוסי. מכין שהשעיר מחוסר זמן לפר כמי שקדמו פרה. וחסאת אחרת קודמת לפר. פרה שלעבודה זרה קודם לשעירי הדא עמו מפני שקדמו במקרא. רבי שמואל אחי דרבי ברכיה בעי. מעתה שלראש חודש יקדום לשעירי הדא עמו מפני שקדמו. אמר רבי בא מרי. לית זכיל. חסאת דידה חסר. על-עלת התמיד עשה ונסכו: סמכו לעולת התמיד. קרבן איש וקרבן אשה. קרבן איש קודם. הדא דתימר בשחיו שניהן שוין. אבל אם

הָיָה זֶה פֶּר וְזֶה גָּדִי כִּהְיָא דְמָר רַבִּי פִּינְחָס בְּשֵׁם רַבִּי הוֹשְׁעִיָּה. עֶבֶד מִבִּיא פֶּר וְרַבּוּ מִבִּיא פֶּר. עֶבֶד קוֹדֵם לְרַבּוּ. דִּתְנִינָן תַּמָּן. פֶּר מְשִׁיחַ וּפֶר עֵדָה עוֹמְדִים. פֶּר מְשִׁיחַ קוֹדֵם לְפֶר עֵדָה לְכָל מַעֲשֵׂי:

1 לפי | פֶּר הַמְשִׁיחַ וּפֶר הָעֵדָה עוֹמְדִים פֶּר הַמְשִׁיחַ קוֹדֵם לְפֶר הָעֵדָה בְּכָל מַעֲשֵׂיו לְפִי שֶׁהָא מִכְפָּר וְהָא מִכְפָּר שֶׁהָדִי מִכְפָּר וְדִין מִתְכַּפֵּר 3 קוֹדֶמֶת | קוֹדֶמֶת לְנֹדֶבֶת נִשְׂיָא נֹדֶבֶת צִיבּוּר וְנֹדֶבֶת נִשְׂיָא | נֹדֶבֶת נִשְׂיָא וְנֹדֶבֶת צִבּוּר 4 קוֹדֵם | קוֹדֶמֶת נֹדֶבֶת | פֶּר עוֹמְדִין | עוֹמְדִים 5 מֵר | אִמְרוּ 6 ע"ז | שֶׁל ע"ז 7 פֶּר | הָפֶר וְהַשְׁעִיר 8 עֲבִידָה | עֲבִידָה 10 יְקוֹדֵם | יְקוֹדֵם | שְׁקִדְמוּ | שְׁקִדְמוּ בַּמִּקְרָא 11 אִמְר' ר' בָּא מֵרִי | אִמְר' ר' שְׁמוּאֵל אִמְר' ר' אָבָא מֵרִי יָכִיל | אֵת יָכִיל חֲטָאת דִּידָה חֲסֵר | דְּחֲטָאת דִּידָה אַחִיר 12 שְׁנִיָּה | שְׁנִיָּה 13 כִּהְיָא | הָדָא הֵיא ר' | - 14 עֶבֶד | הָעֶבֶד תַּמָּן | - עֵדָה עוֹמְדִים. פֶּר מְשִׁיחַ קוֹדֵם לְפֶר עֵדָה לְכָל מַעֲשֵׂי | וְכִי

**Halakhah 7:** “Anything which is more frequent than another,” etc. [“If the bull of the Anointed and the bull of the community are standing, the Anointed’s bull precedes the community’s bull”],<sup>215</sup> for one is atoning, the other is being atoned for<sup>216</sup>. It is preferable that the atoner precede the atoned for, as it is written, *he shall atone for himself, and for his house, and for all the congregation of Israel*<sup>217</sup>.

Between a voluntary gift of the Anointed and a voluntary gift of the prince, the voluntary gift of the Anointed has precedence<sup>218</sup>. Between a voluntary gift of the community and a voluntary gift of the prince, the voluntary gift of the prince has precedence<sup>219</sup>. Between a voluntary gift of the Anointed and a voluntary gift of the community, which one has precedence? Let us hear from the following: A voluntary gift of the Anointed and rams of idolatry<sup>220</sup> were standing. The rams of idolatry have precedence since their blood enters inside<sup>221</sup>. He only said “since their blood enters inside;” this implies that between a voluntary gift of the Anointed and a voluntary gift of the community, the voluntary gift of the Anointed has precedence.

If there were standing the bull of idolatry, the ram which accompanies it, and another purification sacrifice. The bull precedes the ram<sup>222</sup>, the ram precedes the other purification sacrifice, and the other purification sacrifice precedes the bull<sup>223</sup>. How is this done? Rabbi Yose said, since the ram is dependent in time on the bull, it is as if the bull preceded it, and the other purification sacrifice precedes the bull. The bull of idolatry precedes the ram because it precedes in Scripture<sup>224</sup>. Rabbi Samuel the brother of Rabbi Berekhiah asked: But then that of the New Moon should precede the ram which comes with it because it precedes [in Scripture.<sup>225</sup>] <sup>226</sup> Rabbi Abba Mari

said, you cannot do this; its *purification sacrifice* is defective<sup>227</sup>: *After the permanent elevation offering it shall be made, with its libation*; it made it lean on the permanent elevation offering.

Between the sacrifice of a man and the sacrifice of a woman, the man's sacrifice has precedence<sup>228</sup>. That is, if both were equal. But if one was a bull and the other a lamb, it is what Rebbi Phineas said in the name of Rebbi Hoshaia: A slave brings a bull and his master brings a bull, the slave's precedes the master's, as we have stated there: "If the bull of the Anointed and the bull of the community are standing, the Anointed's bull precedes the community's bull in all its ceremonies."<sup>229</sup>

215 From B; a necessary introduction to the following text.

216 This also is the reason given in the Babli (13a) for the precedence of a purification offering over a simultaneously presented elevation offering, both being most holy sacrifices.

217 *Lev.* 16:17. The argument really refers to the service of the Day of Atonement in its entirety, where the High Priest performs three acts of atonement, the first for himself and his family, the second for himself and the priests, and then the third for himself, the priests, and all of Israel. The priest performing the rite of atonement has to be purified himself before being able to serve others. (Tosephta *Horaot* 2:4, *Zevahim* 10:1).

218 Again because the priest has to act to present the king's gift.

219 Since he is the representative of the community.

220 Cf. Chapter 1, Notes 122,135. For the number of rams, cf. *Mishnah* 1:6.

221 While this is not indicated elsewhere, if the bull is identified as the bull prescribed in *Lev.* 4, the ram is attached to

a sacrifice whose blood is brought inside the Sanctuary and which, therefore, has precedence as the more holy sacrifice.

222 As will be explained later in this paragraph.

223 The bull of idolatry is defined as an elevation sacrifice which takes second place after a purification sacrifice (Note 216). The rules lead to an infinite loop.

224 The bull is prescribed in the first half of *Num.* 15:24, the ram in the second half.

225 The sacrifices for the Day of the New Moon are prescribed in *Num.* 28:11 (elevation sacrifices) and 28:15 (the purification sacrifice). This contradicts our rule from Note 216.

226 Added from B, not absolutely necessary.

227 The argument is very elliptic. The ram of idolatry follows the bull not really because it is mentioned later in the verse, but mainly because it is spelled defective, not as חטאת but only as חטת (Babli 13a, *Zevahim* 90b). But the purification offering of the special days is directly connected with the daily offerings which start the day in the sanctuary (*Num.*

28:15.)

228 If both are voluntary offerings of equal value. But an obligatory offering always has precedence over a voluntary one (*Tosephta* Zevahim 10:4).

229 The argument is a *non sequitur*. Some commentators want to emend the text, in that the slave brings a bull but his master a goat. While this connects to the preceding, it severs the connection to the statement of R. Phineas. As a matter of principle, an emendation is totally inadmissible since the text is confirmed not only by the two independent sources here but also by *Lev. rabba* 5(4) where the case of slave and master both bringing a bull follows a story about the merit of contri-

buted to the support of scholars. As the text is presented here, one wonders why the following stories are placed here and what connection they could have with the topic of the Mishnah. But *Lev. rabba*, an old text, shows that the case of slave and master is not a legal but a homiletic statement. There the argument is that the High Priest is the servant of the people; the Sanctuary is run only on behalf of the people. After the destruction of the Temple, the rabbinic establishment became the servant of the people, looking after their needs. Therefore, the rules of preference should be transferred from Temple service to the rabbinic establishment.

(48a line 44) מַעֲשֶׂה בִּירְבִי אֱלִיעֶזֶר וְרַבִּי יְהוֹשֻׁעַ וְרַבִּי עֲקִיבָה שֶׁעָלוּ לְחֹלֶת אֲנֹטְכִיָּא עַל עֶסֶק מִגִּבְתַּת חֲכָמִים. וְהָיָה תַּמָּן חָד אַבָּא יְהוּדָה עֲבִיד מִצָּה בְּעֵין טוֹבָה. פָּעַם אַחַת יָרַד מִכְּסִי וְרָאָה רְבוּתֵינוּ וְנִתְיַאֲשׁ מֵהֶן. עָלָה לוֹ לְבֵיתוֹ וּפְנֵי חוֹלְנִיּוֹת. אָמְרָה לוֹ אִשְׁתּוֹ. מִפְּנֵי מָה פְּנִיד חוֹלְנִיּוֹת. אָמַר לָהּ. רְבוּתֵינוּ כָּאֵן וְאִינִי יוֹדֵעַ מָה אֶעֱשֶׂה. אִשְׁתּוֹ שֶׁהִיָּתָה צְדָקָת מִמֶּנּוּ אָמְרָה לוֹ. נִשְׁתַּיִּירָה לָךְ שָׂדֶה אַחַת. לָךְ וּמִכּוֹר חֲצִיָּה וְתָן לָהֶן. הִלָּךְ וַעֲשֶׂה כֵן. וּבָא לוֹ אֶצֶל רְבוּתֵינוּ וְנָתַן לָהֶן. וְנִתְפַּלְלוּ עָלָיו רְבוּתֵינוּ. אָמְרוּ לוֹ. אַבָּא יְהוּדָה. הַקְדוֹשׁ בְּרוּךְ הוּא יִמְלֹא חֲסִדוֹנוֹתֶיךָ. עִם כְּשֶׁהָלַכְנוּ לָהֶם יָרַד לְחֹרֶשׁ בְּתוֹף חֲצִי שָׂדֶה. עִם כְּשֶׁהוּא חוֹרֵשׁ בְּתוֹף חֲצִי שָׂדֶהוּ שֶׁקָּעָה פָּרְתוֹ וְנִשְׁבְּרָה. יָרַד לְהַעֲלוֹתָהּ וְהָאִיר הַקְדוֹשׁ בְּרוּךְ הוּא עֵינָיו וּמִצָּא סִימָא. אָמַר. לְטוֹבָתִי נִשְׁתַּבְּרָה רָגֶל פָּרְתִי. וּבִהְדוֹרֵת רְבוּתֵינוּ שָׁאֲלוֹן עָלָיו. אָמְרִין. מָה אַבָּא יְהוּדָה עֲבִיד. אָמְרִין. מֵאֵן יָכִיל חֲמִי אִפּוּי דְאַבָּא יְהוּדָה. אַבָּא יְהוּדָה דְתוֹרֵי אַבָּא יְהוּדָה דְגַמְלוּי אַבָּא יְהוּדָה דְחִמּוּרֵי. תּוֹר אַבָּא יְהוּדָה לְכֻמוֹת שָׁהִיָּה וּבָא אֶצֶל רְבוּתֵינוּ וְשָׁאֵל בְּשִׁלּוּמָן. אָמְרִין לָהּ. אַבָּא יְהוּדָה עֲבִיד. אָמַר לָהֶן. עֲשֵׂתָה תְּפִילָתְכֶם פִּירוֹת וּפִירֵי פִירוֹת. אָמְרוּ לוֹ. אַף עַל פִּי שֶׁנִּתְּנוּ אַחֲרֵים יוֹתֵר מִמֶּךָ בְּרֵאשׁוֹנָה אוֹתָךְ כְּתִבְנוּ רֹאשׁ טִימוֹס. נְטִלוּהוּ וְהוֹשִׁיבוּהוּ אֶצְלָם וְקִרְאוּ עָלָיו הַפְּסוּק הַזֶּה מִתָּן אָדָם יִרְחִיב לוֹ וּלְפָנָי גְּדִלִים יִנְחִינוּ:

1 ביר' בר' עקיבה | עקיבא 2 יהודה | יודן עבד | עבד וראה | וראה את 3 מהן | מהם 4 נשתתירה | נשתתיר 5 לך | - | להן | להם ועשה כן. ובא אצל רבותינו | הלך ומכר חציה | להן | להם 6 עליו רבותינו. אמרו לו | ואמרו יהודה | יודן 7 חצי | - | פרתו | רגל פרתו 8 לטובתי | לטובתו 9 פרתי | פרתו 9 ובהדורת | ובחזירת יהודה עבד | יודן עבד מאן | מי 10 יהודה | יודן (4x) 11 ובא | בא יהודה עבד | יודן עבד 13 עליו הפסוק | את המקרא

<sup>230</sup>It happened that Rabbi Eliezer, Rabbi Joshua, and Rabbi Aqiba went to the dunes of Antiochia on the occasion of fundraising for the rabbis<sup>231</sup>. There was there a certain Abba Jehudah who gave alms generously. Once he lost his property, he saw our teachers and gave up hope about them. He went home looking sickly. His wife asked him, why are you looking sickly? He told her, our teachers are here and I do not know what I could do. His wife, who was even more pious than he, told him: You have a field left; go, sell half of it, and give to them. He went and did so, came to our teachers and gave them. Our teachers prayed for him and said to him, Abba Jehudah, the Holy One, praise to Him, may fill your want. After they left, he went to plough his half of the field. When he was ploughing in his half of the field, his cow sank down and broke [its leg]<sup>232</sup>. He went to lift her up when the Holy One, praise to Him, enlightened his eyes and he found a treasure. He said, my cow's leg broke for my benefit. When our teachers returned, they inquired about him. They asked, how is Abba Jehudah doing? They answered, who can appear before Abba Jehudah? Abba Jehudah of his cattle, Abba Jehudah of his camels, Abba Jehudah of his donkeys! Abba Jehudah had returned to his former self; he came to our teachers to greet them. They asked him, how is Abba Jehudah doing? He told them, your prayer brought result and compound results. They told him, even though others had given more than you the last time, we wrote you on top of the honor list<sup>233</sup>. They took him, made him sit with them, and recited for him this verse<sup>234</sup>: *The gifts of a man put him at ease; in front of great ones they will make him rest.*

רבי חייה בר בא עבד פסיקא בהין בית מדרשא דטיבריא. והוון תמן מן אילין דבר  
סילני. ופסק חזא ליטרא דהב. נטלו רבי חייה רבה והושיבו אצלו וקרא עליו הפסוק הזה  
מתן אדם ירחיב לו וגו'.

1 חייה | B חייה בהין | B בהין | מן | B חד מן 2 חייה רבה | BG חייה בר בא

Rebbi Ḥiyya bar Abba held a pledging for a certain house of study at Tiberias. There was one there of the family of Bar Silene, who pledged a pound of gold. (The Elder Rebbi Ḥiyya) [Rebbi Ḥiyya bar Abba]<sup>235</sup> took him, made him sit with him, and recited for him this verse: *The gifts of a man put him at ease*, etc.

רבי שמעון בן לקיש עאל לבוצרה והנה תמן חד רמיא. חס ליה דלא הנה רמיא אלא שקה מרמה במצוות. והנה חמי כמה דציבורא פסק והוא פסיק לקבליה. נטלו רבי שמעון בן לקיש והושיבו אצלו. וקרא עליו הפסוק הזה מתן אדם ירחיב לו וגו'.

1 רמיא | B רב בון דמיחס ליה חס ליה דלא | B לא רמיא | B רבון רמיא רמיא | G רמי 2 מרמה | GB מרמי כמה | GB מה 3 וגו' | B ולפני גדולים ינחנו

<sup>236</sup>Rebbi Simeon ben Laqish went up to Bostra. Over there was a cheater. God forbid that he was a cheater, but he cheated in charity. He looked how much the community pledged, and he pledged the same amount<sup>237</sup>. Rebbi Simeon ben Laqish took him, made him sit with him, and recited for him this verse: *The gifts of a man put him at ease*, etc.

230 These texts are also in *Lev. rabba* 5(4); the first one only also in *Deut. rabba* 4(8). Here also starts a Genizah fragment of half-lines (G) edited by L. Ginzberg (*Yerushalmi Fragments from the Genizah*, New York 1909, pp. 281-286.)

231 Projecting third and fourth Cent. fundraising into a story dated at the first. It is a typically oriental story where people do not get rich by commercial success but by finding a treasure.

232 Added from B.

233 Greek *tīmos*, an old poetic form of *τιμή* "esteem, value, honor" appearing also in late prose texts. The talmudic form supports late classical Greek lexicography; cf. also E. and H.

Guggenheimer, *Talmudic Evidence for Greek Spelling*, *Studi Classici* in Onore di Quintino Cataudela, vol. 4, Catania 1972, pp. 71-72.

234 *Prov.* 18:16.

235 The impossible text in parentheses is from L; the correct text in brackets is from B.

236 In B, the last two paragraphs are in the inverse order. This is the chronologically correct order, teacher followed by student. Chronological consistency is one of the hallmarks of the Babli.

237 His cheating was that he gave the minimum amount necessary to maintain his standing as the richest man around.

(48a line 69) האיש קודם לאשה כול'. עד פדון בשהיה זה להחיות וזה להחיות זה לכסות וזה לכסות. הרי שהיה זה להחיות וזה לכסות. נישמענה מן הדא דמר רבי יהושע בן לוי בשם רבי אטיגנס. כסות אשת חבר וחי עם הארץ. כסות אשת חבר קודמת לחי עם הארץ מפני כבודו של חבר. לא מר אלא כסות אשת חבר כחי חבר. אבל אם היה זה להחיות וזה לכסות אותו שלחיות קודם.

1 האיש קודם לאשה כול' | G הל' כול' | B להחיות וכו' להחיות | B לכסות 2 הרי שהיה | B - G היה הדא | B הדה 3 אטיגנס | B חניא בן אטיגנס (supported by G) 4 מר | B אמר | B כחי חבר | B וחי עם הארץ | G בחי חבר

“The man precedes the woman,” etc. So far if each one was to be kept alive or each one was for clothing. If one was to be kept alive and the other for clothing<sup>238</sup>? Let us hear from the following, as Rebbi Joshua ben Levi said in the name of Rebbi [Hanina ben] Antigonos, the clothing of the wife of a fellow<sup>240</sup> and the life of a vulgar; the clothing of the wife of a fellow has precedence over the life of a vulgar because of the dignity of the fellow. He only said that the clothing of the wife of a fellow was like the life of the fellow<sup>241</sup>. But if there was one to be kept alive and one for clothing, the one to be kept alive has precedence.

238 The question really is raised about the livelihood of a woman and the clothing of a man.

239 From B; no R. Antigonos is known from other sources. G is defective here but the length of the lacuna supports the reading of B.

240 Here “fellow” and “vulgar” are the technical terms defined in the Introduction to Tractate Demai, respectively of a person strictly keeping all rules of levitic

purity (long after the destruction of the Temple) and tithes, and one disregarding the rules of purity and lax in the observance of the rules of tithes.

241 B has a different text: “He only said between the clothing of the wife of a fellow and the livelihood of a vulgar.”

The best is the reading of G: “The clothing of the wife of a fellow during the lifetime of the fellow.”

אָבִידֶת וְאָבִידֶת אָבִי שְׁלוֹ קוּדְמָת. אָבִידֶתוֹ וְאָבִידֶת רַבּוֹ שְׁלוֹ קוּדְמָת. אָבִידֶת (48a line 75)  
אָבִי וְאָבִידֶת רַבּוֹ שְׁלֶרְבּוֹ קוּדְמָת. שְׁאָבִי הַבִּיאוֹ לַחַי הָעוֹלָם הָאֵל. וְרַבּוֹ שְׁלִמְדוֹ חֲכָמָה הַבִּיאוֹ  
לַחַי הָעוֹלָם הַבָּא. וְרַבּוֹ שְׁלִמְדוֹ מְשֻׁנָּה לֹא רַבּוֹ שְׁלִמְדוֹ מִקְרָא. אִם הָיָה אָבִי שְׁקוּל כְּרַבּוֹ אָבִי  
קוּדָם.

1 אבִידֶתוֹ | B אבִידֶתוֹ וְאָבִידֶת | B אבִידֶתוֹ | B אבִידֶתוֹ וְאָבִידֶת | B אבִידֶתוֹ | B אבִידֶת | B אבִידֶת  
אבִידֶת | B אבִידֶת קוּדְמָת | GB קוּדְמָת לְשֵׁל אָבִי הָעוֹלָם | B - שְׁלִמְדוֹ | B שְׁלִמְדוֹ | 3 שְׁלִמְדוֹ | B  
שְׁלִמְדוֹ מְשֻׁנָּה | B חֲכָמָה | אִם | B וְאִם | B כְּנֶגֶד רַבּוֹ<sup>242</sup>

מָה הוֹעִיל. אָמַר רַבִּי יוֹסִי בִּירְבִּי בִּין. כְּשֶׁהָיָה חָצִי תִלְמוּדוֹ מִזָּה וְחָצִי תִלְמוּדוֹ מִזָּה. אָבִידֶת  
אָבִי שְׁחָצִי תִלְמוּדוֹ מִמֶּנּוּ וְאָבִידֶת אָמִי גְרוּשָׁה מֵאָבִי מִי קוּדָם. אָבִי הוּא שְׁיָקְדוּם אוֹ עַד  
שְׁיָהָא כָּל־תִּלְמוּדוֹ מִמֶּנּוּ. אָבִידֶת רַבּוֹ שְׁחָצִי תִלְמוּדוֹ הֵימִינוּ וְאָבִידֶת אָמִי גְרוּשָׁה מֵאָבִי מִי  
קוּדָם. רַבּוֹ הוּא שְׁיָקְדוּם אוֹ עַד שְׁיָהָא כָּל־תִּלְמוּדוֹ הֵימִינוּ. אָבִידֶתוֹ וְאָבִידֶת אָבִי וְאָבִידֶת אָמִי  
וְאָבִידֶת רַבּוֹ. שְׁלוֹ קוּדָם לְאָבִי וְאָבִי לְאָמִי וְאָמִי לְרַבּוֹ. וְלֹא מִתְּנִיתָהּ הִיא. הָאִישׁ קוּדָם לְאִשָּׁה  
לְהַחֲיוֹת וּלְהַשִּׁיב אֲבָדָה. סָבְרִין מִימֶר. בְּשָׁאִין רַבּוֹ שָׁם. אֲתָא מִימֶר לָךְ. וְאָפִילוֹ רַבּוֹ שָׁם. הוּא  
וְאָמִי וְרַבּוֹ וְאָבִי עוֹמְדִים בְּשָׁבִי. הוּא קוּדָם לְאָמִי וְאָמִי לְרַבּוֹ וְרַבּוֹ לְאָבִי. וְלֹא מִתְּנִיתָהּ הִיא.

הָאִשָּׁה קוֹדֶמֶת לָאִישׁ לְקָסוֹת וּלְהוֹצִיָּאָה מִבֵּית הַשָּׂבִי. סָבְרִין מִימֵר. בְּשָׂאִין רַבּוֹ נָשִׁים. אֲתָא מִימֵר לָךְ. וְאֶפִּילוּ רַבּוֹ נָשִׁים.

5 קודם | G קודמת 6 בשאין | G כשאין מימר | G מימור 7 בשבי | G בשיבי 8 השבי | G [ה]שיבי

“Between his lost property and his father’s lost property, his own has precedence. Between his lost property and his teacher’s lost property, his own has precedence. Between his father’s lost property and his teacher’s lost property, his teacher’s lost property has precedence, for his father brought him to the life of this world, but his teacher who taught him wisdom brought him to the life of the future world.”<sup>243</sup> The teacher who taught him (Mishnah) [wisdom]<sup>244</sup>, not the teacher who taught him Scripture<sup>245</sup>. “But if his father was his teacher’s equal, his father’s lost property has precedence.”

What does it help<sup>246</sup>? Rabbi Yose ben Rabbi Abun said, if half of his learning was from one and half of his learning from the other. His father’s lost property if half of his learning was from him and his mother’s lost property if she was divorced from his father, which has precedence<sup>247</sup>? Does his father’s have precedence or only if all his learning was from him? His teacher’s lost property if half of his learning was from him and his mother’s lost property if she was divorced from his father, which has precedence<sup>248</sup>? Does his teacher’s have precedence or only if all his learning was from him? His lost property, and his father’s lost property, and his mother’s lost property, and his teacher’s lost property. His own precedes his father’s, his father’s his mother’s, and his mother’s his teacher’s. Is that not a Mishnah, “the man precedes the woman to be kept alive and to return his lost property”? They wanted to say, if his teacher was not there<sup>249</sup>. He comes to tell you, even if his teacher was there. He, and his mother, and his teacher, and his father, were in captivity. He precedes his mother, his mother his teacher, and his teacher his father<sup>250</sup>. Is that not a Mishnah, “but the woman precedes the man for clothing and to be freed from captivity”? They wanted to say, if his teacher was not there. He comes to tell you, even if his teacher was there.

242 The remainder of the discussion of this part of Mishnah 8 is missing in B.

243 Mishnah *Bava Mesi’a* 2:13, Note 135.

244 The text in parentheses is from L, the one in brackets from B. The text of B is the one from the Mishnah, the one of L can be justified as text of the Tanna R.



Yose in the following paragraph.

245 How does the fact that his father was as learned as his teacher change the argument of the Mishnah?

246 As long as his mother was married to his father, his father has precedence since his wife also is bound to honor him (Mishnah *Keritut* 6:9). But the divorced mother in all respects is equal to the father (Babli *Qidduṣin* 31a). If the father was also the teacher then he had precedence as teacher. But if he was only a partial

teacher, is his claim strong enough or does the son still have the choice whom to help first?

248 Is the teacher who taught him half his learning the teacher in the sense of the Mishnah or not?

249 The language implies that the statements in question are tannaitic, similar to the first part of Tosephta *Horaiot* 2:5.

250 Babli 13a.

(48b line 15) אַי זְהוּ רַבּוֹ שְׁלִימְדוֹ חֲכָמָה. כָּל־שִׁפְתָּח לּוֹ תַּחֲלִיָּה. דְּבָרֵי רַבִּי מֵאִיר. רַבִּי יוֹדָה אוֹמֵר. כָּל־שְׂרֹב תִּלְמִידוֹ מִמֶּנּוּ. רַבִּי יוֹסִי אוֹמֵר. כָּל־שֶׁהָאִיר עֵינָיו בְּמִשְׁנָתוֹ. אֶתָּא רַבִּי אֲבָהוּ בְּשֵׁם רַבִּי יוֹחָנָן. הִלְכָּה כְּמִי שֶׁהוּא אוֹמֵר. כָּל־שְׂרֹב תִּלְמִידוֹ הֵימִינָּה. וְלָמָּה לֹא פִתַּר לָהּ כְּרַבִּי יוֹדָה. אֵיתָ תַּנְיִי תַנִּי וּמַחֲלִי. רַבִּי לְעֶזֶר קָרַע עַל שִׁפְתָּח לּוֹ תַּחֲלִיָּה. שְׂמוּאֵל חָלַץ עַל שֶׁהָאִיר עֵינָיו בְּמִשְׁנָתוֹ. וְכֵּה הָאִיר עֵינָיו בְּמִשְׁנָתוֹ. אָמַר רַבִּי יוֹסִי בִּירְבִּי בּוֹן. מִפְּתָח אֶחָד יוֹרֵד לְאַמַּת בֵּית הַשִּׁיחִי וְאֶחָד פּוֹתֵחַ כִּיּוֹן; וְכֵּה אֶחָד יוֹרֵד לְאַמַּת בֵּית הַשִּׁיחִי. שֶׁהִנֵּה שׁוֹחֵחַ אִמָּה עַד שְׁלֹא יִפְתָּח. רַבִּי תַנְיִי הָהָה מִיִּסְתַּמֵּיךְ בְּרַבִּי חִיָּה בַּר בָּא דְּצִיפְרִין. חָמָא כָּל־עַמָּא פְּרִי. אָמַר לֵיהּ. לָמָּה כָּל־עַמָּא פְּרִי. אָמַר לֵיהּ. רַבִּי יוֹחָנָן יָתִיב דְּרִישׁ בְּבֵית מִדְּרָשָׁא דְּרַבִּי בְּנִיָּה וְכָל־עַמָּא פְּרִי מִשְׁמַעֲיָנָהּ. אָמַר. בְּרִיד רַחֲמָנָא דְּחָמִי לִי פִירִין עַד דְּאָנָּא בְּחַיִּים. וְכָל־אֲגַדְתָּא פְּשֻׁטִית לֵיהּ חוּץ מִמִּשְׁלֵי וְקוֹהֶלֶת.

1 שלימדו | גילמדו | יודה | גילמדו | 2 אבהו | גילמדו | 3 שרוב | גילמדו | 4 שרוב | גילמדו | 5  
האיר | גילמדו | במשנתו | גילמדו | 6 כיון | גילמדו | ומה | גילמדו | השיח | גילמדו | פותח  
כיון | 7 חנניה | גילמדו | בר' | גילמדו | בר' | גילמדו | חנניה | גילמדו | 8 פריי | גילמדו | פרייה  
מדרשא | גילמדו | מדרשה | גילמדו | בניה | גילמדו | 9 דאנא בחיים | גילמדו | דאנא בחיין | גילמדו | כל אגדתה

<sup>251</sup>“Who is the teacher who taught him wisdom? The one who taught him first, the words of Rabbi Meïr. Rabbi Jehudah said, the one from whom he received most of his instruction. Rabbi Yose said, anyone who explained a Mishnah to him.”<sup>252</sup> Rabbi Abbahu came in the name of Rabbi Johanan: Practice follows him who said, the one from whom he received most of his instruction. Why did he not explain that this follows Rabbi Jehudah? There are Tannaïm who state it switched<sup>253</sup>. Rabbi Eleazar tore his garment for his first teacher. Samuel took off [his phylacteries] for one who had explained a Mishnah to him<sup>254</sup>. What Mishnah did he explain to him? Rabbi Yose ben

Rebbi Abun said, “for one key he has to go down to his arm-pit and one opens straight.”<sup>255</sup> What means “for one he has to go down to his arm-pit,” he had to lower his hand under his arm-pit until it could be opened<sup>256</sup>.

Rebbi Hanania<sup>257</sup> was leaning on Rebbi Hiyya bar Abba in Sepphoris, when he saw everybody running. He asked him, why is everybody running? He answered, Rebbi Johanan is sitting preaching in Rebbi Banaia’s house of study and everybody is running to hear him. He said, praised be the Merciful Who showed me fruits while I am alive. In *Agadah* I explained him everything except Proverbs and Ecclesiastes<sup>258</sup>.

251 For the following, cf. *Bava mesia`* 3:13, Notes 136-145; *Mo`ed qatan* 3:7.

252 Tosephta 2:5, *Bava mesia`* 2:30.

253 The name tradition in the Tosephta is not certain.

254 As a sign of mourning. The phylacteries are identified as the “splendor” which Ezechiel had to remove in mourning, *Ez.* 24:17. The text in *Bava mesia`* parallels the Babli (*Bava mesia`* 33a) in reporting that he tore his garment.

255 Mishnah *Tamid* 3:6.

256 The doors of the Temple Hall could be opened only from the inside. When the door was locked, a Cohen entered from a small side door which led to a guard room. The lock of this side door was hidden; the Cohen had to take the key, lower his entire arm to the arm-pit behind the partition wall and only then could insert the key. *Tamid* 30b.

257 With G read “Hanina”.

258 This proves that even a teacher of homiletics has the rank of teacher.

48b line 28) שְׁנֵיהֶם עוֹמְדִין בְּקֶלֶן הָאִישׁ קוֹדֵם לְאִשָּׁה: לָמָּה. שֶׁהָאִשָּׁה דִּרְבָּה לָכֵן וְהָאִישׁ אֵין דִּרְבָּה לָכֵן. מַעֲשֵׂה בִּירְבִי יְהוֹשֻׁעַ שֶׁעָלָה לְרוֹמִי. אָמְרוּ עָלָיו עַל תִּינוּק אֶחָד יְרוּשְׁלָמִי שֶׁהָיָה אֲדָמוּנִי עִם יָפָה עֵינַיִם וְטוֹב רֹאִי וְקוֹוֹצוֹתָיו מְסוּדָרוֹת לוֹ תִּלְתָּלִים. וְהוּא עוֹמֵד בְּקֶלֶן. וְהָלַךְ רַבִּי יְהוֹשֻׁעַ לְבֻדְקוֹ. כִּיֹּן שֶׁהִגִּיעַ לְפִתְחוֹ נִעְנָה רַבִּי יְהוֹשֻׁעַ וְאָמַר לוֹ. מִי־נָתַן לְמַשִּׁיסָה יַעֲקֹב וְיִשְׂרָאֵל לְבֻזָּזִים הָלֹא יִי. נִעְנָה הַתִּינוּק וְאָמַר לוֹ. זֶי חֲטֵאוֹ לֹא וְלֹא־אָבִי בְּדִרְבִּי הָלוֹךְ וְלֹא שֶׁמָּעַר בְּתוֹרָתוֹ: מִדָּ זָלְגוּ עֵינָיו דְּמָעוֹת וְאָמַר. מַעֲיֵד אֲנִי עָלֶי אֶת הַשָּׁמַיִם וְאֶת הָאָרֶץ שֶׁאֵינִי זֶי מִכָּאן עַד שְׂאֲפָדָנִי. וּפָדָא בְּמִמּוֹן הַרְבֵּה וְשִׁילְחוּ לְאָרֶץ יִשְׂרָאֵל. וְקָרָא עָלָיו הַפְּדִיק הָיָה בְּנִי צִיּוֹן הַיְקָרִים וּגְרִי.

1 שְׁנֵיהֶם | G | בּוֹמֵן שְׁנֵיהֶם | שהאשה | G | האשה 2 בִּיר' | G | בר' 4 לְבֻדְקוֹ | G | לְבֻדְקוֹ | כִּיֹּן | G | כִּיֹּן  
לְפִתְחוֹ | G | לְפִתְחוֹ לְמַשִּׁיסָה | G | לְמַשִּׁיסָה 5 נִעְנָה | G | נִעְנָה 6 מִיד | G | מִיד עָלֵי | G | עָלֵי

“If both of them stand in [a house of] ill repute, the man precedes the woman.” Why? For a woman it is natural, for a man it is not natural<sup>210</sup>.

<sup>259</sup>It happened that Rabbi Joshua went to Rome. They informed him about a child from Jerusalem who was reddish with beautiful eyes, good to look at, and his locks ordered in curls<sup>260</sup>, standing in [a house of] ill repute. Rabbi Joshua went to check him out. When he came to the door, Rabbi Joshua started and said, *who gave Jacob to be booty and Israel to plunderers, is that not the Eternal*<sup>261</sup>? The child answered him and told him, *it is because we sinned against Him; they did not want to walk in His ways and did not listen to His teaching*<sup>261</sup>. Immediately his eyes were flowing with tears and he said, I take as my witnesses heaven and earth that I shall not move from here until I buy his freedom. He bought his freedom for much money, sent him to the Land of Israel, and quoted for him this verse, *the dear children of Zion*<sup>262</sup> etc.

259 Tosephta 2:5,6; *Thr. rabbat* 4(4); *Is. 17:42, Cant. 5:11.*

Babli *Gittin* 58a.

261 *Is. 42:24.*

260 A combination of biblical adjectives,

262 *Thr. 4:2.*

48b line 37) כְּהֵן קוֹדֵם לְלוֹי לְיִשְׂרָאֵל וְיִשְׂרָאֵל לְמִמְזֵר כּוּל'. חָכָם קוֹדֵם לְמִלְכָּךְ. מִלְכָּךְ קוֹדֵם לְכֹהֵן גָּדוֹל. כְּהֵן גָּדוֹל קוֹדֵם לְנָבִיא. נָבִיא קוֹדֵם לְמִשְׁוֹחַ מִלְחָמָה. מִשְׁוֹחַ מִלְחָמָה קוֹדֵם לְרֹאשׁ מִשְׁמֶר. רֹאשׁ מִשְׁמֶר קוֹדֵם לְבֵית אָב. בֵּית אָב קוֹדֵם לְמַרְכָּל. וְהַמַּרְכָּל קוֹדֵם לְגִיזְבָּר. גִּיזְבָּר קוֹדֵם לְכֹהֵן הַדִּיּוֹט. כְּהֵן הַדִּיּוֹט קוֹדֵם לְלוֹי לְיִשְׂרָאֵל. יִשְׂרָאֵל לְמִמְזֵר. מִמְזֵר לְנִתְיָן. נִתְיָן לְגֵר. גֵּר לְעֶבֶד מְשֻׁחָרֵר. אֵימָתִי. בְּזִמְן שְׂכוּלָן שְׂוִין. אֲבָל אִם הִיא מִמְזֵר תִּלְמִיד חָכָם וְכֹהֵן גָּדוֹל עַם הָאָרֶץ. מִמְזֵר תִּלְמִיד חָכָם קוֹדֵם לְכֹהֵן גָּדוֹל עַם הָאָרֶץ:

1 כהן | B הלכה כהן<sup>263</sup> | לוי לישראל ישראל לממזר כול' | B וכו' | The rest is missing in B | 2 לכהן | G  
לכוהן כהן | G וכוהן | 3 לבית | G לראש בית | בית | G ראש בית | למרכל | G למרכל | והמרכל | G מרכל  
5 אימתי | G אמתי | שכולן שוין | G [ש]כולם שווים | חכם | G חכמין | וכהן | G וכוהן | 6 חכם | G חכמין  
לכהן | G לכוהן

"A priest precedes a Levite, a Levite an Israel, an Israel a bastard," etc.

<sup>264</sup>"A Sage has precedence over the king, the king has precedence over the High Priest, the High Priest has precedence over a prophet, a prophet has precedence over the Anointed for War, the Anointed for war has precedence over the head of the watch<sup>265</sup>, the head of the watch has precedence over the [head of a] clan<sup>266</sup>, the [head of a] clan has precedence over the executive officer<sup>267</sup>, the executive officer has precedence over the treasurer<sup>268</sup>, the treasurer has precedence over a common priest, a common priest has precedence over a Levite, a Levite over an Israel, an Israel over a bastard, a

bastard over a Gibeonite, a Gibeonite over a proselyte, a proselyte over a manumitted slave. When? If they are all equal. But if the bastard was learned and the High Priest ignorant, the learned bastard precedes the ignorant High Priest.”

263 A Note that here starts the discussion of Mishnah 9.

264 Cf. Tosephta 2:10.

265 Of one of the 24 watches into which the Cohanim were organized (*IChr.* 24), each of which served for one week in the Temple.

266 A clan of priests belonging to one of the watches. The correct reading here is

that of G, confirmed later also by L (lines 61ff.)

267 The permanent member of the Temple staff who organizes the daily routine. As a paid official he comes after the volunteers who do the actual officiating. In Babylonian sources, his title is spelled אמרכל.

268 The Temple treasurer.

חָכָם קוֹדֵם לַמֶּלֶךְ. חָכָם שְׂמֵת אֵין לָנוּ כִּיּוֹצֵא בּוֹ. מֶלֶךְ שְׂמֵת כָּל־יִשְׂרָאֵל רִאיוֹן לַמַּלְכוּת. (48b line 45)

1 חכם | G וכן חכם ראיון | G [ר]אויים

“A Sage has precedence over the king.” If a Sage dies, we do not have a replacement<sup>269</sup>. If a king dies, all of Israel are qualified for the kingdom<sup>270</sup>.

269 This restricts the statement to a truly outstanding Sage. In G, this is not a reference to the text of the Mishnah but a continuation of the statement that a learned bastard has precedence over the boorish High Priest, “and similarly, a Sage has precedence over a king.” The text of L is that of Tosephta 2:8.

270 This legitimizes non-Davidic kings.

The Babli (13a) agrees. The current printed Babli editions were adulterated by a censor who inserted “king of Israel”, to preserve the superiority of the ruler by the grace of God. Already Maimonides in his Commentary to the Mishnah notes that all the precedences enumerated in this Mishnah are ethical only, rather than practical.

אָמַר רַבִּי יוֹחָנָן. כָּל־אוֹתָן אֲרָבָעִים יוֹם שָׁעָשָׂה מִשָּׁה בָּהָר לָמַד תּוֹרָה וַיִּמְשְׁכָהּ. וַיְבַסּוּף נִיתָנָה לוֹ בְּמִתְנָה. כָּל־כֹּף לָמָּה. בְּשִׁבִּיל לְהַחֲזִיר אֶת הַטִּיפָּשִׁים.

1 אותן | B אותם למד | B היה למד G היה למיד 2 ניתנה | B נתנו בשביל | G בישביל הטיפשים | B הטיפשים

Rebbi Johanan said, all these 40 days which Moses spent on the Mountain, he studied Torah and forgot it. At the end it was given to him as a gift. Why so much? To return the stupid ones<sup>271</sup>.

271 To encourage people who do not understand a subject to return to study; they can always hope that at the end the understanding will be given to them in their sleep. The argument would be better

if addressed to scientists who fail to solve a problem; if they persevere they have the hope to finally receive the answer from Heaven in their sleep.

(48b line 49) כְּדִן דְּמִן רַבִּי סִימּוֹן בְּרַ זְבִיד אָעַל רַבִּי הִילֵי וְאַפְטֵר עָלוּ. כִּי יֵשׁ לְכַסֵּף מוֹצֵא וְגו' בְּרִזְל מַעֲפָר יִקָּח וְגו'. אֵילוּ אִם אֶבְדּוּ לֹשׁ לָנוּ חֲלִיפִין. אֲבָל תִּלְמִיד חֶכֶם שְׁמַת מִי מְבִיא לָנוּ כִּיּוֹצֵא בּו'. וְהַחֲכָמָה מֵאִיין תִּימָצֵא וְגו'. וְנַעֲלָמָה מְעִינָה כְּלָחִי וְגו'. אָמַר רַבִּי לִוי. מָה אִם אֲחִי יוֹסֵף עַל שְׁמִצָּאוֹ מְצִיאתָה יָצָא לִיכֶם. דְּכָתִיב וַיֵּצֵא לָכֶם. אָנוּ שְׁאֶבְדְּנוּ רַבִּי סִימּוֹן בְּרַ זְבִיד עַל אַחַת כְּמָה וְכְמָה.

1 בר | G בר' | הילי | B - עלוי | B עלוי לגוי וגו' | G [ו]הב יזיקו 2 וגו' | B - G [ו]אבו יצוק נחושה אילו | B אלו חליפין | G חליפין שמת | B - כיוצא בו | B חליפתו מי יביא לנו תמורתו מי יביא לנו כיוצא בו G מביא 3 וגו' | B ואי זה מקום בינה וגו' | GB ומעוף השמים נסתרה על | B על ידי 4 ליבם | B לבם יוחרדו 5 וכמה | G ואחת כמה

<sup>272</sup>When Rebbi Simeon ben Zevid died, Rebbi Illai rose and eulogized him. *But silver has a source*<sup>273</sup>, etc. *Iron is taken from dust*<sup>274</sup>, etc. Those, if they are lost, have replacement. But a scholar who died, who can bring us one similar to him? *Wisdom, where can it be found*<sup>275</sup>, etc. *It is hidden from the eyes of all living*<sup>276</sup>, etc. Rebbi Levi said, if the brothers of Joseph lost their spirit because they found a find, as it is written, *they lost their spirit*<sup>277</sup>, we, who lost Rebbi Simeon bar Zevid, so much more<sup>278</sup>!

272 The homily here is a considerably shortened version of one in *Berakhot* 1:8 (5c l. 29; Notes 322-324) where R. Illai (La) notes that 4 useful things mentioned in *Job* can be replaced when lost. Text B has the full quotes but still lacks the necessary introduction. The homily of R. Levi is unchanged.

273 *Job* 28:1.

274 *Job* 28:2.

275 *Job* 28:20.

276 *Job* 28:21.

277 *Gen.* 42:28.

278 Note in G the unusual form אַחַת כְּמָה על אַחַת כְּמָה for the common אַחַת כְּמָה וְכְמָה “so much more”.

(48d line 54) מִלְּךָ קוֹדֵם לְכֹהֵן גָּדוֹל. דְּכָתִיב וְהִרְכַּבְתָּם אֶת־שֹׁלֹמֹה בְּלִי וְגו'. כֹּהֵן גָּדוֹל לְנָבִיא. דְּכָתִיב וּמִשָּׁח אֹתוֹ שֶׁם צִדֹק הִכְלֹו וְנָתַן הַנָּבִיא לְמִלְכָּד. הַקֹּדֵם צִדֹק לְנָתַן. רַבִּי יוֹנָה בְּשֵׁם רַבִּי חֲמַאי בַּר חֲנִינָה. נָבִיא מְכַפֵּת יָדָיו וְרָגְלָיו וְיוֹשֵׁב לוֹ בִּפְנֵי כֹהֵן גָּדוֹל. וּמָה טַעְמָהּ. שֶׁמַּעֲלָא יְהוֹשֻׁעַ | הִכְלֹו הַגָּדוֹל אֶתְהָ וְרִיעִיד הַיּוֹשֵׁבִים לְפָנָיִד. זְכוֹל יְהוֹ הַדִּיּוּטוֹת. תִּלְמִיד לֹמֵר כִּי־אֲנִישׁ מוֹפֵת | הַמָּה. וְאִין מוֹפֵת אֵלָא נְבוּאָה. הִיד מַה דְּתִימֵר וְנָתַן אֵלָיִד אֹת אִין מוֹפֵת:

1 לכהן | G לכוהן דכת' | B שנאמר וגו' כהן גדול לנביא דכת' | B על הפרדה אשר לי 2 למלך | B - יונה  
| B הונא 3 חמאי | G חמה חנינה | B חנינא מכפת | B מכפר G מכפית כהן | G כוהן טעמי' | B טעם  
4 וריעיד | GB וריעך יהו הדיוטית | B הדיוטות היו 5 היך מה | GB כמה דתימר | G דתמר

<sup>279</sup>The king has precedence over the High Priest, as it is written: *You shall let my son Solomon ride*<sup>280</sup>, etc. The High Priest over the prophet, as it is written: *There, Sadoq the Priest and Nathan the Prophet shall anoint him as king*<sup>281</sup>, etc. He mentioned Sadoq before Nathan. Rabbi Jonah in the name of Rabbi Hama bar Hanina: The prophet folds his hands and feet and sits before the High Priest<sup>282</sup>. What is his reason? *Listen, Joshua the High Priest, you and your friends who are sitting before you*<sup>283</sup>. I could think that they were common people; the verse says, *because they are men of miracle*, and “miracle” only means prophecy, as you say, *and he gave you a sign or a miracle*<sup>284</sup>.

279 Tosephta 2:9, Babli 13a.

his feet folded under him.

280 *1K.* 1:33.

283 *Zach.* 3:8.

281 *1K.* 1:34.

284 *Deut.* 13:2.

282 He sits on the floor or the carpet with

(48b line 61) נָבִיא קוֹדֵם לְמִשּׁוּחַ מִלְחָמָה. מִשּׁוּחַ מִלְחָמָה קוֹדֵם לְרֹאשׁ מִשְׁמֵר. רֹאשׁ מִשְׁמֵר קוֹדֵם לְרֹאשׁ בֵּית אָב. רֹאשׁ בֵּית אָב קוֹדֵם לְמִרְכָּל. וְהַמִּרְכָּל קוֹדֵם לְגִיזְבָּר. גִּיזְבָּר קוֹדֵם לְכֹהֵן הַדִּיּוּט. כֹּהֵן קוֹדֵם לְלֵוִי. לֵוִי לְיִשְׂרָאֵל. (וְיִשְׂרָאֵל לְמִמְזָר). לֹא הוּא לֵוִי הוּא. אָמַר רַבִּי אֲבוּן. בְּשַׁעַת הַדִּיּוּט שָׁנָה. אָמַר רַבִּי אֲבוּן. גַּר וּמִשּׁוּמֵד מְשׁוּמֵד קוֹדֵם מִפְּנֵי מַעֲשֵׂה שְׂאִירָע. מִפְּנֵי מַה הַכֹּל רָצִין אַחֵר הַגִּיּוּרִת וְאִין הַכֹּל רָצִין אַחֵר מִשּׁוּחֶרֶת. שֶׁהַגִּיּוּרִת בְּחֻזְקָת מִשְׁתַּמְרֵת וּמִשּׁוּחֶרֶת בְּחֻזְקָת הֶבְרָה. וּמִפְּנֵי מַה הַכֹּל רָצִין אַחֵר הַעֲכָבָר. מִפְּנֵי שֶׁעֲסָקוּ רַע עִם הִבְרִיּוֹת. אָמַר רַבִּי יוֹחָנָן. אֵל תִּאֲמִין בְּעֶבֶד עַד שֶׁשָּׂה עֶשֶׂר דּוֹר. בָּא יִשְׁמַעְאֵל בֶּן־נְתַנְיָה בֶּן־אֱלִישָׁמַע מִזֶּרַע הַמְּלוּכָה וַיִּכָּה אֶת־גְּדָלְיָהוּ בְּמַצָּפָה.

2 למרכל | G למרכיל לגיזבר | GB לגובר גיזבר | GB גזבר 3 כהן | B כהן הדיוט לממור | B קודם  
לממור הוא. | B לא הוא ישראל G הוא ישראל אבון | B אבין 4 שני | B שניני אבון | B בון ומשומד | B  
משומד שאירע | G שארע 5 רצין | G רצים (2X) משוחררת | המשחררת ומשוחררת | G ומשוחררת 6

ומפני B מפני רצין אחא העכבר GB שואלין על העבד עם G בין מפני B - אמ' B ואמר 7  
תאמין B תאמן ששה G שישה נתניה G נתניה 8 גדליהו B גדליה

<sup>285</sup>“A prophet has precedence over the Anointed for War, the Anointed for War has precedence over the head of the watch, the head of the watch has precedence over the head of a clan, the head of a clan has precedence over the executive officer, the executive officer has precedence over the treasurer, the treasurer has precedence over a common priest, a common priest has precedence over a Levite, a Levite over an Israel (an Israel over a bastard<sup>286</sup>).” Is not the Levite equal [to an Israel]<sup>287</sup>? Rabbi Abun said, this was taught in the days of the podium<sup>288</sup>. Rabbi Abun said, a proselyte and an apostate, the apostate has preference because of what had happened<sup>289</sup>. “Why does everybody run after a proselyte woman, but not after a freedwoman? For the proselyte is presumed to have been guarding herself but the freedwoman<sup>290</sup> is presumed to be irresponsible.” And why does everybody (run after a rat)<sup>291</sup> [inquire after a slave]<sup>292</sup>? Because his dealings are bad for people. Rabbi Johanan said, do not believe a slave up to sixteen generations. *Ismael ben Netaniah ben Elishama of royal descent came and slew Gedaliahu at Mispah*<sup>293</sup>.

285 Tosephta 2:10, Babli 13a (cf. Notes 264-268).

286 This clause was erased by the scribe of L, it is not in B or G.

287 Added from B and G; must be understood in L.

288 When the Levites had a role in Temple worship, either as singers on the podium or as watchmen. The statement that Levites are no different from Israel shows that the custom that Levites have to pour water of the Cohen's hands before he goes to pronounce the priestly blessing is not talmudic. (The source is *Zohar* III, 146b; the custom is not followed by Yemenites and some other Oriental groups.)

289 If a Gentile comes to a rabbi asking to

become a proselyte and a Jewish apostate comes at the same time asking to be readmitted to the Jewish community, the rabbi has to deal with the apostate's case first, not to turn him away permanently as in the case of Joshua ben Perahia (or Jehudah ben Tabbai) (*Sanhedrin* 6:6, Note 79) and similar stories about Elisha and Gehazi (*Sanhedrin* 10:3, Notes 284,286).

290 As long as the freedwoman (Latin: *libertina*) was a slave, she could not marry and, therefore, was free to have guiltless sex with any man she pleased (except Jews.) She cannot be supposed to have changed her ways radically upon manumission. The proselyte as a free woman is supposed to be married as a virgin (Babli 13a).

291 To kill them. This is the text of L, taken from the Babli 13a, but it seems that one should accept the text of B and G in brackets.

292 Since the slave has no *persona* in law, he is irresponsible, and cannot be sued for damages. Therefore, a prospective buyer is well advised to inquire whether this slave may in the future expose him to suits for damages caused by his slave.

292 2K. 25:25. On *1Chr.* 2:35, about a man who had no sons, only daughters, and gave a daughter to his slave who produced a male grandson, Pseudo-Rashi explains: "From here the Sages said in Yerushalmi (Yebamot) [Horaiot] do not trust a (proselyte) [slave] up to 15 generations

for there were 15 generations from Athai to Ismael and some say 16 generations with Yarha (the slave). In the explanation of our rabbis is possible that (it does not mean) *of royal descent* since Ismael was from Yerahmeel but not from Ram (David's ancestor), but that he gave of his descendants to the Moloch." This explanation identifies Elishama, the grandfather of Ismael, with Elishama mentioned in *1Chr.* 2:41. According to David Qimhi on *1Chr.* 2:26, *Atarah* "crown", the wife of Yerahmeel, was a converted Gentile from a royal family and from her there were 24 generations to Ismael.

48b line 71) רבי יהושע בן לוי אמר. ראש וזקן וזקן קודם. שאינו ראש אם אינו זקן. מה טעמה. אתם נצבים היום כולכם וגו'. ויאסוף יהושע את כל זקני ישראל שכמה. משה הקדים ראשים לזקנים. יהושע הקדים זקנים לראשים. משה על ידי שהיו הכל תלמידיו הקדים ראשים לזקנים. יהושע על ידי שלא היו הכל תלמידיו הקדים זקנים לראשים. משה על שלא צרך להם בביבוש הארץ הקדים ראשים לזקנים. יהושע על ידי שצרך להם בביבוש הארץ הקדים זקנים לראשים. משה על ידי שלא נתייגע בתלמוד תורה הקדים ראשים לזקנים. יהושע על ידי שנתייגע בתלמוד תורה הקדים זקנים לראשים. רבי יהושע דסיכנין בשם רבי לוי. משה על ידי שצפה ברוח הקודש שעתידין ישראל להסתבר במלכות וראשיהן עומדין על גביהן הקדים ראשים לזקנים.

1 זקן | B ראש G (ראש) לוקן שאינו ראש | G - אם אינו זקן | GB - 2 טעמ' | B טעם | ויאסוף | GB וכתוב ויאסוף את כל זקני ישראל שכמה | B את זקני ישראל - | G וגו' | הקדים | G | יחושע | 3 יחושע | לזקנים | B לזקנים | זקנים | B זקנים | B 4-3 (and so at all occurrences) | B 5 בכבוש | B 6 הקדים | G | 7 שמתייגע | B 8 הקודש | B | 9 על גביהן | B | 293 | GB | להסתבר | 294 | עליו

Rebbi Joshua ben Levi said: A head<sup>294</sup> and an Elder<sup>295</sup>, the (Elder) [head]<sup>296</sup> has precedence, for nobody is a head if he is not an Elder. What is his reason? *All of you are standing today*<sup>297</sup>, etc. *Joshua assembled all Elders of Israel at Sichem*<sup>298</sup>. Moses preferred heads over Elders; Joshua preferred Elders over heads. Moses preferred heads over Elders because all were his



students. Joshua preferred Elders over heads because not all were his students. Moses preferred heads over Elders because he did not need them in conquering the Land; Joshua preferred Elders over heads because he needed them in conquering the Land<sup>299</sup>. Moses preferred heads over Elders because he needed no exertion in the study of Torah, Joshua preferred Elders over heads because he had to exert himself in the study of Torah. Rabbi Joshua of Sikhnin in the name of Rabbi Levi: Moses preferred heads over Elders because he saw by the Holy Ghost that in the future Israel will be (reasonable) [in trouble]<sup>293,296</sup> with governments and their heads will stand up for them<sup>300</sup>.

293 Here ends the fragment G.

294 The learned in the law, i. e., the rabbinic authorities.

295 The tribal heads, paradigms for later political office holders.

296 The text in parentheses is that of L, the one in brackets that of B,G. The reason given shows that the latter text was intended by all sources.

297 *Deut.* 29:9; later in the verse the tribal

heads are mentioned before the Elders.

298 *Jos.* 24:1 (misquoted); Elders are mentioned before tribal heads. Similarly in 23:2.

299 While he did not need them for military decisions, they prepared the maps for the distribution of the Land (Chapter 18).

300 A clear declaration of the priority of the political leadership over the religious.

48c line 7) תני. הסודרן קודם לפילפולן. רבי שמואל אחוי דרבי ברכיה בעי. אפילו כרבי אמי. אמר ליה. מיתבעי מרבי אימי. הוא הפילפולן. הדא אמרה. משנה קודם למקרא. ודא מסיינא ליה. דתני רבי שמעון בן יוחי. העוסק במקרא מידה שאינה מידה. ורבנן עבדין מקרא כמשנה. רבי שמואל בר נחמן אמר. משנה קודם לתלמוד. ומה טעמא. קנה חכמה קנה בינה וגו'. רבי יוחנן אמר. תלמוד קודם למשנה. ומה טעמא. קנה חכמה מה טוב מחריץ. מה מקיים רבי יוחנן טעמיה דרבי שמואל בר נחמן. מים בזול ויין ביוקר. איפשר לעולם לחיות בלא יין. אי אפשר לעולם לחיות בלא מים. ומה מקיים שמואל בר נחמן טעמיה דרבי יוחנן. מלח בזול פילפולין ביוקר. איפשר לעולם לחיות בלא פילפולין. אי אפשר לעולם לחיות בלא מלח. לעולם הוי רץ אחר המשנה יותר מן התלמוד. הדא דתימר עד שלא שיקע בו רבי רוב משניות. אבל מששיקע בו רבי רוב משניות לעולם הוי רץ אחר התלמוד יותר מן המשנה.

1 הסודרן | הסדרן | 2 אמי | אימי מיתבעי מר' | מאי את בעי מן ר' | הוא הפילפולן | דהוא סדרן והוא פלפולן קודם | קודמת ודא | והדא | 3 ליה | להאי שאינה ואינה<sup>301</sup> | ורבנן | ורבני | The rest is missing.

It was stated: The systematizer has precedence over the dialectician<sup>302</sup>. Rabbi Samuel, Rabbi Berekhia's brother, asked: Even like Rabbi Immi? He

told him, what do you want from Rabbi Immi? He is a dialectician<sup>303</sup>. This means, the Mishnah has precedence over Scripture<sup>304</sup>. The following supports this, as Rabbi Simeon ben Iohai stated, one who studies Scripture is a qualification which is not a qualification. But the rabbis consider Scripture equally with the Mishnah<sup>305</sup>.

Rebbi Samuel bar Nahman said, the Mishnah has precedence over the Talmud. What is the reason? *Acquire wisdom, acquire understanding*<sup>306</sup>, etc. Rabbi Johanan said, the Talmud has precedence over the Mishnah. What is the reason? *Is acquiring wisdom not better than pure gold*<sup>307</sup>? How does Rabbi Johanan explain Rabbi Samuel bar Nahman's reason? Water is cheap, wine is expensive. It is possible for the world to exist without wine; it is impossible for the world to exist without water<sup>308</sup>. How does Rabbi Samuel bar Nahman explain Rabbi Johanan's reason? Salt is cheap, pepper is expensive. It is possible for the world to exist without pepper; it is impossible for the world to exist without salt<sup>309</sup>. Always pursue the Mishnah more than the Talmud. That is, before Rabbi incorporated most Mishnaïot into it<sup>310</sup>. But since Rabbi incorporated most Mishnaïot into it, pursue the Talmud more than the Mishnah.

301 This is typically the Babli's language in quoting the *baraita* (*Bava mesia`* 33a). The version of L is found also in *Berakhot* 1:5 (Note 175), *Šabbat* 1:2 (3c l. 19), 16:1 (15c l. 27).

302 The scholar who can bring order into the vast amount of rabbinic traditions is on a higher level than the one who finds apparent contradictions between traditional statements and explains them by finding the underlying principles. In the Babli (14a) the question is between "Sinai" and "one who uproots mountains" (and grinds them down), i. e., between a living encyclopedia and a practitioner of dialectics, and it is reported that in Galilee Sinai was preferred. There is no mention

there about an effort at systematizing and in fact it is in general impossible to derive a valid rule of practice by basing oneself on one talmudic discussion alone, but all Tractates of the Babli have simultaneously to be considered.

303 In B: "He is both a systematizer and a dialectician." In both Talmudim, the teachings of R. Immi and his companion R. Yasa are too sporadic to allow a judgment between the two versions.

304 Since the Mishnah is a first attempt at systematizing Jewish teaching, its study, while presupposing a prior study of Scripture, is on a higher level since it is less anecdotal or self-contradictory.

305 They agree to the value of analysis

and explanation of Scripture also independent of traditional interpretations.

306 *Prov.* 4:5. "Wisdom" is identified here as the Mishnah, the encyclopedia of traditional knowledge. "Understanding" is the explanation of the formulaic statements of the Mishnah, the Talmud, whether formulated in one of the Talmudim or in a prior state of oral explanation. Wisdom precedes understanding.

307 *Prov.* 16:16. The verse reads: *Is acquiring wisdom not better than pure gold, acquisition of understanding more select than silver?* Here also wisdom precedes understanding, but silver is everyday coin; gold is used only for major transactions and by the very rich.

308 In both verses, the less valuable but more essential is mentioned in second place. This does not make the second less essential.

309 He agrees that without interpretation and explanation ("the Talmud") the Mishnah cannot be applied; the salt of the Talmud, the silver, is absolutely necessary. This does not diminish the value of the gold.

A different version of the preceding arguments is in *Massekhet Sopherim* 15:7, 8.

310 Here it is intimated that Rabbi's edition of the Mishnah from the start was intended as providing the skeleton around which a systematic exposition of the Talmud, the oral tradition, could be organized. In this way, the Mishnah automatically is studied in a privileged way if the Talmud is studied. Cf. *Lev. rabba* 21(4) which declares the study of the Mishnah as prerequisite for everything else.

דַּרְשׁ רַבִּי שְׁמוּאֵל בְּרִיהַ דְּרַבִּי יוֹסִי בִּירְבִּי בּוּן. חֲכָם בְּעֵינָיו אִישׁ עֲשִׂיר וְדָל מִבֵּין יַחְקֲרֵנּוּ: חֲכָם בְּעֵינָיו אִישׁ עֲשִׂיר זֶה בַּעַל הַתְּלֻמוֹד. וְדָל מִבֵּין יַחְקֲרֵנּוּ זֶה בַּעַל אַגְדָּה. לְשָׁנִים שְׁנָנִסּוּ לָעִיר. בִּיָּד זֶה עֲשֻׁתוֹת שְׁלֹזָהב וּבִיָּד זֶה פְּרוּטוֹט. זֶה שְׁבִידוֹ עֲשֻׁתוֹת שְׁלֹזָהב אֵינוֹ מוֹצִיא וְחִיָּה. וְזֶה שְׁבִידוֹ פְּרוּטוֹט מוֹצִיא וְחִיָּה. (48c line 21)

Rebbi Samuel, son of Rebbi Yose ben Rebbi Abun<sup>311</sup>, preached: *A rich man is wise in his own eyes, but an understanding poor man will think little of him.* <sup>312</sup>*A rich man is wise in his own eyes, this is the master of Talmud. But an understanding poor man will think little of him*<sup>313</sup>, that is the master of homiletics. A parable of two people who entered a city, in the hand of one are gold bars, in the other's hand small change. The holder of the gold bars cannot spend them and survive; the holder of small change can spend it to survive<sup>314</sup>.

311 One of the very last Amoraim mentioned in the Yerushalmi. He

explains why his generation turned from work on a Talmud to work on Midrashim.

312 Prov. 28:11. *Eccl. rabba* 6:2, end.

313 Cf. Arabic **حقر** “to despise somebody or something, think little of him.”

314 Nobody comes to hear lectures on Talmud, everybody comes to hear a

preacher. Cf. Babli *Bava batra* 145b. For a negative view of homiletics three generations earlier cf. *Ma`serot* 3:10 Note 161 (*Sopherim* Chapter 15).

48c line 25) דַּרְשׁ רַבִּי אָחָא. פֶּלֶס | וּמֵאֲזֵנִי מִשְׁפֹּט לִי מַעֲשָׂהוּ כָּל-אַבְנֵי-כִּיס: פֶּלֶס זֶה הַמִּקְרָא. מֵאֲזֵנִי זֶה הַמְשָׁנָה. מִשְׁפֹּט זֶה הַתְּלָמוּד. לִי זֶה הַתְּחוּסָפֶת. מַעֲשָׂהוּ כָּל-אַבְנֵי-כִּיס. כּוֹלֵהֶם נוֹטְלִין שְׂכָרָן מִכִּיס אֶחָד.

Rebbi Aha preached: *Scales and balances of justice are the Eternal's; His work are all stones in the purse*<sup>315</sup>. “Scales” is Scripture. “Balances” are the Mishnah. “Justice” is the Talmud. “The Eternal's” are the additions<sup>316</sup>. *His work are all stones in the purse*; they all take their wages from the same purse.

315 Prov. 16:11. The purse is the container in which weight stones are kept (*Deut.* 25:13, *Mi.* 6:11). It may also mean the wallet where money is kept, *Prov.* 1:14, *Is.* 46:6. The sermon identifies the

two and declares all religious studies of equal value.

316 The extra-talmudic texts; not only Tosephta collections but also Midrashim and similar compositions.

48c line 28) רַבִּי אָבָא בַר כַּהֲנָה אָזַל לְחַד אֶתֶר. אֲשַׁכַּח רַבִּי לִי יְתִיב דְּרֵשׁ. אִישׁ אֲשֶׁר יִתֵּן-לִי הָאֱלֹהִים עוֹשֶׁר וְנִכְסִים וְכָבוֹד וְאֵינְנו חֹסֵר לְנַפְשׁוֹ | מִכָּל אֲשֶׁר-יִתְּאֲזֶה וְלֹא-יִשְׁלִיטֵינוּ הָאֱלֹהִים לְאָכּוֹל מִמֶּנּוּ כִּי אִישׁ נִכְרִי יֵאָכְלֶנּוּ. עוֹשֶׁר זֶה הַמִּקְרָא. נִכְסִים אֵילֵי הַלְבוּת. וְכָבוֹד זֶה הַתְּחוּסָפֶת. וְאֵינְנו חֹסֵר לְנַפְשׁוֹ | מִכָּל אֲשֶׁר-יִתְּאֲזֶה. אֵילֵי מִשְׁנֵיּוֹת גְּדוּלוֹת כְּגוֹן מִשְׁנֵיּוֹת שְׁלָרְבִי חוּנָה מִשְׁנֵיּוֹ שְׁלָרְבִי הוֹשַׁעִיָּה וּמִשְׁנֵיּוֹת שְׁלָבֵר קַפְרָא. וְלֹא-יִשְׁלִיטֵינוּ הָאֱלֹהִים לְאָכּוֹל מִמֶּנּוּ. זֶה בַּעַל אֲגָדָה שְׂאֵינִי לֹא אוֹסֵר וְלֹא מַתִּיר לֹא מְטַמֵּא וְלֹא מְטַהֵר. כִּי אִישׁ נִכְרִי יֵאָכְלֶנּוּ. זֶה בַּעַל הַתְּלָמוּד. קָם רַבִּי אָבָא בַר כַּהֲנָה וְנִשְׁקִיָּה בְּרִישִׁיָּה. אָמַר. זְכִיתָה מִימְרֵינָה יָקִים תְּזַכִּי מִימְרֵינָה מֵיְתִיב.

<sup>317</sup>Rebbi Abba bar Cahana went to a certain place where he found Rebbi Levi installed and preaching: *A man to whom God gives riches, and properties, and honor, and nothing is missing of anything he might desire, but God does not let him take possession to eat from it, for a stranger will eat from it*<sup>318</sup>. *Riches*, that is Scripture. *Properties*, these are practices<sup>319</sup>. *And honor*, these are the additions<sup>316</sup>. *And nothing is missing of anything he might desire*, these are the great Mishnah collections<sup>320</sup>, such as the Mishnah of

Rebbi Huna<sup>321</sup>, the Mishnah of Rebbi Hoshiaia, or the Mishnah of Bar Qappara. *But God does not let him take possession to eat from it*, that is the master of Aggadah who neither prohibits nor permits, neither declares impure nor pure. *For a stranger will eat from it*, that is the master of Talmud<sup>322</sup>. Rebbi Abba bar Cahana got up and kissed him on his head, saying, just as you were worthy to preach this standing, may you be worthy preaching this sitting<sup>323</sup>.

317 *Eccl. rabba* 6:2.

318 *Eccl.* 6:2.

319 A code of practices in a culture of oral transmission was a very valuable property.

320 *Baraita* collections such as underlying the later Tosephta, or Mishnah collections preceding or competing with Rebbi's Mishnah. *Eccl. rabba* adds R. Aqiba's Mishnah.

321 No collection of Rebbi Huna is known; also he would be an Amora of a later generation, unable to collect an independent collection. In *Eccl. rabba*, the reference is correctly to R. Hiyya (the

Elder.)

322 Who has to master all the preceding topics and has the right to decide between forbidden and permitted acts.

323 R. Levi, who became the foremost preacher of his time, at this moment was rabbi of a small congregation who delivered his sermons in person standing in front of his congregation. R. Abba blessed him that he should become the head of a school who would deliver the concept of his speech to an Amora, a professional speaker, who would elaborate on the topics given to him by the head who remained seated.

ביקשו למנות זקנים מאכן הן ממנין. מטיבניה אמדוניה. אמר רבי סימון. יהודה יעלה. אמר ליה רבי מנא. הדא דתימר למלחמה. אבל למנויי רואי פני המלך היושבים ראשונה במלכות.

רבי יעקב בר אידי בשם רבי יהושע בן לוי. מעשה שנכנסו זקנים לעליית בית גדיא בירחו ויצתה בת קול ואמרה להן. יש ביניכם שנים ראויין לרוח הקודש והלל הזקן אחד מהן. נתנו עיניהן בשמואל הקטן. שוב נכנסו זקנים לעלייה בגבה ויצתה בת קול ואמרה להן. יש ביניכם שנים ראויין לרוח הקודש ושמואל הקטן אחד מהן. נתנו עיניהן באליעזר בן הורקנוס. והיו שמיחין על שהסכימה דעתן לדעת רוח הקודש.

If they intended to appoint Elders, from where do they appoint? From Tiberias or from the South<sup>324</sup>? Rebbi Simon said, *Jehudah shall go first*<sup>325</sup>. Rebbi Mana said to him, this refers to war. But for ordination, *those who see the face of the king, sitting first in government*<sup>326</sup>.

<sup>327</sup>Rebbi Jacob bar Idi in the name of Rebbi Joshua ben Levi: It happened that the Elders assembled in the upper story of the House Gadya at Jericho when there came a disembodied voice and told them, there are two among you worthy of the Holy Spirit and one of them is Hillel the Elder. They looked at Samuel Minor. Then the Elders assembled in the upper story at Jabneh when there came a disembodied voice and told them, there are two among you worthy of the Holy Spirit and one of them is Samuel Minor. They looked at Eliezer ben Hyrcanos. They were happy that their opinion coincided with that of the Holy Spirit<sup>327</sup>.

324 The main Academy was at Tiberias in Galilee. There were minor centers of learning in the South, at Lydda and at Kefar Darom, in the plain which in Second Temple times was part of Judea. The question was which center of learning should be the first to propose candidates for ordination by the Patriarch.

325 *Jud.* 1:2. R. Simon came from the South.

326 *Esther* 1:14. The preeminent rabbis at this time were in Tiberias.

327 The same text in *Sotah* 9:17 Note 265; most of the story in greater detail *Sotah* 9:13-14, Notes 212-218, and the parallels given there in Note 212.

(48c line 48) אֵילִין דְּבַר פָּזִי וְדָבַר הוֹשַׁעְיָה הָיוּ עָלֵין וְשָׂאֲלִין בְּשָׁלְמִיָּה דְּנִשְׂיָא בְּכָל-יּוֹם. וְהוּוּן אֵילִין דְּרַבִּי הוֹשַׁעְיָה עָלֵין קְדָמָא. אֲזָלוּן אֵילִין דְּבַר פָּזִי וְאִיתְחַתְּנוּן בְּנִשְׂיָאֲתָא. אֲתוּן בְּעוֹן מִיעוּל קְדָמָא. אֲתוּן וְשָׂאֲלוּן לְרַבִּי אִמִּי. וְהִקְמוּתָא אֶת-הַמִּשְׁכָּן כְּמִשְׁפָּטוֹ. וְכִי יֵשׁ מִשְׁפָּט לְעַצִּים. אֲלָא אִי זֶה קָרַשׁ זָכָה לִינְתָן בְּצַפּוֹן יִינְתָן בְּצַפּוֹן. בְּדָרוֹם יִינְתָן בְּדָרוֹם.

1 ודבר | ודר' | הושעיה | יהושע' | ושאלין | שאלון | דנשיא | דנשיא | 2 הושעיה | יהושעיה | קדמאי | קדמאי ונפקין קדמאי | אולון | - | ואיתחננו | ואיתחננו | אתון בעון | ובעון | 3 מיעול קדמאי | למיפק קדמאי | ושאלון | ובעון | אימי | אמי | 4 לינתן | להנתן | ינתן בצפון | ינתן בדרום | ואי זה קרקש זכה להנתן בדרום

תַּרְתִּין זָרְעִין בְּצִיפְרִין בּוּלְוֹטִיָּא וּפְגִנִּיָּא הָיוּ עָלֵין וְשָׂאֲלִין בְּשָׁלְמִיָּה דְּנִשְׂיָא בְּכָל-יּוֹם. וְהוּוּן בּוּלְוֹטִיָּא עָלֵין קְדָמָא וְנִפְקִין קְדָמִי. אֲזָלוּן פְּגִנִּיָּא וְזָכוּן לְאֻרִּיָּתָא. אֲתוּן בְּעוֹן מִיעוּל קְדָמָא. אִישְׁתַּאֲלַת לְרַבִּי שְׁמַעוֹן בֶּן לִקְיֹשׁ. שְׂאֵלָה רַבִּי שְׁמַעוֹן בֶּן לִקְיֹשׁ לְרַבִּי יוֹחָנָן. אָעַל רַבִּי יוֹחָנָן וּדְרָשָׁה בְּבֵית מִדְרָשָׁא דְּרַבִּי בִּנְיָה. אֶפִּילוּ מִמְּזֹר תִּלְמִיד חָכָם וְכֹהֵן גָּדוֹל עִם הָאָרֶץ מִמְּזֹר תִּלְמִיד חָכָם קוֹדֵם לְכֹהֵן גָּדוֹל עִם הָאָרֶץ: סִבְרִין מִימֵר. לִפְדוֹת וְלַחֲחִיּוֹת וְלִכְסוֹת. הָא לִישִׁיבָה לֹא. אָמַר רַבִּי אֲבוּן. אֶף לִישִׁיבָה. וּמָה טַעַם: יִקְרָה הֵיא מִפְּגִנִּים. וְאֶפִּילוּ מִזָּה שְׁהוּא נִכְבָּשׁ לְפָנֵי לְפָנִים.

1 זרעין | B | זרעיה הוון | ש | זרעין הוון | בצפורין | B | בולוטביא | B | בולבטיה | ש | בולוטביא | ופגניא | B | ופגנייה | ש | ופגניא | הוון | B | ש | הוון | עלין | ש - | ושאלין | B | ושאלון | ש | שאלין | דנשיא | B | דנשיא | 2

בולוטיא | B בולוטיא ש בולוטיא קדמאי | ש קדמאי (2X) פגניא | B פגניא לאורייתא | B לאורייתא ש  
 באורייתא 3 קדמאי | B - ש קדמאי אישתאלת | B אשתאלת שאל | B שאל אעל | B על 4 בבית | B בי  
 ש בבי דר' בנייה | B דטבריא 5 לפדות | B לפדות ולהחיות ולכסות | ש ולכסות ולהחיות 6 ומה | B  
 מה מפנינים | B מפנינים 7 לפני | B לפני

Those of Bar Pazi and (Bar) [Rebbi]<sup>328</sup> Hoshaiia went and greeted the Patriarch every day. Those of Rebbi Hoshaiia went in first [and left first]<sup>329</sup>. Those of Bar Pazi went and became related by marriage to the patriarchate. They came and wanted to enter first. They went and asked Rebbi Immi. *You shall erect the tabernacle according to its ruling*<sup>330</sup>. Does there exist a ruling for wood? But the log which merited to be put in the North should be put in the North, in the South should be put in the South.

<sup>331</sup>Two families were in Sepphoris, one of city councillors<sup>332</sup> and one rural<sup>333</sup>, who were greeting the Patriarch every day. The councillors went in first and left first. The rural ones went and acquired [knowledge in] Torah. They came and wanted to have precedence. It was asked before Rebbi Simeon ben Laqish. Rebbi Simeon ben Laqish asked it from Rebbi Johanan. Rebbi Johanan went up and preached in Rebbi Benaiah's house of study<sup>334</sup>: "But if the bastard was learned and the High Priest ignorant, the learned bastard precedes the ignorant High Priest<sup>335</sup>." They wanted to say, to be redeemed, for livelihood, and for clothing, but not for the Academy. Rebbi Abun said, even for the Academy. What is the reason? *It is more precious than pearls*<sup>336</sup>, even than he who enters into the Most Holy [of the Sanctuary.]

328 The text of L is in parentheses, the one from B in brackets. Since the second family is also called "R. Hoshaiia's" later in L, and the entire story makes sense only if this family was distinguished in learning, the reading from B has to be accepted.

329 Ex. 26:30. This argument is a legal argument of R. Immi's in *Šabbat* 12:3 (13c l. 60). The Mishnah states that it is a prosecutable sin to write two letters on the Sabbath. Since the Sabbath prohibition is repeated after the instructions for building

the Tabernacle (Ex. 31:12-17; 35:1-3) it is concluded that the forbidden actions on the Sabbath are exactly those which were necessary for the construction of the Tabernacle. R. Immi explains that all logs which formed the walls of the Tabernacle carried two letters and that sides bearing the same letters were put together when the Tabernacle was re-assembled after being transported. This is taken here as a sign that nothing should be changed; marrying into the family of the patriarch cannot erase the advantage conferred by

learning.

330 *Ex.* 26:30.

331 A parallel text (ϣ) is in *Šabbat* 12:3 (13c l. 62 ff.) The text here is primary; there the story is told as an appendix to the argument of R. Immi which, however, responds not to the question asked about precedence but about Sabbath prohibitions as explained in Note 329.

332 Greek βουλευταί.

333 Latin *pagani*.

334 The text of B, “of Tiberias” has to be rejected. Not only is the text of L confirmed by the text in *Šabbat*, but also the remark that he “went up” refers to going from Tiberias below Sea level to Sepphoris high in the mountains but also the entire story is placed at Sepphoris and only there a public ruling was needed.

335 *Mishnah* 3:9.

336 *Prov.* 3:15.



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| <i>Haliṣah</i> , document      | 49              | Intercalation, revocable         | 38             |
| Hanging                        | 199             | Interrogation                    | 10             |
| Hearsay                        | 128,164         | Intransitivity                   | 158            |
| Heave and tithes               | 38              | Investigation                    | 148            |
| Hermeneutical principle        | 231,238,262,264 | Jabneh                           | 397            |
| Hermes stele                   | 259             | Jericho, rebuilding              | 351            |
| Heterodoxy                     | 399             | Jewish courts, disestablished    | 13,38          |
| Hezekias                       | 41              | Jubilee                          | 170            |
| High Court judges, eligibility | 499,500         | Judge, abstaining                | 185            |
| High Court ruling, false       | 481,484         | Judge, as witness                | 29             |
| High Court ruling, split       | 481             | Judge, disqualified              | 128            |
| High Court ruling, binding     | 475             | Judge, unqualified               | 395            |
| High Court, authority          | 501             | Judge, rebellious                | 56             |
| High Priest, acting            | 578             | Judge, removal of                | 33             |

|                            |             |                                   |                 |
|----------------------------|-------------|-----------------------------------|-----------------|
| Judges, adding of          | 131         | Mina (Greek)                      | 73,287          |
| Judges, arguing            | 155         | Mistrial, potential               | 151             |
| Judges, number of          | 11,14,187   | Moloch worship                    | 267,268,270,271 |
| Judges, qualifications     | 162         | Mourning, deep                    | 215,579         |
| Judges, seating order      | 31          | Mourning, distant                 | 214             |
| Judges, voting             | 159,160     | Mourning, rows                    | 214             |
| Judgment, definitive       | 186         | Multiple prohibitions             | 234             |
| Judgment, equitable        | 149         | Murder                            | 313,314,319     |
| Judgment, erroneous        | 14          | Murderer, execution               | 444             |
| Judicial behavior          | 150         | Mushiness ( <i>Piggul</i> )       | 235,467         |
| Kidnapping                 | 292         | Necromancy                        | 272             |
| Killing attacker           | 303         | New Moon                          | 31              |
| King, exemption            | 532         | New trial                         | 144             |
| King, grooming             | 105         | Nob and Gibeon                    | 61              |
| King, marriage partners    | 87,88       | Not prosecutable                  | 283             |
| King, mourning             | 92          | Numbers, Alexandrian              | 102             |
| King, not in control       | 562         | Oath of affirmation               | 114             |
| King, status               | 85          | Oath, blurted                     | 138             |
| King, wives of             | 99,100      | Oath, false                       | 138             |
| King's court               | 171         | Officials of the Court            | 398             |
| King's payroll             | 100         | <i>'Omer</i>                      | 37              |
| King's powers              | 201         | Omnipresent                       | 469             |
| Kings of Israel            | 562         | Ordination                        | 46,49           |
| Land of the living         | 375         | Overpaying pledges or tithes      | 51              |
| Leviathan meat             | 382         | Parental assent                   | 294,300         |
| Levites, service           | 597         | Paschal lamb                      | 288             |
| Levitic cities             | 448,450,459 | Passover Eve, <i>Pesah</i>        | 181             |
| Levitic cities, cemeteries | 460         | Passover sacrifice                | 478             |
| Lexemes, invariability     | 226         | Paternal extramarital half-sister | 247             |
| Living things              | 283         | Patriarch                         | 49              |
| Local Courts               | 110         | Patriarch, convicted              | 76              |
| Local courts, venue        | 110         | Patriarch, grooming               | 105             |
| Lunar year                 | 37          | Penalty, imposed by Heaven        | 241             |
| Lydda                      | 35          | Penalty, specified                | 241,219         |
| Magical rites              | 346         | Penalty, unspecified              | 241             |
| Majority                   | 504         | Perjurer, disqualification        | 429             |
| Male prostitute            | 248,249     | Perjury                           | 6               |
| Maneh (Semitic)            | 287         | Perjury, law of                   | 10,55           |
| Married mother, honor of   | 591         | Perjury, penalty for              | 135             |
| Meal of obligation         | 287         | Perjury, proof of                 | 169,425         |
| Menstrual period           | 494         | Perjury, punishment               | 220             |
| Mentally disabled          | 173         | Personal status                   | 160             |
| Mercurius                  | 174         | Phylacteries                      | 206,400,404,592 |
| Merit, sinful              | 19          | Pleadings, repeated               | 130             |
| Metathesis                 | 26          | Plurality, qualified              | 11              |
| Michal                     | 94          | Prayers for the dead              | 377             |
| <i>Min</i>                 | 165         | Predestination                    | 166             |

|                                                               |              |                             |             |
|---------------------------------------------------------------|--------------|-----------------------------|-------------|
| Priest Anointed for war                                       | 448          | Sacrifice, outside Temple   | 238         |
| Priest, desecrated                                            | 418,420      | Sacrifice, purification     | 475         |
| Priest, disqualified                                          | 478          | Sacrifice, re-installed     | 491         |
| Priestly descent                                              | 309          | Sacrifice, reparation       | 479,556,560 |
| Priests' watches                                              | 345,594      | Sacrifice, suspended        | 479,526,547 |
| Produce, imported                                             | 39           | Sacrifice, variable         | 532,548     |
| Profane in Temple area                                        | 480          | Sadducee teaching           | 200         |
| Prohibitions, cumulative                                      | 324          | Salvation, universal        | 5,328       |
| Proof, belated                                                | 146          | Samuel minor                | 27          |
| Proof, difficulty of                                          | 277          | Sanbation                   | 384         |
| Prophet, certified                                            | 414          | Sanctification, of year     | 42          |
| Prostitute                                                    | 107          | Sanctity, increase          | 569         |
| Puberty, female                                               | 285          | Seafood                     | 264         |
| Public servant                                                | 568          | Second Passover             | 504         |
| Public service                                                | 290          | Second Tithe                | 46          |
| Punishment, multiple                                          | 304          | Sects, non-rabbinic         | 67          |
| Punishments, multiple                                         | 419          | Seduced city                | 221,386,397 |
| Purification sacrifice, prerequisite                          | 498, 512,543 | Self-incrimination          | 201         |
|                                                               |              | Settlement, out of court    | 18          |
| Quorum, for acquittal                                         | 65           | Seven Questions             | 169         |
| Quorum, for religious services                                | 64           | <i>Shekhinah</i>            | 211         |
|                                                               |              | Shepherds                   | 117         |
| Rabbi's dignity                                               | 105          | Shew Bread                  | 61          |
| Random drawing                                                | 69,71        | Signing verdict             | 143         |
| Redemption                                                    | 46           | Silver weight               | 73          |
| Relations, disqualifying                                      | 125,126,127  | Skin disease                | 403         |
| Relations, incestuous                                         | 125          | Slave, in law               | 598         |
| Repudiation                                                   | 46,50        | Slave, semi-emancipated     | 394         |
| Robbery                                                       | 292          | Solomon legend              | 102         |
| Roman citizenship                                             | 217          | Solomon's wives             | 101         |
| Rules of precedence                                           | 583,585      | Sorcery                     | 206,279     |
|                                                               |              | Souls destroyed             | 375,376     |
| Sabbath prohibitions                                          | 239,497,498  | Sports betting              | 117         |
| Sabbatical produce                                            | 115          | Statute of limitations      | 169         |
| Sacrifice, by healed from skin disease                        | 533          | Stealing                    | 292         |
| Sacrifice, for larceny of sancta                              | 533          | Stillborn                   | 318         |
| Sacrifice, for relations with semi-manu-<br>mitted slave girl | 534          | Stoning                     | 189,197,198 |
| Sacrifice, for robbery                                        | 533          | Stoning, place of           | 190         |
| Sacrifice, Gentile's                                          | 555          | Strangling                  | 226         |
| Sacrifice, High Priest's                                      | 532,541,567  | Strip-measuring             | 460         |
| Sacrifice, in impurity                                        | 493          | Student and colleague       | 17          |
| Sacrifice, inside Sanctuary                                   | 510          | Suffering of the Just       | 411         |
| Sacrifice, leftover                                           | 467          | Suits involving tribes      | 55          |
| Sacrifice, liability for                                      | 550,552      | Supreme Court, competencies | 158,396     |
| Sacrifice, obligatory                                         | 480          | Synhedrion                  | 1           |
| Sacrifice, of dying person                                    | 490          | Synhedrion, coopting        | 67          |
| Sacrifice, of layman                                          | 490          | Synhedrion, major           | 63          |
| Sacrifice, on holidays                                        | 67           | Synhedrion, not in place    | 67,95       |
|                                                               |              | Synhedrion, political       | 64          |
|                                                               |              | Synhedrion, seating         | 161         |



|                              |                 |                                 |                 |
|------------------------------|-----------------|---------------------------------|-----------------|
| Systematizer                 | 600             | <i>Two Loaves</i>               | 61              |
| Tabernacle, erection         | 61              | Underage sex                    | 250,285         |
| Tabernacles                  | 225             | Underage                        | 284             |
| Talent                       | 73              | Urim and Tummim                 | 59,458,575      |
| Talmudic style               | 211             |                                 |                 |
| Temple blueprints            | 369             | Verdict, at night               | 155             |
| Temple building              | 60              | Verdict, timely                 | 156,158         |
| Temple dedication            | 46,60,61        |                                 |                 |
| Temple doors, lock           | 592             | Voronoi domain                  | 448             |
| Temple organizer             | 594             | Vow of estimation               | 46              |
| Temporary ruling             | 508             | Vow, valid                      | 206             |
| Ten Tribes                   | 384             | Vulgar                          | 62,589          |
| Testimonies, identical       | 130             |                                 |                 |
| Testimony, inadmissible      | 165             | Warning                         | 73, 431,433     |
| Testimony, perjured          | 425             | “Watching day to day”           | 495             |
| Testimony, refused           | 530             | Water libation                  | 98              |
| Testimony, validity of       | 432             | Whore                           | 324             |
| Thanksgiving sacrifice       | 497             | Wine, gentile                   | 161             |
| Theft of Temple vessels      | 325             | Witness, arguing                | 184             |
| Thief, of livestock          | 268             | Witness, as judge               | 156             |
| Third conviction             | 322             | Witness, disqualified           | 112,113,115,123 |
| Third-Day Resurrection       | 414             | Witness, single                 | 112             |
| Town, deviant                | 55              | Witnesses, coherent             | 141,142         |
| Transgression, minor’s       | 555             | Witnesses, perjured             | 412             |
| Transgressions, multiple     | 242,246,547,554 | Witnesses, plotting             | 135,416,427     |
| Transjordan                  | 38              | Witnesses, testimony of         | 257             |
| Transporting, on the Sabbath | 554             | Woman, desecrated               | 419,420         |
| Trial of goring ox           | 162             | Woman, not a virgin             | 9               |
| Trial of multiple accused    | 56              | Women, qualified for priesthood | 67              |
| Trial, combined              | 162             |                                 |                 |
| Trial, criminal              | 164             | <i>Zavah</i>                    | 495             |
| Tribal chief                 | 56              |                                 |                 |