

The Jerusalem Talmud

Fourth Order: Neziqin

Tractates *Ševu'ot* and *Avodah Zarah*

Studia Judaica

Forschungen zur Wissenschaft des Judentums

Begründet von
Ernst Ludwig Ehrlich

Herausgegeben von
Günter Stemberger

Band 61

De Gruyter

The Jerusalem Talmud

תלמוד ירושלמי

Fourth Order: Neziqin

סדר נזיקין

Tractates *Ševu'ot* and *ʿAvodah Zarah*

מסכתות שבועות ועבודה זרה

Edition, Translation, and Commentary

by

Heinrich W. Guggenheimer

De Gruyter

ISBN 978-3-11-025805-9
e-ISBN 978-3-11-025806-6
ISSN 0585-5306

Bibliographic information published by the Deutsche Nationalbibliothek

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie;
detailed bibliographic data are available in the Internet at <http://dnb.d-nb.de>.

© 2011 Walter de Gruyter GmbH & Co. KG, Berlin/New York

Printing: Hubert & Co. GmbH & Co. KG, Göttingen

∞ Printed on acid-free paper

Printed in Germany

www.degruyter.com

Preface

The present volume is the thirteenth in this series of the Jerusalem Talmud, the third and final 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.

Again, biblical quotations are 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 thank the staff of the Jewish Division of the New York Public Library for providing me with copies of the Genizah texts of Tractate *Avodah zarah*.

Contents

Introduction to Tractate Ševuot	1
Ševuot Chapter 1, שבועות שטים	
Halakhah 1	3
Halakhah 2	14
Halakhah 3	21
Halakhah 5	23
Halakhah 8	29
Halakhah 6	31
Halakhah 9	34
Halakah 10	43
Ševuot Chapter 2, ידיעות הטומאה	
Halakhah 1	47
Halakhah 3	58
Halakhah 4	59
Halakhah 5	62
Halakhah 6	63
Ševuot Chapter 3, שבועות שטים	
Halakhah 1	66
Halakhah 2	71
Halakhah 3	73
Halakhah 4	74
Halakhah 6	80
Halakhah 7	85
Halakhah 8	87
Halakhah 9	90
Halakhah 10	92
Halakhah 11	95
Halakhah 12	98

Ševuot Chapter 4 שבועת העדות

Halakhah 1	101
Halakhah 3	109
Halakhah 4	113
Halakhah 5	116
Halakhah 6	117
Halakhah 7-8	120
Halakhah 9	121
Halakhah 10	122
Halakhah 12	124
Halakhah 13	125
Halakhah 14	126

Ševuot Chapter 5 שבועת הפקדון

Halakhah 1	130
Halakhah 2	136
Halakhah 3	138
Halakhah 4	143
Halakhah 5	145
Halakhah 6	148
Halakhah 7	150

Ševuot Chapter 6 שבועת הדיינין

Halakhah 1	153
Halakhah 2	160
Halakhah 3	164
Halakhah 4	166
Halakhah 6	169
Halakhah 7	172

Ševuot Chapter 7 כל הנשבעין

Halakhah 1	183
Halakhah 2	191
Halakhah 3	193
Halakhah 4	194
Halakhah 5	198
Halakhah 6	200
Halakhah 9	204
Halakhah 10	207

Ševuot Chapter 8 ארבעה שומרים

Halakhah 1	211
Halakhah 2	225
Halakhah 7	228
Halakhah 9	230

Introduction to Tractate Avodah Zarah 237

Avodah Zarah Chapter 1 לפני אידיהן

Halakhah 1	239
Halakhah 2	250
Halakhah 3	256
Halakhah 4	258
Halakhah 5	263
Halakhah 6	266
Halakhah 7	272
Halakhah 8	274
Halakhah 9	275
Halakhah 10	281

Avodah Zarah Chapter 2 אין מעמידין

Halakhah 1	283
Halakhah 2	293
Halakhah 3	305
Halakhah 4	318
Halakhah 5	323
Halakhah 6	324
Halakhah 7	326
Halakhah 8	330
Halakhah 9	336
Halakhah 10	347

Avodah Zarah Chapter 3 כל הצלמים

Halakhah 1	355
Halakhah 2	364
Halakhah 3	367
Halakhah 4	371
Halakhah 6	375

Halakhah 7	380
Halakhah 8	381
Halakhah 9	391
Halakhah 10	392
Halakhah 11	394
Halakhah 12	395
Halakhah 13	396
Halakhah 14	399
Halakhah 15	400
Halakhah 16	402

Avodah Zarah Chapter 4 רבי ישמעאל

Halakhah 1	403
Halakhah 2	409
Halakhah 3	410
Halakhah 4	411
Halakhah 5	418
Halakhah 6	419
Halakhah 7	420
Halakhah 9	426
Halakhah 10	429
Halakhah 11	431
Halakhah 12	433
Halakhah 13	435

Avodah Zarah Chapter 5 השוכר את הפועל

Halakhah 1	438
Halakhah 3	442
Halakhah 4	445
Halakhah 5	451
Halakhah 6	452
Halakhah 7	453
Halakhah 8	454
Halakhah 9	456
Halakhah 10	457
Halakhah 11	460
Halakhah 12	464
Halakhah 13	469
Halakhah 14	471
Halakhah 15	473

Indices

Sigla	477
Index of Biblical quotations	477
Index of Talmudical quotations	
Babylonian Talmud	480
Jerusalem Talmud	482
Mishnah	483
Tosephta	484
Midrashim	485
Rabbinic Literature	485
Index of Greek, Latin, Arabic, and Hebrew Words	485
Author Index	487
Subject Index	488

Introduction to Tractate Ševu'ot

The Tractate “Oaths” has two parts. The first three chapters are ritualistic, the later five are partially legalistic. The ritualistic part is based on *Lev.* 5:1-13, 20-26, detailing the sacrifices required for rash or senseless as well as false oaths. Since *Lev.* 5:1-13 states the same treatment for infringements of the purity of the Temple or of sacrifices as for rash or senseless oaths, the first Chapter, after an introduction listing matters which can be classified as “two kinds which split into four cases”, treats inadvertent impurity of sacrifices and their atonement, whether by sacrifice or the Temple service of the Day of Atonement. The Second Chapter then defines the places which can claim the holiness of the Temple and require atonement for inadvertent violations of its purity.

The third Chapter starts with an enumeration of the two/four ways in which a non-judicial oath can be irrelevant or false, whether by one's own initiative or formulated by others. The oaths are punishable by flogging if made before witnesses after due warning, or sacrifices following the same rules as infringements of purity if inadvertent.

The Fourth Chapter deals with oaths which serve as subpoenas to testify. The basic situation is that A says to B I put an oath or an imprecation on you that you should come and testify for me. If B agrees by saying “Amen” and then reneges on his duty, he has violated the oath as described in *Lev.* 5:1. These oaths can be imposed in or out of Court. The Chapter ends with a discussion of the use of substitutes for the Divine name in imprecations.

Chapter Five deals with the oaths by which people falsely defend themselves against monetary claims (*Lev.* 5:21-26). While the doctrines of judicial proof are detailed in Tractates *Neziqin* and *Ketubot*, the Chapter mainly deals with the obligations for sacrifices, with an appendix about the rules by which judicial fines can be imposed.

Chapter Six treats oaths imposed by the court on a defendant in a case in which he partially admits claims not proven by documents or witnesses. He has to swear that he does not owe the part of the claim which he disputes. The oath cannot be imposed if either the defendant rejects the claim in its entirety, when the claimant has to provide proof by witnesses or documents, or if the defendant rejects the claim but admits an unrelated one. Also, matters that must be documented such as real estate claims cannot be settled by oath.

Chapter Seven deals with rabbinic oaths instituted in the interest of social justice, such as the power of the worker to claim unpaid wages by an oath without having to produce witnesses, or cases involving a widow and her husband's heirs, or dissolutions of partnerships, where documents proving exact accounting may be difficult or impossible to obtain.

Finally, Chapter Eight treats the biblical oaths imposed on trustees in case a deposit was damaged or lost, *Ex.* 22:6-14. Since these rules are treated at length in Tractate *Neziqin*, the corresponding Chapter in the Babli is very short. Since the treatment in the Yerushalmi *Neziqin* is so very short, the Chapter here is more substantial than its Babli counterpart.

שבועות שנים פרק ראשון

(fol. 32c) **משנה א:** שבועות שנים שהן ארבע. ידיעות המזאח שנים שהן ארבע. וציאות השבת שנים שהן ארבע. מראות נגעים שנים שהם ארבעה:

Mishnah 1: There are two kinds of oaths which are four kinds¹. There are two kinds of awareness of impurity which are four kinds². There are two kinds of export on the Sabbath which are four kinds³. There are two kinds of appearances of skin disease which are four kinds⁴.

1 *Lev. 5:4* requires a reparation sacrifice for inadvertent breach of a commitment made by oath, “what was pronounced, negatively or positively.” The standard example of a positive oath is somebody swearing that he will eat certain foods. The corresponding negative is an oath that he will refrain from eating certain foods. The exact expression used, *להתק* | *או להיטיב*, by its *hiph'il* form points to the future. A natural complement are backward looking oaths, if a person swears that he ate or did not eat certain foods in the past (Mishnah 3:1). These four cases are equal in sanctions for willful or inadvertent breach.

2 *Lev. 5:2-3* requires a reparation sacrifice for a person who became impure, forgot it, and then either ate *sancta* in his impurity or entered the Sanctuary. The two added cases are that he knew about being impure but forgot that the food was holy or that the place was a Sanctuary.

3 It is forbidden to transport anything on the Sabbath from a private domain to the

public domain (Mishnah *Šabbat* 1:1). “Transport” includes lifting up, moving, and setting down. The two cases where one is liable (for a sacrifice if the sin was unintentional, punishment if the transgression was intentional and is prosecutable, or extirpation by Divine decree if the crime was intentional but is not prosecutable) are “export” by a person standing inside the private domain, lifting something up inside the domain and putting it down on the outside (e. g., through a window) even without moving his feet, or “import”, somebody lifting an object from the outside to the inside and depositing it there. The two cases where one is not liable refer to a person inside who lifts an object, hands it to a person outside (so that the object never is at rest) and the second person puts it down. Since no one person completed a criminal act, no one can be held liable even though the combined action clearly is forbidden.

4 *Lev. 13:2* defines impure skin disease as *שאת או־ספחת או־בהרת* “an elevated spot,

or *sapahat*, or a white spot.” This is read as “an elevated spot (which makes the surrounding skin look elevated over the whitish spot) and a really white spot and their appendages”, deriving *sapahat* from

the root ספח, “to append, adjoin.” This extends the definition of impure skin disease from two relatively well defined cases to two additional weaker symptoms.

(32c line 56) **הלכה א:** שְׁבוּעוֹת שֶׁהֵן אַרְבַּע כּוּל. שֶׁתִּים שֶׁהֵן אַרְבַּע לְחִיּוּב וּשְׁתִּים שֶׁהֵן אַרְבַּע לְפִטּוֹר אוֹ אַרְבַּע לְחִיּוּב וְאַרְבַּע לְפִטּוֹר. נִשְׁמְעִינָה מִן הַדָּא. שְׁבוּעוֹת שֶׁתִּים שֶׁהֵן אַרְבַּע. אָמַר רַבִּי יוֹסִי. מִתְּנִיתָ אֶמְרָה כֵּן. שְׁבוּעוֹת שֶׁתִּים שֶׁהֵן אַרְבַּע. לֹא לְחִיּוּב. וְדַכּוּנָתָהּ יְצִיאוֹת הַשְּׁבִת שֶׁתִּים שֶׁהֵן אַרְבַּע לְחִיּוּב. אָמַר רַבִּי בָּא. תִּמְן כּוֹלְהוֹן לְחִיּוּב. הֵכָא חִיּוּב וּפִטּוֹר אֲתִינִן מִיתְּנִי. הָדָא אֶמְרָה. ד' לְחִיּוּב וְד' לְפִטּוֹר. וְהִתְנִי. דְּלַתּוֹת הֵיכַל שֶׁתִּים שֶׁהֵן אַרְבַּע. אֵית מִימַר. לְחִיּוּב וְלֹא לְפִטּוֹר. נִיתְנִי שְׁנִים עֶשֶׂר פִּטּוֹר. לֹא אֲתִינִן מִיתְּנִי אֶלָּא פִטּוֹר שֶׁהוּא כְּנֶגֶד חִיּוּב. אָמַר רַבִּי חִיָּה בְּרִי אֲדָא. מָהוּ אֶהֱיוֹן פִּטּוֹר דְּתִינִין הֵכָא. מוֹתֵר. אָמַר רַבִּי יוֹסִי. עֲנִי וְעֲשִׂיר אֶחָד מִהֵן וּמִנֵּם חֲכָמִים שְׁנִים. הֲכִנְסָה וְהוֹצָאָה שְׁנִים וּמִנֵּם חֲכָמִים אֶחָד. יְצִיאוֹת הַשְּׁבִת אֵין הֲכִנְסָה בְּכָלִל. הַמּוֹצִיא מִרְשׁוֹת לְרְשׁוֹת אֵין הַמְּכַנִּס בְּכָלִל. וְעוֹד מִהָדָא דְּמַר רַבִּי יְסָא בְּשֵׁם רַבִּי יוֹחָנָן. הֲכִנְסִי חֲצִי גְרוּגְרִית וְהוֹצִיא חֲצִי גְרוּגְרִית חִיָּב. וּמִנִּין שֶׁהוֹצָאָה קְרוּיָה מְלֵאכָה. רַבִּי שְׁמוּאֵל בְּשֵׁם רַבִּי יוֹחָנָן. וְיֵצֵא מוֹשֶׁה וְיַעֲבִירוּ קוֹל בְּמִחְנֶה וְגו'. נִמְנָעוּ הָעַם מִלְּהוֹצִיא מִבִּתְיָהוּ לְתַת לְגִיזְבְּרִין וּמִלְּהוֹצִיא מִיָּדוֹן לְהִכְנִס לְלִישְׁכָּה. רַבִּי חִזְקִיָּה בְּשֵׁם רַבִּי אֲחָא שְׁמַע לָהּ מִן הָדָא. וְלֹא תוֹצִיאוּ מִשָּׂא מִבִּתְיָכֶם בְּיוֹם הַשְּׁבִת וְכָל־מְלָאכָה לֹא תַעֲשׂוּ.

Halakhah 1: “There are two kinds of oaths which are four kinds,” etc.

⁵Two which are four for liability and two which are four for no liability, or four for liability and four for no liability⁶? Let us hear from the following: “There are two kinds of oaths which are four kinds,” etc.⁷ Rabbi Yose said, the Mishnah says so, “there are two kinds of oaths which are four kinds,” not because of liability⁸? And similarly, “there are two kinds of export on the Sabbath which are four kinds,” because there is liability⁸. ⁷Rabbi Abba said, there all are about liability, but here we come to state both liability and no liability. This implies four of liability and four of no liability. But did we not state, the doors of the Temple hall were two which are four⁹? Can you say, liability and no liability¹⁰? Should we state twelve cases of no liability¹¹? We come to state cases of no liability which correspond to cases of no liability¹². Rabbi Hiyya bar Ada¹³ said, what is this “no liability” which we stated here? Permitted¹⁴! Rabbi Yose said, the poor man and the rich man are one but the Sages counted them as two. Exporting or importing are two but the Sages

counted them as one¹⁵. Exporting on the Sabbath does not include importing; if one exports from a domain this does not include importing¹⁶. If one who exports from one domain to the other, does this not include the one who imports¹⁷? In addition, from what Rabbi Yasa said in the name of Rabbi Joḥanan: Somebody who imports half the size of a dried fig and exports half the size of a dried fig is liable¹⁸. And from where that exporting is called work? Rabbi Samuel in the name of Rabbi Joḥanan: “Moses ordered, they made a public proclamation in the camp,¹⁹” etc. The people refrained from taking objects out from their houses to give them to the collectors, who also did not take out anything from them to import into the office. Rabbi Hizqiah in the name of Rabbi Aḥa understood it from the following: “do not bring out any load from your houses on the Sabbath day, and perform no work.”²⁰

5 This paragraph is a slightly garbled copy of the first paragraph in Tractate *Šabbat* 1:1, of which there exists a Genizah parallel (L. Ginzberg, *Yerushalmi Fragments from the Genizah*, New York 1909, p. 62). The text in *Šabbat* is original since in both versions, “here” refers to *Šabbat* while “there” refers to *Ševuot*, and in addition, the statement of R. Ba logically has to precede that of R. Yose as in the *Šabbat* text. Probably the scribe of the *Ševuot* text available to the Leiden ms.’s scribe had omitted the statement of R. Ba and added it in the text when he noticed the omission. S. Liebermann, in his Commentary to the Yerushalmi *Šabbat* (*Hayerushalmi Kipshuto*, New York 1995, Jerusalem 1935) holds that the source is *Ševuot*. This is difficult to accept; the text is from *Šabbat* but the problem is the discrepancy in meaning of the same expression “two which are four” used in very different meanings in our Mishnah.

The problem starts with the rather

complicated language of Mishnah *Šabbat* 1:1: “There are two cases which are four for exporting and two cases which are four for importing.” The Mishnah then goes on to explain that if a rich person, the owner, stands at the window of a house (which is a private domain) and a poor person stands in the street (the public domain), if then the rich person delivers an object to the poor outside, or the poor reaches inside and takes the object, the person acting is liable to prosecution but the other is not liable. (In fact, the passive participant never did do anything; the expression “not liable to prosecution” is inappropriate.) But if the rich person lifted the object, kept it moving all the time, and handed it to the poor who put it down, nobody is liable since nobody completed a forbidden act. The same naturally applies if the poor takes up a package and keeps it moving until the owner of the house takes it and puts it down. In this case, the qualification as “not liable” is appropriate since both participants

violated a Sabbath prohibition.

The question now arises whether the formulation “two which are four” always implies that the status of the two additional cases is different from the two original ones since in our Mishnah the same expression is used for oaths and Sabbath violations.

6 S. Liebermann (Note 5) proposes to delete “four which are not liable” as induced by the preceding statement about “two and two” even though the text is common to all three versions at our disposal and it is difficult to assume that the redundant text was taught in the Galilean Academy. For the rules of the Sabbath, the case is simple and there is no redundancy. In the formulation of Mishnah *Šabbat* 1:1 there are four cases of liability, rich or poor taking out or rich or poor bringing in. There are also four cases where there is no liability, depending on who takes up the object first and who takes over, and what the direction of the move is. The question now is raised whether a similar case can be made for the first clause in Mishnah *Ševuot* 1:1.

7 The statement of R. Abba later in this paragraph should be inserted here as noted in Note 5. While “here” in *Šabbat* the Mishnah itself explains that there are two cases of liability and two of no liability, the situation in *Ševuot* is different; all four cases trigger the obligation of a sacrifice for inadvertent infraction and punishment for intentional infraction in the presence of witnesses.

8 Rabbi Yose disagrees with R. Abba. Since everybody agrees that there are four cases which trigger a liability for oaths, the fact that the statement about Sabbath is formulated in the same Mishnah and in

parallel form implies the same meaning in both clauses. Since Note 7 shows that Mishnah *Šabbat* 1:1 enumerates four cases of liability, there is no obstacle to reading the Sabbath clause in parallel to the oath clause. It is shown later in the paragraph that there are explicit verses only to forbid export; the parallel prohibitions of import are rabbinic interpretations.

9 This *baraita* refers to Mishnah *Middot* 4:1 which explains that the entrance gate to the Temple hall was built in the manner of a city gate, a thick wall closed by an outer double door opening to the outside and an inner two-winged door opening to the inside. The expression “two doors which are four” is simply the description of the structure of the building.

10 This is inappropriate here.

11 Mishnah *Šabbat* 1:1 counts four actions for which one is liable (complete actions, export and import for the rich person, export and import for the poor.) Then it counts four cases for which one is not liable, but since for any incomplete action one is not liable one could consider the possibility that the poor man reaches into the house, lifts the object which the rich then takes up and deposits on the outside. A similar convoluted action is possible for import; two actions for two actors each result in four non-liabilities.

12 Only those cases are counted where a direct action, resulting in liability if executed by one person, imply no liability if done by two. The convoluted cases of Note 11 are not noted since they do not correspond to a case that could involve only one actor.

13 In *Šabbat*: bar Abba. In the Babli,

Šabbat 2b/3a, the argument is by Babylonian Amoraim.

14 The expression “no liability” is used in Mishnah *Šabbat* 1:1 in two completely different senses. As noted earlier (Note 5) if the complete action is performed by one person, the other one is passive and does not infringe on any law; at all times everything he does is permitted. But if the action is completed by two persons, both sinned. While they are not liable for a sacrifice or punishment, they require repentance and Heaven’s forgiveness.

15 Since both the rich man and the poor are described as executing the same actions, there is no intrinsic reason why they should be considered separately. It only is to emphasize the importance of the rules of transporting on the Sabbath. But, as will be shown in the sequel, not to bring out is a direct biblical command while not bringing into a private domain from the public one is an inference; the rules of importing must be transferred from those of exporting.

In *Šabbat*, the Genizah text and the first hand of the Leiden ms. read “Exporting or importing are one but the Sages counted them as two” but as S. Lieberman (Note 5) has noted, the reading here is supported by early Medieval quotes.

16 Since there are no verses spelling out the prohibition of carrying from the public domain to a private one.

17 Importing into one domain is exporting from another. There seems to be no reason to make a distinction between domains (even though there is a big difference since in a private domain one may carry without restriction but in the public domain only for a distance of less than 4 cubits.)

18 While any transport from one domain to another on the Sabbath is sinful, it creates a liability only if the object is of a minimal size (*Šabbat* Chapters 7-8). For solid food, the minimum is fixed at the volume of a dried fig. The two actions mentioned will combine if there was continuous awareness of the Sabbath prohibitions.

19 *Ex.* 36:6. The verse speaks of donations for the construction of the Tabernacle. The Babli (*Šabbat* 96b) finds a tenuous connection with the Sabbath by a *gezerah šawah*, concurrent use of words.

20 *Jer.* 17:22. While prophetic books are not sources of law, they are authentic evidence for the understanding of the Torah by the teachers of past generations. It is proved that in the understanding of Jeremiah (whose student Barukh ben Neriah is credited with bringing the study of Torah to Babylonia) moving objects from a private to the public domain is a violation of biblical law. This supports the interpretation of *Ex.* 36:6.

רבי מנא אמר לה סתם. רבי אבין בשם רבי יוחנן. תנינן תרתין קללין ולא דמיין
דין לדין. שבויעות שתיים שהן ארבע מביא ארבע קרבנות. מראות נגעים שנים שהן ארבע
מביא שתי קרבנות. רבי לעזר בשם רבי אבין פתר לה פתר חורן. שבויעות שתיים שהן ארבע
רבי עקיבה אומר. מראות נגעים שנים שהם ארבע רבי ישמעאל. רבי חגיי בעא קומי רבי יוסי.
ולמה לי כרבי ישמעאל. ואפילו כרבי עקיבה אתיא. היא ידיעה והעלם על טומאת מקדש

ידיעה והעלם על טומאת הקדש. אמר ליה. מאן אית ליה העלם טומאה והעלם מקדש לאו רבי ישמעאל. וון בעיי כרבי עקיבה. פעמים שיש פאן העלם טומאה והעלם מקדש ואינו חייב אלא אחת. היך עבדא. נייטמא וידע נעלקמה ממנו טומאה ונכנס למקדש ויצא וידע. נעלם הימיו מקדש ונכנס למקדש ויצא וידע. הרי פאן העלם טומאה והעלם מקדש ואינו חייב אלא אחת. ופעמים שיש פאן כמה ידיעות וכמה העלימות ואינו חייב אלא אחת. היך. נייטמא וידע נעלקמה הימיו טומאה. עד שהוא בהעלם טומאה נעלקמה הימיו מקדש ונכנס למקדש ויצא וידע ואמר. טומאה זו אין חייבין עליה קרבן. נייטמא וידע נעלקמה הימיו טומאה. עד שהוא בהעלם טומאה נעלם הימיו מקדש ונכנס למקדש ויצא אפילו כמה פעמים ובסוף ידע. הרי פאן כמה ידיעות והעלימות ואינו חייב אלא אחת.

Rebbi Mana said it without attribution²¹; Rebbi Abin in the name of Rebbi Johanan: We did state two principles which do not compare. “There are two kinds of oaths which are four kinds”; one has to bring four sacrifices²². “There are two kinds of appearances of skin disease which are four kinds”; one has to bring two sacrifices²³. Rebbi Eleazar in the name of Rebbi Abin²⁴ explained it otherwise: “There are two kinds of oaths which are four kinds” was said by Rebbi Aqiba; “there are two kinds of appearances of skin disease which are four kinds” by Rebbi Ismael²⁵. Rebbi Haggai asked before Rebbi Yose: why do I need to follow Rebbi Ismael? Does it not come even following Rebbi Aqiba? Knowing and forgetting about impurity of the Sanctuary is the same as knowing and forgetting about impurity of *sancta*²⁶. He told him, does not Rebbi Ismael have forgetting impurity and forgetting the Sanctuary, and we want to follow Rebbi Aqiba²⁷?

Sometimes there is forgetting impurity and forgetting the Sanctuary but he is liable for only one sacrifice²⁸. How is this? If one became impure, realized it, then forgot about impurity, entered the Sanctuary, and left; then he became aware. Here is forgetting impurity and forgetting the Sanctuary but he is liable for only one sacrifice²⁹. Sometimes there are many forgettings of impurity and many forgettings of the Sanctuary but he is liable for only one [sacrifice]. How [is this]³⁰? If one became impure and realized it, then forgot and while being oblivious of impurity entered the Sanctuary and left; then he became aware³¹. He said, there is no sacrifice due for this impurity. Again he became impure and realized it, then forgot and while being oblivious of impurity entered the Sanctuary and left even several times; in the end he

became aware. Here are many forgettings of impurity and forgettings of the Sanctuary but he is liable for only one [sacrifice]³².

21 He did not ascribe the following remark to R. Johanan or any other earlier Amora.

22 Mishnah 3:1, explicit in *Sifra Hovah* (*Wayyiqra* 2) *Parašah* 9(8). For the four cases enumerated in Note 1, R. Aqiba requires four separate sacrifices. R. Ismael infers from the forward-looking formulation of the verse that only future-directed oaths can trigger liability for a sacrifice. According to him, for separate oaths in the same period of oblivion at most two sacrifices may be due.

23 The reference to skin disease also is in a difficult Genizah text (G, L. Ginzberg, *Yerushalmi Fragments from the Genizah*, New York 1909, p. 264 ff.) but it cannot be correct. The purification ceremony of the healed sufferer from skin disease is independent of the particular diagnosis by which he had been declared impure and the number of sacrifices due solely depends on his financial ability. The sequel shows that one has to read “there are two kinds of awareness of impurity which are four kinds,” the second clause in the Mishnah.

The difference between RR. Aqiba and Ismael is explained in *Sifra Hovah* (*Wayyiqra* 2) *Pereq* 12(7), Babli 14b. Both verses *Lev.* 5:2,3 describe situations in which a person might become impure; they both end with the remark “it was hidden from him but then he knew and was found guilty,” i. e., he forgot about the impurity, entered the Sanctuary, and then became aware of his transgression. R. Aqiba holds

that since impurity is mentioned twice but the Sanctuary only by inference, no sacrifice is due for causing impurity of the Sanctuary, only for entering it in impurity. R. Ismael holds that the repetition of the clause implies the obligation of a sacrifice both for impurity of the person and of the Sanctuary. R. Aqiba will hold that separate sacrifices might be due for impurity originating outside the person (v. 2) and that created in humans (v. 3). R. Ismael will hold that separate sacrifices are due for a human entering the Sanctuary in impurity and for the impurity thereby caused to the Sanctuary. The problem is that the Mishnah is anonymous, representing R. Meïr’s Mishnah, which is R. Aqiba’s tradition.

24 R. Abin mentioned at the start of the paragraph is R. Abin the son, head of the Academy of Tiberias at the time of R. Mana in Sepphoris. The reading “R. Eleazar in the name of R. Abin” (In G: “in the name of R. Abun”, at a second occurrence “R. Eliezer ben R. Abun”) is impossible since R. Abin (Abun) the father lived a generation and a half after R. Eleazar. As already recognized by R. David Fraenckel (*Qorban Ha’edah ad loc.*) one must read “R. Eleazar bar Abinna”, a third generation Galilean Amora.

25 The Tanna of the Mishnah is not inconsistent in his use of parallel expressions but the two parallel sentences represent two different tannaïtic positions.

26 Since Mishnah 2:1 explains that even R. Aqiba can hold that “there are two kinds

of awareness of impurity which are four kinds" only if he distinguishes between awareness of impurity and awareness of the Sanctuary, there seems to be a possibility following him to require a sacrifice for infringing on the purity of the Sanctuary when there was awareness of impurity but oblivion of the Sanctuary.

27 Only R. Ismael requires a sacrifice both for forgetting impurity of *sancta* and forgetting the Sanctuary (Mishnah 2:6). R. Haggai's inference is incorrect; R. Aqiba will not require a sacrifice in his case.

28 Even following R. Ismael.

29 There is no guilt attached to being impure. Guilt by impurity is incurred only if either the impure person enters the

Sanctuary or eats from *sancta*. In the case in question there was only one forgetting; there is only one sacrifice required.

The sentence is missing in G.

30 Text of G חיד עבדה.

31 There is only one oblivion and only one sacrifice.

The sentence is missing in G.

32 At the first occasion, he was aware of the Sanctuary but he thought that for his kind of secondary impurity the Sanctuary was not forbidden. Then he entered several times while forgetting about the Sanctuary. Finally he realized his error concerning both impurity and Sanctuary. R. Ismael will agree that only one sacrifice is possible.

(9 line 32d) פִּיסקָא. מִרְאוֹת נְגָעִים שְׁתֵּים שֶׁהֵן אֶרְבָּעָה: אָמַר רַבִּי יוֹסִי. שְׂאֵל יְהוֹשֻׁעַ בֶּן רַבִּי עֲקִיבָה אֶת רַבִּי עֲקִיבָה. אָמַר לוֹ. מִפְּנֵי מָה אָמַרְתָּ. מִרְאוֹת נְגָעִים שְׁתֵּים שֶׁהֵן אֶרְבָּעָה: אָמַר לוֹ. וְאִם לֹא מָה יֹאמְרוּ. אָמַר לוֹ. יֹאמְרוּ. מִקְרוֹם בִּיצָה וּלְמַעַלָּה טָמֵא. אָמַר לוֹ. לומר שְׂאֵם אֵין בְּקִי בָּהֶן וּבְשִׁמוּתָן אֵין רוֹאֶה הַנָּגָעִים.

וּמִנִּיין שְׂמִצְטָרְפִין זֶה עִם זֶה. אָמַר רַבִּי מִנָּא. מִנו אוֹתָן חֲכָמִים שְׁנִים וּמִנו אוֹתָן אֶרְבָּעָה. מָה שְׁנִים מִצְטָרְפִין זֶה עִם זֶה אִף אֶרְבָּעָה מִצְטָרְפִין זֶה עִם זֶה. רַבִּי לֵעָזָר בְּשֵׁם רַבִּי אֲבִין. אִם בְּשִׁאֵינוּ מִינוּ מִצְטָרֵף לֹא כָל־שֶׁכֶן מִין בְּמִינוֹ. אָמַר רַבִּי יוֹסֶה בִּירְבִי בּוּן. וְהִיוּ אֵין כְּתוּב כָּאֵן אֶלָּא וְהִיא. מְלֻמֵּד שְׂאֵינוּ מִצְטָרְפִין זֶה עִם זֶה. תִּנִּי חִזְקִיָּה. לִנְיָגִי צִרְעַת אֵין כְּתוּב כָּאֵן אֶלָּא לִנְגַע צִרְעַת. מְלֻמֵּד שְׂאֵינוּ מִצְטָרְפִין זֶה עִם זֶה. אָמַר לוֹ. וְיֹאמְרוּ. מִקְרוֹם בִּיצָה וּלְמַעַלָּה טָמֵא וּמִצְטָרְפִין. וְאֵל יֹאמְרוּ. מִרְאוֹת נְגָעִים שְׁנִים שֶׁהֵן אֶרְבָּעָה: אָמַר לוֹ. מְלֻמֵּד שְׂאֵינוּ זֶה לְמַעַלָּה מִזָּה. וְהִיא זֶה לְמַעַלָּה מִזָּה. אִם אוֹמַר אֶת כֹּן נִמְצָאת אוֹמַר. הִכָּהָ טָמֵא. וְהִכָּהָ מִן הִכָּהָ טָמֵא. וְהִתְוֹרָה אָמְרָה וְהִנֵּה כְּהָה הִנָּנֶה. הִכָּהָ טָמֵא אֲבָל הִכָּהָ מִן הִכָּהָ טָהוֹר. וְתִינָא כִּי דָמַר רַבִּי חֲנִינָה. לֵב' מְלָכִים וּב' אִיפְרָבִין. מְלָכוּ שְׁלֹזָה גְדוֹל מִמְלָכוּ שְׁלֹזָה וְאִיפְרָכוּ שְׁלֹזָה מֵאִיפְרָכוּ שְׁלֹזָה. וְאֵין אִיפְרָכוּ שְׁלֹזָה גְדוֹל מִמְלָכוּ שְׁלֹזָה וְשִׁגְרִירוּ שְׁלֹזָה מִשְׁלֹזָה. וְאֵין שִׁגְרִירוּ שְׁלֹזָה גְדוֹל מִמְלָכוּ שְׁלֹזָה. רַבִּי חֲנִינָה בְּשֵׁם רַב אֲחִוָּא. מְלָךְ וְרַב חִילִּיָּה וְאַרְבָּבְטָא וְרִישׁ גְּלוּתָא. אָמַר רַבִּי לֵעָזָר בִּירְבִי יוֹסִי קוֹמִי רַבִּי יוֹסִי. מִתְנִיתָא אָמְרָה שְׂאֵינוּ זֶה לְמַעַלָּה מִזָּה. אִם הִשְׁאֵת שְׁכָהָ מִן הִכָּהָ שְׁלָה טָהוֹר יֵשׁ לָהּ מִרְאָה שִׁנִּי. בְּהֶרֶת שְׁכָהָ מִן הִכָּהָ שְׁלָה טָמֵא לֹא

קַל-שֶׁכֶן שְׂיָהָא לָהּ מִרְאָה שְׂיִנִי. אָמַר לִיה. חֲמִי מָה אַתְּ מַר. שְׂיִנִי יֵשׁ לָהּ. שְׂלִישִׁי לֹא כָל-שֶׁכֶן. וּמָה חֲמִית מִימַר. בְּהֶרֶת שְׂכָהָא מִן הַכָּהָא שְׂלָה טָמְא זֶה שְׂאֵת. מִינָה שְׁלֹשָׁאֵת כְּקָרוֹם בִּיצָה. שְׂאֵת זֶה שְׂאֵת. בְּהֶרֶת זֶה בְּהֶרֶת. סְפִיחוֹת שְׂיִנִי לְבֶהֱרֶת. וּמִרְאָה עֲמוּק שְׂיִנִי לְשְׂאֵת. מָה לְשׁוֹן שְׂאֵת. מוֹגְבֶהֶת. כְּמִרְאָה הַצֵּל גְּבוּהָ מִמִּרְאָה הַחֲמָה. מָה לְשׁוֹן עֲמוּק. עֲמוּקָה. מִמִּרְאָה חֲמָה שְׂהִיא עֲמוּקָה מִמִּרְאָה הַצֵּל. מָה לְשׁוֹן סְפִיחוֹת. טְפִילָה. שְׁנֵאֲמַר סְפִיחוֹת נִגְאֵל-אַחֶת הַכְּהוּנוֹת וְגו'. אָמַר רַבִּי לְעִזְרָה. זֶה דְּבָרֵי רַבִּי יִשְׁמַעֵאל וְרַבִּי עֲקִיבָה. אָבֵל דְּבָרֵי חֲכָמִים. שְׂאֵת וּבִהֶרֶת אַחֶת. סְפִיחוֹת שְׂנִייה לָהּ וְלָהּ. מִתְּנִיתָא אֲמָרָה כֵּן. נִגְשִׁית מִסְפַּחַת שְׂאֵת אִין מִסְפַּחַת עֲגָה.

New paragraph. “There are two kinds of appearances of skin disease which are four kinds.”³³ “Rebbi Yose said, Joshua the son of Rebbi Aqiba asked Rebbi Aqiba. He said to him, why did they say, ‘There are two kinds of looks of skin disease which are four kinds’³⁴? He answered him, if not so, what should they have said? He said to him, they could have said ‘starting with eggshell and stronger it is impure.’³⁵ He said to him, to tell you that anybody not expert for them and their names may not see skin lesions.³⁶”

From where that they can be joined one to the other³⁷? Rebbi Mana said, the Sages counted them as two and counted them as four. Just as two can be joined one to the other³⁸ so also four can be joined one to the other. Rebbi Eleazar in the name of Rebbi Abin³⁹: If it can be joined to what is not of its kind, so much more of its own kind³⁹. Rebbi Yose ben Rebbi Bun said, it is not written “they will be” but “it will be”. This teaches that they cannot be joined one to the other⁴⁰. Hizqiah stated: It is not written “skin diseases” but “skin disease”. This teaches that they cannot⁴¹ be joined one to the other.”

⁴²“He said to him, they could have said ‘starting with eggshell and stronger it is impure’ but should not have said, ‘there are two kinds of appearances of skin disease which are four kinds.’ He answered him, it teaches that they are not one superior to the other.⁴³” Could they not be one superior to the other? If you say so, you would have said the darkened one is impure, the very darkened is impure. But the Torah said, *behold, the diseased spot darkened*⁴⁴. The darkened one is impure but the very much darkened is pure. ⁴⁵It follows what Rebbi Ḥanina said, it is comparable to two kings and their two lieutenants⁴⁶. One king is greater than the other king, one lieutenant is greater than the other lieutenant. But the first one’s lieutenant is not greater than the other king. Samuel said, it is comparable to two kings and two of

their ambassadors⁴⁷. One king is greater then the other king, one ambassador is greater than the other ambassador. But the first one's ambassador is not greater than the other king. Rabbi Ḥanina in the name of Rav (Aḥa) [Ada]⁴⁸ bar Aḥawa: A king, and his army commander, and the *Arghabeta*⁴⁹ and the Head of the Captivity. Rabbi Eleasar ben Rabbi Yose said before Rabbi Yose: The Mishnah implies that one is no greater than the other. If *s'et* whose very darkened spot is pure has a second color, the shiny spot, whose very darkened spot is impure, certainly will have a second color. He answered him, look at what you are saying. It has a second degree; should it not also have a third⁵⁰? What causes you to say that the very white spot, whose very darkened spot is impure, is the *s'et*? The kind of *s'et* is like eggshell.

⁵¹“שֶׁט, this is *s'et*. בְּהָרֵת, this is the shiny spot. סְפִחָה is secondary to the shiny spot. [The diseased spot's] look is deepened⁵², secondary to *s'et*. What is the etymology of *s'et*? Elevated. As the shadow looks elevated compared to the sunny spot. What is the etymology of *deepened*? It is deep, as the sunny spot looks depressed compared to the shadow. What is the etymology of סְפִחָה? Adjunct. As it is said, *adjoin me please to one of the priesthoods*⁵³, etc.” Rabbi Eleazar said, these are the words of Rabbi Ismael and Rabbi Aqiba. But the words of the Sages are that *s'et* and the shiny spot are one. *Sappahat* is secondary to either one⁵⁴. The Mishnah says so: “*Mispahat* is turned into *s'et* or strong *mispahat*.⁵⁵”

33 Tosephta Nega'im 1:1, Babli *Ševuot* 6a.

34 In contrast to the three similar statements in the Mishnah, this one does not seem to have legal implications.

35 While white spots on one's skin in general are harmless (*Lev.* 13:38-39), if they contain discolored hair they potentially are sources of impurity. This is characterized in *Lev.* 13:2 as “*s'et*, adjoint, or shiny spot” which is read as “*s'et*, shiny spot, or one of their adjoints”. It is indicated that the

Cohen has to determine the nature of the impurity but no details are given, possibly to reserve diagnosis to priests. The details therefore are left to tradition. In Mishnah *Nega'im* 1:1, “shiny spot” is defined by R. Meir as color of fresh snow, *s'et* as color of eggshell (or the color of the membrane enclosing a hard boiled egg.) These colors are characterized as appearing as depressions on normal skin (*Lev.* 13:3). There are secondary forms for which the spots do not appear as if depressed (*Lev.*

13:4), these are described as the color of whitewash used in the Temple and that of white wool. The Sages disagreeing with R. Meir declare eggshell as a secondary color. Since in the Tosephta eggshell is treated as secondary color, R. Meir cannot represent the teachings of R. Aqiba in this case.

In G there is an added sentence which cannot be reconstructed.

36 Since the colors are not described in the Torah, the uninitiated lacks the means of determining purity and impurity.

37 A discoloration cannot imply impurity unless it contain an inscribed square of the size of half a Cilician bean; this is defined as (36 hairwidths)². The spot does not have to be of uniform color.

38 Since they are mentioned together in one verse.

39 If the verse implies that spots classified as *s'et* and "shiny spot" are to be combined then certainly a shiny spot and one of lesser intensity are one and the same.

40 This contradicts everything we know from parallel sources, in particular the otherwise exact parallel in *Sifra Tazria*, *Parašat Nega'im*, *Pereq* 1(4) which reads *וְהָעֵם יָהּ מְצֻרְפִּין יָהּ עֵם* "this teaches that they can be joined one to the other." Already D. Fraenckel in the 18th Century recognized that under the influence of Greek the *h* sound was lost and there was no difference in sound between *וְהָעֵם* and *וְהָעֵם*.

41 Again, read "they can". Since the verse mentions three different diseases, the singular implies that for matters of purity all three are one.

42 A second version of the discussion between R. Aqiba and his son, not recorded

elsewhere.

43 One cannot say that the color of fresh snow, which is blinding in bright sunlight, is the same as eggshell, but that for the rules of impurity both are equal and the relation of the color of snow to whitewash is equal to the relation between eggwhite and white (unbleached) wool.

44 *Lev.* 13:6. Since even for a darkened spot there are conditions which have to be satisfied before the sufferer from skin disease is declared pure, it follows that the change of color alone is not sufficient.

45 Babli 6b.

46 ὑπαρχος, lieutenant, *proconsul*, *legatus*, the second in command. The decreasing order of brightness is snow, eggshell, whitewash, white wool.

47 He thinks that the secondary colors are much darker than the primary ones.

48 The reading in parenthesis is that of the ms., the one in brackets that of G. While Rav Ada bar Aḥawa (in the Babli Rav Ada bar Ahavah) is well attested to in both Talmudim, a Rav Aḥa bar Aḥawa is not otherwise known.

49 Probably the high Sassanid official mentioned in Greek sources as ἀργαπέτης, a Persian word "commander of a fort.". The word is discussed at length by Geiger in *Additamenta ad librum Aruch Completum*, pp. 27b-28b.

50 The problem is what combines with what for impurity. It is clear from the biblical text that the spots in the original color combine, also that *baheret* and *s'et* combine. If one would establish a hierarchy of brightness as the parables indicate and *s'et* was less than *baheret*, a combination of *baheret* with its secondary color would be a

combination of degrees 1 and 3, which we had excluded by a previous argument. Therefore *s'et* and *baheret* must be coordinate, not subordinate.

51 *Sifra Tazria', Parašat Nega'im, Pereq* 1(4). A parallel text from another source is in the Babli, 6b.

52 *Lev.* 13:3.

53 *IS.* 2:36.

54 Since the word is placed between the two expressions.

55 Mishnah *Nega'im* 7:2. *מספחת* is biblical equivalent of *ספחת* (*Lev.* 13:6,7) used both for impure and pure spots, thereby validating the distinction between deeper and much deeper colors.

(fol. 32c) **משנה ב:** כל שיש בזה ידיעה בתחילה ובסוף והעלם בנתיים הרי זה בעולה ויורד. יש בזה ידיעה בתחילה ואין בזה ידיעה בסוף שעייר הנעשה בפנים ויום הכפורים תולה עד שיודע לו וביא בעולה ויורד:

Mishnah 2: In any case⁵⁶ where there is knowledge at the start and knowledge at the end but forgetting in between there is an increasing or decreasing [sacrifice]⁵⁷. If there was knowledge at the start but no knowledge at the end, the ram whose blood in brought inside⁵⁸ and the Day of Atonement⁵⁹ suspend until it becomes a certainty for him and he brings an increasing or decreasing one⁶⁰.

56 This refers to violations of the laws of purity (Note 2). A sacrifice to atone for such a violation, either by entering the Sanctuary in a state of impurity or eating *sacra* in such a state, is possible only if the violation occurred while the perpetrator was oblivious of his state (*Lev.* 5:2-3). This implies that at some earlier time he was aware of his state. If he never remembers, clearly he has no occasion to bring a

sacrifice.

57 Depending of the perpetrator's wealth as explained in *Lev.* 5:1-13.

58 *Lev.* 16:15-16.

59 If there is no Temple, the Day of Atonement protects the perpetrator from judgment by the Heavenly Court.

60 The Day of Atonement suspends but does not eliminate the obligation; there is no statute of limitations.

(32d line 50) **הלכה ב:** כל שיש בזה ידיעה בתחילה וכל שיש בזה ידיעה בסוף והעלם בנתיים. תלמוד לומר ונעלם ונעלם שני פעמים. מכלל שבאת לו ידיעה בתחילה ובסוף והעלם בינתיים. עד כדון קרבי עקיבה. קרבי לשמאל. דרבי לשמאל קרבי. דרבי אמר. ונעלם ממנו מכלל שידע. והוא נדע הרי שתי ידיעות. הא רבי לשמאל קרבי. ורבי קרבי

יִשְׁמַעְאֵל. וְאֶפִּילוּ כְּרַבִּי עֲקִיבָה אֶתְנָא. הֵיא וְדִיעָה וְהָעֵלָם בְּטוּמְאָת מִקְדָּשׁ. וְדִיעָה וְהָעֵלָם בְּטוּמְאָת הַקּוֹדֶשׁ. וְאֵת דְּבָעֵי יִשְׁמַעְיָנָה מִן הַכָּא. וְהוּא יָדַע וְאֶשֶׁם. וְהֵלֵא כְּכֹר נֶאֱמַר וְהוּא טָמֵא וְאֶשֶׁם. אֲלֵא אִם אֵינוֹ עֲנִין לִדִּיעָה בְּתַחֲלִילָה תְּנִיחוֹ עֲנִין לִדִּיעָה בְּסוֹף.

Halakhah 2: “In any case where there is knowledge at the start,” etc.

⁶¹From where that we require knowledge at the start and at the end but forgetting in between? The verse says, *it was forgotten, it was forgotten*⁶² two times; this implies that he had knowledge at the start and at the end but forgetting in between. So far for Rabbi Aqiba; following Rabbi Ismael? For Rabbi Ismael [argues] like Rabbi. As Rabbi said, *it was forgotten by him*, this implies that he knows. “*But he knew*,” there is knowledge two times. Hence Rabbi Ismael [argues] like Rabbi, and Rabbi like Rabbi Ismael. This comes even according to Rabbi Aqiba; it is the same for knowledge and forgetting about the impurity of the Sanctuary as for knowledge and forgetting about the impurity of *sancta*⁶³. But some want to understand it from the following: *He knew and felt guilty*. Was it not already said, *he became impure and felt guilty*^{62,64}? But if it does not refer to knowledge at the beginning, let it refer to knowledge at the end.

61 Babli 4a.

62 Lev. 5:2,3.

63 In Babylonian sources [Babli 14b, *Sifra Hova (Wayyiqra 2) Pereq 12(7)*] this is consistently attributed to R. Ismael. The difference between the two is that R. Aqiba considers every stylistic variation a change in meaning whereas R. Ismael holds that “the Torah is written in the manner of

common speech.”

64 The first quote is from the verse about human impurity, the other about impurity from extra-human sources. While it was argued before that one can only forget what one knew, the knowledge explicitly required in v. 3 must be explicit, it cannot have been unconsciously absorbed.

32d line 59) רַבִּי בּוֹן בְּעֵי. אִם לֹא נִדְּעָה לוֹ בְּסוֹף הַיָּד מִבֵּיא קֶרֶבָן. אֲלֵא אִם אֵינוֹ עֲנִין לִדִּיעָה בְּסוֹף תְּנִיחוֹ עֲנִין לִדִּיעָה בְּתַחֲלִילָה. הִתִּיבּוֹ. הָרִי כְּתִיב אֶזְרוֹחַדָּע אֶלִּי חֲטָאֲתוֹ וְהִבֵּיא. מַעֲתָה אִם אֵינוֹ עֲנִין לִדִּיעָה תַּחֲלִילָה תְּנִיחוֹ עֲנִין לִדִּיעָת סוֹף. פֶּתֶר לָהּ בְּמַחְוִיבֵי חֲטָאוֹת וְאֶשְׁמוֹת וְנִדְּאִין שְׁעִבֵר עֲלֵיהֶן יוֹם הַכִּיפּוּרִים שְׁמִבִּיאִין אַחֵר יוֹם הַכִּיפּוּרִים וְחִיבֵי אֶשְׁמוֹת תְּלִמִּין פְּטוּרִין. תְּלִמִּיד לֹמֵר אֶזְרוֹחַדָּע אֶלִּי חֲטָאֲתוֹ וְהִבֵּיא. אֶף לְאַחֵר יוֹם הַכִּיפּוּרִים.

Rabbi Bun asked, if he did not know at the end, how could he bring a sacrifice⁶⁵? But if it does not refer to knowledge at the end, let it refer to

knowledge at the beginning⁶⁶. They objected: Is it not written, *or his transgression came to his knowledge, he has to bring*⁶⁷? Then if it does not refer to knowledge at the beginning, let it refer to knowledge at the end⁶⁸! Explain it as referring to those who are obligated for certain purification and reparation offerings for which the Day of Atonement has passed who have to bring after the day of Atonement, while those obligated for suspended reparation sacrifices are no longer liable⁶⁹. The verse says, *or his transgression came to his knowledge, he has to bring* even after the Day of Atonement⁷⁰.

65 Since any obligatory offering cannot be brought voluntarily, the fact that a sacrifice is commanded implies that the person can prove it is obligatory, i. e., he knows that a sin has been committed. Therefore the mention of 'knowledge' in the verse cannot refer to his knowledge at the moment he offers the sacrifice.

66 And the mention of forgetting must be interpreted as read by R. Aqiba here and R. Ismael in the Babli sources.

67 Lev. 4:23, about the purification offering of the prince. Purification offerings are for inadvertent sins; nowhere is prior knowledge and intermediate forgetting

indicated. R. Bun's argument would force the transfer of the rules for variable sacrifices to purification ones against all tradition.

68 A "suspended" reparation sacrifice is brought if the person suspects but is not sure that he has sinned (Lev. 5:17-18). If he then gains certainty that he has committed an inadvertent sin, a purification sacrifice is due if and only if he gains this knowledge before the next Day of Atonement. R. Bun's argument is justified.

70 Yoma 8:6 (45b l. 47), Babli *Keritut* 25b.

ומניין שאין מדבר אלא על טומאת מקדש וקדשיו. הזהיר וענש על ידי טומאה וחייב קרבן על ידי טומאה. מה עונש ואזהרה האמור להלן בטומאת מקדש וקדשיו. אף כשחייב קרבן על טומאת מקדש וקדשיו. רבי אליעזר בן יעקב אומר. בתוך שאמר לא-אכלתי באוני ממנו. יכול ישראל שאכל מעשר אונן או טמא גביא קרבן. תלמוד לומר מאלה. יש מאלה חייב ויש מאלה פטור. אוציא את המעשר שאינו בעון מיתה ולא אוציא את התרומה שהיא עון מיתה. שנאמר ומתו בו כי יחללוהו. תלמוד לומר מאלה. יש מאלה חייב ויש מאלה פטור. או מה להלן בתרומה אף כאן בתרומה. ולא מעבודה זרה למדתה. ועבודה זרה למדה על כל-עבירות שבתורה. לומר. מה עבודה זרה מיוחדת שחייבין על זדונה פרת ועל שגגתה חטאת. יצאת תרומה שאינה אלא עון מיתה.

⁷¹And from where that it speaks only about the impurity of the Sanctuary and its *sancta*? He warned and punished about impurity⁷² and required a sacrifice about impurity. Since punishment and warning spelled out later on refer to impurity of the Sanctuary and its *sancta*⁷³, also when He made liable for a sacrifice it is about impurity of the Sanctuary and its *sancta*. Rabbi Eliezer ben Jacob says, since it says, *I did not eat from it in my deep mourning*⁷⁴, I could think that an Israel who ate tithe in deep mourning should bring a sacrifice. The verse says, *from these*⁷⁵. For some of these he is liable, for some of these he is not liable. I will exclude tithe which is not a deadly sin but will not exclude heave which is a deadly sin as it is said, *they would die from it for they desecrated it*⁷⁶. The verse says *from these*; for some of these he is liable, for some of these he is not liable. Or since there⁷⁷ [one speaks about] heave, also here heave. But did you not learn it from foreign worship⁷⁸? Since foreign worship teaches about all transgressions in the Torah, to say that as foreign worship is special that one is liable for extirpation if done intentionally and for a sacrifice if done unintentionally⁷⁹. This excludes heave which only is a deadly sin⁸⁰.

71 Babli 6b; *Sifra Hovah (Wayyiqra 2) Pereq 11(9)*.

72 In *Lev. 22:15-16*, both warning and punishment are written for priests who would violate the purity of the Sanctuary and its *sancta*. For the laity the corresponding verses are *Lev. 7:19-20*. The sacrifice for violations in purity is mentioned in *Lev. 5:2-3*; one has to establish that no sacrifice is possible for violations of *sancta* which do not belong to the Sanctuary such as heave.

73 *Deut. 26:14*. The person who comes to eat his Second Tithe at the place of the Sanctuary has to make a declaration that he followed all the rules; in particular that he did not eat of it while in “deep mourning”, occupied in burying a close relative. Second

Tithe has to be eaten in purity but no sanction for violation of its purity is spelled out anywhere in the Pentateuch.

74 *Deut. 14*.

75 *Lev. 5:4*. Prefix *נ* always is read as partitive, “some but not all.” Since it is not spelled out which infractions of the laws of impurity (or of testimony, or oaths) are included, and which are excluded, the detailed rules are left to rabbinic interpretation. Babli 33b.

76 *Lev. 22:9*. First Tithe (of which heave of the tithe was separated) is totally profane in the hand of the Levite. Second Tithe has to be eaten in purity at the place of the Sanctuary but there is no penalty for violation of its purity. But heave has to be eaten by the Cohen in purity and violation of

its purity is a deadly sin.

77 The verse mentioned in Note 76.

78 The sacrifice atoning for inadvertent idolatry is declared paradigmatic for all sins in *Num.* 15:22.

79 The sacrifice is spelled out in *Num.*

15:22-29; extirpation in vv. 30-31. Babli *Šabbat* 69a.

80 But no extirpation is mentioned for violating purity of heavens.

1) (33a line 1) אָמַר רַבִּי חֲנִינָה קוֹמִי רַבִּי מָנָא. וּמַעֲבֹדָה זָרָה לְמַדְתָּהּ. וְיִלְמַד מִעֲבֹדָה זָרָה לְכָל־
דָּבָר בִּידְעָה אַחַת. אָמַר לוֹ. עֲבֹדָה זָרָה בְּקַבּוּעַ וְטוֹמְאָתָא מְקַדָּשׁ וְקֻדְשֵׁי בְּעוֹלָה וְיִזְרֵד. וְאִין
לְמִידִין קַבּוּעַ מִעוֹלָה וְיִזְרֵד וְלֹא עוֹלָה וְיִזְרֵד מִקַּבּוּעַ. וְיָמָּה חֲמִית מִימַר. בְּטוֹמְאָתָא הַקּוֹדֶשׁ
הַכְּתוּב מִדְּבָר. נֶאֱמַר כָּאֵן בְּהִמָּה טְמֵאָה וְנֶאֱמַר לְהֵלֵךְ בְּהִמָּה טְמֵאָה. מִה בְּהִמָּה טְמֵאָה
הָאֲמוֹנָה לְהֵלֵךְ בְּטוֹמְאָתָא הַקּוֹדֶשׁ. אִף בְּהִמָּה טְמֵאָה הָאֲמוֹנָה כָּאֵן בְּטוֹמְאָתָא הַקּוֹדֶשׁ. אִין לִי
אֶלָּא טוֹמְאָתָא הַקּוֹדֶשׁ. טוֹמְאָתָא מְקַדָּשׁ מִנִּין. תִּלְמוּד לומר וְטוֹמְאָתוֹ עָלָיו. מִה חֲמִית מִימַר.
בְּטָמָא שְׂאֵכֶל טָהוֹר אִין בְּטָהוֹר שְׂאֵכֶל טָמָא. תִּלְמוּד לומר וְטוֹמְאָתוֹ עָלָיו. בְּטוֹמְאָתָא הַגּוֹף וְלֹא
בְּטוֹמְאָתָא בְּשָׂר. רַבִּי אוֹמַר. וְאֶכֶל וְטוֹמְאָתוֹ עָלָיו. בְּטוֹמְאָתָא הַגּוֹף וְלֹא בְּטוֹמְאָתָא בְּשָׂר. רַבִּי חֲנִינָה
אוֹמַר. נֶאֱמָרוּ קֳדָשִׁים לְשֵׁם רַבִּים וְנֶאֱמָרָה טוֹמְאָה לְשֵׁם יְחִיד. הָא מַה אֲנִי מְקַיֵּים וְטוֹמְאָתוֹ
עָלָיו. בְּטוֹמְאָתָא הַגּוֹף. לֹא בְּטוֹמְאָתָא בְּשָׂר. רַבִּי מֵאִיר אוֹמַר. לֹא דִיבֵר אֶלָּא בְּמִי שְׁטוּמְאָה
פּוֹרְשֵׁת מִמֶּנּוּ. יָצָא בְּשָׂר שְׂאִין טוֹמְאָה פּוֹרְשֵׁת מִמֶּנּוּ.

Rebbi Ḥanina⁸¹ said before Rebbi Mana: Did you learn this from foreign worship? Then one should learn from foreign worship that for everything one needs one knowledge⁸²! He told him, foreign worship requires a fixed value [sacrifice] but the impurity of the Sanctuary and its *sancta* an increasing or decreasing one. One cannot infer about a fixed value [sacrifice] from an increasing and decreasing one, nor for an increasing or decreasing from a fixed value one⁸³. How did you understand to say that the verse⁸⁴ speaks about impurity of Sanctuary *sancta*? It is said here *an impure animal*⁸⁵ and it is said further on *an impure animal*⁸⁶. Since *an impure animal* mentioned there is about impurity of Sanctuary *sancta*, so *an impure animal* mentioned here is about impurity of Sanctuary *sancta*. Not only Sanctuary *sancta*; from where the impurity of the Sanctuary⁸⁷? ⁸⁸“The verse says: *his impurity is on him*⁸⁹. How did you understand to explain it? About an impure person who ate pure [meat], or a pure person who ate impure [meat]⁹⁰? The verse says: *his impurity is on him*. Impurity of the body, not impurity of the meat. Rebbi says, *he ate*⁹¹, *his impurity is on him*. Impurity of the body, not impurity of the meat. Rebbi Ḥiyya says, *sancta* are mentioned in the plural⁹² but impurity is

mentioned in the singular. How can I uphold *his impurity is on him*? Impurity of the body, not impurity of the meat. Rabbi Meir says, the verse only speaks of one from whom impurity separates⁹³. This excludes meat from which impurity does not separate.”

81 Read: Hinena.

82 Since neither prior awareness nor forgetting are mentioned as prerequisite for a sacrifice for unintentional idolatry (nor for any other sacrifice not depending on the sinner's wealth) one would have to explain away the mention of prior awareness for infractions of the laws of purity.

83 Therefore the previous argument is invalid; one has to find another argument to exclude any sacrifice for violations of the sanctity of heaven.

84 Lev. 5:2-3. Babli 7a.

85 Lev. 5:2.

86 Lev. 7:21.

87 Babli Zevahim 43b. The question is whether a violation of the purity of the Sanctuary can be expiated by a sacrifice or whether any such violation requires the full ceremony of Lev. 16 describing the Day of Atonement.

88 Sifra Sav Pereq 14(3-6), partially quoted in Zevahim 43b.

89 Lev. 7:20.

90 This is prohibited in Lev. 7:19.

91 Lev. 7:21.

92 A well-being offering is always mentioned in the plural, שְׁלָמִים. It is argued that therefore a singular cannot refer to the sacrifice. The argument is unconvincing since the sacrifice is not called שְׁלָמִים in the plural but זֶבַח שְׁלָמִים in the singular. It also is unnecessary since in 7:20 עָלָיו “on him” refers to the subject וְהַנֶּפֶשׁ “but the person”.

93 A person always can remove his impurity, for simple impurity by immersion in a *miqweh*, for severe impurities by one of the prescribed rituals. Impure sacrificial meat must be burned (Lev. 7:19; it also loses its impurity by rotting but as long as it is meat it remains impure.

14) (33a line 14) אִם כֵּן מֵה הוֹעִיל לוֹ יוֹם הַכִּיפּוּרִים. אָמַר רַבִּי יוֹסִי בִּירְבִי בּוֹן. נִעֲשִׂית לּוֹ יוֹם הַכִּיפּוּרִים כְּאַשָׁם תְּלוּי. מֵת לִפְנֵי יוֹם הַכִּיפּוּרִים עֹנֶה בָּהּ. אַחֵר יוֹם הַכִּיפּוּרִים כֶּבֶד כִּיפָּר. וְכִפֵּר עַל-הַקּוֹדֶשׁ מִטּוֹמְאוֹת בְּנֵי יִשְׂרָאֵל וְגו'. יֵשׁ לִי בְּעִינַי זֶה שֶׁלֹּשׁ טֹמְאוֹת. טוֹמְאוֹת עֲבוֹדָה זָרָה. שֶׁנֶּאֱמַר לִמְעַן טָמְאָה אֶת-מִקְדָּשִׁי. גִּילּוּי עֲרִיּוֹת. שֶׁנֶּאֱמַר לְבִלְתִּי עֲשׂוֹת מַחֲוֹקוֹת הַתּוֹעֵבוֹת. שְׁפִיכוֹת דָּמִים. שֶׁנֶּאֱמַר וְלֹא תִטְמְאוּ אֶת-הָאָרֶץ. יָכוֹל עַל כָּל-הַטְּמְאוֹת הֵלָלוּ שְׁעִיר זֶה מִכִּפָּר. תִּלְמוּד לומר מִטּוֹמְאוֹת וְלֹא כָל-טוֹמְאוֹת. מֵה מְצִינוּ שֶׁחֵלֶק הַכְּתוּב בְּטוֹמְאוֹת מִקְדָּשׁ וְקֹדֶשׁ. אִם כֵּן לֹא נִחְלֹק אֲלָא בְּטוֹמְאוֹת מִקְדָּשׁ וְקֹדֶשׁ. דְּבָרֵי רַבִּי יְהוֹדָה. רַבִּי שְׁמַעוֹן אוֹמֵר. מִמִּקְוָמוֹ הוּא מוֹכֵר. שֶׁנֶּאֱמַר וְכִפֵּר עַל-הַקּוֹדֶשׁ מִטּוֹמְאוֹת בְּנֵי יִשְׂרָאֵל. כָּל טוֹמְאָה שֶׁבְּקוֹדֶשׁ. יָכוֹל עַל טוֹמְאוֹת מִקְדָּשׁ וְקֹדֶשׁ שְׁעִיר זֶה יִכָּפֵר. תִּלְמוּד לומר וּמִפְשָׁעֵיהֶם. אֵילוֹ הַמְּדִדִין. וְכֵן הוּא אוֹמֵר מִלֵּךְ מוֹאֵב פָּשַׁע בִּי.

If it is so, what does the Day of Atonement help him⁹⁵? Rabbi Yose ben Rabbi Bun said, the Day of Atonement acts for him as a suspended reparation sacrifice. In he died before the day of Atonement, *the sin is in her*⁹⁶. After the day of Atonement it already was atoned for⁹⁷.

⁹⁸“*He shall atone for the Sanctuary from the impurities of the Children of Israel*”⁹⁹, etc. In this aspect I have three impurities. The impurity of foreign worship as it is said, *to defile My Sanctuary*¹⁰⁰. Sexual offenses as it is said, *not to act in the rules of abominations*¹⁰¹. Spilling of blood as it is said, *do not defile the Land*¹⁰². I could think that this ram atones for all these impurities, the verse says, *from the impurities*, not all impurities¹⁰³. We find that the verse treated the impurity of the Sanctuary and its *sancta* separately; also here we treat only the impurity of the Sanctuary and its *sancta* separately¹⁰⁴, the words of Rabbi Jehudah. Rabbi Simeon says, from its place it is decided, as it is said, *he shall atone for the Sanctuary from the impurities of the Children of Israel*, any impurity in the Sanctuary. I could think that this ram atones for these impurities, the verse says, *and their crimes*⁹⁹. These are the rebellions¹⁰⁵, for so it says, *the king of Moab rebelled against me*¹⁰⁶.

95 This refers to the second part of the Mishnah. If at some time the impurity was known, the eventual obligation of a sacrifice is not eliminated by the day of Atonement. Then what is the effect of this day?

96 Num. 15:31. The feminine pronoun refers to נשמה “the breathing person”.

97 Even though an eventual obligation remains for the living person, the guilt has been atoned for.

98 Babli 7b, *Sifra Aḥare Pereq* 4(1-3).

99 Lev. 16:16.

100 Lev. 20:3.

101 Lev. 18:30.

102 Num. 35:34, a misquote from memory.

103 Reading the prefix נ as partitive, cf. Note 75.

104 In his opinion, the Day of Atonement is exclusively for repairing any damage to the Sanctuary.

105 Intentional sins, intended as “breaking the yoke of Heaven”. There is no homily on חטאת “unintentional sins” also mentioned in the verse.

106 2K. 3:7.

(fol. 32c) **משנה ג:** אין בה ידיעה בתחילה אבל יש בה ידיעה בסוף שעיר הנעשה בהין ויום הכיפורים מכפר שנאמר מלבד חטאת הכיפורים על מה שזה מכפר זה מכפר. מה הפנימי אין מכפר אלא על דבר שיש בו ידיעה אף היצון לא יכפר אלא על דבר שיש בו ידיעה:

Mishnah 3: If there is no knowledge at the start but there is knowledge at the end¹⁰⁷, the ram brought outside¹⁰⁸ or the Day of Atonement¹⁰⁹ atone as it is said, *in addition to the atoning purification offering*¹¹⁰; what the one atones for the other atones for. Since the one inside atones only on matters which were known¹¹¹, also the outside one should atone only on matters which were known.

107 If there was no knowledge at the start and therefore no forgetting, there can be no variable sacrifice. But since the purity of the Sanctuary or of its *sancta* was impaired, a sacrifice is needed which, however, cannot be that of a particular person. It must be the people's sacrifice.

108 The holiday purification offering of the Day of Atonement (*Num.* 29:11) which

is treated following the rules of all holidays and is not mentioned in *Lev.* 16.

109 If there is no Temple.

110 *Num.* 29:11. The atoning purification offering is the one mentioned in *Lev.* 16:15.

111 Where there is awareness of violation of the rules of purity. For unknown violations see Mishnah 4.

(33a line 26) **הלכה ג:** אין בה ידיעה בתחילה כול. מה חמית מימר. הפנימי תולה והיצון מכפר או החיצון תולה והפנימי מכפר או זה וזה יתלו או זה וזה יכפר. מאי כדון. אומר רבי יעקב בר אבא. מילה חמית. ריש לקיש איתיב קומי רבי יוחנן ואיתיב ליה. מחלוקי כפרות היא מילתא. ולינה ידע מה מר ליה. אומר ליה רבי זירא. דילמא דא היא. מה חמית מימר. בטמא שאכל טהור או נימר בטהור שאכל טמא. תלמוד לומר לומר וטומאתו עליו. בטומאת הגוף. לא בטומאת בשר. או זה וזה יכפר. מאי כדון. והתורה עליו עונות אילו העונות. פשעיהם אילו המרדים. חטאתם אילו השגגות. כשאמר יכפר. אומר רבי אמי בשם ריש לקיש. ונשא השעיר עליו את כל עונותם. טפוש העונות והנים השגגות. לומר. מה עונות שאין בהן חיוב קרבן. אף השגגות שאין בהן חיוב קרבן. ולמה באו לזכרון. רבי אילא בשם רבי יסא. לתלייה. ויתלה על אוכלי שקצים ורמשים במשמע. רבי שמואל בשם רבי זירא. חטאתם חטאתם. מה חטאתם שנאמר להלו שיש בהן חיוב קרבן. אף חטאתם שנאמר כאן שיש בהן חיוב קרבן. יצאו עונות שאין בהן חיוב קרבן. שיויר שעיר הנעשה בפנים יום הכיפורים תולה. מה שמרתה. אין בה ידיעה בתחילה אבל יש בה ידיעה בסוף.

Halakhah 3: "If there is no knowledge at the start," etc. What can you see to say? Does the one inside suspend and the one outside atone, or the one

outside suspend and the one inside atone, or both of them suspend, or both of them atone¹¹²?

What about it? Rabbi Jacob bar Aḥa said, I saw something. Rabbi Simeon ben Laqish was asking before Rabbi Joḥanan and asked him, what are the differences in atoning? I do not know what he answered him. Rabbi Ze'ira said to him, maybe it is the following: ¹¹³How did you understand to explain it? About an impure person who ate pure [meat], or a pure person who ate impure [meat]? The verse says: *his impurity is on him*. Impurity of the body, not impurity of the meat.

Or both of them atone? What about it? ¹¹⁴*He should over it confess sins*, these are intentional sins, *their crimes*, these are rebellions¹⁰⁵, *their mistakes*, these are unintentional sins. Then He said, *he will atone*. Rabbi Immi said in the name of Rabbi Simeon ben Laqish, *the ram will carry all their sins*¹¹⁵, he grabbed intentional sins and left out unintentional sins¹¹⁶, to indicate that just as intentional sins do not carry the obligation of a sacrifice, so those unintentional sins which do not carry the obligation of a sacrifice¹¹⁷. And why did they come here? Rabbi Ila in the name of Rabbi Yasa, for suspension¹¹⁸. Would it be understood to suspend for those who eat abominations and crawling things¹¹⁹? Rabbi Samuel in the name of Rabbi Ze'ira: *Their mistakes, their mistakes*¹²⁰. Since *their mistakes* mentioned there are those which carry the obligation of a sacrifice, also *their mistakes* mentioned here are those which carry the obligation of a sacrifice. This excludes intentional sins which do not carry the obligation of a sacrifice. What is left out by the ram brought inside¹¹² the Day of Atonement suspends. What did it leave out? If there is no knowledge at the start but there is knowledge at the end.¹²¹

112 Since there are two purification sacrifices brought on the Day of Atonement, one (*Lev. 16:15 ff.*) whose blood is sprinkled on the gobelin separating the Temple Hall from the Holiest of Holies and the incense altar (*Ex. 30:10*), and one (*Num. 29:11*) whose blood is sprinkled on the large altar in the Temple courtyard. The question is whether each of these has a separate

function or whether the day requires a double sacrifice for all its functions.

113 Halakhah 2, Note 90. These are known differences in the power of atonement but have nothing to do with the Day of Atonement.

114 *Lev. 16:21*. Babli *Yoma* 36b, *Ševuot* 12b, *Keritot* 25b.

115 *Lev. 16:22*.

116 In fact only rebellions are mentioned to be carried to the desert even though three kinds of transgressions were put on the scapegoat's head.

117 It is not that intentional sins not carry an obligation of a sacrifice but the sinner is prohibited from offering one (*Num.* 15:30-31.) Unintentional sins only require a sacrifice if the corresponding intentional sin is punishable by extirpation (*Mishnah Keritut* 1:2), others require repentance and atonement by the Day of Atonement. *Babli Keritut* 25b.

118 The commentators differ in what this means. The Day of Atonement suspends punishment to give the sinner time for repentance (*Qorban Ha'edah*) or the statement refers to the *Mishnah* that the Day of Atonement eliminates the obligation of a suspended sacrifice (*Pene Mosheh*). The

sequel shows that neither of these alternatives applies but that the first alternative considered in the introductory paragraph applies; one purification sacrifice suspends punishment for certain categories of sins and the second atones.

119 Eating non-kosher animals is a sin (*Lev.* 11, *Deut* 14) but not one leading to extirpation. Therefore it is not subject to atonement by sacrifice.

120 The first *חטאת* is in *Lev.* 16:21 and refers to the scapegoat and its limited power of atonement, the second one to the final statement *Lev.* 16:34 which declares that *all* mistakes are atoned for on that day.

121 This justifies the *Mishnah*; both actions of the Day of Atonement are needed. *Babli* 10a.

משנה ד: וְעַל שְׂאֵין בָּהּ יְדִיעָה לֹא בִתְחִילָה וְלֹא בִסוּף שְׁעִירֵי הָרְגָלִים וְשְׁעִירֵי רֹאשִׁי הַדָּשִׁים מְכַפְּרִים דְּבָרֵי רַבִּי יְהוּדָה. רַבִּי שְׁמַעוֹן אוֹמֵר, שְׁעִירֵי הָרְגָלִים מְכַפְּרִין אֲכָל לֹא שְׁעִירֵי רֹאשִׁי הַדָּשִׁים. וְעַל מִה שְׁעִירֵי רֹאשִׁי הַדָּשִׁים מְכַפְּרִין עַל טְהוֹר שְׂאֵבֶל טָמֵא. רַבִּי מֵאִיר אוֹמֵר כֹּל הַשְּׁעִירִים כְּפָרְתָן שְׁנָה עַל טוֹמְאָת מִקְדָּשׁ וְקֹדֶשׁ.

משנה ה: הָיָה רַבִּי שְׁמַעוֹן אוֹמֵר שְׁעִירֵי רֹאשִׁי הַדָּשִׁים מְכַפְּרִין עַל טְהוֹר שְׂאֵבֶל טָמֵא וְשֶׁל רְגָלִים מְכַפְּרִין עַל שְׂאֵין בָּהּ יְדִיעָה לֹא בִתְחִילָה וְלֹא בִסוּף וְשֶׁל יוֹם הַכִּפּוּרִים מְכַפֵּר עַל שְׂאֵין בָּהּ יְדִיעָה בִּתְחִילָה אֲכָל יֵשׁ בָּהּ יְדִיעָה בִּסוּף.

Mishnah 4: But about where there is no knowledge either at the start or at the end¹²², the rams of the holidays and the rams of the Days of the New Moon¹²³ atone, the words of Rabbi Jehudah. Rabbi Simeon says, the rams of the holidays atone but not the rams of the Days of the New Moon. What do the rams of the Days of the New Moon atone for? For the pure person who

ate impure¹²⁴. Rabbi Meïr says, the atoning of all rams is the same, about the impurity of the Sanctuary and its *sancta*.

Mishnah 5: Rabbi Simeon used to say, the rams of the holidays atone for the pure person who ate impure; those of the holidays atone for where there is no knowledge either at the start or at the end, and those of the Day of Atonement where there is no knowledge at the start but there is knowledge at the end¹²⁵.

- 122 Undetected infractions of the laws of purity. Mishnaïot 4-6 are reproduced in *Sifra Aḥare Pereq* 5(2-50).
 123 *Num.* 28:15,22,30; 29:4,16,19,22,25,
 28,31,34,38. These are public sacrifices; they atone for damage to public institutions.
 124 Impure sacrificial meat or cereal.
 125 Mishnah 3.

(33a line 43) **הלכה ד':** וְעַל שְׂאִין בָּהּ יְדִיעָה כּוּל'. **הלכה ה':** הִזָּה רַבִּי שְׁמַעוֹן אוֹמֵר כּוּל'. רַבִּי לֵעָזֵר בְּשֵׁם רַבִּי הוֹשְׁעִיָּה. טַעֲמָא דְרַבִּי יְהוּדָה וְשַׁעִיר עִגְלִים חֲטָאת לֵי. חֹט שְׂאִין יוֹדֵעַ בּו אֱלָא יִי שַׁעִיר זֶה מִכֶּכֶּר. אֵין לִי אֱלָא שַׁעִיר שְׁלֹרֵאשׁ חוֹדֶשׁ. שַׁעִירֵי רְגָלִים מְנִיין. אָמַר רַבִּי זִירָא. וְשַׁעִיר. וְיִי מוֹסִיף עַל עֲנִינֵי רִאשׁוֹן. רַבִּי זְעִירָא וְרַבִּי לֵעָזֵר בְּשֵׁם רַבִּי הוֹשְׁעִיָּה רַבִּי יַעֲקֹב בַּר אֲחָא בְּשֵׁם רַבִּי יוֹחָנָן. וְאַתָּה | נִתֵּן לָכֶם לְשֹׂאת אֶת־עֲוֹן הָעֵדָה. מַה נֵּן קִימִין. אִם בְּשַׁעִיר נִחְשׁוֹן. עַל שִׁבְטוֹ מִכֶּכֶּר. אִם בְּשַׁעִיר שְׁלִימִים הַכִּיפּוּרִים. אֵין כְּיוּצָא בּו לְדוֹרוֹת. אֱלָא כּו אֲנִי קִימִין בְּשַׁעִיר שְׁלֹרֵאשׁ חוֹדֶשׁ. מַאי כְּדוֹן. נֶאֱמַר כָּאֵן נִשְׂיאוֹת עוֹן וְנֶאֱמַר לְהָקֵן נִשְׂיאוֹת עוֹן. וְנִשְׂא אֶהָרֹן אֶת־עוֹן הַקֹּדֶשִׁים. מַה לְהָקֵן עוֹן הַקֹּדֶשִׁים וְלֹא עוֹן הַמִּקְרִיבִין אִף כָּאֵן עוֹן הַקֹּדֶשִׁים וְלֹא עוֹן הַמִּקְרִיבִין. מַה חֲמִית מִימֵר בְּטָהוֹר שְׂאֵכֵל טָמֵא יִטָּמֵא בְּטָמֵא שְׂאֵכֵל טָהוֹר. אָמַר רַבִּי יוֹסִי בִּירְבִי בּוֹן. רַבִּי יוֹדָה חֲלָק שִׁטָּת רַבִּי מֵאִיר. רַבִּי שְׁמַעוֹן חֲלָק שִׁטָּת רַבִּי יוֹדָן. מוֹדָה רַבִּי יוֹחָנָן בְּשַׁעִיר הַנֶּעֱשָׂה בְּפָנִים שְׂאִין מִכֶּכֶּר אֱלָא תוֹלָה. וְתֵינֵי כְּרַבִּי יוֹנָה בְּשֵׁם רַבִּי זְעִירָא. וְעֲשֹׂהוּ חֲטָאת. קִבְּעוּ לְתוֹלִיָּה שְׁלֵא יִשְׁתַּנָּה.

Halakhah 4: “But about where there is no knowledge,” etc. **Halakhah 5:** “Rabbi Simeon used to say,” etc. Rabbi Eleazar in the name of Rabbi Hoshai: The reason of Rabbi Jehudah is *and one goat’s ram sin offering for the Eternal*¹²⁶. This ram atones for a sin known only to the Eternal¹²⁷. I have not only the ram of the Day of the New Moon; from where the rams of the holidays? Rabbi Ze’ira said, *and a ram*¹²⁸, the copula adds to the prior subject. Rabbi Ze’ira and¹²⁹ Rabbi Eleazar in the name of Rabbi Hoshai, Rabbi Jacob bar Aḥa in the name of Rabbi Johanan: *He gave it to you to lift the sins of the congregation*¹³⁰. Where do we hold? If about Naḥshon’s ram,

it atoned for his tribe. If about the ram of the Day of (Atonement)¹³¹, there is nothing similar in later generations¹³². But we must deal with the ram of the Day of the New Moon. What about it? It is said here “lifting sin” and it is said there “lifting sin”, *Aaron shall lift the sin of the sancta*¹³³. Since there it is the sinfulness of the offerings not the sins of the offerers, also here it is the sinfulness of the offerings not the sins of the offerers¹³⁴. What did you see to say, “for the pure person who ate impure”, maybe we should say for the impure person who ate pure? Rabbi Yose ben Rabbi Bun said, Rabbi Jehudah splits the argument of Rabbi Meïr; Rabbi Simeon splits the argument of Rabbi Jehudah¹³⁵. Rabbi Johanan¹³⁶ agrees that the ram brought inside does not atone; rather it suspends. This parallels Rabbi Jonah in the name of Rabbi Ze’ira, *he shall make it a purification offering*¹³⁷. He fixed it for suspension, that it could not be changed¹³⁸.

126 *Num.* 28:15, the sacrifice of the Day of the New Moon. (The verse is quoted not quite correctly.) The root נסח in *pā'al* means “to sin” but in *pi'el* “to cleanse, to retribute, to purify.” The word נסח “purification” can also mean “sin” (*Ex.* 34:9). Here it is interpreted in both senses. Babli 9a.

127 In *Sifry Deut.* 145, the example given is that of an unknown grave which makes everybody stepping over it impure; the impure person never could know of his impurity.

128 In all occurrences (Note 123) the sentence starts with ו which also could have been left out. This is read as referring to the first case. Babli 9b.

129 Probably “and” should be replaced by a comma.

130 *Lev.* 10:17, referring to the inauguration of the Tabernacle which was on the first of Nisan. On that day, three purification sacrifices were offered. 1° A

calf, special to this day. 2° A ram for the Day of the New Moon. 3° A ram by the chief of the tribe of Jehudah (*Num.* 7:16). The verse does not spell out to which of the three it refers.

In the Babli 9b, the entire argument is quoted as explanation of R. Simeon’s statement; also quoted *Zevahim* 101b.

131 Read: Inauguration.

132 The reference is to the calf (Note 129, 1°) which only in this case served as public purification offering; in all other cases the sacrifice is a ram. Since the verse is in the singular, it follows that only one purification offering was burnt; the other two were eaten [*Sifra Šemini Pereq* 2(2)]. It is characterized as “given to lift the sin of the congregation”; this is asserted only of the New Moon’s Day ram. It follows that the calf of the Inauguration was particular for the Sanctuary and the priests, Naḥshon’s for his tribe.

133 *Ex.* 28:38.

134 It is explicitly stated in the verse that the High Priest's diadem is only effective to cure unknown disabilities of sacrifices, not of humans. In the Babli, *Menahot* 25a, this is the final answer by the fifth Cent. Rav Ashi after a lengthy discussion which also quotes R. Zera (Ze'ira) with a completely different suggestion which is rejected.

135 R. Jehudah accepts the argument of R. Meir but excludes the rams of the Day of Atonement from the group. R. Simeon accepts the argument of R. Jehudah but excludes the ram of the Day of the New Moon.

136 One may conjecture that originally the text read ר"י meaning "R. Jehudah" which was misread by a copyist as "R. Johanan". (In Babli texts, ר"י has both meanings with about the same frequency.)

137 *Lev.* 16:9. One would have expected the sentence to read וְהִקְרִיב אֶת־הַשְּׂעִיר אֲשֶׁר עָלָה עָלָיו הַגֹּדֶל לִי לְחֻטָּאת. Then חֻטָּאת would have referred to the ram and meant "purification offering." But the clause וַיַּעֲשֵׂה חֻטָּאת "he turns it into חֻטָּאת" defines the word as "unintentional sin." The ram whose blood is brought into the Sanctuary turns intentional into unintentional sins.

138 It cannot be used for any other purpose. If the companion scapegoat would die before it is slaughtered, it could not be used for any other purpose; it must be sent grazing until it develops a bodily defect or becomes too old to be used as a sacrifice, then be sold and its value used to buy other sacrifices. *Sifra Aḥare Pereq* 2(5).

(33a line 58) שְׂעִיר שְׂלֵמָה קָרֵב בְּרֶגֶל יִקְרֵב בְּרֹאשׁ חֹדֶשׁ. לֹא קָרֵב בְּרֹאשׁ חֹדֶשׁ יִקְרֵב לְהִבְאֵה שְׂמִיטָהּ לֹא הוּקְדָּשׁוּ קָרְבָּנוֹת צִיּוֹר אֶלָּא לִיקְרֵב עַל מִזְבֵּחַ הַחִיצוֹן.

A ram which was not brought on the holiday should be brought on the Day of the New Moon. If it was not brought on the Day of the New Moon it should be brought in the future since from the start public sacrifices were dedicated only to be brought onto the outside altar¹³⁹.

139 *Tosephta* 1:1. It is forbidden to bring profane animals into the Sanctuary precinct. Therefore all animals brought into the Sanctuary have to be dedicated beforehand.

One is careful to make only the most general dedication in order not to lose the use of the animal if something goes wrong.

(33a line 61) וְלֹא כְּבֵר כִּיפּוּר יוֹם הַכִּיפּוּרִים. אָמַר רַבִּי מְנָא. מִכֵּיּוֹן דְּכִתִּיב חֹג הַמִּצְוֹת וּבִתְחַג הַשְּׂבָעוֹת וּבִתְחַג הַשְּׂסָפוֹת כָּמִי שְׂכּוּלָן מְכַפְּרִין בְּפֶגֶרָה אַחַת. אָמַר רַבִּי בּוּי. מִכֵּיּוֹן שְׂכּוּלָן מְכַפְּרִין עַל טוּמְאָתָא מְקֻדָּשׁ וְקֻדְשֵׁי כָּמִי שְׂכּוּלָן מְכַפְּרִין בְּפֶגֶרָה אַחַת.

But did not the Day of Atonement already atone¹⁴⁰? Rabbi Mana said, since it is written, *the pilgrimage of Unleavened Bread, the pilgrimage of*

*Weeks, and the pilgrimage of Tabernacles*¹⁴¹, it is as if they all atoned one atonement. Rabbi Bun said, since they all atone for the impurity of the Sanctuary and its *sancta*, it is as if they all atoned one atonement.

140 Since the Day of Atonement leaves a clean slate, why does the following holiday of Tabernacles need another 8 purification sacrifices?

141 *Deut.* 16:16. Since the other two holidays are far removed from the Day of Atonement, the sacrifices are needed.

(33a line 64) רבי יעקב בר אבא בשם רבי יסא. העובר לפני התיבה ביום טוב של ראש השנה אין צריך להזכיר של ראש חודש. אמר רבי אבהו בר פפא. ותיני כן. העובר לפני התיבה ביום טוב של ראש השנה בשחרית. בית שמי אומרים. מתפלל שמונה. ובית הלל אומרים. שבע. במוסף. בית שמי אומרים. עשר. ובית הלל אומרים. תשע. ולאמר אחת עשרה. אמר רבי יוסי. מה פליגי. בדבר שטעון ברכה בפני עצמו. ביום הכא שכן אפילו בחול שאינו אלא כולל. וזכיר בעבודה. רבי יוסי בעי. מעתה שני שעירי ראש השנה מחמת ראש חודש באין. ותימר אין צריך להזכיר של ראש חודש. אמר רבי יוסי בירבי בון. ולא אות רבי בא בר ממל מקשי. דתני. שני כבשי עצרת ושני שעירי ראש השנה אם כיפר הראשון על מה שיני מכפר. על טומאה שאירעה בין זה לזה. ולא רבי שמעון היא. דרבי שמעון חולק בפירות. אלא זה וזה מחמת ראש חודש. אמר רבי אבהו. לית יכיל. דכתבי מלבד עולת החודש. ועוד מהדא דתני. שנים עשר לשני עשר חדשי השנה. חד בר אביי עבר קמי תיבותא ולא אדבר דריש ירחא וקלסוניה. רב הושעיא בעי. הגע עצמך ששחטו שניהן פאחת. מה אית לך טומאה שאירעה בין זה לזה. אמר רבי בון. אילו ישראל כשירין שמא אינו מביאין מה שקבצה להן תורה.

Rebbi Jacob bar Aḥa in the name of Rebbi Yasa: The one who stands before the Ark on New Year's holiday does not have to mention the New Moon¹⁴². Rebbi Aḥa bar Pappus said, it was stated thus: ¹⁴³“The one who stands before the Ark on New Year's holiday in the morning, the House of Shammai say, he prays eight [benedictions]¹⁴⁴, but the House of Hillel say seven. For *musaf*¹⁴⁵, the House of Shammai say ten, but the House of Hillel say nine.” Should he not say eleven¹⁴⁶? Rebbi Yose said, where do they disagree? In a matter which needs a separate benediction. But here even on a weekday he simply includes it¹⁴⁷. So he should mention it in “Service”¹⁴⁸. Rebbi Yose asked, since the two rams of New Year's day come because of the New Moon, why do you say that he does not have to mention the New

Moon¹⁴⁹? Rabbi Yose ben Rabbi Bun said, does Rabbi Abba bar Mamal¹⁵⁰ not ask correctly? As it was stated: “The two lambs of Pentecost¹⁵¹ and the two rams of New Year’s Day.” If the first atoned, what does the second atone for? For impurity that happened between them.¹⁵² Is that not Rabbi Simeon’s? And Rabbi Simeon splits atoning¹⁵³. But if both of them were for the New Moon? Rabbi Abba Mari said, you cannot do that, since it is written, *in addition to the elevation offering of the month*¹⁵⁴. In addition, from what we have stated, “twelve for the twelve months of the year.”¹⁵⁵ A patrician stood before the Ark and did not mention the New Moon; they praised him¹⁵⁶. Rav Hoshai asked: think of it, if they slaughtered both of them simultaneously? What impurity happened between them? Rabbi Bun said, if all of Israel are proper, would they not bring what the Torah prescribed for them¹⁵⁷?

142 The reader stands before the Ark. Before the invention of printing, he was the only one having a prayer text before him and was supposed to recite all prayers aloud. Except on holidays, the congregation were supposed to recite the *Šema* and the *‘Amidah* by heart.

In the main prayer, the *‘Amidah*, in all four times (evening, morning, *musaf*, afternoon) one does not mention that New Year’s Day also is New Moon Day. (In the Ashkenazic rite, in which the verses describing the sacrifices of the day are recited, the New Moon is mentioned in the quote of *Num. 29:6*.)

143 A related text in Tosephta *Berakhot* 3:12.

144 The three beginning and the three final benedictions required daily, one additional benediction for the Sabbath and one for the holiday. The House of Hillel require that the middle benediction refer both to holiday and Sabbath.

145 Every New Year’s Day the *musaf*

prayer contains three middle benedictions, one to praise God’s Kingdom, the second to His sitting in judgment over the world, the third remembering the *shofar* blowing at Mount Sinai and the expectation of the *shofar* blowing announcing the coming of the Messiah. In this version, everybody agrees that the holiday is mentioned in the declaration of God’s Kingdom; the only difference between the Houses of Shammai and Hillel is that the former require a separate benediction for the Sabbath whereas the latter hold that the Sabbath is mentioned together with the holiday in the fourth benediction. None of the parties mentions the New Moon.

146 An extra one for the day of the New Moon.

147 In the morning, afternoon and evening prayers on a Day of the New Moon there is no additional benediction; the New Moon is mentioned in an insert in the first of the last benedictions, “Service”, which is a prayer for the restoration of the Temple service

with a supplication that our prayers be accepted in lieu of sacrifices.

148 The formula used on the other 11 months of the year. The current text originates from the middle benediction of *musaf* of New Year's Day.

149 While only the elevation offering of the Day of the New Moon is mentioned in the list of sacrifices for New Year's Day (*Num.* 29:6), the traditional interpretation includes also the day's purification offering (*Num.* 28:15). Then one should include a mention of the New Moon at least in "Service".

150 It seems that one has to read "R. Yose" since R. Ba bar Mamal is not mentioned in the Halakhah.

151 Read: "the two rams of Pentecost," one prescribed in *Num.* 28:30 for the holiday, the other in *Lev.* 23:19 to accompany the two leavened breads which introduce flour from the new harvest to the Sanctuary. This is a statement of R. Simeon in Tosephta 1:2.

152 Cf. *Qidduṣin* 2:7, Note 166.

153 The answer is not acceptable since the *baraita* is attributed to R. Simeon who in

Mishnah 5 explained that different categories of purification sacrifices atone for different categories of impurity. His opinion about the ram accompanying the two leavened loaves has not been recorded.

154 *Num.* 29:6. Since the verse makes a clear distinction between the sacrifices for the Day of Remembrance (New Year) and the New Moon, certainly for R. Simeon they must have different purposes.

155 Tosephta 1:2, a statement of R. Simeon about 32 public purification sacrifices to be brought every year. There is exactly one for each month.

156 When only the outline of the topics of benedictions were given but no prayer text were prescribed.

157 He objects to the entire line of reasoning. The purification sacrifices of the holidays are given "to atone for you" (*Num.* 28:22,30; 29:5,11), but no provision is made to ascertain whether atonement is actually needed. This implies that they must be brought even if not needed for atonement. The same applies to the other public offerings for which the purpose is not explicitly stated.

מִשְׁנָה ו: אָמְרוּ לוֹ מַה הֵן שִׁיקְרָבוּ זֶה בָּזֵת. אָמַר לָהֶם יִקְרָבוּ. אָמְרוּ לוֹ הֲזֹאֵל וְאֵין כְּפָרְתָן שְׁוֶה הֵיאָדָּ קְרִיבִים זֶה בָּזֵת. אָמַר לָהֶן כּוֹלֵן בָּאֵין לְכַפֵּר עַל טוּמְאָת מִקְדָּשׁ וְקֹדֶשֶׁי:

Mishnah 6: They asked him¹⁵⁷, could they be brought one for the other¹⁵⁸? He told them, they may be brought. They asked him, since their atoning is not the same¹⁵⁹, how can they be brought one for the other? He told them, all of them serve to atone for the impurity of the Sanctuary and its *sancta*¹⁶⁰.

157 The dissenting Sages asked R. Simeon following his statement in Mishnah 5.

158 For example, a ram was dedicated as scapegoat for the Day of Atonement but escaped, another ram was used, and afterwards the original ram was recaptured. Since it had been dedicated, it could not revert to profane status. May it be used as purification offering on the next holiday?

159 As R. Simeon stated in Mishnah 5.

160 The dedication prepares it to atone for impurities, to fulfill a biblical commandment. The particular instances of atonement are not on the mind of the person making the dedication; therefore, the ram may be used on all occasions where Scripture uses similar wording. It is noted in the next Halakhah that a dedication for sacrifice, whatever it will be, is sufficient.

הלכה ו: (33b line 6) אָמְרוּ לוֹ. מָה הֵן שֶׁיִּקְרְבוּ זֶה בָּזָה כּוּל'. אָמַר רַבִּי יוֹחָנָן. דְּבָרֵי הַכִּמִּים מְשַׁנִּין וְדְבָרֵי רַבִּי שֶׁמַּעֲזוֹ אֵין מְשַׁנִּין. דְּבָרֵי הַכִּמִּים מְשַׁנִּין. וְתִימַר. מָהוּ שֶׁיִּקְרְבוּ זֶה בָּזָה. בְּשִׁטָּתוֹ הַשִּׁבּוּחַ. כְּשִׁטָּתָד שֶׁאֵת אֹמַר. אֵין מְשַׁנִּין. מָהוּ שֶׁיִּקְרְבוּ זֶה בָּזָה. אָמַר רַבִּי יוֹסִי. שֶׁאֵין קֶרְבָּנוֹת צִיבּוֹר נִקְבָּעִין אֶלָּא בִּקְבוּעָה. אָמַר רַבִּי יוֹדָן. וְתִי כֵן. לְשֵׁם אוֹתוֹ זָבַח שֶׁהוּא קָרַב לְשִׁמּוֹ הוּא קָדַשׁ מִשְׁעָה רִאשׁוֹנָה.

Halakhah 6: “They asked him, could they be brought one for the other,” etc. Rabbi Johanan said, the words of the Sages [imply] that one may change; the words of Rabbi Simeon [imply] that one may not change¹⁶¹. The words of the Sages [imply] that one may change, and you say “could they be brought one for the other”¹⁶²? They objected to him according to his argument¹⁶³. According to your argument, since you say that one may not change, could they be brought one for the other? Rabbi Yose said, since public sacrifices are designated only by use¹⁶⁴. Rabbi Yudan said, it was stated thus¹⁶⁵: “For the purpose of the sacrifice for which it is brought it was sanctified from the beginning.”

161 It may be assumed that the Sages follow R. Meir, for whom all public purification sacrifices have the same purpose. Then it is obvious that the particular day for which an animal is brought should not have any relevance for the substance of the sacrifice. But for R. Simeon (and also R. Jehudah) there should be a difference; even if in an emergency R. Simeon permits using a ram on the next

available occasion, he might forbid intentional change.

162 Since for the Sages the answer obviously is positive, why does it have to be asked at all?

163 They asked R. Simeon; for themselves the answer was clear.

164 Animals dedicated for public sacrifice are dedicated “for any public sacrifice where they might be needed.” The exact kind is

determined only at the time of slaughter.

165 This follows R. Yose (the Tanna) in Mishnah *Zevahim* 4:6: “Even if somebody did not intend [any of the specific uses] it is qualified; it is a stipulation by the court that the thought is determined by the officiating priest.” Since the officiating priest can disqualify a sacrifice by thought, e. g., the intention to eat the sacrificial meat outside

the allotted time or place, he also qualifies the sacrifice by his thought if the animal had been dedicated as sacrifice. For a private sacrifice this implies that even if the owner had a disqualifying thought but the officiating priest served having the correct thought, the sacrifice is qualified. The Babli agrees as explained in Maimonides’s Mishnah Commentary *ad loc.*

משנה א: רבי שמעון בן יהודה אומר ממשמו שעיירי ראשי תדשים מכפרין על תהור שאכל מן הטמא מוסף עליהם של רגלים שמכפרין על תהור שאכל את הטמא ועל שאין בה ידיעה לא בתחלה ולא בסוף. מוסף עליהם של יום הכפורים שהן מכפרין על תהור שאכל את הטמא ועל שאין בה ידיעה לא בתחלה ולא בסוף ועל שאין בה ידיעה בתחלה אכל יש בה ידיעה בסוף.

משנה ח: אמרו לו אומר היה רבי שיקרבו זה בזה אמר להם חין. אמרו לו אם בן יהוה של יום הכפורים קריבין בראשי תדשים אכל היאך של ראשי תדשים קריבין ביום הכפורים לכפר בכפרה שאינה שלהן. אמר להן בולן באין לכפר על טומאת מקדש וקדשיו:

Mishnah 7: Rabbi Simeon ben Jehudah said in his¹⁶⁶ name, the rams of the New Moon Days atone for the pure person who ate of impure [sacrifice]. Those of the holidays add to them in that they atone for the pure person who ate impure [sacrifice] and for [infractions] of which there was knowledge neither at the start nor at the end. Those of the Day of Atonement add to them in that they atone for the pure person who ate impure [sacrifice] and for [infractions] of which there was knowledge neither at the start nor at the end and those for which there was no knowledge at the beginning but there was at the end¹⁶⁷.

Mishnah 8: They said to him, did not the teacher¹⁶⁶ use to say that they may be sacrificed one for the other? He said, yes. They said to him, if it is so then those of the Day of Atonement could be brought on the Days of the New Moon. But how could those of the Days of the New Moon be brought on the

Day of Atonement to atone an atonement which is not theirs¹⁶⁸? He told them, all of them serve to atone for the impurity of the Sanctuary and its *sancta*^{125,160}.

166 R. Simeon (ben Iohai).

167 He disagrees with the Tanna of Mishnah 5. R. Simeon does not hold that the different kinds of public purification sacrifices are for different kinds of offenses but that there are different kinds of

effectiveness, the power of the sacrifice of a more holy day is strictly greater than that of the day of lesser holiness.

168 Since the rams of the Day of Atonement were destined for two additional powers not in those of the New Moon.

(33b line 11) **הלכה ח:** אמרו לו אומר היה רבי כול'. אמר רבי יוסי דרומינא קומי רבי יונה. הכן צורכה למיתני. אם כן יהו של ראשי חדשים קרבין ביום הכפורים. שכן מעלין בקודש ולא מורידין. אבל שליום הכפורים אינן קרבין בראש חודש. שאין מורידין בקודש. רבי לעזר בשם רבי בון פתר לה פתר חורון. אם כן יהו שליום הכפורים קרבין בראשי חדשים. שמכפרין כפרתן וכפרת ראשי חדשים. אבל של ראשי חדשים אין קרבין ביום הכפורים. שאין מכפרין אלא כפרתן בלבד. אילו מי שאכל חלב חמשה זיתים והפריש ארבעה קרבנות וסבור שהן חמשה שמא כיפר. או אילו מי שאכל חלב ארבעה זיתים והפריש חמשה קרבנות וסבור ארבעה לא כל-שכן. וכן היה רבי שמעון אומר. שלשים ושנים שעירים קרבין על הציבור בכל-שנה. שלשים ואחד בחוץ ונאכלין. ואחד בפנים ואינו נאכל. ושעיר המשתלח. שנים עשר לשנים עשר חדשי שנה. שמונה בחג. שבעה בפסח. שנים בעצרת. אחד בגלגל היום ואחד בגלגל הלחם. אחד בראש השנה ואחד ביום הכפורים. כיון ששמע משה כן אמר. מעתה מי שפצאת לידו ספק גבירה צריך להביא כל-קרבנות הללו. רבי תנחומא בשם ריש לקיש. בשעה שאמר לו הקדוש ברוך הוא למשה והתנדב עלי וגו' התחיל ואמר מזמור לתודה על שם והתנדב עלי.

Halakhah 8: “They said to him, did not the teacher use to say,” etc.

Rebbi Yose the Southerner said before Rebbi Jonah: Would it not have been necessary to state, if it is so then those of the Days of the New Moon could be brought on the Day of Atonement since one increases holiness but one does not diminish; but those of the Day of Atonement cannot be brought on the Days of the New Moon since one does not diminish holiness¹⁶⁹. Rebbi Eleazar in the name of Rebbi Bun¹⁷⁰ explained it by another explanation¹⁷¹: if it is so then those of the Day of Atonement could be brought on the Days of the New Moon, for included in their atoning is the atoning of the Days of the New Moon¹⁷², but those of the days of the New Moon cannot be brought on the Day of Atonement, for they atone only their atonement. For if anybody

ate five olive-sized pieces of fat and dedicated four sacrifices, being of the impression that he had dedicated five, did he atone¹⁷³? Or if he ate four olive sized pieces of fat, dedicated five sacrifices, being of the impression that he had dedicated four, not so much more¹⁷⁴? And so ¹⁷⁵“Rebbi Simeon used to say, thirty-two rams are brought for the public every year. Thirty one outside, they are eaten. One inside which is not eaten¹⁷⁶. And the scapegoat. Twelve for the twelve months of the year. Eight on Tabernacles, seven on Passover, two on Pentecost, one for the day and one for the bread. One on New Year’s Day and one on the Day of Atonement.”¹⁷⁷ When Moses heard this he said, it follows that anybody for whom the doubt of a transgression arises should bring all these sacrifices! Rebbi Tanhuma in the name of Rebbi Simeon ben Laqish: When the Holy One, praise to Him, said to Moses, *he shall confess*¹⁷⁸ on it etc., he started and said, *A Song of confession*¹⁷⁹, inspired by *he shall confess on it*.

169 A general principle (cf. *Bikkurim* 3:3, Note 57; *Yoma* 3:8 41a l. 10, *Megillah* 1:12 72a l. 47, *Horaiot* 3:3 Note 151; *Babli Yoma* 12b). Since this principle cannot be overridden, it is an argument not for practice but against R. Simeon’s opinion that the sacrifices can be substituted one for the other and for R. Meir’s that they cannot.

The argument presupposes that the cumulation of cases for which the sacrifices atone indicates a higher state of holiness.

170 The name tradition is impossible. The second generation R. Eleazar cannot transmit in the name of the third generation R. Bun I or the fourth generation R. Bun II. Probably one should read: R. Bun in the name of R. Elazar or even R. Yose ben R. Bun in the name of R. Eleazar. Cf. Note 24.

171 To uphold the text of the Mishnah. Since the argument is directed against one made in the Academy of R. Jonah, of the last generation of Galilean Amoraim, it

should be attributed to the absolutely last Amora R. Yose ben R. Bun.

172 He asserts that all purification sacrifices have the same status of holiness but their effectiveness depends on the intent of their dedication. One sacrifice atones for all instances for which it was dedicated but none for which it was not dedicated. He must assume that the dedication was for a purification sacrifice, not for “a sacrifice whichever it will be” since the only public sacrifices of rams are purification sacrifices including the scapegoat.

173 Assuming that he is obligated to bring five different sacrifices for five different inadvertent sins punishable by extirpation of which eating fat is the paradigm (cf. *Horaiot* 3:3). If he offered only four, one sin by necessity remains without atonement.

174 Automatically all sins are atoned for (even though one would expect the case never to happen since the owner of the

sacrifice is required to confess his sin while leaning with his hands on the head of the sacrifice (*Lev.* 4:29), and probably would detect his error.)

175 Tosephta 1:2.

176 Some of the blood of the purification offering of the Day of Atonement is brought inside the Sanctuary; the rest has to be burned outside the Sanctuary (*Lev.* 6:23). All other purification sacrifices must be eaten by the priests, (*Lev.* 6:22).

177 A similar text in *Midrash Tehillim* 100. It is standard Galilean doctrine that the 11 Psalms 90-100 were composed by Moses (even *Ps.* 99!), not only *Ps.* 90 as indicated

by its header. In the Babylonian tradition (transmitted by prayer texts) Moses was the author of *Pss.* 90-91 and the Sabbath of *Ps.* 92.

178 *Lev.* 16:21. This resolved Moses's problem and informed him that his prior concern, that the slightest doubt might impose an unbearable financial burden on the sinner, was unfounded.

179 *Ps.* 100:1. Usually, one translates "a song of thanksgiving" since this is appropriate for the תודה sacrifice [*Lev. r.* 9(3)].

מִשְׁנָה ט: וְעַל זֶדוֹן טוֹמְאוֹת מִקֹּדֶשׁ וְקִדְשׁוֹ שְׁעִיר הַנִּעְשָׂה בַּכִּנִּיּוֹת וְיָמִים הַכִּפּוּרִים מִכֶּכֶּר. וְעַל שְׂאֵר עֲבִירוֹת שְׁבִתוֹרָה הַקְּלוֹת וְהַחֲמוּרוֹת הַזְּדוֹנוֹת וְהַשְּׁגָגוֹת הַדָּעָה וְלֹא הַדָּעָה גְּעִשָׁה וְלֹא תַעֲשֶׂה כְּרִיתוֹת וּמִיִּיתוֹת בֵּית דִּין שְׁעִיר הַמִּשְׁתַּלֵּחַ מִכֶּכֶּר:

Mishnah 9: Intentional impurity¹⁸⁰ of the Sanctuary and its *sancta* is atoned by the ram whose blood is brought inside and the Day of Atonement. The remainder of the transgressions mentioned in the Torah, minor or serious ones, intentional and unintentional, known and unknown, positive commandments and prohibitions, extirpations and capital crimes, the scapegoat atones¹⁸¹.

180 Those that cannot be taken care of otherwise; for example, if a person intentionally ate impure *sancta* but was not duly warned beforehand. Then he cannot bring a sacrifice which is reserved for unintentional sins. He cannot be punished in court since he was not warned and

therefore criminal intent cannot be established. The contamination of the Sanctuary and its *sancta* is removed by the Day of Atonement; whether the person's guilt is removed without due repentance is a topic for the Halakhah.

181 This is reformulated in the Halakhah.

השגגות. (33b line 29) **הלכה ט:** וְעַל זָדוֹן טוֹמְאָת מִקֹּדֶשׁ כּוֹל'. הָדָא הִיא מְכַפֵּר עַל הַזְדוּנוֹת וְתוֹלָה עַל

לֹא הָן קָלוֹת לֹא תַעֲשֶׂה. לֹא הָן חֲמוּרוֹת כְּרִיתוֹת וּמִיתוֹת בֵּית דִּין. אָמַר רַב יְהוּדָה. כִּינִי מִתְּנִיתָא. הַקְלוֹת וְהַחֲמוּרוֹת. אוֹתָן הַקְלוֹת בֵּין שְׁעָשָׂאן בְּזָדוֹן בֵּין שְׁעָשָׂאן בְּשִׁגְגָה. אוֹתָן הַזְדוּנוֹת בֵּין שְׁתָּוְנוּדַע לֹא בְּהָן בֵּין שְׁלֹא תְּוֹנוּדַע לֹא בְּהָן. אֵילּוּ הָן קָלוֹת. עֲשֶׂה וְלֹא תַעֲשֶׂה. חֲמוּרוֹת כְּרִיתוֹת וּמִיתוֹת בֵּית דִּין. קָשָׁם שְׁהִשְׁעִיר הַנֶּעֱשֶׂה בְּכֹנִים מְכַפֵּר עַל הַזְדוּנוֹת וְתוֹלָה עַל הַשִּׁגְגוֹת. אַף שְׁעִיר הַמִּשְׁתַּלַּח כֵּן.

1 הן | י היא לא תעשה | י עשה ולא תעשה הן | י היא אמ' רב יהודה | י ר' יהודה או' 2 שעשאן בשגגה | י שלא עשאן בזדון 3 הזדונות | י החמורות קלות | י הקלות 4 חמורות | י אילו הן החמורות 5 השגגות | י השגגות בדבר שיש בו חיוב קרבן כן | י (כן) מכפר

Halakhah 9: “Intentional impurity of the Sanctuary.” etc. That means it atones for intentional infractions and suspends for the unintentional¹⁸².

¹⁸³Are not minor sins [positive commandments and]^{183a} prohibitions; are not serious ones extirpations and capital crimes¹⁸⁴? Rav¹⁸⁵ Jehudah said, so is the Mishnah: “Minor or serious ones. Those minor ones, whether he committed them intentionally or committed them unintentionally¹⁸⁶. Those intentional ones, whether he obtained knowledge of them or did not obtain knowledge of them¹⁸⁷. The following are minor sins: positive commandments and prohibitions¹⁸⁸. Serious ones, extirpations and capital crimes. Just as the ram whose blood is brought inside atones for intentional infractions and suspends for the unintentional¹⁸⁹, the same holds for the scapegoat¹⁹⁰.”

182 The purpose of the sacrifice is to safeguard the integrity of the Sanctuary. Therefore it has to repair all infractions which cannot be repaired otherwise, i. e., intentional infractions that cannot be prosecuted (for lack of eye witnesses or prior warnings). Since severe unintentional infractions (those if intentional would be punished by Divine extirpation or judicial execution) require a sacrifice, the public offering does not absolve the sinner from his obligation; it only suspends the damaging influence on the Sanctuary. The statement is incomplete since infractions for which the penalty is not spelled out in the Pentateuch

(“simple infractions”) cannot be atoned for by a sacrifice and, if committed against the Sanctity of the Sanctuary or is *sancta*, must be atoned for by the public offering.

183 The paragraph is repeated in the Babil, 12b. From here on to the end of the Halakhah there is a parallel in *Yoma* 8:6 (י).

183a Text of *Yoma*.

184 The Mishnah mentions “minor or serious transgressions”; this covers all biblical commandments. But “positive commandments and prohibitions, extirpations, and capital crimes” also describe all biblical commandments. Therefore the last clause of the Mishnah must be read as

explanation of the preceding one.

185 In *Yoma*: “Rebbi Jehudah”. The reading here is supported by the Babli.

186 This must refer either to infractions for which the penalty is not spelled out (Note 182) or to cases where guilt cannot be ascertained. The standard example is that of a person who ate one of two pieces of meat, one of which was kosher, the other one severely forbidden either as forbidden fat or as sacrificial meat which became impure (Rashi, Note 183). If it is not possible to ascertain which of the two he ate, then a suspended reparation sacrifice is due; but the obligation to bring a suspended reparation sacrifice is cancelled by the Day of Atonement, as determined in the next paragraph (and Halakhah 1:2, Note 69, *Hora'ot* 1:1 Note 18).

187 This refers to the situation described in the previous Note. If he intended to eat one

of the two, knowing that one was severely forbidden, he either committed no sin or he committed a serious crime for which no personal sacrifice can atone.

188 No biblical penalty is attached to the failure to fulfill a positive commandment. “Prohibitions” are those to which no biblical penalty is attached. The basis for the statement are the homiletics quoted at the end of this Halakhah.

189 The *Yoma* text adds: “for which no sacrifice is due.” This is understood, cf. Note 182.

190 Which carries away “all their iniquities”, *Lev.* 16:22). This last statement is missing in the Babli *Ševuot*; it is discussed in *Keritut* 25b. The scribe in *Yoma* originally wrote the same text as here, then crossed out כן “the same holds” and wrote “atones”.

31) (33b line 31) נִחָא לֹא הוֹדַע. הוֹדַע. וְלֹא כֹן תִּנִּי. מִנִּיין לְמַחְוִיבֵי חֲטָאוֹת וְאַשְׁמוֹת וְנִדְאִין שְׁעָבֵר עֲלֵיהֶן יוֹם הַכִּיפּוּרִים שְׁחִיבִין לְהֵבִיא לְאַחַר יוֹם הַכִּיפּוּרִים וְחִיבֵי אֲשָׁמוֹת תִּלְוִיין פְּטוּרִין. אָמַר רַבִּי בּוֹן בַּר חִינָה. בֵּין שְׁנֵתוּדַע לֹו בְּהֶן בֵּין שְׁלֹא נִתְּוּדַע לֹו בְּהֶן. וְלֹא כְּבָר כִּיפֹר יוֹם הַכִּיפּוּרִים. רַבִּי שְׁמַעוֹן בֶּשֶׁם לֹוי שׁוּבָדָא. בְּמוֹרֵד בְּיוֹם הַכִּיפּוּרִים הִיא מִתְּנִיתָהּ. וְלָמָּה לֹא מֵר. בְּשֹׁלֵא נִתְּוּדַע בְּהֶן בְּיוֹם הַכִּיפּוּרִים. מִילְתִּיהָ אֶמְרָה אֶפִּילוֹ לֹא נִתְּוּדַע בְּהֶן בְּיוֹם הַכִּיפּוּרִים יוֹם הַכִּיפּוּרִים מְכַפֵּר.

1 תני | י תנין מניין למחויבי | י חייבי 2 שחיבין להביא לאחר יום הכיפורים | י חייבין 3-4 ולא כבר ... מתניתא | י appears after the next sentence שובדא | י סובייה 5 מר | י אמר בהן ביום הכיפורים | י לו בהן אפי | י ואפילו בהן ביום הכיפורים | י לו בהן

It is understandable if it did not come to his knowledge¹⁹¹. If it did come to his knowledge¹⁹²? Was it not stated:¹⁹³ “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?” Rebbi Abun bar Hiyya said, whether it was known to him on

it, or not known to him on it, did not the Day of Atonement already atone¹⁹⁴? Rabbi Simeon in the name of Levi [Sokhia]¹⁹⁵, the Mishnah speaks of one who rebels against the day of Atonement¹⁹⁶. Why did he¹⁹⁷ not say, if it was not known to him on the Day of Atonement? His words imply that even if it was not known to him on the Day of Atonement, the Day of Atonement atones¹⁹⁶.

191 Then no private sacrifice is due and the public sacrifice must atone for the damage done to the sanctuary.

192 Did we not imply that the public offering does not relieve the individual of his obligation to bring a sacrifice?

193 *Horaiot* 1:1, Note 20. The parallel in *Yoma* seems to quote instead from parts of Mishnah *Keritot* 6:4. Purification sacrifices must be brought even after the Day of Atonement but obligations of suspended reparation sacrifices are eliminated.

194 He asks whether the Day of Atonement eliminates the possibility of a suspended reparation sacrifice for the possibility of a sin committed prior to the Day. The positive answer was deduced from biblical verses in *Horaiot* 1:1.

195 This is the name (“from Sokho”) by which this Amora of the first generation is quoted in *Yoma* and other places by R.

Simeon (ben Laqish). The name given here does not appear anywhere else. In the *Yoma* text, the sentence appears after the next; this seems to be more appropriate.

196 While it is inferred from the Mishnah that the answer to R. Abun bar Hiyya’s question is positive, it is pointed out that the answer still might be negative if the person in question rejects the notion of the Day of Atonement and does not want to be its beneficiary. The Babli, *Keritot* 7a (partially *Ševuot* 13a), has another example: a person who violates the Sanctuary late on the Day of Atonement and then dies. This example shows even according to Rabbi (later in the Halakhah) who holds that the Day of Atonement atones even without repentance, that the answer to R. Abun bar Hiyya might be negative.

197 The Tanna of the Mishnah.

עָשָׂה אֶף עַל פִּי שְׁלֹא עָשָׂה תְּשׁוּבָה. לֹא תַעֲשֶׂה. רַבִּי שְׁמוּאֵל בְּשֵׁם רַבִּי זִירָא. (33b line 43)
וְהוּא שְׁעָשָׂה תְּשׁוּבָה. הָאֹמֵר. אִין הָעוֹלָה מְכַפֶּרֶת אִין הָעוֹלָה מְכַפֶּרֶת. מְבַפֶּרֶת הִיא עַל כּוֹרְחוֹ.
הָאֹמֵר. אִין יוֹם הַכִּיפּוּרִים מְכַפֵּר אִין יוֹם הַכִּיפּוּרִים מְכַפֵּר. מְכַפֵּר הוּא עַל כּוֹרְחוֹ. אִי אִיפְשִׁי
שְׂיִכְפֹּר לִי. אִין מְכַפֵּר לוֹ עַל כּוֹרְחוֹ. אָמַר רַבִּי חֲנִינָה בִּירְבִי הֶלֶל. לֹא מִסְתַּבֵּרָה דְּאִילָא חִילּוּפִין.
לֹא כּוֹלָא מִן בֶּר נֶשָׂא מִימַר לְמַלְכָּא. דְּלִית אֶת מַלְכִּי.

¹⁹⁸ A positive commandment, even if he did not repent. A prohibition? Rabbi Samuel in the name of Rabbi Ze’ira, only if he repented¹⁹⁹. If one said, “the elevation offering does not atone,²⁰⁰” does the elevation offering not

atone? It atones even against his will. If one said, “the Day of Atonement does not atone,” does the Day of Atonement not atone? It atones even against his will. “I cannot accept that it atone for me,” it does not atone against his will²⁰¹. Rabbi Ḥanina ben Rabbi Hillel said, the opposite is reasonable²⁰². It is not up to a person to tell the King, “you do not reign.”

198 After the first two sentences, which are identical here and in *Yoma* except for the spelling of R. Ze'ira's name, the text in *Yoma* is quite different (Note 202).

199 While the Mishnah in Rav Jehudah's interpretation treats positive commandments and simple prohibitions in parallel, there is a difference between the two kinds of sins. The non-performance of a positive commandment is atoned for even without repentance while the atoning for breaching simple prohibitions requires repentance.

200 The biblical text does not indicate for which kind of sin an elevation offering does atone but *Lev.* 1:4 indicates that it atones.

The next paragraph will investigate for which sins it is atoning.

201 In the prior formulation, it was simply a false statement. But if somebody said, I am opting out, the atoning power of sacrifices shall not be valid for me, what he offers would be profane. If there is no offering, there cannot be atonement.

202 Since he brings the offering on his own initiative, if it is not brought for atoning it does not atone. But the Day of Atonement is given by God; it is not up to man to say what it can or cannot do. This is clearer from the *Yoma* text which therefore must be taken as original:

האומר. אין העולה מכפרת. אין העולה מכפרת עלי. מבפרת היא. אי איפשי שתכפר לי. אינה מכפרת לו על כרחו. אין יום הכיפורים מכפר מכפרת היא. אי איפשי שיכפר לי. מכפר הוא לו על כרחו. אמר רבי חנניה בריה דרבי הלל. לא כולא מן הדין בר נשא מימור למלכא. לית את מלך.

If one said, “the elevation offering does not atone,” “the elevation offering does not atone for me,” it atones. “I cannot stand that it atone for me,” it does not atone against his will. “The day of Atonement does not atone,” it atones. “I cannot stand that it atone for me,” it atones for him against his will. Rabbi Ḥanania ben Rabbi Hillel said, it is not up to that man to say to the King, you are no King.

Here the introductory statement of R. Ḥanina (Hanania) ben R. Hillel is missing correctly. The two texts are separate

formulations.

In the Babli, *Keritut* 7a, there is a related discussion.

מאי טעמא. והעולה על-דיוחכם היה לא תהיה. (33b line 49) העולה מכפרת על הירחור הלב. מאי טעמא. והעולה על-דיוחכם היה לא תהיה. אמר רבי לוי. העולה מכפרת על רוחכם. וכן איוב הוא אומר. אוילי חטאוי בניי וברכו אלהים בלבבם. הלא אמרה שעולה מכפרת על הירחור הלב.

²⁰³The elevation offering atones for thoughts. What is the reason? *What rises in your spirits will not be*²⁰⁴. Rabbi Levi said, the elevation offering atones for your spirits²⁰⁵. And so in *Job* he says, *maybe my children sinned and cursed God in their hearts*²⁰⁶. This implies that the elevation offering atones for thoughts.

203 In slightly different formulation in *Yoma*. In *Lev. rabba* 7(3) the paragraph is reproduced and the doctrine is attributed to R. Simeon ben Iohai.

204 *Ez.* 20:32.

205 This is an untranslatable pun. The verbal noun העולה “that which rises” (*scil.* “your thoughts”, f.) is identified with the

homonym “the elevation offering”.

205 *Job* 1:5. The verse starts noting that Job offered elevation offerings since he said maybe . . . The *Yoma* text quotes only the first part of the verse, assuming that one remembers the remainder, in standard talmudic style.

על כל-עבירות שבתורה יום הכיפורים מכפר חוץ מפני עול ומיפר ברית ומגלה פנים בתורה. שאם עשה תשובה מתכפר לו. ואם לאו אין מתכפר לו. רבי יסא מקשה. מיסבר סבר רבי נשיום הכיפורים מכפר בלא תשובה. אלא רבי אשיין רבי יונה רבי בא רבי חייה בשם רבי יוחנן. יום הכיפורים מכפר בלא תשובה ומיתה ממרקת בלא תשובה. ונתיב כן. יום מיתה כתשובה. מאן תנייה. רבי. הדיא היא דתניין תמן. מיתה ויום הכיפורים מכפרין עם התשובה. דלא קרבי.

²⁰⁶Rebbi says, the Day of Atonement atones for all sins against the Torah except for him who tears away the yoke, or who breaks the Covenant, or who finds aspects in the Torah²⁰⁷, where it atones if he repented but does not atone otherwise. Rebbi Yasa asked: Does Rebbi think that the Day of Atonement atones without repentance? There came Rebbi Ashian, Rebbi Jonah, Rebbi Abba, Rebbi Hiyya in the name of Rebbi Johanan: The Day of Atonement atones without repentance, and death cleanses without repentance²⁰⁸. We have stated thus: The day of death equals repentance. Who stated this? Rebbi! Then what we stated²⁰⁹, “death and the Day of Atonement atone with repentance,” does not follow Rebbi²¹⁰.

206 Babli 13a, *Yoma* 85b, *Keritut* 7a. The parallel in *Yoma* (45b l. 63 ff.) at the end reports the opposite of the tradition here.

207 This was explained in *Peah* 1:1 Notes

199-213; cf. also *Sanhedrin* 10:1, Note 8. One who tears away the yoke is he who recognizes the authority of the Torah but decides to break its laws; one who breaks

the covenant is he who tries to reconstruct a prepuce and does not circumcise his sons; one who finds aspects in the Torah is he who denies the divine origin of the Torah.

208 In *Yoma*: Rabbi agrees that the Day of Atonement does not atone without repentance, but death atones without repentance. The Babli supports the statement here about the Day of Atonement;

it has no statement of Rabbi about the power of Death.

209 Mishnah *Yoma* 8:7.

210 Since the Mishnah requires repentance also on the Day of Atonement. Rabbi formulated an anonymous Mishnah, i. e., authoritative doctrine, following the majority against his own opinion.

(33b line 60) שאל רבי מתינה בן חרש את רבי לעזר בן עזריה. שמעתי ארבעה חלוקי כפרה שהיה רבי ישמעאל דורש. אמר לו. שלשה הן חוץ מן התשובה. כתוב אחד אומר שובו בנים שובבים וגו'. וכתוב אחד אומר כי ביום הזה יכפר עליכם וגו'. וכתוב אחד אומר ופקדתי בשבט פשעם וגו'. וכתוב אחד אומר אם יכופר העוֹלֵה הָאֵלֶּה לָכֶם עד תמותו. הא כיצד. עבר על מצות עשה ועשה תשובה. אינו זז משם עד שיימחל לו. עליו הוא אומר שובו בנים שובבים וגו'. עבר על מצות לא תעשה ושב מיד. התשובה תולה ויום הכיפורים מכפר. עליו הכתוב אומר כי ביום הזה יכפר עליכם. עבר על כריתות ומיתות בית דין במזיד. התשובה ויום הכיפורים מכפרין מחצה והייסורין מכפרין מחצה. עליו הכתוב אומר ופקדתי בשבט פשעם ובגָעִים עוֹנֵם. אבל מי שנתחלל שם שמים על ידו אין כח לא לתשובה לתלות ולא ליום הכיפורים לכפר ולא לייסורין למרק. אלא תשובה ויום הכיפורים תולין ומיתה ממרקת עם הייסורין. עליו הכתוב אומר אם יכפר העוֹלֵה הָאֵלֶּה לָכֶם עד תמותו. הא למדנו שהמיתה ממרקת.

7 כריתות | G הכרתות במזיד | G במזיד 8 מכפרין | G בשאר כל ימות השנה מכפרים הכ' | G הוא 9 עונם | G וגו' על ידו | G בו לתשובה | G בתשובה 10 למרק | G למקק אלא תשובה | G התשובה ומיתה | G יום המיתה ממרקת | G ממקקת

²¹¹Rebbi Matthew ben Harash asked Rebbi Eleazar ben Azariah in the Academy, 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, *return, naughty children*²¹², etc. But another verse says, *for on that day, He shall pardon you*²¹³, etc. And another verse says, *I shall visit their crime with the rod*²¹⁴, etc. And another verse says, *the iniquity of this people shall not be atoned for until you die*²¹⁵. How is this? If somebody violates a positive commandment and repents, before he moves from there it will be forgiven to him. About this one it says, *return, naughty children*, etc. If one transgresses a prohibition and immediately repents, repentance suspends judgment, and the Day of Atonement pardons. About this one it says, *for on*

that day, He shall pardon you. If one intentionally transgressed [sins punishable by] extirpations or death penalties, repentance and the Day of Atonement atone half, and sufferings atone half. About this one it says, *I shall visit their crime with the rod, and their iniquities with plagues.* 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 suspend, and death scours with sufferings²¹². 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.

אמר רבי יוחנן. זו דברי רבי לעזר בן עזריה ורבי ישמעאל ורבי עקיבה. אבל חכמים אומרים. שעיר המשתלח מכפר. ואם אין שעיר יום הכיפורים מכפר. כיצד מכפר. רבי זירא אמר. כל־שהוא כל־שהוא. רבי חנניה אומר. בסוף. מה ביניהון. מן מיד. על דעתיה דרבי זירא כיפר מיד. על דעתיה דרבי חנינה לא כיפר. אמר רבי זירא. ומתניתה מסייעא לרבי חנינה. חומר בשעיר מה שאין ביום הכיפורים וביום הכיפורים מה שאין בשעיר. יום הכיפורים מכפר בלא שעיר ושעיר אין מכפר בלא יום הכיפורים. והשעיר מכפר מיד ויום הכיפורים משתתף. אמר רבי הונא. איתותב קומי רבי ירמיה ומר. תיפתר שהיה בדעתו להביא שעיר אחר ולא הביא. אמר רבי יוסי. ואין הקדוש ברוך הוא רואה את הנולד. ויכפר מיד.

1 עזריה | G עזריה חכמי אומ' | G דברי חכמים 2 ואם | G אם כיצד | G כיצד זה זירא | G זעורה 3 ביניהון | G מפקה מיבנהון | G מיד | G מיד 4 זירא | G זעורא כיפר מיד | G כבר כופר חנינה | G חנניה זירא | G חנניה [זעורא] ומתנית' | G מתניתה מסייעא | G מסייעה 5 חנניה | G זעורא [חנניה] שאין כן | G שאן (2) הכיפורים | G הכיפורין (2) יום | G שיום 6 הכיפורים | G הכיפורין (2) ושעיר | G והשעיר אין | G אינו בלא | G אלא יום | G ביום והשעיר | G חומר בשעיר שהשעיר מיד | G מיד 7 הכיפורים | G הכיפורין הונא | G חונה 8 אמ' | G - | G - בן ר' בון בעי

Rebbi Johanan said, these are the words of Rebbi Eleazar ben Azariah, Rebbi Ismael, and Rebbi Aqiba. But the Sages say that the scapegoat pardons. How does it pardon? Rebbi Ze'ira said, by and by. Rebbi Hanania²¹⁶ said, at the end. What is between them? If somebody died in-between. In the opinion of Rebbi Ze'ira, he already was pardoned. In the opinion of Rebbi Hanina, he was not pardoned. Rebbi Ze'ira said, a *baraita* supports Rebbi Hanina: 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: The Day of Atonement pardons without a ram, but the ram does not atone without the Day of Atonement. The ram pardons immediately but the Day of Atonement only at nightfall. Rebbi Huna said, the question was raised before Rebbi

Jeremiah and he said, explain it if they intended to bring another ram but they did not bring it. Rabbi Yose said, but does the Holy One, praise to Him, not see into the future? Then He should pardon immediately.

רבי ירמיה אמר. רבי שמואל בר רב יצחק בעי. אדקא תצור תם דרף. חטאים תרדף רעה. רגלי חסידיו לשמור. אסללצים הוא ללץ. סייגין סייגה ותרעין תרעה. וביני. סייגין סייגה ותרעין תרעה. אלא כיני. רבי ירמיה בשם רבי שמואל בר רב יצחק. שימר אדם עצמו מעבירה פעם ראשונה שנייה ושלישית הקדוש ברוך הוא משמרו. שנאמר הן כל אלה יפעל אל פעמיים שלוש עם גבר. אמר רבי זירא. ובלחוד דלא תתוב ליה. והחוטא המשוכל לא ינתק לעולם אין פתוב כאן אלא לא במהרה ינתק. אין אטרחת עלוי הוא מיפסיק.

4 ש' | G ומה טע' 5 זירא | G זעורה יתוב | G יתב 6 ינתק לעולם | G לעולם ינתק אין | G אן הוא מיפסיק | G מפסק הוא

Rebbi Jeremiah said that Rebbi Samuel bar Rav Isaac asked: *Justice protects the one on the straight path*²¹⁷. *Evil deeds will pursue the sinner*²¹⁸. *He will watch over the feet of His pious ones*²¹⁹. *While He makes scoffers targets of scoffing*²²⁰. Fences are made fences and doors doors. Is it so that fences make fences and doors doors? But so it is: Rebbi Jeremiah in the name of Rebbi Samuel ben Rav Isaac: If a person is careful the first, second, and third times not to commit a sin, then the Holy One, praise to Him, will watch over him, as it is said, *all this God will do twice, three times with a man*²²¹. Rebbi 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*²²². If you work on it, it will split.

רבי הונא בשם רבי אבהו. הקדוש ברוך הוא אין לפניו שכחה. כביכול בשביל ישאל נעשה שכתן. שנאמר מי אל כמוך נושא עון. נושא כתיב. וכן דוד אמר נשאת עון עמך.

1 הונא | G חונה אבהו | G אבהו בשביל | G הא מפני 2 ש' | G ומה טע' עון | G עון (2) - | G כיסית כל חטאתם סלה

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? As it is said, *Who is a Power like You, forgives sin*²²³. “He forgets” is written. And so David said, *You forgot Your people's sin*²²⁴.

211 From here to the end of the Halakhah, the text is not only in *Yoma* but also in *Sanhedrin* 10:1, Notes 23-37, 14-22 (and in the *Babli Yoma* 86b). For part of the text

there exists a Geniza fragment (G) edited by L. Ginzberg in his *Yerushalmi Fragments* (1909) p. 267. The main difference between the Leiden ms. text here and in *Yoma* and

the two other sources is that in the Leiden text the quotes of most verses are shortened so that the punch lines mostly are missing. Therefore the *Sanhedrin* and G texts should be considered original.

212 *Jer.* 3:22.

213 *Lev.* 16:20.

214 *Ps.* 89:33.

215 *Is.* 22:14.

216 This name is used throughout in G and

Yoma.

217 *Prov.* 13:6.

218 *Prov.* 13:4.

219 *Is.* 2:9.

220 *Prov.* 3:34.

221 *Job* 33:29.

222 *Eccl.* 4:12.

223 *Micha* 7:18.

224 *Ps.* 85:3.

מִשְׁנָה 9: אֶחָד יִשְׂרָאֵל וְאֶחָד כֹּהֲנִים וְאֶחָד בֶּהֱן מִזִּישִׁית. מִה בֵּין יִשְׂרָאֵל לְכֹהֲנִים לְכֹהֵן מִזִּישִׁית אֵלֶּה שְׁדָם הָפֵר מְכַפֵּר עַל הַכֹּהֲנִים עַל מִזְבֵּחַת מִקְדָּשׁ וְקֹדֶשֶׁי. רַבִּי שְׁמַעוֹן אוֹמֵר כְּשֶׁם שְׁדָם הַשְּׁעִיר הַנִּעְשָׂה כְּפָנִים מְכַפֵּר עַל יִשְׂרָאֵל כֵּן דָם הָפֵר מְכַפֵּר עַל הַכֹּהֲנִים. כְּשֶׁם שְׁעִירֵי הַמִּשְׁתַּלֵּחַ מְכַפֵּר עַל יִשְׂרָאֵל כֵּן יִדְוִי שֶׁל פֶּר מְכַפֵּר עַל הַכֹּהֲנִים:

Mishnah 10: Together Israel, Cohanim, and the Anointed Priest²²⁵. What is the difference between Israel and a Cohen or the Anointed Priest²²⁶? Only that the blood of the bull atones for Cohanim in matters of the Sanctuary and its *sancta*. Rabbi Simeon says, just as the blood of the ram which is brought inside atones for Israel, so the blood of the bull atones for the Cohanim²²⁷. Just as the confession of the scapegoat²²⁸ atones for Israel, so the confession of the bull atones for Cohanim²²⁹.

225 This fraction of a sentence is the end of the preceding Mishnah. The scapegoat atones equally for Israel, Cohanim and the High Priest. The expression “Anointed Priest” is biblical (*Lev.* 6:15); as explained in Tractate *Horaiot* it excludes the High Priests of the Second Temple who were invested, not anointed.

226 There is a difference not only on the Day of Atonement, but all year round: the purification offering of the Anointed Priest (not the invested one) is a bull, but everybody else’s a lamb. For impurity of

the Sanctuary and its *sancta*, everybody has to bring a sacrifice depending on his wealth except the Anointed Priest who is exempt (*Mishnah Horaiot* 2:7).

227 The actual atoning sacrifices on the Day of Atonement are separate for the High Priest (*Lev.* 16:6), the common priests (v. 13), and the people. But for the action of the scapegoat they are all equal.

228 *Lev.* 16:21.

229 He disagrees with the anonymous Mishnah and restricts the action of the scapegoat to the benefit of the people.

33c line 21) **הלכה י:** אָחַד וְשָׂרָאֵל וְאַחַד כֹּהֲנִים כּוּל'. וְלֹא תִנִּינָן מְשִׁיחַ. וְלִמָּה לֹא תִנִּינָן מְשִׁיחַ. אִין תִּימַר. בְּדִבְרֵי שֵׁשׁ בּוֹ חַיִּיב קָרְבָּן אֲנִי קוֹיָמִין. יְאוּת לֹא תִנִּינָן מְשִׁיחַ. אִין תִּימַר. בְּדִבְרֵי שֵׁשׁ בּוֹ חַיִּיב קָרְבָּן. לָמָּה לֹא תִנִּינָן מְשִׁיחַ. אֲשַׁכַּח תִּנִּי. בְּכֹהֵן מְשִׁיחַ. הָדָא אֶמְרֵה בְּדִבְרֵי שֵׁשׁ בּוֹ חַיִּיב קָרְבָּן אֲנִי קוֹיָמִין. אָמַר רַבִּי יוֹסֵי בִּירְבִּי בּוֹן. וְאַפִּילוּ תִימָא בְּדִבְרֵי שֵׁשׁ בּוֹ חַיִּיב קָרְבָּן. נִעְשָׂה כְזָדוֹן. כִּמְה דְתִימַר. בְּזָדוֹן צָרִיד כְּפָרָה וְכִפְּרַת יוֹם הַכִּיפּוּרִים. וְכָא צָרִיד כְּפָרָה וְכִפְּרַת יוֹם הַכִּיפּוּרִים.

3 בבכחן | G כהן | הדא | אדה | 4 יוסי | G יוסה | תימא | G תימר | 5 קרבן | G קורבן | דתימר | G דאמרת | בזדון | G על זדון | וכפרת | G הכפרת | וכא | G וכה | כפרה וכפרת | G כפרת

Halakhah 10: “Together Israel, Cohanim,” etc. But we did not state²³⁰ “the Anointed.” Why did we not state “the Anointed”? If you say that we are discussing things which do not imply the obligation of a sacrifice²³¹, it is correct not to state “Anointed”. If you say about things which imply the obligation of a sacrifice, why do we not state “Anointed”²³²? It was found stated “also the Anointed Priest.”²³³ This implies that we are discussing things which do not imply the obligation of a sacrifice²³⁴. Rabbi Yose ben Rabbi Abun said, even if you say, about things which imply the obligation of a sacrifice, if it was done intentionally¹¹⁷. As you say, intentionally it needs atoning and the atoning of the Day of Atonement, here also it needs atoning and the atoning of the Day of Atonement²³⁵.

230 The Anointed is mentioned in the anonymous statement, the first sentence of the Mishnah. Why is he not mentioned in R. Simeon’s statement?

231 For sins which do not require a purification sacrifice, the status of the High Priest is no different from that of a common priest. The mention of “priests” includes the High Priest.

232 Since the purification sacrifice of the Anointed Priest is different from that of

everybody else (Note 226), it is necessary to mention him if one asserts that the scapegoat really serves everybody.

233 In a *baraita*.

234 In R. Simeon’s statement, the Anointed is not mentioned by design; therefore, the argument of Note 231 applies.

235 As explained by R. Eleazar ben Azariah, intentional sins will be forgiven only by prior repentance combined with the Day of Atonement.

33c line 28) נַעֲמִיד-תִּי. מְלַמֵּד שְׁעִתִּיד לָמוּת. עַד מָתִי הוּא חַי. עַד וְכֹלָהּ מִכְּפָר אֶת-הַקּוֹדֶשׁ. דְּבָרֵי רַבִּי יְהוֹדָה. רַבִּי שְׁמַעוֹן אוֹמֵר. עַד שְׁעֵת וּוִידוּי. עַל דְּעֵתִיָּה דְרַבִּי יְהוֹדָה הוּיָדוּי מַעֲבָב. עַל דְּעֵתִיָּה דְרַבִּי שְׁמַעוֹן אִין וּוִידוּי מַעֲבָב. מַה מִּפְקָה מִבְּיָהוֹן. שְׁחָטוּ בְּלֹא וּוִידוּי. עַל דְּעֵתִיָּה דְרַבִּי יוֹדָה צָרִיד לִהְבִּיא פָּר אַחֵר. עַל דְּעֵתִיָּה דְרַבִּי שְׁמַעוֹן אִין צָרִיד לִהְבִּיא פָּר אַחֵר. אִף שְׁעִיר

הַמְשַׁתְּלֵחַ כֵּן. שֶׁלֹּחַ בְּלֹא וִידוּי. עַל דַּעֲתִיָּה דְרַבִּי יוֹדֵן צָרִיד לְהַבִּיא שְׁעִיר אַחֵר. עַל דַּעֲתִיָּה דְרַבִּי שְׁמַעוֹן אֵין צָרִיד לְהַבִּיא שְׁעִיר אַחֵר. הַתְּנֻדָּה וְשִׁחְטוֹ וְנִשְׁפָּךְ הַדָּם. אֵת אָמַר. צָרִיד לְהַבִּיא פֶּר אַחֵר וְצָרִיד לְהַתְּנוּדוֹת פְּעַם שְׁנִיָּה אוֹ יֵצֵא בְּיָדוּי הָרִאשׁוֹן. אִף שְׁעִיר הַמְשַׁתְּלֵחַ כֵּן. שֶׁהוּא צָרִיד לְהַגְרִיל פְּעַם שְׁנִיָּה אוֹ כְּבֵר יֵצֵא בְּיָדוּי שְׁלֹא שׁוֹן.

1 ח' | G חיי שעתיד | G שהוא עתיד²³⁶

²³⁷ *Shall be stationed alive*; this teaches that in the future it is going to die²³⁸.

How long must it live? Up to *he will finish from atoning to Sanctuary*²³⁹, the words of Rabbi Jehudah. Rabbi Simeon says, up to the moment of confession²⁴⁰. In Rabbi Jehudah's opinion, the confession is indispensable²⁴¹. In Rabbi Simeon's opinion, the confession is not indispensable²⁴². What is the difference between them? ²⁴³If he slaughtered without confession. In Rabbi Jehudah's opinion, he must bring another bull. In Rabbi Simeon's opinion, he does not have to bring another bull. The same holds for the scapegoat. If he sent it without a confession. In Rabbi Jehudah's opinion, he must bring another goat. In Rabbi Simeon's opinion, he does not have to bring another goat. If he confessed, slaughtered, then the blood was spilled. Do you say, does he have to bring another bull and confess a second time or did he do his duty with the first confession²⁴⁴? The same holds for the scapegoat; must he cast lots a second time or did he do his duty with the first confession²⁴⁵?

236 The Genizah fragment ends here.

237 This paragraph is *Yoma* 6:2. However, there the sequence of topics is different. *Sifra Ahare Pereq* 2(6-8).

238 *Lev.* 16:10. Since the verse later only requires that the scapegoat be sent to a cliff (v. 22) in the desert (v. 21), but nothing is said what happens to the goat there, it is inferred that since it is emphasized that it must be alive as long as it is standing *before the Eternal* that later it will not continue to live, but will be pushed over the cliff to its death (*Sifra Ahare Pereq* 2(7,8), *Yoma* 6:2, *Babli Yoma* 40b,65a,71a).

239 *Lev.* 16:20. If the scapegoat dies before the blood of the other ram was

sprinkled on the gobelin and the incense altar in the Sanctuary, the ceremony has to be repeated. Later, no new ram has to be provided.

240 Until after the High Priest leaves the sanctuary to put his hands on the scapegoat to confess the people's sins (v. 21). If the ram dies at the moment the High Priest starts to put his hands on its head, no new ram is needed.

241 Since neither the blood of the bull nor that of the ram may be brought inside the Sanctuary without prior confession (v. 11) the scapegoat may not be sent to the desert without confession; without a scapegoat the atoning is not complete.

242 Since for him the High Priest only has to stand next to the scapegoat, the final confession itself is needed only if the scapegoat is alive at that time.

Commentators note that the Babli *Yoma* 40b seems to switch the positions of R. Jehudah and Simeon in this matter, but since *Sifra* parallels the Yerushalmi this seems to be unlikely. Maimonides does not mention the matter in his Code.

243 This is a *non sequitur*. But in the *Yoma* text, which has to be considered as original, the scapegoat is treated first, i. e., that a scapegoat sent away without confession for R. Jehudah requires an entire new ceremony with formal confession, but not for R. Simeon. Then it is asserted that by analogy if the bull whose blood is to be brought into the Sanctuary was slaughtered without confession, for R. Jehudah the slaughter is invalid and the entire ceremony

has to be repeated, but not for R. Simeon.

244 If the bull was slaughtered correctly but for some reason its blood could not be brought into the Sanctuary, does R. Jehudah require a full repetition of the ceremony including confession?

245 If the scapegoat dies before it can be sent away, one needs a replacement. May one bring a single ram as replacement or does one have to bring two rams, cast new lots, use one as scapegoat and let the other one graze until it develops a bodily defect when it can be sold and one buys other sacrifices with the money? With the *Yoma* text one has to read:

צָרִיד לְהַגְרִיל פָּעַם שְׁנִיָּה אוֹ כֶּבֶד יָצָא בְּהַגְרִילוֹ
שְׁלֹאֲשׁוֹן.

“Must he cast lots a second time or did he do his duty with the first *casting of lots*?”
(Babli *Yoma* 39b/40a.)

ידיעות הטומאה פרק שני

(fol. 33c) **משנה א:** ידיעות הטומאה שתיים שהן ארבע. ניטמא וידע ונעלמה ממנו טומאה וזכור לקודש נעלם ממנו קודש וזכור לטומאה נעלמו ממנו זה וזה ואכל את הקודש ולא ידע ומשאכל ידע הרי זה בעולה ויורד.

Mishnah 1: The kinds of awareness of impurity are two¹ which are four. If one became impure, realized it, then the impurity was forgotten but he was aware of *sancta*; or *sancta* were forgotten by him but he remembered impurity; or he forgot both, ate *sanctum* and realized it after he had eaten: he is obligated for a variable sacrifice.

משנה ב: ניטמא וידע ונעלמה ממנו הטומאה וזכור למקדש נעלם ממנו מקדש וזכור לטומאה נעלמו ממנו זה וזה ונכנס למקדש ולא ידע ומשניצא ידע הרי זה בעולה ויורד:

Mishnah 2: If one became impure, realized it, the impurity was forgotten but he was aware of the Sanctuary; or the Sanctuary was forgotten by him but he remembered impurity; or he forgot both, entered the Sanctuary and realized it after he had left: he is obligated for a variable sacrifice.

¹ Either centered on *sancta* or the state of oblivion require a sacrifice Sanctuary, as detailed in the Mishnah. All depending on the wealth of the perpetrator violations of the Sanctuary and *sancta* in a (Lev. 2:2-13).

(33c line 69) **הלכה א:** ידיעות הטומאה כול'. רבי ירמיה בעי. פשיטא בדיעה האחרונה עד שיהא יודע שחייב להביא בה קרבן. אף בדיעה ראשונה כן. נישמעניה מהדא. שני שבילין אחד טמא ואחד טהור. הילך באחד מהן ונכנס למקדש ויצא והזה ושנה וטבל והילך בשני ונכנס למקדש חייב. וידע שהוא חייב להביא בה קרבן. אמר ריש לקיש. דרבי ישמעאל היא דאמר. חייב על העלם טומאה ועל העלם מקדש. אמר רבי בון בר חייא. הוינו סברין מימר דמר ריש לקיש בבריא לו שהוא טמא ונעלמה ממנו טומאה ונכנס למקדש. אבל אם היה ספק טמא טהור ונעלם ממנו מקדש ונכנס למקדש לא. ממה דאמר ריש לקיש. דרבי ישמעאל היא דאמר. חייב על העלם טומאה ועל העלם מקדש. הדא אמרה אפילו ספק טמא טהור. נעלם ממנו מקדש ונכנס למקדש חייב. אמר רבי יוחנן. דברי הכל היא משום ספק ידיעה כדיתה. מה אם בשעה שאינו יודע אם טמא הוא אם טהור את אמר ידיעה ודאי

היא. בַּשְּׁעָה שֶׁיֵּדַע שֶׁטָמֵא וְדַאי אֵלֶּא אֵינוֹ יוֹדֵעַ אִם חִיבֵינּוּ עָלֶיהָ קָרְבָּן לֹא כָּל־שֹׁכֵן שֶׁתָּהָא יְדִיעָה.

Halakhah 1: “The kinds of awareness of impurity,” etc. Rabbi Jeremiah asked: It is obvious about the last awareness, until he knows that he is liable to bring a sacrifice for it². Is the same true for the first awareness³? Let us hear from the following⁴: Two paths, one impure and one pure. He walked on one of them⁵, entered the Sanctuary, left, sprinkled repeatedly, immersed himself⁶, walked on the second one, and entered the Sanctuary; he is liable⁷ and he knows that he is liable to bring a sacrifice for it. Rabbi Simeon ben Laqish said, this is Rabbi Ismael’s⁸ who said that he is liable for forgetting impurity and forgetting the Sanctuary. Rabbi Abun bar Hiyya said, we thought that one could say that Rabbi Simeon ben Laqish said this if he was certain that he was impure, he had forgotten the impurity and entered the Sanctuary. But not if it was in doubt whether he was impure or pure, he was oblivious of the Sanctuary and entered the Sanctuary. Since Rabbi Simeon ben Laqish said, this is Rabbi Ismael’s who said that he is liable for forgetting impurity and forgetting the Sanctuary: this implies even if it was in doubt whether he was impure or pure⁹. Rabbi Joḥanan said, it is everybody’s opinion since a doubt of awareness is awareness¹⁰. Since at a time when he does not know whether he was impure or pure you say it is certain knowledge, if he knows for certain that he is impure but does not know whether he is liable for a sacrifice then certainly this should be awareness¹¹.

2 *Lev. 5:3* requires a sacrifice if after forgetting about impurity *he knew and felt guilty*. Since as a general rule no obligatory sacrifice can be offered voluntarily, the verse implies that a variable value sacrifice for violations involving impurity is possible if the offerer can prove that he is liable for the sacrifice.

3 There can be no forgetting if there was no prior knowledge. Must this prior knowledge be one of certainty or can it be one of possibility?

4 Babli 19a, Tosephta *Tahorot* 6:7 (the

full text later, Note 41).

5 It was known that one of the paths passed over a spot where a corpse was buried. The spot is no longer recognizable and people do no longer remember which of the paths it was. Anybody walking on one of the paths is possible impure by forming a “tent” over a corpse.

6 He observed the ritual of removing the impurity of the dead (*Num. 19*) by being sprinkled with water containing ashes of the Red Heifer on the 3rd and 7th days and then immersing himself in a *miqweh*.

7 Since he walked both paths, he certainly polluted the Sanctuary by entering while impure. Even though he cannot determine which time he entered while impure, he can be sure that he did it exactly once; this is enough to trigger the obligation of a sacrifice.

8 Mishnah 2:6.

9 This implies that R. Simeon ben Laqish holds that for R. Aqiba, who admits a variable sacrifice only for cases where impurity was known, forgotten, and remembered, no sacrifice was possible in this case since the impurity was never known. It only is known that the two possibilities both were realized and there is no third alternative.

10 Since we accept the principle of the excluded middle (i.e., a statement is either true or false) a proof that the person could not have been pure both times is proof that he was impure (at least) once. For awareness of impurity no awareness of the exact time of impurity is needed. The Babli (19b) points out that this argument is needed only for variable reparation sacrifices since for purification sacrifices no prior knowledge is required.

11 It is irrelevant to him if he does not know when the obligation of a sacrifice started since the competent Temple authority can determine that his obligatory sacrifice is legitimate.

8) (33d line 33) על דעתיה דריש לקיש. נִיטְמָא וְנִגְעָשָׁה לוֹ הַדָּבָר סָפֵק מִהוּ שְׂאִיעָשָׂה אֲצִלוֹ כְּהֶעָלָם דָּבָר וְיִהְיֶה חַיִּיב. דִּין כְּדַעְתִּיהָ וְדִין כְּדַעְתִּיהָ. דְּאִתְפְּלְגוּן.

אֲכַל חֲמִשָּׁה זֵיתִים וְנוֹדַע לוֹ בְּסָפֵק כָּל-אֶחָד וְאֶחָד וְאַחֵר כִּדְּנוֹדַע לוֹ בְּדִאֲמִין. רִישׁ לְקִישׁ אָמַר. וְדִיעַת סָפֵק קוֹבְעָתוֹ לְחֻטָּאוֹת. רַבִּי יוֹסִי בִּירְבִּי בֵּוֹן בָּשָׂם רַבִּי שְׁמוּאֵל. מוֹדָה רִישׁ לְקִישׁ בְּכֹהֵן מְשִׁיחַ שְׂאִין וְדִיעַת סָפִיקוֹ קוֹבְעָתוֹ לְחֻטָּאוֹת. שְׁנָאֲמַר כְּחֻטָּאת קֹאֲשָׁם. אֵת שְׁמִבִּיא אֲשָׁם תְּלוֹי וְדִיעַת סָפִיקוֹ קוֹבְעָתוֹ לְחֻטָּאת. אֵת שְׂאִינוֹ מִבִּיא אֲשָׁם תְּלוֹי אִין וְדִיעַת סָפִיקוֹ קוֹבְעָתוֹ לְחֻטָּאת.

מַחְלִפָּה שִׁטָּת רִישׁ לְקִישׁ. תִּמְן אָמַר. וְדִיעַת סָפֵק קוֹבְעָת לְחֻטָּאת. וְכָא אָמַר. אִין וְדִיעַת סָפֵק קוֹבְעָת לְחֻטָּאת. תִּמְן אֲשָׁמוֹ קִבְעוּ. וְכָא מַה אֵית לָךְ.

מַחְלִפָּה שִׁטָּת רַבִּי יוֹחָנָן. תִּמְן הוּא אָמַר. נִתְכַּפֵּר מִקֶּצֶת הַחֵט וְנִתְכַּפֵּר כּוֹלּוֹ. וְכָא הוּא אָמַר הֵכִין. לֹא אָמַר רַבִּי יוֹחָנָן אֶלָּא בִּידִיעָה הָאֲחֵרוֹנָה שְׂאִין בָּהּ חַיִּיב קָרְבָּן.

In Rabbi Simeon ben Laqish's opinion, if one became impure but it was for him in doubt, would this be for him like forgetting, which makes him liable¹²? Each of them keeps to his opinion, as they disagreed:

¹³One ate five times the volume of an olive; he separately realized a doubt about each one. Afterwards it became known to him as a certainty. Rabbi Simeon ben Laqish said, the knowledge about his doubt determines his kind of sacrifices. Rabbi Johanan said, the knowledge about his doubt does not

determine his kind of sacrifices. 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 purification sacrifice. What is the reason? *Like purification offering, like reparation offering*¹⁴. The knowledge about his doubt determines the transgression for one who brings a suspended reparation offering. The knowledge about his doubt does not determine the 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?

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.

12 He became impure without noticing it. Then a thought arose in his mind that he might have become impure. He forgot about it, committed an offense against the laws of purity, and finally discovered that he actually had been impure to start with. Does this qualify for the sequence awareness - forgetting - awareness required for a

variable sacrifice?

13 This is from *Horaïot* 3:2, Notes 40-45, and part of a longer disquisition (Notes 36-45). The quote here starts in the middle and, therefore, is not very intelligible. But in *Horaïot* the text is complete and completely intelligible.

14 *Lev.* 7:7.

(33d line 22) אָמַר רַבִּי יוֹחָנָן. כָּל־סִפִּיק רְשׁוּת הַרְבִּים סִפִּיקוֹ טָהוֹר. וְאִין מִתִּירִין לוֹ לַעֲשׂוֹת. וְהִתְיַנֵּן. כָּל סִפִּיק הַטָּהוֹר לְתַרְוּמָה טָהוֹר לְחֻטָּאת וְכָל־הַתְּלִי לְתַרְוּמָה נִשְׁפָּד לְחֻטָּאת. אִין תְּלִי בְּחֻטָּאת אֶלָּא אוּ טִמָּא מִמֶּשׁ אוּ טָהוֹר מִמֶּשׁ. אָמַר רַבִּי זִירָא. מִתְיַנֵּתָא בְּדָבָר שְׂאִינוּ בָּא מַחֲמַת הַזֶּבֶחַ. מַה דְּמַר רַבִּי יוֹחָנָן בְּדָבָר שֶׁבָּא מִחֻמַּת הַזֶּבֶחַ. הַכֹּל מוֹדִין שְׂאֵם עֶבֶר וְעֵשָׂה טָהוֹר. מִחֻלָּה שִׁטַּת רַבִּי יוֹחָנָן. תַּמָּן אָמַר. עֶבֶר וְעֵשָׂה טִמָּא. וְכָא אָמַר. עֶבֶר וְעֵשָׂה טָהוֹר. כָּאן בְּרִשׁוּת הַיָּחִיד כָּאן בְּרִשׁוּת הַרְבִּים. אֶפִּילוּ תִימַר כָּאן וְכָאן בְּרִשׁוּת הַרְבִּים. מִחֻלָּה שִׁטַּת רִישׁ לְקִישׁ מִחֻלָּה שִׁטַּת רַבִּי יוֹחָנָן. דְּאִיתְפַּלְגוּן. נִזִּיר שְׁנִיטָמָא בְּטוּמְאָת קֹבֵר הַתְּהוֹם. רִישׁ לְקִישׁ אָמַר. אִין הַנִּזִּיר מְגַלָּח. וְרַבִּי יוֹחָנָן אָמַר. הַנִּזִּיר מְגַלָּח. וְהָא רַבִּי יוֹחָנָן אָמַר. מִשּׁוּם סִפִּיק יְדִיעָה

כִּידִיעָה. וְאַפִּילוּ רֹאשׁוֹנָה בְּשֶׁרֶץ וּשְׁנִיָּה בְּמֵת. הָרֹאשׁוֹנָה עַד שֶׁלֹּא נִתְגִּייר וְהַשְּׁנִיָּה מִשְׁנֵתִיגִייר.
הָרֹאשׁוֹנָה עַד שֶׁלֹּא הִבִּיא שְׁתֵּי שְׁעָרוֹת וּשְׁנִיָּה מִשְׁהִבִּיא.

Rebbi Johanan said: In any case of doubt in the public domain, the doubt has to be resolved as pure, but one does not allow to act¹⁵. But did we not state¹⁶: “Any case of doubt which was declared pure for heave is pure for sprinkling water, and in any case where it remains unresolved for heave the sprinkling water is poured out.” There is nothing unresolved for the sprinkling water; either it is genuinely pure or genuinely impure. Rebbi Ze’ira said, the Mishnah deals with a situation not caused by a sacrifice; what Rebbi Johanan said refers to a situation caused by a sacrifice¹⁷. Everybody agrees that if the person transgresses and acted, it is pure¹⁸.

The arguments of Rebbi Johanan are inverted. There¹⁹, he says, if he transgresses and acted, it is impure. But here he said, if he transgresses and acted, it is pure. There in a private domain, here in the public domain²⁰. But you could even say, there and here in the public domain²¹. The arguments of Rebbi Simeon ben Laqish are inverted, the arguments of Rebbi Johanan are inverted, since they disagreed: A *nazir* became impure by a grave in the abyss²², Rebbi Simeon ben Laqish said, the *nazir* does not shave, but Rebbi Johanan said, the *nazir* has to shave. That is since Rebbi Johanan said, a doubt of awareness is awareness¹⁰, even if the first was because of a crawling animal and the second by a corpse²³. ²⁴The first before he converted and the second after he converted. The first before he grew two pubic hairs, the second after he grew them.

15 It is stated in Mishnah *Tahorot* 4:11 (and made explicit there in Chapters 5-6) that any doubt which arises in the public domain whether something there is impure can be disregarded. Rebbi Johanan’s new statement is that even though this is accepted practice, one does not teach this and if a person comes to ask about it, one does not say that the thing is pure.

16 *Parah* 11:2. While in general the rules of purity for the water in which ashes of the

Red Cow are to be dissolved to purify from the impurity of the dead are very strict, if for heave something is declared pure, such as a doubt of impurity arising in the public domain, it also must be declared pure for the sprinkling water. But if judgment is suspended, i. e., if the heave may not be eaten by a Cohen for perhaps it is impure (when its consumption would be a deadly sin), but it cannot be burned for perhaps it is pure and then the destruction of *sancta*

would be sinful, the water is considered impure and must be poured out on the ground to avoid further pollution.

The expression חֲסֵאת מִי נָדָה biblically refers to the Red Cow (*Num.* 19:2), not to the water which is called מִי נָדָה “throwing water”. (*Num.* 19:20-21).

17 Since the Mishnah in *Parah* instructs the carrier of purifying water to disregard any doubt arising in the public domain, the instruction of R. Johanan that one does not allow anybody to act on this rule cannot be maintained. The answer is that R. Johanan stated his rule only for *sancta* of the Sanctuary; for all *sancta* not connected with the Sanctuary it is a publicly stated rule that a doubt in the public domain has to be disregarded.

18 Only if somebody acted as if it was pure and after the fact comes to ask a rabbinic authority, one has to declare the matter as pure even in the Sanctuary. “Everybody” includes R. Aqiba who in certain cases declares such a doubt as causing impurity (*Tahorot* 5:1).

19 Later in this paragraph, when he declares that a *nazir*, who is forbidden to become impure by the impurity of the dead, must treat a certain case of doubt of impurity as a case of certain impurity.

20 And everybody agrees that in a private domain any doubt of impurity has to be treated as certainty of impurity.

21 Following R. Ze'ira.

22 A corpse, visibly the victim of an accident not seen by witnesses and found buried in straw or pebbles or other loose material. One may assume that the corpse was buried by the accident, rather than humans. *Nazir* 9:2 Notes 59ff.

23 While everybody agrees that the *nazir* is impure if it should become clear that he passed by after the accident and therefore violated the terms of his vow, in R. Simeon ben Laqish's view the verse *Num.* 6:9 clearly requires that the *nazir* be aware of his impurity at the moment it happens to be required to shave and start the ceremony described there. This makes the rules of *nazir* parallel to the rules of the variable sacrifice which also presuppose prior knowledge (*Hora'ot* 3:3). But for R. Johanan, any awareness of any impurity, even a minor one which can be remedied by simple immersion in water, is counted as full awareness of impurity.

24 These two sentences have no place here; they are copied from *Hora'ot* 3:3, Notes 76,77.

(33d line 34) נִיטְמָא בְּמַת וְיָדַע בְּשֶׁרֶץ וְלֹא יָדַע. אִין שֵׁם טוּמְאָה קִלְה אֶצֶל טוּמְאָה חֲמוּרָה. נִיטְמָא בְּמַת וְלֹא יָדַע. בְּשֶׁרֶץ וְלֹא יָדַע. וְאַחֲרֵי כֵן נֹדַע לוֹ עַל הַשֶּׁרֶץ וְאַחֲרֵי כֵן נֹדַע לוֹ עַל הַמַּת. מִפְּנֵי שְׁנוּדַע לוֹ עַל הַשֶּׁרֶץ תְּחִילָה כְּמִי שֵׁשׁ טוּמְאָה קִלְה אֶצֶל חֲמוּרָה. אוּ מִפְּנֵי שֶׁקִּדְמָה לְטוּמְאָת הַמַּת תִּדְחָה לְטוּמְאָת שֶׁרֶץ וְלִידִיעָתָה. וְאִין שֵׁם לְטוּמְאָה קִלְה אֶצֶל טוּמְאָה חֲמוּרָה. נִיטְמָא בְּמַת וְיָדַע בְּשֶׁרֶץ וְלֹא יָדַע וְנִכְנָס לְמִקְדָּשׁ. בְּהֶעֱלִימוּ שֶׁל מֵת חֵיב. בְּהֶעֱלָם שֶׁרֶץ פְּטוּר. יָרֵד לְטָבֹל מִטוּמְאָה חֲמוּרָה וְנִסְמְכָה לוֹ טוּמְאָה קִלְה עֲלֵתָה לוֹ טוּמְאָה קִלְה. לִינְדָא מִיָּלָה. שְׂאִים טָבֹל וְנִכְנָס לְמִקְדָּשׁ פְּטוּר.

Somebody became impure through a corpse and knew it; by a crawling animal²⁵ and did not know it. The minor impurity is not mentioned with the severe impurity²⁶.

Somebody became impure through a corpse and did not know it; by a crawling animal and did not know it. Then it became known to him about the crawling animal, and after that it became known to him about the corpse. Since it first became known to him about the crawling animal, is there minor impurity together with the severe one, or since the impurity of the corpse preceded, should the impurity of the crawling animal and the knowledge about it be pushed aside so that the minor impurity not be mentioned with the severe impurity²⁷?

Somebody became impure through a corpse and knew it; by a crawling animal and did not know it, and entered the Sanctuary. When he was oblivious of the corpse he is liable²⁸; when he was oblivious of the crawling animal he is not liable²⁹. If he went to immerse himself for the severe impurity and the minor impurity was additional, it is counted also for the minor impurity³⁰. In which respect? If he immersed himself and then entered the Sanctuary he is not liable.

25 One of the eight animals, reptile or rodent, mentioned in *Lev.* 11:29,30, whose carcass makes a person impure by contact. The impurity is removed by immersion in a sufficient amount of water and the following sundown. Therefore this is considered a minor impurity in contrast with the impurity induced by a corpse (or leprosy and some bodily discharges) which need elaborate ceremonies of purification.

26 A violation of the purity of the Sanctuary or its *sancta* can be remedied by a (variable value) sacrifice only if there had been prior awareness of the impurity but oblivion at the moment of the violation (Note 1). If the person enters the Sanctuary oblivious of his impurity but having had

prior knowledge of his severe impurity, his having no knowledge of the minor impurity does not invalidate his knowledge of severe impurity; he is liable for a variable value sacrifice.

27 One must assume that he entered the Sanctuary having had knowledge but momentarily being oblivious of his minor impurity but before becoming aware of his severe impurity. Before he brought his sacrifice he became aware of the prior severe impurity. If he had not become aware, clearly he would be liable for a variable sacrifice. For the violation of the purity of the Sanctuary by his severe impurity he cannot bring a sacrifice since he had no prior awareness. Does he still have

to bring the sacrifice for the minor impurity or does his inability to bring one for the severe impurity disable him from bringing the one for simple impurity? No answer is given.

28 All conditions for a variable value sacrifice are satisfied; the minor impurity which was unknown to him cannot interfere with the sacrifice for the severe violation.

29 Since he never had prior awareness of

this impurity by the time he entered the Sanctuary, the basic conditions for a sacrifice are missing.

30 Since the purification from the impurity of the dead at the end also requires immersion (*Num.* 19:19), the latter automatically eliminates the minor impurity even if the minor impurity was not on his mind while he was immersing himself.

יָרַד לְטָבֹּל מִטּוּמְאָה קֹלָה וְנִסְמְכָה לוֹ טּוּמְאָה חֲמוּרָה לֹא עָלְתָה לוֹ טּוּמְאָה חֲמוּרָה. לִי יָדָא מִיָּלָה. שְׂאִים טָבַל וְנָכַס לְמִקְדָּשׁ חֵיב. הָא מִטּוּמְאָה חֲמוּרָה וְנִסְמְכָה לוֹ טּוּמְאָה חֲמוּרָה לֹא. הָא מִטּוּמְאָה קֹלָה וְנִסְמְכָה לוֹ טּוּמְאָה קֹלָה לֹא. יָרַד לְטָבֹּל מִטּוּמְאָה חֲמוּרָה וְנִסְמְכָה לוֹ סִכְכוֹת וּפְרָעוֹת. מֵאַחַר דְּמַר רַבִּי יוֹחָנָן בְּשֵׁם רַבִּי יְנָאי. כּוֹלְהוֹן תּוֹרָה הֵן אֶצֶל תְּרוּמָה. כְּמִי שֶׁהָיָא טּוּמְאָה חֲמוּרָה. אִו מֵאַחַר שְׂאִין הַזֵּיזִר מְגַלַּח עָלֵיהֶם כְּמִי שֶׁהָיָא טּוּמְאָה קֹלָה.

If he went to immerse himself for a minor impurity and a severe impurity was additional, it does not count for him for the severe impurity³¹. In which respect? If he immersed himself and then entered the Sanctuary he is liable³². Therefore not for a severe impurity and a severe impurity was additional³³. Therefore not for a minor impurity and a minor impurity was additional³³. If he went to immerse himself for severe impurity and tree limbs and wall extensions were additional³⁴ are these like severe impurity since Rebbi Johanan said that for heave all of them are [impure] from the Torah³⁵, or are they like minor impurity since the *nazir* does not shave because of them³⁶?

31 While it is possible to cleanse oneself from multiple impurities with one immersion (Babli *Keritut* 8a, bottom), the immersion is effective only for those for which it is done. The only exception is a minor impurity if the immersion is for a severe one without thinking of the minor one.

32 For a variable value sacrifice because of the desecration of the Sanctuary by the

severe impurity.

33 For impurities of equal severity awareness of the impurity is indispensable.

34 Impurity of the dead is spread not only by contact but also by “tent”. A person being under the same roof with a corpse in general becomes severely impure. A roof does not have to be man made. A tree under which a corpse or parts of a corpse are lying forms a tent in this sense. The same holds

for outcropping of rocks or stone walls or bushes that grow in crevasses of stone walls. It is assumed here that the person underwent the full ceremony of cleansing from the impurity of the dead while not being aware that he also had passed under such a tree or outcropping. Mishnah *Nazir* 7:3.

35 *Nazir* 7:3, Note 158.

36 If a person walked under such a tree limb or wall extensions where a piece of a corpse of at least the size of an olive might be buried, he becomes possibly impure by the severe impurity of the dead but as long as this is only a possibility, not a certainty at the moment of his passing by, a *nazir* cannot shave his hair off because of this impurity.

(33d line 50) אַנְדְּרוֹגִינוֹס רָאָה לוֹבֵן וְנִכְנַס לְמִקְדָּשׁ פָּטוּר. רָאָה אוֹדֶם וְנִכְנַס לְמִקְדָּשׁ פָּטוּר. רָאָה אוֹדֶם וְלֹבֵן כְּאֶחָד וְנִכְנַס לְמִקְדָּשׁ חַיִּיב. אֵת תְּנִי תְנִי פָטוּר. אָמַר רַבִּי יוֹחָנָן. רַבִּי שְׁמַעוֹן הָיָא דְתַנִּי. שְׁנֵי שְׁבִילֵי אֶחָד טָהוֹר וְאֶחָד טָמֵא. הִילָךְ בְּאֶחָד מֵהֶן וְנִכְנַס לְמִקְדָּשׁ בְּרֹאשׁוֹן וְהָזָה וְשָׁנָה וְטָבַל. בְּשֵׁנֵי וְנִכְנַס חַיִּיב. רַבִּי שְׁמַעוֹן פּוֹטֵר בָּזָה. רַבִּי שְׁמַעוֹן בֶּן יְהוּדָה פּוֹטֵר בְּכוֹלָן מִשּׁוּם רַבִּי שְׁמַעוֹן. נִיחָא אַנְדְּרוֹגִינוֹס גְּבִי לוֹבֵן אֶת עֶבֶד לֵיה אִשָּׁה. גְּבִי אוֹדֶם אֶת עֶבֶד לֵיה אִישׁ. בְּרִם הָכָא אֵין כָּאן טוֹמְאָה דְּיוּעָה. אָמַר רַבִּי שְׁמַעוֹן בַּר סוֹסְרִטִי. תַּפְתֵּר בְּשִׁשְׁכַּח לְרֹאשׁוֹן. רַבִּי יוֹסִי בְּעִי מָה אֲנִי קְיָיִמִין. אִם בְּשִׁשְׁכַּחוּ לְעוֹלָם שְׁבִיל אֶחָד הוּא. אִם שְׁחִזֹר וְשִׁכַּחוּ שְׁנֵי שְׁבִילֵי הוּ. אָמַר רַבִּי יוֹסִי בִירְבִי בּוֹן. אֶתִּיא דְרַבִּי שְׁמַעוֹן כְּרַבִּי לִיעֶזֶר. עַל דְּעִתִּיה דְּחֻקָּיָה כְּמָה דְרַבִּי לִיעֶזֶר אָמַר תַּמָּן. עַד שְׂיַדַע אִם בְּשִׁרְץ נִיטְמָא אִם בְּמֵת. כֵּן רַבִּי שְׁמַעוֹן אָמַר כָּאן. עַד שְׂיַדַע אִם בְּאוֹדֶם נִיטְמָא אִם בְּלוֹבֵן. נִיחָא תַּמָּן מִשּׁוּם דְּאָמַר. סָפִיק דִּידִיעָה כִּידִיעָה. בְּרִם הָכָא מִכִּין דְּחֻקָּיָה אוֹדֶם וְלֹבֵן כְּאֶחָד דִּידִיעָה וְדָאִי הִיא.

An androgynus³⁷ who saw whitish [effluent]³⁸ and entered the Sanctuary is not liable. If he saw red [effluent]³⁹ and entered the Sanctuary, he is not liable. If he saw simultaneously whitish and red and entered the Sanctuary, he is liable⁴⁰. There is a Tanna who states: he is not liable. Rabbi Johanan said, this is Rabbi Simeon, as it was stated⁴¹: “Two paths, one pure and one impure. He walked on one of them⁵, entered the Sanctuary on the first one, sprinkled repeatedly, immersed himself⁶, on the second one and entered; he is liable. Rabbi Simeon declares him not liable in this case⁴¹. Rabbi Simeon ben Jehudah in the name of Rabbi Simeon⁴² declares him not liable in all cases.” One understands the androgynus, for whitish [effluent] you declare him to be a woman, for red [effluent] you declare him to be a man. But here there is no known impurity. Rabbi Samuel bar Sosartai said, explain it if he forgot the first⁴³. Rabbi Yose asked, where do we hold? If he forgot it forever, it is one path⁴⁴. If he forgot repeatedly, there are two paths. Rabbi Yose ben Rabbi Abun said, Rabbi Simeon parallels Rabbi Eliezer in the interpretation of

Ḥizqiah⁴⁵. Just as Rabbi Eliezer said there, until he knows whether he did become impure by a crawling animal or a corpse, so Rabbi Simeon says here, until he knows whether he did become impure by red [effluent] or by whitish. One understands there since he said, a doubt of awareness is awareness¹⁰. But here, since he saw whitish and red together, it is certain knowledge⁴⁶.

37 He has both male and female genitals, a penis with testicles and a vagina. It is not known whether he is male or female.

38 Gonorrheal discharges from his penis. This causes severe impurity in a male. Similar discharges from a female's urethra are pure.

39 Menstrual blood causes impurity to a woman; prolonged discharge causes severe impurity. No flow of blood causes impurity in a male.

40 Since he is impure both as a male and a female, he is impure and forbidden access to the Sanctuary.

41 He holds that the knowledge of a doubt is not the certain knowledge which triggers the liability for a sacrifice for impurity in the Sanctuary. Since between the two occasions he removed the possible impurity from the first path, it could be that the second time he was perfectly pure entering the Sanctuary.

42 This is the correct text of the Tosephta as seen from R. David Pardo's commentary (Jerusalem 1977).

While R. Simeon following the first quote would agree with the anonymous Tanna if there was no purification in between the two entries, R. Simeon ben Jehudah holds that no logical argument

(either, or, and no third possibility) satisfies the requirement of direct awareness.

43 Since another requirement for the sacrifice was the element of forgetting, he must have forgotten about the possible first impurity both times he entered the Sanctuary. There is no certain knowledge preceding any of the two occasions according to both versions of R. Simeon's position.

44 Since nobody can bring a personal sacrifice for a sin unknown to him; as long as he realizes only one incident there is only a possibility, not certain knowledge, of a violation of the Sanctuary's sanctity. But offenses to be atoned for by a variable sacrifice do not qualify for suspended reparation offerings; no sacrifice is possible.

45 In Mishnah 7, R. Eliezer and R. Aqiba both hold that not being unaware of the Sanctuary but being unaware of impurity triggers the obligation of a variable sacrifice. In Halakhah 2:6, Ḥizqiah holds that they disagree in that R. Eliezer requires prior awareness of the kind of impurity but R. Aqiba only of the fact of impurity.

46 There is nothing unclear here about the facts of impurity, only about the person's body. Both impurities are body-produced; they fall in the same category.

33d line 64) רב חסדא בעי. נכנס למקדש כסבור כנסת מהו. אמר רבי יוסי. כן אנו אומרים. היה יודע שיש טומאה בעולם אלא אינו יודע אם חייבין עליה קרבן לא כלשכון שתהא ידיעה. אלא כי אנו קיימין בבריא לו שטמא ונעלם ממנו מקדש ונכנס למקדש. וכן בבריא לו שהוא מקדש ונעלמה ממנו טומאה ונכנס למקדש. רבי יוסי בעי. אבל חצי זית בידעת קודש והעלם טומאה וכן חצי זית בידעת טומאה והעלם קודש העלימות מהו שיצטרפו.

Rav Hisda asked: What is the situation if he entered the Sanctuary thinking it was a synagogue⁴⁷? Rabbi Yose said, the following is what we are saying: One knew that there exists impurity in the world but he did not know whether one is liable for a sacrifice because of it, that certainly is awareness⁴⁸. But the following is where we hold, if it was clear to him that he was impure but he was oblivious of the Sanctuary, and he entered the Sanctuary⁴⁹. And so if it was clear to him that this was the Sanctuary, he was oblivious of the impurity and entered the Sanctuary⁵⁰.

Rebbi Yose asked: If one ate half the volume of an olive being aware of the Sanctuary but oblivious of impurity and about half the volume of an olive being aware of impurity but oblivious of the Sanctuary; do the oblivions combine⁵¹?

47 He knows that he is impure and knows that as such he may not enter the sanctuary but he does not recognize the Sanctuary. The question can be asked only according to R. Ismael (Mishnah 6).

48 Since there was awareness of impurity, his ignorance of the law is irrelevant.

49 For R. Ismael he is liable for a sacrifice but not for RR. Eliezer and Aqiba.

50 He is liable for a sacrifice according to all opinions.

51 This question is not answered here. It is asked again in *Sabbat* 7:1 (9b l. 46) where it is not answered either. But there the

question is compared to one whether violations of the Sabbath combine if both are small so as not to trigger the obligation of a purification sacrifice, the one made in oblivion of the Sabbath Day but awareness of the categories of forbidden work, the other in awareness of the Sabbath but oblivion of the categories of forbidden work. The latter question is not answered in the Yerushalmi either but it is discussed at length in the Babli (*Sabbat* 70b-71b), the Galilean participant in the discussion being R. Ze'ira.

(fol. 33c) **משנה ג:** אחד נכנס לעזרה ואחד נכנס לתוספת העזרה שאין מוסיפין על העיר ועל העזרות אלא במלך ונביא ואורים ותומים ובסנהדרין של שבעים ואחד ובשתי תודות ובשיר ובית דין מהלכין ושתי תודות אחריהן הפנימית נאכלת והחיצונה נשרפת. וכל שלא נעשה בכל-אילו הנכנס לשם אין חייבין עליה:

Mishnah 3: Whether one entered the courtyard or the addition to the courtyard⁵², because one adds to the city and the temple courtyards only by King and Prophet, and *Urim and Tummim*, and the Synhedrion of Seventy-One, and two thanksgiving offerings, and song, with the Court walking and the two thanksgiving offerings after them. The inner one is eaten but the outer one is burned. Any [addition] which was not made with all these, one who was entering there is not liable for it⁵³.

52 The biblical definition of “Sanctuary” as applied to the Temple Mount in Jerusalem applies only to the area sanctified by Solomon and his successors during the existence of the First Temple, and its reconstruction by Nehemiah. It excludes the additions to the Temple area and the Temple Mound made by Herod. Similarly, the city of Jerusalem which represents the Camp of

the Israelites in the desert is only the First Temple city, with the area between the First Temple wall and the Damascus gate being of questionable sanctity.

53 There can be no liability to bring a variable sacrifice for entering the Herodian additions to the Temple Mount in a state of impurity.

(33d line 71) אחד נכנס לעזרה כול. רב אמר. בתחילה. ויעל דוד בדבר גד זה מלך ונביא. ויחל שלמה לבנות את-בית יי בירושלם אילו אורים ותומים. ודוד אביהו זה סנהדרין שאל אביו ויגד. שיר וילך אחריהם הושעלה ושרי. תודות ואעמידה שתי תודות וגו'. אמר רבי שמואל בר רבי יודן. מה כתוב מהלכות לא תהלוחות. מפני שהיתה תורפת וירושלם שם והיתה יכולה להיכבש משם.

Halakhah 3: “Whether one entered the courtyard,” etc. ⁵⁴Rav said, at the start: ⁵⁵*David ascended following Gad’s word*, that is King and Prophet. ⁵⁶*Solomon started to build the Temple of the Eternal in Jerusalem*, these are Urim and Tummim. ⁵⁶*And his father David*, this is the Synhedrion, ⁵⁷*ask your father and he will tell you*. Song, after them went Hoshiaa and the officers⁵⁸. Thanksgiving sacrifices, *I put up two thanksgiving sacrifices*⁵⁹. Rabbi Samuel bar Rabbi Yudan said, what is written, walking? No, being in procession.

Because it was the vulnerable spot of Jerusalem; it could be conquered from there.”

54 This Halakhah is a very truncated and inferior copy of parts of *Sanhedrin* 1:5 (Notes 288-294). The second paragraph is from the end of that Halakhah, Note 326. Its inclusion indicates that all of that Halakhah should be studied here.

55 2S. 24:19.

56 2Chr. 3:1.

57 Deut. 32:7.

58 Neh. 12:32.

59 Neh. 12:31.

משנה ד: נטמא בעזרה ונגעלמה ממנו המזמאה וזכור למקדש נגעים ממנו המקדש וזכור למזמאה. נגעים ממנו זה וזה. וזא לא בארובה חייב ובקצרה פטור. זו היא מצות עשה שבמקדש שאין חיבין עליה:

Mishnah 4: If one became impure in the Temple courtyard, then was oblivious about impurity but remembered the Sanctuary, [or] was oblivious about the Sanctuary but remembered impurity, [or] was oblivious of both. If he prostrated himself, or tarried that he could have prostrated himself, or left on a lengthy path, he is liable⁶⁰. But on the shortest path he is not liable; this is the positive commandment in the Sanctuary about which they are not liable⁶¹.

60 If somebody entered the Sanctuary area legitimately because he was pure and then became impure in the sacred precinct (e. g., a dead lizard was lying there and he accidentally touched it), no sin attaches to him if he leaves immediately on the shortest possible path. If he tarries or leaves on a

longer path, he commits a sin for which he will be liable if the original awareness was followed by any forgetting.

61 “They” are the members of the Supreme Court who do not have to offer a sacrifice for a wrong ruling in this matter (Mishnah *Horaiot* 2:4).

הלכה ד: (34a line 1) נטמא בעזרה כול. רבי חזקיה רבי אמי בשם רבי לעזר. כתוב אחד אומר את-משכן יי טמא וכתוב אחר אומר את-מקדש יי טמא. הא כיצד. ליתן חלק בין למיטמא בפנים למיטמא בחוץ. מיטמא בפנים עד שיזכר ראשו ורובו. מיטמא בחוץ עד שישקה כדי השתחויה. נטמא בפנים וזכר לזכר ולפנים. נישמענה מהדא. השתחוה או ששקה בכדי השתחויה. וזכר ששקה לאו כמי שהזכר ראשו ורובו. ותימר. עד שישקה כדי

הַשְּׁתַּחֲוִיָּה. וְכֵן עַד שֶׁיִּשְׁפָּה כְּדֵי הַשְּׁתַּחֲוִיָּה. הִידָּ עֲבִידָא. עַל אִי זֶה מֵהֶן מִתְחַיֵּב. עַל הָרִאשׁוֹנָה אוֹ עַל הָאַחֲרוֹנָה. חֲבֵרִיָּה אָמְרִין. עַל הָרִאשׁוֹנָה. אָמַר לוֹן רַבִּי יוֹסִי. אָמְרִי לִיה. צֶא. וְתִימָר. עַל הָרִאשׁוֹנָה. אֶלָּא כִּי נֶן קִיָּמִין עַל הָאַחֲרוֹנָה. תִּמְן תִּנְיָן. הוֹצִיאוּ לוֹ אֶת הַכֶּף וְאֶת הַמִּחְתָּה. עַל אִי זֶה מִתְחַיֵּב. עַל הָרִאשׁוֹנָה אוֹ עַל הָאַחֲרוֹנָה. חֲבֵרִיָּה אָמְרִי. עַל הָאַחֲרוֹנָה. אָמַר לוֹן רַבִּי יוֹסִי אֹמֵר. אֹמְרִים לוֹ. הִיָּנֵס. וְתִימָר. עַל הָאַחֲרוֹנָה. אֶלָּא כִּי נֶן קִיָּמִין עַל הָרִאשׁוֹנָה.

Halakhah 4: “If one became impure in the Temple courtyard,” etc. Rabbi Hizqiah, Rabbi Immi in the name of Rabbi Eleazar: One verse says, *he defiled the dwelling place of the Eternal*⁶², another verse says, *he defiled the Sanctuary of the Eternal*⁶³. Why is this? To state a difference between one who became inside and one who became outside⁶⁴. If he became impure (inside)⁶⁵ not unless he bring his head and most of his body inside; if he became impure (outside)⁶⁵ not unless he stay for prostrating. If he became impure inside and entered further inside⁶⁶? Let us hear from the following: “If he prostrated himself, or tarried that he could have prostrated himself.” If he tarried, is that not as if he brought his head and most of his body inside, but you are saying, “he tarried that he could have prostrated himself.” And here, not unless he tarried that he could have prostrated himself⁶⁷. How is that? About which of them does he become liable? About the first or the last⁶⁸? The colleagues say, about the first. Rabbi Yose told them, one says to him, leave, and you say about the first? But we must hold about the last⁶⁹.

There, we have stated: “They removed the cup and the censer for him”⁷⁰. About which of them does he become liable? About the first or the last? The colleagues say, about the last. Rabbi Yose told them, one says to him, enter, and you say about the last? But we must hold about the first⁷¹.

62 Num. 19:13.

63 Num. 19:20

64 The two verses appear in the same Chapter. There must be a reason for the use of two synonyms. It is a hint that the rules are different for one who enters while impure and one who becomes impure inside. (There is another opinion, *Sifry Num. 126*, that מִשְׁכָּן describes the movable Tabernacle

and מִקְדָּשׁ the permanent Temple. The Babli 16b brings both opinions in the name of R. Eleazar.)

65 It is clear that the places of “inside” and “outside” have to be switched. A person already impure becomes guilty and eventually liable for a sacrifice at the moment his head and most of his body are inside the sacred precinct; one becoming

impure inside if he tarries long enough to prostrate himself.

66 Do we say that if he became impure inside and moved his head and body further inside instead of towards the outside that he is guilty on two counts?

67 The Mishnah makes it clear that only the time elapsed inside the sacred precinct determines his liability, not the direction of his motion.

68 The moment he became impure or the moment he stayed longer than necessary.

69 This essentially is a repetition of the previous argument: Not the fact that he became impure determines his guilt but the time he tarried inside. The argument is recast as introduction to the next paragraph.

70 Mishnah *Yoma*. 5:1. The reference

really is to the end of that Mishnah: “The High Priest takes the censer in his right hand and the cup in the left hand.” In general there is a rule that all priestly service in the Temple has to be performed with the right hand only. The left hand has to be used here to make it possible for the High Priest to enter the Holiest of Holies only once. On that it is noted (*Yoma* 5:2, 42b l. 52) that if he went twice, using only his right hand, the service is valid. Nevertheless, it is sinful to enter the Temple building more often than necessary. About this the paragraph here is then copied in *Yoma*.

71 Since the first entry is necessary in any case, the High Priest cannot be faulted for the first entry even if he only carries the censer.

34a line 15) שיעור השתחויה עשר אמות. היף עבדא. היה בארוכה עשרים ובקצרה עשר. הילך חמש. אין ייזיל בְּדֵא חמש ואין ייזיל בְּדֵא חמש עשרה. אמר רבי יוסי. לעולם אין מתחייב עד שתהא ארוכה מרובה על הקצרה עשר. היף עבדא. היה בארוכה שלשים ובקצרה עשר. הילך חמש. אין ייזיל בְּדֵא חמש. אין ייזיל בְּדֵא עשרין וחמש. עד כמה היא השתחויה. רבי סימון בשם רבי יהושע בן לוי. עד כדי שאילת שלום בין אדם לחבירו. אבא בר הונא בשם רבי יוחנן. עד כדי שאילת שלום מתלמיד לרבו. שלום עלך רבי.

The measure of prostrating is ten cubits⁷². How is this? If the lengthy path was twenty but the short one ten. He went five. If he went in this direction, five, if in the other, fifteen⁷³. Rabbi Yose said, he never becomes liable unless the lengthy path exceed the short one by (ten)⁷⁴. How is that? If the lengthy path was thirty but the short one ten. He went five. If he went in this direction, five, if in the other, twenty-five.

What is the duration of prostrating⁷⁵? Rabbi Simon in the name of Rabbi Joshua ben Levi: up to a greeting from one person to another⁷⁶. Abba bar Huna⁷⁷ in the name of Rabbi Johanan: up to a greeting from a student to his teacher, “peace be with you, my teacher.”⁷⁸

73 If the time frame described in the Mishnah by “prostrating” is measured by the difference in length between a lengthy and a short path, since it cannot be made dependent on the speed of one’s body motions.

74 The only thing that counts is the difference in the lengths of the paths, not the total lengths.

75 From the following it is clear that one has to read “twenty”.

76 If one measures not by length but by time, still admitting differences between one

person and the next.

77 The time frame needed to speak the two words *שְׁלום עִלְיָךְ*.

78 This is misspelling for Abba bar bar Hana; cf. his statement in *Berakhot* 2:1, Note 51, *Nazir* 4:1 Note 12.

79 The time frame allowing three words to be spoken, which in general is the definition of “immediately”. In the Babli 16b the time given is either the time needed to recite the entire verse *2Chr. 7:3* or at least half of it.

(fol. 33c) **משנה ה:** אִי זֶה הָיָא מְצוֹת עֲשֵׂה שְׁבִינִידָה שְׁחִיבִין עָלֶיהָ. הִיא מְשַׁמֵּשׂ עִם הַמְּהוּרָה וְאִמְרָה לֹא נִיטְמָאֲתִי וּפְרַשׁ מִיָּד חַיִּיב שְׂרִיצָתָהּ תְּנִיחָה לֹא בְּבִיאתָהּ:

Mishnah 5: What is the positive commandment about the menstruating woman⁷⁹? If he was having sex with a pure one and she said to him, I became impure, if he separates immediately he is liable,⁸⁰ for his separation is as pleasurable to him as his entry⁸¹.

79 For which the High Court has to bring a purification sacrifice if they rule wrongly, *Horaïot* Mishnah 2:4.

80 For extirpation if he acts intentionally,

for a sacrifice if unintentionally.

81 He has to stay immobile until his erection subsides; *Horaïot* 2:5 Note 69.

(34a line 22) **הלכה ה:** אִי זֶה הָיָא מְצוֹת עֲשֵׂה שְׁבִינִידָה כּוּל. כְּהֵנָּה אָמַר. אִי אֵיפֶשֶׁר שְׁלֹא הָיְתָה בָּהּ יְדִיעָה בְּתַחֲלִילָה וְיָדִיעָה בְּסוּף וְהִעָלַם בְּנִתְיִים. הַתֵּיב רַבִּי שְׁמוּאֵל בְּרַ אֲבוּדִימִי קוֹמִי רַבִּי מָנָא. וְיִהְיֶה כֹן הַמּוֹרִים. אָמַר לֵיהּ. אֲנִי בְּעֵי נִבְנָסִין וְאֵת מִיֵּיתִי לֹא מוֹרִין. מֵאִי כְדוֹן. אָמַר רַבִּי שְׁמוּאֵל בְּרַ רַב יִצְחָק. מְצוֹת מְצוֹת. מֵה מְצוֹת שְׁנֵאֲמַר לְהֵלֹן בְּקִבּוּעַ אֶף כָּאֵן בְּקִבּוּעַ.

Halakhah 5: “What is the positive commandment about the menstruating woman,” etc. ⁸²Cahana said, is it impossible that there was knowledge at the beginning and knowledge at the end and oblivion in between? Rabbi Samuel ben Eudaimon objected before Rabbi Mana: Could that be for the teachers?

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].

82 This paragraph does not belong here; it is copied from *Horaiot* 2:5 (Notes 60-63) and refers to the statement of the Mishnah there that the High Court never incurs the liability for a purification sacrifice for a wrong decision about the purity of the

Sanctuary. It is explained that a purification sacrifice is due only for wrong rulings in matters that require fixed value purification sacrifices, not matters of the Sanctuary which trigger obligations of variable value sacrifices.

משנה ו: רבי ליעזר אומר השרץ ונגעלם מלוננו. על העלם השרץ חייב ואינו חייב על העלם מקדש. רבי עקיבה אומר ונגעלם מלוננו והוא טמא על העלם טומאה חייב ואינו חייב על העלם המקדש. רבי ישמעאל אומר ונגעלם מלוננו ונגעלם מלוננו שתי פעמים לחייב על העלם טומאה ועל העלם המקדש:

Mishnah 6: Rabbi Eliezer says, *the crawling animal and he became oblivious*⁸³, he is liable for forgetting the crawling animal but is not liable for forgetting the Sanctuary⁸⁴. Rabbi Aqiba says, *and he became oblivious while he was impure*⁸⁵, he is liable for forgetting impurity but is not liable for forgetting the Sanctuary. Rabbi Ismael says, *and he became oblivious, and he became oblivious*⁸⁵, two times to make him liable for forgetting impurity and forgetting the Sanctuary⁸⁶.

83 *Lev.* 5:2.

84 The biblical text never hints at the possibility that anybody could be unaware of being in the holy precinct; therefore no penalties are spelled out for this case.

85 *Lev.* 5:3, speaking of impurities generated by the human body.

86 This is the opinion formulated in Mishnah 1. The Mishnah is quoted *Sifra Hova (Wayyiqra 2) Pereq* 12(7).

(33a line 28) **הלכה ו:** רבי ליעזר אומר כול. חזקה אומר. מחלוקת ביניהון. רבי יוחנן אומר. משמעות דרשין ביניהון. אית תנאי תני. על העלם טומאה חייב ולא על העלם מקדש. אית תנאי תני. על העלם שרץ חייב ולא על העלם מקדש. מחלוקה שיטת רבי ליעזר. תמן הוא

אָמַר. אָפִילוֹ לֹא יָדַע. וְכֹא אָמַר. עַד שֶׁיָּדַע. תִּמְנָן אֲשֶׁר חָטָא בָּהּ. עַד שֶׁיָּדַע בְּמָה נִתְחַיֵּב. הֲכֹא וְהוּא טָמֵא מִכָּל־מָקוֹם. אָמַר רַבִּי חִינְנָא. וְכֹא לִית כְּתִיב בָּהּ. מִחֻלְפָּה שֵׁשֶׁת רַבִּי יְהוֹשֻׁעַ. תִּמְנָן הוּא אָמַר. וְהוּא טָמֵא. עַד שֶׁיָּדַע בְּמָה נִיטָמָא. הֲכֹא אֲשֶׁר חָטָא בָּהּ מִכָּל־מָקוֹם. וּמָה מְקִיִּים רַבִּי לִיעְזָר בָּהּ. פְּרִיט לְמוֹתֵעֶסֶק.

Halakhah 6: “Rebbi Eliezer says,” etc. Hizqiah says, there is disagreement between them⁸⁷. Rebbi Johanan said, interpreting the verse is between them; there are Tannaim who state, he is liable for forgetting impurity but is not liable for forgetting the Sanctuary, and there are Tannaim who state, he is liable for forgetting the crawling animal but is not liable for forgetting the Sanctuary⁸⁸.

The argument of Rebbi Eliezer seems inverted⁸⁹. There he says, even if he did not know. But here he says, not unless he knew. ⁹⁰There, *by which he sinned*⁹¹, not unless he knew by what he became liable. Here, *while he was impure*⁹², in all cases. Rebbi Hinenai said, here “by what” is not written.

The argument of Rebbi Joshua seems inverted. ⁹²There he says, *while he was impure*, not unless he knew by what he became liable. Here, *by which he sinned*, in any case

How does Rebbi Eliezer uphold *by what*? This excludes the one who is occupied⁹³.

87 As explained in Halakhah 1, Note 45. R. Eliezer requires awareness of the cause of his impurity, R. Aqiba only requires awareness of impurity. This is the only opinion mentioned in the Babli, 18a.

88 RR. Eliezer and Aqiba only differ in the way they deduce the law from the verse, not in the substance of the meaning. The formulation is just a matter of style.

89 This refers to Mishnah *Keritot* 4:2 where R. Eliezer and R. Joshua disagree in the case that a person knows that he has inadvertently committed a sin which if intentional is either one subject to Divine extirpation or a capital crime, but he does not know which law he broke. Examples

are a person who inadvertently ate a piece of meat which either was forbidden fat or disqualified sacrificial meat, or a man who slept with a woman but he does not know whether it was his wife during her menses or his sister. R. Eliezer declares him liable for a fixed value purification sacrifice since in any case he committed a deadly sin; R. Joshua declares him not liable (and therefore prevented from sacrificing) as long as he cannot specify which prohibition he broke. It is implied that in the case of a variable value reparation sacrifice for violation of the purity of the Sanctuary the opinions are switched; R. Eliezer requires knowledge of the kind of impurity (e. g., “a crawling

animal”) whereas R. Joshua only requires awareness of impurity. Hizqiah would trace R. Aqiba’s opinion to his teacher R. Joshua.

90 The arguments quoted for R. Eliezer belong to R. Joshua and vice-versa.

91 *Lev. 4:23*, the purification sacrifice of the Prince. The verse insist, *he became aware of his transgression by which he sinned*, he can state the paragraph which he broke. But *Lev. 5:2* only requires awareness of impurity.

92 This is R. Eliezer’s argument. As formulated in the Mishnah, he reads *Lev. 5:2* as requiring awareness of the nature of his impurity (or, taking vv. 2,3 together, at least certain knowledge of the kind of impurity,

whether simple or severe.) But in v. 4:23 and certainly v. 27, the purification sacrifice of a commoner, where it is only required that *he sinned inadvertently*, can be read as authorization for a sacrifice if only the fact was known that a sin was committed.

93 Accepting that R. Eliezer refers to 4:27, the peculiar language of 4:23 still has to be explained. He excludes a person who was intent on doing something permitted when it happened that he broke a prohibition, e. g., that he was intent of sleeping with his wife when she was permitted to him and in the dark of night his sister substituted for her. She sinned but he did not.

שבועות שנים פרק שלישי

(fol. 34a) **משנה א:** שבועות שנים שהן ארבע שבועה שאוכל ושללא אוכל שאכלתי ושללא אכלתי. שבועה שללא אוכל ואכל כל-שהוא חייב דברי רבי עקיבה. אמרו לו לרבי עקיבה איכן מצינו באוכל כל-שהוא שהוא חייב שזה חייב. אמר להן איכן מצינו במדבר ומביא קרבן שזה מדבר ומביא קרבן. שבועה שללא אוכל ואכל ושתה אינו חייב אלא אהת. שבועה שללא אוכל ושתה ואכל ושתה חייב שנים:

Mishnah 1: There are two kinds of oaths¹ which are four kinds: An oath that I shall eat, or that I shall not eat; that I ate, or that I did not eat. An oath that I shall not eat, when he ate the most minute amount, he is liable, the words of Rabbi Aqiba. They said to Rabbi Aqiba, where do we find that one who eats the most minute amount should be liable, that this one be liable²? He told them, where do we find that a person talks and has to bring a sacrifice; but this one talks and has to bring a sacrifice³!

An oath that I shall not eat, when he ate and drank⁴ he is liable only for one. An oath that I shall not eat or drink, when he ate and drank he is liable for two.

1 Mishnah 1:1. This Chapter treats “blurted oaths” (*Lev. 5:4*) where a person makes an oath that he shall do or not do certain things, which do not involve others. A breach of such an oath triggers a liability for a variable sacrifice (or if made before witnesses, punishment by flogging.) The liability for a variable sacrifice is subject to the usual conditions for such a sacrifice, prior knowledge, oblivion, and remembrance.

2 In all other matters, only food in the volume of an average olive triggers obligations.

3 In general, only actions, not words, trigger obligations; but an oath is simply words (Note 166). In commercial transactions an obligation is enforceable only when it was confirmed by an action, such as a signature or a handshake. But there are other possible exceptions, such as blasphemy and apostasy (Note 21).

4 Since the general acceptation of “eating” is “ingesting nourishment”, this is the meaning of the word if used in an oath unless the wording of the oath clearly indicates that a more narrow meaning is intended, such as “ingesting solid food”.

(34b line 21) **הלכה א:** שְׁבוּעוֹת שֶׁתִּשָּׂא שֶׁהוּא אֶרְבַּע כּוֹל. נִיחָא שְׁאוּכַל וְשָׁלֵא אוּכַל. שְׁאֲכַלְתִּי וְשָׁלֵא אֲכַלְתִּי. מָה נֵּן קִיּוּמִין. אִם בְּיָדוּעַ שְׁאֲכַל וְנִשְׁבַּע שָׁלֵא אֲכַל. שְׁבוּעַת שֶׁקָּרָה הוּא. וְאִם סָבוּר שְׁאֲכַל וְנִשְׁבַּע שָׁלֵא אֲכַל. רַבִּי בָּא רַב יְהוּדָה בְּשֵׁם רַב. בְּשׁוּגְגַת בְּקָרְבָּנָה וּבְמִזִּיד בְּקָרְבָּנָה. אֲכַל. סָבוּר הֵייתִי שְׁאִין בָּהּ שְׁבוּעָה. מוֹתֵר. אֲכַל בְּמִזִּיד בָּהּ וּבְשׁוּגְגַת בְּקָרְבָּנָה. וְלֹא כֵן אָמַר רַבִּי אֲבָהוּ בְּשֵׁם רַבִּי יוֹחָנָן. מִזִּיד בְּחֻלְבַּת וְשׁוּגְגַת בְּקָרְבָּן מוֹתֵרִין בּוֹ וְלֹקָהּ וּמִבֵּיא קָרְבָּן. לֵית יָכִיל. דְּמַר רַבִּי לֹא בְּשֵׁם רַבִּי לְעִזָּר. קָדַם מְשִׁיב רַבִּי וְשִׁמְעָאֵל לְרַבִּי עֲקִיבָה. מְצִינוּ דְּבַר שְׁחִיבִין בְּזִדּוֹנוֹ מִשּׁוּם שְׁבוּעַת שֶׁקָּרָה וּבְהֶעֱלִימוֹ מִשּׁוּם בִּיטוּי. וְיִתְיַבֵּינָהּ רַבִּי עֲקִיבָה. מְצִינוּ דְּבַר שְׁחִיבִין בְּזִדּוֹנוֹ מִשּׁוּם שְׁבוּעַת שֶׁקָּרָה וּמִבֵּיא קָרְבָּן. אֲכַל כִּי נֵּן קִיּוּמִין בְּבִרְיָא לֹא שְׁאֲכַל וְנִשְׁבַּע וְנִמְצָא שָׁלֵא אֲכַל. לֹא בְּאוֹמַר. אֵין זֶה שְׁבוּעָה. תִּמְנָן בְּאוֹמַר. אֵין זֶה שְׁבוּעָה. בְּרַם הֵכָא בְּיָדָע בָּהּ שְׁשְׁבוּעָה הִיא אֲכַל שְׁהוּא בְּטוּעָה מִחֻמַּת דְּבַר אַחֵר.

Halakhah 1: “There are two kinds of oaths which are four kinds,” etc. One understands “that I shall eat, or that I shall not eat.” “That I ate, or that I did not eat”⁵? Where do we stand? If it is known that he ate and he swore that he did not eat, it is a false oath⁶. But if he was of the opinion that he ate and swore that he did not eat? Rabbi Abba, Rav Jehudah in the name of Rav: If he is inadvertent for its sacrifice or intentional for its sacrifice⁷. But “I was of the opinion that this is not an oath” is permitted⁸. But it must be that he was intentional in the deed but in error about the sacrifice⁷. Did not Rabbi Abbahu say in the name of Rabbi Johanan⁹: Intentional about fat and in error about the sacrifice, one warns him, he is flogged and has to bring a sacrifice¹⁰. This is impossible, as Rabbi La said in the name of Rabbi Eleazar: So did Rabbi Ismael¹¹ answer Rabbi Aqiba: Do we find a situation where one is liable if intentional because of a false oath and in oblivion because of blurting¹²? Should not Rabbi Aqiba retort, we find a situation where one is liable if intentional because of a false oath and he brings a sacrifice¹³? But we deal here with the case that he was sure that he ate, and he swore, and it turned out that he had not eaten. Not about him who said that this is not an oath? There¹⁴, if he says this is not an oath; but here if he knows that this is an oath but he errs because of something else¹⁵.

5 We do not talk here about judicial oaths which by necessity are about past events, but “blurted oaths”. How can a statement about past events ever lead to a

variable sacrifice? For a future directed oath it is possible that he had the honest intention of keeping what he swore to but later he forgot. But for the past we must

assume that he knows what he did.

6 Under the right conditions he can be punished for it, but there can be no atoning sacrifice.

7 A sacrifice is possible only for an inadvertent sin. In this context, "inadvertent" may mean that the perpetrator was not aware that his act was criminal or sinful, or that he was not aware that the act if inadvertent requires a sacrifice.

8 A statement qualifies as an oath only if it is pronounced as such, not as a simple statement.

9 *Terumot* 7:1 Notes 5,6; *Šabbat* 11:5 (13b), *Ketubot* 3:1 Note 30, *Bava Qamma* 7:2 Note 29; Babli *Šabbat* 69a.

10 Sacrifices are possible only for inadvertent deadly sins. If a person knew that eating fat was forbidden but did not know that it was a deadly sin, he simultaneously committed an intentional sin and an unintentional deadly sin. If he had been duly warned by two witnesses not to break the law, he can be flogged for the intentional sin and has to bring a sacrifice for the unintentional deadly sin even though

there cannot be two penalties for one crime (*Terumot* 7:1 Notes 19-70).

11 Who is R. Aqiba's opponent. All of Mishnah 1 is R. Aqiba's teaching. R. Ismael opposes adding backward looking oaths as blurted oaths.

12 A future directed oath, where it cannot be verified instantly whether it will be kept or violated, is an actionless crime and cannot be prosecuted (cf. Note 3). The preconditions of a sacrifice for a blurted oath negate the possibility of judicial penalties.

13 If R. Aqiba did accept R. Johanan's argument, it would be possible for a person to be flogged for violating the prohibition of perjury (*Lev.* 19:12) and still be liable for a sacrifice. This would make R. Ismael's objection irrelevant.

14 If he denies that he intended or pronounced an oath, there is no oath and the entire discussion is irrelevant.

15 He made the oath in good faith but his mind was distracted by other things. It is an inadvertent sin which qualifies for a sacrifice.

(34b line 34) מָה נֶן קִיּוּמִין. אִם בְּאוֹמֵר. שְׁבוּעָה שְׂאוּכָל אֲכִילַת תּוֹרָה. אִף רַבִּי עֲקִיבָה מוֹדָה. וְאִם בְּאוֹמֵר. שְׁבוּעָה שְׁלֹא אֶטְעוֹם. אִף רַבֵּנן מוֹדוּ. אֶלָּא כִּי נֶן קִיּוּמִין כָּל־שְׁהוּא. כָּל־שְׁהוּא אֲכִילָה. פֶּתֶר לָהּ כִּרְבִּי עֲקִיבָה דָּאָמַר. כָּל־שְׁהוּא אֲכִילָה. מִה מִפְּקֹא מִבְּיַהוּן. שְׁבוּעָה שְׂאוּכָל כִּיכָר זֶה. וְאֶכְלָה חֶסֶר כָּל־שְׁהוּא. עַל דַּעְתִּיהָ דְּרַבִּי עֲקִיבָה חִיב. עַל דַּעְתִּין דְּרַבֵּנן פְּטוּר. שְׁלֹא אוֹכֵל כִּיכָר זֶה. וְאֶכְלָה חֶסֶר כָּל־שְׁהוּא. עַל דַּעְתִּיהָ דְּרַבִּי עֲקִיבָה פְּטוּר. עַל דַּעְתִּין דְּרַבֵּנן חִיב. אִף בְּשִׁבְעַת בִּיטוּי כֵּן. שְׁבוּעָה אֲשֶׁתִּי נִהְיִית לִי אִם אוֹכֵל כִּיכָר זֶה. וְאֶכְלָה חֶסֶר כָּל־שְׁהוּא. עַל דַּעְתִּיהָ דְּרַבִּי עֲקִיבָה אֲשֶׁתִּי אֶסְוֶרָה. עַל דַּעְתִּין דְּרַבֵּנן אֲשֶׁתִּי מוֹתֶרֶת. שְׁלֹא אוֹכֵל כִּיכָר זֶה. וְאֶכְלָה חֶסֶר כָּל־שְׁהוּא. עַל דַּעְתִּיהָ דְּרַבִּי עֲקִיבָה אֲשֶׁתִּי אֶסְוֶרָה. אִף בְּנִכְסִין כֵּן. שְׁבוּעַת נִכְסִי עָלַי אִם אוֹכֵל כִּיכָר זֶה. וְאֶכְלָה חֶסֶר כָּל־שְׁהוּא. עַל דַּעְתִּיהָ דְּרַבִּי עֲקִיבָה אֲשֶׁתִּי אֶסְוֶרָה. עַל דַּעְתִּין דְּרַבֵּנן אֲשֶׁתִּי מוֹתֶרֶת. שְׁלֹא אוֹכֵל כִּיכָר זֶה. וְאֶכְלָה חֶסֶר כָּל־שְׁהוּא. עַל דַּעְתִּיהָ דְּרַבִּי עֲקִיבָה נִכְסִי מוֹתֶרֶן. עַל דַּעְתִּין דְּרַבֵּנן אֲסוּרִין.

Where do we hold? If about one who said, an oath that I shall eat according to Torah standards¹⁶, even Rabbi Aqiba will agree. And if about one who says, an oath that I shall not taste, even the rabbis will agree¹⁷. But we hold, about minute amounts. Are minute amounts eating? Explain it following Rabbi Aqiba who said that a minute amount is eating. What is the difference between them¹⁸? “An oath that I shall eat this loaf,” and he ate it except a minute amount. In the opinion of Rabbi Aqiba he is liable, in the opinion of the rabbis he is not liable¹⁹. “That I shall not eat this loaf,” and he ate it except a minute amount. In the opinion of Rabbi Aqiba he is not liable, in the opinion of the rabbis he is liable. Also for blurted oaths²⁰ it is so: “An oath that my wife may not have any usufruct from me if I shall eat this loaf,” and he ate it except a minute amount. In the opinion of Rabbi Aqiba his wife is forbidden [to have usufruct], in the opinion of the rabbis his wife is permitted. “That I shall not eat this loaf,” and he ate it except a minute amount. In the opinion of Rabbi Aqiba his wife is permitted [to have usufruct], in the opinion of the rabbis his wife is forbidden. Also with property it is the same. “An oath that my properties be forbidden to me if I shall eat this loaf,” and he ate it except a minute amount. In the opinion of Rabbi Aqiba they are forbidden, in the opinion of the rabbis his properties are permitted. “That I shall not eat this loaf,” and he ate it except a minute amount. In the opinion of Rabbi Aqiba his properties are permitted, in the opinion of the rabbis they are forbidden.

16 The standard minimal amounts of food which in biblical rules either are needed for the validity of an act or may lead to prosecution of a criminal act. This is the volume of an average olive. R. Aqiba must agree that if somebody insists that his food intake be measured by biblical standards, the minimum is an olive-sized piece. The Babli disagrees (21b) and holds that R. Aqiba agrees with R. Simeon that there is no lower limit for prosecutable offenses (*Pesahim* 3:1 29d l. 61).

17 Tasting by definition involves minute amounts (Babli 22a).

18 Between R. Aqiba and his opponents in the second part of the Mishnah.

19 Let ε denote the volume of an olive. If somebody swore that he would (or would not) eat a certain amount m , for R. Aqiba he fulfilled (or violated) his oath if he ate exactly amount m . But for the rabbis he fulfilled (or violated) his oath if he ate more than $m-\varepsilon$ but less than $m+\varepsilon$. This is the basis of the subsequent examples. If he had

sworn to eat exactly one loaf, for R. Aqiba he violated his oath by eating a minute quantity less than a whole loaf but for the rabbis he swore truly.

20 This expression is difficult to

understand and may be a copyist's error since the preceding two examples are prime examples of blurted oaths. Maybe one should read "vows", since the example uses the language of vows denying usufruct.

(34b line 49) וְהָרִי הַמְגִדֵּף מִבֵּיא קֶרֶבֶן. הַבְּרִיאָא אָמְרִי בְשֵׁם רִישׁ לְקִישׁ. כְּשִׁיטְתּוֹ הַשִּׁבוּהוּ. כְּשִׁיטְתּוֹ שְׂאֵתָהּ אֹמֶר. אֵין הַמְגִדֵּף מַעֲשֶׂה. אֵיכֶן מְצִינוּ בַּמִּדְבָּר וּמִבֵּיא קֶרֶבֶן שְׁזָה מְדַבֵּר וּמִבֵּיא קֶרֶבֶן. רַבִּי בָּא קֶרְתִּינְנָאָה בְּעֵי. מִחֻלְפָּה שִׁיטַּת רִישׁ לְקִישׁ. תַּמָּן מַר. לְרַבִּי עֲקִיבָה אֵין הַמְגִדֵּף מַעֲשֶׂה. וְהָכָא מַר. מְגִדֵּף מַעֲשֶׂה חֲרָבִי עֲקִיבָה. רַבִּי לֹא בְשֵׁם רִישׁ לְקִישׁ. תִּרְיִן תִּנְיִין אֵינוֹן עַל דְּעִתִּיהָ דְּרַבִּי עֲקִיבָה. חַד אָמַר. אֵין הַמְגִדֵּף מַעֲשֶׂה. וְ חַד אָמַר. הַמְגִדֵּף מַעֲשֶׂה.

Does not the blasphemer have to bring a sacrifice²¹? The colleagues in the name of Rabbi Simeon ben Laqish: They answered him according to his²² argument. Following your argument, since you say that the blasphemer does not act, where do we find that somebody talks and brings a sacrifice that this one talks and brings a sacrifice? Rabbi Abba from Carthage asked, is not Rabbi Simeon ben Laqish's argument inverted? There²³ he said, for Rabbi Aqiba the blasphemer does not act. But here he says, the blasphemer is acting in the opinion of Rabbi Aqiba. Rabbi La in the name of Rabbi Simeon ben Laqish: Two Tanna'im²⁴ following the opinion of Rabbi Aqiba. One said, the blasphemer does not act, and the other said, the blasphemer does act.

21 This is a matter of contention. In Mishnah *Keritut* 1:1, the anonymous Tanna, supposed to represent the school of R. Aqiba, lists the blasphemer as one who has to bring a purification sacrifice for inadvertent sin but the Sages insist that the blasphemer cannot bring a sacrifice since a sacrifice is restricted to atone for actions.

22 The anonymous Tanna in our Mishnah here, who also is supposed to represent the school of R. Aqiba.

23 In *Sanhedrin* 7:13 (Note 282) R.

Simeon ben Laqish explains that for R. Aqiba the conjurer of magical spells does not act since he simply speaks, but here he attributes the same opinion to the opponents of R. Aqiba.

24 The inconsistency is not R. Simeon ben Laqish's but is the Mishnah's choice of representatives of the reputed teachings of R. Aqiba. Since R. Aqiba's students were scattered by the Hadrianic persecutions and only a few survived, the divergence of traditions is easily explained.

(fol. 34a) **משנה ב:** שבועה שלא אוכל ואכל פת חטים ופת שעורים ופת פוסמין אינו חייב אלא אחת.

Mishnah 2: An oath that I shall not eat; when he ate wheat bread, and barley bread, and spelt bread, he is liable only once²⁵.

25 While he broke his oath many times, is only one oath to break.
he is liable only for one sacrifice since there

(34b line 55) **הלכה ב:** שבועה שלא אוכל. ואכל כול'. שתייה בכלל אכילה ולא אכילה בכלל שתייה. רבי יונה שמע כולהו מיכא. על-כן אמרתי לבני ישראל כל-נפש מהם לא-תאכל דם. מה נן קיימין. אם בדם שקרש. התיי. דם שקרש אינו לא אוכל ולא משקה. (אכלא כן נן קיימין. כל-שהוא. כל-שהוא אכילה. פתר לה רבי עקיבה. דרבי עקיבה אמר. כל-שהוא אכילה.) והתיי. המחה הדם וגמאו או שהקפה חלב ואכלו. אם יש בו קזית חייב. מה עבד לה רבי יונה. אינו לא אוכל ליטמא טומאת אוכלין ולא משקה ליטמא טומאת משקין. תזר רבי יונה ופתר מתנייה. ונתתה הקסוף בכל אשר-תאכל נפשך. מה נן קיימין. אם בטועם טעם זון בתבשיל. והלא הטעם לפגם. אכלא כן נן קיימין כל-שהוא ורחמנא קרייה אכילה. רבנן דקיסרין אמרין. תיפתר באילין גמרייה ואורזרייה שהכל טפילה לאכילה כפאכילה.

רבי יוסי שמע כולהו מיכא. שבועה שלא אוכל. ואכל ושתה. אינו חייב אלא אחת. אמרי וחבריה קומי רבי יוסי. ומר דבתרה. שבועה שלא אוכל ושתה ואכל ושתה. אין חייב אלא אחת. אמר לון רבי יוסי. אילו מי שאמר. שבועה שלא אוכל כפר זו. תזר ואמר. שבועה שלא אוכל כפר זו. ואכל שתייה. שמה אינו חייב שתיים.

רבי חנינא בשם רבי פינחס שמע כולהו מיכא. שבועה שלא אוכל. ואכל אוכלין שאינן ראויין ושתה משקין שאינן ראויין. פטור. הא אכל אוכלין ראויין ושתה משקין ראויין חייב. רבי בא שמע כולהו מיכא. אכל ושתה בהעלם אחד אינו חייב אלא אחת. עד דדון בשאמר. שבועה שלא אוכל ושתה. ורבי שאמר. שבועה שלא אשתה. רבי חנינא שמע כולהו מיכא. לא-אכלתי באני אכלא שתיית.

עד דדון בשאמר. שלא אוכל. ושתה. אמר. לא אשתה. ואכל. שתייה בכלל אכילה ולא אכילה בכלל שתייה.

Halakhah 2: “An oath that I shall not eat; when he ate,” etc. ²⁶Drinking is subsumed under eating but eating is not subsumed under drinking. Rabbi Jonah understood all this from: *Therefore, I told the Children of Israel, none of you shall eat blood*²⁷. Where do we hold? If about congealed blood, was it not stated that congealed blood is neither food nor drink? ²⁸(But we hold, about minute amounts. Are minute amounts eating? Explain it following

Rebbi Aqiba who said that a minute amount is eating.) And was it not stated: If one liquefied the blood and swallowed it, or froze fat and ate it, if there is the volume of an olive he is liable. What does Rebbi Jonah do with this? It is not food to become impure in the impurity of food, or fluid to become impure in the impurity of fluids. Rebbi Jonah changed and explained the Mishnah: *You shall spend the money for anything you desire*²⁹. Where do we hold? If about one who gives the taste of wine into a cooked dish, is that not spoiling the taste? But we hold with everything and the Merciful called it “eating.” The rabbis of Caesarea said, explain if about *gomraya* and *orzaraya*³⁰, since anything that is auxiliary to food is like food.

Rebbi Yose understood all this from the following: “An oath that I shall not eat; when he ate and drank he is liable only for one.”³¹ The colleagues said before Rebbi Yose, but it is said following this, “an oath that I shall not eat nor drink, when he ate and drank”³¹ should he be liable only for one? Rebbi Yose told them, if somebody said, an oath that I shall not eat this loaf, and he continued, an oath that I shall not eat this other loaf, when he ate both of them would he not be guilty on two counts?

Rebbi Ḥanina³² in the name of Rebbi Phineas understood all this from the following: “An oath that I shall not eat; when he ate inedible food and drank undrinkable fluids, he is not liable.”³³ Therefore if he ate edible food and drank drinkable fluid he is liable.

Rebbi Abba³⁴ understood all this from the following³⁵: “If he ate and drank in one forgetting he is liable only once.”

Rebbi Ḥinena understood all this from the following: *I did not eat from it in my mourning*,³⁶ but I drank?

So far if he said, that I shall not eat, but he drank. If he said, that I shall not drink, but he ate? Drinking is subsumed under eating but eating is not subsumed under drinking.

26 The entire Halakhah does not refer to Mishnah 2 but to the last part of Mishnah 1 where it is stated that an oath to refrain from eating includes a prohibition of drinking but separate oaths for solid and fluid food mean

just that. The text is a slightly inaccurate copy of a text in *Ma'aser Šeni* 2:1, Notes 8-23 and *Yoma* 8:3 (45a); a parallel discussion is in the Babli, 22b-23a. The essence of the argument is that if one

mentions eating, the accompanying drink is included, but speaking of drinking no solid food is intended.

27 *Lev.* 17:12.

28 This text does not belong here; it was copied again from Halakhah 1, text between Notes 17,18.

29 *Deut.* 14:26. The argument is about the part of the verse which is not quoted, that the money of Second Tithe may be spent for all kinds of edibles, cattle and sheep, wine and liquor.

30 *Ma'aser Šeni* 2:1, Note 16. For the second word the preferred reading seems to be that of the other two sources, אורזייה, which may denote cedar resin (J. Levy) or a

derivative of אורז "rice". The readings for the first word, גמורייה, גומנייה, show that the scribe did not know what to do with it; it may be a derivative of "gum" (*gummi*, *καμμι*) (E. G.) used in the preparation of liquors.

31 Mishnah 1.

32 In the parallel sources correctly: Ḥananiah.

33 Mishnah 5.

34 In the parallel sources correctly: Abba Mari.

35 Mishnah *Yoma* 8:1.

36 *Deut.* 26:14

מַשְׁנֵה גִּ: שְׁבוּעָה שֶׁלֹּא אוֹכֵל פֶּת הַטִּים וּפֶת שְׁעוּרִים וּפֶת בּוֹסְמִין וְאֵכֵל חֵיִיב עַל כָּל אַחַת וְאַחַת: (fol. 34a)

Mishnah 3: An oath that I shall eat neither wheat bread, nor barley bread, nor spelt bread; when he ate wheat bread, and barley bread, and spelt bread, he is liable for each single one³⁷.

37 He made three oaths, each one requiring a separate sacrifice.

הַלַּכָּה גִּ: שְׁבוּעָה שֶׁלֹּא אוֹכֵל כּוֹל. שְׁבוּעָה שֶׁלֹּא אוֹכֵל פֶּת. וּכְרָקָה בְּעֵלֵי קִנִּים וְעֵלֵי גִפְנִים וְאֵכֵל. אֵינוֹ חֵיִיב אֶלָּא אַחַת. שְׁבוּעָה שֶׁלֹּא אוֹכֵל פֶּת וְחֶרְצֵנִין וְזִגְיוֹן. וּכְרָקָה בְּחֶרְצֵנִין וְזִגְיוֹן. חֵיִיב עַל כָּל-אַחַת וְאַחַת. וְאִם הָיָה נֹזֵר חֵיִיב שְׁלֹשׁ. רַבִּי יוֹחָנָן אָמַר. בְּכוֹלֵל. אֵכֵל בְּפֹרֵט אֵין שְׁבוּעוֹת חִלוֹת עַל הָאִיסוּרִין. רִישׁ לְקִישׁ אָמַר. אֶפִּילוּ בְּכוֹלֵל אֵין שְׁבוּעוֹת חִלוֹת עַל הָאִיסוּרִין.

Halakhah 3: "An oath that I shall eat neither," etc. ³⁸"An oath that I shall not eat bread" and he wrapped it in reed leaves or grape leaves and ate, he is liable only once³⁹. "An oath that I shall not eat bread nor grape skin nor grape seeds, and he wrapped it in grape skins and grape seeds, he is liable for each one⁴⁰, and if he was a *nazir* he is liable for three⁴¹.

Rebbi Johanan said, in comprehensive form. But in detail, no oaths fall on prohibitions. Rebbi Simeon ben Laqish said, even in comprehensive form no oaths fall on prohibitions⁴².

38 There is a long dissertation about this Halakhah in the commentary *Mishneh Lammelekh* to Maimonides, *Hilkhot Ma'akhalot Asurot* 14:12.

39 The expression “only once” is only because of the following sentence. For the bread wrapped in inedible leaves one has to state that he broke his oath even if the bread itself did not touch his mouth. (Grape leaves are edible when cooked; they may be marginally edible when raw.)

40 As explained in the Mishnah.

41 The formulation is not quite correct. For the oath he is liable for three sacrifices (or, if duly warned, for three floggings) but for breaking the *nazir*'s prohibition of anything coming from grapes (*Num.* 6:4) he is liable for flogging if duly warned, not for

a sacrifice. His liability would be three sacrifices and one additional sin.

42 Babli 22b, 23b. In *Nazir* 1:2 (Note 55) R. Ze'ira proclaims as undisputed what here and in the Babli is R. Johanan's opinion. Since all future Jewish souls were present at Mount Sinai, he already has sworn to keep the precepts of the Torah. Therefore an oath to break Torah prohibitions is void. R. Johanan holds that if an oath is valid since it contains matters not involving Torah prohibitions it is valid in general since an oath is either valid or invalid. R. Simeon ben Laqish (and in the Mishnah, R. Simeon ben Iohai) hold that oaths can be partially invalid; the parts infringing on Torah precepts are always void (Babli 33b).

משנה ד: שבועה שלא אשתה ושתה משקין הרבה אינו חייב אלא אחת. שבועה שלא אשתה יין ושמן ודבש ושתה חייב על כל אחת ואחת:

Mishnah 4: An oath that I shall not drink; if he drank many kinds he is liable only for one. An oath that I shall drink neither wine, nor oil, not date syrup, if he drank he is liable for each single one.

משנה ה: שבועה שלא אוכל ואכל אוכלים שאינן ראויין לאכילה ושתה משקין שאינן ראויין לשתיה פטור. שבועה שלא אוכל ואכל נבלות וטורפות שקצים ורמשים חייב. רבי שמעון פוטר. אמר קונם אשתי נהנית לי אם אכלתי חיים והוא אכל נבלות וטורפות שקצים ורמשים הרי אשתו אסורה.

Mishnah 5: An oath that I shall not eat; when he ate inedible food and drank undrinkable fluids, he is not liable⁴³. An oath that I shall not eat; when

he ate carcass or torn meat, abominations or crawling animals, he is liable; Rabbi Simeon declares him not liable⁴⁴. If he said, a *qonam*⁴⁵ that my wife may not benefit from me if I had eaten today, if he had eaten carcass or torn meat, abominations or crawling animals, his wife is forbidden benefits⁴⁶.

43 In popular usage, swallowing inedibles is not called “eating”. Judicial interpretation of oaths must follow popular usage.

44 Eating forbidden food still is called eating. R. Simeon will agree with this statement; he holds not only that an oath to break biblical commandments is void in itself but breaking the law to fulfill an oath invalidates the oath.

45 *Qonam* is a substitute for *qorbān*

“sacrifice” which in the context of an oath or a vow means “it shall be forbidden to me as if it were sacrificial meat”, cf. *Introduction to Tractate Nedarim*.

46 He can neither have marital relations with her nor let her eat anything that is wholly or partially his, nor let her live in his house: he must divorce her and pay the marriage settlement in full. R. Simeon will agree.

34c line 9) **הלכה ד:** שבועה שלא אשתה כול. בדא רבי שמעון פוטר. רבי שמעון כדעתיה. דתנינן תמן. כמה לאכל מן הטביל ויהא חיב. רבי שמעון אומר. כל שהוא. וחכמים אומרים. כזית. אמר להן רבי שמעון. אין אתם מודין באוכל נמלה כל שהוא שחיב. אפרו לו. מפני שהיא כברייתא. אמר להן. אף חיטה אחת כברייתא: על דעתיה דרבי יוחנן למה רבי שמעון פוטר. אמר רבי זעירא. רבי שמעון כדעתיה. תני בשם רבי שמעון. תענו את נפשותיכם. מותר לכם ולא מאסור לכם.

Halakhah 4: “An oath that I shall not drink,” etc. In this case⁴⁷, Rabbi Simeon declares not liable. Rabbi Simeon follows his own opinion, as we have stated there⁴⁸: “How much does he have to eat from *tevel* to be liable? Rabbi Simeon says, anything⁴⁹; but the Sages say, the volume of an olive. Rabbi Simeon told them, do you not agree that one who eats an ant is liable? They told him, because it is a creature. He answered them, also a grain of wheat is a creature⁵⁰.” In Rabbi Johanan’s opinion, why does Rabbi Simeon declare not liable? Rabbi Ze’ira said, Rabbi Simeon follows his own opinion. It was stated in the name of Rabbi Simeon: *You shall deprive yourselves*⁵¹, of what is permitted to you, not of what is forbidden to you⁵².

רבי בא בר ממל בעי. על דעת רבי יוחנן דאמר. בכלל שבעות חלות על האיסורין ניתני. שבועה שלא אוכל. ואכל. אמר רבי זירא. כל יומי דרבי בא בר ממל לא אשכחון תותבה. ומן דדמך אשכחון תותבה. מה נן קיימין. אם באומר. שבועה שלא אוכל בשר כל ימות

השנה והפסח בתוכן. שלא אוכל עשרת ימים הללו ויום הכיפורים בתוכן. במיחל שבועה על האיסורין. אמר רבי יוסי. ותשמע מינה. היו לפניו זתים שלשחוטה ואחד שלנבילה ואמר. שאוכל עשרת ימים אילו. כיון שפטור על הנבילה פטור אף על השאר.

Rebbi Abba bar Mamal asked: According to Rebbi Johanan, who said that comprehensive oaths fall on prohibitions, should we not state “an oath that I shall not eat; when he ate”⁵³? Rebbi Ze’ira said, in the whole lifetime of Rebbi Abba bar Mamal we did not find an answer; after he had died, we found an answer. Where do we stand? If one said, an oath that I shall not eat meat, including Passover⁵⁴; that I shall not eat during these ten days⁵⁵, including the Day of Atonement, then the oath falls on prohibitions. Rebbi Yose said, one may infer from here if in front of him were olive-sized pieces of slaughtered [meat] and one of carcass meat and he said, [an oath] that I shall eat these ten olive-sized pieces, since he is not liable⁵⁶ for the carcass meat, he neither is liable for the remainder.

רבי בון בר חייה בעי. ולמה לא מר. שבועה שאוכל משחיטת פלוני. אין בה חלב. בשוחט צבאים. אין בה גיד הנשה. בעופות. אין בהן דם.

Rebbi Abun bar Hiyya asked: Why did he not say, “an oath that I shall eat of the slaughter of X”? Is there not fat? If he slaughters deer. Is there not the hip sinew? About fowl. Is there not blood⁵⁷?

רבי חנינה בעי. ולמה לא מר. שבועה שאוכל מפלוני סתם. בגין רבי שמעון. ואין כרבי שמעון ניתני. יום הכיפורים. דתני רבי שמעון. תענו את נפשתיכם. מאסור לו ולא ממותר לו. אלא שזה בקבוצ וזה בעולה ויורד.

Rebbi Hinena asked: Why did he not say, “an oath if I would eat of X” without detail⁵⁸? Because of Rebbi Simeon. But if following Rebbi Simeon, how could we state the Day of Atonement, since Rebbi Simeon stated, *you shall deprive yourselves*, of what is (forbidden)⁵⁹ to you, not of what is (permitted)⁵⁹ to you. Only one has a fixed rate sacrifice, the other a variable one⁶⁰. התיבון. הרי טומאת מקדש וקדשיו שהוא בעולה ויורד ותני תנא. לא אתינן מיתני אלא דברים שהן חייב כרת. שבועות אין בהן חייב כרת.

They objected, is there not impurity of the Sanctuary and its *sancta* which need a variable rate [sacrifice] and did the Tanna not state it⁶¹? We come to state only things carrying a liability to extirpation; there is no extirpation for oaths.

התיבון. הרי מעילה אין בה כרת ותני. לא אתינן מיתני אלא דברים שאין להן היתר אחר איסורן. שבועות יש להן היתר אחר איסורן. הדיא אמרה שאין אבות מלאכות ביום הכיפורים. אילו מי שעשה כולם בהעלם אחד כלום חייב אלא אחת על כולן. אילו מי שעשה כל אחת בפני עצמה שקמה אינו חייב על כל אחת ואחת.

They objected, there is no extirpation for larceny and it was stated⁶²! We come to state only things which cannot become permitted after being forbidden. Oaths may become permitted after being forbidden⁶³. This⁶⁴ implies that there are no categories of work for the day of Atonement⁶⁵, for if anybody violated all of them in one forgetting he is liable only for one [sacrifice] for all of them. But if anybody violated each of them separately, would he not be liable for each single one?

על דעתיה דרבי יוחנן דאמר. שבועה שלא אוכל מצה. אסור לוכל מצה בלילי הפסח. שלא אוכל מצה בלילי פסח. לוקה ואוכל מצה. שלא אוכל מצה. אסור לישוב בצל סוכה. שלא אוכל מצה בלילי פסח. לוקה וישוב בצל סוכה.

In the opinion of Rabbi Johanan, if one said, "an oath that I shall not eat unleavened bread", he is forbidden to eat unleavened bread in the night of Passover. "That I shall not eat unleavened bread in the night of Passover," he is flogged and eats unleavened bread⁶⁷. "That I shall not sit in the shadow", he is forbidden to sit in the shadow of a booth⁶⁸. "That I shall not sit in the shadow of a booth," he is flogged and sits in the shadow of a booth.

47 In Mishnah 5.

48 Mishnah *Makkot* 3:2 Notes 27-32. *Tevel* is produce from which heave and the heave of tithe have not been removed, whose consumption except at harvest time is a deadly sin.

49 In R. Simeon's opinion, biblical prohibitions are absolute, but infringing on a prohibition in a minute amount, for edibles less than the size of an olive, does not trigger the obligation of a sacrifice. Babli 24a.

50 He does not defend his point of view but shows his opponents that even in their opinion a complete fruit or animal is

biblically forbidden even if it is smaller than an olive but still visible with the naked eye. This is accepted as practice, cf. *Berakhot* 6:1, Notes 14-18.

51 *Lev.* 16:29.

52 Eating non-kosher food violates a simple prohibition; breaking the fast on the Day of Atonement is a severe sin subjecting the unrepentant sinner to extirpation. R. Simeon declares eating non-kosher food on the Day of Atonement as violation of a simple prohibition (which if committed inadvertently does not make the perpetrator liable for a sacrifice). If the stringent prohibition of the Day of Atonement does

not include forbidden food then an oath which never can lead to extirpation cannot include forbidden food either.

53 This refers to Mishnah *Keritot* 3:4, that a person may become liable for 5 sacrifices for eating one olive-size bite: an impure person who on the Day of Atonement ate sacrificial fat which was a leftover from a prior day. Eating fat is always forbidden; eating sacrificial fat is illegitimate use of *sacra*, classified as larceny (requiring restitution and a reparation sacrifice); eating any *sacra* while impure is punishable by extirpation. The mention of the Day of Atonement shows that the Mishnah is formulated for the Rabbis, not R. Simeon. The question then is, if the statement of R. Johanan be true that an oath containing a general prohibition also refers to things biblically prohibited, the Tanna, who obviously is looking for an example showing the maximum of criminal acts that can be committed by one action, should have added that the person who ate the fat had previously made an oath that he would not eat at all, for a total of 6 sacrifices. That no oath is mentioned in the Mishnah seems to prove that R. Johanan's position is rejected by the Mishnah; it cannot be accepted in practice.

54 Since oaths have to be interpreted according to common usage, not lawyers' jargon, an oath "that I shall not eat" will be interpreted as oath not to eat permitted food; the question of R. Abba bar Mamal does not apply. But an oath to become vegetarian is a valid oath and in Temple times would prevent the person from fulfilling the commandment of eating of the Passover sacrifice. Since in contrast to vows oaths

cannot be dissolved by a rabbi, this is a case where a general oath supersedes a biblical commandment.

55 The Ten days of Penitence, from New Year's day to and including the Day of Atonement. In this case breaking the fast is a double sin since it also means breaking the oath. The entire argument is for the Rabbis, so it includes eating non-kosher food.

56 This follows R. Simeon. If there can be no punishment for breaking the oath relative to the carcass meat then there cannot be one for eating the other 9 since the oath was for 10, not for 9 pieces.

57 Following R. Johanan it is difficult to find any oath involving meat that should be valid at all, since he requires an oath which forbids permitted foods; as a consequence it will also apply to prohibitions. But if somebody forbids himself anything which a person X will slaughter, the oath includes the fat of the slaughtered domestic animal forbidden by biblical standards. Since an original oath forbidding biblically forbidden things is void, the entire oath is voided. Similarly for wild animals, whose fat is permitted (*Lev.* 7:23), the hip sinew still is forbidden (*Gen.* 32:33), and the blood of a fowl is forbidden like the blood of four-legged animals (*Lev.* 7:27).

58 The difficulty encountered in the preceding paragraph can easily be circumvented if the oath is made on a piece of meat which does not contain any forbidden fat and is drained of its blood. Then the only problem is the problem that for R. Simeon the number of required sacrifices is not a measure of the number of prohibitions which were violated; the Tanna might want to formulate his statement to take care of R.

Simeon's opinions also. But since the Mishnah requires a separate sacrifice for eating forbidden fat on the Day of Atonement, it certainly cannot be formulated for R. Simeon, who denies that the prohibitions of that day refer to forbidden food.

59 It is clear that the words in parentheses have to be switched, Note 52.

60 The Tanna of *Keritut* counts only the maximum of fixed-rate sacrifices; he could agree that with an oath a liability for a variable rate sacrifice could be added. Nothing can be inferred about the disagreement between R. Joḥanan and R. Simeon ben Laqish.

61 The previous explanation is incorrect. The Tanna of *Keritut* mentioned a sacrifice for eating *sancta* in impurity; this requires a variable value sacrifice.

62 The previous explanation is incorrect. The Tanna of *Keritut* mentioned a sacrifice for illegally appropriating Temple property for private use. There is no extirpation mentioned for this, only restitution with a fine and a reparation sacrifice (*Lev.* 5:14-16). Only fixed-rate purification offerings are restricted to atoning for unintentional sins carrying a penalty of at least extirpation, not reparation sacrifices. This finally yields the correct answer.

63 Since oaths may be made for a certain time only.

64 Nothing mentioned here but the end of Mishnah *Keritut* 3:4 where R. Meïr says that if it was on a Sabbath and the person brought the piece of meat between his teeth from a private to a public domain he is liable for an additional sacrifice.

65 The rules for the Sabbath specify 39 categories of forbidden work (*Mishnah Šabbat* 7:2), each of which triggers liability for a separate sacrifice. Since the anonymous Tanna placed the case on the Day of Atonement, and any work forbidden on the Sabbath is forbidden on the Day of Atonement, R. Meïr could simply have added carrying also on the day of Atonement. Since he has to place that Day on a Sabbath, it follows that any and all infringements of the sanctity of the Day of Atonement trigger the same liability of a sacrifice. There never can be more than one for a given Day. The conclusion of the Babli, *Keritut* 14a, is formulated more narrowly: Transporting from domain to domain is not a separate desecration of the Day of Atonement.

66 This remark is quite obvious. In general, any purification sacrifice only covers deeds made during one period when the person was oblivious either of the holiday or of the particular prohibition which he violated.

67 While leavened bread is forbidden for seven days on Passover, there is a positive commandment to eat unleavened bread only on the first night (*Ex.* 12:18; cf. H. Guggenheimer, *The Scholar's Haggadah*, pp. 328-329.) An oath not to fulfill this commandment is void; the oath is void and incurs the penalty of void oaths. But an oath never to eat unleavened bread is valid and prevents its maker from fulfilling his duty without breaking the oath.

68 On the festival of Tabernacles, *Lev.* 23:42. The argument is totally parallel to that of the preceding example.

(34c line 39) לא סוף דְּבַר סֵתֶם אֶלָּא אֶפִּילוּ פְּלוּנִי. לא סוף דְּבַר כּוֹלֵל אֶלָּא אֶפִּילוּ פּוֹרֵט. לא סוף דְּבַר לְבָא אֶלָּא אֶפִּילוּ לְשַׁעֲבֵר. לא סוף דְּבַר רִבְּנָן אֶלָּא אֶפִּילוּ רַבִּי עֲקִיבָה. לא סוף דְּבַר נְבִילוֹת וּטְרִיפוֹת אֶלָּא אֶפִּילוּ עֶפֶר. עוֹלָה הִיא רוּצָה לְהוֹרוֹת לוֹ.

Not only unspecified, but even “X”. Not only comprehensive but even in detail. Not only in the future but also in the past. Not only the rabbis but even Rabbi Aqiba. Not only carcass and torn meat but even dust⁶⁹. He wants to teach himself a pretext⁷⁰.

69 The Babli (24a) explicitly declares ingesting dust as not eating.

70 This refers to the last sentence in Mishnah 5. Since this refers to a vow, which may be annulled by a rabbi or a court, all the restrictions described for oaths are

eliminated. Even if he made his vow dependent on minute details, or refers to something in the past, or to minute quantities, or even to worthless things, the vow is valid since he only wants to find a pretext to divorce his wife.

(fol. 34a) **משנה ו:** אֶחָד דְּבָרִים שֶׁל עֲצָמוֹ וְאֶחָד דְּבָרִים שֶׁל אֲחֵרִים וְאֶחָד דְּבָרִים שֶׁשֶׁשׁ בָּהֶן מִמֶּשׁ וְאֶחָד דְּבָרִים שֶׁאֵין בָּהֶם מִמֶּשׁ. בִּיצֵד אָמַר שְׂבוּעָה שֶׁאֵתֵן לְאִישׁ פְּלוּנִי וְשֶׁלֹּא אֵתֵן שְׁנֵתִי וְשֶׁלֹּא נִתְּתִי שֶׁאִישׁן וְשֶׁלֹּא אִישׁן שֶׁשְׁנֵתִי וְשֶׁלֹּא שְׁנֵתִי. שְׁאֲזָרוֹק צָרוּר לַיִם וְשֶׁלֹּא אֲזָרוֹק שְׁזָרְקִי וְשֶׁלֹּא זָרְקִי. רַבִּי יִשְׁמָעֵאל אוֹמֵר אֵינוֹ חַיִּיב אֵלָּא עַל הַעֲתִיד לְבֹא שְׁנֵי אֲמָר לְהִרְע אוֹ לְהִיטִיב. אָמַר לוֹ רַבִּי עֲקִיבָה אִם כֵּן אֵין לִי אֵלָּא דְּבָרִים שֶׁשֶׁשׁ בָּהֶן תִּרְעָה וְתִטְבָּה. דְּבָרִים שֶׁאֵין בָּהֶן תִּרְעָה וְתִטְבָּה מְגִיין. אָמַר לוֹ מְרִיבֵי תִּכְתּוּב. אָמַר לוֹ אִם רִיבֵי תִּכְתּוּב לְכָךְ רִיבֵי תִּכְתּוּב לְכָךְ:

Mishnah 6: Whether matters of himself⁷¹, or matters of others, or material matters, or immaterial matters. How is this? An oath that I shall give to X, or that I shall not give, that I gave, or that I did not give, that I shall sleep, or that I shall not sleep, that I slept, or that I did not sleep, that I shall throw a pebble into the sea, or that I shall not throw, that I threw, or that I did not throw. Rabbi Ismael said, he is liable only for the future, for it is said *to cause evil or cause good*⁷². Rabbi Aqiba said to him, if it is so then this refers only to matters of causing evil or good; from where matters which do not refer to causing evil or good? He answered him, from the additional text of the

verse⁷³. He answered, just as the additional text of the verse is for this, the additional text of the verse is for the other⁷⁴.

71 All the rules of liability for a variable value sacrifice spelled out in the preceding Mishnaot are valid for all kinds of oaths irrespective of their content or meaning.

72 Lev. 5:4. The causative refers to the future.

73 The continuation of the quote,

anything which a person will blurt out in an oath, which seems to be superfluous since the sentence starts: *Or a person who would swear blurting out with his lips*. The addition indicates that the verse should not be interpreted narrowly. Cf. Note 83.

74 Oaths stating facts about the past.

הלכה ו: אחד דברים שֶׁלֹּעֲצָמוֹ כּוּל'. רבי בא בשם שמואל. שְׁבוּעָה שֶׁנֶּתַן פְּלוֹנִי וּפְלוֹנִי מִנֶּה. וְנִמְצָא שֶׁלֹּא נֶתַן. מֵאַחַר שֶׁאֵין בְּדָו לְבֹא אֵין בְּדָו לְשַׁעֲבֵר. הִתִּיב רבי יוסי. הֲרִי תְּפִילִין אֵין בָּהֶן לְבֹא וְלֹא שֶׁעֲבָר. אָמַר לוֹ. תְּפִילִין מִמְּקוֹם אַחֵר בָּאוּ. לְהִרְעֵ אוֹ לְהִיטִיב. מִה הִטְבָּה רְשׁוּת אֶף הִרְעָה רְשׁוּת. יָצָא דָּבָר שֶׁהוּא שְׁלֵאִיסוֹר וְדָבָר שֶׁהוּא שְׁלֵהִיתוֹ. לְכָל אֲשֶׁר יִבְטֵא פֶּרֶט לְקָטָן. הָאֲדָם בִּשְׁבָעָה פֶּרֶט לְאֲנוֹס. וְנֶעְלָם מִמֶּנּוּ פֶּרֶט לְמִזִּיד. וְנֶעְלָם מִמֶּנּוּ וְנֶעְלָמָה מִמֶּנּוּ שְׁבוּעָה. אוֹ יָכוֹל וְנֶעְלָם מִמֶּנּוּ הַחֶפֶץ. בִּשְׁבָעָה וְנֶעְלָם מִמֶּנּוּ. עַל הָעֵלֶם שְׁבוּעָה חֵיב וְאֵינוֹ חֵיב עַל הָעֵלֶם חֶפֶץ. וְתוֹ הָעֵלֶם חֶפֶץ עַל הָעֵלֶם שְׁבוּעָה וְיֵהָא חֵיב. וְאֵין בִּינְיָהוּ הָעֵלֶם טוֹמְאָה עַל הָעֵלֶם מְקַדָּשׁ. וְיֵהָא חֵיב שְׁתֵּים כְּרִבִּי לְשִׁמְעָאֵל דָּאֻמֵּר. חֵיב עַל הָעֵלֶם טוֹמְאָה וְעַל הָעֵלֶם מְקַדָּשׁ. תָּמָן כְּתוּב וְנֶעְלָם מִמֶּנּוּ וְנֶעְלָם מִמֶּנּוּ שְׁנֵי פְעָמִים. וְהָכָא כְּתוּב וְנֶעְלָם מִמֶּנּוּ אַחַת. יָכוֹל הַנֶּשְׁבַּע לְהִרְעֵ לְאַחֵרִים יֵהָא חֵיב. תִּלְמוּד לומר. לְהִרְעֵ אוֹ לְהִיטִיב. מִה הִטְבָּה רְשׁוּת אֶף הִרְעָה רְשׁוּת. אוֹצֵא נֶשְׁבַּע לְהִרְעֵ לְאַחֵרִים שְׁיֵהָא פְּטוּר. כִּהּוּא דְּמִישְׁתַּבֵּעַ דְּלֹא מִיתָן לְחִבְרִיהּ מִיכּוֹל. חֲמִיתִיהּ מִפְּרָפֵר וְיֵהָב לִיהּ.

Halakhah 6: “Whether matters of himself,” etc. Rabbi Abba in the name of Samuel: “An oath that X gave a mina to Y,” and it turns out that he did not give, since it was not in his power for the future, it is not in his power for the past⁷⁵. Rabbi Yose objected, about phylacteries there is nothing about the future but there is about the past⁷⁶! He told him, phylacteries came from another source. *To cause evil or cause good*⁷²; just as doing good is optional so doing bad is optional; this excludes anything involving a prohibition or anything involving a permission⁷⁷. *Anything which one will blurt out*, excluding a minor⁷⁸. *A person in an oath*, excluding a person not acting at his own will⁷⁹. *And it will be forgotten by him*, he will be oblivious of the oath. Or could I think that the object was forgotten by him? The verse says, *in an oath and it was forgotten by him*; he is liable for forgetting the oath; he is not

liable for forgetting the object. Could one not add forgetting the object to forgetting the oath so that he should be liable? What is the difference between this and forgetting impurity and forgetting the Sanctuary so that he should be liable twice following Rabbi Ismael, who said forgetting impurity and forgetting the Sanctuary⁸⁰? There it is written *it was forgotten by him, it was forgotten by him* twice⁸¹. Here it is written *it was forgotten by him* once. I could think that one who swears to the detriment of others should be liable: the verse says, *to cause evil or cause good*; just as doing good is optional so doing bad is optional⁸². I shall exclude one who swears to the detriment of another that he should not be liable. For example, if one swears that he will not provide food for another. He saw him in convulsions and gave to him.

75 He never could swear that X will give Y since it is not in his power to force X to give. This is all about liability for a variable sacrifice, not monetary liabilities. Since witnesses do not swear, this is not a case of perjury.

76 If somebody swore falsely that he put on *tefillin* he is liable for a sacrifice (Mishnah 9).

77 The expression היתיר “permission” probably is induced by the usual opposites prohibition - permission. What really is intended here is מצוה “commandment” which is the opposite of something optional; *Sifra Hova (Wayyiqra 2) Parashah 9(6)*, Babli 27a.

78 Whose words have no legal consequences.

79 *Sifra Hova (Wayyiqra 2) Parashah 9(9)*, Babli 26a. This includes even a person acting by his own will on false information or false remembering.

80 Chapter 1, Note 23.

81 *Sifra Hova (Wayyiqra 2) Pereq 12(7)*, Babli 14b; Mishnah 2:6.

82 Since harming anybody is forbidden, an oath to harm another person does not trigger liability for a sacrifice if it is broken. The example shows that in this case breaking the oath may be a meritorious act. Babli 27a.

(34c line 59) הִיד רַבִּי יִשְׁמַעֵאל דְּרִישׁ. אִוּן לָפָשׁ כִּי תִשְׁבַּעַ לְבִטָּא בְּשִׁפְתָּיִם כָּלֵל. לְהִרְעֵ | אִוּן
לְהִיטִיב פֶּרֶט. כָּלֵל וּפֶרֶט אִין בְּכָלֵל אֶלְא מֵה שְׁבַפְרִט. וְהֵלֵא אִין בְּפֶרֶט אֶלְא דְּבָרִים שְׁיִישׁ בְּהִן
הִרְעָה וְהִטְבָּה. אֶלְא כִינִי. לְהִרְעֵ | אִוּן לְהִיטִיב פֶּרֶט. לְכָל אֲשֶׁר יִבְטֵא כָּלֵל. פֶּרֶט וּכְלָל וְהִכָּל
בְּכָלֵל וְרִיבָה דְּבָרִים שְׁהִן לְשַׁעֲבֵר. אֶלְא כִינִי. אִוּן לָפָשׁ כִּי תִשְׁבַּעַ לְבִטָּא כָּלֵל. לְהִרְעֵ | אִוּן לְהִיטִיב
פֶּרֶט. לְכָל אֲשֶׁר יִבְטֵא חִזֹּר וּכְלָל. כָּלֵל וּפֶרֶט וּכְלָל אִי אֶתָּה דִּן אֶלְא כִּעִין הִפְרִט. מֵה הִפְרִט
מִפְּנֵי דְּבָרִים שְׁיִישׁ בְּהִן הִרְעָה וְהִטְבָּה. וְדְּבָרִים שְׁאִין בְּהִן הִרְעָה וְהִטְבָּה מִנִּין. אָמַר לוֹ.
מִרִיבֵי הַפְּתוּב. אָמַר לוֹ. אִם רִיבָה הַפְּתוּב לְכֹךְ רִיבָה הַפְּתוּב לְכֹךְ: לֵית יָכִיל דְּמַר רַבִּי הִילָא

בְּשֵׁם רַבִּי לְעֶזֶר. כִּדּוּ מְשִׁיב רַבִּי וְשִׁמְעָאֵל אֶת רַבִּי עֲקִיבָה. מִצִּינוּ דְּבָרִים שְׁחִיבִין עַל זְדוּנָן מִשָּׁם שְׁבוּעַת שְׁקָר וּבִהְעֲלִימָן מִשָּׁם שְׁבוּעַת בִּיטוּי. וַיִּתְּיבִינָהּ. מִצִּינוּ דְּבָר שְׁחִיבִין בְּזִדּוּנוֹ מִשָּׁם שְׁבוּעַת שְׁקָר וּמִבֵּיא קֶרֶן. אָמַר לִיה. וְאֵית לָךְ דְּבָרִים שְׂאִין בְּהוֹ הִרְעָה וְהִטְבָּה וְלִי נֹן כְּתִיבִין. אָמַר לִיה. אִף עַל גַּב דְּאֵית לִי דְּבָרִים שְׂאִין בְּהוֹ הִרְעָה וְהִטְבָּה. לִית אֵינֹן כְּתִיבִין אִין בְּהוֹ מִשּׁוּם הִרְעָה וְהִטְבָּה. הָא לְשַׁעֲבֵר לִית.

How does Rabbi Ismael explain the verse? ⁷²*Or a person, if he would swear blurting out with his lips*, a general statement. *To cause evil or cause good*, a detail. A general statement followed by a detail; the general statement contains only what is in the detail. But the detail only contains matters of causing evil or good! But it is so: *To cause evil or cause good*, a detail. *Anything which a person will blurt out*, a general statement. A detail followed by a general statement, everything is included; this adds matters directed towards the past. But it is so: *Or a person, if he would swear blurting out with his lips*, a general statement. *To cause evil or cause good*, a detail. *Anything which a person will blurt out*, a general statement. A general statement followed by a detail followed by a general statement, you only argue in the pattern of the detail⁸³. Since the detail is explicit, matters of causing evil or good, from where matters not causing evil or good? ⁸⁴“He answered him, from the additional text of the verse^{73,85}. He answered, just as the verse added for this, the verse added for the other⁸⁶.” You cannot⁸⁷, as Rabbi Hila said in the name of Rabbi Eleazar: So did Rabbi Ismael¹¹ answer Rabbi Aqiba. Do we find cases where one is liable for intentional action because of a false oath but if in oblivion because of a blurted oath¹²? Could he not have objected, do we find cases where one is liable for intentional action because of a false oath and he has to bring a sacrifice¹³? He said to him⁸⁸, do you agree that there are cases which are not matters of causing evil or good, even if they are not written⁸⁹? He told him⁹⁰, even though I accept cases which are not matters of causing evil or good, are they only written if they be matters of causing evil or good⁹¹? Therefore never for the past⁹².

83 In the version of *Sifra* (Introduction 1), in the list of the thirteen hermeneutical principles of R. Ismael one finds (5) a general statement followed by a detail, (6) a

detail followed by a general statement, (7) a general statement followed by a detail followed by a general statement you only argue following the pattern of the detail, (8)

a general statement dependent on the detail, (9) a detail dependent on the general statement. Rules 8 and 9 mean that if the general statement can only be understood by the detail or vice versa, rules 5 and 6 do not apply. It then is explained in §7 that if a general statement is followed by a detail, only the detail is intended. §8: If a detail is followed by a general statement, the general statement adds to the detail. Examples are *Lev. 1:2: From animals, from cattle, or from small cattle*. This implies that sacrifices are restricted to cattle, sheep, or goats. *Ex. 22:9: A donkey, an ox, a sheep, or any animal*. The rules of caretakers apply to any animal. Then it becomes a problem how to treat a verse which contains general statement, detail, general statement, whether to apply rule 5 (eliminating the final general statement by rule 9), or rule 6 (eliminating the first general statement by rule 8), or rule 7. In the preceding derivation, the arguments have been suppressed that rules 8 and 9 do not apply and, therefore, only rule 7 is relevant. The standard example for an application of rule 7 is *Deut. 14:26*, about permitted uses of Second Tithe money at the place of the Sanctuary: *You may spend the money for anything you desire* (general), *for cattle, or small cattle, or wine, or liquor* (detail), *or anything you wish* (general). The common denominator of the items in the detail describes animal or vegetable food; Second Tithe money can be used for any food derived from animals (generated from semen) or plants (growing from seeds).

Since the first part of *Lev. 5:4* fits Rule 7, it is clear that the rule applies not only to oaths intended to cause good or evil but to a

larger set of oaths which, however, have to conform to the idea underlying “causing good or bad things”. Obviously one of the ideas is that events caused are later in time than the cause. This is R. Ismael’s interpretation of the verse. Babli 26a.

84 Quote from the Mishnah.

85 This is not an additional argument. The additional text shows that the rule to be applied is rule 7, not rule 5. R. Aqiba follows a different system. For him the sentence structure is not general, detail, general but expansive, restrictive, expansive, which he reads as including everything except what is completely different from the detail quoted as restriction.

86 The text of R. Aqiba’s answer is the text of the Mishnah in the Babli. It is known that the separate Mishnah in the Yerushalmi is not from the Yerushalmi text. The Mishnah text in Maimonides’s autograph is that of the separate Yerushalmi Mishnah.

87 The Mishnah cannot be quoted as proof that R. Ismael conceded to R. Aqiba.

88 R. Aqiba to R. Ismael.

89 Since they are not mentioned in the verse. For לֹא יִנָּחֵם read לֹא יִנָּחֵם.

90 R. Ismael to R. Aqiba.

91 It is obvious from rule 7 that the obligation of a variable sacrifice for a blurted oath must hold for a larger set than “causing bad or good things”. The only problem is to define this larger set and the causative employed definitively excludes oaths regarding the past. The Tanna of the Mishnah cannot accept R. Ismael’s hermeneutical rules.

(fol. 34a) **משנה ז:** נשבע לבטל את המצוה ולא ביטל פטור. לקיים את המצוה ולא קיים פטור. שהיה כדין שהיה חייב דברי רבי יהודה בן בתירא. אמר רבי יהודה בן בתירא ומה אם הרשות שאינו מושבע עליה מהר סיני הרי הוא חייב עליה. מצוה שהוא מושבע עליה מהר סיני אינו דין שהיה חייב עליה. אמרו לו לא. אם אמרת בשבועת הרשות שכן עשה בה לאו כהין. תאמר בשבועת מצוה שלא עשה בה לאו כהין שאם נשבע לבטל ולא ביטל פטור:

Mishnah 7: If he swore not to observe a commandment but failed not to observe it, he is not liable⁹²; to observe a commandment and did not observe it, he is not liable⁹³, though it would have been logical that he should be liable, the words of Rabbi Jehudah ben Bathyra. Rabbi Jehudah ben Bathyra said, since he is liable for a permitted purpose, for which he is not sworn to from Mount Sinai, is it not logical that he should be liable about a commandment to which he is sworn from Mount Sinai⁹⁴? They said to him, no. What you say about an oath for permitted purpose where He made “no” equal to “yes”, can you say that about an oath concerning a commandment, where He did not make “no” equal to “yes”? Since one who swears not to observe a commandment but failed not to observe it, is not liable⁹⁴.

92 Since the oath is void, he is prevented from sacrificing if it was unintentional. If it was intentional he can be prosecuted for a vain oath, forbidden in the Ten Commandments.

93 The oath to keep the commandments is valid (Ps. 119:107); why does breaking this valid oath not imply liability for a sacrifice

or criminal prosecution?

94 In matters not involving biblical precepts, an oath is valid whether formulated in the positive or negative. But for biblical precepts King David already did decide that one may swear to keep them (Ps. 119:106); only oaths to break commandments are intrinsically void.

(34c line 74) **הלכה ז:** נשבע לבטל את המצוה כול'. אמר רבי מני. פני מתניתא. חייב. דברי רבי יהודה בן בתירא. מה מר רבי יהודה בן בתירא בשאר האיסורין. שבועה שאוכל נבילה. ולא אכלה. פטור. אמר. שבועה שלא אוכל. ואכל. אין תימר חייב. ויתביניה. לא. אם אמרת בשבועת הרשות שעשה בה לאו כהין והין כלאו. תימר בשבועת מצוה שלא עשה בה לאו כהין.

אזהרה לשבועת הרשות מניין. אמר רבי יוסי בירבי בון. לא יחל דבר. לא יעשה דבריו חולין.

Halakhah 7: “If he swore not to observe a commandment,” etc. Rabbi Mani said, so is the Mishnah: “He is liable, the words of Rabbi Jehudah ben Bathyra.”⁹⁵ What Rabbi Jehudah ben Bathyra said refers to prohibitions in general. “An oath that I shall eat carcass meat,” but he did not eat it. He is not liable. “An oath that I shall eat,” and he ate⁹⁶. If you would say that he is liable, they should have objected to him: No. You declare about an oath for permitted purpose where He made “no” equal to “yes” and “yes” equal to “no”, can you declare this about an oath concerning a commandment, where He did not make “no” equal to “yes”⁹⁷?

From where a warning about an oath for a permitted purpose? Rabbi Yose ben Rabbi Abun said, *he shall not profane his word*⁹⁸, he shall not make his words profane⁹⁹.

95 Since R. Jehudah ben Bathyra gives an argument to hold a person liable if he breaks any oath, R. Mani wants to read simply “he is liable, the words of R. Jehudah ben Bathyra”.

96 Everybody, including R. Jehudah ben Bathyra, agrees that somebody who breaks an oath to break a Torah commandment is never liable for a sacrifice. The only problematic cases are somebody who keeps an oath to break a Torah commandment or who breaks an oath to keep a commandment. In both cases he might be liable to prosecution for breaking the commandment; the only question here is whether he is liable for a sacrifice, which is answered in the negative by the majority and

in the positive by R. Jehudah ben Bathyra.

97 Oaths about profane subjects may be formulated either as declarations of intent to do something or to refrain from it; about biblical precepts the only admissible ones are to keep the commandments. For R. Mani’s interpretation of R. Jehudah ben Bathyra’s argument to hold, the Mishnah should have been formulated differently. As it stands, the formulation of the Mishnah has to be accepted and R. Mani’s correction rejected.

98 *Num.* 30:3, the paragraph about profane vows. Babli 21a.

99 He translates biblical into rabbinic Hebrew.

משנה ח: שְׁבוּעָה שֶׁלֹּא אוֹכֵל כֶּכֶר זֶה שְׁבוּעָה שֶׁלֹּא אוֹכֵלֶנָּה שְׁבוּעָה שֶׁלֹּא אוֹכֵלֶנָּה וְאִכְלָהּ אֵינָה חֵיִב אֶלָּא אַחֶרֶת. זֶה הִיא שְׁבוּעַת בִּיטוּי שֶׁחַיִּיבִין עַל זְדוּנָהּ מִכּוֹת וְעַל שְׁגָגָתָהּ קָרְבֵּן עוֹלָה וְיִזְרָה.

Mishnah 8: “An oath that I shall not eat this loaf, an oath that I shall not eat it, an oath that I shall not eat it;” he is liable only once¹⁰⁰. This is the blurted oath¹⁰¹ where in case it be intentional one is liable for flogging¹⁰², and if unintentional for a variable sacrifice.

100 He made three oaths but the second and third are void since they forbid what already is forbidden.

101 It is the paradigm for all rules about “blurted oaths”.

102 If he was duly warned not to break his oath but broke it before witnesses he can be prosecuted in criminal court for breaking the commandment of *he shall not profane his word*.

הלכה ח: שְׁבוּעָה שֶׁלֹּא אוֹכֵל כֶּכֶר זוֹ כוּל'. שְׁבוּעָה שֶׁאוֹכֵל כֶּכֶר זֶה הַיּוֹם. וְעֵבֶר הַיּוֹם וְאֶכְלָה. רַבִּי יוֹחָנָן וְרִישׁ לְקִישׁ תְּרִיהוֹן אָמְרִין. פְּטוֹר. לֹא טַעֲמָא דְאַהֲנָן. טַעֲמִיָּה דְרַבִּי יוֹחָנָן מִשּׁוּם שְׁאִינוּ רְאוּי לְקַבֵּל הַתְּרִיָּה. טַעֲמִיָּה דְרִישׁ לְקִישׁ מִשּׁוּם שֶׁהוּא בִּלְא תַעֲשֶׂה שְׁאִין בּו מַעֲשֶׂה. מֵה מִפְקָה מִבִּינְיָהוֹן. שְׂרָפָה וְהַשְׁלִיכָה לַיָּם. אֵין תִּימָר מִשּׁוּם שְׁאִינוּ רְאוּי לְקַבֵּל הַתְּרִיָּה פְטוֹר. וְאֵין תִּימָר מִשּׁוּם שֶׁהוּא בִּלְא תַעֲשֶׂה הַרִי יֵשׁ בּו מַעֲשֶׂה.

Halakhah 8: “An oath that I shall not eat this loaf,” etc. “An oath that I shall eat this loaf today,” the day passed and then he ate it. Rabbi Johanan and Rabbi Simeon ben Laqish both say, he is not liable¹⁰³; not for the same reason. The reason of Rabbi Johanan, because he cannot be duly warned¹⁰⁴. The reason of Rabbi Simeon ben Laqish, because it is a prohibition without action¹⁰⁵. What is the difference between them? He burned it or threw it into the sea. If you say, because he cannot be duly warned¹⁰⁶, he is not liable. If you say, because it is a prohibition without action, there is an action.

103 Criminal liability.

104 No criminal prosecution is possible without evidence that the criminal was duly warned not to commit the crime (cf. *Introduction to Tractate Sanhedrin*, on Chapter Five). The warning must be delivered shortly before the criminal act, so the accused cannot claim to have forgotten. In this case criminality would be inaction; this is not subject to warning.

The Babli, 3b, brings the same

example and connects this with the dispute between R. Johanan and R. Simeon ben Laqish whether a warning can be delivered even if it is conditional because there is no certainty that the contemplated action will be criminal (*Yebamot* 11:7 Note 171, *Nazir* 8:1 Note 48, *Pesahim* 5:4 fol. 32c; Babli 3b). Since R. Johanan holds that a conditional warning is acceptable, the Babli is forced to switch the attributions in this case. As a consequence it follows that for

the Yerushalmi here, in R. Johanan's opinion this would not be a conditional warning but one which it is impossible to deliver. (In his Notes to Tosaphot s. v. אבל, Babli 4a, R. Akiba Eiger essentially notes that the Babli's argument cannot be read into the Yerushalmi.)

105 Cf. Note 3.

106 Even if the witnesses are present at the moment when the loaf is thrown into the sea he cannot be warned since what he does is not breaking the oath but making its fulfillment impossible; there is no biblical paragraph prohibiting this action.

(34d line 12) רבי פינחס בעי. הנה אסתניס. מאחר שאין בידו לבא אין בידו לשעבר. רבי יוסי בעי. שבועה שבועה שבועה שלא אוכל. ואכל. מהו. אמר רבי יוסי בירבי בון. נישמענה מן הדא. שבועה שלא אוכל כפר זו. שבועה שלא אוכלינה. שבועה שלא אוכלינה. ואכלה. חייב אחת. מפני שהזכיר בה זו. הא אם לא הזכיר בה זו חייב על כל-אחת ואחת.

Rebbi Phineas asked, if he was asthenic¹⁰⁷? Since it is not in his hand for the future, it is not in his hand for the past⁷⁵.

Rebbi Yose asked, "an oath, an oath, an oath, that I shall not eat," and he ate. What is the rule? Rebbi Yose ben Rebbi Bun said, let us hear from the following: "An oath that I shall not eat this loaf, an oath that I shall not eat it, an oath that I shall not eat it,' he is liable once." Because he mentioned *this*. Therefore, if he did not mention *this*, he would be liable for each single one¹⁰⁸.

107 Greek ἀσθενής. He is unable to eat an entire loaf during the day and he knows it. Therefore it is a false oath, not a blurted one.

oath, the others were vain. But if it was not specified, the oaths are concurrent but separate and each one carries its own liability. This is amplified in the next paragraph.

108 Since he specified the loaf in the first

(34 line 16) אבימי אחוי דחיפה אמר. שמשית בנדריים שמשית בשבועות. בעי חיפה מיבדקינה. היו לפניו חמש כפרין ואמר. שבועה שאוכל כפר זו. וחזר ואמר. שתיים אילו. וחזר ואמר. שלשה אילו. וחזר ואמר. ארבעה אילו. וחזר ואמר. חמשה אילו. ואכל הראשונה. אמר ליה. חייב על כל-אחת ואחת. אמר ליה. אינו חייב אלא אחת. מכיון שהזכיר עליה שבועה עשאה כנבילה. מיון ואילך כמיחל שבועות על האיסורין. ואין שבועות חלות על האיסורין.

חזר חיפה ובדקיה. היו לפניו חמש כפרין ואמר. שבועה שאוכל חמש כפרים אילו. וחזר ואמר. ארבע. וחזר ואמר. שלש. וחזר ואמר. שנים. וחזר ואמר. זו. ואכל פולם. אמר ליה. אינו חייב אלא אחת. אמר ליה. חייב על כל-אחת ואחת. אילו מי שאמר. שבועה שאוכל חמש כפרים. ואכל ד'. שקמא אינו פטור.

אמר רבי יוסי. מסתברה כאחוי דחייפה באחריותא וכהיפה בקדמיותא.

Abime the brother of Hefa¹⁰⁹ said, I had studied *Nedarim* and *Ševuot*; Hefa wanted to examine him. He had before him five loaves and said, an oath that I would not eat this loaf. He returned and said, these two. He returned and said, these three. He returned and said, these four. He returned and said, these five. Then he ate the first. He¹¹⁰ said to him, he is liable for each single one¹¹¹. He¹¹² answered, he is liable only once, for when he mentioned the first he made it like carcass meat; the following make an oath fall on something prohibited and oaths cannot fall on prohibitions¹¹³.

Hefa continued to examine him. He had before him five loaves and said, an oath that I would not eat these five loaves. He returned and said, these four. He returned and said, these three. He returned and said, these two. He returned and said, this one, and ate the first one. He¹¹⁰ said to him, he is liable only once¹¹⁴. He¹¹¹ answered, he is liable for each single one; if somebody said “an oath if I would eat five loaves” and he ate four, is he not free from liability¹¹⁵?

Rebbi Yose said, the brother of Hefa seems to be reasonable in the later case and Hefa in the prior.

109 He is called עיפא in the Babli 28b, where their dispute is about other cases and Hefa always has the correct answer. They are Babylonian Amoraim of the fourth generation.

110 Abime.

111 Since each oath adds to the preceding prohibition, even R. Johanan should agree that the addition in each oath is valid (Note 42).

112 Hefa.

113 R. Johanan will agree that successive additions of prohibitions are valid only if the prohibitions vary in kind, not if the domain of applicability of one prohibition is enlarged.

114 Since 4,3,2,1 all are contained in 5, all oaths following the first are void.

115 Since he did not eat five, he did not break the oath. In this case, instead of “not liable” one should say “permitted.”

(fol. 34a) **משנה ט:** שְׁבוּעַת שְׁוֹא חֵיבִין עַל זְדוּנָה מְכוּת וְעַל שְׁגָגָתָהּ פְּטוּר: וְאִי זֶה הִיא שְׁבוּעַת שְׁוֹא נִשְׁבַּע לְשָׁנוֹת אֶת הַדִּידוּעַ לְאָדָם אָמַר עַל הָעֵמּוּד שֶׁל אֶבֶן שֶׁהוּא שֶׁל זָהָב וְעַל הָאִישׁ שֶׁהוּא אִשָּׁה. עַל הָאִשָּׁה שֶׁהִיא אִישׁ. נִשְׁבַּע עַל דְּבַר שְׂאִי אִיפְשָׁר לוֹ לְהִיזֵת. אִם לֹא רְאִיתִי גָמַל שְׁפוּרָח בְּאֵוִיר לֹא רְאִיתִי נָחֵשׁ כְּקוֹרֶת בֵּית הַבֵּד. אָמַר לְעֵדִים בּוֹאוּ וְהַעֲדוּנִי שְׁבוּעָה שְׁלֹא נִעֲיֶדֶךָ. נִשְׁבַּע לְכַמֵּל אֶת תְּמוּצָה שְׁלֹא לְעֲשׂוֹת סוּכָה וְשְׁלֹא לִיטוֹל לוֹלֵב וְשְׁלֹא לְהַנִּיחַ תְּפִלִּין. זֶה הִיא שְׁבוּעַת שְׁוֹא שְׁחֵיבִין עַל זְדוּנָה מְכוּת וְעַל שְׁגָגָתָהּ פְּטוּר:

Mishnah 9: For an intentional vain oath one is liable to be flogged; if in error one is not liable. What is a vain oath¹¹⁶? One swears to change what is known to man, about a stone pillar that it is of gold, a man that he is a woman, or a woman that she is a man. One swears about an impossibility, if I did not see a flying camel, if I did not see a snake like the beam of the olive press. If one said to witnesses come and testify for me, an oath that we shall not testify for you¹¹⁷. One swears not to keep commandments: not to make a booth⁶⁸, not to take the *lulav*¹¹⁸, not to put on phylacteries¹¹⁹; these are vain oaths for which one is liable to be flogged if intentional, and free from prosecution of unintentional.

116 An oath which either is obviously false or one which he is forbidden to keep.

117 This is sinful if they know testimony, Lev. 5:1.

116 Lev. 23:40, the palm branch with accompanying greenery.

117 Ex. 13:16, Deut. 6:8, 11:18.

(34d line 28) **הלכה ט:** שְׁבוּעַת שְׁוֹא חֵיבִין עַל זְדוּנָה מְכוּת כּוּל. תִּמְנָן תִּנְיָנָן. אִם לֹא רְאִיתִי בְּדֶרֶךְ זֶה כְּעוֹלֵי מִצְרַיִם. אִיפְשָׁר שְׁלֹא עֶבֶר בָּהּ כְּעוֹלֵי מִצְרַיִם. אֵלֶּא כִּי נִן קִימִין בְּרֵאִיָּה אַחַת. וְהָא דִּוקְלִיטִיאָנוּס כִּד נָחַת תִּמְנָן נָחַת עִימִיָּה ק"כ רַבּוֹנָן. אֵלֶּא כִּי נִן קִימִין בְּרֵאִיָּה אַחַת.

2 כִּי נִן | נִן אֶבֶן 3 דִּוקְלִיטִיאָנוּס | נִן לִילִיטִי קִיסָר תִּמְנָן | נִן לְתִמְנָן ק"כ | נִן מֵאָה וְאַשְׁרִים בִּי נִן | נִן אֶבֶן

“For an intentional vain oath one is liable to be flogged,” etc. There¹¹⁸, we have stated: “If I did not see on this road [crowds] like those who left Egypt.”¹¹⁹ Is it impossible that crowds like those who left Egypt went by? But we are dealing with one look. Was it not the case that when Diocletian¹²⁰ went there, 1’200’000 [men] went with him? But we must be dealing with one look.

118 Mishnah *Nedarim* 3:2.

119 From here to the end of Halakhah 10, the text also is in *Nedarim* 3:2 (ג), explained

there in Notes 37-78.

120 In *Nedarim*: Julianus Caesar. This is the correct text since Diocletian never made

war “there”, i. e., in Babylonia.

(34d line 32) אם לא ראיתי נחש כקורת בית הבד. והא חיוקא דשבור מלפא בלע גמלין בלע קרנין. כד בעון מיקטלויניה איתון פחלין דגמלין ומלון יתהון תבו ויהבון בהון גומרין ובלעון ומית. אמר רבי יודה בר פזי. חמית משח דחיוי עיביד על תמניא מסוסטלא. אמר רבי שמואל בר יעקב. אגא חמית משח דחיוי סליק קרופין דמלכותא. שמואל אמר. במרובע. ואם במרובע ניתני אפילו קטן. אמר רבי יודן אבוי דרבי מתנייה. אלא דלית אורחא דתניינא מיתפוס אלא מילה רובא. דתנינן. גמל פורח באור. ניתני. עכבר פורח באור.

“If I did not see a snake like the beam of the olive press.”¹²¹ Did not the snake of king Sapor swallow camels and carts? When they wanted to kill it, they filled camel bags with straw and put glowing coals inside; it swallowed them and died. Rabbi Jehudah bar Pazi said, I saw the hide of a snake made over eight spaces between pillars¹²². Rabbi Samuel ben Jacob said, I saw the hide of a snake covering a state coach¹²³. Samuel said, square. If square one could state even a small one¹²⁴. Rabbi Yudan the father of Rabbi Mattaniah said, so it is. It is the way of this Tanna to use only big words, as we have stated: “A flying camel.” Could he not have stated, “a flying rat”?

121 The text in *Nedarim* either is from another textual tradition or is rather corrupt.

122 Greek μεσοστούλιον “space between columns.”

123 Latin *carruca* “travel coach”.

124 In Samuel’s opinion a square snake is more wonderful than an oversized one since nothing in nature is square, as stated later in the text.

(34d line 40) תני. רבן שמעון בן גמליאל אומר. אין מרובע מששית ומי בראשית. התיב רבי ברקיה. והתנינן. גוף הבהרת כגריס הקילקי מרובע. מקום הגריס תשע עדשות. מקום עדשה ארבע שערות. נמצאו שלשים ושש שערות: אמר רבי יוסנה. כל-גרמא אגמרה שאינו מרובע. ולמה תניתה מרובע. די ירבעינה הוא. והכגעה. מלא הוא קיטרין. והא עניבה דפילא. עגול הוא מלמטה. ואית דבעי מימר. לא מר רבן שמעון בן גמליאל אלא בבירות. ותני כן. מרובע באוכלין. אין מרובע בבירות.

¹²⁵It was stated: Rabban Simeon ben Gamliel says, there is nothing square from the six Days of Creation. Rabbi Berekhiah objected: Did we not state: “The body of *baheret* is like a square Cilician grit. The place for a grit is nine lentils. The space for a lentil is four hairwidths; in all 36 hairwidths.”¹²⁶ Rabbi (Yosna)¹²⁷ said, that in itself says that there is no square. Why was it stated

“squared”? That he should square it¹²⁸. And כנעה¹²⁹? It is full of knots. But there is the bunch of *pila*¹³⁰! It is round below. Some wanted to say, Rabban Simeon ben Gamliel said this only about creatures, There is square in foods, there is no square in creatures.

125 This paragraph in addition is from *Ma'serot* 5:7, Notes 122-129.

126 Mishnah *Nega'im* 6:1. Cf. Chapter 1, Note 4.

127 For the otherwise unknown name יסנה the other two sources read the well- attested name Bisna.

128 Determine its surface area, standard

Euclidean terminology.

129 The text in *Ma'serot* reads ננעה, in *Nedarim* כנעה. The latter probably is the correct text, “lice”.

130 A kind of spice, cf. *Ma'serot* Note 129. Possible Latin *pila*, among other meanings also “ball, globe” (E. G.).

(34d line 46) שְׁבוּעָה שְׂאִין אָנוּ יוֹדְעִין לָךְ עֵדוּת. לֹקֵין מִשֶּׁם שְׁבוּעַת עֵדוּת. שְׁבוּעָה שְׂלֵא נִעֲדָךְ. לֹקֵין מִשֶּׁם שְׁבוּעַת בִּיטוּי.

¹³¹“An oath that we do not know testimony for you;” they are flogged because of witnesses’ oath¹³². “An oath that we shall not testify for you;” they are flogged because of blurted oath¹³³.

130 This paragraph is not in one of the parallels.

131 If it can be shown that they committed perjury and were duly warned.

132 Rashba (*Novellae on Tractate Ševuot*,

on 26b, in the edition by J. D. Ilan, Jerusalem 1993, col. 97, Note 145) declares this unintelligible since it contradicts Mishnah 4:2.

(fol. 34b) מִשְׁנָה י: שְׁבוּעָה שְׂאֹכֵל בְּכָר זֶה שְׁבוּעָה שְׂלֵא אֹכְלִינָה הָרִאשׁוֹנָה שְׁבוּעַת בִּיטוּי וְהַשְׁנִיָּה שְׁבוּעַת שְׂוֵא. אֹכְלָה עֵבֶר עַל שְׁבוּעַת שְׂוֵא. לֹא אֹכְלָה עֵבֶר עַל שְׁבוּעַת בִּיטוּי:

Mishnah 10: “An oath that I shall eat this loaf; an oath that I shall not eat it.” The first one is a blurted oath, the second a vain oath¹³³. If he ate it he violated a vain oath, if he did not eat it he violated a blurted oath.

133 Since by the first oath he became obligated to eat the loaf by biblical rules, the

second oath has a similar status as an oath to violate a biblical commandment.

(34d line 48) **הלכה י:** שְׁבוּעָה שְׂאֵכֵל כֶּכֶר זֶה כּוּל'. שְׁוֹא וְשֶׁקֶר שְׁנֵיהֶן בְּדִיבּוּר אֶחָד נֶאֱמָרוּ. מֵה שְׂאִין אֹזֶן וְכוּלָּה לְשִׁמוּעַ וְלֹא פֶה לְדַבֵּר. מִחֻלְלֵי מוֹת יוֹמֶת וּבִיּוֹם הַשְּׁבִיעִת שְׁנֵי-כִבְשִׁים בְּדִיבּוּר אֶחָד נֶאֱמָרוּ. לֹא תִלְבֹּשׁ שְׁעִטָּה גְדִלִים תַּעֲשֶׂה-לָּךְ שְׁנֵיהֶן בְּדִיבּוּר אֶחָד נֶאֱמָרוּ. עֶרְוַת אִשְׁת־אָחִיד וּבִמָּה יָבֵא עָלֶיהָ בְּדִיבּוּר אֶחָד נֶאֱמָרוּ. וְלֹא-תִסָּב נְחֻלָּה וְכָל-בֵּית יִרְשֶׁת נְחֻלָּה שְׁנֵיהֶן בְּדִיבּוּר אֶחָד נֶאֱמָרוּ. מֵה שְׂאִי אֵיפֶשֶׁר לָפֶה לְדַבֵּר וְלֹא לְאֹזֶן לְשִׁמוּעַ. וְכֵן הוּא אוֹמֵר אַחַת | דְּבַר אֱלֹהִים שְׁתֵּים-זֵו שְׁמַעְנִי. וְאוֹמֵר הֲלוֹא כֹה דְּבַרִי כְּאֵשׁ נֹאֵם יי'.

Halakhah 10: “An oath that I shall eat this loaf;” etc. ¹³³*Vain and untruth* both were said together, which is impossible for the ear to hear and the mouth to say. *Its desecrator shall be put to death and on the Sabbath day two sheep*¹³⁴ were said together. *Do not wear ša'aṭnez, fringes you shall make for yourselves*¹³⁵, both were said together. *The nakedness of your brother's wife and her brother-in-law shall come to her*¹³⁶ were said together. *You shall not move property; any daughter inheriting real estate*¹³⁷ both were said together, which is impossible for the mouth to say and the ear to hear. And so it says, *God spoke once, two I heard from this*¹³⁸. And it says, *is not My word like fire, says the Eternal*¹³⁹.

133 A shortened version of a paragraph in *Nedarim* 3:2 (Notes 50-59) and the texts quoted there. The general topic are pairs of pentateuchal verses which seemingly contradict one another.

134 *Ex.* 31:14, *Num.* 28:9.

135 *Deut.* 22:11-12.

136 *Lev.* 18:16, *Deut.* 25:5.

137 *Num.* 36:8-9.

138 *Ps.* 62:12.

139 *Jer.* 23:29. The reference is to the end of the verse, *and like a hammer splintering rock*.

(34d line 55) שְׁבוּעַת שְׁוֹא. נִשְׁבַּע לְשִׁנוֹת אֶת הַיְדוּעַ לְאָדָם. שְׁבוּעַת שֶׁקֶר. נִשְׁבַּע לְהַחֲלִיף. רַבִּי יַעֲקֹב בַּר אֶחָא בָּשֵׁם רַבִּי יוֹחָנָן. כָּל-הַיְדוּעַ לְשָׁנִים זֶה הִיא שְׁבוּעַת שְׁוֹא. לְשִׁלְשָׁה זֶה הִיא שְׁבוּעַת שֶׁקֶר. רַבִּי לֹא בָּשֵׁם רַבִּי לְעֶזֶר. אֶפְיִלוּ דְּיוֹעַ לְשָׁנִים וְאֶחָד בְּסוּף הָעוֹלָם מְכִירוֹ שְׁבוּעַת שְׁוֹא הִיא. מֵה מִפְּקָא מְבִינֵיהוּ. שִׁינָה בְּפָנֵי שָׁנִים וְהַשְׁלִיכוֹ לָם וְהִתְרוּ בּוֹ מִשּׁוּם שְׁבוּעַת שְׁוֹא. עַל דַּעֲתִיָּה דְּרַבִּי יוֹחָנָן אֵין לוֹקָה. עַל דַּעֲתִיָּה דְּרַבִּי לְעֶזֶר לוֹקָה. הִתְרוּ בּוֹ מִשּׁוּם שְׁבוּעַת שֶׁקֶר. עַל דַּעֲתִיָּה דְּרַבִּי לְעֶזֶר לוֹקָה. עַל דַּעֲתִיָּה דְּרַבִּי יוֹחָנָן אֵינוּ לוֹקָה. רַבִּי בָּא בָּשֵׁם רַבִּי הִנּוּדָה. אֶפְיִלוּ בִּיטָה וּמִרְגְּלִיתָא. וְאֶחָד אֶפְיִלוּ. אֵלָּא כְּגוֹן בִּיטָה וּמִרְגְּלִיתָא.

¹⁴⁰A vain oath, if one swears to change what is known to men; a false oath if he swears to substitute. Rabbi Jacob bar Aḥa in the name of Rabbi Johanan: anything known to two persons is a (vain)¹⁴¹ oath, to three it is (false)¹⁴¹.

Rebbi La in the name of Rebbi Eleazar: If it is known to two persons and another one at the end of the world, it is a vain oath. What is the difference between them? If he was untrue before two [persons], threw it into the sea, and they had warned him because of a vain oath; in the opinion of R. Johanan he is not flogged, in the opinion of Rebbi Eleazar he is flogged. If they had warned him because of a false oath, in the opinion of Rebbi Eleazar he is flogged, in the opinion of Rebbi Johanan he is not flogged¹⁴². Rebbi Abba in the name of Rebbi¹⁴³ Jehudah, even an egg¹⁴⁴ and a pearl. What means “even”? But, for example, an egg and a pearl.

140 A corrupt copy of the text in *Nedarim* 3:2, Notes 60-65. R. La (Ulla) is quoted in the Babli, 29a.

141 One has to exchange “vain” and “false” as in *Nedarim*. A vain oath is obviously vain, a false oath is materially false but may not generally be seen as such.

142 With the *Nedarim* text, one has to switch “flogged” and “not flogged”.

143 With *Nedarim* read: Rav.

144 Reading בִּצְהָה; it may not be a scribal error but a dialectal identification of 𐤁 for 𐤅.

(34d line 63) תִּנִּי. כְּשֶׁם שְׁנִדְרֵי הָבֵא מוֹתְרִין קֹדֶן שְׁבוּעוֹת הָבֵא מוֹתְרִין. וְהִתְנִי. שְׁבוּעוֹת הָבֵא אֲסוּרִין. רַבִּי יְרֵמְיָה בְּשֵׁם רַבִּי פִּדְתָּ. כָּאֵן בְּמַעֲמִידִין כָּאֵן בְּשֹׁאֵין מַעֲמִידִין. וְאֶפִּילוּ תִּימָא. כָּאֵן וְכָאֵן בְּמַעֲמִידִין. כָּאֵן בְּמִיחַל שְׁבוּעוֹת עַל נְכָסִין. שְׁבוּעָה נְכָסִי עָלַי. נְכָסִין אֲסוּרִין. הָא לְלָקוֹת אֵינוֹ לֹקָה. כְּשֶׁם שְׁנִדְרֵי זִירוּזִין מוֹתְרִין קֹדֶן שְׁבוּעוֹת זִירוּזִין מוֹתְרִין. עוֹד הוּא בְּמִיחַל שְׁבוּעוֹת עַל נְכָסִין. שְׁבוּעָה נְכָסִי עָלַי. נְכָסִין אֲסוּרִין. הָא לְלָקוֹת אֵינוֹ לֹקָה.

1 אסורין | נ אסורות 2 אסורין | נ אסורות בשאין | נ בשאין ואפ' | נ אמ' ר' בא. ואפ' 3 כאן וכאן בשאין מעמידין

¹⁴⁵It was stated: “Just as vows of exaggeration are permitted, so oaths of exaggeration are permitted.” But was it not stated: Vows of exaggeration are forbidden? Rebbi Jeremiah in the name of Rebbi Pedat: Here about those who insist, there about those who do not insist. You may even say in both cases if they insist; here it is about one who intends that his oath should fall on his property, “an oath that my property [should be forbidden] to me.” Then his property is forbidden [to him]. But in matters of flogging, he cannot be flogged. Just as speeding-up vows are permitted, so speeding-up oaths are permitted. It is the same case; if he intends that his oath should fall on his property, “an oath that my property [should be forbidden] to me.” Then his

property is forbidden [to him]. But in matters of flogging, he cannot be flogged.

145 *Nedarim* 3:2 Notes 66-69, Tosephta *Nedarim* 2:1, Babli *Nedarim* 24b.

(34d line 70) חֲזָקָה אָמַר. אֵהוּ דְּמִשְׁתַּבֵּעַ עַל תְּרִין דְּאִינוּן תְּרִין לֹקָה מִשּׁוּם שְׁבוּעַת שָׁוָא. רַבִּי מְנַחֵם בְּשֵׁם רִישׁ לְקִישׁ. אֵהוּ דְּחָמִי מִיטְרָא נְחִית וְאָמַר. קוּרִי פְּלִי בְּרִיכְסוֹן. לֹקָה מִשּׁוּם שְׁבוּעַת שָׁוָא. רַבִּי חוּנָּא רַבִּי יַעֲקֹב בְּרַבִּי בּוֹן בְּשֵׁם רַבִּי שְׁמוּאֵל בַּר נַחֲמָן. כ"ד בּוֹלִיּוֹת הֵיוּ בְּדָרוֹם וְכוּלָם חָרְבוּ עַל שְׁבוּעַת שָׁוָא שֶׁהִיא אֶמְתָּ. דְּכָתִיב לְשָׁוְא הִכִּיתִי אֶת־בְּנֵיכֶם.

1 תְּרִין דְּאִינוּן תְּרִין | 2 תְּרִין דִּינוּן תְּרִין | 2 מְנַחֵם | 3 חָגִי רִישׁ לְקִישׁ | 4 שְׁמוּעוֹן בֶּן לְקִישׁ דְּחָמִי | 5 דְּחָמָא קוּרִי פְּלִי בְּרִיכְסוֹן | 6 בְּלִי קוּרִי בְּרִיכְסוֹן | 7 בּוֹן | 8 אֲבוֹן | 9 כ"ד | 10 עֶשְׂרִים וָאַרְבַּע | 11 אֶמְתָּ | 12 שְׁלָאֵת

Hizqiah said: he who swears that two are two is flogged for a vain oath. Rebbi Menaḥem¹⁴⁶ in the name of Rebbi Simeon ben Laqish: He who saw rain falling and said Κύριε πόλυ βρέξον¹⁴⁷ is flogged for a vain oath. Rebbi Onias, Rebbi Jacob ben Rebbi Abun in the name of Rebbi Samuel ben Nahman: 24 city councils¹⁴⁸ were in Judea and they all were destroyed because of true vain oaths, as it is written: *For the vain did I hit your sons*¹⁴⁹.

146 In *Nedarim*: Ḥaggai.

contraction Kūpt. The statement shows that

147 O Lord, make it rain a lot (Musaphia). The invocation of the Lord is considered a violation of the Third Commandment. It is possible to read the first word as a

Kύριος was accepted as a Divine Name.

148 Greek βουλή.

149 *Jer.* 2:30.

(fol. 34b) **משנה יא:** שְׁבוּעַת בִּטּוּי נִזְהָגָת בְּאֲנָשִׁים וּבְנָשִׁים בְּרַחוּקִים וּבְקָרוּבִים בְּכִשְׁרִים וּבְפִסְוִלִין בִּפְנֵי בֵּית דִּין וְשִׁלָּא בִּפְנֵי בֵּית דִּין מִפִּי עֲצָמוֹ. וְחִיבִין עַל יְדוּנָה מְכּוּת וְעַל שְׁנִגְתָּה קֶרֶבֶן עוֹלָה וַיִּירָד:

Mishnah 11: A blurted oath applies to men and women, relatives and unrelated persons, qualified and disqualified persons, before a court or out of court, from his own mouth¹⁵⁰. For intentional violation one is liable to flogging, for unintentional [to bring] a variable sacrifice.

150 This list is quite unnecessary here, it would have been sufficient to say that the

rules of blurted oaths apply to every competent adult. The details are listed in

contrast to the rules for witnesses' oaths which are restricted to unrelated qualified males made to swear by others. Excluded

relatives are enumerated in *Sanhedrin* 3:7, disqualified persons in *Sanhedrin* 3:6.

(34d line 75) **הלכה יא:** שְׁבוּעַת בִּיטוּי כוּל'. שְׁבוּעָה שֶׁלֹּא אֵכֵל כֶּכֶר זֶה. שְׁבוּעָה שֶׁלֹּא אוֹכְלִינָהּ. שְׁבוּעָה שֶׁלֹּא אוֹכְלִינָהּ. אֵינוֹ חַיִּיב אֶלָּא אַחַת. דְּבַר שֶׁאֵילֹו בְּנִדְרִים אֲסוּר וּבְשְׁבוּעוֹת מוֹתֵר לֹא אֲתִיבָא אֶלָּא בְּמִתְנִיטָה אֶחָד דְּבָרִים שֶׁלְעֲצֻמּוֹ וְאֶחָד דְּבָרִים שֶׁל אַחֲרִים. אֶחָד דְּבָרִים שֶׁאֵין בָּהֶן מִמֶּשׁ וְאֶחָד דְּבָרִים שֶׁיֵּשׁ בָּהֶן מִמֶּשׁ. וְמִרְבֵּי בָּא בְּשֵׁם שְׁמוּאֵל. שְׁבוּעָה שֶׁנֶּתַן פְּלוּנִי לְאִישׁ פְּלוּנִי מִנָּה. וְנִמְצָא שֶׁלֹּא נֶתַן. מֵאַחֵר שֶׁאֵין בְּיָדוֹ לְבֹא אֵין בְּיָדוֹ לְשַׁעֲבֵר. אֲשַׁכַּח תַּנִּי עַל תְּרֻיָּהּ. זֶה חוֹמֵר לְשַׁעֲבֵר מִשְׁלָבָא. שֶׁהָאֹמֵר. לֹא אוֹכֵל לֹא אוֹכֵל. אֵינוֹ חַיִּיב אֶלָּא אַחַת. לֹא אֵכֵלְתִּי לֹא אֵכֵלְתִּי לֹא אֵכֵלְתִּי. חַיִּיב עַל כָּל־אַחַת וְאַחַת.

שְׁבוּעָה שֶׁאוֹכֵל כֶּכֶר זֶה שְׁבוּעָה שֶׁלֹּא אוֹכְלָנָהּ. הָרִאשׁוֹנָה שְׁבוּעַת בִּיטוּי וְהַשְּׁנִינָה שְׁבוּעַת שְׁוֹא. כִּיצַד עוֹשִׂין לוֹ. אוֹמְרִים לוֹ שִׁיאֵכֵל. מוֹטֵב לַעֲבוֹר עַל שְׁבוּעַת שְׁוֹא וְלֹא עַל שְׁבוּעַת בִּיטוּי. שְׁבוּעָה שֶׁלֹּא אוֹכֵל כֶּכֶר זֶה שְׁבוּעָה שֶׁאוֹכְלָנָהּ. הָרִאשׁוֹנָה שְׁבוּעַת בִּיטוּי וְהַשְּׁנִינָה שְׁבוּעַת שְׁוֹא. כִּיצַד עוֹשִׂין לוֹ. אוֹמְרִים לוֹ שֶׁלֹּא יֵאֵכֵל. מוֹטֵב לַעֲבוֹר עַל שְׁבוּעַת שְׁוֹא לְחוּד וְלֹא עַל שְׁבוּעַת שְׁוֹא וּבִיטוּי.

שְׁבוּעָה שֶׁאוֹכֵל כֶּכֶר זֶה הַיּוֹם שְׁבוּעָה שֶׁלֹּא אוֹכְלָנָהּ הַיּוֹם. רַבִּי יוֹחָנָן אָמַר. קִיִּים אֵת הָרִאשׁוֹנָה וּבִיטֵל לְשִׁנִּיָּה. רִישׁ לְקִישׁ אָמַר. בִּיטֵל לְרִאשׁוֹנָה וְלֹא קִיִּים לְשִׁנִּיָּה. שְׁבוּעָה שֶׁלֹּא אוֹכֵל כֶּכֶר זֶה הַיּוֹם שְׁבוּעָה שֶׁאוֹכְלִינָהּ הַיּוֹם. וְאֵכֵלָהּ. רַבִּי יוֹחָנָן אָמַר. בִּיטֵל אֵת הָרִאשׁוֹנָה וְקִיִּים לְשִׁנִּיָּה. רִישׁ לְקִישׁ אָמַר. בִּיטֵל אֵת הָרִאשׁוֹנָה. וְהַשְּׁנִינָה אוֹמְרִים לוֹ שִׁיקְיִמְיָנָה בְּכִיכֵר אַחֲרָת.

שְׁבוּעָה שֶׁאוֹכֵל כֶּכֶר זֶה הַיּוֹם שְׁבוּעָה שֶׁאוֹכְלָנָהּ הַיּוֹם. וְאֵכֵלָהּ. רַבִּי יוֹחָנָן אָמַר. קִיִּים אֵת שְׁתֵּי־הֶן. וְרִישׁ לְקִישׁ אָמַר. קִיִּים לְרִאשׁוֹנָה. וְהַשְּׁנִינָה אוֹמְרִים לוֹ שִׁיקְיִמְיָנָה בְּכִיכֵר אַחֲרָת. שְׁבוּעָה שֶׁלֹּא אוֹכֵל כֶּכֶר זֶה הַיּוֹם שְׁבוּעָה שֶׁלֹּא אוֹכְלִינָהּ הַיּוֹם. וְאֵכֵלָהּ. עַל דַּעְתִּיהָ דְּרַבִּי יוֹחָנָן חַיִּיב שְׁתֵּים. עַל דַּעְתִּיהָ דְּרִישׁ לְקִישׁ אֵינוֹ חַיִּיב אֶלָּא אַחַת. אוֹף רַבִּי שְׁמַעוֹן בֶּן לְקִישׁ מוֹדָה. שֶׁאֵינוֹ אֶלָּא כְּמִנְחָה עֲצֻמּוֹ מִן הָאִיסוּרִין.

Halakhah 11: “A blurted oath,” etc. ¹⁵¹“An oath that I shall not eat this loaf, an oath that I shall not eat it’, he is liable only once”¹⁰⁰. Something which would be forbidden for vows and is permitted for oaths¹⁵². Not on this was it said but on the following: “Whether matters of himself⁷¹, or matters of others,” as Rabbi Abba said in the name of Samuel: ‘An oath that X gave a mina to Y.’ If it turns out that he had not given, since it is not in his hand for the future it is not in his hand for the past⁷⁵. It was found stated on both cases: This is more stringent for the past than for the future: If he says “I shall not

eat, I shall not eat,” he is liable only once. “I did not eat, I did not eat,” he is liable for each single time¹⁵³.

“An oath that I shall eat this loaf; an oath that I shall not eat it.” The first one is a blurted oath, the second a vain oath¹⁵³. How does one deal with him? One tells him to eat; it is better to break a vain oath than a blurted one¹⁵⁴.

“An oath that I shall not eat this loaf; an oath that I shall eat it.” The first one is a blurted oath, the second a vain oath. How does one deal with him? One tells him not to eat; it is better to break a vain oath than to break a vain and a blurted one.

“An oath that I shall eat this loaf today; an oath that I shall not eat it today.” Then he ate it. Rabbi Johanan said, he kept the first oath and invalidated the second¹⁵⁵. Rabbi Simeon ben Laqish said, he invalidated the first one and did not keep the second.

“An oath that I shall not eat this loaf today; an oath that I shall eat it today.” Then he ate it. Rabbi Johanan said, he invalidated the first oath and kept the second¹⁵⁶. Rabbi Simeon ben Laqish said, he invalidated the first one. One tells him to keep the second with another loaf¹⁵⁷.

“An oath that I shall eat this loaf today; an oath that I shall eat it today.” Then he ate it. Rabbi Johanan said, he kept both of them. Rabbi Simeon ben Laqish said, he kept the first one and one tells him to keep the second with another loaf¹⁵⁸.

“An oath that I shall not eat this loaf today; an oath that I shall not eat it today.” Then he ate it. In Rabbi Johanan’s opinion he is twice liable¹⁵⁹. Is he only once liable in Rabbi Simeon ben Laqish’s opinion¹⁶⁰? Even Rabbi Simeon ben Laqish agrees that he only emphasizes the prohibitions¹⁶¹.

151 There is a parallel in *Nedarim* 3:2, Notes 74-78, which is not an exact copy. While repeated vows are separate obligations, of repeated identical oaths only the first is valid; the others are vain oaths. There is no notion of a vain vow.

152 It is not really permitted for oaths since the second oath is vain, but the second never has the status of a valid oath.

153 In the first case, the first oath creates a prohibition; no oath can be made concerning an existing prohibition. In the second case, a false statement is reinforced by an oath; there is no upper limit on the number of lying oaths a person might make.

154 The reading of Rosh (#24) is: It is better to break a vain oath than blurted and vain ones. The two oaths have completely

different status: Since the second one is vain at the moment it is made, the making of the vow is sinful and its maker is liable to be flogged. The only active oath is the first and this one has to be kept.

155 For R. Johanan, the valid first oath prohibits the making of the second which automatically becomes a vain oath subject to the statutory punishment for vain oaths but irrelevant as oath. R. Simeon ben Laqish notes that the first oath contains a promise, not a prohibition. Therefore, there is no rule which prohibits making the second oath. Making the second oath is sinful because it invalidates the first but from the point of view of the law of oaths it is possible. Since he becomes liable for punishment for breaking the first oath, the second is active and should be kept. By eating the loaf, the person commits a second sin.

The Babli, 28b, has a completely different taking on this problem and refers it to the problem whether a criminal warning is possible if it is not clear that a criminal act was intended (Note 104).

156 Swearing the second oath was a criminal act. Since the second is not a prohibition, it can be fulfilled.

157 Since he said אֶכְלֶנָּה “I shall eat it” and not אֶכְל כֶּכֶר זוּ “I shall eat this loaf” it is better to interpret *it* as not referring to the same loaf as does the first oath. Then while nothing can be done to mitigate the sin of breaking the first oath, the second oath can be changed from a vain oath to a new, valid oath referring to something different, not connected with the first.

158 This is a situation similar to the preceding one. For R. Johanan, the second oath is vain, subject to punishment as such, but kept by keeping the first. For R. Simeon ben Laqish the second oath is not vain if *it* is interpreted as referring to another loaf; both oaths can be kept without sin.

159 Once for breaking the oath, and once for uttering a vain oath.

160 By referring the second oath to an indefinite other loaf.

161 In this case, R. Simeon ben Laqish might agree that the repetition indicates reinforcement and that any reasonable interpretation must refer both oaths to the same loaf, agreeing in this case with R. Johanan.

משנה יב: שְׁבוּעַת שְׁוֹא נִזְהָגַת בְּאֲנָשִׁים וּבְנָשִׁים בְּרְחוּקִים וּבְקְרֹובִים בְּכָשָׁרִים וּבְכַסּוּלִים בְּפָנֵי בֵּית דִּין וְשָׁלֹא בְּפָנֵי בֵּית דִּין וּמִפִּי עֲצֻמוֹ. וְחַיִּיבִין עַל זְדוּנָהּ מִכּוּת וְעַל שְׁגָגָתָהּ קָמוּרִין. אֶחָת זֹו וְאַחַת זֹו הַמּוֹשְׁבֵּעַ מִפִּי אַחֲרִים חַיִּיב. בִּיצֵד (אָמַר) לֹא אֶכְלֶנָּה הַיּוֹם וְלֹא הֵינִיחֵנִי תַּפְלִין הַיּוֹם. מִשְׁבִּיעַד אֲנִי וְאָמַר אֶמֶן. חַיִּיב:

Mishnah 12: A vain oath applies to men and women, to relatives and unrelated persons, to qualified and disqualified ones, in court and out of court, and by his own words¹⁵⁰. For intentional violation one is liable to flogging,

for unintentional he is not prosecutable¹⁶². In both cases¹⁶³, one who is sworn to by another person can be liable. How is this? One said, “I did not eat today, I did not put on phylacteries today.” “I want you to swear to it,” if he said “Amen” he¹⁶⁴ is liable.

162 The Third Commandment contains no determination of the punishment. Therefore it can be prosecuted as a standard infraction, punishable by flogging only after due warning and swearing in the presence of two eye witnesses.

163 Blurred and vain oaths.

164 The person who is challenged to swear. By answering Amen he has sworn even though he himself did not utter any oath nor invoke the Divine Name.

(35b line 26) **הלכה יב:** שְׁבוּעַת שְׁוֹא כוּל'. נִפְשׁ נִפְשׁ. מִה נִפְשׁ שְׁנֵאמַר בְּשִׁבוּעַת הָעֵדוּת עֲשֶׂה אֶת הַמּוֹשְׁבֶּעַ כְּנִשְׁבָּע. אִךְ שְׁנֵאמַר בְּשִׁבוּעַת הַפִּיקְדוֹן עֲשֶׂה אֶת הַמּוֹשְׁבֶּעַ כְּנִשְׁבָּע.

Halakhah 12: “A vain oath,” etc. *A person, a person.* Since by *a person* which was said for an oath of testimony He made the one at whom the oath was directed like one swearing, so also by *a person* which was said for an oath of deposit He made the one at whom the oath was directed like one swearing¹⁶⁵.

165 The text here can be understood by a comparison with Halakhah 4:8. *Lev. 5:1* starts: *But a person who would sin.* V. 21 starts: *A person who would sin.* The topic of v. 1 is a person whom another person makes swear indirectly (Note 164) that he will testify in court on his behalf but who then reneges on his promise, thereby breaking his oath. V. 21 describes a person *who commits sacrilege towards the Eternal by lying to his fellow man about a deposit, or a*

partnership, or robbery. One commits sacrilege by swearing falsely. The parallel language implies that swearing falsely about money matters does not necessarily mean to utter a formal oath. The sin of swearing falsely also has been committed if the injured party says to the accused in the presence of witnesses, “swear to me that you do not owe me” and the person then answers “Amen”.

(35a line 28) כָּל-לֹא תַעֲשֶׂה שְׁיֵשׁ בּוֹ מַעֲשֶׂה לֹקֵה וְשֹׂאִין בּוֹ מַעֲשֶׂה אֵינוֹ לֹקֵה. חוּץ מִן הַמִּימָר וְהַנִּשְׁבָּע וּמִקֵּלֶל אֶת חֲבִירוֹ בְּשֵׁם. רַבִּי אֲבָהוּ בְּשֵׁם רַבִּי יוֹחָנָן. לֵית כָּאֵן מִימָר. מִימָר דִּיבּוּר וּמַעֲשֶׂה. נִשְׁבַּע לְשֹׁקֵר מְנִיין. רַבִּי יוֹחָנָן בְּשֵׁם רַבִּי יִנְאִי. כִּי לֹא יִנְקֵה יִי. מְנַקִּין הֵן הַדִּינִין. קִילֵל אֶת חֲבִירוֹ בְּשֵׁם מְנִיין. רִישׁ לְקִישׁ בְּשֵׁם רַבִּי הוֹשַׁעְיָה. לְיִרְאָה אֶת-הַשֵּׁם וְגו'. נִשְׁבַּע לְשֹׁקֵר עַל דַּעְתִּיהָ דְּרִישׁ לְקִישׁ מְנִיין. מִינָהּ. מִכֵּין שְׁנִשְׁבָּע לְשֹׁקֵר אֵין זֶה נִרָא. קִילֵל אֶת חֲבִירוֹ בְּשֵׁם

דעתיה דרבי יוחנן מניין. מכיון שקילל אין זה נרא. מה מפקה מביניהון. נשבע לשקר וקילל לחבירו בשם. על דעתיה דרבי יוחנן חייב שתים. על דעתיה דריש לקיש אינו חייב אלא אחת.

This is the principle¹⁶⁶: One flogs for any prohibition involving an action, but one does not flog if there is no action except for one who substitutes¹⁶⁷, or swears, or curses a fellow man by the Name. Rabbi Abbahu in the name of Rabbi Johanan: This does not include one who substitutes; substituting implies speech and action¹⁶⁷. From where one who swears falsely? Rabbi Johanan in the name of Rabbi Yannai: *For the Eternal will not cleanse*; but the judges will cleanse him¹⁶⁸. From where one who cursed his fellow man by the Name? Rabbi Simeon ben Laqish in the name of Rabbi Hoshia: *To fear the Name*¹⁶⁹, etc. The one who swears falsely in the opinion of Rabbi Simeon ben Laqish from where? Since he swore falsely, he does not fear. The one who cursed his fellow man by the Name in the opinion of Rabbi Simeon ben Laqish from where? Since he cursed, he does not fear. What is the difference between them? If one swore falsely and cursed a fellow man by the Name. In Rabbi Johanan's opinion he is liable for two [punishments]¹⁷⁰. In Rabbi Simeon ben Laqish's opinion he is only liable for one.

166 Babli 21a, *Makkot* 16a, *Temurah* 3a. In the Babli the formulation of this (undisputed) principle is attributed to R. Yose the Galilean.

167 Before an animal can be sacrificed, it has to be sanctified by dedication (*Lev.* 27:9). Once sanctified, it is forbidden to substitute another animal (v. 10). If somebody would substitute, both the original and the substitute are dedicated. Therefore the oral declaration of substitution is at the same time the real act of sanctification which makes the animal prohibited for all profane use. This argument is not found in the Babli. already

168 *Ex.* 20:7, *Deut.* 5:11. As the Babli explains, if the verse simply had said "he will not be cleansed", then a vain or false oath would be an unpardonable sin. But since it said, *the Eternal will not cleanse*, it implies that punishment by the earthly court will remove the sin from the Heavenly ledger.

169 *Deut.* 28:58. While the language is that of a positive commandment, the context shows that its violation is punishable.

170 Since the two offenses violate two different prohibitions. But for R. Simeon ben Laqish they are repeated violation of the same law, punishable only once.

שבועת העדות פרק רביעי

(fol. 35a) **משנה א:** שבועת העדות נוהגת באנשים ולא בנשים ברחוקין ולא בקרובין בכשרים ולא בפסולין. ואינה נוהגת אלא בראוין להעיד בפני בית דין ושלא בפני בית דין מפי עצמו. ומפי אחרים אין חייבין עד שיכפרו בו בבית דין דברי רבי מאיר. וחכמים אומרים בין מפי עצמו ובין מפי אחרים אין חייבין עד שיכפרו בו בבית דין:

Mishnah 1: An oath about testimony¹ applies to men but not to women², to unrelated persons but not to relatives³, to qualified but not to disqualified ones⁴; it applies only to those admitted to testify⁵, in court and out of court, and by the person's own words. By the words of others they only become liable if they renege before a court, the words of Rabbi Meir. But the Sages say, whether by the person's own words or by the words of others they only become liable if they renege before a court⁶.

1 *Lev. 5:1* requires a variable value sacrifice by a person who *heard an imprecation when he had knowledge* and refuses to testify. This is read to mean that a person is approached by a party in a civil suit and asked to testify in their behalf. If then either he swears an oath that he will testify in court ("by his own word") or the party asks him to swear that he will appear ("by the word of others") while he answers "Amen" but does not utter an oath by himself, he becomes liable for the sacrifice if he reneges on his commitment.

2 Since women are not admitted as formal witnesses in court, the rule of an oath

of testimony cannot apply to them.

3 Since relatives are barred from appearing as witnesses in court, the rule of an oath of testimony cannot apply to them.

4 Felons are not permitted to appear as witnesses in court; the rule of an oath of testimony cannot apply to them.

5 Even if their disability only is a rabbinic tradition they will not be heard and the rule of an oath of testimony cannot apply to them.

6 Since testimony is used only in court, a refusal to testify outside of court is irrelevant and cannot trigger liability.

(35b line 24) **הלכה א:** שבועת העדות כול'. שעירים. מיעוט שעירים שנים. מה תלמוד לומר שני. שיהיו שוין.

כְּבָשִׁים. מִיעוּט כְּבָשִׁים שְׁנַיִם. אִם כֵּן מָה תִּלְמֹד לומר שְׁנֵיהֶן שְׁוִין.
 צִפְרִים. מִיעוּט צִפְרִים שְׁנַיִם. אִם כֵּן מָה תִּלְמֹד לומר שְׁתֵּי שְׁנֵיהֶן שְׁוִין.
 חֲצוּצְרוֹת. מִיעוּט חֲצוּצְרוֹת שְׁתֵּים. אִם כֵּן מָה תִּלְמֹד לומר שְׁתֵּי שְׁנֵיהֶן שְׁוִוֹת.
 הַתֵּיב רַבִּי חֲגַיי קוֹמִי רַבִּי יוֹסִי. וְהַכְּתִיב וְעַמְדוֹ שְׁנֵי־הָאֲנָשִׁים. מִיעוּט אֲנָשִׁים שְׁנַיִם. וְמָה
 תִּלְמֹד לומר שְׁנֵי שְׁנֵיהֶן שְׁוִין. וְהַכְּתִיב לֹא תִטָּה מִשְׁפָּט גֵּר יָתוֹם. הָרִי מִצִּינוּ גֵּר דָּן עִם מִי
 שְׂאִינוּ גֵּר. יָתוֹם דָּן עִם מִי שְׂאִינוּ יָתוֹם. אֲלֻמָּנָה עִם בְּעוּלָתָה בַּעַל. אִם כֵּן לָמָּה נֶאֱמַר שְׁנֵי
 מוֹכְנָה לְהַקִּישׁ וְלָדוֹן הִימָינוּ גִּזְרָה שְׁנָה. נֶאֱמַר כָּאן שְׁנֵי וְנֶאֱמַר לְהֵלֵךְ וַיִּשְׁאַרְוּ שְׁנֵי־אֲנָשִׁים |
 בְּמַחֲנֶה. מָה לְהֵלֵךְ אֲנָשִׁים וְלֹא נָשִׁים וְלֹא קִטְנִים אֶף כָּאן אֲנָשִׁים וְלֹא נָשִׁים וְלֹא קִטְנִים. הָרִי
 לְמַדְנוּ שְׂאִין הָאִשָּׁה דָּנָה. מַעֲתָה אֵין הָאִשָּׁה מַעֲדָה.

רַבִּי יוֹסִי בִּי רַבִּי בִּין רַבִּי הוֹנָא בְּשֵׁם רַבִּי יוֹסִי. נֶאֱמַר כָּאן שְׁנֵי וְנֶאֱמַר לְהֵלֵךְ עַל־פִּי | שְׁנַיִם
 עֲדִים. מָה לְהֵלֵךְ עַל־פִּי | שְׁנַיִם עֲדִים אֶף כָּאן עַל־פִּי שְׁנַיִם עֲדִים. אִם כֵּן לָמָּה נֶאֱמַר שְׁנֵי. שְׁלֹא
 יְהִי אֶחָד עוֹמֵד וְאֶחָד יוֹשֵׁב. אֶחָד מְדַבֵּר כָּל־צוּרְכּוֹ וְלֹא־אֶחָד אוֹמֵר לוֹ. קֹצֵר דְּבָרֶיךָ. כִּנְגֵד אֶחָד
 מֵאַרְבָּע פָּנִים וְכִנְגֵד אֶחָד מֵעֵזִי פָּנִים.

אָמַר רַבִּי יוֹדִן. שְׁמַעְתִּי שֶׁאִם רָצָה הַדִּין לְהוֹשִׁיב אֶת שְׁנֵיהֶן מוֹשִׁיב. הָאִסּוּר שְׁלֹא יְהִי זֶה
 עוֹמֵד וְזֶה יוֹשֵׁב. זֶה מְדַבֵּר כָּל־צוּרְכּוֹ וְזֶה אוֹמֵר לוֹ. קֹצֵר דְּבָרֶיךָ. רַבִּי שְׁמַעְיָאל אוֹמֵר. אוֹמְרִין
 לוֹ. לְבוֹשׁ קְשָׁלוּבִשׁ. אוֹ הַלְבִּישָׁהוּ כְּשֶׁאֵתָה לְבוֹשׁ.

רַבִּי בָּא בְּשֵׁם רַב הוֹנָא. צְרִיכוֹ הָעֲדִים לְהִיּוֹת עוֹמְדִין בְּשָׁעָה שְׁמַעֲדִין. מָה טַעַם. וְעַמְדוֹ
 שְׁנֵי־הָאֲנָשִׁים. רַבִּי יְרֵמְיָה בְּשֵׁם רַבִּי אֲבָהוּ. אֶף הִנִּידוּנִין עוֹמְדִין בְּשָׁעָה שְׁמַקְבְּלִין עֲדוּתָן. מָה
 טַעַם. אֲשֶׁר־לָהֶם הָרִיב לִפְנֵי יי.

Halakhah 1: “An oath about testimony,” etc. ⁷Rams⁸, the minimum of rams are two. Why does the verse say *two*? That they be equal.

Sheep, the minimum of sheep are two. Then why does the verse say *two*? That both be equal⁹.

The minimum of *birds* are two. Then why does the verse say *two*? that both be equal¹⁰.

The minimum of *trumpets* are two. Then why does the verse say *two*? that both be equal¹¹.

Rebbi Haggai objected to Rebbi Yose¹². Is there not written: *The two men shall stand*¹³? Now, is not two the minimum of “men”? Why does the verse say *two*? That both be equal? But it is written¹⁴: *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, a widow against a married woman. Then why is there

written *two*? It is free to be combined and to infer from it an *equal cut*. It is said here *two* and it is said there *two men were left*¹⁵. Since there one speaks of men but not women nor underaged, also here men but not women nor underaged. From this we learn that a woman may not be a judge; consequently a woman may not be a witness.

Rebbi Yose ben Rebbi Abun, Rebbi Huna in the name of Rebbi Yose¹⁶. It is said here *two* and it is said there¹⁷ *by the mouth of two witnesses*. 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*¹³? 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. With one he puts up, to the other he is unfriendly.

Rebbi Jehudah said, I heard that if the judge wants to let both of them sit, he may tell them to sit down. What is forbidden is that not one be standing and the other sitting; one says everything he has to say, but to the other one says, make your statement short. Rebbi Ismael says, one says to him, 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. What is the reason? *The two men shall stand*¹³. Rebbi Jeremiah in the name of Rebbi Abbahu: Also the parties have to stand at the moment the verdict is given. What is the reason?: *Who have the quarrel before the Eternal*¹³.

7 This text essentially is *Sanhedrin* 3:10, Notes 150-165, with a related text in *Yoma* 6:1. The many parallels in Babli (30a,b, *Yoma* 62b), Tosephta, and halakhic Midrashim are indicated in *Sanhedrin*.

8 *Lev.* 16:5,7,8. Any indeterminate plural means 2, the minimum of many.

9 *Ex.* 27:38, *Num.* 28:3.

10 *Lev.* 14:4.

11 *Num.* 10:1.

12 This is the correct reading, also given in *Yoma*, not R. Yasa as in *Sanhedrin*.

13 *Deut.* 19:17.

14 *Deut.* 24:17.

15 *Num.* 11:26.74

16 Here it seems better to read "Rav Joseph" with the other two sources.

17 *Deut.* 19:15.

(35b line 47) כְּתִיב לֹא-יִוָּמְתוּ אָבוֹת עַל-בָּנִים וְגו'. וְהֵלֵא כָּבֶד נֶאֱמַר אִישׁ בְּחֻטָּאוֹ יוּמָת: מִה תִּלְמֹד לִוְמֹר לֹא-יִוָּמְתוּ אָבוֹת עַל-בָּנִים. אֲלֵא שֶׁלֹּא יוּמָתוּ בָּנִים בְּעֵדוּת אָבוֹת וְאָבוֹת בְּעֵדוּת בָּנִים. מִיָּכֹן שֶׁלֹּא יִהְיוּ הָעֵדִים קְרוֹבִין שְׁלֵנִידוּנִין.

וּמִנֵּיין שֶׁלֹּא יִהְיוּ הָעֵדִים קְרוֹבִין זֶה לָזֶה. הִגַּע עֲצָמָךְ שֶׁהוֹזְמוּ לֹא מִפִּיָּהוּ נִהְרִין. וּמִנֵּיין שֶׁלֹּא יִהְיוּ הָעֵדִים קְרוֹבִים שְׁלֵנִידוּנִים. הִגַּע עֲצָמָךְ שֶׁאִם הוּזָם אֶחָד מֵהֶם אֵינוֹ נִהְרָג עַד שִׁיוּזָם חֲבִירוֹ. אִם אוֹמֵר אֶת כֹּן נִמְצָא נִהְרָג עַל פִּיו.

וּמִנֵּיין שֶׁלֹּא יִהְיוּ הַדִּינִין קְרוֹבִין זֶה לָזֶה. אֲמַרְהָ תוֹרָה. הָרוֹג עַל פִּי עֵדִים. הָרוֹג עַל פִּי דִינִים. מִה הָעֵדִים אֵינוֹ קְרוֹבִין זֶה לָזֶה. אִף הַדִּינִין כֹּן.

אֵין לִי אֲלֵא אָבוֹת וּבָנִים. שְׁאָר קְרוֹבִין מִנֵּיין. אָמַר רַבִּי זִידָא. וּבָנִים. לְרֵבּוֹת שְׁאָר קְרוֹבִין. עַד דָּדוֹן כְּרַבִּי עֲקִיבָה.

¹⁸It is written¹⁹: *Fathers shall not be killed because of sons*. Is it not already written, *each one should be killed for his own crime*? 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 fathers¹⁶⁹. From here 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 each of them not be killed by the other's testimony? 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 the other's sentencing?

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.

So far 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.

18 This and the following paragraphs also 27b,28a).

have an almost identical copy in *Sanhedrin* 19 *Deut.* 24:16.

3:10, Notes 166-200. (Babli *Sanhedrin*

(35b line 58) כְּרַבִּי וְשִׁמְעֵאל. תִּנִּי רַבִּי וְשִׁמְעֵאל. וְשִׁפְטוּ הָעֵדָה בֵּין הַמִּכָּה וְגו'. שְׁלֹא תִהְיֶה הָעֵדָה קְרוֹבָה לֹא לַמִּכָּה וְלֹא לַמּוֹכֵה. אָמַר רַבִּי יוֹסִי. אִם אוֹמֵר אֶתְּ כֹּן קְרוֹבִין לַיִּכָּה נִמְצָאוּ בֵּית דִּין גּוֹאֲלֵי הַדָּם. מִיִּכֹּן שְׁלֹא יִהְיוּ הַדִּיּוּנִין קְרוֹבִין לַדִּיּוּנִין. וּמִנֵּיין שְׁלֹא יִהְיוּ הָעֵדִים קְרוֹבִים לַדִּיּוּנִין. אֶמְרָה תוֹרָה. הָרוֹג עַל פִּי עֵדִים. הָרוֹג עַל פִּי מַטִּין. מִה הַדִּיּוּנִין אֵינָן קְרוֹבִין לַדִּיּוּנִין אֶף הָעֵדִים כֵּן. מִנֵּיין שְׁלֹא יִהְיוּ הָעֵדִים קְרוֹבִין זֶה לָזֶה. הִגַּע עֲצָמָךְ שֶׁהוֹזְמוּ לֹא מִפִּיָּהּ הוּ נִהְרָגִין.

From where following Rabbi Ismael? Rabbi Ismael stated: *The congregation shall judge between the beater, etc*²⁰. 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. 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 those who vote²¹. 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? Think of it, if they be found perjured, would they not be killed by each other's testimony?

20 Num. 35:24; *between the slayer and the avenger of the blood.*

21 I. e., the judges; the expression is from Ex. 23:2.

(35b line 65) וּמִנֵּיין שְׁלֹא יִהְיוּ הָעֵדִים קְרוֹבִין לַדִּיּוּנִים. הִגַּע עֲצָמָךְ שֶׁהוֹזָם אֶחָד מֵהֶן. כָּלוּם נִהְרָג עַד שְׁנֵיזָם חֲבִירוֹ. אִם אוֹמֵר אֶתְּ כֹּן לֹא נִמְצָא נִהְרָג עַל פִּי. בְּכַשְׁרֵין וְלֹא בְּכַסּוּלִין. מִנֵּיין. אִם לֹא יִגִּיד וְנִשְׁאַ עוֹנוֹ: אֶת שְׂמִגְדוֹ וְחֲבִירוֹ מִשְׁלֵם מָמוֹן. יֵצֵא פָסוּל שְׂמִגְדוֹ וְאֵין חֲבִירוֹ מִשְׁלֵם מָמוֹן. בְּפָנֵי בֵּית דִּין. לְהוֹצִיא עַד אֶחָד. בְּשִׁאֲמָרוֹ לוֹ. הִרִי אֶת מְקוֹבֶל עַלְיָנוּ כְּשֵׁנִי עֵדִים. יִהְיֶה חֵיב. תִּלְמֹד לומר וְהוּא יֵד אוֹ רָאָה אוֹ יָדַע אִם לֹא יִגִּיד וְנִשְׁאַ עוֹנוֹ: אֶת שְׂכָשֶׁר לְהַעֲד עֲדוּת תוֹרָה. יֵצֵא אֶחָד שְׂאִינוּ כְּשֶׁר לְהַעֲד. שְׁלֹא בְּפָנֵי בֵּית דִּין. אִם לֹא יִגִּיד וְנִשְׁאַ עוֹנוֹ: מִקּוֹם שְׂמִגְדוֹ וְחֲבִירוֹ מִשְׁלֵם מָמוֹן. יֵצֵא חוץ לְבֵית דִּין אֶפְּלוּ מִגִּיד אֵין חֲבִירוֹ מִשְׁלֵם.

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?

“To qualified but not to disqualified ones.” For it is said, *if he does not tell, he has to bear his punishment*^{21a}. 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.

“Before the court.” To exclude a single witness. If they told him that they would accept his word as if there were two witnesses, from where? The verse says, *if he was a witness, had seen or known; if he does not tell he shall bear his punishment*^{21a}. One who is qualified to testify according to biblical standards; this excludes a single witness who is not qualified to testify.

“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.

(35b line 74) ומניין לשני עדים. תלמוד לומר. והוא עד. הרי כאן שנים. כרבי ישמעאל. דאמר. כל מקום שנאמר עד סתם הרי הוא בכלל שנים עד שיודיעך הכתוב אחד. אשכח תני רבי ישמעאל. שני עדים. אחד מהו שיהו חייבין עליו משום שבועת ביטוי. איפשר לומר. אחד ראוי לצורפו ולחייבו משום שבועת עדות ואף מחייבו משום שבועת עדות. ואת מחייבו משום שבועת ביטוי.

קרוב מהו שיהו חייבין עליו משום שבועת ביטוי. יבא כהדא. דמר רבי בא בשם שמואל. שבועה שנתן פלוני לפלוני ונמצא שלא נתן. מאחר שאין בידו לבא אין בידו לשעבר. וכהדא. איכן שורי. אמר לו. איני יודע מה אתה סח. רבי פוטר משום שבועת הפיקדון ומחייב משום שבועת ביטוי. אמר רבי יוחנן. מאחר שמצוה להפיסו אינו חייב משום שבועת ביטוי. על דעתיה דרבנן אין מצוה להפיסו. מפיוסו על האמת ואינו מפיוסו על השקר. תני רבי ישמעאל. ונשא עונו. קרבן. מנלו בית דין. הגדה הגדה. מה הגדה שנאמר להלן בית דין אף כאן בית דין.

From where two witnesses? *And he is a witness*, this makes two. Following Rabbi Ismael, who said, any place where the Torah mentions a witness without further determination it implies two witnesses; unless the verse informs you that a single witness is meant. It was found stated in the name of Rabbi Ismael: “Two witnesses.” Can a single witness be found guilty of a blurted oath? Since it is possible to say that one person could team up with him, then he would be subject to the oath of testimony, you could find

him liable for an oath of testimony. How could you find him guilty of a blurted oath?

Should a relative be found guilty of a blurted oath? Does it follow what Rabbi Abba said in the name of Samuel²²: "An oath that X gave 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: "Where is my ox?" He responded, "I do not know what you are referring to." Rabbi declares him not liable for a keeper's oath but liable because of a blurted oath. Rabbi Johanan said, since it is a religious duty to appease him, he is not liable because of a blurted oath. In the rabbis' opinion, is there no religious duty to appease him? One appeases with truthful statements, not with lies.

Rabbi Ismael stated: *He has to bear his punishment*²¹, a sacrifice. From where that one needs a court? "Telling, telling". Since *telling* mentioned there is before a court, also telling here is before a court.

21a Lev. 5:1

22 Chapter 3:6, Note 75. Babli 49b.

(35c line 13) כְּהֵדָא. אין מקבלין העדים אלא אם ראו שניהן כֹּאחַת. רבי יהושע בן קרחה אומר. אפילו זה אחר זה. רבי ירמיה רבי שמואל בר רב יצחק בשם רב יצחק שאמר בשם רב. מודין חכמים לרבי יהושע בעידי בכורה ועידי חזקה. רבי בא בשם רבי ירמיה. אף בעידי סימנין כן. מהדא פשיטא בשנה אומר. ראיתי שתי שערות בגבו. ואחד אומר. ראיתי שערות אחת בגבו. ואחד אומר. ראיתי אחת בכריסו. לא כלום היא. כל-שכן גבו וגבו. שנים אומרים. ראינו שערות אחת בגבו. ואחד אומר. ראיתי שערות אחת בכריסו. רבי יוסי בירבי בון רבי הושעיה בר רבי שמעי. חד אומר. פסול. וחד אומר. כשר. מאן דאמר פסול. במעיד בחצי סימן. ומאן דאמר כשר. אני אומר. שמא נשרה. אחד אומר. ראיתי שתי שערות בגבו. ואחד אומר. ראיתי שנים בכריסו. רבי בא אומר. דברי הכל כשר. רבי חגי אומר. דברי הכל פסול. רבי יוסי אומר. במחלוקת. רבי יודן אומר. במחלוקת. אמר ליה רבי יוסי לרבי חגי. הא רבי יודן סבר כוותי. אומר ליה. על דרביה אגא פליג כל-שכן עלוי. אומר רבי מנא. יאות אומר רבי חגי. אילו שטר שמחותם בארבעה חותמות זה מתיר על ב' וזה מעורר על ב' וקרא עליו ער. שמא כלום הוא. ואין כל-חתימה צריכה שני עדים. וכא כל-סימן וסימן צריך שני עדים. רבי חנינה שמע לה משני חזקה. אילו אחד מעידו שאכלה שנה אחת וב' וג'. ואחד מעידו שאכלה ד' וה'. שמא כלום הוא. ואין כל-חזקה צריכה שני עדים. הכא כל-סימן וסימן צריך שני עדים.

²³Or like the following. “One accepts the witnesses’ testimony only if they saw it together. Rabbi Joshua ben Qorḥa says, even if they saw it one after the other.” Rabbi Jeremiah, Rabbi Samuel ben Rav Isaac in the name of Rav Isaac who said in the name of Rav: The Sages agree with Rabbi Joshua ben Qorḥa 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 back²⁴ and 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 back²⁵. Two are saying, we saw one hair on his back; and one is saying, I saw one hair on his belly. Rabbi Yose ben Rabbi Bun and Rabbi Hoshia ben Rabbi 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 it was rubbed off. One says, I saw two hairs on his back; and one says, I saw two on his belly. Rabbi Abba said, everybody agrees that this is valid. Rabbi Ḥaggai said, everybody agrees that this is invalid [testimony]. Rabbi Yose says, this is in disagreement. Rabbi Yudan said, this is in disagreement. Rabbi Yose said to Rabbi Ḥaggai, does not Rabbi Yudan follow my opinion? He answered, I am disagreeing with his teacher, so much more with him. Rabbi Mana said, Rabbi Ḥaggai was correct. If a document was signed by four seals, if one person (permitted)²⁶ two, and another (questioned)²⁶ the other two, and the document was attacked, is that worth anything? Does not every single signature need two witnesses? And here, every single sign needs two witnesses. Rabbi Ḥanina learns it 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 and fifth years, is that worth anything? Does not every single year need two witnesses? And here, every single sign needs two witnesses.

23 This is a careless copy of a text in *Sotah* 1:1 Notes 56-71, *Ketubot* 2:4 Note 87, *Sanhedrin* 3:10 Note 197.

24 There is a sentence missing: “the other

says, I saw two hairs on his side. If’.

25 It should read: “back and side”.

26 This clearly is corrupt. In both cases, read: “testified to”.

(fol. 35) **משנה ב:** וְחֵיבִין עַל זֶדוֹן שְׁבוּעָה וְעַל שְׁגָגָתָהּ. וְעַל זֶדוֹן הָעֵדוּת וְאִינוּ חֵיבִין עַל שְׁגָגָתָהּ. וְכֵן הוּא חֵיבִין עַל זֶדוֹן קֶרֶבֶן עוֹלָה וְיִירֵד:

Mishnah 2: They are liable both for intentional [violation of the] oath and for erroneous one²⁷, and for intentional [refusal of] testimony, but one is not liable unintentionally²⁸. What is one liable for if intentional? A variable value sacrifice.

משנה ג: שְׁבוּעַת הָעֵדוּת כִּיצַד. אָמַר לְעֵדִים בּוֹא וְהָעִידוּנִי. שְׁבוּעָה שָׂאִין אָנוּ יוֹדְעִין לָךְ עֵדוּת אִם שָׂאֵמְרוּ לוֹ אִין אָנוּ יוֹדְעִין לָךְ עֵדוּת. מִשְׁפִּיעַ אֲנִי עֲלֵיכֶם וְאָמְרוּ אָמֵן חֵיבִין. הַשְּׁפִיעַ עֲלֵיהֶם חֲמִשָּׁה פְּעָמִים חוּץ לְבֵית דִּין וְכָאִם לְבֵית דִּין וְהוּדוּ פְּטוּרִים. כִּפְרוּ חֵיבִין עַל כָּל אַחַת וְאַחַת. הַשְּׁפִיעַ עֲלֵיהֶן חֲמִשָּׁה פְּעָמִים בְּפְנֵי בֵּית דִּין וְכִפְרוּ אִינֵן חֵיבִין אֲלָא אַחַת. אָמַר רַבִּי שְׁמַעוֹן כֹּה הַטַּעַם הוּאֵל וְאִינֵם יְכוּלִין לְחֻזֹּר וּלְהוֹדוֹת:

Mishnah 3: What is an oath about testimony? One said to witnesses, come and testify for me. “An oath that we do not know testimony for you;” or they said to him, we do not know any testimony for you, “I am asking you to take an oath upon this;” if they said “Amen”, they are liable¹. If he asked them five times outside of court to take an oath; when they came to court and admitted it they are not liable²⁹. If they deny, they are liable for each single one. If he asked them five times in court to take an oath and the refused, they are liable only once. Rabbi Simeon said, what is the reason? Because they cannot come back and admit³⁰.

27 If he swore falsely that he did not know testimony but did not know that this makes him liable for a sacrifice.

28 If honestly he was erroneously thinking that he did not know testimony.

29 Since refusal of testimony outside of court is irrelevant (Note 6).

30 Since the courts operate on the principle that a witness can testify only

once, i. e., he cannot change his testimony, after a first refusal in court the witness would not be permitted to change his statement. The additional oaths put on the witnesses are pointless; the court should prohibit them. In the language of the Babli, “after he told, he does not return to tell”.

(35c line 34) **הלכה ג:** שְׁבוּעַת הָעֵדוּת כִּיצַד כּוּל'. נִפְשׁ נִפְשׁ. כֹּה לְהֵלֶן מִפִּי עֲצָמוּ אִם כָּאֵן מִפִּי עֲצָמוּ. כֹּה כָּאֵן מִפִּי אַחֲרִים אִם לְהֵלֶן מִפִּי אַחֲרִים. רַבִּי מֵאִיר דְּרַשׁ גְּזִירָה שְׁוֶה הָאֲמֹרָה בָּהּ. כֹּה מִפִּי עֲצָמוּ שְׁנֵאֲמַר לְהֵלֶן חוּץ לְבֵית דִּין אִם מִפִּי עֲצָמוּ שְׁנֵאֲמַר כָּאֵן חוּץ לְבֵית דִּין. וְרַבָּן

דְּרָשִׁי גִזְרָה שְׁנֵה הָאֻמוּנָה בָּהּ. מִה מִפִּי אֲחֵרִים שֶׁנֶּאֱמַר לְהִלֵּךְ בְּבֵית דִּין אֶף מִפִּי אֲחֵרִים שֶׁנֶּאֱמַר
כָּאן בְּבֵית דִּין.

Halakhah 3: “What is an oath about testimony,” etc. *A person, a person*³¹. Since there it is from his own words, also here from his own words. Since here it is from others’ words, also there it is from others’ words³². Rabbi Meïr explains the equal cut which was said here: Since there it is said about his own words, so also here about his own words. Also the rabbis explain the equal cut which was said here. Since others’ words said there are in court, also others’ words said here are in court³³.

31 A comparison of *Lev.* 5:1 about oaths concerning testimony and 5:21 about the person accused of larceny who swears falsely in purgation by oath; cf. Chapter 3:12, Note 165. The parallel use of identical terms is an *equal cut* which allows transfer of rules from one occurrence to the other.

32 In *v.* 5:1 the potential witness *hears the sound of an imprecation*; others formulate the oath to which he is asked to assent. In 5:21 he himself formulates the oath *to deny a deposit, or a loan, or robbery*. The *equal cut* allows one to transfer one situation to the other; oaths about testimony may be formulated by the potential witness himself; oaths of a person accused of larceny may be formulated by the aggrieved party.

33 This paragraph refers to the disagreement between R. Meïr and the rabbis in Mishnah 1.

The formulation here presupposes that one knows what was explained elsewhere about interpretation of equal cuts [*Yebamot*

11:1 Notes 30,34 (*Sanhedrin* 9:1); Chapter 5:2]. R. Meïr holds that the laws to be transferred are what can be read off the corresponding verses; the rabbis transfer laws only in the context of the verses on both sides.

Verse 5:21 reads, *to deny a deposit . . . and he swears to a lie*; it is understood that this creates guilt whether or not it was before a court. But testimony is before a court; therefore *v.* 5:1 only speaks of guilt incurred in a court trial. R. Meïr holds that an oath formulated by another person following the situation of *v.* 1 transferred to *v.* 21 cannot create liability for a sacrifice outside of court, but an oath pronounced by himself (*v.* 21) always creates such a liability. The rabbis hold that while we accept that the equal cut shows that oaths formulated by himself are covered by *v.* 1, the context of that verse forces the conclusion that one refers to court proceedings only.

39) רבי ירמיה בעי. קרוב מפי עצמו בשבועת העדות מהו שיהא חייב. נישמענה מן הדא. הואיל ולא למדו מפיו משבועת העדות אלא משבועת הפיקדון. מה להלן קרובין חייבין אף פאן כן. אמר רבי יוסי. קרובין שפאן למידין מקרובין שלהלן.

Rebbi Jeremiah asked: Is a relative liable for an oath about testimony formulated by himself? Can we hear it from the following: since they inferred formulation by himself for an oath about testimony only from oaths about deposits, and since there relatives are liable, so they also are here³⁴? Rebbi Yose said, can relatives here be inferred from relatives there³⁵?

34 This question makes sense only according to R. Meir who disregards context. Relatives are barred as witnesses and judges; they are not barred as claimants. If somebody embezzled the property of a relative, that relative can go to court. Therefore, oaths about deposits can be sworn to relatives. Would R. Meir agree that oaths about testimony, even though they

cannot be enforced in court, create liabilities for sacrifices?

35 Even R. Meir will agree that an equal cut allows one to transfer only rules that make sense in the new context. Since oaths about testimony are void among relatives, they may create liabilities for “vain” oaths but no liability for variable sacrifices.

43) רבי יודן קפודקיא בעי. השביע עליו ה' פעמים מפי עצמו בבית דין שמה אינו חייב על כל-אחת ואחת. אמר רבי יוסי. ולא מתניתה היא. אמר רבי שמעון. מה טעם. מפני שאין יכולין לחזור ולהודות: וכאן הואיל ויכולין לחזור ולהודות חייבין בכל-אחת ואחת.

Rebbi Yudan the Cappadocian asked: He made him swear five times by his own formulation before the court: would he not be liable for each instance separately? Rebbi Yose said, is this not the Mishnah: “Rebbi Simeon said, what is the reason? Because they cannot come back and admit³⁰” But here, since they can come back and admit, they are liable for each single instance³⁶.

36 Since it is his own oath, it is not testimony and not under the rule that nobody can testify twice in the same case.

46) רבי ירמיה בעי. השביע עליו חמשה פעמים מפי וְחָזַר וְהִשְׁבִּיעוּ חֲמִשָּׁה פְּעָמִים מִפִּי אֲחֵרִים מִהוּ. מֵאַחֵר דְּרַבִּי מֵאִיר עָבַד מִפִּי כְּבִית דִּין מִהוּ שִׁיקְבָּעִם לְקָרְבָן וּלְחֵיבָם בְּרִאשׁוֹנָה בְּלֹא תְּבִיעָה. יֵבֵא כְּהֵדָא. מִה אֵת בָּא אַחֲרֵינוּ. שְׂבוּעָה שְׂאִין אֲנִי יוֹדְעִין לָךְ עֲדוּת. יְהוּ חֵיבִין. תִּלְמוּד לומר. וְשִׁמְעָה קוֹל אֱלֹהִים. אֵת שְׁשׁוּמֵעַ קוֹל חֵיב. יִצְאוּ אֵילֵי שְׂאִין שׁוּמְעִין

קול. מפיו בקרקעות מהו שְׁיָהָא חַיֵּב. מפיו בקנסות מהו שְׁיָהָא חַיֵּב. מפיו מהו שְׁיָהָא חַיֵּב בקרבן עולה וְיִזְרָד.

Rebbi Jeremiah asked: If he made him swear five times in his own words and let him swear five times by the mouth of others, what³⁷? Since Rebbi Meir considered “in his own words” as if in court, would they determine the sacrifice on the first occasion, even without request? It should come like the following.³⁸ “Why do you go after us? An oath that we do not know any testimony relevant for you. Should they be liable? The verse says, *and he heard the voice of an imprecation*³⁹. Only one who hears an imprecation⁴⁰. This excludes those who did not hear a voice.”

Would he be liable from his own mouth for real estate⁴¹? From his own mouth would he be liable for fines⁴²? From his own mouth would he be liable for a variable value sacrifice⁴³?

37 Again this is a question following R. Meir. It is clear that the demand that they answer to an oath formulated by the person who wants to force testimony must be made in court. Therefore, one has to assume that the first five oaths were made outside of court. Then they are not subject to the rule that there can be only one testimony. The next question is about the status of an oath of denial of knowledge before the other even had asked for their testimony.

38 Cf. Tosephta 2:11 (Babli 31b). The *baraita* is formulated independently from the Babylonian Tosephta.

39 Lev. 5:1.

40 The Tosephta states clearly, “they are not liable unless he requested [the testimony]”.

41 All examples in Lev. 5:21-22 (a deposit, a loan, extortion and robbery, a

find) refer to monetary claims about movables. Since there can be no sacrifice for an oath about deposits relating to real estate, one might argue that there can be no sacrifice for an oath about testimony involving real estate, asserted in Tosephta 4:1.

42 These fines are biblically imposed for misdeeds. Whether there can be an oath about these is in dispute between the majority and R. Simeon, Mishnah 5:6.

43 From the equal cut (Note 32) we know that for a false oath regarding testimony formulated by the potential witness he is liable for a sacrifice. Is that the variable value sacrifice for a false oath regarding testimony or a fixed value sacrifice required for a false testimony about deposits?

(35c line 54) רבי בא רב יהודה בשם רב. בשוגג בקרבו במזיד בקרבו. אבל אמר. סבור הייתי שאין שבועה זו. מותר. תני חזקיה. כל מקום שנאמר בתורה חט סתם את תופש הזדון בשגגה עד שיודיעך הכתוב שהיא שגגה.

Rebbi Abba, Rav Jehudah in the name of Rav: in error, a sacrifice; intentional, a sacrifice. But if he said, I was of the opinion that this oath does not exist, he is free⁴⁴. Hizqiah stated: At any place where the Torah mentions *sin* without attribute you include intentional equally with unintentional unless Scripture inform you that it is unintentional⁴⁵.

44 This now refers to Mishnah 2. The only case in which one is not liable is if he was of the opinion that swearing to evade appearing as a witness was not forbidden. Then his action is without criminal intent.

45 In all cases of purification sacrifices mentioned in *Lev.* 4 it is emphasized that

these apply only to atone for *חטא בשגגה* "sins in error." In most cases of reparation sacrifices described in Chapter 5, there is no mention of error. It follows that the word *חטא* alone covers both intentional and unintentional sins.

(fol. 35a) **משנה ד:** כפרו שניהם באחת שניהן חייבין. בזה אחר זה הראשון חייב והשני פטור. כפר אחד והודה אחד חבפר חייב. היו שתי כתי עדים כפרה הראשונה ואחר כך כפרה השנייה שתיהן חייבות מפני שהעדות יכולה להתקיים בשתייהן:

Mishnah 4: If both of them disavowed simultaneously, both of them are liable; one after the other, the first is liable but the second is not liable⁴⁶. If one reneged but one confessed, the one who disavowed is liable⁴⁷. If there were two groups of witnesses, if the first group disavowed and after this the second, both are liable since testimony could be upheld by either one of them⁴⁸.

46 If there are only two witnesses and one refuses to testify even though he had assented to an oath that he would testify, the second witness becomes a single witness whose testimony cannot compel the defendant in a civil suit to pay money. All the testimony of a single witness in a civil

suit can do is force the defendant to swear that he does not owe money. Since the refusal of the second witness to testify does not inflict a monetary loss on the claimant, he is not liable for a sacrifice unless he disavowed simultaneously with the first.

47 The action of the first witness deprived

the claimant also of the testimony of the second; this triggers liability.

48 Only two witnesses are needed for

conviction; the two groups of witnesses are independent of one another and the order of their appearance is irrelevant.

(35c line 57) **הלכה ד'**: כָּפְרוּ שְׁנֵיהֶן כְּאַחַת כּוּל'. הָרִי אֶנוּ הוֹלְכִין לְכַפּוֹר בְּבֵית דִּין. הִדָּא הִיא דְתַנִּי רַבִּי חִיָּיָה. קָרְבָּנוּ לִי עַל-נִזְרוֹ. שְׁיָקֻדִּים נִזְרוֹ לְקָרְבָּנוּ וְלֹא שְׁיָקֻדִּים קָרְבָּנוּ לְנִזְרוֹ. נִשְׁבַּעוּ חוּץ לְבֵית דִּין הָפְרִישׁוּ קָרְבָּנוּ וְאָמְרוּ. הָרִי אֶנוּ הוֹלְכִין לְכַפּוֹר בְּבֵית דִּין. מָה אֵת עֲבִיד לֵיהּ. כָּמִי שְׁקָדָם חֲטָאוּ לְקָרְבָּנוּ אוֹ מֵאַחַר שְׁאִין חִיָּבִין אֲלָא בְּבֵית דִּין כָּמִי שְׁקָדָם קָרְבָּנָם לְחֲטָאִים.

Halakhah 4: “If both of them disavowed simultaneously,” etc. If they dedicated a sacrifice and said, we are going to disavow in court. This is what Rabbi Hīyya stated, *his sacrifice for the Eternal for his vow of nazir*; that his vow of *nazir* precede his sacrifice, not that his sacrifice precede his vow of *nazir*⁴⁹. If they were sworn to out of court, dedicated a sacrifice and said, we are going to renege in court, how do you treat this? As if his sin did precede his sacrifice or since they are liable only in court as if their sacrifice did precede their sin⁵⁰?

49 *Num.* 6:21. An obligatory sacrifice cannot be brought voluntarily. Therefore it cannot be dedicated before the obligation exists. The dedication cannot be undone (*Lev.* 27:9). Therefore, the original sacrifice has to be rededicated as voluntary offering and a new sacrifice be given as obligatory

sacrifice. *Nazir* 2:9 (Note 118), 3:2 (Note 32), *Tosephta Nazir* 2:6, *Num. rabba* 10(42).

50 The question is not answered. Possibly it is a sequel to R. Jeremiah's questions in the preceding Halakhah; cf. *Terumot* 10:11 Note 110.

(35c line 62) **כִּינִי מִתְנִיתָה**. כָּפַר אֶחָד וְהוֹדָה אֶחָד הַכּוֹפֵר חַיִּיב. אָמַר רַבִּי יוֹסִי. מִתְנִיתָה וְהוּא שְׁיִחְזוֹר בּוֹ שִׁנִּי בְּתוֹךְ כָּדִי דִּבּוּר הָרִאשׁוֹן. שְׂאִים נִחְזוֹר בּוֹ רִאשׁוֹן מִקְבָּלִין אוֹתוֹ. נַעֲשֶׂה שִׁנִּי רִאשׁוֹן.

So is the Mishnah: “If one disavowed but one confessed, the one who disavowed is liable.”⁵¹ Rabbi Yose said, our Mishnah if the second changed his opinion immediately after the speaking of the first. Because if the first changed his opinion, one would accept him; then the second would become the first⁵².

51 The question is why does the Mishnah speak of “one” and not “first” or “second”? The sentence must refer to the first clause in the Mishnah, that both disavowed together but then one of them changed his mind.

52 “Immediately” is defined either as the time needed to say “peace upon you” or

“peace upon you, my master” [*Berakhot* 2:1 (Notes 50-52), *Mo'ed qatan* 3:7 (83c l. 37), *Nazir* 4:1 Note 12]. Anything said immediately following testimony is part of the testimony. The rule that a witness cannot change his testimony does not apply to corrections made immediately. Babli 32a.

האחרון (35c line 65) הוי עשירה. אית תנאי תני. הראשון חייב וכולן פטורין. אית תנאי תני. האחרון פטור וכולן חייבין. מאן דמר. ראשון חייב וכולן פטורין. קמאן דמר. תתקיים עדות בשאר. מאן דמר. אחרון פטור וכולן חייבין. קמאן דמר. עדות שבטלה מקצתה בטלה כולה. אמר רבי יוסי. מתניתה אמרה כן. הוי שתי כתי עדים. לא מר אלא שתיים. הא אחת עדות שבטלה מקצתה בטלה כולה.

If they were ten⁵³. There are Tanna'im who state, the first one is liable and all the rest are not liable. There are Tanna'im who state, the last one is not liable and all the rest are liable. The one who said, the first one is liable and all the rest are not liable, holds with him who said, the testimony can be verified by the remaining [witnesses]. The one who said, the last one is not liable and all the rest are liable, holds with him who said, testimony that was partially invalidated is totally invalidated⁵⁴. Rabbi Yose said, the Mishnah says so: “if there were two groups of witnesses.” He only said “two”. Therefore if there had been one⁵⁵, testimony that was partially invalidated it is totally invalidated.

53 Ten witnesses asked as a group to testify.

54 Both opinions are expressed in Mishnah *Makkot* 1:12-13 (in most Mishnah editions, Mishnah 1:8). It is obvious that the attributions have to be switched. If in civil suits any testimony supported by 2 witnesses is acceptable then only the last, single, remaining witness is not liable (Note

46). But if the testimony of a group is only acceptable if all witnesses are qualified and testify in parallel then the first disqualification disqualifies the group and only the first witness is liable.

55 The formulation of the Mishnah is “two groups of two witnesses” and not “four witnesses”.

(fol. 35a) **משנה ה:** מִשְׁבִּיעַ אֶנִּי עֲלֵיכֶם אִם לֹא תָבוֹאוּ וְתַעֲדוּנִי שְׁמִשׁ לִי בֵּיד פְּלוֹנִי פִקְדוֹן וְתִשׁוּמָת יָד וְגִזְל וְאֶבְדָּה. שְׁבוּעָה שָׂאִין אֲנִי יוֹדְעִין לָךְ עֲדוּת אִין חֵיבִין אֶלָּא אַחַת. שְׁבוּעָה שָׂאִין אֲנִי יוֹדְעִין שְׁמִשׁ לָךְ בֵּיד פְּלוֹנִי פִקְדוֹן וְתִשׁוּמָת יָד וְגִזְל וְאֶבְדָּה חֵיבִין עַל כָּל אַחַת וְאַחַת.

Mishnah 5: “I am putting an oath on you that you should come and testify for me that I have a claim against X for a deposit, and a loan, and robbery, and a lost object.” “An oath that we do not know testimony for you,” they are liable only once. “An oath that we do not know that you have a claim against X for a deposit, and a common venture, and robbery, and a lost object,” they are liable for each single one⁵⁶.

56 Since each single item mentioned oath counts as a separate oath for each would need separate testimony, the detailed detail. The list is taken from *Lev. 5:21-22*.

(35c line 71) **הלכה ה:** מִשְׁבִּיעַ אֶנִּי עֲלֵיכֶם אִם לֹא תָבוֹאוּ וְתַעֲדוּנִי כוּל'. וּמִיָּנִין שְׂאִינוּ מִדְּבַר אֶלָּא בְּתַבִּיעַת מָמוֹן. אָמַר רַבִּי לִיעֶזֶר. נֶאֱמַר כָּאִן אוֹיִים וְנֶאֱמַר אוֹיִים בְּפִקְדוֹן. מָה אוֹיִים הָאֲמוּרִים בְּפִקְדוֹן אֵינוּ מִדְּבַר אֶלָּא בְּתַבִּיעַת מָמוֹן. אִף אוֹיִים הָאֲמוּרִים כָּאִן אֵינוּ מִדְּבַר אֶלָּא בְּתַבִּיעַת מָמוֹן. אוֹיִי רוֹצֵחַ יוֹכִיחוּ שְׂאִין מִדְּבָרִין בְּתַבִּיעַת מָמוֹן. דְּנִין אוֹיִין שְׁלֹשׁ עֲמָהוּן שְׁבוּעָה מֵאוֹיִין שְׁלֹשׁ עֲמָהוּן שְׁבוּעָה. וְאֵל יוֹכִיחוּ אוֹיִי רוֹצֵחַ שְׂאִין עֲמָהוּן שְׁבוּעָה. אוֹיִי סוֹטָה יוֹכִיחוּ. שְׁלֹשׁ עֲמָהוּן שְׁבוּעָה וְאֵינוּ מִדְּבַר בְּתַבִּיעַת מָמוֹן. דְּנִין אוֹיִין שְׁלֹשׁ עֲמָהוּן שְׁבוּעָה וְאִין עֲמָהוּן כֹּהֵן מֵאוֹיִין כְּמוֹת אֵילֹף. וְאֵל יוֹכִיחוּ אוֹיִי סוֹטָה שְׁלֹשׁ עֲמָהוּן אִף כֹּהֵן. אוֹיִי בִיטוּי שְׁפָתִים יוֹכִיחוּ שְׂאִין מִדְּבָרִין בְּתַבִּיעַת מָמוֹן. דְּנִין אוֹיִין שְׁעֵשָׁה בְּהוּ וְדוֹן כְּשִׁנְגָה מֵאוֹיִין כְּמוֹתוֹ. וְאֵל יוֹכִיחוּ אוֹיִי בִיטוּי שְׁפָתִים שְׁלֹא עֲשָׂה בְּהוּ וְדוֹן כְּשִׁנְגָה. רַבִּי עֲקִיבָה אוֹמַר. יֵשׁ מֵאֶלֶּה חֵיב וְיֵשׁ מֵאֶלֶּה פָטוּר. דְּבַר מָמוֹן חֵיב וְשְׂאִינוּ מָמוֹן פָטוּר. רַבִּי שְׁמַעוֹן אוֹמַר. חֵיב כָּאִן וְחֵיב בְּפִקְדוֹן. מָה פִקְדוֹן אֵינוּ מִדְּבַר אֶלָּא בְּתַבִּיעַת מָמוֹן אִף כָּאִן אֵינוּ מִדְּבַר אֶלָּא בְּתַבִּיעַת מָמוֹן.

Halakhah 5: “I am putting an oath on you that you should come and testify for me,” etc. ⁵⁷From where that this only refers to monetary claims? Rabbi Eliezer said, it uses here “or” and it uses “or” with a deposit⁵⁸. Since the “or” used with a deposit only refers to monetary claims, also the “or” used here only refers to monetary claims. The “or” of the homicide will disprove⁵⁹ since they do not refer to monetary claims. One argues about “or” accompanied by an oath from “or” accompanied by an oath; the “or” of the homicide cannot disprove since they are not accompanied by an oath. The “or” of the deviant woman will disprove⁶⁰ since they are accompanied by an

oath and do not refer to monetary claims. One argues about “or” accompanied by an oath not accompanied by a Cohen from similar “or”; the “or” of the deviant woman cannot disprove since they are accompanied by a Cohen. The “or” of blurring lips will disprove⁶¹ since they do not refer to monetary claims. One argues about “or” where He made intent equal to error⁶² from similar “or”; the “or” of blurring lips cannot disprove since there He did not make intent equal to error.

Rebbi Aqiba says, for some of these one is liable, for some one is not liable. For monetary claims one is liable; for non-monetary claims one is not liable⁶³.

Rebbi Simeon says, He made liable here and he made liable for a deposit. Since deposits only refer to monetary claims, so here also it only refers to monetary claims^{41,64}.

57 Babli 33b, *Sifra Hova (Wayyiqra 2) Parashah 8(8-10)*.

58 In *Lev. 5:1*, “or” is used twice, in vv. 21-22 four times.

59 *Num. 35:22-23*, in the description of accidental homicide, “or” is used twice.

60 *Num. 5:14*, the presumption of innocence of the deviant woman is introduced by “or”. The imprecation is not the woman’s but the Cohen’s, v. 19.

61 *Lev. 5:4*, “or” is used twice.

62 As explained in the preceding Chapters, blurted oaths create a liability for a sacrifice only if they were broken in a

period of forgetting, i. e., unintentionally. There is no mention of unintentional sin for liability in cases of oath about testimony or monetary damages.

63 He refers to *Lev. 5:5*: *It shall be if he causes damage by some of these*; some will require a sacrifice but not others. The decision what to include is left to the religious authorities guided by the hermeneutical principle of “equal cut”. Babli 33b, *Sifra Hova (Wayyiqra 2) Pereq 17(1)*.

64 Babli 33b, *Sifra Hova (Wayyiqra 2) Pereq 17(2)*.

משנה ו: מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם אִם לֹא תָבוֹאוּ וְתַעֲיִדוּנִי שְׁמִשׁ לִי בְּיָד פְּלוֹנִי פְקֻדוֹן חֲמִין וְשְׁעוֹרִין וְכוֹסְמִין. שְׁבוּעָה שָׂאִין אֲנִי יוֹדְעִין לָךְ עֵדוּת, אִין חֵיבִין אֶלָּא אֶחָת. שְׁבוּעָה שָׂאִין אֲנִי יוֹדְעִין לָךְ עֵדוּת שְׁמִשׁ לָךְ בְּיָד פְּלוֹנִי חֲמִין וְשְׁעוֹרִין וְכוֹסְמִין, חֵיבִין עַל כָּל אֶחָת וְאַחַת:

Mishnah 6: “I am putting an oath on you that you should come and testify for me that I have a claim against X for a deposit of wheat, and barley,

and spelt.” “An oath that we do not know testimony for you;” they are liable only once. “An oath that we do not know that you have a claim against X for a deposit of wheat, and barley, and spelt;” they are liable for each single one^{66,65}.

65 Since a claim to money's worth is equal to a claim to money.

(35d line) **הלכה ו:** משביע אני עליכם כול. תני. רבי יוסי הגלילי אומר. מה תלמוד לומר והוא עד או ראיה או נדע וגו'. לא אמרתי אלא בעדות שאיפשר להתקיים בדיעה ושלם בראייה. בראייה ושלם בדיעה. בדיעה שלא בראייה בממון היד עבדה. תן לי מאתים זו שיש לי בגד. אין לך בגד. ולא הודיתה לי בפני פלוני ופלוני. לאמרו ואני נותן. זו היא ידיעה שאין עמה ראיה. אתון ואמרון. אין דאודי ליה ואין דגזליה לית אגן דעין. ואין דאזנניה לי נן דעין. בראייה בלא בדיעה בממון היד עבדה. תן לי מאתים זו שיש לי בגד. אין לך בגד. ולא מניתי לך במושב פלוני ופלוני. לאמרו ואני נותן. זו היא ראיה שאין עמה ידיעה. אתון ואמרין. אין מנה ואין דגזליה לי נן דעין. ואין מישאל ליה לי נן דעין. תן לי קנס בתי שהוא בגד. והוא אומר. לא נתחייבתי קנס ממי. והעדים מעידין שנתחייב קנס. ולי נן דעין אין קנס ברתיה אין קנס איתא אחר. אנסתה ופיתית את בתי. והוא אומר. לא אנסתי ופיתיתי אשה ממי. ועדים מעידין שאנס אשה. ולי נן דעין אין ברתיה הוה אין איתא חור. הרגת שורי קיצצתה נטיעותי. והוא אומר. איני יודע. חייב. אתה אמרת לי להרוג ולקוץ. הולכין אחר רוב נטיעות. מה הוא. הולכין אחר רוב נטיעות. אמר רבי חניי. אין הוה תוריה נגחן הוא מר ליה. אם היו נטיעותי בטילות הוא מר ליה. אמר רבי יודן. אין אומר בממון. מאחר דו יכול מימר ליה. אתה אמרת לי להרוג ולקוץ. אף על גו דו אמר ליה. לא הרגתי ולא קצצתי. פטור.

Halakhah 6: “I am putting an oath on you,” etc. ⁶⁶It was stated: Rabbi Yose the Galilean says, why does the verse say, *and he is a witness, or saw, or knew*⁶⁷, etc.? I said this only for testimony which may be accepted about knowing without seeing, or seeing without knowing.

⁶⁸How is knowing without seeing in monetary claims? “Give me my 200 zuz which you are holding.” “I do not have anything of yours.” “But did you not confess before X and Y?” “They should testify and I shall pay.” This refers to knowing without seeing. They came and said, whether he confessed to him or whether he robbed him, we do not know. Whether he gave him a loan we do not know⁶⁹.

How is seeing without knowing in monetary claims? “Give me my 200 *zuz* which you are holding.” “I do not have anything of yours.” “But did I not count them for you in a meeting with X and Y?” “They should testify and I shall pay.” This refers to seeing without knowing. They came and said, whether he counted for him or whether he robbed him, we do not know. Whether he took a loan from him, we do not know.

“Give me the fine for my daughter which you owe me⁷⁰.” But he says, “I never in my life was found liable for a fine.” Witnesses testify that he was found liable for a fine⁷¹, but we do not know whether the fine was for his daughter or the fine for another woman.

“You raped or you seduced my daughter.” But he says, “I never in my life did rape or seduce a woman.” Witnesses testify that he raped a woman⁷¹, but we do not know whether it was his daughter or another woman.

“You killed my ox and cut down my orchard.” But he says, “I do not know.” He is liable⁷². “You told me to kill and cut down,” one follows the majority of orchards. What means, one follows the majority of orchards? Rabbi Haggai said, if his ox was goring, he would have told him; if the orchard was barren, he would have told him⁷³. Rabbi Yudan said, in matters of monetary claims, since he may tell him, you told me to kill and cut down, even if he told him “I did not kill, I did not cut down,” he is not liable⁷⁴.

66 Babli 33b, *Sifra Hova (Wayyiqra 2) Perek 17*(1).

67 Lev. 5:1.

68 Babli 33b, Tosephta 2:5.

69 The witnesses came and testified that they saw a transaction but they have no knowledge about the kind of transaction it was. Had the debtor not said that he would pay if the witnesses came, that testimony would be worthless, but now he has to pay. The Babli assumes that the testimony is without a disclaimer.

70 The biblical fines for seducing a virgin (Ex. 22:16) or raping her (Deut. 22:29).

71 Since he is found in court to be a liar he is barred from swearing to clear himself from the claim. Therefore even a weak testimony will buttress the claim against him.

72 In the Babli, e. g., *Ketubot* 12b, בְּרִי וְשֵׁמָּה בְּרִי עֲדִין “between certain and perhaps, certain is preferred.” If a claim is asserted as certain but the defense is that possibly it is false, there is no defense.

73 Babli *Bava qamma* 91b.

74 Since the burden of proof is on the claimant.

משנה ז: מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם אִם לֹא תָבוֹאוּ וּתְעִידוּנִי שְׁמִשׁ לִי בֵּיד פְּלוֹנִי נֶזֶק וְחֹצֵי נֶזֶק תִּשְׁלֹמֵי כָּפֶל תִּשְׁלֹמֵי אַרְבָּעָה וְחֲמִשָּׁה שְׁאֲנָם אִישׁ פְּלוֹנִי וּפְתָה אֶת בֵּתִי וְשִׁחַבְנִי בְּנִי וְשִׁחַבְלִי בִּי חֲבֵרִי וְשִׁחַדְלִיק אֶת גְּדִישִׁי בַּיּוֹם הַכַּפּוּרִים הֲרִי אֵילֹו חֵיבִין:

Mishnah 7: “I am putting an oath on you that you should come and testify for me that X owes me full damages or half damages⁷⁵, double restitution or quadruple and quintuple restitution⁷⁶, that X raped or seduced my daughter⁷⁰, or that my son hit me⁷⁷, or that my neighbor injured me⁷⁸, or that he set fire to my grain stack on the Day of Atonement⁷⁹,” these are liable.

משנה ח: מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם אִם לֹא תָבוֹאוּ וּתְעִידוּנִי שְׁאֲנִי כֹהֵן שְׁאֲנִי לֹו שְׁאֲנִי בֶן גֵּרֶשָׁה שְׁאֲנִי בֶן חֲלוּצָה שְׁאִישׁ פְּלוֹנִי כֹהֵן שְׁאִישׁ פְּלוֹנִי לֹו שְׁאִינוּ בֶן גֵּרֶשָׁה שְׁאִינוּ בֶן חֲלוּצָה שְׁאֲנָם אִישׁ פְּלוֹנִי וּפְתָה אֶת בֵּתִי וְשִׁחַבְלִי בִּי בְּנִי וְשִׁחַבְלִי בִּי חֲבֵרִי וְשִׁחַדְלִיק גְּדִישִׁי בַּשַּׁבָּת הֲרִי אֵילֹו פְטוּרִין:

Mishnah 8: “I am putting an oath on you that you should come and testify for me that I am a Cohen⁸⁰, that I am a Levite⁸¹, that I am not the son of a divorcee, that I am not the son of a woman having received *ḥalīṣah*⁸², that X raped or seduced his daughter⁸³, or that my son injured me⁷⁷, or that my neighbor injured me or set fire to my grain stack on the Sabbath⁸⁴,” these are not liable⁸⁵.

75 For damage caused by another’s animals to the claimant’s animals, *Ex.* 21:35-36.

76 The punishment of the thief, *Ex.* 22:3; 21:37.

77 If the son hit his parents without causing a wound, they can sue him for damages; it is a monetary claim. But if he injured them it is a capital crime (*Ex.* 21:15).

78 He has to pay, *Ex.* 21:18; Mishnah *Bava qamma* 8:1.

79 Even though it is a deadly sin punishable by extirpation, the desecration is not a case for the earthly court and has no influence on a possible damage suit. Cf. *Gitṭin* 5:4 Notes 138-139.

80 Even though the claimant may bring

the suit in order to be recognized as a Cohen because he wants to receive a priest’s prebends, the suit is classified as one for status, not for money.

81 The same holds for a Levite who may receive tithe.

82 The last two cases are suits to be declared a qualified priest, not directly for monetary claims.

83 Capital crimes; the deflowered daughter cannot sue for damages since a possible death sentence precludes damage suits (*Terumot* 7:1, Notes 19-70).

84 A capital crime.

85 All these suits are not for monetary claims; even though there may be a duty for witnesses to testify, no sacrifice is due for a

refusal to obey a summons under oath in a claims.
case which never can result in monetary

(35d line 31) **הלכה ז:** מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם כּוֹל. **הלכה ח:** מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם כּוֹל. נִפְשׁ כִּי־תִחַטָּא נִפְשׁ כִּי תִחַטָּא לְגִזְרָה שְׁוָה. מִה נִפְשׁ כִּי תִחַטָּא שְׁנֵאמַר לְהֵלֵךְ תְּבִיעַת קָמוֹן וְיֵשׁ לוֹ. אֶף נִפְשׁ כִּי־תִחַטָּא שְׁנֵאמַר לְהֵלֵךְ כָּאֵן תְּבִיעַת קָמוֹן וְיֵשׁ לוֹ.

Halakhah 7: “I am putting an oath on you,” etc. **Halakhah 8:** “I am putting an oath on you,” etc. ⁸⁶*A person who would sin, a person who would sin as an equal cut*³¹. Since *a person who would sin* which was said further on refers to an active monetary claim⁸⁷, also *a person who would sin* must refer to an active monetary claim.

86 Babli 35a, *Sifra Hova (Wayyiqra 2)* in a suit under the law of obligations. This excludes testimony for the defendant or for

87 There is liability for a sacrifice only if the claimant in a suit for breach of promise.

(fol. 35b) **משנה ט:** מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם אִם לֹא תָבוֹאוּ וְתַעֲבִידוּנִי שְׁאֵמַר אִישׁ פְּלוֹנִי לִיתֵן לִי מֵאֲתָם וְזוֹ וְלֹא נָתַן לִי הָרִי אֵילֹו פְטוּרִים שְׁאִין חֵיבִין אֲלֵא עַל שְׁבוּעַת קָמוֹן כִּפְקָדוֹן:

Mishnah 9: “I am putting an oath on you that you should come and testify for me that Mr. X promised to give me 200 *zuz*⁸⁸ but did not give them to me.” These are not liable⁸⁷ since one is liable only for an (oath about)⁸⁹ money similar to a deposit.

88 The Babylonian half-sheqel, identified with the Roman denar. Mishnah sources on has to read תְּבִיעַת “claim of.”

89 This is a scribal error. With all other

(35d line 35) **הלכה ט:** מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם וְכוּל'. לִית הָדָא פְּלִגְא עַל רִישׁ לְקִישׁ דְּאֶמַר. אִין קָמוֹן אֲצֵל מִכּוֹת. פִּתְרָה לָהּ כְּרַבִּי מֵאִיר דְּאֶמַר. לֹוּקָה וּמִשְׁלָם. מְכַל־מְקוֹם לֹא הִפְסִידוּ קָמוֹן. כִּיֵּן דְּלֹא הָוָה בְּעֵי מִיתָן לִיה וְלֹא יָהֵב לִיה כְּמִי שֶׁהִפְסִידוּ קָמוֹן.

Halakhah 9: “I am putting an oath on you,” etc. Does this not disagree with Rabbi Simeon ben Laqish who said, there is no money when there is

flogging⁹⁰. He explains it following Rabbi Meïr who said, he is flogged and he pays⁹¹.

In any case he did not make him lose money. Is it not that since he wanted to give him but did not give to him; it is as if he made him lose money⁹².

90 It seems that this paragraph refers to Mishnah 7 (and in the Leiden ms. Halakhah 9 precedes Halakhot 7 and 8) declaring that a claim about damage on the Day of Atonement is a monetary claim which according to *Terumot* 7:1 Note 51 is true only for R. Johanan but not for R. Simeon ben Laqish. The latter holds that since a violation of the Day of Atonement in front of witnesses after due warning will expose the perpetrator to flogging, there can be no

monetary claim even if there are no witnesses and the case of desecration is not one for the courts.

91 The same explanation is given in *Terumot* 7:1 Note 7. Cf. Babli *Ketubot* 33b.

92 This now refers to Mishnah 9. The formulation of the Mishnah is necessary since a breach of promise could be considered inflicting monetary loss. It is necessary to state that this loss does not qualify under the rules of equal cut.

משנה י: מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם בְּשִׁתְּדָעוֹן לִי עֲדוּת שֶׁתְּבוֹאוּ וְתַעֲיִדוּנִי הָרִי אֵילֹ
פְּטוּרִים מִפְּנֵי שֶׁקְדָּמָה שְׁבוּעָה לְעֲדוּת:

Mishnah 10: “I am putting an oath on you, that you shall come and testify for me when you know testimony for me.” These are not liable⁹³ since the oath preceded the testimony⁹⁴.

משנה יא: עֹמֵד בְּבֵית הַכְּנֶסֶת וְאָמַר מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם שֶׁאַם אַתֶּם יוֹדְעִים לִי עֲדוּת
שֶׁתְּבוֹאוּ וְתַעֲיִדוּנִי הָרִי אֵילֹ פְּטוּרִין:

Mishnah 11: If he stood in the synagogue and said, “I am putting an oath on you, that you shall come and testify for me if you know testimony for me.” These are not liable⁹⁵.

93 If they disobey the imprecation. *Lev.* 5:1 is quite explicit that it applies only to persons who already know the testimony.

preceded the possibility of testimony.

94 This sentence is elliptic. The oath

95 Since the imprecation is not directed at any specific persons.

(35d line 38) **הלכה י:** מְשַׁבֵּיעַ אֶנִּי עֲלֵיכֶם כּוּל'. רַבִּי יוֹסִי רַבִּי יַעֲקֹב בַּר זְבִדִּי רַבִּי אֲבָהוּ בְּשֵׁם רַבִּי יוֹחָנָן. אָמַר לִיתֵּן מִתְּנָה לְחֵבִירוֹ וּבִיקֵשׁ לְחֻזֹּר בּוֹ חוּזֵר. רַבִּי יַעֲקֹב בַּר זְבִדִּי בָּעָא קוּמִי רַבִּי אֲבָהוּ. וְאָהֳרָן הֵן לֹא בְּצִדָּק הוּא. וְהֵין צִדָּק אָמַר. בְּשַׁעָה שְׁאֲמַר הֵין שְׁלָצָדָק הָהִיא.

Halakhah 10: “I am putting an oath on you,” etc.⁹⁶ Rabbi Yose, Rabbi Jacob bar Zavdi, Rabbi Abbahu in the name of Rabbi Johanan: If somebody wanted to change his mind after he had promised a gift to another person, he may change his mind. Rabbi Jacob bar Zavdi asked before Rabbi Abbahu: Did He not say “a true yes”⁹⁷? At the moment when he said it, it was a true yes.

96 *Ševi'it* 10:9 Notes 133-134; *Giṭṭin* 6:1 Note 39, *Bava meši'a* 4:2 Note 49; Babli *Bava meši'a* 49a, *Bekhorot* 13b; *Sifra Qedošim Pereq* 8(7).

97 *Lev.* 19:36. The pun identifies the measure הֵין with the Aramaic equivalent הֵין

of the Hebrew כֵּן “yes”. It shows that י was pronounced like יִ (Itacistic η = ι). The verse is read as exhortation to be honest in business dealings.

(35d line 42) לְמָה. מְשׁוּם שְׂאֵינוּ יוֹדְעַ בְּהֵן אוֹ מְשׁוּם שְׂאֵין מִתְּבָנִין לָהֶן. מַה נִּפְקַ מִבְּיַנְהוּן. מְשַׁכְּן שְׁנַיִם שְׁנַיִם. אֵין תִּימַר מְשׁוּם שְׂאֵינוּ יוֹדְעַ בְּהֵן. יוֹדְעַ בְּהֵן. הֵיאִי טַעְמָא דְלֹא מְשׁוּם שְׂאֵין מִתְּבָנִין לָהֶן.

Why⁹⁸? Because he does not know them, or because he does not intend to ask them⁹⁹? What is the difference between them? If he obligated them in pairs of two. If you would say because he does not know them, he knows them. Therefore the reason only can be that he does not intend to ask them¹⁰⁰.

98 This refers to Mishnah 11, that a wholesale imprecation is invalid.

99 Is it because the person demanding testimony does not know the identity of the person whom he is asking to testify or does he not know whom to ask to testify because he does not know who would be able to testify.

100 In the Sephardic tradition of the Mishnah, independent and in the Babli, including Maimonides's autograph, this statement is part of the Mishnah. In the

Ashkenazic tradition of the Babli, as exemplified by the Munich ms., the Mishnah is identical with the version given in the Yerushalmi. In *Sifra Hova (Wayyiqra 2) Parashah* 8(6) the language is that of the Sephardic Mishnah, based on the expression *and he is a witness* of *Lev.* 5:1. The Babli (35a) infers from this verse that the demand for testimony must be personal; it is not enough that the claimant know the identity of the witness, the request must be delivered individually. If the claimant sees a group of

people which includes the two whom he wants as his witnesses, he may not address the group collectively; he must summon them personally.

(fol. 35b) **משנה יב:** אָמַר לְשָׁנִים מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם אִישׁ פְּלוֹנִי וּפְלוֹנִי שְׂאֵם אַתֶּם יוֹדְעִין לִי עֲדוּת שֶׁתְּבוֹאוּ וּתְעִידוּנִי וְהֵם שִׁוְדָעִין לוֹ עֲדוּת עַד מִפִּי עַד אוֹ שֶׁהָיָה אֶחָד מֵהֶן קָרוֹב אוֹ פְּסוּל הָרִי אֵילוּ פְּטוּרִין:

Mishnah 12: If he said to two persons, I am putting an oath on you, X and Y, that you shall come and testify for me if you know testimony for me, but they knew from another witness¹⁰¹, or one of them was a relative or disqualified. These are not liable.

101 This is hearsay evidence inadmissible in court. If one of a group of witnesses is disqualified, the other one at most could force him to pay money. Therefore the oath is invalid also for the party which would be qualified.

(35d line 45) **הלכה יב:** אָמַר לְשָׁנִים מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם כּוֹל. רַבִּי מָנָא שָׁמַע מִדְּבַתְרִיָּה אוֹ שֶׁהָיָה אֶחָד מֵהֶן קָרוֹב אוֹ פְּסוּל. הָא לֹא הָיָה אֶחָד מֵהֶן קָרוֹב אוֹ פְּסוּל חֵיבִין. וְיִוָּדַע הוּא בְּהוֹן. הָיוּ לִית טַעֲמָא דְלֹא מְשוּם שְׂאֵין מִתְבָּרִין לָהּ. רַבִּי יוֹסִי שָׁמַע לָהּ מִקְדָּמִיתָא. מִפְּנֵי שֶׁקְדָּמָה שְׁבוּעָה לְעֲדוּת: הָא לֹא קְדָמָה שְׁבוּעָה לְעֲדוּת חֵיבִין. וְיִוָּדַע הוּא בְּהוֹן. הָיוּ לִית טַעֲמָא דְלֹא מְשוּם שְׂאֵין מִתְבָּרִין לָהּ.

Halakhah 12: “If he said to two persons, I am putting an oath on you,” etc. Rabbi Mana understood it from the following, “or one of them was a relative or disqualified.” Therefore, unless one of them was a relative or disqualified, they are liable. And he knows who they are. Therefore the reason can only be that he does not intend them.

Rebbi Yose understood it from the preceding, “since the oath preceded the testimony.” Therefore, if the oath did not precede the testimony, they are liable. And he knows who they are. Therefore the reason can only be that he does not intend them¹⁰².

102 This again refers to Mishnah 11, it is a continuation of the preceding Halakhah. All the Mishnaïot quoted presuppose that the claimant knows exactly whom he wants as

witness; nevertheless his imprecation is ineffective even if he knew exactly whom he intended. Therefore it may be assumed he intended that also in the case of Mishnah 11 it would

משנה יג: שילח ביד עבדו או שאמר להן הנתבע משביע אני עליכם שאם אתם יודעין לו עדות שתבואו ותעידוהו הרי אילו פטורין עד שישמענו מפי התובע:

Mishnah 13: If he sent through his slave¹⁰³ or the defendant said to them, “I am putting an oath on you that you shall come and testify for him,” they are not liable unless they hear from the mouth of the claimant¹⁰⁴.

103 To ask the witnesses to testify. Even though the slave is his personal property and acts as his messenger he is disqualified since he is not the claimant and has no *persona* in law.

104 To create liability, the oath must be delivered directly by the claimant asking for the testimony. Cf. Note 87. *Sifra Hova (Wayyiqra 2) Parashah 8*(4).

הלכה יג: שילח ביד עבדו כול. אמר רבי לעזר. מה תלמוד לומר אם-לא יגיד ונשא עונו: לא. מפי התובע. מתניתין צריכה למה דאמר רבי לעזר ומה דמר רבי לעזר צריכה למתניתין. אילו תנינו ולא תנא רבי לעזר הוין אקמין. ישמענו מפי התובע ולא נשבעו לנתבע חייבין. הוי צורכה למה דאמר רבי לעזר. אילו תנא רבי לעזר ולא תנינו הוין מרין. ישמענו מפי הנתבע ולא נשבעו לתובע חייבין. הוי צורכה למתניתין וצריכה למה דמר רבי לעזר עד שישמענו מפי התובע ונשבעו לתובע.

Halakhah 13: “If he sent through his slave,” etc. Rabbi Eleazar said, why does the verse say, *if he does not tell, he has to carry his iniquity?* Not¹⁰⁵, from the mouth of the claimant. Our Mishnah needs what Rabbi Eleazar said, and what Rabbi Eleazar said needs our Mishnah. If we had stated but Rabbi Eleazar had not stated, we would have said that they are liable if they had heard from the claimant but had sworn to the defendant. Therefore what Rabbi Eleazar said is necessary. If Rabbi Eleazar had stated but we had not stated, we would have instructed that they are liable if they heard it from the defendant but had sworn to the claimant. Therefore one needs our Mishnah and needs what Rabbi Eleazar said, only if they heard from the claimant and swore to the claimant.

105 This is a misquote which makes the text unintelligible. The masoretic text of *Lev. 5:8*1* writes the negation as לא which is read both as לו and as לא. In the first version, אם לו נגיד, the liability may only be triggered *if he told him*, if the claimant

personally challenged the witness and if the witness personally accepted the challenge (Babli 35a). In the second version, אם לא נגיד, the liability is triggered if he does not testify.

משנה יד: (fol. 35b) מִשְׁבִּיעַ אֲנִי עָלֶיכֶם מִצְוָה אֲנִי עָלֶיכֶם אוֹסְרָכֶם אֲנִי הָרִי אֶלֹּו חֵיבִין. בְּשָׁמִים וּבְאָרֶץ הָרִי אֶלֹּו פְטוּרִין. בְּאֵל־יָד דִּל־תָּ, בִּיּוֹד הָאֱשֵׁרִי בְּצִבְאוֹת בְּחֻנֵּן וְרַחוּם בְּאֵרֶץ אֲפִים וְרַב חֶסֶד וּבְכָל חֲבֻנִּין הָרִי אֶלֹּו חֵיבִין. הַמְקַלֵּל בְּכוֹלֵן חֵיב דְּבָרֵי רַבִּי מֵאִיר וְחֻכְמִים פּוֹטְרִין. הַמְקַלֵּל אָבִיו וְאִמּוֹ בְּכוֹלֵן חֵיב דְּבָרֵי רַבִּי מֵאִיר וְחֻכְמִים פּוֹטְרִין. הַמְקַלֵּל עַצְמוֹ וְחֻבְרֹו בְּכוֹלֵן עוֹבֵר בְּלֹא תַעֲשֶׂה. יִכְבֶּה אֱלֹהִים וְכֵן יִכְבֶּה אֱלֹהִים זֶה הִיא אֵלֶּה הַכְּתוּבָה בְּתוֹרָה. וְיִכְרְךָ וְיִיטִיב לָךְ רַבִּי מֵאִיר מְחַיֵּב וְרַבִּי יְהוּדָה פּוֹטֵר:

Mishnah 14: “I put an oath upon you, I command you, I bind you,” these are liable¹⁰⁶. “By Heaven and Earth,” they are not liable¹⁰⁷. “By י-ה, by י-ה, by the Almighty, by Sabaoth, by the Gracious and Merciful, by the Forbearing and Most Benevolent,” and all substitute names¹⁰⁸, they are liable. One who curses by any of these is liable, the words of Rabbi Meïr; but the Sages declare him not liable¹⁰⁹. One who curses his father or mother by any of these is liable, the words of Rabbi Meïr; but the Sages declare him not liable¹¹⁰. One who curses himself or another person by any of these violates a prohibition¹¹¹. “May God punish you, so may God punish you,” this is the imprecation mentioned in the Torah⁶⁷. “May He not punish you, may He bless you, may He do well with you,” Rabbi Meïr declares liable¹¹² but Rabbi Jehudah declares not liable¹¹³.

106 These are valid versions of a summons to testify.

107 “Heaven” is not a sobriquet of God’s Name.

108 י-ה stands for Adonay, י-ה for YHWH. A substitute name is any translation of any Name of Attribute of God in any vernacular.

109 The crime of blasphemy (*Lev. 24:15*) refers only to blaspheming the Name (*Sanhedrin 7:14*).

110 The same holds for cursing father and mother (*Ex. 21:17*).

111 *Lev. 19:14; Sifra Qedošim Parashah 2(13)*.

112 If the claimant says “may He not punish you if you come to testify”, or “may He bless you if you come to testify”, for R. Meir this implies the opposite, i. e., “may he punish you if you do not come to testify” etc.

113 For R. Jehudah, what has been said explicitly is the only thing that counts.

The Mishnah versions in the Babli and in the independent Mishnah mss. all read “but the Sages declare not liable.” It is clear from the Halakhah that this also was the reading in the Yerushalmi underlying the Halakhah since it was necessary to state that the Mishnah represents R. Jehudah’s opinion.

הלכה יד: מִשְׁבִּיעַ אֶנִּי עֲלֵיכֶם כּוֹל' עַד סוּפָהּ. מִשְׁבִּיעַ אֶנִּי עֲלֵיכֶם סֶתֶם. חֵיִיבִין. אוֹסְרֵכֶם אֶנִּי בּוֹבְלֵכֶם אֶנִּי. חֵיִיבִין. (35d line 58)

Halakhah 14: “I put an oath upon you,” etc. to the end. “I put an oath upon you” without addition¹¹⁴, they are liable. “I am binding you, I am roping you in,” they are liable.

114 Obviously he has to add what he actually demands from them but he does not have to invoke the Name, neither does he

have to state that this is an oath; the verb alone is sufficient.

רַבִּי יוֹחָנָן בְּשֵׁם רַבִּי יַנָּאִי כְּמַתְּנִיתִין. וְאֵית דְּמַרְיָן רַבִּי אֲבָהוּ בְּשֵׁם רַבִּי יוֹחָנָן. כִּינִי מַתְּנִיתִין. רַבִּי מֵאִיר מַחֲיִיב וְרַבִּי יְהוּדָה פּוֹטֵר. רַבִּי מֵאִיר כְּדֻעָתִיהָ וְרַבִּי יוֹדָה כְּדֻעָתִיהָ. דִּתְנִינָן תַּמָּן. קָלִלִם בְּכַנּוּי רַבִּי מֵאִיר מַחֲיִיב וְחֻקִּמִּים פּוֹטֵרִין:

Rebbi Johanan in the name of Rebbi Yannai, as our Mishnah¹¹⁵. But some say, Rebbi Abbahu in the name of Rebbi Johanan, so is our Mishnah: “Rebbi Meir declares liable but Rebbi Jehudah declares not liable.”¹¹³ Rebbi Meir follows his own opinion and Rebbi Jehudah follows his own opinion, as we have stated: “If he cursed them by a substitute name, Rebbi Meir declares him guilty but the Sages free him from prosecution.”¹¹⁶

115 This seems to be a scribal error; one should read as in the next sentence כִּינִי מַתְּנִיתִין “so is our Mishnah.”

opinion of the Sages attributed to R. Jehudah; in the Babli (Sanhedrin 66a) it is attributed to R. Menahem ben R. Yose.

116 Mishnah *Sanhedrin* 7:14. Only here is

(35d line 63) המקלל עצמו וחבירו בכולן עובר בלאו. מהו ללקות. חבריא אָמְרִי. אין לוקה. אָמַר לוֹן רַבִּי יוֹסִי. לָמָּה. שֶׁהוּא לֹא תַעֲשֶׂה שְׁאִין בּוֹ מַעֲשֶׂה. וְהָרִי הַמַּמִּיר וְהַנִּשְׁבָּע לְשָׁקֵר לֹא שְׁאִין בּוֹ מַעֲשֶׂה הוּא.

“One who curses himself or another person by any of these violates a prohibition.” What about flogging? The colleagues say, he cannot be flogged. Rabbi Yose said to them, why? Because it is a prohibition not involving an action. But is not one who substitutes and one who swears falsely also a prohibition which involves no action¹¹⁷?

117 Cf. Chapter 3:11, Notes 166-168, and the parallels indicated there. It seems that R. Yose considers any speech as an

action, against the consensus that speech can be considered action only if recognized as such by a verse.

(35d line 66) רַבִּי יָסָא בְּשֵׁם רַבִּי יוֹחָנָן. רַבִּי מֵאִיר הִיא דְּאָמַר. מִמִּשְׁמַע לֹא אֶתָּה שׁוֹמֵעַ הֵיךְ. אֶל יִכְפֹּד אִם תְּבֹא וּתַעֲדִינִי. הָא אִם לֹא תְּבֹא וּתַעֲדִינִי יִכְפֹּד. אֵין לִי אֶלָּא אֱלֹה שְׁיֵשׁ עִמָּה שְׁבוּעָה. מְנִיין שְׁאִין עִמָּה שְׁבוּעָה כְּשֵׁינֵשׁ עִמָּה שְׁבוּעָה. תִּלְמוּד לומר וְשָׁמְעָה אֱלֹה וְשָׁמְעָה קוֹל. לַעֲשׂוֹת שְׁאִין עִמָּה אֱלֹה כְּשֵׁינֵשׁ עִמָּה אֱלֹה. הָא אֱלֹה בְּלֹא שְׁבוּעָה לֹא. רַבִּי יוֹסִי בְּשֵׁם רַבִּי יוֹחָנָן. לֹא שְׁנִינָא. הִיא אֱלֹה בְּלֹא שְׁבוּעָה הִיא שְׁבוּעָה בְּלֹא אֱלֹה.

Rebbi Yasa in the name of Rabbi Johanan: Rabbi Meir is the one who says that out of a negative one understands a positive¹¹⁸. “May He not punish you if you come and testify for me.” Therefore, if you do not come and testify for me He shall punish you.

There is not only an imprecation accompanied by an oath. From where one not accompanied by an oath be like one which is accompanied by an oath? The verse says, *and heard an imprecation, and heard a voice*¹¹⁹, to make one without imprecation like one with an imprecation. Therefore not an imprecation without an oath. Rabbi Yasa in the name of Rabbi Johanan: There is no difference; an imprecation without oath is the same as an oath without an imprecation¹²⁰.

118 This is the position of the Yerushalmi here and in 7:1 (Note 11), Eruvin 3 (21b l. 24), *Qiddushin* 3:4 Note 136, *Nedarim* 1:4

Note 158. (The explanation given there that the statement of R. Yasa in the name of R. Johanan is a rhetorical question is incorrect;

the statement is a straightforward declarative sentence.) The Babli (36a, *Nedarim* 11a,13b, *Soṭah* 17a) is totally opposed; it proposes to switch the attributions in the Mishnah between R. Meïr

and the Sages.

119 *Lev.* 5:1.

120 Babli 36a, *Sifra Hova (Wayyiqra 2) Parashah* 8(2).

שבועת הפקדון פרק חמישי

(fol. 36a) **משנה א:** שבועת הפקדון נוהגת באנשים ובנשים ובקרובים ובקרוובים ובכשירים ובכסולים בפני בית דין ושללא בפני בית דין מפי עצמו. ומפי אחר אינו חייב עד שיכפור בו בבית דין דברי רבי מאיר. וחכמים אומרים בין מפי עצמו בין מפי אחרים כיון שקפר בו חייב. וחייב על ודון שבועה ועל שנגתה עם ודון הפקדון ואינו חייב על שנגתה. ומה חייב על ודונה אשם בכסף שקלים:

Mishnah 1: An oath about a deposit applies to men and women, unrelated persons and relatives, qualified and disqualified persons, before a court or out of court, from his own mouth¹. From the mouth of another he is liable only if he denies in court, the words of Rabbi Meir. But the Sages say, whether by his own mouth or the mouth of others, from the moment that he denies, he is liable. He is liable for intent about the oath, or error about it with intent about the deposit, but he is not liable for error about the latter². What is he liable for in case of intentional violation? A reparation offering in the value of two Šeqalim³.

1 In this respect the oath about money matters is equal to the rules of a blurted oath (Mishnah 3:11-12), not to the oath of testimony. All restrictions about women, relatives, and disqualified persons, refer only to witnesses and judges, not to parties in adversary proceedings.

2 The sacrifice prescribed in Lev. 5:25 (in addition to restitution of 125% of the amount embezzled) is due if the false oath was intentional, or if the oath was in error but the embezzling was intentional; it is not due if the oath was factually false because the maker of the oath did not realize that he had the deposit, or forgot about it. The

Babli (but not Maimonides) reads the last word as שנגתה referring to the oath; he is not liable if he was ignorant of the fact that false oaths are forbidden and that they trigger liability for a sacrifice.

3 Lev. 5:25 prescribes a reparation offering “in its value”; the value defined in 5:15 as “Šeqalim”. An indeterminate plural always means 2 (Chapter 4, Note 8). The biblical Šeqel is the traditional “King’s weight” of about 12g silver, about equal to the tetradrachma of the early Principate, and double the rabbinic Šeqel of two zuz (cf. Qiddušin 1:1, Note 122.) Sifra Hova (Wayyiqra 2) Parashah 13(14).

(36a line 41) **הלכה א:** שְׁבוּעַת הַפְּקָדוֹן כּוּל'. תִּנִּי. מִפִּי עֲצָמוּ בְּשִׁבוּעַת הָעֵדוּת מָהוּ לֵהוּיֹת פֶּאֱלָה. מִפִּי עֲצָמוּ בְּשִׁבוּעַת הַפְּקָדוֹן מָהוּ לֵהוּיֹת פֶּאֱלָה. אָמַר רַבִּי יוֹסִי. מִפִּיֹן דְּכֹתִיב נֶפֶשׁ נֶפֶשׁ כְּמָה שְׁכּוּלְהוֹן כָּאֵן וְכוּלְהוֹן כָּאֵן. אָמַר רַבִּי מְנָא. אֵלָה בְּבֵית דִּין מַחְלוּקָת רַבִּי מֵאִיר וְחֻכְמִים. וְכֹחַשׁ בְּעִמְיָתוֹ. לִקְשָׁעָא וּוִידוּיֹ בְּשִׁבוּעָה. פֶּרֶט לִמְכַחֵשׁ בְּאַחַד הַשְׁוֹתִפִּין. פֶּרֶט לִמְכַחֵשׁ בְּעֵדִים וּבִשְׂטָר. אָמַר רַבִּי יוֹסִי. הֵדָא אֲמָרָה. שְׁנִים שְׁלֹו מֵאַחַד אָף עַל גַּב דְּלָא כְּתִבּוּ. אַחֲרָאִין וְעָרְבָאִין זֶה לָזֶה. אַחֲרָאִין וְעָרְבָאִין זֶה לָזֶה. וְלֹא עֲבָדִין כֵּן. שְׁנִים שְׁהִפְקִידוּ בְּאַחַד וּבִיקָשׁ הָאֶחָד לִיטוֹל אֶת שְׁלֹו אֵין שׁוּמְעִין לוֹ. וְיַעֲשֶׂה כְּכּוֹפֵר בְּחֻלְקוֹ וִיהָא חֵיב. אֶחָד שְׁהִפְקִיד לְשְׁנִים. כְּפֹר בּוֹ זֶה חֵיב. כְּפֹר בּוֹ זֶה חֵיב. הַפְּקִיד לָהֶם שְׁנֵה פְּרוּטָה. לֹא נִמְצָא מִבֵּיא קָרְבָן עַל חֲצִי פְּרוּטָה. וּמָה כָּא. אֵילוּ נִשְׁבַּע וְנִשְׁבַּע וְנִשְׁבַּע שְׁמָא אֵין מִבֵּיא קָרְבָן עַל חֲצִי פְּרוּטָה. תִּמְן כָּל־שְׁבוּעָה חֲלָה עַל שְׁנֵה פְּרוּטָה. הֵכָא אֵין שְׁבוּעָה חֲלָה עַל שְׁנֵה פְּרוּטָה.

Halakhah 1: “An oath about a deposit,” etc. ⁴It was stated: Is an oath in his own formulation of an oath of testimony like an imprecation; in his own words is an oath about a deposit like an imprecation⁵? Rabbi Yose said, since it is written “a person, a person⁶”, everything is here and everything is there. Rabbi Mana said, an imprecation made in court is the topic of disagreement between Rabbi Meir and the Sages⁷.

⁸*He lied to his fellow man*⁹, if his confession was eliminated by the oath¹⁰. It excludes one who lied to one of partners; it excludes one who lied where there are witnesses and a document¹¹. Rabbi Yose said, this implies that if two people took a loan from one person, even if they did not write “we are responsible and warrantors for one another”, they are responsible and warrantors for one another; but one does not act on this¹². If two made a joint deposit and one came to retrieve his property, one does not listen to him¹³. Should he not be treated as denying his part and be liable? If one made a deposit with two people. If one denied it, he is liable. If the other denied it, he is liable¹⁴. If the deposit was worth one *peruta*, does this not result in each of them bringing a sacrifice for half a *peruta*¹⁵? What here? If one would swear, and swear, and swear, would he not bring a sacrifice for half a *peruta*¹⁶? There, each oath refers to a *peruta*’s worth. Here no oath refers to a *peruta*’s worth¹⁷.

4 For this and part of the next Halakhah there exists a rudimentary Genizah fragment edited by L. Ginzberg, *Yerushalmi*

Fragments, New York 1909, pp. 285-286 (G).

5 It was established in 4:14 (Note 119)

that for requests of testimony imprecations without oaths and oaths without imprecations trigger liabilities for a sacrifice. As noted before, the natural setting of an oath or imprecation for testimony is one formulated by the claimant; for oaths about deposits it is one formulated by the defendant. No imprecations are mentioned in connection with oaths about deposits. The unresolved questions are whether an imprecation formulated by the potential witness triggers liability and what the status is of an imprecation substituting for an oath is a case of disputed monetary claim?

6 *Lev.* 5:1; cf. Chapter 4:3 Note 31.

7 Not only oaths; Mishnah 4:1.

8 The following is also quoted by Alfassi (*Shevuot* Chapter 5) and is the subject of extensive commentaries by Nachmanides, R. Nissim Gerondi, and Rosh. Cf. Babli 36a.

9 *Lev.* 5:21.

10 Liability for a sacrifice is created only if the false oath saves the defendant from a sentence which would obligate him to pay the claimant. Cf. S. Lieberman, Review of S. Asaph *מספרות הגאונים*, Tarbiz 5(1934) pp. 395-400.

11 Swearing falsely to only one of the partners has no monetary consequences as long as the defendant did not also lie to the other partners. Swearing falsely about an obligation which can be proven by witnesses or documents is pointless.

12 The implication that rules governing one debtor and two creditors can be applied to one creditor and two debtors is not found in the Babli but accepted by Rif (§1043) and all subsequent codifiers; the note that one does not act on this, but writes joint liabilities in all contracts, was not accepted by Rif and his successor Josef ibn Migash (cf. I. Tashma and H. Ben Shammai, *Kobez al Yad* 8(18) Jerusalem 1975 p. 179 Note 10).

13 Without explicit authorization by one of the depositors to the trustee, a joint deposit may be returned only to the joint depositors.

14 If both trustees denied the existence of the deposit at different times, both are liable.

15 A *peruta* (a Hasmonean coin of about 2g bronze) is the smallest amount for which one may go to court. (Half-*peruta* coins have been found.) Since a half-*peruta* cannot be the subject of a law suit, it cannot be the cause of liability for any kind of oath. Should not the sacrifice for an oath about a half-*peruta* be forbidden as false dedication?

16 Since he has to bring three sacrifices for oaths about one *peruta*, each one is for a third of a *peruta*.

17 The previous argument is wrong. Multiple infractions all concerning the same *peruta* need separate atoning. A deposit given to two people jointly must be at least two *perutas* worth to trigger liabilities for sacrifices.

(36a line 54) רָבִי לֹא וְרַבִּי יוֹחֵן וְרִישׁ לְקִישׁ תִּרְיֵהוּן אֶמְרִין. לֵית כָּאן עֲדִים. כְּמִי שֶׁנִּצָּא וִידְעוּ בְּשִׁבְעָה. לָמָּה. מִשּׁוּם שֶׁמֻּצְוִין לָמוֹת. וְשָׁטֵר אֵינוֹ מְצוּי לְאָבֵד. הֲוֵי לֵית טַעְמָא אֶלָּא מִשּׁוּם שֶׁמֻּצְוִין לְשַׁכֵּחַ עֲדוּתָן. תִּכְּמוֹן תִּנְיָן. אֵיכָן שׁוּרִי. אָמַר לוֹ. אָבֵד. מִשְׁבִּיעֵךְ אֲנִי. וְאָמַר אֲמֹן.

וְהָעֵדִים מְעִידִין אוֹתוֹ שֶׁאֵכְלוּ. מְשַׁלֵּם אֶת הַקֶּרֶן. הוֹדָה מַעֲצָמוֹ מְשַׁלֵּם קֶרֶן וְחוֹמֶשׁ וְאֶשֶׁם. מִתְּנִיתִין בְּשֵׂאֵין יוֹדֵעַ בְּעֵדִים. אֵתָא מִימַר לָךְ וְאֶפִּילוּ יוֹדֵעַ בְּעֵדִין. אָמַר רַבִּי יוֹסִי. וּמִתְּנִיתָה אֶמְרָה כֵּן. הָיוּ שְׁתֵּי כֹתֵי עֵדִים. כָּפְרָה רִאשׁוֹנָה וְאַחֵר כֵּן כָּפְרָה שְׁנִיָּה. שְׁתֵּיתָן חַיִּיבוֹת. נִיחָא רִאשׁוֹנָה מִתְּחִיבָתָה. שְׁנִיָּה לְמָה. לֹא מְשׁוּם שֶׁמֻצְוִין לְשַׁכַּח עֵדוּתָן.

6 אמרה - G | כך - G | כן שנייה | G השנייה ניחא | G ניחא 7 ראשונה | G הראשונה שנייה | G השני' - G | היא מתחייבת שמצוין | G שהן מצוים | עדותן | G עידותן והכה מ... מצוים לשכח עדותן

Rebbi La: Both¹⁸ Rebbi Johanan and Rebbi Simeon ben Laqish both are saying, there is no "witnesses" here¹⁹. Why? Because they might die. But might not a document be lost? Therefore, the reason can only be that they might forget their testimony²⁰. There, we have stated²¹: "Where is my ox? He told him, it is lost. I want you to swear, he said, Amen. But witnesses testify that he ate it. He has to pay the value. If he confessed himself, he has to pay the value, and the fifth, and the reparation sacrifice²²." The Mishnah [applies] if he does not know that there are witnesses. He comes to tell you, even if he knows that there are witnesses²³. Rebbi Yose said, the Mishnah says so: "If there were two groups of witnesses, if the first group reneged and after this the second, both are liable.²⁴" One understands that the first group becomes liable²⁵. Why the second? Not because they might forget their testimony? ²⁶[Here also, because they (are commanded) to forget their testimony.]

18 Probably one should read ר' יוחנן instead of ר' יוחנן and delete the first "both". G is of no help. The Babli (37b) only quotes R. Johanan.

19 While they agree that an oath denying any documentary obligation is futile, they hold that a debt proven only by the oral testimony of witnesses is difficult to enforce and, therefore, the debtor may see a chance to evade monetary obligations by a false oath. In the *baraita* quoted at the start of the preceding paragraph the mention of "witnesses" should be deleted.

20 There are several reasons why testimony by witnesses alone may be

impossible; this might encourage false oaths.

21 Mishnah 8:4.

22 The second person has accepted to watch over the ox without being paid and without having the right to use the ox for work. If anything happens to the ox except cases of gross negligence, the trustee does not have to pay. The moment he uses the ox for his own purposes, he becomes liable for damages. Since he swears falsely that it was lost, he swears falsely for monetary gain and becomes liable. (Had he claimed that the ox was stolen, he would have had to pay the thief's fine in addition to paying for the ox.) If he confesses in order to clear his

conscience, he becomes eligible for atonement of his sin which is effected by paying an additional fifth (from above, i. e., a quarter from below) and a sacrifice in the value of 2 *seqalim*.

23 The formulation of the Mishnah shows clearly that there were witnesses available when he swore falsely. Nevertheless, he has to bring a sacrifice if he confesses. Why do R. Johanan and R. Simeon ben Laqish have to formulate a statement which clearly is implied by a Mishnah? The answer is that the Mishnah may be interpreted that the trustee swore falsely in the belief that there were no witnesses; he swore for monetary gain. The Amoraic statement adds that even had the trustee known of the existence of witnesses, only they were not present at the moment of his oath, it still is an oath for monetary gain since the witnesses might forget their testimony in the meantime. The formulation “he”, not “they”, in the last sentence may support the reading of the Babli which only mentions R. Johanan.

24 Mishnah 4:4.

25 This text is very difficult and all commentators and editors follow the Babli (32b/33a) and switch the places of “first” and “second”, for the reasons explained in Halakhah 4:4, Note 54. But this seems to be excluded by the text of G, which becomes the more credible as its scribe clearly did not understand the text since he misread מציין “being apt to” as מצוים “being commanded”.

Therefore one is forced to explain that the first group clearly violates their oath of testimony by reneging on it. The question is why the second group is not freed from their obligation by the first since strictly speaking only two witnesses are needed by biblical standards; any additional witnesses appear superfluous. The answer is that additional witnesses never are superfluous since any witness may forget, if not the whole incident so some detail which might invalidate his testimony in cross examination. One knows that the testimony of a group of witnesses is valid only *after* it was accepted in court.

26 Added from G; cf. the preceding Note.

(36a line 63) וְכַחֵשׁ בָּהּ. וְלֹא בּוֹ. בֶּן עֲזַאזִי אוֹמֵר. שְׁלֹשׁ אֲבִידוֹת הֵן. בְּיָדָעַ בָּהּ וּבְמוֹצְאָהּ. בָּהּ וְלֹא בְּמוֹצְאָהּ. לֹא בָּהּ וְלֹא בְּמוֹצְאָהּ. רַבִּי חוּנְיָהּ בִּשְׁם רַבִּי יְרֵמְיָהּ. כּוֹלְהוֹן לְפִטּוֹר. רַבִּי יַעֲקֹב בֶּר אֲחָא בִּשְׁם רַבִּי יוֹסִי. לֵית כֵּן. רַבִּי יוֹסִי בְּעֵי. וַיְהִי כֵן הַפִּטּוֹר. אָמַר רַבִּי מְנָא. לֵית כֵּן מִשְׁלֹשׁ אֲבִידוֹת. בְּיָדָעַ בָּהּ וּבְמוֹצְאָהּ. בָּהּ וְלֹא בְּמוֹצְאָהּ. לֹא בָּהּ וְלֹא בְּמוֹצְאָהּ. בָּהּ וּבְמוֹצְאָהּ נֶן קִיָּמִין. אֲלֵא שְׁמִכְחַשׁ בָּהּ וּבְמוֹצְאָהּ. בְּמוֹצְאָהּ וְלֹא בָּהּ. בָּהּ וְלֹא בְּמוֹצְאָהּ. כִּינִי מִתְּנִיתָהּ. בָּהּ וּבְמוֹצְאָהּ.

*He denied it*²⁷, not him²⁸. ²⁹“Ben Azzai says, there are three kinds of lost properties. One who knows about it and its finder; about it but not about its finder; neither about it nor about its finder.” Rabbi Onias in the name of Rabbi Jeremiah: All of them to relieve from liability³⁰. Rabbi Jacob bar Aha in the name of Rabbi Yose: This is not so³¹. Rabbi Yose asked, why should it

be to relieve from liability? Rebbi Mana said, the three kinds of lost property cannot be “one who knows about it and its finder; about it but not about its finder; neither about it nor about its finder.”³² About it and its finder, that is where we hold. But it must be about one who denies [knowledge] about it and its finder; about its finder but not about it; about it but not about its finder³³. So is the *baraita*: “About it and its finder.”

27 *Lev.* 5:22.

28 In *Sifra Hova (Wayyiqra 2) Pereq* 22(6) more in detail: “About it but not about its finder.” This Tanna and both Talmudim reject the understanding of the verse as given in the Targumim, that the person swearing had found the lost property and now denies it. This would be covered by “robbery” listed in v. 21. Rather it is that the person searching for his lost property, such as his donkey mares, asks a person whether he knows either of the property or of the person who might have taken it. If he under oath falsely denies any knowledge, according to this Tanna he becomes liable for a sacrifice only if he wrongly denies knowledge about the property, not about the person who might have appropriated it.

The big question then becomes, why should the person asked for testimony be liable for anything since by necessity he is a single person and the testimony of a single person cannot force a judgment. As Ravad explains in his Commentary to *Sifra*, this argument would be unconditionally valid only for oaths about testimony, not for oaths about causing monetary loss. His scenario is, e. g., that the lost animal was standing on another person’s property. The original owner took it but now the person from

whom it was taken claims ownership and wants it back. The second person agrees that he found the animal but he disputes the fact that it is the animal which had belonged to the first. In this situation, testimony of one witness about ownership of the animal is sufficient for a judgment in favor of the first person since it is not a judgment to transfer property but to confirm an existing status. On the other hand, testimony that the second person took possession of some lost property but which failed to identify the property is worthless and its denial cannot trigger any liability by the potential witness.

29 *Sifra Hova (Wayyiqra 2) Pereq* 22(6), Babli *Bava qamma* 105b. In the Babli: “Three kinds of oaths [about lost property.]”

30 In the Babli, this is attributed to the early Galilean Amora R. Hanina.

31 In the Babli, this is the authoritative opinion of Samuel.

32 As the Babli points out, if somebody swears although he does not know about the whole affair he swears truthfully and no liability of any kind can arise. In place of “neither about it nor about its finder” one must read “about it and its finder.”

33 Only the middle clause is in dispute between Ben Azzai and the first Tanna.

(fol. 36a) **משנה ב:** שבועת הפקדון ביצד. אומר לו תן לי הפקדון שיש לי בידך שבועה שאין לך בידו או שאומר לו אין לך בידו משביעך אני ואומר אמן הרי זה חייב. השביע עליו המשה פגמים בין בפני בית דין ובין שלא בפני בית דין וכפר חייב על כל אחת ואחת. אומר רבי שמעון מה פגם מפני שהיה יכול לחזור ולהודות:

Mishnah 2: What is an oath about a deposit? He said to him, “give me the deposit which you hold for me.” “An oath that I am holding nothing of yours,”³⁴ or that he said to him, “I am holding nothing of yours;” “I am putting an oath upon you” and he said “Amen”³⁵; this one is liable. If he made him swear five times whether in court or out of court and he denied, he is liable for each single one. Rabbi Simeon said, what is the reason? Because he may return and admit³⁶.

34 This is the oath from his own mouth. return to tell” (Halakhah 4:3, Note 30)

35 This is the oath from another’s mouth. restricts witnesses but not parties to a trial.

36 The rule that “after he told, he does not

(36a line 71) **הלכה ב:** שבועת הפקדון ביצד כול. נפש נפש. מה כאן מפי עצמו אף להלן מפי עצמו. מה להלן מפי אחרים אף כאן מפי אחרים. רבי מאיר דרש גזירה שנה במקום שבאתה. מה מפי עצמו שנאמר כאן חוץ לבית דין אף מפי עצמו שנאמר כאן חוץ לבית דין. ורבנן דרשי גזירה שנה כאמור בה. מה מפי אחרים שנאמר להלן בבית דין אף מפי אחרים שנאמר כאן בבית דין.

Halakhah 2: “What is an oath about a deposit,” etc. ³⁷A person, a person. Since here it is from his own words, also there from his own words. Since there it is from others’ words, also here it is from others’ words. Rabbi Meir explains the equal cut at the place it comes from: Since here it is said about his own words, so also here³⁸ about his own words. Also the rabbis explain the equal cut which was said about it. Since others’ words said there are in court, also others’ words said here are in court.

37 This Halakhah is a reworking of Halakhah 4:3 with in most cases correctly switching “here” (5:21) and “there” (5:1) and “oath of testimony” and “oath of deposit”. The explanation of *equal cut* is

taken from *Yebamot* 11:1 (Notes 30,34) as indicated in the Notes to 4:3. The text of G ends at the start of this Halakhah.

38 Obviously this should read “there.”

76) line 36a) רבי ירמיה בעי. קרוב מפי אחרים בשבועת הפיקדון מהו שיהא פטור. נישמעניה מן הדא. הואיל ולא למדו מפי אחרים בשבועת הפיקדון אלא משבועת העדות. מה להלן קרובין פטורין אף פאן קרובין פטורין. אמר רבי יוסי. קרובין שפאן למידין מרחוקין שלהלן.

³⁹Rebbi Jeremiah asked: Is a relative not liable for an oath about deposits formulated by others? Can we hear it from the following: since they inferred formulation by others for an oath about deposits only from oaths about testimony, and since there relatives are not liable, so they neither are here? Rebbi Yose said, relatives here can be inferred from non-relatives there.

39 This paragraph is a new question, with argument it is completely parallel to 4:3, the arguments about oaths of testimony and Notes 34,35. deposits switched. In structure and

5) line 36b) רבי יודן קפודקיןא בעי. השביע עליו ה' פעמים מפי אחרים חוץ לבית דין כלום. הוא חייב על כולן אלא אחת. אמר רבי יוסי. ולאו מתניתא היא. אמר רבי שמעון. מה טעם. מפני שיכולין לחזור ולהודות: וכאן הואיל ואין יכולין לחזור ולהודות אין חילבין אלא אחת.

Rebbi Yudan the Cappadocian asked: He made him swear five times by the formulation of others out of the court: would he not be liable only once⁴⁰? Rebbi Yose said, is this not the Mishnah: "Rebbi Simeon said, what is the reason? Because they can come back and admit?" But here, since they cannot come back and admit, they are liable only once.

40 If this refers to oaths about deposits, oaths of testimony and the hypothesis is that this would be the Mishnah and there would be no room for any question. It seems therefore that the question is asked about there should be liability for each one of the oaths.

6) line 35c) רבי ירמיה בעי. השביע עליו חמשה פעמים מאחר דרבי מאיר עבד מפי עצמו בבית דין מהו שיקבענו לקרבן ולחייבו על הראשונה בלא תביעה. יבא כהדא. מה אתא ברא אחרינו. שבועה שאין אנו יודעין לך עדות. משלם קרן וחומש ומביא אשם בשתי סלעים. מה שאין כן בשבועת העדות.

מפי אחרים בקרקעות מהו שיהא פטור. מפי אחרים מהו שיהא חייב אשם בכסף שקלים.

Rebbi Jeremiah asked: If he made him swear five times, since Rebbi Meïr considered “by his own words” as in court, would this determine the sacrifice on the first occasion, even without request⁴¹? It should come like the following:⁴² “Why do you go after us? An oath that we do not know any testimony relevant for you. He pays the value plus a fifth and brings a reparation sacrifice for two tetradrachmas, in distinction from an oath about testimony.”

Would he be “not liable” from others’ mouth for real estate? From others’ mouth would he be liable for a reparation sacrifice worth two *šeqalim*⁴³?

41 This is a bad adaptation of the text in 4:3. Following R. Meïr, since assent to an oath formulated by others is inferred from oaths about testimony, if applied to money matters does this need a claim by the other party? There can be no question about “by his own words” since that is what *Lev. 5:20* ff. is all about. It is difficult to imagine a situation in which others would formulate an oath if they have no claim.

42 This is a mangled quote from a text similar to the end of *Tosephta 4:1*: “He said to him, give me the deposit which you hold for me. Why do you go after me? An oath

that I am holding nothing of yours. This one is liable and has to pay for the value of the object, an added fifth, and bring a reparation sacrifice for two tetradrachmas, in distinction from an oath about testimony.”

A clear sign of the corruption is the use of the plural in the words of the claimant which makes no sense in a question about deposits.

43 For Babylonian sources (*Babli 37b*, *Tosephta 4:1*) it is obvious that the oath applies to claims for real estate which have to be proven by documents.

משנה ג: הוי חמשה תובעין אותו אמרו לו תן לנו פיקדון שיש לנו בידך. שבועה שאין להם בידי אינו חייב אלא אחת. שבועה שאין לה בידו ולא לה ולא לה, חייב על כל אחת ואחת. רבי אליעזר אומר עד שיאמר שבועה באהרונה. רבי שמעון אומר עד שיאמר שבועה לכל אחד ואחד.

Mishnah 3: If five people were claiming from him and said to him, give us the deposit which you are holding for us. “An oath that I am not holding anything of yours”; he is liable only once. “An oath that I am not holding anything of you, and of you, and of you;” he is liable for each one separately.

Rebbi Eliezer says, on condition that he repeat “an oath” at the end. Rebbi Simeon says, not unless he repeat “an oath” for each single one⁴⁴.

44 In the Halakhah and in all parallel sources the name is not “R. Eliezer” but “R. Eleazar”. The latter name is correct as contemporary of R. Simeon; cf. R. Rabbinovicz, *Diqduq Soferim Ševuot*, p. 78, Note f.

The majority [following R. Meir in *Sifra Hova (Wayyiqra 2) Pereq 17(1)*] holds that an oath addressed to a group of people is a single oath, but one addressed to separate individuals counts as multiple oaths according to the number of persons mentioned in the oath. R. Eleazar holds that

this is true only if the person swearing indicates that he intends the one sentence to be considered a separate oath for each individual addressed, by repeating at the end that “this is an oath.” Without such a final statement the mention of “oath” refers only to the first subject addressed in the oath. R. Simeon holds that a statement formulated as one oath is one oath; there is liability for multiple sacrifices only if it was clearly said that separate oaths were made for each claimant.

הַיּוֹמָהּ תִּבְעֵן אוֹתוֹ כּוֹל. יָכוֹל אֶף בְּשִׁבְעַת הַפְּקָדוֹן לֹא עָשָׂה
הַמּוֹשְׁבֵעַ כְּנִשְׁבָּע. אָמַר רַבִּי לְעֹזֵר. לִית כָּאן. אֵלֶּא אֶף בְּשִׁבְעַת הַפְּקָדוֹן נִעְשָׂה הַמּוֹשְׁבֵעַ
כְּנִשְׁבָּע. (36b line 14) **הלכה ג:**

Halakhah 3: “If five people were claiming from him,” etc. I could think that also for an oath about a deposit He did not make one assenting to an oath like making an oath? Rebbi Eleazar said, this is not so. But also for an oath about a deposit we are treating one assenting to an oath like one formulating an oath⁴⁵.

45 The text as it stands is unintelligible. The first “also” contradicts what was stated in Halakhah 4:5 that the rules of oaths about testimony and deposits are derived from one another. An oath about testimony by its nature is imposed by another party; there it was established that the reluctant witness also is liable if he himself formulates the oath that he will appear as a witness and then reneges. Therefore, this “also” has to

be deleted.

The oath about a deposit by its nature is offered by the person denying that he is holding anything. The Babli (34b) and *Sifra Hova (Wayyiqra 2) Pereq 11(3)* state that in this case an oath imposed by another person does not trigger the liability for a sacrifice. The Yerushalmi considers this possibility and rejects it.

(36b line 17) אָמַר רַבִּי יוֹחָנָן. דְּבָרֵי רַבִּי לְעֹזֵר וְהוּא שֶׁהִזְכִּיר שְׁבוּעָה תַּחֲלִילָה וְסוּף. דְּבָרֵי חֲכָמִים הִזְכִּיר שְׁבוּעָה תַּחֲלִילָה וְלֹא הִזְכִּיר בְּסוּף. אִם הִזְכִּיר בְּסוּף וְלֹא הִזְכִּיר תַּחֲלִילָה עַל דְּעֵתִין דְּרַבָּנָן מִבֵּיא קָרְבָּן עַל כָּל־אַחַת וְאַחַת. עַל דְּעֵתִיָּה דְּרַבִּי לְעֹזֵר מִבֵּיא קָרְבָּן אֶחָד. הִזְכִּיר שְׁבוּעָה תַּחֲלִילָה וְסוּף עַל דְּעֵתִין דְּרַבָּנָן מִבֵּיא שְׁנֵי קָרְבָּנוֹת עַל כָּל־אַחַד וְאַחַד. עַל דְּעֵתִיָּה דְּרַבִּי לְעֹזֵר מִבֵּיא קָרְבָּן אֶחָד עַל הַכֹּל. הִזְכִּיר שְׁבוּעָה בְּתַחֲלִילָה וְלֹא הִזְכִּיר בְּסוּף מָהוּ שֶׁתַּחֲלוּל שְׁבוּעָה עַל הָאֲמָצְעִיִּים. אֵינָא חָמִי. אֵילּוּ הִזְכִּיר שְׁבוּעָה תַּחֲלִילָה וְסוּף שָׁמָּה הִזְכִּיר בְּאֲמָצְעֵיִם. וְתִימַר חֵלָה וְהֵכֵן חֵלָה.

Rebbi Johanan said: The words of Rebbi Eleazar, only if he mentioned “oath” at the start and at the end⁴⁶. The words of the Sages, if he mentioned “oath” at the start but not at the end. Or if he mentioned it at the end but not at the start in the opinion of the rabbis he brings a sacrifice for each single one, in Rebbi Eleazar’s opinion he brings one sacrifice for everything⁴⁷. If he mentions “oath” at the start but did not mention it at the end, does the oath fall on the middle ones⁴⁸? Come and see: If he had mentioned it at the start and the end, did he mention it for the middle ones? But you are saying that it is valid; so here it is valid⁴⁹.

46 Then multiple sacrifices are due for multiple lies.

47 In both cases, a single mention of “oath” at the end is equivalent in force to a single mention of “oath” at the start.

48 This is a question only for R. Eleazar. Does R. Eleazar only require one sacrifice because he considers everything together as one statement, or does he restrict the oath to the denial of the claim of the first person mentioned? If the denial of the claim of the first person was correct, but some denials to

other persons were false, in the first case the trustee would have to bring a sacrifice but not in the second.

49 Since the difference between R. Eleazar and R. Simeon is that the latter requires a separate mention of “oath” for each single denial while R. Eleazar requires only two irrespective of the number of denials in between, it is obvious that the first eventuality mentioned in the preceding Note is the correct interpretation.

(36b line 25) רַבִּי יוֹדֵן קַפּוֹדִיקָא בְּעֵי. שְׁבוּעָה חִטִּין וּשְׁעוּרִין וְכוּסָּמִין אֵין לָךְ בְּיָדִי מָהוּ. כָּמִי שֶׁהִזְכִּיר שְׁבוּעָה תַּחֲלִילָה וְסוּף. מֵאַחֵר שָׁעַל יָדִי זֶה וְעַל יָדִי זֶה שְׁבוּעָה מִתְקִימָת אֵינוּ חַיִּיב אֱלָא אַחַת. אֵין לָךְ בְּיָדִי חִטִּין וּשְׁעוּרִין וְכוּסָּמִין שְׁבוּעָה. כָּמִי שֶׁהִזְכִּיר שְׁבוּעָה תַּחֲלִילָה וְסוּף. מֵאַחֵר שָׁעַל יָדִי זֶה וְעַל יָדִי זֶה שְׁבוּעָה מִתְקִימָת אֵינוּ חַיִּיב אֱלָא אַחַת. אֵין בְּשְׁבוּעַת בִּטּוּי כֵּן. שְׁבוּעָה שְׁלֹא אוֹכֵל. שְׁלֹא אוֹכֵל שְׁבוּעָה. עַל דְּעֵתִין דְּרַבָּנָן מִבֵּיא קָרְבָּן עַל כָּל־אַחַת וְאַחַת. עַל דְּעֵתִיָּה דְּרַבִּי לְעֹזֵר מִבֵּיא אֶחָד עַל הַכֹּל. אוּף רַבִּי לְעֹזֵר מוֹדָה. שְׂאֵינוּ אֱלָא כְּמוֹזֵר עֲצָמוֹ מִן הָאִיסוּרִין.

לא אתיא דלא אמר הוא לשעבר. שבועה שלא אכלתי. שלא אכלתי שבועה. על דעתין דרבנן מביא שני קרבנות על כל אחת ואחת. על דעתיה דרבי לעזר מביא אחד בכל אחד ואחד.

Rebbi Yudan from Cappadocia asked: What about “an oath that neither wheat, nor barley, nor spelt I am holding for you”⁵⁰? Is it as if he had mentioned “oath” at beginning and end⁵¹? Since the oath would be confirmed by any one of them, he is liable only once⁵². “I am not holding for you wheat, or barley, or spelt, an oath,” is this as if he had mentioned “oath” at beginning and end? Since the oath would be confirmed by any one of them, he is liable only once⁵³. Is it so if this were a blurted oath? “An oath that I shall not eat; I shall not eat, an oath”? In the rabbis’ opinion he brings a sacrifice for each one⁵⁴. In Rebbi Eleazar’s opinion does he bring one for the entirety? Even Rebbi Eleazar will agree that he is only emphasizing the prohibitions⁵⁵. It only would be problematic if it were about the past. “An oath that I did not eat; I did not eat, an oath.” In the rabbis’ opinion he brings two sacrifices (for each one). In Rebbi Eleazar’s opinion he brings one (for each)⁵⁶.

50 The wording is that of Mishnah 5. However, there one has to translate “wheat, or barley, or spelt” and the oath is true only if he holds neither kind. But here the oath is true if he does not hold at least one of them. This follows from de Morgan’s formulas (using v “or”, & “and”, ¬ “not”):

$$\neg(A \vee B \vee C) = \neg A \& \neg B \& \neg C,$$

$$\neg(A \& B \& C) = \neg A \vee \neg B \vee \neg C.$$

51 This is a question following R. Eleazar, assuming that he disagrees not only in the case of Mishnah 3 but in all similar cases.

52 It is impossible to read this as three distinct oaths; there can be no disagreement between the rabbis and R. Eleazar in this case.

53 This is a question for the rabbis. Does placing the mention of “oath” at the end of a sentence intended as oath constitute a

second oath?

54 Since this clearly represents two distinct oaths.

55 Cf. Halakhah 3:11, Note 161. Since there is only one subject, R. Eleazar should consider the two clauses as parts of one statement and require only one sacrifice. But he will agree that the second statement is meant to reinforce the first; therefore if he breaks one he breaks both and must bring two sacrifices.

56 For the rabbis, the two clauses are two separate oaths; for R. Eleazar they are two parts of one oath. Since the oaths have only one object, the references to “each one” or “all of them” are copyists’ errors induced by the use of these expressions in the other cases.

(36b line 36) רבי אבהו רבי ירמיה בעי. אמר. שבועה חייטין וחיטין אין לך בגדי. מהו. נישמענה מן הדא. לא ממקום פלוני ולא ממקום פלוני חייב. אמר רבי יוסי. מקומות הרבה עשו אותן כמניין הרבה. אילו מר. לא מאותו המקום ולא מאותו המקום. יאות. רבי חגי בעי. י' שבועות אין לך בגדי. מהו.

רבי יוסי בעי. שבועה שבועה אין לך בגדי. מהו. אמר רבי יוסי. נשמענה מהדא. שבועה שלא אוכל כפר זו. שבועה שלא אוכלינה. ואכלה. חייב אחת. מפני שהזכיר זו. הא לא הזכיר זו חייב בכל-אחת ואחת. אף בשבועת ביטוי כן. שבועה שאוכל נבילה ופת חייטין ופת שעורין ופת כוסמין. מאחר שפטור על הנבילה פטור על השאר.

Rebbi Abbahu, Rebbi Jeremiah⁵⁷ asked: If one said, “an oath wheat and wheat I am not holding;” what? Let us hear from the following: “Not from place X, not from place Y,” he is liable. Rebbi Yose said, they considered a multiplicity of places like a multiplicity of kinds. If he had said, not from this place, not from this place; it would have been useful⁵⁸.

Rebbi Haggai asked: “10 oaths that I am not holding;” what?

Rebbi Yose asked: “An oath, an oath that I am not holding for you,” what? Rebbi Yose said, let us hear from the following: “An oath that I shall not eat this loaf; an oath that I shall not eat it’ . Then he ate it. He is liable only once.⁵⁹” Because he mentioned “this”. Therefore, had he not mentioned “this” we would be liable for each one. Is it the same for a blurted oath? “An oath that I shall eat carcass meat, and wheat bread, and barley bread, and spelt bread.” Since he is not liable for carcass meat⁶⁰ he is not liable for the remainder.

57 This name tradition is impossible. Either one has to read R. Jeremiah, R. Abbahu, or, since the question fits R. Jeremiah’s style, instead of R. Abbahu one has to read R. Abba (or the name of another last generation Amora.)

58 If the same object is mentioned twice in an oath. There is no proof from a *baraita* that a false oath “I am not holding grain from place X nor from place Y” is considered only one oath. To be applicable

to the question the same place name would have to be repeated.

59 Mishnah 3:8 (3:7 in most independent Mishnah mss.). This clause is missing in the Mishnah of the Yerushalmi; another indication that the Mishnah of the Leiden ms. does not have the same source as the Yerushalmi Tractates.

60 Mishnah 3:5; this argument follows R. Simeon.

(fol. 36a) **משנה ד:** תן לי פיקדון ותשומת יד וגזל ואבדה שיש לי בידך שבועה שאין לך בדי אינו חייב אלא אהת. שבועה שאין לך בדי פיקדון ותשומת יד וגזל ואבדה חייב על כל-אחת ואחת.

Mishnah 4: “Give me the deposit, the loan, the robbery, and the lost object which you are holding for me.” “An oath that I am not holding anything of yours;” he is liable only once. “An oath that I am holding for you neither a deposit, nor a loan, nor a robbery, nor a lost object;” he is liable for each separate item⁶¹.

61 The same arguments made for oaths addressed to different people can be made for oaths covering different subjects; cf.

Note 44. The dissents of RR. Eleazar and Simeon apply here also.

(36d line 46) **הלכה ד:** תן לי פיקדון ותשומת יד כול. אמר רבי יוחנן. דברי רבי שמעון נמצא שאין בידו חטים פטור בשאך. אמר רבי בא. אף רבי יסא מודה בה. נמצא שיש בידו חיטין מהו שתחול שבועה בשאך המינין. חבריא אמרי. לא חלה. רבי זירא אמר. חלה. אמר רבי יעקב בר אבא. מתניתין מסייעה למא דאמרי חבריא. אשה שאמרה. הריני נזירה. ושמעה חבירתה ואמרה. ואני. ושמע בעל הראשונה והיפר לה. הראשונה מותרת והשנייה אסורה. אם אמרה. לא נתכוונתי להיות אלא כמותה. שתייהן מותרות. מפני שאמרה. לא נתכוונתי להיות אלא כמותה וכיוצא בה. הא אם לא אמרה. להיות כמותה וכיוצא בה. הראשונה מותרת והשנייה אסורה. מה אם תמן שאין שם עיקר שבועה את מר חלה. כאן שיש עיקר שבועה לא כל-שכן שתחול. ומאי דא דאמר רבי יוחנן. דברי רבי שמעון נמצא שאין בידו חטין פטור בשאך. במתפס באומר. שעורין יהו כחיתין. כוסמין יהו כחיתין. פשיטא דא מילתא. לא היפר לה בעל הראשונה ועמדה בנדרה לוקה. שנייה מהו. אמר רבי יוסי. מאחר שא לוקה זו לוקה. אמר רבי יודן. ותניי בית דין הוא. ותיעשה שנייה כאומרת. הריני נזירה ל' יום. רבי שמעון כדעתיה דאמר. במגבה הדבר תלוי.

Halakhah 4: “Give me the deposit, the loan,” etc. ⁶²Rebbi Johanan said, Rebbi Simeon implies that if it turns out that he had no wheat, he is not liable for the rest. Rebbi Abba said, even Rebbi (Yasa)⁶³ will agree with this. If it turns out that he had no wheat, does [the oath] refer to the other kinds? The colleagues said, it does not. Rebbi Ze'ira said, it does. Rebbi Jacob bar Aha said, a *baraita* supports what the colleagues said. “A woman made a vow as a *nazir* and her friend heard it and said, ‘so am I’; the first woman’s husband heard it and dissolved [the vow] for her; the first one is permitted and the

second forbidden. ⁶⁴If she said, ‘my intention was only to be like her,’ both are permitted.” Because she said, “to be like her, in her state”. Therefore, if she did not say “to be like her, in her state”, the first is permitted and the second forbidden. Since there, where the essence is not an oath, you say it applies, here, where there was an original oath, not so much more? What Rabbi Johanan said, Rabbi Simeon implies if it turns out that he had no wheat, he is not liable for the rest, if he connects: If he says, [my obligation for] barley shall be like that for wheat; [my obligation for] spelt shall be like that for wheat.

The following is obvious: If her husband did not dissolve [the vow] for the first woman and she (remained)⁶⁵ in her vow, she is whipped. Can the second be whipped? Rabbi Yose said, since one is whipped, the other also is whipped. Rabbi Yudan said, is this a stipulation of the court? Should not the second be treated as one who said, “a shall be a *nezirah* [after] thirty days”⁶⁶? Rabbi Simeon follows his own opinion, for he said, it depends on the collection⁶⁷.

62 This entire Halakhah is a slightly defective copy of a text in *Nazir* 4:3, explained there in Notes 48-60.

63 In *Nazir*: R. Jehudah. Since there is no Tanna R. Yasa, the reading “R. Jehudah” has to be accepted. In the next Halakhah, R. Jehudah is identified as the anonymous Tanna of Mishnaïot 3-5.

64 In *Nazir*, “R. Simeon said, if . . .” Since the next paragraph refers to R. Simeon, this must also be the text here.

65 Read with *Nazir*: “she violated her vow.”

66 It is assumed that the first became impure; then her *nezirut* is suspended while she undergoes the purification rite. Should the second woman’s vow be suspended while the *nezirut* of the first is suspended?

67 This sentence does not belong here; it is from the end of Halakhah 6. The correct text is in *Nazir*: R. Simeon declares him not liable since his offering was not in the custom of offerers (Mishnah *Menahot* 12:3). A vow is either valid or not, it cannot be intermittent.

משנה ה: תן לי חיטין ושעורין וכוסמין שיש לי בידך שבועה שאין לך בידי אינו חייב אלא אחת. שבועה שאין לך בידי חטין ושעורין וכוסמין חייב על כל אחת ואחת. רבי מאיר אומר אפילו אומר חטה ושעורה וכוסמית חייב על כל אחת ואחת:

Mishnah 5: “Give me the wheat, and the barley, and the spelt, which you are holding for me.” “An oath that I am not holding anything for you,” he is liable only for one. “An oath that I am not holding wheat, and barley, and spelt, for you,” he is liable for each single one⁶¹. Rabbi Meir says, even if he says, “wheat, and barley, and spelt,”⁶⁸ he is liable for each single one.

68 Even if the defendant did not use the language of the claimant, as long as the meaning is the same there is liability for a false oath. The claimant used the vernacular plural to describe his claim; the defendant

used the biblical collective (*Ex.* 9:31-32) which in form is identical with the singular. In the Halakhah, the collective for R. Meir is read as singular for the anonymous Tanna.

הלכה ה: תן לי חיטין ושעורין כול'. אמר רבי יוחנן. דברי רבי יודן נקלליו בקרבן אחד ונפרטין בג' קרבנות. היד עבידא. פרוטה חיטין ופרוטה שעורין ופרוטה כוסמין נקלליו בקרבן אחד ונפרטין לג' קרבנות. פרוטה שליש חיטין פרוטה שליש שעורין פרוטה שליש כוסמין מהו שיעטרפו כול'. איתא חמי. אילו היו בידו כמה מיניו בפרוטה אפילו כן נקלליו ונפרטין. ליי דה מילה. לחייבו בקרבן. היו בידו ד' מיניו. ב' מיניו בפרוטה ב' מיניו בב' פרוטות. אפילו כן נקלליו ונפרטין. דאמר רבי יוחנן בשם רבי ינאי. ושואל אני בשלום פלוני. חזקה לכל חתם. שואל אני בשלום פלוני. לא חתם אלא בשאילת שלום. ריש לקיש אמר. שואל אני בשלום פלוני. חזקה לכל חתם. אי זהו כלל. רבי יוחנן אמר. איש פלוני מגרש פלנית ופלוני פלנית. אי זהו כלל. ריש לקיש אמר. אנו פלוני ופלוני מגרשין נשינו במקום פלוני. אמר רבי זירא. מודה רבי יוחנן שאם הזכיר גירושין לכל אחת ואחת שצריך ליתן טפוס ועדים לכל אחד ואחד. חיליה דרבי יוחנן מהדא. שאיני נהנה לזה לזה קרבן לזה קרבן. צריכין פתח לכל אחד ואחד: אמר רבי יוסי. מתניתה מסייעה לרבי יוחנן. הנה כתוב טפוס לכל אחד ואחד והעדים למטה. את שהעדים ניקרין עמו פשר:

Halakhah 5: “Give me the wheat, and the barley,” etc. Rabbi Johanan said, the words of Rabbi Jehudah imply collectively one sacrifice, in detail three sacrifices⁶⁹. How is this? A detail wheat, a detail barley, a detail spelt. Collectively one sacrifice, in detail three sacrifices. Detail a third wheat, detail a third barley, detail a third spelt, are these taken together? Come and see; although he holds many details, even so they can be formulated

collectively or in detail. In which respect? To make him liable for sacrifices. If he held four kinds, two kinds in one detail, two kinds on two details. even so they can be formulated collectively or in detail⁷⁰.

⁷¹As Rabbi Johanan said in the name of Rabbi Yannai: "And I am greeting X," one can assume that he signed concerning everything; "I am greeting X," he signed only for the greeting. Rabbi Simeon ben Laqish said, "I am greeting X," one can assume that he signed concerning everything. What means "collectively"? Rabbi Johanan said, "X divorces Y and Z U." What means "collectively"? Rabbi Simeon ben Laqish said, "We, X and Z, divorce our wives at place A." Rabbi Ze'ira said, Rabbi Johanan agrees that if he mentions divorce for each one separately that he needs the typical text⁷² and witnesses for each one separately. The strength of Rabbi Johanan is from the following: "'That I shall not benefit from this one; a *qorban* for this one and a *qorban* for that one.' Each single one needs a separate opening."⁷³ Rabbi Yose said, the Mishnah supports Rabbi Johanan: "If he wrote a separate text for each of them and the witnesses signed at the end, [only] the one with which the witnesses are read is valid."⁷⁴

69 This determines the anonymous author of the Mishnah who makes the liability for sacrifices dependent on the way the vow is formulated as R. Jehudah. This is confirmed in the Babli, 38a.

70 Irrespective of the complication of the transaction, there always is a formulation of the oath which avoids mentioning any detail.

71 From here to the end of the Halakhah the text is from *Gittin* 9:7, Notes 85-101. The following paragraph describes efforts by two men to divorce their wives with one

document to save on costs for scribe and parchment.

72 While the *Gittin* text everywhere has טִפְס "boilerplate document" which possibly is Accadic (from the Sumerian) *tuppum* "document", the spelling here indicates Greek τύπος "figure, form" used as "prescribed form" (of the document.)

73 Mishnah *Nedarim* 9:7.

74 Mishnah *Gittin* 9:7.

שְׁמוּאֵל אָמַר. פָּרַט רַבִּי מֵאִיר כָּלֵל לְרַבִּי יְהוֹנָה. פָּרַט רַבִּי יְהוֹנָה כָּלֵל לְרַבִּי מֵאִיר. רַבִּי שְׁמוּאֵל בִּשְׁם רַבִּי זִידָא. מִיִּלְיָהוּן דְּרַבְּנָן אֶמְרִין שְׂאִין פָּרְטוּ שְׁלָרְבִי מֵאִיר כָּלֵלוּ שְׁלָרְבִי יְהוֹנָה. דָּמַר רַבִּי יוֹחָנָן בִּשְׁם רַבִּי יֵנְאִי. וְשׁוֹאֵל אֲנִי בְּשֵׁלוֹם פְּלוֹנִי. חֲזָקָה לְכָל חֵתִם. שׁוֹאֵל אֲנִי בְּשֵׁלוֹם פְּלוֹנִי. לֹא חֵתִם אֶלָּא בְּשִׁאֲלַת שְׁלוֹם. אִם אוֹמֵר אֶת. פָּרַט רַבִּי מֵאִיר כָּלֵל לְרַבִּי יְהוֹנָה.

אמר. שואל אני בשלום פלוני. חזקה לכל חתם. אמר רבי יוסי. מתינתה אמרה שאין פרטו של רבי יהודה כלל של רבי מאיר. דתנינן. רבי מאיר אומר. אפילו אמר. חיטה ושעורה וכוסמת. חייב בכל אחת ואחת: ולית אינש אמר אפילו אלא דמודה בקדמיתא. אמר רבי חיינא. על דעתיה דרבי מאיר בין שאמר. חיטין ושעורין וכוסמין. בין שאמר. חיטין ושעורין וכוסמין. על דעתיה דרבי יהודה אם אמר. חיטין ושעורין וכוסמין. כלל ופרט הוא. אם אמר. חיטין ושעורין וכוסמין. כלל שאין עמו פרט.

⁷⁵Samuel said, the detailed statement for Rabbi Meir is the general statement for Rabbi Jehudah; the detailed statement for Rabbi Jehudah is the general statement for Rabbi Meir. Rabbi Samuel said in the name of Rabbi Ze'ira, the words of the rabbis show that the detailed statement for Rabbi Meir is not the general statement for Rabbi Jehudah and the detailed statement for Rabbi Jehudah is not the general statement for Rabbi Meir, as Rabbi Johanan said in the name of Rabbi Yannai: "And I am greeting X," one can assume that he signed concerning everything; "I am greeting X," he only signed for the greeting. If you would say that the detailed statement for Rabbi Meir is the general statement for Rabbi Jehudah, even if he said "I am greeting X," can one assume that he signed everything? Rabbi Yose said, the Mishnah implies that the detailed statement for Rabbi Jehudah is not the general statement for Rabbi Meir, as we have stated: "Rabbi Meir says, even if he says, 'wheat, and barley, and spelt,' he is liable for each single one;" and nobody says "even" unless he agrees to an earlier statement. Rabbi Hinenai said, in Rabbi Meir's opinion, whether he said, "wheat, and barley, and spelt," or "wheat, barley, spelt," it is a general statement and details. In Rabbi Jehudah's opinion, if he said, "wheat, and barley, and spelt," it is a general statement and details. If he said "wheat, barley, spelt," it is a general statement without details⁷⁶.

⁷⁵ *Gittin* 9:7, Notes 93-101. The omissions in the *Gittin* text show that the text here is original. (This has been recognized in the text there.)

⁷⁶ Since he reads the words as singulars, not collectives, the entire statement is one unit: "I am holding for you not even a single grain each of wheat, barley, spelt".

(fol. 36a) **משנה ו:** אֲנִשְׁתָּהּ וּפִתִּיתָהּ אֶת בְּתִי וְהוּא אוֹמֵר לֹא אֲנִשְׁתִּי וְלֹא פִתִּיתִי. מִשְׁבִּיעַךְ אֲנִי וְאֵמֵר אָמֵן חֲיִיב. רַבִּי שְׁמַעוֹן פּוֹטֵר שְׂאִינוֹ מִשְׁלֵם קָנָם עַל פִּי עֲצֻמוֹ. אָמְרוּ לוֹ אַף עַל פִּי שְׂאִינוֹ מִשְׁלֵם קָנָם עַל פִּי עֲצֻמוֹ מִשְׁלֵם בּוֹשֶׁת וּפְנִים עַל פִּי עֲצֻמוֹ:

Mishnah 6: “You raped or seduced my daughter,” and he says “I did not rape, I did not seduce.” “I am asking you to swear,” and he says “Amen,” he is liable. Rabbi Simeon frees him from liability since he would not pay the fine by his own admission⁷⁷. They told him, even though he does not pay the fine by his own admission, he pays for shame and diminution by his own admission⁷⁸.

77 The fines are the statutory fines of the seducer of a virgin (*Ex. 22:16*) and the rapist of a virgin (*Deut. 22:29*). Since these fines are imposed in criminal law, they cannot be imposed based on a confession since all confessions are inadmissible in criminal court. It was established earlier (4:4, Note 40) that an oath can create liability for a

reparation sacrifice only if the action of the defendant led to a claimant's monetary loss.

78 Payments for inflicted shame, diminution of marriage prospects, and for rape victims' pain, are civil claims for which “the admission by the defendant is worth 100 witnesses.” If the daughter is a minor, all money is due to her father.

(36c line 17) **הלכה ו:** אֲנִשְׁתָּהּ וּפִתִּיתָהּ אֶת בְּתִי כוּל'. רַבִּי זִירָא רַבִּי יְסָא בְּשֵׁם רַבִּי יוֹחָנָן. דְּבָרֵי רַבִּי שְׁמַעוֹן עֵיקָר תְּבִיעָה קָנָס. לְדְבָרֵי חֲכָמִים לֹא. אָמַר רַבִּי אֵילָא. דְּבָרֵי רַבִּי שְׁמַעוֹן בְּתוֹבְעוֹ קָנָס בּוֹשֶׁת וּפְנִים. דְּבָרֵי חֲכָמִים בְּתוֹבְעוֹ בּוֹשֶׁת וּפְנִים וּקָנָס. רַבִּינִי אָמְרוּ. דְּבָרֵי רַבִּי שְׁמַעוֹן בְּתוֹבְעוֹ ג' דְּבָרִים. דְּבָרֵי חֲכָמִים בְּתוֹבְעוֹ דְּבַר אֶחָד. רַבִּי זִירָא בְּעָא קוּמִי רַבִּי יְסָא. בְּפִירוּשׁ שְׁמַעְתָּ מִרַבִּי יוֹחָנָן אוֹ מִמִּלְתִּיה. אָמַר רַבִּי יְסָא. דְּסִבָּר כְּרַבָּנִן. אָמַר רַבִּי מְנָא. וְאֶפִּילוּ דְּו סִבָּר כְּרַבִּי אֵילָא. דְּבָרֵי רַבִּי שְׁמַעוֹן בְּתוֹבְעוֹ דְּבַר אֶחָד. בְּרַם הִקָּא בְּתוֹבְעוֹ ג' דְּבָרִים. אִין לִי אֵילָא דְּבָרִים שְׂאִינוֹ מִשְׁלֵם עֲלֵיהֶן אֶת הַקָּרָן. מְנִיין תְּשְׁלוּמֵי כָּפֹל וְתְשְׁלוּמֵי אַרְבָּעָה וְחֻמְשָׁה הָאוֹנָס וְהַמִּפְתָּה וְהַמּוֹצִיא שֵׁם רַע. תִּלְמוּד לומר מִכָּל אֲשֶׁר-יִשְׁבַּע עָלָיו לִשְׁקֹף. לְמוֹצִיא שֵׁם רַע לֹא קָנָס הוּא. אָמַר רַבִּי יְרֵמְיָה. רַבִּי שְׁמַעוֹן הִיא דְּאָמַר. בְּמִגְבָּהּ הַדְּבַר תִּלְוִי.

Halakhah 6: “You raped or seduced my daughter,” etc. Rabbi Ze'ira, Rabbi Yasa in the name of Rabbi Johanan: The words of Rabbi Simeon [imply that] the main claim is for the fine, which is not so for the words of the Sages⁷⁹. Rabbi Illa said, the words of Rabbi Simeon if he claims the fine, shame and diminution; the words of the Sages if he claims shame, diminution, and fine⁸⁰. The rabbis say, the words of Rabbi Simeon if he advances three claims; the words of the Sages if he advances one claim⁸¹. Rabbi Ze'ira asked

before Rabbi Yasa, did you hear explicitly from Rabbi Johanan, or from his word⁸²? Rabbi Yasa said, for he is of the rabbis' opinion. Rabbi Mana said, even if he is of Rabbi Illa's opinion, the words of Rabbi Simeon if he advances one claim; the words of the Sages if he advances three claims⁸³.

"Not only matters for which he has to pay the capital, from where double payment, quadruple and quintuple payment, the rapist, and the seducer, and the calumniator? The verse says, *everything about which one would swear falsely*.⁸⁴" Is the calumniator's not a fine? Rabbi Jeremiah says, this is Rabbi Simeon's who said, all depends on the collection⁸⁵.

79 Babli 38b. In the interpretation of the Babli, R. Simeon holds that a person will go to court for the claim of a sum fixed by law rather than one depending on the sentiment of the judges; the Sages hold that a person always will prefer a civil claim which can be settled by the agreement of the defendant to a criminal trial depending on witnesses.

80 This argument is similar to the previous one. For R. Simeon one will prefer a criminal trial upon the successful completion of which the civil claims can easily be prosecuted; for the Sages one prefers the civil procedure, upon successful conclusion of which the claim in criminal court has much better chances.

81 This sentence most likely is corrupt; Rabbi Simeon deals with the situation where there only is a criminal case (one claim); the Sages consider the civil claims as paramount (three claims).

82 This is always a problem in oral tradition; it is not obvious who formulated the statement. In most cases of a lengthy chain of transmission, the actual formulation is not that of the first author. Since R. Ze'ira immigrated to Galilee after R. Johanan's death, he has no way of knowing.

R. Yasa explains that he formulated the sentence because R. Johanan had endorsed a position equal to that of the rabbis quoted earlier.

83 There really is no material difference between R. Illai and the rabbis since a claim for the fine must be brought in criminal law; the claims for shame and diminution would have to be adjudicated later in civil court. The first claim according to R. Simeon is a single criminal claim.

84 *Sifra Hova (Wayyiqra 2) Perek 22(9)*. This source quotes *Lev. 5:21* instead of *5:24* quoted here.

The cases enumerated in *Lev. 5:21-22* are all about money or money's worth which the defendant withholds from the claimant, a condition for liability for a sacrifice after a false oath. Double restitution is due from the thief, quadruple or quintuple from the cattle and sheep rustler who sells or eats the animal. The calumniator is the man who accuses his wife of adultery between preliminary and definitive marriages; if proven guilty in criminal court he pays a fine of 100 tetradrachmas (*Deut. 22:19*).

84 The claim against the calumniator is purely about a fine. How could the Sages

apply an oath for deposits in this case since by falsely denying that he had been convicted the calumniator does not deprive the claimant of money that already had been his? The reference here is to Halakhah *Ketubot* 4:2 where it is established that for R. Simeon a fine becomes property of the claimant only upon payment whereas for the

Sages the judgment creates the obligation of the defendant to pay which automatically establishes the amount of the fine as a loan by the claimant to the defendant which in case of the claimant's death becomes part of his estate and passes to his heirs; it is a legitimate subject of an oath of deposit.

משנה ז: (fol. 36a) גָּנַבְתָּ אֶת שׁוֹרִי וְהוּא אֹמֵר לֹא גָּנַבְתִּי מִשְׁבִּיעֶנְךָ אָנִי וְאָמַר אָמֵן חַיִּיב. גָּנַבְתִּי אֲבָל לֹא טָבַחְתִּי וְלֹא מָכַרְתִּי מִשְׁבִּיעֶנְךָ אָנִי וְאָמַר אָמֵן פְּטוֹר. הַמֵּית שׁוֹרְךָ אֶת שׁוֹרִי וְהוּא אֹמֵר לֹא הַמֵּית מִשְׁבִּיעֶנְךָ אָנִי וְאָמַר אָמֵן חַיִּיב.

Mishnah 7: “You stole my ox,” but he says “I did not steal,” “I am asking you to swear” and he says “Amen”, he is liable. “I stole but I did not slaughter or sell it;” “I am asking you to swear” and he says “Amen”, he is not liable⁸⁵. “Your ox killed my ox,” but he says “he did not kill;” “I am asking you to swear” and he says “Amen,” he is liable.

משנה ח: הַמֵּית שׁוֹרְךָ אֶת עֶבְדִּי וְהוּא אֹמֵר לֹא הַמֵּית מִשְׁבִּיעֶנְךָ אָנִי וְאָמַר אָמֵן פְּטוֹר. אָמַר לוֹ הַכְלֵת בִּי וְעָשִׂיתָ בִּי חֲבוּרָה וְהוּא אֹמֵר לֹא הַכְלֵתִי וְלֹא עָשִׂיתִי בְּךָ חֲבוּרָה מִשְׁבִּיעֶנְךָ אָנִי וְאָמַר אָמֵן חַיִּיב. אָמַר לוֹ עֲבַדְךָ הַפְלֵת אֶת שְׁנֵי וְסִימִית אֶת עֵינֵי וְהוּא אֹמֵר לֹא הַפְלֵתִי וְלֹא סִימִיתִי מִשְׁבִּיעֶנְךָ אָנִי וְאָמַר אָמֵן פְּטוֹר. זֶה הַכֶּלֶל כָּל-הַמְשַׁלֵּם עַל פִּי עֲצָמוֹ חַיִּיב. וְשִׂאֵינוֹ מְשַׁלֵּם עַל פִּי עֲצָמוֹ פְּטוֹר:

Mishnah 8: “Your ox killed my slave,” but he says “he did not kill,” “I am asking you to swear” and he says “Amen”, he is not liable⁸⁶. He said to him, “you hurt me and injured me,” but he says “I did not hurt you and I did not injure you;” “I am asking you to swear” and he says “Amen”, he is liable. His slave said to him, “you knocked out my tooth and blinded my eye,” but he says “I did not knock out your tooth or blind your eye;” “I am asking you to swear” and he says “Amen”, he is not liable⁸⁷. This is the principle, anybody who has to pay on his own admission is liable; but anybody who does not have to pay on his own admission is not liable⁸⁸.

85 Since he denied only the fine, not the capital amount.

86 Since the amount payable is the biblically fixed amount of 30 šeqalim, about a Roman pound of silver (Ex. 21:32), it has the status of a fine.

87 The obligation of the master to manumit the slave whom he has injured is biblical and has the character of a fine.

88 The person who denies any fine adjudicated under criminal law.

28) **הלכה ז:** גִּבְתָּהּ אֶת שׁוּרֵי כוֹל' עַד סוֹף פִּירְקָא. רַבִּי יִצְחָק שָׁאֵל. מָהוּ שְׁיִשְׁלֵם דְּמֵי הָעֶבֶד מִפִּי. וְהִיא צָרִיכָה לֵיהּ. כָּל־שְׁלֵשִׁים קֶנֶס אוֹ יוֹתֵר בְּדָמָיו קֶנֶס. אֵין תִּימָר. כָּל־שְׁלֵשִׁים קֶנֶס. אֵין מִשְׁלֵם. אֵין תִּימָר. יוֹתֵר בְּדָמָיו קֶנֶס. מִשְׁלֵם. תָּמָן תִּנְיָן. הַמֵּית שׁוֹרֵד עֶבֶדִי. וְהוּא אָמַר. לֹא הַמֵּית. מִשְׁבִּיעַד אֲנִי. וְאָמַר אָמֵן. פְּטוּר. אָמַר רַבִּי חֲגִי קוֹמִי רַבִּי יוֹסִי. תִּפְתָּר שֶׁהַמֵּית עֶבֶד מוֹכֵה שְׁחִין. אָמַר לֵיהּ. וְמוֹר דְּבִתְרָה. הַמֵּית שׁוֹרֵד בְּנִי. וְהוּא אָמַר. לֹא הַמֵּית. מִשְׁבִּיעַד אֲנִי. וְאָמַר אָמֵן. חֵיב. וּפְתִירָה בְּמוֹכֵה שְׁחִין וְהִיא פְּטוּר. לֵית יָכִיל. דְּתִנְיָן. הַמֵּית בֶּן חוֹרִין נוֹתֵן שְׁוִיָּו. אָמַר רַבִּי עֲזָרָא קָמִי רַבִּי מָנָא. תִּפְתָּר כְּמָאן דָּמַר. וְנִתֵּן פְּדִיָן נִפְשׁוֹ שְׁלָנִיזְק. אָמַר לֵיהּ. אֵין כְּמָאן דָּמַר. וְנִתֵּן פְּדִיָן נִפְשׁוֹ שְׁלָנִיזְק. כּוּלוֹ קֶנֶס.

מָהוּ שְׁיִאמַר לוֹ. צָא יָדִי שְׁמַיִם. נִשְׁמַעִינָה מִן הָדָא. מַעֲשֶׂה בְּרַבָּן גַּמְלִיאֵל שֶׁהִפִּיל שֵׁן טַבִּי עַבְדּוֹ. אֶתָּא גְבִי רַבִּי יְהוֹשֻׁעַ. אָמַר לֵיהּ. טַבִּי עֶבְדִּי מִצְאִתִּי עֵילָא לְשַׁחְרָרִי. אָמַר. לֵית בְּגִידָא. וְאֵין קֶנְסוֹת אֱלָא בְּעָדִים וּבְבֵית דִּין. הָדָא אָמְרָה אֵין אֹמְרָא לוֹ. צָא מִיָּדִי שְׁמַיִם. רַבִּי גַמְלִיאֵל בִּירְבִּי אִילְעָאִי בָּעָה קוֹמִי רַבִּי מָנָא. רַבָּן גַּמְלִיאֵל כְּמָאן דָּאָמַר. מוֹתֵר לְשַׁחְרָר. אָמַר לֵיהּ. גְּרָמָה אָמְרָה שְׁאָסוּר לְשַׁחְרָר. דְּלֹא כֹן הָיָה לוֹ לְשַׁחְרָר מִשְׁעָה רִאשׁוֹנָה.

Halakhah 7: “‘You stole my ox,’ etc. to the end of the Chapter. ⁸⁹Rebbi Isaac asked, should one have to pay the value of the slave by his admission? But what is his problem? Are the entire thirty a fine⁸⁶ or is only the excess over his value a fine? If you say, all the thirty are a fine, he does not pay. If you say, the excess over his value is a fine, he pays. There, we have stated: “‘Your ox killed my slave’, but he says ‘he did not kill;’ ‘I am asking you to swear’ and he says ‘Amen’, he is not liable.” Rebbi Ḥaggai said before Rebbi Yose: Explain it if he killed a slave covered with boils. He said to him, but it says afterwards, “‘Your ox killed my son’, but he says ‘he did not kill;’ ‘I am asking you to swear’ and he says ‘Amen’, he is liable.”⁹⁰ You could explain it if he was covered with boils, then he would not be liable! You cannot do this, as we have stated⁹¹: “If he killed a human, he has to pay his worth.” Rebbi Ezra said before Rebbi Mana⁹² Explain it following him who said, *he shall pay redemption of his person*; of the injured⁹³. He said to him, if following

him who said, *he shall pay redemption of his person*; of the injured, all is a fine

Does one tell him, be in the clear with Heaven? Let us hear from the following⁹⁴: “It happened that Rabban Gamliel knocked out a tooth of his slave Tabi. He came to Rabbi Joshua and said to him, I found a reason to manumit my slave Tabi. He told him, you have nothing in your hand; fines only are imposed through witnesses and in court.” This implies that one does not tell him, be in the clear with Heaven. Rabbi Gamliel ben Rabbi Illai⁹⁵ asked before Rabbi Mana, does Rabban Gamliel hold with him who says, one is permitted to manumit? He told him, in itself it says that it is forbidden to manumit, for otherwise he should have manumitted him immediately.

89 The entire Halakhah is also in *Ketubot* 3:10, Notes 143-156.

90 This *baraita* is not found in any other source.

91 Mishnah *ʿArakhin* 3:3, about a person killed by an ox known as goring. The entire sentence is not found in *Ketubot*; this seems to point to *Shevuot* as the primary source.

92 In *Ketubot*: R. Ḥaggai before R. Yose; probably dittography.

93 *Ex.* 21:30. It is not clear whether “his” refers to the slain person or the owner of the dangerous ox (*Bava qamma* 4:8 Note 108). In *Ketubot* one reads the verse as referring to the owner of the ox; then it is obvious that the money is a fine even though its amount

is not biblically fixed. On the face of it, this reading might be preferred; cf. *Mekhilta dR. Ismael* and *Mekhilta dR. Simeon ben Iohai ad Ex.* 21:30. Rashi in *ʿArakhin* points to *Ex.* 21:30 as the source of the Mishnah there; the addition of the sentence (Note 91) supports the reading here as correct and that in *Ketubot* as corrected *lectio faciliior*. Even according to the reading here, the identification of the redemption money as weregilt defines it as a fine.

94 Babli *Bava qamma* 74b.

95 In *Ketubot*: ben Avina, at other places ben Ininia. R. Mana here is R. Mana I; in the preceding paragraph he was R. Mana II.

שבועת הדיינין פרק ששי

(fol. 36c) **משנה א:** שבועת הדיינין המענה שתי כסף והודייה בשנה פרוטה. ואם אין ההודייה ממין המענה פטור. כיצד שתי כסף לי בידך אין לך בדי אלא פרוטה פטור. שתי כסף ופרוטה לי בידך אין לך בדי אלא פרוטה חייב. מנה לי בידך אין לך בדי פטור. מנה לי בידך אין לך בדי אלא חמשים דינר חייב. מנה לאבא בידך אין לך בדי אלא חמשים פטור מפני שהוא כמשיב אברה:

Mishnah 1: A judicial oath¹ is about a claim of two silver coins² and the acknowledgment of one *perutah*³. If the acknowledgment is not of the kind of the claim he is not liable⁴. How is this? “You are holding two silver coins for me;” “I am holding only one *perutah*.” He is not liable⁵. “You are holding two silver coins and a *perutah* for me;” “I am holding only one *perutah*.” He is liable⁶. “You are holding a *mina* for me;” “I am not holding anything for you,” he is not liable⁷. “You are holding a *mina* for me;” “I am holding only 50 *denar* for you,” he is liable. “You are holding a *mina* for my father,” “I am holding only 50 *denar* for you,” he is not liable since he is like one returning a lost object⁸.

1 In the case of a claim not proven by witnesses or documents where the defendant disputes part of the claim, the judges will impose an oath on the defendant that he owes not more than he admitted. The basis is Ex. 22:8, where the expression *where he says, this is it* is read as partial admission on the part of the defendant. The oath cannot be required by biblical standards if the defendant rejects the claim in its entirety; it cannot be administered by rabbinical standards if the amount in dispute or the amount admitted are below a certain threshold.

2 “Silver” denotes the smallest silver coin struck in Hasmonean times, the *obolos*, $\frac{1}{6}$ of a *denar*. The silver half- *oboloi* minted

in Yehud in Persian times had long disappeared when the Mishnaic system of currency was formulated.

3 A copper coin of Hasmonean times, of varying weight, but in the Mishnah assumed to be $\frac{1}{32}$ of an *obolos*. Half- *perutot* have been found.

4 This is explained in Mishnaot 3 ff.

5 Since the claim to be adjudicated is 2 *oboloi* minus 1 *perutah*, i. e., 63 *perutot*, the statutory minimum of 64 *perutot* is not reached; the oath cannot be imposed by rabbinic rules.

6 Since the claim in dispute is a full two *oboloi*.

7 Since the claim is rejected in its entirety, it must be proven by documents or

witnesses; the oath cannot be imposed by biblical standards.

8 Since a son cannot swear in place of his father, the son would have to accept a declaration by the defendant that he had

owed to the father but returned everything to the latter during his lifetime; the defendant has to be believed if he admits part of the claim.

(36d line 21) **הלכה א:** שבויעת הדיינין כול'. הטענה. בית שמי אומרים. מעה כסף. ובית הלל אומרים. שתי מעין. מחלפה שיטתיו דבית שמי. תמן אמרין. כסף דינר. והכא אמרין. כסף מעה. מחלפה שיטתיו דבית הלל. תמן אמרין. כסף פרוטה. והכא אמרין. כסף תרין מעין. רבי יעקב בר אבא בשם רבי חנינה. בית שמי אומרים. מתחילת מכירת העבדיה. מה תחילת מכירתה בדינר אף קידושיה בדינר. ובית הלל למידין מסוף גירועיה. מה סוף גירועיה בפרוטה אף קידושיה בפרוטה. ומה טעמא דבית שמי. ויצאה חנם אין כסף. וכי אין אנו יודעין שאין כסף. מה תלמוד לומר כסף. מיכן שנמכרת יותר מכסף. וכמה היא יותר מכסף. דינר. או כסף פרוטה. יותר מכסף שתי פרוטות. סוף מטבוע כסף מעה. ויתהא מעה. רבי אבין בשם רבי יודה בר פזי. שאם ביקשה למגרע מגרעת מעה בכל-שנה ויוצאה. ותגרע בפרוטה. אמר רבי אבין. הגע עצמך שאם ביקשה ליגרע מתחילת השנה הששית. מה תחילת השנה הששית גירועיה בפרוטה אף קידושיה בפרוטה. אלא תחילת גירועיה מעה כסף וסוף גירועיה בפרוטה. ומה טעמא דבית הלל. ממה שסוף גירועיה בפרוטה את יודע שקידושיה בפרוטה. הגע עצמך שאם נשתייר שם שנה פרוטה שמה אינה מגרעתו ויוצא. כשם שסוף גירועיה בפרוטה כד קידושיה בפרוטה.

מחלפה שיטתהון דבית הלל. כיינתו איש אל-דעהו וגו'. אם ללמד שאין בית דין נזקקין לפחות משנה פרוטה. כבר כתוב לאשמה בה: פרט לפחות מפרוטה. מיכן שיש כאן יותר מכסף. וכמה הוא. שתי מעין. או כסף פרוטה. יותר מכסף ב' פרוטות. סוף מטבוע כסף מעה. ויתהא מעה. או-כלים. מה כלים ב' אף כסף ב'. מה מקיימין דבית שמי או-כלים. כהדא דתני רבי נתן. או-כלים. להביא כלי חרס. שמואל אמר. טענו שני מחטין והודה לו באחת מהן חיוב. אמר רבי חנינא. והן שניהם נפות שתי פרוטות. שניהם הטענה פרוטה וההודיה פרוטה. אתנא כבית שמי דלא ילפי כסף מפלים. ברם כבית הלל דילפי כסף מפלים. מה כלים שנים אף כסף שנים. ודכותה. מה כסף שתי מעין אף כלים שתי מעין.

Halakhah 1: "A judicial oath," etc. ⁹The claim, the House of Shammai say, an *obolos*, but the House of Hillel say, two *oboloi*. The argument of the House of Shammai seems inverted. There, they say, "silver" is a *denar*, but here, they say that "silver" is an *obolos*. The argument of the House of Hillel seems inverted. There, they say that "money" is a *perutah* but here, they say that "money" is two *oboloi*. Rabbi Jacob bar Aḥa in the name of Rabbi

Ḥanina: The House of Shammai learn from the initial sale of a Hebrew girl. Since her initial sale was by [at least] a *denar*, so her preliminary marriage is by [at least] a *denar*. The House of Hillel learn from the end of her diminution. Since the end of her diminution is a *peruṭah*, so her preliminary marriage is by a *peruṭah*. What is the reason of the House of Shammai? As it is said, *she leaves gratis, without silver*¹⁰. Would we not know that it is without money? Why does the verse say, *without silver*? From there, that she is sold for more than silver. And what is more than silver? A *denar*. But maybe “silver” is a *peruṭah*, more than silver two *peruṭot*. The smallest silver coin is an *obolos*². So why is it not an *obolos*? Rabbi Abun in the name of Rabbi Judah bar Pazi: For if she wants to diminish, she diminishes every year by an *obolos* and leaves. Could she not diminish by a *peruṭah*? Rabbi Abun said, think of it. If she wanted to compute the diminution at the start of the sixth year, there would be a *peruṭah* left. But the start of the diminution must be an *obolos*, the end of the diminution a *peruṭah*. If there is only one *peruṭah* left, can she not pay the diminished amount and leave? Just as the last diminished amount is a *peruṭah*, so her preliminary marriage should be a *peruṭah*! What is the reason of the House of Hillel? Since her last diminished amount is a *peruṭah*, you know that her preliminary marriage is by a *peruṭah*. Think of it, if there is only one *peruṭah*’s worth left, can she not pay the diminished amount and leave? Just as the last diminished amount is a *peruṭah*, so her preliminary marriage is by a *peruṭah*.

The argument of the House of Hillel seems inverted. *If a person give to his neighbor*,¹¹ etc. If to teach that the court will not act on less than a *peruṭah*’s worth, is it not already written, *to incur liability for it*? To exclude anything not worth a *peruṭah*. From here, that it should be more than silver. And what is more than silver? Two *oboloi*. But maybe “silver” is a *peruṭah*, more than silver two *peruṭot*. The smallest silver coin is an *obolos*. So why is it not an *obolos*? Or vessels; since vessels are two, also “money” is two. How do the House of Shammai interpret or vessels? Following what Rabbi Nathan stated, or vessels, including clay vessels¹². Samuel said, if he claimed from him two needles and he admitted to one, he is liable. Rabbi Ḥinena said, only if they are worth two *peruṭot*, that the claim should be about a *peruṭah*’s worth and

the confession about a *peruṭah*'s worth¹³. This follows the House of Shammai who do not learn money's worth from "vessels". But following the House of Hillel who learn money's worth from "vessels", since vessels are two, also "money" is two. Similarly, since "money" means two *oboloi*, also "vessels" means two *oboloi*'s worth.

9 This text is copied in *Qidduṣin* 1:1, explained there in detail in Notes 77-98. Parallels are in the Babli *Qidduṣin* 11b.

The question is, why do the House of Hillel require a larger minimal amount for litigation before a court than the House of Shammai but a much smaller sum than the House of Shammai for legal marriage by symbolic acquisition. The answer is that different biblical verses are the basis. Since a Hebrew slave girl is a minor sold by her father for a maximum of 6 years, or until she reaches the age of 12, or until she is married by the person who buys her or one of his sons. In order to get the maximum for his money, the man buying her might use her as

a servant up to the last day of her servitude and then marry her on that day. Since if the original price is divided by the sum of all days of her servitude and only pennies pay for the service of one day, only pennies are left on the last day but nevertheless the marriage is legal. Therefore only pennies are needed for a legal marriage ceremony.

10 Ex. 21:10.

11 Ex. 22:6.

12 Cf. *Qidduṣin* 1:1 Note 96 for the arguments which show that this reading is impossible.

13 Quoted in *Tosaphot* 39b, s.v. מה.

(36d line 50) רבי בא רב יהודה בשם שמואל. כל-נששנים מחייבין אותו כמון עד אֶחָד זֶקֶק לְשְׁבוּעָה. וְהָרִי שְׁנִים מְחַיִּיבִין אוֹתוֹ קֶרֶקֶע. שְׁנִיָּא הִיא שְׁאִין נִשְׁבָּעִין בְּקֶרֶקֶעוֹת. וְהָרִי שְׁנִים מְחַיִּיבִין אוֹתוֹ קֶנֶס. שְׁנִיָּא הִיא שְׁאִין נִשְׁבָּעִין בְּקֶנֶס. וְהָרִי שְׁנִים מְחַיִּיבִין אוֹתוֹ פְּרוּטָה. וְכֵן הִיא דְּתַנִּין. שְׁבוּעַת הַדִּינִין. הַטַּעֲנָה שְׁתֵּי כֶסֶף וְהַהוֹדֵיָה שְׁנֵה פְּרוּטָה. מִתְּנִיתָא בְּנִשְׁבָּע מִפּוֹ. מִה דְּמַר רַבִּי שְׁמוּאֵל בְּנִשְׁבָּע מִפִּי אֲחֵרִים. רַב חֲסִידָא וְחִבְרוּתִיָּה פְּלִיגִי. שְׁבוּעַת הַדִּינִין. כָּל-שְׁבוּעַת הַדִּינִין. לֹא שְׁנִיָּא בֵּין מִפּוֹ בֵּין מִפִּי אֲחֵרִים לְעוֹלָם אֵינוֹ חַיֵּב עַד שֶׁתִּהְיֶה הַטַּעֲנָה.

Rebbi Abba, Rav Jehudah in the name of Samuel: In any case where two [witnesses] make him liable to pay money, a single witness sets him up for an oath¹⁴. But do not two [witnesses] make him liable for real estate¹⁵? It is a difference since one does not swear about real estate. But do not two [witnesses] make him liable for a fine? There is a difference since one does not swear about a fine. But do not two [witnesses] make him liable for a *peruṭah*? Is it so? Have we not stated: "A judicial oath is about a claim of

two silver coins and the acknowledgment of one *perutah*.” Our Mishnah, when he swears by his own formulation. What (Rebbi)¹⁶ Samuel said, when he swears by the formulation of others. Rav H̥isda and his group disagree. “A judicial oath”, any judicial oath. There is no difference whether he swears by his own formulation or he swears by the formulation of others, he cannot be liable except for a claim¹⁷.

14 In the Babli, 40a, this is a tannaitic statement commented upon by Samuel.

15 Since anything can be decided upon the testimony of two witnesses, possession of real estate can be transferred without documentary proof by the testimony of witnesses. Similarly, real estate can be attached in foreclosure for unpaid fines upon the testimony of two witnesses.

16 A slip of the scribe’s pen; the first generation Samuel only had a medical, not a

rabbinic degree.

17 It is not clear whether the sentence is incomplete and one should add “of at least two *oboloi*”, or that only the situation of monetary claim and denial can be adjudicated by judicial oath, to support the opponents of R. Johanan in the next paragraph. The interpretation of the statement in the Babli has no relation to the discussion here.

וְהַהוּדְיָה שְׁנֵהּ כְּרוּטָה. רַבִּי יוֹחָנָן אָמַר. הַטּוֹעֵן לַחֲבִירוֹ טַעַנְתָּ גִּנְבִּי אֵינוֹ חַיִּב עַד שְׂיֻדָּה מִקְצָת. וְכָל־חֲבִירֵי פְּלִיגִין עָלָיו. מִה מְקַיֵּמִין כָּל־חֲבִירֵי כִּי־הוּא זֶה. בְּטוֹעֵנוּ מִמוֹן. אִם בְּטוֹעֵנוּ מִמוֹן בְּדָא וְשִׁלְמָם שְׁנַיִם לָרַעְהוּ. וְעִירוּבֵי פְּרָשִׁיּוֹת יֵשׁ קָאן. אָמַר רַבִּי זִירָא. אֵינוֹ חַיִּב עַד שְׂיֻהָא בְּכַפִּירָה שְׁתֵּי כֶּסֶף חוּץ מִהַהוּדְיָה. אֲתֵיָא כְּחֲבִירֵי דְרַבִּי יוֹחָנָן.

“And the acknowledgment of one *perutah*.” Rebbi Johanan said, if somebody claims that another had stolen¹⁸, the latter is not liable unless he partially admit. But all his colleagues¹⁹ differ from him. How do the colleagues uphold *for this is it*²⁰? If he claims money from him. If he claims money from him, is that *double he shall pay to his neighbor*²¹? But this is a mixture of paragraphs.

Rebbi Ze’ira said, he is not liable unless the denial be of two silver coins not counting the acknowledgment of one *perutah*²². This follows Rebbi Johanan’s colleague.

18 The argument is about *Ex. 22:8*, the basis of the Mishnah. A deposited something with B. B claims that the item was lost and as unpaid trustee he is not liable for damages. A accuses B of having appropriated the item for himself, i. e., to have stolen it. R. Johanan holds that this claim is no different from all other claims adjudicated under the rules of *Ex. 22:6-8* and, therefore, an oath can be imposed on B only if the latter acknowledges liability for part of the claim.

19 According to the Babli (*Bava qamma* 106b, bottom) he is R. Hiyya bar Joseph, a student of Rav and member of R. Johanan's court.

20 *Ex. 22:6* reads: *About anything criminal, about an ox, about a donkey, about a sheep, about a garment, about anything lost, if he says, for this is it, the suit of them shall come before the Elohim, he whom the Elohim find guilty shall pay double to his neighbor.* Elohim means "the powerful;" it can be applied both to God and to judges. From this double meaning it is inferred that judges impose an oath before

God on the accused if the latter has acknowledged *for this is it*, i. e., a partial admission. On the other hand, double restitution is the fine for the thief. Therefore R. Johanan is justified in his conclusion that since v.6 declares the entire paragraph to be about deposits, the entire sentence deals with the case of A accusing B of theft of the deposit.

21 The colleagues agree that a fine can be imposed only for theft, but they hold that the clause *for this is it* does not apply to deposits but to repayment of loans and debts (*Lev. 5:24*). They have to take the position that this very long sentence deals with different subjects in different parts and that an oath is due on demand of the claimant for any accusation that a deposit was stolen.

22 As explained in the Mishnah, after partial admission of any claim, the amount in dispute must be at least two *oboloi*. In the Babli, 39b, this is the position of Rav, R. Hiyya bar Joseph's teacher, disputed by Samuel who only requires the total claim to be for at least two *oboloi*.

מְנָה לִי בְגִדִּי. אֵין לְךָ בְּגִדִּי. פְּטוּר. אֶפִּילוֹ. כְּמָה לִי בְּגִדִּי. אֵין לְךָ בְּגִדִּי. פְּטוּר. אֶלָּא כִּינִי. מְנָה לִי בְּגִדִּי. אֵין לְךָ בְּגִדִּי אֶלָּא פְּרוּטָה. חֵיב. רַב רַבִּי יוֹחָנָן תַּרְוִיחוֹן אֶמְרִין. וְהוּא שְׁהִלְוֹהוּ בְּעֵדִים. אֲבָל אִם הִלְוֹהוּ שְׁלָא בְּעֵדִים וְכִיל מִימַר לֵיהּ. הִלְוִיתְנִי וְנִתְתִּי לְךָ מַחְצָה. אֶמַּר רַבִּי יוֹדֵן. אֵין אוֹמְרִים בְּקִמּוֹן מֵאַחַר. מֵאַחַר דִּיכִיל לְמִימַר לֵיהּ. לֹא הִלְוִיתְנִי. וְכִיל מִימַר לֵיהּ. הִלְוִיתְנִי וְנִתְתִּי לְךָ חֲצִיִּים. מִתְּנִיתָה פְּלִיגָה בְּרַבִּי יוֹחָנָן. מְנָה לִי בְּגִדִּי אֶמַּר לוֹ. הֵין. לְמַחַר אֶמַּר לוֹ תִּנֵּיחוּ לִי. נִתְתִּי לְךָ. פְּטוּר. אֵין לְךָ בְּגִדִּי. חֵיב.

“You are holding a *mina* for me’, ‘I am not holding anything for you’, he is not liable⁷.” Even “you are holding a lot for me,” “I am not holding anything for you”, he is not liable? But the following: “You are holding a *mina* for me.” “I am holding only a *perutah* for you.” He is liable²³.

Rav and Rabbi Johanan both are saying: Only if he made the loan in the presence of witnesses²⁴. But if he made the loan not in the presence of witnesses, he could tell him, you gave me a loan but I returned half of it. Rabbi Yudan said, in money matters one does not argue “because.” Because he could have told him, you did not give me a loan, he could tell him, you gave me a loan but I returned half of it²⁵? The Mishnah²⁶ disagrees with Rabbi Johanan: “‘You are holding a *mina* for me,’ he said ‘yes’²⁷. The next day he said, ‘return it to me,’ ‘I returned it to you,’ he is not liable. ‘I am not holding anything for you,’ he is liable²⁸.”

23 In Mishnah 1, the sentence about the person who claims he owes only 50 denar seems redundant. It only is inserted to indicate that for the liability to swear, a *mina* is no different from two *oboloi*. If the defendant admits to owing a *perutah* and the claim is at least 2 *oboloi*, there is liability. The lower bound is not a function of the size of the claim.

24 They hold that undocumented loans never can trigger liability for an oath. Babli 41a (in the name of Rav only.)

25 In the Babli, such an argument is called מגו “because”. In the absence of witnesses or documents, if the defendant presents an argument which is less favorable to him than another argument which he

could have advanced, the court is forced to give him the benefit of doubt and free him from the oath. It will be seen in Halakhah 7:1 that such arguments are acceptable in general, supporting Rav and R. Johanan against R. Yudan.

26 Mishnah 2.

27 In front of witnesses.

28 Since he had agreed in the presence of witnesses that he owes the money, he cannot change his confession later; he does not swear but has to pay. This last sentence is not in the Mishnah of the Yerushalmi but appears in the Babli and the independent Mishnah mss., including Maimonides’s autograph. The Halakhah shows that it should also be read in the Mishnah.

מִנָּה לִי בְיָדְךָ. אֵין לְךָ בְּיָדִי. אִשִּׁי אָמַר. הַמַּלְוֶה לְחַבְּרֵירוֹ בְּעֵדִים לֹא יִפְרָעֵנּוּ אֶלָּא בְּעֵדִים. אָמַר רַבִּי אֲבִין. מִלִּתִּיהָ דְּאִשִּׁי הַמַּלְוֶה לְחַבְּרֵירוֹ בְּעֵדִים לֹא יִחְזִיר לוֹ אֶלָּא בְּעֵדִים. מִתְּנִיתָהּ פְּלִיגָה עָלָיו. מִנָּה לִי בְיָדְךָ. אָמַר לוֹ הֵין. לְמַחֵר אָמַר לוֹ. תְּנִיתָהּ לִי. תְּתִיתִי לְךָ. פְּטוֹר. אֵין לְךָ בְּיָדִי חֵיב.

“‘You are holding a *mina* for me,’ ‘I am not holding anything for you.’” Issy²⁹ said, one who gives a loan to another in the presence of witnesses should claim repayment only in the presence of witnesses. Rabbi Avin said, the word of Issy: If one gives a loan to another in the presence of witnesses,

[the debtor] should not repay except in the presence of witnesses³⁰. The Mishnah disagrees with him: “‘You are holding a *mina* for me;’ he said ‘yes’²⁷. The next day he said, ‘return it to me,’ ‘I returned it to you;’ he is not liable. ‘I am not holding anything for you,’ he is liable^{28,31}.”

29 Babli 41a. In the Babli, he always appears as Rav Assi even though his ordination preceded that of Rav for whom the title “Rav” was invented.

30 This is not an obligation of the lender’s as implied by Issy’s formulation, but advice to the borrower to protect himself from double claims by the lender.

31 Since the second part of the Mishnah explicitly mentions payment in front of

witnesses, the first part must assume that payment was not made before witnesses, even though the admission of the debt before witnesses is equivalent to a loan given before witnesses. The Mishnah contradicts Issy’s formulation; it is compatible with R. Avin’s. The Babli, 41a and *Ketubot* 18a, explicitly notes that repayment in the presence of witnesses is not a legal requirement.

משנה ב: מִנָּה לִי בְיָדְךָ אָמַר לוֹ הֵינְי וְלִמְחֹר אָמַר לוֹ תִּנְיָהּ לִי נִתְּנִי לְךָ פְּטוֹר. מִנָּה לִי בְיָדְךָ אָמַר לוֹ הֵינְי אֵל תִּתְּנִיָּהּ לִי אֵלָּא בְּפָנֵי עֵדִים. לִמְחֹר אָמַר לוֹ תִּנְיָהּ לִי נִתְּנִי לְךָ חַיִּב מִפְּנֵי שְׁצִרִיךָ לִיתְנֶם בְּפָנֵי עֵדִים:

Mishnah 2: “‘You are holding a *mina* for me;’ he said “yes”²⁶. The next day he said, “return it to me,” “I returned it to you;” he is not liable³². “‘You are holding a *mina* for me;’ he said “yes.” “Return it to me only in the presence of witnesses.” The next day he said, “return it to me,” “I returned it to you;” he is liable³³ since he is required to return it in the presence of witnesses.

32 Since he already admitted his entire obligation in the presence of witnesses, there is no occasion for an oath. It is up to the claimant to prove the defendant’s guilt

by witnesses or documents.

33 To pay the entire sum, see the preceding Note.

הלכה ב: מִנָּה לִי בְיָדְךָ כֹּל. אָמַר רַבִּי בִּין. דֶּרֶךְ בְּנֵי אָדָם לְהַלְוֹת לַחֲבֵירֵיהֶן שְׁלֵא בְּעֵדִים וּלְתוֹבָעֶן בְּעֵדִים.

Halakhah 2: “You are holding a *mina* for me;” etc. Rabbi Abun³⁴ said, it is usual for people to give loans to others not in the presence of witnesses but to ask for repayment in the presence of witnesses³⁵.

34 He seems to be identical with R. Avin quoted in the preceding paragraph (which also refers to Mishnah 2) and the father of R. Yose ben R. Bun.

it is recommended that requests for repayment be made in front of witnesses to obtain admission by the debtor of the existence of the debt as presupposed in the Mishnah.

35 Even though it is not legally necessary,

(36d line 76) מְנָה לִי בְיָדְךָ. אָמַר לוֹ. הֵינִי. אֵל תִּתְּנֶיהוּ לִי אֶלָּא בְּפָנֵי פְלוֹנִי וּפְלוֹנִי. לְמַחֵר אָמַר לוֹ. תִּתְּנֶיהוּ לִי. וְתִתִּיו לָךְ. חֵיב. שְׁצָרִיךְ לְהַחֲזִיר לוֹ בְּעֵדִים: הִגַּע עֲצָמְךָ דְּאָמַר לִיה. וְתִתִּיו לָךְ בְּעֵדִים. תִּנִּי בַר קַפְרָא. בְּמַעֲמַד פְּלוֹנִי וּפְלוֹנִי. הִגַּע עֲצָמְךָ דְּאָמַר לִיה. בְּמַעֲמַד פְּלוֹנִי וּפְלוֹנִי. רַבִּי בָּא רַב הַמְנוּנָא רַבִּי אֲדָא בַר אֲהֵבָה בָּשֵׁם רַב. מַעֲשֶׂה בָּא לְפָנֵי רַבִּי וְאָמַר. יָבוֹאוּ פְּלוֹנִי וּפְלוֹנִי.

“You are holding a *mina* for me;” he said “yes.” “Return it to me only in the presence of X and Y.” The next day he said, “return it to me,” “I returned it to you,” he is liable³³ since he is required to return it in the presence of witnesses. Think of it, if he said, I returned it in the presence of witnesses. Bar Kappara stated: “when X and Y are standing there.” Think of it, if he said, “when X were Y are standing there.” Rabbi Abba, Rav Hamnuna, Rabbi Ada bar Ahava³⁵ in the name of Rav: A case came before Rabbi, and he said, let X and Y come³⁶.

35 The Babylonian form of his name.

the Babli, 41b, the question is raised if the return was made in the presence of witnesses but not those specified by the lender. It seems that the formulation by Bar Kappara requires return only in the presence of the specified witnesses.

36 The questions are besides the point. If there were witnesses, it is not a question of whether a statement of the defendant can be believed, nor whether he should swear; it is up to the court to listen to the witnesses. In

(37a line 5) הָרִי שֶׁבָּא בְּשִׁטָּר וּבַחֲזָקָה. רַבִּי אֹמַר. יָדוֹן בְּשִׁטָּר. רַבָּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל אֹמַר. יָדוֹן בַּחֲזָקָה. רַבִּי זִירָא בָּשֵׁם רַב יִרְמְיָה. מַעֲשֶׂה בָּא לְפָנֵי רַבִּי יְהוּדָה כְּרַבָּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל. רַבִּי יִרְמְיָה בְּעֵי קָמִי רַבִּי זִירָא. מַה. מִחֻלְפָּה שִׁטְיָתִיהָ דְּרַבִּי. תִּמְנָן אָמַר. יָדוֹן בְּשִׁטָּר. וְכָא אָמַר. יָדוֹן בַּחֲזָקָה. גִּימַר. עַד דְּלֹא נִחוּזָר בֵּיה. וְאַפִּילוּ תִימַר מִדְּחִזָּר בֵּיה. לֹא בִיקֻשׁ רַבִּי אֶלָּא לַעֲמוּד עַל אֲמִיתָן שְׁלֵדְבָרִים. הַמְחִזִּיק מִחֲמַת אוֹנוֹ וְנִמְצָאת פְּסוּלָה אֵינָה חֲזָקָה. רַבִּי יִרְמְיָה אָמַר. בְּמַחֲלוּקָתָא. רַבִּי שְׁמוּאֵל אָמַר רַבִּי זִירָא רַבִּי יַעֲקֹב בַּר אֲחָא בָּשֵׁם רַבִּי אֲבִינָא. דְּבָרִי הַכֹּל הִיא.

אָמַר רַבִּי יוֹסִי. תִּמְנָן בְּבֵא בְּשִׁטָּר וּבְחִזְקָה. הָכֵא בְּבֵא בְּשִׁטָּר. אָמַר רַבִּי יוֹדָן. תִּמְנָן בְּבֵא בְּשִׁטָּי
כִּינִי עֲדִים. הָכֵא בְּכּוֹפֵר בְּרָאיוֹתַי.

³⁷If somebody produced both a document and *hazaqah*³⁸. Rabbi says, it should be judged by the document. Rabban Simeon ben Gamliel says, it should be judged by *hazaqah*³⁹. Rabbi Ze'ira in the name of Rav Jeremiah: A case came before Rabbi Jehudah following Rabban Simeon ben Gamliel⁴⁰. Rabbi Jeremiah asked before Rabbi Ze'ira: How? Did Rabbi switch his opinion? There he said, it should be judged by the document. But here he said it should be judged by *hazaqah*. Would we say, before he changed his opinion⁴¹? Even if you say, after he changed his opinion. Rabbi only wanted to determine the truth of the matter⁴².

“If somebody occupied real estate on the basis of a document of sale⁴³ and it was found invalid, this is not *hazaqah*⁴⁴.”⁴⁵ Rabbi Jeremiah said, in dispute⁴⁶. Rabbi Samuel said, Rabbi Ze'ira, Rabbi Jacob bar Aḥa in the name of Rabbi Abinna: it is everybody's opinion⁴⁷. Rabbi Yose said, there if one produced both a document and *hazaqah*. Here if he came with a document⁴⁸. Rabbi Yudan said, there if he presented two groups of witnesses; here one who contradicts his own proofs⁴⁹.

37 The following does not concern oaths but judicial rules concerning real estate. Babli *Bava batra* 169b.

38 “Grasping”, a legal term with different meanings in different domains of law (cf. *Ketubot* 5:5 Note 100, *Qidduṣin* 1:1 Note 30.) It can mean taking possession by active use, but here it means a presumption of permanence of an established *status quo ante*. The particular application meant here is validation of squatter's rights after three years of uncontested occupation (which must be combined with a claim, not necessarily proven, of rightful acquisition, *Bava qamma* 7:4 Note 49.)

39 Obviously all means of proof should be admitted; the question is which should be

given the greater weight in the judges' deliberations.

40 The text is questionable since “R. Jehudah” clearly is Rabbi, (R. Jehudah ben Simeon) as follows from the sequel, and the sentence is missing a verb. Probably one should read: Rabbi judged following Rabban Simeon ben Gamliel.

41 Since Rabbi was a student of his father Rabban Simeon, he certainly started out following the latter's opinion and only later developed his own, differing, approach.

42 Theoretical preferences should never impede the search for the truth. Babli *Bava batra* 170a/b.

43 Greek δῶρη “document of sale”.

44 As mentioned in Note 38, proof of

legal possession by proof of undisturbed occupation is admissible only if based on a claim of legal acquisition. This claim does not necessarily have to be proven; the person in possession might claim, e. g., either that he inherited under intestate rules or that the sale document was eaten by the rats. But if he tries to prove his claim by presenting a forged document, any claim of *ḥazaqah* based on the document must be thrown out by the court. The only problem is whether he should be allowed to plead a substitute claim.

45 Tosephta *Bava batra* 2:2.

46 R. Jeremiah (the fourth generation Amora, not the first generation Rav Jeremiah) thinks that Rabbi would prohibit any substitute claim while Rabban Simeon would allow an examination of proof of undisturbed occupation even after rejection of the document.

47 If the document proving the claim is found invalid, the claim of squatter's rights is also invalidated. In this Rabbi and Rabban Simeon agree.

48 The difference between Rabbi and his father is about a case where both a document and a claim of *ḥazaqah* are presented to the court, where either one alone would be sufficient. The Tosephta deals with a case where a forged document was produced and only after it was rejected a claim of *ḥazaqah* was entered.

49 Rabbi and Rabban Simeon disagree on how to handle a case where the claimant produces two sets of witnesses testifying to different aspects of the case. The Tosephta states that after a claim of documentary proof has been rejected, a subsequent claim which is logically inconsistent with the first one will not be considered by the court.

רבי מרינוס הוה ערב לכלתיה והווי דיינין קמי רבי חמא אבי בר קפרא ורבי הושעיה. מדהודה אמר ליה. יהבית. שאלון לרבי חיה רובה. שאל רבי חיה לרבי. המתחייב בבית דין לא כל-הימינו. מאי לא כל-הימינו. רבי אבהו בשם רבי יוחנן. אם מעצמו משלם נאמן לומר נתתי. ואם מפי אחרים לא כל-הימינו. רבי בון בר כהנא אמר. אף בשבועות כן. מהו אף בשבועות כן. רבי אבהו בשם רבי יוחנן. אם מעצמו נשבע נאמן לומר נשבעתי. ואם מפי אחרים לא כל-הימינו.

Rebbi Marinus was guarantor for his daughter-in-law⁵⁰. They went to court before Rebbi Hama the father of Bat Qappara and Rebbi Hoshia⁵¹. After he had admitted he said to him, I gave. They asked the Elder Rebbi Hiyya; Rebbi Hiyya asked Rebbi: One who became liable in court cannot be trusted. What is the meaning of "he cannot be trusted"? Rebbi Abbahu in the name of Rebbi Joḥanan: If he pays on his own initiative, he is trusted when he says, I gave. But from the orders of others, he cannot be trusted⁵². Rebbi Abun bar Cahana said, also for oaths it is the same. What is the meaning of "also for oaths it is the same"? Rebbi Abbahu in the name of Rebbi Joḥanan:

If he swears on his own initiative, he is trusted when he says, I swore. But from the orders of others, he cannot be trusted.

50 He warranted all claims she might have against her husband from the marriage contract; Babli *Bava meṣia* 17a.

51 This must read: R. Ḥama the father of R. Hoshia and Bar Qappara. The latter's father was R. Eleazar haQappara.

52 The question here and in the next case is, on whom is the burden of proof. Even

though the rule is that "the burden of proof is on the claimant," since his daughter-in-law had to go to court against him, he has to prove (by witnesses or a receipt) that he paid. Had he not initially denied his responsibility, the burden of proof would have been on the daughter-in-law.

משנה ג: לטרא זָהב לִי בְיָדְךָ אֵין לְךָ בְּיָדִי אֶלָּא לִטְרָא כֶּסֶף פְּטוֹר. דִּינָר זָהב לִי בְיָדְךָ אֵין לְךָ בְּיָדִי אֶלָּא דִּינָר כֶּסֶף כְּטָרִיסִית וּפּוֹנְדִיּוֹן וּפְרוּטָה חַיִּב שְׁהַבֵּל מִזֵּן מִטְבַּע אֲחֵד.

Mishnah 3: ⁵³“You are holding for me a pound⁵⁴ of gold,” “I am holding for you only a pound of silver;” he is not liable. “You are holding for me a gold *denar*,” “I am holding for you only a silver *denar*, or a *tressis*⁵⁵, or a *dupondius*⁵⁶, or a *perutah*,” he is liable since all kinds of coin⁵⁷ are one.

53 Here starts the discussion of the condition that “the acknowledgment must be of the kind of the claim.”

54 Greek λίτρα, a Roman *libra* of twelve (Troy) ounces.

55 With the good Mishnah mss. (Kaufmann ms. and Maimonides's auto-

graph) read: וטריסית. *Tressis* “three *as*; something of little value.”

56 “Two *as*; two bits”.

57 Even if for a claim of a gold *denar* the defendant admits only a debt of one *perutah*, 1/4800, it is a valid admission which makes the defendant liable for an oath.

הלכה ג: לטרא זָהב לִי בְיָדְךָ כּוֹל. שְׁמוּנָה שְׁלֹזָהב יֵשׁ לִי בְּכִס. וְנִמְצְאוּ שְׁמוּנָה דִּינָרֵי זָהב. אוֹ חֲמִשִּׁים סָלַע. וְנִמְצְאוּ ר' דִּינָר. אוֹ ר' דִּינָר. וְנִמְצְאוּ חֲמִשִּׁים סָלַע. הָרִי אֵילוֹ חוּלִין. שְׁמוּנָה דִּינָרֵי זָהב יֵשׁ לִי בְּכִס. וְנִמְצְאוּ חֲמִשִּׁים סָלַע. אוֹ ר' דִּינָר. וְנִמְצְאוּ נ' סָלַע. הָרִי אֵילוֹ שִׁנִּי. לִטְרָא זָהב לִי בְיָדְךָ אֵין לְךָ בְּיָדִי אֶלָּא לִטְרָא כֶּסֶף פְּטוֹר. דִּינָר זָהב יֵשׁ לִי בְיָדְךָ. אֵין לְךָ בְּיָדִי אֶלָּא דִּינָר כֶּסֶף. אָמַר רַבִּי יַעֲקֹב בֶּר אֲבִינָא. בְּקִדְמִיתָא הָיוּ אֶמְרִין. דִּינָר זָהב פְּרוּטָרוּט. דִּינָרֵי זָהב אֵין פְּרוּטָרוּט. אֵילוֹ מַר. דִּינָרֵי זָהב זָהוּב. יֵאוּת. אֲשַׁבַּח תַּנִּי. דִּינָר זָהוּב זָהב פְּטוֹר.

Halakhah 3: “You are holding for me a pound of gold,” etc. ⁵⁸“Eight of gold⁵⁹ I have in the wallet and one finds there eight gold *denarii*; or fifty *tetradrachmas* and one finds 200 *denar*; or 200 *denar* and one finds 50 *tetradrachmas*; these are profane. Eight gold *denarii* I have in the wallet and one finds fifty *tetradrachmas*⁶⁰; or 200 *denar* and one finds 50 *tetradrachmas*, these are Second [Tithe].”

“‘You are holding for me a pound of gold,’ ‘I am holding for you only a pound of silver;’ he is not liable. ‘You are holding for me a gold *denar*,’ ‘I am holding for you only a silver *denar*.’⁶¹” Rabbi Jacob bar Abinna said, earlier, we were saying, “a gold *denar*” is a detail; “gold *denarii*” are not detail. If he had said, “a gold *denar*, a gold coin” it would have been correct⁶². It was found stated, “a gold coin of a *denar*,” he is not liable⁶³.

58 Tosephta *Ma’aser šeni* 5:5. In the opinion of S. Lieberman, the Tosephta is quoted here to indicate that the rules for Second Tithe and judicial oaths are different.

Second Tithe is the part of the harvest which the farmer should eat with his family at the place of the Sanctuary. If this is not practical, the crop can be redeemed and the sanctity transferred to the coins which then have to be spent in purity at the place of the Sanctuary. Problems arise when in the wallet chosen for the sanctified coins other coins are found which do not directly correspond to the farmer’s memory.

59 Gold coins, but seemingly different from the standard gold *denar* (or, after Diocletian’s currency reform, the *solidus*.)

60 A gold *denar* usually is counted as 25 silver *ii*. 8 gold *denarii* are 200 silver *denarii* or 50 *tetradrachmas*.

61 This seems to be not a copy of the Mishnah but a text similar to Tosephta *Ševuot* 5:8,9. The background text is from

Tosephta 5:9: “‘You are holding for me a gold *denar* as gold coin,’ ‘I am holding for you only a silver *denar*, or a *tressis*, or a *dupondius*, or a *perutah*,’ he is liable.” The incomplete sentence in the Halakhah seems to be a text, not found in the Tosephta, “‘You are holding for me a gold *denar*,’ ‘I am holding for you only a silver *denar*,’ he is not liable.” The formulation of the text points to the first two Amoraic generations during the military anarchy in the Roman Empire, when the gold *denar* was a unit of accounting but not an actual coin. Then the status of a claim for a gold *denar* is similar to the claim for a pound of gold; if it is answered by an admission of silver units it is not an admission of the kind of the claim. But a claim for an actual gold coin which is answered by an admission of silver or bronze coins is an admission of the kind of the claim. In the rabbinic literature of the Middle Ages, דנר is the name of the standard gold coin of the author’s country.

62 To hold the person liable who admits

owing a silver *denar* when a gold coin was claimed.

63 In the Tosephta: He is liable; the same in the Babli, 40a.

משנה ד: בור תבואה לי בידך אין לך בידי אלא לתת קטנית פטור. בור פרות לי בידך אין לך בידי אלא לתת קטנית חייב שתקטנית בכלל פרות. טענו חיטים והודה לו בשעורים פטור. ורבי שמעון כחייב. הווען לחברו בבדי שמן והודה לו בקנקנים אדמון אומר הואיל והודה לו מקצת מין הטענה ישבע. וחכמים אומרים אין ההודיה מין הטענה. אמר רבן גמליאל רואה אני את דברי אדמון.

Mishnah 4: “You are holding for me a *kor*⁶⁴ of grain;” “I am holding for you only a *letek*⁶⁵ of legumes;” he is not liable. “You are holding for me a *kor* of produce;” “I am holding for you only a *letek* of legumes;” he is liable since legumes are subsumed under produce. If one sued for wheat and the other acknowledged barley, he is not liable, but Rabbi Simeon⁶⁶ declares him liable. Somebody who sued for amphoras of oil and the other admitted to pitchers, Admon says since he admitted of the kind of the claim he has to swear. But the Sages say, the admission is not of the kind of the claim⁶⁷. Rabban Gamliel said, I see⁶⁸ the words of Admon.

משנה ה: טענו בלים וקרקעות הודה בכלים וכפר בקרקעות וכפר בכלים פטור. הודה במקצת הקרקעות פטור. במקצת הכלים חייב שהנכסים שאין להם אחריות זוקקין את הנכסים שיש להן אחריות לישבע עליהן:

Mishnah 5: If somebody sued for both vessels and real estate; if [the other] admitted the vessels but denied the real estate, or the real estate and denied the vessels, he is not liable⁶⁹. If he admitted part of the real estate he is not liable⁶⁹. Part of the vessels he is liable since non-guaranteed property obligates guaranteed property to be sworn about⁷⁰.

64 Biblical and Accadic measure of volume, 30 *seah*.

65 A biblical measure of volume, half a *kor*.

66 In all other sources, including the following Halakhah: Rabban Gamliel. He considers all grain to be of related kind.

67 Admon (an authority of pre-rabbinic times) holds that the content of the vessels is determining; the Sages give preference to the determination of the vessels of storage.

68 To see = to accept as obvious.

69 One does not swear on claims of real estate (Mishnah 1). Therefore if the de-

fendant acknowledged his debt of vessels, there is nothing left to take the oath. If he disputes all claims to vessels, there is no acknowledgment since admission of the duty to hand over real estate does not count.

70 Mishnah *Qiddušin* 1:5, Note 474. If the defendant is liable to take an oath, the claimant can add to the oath all of his

outstanding claims even if they in themselves would not force an oath. This is known as “rolling over of oaths.”

A property is guaranteed if the seller as a matter of routine must guarantee the title to the property; this is the case with real estate.

(37a line 31) **הלכה ד:** כור תבואה לי בגדף כול. רבי אמי בשם רבי יוחנן. מתניתה בטענו חטים והודה לו בשעורים. אבל טענו שני מינין והודה לו באחד מהן דברי הכל פטור. אמר רבי אבהו בהדא דרבי אמי. מאי דא דתנינן. רבן גמליאל מחייב. בא להודיעך כח רבן גמליאל עד היכן מחייב. רבי חיה בשם רבי יוחנן. לא סוף דבר בטענו חטים והודה לו בשעורים. אבל אם טענו שני מינין והודה לו באחד מהן דברי חכמים פטור. ריש לקיש אמר. לא יהא דבר בשטענו שני מינין והודה לו באחד מהן. אבל אם טענו חטים והודה לו בשעורים דברי הכל חייב. בהדא דריש לקיש. חד בר נש אגל בעי מידן קמי רב דהנה מטען לחבריה חטין שעורין וכוסמין. אמר ליה רב. המתן עד דיגלגל עלך כל דבעי ובסופא תישתבע על כולן. אמר רבי אבהו. קד משיב ריש לקיש לרבי יוחנן. על דעתך דתימר טענו שני מינין והודה לו באחד מהן דברי חכמים פטור. והתנינן. טענו חטים וקרקעות. והודה לו בפלים וכפר בקרקעות. בקרקעות וכפר בפלים. פלים וכלים חייב. פלים וקרקעות לא כל-שכן. אמר ליה. לזוקקו לשבועה דו מתניתה. שהנכסים שיש להן אחריות זוקקין הנכסים שאין להן אחריות לישובע עליהן; ואפילו על דריש לקיש לית היא פליגא. דתנינן. הטוען לחברו כדי ששמן והודה לו בקנקנים. מה נן קיימין. אם בשטענו קנקנים ושמן. כל-עמא מודי שיש הודייה מהטענה. אם בשטענו קנקנים ולא הודה בשמן. כל-עמא מודי שאין הודייה מהטענה. רבי יציר אבהו בשם שמואל. בשטענו קנקנים ושמן. אהו אמר. קנקנים ולא שמן. ואהו אמר. שמן ולא קנקנים. נידה קנקנים ולא שמן. שמן ולא קנקנים. רבי לעזר בשם רבי אבין מפיק לישנא מחצין דמשת. וישאלוניה. בהוא דאישתתק.

Halakhah 4: “You are holding for me a *kor* of grain;” etc.⁷¹ Rabbi Immi in the name of Rabbi Johanan: Our Mishnah if he sued him for wheat and he admitted barley; but if he sued him for two kinds⁷² and he admitted one of them, everybody agrees that he is not liable. Rabbi Abbahu said about that of Rabbi Immi: Why did we state, “Rabban Gamliel declares him liable”? It comes to inform you of the power of Rabban Gamliel, how far he declares liable. Rabbi Hiyya in the name of Rabbi Johanan: Not only if he claimed wheat and he admitted barley to him, but if he claimed two kinds and he

admitted one of them, the words of the Sages are that he is not liable. Rabbi Simeon ben Laqish said, it is only if he claimed two kinds and he admitted one of them, but if he sued for wheat and he admitted barley according to everybody he is liable. Following Rabbi Simeon ben Laqish: A person went to court before Rav: When he claimed from another wheat, barley, and spelt. Rav told him, wait until he charged you with anything he has to charge, and in the end you will swear one oath about everything. Rabbi Abbahu said, so argued Rabbi Simeon ben Laqish against Rabbi Johanan: In your opinion, since you say that if he claimed two kinds and he admitted one of them, according to the Sages he is not liable, did we not state “if he claimed vessels and real estate; if he admitted the vessels and denied the real estate, the real estate and denied the vessels”? For vessels about vessels he is liable, not so much more for vessels and real estate? He answered him, to transfer an oath to him by the following Mishnah, “since guaranteed property obligates non-guaranteed property to be sworn about.” This does not even disagree with Rabbi Simeon ben Laqish. But did we not state: “Somebody who sued for amphoras of oil and he admitted to vessels”? How do we hold? If he sued him for vessels and oil, and he admitted one of them, everybody agrees that this refers to the claim. But if he sued him for vessels and he did (not)⁷³ admit oil, everybody agrees that what he admitted did not refer to the claim. Rabbi Ze’ira and Rabbi Abbahu in the name of Samuel: If he sued for vessels full of oil, one said vessels but not oil, the other said oil but not vessels. (Thrown)⁷⁴ vessels but not oil. Oil but not vessels⁷⁵? Rabbi Eleazar in the name of Rabbi Abin formulates it as oil buckets. Can one not ask him? If he was paralyzed⁷⁶.

71 A copy of this Halakhah is *Ketubot* 13:4, fully explained there in Notes 79-89. A parallel is in the Babil 40a, *Ketubot* 108b.

72 Unrelated matters.

73 This has to be deleted.

74 For the inappropriate נידה read נידח “it is understandable”.

75 Oil not in vessels is lost.

76 The difference between Admon and the Sages is one of semantics; any judge could immediately resolve the question by asking the parties what they meant. The only occasion for the disagreement is if one of the parties cannot be interrogated since he became paralyzed.

(37a line 55) כִּינִי מִתְּנִיתָהּ. כִּפֹּר בְּמִקְצֵת קַרְקָעוֹת חֵיב. בְּמִקְצֵת כֵּלִים פֶּטוּר.

So is the Mishnah: If he denied part of the real estate he is liable, part of the vessels he is not liable⁷⁷.

77 It is obvious that the mentions of “real estate” and “vessels” have to be switched since one does not swear about claims to real estate. It is pointed out that the entire

suit is not about what the defendant admitted but what he denied. There is an oath if the denial is partial, not if it is complete.

(fol. 36c) **משנה ו:** אִין נִשְׁבַּעִין עַל טַעֲנַת הָרֵשׁ שׁוֹטָה וְקָטָן וְאִין מִשְׁבִּיעִין אֶת הַקָּטָן אֲבָל נִשְׁבַּעִים לְקָטָן וְלִהְיָדֵשׁ:

Mishnah 6: One does not swear on the claim of a deaf-and-dumb person, an insane person, or a minor⁷⁸. One does not put an oath on a minor but one swears for a minor⁷⁹ and the Temple⁸⁰.

78 These persons have no standing in court; they cannot bring any action.

79 This oath is not the judicial oath based on a biblical decree but the rabbinic oath (Mishnah 7:8) instituted for creditors of orphans who want to collect debts incurred by their deceased father. They have to swear that the debt was not paid.

80 The Temple is not a person, cannot bring a suit, or be sued. But if a person dedicates all his property to the Temple, then the creditor can claim to be paid before the Temple may take possession. He has to swear an oath similar to that instituted for creditors of orphans.

(37a line 56) **הלכה ו:** אִין נִשְׁבַּעִין עַל טַעֲנַת הָרֵשׁ שׁוֹטָה וְקָטָן כּוּל. כְּתִיב כִּי־יִתֵּן אִישׁ אֶל־רֵעֵהוּ. פָּרַט לְקָטָן. עַד כְּדוֹן בְּשִׁנְתּוֹ לוֹ קָטָן וְיִתְּבַעוּ קָטָן. נִתַּן לוֹ קָטָן וְיִתְּבַעוּ גְדוֹל. תִּלְמוּד לומר רֵעֵהוּ. עַד שֶׁיִּהְיֶה נִתְּנָתוֹ וְיִתְּבַעֲתוֹ שְׁוִין. אָמַר רַבִּי בָּא בַר מַמְל. לִית הָדָא פְּשִׁיטָא עַל דְּרַבִּי יוֹחָנָן דְּאָמַר. הַטּוֹעֵן לְחַבְרֵי טַעֲנֵת גָּנֵב בְּאַבְדֵּיהַ חֵיב. אִיכּוֹ אֲבִידֵתִי. אָמַר לוֹ. נִגְנֵבָה. אָמַר רַבִּי בָּא. תִּיפְתָּר שְׁאָמַר לוֹ. עַד שֶׁאֵת קָטָן תִּבְעֵתִי וְנִפְטַרְתִּי מִשְׁבוּעָתָךְ. שְׁבוּעַת יִי תִּהְיֶה בֵּין שְׁנֵיהֶם. לְהוֹצִיא הַיּוֹרֵשׁ. רַבִּי אֵילָא בְּשֵׁם רַבִּי יֵסָא. בִּיּוֹרְשֵׁי הִיא מִתְּנִיתָהּ.

Halakhah 6: “One does not swear on the claim of a deaf-and-dumb person, an insane person, or a minor,” etc. It is written: *If a man give to his neighbor*⁸¹, to exclude the minor⁸². So far if a minor gave to him and the minor requested from him. If he gave it as a minor and requested it as an

adult? The verse says, *his neighbor*; only if giving and requesting are equal⁸³. Rabbi Abba bar Mamal said, is that not obvious by what Rabbi Johanan said, one who claims a claim of theft in respect of his neighbor's lost object is liable? "Where is my lost object?" He told him, it was stolen⁸⁴. Rabbi Abba said, explain it if he told him, you already asked me when you were underage and I was freed from swearing for you⁸⁵. *An oath of the Eternal shall be between both of them*⁸⁶, to exclude the heir⁸⁷. Rabbi Illa in the name of Rabbi Yasa: The *baraita* is about the heir⁸⁸.

81 *Ex. 22:6*.

82 Since a minor is not able to act in law, anything the minor may give does not leave his guardian's power. Since a minor cannot legally give a deposit, he cannot reclaim it nor ask for an oath in connection with such a deposit. The Yerushalmi *Ma'aser šeni* 4:4 (Note 67, *Eruvin* 7:6) finds this in the first words of v. 6, *if a man give*. Babli 42a; *Mekhilta dR. Simeon ben Ioḥai* 22:6.

83 If the giving is legal, the request for an oath is legal; this excludes the giving of a deposit by a minor, which is not legal. The Babli (*Bava qamma* 106b) and the *Mekhilta* derive this from v. 8, *before the judges shall come their mutual affair*; the oath is possible only if both parties have the same standing.

84 Halakhah 8:7; Babli *Bava qamma* 106b. A lost an object with enough unique features that the finder would have been required to publicly ask for its owner to come and reclaim it. B found the object. A has witnesses who saw B taking the object. When A comes to ask B, the latter claims that it was stolen. Since *Ex. 22:8* lists lost objects as subjects of judicial oaths, it is clear that B has to swear upon A's request even though A never handed the object to B. This excludes an interpretation like that

given in Note 83. (Babli *Yoma* 79b, *Yebamot* 48b, *Soṭah* 8a, *Zevaḥim* 17a, 90a, 94b, *Menahot* 69b, *Keritut* 3b).

85 An adult can ask for an oath regarding a deposit which he made underage only if the respondent does not claim that he already asked for the deposit back when he was still underage and unable to force an oath.

86 *Ex. 22:10*.

87 Only the original parties have enough knowledge of the transaction to be able to swear. Heirs can only swear rabbinic oaths, to state that their father did not inform them that the claims were moot or similar formulations. *Mekhilta dR. Ismael Mišpaṭim* 16.

88 The *baraita* explaining the verse *between them* is directed also to the heirs. Since normally only the defendant has to swear, the expression *between them* is interpreted as biblical endorsement of the rule that if the defendant is disqualified as a witness he also is disqualified from swearing; in that case the claimant has to swear that he is entitled to the money. Heirs, who cannot swear in cases of claims against the father's estate, can as claimants force oaths of debtors to the estate. Babli

47b.

(37a line 63) בֵּין שְׁנֵיהֶם. אֵינָה זֶה מִבֵּין שְׁנֵיהֶן לְעוֹלָם. אִם הַמְשַׁבֵּעַ מְשַׁבֵּעַ לְשָׁקֶר סוֹף לְצִאתָ עָלָיו. אִם הַנֶּשְׁבָּע נֶשְׁבָּע לְשָׁקֶר סוֹף לְצִאתָ עָלָיו. מֵאִי טַעְמָא. הוֹצֵאתִיהָ נָאִם יִי צְבָאוֹת וּבָאָהּ אֶל-בֵּית הַגָּבִי וְאֶל-בֵּית הַנֶּשְׁבָּע בְּשֵׁמִי לְשָׁקֶר וּגו'. אָמַר רַבִּי שְׁמוּאֵל בַּר נַחֲמָן. מִלֹּאכִי חִבְלָה אֵין לָהּ קִפְצִין. וּמָה טַעַם. מְשׁוּט בְּאַרְץ וּמִהֲתַהַלֵּךְ בָּהּ. בְּרַם הָכָא וְכִלְתָּ אֶת עַצְמוֹ וְאֶת-אַבְנֵיהִי: בּוֹא וְרָאָה. דְּבָרִים שְׁאֵין הָאִשׁ שׁוֹרְפָן שְׁבוּעַת שְׁוִי מְכַלְתָּ. רַבִּי יוֹנָה אָמַר. עַל שָׁקֶר. רַבִּי יוֹסִי אָמַר. אֶף עַל הָאֻמָּת. תַּחֲזִי דְרִישׁ כֹּהֵדָא דְרַבִּי יוֹסִי. עוֹבְדָא הוּא בְּחֵדָא אֵיתָא דְאִזְלַת מִיַּעְרוֹ: גַּב חֲבִירָתָה וְהוּא קְטִיר בְּשִׁיטָה דְקוֹלֶסְתִּיָּה תִרְוִי דִּינְרִין. נִפְלו לָהּ וְאִיעָרְכוּ גו עִיגוּלָא. הִפְכַּת בְּעִינָא לָהּ גו בֵּיתָא וְלֹא אֲשַׁכְחָתוּן. חֲזָרָת לְגַבָּה אָמְרָה לָהּ. הָבִי לִי ב' דִּינְרִין דְנִפְלוּ לִי גו בֵּיתִיד. אָמְרָה לָהּ. לֹא יְדַעְנָא. אִי יִדְעָה בְּהוּ תִיקְבּוֹר בְּרָה. קְבֻרָתִיהּ. מִי עָלוּן מִיקְבְּרִיא שְׁמַעַת קָלָא אָמְרָה. אִילוּלָא דְהוֹת יִדְעָה בְּהוּן לֹא קְבֻרָתִיהּ. אָמְרָה. אֵין יִדְעָה בְּהוּן הִיא אֵיתָא תִיקְבּוֹר בְּרָה חוֹרְנָה. קְבֻרָתִיהּ. עָלוּן מִנְחֻמָּתָא וְקִצּוֹן חַד עִיגוּל וְאֲשַׁכְחוּן תִּרְוִי דִּינְרִיא עָרִיכוּ גו עִיגוּלָא. הֵדָא מִיִּלְתָּא אָמְרָה. בֵּין זַכִּי בֵּין חַיִּיב לְשַׁבְּעָה לֹא תִיעוּל.

*Between both of them*⁸⁶ it will never move from between them. If the one forcing the oath forces the oath lying, at the end it⁸⁹ will come over him. If the one swearing swears lying, at the end it will come over him. What is the reason? *I shall take it out, oracle of the Eternal Sabaoth, and it will come into the house of the thief and the house of him who swears falsely in My Name*⁹⁰, etc. Rabbi Samuel bar Nahman said, destructive angels have no joints. What is the reason? *From roving about the Earth and walking there*⁹¹. But here, *it will destroy its wood and its stones*⁹⁰. Come and see, things which the fire will not burn, a vain oath will destroy. Rabbi Jonah said, about falsehood. Rabbi Yose said, even on truth.

⁹²Haggai was preaching following Rabbi Yose. There was a case about a woman who went to knead dough with another and had two *denarii* bound into the seam of her head cover. These fell out and were rolled into a loaf. She went back to her house, wanted them and did not find them. She returned to her and said to her, give me the two denarii which fell from me in your house. She told her, I do not know. If she⁹³ would know of it, she should bury her son. She buried him. When they returned from his grave, she heard a voice saying, if she had not known about them she would not have buried him. She said, if this woman⁹³ knows about them, she should bury her other

son. She buried him. They came to console her and cut one loaf and found two denarii rolled into the loaf. This says, whether innocent or guilty, never swear an oath⁹⁴.

89 The oath will destroy him.

90 *Sach*. 5:5. "It" is the curse mentioned in v. 4.

91 *Job* 2:2, Satan's answer. Having no joints at knees or ankles, he could never sit down. The order of topics is better in *Lev. rabba* 6(1) where it is explained that the Satan has to move perpetually because he has no joints but the curse of a false oath comes and dwells at length in the house of the swearer.

92 The Aramaic of the following

paragraph shows that this is a sermon, rather than a halakhic discussion. In slightly different form *Lev. rabba* 6(1).

93 As always in rabbinic literature, in relating bad things about oneself one always used the third person ("this man, this woman") instead of the first. The woman must have used an oath formula to be punished for vain oaths.

94 It is better to pay, or not to sue and not collect money, than force or swear any oath.

משנה ז: אילו דברים שאין נשבעין עליהם העבדים והשטרות והקרקעות וההקדשות. אין בהן תשלומי כפל ולא תשלומי ארבעה והמשה שומר הנם אינו נשבע. נושא שכן אינו משלם. רבי שמעון אומר דברים שחייב באחריותו נשבעין עליהן. ושאין חייב באחריותו אין נשבעים עליהן: (fol. 36c)

Mishnah 7: About the following one does not swear: slaves, and documents⁹⁴, and real estate, and gifts to the Temple⁹⁵. Not about double restitution, nor quadruple or quintuple; the unpaid trustee does not swear, the paid trustee does not pay⁹⁶. Rabbi Simeon says, one swears about things⁹⁷ for which he is responsible if they be alienated, but does not swear if he is not responsible if they be alienated.

משנה ח: רבי מאיר אומר יש דברים שהן כקרקע ואינן כקרקע ואין חכמים מודים לו. כיצד עשר גפנים מעונות מסרתי לך והלך אומר אינן אלא חמש רבי מאיר מחייב שבועה וחכמים אומרים כל המחזקר לקרקע הרי הוא כקרקע.

Mishnah 8: Rabbi Meir says, there are things which are like real estate and they are not like real estate but the Sages do not agree with him. How is this? "Ten bearing vines⁹⁸ did I hand over to you," but the other says, "they

are only five.” Rabbi Meir declares liable for an oath but the Sages say, anything connected to the ground is like ground.

משנה ט: אין נשבעין אלא על דבר שבמידה ושבמשקל ושבמניין. כיצד בית מלא מסרתי לך ובים מלא מסרתי לך והלה אומר איני יודע אלא מה שהינחה אתה נוטל פטור. זה אומר עד היזי וזה אומר עד תחלון חייב:

Mishnah 9: One swears only on matters of measure, or weight, or count. How is that? “I handed over to you a full house; or I handed over to you a full wallet,” But the other says, “I do not know; take what you left with me,” he is not liable. One says, up to the gutter; the other says, up to the window; he is liable⁹⁹.

משנה י: תמלך את חברו על המשכון ואבד המשכון אומר לו סלע הלוייתך עליי ושלך היתה שוה והלה אומר לא כי אלא סלע הלוייתני עליי וסלע היתה שוה פטור.

Mishnah 10: One gave a loan to another on a pledge and the pledge was lost. He told him, “I loaned you a *tetradrachma* and it was worth a *sheqel*,” but the other one says “no, a *tetradrachma* you loaned me and it was worth a *tetradrachma*”; he is not liable¹⁰⁰.

משנה יא: סלע הלוייתך עליי ושלך היתה שוה והלה אומר לא כי אלא סלע הלוייתני עליי ושלשה דינרים היתה שוה חייב.

Mishnah 11: “I loaned you a *tetradrachma* and it was worth a *sheqel*,” but the other one says “no, a *tetradrachma* you loaned me and it was worth three *sheqel*,” he is liable¹⁰¹.

משנה יב: סלע הלוייתני עליי ושתים היתה שוה והלה אומר לא כי אלא סלע הלוייתך עליי וסלע היתה שוה פטור.

Mishnah 12: “You loaned me a *tetradrachma* on it but it was worth two,” and the other says “no, but I loaned you a *tetradrachma* and it was worth a *tetradrachma*,” he is not liable¹⁰².

משנה יג: סלע הלוייתני עליי ושתים היתה שוה והלה אומר לא כי אלא סלע הלוייתך עליי ותמשה דינר היתה שוה חייב. ומי נשבע מי שהפקדון אצלו שמוא יישבע זה ויציא הלה את הפקדון:

Mishnah 13: “You loaned me a *tetradrachma* on it but it was worth two,” and the other says “no, but I loaned you a *tetradrachma* and it was worth five

denar,” he is liable¹⁰³. Who has to swear? The one who holds the pledge, lest one swear and the other produce the pledge¹⁰⁴.

94 Mostly IOU's. Even though they are money's worth, they do not fulfill the biblical criteria for a judicial oath.

95 Most of these will be shown in the Halakhah to be outside the biblical criteria. The Temple cannot ask for an oath since *Ex.* 22:6 restricts the judicial oath to transactions between human persons.

96 The statements (also in Mishnah *Bava meši'a* 4:8) refer to the subjects about which one does not swear. Cf. Mishnah 8:1.

97 In all other sources, including *Šeqalim* 2:1, the reading is: sacrifices. If a person makes a vow “to sacrifice *an* animal”, and if then the designated animal is lost or develops a defect, he has to provide a replacement; this is a vow implying a guarantee. But if he vowed “to sacrifice *this* animal,” and anything happens to the designated animal, he does not have to provide a substitute; there is no guarantee.

98 To be harvested. R. Meir considers

ripe fruit as already harvested and therefore movable, the Sages as part of the tree as long as they are hanging on the tree.

99 Since this is a measurable difference.

100 The creditor asks for a *šeqel* (half a *tetradrachma*), the debtor refuses. He denies the entire claim; the burden of proof is on the claimant.

101 The debtor agrees that he owes a *denar*; he admits part of the claim and has to take the oath.

102 The debtor asks for a *tetradrachma*, the creditor denies it completely; the creditor does not have to swear.

103 The creditor admits that he owes 3 *denarii* for the pledge, the debtor asks for four. The creditor has to swear.

104 The court has to be careful to avoid pushing people into perjury. The oaths always have to be formulated to minimize the possibility of public perjury. Cf. *Bava meši'a* 1:1, Note 3.

(37b line 4) הלכה ז: אילו דברים שאין נשבעין עליהן כול. עבר ונשבע. רבי יוחנן אמר. מביא קרבן על השבועה. רבי לעזר אומר. אינו מביא. אמר רבי אבון בר חייה. כן משיב רבי יוחנן לרבי לעזר. לא. אם אמרת בשבועת העדות שנוהגת בעבדים ובשטרות ובקרקעות. תאמר בשבועת הפקדון שאינה נוהגת בעבדים ובשטרות ובקרקעות. ושבועת העדות לאו בבית דין. ובית דין מוסרין שבועה לחשוד. אלא בשעבר ונשבע. ותימר. מביא קרבן על השבועה. וכא עבר ונשבע מביא קרבן על השבועה.

Halakhah 7: “About the following one does not swear,” etc. If he transgressed¹⁰⁵ and swore, Rabbi Johanan said he brings a sacrifice for the oath¹⁰⁶; Rabbi Eleazar says, he does not bring. Rabbi Abun bar Hiyya said, so does Rabbi Johanan answer Rabbi Eleazar. No. If you pronounced about an oath about testimony which may apply to slaves, documents, and real estate,

what can you say about oaths concerning deposits which do not apply to slaves, documents, and real estate¹⁰⁷? But an oath for testimony is not in court¹⁰⁸. Would the court admit an oath of a suspect person¹⁰⁹? Only when he transgressed and swore, you say that he brings a sacrifice for his oath¹⁰⁶; here also if he transgressed and swore, you say that he brings a sacrifice for his oath¹⁰⁶.

105 He swore about a claim to one of the items excluded by Mishnah 7 from being settled by oaths.

106 Since the oath was illegitimate, it is treated as “blurted oath”.

107 This argument is very elliptic. Tosephta 4:1 notes that oaths about testimony have no restrictions on the topics covered, whereas oaths about deposits have almost no restrictions on the people subject to the oath. Where they are equal is that people suspected of perjury are not allowed to swear (Mishnah 7:4).

108 Mishnah 4:3. On the other hand, an

oath about deposits is possible only in court.

109 Since oaths for testimony are not administered by the court, it may easily happen that the oath is wrongly applied to a person either disqualified as a relative or as a suspect (Mishnah *Sanhedrin* 3:6). But how could an oath about deposits be administered by the court to a disqualified person or about a disqualified subject? It can only happen if the person swears without waiting for instructions from the court, which characterizes his action as a blurted oath subject to all its rules.

(37b line 12) ואית דבעי נשמעניה מהדא. חמור אושור אושה. מה אילו מיוחדין שיש בהן שבר ושבויה ומתה. נצאו קרקעות שאין בה שבר ושבויה ומתה. אוציא קרקע ולא אוציא עבדים. מה אילו מיוחדין שיש להן קנס. נצאו עבדים שאין להן קנס. אוציא עבדים ולא אוציא שטרות שיש להן קנס. מה אילו מיוחדין שיש להן אונאה. נצאו שטרות שאין להן אונאה. מיכן אמרו. המוכר שטרות לבסם יש לו אונאה. רבי ישמעאל דרש. או נפש כי תשבע כלל. להרע או להיטיב פרט. לכל אשר יבטא חזר וכלל. כלל ופטר וכלל אין אתה דן אלא כעין הפרט. מה הפרט בתביעת ממון ולעצמו ומוציא בדין ויש לו דמים ודמיו קצובין ובמטלטלין ופטור על העונש ועל הקנס. בתביעת ממון. פרט לאומר לחבירו. תן לי מאתים זוזים שאמרתי ליתן לי ולא נתתה. לעצמו. פרט לאומר לחבירו. קיללתני ובנישתני. שפטור ומוציא בדין. פרט לאומר לחבירו. אנסתה ופיתיתיה בת פלוני. ויש לו דמים. פרט לשטרות. ודמיו קצובין. פרט לעבדים. ובמטלטלין. פרט לקרקעות. ופטור על העונש. פרט לאומר לחבירו. הדלקת גדישי בשבת. שפטור. ופטור על הקנס. פרט לתשלומי כפל ותשלומי ארבעה וחמשה. שהן קנס.

Some want to understand it from here¹¹⁰: *An ox, or a donkey, or a sheep*¹¹¹. Since these are particular in that they are subject to breaking, kidnapping, and dying, this excludes real estate which is not subject to breaking, kidnapping, and dying. I shall exclude real estate but shall not exclude slaves. Since these are particular in that they are subject to a fine, this excludes slaves which are not subject to a fine¹¹². I shall exclude slaves but shall not exclude documents since they are subject to fines. Since these are particular in that they are subject to overcharging, this excludes documents which are not subject to overcharging¹¹³. From here they say, if somebody sells documents to the spice trader¹¹⁴, it is subject to claims of overcharging.

Rebbi Ismael explained: *Or a person, if he would swear*, a general statement. *To cause evil or cause good*, a detail. *Anything which a person will blurt out*, a repeat general statement. A general statement followed by a detail followed by a general statement, you only argue in the pattern of the detail¹¹⁵. Since the detail¹¹⁶ is about monetary claims, [originating] from himself, which can be collected by court order, having monetary value, which is a fixed value, and are movables, and one is not liable for punishment and fines. Monetary claims, excluding one who said to another, give me the 200 *denar* which you promised me but never gave¹¹⁷. [Originating] from himself, excluding one who said to another, you cursed me and shamed me, who is not liable¹¹⁸. Which can be collected by court order, excluding one who said to another, you raped or seduced X's daughter¹¹⁹. It has monetary value, excluding documents¹²⁰. Which is a fixed value, excluding slaves¹²¹. Movables, excluding real estate. One is not liable for punishment, excluding one who said to another, you set fire to my grain stack on the Sabbath; who is not liable¹²². One is not liable for fines, excluding double, quadruple, or quintuple restitution which are fines¹²³.

110 The exclusions from oaths about deposits enumerated in the Mishnah.

111 *Ex.* 22:9, about the oath of the paid trustee. Breaking, kidnapping, and dying are all mentioned in the verse.

112 The person who kidnaps a slave does

not have to pay the double restitution exacted from a thief.

113 The thief of documents has to pay double restitution for the value of the paper on which the documents are written. On the other hand, documents are not traded as

commodities but for the financial values of the contracts written on them. Commodities are subject to the rules of overcharging or underpaying; a transaction which differs more than $\pm 16 \frac{2}{3}\%$ from the going market rate can be voided on the request of the injured party. Financial speculation, such as over the counter stock or bond trades, are not protected by this law (which is based on *Lev. 25:14*.)

114 If an IOU has been paid, it can be sold as packaging material; then it is a commodity. *Babli Bava meši'a 56b*, where the *baraita* is quoted as proof that the laws of overcharging apply to penny matters.

115 Halakhah 8:3, Note 83. However, this reference to *Lev. 5:4* is out of place since the argument is about *Ex. 22:9*. The text should be similar to that of *Mekhilta dR. Ismael Mišpaṭim* 15 (pp. 300-301): *About anything criminal*, a general statement. *About an ox, or a donkey, or a sheep*, detail. *About anything lost*, a repeat general statement.

116 In *Ex. 22:9*.

117 A promise does not generate an

enforceable claim.

118 Since the paradigm is a deposit made by the claimant, the defendant's oath is only about actions initiated by the claimant. Suits about matters initiated by the defendant's actions cannot be settled by oaths.

119 The only persons who can go to court are the woman or her father.

120 Since the value of the document is not determined by the cost of the paper on which it is written.

121 The value of the slave largely depends on his education, which has no standard value attached to it.

122 No money can be recovered for actions which carry the death penalty, even if there are no eye witnesses and therefore no court procedures are possible.

123 Only simple restitution of stolen property is within the purview of a civil court. Fines can be imposed only by a duly authorized criminal court where trials by oath are impossible.

וְחַד אָמַר. חַיִּיב. וְחַד אָמַר. רַבִּי חֲנַנְיָה וְרַבִּי מְנָא. רַבִּי חֲנַנְיָה חוּץ מִדַּעְתּוֹ. רַבִּי מְנָא דְּאָמַר פְּטוֹר. וּמְנָא דְּאָמַר חַיִּיב. מִשּׁוּם קֶנֶס. וּמְנָא דְּאָמַר חַיִּיב. וְדָא אֲרַמְלֶתָא דְּתַפְּשָׁה שְׁטֵרִיא כְּאִינֵשׁ דְּצִייר פּוּמְהוֹן דְּשִׁהֲדִיא דְּלֹא יִשְׁהָדוּן. אָמַר רַבִּי אֲמִי. אֵילִין דְּכִתְבִין. עַל מְנָת שְׂיֵשׁ לִי רְשׁוּת לְגָבוֹת מִמְטִלְטְלִין. לֹא גָבִי. אָמַר רַבִּי מְנָא. אֵין כְּתֵב וְמָר. אֵף עַל גּוֹ דְּלִית בֵּי דִּינָא יְהִיב. גָּבִי.

Somebody tears up another's documents without the latter's agreement. Rebbi Ḥanania and Rebbi Mana¹²⁴, one said, he is liable; the other said, he is not liable¹²⁵. The one who said he is liable, as a fine¹²⁶. The one who said he is not liable: he is like one who obstructs the depositions of witnesses. A widow who grabs documents is like a person who ties up the mouths of witnesses¹²⁷.

Rebbi Immi said, those who write, “on condition that I have the right to seize movables,” cannot collect¹²⁸. Rebbi Mana said, if he writes and declares, “even though the Court will not enforce,” he collects¹²⁹.

124 These are either R. Ḥanina of Sepphoris and R. Mana I or R. Ḥinena and R. Mana II. In the next paragraph appears R. Mana II, two generations after R. Immi. The rule is attributed in the Babli, *Bava qamma* 98a/b, to Rava who is a known adaptor of Galilean rules and an older contemporary of R. Mana II.

125 Everybody agrees that he has to pay for the value of the paper or parchment which he destroyed. The problem is whether he has to pay for the mortgages for which the documents were written (assuming that there are no witnesses available who could write a replacement document.)

126 Since destruction of the document involves both the destruction of the writing material (for which payment can be forced in court if the value was more than a *perutah*) but also the lien on the debtor's property which is not something recoverable in biblical law. It has to be dealt with in local police law.

127 Since even an existing mortgage document can be used for foreclosure only if

in court it can be proven to be genuine by the witnesses to the document or witnesses to the identities of the signatures affixed to it. While suborning perjury is criminal, we find no statute against physically preventing witnesses from appearing in court.

128 While there is freedom in stipulating money terms in contracts (*Ketubot* 5:10, Note 227), this is valid only in matters that do not involve court actions. In both Talmudim, court-ordered foreclosures are restricted to real estate. Therefore, a contract which provides foreclosure of movables, while valid, cannot be enforced. Only in the Middle Ages, when Jews in many cases could not hold real estate, was the restriction to real estate lifted by Gaonic decree.

129 If the involvement of the court is denied, there remains a private contract in money matters with unlimited powers of stipulation. While no foreclosure can be obtained from any court, the delinquent party can be judicially censured for not keeping his word (*Bava meṣi'a* 4:2).

34) (36b line) רבי שמעון אומר. אחד קדשי קדשים ואחד קדשים קלין שחייב באחריותו קורא אני בהן וכלש בעמיתו. ושואין חייב באחריותו קורא אני בהן ביי וכלש. רב הונא אומר. אחד קדשין פשירין ואחד קדשים פסולין שחייב באחריותו אף על פי שהן ליי קורא אני בהן וכלש בעמיתו בפקדון. ושואין חייב באחריותו קורא אני בהן ביי וכלש ולא בעמיתו וכלש.

1 שחייב | קדשים שחייב 2 וכחש בעמיתו | ק בעמיתו וכחש ושואין | ק ושאינו וכחש | ק וכחש 3 קדשין | ק קדשים שחייב | ק קדשים שחייב אע"פ שהן | ק אפי' הן 4 וכחש בעמיתו בפקדון | ק בעמיתו וכחש ושואין | ק ושאינו וכחש | ק וכחש (2)

¹³⁰“Rebbi Simeon says, both most holy and simple *sancta*; about any *sancta* for which he is responsible if alienated, I am reading *against his neighbor and he lied*; but about any *sancta* for which he is not responsible if alienated, I am reading *against the Eternal and he lied*.” Rav Huna said, both qualified and disqualified *sancta*, if he is responsible if alienated, even if they are for the Eternal, I am reading *against his neighbor and he lied*; but if he is not responsible if alienated, I am reading *against the Eternal and he lied* but not *against his neighbor and he lied*.

130 This has a parallel in *Bava qamma* 1:2, Notes 118-122 (p). The Mishnah has to be understood that R. Simeon only frees from liability for an oath which is applicable only to disagreements between humans, but not

for payment which was fixed at 125% for concealed debts against humans in *Lev.* 5:20-25, and for amounts due to God in *Lev.* 5:14-15. (Babli *Bava meṣi'a* 25a/b).

36b line 39) אָמַר רַבִּי חֲנִינָה. זֶה אוֹמֵר. מְנוּחָה גְּדוּלָּה. וְזֶה אוֹמֵר. מְנוּחָה קְטַנָּה. חֵיב. דִּתְנֵן. אֵין נִשְׁבָּעִין אֶלָּא עַל דְּבַר שְׁבִמִידָה וְשְׁבִמִשְׁקָל וְשְׁבִמִינִין. אָמַר רַבִּי בָּא בַר מָמַל. תִּיפְתֵּר בְּמְנוּחָה שְׁלֹחִילִיּוֹת. זֶה אוֹמֵר. אֲזוּר גְּדוּל. וְזֶה אוֹמֵר. קְטוּן. תִּנִּי רַבִּי חֵיָּה וְלֹא יִדְעִין מַה תִּנִּי. אֵין תִּימַר חֵיב. מִתְּנִיתָא פְּלִיגָא. דִּתְנֵן. אֵין נִשְׁבָּעִין אֶלָּא עַל דְּבַר שְׁבִמִידָה וְשְׁבִמִשְׁקָל וְשְׁבִמִינִין. אֵין תִּימַר פְּטוּר. מִתְּנִיתָא פְּלִיגָא. דִּתְנֵן. זֶה אוֹמֵר. גְּדוּל. וְזֶה אוֹמֵר. קְטוּן. יִשְׁבַּע הַמוֹכֵר שֶׁהִקְטֹן מְכָר. זֶה אוֹמֵר. אֵינִי יוֹדֵעַ. וְזֶה אוֹמֵר. אֵינִי יוֹדֵעַ. יִחְלֹקוּ:

¹³¹Rebbi Hanina said, One says, a large candelabra, but the other says, a small candelabra; he is liable¹³² since we have stated: “One swears only on matters of measure, or weight, or count.” Rebbi Abba bar Mamal said, explain it if it was a candelabra composed of sections¹³³.

One says, a large belt; the other says, a small belt. Rebbi Hiyya stated something but we do not know what he stated. If you say “liable”, a Mishnah disagrees, as we have stated: “One swears only on matters of measure, or weight, or count.”¹³⁴ If you say “not liable”, a Mishnah disagrees, as we have stated: “If one says the adult one and the other says the underage one, let the seller swear that he sold the underage one. If both say that they do not know, they shall split.”¹³⁵

131 Discussion of Mishnah 9.

properties defined by measurement, the

132 Since “large” and “small” are

claim was a claim by measure. On the other

hand, since a candelabra cannot be partially small or large, the admission was not of the kind of the claim.

133 The candelabra can be disassembled and reassembled in different sizes; the admission was of the kind of the claim; R. Ḥanina's statement is unquestionably correct. Babli 43a.

134 In this case, "small" and "large" do refer to two substantially different entities; the admission is partial admission of a claim referring to things measurable.

135 Mishnah *Bava meši'a* 8:5. The buyer bought one of two slaves, one adult and one underage, with their garments or other property. There is a dispute about which slave was sold. Even though there is no oath about sales of slaves, there is an oath about their garments or other possessions, and an oath about the sale of the slave can be attached to that oath by rollover (Note 70.) We found a case where Mishnaïot *Ševuot* 6:9 and *Bava meši'a* 8:5 present an irreconcilable contradiction.

(37a line 46) אָמַר רַבִּי יוֹחָנָן. נֶאֱמַן הַמִּלָּוָה לֹאמֹר. עַד כְּדֵי הַמִּשְׁכּוֹן הַלְוִיתִיךָ. מִתְּנִיתָ אֶמְנָה. אִם הִלָּוָה נֶאֱמַן. דִּתְנִינָן. סָלַע הַלְוִיתִיךָ עָלָיו וְשָׁקַל הִיָּה שְׁוֵהוּ. וְהִלָּה אֹמַר. לֹא כִי אֶלָּא סָלַע הַלְוִיתִי עָלָיו וְסָלַע הִיָּה שְׁוֵהוּ. פְּטוֹר. חֵד בַּר נֶשׁ קָם עִם חֲבֵרִיהַ בְּשׂוּקָא. אָמַר לִיה. תִּרְוִן דִּינְרִין לִי בְּגִדָּךְ וּמִשְׁכּוֹנְךָ שְׁוִי תִרְוִן דִּינְרִין. אָמַר לִיה. חֵד דִּינְרָא נָא בְּעִי לְמִיתָן לָךְ וּמִשְׁכּוֹנִי טַב תִּרְוִן דִּינְרִין. אֵתָא עוֹבָדָא קוֹמִי דִּינְיָ נִהְרַדְעָא. אָמַרִי. כִּינֹן דְּכָל־עַמָּא מוֹדוּ דְּמִשְׁכּוֹנָא טַב תִּרְוִן דִּינְרִין אוֹחֲרָנָא יִיתִי עָלָי שְׁהִידִי. וְלֹא שָׁמַע דְּמַר רַבִּי יוֹחָנָן. נֶאֱמַן הַמִּלָּוָה עַד כְּדֵי הַמִּשְׁכּוֹן. חֵד בַּר נֶשׁ קָם עִם חֲבֵרִיהַ בְּשׂוּקָא וְאַרְיִס סְבִינְתִּיהַ. אָמַר. לִית הָדִין סְדִינָא נָפִיק מִן גִּידִי עַד דִּתְתָּן לִי מַה דְּאִית לִי בְּגִדָּךְ. אֵתָא לְקַמִּי שְׁמוּאֵל. אָמַר לִיה. הֵב לִיה סְבִינְתִּיהַ וְזִיל דּוֹן עַמִּיהַ. מַה. שְׁמוּאֵל כְּדִינְיָ נִהְרַדְעָא. אָמַרִי. תִּמָּן הוֹחֲזֵק הַמִּשְׁכּוֹן בְּגִדּוֹ. הֵכָא לֹא הוֹחֲזֵק הַמִּשְׁכּוֹן בְּגִדּוֹ.

Rebbi Johanan said, the lender can be believed if he said, I lent to you up to the value of the pledge¹³⁶. The Mishnah says, also the borrower can be believed, as we have stated: "He told him, 'I loaned you a *tetradrachma* and it was worth a *šeqel*,' but the other one says 'no, a *tetradrachma* you loaned me and it was worth a *tetradrachma*'; he is not liable."¹³⁷

A person encountered another in the market and said, you owe me two *denarii* and your pledge is worth two *denarii*. He answered, I owe you one *denar* but my pledge is worth two *denarii*. The case came before the judges of Nahardea. They said, since everybody agrees that it is worth two *denarii*, he has to bring witnesses on the other [*denar*]¹³⁸. They had not heard that Rebbi Johanan said, the lender can be believed if he said, I lent to you up to the value of the pledge.

A person encountered another in the market and took away his linen cloth¹³⁹ saying, “this sheet will not leave my hand until you give me what you are holding for me.” It came before Samuel. He told him, return his linen cloth to him and sue him. Does Samuel follow the judges of Nahardea? There, the pledge was held by him, here the pledge was not held by him¹⁴⁰.

136 Here starts the discussion of Mishnaiot 10-13 (which in most Mishnah texts form a single Mishnah.) The statement of R. Johanan explains Mishnah 12, where the creditor claims that the amount of the loan does not exceed the value of the pledge.

137 If the borrower disputes the claim, the burden of proof is on him.

138 They put the burden of proof on the creditor for the amount disputed by the debtor.

139 Greek σάβανον, Latin *sabanum*.

140 If the pledge was handed over by the debtor to the creditor, practice has to follow R. Johanan against the judges of Nahardea. But if a pledge was taken by force, it has to be returned before the case can be heard in court. (*Sefer Ha'Ittur* II כבב reads R. Ze'ira instead of Samuel. This reading is not likely to be correct.)

(37b line 58) שְׁמוּאֵל אָמַר. שְׂאִין הַשְּׁבוּעָה זֶה מִבְּיַחְיוֹן. אִם יִשְׁבַּע הַמַּלְוֶה הָרִי זֶה נִשְׁבַּע וְנוֹטֵל. וְאִם נִשְׁבַּע הַלֹּוֶה. מוֹצִיא הֵלָּה אֶת הַפְּקָדוֹן: מִי הוּא הַנִּשְׁבָּע. מִי שֶׁהַפְּקָדוֹן אֶצְלוֹ. רַב וְיֵשׁ לְקִישׁ אֲמָרִי עַל רִישָׁא. סָלַע הַלְוִיתִנִּי עָלָיו וְשִׁתִּים הֵיָה שְׁוָה. וְהֵלָּה אֹמֵר. לֹא כִי אֵלָּא סָלַע הַלְוִיתִיד עָלָיו וְסָלַע הֵיָה שְׁוָה. פְּטוֹר. סָלַע הַלְוִיתִנִּי עָלָיו כּוֹל. וְהֵלָּה אֹמֵר. אֵינִי יוֹדֵעַ. רַבִּי בָּא רַב הוֹנָא בְּשֵׁם רַב אָמַר. אֲנִי לִית יָדַע אֲהֹן יָדַע. רַבִּי יְהוֹשֻׁעַ דִּימָא בְּעָא קוֹמִי רַבִּי יוֹנָה. תַּמָּן אֲתָּא אָמַר. לִית אֲתָּא יָדַע אֲהֹן יָדַע. וְכָא אֲתָּא מֵר הַכִּין. תַּמָּן יֵשׁ חִילוּל שְׁבוּעָה. הֵכָא לִית חִילוּל שְׁבוּעָה.

¹⁴¹Samuel says, the oath does not move away from between them. If the lender swears, he swears and takes. But if the borrower swears, the other will present the pledge. “Who has to swear? The one who holds the pledge.”¹⁴² Rav and Rabbi Simeon ben Laqish say, about the first part: “‘You loaned me a *tetradrachma* on it but it was worth two,’ and the other says ‘no, but I loaned you a *tetradrachma* and it was worth a *tetradrachma*,’ he is not liable. ‘You loaned me a *tetradrachma* on it,’” etc. “And the other says, ‘I do not know’.”¹⁴³ Rabbi Abba, Rav Huna in the name of Rav: You do not know, the other knows¹⁴⁴. Rabbi Joshua [the Southerner]¹⁴⁵ asked before Rabbi Jonah:

There you say, you do not know, the other knows; but here you say so? There is desecration of an oath, here there is no desecration of an oath¹⁴⁶.

141 This refers to Mishnah 12, where the creditor swears to free himself from paying.’

142 As the Babli explains, 43b, if both have to swear, the holder of the pledge always has to swear first.

143 What is the rule if in any of the situations of Mishnaïot 10-13 the defendant claims ignorance?

144 If the answer is taken as partial admission, the person would have to swear. Since by his own testimony he is unable to swear, he has to pay. If the answer is not taken as partial admission, then by the rule that in a case of a defense of “perhaps” against a claim of “certain” judgment has to

be given for the certain claim (cf. Chapter 5, Note 72), he has to pay.

145 Read דרומא as quoted in Rosh (Chapter 6, No. 28) in a reference from Nahmanides’s commentary on this paragraph from the Yerushalmi.

146 In the case of Mishnaïot 11 and 13 there is an oath to be imposed and it is up to the court to devise procedures which make sure that the court does not become a party to perjury. But in the case of “perhaps” against “certain”, no oath can be imposed and there is no need for rules of precedence.

כל הנשבעין פרק שביעי

(fol. 37b) **משנה א:** כָּל־הַנִּשְׁבָּעִין שֶׁבַתּוֹרָה נִשְׁבָּעִין וְלֹא מִשְׁלָמִין. וְאֵילּוּ נִשְׁבָּעִים וְנוֹמְלִין הַשֹּׂכֵר וְהַנִּגְזָל וְהַנֶּחֱבֵל וְהַסֶּבֶן וְהַשּׂוֹד עַל הַשְּׂבוּעָה וְהַחֲנוּנִי עַל פִּינְקָסוֹ. הַשֹּׂכֵר כִּיצַד אָמַר לוֹ תֵּן לִי שֹׂכְרִי שֵׁשׁ לִי בַיּוֹדֶה הוּא אֹמֵר נִתְּתִי וְהִלָּה אֹמֵר לֹא נִמְלָתִי הוּא נִשְׁבָּע וְנוֹמֵל. רַבִּי יְהוּדָה אֹמֵר עַד שֶׁתִּהְיֶה שָׁם מִקְצֵת הוֹדִיָּיתָ. כִּיצַד אָמַר לוֹ תֵּן לִי שֹׂכְרִי חֲמִשִּׁים דִּינָר שֵׁשׁ לִי בַיּוֹדֶה וְהוּא אֹמֵר הִתְקַבְּלָתָּ מִהֶם דִּינָר זָהָב:

Mishnah 1: All who must swear by Torah standards do swear not to pay. The following do swear¹ and collect: The journeyman, a person robbed or injured, and one whose opponent is suspected of perjury, and the grocer on his account book². How does the journeyman do it? He tells him, “give me my wages which you are holding;” he says, “I gave.” He swears and collects³. Rabbi Jehudah says, only if there is partial admission. How is this? He tells him, “give me my wages of fifty *denarii* which you are holding;” but he says, “you received from these a gold *denar*”⁴.

1 By rabbinic (popular) standards.

2 These will be explained in the following Mishnaiot.

Probably one should vocalize פִּינְקָסוֹ, Greek πίναξ “wooden (wax covered) writing tablet.”

3 Since one assumes that the employer is occupied with many things while the journeyman has only his wages on his mind.

4 25 silver *denarii*. By biblical law, the employer would have to swear since he partially denied the journeyman’s claim.

(37c line 45) **הלכה א:** כָּל־הַנִּשְׁבָּעִין שֶׁבַתּוֹרָה כֹּל. מִמִּשְׁמַע שְׁנֵאמַר שְׂבוּעַת יִי תִהְיֶה בֵּין שְׁנֵיהֶם אֵין אֶנוּ יוֹדְעִין שְׂאֵם לֹא נִשְׁבַּע יְשָׁלֵם. מֵה תִלְמוּד לומר וְלִקַּח בְּעֵלְיוֹ וְלֹא יְשָׁלֵם: אֶלֶּא מִפִּינּוֹ שֶׁקִּיבְלוּ בְּעֵלִים שְׂבוּעָה הוּא פְטוּר מִלְּשָׁלֵם. רַבִּי חֲנִי בָּעֵא קוֹמִי רַבִּי יוֹסִי. וְלָמָּה לִי כְּרַבִּי מֵאִיר. אֶפִּילוֹ כְּרַבָּנִי. לֹא אָמַר רַבִּי אֶסִּי בָּשֵׁם רַבִּי יוֹחָנָן. דְּבָרֵי רַבִּי מֵאִיר מִמִּשְׁמַע לֹא אֵתָּה שׁוֹמֵעַ חֵין. וְלִקַּח בְּעֵלְיוֹ וְלֹא יְשָׁלֵם. הֵא אֵם לֹא נִשְׁבַּע יְשָׁלֵם. תִּנִּי רַבִּי חֵינָה. מִתְּנָה שׁוֹמֵר חֲנָם וְשׁוֹמֵר שֹׂכֵר לִהְיוֹת כְּשׁוֹאֵל. אָמַר רַבִּי חֲנִינָה. הַכֹּל מוֹדִין בְּלִשׁוֹן תּוֹרָה מִמִּשְׁמַע לֹא אֵתָּה שׁוֹמֵעַ חֵין. מֵה פְּלִיגִין. בְּלִשׁוֹן בְּגִי אֲדָם.

Halakhah 1: “All who must swear by Torah standards,” etc. One understands from what is said, *an oath before the Eternal shall be between them*⁵, would we not know that if he does not swear, he has to pay⁶? Why

does the verse say, *its owner shall take it, and he does not have to pay*? But from the moment the owner accepted his oath, he does not have to pay⁷. Rabbi Ḥaggai asked before Rabbi Yose: Is this only following Rabbi Meïr or even following the rabbis? Did not Rabbi Assi⁸ say in the name of Rabbi Joḥanan: Rabbi Meïr is the one who says that out of a negative one understands a positive? *Its owner shall take it, and he does not have to pay*, therefore if he does not swear, he has to pay⁹. Rabbi Ḥiyya stated: The unpaid and the paid trustees may stipulate to be like a borrower¹⁰. Rabbi Ḥanina said, everybody agrees that in the language of the Torah out of a negative one understands a positive; where do they disagree? In everyday speech¹¹.

5 Ex. 22:10.

6 Since the entire paragraph is about the obligations of the paid trustee in case the deposit was lost. Only the case in which he does not have to pay is described; from this it follows that in all other circumstances he has to pay.

7 Babli 45a, *Bava qamma* 107a; *Mekhilta dR. Ismael Neziqin* 16, *dR. Simeon ben Ioḥai ad loc.*, (Tosephta 6:7.)

Probably this statement has to be interpreted following the parallels in the Babli and the *Mekhilta dR. Simeon ben Ioḥai*: The oath grants the trustee absolute immunity. Even if afterwards witnesses are found who prove that the trustee stole the deposit, he cannot be made to pay. This cannot be inferred from the first part of the verse quoted earlier.

Mekhilta dR. Ismael Neziqin treats the statement as paradigm for all oaths prescribed in the Torah and sees in it proof for the statement that "All who must swear

by Torah standards do swear not to pay."

8 The Babylonian name of R. Yasa who is named correctly in the parallel, *Halakhah* 4:14 (Note 118).

9 Why should this simple inference be particular to R. Meïr and require R. Joḥanan's statement?

10 It really should read: The depositor may stipulate with a paid or unpaid trustee that they should be strictly responsible for the deposit like a borrower (*Mishnah* 8:1). Since this is a money matter, the biblical conditions are only valid if there are no explicit dispositions for deviations from these standards (*Bava meṣi'a* 5:5 Note 81). The verse may be read: If the owner accepts the oath, the trustee does not pay; this leaves open the option that the owner stipulated that he would not accept the oath.

11 There is no disagreement with R. Meïr in the interpretation of scriptural verses but there is much disagreement in the interpretation of vows and informal texts.

(37d line 53) אָמר רבי אבין. על ידי שבעל הבית עסקיו מרובין תיקנו בשכיר לישבע ולטול. [אמר רבי יוסה בירבי בון. תמן תיקנו בשכיר שיהא נשבע ונטול.] ודכוותה תיקנו בבצל הבית שאם עבר זמנו שלא ישבע ונטול. תני רבי חייה. אם יש עדים שתבעו בזמנו אפילו דאחר שנה נשבע ונטול. אמר רבי יוסי. אין לו אלא אותו היום בלבד. רבי יונה אמר. אתפלגון רבי יוסי בירבי חנינה וריש לקיש. חד אמר. תבעו ביום אין לו אלא יום. לילה אין לו אלא לילה. וחרנה אמר. בשתבעו ואמר. נתתי. אבל אם אמר לו. אתן. חזקה נתן. ולא קדעין מאן אמר דא ומאן אמר דא. ממה דמר רבי חמא בר עוקבא בשם ריש לקיש. תבעו ביום אין לו אלא יום. לילה אין לו אלא לילה. הוי רבי יוסי בירבי חנינה דאמר. בשתבעו ואמר. נתתי. אבל אם אמר לו. אתן. חזקה נתן. אמר רבי מנא. פ'עמים שתבעו אחר זמן ונעשה בתוך זמנו. היד עבדא. תבעו ואמר לו. לא אמרתי לך מאותו היום נתתי. אותו היום נעשה כמי שהוא אומול. ונתן לו שיעור אחד.

Rebbi Abin said, since the householder has many occupations they instituted that the journeyman should swear and collect¹². [Rebbi Yose ben Rebbi Abun said, there¹³ they instituted that the journeyman should swear and collect;] similarly they instituted for the householder that if its deadline had elapsed, he cannot swear and collect¹⁴. Rebbi Hiyya stated, if there are witnesses that he claimed it in time, he swears and collects¹⁴ even after a year. Rebbi Yose said, he has only that single day¹⁵. Rebbi Jonah said, Rebbi Yose ben Rebbi Hanina and Rebbi Simeon ben Laqish disagreed. One said, if he claimed from him during daytime, he has only that day; if in the night he has only that night¹⁶. But the other said, if he claimed from him and he said, I gave. But if he said, I shall give, the presumption is that he gave¹⁷. We do not know who said what. Since Rebbi Hama bar Uqba said in the name of Rebbi Simeon ben Laqish: if he claimed from him during daytime, he has only that day; if in the night he has only that night, therefore Rebbi Yose ben Rebbi Hanina is the one who said, if he claimed from him and he said, I gave. But if he said, I shall give, the presumption is that he gave. Rebbi Mana said, sometimes he claims after its time and it is considered as in time. How is this? He claimed from him and he¹⁸ said to him, did I not say to you that I gave at that date? That date becomes as if it were yesterday; one gives him one measure¹⁹.

12 In the Babli, 45a, this is an anonymous statement. Since it comes at the end of a lengthy discussion, it is Amoraic.

13 The insert is from a Genizah text; it is superfluous and questionable in that it fixes the origin of the institution in Babylonia ("there").

14 Mishnah *Bava meši'a* 9:13, Tosephta *Bava meši'a* 10:5. The journeyman is hired for the day. It is sinful not to pay the journeyman immediately after his work is done (*Deut.* 24:15). Therefore one may assume that the laborer asked for his wages immediately and that he was paid since it is difficult to assume that the householder would sin in withholding the wages. But if there are witnesses that the laborer asked and was not paid, the presumption of permanence of the *status quo ante* requires one to assume that he was not paid until the opposite is proven.

15 He disagrees with the Tosephta and holds that the inversion on the rules of oaths is valid only for 12 hours after the end of the working day. Later the householder would have the option to swear and to free himself

from paying since it must be assumed that the laborer would have gone to court immediately had he not been paid. This opinion has no parallel elsewhere.

16 The hours worked by a laborer hired for the day are set by communal standards (Mishnah *Bava meši'a* 7:1) but at most are from daybreak to nightfall. Therefore, a day laborer must be paid between the end of his working day and the end of the following night; a worker hired for the night must be paid before the end of the next day.

17 If the laborer claims that he was not paid and his employer says that he was paid, this is a situation analogous to that of an oath about a deposit and the laborer swears and collects. But if the householder agrees that he has to pay, the court has to assume that he will keep his word and fulfill his religious duty in paying promptly.

18 The laborer claimed and the employer said.

19 The 12 hours of the next day to claim, swear, and collect under the rules of the day-laborer.

הקדים לו שְׁכָרוֹ. בְּדֵא נִשְׁבַּע וְנוֹטֵל. הִנֵּה הַמִּשְׁכּוֹן בְּיָדוֹ. בְּדֵא נוֹטֵל בְּלֹא שְׁבוּעָה. הִנֵּה עֶבֶד. וּבֵית דִּין מוֹסְרִין שְׁבוּעָה לְעֶבֶד. הִנֵּה חֲשׂוֹד. וּבֵית דִּין מוֹסְרִין שְׁבוּעָה לְחֲשׂוֹד. הִנֵּה שְׁנִיָּהּ חֲשׂוֹדִין. תְּפִלְגָּתָא דְּרַבִּי מֵאִיר וְרַבִּי יוֹסִי. הִנֵּה שְׁנִיָּהּ חֲשׂוֹדִין חֲזָרָה שְׁבוּעָה לְמִקּוֹמָהּ. דְּרַבִּי רַבִּי יוֹסִי. רַבִּי מֵאִיר אוֹמֵר. נְחִלּוֹקִי:

If he paid him in advance; in that case he swears and collects²⁰. If a pledge was in his hand; in that case he collects without swearing²¹. If he was a slave. Would the court admit a slave to an oath²²? If he was suspect? Would the court admit a suspect person to an oath²³? If both were suspect, it is the dispute between Rabbi Meir and Rabbi Yose: ²⁴“If both were suspect,

the oath returns to its origin, the words of Rabbi Yose²⁵; Rabbi Meir says, they shall split the difference²⁶.”

20 The employer claims that he paid the day laborer in advance but he has no witnesses and no receipt. The law is not changed; the laborer swears and collects.

21 If the laborer had been paid, he would have returned the pledge.

22 Since the slave has no standing in court, he could not be punished for perjury. An oath sworn by someone exempt from the sanctions for perjury is worthless and an insult to the court.

23 Either he is suspected of a false or vain

oath or he gains his livelihood by fraud, as explained in Mishnah 4.

24 Mishnah 4.

25 The meaning of his words is in dispute between Babylonians and Galileans; cf. Halakhah 4, end.

26 Since neither party can swear or has proof; the claim is classified as “money in doubt” which is split evenly between the parties (*Ketubot* 2:1 Note 9, *Bava qamma* 5:1 Note 4).

37c line 70) פְּשִׁיטָא. מֵת בַּעַל הַבֵּית הַשְּׂכִיר נִשְׁבַּע לְיֹרְשָׁיו. וְאַפִּילוּ מֵת הַשְּׂכִיר יֹרְשָׁיו נִשְׁבָּעוּ לְיֹרְשֵׁי בַּעַל הַבֵּית. כְּלוּם תִּיקְנוּ אֶלָּא בְּשָׂכִיר. שְׂמָא בְּיֹרְשָׁיו. אָמַר רַבִּי לֵעָזֵר. בְּשִׁתְּבָעוּ בְּעָדִים. [אֲבָל אִם תִּבְעוּ שְׂלָא בְּעָדִים]. יָכִיל מֵימַר לֵיהּ. נִתְּנִי לָךְ שְׂכָרְךָ. אָמַר רַבִּי יוֹחָנָן. אִין אוּמְרִים בְּמָמוֹן. מֵאַחֵר. מֵאַחֵר דִּיכִיל מֵימַר לֵיהּ. לֹא שְׂכָרְתִּיד. יָכִיל מֵימַר לֵיהּ. שְׂכָרְתִּיד וְנִתְּנִי לָךְ שְׂכָרְךָ. מִתְּנִיתָא פְּלִיגָא עַל רַבִּי לֵעָזֵר. בְּמָה דְּבָרִים אָמוּרִים. בְּשָׂאָה אוּמַר. נִתְּנִי. וְזֵה אוּמַר. לֹא נִטְלָתִי. נִתְּנִי לָךְ שְׂכָרְךָ. וְהוּא אוּמַר. לֹא נִטְלָתִי. שְׂכָרְתִּנִּי. וְהוּא אוּמַר. לֹא שְׂכָרְתִּיד. הַמוּצִיא מַחֲבִירוֹ עָלָיו הָרֹאשִׁי. וְקִשְׁיָא עַל דְּרַבִּי לֵעָזֵר. אִם בְּאוּמַר. בְּעָדִים שְׂכָרְתִּנִּי. וְהִלָּה אוּמַר. לֹא שְׂכָרְתִּיד.

רַבִּי בָּא קֳרַתִּיגְנָא בְּעֵי. יוֹם אֶחָד עָשִׂיתָ עִמִּי וְנִתְּנִי לָךְ. וְהִלָּה אוּמַר. ב' יָמִים עָשִׂיתָ עִמָּךְ וְלֹא נִתְּנִי לִי כְּלוּם. פְּשִׁיטָא יוֹם רִאשׁוֹן נוֹטֵל בְּלֹא שְׂבוּעָה. שְׁנִיָּה תַּפְּלוּגְתָּא דְּרַבִּי יוֹחָנָן וְרַבִּי לֵעָזֵר. סָלַע אֶחָד פְּסָקְתִּי לָךְ וְנִתְּנִי לָךְ. וְהִלָּה אוּמַר. ב' סָלָעִים פְּסָקְתָּה לִי וְלֹא נִתְּנָה לִי כְּלוּם. פְּשִׁיטָא סָלַע רִאשׁוֹנָה נוֹטֵל בְּלֹא שְׂבוּעָה. שְׁנִיָּה תַּפְּלוּגְתָּא דְּרַבִּי יוֹחָנָן וְרַבִּי לֵעָזֵר.

It is obvious: If the householder dies, the journeyman swears to his heirs²⁷. Even if the journeyman dies, do his heirs swear to the householder's heirs? They made this ordinance only for the journeyman. Maybe for his heirs?

Rabbi Eleazar said, if he claimed²⁸ before witnesses. [But if he claimed without witnesses²⁹, he can tell him,] I paid your wages. Rabbi Johanan said, does one not in money matters argue “because³⁰”? Because he can say to him, I did not hire you, he can tell him, I hired you and paid your wages³¹. A

*baraita*³² disagrees with Rabbi Eleazar³³: “When was this said? If he said, I gave, but the other said, I did not take; I gave you your wages, but he says, I did not take. You hired me, but he says, I did not hire you. The burden of proof is on the claimant.³⁴” It is difficult for Rabbi Eleazar³³, if he hired him before witnesses, how can this one say, I did not hire you?

Rabbi Abba from Carthage asked: “You worked for me one day and I paid you.” But the other says, “I worked for you for two days and you did not give anything to me.” It is obvious that he takes for the first day without³⁵ oath. The second is the disagreement between Rabbi Johanan and Rabbi Eleazar³⁶. “I hired you for a *tetradrachma* and gave it to you.” But the other says, “you hired me for two *tetradrachmas* and did not give me anything.” It is obvious that he takes the first *tetradrachma* without³⁵ an oath. The second is the disagreement between Rabbi Johanan and Rabbi Eleazar³⁶.

27 And collects his wages. Since the Babli does not mention the topic, this is accepted practice. If the day laborer dies, the employer swears to free himself from payment.

28 Since the text is confirmed by a Genizah fragment, it cannot be amended to read “if he hired him before witnesses” as seems to be implied later in the text. R. Eleazar restricts the possibility of the laborer to swear and collect to the situation when he requested payment before witnesses and afterwards comes to court. But if there are no witnesses to the fact that he was not paid on the spot when he requested payment, i. e., there is *prima facie* evidence that the employer did not fulfill the commandment “to pay on his day”, the employer must be given the benefit of doubt and the option of swearing to deny his debt.

29 The text in brackets is added from a Genizah fragment. It is necessary; its existence was conjectured by some

commentaries (*Ridbaz* and *Noam Yerushalmi*).

30 Cf. Halakhah 6:1, Note 25. The later R. Yudan denies the legal validity of “because” arguments in court but R. Johanan is quoted in the Babli 45b to agree with Samuel that this kind of argument is valid.

31 If the laborer was hired without witnesses or contract, he has no way to establish the fact that he was a day laborer in the service of the person from whom he claims wages and cannot request the court to admit his oath.

32 Tosephta 6:1.

33 It seems that in this text, “Eleazar” should everywhere be replaced by “Johanan” since only R. Johanan requires that the hiring be documented.

34 There is a word missing in the text of the Tosephta, which makes the text incomprehensible. The Tosephta notes that the special rule which allows the laborer to

swear and collect is restricted to the case of the Mishnah, where there is no dispute about the relation of employer and employee, only whether the latter had been paid or not; *but* a dispute whether such a relationship existed at all must be adjudicated by the general principle that the burden of proof is on the claimant. It seems clear that this situation cannot occur if the hiring was documented.

35 This must read “with”. Since the employer asserts the existence of the hire,

the rule of the Mishnah applies.

36 According to R. Johanan, if the hire was not documented the employer must be believed and any additional claim by the laborer has to be proven (e. g., by witnesses). There is no occasion for an oath about the additional sum. According to R. Eleazar, if the claim was made before witnesses, there is no limit to the right of the laborer to swear and collect.

9) (37d line 9) רב הונא אָמַר. אִם בְּשִׁנְשָׁבַע הִבִּיא עֲדִים. הִיְתָה עוֹמֶדֶת בְּאַבוּס. כָּךְ גָּזַלְתָּ שְׂבוּעָה. מִתְּנִיתָא כְּלִינָא עַל רַב הוֹנָא. אֵיכָן שׁוּרִי. אָמַר לוֹ. אֲבָד. מִשְׁבִּיעַךְ אָנִי. וְאָמַר אָמֵן. וְעֲדִים מְעִידִין שְׂאֲכָלוּ. מִשְׁלָם הִקְרָן. הוֹדָה מַעֲצָמוּ מִשְׁלָם קָרָן וְחוֹמֶשׁ וְאֶשֶׁם. מִתְּנִיתָא בְּשִׂאֲכָלוּ וְאַחֲרֵי כֵן נִשְׁבַּע לוֹ. מִמָּה דָּמַר רַב הוֹנָא בְּשִׁנְשָׁבַע לוֹ וְאַחֲרֵיכֵן אֲכָלוּ.

Rav Huna said, if after he swore he brought witnesses that it was standing at the feeding trough, the oath already had robbed it³⁷. A Mishnah disagrees with Rav Huna: ³⁸“Where is my ox?” He told him, it was lost. ‘I am putting an oath on you,’ and he said Amen. But witnesses testify that he ate it. He has to pay the value. If he confessed on his own, he pays the value, an additional fifth, and a reparation offering”. The Mishnah if he ate it and only later swore to him. What Rav Huna said, it he swore to him and only later ate it.

37 This paragraph is not a continuation of the preceding but refers to the first paragraph of the Halakhah where it was stated that if the claimant accepted the defendant’s oath, the latter does not have to pay (Note 7). Rav Huna [in the Babli, *Bava qamma* 106a, a statement of Ilfa (Hilfai) endorsed by Rav Huna in the name of Rav] holds that the oath effects a transfer of property rights; if the claimant accepts the

oath, the defendant later ate his own animal, not the claimant’s. However, since here the acquisition is qualified as robbery the claimant can bring a new action for robbery whereas in the Babli Rav Huna in the name of Rav qualifies this as acquisition and denies any obligation on the part of the defendant.

38 Mishnah 8:4.

(37d line 14) מְחַלְפָה שִׁטְטִיתָה דְּרַבִּי יְהוּדָה. תִּמְנָן אָמַר. אֶפִּילוֹ לֹא יָדַע. וְהָכָא אָמַר. עַד שֶׁיָּדַע. תִּמְנָן עַל דִּי שְׂאִינוּ כְּעִין שְׂבוּעַת תּוֹרָה אֶפִּילוֹ שְׂבוּעַת תּוֹרָה לֹא יָדַע. בְּרַם הָכָא עַל דִּי שֶׁהוּ כְּעִין שְׂבוּעַת תּוֹרָה.

מֵהוּ לְגַלְגַּל שְׂבוּעַת תּוֹרָה עַל שְׂבוּעַת תּוֹרָה. נִישְׁמַעֲיָנָה מִן הָדָא. מְגַלְגְּלִין שְׂבוּעַת תּוֹרָה עַל שְׂבוּעַת תּוֹרָה. שְׂבוּעַת תִּקְנָה עַל שְׂבוּעַת תִּקְנָה. שְׂבוּעַת תּוֹרָה עַל שְׂבוּעַת תִּקְנָה. שְׂבוּעַת תִּקְנָה עַל שְׂבוּעַת תּוֹרָה. תִּמְנָן זֶה נִשְׁבַּע וְזֶה מִשְׁלָם. בְּרַם הָכָא זֶה נִשְׁבַּע וְנוֹטֵל. וְזֶה נִשְׁבַּע וְאִינוּ מִשְׁלָם.

Rebbi Jehudah's argument seems inverted. There³⁹ he says, even if he does not know. But here he says, not unless he knows⁴⁰. There since it is not in the form of a biblical oath even (about a biblical oath)⁴¹ he does not know. But here it is in the form of a biblical oath⁴².

May one roll over a biblical oath on a biblical oath⁴³? Let us hear from the following: One rolls over a biblical oath on a biblical oath, an instituted oath on an instituted oath, a biblical oath on an instituted oath. An instituted oath on a biblical oath? There, one swears and pays, but here in one case he swears and collects, in the other he swears and does not pay⁴⁴.

39 Mishnah *Bava gamma* 6:7. In R. Jehudah's opinion an arsonist has to pay for everything he destroyed even if he could not have known of its value.

40 Since in this and the following Mishnaot R. Jehudah always requires partial admission by the debtor, information of the debtor is assumed. (Since the reading "knows" is confirmed by the Genizah fragment, the word cannot be emended to "admits".)

41 These words are not in the Genizah text, do not make any sense here, and have to be deleted.

42 In *Bava gamma* there is no oath. Here R. Jehudah requires partial admission to base the administration of an oath on biblical grounds even though the oath itself is a rabbinic institution.

43 *Sotah* 2:6 Note 167, *Qiddušin* 1:5 Note

520. If a person is required to swear in court, the opposing party can add to the text of the oath any other oath he might have cause to let the other party swear without having to prove every case separately. For biblical oaths this is proven from biblical texts in the places quoted. For an obligation to swear by biblical standards to add an oath which is a rabbinic institution seems to be a natural consequence. The only problem is whether the obligation to swear a rabbinic oath is cause for the opposing party to add biblical oaths without presenting sufficient proof for that obligation.

44 The question is answered in the negative. The rabbinic oaths mentioned in this Chapter (and probably also the one in *Bava gamma* 10:3) are not obligations but privileges; there is no reason to pile obligations on top of these.

The Babli (49a, top) agrees for the oaths described in the Mishnah. The answer of the Babli has to be more nuanced since it introduces an Amoraic institution of *שבועת היסוד* “an oath of instigation”, unknown to

the Yerushalmi, if judgment is given by a preponderance of evidence but not beyond a reasonable doubt. These rabbinically instituted oaths are obligations and can be used as pegs to pile on other obligations.

משנה ב: הנגזל כיצד חיו מעידין אותו שזנבנו לביתו למשקנו שלא ברשות. אומר לו תן לי כילי שנמלתה והוא אומר לא נמלתי הרי זה נשבע ונוטל. רבי יהודה אומר עד שתהא שם מקצת הודיה. כיצד אומר לו שני כילי נמלתה והוא אומר לא נמלתי אלא אחד:

Mishnah 2: How about a person robbed? There were witnesses that he entered another's house to take a pledge without authorization⁴⁵. He said to him, give me my vessels which you took but he answers I did not take; this one swears and takes. Rabbi Jehudah says, only if there is partial admission. How is this? He tells him, you took two of my vessels but he says, I took only one.

45 Either by the debtor or by the court. debtor swears and takes based on this *prima facie* evidence of wrongdoing by the witnesses did not see what he took. The creditor.

הלכה ב: הנגזל כיצד כול. לתוך ביתו. לא לתוך חצירו. למשקנו. לא משום דבר אחר. אומר רבי יצחק. ובלבד בעדים. נכנסו שנים למשקנו. יבא כהדא. יצא חבול מבין שניהן. שניהן ראויין למשקנו. ומה חמי ליה. בשארו שנים חובטין ליה במקלות. ראוחו זורק צרורות ונמצאו שם כלים שבוירן נוטל בלא שבועה.

Halakhah 2: “How about a person robbed,” etc. “In another's house,” not in his courtyard⁴⁶. “To take a pledge,” not for another purpose⁴⁷. Rabbi Issac said, and only by witnesses⁴⁸. If two entered to take pledges from him? It should come like the following: “If he was injured between the two . . .”⁴⁹. But if both were entitled to take pledges? What should be seen there? If they saw two [men] hitting him with sticks⁵⁰.

If they⁵¹ saw him throwing pebbles and broken vessels were found there, he⁵² collects without oath.

46 Since *Deut.* 24:10 only forbids to enter the debtor's house to take a pledge. This condition does not appear in the Babli; in *Ṭur Hošen Mišpaṭ* 90 (*Bet Yosef* Note 9) there is an extended discussion about the validity of this statement.

47 Since the rules of the Mishnah imply a suspension of ordinary rules of evidence, they have to be followed to the letter.

48 While the crime does not have to be proven, the *prima facie* evidence of illegal entry has to be established beyond a reasonable doubt.

49 A sentence is missing here as indicated in the not well legible Genizah text. It was omitted by the scribe from the word שניהן to the next occurrence of the same word. But the meaning of the missing sentence is easily reconstructed. If a person was injured when attacked before witnesses by two people, but the witnesses cannot identify the

person who actually injured him, he has no civil claim against any of them. Similarly, if witnesses saw two people entered but they did not see which of them actually took something, the rule of the Mishnah cannot be applied.

50 If two creditors were seen entering together it can be compared to the case that witnesses actually saw both perpetrators hitting their victim with sticks. Then the victim can successfully sue both and the debtor can invoke the Mishnah against both creditors.

51 Witnesses saw a man throwing pebbles onto another's property but they did not see the damage done.

52 The owner of the property can collect damages even though he has no proof that the pebbles actually did the damage. The proof of criminal behavior by the stone thrower is enough.

(37d line 27) מהו מיטעניניה מילין מפלגין. יבא כדאמר רבי יוחנן. בר נש עתיר גו שוקא ומסכן גו ביתא. עתיר גו ביתא ומסכן גו שוקא. יש מתעשר ואין כל מתרושש והון רב. רבי בא משתעי. עובדא הנה באריסיה דבר זינא דאפקיד גבי חד בר נש ליטרא דהב. מית בר זינא ואריסיה דבר זינא. אתא עובדא קומי רבי ישמעאל בירבי יוסי. אמר. ומאן לימא לן דכל-מה דהוי לאריסיה דבר זינא לאו דבר זינא אינון. ותייהבון לבני דבר זינא. אתון בני דבר זינא. אמר. יסבון בניו רברביו פלגא ומן דקיקין רבון יסבון פלגא. דמד רבי ישמעאל בירבי יוסי. אתא עובדא קומי רבי חייה רובה. אמר. אין מהדא לית שמע מינה כלום. אית בר נש דלא בעי מפרסם נפשיה. ותייהבון לבני דאריסא. אמר ליה מריה דפיקדונא. כבר יהבית פלגא. אמר ליה. מה שנתת על פי בית דין נתתה. ומה שאתה נותן על פי בית דין אתה נותן. מהו דיימרון בני אריסא לבני בר זינא. הבו לן מה דנסבתון. יכלין מימר לון. מה שצנעשה על פי בית דין נעשה. מהו דיימרון דקיקיא לרברבייא. נחלוך עמכוך. יכלין מימר לון. מציאה מציאנו. אמר רבי יצחק. אין בין רברביא לדקיקיא אלא כמי שניתן להן מתנה.

⁵³May one claim extraordinary things? One may, following what Rabbi Johanan said, a person may be rich on the market place and poor in his house; rich in his house and poor in the market place. *There is one who poses as rich*

and has nothing, poses as poor and has great wealth⁵⁴. Rabbi Abba told⁵⁵: Bar Ziza's sharecropper deposited a pound of gold⁵⁶ with somebody. Bar Ziza and Bar Ziza's sharecropper died; the case came before Rabbi Ismael ben Rabbi Yose. Would one not say that all that Bar Ziza's sharecropper had was Bar Ziza's property? It should be given to Bar Ziza's sons. Bar Ziza's sons came. He said, the adult ones should take half and when the underage grow up they should take half. Rabbi Ismael ben Rabbi Yose died; the case came before the Elder Rabbi Hiyya who said, that argument means nothing since there are people who do not advertise themselves. It should be given to the sharecropper's sons. The trustee told him, I already disbursed half of it. He told him, what you gave, you gave by court order and what you will give, you will give by court order. May the sharecropper's sons say to Bar Ziza's sons, give us what you took? They can tell them, what was done was done by court order. May the underage ones say to the adult, let us share with you? May they tell them, we found a find? Rabbi Isaac said, the case between the adult and underage ones is only comparable to a gift given to them.

53 A slightly reduced form of this text is in *Bava qamma* 6:7 (Notes 111-115) and Alfasi *Bava qamma* No. 125. It is clear that R. Johanan and the editors of the Yerushalmi endorse R. Hiyya's judgment and reject R. Ismael ben R. Yose's.

54 *Prov.* 13:7.

55 This introduction, missing in both *Bava qamma* texts, makes it questionable whether a real case is recounted here.

56 An enormous fortune, under the Severan emperors the equivalent of 900 *ketubot*.

משנה ג: הנהבל ביצד היה מעידין אותו שנכנס לתוך ידו שלם ויצא חבול ואמר לו חבלתה בי והוא אומר לא חבלתי הרי זה נשבע ונומל. רבי יהודה אומר עד שתהא שם מקצת הודיית. ביצד אומר לו חבלתה בי שתים וחלה אומר לא חבלתי אלא אחת:

Mishnah 3: The injured one, how? They were testifying against him that one came to his hand whole and left injured⁵⁷. He says, you injured me, but the other says, I did not injure; this one swears and collects. Rabbi Jehudah

says, only if there was a partial admission. How is this? He said to him, you injured me twice but the other says, I injured you only once.

57 And it is a reasonable inference that the second person was injured by the first.

(37d line 44) **הלכה ג:** הנחבל כיצד כול'. רבי יהודה היה קורא חבטי. כל-זמן שהו חוככין זה בזה הרי זה נשבע ונוטל. היה נשוד במקום שאינו יכול לישוד עצמו נוטל בלא שבועה. לאחר זמן זה אומר. חבלתי בי. וזה אומר. לא חבלתי. הרי זה כשאר הטענות.

Halakhah 3: “The injured one, how,” etc.⁵⁸ “Rebbi Jehudah was calling them beaters⁵⁹. Any time they are rubbing⁶⁰ one another, he swears and collects⁶¹. If he was bitten at a place where he could not bite himself, he collects without oath⁶². At a later time if one says, you injured me, but the other says, I did not injure, this is like any other claim⁶³.”

58 Tosephta 6:2, *Bava qamma* 9:28 (S. Lieberman *Tosefta kiFshutah Bava qamma* p. 109.)

59 In the parallel sources חביבא, חבבא, which might support a reading חכאי (or something similar) “wrestlers”.

60 Or “wrestling”.

61 If there are witnesses for a physical altercation but no witnesses for any detailed happening.

62 Babli 46b, an Amoraic statement in the name of Samuel.

63 This refers to the Mishnah. If the witnesses saw him whole and immediately after he was seen in an altercation he was seen injured, he swears and collects. But if the injury was only certified later, the general rules of evidence will apply to any claim.

(fol. 37c) **משנה ד:** ושפנגדו השוד על השבועה כיצד אחת שבועת העדות ואחת שבועת הפקדון ואפילו שבועת שוא. היה אחד מהן משחק בקוביא מלוח בריבית מפריה יונים וסוחר שביעית שפנגדו נשבע ונוטל. היו שניהן השודין חזרה שבועה למקומה דברי רבי יוסי. רבי מאיר אומר יחלוק:

Mishnah 4: And if the opposing party was suspect of perjury, how? Equally oaths about testimony, or oaths about deposits, or even vain oaths, if one of them was a dice-player, a lender on interest, a participant in pigeon contests, or a dealer in sabbatical produce⁶⁴, the opposing party swears and

collects. If both of them were suspect, the oath returns to its place, the words of Rabbi Yose. Rabbi Meir says, they shall split²⁵.

64 This list of people not admitted as witnesses nor credible in their oaths is from *Sanhedrin* 3:6 (Notes 44-47.)

37d line 47) **הלכה ד'**: וְשִׁכְנָגְדוּ חֲשִׁיד עַל הַשְּׁבוּעָה כּוּל'. אֵילוּ הֵן הַפְּסוּלִין. הַמְּשַׁחֵק בְּקוֹבְיָא. זֶה הַמְּשַׁחֵק בְּפִסִּיפְסִין. אֶחָד הַמְּשַׁחֵק בְּפִסִּיפְסִין וְאֶחָד הַמְּשַׁחֵק בְּקִלְפֵי אֲגוּזִים וְרִמּוֹנִים לְעוֹלָם אֵין מְקַבְּלִין עֲדוּתָן עַד שֶׁיִּשְׁבֵּר פִּסִּיפְסִין וְיִבְדֹּק וְיִחְזוֹר בָּהֶן חֲזָרָה גְּמוּרָה. הַמְּלִיָּה בְּרִיבִית אֵין מְקַבְּלִין אוֹתוֹ עַד שֶׁיִּקְרַע שְׁטָרוֹתָיו וְיִבְדֹּק וְיִחְזוֹר בָּהֶן חֲזָרָה גְּמוּרָה.

Halakhah 4: “And if the opposing party was suspect of perjury,” etc.

⁶⁵The dice player is the one who plays with small stones⁶⁶. “Not only the player with stones, even one who plays with shells of nuts or pomegranates^{66a} one does not accept unless he break his stones, and be checked out, and repent in complete repentance.” One who lends on interest one does not accept unless he tear up his IOU’s, and be checked out, and repent in complete repentance.

65 This and the following paragraphs are found in *Roš Haššanah* 1:9 and *Sanhedrin* 3:6, explained in *Sanhedrin* Chapter 3, Notes 51-69

66 Greek *ψιφῆρος* “pebble, cube; the stones used for mosaics and tokens used in elections.” Rashi defines as “marbles”.

66a Pomegranates (*rimmonim*) do not have shells but skins. Perhaps the reference is to Greek *ῥόμβος*, *ῥόμβος*, “magic wheel, instrument used in pagan mysteries; rhomb”, from *ῥόμβέω* “to spin, cause to whirl” (E. G.)

37d line 53) וּמִפְּרִיחֵי יוֹנִים. זֶה הַמְּמַרְה יוֹנִים. אֶחָד הַמְּמַרְה יוֹנִים וְאֶחָד הַמְּמַרְה בְּהֶמָּה חִיָּה וְעוֹף אֵין מְקַבְּלִין אוֹת עַד שֶׁיִּשְׁבֵּר פְּגִימָיו וְיִחְזוֹר חֲזָרָה גְּמוּרָה.

Participants in pigeon contests, that is one who bets on pigeons. Whether one bets on pigeons or bets on any domesticated animal, wild animal, or bird, he is not accepted unless he break his tools of the catch and repent in complete repentance.

סוֹחְרֵי שְׁבִיעִית. זֶהוּ תִּגְר שְׁבִיעִית. אִי זֶהוּ תִּגְר שְׁבִיעִית. יִשָּׁב לוֹ כָּל־שְׁנֵי שְׁבִיעִית וּבִשְׁבִיעִית הִתְחִיל נוֹשָׂא וְנוֹתֵן בְּפִירוֹת שְׁבִיעִית. אֵין מְקַבְּלִין אוֹתוֹ עַד שֶׁתִּגְיַע שְׁבִיעִית אַחֲרֵת וְיִבְדֹּק וְיִחְזוֹר חֲזָרָה גְּמוּרָה. תַּנִּי רַבִּי יוֹסִי. שְׁנֵי שְׁבִיעִיּוֹת. רַבִּי נְחֻמֵּיה אָמַר. חֲזָרָת מִמּוֹן לֹא חֲזָרָת דְּבָרִים.

שְׁאֵמֵר לָהֶם. הָא לָכֶם מְאֵתִים זֶו וְחִלְקוֹם לְעֵנִיִּים שֶׁכִּנְסְתִּי מִפִּירַת עֲבִירָה. הוֹסִיפוּ עָלֶיהֶן הַרְוֵעִין וְהַחֲמִסְנִין וְהַגְזֵלְנִין. וְכָל הַחֲשׂוּדִין בְּמִמּוֹן עֲדוּתָן בְּטִילָה. אָמַר רַבִּי אֲבָהוּ. בְּרוּעֵי בְּהֵמָה דִּקָּה.

Dealers in sabbatical produce, that is the sabbatical trader. “Who is a sabbatical trader? One who sits idle all the years of a sabbatical cycle. In the sabbatical year he becomes active and trades in sabbatical produce. One does not accept him before another sabbatical year starts and he can be checked out that he repented in complete repentance.” Rabbi Yose stated, two sabbatical periods. ⁶⁶“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.” They added shepherds, extortionists, and any who are suspect in money matters, that their testimony be invalid. Rabbi Abbahu said, shepherds of small animals.

רַב הוּנָא אָמַר. מֵאֵן תִּנְיָתָה מִפְּרִיחֵי יוֹנִים. רַבִּי לִיעֶזֶר. דִּתְנֵן. מִפְּרִיחֵי יוֹנִים פְּסוּלִין לְעֲדוּת. אָמַר רַבִּי מְנָא קוֹמֵי רַבִּי יוֹסִי. יוֹעִיד מִהֵדָּא דְסִנְהֶדְרִין כְּרַבִּי לִיעֶזֶר. אָמַר לֵיהּ. דְּבָרֵי הַכֹּל הִיא. הֵכָּא אָמַר רַבִּי יוֹסִי. יוֹדְעִין הֵי שֶׁהֵיכָּה פְּסוּל מַעֲדוֹת מָמוֹן. וּמָה בָּא לְהַעֲדִי. אֵלֶּא כֶּשֶׁם שֶׁפְּסוּל מַעֲדוֹת מָמוֹן כִּד פְּסוּל מַעֲדוֹת נְפֻשׁוֹת. וְעִידֵי הַחוֹדֶשׁ פְּעִידֵי נְפֻשׁוֹת. דִּתְנֵנּוּ תַּמָּן. כָּל-עֲדוּת שֶׁאֵין הָאִשָּׁה כְּשִׁירָה לָהּ אִף הוּא אֵינוֹ כְּשִׁירָה לָהּ. מֵאֵן תִּנְיָתָה. רַבִּנּוּ. רַבִּנּוּ כְּרַבִּי לִיעֶזֶר. מוֹדִיִּין לֵיהּ וּפְלִיגִין עָלָיו. רַבִּי הוּנָא בִּשְׁם רַבִּי יוֹנָה. כּוֹלְהוֹן כְּרַבִּי לִיעֶזֶר. וְאֵתִיבֵן אֵילִין פְּלוּגוֹתָא כְּאֵילִין פְּלוּגוֹתָא. דִּתְנֵי. עַד זֹמַם פְּסוּל מִכָּל-עֲדוּת שֶׁבִּתְוֹרָה. דְּבָרֵי רַבִּי מֵאִיר. אָמַר רַבִּי יוֹסִי. אִימְתִּי. בְּזִמְן שֶׁנִּמְצָא זֹמַם בְּעֲדוּת נְפֻשׁוֹת. אֲבָל אִם נִמְצָא זֹמַם בְּעֲדוּת מָמוֹן אֵינוֹ פְּסוּל אֲלָא אוֹתָהּ עֲדוּת בִּלְבֹד. וְתִיָּא דְרַבִּי יוֹסִי כְּרַבִּנּוּ וְדְרַבִּי מֵאִיר כְּרַבִּי לִיעֶזֶר.

Rav Huna said: Who is the Tanna of “participants in pigeon contests”? Rabbi Eliezer, as we have stated there: “Participants in pigeon contests are disqualified from testimony.” Rabbi Mana said before Rabbi Yose: Is that statement in *Sanhedrin* Rabbi Eliezer’s? He told him, it is everybody’s opinion. So said Rabbi Yose: We knew that he was disqualified for testimony in money matters. What does he 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: “Any testimony for which a woman is not qualified, they are not qualified for.” Who stated this? The rabbis! Do the rabbis follow Rabbi Eliezer? They agree with him and disagree with him. Rabbi

Huna in the name of Rabbi Jonah said: It follows Rabbi Eliezer in everything. It turns out that this disagreement parallels another disagreement, as it was stated: A perjured witness is disqualified for any and all testimony required by the Torah, the words of Rabbi Meir. 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 Meir Rabbi Eliezer.

הַחֲשׂוֹד בְּשִׁבוּעָה מֵאִמְתִּי מִקְבָּלִין אוֹתוֹ. מִשְׁבּוּעָה בְּבֵית דִּין וְלֹאמֵר. חֲשׂוֹד אֲנִי. מִה נֵן קִיּוּמִין. אִם בָּהוּא דְקִאִים חֵיב לְחִבְרִיה שְׁבוּעָה. וּבֵית דִּין מוֹסְרִין שְׁבוּעָה לְחֲשׂוֹד. אֶלָּא כֵן אֲנִי קִיּוּמִין בָּהוּא דְאֶזֶל מִדּוֹן בְּבֵית דִּין דְּלֹא חֲקָמִין לֵיה וְיִימַר לוֹן. הֵהוּא גְבָרָא חֲשׂוֹד הוּא. אִף בָּהוּא דְקִאִים וְחֵיב לֵיה שְׁבוּעָה וּמַחֲלִיה עֲלֵיה.

When does one accept one who is suspect in matters of oaths⁶⁷? From when he comes to the court and says, I am suspect. Where do we hold? If one who stands here and is obligated to swear for another, does the court deliver an oath to a suspect person⁶⁸? But we must hold about one who has a suit at a court where he is unknown and tells them, this man⁶⁹ is suspect. Also about one who stands and another owes him an oath and he forgives it⁷⁰.

67 Even though the Tosephta quoted in the preceding paragraphs has very stringent conditions, in practical cases the court may apply a more lenient standard.

68 If he is a known suspect, what difference does it make if he declares what the court already knows?

69 This is himself. Since the statement is derogatory, one uses the third person instead of the first.

70 If he is ready to pay rather than have another person (who is not suspect) swear an oath on his demand.

רַב הַשְׁעִיגָה אָמַר קָמִי רַבִּי אֲמִי בְּשֵׁם רַבְּנֵנוּ דְּתַמְנָן. חֲזָרָה שְׁבוּעָה לְסִינִי. רַבִּי יוֹחָנָן בְּשֵׁם רַבִּי יַנָּאי. חֲזָרָה שְׁבוּעָה לְבָעֲלִין. כָּאֵן דָּמַר. חֲזָרָה שְׁבוּעָה לְסִינִי. כָּמִי שְׂאִין כָּאֵן עֲדוּת. הַמוֹצִיא מִחֲבִירוֹ עָלָיו הָרְאִיָּה. וְכָאֵן דָּמַר. חֲזָרָה שְׁבוּעָה לְבָעֲלִין. מִמָּה דְהוּא גְבָרָא חֲשׂוֹד וְלֹא יָכִיל מִישְׁתַּבֵּעַ לִי קוּם שְׁלֹם לִי.

⁷¹Rav Hoshia said before Rabbi Immi in the name of the rabbis there: the oath returned to Sinai. Rabbi Johanan in the name of Rabbi Yannai: the oath returned to the parties. He who said, the oath returned to Sinai, it is as if there

was no testimony; the burden of proof is on the claimant⁷². He who said, the oath returned to the parties, since that man is suspect and cannot swear for me, get up and pay me⁷³.

71 Discussion of the statement of R. Yose in the Mishnah (whom practice has to follow in preference to R. Meïr.) Babli 47a.

72 If the parties are not able to swear, the special rules of the Mishnah cannot be applied and the suit has to be settled by the regular standards for civil suits.

73 This does not apply to the oaths which

are the topics of the present Chapter, where the claimant swears and collects, but to the biblical oaths of trustees who swear in order to be freed from payment (Mishnah 1). If such a trustee is barred from swearing, he has to pay. In fact, the opposing party has to swear to collect; cf. Halakhah 6:6, Note 88.

משנה ה: וְהַחֲנוּנִי עַל פִּינְקָסוֹ בִּיצֵד לֹא שִׁיאָמַר לוֹ כְּתוּב עַל פִּינְקָסִי שְׂאֵת חֵיב לִי מֵאֲתִים זֶזוֹ אֶלֶּא אָמַר לוֹ תֵּן לְבְנִי סֵאתִים חֲמִים וּלְפִנְעָלִי בְּסֻלַּע מְעוֹת הוּא אוֹמֵר נִתְּנִי וְהֵן אוֹמְרִים לֹא נִטְלָנוּ הוּא נִשְׁבַּע וְנוֹטֵל וְהֵן נִשְׁבַּעִין וְנוֹטְלִין. אָמַר בֶּן נָנָס בִּיצֵד אִילֹו וְאִילֹו בְּאִין לִידֵי שְׂבוּעַת שְׁוֹא אֶלֶּא הוּא נוֹטֵל שְׂוֹא בְּשְׂבוּעָה וְהֵן נוֹטְלִין שְׂוֹא בְּשְׂבוּעָה:

Mishnah 5: The grocer on his account book, how? Not that he says to him, it is written in my account book that you owe me 200 denars⁷⁴, but he said to him, give my son two *se'ah* of wheat, or my worker small change for a tetradrachma⁷⁵. He says, I gave, but they say, we did not take. He swears and collects, and they swear and collect. Ben Nannas said, how? Both are induced to swear falsely⁷⁶! But he takes without an oath and they take without an oath⁷⁷.

74 If the trader claims that the customer received the merchandise but did not pay, he has to prove his claims in court according to local standards; there is no proviso for an oath in the proceedings.

75 Because most people are illiterate, there is no standard requirement for a receipt.

76 The formulation of the oaths is in the hands of the judges; they have to be careful

not to create a situation in which they are seen to cause perjury (cf. *Neziqin Bava Meši'a* 1, Note 3.). Since the person who gave the instructions incurred a liability both with the grocer and the workers, both parties can collect since both offer to swear but under the circumstances cannot be allowed to.

77 This is the reading in all sources except for R. Nissim in his commentary to

Rif; his reading has to be considered an follow the anonymous Tanna.
unjustified emendation. Practice has to

38a line 8) **הלכה ה:** והחנוני על פינקסו כול. חנוני על פינקסו לא במקוץ אָמרו. שהוא
אומר לו. כתבת בזה מחוק בזה.

Halakhah 5: “The grocer on his account book,” etc. “Was ‘the grocer on his account book’ not said about one extending credit? For he can tell him, you wrote with this [hand], erase with the other [hand]”⁷⁸.

78 Tosephta 6:4. In the absence of required to preserve the receipt for his proofs, the customer can always claim that payment; the seller has to organize his he paid his debt but the seller failed to accounts so that open accounts can be used update his books. The customer is not as proof in court.

38a line 10) **רבי אומר.** אומר אני שיהו אילו נשבעין בפני אילו מפני הבושה.

Rebbi says, I am saying that these have to swear in the presence of those because of the embarrassment.⁷⁹

79 Babli 47b. He takes care of Ben the person who has to pay). It can be Nannas’s objection by requiring both parties expected that in this case the party not to swear in the presence of the other (and, in entitled to payment will not dare to swear the Babli’s version, in the presence also of falsely.

38a line 11) **הדא דתימר בשלל העמידו עמו.** אבל העמידו עמו אין בעל הבית חייב כלום.
כהדא דמר רבי יודה בר שלום. סמכון כתפיא גבי קפיליא. אתון. ואפקון דלא זהב להון.
אתא עובדא קומי רבי שמי. ממה דאילו הון קפיליא ימר מסבות לית סופיהון דאילין
ואילין מיסב אלא יסבון מקבר.

That is to say, only if he did not introduce them⁸⁰. But if he introduced them, the householder has no liability, following what Rebbi Jehudah bar Shalom said: One did introduce the porters to the food merchants⁸¹. They came, but they sent them away without giving them anything. The case came before Rebbi Shammai. Since if the food merchants had said that they took, would at the end not these and those collect? Therefore, they shall collect immediately⁸².

80 If the employer directs his employees to the grocer and separately instructs the grocer to give them merchandise on his behalf, he becomes liable to both parties. But if he instructs the grocer in the presence of his employees, he has discharged his duty towards his employees; his debt to the grocer is treated by the general rules of obligations.

81 Greek *κάπηλος* "(raw or cooked) food merchant; tavern keeper".

82 In the case of the Mishnah, the

merchants incur no risk since they have regress on the employer. But in the case here, the merchants admit that they did not deliver; the employees have the right to demand immediate payment. Since they were directed to the merchants and these agreed to the order, the merchants have immediately to deliver to the employees, who have no regress on their employer, but the merchants can later bill the employer and collect.

משנה ו: אָמַר לְחֲנוּנִי תֵּן לִי בְּדִינָר פִּירוֹת וְנָתַן לוֹ אָמַר לוֹ תֵּן לִי הַדִּינָר אָמַר לוֹ נָתַתִּי לָךְ וְנָתַתָּו בְּאַנְפִּלִי יִשָּׁבַע בְּעַל הַבֵּית. נָתַן לוֹ אֶת הַדִּינָר אָמַר לוֹ תֵּן לִי אֶת הַפִּירוֹת אָמַר לוֹ נָתַתִּים לָךְ וְהוֹלֵכְתָּן לְתוֹךְ בֵּיתְךָ יִשָּׁבַע הַחֲנוּנִי. רַבִּי יְהוּדָה אוֹמֵר כָּל שֶׁהִפְרוֹת בְּיָדוֹ יְדוּ עַל הַעֲלִינָה.

Mishnah 6: He said to the grocer, give me produce for a denar; that one delivered and said, give me the denar. He said to him, I gave it to you and you put it into *anpalē*⁸³: the householder has to swear⁸⁴. If he gave him the denar and said, give me the produce; he said to him I delivered them to you and you brought them to your house: the grocer has to swear. Rabbi Jehudah says, the one in possession of the produce is advantaged⁸⁵.

משנה ז: אָמַר לְשׁוֹלְחָנִי תֵּן לִי בְּדִינָר מְעוֹת וְנָתַן לוֹ אָמַר לוֹ תֵּן לִי אֶת הַדִּינָר אָמַר לוֹ נָתַתִּי לָךְ וְנָתַתָּו בְּאַנְפִּלִי יִשָּׁבַע בְּעַל הַבֵּית. נָתַן לוֹ אֶת הַדִּינָר אָמַר לוֹ תֵּן לִי אֶת הַמְעוֹת אָמַר לוֹ נָתַתִּים לָךְ וְהִשְׁלַכְתָּם לְתוֹךְ כִּיסְךָ יִשָּׁבַע הַשׁוֹלְחָנִי. רַבִּי יְהוּדָה אוֹמֵר אֵין דָּרָךְ הַשׁוֹלְחָנִי לֵיתָן אִיסָר עַד שְׂיִמּוֹל אֶת הַדִּינָרִין:

Mishnah 7: He said to the money changer, give me *oboloi* for a *denar*; that one delivered and said, give me the *denar*. He said to him, I gave it to you and you put it into *anpalē*: the householder has to swear. If he gave him the *denar* and said, give me the *oboloi*; he said to him I delivered them to you and you threw them into your wallet: the money changer has to swear. Rabbi

Jehudah says, it is not the practice of money changers to give an *as* before he took the *denarii*⁸⁶.

83 According to Rashi “a wallet for coins.” No etymology for this word has been given. At other occurrences in the Talmudim, the word seems to stand for *ἐμπύλιον*, *impilia* “felt socks.” This meaning is inappropriate here. A better explanation is ἀμφελόνη “garment, throw-around” (E. G.) or one might read with the Tosephta (6:4) *אוכלי* explained by Kohout as ἀνάκωλος [*χίτων(ισ)κος*] “a short sleeved outer garment.”

84 The simple statement, “I gave it to you,” is insufficient. The manner of

delivery must be described.

85 Since both parties agree that the transaction was not on credit, in his opinion the buyer does not have to swear since in his place cash transactions always implied delivery after payment. If the grocer claimed that the transaction did not follow the norm, the full burden of proof is on him as claimant.

86 This is the same argument as in the preceding Mishnah. The money changer will not give out even an *as*, a quarter (or fifth) of an *obolos*, without first being paid.

משנה ח: כִּשֶׁם שֶׁאָמְרוּ הַפּוֹגְמֹת בְּתוֹבָתָהּ לֹא תִפְרַע אֵלָּא בִשְׁבוּעָה. וְעַד אֶחָד מֵעֵידֶיהָ שֶׁהִיא פְּרוּעָה לֹא תִפְרַע אֵלָּא בִשְׁבוּעָה. מִנְּכֶסֶם מְשֻׁעָבְדִּים וּמִנְּכֶסֶי יְתוּמִין לֹא תִפְרַע אֵלָּא בִשְׁבוּעָה. וְהַנִּפְרָעַת שְׁלֵא בְּפָנָי לֹא תִפְרַע אֵלָּא בִשְׁבוּעָה.

Mishnah 8: ⁸⁷If she had compromised her *ketubah*, she shall not be able to collect without an oath. If one witness testifies that [the *ketubah*] was paid, she shall not be able to collect without an oath. From encumbered property, or from orphans' property, she shall not be able to collect without an oath. If she collects in his absence, she shall not be able to collect without an oath.

87 This is Mishnah *Ketubot* 9:7, explained there in Notes 159-163. The *ketubah* (the marriage contract intended to provide financial support for the woman if the marriage is dissolved by divorce or the husband's death) is compromised if not the full amount is due since the wife has signed a receipt for partial payment. The testimony of a single witness can be contradicted by an oath of the opposing party by biblical rule.

If the *ketubah* has to be paid by the heirs from the estate, the estate is diminished; one requires the widow to swear that the entire amount is due her. The same holds if the rights of a mortgage holder whose claim is posterior to the lien created by the *ketubah* are diminished by the payment, or if a divorcee claims payment from the property of her absentee former husband.

38a line 15) **הלכה ו:** אָמַר לַחֲנוּנִי תֵן לִי בְדִינָךְ פִּירוֹת כּוּל'. רַבִּי חֲנִינָא אָמַר. בְּמַחְלוּקָתָא. אָמַר רַבִּי יוֹדָה. אֵימַתִּי. בְּזֶמֶן שֶׁהָיְתָה הַקּוּפָה מוֹנַחַת בֵּין שְׁנֵיהֶן. אֲבָל אִם הָיְתָה יוֹצֵאָה מִתַּחַת יָדֵי אֶחָד מֵהֶן.

Ha;lakhah 6: “He said to the grocer, give me produce for a *denar*,” etc. Rabbi Hanina said, it is to be differentiated: “Rabbi Jehudah said, when? If the container was lying between them. But if it was in the possession of one of them . . .”⁸⁸

88 The statement of R. Jehudah in Mishnah 6 is not a statement flatly denying the opinion of the anonymous Tanna in the first case, but it has to be read in the light of a text close to Tosephta 6:4: “Rabbi Jehudah said, when has this been said? At a time when the container was lying (in houses) [between them], but if it was in the possession of either of them, the burden of proof is on the claimant.” The incomprehensible text in parentheses is from the Erfurt ms. (Zuckermann), the text in brackets from the *editio princeps*. A similar text is quoted in the Babli, 48a. Five different explanations of the text are offered by the commentary *Sifte Cohen* (*Šulḥan Arukh Hošen Mišpat* 91:1, Note 33) in more than 4 folio pages. Rashi does not comment on the text; the author of *Šulḥan Arukh* follows Maimonides who explains the

expression “at a time when the container was lying between them” to mean that the transaction occurred in the public domain. If the container full of produce was in a private domain, the owner of that domain is in possession and there can be no oath; any claimant will have to produce proof according to the regular standards of civil trials. *Sifte Cohen* disagrees with this explanation since he reads בְּמַחְלוּקָתָא as “in dispute”; meaning that R. Jehudah disagrees with the anonymous Tanna. But this is the simple meaning of the Mishnah; if R. Hanina notes that the statement of R. Jehudah has to be interpreted following the Tosephta, he clearly states that the text has to be read as an explanation of the opinion of the anonymous Tanna as given in the translation.

38a line 18) עוֹד הִיא בְּמַחְלוּקָתָא. הִדָּא דָּתָא מִרַבִּי אֶבְרָהָם בֶּרֶךְ עִיר דְּרַבְּכּוֹ לִיתֵּן אִיסָר עַד שְׁלֹא יִטּוֹל דִּינָרָא.

Also this⁸⁹ needs to be differentiated. It is said about a stranger⁹⁰. But to a fellow town dweller he will give an *as* before he takes his *denar*⁹¹.

89 Also in Mishnah 7 does R. Jehudah point out a case where the anonymous Tanna will not follow the rules of his own Mishnah.

90 Greek ξένος.

91 With people known to him the money-changer will not refrain from deals involving credit.

19) (38a line 19) אָמַר רַבִּי זִירָא. כּוֹלְהוֹן קַעֲיִן שְׁבוּעַת תּוֹרָה יִרְדּוּ לָהּ. וְכְתוּבָת אִשָּׁה לֹא הוֹחֶזֶקָה בְּיָדָהּ לְהַגְבוֹת. אֲלָא כְּמִי שְׁנָבַת מֵיכּוֹן וְהִלְךְ. וְהוּא בְּתוּבָעָה שֶׁטֶר שְׁלֵמָאֲתִים פְּרוּעַ וְאוֹמְרָת. אִינָה אֲלָא מְנָה. נִפְרַעַת בְּלֹא שְׁבוּעָה. תַּמָּן תַּנִּינָן הַפּוֹגְמָת כְּתוּבָתָהּ לֹא תִפְרַע אֲלָא בְּשְׁבוּעָה. כִּי־צָד. הָיְתָה כְּתוּבָתָהּ אֶלֶף זֹז וְאָמַר לָהּ. הִתְקַבְּלָתְּ כְּתוּבָתִיךְ. וְהִיא אוֹמְרָת. לֹא הִתְקַבְּלָתִי אֲלָא מְנָה. לֹא תִפְרַע אֲלָא בְּשְׁבוּעָה. תַּנִּי. הַפּוֹגְמָת וְלֹא הַפּוֹחֶת. רַב חֲסִידָא בְּעִי. בְּגִין דְּהִלְךְ תַּרְתִּין פְּסִיעָתָא הוּא. מִפְּנֵי שְׁפָגְמוּ בְּבֵית דִּין אֶת מַר. אֵינוּ גוֹבָהּ.

Rebbui Ze'ira said, this came down in the manner of biblical oaths. And a woman's *ketubah* is not from the start in her hand for collection, but only for collection from now on and in the future. Since she claims a document about 200 paid and she says, it is only one *mina*, she collects without oath⁹².

There, we have stated⁹³: "If she had compromised her *ketubah*, she shall not be able to collect without an oath. How is this? If her *ketubah* was a thousand *denars* and he says to her, you received your *ketubah*, but she says, I received only one *mina*, she cannot collect without an oath." It was stated, one who had compromised, not one who had diminished⁹⁴.

⁹⁵Rav Hisda said, because he went two steps . . . Because he compromised it in court you say, he cannot collect?

92 This paragraph refers to Mishnah 8 and is a reworking of one in *Ketubot* 9:7, Note 166, in a number of details opposing the opinions given there.

As explained in Note 87, the oath of a woman who wants to collect her *ketubah* when a single witness asserts that it already was paid is biblical. R. Ze'ira notes that the oaths required in the other cases are formulated on the model of that oath.

The rules for collecting a *ketubah* are not identical with the rules for enforcing an IOU since it may be assumed that a woman does not marry in order to be divorced or become widowed; if she is widowed she may prefer not to claim the *ketubah* but to be permanently supported by the heirs. This means that the woman acquires the *ketubah* not with the intent of presenting it for

collection. The *ketubah* becomes an enforceable claim only by the owner presenting it for collection.

In *Ketubot*, it is stated that if the *ketubah* is presented with an attached receipt, and the woman claims that the receipt is only for half of the amount and the other half is still due her, this is a compromised *ketubah* and she may collect only by swearing to the validity of her claim. But here she presents a *ketubah* for the standard 200 *denars* but declares that she only claims 100 *denars* (a *mina*); therefore she collects without an oath. This is not a compromised but a diminished *ketubah* (Note 94).

93 *Mishnah Ketubot* 9:9.

94 *Ketubot* 9:7 Note 167, *Sanhedrin* 8:6 Note 69; *Babli Ketubot* 87b.

95 This is a fragment from *Ketubot* 9:7 (Note 185) *Sanhedrin* 8:6 (Note 72): “Rav Hīsa 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?” It refers to a statement by R. Abin (or Ba) not quoted here and not related to the topics of the Mishnah.

משנה ט: וכן היתומים לא יפרעו אלא בשבועה שבועה שלא פיקדנו אבא ולא אמר לנו אבא ושללא מצינו בין שטרותיו של אבא ששטר זה פרוע. העיד רבי יוחנן בן ברוקה אפילו נולד הבן לאחר מיתת האב הרי זה נשבע ונוטל. אמר רבן שמעון בן גמליאל אם יש גדים שאמר האב בשעת מיתת שטר זה אינו פרוע הוא נוטל שלא בשבועה:

Mishnah 9: Similarly, the orphans can collect only by an oath; “an oath that our father did not instruct us⁹⁶, our father did not tell us⁹⁷, and we found nothing in our father’s documents⁹⁸ that this note of indebtedness was paid.” Rabbi Johanan ben Beroqa testified⁹⁹ that even if the son was born after the father’s death he swears and collects. Rabban Simeon ben Gamliel said, if there are witnesses that the father said on his death bed that this note of indebtedness was not paid, he collects without oath.

96 On his death bed.

mss., the formulation is an noncommittal

97 Before this time.

“said” instead of “testified.” But since the

98 No receipt was found.

Yerushalmi version is also that of Rif and

99 All statements of testimony in the Mishnah are practice. In the known Babli

Rosh, it must have been the Babli version of their texts.

הלכה ט: וכן היתומים לא יפרעו אלא בשבועה כול. רבי יוחנן בשם רבי ינאי. אין נפרעין מניכסי יתומין קטנים אלא בשריבית אוכלת בו. רבי נתן אומר. אף לכתובת אשה. אמר רבי מנא. מפני מוונות. אמר רבי מתניא. מאן חיש למוונות. רבי שמעון. דרבי שמעון אומר. בנקיבה הדבר תלוי. מאי כדון. משום חשן. כדי שיהו קופצין עליה לישאנה. רבי נתן אומר. אף לגזילה ולנזקין. אמר רבי יוסי. אף נן תנינו תרתייהון. לגזילה מהבא. אם היה דבר שיש בו אחריות חייב לשלם. לנזקין מהבא. אין נפרעין מניכסי יתומין קטנים אלא מזבורית. כיני מתניתא. אין נפרעין מניכסי יתומין קטנים לנזקין אלא מזבורית. וקתני. נעמד הבן תחת האב. הנזקין שמין להן בעידית ובעל חוב בבינונית וכתובת אשה בזבורית. אמר רבי יוסי בירבי בון. תיפתר דברי הכל בהדא דיתיקי.

Halakhah 9: “Similarly, the orphans can collect only by an oath;” etc.

¹⁰⁰Rebbi Johanan in the name of Rebbi Yannai: One pays from an orphan’s property only if interest is due; Rebbi Nathan says, also a woman’s *ketubah*¹⁰¹. Rebbi Mana said, because of her sustenance. Rebbi Mattania said, who is worried about sustenance? Rebbi Simeon! Since Rebbi Simeon said, all depends on the female¹⁰². What about it? For attraction¹⁰³, that everybody should jump to marry her. Rebbi Nathan said, also for robbery and torts. Rebbi Yose said, we stated both of these. Robbery from the following: “If it was mortgageable, he has to pay.”¹⁰⁴ For torts from the following: “One pays from minor orphans’ property only from the least valuable.”¹⁰⁵ So is the Mishnah: One pays for torts from minor orphans’ property only from the least valuable. But was it not stated, the son shall stand in the father’s place; one estimates torts from the most valuable land, creditors from average quality, and a woman’s *ketubah* from the least valuable? Rebbi Yose ben Rebbi Abun said, explain it as everybody’s opinion about testamentary dispositions¹⁰⁶.

הָכָא אֶת מַר. אֵין נִשְׁבְּעִין עַל טַעֲנַת חֵרֶשׁ שׁוֹטֵה וְקָטָן. וְהָכָא אֶת מַר. אֲבָל נִשְׁבְּעִין לְקָטָן וְלַהֲקָדֵשׁ. בְּנִפְרָעִין מִיִּכְסֵי קָטָן. וְנִפְרָעִין מֵאֲדָם שְׁלֵא בְּפָנָיו. אָמַר רַבִּי יִרְמְיָה. תִּיפְתָּר תִּיפְתָּר בְּשָׂרִיבִית אוֹכְלֵת בּוֹ. וְבֵית דִּין גּוֹבֵין רִיבִית. תִּיפְתָּר בְּעָרֵב לֹא מְגוּי.

Here you say, “one does not swear on the claim of a deaf-and-dumb person, an insane person, or a minor.” But there you say, “one swears for a minor and the Temple.”¹⁰⁷ If one pays from the minor’s property.¹⁰⁸ But 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 it that it was guaranteed for a Gentile¹⁰⁹.

לִיכְסָה אָמַר קוֹמֵי רַבִּי מָנָא. אֲנִן עֹבְדִין טְבוֹת סָגִין מִיִּבְחוּן. אֲנִן מְשַׁלְחִין דִּנְיָא טִיגְמָטִין. אֵין אֲתָא הָא טְבוֹת. וְאֵין לָא אֲתָא מִחֻלְטִין נְכָסִין. אָמַר לִיה. אוּף אֲנִן עֹבְדִין כֵּן. מְכַרְזִין ל' יוֹמִין. אֵין אֲתָא טְבוֹת. וְאֵילָא מִחֻלְטִין נְכָסִין. אָמַר לִיה. הִנֵּה עֲצָמָא דִּהוּהָ בְּזוּי רַחֲמִיקָי. אָמַר לִיה. אֲנִן מְשַׁלְחִין ג' אִיגְרוֹת. חֲדָא גּוֹ ל' יוֹמִין. וְחֲדָא גּוֹ ל' יוֹמִין. וְחֲדָא גּוֹ ל' יוֹמִין. אֵין אֲתָא הָא טְבוֹת. וְאֵילָא מִחֻלְטִין נְכָסִין. אָמַר רַבִּי חֲנִינְיָה. וְשַׁעֲמַד בְּדִין וּבְרַח. אֲבָל אִם לֹא עָמַד בְּדִין לֹא מִחֻלְטִין וְלֹא מְכַרְזִין.

¹¹⁰Alexis said before Rebbi Mana: We act much better than you do. We send edicts¹¹¹. If he comes, it is good. If he does not come, we irrevocably give away his properties. He answered him, we also act in this way; we have

the heralds announce for thirty days. If he comes, it is good. If he does not come, we irrevocably give away his properties. He said to him, think of it, if he was in a distant place. He said to him, we send three letters¹¹², one after thirty days, one after the next thirty days, and one after the next thirty days. If he comes, it is good. If he does not come, we irrevocably give away his properties. Rabbi Ḥanina said, that is, if he was present at the trial and then fled. But if he was not present at the trial, we cannot irrevocably give away (nor)¹¹³ announce.

אֲשַׁפֵּחַ תִּימָר. חָנוּ וְרַבִּי שְׁמַעוֹן שְׁנֵיהֶן אָמְרוּ דָּבָר אֶחָד. הֵיךְ מֵה דְּתִימָר. הֲלֹכָה כְּחָנוּ.
וְדִכְוֹתָהּ הֲלֹכָה כְּרַבִּי שְׁמַעוֹן.

¹¹⁴You find that one may say that Ḥanan and Rabbi Simeon said the same thing¹¹⁵. Just as you say that practice follows Ḥanan, so practice follows Rabbi Simeon.

100 The entire Halakhah is from *Ketubot* Chapter 9. The first paragraph is from 9:8, Notes 185-197 (and *Gittin* 5:3 Note 52.).

101 Babli *Arakhin* 22a.

102 The text in *Ketubot* and *Gittin* reads: “on the collection,” i. e., on the woman’s decision whether to ask for payment of the *ketubah* or for upkeep (lodging, food, and clothing) from the estate.

103 Babli *Ketubot* 84a.

104 Mishnah *Bava qamma* 10:1.

105 Mishnah *Gittin* 5:3.

106 In the other two sources correctly: “R. Yose ben R. Abun said, here about an adult orphan, there about an underage orphan.” The sentence here intruded from Halakhah 10 where it belongs. The word used here is Greek, διαθήκη “written will”. Cf Mishnah *Bava meṣi’a* 1:7.

107 Both quotes are from Mishnah 6:6.

108 From here on the text is in *Ketubot* 9:9-10, Notes 201-204.

109 Quoted in Tosaphot *Gittin* 50b s.v. יתומין.

110 *Ketubot* 9:9-10, Notes 205-212.

111 Greek διατάγματα.

112 Quoted in Tosaphot *Ketubot* 88a, s. v. ורבא.

113 One has to read with *Ketubot* “but only”. This reading is confirmed by a Geonic responsum (S. Assaf, *Responsa Geonica*, Jerusalem 1942, p. 103) which declares the statement to represent (Babylonian) general practice.

114 A shortened version of *Ketubot* 9:9-10, Notes 213-216.

115 *Ketubot* 88b.

משנה י: ואילו נשבעין שלא במענה השותפין והאריסין והאפיטרופין והאשה הנזואה ונותנת בתוך הבית ובן הבית. אומר לו מה אתה מוועניני רצוני שתישבע לי חייב. חלקו השותפין והאריסין אין יכול להשביעו. נתגלגלה לו שבועה במקום אחר מנגלגלין עליו את הכל. והשביעית משמטת את השבועה:

Mishnah 10: The following have to swear without a claim: Partners¹¹⁶, and sharecroppers¹¹⁷, and trustees¹¹⁸, and a wife trading in the house¹¹⁹, and a family member¹²⁰. If he says, what do you claim from me? “I want you to swear to me,” he is liable¹²¹. After partners or sharecroppers distributed, he cannot force them to swear. If an oath was rolled over to him for another cause, one may roll everything over to him¹²². The Sabbatical year remits an oath¹²³.

116 If a partnership is dissolved, each partner has to swear that he did not retain any common property.

117 The owner may ask the sharecropper to swear that he delivered the entire crop to the landlord who then will return his share to him.

118 Greek ἐπίτροπος. He administers the estate of another person and at the end of his tenure has to swear that he did not illegally take anything for himself.

119 If the husband gives her capital which she uses for trade, he is entitled to the entire gain and can demand that his wife swear that she did not retain anything of the net gain.

120 One of the brothers who acts as managing trustee for an undistributed inheritance. If the inheritance is distributed, he has to swear that he did not illegally take anything for himself.

121 The person obligated to swear cannot ask the person demanding the oath whether

he suspects him of any dishonesty.

122 Note 43, cf. *Sotah* 2:6, Notes 166-168. If a person is required to swear, the one demanding the oath can add to the text of the oath any claim he might have against the person swearing even if totally unrelated to the matter before the court and for which he could not force a separate oath.

A precondition for rollover, which is a biblical rule, is that the original oath must be by biblical standards; a purely rabbinic oath cannot be extended. This implies that the oath required by the Mishnah is considered biblical since the person acting for others in money matters automatically agrees that he is responsible and thereby fulfills the requirement of partial admission (Mishnah 6:1).

123 Since the Sabbatical remits debts (Mishnah *Ševi'it* 10:1), the creditor cannot after the Sabbatical year ask for any oath regarding the remitted debt (Tosephta *Ševi'it* 8:6).

38a line 53) **הלכה י:** ואילו נשבעין שלא בטענה כול'. רב אמר. מת הלך המלוה נשבע ליוֹרְשָׁיו. ואפילו מת המלוה יורשי מלוה נשבעין ללוֹה. אבל אם מת לוֹה תחילה ואחר כך המלוה כבר נתחייב המלוה לבני לוה שבועה ואין אדם מוריש שבועתו לבניו. שמע רבי יוחנן ואמר. לאכל הלה וחדו.

Halakhah 10: Rav said, if the debtor died, the creditor swears to his heirs. Even if the creditor died, the creditor's heirs swear to the debtor. But if the debtor died first and after him the creditor, the creditor already was obligated for an oath to the debtor's sons and nobody makes his sons inherit his oath¹²⁴. Rabbi Johanan heard and said, should that one eat and enjoy it¹²⁵?

124 Babli 48a. Since the sons cannot inherit the father's oath they cannot swear and the borrower's estate does not have to pay.

was a loan, the creditor's sons can swear the orphans' oath (Mishnah 9), which is not the father's oath, and collect on basis of that oath. In the Babli, this opinion is ascribed to R. Eleazar.

125 Since there is little doubt that there

רב חייה בר אשי בשם רב. שטר היוצא מתחת ידי המלוה בכתב דו פסול. אני אומר. מתעסק היית בשטרותיך. הא מתחת ידי אחר פשר. רבי אבינא בשם שמואל. לעולם פסול עד שניצא מידי המלוה בכתב ידי לוה. מאי דון. אמר רבי יוסי בירבי בון. תיפתר דברי הכל בדיתיקי.

¹²⁶Rav Ḥiyya bar Ashi in the name of Rav: A document¹²⁷ produced by the creditor in the creditor's handwriting is invalid, for I am saying that he has practiced writing documents. This implies that in the hand of another it would be valid. Rabbi Abinna in the name of Samuel: It is always invalid unless it be in the creditors's possession but in the debtor's handwriting¹²⁸. What about this? Rabbi Yose ben Rabbi Bun said, explain it according to everybody about a testamentary gift¹²⁹.

126 This is a shortened version of a paragraph in *Bava meši'a* 1:8 (Notes 113-115); two different name traditions are reported in *Sefer Ha'ittur* 1, 41b (Notes 49-51).

127 A term derived from Accadic *šaṭāru* "to write", usually used for documents of

indebtedness. The statement is in the Babli, *Bava meši'a* 20b.

128 A document not signed by outside witnesses.

129 A codicil in the testator's handwriting attached to a will always is valid.

38a line 61) אָמַר רַבִּי יוֹסִי. הָדָא אָמְרָה בְּנוּשָׁא וְנוֹתָן שְׁלָא בְּחֻשְׁבוֹן. אַבְל בְּחֻשְׁבוֹן לֹא בָדָא. וְאַהֲוֵן בֵּין בֵּית עוֹד הוּא בְּנוּשָׁא וְנוֹתָן שְׁלָא בְּחֻשְׁבוֹן. רַבִּי זִירָא כְּהָדָא דְרַבִּי יוֹסִי. חַד בַּר נָשׁ אָזַל לְמִידָן קָמִי רַבִּי זִירָא וְחִיבָו שְׁבוּעָה עַל תְּרִין דִּינָרִין. אָמַר לֵיהּ. לֹא תִרִין דִּינָרִין אֲנִי חֵיב לָךְ. הָא טְרִיפִין לָךְ. אָמַר לֵיהּ. וּמִילַת פְּלֹן וּפְלָן. אָמַר רַבִּי זִירָא. אוּ חַב לֵיהּ כָּל-דִּתְבָּע לָךְ אוּ אִישְׁתְּבַע כָּל-דִּמְגַלְגַּל עֲלָךְ. עַד כִּמָּה מְגַלְגְּלִין עֲלִי. אָמַר רַבִּי יוֹחָנָן. עַד כְּדִי שְׁאִימַר לוֹ. עֲבָדִי אֶתְהֵ. הִנֵּעַ עֲצָמָךְ שְׁהִיָּה כְּהוּ וְעֲבָד עֲבָרִי. וְכִי יֵשׁ עֲבָד בְּזִמְן הַזֶּה.

Rebbi Yose¹³⁰ said, this means if he trades without account; it does not apply if there are accounts. Also the family member trades without accounts¹³¹.

Rebbi Ze'ira agrees with Rebbi Yose¹³². A man came for judgment before Rebbi Ze'ira who required him to swear for two *denars*¹³³. He told him¹³⁴, do I not owe you two *denars*? Here they are thrown to you. He¹³⁴ answered him, and cloth of fine wool X and Y. Rebbi Ze'ira said, either you give him everything he claims from you or you swear to him everything which he rolls over to you¹²².

How far does one roll over? Rebbi Johanan said, until he say to him, you are my slave¹³⁵. Think of it, could he be Cohen and Hebrew slave¹³⁶? Is there such a slave today¹³⁷?

130 In *Sefer Ha'ittur* 1, 43a (Note 81): R. Yose bar Bun.

131 If there is a regular account book which lists all transactions, the person trading can open his book for inspection instead of swearing, and therefore avoid the impression that he admits part of the claim. This rule is not in the Babli, nor in Rif or Maimonides.

132 This does not refer to the preceding paragraph; the third generation R. Ze'ira cannot be said to be dependent on the fifth generation R. Yose or R. Yose ben R. Bun. The reference is to a statement in *Bava meši'a* 3:1 Note 20, that it is the free choice of a person to swear or to pay up and that a person willing to swear is free to change his

opinion if too many other items are added to the oath.

133 A very minor sum.

134 The opposing party in the suit.

135 Babli *Qiddušin* 28a.

136 Since a Hebrew slave may have his earlobe pierced if he refuses to leave his state of servitude (*Ex.* 21:6) but a Cohen with a pieced earlobe is barred from service in the Temple; no court could tolerate that a Cohen would be sold as a Hebrew slave.

137 Since the institution of Hebrew slavery was intrinsically intertwined with that of the Jubilee, it was abolished with the Babylonian captivity never to be re-instituted (cf. Introduction to Tractate *Qiddušin* p. 3).

(38a line 69) אָמַר רַבִּי שְׁמוּאֵל בֶּר רַב יְצַחְקִי. שְׁמֶרָה. דְּלֹא כֹן מָה נוֹן אֶמְרִין. שְׁמֶרָה. לֹא בְטָלִיָּה. הִיא בָּעַל בָּעַל. מָה בָּעַל שְׁנַאמַר לְהֵלֵךְ מִשְׁמִיט אֶף כָּאֵן מִשְׁמִיט. דְּבָרִים שֶׁהֵן מִשְׁהָ יָדוֹ שְׁבִיעִית מְשַׁמְטָתוֹ. וְשֶׁאִין מִשְׁהָ יָדוֹ אֵין שְׁבִיעִית מְשַׁמְטָתוֹ לֹא אוֹתוֹ וְלֹא שְׁבִיעִתוֹ. כָּל־שֶׁשְׁבִיעִית מְשַׁמְטָתוֹ מְשַׁמְטָת שְׁבִיעִתוֹ. וְכָל־שֶׁאִין שְׁבִיעִית מְשַׁמְטָתוֹ אֵינָה מְשַׁמְטָת שְׁבִיעִתוֹ.

Rebbi Samuel ben Rav Isaac said, watch it for it is otherwise¹³⁸. What do we say? Watch it, for it is not negligible. “Owner,” “owner.”¹³⁹ Since the owner mentioned there is subject to annulment, so also here he is subject to annulment¹⁴⁰. The Sabbatical annuls things which are his hand’s loans¹⁴¹ and annuls the corresponding oaths; the Sabbatical does not annul things which are not his hand’s loans, nor does it annul the corresponding oaths. “For anything which the Sabbatical annuls it annuls the corresponding oath; anything which the Sabbatical does not annul it does not annul the corresponding oath”¹⁴².

138 From the arrangement of the Mishnah one gets the impression that partner, sharecropper, trustee, etc., are freed from their oath in the Sabbatical year. But the Sabbatical eliminates only oaths referring to loans which are actually annulled in it.

139 In Ex. 24:14 anybody having a law suit is called בָּעַל; in the laws of annulment of debts (Deut. 15:2) the creditor is called בָּעַל. This sets up the argument of “equal cut” indicating that the person going to court is one subject to the laws of the Sabbatical.

140 Since after annulment the creditor

cannot go to court to collect the debt, neither can he go to court to have an oath imposed on the debtor. (Explanation of the commentary *To`afot Re`em*, R. Abraham Abba Schiff, to *Sefer Yere`im* §164 Note 17). The Babli 49a has a different interpretation of Deut. 15:2.

141 The expression used in Deut. 15:2.

142 Tosephta *Ševi`it* 8:6. There is no redundancy here. The preceding sentence was the argument, the last sentence is the tannaitic formulation.

ארבעה שומרין פרק שמיני

(fol. 38b) **משנה א:** ארבעה שומרין הן שומר הנזק והשואל נושא שכר והשוכר. שומר הנזק נשבע על הכל והשואל משלם את הכל. נושא שכר והשוכר נשבעים על השכר ועל השבועה ועל המיתה ומשלמין את האבידה ואת הנזיכה:

Mishnah 1: ¹There are four kinds of keepers: The unpaid trustee and the borrower, the paid keeper, and the renter. The unpaid trustee swears about everything²; the borrower pays for everything; the paid keeper and the renter swear about breakage, abduction, and death, but pay for the lost and the stolen³.

1 The same Mishnah already was part of it was not his fault.

Bava meši'a 7:9.

3 They do not pay for what happened

2 He has to swear that he did not take beyond their control.

anything and that in case anything was lost

(38b line 37) **הלכה א:** ארבעה שומרין הן כול'. אמר רבי יוחנן. ארבעה שומרין הן ואין חייבין אלא דרך קניין. רבי יעקב בר אחא בשם רבי לעזר. אף לענין גזילה אין חייבין אלא דרך קניין. אמר רבי יוסי בירבי בון. ומתניתא אמרה כן. המקביל שדה מחברו כול'. רבי חנניה אמר רבי בון. אף בגניבה אין חייבין אלא דרך קניין. רבי חנניה בשם רבי פינחס. ומתניתא אמרה כן. הנה מושכו ויוצא ומת ברשות הבעלים פטור. הגביהו או שהוציאו מרשות הבעלים ומת חייב. הגביהו ברשות הבעלים כמי שניצא כל רשות הבעלים. הנה מושכו ויוצא עד שניצא כל רשות הבעלים. רבי אבהו בשם רבי יוחנן. בעומדת באבוסו. רבי בון בר חיה בעי. אם בעומדת באבוסו אפילו לא משך. אלא כי נן קיימין בעומדת ברשות הרבים. מה. רבי בון בר חיה כבית שמי. דבית שמי אומרים. ילקה בחסר וביגד. מה נן קיימין. אם בעומדת ברשות הרבים וחשב לגזלה ומתה באותה המחשבה דברי הכל חייב. אם עד שלא משך דברי הכל פטור. אלא כי נן קיימין בעומדת באבוסו. כדאמר רבי בון בר חיה כבית שמי. אמר רבי בון. תמן בקונה שלא מדעת הבעלים. ברם הקא בקונה מדעת הבעלים.

Halakhah 1: “There are four kinds of keepers,” etc. Rabbi Johanan said, there are four kinds of keepers and they become liable only through acquisition⁴. Rabbi Jacob bar Aha in the name of Rabbi Eleazar: Also in matters of robbery they become liable only through acquisition. Rabbi Yose ben Rabbi Bun said, a *baraita* said so: “one who contracts with another for a field,”⁵ etc. Rabbi Hananiah said, Rabbi Abun, also in theft cases they become liable only through acquisition⁶. Rabbi Hananiah in the name of Rabbi Phineas, our Mishnah said so: “If he was pulling it to lead it out but it died on the owner’s property, he is not liable. If he lifted it or had it led outside the owner’s property when it died, he is liable.”⁷ If he lifted it inside the owner’s property it is as if he had taken it out of the entire property of the owner. If he was pulling it and it left, only after it left the entire property of the owner. Rabbi Abbahu in the name of Rabbi Johanan: If it was standing at his feeding trough⁸. Rabbi Abun bar Hiyya asked: If it was standing at his feeding trough then even if he did not pull it⁹! But we must deal with the case that it was standing in the public domain¹⁰. Does Rabbi Abun bar Hiyya follow the House of Shammai, since the House of Shammai say, “he shall be hit by less or more”¹¹? How do we hold? If it was standing in the public domain and he intended to rustle it when it died, according to everybody he became liable by that intention. If he did not start to pull it, according to everybody he is not liable¹². But we must hold that it was standing at a feeding trough on his property¹³. As Rabbi Abun bar Hiyya said, following the House of Shammai. Rabbi Abun said, there he acquired without the knowledge of its owner; but here when he acquires with the knowledge of its owner¹⁴.

4 In the Babli, *Bava qamma* 79a, this is treated as an old (tannaitic or pre-tannaitic) rabbinic institution. Since keepers incur financial responsibilities, the moment in time when responsibility is transferred from owner to keeper must be well defined. The rules of this transfer are borrowed from the rules of buying and selling. Any act which would transfer property from the seller also

transfers responsibility from owner to keeper; absent such an act no responsibility is transferred.

5 Tosephta *Bava meṣi’a* 9:12. If somebody contracts to care for a field and then neglects his duty so that there is no yield, he can be sued for damages only if there was an act of acquisition.

6 The act of stealing is completed and

the thief responsible for double restitution only after an act of acquisition, such as putting the stolen object in his pocket. If the thief is discovered while he is dragging away some object in the owner's house, he is not liable for double restitution since as long as the object was not lifted it was not acquired by the thief as long as he did not reach the public domain.

7 Mishnah *Bava qamma* 7:8, Notes 83-84, describing rustling of animals.

8 Babli *Ketubot* 31b, an opinion ascribed to Rabinna II. An animal pulled or pushed into the public domain is not thereby acquired by the thief; it becomes acquired only when it is brought into the thief's private property.

9 Since we hold that the property of a person acquires abandoned property found on it (cf. *Gittin* 6:2, Note 71). Since the owners do not know where their lost object is, they cannot make a mental reservation which would annul the acquisition.

10 In the Babli, *loc. cit.*, opinion ascribed to Rav Aḥa (bar Rava), of the last generation of Babylonian Amoraim.

11 Mishnah *Bava meṣi'a* 3:13. The dishonest keeper in the opinion of the House of Shammai has to pay the larger of the values of the object either at the time it was given to him or when it should have been returned. The House of Hillel makes him

pay the value at the time he took possession, R. Aqiba the value at the time of the claim. This has nothing to do with the problem here. The Mishnah there continues: "If somebody intends to take the deposit, the House of Shammai hold him liable, but the House of Hillel say, he is liable only from the moment he takes it." Since in the public domain acquisition is effected only by lifting the object, not by dragging it, liability for cattle rustling in the public domain exists only for the House of Shammai.

12 The statement is elliptic. If he intended to rustle an animal but did not do it, even the House of Shammai agree that thought without action is without legal consequences. If he pulled the animal along, and declared before witnesses that he intended to rustle this animal, even the House of Hillel will agree that he accepted liability for his act.

13 The Mishnah in *Bava meṣi'a* notes that for the House of Shammai full liability starts when the animal enters the robber's property while the House of Hillel require an act or at least a declared intent of acquisition.

14 While an act of acquisition may be required for liability both of the keeper and of the thief, the details of what is considered as such an act are different in the two cases since acquisition by the will of the owner is less restrictive than that against his will.

38b line 53) כְּתִיב כִּי־יִתֵּן אִישׁ אֶל־רֵעֵהוּ וּגו'. לְשֹׁמֵר. וְלֹא לְקָרוֹעַ. לְשֹׁמֵר. וְלֹא לְהַשְׁלִיךְ.
לְשֹׁמֵר. וְלֹא לִיתֵן בְּמִתְּנָה. אָמַר רַבִּי יוֹסִי. וְהוּא שֶׁאִמַּר לִיתֵן מִתְּנָה לְכָל־מִי שֶׁיִּצְרָח. אֲבָל אָמַר
לְפָנָי. מִכֵּן שֶׁשְׁמִירָתוֹ עָלָיו כְּמִי שֶׁהוּא עָלָיו.

¹⁵It is written: *If a man give to another, etc', to keep*¹⁶. *To keep*, not to tear it up. *To keep*, not to throw it away. *To keep*, not to give it away as a gift.

Rebbi Yose said, only if he said to give it to anyone he likes. But if he said, to X, since he is obligated to keep it is as if he kept it for him¹⁷.

15 Babli *Bava qamma* 93a.

16 *Ex.* 22:6.

17 The paragraph gives the rules of the unpaid keeper who in case of loss has to swear that he did not appropriate the article for himself and that it was not lost by his negligence. But if he received the article in order to dispose of it, or to distribute it to the poor, even if it was lost there cannot be

any oath. R. Yose points out that this applies only if the charge was to distribute to the poor, not if it was to be delivered to a designated person. Rashi explains in *Bava qamma* that the depositor cannot sue because he renounced ownership and the poor cannot sue since the keeper was free to give to any poor person of his choice.

(38b line 57) תַּנִּי. וְגוֹנֵב מִבֵּית הָאִישׁ. לֹא מֵרֹאשׁ גָּגוֹ. אָמַר רַבִּי לֵעָזָר. הִדָּא דְּתִימָר בְּגַג שְׂאִינִי מְבוֹצָר. אֲבָל בְּגַג מְבוֹצָר כְּבֵית הוּא.

It was stated: *If it was stolen from the man's house*¹⁶. Not from his roof. Rebbi Eleazar said, that means, from an unprotected roof. But a fortified roof is like a house¹⁸.

18 Taking anything from a flat roof visible from the outside is not theft but robbery since it was in the open. There can be no double restitution in this case. But if the roof was surrounded by a wall so that

nothing deposited there could be seen from the street it is theft and subject to its laws. Keeping a deposit on an open roof is gross negligence on the part of the keeper.

(38b line 59) תַּנִּי. וְגוֹנֵב מִבֵּית הָאִישׁ. לֹא מִבֵּית הַשּׂוֹאֵל. וְכֵן וְגוֹנֵב מִבֵּית הָאִישׁ. לֹא מִבֵּית נוֹשֵׂא שְׂכָר וְהַשּׂוֹכֵר. מִכֵּינֵן שֶׁשְּׂמִירְתּוֹ עָלָיו כְּמִי שֶׁהוּא עָלָיו. שְׂתִימָצָא אוֹמֵר. שְׁלֹשׁ פְּרָשִׁיּוֹת הֵן. הַתְּחִתּוֹנָה בְּשׂוֹאֵל. וְהַמְצָעִית בְּנוֹשֵׂא שְׂכָר וְהַשּׂוֹכֵר. וְהַעֲלִיּוֹנָה בְּשׂוֹמֵר חֲנָם. שׂוֹאֵל לִפִּי שְׁנֵהֲנָה אֶת הַכֹּל מִשְׁלָם אֶת הַכֹּל. נוֹשֵׂא שְׂכָר וְהַשּׂוֹכֵר לִפִּי שְׁנֵהֲנָה מִקְצָת וּמֵהֲנָה מִקְצָת נִשְׁבָּע מִקְצָת וּמִשְׁלָם מִקְצָת. שׂוֹמֵר חֲנָם שְׂאִין לוֹ הֲנִיָּה נִשְׁבָּע וְיוֹצֵא. מֵהוּ נִשְׁבָּע. לֹא פִשְׁעֵתִי. הֵיוּ אֲחֵרִים יוֹדְעִין שֶׁלֹּא פִשַׁע מֵאִי. נִשְׁמָעִינָה מִהֶדָּא. הָרִי שְׂנִמְצָא הִנָּב וְאִין לוֹ לְשֹׁלֵם. מֵהוּ שְׂאִימֵר לוֹ. בּוֹא וְהִשְׁבַּע לִי שֶׁלֹּא נָתַתְּ עֵינֶיךָ בָּהּ לְגוֹזְלָהּ. נִשְׁמָעִינָה מִהֶדָּא. וְאִם לֹא יִמְצָא הִנָּב. הֵא אִם נִמְצָא פְטוֹר.

It was stated, *if it was stolen from the man's house*¹⁶; not from the borrower's house. *If it was stolen from the man's house*; not from the house of the paid keeper or the renter¹⁹? Since he is obligated to watch it, it is as if it

referred to him²⁰; for you may say that there are three paragraphs²¹. The last one about the borrower, the middle one about the paid keeper and the renter, the first one about the unpaid keeper. The borrower who profits from all pays everything. The paid keeper or the renter, because he profits partially and gives partial profit, swears about part and pays part. The unpaid keeper who does not profit at all swears and leaves. What does he swear? I did not commit anything²². What is the situation if others know that he did not commit anything? Let us hear from the following: If the thief was found but has nothing with which to pay, may he say to him²³, swear to me that you were not thinking to take it? Let us hear from the following: *If the thief was not found*²⁴. Therefore, if he was found he is not liable.

19 The verse speaks of the unpaid keeper, who swears that he did not take it and that he was not negligent but does not pay. The corresponding cases for the paid keeper and the borrower are not mentioned in the verses. The definite article is interpreted to mean that the verse insists that *it was stolen from this man's house*; the rule does not apply to others. By the reason explained later it is clear that the borrower cannot swear; he must pay. There is no intrinsic reason in the verse to exempt the paid keeper and the renter. Why are they exempt? In the Babli *Bekhorot* 11a, the verse is read to exclude institutions; cf. *Bava gamma* 7:1 (5d 46), Notes 10 ff.

20 There is a reason to extend the rule of the unpaid keeper to the paid one.

21 Ex. 22:6-8, 9-11, 13-14. A similar statement in the Babli, *Bava meši'a* 94b.

22 He did not take anything for his personal use and was not criminally negligent.

23 The owner of an object stolen from an unpaid keeper. If he cannot recoup his loss he might be tempted to let the keeper swear in the hope that he might prefer to pay rather than swear.

24 Ex. 22:7. If the thief was found, the unpaid keeper is absolved from any oath. *Mekhilta dR. Ismael Neziqin* 15.

(38b line) כְּתִיב כִּי־יִתֵּן אִישׁ אֶל־רֵעֵהוּ חֲמוֹר אוֹ־שׂוֹר אוֹ־שֶׁה וּגְ. שְׂבוּעַת יֵי תְהִיָּה בֵּין שְׁנֵיהֶם. גְּנוֹבָה. אִם גְּנוֹב וְגַב מַעֲמֹו. אֲבִידָה. וְאִם. לְרִבּוֹת הָאֲבִידָה. עַד כְּדוֹן כְּרָבִי עֲקִיבָה. כְּרָבִי יִשְׁמַעְעָל. תִּנִּי רָבִי יִשְׁמַעְעָל. מָה אִם גְּנוֹבָה שְׁקֻרֻבָה לְאוֹנְסִין אֶת אֲמֹר מִשְׁלֵם. אֲבִידָה שְׁאִינָה קְרוּבָה לְאוֹנְסִין לֹא כָל־שָׂכָן.

אֵין פְּתוּב בְּשׂוֹאֵל אֶלָּא שְׂבוּרָה. אֲבִידָה וְגִיבָה מְנִיין. וְדִין הוּא. מָה אִם נוֹשֵׂא שְׂכָר וְהַשׂוֹכֵר שְׁאֵין מְשַׁלְמִין שְׂבוּרָה וּמִתָּה מְשַׁלְמִין גְּנוֹבָה וְאֲבִידָה. שׂוֹאֵל שְׁמִשְׁלֵם שְׂבוּרָה וּמִתָּה אֵינוֹ דִּין שְׁמִשְׁלֵם אֲבִידָה וְגִיבָה. וְתִנִּי גְּעָלָה. הָרִי זֶה קָל וְחוֹמֶר שְׁאֵין עָלָיו תְּשׁוּבָה. שְׂבוּיָה

מִנִּיין. נֶאֱמַר כֹּאן וְנִשְׁבַּר אוֹמֶת וְנֶאֱמַר לֵהֶן וּמֵת אוֹ-נִשְׁבַּר. מֵה לֵהֶן לִשְׁבוּיָה עֲמִהֶן אִף כֹּאן לִשְׁבוּיָה עֲמִהֶן. עַד כְּדוֹן כְּרִבִּי עֲקִיבָה. כְּרִבִּי לִשְׁמַעְעָל. רִבִּי לִשְׁמַעְעָל כְּרִבִּי נֶתָן. רִבִּי נֶתָן אוֹמֶר. אוֹ. לְרִבּוֹת אֶת הַשְּׁבוּיָה. וְכִרְבִּי מֵאִיר דָּאֶמֶר. גִּזְרָה שְׁנֵה בְּמִקּוֹם שְׁבָאֵת. מֵה לֵהֶן לִשְׁבָּעִין עַל הָאוֹנְסִין. אִף כֹּאן לִשְׁבָּעִין עַל הָאוֹנְסִין. עוֹד דְּרִבִּי נֶתָן. דְּרִבִּי נֶתָן אוֹמֶר. אוֹמֶת. לְרִבּוֹת אֶת הַשְּׁבוּיָה.

It is written, *if a man give to his neighbor a donkey, or an ox, or a sheep*²⁵ etc. *An oath before the Eternal shall be between the two of them*²⁶. *Stolen, if it was stolen stealing from him*²⁷. *Lost, and if, to include the lost one*²⁸. So far following Rabbi Aqiba. Following Rabbi Ismael? Rabbi Ismael stated: Since you say that he pays for theft which is close to duress, for loss which is not close to duress not so much more²⁹?

For the borrower only the broken is written. From where loss and theft? It is logical. Since the paid keeper and the renter who do not pay for the broken or the dead have to pay for theft and loss, the borrower who pays for the broken or the dead certainly has to pay for theft and loss³⁰. It was stated about this: This is an argument *de minore ad majus* which cannot be challenged.

From where the abducted? It is said here, *it was broken or died*³¹; and it is said there, *it dies or was broken*³². Since there the abducted was included, here also the abducted was included. So far following Rabbi Aqiba³². Following Rabbi Ismael? Rabbi Ismael follows Rabbi Nathan. Rabbi Nathan says, *or, to include the abducted*. Or following Rabbi Meïr who said, an equal cut at the place it comes from³³. Since there one swears for duress, also here one swears for duress. Still following Rabbi Nathan, for Rabbi Nathan said, *or it died*³¹, to include the abducted one³⁴.

25 Ex. 22:9.

26 Ex. 22:10.

27 Ex. 22:11. The verse is intentionally misquoted; it is written וְאִם “and if”, not אִם “if”, as noted in the sequel.

28 This is Rabbi Aqiba’s signature argument that all conjunctions which are not absolutely necessary imply an addition which can only be determined by tradition.

29 In the Babli, *Bava meši’a* 94b, this is characterized not as a statement of R. Ismael but as a Galilean Amoraic statement in the spirit of R. Ismael. A different argument is in *Mekhilta dR. Ismael Neziqin* 16, (ed. Horovitz-Rabin p. 305).

30 This an argument of R. Ismael; *Mekhilta dR. Ismael Neziqin* 16, (ed. Horovitz-Rabin p. 306).

31 Ex. 22:13.

32 This is *not* an argument of R. Aqiba but of R. Ismael [*Mekhilta dR. Ismael Neziqin* 16, (ed. Horovitz-Rabin p. 306)]. R. Aqiba's argument is attributed here to R. Ismael.

33 Chapter 4, Note 33. If *broken or died*

and *died or was broken* defines an equal cut, since the abducted is mentioned in v. 9 it also is implied in v. 13.

34 A follower of R. Aqiba has the choice of arguing either following R. Meir or R. Nathan.

מהו (38c line 8) רבי יודן בעי. טענו טענת גנב שלאונסין. אמר לו. בא ליסטיס מזויין ונטלה. מהו שישלם תשלומי כפל שלאונסין. אמר רבי יוסי. אין ביני נתיני. שומר שכן והשוכר. דתני. לא מצינו בשומר שכן והשוכר שמשלם תשלומי כפל שלאונסין. ותני עלה. זהו קל וחומר שיש עליו תשובה. אמר רבי חנינה. אם אומר אתה כן נמצאת אומר. הרי זה קל וחומר שיש עליו תשובה. דו זכיל מימר ליה. מצינו בשומר שכן והשוכר שאינו משלם תשלומי כפל. תאמר בשואל שמשלם תשלומי כפל מכל-מקום. ותני עלה. הרי זה קל וחומר שאין עליו תשובה.

Rebbi Yudan asked: ³⁵If he claimed the claim of a thief and duress? He told him, an armed robber came and took it; does he have to pay double restitution of duress? Rebbi Yose said, if it were so one should state "the paid keeper and the renter;" but we have stated: We do not find that the paid keeper and the renter pay double restitution of duress. On this we have stated, "this is an argument *de minore ad majus* which is questionable"³⁶. Rebbi Hanina said, if you say so, should you say, this is an argument *de minore ad majus* which is questionable³⁶, for he can tell him, let us say that the borrower pays double restitution. On this it was stated, this is an argument *de minore ad majus* which cannot be challenged³⁷.

35 The proviso that the keeper may have to pay double restitution is mentioned only for the unpaid keeper, where Ex. 22:8 is interpreted to mean that the keeper claimed the deposit was stolen but it was proven in court that he himself took it. The paid keeper or the renter must pay for stolen items (22:11); in general, a claim that the item was stolen by such a keeper is an agreement that he has to pay; even if the claim is false there is no reason for double restitution. But if the keeper claims that the

item was abducted by force, he may swear to this fact to free himself from paying (v. 22:9). An argument is missing here, which is supplied in the Babli, *Bava meši'a* 57b, viz., that in an orderly commonwealth an armed robber will hide his weapons in public and only show them to his intended victim. This makes armed robbery an instance of theft (*Sanhedrin* 8:3, Notes 44ff.). Therefore the question arises whether a false claim of armed robbery makes the paid keeper or the renter liable for

double restitution.

36 The text is incorrect. The scribe first wrote correctly שאין עליו תשובה “which cannot be challenged” and then corrected it wrongly to the text given. The reference is to the argument *de minore ad majus* presented in the preceding paragraph where it was stated that the argument is unquestionable. But if there are instances of theft where the paid keeper and the renter

follow the rules of the unpaid keeper, the argument becomes invalid; it is more than questionable, it is shown to be false.

37 Therefore the claim of armed robbery is not a claim of theft; there never can be double restitution by the paid keeper or the renter. The Babli (*Bava meši'a* 57a/b) disagrees and holds that in this case the paid keeper has to pay double restitution (Maimonides *Hilkhot Genevah* 4:4).

(38c line 16) את מר. אם-בעליו עמו לא ישלם. מהו שישבע. רבי זירא אומר. נשבע. רבי חנינה ורבי לא תגריהון אמרין. אינו נשבע. מתניתא מסייעה לרבי חנינה ולרבי לא. שבר שבויה ומתה שהו פטורין בנושא שר והשוכר. והשואל בבעליו פטור שלא בבעלים חייב. אבידה וגניבה שהו חייבין בנושא שר והשוכר. לא כל-שכן בשואל בבעליו פטור שלא בבעלים חייב. מאן דמר. פשיטא שהוא נשבע צריכה ליה שישלם. רבי חנינה בשם רבי יודן. מתניתא מסייעה לרבי זירא. שואל שהחמירה התורה עליו בבעליו פטור שלא בבעליו חייב. נושא שר שהיקלה התורה עליו לא כל-שכן בבעלים פטור שלא בבעלים חייב. אין תימר לשבועה איצטריכת ליה. ניתני בנושא שר והשוכר. הווי לא צורכה דלא לתשלומין. וקשיא על הדא דרבי זירא. שואל אם בעליו עמו נשבע. אין בעליו עמו ישלם. נושא שר אם בעליו עמו נשבע. אין בעליו עמו לא ישלם. שומר חנם בין שהבעליו עמו בין שאין הבעלים עמו נשבע. דברים שהשואל משלם נושא שר נשבע. דברים שנושא שר נשבע שומר חנם והא פטור. דברים שנושא שר משלם שומר חנם נשבע. מה את מתני בשומר חנם. בשבועה נשבע עמו. ואית דבעי. מה את מתני בשומר חנם ונושא שר. בין שהבעלים עמו בין שאין הבעלים עמו. אמר רבי אבין. על-כל-דבר-פשיע. אמר רבי מנא. לא מצינו שהשנות התורה בגניבה ואבידה בשואל. לכן נשוא שומר חנם ונושא שר שבר שבויה ומתה.

It was said, *if its owners were with him, he does not have to pay*³⁸. Does he have to swear? Rabbi Ze'ira said, he swears. Rabbi Hanina and Rabbi La both are saying, he does not swear³⁹. A *baraita* supports Rabbi Hanina and Rabbi La: “Breakage, abduction, and death for which he is not liable in the cases of the paid keeper and the renter⁴⁰, and the borrower with the owner is not liable, without the owner is liable⁴¹; loss and theft where the paid keeper and the renter are liable, is it not that *a fortiori* the borrower be not liable with the owner but liable without the owner⁴¹?” For him who says it is obvious that he swears, should he not have to pay⁴²?

Rebbi Ḥanina⁴³ in the name of Rebbi Yudan: A *baraita* supports Rebbi Ze'ira. "The borrower, for whom the Torah was restrictive, with the owner is not liable, without the owner is liable; the paid keeper, for whom the Torah was lenient, *a fortiori* with the owner should not be liable, without the owner should be liable.⁴⁴" If you are saying, his problem was swearing, he should have stated "the paid keeper and the renter⁴⁵." That means he only needs it for payment. It is difficult for Rebbi Ze'ira: the borrower swears if the owner was with him; if the owner was not with him he must pay. The unpaid keeper swears, whether the owner was with him or was not with him⁴⁶. You are saying that where the borrower pays the paid keeper swears⁴⁷. Where the paid keeper swears, the unpaid keeper should not be liable. Where the paid keeper pays, the unpaid keeper swears⁴⁸. What do you state about an unpaid keeper when the owner be with him⁴⁹? But some are asking, what do you state about an unpaid and a paid keeper, whether or not the owner be with him⁵⁰? Rebbi Abin said, *any word of criminality*^{46,51}. Rebbi Mana said, do we not find that the Torah treated loss and theft equally for the borrower? Therefore, we shall treat breakage, abduction, and death equally both for the unpaid and the paid keepers⁴².

38 Ex. 22:14. If the borrower had asked not only for the use of an animal and/or agricultural or mechanical implements but also had asked their owner to help him in his work, then the disposition over animals or tools never was transferred to the borrower; in case the animal died or it and the tools broke or were taken by force the borrower does not have to pay. But if the authority over animal and/or tools was transferred, the borrower has to pay if anything happens to them.

39 The Babli does not treat the question, which seems to be that even though the owner retains the power of disposition over his property, the borrower might have to swear that he was not in any way the cause

of the accident.

40 Since Ex. 22:9 excuses the paid keeper in the case of an unobserved accident but requires an oath that the keeper did never ever use the animal or object for himself (or the renter that he never overstepped the conditions of his lease).

41 There is no verse referring to the responsibility of the borrower for cases of loss and theft but it cannot be less than that of breakage, etc. It cannot be more since the conclusion of a logical argument cannot be stronger than the premise.

42 Since the oath would absolve from payment, it is clear that R. Ze'ira holds that the borrower has to pay if he cannot swear. But this contradicts the argument of the

baraita since it also applies to the case where the owner works with the borrower.

43 This is the late Amora R. Hinnena, not the early R. Hanina mentioned earlier.

44 In fact his responsibility depends on whether there was a formal act of transfer of responsibility, Note 4.

45 Since in general the paid keeper and the renter follow the same rules. But since the renter pays the owner for the use, in matters of payment there is reason to differentiate between the two.

46 *Ex.* 22:8.

47 If the loss was because of the unlawful actions of third persons.

48 If the loss was because of the

negligence of the keeper, when the object was lost, or probable negligence, when it was stolen.

49 As stated before, if there was no formal transfer of responsibility, the unpaid keeper does not even swear.

50 Since the distinction is made only for the borrower, we do not even know whether such a distinction is of any relevance for the other kinds of keepers.

51 This explicitly excludes the distinction about the participation of the owner for paid and unpaid keeper; the previously quoted *baraitot* are contradicted.

52 This is a different argument but supporting R. Abin's conclusion.

(38c line 37) ומה טעמון דבית שמי. על-כל-דבר-פֿשע. ומה מקיימין דבית הלל טעמון דבית שמי. פֿשע. על-כל-דבר-פֿשע. תיפתר ששלח בו יד על ידי שליח.

רבי יוסי בר חנינה בעי. מה אמר. יטול. נטל. והתני רבי הושעיה. נשברה החמיצה נותן לו דמי כולה. כלום החמיצה לא מחמת קילקולה. רבי שמואל רבי אבהו בשם רבי לעזר. שליחות שנאמר בשומר חנם אינו חייב עד שיחסר. רבי שמואל בעי קומי רבי אבהו. מה איתאמרת יסב. חיסר או אפילו לא חיסר. אמר ליה. לית הדא שאילתא דרבי יוסי בר חנינה יטול נטל. אין תימר ליטול. אפילו לא חיסר. אין תימר. עד שעה שיחסור. אין תימר ליטול. החזירה בין למקומו בין למקום אחר פטור. אין תימר נטל. החזירה למקומה פטור. למקום אחר חייב.

רבי אבהו בשם רבי יוחנן. נאמרה שמירה בשומר חנם ונאמרה שמירה בשומר שָׂכָר. ולא דמיא שמירה שנאמרה בשומר חנם לשמירה שנאמרה בנושא שָׂכָר. שמירה שנאמרה בשומר חנם כיון ששימר כל-צרכו פטור. שמירה שנאמרה בנושא שָׂכָר אין משערין אותו אלא בגופו. לפיכך רואין אותו אם היה ראוי לשמירה פטור. ואילא חייב. אין אומרין. אלו היה אחר שם יכול להציל הציל פטור. שלא הציל חייב.

רבי לעזר בשם רבי הושעיה. נאמרה שליחות ד בשומר חנם ונאמרה שליחות ד בשומר שָׂכָר. ולא דמיא שליחות ד שנאמרה בשומר חנם לשליחות ד שנאמרה בשומר שָׂכָר. שליחות ד שנאמרה בשומר חנם אינו חייב עד שימשוד. שליחות ד שנאמרה בשומר שָׂכָר כיון שהניח מקלו ותרמילו עליה חייב. שמע רבי יוסי בר יהוראי ומר. אני אני מקבל עלי את הדבר הזה אלא אחד זה ואחד זה אינו חייב עד שימשוד. רבי אמי בשם רבי לעזר ותני רבי

הושעיה כן. אילו נאמרה שלוחות יד בשומר חנם שאינו צריך הייתי למד מנושא שכן. מה אם נושא שכן שהחמירה התורה עליו אינו חייב עד שימשוך. שומר חנם שהיקלה בו התורה אינו דין שלא יהא חייב אלא דעד שימשוך. לאי זה דבר נאמרה שלוחות יד בשומר חנם שאינו צריך. להחמיר על נושא שכן. כיון שהניח מקלו ותרמילו עליה חייב. רבי יוסי אומר. אם אומר את כן נמצאת למד על המלמד להחמיר עליו. דו יכיל מימר ליה. מה אם נושא שכן שהחמירה בו התורה אינו חייב עד שימשוך. שומר חנם שהיקלה בו התורה אפילו משך יהא פטור. אלא כיני. לא נאמר שלוחות יד שנאמרה בשומר שכן שאינו צריך. הייתי למד משומר חנם. מה אם שומר חנם שהיקלה בו התורה אינו חייב עד שימשוך. נושא שכן שהחמירה בו התורה כיון שמשך חייב. לאי זה דבר נאמרה שלוחות יד בנושא שכן שאינו צריך. להחמיר עליה. כיון שהניח מקלו ותרמילו עליה חייב.

Text of the Escorial ms. of *Bava meši'a* 3:13

מה טעמון דבית שמאי. פשע. על-כל-דבר-פשע. מה מקיימין בית הלל. פשע. על-כל-דבר-פשע. תיפתר ששלח בו יד על ידי שליח.

רבי יוסה בן חנינה בעי. מה את אמרת. ליטול נטל. והא תני רבי הושעיה. נשברה או שהחמיצה נותן לו דמי בלה. כלום החמיצה אלא מחמת טילטול. רבי שמואל רבי אבהו בשם רבי לעזר. שלוחות יד שנאמרה בשומר חנם אינו אלא עד שעה שיחסר. רבי שמעון בעה קומי רבי אבהו. מה את אמרת. חסר או אפילו לא חסר. אמר ליה. ולא דא היא שאילתיה דרבי יוסה בן חנינה. ליטול נטל. אין תימר. ליטול. אפילו לא חסר. אין תימר. נטל. עד שעה שיחסר. אין תימר. ליטול. החזירה בין למקומה בין למקום אחר פטור. ואין תימר. נטל. החזירה למקומה פטור. למקום אחר חייב. רבי אבהו בשם רבי יוחנן. נאמרה שמירה בשומר חנם ונאמרה שמירה בשומר שכן. ולא דמיה שמירה בשומר חנם לשמירה שנאמרה בשומר שכן. שמירה שנאמרה בשומר חנם כיון ששימר לו כל-צורכו פטור. שמירה שנאמרה בשומר שכן אפילו הקיפו חומה של ברזל אין רואין אותו באילו שומר. היה יכול להציל חייב. לא היה יכול להציל פטור. אין אומרין. אלו היה אחר שם היה יכול להציל.

רבי לעזר בשם רבי הושעיה. נאמרה שלוחות יד בשומר חנם ונאמרה שלוחות יד בשומר שכן. ולא דמיה שלוחות יד שנאמרה בשומר חנם לשלוחות יד שנאמרה בשומר שכן. שלוחות יד שנאמרה בשומר חנם אינו חייב עד שעה שימשוך. שלוחות יד שנאמרה בשומר שכן כיון שהניח מקלו ותרמילו עליו חייב. שמע רבי יוסה בן נהורי ואמר. אני איני מקבל עלי את הדבר הזה. אלא אחת זו ואחת זו אינו חייב עד שימשוך. רבי אימי בשם רבי לעזר. ותני רבי הושעיה כן. לא נאמר שלוחות יד שנאמר בנושא שכן שאינו צריך. הייתי למד משומר חנם. מה אם נושא שכן שהחמירה עליו תורה אינו חייב עד שעה שימשוך. שומר חנם שהיקלה בו תורה אינו חייב עד שעה שימשוך. לאי זה דבר נאמרה שלוחות יד בנושא שכן. שאינו צריך להחמיר עליו. כיון שהניח מקלו ותרמילו עליו חייב. אמר לו רבי יוסה. אם אומר את כן נמצאת למד קיל מחמור להחמיר עליו. דו יכיל מימור ליה. מה אם נושא שכן שהחמירה התורה בו אינו חייב עד שעה שימשוך. שומר חנם שהיקלה בו התורה אפילו משך יהא פטור. אלא לא נאמר שלוחות יד שנאמרה בשומר חנם שאינו צריך הייתי למד מנושא שכן. מה אם שומר חנם שהיקלה התורה בו אינו חייב עד שעה שימשוך. נושא שכן שהחמירה בו התורה

כִּינן שְׁמִישׁוֹ יְהִי חַיִּיב. לֹא זֶה דְּבַר נֶאֱמָרָה שְׁלִיחוֹת יָד בְּשׁוּמֵר חֲנֻם שְׂאִינוּ צְרִיךְ לְהַחֲמִיר עַל נוֹשֵׂא שְׂכָר.
כִּינן שְׁהֵנִיחַ מִקְלּוֹ וְתִרְמִילוֹ עָלָיו חַיִּיב.

⁵³What is the reason of the House of Shammai? *Any word of criminality*^{46,54}. How do the House of Hillel explain the reason of the House of Shammai? “Criminality,” *any word of criminality*. Explain it if he appropriated it through an agent⁵⁵.

Rebbi Yose bar Ḥanina asked, what was said, to take? Took⁵⁶? Did not Rebbi Hoshia state, “it broke”; if it turned into vinegar he pays for everything⁵⁷? It turned into vinegar only because of its spoilage⁵⁸. Rebbi Samuel, Rebbi Abbahu in the name of Rebbi Eleazar. “Grabbing”⁵⁹ which was mentioned for the unpaid keeper makes him liable only if he diminished⁶⁰. Rebbi Samuel asked before Rebbi Abbahu: What has been said about taking? That he diminished or even if he did not diminish? He said to him, is that not Rebbi Yose bar Ḥanina’s question, to take, took? If you say “to take”, even if he did not diminish⁶¹. If you say “took,” only when he diminished. If you say “to take”, if he returned it either to its former place or to another place he is not liable. If you say “took,” if he returned it to its former place he is not liable, to another place he is liable.

Rebbi Abbahu in the name of Rebbi Joḥanan: “Guarding” is mentioned for the unpaid keeper and “guarding” is mentioned for the paid keeper, but “guarding” mentioned for the unpaid keeper is not similar to “guarding” mentioned for the recipient of a fee. “Guarding” mentioned for the unpaid keeper; if he guarded it sufficiently he is not liable. For a paid keeper one estimates it only relative to his body. Therefore one judges him; if the guarding was appropriate he is not liable, otherwise he is liable⁶². One does not say, if another had been there, he could have saved⁶³. If he saved, he is not liable; if he did not save, he is liable⁶⁴.

Rebbi Eleazar in the name of Rebbi Hoshia: “Grabbing” is mentioned for the unpaid keeper and “grabbing” is mentioned for the paid keeper, but “grabbing” mentioned for the unpaid keeper is not comparable to “grabbing” mentioned for the paid keeper. “Grabbing” mentioned for the unpaid keeper does not make him liable unless he move it⁶⁵. “Grabbing” mentioned for the paid keeper, he is liable from the moment he puts his staff and his bag on it⁶⁶.

Rebbi Yose ben Nehorai heard this and said, I am not accepting this, but in any case he is not liable unless he move it⁶⁷. Rebbi Immi in the name of Rebbi Eleazar: But did not Rebbi Hoshiaia state it in this way? If “grabbing” had not been mentioned for the unpaid keeper as unnecessary⁶⁸, I would have inferred from the recipient of a fee. Since the recipient of a fee, with whom the Torah was strict, does not become liable unless he move it, it is only logical that an unpaid keeper, with whom the Torah was lenient, not be liable unless he move it. For which purpose was “grabbing” mentioned for the unpaid keeper since it was unnecessary? To be strict with the recipient of a fee; from the moment he puts his staff or his bag on it he is liable. Rebbi Yose said, if you say so, you infer about the premise to restrict it. For one could say to him, since the recipient of a fee, with whom the Torah was strict, does not become liable unless he move it, the unpaid keeper, with whom the Torah was lenient, should not be liable even if he move it. But it must be the following: “Grabbing” should not have been mentioned for the paid keeper as unnecessary, for I would have inferred from the unpaid keeper⁶⁸. Since the unpaid keeper, with whom the Torah was lenient, is not liable unless he move it, the recipient of a fee, with whom the Torah was strict, becomes liable when he moves it. For which purpose was “grabbing” mentioned for the recipient of a fee since it was unnecessary? To be strict; from the moment he puts his staff or his bag on it he is liable⁶⁹.

53 The remainder of the Halakhah does not refer to Mishnah 8:1 but to *Bava meṣi'a* 3:13. There exists a full parallel in the Escorial ms. of *Neziqin* (E), reproduced above, and a not quite complete version published by R. H.Y.D. Azulai almost 200 years before the discovery of E; cf. *Bava meṣi'a* 3:13, Note 89. The Leiden ms. there quotes only the first line followed by “etc.” This justifies considering the text of E as second source for the text here.

A short parallel to the discussion here is in the Babli, *Bava meṣi'a* 44a.

54 Mishnah *Bava meṣi'a* 3:13 states that

according to the House of Shammai, a keeper becomes unfaithful and liable for any and all damages to the deposit if he thinks of appropriating it for his own use; according to the House of Hillel only the actual taking triggers liability. The House of Shammai include in “word of criminality” also unspoken words which would prevent the keeper from swearing to his innocence.

55 Giving orders certainly involves words. If the order was criminal, the person giving the order can no longer swear truthfully that he did not take the deposit even if he himself never touched it.

56 This refers to the second part of Mishnah *Bava meši'a* 3:13: "If he tilted the [wine] amphora and took a *quartarius*, and then it broke, [the unpaid keeper] pays only for a *quartarius*. If he lifted it and took a *quartarius*, and then it broke, he pays for all." It is assumed that the amphora did not break because of any action of the keeper's; then the unpaid keeper does not have to pay for the loss. But if he lifted the amphora with the intent of stealing from it, it becomes his property and he is liable for the entire value of amphora and contents. The question now is whether "took" means that he actually removed anything from the amphora's contents or whether just moving the amphora with the intent of taking triggers full liability. Since in a sale of movables it is not the payment which transfers property rights and liabilities from seller to buyer but the buyer's moving the item, it is not unreasonable to read "took" as "intent to take" since action of moving is decisive.

57 R. Hoshia qualifies the first statement. If he only tilted the amphora but did not move it from its place and it broke he only pays for what he took, to apply only to the case of breakage. If he tilted the amphora, took some wine, and then the wine turned into vinegar, he is liable to pay for all the wine since we say that tilting the wine and pouring from it caused the rest to turn into vinegar.

58 Read with E: "the motion".

59 The biblical expression *שֵׁן יָדוֹ* "sent his hand", mentioned both in *Ex. 22:7* and 10.

60 Only if he actually took from it, not if the volume diminished by his handling the

amphora for his own purposes.

61 But it lost volume after he handled it not for its own sake.

62 Text of E: "Guarding mentioned for the paid keeper, even if he enclosed it in an iron wall one is not satisfied that he guarded. If it was in his power to save, he is liable. If it was not in his power to save, he is not liable." This refers to the rule that the paid keeper is liable for theft and loss.

63 Since the keeper is paid, it would have been the responsibility of the owner to hire a sufficient number of guards to watch over his property.

64 This belongs before the preceding sentence; cf. Note 62.

65 As made clear in Mishnah *Bava meši'a* 3:13.

66 Since the paragraph about the paid keeper (*Ex. 22:9-11*) refers to animals, the example given refers to animals. If the keeper has to shepherd an animal, he cannot use it as his beast of burden even for the most minute load to his own benefit.

67 He requires an act of acquisition; he is liable only if he makes the animal move from the place where he put his bag on it.

68 Since earlier we had established a strict order of liabilities, the unpaid keeper being liable less than the paid keeper or renter who in turn are liable less than the borrower, a mention of liability after "grabbing", appropriating the deposit, for the unpaid keeper would automatically imply the same for the paid keeper and the renter. In the first version, the argument is upside down as R. Yose points out.

69 Since the mention of "grabbing" in v. 10 is unnecessary if it meant the same as in v. 7, it follows that the rules of liability for

the paid keeper are more strict than those for the unpaid keeper. The detail, in what these rules are more strict, is not mentioned in the

biblical text; it must be left to the traditional understanding of these rules.

משנה ב: אמר לשומר הנם איכן שורי אמר לו מות והוא שנשבר או נשבה או נגנב או אבד. נשבר והוא שמות או נשבה או נגנב או אבד. נשבה והוא שמות או נשבר או נגנב או אבד. נגנב והוא שמות או נשבר או נגנב או אבד. אבד והוא שמות או נשבר או נשבה או נגנב. משביעך אני ואמר אמן פטור:

Mishnah 2: He said to the unpaid keeper, “where is my ox?” He told him, “it died,” but it broke, or was abducted, or stolen, or lost⁷⁰. “It broke,” but it died, or was abducted, or stolen, or lost. “It was abducted,” but it died, or broke, or was stolen, or lost. “It was stolen,” but it died, or broke, or was abducted, or lost. “It was lost,” but it died, or broke, or was abducted, or stolen. “I want you to swear,” he answered “Amen”. He is not liable⁷¹.

משנה ג: איכן שורי אמר לו איני יודע. מה אפה שח והוא שמות או נשבר או נשבה או נגנב או אבד. משביעך אני ואמר אמן פטור.

Mishnah 3: “Where is my ox?” He told him, “I do not know.” “What are you telling?” But if had died, or broke, or was abducted, or stolen, or lost. “I want you to swear,” he answered “Amen”. He is not liable⁷¹.

משנה ד: איכן שורי אמר לו אבד. משביעך אני ואמר אמן והעדים מעידין אותו שאכלו משלם את הקרן. הודה מעצמו משלם קרן וחומש ואשם.

Mishnah 4: “Where is my ox?” He told him, “it was lost.” “I want you to swear,” he answered “Amen”. Witnesses testify that he ate it: he has to pay its value⁷². If he confessed himself he pays the value, and a fifth, and a reparation sacrifice⁷³.

משנה ה: איכן שורי אמר לו נגנב. משביעך אני ואמר אמן והעדים מעידין אותו שנגנב משלם תשלומי כפל. הודה מעצמו משלם קרן וחומש ואשם:

Mishnah 5: “Where is my ox?” He told him, “it was stolen.” “I want you to swear,” he answered “Amen”. Witnesses testify that he stole it: he has to pay double restitution⁷⁴. If he confessed himself he pays the value, and a fifth, and a reparation sacrifice⁷³.

משנה ו: אָמַר לְאֶחָד בִּשְׁוֹק אֵיכָן שׁוֹרִי שֶׁגָּנַבְתָּ וְהוּא אֹמֵר לֹא גָנַבְתִּי וְהָעֵדִים מַעֲיִדִין אוֹתוֹ שֶׁגָּנַב מִשְׁלָם תְּשַׁלְּמוּ כָפָל. טַבַּח וּמָכַר מִשְׁלָם תְּשַׁלְּמוּ אֶרְבַּעַה וְחֲמִשָּׁה. רָאָה גְדִים שֶׁמִּמֶּשְׁמֵשִׁין וּבֵאִין אֹמֵר גָּנַבְתִּי אֲבָל לֹא טַבַּחְתִּי וְלֹא מָכַרְתִּי אֵינִי מִשְׁלָם אֵלָּא קָרִן:

Mishnah 6: He said to a person on the market, “where is my ox which you stole?” This one says, “I did not steal,” but witnesses testify that he stole it: he has to pay double restitution⁷⁴. If he slaughtered or sold it, he pays quadruple or quintuple restitution⁷⁵. If he saw that witnesses appeared and said, “I stole but did neither slaughter nor sell,” he only pays its value⁷⁶.

70 These are the cases enumerated in *Ex.* 22:6,9, where the unpaid keeper swears but does not have to pay. Breakage refers to vessels, not to animals; it is included since it appears in the verse.

71 Even though he swore under a false category, since he swore correctly to the fact that he does not have to pay he is not liable for the sacrifice required for a false oath.

72 He has to pay restitution. But since he did not claim falsely that it was stolen, there is no fine. In general there is no fine imposed if the culprit confesses before

witnesses testify against him.

73 Following *Lev.* 5:20-25.

74 This is not the double restitution of the common thief (since the owner himself handed the animal or vessel over to him) but the double restitution required by *Ex.* 22:8.

75 *Ex.* 21:37.

76 He did not swear; there is no additional fifth and sacrifice. There is no fine for the confessed thief; therefore he pays only the value even though he falsely claimed not to have slaughtered or sold the animal.

(38d line 1) **הלכה ב:** אָמַר לְשׁוֹמֵר חֵנָם כּוֹל. רַב אָמַר. פְּטוֹר מִשְׁבֻּעַת פִּיקְדוֹן וְחַיִּיב מִשְׁוֹם שְׁבֻעַת בִּיטוּי. אָמַר רַבִּי יוֹחָנָן. מֵאַחֵר שֶׁמִּצְוָה לְהַפִּיסוֹ אֵינוֹ חַיִּיב מִשְׁוֹם שְׁבֻעַת בִּיטוּי. עַל דַּעְתִּיהָ דְּרַב אֵינוֹ מִצְוָה לְהַפִּיסוֹ. מִפִּיִּסוֹ עַל הָאֻמָּת וְאֵינוֹ מִפִּיִּסוֹ עַל הַשֶּׁקֶר.

Halakhah 2: “He said to the unpaid keeper,” etc. ⁷⁷Rav said, he is not liable for a keeper’s oath but is liable because of a blurted oath. Rabbi Johanan said, since it is a religious duty to appease him, 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.

77 This paragraph is from *Sanhedrin* 3:10, Notes 190-192.

(38d line 5) רַבִּי יוֹחָנָן בְּעֵי. שְׁבֻעַת סוּטָה מֵהוּ שִׁיְהוּ חַיִּיבִין מִשְׁוֹם שְׁבֻעַת בִּיטוּי. מָה נֵן קִיּוּמִין. אִם בְּשׁוּגָתָהּ בְּעֵבֶרָה וּבְשֻׁבָּעָה אֵין כָּאֵן סוּטָה. אִם בְּמִזְדָּה בְּעֵבֶרָה וּבְשֻׁבָּעָה אֵין כָּאֵן קוֹרְבָן.

אֶתְּנָה דָּרֵב קָרְבִּי עֲקִיבָה. וְאִין יִסְבּוֹר רַבִּי לְשַׁמְעָאֵל קָרְבִּי מֵאִיר אֶתְּנָה הִיא דְּרַבִּי מֵאִיר אָמַר.
אֲמֵן שְׁלֵא נִטְמָאתִי. אֲמֵן שְׁלֵא אִטְמָא. וְאֵת מִשְׁבַּח מִקְשִׁיא.

Rebbi Johanan asked: May the oath of a deviant woman⁷⁸ be liable for a blurted oath? Where do we hold? If she is in error in sin and oath she is not deviant⁷⁹. If she is intentional in sin and error there is no sacrifice⁸⁰. Rav follows Rebbi Aqiba⁸¹. If Rebbi Ismael⁸² would argue like Rebbi Meïr it would follow, since Rebbi Meïr said⁸³: “Amen that I was not defiled, Amen that I shall not be defiled.” But you may question this⁸⁴.

78 The suspected adulteress who is put under oath by the Cohen, *Num.* 5:22.

79 If she slept with a man thinking it was her husband and swears while in this belief, she is not forbidden to her husband and not deviant.

80 There is no sacrifice for an intentional false oath.

81 This refers to Halakhah 3:1. R. Aqiba admits the possibility of sacrifices for inadvertent blurted oaths (*Lev.* 5:4) referring to past events as well as future ones but R. Ismael allows only future- directed blurted oaths. Rav (Chapter 3 Note 7) admits only past-directed blurted oaths; as just shown this is not possible in the case of the deviant woman.

82 R. Meïr explains the repetition “Amen, Amen” in *Num.* 5:22 that the first one is past directed, the second future directed. R. Ismael might agree that this is a special case where a biblical verse also requires the inclusion of references to past events. Then the question of R. Johanan might make sense since the possibility of an oath by a deviant woman depends on past events but the designation as blurted oath must depend on future happenings, not covered by the previous argument.

83 Mishnah *Soṭah* 3:1.

84 Since practice would follow neither R. Ismael nor R. Meïr there seems to be no point for R. Johanan’s question.

משנה ז: אָמַר לְשׁוֹאֵל אֵיכָן שׁוֹרִי אָמַר לוֹ מֵת וְהוּא שֶׁנִּשְׁבַּר אוֹ נִשְׁבָּה אוֹ נִגְנַב אוֹ אָבַד. נִשְׁבַּר וְהוּא שְׁמֵת אוֹ נִשְׁבָּה אוֹ נִגְנַב אוֹ אָבַד. נִשְׁבָּה וְהוּא שְׁמֵת אוֹ נִשְׁבַּר אוֹ נִגְנַב אוֹ אָבַד. נִגְנַב וְהוּא שְׁמֵת אוֹ נִשְׁבַּר אוֹ נִשְׁבָּה אוֹ אָבַד. אָבַד וְהוּא שְׁמֵת אוֹ נִשְׁבַּר אוֹ נִשְׁבָּה אוֹ נִגְנַב אוֹ אָבַד. מִשְׁבִּיעֶנּוּ אֲנִי וְאָמַר אֲמֵן פְּטוּר:

Mishnah 7: He said to the borrower, “where is my ox?” He told him, “it died,” but it broke, or was abducted, or stolen, or lost⁷⁰. “It broke,” but it died, or was abducted, or stolen, or lost. “It was abducted,” but it died, or broke,

or was stolen, or lost. “It was stolen,” but it died, or broke, or was abducted, or lost. “It was lost,” but it died, or broke, or was abducted, or stolen. “I want you to swear,” he answered “Amen”. He is not liable⁸⁵.

משנה ח: איכן שורי אמר לו איני יודע כמה אתה שם והוא שמת או נשבר או נשבה או נגנב או אבד. משביעך אני ואמר אמן חייב.

“Where is my ox?” He told him, “I do not know.” “What are you telling?” But if had died, or broke, or was abducted, or stolen, or lost. “I want you to swear,” he answered “Amen”. He is liable⁸⁶.

85 Since the borrower pays for any of the reasons mentioned, by his oath he does not deprive the owner of any money. Therefore no sacrifice is due.

86 He denies ever having borrowed an ox. His oath is to the detriment of the owner; a sacrifice is due in addition to the restitution of 125% of the value.

(38d line) **הלכה ז:** אמר לשואל. איכן שורי כול. אמר רבי יוחנן. ותיני כן. טענו טענת אבוד ונשבע לו והודה. בין עד שלא באו העדים בין משבאו העדים משלם קרן וחומש ואשם. טענו טענת גנב ונשבע לו והודה. עד שלא באו עדים משלם קרן וחומש ואשם. ואם משבאו עדים משלם תשלומי כפל ואשם וחומשו עולה לו מתוך כפילו. דברי רבי יעקב. אמרו לו לרבי יעקב. איכן מצינו אשם בלא חומש. אמר להן. אם נשבע ונשבע ונשבע הרי מצינו אשם בלא חומש. ורבני אמרין. לקרן חומשין אין לשבועות חומשין.

דבר אחר. ושלם אותו בראשו וחמישיתו יוסף עליו. אמר רבי זירא. ותיני כן. טענו טענת אבוד ונשבע לו והפריש קרבן. מאילו שאילו הודה משבאו עדים קידש אף כן קידש. טענו טענת גנב ונשבע לו והפריש קרבן. מאחר שאילו הודה משבאו עדים לא קידש אף כן לא קידש. ורבי יעקב קידש.

Halakhah 7: “He said to the borrower, “where is my ox,” etc. Rabbi Johanan said, it was stated thus⁸⁷: “He⁸⁸ claimed a claim of loss, swore, and confessed. Whether before witnesses came or after witnesses came he pays the value, a fifth, and a reparation sacrifice⁷³. If he claimed a claim of thief, swore, and confessed before witnesses came he pays the value, a fifth, and a reparation sacrifice. When after witnesses came he pays double restitution⁷⁴ and a reparation sacrifice; the fifth is counted for him in the double payment, the words of Rabbi Jacob. They said to Rabbi Jacob, where do we find a reparation sacrifice without fifth? He said to them, if he swore, and swore,

and swore, we find a reparation sacrifice without fifth. But the rabbis say, there is a fifth for the capital; there is no fifth for oaths⁸⁹.”

Another explanation: *He shall pay the whole worth and add its fifths to it*⁹⁰. Rabbi Ze'ira said, it was stated thus: “He claimed a claim of loss, swore, and dedicated a sacrifice. Since if he confessed after witnesses came it would be sanctified, it is sanctified here. He claimed a claim of thief, swore, and dedicated a sacrifice. Since if he confessed after witnesses came it would not be sanctified⁹¹, it is not sanctified here, but following Rabbi Jacob it would be sanctified.”

87 *Bava qamma* 65a/b, Tosephta *Bava qamma* 8:8.

88 A paid keeper or renter who pays for stolen and lost deposits but pays no double restitution if he in fact stole it but claims that it was lost.

89 Rabbi Jacob holds that if he swore falsely he has to pay the fifth of the value of the deposit but if he then repeats the false oath there is no underlying money involved and therefore no money due. The rabbis hold that double restitution is only due from the thief after conviction by the court. For payment after confession neither fifth nor a sacrifice are due.

90 *Lev.* 5:24. The plural “fifths” implies that for repeated false oaths about the same subject additional fifths are due (*Sifra Hovah, Wayyiqra II, Parašah* 13:12; *Babli Bava qamma* 103b, *Bava meši'a* 54b). This disproves R. Jacob's statement.

91 A reparation offering is obligatory; it cannot be voluntary. Since the rabbis hold that double restitution excludes oath and confession, no sacrifice is possible even in the case where the verse demands double restitution in any case, as for the paid keeper who falsely claimed that a thief had stolen the item (Note 74).

38d line 23) אָמַר רַבִּי יוֹחָנָן. הַטּוֹעֵן אֶת חֲבִירוֹ טַעַנַת גָּנֹב מִשְׁלָם תְּשֻׁלוּמֵי כָּפֹל. טָבַח וּמָכַר מִשְׁלָם תְּשֻׁלוּמֵי אַרְבָּעָה וְחֲמִשָּׁה. תָּמַן אָמַרְי. מִשְׁלָם תְּשֻׁלוּמֵי אַרְבָּעָה וְחֲמִשָּׁה. רַבִּי פִּדְתָּ בִּשְׁם רַבִּי הוֹשַׁעְיָה. תִּנְיִי תָמַן וּמִסִּיעִין לְרַבִּי יוֹחָנָן. אֵיכָן שׁוֹרִי. אָמַר לוֹ. אָבִד. מִשְׁבִּיעֵךְ אָנִי. וְאָמַר אָמֵן. וְהַעֲדִים מַעֲיָדִין אוֹתוֹ שְׁאֵכְלוּ. מִשְׁלָם אֶת הַקֶּרֶן. הוֹדָה מַעֲצָמוֹ. מִשְׁלָם קֶרֶן וְחוֹמֶשׁ וְאֶשֶׁם. וְיֵשׁ אֲכִילָה בְּלֹא טְבִיחָה. אָמַר רַבִּי חֲנִי. תִּפְתָּר בְּשִׁשְׁחֻטוֹ אַחֵר. וְיֵי דָא אָמְרָה דָּא. אָמַר לְאַחַד בְּשׁוֹק. אֵיכָן שׁוֹרִי שְׁגִבְתָּ. וְהוּא אוֹמַר. לֹא גִבְתָּי. מִשְׁבִּיעֵךְ אָנִי. וְאָמַר אָמֵן. פָּטוּר. מִפְּנֵי שְׁאֵמַר לְאַחַד מִן הַשּׁוֹק. אָבִל אִם אָמַר לְאַחַד מִן הַשּׁוֹמְרִין חֵיב. מִתְּנִיתָא בְּשִׁאֲכָלוֹ וְאַחֵר כֶּד נִשְׁבַּע לוֹ. מִן מַה דְּמַר רַבִּי יוֹחָנָן בְּשִׁנְשַׁבַּע לוֹ וְאַחֵר כֶּד אֲכָלוֹ.

Rebbi Johanan said, if somebody claims against another a claim of thief he pays double restitution. If he slaughtered or sold, he pays⁹² quadruple or

quintuple restitution. There, they say, he pays quadruple or quintuple restitution⁹³. Rabbi Pedat in the name of Rabbi Hoshai: There⁹⁴ we state and it supports Rabbi Johanan: “‘Where is my ox?’ He told him, ‘it was lost.’ ‘I want you to swear,’ he answered ‘Amen’. Witnesses testify that he ate it; he has to pay its value⁷². If he confessed himself he pays the value, and a fifth, and a reparation sacrifice⁷³.’” Is there eating without slaughtering⁹⁵? Rabbi Haggai said, explain it if another slaughtered⁹⁶. And the following said so: He said to one in the market place, “where is my ox which you stole?” He says, “I did not steal.” “I want you to swear,” and he says “Amen.” He is (not)⁹⁷ liable. Because he is one in the market place. But if he said it to one of the keepers, that one would be liable⁹⁸. The *baraita* when he ate it and then swore. What Rabbi Johanan said, if he swore and after that ate it⁹⁹.

92 The following implies that one has to read “does not pay.”

93 In Babylonia they transmit R. Johanan’s saying as requiring multiple restitution; Babli *Bava qamma* 106b.

94 Mishnah 4.

95 The Mishnah does not require multiple restitution for eating the animal entrusted to him. This proves that there is no quadruple or quintuple restitution and double restitution only if the keeper claims that it was stolen from him.

96 The Babli, *Bava qamma* 71a,

emphatically disagrees, in the name of R. Johanan. Since the verse brackets slaughter and sale together and a sale is impossible without a third party, so slaughter by a third party acting on his orders also triggers the liability of the thief.

97 This has to read “is liable.”

98 This has to read “would not be liable (for quadruple or quintuple restitution).”

99 If the unpaid keeper had sworn or the paid keeper had paid, the animal became his and if he slaughtered afterwards there can be no additional restitution.

משנה ט: אמר לנזשא שקר והשוקר איכן שורי אמר לו מות והוא שנשפר או נשבת. נשפר והוא שמות או נשבת. נשבת והוא שמות או נשפר. נגנב והוא שאבד. אבד והוא שנגנב. משביעך אני ואמר אמן פטור. (fol. 38c)

Mishnah 9: He said to the recipient of a fee or to a renter, “where is my ox?” He told him, “it died,” but it broke or was abducted; “it broke,” but it died or was abducted; “it was abducted,” but it died or broke; “it was stolen,”

but it was lost; "it was lost," but it was stolen. "I want you to swear;" if he said "Amen", he is not liable.

משנה י: מת או נשבר או נשבה והוא שנגנב או אבד. משביעך אני ואמר אמן חייב. אבד או נגנב והוא שמת או נשבר או נשבה פטור. זה הכלל כל הנשבע להקל על עצמו חייב. להקמיר על עצמו פטור.

Mishnah 10: "It died, or it broke, or it was abducted," when it was stolen or lost. "I want you to swear;" if he said "Amen", he is liable. "It was lost, or stolen," when it died, or broke, or was abducted; he is not liable. This is the principle: Anybody who swears to his benefit is liable, to his detriment is not liable.

(38d line 33) **הלכה ט:** אומר לנושא שכר כול'. אומר רבי יוחנן. הטוען לחבירו טענת גנב באבדה חייב. איכן אבידתי. אומר לו. נגנבה. אומר רבי יוחנן. הטוען לחבירו טענת גנב אינו חייב אלא לאחר שבועה. ומאי טעמא. נאמר כאן שליחות יד. ונאמר להלן שליחות יד. מה שליחות יד שנאמרה להלן אינו אלא לאחר השבועה. אף שליחות יד שנאמרה כאן אינו חייב אלא לאחר שבועה. אומר רבי יוחנן. טענו טענת אבוד ונשבע לו ואחר כך טענו טענת גנב. פטור. רבי יוחנן בעי. שבועת טענת גנב מהו שיהו חייבין בה משום שבועת ביטוי. מחלפה שיטתיה דרבי יוחנן. תמן אומר. טענו טענת אבוד ונשבע לו ואחר כך טענו טענת גנב פטור. וכא אומר אכין. תמן פשיטה ליה וכא צריכה ליה. מה איצטריכת ליה חזי ופשיטה. רבי חייה בר יוסף אומר. הטוען לחבירו טענת גנב אינו חייב עד שיכפור בבית דין. מה נן קיימין. אם בהוא דקאים וחיוב לחבריה שבועה אפילו נשבע חוץ לבית דין חייב. אלא כי נן קיימין בהוא דחמי לון אזלין. בעון מישבעוניה והוא קפץ ומשתבע. רבי חייה בשם רבי יוחנן. בעומדת על אבוסו. רבי זירא בעי. מה איתאמרת. בעומדת או אפילו עומדת. ואין תימר אפילו עומדת. היא הך היא הך. אין תימר בעומדת. מחלפה שיטתיה דרבי יוחנן. תמן אומר. טענו טענת אבוד ונשבע לו והפריש קרבן ואחר כך טענו טענת אונס פטור. והכא אתמר הכין. אומר רבי לא. שנייא היא שהיא ביוצא וידויו בשבועה. מקשינא על דעתיה דרבי זירא. אומר לו. איכן שורי. אומר לו. נגנב. משביעך אני. ואמר אמן. והעדים מעידין אותו שנגנב. משלם תשלומי כפל. הודה מעצמו. משלם קרן וחומש ואשם: והכא כיון שמשך בטוענו טענת אבוד. מיכן ואילך בטוענו טענת גנב ופטור. תיפתר בשנשבע לו ואחר כך טבח. תלמידיו דרבי חייה בר לולייני אמרי. תפתר בששחטו רבוי. ויש טביחה בלא מכירה. כסומכוס דאמר. אף על פי שאין גניבה לש טביחה ומכירה. שמואל אמר. בשלא באו עידי גניבה. אבל אם באו עידי טביחה חייב.

Halakhah 9: “He said to the recipient of a fee,” etc. Rabbi Johanan said, one who claims before his neighbor a claim of thief in a case of loss is liable¹⁰⁰. “Where is my lost object?” He told him, “it was stolen.”

Rabbi Johanan said, one who claims before his neighbor a claim of thief is liable only after an oath. What is the reason? It is said here “grabbing” and it says there “grabbing.” Since “grabbing” mentioned there only applies after an oath, so also “grabbing” mentioned here only applies after an oath¹⁰¹.

Rabbi Johanan said, one who claims a claim of loss, swore to him, and afterwards claimed a claim of thief is not liable¹⁰². Rabbi Johanan asked: May one be liable for a blurted oath in case of an oath regarding a claim of thief¹⁰³? The argument of Rabbi Johanan seems to be inverted. There he said, if he claimed a claim of loss, swore to him, and afterwards claimed a claim of thief is not liable. And here he says so¹⁰⁴? There it is obvious to him, here it is problematic for him¹⁰⁵. What is problematic for him? He saw and found it simple¹⁰⁶.

Rabbi Hiyya bar Joseph said¹⁰⁷, one who claims before his neighbor a claim of thief is liable only after he denied in court. Where do we hold? If about him who already owes an oath¹⁰⁸ to his neighbor, even if he was swearing out of court he is liable. But we must hold about him who saw them coming. They wanted to make him swear but he jumped in and swore¹⁰⁹.

Rabbi Hiyya in the name of Rabbi Johanan: When it was standing at his feeding trough¹¹⁰. Rabbi Ze'ira asked: how was it said? “If it was standing” or “even if it was standing”¹¹¹? If you say “even if it was standing,” it makes no difference¹¹². If you say “if it was standing,” then the argument of Rabbi Johanan is inverted. There, he said, if he claimed before him a claim of loss, had been swearing to him, selected a sacrifice¹¹³, and then claimed a claim of duress, he is not liable¹¹⁴. But here you are saying so? Rabbi La said, there is a difference since he absolved himself of confession by the oath¹⁰². They objected to the opinion of Rabbi Ze'ira: “‘Where is my ox?’ He told him, ‘it was stolen.’ ‘I want you to swear,’ he answered ‘Amen’. Witnesses testify that he stole it: he has to pay double restitution⁷⁴. If he confessed himself he pays the value, and a fifth, and a reparation sacrifice⁷³.” But here when he moved it¹¹⁵ by claiming that it was lost. Afterwards he claimed a claim of

thief and is not liable¹⁰². Explain it that he swore to him but slaughtered it afterwards¹¹⁶. The students of Rabbi Hiyya bar Julianus say, explain it that he slaughtered it when it was lying down¹¹⁷. Is there slaughter without sale¹¹⁸? Following Symmachos who said, there can be slaughter and sale without theft¹¹⁹. Samuel said, if there came no witnesses of the theft, but there came witnesses of the slaughter; he is liable¹²⁰.

100 A person who finds a lost object with distinguishing marks by which the owner can convincingly describe it is obligated to return it to its owner (*Deut.* 22:1-3); by picking it up he automatically becomes an unpaid keeper. If the owner hears that the object was found by that person and comes to reclaim it, if the finder had honestly told him that he lost it again he would not be liable since he was an unpaid keeper. But if he falsely claimed that it was stolen, he is liable for double restitution required for any false claim of theft (*Ex.* 22:8).

101 "Grabbing" is mentioned in *Ex.* 22:7 regarding court procedures involving an oath for an unpaid keeper who falsely claims that the object was stolen and has to pay double restitution. It also is mentioned in v. 10 regarding the paid keeper who for an actually stolen object has to pay its value (v. 11) but double restitution for a false claim of theft for which he swore falsely.

102 Babli *Bava qamma* 107b. Since he discharged his obligations towards the owner by his oath, the second claim is irrelevant.

103 If he swears for the second claim (truly or falsely), is this a blurted oath in the meaning of *Lev.* 5:4?

104 How can he say he is not liable and then make him liable for a blurted oath?

105 He is not liable for an oath about a

deposit; this implies nothing for the rules of blurted oaths.

106 The previous answer is incorrect. He saw that the answer is simple: since the second oath is not required it would be a blurted oath if true and a false oath if false, sinful in any case.

107 Babli *Bava qamma* 106b/107a. He notes that *Ex.* 22:8 in general is read as applying to court proceedings (6:1 Note 1, *Bava mesi'a* 1:1 Note 9) expressing the general conditions when an oath can be imposed. Therefore the double restitution imposed at the end of the verse has to be in such a proceeding, and double restitution imposed on the paid keeper or renter is imposed on the same basis by the argument of Note 101.

108 By court order.

109 Before there was any court proceeding. This oath does not protect him from having to swear another oath imposed by the court; therefore it does not trigger double restitution.

110 Babli *Bava qamma* 107b.

111 What kind of testimony will make him pay double restitution? Since he is a keeper and the animal was delivered to him, it needs an act of acquisition to be stolen and then this has to be classified as robbery, rather than as theft. If the animal was standing at a feeding trough on his property,

there it belongs. If he claims that it was stolen, he is liable for double restitution. If he took it as his property, he is a robber, the animal is his property, he has to pay for it, but any oath will be irrelevant since it would not be about the other's property. But if the formulation was "even if it was standing at his feeding trough" then it would apply even if he took it by robbery. (Rashi in *Bava qamma*.)

112 Whether he took the animal before he swore or after.

113 For his false oath.

114 For double restitution, since by the oath and payment he acquired the animal and the second claim is baseless; cf. Note 102.

115 He did not move it but acquired it by the oath as if he had moved it after buying.

116 When he already had acquired the animal by his oath.

117 He was an honest keeper beforehand; the animal was still its owner's property. He did not move the animal with the intent of appropriating it; the animal was acquired by

slaughter. This argument presupposes that quadruple or quintuple restitution applies only for slaughter or sale after theft.

118 It should read: "Is there restitution for slaughter without prior theft?"

119 He holds that quadruple or quintuple restitution is independent of restitution for theft; theft has not to be proven, only illegal slaughter. In the Babli (*Bava qamma* 75b) he states that if there were witnesses for the theft whose testimony stood up and witnesses for slaughter or sale which were found perjured, the accused has to pay double restitution for theft and the perjurers double or triple restitution for the false accusation, showing that slaughter or sale can be separated from theft. (The thief of cattle who sells his booty has to pay five times, not seven.)

120 He holds that while quadruple or quintuple restitution applies only to stolen animals, the theft has not to be proven in court if there are witnesses for illegal slaughter.

38d line 62) ריש לקיש אמר. ראה עידי גניבה באין ואמר. גנבתי. מאחר שאין בהודיתו ממנש פטור. ראה עידי טביחה באין ואמר. טבחתי. מאחר שאין (ס"א שגש) בהודיתו ממנש פטור (ס"א חייב). רבי זירא בעי. ראה עידי אונסין באין ואמר. אנסתי. אמר רבי חנינה. מתניתה כרבי שמעון דאמר. עיקר תביעה קנס. כמי שאין בהודיתו ממנש ופטור. ורבנן אמרין. אין עיקר תביעה קנס. כמי שגש בהודיתו ממנש וחייב.

Rebbi Simeon ben Laqish said, if he saw that witnesses to the theft were approaching and he said "I stole," since his confession is inoperative he is not liable¹²¹. If he saw that witnesses to the slaughter were approaching and he said "I slaughtered," since his confession is (another opinion: not)¹²² operative¹²³ he is not liable (another opinion: is liable). Rebbi Ze'ira asked: that witnesses to rape were approaching and he said "I raped"? Rebbi

Ḥanina⁴³ said, the Mishnah follows Rabbi Simeon who said the main claim is for the fine¹²⁴. Therefore his confession is inoperative and he is not liable¹²¹. But the rabbis say, the main claim is not for the fine. Therefore his confession is operative¹²⁵ and he is liable¹²¹.

121 In this entire paragraph, “liable” has to be replaced by “not liable” and vice versa.

The principle that a confession frees a person from a fine is valid only if the confession preceded the appearance of witnesses since witnesses make his confession unnecessary. If the thief waits until the injured party has found witnesses he has to pay double restitution: the value of the object which he took as a debt and the double as a fine.

122 Copyist’s notes; the copyist’s correction of the incorrect text from which he copied.

123 It is assumed that the witnesses have no knowledge about how he acquired the animal which he slaughtered; he could have

bought it from the owner or from a thief. The person who bought from the thief cannot be sued for multiple restitution. Therefore his confession is as irrelevant as is the witnesses’ testimony; there is no place for any liability. If he also admits to having stolen the animal he liquidates his debt by paying its value.

124 Mishnah 5:6, Note 79.

125 For the rabbis the main claim of the father of an underage rape victim is for the diminution of his daughter’s chances on the marriage market; this is a claim for damages, not a fine, and in this respect “the admission of the debtor is worth 100 witnesses.”

38d line 68) תני. לא להקל ולא להחמיר חייב. אמר רבי. מתניתא אמרה כן. אמר לשואל
אמר לשומר חנם אמר לנושא שקר והשוכר. איכן שורי. אמר לו. מות. מהו שלאמר לו. בוא
והשבע לי שלא נתתה עיניך בה לגוזלה. מכל-מקום אינו משלם. מהו דיימר ליה. אפילו דאף
יהב לי כמה ידי אנה בעי גבך.

It was stated: If it was neither to his benefit nor to his detriment, he is liable¹²⁶. Rabbi said, a *baraita* says so: “If he said to the borrower, the unpaid trustee, the recipient of a fee, or the renter, ‘where is my ox?’ This one said, ‘it died.’”¹²⁷

May he tell him, “come and swear to me that you never thought of rustling it”^{128,23}? In any case he would not pay; what could he say? “Even if you would pay me a lot, I want from you what is mine.”

126 There is a *baraita* which disagrees with the Mishnah and holds that a false oath

is a false oath even if the false formulation does no harm to the other party.

127 Tosephta 6:7 starts in this way; but the *baraita* must have the person who swore falsely not to the detriment of the depositor as liable to the penalties of a false oath.

128 Could the depositor ask that the paid trustee or renter, or even the borrower, who paid for the lost or stolen object, nevertheless swear that they do not hold the object in their possession? The first

argument is against, for the oath will not change the monetary situation. The second argument is in favor; there is a value to one's own possession which cannot be expressed in monetary terms. The answer is not given, nor is the question raised in the Babli. In the absence of guidance, a court cannot act.

Introduction to Tractate Avodah Zarah

The topic of the Tractate “Pagan Worship” is that of social interaction of Jews with pagan surroundings, in particular the possibility of keeping a kosher food supply in a non-Jewish (not necessarily pagan) world. Pagan practice as a matter of Jewish criminal law was dealt with in Tractate *Sanhedrin*.

The First Chapter starts with the general principle that three days before a public pagan feast commercial intercourse with pagans is forbidden. This refers to intrinsically pagan rites, not simply to non-Jewish festivities. For private festivities of pagan character, only the day itself is forbidden. The remainder of the Chapter is devoted to a description of public festivities in the later pre-Christian Roman Empire and the attenuated practical implementation of the general rule. The later part of the Chapter contains rules designed to preserve the Jewish character of Palestine.

The Second Chapter, the center piece of the Tractate, is divided into two parts. The first part is a complement of the First Chapter, detailing what to be careful about in dealing with Gentiles, not necessarily pagans. The second part starts the main topic of the Tractate, keeping a kosher food supply in a Gentile world. In this respect, a characteristic feature of rabbinic-pharisaic Judaism is the treatment of Gentile wine. Since it was generally accepted in the Greco-Roman world that wine drunk at any festive occasion was first dedicated to the gods by a libation (which mostly was done by gently wiggling the full cup), rabbinic interpretation considers any pagan wine as dedicated and therefore biblically forbidden for all usufruct for Jews. We do not know what the position of non-rabbinic sects was in this respect; the rule of the Damascus Document (CD xii 10) that it is forbidden to sell any wine (as well as grain and animals) to Gentiles lest they be used in idolatrous ways illustrates strict adherence to the rules of Chapter One.. On the other hand it is reported (in our Tractate, Chapter 5) that Samaritans did not refrain from using Gentile wine; probably they forbade only wines actually used for pagan

rites. Since the latter were either drunk or spilled by the worshippers, they could not be objects of trade. It is reported that the final split between Jews and Samaritans, attributed to R. Abbahu at Caesarea, was essentially caused by the difference in treatment of Gentile wine. Rabbinic Judaism has continued to ban Gentile wine even though the pagan background of the ban has disappeared. While the topic of Gentile wine is introduced in the Chapter, with extended remarks about the dangers of wine which was left uncovered and unattended, the main emphasis is on food rather than wine.

Chapter Three discusses the prohibition to use vessels decorated with pagan symbols of worship; arguments are given why public buildings decorated with such symbols may still be used. The general rule that natural phenomena, such as mountain tops, and buildings or trees connected to the ground cannot become forbidden by pagan use leads to a discussion of what is permitted and what is forbidden in buildings used for idolatry and sacred groves.

The Fourth Chapter again has two parts. The first part continues the Third Chapter in a description of Hermes worship and the general topic on how to remove the pagan aspect from objects of pagan worship. The second part deals with wine-presses; either Jewish owned with pagan workers or Gentile owned used to produce kosher wine. How to make a Gentile wine-press fit for the production of kosher wine is treated towards the end of Chapter Five.

The Fifth and last Chapter is almost completely dedicated to topics connected with wine; either the prohibition of Gentile wine or the problems of handling kosher wine in a Gentile environment. The last Halakhah deals with a different topic: How to prepare Gentiles' vessels for the preparation or use of kosher food (today called *kashering*.) The basis of the rules, both in their practical and their ritualistic aspects, is *Num.* 31:21-23.

לפני אידיהן פרק ראשון

(fol. 39a) **משנה א:** לפני אידיהן של גוים שלשה ימים אסור לשאת ולתת עמהן להשאילן ולשאול מהן להלוותן וללוות מהן לפרעו ולפרע מהן. רבי יהודה אומר נפרעין מהן מפני שהוא מצר לו. אמרו לו אף על פי שמצר הוא עכשיו שמה הוא לאחר זמן: רבי שמעאל אומר שלשה ימים לפניהם ושלשה ימים לאחריהם אסור. וחכמים אומרים לפני אידיהן אסור לאחר אידיהן מותר:

Mishnah 1: Within three days before Gentile holidays one is forbidden to trade with them, to lend them and to borrow from them, to give them loans and to ask them for loans, to pay debts to them and to accept payment from them¹. Rabbi Jehudah says, one may accept payment from them because this hurts him. They told him, even though it hurts him now he will enjoy it later². Rabbi Ismael says, three days before and three days afterwards are forbidden but the Sages say, before their holidays it is forbidden, after their holidays it is permitted.

1 It is forbidden to buy from an idolator or repay one's debt because this provides him with money for his idolatrous celebration. It is forbidden to sell to him because he will buy things for his celebration. One may not lend him vessels

or animals for he will use them for his celebration. One may not borrow from him because this will make him feel important.

2 The feeling that he got rid of his debts will make his idolatrous celebration more happy.

(39a line 54) **הלכה א:** לפני אידיהן של גוים כול'. רבי חמא בר עוקבה שמע כוליהו מכא והביאו לבוקר זבחיכם לשלשת ימים מעשרתיכם: אמר ליה רבי יוסי. אין כיני אפילו בגליות. דתני. נחום המדי אומר. יום אחד בגליות אסור. מאי כדון. תמן בידקו ומצאו שהו עושין צרכיהן ליום אחד ואסרו יום אחד. ברם הכא בידקו ומצאו שהו עושין צרכיהן לשלשת ימים. ואסרו להן ג' ימים.

Halakhah 1: “Within three days before Gentile holidays,” etc. Rabbi Hama bar Uqba understood all from here: *Bring your sacrifices in the morning, on the third day your tithes*³. Rabbi Yose said to him, if it were so,

even in the diasporas. But it was stated⁴, Nahum the Mede said, in the diasporas one day is forbidden. What about this? There, they checked and found that they supplied their needs in one day and forbade them one day. But here⁵ they checked and found that they cover their needs in three days and forbade them three days.

3 *Am. 4:4*, speaking of the sinful service of the Golden Calf of Beth El.

usually means Babylonia; the plural does not imply that any of these restrictions were followed in Egypt or other parts of the Roman Empire.

4 Babli 7b, slightly differently Tosephta 1:1.

5 In Palestine. The expression גלית

(39a line 59) מה מקיים רבי יוסי אהן קרייה והביאו לביקר זבחיכם וגו'. במלכות ירבעם הכתוב מדבר. כיון שכל ירבעם על ישראל התחיל מפתה את ישראל ואמר להן. בואו ונעבוד עבודה זרה. עבודה זרה וותרונית היא. הדא הוא דכתיב נעלה ביהודה ונקייצנה ונבקייענה אלינו ונמליך מלך בתוכה את בן-טבאל. אמר רבי אבא. חזינו בכול-המקרא ולא מצינו מקום ששמו טבאל. אלא שעושה טובה עם עובדי. התורה אמרה ובחור אותו מכל-שבטי ישראל ללכהן. ועבודה זרה אומרת ויעש כהנים מקצות העם. אמר רבי לא. מן הקוצים שבעם ומפסולת שבעם. התורה אמרה ולא ילכו חלב-חגי עד בוקר. ועבודה זרה אמרה והביאו לבוקר זבחיכם. התורה אמרה ביום זבחכם יאכל וממחרת. ועבודה זרה אמרה לשלשת ימים מעשרתכם. התורה אמרה לא-תזבח על-חמץ דם זבחי. ועבודה זרה אמרה וקטר מחמץ תודה. התורה אמרה כיתידור נדר ליהנה אלהיך לא תאחר לשלמו. ועבודה זרה אמרה וקראו נדבות השמיעו. אמר רבי יודן אבוי דרבי מתניה. לא בא הפתוב אלא להזכיר גניין של ישראל. יום מלכנו החלו שרים חמת מין משך ידו את-לוצצים. יום שכל ירבעם על ישראל אתון כל-ישראל לגביה בפתי רמשא. אמרו ליה. קום עבוד עבודה זרה. אמר לון. אפתי רמשא הוא אשתי ולא אשתי. כל-עמא שתו אלא אם אתון בען אלוון ואתון בצפרא. הדא היא דכתיב כי-קרב כתנור לבם בארבע כל-הלילה לון אופיהם. כל-הלילה לא ישן אופיהם. בוקר הוא בויער פאש להבה. בצפרא אתון לגביה. אמר לון. קדון אגא ידע דאתון בען אלא דאגא דחיל מסנהדרין דדכון דלא יקטלונני. אמרו ליה. אגן קטלון לון. ההיא דכתיב כולם יחמו לפתור ואכלו את-שופטיהם. רבי לוי אמר. הרגום. הין מה דתימר כי-מצא חלל. רבי לא אמר. הורידן מגדולתן. יום מלכנו החלו שרים חמת מין. יום שנעשו בו שרים חולין. מי גרם להן. חמת מין. שהיו להוטין אחר חמין. משך ידו את-לוצצים. כד הנה חמי בר נש פשר הנה מייטיב גבי תרין ליצניו ואמרין ליה. אי זה דור חביב מכל-הדורות. אמר להן. דור המדבר. ואינון אמרין ליה. ולא עבדון עבודה זרה. והוא אמר לון. בגין

דחביבין לא אתענשו. והיונו אמרין ליה. חשי. דמלכא בעי מייעבד בן. ולא עוד אלא אינון עבדון חד ודיו עבד תרין. וישם את־האֱלֹהִים בביתאל ואת־האֱלֹהִים נתן בְּדוֹן: גסות רוחו שלִיבְרָעָם היא החליטתו. אָמַר רַבִּי יוֹסִי בַר יַעֲקֹב. בְּמוֹצָאֵי שְׁמִיטָה מְלֹךְ יִרְבָּעָם עַל יִשְׂרָאֵל. הוּא דְכָתִיב מִקֶּץ | שְׁבַע שָׁנִים בְּמוֹעֵד שְׁנַת הַשְּׁמִיטָה בְּחַג הַסּוּכּוֹת: בְּבֹא כָל־יִשְׂרָאֵל לְרֵאשִׁית אֶת־פְּגִל יִי אֱלֹהֶיךָ בַּמָּקוֹם אֲשֶׁר יִבְחַר תִּקְרָא אֶת־הַתּוֹרָה הַזֹּאת נֶגֶד כָּל־יִשְׂרָאֵל בְּאַזְנוֹתָם: אָמַר. אֲנִי מִיתְבָּעִי מִיִּקְרִי קָאִים אֲנִי. ואינון אמרין. מְלֹכָא דְאַתְרָא קִדָּם. ואין מִיִּקְרִי תִינִין גָּנְאִי הוּא לִי. ואין לֹא נִיִּקְרִי בִּזְיוֹן הוּא לִי. ואין מִרְפִּינוּן אֲזִלוּ סְלִקוּן אינון שְׂבָקוּן יְתִי. אֲזִלְוּן לֹו גְבִי רַחֲבָעָם בֶּן שְׁלֹמֹה. הוּא דְכָתִיב אִם־יִעֲלֶה | הָעָם הַזֶּה לַעֲשׂוֹת זִבְחִים בְּבֵית־יִי בִירוּשָׁלַם לְשׁוֹב לֵב הָעָם הַזֶּה אֶל־אֲנִיָּהֶם אֶל־רַחֲבָעָם. מָה עָשָׂה. עָשָׂה שְׁנֵי עֲגָלֵי זָהָב וְכָתַב עַל לִבָּן. וְהִרְגֹּד. אָמַר. כָּל־מֶלֶךְ דִּיקוּם יִסְתַּכֵּל בּוֹן. אָמַר רַבִּי חוּנָּה. חוּבָר חֲבָרִים מְחוּפָּם. כָּל־מִי שֶׁהָיָה חוּבָרוּ הָיָה חוּבָרוּ. אָמַר רַבִּי חוּנָּה. וְשִׁחֲטָה שְׂטִים הָעֲמִיקוּ. שְׁהִעֲמִיק בְּרָשַׁע. אָמַר. כָּל־דְּמִפְרָסִים אֲנִי קָטִיל לִיה.

How does Rabbi Yose uphold this verse, *bring your sacrifices in the morning*, etc.⁶? The verse speaks about Jeroboam's kingdom. When Jeroboam became king over Israel he started seducing Israel and said to them come, let us worship pagan worship. Pagan worship is lenient. This is what is written, *let us go against Jehudah, cut it down, break it up, and appoint a king in it, the man from Tabeal*⁷. Rabbi Abba said, we checked all of Scripture but did not find a place named Tabeal. But it treats its worshippers well. The Torah said, *selected him from all of the tribes of Israel to be a priest for Me*⁸. Pagan worship says, *he made priests from the fringes of the people*⁹. Rabbi La said, from the thorns of the people, the rubbish of the people. The Torah said, *the fat of My sacrifice shall not remain until the morning*¹⁰; but pagan worship said, *bring your sacrifices in the morning*³. The Torah said, *it should be eaten on the day of its slaughter and the next day*¹¹; but pagan worship said, *on the third day your tithes*³. The Torah said, *do not sacrifice the blood of My sacrifice on leavened matter*¹⁰; but pagan worship said, *and burn your thanksgiving offer of leavened matter*³. The Torah said, *if you are vowing a vow to the Eternal, your God, do not tarry to fulfill it*¹², but pagan worship said, *pledge gifts, publicize them*^{3,13}.

Rabbi Yudan, Rabbi Mattaniah's father, said, the verse only serves to mention the shame of Israel. *The day of our king, the princes are sick from wine's heat, he draws the mockers by his hand*¹⁴. On the day when Jeroboam

became king over Israel, all of Israel came to him late in the evening and told him, come and worship pagan worship. He told them, it is late in the evening; I am drunk and not drunk¹⁵. Everybody is drinking; but if you wish, go and come in the morning. That is what is written, *for their heart is like an oven while they are lying in ambush; all night long their baker is sleeping*.¹⁶ All night long their baker did not sleep. *In the morning he is burning like fire of a conflagration*¹⁶. In the morning they came to him. He told them, I do understand what you want but I am afraid of your Synhedrion lest they kill me. They told him, we shall kill them; this is what is written, *that all are glowing like an oven and eat their judges*¹⁷. Rabbi Levi said, they killed them, as is written, *if a corpse is found*¹⁸. Rabbi La said, they deposed them; *The day of our king, the princes are profaned from wine's heat*^{14,19}; the day when princes were profaned. *From wine's heat*, they were addicted to wine. *He draws the mockers by his hand*: When he saw a serious person he placed two scoffers next to him who asked him, which generation was preferred over all generations? He told them, the generation of the Exodus. But did they not practice pagan worship? He answered them, because they were beloved they were not punished. But they told him, be quiet for the king wants to do the same. Not only that, but they made one and this one made two. *He put the one up at Bethel; the other he gave to Dan*²⁰.

The haughtiness of Jeroboam damned him absolutely²¹. Rabbi Yose ben Jacob said, Jeroboam became king at the end of a Sabbatical year. This refers to what is written²², *at the end of seven years, at the time of the Sabbatical year, on the festival of Tabernacles, when all of Israel comes to appear before the Eternal, your God, at the place which He shall choose, you shall read this Torah in the presence of all of Israel to their ears*. He said, if I am asked to read²³, I have to stand. They will say, the local king has precedence. But if I am reading as second, it is a shame for me. If I do not read, it is a disgrace for me. And if I let them go²⁴, they will ascend and desert me. They will go to Rehabeam, Solomon's son. This is what is written²⁵: *If this people would go up to sacrifice in the Temple in Jerusalem will this people's heart return to their master, to Rehabeam*. What did he do? He made two golden calves and wrote on their hearts, "they will kill you." He said, any king who will succeed

me will look at them²⁶. Rabbi Ḥuna said, *companions of ingenious conjurations*²⁷. Anybody who joined with him he will make a co-conspirator²⁸. Rabbi Ḥuna said, *a slaughtering place deepened by seducers*²⁹, for he deepened in crime. He said, anybody, I shall kill anybody who makes this public³⁰.

6 Since for him the Mishnah has no biblical basis; the cessation of commerce with idolators either is rabbinic or an old popular custom. The entire sermon is reproduced in *Yalqut Šim`oni Prophets* §542.

7 *Is.* 7:6. The tradition that Ṭabeal is a place rather than a personal name was accepted by the Medieval commentators of Prophets. According to Rashi the name is coded; one has to replace letter *n* by *n* +/-11; then טבאל becomes רמלא, a city founded after the Arab conquest.

8 *Is.* 2:28.

9 *IK.* 12:31; quoted in the Babli, *Qiddušin* 75b, in the name of R. Joḥanan.

10 *Ex.* 23:28.

11 *Lev.* 19:6.

12 *Deut.* 23:22.

13 But it is not necessary to fulfill one's pledge. The reason of the Northern Kingdom's apostasy is traced to the cost and onerous rules of Torah practice.

14 *Hos.* 4:5.

15 He claimed that his mental faculties were slightly impaired.

16 *Hos.* 4:6.

17 *Hos.* 4:7. All of Talmudic literature assumes that the legal system imagined for late Hasmonean rule was that of the Davidic kingdom.

18 *Deut.* 21:1. This sermon derives חללי in *Hos.* 4:5 not from חלה "to be sick" but

from חלל "to be perforated".

19 Deriving חללי in *Hos.* 4:5 from חול "to be profane".

20 *IK.* 12:29.

21 Jeroboam is the only person of those mentioned in Mishnah *Sanhedrin* 11:2 as having no part in the Future World who is not rehabilitated in the Yerushalmi Halakhah. The following argument is reproduced in Babli *Sanhedrin* 101b.

22 *Deut.* 31:11.

23 By tradition, on this occasion it is the king who has to read selected portions (*Mishnah Sotah* 6:7). It is presumed that the same was true for the First Temple. There is no provision that two kings could read alternate portions, or if they did, the local king certainly would have precedence. The assertion of the book of Kings that there was a perpetual state of war between the Northern and the Southern kingdoms in the time of Jeroboam (*IK.* 15:6) is interpreted as a war of words conducted in the House of Study.

Another tradition (mentioned frequently but not undisputed) holds that nobody is allowed to sit in the Temple but a Davidic king (*Pesaḥim* 5:10, *Yoma* 3:2, *Sotah* 7:7; Babli *Sanhedrin* 101b, *Sotah* 40a,41a, *Yoma* 25a, *Qiddušin* 78a, *Tamid* 27a). If Yeroboam would have to stand while Rehabeam was sitting, an impossible situation would be created.

24 Letting the people go to Jerusalem while he remains at Sichem would emphasize the legitimacy of Rehabeam's rule.

25 *1K.* 12:26.

27 *Ps.* 58:6.

28 Correctly reading the first חבּר in the verse from the root meaning "to connect" but the second from the homonym meaning "to conjure, to practice sorcery." Since all kings of Israel adopted his institution of official worship at Bethel as long as that

26 The king would see the words engraved on the calves and understand that their purpose was to prevent people from observing the assembly in Jerusalem which would undermine his rule.

place existed, they became his co-conspirators.

29 *Hos.* 5:2.

30 The reason for the worship of the calves was never made public. Therefore, the sin was the king's only.

(39b line 28) אָמַר רַבִּי אֲבִין בַּר כְּהָנָא. אִף שַׁבָּתוֹת וַיָּמִים טוֹבִים מְצִינוּ שֶׁבָּדָה לָהֶם יִרְבְּעָם מְלִיבּוֹ. הָהוּא דְכָתִיב וַיַּעַשׂ יִרְבְּעָם | חָג בַּחוּדָשׁ הַשְּׁמִינִי בַחֲמִשָּׁה-עָשָׂר יוֹם | לַחוּדָשׁ כְּתָג | אֲשֶׁר בִּיהוּדָה וַיַּעַל עַל-הַמִּזְבֵּחַ כִּן עָשָׂה בְּבֵית-אֵל לְזִבּוֹחַ בַּחוּדָשׁ אֲשֶׁר-בָּדָא מְלִיבּוֹ. מַלְבַּד כְּתִיב. דְּמָה דְאַתָּא אָמַר מְלָבַד שַׁבָּתוֹת יִי.

Rebbi Abin bar Cahana said, we find that Jeroboam also invented Sabbaths and holidays. That is what is written³¹: *Jeroboam made the holiday in the eighth month, on the fifteenth of the month, like the holiday in Jehudah, and went on the altar; so did he at Bethel to sacrifice . . . in the month which he invented.* "In addition to" is written³², as you say, *in addition to the Sabbaths of the Eternal.*

31 *1K.* 12:32-33.

32 The *Qere* is מְלִיבּוֹ "by his invention"; the *Ketib* is מְלָבַד "in addition" (or "except"). This is read to mean that in addition to the holiday month which he invented, he

invented something else. By comparing the expression used in *Lev.* 23:38, the "else" is found to be the Sabbath, justifying R. Abin bar Cahana's statement. (Cf. *Num. r.* 21:23.)

(39b line 32) תִּנִּי. עֶבֶר וַנִּשְׂאָ וַנִּתֵּן עִמּוֹ מוֹתֵר. רַבִּי יַעֲקֹב בַּר אֲחָא רַבִּי יוֹסִי בִשְׁם רַבִּי יוֹחָנָן. וַאֲפִילוּ בְיוֹם אִידוֹ. וַתִּנִּי כֵן. בְּמָה דְבָרִים אֲמוּרִים. בְּגוֹי שְׂאִינוּ מִכִּירוֹ. אַבְל בְּגוֹי הַמִּכִּירוֹ מוֹתֵר מִפְּנֵי שְׁהוּא כְּמַחֲנִיף לָהּ. תִּנִּי. נִכְנֵס לְעִיר וּמִצָּאָן שְׂמַחִין שְׂמִיחַ עִמָּהּ שְׂאִינוּ אֵלָא כְּמַחֲנִיף לָהּ. חַד דּוֹקִינָר אֲוָקִיר לְרַבִּי יוֹדָן נִשְׂיָא חַד דִּיסקוֹס מְלֵא דִינִירִין. נִסָּב חַד מִינְהוֹן וְשִׁלַּח לִיה שְׂאֲרָא. שְׂאֵל לְרַבִּי שְׁמַעוֹן בֶּן לָקִישׁ. אָמַר. יוֹלִיד הִנִּיחָה לִּים הַמְּלַח. הִרִי בְּמִכִּירוֹ הִרִי לְשַׁעֲבֵר. וְרִישׁ לָקִישׁ אָמַר. יוֹלִיד הִנָּחָה לִים הַמְּלַח. אָמַר רַבִּי אֲבָהוּ. וַאֲנִי לֹא שְׂאֵלָנִי רַבִּין גְּמִלְיָאֵל בְּרַבִּי

מִהוּ לִילָךְ לִירִיד. וְאַסְרֵתִי לוֹ. וְהִתְנִי. הוֹלְכִין לִירִיד וְלוֹקְחִין מִשָּׁם עֲבָדִים וְשִׁפְחוֹת. רִישׁ לְקִישׁ אָמַר. לֹא סוֹף דָּבָר עֲבָדִים יִשְׂרָאֵל אֶלָּא אֶפִּילוּ גוֹיִם. מִפְּנֵי שֶׁמִּקְרָבָן תַּחַת כְּפָנֵי הַשְּׂכִינָה. מֵאִי כְדוֹן. רַבֵּן גַּמְלִיאֵל אָדָם קָטָן הָיָה וּבִיקֵשׁ רַבִּי אֲבָהוּ לְגוֹדְרוֹ. אֲבָל רַבִּי יוֹדֵן נִשְׁיֵא אָדָם גְּדוֹל הָיָה וּבִיקֵשׁ רִישׁ לְקִישׁ לְגִדּוֹר הַדָּבָר.

It was stated³³: If one transgressed and traded with him, it is permitted. Rabbi Jacob bar Aḥa, Rabbi Yose, in the name of Rabbi Johanan: Even on his holiday³⁴. It was stated so.³⁵ When was this said? About a Gentile whom he does not know. But with a Gentile of his acquaintance it is permitted since he is flattering him. It was stated: If one enters a town and finds them celebrating, he celebrates with them because he only is flattering them.

A *ducenarius*³⁶ honored Rabbi Jehudah the Prince³⁷ with a plate full of *denarii*. He took one of them and sent the remainder to him. He asked Rabbi Simeon ben Laqish who said, he shall bring the value to the Dead Sea³⁸. But was he not an acquaintance and it was in the past? Rabbi Abbahu said, did not Rabban Gamliel ben Rabbi asked me, may one go to a fair³⁹, and I forbade it to him, although it was stated⁴⁰: “one goes to fairs and buys there male and female slaves.” Rabbi Simeon ben Laqish said, not only Jewish slaves⁴¹ but even Gentiles, because he brings them under the wings of the *Shekhina*⁴². What about this? Rabban Gamliel was a minor personality and Rabbi Abbahu desired to confine him⁴³. But Rabbi Judan the Prince was an important person and Rabbi Simeon ben Laqish wanted to limit the matter⁴⁴.

33 Babli 6b. While trade is forbidden, the proceeds of an illegal trade are not.

34 Disputed by the Babli 6b, Tosephta 1:9.

35 Quoted in Tosaphot 2a, s.v. אסור.

36 Latin, “referring to 200”. If this describes an administrator, the reference is to an official such a prefect, procurator, receiving a salary of 200 *sestertia* (2'000 gold *denarii*), if a soldier, a commander of 200 men.

37 The grandson of Rabbi.

38 “Bringing something to the Dead Sea” means destroying it, since the Dead Sea

corrodes and destroys all metal thrown into it. Babli 6b.

39 This refers only to fairs which are in honor of some divinity. There is no limit to visits to government-organized fairs (Tosephta 1:7).

40 Tosephta 1:8; Babli 13a.

41 Circumcised slaves who were property of another Jew. This cannot refer to Jews sold as slaves since it is very meritorious to redeem Jews from slavery and does not need special permission.

42 The Divine Presence. Since the slave becomes a semi-Jew, in the words of the

Babli (13b) buying Gentile slaves “diminishes the number of idolators in the world.”

43 R. Abbahu did not want to abrogate the general permission for a meritorious intent to visit fairs dedicated to pagan divinities; he only thought that a public personality who probably would be unable

to define the limits between permitted and forbidden intent should not give a bad example to the people.

44 While trade is permitted, accepting gifts distributed by a pagan on his holiday essentially is forbidden even though the gift should be accepted to improve inter-communal peace.

(39b line 44) נִיחָא מִלְּהַשְׂאִיל. מִלְּשָׂאוֹל מִהֶן. מִפְּנֵי שֶׁהוּא כְּמַשִּׂיאֵי שָׁם. נִיחָא מִלְּהַלּוּתָן. מִלְּהַלּוּת מִהֶן. מִפְּנֵי שֶׁהוּא כְּמַשִּׂיאֵי שָׁם. נִיחָא מִלְּפִזְרוֹעָן. מִלְּפִרְעָה מִהֶן. שְׂלָא לֵאמַר. עֲבוּדָה זָרָה שְׂלוֹ סִייעָה. רַבִּי בָּא בַּר טַבְלִי בְּשֵׁם רַב. אִם הָיְתָה מִלְּוָה אוֹבֶדֶת מוֹתֵר. וְתַנִּי כֵן. מִלְּוָה אוֹבֶדֶת בְּעֵדִים. אֵין מִלְּוָה אוֹבֶדֶת בְּשֹׁטֵר. אֶפִּילוּ מִלְּוָה בְּשֹׁטֵר אוֹבֶדֶת הִיא. שְׂלָא בְּכָל־שַׁעֲרָה אֲדָם זֹכֶה לְפִרְעָה חֹבֹו. מֵאִי כְּדוֹן. מִלְּוָה אוֹבֶדֶת שְׂלָא בְּמִשְׁכּוֹן. אֵין מִלְּוָה אוֹבֶדֶת בְּמִשְׁכּוֹן. אֲשַׁכַּח תַּנִּי עַל קְדָמִיתָא. מִלְּוָה אוֹבֶדֶת בְּעֵדִים. אֵין מִלְּוָה אוֹבֶדֶת בְּשֹׁטֵר.

One understands “to lend;” “to borrow” from them? Because he increases his reputation. One understands “to give them loans;” “to ask them for loans”? Because he increases his reputation. One understands “to pay debts to them;” “to accept payment from them”? That he should not say, his pagan worship had helped him⁴⁵. Rabbi Abba bar Tevelai in the name of Rav: If it was a loan in danger of being lost it is permitted. It was stated thus: A loan in danger of being lost, by witnesses. A loan not in danger of being lost, by document⁴⁶. Even a loan by document is in danger of being lost, for not at all times does a person succeed in liquidating his debt⁴⁷. How is this? A loan not in danger of being lost, by pledge. A loan in danger of being lost, not by pledge. It was found following the former [opinion]: A loan in danger of being lost, by witnesses. A loan not in danger of being lost, by document.

45 Babli 6b.

47 Quoted in Tosaphot 2a, s.v. ולפרוע.

46 Babli *Bava qamma* 102a.

(39b line 52) תַּמָּן תַּנִּינָן. רַבִּי יוֹדָה אוֹמֵר. אִשָּׁה לֹא תִסּוּד מִפְּנֵי שְׁנִיבּוֹל הוּא לָהּ; רַבִּי חֲנִינְיָה וְרַבִּי מִנְּא. חֵד אָמַר. בְּסִיד שֶׁהוּא מִתִּירָתוֹ בְּמוֹעֵד נְחָלְקוּ. אֲבָל בְּסִיד שְׁמִתִּירָתוֹ אַחֵר הַמוֹעֵד אֲסוּר. וְחֲרָנָה אָמַר. בְּסִיד שֶׁהִיא מִתִּירָתוֹ אַחֵר הַמוֹעֵד נְחָלְקוּ. אֲבָל בְּסִיד שְׁמִתִּירָתוֹ בְּתוֹךְ הַמוֹעֵד מוֹתֵר. וְלֹא יִדְעִין מָאֵן אָמַר דָּא וּמָאֵן אָמַר דָּא. מִן מַה דְּאָמַר רַבִּי חֲנִינְיָה רַבִּי יוֹסִי בְּשֵׁם

רבי יוחנן. רבי יהודה כדעתיה. כמה דרבי יהודה אמר תמן. גיבול שעה גיבול. כן הוא אמר הקא. צרת שעה צרה. הווי דו אמר. בסיד שהוא מותר בתוך המועד נחלקו. אבל בסיד שהוא מותר אחר המועד אסור.

There, we have stated⁴⁸: “Rebbi Jehudah says, a woman should not apply lime because it disfigures her⁴⁹.” Rebbi Ḥanina and Rebbi Mana. One said, they disagreed about lime which she removed on the holiday, but lime which she removes after the holiday is forbidden⁵⁰. But the other says, they disagreed about lime which she removes after the holiday. But lime which she removes during the holiday is permitted. We did not know who said what. From what R. Ḥanina, Rebbi Yose said in the name of Rebbi Johanan, Rebbi Jehudah is consistent. Just as Rebbi Jehudah said there, temporary disfiguration is disfiguration, so he says here⁵¹, temporary pain is pain. This implies that they disagreed about lime which she removed on the holiday, but lime which she removes after the holiday is forbidden⁵².

48 Mishnah *Mo'ed qatan* 1:5 (in the Mishnah editions, 1:7.) Babli *Mo'ed qatan* 9b.

49 On the semi-holidays which are the intermediate days of the Passover and Tabernacles holidays, one should not do what one can do before the holiday. Therefore one cannot get a haircut on the holidays and men cannot trim their beards. Rebbi Jehudah holds that a woman cannot get a beauty treatment in the form of a face mask of lime which will remove all facial hair and will make her cheeks more red by increased blood circulation. Since his name is attached to this prohibition while the others are stated anonymously it follows that the majority of the Sages hold that a woman can get such a treatment at any time.

It would seem that one should write גיבול as *pi'el* but since the Babli consistently has גיבול they must have heard the Galileans

pronounce the word with a soft ב (which does not exclude that Galilean ב also was pronounced v; cf. *Berakhot* 2:4 Note 167.)

50 Even for the Sages. While it is forbidden to marry on a holiday since the joy of holidays should not be mixed with the joy of marriage, a girl certainly can get engaged to be married on a holiday. The beauty treatment described was applied mainly to single girls to make them more marriageable. A treatment which terminates only after the holiday is a misuse of holiday time.

51 In our Mishnah where he holds that the temporary pain the Gentile feels when repaying his debt is sufficient to wave the prohibition of commerce.

52 This therefore is not only R. Ḥanina's opinion but stated practice.

(39b line 61) אומנים ישאלו עושיין עם הגוי באידן בתוך ביתו אסור. בתוך בתייהן מותר. רבי שמעון בן אלעזר אומר. במה דברים אמורים. בתלוש מן הקרקע. אבל במחנך לקרקע אסור. בעיר אחרת בין כך ובין כך מותר. מהו בין כך ובין כך מותר. בין בתלוש בין במחנך בין בשכיר בין בקיבולת. אמר רבי לא. בין בתלוש בין במחנך ובלבד בקיבולת. רבי שמעון בר כרסנה בשם רבי אחא. בשבת ובאבל ובעבודה זרה הלכה כרבי שמעון בן אלעזר.

⁵³Jewish craftsmen working for a Gentile at that time, in his house it is forbidden, in their houses permitted. Rabbi Simeon ben Eleazar says, when has this been said? When it was cut from the ground, but as long as it is standing on the ground it is forbidden⁵⁴. In another town in any case it is permitted. What means “in any case it is permitted”? Whether cut or standing, whether hired or contracting. Rabbi La said, Whether cut or standing, but only in contracting. Rabbi Simeon ben Karsana in the name of Rabbi Aha, concerning Sabbath⁵⁴, mourning⁵⁵, and pagan worship practice follows Rabbi Simeon ben Eleazar.

53 A similar text in Tosephta 1:3.

54 The Jewish agricultural worker cannot harvest for the Gentile's celebration of his holiday. The Tosephta text reads differently: The Jewish worker cannot work if he is paid by the day but the craftsman who is paid as contractor can do anything he wants in his own house. In a similar statement (*Sabbat* 1, 4a l. 58) R. Simeon ben Eleazar holds that a Gentile contractor can work on a Jew's contract in his house on the

Sabbath, but not in the Jew's house nor if he is paid for his time on the Sabbath.

55 There is no statement of R. Simeon ben Eleazar in the relevant Chapters of Yerushalmi *Mo'ed qatan*. According to Nachmanides (*Milhamot Hashem ad Alfasi Mo'ed qatan* §1232) it refers to the *baraita* in the Babli *Mo'ed qatan* 26b where R. Simeon ben Eleazar forbids invisible mending of garments torn at the news of the death of a close relative.

(39b line 67) חברייא אמרי. טעמיה דרבי ישמעאל משום בריה דמועזא. אמר רבי בא. כיון שהוא יודע שסור לך לישא וליתן עמו הוא ממעט בשמחת אידו. מה מפקא מביניהון. למפור לו דברים שאינו מתקיימין. על דעת חברייא אסור. על דעת רבי בא מותר. אמר רבי יודן. קרייא מסייע למה דאמרי חברייא. וביום עשרים וארבעה לחודש השביעי נאספו בני ישראל בצום ובשקלים ואדמה עליהם: ולמה לא אמר בעשרים ושלשה. משום בריה דמועזא. אין נימר דהנה בשובתא לית זכיל דאת מחשב ואת משבח צומא רבא בחד בשובא. ומה בה ולית רבי חוניא מיקל למאן דמעבר ליה מן אתריה. אמר רבי יוחנן בר מדינא. אגא חשב יתה ולא הוה בשובתא.

The colleagues say, the reason of Rabbi Ismael is because of the holiday's son⁵⁶. Rabbi Abba said, because he knows that it is forbidden to you to trade with him, he reduces the enjoyment of his holiday⁵⁷. What is the difference between them? To sell them things which do not keep. In the opinion of the colleagues it is forbidden. In the opinion of Rabbi Abba it is allowed⁵⁸.

Rabbi Yudan said, a verse supports what the colleagues said. *On the twenty-fourth day of the seventh month the sons of Israel assembled in fasting, and crying, and in sackcloth, and dirt on them*⁵⁹. Why does it not say, on the twenty-third? Because of the holiday's son. If you want to say because that was on a Sabbath, you cannot do this, because then the Great Fast would have been on a Sunday⁶⁰. And what about this? Does not Rabbi Onias make light of him who would move it from its place⁶¹? Rabbi Johanan ben Madia said, I computed it and it was not on a Sabbath.

56 The day after the holiday which in Jewish custom is a day where mourning and fasting are forbidden. It is presumed that Gentiles follow a similar custom.

57 This assumes that Jews are dominant in trade. If the Gentile cannot replenish his stock after the holiday, he will use it sparingly and thereby refrain from any exuberant celebration.

58 In the opinion of the colleagues all commerce is forbidden on the day following a holiday. In the opinion of R. Abba (in the Babli 6b R. Simeon ben Laqish supported by a *baraita*) one may sell perishable items on that day since the Gentile could not have bought them before and their availability will not influence the Gentile's behavior on his holiday.

59 *Neh.* 9:1. Words not appearing in MT are underlined.

60 In the Seventh month, the first is New Year's Day, the tenth is the Day of Atonement, and days 15-22 are Tabernacles.

Nehemiah refrained from calling a fast day on the day after the holiday; this dates the observance of the "holiday's son" at least to Nehemiah, unless it was impossible to call a fast day because the 23rd was a Sabbath. But then the 15th and the 1st would have been Fridays and the day of Atonement a Sunday. Since it is assumed that Nehemiah followed rabbinic rules one also assumes that as head of the rabbinic establishment of his time he would have manipulated the calendar to avoid this situation when one could not cook for a big meal before the fast (as the rabbinic calendar also is manipulated to avoid the fast on a Friday when one could not cook for breaking the fast.) (A similar argument is rejected by Tosafot in *Roš Haššana* 19b *s. v.* במימור; one must assume that the author was ignorant of this paragraph in the Yerushalmi.)

61 An Amora of the first generation; in Halakhah 3:1 he is called R. Hanina from Hauran. He was a member of the committee

of the Academy of Tiberias which fixed the calendar after Rabbi's death and opposed all

manipulations not justified by astronomical facts.

(fol. 39a) **משנה ב:** אֵילֵנו אֵיִדִּיָּהוֹן שֶׁל גִּזְרֵי קִלְגָּדִים וְסִמְרֵי לֵיָּא וְקִרְטָסִים וְיוֹם גִּיְתִיסְיָא שֶׁל מְלָכִים וְיוֹם הַלִּידָה וְיוֹם הַמֵּיתָה דְּכָרִי רַבִּי מֵאִיר. וְהַכְּמִים אוֹמְרִים כְּלִמִּיתָה שְׂשִׁישׁ בָּהּ שְׂרִיפָה יֵשׁ בָּהּ עֲבוּדָה זָרָה. וְשֹׂאִין בָּהּ שְׂרִיפָה אֵין בָּהּ עֲבוּדָה זָרָה.

Mishnah 2: The following are the holidays of the Gentiles: Calendae⁶², Saturnalia⁶³, and Cratesis⁶⁴, and the king's birthday⁶⁵, and birthday⁶⁶, and the day of death⁶⁷, the words of Rabbi Meir. But the Sages say, any death for which there is burning⁶⁸ is idolatrous; if there is no burning it is not idolatrous.

62 The first day of the month; used here only for the first day of the year, the first of January.

63 The year-end licentious festivities in Rome.

64 Greek κράτεις, "might, power, accession to Empire". Observed on the first of August, the day of capture of Alexandria

by Augustus.

65 This is the Yerushalmi explanation. In the Babli, the day of accession.

66 Personal holidays of private persons.

67 Of ancestors.

68 Burning the personal belongings of the deceased.

(39c line) **הלכה ב:** אֵילֵנו הֵן אֵיִדִּיָּהוֹן שֶׁל גִּזְרֵי כוֹל. רַב אָמַר. עֵידִיָּהוֹן. וְשִׁמּוּאֵל אָמַר. אֵיִדִּיָּהוֹן. מָאן דְּאָמַר. עֵידִיָּהוֹן. וְעֵידִיָּהֶם הִמָּה. מָאן דְּאָמַר. אֵיִדִּיָּהוֹן. כִּי קִרְוֵב יוֹם אֵיִדִּים. רַב אָמַר. מְאֲבָרִים. וְשִׁמּוּאֵל אָמַר. מְעַבְרִין. מָאן דְּאָמַר. מְאֲבָרִין. מוֹסִיפִין לָהּ אֶבֶר. מָאן דְּאָמַר. מְעַבְרִין. כְּאִשָּׁה עוֹבְרָה. רַב אָמַר. יְאוּתוֹ. וְשִׁמּוּאֵל אָמַר. יְעוּתוֹ. מָאן דְּאָמַר. יְאוּתוֹ. אֶדְבָּאֵת נְאוּת לָכֶם. מָאן דְּאָמַר. יְעוּתוֹ. לְדַעַת לְעוּת אֶת־יַעַף דְּבָר.

Halakhah 2: "The following are the holidays of the Gentiles," etc. ⁶⁹Rav said 'edeheh and Samuel said 'edeheh. He who said 'edeheh, *they are their witnesses*⁷⁰. He who said 'edeheh, *for the day of their misfortune is near*⁷¹. Rav said *me'abberim*, and Samuel said *me'abberin*⁷². He who said *me'abberin*, one adds a limb to it. He who said *me'abberin*, like a pregnant woman. Rav said *ye'utu*, and Samuel said, *ye'utu*⁷³. He who said *ye'utu*, *but with this we shall be agreeable to you*⁷⁴. He who said *ye'utu*, *to know, to inform the weary of wisdom*⁷⁵.

69 A reformulated parallel is in *Berakhot* 8:7, Notes 157-160.

70 *Is.* 44:9.

71 *Deut.* 32:35.

72 The technical term for intercalation in the calendar, adding a month.

73 The condition for a benediction over fire at the end of the Sabbath is that one have use of it.

74 *Gen.* 34:15.

75 *Is.* 50:4.

(39c line) רב אמר. קלגדס אדם הראשון התקינו. פיו דחמא ליליא אריד אמר. אי לי. שמה שכתוב בו הוא יסופך ראש ואתה תשופנו עקב שמה גבא לנשכני. ואמר אף-חושך יסופני. פיו דחמא איממא ארד אמר. קלגדס. קלון דיאו. ואיתא כמאן דאמר. בתשרי נברא העולם. ברם כמאן דאמר. בניסן נברא העולם. ידע הנה. אמר רבי יוסי בירבי בון. מאן סבר. בתשרי נברא העולם. רב. דתני בתקיעתא דבי רב. זה היום תחילת מעשיך ופרו ליום ראשון כול. הוי. בראש השנה נברא העולם.

⁷⁶Rav said, Adam, the first man, instituted *Calendas*. When he saw that the night was getting longer, he said, woe to me, maybe this is what is written for, *he shall smite your head, you will sneak to his heel*⁷⁷, maybe it will come to bite me. *I said, but darkness will smite me*⁷⁸. When he saw that days were getting longer, he said *calendas*, καλόν *dies*⁷⁹. This follows him who said that the world was created in Tishre⁸⁰. But following him who said that the world was created in Nisan, he would have known. Rabbi Yose ben Rabbi Abun said, who thinks that the world was created in Tishre? Rav! As we have stated in the composition for *shofar* blowing from the House of Rav⁸¹: “This is the day of the beginning of Your works, a remembrance of the first day.” This implies that the world was created on New Year’s Day.

76 Babli 8a.

77 *Gen.* 3:15.

78 *Ps.* 139.11. Psalm 139, ascribed in the book of Psalms to David, is in aggadic tradition at least partially ascribed to Adam (cf. *Midrash Tehillim*, *Ps.* 139, the author’s *The Scholar’s Haggadah* p. 220).

79 “A beautiful day,” mixed Greek (καλόν “beautiful”, accusative) and Latin (*dies* “day”, nominative) perhaps to indicate

the popular language of the unlettered.

80 This is the opinion of R. Eliezer. R. Joshua holds that the world was created on the 15th of Nisan. Cf. Babli *Roš Haššanah* 27a and the author’s *Seder Olam* (Northvale NJ 1998) pp. 47-48 (Note 3).

81 Rav’s composition for the extended *musaf* prayer on New Year’s Day. The sentence is found in the middle section.

(39c line 15) רבי יוחנן לא אמר כן. אלא מלכות מצרים ומלכות רומי היו עושין מלחמה אילו עם אילו. אמרו. עד מתי אנו הורגין בפולמוס זה עם זה. בואו ונתקין שכל-מלכות שתאמר לשר צבא שלה. פול על חרבך. וישמע לה. תתפוס המלכות תחילה. דמצרים לא שמע לון. דרומי הוה תמן חד גבר סב והוה שמייה יינבריס והוה ליה תריסרי בני. אמרו ליה. שמע לון ואנו עושין בניך דוקסין ואיפרכין ואסטרטליטין. ושמע לון. בגין כן צווחין ליה. קלנדס יינבריס. מן יומא דבתריה מתאבלין עלוי מילני אימנא. אמר רבי יודן ענתודריא. מאן דזרע טלופחין בההוא יומא לא מצלחין.

Rebbi Johanan does not say so, but the empire of Egypt and the empire of Rome were fighting with one another. They said, how long are we killing one another in this war⁸²? Let us institute the rule that the empire should be preeminent which will tell its army commander, fall on your sword, and he will obey. The Egyptian did not obey. In Rome there was an old man by the name of Januarius who had twelve sons. They told him, if you obey us we shall make your sons dukes⁸³, eparchoi⁸⁴, and generals⁸⁵. He listened to them. Therefore, it is called *Calendae Januarii*. The next day they mourn him, a black day⁸⁶. Rebbi Yudan from Antodra⁸⁷ said, if one sows lentils^{87a} on that day, they will not succeed.

82 Greek πόλεμος.

postridiani, following *calendae*, *ides*, or *nonae*, were considered inauspicious.

83 Latin *dux*, pl. *duces*.

84 Greek ἑπαρχος "governor, prefect."

87 Or Antondra, Antorda; cf. *Berakhot* 4:1 Note 72.

85 Greek στρατηλάτης.

86 Greek μέλαινα ἡμέρα, translation of Latin *dies ater*, a black (unlucky) day. *Dies*

87a A symbol of mourning, *Gen. rabba* 63(19).

(39c line 24) רב אמר. קלנדס אסורה לכל. רבי יוחנן אמר. אין אסורה אלא לפלחין בה. סטרנליה אסורה לכל. רבי יוחנן אמר. בין קלנדס בין סטרנליה אינה אסורה אלא לפלחין בה. חברייה בעו. נשי דפלחין פפלחין. רבי אבהו בעי. והדא טקסיס דקיסרין מכין דסוגיין שמרין פפלחין היא. הדה טקסיס דדוקים צריכא. רבי ביבי שלחיה רבי זעירא דיןבון ליה עזיל קטן מן סטרנליה דבישו. אתא גבי רבי יוסי. סבר דמורה ליה כהדא דרבי יהושע בן לוי שרי. והורי ליה כהדא דרבי יוחנן אסיר. רב אמר. קלנדס לפני תקופה שמונה ימים. סטרנליה לאחר תקופה שמונה ימים. אמר רבי יוחנן. פרוקטו ראשה שלתקופה.

Rav said, *Calendae* are forbidden for everybody⁸⁸. Rebbi Johanan said, it is forbidden only for those worshipping on them. *Saturnalia* are forbidden for

everybody⁸⁹. Rabbi Johanan said, both Calendae and Saturnalia are forbidden only for those worshipping on them.

The colleagues asked: are wives of worshippers like worshippers? Rabbi Abbahu asked: is the parade⁹⁰ of Caesarea like worship, since it is full of Samaritans? The parade of Duqim^{90a} is questionable. Rabbi Ze'ira sent Rabbi Bevai that he should buy him a small web from the Saturnalia of Bet-Shean. He came to Rabbi Yose⁹¹. He thought that he would instruct him following Rabbi Joshua ben Levi who permitted it. But he instructed him following Rabbi Johanan that it was forbidden⁹².

Rav said, Calends are eight days before the solstice, Saturnalia eight days after the solstice⁹³. Rabbi Johanan said, *prwqtw* is the head of the turning point⁹⁴.

88 In the Babli, 8a, the opinions attributed here to the Babylonian Rav are quoted in the name of the Galilean R. Joshua ben Levi.

89 This also is opinion of Rav/R. Joshua ben Levi.

90 This seems to have been a military parade which may have involved the display of the legion's eagles, considered an idolatrous practice. The participation of Samaritans may have removed the pagan aspect.

90a An unidentified place.

91 One has to read Yasa (Assi), the teacher of R. Ze'ira, not Yose, his student's student.

92 Clearly, one has to switch "permitted" and "forbidden" since the preceding (and Note 88) shows that R. Joshua ben Levi forbade what R. Johanan allowed.

93 Here "before" and "after" have to be switched; the statement is correct in the

Babli, 8a. The Calends of January are 9 to 10 days after the winter solstice.

94 The dictionaries follow Musaphia in reading *tropic* for *procto*, meaning that when the sun is standing over the tropic this is the time of the solstice. It is difficult to accept a double metathesis, and the sun being over one of the tropics is not a beginning of the solstice; it is the solstice. Also תְּקוּפָה "turning point" denotes any one of the four cardinal points of the ecliptic, both solstices and both equinoxes. S. Krauss is correct in rejecting Musaphia's explanation but his own, by a non-existing Greek word, is no better. Cf. Latin *prociat* "it drew near", said e. g. of the orbits of two stars. The earth is nearest to the sun at the summer solstice (E. G.). One would vocalize פְּרוֹקְטוּ.

32) line 39c) רבי בא בשם רב. שלשה זמנים בבבל. ושלשה זמנים במדי. שלשה זמנים בבבל. מהורי וכונני וכוונתה. שלשה במדי. נוסרדי ותיריסקי ומהירקנה. רבי הונא בשם רב נחמן בר יעקב. נרוז בב' באדר בפרס בעשרים באדר במדי.

Rebbi Abba in the name of Rav: There are three times⁹⁵ in Babylonia, three times in Media. Three times in Babylonia, וכוונתה⁹⁶. Three in Media, ⁹⁶ נוסרדי ותיריסקי ומהירקנה. Rebbi Huna in the name of Rab Nahman bar Jacob: New Year's Day⁹⁷ is on the second of March in Persia, on the 20th of March in Media.

95 Where one has to observe the Mishnah's restrictions on commerce with Gentiles.

96 These days have not been identified except for מהירקנה which is *mehragan*, Arabic *مهرجان*, a fall festival. In *Responsen der Geonim* (Harkavy), Berlin 1887, No. 46 (p. 22) the Gaon describes this as the solstices, still celebrated as a holiday in his time. Also in מהורי one recognizes the root *mehr* "Mithra", the sun-god. In כנוני one recognizes *kanun*, the Accadic and Syriac name of the Month of *Ṭevet* (or *Kislev* and *Ṭevet*) which leads one also to identify the day as connected to the winter solstice. In the Babli (11b) the readings are for Persian festivals מוהרניק ומוהרין readings מוטרדי וטיריסקי מוהרסנקי ומוהרין מוטרדי וטיריסקי מוהרסנקי ומוהרין, for the

מוהרניקי ואקניתי' בחנוני ועשר באדר מוהרניקי ואקניתי, ואקניתי' במני ואסר באדר. In the ms. readings the first series is from the Munich ms. (*Diquque Soferim*), the second from the NY ms. published by Shraga Abramson (New York 1957). The readings do not help much but it is clear that on base of the next sentence in the Yerushalmi in the list of Babylonian festivals one must read with the NY ms. "20 Adar" as Median New Year's Day. (In his Notes, p. 150a, Abramson incorrectly reads "10 Adar" with the other Babli sources.)

97 Persian *نوروز*. "Adar" here has the meaning of "March" as in the Syrian Christian calendar. Today's Persian New Year is what is characterized here as Median.

35) line 39c) סטורנליא. שנאה טמונה. שונא נוקם ונוטר. היך מה דאת אמר וישטם עשו את יעקב. אמר רבי יצחק בירבי לעזר. ברומי צווחין ליה. סנטוריה דעשו. וקרטסיס. יום שתפשה בו רומי מלכות. ולא כבר תניתה. אמר רבי יוסי בירבי בון. פעם שנייה. אמר רבי לוי. יום שנתחתן שלמה לפרעה וכה מלך מצרים ירד מיכאל ונעץ קנה בים והעלה שלעטוט ונעשה חורש גדול וזה הוא כרד גדול שברומי. יום שהעמיד ירבעם שני עגלי זהב באו רומס ורומילס ובנו שני צריפים ברומי. יום שנסתלק בו אלהיו הועמד מלך ברומי. ומלך אין באדום נצב מלך:

יום גניסיןא נשל מלכים. ויהי | ביום השלישי יום הלקדת את-פרעה.

“Saturnalia,” “hidden hatred; hating, taking revenge, preserving [hatred].”⁹⁸ This is what you say, *Esau hated Jacob*⁹⁹. Rabbi Isaac ben Rabbi Eleazar said, in Rome they call it “senate of Esau”¹⁰⁰.

“Cratesis.” The day when Rome took hold of the Empire. Was this not stated already¹⁰¹? Rabbi Yose ben Rabbi Abun said, for the second time¹⁰². Rabbi Levi said, on the day when Solomon married the daughter of Pharaoh Necho, the king of Egypt, Michael descended and put a stick into the Sea which attracted debris and formed a forest; that is the great fortification in Rome. On the day when Jeroboam put up two golden calves, Remus and Romulus built two sheds in Rome. On the day Eliahu disappeared a king was installed at Rome; *a king, there is no king appointed in Edom*¹⁰³.

“The king’s birthday.” *It was on the third day, Pharaoh’s birthday*¹⁰⁴.

98 A proposed Hebrew etymology of “Saturnalia.”

99 Gen. 27:41.

100 In *Gen. rabba* 66(7) there is a different, more intelligible version: *Esau hated Jacob*; R. Eleazar ben R. Yose said, he was his steward (סנטרי) but became hating, taking revenge, preserving [hatred]; for this one calls the Senators (סנטרי) of Rome. For סנטר *salutarius* cf. *Bava mesi’a* 5:7 Note 138.

101 In the second interpretation of *Calendae*.

102 When Augustus became Emperor to end the civil wars.

103 *IK*. 22:48. The verse is quoted in incomplete form; in the biblical text נֶאֱבַד is not a verb but a noun: *There was no king in Edom; a governor was king*. A shortened version is found in the Babli, *Sanhedrin* 21b.

104 Gen. 40:20.

יום הלידה ויום המיתה. עד כאן לציבור. מכּוּ וְאֵילָן לְיָחִיד. וְכָתִיב בְּשָׁלֹם תָּמוּת וּבְמִשְׁרָפוֹת אֲבוֹתֶיךָ הָרָאשִׁים וְגו'. כִּינִי מִתְנִיתָא. כָּל-מִיתָה שְׁנֵשׁ בָּהּ עִשּׁוֹן וּשְׂרִיפָה נֶשׁ בָּהּ עֲבוּדָה זָרָה. וְשָׂאִין בָּהּ עִשּׁוֹן וּשְׂרִיפָה אִין בָּהּ עֲבוּדָה זָרָה.

“Birthday, and the day of death.” The preceding was for the public, from here on private. But it is written^{104a}: *You shall die in peace, and what was burned for your earlier forefathers* . . . So is the Mishnah: “Any death where there is smoke and burning¹⁰⁵ is idolatrous; if there is not smoke and burning it is not idolatrous.

104a *Jer.* 34:5. Since God promises Sedekia that one will burn things at his funeral, the practice cannot be prohibited.

105 One burns not only the deceased's utensils but adds some fuel which creates

thick smoke. This is superstitious or idolatrous. The Babli, 11a, accepts burning as practice only for kings and Patriarchs, not for commoners.

משנה ג: יום תגלחת זקנו ובלוריתו יום שעלה בו מן הים יום שיצא בו מבית האסורים אינו אסור אלא אותו היום ואותו האיש.

Mishnah 3: The day of the first shaving of his beard and his locks¹⁰⁵, the day he arrived from a trip at sea¹⁰⁶, or the day he was freed from jail, are forbidden only on the day itself and for this man.

105 The religious shaving of the first beard is known from Roman sources (Petronius, *Satyricon* §29-8, where a golden box with the shavings of the master's first beard stands in a niche with the *lares* and a statue of Venus.) According to Ravad

[Commentary to *Sifra Ahare Pereq* 13(9)] this is the sacrifice of locks that one grows for a year or two and then cuts as a religious rite.

106 Which always involved mortal danger.

(39c line 48) **הלכה ג:** יום תגלחת זקנו כול. מה. אותו היום בלבד. או אותו היום בכל שנה. והתני. תגלחתו ותגלחת בנו אסורה. תיפתר שגילחו שניהן כאחת. והתני. משתהו ומשתה בנו אסורה. תיפתר שגילחו שניהן כאחת שנשאז נשים. והתני. לידתו ולידת בנו אסורה. אית לך מימר. שנולדו שניהן כאחת. תיפתר בההוא דלא אספיק מיעבד ביומיה עד דאיתגליד בר וצבד כחדא.

Halakhah 3: “The day of the first shaving of his beard,” etc. What means “only on the day itself”; maybe the same day every year? Did we not state, his haircut and his son’s haircut is¹⁰⁷ forbidden? Explain it that they had a haircut together. Did we not state, his wedding feast and his son’s wedding feast are forbidden¹⁰⁸? Explain it that they together had a haircut and married women. Did we not state, his birth and his son’s birth is forbidden? Could you say that they were born together? Explain it that he did not do it on his day, but after the son was born he did it with him¹⁰⁹.

107 The singular “it is forbidden” implies that this is a double festivity on the same day. Since it is quite impossible that a man and his son should shave their beards for the first time on the same day, it seems that the *baraita* implies that he celebrates the anniversary of his first shave every year and then shaves his son on that same date. The answer is that nothing in the *baraita* implies that one speaks of the first shaving of the beard; it could well be that the father lets his hair grow three years from the date of birth of his son and then cuts his and his son's hair on the same day in one pagan rite.

108 A son and his widowed father may well marry on the same day.

109 Here it seems more reasonable to assume that a father celebrates his birthday every year and his son has the same birthday. But as with the other statements, it is not necessarily so. It either may be that the *baraita* does not refer to the birthdays of the persons but to birth of children to both of them; nor does it imply that the birthdates are identical; only the celebrations are. The problem is undecided; for practical purposes only the day itself is forbidden, not its date every following year.

לא יִשְׁלַח לוֹ חֲבִירוֹת מְכֻרֹת לַחֲנוּנִי מִפְּנֵי שֶׁהוּא כְּטוֹעֵנוּ טַעֲנַת חֲנָם. לֹא יִסְרֹב אָדָם בְּחִבְרֹתוֹ לְאַחֲרוֹ בְּשַׁעֲהָ שְׂאִינוֹ רוֹצֶה. לֹא יִרְבֶּה לוֹ בְּתַקְרוּבָתָּהּ בְּשַׁעֲהָ שֶׁהוּא יוֹדֵעַ שְׂאִינוֹ מִבְּקָשׁ. מָהוּ בְּתַקְרוּבָתָּהּ. רַחֲוִי בָּזוּי אַחֲרָי. וּבִירוּשָׁלַם הָיָה הוֹפֵךְ עֵינָיו לְדִמְיוֹנָא לְשִׁמְאֻלָּא.

¹¹⁰He should not send him amphoras sold to the grocer because that is like claiming an unnecessary claim. One should not invite another knowing that he will not accept. He should not offer many gifts of closeness knowing that he does not want [them]. What is “of closeness”? He trusts another corner¹¹¹. And in Jerusalem he was switching his ‘*ikhla*’ from right to left¹¹².

110 A thoroughly corrupt paragraph; partially but defectively copied from *Demay* 4:6, Notes 73-74. The basic reference is Tosephta *Baba gamma* 7:8 which declares creating a false impression to obtain goodwill as “stealing minds” and forbidden. The example in the Tosephta reads: “he should not open for him amphoras sold to a grocer,” i. e., one should not give the guest the impression that one goes to great expense for him when in fact the amphora had to be opened anyhow to fulfill an

existing sales contract. The text here does not make much sense. The next sentence is also in *Demay* (Babli *Hulin* 94a) and makes perfect sense.

111 In *Demay*: “He knows that the other person expects that he would exert himself for him.”

112 The word עֵינָיו is otherwise unknown; cf. *Demay loc. cit.* Note 74. Compare Arabic عِقال “cord (of a curtain)”.

עיר שיש בה גוים וישראל. אם נותנין הגוים לגבאיין גובין מהן ומישראל. ומפרנסין עניי גוים ועניי ישראל. ומבקרין חולי גוים וחולי ישראל. נוהמים אבילי גוים ואבילי ישראל. וקוברין מייתי גוים ומייתי ישראל. ומכניסין כלי גוים וכלי ישראל. מפני דרכי שלום. גרדאי שאלון לרבי אמי. יום משתה שלגוים מהו. וסבר מישרי לון מן הדא. מפני דרכי שלום. אמר ליה רבי בא. והתני רבי חייה. יום משתה שלגוים אסור. אמר רבי אמי. אילוילא רבי בא הנה לנו להתייר עבודה זרה שלנה. וברוך המקום שרחקנו מהן.

¹¹³It was stated: In a town where Gentiles and Jews live together, if the Gentiles contribute the overseers of charity collect from them and from Jews, and provide for Gentile and Jewish poor, visit Gentile and Jewish sick, console Gentile and Jewish mourners, and bury Gentile and Jewish dead. Also one takes in vessels from Gentiles and Jews for the sake of peaceful coexistence. The weavers asked Rabbi Immi, what about a Gentile wedding feast? He wanted to permit it to them from this: “for the sake of peaceful coexistence.” Rabbi Abba told him, did not Rabbi Hiyya state that a Gentile wedding feast is forbidden? Rabbi Immi said, if it had not been for Rabbi Abba we would have come to permit their pagan worship; praise be the Omnipresent Who distanced us from them.

113 *Demay* 4:7, Notes 76-80; *Tosephta Gittin* 4:13-14; *Babli Gittin* 61a.

(fol. 39a) **משנה ד:** עיר שיש בה עבודה זרה חוצה לה מותר. תיה חוצה לה עבודה זרה תוכה מותר. מהו לילך לשם בזמן שהדרך מיוחדת לאותו מקום אסור. ואם היה יכול להילך בה למקום אחר מותר. עיר שיש בה עבודה זרה והיו בה הנזירות מעוטרות ושאין מעוטרות זה היה מגיעה בבית שאן ואמרו חכמים המעוטרות אסורות ושאין מעוטרות מותרות:

Mishnah 4: Outside a town with pagan worship it is permitted¹¹⁴. If the pagan worship was outside, inside is permitted. May one go there? If the road was dedicated to this place¹¹⁵ it is forbidden, but if one could go there also to another place it is permitted. If a town has pagan worship and there were stores decorated and not decorated; there was a case in Bet Shean and the Sages said that the decorated ones are forbidden, the not decorated ones are permitted¹¹⁶.

114 In a village or small town, if there is a pagan festival, or a fair dedicated to a pagan deity, which is celebrated by everybody there, the restrictions of trade spelled out in Mishnah 1 do apply in the town but not in

its surroundings.

115 The place where trade with the Gentiles would be forbidden.

116 To trade there since they do not participate in the festivities.

(39c line 65) **הלכה ד:** עיר שיש בה עבודה זרה כול'. הא תוכה אסור. מפני שיש בה צלם אחד יהא תוכה אסור. ריש לקיש אמר. ביריד שנו. ומה בין בתוכה לחוצה לה. תוכה שנהנה מן המכס אסור. חוצה לה מותר שלא נהנה מן המכס. ואם היה חוצה לה נהנה מן המכס אף חוצה לה אסור. והתני. הולכין ליריד ולוקחין משם עבדים ושפחות ובהמה. ריש לקיש אמר. לא סוף דבר עבדים ישראל אלא אפילו עבדים גוים. שמקרבן תחת כנפי השכינה. והתני. לקח משם פסות תשרף. בהמה תעקר. מעות יוליכם לים המלח. ניחא פסות תשרף. מעות יוליכם לים המלח. בהמה תעקר. והתני. הולכין ליריד ולוקחין משם עבדים ושפחות ובהמה. רבי שמעון בן לקיש אמר. לא סוף דבר עבדים ישראל אלא אפילו עבדים גוים. שמקרבן תחת כנפות שמים. תיפתר ישראל ישראל. והתני. המוכר עבדו לגוים דמיו אסורין. עוד היא תיפתר ישראל ישראל. ישראל שהולך ליריד ולוקחין ממנו מפני שהוא כמציל מידן. ובחזירה אסור שנהנה מחמת עבודה זרה. ובגוים בין הולכין בין באין מותר. רבי בא בריה דרבי חייה בר בא בשם רבי יוחנן. אם היה פונדק מותר. רבי זעירא בעי. ביריד אסור ובפונדק מותר. דילמא בפונדק אסור רבי יוחנן. אלא רבי בא בריה דרבי חייה בר בא בשם רבי יוחנן. אם היה פונדק מותר בפונדק אסור. אמר רבי יוחנן.

Halakhah 4: “Outside a town with pagan worship,” etc. Therefore inside it is forbidden. Because in it there is one statue all of it should be forbidden? Rabbi Simeon ben Laqish says, they taught this about a fair¹¹⁷. What is the difference between inside and the surroundings? Inside where it profits from the toll it is forbidden. Outside it is permitted because it does not profit from the toll, but if outside it also profits from the toll it is forbidden. But was it not stated⁴⁰: “One goes to fairs and buys there slaves, slave girls, and animals.” Rabbi Simeon ben Laqish said, not only Jewish slaves⁴¹ but even Gentiles, because he brings them under the wings of the *Shekhina*⁴². But was it not stated¹¹⁸: If he bought there a garment, it should be burned, an animal should be castrated, coins should be brought to the Dead Sea? One understands that a garment should be burned, coins should be brought to the Dead Sea. An animal should be castrated¹¹⁹? But was it not stated⁴⁰: One goes to fairs and buys there slaves, slave girls, and animals.” Rabbi Simeon

ben Laqish said, not only Jewish slaves⁴¹ but even Gentiles, because he brings them under the wings of Heaven? Explain it, Israel, Israel¹²⁰. But was it not stated: If somebody sells his slave to Gentiles the proceeds are forbidden¹²¹. Again explain it, Israel, Israel. One buys from an Israel who goes to a fair because he is like one salvaging from their hands. On his return it is forbidden since he profits from pagan worship¹²². But from Gentiles it is permitted whether they are going or coming. Rabbi Abba the son of Rabbi Hiyya bar Abba in the name of Rabbi Johanan: If it was a hostelry¹²³ it is permitted. Rabbi Ze'ira asked: at a fair it is forbidden, in a hostelry it is permitted? Maybe Rabbi Johanan said this about merchandise¹²⁴. Rabbi Abba the son of Rabbi Hiyya bar Abba came in the name of Rabbi Johanan: If it was a hostelry, merchandise is permitted¹²⁵, said Rabbi Johanan¹²⁶.

117 The fair is a once yearly affair in honor of some divinity and its temple receives a fee from every transaction at the fair. Trading at the fair is directly subsidizing pagan worship. Babli 11b.

118 Babli 13a.

119 The statement is unacceptable first because it contradicts the Tosephta and second because there is a biblical prohibition to castrate any animal (*Lev.* 22:24). The Babli 13a explains “castrating” as “making unfit for agricultural work” similar to the meaning of the root **عقر** “to starve an animal” in Arabic.

120 He bought from a Jew who was a vendor at the fair. This shows that only the strictly religious persons followed the rules on trade with Gentiles.

121 The Babli (*Giṭtin* 45a) requires the communal court to force the seller to buy

the slave back for up to 10 times the sale price. It is forbidden to sell a circumcised slave, who has to keep the Sabbath and eat kosher, to a Gentile. On the other hand, a slave who refuses to be circumcised and become a semi-Jew may be sold to Gentiles without penalty.

122 Babli 33a, Tosephta 1:15.

123 Greek πανδοχείον, πανδοχείον. Since the hostelry is a place for strangers, even at the time of a fair it is exempt of the rules restricting participation of Jews.

124 Greek πραγματεία.

125 The Babli 13a,b explains that any kind of merchandise one may buy there if no fee is paid to the organizers of the fair.

126 This clause is superfluous but this is not sufficient reason to delete it from the text.

רבי אבהו בשם רבי יוחנן. החליף בהמה בעבודה זרה אסורה. רב חסדא בעי. אילו השתתחו לה לא אסרה. מפני שהחליף בהמה בעבודה זרה אסרה. דילמא בפרגמטיא

שְׁנֵינְסָה קוֹדֵם לִירִיד אֲתָאֲמַרְתָּ. אֲתָא רַבִּי זְעִירָא רַבִּי אֲבָהוּ בְּשֵׁם רַבִּי יוֹחָנָן. הִחְלִיף בְּהֵמָה בְּעִבּוּדָה זָרָה אֲסֻרָה. בְּפִרְגָּמְטָא שְׁנֵינְסָה קוֹדֵם לִירִיד אֲתָאֲמַרְתָּ. אָמַר רַבִּי אֲבָהוּ. אֲסוּר לַעֲשׂוֹת חֲבִילָה בִּירִיד. וְתִיָּב כֵּן. לֹא יִשְׁאַל בְּשִׁלּוּמוֹ בְּמָקוֹם שֶׁהוּא מִתְחַשֵּׁב. מִצָּאוֹ לְפִי דְרָכוֹ שׂוֹאֵל בְּשִׁלּוּמוֹ בְּכוֹד רִאשׁ.

Rebbi Abbahu in the name of Rebbi Johanan: If one bartered an animal for an idol it becomes forbidden. Rav Hisda asked: If he had worshipped it he would not have made it forbidden¹²⁷. Because he bartered an animal for an idol he made it forbidden? Maybe it was said about merchandise assembled before the fair¹²⁸. There came Rebbi Ze'ira, Rebbi Abbahu in the name of Rebbi Johanan: If one bartered an animal for an idol it becomes forbidden. This was said about merchandise assembled before the fair.

Rebbi Abbahu said, it is forbidden to make a group visit to a fair¹²⁹, as we have stated¹³⁰: "One should not greet him at a place where it gives him prestige. If he meets him on his way, he greets him gravely."

127 Animals used in pagan worship are forbidden as sacrifices (Mishnah *Temurah* 6:1), but living things cannot become forbidden for all use. Why should barter make the living animal forbidden?

128 It is forbidden to give animals (or any other article which might be used in pagan worship) specifically for the purpose of assembling merchandise for sale at the pagan fair. The proceeds would be

forbidden as the money of a Jew returning from dealing at the fair.

129 As stated in the following Tosephta, it is forbidden to greet a celebrant of a pagan rite in public where it increases his prestige on the day of his celebration. Since a group constitutes a public, a person meeting a Gentile of his acquaintance would automatically violate this prohibition.

130 Tosephta 1:2.

(39d line 14) רַבִּי חִיָּיָה בְּרִי נֹחַ שְׁלַח מִיִּזְבוֹן לִיהִ סִנְדֵּל מִן יְרִידָה דְּצוֹר. אָמַר לִיהִ רַבִּי יַעֲקֹב בְּרִי אֲחָא. וְאַתָּה מְלֻקָּחִי יְרִיד. אָמַר לִיהִ. וְאַתָּה לֹא לְקַחְתָּ קְלוֹסָקִין מִיָּמִיד. אָמַר לִיהִ. שְׁנִינְיָא הֵיא. דְּמַר רַבִּי יוֹחָנָן. לֹא אֲסֻרוֹ דְּבַר שֶׁהוּא חַי נָפֶשׁ. רַבִּי שְׁמַעוֹן בֶּן יוֹחָנָן שְׁאַל לְרַבִּי שְׁמַעוֹן בֶּן יוֹצֵדֵק. לִית אֲתָּה בְּדִיק לִיהִ אֲהוּ יְרִידָה דְּצוֹר מָהוּ. אָמַר לִיהִ. אִין. יִהְיֶה תַרְתִּין לִיטְרִין דְּפִילָפְלִין לְאִיסְקְרִנְדָּה. עָאֵל וְאִשְׁכַּח כְּתִיב תִּמְן. אֲנָא דִּיקְלִטְגִינוֹס מִלְכָּא שְׁכִנִית אֲהוּ יְרִידָה דְּצוֹר לְגִידָה דְּאַרְקָלִיס אֲחִי תִמְנָא יוֹמִין. רַבִּי יִצְחָק בְּרִי נַחְמָן שְׁאַל לְרַבִּי חִינְיָה. יְרִיד עֲזָה מָהוּ. אָמַר לִיהִ. הִלְכְתָּ לְצוֹר מִיָּמִיד וְרִאִיתָ יִשְׂרָאֵל וְגוֹי שֶׁהוּ שׁוֹתֵפִין בְּקִדְיָה וְאִינוּ חוֹשֵׁשׁ שְׁמָא נִיעַר הַגּוֹי בְּקִדְיָה. וְקִשְׁנָא. הוּא שְׁאַל לִיהִ דָּא וּמַגִּיב לִיהִ דָּא. אֲלָא בְּגִין דְּלִית רַבִּי חִינְיָה אָמַר מִילָה דְּלֹא שְׁמַעָה מִיוֹמוֹי בְּגִין כֵּן הוּא שְׁאַל לִיהִ דָּא וּמַגִּיב לִיהִ דָּא. אֲתָא רַבִּי יוֹסִי בִּרְבִי בּוֹן אֲבָא בְּרִי

בַּר חֲנָה בָּשֶׁם רַבִּי יוֹחָנָן. לֹא אָסְרוּ אֶלְא כְּגוֹן יְרִידָה שְׁלִבוּטָנָה. וְתַנִּי כֵן. ג' יְרִידִין הֵן. יְרִיד עֲזָה
יְרִיד עֶפֶה יְרִידָה שְׁלִבוּטָנָה. וְהַמְחֻזָּר שֶׁבְּכֵלָן יְרִיד בּוּטָנָה.

Rebbi Ḥiyya bar Abba sent to buy sandals for himself at the fair of Tyre. Rebbi Jacob bar Aḥa said to him, are you a buyer at fairs¹³¹? He answered him, did you never buy a loaf of bread¹³²? He said to him, there is a difference, since Rebbi Joḥanan said, they did not forbid the necessities of life. Rebbi Simeon ben Joḥanan sent to ask Rebbi Simeon ben Josadaq, did you not check out the nature of the fair at Tyre? He told him, yes. He gave two pounds¹³³ of peppers to an ¹³⁴איסקרנדה. He went and found an inscription there, “I, King Diocletian, settled this fair at Tyre to the genius of my brother Heraklius¹³⁵, eight days.”

Rebbi Isaac bar Naḥman asked Rebbi Ḥanina: What is the nature of the fair at Gaza? He said to him, did you ever go to Tyre and see a Jew and a Gentile sharing a pot, and he does not worry that the Gentile pour something into the pot? This is difficult. He asked him; what did he answer him? But since Rebbi Ḥanina never said something that he had not heard, for that reason when he asked him this he responded with that¹³⁶.

Rebbi Yose ben Rebbi Abun came, Abba bar bar Ḥana in the name of Rebbi Joḥanan: They forbade only the fair at Botnah¹³⁷, as it was stated thus: There are three fairs, the fair at Gaza, the fair at Acco, the fair at Botnah. The clearest of them¹³⁸ is the fair at Botnah.

131 The head of the Academy should not be violating rabbinic decrees; Babli 13b.

132 Greek κόλλιξ.

133 Cf. *Ševuot* 6:3, Note 34.

134 An unexplained word. The proposed etymologies by Perles (*scrinarius*, a document keeper), Levy (a small oven), and Kohut (Persian *eskodār*, a courier) are unsatisfactory.

135 Title given by Diocletian Jovius to his co-emperor Maximian. As a government

sponsored fair, it should be permitted (*Tosephta* 1:7); the dedication to the genie of an Emperor would not make it prohibited since no pagan temple would profit from the sales.

136 Babli 11b/12a.

137 Identified by Eusebius as the biblical town of Beṭonim in the territory of the tribe of Gad.

138 As unquestionably pagan, organized for the benefit of pagan worship.

(39d line 28) מהו לילך לשם. אם היה אכסניא אסור. בן עיר מותר. שייירה מותר. שכן דרך שייירה לילך בכל מקום.

במה מעוטרות. רבי יוחנן אמר. בהדס. רבי שמעון בן לקיש אמר. בשאר כל המינין. על דעתיה דרבי יוחנן הכל אסור. על דעתיה דרבי שמעון בן לקיש אינו אסור אלא התוספת. היד עבד. היה למוד להוציא ה' קופות והוציא עשר. אין תימר. משם עיטור. אסור. אין תימר. משם פרקסים מותר.

“May one go there?” If he was a guest¹³⁹, it is forbidden; a town dweller is permitted¹⁴⁰. A caravan is permitted since caravans go everywhere¹⁴¹.

How are they decorated? Rabbi Johanan said, with myrrh; Rabbi Simeon ben Laqish said, with any kind¹⁴². In the opinion of Rabbi Johanan, all is forbidden¹⁴³; in the opinion of Rabbi Simeon ben Laqish only the addition is forbidden. How is this done? If he usually takes five boxes outside and he took ten. If you say as a decoration, it is forbidden. If you say as sales practice¹⁴⁴, it is permitted.

139 An Aramaic word formed from Greek ξένος “stranger.” The rule of the Mishnah was made for visitors.

140 As explained in Mishnah 3:6, real estate cannot become forbidden by being used for worship. A taxpayer of the place cannot be deprived by pagan worship of his right to use public roads.

141 Long distance travellers cannot be expected to know all local happenings; they may continue on their road.

142 Not necessarily with flowers.

143 Since only myrrh is used, any myrrh used as decoration of any store in town is forbidden as pagan offering, whether or not it was intended as such.

144 Greek *πραξις*, read פרקסיס for פרקסים. If the store expects to do more business because of the fair but outside the fairgrounds, this is not pagan worship.

משנה ה: אילו דברים אסור למכור לגוים איצטריבילין ובנות שוח בפתמורותיהן ולבונה ותרנגול חלקן. רבי יהודה אומר מוכר הוא לו תרנגול לכן בין התרנגולין. בזמן שהוא בפני עצמו קוטע אצבעו ומוכרו שאין מקריבין חסר לעבודה זרה. ושאר כל הדברים סתמן מותר ופירושן אסור. רבי מאיר אומר אף דגל טב וחצד וניקלבים אסור למכור לגוים:

Mishnah 5: The following are forbidden to be sold to them: Pine cones¹⁴⁵, and white figs¹⁴⁶ with their stalks, and incense, and white cocks.

Rebbi Jehudah says, it is permitted to sell a white cock among chickens; when it is alone he cuts one claw and sells it since one does not sacrifice defective ones in pagan worship. All other things are permitted if unspecified¹⁴⁷ but forbidden if specified. Rebbi Meir says, it is also forbidden to sell good dates, and curved dates¹⁴⁸, and Nicolaos dates¹⁴⁹ to Gentiles.

145 Greek στρόβιλος “cone”.

148 Cf. Note 155.

146 Cf. *Demay* 1:1, Note 5.

149 A kind of large Syrian dates, cf.

147 If the Gentile does not specify that he needs the objects for pagan worship.

Berakhot 6:5, Note 162.

(39d line 34) **הלכה ה:** אילו דברים אסורין. שמעון בר בא בשם רבי יוחנן. בנות שוחם בפטוטותיהן והאיצטרובלין במטוטלותיהן. ולבונה. תני. אם היתה חבילה מותר. וכמה היא חבילה. רבי יהודה בן בתיירה אמר. חבילה של לבונה אין פחות ממששה מינין. אם היתה כומר אסור. רופא מותר. תגר מותר. תגר חשוד אסור.

אנו תנו. תרנגול לבן. תני רבי חייה. תרנגול סתם. מתניתין צריכה למתניתה דרבי חייה. ומתניתה דרבי חייה צריכה למתניתין. אילו תנינו ולא תני רבי חייה הוינו אסורין. לא אסורין אלא תרנגול לבן. אבל תרנגול סתם אפילו בינו לבין עצמו מותר. הוי צורכה למתניתה דרבי חייה. או אילו תנא רבי חייה ולא תנינו אנו הוינו אסורין. לא אסורין אלא תרנגול סתם. הא תרנגול לבן אפילו בינו לבין התרנגולין אסור. הוי צורכה למתניתין וצורכה למתניתה דרבי חייה. אמר רבי בון בר חייה. תרנגול למכור. מוכר לו תרנגול לבן. תרנגול לבן למכור. נימר בינו לבין עצמו אסור. בינו לבין התרנגולין מותר. רבי בון בר חייה בעי. ראה תרנגולין רועין באשפה ותרגול לבן ביניהן ואמר. שלמי. כמי שסיים. היתה חסר. קריא אמר. שמקריבין חסר לעבודה זרה. וכייתגישון עור לזבוח אין רע. הדיא אמרה. שמקריבין חסר לעבודה זרה.

רבי מאיר אומר. אף דקל טב וחקד ונסקליס אסור למכור לגויס: רבי חמא בר עוקבה אמר. קריטה. רבי לעזר בירבי יוסי אמר. מין הוא ושמו חצדא. עבר ומכר. יבנה פיי דמר רבי לעזר. עבר ובנה מותר. וכא עבר ומכר מותר.

Halakhah 5: “The following are forbidden.” Simeon bar Abba in the name of Rebbi Johanan: White figs with their stalks and pine cones with their attachments¹⁵⁰.

“And incense.” It was stated, if it was a bundle it is permitted. How many are a bundle? “Rebbi Jehudah ben Bathyra said, there are no less than five

kinds in a bundle of incense¹⁵¹. If he was a pagan priest it is forbidden¹⁵², a medical man is permitted, a trader is permitted. A suspect trader is forbidden.”

We have stated, “a white cock.” Rabbi Ḥiyya stated unspecified “a cock.” Our Mishnah needs the *baraita* of Rabbi Ḥiyya and the *baraita* of Rabbi Ḥiyya needs our Mishnah. If we had stated but Rabbi Ḥiyya had not stated, we would have said, only a white cock but an unspecified cock would be permitted even alone. Therefore the *baraita* of Rabbi Ḥiyya is needed. Or if Rabbi Ḥiyya had stated but we had not stated, we would have said, this is only for an unspecified cock, but a white cock even among chickens is forbidden. Therefore our Mishnah is necessary and the *baraita* of Rabbi Ḥiyya is necessary. “A chicken to sell,” one may sell him a white cock. “A white cock to sell,” we say by itself it is forbidden, among chickens it is permitted. Rabbi Abun bar Ḥiyya asked: If one saw chickens grazing on a garbage heap and a white cock among them and said, whose is it? Is it as if he specified¹⁵³?

If it had a defect. The verse says that they sacrifice defectives in pagan worship. *If you present a blind one to be sacrificed, is there nothing bad*¹⁵⁴? This says that they sacrifice defectives in pagan worship.

“Rabbi Meïr says, it is also forbidden to sell good dates, and curved dates, and Nicolaos dates to Gentiles.” Rabbi Ḥama bar Uqba said, Caryotis¹⁵⁵. Rabbi Eleazar ben Rabbi Yose said, it is a kind known as *ḥaṣḥa*. If somebody transgressed and sold? It will come similar to what Rabbi Eleazar said¹⁵⁶, if he transgressed and built it is permitted, and here if he transgressed and sold it is permitted.

150 Which are needed to decorate the thyrsus in Dionysian rites. Babli 14a.

151 Babli 14a, Tosephta 1:21.

152 A Jew may not sell him any of the items specified in the Mishnah even if he does not specify that he needs it for pagan worship.

153 Since he showed interest in the white cock alone, even if later in negotiating for

the sale he does not mention it. Cf. Babli 14a.

154 *Malachi* 1:8. If it had not been acceptable for the Gentiles, the Jews would not have thought of doing this.

155 Greek *καρυώτις* “nut shaped kind of dates,” Babli 14b. The word *חצד* may be Arabic *خضد* “curved, bent”. The reading of

the Yerushalmi is preferable to that of the Babli and the independent Mishnah mss., תצב, which designates a plant or bush having

nothing to do with date palms (*Peah* 2:1 Note 24).
156 Halakhah 7, end.

(fol. 39a) **משנה ו:** מקום שנהגו למכור בהמה דקה לגוים מוכרין. מקום שנהגו שלא למכור אין מוכרין ואל ישנה אדם מפני המחלוקת. ובכל מקום אין מוכרין להם בהמה גסה עגלים וסוסייהם שלמין ושבורין. רבי יהודה מתיר בשבועה בן בתיא מתיר בסוס:

Mishnah 6: At a place where they used to sell small cattle to Gentiles one sells¹⁵⁷; at a place where they used not to sell one does not sell; nobody should change this because of controversy¹⁵⁸. Nowhere does one sell to them large animals, calves, and donkey foals, whole or damaged¹⁵⁹. Rabbi Jehudah permits damaged ones; Ben Bathyra permits horses¹⁶⁰.

157 At places where sheep and goats are not sacrificed in pagan rites.

158 Even if the situation changes one should not change old usage since this will destroy communal peace.

159 Cattle and donkeys were used as animals for work and beasts of burden. Belonging to Jews, these animals have a right to rest on the Sabbath. If they are sold to Gentiles, the seller deprives them of this right; depending on circumstances this might be counted as violation of the Sabbath

by the seller. Calves and foals do not work but are raised for work.

160 In antiquity horses were used only for riding, not for work. Even if the horse is used for hunting, he holds that transporting live animals or birds is not a breach of biblical Sabbath law.

Mishnah and Halakhah are also in *Pesahim* 4:3 (פ) which partially survives in a Genizah text (ג) edited by L. Ginzberg, New York 1909. It is difficult to determine which text is original.

(39d line 55) **הלכה ו:** מקום שנהגו למכור בהמה דקה כול'. מה ומוותר לגדל. אמר רבי בא. כגון מהיר שהוא נשעה עשר מיל על נשעה עשר מיל. הוון בעיי ממר. כמן דמר. מותר למכור מותר לגדל. וממן דמר. אסור למכור אסור לייחד. רבי יונה רבי לעזר בשם רב. ואפילו כמאן דמר. מותר למכור אסור לייחד. מה בין למכור מה בין לייחד. בשעה שמכורה לו כבהמתו נשגיו היא. בשעה שהוא מייחדה לו כבהמתו נשגיו הוא והוא חשוד עליה.

1 מה ומוותר | פ מותר 3 לגדל | פ לייחד 4 בשעה שמכורה | פ תמן מכין שהוא מוכרה 5 בשעה שהוא מייחדה לו | פ ברם הכא

Halakhah 6: “At a place where they used to sell small cattle,” etc. But is it permitted to raise them¹⁶¹? Rabbi Abba said, for example Mahir which is sixteen by sixteen *mil*¹⁶². They wanted to say, he who said it is permitted to sell [says] it is permitted to raise¹⁶³. But he who says, it is forbidden to sell [says] it is forbidden to leave it alone¹⁶⁴. Rabbi Jonah, Rabbi Eleazar in the name of Rav¹⁶⁵: Even one who says it is permitted to sell it [says] it is forbidden to leave it alone. What is the difference between selling and leaving alone? When he sells it to him it becomes the Gentile’s animal. If he lets it be alone with him, it is the Jew’s animal and he is suspected about it.

161 Since it is forbidden to raise sheep and goats in the Land of Israel (Mishnah *Bava qamma* 7:10, Note 97), from where does one get them to sell them to a Gentile?

162 The Mishnah permits to raise goats and sheep in places unfit for agriculture. *Mahir* is described in *Eccl. rabba* 1(34) as situated in the domain of the tribe of Reuben

in Transjordan, a country of sheep and goats (*Nuim*. 32:4). Mentioned also in *Pesahim* 5:3.

163 Read with *Pesahim*: “to leave alone”.

164 Gentiles are suspected of bestiality (Mishnah 2:1).

165 In the Babli, 14b/15a, this is R. Eleazar’s statement opposing Rav.

(39d line 61) מְקוֹם שֶׁנִּהְיָ לִשְׁלֹא לְמִכּוֹר אֵין מוֹכְרִין. לָמָּה. מִפְּנֵי שְׁמוּצִיאוֹת מִיְּדֵי גִזְיָה. הַגֵּעַ עֲצָמָךְ שֶׁהִיתָ עֵז. מִפְּנֵי שְׁמוּצִיאוֹת מִיְּדֵי בְכוֹרָה. הַגֵּעַ עֲצָמָךְ שֶׁהִיָּה זָכָר. מִפְּנֵי שְׁמוּצִיאוֹת מִיְּדֵי מִתְנָת. מִעֲתָה חִטִּין אֵל יִמְכּוֹר לוֹ מִפְּנֵי שְׁמוּצִיאוֹת מִן הַחֵלָה. יוֹ וְשָׁמֶן אֵל יִמְכּוֹר לוֹ מִפְּנֵי שְׁמוּצִיאוֹת מִן הַבֶּרֶקָה.

1 מפני שמוציאה | פ שהוא מוציאה 2 שהיתה | ג שהיתה מפני שמוציאה | פג שהוא מוציאה מפני שמוציאו | פג שהוא מוציאו 3 מפני שמוציאו | פג שהוא מוציאו מן החלה | פג מידי חלה מפני שמוציאו | פג שהוא מוציאו

“At a place where they used not to sell one does not sell.” Why? Because he eliminates the duty of shearing¹⁶⁶. Think of it, if it was a goat! Because he eliminates the duty of the first-born¹⁶⁷. Think of it, if it was a male! Because he eliminates the gifts¹⁶⁸. Then one should not sell wheat to them because he eliminates the duty of *hallah*¹⁶⁹; then one should not sell wine and oil to them because he eliminates the duty of benedictions¹⁷⁰.

166 The first shearing of sheep should be given to a Cohen, *Deut.* 18:4. But goats are not raised for wool and are included in the prohibition.

167 Which must be given to a Cohen, *Deut.* 15:19. But a male animal does not bear lambs and also is included in the prohibition.

168 The parts of the animal to be given to a Cohen, *Deut.* 18:3.

169 The gift to the Cohen from bread dough, *Num.* 15:20.

170 Which are pronounced before and after food, as described in the later Chapters of Tractate *Berakhot*.

The problem treated here is that in the next paragraph it is stated that one does not sell large animals to Gentiles because of

problems with the laws of the Sabbath. Therefore one is inclined to say that the prohibitions of Mishnah 5 are because of pagan worship and those of Mishnah 6 because of Jewish worship. It is shown that this does not hold; the first part of Mishnah 6 is about pagan worship, about places where sheep or goats are sacrificed by pagans; only the second part is about Jewish matters.

בְּכָל מְקוֹם אֵין מוֹכְרִין לָהֶם בְּהֶמְה גָּסָה. לָמָּה. בְּהֶמְה גָּסָה יֵשׁ בָּהּ חַיִּיב חֲטָאֵת וּבְהֶמְה דָּקָה אֵין בָּהּ חַיִּיב חֲטָאֵת. וְאֵינוּ חוֹלְבִין וְאֵינוּ גּוֹזִין. אָמַר. תִּפְנוּ הֵיא מִתְחַיִּיבָת. בְּרֵם הֵכָא הוּא מוֹתִיב. מִפִּינוּ שְׁהוּא מוֹכְרָה לוֹ לֹא כְּבִהְמָתוֹ שְׁלֵגוּי הֵיא. רַבִּי אֲמַי בְּבִלְיָא בְּשֵׁם רַבִּינִי דִתְנִין. פְּעָמִים שְׁמוֹכְרָה לוֹ לְנִישְׁיוֹן וְהוּא מַחְזִירָה לְאַחֵר ג' יָמִים וְנִמְצָא עוֹבֵד עֲבוּדָה בְּבִהְמָתוֹ שְׁלֵישְׁרָא. מַעֲתָה לְנִישְׁיוֹן אֲסוּר שְׁלֹא לְנִישְׁיוֹן מוֹתָר. זֹו מִפְּנֵי זֹו.

עֲבַר וּמְכַר קוֹנְסִין אוֹתוֹ. כְּשֵׁם שְׁקוֹנְסִין לוֹ לְהִלְכָּה כִּד קוֹנְסִין לוֹ לְמִנְהָג. וּמִנִּין שְׁקוֹנְסִין לוֹ לְמִנְהָג. חַד בַּר נֵשׁ זִבִּין גְּמָלִיָּה לְאַרְמָא. אֵתָא עוֹבְדָא קוֹמִי רִישׁ לְקִישׁ וּקְנִסִי בְּדִיפְלָא בְּגִין דִּיחִזֵּר לִיה גְּמָלָא. אָמַר רַבִּי יוֹסִי בִּירְבִי בּוֹן. לְסָרְסוֹר קִנְס וְהוּוּ צְוֹחִין לִיה בְּרָא דְמִסְרִסֵּר לְאַרְמָא. רַבִּי שְׁמַעוֹן בֶּן לְקִישׁ כְּרַבִּי יוֹדָה. דִּתְנִי בְּשֵׁם רַבִּי יוֹדָה. הִלּוֹקֵחַ בְּהֶמְה מִן הַגּוֹי וְיִלְדָּה בְּכוֹר מַעֲלָה עִמּוֹ בְּשׁוּיָו וְנוֹתֵן חֲצִי דָמִים לַכֹּהֵן. נִתְּנָה לוֹ בְּקִבְלָה מַעֲלָה עִמּוֹ עַד פְּמָה דָּמִים וְנוֹתֵן כָּל־הַדָּמִים לַכֹּהֵן. וְחֲכָמִים אוֹמְרִים. הוּאִיל וְאַצְבָּע הַגּוֹי בְּאַמְצַע נִפְטְרָה מִן הַבְּכוֹרָה. רֹבְהָ דְרַבִּי שְׁמַעוֹן בֶּן לְקִישׁ מִדְּרַבִּי יוֹדָה. מָה דָּמַר רַבִּי יוֹדָה מִשּׁוּם הִילְכוֹת בְּכוֹרָה. וְמָה דָּמַר רַבִּי שְׁמַעוֹן בֶּן לְקִישׁ לְהִילְכוֹת בְּהֶמְה גָּסָה.

1 למה | פג מה בין גסה מה בין בהמה דקה | 2 ובהמה | פג בהמה | אמר | פג - | היא מתחייבת | פג הוא מתחייב | 3 הוא מתחייב | פג היא מתחייבת מכיון | פ וכוין ג ומכיון | - | פ ברם הכא ג והכא פג בהמתו של ישראל הוא והוא חשוד עליה¹⁷¹ | אמי | פ אימי בבליא | ג בבליה רבני | ג רבנן | 4 פעמים | ג פעמים | לאחר | פ לו לאחר | ג | פג שלשה עובד עבודה | פ עובר עבירה | 6 לו | פ - | פ (2) בו (2) | 7 לו | פג בו לארמאי | פ | 8 דיחזר | פ דיחזר | פ יוסי | פ יוסה | פ קנסו והווי | פ והווי | 9 לארמאי | ג לארמאי | - | פ מה | 10 בשווי | פ בשוה | עד כמה דמים | פ (ג) אפלי עשר דמים בשווה | 11 נפטרה | ג ניפסדה | 12 רובה דר' שמעון בן לקיש מדר' יודה | פ ר' שמעון בן לקיש כר' יודה. ורבה מן דר' יודה דמר | פ דאמר משום | פ משם ומה דמר | פ מה דאמר | 13 להילכות | פ משום הילכות

Nowhere does one sell large animals to them.” Why? For a large animal there might be an obligation for a purification offering¹⁷²; for a small animal there can be no obligation for a purification offering. But does he not shear, does he not milk? One says, there it is liable, here he is liable¹⁷³. But if it is sold, is it not the Gentile’s animal? The Babylonian Rabbi Immi¹⁷⁴ in the

name of the rabbis there: Sometimes he sells it on trial and returns it after three days, then it turns out that he did do work with the Jew's animal¹⁷⁵. Then on trial it should be forbidden, not on trial permitted. One is because of the other¹⁷⁶.

If he transgressed and sold one fines him. Just as one fines for practice so one fines for custom. From where that one fines for custom? A person sold his camel to an Aramean¹⁷⁷. The case came before Rabbi Simeon ben Laqish who fined him double¹⁷⁸ to make him take back the camel. Rabbi Yose ben Rabbi Abun said, they fined the broker and called him son who brokers to Arameans¹⁷⁹. Does Rabbi Simeon ben Laqish follow Rabbi Jehudah¹⁸⁰? As it was stated in the name of Rabbi Jehuda¹⁸¹: "If somebody buys an animal from a Gentile and it gave birth to a firstling, he buys it up to its worth and gives half of its worth to a Cohen. If it was given to him as contractor, he has to pay for up to ten times its worth and gives all of its worth to the Cohen. But the Sages say, since the finger of the Gentile in involved it is no longer liable as firstling¹⁸²." Rabbi Simeon ben Laqish is more than Rabbi Jehudah. What Rabbi Jehudah said because of the practice of firstlings; but what Rabbi Simeon ben Laqish said because of practice regarding a large animal¹⁸³.

171 An erroneous copy from the first paragraph.

172 If the Gentile does work with the Jew's animal on the Sabbath, it is a violation of the Sabbath by biblical standards.

173 It is clear that shearing a sheep on the Sabbath is a violation of biblical law (Mishnah *Šabbat* 7:2). The Yerushalmi holds that milking a goat also is a biblical prohibition. But giving the animal rest on the Sabbath is an obligation of the owner; he is liable even if another person does the work with his consent. But the Gentile who shears or milks the animal violates no prohibition; since the animal is passive the owner also does not violate any biblical statute.

174 A Babylonian who immigrated to Galilee in the generation after R. Immi the Galilean. In the Babli 15a he is called Rami ben Rabbi Yeva.

175 If the Gentile takes the animal on Friday and returns it on Sunday he will have worked with it on the Sabbath with the agreement of the Jew who it turns out still is the owner.

176 This is a rabbinic "fence around the law," far from biblical prohibitions.

177 A Gentile. While "Gentile" is used to emphasize the pagan character of a person, "Aramean" simply characterizes him as Non-Jew.

178 Greek διπλῆ. In א the Hebrew/Aramaic translation is used. In א and the

Babli, *Bekhorot* 3a, he authorizes a fine up to ten times its price.

179 Translated following פ.

180 Could R. Simeon ben Laqish act against accepted practice in this case?

181 Tosephta *Bekhorot* 2:1, Babli *Bekhorot*

2b.

182 Undisputed practice follows the Sages, cf. Note 187.

183 The two cases have nothing in common.

(40a line 7) רבי יהודה מותר בשבורה. לא אמר רבי יהודה אלא בשבורה שאינה יכולה להתרפוא. אמרו לו. והלא הוא מביא לה זכר והוא רובעה והיא יולדת. אמר להן. אף אני לא אמרתי אלא בסוס זכר שאינו יכול להתרפוא. אמרו לו. והלא הוא מביא לו נקיבה והיא רובעת ממנו והיא יולדת. רב אבין בשם רבנין דתמן. זאת אומרת שאסור להמציא להן עוברין. תמן תנינן. הלוקח עובר חמורו של נכרי והמוכר לו אף על פי שאינו רשאי. והמשתתף לו והמקבל ממנו והנותן לו בקבלה פטור מן הבכורה. רבי חגיג בעא קומי רבי יוסי. לית הדיא אמרה שאסור להמציא להן עוברין. אמר ליה. כבר קדמך רב אבין בשם רבנין דתמן. זאת אומרת שאסור להמציא להן עוברין.

1 יהודה | פ יודה (2) 2 הוא מביא | פ מביאין והוא רובה והיא יולדת | פ ורבעת ממנו 3 בסוס | פ בשבור הוא מביא | פ מביאין והיא | והוא 4 רובעת ממנו | פ רובעה אבין | פ אבון 5 עוברין | פ זרע והמוכר | פ המוכר והמשתתף | פ המשתתף 6 ממנו | ג הימנו בעא | ג בעה 7 עוברין | פ עבדים אבין | פ אבון (2) 8 עוברין | פ זרע

“Rebbi Jehudah permits damaged ones.” Rebbi Jehudah said this only for a damaged one which cannot be healed¹⁸⁴. They told him, may he not bring a male to it, he fertilizes it and it gives birth? He said to them, I also said this only about a male (horse) [damaged one]¹⁸⁵ which cannot be healed. They told him, may he not bring a female to him, she is fertilized by him and gives birth? Rav Abin in the name of the rabbis there: This implies that one is forbidden to provide them with fetuses¹⁸⁶. There¹⁸⁷, we have stated: “If somebody buys a Non-Jew’s donkey fetus or who sells one to him even though he is not authorized, or one who enters into partnership, or accepts from him as contractor, or lets it in contract, is not liable for firstling.” Rebbi Haggai asked before Rebbi Yose, does this¹⁸⁸ not imply that one is forbidden to provide them with fetuses? He said to them, Rebbi Abin in the name of the rabbis there already preceded you: This implies that one is forbidden to provide them with fetuses.

184 To ever work again.

here, the (correct) one in brackets from

185 The text in parentheses is from the text

Pesahim.

186 Since the argument of the rabbis has nothing to do with Sabbath prohibitions. The Babli, 16a and *Bekhorot* 2b, disagrees and reports that R. Jehudah denies that a

disabled cow will accept a male.

187 Mishnah *Bekhorot* 1:1.

188 The note that one is not authorized to sell a pregnant animal to a Gentile.

17) (40a line 17) בְּנֵי בְּתִירָה מְתִיר בְּסוּסִי: לֹא אָמַר בֶּן בְּתִירָה אֶלָּא בְּסוּסִי זָכָר שֶׁהוֹרָג בְּעָלָיו בְּמִלְחָמָה. וְיֵשׁ אוֹמְרִים. שֶׁרָץ אַחֲרֵי הַנְּקִיבוֹת. וְיֵשׁ אוֹמְרִים. שֶׁעוֹמֵד וּמִשְׁתַּיֵּן. מִה בְּיִנְהוּן. סָרִיס. מֵאֵן דָּאֵמַר. שֶׁרָץ אַחֲרֵי הַנְּקִיבוֹת. אֵינוֹ רָץ. וּמֵאֵן דָּאֵמַר. עוֹמֵד וּמִשְׁתַּיֵּן. אִף זֶה עוֹמֵד וּמִשְׁתַּיֵּן. רַבִּי תַנְחוּם בַּר חִיָּה. לְקַשְׁיָקִין כּוֹדְנוּ בְּרִיחִים. רַבִּי יוֹסִי בִּירְכִי בּוֹן בֶּשֶׁם רַבִּי הוּנָא. בֶּן בְּתִירָה וְרַבִּי תַנְתָּן שְׁנֵיהֶם אָמְרוּ דְּבַר אֶחָד. דִּתְנִי. הוֹצִיא מִן הַבְּהֵמָה וּמִן הַחִיָּה וּמִן הָעוֹפוֹת בֵּין חַיִּים בֵּין מֵתִים חַיִּב. רַבִּי תַנְתָּן אוֹמַר. מֵתִים חַיִּב. חַיִּים פְּטוּר. וְרַבְנָן אֵיתָ לְהוֹן. חַיִּב חֲטָאֵת. וְאֵינוֹן מְתִיבִין לִיה אֶכָּן. כְּשִׁטְתּוֹ הַשִּׁיבוּהוּ. כְּשִׁטְתָּךְ שְׂאֵתָה אוֹמַר. מְשוּם שְׁבוּת. אוֹף אֲנָא אֵיתָ לִי. לְקַשְׁיָקִין כּוֹדְנוּ לְרִיחִים. רַבִּי אוֹמַר. אוֹמַר אֲנִי שְׂאֵסוֹר מְשוּם שְׁנֵי דְבָרִים. מְשוּם כְּלִי זֵיין וּמְשוּם בְּהֵמָה גְּסָה. וְתַנִּי כֵן. חִיָּה גְּסָה כְּבֵהֶמָה דְּקָה. מֵאֵן תַּנְיָתָה. רַבִּי. דְּבָרֵי חֲכָמִים. רַבִּי בִּיסְנָא רַבִּי חֲנָן בַּר בָּא בֶּשֶׁם רַב. חִיָּה גְּסָה כְּבֵהֶמָה גְּסָה.

1 שהורג | פג שהוא הורג 2 שרץ | פג שהוא רץ הנקיבות | פ נקיבה שעומד | פג שהוא עומד מה ביניהן | פג מה נפק מן ביניהן סריס | פ הסריס 3 שרץ | פג שהוא רץ הנקיבות | פ הנקיבה אינו רץ | זה אינו רץ אחר נקיבה ג אינו רץ אחר הנקיבות ומאן דאמר | פג מאן דמר - | פ שהוא זה | פג הוא - | פג דברי חכמים 4 ר' | פ ר' אחא בשם ר' ג' ר' אחא בשם ר' בר ג' ביר' - | פ הוא בריחים | פ בריחים ג לרחיין יוסי | פ יוסה הונא | פג חונה 5 שניהם | פ - ג שניהן הוציא | ג המוציא מן הבהמה ומן החיה ומן העופות | פג בהמה וחיה ועופות חיים | ג חיין 6 מתים | ג מתין (2) חיים | פג חיין ורבנן | פג רבנן להון | ג לון משם חייב | פ משום חייב 7 אכן | פ הכין ג הכן שאתה | פג שאת שבות | פ הילכות בהמה גסיה ג הלכת בהמה גסיה אנא אית לי | פג אנן אית לן 8 לריחים | פ בריחים שאסור | פ שהוא אסור משום | ג משם 9 - | פ הילכות ג הלכת דקה | פג גסיה חכמים | ג חכמין ביסנא | ג ביסנא ר' חנן | פ חנין ג חנן 10 רב | ג ר' חיה גסיה | פ דקה

“Ben Bathyra permits horses.” Ben Bathyra said this only about a male horse because it kills its owner in war. Some say, because it runs after females, and some say, because it stands still to urinate¹⁸⁹. What is between them? A gelding. He who says because it runs after females, it does not run. He who says because it stands still to urinate, this one also stands still to urinate. [Rebbi Aḥa in the name of]¹⁹⁰ Rebbi Tanḥum bar Ḥiyya: If it gets old he binds it to the grindstone¹⁹¹. Rebbi Yose ben Rebbi Abun in the name of Rebbi Huna: Ben Bathyra and Rebbi Nathan both said the same¹⁹², as it was stated¹⁹³: “If he carried out domestic animals, wild animals, or birds, whether alive or dead, he is liable. Rebbi Nathan says, dead he is liable, alive he is not liable.” The rabbis hold that he is liable for a purification sacrifice and they answer him so¹⁹⁴? They answer following his own argument. Following your

argument, since you are saying because of rabbinic Sabbath prohibition, also we hold that if it gets old he binds it to the grindstone. Rabbi says, I am saying that it is forbidden for two reasons, as a weapon¹⁹⁵ and as a large animal. It was stated so: A large wild animal is like a (small) [large]¹⁹⁶ domestic animal¹⁹⁷. Who stated this? Rabbi. The words of the Sages: Rabbi Bisna, Rabbi Hanan bar Abba in the name of Rav¹⁹⁸: A wild animal is like a (large) [small]¹⁹⁶ domestic animal.

189 At this moment the horse will not obey its master and therefore be dangerous.

190 Added from the *Pesahim* texts.

191 Then it is used like a beast of burden and the same restriction may apply as to the sale of cattle. Babli 16a.

192 For the laws of Sabbath. Everybody agrees that “a living person carries himself”; it is permitted to carry a human baby from private to public domains. The rabbis restrict this to humans; R. Nathan explicitly and Ben Bathyra implicitly (Note 160) extend the rule to animals. Babli *Šabbat* 94a.

193 Tosephta *Šabbat* 8:34 Babli *Šabbat* 94a.

194 Why do they object because of the use of old horses which only implies a violation

of rabbinic rules but not to the possible use of a younger horse in hunting which would violate biblical rules?

195 Which makes the seller of the weapon an accessory to murder before the fact. Babli 16a.

196 The correct text in brackets is from *Pesahim*, the text in parentheses is from *Avodah zarah*. In the last sentence, the Genizah text follows the one in *Avodah zarah*; this clearly is impossible.

197 A horse is considered a tamed wild animal, not domesticated by nature.

198 It should be Rav Hanin, not Rabbi. The Genizah text has the statement in the name of Rabbi Hiyya, Rav’s uncle and foremost teacher.

משנה ז: אין מוכרין להם דובין ואריות וכל דבר שיש בו נזק לרבים ואין בונים עמקה בסילקי נדרון ואיסטדיא ובימה. אבל בונים עמקה בימיסאות וקרחצאות. הגיעו לכפה שמעמידין בה עבודה זרה אסור לבנותה: (fol. 39a)

Mishnah 7: One does not sell them bears and lions, or anything damaging to the public; nor does one build with them a basilica¹⁹⁹, a gallows²⁰⁰, a stadion²⁰¹, or a rostrum²⁰². But one builds with them public²⁰³ and private baths; when they come to the cupola where an idol will be placed it is forbidden to build it.

199 Greek βασιλική “king’s palace”, a government building in the provinces, automatically dedicated to the worship of Rome and the Emperor.

200 Since one may assume that most of death sentences passed by the Roman government are unjust.

201 Greek στάδιον, the place of gladiator’s combats, race courses, etc.

202 Podiums for public speeches or trials.

203 Reading with Maimonides and the ‘*Arukh*’ from Greek δημόσια.

(40a line 31) **הלכה ז:** אין מוכרין להם דובין ואריות כול'. הא דבר שאין בו נזקא לרבים מותר. מתניתין דרבי. דתני. הרוצה את הנחשים ואת החכרים מוקיון מופיון מוליון מילרין מילריה סגלרין סגילריה. הרי זה אסור משום מושב לצים. שנתאמר ובמושב לצים לא ישב: וכולן מביאין לידי בטול תורה. שנתאמר כי אם בתורת יי חפצו. העולה לתיאטרון אסור משום עבודה זרה. דברי רבי מאיר. וחכמים אומרים. בשעה שהן מזבלין אסור משום עבודה זרה. ואם לאו משום מושב לצים בלבד. העולה לתיאטרון וצוות. אם לצורך הרבים מותר. ואם מתחשד אסור. היושב באצטדיון הרי זה שופך דמים. רבי נאן מתיר מפני שני דברים. משום שצווח ומציל את הנפשות. ומעיד על האשה שתינשא.

עבר וזנה. רבי לעזר אומר. מותר. אמר רבי מנא. לא מסתברא כהן סיבירה דלא אסור דהוא חייב כל-הדא כיפתא.

Halakhah 7: “One does not sell them bears and lions,” etc. Therefore something which does not present a danger to the public one may sell to them. Our Mishnah follows Rabbi²⁰⁴. As it was stated²⁰⁵: “One who sees snake charmers and conjurers, *muqion*, *mupion*, *mulion*, *mlarin*, *mlaria*, *sigillarin*, *sigillaria*²⁰⁶, this is forbidden because of ‘seat of the scoffers,’ as it is said,²⁰⁷ *in the seat of scoffers he did not sit*. All this leads to neglect of the Torah, as it is said²⁰⁸, *but in the teachings of the Eternal is his desire*. Going to the theater²⁰⁹ is forbidden as pagan worship, the words of Rabbi Meir, but the Sages say, when they present offerings it is forbidden because of pagan worship, otherwise it only is forbidden because of ‘seat of scoffers.’ One who goes to the theater to shout²¹⁰; if it is for a public need it is permitted, if to ingratiate himself it is forbidden. One who sits in the stadium is a spiller of blood²¹¹. Rabbi Nathan permits because of two reasons, because he can shout and save lives²¹², and he can testify for a woman that she can remarry²¹³.”

If he transgressed and built. Rabbi Eleazar said, it remains permitted²¹⁴. Rabbi Mana said, it rather seems reasonable following the opinion that it is forbidden because he would have prevented²¹⁵ the entire cupola.

204 It is not known what this refers to.

205 Babli 18b, Tosephta 2:6, *Yalqut Ps.* 1:1 (#613).

206 The different sources give different readings for the names of the performers. Yerushalmi:

מוקיון מופיון מוליון מילרין מילרין סגילרין סגילרין
Tosephta ed. Zuckerman

בוקיון מוקיון מוליון סגלרין סגלרין

Tosephta ed. princeps

בוקיון מוקיון מוליון סגלרין סגלרין

Babli ed. princeps

בוקיון מוקיון מוליון לוליון בלורין סלגורין

Babli Ms. Munich

בוקיון מוקיון מוליון לוליון סגליון סגלקין בלרין
בלריון מלרין מלרין סלגורין

Yalqut

בוקיון מוקיון מוליון לוליון סגליון סגלדן כלרין בלרין
מלרין מלרין

For the words appearing in the Yerushalmi there seems to be unanimity that the first three are *maccus*, the buffoon, corresponding to the Babli's *bucco*, *μῶκος* the comedian, *mulio* the donkey trainer. *Sigillaria* is the holiday which concludes the *saturnalia*; Kohut notes a meaning "puppeteer" for *sigillarius* (סגילרין) quoted in DuCange's Medieval Latin dictionary.

Compare also *sicinnista*, "dancer (*m.*) of the *sicinnis*" a dance of satyrs (E. G.) The remaining two words מילרין מילרין seem to remain without reasonable identification.

207 *Ps.* 1:1.

208 *Ps.* 1:2.

209 Probably meaning: amphitheater (E. G.). Both Greek tragedy and Comedy were religious ceremonies.

210 In the theater it was to vote with one of the parties. In the Babli sources (Babli and Tosephta), instead of מִתְחַשֵּׁב "to ingratiate oneself" one reads מִתְחַשֵּׁב "to be counted as one of them". The meaning is the same.

211 If there were no public, neither fights of gladiators nor fights of men with wild beasts would be staged.

212 If a wounded gladiator begs for his life, he can vote to let him live.

213 If a Jew is killed in one of these performances the spectator can testify that his wife is a widow and can remarry.

214 Halakhah 1:5, Note 156. The Babli, 19b, knows only of R. Eleazar's ruling.

215 From the verb חָיַד "to deviate".

Maybe if the Jew had refused to build the cupola it would not have been built.

(fol. 39a) **משנה ח:** איין מוזכרין להם במוזכר לפרקע אכל מוזכר הוא משקצין. רבי יהודה אומר מוזכר הוא לו על מנת לקוץ.

Mishnah 8: One does not sell to them anything connected to the ground, but one may sell for when it will be cut²¹⁶. Rabbi Jehudah says, he may sell for the purpose of cutting.

(40a line 43) **הלכה ח:** אין מוכרין להם במחובר לקרקע כול'. רבי בון בר חייא בעי. אף בהמה גסה במחלוקת מוכר הוא לו על מנת לשחוט. אשכח תני. אף בהמה גסה במחלוקת. רבי יהודה אומר. מוכר לו על מנת לשחוט.

Halakhah 8: “One does not sell to them anything connected to the ground,” etc. Rabbi Abun bar Hiyya asked: Is there also a disagreement about large cattle? May one sell for the purpose of slaughter? It was found stated: Also large cattle is in dispute; Rabbi Jehudah says, he may sell for the purpose of slaughtering²¹⁷.

216 This is a rule particular to the Land of Israel, to preserve the Jewish character of the land, as explained in Halakha 9. It does not apply to the diaspora.

217 Babli 20a. This is not dependent on the Land; it applies everywhere. The Babli defines R. Jehudah's adversary as R. Meir.

(fol. 29a) **משנה ט:** אין משכירין להן בתים בארץ ישראל ואין צריך לומר שדות. ובסוריא משכירין להם בתים אבל לא שדות. ובחזון לארץ מוכרין להם בתים ומשכירין שדות דברי רבי מאיר. רבי יוסי אומר אף בארץ ישראל משכירין להם בתים אבל לא שדות. ובסוריא מוכרים בתים ומשכירין שדות. ובחוצה לארץ מוכרין אילו ואילו:

Mishnah 9: In the Land of Israel²¹⁸ one does not lease houses to them and certainly not fields. In Syria²¹⁹ one leases houses to them but not fields. Outside the Land one sells houses to them and leases fields, the words of Rabbi Meir. Rabbi Yose says, also in the Land of Israel one leases houses to them but not fields; in Syria one sells houses and leases fields; outside the Land one sells both²²⁰.

218 As defined in *Ševi'it* 6:1.

7:6 Note 119.

219 All territory ruled over by David but not included in the Land proper; cf. *Peah*

220 The opinion of R. Yose is pre-eminent.

(40a line 46) **הלכה ט:** אין משכירין להן בתים כול'. רבי זעירה בשם רבי יוסי בן חנינה רבי אבא רבי חייא בשם רבי יוחנן. לא תחנם לא תתן להם חן. לא תחנם לא תתן להם מתנת חנם. לא תחנם לא תתן להם חנינה בארץ. והתנינו אף בארץ ישראל משכירין להן בתים. בית

אין מצוי להתבדל מותוכו שדה מצוי להתבדל מותוכו. הורי רבי יוסי בירבי בון שאסור להשפיר להן קבורה בארץ ישראל על שם לא תתן להם חנייה בארץ.

Halakhah 9: “One does not lease houses to them,” etc.²²¹ Rabbi Ze‘ira in the name of Rabbi Yose ben Hanina, Rabbi Abba, Rabbi Hiyya²²² in the name of Rabbi Johanan: לא תתנם²²³ do credit them with charm; לא תתנם do not give them free gifts; לא תתנם do not give them encampment in the Land²²⁴. But did we not state, “also in the Land of Israel one leases houses to them”? A house is not a source of blessing; a field is a source of blessing²²⁵. Rabbi Yose ben Rabbi Abun instructed that it is forbidden to let them lease a grave in the Land of Israel because of “do not give them encampment in the Land.”²²⁶

221 Babli 19b/20a. The entire theory built on *Deut.* 7:2 is Amoraic even though in the Babli it is supported by a *baraita*.

222 These are two parallel traditions, one in the name of R. Yose bar Hanina, the other in the name of R. Johanan.

223 *Deut.* 7:2. The verse refers only to the original Canaanite inhabitants.

224 The different interpretations are based

on reading the word as derived from the roots חנן, חנם, חנה. They will be discussed in the inverse order of the first quote.

225 Cf. Babli *Menahot* 66b Tosaphot s. v. מירוח.

226 Since a permanent irrevocable lease is the equivalent of a sale.

(40a line 52) לא תתנם לא תתן להם מתנת חנם. והתני. מעשה ברבן גמליאל שהיה מהלך בדדך וראה קלוסקין אחת מושלכת בדדך. אמר לטבי עבדו. טול לך קלוסקין זו. ראה גוי אחד בא כנגדו. אמר לו. מבגיי. טול לך קלוסקין זו. רץ אחריו רבי אילעאי. אמר לו. מה שמך. אמר לו. מבגיי. ומאין אתה. אמר לו. מן העיירות שלבורגניו. ומכדך הוא רבן גמליאל מןמך. אמר לו. לא. כיין רבן גמליאל ברוח הקודש. ולמדנו ממנו שלשה דברים. למדנו שאין מעבירין על האוכלין. ושתמיצו שלנכרי מותר לאחר הפסח מיד. ושהולכים אחר רוב עובדי דרכים. רבי יעקב בר זבדי בשם רבי אבהו. הדא דתימר. בראשונה. אבל עכשיו מעבירין על האוכלין מפני הכשפים.

עם כשהוא יוצא מגזיב בא אחד להישאל על נדרו. אמר לזה שהיה מהלך עמו. תאמר ששתינו רביעית יין באיטלקי. אמר לו. הין. אמר לשואל. טייל עמנו עד שנפגי את יינינו. כיון שהגיעו לסולמה שלצור נדר רבן גמליאל ונתעטף וישב לו והתיר לו את נדרו. מדבריו למדנו שרביעית יין משפרת ושהדדך מפיגה את היין. ואין נשאלין נדרים ולא מודים שתינו יין. ולא מפירין נדרים מהלכין אלא עטופין ויושבין. אמר רבי יוחנן. כך פתח לו יגש בוטה במדקרות חרב וגו'. לאחד שנדר מן הכפר. ווי דייכול. ווי דלא ייכול. אין אכיל הוא עבר על

נִדְרִיהָ. וְאִין לֹא אָכִיל הוּא חָטָא עַל נַפְשִׁיהָ. כִּי צִד נַעֲשֶׂה. לֵלֵךְ אֶצֶל חֲכָמִים וְיִתְּרוּ לוֹ אֶת נִדְרוֹ.
דְּכָתִיב וּלְשׁוֹן חֲכָמִים מִרְפָּא:

do not give them free gifts. But was it not stated²²⁷: “It happened that Rabban Gamliel was walking on the road and saw a loaf of bread¹³² thrown on the road. He said to his slave Tabi, pick up this loaf. He saw a Gentile coming towards him and said to him, Mabgai²²⁸, take this loaf. Rabbi Illai ran after him and asked him, what is your name? He told him, Mabgai. From where are you? He told him, from the guard-tower²²⁹ villages. Did Rabban Gamliel ever come to know you?, He told him, no. Rabban Gamliel had it right by the Holy Spirit. We learned from him three things. We learned that one does not pass over food. And that leavened matter of a Gentile is permitted immediately after Passover. And that one follows the majority of travelers²³⁰.” Rabbi Jacob bar Zavdi in the name of Rabbi Abbahu: That is, in earlier times. But today we pass over edibles because of sorcery²³¹.

²³²“When he was leaving Akzib there came a person to ask about his vow²³³. He asked his travel companion, would you say that we drank a *quartarius*²³⁴ of Italian wine? He said to him, yes. He told the person who asked, walk with us until we dissipate our wine. When they came to the Tyrian Ladder²³⁵ Rabban Gamliel dismounted, covered himself²³⁶, sat down, and dissolved his vow. From his words we learned that a *quartarius* of wine intoxicates and that travelling dissipates the wine. Also that one does not ask about vows and gives no instruction after drinking wine²³⁷. Also one does not dissolve vows while walking but covered and sitting.” Rabbi Johanan said, so he opened for him: *Some blurt out unthinkingly like sword piercing*²³⁸ etc. For example, one who made a vow not [to eat] a loaf. Woe if he eats, woe if he does not eat. If he eats he violates his vow. If he does not eat he sins against himself²³⁹. What should he do? He should go to the Sages who will dissolve his vow as is written, *but the sayings of the Sages are healing*.

227 Tosephta *Pesaḥim* 2:15; Babli *Eruvin* 64b, *Lev. rabba* 37(3). There it is stated that he went from Acco to Akzib near the Lebanese border riding on a donkey and implied that it was the day after the end of

Passover.

228 Levy reads the name as derived from *paganus*, “village dweller”. It is possible to see here the root פָּגַח “to fatten animals” said of pasture.

229 From Latin *burgus*, watch lower at a *limes*, Greek πύργος “tower”.

230 Since Tabi was circumcised and the time was just after the end of Passover, Rabban Gamliel riding on a donkey could not have asked his slave walking beside him to pick up a loaf of bread, and therefore acquiring it as ownerless, if he could not assume that it was lost by a Gentile since most of the travelers on that road were Gentiles. The road itself is described in *Ševi'it* (6:1 Note 21) as being the border between Jewish Galilee to the East and pagan Phoenicia to the West. If the leavened bread had been the property of a Jew during Passover its usufruct would be permanently forbidden to Jews.

231 Since abandoned food may be a health hazard, one is justified not to touch it.

232 Found in the same sources as the

preceding paragraph, Note 227.

233 Which according to Pharisaic tradition can be dissolved by an ordained rabbi; cf. *Introduction to Tractate Nedarim*, p. 422; *Nedarim* 3:1 Note 7.

234 About 135 ml.

235 Modern *Rosh Hanniqra* on the Lebanese border.

236 Wrapped himself in his toga.

237 For priests officiating in the Temple this is a biblical prohibition, *Lev.* 10:9-10.

238 *Prov.* 12:18.

239 The *nazir* who vows to abstain from wine at the end of his period of abstinence has to bring a purification offering usually reserved for sinners. His sin is that he voluntarily deprived himself of permitted enjoyments; cf. *Nedarim* 1:1 Note 95, *Qiddušin* 4:12 Note 272.

(40a line 72) לֹא תַחֲנֵם לֹא תִתֵּן לָהֶם חֵן. וְהִתְנִי. מַעֲשֵׂה בְּרַבִּין גַּמְלִיאֵל שֶׁהָיָה מְטַיֵּל בְּהַר הַבֵּית וְרָאָה אִשָּׁה אַחַת גּוֹיָה וּבִירָדָּה עָלֶיהָ. וְכִי דָרְכוּ שְׁלָרְבִין גַּמְלִיאֵל לְהַבִּיט בְּנָשִׁים. אָלֶּא דָּרָדָּה עַקְמוּמִית הָיְתָה כְּגוֹן אֲהִינן פְּסוּוֹרוֹס שֶׁהַבֵּית בָּהּ שָׁלֹא בְּטוֹבָתָהּ וּבִירָדָּה עָלֶיהָ. וְלֹא כֵן אָמַר רַבִּי זְעוּרָה בְּשֵׁם רַבִּי יוֹסִי בֶן חֲנִינָה רַבִּי בָּא רַבִּי חִינָה בְּשֵׁם רַבִּי יוֹחָנָן. לֹא תַחֲנֵם לֹא תִתֵּן עֲלֵיהֶם חֵן. מֶה אָמַר. אֲבִסְקִנְטָא. לֹא אָמַר אָלֶּא. בְּרוּךְ שֶׁכָּךְ לוֹ בְּרִיּוֹת נְאוֹת בְּעוֹלָמוֹ. שֶׁכֵּן רָאָה אֲפִילוֹ חֲמוֹר נָאָה אוֹ גַּמֶּל נָאָה סוּס נָאָה אוֹמֵר. בְּרוּךְ שֶׁכָּךְ דּוֹ בְּרִיּוֹת נְאוֹת בְּעוֹלָמוֹ.

do not credit them with charm. ²⁴⁰But was it not stated: It happened that Rabban Gamliel while walking on the Temple Mount saw a beautiful Gentile woman and recited a blessing over her. Does Rabban Gamliel usually look at women? It was a curved road, like a *pswros*²⁴¹, he looked at her because he could not avoid her. But did not Rabbi Ze'ura in the name of Rabbi Yose ben Hanina, Rabbi Abba, Rabbi Hiyya in the name of Rabbi Johanan say: לֹא תַחֲנֵם do not credit them with charm? What did he say? He did not say ἀβασααυτα²⁴² but “praised be He Who has beautiful creatures in His world,” because even if one saw a beautiful donkey, a beautiful camel,

ἐπίσυρμα “trail or track made by something

[illegible]

the lease is legitimate following R. Yose agrees, 21a.
there is no reason for such a fine. The Babli

מִשְׁנָה י: אֵף בְּמָקוֹם שֶׁאָמְרוּ לְהַשְׁכִּיר לֹא לְבֵית דִּירָה אָמְרוּ מִפְּנֵי שֶׁהוּא מְכָנִים
לְתוֹכוֹ עֲבוּדָה זָרָה שֶׁנֶּאֱמַר וְלֹא־תָבִיא תוֹעֵבָה אֶל־בֵּיתְךָ וְהָיִיתָ תָּרֵם בְּמֵהוּ וְגו'. וּבְכָל מָקוֹם לֹא
יִשְׁכִּיר לוֹ אֶת הַמְּרֻחֵץ מִפְּנֵי שֶׁהִיא נִקְרָאת עַל שְׁמוֹ:

Mishnah 10: Also in a case where they said to lease they did not mean a dwelling because he will introduce idols as it is said, *do not bring an abomination into your house for you would be anathema like it*²⁵⁵, etc. In any case he should not lease to him a bath house because it is called by his name²⁵⁶.

255 Deut. 7:26.

it cannot be operated on the Sabbath since

256 If the bath house (or any other public convenience) is known as the Jew's property

people would think that the Jew operates it.

40b line 19) אֵף בְּמָקוֹם שֶׁאָמְרוּ לְהַשְׁכִּיר כו'. הָא בְּמָקוֹם שֶׁנֶּהְיָ לְמַכּוֹר מוֹכֵר לוֹ אֶפִּילוּ בֵּית
דִּירָה וּמִשְׁכִּיר לוֹ אֶפִּילוּ בֵּית דִּירָה. רַבִּי אֶחָא רַבִּי תַנְחוּם בַּר חִיָּה בִּשְׁם רַבִּי לְעֶזֶר בִּרְבִּי יוֹסִי.
וְאֶפִּילוּ תִּיבָה קִטְנָה. כְּגוֹן בּוֹרְסָקִי שֶׁבְּצִדָּן. לֹא סוֹף דְּבָר כּוֹלָא אֵלָּא אֶפִּילוּ בֵּית אֶחָד. הֵיוּ
שְׂתֵּי זֵו לְפָנִים מֵאָז הַפְּנִימִית חִיבָת וְהַחִיצוֹנָה פְּטוּרָה. הֵיכָּה אַחַת וְנִעֲשִׂית שְׂתֵּי שְׂתֵּי
וְנִעֲשִׂית אַחַת. רַבִּי אֲבִין בִּשְׁם רַבִּינָן דְּתַמְנָן. זֹאת אוֹמֶרֶת שְׂדֵה שֶׁהִיא נְתוּנָה עַל גִּב הַדָּרָךְ אֲסוּר
לְהַשְׁכִּירָה לְגוֹזִים. מִפְּנֵי שֶׁנִּקְרָאת עַל שֵׁם יִשְׂרָאֵל וְהָן חוֹרְשִׁין בָּהּ בִּשְׂבָתוֹת וּבְיָמֵם טוֹבִים.

1 מוֹכֵר | G מוֹכִיר | בֵּית | G לְבֵית 2 וּמִשְׁכִּיר | G מִשְׁכִּיר | בֵּית | G לְבֵית | G אֶחָד | G אֶחָה | G חִיָּה | G חֵיא
בִּיר' יוֹסִי | G בֶּן יוֹסֵה 3 בּוֹרְסָקִי | בּוֹרְסָקִי 4 שְׂתֵּי | G שְׂתֵּי | G לְפָנִים | G לְפָנִים 5 וְנִעֲשִׂית | G
וְנִעֲשִׂית אֲבִין | G אֲבִין | G רַבִּין | G אֲסוּר | G שֶׁאֲסוּר 6 לְהַשְׁכִּירָה | G לְהַשְׁכִּירָה | G שֶׁנִּקְרָאת | G שֶׁהִיא
נִקְרָאת חוֹרְשִׁין | G חוֹרְשִׁים | G בָּהּ

“Also in a case where they said to lease,” etc. Therefore, at a place where one is used to sell²⁵⁷, he may sell even a dwelling and lease a dwelling²⁵⁸.
Rebbi Aḥa, Rebbi Tanḥum bar Ḥiyya in the name of Rebbi Eleazar ben Rebbi Yose: Even a small room as in the tannery of Sidon²⁵⁹. Not only all of it, but even one room. “If there were two, one inside the other, the inner one is liable, the outer one is not liable.²⁶⁰” If there was one and it was subdivided into two, two and combined into one²⁶¹? Rebbi Abin in the name of the rabbis

there.²⁶² This²⁶³ implies that if there was a field adjacent to a road it is forbidden to lease it to Gentiles because it is known by the name of the Jew and they plough there on Sabbaths and holidays.

257 Outside the Land for R. Meir and in Syria for R. Yose.

258 *Deut.* 7:26 applies only to the Land. In the theory of the Babli, Gentiles outside the Land are no real idolators but only followers of inherited superstitions. Cf. Tosephta 2:8.

259 If a small room in an industrial complex cannot be leased to Gentiles as living space. A similar text in Babli 21b.

260 This is Mishnah *Ma'aserot* 3:5 (Note 92). Harvested grain becomes liable for tithes only when it is being prepared for storage. An example of this is grain

transported from the field to the courtyard attached to the farmer's dwelling. R. Jehudah holds that if there is a courtyard inside another, the inner one only counts in this respect.

261 How do the rules of tithing apply? The question is inappropriate here and not answered.

262 Of Babylonia.

263 The argument of the Mishnah about leasing a bathhouse. In Tosephta 2:9, R. Simeon forbids leasing a field anywhere for the same reason.

אין מעמידן פרק שני

(fol. 40b) **משנה א:** אין מעמידן בהמה בפונדקאות של גוים מפני שהשוודין על התרפעה. ולא תתייחד אשה עמהן מפני שהשוודין על העריות. ולא יתייחד אדם עמהן מפני שהשוודין על שפיכות דמים. בת ישראל לא תילד את הנכרית אבל נכרית מילדת בת ישראל. בת ישראל לא תניק בנה של נכרית אבל נכרית מניקה בנה של ישראלית ברשותה:

Mishnah 1: One does not put up an animal in hostelryes¹ of Gentiles since they are suspected of bestiality. A woman should not be alone with them² because they are suspected of forbidden sexual relations; a man should not stay alone with them since they are suspected of shedding blood. A Jewish woman should not be a midwife for a Non-Jew³ but a Non-Jew may be a midwife for a Jewish woman. A Jewish woman should not nurse the child of a Non-Jewish woman but a Non-Jewish woman may nurse the child of a Jewish woman at her home⁴.

1 Cf. Chapter 1, Note 123.

2 A single woman with any number of Gentile men.

3 Since she helps to increase the number of pagan worshippers. This reason given in

the Halakhah is (incorrectly) part of the Mishnah in some Babli and Mishnah texts.

4 The wet-nurse should not be allowed to remove the baby from his mother's house since she might kill it.

(40c line 2) **הלכה א:** אין מעמידן בהמה בפונדקאות של גוים כול'. רבי זעירא רבי אבהו בשם רבי יוסי בירבי חנינה. רבי בא רבי יונה. תיפתר רבי ליעזר. דרבי ליעזר אמר. אינה נלקחת מן הגוים. רבי יונה בעי. ולמה לי נן פתרון לה דברי הכל. כיי דמר רבי לעזר בשם רב. ואפילו כמאן דמר. מותר למכור אסור לייחוד. עבר וייחד דברי הכל. אמר רבי ירמיה. נישמענה מן הדא. האשה שנחבשה בידי גוים. אמר רבי יוסי. שנייא היא אשה שדרכה לצוות. הגע עצמה שהיתה חרשת. דרבה לרמו. מאי כדון. תיפתר רבי ליעזר. דרבי ליעזר אומר. אינה נלקחת מן הגוים. הוון בעו מימר. מה פליגין רבי ליעזר ורבנן. בפרה. על שום מעלה היא בפרה סיקסול היא בפרה. מן מה דרבנן מתיבין לרבי ליעזר. כל-צאן קדר יקבצו לך. הדא אמרה.

אף בשאָר כָּל־הַדְּבָרִים חֲלוּק רַבִּי לִיעֶזֶר. רַבִּי הוֹשַׁעְיָה בְּעֵי. מְשִׁיבִין דָּבָר וְשֹׁהָא לְבֹא עַל דָּבָר וְשֹׁהָא לְשַׁעְבֵּר. רַבִּי אֲבִין בְּעֵי. מְשִׁיבִין דָּבָר וְשִׁנְיָא הָרַע בְּטַל עַל דָּבָר וְשִׁנְיָא הָרַע קִיָּיִם.

Halakhah 1: “One does not put up animals in hostelrys of Gentiles,” etc. Rabbi Ze’ira, Rabbi Abbahu in the name of Rabbi Yose ben Rabbi Hanina; Rabbi Abba, Rabbi Jonah⁵: explain it⁶ following Rabbi Eliezer, since Rabbi Eliezer said “it may not be bought from Gentiles.”⁷ Rabbi Jonah asked, why do we not explain it according to everybody, following what Rabbi Eleazar said in the name of Rav: Even one who says it is permitted to sell [says] it is forbidden to leave alone⁸. If he transgressed and left it alone by everybody’s opinion⁹. Rabbi Jeremiah said, let us hear from the following¹⁰: “A woman who was jailed by Gentiles.” Rabbi Yose said, it is different for a woman because she usually cries. Think of it if she was mute! She uses sign language. What about it¹¹? Explain it following Rabbi Eliezer, since Rabbi Eliezer said “it may not be bought from Gentiles.” They wanted to say, where do Rabbi Eliezer and the rabbis disagree? About the cow, because of “eminence was given to the cow, an adornment was made for the cow.”¹² But since the rabbis answer to Rabbi Eliezer *all sheep of Qedar will be assembled for you*¹³, this says that Rabbi Eliezer disagrees about everything. Rabbi Hoshai asked, does one reply with an argument about the future against one about the past¹⁴? Rabbi Abin asked, does one reply with an argument when evil inclinations will have disappeared against one when evil inclinations exist¹⁵?

5 Unfortunately G is very lacunary here; therefore its readings are not given after the Hebrew text. The Halakhah starts: “R. Ze’urah, R. Abbahu in the name of R. Yose ben Hanina, R. . . . R. Abbahu in the name of R. Yose ben Hanina, explain it . . .” There is no reason to mention the sixth generation R. Abba III and the fifth generation R. Jonah who later disagrees with the statement if already it was attributed to the second generation R. Yose ben Hanina.

6 The Mishnah which forbids to put up

unsupervised animals in the stable of a Gentile hostelry makes travel outside Jewish settlements practically impossible. An attribution to R. Eliezer removes the first part of the Mishnah from practice.

7 Mishnah Parah 2:1. This refers to the Red Cow (*Num.* 19) whose ashes are needed to cleanse people from the impurity of the dead. The Cow is not a Temple sacrifice; how far the restrictions imposed on sacrificial animals and the officiating priests apply to the Cow and its officiants are old

matters of dispute between Sadducees and Pharisees (Mishnah *Parah* 3:3,7) and among the rabbis themselves. One of the biblical requirements is that the Red Cow never carried a yoke (*Num.* 19:2). In Mishnah *Parah* 2:1, a first statement of R. Eliezer validates a pregnant Red Cow for the ceremonies; the reason is explained in Mishnah 4 by his student's R. Illai's son R. Jehudah, that a bull mounting the Cow on his own cannot be considered making her carrying anything; only copulation by human intervention makes the ox the equivalent of a yoke. The majority rejects the ruling; it considers the Cow and its fetus as two separate beings but v. 19:3 requires the Cow alone to be taken. These restrictions do not apply to ordinary sacrifices. R. Eliezer then forbids buying a Red Cow from Gentiles since a sodomized animal is unfit for the altar; the Sages disagree since without reason one does not suspect that such a thing happened; this would make the Mishnah here unreasonable. (The last generation R. Yose bar Abun even introduces buying a Red Cow from a Gentile into a story about R. Eliezer; *Peah* 1:1 Notes 99 ff., *Qiddushin* 1:7 Notes 607 ff.) Babli 23a.

8 One may not leave the animal alone with a Gentile. Chapter 1:6, Note 165. There the first tradent is R. Jonah himself.

9 It is not said what everybody's opinion is; the corresponding passage in G is in the name of "the rabbis of Caesarea, Giddul bar Benjamin in the name of Rav" but then is missing the conclusion. One has to assume that it was "if he transgressed and left it alone by everybody's opinion the animal remains permitted."

10 Mishnah *Ketubot* 2:9. If she is jailed because of money matters one must assume that she was not raped; if she was condemned to death one must assume that she was raped or consented to sex with her jailers. If a woman can be alone in the custody of Gentiles without being raped, may the same not be assumed of female animals?

11 The argument appears to be cogent.

12 In the Mishnah, not only do the rabbis permit to buy a Red Cow from a Gentile owner, they also allow to buy sacrificial animals from him. The question arises whether R. Eliezer will agree with this or not. The assumption here is that R. Eliezer will agree that sacrifices can be bought from Gentiles but not the Red Cow, whose ceremonies in pharisaic theory were made with many non-scriptural restrictions because of an important difference with Sadducees in matters of ritual purity (Mishnah *Parah* 3:7,8).

13 *Is.* 60:7. The verse ends: *they will be brought on My altar for pleasure*. This gives divine sanction for using animals raised by Gentiles for the altar. Since the verse speaks of sacrifices, not of the Red Cow, R. Eliezer must hold that sacrificial animals cannot be bought from Gentiles. The same argument is quoted in the Babli 24a.

14 The preceding argument does not prove anything in practice since in the next paragraph it will be shown that in messianic times the Gentiles will accept the Torah. Their animals may well be acceptable then but not now.

15 This is the same argument as before.

40c line 15) רבי הושעיה אמר. ולמה לי נן פתרון לה דברי הכל. כיי דמר רב הונא בשם רב. וישקלו את שקלי שלשים כסף. אילו שלשים מצות שעתידין בני נח לקבל עליהן. ורבנן אמרי. אילו שלשים צדיקים שאין העולם חסר מהן. דמר רבי נחמן בשם רבי מנא. אין העולם יכול להיות פחות מל' צדיקים כאבינו אברהם. ומה טעם. ואברהם היה יחיד. יהיה מניין ל'. פעמים שרובן בבבל ומיעוטן בארץ ישראל. פעמים שרובן בארץ ישראל ומיעוטן בבבל. סימן יפה לעולם בשעה שרובן בארץ. רבי חייה בר לולייני בשם רבי הושעיה. כל-המצות עתידין בני נח לקבל עליהן. ומה טעם. כייאז אהפוך אל-עמים שפה ברוך. ובסוף הן עתידין לחזור בהן. ומה טעם. ננתיקה את-מוסרותימו ונשליכה ממנו עבדתימו: זו מצות תפילין. זו מצות ציצית.

1 אמ' | G בעי הונא | G הונה 2 שקלי | G שכרי שלשים | G שלשים (2) מצות | G מצוות שעתידין בני נח | G שבני נח עתידין עליהן | G עליהם ורבנן | G ורבנן 3 אמרי | G אמרין שלשים | G שלשים דמר | G א' 4 מל' | G משלושים היה | G הי היה | G באברהם היו היה (remainder missing in G)

Rebbi Hoshiaia said¹⁶, why do we not explain it according to everybody, as Rav Huna said in the name of Rav: *They weighed for me my (sheqels) [wages]*¹⁷, *thirty pieces of silver*. These are the thirty commandments which the descendants of Noah will take upon themselves in the future¹⁸. But the rabbis say, there are the 30 just persons which the world never will be lacking¹⁹, as Rebbi Nahman said in the name of Rebbi Mana, the world cannot be with less than 30 just men like our father Abraham. What is the reason? *Abraham will certainly be*²⁰, the numerical value of יהיה is 30²¹. Sometimes the majority are in Babylonia and the minority in the Land of Israel; sometimes the majority are in the Land of Israel and the minority in Babylonia. It is a good sign for the world if most of them are in the Land²². Rebbi Hiyya bar Julianus in the name of Rebbi Hoshiaia: In the future the descendants of Noah will take all commandments upon themselves. What is the reason? *Then I shall transform Gentiles' purified lips*²³. But at the end they will renege on it. What is the reason? *Let us break their chains, and throw from us their ropes*²⁴! That is the commandment of phylacteries²⁵; that is the commandment of *šišit*²⁶.

16 In G: asked. This paragraph interrupts the discussion of the Mishnah and turns to explaining the verse *Is. 60:7* quoted earlier.

17 *Sach. 11:12*. The quote is wrong in L (in parentheses), correct in G [in brackets].

In v. 13 the pieces of silver are declared to be "the Eternal's treasure;" this explains the identification as saints.

18 "In the future", i. e., in the time of the Messiah. *Gen. rabba* 98(14) as opinion of

R. Johanan. In the Babli, *Hulin* 92a, in one opinion 30 commandments which the Gentiles already took upon themselves, of which they keep only three; one of them being not to allow homosexual marriages.

19 *Gen. rabba* 35(2) in the name of R. Simeon ben Ioḥai. In the Babli, *Hulin* 92a, in another opinion the 30 just Gentiles on whose merit the Gentile world exists. The Jewish world exists for the Babli on the merit of 36 just men (*Sukkah* 45b, *Sanhedrin* 97b).

20 *Gen.* 18:18.

21 $5+10+5+10=30$.

22 *Gen. rabba* 98(14) as opinion of Rav.

23 *Zeph.* 3:9. The verse ends: *They all are invoking the Eternal's Name, to serve Him with united shoulder*, implying that the Gentiles will accept the Jewish style of worship. Babli *Berakhot* 57b, in the name of R. Simeon ben Ioḥai.

24 *Ps.* 2:3; cf. Babli 3b.

25 *Midrash Psalms* 2(8). The chains are the straps of the phylactery on the arm.

26 These are the "ropes", *Tosaphot Avodah zarah* 3b s. v. ומניחין.

רבי יצחק ורבי אמי הוון יתבין מקשיי. והכתיב ויזבחו לי ביום ההוא מן השלל. וקיימונה. ולא ידעין אין חבריא קיימונה ואין רבי אמי קיימינה. על ראשה. מן השלל שהיה בדם הקריב. והא כתיב ואנשי בית-שמש העלו עולה ויזבחו זבחים ליי פרים. וכי משרגי פלשתים אנו למדין. ולא כן אמר רבי אבהו בשם רבי יוסי בר חנינה. ואפילו נקיבות הקריבו. ואת-הפרות העלו עולה ליי. והכתיב ויאמר שאול מעמלקי הביאום. אין למדין משאול. דמר ריש לקיש. שאול גרופית שלשקמה היה. והכתיב ויטח דנד את-הגורן. קנה ולא הקריב. והכתיב ואמר ארונה אל-המלך יי אלהיד ירצד: ירצד בתפילה. והכתיב ומיד בן-נר לא תקריבו את-לחם אלהיכם מכל-אלה. מכל-אלה אין את מקריב. לוקח אתה תמימים ומקריב. מה עבד לה רבי ליעזר. לוקח אתה בדמים ומקריב. הוא תני בדמים. ולא קריב ליעזר.

²⁷Rebbi Isaac and Rebbi Immi were sitting and asking, is it not written²⁸:

On that day they slaughtered of the booty for the Eternal? They explained it, but we do not know whether the colleagues explained it or Rebbi Immi explained it, from previous ones, from booty which was in their hands they sacrificed²⁹.

But is it not written³⁰: *The men of Bet Shemesh brought an elevation offering and slaughtered family offerings to the Eternal, oxen?* Can we learn anything from the rulers of the Philistines? Did not Rebbi Abbahu say in the name of Rebbi Yose ben Hanina, they even sacrificed females, *the cows they offered as elevation offering to the Eternal*³¹.

But is it not written³², *Saul said, they brought them from the Amalekite?* One does not learn from Saul; as Rebbi Simeon ben Laqish said, Saul was a sycamore shoot³³.

But it is not written³⁴, *David bought the threshing floor?* He bought but did not sacrifice. But is it not written³⁵, *Arawna said to the king, may the Eternal, your God, have pleasure with you.* May he find pleasure with you in prayer.

But is it not written³⁶, *Also from the hand of a stranger you should not bring your God's bread from any of these?* From any of these you do not sacrifice; you buy unblemished ones and sacrifice. What does Rebbi Eliezer do with this? You are buying for money and sacrifice? The one who stated "for money" cannot follow Rebbi Eliezer³⁷.

27 One returns to the prior topic, to try to understand R. Eliezer's position in view of biblical verses which seem to indicate that Gentile animals are perfectly acceptable as sacrifices.

28 2Chr. 15:11. At first glance this refers to the booty which they took from the Nubians as described in Chapter 14 since no other war of Asa was mentioned.

29 Since Chapter 15 does not refer to the war described in Chapter 14, it is not necessary to assume that "the booty" was taken from the Nubians.

30 1S. 6:15, one the day the Philistines returned the Ark on a carriage drawn by cows.

31 1S. 6:14. In Lev. 1:3 it is spelled out that an elevation offering must be a male animal. Since the entire proceedings were irregular, one cannot infer anything about

the rules to follow.

32 1S. 15:15. As explained in v. 21, the animals taken from the Gentile tribe were to be slaughtered as sacrifices. Babli 24b.

33 Something inedible. In the Babli, *Eruvin* 53a/b, the verse 1S. 14:47 in interpreted that religious practice never follows Saul. The same is intended here.

34 2S. 24:24.

35 2S. 24:23. To give pleasure before the Eternal usually is asserted of sacrifices (e. g., Ex. 28:38). Babli 24b.

36 Lev. 22:25.

37 Since R. Eliezer considers all animals of a Gentile unfit for the altar. But he must read the verse as absolute prohibition of accepting any sacrifice from a Gentile, similar to *Sifra Emor Pereq* 7(12) where the verse is read to prohibit accepting money of the Temple tax from Gentiles.

אֵין מַעֲמִידִין בְּהֶמָּה בְּפוֹנְדְקָאוֹת אֶפִּילוּ זָכָרִים אֶצֶל זָכָרִים וְנִקְיבוֹת אֶצֶל נְקִיבוֹת. וְאֵין צָרִיד לומר זָכָרִים אֶצֶל נְקִיבוֹת וְנִקְיבוֹת אֶצֶל זָכָרִים. זָכָרִים אֶצֶל זָכָרִים מָה אֵית (40c line 39)

לָדָּ. אוֹהֲבָתוֹ בָּאֵת וְאִינָהּ מוֹצֵאָה אוֹתוֹ וְהִיא נִרְבַּעַת הַיָּמִינוּ. נְקִיבוֹת אֶצֶל נְקִיבוֹת מָה אֵיִת לָדָּ. אוֹהֲבָה בָּא וְאִינוּ מוֹצֵא אוֹתָהּ וְרוֹבְעָה. רַבִּי חֲגַי בְּשֵׁם רַבִּי זְעִירָא. לֹא סוֹף דְּבַר בְּהֶמְתּוֹ שְׁלִישְׁרָאֵל אֶצֶל הַגּוֹי אֶלָּא אֶפִּילוֹ בְּהֶמְתּוֹ שְׁלִישְׁרָאֵל לֹא יִחַדְיָנָה אֶצֶל שְׁלִישְׁרָאֵל אֶחָד שְׁלֹא תִמְצִיא לוֹ תִקְלָה. מַעֲתָה אֶפִּילוֹ שְׁכַר אֵת בְּהֶמְתּוֹ לֹא נָאָה לַחֲזוֹר לִיחַדָּה אֶצֶל שְׁלֹא תִמְצִיא לוֹ תִקְלָה. חֲשׂוֹד הוּא לְבּוֹא עַל בְּהֶמְתּוֹ שְׁלִישְׁרָאֵל וְאִינוּ חֲשׂוֹד לְבּוֹא עַל בְּהֶמְתּוֹ עֲצָמוֹ. שְׁמֹתוֹד שְׂיֹדֵעַ שָׂאֵם בָּא עָלֶיהָ הוּא מַעֲקָרָה אִף הוּא לֹא בָּא עָלֶיהָ.

It was stated:³⁸ “One does not put up animals in hostelrys, even males next to males and females next to females; it is not necessary to say males next to females and females next to males.” Males next to males, what do you have? His beloved comes and she does not find him, then she is impregnated by it³⁹. Females next to females, what do you have? Her lover comes and does not find her and impregnates it. Rabbi Haggai in the name of Rabbi Ze‘ira: Not only the Jew’s animal at a Gentile’s but even a Gentile’s animal at a Jew’s should not be left alone with another Gentile acquaintance, lest it cause him a mishap⁴⁰. But then even if he leased his animal it would not be nice to return it to be alone with him, lest it cause him a mishap? He is suspected of cohabiting with another’s animal; he is not suspected to have sexual relations with his own animal. For he knows that if he cohabits with her he makes her sterile; therefore he will not cohabit with her⁴¹.

38 Babli 14a, Tosephta 3:2.

39 By the animal. Since Gentiles are used to have pre- and extramarital sex, if one of the partners feels the need for sex but does not find his/her partner, he/she will take an animal as replacement to satisfy him/her. The Tosephta holds otherwise, viz., that male animals attract homosexuals and

females heterosexuals. If males are put next to females, animal copulation will stimulate Gentile voyeurs.

40 The Jew would be the instrument of the second Gentile’s copulation with the first Gentile’s animal.

41 Babli 15a, 22b.

40c line 50) אֶבֶל מַעֲמִידִין בְּהֶמָּה בְּפוֹתֵי קָאוֹת שְׁלִכוֹתִים כּוֹל'. הָדָא אָמְרָה. כּוֹתִים לֹא נִחְשָׁדוּ עַל הָעֲרִיּוֹת. וְתִי כֵן. מִתְיַחַדֵּת אִשָּׁה עִם שְׁנֵי אֲנָשִׁים אֶפִּילוֹ שְׁנֵיהֶם עֲבָדִים אֶפִּילוֹ אֶחָד כּוֹתִי וְאֶחָד עֲבָד. אֶבֶל לֹא תִתְיַחַד עִם הַגּוֹי. חֲמוֹתוֹ וְאַחוֹת אִשְׁתּוֹ וְשֶׁאֵר כָּל-הָעֲרִיּוֹת לֹא יִתְיַחַדוּ עִמּוֹ אֶלָּא בְּפִי שְׁנַיִם.

“But one may put up an animal in a Samaritan hostelry,”⁴² etc. This implies that Samaritans are not suspected of forbidden relations. And it was

stated thus⁴³: “A woman may be alone with two men⁴⁴, even if both are slaves⁴⁵ or one a Samaritan and one a slave. But she should not be alone with a Gentile⁴⁶. His mother-in-law, and his wife’s sister, and all other forbidden relations should be alone with him but require the presence of two [others]⁴⁷.”

42 Tosephta 3:1. The Note “etc.” implies that the entire Tosephta (or an equivalent Galilean *baraita*) should have been quoted.

43 Tosephta *Qiddušin* 5:9.

44 Two Jews. This excludes being alone with husband, father, son, and possibly brother (*Qiddušin* 4:11, Notes 246-254). Babli 25b.

45 Converted and circumcised who belong to a Jewish *familia*.

46 This statement is obviously incomplete since a Jewish woman is not allowed to be alone with a single Jewish man, so certainly

not with a single Gentile. One must read with the Tosephta and G, of which a new leaf starts here: “not even with a hundred Gentiles.”

47 Tosephta *Qiddušin* 5:10, Babli *Qiddušin* 81b. These Babli sources have “sister” instead of “wife’s sister” but the Yerushalmi text is confirmed by G. In contrast to the Babli, the Yerushalmi both here and in *Qiddušin* unquestionably permits a man to be alone with his sister (but not to share a bed with her.)

תני. אין מוכרין להן לא זיין ולא כלי זיין. ואין משחזין להן את הזיין. תיפתר
בעיר שכולה גוים. ואין האשה בכלל שפיכות דמים. אמר רבי אמי. תיפתר בבריאה. אמר
רבי אבין. ואפילו תימר. יכולה אשה להטמין את עצמה ולומר. גויה אני. ואין האיש יכול
להטמין עצמו ולומר. גוי הוא.

1 מוכרין | מוכרים להן | G להם (2) את | G - תיפתר | G תפתר 2 אמי | G מנא 3 תימר | G
תמר באשה אשה | G היא האשה 4 עצמו | G את עצמו

It was stated:⁴⁸ “One sells them neither weapons nor accessories to weapons⁴⁹. One does not sharpen weapons for them.” Explain it in a town of only Gentiles⁵⁰. Is a woman not in danger to be killed⁵¹? Rabbi Immi⁵² said, explain it about a muscular one. Rabbi Abin said, even you may say [about a weak one.⁵³] A woman may hide herself and say, I am a Gentile, but a man cannot hide himself and say, he is a Gentile⁵⁴.

48 Tosephta 2:4, Babli 15b.

49 Such as a sheath of a sword.

50 But in a town with Jewish inhabitants one may provide weapons for the security forces.

51 This refers to the Mishnah which states that a woman is in danger to be raped but a man to be killed.

52 In G: R. Mana, the same in a quote in *Or zarua*. In the latter’s interpretation, a

- strong woman is one who would survive a gang rape. In a quote in Tosaphot 25b s. v. R. Jeremiah. 53 Added from G. (The vocalization is from G.)
54 Since he is circumcized.

(40c line 58) תָּנִי. נִדְוֹג לֹא גִוִּי לְיִשְׂרָאֵל נֹתֵנוּ לִימִינוּ. רַבִּי יִשְׁמָעֵאל בִּירְבִי יוֹסִי אֹמֵר. בְּסִיף לִימִינוּ וּבִמְקַל לְשִׁמְאֵלוֹ. עוֹלָה עִמּוֹ לְעִלְיָהּ וְיֵרֵד עִמּוֹ לְחִרּוֹת יִשְׂרָאֵל לְמַעַלָּה וְהַגּוֹי מְלַמֶּטָּה. לֹא יִשְׁוִיחַ לְפָנָיו שְׁלֹא יִרוּץ אֶת גּוֹלְגוֹלְתּוֹ. וּמִרְחִיב לֹא אֶת הַדֶּרֶךְ. אִם שְׁאֵלֹו לְהִיכֹן הוֹלֵךְ יִפְלִיגּוּ. כָּשֶׁם שֶׁהַפְּלִיג יַעֲקֹב אָבִינוּ לַעֲשִׂי. שְׁאֵמֵר לֹא עַד אֲשֶׁר-אָבּוּא אֶל-אֲדוֹנֵי שְׁעִירָה; וְהֵלֵךְ לְסוּכּוֹת. אָמֵר רַבִּי הוֹנָא. לֹא מִצִּינוּ שֶׁהֵלֵךְ יַעֲקֹב אָבִינוּ לַשְּׁעִיר. אָמֵר רַבִּי יוֹדֵן בְּרִיהַ דְּרַבִּי. לְעֵתִיד לְבּוֹא אָמֵר לִיה. וְעָלוּ מוֹשְׁעִים בְּתֵר צִיּוֹן לְשִׁפּוֹט אֶת-תֵּר עֵשָׂן.

1 נדווג | G נידווג לו | G - לימני | G מימני יוסי | G יוסי | G בסיף | G 2 לימני | G מימני לשמאלו | G משמאלו עמו | G עימו למעלה | G מלמעלה | G מלמטן | G 3 ירוץ | G ירוץ | G גולגולתו | G גלגולתו להיכן | G לאיכן הוא | G יפליג | G יפליג | G 4 שהפליג יעקב אבינו | G שעשה אבינו יעקב אבוא | G אבא אדוני | G אדני לסוכות | G לו לסוכות | G 5 הונא | G חונה לשעיר | G לשעירה בריה דר' | G ביר' איבו ליה | G לה | G לשפוט את הר עשין | G וגו'

It was stated⁵⁴: "If a Gentile is paired with a Jew, he puts him on his right hand side. Rabbi Ismael ben Rabbi Yose says, with a sword, at his right; with a staff, at his left⁵⁵. If he climbs with him to an upper floor or descends to the exit, the Jew should be higher and the Gentile below. He should not lie down before him lest he smite his skull. And he should extend the way to him, that if he asks him where he goes he should indicate a farther distance, as our father Jacob did with Esau, *until I shall come to my Lord at Seir*⁵⁶. But he went to Sukkot. Rabbi Huna said, we do not find that our father Jacob went to Seir. Rabbi Yudan, son of Rabbi [Aivo]⁵⁷, he spoke to him of the future world, *when saviors will climb on Mount Sion to judge Mount Esau*.⁵⁸"

54 Tosephta 3:4, Babli 25b.

weapon.

55 Since the sword is girded at his right

56 Gen. 33:14.

side and the staff held in his left hand. The

57 Added from G, missing in L.

Gentile should not have space to swing his

58 Ob. 21.

(40c line 65) בֵּית יִשְׂרָאֵל לֹא תִיּוֹלֵד אֶת הַנְּכָרִית. מִפְּנֵי שֶׁמַּעֲמִידָתָּ בּוֹ לַעֲבוֹדָה זָרָה. אֲבָל נְכָרִית מִיּוֹלֵדָת בֵּית יִשְׂרָאֵל. וְתָנִי כֵן. מִיּוֹלֵדָת מִבְּחוּץ אֲבָל לֹא מִבְּפָנִים. לֹא תִכְנִס נִדָּה לְפָנִים שְׁלֹא תִמַּיֵּק אֶת הָעוֹבֵר בְּמִיעֵיָהּ. וְלֹא תִשְׁקִינָה כּוֹס שֶׁל עֵיקָרִין. הֵיטָה חֲכָמָה. יִיבֶה כִּי דָמַר רַבִּי יַעֲקֹב בְּרַ אֲמָא בָּשֶׁם רַבִּי יוֹחָנָן. אִם הִיָּה רּוֹפֵא אוֹמֵן מוֹתֵר. וְהִכָּא. אִם הֵיטָה חֲכָמָה מוֹתֵר.

1 בן | גוי 2 כן | G - מיילדת | G מיילדתה 3 במיעה | G במיעה עיקרין | G עיקרים היתה | G הייתה 4 - G | ר' יוסה ביר' א' אנון שאילקא כן . . . מה מותר

59^c “A Jewish woman should not be a midwife for a Non-Jew, for she brings a son⁶⁰ to pagan worship; but a Non-Jew may be a midwife for a Jewish woman.” It was stated so: From the outside but not the inside. She should not put her hand inside not to squish the fetus in her innards, and she should not give her a cup of root-extract to drink⁶¹. If she was a medical doctor? This will come as what Rabbi Jacob bar Aḥa said in the name of Rabbi Johanan: If he was a professional healer it is permitted⁶². And here, if she was a medical doctor it is permitted. [Rebbi Yose bar Abun, these questions . . . [doc]tor permitted.⁶³]

59 Tosephta 3:3, Babli 26a.

60 This is the reading in all sources except G which reads גוי “Gentile” instead of בן “son”. Cf. Chapter 1, Note 177.

61 A concoction used to prevent pregnancies. The obligation of having children uniquely is on the male (Mishnah *Yebamot* 6:6); therefore a woman is permitted to use chemical birth control methods which do not change the sex act. Since Gentiles are suspect as potential

murderers such a potion may be taken only from a Jewish source or, as indicated later in this paragraph, also from a duly qualified Gentile professional.

62 Babli 27a, also in the name of R. Johanan. He has to worry about his professional reputation.

63 Fragment in G of a sentence missing in L and the *editio princeps*; probably a confirmation of the permission to use Gentile certified medical professionals.

40c line 70) בַּת יִשְׂרָאֵל לֹא תִנִּיךְ בְּנָה שְׁלֵכָרִית מִפְּנֵי שְׁנוּתָתָהּ לֹא חַיִּים. אָמַר רַבִּי יוֹסִי. הִדָּא אָמְרָה. שְׂאִסּוּר לְלַמְדּוֹ אוֹמְנוּת. כִּהְדָּא תַרְתִּין אוֹמְנָנוּ הוּון בְּגִירוֹ. זִגְגִיָּא וְקוֹבֵטְרִיָּא. זִגְגִיָּא לָא אֶלְפִין וְקָמוּן. קוֹבֵטְרִיָּא אֶלְפִין וְאַתְעֵקְרוּן.

אֲבָל נְכָרִית מְנִיקָה בְּנָה שְׁלֵכָת יִשְׂרָאֵל: דְּכְתִיב וְהָיוּ מְלָכִים אֲמִנִּיךְ וְשָׂרֵתִיָּהֶם מִיִּנְקוּתֵיֶךְ. תִּנִּי. יוֹנֵק הַתִּינוֹק וְהוֹלֵךְ מִן הַנְּכָרִית וּמִן בְּהֵמָה טְמִיאָה וּמִבִּיאֵן לֹא חֶלֶב מִכָּל-מִקּוֹם. וְאַנּוֹ חוֹשֵׁשׁ לֹא מִשּׁוּם שֶׁקָּץ וְלֹא מִשּׁוּם טוֹמְאָה.

1 שְׁנוּתָתָהּ | G שְׁהִיא . . . יוֹסִי | G יוֹסֵה הִדָּא | G הִדָּה 2 כִּהְדָּא | G כִּהְדָּה הוּון בְּגִירוֹ | G הוּוה בַּעֲבוּרֵי זִגְגִיָּא | G זִגְגִיָּה (2) וְקוֹבֵטְרִיָּא | G וְקוֹבֵטְרִיָּה 3 קוֹבֵטְרִיָּא | G קִטְטִין ! 4 אוֹמְנִיךְ וְשָׂרֵתִיָּהֶם מִיִּנְקוּתֵיֶךְ | G אוֹמְנִיךְ וְגו' 5 יוֹנֵק | G יוֹנֵק הוּא 6 מִשּׁוּם | G מִשּׁוּם (2)

“A Jewish woman should not nurse the child of a Non-Jewish woman” because she gives it life⁶⁴. Rabbi Yose said, this implies that one may not teach him a trade⁶⁵. As the following: Two trades, glaziers and carpenters⁶⁶

were at (Giro) [Acco]⁶⁷. The glaziers did not teach⁶⁸ and continued, the carpenters taught and were pushed out.

"But a Non-Jewish woman may nurse the child of a Jewish woman" as it is written, *their kings will be your pedagogues and their princesses your wet nurses*⁶⁹. It was stated: A baby nurses continuously from a Non-Jewish woman or from a non-kosher animal and one brings him milk from anywhere and does not worry either about abomination or because of impurity⁷⁰.

64 In Tosephta 3:3 "because she raises a son for pagan worship" as in the preceding paragraph. G is defective at this point.

65 In order to live one has to make a living. Therefore it is a religious duty for a man to see to it that his son learn a trade; cf. *Qiddušin* 4:12.

66 A hybrid of Greek *καβωτός* "box, chest" (in LXX used to translate *תיבה*) and the Latin suffix *-arius* "craftsman of . . ." There exists a Greek word *καβωτάριον* but this is a diminutive, "small box or chamber" and does not designate a profession.

Jastrow explains as "maker of pickles" but this is a gross misreading of *καβωτάριον* in *Terumot* 10:3, Note 36.

67 No place Giro (ms. L) is known. (If one would read *גידו* the place would be Jedda in Arabia.) Acco (reading of G) was known as a city divided between Jews and Gentiles, only partially within the borders of the Land; cf. *Ševi'it* 6:1 N. 30.

68 They did not accept Gentile apprentices.

69 *Is.* 49:23, giving divine sanction to Gentile wet nurses.

70 The Babylonian attitude is expressed in Tosephta *Šabbat* 9:22: One does not nurse from a Non-Jewish woman or from a non-kosher animal but if it was a matter of survival nothing stands before saving lives.

משנה ב: מִתְרַפְּאִין מִהֶן רִיפּוּי מְמוֹן אֲכָל לֹא רִיפּוּי נַפְשׁוֹת. וְאִין מְסַתְפְּרִין מִהֶן בְּכָל־מְקוֹם דְּבָרֵי רַבִּי מֵאִיר. וְהַכְּמִים אֹמְרִים בְּרִשּׁוֹת הָרָבִים מוֹתֵר אֲכָל לֹא בֵּינוּ לְבֵינוּ:

Mishnah 2: One may be healed from the healing of property but not healing of persons. One may not be shaved from them anywhere⁷¹, the words of Rabbi Meïr; but the Sages say it is permitted in the public domain but not in private.

71 Since the barber easily may cut the client's throat with his knife.

(40d line 1) **הלכה ב:** ומתרפין מהן ריפוי ממוון כול'. רבי יעקב בר זבדי בשם רבי אבהו. ריפוי ממוון בהמתו. ריפוי נפשות גופו. רבי בא בשם רב יהודה. אם היה נחמס אסור. כהדא רבי אמי סלק עם רבי יודן נשייא לחמתא דגדר. לקה באצבעיה יהב עליה אספלני. חמתה מתחללה וקלמה. ולא שמיע פיי דמר רבי יעקב ברבי אחא בשם רבי יוחנן. אם היה רופא אומן מותר. ולא דמיא. תמן נחמס מותר. ברם הכא נחמס אסור.

3 אמי | G אמא נשייא | G נסייא 4 בר' | G בר 5 דמיא | G דמיא הכא | G הכה אסור | G אסיר

Halakhah 2: “One may be healed from the healing of property,” etc.

Rebbi Jacob bar Zavdi in the name of Rebbi Abbahu: “healing of property,” his animal. “Healing of persons,” his body⁷². Rebbi Abba in the name of Rav Jehudah: If it was scratched it is forbidden⁷³. As in the following case: Rebbi Immi went with Rebbi Jehudah the Prince to the hot springs of Gader⁷⁴. He hurt his finger and put a bandage⁷⁵ on it. He saw it penetrate and cut it off⁷⁶. Did he not hear what Rebbi Jacob bar Aḥa said in the name of Rebbi Joḥanan: If he was a professional healer it is permitted⁶²? This is not comparable. There if it was scratched it is permitted, but here it was scratched and is forbidden⁷⁷.

72 Babli 27a.

73 Babli *loc. cit.* He does not permit any Gentile doctor, even qualified, to do any surgical procedure on the body of a Jew; only medication can be accepted.

The translation reads here נחמס as in the sequel, not נחמס “developed a fever.” G is missing at this passage.

74 Where usually the intercalation of a month was announced.

75 Latin *splenium* “pad, wound dressing”;

cf. *Orlah* 3:1 Note 20.

76 Arabic **قلم** “to cut”. The feminine suffix shows that the bandage (f.) was cut off, not the finger (m.).

77 Deriving **חמש** from a root like Arabic **خمش** “to scratch”. He could not go to the local Gentile doctor because he needed surgical intervention which according to Rav Jehudah is forbidden; R. Joḥanan permits only non-surgical interventions.

(40d line 6) מהו מיכחול מיהו. רב אמר. מאן דבעי מיסתמא איסתמי. לוי אמר. מאן דבעי לממת גמור. רב לא עבד עינא כחל לה. לוי עבד עינא כחל לה. אמר רבי בא. והא אגן חמי לון טעמין הדא קילוריתא. נימר פדי טבא הוא טעים לה. פד לית היא טבא היא קיימא וסמיא. אהן אופיון סכנה. הדא תורייקי. רבי סימון אמר. אסורה. רבי יוחנן אמר. מותרת. 1 מיכחול | G מכחול מיהו | G מנהו מיסתמא | G מיסתמא איסתמי | G יסתמי 2 לממת | G ממת עינא כחל לה | G עינא כחללה (2) אמ' | G ומר והא אגן | G ון 3 הדא קילוריתא | G דה קילוריתא

כדי | G כד היא | טבא | G טבה (2) קיימא | G קיימה | G וסמיא | G וסמיה | 4 תורייקי | G תיריקי | יוחנן | G אמי

May one have one's eyelids painted by them⁷⁸? Rav said, anybody who wants to be blinded may be blinded. Levi said, anybody who wants to die may die⁷⁹. Rav never had his eye painted; Levi had his eye painted. Rabbi Abba said, but do we not see that they taste this *collyrium*⁸⁰? We may say that they taste it if it is good. If it is no good it keeps and blinds. Opium⁸¹ is dangerous. Treacle⁸², Rabbi Simon says it is forbidden; Rabbi Johanan⁸³ says it is permitted.

78 Applying *kohl*, originally the Aramaic/Arabic name for antimony, then used for any paste applied in ophthalmology.

79 Babli *Niddah* 55b.

80 Greek *kollyra* "eye salve".

81 Greek *ὄπιον*.

82 Greek *θηριακή, scil. ἀντίδοτος*, "antidote against a poisonous bite."

83 In G: E. Immi. This seems a more trustworthy reading.

(40d line 12) חביריא בשם רבי בא בר זבדא. כל-שהוא מן השפה ולפנים מרפין אותו בשבת. התיב רבי זעירא. הא אגן תנן. החושש בשיניו לא יגמא בהן חומץ. לא מן השפה ולפנים הן. רבי זעירא לא אמר כן. אלא רבי זעירא בשם רבי אבא בר זבדא. כל-שהוא מן החלל ולפנים מרפין אותו בשבת. רבי זעירא רבי בא בר זוטרא רבי חנינה בשם רבי. מעליו עצם שלראש בשבת. רבי חייה בר מדייא רבי יונה רבי זעירא רבי בא בר זוטרא רבי חנינה בשם רבי. מעליו בנות אגנים בשבת. רבי אבהו בשם רבי יוחנן. עין שמרדה מרפין אותו בשבת. תמן אמרין בשם רבי יוחנן. גבות ידים ורגלים ספנה. רבי אבהו בשם רבי יוחנן. אהן סומקא ספנה. אמר רבי אבין. לוקטין לו עוקץ עקרב בשבת. רב אמר. חמרא לבר מעינא שרי. לגיו מן עינא אסיר. שמואל אמר. נאהו רוק תפל אסור לעין בשבת. מיניה את יליף לחזיתא. רבון דקיסרי אמר. הדיא עורדענא ספנה. רבי חזקיה אמר בשם רבון דקיסרי. הדיא עקשבוניתא ספנה. רבי שמואל בר רב יצחק. הדיא גומרתא ספנה. אמר רבי ירמיה. נותנין עליה חמץ בפסח. אהן בלעה שרי. אמר רבי יוסי. מתניתא אמרה כן. מחט של יד לטול בה את הקוצ. דלא כן מה בין קוצ מה בין בלע. אהן עיימא דעינא. שאלון לרבי ירמיה. אמר לון. הא רבי בא קדמיכון. שאלון לרבי בא ושרא לון. אמר לון. אוף אגא שרי.

1 חביריא | G חבירה | בא | G אבא מרפין | G מרפין | 2 זעירא | G זעורא | אגן | G תנינן | ש והתיב | ש שיניו | בהן | G בהם | הן | G הם | 3 ר' זעירא | G ר' זעורה | ש - זעירא | G זעורא | 4 מרפין | G מרפין | בשבת | ש - ר' בא | ש רבא חנינא | ש חנינה | מעליו | G מעלים | 5 ר' חייה | G התיב | ר' חייה | מדייא | G מדייה | זעירא | G זעירה | 6 שבהו | G אבהוא | תמן אמרין | אותו | G אותה | 7 סומקא | G סמוקה | ש סימקא | 8 שבין | G שבין | אבון | לוקטין | G לוקטים | חמרא | ש | ההן | חמרא | מעיינא | מן | עינא | G מן | עינא | 9 ואהן | ש | ההן | לעין | G לעיין | ש | ליתן | על | גבי | העין | מיניה | G מנה | ש | מינה | לחזיתא | G

⁸³The colleagues in the name of Rabbi Abba bar Zavda: Anything inside

84 In the Babli, 28a, this is the position of Rebbi Immi. Since medical practice usually involves activities biblically forbidden on the Sabbath, such as compounding medicines and ointments or surgical interventions, also healing activities which

do not involve these prohibitions are rabbinically forbidden on the Sabbath. However, if a condition is life-threatening, Sabbath prohibitions do not apply. A declaration that “one heals such-and-such a condition on the Sabbath” is the equivalent of declaring the condition as life-threatening.

85 Mishnah *Šabbat* 14:4. While one is permitted to drink (diluted) vinegar on the Sabbath, one may not use it as a pain killer since this is medical treatment of a situation which in general is not life-threatening.

86 Babli 27b/28a, in the name of R. Johanan.

87 Any injury to the skull bones.

88 Babli 28b. The translation used here of “daughters of the ear” is an interpretation of Rashi’s explanation in the Babli: “Sinews of the ear which sometimes are lowered and keep the jaws open; then it is necessary to lift them and this is dangerous.”

89 “An eye which rebelled”: it feels as if the eye would leave its place. Babli 28b.

90 Any wounds at these places are considered life-threatening. Babli 28a.

91 Dark red color of a wound is indication of a life-threatening infection.

92 Babli *Šabbat* 108b, with the names of Rav and Samuel switched. Since people sometimes put wine on their eyelids for

non-medical reasons, it is permitted to do the same for minor aches for which medical intervention would be forbidden on the Sabbath.

93 A skin disease, purely external.

94 “Frog” (Aramaic), Latin *ranula*, an infection of the mouth.

95 The text in parentheses is from the Leiden ms., the one in brackets from G and **ש**.

96 This may either describe the bite of a spider or more likely a cancerous growth looking like a spider.

97 Using leavened matter on Passover is a deadly sin but for medical purposes in life threatening situations it may be used without hesitation.

98 A boil filled with pus may be opened on the Sabbath.

99 Mishnah *Šabbat* 17:2. As a matter of principle one may move a vessel on the Sabbath only if it is of any use on this day. A sewing needle cannot be used for its usual function on the Sabbath but may be used to remove a thorn in one’s foot or to open a boil.

100 This may describe a cataract or glaucoma.

101 R. Jeremiah. G ends here.

רבי אבהו בשם רבי יוחנן. אהו צפדונה ספנתא. רבי יוחנן הנה ליה והנה מיתסי קומי דתימטניגס בטיברא. בערובתא נחת לגבה. אמר לה. מצרוד אצא למחר כלום. אמרה ליה. לא. ואין צרכת סב גרעיני דתומרון. ואית דאמרי. דניקלבסין בפלגיהון וקידין ואור דשערין וצואת קטן נגיבה ושחוק וטפול ולא תימר קומי בר נש. למחר אצל ודרשה בבי מדרשא. שמעת וחנוקה גרמה. ואית דאמרון. אית שמע מינה תלת. שמע מינה.

אָהן צופֿדנָה סַכְנָתָא. נְשָׁמַע מִינָהּ. כָּל־שָׁהוּא מִן הַשָּׁפָה וְלִפְנֵים כְּרִפִּין אוֹתוֹ בְּשַׁבָּת. נְשָׁמַע מִינָהּ. כִּי דָמַר רַבִּי יַעֲקֹב בְּרַ אֲחָא בְּשֵׁם רַבִּי יוֹחָנָן. אִם הָיָה רֹפֵא אוֹמֵן מוֹתָר. רַבִּי יְהוֹשֻׁעַ בֶּן לֵוִי הָיָה לֵיהּ קוֹלוֹס וְהוֹרֵן לֵיהּ רַבִּי חֲנִינָה וְרַבִּי יוֹנָתָן מִישְׁחֹק תַּחְלוּסִין וּמֵיתָן גּוֹ חֲמָרָא עֲתִיקָא וּמִישְׁתִּי וְלֹא יִסְכֵּן.

1 צפדונה | ש ציפורנה (ספדונה) הוא ליה | ש מטתיה כן 2 דתימטיניס | ש ברתיא דדמיטינוס בטיבריא | ש דטיבריא נחת | ש בפתי רומשא סלק למחר כלום | ש כלום למחר 3 צרכת | ש צרבתה 3-4 גרעינין דתומרי. אית דאמרי דניקלבסין בפלגיהון יקדין ואור דשערין וצואת קטן נגיבה ושחוק | ש גלעינין דתמרין בפלגיהון יקדין. ואית דאמרין דניקלבס. ועור דשערין וצואה דמיינוק יבישה. שחוק 4-5 בבי מדרשא | ש בציבורא 5 שמעת וחנקת גרמה | ש אית דאמרין דחנקת נפשה איתגיירת | ש דאיתגיירת שמע | ש את שמע 6 אהן צופדנה סבנתא | ש הון ציפדונה סכנה שמע | ש את שמע כל | ש דכל בשבת | ש - שמע | ש ואת שמע 7 כיי דמר | ש ההוא דאמ' 8 והורון | ש הורון חנינה | ש חנינא - | ש בשוברא 9 ומישתי | ש וישתי

¹⁰²Rebbi Abbahu in the name of Rebbi Johanan. Scurvy¹⁰³ is dangerous. Rebbi Johanan had it; he was treated by the daughter of Domitianus¹⁰⁴ of Tiberias. Friday evening he went down to her¹⁰⁵ and asked her, will I need anything tomorrow? She said no, but if you need anything take date pits, some say of Nicolaus dates, split and heated, skin¹⁰⁶ of barley grain, and dry excrement of a baby, grind it and apply it; do not tell this to anybody. The next day he went up and preached it in the House of Study¹⁰⁷. She heard it and strangled herself; but some say that she converted¹⁰⁸. You understand from this three things. You understand that scurvy is dangerous. You understand that anything inside of the lips one heals on the Sabbath^{84,109}. You understand what Rebbi Jacob bar Aha said in the name of Rebbi Johanan: If he was a professional healer it is permitted.

Rebbi Joshua ben Levy was suffering from colic¹¹⁰; Rebbi Hanina and Rebbi Jonathan instructed him to grind *tahlusin*¹¹¹, put it in old wine and drink it to avoid becoming endangered¹¹².

102 It seems that the original of this paragraph is in *Šabbat* 14:4. Babli 28a.

103 This is the meaning of צַפְדָּנָה in modern Hebrew. The different vocalization here is based on the text in *Šabbat*. Rashi in the Babli explains the word as French *muguet*, English thrush, a sickness producing a musk like smell of the mouth.

104 Translation of the text in *Šabbat*. Here

“Domitianus’s”. If they are professionals, female doctors are as acceptable as male.

105 In *Šabbat* 14:4, “went up.” In Tiberias, one goes up or down, almost never level.

106 Bran.

107 In *Šabbat* 14:4 “in public”, which is the better version.

108 Either she committed suicide because

she lost her trade secret or she converted because she admired R. Johanan who made the recipe public and did not try to make money through his knowledge.

109 Since R. Johanan acted on this, it is practice notwithstanding R. Ze'ira's criticism.

110 Greek κῶλον, "gut, disease of the colon."

111 This probably is a plural of תוקלא "hard unripe date" which can be ground

rather than תחלי "cress, nasturtium" which could be cut but not ground.

112 Since this is not a usual drink; its use on the Sabbath is rabbinically prohibited but to avoid future danger this prohibition can be waived. R. Joshua ben Levy was himself at least as qualified as the other two authorities to decide but he did not want to apply a leniency to himself on his own word.

42d line 40) בר בריה הוה ליה בלע. אתא חד ולחש ליה בשמיה דנשו בן פנדרא ואינש. מי נפק אמר ליה. מאי אמרת עלי. אמר ליה. מילת פלן. אמר. מה הוה ליה אילו מית ולא שמיע הדא מילתא. והוות ליה בן פשגגה שניצא לפני השליט.

1 חד | ש חד בר נש בשמיה | ש מו שמיה | ש פנדרא | ש פנטרא | ש נפק | ש כדנפיק 2 מאי אמרת עלי | ש מאן לחשתה ליה | מה | ש ניח | מית | ש הוה מיית 3 שמע הדא מילתא | ש כן | שיצא לפני | ש שיוצא מלפני

רבי יעקב בשם רבי יוחנן. בכל מתרפין חוץ מעבודה זרה וגילוי עריות ושפיכות דמים. רבי פינקס בעי. עד כדון. קשאמר לו. הבא לי עלים מעבודה זרה. והביא לו. אמר לו. הבא לי עלים סתם. והביא לו מעבודה זרה. נשמענה מן הדא. רבי אחא הוה ליה צמרמורין. אייתון ליה מן זכרונתיה דדוהי ולא אישתה. אייתון לרבי יונה ואישתי. אמר רבי מנא. אילו הוה רבי יונה אבא ידע מאן הוון לא הוה שתי.

1 יעקב | ש יעקב בר אידי 2 עלים | ש עצים | ש הבא | ש הביא 3 אחא | ש יונה 4 דוהי | ש דדורי ולא אישתה | ש ושתי | ש אייתון לר' יונה ואישתי | ש ר' אחא אייתון ליה ולא שתה 5 הוה ר' יונה אבא ידע | ש ידע ר' יונה אבא ידע | ש מאן הוון | ש מנן הוה | ש מנן הוה | ש שתי | ש אשתה

אמר רבי הונא. זאת אומרת שאין מתרפין מגילוי עריות. דתני. שבת הותרה מכללה. נערה המאורסה לא הותרה מכללה. שבת שהותרה מכללה לא להתרפות. ודכוותה נערה המאורסה לא הותרה ואפילו להתרפות. ולא סוף דבר שאמר לו. הבא לי אשת איש. אלא אפילו לשמוע את קולה. כהדא חד בר נש רחם איתא ביומוי דרבי לעזר וסכן. אתון שאלון לרבי לעזר. מהו דתיעבור קומוי ויחי. אמר לו. ימות ולא כן. מהו דישמע קולה ויחי. אמר לו. ימות ולא כן. ומה הוות. רבי יעקב בר אידי ורבי יצחק בר נחמן. חד אמר. אשת איש הווי. וחד אמר. פנויה. מאן דמר אשת איש ניחא. ומאן דמר פנויה. והא בר כוחא נגרא רחם איתתא ביומוי דרבי לעזר וסכן. כאן באשת איש כאן בפנויה. ואפילו תיקמא. כאן וכאן בפנויה וכאן באשת איש. תיפתר שנתן עינו בה עד שהיא אשת איש. אית דבעי מימר. איתיה רובה הוות ולא הוות משמע ליה. וכל-מה דהוה עבד באיסור הוה מעבד. בגין כן לא שרא ליה.

1 הוּנָא | ש' חוּנָה | זאת אומרת | ש' מתניתא אמרה כן | דתני | ש' ותני כן | שבת הותרה מכללה | ש' לפיכך הותר מכלל שבת | 2 נערה המאורסה לא הותרה מכללה | ש' ולא הותר מכלל נערה מאורסה | שבת שהותרה מכללה | ש' הותר מכלל שבת | לא | ש' ולא | 3 נערה המאורסה לא הותרה מכללה ואפילו | ש' לא הותר מכלל נערה מאורסה אפילו ולא | ש' לא | 4 לעזר | ש' אלעזר | 5 לר' לעזר | ש' ליה | דתיעבור | ש' תיעבור | לון | ש' - דישמה קולה ויחיי | ש' ישמה קלה ולא ימות | 6 ומה | ש' מה | 7 הוויי | ש' - | ש' וחד | ש' וחורנה | 8 איתתא | ש' איתא | לעזר | ש' אלעזר | וסכן | ש' ושרא ליה | באשת איש | ש' בפנויה | ש' באשת איש | תימא | ש' תימר | 9 בפנויה | ש' באשת איש | באשת איש | ש' בפנויה | 10 ולא הוות משמע ליה | ש' ולא מנסבה | ש' מעבד | 11 לא שרא | ש' אסר

אמר רבי חנינה. זאת אומרת שאין מתרפין משפחות דמים. דתנינן תמן. יצא רובו אין נוגעין בו כול'. חיישינן שלא ימות. ואין דוחין נפש מפני נפש. לא סוף דבר שאמר לו. הרוג את איש פלוני. אלא אמר לו. חמוס את איש פלוני. גוי בגוי גוי בישראל חיבי. ישראל בגוי. פטור. רב חסדא בעי. מהו להציל את הגדול בנפשו שלקטון. התיב רבי ירמיה. והתנן. יצא רובו אין נוגעין בו שאין דוחין נפש מפני נפש. רבי יוסי בירבי בון בשם רבי לוי. שנייא היא תמן דלא נודע מי הורג את מי.

1 זאת אומרת | ש' מתניתא אמרה כן | 2 כול' חיישינן שלא ימות ואין | ש' שאין | שאמ' | ש' בשאמ' | 3 איש | ש' - | אמ' לו | ש' אפילו | גוי בגוי גוי בישראל חיבי. ישראל בגוי פטור | ש' גוי בישראל אסור. ישראל בגוי מותר. | 4 את הגדול | ש' נפשו שלגדול | והתנן | ש' ולא מתניתא היא | 5 ר' לוי | ש' רב חסדא | 6 דלא נודע | ש' שאין את יודע

מעשה באלעזר בן דמא שנשכו נחש ובה יעקב איש כפר סמא לרפותו. אמר לו. נימא לך בשם ישו בן פנדרא. אמר לו רבי ישמעאל. אי אתה רשאי בן דמא. אמר לו. אני אביא ראיה שירפאני. לא הספיק להביא ראיה עד שמת. אמר לו רבי ישמעאל. אשריד בן דמה. שניצאת בשלום מן העולם ולא פרצת גידן שלחכמים. לקיים מה שנאמר ופורץ גדר ישכנו נחש. ולא נחש נשכו. אלא שלא לשכנו לעתיד לבוא. ומה הנה ליה למימר. אשר נעשה אותם האדם וחי בהם

1 באלעזר | ש' בר' אלעזר | לרפותו. אמ' לו. נימא לך | ש' משם של | 2 פנדרא | ש' פנדירא לרפותו | אמ' | ש' ולא הניח | אי אתה רשאי בן דמא | ש' - | 3 שירפאני | ש' שירפאני שמת | ש' שמת בן דמה | 4 פרצת | ש' פרצתה | שלחכמים | ש' של חכמים | לקיים מה שנ' | ש' דכת' | 5 ישכנו | ש' ישכנו נחש למימר | ש' מימר

His¹¹³ grandson suffered from choking; there came one, whispered something in the name of Jesus ben Pandera¹¹⁴ and he could breathe. When he left, he asked him¹¹⁵, what did you say over him? He answered, such and such words. He said, it would have been better for him had he died and not heard these words. It happened to him¹¹⁶, like an erroneous order from a ruler.

Rebbi Jacob [bar Idi]¹¹⁷ in the name of Rebbi Johanan: One heals with anything except pagan worship, uncovering nakedness, and spilling blood¹¹⁸. Rebbi Phineas asked: So far if he said, bring me leaves from pagan worship, and he brought him. If he said to him bring me leaves (unspecified) and he brought him from pagan worship? Let us hear from the following: Rebbi Aha had a fever attack. They brought him from the penis of Dohi¹¹⁹ but

he did not drink. They brought to Rabbi Jonah and he drank. Rabbi Mana said, if my father Rabbi Jonah had known from where it was, he would not have drunk¹²⁰.

Rebbi Huna said, (this means) [a *baraita* implies]¹²¹ that one does not heal through uncovering nakedness¹²², as it was stated: The Sabbath was permitted in exceptional cases; the betrothed maiden was never permitted in exceptional cases¹²³. Was not the Sabbath permitted in exceptional cases for healing? Therefore the betrothed maiden was never permitted, not even for healing. Not only if one said to another, bring me a married woman, but even to hear her voice, as the following¹²⁴: In the days of Rebbi Eleazar a man loved a woman and fell dangerously ill. They came and asked Rebbi Eleazar, should she parade before him that he may live? He said to them, he should die but not this. May he hear her voice and live? He said to them, he should die but not this. How was it? Rebbi Jacob bar Idi and Rebbi Isaac bar Nahman, one said, she was a married woman, but one said, she was single. One who said that she was a married woman we understand. But the one who said that she was single? Did not Bar Koḥa the carpenter¹²⁵ love a woman in the days of Rebbi Eleazar and (became dangerously sick) [and he permitted him]¹²⁶? One case about a married woman and the other about a single one. Even you may say, here and here about a single one, here and here about a married woman. Explain it that he became infatuated with her when she still was married. Some want to say, she was a woman of substance (and did not listen to him) [and did not want to marry.]¹²⁷ Everything which he did was forbidden; therefore he did permit nothing to him.

Rebbi Ḥanina said, (this means) [a *baraita* implies]¹²¹ that one does not heal through spilling blood, as we have stated there¹²⁸: “If most of his body was outside one does not touch him,” we suspect that he will live¹²⁹, “for one does not push aside one life before another life.” Not only if one would say, kill this person, but even if he tell him, injure that person. A Gentile against a Gentile, a Gentile against a Jew, is liable¹³⁰. A Jew against a Gentile is not liable¹³¹. Rav Ḥisda asked, may one save the life of an adult with the life of a minor? Rebbi Jeremiah objected, did we not state, “If most of his body was outside one does not touch him, for one does not push aside one life before

another life”)? Rabbi Yose ben Rabbi Abun in the name of Rabbi Levi:¹³² There it is different for it is not known who is endangering whom.

¹³³It happened that Eleazar ben Dama was bitten by a snake and Jacob from Kefar-Sama came to heal him (,and told him, I shall speak to you)¹³⁴ in the name of Jesus ben Pandera. Rabbi Ismael said to him, Ben Dama you are not allowed. He told him, I shall bring a proof that he can heal me. He could not bring proof before he died. Rabbi Ismael said to him, you are blessed, ben Dama, that you left this world in peace and did not tear down the fences of the Sages, (to confirm)¹³⁴ as it is written¹³⁵, *he who tears down a fence will be bitten by a snake*. But did not a snake bite him? But that it will not bite him in the Future World¹³⁶. What could he have said? *Which a person should do and live by them*¹³⁷.

113 R. Joshua ben Levi's grandson.

114 This name (or *Pantera*) is unexplained. [Perhaps a distortion of Greek πανταρκής, Latin *Pantarcēs*, “all-helping”, a surname of Jupiter (E. G.).]

115 R. Joshua ben Levi asked the Christian missionary.

116 The grandson died.

117 From the text in *Šabbat*, needed for chronological reasons. In the Babli, *Pesaḥim* 25a, the tradition is by R. Abin (Abun) in the name of R. Joḥanan.

118 The three sins which one is not permitted to commit even in order to save one's life. Since Christian faith healing is rejected before pagan healing is discussed it is clear that it is not rejected as pagan but as falsely claiming to be Jewish.

119 A pagan statue with a spout in form of a penis, like Brussel's Manneken Piss.

120 Therefore healing by idolatrous materials is forbidden even if not specifically asked for.

121 Since the proof follows the statement,

the text in brackets, from *Šabbat*, has to be preferred over the text here (in parentheses).

122 The technical term for criminal acts of a sexual nature, including but not restricted to incest and adultery.

123 The laws of the Sabbath are suspended in the Temple where the prescribed sacrifices are slaughtered and burned, actions which outside would be capital crimes. But a preliminarily married woman is absolutely forbidden for any man without exception.

124 Babli *Sanhedrin* 75a. The text in the Babli makes it clear that R. Eleazar here is the Tanna, ben Shammai.

125 It is possible that Ben Koḥa is not a proper name but means “strongman”.

126 The text in brackets is from *Šabbat*, to be preferred over the text here in parentheses. The main point is that R. Eleazar permitted the man to date the woman and to contract a marriage which was neither pre-arranged nor brokered.

127 The text in brackets is from *Šabbat*, to

be preferred over the text here in parentheses. In the Babli they hold that the man was not interested in marriage at all, only in sex.

128 Mishnah *Ahilut* 7:6. The Mishnah states that if a child during childbirth endangers the life of the mother one saves the mother's life by cutting the fetus into pieces. But if head and part of the body are already born so that the baby breathes on his own one may not harm him. Maimonides in his Mishnah Commentary notes "all this is obvious and does not need commentary."

129 Even though the baby might be stillborn (this includes the possibility that he might not live for a full thirty days after birth, in which case a person killing the

baby could not be prosecuted for murder), if actually he is breathing on his own he must be treated as certainly being alive.

130 Is prosecutable in a Jewish court.

131 Is not prosecutable by biblical rules, only by the king's police powers (cf. *Sanhedrin* 6:5 Note 75).

132 In *Šabbat*: Rav Ḥisda.

133 Babli 27b. According to this source, ben Dama was the son of R. Ismael's sister.

134 Addition in the text here.

135 *Eccl.* 10:8. The fence is a stone wall without mortar with holes in which a snake may hide.

136 The mythical snake which seduced Eve.

137 *Lev.* 18:5.

המספר לגוי מספר עד שמגיע לבגורית. וכיון שמגיע לבגורית הרי זה מושך את ידיו. המספר מן הגוי הרי זה רואה במראה. מן הכותי אינו רואה במראה. התירו לבית רבי שיהו רואין. שהיו זקוקין למלכות. שלשה דברים התירו לבית רבי. שיהו רואין במראה ושיהו מספרין קומי ושלמדו את בניהן וזונית. שהיו זקוקין למלכות.

"One who cuts a Gentile's hair cuts it until he comes to the lock"¹³⁸. Once he comes to the lock he desists. One who gets a haircut from a Gentile looks in the mirror¹³⁹, from a Samaritan he does not look into the mirror¹⁴⁰. They permitted the family of Rabbi¹⁴¹ that they might look, because they were in need of Roman government connections.¹⁴² Three things they permitted the House of Rabbi, that they might look into a mirror, that they got a haircut with a lock¹⁴³, and that they taught their children Greek¹⁴⁴, because they were in need of Roman government connections.

138 A word of undetermined etymology which R. Ḥananel in his Commentary to *Sanhedrin* 21a explains by Arabic *دوا بة* which means both a toupee and a mane; cf. Chapter 1, Note 105. Levy suggests Latin

vellera crinis.

139 To make sure that the Gentile will not cut his throat. In general, for a man to look in a mirror to check on his grooming is rabbinically forbidden as "woman's garb" (*Deut.* 22:5). Babli 29a.

140 Since they are (Sadducee) Jews, there is no reason to allow looking in a mirror.

141 The Patriarch's family, the official representative of the Jews vis-a-vis the Roman Government from the Severan Emperors to Theodosius II.

142 Tosephta 3:4.

143 Greek κόμη.

144 Not simply the Greek language which every trader had to master but Greek education, literature, and philosophy, which are intrinsically pagan. Babli *Sotah* 49b.

9) (41a line 9) חד גיור הנה ספר והנה איצטרולוגוס והנה חמי באיצטרולוגיא דידה דיהודאי אשכין אדמיה ולא הוון אלא אמגירתיה. והנה יודאי אצל בעי מיספרה גביה קטיל ליה. כמן קטל. רבי לעזר בר יוסי אמר. שמונים. רבי יוסי בירבי בון אמר. שלש מאות. ובסוף נתפללו עליו וחזר לסיאורו.

תני. גוי שמוכר ספרים תפילין ומזוזות אין לוקחין ממנו. והתני. מעשה בגוי אחד בצידן שהיה מוכר תפילין ספרים ומזוזות. ובא מעשה לפני חכמים ואמרו. מותר ליקח ממנו. רבי שמואל בר נתן בשם רבי חמא בר חנינה. בגר שחזר לשיאורו הלה.

A convert was a barber and astrologer¹⁴⁵. He saw in his astrology¹⁴⁵ that Jews were spilling his blood. This only referred to his circumcision but when a Jew came to him to get a haircut, he killed him. How many did he kill? Rabbi Eleazar ben Rabbi Yose said eighty. Rabbi Yose ben Rabbi Abun said three hundred. At the end they prayed about him and he returned to his origin¹⁴⁶.

¹⁴⁷ It was stated: One does not buy from a Gentile who sells Torah scrolls, phylacteries, and *mezuzzot*¹⁴⁸. ¹⁴⁹“It happened that a Gentile in Sidon was selling phylacteries, Torah scrolls, and *mezuzzot*. The case came before the Sages who ruled that one might buy from him.” Rabbi Samuel ben Nahman in the name of Rabbi Hama bar Hanina: This was a convert who returned to his origin¹⁵⁰.

145 Greek ἀστρολόγος, ἀστρολογία.

146 Then Jews who came to his place had to watch in a mirror what he was doing.

147 *Gittin* 4:6, Notes 170-172.

148 This opposes a Tosephta (3:6, Babli *Gittin* 45b) which permits to buy these from a Gentile trader if one is able to check that they are written according to the special rules. The problem is that one may be able

to verify that all letters were written correctly but it is impossible to verify that the leather (or in later technology the parchment) was prepared correctly and that they were written by a Jew obligated to have one of these. The latter requirement is indispensable.

149 Tosephta 3:7, Babli *Gittin* 45b.

150 Since conversion to Judaism is

irreversible, even if he starts following pagan rites again he remains obligated to wear phylacteries, to affix a *mezuzah* to his

doorpost, and to study Torah, i. e., also empowered to write it.

משנה ג: אֵילֹו דְּבָרִים שֶׁל גִּוִּים אֲסוּרִין וְאֲסוּרִין אֲסוּר הַנָּאָה תַּמִּין וְהַחֹמֶץ שֶׁל גִּוִּים שֶׁהִיָּה מִתְחִילָתוֹ יֵין וְהָרֶם אֲדָרִינִי וְעוֹרוֹת לְכוּבִין. רַבֵּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר בְּזִמְן שֶׁתִּקְרַע שֶׁלֹּו עָגוֹל אֲסוּר וּמִשּׁוֹךְ מוֹתֵר. וּבִשֶׁר הַנֶּכֶס לְעִבּוּדָה וְרָה מוֹתֵר וְתוֹצֵא אֲסוּר מִפְּנֵי שֶׁהוּא זָבָחִי מֵתִים דְּבָרֵי רַבִּי עֲקִיבָה. הַחֹלְכִין לְתַרְפוֹת אֲסוּר מִלְּשָׂאת וּמִלְּתֵת עִמָּהֶן.

Mishnah 3: The following Gentile properties are forbidden and the prohibition is of usufruct: Wine¹⁵¹, and vinegar which originally was wine¹⁵², and Hadrianic pottery,¹⁵³ and heart-removed skins¹⁵⁴. Rabban Simeon ben Gamliel says, if the tear is circular they are forbidden, oblong permitted. Meat brought into a pagan Temple is permitted but what leaves is forbidden because it is sacrifice to the dead, the words of Rabbi Aqiba¹⁵⁵. It is forbidden to trade with those who go to ugliness¹⁵⁶.

151 One may assume that the Gentile before drinking the wine made a libation to the gods. If done for a full barrel, it makes all the wine in the barrel forbidden as חָרָם (Deut. 13:18) which biblically is forbidden for all usufruct.

152 Even though it is no longer wine and cannot be used for libations, since it remains usable the original prohibition is not removed.

153 Very porous earthenware which is soaked in wine to absorb it. It is taken on caravan trips to give a taste of wine to water

taken on the trip.

154 Skins of the belly which show that the heart was removed before the animal was skinned. This is done only in pagan rituals; the animal including any parts not used in pagan worship is חָרָם.

155 The expression "sacrifice to the dead" is from Ps. 106:26; it describes all pagan sacrifices.

156 This is the meaning of the word in other contexts. The meaning here is not uncontested, cf. Notes 220 ff.

הלכה ג: אֵילֹו דְּבָרִים שֶׁלְּגוֹיִם אֲסוּרִין כּוֹל. רַבִּי יִצְחָק בַּר נַחְמִן בָּשֵׁם רַבִּי יְהוֹשֻׁעַ בֶּן לֵוִי הָיָה אָמֵר. מִתּוֹק מֵר חֵד אֵין בָּהֶן מִשּׁוּם גִּילִי. רַבִּי סִימּוֹן בָּשֵׁם רַבִּי יְהוֹשֻׁעַ בֶּן לֵוִי. הַחֵד וְהַמֵּר וְהַמִּתּוֹק אֵין בָּהֶן מִשּׁוּם גִּילִי וְלֹא מִשּׁוּם יֵין נֶסֶף. רַבִּי סִימּוֹן מִכְּרָשׁ. הַחֵד קוֹנְדִּיטוֹן. הַמֵּר פְּסִינְטוֹן. וְהַמִּתּוֹק מֵהוּ. חִמְרָא מִבְּשָׂלָא. רַבִּי יְהוֹשֻׁעַ בֶּן זִידְלָה הָיָה לוֹ יֵין מִבוֹשָׁל

שְׁנֵיתֵיכֶם בְּרִשּׁוֹת הַגּוֹי. שָׁאַל לְרַבִּי יֵנָאי בְּרַבִּי יִשְׁמַעֲלֵאל. אָמַר לֵיהּ. כֵּן אָמַר רַבִּי שְׁמַעוֹן בֶּן לִקְיִשׁ. מִתּוֹק אֵין בּוֹ לֹא מִשּׁוּם גִּילּוּי וְלֹא מִשּׁוּם יִין נֶסֶד. רַבִּי יֵנָאי בְּרַבִּי יִשְׁמַעֲלֵאל אֵיבָאֵשׁ. סָלְקוּן רַבִּי יֵזְרָא וְרַבִּי יְהוֹשֻעַ וְרַבִּי בּוּן בַּר כְּהֵנָא וְרַבִּי חֲנִנְיָה הַבְּרִיחוּן דְּרַבְּנָן מִבִּקְרָתֵיהּ. אֲשַׁכְחוּן רַבִּי יְהוֹשֻעַ בֶּן זִידְל וְיָתִיב תַּמָּן. אָמְרִי. הָא מְרָה דְשִׁמוּעָתָא וְהָא מְרָה דְעוּבָדָא מִשְׁאַלְוִינִיהּ. אָמַר לוֹן. כֵּן אָמַר רִישׁ לִקְיִשׁ. מִתּוֹק אֵין בּוֹ לֹא מִשּׁוּם גִּילּוּי וְלֹא מִשּׁוּם יִין נֶסֶד. אָמַר לֵיהּ. דִּילְמָא מִן הֵדָא דְרַבִּי שְׁמַעוֹן בֶּן לִקְיִשׁ דָּאָבָן אָבָן. אָמַר לוֹן. לְעוּבָדָה וְסִמְכוֹן עָלֵי. מִן דְקִמּוֹן רַבִּי אֵילָא עִם רַבִּי בּוּן בַּר כְּהֵנָא אָמַר לֵיהּ. אֵילּוּלָא דְאֶתְוִן רַחֲמִין שְׁמוּעָתָא. וְלֹא מִתְּנִיתָא הֵיא. תַּנִּי רַבִּי חִיָּיָה. מְבוּשֵׁל שְׁלָגִי לָמָּה הוּא אָסוּר. שְׁהִיָּה מִתְּחִילָתוֹ יִין. אָמַר רַבִּי יוֹסִי. מִתְּנִיתָא אָמְרָה כֵּן. הֵינִי וְהַחֲזִמְץ שְׁהִיָּה מִתְּחִילָתוֹ יִין.

Halakhah 3: “The following Gentile properties are forbidden,” etc.
¹⁵⁷Rebbi Isaac bar Nahman in the name of Rebbi Joshua ben Levi: Bitter, sweet, and hot are not under the rules of being uncovered¹⁵⁸. Rebbi Simon in the name of Rebbi Joshua ben Levi: The hot, the bitter, and the sweet are not under the rules of being uncovered or under those of libation wine¹⁵⁹. Rebbi Simon explains: The hot, spice wine¹⁶⁰. The bitter, vermouth wine¹⁶¹. And the sweet, cooked wine. Rebbi Joshua ben Zeidal had cooked wine which was left unsupervised in the custody of a Gentile. He asked Rebbi Yannai ben Rebbi Ismael who said to him, so says Rebbi Simeon ben Laqish: The sweet is not under the rules of being uncovered or under those of libation wine. Rebbi Yannai ben Rebbi Ismael fell ill. Rebbi Ze’ira, Rebbi (Joshua) [Hoshaia]¹⁶², Rebbi Abun bar Cahana, and Rebbi Ḥanianiah the colleague of the rabbis, went to visit him. They saw Rebbi Joshua ben Zeidal sitting there. They said, there is the master of the decision and the person of the happening, let us ask him. He said to them, so says Rebbi Simeon ben Laqish, the sweet is not under the rules of being uncovered or under those of libation wine. One said to him, maybe that of Rebbi Simeon ben Laqish is for argument’s sake? He told them, it is for action and you can rely on it. When (they got up) [returned]¹⁶³, Rebbi Ila was standing with Rebbi Abun bar Cahana and told him, if you did not prefer decisions, is this not a *baraita*? As Rebbi Ḥiyya stated, “why is cooked wine of Gentiles forbidden? Because it started out as wine.”¹⁶⁴ Rebbi Yose said, the Mishnah says so, “wine and vinegar which originally was wine”¹⁶⁵.

157 This paragraph and many of the following have a parallel in *Terumot* 8:5 (Notes 82-111). At places the text here is a reformulation, not a direct copy, of the text there; though it is not excluded that both might represent the same original by two very different paths of copying.

158 In both Talmudim it is assumed that a snake will drink from uncovered unattended fluids and in the process poison the drink for humans. Then the drink cannot be used, neither can it be sold since this would be “putting a stone in the path of a blind person.” This makes uncovered unattended wine almost as forbidden as wine used for pagan practices.

159 Babli 30a. “Libation wine” is the technical term for Gentile wine which was used for pagan libations or other pagan ceremonies and therefore is forbidden for all

usufruct.

160 Latin (*vinum*) *conditum*.

161 Greek ἀψιθιον, “wormwood, *Artemisia Absinthium*.”

162 The text in brackets is the reading of the text in *Terumot*; it is preferred since no Amora “R. Joshua” without patronymic is known.

163 The text in brackets is the reading of the text in *Terumot*, the one in parenthesis is the text here.

164 Babli 29b. The statement implies that Jewish cooked wine (pasteurized grape juice) cannot become forbidden after being handled by a Gentile.

165 But anything manufactured from wine that was not originally forbidden does not become forbidden; same consequence as in the preceding Note.

40a line 34) רבי אמי הוּו ליה אורחין. אָמַר לוֹן. אילולי חמרא מבשלא ידידי מגלי לא הוינא משקתכון. אָמַר ליה רב ביבי. אייתון ואָנן שתינון. אָמַר. מאן דבְּעֵי מימת ימות גו בִּיתִיהָ. בר יודנה הנה לי קונדיטון מגלי. שאל לרבניו ואָסֶרוֹן. ולא כן אָמַר רבי יצחק בר נחמן בשם רבי יהושע בן לוי. החד והמר והמתוק אין בהן משום גילוי. רבניו דקיסרין משום רבי יודה בר טיטוס. באו דשחיק חד לתלתא.

בעו קומי רבי אבהו. מבושל שנתגלה מהו. אָמַר לוֹן. קרינה צריכה לרבי יוחנן ואֲתוֹן שָׁאֲלוּ לִי הָדָא. שָׁאֲלוּ לְרַבִּי יִצְחָק וְאָסֶר לוֹן. וְאִנְהִי רַבִּי אֲבָהוּ דְּמַר רַבִּי יוֹחָנָן אָסִיר.

¹⁶⁶Rebbi Immi had guests. He said to them, if my cooked wine had not been left uncovered, would I not have served you? Rebbi Vivian said, bring it and we shall drink. He answered, he who wants to die should go and die in his own house.

Bar Yudani had uncovered spice wine. He went and asked the rabbis who forbade it. But did not Rebbi Isaac bar Nahman say in the name of Rebbi Joshua ben Levi: The hot, the bitter, and the sweet, are not under the rules of

being uncovered. The rabbis of Caesarea in the name of Rabbi Judah bar Titus: About one which consists of one to three parts ground [spices]¹⁶⁷.

They asked before Rabbi Abbahu, what is the rule for uncovered cooked [wine]? He told them, Rabbi Johanan had a problem with *carenum*¹⁶⁸ and you are asking me this? They asked Rabbi Isaac and he forbade it to them. Then Rabbi Abbahu remembered that Rabbi Johanan had said, it is forbidden¹⁶⁹.

166 *Terumot* 8:5 Notes 91-94.

167 One part spices for every three parts wine (one fourth of the volume) is the minimal concentration for which R. Joshua ben Levi's rule may be applied.

168 Latin *carenum*, Greek *ἀρποινον*, wine which by cooking has lost one third of its

volume. Since the alcohol-producing bacteria die at 13% alcohol by volume, if the volume has shrunk by one third certainly all alcohol had evaporated and no alcohol was left in the fluid.

169 R. Simeon ben Laqish's statement is rejected in practice.

(41a line 43) (רבי יעקב בר אבא רבי אמי בשם רבי לעזר.) בר נטוזה איתגלין ליה גיגיתיה. [איל לרבי בא בר ממל. אמר ליה. אם היה נכנס ויוצא מותר. רבי יעקב בר אבא רבי אמי בשם רבי לעזר. אם היה ישן מותר. רבי חנינה רבי יהושע בן לוי. חד אמר. ישן מותר. וחד אמר. ישן אסור. מסתברא דרבי חנינה אמר. ישן מותר. דבכל-אתר סמיך רבי לעזר לרבי חנינה.]

(Rebbi Jacob bar Aḥa, Rebbi Immi, in the name of Rebbi Eleazar.)¹⁷⁰ The barrel of Ben Neṭoza became uncovered. He went and asked Rebbi Abba bar Mamal, who told him, it is permitted. Rebbi Jacob bar Aḥa, Rebbi Immi, in the name of Rebbi Eleazar: if he was sleeping it is permitted¹⁷¹. Rebbi Ḥanina and Rebbi Joshua ben Levi, one said, if he was sleeping it is permitted; the other said, if he was sleeping it is forbidden. In is reasonable [to infer] that Rebbi Ḥanina said, if he was sleeping it is permitted, since Rebbi Eleazar everywhere relies on Rebbi Ḥanina¹⁷².

170 In the Leiden ms. this sentence was deleted by the scribe; it does not appear in the prints. In *Terumot*, the corresponding sentence reads: Rebbi Jacob bar Aḥa, Rebbi Immi, in the name of Rebbi Eleazar: if he was entering and leaving it is permitted. This means that one may assume that no

snake came out of its hole to eat from the food or drink the fluid if there was constant traffic in the room. The sentence really is needed to justify R. Abba bar Mamal's ruling in the sentence after the next. Possibly it was deleted to indicate that the passage here should not be considered an

exact copy of the text in *Terumot*. *Terumot* 8:5 Note 95.

171 Also here one does not assume that a snake would venture into the room, even though the story in the next paragraph disproves the assumption. The statement

also is rejected in the Babli, 30a.

172 The frequent disagreements of R. Eleazar and R. Johanan in both Talmudim really are disagreements between R. Hanina and R. Johanan.

(41a line 47) רבי יוסי בן שאול משתעי אהן עובדא. עובדא הוה איתא תדא דהוה מרחמא מצוותא ובעלה שנה מצוותא. אתא חד מסכן ויהבת קומוי ואכל. ארגישת בבועלה. אסליק וטמרתיה בעיליתה. תבת קומי בעלה ואכל ודמד ליה. אתא חזא ואכל מן קומוי. קם בעלה מן שינתיה ובעא מיכול. שרי ההוא דעיליתה מלולי. הדא אמרה. לשן מותר. פריך הוה. ואינו אסור משום ייחוד. כי נאפו ודם בדיהון. מכין דלא הוה חשיד על דא לא חשיד על דא.

¹⁷³Rebbi Yose ben Shaul understands it from the following occurrence. It happened that a woman loved to do good deeds but her husband hated good deeds. There came a poor man and she gave him to eat. While he was eating she noticed her husband; she made him climb and hid him in the upper floor. She returned to her husband who ate and fell asleep. There came a snake and ate from what was before him; her husband awoke from his sleep and wanted to eat. The one in the upper floor started to talk¹⁷⁴. That means if he was sleeping it is permitted¹⁷⁵. It was used to it. But is it not forbidden because of being alone? *For they committed adultery, blood is on their hands*¹⁷⁶. Since he is not suspected of one he is not suspected of the other¹⁷⁷.

173 *Terumot* 8:5 Notes 96-101; the text is somewhat reformulated.

174 To warn the husband not to eat from the leftovers.

175 Without warning the husband would have eaten the poisoned food. This proves both that the rule is that one may eat food left while a person is sleeping nearby and that the rule is questionable, at least if there

is a house snake familiar with the happenings there.

176 *Ez.* 23:37.

177 Since the guest saved the husband from danger to his life he is not suspected of wanting him to die; this also clears him of any suspicion of adultery (Babli *Nedarim* 81b).

(41a line 54) מעשה בחסיד אחד שהיה מגלגל בגילויים ולקה בדלקת. וראו אותו יושב ודורש ביום הכיפורים וצלוחית של מים בידו.

¹⁷⁸A pious person happened to be insistent in the matter of uncovered [drinks]; he was smitten with a fever. They saw him preaching on the Day of Atonement with a flask of water in his hand¹⁷⁹.

178 *Terumot* 8:5 Notes 104-105.

179 For medical reasons he would be permitted to take small sips of water on the day of the fast but it was extraordinary that he would have wanted to be seen with a

flask of water which might lead people to believe that he did not fast. He took that chance rather than to risk leaving the water unattended.

(41a line 56) מַעֲשֶׂה בְּטַבַּח אֶחָד בְּצִיפּוֹרִין שֶׁהָיָה מֵאֲכִיל אֶת יִשְׂרָאֵל נְבִילוֹת וּטְרִיפוֹת. פָּעַם אַחַת עָרַב יוֹם הַפִּיפּוֹרִים עִם חֲשִׁיכָה שָׁתָה יַיִן הַרְבֵּה וְנִשְׁתַּכֵּר. וַעֲלָה לְרֹאשׁ הַגֶּג וְנָפַל וּמָת. הִתְחִילוּ הַכְּלָבִים מְלַקְקִין בְּדָמּוֹ. אָתָּן וּשְׁאֵלוֹן לְרַבִּי חֲנִינָה. מָהוּ מֵיַעֲבֹרֶתִיָּה מִן קוֹמִיָּהוּן. אָמַר לָהֶן. כְּתִיב וְאִנְשֵׁי־קֹדֶשׁ תִּהְיוּ לִי וּבִשְׂרָ בִשְׂדֵה טְרֵפָה לֹא תֹאכְלוּ לְכָלֵב תִּשְׁלַכְוּן אֹתוֹ: זֶה גִּזְלֵן אֶת הַכְּלָבִים וְהֵאֲכִיל אֶת יִשְׂרָאֵל נְבִילוֹת וּטְרִיפוֹת. אֶרְפוֹן לוֹן. מִדִּידְהוֹן אֵינּוּן אֲכָלִין.

¹⁸⁰It happened that a butcher in Sepphoris sold Jews carcasses and torn meats. Once on the eve of the day of Atonement before nightfall he drank a great deal of wine and became drunk. He went to the roof, fell down, and died. The dogs started to lick his blood; people came to ask Rebbi Hanina how to remove him from before them. He told them, it is written¹⁸¹, *holy people you shall be to Me; torn meat on the fields you shall not eat, you must throw it to the dogs*. This one robbed the dogs and fed the Jews carcasses and torn meat. Let them alone, they are eating from their own.

180 *Terumot* 8:5 Notes 102-103. Although in the first part the *Terumot* text appears as the original, from here on the order of texts makes more sense. The only connection the present paragraph has with the others is the

mention of the Day of Atonement (missing in *Terumot*) which was introduced in the preceding one (and continues in the next one with the original theme.)

181 *Ex.* 22:30.

(41a line 63) חֵד בַּר נֶשׁ הָיָה לִיָּה חֵד גָּרַב מְגָלִי בְּעִרְבֵי־בֵית צוּמָא רַבָּא. אֲזַל בְּעִי לְמִישְׁפָּכִיָּה. אָמַר לִיָּה חֲבֵרִיָּה. אֵינִי וְאֵנָּה שְׁתֵּי לִיָּה. אָמַר לִיָּה. מְגָלִי הָיָה. אָמַר לִיָּה. כְּרִיָּה דִּיּוּמָא קָאִים. לֹא אִסְפֹּק מִיטַעֲם עַד דְּאִיתְחַלְחַל.

¹⁸²A person's amphora of wine became uncovered on the eve of the Great Fast. He went to pour it out; another person said to him, bring it and I shall

drink it. He told him, it was uncovered. He answered, does not the Master of the Day exist? He had not finished tasting when he started shaking.

רבי ירמיה בשם רבי חייה בר בא. כל-אירסים מעלין חטטין ושלכחש ממית. רבי חייה אמר. אין נשעלין על הגילויים. רבי ירמיה בעה קודם רבי זעירא. מריה דשמועתא אשאל ליה.

Rebbi Jeremiah in the name of Rebbi Ḥiyya bar Abba: All poisons cause scab but the poison of a snake kills¹⁸³. Rebbi Ḥiyya said, one is not asked about uncovered [drinks]¹⁸⁴. Rebbi Jeremiah asked before Rebbi Ze'ira; as master of the ruling he asked him¹⁸⁵.

מתנמנם הוה. רבי זעירא הוה יתיב אכיל ברמשא. איטפי בוצינא יב גדיה על תומנתא. אדלקון בוצינא אשכחון אהו שפיפונא שהוא דומה לשערא כריף על תומנתא. אמר ליה. ושיעא. לא הוינא זהיר לך.

Rebbi Ze'ira was dozing; he was sitting and eating in the evening. The light went out; he put his hand on the toman¹⁸⁶. They lit the light and found a snakelet like a hair curled around it. He said to it, evil one, was I not careful about you?

אמר רבי אמני. צריכין אנו חששין על מה דבריינתא חששין. אסיר למיתן פריטין גו פומה. פיתנתא תחות בית שחינא. תבשילא תותי ערסא. ולמיצע ספינא גו איטרוגא וספינא גו פוגלא. אמר רבי יוסי בירבי בון. כל-זיעה דנפקא מבר נשא סם המנות היא חוץ מזיעת הפנים.

Rebbi Immi said, one has to be careful with what the creatures are careful with: It is forbidden to put coins in one's mouth, a bread under the armpit, a dish under one's bed, and to stick a knife¹⁸⁷ in an *etrog*, or a knife into a radish. Rebbi Yose ben Rebbi Bun said, all sweat that exudes from a human is deadly poison except the sweat of the face.

אמר רבי ינאי. אין קטא קטא שיחור. ואין אובד אובד מרגלי. רבי יונתן פי הוה בר נש שאל ליה אמר ליה. ערבא דנפשד אגא. אמר רבי שמעון בן לקיש. אילו ללודין זבינת גרמך זבינתה גרמך בדמים ותיירין. וקא בדמין קלילין.

Rebbi Yannai said, if you bit something off, you bit off soot. If you lose, you lose a pearl¹⁸⁸. If anybody asked Rebbi Jonathan he told him: Am I the guarantor of your life? Rebbi Simeon ben Laqish said, if you sold yourself for the games¹⁸⁹, you would sell yourself for an excessive price; but here for a very cheap price.

182 *Terumot* 8:5 Notes 106-112. These are the last paragraphs having a parallel there.

183 Babli 31b: reptile poisons do not kill except that of a snake.

184 One should not ask a rabbi to authorize behavior that will endanger one's health. Babli 30a.

185 How could R. Jeremiah have asked if he is the person who teaches that one does not ask? He asked in order to be able to

formulate his rule.

186 A vessel containing half a *log* (a *hemina*, half a *sextarius*) of wine. Sine the room was dark he held that the presence of a human in the room would not deter a snake from drinking the wine. Babli 30a.

187 Store a knife there.

188 If you take chances with your health you may lose it.

189 Latin *ludi*; as a gladiator.

(41b line 3) רבי אסי רבי יוחנן בשם ר' בון בתירה. לין נסך שפפל לבור ימכר פולו לגוי חוץ מדמי לין נסך שבו. רבי אסי בשם רבי יוחנן. סתם לין שפגוי אסור ואינו מטמא. הפקידו אצלו אסור בשתייה ומוותר בהנאה. רבי זעירא בעא קומי רבי יסא. מה. במיחד. אמר ליה. במפקיד. אתא רבי אבהו בשם רבי יוחנן. שלש ינות הן. שראה גוי מנסכו ונדאי דעבודה זרה מטמא טומאה חמורה קשרי. סתם לין שפגוי אסור ואינו מטמא. הפקידו אצלו בחותם אחד אסור בשתייה ומוותר בהנאה. אמר רבי ירמיה קומי רבי זעירא. חמי מה מר. לא מר אלא בחותם. הא בלא חותם אסור בשתייה ובהנאה. הורי רבי לעזר במיחד. והנה רבי זעירא חדי בה.

Rebbi Assi¹⁹⁰, Rebbi Johanan in the name of Ben Bathyra: If libation wine fell into a cistern, it should be sold entirely to a Gentile except the value of the libation wine contained in it¹⁹¹. Rebbi Assi in the name of Rebbi Johanan: Undetermined wine¹⁹² of a Gentile is forbidden¹⁹³ but does not make impure. If he deposited it¹⁹⁴ with him it is forbidden for drinking but permitted for usufruct. Rebbi Ze'ira asked before Rebbi Yasa, how? If he segregated it? He told him, if he deposited it¹⁹⁵. Rebbi Abbahu came in the name of Rebbi Johanan: There are three kinds of wine. If he saw the Gentile pouring a libation, it is certainly pagan worship and induces severe impurity like a reptile¹⁹⁶. Gentiles' undetermined wine is forbidden but does not cause impurity. If he deposited with him¹⁹³ with one seal it is forbidden to drink¹⁹⁴ and permitted for usufruct. Rebbi Jeremiah said before Rebbi Ze'ira: See what he said! He only said with a seal. Therefore without a seal it is forbidden for drinking and usufruct. Rebbi Eleazar instructed: if it was segregated; Rebbi Ze'ira enjoyed it¹⁹⁷.

190 This is the Babli's name of R. Yasa who later is quoted with his Galilean name. Note also in the first part Babylonian *התא* for Galilean *הנייה*.

191 This is Rabban Simeon ben Gamliel's opinion in Mishnah 5:13, opposed by the anonymous majority which declares the entire cistern as forbidden for usufruct. The Babli (74a) agrees that practice has to follow Rabban Simeon ben Gamliel.

192 Wine about whose previous use nothing is known.

193 In this sentence, "forbidden" means "forbidden for usufruct".

194 Wines produced by Jews if handled by Gentiles are permitted to drink only if they are guarded by an inner seal and an outer seal which make it practically impossible for the Gentile to get to the wine without being detected. If there is no double seal, the wine becomes forbidden to drink. The problem then is to determine when Jewish wine handled by a Gentile or in the custody of a

Gentile is permitted for usufruct.

195 In the first case, it was specified that the Jew's closed wine amphora has to be kept at a specified place, with the Jew being able to inspect the place and see that the condition was kept. In the second case the amphora is to be kept by the Gentile in his wine cellar, not separate from his own wine amphoras.

196 In rabbinic teaching in many aspects pagan worship induces impurity much more severe than that of a dead reptile, cf. Mishnah 3:13, *Šabbat* 9:1. In the Babli, 30b/31a, the formulation is more correctly "severe impurity".

197 Since R. Eleazar confirmed that he was correct in his question to R. Yasa, against R. Yasa. Since R. Eleazar died before R. Joḥanan, the entire discussion must be dated to the generation after R. Joḥanan, trying to understand the latter's teachings.

(41b line 13) תַּמָּן תִּינֵן. אֶצֶל הַנִּכְרִי כְּפִירוּתָיו. רַבִּי שְׁמַעוֹן אוֹמֵר. דְּמַאי: רַבִּי חֲנִינְיָהּ בְּעֵא קוֹמִי רַבִּי מָנִי. מַה. כְּפִירוּתָיו מִמַּשׁ טַעְמוֹ פּוֹטֵר טָבֵל בְּרוּר מִמָּקוֹם אַחֵר. אָמַר לֵיהּ. וְלִכְלֵל דְּבָהּ. וְלֹא עַל יְעוּת רַבִּי חֲנִינְיָהּ מִתְּרֵס לְקִיבֻלָּהּ. הִפְקִידוּ אֶצְלוֹ בְּחוּטָם. רַבִּי חֲנִינְיָהּ וְרַבִּי מָנָא. חָד אָמַר אֲסוּר. וְחָד אָמַר מוּתָר. מַה פְּלִיגִין. בְּהִנָּאָה. אֲבָל בְּשִׁתְיָהּ אֲסוּר.

There, we have stated¹⁹⁸: "With a Gentile, it is like his produce. Rabbi Simeon says, it is *demay*." Rabbi Ḥananiah asked before Rabbi Mani: Does it mean, really like his produce? Freeing what would be *tevel* at another place? He said to him, for all that is in it. Rabbi Ḥanina was uselessly opposing him¹⁹⁹.

If he deposited with him with a seal²⁰⁰. Rabbi Ḥananiah and Rabbi Mana, one says, prohibited²⁰¹, and one says, permitted. Where do they disagree? For usufruct. But for drinking it is forbidden.

198 Mishnah *Demay* 3:4. *Demay* is produce bought from a Jew who is suspected of not following rabbinic rules. He is presumed to have given heave, which is a small amount and the violation of whose prohibition is clearly a biblical deadly sin, but is suspected of neglecting all other rules (cf. Introduction to Tractate *Demay*). The anonymous majority holds that Gentile produce in the Land of Israel is free from the rules of heave and tithes. (For the opinion of R. Simeon, cf. *Demay* 3:4 Note 91). *Tevel* is Jewish produce from which no heave or tithes have been taken, forbidden for any Jew after storage.

199 The paragraph has a parallel in *Demay* 3:4, Notes 104-107. In the opinion of the anonymous Tanna, since the obligation of *tevel* starts only after storage, initial storage by a Gentile removes the obligation completely.

Since R. Mani (Mana I) was an Amora of the first generation, the name has to be Ḥanina in both occurrences unless one reads Mana (II) and Ḥanania in all occurrences here and the next paragraph.

The placing of the quote here can only

be understood with the help of the Babli (31a). In the preceding paragraph it was established that the Jew's wine stored with the Gentile under certain conditions remains permitted for usufruct. Then the question is why wine does not follow the rules of produce, that if stored by the Gentile it follows the rules of Gentile produce. While for grain this implies release from the obligations of heave and tithes, for wine it should imply prohibition of all usufruct. The answer is given in the next paragraph (having no parallel in the Babli) that the person who frees grain from heave and tithes forbids wine stored with the Gentile for usufruct.

200 A barrel or bottle of wine, deposited with a Gentile without being held at a separate place. As noted earlier, it remains permitted as a drink for Jews only if it is secured by a double seal. The question remains about its status if it is secured only by a single seal which makes it unlikely but not impossible for the Gentile to access the wine.

201 R. Mana..

(41b line 18) רב אָמַר. חב"ל אָסור. חמפ"ג מוּתָּר. חֲתִיכַת דָּג שְׂאִין בּוֹ סִימָן. בֶּשָׂר. זֵין. תְּכֵלֶת. אָסור בְּחוֹתָם אֶחָד. חִילְתִּית. מוֹרִיס. פֶּת. גְּבִינָה. מוּתָּר בְּחוֹתָם אֶחָד. אָמַר רַבִּי יוֹדֵן. טַעֲמָא דָּרַב. כָּל־שְׂאִיסוּרוֹ מְגוּפוֹ אָסור בְּחוֹתָם אֶחָד. עַל יְדֵי תַעְרוּבָת מוּתָּר בְּחוֹתָם אֶחָד. רַבִּי יַעֲקֹב בַּר אֶחָא רַבִּי שְׁמַעוֹן בַּר בָּא רַבִּי לְעֶזְרָא בֶּשָׂם רַבִּי חֲנִינְיָה רַבִּי בָּא רַבִּי חִיָּה בֶּשָׂם רַבִּי יוֹחָנָן רַבִּי זְעִירָא בֶּשָׂם רַבִּי יְהוֹשֻׁעַ בֶּן לֹוי. הַכֹּל מוּתָּר בְּחוֹתָם אֶחָד חוּץ מִן הַזֵּין.

Rav said, *hbyt* is forbidden, *hmpg*²⁰² is permitted. A piece of fish without distinguishing mark²⁰³, meat, wine, and dark blue color²⁰⁴, are forbidden with a single seal; *assa foetida*²⁰⁵, fish sauce²⁰⁶, bread, and cheese, are permitted with a single seal. Rabbi Yudan said, the reason of Rav is that anything which is forbidden in itself is forbidden with a single seal, if because of admixture it is

permitted with a single seal. Rabbi Jacob bar Aḥa, Rabbi Simeon bar Abba, Rabbi Eleazar in the name of Rabbi Ḥanina; Rabbi Abba, Rabbi Ḥiyya in the name of Rabbi Joḥanan; Rabbi Ze'ira in the name of Rabbi Joshua ben Levi: Everything is permitted with a single seal except wine²⁰⁷.

202 Mnemonic marks composed of initial letters of the items to be remembered; pronounced *havit* and *ḥampag*. Babli 39a/b.

203 If it is not directly visible that it is a piece of a fish with fins and scales, permitted as food.

204 Woolen threads for use in the *šisit*, which by tradition must be dyed with the blood of a marine snail which can easily be counterfeited by (much cheaper) indigo, and therefore needs certification. (In modern

Hebrew תכלת is light blue but classically very dark blue.)

205 A medical concoction on vegetal basis but for which (forbidden) wine might have been used.

206 Latin *muries*; this also might have been made with wine, even though using only salt and water is cheaper.

207 Babli 31a.

וְחָרָס אֲדָרִינִי. רַבִּי זְעִירָה בְּשֵׁם רַבִּי יְרֵמְיָהּ. הִלְכָה כְּרַבִּי מֵאִיר. הָא דְתִנְיָ. חָרָס אֲדָרִינִי אֲסוּר וְאִישׁוּרֵי אִישׁוּר הִנֵּינָה. דְּבָרֵי רַבִּי מֵאִיר. וְחֻכְמִים אֲמָרִים. אֵין אִישׁוּרֵי אִישׁוּר הִנֵּינָה. רַבִּי יְרֵמְיָה בְּעָא קוּמִי רַבִּי זְעִירָה. אָהֵן בְּגָד דְּתִנְיָן הִכָּא מָהוּ. וְאַקְפִּיד לְקוּבְלִיָּה. אָמַר לִיה. אֲפִילוּ לְמָאן דְּמַר תַּמָּן מוּתָר וְכָא אֲסוּר. תַּמָּן אֵין אִישׁוּרֵי נִיכָר. בְּרַם הִכָּא אִישׁוּרֵי נִיכָר. וּמָהוּ לְסֻמוּךְ בּוֹ אֶת הַמִּיטָה. רַבִּי לְעֶזְרָא אָמַר. מוּתָר. וְרַבִּי יוֹחָנָן אָמַר. אֲסוּר.

“And Hadrianic pottery.”²⁰⁸ Rabbi Ze'ira in the name of Rabbi Jeremiah²⁰⁹: does practice follow Rabbi Meir? As it was stated²¹⁰, “Hadrianic pottery is prohibited and its prohibition is of usufruct, the words of Rabbi Meir²¹¹, but the Sages say, its prohibition is not of usufruct.” Rabbi Jeremiah asked before Rabbi Ze'ira: what is the status of the cloth about which we stated here²¹²? He was offended by this and told him, even for him who permits there, here it is forbidden. There, the prohibition is not visible, here the prohibition is visible. May one use it to support the legs of a couch²¹³? Rabbi Eleazar says it is permitted, Rabbi Joḥanan says it is forbidden²¹⁴.

208 The origin of this text is in 'Orlah 3:2, Notes 64-76, since in the text “here” means 'Orlah and “there” Avodah zarah. Nevertheless the order of sentences is too

different and the text here cannot be considered as simply a copy of the text there.

209 Probably this should read: Ze'iri in the

name of Rav Jeremiah.

210 Cf. Tosephta 4:8. Since the majority opposes R. Meïr, it is difficult to understand why the Mishnah should support a minority opinion as practice.

211 In the *editio princeps* : R. Eliezer.

212 This shows that the paragraph belongs to 'Orlah, the treatise about the prohibition to use the fruits of a tree in the first three years of its growth. Mishnah 'Orlah 3:1 states: "Cloth dyed with 'orlah shell shall be burned." R. Jeremiah asks, why do the

Sages hold that libation wine absorbed in pottery is not forbidden for usufruct but dye from 'orlah shells (e. g. walnut shells) absorbed in cloth make the entire cloth forbidden for usufruct?

213 They used to put the legs of the couch in water containers to shield the sleeper from snakes and other crawling animals.

214 In 'Orlah, the attributions are switched. The Babli 32a cannot decide between the two traditions.

41b line 31) ועורות לבובין. רבי ירמיה בשם רב. הלכה כרבן שמעון בן גמליאל.
כיצד הוא עושה. קורעה עד שהיא בחיים ומוציא לבה לעבודת זרה. כיצד הוא יודע.
רבי הונא אמר. בשעה שקורעה עד שהיא בחיים הוא נסלל ונעגל. לאחר שחיתה הוא נמשך.
אמר רבי יוסי. ותשמע מינה. שחט בה סימן אחד. אף על גו דתימר. אין דבר שלש בו רוח
חיים נאסר. וכה נאסר.

"And heart-removed skins." Rabbi Jeremiah in the name of Rav: Practice follows Rabban Simeon ben Gamliel²¹⁵.

How does he do it? He tears its heart out from the living animal for pagan worship. How does one know²¹⁶? Rabbi Huna said, if it is torn out from the living animal it rebounds and becomes circular; after slaughter it becomes stretched. Rabbi Yose said, one can infer from this that if he slaughtered one sign, even though one says that nothing living can become prohibited, here it becomes prohibited²¹⁷.

215 In the Babli 32b this is a tradition of Samuel. R. Jeremiah here is the first generation Babylonian.

216 Which skins were used in pagan ceremonies and are forbidden?

217 Even an animal which was worshipped as a divinity is not forbidden for usufruct (it is forbidden as a sacrifice.) If in an act of

pagan worship only the windpipe of an animal is cut but not the esophagus and the carotid arteries, the animal is not immediately killed. But since it is for pagan worship it is not less than tearing the heart out from a living animal which makes the entire carcass forbidden for usufruct.

(41b line 36) וּבֶשֶׁר הַנֶּכֶס לַעֲבוֹדָה זָרָה מוּתָר. רַבִּי בָּא רַבִּי חִינָה בְּשֵׁם רַבִּי יוֹחָנָן אָמַר. לְהוֹצִיא מִדְּבָרֵי רַבִּי לִיעֲזָר. שְׂרָבִי לִיעֲזָר אֹמֵר. מִחֲשַׁבֶּת נִכְרִי לַעֲבוֹדָה זָרָה.

וְהוֹצֵא אֶסוּר. רַבִּי אֲבִינָא בְּשֵׁם רַב יְרֵמְיָה. בְּשֶׁהִכְנִיסוּ לַפְּנִים מִן הַקִּינְקָלִין. אָבָל אִם לֹא הִכְנִיסוּ לַפְּנִים מִן הַקִּינְקָלִין אִף הוֹצֵא מוּתָר. בְּעֲבוֹדָה זָרָה שֵׁשׁ לָהּ קִינְקָלִין. אָבָל בְּעֲבוֹדָה זָרָה שְׁאִין לָהּ קִינְקָלִין כָּל־הַבֵּית יָדוֹן לְשֵׁם קִינְקָלִין.

“Meat brought into a pagan Temple is permitted.” Rabbi Abba, Rabbi Hiyya in the name of Rabbi Johanan said, to exclude the statement of Rabbi Eliezer, since Rabbi Eliezer says that the thoughts of a Non-Jew are about pagan worship²¹⁸.

“But what leaves is forbidden.” Rabbi Abinna in the name of Rav Jeremiah: When he introduced it inside the lattice railing²¹⁹. But if he did not introduce it inside the lattice railing it is permitted. That is about a pagan Temple which has a lattice railing. But if a pagan Temple has no lattice railing, the entire building is considered lattice railing.

218 Mishnah *Hulin* 2:7. He holds that even if a Jew correctly slaughters an animal for a Gentile the meat is forbidden since the Gentile owner in his mind dedicates the slaughter to his god. Practice follows R. Yose who holds that only the slaughterer's

intentions have any influence on the process of slaughtering. Babli 32b.

219 Greek *κίγκλις*, mostly used in the plural Greek *κίγκλιδες*, Latin *cancelli*, “lattice gates” (of Temples, etc.) Babli 51b.

(41d line 41) הַהוֹלָכִים בְּתַרְפוּת. רַבִּי חִינָה בְּשֵׁם רַבִּי יוֹחָנָן. תוֹרִיבֹס. מוֹלִיכִין עֲבוֹדָה זָרָה גְדוֹלָה אֶצֶל עֲבוֹדָה זָרָה קְטַנָּה. אֵית תַּנְיִי תַנִּי תַרְפוּת. מֵאֵן דָּאֵמַר תַּרְפוּת. תַּרְפִּים. וּמֵאֵן דָּמַר תַּרְבוּת. תוֹרִיבֹס.

וְהַבָּאִין מוּתָרִין. רַבִּי אֲבִינָא בְּשֵׁם רַב יְרֵמְיָה. בְּשְׁאִין חֲזִירְתָּן כְּהִלְכָתָן. אָבָל אִם הֵיטָה חֲזִירְתָּן כְּהִלְכָתָן אִף הַבָּאִין אֶסוּרִין.

“Those who go in²²⁰ ugliness.” Rabbi Hiyya in the name of Rabbi Johanan, *θόρυβος*²²¹. One brings a large idol to a small idol. Some state *תרפות*.²²² He who says *תרפות*, idols²²³. He who says *תרבות*²²⁴, *θόρυβος*.

“But those who return are permitted.”²²⁵ Rabbi Abinnas in the name of Rav Jeremiah: If their returning is not like their going. But if their returning is like their going, also those returning are forbidden.

220 This text, בתרפות, is otherwise found only in Mishnah texts of the Maimonides tradition. It seems preferable to the common text לתרפות.

221 “Tumult.” The reference is to pagan processions.

222 There seems a sentence to be missing, “some state תרבות”. This is a word תרבות both in biblical Hebrew, “brood” (*Num.* 32:14), as also in rabbinic, “culture”. For תרפות compare Greek *τράπεζα* “table”

including table dedicated to divinities with offerings of food (E. G.).

223 A word derived from a root תרפ used either for household gods or dolls (*IS.* 13,16). Arabic *تَرْف* “to live the good life”.

224 To be vocalized תְּרֻבֹּת.

225 A quote from the Mishnah in all versions except the Yerushalmi separate Mishnah.

משנה ד: נודות הגוים וקנקניהם ויין ישראל כגוס כהן אסורין ואיסורן איסור הנאה דברי רבי מאיר. והקמים אומרים אין איסורן איסור הנאה.

Mishnah 4: Gentiles’ wine skins and jugs²²⁶ containing an Israel’s wine are forbidden and their prohibition is one of usufruct, the words of Rabbi Meir; but the Sages say that their prohibition is not one of usufruct²²⁷.

226 Which were not thoroughly cleansed to remove all traces of use for Gentile wine.

227 The wine may be used for trade; it is forbidden for Jews to drink.

(41b line 46) **הלכה ד:** נודות הגוים וקנקניהם כול. נודות הגוים גרודות הרי אילו מותרות. זפותות הרי אילו אסורות. גוי עובדן ודובבן וישראל עומד על גביו כונס לתוכן יין ואינו חושש. וחש לומר. שמא ניסד הוא. אמר רבי בא. אינו מצוי לנסד על גבי דבר מאוס. מעתה אפילו אין ישראל עומד על גביו. אני אומר. שמא החליף.

קנקני גוים תדשוש מותרות אף על פי שהן זפותות. וישנות אסורות אף על פי שאינן זפותות. הקא את אמר זפותות מותרות. והקא את אמר זפותות אסורות. אמר רבי אבהו. אני עמדי על זפתן של קנקנים ואין נותנין לתוכן חומץ בשעה שאופתין אותן.

Halakhah 4: “Gentiles’ wine skins and jugs,” etc.²²⁸ “Rough Gentile wine skins²²⁹ are permitted; tarred ones are forbidden. If a Gentile made it and insulated²³⁰ it while a Jew was watching, one may fill it with wine without worry.” Should one not be afraid that possibly he made a libation? He will

not usually make a libation in repugnant circumstances²³¹. Then even if no Jew was watching? I say, maybe he switched²³².

²²⁸“Gentile jugs, new ones are permitted even tarred; old are forbidden even if not tarred.” Here you say tarred are permitted and there you say tarred are prohibited. Rabbi Abbahu said, I investigated tarring of jugs; they do not use vinegar while tarring²³³.

228 Tosephta 4:10; Babli 33a.

229 The interior surface is leather only; it was not smoothened by tar.

230 It is difficult to see how the scribe could have written זופתו דובנ for “tarred them” in the other sources; it may be better to accept the word as it stands and read it as דַּבֵּב “to protect, defend something”, to protect the skin against being penetrated by

the wine.

231 Even if the pitch is diluted with vinegar when applied to the skin, the bad smell does not invite making a libation. One assumes that the Jew has provided the vinegar which was made from kosher wine.

232 Then one has no control over the vinegar which was used.

233 There is no reason to forbid new jugs.

41b line 54) רבי יעקב בר אבא בשם רבנן. יין שאסור בשתייה ומוותר בהנאה וכנסו לתוך קנקנים נעשו הקנקנים קיין. פינהו וכןס לתוכו יין אחר נעשה יין קנקנים. פינהו וכןס לתוכו יין אחר היין אסור והקנקנים מותרין. ולמה אסור בשתייה ומוותר בהנאה. בגין דרבי מאיר אמר. אסור בשתייה ובהנאה.

Rebbi Jacob bar Aḥa in the name of the rabbis: If somebody puts wine which was forbidden to drink but permitted to use into jugs, the jugs become like the wine²³⁴. If he removed it and put new wine²³⁵ into them, the wine becomes like the jugs²³⁶. If he removed it and put new wine²³⁵ into them, the wine is forbidden but the jugs permitted²³⁷. Why “forbidden to drink but permitted to use”? Because of Rebbi Meïr who said, forbidden to drink and for use²³⁸.

234 It cannot be exactly like the wine since one cannot drink the solid jug. But it means that the jug is permitted for usufruct but will make any wine which touches its inside forbidden to drink.

235 Kosher wine.

236 Forbidden to drink but permitted for usufruct.

237 The first wine was forbidden. If the jug was filled twice with kosher wine, it has been cleansed from the first contamination; the third time the kosher wine remains

kosher.

jug.

238 He will reject this way of cleansing the

(41b line 58) אָמַר רַבִּי בָּא. כְּשֶׁהֵלֵךְ רַבִּי עֲקִיבָה לְזִיפּוּרֵי אֶתְנוֹן שְׁאֵלוֹן לִיה. קִנְקִנִּים שְׁלֹגוּמִים בְּמָה הִיא טְהוֹרָתָן. אָמַר. מִזֹּא לִימְדֹתִי עֲלֵיהֶם. מָה אִם בְּשִׁעָה שְׂאִינָן זְכוּתוֹת אֶת מֶר מוֹתְרִין. בְּשִׁעָה שֶׁהוּא זְכוּתוֹת אֶלָּא שְׁנוֹתִקְלָפָה זִיפְתָּן לֹא כָּל־שֶׁכֶן. וְכִשְׁבָּאֲתִי אֶצֶל חֲבֵרַי אָמְרוּ לִי. עַל יָדִי זִפְתָּן הֵן בּוֹלְעוֹת.

כִּנְסֵי הַגּוֹי לְתוֹכָן מִיָּם יִשְׂרָאֵל כּוֹנֵס לְתוֹכָן מִיָּם וְחוֹזֵר וְכוֹנֵס לְתוֹכָן יֵין וְאֵינוֹ חוֹשֵׁשׁ. כִּנְסֵי הַגּוֹי לְתוֹכָן צִיר אִו מוֹרִיִּים יִשְׂרָאֵל כּוֹנֵס לְתוֹכָן יֵין. כִּנְסֵי הַגּוֹי לְתוֹכָן יֵין וְיִשְׂרָאֵל כּוֹנֵס לְתוֹכָן צִיר אִו מוֹרִיִּים וְחוֹזֵר וְכוֹנֵס לְתוֹכָן יֵין וְאֵינוֹ חוֹשֵׁשׁ.

רַבִּי יוֹחָנָן נָפַק לַפְּנֵי דְרַבִּי יוֹדָן נְשִׂיאָא לַעֲבֹד. אֶתְנוֹן שְׁאֵלוֹן לִיה. קִנְקִנִּים בְּמָה הִיא טְהוֹרָתָן. אָמַר. מִזֹּא לִימְדֹתִי עֲלֵיהֶם. מָה אִם בְּשִׁעָה שְׂכָנִים הַגּוֹי לְתוֹכָן צִיר אִו מוֹרִיִּים יִשְׂרָאֵל כּוֹנֵס לְתוֹכָן יֵין. רַבִּי יִסָּא בְּשֵׁם רַבִּי יוֹחָנָן. בְּשִׁעָה שְׂמִכְנִיסָן לְאוּר לֹא כָּל־שֶׁכֶן. רַבִּי חִיָּה בְּשֵׁם רַבִּי יוֹחָנָן. בְּשִׁעָה שְׂמִשְׁחִיל אֶת זִיפְתָּן לֹא כָּל־שֶׁכֶן. קִיָּמִין אֵינוֹן. אֵין קִמִּין קִמִּין. קִנְקִנִּין שְׂאִינָן זְכוּתוֹת. רַבִּי אֲסִי אָמַר. אֲסוּרוֹת. רַבִּי אֲמִי אָמַר מוֹתְרוֹת. רַבִּי יַעֲקֹב בֶּר אַחָא אָמַר. רַבִּי אֲסִי מְקִשִּׁי. כִּי נָן אֶמְרִין אֵהוּ כּוֹנֵס לֹא בָּלַע. רַבִּי בָּא אָמַר. רַב שֶׁשֶּׁת שְׂאִיל. מִאֵן אָנָּן אֶמְרִין הָאֵין דְּהוּן שְׂלִמִימִי רְגָלִים לֹא בָּלַע.

Rebbi Abba said, when Rebbi Aqiba went to the tar workers, they came and asked him, how does one purify Gentiles' jugs? From the following I taught them, since they are permitted if not tarred, if they were tarred but the pitch was shaved off not so much more? But when I came to my colleagues they told me that they are absorbing because of the pitch²³⁹.

228,240,“If the Gentile filled it with water, the Jew fills it with water; then he fills it with wine without worry. It the Gentile filled it with fish fluid²⁴¹ or fish sauce²⁰⁶ the Jew may fill it with wine²⁴². If the Gentile filled it with wine, the Jew fills it with fish fluid or fish sauce, then he fills it with wine without worry.”

Rebbi Johanan went to meet²⁴³ Rebbi Yudan the Prince at Acco. They came and asked him, how does one purify jugs? He said, from the following I taught them, since after the Gentile filled it with fish fluid or fish sauce the Jew fills it with wine²⁴⁴. Rebbi Yasa in the name of Rebbi Johanan, if he puts them into the fire not so much more? Rebbi Hiyya in the name of Rebbi

Johanan, if he strips off the tarring²⁴⁵ not so much more? Do they stand this? If they stand it, they stand²⁴⁶.

Untarred jugs²⁴⁷, Rabbi Assi¹⁹⁰ said, they are forbidden²⁴⁸, Rabbi Immi said, they are permitted. Rabbi Jacob bar Aḥa said, Rabbi Assi questioned: do we say that a tankard does not absorb²⁴⁹? Rabbi Abba said, Rav Sheshet asked, could we say that a vessel for urine does not absorb?

239 They hold that wine absorbed in earthenware which had been tarred will not be removed even if the tar was removed and the vessel cleansed with water for three days as explained at the end of the Halakhah.

240 A very different version in the Babli, 33a, bottom.

241 ציר is any fluid obtained by squeezing something, whether fruit, meat, or in this case fish. *Muries* is a sauce in which pieces of fish are preserved.

242 The smell of the fish will obliterate any taste that might have remained of the Gentile's wine.

243 Greek ἀπαντᾶω "to meet" with Atamaic prefix לו.

244 This is the quote from the previous Tosephta. Of R. Johanan's argument there exist two versions, one by R. Yasa (reported in the Babli 33b), the other by R. Hiyya bar Abba.

245 By burning of the tar.

246 Both R. Yasa and R. Hiyya require that the earthenware jug be treated with fire; either fired in its entirety or fire applied to the tar lining. It is agreed that there is a risk that the vessel will burst in the fire, but if it withstands the process it may be used to store Jewish wine.

247 Which had been used by Gentiles.

248 They cannot be cleansed to become usable.

249 Both R. Assi and Rav Sheshet question the position of R. Immi.

(21b line 74) רבי יעקב בר אבא רבי שמעון בר אבא בשם רבי חנינה. קנקני גוים ממלאן מים ג' ימים מעת לעת. רבי יעקב בר אבא אמר. רבי אסי מקשי ועבדין בן. רבי יוסי ממלחיא אעיל עובדא קומי רבי מנא. אמר ליה. הא לשעבר. אמר ליה. שרי. הא לכתחילה. אמר ליה. אסיר. רבי ירמיה אצל לגובלנה. הורי באילין פתריא רברבייא. ממלא אותן ג' ימים מעת לעת.

ארמיא איתבזעזע זיקיה וקיבלה ישראל גו ידיה. אתא עובדא קומי רבנו. אמרי. ממלא אותן ג' ימים מעת לעת.

רבי יסא אצל לצור. חמא ניהון זפתין זיקוקין זעירין וישראל זבניו. אמר. מאן שרא לבון. שאלון לרבי יצחק ולרבי מני ואסרון.

Rebbi Jacob bar Aḥa, Rebbi Simeon bar Abba in the name of Rebbi Ḥanina: One fills Gentiles' jugs with water three days from time to time²⁵⁰. Rebbi Jacob bar Aḥa said, Rebbi Assi¹⁹⁰ asked, does one do this? Rebbi Yose from Malḥa brought a case before Rebbi Mana. He told him, that is what happened; he answered that it is permitted. Is that to start? He told him, it is forbidden²⁵¹. Rebbi Jeremiah went to Goblana; he instructed about large cups²⁵² that one fills them with water three days from time to time²⁵³.

An Aramean's²⁵⁴ leather bag split; the Jew received it into his²⁵⁵. The case came before the rabbis who said, one fills them with water three days from time to time²⁵⁶.

Rebbi Yasa²⁵⁷ went to Tyre. He saw them²⁵⁸ tarring small leather bags and Jews bought them. He asked, who permitted you? They asked Rebbi Isaac and Rebbi Mani²⁵⁹, who prohibited it.

250 One fills the vessel with water, lets it stand for 24 hours, pours the old water out and refills with new, and repeats twice.

251 The method is a short-cut which cannot be used generally; if people used it without asking one cannot prohibit the vessels cleansed in this way.

252 Latin *patra* "flat dish or saucer; libation bowl" or Greek ποτήριον (cup, receptacle for offerings in temples; cup in the Eucharist) (Kohut).

253 He sees nothing wrong with the method and recommends it publicly. He is quoted in the Babli, 33a, in the same sense and ascribes the ruling to R. Immi.

254 A Non-Jew, not necessarily a pagan; cf. Chapter 1, Note 177.

255 The Aramean's wine-skin started leaking; a Jew saved his wine by receiving it into his own wine-skin. The Gentile's wine certainly is forbidden to the Jew; the question is how the Jew can regain the use of his skin after the wine was transferred to the Gentile's vessel, without ruining the vessel by using it for fish sauce.

256 Following R. Jeremiah, against R. Yasa (Assi).

257 In the entire Halakhah he opposes cleansing Gentile wine vessels for use by Jews.

258 Gentile workers.

259 The earlier authorities all forbid refurbishing wine skins and jugs; the later generations do permit it.

משנה ו: תהרצנים ותגנין של גוים אסורין ואיסורן איסור הנאה דברי רבי מאיר.
וחכמים אומרים להין אסורין ובישין מותרין.

Mishnah 6²⁶⁰ Gentiles' grape kernels and skins²⁶¹ are forbidden and the prohibition is of usufruct, the words of Rabbi Meir. But the Sages say, moist they are forbidden, dry permitted.

260 In the Mishnah this text follows Commentary.

Mishnah 5 which belongs to Halakhah 6.
The sequence of the Halakhah also is the
one in the Babli and Maimonides's Mishnah

261 Which remain after the production of
wine.

הלכה ה': החרצנים והגגין שלגזים כול'. רב ששט ב'שם רב. לחים אסורין אפילו
בהנאה. ובישין מותרין אפילו באכילה. והא תנינן. אינו נעשה יין נסך עד שירד לבור. רבי בא
ב'שם רבי יודה. במשקלם לתוך הבור היא מתניתא.
תמן תנינן. וכן בגפת חדשה. אבל בישנה טהור. אי זו היא חדשה. בתוך י"ב חודש.
ישנה לאחר י"ב חודש.

Halakhah 5: "Gentiles' grape kernels and skins," etc. Rav Sheshet in the
name of Rav: Moist they are forbidden even for usufruct; dry they are
permitted even to eat²⁶². But did we not state²⁶³, "it does not become libation
wine until it descends into the cistern"²⁶⁴? Rabbi Abba in the name of Rabbi
Judah: The Mishnah is about one who lowers them into the cistern²⁶⁵.

There we have stated:²⁶⁶ "And so it is with new solid matter of olives; but
old one is pure."²⁶⁷ What is new? Within twelve months. Old, after twelve
months²⁶⁸.

262 In the Babli, 34a, ascribed to the
Galilean R. Johanan.

263 Mishnah 4:8.

264 Grape juice pressed out of grapes does
not become forbidden before it is collected
in a vat below the wine press. Since kernels
and skins are kept in the press they should
not become forbidden.

265 The only skins forbidden are those put
in the fermenting wine to give it red color.

266 Mishnah *Kelim* 9:5.

267 If the solid remnants in the olive press

which remain after the production of oil are
impure, they impart impurity only as long as
they are somewhat moist. Once they are
stone dry they do no longer impart impurity
to clay vessels.

268 The same is true for grape skins used
for the production of Gentile wine. Once
they are completely dry, having dried out for
a full 12 months, they are forbidden no
longer; Babli 34a (attributed there to
Samuel).

(fol. 40b) **משנה ה:** המוריים והגבניה ותריוקני של גוים אסורין ואיסורן אסור הנאה דברי רבי מאיר. והקמים אומרים. אין איסורן איסור הנאה:

Mishnah 5: Fish sauce²⁶⁶, cheese²⁶⁹, and theriac²⁷⁰ of Gentiles are forbidden and the prohibition is of usufruct, the words of Rabbi Meir. But the Sages say, their prohibition is not of usufruct.

269 The reasons for prohibiting Gentile cheese will be discussed in the next Halakhot.

270 Greek *θηριακή*, *scil.*, *φάρμακα* “medicines made from poisonous beasts (θηρίον)”. It is possible however that תריוקני

is an error for בתיניקי “Bithynian”, which in the Mishnah in the Babli and the independent Mishnah mss. characterizes the kind of cheese which if made by Gentiles is forbidden for usufruct; cf. Note 431.

(41c line 13) **הלכה ו:** המוריים והגבניה כול. יין למוריים רבי מתיר. רבי לעזר בירבי שמעון אוסר. לפיכך אם עבר ונתן רבי אוסר לגרים. רבי לעזר בירבי שמעון מתיר לגרים. רבי מנא בר תנחום בעי. כדברי מי שהיה מתיר לגרים. ומוריים הגוי למה הוא אסור. רבי ירמיה בשם רבי חייה בר בא. משום תבשילי גוים. והתני. אומן מותר. שאינו אומן אסור. אומן מותר לא בשאנו מבושל. ודכותה שאינו אומן אסור אף על פי שמבושל. מאי קדון. את שהיה ליטול את האומן מחמת עבודה זרה אסור. הקא אמרה. הנאת עבודה זרה אסורה והנאת תרומה מותרת. אמר רבי יוחנן בר מדיא. כדברי מי שהיה אומן מותר ובלבד בידעו.

3 ומוריים ג מוריים 4 חייה ג חייה תבשילי ג תפשוילי והתני ג והתני ר' יוסה אומן ג אומן (3) 5 שאינו ג ושאינו אומן ג אומן שמבושל ג מבושל מאי ג מי 6 הזוהמא ג הזוהמה מחמת ג מיחמת הדא ג הדה הנאת ג הנאת והנאת ג הנאת 7 מדיא ג מדיה כדברי ג כדברי אר' ג אמר אומן ג אומן ובלבד ג ובלבד

ורבי יוחנן ורבי לעזר. חד אמר. מפני שממעיטו ממידתו. וחד אמר. מפני שממעיטו משותיו. ולא ידעין מאן מר דא ומאן מר דא. מן מה דמר רבי יוחנן. מחלפה שיתיה דרבי יודה. ומר רבי לעזר. אינה מחלפת. תמן בכהן והקא בבועלים. הוי דרבי יוחנן דו אמר. מפני שממעיטו משותיו.

1 ור' יוחנן ור' לעזר | תת ר' לעזר ור' יוחנן מפני ג מיפני שממעיטו | ג שהיה ממעיטו (2) ממידתו ג מימדתו וחד | גת וחרנה 2 משותיו ג מישותיו מאן | ג מן ומאן | ג ומן דמר | ת דאמ' ת דאמר מחלפה | ת מחלפא 3 יודה | ת יהודה לעזר | ת אלעזר מחלפת | ג מחולפת תת מחולפת והכא | ג וכה ת וכאן בבעלים | ג בבעלים הוי | ג הבאי דר' | ת ר' | דו | ת דאמ' ת דהוא אמ' 4 שממעטו משותיו ג ממעיטו מישותיו ת שהוא ממעיטו משותיו

Halakhah 6: “Fish sauce, cheese,” etc. ²⁷¹“Wine in *muries*, Rabbi permits but Rabbi Eleazar ben Rabbi Simeon forbids.” Therefore, if somebody transgressed and put it in, Rabbi forbids it to laymen but Rabbi Eleazar ben Rabbi Simeon permits it to laymen.” Rabbi Mana bar Tanḥum

asked: Following him who permits for laymen, why is *muries* of Gentiles forbidden²⁷²? Rabbi Jeremiah in the name of Rabbi Hiyya ber Abba, it is forbidden as being cooked by Gentiles²⁷³. But did not [Rabbi Yose]²⁷⁴ state: “From a professional²⁷⁵ it is permitted, from a non-professional it is forbidden.” From a professional it is permitted, is that not if it is not cooked²⁷⁶? Similarly, from a non-professional it is forbidden even if cooked. What about it? If it is to remove contamination it is forbidden because of pagan worship²⁷⁷. This implies that usufruct of pagan worship is forbidden, usufruct of heave is permitted²⁷⁸. Rabbi Joḥanan bar Madia said, following him who said from a professional it is permitted, only if he knows him²⁷⁹.

Rabbi Joḥanan and Rabbi Eleazar. One says because he diminishes its volume, the other says because he reduces the number of drinkers²⁸⁰. We do not know who said what. Since Rabbi Joḥanan said, Rabbi Jehudah inverted his reasoning but Rabbi Eleazar said, it was not inverted, there for the Cohen, here for the owners, it follows that Rabbi Joḥanan said because he reduces the number of drinkers.

271 From here on, there exists a Genizah text (א) which differs from the Leiden text mainly in its spelling. The origin of the entire Halakhah is *Terumot* 11:1 (א, Notes 11-23). However, the first paragraph is a reformulation and explanation of that text as noted by S. Lieberman (*Tosefta kiFshutah Terumot* p. 454). The second paragraph also belongs to *Terumot* 2:5 (א, Notes 118-119).

The quote refers to a *baraita* similar to Tosephta *Terumot* 9:6. According to Rabbi one puts wine into *muries* to improve its taste. This is a legitimate use of wine as food; therefore the Cohen may use his heave wine, sanctified food which has to be consumed in purity as a religious duty, to improve his *muries*. On the other hand, since the improved taste is noticeable, the entire *muries* now must be eaten under the

rules of heave.

R. Eleazar holds that wine is used in *muries* only to clean it from contaminations. To use heave wine for this purpose is sinful since it destroys sanctified drink. But if heave wine was used in this illegitimate way, it was destroyed and therefore lost its sanctity. The *muries* is profane and may be eaten by lay people in impurity.

272 Since the amount of any forbidden wine left in the sauce would be insignificant. If the trace of heave wine is permitted to impure laymen, should not a trace of Gentile wine be permitted to everybody?

273 Whose general prohibition is discussed in Halakhah 9.

274 Added from א and the *Terumot* texts.

275 This is the reading of the Leiden ms., Babli 34b, and Tosephta *Terumot* 4:13. The

Leiden ms. in *Terumot* reads המין “trust-worthy”, which in *editio princeps* became an unintelligible חמין “hot”. The reading of ג, אמן may be read either as אמן “craftsman” with the Leiden ms. here or אמן “trust-worthiness” with the text in *Terumot*.

276 Since otherwise it still would be forbidden as Gentile cooking even if one was sure that no wine was used in its production.

277 In industrial production a Gentile might use wine of which a libation was made.

278 Since usufruct of pagan wine is forbidden, the rules of declaring an amount as insignificant do not apply; the most minute amount makes the entire product

forbidden whereas less than $\frac{1}{2}\%$ of heave in food leaves it permitted for everybody.

279 In modern terms, if the *muries* carries a rabbinic certification that no wine was used in its production.

280 This refers to Mishnah *Terumot* 11:1: “One may not cook heave wine because he diminishes its volume; R. Jehudah permits since he improves it.” But some people do not want to drink alcohol-free cooked wine. The problem really is whether the vintner is permitted to cook his wine before he gave heave since (a) with the diminution in volume of the wine he diminishes the volume of heave to be taken and (b) not every Cohen may be willing to accept cooked heave wine.

משנה ז: אמר רבי יהודה שאל רבי ישמעאל את רבי יהושע כשהיו מחליכין בדרך מפני מה אסרו גבינות הגוים. אמר לו מפני שמעמידין אותה בקבה של גבילה. אמר לו והלא קיבת עולה חמורה משיבת גבילה ואמרו כהן שדעתו יפה שורפה חיה ולא הודו לו אלא אמרו לא נהנין ולא מועלין. (fol. 40b)

Mishnah 7: Rabbi Jehudah said, Rabbi Ismael asked Rabbi Joshua when they were walking on a road, why did they forbid Gentiles' cheeses²⁸¹? He told him, because they make them with stomach of cadaver²⁸². He answered him, is not the stomach of an elevation offering²⁸³ more serious than the stomach of a cadaver and they said, a Cohen who is not repulsed may burn it raw²⁸⁴, they did not agree to this but said one has no usufruct²⁸⁵ but does not commit larceny²⁸⁶.

281 They were forbidden in Mishnah 6 for all usufruct without any obvious reason.

282 The rennet is taken from the stomach contents of cattle killed by Gentiles and

therefore automatically have the status of cadavers. Since the rennet causes the milk to curdle, its addition cannot be said to be insignificant. Therefore one understands

that the cheeses are forbidden as food. Since the rennet is produced from an animal and cheese (including kosher cheese made by Jews) is made by cooking milk with rennet, it could be forbidden for all usufruct as meat cooked in milk following R. Simeon ben Iohai (*Mekhilta dR. Ismael Masekhta deKaspa* 20).

283 An elevation offering is burned completely on the altar. The stomach contents (and the contents of its intestines) are not burned; the innards have to be washed before being put on the altar (*Lev.* 1:9). Eating from a cadaver is a simple infraction which requires no sacrifice; eating from an animal dedicated as elevation sacrifice is both an infraction and larceny

requiring a sacrifice.

284 The Cohen may eat the stomach contents raw since they are considered excrement; the rennet therefore cannot be considered meat and the Gentile's cheese should be permitted even as food! For the expression "to burn" for "to slurp" see Note 321.

285 While the previous statement is essentially correct there is a (customary or rabbinic) rule that it would not be decorous to do so; one refrains from using any part of the animal (except the hide given to the priests, *Lev.* 7:8) as a practical rule.

286 As a rule of biblical law. Therefore Gentiles' cheese could at most be rabbinically forbidden.

הלכה ז: אָמַר רַבִּי יְהוֹדָה שֶׁאֵל רַבִּי יִשְׁמָעֵאל אֶת רַבִּי יְהוֹשֻׁעַ כּוֹל'. רַבִּי יַעֲקֹב בַּר אֶחָא רַבִּי שְׁמַעוֹן בַּר בָּא בָשָׂם רַבִּי יְהוֹשֻׁעַ בֶּן לִי. מִפְּנֵי עֲגָלִים שֶׁשָּׂם נִשְׁחָטִין לָשֶׁם עֲבוּדָה זָרָה. שְׁמַע רַבִּי יוֹחָנָן וְאָמַר. יָכֹה לִימְדֵנוּ רַבִּי. שֶׁכֵּן הַשּׁוֹחֵט בְּהֵמָה לְעֲבוּדָה זָרָה אֶפְיָלוּ פִּירְשָׁה אֶסּוּר. רַבִּי יוֹחָנָן בְּעֵי. מִצָּא בָּהּ טִבְעֵת. אָמַר רַבִּי יוֹסִי. טִבְעֵת בְּעֵינָהּ הִיא. פִּירְשָׁה גּוֹפָה הִיא.
2 בא | ג אבא מפני | ג מפני שרוב נשחטין | ג נשחטים 3 ומו' | ג ואמר לימדנו | ג לימדי ר' | ג רבו שכן | ג שכן בהמה | ג בהמה 4 יוסי | ג יוסה בעינה | ג עינה

Halakhah 7: "Rebbi Jehudah said, Rebbi Ismael asked Rebbi Joshua," etc. Rebbi Jacob bar Aḥa, Rebbi Simeon bar Abba in the name of Rebbi Joshua ben Levi: Because [most]²⁸⁷ calves there²⁸⁸ are slaughtered in the name of pagan worship. Rebbi Joḥanan heard this and said, my teacher taught us well, since if one slaughters for pagan worship even its excrement is forbidden²⁸⁹. Rebbi Joḥanan asked, if one found a ring in it? Rebbi Yose said, a ring is recognizable²⁹⁰; excrement is part of its body.

287 Added from the Genizah text, necessary for syntactic reasons.

288 This shows that the Mishnah underlying this Halakhah is not the one given in the separate Mishnah in the Yerushalmi but the one found in the Babli

and Maimonides: R. Meir declares *Bithynian* Gentile cheese as forbidden for usufruct. Babli 34b.

289 Therefore even R. Ismael must agree that these cheeses are forbidden; but they should be forbidden for usufruct.

290 It never was part of the animal and did idolatry.
not become forbidden by its slaughter for

(41c line 31) רבי חייה בר בא בשם רבי יוחנן. בראשונה היו אומרים. אין מעמידין לא בקיבת הנבילה ולא בקיבת הגוי. חזרו לומר. מעמידין בקיבת הנבילה ואין מעמידין בקיבת הגוי. רבי בא בר זבדא רבי שמואל בר רב יצחק בעי. זו להוציא מדברי רבי לעזר. שרבי לעזר אומר. שמחשבת נכרי לעבודה זרה. אתא רבי אסי בשם רבי יוחנן. בראשונה היו אומרים. מעמידין בקיבת הנבילה ולא בקיבת הגוי. חזרו לומר. מעמידין בין בקיבת הנבילה בין בקיבת הגוי. לישן מתניתה מסייעא לרבי חייה בר בא. קיבת הנכרי ושלנבילה אסורה כמשנה הראשונה. טריפה שניקה מן הכשירה קיבתה מותרת כמשנה האחרונה. כשירה שניקה מן הטריפה קיבתה אסורה כמשנה האחרונה. ואפילו דייס ברוך בית שמי כבית הלל במשנה הראשונה היו ביצה גידולי גופה. קיבה ממקום אחר באת. ואתיא כפי דמר רבי יוסי בירבי בון בשם רבי יוחנן. מעשה בבנו של רבי יהודה בן שמוע שביקעו להן זאיבים יותר משלש מאות צאן. ובה מעשה לפני חכמים והתירו קיבותיהן. אמרו. ביצה גידולי גופה. קיבה ממקום אחר באת לו.

1 בר בא | בב - מעמידין | ג מעמידים הנבילה | בב הנבילה 3 ר' בר זבדא | ג ר' זבידא א' מדברי | ג מדברי ר' בא ... ר' לעזר | בב ר' יוסי ביר' בון אמ'. שמואל בר אבא בעי. מה. כר' אליעזר | לעזר שר' | ג שהיה ר' בב דר' 4 או' | ב אמ' שמחשבת | ג שהמחשבת בב סתם מחשבת נכרי | ג הנכרי אתא | ג אתה ב - אסי | ג יסא ב יסה - | ב הכין ב הכיני 5 מעמידין | ג אין מעמידים לא ב לא מעמידין לא אין ב - מעמידין | ג מעמידים 6 לישן | ג לישן ב אמ' ר' יוסי. לישן ב א' ר' יוסה לישן מסייעא | ג מסייע ב מסייעה הנכרי | ג הנכרי ושלנבילה | בב וקיבת נבילה כמשנה | ג כמישנה 7 הראשונה | ב ראשונה 8-7 טריפה ... האחרונה | גבב כשירה שניקה מן הטריפה קיבתה אסורה כמשנה הראשונה וטריפה שניקה מן הכשירה | קיבתה מותרת כמשנה האחרונה²⁹¹ 8 שמי | גבב שמי | ב לבית²⁹² במשנה | ג במישנה | גבב כמשנה 9 הראשונה | ב האחרונה | הוי | ג הוי בב - ואתיא | גות ... ב. ואתיא כיי | ב כהיא דמר | ב דאמ' יוסי | גבב יוסה 10 בבנו | גבב בבניו שלר' | גבב של שמוע | גבב שמוע | ב שמוע | שמוע | ב שביקעו להן | ג להם זאיבים | ב זאיבין יותר | גבב יתר משלש | ג משלוש 11 חכמים | ב חכמין והתירו | ג והתירו 12 לו | גבב -

²⁹³Rebbi Ḥiyya bar Abba in the name of Rebbi Joḥanan: At first they were saying, one curdles neither with the stomach content of the carcass²⁹⁴ nor with the stomach contents of the Gentile. They changed to say, one curdles with the stomach content of the carcass but not with the stomach contents of the Gentile. Rebbi Abba bar Zavda, Rebbi Samuel bar Rav Isaac asked: Does this negate the declaration of Rebbi Eliezer, since Rebbi Eliezer said, the thoughts of the Non-Jew are about pagan worship²⁹⁵? Rebbi (Assi) [Yasa]²⁹⁶ came in the name of Rebbi Joḥanan: Originally, they said, one does curdle [neither]²⁹⁷ with carcass stomach contents nor with Gentile's stomach contents. They changed to say, one does curdle with carcass stomach contents and with Gentile's stomach contents. The language of a *baraita* supports Rebbi Ḥiyya

bar Abba: Stomach contents of a Gentile or a carcass is forbidden following the original teaching. (The stomach contents of a torn animal which suckled from a qualified one are permitted following the later teaching; the stomach contents of a qualified animal which suckled from a torn one are forbidden following the later teaching.) [The stomach contents of a qualified animal which suckled from a torn one are forbidden following the former teaching, and the stomach contents of a torn animal which suckled from a qualified one are permitted following the later teaching.]²⁹⁸ And even if the House of Shammai would argue like the House of Hillel in the first teaching, an egg is a growth of its body; the contents of the stomach come from the outside²⁹⁹. It parallels what Rabbi Yose ben Rabbi Abun said in the name of Rabbi Joḥanan: It happened to the son[s]³⁰⁰ of (Rabbi) Jehudah ben Shamma³⁰¹ that wolves tore more than 300 of their flock. The case came before the Sages who permitted their stomach contents³⁰². They said, an egg is a growth of its body; the contents of the stomach come from the outside.

291 The text is complete in אב, Note 293.

292 This also was the text of א before correction. Therefore it is a traditional text rather than a scribal error.

293 For this paragraph there exist two additional witnesses, the Leiden ms. in *Beṣah* 1:1 (60a ll. 39-54, א) and a Genizah text (*Yerushalmi Fragments*, pp. 156-157, א) of the same. The source clearly is the *Beṣah* text even though the argument is from *Avodah zarah* and the reference to *Beṣah* is a side remark.

“Gentile’s stomach content” naturally means “stomach content of animal slaughtered by a Gentile.”

294 An animal which was not slaughtered following the rules of ritual slaughter. whose flesh therefore is forbidden as meat.

295 The *Beṣah* text seems better: Does this (i. e., the prohibition of Gentile rennet)

follow R. Eliezer (whom practice does not follow in general) since it treats Gentile rennet as more problematic than the one derived from a carcass? Since here practice is said to follow R. Eliezer, the tradition seems questionable; one has to search for parallel traditions either to confirm or to reject.

296 The Babylonian form of the name (in parentheses) has to be deleted in favor of the Galilean form used in the three parallel sources [in brackets].

297 To be added by the unanimous testimony of the other three sources and the later arguments.

298 The ms. text (in parentheses) is inconsistent. It has to be replaced by the text of the other three sources [in brackets] which is consistent with R. Joḥanan’s statement in both versions since for dietary laws a “torn” animal has the same status as a

carcass.

A “torn” animal is one of which a vital organ is impaired or defective, the most common one being tuberculous lesions of the lung. If a cow is known to suffer from a defect which makes it “torn”, its milk is forbidden as drink but as stomach contents it becomes excrement and is no longer forbidden. (Karaites deny the existence of internal *terefa* and prohibit as torn only the victims of predator attacks as described by the verse, *Ex.* 22:30.)

299 This now connects the discussion with Mishnah *Beṣah* 1:1 which states that the House of Shammai permit the use on the holiday of an egg laid on that day while the House of Hillel forbid it. The problem is to understand the position of the House of Hillel since the preparation of food is permitted on a holiday (*Ex.* 12:16). According to the Babli and one opinion in the Yerushalmi the prohibition applies only to eggs laid by chickens raised to produce

eggs. Then the mother was not food at the start of the holiday. While the egg is food according to everybody, for the House of Hillel it cannot change its character from non-food to food on the holiday. Then the question is raised why milk which is prohibited as food before being ingested by a ruminant becomes permitted by the animal’s stomach. In this question, the revised ruling in matters of rennet would agree with the stance of the House of Shammai. But the answer is that the two cases cannot be compared; the stomach contents of an animal never were part of the animal and do not have the latter’s status.

300 The plural is attested to in the three parallel sources and required by the context.

301 The parallels unanimously state the name as Jehudah ben Shemu’ai without a rabbinic title.

302 The latter teaching which permits rennet from animals prohibited as meat is confirmed by a ruling in an actual case.

מִשְׁנֵה ח: הָזֶה וְאָמַר לוֹ מִפְּנֵי שֶׁמֶנְעִמִּידִין אוֹתָהּ בְּקִיבַת עֲבֹדָה זָרָה. אָמַר לוֹ
אִם בֶּן לָמָּה לֹא אֶסְרוּהָ בְּהֵנָא. הִשְׁיִאוֹ לְדָבָר אַחֵר אָמַר לוֹ וְשִׁמְעֵאל אֲחִי הֵיאָךְ אֶתָּה קוֹרָא
כִּי מוֹבִיּוֹת דְּרִידָא מֵיִין אִלּוּ כִּי מוֹבִיּוֹת דְּוִדִּיקָא. אָמַר לוֹ אֵין תְּדַבֵּר בֶּן
שְׁהָרִי חֲבֵרוֹ מִלְּמוֹד גַּלְיָא לְרִיחַ שְׁמֻנִּיק מוֹבִיּוֹת:

Mishnah 8: He³⁰³ gave a second argument and said, because they curd it with stomach content of calves for pagan worship. He³⁰⁴ retorted, then why did they not forbid it for usufruct²⁸⁹? He³⁰³ deflected him to an other subject³⁰⁵ and said to him, my brother Ismael, how do you read, *for your (m.) friends are better than wine*, or *for your (f.) friends are better than wine*³⁰⁶? He³⁰⁴ told

him, *for your (f.) friendship is better*. He³⁰³ answered, it is not so since the next verse implies it, *by the scent of your (m.) good oils*³⁰⁷.

303 R. Joshua.

304 R. Ismael.

305 As the Babli explains, since it was a new purely rabbinic restriction introduced after the destruction of the Temple, he did not want to disclose the reason.

306 *Cant.* 1:2. Since the Song is read as a dialogue between God (m.) and Israel (f.), the theological interpretation depends on the vocalization which was not directly expressible before the invention of vowel signs. The interpretation given in the Halakhah requires the identification of דוידים as “friends, lovers” rather than “friendship, love.”

307 *Cant.* 1:3. As in most cases, the proof is from the part of the verse not quoted. The verse ends: *therefore girls love you*. Since the Song of Songs clearly celebrates heterosexual love, the speaker must be a female addressing a male.

The following interpretation of the Mishnah follows S. Naeh¹. There are two problems. What is the relationship of the Mishnah 7 and the first part of Mishnah 8 to the second part of Mishnah 8? Also the discussion in Mishnah 8 does not seem to make sense. Since *Cant.* 1:2 starts: *May he kiss me with kisses of his mouth*, it should be clear that the speaker is the female. Why should R. Ismael, who everywhere else requires that a verse be interpreted according to its plain sense, suddenly switch speakers in middle sentence? Why does R.

Joshua refer to 1:3, when a referral to 1:2 would be more appropriate? The unvocalized text of 1:2-3 has a chiasmic structure: It starts clearly with the masculine, has a middle section which could be read in the masculine or the feminine, and ends again with the masculine.

R. Ismael proves convincingly that there is no biblical basis for the prohibition of Gentile cheese; it is purely rabbinical. It can be regarded as a “fence around the law” only with regard to the prohibition of intermarriage, since it is designed to make social intercourse between Jews and Gentiles as difficult as possible. Then the question arises as to the status of the much more important prohibitions oil and wine. The prohibition of oil clearly is rabbinical even though it is mentioned as particularly meritorious in *Daniel*; no reason could be found in dietary laws to prohibit Gentile cold pressed virgin olive oil. While wine actually used for pagan libations is biblically forbidden, the extension of the prohibition to almost any wine moved in any way by a Gentile, even one adhering to a faith not practicing libations (or even prohibiting the drinking of wine), must be considered rabbinical. Now wine is mentioned in v. 1:2 and oil in v. 1:3. The discussion between Rabbis Ismael and Joshua is about the status of the prohibitions of wine and oil.

As mentioned in Note 306, any rabbinic reference to the Song of Songs

1. שלמה נאה, טובים דודים מיין, מבט חדש על משנת ע"ז ביה; מחקרים בתלמוד ובמדרש, ספר זכרון לתיציה . 434-411 ע' 2005 י-ם ליפשיץ.

unquestionably reads sentences put into the mouth of the female as coming from the congregation of Israel (as represented by its rabbinical leaders) and that of the male as referring to God. R. Joshua asks R. Ismael about his opinion about the actual rules referring to Gentile wine. The latter, by putting the reference to wine in the mouth of the male, asserts that the prohibition of

Gentile wine essentially is God's decree, is biblical. R. Joshua, the overriding authority, informs him that the references to wine and oil have equal status; since the prohibition of oil in almost all cases has no pentateuchal basis, the prohibition of wine also in almost all cases is purely rabbinical (Cf. Halakhah 5:4, Note 67).

דודים דברי סופרים (41c line 45) **הלכה ח:** מפני שמעמידין אותה כול'. חבריא בשם רבי. דודים דברי סופרים לדברי תורה וחביבים יותר מדברי תורה. וחלף קיין הטוב. שמעון בר בא בשם רבי יוחנן. דודים דברי סופרים לדברי תורה וחביבים יותר מדברי תורה. כִּיטובים דודים מין: רבי בא בר כהן בשם בר פזי. תדע לך שדברי סופרין חביבין יותר מדברי תורה. שְהרי רבי טרפון אילו לא קרא לא היה עובר אלא בעשה. מפני שעבר על דברי בית הלל חייב מיתה. על שם ופרץ גדר ישכנו נחש.

1 ר' א' ר' יוחנן 2 יותר מדברי א' כדברי וחקך א' וחיכך

Halakhah 8: "Because they curdle it," etc.³⁰⁸ The colleagues in the name of Rabbi [Joḥanan]: The words of the Sopherim are related to the words of Scripture and are (more pleasant than) [pleasant like] the words of Scripture; *your throat is like good wine*³¹⁰. Simeon bar Abba in the name of Rabbi Joḥanan: The words of the Sopherim are related to the words of Scripture and are more pleasant than the words of Scripture, *for your friends are better than wine*³¹¹. Rabbi Abba bar Cohen in the name of Bar Pazi: You may know that the words of the Sopherim are more pleasant than the words of Scripture, because if Rabbi Tarphon³¹² 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*³¹³.

309 This paragraph and the next are from *Berakhot* 1:7 (Notes 182-191) and *Sanhedrin* 11:6 (Notes 54-57); Midrash *Cant.* 1(18). The Geniza fragment ends here on line 2.

309 A comparison with the other texts

shows that the correct text is the [Genizah text] not the (Leiden ms.) one in which the two traditions of R. Joḥanan are undistinguishable.

310 *Cant.* 7:10; Babli 35a.

311 Mishnah *Berakhot* 1:7.

312 *Cant.* 1:2.313 *Eccl.* 10:8.

(41c line 53) תַּנִּי רַבִּי יִשְׁמַעְאֵל. דְּבָרֵי תוֹרָה יֵשׁ בָּהֶן אִיסּוּר וְיֵשׁ בָּהֶן הֵיתֵר וְיֵשׁ בָּהֶן קָלִי וְיֵשׁ בָּהֶן חֲמוּרִין. אֲבָל דְּבָרֵי סוֹפְרִין כּוֹלֵן חוֹמֶר. דְּתַנִּינָן תַּמָּן. הָאוּמֶר. אִין תְּפִילִין. לַעֲבוֹר עַל דְּבָרֵי תוֹרָה. פְּטוֹר. חֲמֵשׁ טוֹטְפוֹת. לְהוֹסִיף עַל דְּבָרֵי סוֹפְרִים. חֵיב. רַבִּי חֲנִינְיָה בִּשְׁם רַבִּי אִידִי בִּשְׁם רַבִּי תַנְחוּם בְּרַבִּי חֵינָה. חֲמוּדִין דְּבָרֵי זְקִינִים מִדְּבָרֵי נְבִיאִים. דְּכַתִּיב אֶל־תִּטְּפוּ יִטְיָפוּן. וְכַתִּיב אֲטִיף לָךְ לֵינִי וְלִשְׁכָּר. נְבִיא וְזָקֵן לָמָּה הֵן דּוֹמִין. לְמַלְךְ שְׂשִׁילַח שְׂגִי סִימְנִטִּירִין שְׁלוֹ לְמַדִּינָה. עַל אֶחָד מֵהֶן כְּתִב. אִם אֵינוּ מֵרָאָה לָכֵם חוֹתָם שְׁלִי וְסִימְנִטִּירִין שְׁלִי אֵל תֵּאֱמִינוּ לוֹ. וְעַל אֶחָד מֵהֶן כְּתִב. אִף עַל פִּי שְׁאִינוּ מֵרָאָה לָכֵם חוֹתָם שְׁלִי וְסִימְנִטִּירִין שְׁלִי הֵאֱמִינוּ לוֹ. כִּד בְּנִבְיָא כְּתִיב וְנָתַן אֶלֶּךָ אוֹת אֶן מוֹפֶת. בְּרַם הָכָא. עַל־פִּי הַתּוֹרָה אֲשֶׁר יוֹרֹד.

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, 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." Rebbi Ḥanina³¹⁴ in the name of Rebbi Idi in the name of Rebbi Tanḥum bar Ḥiyya: The words of the Sages carry more weight than those of the prophets since it is written, *do not preach, they preach*³¹⁵. And it is written, *I shall preach to you for wine and liquor*³¹⁶. The relation of prophet and scholar can be compared to the case of a king who sent two seals³¹⁷ to a province. About one of them he wrote, if he does not show you my seal and *σημαντήριον*³¹⁸, do not believe him. About the other he wrote, 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*³¹⁹. But here it is written, *according to the teachings that they will teach you*³²⁰.

314 With the other two sources read: *diplomatarii*, persons authorized to use the imperial mail.

315 *Micha* 2:6.

318 Greek "seal".

316 *Micha* 2:11.

319 *Deut.* 13:2.

317 As the text shows this is a scribal error. Read with the other sources פלמנטרין

320 *Deut.* 17:11.

(41c line 63) רַבִּי יַעֲקֹב בַּר אֲחָא רַבִּי שְׁמַעוֹן בַּר בָּא בִּשְׁם רַבִּי יְהוֹשֻׁעַ בֶּן לִוי. מִפְּנֵי שְׂרׁוב עֲגָלִים שְׂשֵׁם נִשְׁחַטִּין לָשֵׁם דְּעֻבְדָּה זָרָה. שְׁמַע רַבִּי יוֹחָנָן וּמַר. יָפָה לִימְדֵנוּ רַבִּי. שְׂכָן הַשּׁוֹחֵט בְּהֵמָה

לַעֲבוֹדָה זָרָה אֶפִּילוּ פִּירְשָׁה אָסוּר. רַבִּי יוֹחָנָן בֶּעֵי. מָצָא בָּהּ טִבְעֵת. אָמַר רַבִּי יוֹסִי. טִבְעֵת בְּעֵינֶיהָ הִיא. פִּירְשָׁה גּוֹפָה הִיא.

מִה שׁוֹרְפָּה. גָּמִי לָהּ. רַבִּי שְׁמַעוֹן בֶּן לָקִישׁ אָמַר. בָּכוּס זוֹהֵם. הִדָּא אֶמְרָה. הַשּׁוֹתֶה בָּכוּס זוֹהֵם לֹא נִהְנֶה וְלֹא מוֹעִיל.

מִפְּנֵי מַה לֹּא גִילָה לוֹ. אָמַר רַבִּי יוֹחָנָן. מִפְּנֵי שֶׁבִּקְרוֹב אֲסָרוּם. וְרַבִּי יִשְׁמַעֵאל הֵיחָה קָטָן.

Rebbi Jacob bar Aḥa, Rebbi Simeon bar Abba in the name of Rebbi Joshua ben Levi: Because most calves there²⁸⁸ are slaughtered in the name of pagan worship. Rebbi Johanan heard this and said, my teacher taught us well, since if one slaughters an animal for pagan worship even its excrement is forbidden²⁸⁹. Rebbi Johanan asked, if one found a ring in it? Rebbi Yose said, a ring is recognizable²⁹⁰; excrement is part of its body.

What means “burns it”? He slurps it³²¹. Rebbi Simeon ben Laqish said, in a dirty cup. This implies that one who drinks from a dirty cup neither benefits nor commits larceny³²².

Why did he not tell him? Because they prohibited it recently and Rebbi Ismael was young³²³.

321 In *Midrash Cant.* 1(17) גמיע.

322 Since he must slurp the contents of the stomach in the Temple it would be a desecration to use a clean Temple vessel for this purpose. A private vessel may not be introduced into the Temple precinct. The priest may use a dirty vessel which nobody else would use for food to eat the disgusting

matter.

323 They had to establish the authority of the newly formed Synhedrion at Jabneh; Babli 35a. The story must be dated to the last 20 years of the first Century, after the death of Rabban Johanan ben Zakkai (at an unknown date). R. Ismael never appears as member of the Synhedrion.

(41c line 70) רַבִּי חוּנְיָה אָמַר. רַבִּי חֲמַא בֶּר עֻקְבָּא מְקָשִׁי. אִם לְהַפְלִיגוּ בְּדָבָרִים הֵיחָה מְבֻקָּשׁ הֵיחָה לוֹ לְהַשְׂיאוֹ בְּחִמְשׁ הַשְּׂאוֹת שֶׁבְּתוֹרָה. וְאֵילוּ הֵן. שְׂאֵת. אָרוּר. מָחָר. מְשׁוּקָדִים. וְקָם. הִלְזָא אֶסְתִּיטִּיב שְׂאֵת אוֹ שְׂאֵת אִם לֹא תִיטִיב. כִּי בְּאֶפֶס הָרְגוּ אִישׁ וּבִרְצָנָם עֲקָרוּ שׁוֹרְאָרוּ אוֹ אָרוּר אֶפֶס כִּי עָז. וְלֵאמֹר מִשְׁחָה אֶל־יְהוֹשֻׁעַ. צָא הִלְחֵם בְּעַמְלֶק מִלֵּחַר אוֹ מִחֵר אֲנֹכִי נֶצֶל עַל־רָאשׁ הַגְּבֻלָּה. וּבִמְנִחָה אֲרַבְּעָה גְבָעִים מְשׁוּקָדִים אוֹ מְשׁוּקָדִים כְּפִתְרִיָּה וּכְרִחִיָּה; וְלֵאמֹר זֶי אֶל־מִשְׁחָה הִנֵּךְ שָׁכַב עַם־אֲבֹתֶיךָ וְקָם אוֹ וְקָם הָעָם הַזֶּה וְזָנָה. רַבִּי תַנְחוּמָא מוֹסִיף הִדָּא. וּבִגְי יַעֲקֹב בָּאוּ מִן־הַשְּׂדֵה כְּשֶׁמֶלֶם אוֹ כְּשֶׁמֶלֶם וַיִּתְּעֲצְבוּ הָאֲנָשִׁים. אָמַר רַבִּי לָא. יֵשׁ דְּבָרִים שְׁמִשְׁקִין עֲלֵהֶן אֶת הַפָּה. הִיכְמָה דָּאֵת אָמַר יִשְׁלַנְי מְנָשִׁיקוֹת פִּיהוּ. אָמַר רַבִּי יִצְחָק. כְּתוּב

וְאוֹתֵי צִנֹּה יִי. אוֹתֵי וְאוֹתֵי. נֶאֱמָרוּ לִי דְבָרִים שֶׁנֶּאֱמָרוּ לָכֶם. וְנֶאֱמָרוּ לִי דְבָרִים שֶׁנֶּאֱמָרוּ בֵּינִי לְבֵין עַצְמִי.

Rebbi Onias said, Rebbi Hama bar Uqba raised a difficulty: If he wanted to deflect him to another subject³²⁴, he should have removed him to the five indeterminate places in the Torah³²⁵, which are the following: “gift, cursed, tomorrow, almond shaped, rise”. *Behold if you choose well the gift or the gift if you do not choose well*³²⁶. *For in their rage they killed a man and by their will castrated a cursed ox or cursed be their rage for it is strong*³²⁷. *Moses said to Joshua . . go fight Amaleq tomorrow or tomorrow I shall stand on top of the hill*³²⁸. *On the candelabra four cups almond shaped or almond shaped their knobs and their flowers*³²⁹. *The Eternal said to Moses, you will lie with your fathers and rise or rise will this people and whore*³³⁰. Rebbi Tanhuma added the following: *Jacob’s sons came from the field when they heard or when they heard the men were offended*³³¹. Rebbi La said, there are things about which one kisses the mouth, as it is said, *may he kiss me with the kisses of his mouth*³³². Rebbi Isaac said, *and me did the Eternal command*³³³. “Me, and me.” Things were said to me that were said to you. And things were said to me alone³³⁴.

324 If R. Joshua’s intention only was to deflect R. Ismael’s inquiry there were many other questions to be asked.

325 In the absence of masoretic accents it may be difficult to parse a sentence. In Babli sources, this is called “verses that have no decision,” i. e., where to place the caesura. In our masoretic texts only *Ex.* 25:34 remains undecided in this sense. Parallel sources are Babli *Yoma* 52a/b, *Gen. rabba* 80(5) (Theodor-Albeck #957/958, Sokoloff *Geniza Fragments* p. 170), *Midrash Cant.* 1(18), *Mekhilta dR. Ismael, Amaleq* 1, *Mekhilta dR. Simeon ben Iohai Epstein-Melamed* p. 121, *Tanhuma Be’sallah*

26. The list itself is attributed in most sources to Issy ben Jehudah².

326 *Gen.* 4:7. They must have read הָלוֹא אִם-תִּיטִיב שְׂאֵת וְאִם לֹא תִיטִיב but also in the masoretic text הָלוֹא אִם-תִּיטִיב שְׂאֵת there is a stop between תִּיטִיב and שְׂאֵת.

327 *Gen.* 49:6-7. It is a question whether to read one or two sentences.

328 *Ex.* 17:9.

329 *Ex.* 25:34.

330 *Deut.* 31:16.

331 *Gen.* 34:7. Most translations follow the masoretic punctuation in choosing the first alternative but the German translation

2. A discussion in principle about this subject is found in ש. קוגוט, המקרא בין טעמים לפרשנות, יום תשנ"ד; מ. ברויאר, מקראות שאין להם הכרע, לשוננו נח (תשנ"ה) 189-199.

by Torczyner *et al.* (Berlin 1934) which opts for the second.

332 This answers R. Hama bar Uqba's question. The verse *Cant.* 1:2 was chosen because its first part, quoted now, tells R. Ismael to be silent since a person who is kissed on his mouth cannot speak at that time. The first part clearly refers to a male; nevertheless R. Ismael had a point reading

the second part as addressing a female since the sentence switches from third to second person, possibly indicating a change of speaker.

333 *Deut.* 4:14. Here starts a rather defective Genizah fragment (Ginzberg pp. 276-277.)

334 Not everything has to be told to everybody.

(41d line 6) רבי שמעון בן חלפוטא רבי חגי בשם רבי שמואל בר נחמן. כבשים ללבושך ומחיר שדה עתודים: כבשים כתיב. הא כיצד. בשעה שתלמידיו קטנים קבוש לפניהן דברי תורה. הגדילו ונעשו כעתודים גלה להם רזי תורה. ודא מסייעה למה דתני רבי שמעון בן יוחי. ואלה המשפטים אשר תשים לפניך: מה הסימה הזאת אינה נגלית לכל-ברייה בך אין לך רשות לשקע את עצמך בדברי תורה אל-בפני בני אדם כשירין.

Rebbi Simeon ben Ḥalfuta, Rebbi Ḥaggai in the name of Rebbi Johanan. *Lambs for your clothing; the price of a field are rams*³³⁵. It is written "suppressings"³³⁶. How is this? If the students are young, suppress before them the secrets of the Torah. If they grew and became like rams, reveal to them the secrets of the Torah. This lends support to what Rebbi Simoen ben Iohai stated: *And these are the laws which you shall put before them*³³⁷. Just as this putting is not revealed to everybody³³⁸ so you do have permission to immerse yourself in words of the Torah only before legitimate people.

335 *Prov.* 27:26.

336 Identifying ש and ש for the homily.

337 *Ex.* 21:1.

338 The laws in *Ex.* 21-22 are not to be told to Gentiles nor applied to their suits.

(fol. 40b) **משנה ט:** אילו דברים של גוים אסורין ואין איסורן איסור הנאה חלב שחלבו גוי ואין ישראל רואהו הפת והשמן שלהן ושלקות. רבי ובית דינו התירו בשמן. כבשין שדרכן לתת בהן זין וחומץ וטריט טרופה וציר שאין בה דגה והחילק וקורט של חלתית ומלח סלוקנרית הרי אלו אסורין ואין איסורן איסור הנאה:

Mishnah 9: The following matters of Gentiles are forbidden but their prohibition is not of usufruct: Milk which the Gentile milked when no Jew was seeing him, bread, their oil³³⁹, and anything preserved by cooking³⁴⁰. Rebbi and his court permitted oil. Preserves in which usually wine is used³⁴¹, and vinegar³⁴², and pieces of *triton*³⁴³, and fish sauce³⁴⁴ not containing a whole fish, and *hallec*³⁴⁵, and a lump of *asa foetida*²⁰⁵, and *salqonarit* salt³⁴⁶; these are forbidden but their prohibition is not of usufruct:

339 Olive oil.

340 Even if the Gentile cooked with the Jew's vessels under his control, as long as no Jew participated in the cooking process.

341 Preserves made with spices without cooking, such as *Sauerkraut*, where wine might have been added. The wine is forbidden but there is no danger that it might have been used for pagan rituals.

342 Vinegar is not wine, but vinegar made from grapes is forbidden.

343 The Latin name of a kind of sea fish mentioned by Pliny; in Greek it is the name of sea gods. Since the fish is cut in little pieces one cannot ascertain that no

forbidden fish (without fins and scales) was used.

344 Fluid obtained by squeezing fish.

345 "Fish sauce (*garum*) prepared from small fish" (Lewis and Short's Latin Dictionary).

346 *Musaphia* reads סלקונדית and explains as *sal conditum*, spiced salt (mentioned by Pliny xxxi,87 and in Diocletian's price edict. A recipe is given by Apicius.) Kohut proposes *salcenarium* Medieval Latin "used for pickling". Also consider *sal candidum* "white salt" (E. G.).

13) (41d line 13) **הלכה ט:** אילו דברים שקללים אסורין כול'. חלב הגוי למה הוא אסור. רבי בא בר רב יהודה רבי סימון בשם רבי יהושע בן לוי. חלב הגוי למה הוא אסור. משום גילוי. ויעמיד. אמר רבי שמאל בר רב יצחק. מפני האירס הנתון בין הנקבים. ותיני כן. ג' אירסים הן. אחד צף ואחד שוקע ואחד דומה לשבכה. פעלליא הוון בחקלא. אתגלית קולתא דמא. אשתון קמיא ואנכון. תיניני ומייתין. אני אומר. אירס שוקע הנה. ביומו דרבי ירמיה איתגליו גיגיתיה דסדרא רבא. אשתון קמיא ולא אינכון. תיניני ומייתו. אני אומר. אירס שוקע הנה. ותיני כן. אבטיח שניקר ואכלו ממנו עשרה בני אדם וכו' וכן שנתגלה ושתו ממנו עשרה בני אדם אסור לוכל ולשתות אחריהן. אני אומר. אירס שוקע הנה.

2 בר ג' בש' 3 ג' 1 ג' שלושה 4 לשבכה 5 קמיא 1 ג' דמאי ואנכון 1 ג' ולא אנכון 6 רבא 1 רבה 7 ארס שוקע 1 אירס שוקע

אמר רבי ירמיה. חלב הגוי למה הוא אסור. משום תערובת בהמה טמאה. ותיני כן. ישראל יושב בעדר והגוי חולב ומביא לו ואינו חושש.

Halakhah 9: “The following matters of Gentiles are forbidden,” etc.³⁴⁷ Why is Gentile’s milk forbidden? Rabbi Abba (son of) [in the name of]³⁴⁸ Rav Jehudah, Rabbi Simon in the name of Rabbi Joshua ben Levi: Why is Gentile’s milk forbidden? Because of uncovering¹⁵⁸. Let him make cheese! Rabbi Samuel ben Rav Isaac said, because of the poison given between the holes³⁴⁹. It was stated so: There are three kinds of poison; one swims, one sinks down, and one is similar to a net³⁵⁰. Workers were in the field. The water pitcher was uncovered. The first ones drank and were [not]³⁵¹ disabled. The second ones died. I say that it was sinking poison. In the days of Rabbi Jeremiah the barrels of the great assembly³⁵¹ were uncovered. The first ones drank and were not disabled. The second ones died. I say that it was sinking poison. It was stated thus³⁵²: “If a watermelon was pecked and ten people ate from it or wine was uncovered and ten people drank from it, it is forbidden to eat or drink after them; I say that there is sinking poison.”

Rabbi Jeremiah said, why is Gentile’s milk forbidden? Because of admixture from forbidden animals³⁵³. It was stated so³⁵⁴: “There is nothing to worry if the Jew sits with the herd while the Gentile milks and brings to him.”

347 Parallels to these two paragraphs are in *Terumot* 8:5 (Notes 135-142) and *Šabbat* 1:(3d line 2). The text in *Terumot* is a copy of the text in *Šabbat*; the text here is somewhat different.

348 The text of the Leiden ms. in parentheses has to be corrected by the text of *g* in brackets and the parallels.

349 One seems to assume that the poison will be separated out in the process of solidification making hard cheese. But if the cheese has holes the poison will

accumulate there and there may be small holes not directly visible.

350 Babli 30b.

351 The half-yearly reunion of all members of the Academy.

352 Tosephta *Terumot* 7:17.

353 Babli 35b. This is the only explanation given in the Babli where also it is noted that making cheese from the milk does not solve the problem.

354 Tosephta 4:11; Babli 30b.

(41d line 25) פִּיתָן. רַבִּי יַעֲקֹב בֶּר אֲחָא בִּשְׁם רַבִּי יוֹנָתָן. פֶּת מִהֲלָכוֹת שְׁלַעֲיָמָעוּם הִיא. כִּד אֲנִי אוֹמֵר. מְקוֹם שֶׁפֶת יִשְׂרָאֵל מְצוּיָה בְּדִין הוּא שְׁתֵּהָא פֶת גּוֹיִם אֲסוּרָה. וְעִימָעְמוּ עָלֶיהָ וְהִתִּירוּהָ. אוֹ מְקוֹם שֶׁאֵין פֶּת יִשְׂרָאֵל מְצוּיָה בְּדִין הוּא שְׁתֵּהָא פֶת גּוֹיִם מוֹתֵרָת. וְעִימָעְמוּ עָלֶיהָ וְאֲסוּרָה. אֲמַר רַבִּי מִנָּא. וְכִי יֵשׁ עִימָעוּם לְאִיסוּר. וּפֶת לֹא כְתִבְשִׁילִי גּוֹיִם הוּא. כִּד אֲנִי אוֹמְרִים. מְקוֹם

שָׂאִין תְּבִשִּׁילִי יִשְׂרָאֵל מְצוּיִן בְּדִין הוּא שֶׁיְהוּ תְּבִשִּׁילִי גוֹיִם מוֹתְרִין. אֶלָּא כִּינִי. מְקוֹם שָׂאִין פֶּת
יִשְׂרָאֵל מְצוּיָה בְּדִין הוּא שֶׁתִּהְיֶה פֶת גוֹיִם אֲסוּרָה. וְעִמְעֵמוּ עָלֶיהָ וְהִתִּירוּהָ מִפְּנֵי חַי נֶפֶשׁ. רַבְּנֵי
דְקַסְרִין בְּשֵׁם רַבִּי יַעֲקֹב בַּר אֲחָא. כְּדָבְרִי מִי שֶׁהוּא מִתִּיר וּבִלְבָד מִן הַפְּלִטָּה. וְלֹא עָבְדִין כֵּן.

1 פת | ש - מ עוד היא שלעמעות | ג שלעמעות כך | גשמ [אמ'ר] יוסה קנשייתה קומי ר' יעקב בר אחא
מהוא [מהו מהלכות] שלעמעות [מ היא] כך אני | ש או 2 או' | ש אומ' מקום | שמ במקום הוא | ש היה
ועמעותו | ש ועמעותו מ ועמעותו והתירוה | ג והתירוה 3 מקום | שמ במקום הוא | ש היה 4 לאיסור |
ג לאסור כתבשילי | ש תבשילי מקום | שמ במקום 5 תבשילי | ג תפשילי הוא | ש היה - | שמ
ועמעותו עליהן ואסורו מקום | שמ במקום שפת | שמ שאין פת הוא | ש היה 7 כדברי | ג כדברי

³⁵⁵Their bread. Rabbi Jacob bar Aḥa in the name of Rabbi Jonathan.

Bread is of the practices of obfuscation. [Rabbi Yose said, so I asked before
Rabbi Jacob bar Aḥa: What means “of the practices of obfuscation?”]³⁵⁶ Do I
say, at a place where Jewish bread is available it is logical that Gentile bread
should be forbidden and they obfuscated about it and permitted it? Or at a
place where Jewish bread is not available it is logical that Gentile bread
should be permitted and they obfuscated about it and forbade it? Rabbi Mana
said, is there any obfuscation for prohibition³⁵⁷? But is bread not like cooking
of Gentiles? Are we saying: At a place where no Jewish cooking is available
it is logical that Gentile cooking should be permitted³⁵⁸? But it must be the
following: At a place where Jewish bread is not available it is logical that
Gentile bread should be forbidden and they obfuscated about it and permitted
it because of the necessities of life. The rabbis of Caesarea in the name of
Rabbi Jacob bar Aḥa: Following the words of him who was permitting, but
only from the store³⁵⁹; but one does not do this³⁶⁰.

355 There are three parallels to this text, in *Sevi'it* 8:5 (Notes 57-62), *Ma'aser Šeni* 3:1 (Notes 2-3, מ), and *Šabbat* 1 (3c l. 55, ש). The Genizah text here, and the texts in *Ma'aser Šeni* and *Šabbat* are clearly copies of one and the same original; the text in *Sevi'it* is slightly different in wording but identical in meaning.

356 Added from the three identical texts; most of the paragraph is taken up by the questions of R. Yose and R. Mana; only at the end the correct answer is spelled out.

The practice of obfuscation is that the

rabbis have to justify the popular disregard of their prohibition.

357 As shown in the Mishnah, rabbinic prohibitions do not need justification, only permissions which are inconsistent with general prohibition, such as to permit bread while prohibiting all other kinds of Gentile cooking.

358 The texts in *Sevi'it*, *Ma'aser Šeni*, and *Šabbat* add: “and they obfuscated about it and forbade it.” But the illegible space in א is not sufficient for this addition; one has to assume that it never was in the *Avodah*

zarah text.

359 Greek *πρατήρ* “seller”. Lieberman
reads *πωλητήριον* “retail store”, Kohut Latin

panetarius “bread merchant”.

360 But eats also privately baked Gentile
bread; forbidden in the Babli 35b.

41d line 35b) אָמְרוּן קוּמִי רַבִּי חִיָּה רֹבָה. תֵּנִי רַבִּי שְׁמַעוֹן בֶּן יוֹחִי כֵן. אוֹכֵל תִּשְׁבְּרוּ מֵאֲתָם
בְּכֶסֶף וְאֶבְיָתָם וְגו'. מֵה מַיִם לֹא נִשְׁתַּנּוּ מִבְּרִיתָן אֶף כָּל-דָּבָר שֶׁלֹּא נִשְׁתַּנָּה מִבְּרִיתָן. הַתִּיבּוֹן.
הָרִי מוּטְלָא וּפְנִקְרִיסִין וְקוֹבֶטִיּוֹת וְקָלִיּוֹת וְחֻמְמִים שֶׁלֹּהֶן הָרִי אֵילוּ מוֹתְרִין. נִחָא כוֹלְהוֹן שֶׁהֶן
יְכוּלִין לְהִשְׁרוֹת לְחֹזֵר לְכֻמוֹת שְׁהִי. קָלִיּוֹת לָמָּה. רַבִּי יוֹסִי בִּירְבִי בּוֹן בְּשֵׁם רַב. כָּל-אוֹכֵל
שֶׁהוּא נֹאכֵל כְּמוֹת שֶׁהוּא כְּחִי אֵין בּוֹ מִשּׁוּם בִּישׁוּלִי גוּיִם. עִם הַפֶּת יֵשׁ בּוֹ מִשּׁוּם בִּישׁוּלִי גוּיִם.
מֵה מִקְיִים רַבִּי חִיָּה רֹבָה אוֹכֵל תִּשְׁבְּרוּ מֵאֲתָם. בְּאוֹכֵל תִּשְׁבְּרוּ. הַאֲכָלְתוּ שְׁבִירָתוֹ. אִם הִיא
קוֹשָׁה עֲלֶיךָ בְּאוֹכֵל תִּשְׁבְּרוּ וְאִם לֹא הִכְרָה (הַרְבָּה) עֲלֶיךָ כֶּסֶף. אָמְרוּ. כֵּן הָיָה רַבִּי יוֹנָתָן עֲבִיד.
כֵּד הָיָה בֶּר נֶשׁ רַב עֲלִיל לְקִרְתָּא הָיָה מִשְׁלַח לֵיהּ אִיקְרוּן. דָּאֵין אֲתָא דִּין דִּיתוּם אוּ דִּין
דְּאַרְמָלָא יִשְׁכַּח אֲפִין מִפִּיִּסָּא.

1 חִיָּה | ג חִיָּה רֹבָה | ש רֹבָה 2 וְגו' | ש וְגוּס־מַיִם תִּכְרוּ מֵאֲתָם בְּכֶסֶף וְגו' | ש לֹא | ש שְׁלֹא נִשְׁתַּנּוּ | ג נִשְׁתַּנּוּ
מִבְּרִיתָן | ג מִבְּרִיתָם 3 מוּטְלָא | ג מוּטְלִיָּה וּפְנִקְרִיסִין | ש וּפְנִקְרִיסִים וְחֻמְמִים | ש וְחֻמְמִין כוֹלְהוֹן | ש
כוֹלְהוֹן 4 לְהִשְׁרוֹת | ג - ש לְהִשְׁרוֹת לְחֹזֵר | ש לְחֹזֵר לְכֻמוֹת | ג לְכֻמוֹת ש כְּמוֹ לְמָה | ש מֵה ר' | ש
אִם ר' אוֹכֵל | ג אוֹכֵל 5 בִּישׁוּלִי | ש תְּבַשְׁלִי - | וְיוֹצֵאֵין בּוֹ מִשּׁוּם עִירוּבֵי תְּבַשְׁלִין אִם הַפֶּת ... גוּיִם | ש -
6 חִיָּה רֹבָה | ש חִיָּה רֹבָה אִם | ש שֵׁם 7 תִּשְׁבְּרוּ | ג תִּשְׁבְּרוּ בְּאוֹכֵל | ש כְּאוֹכֵל | ג לֹא | ג לֹו הִכְרָה | ש
הִכְרַע הוּהוּ | ג הוּהוּ עֲבִיד | ש עֲבִיד 8 הוּהוּ | ג הוּהוּ - | ש חֲמִי רַב | ג דֶּרֶב עֲלִיל | ג עֲלִיל לְקִרְתָּא
| ש לְקִרְתִּיָּה הוּהוּ | ג הוּהוּ - | ש מִי אִמֵּר דָּאֵין | ג דָּאֵין אֲתָא | ג אֲתָה דִּין | ש דִּין (2) דִּיתוּם | ג
דִּיתָם | ש דִּיתָם 9 יִשְׁכַּח | ש יִשְׁכַּח מִפִּיִּסָּא | ג מִפִּיִּסָּה ש מִפִּיִּסָּה עֲלִי

²⁶¹They said before the Elder Rabbi Hiyya: Rabbi Simeon ben Iohai stated
thus: *Food you shall buy from them with money and eat, etc.*³⁶². As water is
not changed from its natural state, so anything which was not changed from
its natural state³⁶³. They objected: Are there not their dry beans³⁶⁴,
פְּנִקְרִיסִין³⁶⁵, roasted grain³⁶⁶, and hot water permitted? One understands all of
these because they can be soaked and return to their former state. But roasted
grain? Rabbi Yose ben Rabbi Abun in the name of Rav³⁶⁷: Any food which
can be eaten alone raw is not in the category of Gentile cooking³⁶⁸. (With
bread it is in the category of Gentile cooking³⁶⁹.) How does Rabbi Hiyya
explain *food you shall buy from them*? You shall buy with food. If you fed
him you bought him. If he causes you trouble buy him with food or otherwise
trade (ply him)³⁷⁰ with him money. They said, that is what Rabbi Jonathan
did. When a superior³⁷¹ came to [his]³⁷² town, he sent him an honor gift, that if
a suit involving an orphan or a widow came he would have a way to mollify
him.

361 *Šabbat* 1 (3c line 65). The Geniza fragment (א) ends at the mention of Rav. Another fragment, in much better shape, edited by J. N. Epstein [*Tarbiz* 3(1932) 15-26 (G)] starts at the second mention of *Deut.* 2:28.

362 *Deut.* 2:28. In the Babli, 37b, a statement of R. Johanan. The Babli (38a) negates a biblical base for the prohibition of Gentile cooking.

363 The list also appears in *Tosephta* 4:11. In the Babli 38b the word is explained as meaning either φάσηλος or שעועית, both meaning "bean".

365 The word is unexplained. In the Babli, *loc. cit.*, and similarly in the *Tosephta*, it appears as קפריסין "capers".

366 In the Babli קפלוטות "leeks". In *Tosephta* קפסאות, קפאטיות. N. Brüll (*Jahrbücher für jüdische Geschichte und Literatur* 5) proposes *copta* قُطَاط "fig preserve". This agrees well with the quote in the Babli since, as stated later also here, all preserves made from fruit which also is eaten raw are not under the prohibition of Gentile cooking. The only problem is that

the next sentence implies that the word describes a dried fruit or vegetable which can be returned more or less to its original state but soaking.

367 Babli 38a, 59a; *Šabbat* 51a, *Bava qamma* 11a, *Yebamot* 12b. Also Yerushalmi *Nedarim* 6:1 (39c l. 44).

368 The *Šabbat* text adds: And it may be used for *eruv tavšilin* (a symbolic act which turns a common courtyard or a dead-end alley into a private domain, or which lets one prepare cooked food for the Sabbath on a holiday which falls on a Friday); this formulation may be taken from the end of the Halakhah

369 This restriction is found neither in the *Šabbat* text nor the Babli. It also contradicts the insertion in the *Šabbat* text (Note 368). Either it is spurious or the text here disagrees with the text there.

370 Reading of the corrector of L. The scribe wrote as in the *Šabbat* text and G.

371 A superior Roman judge; cf. *Introduction to Tractate Neziqin* p. 4, remark about R. Jonathan.

372 Readings of G and the *Šabbat* text.

(41d line 46) מִי אֶסֶר אֶת הַשֶּׁמֶן. רַב הֵנִיחָה אֶמֶר. דִּנְיָאֵל אֶסְרוּ. וְנִשְׁם דִּנְיָאֵל עַל-לָבֹוּ וּגו'.

וּמִי הֵתִירוּ. רַבִּי הֵתִירוּ וּבֵית דִּינֹו. בְּשִׁלְשָׁה מְקוֹמוֹת נִקְרָא רַבִּי הֵנִיחָה הַנְּשִׂא. רַבּוֹתֵינוּ. בְּגִיטִין וּבְשֶׁמֶן וּבְסִנְדֵּל. וְקָרוּ לִיה בֵּי דִנְיָא דְשֶׁרוּ מִשְׁחָא. כָּל-בֵּית דִּין דְשֶׁרוּ ג' דְּבָרִים נִקְרָא בֵּי דִנְיָא שְׁרָא. אֶמֶר רַבִּי יוֹדֵן. בֵּית דִּינֹו חֲלוּק עָלֵיוּ בְּגִיטִין. מִהוּ שִׁתְּהָא מוֹתֶרֶת לְהִנְשָׂא. רַבִּי חֲגִי אֶמֶר. מוֹתֶרֶת לְהִנְשָׂא. רַבִּי יוֹסִי אֶמֶר. אֶסְרוּהָ לְהִנְשָׂא.

1 אסרו | אסר את השמן לבו | ש ליבו וגו' | G אשר לא יתגאל וגו' ש אשר לא יתגאל בפת בג המלך ובין משתני 2 ומי | G מי ר' התירו ובית דינו | ש ר' ובית דינו התירו בשמן נקרא | G ניקרא יהודה | G יודן 3 בגיטין | G בגיטין וקרו ליה בי דינא דשרו מישחא. כל | G ויקראו לו בית דין שריא^g שריא^g שכל דשרו | G שהוא מתיר ש שהוא מבטל נקרא בי דינא שריא | G ניקרא בית דין שריא ש נקרא בית דין שריא 4 יודן | ש יודן ביר' ישמעאל בגיטין | G בגיטין מהו... להנישא | ש - 5 יוסי | G יוסה

רבי אֶחָא רבי תנחום בר חייה בשם רבי חנינה ואמרי לה בשם רבי יהושע בן לוי. שְׁהוּ עוֹלִין לְהַר הַמֶּלֶךְ וְנִהְרָגִין עָלָיו. יִצְחָק בַּר שְׁמוּאֵל בַּר מִרְתָּא נָחַת לְנִצְיָבִין. אֲשַׁכַּח שְׁמֵלַי הִדְרוּמִי יְתִיב דְּרֵשׁ. רַבִּי וּבֵית דִּי הִתִּירוּ בְּשֶׁמֶן. אָמַר שְׁמוּאֵל אָבֵל. רַב לֹא קָבִיל עָלֶיהָ מִיכּוֹל. אָמַר לִיהָ שְׁמוּאֵל. אָכּוֹל. דְּלֹא כּוֹ אֵנָּה כְּתִב עֲלֶיהָ זָקוֹן מִמֶּנָּה. אָמַר לִיהָ. עַד דְּאֵנָּה תִּמְּוֹן אֵנָּה יָדַע מָאֵן עָרַר עָלֶיהָ שְׁמֵלַי הִדְרוּמִי. אָמַר לִיהָ. מִרְּבִשׁ גְּרָמִיָּה לֹא בְּשֶׁם רַבִּי יוֹדֵן נִשְׁיָא. אֶטְרַח עָלֶיהָ וְאָבֵל.

1 בר | G ביר' ואמרי | G ואמרי | ש ואית דאמרי לה | 2 עולין | G עולים | ש עולין עליו ונהרגין | G ונהרגים יצחק | G ר' יצחק מרתא | G מרתה שמלאי | G שמליי | ש' שמלאי | 3 הדרומי | G דרומי | דרש | ש' חריש | אמ' | G - אבל | G אכל | ש קביל עלוי ואכל | קביל | G קבל | ש - עליה מיכול | ש אכל | 4 דלא כן | G אי לכן כתב עלך | ש כתיב עלך | אמ' | ליה | G - דאנא | G דנה | אמ' | G אנה | 5 מאן | G מן | ער | ש עירער | שמלאי | G שמליי | ש' שמלאי | הדרומי | G דרומי | אמ' | ליה | מר | ש מהו מר | ליה | G מה | יודן נשיא | ש' ר' ובית דינ | G יודן נשיא

רבי יוחנן בעי. ולא כן תנינן. שאין בית דין יכול לבטל דברי בית דין חברו עד שיהא גדול ממנו בחכמה ובמניין. ורבי ובית דינו מתירין מה שאסר דניאל וחנוניו. רבי יוחנן קדושתיה. אמר רבי יוחנן. מקובל אני מרבי לעזר בירבי צדוק שקל-גזירה שבית דין גוזרין ואין רוב ציבור מקבלין אינה גזירה. בידקו ומצאו בגזירתו שלש שמן ולא מצאו שקיבלו רוב הציבור עליהן.

1 ולא | G לא | דברי | G את דיברי | חברו | G חברו | 2 בחכמה | G בחוכמה | ר' | G ור' | וחביריו | G ש' וחבורתו | ר' יוחנן | ש אלא | ר' יוחנן | 2 אמ' | ש' דמר | מקובל אני מר' לעזר ביר' | צדוק | ש בשם | ר' לעזר ביר' | צדוק | מקובל אני | גוזרין | G גוזרים | 3 ואין רוב הציבור מקבלין | G מקבלים | ש על הציבור ולא קיבלו רוב הציבור עליהן | בדקו | ש ובדקו | בגזירתו | ש גזירה | מצאו שקיבלו | ש קיבלו | G נימצאו שקיבלו

³⁷³Who forbade the oil? Rav Jehudah said, Daniel forbade it. *Daniel was careful, etc.*³⁷⁴. And who permitted it? Rabbi permitted it and his court³⁷⁵. At three places is Rabbi Jehudah the Prince called “our teachers,” in divorce documents³⁷⁶, oil, and a sole³⁷⁷. They called him “the court which permitted oil.”³⁷⁸ Any court which permits three [previously forbidden] things is called “permissive court.” Rabbi Yudan said, his court disagreed with him about the bills of divorce.³⁷⁹ May she be allowed to remarry? Rabbi Haggai said, she is allowed to remarry. Rabbi Yose said, she is forbidden to remarry.

Rebbi Aḥa, Rebbi Tanḥum bar Ḥiyya in the name of Rebbi Ḥanina, but some say in the name of Rebbi Joshua ben Levi: They were climbing up King's Mountain and were killed about it³⁸⁰. Isaac bar Samuel bar Martha went down to Nisibis. He met Simlai³⁸¹ the Southerner who sat and expounded: Rebbi and his court permitted the oil. Samuel said, true³⁸²! Rav did not accept on himself to eat. Samuel told him, eat! Otherwise I shall declare you a rebellious Elder³⁸³. He answered him, when I still was there³⁸⁴ I

knew who complained about it, Simlai the Southerner. He told him³⁸⁵, he said it in the name of himself, not in the name of Rabbi Jehudah the Prince. He bothered him and he ate³⁸⁶.

Rebbi Joḥanan asked: Did we not state, “for no court may invalidate the words of another court unless it be greater in wisdom and numbers”³⁸⁷? And Rebbi and his court permit what Daniel and his companions forbade? Rebbi Joḥanan follows his own opinion: Rebbi Joḥanan said, I have a tradition in the name of Rebbi Eleazar ben Rebbi Šadoq that any restrictive edict passed by a court which is not accepted by the majority of the public is not an edict³⁸⁸. They checked and found in the matter of the edict about oil and did not find that a majority of the public followed it³⁸⁹.

373 The following also is in *Šabbat* I, 3d line 16 ff., **ו**. While the sentence order there differs from here, the fact that G while following the sentence order of L very often follows the formulation of **ו** indicates that the two texts are essentially the same.

374 *Dan.* 1:8. The verse does not seem to mention olive oil. As the Babli explains (36a), the argument is from the continuation, *that he would not defile himself by the king's solid food and the wine of his drinks*, where the plural *drinks* refers both to wine (whose prohibition is generally accepted) and oil (where Daniel's action rather is an act of personal piety.) In any case, the prohibition of Gentile olive oil never was considered to have any biblical basis.

375 *Babli* 36a.

376 *Gittin* 7:3, Notes 49-64. The essence of the controversy is whether a divorce document subject to a certain condition is only valid after the condition has been satisfied or is valid immediately but not actionable unless the condition be satisfied.

The simplest example is that of a sick childless man who wants to shield his wife from levirate marriage (or prevent her from marrying his brother) by writing a bill of divorce valid if he should die from his disease. If he stipulates that divorce be “from today if I shall die”, the divorce is unquestionably valid. If he omits “from today” then for Rebbi it is valid, for the rabbis it is invalid since a dead person cannot divorce.

377 *Niddah* 3:4, Notes 93-98. The “sole” is the result of a miscarriage where no features are recognizable in the aborted fetus. For the rabbis, the woman is subject to all disabilities of a woman who gave birth to a male and a female (*Lev.* 12:1-8), for Rebbi and his court only if human features were recognizable.

378 In the other two sources: Should he not be called “a permissive court” (a pejorative term) since . . . “

379 These two sentences really do not belong here; they are copied from the text in *Gittin* (Note 54) which thereby is shown to

be the source of the preceding sentences, and refer to Mishnah *Gitin* 7:10 about a man who gave his wife a bill of divorce valid if he should not return within 12 months, and notice was received of his death. Does she have to wait the full 12 months or not?

380 In **ש**, this immediately follows the statement that Daniel forbade Gentile oil and invalidates it. It is not clear what danger there was in getting Gentile oil but since both Talmudim declare the prohibition of Gentile oil to be of the 18 prohibitions promulgated in the run-up to the first revolt against the Romans (*Šabbat* I, 3c 1.37, Babli 17b) it must refer to the situation there. The exact meaning of “King’s mountain” as a geographical entity has not been determined.

381 In the Babli and **ש**, as well as in the quote from the Yerushalmi in Tosaphot 36a, s.v. אשר, R. Simlai. Babli 37a. This dates

“R. Jehudah” here as R. Jehudah II. For “Southerner” the Babli has “from Lydda”, which is taken as a pejorative term.

382 In the two other sources, probably correctly, “Samuel accepted this and ate.”

383 Cf. *Sanhedrin* 8:6, Note 64.

384 When Rav was studying in Galilee under Rebbi (Jehudah I) and R. Hiyya the Elder.

385 Rav to Samuel. In the Babli. 37a, R. Simlai is described as being critical of the decision to allow Gentile oil.

386 Rav ate in order to sustain the authority of the Patriarchate.

387 Mishnah *Idiut* 1:5.

388 In the Babli 36a: It is forbidden to promulgate a decree that the majority of the public cannot accept.

389 Babli 36a. This proves conclusively that the original prohibition of oil was relatively recent and purely rabbinic.

41d line 65) בִּיצָה צְלוּיָה שְׁלֵהָ. בַּר קַפְרָא שָׁרִי. חִזְקִיָּה אָסֵר. עַד כְּדוֹן בְּשִׁנְצָלִית לְדַעַת. נִצְלִית שְׁלֵא לְדַעַת. נִישְׁמַעֲיָנָה מִן הָדָא. מַעֲשֶׂה שְׁנִפְלָה דְלִיקָה בְּאַשְׁתִּי קֵינִים וּבְאַגְסִים תְּמָרִים וְהָיוּ שָׁם חֲגָבִים וְנִצְלוּ. אֲתָא עוֹבְדָא קוּמִי רַבִּי מְנָא וְאָסֵר. אָמַר רַבִּי אֲבָהוּ. מִשּׁוּם תַּעֲרוּבַת חֲגָבִים טְמֵאִים. אָמַר רַבִּי יוֹסִי בִּירְבִּי בּוֹן. וְהָדָא מִן חֲמִירְתָּא דְרַב. רַב נָחַת לְתַכּוֹן חֲמִתּוֹן מְקַלְלִין וְחֲמַר עֲלֵיהוֹן. חַד בַּר נֶשׁ הָוָה טַעִין קוֹפֵד מְהֵלֵךְ בְּשׁוּקָא. אֲתָא דִּיִּיתָא וְחֲטַפְתָּא מִן יָדֵיהּ אֲתֵר תּוֹתִיָּה. אֲזַל בְּעֵי מִיִּסְבִּינִיָּה. אָמַר לֵיהּ רַב. אָסִיר לָךְ. דָּנָא אָמַר דְּנִבְלָה הָוֵת טַעֲיָנָה וְאֲתֵר תִּתָּה וְנִסְיַבַת דִּין תַּחוּתֵי. חַד בַּר נֶשׁ אֲזַל בְּעֵי מְשֻׁנָּא אִיִּסְקוּפְתָּא גּוֹ נְהָרָא. אֲנִישִׁיתָה וְסָלַק לֵיהּ. אֲזַל בְּעֵי מִיִּסְבִּינִיָּה. אָמַר לֵיהּ רַב. אָסִיר לָךְ. דָּנָא אָמַר הֵהִיא שְׁטַפָּה נְהָרָא וְאִיִּיתֵי חוּרֵי דְנִבְלָה תּוֹתִיָּה.

1 שלחן | G שלהם | קפרא | G קפרא שרי | G אמר מותרת | אסר | G אמר אסורה | בשנצלית | G כשנצלית
2 נצלית שלא | G ניתלתא שלא | הדה | G הדה | 3 אתא עובדא | G אתה עובדה | משום | G משם | 4
יוסי | G יוסה | והדא | G חמירתא | 5 הוה טעין קופד מהלך | בשוקא | G הוה מהלך |
בשוקא ובידיה קופד | וחטפתא | G וחטפתיה | מן ידיה | G - | אתר תותיה | G אתרתיה | 6 ליה | G לה
אסיר לך דנא אמ' | G - | הות | G הוא | ואתר תתה ונסיבת דין | G ואתרתיה ונסבת דין | 7 תחותי | G
תחותי | משוגא איסקופתיה | G משוגא איסקופתי | נהרא | G נהרה | ליה | G לה | 8 מיסביניה | G מהבנה
ליה | G לה | דנא אמ' . . . תותיה | G דנבילה היא דנמר אהי אשתפט ואייתי נהרה תותיה

Their roasted egg, Bar Qappara permitted, Hizqiah forbade³⁹⁰. So far if it was roasted intentionally. If it was roasted unintentionally? Let us hear from the following: There was a fire in an under-growth of reeds and a swamp of date palms where there were locusts which were roasted. The case came before Rabbi Mana³⁹¹, who forbade them. Rabbi Abbahu said, because of admixture of impure locusts³⁹². Rabbi Yose ben Rabbi Abun said, and this is of the stringencies of Rav. Rav returned there and saw them taking things lightly and was restrictive with them³⁹³. A man was carrying meat while walking on the market. There came a vulture, seized it from his hand, and it dropped off³⁹⁴ under him. He went and wanted to sell it. Rav told him, it is forbidden to you, for I am saying that it was carrying carcass meat, dropped it and took the other instead³⁹⁵. A man went to wash a piece of meat³⁹⁶ in the river. He forgot it and left. Then he went and wanted to sell it. Rav told him, it is forbidden to you, for I am saying the other one was carried away by the river and it brought another piece of carcass meat in its place³⁹⁷.

390 Babli 38b. The egg is roasted in its shell so that there are no problems of non-kosher admixtures. It is not impossible to eat an egg raw.

391 R. Mana I.

392 Babli 38a.

393 He used his office as overseer of Jewish markets to enforce strict rabbinic rules.

394 As recognized by J. N. Epstein, Aramaic אַתֵּר is Afel of Aramaic נֵתֵר Hebrew נשר.

395 This is a case of "meat which had been lost sight of" which must be treated as non-

kosher; it cannot be sold as kosher meat. Quoted in *Tosaphot Bava meši'a* 24b s. v. אַתֵּר.

396 The translation is a guess based on the context; the word itself is unexplained. It appears only here and in the exact parallel *Šeqalim* 7:3 (50c l. 47). Sokoloff in his *Dictionary of Jewish Palestinian Aramaic*² accepts also Jastrow's explanation "an object on which the meat was hung" but this seems to be excluded by the context.

397 A similar story in the Babli *Hulin* 95a-b.

תַּנְרְמוּסִין שְׁלֵהֶן מִה הֵן. רַבִּי אִוְסֵר. גְּנִיבָה מִתֵּיר. אָמַר רַבִּי. אֲנִי זָקוּ וְהוּא זָקוּ. (41d line 76)
אֲנִי עָלְתָה עַל לִיבִי לְאַסּוֹר וְהוּא עָלְתָה עַל דַּעְתּוֹ לְהִתִּיר. רַבִּי מְנָא בְּרַתְנָחוּם אָזַל לְצוּר וְהִתִּיר
תַּנְרְמוּסִין שְׁלֵהֶן. רַבִּי חִיָּה בְּרַבָּא אָזַל לְצוּר וְאַשְׁכַּח לְרַבִּי מְנָא בְּרַתְנָחוּם שֶׁהִתִּיר תַּנְרְמוּסִין
שְׁלֵהֶן. אֵתְּמַא גְּבִי רַבִּי יוֹחָנָן. אָמַר לִיה. מַה מַּעֲשֶׂה אִירַע לְגִידִךָ. אָמַר לִיה. אֲשַׁכְּחִית לְרַבִּי מְנָא

בר תנחום שהתיר תורמוסין שֶׁלֶהוּ. אָמַר לִיה. וְלֹא פָּנְעֵת בִּיה. אָמַר לִיה. אָדָם גָּדוֹל הוּא וְהוּא יוֹדֵעַ לְמַתֵּק אֶת הַיָּם הַגָּדוֹל. אָמַר לוֹ. לֹא בָנִי. חֲשָׁבוֹן מִים הוּא יוֹדֵעַ. וְכָשֶׁה שְׁהַמִּים מְקַלְסִין אֶת בּוֹרְאָן הֵן מִתְמַתְּקִין. אָמַר רַבִּי יִצְחָק בֶּר לַעֲזָר. בָּא לוֹמַר גְּנִיּוֹ וְאָמַר שְׁבָחוּ. אָמַר רַבִּי יוֹסִי בִּירְבִּי בּוֹן. חֲשָׁבוֹן גָּדוֹל הוּא. רַבִּי זְכַאי דְּאֶלְכָסְנְדְּרִיָּא הָהוּא יוֹדֵעַ לָהּ. אָמַר. וְאִי בָּעִית לְלַפְתָּהּ מִיָּנִיָּה.

1 תורמוסין | תורמוסין שלהן | שלהם מה הן | מהן 2 לאסור | ג | לוסר 3 תורמוסין | ג | התורמוסין חייה בר בא | ג | חייה ברווא ואשבח | ג | אשכח | לר' | תורמוסין | ג | תורמוסין 4 שלהן | ג | שלהם אתא | ג | אתה | ליה | ג | לה (2) | לידך | ג | על ידיך | ניה | ג | ליה | ג | לו רבי 6 יודע | ג | יודיע | לאו | ג | ליו

What is the status of their lupines³⁹⁸? Rabbi forbids, Ganiba permits. Rabbi said, I am an Elder and he is an Elder. It came to my mind to forbid; it was his opinion to permit. Rabbi Mana bar Tanḥum went to Tyre and permitted their lupines. Rabbi Hiyya bar Abba went to Tyre and found that Rabbi Mana had permitted their lupines. He returned to Rabbi Johanan who asked him, what case came to your hands? He told him, I found that Rabbi Mana had permitted their lupines. He asked him, did you not hit him? He answered, he is an important personality and knows how to sweeten the waters of the Great Sea. He told him³⁹⁹, no, my son. He knows how to compute the waters; when the waters come together to acclaim their Creator⁴⁰⁰ they sweeten themselves. Rabbi Isaac bar Eleazar said, he starts to speak his disgrace and tells his praise! Rabbi Yose ben Rabbi Abun said, it is a difficult computation; Rabbi Zakkai of Alexandria knows it. He said, if you want, you may learn it from him.

398 They cannot be eaten raw; according to Yerushalmi rules cooked lupines should be forbidden as Gentile's cooking. But Ganiba was a Babylonian and the Babli has a second category of food exempted from the rules: coarse food not eaten in polite society (Babli 38a, rules of the autoch-

thonous academy of Pumbedita.) The paragraph makes clear that this tradition never was accepted in the domain of influence of the Academy of Tiberias.

399 Here ends the second Genizah fragment.

400 Cf. *Midrash Tehillim* on Ps. 93:4.

(42a line 11) חֲלוּט שֶׁלֶהוּ מֵהוּ. נִישְׁמְעִינָה מִן הָדָא. רַבִּי אָמִי סָלַק עִם רַבִּי יוֹדָן נְשִׂיָּאָה לְחִמְתָּא דְּגִדְר וְהִתִּיר חֲלוּט שֶׁלֶהוּ. רַבִּי בָּא בֶר מְמַל בְּעִי. מֵה בֵּיין חֲלוּט לְתוֹרְמוֹסִין. אָמַר רַבִּי יוֹסִי. חֲלוּט מְחוּסָר מַעֲשֶׂה יְדֵי הָאוֹר הוּא. תוֹרְמוֹסִין אֵינָן מְחוּסָר מַעֲשֶׂה יְדֵי הָאוֹר הוּא.

חורנס אין בו משום בישולי גוים ויוצאין בו משום עירובי תבשילין. רבי בא בשם רב איתי. מרטיסה אין בו משום בישולי גוים ויוצאין בו משום עירובי תבשילין. רבי יוסי בירבי בון בשם רב הונא. כל-אוכל שהוא נאכל חי כמות שהוא אין בו משום בישולי גוים ויוצאין בו משום עירובי תבשילין.

What is the rule for their parboiled [food]⁴⁰¹? Let us hear from the following: Rabbi Immi went with Rabbi Jehudah to the hot springs of Gadara and permitted their parboiled [food]. Rabbi Abba bar Mamal asked, what is the difference between parboiled and lupines? Rabbi Yose said, parboiled is missing action by fire; lupines are not missing action by fire.

*Hawarnas*⁴⁰² is not forbidden because of Gentile cooking and one may use it for *eruv tavšilin*³⁶⁸. *Martisa*⁴⁰¹ is not forbidden because of Gentile cooking and one may use it for *eruv tavšilin*. Rabbi Yose ben Rabbi Abun in the name of Rav: Any food which can be eaten alone raw is not in the category of Gentile cooking and one may use it for *eruv tavšilin*³⁶⁸.

401 Scalding is not boiling; while the food is prepared it is not cooked.

402 These two words are unexplained; they can be given sense only by radical emendation. It takes some imagination to define *martisa* as “hash” (Jastrow) on basis of Arabic **رطس**, “to hit somebody with one’s

hand”; it may be somewhat better to rewrite **הרסנא** as Babylonian **חורנס** “sauce made out of ground sardines” (Jastrow) since Palestinian ח often corresponds to Babylonian ה. Also compare Latin *arvina* “grease, fat,” and *moretum*, Greek **μυρτοτός**, a country dish (E. G.).

(fol. 40 b) **משנה י:** אילו מותרין באכילה חלב שחלבו גוי וישראל רואהו והדבש. והדבשנות אף על פי שמנטיפות אין בהן משום הכשר ממשקה. וכבשים שאין דרכן לתת בהן יין וחומין. וטריט שאינה טרופה וציר שיש בה דגה וגלה של הליתית וזיתי קלוסקא המגולגלין. רבי יוסי אומר השלוחין אסורין. והחנבים מן הסלילה אסורין ומן ההפתק מותרין. וכן לתרומה:

Mishnah 10: The following are permitted to eat: Milk which a Gentile milked while a Jew saw him, and honey, and broken grapes⁴⁰³ (even though they drip they do not prepare for impurity.⁴⁰⁴) Preserves in which usually wine or vinegar is not used, and uncut *triton*³⁴³, and fish sauce containing a

whole fish³⁴⁴, and a leaf of *asa foetida*²⁰⁵, and rolled olives⁴⁰⁵; Rabbi Yose says, the pitted ones are forbidden⁴⁰⁶. Locusts from the basket are forbidden⁴⁰⁷, from storage permitted; similarly for heave⁴⁰⁸.

403 Table grapes transported in baskets, not vine grapes transported in barrels. In the first case, juice dripping from broken grape berries is lost. In the second case the juice is collected in the barrel and poured into the wine press; this juice follows all the rules of wine and becomes forbidden by the Gentile's touch.

404 Any vegetable food cannot become impure as long as it is connected to the ground. After harvest it can become impure once it comes into contact with water (*Lev.* 11:38). Juice is treated as water in this respect. But the verse reads, *if water is poured on vegetables*, this is read to imply that contact with water makes vegetables susceptible to impurity only if it was poured intentionally or at least if the wetting was agreeable to the owner (*Sifra Šemini Pereq* 11). Therefore juice which flows out of table grapes does not prepare for impurity since it is lost, but juice flowing from wine grapes does prepare for impurity since it is not lost and eases the work of wine pressing.

405 It seems that the correct reading is that

of the *Arukh*: ייתי קלוסטא המגוללים and the expression is a double Greek-Hebrew, the olives are "rolled" (or "apt to be rolled") Greek κυλιστός and Hebrew "rolled". Cf. E. and H. Guggenheimer, Notes on the Talmudic Vocabulary, *Lešonenu* 37 (1973) pp. 23-25.

406 He thinks that standard technology is to soften the olives by vinegar before removing the pits (*Tosephta* 4:8).

407 One assumes that the store will sprinkle the dead locusts on display with vinegar to keep them looking fresh (*Tosephta* 4:12).

408 A Cohen, who certainly is Jewish, has a food store and therefore can legally refreshen his locusts with vinegar or wine. If he is suspected of illegally using his heave wine or vinegar, which by biblical decree must be eaten by the Cohen in purity and should not be used commercially, to sprinkle on locusts for sale, he has to be treated the same as a Gentile seller of the same.

הלכה י: אילו מוותרין בהנייה כול. אמר רבי לעזר. הקדא דאתא אמר. בתבשיל שאין דרכו לתת לתוכו יין וחומץ. הא דבר בריא שנתן אסור אפילו בהנאה. רבי יעקב בר אבא רבי חייה בשם רבי יוחנן. ישראל וגוי שהן שופתין בקדירה. ישראל שופת והגוי מנער. מי מחזיר. סבירין מימר. ישראל מחזיר. אמר רבי בנימין בר לויא. והוא שנתבשל כמאכל בן דרוסא. רבי יוסי בעי. אם בשנתבשל כמאכל בן דרוסא למה ליה ישראל מחזיר. אפילו הגוי מחזיר.

Halakhah 10: “The following are permitted for usufruct,⁴⁰⁹” etc. Rabbi Eleazar said, about a dish in which usually one does not add wine or vinegar. Therefore if it is certain that he added, it is forbidden even for usufruct⁴¹⁰.

Rabbi Jacob bar Aḥa, Rabbi Ḥiyya in the name of Rabbi Johanan: If a Jew and a Gentile put a pot on the fire, the Jew puts it down and the Gentile stirs⁴¹¹. Who puts it back? One would say that the Jew puts it back⁴¹². Rabbi Benjamin bar Levai said, only if it is cooked like Ben-Drosai’s⁴¹³ food. Rabbi Yose asked, if it is cooked like Ben-Drosai’s food, why does the Jew have to put it back? Even the Gentile may put it back⁴¹⁴.

409 This looks like a misquote from the Mishnah but probably is not since the following statement of R. Eleazar makes sense only if it relates to usufruct, not to food eaten by Jews.

410 Since one refers to dishes produced by Gentiles they are forbidden as Gentile cooking. The only question is whether a Jew may use them as objects of trade. He may do that only if in the standard cook books no addition of wine or vinegar is required. In any case, if it is known that wine or vinegar was added it is forbidden for usufruct. If nothing is known but the standard recipe does not call for wine it is a legitimate object of trade.

411 The Babli 38b declares that there is no

prohibition of Gentile cooking if either the Jew puts it on the fire and the Gentile cooks or the Gentile puts it on the fire and the Jew cooks.

412 Since the Yerushalmi requires that the Jew put the dish on the fire it is obvious that he has to put it back if for some reason the pot was taken off the fire.

413 “The trampler”, a famous robber who always was on the run and therefore could eat his meat only rare. “Ben Derosai’s food” is rare, cooked one-third of normal cooking time.

414 Any food cooked rare is no longer subject to the rules of Gentile cooking. Babli 38a, *Šabbat* 20a.

42a line 27) אִי זֶהוּ הַחֵילָק. רַב אָמַר. סוֹלֶתְנִיתָא. אָמַר רַבִּי יוֹחָנָן. הוּא חֵילָק הוּא טָרִית טְרוּפָה. רַבִּי זְעִירָא כְּהֵנָא בַר תַּחְלִיפָה חָנָן בַּר בָּא בָשֶׁם רַב. לַחְלוּחִתָּא אֲסוּרָה מְשוּם תַּעְרוּבָת דְּגִים טְמֵאִים. רַבִּי בָּא בָשֶׁם רַב יְהוּדָה. הָדָא דְתִימֵר. בְּמָקוֹם שְׂאִין הַמֵּיִם מְהֻלָּכִין. אֲבָל בְּמָקוֹם שֶׁהַמֵּיִם מְהֻלָּכִין אִין דָּג טָמֵא מְהֻלָּךְ עִם דָּג טָהוֹר. וְהָא יָמָא דְּטִיבְרָה כְּגוֹן הַמֵּיִם מְהֻלָּכִין הֵן. אָמַר רַבִּי יוֹסִי בִּירְבִּי בּוֹן. וּבִלְבָד בְּשַׁעָה שֶׁהָדָג טוֹרֵף. שְׂמוּאֵל אָמַר. הָדָא חֲפִיתָה יְהִיבָה גּוֹ קוֹלְפָתָה. אִין עֲבָדַת לַחְלוּחִי שְׂרִיָּא. וְאֵילָא אֲסִירָא.

אִי זֶהוּ הַטָּרִית שְׂאִינָה טְרוּפָה. כָּל־שֶׁהֲרָאֲשִׁים וְהַשִּׁזְרוֹת שְׁלָה קִימִין. רַבִּי לְעֶזֶר בָּשֶׁם רַבִּי חֲנִינָה. מַעֲשֶׂה בְּסַפִּינָה אַחַת מְשַׁלֵּבִית רַבִּי שֶׁהָיוּ בָּהּ יוֹתֵר מִשְׁלָשׁ מֵאוֹת חֲבִילוֹת. וּבִדָּק רַבִּי אֶת

כולהון ולא מצא אלא אחת שהראשים והשיזרות שלה קיימין. והתיר את כולה. רבי יעקב בר אחא אמר. רבי אסי מקשי. לה מסתברה דלא אתה חבית תהא מותרת ושאר כל חביות יהו אסורות. אלא על ידי עילא. זבינתא איתקלקלת. שאל רבי חגי לרבי בא בר זבדא. אמר ליה. אין דבר שלרבים נאסר. רבי יעקב בר זבדי אמר. רבי יצחק מקשי. ואילין איגרתא לא גיים לוקין כתיב בהן. ואת אמר. על ידי עילא. והכא על ידי עילא.

What is *alec*? Rav said, *soltanit*⁴¹⁵. Rabbi Johanan said, *alec* and cut-up triton follow the same rules. Rabbi Ze'ira, Cahana bar Tahlifa, Hanan bar Abba in the name of Rav: Its mucus is forbidden because of admixture from prohibited fish. Rabbi Abba in the name of Rav Jehudah: This you say at a place where water is not running. But in running water no impure fish associates with pure fish. The Sea of Genesareth is similar to running water. Rabbi Yose ben Rabbi Abun said, only at times when the fish bites. Samuel said, *hafitha*⁴¹⁶ one judges according to its shell. If it produces mucus it is permitted, otherwise forbidden.

What is uncut triton? Any where heads and spines exist⁴¹⁷. Rabbi Eleazar in the name of Rabbi Hanina: It happened that on a ship of the House of Rabbi there were more than 300 amphoras. Rabbi checked them all out and found only one where heads and spines were found. He permitted all of them. Rabbi Jacob bar Aha said, Rabbi Assi¹⁹⁰ asked, would it not be reasonable that one amphora be permitted but the other amphoras be forbidden? But it was by a pretext.^{418 419} (A sale)⁴²⁰ was mixed up. Rabbi Haggai asked Rabbi Abba bar Zavda who said to him, the property of the public cannot be forbidden. Rabbi Jacob bar Zavdi said, Rabbi Isaac asked: Is not Cajus Lycus written on these documents, and you say, by a pretext⁴²¹?

415 There is no linguistic evidence for translating either sardine or herring. All one has to go on is a remark in the Babli 29a that *soltanit* is forbidden because it is a small fish caught together with non-kosher fish. Cf. Latin *solea* "sole" (also the fish).

416 This kind of fish likewise has not been identified. In *Cant. rabba ad* 1:4 it is noted that it is a jumping fish. Arabic حَفِث is a

large non poisonous snake.

417 Babli 40a, opinion of Rav Huna.

418 Since all of the amphoras came from the same source, he had reason to assume that all of them were made by the same rule.

420 The following sentences are from *Terumot* 10:7, Notes 91-94. The common topic are subterfuges to stretch permissions over the reasonable limit.

420 In *Terumot* one reads "cheeses", ג, for

ו, a not infrequent misreading. While the principle of R. Abba bar Zavda refers to public property, here he applied it to loads on a common carrier. This is a subterfuge.

421 Divorce documents can only be signed by Jews. In the diaspora, one must accept

also Jewish witnesses with Latin and Greek names; therefore the appearance of foreign names on documents is no reason for attacking the genuineness of a document under any circumstance. This is a subterfuge.

(42d line 44) תִּנִּי עוֹלָא שְׁכַפְּתָא קוּמִי רַבִּי דּוּסָא. דָּג טָמֵא מִשְׁרִיץ. דָּג טָהוֹר מְטִיל בִּיציִים. חֲזוֹר וְתִנָּא קוּמוּי. מַעֵי דָגִים וְקִירְבֵי דָגִים אֵינָן נֶאֱכָלִין אֶלָּא עַל פִּי מוֹמְחָה. אָמַר לֵיהּ. חֲזוֹר בְּדָ. הָדָא תִנִּי אוֹ הָדָא. הָנֹה בְּעֵי מִיחְזוֹר בֵּיהּ. אָמַר לֵיהּ רַבִּי זְעִירָא. לֹא תִחְזוֹר בְּדָ. בִּיציָתָא הֵן נִגְמְרוֹת. רַבִּי בָּא בְּשֵׁם רַב יְהוּדָה. אִם אָמַר לָךְ. מְלַחְתִּים. נֶאֱמָן. נִתֵּן בַּר בָּא אָמַר קוּמִי שְׂמוּאֵל. יָדַע אֲנִי מִפְּרָשָׁא בֵּין עוֹבְרֵי דָגִים טָמְאִין לְעוֹבְרֵי דָגִים טָהוּרִין. עוֹבְרֵי דָגִים טָמְאִין עָגוּלִין. עוֹבְרֵי דָגִים טָהוּרִין אֲרוּכִין. אַחֲוֵי לֵיהּ חָדָא סְלָפִיתָא. אָמַר לֵהּ. כְּזֶה מָהוּ. אָמַר לֵיהּ. טָמֵא. אָמַר לֵיהּ. לֹא בִישׁ לִי דְאִמְרַתְּ עַל טָהוֹר טָמֵא. אֶלָּא סוֹפְדָ דְאָמַר עַל טָמֵא טָהוֹר. תִּנִּי. אֵין לֹקְחִין מַעֵי דָגִים וְקִירְבֵי דָגִים אֶלָּא עַל פִּי מוֹמְחָה. אֵין לֹקְחִין תְּכַלֶּת אֶלָּא עַל פִּי מוֹמְחָה. אֵין לֹקְחִין גְּבִינָה וְתִינִיָּקִי אֶלָּא עַל פִּי מוֹמְחָה. אֵין לֹקְחִין יָין בְּסוּרְיָא אֶלָּא עַל פִּי מוֹמְחָה. אֵין לֹקְחִין בֶּשֶׂר שְׂאִין בּוֹ סִימָן אֶלָּא עַל פִּי מוֹמְחָה. וְכוּלָן נֶאֱכָלִין אֶצֶל מִי שְׂאִינוּ מוֹמְחָה וְאִינוּ חוֹשֵׁשׁ.

Ulla the leatherworker⁴²² stated before Rabbi Dosa, an impure fish has live births, a pure fish lays eggs⁴²³. He started again and stated, fish intestines and fish innards are eaten only upon certification by an expert⁴³⁴. He told him, change your statement! This one state or that one. Rabbi Ze'ira said to him, do not change your statement. They are finished only upon being laid⁴²⁵. Rabbi Abba in the name of Rav Jehudah, if one tells you, I salted them, he may be believed⁴²⁶. Nathan bar Abba said before Samuel, I know how to distinguish between fetuses of impure fish and fetuses of pure fish. The fetuses of impure fish are spherical, the fetuses of pure fish are elongated⁴²⁷. He showed him a *salpe*⁴²⁸, he asked him, what is its status? He answered, impure. He told him, not only am I aggravated that you said impure of what is pure but at the end you will say pure of what is impure.

It was stated: One buys fish intestines and fish innards only upon certification by an expert⁴²⁹. One buys dark blue wool only upon certification by an expert^{204,430}. One buys Bithynian⁴³¹ cheese only upon certification by an expert⁴²⁹. One buys wine in Syria only upon certification by an expert⁴²⁹. One

buys meat without a mark only upon certification by an expert⁴²⁹. But all one may eat at a person's who is not an expert without worry⁴²⁹.

422 Accadic *aškapu*.

423 Babli 40a, *Bekhorot* 7b.

424 Babli 40a.

425 In the Babli 40a the question is asked by Ulla (ben Ismael) to R. Dositheos of Bire and answered by R. Ze'ira correctly that all lay eggs but some impure fish hatch their eggs in their body (clearly excluding mammals). It is not impossible to read the same meaning into the statement here.

426 Babli 40b. If he asserts that he checked the fish and they were of the pure kind, he does not have to be an expert.

427 In the Babli, 40a, it is asserted that impure fish eggs are symmetrical ovaloid, pure fish eggs asymmetrical.

428 Greek *σάλπη*, Latin *salpa*, -ae, "stock-fish".

429 Tosephta 4:13, Babli 39b.

430 Babli *Menahot* 42b.

431 The translation assumes that ותנייכי is a scribal error for בתייכי "Bithynian", which in the Mishnah in the Babli (Note 270) characterizes cheese which is forbidden for usufruct if produced by Gentiles. In the Tosephta *ed. princeps* בית היינאי, Erfurt ms. ובית הייניקי, Vienna ms. missing. The Vienna text is the only one agreeing with the Mishnah as printed in the Yerushalmi editions.

(42a line 57) רבי אַחא רבי תנחום בשם רבי יהושע בן לוי. שילח לו חילתית נאמן. רבי יעקב בר אַחא רבי יעקב בר אידי בשם רבי יהושע בן לוי. שילח לו תכלת נאמן. טליא דלוי צנבריא הנה מזבן פירין. רבי יעקב בר אַחא בשם רבי יסא. עבדו של נאמן נאמן. גרמא עבדיה דרבי יודן נשיא הנה ליה תוקלא. רבי יסא בשם רבי יוחנן. עבדו של מומחה כמומחה.

Rebbi Aha, Rebbi Tanḥum in the name of Rebbi Joshua ben Levi: If one sent *asa foetida* he is trustworthy⁴³². Rebbi Jacob bar Aḥa, Rebbi Jacob bar Idi in the name of Rebbi Joṣhua ben Levi: If one sent dark blue wool he is trustworthy. The lad of Levi of Sanbar was selling produce⁴³³. Rebbi Jacob bar Aḥa in the name of Rebbi Yasa: The slave of a trustworthy person is trustworthy. Germanus the slave of Rebbi Jehudah the Prince had dark blue wool. Rebbi Yasa in the name of Rebbi Joḥanan: The slave of an expert is like an expert⁴³⁴.

432 If a person sends a gift to another of a substance whose kosher status might be questionable, the recipient may assume that the gift was kosher, otherwise it would not

have been sent without proper warning. Babli 39b.

433 The lad was a slave. The question was whether the buyer of produce may assume

that heave and tithes were taken from produce sold by the servant of a person who himself was known to be trustworthy in matters of heave and tithes. Since the slave's owner would not tolerate untithed produce in his house, one must assume that any produce sold by his slave was tithed.

Babli 39a.

434 This is parallel to the previous case. Since R. Jehudah the Prince would not tolerate fake blue wool on his property, one may buy blue wool threads from his slave even if the latter was uneducated.

(42a line 64) ומלח סלוקנרית. אית תנאי תני. שחורה אסורה ולבנה מותרת. אית תנאי תני. לבנה אסורה ושחורה מותרת. מאן דמר. שחורה אסורה. שנותן לתוכה שרץ שחור. ומאן דמר. לבנה אסורה. שנותן לתוכה שרץ לבן. רבי חנניה בן גמליאל אמר משום רבי יהודה בן גמליאל. זו וזו אסורה. אמר רבי חנניה. שכן חד הנה לבן וחד הנה נותן לתוכה שומן שלחור.

“And *salqonarit* salt.” Some Tannaïm state, black one is forbidden but white permitted. But some Tannaïm state, white one is forbidden but black permitted⁴³⁵. He who said black one is forbidden, because one puts a black crawling thing in it. He who said white one is forbidden, because one puts a white crawling thing in it. Rabbi Hanania ben Gamliel said in the name of Rabbi Jehudah ben Gamliel, both are forbidden. Rabbi Hanania⁴³⁶ said, we had a neighbor who was mixing it with pig fat.

435 One of these is R. Meïr, the other R. Jehudah, but Babli 39b and Tosephta 4:12 give contradictory attributions. One has to assume that the editors of the Yerushalmi refrained from attaching names to the

traditions since they knew about differing attributions.

436 He is the previously mentioned R. Hanania ben Gamliel, Babli 39b.

(42a line 68) הן סככות הן פרעות. הן רפפות הן רעילות. הן איסטגיות הן ספיות. הן פוסות הן גומות. היא מקום תחת הפוסות היא מקום הנחת חתיכות. הן ייתי קלויסקא הן זיתים מגולגלים.

והשלוחין אסורין. רבי חייה בשם רבי יוחנן אמר. מין הוא והן נותנין לתוכן חומץ שיהי חולצין את גלעיניהן.

⁴³⁷Coverings are the same as protuberances⁴³⁸. Veiled is the same as hulled⁴³⁹. Roofs are the same as covers⁴⁴⁰. Cups are the same as grooves⁴⁴¹. A place under cups is a place for putting down pieces⁴⁴². *Κυλιστόι* olives are rolled olives⁴⁰⁵.

“The pitted are forbidden.” Rabbi Ḥiyya in the name of Rabbi Joḥanan said, it is a variety⁴⁴³ and they put vinegar on them to be able to remove their pits.

437 In this paragraph one gives example of technical terms used in Mishnaïot which are essentially the same. The list is made to explain the term *זית קלסוקא הקגולגלין* which however is somewhat different in combining two expressions which are translations of one another (Note 405).

438 In Mishnah *Ahilut* 8:2 it is explained that *סְכָכוֹת* refers to trees giving shade and *פְּרָעוֹת* to bushes growing out of a stone wall. Both transmit “tent” impurity.

439 Mishnah *Šabbat* 6:6: On a Sabbath, a Jewish woman in Arabia may walk in the public domain veiled and in Persia hulled.

440 Mishnah *Kelim* 8:9. An oven (*furnus*) may become impure if according to R.

Jehudah it has a roof (στέγη), according to Rabban Gamliel if it has a platform (תִּפְסֵי).

441 Mishnah *Parah* 2:5: Two black hairs growing in the same groove disqualify a red cow; R. Jehudah says in the same cup.

442 Mishnah *Kelim* 22:1: A table or tripod (portable pieces of furniture which may become impure if whole) which were damaged but were covered with a marble top (which cannot become impure) still may become impure if the cover excludes a place for putting there cups (majority opinion) or pieces (R. Jehudah).

443 A kind of olives which can easily be freed of its pits. The name refers to the root שלח I “to strip off”.

כל הצלמים פרק שלישי

(fol. 42b) **משנה א:** כל־הצלמים אסורין מפני שהן נעבדין פעם אחת בשנה דברי רבי מאיר. והכמים ואמרים אינו אסור אלא כל־שיש בידו מקל או צפור או כדור. רבן שמעון בן גמליאל אומר כל־שיש בידו כל דבר:

Mishnah 1: All statues are prohibited¹ because they are worshipped once a year, the words of Rabbi Meir, but the Sages say, prohibited are only those in whose hand is a rod², or a bird³, or a globe⁴. Rabban Simeon ben Gamliel says, any in whose hand is anything.

1 Prohibited for usufruct. For R. Meir there are no statues made for artistic value alone.

2 A symbol of command.

3 A symbol of having access everywhere.

4 A symbol of ruling the earth.

(42b line 64) **הלכה א:** כל־הצלמים אסורין כול. אמר רבי חייה בר בא. מפני שהן נעבדין בדרך גדול שבדומי פעמיים בשבוע. מעתה במקום שנעבדין יהו אסורין ומקום שאינן נעבדין יהו מותרין. אמר רבי יוסי. מכיון שנאסרו במקום אחד נאסר מיון בכל־מקום. מה אנו קיימין. אם דבר בריא שהן של מלכים. דברי הכל. אסור. אם דבר בריא שהן שלשלוטונות. דברי הכל. מותר. אלא כן אנו קיימין בסתם. רבי מאיר אומר. סתמן של מלכים. ורבנן אמרי. סתמן שלשלוטונות.

אשייאן נגרא בשם רבי יוחנן. איקוניות למה הן אסורות. מפני שמקטירין לפנין בשעה שהן עולות. אמר רבי יוחנן. מותר לראותן בשעה שהן יורדות. מה טעם. בהפך רשעים תראה: כתב המהלך תחת הצורות או תחת האיקוניות אין מסתכלין בהן בשבת. ולא עוד אלא אף בחול אין מסתכלין באיקונות. ומה טעם. אל־תפנו אל־האילים. אל תפנה לעובדן. רבי יהודה אומר. אל תפנה לראותן ממש.

Halakhah 1: “All statues are prohibited,” etc. Rabbi Hiyya bar Abba said, because they are worshipped in the great fortification of Rome twice in a Sabbatical period⁵. Then at a place where they are worshipped they should be forbidden, at a place where they are not worshipped they should be permitted. Rabbi Yose said, since they became forbidden at one place, their kind becomes forbidden anywhere⁶.

Where do we hold⁷? If it is certain that they are of kings⁸, according to everybody they are forbidden. If it is certain that they are of rulers⁹, according to everybody they are permitted. But where we hold is if it is indeterminate. Rabbi Meïr says, indeterminate they are of kings but the rabbis say, indeterminate they are of rulers.

Ashian the woodworker in the name of Rabbi Johanan: why are pictures forbidden¹⁰? Because one burns incense before them at the time they are hung. Rabbi Johanan said, one may look at them when they are taken down. What is the reason? *You may look when the evildoers are being destroyed*¹¹. One may not look at inscriptions under figures or under pictures on the Sabbath¹². Not only this, but even on a weekday one does not look at pictures. What is the reason? *Do not turn to idols*¹³, do not turn to worship them; Rabbi Jehudah says, do not turn actually to see them.

5 This is given as R, Meïr's reason.

6 Babli 40b (following R. Meïr).

7 Where is the disagreement between R. Meïr and the rabbis?

8 Since Augustus introduced the worship of the Emperor in the provinces, any statue of an Emperor is an idol.

9 The statue of a procurator is not an idol.

10 Flat pictures of pagan deities or pagan subjects, since the Second Commandment

forbids only three-dimensional forms. Greek εἰκόνα, "portrait".

11 Ps. 34:37.

12 Babli Šabbat 149a. Since the inscription explains what the picture is all about, reading it is for non-religious information which is forbidden on the Sabbath.

13 Lev. 19:4.

כְּדִימָה רַבִּי נָחוּם בַּר סִימַי חָפִין אִיקוֹנָתָא מִחֲצֵלָן. אָמַרִי. כִּמְה דְלֹא חֲמֵתִין
בְּחַיִּי לֹא יִחְמִינוּן בְּדִמְכּוּתֵיהּ. וְחֲכָמִין אֵינוּן כָּלוּם. אָמַר רַבִּי שְׁמַעוֹן בֶּן לָקִישׁ. אֵין בֵּינֵינוּ
וְלַצְדִּיקִים אֶלָּא דִּיבּוּר פֶּה בְּלִבָּד. אָמַר רַבִּי זְעִירָא. שׁוֹמֵעַ הוּא הַמֶּת קִילּוֹסוֹ כְּמַתּוֹן חָלוּם.
אָמַר רַבִּי אֲשִׁינ. שׁוֹמֵעַ הַמֶּת קִילּוֹסוֹ כְּמַתּוֹן הַחָלוּם. וְלִמָּה נִקְרָא שְׁמוֹ נָחוּם אִישׁ קוֹדֶשׁ
קֹדָשִׁים. שְׁלֹא הֵבִיט בְּצוּרַת מִטְבַּע מִמֶּיּוּ. וְלִמָּה נִקְרָא שְׁמוֹ רַבִּינוּ הַקְדוֹשׁ. שְׁלֹא הֵבִיט בְּמִילָתוֹ
מִמֶּיּוּ.

When Rabbi Nahum bar Simai expired, the pictures were covered by bast mats¹⁴. Just as he did not see them during his lifetime, so he should not see them in his death. But do they know anything¹⁵? Rabbi Simeon ben Laqish said, the only difference between us and the just is speech¹⁶. Rabbi Ze'ira

said, the dead person hears his eulogy as in a dream. Rabbi Ashian said, the dead person hears his eulogy^{16a} as in a dream. Why was he called “Nahum the most holy man”? because he never in his life looked at the form on a coin¹⁷. Why was he called “our holy teacher”? Because he never looked at his circumcision¹⁷.

14 The entire paragraph in *Eccl. rabba* 9(9); cf. also Babli *Mo'ed qatan* 25b.

They covered all icons along the route of the funeral procession by mats. (In the Babli, the icons turned into mats.)

15 Babli *Berakhot* 18a.

16 *Midrash Ps.* 30(3) [ed. Buber Note 6]; *Pesiqta rabbati* 2 (ed. Friedmann Note 17),

12 (Note 4). The name tradition changes

from source to source.

16a קילוס “praise” is derived from Greek καλῶς! “beautiful, excellent”. For the use as “eulogy” compare καλολογέω, same as ἐυλογέω (E. G.).

17 *Sanhedrin* 10:6 Note 335, *Megillah* 1:13 (72b l. 57) 3:3 (74a l. 39); Babli *Šabbat* 118b, *Pesahim* 104a.

42c line 8) כַּד דְּמָדָּ רַבִּי אַחָא אֵיתְחַמֵּי בְּטִיתְרָא כּוּכְבָּא. כַּד דְּמָדָּ רַבִּי חֲנָן אֵיתְכַּפּוּן אֲנִידְרִטִיָּא. כַּד דְּמָדָּ רַבִּי יוֹחָנָן אֵיתְכַּפּוּן אֵיקוֹנֵיָּא. אָמְרִין. דְּלָא הָנוּת אֵיקוֹנֵין דְּכּוֹנוּתָהּ. כַּד דְּמָדָּ רַבִּי חֲנִינָא דְּבֵרַת חוּוֹרָן אֵיתְבָּזַע יָמָא דְּטִיבְרָא. אָמְרִין. כַּד הָנוּת סָלִיק לַעֲיבּוּרָא הָנוּת יָמָא מִתְבָּזַע קוּמוּיָא. כַּד דְּמָדָּ רַב הוֹשַׁעְיָה נָפַל קִלּוֹן דְּטִיבְרָא. כַּד דְּמָדָּ רַבִּי יִצְחָק בֶּן אֶלְשִׁיב אֵיתְעַקְרוּן שׁוּבְעִין אִיִּסְקוּפִין מִבְּעַלֵּי בְּתִים דְּגָלִילָא. אָמְרִין. דִּהוּי תִלְוִין בְּזֻכּוּתֵיהּ.

כַּד דְּמָדָּ רַבִּי שְׁמוּאֵל בֶּר רַב יִצְחָק אֵיתְעַקְרוּן אַרְזֵיָּא דְּאַרְעָא דִּישְׂרָאֵל. אָמְרִין. דִּהוּיָּה נָסִיב שׁוֹשִׁיבְתָּא וּמִקְלָס קוּמִי כְּלִיָּה. וְהוּוּן רַבְּנָן מְרַנְּנִין בֵּיהּ. אָמַר לוֹן רַבִּי זְעִירָא. אַרְפּוֹן לִיה. לִית אֹהֵן סָבָא יָדַע מַה עָבִיד. כִּין דְּמָדָּ נְחִתָּת אִישְׁתָּא מִן שְׁמִיָּא וְאַפְסָקַת בִּין עָרְסָא לְקַהֲלָא וְהוּוּן תִּלְתָּ שְׁעִין קִלּוֹן וּבִרְקִין בְּעָלְמָא. חֵיָּא דְּאֹהֵן סָבָא דְּעָבְדַת לִיה שׁוֹשִׁבְתָּא. וְנִפְקַת בַּת קָלָא וְאַמְרָה. וַיִּי דְּמָדָּ שְׁמוּאֵל בֶּר רַב יִצְחָק גָּמִיל חִיסְדָּא.

כַּד דְּמָדָּ רַבִּי יִסָּא בֶר חֲלָפוּתָא מְשַׁכּוּ צִינוּרוֹת דָּם בְּלִדּוּקָא. אָמְרִין. דִּיהֵב נִפְשִׁיָּה עַל גְּזוּרְתָּא.

כַּד דְּמָדָּ רַבִּי אֲבָהוּ בְּכּוּן עֲמוּדָא דְּסִנְסְרִין. אָמְרִין כּוֹתִיָּא. לִית אִינוּן אֶלָּא מְרִיעִין. אָמַר לוֹן יִשְׂרָאֵל. יַדְעִין רְחִיקֵיָּא כְּמַה דְּקִרְיֵיָּא מְרִיעִין. רַבִּי אֲבָהוּ מִי דְּמָדָּ עָבְרוּן קוּמוּיָא יִגְ נִהְרִין דְּאַפְרָסְמוֹן. אָמַר לוֹן. כָּל־אִילִין לְמָאן. אָמְרוּ לִיה. דִּידָּ. אָמַר לוֹן. וְכָל־אִילִין דְּאַבְהוּ. וְאַנִּי אֲמַרְתִּי לְרִיק גְּעַתִּי וְגו'.

¹⁸When Rabbi Aha expired, a star was seen at high noon. When Rabbi Hanan expired, the statues were bent. When Rabbi Johanan expired, the pictures were bent. They said, there was no picture beauty like his¹⁹. When

Rebbi Hanina from Hauran expired, Lake Tiberias was split. They said, when he was going to intercalate²⁰, the lake was split before him. When Rav Hoshai expired, the shame²¹ of Tiberias fell down. When Rebbi Isaac ben Elyashiv expired, 70 thresholds of Galilean houses were uprooted. They said, these were kept in place by his merit.

²²When Rebbi Samuel ben Rav Isaac expired, the cedars of the Land of Israel were uprooted. They said that he was taking branches and danced while singing²³ before brides. The rabbis were complaining about him. Rebbi Ze'ira said to them, let him alone, the old man does not²⁴ know what he is doing. When he expired, fire came from Heaven and separated between his bier and the public; there were three hours of thunder and lightning in the world. They showed²⁵ what this branch did for the old man. There came a disembodied voice and said, woe that Samuel bar Rav Isaac, the doer of good deeds, has expired.

When Rebbi Yasa bar Halfuta expired, the water pipes drew blood in Laodicea²⁶. They said, because he devoted his life to circumcisions.

When Rebbi Abbahu expired, the pillars of Caesarea were crying. The Samaritans said, they only are making a joyful noise²⁷. The Jews told them, do the outsiders know what sound the insiders make? When Rebbi Abbahu expired, they had thirteen rivers of balsamum flowing before him. He asked them²⁸, for whom are these? They told him, they are yours. He said to them, all of this is for Abbahu, *and I said, in vain I labored*²⁹, etc.

18 Most of these remarks about wonders which happened at the death of holy men are alluded to in the Babli, *Mo'ed qatan* 25b.

19 R. Johanan's beauty is extolled in the Babli, *Bava mesit'a* 84a.

20 Calendar intercalations, the proclamations of an additional month in the year, were done at the hot springs of Gadara, near the South-East corner of the Lake of Genezareth.

21 Usually קֶלֶן "shame" means a brothel (cf. *Horaiot* 3:7 Note 259), possibly

government run. It is possible that here one should read קֶלֶן *columna* "a pillar" (commentary *Gilyon Efraim*.)

22 This story appears also in *Peah* 1:1 (Note 139) and twice in *Gen. rabba*. The different Yerushalmi versions are compared in Appendix 2 of M. Sokoloff, *The Geniza Fragments of Bereshit Rabba*, Jerusalem 1982. (Babli *Ketubot* 17a.)

23 Arabic فُلس "to dance while singing". This יִיֵּץ is not the verb קָלַס derived from

Greek καλός “beautiful”.

24 J. N. Epstein deletes this word since in the parallels R. Ze'ira appears in a positive light.

25 Read חיוי instead of חייא .

26 In the Babli, R. Yose (ben Halafta, the Tanna) at Sepphoris.

27 Since R. Abbahu was the driving force behind the permanent separation of Jews

and Samaritans (Halakhah 5:3, Babli *Hulin* 6a.)

28 The angels. The next paragraph implies that he saw his reward before his death, and explains the euphemism “expired” (really “slept”) for “died”. *Gen. rabba* 63(3). A similar story is in the Babli, *Ta'anit* 25a, referring to R. Eleazar.

29 *Is.* 49:4. *Gen. rabba* 63(3).

וְהוּא הַקְדוּשׁ בְּרוּךְ הוּא מְרָאָה לְהוֹן לְצַדִּיקִים מִתּוֹן שְׂכָרָם בְּעוֹלָם הַזֶּה וְנִפְשָׁם שְׂבִיעָה וְהוֹן וְשִׁינִיו לָהֶן. לְמַלְךְ שְׁעֵשָׂה סְעוּדָה וְצָר כָּל־מִינֵי סְעוּדָה בְּמַפָּה. כִּיֹּן שְׁנִכְנָסוּ הָאוֹרְחִין רָאוּ אוֹתוֹן וְנִפְשָׁם שְׂבִיעָה וְיָשְׁנוּ לָהֶן.

³⁰The Holy One, praise to Him, shows to the just their rewards in this world; their soul is satisfied and they go to sleep. [A parable] of a king who gave a dinner and pictured all kinds of dishes on a chart. When the guests entered they saw it, they were satiated and went to sleep.

זָבְדִּי בַר לֵוִאי וְרַבִּי יוֹסִי בַר פִּיטְרָס וְרַבִּי יְהוֹשֻׁעַ בֶּן לֹוי אָמְרִין תִּלְתָּא פְּסִיקִין מִי דְמַכִּין. חַד מִיָּהוֹן אָמַר עַל־זֹאת יִתְפַּלֵּל כָּל־חֲסִיד | אֱלֹהֵי גוֹ'. וְחַד אָמַר וְיִשְׁמָחוּ כָל־חֲוֹסֵי בְךָ גוֹ'. וְחַד אָמַר מָה רַב טוֹבָךָ אֲשֶׁר־צָפַנְתָּ לִּי אֵיךְ גוֹ'.

³¹Zavdai ben Levi, and Rabbi Yose bar Petrus, and Rabbi Joshua ben Levi said three verses when they expired. One of them said, *for this every pious one should pray to You*³² etc. And one said, *all who rely on You will enjoy*³³ etc. And one said, *how great is Your bounty which You did hide for those who fear You*³⁴ etc.

30 *Gen. rabba* 63(3), an enlarged version.

32 *Ps.* 32:6.

31 *Gen. rabba* 63(4), 92(2), *Ex. rabba*

33 *Ps.* 5:12.

22(3), *Midrash Psalms* 5(11).

34 *Ps.* 31:20.

רַבִּי יַעֲקֹב בַּר אֵידִי בִשְׁם רַבִּי יְהוֹשֻׁעַ בֶּן לֹוי. מַעֲשֵׂה שְׁנִכְנָסוּ זָקִינִים לְעֵלִיית בֵּית גְּדִיָּא בִּירִיחוֹ. יָצְתָה בַת קוֹל וְאָמְרָה לָהֶן. יֵשׁ בִּינֵיכֶם שְׁנַיִם רְאוּיִין לְרוּחַ הַקְדוּשׁ וְהַלֵּל הַזֶּסֶן אַחַד מֵהֶן. נִתְּנוּ עֵינֵיהֶן בְּשִׁמוּאֵל הַקָּטָן. שׁוּב נִכְנָסוּ זָקִינִים לְעֵלִיָּה בִּבְנָה וְיָצְתָה בַת קוֹל וְאָמְרָה לָהֶן. יֵשׁ בִּינֵיכֶם שְׁנַיִם רְאוּיִין לְרוּחַ הַקְדוּשׁ וְיִשְׁמוּאֵל הַקָּטָן אַחַד מֵהֶן. נִתְּנוּ עֵינֵיהֶן בְּרַבִּי לִיעֶזֶר. וְהָיוּ שְׂמִיחִין עַל שֶׁהִסְפִּימָה דַּעְתָּן עַל דַּעַת רוּחַ הַקְדוּשׁ.

³⁵Rebbi Jacob bar Idi in the name of Rebbi Joshua ben Levi: It happened that the Elders assembled in the upper story of 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.

35 This paragraph is from *Horaïot* 3:7, Tosephta *Sotah* 13:3-4; parallels in the Babli *Sotah* 9:17, 9:13-14 (Notes 212-218), *Berakhot* 57a, *Sotah* 48b, *Sanhedrin* 11a.

38d line 38) חד מן איילין דנשייתא דמך וקלטת מערתא וסכנתו נפשתא. עאל רבי יוסי ואפטר עלוי. אשרי אדם שיצא מן העולם בשלום. כד דמך רבי יסא נפל קסיטולין דטיבריא והיון איילין דנשייתא חדיין. אמר לון רבי זעירא. לא דמא. תמן סכנן נפשתא ברם הכא לא סכנן נפשתא. תמן לא איתעקרת עבודה זרה ברם הכא איתעקרת עבודה זרה.

One of the Patriarch's court expired. The burial cave received him but people's lives were endangered³⁶. Rebbi Yose³⁷ came and held a funeral oration, "happy the man who leaves the world in peace." When Rebbi Yasa died, the sacred fountain³⁸ of Tiberias fell down and those of the Patriarch's court were happy³⁹. Rebbi Ze'ira told them, it is not comparable. There people were in danger, here nobody was in danger. There no pagan worship was uprooted, here pagan worship was uprooted.

36 Probably the cave was unsafe.

37 This name probably should read "Yasa" as in the following, since R. Yose was R. Ze'ira's student's student.

38 The usual interpretation as Latin *castellum* (New Greek καστέλλιον), expression used by Vitruvius for the water container on top of a water tower, fits Tosephta *Miqwaot* 4:6 but not this passage.

Fortification in the Yerushalmi always appears as *castra*, *-orum*, and has nothing to do with pagan worship. The word here seems to be κασταλία "a sacred fountain". Compare Latin *castalius*, "holy" (E. G.).

39 That something happened to the preacher who found fault with the court because something happened at one of its funerals.

(42c line 42) רבי יעקב בר אידי בשם רבי יהושע בן לוי. רבן יוחנן בן זכאי מי דמך אמר. פנו הבית מפני הטומאה ותנו כסא לחזקיה מלך יהודה. רבי ליעזר תלמידיה מי דמך אמר. פנו הבית מפני הטומאה ותנו כסא לרבן יוחנן בן זכאי. ואית דאמרי. כמה דחמא רביה חמא אף הוא.

1 דמך | ס דמך פקיד אמ' | ס ואמ' 2 הבית | ס חצר (same changes in the next sentence)
חד מן אילין דבי רבי פזי הוון אילין דנשיטא בעי מחותנתיה והוא לא מקבל עלוי. אמר.
דלא יהוון מיתגנו בי. מי דמך אמר. פנו הבית מפני הטומאה ותנו מקום כסא ליהושפט מלך
יהודה. אמרו. יבוא זה שרץ אחר כבוד אחר זה שברח מן הכבוד.

⁴⁰Rebbi Jacob bar Idi in the name of Rebbi Joshua ben Levi: When Rabban Johanan ben Zakkai died, he said, clear the house because of impurity and prepare a chair for Hezekiah, the king of Judah. When his student Rebbi Eliezer died, he said, clear the house because of impurity and prepare a chair for Rabban Johanan ben Zakkai. But some say, what his teacher saw, he saw.

Some of the family of the Patriarch proposed a marriage connection to one of the house of Rebbi Pazi but he did not accept; he said that they should not be embarrassed by him. When he died he said, clear the house because of impurity and prepare a chair for Josaphat, the king of Judah. They said, the one who ran after honor should come for him who fled before honor.

40 *Sotah* 9:17 (ס) Notes 283-284. The first paragraph is slightly reformulated, the second more radically except for the last sentence. Probably one should read *bar* Pazi instead of *Rebbi* Pazi. According to *Horaiot* 3:7 (Note 329) the family bar Pazi already was related to the Patriarchate but had no learned members.

(42c line 50) ונחמם אומרים אינו אסור אלא כל-שיש בידו מכל או ציפור או כדור. מכל. שהיה רודה בו את העולם. ציפור. ותמצא כהן | נדל לחיל העמים. כדור. שהעולם עשוי ככדור.

אמר רבי יונה. אלכסנדרוס מקדון כד בעא מיסק לעיל. והיה סלק וסלק סלק עד שראה את העולם ככדור ואת הים כקערה. בגין כן ציירין לה בכדורה גדה. ויצוריה קערה גדה. אינו שליט בים. אבל הקדוש ברוך הוא שליט בים וביבשה. מציל בים ומציל ביבשה.
דרש רבי זעירא בריה דרבי אבהו קומי רבי לעזר. אשוי שאל יעקב בעזר. ומה כתיב בתריה. עשה | שמים וארץ. ומה ענין זה לזה. אלא מלך בשר ודם יש לו פטרון באיפרכא זו אינו שליט. שמא אחרת. ואם תאמר קוזמוקרטור שליט ביבשה. שמא בים. אבל הקדוש ברוך הוא אינו כן. שליט בים ושליט ביבשה. ולא עוד אלא חרב על צואר האדם הקדוש

ברוך הוא מצילו. הוא שְׁמַנְשָׁה אוֹמֵר וַיִּצְלָנִי מִחֶרֶב פְּרָעָה: אֵין קְתוּב כָּאֵן אֶלָּא מִחֶרֶב. אֶפִּילוּ חֶרֶב נְתוּנָה עַל צִנּוֹרֹ הַקְדוּשׁ בְּרוּךְ הוּא מְצִילוֹ הַיְמִינָה.

“But the Sages say, prohibited are only those in whose hand is a rod, or a bird, or a globe.” A rod by which he rules the world⁴¹. A bird, *my hand reaches to the riches of people as to a bird’s nest*⁴². A globe, for the world is globe-shaped.

⁴³Rebbi Jonah said, when Alexander the Macedonian wanted to ascend he rose, and rose, and rose, until he saw the world as a globe and the ocean like a bowl. Therefore one represents him with a globe in his hand. Should one not represent him with a bowl in his hand? He does not rule over the Sea. But the Holy One, praise to Him, rules over Sea and dry land, He rescues on the Sea and on land.

⁴⁴Rebbi Ze’ira the son of Rebbi Abbahu preached before Rebbi Eleazar. *Happy is he whom the God of Jacob helps*⁴⁵. What is written after this? *The Maker of Heaven and Earth*. What has one to do with the other? But a king of flesh and blood needs a protector^{45*}; in one district⁴⁶ he is not a ruler, maybe in another one? If you say a universal ruler⁴⁷ rules over dry land, does he [rule] over the Sea? But the Holy One, praise to Him, is not like this; He rules over the Sea, He rules over dry land. Not only this, but if a sword is at a person’s neck the Holy One, praise to Him, saves him. That is what Moses said, *He saved me from Pharaoh’s sword*⁴⁸. It is written only *sword*⁴⁹. Even if a sword is at his neck the Holy One, praise to Him, saves him from it.

41 Babli 41a. The other two attributes are interpreted differently; the Yerushalmi interpretation also is in *Num. rabba* 13(13).

42 *Is.* 10:14.

43 *Num. rabba* 13(13).

44 A slightly different version of this paragraph is in *Berakhot* 9:1 (Notes 56-58).

45 *Ps.* 146:5-6.

45* Latin *patronus* “protector, defender”.

46 Greek *ἐπαρχία*.

47 Greek *κοσμοκράτωρ*, the Roman

Emperor. A king in the Roman principate was a local ruler subject to orders from Rome.

48 *Ex.* 18:4.

49 Since it does not say “from Pharaoh” but “from Pharaoh’s sword” Moses was condemned to death but escaped miraculously (*Berakhot* 9:1 Notes 42-47, *Deut. rabba* 2(20), *Midrash Cant.* 7(5), *Midrash Ps.* 4[3].)

(42c line 64) הוסיפו עליהן הסייף והעטרה והטבעת. הסייף שהורג בו. העטרה שמתעטר בו. טבעת שחותם בו.

טבעת שיש עליה עבודה זרה אסור לחתום בה. רבי יודה אומר. אם היתה חותמה שקוע אסור לחתום בה. בולט מותר לחתום בה. רבי חנינה בן גמליאל אומר. שלבית אבא היו חותמים בפרסופות. רבי לעזר בירבי שמעון אומר. כל-פרסופות היו בירושלים חוץ משל אדם.

“They added to this the sword, the crown, and the ring.”⁵⁰ The sword with which he kills, the crown with which he crowns himself, the ring with which he seals.

It is forbidden to seal with a seal on which there is an idol. Rabbi Jehudah says, if its seal was recessed it is forbidden to seal with it, if it protrudes it is permitted to seal with it⁵¹. Rabbi Hanina ben Gamliel says, in my father’s family they were sealing with faces⁵². Rabbi Eleazar ben Rabbi Simeon says, all kinds of faces were in Jerusalem except human ones⁵³.

50 Tosephta 5:1, Babli 41a.

51 Babli 43b. A figure prohibited by the Second Commandment is a three-dimensional plastic image. A ring with a concave picture will result in a protruding seal which therefore is forbidden (but as the Babli points out, one is permitted to wear such a ring.) A ring with a

protruding picture results in a recessed seal which is permitted (but one may not possess such a ring.)

52 Greek πρόσωπον, τό “face”.

53 In the Babli (42b): All faces are permitted except human ones. Tosephta 5:2.

(42c line 70) רבן שמעון בן גמליאל אומר כל-שיש בידו כל דבר: ובלבד דבר שהוא שלקבוד. הסל והסילים והסמלים דבר שלביאיון הוא. הנזיר והקולמוס דבר שלקבוד הוא. קלמרון צריכה.

“Rabban Simeon ben Gamliel says, any in whose hand is anything.” But only matters of honor⁵⁴. A basket, laced shoes, and rags are matters of dishonor. Papyrus and reed pen⁵⁵ are matters of honor. The pen-case⁵⁶ is problematic.

54 Babli 43b.

55 Greek καλαμίσκιον, τό.

56 Latin *calamus*, -i; Greek κάλαμος, ό.

(fol. 42b) **משנה ב:** המוצא שיברי כלים הרי אילו מתרין. מצא תבנית יד או תבנית רגל הרי אילו אסורין מפני שפויצא בהן נעבד:

Mishnah 2: If one finds shards of vessels⁵⁶ they are permitted. If one finds the figure of a hand or of a foot these are forbidden because similar ones are worshipped⁵⁷.

56 In the Babli and the independent Mishnah mss.: “of idols”. While idols are and remain biblically forbidden for all usufruct, a pagan (not a Jew) who damages or breaks an idol thereby removes the character of instrument of worship. If one finds shards of vessels decorated with pagan symbols then either (1) it simply is a decorated vessel never intended for pagan worship, or (2) even if it was an object of

worship there is a likelihood that a pagan broke and discarded it. As a general principle such a case (called “the doubt of a doubt”) in which the object may be permitted in each of the cases clears the object from any biblical prohibition.

57 In this case, possibility (1) is very remote; there is only one doubt which is not enough to remove the biblical prohibition.

(42c line 73) **הלכה ב:** המוצא שיברי כלים כול. רבי יוסי בשם רבי יוחנן. מפני שריבן באין מן הדלפקיות. מעתה אפילו תבנית יד ותבנית רגל. שנייא היא. מפני שפויצא מהן נעבד.

Halakhah 2: “If one finds shards of vessels,” etc. Rabbi Yose in the name of Rabbi Johanan: Because most of them come from three-legged tables⁵⁸. Then also figures of a hand or figures of a foot? There is a difference since similar ones are worshipped.

58 Greek δέλφιξ, -ικος, a (Delphian) tripod possibility of case (2) is remote. or small three-legged table. In this case the

(42c line 75) כותב ואנשי בבל עשו את סוכות בנות. תרגולתא ופרחיה. ואנשי כות עשו את גרגל. ריגליה דיעקב וריגליה דיוסף. נחשתי ויברכני יי בגלגל: ויברך יי את בית המצרי בגלגל יוסף. ואנשי חמת עשו את אשימה: אימרא כמה דתימר וכפר עליו הכהן באיל האשם. הערים עשו נבחן. כלבא. ואת תרתק. חמרא. והספרוים שורפים את גנייהם באש. טווסא ופיסיוני.

1 סוכות | G סוכות תרגולתא | G תרגולתא 2 ריגליה | G ריגליה וריגליה | G ריגליה ויברך יי את בית המצרי בגלגל יוסף | G ויברך יי אתד לרגלי 3 אשימה | G אשימה אימרא | G אמרה דתימא | G דתא אמר וכפר עליו הכהן | G והכהן יכפר עליו 4 כלבא | G כלבה חמרא | G חמרה באש | G באש לאדרמלך וענמלך אלהי ספרים 5 טווסא ופיסיוני | G טפסה ופיסיוני

⁵⁹It is written⁶⁰: *The people from Babylon made Sukkot Benot*, the chicken and its young, *and the people of Kuta made the Nergal*, the foot of Jacob and the foot of Joseph⁶¹, *I divined that the Eternal blessed me for your sake*⁶²; *the Eternal blessed the Egyptian's house for Joseph's sake*⁶³. *The people of Hamma made the Ashima*, a sheep, as you say, *the Cohen shall atone for him by the asham ram*⁶⁴. *The Awim made the Nibhan*⁶⁵, a dog, *and the Tartaq*, a donkey. *And the Sepharwites burned their sons in fire [to Adrammelekh and Annamelekh the gods of Sepharwaim]*⁶⁶, peacock⁶⁷ and pheasant⁶⁸.

59 Here starts a Geniza text (G), one leaf also edited by J. N. Epstein (Chapter 2, Note 361). The parallel in the Babli is *Sanhedrin* 63b.

60 2K. 17:30.

61 Some of the regions mentioned here and most of the deities are unidentified in cuneiform sources but Nergal is well identified as the god of the Underworld. Since the word does not correspond to any Semitic root, *Nun* is considered a prefix leaving a root רגל “foot” which in turn is taken of the source of גלל “because of” in analogy to עקב “heel, in consequence of”.

62 *Gen.* 30:12.

63 *Gen.* 39:5.

64 *Lev.* 19:22. G quotes 5:16 instead. In both cases there is acoustic similarity

between *asham* and *ashima*.

65 Both sources and the Babli read נבחר “the barker” against the MT נבחי which together with תרתק are read as Elamite by modern interpreters.

66 Parentheses added from G; while the interpretations clearly refer to the deities mentioned in the addition, in talmudic style the explicit quote is not strictly necessary.

67 Greek ταῶς, ὁ. In Latin, *taos*, -i, m., is “a precious multi-colored stone”.

68 Latin *phasianus*, also *phasiana*, -ae, f. (*Edict. Diocl.*). According to myth, it is metamorphosed Itis, a son of Tereus. He was killed by his mother and served to his father, then changed into a pheasant.

(42d line 6) עבודה זרה ששפורה. רבי יוחנן אמר. אסורה. רבי שמעון בן לקיש אמר. מותרת. מה אנו קיימין. אם בעתיד להחזירן לכליין. דברי הכל. אסור. אם בשאינו עתיד להחזירן לכליין. דברי הכל. מותר. אלא כי אנו קיימין בסתם. רבי יוחנן אמר. סתם כמי שעתיד להחזירן לכליין. רבי שמעון בן לקיש אמר. סתם כמי שאינו עתיד להחזירן לכליין. אמר רבי יודן אביו של רבי מתינה. אם היו מונחין במקומן כמי שעתיד להחזירן לכליין. מתיב רבי שמעון בן לקיש לרבי. והא כתיב על-כך לא-ידרכו כהני דגון על-מפתן דגון. אמר ליה. מלמד שהיו נוהגין במפתן יותר מדגון. רבי ירמיה בשם רבי חייה בר בא אמר. אומות העולם עשו מפתן אחד. ישראל עשו כמה מפתנים. ומה טעם ופקדתי על הדולג על-המפתן.

1 שנסברה | G שנישברה (?) over the line corrected 2 לכליין | G לכליין 3 לכליין | G לכליין אלא כי | G כן סתם | G סתמן 4 לכליין | G לכליין (2) 5 אביו של ר' | G אביו דר' מתנייה | G מתניה לכליין | G לכליין 6 ריש | G ר' שמעון בן לר' | G לר' יוחנן דגון | G דגון וכל הבאים בית דגון על מפתן דגון | G - 7 נוהגין | G נוהגים בר בא | G ברווא 8 הדולג | G כל הדולג 9 המפתן | G המפתן ביום ההוא וגו'

An idol which was broken⁶⁹, Rabbi Johanan said it is forbidden, Rabbi Simeon ben Laqish said it is permitted⁷⁰. Where do we hold? If in the future he would return it to its vessel, everybody agrees it is forbidden. If in the future he will not return it to its vessel, everybody agrees that it is permitted. But we hold if it is not indicated. Rabbi Johanan said, not indicated is as if he would return it to its vessel; Rabbi Simeon ben Laqish said, not indicated is as if he would not return it to its vessel. Rabbi Yudan the father of Rabbi Mattaniah said, if they were lying on their spot⁷¹ it is if he would return it to its vessel. Rabbi Simeon ben Laqish objected to Rabbi [Johanan]⁷²: Is it not written, *therefore the priests of Dagon and all visitors to Dagon's temple will not step on Dagon's threshold*⁷³? He told him, this teaches that they honored the threshold more than Dagon. Rabbi Jeremiah in the name of Rabbi Hiyya bar Abba, the peoples of the world made one threshold; Israel made many thresholds; what is the reason? *I shall visit on [any]*⁷⁴ *who skips over the threshold [on that day]*⁷⁵.

69 In the Babli, 41b, "if it broke spontaneously." This is the reading of the correction in G over the line. Therefore one has to assume that the reading in the text simply means that a piece is before us and we do not know how it was broken. The argument in the text shows that the idol was a decoration of a vessel, not a statue.

70 Babli 41b.

71 All parts of the vessel are still available, so it can be glued back together.

72 From G, missing in L.

73 *Is. 5:5*. Since it does not mention Dagon's hands and head, it proves that once a statue is broken it is not worshipped any longer by pagans. In the Babli the same verse serves to buttress R. Johanan's position against R. Simeon ben Laqish.

74 Added from G (and the verse in MT); needed for the point of the sermon.

75 *Zeph. 1:9*.

(42d line 16) המוצא עבודה זרה. רב אמר משברה אבר אבר והיא בטילה. ושמואל אומר. אינה בטילה לעולם.

1 רב | G ר' משברה | G משבר ושמואל | G שמואל

רבי אבין בשם רבי שמעון. הָדָא אָמְרָה בְּשָׂאִין גְּלִיָּהוּ בְּסִיס. אֲבָל יֵשׁ גְּלִיָּהוּ בְּסִיס אֲנִי אוֹמֵר.
מִן הַשִּׁבְרִים בָּאוּ.

1 אבין G | בן ר' שמעון G | שמואל | הדא אמרה G | - יש G | אם יש עליהן G | עליהם 2 השברים G | השברים

If somebody finds an idol, Rav said, he breaks it limb by limb and it becomes insignificant, but Samuel said, it never can become insignificant⁷⁶.

Rebbi Abin in the name of (Rebbi Simeon) [Samuel]⁷⁷: This means⁷⁸ if they are without base. But if they have a base, I am saying they come from shards.

76 Rav holds that an idol broken into little pieces cannot be reconstituted. Therefore it is no longer an idol and the shards may be used. Samuel holds that an idol which falls into the hands of a Jew is *herem* and forbidden for any use under any circumstance (*Deut.* 13:18). For him the only way an idol or its parts can become useable for a Jew is that a Gentile (a pagan) breaks it. The Babli (49b) explains

Samuel's position away.

77 Reading of L in (parentheses), of G in [brackets].

78 This refers to the last statement of the Mishnah, about hands and feet. If these are complete, not broken off from a base, the Mishnah applies; these are complete objects of worship. But if they are broken off a basis they are shards. Babli 41a/b.

מִשְׁנָה ג': הַמּוֹצֵא כֵּלִים וְעֲלִיָּהוּ צוּרַת חֲמָה צוּרַת לְבָנָה צוּרַת הַדְּרָקוֹן וְיֵלִיכָם לָיִם הַפֶּלֶחַ. רַבִּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר עַל הַמְּכֻבָּדִים אֲסוּרִין עַל הַמְּבוּזִין מוֹתְרִין. רַבִּי יוֹסִי אוֹמֵר שׁוֹחֵק וְזוֹרָה לְרוּחַ אוֹ מַטִּיל לָיִם. אָמְרוּ לוֹ אֵף הוּא נִעְשָׂה זָבֵל וְנֶאֱמַר וְלֹא יִדְבַק בְּיָדְךָ מֵאוֹמֶה מִן הַחֶרֶם:

Mishnah 3: If somebody finds vessels and on them the form of the sun, the form of the moon⁷⁹, the form of a dragon⁸⁰, he should bring them to the Dead Sea⁸¹. Rabban Simeon ben Gamliel says, on honored ones⁸² it is forbidden, on contemptible ones permitted. Rebbi Yose said, he grinds them and disperses them into the wind or throws them into the Sea. They told him, but then it becomes fertilizer and it was said, *nothing of the ban should cling to your hand*⁸³.

79 According to Maimonides, not circles representing sun and moon but their astrological representation.

80 Greek δράκων, -οντος, ό, also “dragon-shaped jewellery” .

81 Made from precious metals. All others fall under the category of “contemptible”.

82 Deut. 13:18.

42d line 19) **הלכה ג:** המוצא כלים כול'. לא שנו אלא כלים שעליהן צורת החמה וצורת הלבנה. הא שאר כל המלות לא. לא שנו אלא הדרקון. הא כל-הנחשים לא. אי זהו דרקון. כל-שציצין יוצאין בצוארו. ותני כן. רבי שמעון בן (אלעזר) [עזאי] אומר. אי זהו דרקון. כל-שציצין יוצאין מצוארו. החלק מותר. המוצא דרקון עשוי כמין רחוש אסורה. רחוש ועליו דרקון. נוטל את הרחוש ומשליך את הדרקון.

1 כלים שעליהן | G - 2 הדרקון | G דרקון | הא | G הא שאר | אי זהו | G איזו הוא | 3 שציצין | G שהציצים | בצוארו | G מיצוארו | - | G החלק מותר | עזאי | G אלעזר | זהו | G זהוהא | שציצין | G שהציצים | יוצאין | G יוצאים | בצוארו | G מיצוארו | 4 אסורה | G אסור | שמואל אומר. כוס בסיס לדרקון אסור. ודרקון בסיס לכוס מותר. רבי בא בשם רב. שברי דרקון הרי אילו מותרין. דרקון שלם ונשבר הרי אילו אסורין. ושבירים מן השלם באו. רבי חזקיה בשם רב. כיני. ראה אותן משתחוים לדרקון שלם ונשבר אסורין.
1 ודרקון | G דרקון | בא | G ווא | 2 שברי | G שיברי | מותרין | G מותרים | ונשבר | G ונישבר | אסורין | G אסורים | מן | G לא מן | השלם | G השלים | 3 כיני | G האכני | לדרקון | G לידרקון | ונשבר | G ונישבר | אסורין | G אסור

Halakhah 3: “If somebody finds vessels,” etc. They stated only “vessels and on them the form of the sun, the form of the moon,” therefore not any of the other planets⁸³. They only stated “dragon”, therefore not any snakes. What is a dragon? Any which has spikes on its neck. It was stated thus⁸⁴: “Rebbi Simeon ben (Azzai) [Eleazar]⁸⁵ says, what is a dragon? Any which has spikes on its neck.” If it⁸⁶ is smooth it is permitted. If one finds a dragon in the form of a something crawling⁸⁷ it is forbidden. Something crawling and on it a dragon, he takes the crawling thing and throws away the dragon.

Samuel said, a cup which serves as base for a dragon is forbidden, a dragon which serves as base for a cup is permitted⁸⁸. Rebbi Abba in the name of Rav: Fragments of a dragon are permitted. If it was a whole dragon and broke, it is forbidden⁸⁹. But did the fragments not come from a whole one? Rebbi Hizqiah in the name of Rav: So it is: If one saw them bowing down before a whole dragon and then it was broken, it is forbidden⁹⁰.

- 83 While they are divinities, they are not actively worshipped.
- 84 Tosephta 5:2.
- 85 The reading of Tosephta, G, and the Leiden ms. before correction is "Eleazar". In addition, while ben Azzai's name was Simeon, he was not ordained and never is called "rabbi". The correction is a corruption.
- 86 The neck on the snake-shaped vessel.
- 87 The word may mean either snake, or worm, or even a small rodent.
- 88 In the first case it may be an object of worship, in the second the dragon is a decoration.
- 89 Since a forbidden idol can become permitted only if a Gentile, not a Jew, breaks it (Note 76).
- 90 Then there is an indication that the idol broke by accident, not by intention, and the shards remain forbidden.

(42d line 28) מָה נֶן קִימָיו. אִם דָּבָר בְּרִיא שֶׁנֶּעֱבְדִין אֶפִּילוּ מְבוּזִין אֲסוּר. אִם דָּבָר בְּרִיא שֶׁאֵינוֹ נֶעֱבְדִין אֶפִּילוּ מְכוּבְדִין מוּתָר. אֵלָּא כִּי נֶן קִימָיו בִּסְתָם. אָמַר רַבִּי קְרִיסְפָּא. וְהָדָא כּוֹסוֹת דָּבָר שֶׁל בִּיזְיוֹן הוּא. דְּרַבִּי חִיָּה בַר בָּא הָוָה לִיה קוֹנֵקוּן וְהוּנֹת טִימִי דְרוּמִי צִירָא בְגוּוּהָ. אֲתָא שָׂאֵל לְרַבִּי יוֹחָנָן. אָמַר לִיה. מִכֵּין שְׁהֵמִים צָפִין עַל גְּבֻה דָּבָר שֶׁלְבִיזְיוֹן הוּא. וְאֵהוּן קִיתוּנָא מִכֵּין שֶׁאֲתָה מְשַׁקְעוּ בְּמִים דָּבָר שֶׁלְבִיזְיוֹן הוּא. בְּיוֹמוֹי דְּרַבִּי יוֹחָנָן שְׁרוּן צִירָין עַל כּוֹתֵלָא וְלֹא מַחֵי בְּיָדֵיהוּ.

1 נ | G אֵן שֶׁנֶּעֱבְדִין | G שֶׁן נֶעֱבָדִים מְבוּזִין | G מְבוּזִים אֲסוּר | G יְהוּ אֲסוּרִים 2 נֶעֱבָדִין | G נֶעֱבָדִים מְכוּבְדִין | G מְכוּבְדִים מוּתָר | G יְהוּ מוּתָרִים כִּי נֶן | G כֵּן אֵן בִּסְתָם | G בִּסְתָם וְהָדָא 3 כּוֹסוֹת | G כּוֹסוֹת בָּא | G וְאֵהוּ הוּוּה טִימִי | G טִיכִי צִירָא | G צִירָה 4 לִר' יוֹחָנָן | G לְרַבִּנֵּן אִמ' לִיה | G אֲמָרִין מִכֵּין | G מִיכֵין שְׁהֵמִים | G שְׁהֵמִים וְאֵהוּן | G וְהוּן 5 קִיתוּנָא | G קִיתוּנָה מִכֵּין | G מִיכֵין שֶׁאֲתָה | G שֶׁאֲתָה מְשַׁקְעוּ | G מְשַׁקְעוּ 6 כּוֹתֵלָא | G כּוֹתֵלִיָּה בִּידִיָּהוּ | G בִּידוֹן בְּיוֹמוֹי דִּר' אֲבֻן שְׁרוּן צִירָין עַל פְּסִיפֶסס וְלֹא מַחֵי בִידוֹן

Where do we hold? If it is certain that they are worshipped, even the contemptible ones are forbidden. If it is certain that they are not worshipped, even the honored ones are permitted. But we must deal with the indeterminate case. Rabbi Crispus said, those cups⁹¹ belong to the contemptible category, for Rabbi Hiyya bar Abba had a pitcher⁹² and the (worth) [fortune]⁹³ of Rome⁹⁴ was pictured on it. He came to ask Rabbi Johanan who told him, since water swims on top of it, it is a contemptible one. A drinking cup⁹⁵ is contemptible since one immerses it in water. In the days of Rabbi Johanan they started painting on walls⁹⁶ and he did not protest against it. [In the days of Rabbi Abun they started depicting by mosaics and he did not protest against it.⁹⁷]

91 In G: “garment”. The following sentences show that the text of L is correct even though *Gen.r.* 81(3) quotes R. Johanan to the effect that garments may be forbidden as pagan (based on *Gen.* 35:2).

92 A Syriac word as identified in Sokoloff’s *Dictionary of Jewish Palestinian Aramaic*.

93 The reading of G, *τύχη* “fortune, destiny” is preferable over the reading of L, *τιμή* “worth, value.”.

94 The vocalization is from G referring to

Romae.

95 Greek *κῶθον*, “Laconian drinking vessel used by soldiers; drinking bout; religious banquet”.

96 Since the paintings are flat, they are not prohibited by the Second Commandment.

97 Text of G, missing in L. As J. N. Epstein notes, any synagogue mosaic floor which shows figures (as opposed to text) must be dated after R. Abun’s time (about the year 300).

(42d line 35) מתיב רבי יוסי לרבנן. והכתיב את־חטאת־כֶּם אֲשֶׁר־עֲשִׂיתֶם אֶת־הָעֵגֶל. אָמְרוּ לֵיהּ. מִלְמַד שֶׁהָיָה מְבַקֵּשׁ לְבוֹדֵקוֹן כְּשֶׁם שְׁבוּדֵקוֹן אֶת הַסּוּטוֹת. וַיֹּרֶל עַל־פְּנֵי הַמַּיִם. אָמְרוּ לוֹ. וְהִכְתִּיב וְגַם | מַעֲכָה אִם אֶסָּא הַמְלִיךְ־הַסִּירָה מִגְבִּילָהּ. אָמְרוּ לוֹ. מִשֵּׁם רֵאִיָּה. וַיִּכְרַת אֶסָּא וְגו'. אָמְרוּ לוֹ. וְהִכְתִּיב וּכְתַבְתָּ נָחַשׁ הַנְּחוּשֶׁת. וְכִי עֲבוּדָה זָרָה הִיא. וְהִלָּא מֹשֶׁה עָשְׂעוּ. אֵלֶּה מִלְמַד שֶׁהָיָה יִשְׂרָאֵל טוֹעִין אַחֲרָיו עַד שֶׁבָּא חִזְקִיָּהוּ וְהַעֲבִירוּ.

1 יוסי | יוסה | לרבנן | לרבנן | והכת' | והא כתיב | העגל | G | העגל וגו' | אמרו ליה | G | אמרין לה
2 שהיה | G | שהיה משה כשם | כדרך | שבדקין | G | שבדקים המים | G | המים ושק א' ב' יש' | 3 והכת' |
G | והא כתיב | מגבירה | G | מגבירה וגו' | אסא | G | אסא את מפלצתה וידק ויש' | 4 הנחושת | G | הנחשת אשר
עשה משה | 5 שהיו יש' טועין אחרי | G | שתעו אחרי ישראל | שבא | G | שעמד

⁹⁸Rebbi Yose objected to the rabbis, is it not written: *your sin which you had made, the calf*⁹⁹? They told him, this teaches that he intended to examine them in the way one examines deviant wives: *he strewed it on the surface of the water*¹⁰⁰. He said to them, is it not written, *and also Maacah, king Asa's mother, he removed from power*¹⁰¹? They told him, is there proof from there? *Asa cut down*¹⁰² etc. He told them, *he beat the bronze serpent to pieces*¹⁰³. Was this an object of worship? Did not Moses make it? This teaches that Israel was erring after it until Hezekias came and removed it¹⁰⁴.

98 Babli 43b/44a, Tosephta 3:19. The speaker is R. Yose the Tanna who objects to the statement that the idol has to be dumped into the Dead Sea; he brings examples of disposition of pagan idols in other ways.

99 *Deut.* 9:21.

100 *Ex.* 32:20. As usual, the argument is

from the part of the verse which is not quoted, viz., *he let the Children of Israel drink*. The deviant wife has to drink water mixed with dust from the floor of the Sanctaury, *Num.* 5:11-31.

101 *IK.* 15:13.

102 Since Asa burned his mother's Ashera,

there is no doubt that burning a wooden statue is as good as bringing it to the Dead Sea.

103 2K. 18:4.

104 Here ends the Genizah fragment G

edited by Epstein; on the next line starts one (ג) edited by Ginzberg (pp. 278-279) of which, however, not very much is legible.

(42d line 41) כְּתוּב אֶחָד אוֹמֵר וַיַּעֲזְבוּ־שָׁם אֶת־עֲצֵיהֶם וַיִּשְׂאֵם דָּוִד וְאַנְשָׁיו: וְכָתוּב אַחֵר אוֹמֵר וַיֹּאמֶר דָּוִד וַיִּשְׂרְפוּ בָאֵשׁ: רַבִּי יוֹסִי בֶר חֶלְפוּתָה וְרַבֵּנָּן. רַבִּי יוֹסִי בֶר חֶלְפוּתָה אוֹמֵר. מִה שְׁהָיָה שְׁלֵמֶתֶכֶת וַיִּשְׂאֵם דָּוִד וְאַנְשָׁיו. וּמִה שְׁהָיָה שְׁלֵמֶץ וַיֹּאמֶר דָּוִד וַיִּשְׂרְפוּ בָאֵשׁ: וְרַבֵּנָּן אָמְרִי. מִה שְׁהָיָה אִיתִי הַגִּיתִי מִבֵּטֶל וַיִּשְׂאֵם דָּוִד וְאַנְשָׁיו. וּמִה שְׁלֵא הָיָה מִבֵּטֶל וַיֹּאמֶר דָּוִד וַיִּשְׂרְפוּ בָאֵשׁ. מִה מְקִיִּים רַבִּי יוֹסִי בֶן חֶלְפוּתָה וַיִּשְׂאֵם דָּוִד וְאַנְשָׁיו. נִטְלוּם בְּשַׁפְּנֵיו.

2 דוד | ג דויד בר חלפותא | ג ביר' חלפתה 3 אמרי | ג אמרין 4 הגיתי | ג הגיתי היה | ג היה איתי הגיתי דוד | ג דויד 5 בן חלפותא | ג ביר' חלפתה

One verse says, *they abandoned their idols; David and his men carried them away*¹⁰⁵. But another verse says, *David gave orders and they were burned in the fire*¹⁰⁶. Rabbi Yose [ben Rabbi] Halafta¹⁰⁷ and the rabbis. Rabbi Yose ben Rabbi Halafta says, what was of metal, *David and his men carried them away*. And what was of wood, *David gave orders and they were burned in the fire*. But the rabbis say, what Itai from Gat¹⁰⁸ annulled, *David and his men carried them away*. And what he did not annul, *David gave orders and they were burned in fire*. How does Rabbi Yose [ben Rabbi] Halafta confirm *David and his men carried them away*? They took them by their rims¹⁰⁹.

105 2S. 5:21. The verse implies that the idols were a valuable part of the booty. According to the Mishnah the idols should have been brought to the Dead Sea, not to Hebron.

106 *1Chr.* 14:12, another report about the same event.

107 This is the reading of ג, which agrees

with the name of the Tanna in other sources.

108 They assume that he was a Gentile and therefore able to break the idols to remove the prohibition and turn them into valuable metal scrap. Babli 44a

109 To grind them down as R. Yose prescribes in the Mishnah.

(fol. 42b) **משנה ד:** שֶׁאֵל פְּרָקְלוֹם בֶּן פְּלוֹסְלוֹם אֶת רַבֵּן גְּמִלְיָאֵל בְּעֵבֶר שְׁהָיָה רוֹחֵץ בְּמִרְחֵץ שֶׁל אֶפְרוּדִישִׁי אָמַר לוֹ כְּתוּב בְּתוֹרַתְכֶם וְלֹא יִדְבֹק בִּידְבֹק מְאֻמָּה מִן הַחֶרֶם. מִפְּנֵי מַה אֶתָּה

רוחץ במרחץ של אפֿרודיט. אמר לו אין משיבין במרחץ. כשיצא אמר לו אני לא באתי בנבולה היא באת בגבולי. אין אומרים נגשה מרחץ נוי לאפֿרודיט אלא אומרים נגשית אפֿרודיט נוי למרחץ.

Mishnah 4: Proclos ben Ploslos¹¹⁰ asked Rabban Gamliel in Acco when he was taking a bath in the Bath of Aphrodite¹¹¹. He said to him, it is written in your Torah, *nothing banned should stick to your hand*¹¹²: why are you bathing in the Bath of Aphrodite? He said to him, one does not answer in the bath¹¹³. When he left he told him, I did not come into her domain, she came into my domain. One does not say, the bath was built as adornment for Aphrodite but one says, Aphrodite was made as adornment of the bath.

משנה ה: דבר אחר אם נותנין לך כמון הרבה אתה נכנס לעבודה זרה שלך גרום ובעל קרי ומשתין בפניה וזו עומדת על פי הביב וכל אדם משתין לפניה. לא נאמר אלא אלהיהם. את שהוא נוהג בו משום אלה אסור. ואת שאינו נוהג בו משום אלה מותר:

Mishnah 5: Another explanation. If one gave you lots of money, would you enter your temple naked, after an emission, or urinating before it? But this one stands over the sewer and everybody is urinating in its presence. It only says *their gods*¹¹⁴; what is treated as a divinity is forbidden, what is not treated as a divinity is not forbidden.

110 In the Babli פלוספוס which can be read "philosopher"; in the Venice edition of Alfasi פלופלוס, but in most sources, including Maimonides's autograph Mishnah Commentary the name is written as in the Yerushalmi Mishnah.

111 According to Maimonides there is no problem since Aphrodite is the symbol of the planet Venus, which was exempted from

the general prohibition of pagan symbols in Halakhah 3 Note 83.

112 *Deut.* 13:18.

113 One may not discuss religious subjects while naked. Cf. *Berakhot* 2:3 Notes 116-119.

114 *Deut.* 12:30; the verse which is the basis of Mishnah 6.

(42b line 48) **הלכה ז:** שאל פרקלוס בן פלוסלוס כול. מא אנו קיימין. אם בששאלו בהילכות המרחץ היה לו להשיב. ואם בשלא שאלו בהילכות המרחץ לא היה לו להשיב. דמר רבי יעקב בר אידי בשם רבי יהושע בן לוי. שואלין הילכות המרחץ בבית המרחץ. הילכות בית הכסא בבית הכסא. כהדא רבי שמעון בן לעזר צאל מיסחי עם רבי מאיר. אמר לה. מהו שנדיח. אמר לה. אסור. אמר לה. מהו שננקיח. אמר לה. אסור. ולא כן שמואל שאל לרב.

מהו לענות אמן במקום מטונף. אמר ליה. אסיר. ואסיר דאמרי לך אסיר. אשכח תני. שואלין הילכות המרחץ בבית המרחץ. הילכות בית הכסא בבית הכסא. אמר רבי יודן אביו דרבי מתניה. מהילכות המרחץ שאלו אלא שאין דרך לענות במרחץ. אמר רבי שמואל בר אבדימי. מהילכות המרחץ שאלו אלא שהכל המרחץ רע לשינים. חבריא רבי חמא בר יוסי בשם רבי הושעיה רבי זעירא בשם רבי יהושע בן לוי. תשובת הפלג השיבו. דלא כן הנה לו להשיב מבצל פער שאין עבודתו אלא בפעירא. מאי כדון. את שהוא נוהג בו משום אלוה אסור. ואת שאינו נוהג בו משום אלוה מותר:

1 בששאלו | ג בששאל 3 הילכות | ש והילכות 4 לעזר | ש אלעזר עאל | ג על 5 שנדיח | ש לקנח
שנקנח | ש להדיח שאל | ש שאל 6 אמ' ליה | ש והוא אמ' אסיר | ג אסור דאמרי | ג דמרת 7
שואלין | ש אין שואלין אביו | ג אביו 8 מהילכות | ג מהלכות דרך | ג דרך כבוד 9 חבריא | ג חברייא
חמא | ג חמה 10 זעירא | ג ... רה

Halakhah 4: “Proclos ben Ploslos asked,” etc. Where do we hold? If he asked him about practice in the bath he should have answered; if he did not ask him about practice in the bath he should not have answered¹¹⁵. ¹¹⁶As Rabbi Jacob bar Idi said in the name of Rabbi Joshua ben Levi: One asks about practice in the bath while in the bathhouse, about practice in the toilet while in the toilet. As when Rabbi Simeon ben Eleazar went to bathe with Rabbi Meir, he asked him, may one rinse? He told him, it is forbidden¹¹⁷. May one dry himself with a towel? He told him, it is forbidden¹¹⁸. But did not Samuel ask Rav, may one say “Amen” at a dirty place? He told him, it is forbidden, and it is forbidden that I told you that it is forbidden¹¹⁹. It was found stated, one asks¹²⁰ about practice in the bath while in the bathhouse, about practice in the toilet while in the toilet. Rabbi Yudan, the father of Rabbi Mattaniah, said, he asked him about practice in the bath but it is not done¹²¹ to answer in the bath. Rabbi Samuel bar Eudaimon said, he asked him about practice in the bath but the steam in the bath is bad for the teeth. The colleagues, Rabbi Hama bar Yose in the name of Rabbi Hoshai, Rabbi Ze'ira in the name of Rabbi Joshua ben Levi: He answered him in an evasive answer¹²², for he could have replied about Baal Pe'or whose worship only consists in exposure and defecation¹²³. What about it¹²⁴? What is treated as a divinity is forbidden, what is not treated as divinity is not forbidden.

115 Since the instruction that one does not answer in the bath, i. e., in the room where people are naked, is a religious instruction

forbidden at that place.

116 The main source for the following is *Sabbat* 3:3 (6a l. 51, ש), Babli *Šabbat* 40b.

117 As explained in *Šabbat*, they went to bathe in the hot springs of Tiberias on the Sabbath. It is forbidden to take a hot bath in water which was heated, but not in water which is naturally hot. But then one has to be careful not to rinse oneself outside the water flowing from the source since water spilled on the earth outside would fill in depressions in the ground, which is prohibited work.

118 Similarly, one may not use a bath towel on the Sabbath since squeezing out water from a towel (or a sponge) is forbidden

work.

119 Since he was asked at a place with a bad smell. He disagrees with R. Jacob bar Idi.

120 In *Šabbat*: “One does not ask.” This supports Rav and seems to be the original version. Unfortunately, א is damaged at this passage.

121 In א: “is not polite”.

122 Babli 44b.

123 Mishnah *Sanhedrin* 7:12.

124 What would be the correct answer?

מִשְׁנָה ו: הַגִּזְיוֹת הַעוֹבְדִים אֶת הַהָרִים וְאֵת הַגְּבְעוֹת הֵם מוֹתְרִין וְכֹה שְׁעָלֵיהֶן אֲסוּרִין שְׁנֵאמַר לֹא־תִחַמּוּד בָּסֶף וְזֶה־בְּעָלֵיהֶם וְלִמְחַתָּ לָךְ. רַבִּי יוֹסֵי הַגָּלִילִי אוֹמֵר אֱלֹהֵיהֶם עַל הַהָרִים וְלֹא הַהָרִים אֱלֹהֵיהֶם. אֱלֹהֵיהֶם עַל הַגְּבְעוֹת וְלֹא הַגְּבְעוֹת אֱלֹהֵיהֶם. וּמִפְּנֵי כֹה אֲשִׁירָה אֲסוּרָה מִפְּנֵי שֶׁיֵּשׁ בָּהּ תַּפְּשִׁיט יְדֵי אָדָם. וְכִלְשִׁישׁ בָּהּ תַּפְּשִׁיט יְדֵי אָדָם אֲסוּר.

Mishnah 6: If Gentiles worship mountains and hills; these are permitted¹²⁵ but what is on them is forbidden, as it is said¹²⁶, *do not covet silver or gold on them and take for yourself*. Rabbi Yose the Galilean said, *their gods [are] on the mountains*¹²⁷, the mountains are not their gods. *Their gods [are] on the hills*, the hills are not their gods. Then why is an *Ashera*¹²⁸ forbidden? Because it was held by human hand¹²⁹, and anything held by human hand is forbidden.

125 For agricultural use; the ground and what grows on it is not forbidden as long as it is connected to the ground.

126 *Deut.* 7:25. If a mountain top is covered in gold or silver, the cover has to be removed and destroyed; only the ground itself is permitted.

127 *Deut.* 12:2.

128 A holy tree (Mishnah 11), which is connected to the ground and by the argument of Note 125 should be permitted as building material or fire wood.

129 It was planted.

42d line 63) **הלכה ו:** הגוים העובדים את ההרים כול'. רבי זעירא רבי יסא רבי יוסי בר חנינה בשם רבי הושעיה. כתוב אחד אומר לא תחמוד כסף וזהב עליהם ולקחת לך. וכתוב אחר אומר כסף וזהב אשר עמם: אם עליהם למה עמם. ואם עמם למה עליהם. מה עליהם דבר שהוא מיוחד להם תכשיט להם. אף עמם דבר שהוא מיוחד להם תכשיט להם. רבי יוחנן בשם רבי ינאי. כל שהכניסו לפניו מקנלקין אסרו. כגון כיסים של מעות. אמר רבי יסא. סימן הנה לנו והדר רבי הושעיה פליגא על דרבי ינאי. ולית היא אלא מסייעה לה. מה עליהן דבר שהוא מיוחד להן תכשיט להן. אף עמם דבר שהוא מיוחד להן תכשיט להן. יצאו כיסים של מעות. רבי בא בשם רב יהודה. ואפילו מים ומלח. מלח לשון ומים לדית. ואהין אפילו. אלא כגון מים ומלח.

1 יוסי | ג יוסה 2 תחמוד | ג תחמד 4 עמם | ג עימם תכשיט | ג מקשט 5 ינאי | ג יניי שהכניסו | ג שהכניסו מקנלקין | ג מיקנלקין 6 הוה | ג הווה והדר | ג ודה ר' | ג דר' פליגא | ג פליגת 8 בא | ג ווא ואהין | ג וההין 9 אלא | ג אלה

Halakhah 6: “If Gentiles worship mountains,” etc. Rabbi Ze’ira, Rabbi Yasa, Rabbi Yose bar Hanina in the name of Rabbi Hoshai: One verse says¹²⁶, *do not covet silver or gold on them and take for yourself*. And one verse says¹³⁰, *silver and gold which is with them*. If *on them* why *with them*, and if *with them* why *on them*? Since *on them* refers to something which is particular for them and an adornment for them¹³¹, also *with them* refers to something which is particular for them and an adornment for them.

Rebbi Johanan in the name of Rebbi Yannai: Anything which one introduced inside the lattice work¹³² he made forbidden; e. g., money pouches. Rebbi Yasa said, we had a note that (return) [this]¹³³ of Rebbi Hoshai disagreed with Rebbi Yannai, but it is not so; it supports it. Since *on them* refers to something which is particular for them and an adornment for them, also *with them* refers to something which is particular for them and an adornment for them; this excludes money pouches¹³⁴. Rebbi Abba in the name of Rav Jehudah: Even water and salt. Salt to rub and water to rinse¹³⁵. And this is “even”? But e. g., water and salt¹³⁶.

130 Deut. 29:16.

131 Since the mountains themselves cannot become forbidden, only adornments made explicitly for pagan worship can be forbidden. Therefore also of the contents of a dwelling only idolatrous objects can be

forbidden for all usufruct. Babli 51b.

132 The inner part of a temple, cf. Chapter 2:3, Note 219.

133 The text of L (in parentheses) is clearly a scribal error; one has to follow the text of א [in brackets].

134 This seemingly contradicts R. Yannai's statement.

135 To polish the statues.

136 It is obvious that in general Gentiles' water and salt are permitted. They become forbidden only by being introduced into the inner temple for idolatrous purposes. So

also a Gentile's wallet and his money are permitted. Only by being introduced into the inner temple the money becomes forbidden. The statement of R. Yannai is a necessary complement to that of R. Hoshaia and vice-versa. Babli 51b.

(42d line 74) הַנֶּעֱבָד. אֵת תְּנִי תְנִי. בֵּין שְׁלוֹ בֵּין שְׁלַחֲבִירוֹ אָסוּר. וְאֵת תְּנִי תְנִי. שְׁלוֹ אָסוּר וְשְׁלַחֲבִירוֹ מוּתָר. מִן דָּמַר. בֵּין שְׁלוֹ בֵּין שְׁלַחֲבִירוֹ אָסוּר. רַבִּי יְהוּדָה. וּמִן דָּמַר. שְׁלוֹ אָסוּר וְשְׁלַחֲבִירוֹ מוּתָר. רַבִּי יוֹסִי וְרַבִּי שְׁמַעוֹן. רַבִּי יוֹסִי בִשְׁם רַבִּי אֵילָא. דְּבָרֵי הַכֹּל הֵיא. כְּמָה דְּתִימָר תַּמָּן. דְּבַר שֵׁישׁ בּוֹ רוּחַ חַיִּים אֵף עַל פִּי שְׁאִינוּ נֶאֱסַר לְהַדְיוּט נֶאֱסַר לְגָבוּהָ. וְדְכוּתָהָ. דְּבַר שְׁאִינוּ שְׁלָףְ אֵף עַל פִּי שְׁאִינוּ נֶאֱסַר לְהַדְיוּט (אִינוּ) נֶאֱסַר לְגָבוּהָ.

11 שלחבירו | כ שלאחרים ואית | כ אית 2 מותר | ג מותר הוון - | כ בעי מימר שלחבירו | כ שלאחרים ר' יהודה | גכ ר' מאיר ור' יודה ומן | ג מן כ מאן דמר | כ דאמ' 3 שלחבירו | כ שלאחרים יוסי | גכ יוסה (2) אילא | כ לא 4 נאסר | ג אסור דבר | ג - 5 אינו | כ - נאסר | ג אסור רבי בון בר חיה אמר. אפילו סולת שְׁלוֹ אָסוּר וְשְׁלַחֲבִירוֹ מוּתָר. מַה כְּמָאן דְּמַר בֵּין שְׁלוֹ בֵּין שְׁלַחֲבִירוֹ אָסוּר אָמַר. לֹא אֵיתְּפִלְגוֹן בְּדָבָר שְׁאִין בּוֹ רוּחַ חַיִּים. אֲתָא רַבִּי בּוֹן בַּר חִיָּה מִימַר לָךְ. בְּדָבָר שֵׁישׁ בּוֹ רוּחַ חַיִּים הֵיא מְתִינָתָא. בֵּין מַה דְּאִיפְלְגוֹן בְּדָבָר שְׁאִין בּוֹ רוּחַ חַיִּים. הָא דְּבַר שֵׁישׁ בּוֹ רוּחַ חַיִּים אָסוּר. וְדָבָר שְׁאִין בּוֹ רוּחַ חַיִּים לֹא כָל־שֶׁכֶן. הָיִי שְׁלֹא תֵאמַר כְּמָא דְּאָתָּא אָמַר תַּמָּן. דְּבַר שֵׁישׁ בּוֹ רוּחַ חַיִּים אֵף עַל פִּי שְׁאִינוּ נֶאֱסַר לְהַדְיוּט נֶאֱסַר לְגָבוּהָ. וְדְכוּתָהָ. דְּבַר שְׁאִינוּ שְׁלָףְ אֵף עַל פִּי שְׁאִינוּ נֶאֱסַר לְהַדְיוּט נֶאֱסַר לְגָבוּהָ.

2 אמר | ג - לא איתפלגון | ג אילו אתפלגון 4 הוי שלא | ג הביא שלוא

¹³⁷An object of worship. Some Tannaim state, whether it was his or another person's, it is forbidden. But some Tannaim state, his is forbidden, another person's is permitted. He who said, whether it was his or another person's, it is forbidden, [Rebbi Meir and]¹³⁸ Rebbi Jehudah. But he who said, his is forbidden, another person's is permitted, Rebbi Yose and Rebbi Simeon. Rebbi Yose¹³⁹ in the name of Rebbi Ila: It is everybody's opinion. Just as you say there, anything living¹⁴⁰ while it cannot become forbidden for a private person it becomes forbidden for Heaven, so similarly anything which is not yours even though it cannot become forbidden for a private person it (does not)¹⁴¹ become forbidden for Heaven¹⁴².

Rebbi Abun bar Hiyya said, even his fine flour becomes forbidden and another person's is permitted¹⁴³. Is this following him who said, whether it was his or another person's, it is forbidden; did he say¹⁴⁴ that they do not

disagree about something which is not alive and Rabbi Abun bar Hiyya comes to tell you that the *baraita* refers to living things? If they disagree about something which is not alive; therefore a living thing is forbidden¹⁴⁵. Then something which is not alive should be forbidden *a fortiori*¹⁴⁶. This is that you should not say as you say there, anything living while it cannot become forbidden for a private person it becomes forbidden for Heaven, so similarly anything which is not yours even though it cannot become forbidden for a private person it becomes forbidden for Heaven¹⁴⁷.

137 This paragraph is from *Kilaim* 7:4, Notes 46-48 (2).

138 Added from both parallel texts. The reference is to Mishnaot *Kilaim* 7:4,5. If a person grows vegetables or grain in his vineyard, everything becomes forbidden for usufruct. But if he causes such a growth on another person's land, R. Meir holds that the crop is forbidden and the owner of the land has to sue the culprit for damages; R. Yose and R. Simeon hold on the authority of R. Aqiba that "nobody can sanctify anything which is not his." In our case, anybody who worships an animal or an object which is his, made it forbidden for usufruct for himself and everybody else. But if the object was not his property, for R. Yose and R. Simeon it cannot become forbidden for anybody.

139 The fifth-generation Amora.

140 Any living animal which is worshipped is an animal and not an idol and cannot be forbidden.

141 This word is not in the parallel text; the context and the following paragraph make it clear that it is a scribal error.

142 The comparison with *Kilaim* is misleading. The relevant Mishnah is *Temurah* 6:1 where it is stated that an animal used for

idolatry (or bestiality) is unfit as sacrifice, irrespective of ownership. For sacrifices there is no dispute between R. Meir and R. Yose. Babli *Temurah* 28a.

143 While it is clear from our Mishnah that if anybody worships wild standing grain it will not be forbidden since it is connected to the ground (but if it was sown for idolatrous purposes then it is an *Ashera*.) It now is stated that cut and milled produce will only be forbidden if used illegitimately by its owner, not by any third person.

144 While this word is not in א, it is better to retain it.

145 If R. Abun bar Hiyya disagrees with R. Yose in the name of Rabbi Ila. He should have mentioned an animal, not fine flour. For if R. Meir and R. Yose disagree about plants then one must assume that R. Yose agrees with R. Meir about animals.

146 Since animals have a privileged status; R. Yose cannot agree with R. Meir about their status.

147 R. Abun bar Hiyya disagrees with R. Yose in the name of Rabbi Ila in a matter of principle; he holds that worshipping something which is the private property of a third person without knowledge or acquiescence of that third person has no

influence on the status of the property
whether for profane or sacral purposes.

Here ends the Genizah text.

(43a line 14) השתחויה לביצה. חזקיה אמר. לא אסרה. רבי יוחנן אמר. אסרה. אמר רבי זעירא. בביצה פליגין. חביריא אמרין. בחלוקי נחל פליגין. אמר רבי הונא. וקרא מסייע למאן דאמר חביריא. בחלקי נחל חלקן הם הם גורלן. חיליה דחזקיה מן הדא. מפני מה אשירה אסורה מפני שיש בה תפוסת יד בני אדם. וכל שיש בה תפוסת ידי אדם אסור. הכל מודין בחיטין שאסורות. דמר רבי חנינה בר יסא בשם רב יהודה. שורשי חיסה בוקעין בארץ חמשים אמה. שורשי תאינה רבים בוקעין בצור. אם כן מה יעשו שורשי חריב ושרשי שקמה. אמר רבי חנינה. אחת לל' יום התהום עולה ומשקה אותן. ומה טעם. אני יי נצרה לרגלים אשקנה. תני. רבי שמעון בן אלעזר אומר. מלמד שאין הארץ שותה אלא לפי חיסומה.

If somebody worshipped an egg¹⁴⁸. Hizqiah said, he did not make it forbidden; Rabbi Johanan said, he made it forbidden¹⁴⁹. Rabbi Ze'ira said, they disagree about an egg. The colleagues say, they disagree about pebbles in a river bed¹⁵⁰. Rabbi Huna said, a verse supports what the colleagues say: *Your part is with river pebbles; these are your destiny*¹⁵¹. The strength of Hizqiah is from the following: "Then why is an *Ashera* forbidden? Because it was held by human hand, and anything held by human hand is forbidden." Everybody agrees that wheat is forbidden¹⁵¹; ¹⁵²as Rabbi Hanina bar Yasa said in the name of Rav Jehudah: The roots of wheat split the earth to a depth of 50 cubits; the soft roots of a fig tree split rock. Then what do the roots of the carob and the roots of the sycamore? Rabbi Hanina said, once every thirty days the abyss wells up and drenches them. What is the reason? *I, the Eternal, am watching over it and water it in moments*¹⁵². It was stated: Rabbi Simeon ben Eleazar says, this teaches that the earth drinks only according to its hardness.

148 Babli 46a. The egg is a symbol of resurrection; cf. J. J. Bachofen, *Versuch über die Gräbersymbolik der Alten*, Gesammelte Werke Bd. 4, Basel 1954.

149 For Hizqiah the egg is considered under the rules of animals; for R. Johanan only the chick would qualify, not the egg.

150 These are egg shaped. While they are

products of nature, they are no longer connected to the ground.

151 *Is. 57:6*.

152 The remainder of the paragraph has no connection with the topic of the Halakhah and the preceding text; it also appears in *Berakhot* 9:3 Notes 170-174, *Ta'anit* 1:3 (64b 1.30); its source seems to be *Gen.*

rabba 13(19) on *Gen.* 2:6. The different *Berakhot*.
name traditions are noted in the Notes to 153 *Is.* 27:3.

(24 line 43a) ביצת עבודה זרה שנגעשית אפרוח. רבי חגי בשם רבי יאשיה. אתפלגון כהנא וחזקיה. כהנא אמר. מותרת. וחזקיה אמר. אסורה. וקשיא על דעתיה דחזקיה. הוה אפטר לביצת עבודה זרה שתיעשה אפרוח. מה אגן קיימין. אם בשפחסה אין כאן אפרוח. אם בשכהניסה לפניו מן הקינקליו. תא חמי. אילו השתחוה לה לא אסרה. ומפני שהכניסה לפניו מן הקינקליו אסרה. אמר רבי יודן אביו של רבי מתניה. תפתר שגיר ביה לעבודה זרה.

1 שנעשית | ע שנעשה כהנא וחזקיה | ע חזקיה וכהנא 2 וחזקיה | ע חזקיה אסורה | ע אסור וקשיא | ע - היך | ע אי 3 שתיעשה | ע שנעשית 4 לפניו | ע לפנימה הקינקליו | ע הקינקליו תא | ע אתא אילו | ע ואלו ומפני | ע מפני 5 הקינקליו | ע הקינקליו מתניה | ע מתניה שגיר | ע שגיר אגוז שלעלה שנטעו וכן ביצת הקדש שנגעשית אפרוח. רבי יסא. אתפלגון כהנא ורבי יוחנן. כהנא אמר. אסורה. ורבי יוחנן אמר. מותרת. אמר רבי זעירא קומי רבי יסא. והאמר רבי. מותרת. אף הוא אינו פודה בזמן זרעה. אתא רבי חנניה ורבי יונה רבי לעזר בשם כהנא. פודה אותה בזמן זרעה. רבי חנניה בשם רבי פינחס אמר מתקנתה. כהנא אמר. אסורה ופודה אותה כמות שהיא. ורבי יוחנן אמר. מותרת פודה אותה בזמן זרעה.

1 אגוז שלעלה שנטעו וכן | ע - שנעשית | ע שנעשית יסא | ע יסא אתפלגון | ע פליגי בה 2 קומי ר' יסא | ע לר' יוסי והאמר | ע הא ר' יוחנן אמר 3 אף הוא אינו פודה | ע אף היא פורה אותה אתא ר' חנניה | ע ר' חנניה ר' עזר' 4 ר' חנניה | ע ר' חנניה אמ' | ע - אמ' | ע אומ' 5 כמות | ע כמו

¹⁵⁴ An egg of pagan worship which turned into a chick. Rabbi Haggai in the name of Rabbi Josia: Cahana and Hizqiah disagree. Cahana said, it is permitted, Hizqiah said, it is forbidden. There is a difficulty in the opinion of Hizqiah: how is it possible for an egg of pagan worship to become a chick? Where do we hold? If somebody squashed it, there is no chick. If he brought it inside the lattice enclosure, come and look: If he worshipped it it is not forbidden¹⁴⁹; because he brought it inside the grating it should be forbidden? Rabbi Yudan the father of Rabbi Mattaniah said, explain it if he used to tow¹⁵⁵ the idol.

If an 'orlah walnut was planted¹⁵⁶ or an egg dedicated to the Temple became a chick¹⁵⁷. Rabbi Yasa said, Cahana and Rabbi Johanan disagree. Cahana said it is forbidden and Rabbi Johanan said it is permitted¹⁵⁸. Rabbi Ze'ira said before Rabbi Yasa, did not Rabbi [Johanan]¹⁵⁹ say it is permitted, does he not redeem it as from the time it is sown¹⁶⁰? There came Rabbi Hanania and Rabbi Jonah, Rabbi Eleazar in the name of Cahana: He redeems it as from the time it is sown. Rabbi Hanania in the name of Rabbi Phineas

corrects it: Cahana said it is forbidden and he redeems it as it is now¹⁶¹; Rabbi Johanan said it is permitted and he redeems it as from the time it is sown.

154 These two paragraphs are also in *'Orlah* 1:8, Notes 200-208, ג. The scribe of L wrote only the first and last few words and then: "one continues in *Avodah zarah* Chapter 3, Halakhah 6, 'if Gentiles worship', to the end." The text was then added by the first corrector in a somewhat shoddy way, from a source different from the text here. The full text is in the Rome *Zera'im* ms.

155 This is the text here. In *'Orlah*: "he fenced in", confirmed by the Rome text. This text can be understood since it mentions the walnut which was planted at the beginning of the first paragraph, not the second as in the text here. If a walnut tree was planted to close an opening in the lattice work, this certainly makes it forbidden as an *Ashera*. It is hard to see how to tow anything using an egg; the difference between the two texts is that between גר and גדר. Neither of the two expressions

makes much sense if applied to an egg.

156 The walnut was forbidden for all usufruct; the status of the tree is in doubt.

157 It is property of the Temple and cannot be used without redemption. This case is not in dispute.

158 Everybody agrees that the new tree is not *'orlah*. According to Cahana the original prohibition has not disappeared, according to R. Johanan the situation is parallel to that of heave grain (restricted as food to pure Cohanim) which was used as seed grain; the crop needs only token redemption (*Mishnah Terumot* 9:4).

159 From the text in *'Orlah*, missing here.

160 This refers to the walnut. If the tree may be used, it never was *'orlah*; the redemption is symbolic and can be effected by a token payment.

161 It needs redemption for its full value; in the case of the *'orlah* tree the redemption money has to be destroyed.

מִשְׁנָה ז': אָמַר רַבִּי עֲקִיבָה אֲנִי אֶהְיֶה אוֹכֵין לְפָנֶיךָ. כָּל מְקוֹם שֶׁאֵתָּה מוֹצֵא הָרָבֹבֶה וְנִבְעָה נִשְׂאָה וְעֵץ רִעְנָן דַּע שֶׁשֵּׁשׁ שָׁם עֲבוֹדָה זָרָה: (fol. 42b)

Mishnah 7: Rabbi Aqiba said, I shall explain it to you. Any place where you find a high mountain, or an elevated hill, or a sprightly tree, know that there is idolatry¹⁶².

162 *Deut. 12:2* reads: *You shall certainly destroy all the places where the peoples from whom you will inherit worshipped their gods, on high mountains, and hills, and*

under each sprightly tree. This explains clearly that not the place is forbidden but the idol and its temple to be found there.

(43a line 37) **הלכה ז:** אמר רבי עקיבה אני אובין לך קידה כול. אמן תנינן. אובין. אית תני. אוביל לך קידה. מאן דמר. אובין. נבין. ומאן דמר. אוביל. נייביל.

Halakhah 7: “Rebbi Aqiba said, I shall explain it to you,” etc. We have stated אובין. Some are stating אוביל. He who says אובין “we understand.” But he who says אוביל “we bring.”¹⁶³

163 The hapax אובין is derived from the root “to transport”. Both verbs are used in *hif'il*. יביל “to understand”, אוביל is from the root ביל

(43a line 39) תני רבי בורקאי קומי רבי מנא. מלמד שלא הניחו הכנענים לא הר ולא גבעה שלא עבדו עליה. ולא כן סבריהן מימר. דבר שיש בו רוח חיים אף על פי שאינו אסור להדיט אסור לגבוה. בית הבחירה איכן נבנה. על פי נביא. ויעל דויד בדבר-גד אשר דבר ביד יי.

Rebbi Borqai stated before Rebbi Mana: This teaches that the Canaanites did not leave any mountain or hill where they did not worship. But do we not understand to say, anything alive, while not forbidden for a private person, is forbidden for Heaven¹⁶⁵? How could the Temple have been built¹⁶⁶? By the order of a prophet; *David went up following the word of Gad which he had said by the Hand of the Eternal*¹⁶⁷.

165 If it was worshipped as pagan deity, as a place for the Temple. Therefore the place could not have been selected by

166 While a mountaintop is perfectly good humans. It is not a mountain top.

for agricultural use, it should be forbidden 167 *1Chr.* 21:19, slightly misquoted.

(fol. 42b) **משנה ח:** מי שהיה ביתו סמוך לבית עבודה זרה ונפל אסור לבנותו. כיצד יעשה פונם בתוך שלו ובונה. היה שלו ושל עבודה זרה נדון מחצה למחצה. אבניו ועציו יעפרו מטמאין כשרץ שנאמר שקץ תשקצצנו וגו'. רבי עקיבה אומר כנדה שנאמר תזרם כמו דנה צא תאמר לו. מה הנדה מטמא במשא אף עבודה זרה מטמא במשא:

Mishnah 8: If one's house was connected¹⁶⁸ to a house of pagan worship and collapsed, it is forbidden to rebuild it. What should he do? He restricts himself to his property¹⁶⁹ and builds. If it was his and the idolatry's, it is judged half by half¹⁷⁰. Its stones, its wood, and its dust make impure like a

crawling animal¹⁷¹, as it is said¹⁷², *you shall treat it as an abomination*. Rabbi Aqiba says like a menstruating woman as it is said¹⁷³, *you shall throw it away like feeling miserable; you will call it excrement*. Since the menstruating makes impure by load¹⁷⁴, also idolatry makes impure by load.

168 His house and the pagan temple share a wall.

169 In the Babli: 4 cubits. His wall should be separated from the temple by 4 cubits. The text of Maimonides is that of the Yerushalmi.

170 He may take half of the building material of the common wall for his own use; the remainder is forbidden for all usufruct for any Jew.

171 As described in *Lev.* 11:29-38, it makes impure by touch. This applies also to the stones which remain his property.

172 *Deut.* 7:26. In *Lev.* 11:40-41, all crawling things which are forbidden as food

are called *abomination*, including those which make impure by touch.

173 *Is.* 30:22. In *Lev.* 12:2 menstruation is called "the separation of her feeling miserable".

174 In *Lev.* 15:20-21 it is stated that anything she lies on becomes an original source of impurity. This means that if a woman in her period lies on top of ten mattresses and somebody touches the lowest one, which the woman never touched, he becomes impure as if he touched the woman herself. For R. Aqiba anybody who carries an idol becomes impure even if he never touched the idol.

(43d line 43) **הלכה ח:** מי שנהיה ביתו סמוך לבית עבודה זרה כולו. כתוב תועבה בניהו וכתוב תועבה בשרצים וכתוב תועבה בעבודה זרה. בניהו כי כל אשר יעשה מכל התועבות. בשרצים לא תאכל כל תועבה: בעבודה זרה ולא תביא תועבה אל ביתך. אבל אני יודע לאי זו דבר הוקשה. רבי עקיבה אומר לתועבה דניהו הוקשה. מה הניהו מטמא במשא אף עבודה זרה מטמא במשא: או מה הניהו מטמא על גב אבן מטמא אף עבודה זרה מטמא באבן מטמא. רבי זריקא בשם רבי חנינה. ואיתא אמרין לה. בשם רב חסדא. מודה רבי עקיבה לחכמים שאין עבודה זרה מטמא באבן מטמא. ורבנן אמרי. לתועבה שבשרצים הוקשה. מה השרץ מטמא בהיסט אף עבודה זרה מטמא בהיסט. או מה השרץ מטמא בכעדשה יכול אף עבודה זרה תטמא בכעדשה. רבי זעירא רבי יוחנן רבי יצחק בר נחמן רבי לעזר רבי אבהו בשם רבי יוחנן. ויצמדו לבעל פעור ויאכלו זבחי מתים: מה המת מטמא בכזית אף עבודה זרה תטמא בכזית. או מה המת מטמא משניכנים ראשי אצבעותיו יכול אף עבודה זרה משניכנים ראשי אצבעותיו. נתיצה נתיצה גמר מבית המנוגע. מה בית המנוגע משניכנים ראשו ורובו אף עבודה זרה משניכנים ראשו ורובו. אמר רבי חנינה. זאת אומרת שאין טומאת עבודה זרה מחוורת. דלא כן מקישה לשלם ואינה מקישה לחומרין. אמר רבי מנא. מחוורת היא. ולמה הוא מקישה למת ולשרץ. ללמוד ממנה לשלם שבה. הדין דאת אמר בעבודה זרה

שְׁבוּרָה. אֶבֶל בְּעֻבְדָּה זָרָה שְׁלִימָה כָּל־שָׁהִיא. דָּמַר רַבִּי יוֹסִי בִּירְבִי בּוֹן רַב חֲמָא בַר גּוֹרִיוֹן בְּשֵׁם
 ר.ב. בַּעַל רֹאשׁ גְּזִייתָה הֵנָּה וְכֶאֱפוֹן הֵנָּה. וּמָה טַעַם. וַיִּשְׁיֵמוּ לָהֶם בַּעַל בְּרִית לְאֵלֵהֶם:
 2 בשרצים | ש' בע"ז | ש' בשרצים | ש' כ' תואבה בנידה | ש' תואבות | ש' התואבות האלה וגו' 3
 בשרצים | ש' תואבה בשרצים | ש' בע"ז | ש' תואבה בע"ז | ש' ביתך | ש' ביתך וגו' איני | ש' אין אני 4 ז' | ש' זה
 דבר | ש' מהן | ש' בנידה | ש' שבנידה 5 על גב אבן | ש' באבן 6 באבן | ש' על גב אבן | ש' זריקא בשם ר' חנינה |
 ש' זריקן בשם רב יהודה אמ' | ש' דאמרין 7 באבן | ש' על גבי אבן 8 או | ש' אי 9 זעירא | ש' זעורה
 11 או | ש' אי מטמא משיכניס | ש' עד שיכניס ראשי אצבעותיו | ש' ראש אצבעו 12 גמר | ש' - 13
 משיכניס | ש' עד שיכניס (2) חנינה | ש' חנינה 14 לחמורין | ש' לחמורים 16 בע"ז שלימה | ש' בשלימה
 אפי' ר' יוסי ביר' בון | ש' ר' חונה 17 רב | ש' ר' וכאפון | ש' ונאפון ומה טע' | ש' -

Halakhah 8: "If one's house was connected to a house of pagan worship,"

etc. ¹⁷⁵There is written *abomination* about the menstruating women, *abomination* about vermin, *abomination* about idolatry. About the menstruating woman, *for anybody who would commit any of these abominations*¹⁷⁶. About vermin, *do not eat any abomination*¹⁷⁷. About idolatry, *and do not bring any abomination into your house*¹⁷⁸. But I do not know for which purpose it was compared. Rabbi Aqiba says, it was compared to *abomination* regarding the menstruating woman. As the menstruating woman imparts impurity by load¹⁷⁴, also idolatry imparts impurity by load. Or since the menstruating woman imparts impurity through a cover stone¹⁷⁹, does idolatry impart impurity through a cover stone? Rabbi Zeriqa in the name of Rabbi Hanina¹⁸⁰, but some say in the name of Rav Hisda: Rabbi Aqiba agrees with the Sages that idolatry does not impart impurity through a cover stone. But the rabbis say it was compared to *abominations* of vermin. As vermin imparts impurity by motion¹⁸¹, so also idolatry imparts impurity by motion. Or as vermin in the size of a lentil imparts impurity¹⁸² does also idolatry in the size of a lentil impart impurity? Rabbi Ze'ira, Rabbi Isaac bar Nahman, Rabbi Eleazar, Rabbi Abbahu in the name of Rabbi Johanan: *They were yoked to Baal Peor and ate sacrifices to the dead*¹⁸³. As the dead in the size of an olive impart impurity¹⁸² so idolatry in the size of an olive imparts impurity. Or since a corpse imparts impurity once a person puts his finger tips in¹⁸⁴, could I think that idolatry imparts once a person puts his finger tips in? *Tearing down, tearing down* one infers from the leprous house¹⁸⁵. Since in a leprous house when he entered with his head and most of his body¹⁸⁶, so idolatry when he entered with his head and most of his body. Rabbi Hanina¹⁸⁷ said, this means that the impurity of idolatry is not consistent¹⁸⁸. For otherwise, why

does one compare if for the facile [impurity] and does not compare for the strict? Rabbi Mana said, it is consistent. Why was it compared to a corpse and to vermin? To inform in both cases about the facile [impurity] attached to it¹⁸⁹. This is for a broken idol. But an entire one even in the most minute size¹⁹⁰, as Rabbi Yose ben Rabbi Abun¹⁹¹ said, Rav Hama bar Gorion in the name of Rav: Baal was the penis gland in the form of a bean. What is the reason? *They selected the Baal of circumcision as god*¹⁹².

175 This Halakhah also is Halakhah 9:1 in *Šabbat* (פ). Evidence points to *Šabbat* as the primary source. Much of the argument is found in Babli *Šabbat* 82b-83b.

176 *Lev.* 18:29. The verse refers to all prohibitions of a sexual nature.

177 *Deut.* 14:2. The verse refers to all food prohibitions.

178 *Deut.* 7:26. This verse refers uniquely to idols and idolatry.

179 Stone is impervious to impurity. In general, anything not susceptible to impurity cannot transmit impurity. The one and only exception is impurity caused by genital discharges where impurity by load (Note 174) applies to anything under the affected person and even a stone plate covering a mattress will not shield the mattress from impurity if a person afflicted by a genital discharge sits on the stone. Babli *Niddah* 69b.

180 In *Šabbat*: Rav Jehudah. On one hand, the tradent in *Šabbat* is mentioned as R. Zeriqan, the Yerushalmi form, not the Babli form Zeriqa as here; but this is to be explained by the babylonized spelling of the text of the present Tractate. On the other hand, the tradent in the Babli (*Šabbat* 82b) is R. Eleazar, a known student of R. Hanina.

181 Here one has a serious discrepancy

between the technical terminology of the Babli and the Yerushalmi. In the Babli impurity by motion is a form of impurity by load: If a person suffering from a genital discharge moves something indirectly or is moved with it, he imparts impurity. In the Yerushalmi this is consistently designated by its Mishnaic name, מַדְרֵס, “stepping on.” This kind of impurity emphatically does not exist for vermin, or anything other than genital discharges. Therefore הַיָּד the “motion” mentioned here must be that of a person’s hand touching an impure object. Transfer of impurity by touch is the only one mentioned for the eight kinds of impure vermin.

182 Mishnah *Ahilut* 1:8. This minimum size for generation of impurity does not apply to complete limbs.

183 *Ps.* 106:28.

184 This refers to “tent” impurity (*Ševuot* 2:1 Note 34) which is created by *any* part of a person’s body being under the same roof as a corpse, even if it is only a finger tip.

185 A house afflicted with recurrent “leprosy” must be torn down (*Lev.* 14:45). Pagan altars must be torn down (*Deut.* 12:3). By the nature of the topics, the verb נָתַן is used in the singular in the first case, in the plural in the second. Therefore this is a

comparison (הקש), not an “equal cut” (גזירה); the laws will be similar, not exactly identical.

186 Based on *Lev. 14:46*, which decrees impurity for anybody coming *into* the house, *Sifra Mesora` Pereq 5(4)*, *Mishnah Nega'im 13:8*.

187 In *Šabbat*: Hanania. The latter attribution is correct since he must have been a contemporary of R. Mana (II).

188 Neither R. Aqiba nor the rabbis are consistent in their comparisons.

189 The impurity of idols and idolatry should follow the rules common to impurities generated either by dead vermin or by bodily discharges. This argument is

known in the Babli tradition as הַצֵּד הַשָּׁנָה “the equal part;” cf. H. Guggenheimer, *Logical Problems in Jewish Tradition*, in: “Confrontations with Judaism”, ed. Ph. Longworth, London 1966, p. 185.

190 This is consistent with the impurity of animals as food, where a complete creature always is biblically forbidden irrespective of size (cf. *Nazir 6:1* Note 64).

191 In *ש*: R. Huna.

192 *Jud. 8:33*. Instead of “Baal of Covenant” one reads “Baal of circumcision” referring to the place of circumcision. This identifies the Semitic Baal with the Greek and Roman Priapus.

(43a line 62) מֵה טַעֲמִיָּה דְרַבִּי עֲקִיבָה. תַּעֲב תִּתְעַבְּבוּ כְּנִידָה. מֵה טַעֲמוֹן דְּרַבְנָן. שְׂקָץ | תִּשְׁקָצְנוּ כְּשֶׂרֶץ. מֵה מְקִימֵי רַבְנָן טַעֲמִיָּה דְרַבִּי עֲקִיבָה תַּעֲב תִּתְעַבְּבוּ. צֹאֵהוּ נִבְלִיָּה. מֵה הֵן לְרַבְנָן נִבְלִיָּה. רַבִּי שְׁמוּאֵל רַבִּי אֲבָהוּ בִשְׁם רַבִּי לֵעָזָר. צֹא תֹאמַר לוֹ. אֶת שְׁקוּרֵין אוֹתוֹ פָּנִי אֱלוֹהִי קוּרִין אוֹתוֹ פָּנִי כָּלֵב. עֵין כּוֹס קוּרִין אוֹתוֹ עֵין קוֹץ. גְּדִיָּה קוּרִין אוֹתוֹ גְּלִיָּה. רַבִּי תַנְחוּמָא בְּעֵי רַבִּי הוּנָא. כְּתוּב הָעֵי אֲשֶׁר עִם־בֵּית אֶזְרָא מְקַדֵּם לְבֵית־אֵל. מְקַדֵּם קוּרִין אוֹתוֹ בֵּית־אֵל וְעֶקְשֵׁי קוּרִין אוֹתוֹ בֵּית אֶזְרָא. תִּנִּי בִשְׁם רַבִּי לֵעָזָר. לֹא רָצָה לְקַרְוֹת עוֹמֶדָה קוּרִין אוֹתוֹ עֲמִידָה. וְצוּחוּין לְדַהוּן שְׁלֹמִימִי רַגְלִים עֲמִידָה. מֵה מְקִימֵי רַבְנָן צֹא תֹאמַר לוֹ. רַבִּי יוֹסֵי בִּירְבִּי אֲבִין רַבִּי הוּנָא בִשְׁם רַבִּי יוֹסֵף. מְנִיין שְׂאִין אוֹמְרִים לְאֶדָם צֹא עַד שְׂכִינְס רֹאשׁוֹ וְרוּבּוֹ.

1 דרבנן | ש דרבנן 2 כשרץ | ש כשרצים צאהו | ש צאהו - | ש מה מקיים ר' עקיבה טעמוֹן דרבנן. שקץ | תשקצנו. שקציהו נבליהו מה הן | ש מנין 3 לעזר | ש אלעזר - | ש צאהו תאמר לו. צאהו נבליהו 4 אלוה | ש מלך קורין אותו | ש - (2) 5 בעי | ש בשם הונא | ש חונא כח' | ש - קורין | ש היו קורין 6 לעזר | ש אלעזר לקרות | ש להיקרות עומדה | ש עמדה אותו | ש אותה 7 - | ש דאמ' ר' אבא בר כהנא. תמן צווחין לפעלה טבא עמדה לדהוין | ש לרחוץ מקיימין רבנן | ש מקיים ר' עקיבה 8 אבין | ש בון ר' הונא | ש רב חונה מניין | ש מיכאן שיכנס | ש שיכנס

What is Rabbi Aqiba's reason? *You should treat it as an abomination*¹⁹³, like a menstruating woman. What is the rabbis' reason? *You should detest it*, like vermin. How do the rabbis uphold Rabbi Aqiba's reason, *you should treat it as abomination*? Treat it as excrement, make it vile¹⁹⁴. What means “make it vile” for the rabbis? Rabbi Samuel, Rabbi Abbahu in the name of Rabbi Eleazar: *you shall call it excrement*. What is called God's¹⁹⁵ Face is called Dog's Face. Spring of the Cup is called Spring of the Thorn. The

Place of Fortune is called the Place of Undress¹⁹⁶. Rabbi Tanhuma (asked) [in the name of]¹⁹⁷ Rabbi Huna: It is written¹⁹⁸, *The Ai which is near Bet-Awen East of Bethel*. Earlier it was called Bethel but now one calls it Bet-Awen¹⁹⁹. It was stated in the name of Rabbi Eleazar: If one does not want to call it ‘Omda one calls it ‘Amida since the flow of urine is called ‘amida²⁰⁰. How (do the rabbis) [does Rabbi Aqiba]¹⁹⁷ interpret *you shall call it excrement?* Rabbi Yose ben Rabbi Abin, Rabbi Huna in the name of Rav Josef: from (where) [here]¹⁹⁷ that one does not tell anybody to leave unless he entered with his head and most of his body.

193 *Deut.* 7:26.

194 **ו** has an addition: How does R. Aqiba interpret the rabbi’s reason, *you should detest it?* Detest it, make it vile. Babli 46a, *Mekhilta dR. Ismael Mišpatim* 20 (p. 332 ed. Horovitz-Rabin).

195 In **ו**: King’s face.

196 All these places and most of their idolatrous meanings are unknown. A similar list is as Tannaitic text in the Babli 46a, *Tosephta* 6:4

197 The reading of *Avodah zarah* is in (parentheses), that of *Šabbat* in [brackets].

198 *Jos.* 7:2.

199 It seems that the translator of the LXX

read the verse in the way of the Talmud and eliminated the mention of Bet-Awen, “the House of Iniquity”, as a gloss, as accepted by the moderns. (However, E. Täubler in a marginal Note to his copy of M. Noth’s *Das Buch Josua*, Tübingen 1938, identifies Bet-Awen as the old name of “The Ai (ruin)”; cf. Arabic **اون** “calm, tranquillity”).

200 This piece is truncated here but it is in bad shape both here and in *Šabbat* (and *Yalqut Jos. ad* 7:2). It is intelligible in *Gen. rabba* 39(24), on *Gen.* 12:8, the first mention of The Ai in the Bible, following the interpretation of J. Levy:

ויעתק משם ההרה מקדם לבית אל. לשעבר היתה נקראת בית אל ועכשיו היא נקראת בית און. א”ר אלעזר לא זכתה להקראת בית העמל הרי היא הקראת בית העמד. תמן קריין לפועלא טבא עמילה ולהרהון של מימי רגלים עמידה.

He transferred from there to the mountain, East of Bethel. In the past it was called Bethel but now it is called Bet Awen. Rabbi Eleazar said, it²⁰¹ did not merit to be called the House of Work but it is called the House of Baptism²⁰². There, they are calling a good worker **עַמֵּל** but the chamber pot **ἀμίδα**²⁰³.

201 The church.

202 Syriac **עמד**.

203 Accusative of **ἀμῖς**, -ιδος (identified by Musaphia.)

(43c line 75) אית מתניתא אַמְרָה. עבֹדָה זָרָה כְּנִידָה וּמִשְׁמָשִׁיָּה כְּנִידָה. ואֵית מתניתא אַמְרָה. עבֹדָה זָרָה כְּנִידָה וּמִשְׁמָשִׁיָּה כְּשֶׁרֶץ. מֵאן דְּמַר. עבֹדָה זָרָה כְּנִידָה וּמִשְׁמָשִׁיָּה כְּנִידָה. נִיחָא. וּמֵאן דְּמַר. עבֹדָה זָרָה כְּנִידָה וּמִשְׁמָשִׁיָּה כְּשֶׁרֶץ. כָּל-עֲצָמוֹ אֵינוֹ קָרוי נִידָה אֶלָּא בְּמִשְׁמָשִׁיָּה. תִּפְתָּר בְּחֻקִּין עַל גּוֹפָה. דְּאָמַר רַבִּי זְעָקָב דְּכַפְרֵ חֲנָן. תִּפְתָּר בְּמִשְׁתַּחֲוָה לְאִפּוֹד עֲצָמוֹ. כְּעִנְיֵין שְׁנָאֲמַר וַיַּעַשׂ גִּדְעוֹן אִפּוֹד. מִתְנִיתִין כְּמֵאן דְּאָמַר. עבֹדָה זָרָה כְּנִידָה וּמִשְׁמָשִׁיָּה כְּנִידָה. וְהִתְנִינָן. אֲבָנִי וַעֲצֵי וַעֲבָדוֹ מִטְּמֵאִין כְּשֶׁרֶץ. תִּפְתָּר בְּמִשְׁתַּחֲוָה לְבֵית עֲצָמוֹ. דְּאָמַר רַבִּי בָּא רַב הוּנָא בְּשֵׁם רַב. הַמִּשְׁתַּחֲוָה לְבֵית אֶסְרוֹ. רַבִּי זְעִירָא רַבִּי אֲבָהוּ בְּשֵׁם רַבִּי יוֹחָנָן. הַמְקַדִּישׁ אֶת הַבַּיִת אֵין מוֹעֲלִין בּוֹ. וּמֵאן דְּאָמַר. אֵין מוֹעֲלִין בּוֹ. אֶסְרוֹ. הַתֵּיב רַבִּי חֲנִי קוֹמִי רַבִּי יוֹסִי. וְהָא מִתְנִיתָא פְּלִגָא עַל רַב. הַשְׁקֵת שְׂבָסֻלַע אֵין מְמַלְאִין בָּהּ וְאֵין מְקַדְּשִׁין בָּהּ וְאֵין מֵאִין מִמֶּנָּה וְאֵינָה צְרִיכָה צְמִיד פְּתִיל וְאֵינָה פּוֹסְקֵת אֶת הַמִּקְוָה. הִיתָה כְּלִי וְחִבְרָה בְּסִיד וְכוּל' עַד וּפּוֹסֵל אֶת הַמִּקְוָה. מִפְּנֵי שְׁחֻקָּהּ וְאַחַר כֵּן חִיבְרָה. הָא אִם חִיבְרָה וְאַחַר כֵּן חֻקָּהּ מָה אֶת עֲבֹד לָהּ. פְּתַר רַבִּי יוֹחָנָן. סִיתִיתָן שְׁלֹאֲבָנִים הִיא גִּמְר מְלֹאכְתָּן. לֵית הָדָא פְּלִיגִי עַל רַבִּי שְׁמַעוֹן בֶּן לָקִישׁ דְּאָמַר. עבֹדָה זָרָה שְׁנִשְׁבְּרָה מוֹתֶרֶת. וְכֵן סָבְרִין מִימַר. אִם בְּעֵתִיד לְהַחְזִירָן לְכֻלְיָ דְּבָרֵי הַכֹּל אֶסְרוֹ. תִּפְתָּר לְמִשְׁתַּחֲוָה לְכָל-אֶבֶן וְאֶבֶן וְאַחַר כֵּן בְּנִינָן. לֵית הָדָא פְּלִגָא עַל רַבִּי יוֹחָנָן. דְּרַבִּי יוֹחָנָן אָמַר. עבֹדָה זָרָה שְׁנִשְׁבְּרָה אֶסְרוֹרָה. וְכֵן סָבְרִין מִימַר. אִם בְּשָׂאֵינוּ עֵתִיד לְהַחְזִירָן לְכֻלְיָ דְּבָרֵי הַכֹּל מוֹתֶר. תִּפְתָּר בְּמִשְׁתַּחֲוָה לְזִמְרָה וְאַחַר כֵּן נִטְעָה.

²⁰⁴There exists a *baraita* which says, idols are like a menstruating woman and its appurtenances are like a menstruating woman. Also there exists a *baraita* which says, idols are like a menstruating woman and its appurtenances are like crawling animals²⁰⁵. The one who says, idols are like a menstruating woman and its appurtenances are like a menstruating woman, is understandable. But the one who says, idols are like a menstruating woman and its appurtenances are like crawling animals, is it not called “unwell” only for its appurtenances²⁰⁶? Explain it if they were engraved on its body. As Rabbi Jacob of Kefar Hanan said, explain it if one worships the *ephod* itself, similar to what is written, *Gideon made an ephod*²⁰⁷. Our Mishnah follows him who said, idols are like a menstruating woman and its appurtenances are like a menstruating woman, and we have stated: “its stones, its wood, and its dust make impure like a crawling animal.”²⁰⁸ Explain it if he worshipped the house itself, as Rabbi Abba, Rab Huna said in the name of Rav: One who worships a house makes it forbidden²⁰⁹. Rabbi Ze'ira, Rabbi Abbahu in the name of Rabbi Johanan: If somebody dedicates a house one does not commit larceny with it. And he who says, one does not commit larceny with it, can he

make it forbidden²¹⁰? Rabbi Haggai objected before Rabbi Yose, does not a Mishnah disagree with Rav? “A trough in a rock: one does not fill from it, and one does not sanctify with it, and one does not sprinkle with it, it does not have to be fastened with a tightened cover, and it does not invalidate a *miqweh*. If it was a vessel and he fixed it with lime, etc., up to it invalidates a *miqweh*.²¹¹” Because he excavated it and after that combined it²¹². Then if he fixed it and after that excavated it, what do you do with it²¹³? Explain it following Rabbi Johanan that the hewing of stones is the completion of work on them²¹⁴. Does this²¹⁵ not disagree with Rabbi Simeon ben Laqish who said, an idol which was broken is permitted? And so we are thinking to say if in the future he can restore it to its vessel it is forbidden according to everybody²¹⁶. Explain it if he worships every single stone and then builds with them²¹⁷. Does this not disagree with Rabbi Johanan, as Rabbi Johanan said, an idol which was broken is forbidden? And so we are thinking to say if in the future he cannot restore it to its vessel it is permitted according to everybody²¹⁶. Explain it if he worshipped a vine and afterwards planted it²¹⁸.

204 At some places, this paragraph has been shortened from the text in *Šabbat* to the extent as to become unintelligible without recourse to that text.

205 The first opinion is the teaching of R. Aqiba in the Mishnah, the second is ascribed to R. Aqiba in the Babli, *Šabbat* 83a.

206 The full text of *Is.* 30:22 (quoted in *Šabbat*) which is the base of R. Aqiba’s argument reads: *You will defile the cover of your silver statues and the clothing of your golden casts; you shall throw it away like feeling miserable, you shall call it excrement.* Therefore the reference of “feeling miserable” which is the description of a female period refers to appurtenances only. The second version of the position of R. Aqiba seems untenable.

207 The formulation in *Šabbat* is better: R. Jacob said (as an alternative explanation)

that the statue and its ornamental vest were two separate objects of worship. Either explanation is possible.

208 Since this sentence in the Mishnah precedes the statement of R. Aqiba, it is implied that R. Aqiba disagrees and imposes the impurity of *niddah* also on the stones which form the shell of the house of worship but are not the object of worship.

209 A comparison with the text in *Šabbat* shows that the sentence has to be split in two. First it is stated that the house will be strictly impure if it was worshipped. Then a question is missing, quoting the following Mishnah 9: Only a house originally built as a temple is permanently forbidden; all others can be cleansed by removing the idol and all installations and ornamentations made for it. How could one decree severe impurity which can be easily eliminated? On this

Rav says that even a house not built for worship becomes permanently forbidden as if it had been built as a pagan temple, if itself was worshipped. Babli 47b, *Me'ilah* 20a.

210 In *Šabbat* one reads: "R. Ze'ura, R. Ab-bahu in the name of R. Johanan, if one dedicates his house one commits larceny with it." The reading here is confirmed by Halakhah 9.

One compares the rules concerning a pagan temple with those of a house dedicated to the Temple (*Lev.* 27:14-15). Improper use of dedicated things is larceny which must be expiated by a sacrifice and payment of a fine, (*Lev.* 5:14-16). Just as real estate cannot become forbidden by idolatry, larceny by improper use of dedicated objects does not apply to real estate. If a house is considered real estate, it cannot become forbidden by worship, and its improper use while in the possession of the Temple cannot trigger a fine for larceny. If it is not considered real estate since the building materials were movables before being used, it can become forbidden and improper use can trigger the fine.

211 Mishnah *Parah* 5:7. The ashes of the Red Cow, used to purify a person from the impurity of the dead, must be strewn on "flowing water in a vessel" (*Num.* 19:17). A vessel is movable; therefore a trough hewn into the rock is not a vessel. The water flowing from the source into the trough becomes standing water. Therefore it may be used neither (1) to fill a vessel for the ashes, nor (2) to put some ashes in the water, "to sanctify it", nor (3) to sprinkle the water on impure persons to purify them.

In addition, a corpse in a "tent" makes

everything in the tent impure including the contents of vessels whose cover is not tightly fastened (*Num.* 19:15). Since the trough is no vessel, if it is under one roof with a corpse it only needs to be covered but the cover does not have to be fastened.

A *miqweh* (ritual bath) has to contain 40 *seah* of water. It becomes invalid if 3 *log* ($\frac{1}{8}$ *seah*) of water from a vessel is poured into it. If the trough is not a vessel, its water cannot invalidate the *miqweh*. On the other hand, if the trough was a vessel before it was fastened in the rock, it can be used for the ashes of the red cow, and its water will disqualify the *miqweh*.

Since a house was not a vessel before being connected to the ground, it should be considered real estate and not be subject to prohibition because of worship.

212 A vessel which is permanently fixed to the ground remains a vessel and can become forbidden.

213 A piece of loose rock which was cemented to the ground and then a trough was hewn from it does not become a vessel. Then why should a house become forbidden by being worshipped since it becomes a house only after being connected to the ground?

214 It is true that a finished house not built as a temple cannot become forbidden. But if the finished stones for a stone building were worshipped before being cemented in the house they already are forbidden and do not become permitted by use as building blocks.

215 The Mishnah which subjects the building material of the collapsed wall to the rules of idolatry. Babli *Me'ilah* 20a.

216 The statement of R. Simcon ben Laqish and the opposing statement of R. Johanan

only refer to situations where it is not clear whether the idol can be restored or not.

217 Then each individual stone remains forbidden; there is no contradiction to Mishnah 10.

218 This refers to a holy tree which is

worshipped as *Ashera* (Mishnah 11) but where no idol is found buried under it. Then as connected to the ground it should not be part of the real estate and not be forbidden. It becomes permanently forbidden only if it was planted as a holy shoot.

(43b line 21) לַי אָמַר. מִשְׁתַּחֲוִה לְבֵית אֲסֵרָה. לְמַעַרָה לֹא אֲסֵרָה. מֵה בֵּין בֵּית לְמַעַרָה. אָמַר רַבִּי הִנִּיחָה בִּירְבֵי הַלֵּל. בֵּית הָיָה לוֹ שְׁעֵת תְּלִישָׁה. מַעַרָה לֹא הָיְתָה לָהּ שְׁעֵת תְּלִישָׁה.

רַבִּי יוֹחָנָן פֶּתַר מִתְּנִיתִין בְּגֵר וְגוֹי שֶׁיִּירָשׁוּ אֶת אֲבִיהֶן גּוֹי. וְלָמָּה לֹא פֶתַר לָהּ בְּשֻׁבָּאת עֲבוּדָה זָרָה וְנִסְמְכָה לוֹ. תֵּנִי. בֵּית עֲבוּדָה זָרָה וְנִסְמְכָה לוֹ וְאַחֵר כֶּן הִלְכָה לָהּ מוֹתֵר. אֲבָל גֵּר וְגוֹי שֶׁיִּירָשׁוּ אֶת אֲבִיהֶן גּוֹי אֲסִירָה. תֵּנִי. בֵּית עֲבוּדָה זָרָה וְנִסְמְכָה לוֹ וְאַחֵר כֶּן הִלְכָה לָהּ מוֹתֵר. אֲבָל אִם בָּא הוּא וְנִסְמַךְ לְעֲבוּדָה זָרָה כָּל-הַבַּיִת לָשֵׁם עֲבוּדָה זָרָה. אָמַר רַבִּי יוֹסִי. מִתְּנִיתִין אָמְרָה כֵּן. הָיָה שָׁלוֹ וְשָׁל עֲבוּדָה זָרָה יְדוּן מִחֲצָה לְמִחֲצָה.

Levi said, one who worships a house makes it forbidden²⁰⁹, a cave he does not make forbidden²¹⁹. What is between a house and a cave? Rabbi Hanina ben Rabbi Hillel said, a house was separated at some time; a cave never was separated.

²²⁰Rebbi Johanan explained the Mishnah²²¹ about a proselyte and a pagan who inherited from their pagan father. Why does he not explain it when idol worship came and built next to him? It was stated: If a house of idol worship was built next to him and then left it is permitted²²². But for a proselyte and a pagan who inherited from their pagan father, it is forbidden. It was stated: If a house of idol worship was built next to him and then left it is permitted. But if he came and built next to idol worship the entire house is for idol worship²²². Rebbi Yose said, our Mishnah says so, “If it was his and the idolatry’s, it is judged half by half.”²²³

219 Even if the cave was excavated for purposes of idol worship it does not lose its character as real estate.

220 This paragraph is not in *Šabbat*.

221 To explain how the house of a Jew and a pagan place of worship may share a wall.

222 If the Jew’s house was there before the pagan, it is not touched by temporary use of

the adjacent house as place of pagan worship. But if the Jew builds in disregard of the injunction of the Mishnah to construct a separate wall inside his real estate he is fined.

223 The Mishnah might be referring to a house built after the pagan place already existed, not a proselyte brother to a pagan.

(fol. 42b) **משנה ט:** ג' בתים הן. בית שבנאו מתחילה לעבודה זרה הרי זה אסור. סיידו וכיירו לעבודה זרה וחידיש נוסל מה שחידיש. הכנים לתוכה עבודה זרה והוציאה הרי זה מותר.

Mishnah 9: There are three houses. A house which one built originally for idolatry is forbidden. If he whitewashed it or ornamented it for idolatry and renovated, one removes what he renovated. If he introduced there an idol and removed it, it is permitted.

(43b line 29) **הלכה ט:** שלש בתים הן כול'. רב ורבי יוחנן תריהון אמרין. בהכנסתו לארץ היא מתניתא. על דעתיה דרב דאמר. המשתחיה לבית אסור. בגין כך הוא פתר לה בכניסתו לארץ. על דעתיה דרבי יוחנן דו אמר. המקדיש את הבית אין מועלין בו. ויתרניה במשתחיה לבית. המשתחיה לבית יש לו ביטול. הכנסתו לארץ אין לו ביטול. כיצד הוא עושה. מפרק את פציו ויהא מותר.

רבי אילא בשם רבי לעזר. והוא שהכנים לתוכו עבודה זרה. על דעתיה דרבי שני בתים הן. והתינון. ג' בתים. כאן לשעה וכאן לשהות.

Halakhah 9: "There are three houses," etc. Rav and Rabbi Johanan both are saying, the Mishnah treats their entry into the Land²²⁴. The opinion of Rav, who said that one who worships a house makes it forbidden, is the reason that he explains it by their entry into the Land²²⁵. Following the opinion of Rabbi Johanan, who said that if somebody dedicates a house one does not commit larceny with it, could he not have explained it by somebody who was worshipping the house²²⁶? {The effect of} one who worships a house can be voided. At their entry into the Land it could not be voided²²⁵. What could he do²²⁷? He removes its clapboards and it is permitted.

Rebbi Ila in the name of Rebbi Eleazar: Only if he brought an idol into it²²⁸. In the opinion of Rebbi [Eleazar]²²⁹ there are two houses. But have we not stated three? Here temporarily, there permanently²³⁰.

224 *Deut.* 7:5 is an unconditional commandment to destroy all pagan altars and Temples in existence at the time of the conquest. This agrees with the statement that the house in the first case is absolutely and irrevocably forbidden, since in all other cases a partial

destruction of the house will remove the prohibition.

225 Since he considers a house as a kind of movable (Note 209), his problem is that the first rule of the Mishnah should apply not only to a house built as a pagan temple but

also to one which was worshipped. But the effect of worship can be undone (Halakhot 14-16); only the commandment *Deut. 7:5* is absolute.

226 Since a house is real estate, it cannot become forbidden by simply being worshipped. But if a Jew built it for purposes of idolatry, it becomes forbidden by an act of idolatry (Mishnah 4:4). Therefore the first case of the Mishnah could also be referred to a case possible today. One does not expect a rule in the Mishnah which became obsolete some 1500 years before its formulation. The answer to be given is the same as in the case of Rav.

227 To desecrate the house and therefore nullify its pagan status.

228 This now refers to the second case, a house renovated for the purpose of idolatry. As property of the Jew it becomes forbidden only by an act of pagan worship, not by intention (Mishnah 4:4).

229 Missing in the text; added from Halakhah 10 as required by the context.

230 Since the presence of an idol is required in both cases 2 and 3, what is the difference? In case 3 the idol is temporarily in the house; one removes it and the house is permitted. In case 2 the intention is a permanent installation of the idol; therefore not only the idol but all installation has to be removed. Also for R. Eleazar there are three distinct cases.

משנה י: שְׁלֹשָׁה אֲבָנִים הֵן. אֶבֶן שֶׁחֻצְבָה מִתְחִלָּה לְפִימוֹם הָיָה זֶה אֲסוּרָה. סִייד וְכִיִּירָה לְשֵׁם עֲבוּדָה זָרָה וְחִידֵשׁ נוֹטֵל מִה שֶׁחִידֵשׁ. הַעֲמִיד עָלֶיהָ עֲבוּדָה זָרָה וְסִלְקָהּ הָיָה זֶה מוֹתֶרֶת.

Mishnah 10: There are three kinds of stone. If he quarried them from the start as pedestal²³¹ it is forbidden. If he whitewashed it and ornamented it for idolatry and renovated, one removes what he renovated. If he put an idol on it and removed it, it is permitted.

231 Greek βωμός. The expression is used exclusively for pedestals of idols (including statues of emperors). From the

comparison with the next Mishnaïot one must assume that a pedestal in itself was an object of veneration.

(43b line 37) **הלכה י:** שְׁלֹשָׁה אֲבָנִים הֵן כֹּל. רַבִּי בָּא בְּשֵׁם רַב. מֵא הַמִּיּוֹתָכִים לְעֲבוּדָה זָרָה נֶאֱסָר מִיָּד. רַבִּי יְרֵמְיָה בְּשֵׁם רַבִּי לָעֶזֶר. מֵא הַמִּתִּיךְ כּוֹס לְעֲבוּדָה זָרָה נֶאֱסָר מִיָּד. רַבִּי הִילָא בְּשֵׁם רַבִּי לָעֶזֶר. וְהוּא שֶׁהָעֲמִיד עָלֶיהָ עֲבוּדָה זָרָה. מִחֻלְפָּה שִׁטְתִּיהָ דָּרַב. תַּמָּן הוּא אָמַר. מֵא הַמִּתִּיךְ כּוֹס לְעֲבוּדָה זָרָה נֶאֱסָר מִיָּד. וְהָכָא הוּא אָמַר הָכִין. פֶּתֶר לָהּ כְּהָדִין תִּנְיִיא. דִּתְנִינָן תַּמָּן. עֲבוּדָה זָרָה שֶׁלֵּנְכָרִי אֲסוּרָה מִיָּד. וְשֶׁלִּישְׂרָאֵל מִשְׁתַּעֲבָד. כָּלֹאם פְּלִיגִין לָהּ

בְּעִבּוּדָה זָרָה. דִּילָמָא בְּמִשְׁמָשׁוּי. רַבִּי שְׁמַעוֹן בֶּשֶׁם רַבִּי לְעֶזֶר. אֶף בְּמִשְׁמָשׁוּי עִבּוּדָה זָרָה מִחִלּוֹקָתָא.

רַבִּי אֵילָא בֶּשֶׁם רַבִּי לְעֶזֶר. וְהוּא שֶׁהָעֶמִיד עָלֶיהָ עִבּוּדָה זָרָה. עַל דְּעֵתִיָּה דְרַבִּי לְעֶזֶר ב' אֲבָנִים. וְהַתְנִיחַ. שְׁלֹשׁ אֲבָנִים הֵן. כָּאֵן לְשַׁעֲהָ וְכָאֵן לְשִׁהוּתָא.

Halakhah 10: “There are three kinds of stones,” etc. Rabbi Abba in the name of Rav: This²³² implies that what is cast for idolatry is immediately forbidden. Rabbi Jeremiah in the name of Rabbi Eleazar: This implies that if one casts a cup for idolatry it is immediately forbidden²³³.

Rabbi Ila in the name of Rabbi Eleazar: Only if he put an idol on it²³⁴. The opinions of Rav²³⁵ seem inconsistent. There he says, if one casts a cup for idolatry it is immediately forbidden, and here he says so²³⁶? Explain it following what has been stated²³⁷: “A Gentile’s idol is immediately forbidden, but a Jew’s when it was worshipped.” There is disagreement about an idol, maybe also for its appurtenances²³⁸? Rabbi Simeon in the name of Rabbi Eleazar: There is disagreement also about appurtenances²³⁹.

²⁴⁰Rabbi Ila in the name of Rabbi Eleazar: Only if he put an idol on it. In the opinion of Rabbi Eleazar there are two stones. But have we not stated “there are three stones”? Here temporarily, there permanently.

232 The first part of the Mishnah is not only about stones quarried but about everything intentionally manufactured as an idol. Therefore if a metal statue was cast, the process of casting makes it forbidden even before it is polished and worshipped.

233 A cup is an implement of worship; it is not an object of worship. The statement of R. Eleazar is stronger than that of Rav. The Babli disagrees, 52a.

234 This refers to the second case in the Mishnah, where a stone quarried indifferently is adorned to become an altar.

235 It seems that one has to read: R. Eleazar.

236 Why for a cup it is immediately forbidden but for a decorated stone only by

actually being used in idolatry?

237 Mishnah 4:4. It is presumed that only a Gentile would make something from the start for idolatry; the most a Jew would do is to adorn an object.

238 In Halakhah 4:4 there is an opinion to the reverse: the idol of a Gentile becomes forbidden only by being worshipped, the Jew’s idol immediately upon acquisition or manufacture.

239 Even though Mishnah 4:4 and the corresponding *baraita* are formulated for idols, they are valid for all implements of idolatry. The Babli disagrees, 52a.

240 This is completely parallel to the corresponding paragraph in Halakhah 9.

(fol. 42b) **משנה יא:** שלש אשירות הן. אילן שננטעו מתחלה לשם עבודה זרה הרי זה אסור. גדעו ופסלו לשם עבודה זרה והחליף נוטל מה שהחליף. העמיד תחתיו עבודה זרה וביטלה הרי זה מותר.

Mishnah 11: There are three kinds of *Ashera*¹²⁸. A tree which originally was planted for idolatry is forbidden. If he cut and shaped²⁴¹ it for idolatry and it grows new shoots, one removes what grew newly. If he puts an idol under it²⁴², when he makes it invalid it becomes permitted.

241 While the tree is still standing on the ground. A cut tree is not an *Ashera*.

242 Under a tree not previously grown for idolatry.

(43b line 45) **הלכה יא:** שלש אשירות הן כול'. רבי אמי בשם רבי שמעון בן לקיש אמר. פיתח בה פיתוחים אינה בטילה. לכן צריכה אפילו העביר הפיתוחים. תני. הרקב נוטל מה שהרקיב. אמר רבי ינאי. והוא שהרקיב בה לעבודה זרה. רבי הילא בשם רבי לעזר. והוא שהעמיד תחתיה עבודה זרה. מחלףא שישתיה דרבי שמעון בן לקיש. תמן אמר רבי אמי פיתח בה פיתוחים אינה בטילה. וסברין מימר. אפילו העביר את הפיתוחים. וכא אמר אבון. חומר הוא בפיתוח.

תני. הרקב נוטל מה שהרקיב. אמר רבי ינאי. והוא שהרקיב בה לעבודה זרה. רבי הילא בשם רבי לעזר. והוא שהעמיד בה עבודה זרה. על דעתיה דרבי לעזר שתי אשירות הן. והתנינן. ג' אשירות הן. כאן לשעה וכאן לשמות.

Halakhah 11: "There are three kinds of *Ashera*," etc. Rabbi Immi in the name of Rabbi Simeon ben Laqish said, if he engraved engravings in it it cannot become invalidated. This is necessary: even if he removed the engravings²⁴³. It was stated: If he grafted, he has to remove what he grafted. Rabbi Yannai said, only if he grafted for idolatry²⁴⁴. Rabbi Hila in the name of Rabbi Eleazar²⁴⁵: Only if he put an idol under it. The opinions of Rabbi Simeon ben Laqish seem inconsistent. There Rabbi Immi said in the name of Rabbi Simeon ben Laqish, if he engraved engravings on it it cannot become invalidated; and we interpreted this to mean, even if he removed the engravings. And here²⁴⁶ he says so? It is more severe with engravings.

²⁴⁷It was stated: If he grafted, he has to remove what he grafted. Rabbi Yannai said, only if he grafted for idolatry. Rabbi Hila in the name of Rabbi Eleazar: Only if he put an idol under it.

^{240,248}Rabbi Ila in the name of Rabbi Eleazar: Only if he put an idol under it. In the opinion of Rabbi Eleazar there are two *Asherot*. But have we not stated “there are three kinds of *Ashera*”? Here temporarily, there permanently.

243 Even though in the second case Mishnah it is sufficient to remove everything grown after the tree was shaped for idolatry, if an engraving was made it is irrevocable even if it was obliterated.

244 If the grafted tree would have been used as *Asherah*. Babli 48a.

245 The following argument shows that one has to read: R. Simeon ben Laqish.

246 In the second case of the Mishnah he not only rules restrictively that an engraving is irrevocable but also leniently that shaping a tree as *Asherah* makes it forbidden only if an idol is placed under the tree.

247 Dittography induced by the repetitious quote of the statements of R. Simeon ben Laqish.

248 Babli 48a.

מִשְׁנָה יב: אִיזוֹ הִיא אֲשֵׁרָה כֹּל שִׁישׁ תַּחְתֶּיהָ עֲבֻדָּה זָרָה. רַבִּי שְׁמַעוֹן אוֹמֵר כֹּל שְׁעוֹבְדִין אוֹתָהּ. וּמַעֲשֶׂה בְּצִידָן בְּאֵילָן שֶׁהָיוּ עוֹבְדִין אוֹתוֹ וְהָיָה תַּחְתָּיו גֵּל. אָמַר לָהֶן רַבִּי יְהוֹשֻעַ בְּדָקוּ אֵת הַגֵּל הַזֶּה וּבְדָקוּהוּ וּמָצְאוּ בוֹ צוּרָה. אָמַר לָהֶן הוּאֵיל וְלִצְוֹרָה הֵן עוֹבְדִין נִתִּיר לָהֶן אֵת הָאֵילָן: (fol. 42b)

Mishnah 12: What is an *Ashera*²⁴⁹? Any under which is an idol. Rabbi Simeon says, any which is worshipped. It happened in Sidon that they were worshipping one and there was a mound under it. Rabbi Joshua²⁵⁰ said to them, investigate the mound! They investigated it and found a figure in it. He told them, since they worship the figure we may permit the tree to them²⁵¹

249 Where one has no information to place it in one of the categories of Mishnah 11. Babli 48a.

250 This is a copyist's error as shown in the

Halakhah. One has to read with all other Mishnah source: R. Simeon.

251 The rules of Mishnaïot 13-16 do not apply to this tree.

(43b line 55) **הלכה יב:** איזו היא אֲשֵׁרָה כול'. אָמַר רַב חֲסִידָא. בְּסֵתָם חֲלִיקִין. מָה נֶן קִיָּמִין. אִם דָּבָר בָּרִיא שֶׁהוּא עוֹבְדִין לַצִּוְרָה וְלֹאֵילָן דְּבָרֵי הַכֹּל אֲסוּר. וְאִם דָּבָר בָּרִיא שֶׁהוּא עוֹבְדִין לַצִּוְרָה וְאִינוּ עוֹבְדִין לֵאלֹהֵי דְבָרֵי הַכֹּל מוּתָר. אֲלֵא כֹן אֲנִי קִיָּמִין בְּסֵתָם. רַבִּי שְׁמַעוֹן אוֹמֵר. סֵתָמָן עוֹבְדִין לַצִּוְרָה וְלֹאֵילָן. וְרַבְּנָן אָמְרִי. סֵתָמָן עוֹבְדִין לַצִּוְרָה וְאִינוּ עוֹבְדִין לֵאלֹהֵי. וְקִשְׁיָא. רַבִּי שְׁמַעוֹן חֲלוּק עַל הַחֲבָתִּים וְעוֹשֶׂה מַעֲשֶׂה כְּיוֹצֵא בּוֹ.

Halakhah 12: What is an *Ashera*? Rav Hisda said, They disagree in the indeterminate case²⁴⁹. Where do we hold? If it is certain that they worship both idol and tree, everybody agrees that it is forbidden. But if it is certain that they worship the idol and do not worship the tree, everybody agrees that it is permitted. But where do we hold? If it is indeterminate. Rabbi Simeon says, normally they worship both idol and tree; but the rabbis say, normally they worship the idol but do not worship the tree. And it is difficult. Rabbi Simeon disagrees with the Sages and acts in their sense²⁵²!

252 Since in the interpretation of the Halakhah, R. Simeon should have forbidden both tree and idol. But there is nothing to wonder at since R. Simeon insists that practice follow the majority rule against his own opinion, *Ševi'it* 9:1, Notes 35-36.

(fol. 42b) **משנה יג:** לֹא יֵשֵׁב בְּצִלָּהּ וְאִם יֵשֵׁב טְהוֹר. וְלֹא יַעֲבֹר תַּחְתֶּיהָ וְאִם עָבַר תַּחְתֶּיהָ טָמֵא. הֵיכָה גּוֹזֶלֶת אֶת הָרִבִּים וְעָבַר תַּחְתֶּיהָ טְהוֹר. וְזוֹרְעִים תַּחְתֶּיהָ יִרְקוֹת בִּימוֹת הַגִּשְׁמִים אֲבָל לֹא בִימוֹת הַחֶמְדָּה. וְהַחֲזִירִין לֹא בִימוֹת הַחֶמְדָּה וְלֹא בִימוֹת הַגִּשְׁמִים. רַבִּי יוֹסִי אוֹמֵר אִף לֹא יִרְקוֹת בִּימוֹת הַגִּשְׁמִים כִּפְנֵי שֶׁהִנְבִּיחַ נִוְשְׁרָת גְּלִיתָהּ וְהָיָה לָהּ לְזֶפֶל:

Mishnah 13: One should not sit in its shadow²⁵³ but if one sat he is pure. One should not pass under it and if one passed under it he is impure. If it robbed the public²⁵⁴ and one passed under it, he is pure. One may sow vegetables under it in the rainy season but not in summer²⁵⁵, but lettuce neither in summer nor in the rainy season. Rabbi Yose says not even vegetables in the rainy season since falling leaves drop down on it and become fertilizer.

253 It was noted earlier that idols impart "tent" impurity (Note 184). Therefore if one sits under the crown of an *Ashera* he is impure by the impurity of the dead. But if he sits in its shadow but not under its crown, he illegally profits from idolatry but is not impure. If he passes under an *Ashera* he becomes impure like anybody passing under

a tent above a corpse. But walking through the shadow of an *Ashera* outside its crown is not considered profiting from idolatry.

254 It is clear from the earlier sources (Note 184) and the following Halakhah that the tent impurity generated by an idol is purely rabbinic. If the crown of the *Ashera* extended over a public road, the customary

impurity of idols never was intended to deprive Jews from using public roads.

255 In winter, the shade given by the tree inhibits the growth of the vegetables; the tree is a detriment, not a positive influence. But in summer the shade is necessary; it clearly is usufruct.

43c line 61) **הלכה יג:** לא יָשֵׁב בְּצִילָהּ כּוֹל'. תִּמְנָן אֶמְרִי בְּשֵׁם רַב חֲסִידָא. צִילָהּ אָסוּר. צֵל צִילָהּ מוּתָר. אִי זָהוּ צֵל צִילָהּ וְאִי זָהוּ צִילָהּ. תִּמְנָן אֶמְרִי. כָּל-שְׂאֵילֵי תִּפּוּל וְהִיא נֹגַעַת בּוֹ זָהוּ צִילָהּ. וְכָל-שְׂאֵילֵי תִּפּוּל וְאִינָהּ נֹגַעַת בּוֹ זָהוּ צֵל צִילָהּ.

Halakhah 13: “One should not sit in its shadow,” etc. There²⁵⁶ they say in the name of Rav Hisda: Its shadow is forbidden, its half-shadow is permitted. What is its shadow and what is its half-shadow? There they say, any place where if it would fall down would touch him is its shadow, but any place where if it would fall down would not touch him is its half-shadow²⁵⁷.

256 In Babylonia.

257 It is clear that at any place not under the tree's crown there is no question of impurity. The discussion is only about the statement that one should not sit in the *Ashera*'s shadow. It is now added that in

the half-shadow one may sit, i. e., far enough away that if the tree fell down in the direction of the person sitting there the fallen crown would not reach the person.

In the Babli, 48b, this is attributed to R. Johanan the Galilean.

43c line 65) מִפְּנֵי מָה צִילָהּ אָסוּר. מִשּׁוּם שֶׁהִיא בְּהִנָּאָה. הָרִי הַקָּבֵר אָסוּר בְּהִנָּאָה וְצִילוֹ מוּתָר. הָרִי הַיָּכֵל הָרִי הוּא אָסוּר בְּהִנָּאָה וְרֵבֶן יוֹחֲנָן בֶּן זַכַּאי יוֹשֵׁב וְשׂוֹנֶה בְּצִילוֹ שֶׁלְּהִיכָל. הָרִי לֵית טַעַם דְּלֹא מִשּׁוּם שֶׁהִיא אָסוּר בְּהִנָּאָה. רַב אֲבִין בְּשֵׁם רֵבֶן דְּתַמְנָן. זֹאת אוֹמְרֵת שְׂאֵין טוֹמְאָת הַמֵּתִים מִחוּוָּרָת. דְּלֹא כֵן אֵילֵי קָבֵר שֶׁהִיא גּוֹזֵל אֶת הָרֵבִים וְעֵבֶר תַּחְתָּיו טָהוֹר.

Why is its shadow forbidden? Because it is an enjoyment. But a grave is forbidden for usufruct and its shadow is permitted! But the Temple Hall is forbidden for usufruct and Rabban Johanan ben Zakkai was sitting and teaching in the shadow of the Temple Hall²⁵⁸! Therefore the reason cannot be that it is forbidden for usufruct. Rav Abin in the name of the rabbis there²⁵⁶: This implies that this impurity of the dead is not logically consistent²⁵⁹. For

otherwise if a grave were robbing the public and one passed under it one would be pure.

258 Babli *Pesahim* 26a. There it is argued that he could do this only because the Temple was built for its service and the Herodian Hall was 100 cubits high so that its shadow at times extended beyond the Temple Hill; it never was intended that the shadow should prevent people from being there. This disagrees with the statements here.

259 Since as pointed out in the next

sentence, a mausoleum whose roof extends over a public road will automatically impart impurity to any Jew walking under it (and force any Cohen to make a detour to avoid passing under that roof) the rules of the *Ashera* cannot be deduced from the rules of the impurity of the dead. They are customary rules and as such not susceptible to logical analysis.

(43b line 70) גַּמְלִיאֵל זִנְגָא הָהוּ מְסַתְמִיךְ בְּרַבִּי שְׁמַעוֹן בֶּן לֵקִישׁ. מִטּוֹן בְּהוּ תִבְנִיתָא. אָמַר לֵיהּ. מָהוּ נִיעָבוֹר קוֹמֵי. אָמַר. עָבוֹר קוֹמֵי וְסָמִי עֵינֵיהּ. רַבִּי יִצְחָק בַּר מִתְנָה הָהוּ מְסַתְמִיךְ בְּרַבִּי יוֹחָנָן. מִטּוֹן צִלָּמָא דְבִילִי. אָמַר לֵיהּ. מָהוּ נִיעָבוֹר קוֹמֵי. אָמַר לֵיהּ. עָבוֹר קוֹמֵי וְסָמִי עֵינֵיהּ. רַבִּי יַעֲקֹב בַּר אִידִי הָהוּ מְסַתְמִיךְ בְּרַבִּי יְהוֹשֻׁעַ בֶּן לֵוִי. מִטּוֹן לְאַדְרֵי צִלָּמָא. אָמַר לֵיהּ. נְחוּם אֵשׁ קוֹדֵשׁ קְדָשִׁים עָבַר וְאַתָּ לִית אַתָּ עָבַר. עָבוֹר קוֹמֵי וְסָמִי עֵינֵיהּ.

Gamliel the Twin was supporting²⁶⁰ Rabbi Simeon ben Laqish. They came to this statue. He asked him, may we pass in front of it? He said, pass by it and blind its eye²⁶¹. Rabbi Isaac bar Mattanah was supporting Rabbi Johanan. They came to the statue of the city council²⁶². He asked him, may we pass in front of it? He said, pass by it and blind its eye. Rabbi Jacob bar Idi was supporting Rabbi Joshua ben Levi. They came to the statue of Herod²⁶³. He told him, Nahum the most holy man¹⁷ passed by it and you do not want to pass by? Pass by it and blind its eye!

260 In this paragraph, the second person mentioned always is the authority who in walking leans upon one of his students. A comparison with other occurrences shows that *מִסְתַּמֵּךְ בַּ* means “was supporting” but *על מִסְתַּמֵּךְ* is “leaning on.”

261 One “blinds the eye” of the idol by passing by it without taking any notice of it and the idol sees that it is not taken

seriously.

262 Greek βουλή. In Tiberias this probably was a statue of *divus* Tiberius.

263 In *Mo'ed qatan* 3:7 the spelling is as here. In *Berakhot* 2:1 (Note 57) אַהֲדוּרִי, in *Se'qalim* 2:6 אַהֲרִיא, in *Midrash Shemuel* 19[4], ed. Buber Note 17, הרודוס, in *Yalqut Semuel* # 124 הרודוס. The last two readings “Herod” seem to be the correct one.

(43b line 76) לית הָדָא פְּלִיגָא עַל רַבִּי יוֹחָנָן. דְּרַבִּי יוֹחָנָן אָמַר. עֲבוּדָה זָרָה שְׁנִשְׁתַּבְּרָה אֲסוּרָה. לֹא כֹן סָבְרִינוּ מִימֵר. אִם בְּשֵׂאִינוּ עֲתִיד לְהַחְזִירָן לְכָלֵּין דְּבָרֵי הַכֹּל מוֹתֵר. תִּיפְתָּר בְּעֲבוּדָה זָרָה שְׁלִישְׁרָאֵל. לִית הָדָא פְּלִיגָא עַל רַב. דְּרַב אָמַר. לְצוּרָה הִיא אֲסוּרָה וְשִׁפְיָהּ מוֹתֵרִין. עוֹד הִיא תִּיפְתָּר בְּעֲבוּדָה זָרָה שְׁלִישְׁרָאֵל. מִפְּנֵי מָה הַכֹּל פּוֹרְשִׁין הִימָנָה. מִפְּנֵי שְׁנִיבּוּלָה רַע.

Does this²⁶⁴ not disagree with Rabbi Johanan, since Rabbi Johanan said, an idol which was broken is forbidden? And so we are thinking to say if in the future he cannot restore it whole it is permitted according to everybody²¹⁶. Explain it about a Jew's idol²⁶⁵. Does this not disagree with Rav, since Rav said, for its purpose it is forbidden but its shavings are permitted²⁶⁶? Again explain it about a Jew's idol.

Why does everybody stay away from it²⁶⁷? Because its dropping leaves are bad.

264 The last sentence of the Mishnah, where R. Yose forbids planting anything. Why should the status of wilted leaves be different from broken pieces? It is not so much the statement of R. Johanan but the following statement that anything which cannot be repaired is permitted. Wilted leaves certainly cannot be restored.

265 Which is permanently forbidden.

266 In the Babli, 49b, this is a *baraita*: "A Gentile who worked on an idol with a plane,

if it was for his benefit it and its shavings are permitted, for its benefit it is forbidden but the shavings are permitted. A Jew who worked on an idol with a plane, whether it was for his or its benefit, both it and its shavings are forbidden." Cf. Mishnah and Halakhah 16.

267 Why does nobody ever take advantage of the permission given in the Mishnah to plant vegetables under an *Ashera* in the winter?

(fol. 42b) מִשְׁנֵה יָד: נָטַל מִמֶּנָּה עֲצִים אֲסוּרִין בְּהִנְיָהּ. הִפִּיק בָּהֶן אֶת הַתְּנֹור אִם חֲדָשׁ יוֹתֵן. וְאִם יָשֵׁן יוֹצֵן. אָפָה בּוֹ אֶת הַפֶּת הַפֶּת אֲסוּרָה בְּהִנְיָהּ. נִתְעַרְכָּה בְּאַחֲרוֹת כּוֹלֵן אֲסוּרוֹת בְּהִנְיָהּ. רַבִּי לִיעֶזֶר אוֹמֵר וְיֵלֶךְ הַנְּיָיָה לִים הַמִּלָּת. אָמְרוּ לוֹ אֵין פְּדִיִין לְעֲבוּדָה זָרָה.

Mishnah 14: If he took wood from it²⁶⁸, it is forbidden for usufruct. If he used it to heat an oven²⁶⁹, if it was new it must be destroyed²⁷⁰, if it was old it must be cooled down. If he used it to bake bread, it is forbidden for usufruct. If it was mixed with other loaves, all are forbidden for usufruct²⁷¹. Rabbi

Eliezer says, he should bring his profit to the Dead Sea²⁷². They said to him, idols cannot be redeemed.

268 From an *Ashera* tree.

269 A portable earthenware cone.

270 These ovens were not finished in a kiln, they became hardened by being exposed to the fire kindled in them. Therefore a new oven would be finished by the *Ashera* wood; it must be destroyed.

271 Since loaves are sold by the piece, no loaf can be considered insignificant if mixed

with others. Even without the special case of loaves of bread, “the ashes of everything burned are permitted except ashes coming from idolatry” (*Orlah* 3:3, Note 116).

272 Where the coins are corroded and destroyed. Obviously R. Eliezer must mean not only the profit but the entire value of the forbidden loaf.

(43c line 5) **הלכה יז:** נטל ממנה עצים כול'. אמר רב חסדאי. בסתם חלוקין. מה נן קיימין. אם להסיק דברי הכל מותר. אם לאשון דברי הכל אסור. אלא כן אנו קיימין בסתם.

Halakhah 14: “If he took wood from it,” etc. Rav Hasdai said, they are disagreeing in the indeterminate case. Where do we hold? If to heat, everybody agrees that it is permitted. If to fumigate, everybody agrees that it is forbidden. Where do we hold? In the indeterminate case²⁷³.

273 The Mishnah before R. Hasdai was not the text before us. He must have read: “If they (the pieces of wood) were mixed with others, . . .” Then R. Eliezer and the rabbis disagree about the value created by the wood coming from an *Ashera*. In this case the argument of Note 271 does not apply. Since idols are destroyed by burning (Note 106) it is obvious that their wood may be burned. If it is used to cook or bake

anything, the profit comes only after the wood has been reduced to ashes and is no longer forbidden. But in fumigating the burning itself is the valuable act and is forbidden. R. Eliezer permits to bring the profit to the Dead Sea as long as it is not clear that the action was forbidden. The rabbis forbid everything as long as it is not clear that the action is permitted.

(fol. 42b) **משנה טו:** נטל ממנה כרכר אסור בהנאה. ארג בו את הכננד הכננד אסור בהנאה. נתערב באחרים כולן אסורין בהנאה. רבי אליעזר אומר וילין הנאה ליום המלה. אמרו לו אין פדיון לעבודה זרה:

Mishnah 15: If he took from it [wood to make] a weaver's shuttle²⁷⁴, it is forbidden for usufruct. If he used it to weave cloth the cloth is forbidden for usufruct. If it was mixed up with others, all are forbidden for usufruct²⁷⁵. Rabbi Eliezer says, he should bring his profit to the Dead Sea²⁷². They said to him, idols cannot be redeemed.

274 Reading with the Halakhah (and Greek κερακίς, -ἴδος.

Maimonides's autograph Mishnah) כרכד, 275 Same argument as in Note 271.

(43c line 8) **הלכה טו:** נטל ממנה כרפד כול. אמר רבי חגי. כד נחתית מן אילפא אשכחית רבי יעקב בר אבא יתיב מקשי. נטל הימניה כרפד אסור בהנניה. ארג בו את הפגד הפגד אסור בהנניה. והתנינן. ימכר כולו לגוי חוץ מדמי יין נסוד שבו. אמר רבי יעקב בר אבא. חגי קשתה חגי קיימה. מאי כדון. תמן אין דרד בנ אדם לישח מן הגוי. ברם הקא דרד בנ אדם לישח בנ הגוי.

Halakhah 15: "If he took from it [wood to make] a weaver's shuttle," etc.

²⁷⁶Rebbi Haggai said, when I descended from a ship I found Rabbi Jacob bar Aha sitting and asked him. "If he took from it [wood to make] a weaver's shuttle, it is forbidden for usufruct. If he used it to weave cloth the cloth is forbidden for usufruct." But did we not state²⁷⁷, "it should all be sold to a Gentile except for the value of the libation wine in it"? Rabbi Jacob bar Aha said, Haggai raised the question, Haggai resolved it. What is it? There people do not buy²⁷⁸ from the Gentile; but here people buy cloth from the Gentile.

276 A somewhat truncated version of a passage in *Orlah* 3:1, Notes 77-81.

277 Mishnah 5:13: "If libation wine (forbidden for usufruct by the idolatrous act) fell into a cistern (of wine), all is forbidden for usufruct. Rabban Simeon ben Gamliel (whom practice follows) says, it should all be sold to a Gentile except for the value of libation wine in it." Why could the cloth not be sold except for the value of the one

forbidden piece?

278 In a society where Gentiles actually make libations to their gods it practically is impossible for Jews to buy wine from them. Therefore there is no danger that the forbidden wine would end up in the hands of a Jew. The strict rule of Mishnah 15 is not a consequence of the laws of forbidden usufruct but of the necessity to keep the forbidden items out of the hands of Jews.

(fol. 42b) **משנה יו:** פיצד מבטלה. קורסם זירד נטל ממנה מקל או שרכיט אפילו גלה הרי זו ביטלה. שפאה לצורכה אסורה ושלל לצורכה מותרת:

Mishnah 16: How does one make it insignificant? If he pruned dry branches, green branches, took from it a rod, or a twig, even a leaf, it became insignificant²⁷⁹. If he planed it for its benefit it is forbidden, not for its benefit it is permitted²⁶⁶.

279 Taking anything from a holy tree in a manner which a pagan never would do turns the *Ashera* into a common tree.

(43c line 13) **הלכה יו:** פיצד מבטלה כול. רב אמר. לצורכו בין היא בין שפניה מותרין. לצורכה היא אסורה ושפניה מותרין. שמואל אמר. לצורכה בין היא בין שפניה אסורין. לצורכו היא אסורה ושפניה מותרין. רבי יוחנן אמר. לצורכה היא אסורה ושפניה מותרין.

Halakhah 16: “How does one make it insignificant,” etc

Rav said, for his benefit, both it and its shavings are permitted; for its benefit it is forbidden but its shavings are permitted.

Samuel said, for its benefit both it and its shavings are forbidden, for his benefit it is forbidden but its shavings are permitted²⁸⁰.

Rebbi Johanan said, for its benefit it is forbidden but its shavings are permitted.

280 Cf. Note 266. In the Babli, 49b, the opinions given here as those of Rav and

Samuel are reported as those of students of Rav.

רבי ישמעאל פרק רביעי

(fol. 43c) **משנה א:** רבי ישמעאל אומר שלש אבנים זו כצד זו כצד מרקולים אסורות. ושתיים מותרות. וחקמים אומרים את שהוא נראה עמו אסור ואת שאינו נראה עמו מותר:

Mishnah 1: Rabbi Ismael said, three stones next to one another and next to a Mercury¹ are forbidden, but two are permitted². But the Sages say, what is seen with it is forbidden³, what is not seen with it is permitted.

1 A Hermes stele, where every passer-by is supposed to add a stone to the heap covering it. Cf. *Sanhedrin* 5:2 Note 36, Mishnah 7:12. The stele is a phallic symbol (Herodotus II 54).

2 If the stones are separated from the heap they do not belong to it. One starts a

new heap with a triangle of stones, not with two stones.

3 Since the additional stones are thrown, even if they are found separately from the mound but near to it one may assume that they were thrown as homage to Mercury.

(43d line 66) **הלכה א:** רבי ישמעאל אומר כול' אמר רבי אמי. טעמיה דרבי ישמעאל משום מרקוליס גדול אצל מרקוליס קטן. ורבנן אמרי. משום רגלי מרקוליס. כמה הן רגלי מרקוליס. רבי בא בשם רבנן דתמן. נ' אמה.

Halakhah 1: “Rabbi Ismael said,” etc. Rabbi Immi said, the reason of Rabbi Ismael is because of a small Mercurius next to a large Mercurius. But the rabbis say, because of the feet of Mercurius. How large are the feet of Mercurius? 50 cubits⁴.

4 Within 50 cubits of the center of the heap the stones “are seen with it.” Babli 50a.

(43c line 69) היילכת מרקוליס כך היא. ב' אבנים זו על גבי זו והשלישית מלמעלה. נתן את השנייה והתרו בו משום אותו ואת בנו לוקה. משום עבודה זרה נסקל. נתן את השלישית. פלוגתא דרבי יוחנן ורבי שמעון בן לקיש. דאיתפלגון. השוחט אותו ואת בנו לשם עבודה זרה. רבי יוחנן אמר. אם התרו בו משום אותו ואת בנו לוקה. משום עבודה זרה נסקל. רבי שמעון בן לקיש אמר. אפילו התרו בו משום אותו ואת בנו אינו לוקה מאחר שאילו התרו בו לשם עבודה זרה היה נסקל.

The practice of Mercurius is the following: Two stones one touching the other and the third on top of them⁵. If one put down the second one and they warned him because of “it and its young”⁶, he is whipped. Because of idolatry he is stoned⁷. If he put down the third⁸; there is a disagreement between Rabbi Johanan and Rabbi Simeon ben Laqish. ⁹For they disagreed: If somebody slaughters an animal and its young for idolatrous purposes. Rabbi Johanan says, if he was cautioned about an animal and its young he is flogged, about idolatry he is stoned. Rabbi Simeon ben Laqish said, even if he is cautioned about an animal and its young he is not flogged since he would be stoned to death had he be cautioned about idolatry.

5 This does not mean that the third stone lies vertically on top of the other two since this is a very unstable arrangement. It must be that the third stone forms a triangle together with the others; then the third stone is on the altitude of the triangle which is at a right angle to, i. e. “on”, the base line.

6 *Lev.* 22:28. The text is very elliptic here; it is explained by the following quote from *Terumot*.

A person is starting to build a rudimentary Mercurius. When he had put down the second stone he decided to sacrifice to the yet unfinished idol and he chose for this purpose an animal and its young. As explained in *Sanhedrin*, a criminal conviction in rabbinic theory is possible only if criminal intent was proven by the testimony of two eye witnesses that the perpetrator had duly been warned of the criminal nature of his intended act. Also,

for one act there can be only one punishment. Slaughtering an animal and its young on the same day is a simple criminal infraction for which no punishment is spelled out in the biblical text. The prescribed punishment for such an act is flogging.

7 One has to read “is not stoned”. Since two stones do not make an idol, even if there was criminal intent no crime was committed.

8 Then there is an idol and even though it is worshipped by throwing an additional stone, anything which would be part of the service in the Temple when done for an idol is a capital crime whether or not the idol is worshipped in this way.

9 This text to the end of the paragraph is from *Terumot* 7:1 Notes 64-66; *Ketubot* 3:1 (27c l.21).

(43c line 76) אִי זֶה הָיָה מְרְקוּלִיס. כָּל־שֶׁהוּא סָג אֶת הַיָּם וְאֶת הַדְּרָכִים. הַיִּלְכֵת מְרְקוּלִיס בְּזָרִיקָה. הַשְׁתַּחֲוָה לָהּ מָהוּ. אָמַר רַבִּי יוֹסִי. כָּל־עֲצָמוֹ אֵינוֹ קָרִי מְרְקוּלִיס אֲלֵא בְּהַשְׁתַּחֲוָה. וְאֵבֶן מִשְׁפָּטִית לֹא תִתֵּנוּ בְּאַרְצְכֶם לְהַשְׁתַּחֲוֹת עָלֶיהָ. יָכוֹל לֹא יִתֵּן שְׁנֵי אֲבָנִים זֶה עַל גִּבּוֹ זֶה וְיִתֵּן

קופתו עליהם. תלמוד לומר להשתחוות עליה. עליה אי אתה משתחוה. אבל נותן את את קופתך עליה. עליה אי אתה משתחוה. משתחוה אתה על אבני בית המקדש.

What is a Mercurius? Any which borders the ocean or roads¹⁰. The practice of Mercurius is by throwing. What if he bowed down before it? Rabbi Yose said, essentially is called Mercurius only for bowing down, *a maskit stone you shall not put up in your land to bow down on it*¹¹. I could think that one may not put two stones next to one another and put his box down on them, the verse says *to bow down on it*, you do not bow down on it but you put your box down on it; you do not bow down on it but you bow down on the stones of the Temple¹².

10 Indicating a landing spot on the shore or a road crossing on land.

between משכית and מרקוליס is not clear.

12 Babli Megillah 22b; Sifra Behar Pereq

11 Lev. 26:1. The connection to be made

9(5).

(43d line 6) רב מפקד לבית רב אחא. רבי אמי מפקד לאינשי ביתיה. כד תהווין נפקין לתעניתא לא תהווין רבעין כאורחכון. רבי יונה רבע על סיטריה. רבי אחא רבע על סיטריה. אמר רבי שמואל. אנא חמית רבי אבהו רבע כאורחיה. אמר רבי יוסי. קשיתא קומי רבי אבהו. והכתיב ואבן משפית לא תתנו בארצכם להשתחוות עליה. תפתר בקובע לו מקום. והכתיב ויהי דוד בא עד הר' אשר ישתחוה שם לאלהים. בלבד שתחוייה שאינה על הארץ. וכי יש שתחוייה שאינה על הארץ. ויכרעו אפים ארצה על הרצפה וישתחו. רבי אבהו מוסיף על הודו ליהנה כי טוב. רבי מנא מוסיף על פי לעולם חסדו על ישראל. רבי יוחנן אמר לרבי חייה בר בא. בבליא תרין מילין סלקין מן גביכון. מפשוטינתא דתעניתא וערובתא דיומא שביעיא. רבנן דסיסרין אמרין. אוף הדא מקוזתא. ואתייא כיי דמר רבי אמי. בבליא בשם רבנן דתמן. לא התירו שתחוייה אלא לתענית ציבור. ובלבד על הצד. רבי ינאי זעירא בשם אבהתיה. כל מי שאינו כשר כיהושע. שאם יפול על פניו לאמר לו הקדוש ברוך הוא קום לך. אל יפול. ובלבד יחד על הציבור.

Rav commanded to the family of Rav Aha, Rabbi Immi commanded to his own family, if you go out on the fast day¹³ you should not incline normally¹⁴. Rabbi Jonah inclined on his side; Rabbi Aha inclined on his side. Rabbi Samuel said, I saw Rabbi Abbahu inclining normally. Rabbi Yose said, I pointed out a difficulty before Rabbi Abbahu, is it not written¹¹, *a maskit stone you shall not put up in your land to bow down on it*. Explain it if he fixed a place for it. But is it not written¹⁵, *it was when David arrived at the mountain*

top where one bows down before God? Except bowing down which is not on the ground. Does there exist bowing down which is not on the ground? *They fell down with their faces to the ground and bowed down*¹⁶. Rabbi Abbahu added up to *give thanks to the Eternal for He is good*; Rabbi Mana added up to *for eternal is His kindness to Israel*¹⁷. Rabbi Johanan said to Rabbi Hiyya bar Abba: Babylonian, two things came from you, the stretching out on the Fast Day¹⁸, and the willow of the Seventh Day¹⁹. The rabbis of Caesarea say, also this blood letting²⁰. It follows what Rabbi Immi said, the Babylonians in the name of the rabbis there: They permitted prostrating only on a public fast, and only on the side²¹. The younger Rabbi Yannai in the name of his fathers: Anybody who is not qualified like Joshua that if he falls on his face the Holy One, praise to Him, would tell him, *get up*²², should not fall down, in the case of an individual [praying] for the community²³.

13 Usually, “fast day” is one of the days of penitence called in case of a drought, as described in Tractate *Ta’anit*. However, since the Babli states (*Ta’anit* 11b) in the name of Rav’s colleague R. Jeremiah bar Abba that this kind of fast day is not practiced in Babylonia, Rav’s instructions to the family of Rav Aḥa can only refer to the Fast Day, the Day of Atonement, where it is customary to prostrate oneself during the recitation of Rav’s composition *Alenu* at the mention that “we prostrate ourselves” and during the enactment of the Temple ceremony of the day. Cf. Note 18.

14 Face down on the floor. The examples following refer to the daily prayers which morning and afternoon have three parts. The first, the “eighteen benedictions” are said standing, the second, “falling down on one’s face”, is said while bending down, and the third, a recitation of biblical verses, is said sitting up straight. Following the majority opinion here and the unquestioned

prescription of the Babli (*Megillah* 22b) one may not put down one’s face to the ground but must bend it sideways. This presumes that the synagogue had a stone floor (as shown by the archeological evidence in Galilee.) There would be no need to turn one’s head on a dirt floor or on carpets.

15 2S. 15:32. A “high place” on the Mount of Olives which however had not to be destroyed since there was neither altar nor stone floor.

16 2Chr. 7:3.

17 The additions of RR. Abahu and Mana are in the verse, except for the addition “on Israel” which are not in this verse nor in any other biblical occurrence of the formula *give thanks to the Eternal for He is good, for eternal is His kindness*.

18 Prostrating oneself with outstretched arms and legs. Since the only day one did this in Babylonia was the day of Atonement, it must refer to that day.

19 Hitting the floor with a bunch of willow

twigs on the Seventh Day of the Festival of Tabernacles; an ancient custom to induce ample rains in the coming winter.

20 Traditions of good and bad days for blood letting.

21 To avoid violating *Lev. 26:1*. These now are Babylonian instructions for the Palestinian fast days for rain which were not practiced in Babylonia.

22 *Jos. 7:10*.

23 An individual praying in public for the relief of a public calamity may not prostrate himself unless he claims for himself a status at least equal to Joshua's. A private person praying for private needs may prostrate himself as much and as long as he feels necessary. Babli *Megillah* 22b in the name of R. Eleazar.

(43d line 21) וְחֻכָּמִים אוֹמְרִים. אֶת שֶׁהוּא נִרְאָה עִמּוֹ אֶסּוּר. וְאֶת שֶׁאִינוֹ נִרְאָה עִמּוֹ מוּתָר. אֶת שֶׁהוּא נִרְאָה עִמּוֹ גּוֹפּוֹ אֶסּוּר. וְאֶת שֶׁאִינוֹ נִרְאָה עִמּוֹ גּוֹפּוֹ. וְאֶת שֶׁאִינוֹ נִרְאָה עִמּוֹ אִינוֹ גּוֹפּוֹ. אֶת שֶׁהוּא נִרְאָה עִמּוֹ אֶסּוּר. לִית הָדָא פְּלִיגָא עַל רִישׁ לְקִישׁ. דְּרִישׁ לְקִישׁ אֱמַר. עֲבֻדָּה זָרָה שְׁנִשְׁתַּבְּרָה מוּתָרָת. לֹא כֹן סְבָרִינוּ מִימֵר. אִם בְּעֵתִיד לְהַחְזִירָן לְכָלִּין דְּבָרֵי הַכֹּל מוּתָר. לִית הָדָא פְּלִיגָא עַל רַבִּי יוֹחָנָן. דְּרַבִּי יוֹחָנָן אָמַר. עֲבֻדָּה זָרָה שְׁנִשְׁתַּבְּרָה אֶסּוּרָה. וְלֹא כֹן סְבָרִינוּ מִימֵר. אִם בְּשֶׁאִינוֹ עֵתִיד לְהַחְזִירָן לְכָלִּין דְּבָרֵי הַכֹּל מוּתָר. וְמַר רַבִּי יוֹדָן אָבִי דְּרַבִּי מִתְנִיָּה. אִם הָיָה מוֹנְחִין בְּמִקּוֹמָן כְּמִי שֶׁהוּא עֵתִיד לְהַחְזִירָן לְכָלִּין. וְאִילּוּ בְּמִקּוֹמָן.

רַבִּי בָּא בְּשֵׁם רַב. זָמְנִין דְּאֵת אֱמַר. שְׁבָרֵי עֲבֻדָּה זָרָה אֵין לָהּ בִּטּוּל. וְזָמְנִין דְּאֵת אֱמַר. מִשְׁמָשִׁי עֲבֻדָּה זָרָה אֵין לָהּ בִּטּוּל. מֵאֵין דְּאֱמַר. מִשְׁמָשִׁין. כָּל־שֶׁכֶּן עֲבֻדָּה זָרָה. וּמֵאֵין דְּמַר. עֲבֻדָּה זָרָה. הָא מִשְׁמָשִׁין לֹא. רַבִּי שְׁמוּאֵל רַבִּי אֲבָהוּ בְּשֵׁם רַב. אֲבָנֵי מְרֻקּוּלִיס שְׁנִשְׁתַּבְּרוּ אֵין לָהּ בִּטּוּל לְעוֹלָם מִשּׁוּם עֲבֻדָּת עֲבֻדָּה זָרָה. שְׁמַע רַבִּי יוֹחָנָן וְמַר. יָכֹה לִמְדֵּנוּ רַבִּינוּ. שְׁכֹן הַמִּשְׁתַּחֲוִּה לְעֲבֻדָּה זָרָה שְׁלֹאבִלִים אֵין לָהּ בִּטּוּל לְעוֹלָם.

כִּיצַד הוּא מְבַטְלָה. רַבִּי חִינְיָה בְּרַ אֲדָא דְּאֱמַר. בְּרוּק. וְהֵתֵנִי רַבִּי חִינְיָה. אֲבָנֵי מְרֻקּוּלִיס שְׁנִשְׁתַּבְּרוּ אֵין לָהּ בִּטּוּל. אֱמַר רַבִּי פִּינְחָס. כָּאֵן בְּנִזְרָקוֹת לָהּ וְכָאֵן בְּשֶׁאֵין נִזְרָקוֹת לָהּ. כִּהְדָּא רַבִּי שְׁמַעוֹן בְּרַבִּי הוּהוּ לִיה מְרֻקּוּלִיס גּוֹ חֻקְלָא. אֲתָא גַּבִּי בּוֹרְגָנְרָה. אֱמַר לִיה. בְּגִין דְּשִׁמְעִית דְּאֶרְכּוֹנָה בְּעִי מִיַּעְבּוֹר הָכָא לְמַחֲרָא אֱלָא בְּחֵייד דְּאֵת מְרִים אֵילִין כִּיפִינָא. מִן דְּרַמּוֹן אֲזַל בְּעִי מִיסְבִּינוֹן. אֱמַר לִיה. דִּידִי אֵינוֹן. שְׁמַע רַבִּי חִינְיָה בְּרַ וְהוּהוּ וְמַר. וְאֵית לֹאִמִּיָּה בְּרַ. וְלֹא רַבִּי חִינְיָה רַבָּה תִּנְיָתָה. אֱלָא מִן דְּשִׁמְעָה מִינִיָּה חֻזַּק וְקִבְּעָה.

“But the Sages say, what is seen with it is forbidden, what is not seen with it is permitted.” (What is seen with it, its body, is forbidden; what is not seen with it is permitted.)²⁴ What is seen with it⁴ is its body, what is not seen with it is not its body. ²⁵Does this not disagree with Rabbi Simeon ben Laqish since Rabbi Simeon ben Laqish said, an idol which was broken is permitted? And so we are thinking to say if in the future he can restore it whole it is

permitted²⁶ according to everybody. ²⁵Does this not disagree with Rabbi Johanan, as Rabbi Johanan said, an idol which was broken is forbidden? And so we are thinking to say if in the future he cannot restore it whole it is permitted according to everybody. ²⁷But Rabbi Yudan the father of Rabbi Mattaniah said, if they were lying on their spot it is as if he would return it to its wholeness. And these are at their place²⁸.

Rebbi Abba in the name of Rav: Sometimes you are saying, broken pieces of idols cannot be nullified. And sometimes you are saying, serving pieces of idols cannot be nullified²⁹ He who says serving pieces, certainly idols. But he who says idols, therefore not serving pieces. Rebbi Samuel, Rebbi Abbahu in the name of Rav: Mercurius stones which were scattered never can be nullified, because of worship of idols³⁰. Rebbi Johanan heard it and said, our teacher taught us well, since if one bows down before an idol of (mourners)³¹ they never can be nullified.

How does one nullify it? Rebbi Ḥiyya bar Ada said, by spit³². But did not Rebbi Ḥiyya state: Scattered stones of Mercurius have no nullification? Rebbi Phineas said, here those which were thrown at it; there those which were not thrown at it³³. As this: Rebbi Simeon ben Rebbi had a Mercurius on his field. He came to his *burgonar*³⁴ and told him, since I heard that the magistrate³⁵ wants to pass by here tomorrow, by your life lift these stones. After he³⁶ had lifted them, he wanted to take them away. He³⁷ told him, they are mine. Rebbi Ḥiyya bar Abba heard this and said, did not the Elder Rebbi Ḥiyya state this³³? But since he had heard it from him, he reinforced³⁸ and fixed it³⁹.

24 The first time (in parentheses) the scribe mixed the Mishnah text with the intended explanation. The second time then he wrote correctly.

25 A quote from Chapter 3, Notes 215 ff.

26 It is clear that one has to read with the text in 3:2 "forbidden". The argument goes as follows: Since the stones lying around a Mercurius are just pebbles, should they not be considered shards? The answer is that

the pebbles can easily be put back on the mound; therefore they are forbidden.

27 Chapter 3, Note 71.

28 Therefore they are forbidden according to everybody.

29 Both versions are reported as to be stated by Rav.

30 Since the worship of Mercurius is by throwing a stone on the heap, all stones (except the core which formed it in the first

place) are offerings to the idol which are permanently and irrevocably forbidden.

31 A scribal error. Instead of שלאבלים read שלאכלים “of food”.

32 By having a Gentile spit on some of the core stones.

33 As noted before, the original mound can be disassembled and its stones used; the accretions by passers-by cannot.

34 Probably a dweller or supervisor of a *burgus*, πυργός “tower”; cf. Chapter 1, Note 229. The conjecture of M. Sokoloff, “tenant farmer” based on an interpretation of D. Sperber (*Essays on Greek and Latin in the*

Mishna, Talmud and Midrashic Literature, Jerusalem 1982) of πυργός as “farm house” is not convincing. Also compare Greek πυρκαεύς, “fire-kindler” (E. G.).

35 Greek ἄρχων.

36 The *burgonar*.

37 R. Simeon ben Rebbi.

39 R. H.I.D. Azulay reports (כבר לאדן) a ms. reading חזר “he repeated”.

40 He publicized what he had done in order to fix practice following R. Hiyya in the interpretation of R. Phineas.

משנה ב: מִצָּא בְּרֹאשׁוֹ מַעוֹת כֶּסֶּת אוֹ כְּלִים הָרִי אֵילָּו מוֹתְרִין. בְּרִבְלִי עֲנָבִים וְעֵטְרוֹת שֶׁל שִׁבְלִים וְיֵינֹת וְשִׁמְנִים וְסֵלֶתוֹת וְכָל דָּבָר שֶׁבִּיּוֹצֵא בּוֹ קָרֵב עַל נֶגְי הַמִּזְבֵּחַ אָסוּר:

Mishnah 2: If one found on top of it⁴¹ coins, garments, or vessels, they are permitted⁴². Branches of vine⁴³, wreaths of ears of grain, wines, oils, and fine flours, and anything similar to what is offered on the altar⁴⁴ is forbidden.

41 Of a Mercurius mound.

42 Since only stones are offerings to the Mercurius. There is a dissenting opinion in Tosephta 6:13 which forbids coins found on the top stone.

43 Greek φραγέλλιον “twig”.

44 Anything of a kind acceptable for the altar in the Temple is forbidden if offered to any pagan deity even if the latter is not usually worshipped in this way. Cf. *Sanhedrin* 7:11, Note 239.

הלכה ב: מִצָּא בְּרֹאשׁוֹ מַעוֹת כּוֹל. אָמַר רַבִּי יוֹנָתָן. לֹא סוֹף דָּבָר עֵטְרוֹת שִׁבְלִים אֶלָּא אֶפִּילוֹ עֵטְרוֹת שְׁלֹוֹרֵד. אָמַר רַבִּי יוֹסִי. לֹא סוֹף דָּבָר מֶרְקוּלִיס וּבְרֹאשׁוֹ מַעוֹת אֶלָּא אֶפִּילוֹ עֵבֻדָּה זָרָה שֶׁאֵין לָהּ קִנְסָלִין מִצָּא בְּתוֹכָהּ כֶּסֶּת אוֹ כְּלִים הָרִי אֵילָּו מוֹתְרִין.

Halakhah 2: “If one found coins on top of it,” etc. Rabbi Jonathan said, not only wreaths of ears of grain but even wreaths of roses⁴⁵. Rabbi Yose said, not only a Mercurius and on top of it coins but even any pagan place

which has no lattice work⁴⁶ and he found in it garments or vessels, they are permitted.

45 Which are forbidden as ornaments and also because they are used in Isis worship.

46 Which separates the area reserved for priests from that of common worshippers, where everything is forbidden as

appurtenances of idols (Chapter 2 Note 219, Chapter 3 Note 132). If no such separation exists, nothing is reserved for the idol except what is on it. The Babli has the opposite rule, 51b.

משנה ג: עבודה זרה שיש בה גינה ומרחץ נהנין מהן שלא בטובה ואין נהנין מהן בטובה. היה שלה ושל אחרים נהנין מהן בטובה ושל בטובה:

Mishnah 3: If an idol had a garden or a bath house, one may benefit from them not with a favor⁴⁷ but one may not benefit with a favor. If it belongs to it and a third party one benefits whether with or without a favor⁴⁸.

47 One does “a favor” either by paying or by incurring a debt of gratitude, i. e., the other party accumulates goodwill which obliges one to reciprocate on occasion.

48 Since one may credit the third party with either income or goodwill. As implied by the Halakhah, direct payments to a pagan temple are always excluded.

הלכה ג: עבודה זרה שהיה לה גינה כול. כיני מתניא. בטובת הכופרין ושלט בטובת הכופרין. חלילין שלעבודה זרה אסור למוכרן. אם היו מעלין שכן למדינה אף על פי שעושין בהן צורך לעבודה זרה מותר למוכרן. חנות שלעבודה זרה אסור לשוברה. אם היתה מעלה שכן למדינה אף על פי שעושין בה צורך לעבודה זרה מותר לשוברה. הגובה לשם עבודה זרה אסור ליתן לו. אם היה מעלה שכן למדינה אף על פי שהוא גובה לשם עבודה זרה מותר ליתן לו. ומתניא אמרה כן. היה שלה ושל אחרים נהנין מהן בטובה ושלט בטובה:

Halakhah 3: “If an idol had a garden,” etc. So is the Mishnah: A favor to the priests or without a favor to the priests⁴⁹. ⁵⁰“It is forbidden to sell⁵¹ fives of idols, but if one pays the rental fee to the state if it is used to supply the needs of idol worship it is permitted to sell⁵¹ them⁵². It is forbidden to rent a store from a pagan temple, but if one pays rent to the state even if it is used to supply the needs of idol worship it is permitted to rent it. It is forbidden to

give to collectors for idol worship. If he pays a fee to the state even though he collects for idol worship it is permitted to give to him.” And the Mishnah said so, “if it belongs to it and a third party one benefits whether with or without a favor.”

49 Babli 51b.

50 Tosephta 6:1.

51 In the Tosephta: “to use for dirges.” Since a rental fee is mentioned, “rent” is the reading which is required here also.

52 As stated at the end of the Halakhah, since the state will take its cut and not spend all the money for idolatry, one may suggest that the Jew’s money is income for the state. This is valid for all cases in the Tosephta.

משנה ד: עבודה זרה של נכרי אסורה מיד ושל ישראל משתעבד. נכרי מבטל עבודה זרה שלו ושל ישראל. וישראל אינו מבטל עבודה זרה של נכרי. המבטל עבודה זרה ביטל משמשיה. ביטל משמשיה משמשיה מבטלין והיא אסורה:

Mishnah 4: A Gentile’s idol is immediately forbidden⁵³ but a Jew’s only when it is worshipped⁵⁴. A Gentile is able to annul his idol and that of a Jew; but a Jew cannot annul the idol of a Gentile⁵⁵. If one annulled an idol he annulled its appurtenances; if he annulled its appurtenances the appurtenances are annulled but it is forbidden.

53 Immediately when it was made since its manufacture is part of its worship.

54 Since he is not supposed to do it there is a chance that he will not worship it.

55 “To annul” an idol is to treat it in a way inconsistent with veneration, such as breaking off a piece. If the Gentile does this he transforms the idol into a piece of art

which is permitted for usufruct. A Jew can do this to his own idol as part of his repentance but since he is under the obligation to destroy pagan idols without obtaining any gain he cannot transform Gentile objects forbidden for usufruct into those permitted for usufruct.

הלכה ד: עבודה זרה של נכרי אסורה מיד כול'. רבי שמעון בן לקיש אומר. באומן שעושה למכור לשוק היא מתניתא. שפיון שגמרה דבר בריא שהשתחוה לה. רבי יוסי בעי. אם דבר בריא שהשתחוה לה בידא תנינן. עבודה זרה של נכרי אסורה מיד ושל ישראל משתעבד.

רבי הילא בשם רבי שמעון בן לקיש. החוצב צלם לעבודה זרה. אף על גב דאתא אמר. אין קרקע נאסר. מתרין בו על כל-סיתות וסיתות. לכשיחלש לוקה. אמר רבי יוסי. את שמע מינה. העושה צלם לעבודה זרה. אף על גב דאתא אמר. אין דבר שיש בו רוח חיים נאסר. מתרין בו על כל-קורנס וקורנס. לכשיגמר לוקה.

Halakhah 4: “A Gentile’s idol is immediately forbidden,” etc. Rabbi Simeon ben Laqish said, the Mishnah speaks about an artist who works to sell it on the market. When he finishes it, it is a sure thing that he bows down before it. Rabbi Yose asked, if it is a sure thing that he bows down before it, why did we state “a Gentile’s idol is immediately forbidden but a Jew’s only when it is worshipped”⁵⁶?

Rebbi Hila in the name of Rabbi Simeon ben Laqish: If one cuts an idol in stone, even though you say that nothing connected to the ground is forbidden, one warns him on every single chiseling and when it will be separated from the rock he will be flogged⁵⁷. Rabbi Yose said, from this you understand that if somebody makes a statue for idol worship, even though you say that nothing breathing can be forbidden, one warns him about each single mallet⁵⁸ and he will be flogged when it is finished⁵⁹.

56 If he works for the trade and an idol is worth more if it was worshipped then there is no reason to exempt a Jewish-made idol from immediate prohibition.

57 While in modern Hebrew קורנס is a sledge hammer, and some dictionaries define it as a mallet, neither etymology nor meaning are clear. (In Arabic قرناس is “the

back of an axe, mountain ridge”). The sentence is not intelligible, but the Babli (19b) seems to disagree since it notes that an incomplete idol will not be worshipped and therefore has no commercial value in the idol trade; therefore it is the last application of the hammer or chisel which confers the status of idol.

(43d line 62) גְּבוּדָה זָרָה שֶׁלִּנְכָרִי אֲסוּרָה מִיָּד לְפִיכָךְ יֵשׁ לָהּ בִּיטוּל. וְשֶׁלִּישְׂרָאֵל מִשְׁתַּיַּעֲבֵד לְפִיכָךְ אֵין לָהּ בִּיטוּל. אָמַר רַבִּי זְעִירָא. לֵית כָּאֵן לְפִיכָךְ. אֶלָּא אֵין לָהּ בִּיטוּל וְיֵשׁ לָהּ בִּיטוּל. גְּבוּדָה זָרָה שֶׁלִּנְכָרִי אֲסוּרָה מִיָּד. דְּכָתִיב אֲבָד תֶּאֱבְדֹּן. מִיָּד. וְשֶׁלִּישְׂרָאֵל מִשְׁתַּיַּעֲבֵד. דְּכָתִיב אֲרוּר הָאִישׁ אֲשֶׁר יַעֲשֶׂה פֶסֶל וּמִסֶּכֶה וּגו'. לְכַשְׁשִׁים. וְאֵית דְּמַחְלָפִין לִיה. גְּבוּדָה זָרָה שֶׁלִּישְׂרָאֵל אֲסוּרָה מִיָּד. דְּכָתִיב אֲרוּר הָאִישׁ. וְשֶׁלִּנְכָרִי עַד שְׁתַּיַּעֲבֵד. דְּכָתִיב אֲבָד תֶּאֱבְדֹּן. אֶת־כָּל־הַמִּקְמֹות אֲשֶׁר עָבְדוּ־שָׁם הַגּוֹיִם. רַבִּי יֶחֱזֶק בֶּר נַחֲמָן בִּשְׁם שְׁמוּאֵל שָׁמַע לוֹן מִן הַדָּא. אִם יִרְשׁוּנוּ כְּשֶׁהוּא אֵלֹהֶ בְּאֵשׁ תִּשְׂרֹפוּ. וְאִם לֹא אֲשֶׁר אַתֶּם יִרְשִׁים אַתֶּם אֶת־אֱלֹהֵיהֶם. רַבִּי

יוֹחָנָן בֶּשֶׁם רַבִּי יֵצְאֵי שְׁמַע לֹוּן מִן הַדָּא. לֹא-תַחֲמוּד לְסָף וְזָהָב עֲלֵיהֶם. אֶת אֵין אֶת חוֹמָד וְלֹקֶחַ. אֲחֵרִים חוֹמְדִין וְאֶת לֹקֶחַ.

רבי יוחנן אמר לבר דרוסי. חות ותבר כל-אילין צלמיא דגו דימוסין. ונחת ותבר פולחון פרא חד. ולמה כן. אמר רבי יוסי בירבי בון. מפני שנחשד ישראל אחר להיות מקטיר עליו.

"A Gentile's idol is immediately forbidden," therefore it can be annulled. "But a Jew's only when it is worshipped," therefore it cannot be annulled. Rabbi Ze'ira said, there is no "therefore"⁵⁸, only "it cannot be annulled or it can be annulled". "A Gentile's idol is immediately forbidden," as it is written⁵⁹: *you certainly shall destroy*. "But a Jew's only when it is worshipped," as it is written⁶⁰, *cursed be the man who makes a hewn or molten image*, etc., when he puts it up. But some are switching this⁶¹. "A Jew's idol is immediately forbidden," for it is written, *cursed be the man*. "But a Gentile's only when it was worshipped," as it is written⁵⁹, *you certainly shall destroy all the places where these peoples worshipped*. Rabbi Isaac bar Nahman in the name of Samuel understood it from the following: If you inherited it when it was a god you shall burn it in fire⁶², otherwise *of which you will inherit their gods*⁶³. Rabbi Johanan in the name of Rabbi Yannai understood it from the following: *You should not covet silver or gold for them*⁶⁴. You cannot covet and take, but others can covet and you are taking.

Rabbi Johanan said to Bar Drosai, go down and break all those statues in the public baths⁶⁵. He went down and broke them all except one⁶⁶. Why this? Rabbi Yose ben Rabbi Abun said, because another⁶⁷ Jew was suspected of burning incense for it.

58 It is not a logical consequence. The Tosephta, 5:3, notes that it is a logical consequence of the opposite opinion. If the idol made by a Jew is immediately forbidden even if he did not worship it then it follows that he cannot annul it (except maybe by melting it down) but the Gentile whose idol becomes forbidden only if worshipped can annul an idol by an act of non-worship.

59 Deut. 12:20.

60 Deut. 27:15. The argument is from the later part of the verse, *cursed be the man who would make a hewn or molten image and put it up in secret*. As long as it is not put up there is no curse. The Babli, 52a, reads the verse as stating that the curse applies when the idol is made.

61 Tosephta 5:4.

62 This probably should be a quote of

Deut. 7:25.

63 The full verse reads: *you certainly shall destroy all the places where these peoples worshipped, whom you are going to inherit, their gods.* By taking only a fraction of the verse it is turned into permission to inherit the statues of the gods. This implies that if the Gentiles do not consider them as gods any more, the prohibition of usufruct is lifted.

64' Deut. 8:25. If the Gentiles covet their silver and gold, you may take it. In the Babli, 52a, is a similar argument. Samuel

reads the verse, *do not covet silver or gold for them and take for yourself as: you may not covet silver or gold for them but you may be permitted to take for yourself.*

65 Greek δημόσιον (βαλανεῖον) public (government run) bath.

66 Greek παρά. For this use of the word cf. E. and H. Guggenheimer, *On the Talmudic Vocabulary* 12-15, Lešonenu 39(1975) pp. 62-69.

67 One might read אחד "one" instead of אחר "another."

(43d line) רבי חייק בר אשי בשם רב. רבי הנה יתיב מתני לרבי שמעון במה. הנכרי מבטל גבוהה זרה ששלו ושלחבירו. אמר ליה. עד דהנה חייקל עלך. כן אית תני תני. הנכרי מבטל גבוהה זרה ששלו ושלחבירו. אמר לו. לאו בני. גבוהה זרה שעבדה ישאל אין לה ביטול לעולם. ותני כן. רבי שמעון בן מנסיא אומר. גבוהה זרה שעבדה ישאל אין לה ביטול לעולם. רב מתני בשם טעמא דאהו תניא ארור האיש אשר יעשה פסל ומסכה. לעולם.

Rebbi Hiyya bar Ashi in the name of Rav: ⁶⁸Rebbi was sitting and teaching his son⁶⁹ Rebbi Simeon. The Gentile annuls his own idol and that of his neighbor. He said to him, when you still were in full mental powers you quoted Tanna'im stating that a Gentile annuls his own idol and that of a Jew. He answered him, no, my son. An idol which a Jew had worshipped can never be annulled. And it was stated so: "Rebbi Simeon ben Menassia says, an idol which a Jew had worshipped can never be annulled."⁷⁰ Rav stated in the name of ⁷¹the reason of this Tanna: *Cursed be the man who makes a hewn or molten image, forever*⁶⁰.

68 Babli 52b, where, however, it is accepted that Rebbi in his advanced age changed his opinion.

69 Reading ברה "his son" instead of inappropriate בקה "height, altar" or בקה

"why?"

70 Babli 53a; as anonymous text Tosephta 5:3.

71 A name is missing here.

6) (44a line 6) בר קפרא אשכח חד עיזקא צר. חד טלי ארמאי הוה פרי בתריה. הוה מחי ליה הוה מיסקל ליה. הוה אמר ליה. רוק עליה. והוא לא מקבל עלוי. אשתני עליה. והוא לא מקבל עלוי. הדא אמרה. נכרי מבטל עבודה זרה שלו ושל חבריו על פרוחו. והוא שידע טיב עבודה זרה שלו. הדא אמרה. עבודה זרה שעבדה ישראל אין לה ביטול לעולם. ותיעשה כעבודה זרה שהניחיה עובדיה ונתנה בטיילה. אמר רבי זעירא. כל שאילו מאליה היא בטיילה ישראל מבטלה. וכל שאילו מאליה אינה בטיילה אין ישראל מבטלה.

⁷²Bar Qappara found a ring with an idol. An Aramean youth was running after him. He was hitting him⁷³, cursing him, and told him, spit on it! He did not accept. Urinate on it! He did not accept. This implies that a Non-Jew annuls his own and another person's idols under duress, on condition that he know the nature of this idol. An idol which had been worshipped by a Jew can never be annulled⁷⁴. Could it not be like an idol which was abandoned by its worshippers and by that being annulled⁷⁵? Rabbi Ze'ira said, anything which becomes annulled by itself, a Jew can annul. But anything which does not become annulled by itself, a Jew cannot annul⁷⁶.

72 Another version of the same story is in the Babli, 43a, leading to essentially the same conclusions.

73 Bar Qappara the Gentile youth.

74 This sentence does not seem to fit into the context here. It is not totally excluded that the translation should be: An idol which had been worshipped, a Jew can never annul.

75 Mishnah 6.

76 If the ring had been abandoned, by this fact it would become permitted for usufruct. Then the Jew could eliminate the idolatry aspect either by defacing it or by melting it down. But if the ring was lost and the owner did not realize his loss, he could not abandon it and it remains forbidden for all usufruct unless a Gentile treat it with contempt.

13) (44a line 13) רב אמר. בימוס לא בטיל. הא אם ביטלו בטל. מחלפה שיטתיה דרב. תמן הוא אמר. מאז המתין כוס לעבודה זרה נאסר מיד. והכא את אמר הכין. כאן בשקיטור וכאן בשלא קיטור. ואפילו תימר. כאן וכאן בשקיטור. רב כדעתיה. דרב אמר. מאז המתין כוס לעבודה זרה נאסר מיד.

רב אמר. בימוס לא בטל. הא משמשין בטל. מחלפה שיטתיה דרב. תמן אמר רב ששת בשם רב. בשחילכו להם המהלכים בדרך אחרת. והכא הוא אמר הכין. כאן בשקיטור וכאן בשלא קיטור. ואפילו תימר. כאן וכאן בשקיטור. רב כדעתיה. דרב אמר. מאז המתין כוס לעבודה זרה נאסר מיד.

Rav said, a pedestal⁷⁷ is not annulled⁷⁸. Therefore if one annulled it it is annulled⁷⁹. The opinions of Rav seem inconsistent. There he says⁸⁰, if one casts a cup for idolatry it is immediately forbidden, and here he says so? Here if he burned incense, there if he did not burn incense⁸¹. And even if you are saying, in both cases if he burned incense, Rav follows his opinion since Rav said, if one casts a cup for idolatry it is immediately forbidden⁸².

Rav said, a pedestal is not annulled. Therefore its appurtenances are annulled. The opinions of Rav seem inconsistent. There⁸³ Rav Sheshet said in the name of Rav, if the procession was using another way, and here he says so? There if he burned incense, here if he did not burn incense. And even if you are saying, in both cases if he burned incense, Rav follows his opinion since Rav said, if one casts a cup for idolatry it is immediately forbidden⁸².

77 Cf. Chapter 3:10, Note 231.

78 If the pedestal was made especially for an idol, removing the idol does not automatically make the pedestal permitted for usufruct. This implies that the pedestal is treated not as an appurtenance of the idol but as a separate idol.

79 In the Babli, 53b, this is the opinion of the Galilean authorities R. Johanan and R. Simeon ben Laqish, opposed by Rav and Samuel.

80 Halakhah 3:10. Since Rav deduces from the statement of the Mishnah about stones used for a pedestal rules about appurtenances of idols it follows that he treats the pedestal as an appurtenance.

81 A pedestal which was not used as an altar is an appurtenance; if it was used as an altar it is an idol.

82 Obviously this quote cannot be correct since it was the basis of the question raised; one must refer here to the statement of R. Abba in the name of Rav in Halakhah 3:10: "This implies that what is cast for idolatry is immediately forbidden." The difference is whether the stone was quarried or the tree felled for the purpose of building a pedestal for idolatry or whether the material was bought on the market.

83 This refers to Mishnah 6, pedestal erected by the Augustales, the priests of the worship of the Emperor, for a visit of the Emperor in the region. If the Emperor did not pass by a certain pedestal it is permitted without being disassembled. The statement of Rav Sheshet is not otherwise recorded. Babli 53b.

(44a line 21) אָמַר רַבִּי יוֹחָנָן. מִצֵּבָה כָּל־שֶׁהִיא יְחִידִית. מִזְבֵּחַ כָּל־שֶׁאַבְנֵי מְרֻבּוֹת. הִזְקִיָּה אָמַר. מִצֵּבָה כִּין שֶׁנִּפְגְּמָה בִּיטְלָהּ. מִזְבֵּחַ צָרִיד לִפְגָּם כָּל־אַבֵּן וְאַבֵּן. מִתְּנִיתָא דְּהִזְקִיָּה פְּלִגְנָא עָלוּ. נִתְצַת אֶת הַמִּזְבֵּחַ הַנֵּחַ לוֹ. שִׁבְרַת אֶת הַמִּצֵּבָה הַנֵּחַ לָהּ. רַבִּי זְעִירָא רַבִּי יִצְחָק בַּר נַחֲמָן

בְּשֵׁם רַבִּי הוֹשַׁעְיָה רַבִּי חִיָּה רַבִּי בָּא רַבִּי לְעִזְרָא בְּשֵׁם רַב הוֹשַׁעְיָה. בְּשׁוּמוֹ | כָּל־אֲבָנֵי מִזְבֵּחַ
כָּאֲבָנֵי־גִיר מְנוּפָצוֹת. וְדוֹף אַחֲרֵיהֶם עַד שֶׁתִּקְעַקַע בִּיצְתָם מִן הָעוֹלָם. בְּרֵם הָכָא. שְׁבִרְתָּ
הַמִּצְבָּה הַיָּחִיד לָהּ. נִתְצַתְּ הַמִּצְבָּה חֵנַח לוֹ.

Rebbi Johanan said, a stele is a monolith, an altar has many stones⁸⁴. Hizqiah said, a stele is annulled once it is damaged; of an altar one has to damage each single stone. A *baraita* of Hizqiah disagrees with him: If you tore down the altar, leave it alone; if you broke the stele, leave it alone⁸⁵. Rebbi Ze'ira, Rebbi Isaac bar Nahman in the name of Rebbi Hoshaia; Rebbi Hiyya (Rebbi)⁸⁶ Abba, Rebbi Eleazar in the name of Rav Hoshaia: *When He turns all stones of the altar like smashed pieces of chalk*⁸⁷, persecute them until you eliminated its egg from the world. But here, if you broke a stele, leave it alone; if you tore down an altar, leave it alone⁸⁸.

84 Babli 53b. In the Babli, instead of *masseba* one uses βωμός, not consistent with the use of the term in the Yerushalmi.. This change in terminology is not usually recognized in the talmudic Dictionaries.

85 The terminology is taken from *Deut.* 12:3.

86 Read בר for ר. The tradent is R. Hiyya bar Abba.

87 *Is.* 27:9. In the Babli, 54a, this is Hizqiah's *baraita*; probably here also this is the statement which contradicts his earlier statement that simple damage, not complete annihilation, permits *massebot* and altars for usufruct.

88 Divine vengeance is different from rules prescribed for humans.

כְּתִיב לֹא־תַעֲשׂוּ לָכֶם אֱלִילִים וַיִּסָּל וּמִצְבֵּה לֹא־תִקְמוּ לָכֶם. לֹא הִיא עֲשִׂיָּה הִיא
קִימָה. אָמַר רַבִּי הִילָא. עֲשִׂיָּה כְּתֻחִילָהּ. קִימָה כָּל־שִׂאִילוֹ תִפּוֹל לֹא יִקְיִמָּנָה. כְּתִיב וְנִתְצַתָּם
אֶת־מִזְבְּחֵיהֶם וְשִׁבְרֵתָם אֶת־מִצְבֹּתָם. וּמִנִּיין לִיתֵן אֶת הָאָמּוֹר בָּזָה לָזָה. אָמַר רַבִּי בּוֹן בֵּר חִיָּה
לְצַדִּין אֶתְאָמְרָת. אוֹ שִׁיבּוֹר אוֹ גִּדּוּעַ אוֹ נִתְצָה לְכָל־אַחַת וְאַחַת.

It is written⁸⁹, *do not make idols for yourselves, statue and stele you shall not erect for yourselves*. Is not making the same as erecting? Rebbi Hila said, making is from new; erecting, if it falls down one shall not re-erect it.

It is written⁹⁰, *you shall tear down their altars and break their steles*. From where to apply one to the other? Rebbi Abun bar Hiyya said, it was said to refer to both sides; either breaking, or cutting down, or tearing down for each of them.

89 Lev. 26:1.

statues you shall cut down.

90 Deut. 12:3. The verse continues, *their*

(fol. 43c) **משנה ה:** בִּיצֵד מִבְּטָלָה קָטַע רֹאשׁ אֲזִנָּהּ רֹאשׁ חוֹטְמָהּ רֹאשׁ אֶצְבָּעָהּ. פָּחַסָה אָף עַל פִּי שְׁלֹא חִסְרָהּ בִּיטְלָהּ. רָקַק בְּפָנֶיהָ הִשְׁתִּין בְּפָנֶיהָ גִּרְרָה וְזָרַק בָּהּ אֶת הַצּוֹאָה הָרִי זֶה אֵינָה בְּטִילָה. מָכְרָהּ אוֹ מִשְׁכָּנָהּ רַבִּי אֹמֵר בִּיטֹל וְחֻכְמִים אֹמְרִים לֹא בִיטֹל:

Mishnah 5: How does one annul it⁹¹? If he cut off the top of its earlobe, the tip of its nose, the tip of its finger. If he disfigured it even though nothing is missing⁹², he annulled it. If he spat in its face, urinated before it, dragged it, threw excrement on it, this is not annulled.⁹³ If he sold or mortgaged it, Rabbi says it is annulled, but the Sages say it is not annulled.

91 An idol or one of its appurtenances.

hammer so that nothing is missing.

92 E. g., by denting the statue with a

93 Only permanent damage is acceptable.

(44a line 34) **הלכה ה:** בִּיצֵד הוּא מִבְּטָלָה כּוֹל. אָמַר רַבִּי זְעִירָה. הָדָא דְתִימָר. בְּשִׁמְכָרָה מִתּוּךְ שְׁלוֹם. אֲבָל מָכְרָה מִתּוּךְ הַקִּפְדָּה דְּבָרֵי הַכֹּל בְּטִילָה. וְהָלָה כִּי־יִרְעֵב וְהִתְקַצֵּף וְקָלַל בְּמַלְכוֹ וְגו'. זְעוּר בַּר הִינְנָה בָּשָׂם רַבִּי חֲנִינָה. בְּשִׁמְכָרָה לְצוּרֵי נְחָלְקוּ. אֲבָל אִם מָכְרָה לְעוֹבְדָהּ דְּבָרֵי הַכֹּל. אֵינָה בְּטִילָה. רַב יִרְמְיָה בָּשָׂם רַב. בְּשִׁמְכָרָה לְעוֹבְדֵיהָ נְחָלְקוּ. אֲבָל אִם מָכְרָה לְצוּרֵי דְּבָרֵי הַכֹּל. בְּטִילָה הִיא. רַבִּי יַעֲקֹב בַּר אֲחָא בָּשָׂם רַבִּי יוֹחָנָן דְּבָרֵי הַכֹּל. רַבִּי הִילָא בָּשָׂם רַבִּי שְׁמַעוֹן בֶּן לִקְיִשׁ בְּמַחְלוּקָתָהּ. וְאַתְיָא דְרַבִּי חֲנִינָה כְּרַבִּי רַבִּי יוֹחָנָן וְדָרַב יִרְמְיָה כְּרִישׁ לִקְיִשׁ. מֵאִי כְדוֹן. בְּשִׁמְכָרָה לְצוּרֵי נְחָלְקוּ. אֲבָל אִם מָכְרָה לְעוֹבְדֵיהָ דְּבָרֵי הַכֹּל. אֵינָה בְּטִילָה.

Halakhah 5: “How does one annul it,” etc? Rabbi Ze’ira said, this is if he sold it in peace⁹³. But if he sold it in ill-will, everybody agrees that it is annulled; *it happens that he is hungry, falls into a rage, and curses his king*⁹⁴ etc.

Ze’ur bar Hīnena in the name of Rabbi Hānina: They disagreed in case he sold it to a goldsmith⁹⁵. But if he sold it to its worshipper, everybody agrees that it is not annulled. Rav Jeremiah in the name of Rav: they disagreed if he sold it to its worshippers. But if he sold it to a goldsmith everybody agrees that it is annulled. Rabbi Jacob bar Aḥa in the name of Rabbi Johanan: the opinion of everybody. Rabbi Hila in the name of Rabbi Simeon ben Laqish:

in dispute⁹⁶. It turns out that Rabbi Ḥanina held with Rabbi Johanan and Rav Jeremiah with Rabbi Simeon ben Laqish. What about it? They disagreed in case he sold it to a goldsmith. But if he sold it to one of its worshippers, everybody agrees that it is not annulled⁹⁷.

93 This refers to the last sentence in the Mishnah, the disagreement between Rabbi and the Sages. If the seller does not express a grudge towards the idol.

94 *Is.* 8:21. The Babli uses the same verse as a reason for which a contemptuous treatment of an idol is not an annulment; 53a.

95 The disagreement between R. Johanan

and Rav is formulated in the Babli (53a) about whether the idol is sold to a Jewish or a Gentile goldsmith, without exact attribution of authorship.

96 It is not spelled out what they are referring to. The next sentence makes this clear.

97 The decision follows R, Johanan and the goldsmith must be a Jew who will melt down the idol.

מִשְׁנָה ו: עֲבוּדָה זָרָה שֶׁהִנְחִיחָהּ עוֹבְדֶיהָ בְּשָׁעַת שְׁלֹמֹם מוֹתֶרֶת. בְּשָׁעַת מִלְחָמָה אֲסוּרָה. בִּימוֹסִיאוֹת שֶׁל מְלָכִים הָרִי אֵלֶּי מוֹתֶרֶן מִפְּנֵי שֶׁמַּעֲמִידִין אוֹתָן בְּשָׁעָה שֶׁהַמְּלָכִים עוֹבְדִין: (fol. 43c)

Mishnah 6: An idol which was abandoned by its worshippers in times of peace is permitted, in times of war is forbidden⁹⁷. Pedestals of kings are permitted since they put them up when the kings pass by⁹⁸.

97 Since there is no indication that the idol was permanently abandoned.

the Emperor has departed, the pedestal has lost its mission; cf. Note 83.

98 This is a temporary situation; as soon as

הִלְכָה ו: עֲבוּדָה זָרָה שֶׁהִנְחִיחָהּ עוֹבְדֶיהָ כּוֹל. תָּנִי. מִלְחָמָתָהּ הוֹשָׁע אֲסוּרָה. בְּמִלְחָמָתָהּ הוֹשָׁע מוֹתֶרֶת. מִלְחָמָתָהּ דָּוִד מוֹתֶרֶת. בְּמִלְחָמָתָהּ דָּוִד אֲסוּרָה. מִלְחָמָתָהּ הוֹשָׁע אֲסוּרָה. דְּכָתִיב כִּי־הִחֲרַם תַּחֲרִימֶם. בְּמִלְחָמָתָהּ הוֹשָׁע מוֹתֶרֶת. שֶׁהִיא לְשָׁעָה. מִלְחָמָתָהּ דָּוִד מוֹתֶרֶת. מֶה שֶׁהִיא אֵיתִי הַגִּיתִי מִבֶּטֶל. בְּמִלְחָמָתָהּ דָּוִד אֲסוּרָה. שֶׁהִיא לְעוֹלָם.

Halakhah 6: “An idol which was abandoned by its worshippers,” etc. It was stated: The war of Joshua is forbidden, similar to the war of Joshua is permitted. The war of David is permitted, like the war of David is forbidden.

The war of Joshua is forbidden, as it is written⁹⁹, *for certainly you should ban them*. Similar to the war of Joshua is permitted, for it is a short time¹⁰⁰. The war of David is permitted, what Itai from Gat annulled¹⁰¹. Like the war of David is forbidden, for it is permanent¹⁰².

99 *Deut.* 20:17. This verse is quoted as justification of the first statement, that idols captured in the wars of Joshua were forbidden.

100 Idols conquered in a war of limited duration are temporarily forbidden until it is ascertained after the war that no worshippers returned, as in the war of Joshua where in theory all Canaanites were killed (*Deut.*

20:16).

101 Since David had Gentile mercenaries in his army, they immediately could annul all idols and articles of pagan worship which then became of use (Chapter 3:3 Note 108).

102 If a war is not ended with a peace but with an indefinite truce, the preceding arguments are not applicable.

(fol. 43c) **משנה ז:** שאלו את הזקנים ברומי אם אין רצוננו בעבודה זרה למה אינו מבטלה. אמרו להן אילו לדבר שאין צורך לעולם בו היו עובדין היה מבטלו. הרי הן עובדין להמה וללכנה ולבוכבים ולמזלות לתרים ולגבעות. ואבד עולמו מפני השומין. אמרו להן אם בן יאבד דבר שאין צורך לעולם בו ויסיים דבר שצורך העולם בו. אמרו להן אף אנו מחזיקין ידי עובדיהם של אילו שאומרים תדעו שהן אלוהות שהרי אילו בטלו ואילו לא בטלו:

Mishnah 7: The Elders were asked in Rome, if He does not approve of idol worship, why does He not eliminate it? They answered, if they would worship something which the world does not need, He would eliminate it. But they worship sun and moon, stars and planets, mountains and hills. Should He destroy His world because of the stupid? They told them, if it is so, He should eliminate things which are not needed in the world, and keep things necessary for the world. They answered, then we would strengthen the worshippers of the latter who would say, you should know that these are divinities since those were eliminated and these were not eliminated.

(44a line 48) **הלכה ז:** שאלו את הזקנים ברומי כול'. קזל זרע וזרע אין סופו לצמות. הבא על אשת איש אין סופו להוליד ממזר. אלא הנחו לעולם שניהוג במנהגו. שוטים שקילקלו צתידין ליתן דין וחסבון.

אמר רבי זעורא. אילו הוה כתיב כמוהם יהיו עובדיהם קשיא. עובדי החמה בחמה ועובדי הלבנה בלבנה. אלא כמוהם יהיו עושיהם. אמר רבי מנא. אילו הוה כתיב כמוהם יהיו עובדיהם לא קשיא. דכתיב וחקרה הלבנה ובושה החמה. רבי נחמן בשם רבי מנא. עתידה עבודה זרה להיות באה ורוקקת בפני עובדיה ומבישתו ובטילה מן העולם. ומה טעם. יבואו כל עובדי פסל. רבי נחמן בשם רבי מנא. עתידה עבודה זרה להיות באה וכורעת לפני הקדוש ברוך הוא ובטילה מן העולם. ומה טעם. ישתחוו לו כל אלהים:

Halakhah 7: “The Elders were asked in Rome,” etc. If somebody stole seeds and sowed, would it not grow in the end? If somebody sleeps with a married woman, would he not in the end cause a bastard to be born? But let the world continue its usual way. The stupid who misbehave will in the future have to account for their deeds.

Rebbi Ze'ira said, if it were written, “like them should be their worshippers”, that would be difficult; the sun’s worshippers like the sun, the moon’s worshippers like the moon¹⁰³? But, *like them should be their makers*¹⁰⁴. Rebbi Mana said, if it were written, “like them should be their worshippers”, it would not be difficult, as it is written¹⁰⁵, *the moon will be ashamed and the sun abashed*. Rebbi Nahman in the name of Rebbi Mana: In the future, an idol will come, spit in the face of its worshippers, make them ashamed, and disappear from the world. What is the reason? *All worshippers of statues will be ashamed*¹⁰⁶. Rebbi Nahman in the name of Rebbi Mana: In the future, an idol will come, bow down before the Holy One, praise to Him, and disappear from the world. What is the reason? *Bow down before Him, all gods*¹⁰⁶.

103 To compare people to sun and moon would be praise.

104 Ps. 115:8. This clearly refers to idols and their makers.

105 Is. 24:23.

106 Ps. 97:7. This homily ends the part of the Tractate devoted to idols.

משנה ח: לוקחין גת בעומה מן הנכרי אף על פי שהוא נומל בידו ונותן לתוך התפוח. ואינו נעשה יין נסך עד שיירד לבור. ירד לבור מה שפבור אסור ותשאר מותר:

Mishnah 8: One may buy a used wine-press from a Non-Jew¹⁰⁷. Even if he¹⁰⁸ takes it in his hands and puts it on the pile¹⁰⁹. It does not become libation wine until it flows down into the cistern. If it flowed into the cistern¹¹⁰, what is in the cistern is forbidden and the remainder is permitted.

107 Since it is stated later in the Mishnah that grape juice becomes wine only when it is collected in the cistern below the wine press, a wine press used by a Gentile does not have to be cleansed from the remainders of the Gentile's pressing before being used by the Jew to make kosher wine.

108 This now starts a new topic. The Gentile may help the Jew to load the grapes into the wine press even if the grapes are already oozing juice..

109 "The apple" or "the swollen". Any heap of organic material is called by this expression, so also the heap of ashes at the center of the altar in the Temple courtyard.

Here it denotes the heap of grapes to be pressed.

110 The place where the juice flowing from the wine press is collected. As Rashi points out, European wine presses are not built over cisterns; there the place of the cistern is taken by the barrel into which the juice is collected.

If the Gentile touches the fluid in the cistern, the contents of the cistern become forbidden, the fluid still in the press is permitted. The status of the fluid in the pipe leading from press to cistern has to be discussed in the Halakhah.

(44a line 59) **הלכה ח:** לוקחין גת בעוטה כול'. תני רבי חנן. והוא שלא העלים ישראל את עיניו ממנו. אבל אם העלים עיניו ממנו לא בדא. עד כדון קשהה נטיל לין וענבים באחת ונותן על התפוח. היה נותן אילו בפני עצמן ואילו בפני עצמן אפילו מן מותר גוממיות. שתחת האשכולות אסורות. שבצדיהן מותרות. רבי יוסי בירבי בון בשם רבי יוחנן. הן עצמן נעשות לין נסך.

Halakhah 8: "One may buy a used wine-press," etc. Rabbi Hanin stated: Only if the Jew did not turn his eyes away from him¹¹¹. But if he turned his eyes away from him, not then. So far if he¹¹² was taking juice and grapes together to put on the heap. If he gave these and those separately, (even from what was left in the fissures, what is under the bunches is forbidden, on the sides is permitted.)¹¹³ Rabbi Yose ben Rabbi Abun in the name of Rabbi Johanan: Itself it becomes libation wine¹¹⁴.

111 The Gentile can help in preparing the harvest for pressing only if at all times a Jew

sees him so one is sure that he does not touch the cistern or any storage barrels of

grape juice. Quoted in Tosaphot 55b, Roqeah #495, Raviah # 1096, Mordekhai #845, Rosh (Note 113).

112 The Gentile.

113 The reading of Rosh (*Avodah zarah* 4, #50) in the version of R. Lipman Heller Wallerstein and R. H̲ID Azulai seems preferable:

הָיָה נוֹתֵן אֵילָיו בְּכַנֵּי עֲצָמוֹ וְאֵילָיו בְּכַנֵּי עֲצָמוֹ אֶפְּלֵלוּ כֵן מוֹתֵר. גּוֹמְמִיּוֹת שֶׁתַּחַת הָאֲשָׁכּוֹלוֹת מוֹתֵרוֹת. שֶׁבְּצִידֵיהֶן הֵן אֲסוּרוֹת.

"If he gave these and those separately, *even so it is permitted*. The fissures under the bunches are *permitted*, on the sides they are *forbidden*."

If the grapes are harvested into a vat, if the entire vat is emptied into the wine press

one does not care if juice already oozed from the grapes since this is part of the pressing process. If the grapes are taken out of the vat and then the fluid is poured into the press separately, this also is acceptable. But if then some fluid is left in the fissures between the wooden planks which form the walls of the vat, it is grape juice in a separate vessel which is no different from a barrel standing under the pipe through which the juice flows from press to cistern; any touch by the Gentile will turn it into forbidden libation wine.

114 He objects to making a difference between places where some juice is left; any juice left in the vat has the same status as juice in the cistern.

(44a line 64) גַּת שֶׁפָּקְקָה גּוֹי מִבְּכָנִים אֲסוּרָה וּמִבְּחוּץ מוֹתֵרָה. שֶׁאִי אֶפְשָׁר שֶׁלֹּא הָיָה שָׁם שִׁיפָה אַחַת טְלוּלָה וְנוֹגַע בָּהּ וּמִנְסָךְ כָּל-הַבּוֹר.

רַב הוֹנָא בְּשֵׁם רַב. הַקִּילוֹחַ בְּבוֹר. רַבִּי זְעִירָה בְּעֵי. בְּכָל-אַתֵּר לֵית אֶת עֶבֶד הַנְּצוֹק חִיבוֹר. וְהָכָא אֶת עֶבֶד הַנְּצוֹק חִיבוֹר. סָבַר רַב הוֹנָא. נִתְּנִסָּךְ הַבּוֹר נִתְּנִסָּךְ הַקִּילוֹחַ. נִתְּנִסָּךְ הַקִּילוֹחַ לֹא נִתְּנִסָּךְ הַבּוֹר. רַבִּי בָּא לֹא אָמַר כֵּן. אֵלֹא נִתְּנִסָּךְ הַבּוֹר לֹא נִתְּנִסָּךְ הַקִּילוֹחַ. נִתְּנִסָּךְ הַקִּילוֹחַ לֹא נִתְּנִסָּךְ הַבּוֹר. הָאִי דְאָמַר רַב הוֹנָא בְּשֵׁם רַב. הַקִּילוֹחַ בְּבוֹר. סָבַר רַב הוֹנָא. כְּשֵׁם שֶׁהַבּוֹר מִתְּנִסָּךְ כִּד הַקִּילוֹחַ מִתְּנִסָּךְ. תָּמַן אָמַרִי בְּשֵׁם רַב. מִגְּעוֹ שֶׁלְּגוֹי עוֹשֶׂה יָוֵן נִסָּךְ. רַב נִחְמֵן בֵּר יַעֲקֹב אָמַר. וּבִלְבָד בְּשׁוֹתֵת.

A wine press on which a Gentile stopped a leak from the inside is forbidden, from the outside permitted, for it is impossible that there not be wet bast where he touches and turns the entire cistern into libation wine¹¹⁵.

Rav Huna in the name of Rav: The jet is like the cistern¹¹⁶. Rabbi Ze'ira asked: Everywhere¹¹⁷ you do not say that flow is connection, but here you are treating flow as connection? Rav Huna is of the opinion that if the cistern became libation wine, the flow became libation wine¹¹⁸; if the flow became libation wine the cistern did not become libation wine¹¹⁹. Rabbi Abba did not say so, but if the cistern became libation wine, the flow did not become libation wine; if the flow became libation wine the cistern became libation

wine. What Rav Huna said in the name of Rav, the jet is like the cistern, for Rav Huna is of the opinion, just as the cistern becomes libation wine so the jet becomes libation wine. There, they say in the name of Rav, the touch of a Gentile makes libation wine. Rav Nahman bar Jacob said, only when it is flowing¹²⁰.

115 If the wine press were completely dry, there would be no difference whether the Gentile plugs the leak from the inside or the outside. But if it is moist, the bast which he uses to plug the leak retains some wine which then turns the wine press into a vessel like vat and cisterns, and the Gentile's touch forbids the wine. But from the outside it never can be considered inside a vessel.

116 Babli 55b. The case of the conduit from wine press to cistern which was not treated in the Mishnah is decided: The moment when a drop of grape juice passes the filter at the bottom of the press and enters the pipe

leading to the cistern it turns into wine.

117 The basic text is Mishnah *Tahorot* 8:8 which states that any flow downwards is no connection for impurity while standing fluid on a level surface is. Babli 72a.

118 In these matters, any defect is transferred upwards but not downwards.

119 If the flow was cut off and prevented from reaching the cistern.

120 A libation consists of shaking the wine as an homage to the gods. Therefore if the touch of the Gentile did not move the wine from its position at rest, no libation was made.

44a line 74) אַרְמִינָא נָפַל לְגוּבָא. אֲתָא עוֹבְדָא קוֹמֵי רַבִּי הוּנָא. אָמַר. כּוֹבֵשֵׁן עָלָיו עַד דִּתְזַחֲלוֹן גּוּבָה. אָמַר רַבִּי חֲנִינָה. תָּדָא אוֹשֵׁיט. אָמַר. אֵייתוֹן נִיצְרִין וְזָלְפוֹן מִתּוֹתִיָּה גְדִיָּה.

An Aramean fell into a cavity. The case came before Rabbi Huna who said, immobilize him¹²¹ until you have emptied the cavity. Rabbi Hanina said, he is moving his hand. He said, bring willow baskets and approach from under his hand¹²².

121 Since libation wine is created by a Gentile moving the wine, the Non-Jew has to be immobilized until the cistern is emptied.

122 Hebrew and Aramaic זָלַף means “to sprinkle” (Note 161). This does not make

any sense here. The word is Arabic زَلَف “to approach, advance toward”. One brings baskets or mats of willow weave and approaches his arms from below so that his hands are in the air above the wine and cannot move the wine.

(44 line 76) שְׁמַעוֹן בַּר חִיָּיָה הָיָה מְתַנֵּי לְחִיָּיָה בַּר רַב. גּוֹי מְאִימָתִי עוֹשֶׂה יַיִן נָסֶדֶךְ. אָמַר לֵיהּ. מִשְׁיֹדֵעַ בְּטִיב עֲבֹדָה זָרָה. אִפִּיק רַב יֹאשִׁיָּה מִכִּילְתָּא אָמַר לֵיהּ. הָדָא דְאַתָּה אָמַר. בְּלוֹקֶחַ עֲנָבִים מִן הַגּוֹי. אֲבָל הַגּוֹי עֲצָמוּ בִּן יוֹמוֹ עוֹשֶׂה יַיִן נָסֶדֶךְ.

Simeon bar Hiyya was instructing Hiyya bar Rav. Starting when does a Gentile make libation wine¹²³? He told him, from when he knows the nature of idol worship. (Rav Joshia left) [Rav put out his head]¹²⁴ from the curtain and told him, you may say this if one buys grapes from the Gentile. But the Gentile proper makes libation wine when he is one day old¹²⁵.

123 This seems to be a question which Hiyya bar Rav asked Simeon bar Hiyya.

124 The translation [in brackets] follows the argument of S. Lieberman (*Hayerushalmi Kipshuto* New York 1995, p. 226) that one has to read not *אפיק רב יאשיה* but *אפיק רב* as in *Eruvin* 1:1, 18d line 33.

125 Babli 57a, where Simeon bar Hiyya

actively opposes Rav. Rav admits the leniency only for grape juice flowing from grapes in a vat. But in this case, even an adult Gentile was admitted as help. The leniency applies only to the juice left in the vat after it was emptied of grapes, cf. Note 113.

(44b line 3) גּוֹי מָהוּ שְׁעִיעֶשֶׂה בְּכִי יַיִן נָסֶדֶךְ. רַבִּי אֲדָא בְּשֵׁם רַבִּי לֵעָזֵר. אֵין גּוֹי עוֹשֶׂה יַיִן נָסֶדֶךְ בְּכִי. רַבִּי יְרֵמְיָה בְּשֵׁם רַבִּי אֲבָהוּ. הַגּוֹי עוֹשֶׂה יַיִן נָסֶדֶךְ בְּכִי. וְתַנִּי כּוֹ. אֶגְרִימִסוֹס שְׁטַעַם מִן הַכּוֹס אוֹ מִן הַמִּינְקָתָא וְהִחְזִיר לְחִבְתִּי אֶסּוֹר. עַל דְּעִתִּיהּ דְּרַבִּי אֲדָא בְּשֵׁם רַבִּי לֵעָזֵר. וְהוּא שְׁהִחְזִיר הַגּוֹי. עַל דְּעִתִּיהּ דְּרַבִּי יְרֵמְיָה בְּשֵׁם רַבִּי אֲבָהוּ. וְאִפִּילוּ הִחְזִיר יִשְׂרָאֵל.

May a Gentile make libation wine with his mouth? Rabbi Ada in the name of Rabbi Eleazar: A Gentile cannot make libation wine with his mouth. Rabbi Jeremiah in the name of Rabbi Abbahu: A Gentile can make libation wine with his mouth. And we have stated thus: “If a market supervisor¹²⁶ tasted from a cup or from a suction pipe¹²⁷ and returned¹²⁸ to the amphora it is forbidden.” In the opinion of Rabbi Ada in the name of Rabbi Eleazar, only if the Gentile returned it¹²⁹. In the opinion of Rabbi Jeremiah in the name of Rabbi Hoshai, even if a Jew returned¹³⁰.

126 This should read *אגרימוס* Greek *ἀγορανόμος* “market supervisor”.

127 To check the quality of the wine, whether the customer would not be

overcharged.

128 The remainder of the wine.

129 Since they hold that the motion of the wine induced by the overseer’s mouth cannot make libation wine, if the Gentile

returned it to the amphora he causes waves in the wine which makes it libation wine forbidden for usufruct.

129 For him the wine drawn by the overseer

is libation wine in all cases; the person who returns the wine to the amphora will make it forbidden in all cases.

משנה ט: דורכין עם הנכרי בגת אבל לא בוצרין עמו. ישראל שחזר עושה במזמאה לא דורכין ולא בוצרין עמו. אבל מוליכין עמו חביות לגת ומביאין עמו מן הגת.

Mishnah 9: One may stamp with a Non-Jew in the wine press¹³⁰ but one may not harvest with him¹³¹. With a Jew who works in impurity¹³² one neither stamps nor harvests with him but one transports with him amphoras to the wine press and brings with him from the wine press¹³³.

130 The grapes are pressed not by a mechanical device but by people stamping on a wooden plank on top of the grapes. All the wine produced is libation wine forbidden for all usufruct. Therefore one could think that a Jew would be forbidden to receive wages for pressing the grapes. But it was explained in the preceding Halakhah that the grape juice turns into wine only by flowing into the cistern below the press. Therefore the Jew may receive wages for pressing the grapes whose juice will not be forbidden at the moment of pressing.

131 This Tanna is of the opinion that it is forbidden to cause impurity to fruits of the Holy Land. Since the grapes become impure by being handled by the Non-Jew, a Jewish agricultural worker observing the rules of purity may not help in the Non-Jew's harvest (cf. *Berakhot* 1:1, Note 3 and *Introduction to Tractate Demay* p. 349-350).

132 Working at a time when it was still possible to follow the rules of impurity, a

Jew making his wine in impurity was a sinner since he caused his heave and tithes (which are biblical obligations for grain, olive oil, and grape wine) to be impure and therefore forbidden to be consumed by the Cohen. Grapes harvested for wine making are placed in a vat for transport to the wine press. The fluid oozing out of injured grape berries are collected in the vat and also used for making wine. This fluid is welcome; therefore it prepares the grapes for impurity as explained in *Demay* 2:3 Notes 136,137, 141. An observant Jew harvesting together with an unobservant one is guilty of helping to cause impurity to fruits of the Land. There really is no intrinsic reason to forbid pressing the grapes which already are impure; the prohibition to help in pressing is a general rule "not to support sinners".

133 Transporting empty amphoras to the wine press is not connected with any impropriety; it is not even forbidden to fill impure wine into pure amphoras which thereby will become impure. Transporting

amphoras filled with impure wine from the action was in the past.
wine press is permitted since all forbidden

44b line 8) **הלכה ט:** דורכין עם הנכרי בגת כול'. אמר רבי יונה. הדיא דאית אומר. והוא שהילכו עליהן דרוכית שתי וערב. אבל לא הילכו עליהן דרוכית שתי וערב לא בדיא. רבי יוסי בעי. אם בשתילכו עליהן דרוכית שתי וערב אפילו כמשתנה הראשונה. דתני. בראשונה היו אומרים. בוצרין עם הנכרי ודורכין עם ישראל מפני שעושה בטומאה. ואין דורכין עם הגוי. חזרו לומר. אין בוצרין עם הנכרי ואין דורכין עם ישראל שהוא עושה בטומאה. אבל דורכין עם הגוי ומסייעין עמו עד שיתעלם מעיניהם. נתעלם מעיניהם נעשה יין נסד.
מה טעמיה דרבי יונה. שכתבו נטמו מהכשר בצירה. מה טעמיה דרבי יוסי. טהורים היו דבר תורה. אתה הוא שגזרתה עליהן טומאה. חיליה דרבי יוסי מהדיא. דמר רבי יוסי בשם רבי הילא. בדין הדיא שיהא אדם פוטר את טבלו דבר תורה. דכתיב ונתתם ממנו את-תרומת יהוה לאהרן הכהן: עשה שנינו לאהרון הכהן בכהונתו. וכאן הואיל ואין את יכול ליתנו לאהרון הכהן בכהונתו רשאי אתה לטמותו.

Halakhah 9: “One may stamp with a Non-Jew in the wine press,” etc. Rabbi Jonah said, that is, you say only if they walked over it crosswise¹³⁴. But if they did not walk over it crosswise, it does not apply. Rabbi Yose asked, if they walked over it crosswise, even following the earlier teaching¹³⁵? As it was stated:¹³⁶ “Originally they were saying that one harvests grapes with the Non-Jew and stamps with a Jew who works in impurity¹³⁷. They changed and said, one does not harvest grapes with the Non-Jew nor stamp with a Jew who works in impurity, but one stamps with a Gentile and helps him as long as it did not disappear from sight. Once it disappeared from sight it became libation wine¹³⁸”.

What is Rabbi Jonah's reason? Because it already became impure when it was prepared by the grape harvest¹³⁹. What is the reason of Rabbi Yose? They were pure by biblical standards. You are the one who decided that they be impure¹⁴⁰. The strength of Rabbi Yose is the following, as Rabbi Yose said in the name of Rabbi Hila¹⁴¹ It should be logical that one may (free) his *tevel* as it is written, *you should give from it the Eternal's heave to Aaron the priest*¹⁴³. You have to give it to Aaron in his quality of priest. But here, since you cannot give it to Aaron the priest in his quality of priest, you may make it impure.

134 Since Gentiles are considered impure under the rules of a sufferer from gonorrhea (Babli 36b), the moment a Gentile steps on the planks on top of the grapes everything is impure by “stepping on” (Chapter 3:8, Note 181). It is not really necessary that the Gentile walk on the plank in two different directions. Since then the entire contents of the wine press are impure: the Jew does not help to make them impure.

135 There seems to be no reason for R. Jonah’s rule since the entire harvest becomes impure at harvest time, Note 132. There never should be any reason not to press grapes with a Gentile.

136 Tosephta 7:1, Babli 55b.

137 In both sources, one reads: “Originally they were saying that one *does not* harvest grapes with the Non-Jew and *does not* stamp with a Jew who works in impurity.” This text must be supposed also for the quote here. If one holds that it is forbidden to cause impurity to the fruits of the Land then one may not harvest with the Gentile because this is the moment when the grapes become impure.

138 The second part of this *baraita* parallels the Mishnah; it is missing in the Tosephta. In the Babli text it reads “one *does not* stamp with the Non-Jew”; this is explained as a precaution because if the Gentile has a small harvest and decided to make red wine by leaving the skins in the fluid, the easiest way would be to plug the pipe leading to the cistern and use the press itself to let the wine ferment. Then the act of pressing makes libation wine and the Jew’s wages would be forbidden for usufruct. The Yerushalmi very reasonably does not consider this a possibility.

139 As explained before, this is R. Yose’s argument.

140 This is R. Jonah’s argument. There is no biblical impurity for Gentiles; the laws of impurity are uniquely formulated for Jews. The imputation of impurity (permanent and irrevocable) for Gentiles is rabbinical (Babli 36b). The exclusion of Gentiles from the Temple precinct is not because of impurity but because of their being disqualified.

141 The source of this statement (in another context) is *Hallah* 3:2, Note 53.

142 This text makes no sense either by itself nor in this context. *Tevel* is produce under the obligation of heave from which heave was not yet taken; it may not be consumed. By all standards a person is not only permitted but obligated to free his *tevel* by separating the heave. The text in *Hallah* correctly reads: “a person may make his *tevel* impure by biblical standards.” The main point of the argument is given there but omitted here. Heave not only must be consumed in purity but it is stated in *Num.* 18:8 that the priests have a special duty to guard heave from impurity. It follows that this duty does not apply to *tevel*, which therefore may be allowed to become impure; disagreeing with the hypothesis underlying the Mishnah.

The quote here refers to a different subject. Heave given to Aaron in his quality of priest is pure heave for which he can exercise his duty to watch it and consume it in purity. But once produce has incurred even a doubt of impurity it can no longer be consumed by the Cohen; this eliminates not only the duty of guarding it but all rules made to safeguard it. If the rules of purity

no longer can be observed there remain no grapes with a Gentile.
restrictions on harvesting and pressing 143 Num. 18:27.

מִשְׁנָה (fol. 43c) נִהְיָתוּם שֶׁהוּא עוֹשֶׂה בְּטוּמְאָה לֹא לֶשֶׁן וְלֹא עוֹרְכִין עֲמֹל אֲכָל מוֹלִיכִין עֲמֹל פֶּת לְפִלְטָר.

Mishnah 10: If a baker works in impurity one does not knead with him¹⁴⁴ nor form the bread with him¹⁴⁵, but one may bring bread to the seller¹⁴⁶ with him¹⁴⁷.

144 For kneading one must wet the flour; general prohibition “to support sinners.”

this prepares it for impurity and, in an impure bakery, makes the dough impure. 146 Greek *πρατήρ* (Buxtorf) or *πωλητήρ* (Krauss) “seller”.

145 The dough already is impure when it is formed; this prohibition falls under the 147 Since the bread is fully baked, transporting it is not “to support sinners.”

הִלְכָה (44b line 22) נִהְיָתוּם שֶׁעוֹשֶׂה בְּטוּמְאָה כּוֹל. וְתַנִּי עֲלֶיהָ לֹא לֹתְתִין וְלֹא טוֹחֲנִין וְלֹא בּוֹלְלִין עֲמֹל. אָמַר רַבִּי הִילָא. כָּאֵן דְּחוֹלִין כָּאֵן דְּתִרְוּמָה. וְהִתְנִינֵן. נִהְיָתוּם. אֵית לָךְ מִימַר נִהְיָתוּם בְּתִרְוּמָה. חֲבֵרִיָּה אָמַר. כָּאֵן בְּלוּתָת כָּאֵן בְּשֹׂאֵינוּ לֹתְתָת. וְהָא תַנִּינֵן. אֲבָל מִשְׁתַּטִּיל לַמֵּיִם לֹא תַנְעֵ אֲצִלָּה שְׂאֵין מִחֻזְקִין דִּי עוֹבְרֵי עֲבָרָה.

רַבִּי חִינָנָה וְרַבִּי אֲמִי. חֲדָא אָמַר. חֲרוּשׁ בֵּה טְבָאוֹת וְאֵנָּה נֶסֶב לָהּ מִינְדָּ בִּתְרָ שְׁמִיטָתָא. וְחֲדָא אָמַר. אֲנִשְׁר. כָּמָן דְּאָמַר. חֲרוּשׁ בֵּה טְבָאוֹת וְאֵנָּה נֶסֶב לָהּ מִינְדָּ בִּתְרָ שְׁמִיטָתָא. מָהוּ שְׂוֹאֲלִין בְּשִׁלּוּמָן. אֲנִשְׁר. וּמָאן דְּאָמַר לְגוּזִי. אֲנִשְׁר. מָהוּ שְׂוֹאֲלִין בְּשִׁלּוּמָן שֶׁל יִשְׂרָאֵל. שְׁלוֹם עֲלֵיכֶם.

1 אָמַי | 77 * אֲמִי טְבָאוֹת | 7 טְבָאוֹת נֶסֶב | 7 נֶסֶב וְחֲדָא | 77 * וְחֲרָה 2 מָאן דָּאֵמַי | 7 * מִן דְּמַר חֲרוּשׁ בֵּה טְבָאוֹת וְאֵנָּה נֶסֶב לָהּ מִינְדָּ בִּתְרָ שְׁמִיטָתָא | 7 * טְבָאוֹת 3 וּמָאן | 7 מָאן שֶׁל | 7 כְּשִׁלּוּם

דִּלְמָא. רַבִּי חִנְיָנָה בְּרַ פֶּפֶא וְרַבִּי שְׁמוּאֵל בְּרַ נַחֲמָן עֲבָרוּן עַל חֲדָ מִן חוֹרְשֵׁי שְׁבִיעִית. אָמַר לֵיהָ רַבִּי שְׁמוּאֵל בְּרַ נַחֲמָן. אֲנִשְׁר. אָמַר לֵיהָ רַבִּי חִנְיָנָה בְּרַ פֶּפֶא. לֹא כֵן אֵילָפֵן רַבִּי. וְלֹא אָמַרְוּ | הָעוֹבְרִים וְגו'. שְׁאָסוּר לֹמַר לְחוֹרְשֵׁי שְׁבִיעִית. אֲנִשְׁר. אָמַר לְקִרְוֹת אֶת יוֹדֵעַ לְדְרוֹשׁ אֵי אֶת יוֹדֵעַ. וְלֹא אָמַרְוּ | הָעוֹבְרִים. אֵילוּ הָאֻמוֹת שֶׁהֵן עוֹבְרִין מִן הָעוֹלָם שֶׁלֹּא אָמַרְוּ לִישְׂרָאֵל. בְּרַכְתָּ יִי אֱלֹהֵיכֶם. וּמָה יִשְׂרָאֵל אוֹמְרִין לָהֶם. בְּרַכְנוּ אֶתְכֶם בְּשֵׁם יִי. וְיִשְׂרָאֵל אוֹמְרִים לָהֶם. לֹא דִּיִּיכֶם כָּל־הַטּוֹבוֹת וְהַנְּחֻמוֹת הַבָּאִים לְעוֹלָם בְּשִׁבְלֵינוּ. וְאֵין אֶתְם אוֹמְרִים לָנוּ. בּוֹאוּ וּשְׂאוּ לָכֶם מִן הַבְּרָכוֹת. וְלֹא עוֹד אֶלָּא שְׂאֵתְם מְגֻלְגְּלִין עֲלֵינוּ פִּיסִים וְזִמְמוֹת וְגוֹלְגְּלוֹת וְאֶרְנוֹנוֹת.

1 חִנְיָנָה | 77 * חִנְנָה בְּרַ | 7 - מִן חוֹרְשֵׁי | 77 * מְחוֹרְשֵׁי שְׁבִיעִית | 7 שְׁבִיעִית | 2 ר' | 7 * - חִנְיָנָה | 77 * חִנְנָה אֵילָפֵן | 7 * אֵילָפֵן | 3 וְגו'. | 7. מָכָן | 7 * בְּרַכְתָּ יִי עֲלֵיכֶם. שְׁבִיעִית | 77 * שְׁבִיעִית אֵמַי | 7 * אֵמַי לֵיהָ | 7 * אֵין | 4 הָאֻמוֹת | 77 * אֻמוֹת הָעוֹלָם עוֹבְרִים | 77 * עוֹבְרִין שֶׁלֹּא | 77 * וְלֹא | 5 וְמָה | 77 * מָה וְיִשׁ'

אומ' להם | 7 - 7 *אומ' להן | 6 הטובות והנחמות | 77 *הברכות | 77 *הבאות | ושאז | 77 *וטלו
7 | 7 הללו. 7 *האילו | וגולגליות | 7 גולגליות | וארנונות | 77 *וארנוניות

Halakhah 10: “If a baker works in impurity,” etc. One states about this: One does not moisten, nor grind, nor mix with him¹⁴⁸. ¹⁴⁹Rebbi Hila said, here for profane [bread], there for heave. Can you say heave at a baker’s? The colleagues: one if he moistens, the other if he does not moisten¹⁵⁰. But did we not state¹⁵¹: “But she may not touch hers once water has been put in because one does not support transgressors.”

Rebbi Hiyya and Rebbi Immi. One said¹⁵², “plough it well; then I will rent it from you after the Sabbatical.” The other one said, “may you succeed.” For him who said, plough it well; then I will rent it from you after the Sabbatical, what means “one greets them”? “May you succeed.¹⁵³” But he who said that one says to a Gentile, may you succeed, what means that one greets Jews¹⁵⁴? “Peace be on you.”

Explanation¹⁵⁵. Rebbi Ḥanina bar Pappa and Rebbi Samuel bar Nahman passed by one of the ploughmen in the Sabbatical. Rebbi Samuel bar Nahman said to him, may you succeed. Rebbi Ḥanina bar Pappa said to him, did not Rebbi teach, *the passers-by did not say*¹⁵⁶, etc., that it is forbidden to say “may you succeed” to one who ploughs in the Sabbatical? He told him, you know how to read but you do not know how to make a homily. *The passers-by did not say*, these are the nations who pass out of the world because they did not say to Israel, *the blessing of the Eternal is on you*. What does Israel say to them? *We bless you in the name of the Eternal*. Israel says to them, all the good things and happy circumstances that come into the world because of us are not enough for you; you do not say, come and take from these blessings for yourselves, but you roll over us pro-rated contributions¹⁵⁷ and fines¹⁵⁸, head taxes and *annonae*¹⁵⁹.

148 One either moistens the grain before grinding to facilitate the separation of chaff from flour or one washes the grain before grinding to eliminate impurities such as pebbles. In any case will the moistening make the grain susceptible to impurity. Even if the grain was dry milled, moistening

the flour to make dough will bring on the impurity. Only grinding itself is solely forbidden not “to support sinners.”

149 From here on this is taken from *Ševi`it* 5:9 (Notes 92-97)7, 4:3 (Notes 52-57)*7.

Instead of the *baraita* quoted here, one states in *Ševi`it*: “One should neither cull

nor grind nor sift with him.” These are all done dry when the grain still may be immune to impurity. The question is to explain when each of the *baraitot* applies.

150 Since it has been established that the Cohen has the duty to guard his heave, he has to bake his heave bread himself or at least have it baked under his strict supervision; he is forbidden to hand it over to a commercial baker. The explanation of the colleagues is the only acceptable one. Quoted in Tosaphot *Gittin* 61a/b s.v. רישא.

151 Mishnah *Ševi'it* 5:9, speaking of an observant woman baking together with one who does not observe the rules of purity.

152 This explains the last sentence in Mishnah *Ševi'it* 5:9 that one encourages

Gentiles in the Sabbatical and that one greets Gentiles for communal peace. What is the difference between encouraging and greeting?

153 This is the greeting of Gentiles endorsed by the Babli, *Gittin* 62a.

154 The text of *Ševi'it* 5:9 is more convincing: One greets Gentiles in the same way one greets Jews.

155 Greek δῆλωμα.

156 *Ps.* 129:8.

157 Aramaic and Syriac פיסא “piece”, here used in the sense of individual contribution to a tax imposed on the community (I. Löw).

158 Greek ζῆμια.

159 The annual contributions in kind for the upkeep of the Roman army.

(44b line 40) הוֹרִי רַבִּי אָמִי. לְרֹדוֹת עֲמוֹ אָסוּר. וְדִכּוֹתָהּ. לְזֶלוֹף עֲמוֹ אָסוּר.

Rebbi Immi instructed: It is forbidden to take the bread out of the oven with him¹⁶⁰. Similarly, it is forbidden to sprinkle with him¹⁶¹.

160 The baker who works in impurity. The scribe in *Ševi'it* 5:9 started to write this sentence, then he noticed that there it makes no sense. This determines *Avodah zarah* as

origin of the preceding paragraph.

161 Moisten baking goods. It would be possible to translate “to load (the oven)”; cf. Note 122.

(fol. 43c) **משנה יא:** נָכְרִי שֶׁנִּמְצָא עוֹמֵד בְּצֶד הַבּוֹר שֶׁל יֵין אִם יֵשׁ לוֹ עָלָיו מִלֶּחֶם אָסוּר אֵין לוֹ עָלָיו מִלֶּחֶם מוֹתֵר. נָפַל לַבּוֹר וְעָלָה וּמָדְדוּ בִּקְנָה הִתִּיז אֶת הַצָּרֶעָה בִּקְנָה אוֹ שֶׁהָיָה מִטֶּפֶחַ עַל פִּי הַבַּיִת מְרוֹתֶחַת בְּכָל־אֵילּוֹ הָיָה מַעֲשֶׂה וְאָמְרוּ יִמְכֹּר. וְרַבִּי שְׁמַעוֹן מֵתִיר. נָטַל אֶת הַחֲבִית וּרְקָה לַבּוֹר זֶה הָיָה מַעֲשֶׂה וְהִכְשִׁירוּ:

Mishnah 11: A Non-Jew who was found standing next to a wine cistern, if he has a loan secured by it¹⁶², [the wine] is forbidden, if he has no loan secured by it, it is permitted. If he fell into the cistern and climbed out, or

measured it with a measuring rod; if he tried to hit a wasp with a stick¹⁶³, or was drumming on the mouth of a fermenting amphora¹⁶⁴; all these cases happened and they said, it should be sold¹⁶⁵, but Rabbi Simeon permits. If he took the amphora and threw it into the cistern;¹⁶⁶ this happened and they declared it kosher¹⁶⁷..

162 The Jewish owner's wine is mortgaged to a Gentile. Then it may be assumed that the Gentile touched the wine, which makes the wine forbidden for the Jew. The Gentile may take the wine as repayment of the loan.

163 The stick did not hit the wasp but the wine in the amphora. This certainly is not libation wine but it was hit if not by the Gentile so by the force of his arm; the wine is forbidden as drink but permitted for

usufruct.

164 There is a distinct possibility that the Gentile touched the foam on the mouth of the amphora. This is not a way of making libations.

165 To Gentiles since the wine is forbidden as drink but permitted for usufruct.

166 In a rage; there is no libation.

167 Even to drink.

(44b line 41) **הלכה יא:** נָכְרִי שֶׁנִּמְצָא כּוֹל'. רַב שֵׁשֶׁת בְּשֵׁם רַב. וְהוּא שָׁיְהָה לוֹ עָלָיו מִלָּה עַל אוֹתוֹ הַבּוֹר. אֲבָל אֵין לוֹ מִלָּה עַל אוֹתוֹ הַבּוֹר שֶׁכֵּן דִּרְךָ בְּעָלֵי הַחוּב לַעֲמוּד בְּגִיתוֹת וּבְגִרְנוֹת. הוּוֹן בְּעוֹ מִימֵר. מֵאן דָּמֵר. וְהוּא שָׁיְהָה לוֹ עָלָיו מִלָּה עַל אוֹתוֹ הַבּוֹר. בְּתוּף לְפִישוּט גִּידִים. וּמֵאן דָּמֵר. אֵף עַל פִּי שְׁאִין לוֹ עָלָיו מִלָּה עַל אוֹתוֹ הַבּוֹר. חוּץ לְפִישוּט גִּידִים. וְלֹא כֵד אָמַר רַבִּי בָּא בְּשֵׁם רַב שֵׁשֶׁת. כְּשֵׁם שֶׁנִּתְּנוּ פִישוּט גִּידִים בְּטְהָרוֹת כֵּן נִתְּנוּ פִישוּט גִּידִים בִּינּוֹ נֶסֶף. אֵלָּא כִינִי. מֵאן דָּמֵר. וְהוּא שָׁיְהָה לוֹ עָלָיו מִלָּה עַל אוֹתוֹ הַבּוֹר. בְּתוּף פִישוּט גִּידִים. וּמֵאן דָּמֵר. אֵף עַל פִּי שְׁאִין לוֹ עָלָיו מִלָּה עַל אוֹתוֹ הַבּוֹר. וּבִלְבָד חוּץ לְפִישוּט גִּידִים.

Halakhah 11: “A Non-Jew who was found standing,” etc. Rab Sheshet in the name of Rav: Only if he has a lien on this particular cistern¹⁶⁸. But if he has no lien on this particular cistern, it is the way of creditors to stand near wine presses and threshing floors. They wanted to say, he who says, only if he has a lien on this particular cistern, within his outstretched arms¹⁶⁹, but he who says, even if he has no lien on this particular cistern, even outside his outstretched arms¹⁷⁰. But did not Rabbi Abba say in the name of Rav Sheshet¹⁷¹, just as they gave outstretched arms for purity so they gave it for libation wine? But it must be so: He who says, only if he has a lien on this particular cistern, within his outstretched arms, but he who says, even if he has no lien on this particular cistern, only outside his outstretched arms¹⁷².

168 The Mishnah could be read as applying to a loan secured by all wine in the possession of the debtor. It is now asserted that in the opinion of Rav (in the Babli, 60b, of Samuel) only the holder of a lien on the particular cistern will consider the wine his property and therefore touch it without hesitation whereas a lender on a future harvest will only visit wine press and threshing floor to ascertain that the harvest is sufficient to secure his claim but he will not touch the produce or the wine since it is not his. In the Babli, this is the only opinion declared consistent with the following Mishnaïot; the discussion in the Yerushalmi shows that the opposing opinion is considered equally valid.

169 The definition of “next to” is “within reach of his hands without moving his body.” This is the definition accepted for the distance in which a person not following the rules of impurity makes vessels and food impure by his presence (Mishnah *Ṭahorot* 7:3).

170 Since he is more restrictive than the first opinion, one may assume that he is more restrictive in this matter also.

171 Halakhah 5:6 (45a l. 1).

172 The definition of “next to” is independent of the circle of persons to which it is applied. In all circumstances, “next to” means what can be reached without moving one’s body.

משנה יב: המטמא יינו של נכרי ונותנו ברישותו בבית הפתוח לרישות הרבים בעיר שיש בה גוים וישראל מותר. בעיר שכולה גוים אסור עד שישיב שם שומר. ואין שומר צריך להיות יושב ומשמר אף על פי שהוא יוצא ונכנס מותר. רבי שמעון בן אלעזר אומר כל רישות גוים באחת:

Mishnah 12: One who makes a Non-Jew’s wine in purity¹⁷³ and leaves it in his domain, in a house open to the public domain¹⁷⁴ in a city where there are Gentiles and Jews it is permitted, in a city where all are Gentiles it is forbidden unless he install there a watchman. But the watchman does not have to sit there and watch; even if he leaves and reenters it is permitted¹⁷⁵. Rabbi Simeon ben Eleazar says, all Gentiles’ domains are the same¹⁷⁶.

173 The Jew uses a Gentile’s winery to make kosher wine to sell the wine to Jews.

174 Where the public has open access. If a Jew saw the Gentile near the wine, he could not anymore sell the wine to Jews. Since this would be costly to him, one may assume

that the minor oversight provided by the occasional Jewish visitor is sufficient.

175 On condition that he not tell anybody when he would leave or come back.

176 There is no difference between the owner’s property or that of any other Gentile

in this matter.

(44b line 50) **הלכה יב:** המטהר יינו שלנכרי כול'. רבי אבין בשם רבי שמואל. הלכה כרבי שמעון. רבי אבין בשם שמואל. אני כפרת רבי שמעון. או מתיר בשתייה או אוסר בהנניה. אמר רבי ירמיה בשם רבי אבהו. מעשה היה והורי בשתייה כרבי שמעון. רבי שמואל בשם רבי אבהו. אין הגוי עושה יין נסך בזריקה. גוי מהו שיעשה יין נסך בחמתו. לישמעינה מן הדא. ארמיא הנה ליה קופין גו מעצרתא. אתא ישראל וזלף בהון חמר. אתא ארמיא קולתה ושפכו לגובה. אתא עובדא קומי רבנן. אמרי. אין הגוי עושה יין נסך מחמתו. רבי ירמיה בשם רבי חייה בר בא. זה שמוזג. בחמין אסור. בצונין מותר. גבוא עלי שלא עשיתי ממיי. רבי יסא אזל לצור. חמתון שתו חמר וחמימין וארמיא מזג. אמר לון. מה שרא לכון.

Halakhah 12: “One who makes a Non-Jew’s wine in purity,” etc.

¹⁷⁷Rebbi Abin in the name of Rebbi Samuel, practice follows Rebbi Simeon¹⁷⁸. Rebbi Abin in the name of Samuel. I am atoning for Rebbi Simeon¹⁷⁹, either permit to drink or forbid for usufruct¹⁸⁰. Rebbi Jeremiah said in the name of Rebbi Abbahu. There was a case and they permitted for drinking following Rebbi Simeon. Rebbi Samuel in the name of Rebbi Abbahu: A Gentile does not make libation wine by throwing¹⁸¹. Does a Gentile make libation wine in his rage? Let us hear from the following: An Aramean¹⁸² had boxes in a wine press. There came a Jew and sprinkled wine on them. The Aramean came¹⁸³ [with] a pitcher and poured it out into the cistern. The case came before the rabbis who said, a Gentile does not make libation wine in his rage.

Rebbi Jeremiah in the name of Rebbi Hiyya bar Abba. One who mixes wine, with hot water it is forbidden, with cold water it is permitted. It should come over me, if I ever did this¹⁸⁴. Rebbi Yasa went to Tyre¹⁸⁵. He saw them drinking wine with hot water and an Aramean was mixing. He told them, what¹⁸⁶ did allow you?

177 This Halakhah in its entirety refers to Mishnah 11, not Mishnah 12.

178 Who in Mishnah 11 permitted to drink wine which the Sages only permitted for usufruct. This tradition is quoted in the Babli 60b but in the end rejected.

179 This is an expression traditionally used

by the son speaking of his father. He considers himself the spiritual son of R. Simeon (ben Iohai).

180 R. Simeon holds that any wine not forbidden for usufruct is not forbidden as drink.

181 If the Gentile never touched the wine

but moved it by throwing the bottle in which it was stored, he cannot possibly have made it into libation wine. Quoted in Tosaphot 59a/b s. v. מרו.

182 A Gentile, cf. Halakhah 1:6, Note 177.

183 It might be better to read אָיְתִי “brought” instead of אָתָּא “came”.

184 He never let a Gentile pour water in his cup of wine.

185 In the Babli 58b a similar story is told of R. Jeremiah himself. The problem with the text here is that R. Yasa was one of the teachers of R. Hiyya bar Abba, the teacher of R. Jeremiah’s teacher R. Ze’ira.

186 “What”, not “who”. He made it clear that he did not think that any rabbi would allow this.

מְשֵׁנָה יֵג: הַמְטָהר יֵינוּ שֶׁל נְכָרִי וְנוֹתְנוּ בְּרִשּׁוֹתוֹ וְהִלָּה כּוֹתֵב לוֹ שֶׁנִּתְקַבְּלָתִי מִמֶּדֶּ מְעוֹת מוֹתָר. אָבֵל אִם יִרְצֶה יִשְׂרָאֵל לְהוֹצִיאָו וְאֵינוּ מְנִיחוּ עַד שְׂוִיתֵן לוֹ אֶת מְעוֹתָיו זֶה הִיָּה מַעֲשֵׂה בְּבֵית שָׂאן וְאֶכְרוּ חֲכָמִים: (fol. 43c)

Mishnah 13: One who makes a Non-Jew’s wine in purity¹⁷³ and leaves it in his domain¹⁸⁷, if this one writes to him that I received the money, it is permitted¹⁸⁸. But if the Jew wants to remove it and he does not let him do it before he paid him his money¹⁸⁹, this was a case in Bet Shean and the Sages forbade.

187 Without a guard.

188 Since the Gentile has recognized the wine as the Jew’s property he will not touch it and expose himself to a suit for damages.

189 The Gentile shows that he considers the wine his property until the rental fee for his wine press and wine cellar was paid. This makes the wine Gentile and forbidden.

הַלְכָה יֵג: הַמְטָהר יֵינוּ שֶׁלְנִכְרִי כּוֹל. רַבִּי אֲבָהוּ בָשֵׁם רַבִּי יוֹסִי בְּרַבִּי חֲנִינָה. לֹא סוּף דָּבָר פֶּתַח אֶלָּא אֶפִּילוֹ חֲלוֹן וְיֵשׁ בָּהּ אֶרְבַּע עַל אֶרְבַּע עַל רוּם גָּעֶשְׁרָה. וּבִלְבָד מְקוֹרָה וּבִמְגוּפָה. הִיָּה לְרַבִּי. נִימַר. אִם הִיָּה נִרְאָה עוֹלָה וְיִוָּרֵד בּוֹ אֶסּוּר וְאִם לֹא מוֹתָר. רַבִּי בָּא בָשֵׁם רַב יְהוֹדָה. בָּעִיר שָׁיֵשׁ בָּהּ דִּלְתִּים וּבְרִיחַ הִיא מִתְנִיתָא. בָּדָא תִנִּי. שׁוּמֵר אֶף עַל פִּי שְׂאֵינוּ בָּא אַחַת לְקִיצִים.

Halakhah 13: “One who makes a Non-Jew’s wine in purity,” etc.
¹⁹⁰Rebbi Abbahu in the name of Rebbi Yose ben Rebbi H̥anina: Not only a door but even a window wide four by four and high ten¹⁹¹, on condition that it be roofed and glued closed¹⁹². If it was growing, we would say if he is seen

climbing up and coming down it is forbidden, otherwise it is permitted¹⁹³. Rabbi Abba in the name of Rav Jehudah: The Mishnah speaks of a town “with double doors and bolts.”¹⁹⁴ Was it stated in that case “a watchman even if he comes only at intervals”?

190 This Halakhah discusses Mishnah 12.

191 Since the numerals are masculine they denote hand-breadths, not quite 10cm. An opening of 4-by-4 and high 10 is considered a door also for the rules of impurity.

192 Not the door but the amphora in which the wine is stored. It cannot be left open in the Gentile's place under any circumstances but must have a cover, “be roofed”, and the cover must be glued to the amphora by clay which is left to dry. Then it is sufficient that an occasional visitor check that the clay seal is inviolate.

193 If the wine is stored on a tree (a seemingly unlikely case but which is mentioned also in the Babli, 61a). If an amphora is stored at a place reserved for it and the Gentile is seen going there where he

has no reason to be, the wine will become forbidden since one must suspect him of removing the seal, taking some wine, and resealing.

194 A fortified city; the expression is Biblical (*Deut.* 3:5). In the Babli the author is Samuel, Rav Jehudah's teacher and the statement is accepted as authoritative. According to Rashi, the reason is that there all inhabitants are known and easily checked out; therefore one does not need a permanent presence of the watchman.

195 If it is a closed society and everybody is watched by everybody else, the watchman cannot make a surprise appearance. Then it cannot be true that he does not have to guard continuously.

תני. ישראל וגוי שפנסו את יין ברכייה שלעיר. אפילו שומרים גוים אפילו חבית פתוחות מותרות שאין מנסכין בן.

רבי הילא בשם רבי ינאי. הלוקח כמוכר. ותני כן. אחד הלוקח ואחד המוכר ברשות הגוי. בזמן שהיו של ישראל וישראל דר שם מותר. והוא שיהא עליו מפתח וחותר. ובזמן שהיו של גוי וישראל דר שם מותר. והוא שיהא עליו מפתח וחותר. ואם אין ישראל דר שם אסור אף על פי שיש עליו מפתח וחותר.

רבי ילי בשם רבי ינאי. חלוקים על רבי שמעון בן לעזר. לא על הדא אתאמרת אלא על הדא דבתרה. המטהר יינו שלכרי וכול.

It was stated¹⁹⁶ “A Jew and a Gentile who brought their wine into the surroundings¹⁹⁷ of the city, even if the watchmen are Gentile, even if the amphoras are open, they are permitted since one does not make a libation in this way.”

Rebbi Hila in the name of Rebbi Yannai: The buyer has the same status as the seller. It was stated thus¹⁹⁸: Whether the seller or the buyer [stores] on the Gentile's property. If the wine is the Jew's and a Jew lives there it is permitted on condition that in his hand are key and seal. If the wine is the Gentile's and a Jew lives there it is permitted on condition that in his hand are key and seal¹⁹⁹; but if no Jew lives there it is forbidden even if key and seal are in his hand.

Rebbi Ilai in the name of Rebbi Yannai: They disagree with Rebbi Simeon ben Eleazar. Not on this was it said but on the following, "one who makes an Non-Jew's wine in purity,"²⁰⁰ etc.

196 Tosephta 7:10.

197 According to H. L. Fleischer this is derived from Greek περιχώρη in its meaning "circumference". In the Tosephta, the corresponding word is (Persian) פרנר "suburb". This is translated here.

198 In the Babli, 61a/b, "buyer and renter". The Yerushalmi's version is preferable since the Mishnah refers to the producer who is the seller. The rules about storage are identical for producer and buyer.

199 The key to the storage room and the seal either on the covers of the amphoras or, if the amphoras are open, on the door to the storage room.

200 The disagreement is not about the statement of R. Simeon ben Eleazar applied to Mishnah 12, where everybody agrees that the identity of the Gentile is irrelevant, but about Mishnah 13 where the majority insists that it refers only to the owner of the wine press.

השוכר את הפועל פרק חמישי

(fol. 44c) **משנה א:** השוכר את הפועל לעשות עמו כיון נסך שכרו אסור. שכרו לעשות עמו כלאכה אחרת אף על פי שאמר לו העבר לי חבית של יין נסך ממקום למקום שכרו מותר.

Mishnah 1: If somebody hires a worker to work for him on libation wine, his wages are forbidden¹. If he hired him for other work, even though he told him, transport an amphora of libation wine for me from one place to another, his wages are permitted².

1 If a Gentile hires a Jewish worker specifically to work on his wine, the wages are forbidden to the worker for all usufruct. The rule which makes it impossible for the Jewish worker to be hired in this way is purely rabbinical; it is not implied by the

fact that libation wine is forbidden for usufruct for a Jewish owner.

2 The moment that libation wine was not mentioned at the time of the hiring, there is no obligation on the worker to refrain from being occupied with libation wine.

(44c line 50) **הלכה א:** השוכר את הפועל כול'. ולא שכרו הוא נותן לו. רבי אבהו בשם רבי יוחנן. קנס קנסיהו.

תני. החמרים והפתים וכל העושים בשביעית שכן שביעית. אמר רבי זעירא. בפירות היתר היא מתניתא. והיא דהורי רבי יוחנן לאילין דבית רבי נאי שלא יהו נוטלין שכר בידיהו יין אלא מעות כרבי יהודה וכרבי נחמיה הורי להו. אמר רבי ילי. בפירות עבודה זרה היא מתניתא. כדמר רבי אבהו בשם רבי יוחנן. גזין נסך קנס קנסיהו.

Halakhah 1: “If somebody hires a worker,” etc. Does he not give him his wages? Rabbi Abbahu in the name of Rabbi Johanan: They fined him a fine³.

⁴It was stated⁵: “The wages of donkey drivers, carriers, and all those working with Sabbatical produce are sabbatical.”⁶ Rabbi Ze’ira said, this *baraita* deals with permitted produce. And what Rabbi Johanan taught those of the House of Rabbi Yannai that they should not accept in their hands⁷ wine as wages but money, he taught them following Rabbi Jehudah and Rabbi Nehemiah⁸. Rabbi Ilai said, this *baraita* deals with idolatrous produce⁹. As

Rebbi Abbahu said in the name of Rebbi Johanan, in matters of libation wine they fined him a fine.

3 A customary restriction without justification in law.

4 This paragraph is a shortened and somewhat corrupt copy of one in *Ševi`it* 8:6, Notes 94-98.

5 Babli 62a, Tosephta *Ševi`it* 6:26.

6 They should only be used to buy Sabbatical produce to be eaten, not processed.

7 While the paragraph in general looks like a bad copy of the one in *Ševi`it*, the reading בידיהן “in their hands” is superior to the reading בידיהן “of their olive presses” of

both *Ševi`it* mss. There is no question why one should be paid in wine for using an olive press.

8 Who in *Ševi`it* (8:4 Note 69, Tosephta 6:21) forbid to pay for anything, even for food, with sabbatical produce.

9 This reading is quite impossible; idolatrous produce does not exist. In *Ševi`it*: “forbidden produce”, stored sabbatical produce at a time when wild animals no longer can find produce on the fields, which has to be consumed immediately.

44c line 56) כִּיתָף עֲמֹל חֲבִית בְּחִבִּית אֶת קוֹנְסוֹ בְּחִבִּיתוֹ עַד כְּדֵי שְׁכָרוֹ. נָתַן לוֹ קֶרֶקַע בְּשָׁכָרוֹ. בְּכָל-אֲתָר אֶת אָמֶר. אִין קֶרֶקַע נֶאֱסָר. וְכָא נֶאֱסָר. נָתַן לוֹ בְּהֵמָה בְּשָׁכָרוֹ. בְּכָל-אֲתָר אֶת אָמֶר. אִין דָּבָר שֶׁיֵּשׁ בּוֹ רוּחַ חַיִּים נֶאֱסָר. וְכָא נֶאֱסָר. נָתַן לוֹ הַכֹּל בְּשָׁכָרוֹ הַכֹּל אֲסוּר אֲלָא עַד כְּדֵי שְׁכָרוֹ. הִנֵּה עוֹשָׂה עֲמֹל בְּטוֹבַת הַנָּאָה אֶת מִמְשָׁכָּנוּ מִנְכָּסִיו עַד כְּדֵי שְׁכָרוֹ.

הִנֵּה עוֹשָׂה עֲמֹל חֲצִי יוֹם בְּאִיסוּר וְחֲצִי יוֹם בְּהִיתָר. הִנֵּה מוֹכֵר חוֹלִין וְשִׁנִּי בְּכָרָךְ אֶחָד אִי זֶה שִׁירְצָה חוֹלִין יַעֲשֶׂה. וְשִׁנִּי יַעֲשֶׂה. וְהָכָא כֵּן. נִשְׁמַעִנָּה מִן הָדָא. הַשּׁוֹכֵר אֶת הַפּוֹעֵל לְהִבְיָא יִין לַחֹלָה. אִם הִבְיָא לוֹ חֵיב לִיתָן לוֹ. וְאִם לֹא אִין חֵיב לִיתָן לוֹ. אֲבָל אִם אָמַר לוֹ. יִין לַחֹלָה מִמְקוֹם פְּלוֹנִי וְתַפּוּחַ לַחֹלָה מִמְקוֹם פְּלוֹנִי. בֵּין הִבְיָא בֵּין לֹא הִבְיָא חֵיב לִיתָן לוֹ. דְּמִי רְגָלִיו נוֹתֵן לוֹ. וְכָא לֹא דְמִי רְגָלִיו נוֹתֵן לוֹ.

רַבִּי יִרְמְיָה בְּעִי. שְׁכָרוֹ לְשִׁבְרַת חֲבִית שְׁלִימָא נָסָף. אֲפִילוּ כֵּן שְׁכָרוֹ אֲסוּר.

If he transported for him amphora against amphora¹⁰, you fine him in his own amphora up to the amount of his wages¹¹. If he paid him his wages in land. Everywhere you are saying that land is not forbidden¹², here it is forbidden. If he paid him his wages in an animal. Everywhere you are saying that anything breathing is not forbidden¹³, here it is forbidden. If he gave him anything as his wages¹⁴, is everything forbidden or only up to the amount of his wages? If he worked for him for goodwill, do you impound his property in the value of his wages?

If he worked for him half a day in prohibition and half a day in permission. If he was selling profane [food] and Second Tithe together, [the buyer] has the choice of treating as profane what he chooses and as Second Tithe what he chooses¹⁵. Is this the same here? Let us hear from the following¹⁶. If somebody hires a worker to bring wine to a sick person; if he delivered [the employer] has to pay him, otherwise he does not have to pay him. But if he told him, wine for a sick person from place X, an apple for a sick person from place X, whether or not he delivered he has to pay him, for he pays the wages of his feet. And here, does he not pay the wages of his feet¹⁷?

Rebbi Jeremiah asked, if he hired him to break amphoras of libation wine; is it forbidden anyhow¹⁸?

10 The language is not clear and the proposed interpretations are unfounded. It seems that the worker is not paid as a worker for his time but as a contractor by the piece, and is not paid in money but receives an (empty) amphora.

In the entire paragraph it is equally possible not to read the sentences as apodictic statements but as questions. If he is paid in land, is the land forbidden? Etc.

11 That he might be forced to sell the amphora and destroy coins in the equivalent of his wages.

12 Halakhah 3:6, Note 125.

13 Halakhah 3:6, Note 140.

14 Which clearly is worth more than the amount due for his wages.

15 This statement is not found in any parallel source but no opposing opinion is

noted. While it is necessary to “give a name” to the Second Tithe due for a harvest, it is not necessary bodily to separate it from the remainder of the harvest. If the farmer does not intend to bring his tithe bodily to Jerusalem, he may sell it and transfer its sanctity to the money. The buyer then has to separate tithe from profane food but is not restricted in his choice; cf. Introduction to Tractate *Ma’aser Šeni*.

16 *Ševi’it* 8:4 Note 65. In the first case the worker is hired as a contractor, in the second as a worker who has to be paid for his time.

17 There is no reason to impound the wages for the time he worked in a permitted way.

18 In the Babli 63b the question was asked by Amoraim of the second generation and answered in the negative.

(44c line 70) אָסִי אָמַר. דְּמִי יִין נֶסֶף בִּיד גּוֹי אָסוּר. דְּמִי עֲבוֹדָה זָרָה בִּיד גּוֹי. רַבִּי יוֹנְתָן אָמַר. מוֹתֵר. רַבִּי יוֹחָנָן אָמַר. אָסוּר. מִתְּנִיתָא מְסִיעָה לְדִין וּמִתְּנִיתָא מְסִיעָה לְדִין. מִתְּנִיתָא מְסִיעָה לְרַבִּי יוֹחָנָן. גּוֹי שֶׁהָיָה חֵיב מְעוֹת לְיִשְׂרָאֵל. לֹא יֹאמַר לוֹ. הִמְתִּין עַד שֶׁאֶמְכּוֹר יִין נֶסֶף.

עד שְׁאֵמְכֹר עֲבֻדָּה זָרָה וְאֵתָן לָדֹ. אֲנִי אוֹמֵר. שְׁמָא הִחְלִיף. מִתְּנִיתָא מְסִיעָה לְרַבִּי יוֹנָתָן. גּוֹי שֶׁהָיָה חַיִּיב מַעוֹת לְיִשְׂרָאֵל הָרִי זֶה מוֹכֵר יֵין נֶסֶד וְנֹתֵן לוֹ. עֲבֻדָּה זָרָה וְנֹתֵן לוֹ. מִפְּנֵי מַרְעִית הָעֵינַיִן.

הַכֹּל מוֹדִין בְּחִלְפִין שְׁאֵסוּרוֹת. חִלְפִי חִלְפִין מֵהוּ. אָמַר רַבִּי חֲנִינְיָה. מִחְלֻקַּת רַבִּי יִשְׁמַעֵאל וְרַבָּנִי. רַבִּי יִשְׁמַעֵאל בִּירְבִּי יוֹסִי אָמַר. אֲסוּר. וְרַבָּנִי אָמַר. מוֹתֵר. רַבִּי לֵעָזָר בֶּן הוֹשִׁיעָרָה. טַעֲמוֹן דְּרַבָּנִי וְהֵייתָ חֶרֶם כְּמוֹהוּ. כָּל־שִׂאֲתָא יָכוֹל לְקַיְיְמוּ מִמֶּנּוּ הָרִי זֶה כְּמוֹהוּ. מֵאִי כְדוֹן. אָמַר רַבִּי יוֹסִי בִּירְבִּי בּוֹן. כְּמוֹהוּ כְּמוֹהוּ ב' פְּעָמִם עַל שֵׁם וְלֹא־יִדְבֹּק בְּגִדָּה מֵאוֹמְרָה מִן־הַחֶרֶם.

Assi said, the proceeds of libation wine in the hands of a Gentile are prohibited¹⁹. The proceeds of an idol in the hand of a Gentile, Rabbi Jonathan said it is permitted, Rabbi Johanan said it is prohibited. A *baraita* supports one and a *baraita* supports the other. A *baraita* supports Rabbi Johanan: “A Gentile who owed money to a Jew should not tell him, wait until I sell libation wine, until I sell an idol, and I shall give it to you. I am saying, maybe he exchanged.”²⁰ A *baraita* supports Rabbi Jonathan: “A Gentile who owes money to a Jew may sell libation wine and give to him, an idol and give to him. Because of the bad impression?”²¹

²²Everybody agrees that substitutes are forbidden. What about substitutes of substitutes? Rabbi Hanina said, a disagreement between Rabbi Ismael and the rabbis. Rabbi Ismael ben Rabbi Yose said, forbidden. But the rabbis say, permitted. Rabbi Eleazar ben Hoshai, the reason of the rabbis, *you would be banned like itself*²³. Anything which you can keep from it is like itself²⁴. What about it? Rabbi Yose ben Rabbi Bun said, *like itself, like itself* two times²⁵, because of *nothing should cling to your hand from the ban*²⁶.

19 They are not forbidden to the Gentile, only to a Jew who knows that this money was received as payment for wine whose usufruct is forbidden to Jews. From the argument in the text it seems possible that one should read; “Assi said, the proceeds of libation wine in the hands of a Gentile and the proceeds of an idol in the hand of a Gentile, Rabbi Jonathan said it is permitted, Rabbi Johanan said it is prohibited”, since in

the proof texts wine and idols are always treated in parallel. On the other hand, the preceding text (Notes 11-12) notes that the prohibition of wine, a purely rabbinic custom, follows much stricter rules than the biblical prohibition of idols.

20 Babli 64a. If the Gentile tells the Jew that he gives him money received for forbidden wine or idols, the Jew may not accept since we must assume that the

Gentile tells the truth. In the Babli's tradition, this is accepted by everybody; in the Yerushalmi this is particular to R. Johanan.

21 This is read as meaning that in all cases the Jew may accept the money and does not have to worry that people will say that he accepts idol money. The Babli would interpret the *baraita* as stating that the Jew may accept the money as long as the Gentile does not explicitly declare it as idol's proceeds.

22 The entire paragraph has a parallel in the Babli, 54b. Anything received in barter for an idol must be destroyed as if it were

the idol itself.

23 *Deut.* 7:26.

24 Any proceeds are like the idol itself. But nothing is said about proceeds for barter of the proceeds.

25 The expression תָּרָם כְּמוֹהוּ appears only once in the biblical text. The argument gives the reason for R. Ismael ben R. Yose's position. If the proceeds obtained by barter for an idol are an idol, then the proceeds in barter for the proceeds are also an idol; in effect, the prohibition never stops.

26 *Deut.* 13:18.

(fol. 44c) **משנה ב:** השוכר את החמור להביא עליה יין נסך שְׂכָרָה אָסוּר. שְׂכָרָה לַיֵּשֶׁב
עֲלֶיהָ אִם עַל פִּי שְׁחָגִיתָ לָגֵינוּ עֲלֶיהָ שְׂכָרָה מוּתָר:

Mishnah 2: If somebody²⁷ hires a donkey to transport libation wine, its wages are forbidden. If he hired it to sit on it, even though he put his barrel²⁸ on it, its wages are permitted.

27 A Gentile. The Mishnah is parallel to Mishnah 1; only rentals made for the explicit purpose of transporting libation wine (or idols) is forbidden, not occasional use if the hiring was for general purposes.

28 Greek *λάγυρος*, *λάγηνος*, Latin *lagna* "bottle", also a measure. Middle High German *lāgen* "small barrel; a measure of volume or weight".

(44d line 5) **הלכה ב:** השוכר את החמור כול'. עד היכן. עד כדי שְׂלֵא יְהֵא החמור מקפיד.

Halakhah 2: "If somebody hires a donkey," etc. How far? Up to when the donkey takes offense²⁹.

29 If the weight of the rider and the barrel would be more than the normal load of a

donkey, the contract would be for transporting the wine and illegal.

משנה ג: יין נסך שנפל על גבי ענבים ויהן מותרות ואם היו מבוקעות אסורות. מעשה בביתוס בן זונין שהביא גרוגרות בספינה ונשתברו הבית של יין נסך על גביהן וביא מעשה לפני חכמים והתירו. זה הכלל כל שהוא בהנחתו בנותן טעם אסור וכל שאינו בהנחתו בנותן טעם מותר כגון החומץ שנפל לגריסים:

Mishnah 3: If libation wine fell on grapes, one should wash it off and they are permitted; but if they were split they are forbidden. If happened that Boetius ben Zenon brought dried figs in a boat when amphoras of libation wine broke over them. The case came before the Sages and they permitted. This is the principle: Anything where the taste improves the use is forbidden³⁰; anything where the taste does not improve its use is permitted³¹, such as vinegar on broken beans³².

30 If the taste of the forbidden wine fell.

improves the taste of the food on which it fell.

31 If the spill was accidental, it is not necessary that the wine actually diminish the value or enjoyment of the food on which it

fell.

32 In the Halakhah both here and in the Babli (67a) R. Johanan restricts this to wine falling on a dish of hot broken beans or peas.

(44d line 7) **הלכה ג:** יין נסך שנפל על גבי ענבים כול. מתניתין בשלא נידלדל חותמן. אבל נידלדל חותמן כמבוקעות הן.

מה את עבד לה. כיון כיון או כיון לתבשיל. אין תעבדינה כיון לתבשיל דברי הכל אסור. ואין תעבדינה כיון כיון מחלוקת רבי מאיר וחכמים.

אמר רבי יוחנן. הדיא דאת אמר ברוחחין. אבל בצונין אסור. שכן דרש בני ציפורין עושין כן וקורין אותו שהלייא. היו רוחחין וצינן. מעתה אפילו רוחחין יהו אסורין מאחר שדרבן לצין.

דתני. כל-נותנין טעם בין לשבח בין לפגם אסור. דברי רבי מאיר. וחכמים אומרים. לשבח אסור. לפגם מותר. כגון חומץ שנפל לגריסין. רבי יסא בשם רבי יוחנן. דרבי מאיר היא. דתנינן תמן. וכן שעורים שנפלו בתוך הבור של מים. אף על פי שהבאישו מימיו מימיו מתירין. והדיא מתנייתא רבי מאיר אומר. במחלוקת. רבי יוחנן ורבי שמעון בן לקיש דברי הכל. רבי יוסי בירבי בון אמר. שמועתה כן. על דעתיה דרבי מאיר במחלוקת. על דעתיה דרבי יוחנן ורבי שמעון בן לקיש דברי הכל.

Halakhah 3: "If libation wine fell on grapes," etc. Our Mishnah if their seal is not loosened. But if their seal was loosened they are as injured³³.

How do you treat them³⁴? Like wine in wine or wine in a dish³⁵? If you treat it like wine in a dish, according to everybody it is forbidden. If you treat it like wine in wine, there is the disagreement between Rabbi Meïr and the Sages³⁶.

³⁷Rebbi Johanan said, this you say if it is hot. But cold it is forbidden, for the people of Sepphoris are used to make it and call it laxative³⁸. If it was hot and one cooled it down? Then even hot it should be forbidden since usually it cools down³⁹.

⁴⁰As we have stated⁴¹. “Everything that can be smelled is forbidden, whether it improves or spoils, the words of Rabbi Meïr. But the Sages say, if it improves it is forbidden, if it spoils it is permitted,” as for example vinegar which fell into broken beans. Rabbi Yasa in the name of Rabbi Johanan: It is Rabbi Meïr’s, as we have stated there⁴²: “If barley grains fell into a cistern of water, even though they made it stink, [the water] is permitted.” About this Mishnah, Rabbi Meïr says it is in dispute, Rabbi Johanan and Rabbi Simeon ben Laqish: everybody’s opinion⁴³. Rabbi Yose ben Rabbi Abun said this tradition so: In the opinion of Rabbi Meïr it is in dispute, in the opinions of Rabbi Johanan and Rabbi Simeon ben Laqish it is everybody’s opinion.

33 Grapes which still sit on the vine with intact skin are sealed; if libation wine falls on them one washes the bunch and it is permitted. But loose grapes have a hole where they were sitting on the vine; the libation wine enters through this hole and cannot be removed.

34 What is the reason that injured grapes on which libation wine fell are forbidden?

35 If wine of one kind is mixed with wine of another type, for wine cognoscenti this definitely is spoilage. But wine added to a cooked dish improves the taste.

36 As noted later, if the forbidden admixture improves the taste, the mixture is forbidden according to everybody. But if it spoils the taste, the rabbis opposing Rabbi

Meïr do permit consumption of the food.

37 This paragraph is an intrusion here; it should be placed at the end of the Halakhah since it refers to the last statement in the Mishnah, forbidden vinegar on broken beans. The parallel is in the Babli, 67a.

38 In the Babli, the dish of Sepphoris is called שחליים. This probably comes from the Babylonian pronunciation of ח as ה. As the Babli reports, *Megillah* 24b, Rabbi told R. Hiyya the Babylonian to be careful if he quotes *Is.* 8:17, “I am waiting (וְחִכִּיתִי) for the Eternal”, not to blaspheme by saying “I am hitting (וְהִכִּיתִי).” Now שחליים are water-cresses, not making sense for the context. The root שחל is not documented in Hebrew

or any of the Talmudic Aramaic dialects; but one of the many meanings of Arabic **سهل** is “to purge, to act as laxative.” This is taken as the meaning here. It cannot be determined whether the word was pronounced with **ש** or **ס**, even though **ש** is more likely.

39 An implied answer to this question is found in the Babli: Vinegar in the cold dish improves the taste and therefore makes it forbidden. If the dish then is heated the vinegar spoils the taste but this does not remove the prohibition. Cooling the dish after heating leaves the dish spoiled.

40 This paragraph is a corrupted version of one in *Terumot* 10:2 (Notes 20-24), *Orlah* 2:5 (Note 121). It is the continuation of the discussion why and under which condition contamination with libation wine makes food prohibited. Babli 67b/68a.

41 Tosephta *Terumot* 8:9.

42 Mishnah *Terumot* 10:2. The barley grains are heave, forbidden to anybody but a Cohen. Since they spoil the taste of the water, they impart no sanctity to it. The water remains permitted to everybody.

43 This sentence and the following one are impossible; Rabbi Meïr the fourth-generation Tanna cannot engage in a discussion with the second generation Amoraim RR. Johanan and Simeon ben Laqish. The correct statements are from *Orlah* and *Terumot*: “About this Mishnah, Rabbi Johanan says it is in dispute, Rabbi Simeon ben Laqish said it is everybody’s opinion. Rabbi Yose ben Rabbi Abun said this tradition so: In the opinion of Rabbi Johanan it is in dispute, in the opinion of Rabbi Simeon ben Laqish it is everybody’s opinion.”

משנה ד: נִבְרִי שֶׁהָיָה מַעֲבִיר עִם יִשְׂרָאֵל בְּדֵי יוֹן מִמָּקוֹם לְמָקוֹם אִם הָיָה בְּחֻזָּקָת הַמַּשְׁתַּמֵּר מוֹתֵר. אִם הוֹדִיעָו שֶׁהוּא מְפָלִיג בְּדֵי שִׁישְׁתּוֹם וְיִסְתּוֹם וְגוֹב רַבֵּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר בְּדֵי שִׁיפְתָּה וְגוֹף וְתַגּוּב: (fol. 44c)

Mishnah 4: A Non-Jew who with a Jew was transporting wine jugs from one place to another, if it can be presumed to be watched it is permitted⁴⁴. If he told him that he was leaving⁴⁵, the time needed to open, close, and fill the hole⁴⁶, Rabban Simeon ben Gamliel says, to open, and close, and dry⁴⁷.

44 The Jew transports kosher wine and hires a Gentile as help. Even if the Jew does not see the Gentile at every moment; the fact that the Jew is around will prevent the Gentile from touching the wine if he knows

that he would lose his job and face a damage suit.

45 The Jew informed the Gentile that he was leaving for some time.

46 The containers are of clay and are

closed. If the expected time of absence of the owner is sufficient for the Gentile to drill a hole in the cover, close it again and seal it, the wine becomes forbidden.

47 He thinks that the owner upon his return

would recognize a hole freshly filled. He therefore forbids the wine only if there was time for the Gentile to remove the old seal completely, make a new one and have it dry to become undetectable.

(44d line 21) **הלכה ד:** נָכְרִי שֶׁהֵיחָ מַעֲבִיר כּוֹל'. אָמַר רַבִּי שְׁמוּאֵל. מַעֲשֶׂה בְּנִכְרִי אֶחָד שֶׁהֵיחָ מַעֲבִיר עִם יִשְׂרָאֵל בְּדִי יוֹן מִמְּקוֹם לְמִקְוִים. אֵתָא עוֹבְדָא קוּמִי רַבִּי אֲבָהוּ וְאָסֵר. אָמְרִי. בְּפִתּוּחוֹת הָיִי עוֹבְדָא. אָמַר רַבִּי זְרִיקָן. לֹא סוּף דְּבַר מְלֵאוֹת אֶלָּא אֶפִּילוּ חֲסִירוֹת. דְּטָרְף וְנִגַּע בְּדָא וְחִזּוּר.

אֵת סֶבֶר דְּהָדָא דְרַבּוֹ שְׁמַעוֹן בֶּן גַּמְלִיאֵל לְקוּלָא וְלִית הֵיא אֶלָּא לְחוּמָרָא. דְּשִׁיתוּמָהוֹן דְּרַבּוֹן מַעֲט מִנֵּה.

Halakhah 4: “A Non-Jew who was transporting,” etc. Rabbi Samuel said, it happened that a Non-Jew was transporting wine jugs with a Jew from one place to another. The case came before Rabbi Abbahu who forbade. They said, the case was about open [containers]⁴⁸. Rabbi Zeriqa said, not only full ones but also short ones; for he suddenly could have touched with his hand and removed it⁴⁹.

You may be of the opinion that Rabban Simeon ben Gamliel’s statement was a leniency, but rather it is a stringency. For the opening of the rabbis leaves little of the cover⁵⁰.

48 The ruling of R. Abbahu does not contradict the Mishnah. The wine containers are only “presumed to be watched” if on top they are closed with a clay cover. Open containers, where the wine could be touched in no time, are never “presumed to be watched”.

49 Even if the container has a narrow neck and is not full, so that even without a cover

it is not possible for the Gentile to touch the wine and remove his hand in less than a second, the wine is forbidden.

50 While Rabban Simeon requires time for the cover to dry, he envisages the possibility that the Gentile drill a small hole in the cover, whereas the rabbis only contemplate the removal of most of the old cover.

(44d line 26) רַבִּי יְהוּדָה בַּר כְּזִי בִשֵּׁם רַבִּי אֲמִי. בִּיצָה צְלוּיָה שְׁלִכּוּתִים הָרִי זֹו מוֹתֶרֶת. רַבִּי יַעֲקֹב בַּר אֶחָא בִשֵּׁם רַבִּי לְעֶזֶר. תִּבְשִׁילִי כוּתִים הָרִי אֵילוּ מוֹתֶרֶי. הָדָא דְאֵתָא אָמַר. בְּתִבְשִׁיל שְׁאִין דְּרָכּוֹ לְתַת לְתוֹכּוֹ יוֹן וְחוּמָא. הָא דְבַר בְּרִיא שְׁנִתָּן אָסוּר אֶפִּילוּ בְּהִנְיָה. כִּהָדָא דְתַנִּי. בְּרִאשׁוֹנָה הָיִי אוּמְרִין. יֵינָה שֶׁל אוֹגְדוֹר לָמָּה הוּא אָסוּר. מִפְּנֵי כֶּפֶר פֶּגַשׁ. וְשֶׁלְבוֹרְגָתָה מִפְּנֵי

בית סוריקה. שלעין כושית מפני כפר שלם. תזרו לומר. פתוחה בכל מקום אסורה וסתומה מותרת. נקובה וסתומה הרי היא כסתומה. רבי יצחק בן חקולה אמר. הרי זו כפתוחה. אמר רבי חנינה. ואנא יכיל קיים. אין הנה עילווה יקיר לא איתפתחת. ואין לא איתפתחת. כהדא רבי שמעון בן לעזר. אזל להדא קרייה דשמרין. אתא ספרא לגביה. אמר ליה. אייתי לי חדא קולא שתימא. אמר לו. הא מבועא קמך שתי. אטרח עלוי. אמר ליה. הא מבועא קמך שתי. חמתייה מטרח עלוי. אמר ליה. אין את מריה דנפשא הא מבועא קמך שתי. ואין נפשא מרתך ושמת שפין בלועד אם בעל נפש אתה: כבר נתקלקלו הכותים.

Rebbi Jehudah ben Pazi in the name of Rebbi Immi: A roasted egg of Samaritans is permitted⁵¹. Rebbi Jacob bar Aha in the name of Rebbi Eleazar: Samaritans' dishes are permitted. This is what you say about a dish usually made without wine or vinegar. Therefore if it is certain that he put some in, it is forbidden even for usufruct⁵². As what had been stated: In earlier times they used to say, why is the wine of Ogdor forbidden? Because of Kefar-Pageesh, and of Burgata because of the Saracen tower, and of the *Kushit* spring because of *Kefar Shalem*⁵³. They changed to say, open it⁵⁴ is everywhere forbidden, sealed it is permitted. Perforated and repaired it is like sealed, Rebbi Isaac ben Haqula said, it is like open. Rebbi Hanina said, I can confirm. If it has a cavity on it⁵⁵ it was not opened, otherwise it was opened. As the following: Rebbi Simeon ben Eleazar went to the city of Samaria⁵⁶. The scribe came to him. He told him, bring me a closed jug⁵⁷. He answered him, there is a spring in front of you, drink. He importuned him; he said, there is a spring in front of you, drink. When he saw that he was going to importune him, he told him, if you are master of yourself, there is a spring in front of you, drink. But if your soul brings you to rebellion, *you are going to swallow a knife if you are too covetous*⁵⁸. The Samaritans already are degenerate⁵⁹.

51 There is no suspicion that it not be kosher.

52 Samaritan wine is forbidden as if it were Gentile wine.

53 These places are not identified; also it is not clear whether the wine of the first mentioned locality is forbidden because it is Samaritan close to the second one settled by Gentiles, or that the first locality is Jewish

and the second Samaritan. *Kefar Shalem* may be the place mentioned in *Gen.* 33.18 as situated near Sichem.

54 Wine sold in open amphoras since there is no controlling who might have touched it.

55 This translation is tentative; it is offered as an educated guess. The proposal of *Pene Moshe* to read קירי "*cera*, wax" instead of יקיר is not very convincing; a wax seal can

easily be counterfeit. The explanation of M. Sokoloff, to read here as at other places “worth, expense” is even less convincing; it seems illogical to assume that wine was not tampered with because it was expensive. The explanation given is based on Arabic **وقر** “cavity”. If the clay seal on top of the amphora is not plane it probably is original, if it is smooth it may have been tampered

with.

56 In the Babli, *Hulin* 6a, he was sent by R. Meir to buy wine from Samaritans.

57 Of wine to drink.

58 *Prov.* 23:2.

59 This projects the Amoraic development of separation of Jews from Samaritans into Tannaitic times (and it was not complete even in Fatimid Egypt.)

(44d line 41) רבי ישמעאל בירבי יוסי אַזל לְהָדָא גִּיפּוֹלִיס. אֶתוֹן כּוּתִינְיָא לְגִבְיָהּ. אָמַר לוֹן. אֲנָא מִחְמִי לְכוֹן דְּלִית אֶתוֹן סָגְדִין לְאַהִין טוֹרָא אֶלָּא לְצִלְמִינָא דְתַחְתּוֹתוֹי. דְּכַתִּיב וַיִּטְמוֹן אוֹתָם מַעֲלֵב תַּחַת הָאֵלָה אֲשֶׁר עַם־שָׂכָם: שְׁמַע קֶלֶין אֶמְרִין. נִקְרוֹץ נִסְדֵּר לְאִילֵין כּוּבִינְיָא. וַיֵּדַע דְּאִינוּן בָּעוּ מִקְטָלוֹנִיָּה. וּקְרָץ וּנְכַק לִיהּ.

רבי אחא אַזל לְמָאוּס וְאָכַל חֲלִיטוֹן. רבי ירמיה אָכַל חֲמִצִּין. רבי חזקיה אָכַל קִמְצִין. רבי אבהו אָסַר יִינוֹן מִפִּי רבי חייה ורבי אסי ורבי אמי שְׁהִיו עוֹלִין בְּהַר הַמֶּלֶךְ וְרָאוּ גוֹי אֶחָד שְׁהִיָּה חָשׂוֹד עַל יִינוֹן. אֶתוֹן אֶמְרוּן לִיהּ קוֹמוּי. אָמַר לוֹן. וְלֹא עַל דִּי עֵילָא. וְאִית דְּבָעִי מִימֵר. חָדָא עֲרוּבַת שׁוּבָא לֹא אִישְׁתַּבַּח חֲמָרָא בְּכָל־סַמְרִיטִיקִי. בְּפוּקִי שׁוּבָא אִישְׁתַּבַּחַת מְלִינָא מִן מַה דְּאִייתוֹן אֶרְמִינְיָא וְקִבְלוֹנִיָּה כּוּתִינְיָא מִינְהוֹן. וְאִית דְּבָעִי מִימֵר. כִּד קָלִיק דִּיקְלִטְיוֹנוֹס מְלָכָא לְהָכָא גִּזֵּר וְאָמַר. כָּל־אֻרְמִינָא וְנִסְכוֹן בֵּר מִן יוֹדֵאִי. וְנִסְכוֹן כּוּתִינְיָא וְנָאָסַר יִינוֹן. וְאִית דְּבָעִי מִימֵר. כִּמִּין יוֹן אִית לְהוֹן וּמְנַסְכִּין לִיהּ.

Rebbi Ismael ben Rebbi Yose went to the wellknown Neapolis⁶⁰. The Samaritans came to him. He told them, I am seeing you bowing down not to this mountain but to the idols under it, as it is written, *he hid them under the terebinth near Sichem*⁶¹. He heard their voices saying, let us get up early and gather those thorns. He understood that they intended to kill him; he got up early and left.

Rebbi Aha went to Emmaus and ate something made in boiling water⁶². Rebbi Jeremiah ate pickles. Rebbi Hizqiah ate locusts⁶³. Rebbi Abbahu forbade their wine on the testimony of Rebbi Hiyya, Rebbi Assi, and Rebbi Immi who went up King's Mountain and saw a Gentile who was suspected because of wine⁶⁴. They came and said it before him. He told them, but not as a pretext⁶⁵. But some say, one Sabbath eve no wine was found in all of Samaria⁶⁶. When Sabbath ended, it was found full from what the Arameans

brought and the Samaritans accepted from them⁶⁷. But some say, when King Diocletian came here he decided and said, all peoples have to offer libations except the Jews. The Samaritans offered libations and their wine was forbidden. But some say, they have a kind of dove and they offer libations to it.

60 The former Sichem, today Nablus.

61 *Gen.* 35:4.

62 Dumplings or bagels, any grain product prepared in hot water is called חלוט.

63 All three considered Samaritan cooking as kosher. (Also Samaritan slaughter, Babli *Hulin* 5b).

64 He was suspected of selling Gentile wine to Samaritans. The latter, as Sadducees, had no reason to forbid Gentile

wine which was not actually used in pagan exercises.

65 He wanted to forbid Samaritan wine only upon solid evidence.

66 The district.

67 As noted earlier, they had no reason to forbid Gentile wine. But this made Samaritan wine equal to Gentile wine for rabbinic Jews. Of all reasons given, this seems the most plausible.

44d line 54) כותינא דקיסרי בעו מרבי אברה. אבותיכם היו מסתפקין בשלנו. אתם מפני מה איכם מסתפקין ממנו. אמר להן. אבותיכם לא קלקלו מעשיהם. אתם קלקלתם מעשיכם.

The Samaritans of Caesarea asked Rabbi Abbahu: Your fathers were providing themselves from us⁶⁸. Why are you not providing yourselves from us? He answered them, your fathers did not spoil their deeds⁶⁹, you are spoiling your deeds.

68 They were buying Samaritan wine for personal use.

rabbinic standards. *Tosaphot Hagigah* 25a s. v. שרצעה.

69 One could assume that in earlier times Samaritan wine was made according to

44d line 58) תמן תנינן. ארץ ישראל טהורה ומקוותיה טהורין. ארץ כותים טהורה ומקוותיה ומדורותיה ושביליה טהורין. שביליה טהורין. חזקה שאין בוררין להן שביל אלא מטהרה. ומקוותיה טהורין. רבי לעזר בירבי יוסי הדא דת אמר. להאמנן שאינן שואבין. הא למידת ארבעים לא. דדרשי אף מעיין ובור מקוה-מים. מה מעיין מטהר כל-שהוא אף מקוה מטהר כל-שהוא.

בְּעוֹן מְרִי אֲבָהוּ. חֲלוּט שְׁלֶהָן מָהוּ. אָמַר לוֹן. הַלָּנֹא הֵיִינוּ יְכוֹלִין לוֹסֵר גַּם מִימֵהֶן. רַבִּי יַעֲקֹב בַּר אֲחָא בָּשָׁם רַבִּי חֲנִינָה. כּוּתְּאֵי דְקִסְרִין מוּתָר לְהַלְוֹתָן בְּרִיבִית. רַבִּי יוֹסִי בְּעֵי. מַעֲטָה לֹא נְחוּשׁ לְחֻלּוֹתָן. וְנָן חֲמִי רַבְּנָן חֲשָׁשׁוֹן.

There⁷⁰ we have stated: “The Land of Israel is pure and its ritual baths are pure⁷¹.” ⁷²“The land of the Samaritans is pure; its ritual baths, and its dwellings⁷³, and its paths are pure.” Its paths are pure; it is a presumption that they would not select a path unless it was pure⁷⁴. And its ritual baths are pure; Rabbi Eleazar ben Rabbi Yose⁷⁵: that is, to believe them that they are not from drawn water⁷⁶, but not for the measure of forty; for they explain, *only a spring or a cistern, a collection of water*⁷⁷,” just as a spring cleanses in any amount, any collection of water cleanses in any amount⁷⁸.

They asked Rabbi Abbahu: What is the status of their parboiled food⁷⁹? He told them, if only we also could prohibit their water! Rabbi Jacob bar Aḥa in the name of Rabbi Ḥanina: It is permitted to lend to the Samaritans of Caesarea on interest⁸⁰. Rabbi Yose asked, if that is so, we should not be worried about their *ḥallah*; but we see that the rabbis do worry⁸¹.

70 Mishnah *Miqwaot* 8:1.

71 There is a universal presumption that every Jewish congregation in the Land of Israel will see to it that its ritual baths are built according to the rules (in particular, that the water is natural, ground water or rain water, not from vessels, and that the amount of water is at least 40 *seah* (a Roman *culleus*, 20 *amphorae*) as required by rabbinic tradition. A visitor may use any such *miqweh* without first investigating its status. Cf. *Berakhot* 3:4, Notes 164-166.

72 Tosephta *Miqwaot* 6:1.

73 Gentile dwellings and paths are impure even in the Land of Israel since one has to worry that Gentiles bury their stillborn in their dirt floors or on their paths. Anybody walking over such a spot would become impure by “tent impurity.” The opinion that

Gentiles are not sources of “tent impurity” is not found in Yerushalmi sources (Babli *Yebamot* 61a, attributed to R. Simeon ben Iohai.)

74 They are assumed to be more strict in matters of impurity than rabbinic Jews.

75 The Tanna.

76 Which is a source of impurity.

77 *Lev.* 11:36.

78 In *Sifra Šemini Parašah* 9(1) the argument attributed here to Samaritans (as Sadducees) is rejected only because of the rule that אֶךָ “only” must indicate an exclusion. This characterizes the rule that flowing water purifies in any quantity but standing water only in 40 *seah* as rabbinical but in essence it is also found in the Damascus Document CD X 11..

79 Which only could be forbidden if

Samaritans were considered Gentiles.

80 He considers them as Gentiles.

81 A Gentile baker does not have to give *hallah* and should he give it would not have any holiness. If the rabbis insist that Samaritan bread may be used only if *hallah*

had duly been given, the attitude of R. Jacob bar Aḥa and R. Abbahu is rejected. Since R. Jacob bar Aḥa was one of the teachers of R. Yose, one has to assume that the latter's position is that of his foremost teacher, R. Jeremiah.

מִשְׁנָה ה': הַמְנִיחַ יֵינוּ בְּקֶרֶן אוֹ בְּסָפִינָה וְהֵלֵךְ לוֹ בְּקַפְנִדְרֵיא נִכְנֵס לְמִדְיָנָה וְרָחֵץ מוֹתֵר. אִם הוֹדִיעָו שֶׁהוּא מִפְּלִיג כְּדִי שִׁשְׁתּוֹם וְיִסְתּוֹם וְיִגֹּב. רַבֵּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר כְּדִי שִׁפְתָּח וְיִגֹּף וְיִתְיַבֵּב.

Mishnah 5: If somebody leaves his wine on a cart⁸² or a ship⁸³ and went by a short-cut⁸⁴, [even if] he entered a town and took a bath⁸⁵, it is permitted. If he told him that he was leaving⁴⁵, the time needed to open, close, and fill the hole⁴⁶; Rabban Simeon ben Gamliel says, to open, and close, and dry⁴⁷.

82 Latin *carrum*. The teamster transporting the wine (in sealed amphoras) is Gentile.

83 A ship on a river.

84 Latin *compendiarium* (*iter*); cf. *Berakhot* 1:1, Note 36.

85 The Jew is out of sight and away for an extended period. Nevertheless the wine is permitted if the Gentile has to expect every minute that the owner of the wine might return.

הַלְכָה ה': הַמְנִיחַ יֵינוּ בְּקֶרֶן כּוֹל. אָמַר רַבִּי חֲנִינָה. מַעֲשֶׂה בְּקֶרֶן אַחַת מִשְׁלַב בֵּית רַבִּי שֶׁהִפְלִיגָה יוֹתֵר מֵאַרְבַּעַת מִיל. אֵתָא עוֹבְדָא קוֹמֵי רַבָּנָן וְאַכְשָׁרוּן. אָמְרִין. בְּהָדָא אֶסְטָרְטָא דְצִיָּדָן הָיָה וְכוּלָּהּ מִיִּשְׂרָאֵל הָיָה. אָמַר רַבִּי חֲנִינָה. זָמִינִן דּוּ חָמִי סִיגִין כּוֹבֵבִין וְהוּא סָבוּר דִּינוֹן בְּנֵי נֶשׁ וְהוּא מְתַבָּעַת.

Halakhah 5: “If somebody leaves his wine on a cart,” etc.⁸⁶ Rebbi Hanina said, it happened that a cart of the family of Rebbi was leaving for more than four *mil*⁸⁷. The case came before the rabbis who declared it kosher. It was on the road to Sidon populated by Jews⁸⁸. Rebbi Hanina⁸⁹ said, sometimes he sees a fence formed by thorn bushes⁹⁰ and he thinks that they are people and is afraid.

86 Quoted in *Or Zarua* 240 (edition of Makhon Yerushalaim 2010, vol. 3 p. 650b); referred to in the Babli, *Šabbat* 122a.

87 The distance between the Jewish overseer and the Gentile driver. The *mil* referred to here probably is a quarter of a Greek *parasanges*, 1380 m.

88 In this interpretation, such a large

distance is acceptable only if the cart at all times was seen by Jews.

89 In *Or Zarua*, R. Ḥama, a more likely reading. The attribution to R. Ḥanina of the original statement is confirmed by the Babli.

90 Which may look like human shapes at a distance.

(fol. 44c) **משנה ו:** המניח את הנכרי בהנחתו אף על פי שהוא יוצא ונכנס מותר. ואם הודיעו שהוא מפליג כדי שישתום ויסתום ויגוב. רבן שמעון בן גמליאל אומר כדי שיפתח ויגוף ותיגוב:

Mishnah 6: If somebody leaves a Gentile in charge of his store, even though he [intermittently] leaves and returns, [the wine] is permitted. If he told him that he was leaving⁴⁵, the time needed to open, close, and fill the hole⁴⁶; Rabban Simeon ben Gamliel says, to open, and close, and dry⁴⁷.

(44d line 70) **הלכה ו:** המניח את הנכרי בהנחתו כול'. וקרבי מאיר. דרבי מאיר אמר. בין כך ובין כך הבית טמא. רבי חמא בשם רבי יוסי בר חנינה. בחצר החלוקה במסיפס בטהרות טמא. גיין נסך טהור. והא רבי מאיר מחמיר בטהרות ומיקל גיין נסך. און רבן מחמירין בטהרות ומיקלין גיין נסך.

Halakhah 6: “If somebody leaves a Gentile in charge of his store,” etc. Following Rabbi Meïr? Did not Rabbi Meïr say, “in any case the house is impure?”⁹¹ Rabbi Ḥama in the name of Rabbi Yose bar Ḥanina: If a courtyard is subdivided by a low wall⁹², for purities it is impure, in matters of libation wine it is pure⁹³, since Rabbi Meïr is restrictive for purities but lenient for libation wine; also the rabbis are restrictive for purities but lenient for libation wine⁹⁴.

91 Mishnah *Tahorot* 7:4. Since an anonymous Mishnah is supposed to follow R. Meïr’s formulation, an apparent contradiction between two statements

attributed to R. Meïr must be resolved.

Since the wine in the store is for sale, it is stored in open amphoras. The wine would become forbidden for usufruct if touched by

the Gentile. In our Mishnah it seems that R. Meir assumes that the Gentile will not touch the open amphoras. But in Mishnah *Tahorot* 7:4 he holds that if a woman keeping all rules of ritual purity invites one careless in these matters to help her in her home all vessels in the home become impure since one must assume that the helper is impure and touches everything in sight.

92 The explanation is Rashi's (70b, Bava batra 2b). The etymology is unknown; the word certainly is different from פסיפס ψῆφος "pebble".

93 A courtyard (in the back of houses or walled in, not directly open to the street) has been divided by a low wall as a sign that each party has only the use of its own part. Even though it is easy to step over the partition, the fact that it is raised is enough

to create the presumption that the parties will abide by the rules and not trespass. If the dwellers in one part are scrupulous in observing the rules of purity while the others are not (or are Gentiles), the vessels standing in the courtyard of the observant party remain pure. Similarly, if one party is Jewish and the other Gentile, wine amphoras stored in the the Jewish part remain permitted since the presumption is that the Gentile will not enter the Jewish part.

94 While a store catering to customers observant in matters of purity certainly cannot have a Gentile employee, a grocery store for the general public can have such an employee. In the Babli, 70b, this is reported as the opinion of Rav, opposed by R. Johanan.

משנה ז: הָיָה אוֹכֵל עִמּוֹ עַל הַשּׁוּלְחָן וְהָנִיחַ לְפָנָיו לֶגֶן עַל הַשּׁוּלְחָן וְלֶגֶן עַל הַדּוֹלְפָּקִי וְהָנִיחוֹ וַיֵּצֵא מִה שֶׁעַל הַשּׁוּלְחָן אִסּוּר וּמִה שֶׁעַל הַדּוֹלְפָּקִי מֵוֹתֵר. וְאִם אָמַר לוֹ הֵן מֵוֹזֵג וְשׁוֹתֶה אֵף שֶׁעַל הַדּוֹלְפָּקִי אִסּוּר. הַבֵּיט פְּתוּחוֹת אִסּוּרוֹת סְתוּמוֹת כְּדֵי שִׁפְתָּהּ וַיִּגֹּף וַיִּתְּנוּב:

Mishnah 7: If he was eating with him⁹⁵ at one table, he put a pitcher⁹⁶ on the table and one on a Delphic table⁹⁷, then let him stay there and left. Anything on the table is forbidden, on the Delphic table is permitted⁹⁸. But when he told him, mix with water and drink, also the one on the Delphic table is forbidden⁹⁹. Open amphoras are forbidden¹⁰⁰, sealed after the time needed to open, and close, and dry⁴⁷.

95 A Gentile.

96 Latin *lagena*, Greek λάγηνος, λάγυνος;

Note 28. The vessels contain wine.

97 Latin *delphica* (sc. *mensa*); Chapter 3:2

Note 58. A small ornamental table in the form of the Pythia's tripod.

98 If the Delphic table is out of the Gentile's reach when the latter is sitting

down.

99 Since the Gentile guest was given permission to move around.

100 Since wine is taken out from the open top with a bucket. As the French wine

making authorities of the Middle ages

pointed out, these rules do not necessarily apply to barrels from which the wine is

drawn from a spigot near the bottom.

(44d line 75) **הלכה ז:** הָיָה אוֹכֵל עִמּוֹ כו'. הוּוֹן בַּעֲיֵין מִימֶר. מֵה שֶׁעַל הַשּׁוּלְחָן אֲסוּר בְּתוֹךְ פִּישׁוּט גִּידִים. וְמֵה שֶׁעַל הַדּוֹלְפָקִי מוֹתֵר חוּץ מִפִּישׁוּט גִּידִים. וְלֹא כֵן אָמַר רַבִּי בָּא בָּשֵׁם רַב שִׁשֶּׁת. בָּשֵׁם שֶׁנִּתְּנוּ פִישׁוּט גִּידִים בְּטִהָרוֹת כֶּךָ נִתְּנוּ פִישׁוּט גִּידִים בִּיָּין נֶסֶךְ. אֲלֵא כִינִי. מֵאן דְּאָמַר. מֵה שֶׁעַל הַשּׁוּלְחָן אֲסוּר. בְּתוֹךְ פִּישׁוּט גִּידִים. וְמֵה שֶׁעַל הַדּוֹלְפָקִי מוֹתֵר. וּבִלְבָד חוּץ מִפִּישׁוּט גִּידִים.

Halakhah 7: “f he was eating with him,” etc. They wanted to say, “anything on the table is forbidden,” within reach of his outstretched arms; “on the Delphic table is permitted,” out of the reach of his outstretched arms¹⁰¹. But did not Rabbi Abba say in the name of Rav Sheshet¹⁰², just as they gave outstretched arms for purity so they gave it for libation wine? But it must be the following. He who said, “anything on the table is forbidden,” within reach of his outstretched arms; “on the Delphic table is permitted,” only if¹⁰³ out of the reach of his outstretched arms.

101 In this first version, anything on a separate table is considered out of the reach of the Gentile’s hand even if physically it is within his reach.

102 Halakhah 4:11, Note 171. Since an impure person is presumed to make

anything within his reach impure, a Gentile must be presumed to make all wine within his reach forbidden.

103 Both prohibition and permission are conditional .

(fol. 44c) **משנה ח:** בּוֹלְשֶׁת שֶׁנִּבְנְסָה לְעִיר בְּשַׁעַת שְׁלוֹם הַבָּיִת פְּתוּחוֹת אֲסוּרוֹת וְסִתּוּמוֹת מוֹתְרוֹת. בְּשַׁעַת מִלְחָמָה אֵילֵינוּ וְאֵילֵינוּ מוֹתְרוֹת לְפִי שֶׁאֵין פְּנֵאִי לְנֶסֶךְ:

Mishnah 8: If an investigative unit¹⁰⁴ came to a village in times of peace, open amphoras are forbidden¹⁰⁵ and sealed ones permitted. In times of war these and those are permitted since there is no time to make libations¹⁰⁶.

104 Police or military who enter all houses.

wine whether or not it is legal.

105 One may assume that they take from the

106 The soldiers cannot risk getting drunk.

הַלָּכָה ח: בּוֹלֵשֶׁת שֶׁנִּכְנְסָה לְעִיר כּוֹל'. בְּשַׁעַת הַשְּׂמֹד הַכֹּל אָסוּר. שְׂאֵי אֶפְשָׁר שֶׁלֹּא הָיָה שָׁם יִשְׂרָאֵל שֶׁלֹּא עֲבָדָה עַל כּוֹרְחוֹ. הָדָא אָמְרָה. עֲבֹדָה זָרָה שֶׁעֲבָדָה יִשְׂרָאֵל אֵינָה בְּטִילָה לְעוֹלָם. אָמַר רַבִּי יוֹסִי. וְאֵת שְׂמֵעַ מִינָה. עֲבֹדָה זָרָה שֶׁעֲבָדָה יִשְׂרָאֵל עַל כּוֹרְחוֹ אֵינָה בְּטִילָה לְעוֹלָם.

Halakhah 8: “If an investigative unit came to a village,” etc. In times of a religious persecution all is forbidden¹⁰⁷; it is impossible that there was not a single Jew who worshipped it under duress. This implies that an idol which was worshipped by a Jew is never invalidated¹⁰⁸. Rabbi Yose said, you infer from this that an idol which was worshipped by a Jew under duress is never invalidated¹⁰⁹.

107 This does not refer to the Mishnah but to a text similar to Tosephta 5:6: Pedestals erected by Gentiles in times of religious persecution (as base for statues of the Emperor or of Rome, Halakhah 3:10 Note 231) are never annulled.

there.

109 The statement is much stronger than the one stated in Halakhah 4:4 since there one speaks of idols genuinely worshipped by a Jew. But here it follows that the act of worship by a Jew makes it permanently forbidden even if the only intent of the Jew was to escape martyrdom. Cf. Babli 54a.

108 This is a statement in Halakhah 4:4, Note 30, for which proof was not given

אָמַר רַבִּי יוֹחָנָן. לֵית כָּאן אָסוּרוֹת אֱלָא מוֹתְרוֹת. אָמַר רַבִּי זְעִירָא. אֵית כָּאן אָסוּרוֹת. דָּאִין מִטָּה בֵּיהּ הוּא מוֹדַע לֵיהּ. וְאִין לֹא מִטָּה בֵּיהּ לֹא מוֹדַע לֵיהּ דְּלֹא יְהֵא שְׁלִים לֵיהּ טִיבּוֹ. רַבִּי אֲמִי בְּשֵׁם רַבִּי יוֹחָנָן. בְּשָׁלוֹם בּוֹלֵשֶׁת וּבְמִלְחָמָה בּוֹלֵשֶׁת.

Rabbi Johanan said, there is no “forbidden” here, only “permitted”. Rabbi Ze’ira said, there is “forbidden” here¹¹⁰. For if he reaches it he will inform him; if he does reach it he will not inform him, lest he owe him a favor¹¹¹.

Rabbi Immi in the name of Rabbi Johanan: If the investigative unit comes in peaceful or warring manner¹¹².

110 R. Johanan deletes the first part of the Mishnah; R. Ze’irah confirms the text of the Mishnah.

111 If the investigator opens the wine amphora, he will inform the owner. Then the wine will be forbidden under the general

rules of wine touched by a pagan; the Mishnah is not necessary in this case. If he does not open the amphora the owner may assume that the investigator did not inform him out of malice; even if there was time for new clay to dry (following Rabban Simeon ben Gamliel) one may assume that the

amphora was not touched. It is this later statement which R. Ze'ira objects to.

112 It is not a question whether the investigators are sent by the villagers' own government or a hostile power but whether they come with friendly or adversary intent, expecting collaboration or hostile reception.

חִיּוּאָ מִי פְּרִי בִּתְרִיָּה נָפַל לְגֹבָא. אֵתָא עֹבְדָא קוּמִי רַבָּנָן וְאַכְשָׁרוּן. אָמְרִין. אִין פְּנָאֵי לְהַטִּיל אֵירָס. (45a line 12)

A snake when pursuing him fell in a pit. The case came before the rabbis who declared it usable. They said, there was no time to deposit poison¹¹³.

113 This is an unrelated story; its connection with the Mishnah is the expression "there was no time" to cause damage. The problem here is the general prohibition to drink water or wine that was left standing unsupervised. This is a sanitary, not a religious, rule since we are afraid that a poisonous snake could have

drunk from the fluid and in the process left its own poison in the fluid; Halakhah 2:3. Here it is noted that if the snake fell into a cistern full of wine while attacking (a human?, an animal?) it is not intent on drinking but will try to get out, so as not to drown, as fast as possible. Therefore there is no health hazard in drinking the wine.

מִשְׁנֵה ט': אוּמְנִים וְיִשְׂרָאֵל שִׁשְׁלָח לְהֵם נְכָרִי חֲבִית שֶׁל יַיִן נֶסֶד מוֹתֵר שִׁיאֲמְרוּ לוֹ תֵּן לָנוּ אֵת דְּמִיתָ. אִם מִשְׁנֵבְנָם לְרִשׁוֹתָן אֲסוּר. (fol. 44c)

Mishnah 9: Jewish craftsmen whom a Gentile sent an amphora of libation wine¹¹⁴ as their wages are permitted to tell him, give us its worth¹¹⁵. After it came to their possession it is forbidden.

114 Which is forbidden for usufruct to the Jew and therefore worthless to them.

115 They can refuse to accept the amphora and ask for payment in money. But they

cannot accept the merchandise and then request that it be exchanged for money; this would be usufruct of forbidden wine, not payment for work done.

הַלְכָה ט': אוּמְנִין וְיִשְׂרָאֵל כּוֹל'. וְאִין אֲסוּר מִשּׁוּם יַיִן נֶסֶד. תִּנִּי בַר קַפְרָא. בְּמִשְׁלַח בְּבִתִּים. (45a line 13)

Halakhah 9: “Jewish craftsmen,” etc. Is it not forbidden because of libation wine? Bar Qappara stated, if he sends it to houses¹¹⁶.

116 If the amphora were delivered by a Jewish teamster, he would act as the Jew’s agent and the wine would be forbidden. Similarly, if the wine were delivered by a Gentile to the property of the artisan, the delivery would effect the transfer of property rights and the wine would be

forbidden. Therefore one must assume that the Jew rents his place of work in a building dedicated to artisans’ workshops; delivery there by a Gentile transporter does not transfer property rights and the artisan may refuse acceptance and require payment in coin.

מִשְׁנָה י: הַמוֹכֵר יֵינוּ לְנִכְרֵי פֶסֶק עַד שֶׁלֹּא מִדֵּד דְּמִי מוֹתְרִין. מִדֵּד עַד שֶׁלֹּא פֶסֶק דְּמִי אֲסוּרִין. נִטַּל אֶת הַמִּשְׁפָּךְ וּמִדֵּד לְתוֹךְ צְלוּחֵיתוֹ שֶׁל נִכְרִי וְנִטְלוּ וּמִדֵּד לְתוֹךְ צְלוּחֵיתוֹ שֶׁל יִשְׂרָאֵל אִם יֵשׁ בּוֹ עֶקֶבֶת יַיִן אֲסוּר. הַמַּעְרָה מִכְּלִי אֶל כְּלִי אֶת שְׁעָרָה מִמֶּנּוּ מוֹתֵר אֶת שְׁעָרָה לְתוֹכּוֹ אֲסוּר: (fol. 44c)

Mishnah 10: If somebody sells his wine to a Non-Jew, in case he fixed the price before that one measured, the proceeds are permitted¹¹⁷; if that one measured before he fixed the price, the proceeds are forbidden¹¹⁸. If he took the funnel and measured into a Non-Jew’s vessel, then took it and measured into the vessel of a Jew, if it is contaminated with wine it is forbidden¹¹⁹. If somebody pours from a vessel to another, what is poured from is permitted¹²⁰, what is poured into is forbidden¹²¹.

117 The entire amphora is sold wholesale for a fixed price. By accepting the deal the Gentile becomes the owner and owes the money to the Jew. If then he takes the measuring rod and dips it into the wine, the wine already is his property and what he does with it is irrelevant for Jewish law.

118 If the Gentile buys the wine by volume, the contents of the amphora have to be measured before the deal is concluded. It is essential that the measuring be done by a Jew since if the Gentile dips the rod into the

amphora he is moving the wine and this turns it into libation wine forbidden for usufruct.

119 If the wine is sold in retail quantities and a funnel is used to pour from the amphora into a smaller vessel, it is essential that the funnel be thoroughly cleansed after wine was sold to a Gentile. Since the wine becomes forbidden the moment it reaches the Gentile’s vessel, any drops clinging to the bottom of the funnel which was immersed in the Gentile’s wine also are

forbidden. Since libation wine is forbidden in the most minute amounts, a single drop remaining on the funnel turns everything passing through the funnel into libation wine.

120 While we hold that fluids conduct impurity, so that continuous pouring from a pure into an impure vessel will transfer the impurity to the fluid remaining in the upper vessel, we do not hold so for the prohibition of libation wine. Therefore if wine is poured from an amphora into a smaller vessel, the status of the smaller vessel has no

influence on the status of the wine remaining in the amphora.

121 The Yerushalmi does not discuss whether wine poured from an amphora into a Gentile's vessel becomes forbidden when it reaches the vessel or when it leaves the amphora. The difference is relevant to the previous case that a funnel was used in the process. In the first case, the funnel has to be cleansed only in that part which was immersed in the lower vessel; in the second case it has to be cleansed and dried thoroughly from top to bottom.

(45a line 15) **הלכה י** המוכר יינו לנכרי כול. רבי בא רב הונא בשם רב. ואהן דנגד בזיקא והיא מיבזעא בגדיה לא חייב בה. אמר רבי יוסי בירבי בון. לכן צריכה אפילו מעיל לה גו חנותה ולא אתכונן אלא דלא יזכה בה חורון. מהו שתיקנה לו כשער הפחות. אמר רבי חגי קומי רבי יוסי. מתניתא אמרה שאינה נקנית לו כשער הפחות. דתנינן תמן. המוכר יינו לנכרי. פסק עד שלא מדד דמיו מותרין. מדד עד שלא פסק דמיו אסורין. אם אתה אומר לקנות לו כשער הפחות אפילו מדד עד שלא פסק יעשה כמי שפסק עד שלא מדד ויהיו דמיו מותרין.

Halakhah 10: “If somebody sold his wine to a Non-Jew,” etc.¹²² Rabbi Abba, Rav Huna in the name of Rav: One who handles a wine-skin and it splits in his hand is not responsible for it. Rabbi Yose ben Rabbi Abun said, it is necessary even if he takes it in the store when he has no other intention than that no other person should take it.

Can he take possession at a minimal rate¹²³? Rabbi Ḥaggai said before Rabbi Yose, a Mishnah says that it cannot become his possession at a minimal rate, as we have stated there: “If somebody sells his wine to a Non-Jew, in case he fixed the price before that one measured, the proceeds are permitted; if that one measured before he fixed the price, the proceeds are forbidden.” If you say that it can come into his possession at a minimal price, even if he measured before he fixed the price should be as if he fixed the price before he measured and the proceeds would be permitted.

122 The text is copied from *Qidduṣin* 1:4, Notes 420-429. The first paragraph belongs

to the theory of transfer of property; it is irrelevant here. The origin of the second

clearly is in *Qiddushin* since the Mishnah here is quoted as “there”, even though the text here is slightly better.

123 If there is firm intention to buy one could argue that the buyer already agreed to pay no less than the lowest price recorded

for a similar product within the last few days. Then it would be irrelevant whether the wine was measured before or after the price was fixed. Since prices are influenced by news, the question could have been dismissed out of hand. Babli 72a.

(45a line 23) מָהוּ עֶקֶבֶת יַיִן. בְּהֵוֹא דְּמִלְכָּדָךְ. כִּמְה דְּתִימֵר עֶקֶבֶת מִדָּם.

What means “contaminated with wine”¹²⁴? If it is dirty, as one says, *immersed in blood*¹²⁵.

124 The expression is uncommon and in the Mishnah in the Babli and the independent Mishnah mss. is replaced by “a

remainder”.

125 *Hos.* 6:8.

(45a line 24) פְּשִׁטָּא דָּא מִילְתָּא. יִשְׂרָאֵל תּוֹפֵשׁ בְּפִי הַמְשָׁפֶד וְהַגּוֹי מַעְרָה דְּבָרֵי הַכֹּל אֲסוּר. גּוֹי תּוֹפֵשׁ בְּמִשְׁפֶּד וְיִשְׂרָאֵל מַעְרָה. רַבִּי אֲסִי אוֹסֵר וְרַבִּי אֶמִי מַתִּיר. גּוֹי תּוֹפֵשׁ בְּפִי הַנּוֹד וְיִשְׂרָאֵל מַעְרָה. רַבִּי יְרֵמְיָה בָּשָׂם רַבִּי זְעִירָא. הֵיא הַמַּחְלֻקֶּת. רַבִּי מָנָא בָּעָא קוּמִי רַבִּי יוֹסִי. הֵיכָד מַחְלֻקֶּת. אָמַר לֵיהּ. מַחְלֻקֶּת רַבִּי אֲסִי וְרַבִּי אֶמִי. יִשְׂרָאֵל תּוֹפֵשׁ בְּנוֹד וְגוֹי מַעְרָה. סָבְרִין מִימֵר. דְּבָרֵי הַכֹּל מוֹתֵר. רַבִּי שְׁמוּאֵל כָּל גִּרְמָא אָמַר שְׁאֲסוּר. שְׁפַעְמִים שְׁיִשְׂרָאֵל מִרְפָּה דְּדִי וְנִמְצָא כָּל־הָעִירִי מִחֲמַת הַגּוֹי. וְאֵהוּ דְּמַרְגֵּל זִיקָא מַעִיל לָרַע אִין בּוּ מְשׁוּם מַעְרָה מִכְּלִי לְכָלִי.

The following is obvious: If the Jew holds the funnel and the Gentile pours, everybody agrees that it is forbidden¹²⁶. If the Gentile holds the funnel and the Jew pours, Rabbi Assi¹²⁷ forbids and Rabbi Immi permits. If the Gentile holds the opening of the wineskin and the Jew pours¹²⁸, Rabbi Jeremiah in the name of Rabbi Ze'ira: this is the disagreement. Rabbi Mana asked before Rabbi Yose, which disagreement? He told him, the disagreement between Rabbi Assi and Rabbi Immi. If the Jew holds the wineskin and the Gentile pours, they wanted to say that according to everybody it is permitted. Rabbi Samuel: In itself it implies that it is forbidden. For sometimes the Jew will loosen his grip and then the entire pouring is done by the Gentile¹²⁹. If somebody lets down¹³⁰ a wineskin from top to bottom this is not pouring from vessel to vessel.

126 If the Gentile tilts the Amphora, he moves the wine in it and the entire contents of the amphora become libation wine forbidden for all usufruct. Babli 60a.

127 This is his Babli name; in the Yerushalmi he otherwise appears as R. Yasa. Possibly one also should read the Babylonian *Ammi* for Galilean *Immi*.

128 The Gentile keeps the opening of the wineskin in a fixed position; the Jew lifts the skin to pour.

129 And even the wine remaining in the skin is forbidden.

130 It is not too clear what the *hapax* רגל (as Palestinian Aramaic verb) means. It is conjectured that it means “to turn upside down”. It is taken here in one of the meanings of Arabic رَجَلَ “to lower”. If a sealed kosher wineskin is handled by a Gentile it remains permitted.

(fol. 44c) **משנה יא:** יין נסך אסור ואסור בכל־שהוא. יין בליין ומים במים כל־שהוא. יין במים ומים בליין בנותן טעם. זה הכלל מין במינו כל־שהוא. ושלל במינו בנותן טעם:

Mishnah 11: Libation wine is forbidden and makes forbidden in the most minute amount. Wine mixed with wine¹³¹ or water mixed with water¹³² in the most minute amount. Wine in water or water in wine, if it gives taste¹³³. This is the principle, kind in the same kind in the most minute amount, kind in another kind if it gives taste.

131 Libation wine mixed with kosher wine.

132 Holy water used for pagan rituals.

133 In the practice of the Babli, if the

forbidden substance is less than one sixtieth of the permitted; cf. *Terumot* Chapter 10.

(45a line 32) **הלכה יא:** יין נסך אסור כול. חזקיה אמר. הדא דתימר. במקום שאין המים נמכרין במידה. אבל במקום שהמים נמכרין במידה קצין בליין הו.

Halakhah 11: “Libation wine is forbidden,” etc. Hizqiah said, that is at a place where water is not sold by measure. But at a place where water is sold by measure it is like wine in wine¹³⁴.

134 If water is so precious that it is sold bottled, mixing wine and water is mixing

two equally important fluids and treated as equals. This rule is not found in the Babli.

(45a line 34) חזקיה אמר. כוס ששמן ממיסור ומייתר ונפל איסור בתוך איסור והיתר בתוך היתר. אמר רבי שמואל. דרבי ליעזר היא. דרבי ליעזר אמר. אחר אחרון אני בא. אמר רבי ירמיה. חומר הוא בין נסך. רבי יוסי בעי. אם חומר הוא בין נסך אפילו נפל היתר בסוף יהא אסור. רבי אסי בשם רבי יוחנן. כוס ששמן ממיסור ומייתר את רואה את ההיתר כמי שאינו. והאיסור אם יש בו בנותן טעם אסור. ואם לאו מותר. אמר רבי הושעיה. והוא שנפל היתר בסוף. רבי אמי בשם רבי יוחנן. ולא שנייא בין שנפל איסור בתחילה והיתר בסוף היתר בתחילה ואיסור בסוף. אפילו מים בין אפילו נמזג כל צרכו מהיתר את רואה את ההיתר כמי שאינו. והאיסור אם יש בו בנותן טעם אסור. ואם לאו מותר. אמר רבי זירא. הדא למעלן איתאמרת וכולה תיניין הי' עבדא. רבי יוסי בירבי בון רבי אבהו בשם רבי יוחנן. צלוחית יין נסך שנפלה לחבית של מים ואחר כך נפלה לתוך בור של מים. את רואה את ההיתר כמי שאינו. והאיסור אם יש בו בנותן טעם אסור. ואם לאו מותר.

1 מאיסור ומהיתר | ע מן האיסור ומן ההיתר בתוך | ע בסוף (2X) 2 שמואל | ע שמואל בר רב יצחק אחרון | ע האחרון 4 אסי | ע יסא 5 והאיסור | ע אותו האיסור היתר | ע ההיתר 6 אמי | ע אימי לא | ע ולא היתר | ע להיתר 7 בין | ע ויין מהיתר | ע מן ההיתר 8 והאיסור | ע אותו האיסור זירא | ע זירא למעלן | ע - 9 איתאמרת | ע דאת אמר תיניין | ע תיניין יין | ע שליין 10 לחבית | ע לתוך חבית של מים | ע שליין ואחר כך | ע וחזרה נפלה | ע ונפלה 11 והאיסור | ע אותו האיסור

¹³⁵Hizqiah said, if somebody mixed a cup from forbidden and from permitted [wine], if the forbidden fell in [last]¹³⁶ it makes it forbidden, permitted [last] makes it permitted. Rabbi Samuel [bar Rav Isaac] said, this follows Rabbi Eliezer, as Rabbi Eliezer said, I am going after the last one¹³⁷. Rabbi Jeremiah said, this is a stringency about libation wine. Rabbi Yose asked, if it were a stringency about libation wine, even if the permitted fell in last it should be forbidden! Rabbi Assi¹²⁷ in the name of Rabbi Johanan: if somebody mixed a cup from forbidden and from permitted [wine], one considers the permitted as nonexistent; if the forbidden does impart taste it is forbidden, otherwise permitted. Rabbi Hoshai said, only if the permitted fell in last. Rabbi Immi in the name of Rabbi Johanan, it does not make any difference whether the forbidden fell in first and the permitted last or the permitted first and the forbidden last, even water and wine, even if it was mixed perfectly from permitted, one considers the permitted as nonexistent; if the forbidden does impart taste it is forbidden, otherwise permitted¹³⁸. Rabbi Ze'ira said, this has been said about the preceding; how can it be? Rabbi Yose ben Rabbi Abun, Rabbi Abbahu in the name of Rabbi Johanan, if a flask of libation wine fell into an amphora of (water)¹³⁹ and then it fell into a water

cistern, one considers the permitted as nonexistent; if the forbidden does impart taste it is forbidden, otherwise permitted¹⁴⁰.

135 From here to the end of the Halakhah the text is from *Orlah* 2:7 (ע), Notes 158-174. The text there is superior in the tradition both of text and of names.
136 Added from ע, needed for comprehension.

137 Mishnah *Orlah* 2:10.

138 Babli 73b.

139 In ע “wine” (permitted wine). Only this makes sense; otherwise there would be no need to mention two different vessels.

140 Babli 73a.

(45a line 49) עד כדון בשנפלו זה אחר זה. נפלו שנים כאחת. נישמעניה מהדא. מאימתי חמץ כותים מותר לאחר הפסח. של בעלי בתים שלש שבטות שלאפיה. ושלנחתומין בכרכים אחר ג' ימים. בכפרים אחר ג' תנורים. רבי שמעון בן אלעזר אומר. אף כשאמרו: שלבעלי בתים אחר שלש שבטות שלאפיה. והוא שיהא אדם גדול או שהיה משיא לבנו ואפה ג' תנורים בשבת אחד זו אחר זו מותר. אף כשאמרו שלנחתומין בכפרין אחר ג' ימים. אם נדחק ואפה ג' תנורים ביום אחד זה אחר זה מותר. תני. רבי שמעון אומר. אף כשאמרו שלנחתומין בכפרין אחר ג' תנורים. אסור עד ג' ימים. שמשחרית בורר לו שאור לכל-אותו היום. אותה העיסה השנייה לא מאיסור והיתר מתחמצצת. אמר רבי ירמיה בשם ריש לקיש. מאן תנא חמיצן שלכותים. רבי לעזר. אמר רבי יוסי לרבי חנינה ענתוניא. נהירת דהויתון מרין את רבי ירמיה בשם ריש לקיש. מאן תנא חמיצן של כותים. רבי ליעזר. וכאן לא הוינן מרין אלא רבי הילא בשם ריש לקיש. ירדו לחמיצן של כותים כרבי ליעזר. ועוד מהדא דמר רבי חנניה בר רבי אבהו. אבא הוה ליה עובדא. שלח שאל לרבי חייה ולרבמי ולרבסי והורון ליה כרבי ליעזר. מה. וכיחידא מרין. לא. משום שיירדו לחמיצן של כותים כרבי ליעזר.

1 - | ע מה אמר בה ר' לעזר אמר מהדא | ע מן הדא מאימתי | ע אימתי 2 חמץ | ע חמיצן כותים | ע שלכותים 3 אחר | ע לאחר (2X) ג' | ע שלשה (always) בכפרים | ע ושלנחתומין בכפרים 4 לבנו | ע את בנו 5 תנורין | ע תנורים אחד | ע אחת - | ע וזה אחר זה אף | ע ואף בכפרין | ע בכרכים אחר | ע לאחר 6 אם | ע והוא נדחק | ע שנדחק תנורין | ע תנורים - | ע וזה אחר זה 7 בכפרין | ע בכפרים אחר | ע לאחר - | ע אסורים בורר | ע הוא כורה 8 השנייה | ע שנייה - | ע היא אמר | ע ומר ריש | ע ר' שמעון בן 9 לעזר | ע ליעזר נהירת | ע נהור אתית דהויתון מרין | ע אמר 10 ריש | ע ר' שמעון בן וכאן | ע ואנן לא הוינן | ע לן 11 מרין | ע אמרין כן ריש | ע ר' שמעון בן של כותים | ע שלכותין מהדא | ע מן הדא דמר | ע דאמ' 12 חנינה | ע חנינה בר ר' | ע בריה דר' ולרבמי ולרבסי | ע ולר' יסא ולר' אימי והורון | ע ואורין 13 וכיחידא | ע כיחדייא מרין | ע מורי

So far when they fell in one after the other. What can one say if they fell together? Let us hear from the following¹⁴¹: “When is leavened matter of Samaritans permitted after Passover? Of private persons after three weekly bakings, of city bakers after three days, of rural ones after three baking loads.” Rabbi Simeon ben Eleazar says, even when they said of private persons after

three weekly bakings, if he was an important personality or he married off his son, if he baked three loads in one week one after the other it is permitted. Even when they said of (rural) [city]¹⁴² bakers after three days, if he was under pressure and baked three loads one after the other, it is permitted. It was stated: Rabbi Simeon says, even when they said of rural bakers after three baking loads, it is forbidden at least three days since in the morning he prepares sourdough for the entire day.” Does the second dough not become sour from forbidden and permitted? And Rabbi Jeremiah said in the name of Rabbi Simeon ben Laqish, who is the Tanna of “the leavened matter of the Samaritans”? Rabbi Eliezer! And Rabbi Yose said to Rabbi Ḥanina Eyntanaya: Do you remember that you and Rabbi Jeremiah were instructing in the name of Rabbi Simeon ben Laqish, who is the Tanna of “the leavened matter of the Samaritans”? Rabbi Eliezer! But here we do not instruct so but Rabbi Hila in the name of Rabbi Simeon ben Laqish, they treated leavened matter of the Samaritans following Rabbi Eliezer. In addition from the following:: Rabbi Ḥananiah bar Rabbi Abbahu said, my father had a case; he sent to Rabbi Ḥiyya, and Rabbi Immi, and Rabbi Yasa, and they instructed him following Rabbi Eliezer. How? Would they instruct following an isolated opinion? No, since they treated leavened matter of the Samaritans following Rabbi Eliezer¹⁴².

אמר רבי מני קומי רבי יוסי. כמה דתמר תמן. הלכה כרבי ליעזר. אוף הקא הלכה כרבי ליעזר. אמר ליה. ולכל דבה.

1 מני | ע מנא כמה דתמר | ע היך מה דתימר אוף הכא | ע וכא 2 דבה | ע דבר

Rebbi Mani said before Rebbi Yose: as you are saying there¹⁴³, “practice follows Rabbi Eliezer”, also here practice follows Rabbi Eliezer. He said to him, for everything¹⁴⁴?

140 Tosephta *Pesahim* 2:1. One may assume that as long as other Sadducee sects were in existence, the same rules applied to all Sadducees who denied that leavened matter which was owned by a Jew during Passover (but hidden away so that it was not seen, *Ex.* 13:7) was forbidden in the most

minute amount after Passover. A Samaritan/Sadducee did consider the sale of such matter to a Gentile while the matter was seen in the Jew’s house on Passover, as a breach of the biblical commandment.

141 The text in parentheses (identical with that in *’Orlah*) was originally written by the

scribe; the text in brackets is his correction.

142 It is a practice universally accepted (probably by necessity when Sadducees were a viable Jewish sect), not a decision incorporated in a consistent theory of the law.

143 In matters of leavened matter; does this apply to all cases of food prohibited in the

most minute amount? The answer is negative.

144 The scribe also wrote דבה in 'Orlah but there corrected to דבר. The form דבה, Accadic *dibbu*, should be acknowledged, but it is not clear whether this is learned Hebrew speech or popular Aramaic.

(fol. 44c) **משנה יב:** אילו אסורין ואוסרין כל-שהן. יין נסך ועבודה זרה ועורות לבובין ושור הנסקל ועגלה גרופה וצפרי מצורע ושיער נזיר ופטר חמור ובשר בהלב וחולין שגשגמו בעזרה. הרי אילו אסורין ואוסרין בכל-שהן:

Mishnah 12: The following are forbidden and they forbid in the most minute amount.¹⁴⁵ Libation wine, idols, heart-removed skins¹⁴⁶, and an ox which was stoned¹⁴⁷, and the calf whose neck was broken¹⁴⁸, and the birds of the sufferer from skin disease¹⁴⁹, and the *nazir*'s hair¹⁵⁰, and the firstborn donkey¹⁵¹, and meat in milk¹⁵², and profane animals slaughtered in the Temple precinct¹⁵³. These are forbidden and they forbid in the most minute amount.

145 The rule that anything which cannot be tasted in a mixture is irrelevant does not apply to these items. An admixture of one of these even if less than one in a thousand will make everything forbidden.

146 Mishnah 2:3.

147 Which killed a human, *Ex.* 21:28.

148 To atone for an unsolved murder case, *Deut.* 21:1-9.

1498 For purification of the healed

person, *Lev.* 14:4-6.

150 Which has to be burned, *Num.* 6:18.

151 Which is not redeemed by a lamb given to a Cohen, *Ex.* 13:13.

152 Meat cooked in milk, *Ex.* 23:19,34:26, *Deut.* 14:21.

153 It is pointed out in the Halakhah that the biblical text forbids only the slaughter of dedicated animals outside the holy precinct, *Lev.* 17:4.

(45b line 1) **הלכה יב:** אילו אסורין ואוסרין כל-שהן כול. יין נסך ועבודה זרה ועורות לבובין

על שם ולא ידבק בידך מאומה מן-החרם.

ושור הנסקל. ממשמע שנאמר יסקל השור איני יודע שלא יאכל. מה תלמוד לומר לא יאכל. מיכן שאסור אף בהנייה.

עגלה ערופה. שם שם. מה שם האמור להלן אסור בהנניה אף שם האמור פאן אסור בהנניה.

וצפרי מצורע. כל צפור טהורה תאכלו זו החיה. וזה אשר לא תאכלו מהם זה השחוטטה. או חילוף. רבי יוחנן בשם רבי ישמעאל. לא התפישתה התורה איסור הנניה דבר שיש בו רוח חיים.

ושיגר נזיר. ונתן על האש אשר תחת זבח השלמים:

ופטר חמור. עריפה עריפה. מה להלן קוברו ואסור בהנניה אף כן קוברו ואסור בהנניה.

ובשר בחלב. תני. בג' מקומות כתוב לא תבשל גדי. לאכילה ולהנניה ולבישול.

וחולין שנשחטו בעצרה. רבי יוחנן בשם רבי ישמעאל. אמרה תורה. שחוט שלי בשלי ושלך בשלך. מה שלי בשלך אסור. אף שלך בשלי ענוש כרת. ולאו רבי ישמעאל אמר. למידין מקל וחומר ואין עונשין מקל וחומר.

Halakhah 12: “The following are forbidden and they forbid in the most minute amount,” etc. Libation wine, idols, heart-removed skins, because *nothing of the taboo should cling to your hand*¹⁵⁴.

An ox which was stoned. From the meaning of what was said, *the ox shall be stoned*¹⁴⁷ would I not know that it cannot be eaten? Why does the verse say, *it shall not be eaten*? From here that it is forbidden for usufruct¹⁵⁵.

And the calf whose neck was broken. *There, there*. Since *there* mentioned further describes a prohibition of usufruct, also *there* said here implies prohibition of usufruct¹⁵⁶.

And the birds of the sufferer from skin disease. *Any pure bird you may eat*¹⁵⁷, this is the living bird. *But the following you may not eat of them*¹⁵⁸, that is the slaughtered one¹⁵⁹. Or the other way around? Rabbi Johanan in the name of Rabbi Ismael: The Torah has no prohibition of usufruct which applies to any living thing¹⁶⁰.

And the nazir's hair. *He shall put it in the fire which is under the well-being offering*^{150,161}.

And the firstborn donkey. Breaking the neck, breaking the neck. Since there one buries it and it is forbidden for usufruct, also here one buries it and it is forbidden for usufruct¹⁶².

And meat in milk. It was stated: At three places it is written *do not cook a kid goat*¹⁵², about eating, about usufruct, and about cooking¹⁶³.

And profane animals slaughtered in the Temple precinct. Rabbi Joḥanan in the name of Rabbi Ismael: The Torah said, slaughter what is Mine in My place¹⁵³ and what is yours in yours. Since Mine in yours is forbidden, also yours in Mine¹⁶⁴. Is it punished by extirpation? Does not Rabbi Ismael say, one infers by an argument *de minore ad majus* but one does not punish by an argument *de minore ad majus*¹⁶⁵?

154 Deut. 13:18. Sifry Deut. 96.

155 This is a very short reference to a text in 'Orlah 3:1 (Notes 26-28, Pesahim 2:1 28c), which is part of a lengthy discussion under which conditions a prohibition as food implies a prohibition of usufruct ('Orlah 3:1, Notes 10-44; Pesahim 2:1; Babli Pesahim 21b, Qiddušin 56b, Bava qamma 41a, Hulin 114b) Since the mention of the prohibition as food is unnecessary, the ox qualifies as a case where the prohibition as food means prohibition of usufruct. In the Babylonian sources (Bava qamma 41a, Mekhilta dR. Ismael Mišpaṭim 10) it is agreed that it is obvious that a stoned animal was not ritually slaughtered and therefore is forbidden as meat but it is noted that the

prohibition as food is necessary anyhow to show that if the ox was ritually slaughtered after conviction by the court, the slaughter is ineffective and does not permit the carcass to be eaten. Everybody agrees that if the ox was correctly slaughtered before a trial could be held the meat is kosher. The Babli has to find the prohibition of usufruct in another part of the verse which makes the prohibition one of rabbinic interpretation rather than biblical.

Louis Ginzberg in his *Yerushalmi Fragments from the Genizah* (New York 1909) p. 280 has published a leaf of selections from the entire tractate. The passage referring to the paragraph under discussion reads there (vocalization added):

וְשׁוֹר הַנֶּסֶקֶל. סֶקֶל יִסָּקֵל הַשּׁוֹר וְג' מִפְּשָׁמַע שֶׁנִּי סֶקֶל יִסָּקֵל וְכִי אֵין אָנוּ יוֹדְעִין לֹא יֵאָכֵל. מִה תִּלְמֹד לֹמֵד לֹא יֵאָכֵל. אֶלָּא שֶׁהוּא אִסּוּר בְּאִכְלָהָ וְאִסּוּר בְּהִנְיָהָ. ר' אֶבְיָ בִּשְׁמִי ר' יוֹחָנָן כָּל-מִקּוֹם שֶׁנִּי לֹא יֵאָכֵל לֹא תֵאָכְלוּ... אִסּוּר

And an ox which was stoned. *The ox should certainly be stoned*. From the meaning of what was said, *shall certainly be stoned*¹⁴⁷ would we not know that it cannot be eaten? Why does the verse say, *it shall not be eaten*? But that it is forbidden for eating and forbidden for usufruct. Rabbi Abba[hu] in the name of Rabbi Joḥanan: Any place where it says *shall not be eaten, you shall not eat* [it is forbidden for eating and forbidden for usufruct.]

The addition to the text is from 'Orlah 3:1 (Note 10) or Pesahim 2:1 l. 15. In these and all Babli sources (quoted above) the statement is attributed to R. Eleazar, not R.

Joḥanan (R. Eleazar's teacher). The addition has to be considered a commentary. 156 Babli 29b, Sifry Deut. 207. This is a case of *equal cut*. It is written in Deut. 21:4,

and they shall break the calf's neck there in the wadi. Also it is written in Num.20:1, there Miriam died and was buried there. Since a grave and all its appurtenances are forbidden for usufruct, and since the mention of *there* in Deut. 21:4 is not logically necessary, the prohibition of usufruct (and, as noted in the Babylonian sources, the obligation of burial) is transferred to the calf.

157 Deut. 14:11.

158 Deut. 14:12.

159 Sifry Deut. 103, Babli Qiddušin 57a, Hulin 82a. Since first it is said, *any pure bird you may eat*, which is immediately followed by *but the following you may not eat of them*, this implies that not only may one not eat the impure birds listed later but also some pure birds. Of the two pure birds used for the purification ceremony of the healed sufferer from skin disease, one is slaughtered (Lev. 14:5). The other is released (v. 7); since it is not recognizable it cannot be forbidden to anybody who might catch it. Therefore the slaughtered bird must be the one pure bird which was correctly slaughtered and nevertheless is forbidden as food. The parallel sources also presuppose that the remains of the slaughtered bird, after its blood has been used, is forbidden for usufruct but no explicit reason for that is given. One must assume that this is one of the cases where a prohibition as food implies prohibition of usufruct (cf. Note 155).

160 Babli Qiddušin 57a, opposed there by R. Simeon ben Laqish.

161 Using the hair as fuel is a kind of

usufruct; since it is a positive commandment to burn the hair in this way, any *other* use is forbidden (but not sanctionable).

162 Babli Bekhorot 9b, Mekhilta dR. Ismael Bo 18, dR. Simeon bar Iohai 13:13 (l. 25). This is *heqgeš* rather than “equal cut”. Since the only other case where the neck of a four-legged animal has to be broken is the atonement for an unsolved murder case, the rules of the latter have to be applied to the case where a rancher refuses to redeem the first born of his donkey. Since the rule has moral justification in the parallel sources, “he refused to give value to the Cohen; therefore value has to be denied him”, the rule has to be considered rabbinic rather than biblical.

163 Babli Hulin 115b, Qiddušin 57b; Mekhilta dR. Ismael Mišpaṭim 20 (opposed by Mekhilta dR. Simeon ben Iohai 23:19, Sifry Re'eh 104).

164 Babli Qiddušin 57b where the argument if found unconvincing and other proofs are given.

165 Cf. Yebamot 11:1 Note 50. There is no argument *de minore ad majus* involved here; more appropriate is the language of the Babli (Sanhedrin 54a, Makkot 5b, 14a, 17a): One does not punish by a logical argument (only by an explicit verse). One cannot object that extirpation anyhow is a matter for the Heavenly Court not bound by human arguments since offenses punishable by extirpation automatically are punishable by flogging by the human court. The exclusion of extirpation implies removal of the offense from human criminal justice.

(45b line 16) וְלָמָּה לֹא תִנִּינָן נְבִילָה עִמָּהּ. אָמַר רַבִּי יוֹסִי בִּירְבִּי בּוּן. לֹא מִתְּנִי אֶלָּא דָּבָר שְׂאֵסוּר בִּהְנִיָּה. נְבִילָה מוֹתֶרֶת בִּהְנִיָּה. הִתִּיבּוּ. הָרִי חֶמֶץ בַּפֶּסַח. חֶמֶץ יֵשׁ בּוֹ כֶּרֶת וְאֵילוֹ אֵין בָּהֶן כֶּרֶת.

Why did we not state carcasses with them¹⁶⁶? Rabbi Yose ben Rabbi Abun said, it did state only things forbidden for usufruct. Carcass meat is permitted for usufruct¹⁶⁷. They objected, is there not leavened matter on Passover¹⁶⁸? Leavened matter makes liable to extirpation¹⁶⁹, but for these¹⁷⁰ there is no extirpation.

166 Carcass meat as meat forbids only if it can be tasted, i. e., if it is more than $\frac{1}{60}$ in a mixture. Therefore the question must be about entire carcasses which usually are sold by the piece; nothing usually sold by the piece can become insignificant (*Orlah* 3:6, *Terumot* 10:6; *Babli Beṣah* 3b).
167 *Deut.* 14:21.

168 Here again one only considers loaves of bread which exclusively are sold by the piece and therefore cannot become insignificant.

169 *Ex.* 12:15 (but only for eating, not for possession).

170 The prohibited items enumerated in the Mishnah.

(45b line 19) רַבִּי יוֹסִי בִּשְׁם רַבִּי חֲנִינָה בָּעֵי. אִיסוּרֵי הֲנִיָּה כְּהוּ שֶׁיִּבְטְלוּ (בְּצִירוֹף) [בְּטִירוֹף]. וְהִתְנִינָן שׁוֹר הַנֶּסֶקֶל. תִּפְתָּר בַּחֲתִיכוֹת. וְהִתְנִינָן צִיפּוֹרֵי מְצוֹרָה. תִּפְתָּר צִיפּוֹר בְּצִיפּוֹרֵין. וְהִתְנִינָן שִׁיעַר נָזִיר. אֵית לָךְ מִימֹר צִיפּוֹר בְּצִיפּוֹרֵין. כִּד מִטּוֹן לְעֶרְלָה הִתִּיב רַבִּי יַעֲקֹב קוֹמֵי רַבִּי יוֹסִי. וְהִתְנִינָן הָאוֹרֵג מְלֹא הַסֵּיט מִצָּמֶר בְּכוֹר יִדְלַק הַבָּגָד. וּמִשִּׁיעַר הַנָּזִיר מִפֶּטֶר חֲמוֹר בִּשְׂקָ יִדְלַק הַשֶּׁק. אָמַר לֵיהּ. אֵילוֹ אָמַר תִּנָּא קִמְן אִיתִייהִיבֵת יָאוּת.

Rebbi Yose asked in the name of Rabbi Ḥanina: May prohibitions of usufruct become insignificant in (combination) [by being shredded]¹⁷¹? But did we not state “the ox which was stoned”? Explain it in pieces¹⁷². But did we not state “the birds of the sufferer from skin disease”? Explain it as a bird among birds¹⁷³. But did we not state “the *nazir*’s hair”? Can you say a bird among birds¹⁷⁴? When they came to study *Orlah* did Rabbi Jacob object before Rabbi Yose, did we not state¹⁷⁵, “if somebody weaves the length of a *śit* of firstling’s wool, the cloth must be burned. Of *nazir*’s hair or firstling donkey in sackcloth, the sackcloth must be burned.” He told him, (if the Tanna had said before us, you would have given)¹⁷⁶ correctly.

171 The text in parentheses is the original text written by the scribe, printed in the *editio princeps* and the editions based on the latter. The text in brackets is a correction by the scribe himself.

In both cases the question is whether prohibitions of usufruct automatically imply the impossibility of disregarding minute amounts or whether the prohibition will be void if either the prohibited item is mixed with sufficiently many permitted items and is no longer recognizable or whether it reverts to the usual test of giving taste if shredded and mixed with others.

172 The question is legitimate for meat from such an ox. This question then reads טירוף.

173 A slaughtered small bird among many of the same kind. Here one has to read צירוף.

174 This is the one genuine question since hair is not sold by the unit; therefore the rabbinic prohibition of usufruct for admixtures of forbidden things sold by the

piece (Note 166) does not apply. Here also the prohibition of usufruct is secondary; the question can arise only if the positive commandment of burning the hair in the fire cooking the well-being offering has not been followed.

175 Mishnah *Orlah* 3:3. Since a minimum length of a *sīt* (*Orlah* 3:3 Note 82) is required, it is obvious that the prohibition of the *nazir*'s hair does not apply to minute amounts.

176 The text as written here can be translated word for word but does not make any sense. It is a corruption of a text in *Orlah* 3:3 (Note 94): אֵילוֹ אֵתְבַת תִּמְן אֵית הָעֵת הָאֵת. If you had objected there you would have been correct, i. e., if when I asked the question in *Avodah zarah* about prohibitions of usufruct becoming insignificant you pointed out the Mishnah in *Orlah* it would have been relevant.

(fol. 44c) **משנה יג:** יין נסך שנפל לבור בולז אסור בהננייה. רבן שמעון בן גמליאל אומר ימכר בולז לגוי חוץ מדמי יין נסך שיש בו:

Mishnah 13: If libation wine fell into a cistern, the entire cistern is forbidden for usufruct. Rabban Simeon ben Gamliel said, all of it shall be sold to a Gentile except for the value of libation wine contained in it¹⁷⁷.

177 If the wine is sold by volume, the Gentile shall not be required to pay for the volume of libation wine contained in the cistern. Libation wine cannot become insignificant; there is no volume of the

cistern which would make the wine kosher to drink. According to Rabban Simeon ben Gamliel the prohibition of usufruct does not extend to the mixture.

(45b line 25) **הלכה יג:** יין נסוף שנפל לבור כול'. רבי יוסי רבי יוחנן בשם רב בתיירה. יין נסוף שנפל לבור יימכר כולו לגוי חוץ מדמי יין נסוף. רבי שמואל בר נתן בשם רבי חמא. הלכה כרבן שמעון בן גמליאל. אמר רבי יסא. חד רבנין נפק מבית וועדא. אמר. אתפלגון רבי יוחנן וריש לקיש. חד אמר. הלכה כרבן שמעון בן גמליאל. וחד אמר. אין הלכה כרבן שמעון בן גמליאל. ומודה רבן שמעון בן גמליאל ביין לתבשיל שהוא אסור. רבי בון בשם רב. מודין חכמים לרבן שמעון בן גמליאל בחבית בין חביות לימכר כולו לגוי חוץ מדמי יין נסוף. שבו. אמר רבי זורא קומי רבמי. עד דלא אתאמרת הדא מילתא לא הוין יודעין דו כן. לא אתאמרת אלא מודין חכמים לרבן שמעון בן גמליאל. או דילמא לא אתאמרת אלא מודין רבן שמעון בן גמליאל לחכמים. אמר רבי יודן. ידע הוה רבי זעירא דו כן אלא כאינש דשמע מילה ומקשה עליה.

Halakhah 13: “If libation wine fell into a cistern,” etc. Rabbi Yose, Rabbi Johanan in the name of ben Bathyra: If libation wine fell into a cistern, all of it shall be sold to a Gentile except for the value of libation wine¹⁷⁸. Rabbi Samuel bar Nathan in the name of Rabbi Hama: practice follows Rabban Simeon ben Gamliel¹⁷⁹. Rabbi Yasa said, one of the rabbis came out from the house of assembly and said, Rabbi Johanan and Rabbi Simeon ben Laqish disagree. One said, practice follows Rabban Simeon ben Gamliel, and one said, practice does not follow Rabban Simeon ben Gamliel, but Rabban Simeon ben Gamliel agrees that as wine for cooking it is forbidden¹⁸⁰. Rabbi Bun in the name of Rav: The Sages agree with Rabban Simeon ben Gamliel if it was an amphora among amphoras that all of it shall be sold to a Gentile except for the value of libation wine¹⁸¹. Rabbi Ze'ira said before Rabbi Immi: Before this was said did we not know that it was so¹⁸²? Was it said that the Sages agree with Rabban Simeon ben Gamliel, or perhaps was only said that Rabban Gamliel agrees with the Sages? Rabbi Yudan said, Rabbi Ze'ira knew that it was so, but he is like a person who hears something and objects to it¹⁸³.

178 The lenient ruling of Rabban Simeon ben Gamliel is a traditional Babylonian one.

179 In the Babli, 74a, this is a ruling of the prestigious Rav Nahman. Here it is quoted in the name of obscure authorities because it is not unquestionable.

180 As explained in Note 177, even for Rabban Simeon ben Gamliel libation wine remains forbidden even in the most minute amount; it is only that the mixture does not entirely become forbidden for all usufruct.

181 This is Rav's interpretation of Rabban Simeon ben Gamliel's ruling in the Babli

74a. If an amphora in a storage facility with at least two other amphoras was contaminated with libation wine and it can no longer be identified, all amphoras can be sold to Gentiles since for each single one the probability that it was the forbidden one is less than 50% which makes the sale acceptable by biblical standards.

182 That even a person rejecting the opinion of Rabban Simeon ben Gamliel could agree with the ruling.

183 He does not question that practice follows Rabban Simeon ben Gamliel in all cases, also of a single cistern or a single amphora, following Samuel in the Babli 74a. He only makes it clear that this is a practical ruling without theoretical underpinning.

(fol. 44c) **משנה יד:** גַּת שֶׁל אֶבֶן שֶׁזָּפְתָהּ גּוֹי כְּנֻבָּה וְהִיא טְהוֹרָה. וְשֶׁל עֵץ רַבִּי אָמַר יִנָּב. וְחֻכְמִים אוֹמְרִים יִקְלוּף אֶת הַזָּפֶת. וְשֶׁל חֶרֶם אֵף עַל פִּי שֶׁקָּלַף אֶת הַזָּפֶת הָרִי זֶה אֲסוּרָה:

Miashnah 14: A wine press of stone which a Gentile had pitched one has to wipe dry¹⁸⁴ and it is pure. But one of wood, Rabbi said he shall wipe it dry but the Sages say he must remove the pitch¹⁸⁵. And one of pottery, even if he removed the pitch, remains forbidden¹⁸⁶.

184 If the wine press is hewn into the local limestone, the walls of the vat under the press into which the pressed juice flows have to be made impermeable. If this is done by sealing with pitch, something has to be done that the pitch does not spoil the wine. The usual way of neutralizing the pitch was to wash it down with wine. The Yerushalmi does not specify how the wiping dry has to be done, probably because it was generally known, but the Halakhah implies

that first everything has to be washed down with water for an extended period. The Babli specifies that in washing down an abrasive powder has to be used.

185 Since wood is more absorbent than stone, a new insulation has to be applied.

186 Pottery absorbs the wine; the walls of the vat become forbidden and cannot be repaired (except by standing empty for 12 months, by which time all organic material will have decomposed.)

(45b line 37) **הלכה יד:** גַּת שֶׁל אֶבֶן שֶׁזָּפְתָהּ גּוֹי כּוֹל. מִתְנִיתִין דְּרַבִּי. שֶׁלְעֵץ רַבִּי אָמַר. יִנָּב. וְחֻכְמִים אוֹמְרִים. יִקְלוּף אֶת הַזָּפֶת. וְשֶׁל חֶרֶם דְּלֹא כְּרַבִּי. דְּתַנִּי. הֵגַת וְהַמְחֵץ וְהַמְשַׁפֵּץ שֶׁלְגוֹי. רַבִּי מִתִּיר וְחֻכְמִים (אוֹמְרִים). מוֹדָה רַבִּי בְּשִׁנְקָנִים שֶׁאֲסוּרוֹת. וּמִפְנֵי מָה אֵילֹף אֲסוּרִין וְאֵילֹף מוֹתְרִין. אֵילֹף מִכְנָסוֹ לְכָד וְאֵילֹף אֵין מִכְנָסוֹ לְכָד. רַבִּי יוֹסִי בִּשְׁם רַבִּי יוֹחָנָן. הִלְכָה כְּרַבִּי. כָּלִי פְּפִייר שֶׁזָּפְתָן גּוֹי. רַבִּי יוֹסִי בְּרַבִּי בּוֹן בִּשְׁם שְׁמוּאֵל. הִלְכָה כְּרַבִּי. מִחְלוּקֶת רַבִּי וְחֻכְמִים. דְּתַנִּי. הֵיטָה גִיתוֹ טְמִיאָה וּמִבְקָשׁ לְטְהָרָה. הַלּוֹלֶבֶין וְהַדְּפִין וְהַעֲדָשָׁה מִנְּגָבוֹ וְטַהוֹרִין. וְהַעֲקֵל

שְׁלֵנְצָרִין וְשֶׁלֶבֶטָבוט וְשֶׁלְעָץ שֶׁלְשִׁיפָה שֶׁלְחוּטִין שֶׁלְגָמִי מִיִּשְׁנָן כָּל-שָׁנִים עֶשֶׂר חוּדָשׁ. רַבֵּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר. מִבֶּד לְבַד וּמִגַּת לְגַת. תַּנִּי. אָמַר רַבֵּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל. אִם רָצָה לְטַהֲרוֹ מִיָּד נוֹתֵן בְּצִנּוֹר שְׁמִימִי מִקֶּלַחִין אוֹ בְּנֶהָר שְׁמִימִי מִהֶלְכִין כְּדִי עוֹנָה. כָּשֶׁם שֶׁאֵת מִנְגַב בְּטַהֲרוֹת כֶּךָ מִנְגַב בִּיָּין נֶסֶד. כִּמָּה הִיא עוֹנָה. רַבִּי יוֹסִי בְּשֵׁם רַבִּי יוֹחָנָן אוֹמֵר. חֲצִי יוֹם. וְחֲצִי לַיְלָה. תַּנִּי רַבִּי חִיָּה. אוֹ יוֹם אוֹ לַיְלָה. מֶה וּפְלִיג. אֶלָּא כָּאֵן שֶׁהָיִים וְהֶלִילָה שְׁוִין וְכָאֵן שֶׁאֵין הָיִים וְהֶלִילָה שְׁוִין.

Halakhah 14: “A wine press of stone which a Gentile had pitched,” etc. Our Mishnah is Rabbi’s. “One of wood, Rabbi said he shall wipe it dry but the Sages say he must remove the pitch.” For pottery it is not following Rabbi, as it was stated¹⁸⁷: A Gentile’s wine-press, bucket, and funnel, Rabbi permits but the Sa (say)¹⁸⁸. Rabbi agrees that pitchers are forbidden. Why are these forbidden and those permitted? These one fills with it, the others one does not fill with it¹⁸⁹. Rabbi Yose in the name of Rabbi Johanan: practice follows Rabbi¹⁹⁰. If a Gentile pitched a papyrus vessel¹⁹¹. Rabbi Yose ben Rabbi Abun in the name of Samuel, practice follows Rabbi¹⁹². It is the disagreement of Rabbi and the Sages, as we have stated¹⁹³: “If somebody’s wine-press was impure¹⁹⁴ and he wants to purify it, the brooms, the planks, and the lentil¹⁹⁵ one rubs dry and they are pure. The wicker-work of wood splinters, or of hemp, or of wood, or of bark, of threads, of bast, one lets age a full twelve months; Rabban Simeon ben Gamliel said, from one olive pressing to the next, from one wine pressing to the next¹⁹⁶. Rabban Simeon ben Gamliel said¹⁹⁷, if he wants to purify it immediately, he puts it for a period in a pipe where water streams, or in a brook whose water flows. Just as one wipes dry for purity¹⁹⁸ so one wipes dry for libation wine.” How much is a period? Rabbi Yose in the name of Rabbi Johanan, half a day or half a night. Rabbi Hīyya stated, either a day or a night. Do they disagree? But one when day and night are equal, the other when day and night are unequal¹⁹⁹.

187 Babli 74b. A comparison with the text of the Babli shows that the text here is elliptic. It must read: The Mishnah follows Rabbi for stone and wood vessels, but does not follow Rabbi for pottery.

188 It is obvious that for אומרים “say” one

has to read אִסְרִים “forbid”. What Rabbi permits and the Sages forbid is cleansing the earthenware vessels by wiping them dry.

189 The text of the Babli is more explicit: In pitchers wine is stored, in other vessels it is filled only temporarily.

190 The Babli does not discuss which opinion to follow but, since at other places it states the rule that practice follows Rabbi only if his opinion is opposed by a single dissenter, not against a majority opinion, the codifiers of Talmudic law follow the Sages in this matter.

191 Not paper cups but wicker work made with papyrus rope or stems; cf. *Kilaim* 6:3 Note 38. The discussion is interrupted by the next sentence; it continues with “is the disagreement . . .”

192 There is Babylonian authority for following Rabbi; cf. Note 190.

193 Tosephta 8:3, Babli 75a.

194 Nothing connected to the ground can be impure except a leprous house. One speaks here of the movable parts and the implements belonging to a wine-press which in a standard sale contract would be sold

with the building.

195 Any ovaloid implement is called “lentil”; this may be a vessel (a hot water bottle, Tosephta *Šabbat* 3:7) or a roller.

196 If one has to wait a full 12 months one loses the use of the press for one full harvest.

197 In the Babylonian sources, Babli and Tosephta: Rabban Simeon ben Gamliel in the name of R. Yose.

198 Even though one uses the expression “to make the wine in purity” as equivalent to “making kosher wine” (Halakhah 4:12), here one speaks of purity in the exact biblical meaning.

199 Babli 75a, *Pesaḥim* 113b, *Yebamot* 62b, *Ševuot* 18b, *Niddah* 63b. Either day or night at the equinox or half a day during the summer solstice, half a night during the winter solstice.

מִשְׁנָה טוֹ: הַלּוֹקֶחַ כְּלֵי תַשְׁמִישׁ מִן הַגּוֹי אֵת שֶׁדָּרְבּוֹ לְהַטְבִּיל וְיַטְבִּיל לְהַנְעִיל יִנְעִיל. לְלֶכֶן בְּאוֹר יִלְבֵּן. הַשְּׂפוּד וְהַאֲסֻכָּה כְּלֶכֶן בְּאוֹר וְהַסְבִּין שְׂפָה וְהִיא מְהוּרָה:

Mishnah 15: If somebody buys crockery²⁰⁰ from a Gentile, what usually is immersed one immerses²⁰¹, cleansed in boiling water one cleanses in boiling water, making glowing white in fire one makes glowing white²⁰². The spit and the grill²⁰³ one makes glowing white in fire but a knife one rubs clean²⁰⁴ and it is pure.

200 Any vessels and utensils used for the preparation or serving of food.

201 The basic source is *Num.* 31:21-23. If the item has not been used for non-kosher food and is of metal, it is immersed in water.

202 The rules for cleansing vessels from non-kosher food are identical with those for

cleansing kosher vessels from leavened matter for Passover and discussed in Tractate *Pesaḥim*. As a general principle, what was used only cold simply has to be cleansed, what was used with hot fluids must be cleansed with boiling water, and what was used in the fire must be exposed to

fire.

203 Greek ἔσχαρρα, with change of the liquid.

204 As explained in the Halakhah, one

pushes it three times into hard soil. This should eliminate all fat particles clinging to the knife.

(45b line 53) **הלכה טו:** הלוקח כלי תשמיש מן הגוי כול'. הלוקח כלי תשמיש מן הגוי דברים שיוצא שיעושין בהן אוכל נפש כגון כוסות מדיחין וטהורין. אבל יורות וקומקמים מגעילן בחמין. וכולן שנסתמש בהן אף על פי שלא הטביל והגעיל ושאף וליבן הרי אילו טהורין. תני רבי הושעיא. צריך להטביל. כהדא. רבמי סלק עם רבי יודן נשיא לחממתא דגדר ושאולו כסף מן איילו דאוסינוס. שאולו לרבי ירמיה אמר. צריך להטביל לפי שאצאו מטומאת הגוי ונכנסו לקדושת ישראל. יצא לחוץ ונלמד. נפקון ושמעון רבי יעקב בר אחא שמעון בר בא בשם רבי יוחנן. לא שנו אלא לוקח. אבל שואל מותר. מעתה אפילו כלים. רבי הושעיא זבין כלים ומטבילן.

הקא את אמר. מדיחין והן טהורין. וכן את אמר. מגעילן בחמין. חומר הוא בגיעולי גוים.

סבין תוכה בארץ ג' פעמים ודיין. רבי בא בשם רב יהודה. הדין דתימר בסבין קטנה. אבל בסבין גדולה צריכה ליבון. והליבון צריך שיהיו ניצוצות מנתזין ממנו.

Halakhah 15: “If somebody buys crockery from a Gentile,” etc. ²⁰⁵“If somebody buys crockery from a Gentile, something of which he knows that it is used for human food, he washes them clean and they are pure. But pots and boiling kettles²⁰⁶ one cleanses in boiling water. All of these, if he used them even if he did not immerse them, or cleansed them in boiling water, or rubbed them clean, or made them glowing white in fire, they are pure.” Rabbi Hoshia said, one has to immerse them²⁰⁷, as by the following. Rabbi Immi and Rabbi Jehudah the Prince went down to the hot springs of Gadara²⁰⁸ and borrowed silverware from the family Osinos²⁰⁹. They asked Rabbi Jeremiah who said, one must immerse them because they left the impurity of Gentiles and entered the holiness of Israel²¹⁰. He went out and we want to learn²¹¹. They left and heard Rabbi Jacob bar Aha, Simeon bar Abba in the name of Rabbi Johanan: they said only “who buys”, but the borrower is permitted²¹². Then even vessels²¹³. Rabbi Hoshia bought vessels and immersed them²¹⁴.

Here you say, one washes them clean and they are pure. But there you say, one cleanses them in boiling water. One is more stringent with the abominations of Gentiles²¹⁵.

A knife one sticks into the ground three times and it is enough²¹⁶. Rabbi Abba in the name of Rav Jehudah: That is for a small knife. But a large knife needs to become white hot, and in its being white hot it is necessary that sparks fly from it²¹⁷.

205 Babli 75b, Tosephta 8:2. In these texts, the formulation is much more clear. If a vessel is new, one simply immerses it. If it was used cold like cups, one washes them clean. If it was used hot or for cooking, it has to be cleansed by boiling water.

206 Latin *cucuma*.

207 One has to immerse any vessel bought from a Gentile to convert it to a Jewish vessel. In the Babli (Note 205) this is one version of the preceding *baraita*; another version denies the obligation.

208 The place where calendar computations and proclamations were held and all leading scholars of the time came together. The names of persons involved here are probably corrupt. R. Immi cannot ask for instruction from R. Jeremiah, the student of his colleagues R. Yasa's student R. Ze'ira.

209 From the context it appears that these were Gentiles.

210 This opinion is not found in any other source.

211 While the meaning of the sentence is clear, the text is corrupt and cannot be vocalized to make sense as it stands. The people who asked R. Jeremiah did not accept his ruling, they decided to look around for other opinions. Possibly then the

sentence was *לֵצֵא לְרִצְיָהּ וְלִלְמַד* "let us go out and study."

212 In the Babli, *loc. cit.*, a statement of R. Nahman (bar Jacob).

213 New earthenware vessels, not covered by reference to *Num.* 31:21-24.

214 As a matter of practice, not theoretical obligation.

215 It is difficult to make sense of this passage. Most probably the explanation of *Pene Moshe* is correct that the Mishnah here requires that spit and grill be cleansed in fire whereas in Mishnah *Zevaḥim* 11:7 it is only required that spit and grill used in the Temple be cleaned by boiling water. The answer is that while the cleansing of the utensils in the Temple is a biblical requirement (*Lev.* 6:21) the rabbinic requirement of cleansing from forbidden cooking follows rules that are more strict.

216 In the Babli, 76b, ten times in hard ground, and only for a knife without depressions.

217 The Babli, *loc. cit.*, makes a difference between a knife used for cold food which can be cleansed in the ground and one used hot which needs cleansing in boiling water.

Indices

Sigla

Parallel Texts from Yerushalmi Tractates

Beṣah	ב	Orlah	ע
Beṣah Genizah	ב	Pesaḥim	פ
Demay	ד	Bava qamma	ק
Yoma	י	Berakhot	ר
Chapter 8	ח	Šabbat	ש
Yebamot	י	Terumot	ת
Kilaim	כ	Terumot Chapter 2	ת
Ma'aser Šeni	מ	Ševi'it	7
Nazir	נ	Ševi'it Chapter 5	7*
Soṭah	ס		

Manuscript texts and early prints

Genizah Texts	G	Leiden Manuscript	L
Genizah Šabbat	S		

Index of Biblical Quotations

Gen. 2:6	378	40:20	255	21:17	126		233
3:15	250			21:18	120	22:11	216,217,
4:7	335	Ex. 25:15	468	21:28	465		224,233
18:18	287	12:16	25	21:30	152	22:13	217
27:41	255	13:7	463	21:32	151	22:14	210,215
30:12	365	13:13	464	22:3	120		219
32:33	78	13:16	90	22:6156,158,170,		21:37	226
33:14	267	17:9	335	174,214,215,226		22:16	119,148
33:18	447	18:4	362	22:7	215,233	22:30	310,330
34:7	335	20:7	100	22:8	153,158,170	23:2	105
34:15	250	21:1	336		217,220,233	23:19	464
35:2	369	21:10	156,170	22:9	84,176,177,	23:28	243
35:5	449		215,224		216,219,224,226	25:34	335
39:5	365	21:15	120	22:10	184,216,	27:38	103

28:38	25,288	13:2	3,12	6:18	464	12:3	384,418
30:10	22	13:3	14	6:21	115	12:20	413
31:14	93	13:4	12	10:1	103	12:30	372
32:20	370	13:6	13,14	11:26	103	13:2	333
34:9	25	13:38	12	11:74	103	13:18	305,
34:26	464	14:4-6	103,464,	15:20	268	368,372,442,465	
36:6	7		467	15:22	18	14:11,12	465
		14:45	384	15:30	18,23,24	14:21	464,468
Lev. 1:2	84	14:46	384	15:31	20,23	14:26	73,84
1:3	288	15:20	382	18:8	428	15:2	210
1:4	38	16:5,7,8	103	18:27	428	15:19	267
1:9	327	16:9	26	19:2	285	16:16	27
4:23	16,65	16:15	14,22,43	19:3	285	17:11	332
4:27	65	16:16	20	19:13	60	18:3	268
4:29	34	16:20	43,45	19:15	389	18:4	267
5:1	90,99,101,	16:21	22,23,34,	19:20	52,60	19:15	103
107,110,112,117,			43	20:1	467	19:17	103
119,122,126,129,		16:22	22,36	20:17	420	21:1	243
132		16:29	77	28:3	103	21:1-9	464,466
5:2	3,9,17,19,63,	16:34	23	28:15	25	22:1	233
65		17:4	464	28:22	29	22:5	303
5:3	3,9,17,19,48,	17:12	73	28:30	29	22:11	93
63		18:5	303	29:4	24	22:12	93
5:4	3,17,81,84,	18:16	93	29:5	29	22:19	149
117,177		18:29	384	29:6	28,29	22:29	119,148
5:5	117	18:30	20	29:11	21,22	23:22	243
5:14	79,179	19:4	356	30:3	86	24:10	191,192
5:16	365	19:6	243	31:21-23	473,	24:15	186
5:17	16	19:22	365		475	24:16	104
5:20	226	19:36	123	32:4	267	24:17	103
5:21	99,110,112,	20:3	20	33:22	117	25:5	93
116,132,149		22:9	17	33:24	105	26:14	73
5:22	135,149	22:15	17	35:34	20	27:15	413
5:24	149,158,179,	22:24	260	36:8	93	28:58	100
226,229		22:25	288			29:16	375
6:21	475	22:28	404			31:11	244
6:22	34	23:19	29	Deut. 2:28	341	31:16	335
7:7	50	23:38	244	3:5	436	32:7	59
7:8	329	23:40	90	4:14	336		
7:19	17,19	24:15	126	5:11	100		
7:20	19	34:42	79	6:8	90	Jos. 7:10	407
7:21	19	25:14	176	7:2	276		
7:23	78	26:1	405,407,418	7:3	279	Jud. 8:33	385
7:27	78	27:9	114	7:5	392		
10:9	278			7:25	344,413	1S. 2:9	43
10:17	25	Num. 5:11-31		7:26	281,382,384,	2:28	243
11:29-38	382		370		386,442	2:36	14
11:36	450	5:14	117	8:25	414	5:5	366
11:40-41	382	5:22	227	11:18	90	6:14,15	288
12:2	382	6:4	74	12:2	374,380	14:47	288

15:15	288	57:6	277	11:12	286	13:6	43
		60:7	285			13:7	193
2S. 5:21	371			Mal. 1:8	265	23:2	448
15:32	406	Jer. 3:22	43			27:26	336
24:19	59	17:22	7				
24:23	288	23:29	93	Ps. 1:1-2	274	Job 1:5	39
		23:30	95	2:3	287	2:2	172
1K. 12:26	244	34:5	256	5:12	359	33:29	43
12:29	243	34:7	335	31:20	359		
12:31	243			32:6	359	Cant. 1:2	332,
15:6	243	Ez. 23:37	309	34:37	356		333,335
22:48	254			58:6	244	1:3	332
		Hos.	4:5,6,7	62:12	93	7:10	332,333
2K. 3:7	20		243	85:3	43		
17:30	365	5:2	244	89:33	43	Eccl. 4:12	43
18:4	370	6:8	455	97:7	421	10:8	303,333
				100:1	34		
Is. 7:6	243	Am. 4:4	240	106:26	305	Dan. 1:8	343
8:21	419			106:28	384		
10:14	362	Ob. 21	288	115:8	421	Neh. 9:1	249
22:14	43			119:106	85	12:31	59
24:23	421	Micha 2:6	333	119:107	85	12:32	59
27:3	378	2:11	333	129:8	431		
27:9	417	7:18	43	139:11	250	1Chr. 14:12	371
30:22	382,389			146:5	362	21:19	381
44:9	250	Zeph. 1:9	366				
49:4	359	3:9	287	Prov. 3:34	43	2Chr. 3:1	59
49:23	293			12:18	278	7:3	62,406
50:4	250	Sach. 5:5	172	13:4	43	15:11	288

Index of Talmudical Quotations

Babylonian Talmud

Berakhot 18a	357	Megillah 22b	405,407	57b	467
57a	360	24b	444	75b	243
57b	287			78a	243
		Ta'anit 11b	406	81b	290
Šabbat 2b/3a	6	25a	359		
17b	344				
20a	349	Mo'ed Qaṭan 9b	247	Bava Qamma 11a	341
40b	373	25b	357,358	41a	464
51a	341	26b	248	65a	229
69a	18,68			71a	230
70b	57			74b	152
82b	384	Yebamot 12b	341	75b	234
83a	384	61a	450	79a	212
94a	272			91b	119
108b	297	Ketubot 12b	119	93a	214
118b	357	17a	358	98a	178
122a	452	18a	160	102a	246
149a	356	31b	213	103b	229
		33b	121	105b	135
Eruvin 53a	288	84a	206	106a	189
64b	277	87b	203	106b	158,170,230
		88a/b	206	107a	184
Pesaḥim 25a	302	108b	168	107b	233
26a	398				
56b	466	Sotah 8a	170	Bava Mesi'a 17a	164
104a	357	17a	129	24b	345
113b	473	40a	243	25a	179
		41a	243	44a	223
Yoma 12b	33	48b	360	49b	123
25a	243	49b	304	54b	229
36b	22			57b	217,218
40b	45,46	Nedarim 11a	129	84a	358
52a	335	13b	129	94b	216
62b	103	24b	95		
65a	45	81b	309	Bava Batra 2b	453
71a	45			169b	162
79b	170	Gittin 45a	260	170a	162
85b	39	45b	304		
		61a	258	Sanhedrin 11a	360
Sukkah 45b	287	62a	431	27b	104
				28a	104
Roš Haššanah 27a	251	Qiddušin 11b	156	54a	467
		28a	209	63b	365
Beṣaḥ 3b	468	57a	466,467	66a	127

75a	302	43b	182	34b	325,327
97b	287	45a	184,185	35a	332
101b	243	45b	188	35b	338,340
		46b	194	36a	343,344
Makkot 5b	467	47a	198	36b	427,428
16a	99	47b	170,199	37a	344
		48a	202,208	37b	341
Ševuot 3b	87	49a	191,210	38a	341,345,349
4a	15	49b	107	38b	341,345,349
6a	12,13			39a	353
6b	17	Avodah Zarah	2a 245,	39b	352,353
7a	19		246	40a	350,352
7b	20	3b	287	40b	352,356
9a	25	6b	245,246,249	41a	362,367
9b	25	7b	240	41b	366,367
10a	23	8a	250	42b	363
12b	22,35	11b	251,260,262	43a	415
13a	39	12a	262	43b	363,370
14b	9,15,82	13a	245,260	44a	370,371
16b	60	13b	246,260,262	44b	374
18b	473	14a	265,289	46a	377,385
19a	48	14b	267	48a	394
19b	49	15a	267,269,289	48b	397
21a	86	15b	290	49b	367,399,402
22a	69	16a	271,272	51b	318,375,411
22b	74	18b	274	52a	393,413,414
21a	99	19b	276,411	52b	414
23b	74	20a	275,276,279	53a	414,419
24a	77,80	20b	279	53b	416,417
26a	82,84	21a	281	54a	417
27a	82	21b	282	54b	442
28b	89,98	24a	285	55b	424,427
29a	93	24b	288	57a	425
30a	103	25b	290,291	58b	435
30b	103	26a	292	60b	432,434
31b	112	27a	292,294	61a	435,437
32a	115	27b	297,303	62a	439
33b	117,119	28a	296,297,298	63a	440
34b	139	28b	297	64a	441
35a	121,123,126	29a	303,350	67a	443,444
36a	129	29b	307,466	67b	445
37b	133,138	30a	307	68a	445
38a	146	30b	309,313,338	70b	453
38b	149	31a	313,314,315	72a	424,455
39b	156,158	31b	312	73a	462
40a	157,166,168	32a	316	73b	461
41a	159,160	32b	316,317	74a	313,470
41b	161	33a	260,319,322	74b	472
42a	170	33b	321	75a	472,473
43a	180	34a	323	75b	474

76b	475	9b	467		
Zevahim 43b	19	11a	215	Tamid 27a	243
17a	170	13b	123		
101b	25	Keritut 3b	170	Ḥulin 5b	449
Menahot 25a	26	7a	39	6a	448
42b	352	8a	54	82a	467
66b	276	25b	16,22,36	92a	288
69b	170			95a	345
		Temurah 28a	377	115b	467
Bekhorot 2b	270,271			Niddah 55b	295
3a	270	Meilah 20a	390	63b	473
7b	351	Arakhin 22a	206		

Jerusalem Talmud

Berakhot 1:1	426,451	7:1	68,120,122,404	1(3d)	343,338
1:7	332	7:17	338	1(4a)	248
2:1	62,115,399	8:5	307,308,309,310,	3(6a)	373
2:3	372		312,338	7(9b)	57
2:4	247	9:6	315	9(11d)	384
3:4	450	10:2	445	11(13b)	68
6:1	77	10:6	468	14(14d)	296,298
8:7	250	10:7	350		
9:1	362	10:11	114	Eruvin 1(18c)	425
9:2	279	11:1	325	3(21b)	128
9:3	378			7(24c)	170
		Ma'serot 5:7	92		
Peah 1:1	39,285,358			Pesahim 2:1	466
2:1	266	Ma'aser Šeni 2:1	72,73	4:3	266
		3:1	339	5:4	87
Demay 1:1	264	4:4	170	5:10	243
3:4	314				
4:6	257	Ḥallah 3:2	428	Yoma 3:2	243
4:7	258			3:8	33
		Orlah 1:8	379	5:2	61
Kilaim 7:4	377	2:5	445	6:1	103
		2:7	461	6:2	45
Ševi'it 5:9	430,431	3:1	401,465,466	8:3	72
6:1	275,278	3:2	315	8:6	16,35,39
8:4	439,440	3:3	400,469		
8:5	339	3:6	468	Šeqalim 2:1	174
8:6	439			2:6	399
9:1	396	Bikkurim 3:3	33	7:3	345
10:9	123				
		Šabbat 1(2a)	5		
Terumot 2:5	325	1(3c)	339,341,344	Roš Haššanah 1:9	195

Bešaḥ 1:1	329	1:4	128	5:1	187
		3:1	278	6:7	193
Megillah 1:12	33	3:2	90,93,94,95,97	7:1	215
1:13	357			7:2	68
		Giṭṭin 4:6	304	7:4	162
Ta'aniot 1:3	378	5:3	206		
		5:4	120	Bava Meši'a 1:8	208
Mo'ed Qaṭan 3:7	399	6:1	123	3:13	223
		7:3	342	4:2	123,178
		9:7	146,147	5:5	184
Yebamot 11:1	110,136,				
	467	Nazir 1:2	74	Sanhedrin 1:5	59
11:7	87	2:9	114	3:6	195
		4:1	62,115	3:10	103,104,108,226
Soṭah 1:1	108	4:3	144	5:2	403
2:6	190,207	7:3	55	7:11	409
9:13	360	8:1	87	7:13	70
9:17	360,361	9:2	52	7:14	126
				8:3	217
Ketubot 2:1	187	Qiddušin 1:1	130,156,	8:6	203,204,344
2:4	108		162	9:1	110
3:1	68,403	1:4	457	10:6	357
3:10	152	1:5	190	11:6	332
5:5	162	1:7	285		
5:10	178	3:4	128	Horaiot 1:1	36,37
9:7	203,204	4:11	290	2:5	62,63
9:8	206	4:12	278,293	3:2	50
9:9-10	206			3:3	33,52
13:4	168			3:7	360,361
		Bava Qamma 1:2	179		
Nedarim 1:1	278	4:8	152	Niddah 3:4	343

Mishnah

Berakhot 1:7	333	7:2	79,269	9:7	146
Demay 3:4	314	9:1	313	Giṭṭin 5:3	206
Kilaim 7:4	377	14:4	297	7:10	344
Ševi'it 10:1	207	17:2	297	9:7	146
Terumot 9:4	380	Yoma 5:1	61	Nazir 7:3	55
10:2	445	8:1	73	Qiddušin 1:5	167
11:1	326	8:7	40		
Ma'serot 3:5	282	Mo'ed Qaṭan 1:5	247	Bava Qamma 6:7	190
Orlah 2:10	461			7:8	213
3:1	316	Soṭah 3:1	227	7:10	267
3:3	469	Ketubot 2:9	285	8:1	120
		9:7	201	10:1	206
Šabbat 1:1	6,7	9:9	203	10:3	190
6:6	354	Nedarim 3:2	90	Bava Meši'a 1:7	206

3:13	213,223,224	Menahot 12:3	141	Nega'im 1:1	12
4:8	174	Keritut 1:1	70	6:1	92
7:9	211	1:2	23	7:2	14
8:5	180	3:4	78,79	13:8	385
9:13	185	4:2	64	Parah 2:1	284,285
Sanhedrin 3:6	175	6:4	37	2:5	354
7:14	127	Temurah 6:1	261	3:3	285
10:1	42	Bekhorot 1:1	271	3:7	285
11:2	243	Arakhin 3:3	153	5:7	389
Makkot 1:12-13(1:8)		Hulin 2:6	317	11:2	51
	115	Middot 4:1	6	Tahorot 4:11	51
3:2	77			5:1	52
Horaiot 2:4	59,62	Kelim 8:9	354	7:3	424
2:7	43	9:5	323	7:4	452
Idiut 1:5	344	22:1	354	8:8	424
		Ahilut 1:8	384	Miqwaot 8:1	450
Zevaḥim 4:6	30	7:6	303		
11:7	475	8:2	354		

Tosephta

Berakhot 3:12	28	8:8	229	3:1	290
Ševi'it 6:21	439	Bava Meši'a 9:12	212	3:2	289
6:26	439	10:5	186	3:3	292,293
8:6	210	Bava Batra 2:2	162	3:4	291,304
Terumot 4:13	325	Ševu'ot 1:1	26	3:6	304
8:9	445	1:2	29,34	3:7	304
Ma'aser Šeni 5:5	165	2:11	112	3:19	370
		4:1	112,138,175	4:8	316,348
Šabbat 3:7	472	5:9	165	4:10	319
8:34	272	6:1	188	4:11	338,341
9:22	293	6:2	194	4:12	348,353
Pesaḥim 2:1	463	6:4	199,201	5:1	363
2:15	277	6:7	235	5:2	363,368
		Avodah Zarah 1:2	261	5:3	413
Soṭah 13:3-4	360	1:3	248	5:4	413
Nedarim 2:1	95	1:7	245	5:6	455
Gittin 4:13	258	1:9	245	6:1	411
Nazir 2:6	114	1:15	260	6:4	386
Qiddušin 5:9	290	1:21	265	6:13	409
5:10	290	2:4	290	7:1	427
		2:6	273	7:10	437
Bava Qamma 7:8	257	2:8	282	8:2	474

8:3	472			Miqwaot 4:6	360
Bekhorot 2:1	27	Tahorot 6:7	48,56		
		Nega'im 1:1	12		

Midrashim

Mekhilta dR. Ismael	405,450	Midrash Samuel	399	
152,170,177,184,215,	Sifry Num.	60	Midrash Psalms	250,
216,217,327,335,386,	Sifry Deut. 25,465,466,	467	287,346,357,359,362	
466,467	467	Midrash Cant.	332,334,	
Mekhilta dR. Simeon b.	Gen. r. 252,255,286,287	335,350,362		
Ioḥai 152,170,184,335,	335,358,359,369,378,	386	Eccl. r.	267,357
467	386	Pesiqta r.	357	
Sifra 9,13,14,15,17, 19	Ex. r.	339		
20,24,25,26,45,63,82,	Lev. r.	9,172,277	Damascus Document	450
117,119,121,123,125,	Num. r.	114,244,362		
126,129,130,135,139,	Deut. r.	362		
149,229,288,348,385,	Tanḥuma	335		

Rabbinic Literature

Alfasi	132,192,198	Musaphia	386	Rosh	97,132,422
Arukh	273	Nahmanides	132,248	Rozanes, Y.	74
Azulai (HIDA)	223,409	Nissim Gerondi	132,	Schiff, A. A.	210
	423		198	Sefer Ha'ittur	181,208,
Fraenckel D.	313	Or Zarua	451		209
Gilyon Ephraim	358	Pardo, D.	56	Sifte Cohen	202
Heller Wallerstein Y.		Pene Moshe	447,475	Tosaphot	
	423	Rashba	92		249,287,291,344
Ibn Migash	132	Rashi	36,152,202,233		345,422,430
Maimonides			243,453	Tur	192
	31,46,74,	Ravad	135,256	Yalqut	243,273,386,
	123,159,164,213,273,	Raviah	422		399
	323,327,368,372,382,	Roqeah	422		
	401				
Mordokhai	422				

Index of Greek, Latin, Arabic, and Hebrew Words

ἄβασκαντα	279	ἄμῖς	386	ἀνάκωλος	201
ἀγορανόμος	425	ἀμφελόνη	201	ἀπαντάω	321

ἀργαπέτης	13	κοσμοκράτωρ	362	φάσηλος	341
ἄρχων	410	κράτησις	250	φραγγέλλιον	409
ἀσθενής	88	κυλιτός	348	ψηφος	195,453
ἀστρολογία	304	κύριη πόλυ βρέξον		ὠνή	162
ἀστρολόγος	304		95		
ἀψίνθιον	307	κῶθων	370	burgus	278,409
βασίλική	273	κῶλον	299	calamus	363
βουλή	95,399	λάγηνος	453	Calendae	250
βωμός	392,417	λίτρα	164	cancelli	317
δέλφιξ	364	μέλαινα ἡμέρα	251	carenum	308
δήλωμα	431	μεσοστύλιον	91	carruca	91
δημοσία	273	μώκος	274	carrum	451
δημόσιον	414	ξένος	202,263	castalius	360
διατάγματα	206	ὄπιον	295	castellum	360
διπλῆ	269	πανδοκεῖον	260	cera	447
δράκων	362	πανταρκῆς	302	compendiarium	451
εἰκόνιον	356	παρά	414	conditum	307
ἐμπύλιον	201	περιοχή	437	cucuma	474
ἐπαρχία	362	πίναξ	183	delphica	453
ἐπαρχος	252	πόλεμος	252	dies	251
ἐπίτροπος	207	πραγματεία	260	ducenarius	245
ἐσχάρα	473	πράξις	263	hallec	337
ξημία	431	πρατήρ	340,429	lagna	453
θηριακή	295,324	πρόσωπον	363	ludi	312
θόρυβος	317	πυργός	278	maccus	274
καλαμάριον	363	πωλητήρ	429	moretum	341
κάλαμος	363	πωλητήριον	352	mulio	274
καλογολέω	357	ρόμβος	195	muries	315,321
καλόν	251	σάβανον	181	panetarius	340
καλός	359	σάλπη	352	patera	322
καλῶς	357	σημαντήριον	333	patronus	362
κάπηλος	200	στάδιον	273	phasianus	365
καρυῶτις	265	στρατηλάτης	252	pila	92
κασταλία	360	στροβίλος	264	procitare	253
κερκίς	401	ταῶς	365	Roma	370
κιβωτός	293	τιμή	370	sabanum, σάβανον	181
κόλλιξ	262	τύχη	370	sal candidum	337
κολλύρα	295	τράπεζα	318	Saturnalia	250
κόμη	304	τύπος	146	sicinnista, σικινιστής	
κόμμι	73	ὑπαρχος	13		274

sigillarius	274	رجل	460	وَقَر	448
splenium	294	زلف	424	ביטה	94
tressis	164	سهل	445	דבה	463
		عقال	257	זלף	422
اون	386	عقر	260	חטאת	52
بج	277	قباط	341	משכן	60
ترف	318	قرناس	412	מקדש	60
حید	274	قلس	358	קורנס	412
خضد	265	قلم	294	רגל	460
خمش	294	مهرجان	254	שהלייא	444
دبب	319	نوروز	254		

Author Index

Abramson, S.	254		414	Löw, I.	431
Asaph, S.	132,206	Guggenheimer, H.		Noth, M.	386
Bachofen, J.J.	377		79,250,348,385,414	Rabbinowicz, R.	139
Ben Shammai	132	Herodotus	403	Sokoloff, M.	335,345
Breuer, M.	335	Ilán, J.	92		358,369,409,448
Brüll, N.	341	Jastrow, M.	293,345,	Sperber, D.	409
Buxtorf Jr.	429		347	Tashma, I.	132
Epstein J. N.	280,341,	Kogut, S.	335	Täubler, E.	386
	345,359,365,370	Kohut, A.	322,337,340	Torczyner, H.	336
Geiger, B.	13	Levy, J.	277,386	Zuckerman, M.S.	
Ginzberg, L.	5,9,42,	Lewis & Short	337		202
	131,266,280,370,466	Lieberman, S.	5,6,7,132		
Guggenheimer, E.	348		165,194,325,340		

Subject Index

Abortion during childbirth	303	Diocletian	91,165,262,336
Acco	292	Dionysian rites	265
Acquisition by delivery	457	Discharge, genital	56
Acquisition, act of	213	Divorce, conditional	343
Animals, for pagan worship	261	Double seal	307,326
Animals, Sabbath rights of	266	Dring, unsupervised	456
Annulling an idol	411	Detectives	454
Anointed Priest	43		
<i>Asherah</i> , grafted	395	Eating Mazzah	79
Astrological signs	369	Eating non-kosher	23
Aramean	322	Egg, holy	378
		Egg, laid on holiday	330
Barter for idols	442	Eighteen prohibitions	344
Ben-Derasai's food	349	Elevation offering, atoning	36,37
<i>Bet Aven</i>	386	Equal cut	110
Betrothal	247	<i>Eruv tavšilin</i>	341
Birth control methods	292	Excluded Middle	49
Black day	252	Export, on Sabbath	3
Burden of proof	164		
		Faith healing, Christian	302
Carcass meat	468	Figure, prohibited	363
Cattle rustling	213	Financial documents, value of	178
Cheese making	326	Finder's obligation	233
Civil testimony, false	233	Fine after confession	235
Claims, certain and tentative	119	Fines, multiple	229
Codicill to will	208	Fish eggs	352
Cohen, suspect	348	Formulations in oral transmission	149
Conjunctions	216		
Collective	145	Gentile bestiality	289
Contract work	247	Gentile's harvest	280
Cooked wine	307,326	Gifts received	352
Cooking, not Gentile	349	Gold denar	165
Court censure	178	Golden calves	244
Creature, complete	77	Goodwill	410
Crime, actionless	66	Grape juice	422
		Grape pressing	426
Dasy of Atonement, eating on	77,78	Greek education	304
Day of Atonement, power of	14,20,23,37,38,42	Gross negligence	214
Day of Atonement, prayers	28		
Day of Atonement, purification sacrifice	34	Hadrianic pottery	305
Day of Atonement, sacrifices	22,35,43	<i>Hazaqah</i>	162
Day of Atonement, violation of	79,121	Hearsay	124
Dead Sea	245	Hebrew slave	209
Dedication	389	Hermaphrodite	56
<i>Demay</i>	314	Hermenautical rules	84
		Hermes stele	403
		Holiday gift	246

"Holiday's son"	249	<i>Mem</i> partitive	17
Holiness, stages	33	<i>Miggo</i> claim	159
Honest "yes"	122	<i>Mil</i> and <i>parasanga</i>	452
Hot Springs of Gadara	358,475	Military anarchy	165
		Minor, in court	170
Idolatry, eliminating	400	<i>Miqweh</i> , invalid	389
Idolatry, government sponsored	411	Monetary claimss, prosecutable	120
Immediately	62,115	Money in doubt	187
Impoert, on Sabbath	3	Morgan's laws	141
Impurity, "tent"	384,397	Mosaic floors	390
Impurity, atoning for	14	Mountain, worshipped	375
Impurity, by load	382		
Impurity, by motion	384	Nazir's sin	278
Impurity, by stepping on	384,427	<i>Neapolis</i>	449
Impurity, causing	426	<i>Nergal</i>	365
Impurity, combined	13	New Year's Day, prayers	28
Impurity, connection for	424		
Impurity, doubt of	51,52	Oath of journeyman	183,186,188,200
Impurity, impervious to	384	Oath of partnership	207
Impurity, of creature	385	Oath of shopkeeper	198
Impurity, of dead reptile	313	Oath of trustee	184,198,207
Impurity, of Gentiles	427,428	Oath, about deposit	130,173
Impurity, of house	384	Oath, about lost object	135
Impurity, of idols	397	Oath, about real estate	112
Impurity, opening for	435	Oath, about testimony	101,120
Impurity, removal of	19	Oath, acceptance of	189
Instruction while naked	370	Oath, after payments	236
Itacism	123	Oath, and Sabbatical	207,210
		Oath, blurted	66,68
Julianus Caesar	90	Oath, by slave	187
Just Gentiles	287	Oath, cleasing of false or vain	100
		Oath, interpretation of	75,78
Karaita <i>terefa</i>	330	Oath, judicial	153,175
Kashering vessels	473	Oath, kept	69
<i>Kefar Shalom</i>	447	Oath, negative	3
<i>Ketubah</i> , compromised	201	Oath, of heirs	170
<i>Ketubah</i> , enforceable	203	Oath, positive	3
King reading Torah	243	Oath, purgation by	110
King's mountain	280	Oath, rabbinic	169
<i>Kohl</i>	295	Oath, rollover	167,190,207
<i>Kor</i>	166	Oath, subjectively true	226,227
		Oath, to keep commandments	85
Lentil	472	Oath, to sin	82,85
<i>Letek</i>	166	Oaths, repeated	97
Liability, rules of	214	Obligation to have children	292
Loan secured by wine	432	<i>Obolos</i>	153
		Orphan's oath	208
Manumission, obligatory	151	Overcharching	177
Maximian	262		
Meat out of sight	345	Payment, without witnesses	160

Permanence of status quo ante	186	Sanctifying others' property	377
<i>Peruṭa</i>	132,153	Scapegoat	43,45,46
Petronius	256	Second Tithe	165,440
Pledges	191,192	Selling a slave	260
Plinius	336	Semi-holidays	247
Plural, indeterminate	104	<i>Šeqel</i> , biblical or rabbinic	130
Preparation for impurity	348	Silver coin	153
<i>Priapus</i>	385	Sin, intentional	23
<i>Prima facie</i> evidence	194	Sins unknown	56,64
Prohibition of usufruct	468	<i>Šisit</i>	315
Prohibition of wine and oil	33	<i>Šit</i>	469
Property transfer by oath	189	Sitting in Temple Court	243
Property, guaranteed	167	Skin disease	3,9,12,13
Prophetic Books, authority of	7	Slave girl, Hebrew	156
Prostrating	407	Slaves, trustworthy	353
Prostrating, on stone floors	406	Sold by the piece	468
Psalms of Moses	34	<i>Song of Songs</i>	331
Punishment, multiple	68	Souls present at Sinai	74
		Speculation	177
<i>Qonam</i>	75	Squatters' rights	162
Quantity, minimal	7,57,69	Stealing goodwill	257
		Stipulating financial terms	178,184
Rabbinic prohibitions	338	Stomach contents	327
Rain magic	407	Stones, worshipped	389
Ramlah	243	Subpoena, delivery of	123,126
Rape of underage girl	235	Subpoena, invalid	124
Red Cow	284	Substitute names	126
Refusal to testify	90	Subterfuges	350
Reptiles, impure	53	Supporting sinners	430
Restitution, double	218	Swearing falsely	99
Restitution, multiple	234	Syria	275
Right angles, not in nature	91		
Ritual baths	450	Tasting forbidden food	69
		Temple animals	26,100,114
Sabbath violations	269,272,296,356	Temple Mount	381
Sabbath, bathing on	373	Temple offerings	409
Sabbath, categories of work	79	Temple precinct	58
Sacrifice depending on wealth	14,47	Temple, shadow of	398
Sacrifice, condition for	9,16,19,48,49,53,77	Tent impurity	48,54,55
Sacrifice, for idolatry	18	Testimony, unchangeable	109
Sacrifice, guaranteed	174	<i>Tevel</i>	77,314
Sacrifice, replacement	30	Theft of documents	176
Sacrifice, suspended	16	Third Commandment	99
Sacrifices, dedication	30	Tithes	282
Sacrifices for Gentiles	285	Titles, purity of	17
Sacrifices, atoning	24,25,29	Torah, style of	15
Samaritan wine	447	Trading at fair	260
Samaritans, separation from	359	Trading non-kosher food	349
Sancta, not of Temple	52	Transfer of responsibility	121,219,223,224

Transport, on Sabbath	3	Warning, conditional	87
Tree, worshipped	394	Warning, criminal	87,98
<i>Triton</i>	337	Well-being offering	19
		Wine press	471
Uncovered drink	307	Witnesses, disqualified	96
		Woman jailed	285
<i>Vaw</i> , redundant	25	Working on forbidden wine	438
Veil and burka	354		
Verses, undecided	335	<i>Zuz</i>	121
Vessels, decorated	364		

