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*Heinrich W. Guggenheimer (Ed.)*

# THE JERUSALEM TALMUD

**FOURTH ORDER: NEZIQIN**

TRACTATES ŠEVI'IT AND  
‘AVODAH ZARAH

The Jerusalem Talmud  
Fourth Order: Neziqin  
Tractates *Ševi'it* and *ʿAvodah Zarah*

# Studia Judaica

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# The Jerusalem Talmud

## תלמוד ירושלמי

Fourth Order: Neziqin

סדר נזיקין

Tractates *Ševi'it* and *Avodah Zarah*

מסכתות שביעית ועבודה זרה

Edition, Translation, and Commentary

by

Heinrich W. Guggenheimer

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## 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*.

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## 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 שתיים פרק ראשון

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

**Mishnah 1:** There are two kinds of oaths which are four kinds<sup>1</sup>. There are two kinds of awareness of impurity which are four kinds<sup>2</sup>. There are two kinds of export on the Sabbath which are four kinds<sup>3</sup>. There are two kinds of appearances of skin disease which are four kinds<sup>4</sup>.

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, *לֹא לְהִיטִיב*, 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 *שֵׂאת אֹרֶסְפָחַר אֹו בְהָרִית* “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 שְׁתֵּים שֶׁהֵן אַרְבַּע כּוֹל'. שְׁתֵּים שֶׁהֵן אַרְבַּע לְחַיִּיב וּשְׁתֵּים שֶׁהֵן אַרְבַּע לְפֹטוֹר אוֹ אַרְבַּע לְחַיִּיב וְאַרְבַּע לְפֹטוֹר. נִישְׁמְעִינָה מִן הַדָּא. שְׁבוּעוֹת שְׁתֵּים שֶׁהֵן אַרְבַּע. אָמַר רַבִּי יוֹסִי. מִתְּנִיתָא אֲמַרְהָ כּוֹן. שְׁבוּעוֹת שְׁתֵּים שֶׁהֵן אַרְבַּע. לֹא לְחַיִּיב. וְדַכּוּנְתָהּ יְצִיאוֹת הַשְּׁבִטָה שְׁתֵּים שֶׁהֵן אַרְבַּע לְחַיִּיב. אָמַר רַבִּי בָּא. תַּמָּן פּוֹלְהוֹן לְחַיִּיב. הֵכָא חַיִּיב וּפְטוֹר אֲתִינָן מִיתְּנִי. הַדָּא אֲמַרְהָ. ד' לְחַיִּיב וְד' לְפֹטוֹר. וְהִתְנִי. דְּלַתּוֹת הַיֵּכָל שְׁתֵּים שֶׁהֵן אַרְבַּע. אֵית מִימַר. לְחַיִּיב וְלֹא לְפֹטוֹר. נִיתְנִי שְׁנַיִם עֶשֶׂר פְּטוֹר. לֹא אֲתִינָן מִיתְּנִי אֶלָּא פְטוֹר שֶׁהוּא כְּנַגְד חַיִּיב. אָמַר רַבִּי חִיָּה בַר אֲדָא. מָהוּ אֶהֱיוֹ פְטוֹר דְּתִינָן הֵכָא. מוֹתֵר. אָמַר רַבִּי יוֹסִי. עֵינִי וְעֵשֶׂר אֶחָד מִהֶן וּמְנֻס חֲכָמִים שְׁנַיִם. הַכְּנֶסָה וְהוֹצָאָה שְׁנַיִם וּמְנֻס חֲכָמִים אֶחָד. יְצִיאוֹת הַשְּׁבִטָה אֵין הַכְּנֶסָה בְּכָלֵל. הַמוֹצֵיא מִרְשׁוֹת לְרְשׁוֹת אֵין הַמְּכַנֵּס בְּכָלֵל. וְעוֹד מִהַדָּא דָּמַר רַבִּי יְסָא בְּשֵׁם רַבִּי יוֹחָנָן. הַכְּנֵס חֲצִי גְרוּגְרֵת וְהוֹצֵיא חֲצִי גְרוּגְרֵת חַיִּיב. וּמְנִיין שֶׁהוֹצָאָה קְרוּיָה מְלֹאכָה. רַבִּי שְׁמוּאֵל בְּשֵׁם רַבִּי יוֹחָנָן. וְיֵצֵא מוֹשֶׁה וַיַּעֲבִירוּ קוֹל בְּמַחְנֶה וְגו'. וּמְנִיעוּ הָעַם מִלְּהוֹצֵיא מִבְּתֵינָן לְתַתַּ לְגִיזְבָּרִין וּמִלְּהוֹצֵיא מִדְּוֹן לְהַכְּנִיס לְלִישְׁכָּה. רַבִּי חִזְקִיָּה בְּשֵׁם רַבִּי אֲחָא שְׁמַע לֵה מִן הַדָּא. וְלֹא יוֹצֵיאֵי מוֹשֶׁה מִבְּתֵיכֶם בְּיוֹם הַשְּׁבִטָה וְכָל־מְלֹאכָה לֹא תַעֲשׂוּ.

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

<sup>5</sup>Two which are four for liability and two which are four for no liability, or four for liability and four for no liability<sup>6</sup>? Let us hear from the following: “There are two kinds of oaths which are four kinds,” etc.<sup>7</sup> Rabbi Yose said, the Mishnah says so, “there are two kinds of oaths which are four kinds,” not because of liability<sup>8</sup>? And similarly, “there are two kinds of export on the Sabbath which are four kinds,” because there is liability<sup>8</sup>. <sup>7</sup>Rabbi 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 four<sup>9</sup>? Can you say, liability and no liability<sup>10</sup>? Should we state twelve cases of no liability<sup>11</sup>? We come to state cases of no liability which correspond to cases of no liability<sup>12</sup>. Rabbi Hiyya bar Ada<sup>13</sup> said, what is this “no liability” which we stated here? Permitted<sup>14</sup>! 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 one<sup>15</sup>. Exporting on the Sabbath does not include importing; if one exports from a domain this does not include importing<sup>16</sup>. If one who exports from one domain to the other, does this not include the one who imports<sup>17</sup>? 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 liable<sup>18</sup>. 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,<sup>19</sup>” 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 Ḥizqiah 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.”<sup>20</sup>,

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 Rebbi 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. Liebermann (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 כללין ולא דמין  
 דין לדיו. שבועות שתיים שהן ארבע מביא ארבע קרבנות. מראות נגעים שנים שהן ארבע  
 מביא שתי קרבנות. רבי לעזר בשם רבי אבין פתר לה פתר חורן. שבועות שתיים שהן ארבע  
 רבי עקיבה אומר. מראות נגעים שנים שהם ארבע רבי ישמעאל. רבי חגיגי בעא קומי רבי יוסי.  
 ולמה לי כרבי ישמעאל. ואפילו כרבי עקיבה אתנא. היא ידיעה והעלם על טומאת מקדש

יְדִיעָה וְהֶעֱלֵם עַל טוּמְאַת הַקֹּדֶשׁ. אָמַר לִיה. מֵאֵן אֵית לִיה הֶעֱלֵם טוּמְאָה וְהֶעֱלֵם מִקֹּדֶשׁ לֹא רַבִּי יִשְׁמַעֵאל. וְנֹן בְּעֵי כְרַבִּי עֲקִיבָה. פְּעָמִים שְׁנַיִם כָּאֵן הֶעֱלֵם טוּמְאָה וְהֶעֱלֵם מִקֹּדֶשׁ וְאִינוּ חַיִּיב אֶלָּא אַחַת. הֵיךְ עָבִידָא. נִיטְמָא וְיָדַע נֶעְלָמָה מִמֶּנּוּ טוּמְאָה וְנִכְנַס לְמִקֹּדֶשׁ וְיָצָא וְיָדַע. נֶעְלֵם הַיְמִינוּ מִקֹּדֶשׁ וְנִכְנַס לְמִקֹּדֶשׁ וְיָצָא וְיָדַע. הֲרִי כֵּאֵן הֶעֱלֵם טוּמְאָה וְהֶעֱלֵם מִקֹּדֶשׁ וְאִינוּ חַיִּיב אֶלָּא אַחַת. וּפְעָמִים שְׁנַיִם כָּאֵן כְּמָה יְדִיעוֹת וְכְמָה הֶעֱלִימוֹת וְאִינוּ חַיִּיב אֶלָּא אַחַת. הֵיךְ. נִיטְמָא וְיָדַע נֶעְלָמָה הַיְמִינוּ טוּמְאָה. עַד שֶׁהוּא בְּהֶעֱלֵם טוּמְאָה נֶעְלָמָה הַיְמִינוּ מִקֹּדֶשׁ וְנִכְנַס לְמִקֹּדֶשׁ וְיָצָא וְיָדַע וְאִמַר. טוּמְאָה זֶה אֵין חַיִּיבִין עֲלֶיהָ קֹרְבָן. נִיטְמָא וְיָדַע נֶעְלָמָה הַיְמִינוּ טוּמְאָה. עַד שֶׁהוּא בְּהֶעֱלֵם טוּמְאָה נֶעְלֵם הַיְמִינוּ מִקֹּדֶשׁ וְנִכְנַס לְמִקֹּדֶשׁ וְיָצָא אֶפְיִלוּ כְּמָה פְּעָמִים וּבְסוּף יָדַע. הֲרִי כֵּאֵן כְּמָה יְדִיעוֹת וְהֶעֱלִימוֹת וְאִינוּ חַיִּיב אֶלָּא אַחַת.

Rebbi Mana said it without attribution<sup>21</sup>; 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 sacrifices<sup>22</sup>. “There are two kinds of appearances of skin disease which are four kinds”; one has to bring two sacrifices<sup>23</sup>. Rebbi Eleazar in the name of Rebbi Abin<sup>24</sup> 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 Ismael<sup>25</sup>. 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*<sup>26</sup>. He told him, does not Rebbi Ismael have forgetting impurity and forgetting the Sanctuary, and we want to follow Rebbi Aqiba<sup>27</sup>?

Sometimes there is forgetting impurity and forgetting the Sanctuary but he is liable for only one sacrifice<sup>28</sup>. 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 sacrifice<sup>29</sup>. Sometimes there are many forgettings of impurity and many forgettings of the Sanctuary but he is liable for only one [sacrifice]. How [is this]<sup>30</sup>? If one became impure and realized it, then forgot and while being oblivious of impurity entered the Sanctuary and left; then he became aware<sup>31</sup>. 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]<sup>32</sup>.

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. Ḥaggai'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 עבידה.

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.

(32d line 9) פִּיֶּסְקָא. מִרְאוֹת נְגַעִים שְׁתִּימִים שֶׁהוּן אֲרֻבְעָה: אָמַר רַבִּי יוֹסִי. שְׂאֵל יְהוֹשֻׁעַ בֶּן רַבִּי עֲקִיבָה אֶת רַבִּי עֲקִיבָה. אָמַר לוֹ. מִפְּנֵי מָה אָמַרְוּ. מִרְאוֹת נְגַעִים שְׁתִּימִים שֶׁהוּן אֲרֻבְעָה: אָמַר לוֹ. וְאִם לָאוּ מָה יֹאמְרוּ. אָמַר לוֹ. יֹאמְרוּ. מִקְרוֹם בִּיצָה וּלְמַעַלָּה טָמְא. אָמַר לוֹ. לֹוֹמַר שְׂאֵם אֵין בְּקִי בְּהוּן וּבִשְׁמוֹתָן אֵין רוּאָה הַנְּגַעִים.

וּמַנִּיין שְׂמִצְטָרְפִין זֶה עִם זֶה. אָמַר רַבִּי מְנָא. מִנוּ אוֹתָן חֲכָמִים שְׁנִים וּמְנוּ אוֹתָן אֲרֻבְעָה. מָה שְׁנִים מִצְטָרְפִין זֶה עִם זֶה אִף אֲרֻבְעָה מִצְטָרְפִין זֶה עִם זֶה. רַבִּי לְעִזָּר בְּשֵׁם רַבִּי אֲבִין. אִם בְּשִׂאֵינוּ מִינוּ מִצְטָרֵף לֹא כָל־שֶׁכֶן מִין בְּמִינוּ. אָמַר רַבִּי יוֹסִי יוֹסִי בִירְבִי בּוּן. וְהִיוּ אֵין כְּתוּב כָּאֵן אֶלָּא וְהִיָּה. מְלַמֵּד שְׂאֵינוּ מִצְטָרְפִין זֶה עִם זֶה. תִּנִּי חִזְקִיָּה. לְנִיגְעֵי צְרַעַת אֵין כְּתוּב כָּאֵן אֶלָּא לְנִגְעַת צְרַעַת. מְלַמֵּד שְׂאֵין מִצְטָרְפִין זֶה עִם זֶה. אָמַר לוֹ. וְיֹאמְרוּ. מִקְרוֹם בִּיצָה וּלְמַעַלָּה טָמְא וּמִצְטָרְפִין. וְאֵל יֹאמְרוּ. מִרְאוֹת נְגַעִים שְׁנִים שֶׁהוּן אֲרֻבְעָה: אָמַר לוֹ. מְלַמֵּד שְׂאֵינוּ זֶה לְמַעַלָּה מִזֶּה. וְיִהְיֶה זֶה לְמַעַלָּה מִזֶּה. אִם אוֹמַר אֶתְּ כֵן נִמְצָאת אוֹמַר. הִכָּהָ טָמְא. וְהִכָּהָ מִן הִכָּהָ טָמְא. וְהִתּוֹרָה אָמְרָה וְהִנֵּה כְּתוּב הַנְּגַעַ. הִכָּהָ טָמְא אֶבֶל הִכָּהָ מִן הִכָּהָ טָהוֹר. וְתִיבָא כִּי דָמַר רַבִּי חֲנִינָה. לֵב מְלָכִים וּב' אִיפְרָבִין. מְלָכוּ שְׁלִזָּה גְדוֹל מִמְלָכוּ שְׁלִזָּה וְאִיפְרָכוּ שְׁלִזָּה מֵאִיפְרָכוּ שְׁלִזָּה. וְאֵין אִיפְרָכוּ שְׁלִזָּה גְדוֹל מִמְלָכוּ שְׁלִזָּה וְשִׁגְרִירוּ שְׁלִזָּה מִשְׁלִזָּה. וְאֵין שִׁגְרִירוּ שְׁלִזָּה גְדוֹל מִמְלָכוּ שְׁלִזָּה. רַבִּי חֲנִינָה בְּשֵׁם רַב אֶחָוָא. בְּרַב אֶחָוָא. מְלָךְ וּרַב חִילִיָּה וְאַרְבָּטָא וְרִישׁ גְּלוּתָא. אָמַר רַבִּי לְעִזָּר בִּירְבִי יוֹסִי קוּמִי רַבִּי יוֹסִי. מִתְנִיתָא אָמְרָה שְׂאֵינוּ זֶה לְמַעַלָּה מִזֶּה. אִם הִשְׂאתָ שְׂכָהָ מִן הִכָּהָ שְׁלָה טָהוֹר יֵשׁ לָהּ מִרְאָה שְׁנִי. בְּהִרְתָּ שְׂכָהָ מִן הִכָּהָ שְׁלָה טָמְא לֹא

כָּל־שֶׁכֶן שָׁיְהָא לָהּ מִרְאָה שְׂיֵינִי. אָמַר לִיה. חָמִי מָה אַתָּ מַר. שְׂיֵינִי יֵשׁ לָהּ. שְׁלִישִׁי לֹא כָל־שֶׁכֶן. וְיָמָּה חֲמִית מִימַר. בְּהֶרֶת שְׂפָהָּ מִן הַפֶּה שְׁלָה טָמֵא זֶה שְׂאֵת. מִינָהּ שְׁלִשְׁאֵת כְּקָרוֹם בִּיצָה. שְׂאֵת זֶה שְׂאֵת. בְּהֶרֶת זֶה בְּהֶרֶת. סְפָחוֹת שְׂיֵינִי לְבִהְרֶת. וּמִרְאָה עֲמוּק שְׂיֵינִי לְשְׂאֵת. מָה לְשׁוֹן שְׂאֵת. מוּגְבַהֵת. כְּמִרְאָה הַצֵּל גְּבוּהָ מִמִּרְאָה הַחֲמִי. מָה לְשׁוֹן עֲמוּק. עֲמוּקָה. מִמִּרְאָה חֲמִי שְׂהִיא עֲמוּקָה מִמִּרְאָה הַצֵּל. מָה לְשׁוֹן סְפָחוֹת. טְפִילָה. שְׁנֵאמַר סְפָחֵינִי נָא אֶל־אַחֶת הַפְּהוּוֹת וְגו'. אָמַר רַבִּי לְעֶזְרָה. זֶה דְּבָרֵי רַבִּי יִשְׁמַעְאֵל וְרַבִּי עֲקִיבָה. אֲבָל דְּבָרֵי חֲכָמִים. שְׂאֵת וּבִהְרֶת אַחֶת. סְפָחוֹת שְׂנִייה לָהּ וְלָהּ. מִתְּנִיתָא אֲמַרָה כּו'. נְעֻשִׁית מִסְפָּחוֹת שְׂאֵת אִין מִסְפָּחוֹת עֲזָה.

New paragraph. “There are two kinds of appearances of skin disease which are four kinds.”<sup>33</sup> “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’<sup>34</sup>? 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.’<sup>35</sup> He said to him, to tell you that anybody not expert for them and their names may not see skin lesions.<sup>36</sup>”

From where that they can be joined one to the other<sup>37</sup>? Rebbi Mana said, the Sages counted them as two and counted them as four. Just as two can be joined one to the other<sup>38</sup> so also four can be joined one to the other. Rebbi Eleazar in the name of Rebbi Abin<sup>24</sup>: If it can be joined to what is not of its kind, so much more of its own kind<sup>39</sup>. 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 other<sup>40</sup>. Hizqiah stated: It is not written “skin diseases” but “skin disease”. This teaches that they cannot<sup>41</sup> be joined one to the other.”

<sup>42</sup>“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.<sup>43</sup>” 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*<sup>44</sup>. The darkened one is impure but the very much darkened is pure. <sup>45</sup>It follows what Rebbi Ḥanina said, it is comparable to two kings and their two lieutenants<sup>46</sup>. 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 ambassadors<sup>47</sup>. One king is greater than 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 Hanina in the name of Rav (Aḥa) [Ada]<sup>48</sup> bar Aḥawa: A king, and his army commander, and the *Arghabeta*<sup>49</sup> 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 third<sup>50</sup>? 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.

<sup>51</sup>“שֵׁט, this is *s'et*. בְּהָרֵת, this is the shiny spot. שֵׁט פְּחוּת is secondary to the shiny spot. [The diseased spot's] look is deepened<sup>52</sup>, 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 שֵׁט פְּחוּת? Adjunct. As it is said, *adjoin me please to one of the priesthoods*<sup>53</sup>, 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 one<sup>54</sup>. The Mishnah says so: “*Mispaḥat* is turned into *s'et* or strong *mispaḥat*.<sup>55</sup>”

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)<sup>2</sup>. 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 *הָעֵם יָהּ מִצְטָרְפִין יָהּ שְׁהוּ מְלַמֵּד* "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 *הָעֵם* and *הָעֵשׂ*.

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 ὕπαρχος, 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 ἀρχαπέτης, 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, Perek* 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 בה ידיעה בתחילה וידיעה בסוף והעלם בנתיים הרי זה בעולה ויורד. יש בה ידיעה בתחילה ואין בה ידיעה בסוף שעיר הנעשה בפנים ויום הכפורים תולה עד שיודע לו וביא בעולה ויורד:

**Mishnah 2:** In any case<sup>56</sup> where there is knowledge at the start and knowledge at the end but forgetting in between there is an increasing or decreasing [sacrifice]<sup>57</sup>. If there was knowledge at the start but no knowledge at the end, the ram whose blood in brought inside<sup>58</sup> and the Day of Atonement<sup>59</sup> suspend until it becomes a certainty for him and he brings an increasing or decreasing one<sup>60</sup>.

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 בה ידיעה בתחילה כול'. ומניין לידיעה בתחילה ובסוף והעלם בנתיים. תלמוד לומר ונעלם ונעלם שני פעמים. מקלל שבאת לו ידיעה בתחילה ובסוף והעלם בנתיים. עד פדון קרבי גקיבה. קרבי לשמעאל. דרבי לשמעאל קרבי. דרבי אמר. ונעלם ממונו מקלל שידע. והוא נדע הרי שתי ידיעות. הא רבי לשמעאל קרבי. ורבי קרבי

יְשַׁמְעֵאל. וְאֶפִּילוּ כְּרַבִּי עֲקִיבָה אֶתְנָא. הִיא יְדִיעָה וְהֶעֱלַם בְּטוּמְאָת מִקְדָּשׁ. יְדִיעָה וְהֶעֱלַם בְּטוּמְאָת הַקּוֹדֶשׁ. וְאֵת דְּבַעֵי יִשְׁמַעְיָנָה מִן הַכָּא. וְהִיא יְדַע וְאֶשָּׁם. וְהִלָּא כְּבָר נֶאֱמַר וְהִיא טְמֵאָ וְאֶשָּׁם. אֲלָא אִם אֵינוֹ עֲנִינָן לִידִיעָה בְּתַחֲלִילָה תְּנִיחוּ עֲנִינָן לִידִיעָה בְּסוֹף.

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

<sup>61</sup>From 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*<sup>62</sup> 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*<sup>63</sup>. 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*<sup>62,64</sup>? 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 נִדְעָה לוֹ בְּסוֹף הֵיךְ מִבֵּיא קֶרְבָּן. אֲלָא אִם אֵינוֹ עֲנִינָן לִידִיעָה בְּסוֹף תְּנִיחוּ עֲנִינָן לִידִיעָה בְּתַחֲלִילָה. הִתִּיבּוּ. הֲרֵי כְּתִיב אִוְהִוְדַע אֶלְיוֹ חֲטָאוֹ וְהִבֵּיא. מֵעַתָּה אִם אֵינוֹ עֲנִינָן לִידִיעָה תְּחִילָה תְּנִיחוּ עֲנִינָן לִידִיעָת סוֹף. פֶּתַר לָהּ בְּמַחֲוִיבֵי חֲטָאוֹת וְאֶשְׁמוֹת וְנִדְּאִין שְׁעֵבֶר עֲלֵיהֶן יוֹם הַכִּיפּוּרִים שְׂמִבֵּיאִין אַחַר יוֹם הַכִּיפּוּרִים וְחִיבֵי אֶשְׁמוֹת תְּלִינן פְּטוּרִין. תְּלַמּוּד לומר אִוְהִוְדַע אֶלְיוֹ חֲטָאוֹ וְהִבֵּיא. אֶף לְאַחַר יוֹם הַכִּיפּוּרִים.

Rabbi Bun asked, if he did not know at the end, how could he bring a sacrifice<sup>65</sup>? But if it does not refer to knowledge at the end, let it refer to

knowledge at the beginning<sup>66</sup>. They objected: Is it not written, *or his transgression came to his knowledge, he has to bring*<sup>67</sup>? Then if it does not refer to knowledge at the beginning, let it refer to knowledge at the end<sup>68</sup>! 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 liable<sup>69</sup>. The verse says, *or his transgression came to his knowledge, he has to bring* even after the Day of Atonement<sup>70</sup>.

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.

(32d line 65) ומניין שאין מדבר אלא על טומאת מקדש וקדשיו. הזהיר וענש על ידי טומאה וחיוב קרבן על ידי טומאה. מה עונש ואזהרה האמור להלן בטומאת מקדש וקדשיו. אף קשייב 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. שפאמר 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.

<sup>71</sup>And from where that it speaks only about the impurity of the Sanctuary and its *sancta*? He warned and punished about impurity<sup>72</sup> and required a sacrifice about impurity. Since punishment and warning spelled out later on refer to impurity of the Sanctuary and its *sancta*<sup>73</sup>, also when He made liable for a sacrifice it is about impurity of the Sanctuary and its *sancta*. Rebbi Eliezer ben Jacob says, since it says, *I did not eat from it in my deep mourning*<sup>74</sup>, I could think that an Israel who ate tithe in deep mourning should bring a sacrifice. The verse says, *from these*<sup>75</sup>. 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*<sup>76</sup>. The verse says *from these*; for some of these he is liable, for some of these he is not liable. Or since there<sup>77</sup> [one speaks about] heave, also here heave. But did you not learn it from foreign worship<sup>78</sup>? 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 unintentionally<sup>79</sup>. This excludes heave which only is a deadly sin<sup>80</sup>.

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 *ב* 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) אָמַר רַבִּי חֲנִינָה קוֹמִי רַבִּי מְנָא. וּמַעֲבֹדָה זָרָה לְמִדְתָּהּ. וְיִלְמַד מֵעֲבֹדָה זָרָה לְכָל־  
 דָּבָר בִּידְעָה אַחַת. אָמַר לוֹ. עֲבֹדָה זָרָה בְּקַבּוּעַ וְטוֹמְאָת מִקֻּדְשׁ וְקֻדְשׁוֹ בְּעוֹלָה וְיִזְרַד. וְאִין  
 לְמִיּוֹדִין קַבּוּעַ מֵעוֹלָה וְיִזְרַד וְלֹא עוֹלָה וְיִזְרַד מִקַּבּוּעַ. וַיְמָה חֲמִית מִימַר. בְּטוֹמְאָת הַקֻּדְשׁ  
 הַכְּתוּב מִדְּבַר. נֶאֱמַר כָּאן בְּהִמָּה טְמֵאָה וְנֶאֱמַר לְהִלְכוּ בְּהִמָּה טְמֵאָה. מַה בְּהִמָּה טְמֵאָה  
 הָאֲמוּנָה לְהִלְכוּ בְּטוֹמְאָת הַקֻּדְשׁ. אִף בְּהִמָּה טְמֵאָה הָאֲמוּנָה כָּאן בְּטוֹמְאָת הַקֻּדְשׁ. אִין לִי  
 אֶלָּא טוֹמְאָת הַקֻּדְשׁ. טוֹמְאָת מִקֻּדְשׁ מְנִיין. תִּלְמוּד לומר וְטוֹמְאָתוֹ עָלָיו. מַה חֲמִית מִימַר.  
 בְּטֵמָא שְׂאֵכֶל טְהוֹר אוֹ בְּטְהוֹר שְׂאֵכֶל טְמֵא. תִּלְמוּד לומר וְטוֹמְאָתוֹ עָלָיו. בְּטֵמָאָת הַגּוֹף וְלֹא  
 בְּטוֹמְאָת בְּשָׂר. רַבִּי אוֹמַר. וְאֵכֶל וְטוֹמְאָתוֹ עָלָיו. בְּטוֹמְאָת הַגּוֹף וְלֹא בְּטוֹמְאָת בְּשָׂר. רַבִּי חֲנִינָה  
 אוֹמַר. נֶאֱמָרוּ קֻדְשִׁים לְשֵׁם רַבִּים וְנֶאֱמָרָה טוֹמְאָה לְשֵׁם יְחִיד. הָא מַה אֲנִי מְקַיִים וְטוֹמְאָתוֹ  
 עָלָיו. בְּטוֹמְאָת הַגּוֹף. לֹא בְּטוֹמְאָת בְּשָׂר. רַבִּי מְאִיר אוֹמַר. לֹא דִיבַר אֶלָּא בְּמִי שְׁטוֹמְאָה  
 פּוֹרְשֵׁת מִמֶּנּוּ. יֵצֵא בְּשָׂר שְׂאִין טוֹמְאָה פּוֹרְשֵׁת מִמֶּנּוּ.

Rebbi Hanina<sup>81</sup> said before Rebbi Mana: Did you learn this from foreign worship? Then one should learn from foreign worship that for everything one needs one knowledge<sup>82</sup>! 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 one<sup>83</sup>. How did you understand to say that the verse<sup>84</sup> speaks about impurity of Sanctuary *sancta*? It is said here *an impure animal*<sup>85</sup> and it is said further on *an impure animal*<sup>86</sup>. 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 Sanctuary<sup>87</sup>? <sup>88</sup>“The verse says: *his impurity is on him*<sup>89</sup>. How did you understand to explain it? About an impure person who ate pure [meat], or a pure person who ate impure [meat]<sup>90</sup>? The verse says: *his impurity is on him*. Impurity of the body, not impurity of the meat. Rebbi says, *he ate*<sup>91</sup>, *his impurity is on him*. Impurity of the body, not impurity of the meat. Rebbi Hiyya says, *sancta* are mentioned in the plural<sup>92</sup> 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 separates<sup>93</sup>. 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 עליו “on him” refers to the subject והנפש “but the person”.

93 A person always can remove his impurity, for simple impurity by immersion in a *miqveh*, 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 בּוּן. נִעֲשִׂית לּוֹ יוֹם הַכִּיפּוּרִים כְּאִשָּׁם תְּלוּי. מֵת לִפְנֵי יוֹם הַכִּיפּוּרִים עֹנֶה בָּהּ. אַחַר יוֹם הַכִּיפּוּרִים כָּבֵר כִּיפּוּר. וְכִפֵּר עַל-הַקּוֹדֶשׁ מִטּוּמְאוֹת בְּנֵי יִשְׂרָאֵל וְגו'. יֵשׁ לִי בְּעִינַי זֶה שְׁלֹשׁ טְמֵאוֹת. טוּמְאוֹת עֲבוּדָה זָרָה. שְׁנַאֲמַר לְמַעַן טְמֵא אֶת-מִקְדָּשִׁי. גִּילוי עֲרִיוֹת. שְׁנַאֲמַר לְבִלְתִּי עֲשׂוֹת מַחֻקּוֹת הַתּוֹעֵבֹת. שְׁפִיכוֹת דָּמִים. שְׁנַאֲמַר וְלֹא תִטְמְאוּ אֶת-הָאָרֶץ. יָכוֹל עַל כֹּל-הַטְּמֵאוֹת הַלְלוֹ שְׁעִיר זֶה מְכַפֵּר. תִּלְמוּד לומר מִטּוּמְאוֹת וְלֹא כָל-טוּמְאוֹת. מֵה מְצִינוּ שְׁחֵלֶק הַכְּתוּב בְּטוּמְאוֹת מִקְדָּשׁ וְקֹדֶשׁ שִׁי. אִף כֵּאֵן לֹא נִחְלוֹק אֶלָּא בְּטוּמְאוֹת מִקְדָּשׁ וְקֹדֶשׁ שִׁי. דְּבָרֵי רַבִּי הֵוָה. רַבִּי שְׁמַעוֹן אוֹמַר. מִמְּקוֹמוֹ הוּא מוֹכֵר. שְׁנַאֲמַר וְכִפֵּר עַל-הַקּוֹדֶשׁ מִטּוּמְאוֹת בְּנֵי יִשְׂרָאֵל. כָּל טוּמְאוֹת שֶׁבְּקוֹדֶשׁ. יָכוֹל עַל טוּמְאוֹת מִקְדָּשׁ וְקֹדֶשׁ שְׁעִיר זֶה יְכַפֵּר. תִּלְמוּד לומר וּמִפְּשָׁעֵיהֶם. אֵילוּ הַמְּרִדִין. וְכֵן הוּא אוֹמַר מִלֶּד מוֹאֵב פֶּשַׁע בִּי.

If it is so, what does the Day of Atonement help him<sup>95</sup>? 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*<sup>96</sup>. After the day of Atonement it already was atoned for<sup>97</sup>.

<sup>98</sup>“*He shall atone for the Sanctuary from the impurities of the Children of Israel*”<sup>99</sup>, etc. In this aspect I have three impurities. The impurity of foreign worship as it is said, *to defile My Sanctuary*<sup>100</sup>. Sexual offenses as it is said, *not to act in the rules of abominations*<sup>101</sup>. Spilling of blood as it is said, *do not defile the Land*<sup>102</sup>. I could think that this ram atones for all these impurities, the verse says, *from the impurities*, not all impurities<sup>103</sup>. 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* separately<sup>104</sup>, 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*<sup>99</sup>. These are the rebellions<sup>105</sup>, for so it says, *the king of Moab rebelled against me*<sup>106</sup>.

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 שָׁמַיִם “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 Perek* 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 חַטֹּאת “unintentional sins” also mentioned in the verse.

106 *2K.* 3:7.



(fol. 32c) **משנה ג:** אין בה ידיעה בתחילה אכל יש בה ידיעה בסוף שעיר הנעשה בהוין יום הכיפורים מכפר שנגמור מלבד הטאת 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 end<sup>107</sup>, the ram brought outside<sup>108</sup> or the Day of Atonement<sup>109</sup> atone as it is said, *in addition to the atoning purification offering*<sup>110</sup>; what the one atones for the other atones for. Since the one inside atones only on matters which were known<sup>111</sup>, 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 יכפרו. מאי כדון. אמר רבי יעקב בר אבא. מילה חמית. ריש לקיש איתיב קומי רבי יוחנן ואתיב ליה. מחלוקי כפרות היא מילתא. ולינה דע מה מר ליה. אמר ליה רבי זירא. דילמא דא היא. מה חמית מימר. בטמא שאכל טהור או נימר בטהור שאכל טמא. תלמוד לומר וטומאתו עליו. בטומאת הגוף. לא בטומאת בשר. או זה וזה יכפרו. מאי כדון. והתנדה עליו עונות אילו הודנות. פשעיהם אילו המרדים. חטאתם אילו השנגות. קשאמר יכפר. אמר רבי אמי בשם ריש לקיש. ונשא השעיר עליו את-כל-עונותם. טפש הודנות והנים השנגות. לומר. מה דונות שאין בהן חיוב קרבן. אף השנגות שאין בהן חיוב קרבן. ולמה באו לכאן. רבי אילא בשם רבי יסא. לתלייה. ויתלה על אוכלי שקצים ורמשים במשמע. רבי שמואל בשם רבי זירא. חטאתם חטאתם. מה חטאתם שנגמור להן שיש בהן חיוב קרבן. אף חטאתם שנגמור כאן שיש בהן חיוב קרבן. נצאו דונות שאין בהן חיוב קרבן. שיויר שעיר הנעשה בפנים יום הכיפורים תולה. מה שייקרה. אין בה ידיעה בתחילה אכל 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 atone<sup>112</sup>?

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: <sup>113</sup>How 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? <sup>114</sup>*He should over it confess sins*, these are intentional sins, *their crimes*, these are rebellions<sup>105</sup>, *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*<sup>115</sup>, he grabbed intentional sins and left out unintentional sins<sup>116</sup>, 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 sacrifice<sup>117</sup>. And why did they come here? Rabbi Ila in the name of Rabbi Yasa, for suspension<sup>118</sup>. Would it be understood to suspend for those who eat abominations and crawling things<sup>119</sup>? Rabbi Samuel in the name of Rabbi Ze`ira: *Their mistakes, their mistakes*<sup>120</sup>. 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 inside<sup>112</sup> 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.<sup>121</sup>

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, *Keritut* 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 *חטאתם* 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 שְׂאֵיז בָּהּ יְדִיעָה לֹא בִתְחִילָה וְלֹא בְסוּף שְׁעִירֵי הַרְגָּלִים וְשְׁעִירֵי רֹאשֵׁי הַחֲדָשִׁים מְכַפְּרִים דְּבָרֵי רַבִּי יְהוּדָה. רַבִּי שְׁמַעוֹן אָמַר, שְׁעִירֵי הַרְגָּלִים מְכַפְּרִין אֲבָל לֹא שְׁעִירֵי רֹאשֵׁי הַחֲדָשִׁים. וְעַל מִדֵּה שְׁעִירֵי רֹאשֵׁי הַחֲדָשִׁים מְכַפְּרִין עַל טְהוֹר שְׂאֵבֶל טָמֵא. רַבִּי מֵאִיר אָמַר כָּל הַשְּׁעִירִים כְּפָרְתָן שְׂוָה עַל טוֹמְאָתָא מְקַדָּשׁ וְקֹדֶשׁ.

**משנה ה:** הָיָה רַבִּי שְׁמַעוֹן אָמַר שְׁעִירֵי רֹאשֵׁי הַחֲדָשִׁים מְכַפְּרִין עַל טְהוֹר שְׂאֵבֶל טָמֵא וְשֶׁל רְגָלִים מְכַפְּרִין עַל שְׂאֵיז בָּהּ יְדִיעָה לֹא בִתְחִילָה וְלֹא בְסוּף וְשֶׁל יוֹם הַכְּפוּרִים מְכַפְּרֵי עַל שְׂאֵיז בָּהּ יְדִיעָה בִּתְחִילָה אֲבָל יֵשׁ בָּהּ יְדִיעָה בְּסוּף.

**Mishnah 4:** But about where there is no knowledge either at the start or at the end<sup>122</sup>, the rams of the holidays and the rams of the Days of the New Moon<sup>123</sup> 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 impure<sup>124</sup>. 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 end<sup>125</sup>.

122 Undetected infractions of the laws of purity. Mishnaïot 4-6 are reproduced in *Sifra Ahare Perek 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:** ועל שאין בה ידיעה כול'. **הלכה ה:** היתה רבי שמעון אומר כול'. רבי לעזר בשם רבי הושעיה. טעמא דרבי יהודה ושעיר עגים חטא לוי. חט שאין יודע בו אלא יי שעיר זה מכפר. אין לי אלא שעיר של ראש חודש. שעירי רגלים מניין. אמר רבי זירא. ושעיר. וי' מוסיף על ענין ראשון. רבי זעירא ורבי לעזר בשם רבי הושעיה רבי יעקב בר אחא בשם רבי יוחנן. ואתה | נתן לכם לשאת את עון העדה. מה נן קיימין. אם בשעיר נחשון. על שבטו מכפר. אם בשעיר שליום הכיפורים. אין פיוצא בו לדורות. אלא כן אנו קיימין בשעיר של ראש חודש. מאי כדון. נאמר פאן נשיאות עון ונאמר להלן נשיאות עון. ונשא אהרן את עון הקריבין ולא עון המקריבין אף פאן עון הקריבין ולא עון המקריבין. מה חמית מימר בטהור שאכל טמא נימא בטמא שאכל טהור. אמר רבי יוסי בירבי בון. רבי יודה חלק שיטת רבי מאיר. רבי שמעון חלק שיטת רבי יודן. מודה רבי יוחנן בשעיר הנעשה בפנים שאין מכפר אלא תולה. ותייא כרבי יונה בשם רבי זעירא. ועשהו חטאת קבעו לתלייה שלא ישתנה.

**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*<sup>126</sup>. This ram atones for a sin known only to the Eternal<sup>127</sup>. 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*<sup>128</sup>, the copula adds to the prior subject. Rabbi Ze’ira and<sup>129</sup> Rabbi Eleazar in the name of Rabbi Hoshai, Rabbi Jacob bar Aha in the name of Rabbi Johanan: *He gave it to you to lift the sins of the congregation*<sup>130</sup>. Where do we hold? If about Nahshon’s ram,

it atoned for his tribe. If about the ram of the Day of (Atonement)<sup>131</sup>, there is nothing similar in later generations<sup>132</sup>. 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*<sup>133</sup>. 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 offerers<sup>134</sup>. 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 Meir; Rabbi Simeon splits the argument of Rabbi Jehudah<sup>135</sup>. Rabbi Johanan<sup>136</sup> 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*<sup>137</sup>. He fixed it for suspension, that it could not be changed<sup>138</sup>.

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 נסחן “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־הַזֶּבֶחַ אֶת־הַשְּׂעִיר אֲשֶׁר עָלָה עִלָּיו הַגֹּדֶל לִי לְחֻטָּאת. Then חֻטָּאת would have referred to the ram and meant "purification offering." But the clause וַעֲשֶׂהוּ 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 Ahare Pereq* 2(5).

33a line 58) שְׂעִיר שְׂלֵמָה קָרֵב בְּרֶגֶל יִקְרַב בְּרֵאשׁ חֹדֶשׁ. לֹא קָרֵב בְּרֵאשׁ חֹדֶשׁ וְקָרֵב לְהֵבֵא שְׂמֵת־חֵילָהּ לֹא הוּקְדָשׁוּ קָרְבָּנוֹת צִיבּוֹר אֶלָּא לִיקְרַב 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 altar<sup>139</sup>.

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 כָּבֵד כִּיפּוּר יוֹם הַכִּיפּוּרִים. אָמַר רַבִּי מָנָא. מִכֵּיּוֹן דְּכָתִיב חַג הַמִּצּוֹת וּבְחַג הַשְּׂבָעוֹת וּבְחַג הַסֻּכּוֹת כָּמִי שְׂפוּלָן מְכַפְּרִין כְּפָרָה אַחַת. אָמַר רַבִּי בּוּן. מִכֵּיּוֹן שְׂפוּלָן מְכַפְּרִין עַל טוּמְאָת מִקְדָּשׁ וְקָדְשׁוֹ כָּמִי שְׂפוּלָן מְכַפְּרִין כְּפָרָה אַחַת.

But did not the Day of Atonement already atone<sup>140</sup>? Rebbi Mana said, since it is written, *the pilgrimage of Unleavened Bread, the pilgrimage of*

*Weeks, and the pilgrimage of Tabernacles*<sup>141</sup>, 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. ותני כו. 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. ברם 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 בפרות. אלא זה וזה מחמת ראש חודש. אמר רבי אבמר. לית יכיל. דכתב מלבד עולת החודש. ועוד מהדא דתני. שנים עשר לשני עשר חדשי השנה. חד בר אביי עבר קמי תיבתא ולא אדפר דריש ירחא וקלסוניה. רב הושעיא בעי. הגע עצמך ששחטו שניהן פאחת. מה אית לך טומאה שאירעה בין זה לזה. אמר רבי בון. אילו ישראל פשירין שמא אינו מביאין מה שקבעה להו תורה.

Rebbi Jacob bar Aha 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 Moon<sup>142</sup>. Rebbi Aha bar Pappus said, it was stated thus: <sup>143</sup>“The one who stands before the Ark on New Year's holiday in the morning, the House of Shammai say, he prays eight [benedictions]<sup>144</sup>, but the House of Hillel say seven. For *musaf*<sup>145</sup>, the House of Shammai say ten, but the House of Hillel say nine.” Should he not say eleven<sup>146</sup>? Rebbi Yose said, where do they disagree? In a matter which needs a separate benediction. But here even on a weekday he simply includes it<sup>147</sup>. So he should mention it in “Service”<sup>148</sup>. 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

Moon<sup>149</sup>? Rabbi Yose ben Rabbi Bun said, does Rabbi Abba bar Mamal<sup>150</sup> not ask correctly? As it was stated: “The two lambs of Pentecost<sup>151</sup> 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.<sup>152</sup> Is that not Rabbi Simeon’s? And Rabbi Simeon splits atoning<sup>153</sup>. 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*<sup>154</sup>. In addition, from what we have stated, “twelve for the twelve months of the year.<sup>155</sup>” A patrician stood before the Ark and did not mention the New Moon; they praised him<sup>156</sup>. 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 them<sup>157</sup>?

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. *Qiddušin* 2:7, Note 166.

153 The answer is not acceptable since the *bara'ita* 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 שִׁיקְרְבוּ זֶה בְּזֶה. אָמַר לָהֶם יִקְרְבוּ. אָמְרוּ לוֹ הֲזֹאֵל וְאֵין

בְּפִרְתָּן שְׁוֵה הַיָּאֵד קְרִיבִים זֶה בְּזֶה. אָמַר לָהֶן כּוֹלֵן בְּאֵין לְכַפֵּר עַל טוּמְאֹת מִקְדָּשׁ וְקִדְשֵׁי:

**Mishnah 6:** They asked him<sup>157</sup>, could they be brought one for the other<sup>158</sup>? He told them, they may be brought. They asked him, since their atoning is not the same<sup>159</sup>, 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*<sup>160</sup>.

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.

6) (33b line 6) **הלכה ו:** אָמְרוּ לוֹ. מָה הֵן שֶׁיִּקְרְבוּ זֶה בְּזֶה כּוֹל. אָמַר רַבִּי יוֹחָנָן. דְּבָרֵי הַכִּמִּים מְשַׁנִּין וְדְבָרֵי רַבִּי שְׁמַעוֹן אֵין מְשַׁנִּין. דְּבָרֵי הַכִּמִּים מְשַׁנִּין. וְתִימַר. מָהוּ שֶׁיִּקְרְבוּ זֶה בְּזֶה. בְּשִׁטָּתוֹ הַשְּׂבִיבוּהוּ. כְּשִׁטָּתְךָ שְׂאֵת אוֹמַר. אֵין מְשַׁנִּין. מָהוּ שֶׁיִּקְרְבוּ זֶה בְּזֶה. אָמַר רַבִּי יוֹסִי. שֶׁאֵין קָרְבָּנוֹת צִיבוּר נִקְבָּעִין אֶלָּא בְּקִבוּעָה. 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 change<sup>161</sup>. The words of the Sages [imply] that one may change, and you say “could they be brought one for the other”<sup>162</sup>? They objected to him according to his argument<sup>163</sup>. 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 use<sup>164</sup>. Rabbi Yudan said, it was stated thus<sup>165</sup>: “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 משמו שעירי ראשי הדשים מכפרין על התהור שאכל מן הטמא מוסף עליהם של רגלים שמכפרין על התהור שאכל את הטמא ועל שאין בה ידיעה לא בתחלה ולא בסוף. מוסף עליהם של יום הכפורים שהן מכפרין על התהור 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 הנה רבי שיקרבו זה בזה אמר להם הין. אמרו לו אם בן יהוה של יום הכפורים קריבין בראשי הדשים אכל היאך של ראשי הדשים קרבין ביום הכפורים לכפר כפרה שאינה שלהן. אמר להן בולן באין לכפר על טומאת מקדש וקדשיו:

**Mishnah 7:** Rabbi Simeon ben Jehudah said in his<sup>166</sup> 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 end<sup>167</sup>.

**Mishnah 8:** They said to him, did not the teacher<sup>166</sup> 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 theirs<sup>168</sup>? He told them, all of them serve to atone for the impurity of the Sanctuary and its *sancta*<sup>125,160</sup>.

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:** אָמְרוּ לוֹ אוֹמֵר הִיָּה רַבִּי כּוֹל. אָמַר רַבִּי יוֹסִי דְרוֹמִינַא קוֹמִי רַבִּי יוֹנָה. הֵכָן צוֹרְכָה לְמִיתְנִי. אִם כֵּן יִהְיֶה שֶׁל רֵאשֵׁי חֲדָשִׁים קָרְבִּין בְּיוֹם הַכַּפּוּרִים. שְׂכָן מַעְלִין בְּקוֹדֶשׁ וְלֹא מוֹרִידִין. אֲבָל שְׁלִיחַ הַכַּפּוּרִים אֵינָן קָרְבִּין בְּרֵאשִׁי חוֹדֶשׁ. שְׂאֵן מוֹרִידִין בְּקוֹדֶשׁ. רַבִּי לְעֶזֶר בְּשֵׁם רַבִּי בּוֹן פֶּתֵר לֵה פֶתֵר חוֹרוֹן. אִם כֵּן יִהְיֶה שְׁלִיחַ הַכַּפּוּרִים קָרְבִּין בְּרֵאשֵׁי חֲדָשִׁים. שְׂמִיכָפְרִין כְּפֶרֶת וְכֶפֶרֶת רֵאשֵׁי חֲדָשִׁים. אֲבָל שֶׁל רֵאשֵׁי חֲדָשִׁים אֵין קָרְבִּין בְּיוֹם הַכַּפּוּרִים. שְׂאֵין מִכְפְּרִין אֶלָּא כְּפֶרֶת בְּלֶבֶד. אֵילוּ מִי שְׂאֶכֶל חֶלֶב חֲמִשָּׁה זֵיתִים וְהִפְרִישׁ אַרְבָּעָה קָרְבָּנוֹת וְסָבוֹר שֶׁהֵן חֲמִשָּׁה שְׂמָא כִּפּוּר. אוֹ אֵילוּ מִי שְׂאֶכֶל חֶלֶב אַרְבָּעָה זֵיתִים וְהִפְרִישׁ חֲמִשָּׁה קָרְבָּנוֹת וְסָבוֹר אַרְבָּעָה לֹא כָל־שְׂכָן. וְכֵן הִיָּה רַבִּי שְׂמַעוֹן אוֹמֵר. שְׁלִישִׁים וְשְׁנַיִם שְׁעִירִים קָרְבִּין עַל הַצִּיּוּר בְּכָל־שָׁנָה. שְׁלִישִׁים וְאַחַד בַּחוּץ וְנֶאֱכָלִין. וְאַחַד בְּפָנִים וְאֵינוּ נֶאֱכָל. וְשְׁעִיר הַמִּשְׁתַּלַּח. שְׁנַיִם עֶשֶׂר לְשָׁנִים עֶשֶׂר חֲדָשֵׁי שָׁנָה. שְׂמוֹנֶה בְּחֵג. שְׁבַעֵה בְּפֶסַח. שְׁנַיִם בְּעֶצְרַת. אֶחָד בְּגִלְגַּל הַיּוֹם וְאַחַד בְּגִלְגַּל הַלַּחֵם. אֶחָד בְּרֵאשִׁי הַשָּׁנָה וְאַחַד בְּיוֹם הַכַּפּוּרִים. כִּינּוֹן שְׂשֻׁמֶע מִשָּׁה כֵּן אָמַר. מִעֲתָה מִי שְׂבָאָת לָדוּ סִפֵּק עֲבִירָה צְרִיף לְהַבִּיא כָּל־קָרְבָּנוֹת הַלָּלוּ. רַבִּי תַנְחוּמָא בְּשֵׁם רִישׁ לְקִישׁ. בְּשַׁעָה שְׂאֵמַר לוֹ הַקְדוֹשׁ בְּרוּךְ הוּא לְמַשָּׁה וְהַתְנַדָּה עָלֵינוּ וְגו' הַתְחִיל וְאָמַר מִזְמוֹר לַתְּנֻדָּה עַל שֵׁם וְהַתְנַדָּה עָלָיו.

**Halakhah 8:** “They said to him, did not the teacher use to say,” etc. Rabbi Yose the Southerner said before Rabbi 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 holiness<sup>169</sup>. Rabbi Eleazar in the name of Rabbi Bun<sup>170</sup> explained it by another explanation<sup>171</sup>: 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 Moon<sup>172</sup>, 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 atone<sup>173</sup>? 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 more<sup>174</sup>? And so <sup>175</sup>“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 eaten<sup>176</sup>. 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.”<sup>177</sup> 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*<sup>178</sup> on it etc., he started and said, *A Song of confession*<sup>179</sup>, 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)].

מִשְׁנֵה ט': וְעַל זֶדוֹן טוֹמְאוֹת מִקֹּדֶשׁ וְקִדְשׁוֹ שְׁעִיר הַנִּעְשָׂה בַּכִּנּוּיִם יוֹם הַכִּפּוּרִים מִכֹּפֶר. וְעַל שְׂאֵר עֲבִירוֹת שְׁבֵתוֹרָה הַקְּלוֹת וְהַחֲמוּרוֹת הַזְּדוֹנוֹת וְהַשְּׂגָגוֹת הַדַּע וְלֹא הַדַּע עָשָׂה וְלֹא תַעֲשֶׂה כְּרִיתוֹת וּמֵיתוֹת בֵּית דִּין שְׁעִיר הַמִּשְׁתַּלֵּחַ מִכֹּפֶר:

**Mishnah 9:** Intentional impurity<sup>180</sup> 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 atones<sup>181</sup>.

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.

הַשְּׂגוּת. הַלְכָה ט: וְעַל זָדוֹן טוֹמְאָת מִקֹּדֶשׁ כּוֹל'. הִדָּא הִיא מִכִּפָּר עַל הַזְּדוּנוֹת וְתוֹלָה עַל הַשְּׂגוּת.

לֹא הֵן קִלּוֹת לֹא תַעֲשֶׂה. לֹא הֵן חֲמוּרוֹת כְּרִיתוֹת וּמִיתוֹת בֵּית דִּין. אָמַר רַב יְהוֹנָדָה. כִּינִי מִתְּנִינָא. הַקִּלּוֹת וְהַחֲמוּרוֹת. אוֹתָן הַקִּלּוֹת בֵּין שְׁעֵשָׂאן בְּזָדוֹן בֵּין שְׁעֵשָׂאן בְּשִׁגְגָה. אוֹתָן הַזְּדוּנוֹת בֵּין שְׁנִתְּוּדַע לֹו בְּהֵן בֵּין שְׁלֹא תְּוּדַע לֹו בְּהֵן. אֵילוּ הֵן קִלּוֹת. עֲשֶׂה וְלֹא תַעֲשֶׂה. חֲמוּרוֹת כְּרִיתוֹת וּמִיתוֹת בֵּית דִּין. כָּשֶׁם שֶׁהַשְּׂעִיר הַנֶּעֱשֶׂה בַּכִּנִּים מִכִּפָּר עַל הַזְּדוּנוֹת וְתוֹלָה עַל הַשְּׂגוּת. אַף שְׂעִיר הַמִּשְׁתַּלַּח כֵּן.

1 הֵן | יִהְיֶה לֹא תַעֲשֶׂה | יִעֲשֶׂה וְלֹא תַעֲשֶׂה הֵן | יִהְיֶה אִם רַב יְהוֹדָה | יִר' יְהוֹדָה או' 2 שְׁעֵשָׂאן בְּשִׁגְגָה | יִשְׁלֹא עֲשָׂאן בְּזָדוֹן 3 הַזְּדוּנוֹת | יִחֲמוּרוֹת קִלּוֹת | יִקִּלּוֹת 4 חֲמוּרוֹת | יִאֵילוּ הֵן הַחֲמוּרוֹת 5 הַשְּׂגוּת | יִשְׁגוּת בְּדַבָּר שִׁישׁ בּוֹ חַיִּיב קִרְבָּן כֵּן | יִכִּפָּר

**Halakhah 9:** “Intentional impurity of the Sanctuary.” etc. That means it atones for intentional infractions and suspends for the unintentional<sup>182</sup>.

<sup>183</sup>Are not minor sins [positive commandments and]<sup>183a</sup> prohibitions; are not serious ones extirpations and capital crimes<sup>184</sup>? Rav<sup>185</sup> Jehudah said, so is the Mishnah: “Minor or serious ones. Those minor ones, whether he committed them intentionally or committed them unintentionally<sup>186</sup>. Those intentional ones, whether he obtained knowledge of them or did not obtain knowledge of them<sup>187</sup>. The following are minor sins: positive commandments and prohibitions<sup>188</sup>. Serious ones, extirpations and capital crimes. Just as the ram whose blood is brought inside atones for intentional infractions and suspends for the unintentional<sup>189</sup>, the same holds for the scapegoat<sup>190</sup>.”

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 (†).

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, *Horaiot* 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 הוּדַע. הוּדַע. וְלֹא כֹן תִּנִּי. מִנֵּיין לְמַחֲוִיבֵי חֲטָאוֹת וְאַשְׁמוֹת וְנִדְאִין שְׁעָבֵר עֲלֵיהֶן יוֹם הַכִּיפּוּרִים שְׁחִיבִין לְהֵבִיא לְאַחַר יוֹם הַכִּיפּוּרִים וְחִיבֵי אֲשָׁמוֹת תְּלוּיִין פְּטוּרִין. אָמַר רַבִּי בּוּן בֶּר חִינָה. בֵּין שְׁנֵתוּדַע לּוּ בְּהֶן בֵּין שְׁלֹא נִתְּוּדַע לּוּ בְּהֶן. וְלֹא כְּבָר כִּיפֵר יוֹם הַכִּיפּוּרִים. רַבִּי שְׁמַעוֹן בְּשֵׁם לְוִי שׁוּבַדָּא. בְּמוֹרֵד בְּיוֹם הַכִּיפּוּרִים הִיא מִתְּנִיתָה. וְלָמָּה לֹא מַר. בְּשְׁלֹא נִתְּוּדַע בְּהֶן בְּיוֹם הַכִּיפּוּרִים. מִילְתִּיהָ אֶמְרָה אֶפִּילוּ לֹא נִתְּוּדַע בְּהֶן בְּיוֹם הַכִּיפּוּרִים יוֹם הַכִּיפּוּרִים מְכַפֵּר.

1 תני | י תנין מניין למחוייבי | י חייבי 2 שחיבין להביא לאחר יום הכיפורים | י חייבין 3-4 ולא כבר ... מתניתא | י אפילו | י ואפילו בהן ביום הכיפורים | י לו בהן 5 מר | י אמר בהן ביום הכיפורים | י

It is understandable if it did not come to his knowledge<sup>191</sup>. If it did come to his knowledge<sup>192</sup>? Was it not stated:<sup>193</sup> “From where that those obligated for purification sacrifices and certain reparation sacrifices for whom the Day of Atonement had passed, are obligated to bring them after the Day of Atonement, but those obligated for suspended reparation offerings are no longer liable?” 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 atone<sup>194</sup>? Rabbi Simeon in the name of Levi [Sokhia]<sup>195</sup>, the Mishnah speaks of one who rebels against the day of Atonement<sup>196</sup>. Why did he<sup>197</sup> 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 atones<sup>196</sup>.

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.

עֲשֵׂה אֶף עַל פִּי שְׂלֵא עֲשֵׂה תְּשׁוּבָה. לֹא תַעֲשֶׂה. רַבִּי שְׁמוּאֵל בְּשֵׁם רַבִּי זִירָא. (33b line 43)  
וְהוּא שְׁעֵשֶׂה תְּשׁוּבָה. הָאוֹמֵר. אִין הַעוֹלָה מְכַפֶּרֶת אִין הַעוֹלָה מְכַפֶּרֶת. מְבַפְרֵת הִיא עַל כּוֹרְחוֹ.  
הָאוֹמֵר. אִין יוֹם הַכִּיפּוּרִים מְכַפֵּר אִין יוֹם הַכִּיפּוּרִים מְכַפֵּר. מְכַפֵּר הוּא עַל כּוֹרְחוֹ. אִי אֵיפְשִׁי  
שְׂכִיפֵר לִי. אִין מְכַפֵּר לוֹ עַל כּוֹרְחוֹ. אָמַר רַבִּי חֲנִינָה בִּירְבִי הַלֵּל. לֹא מִסְתַּבְּרָה דְאֵילָא חִילּוּפִין.  
לֹא כּוֹלָא מוֹ בַר נֶשְׂא מִימֵר לְמַלְכָּא. דְלִית אֵת מְלִיךָ.

<sup>198</sup> A positive commandment, even if he did not repent. A prohibition? Rabbi Samuel in the name of Rabbi Ze`ira, only if he repented<sup>199</sup>. If one said, “the elevation offering does not atone,<sup>200</sup>” 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 will<sup>201</sup>. Rabbi Ḥanina ben Rabbi Hillel said, the opposite is reasonable<sup>202</sup>. 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 פורחו. 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.

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 אליהם בלבבכם. הדיא אמרה שעולה מכפרת על הירחור הלב.

<sup>203</sup>The elevation offering atones for thoughts. What is the reason? *What rises in your spirits will not be*<sup>204</sup>. Rabbi Levi said, the elevation offering atones for your spirits<sup>205</sup>. And so in *Job* he says, *maybe my children sinned and cursed God in their hearts*<sup>206</sup>. 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 מפורך עול ומיפר ברית ומגלה פנים בתורה. שאם עשה תשובה מתכפר לו. ואם לאו אין מתכפר לו. רבי יסא מקשה. מיסבר סבר רבי שיום הכיפורים מכפר בלא תשובה. אַתא רבי אַשין רבי יונה רבי בא רבי חייה בשם רבי יוחנן. יום הכיפורים מכפר בלא תשובה ומיתה ממרקת בלא תשובה. ותני כן. יום מיתה כתשובה. מאן תנייה. רבי. הדיא היא דתנין תמן. מיתה ויום הכיפורים מכפרין עם התשובה. דלא כרבי.

<sup>206</sup>Rebbi 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 Torah<sup>207</sup>, 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 repentance<sup>208</sup>. We have stated thus: The day of death equals repentance. Who stated this? Rebbi! Then what we stated<sup>209</sup>, “death and the Day of Atonement atone with repentance,” does not follow Rebbi<sup>210</sup>.

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 מתנה בן חרש את רבי לעזר בן עזריה. שמעתה ארבעה חלוקי כפרה שהנה 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 העון הזה לכם 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 ובנגעים עוונם. 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 העון הזה לכם 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 ממרקת

<sup>211</sup>Rebbi 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*<sup>212</sup>, etc. But another verse says, *for on that day, He shall pardon you*<sup>213</sup>, etc. And another verse says, *I shall visit their crime with the rod*<sup>214</sup>, etc. And another verse says, *the iniquity of this people shall not be atoned for until you die*<sup>215</sup>. 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 [sin 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 sufferings<sup>212</sup>. 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. מתמיד. על דעתיה דרבי זירא כיפר מיד. על דעתיה דרבי חנניה לא כיפר. אמר רבי זירא. ומתניתה מסייעא לרבי חנניה. 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 משתלח. אמר רבי הונא. איתותב קומי רבי ירמיה נמר. תיפתר שהיה בדעתו להביא שעיר אחר ולא הביאו. אמר רבי יוסי. ואין הקדוש ברוך הוא רואה את הנולד. ויכפר מיד.

1 עזריה | עזריה חכמי אומ' | דברי חכמים 2 ואם | G | כיצד | G | כיצד זה זירא | G | זעורה 3 ביניהון | G | מפקה מיבנהון מיד | G | מיד 4 זירא | G | זעורא כיפר מיד | G | כבר כופר חנינה | G | חנינה זירא | G | חנינה [זעורא] ומתנית' | G | מתניתה מסייעא | G | מסייעה 5 חנינה | G | זעורא [חנינה] 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 | בר' בן 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 Hanania<sup>216</sup> 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. אדקה תצור תם דרף. חטאים תרדף רעה. רגלי חסידיו לשמור. אם ללצים הוא לץ. סיגין סיגה ותרגין תרעה. וכיני. סיגין סיגה ותרגין 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 תתב ליה. והחוט המשולש לא ינתק לעולם אין פתוב כאן אלא לא במהרה ינתק. אין אטרחת עלוי הוא מיפסיק.

4 שני | 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*<sup>217</sup>. *Evil deeds will pursue the sinner*<sup>218</sup>. *He will watch over the feet of His pious ones*<sup>219</sup>. *While He makes scoffers targets of scoffing*<sup>220</sup>. 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*<sup>221</sup>. 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*<sup>222</sup>. If you work on it, it will split.

רבי הונא בשם רבי אבהו. הקדוש ברוך הוא אין לפניו שכחה. כבכול בשביל שראל נעשה שכהן. שנאמר מראל כמוך נושא עון. נושא כתיב. וכך דוד אמר נשאת עון עמך.

1 הונא | G חונה אבהו | G אבהו בשביל | G הא מפני 2 שני | 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*<sup>223</sup>. “He forgets” is written. And so David said, *You forgot Your people's sin*<sup>224</sup>.

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 <i>Sanhedrin</i> and G texts should be considered original.	<i>Yoma</i> . 217 <i>Prov.</i> 13:6. 218 <i>Prov.</i> 13:4. 219 <i>IS.</i> 2:9. 220 <i>Prov.</i> 3:34. 221 <i>Job</i> 33:29. 222 <i>Eccl.</i> 4:12. 223 <i>Micha</i> 7:18. 224 <i>Ps.</i> 85:3.
212 <i>Jer.</i> 3:22.	
213 <i>Lev.</i> 16:20.	
214 <i>Ps.</i> 89:33.	
215 <i>Is.</i> 22:14.	
216 This name is used throughout in G and	

מִשְׁנָה פּ: אֶחָד יִשְׂרָאֵל וְאֶחָד כֹּהֲנִים וְאֶחָד בַּהֵן מִשִּׁיתָּ. מִזֶּה בֵּין יִשְׂרָאֵל לְכֹהֲנִים לְכַהֵן מִשִּׁיתָּ אֱלֹא שְׂדֵם הַפֶּר מְכַפֵּר עַל הַכֹּהֲנִים עַל טוֹמְאוֹת מְקַדֵּשׁ וְקֹדֶשִׁי. רַבִּי שְׁמַעוֹן אוֹמֵר כְּשֵׁם שְׂדֵם הַשְּׁעִיר הַנִּגְעָשָׁה כְּפָנִים מְכַפֵּר עַל יִשְׂרָאֵל כֵּן דָם הַפֶּר מְכַפֵּר עַל הַכֹּהֲנִים. כְּשֵׁם שְׂוֵדֵי שֶׁל שְׁעִיר הַמִּוִּשְׁתַּלַּח מְכַפֵּר עַל יִשְׂרָאֵל כֵּן וְיִדְוִי שֶׁל פֶּר מְכַפֵּר עַל הַכֹּהֲנִים:

**Mishnah 10:** Together Israel, Cohanim, and the Anointed Priest<sup>225</sup>. What is the difference between Israel and a Cohen or the Anointed Priest<sup>226</sup>? 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 Cohanim<sup>227</sup>. Just as the confession of the scapegoat<sup>228</sup> atones for Israel, so the confession of the bull atones for Cohanim<sup>229</sup>.

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 כּוֹל. וְלֹא תִנְיֵן מְשִׁיחַ. וְלָמָּה לֹא תִנְיֵן מְשִׁיחַ. אִין תִּימַר. בְּדָבָר שְׂאִין בּוֹ חַיִּיב קָרְבָּן אֲנִן קַיִמִין. יְאוּת לֹא תִנְיֵן מְשִׁיחַ. אִין תִּימַר. בְּדָבָר שְׂשׁ בּוֹ חַיִּיב קָרְבָּן. לָמָּה לֹא תִנְיֵן מְשִׁיחַ. אֲשַׁכַּח תִּנְיֵי. בְּכַהֵן מְשִׁיחַ. הֵדָא אֶמְרַהּ בְּדָבָר שְׂאִין בּוֹ חַיִּיב קָרְבָּן אֲנִן קַיִמִין. אָמַר רַבִּי יוֹסֵי בִּירְבִי בְּנִי. וְאַפִּילוּ תִימָא בְּדָבָר שְׂשׁ בּוֹ חַיִּיב קָרְבָּן. נַעֲשֶׂה כְזָדוֹן. כִּמְה דְתִימַר. בְּזָדוֹן צְרִיךְ כְּפָרָה וְכִפְרַת יוֹם הַכִּיפּוּרִים. וְכָא צְרִיךְ כְּפָרָה וְכִפְרַת יוֹם הַכִּיפּוּרִים.

3 בכהן | G | כהן | הדא | G | אדה | 4 יוסי | G | יוסי | תימא | G | תימר | 5 קרבן | G | קרבן | דתימר | G | דאמרת | בדון | G | על זון | וכפרת | G | הכפרת | וכא | G | וכה | כפרה | וכפרת | G | כפרת

**Halakhah 10:** “Together Israel, Cohanim,” etc. But we did not state<sup>230</sup> “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 sacrifice<sup>231</sup>, 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”<sup>232</sup>? It was found stated “also the Anointed Priest.”<sup>233</sup> This implies that we are discussing things which do not imply the obligation of a sacrifice<sup>234</sup>. Rabbi Yose ben Rabbi Abun said, even if you say, about things which imply the obligation of a sacrifice, if it was done intentionally<sup>17</sup>. 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 Atonement<sup>235</sup>.

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) **גַּעְמַדְתִּי.** מְלַמֵּד שְׁעוֹתֶיךָ לְמוֹת. עַד מְתֵי הוּא חַי. עַד וְכֹלְהָ מִכְּפָר אֶת־הַקּוֹדֵשׁ. דְּבַרֵּי רַבִּי יְהוֹדָה. רַבִּי שְׁמַעוֹן אוֹמֵר. עַד שְׁעַת וּוְיָדוּי. עַל דְּעֵתִיָּה דְרַבִּי יְהוֹדָה הוּיָדוּי מְעַבְב. עַל דְּעֵתִיָּה דְרַבִּי שְׁמַעוֹן אִין וּוְיָדוּי מְעַבְב. מַה מִּפְקָה מִבְּיָהוֹן. שְׁחִטּוּ בְּלֹא וּוְיָדוּי. עַל דְּעֵתִיָּה דְרַבִּי יוֹדָה צְרִיךְ לְהִבְיָא פֶּר אַחַר. עַל דְּעֵתִיָּה דְרַבִּי שְׁמַעוֹן אִין צְרִיךְ לְהִבְיָא פֶּר אַחַר. אַף שְׁעִיר



הַמְשַׁתְּלַח כֵּן. שֶׁלְחוּ בְלֹא וִידוּי. עַל דַּעֲתִיָּה דְרַבִּי יוֹדֵן צְרִיף לְהַבִּיא שְׁעִיר אַחֵר. עַל דַּעֲתִיָּה דְרַבִּי שְׁמַעוֹן אֵין צְרִיף לְהַבִּיא שְׁעִיר אַחֵר. הַתְּנִידָה וְשִׁחְטוּ וְנִשְׁפָּד הַדָּם. אֵתְ אָמַר. צְרִיף לְהַבִּיא פֶּר אַחֵר וְצְרִיף לְהַתְּנִידוֹת פְּעַם שְׁנִיָּה אוֹ יֵצֵא בְיָדוּי הָרִאשׁוֹן. אִף שְׁעִיר הַמְשַׁתְּלַח כֵּן. שֶׁהוּא צְרִיף לְהַגְרִיל פְּעַם שְׁנִיָּה אוֹ כְּבֵר יֵצֵא בְיָדוּי שְׁלֹרְאִשׁוֹן.

1 ח | G חיי שעתיד | G שהוא עתיד<sup>236</sup>

<sup>237</sup> *Shall be stationed alive*; this teaches that in the future it is going to die<sup>238</sup>.

How long must it live? Up to *he will finish from atoning to Sanctuary*<sup>239</sup>, the words of Rabbi Jehudah. Rabbi Simeon says, up to the moment of confession<sup>240</sup>. In Rabbi Jehudah's opinion, the confession is indispensable<sup>241</sup>. In Rabbi Simeon's opinion, the confession is not indispensable<sup>242</sup>. What is the difference between them? <sup>243</sup>If 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 confession<sup>244</sup>? The same holds for the scapegoat; must he cast lots a second time or did he do his duty with the first confession<sup>245</sup>?

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 RR. 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 פְּעָם שְׁנִיָּה אוֹ כֶּבֶד יָצָא מִהַגְרִילוֹ  
שְׁלֵרֵאשׁוֹן.

“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 ונגעלמה ממנו טומאה וזכור לקודש נגעים ממנו קודש וזכור לטומאה נגלמו ממנו זה וזה ואכל את הקודש ולא ידע ומשאכל ידע הרי זה בעולה ויורד.

**Mishnah 1:** The kinds of awareness of impurity are two<sup>1</sup> 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 ונגעלמה ממנו הטומאה וזכור למקדש נגלים ממנו מקדש וזכור לטומאה נגלמו ממנו זה וזה ונכנס למקדש ולא ידע ומשויצא 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 העולם טומאה ועל העולם מקדש. אמר רבי בון בר חייא. הוינו סברין מימר דמר ריש לקיש בבריא לו שהוא טמא ונגעלמה ממנו טומאה ונכנס למקדש. אבל אם היה ספק טמא טהור ונגעלם ממנו מקדש ונכנס למקדש לא. ממה דאמר ריש לקיש. דרבי ישמעאל היא דאמר. חייב על העולם טומאה ועל העולם מקדש. הוה דאמר ריש לקיש. אפילו ספק טמא טהור. נגעים ממנו מקדש ונכנס למקדש חייב. אמר רבי יוחנן. דבריהם הפל היא משום ספק ידיעה כדיתה. מה אם בשעה שאינו יודע אם טמא הוא אם טהור את אמר ידיעה ודאי

היא. בַּשְּׂעָה שְׁיִדַּע שְׁטָמָא וְדַאי אֵלָא אֵינוּ יוֹדַע אִם חִיבִין עָלֶיהָ קָרְבָן לֹא כָּל־שֶׁכֶן וְשִׁתְּהָ וְדִיעָה.

**Halakhah 1:** “The kinds of awareness of impurity,” etc. Rebbi Jeremiah asked: It is obvious about the last awareness, until he knows that he is liable to bring a sacrifice for it<sup>2</sup>. Is the same true for the first awareness<sup>3</sup>? Let us hear from the following<sup>4</sup>: Two paths, one impure and one pure. He walked on one of them<sup>5</sup>, entered the Sanctuary, left, sprinkled repeatedly, immersed himself<sup>6</sup>, walked on the second one, and entered the Sanctuary; he is liable<sup>7</sup> and he knows that he is liable to bring a sacrifice for it. Rebbi Simeon ben Laqish said, this is Rebbi Ismael’s<sup>8</sup> who said that he is liable for forgetting impurity and forgetting the Sanctuary. Rebbi Abun bar Hiyya said, we thought that one could say that Rebbi 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 Rebbi Simeon ben Laqish said, this is Rebbi 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 pure<sup>9</sup>. Rebbi Johanan said, it is everybody’s opinion since a doubt of awareness is awareness<sup>10</sup>. 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 awareness<sup>11</sup>.

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 3<sup>rd</sup> and 7<sup>th</sup> 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) על דעתיה דריש לקיש. ניטמא ונעשה לו הדבר ספק מהו שיעשה אצלו כהעלם דבר ויהא חייב. דין כדעתיה ודין כדעתיה. דאתפלגון.

אכל חמשה זיתים ונדע לו בספק כל-אחד ואחד ואחר כך נודע לו בודאין. ריש לקיש אמר. דיעת ספק קובעתו לחטאות. רבי יוחנן אמר. אין דיעת ספק קובעתו לחטאות. רבי יוסי בירבי בון בשם רבי שמואל. מודה ריש לקיש בלהו משיח שאין דיעת ספיקו קובעתו לחטאות. שנאמר כחטאת קאשם. את שמביא אשם תלוי דיעת ספיקו קובעתו לחטאות. את שאינו מביא אשם תלוי אין דיעת ספיקו קובעתו לחטאות. מחלפה שיטת ריש לקיש. תמן אמר. דיעת ספק קובעת לחטאות. וכא אמר. אין דיעת ספק קובעת לחטאות. תמן אשמו קבעו. וכא מה אית לך. מחלפה שיטת רבי יוחנן. תמן הוא אומר. נתפפר מקצת החט נתפפר כולו. וכא הוא אמר הכין. לא אמר רבי יוחנן אלא בידיעה האחרונה שאין בה חייוב קרבן.

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 liable<sup>12</sup>? Each of them keeps to his opinion, as they disagreed:

<sup>13</sup>One 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. Rebbi Yose bar Abun in the name of Rebbi Samuel bar Rav Isaac: Rebbi 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*<sup>14</sup>. 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 Rebbi 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 Rebbi 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? Rebbi 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־סְפִיק רְשׁוּת הַרְבִּים סְפִיקוֹ טְהוֹר. וְאִין מִתִּירִין לוֹ לַעֲשׂוֹת. וְהִתְיַנֵּן. כָּל סֶפֶק הַטְּהוֹר לְתַרוּמָה טְהוֹר לְחֻטָּאת וְכָל־הַתְּלִי לְתַרוּמָה נִשְׁפָּד לְחֻטָּאת. אִין תְּלִי בְחֻטָּאת אֶלָּא אוֹ טֵמָא מִמֶּשׁ אוֹ טְהוֹר מִמֶּשׁ. אָמַר רַבִּי זִירָא. מִתְיַנֵּתָא בְּדָבָר שְׂאִינוּ כָּא מַחֲמַת הַזְּבַח. מַה דָּמַר רַבִּי יוֹחָנָן בְּדָבָר שְׂבָא מַחֲמַת הַזְּבַח. הַכֹּל מוֹדִין שְׂאֵם עֶבֶר וְעֵשָׂה טְהוֹר. מַחֲלָפָה שִׁיטַת רַבִּי יוֹחָנָן. תַּמָּן אָמַר. עֶבֶר וְעֵשָׂה טֵמָא. וְכָא אָמַר. עֶבֶר וְעֵשָׂה טְהוֹר. כָּאן בְּרִשׁוּת הַיָּחִיד כָּאן בְּרִשׁוּת הַרְבִּים. אֶפִּילוֹ תִימַר כָּאן וְכָאן בְּרִשׁוּת הַרְבִּים. מַחֲלָפָה שִׁיטַת רִישׁ לְקִישׁ מַחֲלָפָה שִׁיטַת רַבִּי יוֹחָנָן. דְּאִיתְּפִלְגוּן. נְזִיר שְׂנִיטָמָא בְּטוּמְאָת קֹדֶר הַתְּהוֹם. רִישׁ לְקִישׁ אָמַר. אִין הַנְּזִיר מְגַלַּח. וְרַבִּי יוֹחָנָן אָמַר. הַנְּזִיר מְגַלַּח. וְהָא רַבִּי יוֹחָנָן אָמַר. מִשׁוּם סְפִיק יְדִיעָה

כדיעה. ואפילו ראשונה בשרץ ושנייה במת. הראשונה עד שלא נתגיר והשנייה משנתגיר.  
הראשונה עד שלא הביא שתי שערות ושנייה משהביא.

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 act<sup>15</sup>. But did we not state<sup>16</sup>: “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 sacrifice<sup>17</sup>. Everybody agrees that if the person transgresses and acted, it is pure<sup>18</sup>.

The arguments of Rebbi Johanan are inverted. There<sup>19</sup>, 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 domain<sup>20</sup>. But you could even say, there and here in the public domain<sup>21</sup>. 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 abyss<sup>22</sup>, 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 awareness<sup>10</sup>, even if the first was because of a crawling animal and the second by a corpse<sup>23</sup>. <sup>24</sup>The 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 תַּסַּאת biblically refers to the Red Cow (*Num.* 19:2), not to the water which is called מִי נִדָּה “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 (*Tahorat* 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.

34) line 33d) נִיטְמָא בְּמַת וְיָדַע בְּשֶׁרֶץ וְלֹא יָדַע. אִין שָׁם טוּמְאַה קַלְה אֶצְל טוּמְאַה חֲמוּרָה. נִיטְמָא בְּמַת וְלֹא יָדַע. בְּשֶׁרֶץ וְלֹא יָדַע. וְאַחַר כֵּן נִדַּע לֹו עַל הַשֶּׁרֶץ וְאַחַר כֵּן נִדַּע לֹו עַל הַמַּת. מִפְּנֵי שְׁנוּדַע לֹו עַל הַשֶּׁרֶץ תְּחִילָה כְּמִי שֵׁישׁ טוּמְאַה קַלְה אֶצְל חֲמוּרָה. אוּ מִפְּנֵי שְׁקִדְמָה לְטוּמְאַת הַמַּת תִּדְחָה לְטוּמְאַת שֶׁרֶץ וְלִידְעָתָה. וְאִין שָׁם לְטוּמְאַה קַלְה אֶצְל טוּמְאַה חֲמוּרָה. נִטְמָא בְּמַת וְיָדַע בְּשֶׁרֶץ וְלֹא יָדַע וְנִכְנַס לְמַקְדָּשׁ. בְּהֶעֱלִינוּ שֶׁל מַת חֵיב. בְּהֶעֱלַם שֶׁרֶץ פְּטוּר. גֵּרָד לְטָבוּל מִטוּמְאַה חֲמוּרָה וְנִסְמְכָה לֹו טוּמְאַה קַלְה עֲלֵתָה לֹו טוּמְאַה קַלְה. לִינְדָא מִיַּלְה. שְׂאִים טָבֵל וְנִכְנַס לְמַקְדָּשׁ פְּטוּר.



Somebody became impure through a corpse and knew it; by a crawling animal<sup>25</sup> and did not know it. The minor impurity is not mentioned with the severe impurity<sup>26</sup>.

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 impurity<sup>27</sup>?

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 liable<sup>28</sup>; when he was oblivious of the crawling animal he is not liable<sup>29</sup>. If he went to immerse himself for the severe impurity and the minor impurity was additional, it is counted also for the minor impurity<sup>30</sup>. 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.

גַּרְד לְטָבוֹל מִטּוֹמְאָה קֵלָה וְנִסְמְכָה לוֹ טּוֹמְאָה חֲמוּרָה לֹא עָלְתָה לוֹ טּוֹמְאָה חֲמוּרָה. לִי דָא מִילָה. שְׂאִים טָבֵל וְנִכְנַס לְמִקְדָּשׁ חֵיב. הָא מִטּוֹמְאָה חֲמוּרָה וְנִסְמְכָה לוֹ טּוֹמְאָה חֲמוּרָה לֹא. הָא מִטּוֹמְאָה קֵלָה וְנִסְמְכָה לוֹ טּוֹמְאָה קֵלָה לֹא. גַּרְד לְטָבוֹל מִטּוֹמְאָה חֲמוּרָה וְנִסְמְכָה לוֹ סְכָכוֹת וּפְרָעוֹת. מֵאַחַר דְּמַר רַבִּי יוֹחָנָן בְּשֵׁם רַבִּי יֵצְאי. כּוֹלְהוֹן תּוֹרָה הוּן אֶצְל תְּרוּמָה. כְּמִי שְׁהִיא טּוֹמְאָה חֲמוּרָה. אִו מֵאַחַר שְׂאִין הַזֵּזִיר מְגַלַּח עֲלֵיהֶם כְּמִי שְׁהִיא טּוֹמְאָה קֵלָה.

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 impurity<sup>31</sup>. In which respect? If he immersed himself and then entered the Sanctuary he is liable<sup>32</sup>. Therefore not for a severe impurity and a severe impurity was additional<sup>33</sup>. Therefore not for a minor impurity and a minor impurity was additional<sup>33</sup>. If he went to immerse himself for severe impurity and tree limbs and wall extensions were additional<sup>34</sup> are these like severe impurity since Rebbi Johanan said that for heave all of them are [impure] from the Torah<sup>35</sup>, or are they like minor impurity since the *nazir* does not shave because of them<sup>36</sup>?

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 פְּטוּר. רָאָה אוֹדֵם וְנִכְנַס לְמִקְדָּשׁ פְּטוּר. רָאָה אוֹדֵם וְלֹבֵן בְּאַחַד וְנִכְנַס לְמִקְדָּשׁ חַיִּיב. אֵיךְ תִּנִּי תִנִּי פְטוּר. אָמַר רַבִּי יוֹחָנָן. רַבִּי שְׁמַעוֹן הִיא דְתַנִּי. שְׁנֵי שְׁבִילֵי אֶחָד טָהוֹר וְאֶחָד טָמֵא. הִילָךְ בְּאַחַד מֵהֶן וְנִכְנַס לְמִקְדָּשׁ בְּרֵאשׁוֹן וְהָזָה וְשָׁנָה וְטָבַל. בְּשֵׁנֵי וְנִכְנַס חַיִּיב. רַבִּי שְׁמַעוֹן פּוֹטֵר בְּזָה. רַבִּי שְׁמַעוֹן בֶּן יְהוּדָה פּוֹטֵר בְּכוֹלֵן מִשּׁוּם רַבִּי שְׁמַעוֹן. נִיחָא אַנְדְּרוֹגִינוֹס גְּבִי לֹבֵן אֶתְּ עֶבֶד לֵיה אִשָּׁה. גְּבִי אוֹדֵם אֶתְּ עֶבֶד לֵיה אִישׁ. בְּרַם הֵכָא אִין כָּאן טוֹמְאָה דְדוּעָה. אָמַר רַבִּי שְׁמַעוֹן בְּרַם סוֹסְרֵטִי. תִּפְתָּר בְּשִׁשְׁכַח לְרֵאשׁוֹן. רַבִּי יוֹסִי בְעֵי מָה אֲנִן קִיָּמִין. אִם בְּשִׁשְׁכַחוּ לְעוֹלָם שְׁבִיל אֶחָד הוּא. אִם שְׁחָזַר וְשִׁכַּחוּ שְׁנֵי שְׁבִילֵי הוּן. אָמַר רַבִּי יוֹסִי בִירְבִי בּוּן. אֶתְּיָא דְרַבִּי שְׁמַעוֹן כְּרַבִּי לִיעֶזֶר. עַל דְּעֵתִיָּה דְחֻזְקָיָה כְּמָה דְרַבִּי לִיעֶזֶר אָמַר תַּמּוּן. עַד שְׂיַדַע אִם בְּשִׁרְץ נִיטְמָא אִם בְּמַת. כֵּן רַבִּי שְׁמַעוֹן אָמַר כָּאן. עַד שְׂיַדַע אִם בְּאוֹדֵם נִיטְמָא אִם בְּלוֹבֵן. נִיחָא תַמּוּן מִשּׁוּם דְאָמַר. סְפִיק דְדִיעָה פְּדִיעָה. בְּרַם הֵכָא מִכִּיּוֹן דְחֻזְקָיָה אוֹדֵם וְלֹבֵן בְּאַחַד דְדִיעָה וְדֵאִי הִיא.

An androgynus<sup>37</sup> who saw whitish [effluent]<sup>38</sup> and entered the Sanctuary is not liable. If he saw red [effluent]<sup>39</sup> and entered the Sanctuary, he is not liable. If he saw simultaneously whitish and red and entered the Sanctuary, he is liable<sup>40</sup>. There is a Tanna who states: he is not liable. Rabbi Johanan said, this is Rabbi Simeon, as it was stated<sup>41</sup>: “Two paths, one pure and one impure. He walked on one of them<sup>5</sup>, entered the Sanctuary on the first one, sprinkled repeatedly, immersed himself<sup>6</sup>, on the second one and entered; he is liable. Rabbi Simeon declares him not liable in this case<sup>41</sup>. Rabbi Simeon ben Jehudah in the name of Rabbi Simeon<sup>42</sup> 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 first<sup>43</sup>. Rabbi Yose asked, where do we hold? If he forgot it forever, it is one path<sup>44</sup>. If he forgot repeatedly, there are two paths. Rabbi Yose ben Rabbi Abun said, Rabbi Simeon parallels Rabbi Eliezer in the interpretation of

Ḥizqiah<sup>45</sup>. Just as Rebbi Eliezer said there, until he knows whether he did become impure by a crawling animal or a corpse, so Rebbi 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 awareness<sup>10</sup>. But here, since he saw whitish and red together, it is certain knowledge<sup>46</sup>.

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 חיביו עליה קרבו 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. אכל חצי זית בידיעת קודש והעלם טומאה וכחצי זית בידיעת טומאה והעלם קודש העלימות מהו שיצטרפו.

Rav Hisda asked: What is the situation if he entered the Sanctuary thinking it was a synagogue<sup>47</sup>? 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 awareness<sup>48</sup>. 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 Sanctuary<sup>49</sup>. And so if it was clear to him that this was the Sanctuary, he was oblivious of the impurity and entered the Sanctuary<sup>50</sup>.

Rabbi 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 combine<sup>51</sup>?

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:** אָחַד נִכְנַס לְעֶזְרָה וְאָחַד נִכְנַס לְתוֹסֶפֶת הָעֶזְרָה שְׂאִין מוֹסִיפִין עַל הָעִיר וְעַל הָעֶזְרוֹת אֵלָּא כְּמִלְכָּד וְנִבְיָא וְנֹאֲרִים וְתוֹמִים וְכִסְנֵה־דְרִין שֶׁל שְׂבָעִים וְאָחַד וּבִשְׁתֵּי תוֹדוֹת וּבִשְׁשֵׁי דִין מִהֶלְכִין וּשְׁתֵּי תוֹדוֹת אַחֲרֵיהֶן הַפְּנִימִית נִאֲכָלֶת וְהַחִיצוֹנָה נִשְׂרָפֶת. וְכֵן שְׂלָא נִגְעֶשָׂה בְּכָל-אֵילָו הַנִּכְנָס לְשֵׁם אֵין חַיִּיבִין עֲלֶיהָ:

**Mishnah 3:** Whether one entered the courtyard or the addition to the courtyard<sup>52</sup>, 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 it<sup>53</sup>.

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) אָחַד נִכְנַס לְעֶזְרָה כּוֹל. רַב אָמַר. בְּתַחֲלֵהָ. וַיַּעַל דָּוִד בְּדָבָר לְדָזָה מִלְכָּד וְנִבְיָא. וַיַּחֲלֵל שְׁלֹמֹה לְבָנוֹת אֶת-בֵּית יְיָ בִּירוּשָׁלַם אֵילָו אֲוִרִים וְתוֹמִים. וְדָוִד אָבִיהוּ זֶה סִנְהֶדְרִין שְׂאֵל אֲבִיךָ וַיִּגְדֶּד. שִׁיר וַיִּלְכֵד אַחֲרֵיהֶם הוֹשַׁעְלָה וְשָׂרִי. תוֹדוֹת וְאַעֲמִידָה שְׁתֵּי תוֹדוֹת וּגו'. אָמַר רַבִּי שְׂמוּאֵל בַּר רַבִּי יוֹדֵן. מַה כְּתוּב מִהֶלְכוֹת לֹא תִהְיוּחוּז. מִפְּנֵי שֶׁהִיָּתָה תוֹרַפֶת וְרוּשָׁלַם שֵׁם וְהִיָּתָה יְכוּלָה לְהִכָּבֵשׂ מִשָּׁם.

**Halakhah 3:** “Whether one entered the courtyard,” etc. <sup>54</sup>Rav said, at the start: <sup>55</sup>*David ascended following Gad’s word*, that is King and Prophet. <sup>56</sup>*Solomon started to build the Temple of the Eternal in Jerusalem*, these are Urim and Tummim. <sup>56</sup>*And his father David*, this is the Synhedrion, <sup>57</sup>*ask your father and he will tell you*. Song, *after them went Hoshai and the officers*<sup>58</sup>. Thanksgiving sacrifices, *I put up two thanksgiving sacrifices*<sup>59</sup>. Rebbi Samuel bar Rebbi 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.

מִשְׁנֵה ד': נִטְמָא בְּעֶזְרָה וְנִגְעַלְמָה מִמְּנוּ הַטּוֹמְאָה וְזָכוֹר לְמִקְדָּשׁ נִגְעַלְמִי מִמְּנוּ הַמִּקְדָּשׁ וְזָכוֹר לְטּוֹמְאָה. נִגְעַלְמִי מִמְּנוּ זֶה הוּא. וְכֵן לֹא בְּאֵרֶכָּה חַיִּיב וּבְקִצְרָה פְטוּר. זֶה הוּא מִצְוֹת עֲשֵׂה שֶׁבְּמִקְדָּשׁ שָׂאִין חַיִּיבִין עָלֶיהָ:

**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 liable<sup>60</sup>. But on the shortest path he is not liable; this is the positive commandment in the Sanctuary about which they are not liable<sup>61</sup>.

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).

34a line 1) **הַלְכָה ד'**: נִיטְמָא בְּעֶזְרָה כּוּל'. רַבִּי חִזְקִיָּה רַבִּי אֲמִי בְּשֵׁם רַבִּי לְעֶזְרָה. קְטוֹב אֶחָד אֹמֵר אֶת־מִשְׁבֹּן יִי טְמֵא וְקְטוֹב אַחַר אֹמֵר אֶת־מִקְדָּשׁ יִי טְמֵא. הָא כִּיצַד. לֵיתָן חֶלֶק בֵּין לְמִיטְמָא בְּנִים לְמִיטְמָא בַּחוּץ. מִיטְמָא בְּנִים עַד שֶׁיִּכְנִיס רֹאשׁוֹ וְרוּבּוֹ. מִיטְמָא בַּחוּץ עַד שֶׁיִּשְׁתַּחֲוֶה. נִיטְמָא בְּנִים וְנִכְנָס לְבָנָי וְלְפָנָי. נִישְׁמַעִינָה מֵהֵדָא. הַשְּׁתַּחֲוָה אִוּ שֶׁשְׁתַּחֲוֶה בְּכַדִּי הַשְּׁתַּחֲוִיָּה. וְכֵינן שֶׁשְׁתַּחֲוָה לֹא כְּמִי שֶׁהִכְנִיס רֹאשׁוֹ וְרוּבּוֹ. וְתִימַר. עַד שֶׁיִּשְׁתַּחֲוָה כְּדִי

הַשְּׁתַחֲוּיָהּ. וְכֹא עַד שְׁלֹשָׁה כְּדֵי הַשְּׁתַחֲוּיָהּ. הִיךְ עֲבִידָא. עַל אֵי זֶה מֵהוּ מִתְחַיֵּב. עַל הָרֵאשׁוֹנָה אוֹ עַל הָאַחֲרוֹנָה. חֲבִרִיָּה אָמְרִין. עַל הָרֵאשׁוֹנָה. אָמַר לֹן רַבִּי יוֹסִי. אָמְרִי לִיה. צֵא וְתִמַּר. עַל הָרֵאשׁוֹנָה. אֶלָּא כִּי נָן קִיָּמִין עַל הָאַחֲרוֹנָה. תַּמָּן תִּנְיָנָן. הוֹצִיאוּ לוֹ אֶת הַכֶּף וְאֶת הַמַּחֲתָה. עַל אֵי זֶה מִתְחַיֵּב. עַל הָרֵאשׁוֹנָה אוֹ עַל הָאַחֲרוֹנָה. חֲבִרִיָּה אָמְרִי. עַל הָאַחֲרוֹנָה. אָמַר לֹן רַבִּי יוֹסִי אֹמֵר. אוֹמְרִים לוֹ. הֵיכְנֵס. וְתִמַּר. עַל הָאַחֲרוֹנָה. אֶלָּא כִּי נָן קִיָּמִין עַל הָרֵאשׁוֹנָה.

**Halakhah 4:** “If one became impure in the Temple courtyard,” etc. Rebbi Hizqiah, Rebbi Immi in the name of Rebbi Eleazar: One verse says, *he defiled the dwelling place of the Eternal*<sup>62</sup>, another verse says, *he defiled the Sanctuary of the Eternal*<sup>63</sup>. Why is this? To state a difference between one who became inside and one who became outside<sup>64</sup>. If he became impure (inside)<sup>65</sup> not unless he bring his head and most of his body inside; if he became impure (outside)<sup>65</sup> not unless he stay for prostrating. If he became impure inside and entered further inside<sup>66</sup>? 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 himself<sup>67</sup>. How is that? About which of them does he become liable? About the first or the last<sup>68</sup>? The colleagues say, about the first. Rebbi Yose told them, one says to him, leave, and you say about the first? But we must hold about the last<sup>69</sup>.

There, we have stated: “They removed the cup and the censer for him”<sup>70</sup>. About which of them does he become liable? About the first or the last? The colleagues say, about the last. Rebbi Yose told them, one says to him, enter, and you say about the last? But we must hold about the first<sup>71</sup>.

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. הנה בארוכה עשרים ובקצרה עשר. היקף 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. הנה בארוכה שלשים ובקצרה עשר. היקף 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 לרב. שלום עלך רבי.

The measure of prostrating is ten cubits<sup>72</sup>. 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, fifteen<sup>73</sup>. Rabbi Yose said, he never becomes liable unless the lengthy path exceed the short one by (ten)<sup>74</sup>. 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 prostrating<sup>75</sup>? Rabbi Simon in the name of Rabbi Joshua ben Levi: up to a greeting from one person to another<sup>76</sup>. Abba bar Huna<sup>77</sup> in the name of Rabbi Johanan: up to a greeting from a student to his teacher, “peace be with you, my teacher.”<sup>78</sup>

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 שלום עליך.

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.

מַשְׁנֵה ה': אִי זֶה הוּא מְצוֹת עֲשֵׂה שְׁבִינִידָה שְׁחִיבִין עֲלֶיהָ. הִיָּה מְשֻׁמֵּשׂ עִם הַמְּהוּרָה וְאִמְרָה לֹא נִיטְמָאֲתִי וּפְרַשׁ מִיָּד חַיִּב שְׁיִצִּיאָתוֹ תְּנִיחָה לֹא כְּבִיאָתוֹ: (fol. 33c)

**Mishnah 5:** What is the positive commandment about the menstruating woman<sup>79</sup>? If he was having sex with a pure one and she said to him, I became impure, if he separates immediately he is liable,<sup>80</sup> for his separation is as pleasurable to him as his entry<sup>81</sup>.

79 For which the High Court has to bring a purification sacrifice if they rule wrongly, *Horaiot* 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; *Horaiot* 2:5 Note 69.

הַלְכָה ה': אִי זֶה הוּא מְצוֹת עֲשֵׂה שְׁבִינִידָה כּוֹל. כֶּהֱנָא אָמַר. אִי אִיפְשֵׁר שְׁלֵא הָיְתָה בָּהּ יְדִיעָה בְּתַחֲלִילָה וְיִדְיעָה בְּסוּף וְהֶעֱלַם בְּנִתְיִים. הִתִּיב רַבִּי שְׁמוּאֵל בְּרַ אֲבוּדִימִי קוֹמִי רַבִּי מָנָא. וְיִהְיוּ כֹן הַמּוֹרִים. אָמַר לִיהָ. אָנּוּ בְעֵי נִבְנָסִיו וְאֵת מִיִּתִּי לָךְ מוֹרִין. מֵאִי כְדוּן. אָמַר רַבִּי שְׁמוּאֵל בְּרַ רַב יִצְחָק. מְצוֹת מְצוֹת. מֵה מְצוֹת שְׁנֵאמַר לְהִלְךְ בְּקַבּוּעַ אֶף כָּאֵן בְּקַבּוּעַ.

**Halakhah 5:** “What is the positive commandment about the menstruating woman,” etc. <sup>82</sup>Cahana 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 השריץ ונגעלם ממונו. על הגעלם השריץ חייב ואינו חייב על הגעלם המקדש. רבי עקיבה אומר ונגעלם ממונו והוא טמא על הגעלם טומאה חייב ואינו חייב על הגעלם המקדש. רבי ישמעאל אומר ונגעלם ממונו ונגעלם ממונו שתי פעמים לחייב על הגעלם הטומאה ועל הגעלם המקדש:

**Mishnah 6:** Rabbi Eliezer says, *the crawling animal and he became oblivious*<sup>83</sup>, he is liable for forgetting the crawling animal but is not liable for forgetting the Sanctuary<sup>84</sup>. Rabbi Aqiba says, *and he became oblivious while he was impure*<sup>85</sup>, 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*<sup>85</sup>, two times to make him liable for forgetting impurity and forgetting the Sanctuary<sup>86</sup>.

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).

**הלכה ו:** רבי ליעזר אומר כול. חזקה אמר. מחלוקת ביניהון. רבי יוחנן אמר. משמעות דרשין ביניהון. אית תנאי תני. על הגעלם טומאה חייב ולא על הגעלם מקדש. אית תנאי תני. על הגעלם שרץ חייב ולא על הגעלם מקדש. מחלוקה שיטת רבי ליעזר. תמן הוא

אָמַר. אֲפִילוֹ לֹא יָדַע. וְכֹא אָמַר. עַד שֶׁיִּדְעַ. תִּמְנֹן אֲשֶׁר חָטְאָ בָּהּ. עַד שֶׁיִּדְעַ בְּמָה נִתְחַיֵּב. הִכָּא וְהוּא טָמֵא מִכָּל־מְקוֹם. אָמַר רַבִּי חִינְנָא. וְכֹא לִית כְּתִיב בָּהּ. מִחֻלְפָּה שֵׁיטַת רַבִּי יְהוֹשֻׁעַ. תִּמְנֹן הוּא אָמַר. וְהוּא טָמֵא. עַד שֶׁיִּדְעַ בְּמָה נִיטְמָא. הִכָּא אֲשֶׁר חָטְאָ בָּהּ מִכָּל־מְקוֹם. וַיִּמָּה מְקַיִּים רַבִּי לִיעֶזֶר בָּהּ. פְּרִיט לַמִּתְעַסֵּק.

**Halakhah 6:** “Rebbi Eliezer says,” etc. Hizqiah says, there is disagreement between them<sup>87</sup>. 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 Sanctuary<sup>88</sup>.

The argument of Rebbi Eliezer seems inverted<sup>89</sup>. There he says, even if he did not know. But here he says, not unless he knew. <sup>90</sup>There, *by which he sinned*<sup>91</sup>, not unless he knew by what he became liable. Here, *while he was impure*<sup>83</sup>, in all cases. Rebbi Hinenai said, here “by what” is not written.

The argument of Rebbi Joshua seems inverted. <sup>92</sup>There 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 occupied<sup>93</sup>.

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 שלא 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 שלא אוכל ואכל ושתה אינו חייב אלא אהת. שבועה שלא אוכל ושללא אשתה ואכל ושתה חייב שנים:

**Mishnah 1:** There are two kinds of oaths<sup>1</sup> 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 liable<sup>2</sup>? 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 sacrifice<sup>3</sup>!

An oath that I shall not eat, when he ate and drank<sup>4</sup> 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 acceptance 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”.

שְׁבוּעוֹת שֶׁתִּשָּׂא שֶׁהוּא אֶרְבַּע כּוֹל. נִיחָא שְׂאוּכַל וְשֶׁלֹא אוֹכַל. שְׂאֲכַלְתִּי וְשֶׁלֹא אֲכַלְתִּי. מָה נֶן קַיְימִין. אִם בְּיָדוֹעַ שְׂאֲכַל וְנִשְׁבַּע שֶׁלֹא אֲכַל. שְׁבוּעַת שֶׁקָּרָה הוּא. וְאִם סָבוּר שְׂאֲכַל וְנִשְׁבַּע שֶׁלֹא אֲכַל. רַבִּי בָּא רַב יְהוּדָה בְּשֵׁם רַב. בְּשׁוּגְגַת בְּקַרְבָּנָה וּבְמִזִּיד בְּקַרְבָּנָה. אֲבָל. סָבוּר הֵייתִי שֶׁאֵין בָּהּ שְׁבוּעָה. מוֹתֵר. אֲלֵא בְּמִזִּיד בָּהּ וּבְשׁוּגְגַת בְּקַרְבָּנָה. וְלֹא כֵן אָמַר רַבִּי אֲבָהוּ בְּשֵׁם רַבִּי יוֹחָנָן. מִזִּיד בְּחֻלְבַּב וְשׁוּגְגַת בְּקַרְבֹן מוֹתֵרִין בּוֹ וְלוֹקָה וּמִבֵּיא קָרְבָן. לֵית יָכִיל. דְּמַר רַבִּי לֹא בְּשֵׁם רַבִּי לְעֵזֶר. קָדַם מְשִׁיב רַבִּי לְשִׁמְעָאֵל לְרַבִּי עֲקִיבָה. מְצִינוּ דְּבַר שְׁחִיבִין בְּדוֹנוּ מְשׁוּם שְׁבוּעַת שֶׁקָּרָה וּבְהֶעֱלִימוּ מְשׁוּם בֵּיטוּי. וְיִתְבַּיְנִיָה רַבִּי עֲקִיבָה. מְצִינוּ דְּבַר שְׁחִיבִין בְּדוֹנוּ מְשׁוּם שְׁבוּעַת שֶׁקָּרָה וּמִבֵּיא קָרְבָן. אֲלֵא כִי נֶן קַיְימִין בְּבֵרִיא לּוֹ שְׂאֲכַל וְנִשְׁבַּע וְנִמְצָא שֶׁלֹא אֲכַל. לֹא בְּאוֹמֵר. אֵין זֶה שְׁבוּעָה. תִּמְנָן בְּאוֹמֵר. אֵין זֶה שְׁבוּעָה. בְּרַם הֵכָא בְּיָדוֹעַ בָּהּ שְׁשְׁבוּעָה הִיא אֲלֵא שֶׁהוּא 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”<sup>5</sup>? Where do we stand? If it is known that he ate and he swore that he did not eat, it is a false oath<sup>6</sup>. But if he was of the opinion that he ate and swore that he did not eat? Rebbi Abba, Rav Jehudah in the name of Rav: If he is inadvertent for its sacrifice or intentional for its sacrifice<sup>7</sup>. But “I was of the opinion that this is not an oath” is permitted<sup>8</sup>. But it must be that he was intentional in the deed but in error about the sacrifice<sup>7</sup>. Did not Rebbi Abbahu say in the name of Rebbi Johanan<sup>9</sup>: Intentional about fat and in error about the sacrifice, one warns him, he is flogged and has to bring a sacrifice<sup>10</sup>. This is impossible, as Rebbi La said in the name of Rebbi Eleazar: So did Rebbi Ismael<sup>11</sup> answer Rebbi Aqiba: Do we find a situation where one is liable if intentional because of a false oath and in oblivion because of blurting<sup>12</sup>? Should not Rebbi Aqiba retort, we find a situation where one is liable if intentional because of a false oath and he brings a sacrifice<sup>13</sup>? 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? There<sup>14</sup>, if he says this is not an oath; but here if he knows that this is an oath but he errs because of something else<sup>15</sup>.

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. Joḥanan’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.

34) (34b line 34) מָה נֶן קִיּוּמִין. אִם בְּאוֹמֵר. שְׁבוּעָה שְׂאוּכֵל אֲכִילַת תּוֹרָה. אִף רַבִּי עֲקִיבָה מוֹדָה. וְאִם בְּאוֹמֵר. שְׁבוּעָה שְׁלֵא אֶטְעוּם. אִף רַבֵּנן מוֹדוּ. אֶלָּא כִּי נֶן קִיּוּמִין כְּל־שְׁהוּא. כְּל־שְׁהוּא אֲכִילָה. פֶּתֵר לָהּ כְּרַבִּי עֲקִיבָה דְאָמַר. כְּל־שְׁהוּא אֲכִילָה. מַה מִּפְקָא מִבְּיַהוּן. שְׁבוּעָה שְׂאוּכֵל כִּיכָר זוּ. וְאֶכְלָה חֶסֶר כְּל־שְׁהוּא. עַל דַּעְתִּיָּה דְרַבִּי עֲקִיבָה חִיב. עַל דַּעְתִּין דְּרַבֵּנן פְּטוּר. שְׁלֵא אוּכֵל כִּיכָר זָה. וְאֶכְלָה חֶסֶר כְּל־שְׁהוּא. עַל דַּעְתִּיָּה דְרַבִּי עֲקִיבָה פְּטוּר. עַל דַּעְתִּין דְּרַבֵּנן חִיב. אִף בְּשִׁבְעַת בִּישׁוּי כֵּן. שְׁבוּעָה אֲשֶׁתִּי נְהָיִית לִי אִם אוּכֵל כִּיכָר זוּ. וְאֶכְלָה חֶסֶר כְּל־שְׁהוּא. עַל דַּעְתִּיָּה דְרַבִּי עֲקִיבָה אֲשֶׁתוּ אֲסוּרָה. עַל דַּעְתִּין דְּרַבֵּנן אֲשֶׁתוּ מוֹתֶרֶת. שְׁלֵא אוּכֵל כִּיכָר זוּ. וְאֶכְלָה חֶסֶר כְּל־שְׁהוּא. עַל דַּעְתִּין דְּרַבִּי עֲקִיבָה אֲשֶׁתוּ אֲסוּרָה. אִף בְּנֶכְסִין כֵּן. שְׁבוּעַת נֶכְסִי עָלֵי אִם אוּכֵל כִּיכָר זוּ. וְאֶכְלָה חֶסֶר כְּל־שְׁהוּא. עַל דַּעְתִּיָּה דְרַבִּי עֲקִיבָה אֲסוּרִין. עַל דַּעְתִּין דְּרַבֵּנן נֶכְסִין מוֹתֶרֶין. שְׁלֵא אוּכֵל כִּיכָר זוּ. וְאֶכְלָה חֶסֶר כְּל־שְׁהוּא. עַל דַּעְתִּיָּה דְרַבִּי עֲקִיבָה נֶכְסִי מוֹתֶרֶין. עַל דַּעְתִּין דְּרַבֵּנן אֲסוּרִין.



Where do we hold? If about one who said, an oath that I shall eat according to Torah standards<sup>16</sup>, even Rabbi Aqiba will agree. And if about one who says, an oath that I shall not taste, even the rabbis will agree<sup>17</sup>. 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 them<sup>18</sup>? “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 liable<sup>19</sup>. “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 oaths<sup>20</sup> 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  $\varepsilon$  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 הַמְגַדֵּף מִבֵּיא קָרְבָּן. חֲבֵרִיָּא אָמְרִי בְשֵׁם רִישׁ לְקִישׁ. כְּשִׁטְתּוֹ הַשִּׁבוּהוּ. כְּשִׁטְתּוֹדָּ שְׂאֵתָהּ אוֹמֵר. אֵין הַמְגַדֵּף מַעֲשֶׂה. אֵיכּוֹן מְצִינּוּ בַּמִּדְבָּר וּמִבֵּיא קָרְבָּן שְׁנָה מְדַבֵּר וּמִבֵּיא קָרְבָּן. רַבִּי בָּא קֳרָתִיגְנָאָה בְּעֵי. מִחֲלָפָה שִׁטְתָּ רִישׁ לְקִישׁ. תַּפְּנוּ מֵר. לְרַבִּי עֲקִיבָה אֵין הַמְגַדֵּף מַעֲשֶׂה. וְהִקָּא מֵר. מְגַדֵּף מַעֲשֶׂה חֲרַבִּי עֲקִיבָה. רַבִּי לֹא בְשֵׁם רִישׁ לְקִישׁ. תַּרְיִן תַּנְיִין אֵינּוּן עַל דְּעֵתִיָּה דְרַבִּי עֲקִיבָה. חַד אָמַר. אֵין הַמְגַדֵּף מַעֲשֶׂה. וְ חַד אָמַר. הַמְגַדֵּף מַעֲשֶׂה.

Does not the blasphemer have to bring a sacrifice<sup>21</sup>? The colleagues in the name of Rabbi Simeon ben Laqish: They answered him according to his<sup>22</sup> 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? There<sup>23</sup> 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'im<sup>24</sup> 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 *Keritot* 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 הפנים 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 once<sup>25</sup>.

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 בקלל אכילה ולא אכילה בקלל שתייה. רבי יונה שמע פולהון מיכא. על-כן אמרתל לבני ישראל פל-נגפש מכם לא-תאכל דם. מה נן קיימין. אם בדם שקרש. התני. דם שקרש אינו לא אוכל ולא משקה. (אלא כן נן קיימין. פל-שהוא. פל-שהוא אכילה. פתר לה רבי עקיבה. דרבי עקיבה אמר. פל-שהוא אכילה.) והתני. המחה הדם וגמאו או שהקפה חלב ואכלו. אם יש בו כזית חייב. מה עבד לה רבי יונה. אינו לא אוכל ליטמא טומאת אוכלין ולא משקה ליטמא טומאת משקין. תזר רבי יונה ופתר מתנייה. ונתתה הפסוף בכל אשר-תאנה נפשך. מה נן קיימין. אם בטועם טעם נון בתבשיל. והלא הטעם לפגם. אלא כן נן קיימין פל-שהוא ורחמנא קרייה אכילה. רבנן דקיסרין אמרין. תיפתר באילין גמרייה ואורזייה שהכל טפילה לאכילה פאכילה.

רבי יוסי שמע פולהון מיכא. שבועה שלא אוכל. ואכל ושתה. אינו חייב אלא אחת. אמרי וחברייה קומי רבי יוסי. ומר דבתרה. שבועה שלא אוכל ושלא אשתה 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 שתיהו. שמה אינו חייב שתיים.

רבי חנינא בשם רבי פינחס שמע פולהון מיכא. שבועה שלא אוכל. ואכל אוכלין שאינן ראויין ושתה משקין שאינן ראויין. פטור. הא אכל אוכלין ראויין ושתה משקין ראויין חייב. רבי בא שמע פולהון מיכא. אכל ושתה בהעלם אחד אינו חייב אלא אחת. עד פדון בשאמר. שבועה שלא אוכל ושתה. וכרבי שאמר. שבועה שלא אשתה.

רבי חנינא שמע פולהון מיכא. לא-אכלתי באני אלא שתיתי. עד פדון בשאמר. שלא אוכל. ושתה. אמר. לא אשתה. ואכל. שתייה בקלל אכילה ולא אכילה בקלל שתייה.

**Halakhah 2:** “An oath that I shall not eat; when he ate,” etc. <sup>26</sup>Drinking 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*<sup>27</sup>. Where do we hold? If about congealed blood, was it not stated that congealed blood is neither food nor drink? <sup>28</sup>(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*<sup>29</sup>. 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*<sup>30</sup>, 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.”<sup>31</sup> 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”<sup>31</sup> 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 Ḥanina<sup>32</sup> 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.”<sup>33</sup> Therefore if he ate edible food and drank drinkable fluid he is liable.

Rebbi Abba<sup>34</sup> understood all this from the following<sup>35</sup>: “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*,<sup>36</sup> 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, גומנייה, גמזייה, גומנייה show that the scribe did not know what to do with it; it may be a derivative of "gum" (*gummi, κόμμι*) (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

משנה ג: שבועה שלא אוכל פת חטים ופת שעורים ופת כוסמין ואכל חיוב על כל אהת ואהת: (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 one<sup>37</sup>.

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

(34c line 4) הלכה ג: שבועה שלא אוכל כול. שבועה שלא אוכל פת. וכרקה בעלי קנים ועלי גפנים ואכל. אינו חיב אלא אחת. שבועה שלא אוכל פת וחרצנין וזגין. וכרקה בחרצנין וזגין. חיב על כל-אחת ואחת. ואם היה נזיר חיב שלש. רבי יוחנן אמר. בכולל. אכל בפורט אין שבועות חלות על האיסורין. ריש לקיש אמר. אפילו בכולל אין שבועות חלות על האיסורין.

**Halakhah 3:** "An oath that I shall eat neither," etc. <sup>38</sup>"An oath that I shall not eat bread" and he wrapped it in reed leaves or grape leaves and ate, he is liable only once<sup>39</sup>. "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 one<sup>40</sup>, and if he was a *nazir* he is liable for three<sup>41</sup>.

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 prohibitions<sup>42</sup>.

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 liable<sup>43</sup>. 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 liable<sup>44</sup>. If he said, a *qonam*<sup>45</sup> 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 benefits<sup>46</sup>.

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'. בְּדֵא רַבִּי שְׁמַעוֹן פּוֹטֵר. רַבִּי שְׁמַעוֹן כְּדַעְתֵּיהָ. דְּתִינְיָו תִּמְנָן. כַּמָּה יֵאכַל מִן הַטֶּבֶל וְיֵהֵא חֵיב. רַבִּי שְׁמַעוֹן אָמַר. כֹּל שֶׁהוּא. וְחֻכְמִים אוֹמְרִים. כְּאֵת. אָמַר לָהּ רַבִּי שְׁמַעוֹן. אִין אַתָּם מוֹדִין בְּאוֹכַל נִמְלָה כֹּל־שֶׁהוּא שְׁחִיב. אָמְרוּ לוֹ. מִפְּנֵי שֶׁהִיא כְּבִרְיֵתָה. אָמַר לָהּ. אַף חִטָּה אַחַת כְּבִרְיֵתָה: עַל דְּעֵתֵיהָ דְרַבִּי יוֹחָנָן לָמָּה רַבִּי שְׁמַעוֹן פּוֹטֵר. אָמַר רַבִּי זְעִירָה. רַבִּי שְׁמַעוֹן כְּדַעְתֵּיהָ. תִּנְיָ בָשֵׁם רַבִּי שְׁמַעוֹן. תִּעֲנֵנּוּ אֶת־נִפְשֵׁיכֶם. מִמּוֹתָר לָכֶם וְלֹא מֵאִסוּר לָכֶם.

**Halakhah 4:** “An oath that I shall not drink,” etc. In this case<sup>47</sup>, Rabbi Simeon declares not liable. Rabbi Simeon follows his own opinion, as we have stated there<sup>48</sup>: “How much does he have to eat from *tevel* to be liable? Rabbi Simeon says, anything<sup>49</sup>; 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 creature<sup>50</sup>.” 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*<sup>51</sup>, of what is permitted to you, not of what is forbidden to you<sup>52</sup>.

רַבִּי בָּא בַר מִמַּל בְּעֵי. עַל דְּעַת רַבִּי יוֹחָנָן דְּאָמַר. בְּכוֹלֵל שְׁבוּעוֹת חִלוֹת עַל הָאִיסוּרִין נִתְיָנִי. שְׁבוּעָה שְׁלֵא אוֹכַל. וְאָכַל. אָמַר רַבִּי זִירָא. כֹּל יוֹמוֹי דְרַבִּי בָּא בַר מִמַּל לֹא אֶשְׁכַּחֲנָן תּוֹתֵבָה. וּמִן דְּמִדָּ אֶשְׁכַּחֲנָן תּוֹתֵבָה. מַה נֵּן קוּיָמִין. אִם בְּאוֹמְרִי. שְׁבוּעָה שְׁלֵא אוֹכַל בְּשֵׁר כֹּל־יָמוֹת

השנה והפסח בתוכו. שלא אוכל עשרת ימים הקלו ויום הכיפורים בתוכו. במיחל שבועה על האיסורים. אמר רבי יוסי. ותשמע מינה. היו לפניו זתים שלשחוטה ואחד שלנבילה ואמר. שאוכל עשרת זיתים 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”<sup>53</sup>? 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 Passover<sup>54</sup>; that I shall not eat during these ten days<sup>55</sup>, 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 liable<sup>56</sup> 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 blood<sup>57</sup>?

רבי חיינה בעי. ולמה לא מר. שבועה שאוכל מפלוני סתם. בגין רבי שמעון. ואין כרבי שמעון ניתני. יום הכיפורים. דתני רבי שמעון. תעני את נפשותיכם. מאסור לו ולא ממותר לו. אלא שזה בקבוע וזה בעולה ויורד.

Rebbi Hinena asked: Why did he not say, “an oath if I would eat of X” without detail<sup>58</sup>? 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)<sup>59</sup> to you, not of what is (permitted)<sup>59</sup> to you. Only one has a fixed rate sacrifice, the other a variable one<sup>60</sup>. התיבון. הרי טומאת מקדש וקדשיו שהיא בעולה ויורד ותני תנא. לא אתינן מיתני אלא דברים שהן חייב פרת. שבועות אין בהן חייב פרת.

They objected, is there not impurity of the Sanctuary and its *sancta* which need a variable rate [sacrifice] and did the Tanna not state it<sup>61</sup>? We come to state only things carrying a liability to extirpation; there is no extirpation for oaths.



התיבון. הרי מעילה אין בה קרת 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 שמה אינו חייב על כל אחת ואחת.

They objected, there is no extirpation for larceny and it was stated<sup>62</sup>! We come to state only things which cannot become permitted after being forbidden. Oaths may become permitted after being forbidden<sup>63</sup>. This<sup>64</sup> implies that there are no categories of work for the day of Atonement<sup>65</sup>, 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 אשב בצל. אסור לישוב בצל סוכה. שלא אשב בצל סוכה. לוקה ויושב בצל סוכה.

In the opinion of Rebbi 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 bread<sup>67</sup>. “That I shall not sit in the shadow”, he is forbidden to sit in the shadow of a booth<sup>68</sup>. “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 *Keritut* 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. Meir 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. Meir 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.

לא סוף דבר סתם אלא אפילו פלוני. לא סוף דבר כולל אלא אפילו פורט. לא סוף דבר לבא אלא אפילו לשעבר. לא סוף דבר רבנו אלא אפילו רבי עקיבה. לא סוף דבר נבילות וטריפות אלא אפילו עפר. עולה הנה רוצה להורות לו.

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 dust<sup>69</sup>. He wants to teach himself a pretext<sup>70</sup>.

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:** אָהַד דְּבָרִים שֶׁל עֲצָמוֹ וְאָהַד דְּבָרִים שֶׁל אֲחֵרִים וְאָהַד דְּבָרִים שֶׁיֵּשׁ בְּהֵן מִמֶּשׁ וְאָהַד דְּבָרִים שֶׁאֵין בְּהֵם מִמֶּשׁ. בִּיַּד אָמַר שְׂבוּעָה שֶׁאַתָּן לְאִישׁ פְּלוֹנִי וְשֵׁלָא אַתָּן שְׁנַתִּי וְשֵׁלָא נְתַתִּי שֶׁאֵישׁן וְשֵׁלָא אִישׁן שֶׁיֵּשְׁנִתִּי וְשֵׁלָא שְׁנַתִּי. שֶׁאֲזָרוֹק צְרוּר לֵים וְשֵׁלָא אֲזָרוֹק שְׁזָרְקִתִּי וְשֵׁלָא זְרָקִתִּי. רַבִּי יִשְׁמַעְיָאֵל אָמַר אֵינּוּ חַיִּב אֱלָא עַל הַעֲתִיד לְבוֹא שְׁנַאֲמַר לְהַרְעֵ אוֹ לְהִיטִיב. אָמַר לוֹ רַבִּי עֲקִיבָה אִם בְּן אֵין לִי אֱלָא דְּבָרִים שֶׁיֵּשׁ בְּהֵן הַרְעָה וְהִטְבָּה. דְּבָרִים שֶׁאֵין בְּהֵן הַרְעָה וְהִטְבָּה מְנַיִן. אָמַר לוֹ מְרִיבֵי הַכְּתוּב. אָמַר לוֹ אִם רִיבֵי הַכְּתוּב לְכַדְּ רִיבֵי הַכְּתוּב לְכַדְּ:

**Mishnah 6:** Whether matters of himself<sup>71</sup>, 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*<sup>72</sup>. 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

verse<sup>73</sup>. He answered, just as the additional text of the verse is for this, the additional text of the verse is for the other<sup>74</sup>.

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.

34c line 43) **הלכה ו**: אָחַד דְּבָרִים שֶׁלְעֲצֵמוֹ כּוּל'. רַבִּי בָּא בְּשֵׁם שְׁמוּאֵל. שְׁבוּעָה שֶׁנֶּתַן פְּלוּנִי וּפְלוּנִי מִנֶּה. וְנִמְצָא שֶׁלֹּא נֶתַן. מֵאַחַר שֶׁאֵין בְּדָוּ לְבָא אֵין בְּדָוּ לְשַׁעֲבֵר. הַתֵּיב רַבִּי יוֹסִי. הָרִי תְּפִילִין אֵין בְּהוּ לְבָא וְיֵשׁ בְּהוּ לְשַׁעֲבֵר. אָמַר לוֹ. תְּפִילִין מִמְּקוֹם אַחַר בָּאוּ. לְהַרְע אוֹ לְהִיטִיב. מִה הִטְבָּה רְשׁוּת אֶף הִרְעָה רְשׁוּת. יֵצֵא דָּבָר שֶׁהוּא שְׁלֵאִיסוּר וְדָבָר שֶׁהוּא שְׁלֵהִיתֵר. לְכֹל אֲשֶׁר יִבְטֵא פְּרִט לְקִטּוֹן. הָאֲדָם בְּשַׁבְּעָה פְּרִט לְאָנוּס. וְנִעְלָם מִמֶּנּוּ פְּרִט לְמִזִּיד. וְנִעְלָם מִמֶּנּוּ. וְנִעְלָמָה מִמֶּנּוּ שְׁבוּעָה. אוֹ יְכוּל וְנִעְלָם מִמֶּנּוּ הַחֶפֶץ. בְּשַׁבְּעָה וְנִעְלָם מִמֶּנּוּ. עַל הָעֵלֶם שְׁבוּעָה חֵיב וְאִינוּ חֵיב עַל הָעֵלֶם חֶפֶץ. וְתוֹ הָעֵלֶם חֶפֶץ עַל הָעֵלֶם שְׁבוּעָה וְיֵהָא חֵיב. וְאִין בִּינְיָהוּ הָעֵלֶם טוּמְאָה עַל הָעֵלֶם מְקַדָּשׁ. וְיֵהָא חֵיב שְׁתֵּימָן כְּרַבִּי יִשְׁמַעְיָל דְּאָמַר. חֵיב עַל הָעֵלֶם טוּמְאָה וְעַל הָעֵלֶם מְקַדָּשׁ. תִּמְן כְּתוּב וְנִעְלָם מִמֶּנּוּ וְנִעְלָם מִמֶּנּוּ שְׁנֵי פְּעֻמִּים. וְהִכָּא כְּתוּב וְנִעְלָם מִמֶּנּוּ אַחַת. יְכוּל הַנְּשַׁבֵּע לְהַרְע לְאַחֲרִים יֵהָא חֵיב. תְּלַמוּד לּוּמַר. לְהַרְע אוֹ לְהִיטִיב. מִה הִטְבָּה רְשׁוּת אֶף הִרְעָה רְשׁוּת. אוֹצִיא נְשַׁבֵּע לְהַרְע לְאַחֲרִים שְׁיֵהָא פְּטוּר. כִּהוּא דְּמִישְׁתַּבֵּע דְּלֹא מִיתָן לְחַבְרִיהּ מִיְכוּל. 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 past<sup>75</sup>. Rabbi Yose objected, about phylacteries there is nothing about the future but there is about the past<sup>76</sup>! He told him, phylacteries came from another source. *To cause evil or cause good*<sup>72</sup>; just as doing good is optional so doing bad is optional; this excludes anything involving a prohibition or anything involving a permission<sup>77</sup>. *Anything which one will blurt out*, excluding a minor<sup>78</sup>. *A person in an oath*, excluding a person not acting at his own will<sup>79</sup>. *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 Sanctuary<sup>80</sup>? There it is written *it was forgotten by him, it was forgotten by him* twice<sup>81</sup>. 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 optional<sup>82</sup>. 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) Perek 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) היך רבי ישמעאל דריש. או נפש כי תשבע לבטא בשפתיים כלל. להרע | או להיטיב פרט. כלל ופרט אין בכלל אלא מה שבפרט. והלא אין בפרט אלא דברים שיש בהן הרעה והטבה. אלא כיני. להרע | או להיטיב פרט. לכל אשר יבטא כלל. פרט וכלל והכל בכלל וריבה דברים שהו לשעבר. אלא כיני. או נפש כי תשבע לבטא כלל. להרע | או להיטיב פרט. לכל אשר יבטא חזר וכלל. כלל ופרט וכלל אי אתה דן אלא כעין הפרט. מה הפרט מפורש דברים שיש בהן הרעה והטבה. ודברים שאין בהן הרעה והטבה מניין. אמר לו. מריבוי הפתוב. אמר לו. אם ריבה הפתוב לך ריבה הפתוב לך; לית יכיל דמר רבי הילא

בְּשֵׁם רַבִּי לְעֵזֶר. כִּדְ מַשִּׁיב רַבִּי לְשִׁמְעֵאל אֶת רַבִּי עֲקִיבָה. מִצִּינֵי דְבָרִים שְׁחִיבִין עַל זְדוּנָן מִשֵּׁם שְׂבוּעַת שְׁקָר וּבְהֶעֱלִימָן מִשֵּׁם שְׂבוּעַת בִּיטוּי. וַיִּתְיַבְיְיָהּ. מִצִּינֵי דְבָר שְׁחִיבִין בְּזְדוּנֵי מִשֵּׁם שְׂבוּעַת שְׁקָר וּמְבִיא קָרְבָן. אָמַר לֵיהּ. וְאִית לָךְ דְּבָרִים שְׂאִין בְּהוּ הִרְעָה וְהִטְבָּה וְלִי נֵן כְּתִיבִין. אָמַר לֵיהּ. אִף עַל גַּב דְּאִית לִי דְּבָרִים שְׂאִין בְּהוּ הִרְעָה וְהִטְבָּה. לִית אִינוּן כְּתִיבִין אִין בְּהוּ מִשׁוּם הִרְעָה וְהִטְבָּה. הָא לְשַׁעֲבֵר לִית.

How does Rabbi Ismael explain the verse? <sup>72</sup>*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 detail*<sup>83</sup>. Since the detail is explicit, matters of causing evil or good, from where matters not causing evil or good? <sup>84</sup>“He answered him, from the additional text of the verse<sup>73,85</sup>. He answered, just as the verse added for this, the verse added for the other<sup>86</sup>.” You cannot<sup>87</sup>, as Rabbi Hila said in the name of Rabbi Eleazar: So did Rabbi Ismael<sup>11</sup> 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 oath<sup>12</sup>? 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 sacrifice<sup>13</sup>? He said to him<sup>88</sup>, do you agree that there are cases which are not matters of causing evil or good, even if they are not written<sup>89</sup>? He told him<sup>90</sup>, 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 good<sup>91</sup>? Therefore never for the past<sup>92</sup>.

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 יִלְכָּד read לֹא יִלְכָּד וְלֹא יִלְכָּד.

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. שתיהן כדיון שיהא חייב דברי רבי יהודה בן בתירא. אמר רבי יהודה בן בתירא ומה אם הרשות שאינו מושבע עליה מהר סיני הרי הוא חייב עליה. מצוה שהיא מושבע עליה מהר סיני אינו דין שיהא חייב עליה. אמרו לו לא. אם אמרת בשבועת הרשות שכן עשה בה לאו כהוין. תאמר בשבועת מצוה שלא עשה בה לאו כהוין שאם נשבע לבטל ולא בטל פטור:

**Mishnah 7:** If he swore not to observe a commandment but failed not to observe it, he is not liable<sup>42,92</sup>; to observe a commandment and did not observe it, he is not liable<sup>93</sup>, 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 Sinai<sup>42</sup>? 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 liable<sup>94</sup>.

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 כהוין והיו כלאו. תימר בשבועת מצוה שלא עשה בה לאו כהוין.

אזכרה לשבועת הרשות מניין. אמר רבי יוסי בירבי בון. לא נחל דבר. לא יעשה דברי 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.”<sup>95</sup> 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 ate<sup>96</sup>. 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”<sup>97</sup>?

From where a warning about an oath for a permitted purpose? Rabbi Yose ben Rabbi Abun said, *he shall not profane his word*<sup>98</sup>, he shall not make his words profane<sup>99</sup>.

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.

(fol. 34a) **משנה ח:** שְׁבוּעָה שְׁלֵא אוֹכֵל בְּכֶרֶזּוּ שְׁבוּעָה שְׁלֵא אוֹכֵלֶנָּה שְׁבוּעָה שְׁלֵא אוֹכֵלֶנָּה וְאִכְלָהּ אֵינּוּ חַיִּיב אֵלֶּא אַחֶרֶת. זֶה הִיא שְׁבוּעַת בִּיטוּי שְׁחֵמְבִין עַל זְדוּנָה מִכּוֹת וְעַל שְׁגָגָתָהּ קָרְבַּן עוֹלָה וְיִזְרָד.

**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 once<sup>100</sup>. This is the blurted oath<sup>101</sup> where in case it be intentional one is liable for flogging<sup>102</sup>, 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*.

הַלְכָה ח: שְׂבוּעָה שֶׁלֹּא אוֹכֵל כֶּכֶר זוֹ כּוֹל'. שְׂבוּעָה שֶׁאוֹכֵל כֶּכֶר זֶה הַיּוֹם. וְעֵבֶר הַיּוֹם וְאֶקְלָה. רַבִּי יוֹחָנָן וְרִישׁ לְקִישׁ תְּרִיהוֹן אֶמְרִין. פְּטוֹר. לֹא טַעַמָּא דְאִהוּן. טַעַמִּיה דְרַבִּי יוֹחָנָן מִשָּׁם שְׂאִינוּ רָאוּי לְקַבֵּל הַתְּרִיבָה. טַעַמִּיה דְרִישׁ לְקִישׁ מִשּׁוּם שֶׁהוּא בְּלֹא תַעֲשֶׂה שְׂאִין בּו מַעֲשֶׂה. מֵה מִפְקָה מִבְּיַחַד. שְׂרָפָה וְהַשְׁלִיחָה לָּם. אִין תִּימַר מִשָּׁם שְׂאִינוּ רָאוּי לְקַבֵּל הַתְּרִיבָה פְּטוֹר. וְאִין תִּימַר מִשּׁוּם שֶׁהוּא בְּלֹא 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. Rebbi Johanan and Rebbi Simeon ben Laqish both say, he is not liable<sup>103</sup>; not for the same reason. The reason of Rebbi Johanan, because he cannot be duly warned<sup>104</sup>. The reason of Rebbi Simeon ben Laqish, because it is a prohibition without action<sup>105</sup>. What is the difference between them? He burned it or threw it into the sea. If you say, because he cannot be duly warned<sup>106</sup>, 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 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 asthenic<sup>107</sup>? Since it is not in his hand for the future, it is not in his hand for the past<sup>75</sup>.

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 one<sup>108</sup>.

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 דחייפה אמר. שמשית בנדריים שמשית בשבועות. בעי חייפה  
 מיבדקינה. היו לפניו חמש כפרין ואמר. שבועה שאוכל כפר זו. וחזר ואמר. שתים 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. מיפן ואילך כמיחל שבועות על האיסורין. ואין שבועות  
 חלות על האיסורין.

חזר חייפה ונדקיה. 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'. שמה אינו פטור.

אמר רבי יוסי. מסתברה כאחוי דחייפה באחריינתא ויחייפה בקדמינתא.

Abime the brother of Hefa<sup>109</sup> 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. He<sup>110</sup> said to him, he is liable for each single one<sup>111</sup>. He<sup>112</sup> 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 prohibitions<sup>113</sup>.

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. He<sup>110</sup> said to him, he is liable only once<sup>114</sup>. He<sup>111</sup> 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 liability<sup>115</sup>?

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. Joḥanan should agree that the addition in each oath is valid (Note 42).

112 Hefa.

113 R. Joḥanan 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 חַיִּיבִין עַל זְדוּנָה מְכוּת וְעַל שְׁגָגָתָה פְּטוּר: וְאִי זֶה הִיא שְׁבוּעַת שְׁוֹא נִשְׁבַּע לְשָׂנוֹת אֶת הַדְּיוּעַ לְאָדָם אָמַר עַל הַעֲמוּד שֶׁל אֶבֶן שֶׁהוּא שֶׁל זָהָב וְעַל הָאִישׁ שֶׁהוּא אִשָּׁה. עַל הָאִשָּׁה שֶׁהִיא אִישׁ. נִשְׁבַּע עַל דְּבַר שְׂאִי אִי־פֶשֶׁר לוֹ לְהוֹיֵת. אִם לֹא רְאִיתִי גָמַל שְׁפוּרָח בְּאֵוִיר לֹא רְאִיתִי נָחֵשׁ כְּקוֹרֵת בֵּית הַכֹּדֶד. אָמַר לְעֵדִים בּוֹאוּ וְהַעֲדוּנִי שְׁבוּעָה שְׁלֵא נֶעִידָךְ. נִשְׁבַּע לְכַפֵּל אֶת הַמִּצְוָה שְׁלֵא לַעֲשׂוֹת סוּכָה וְשְׁלֵא לִיטוֹל לֹלֶב וְשְׁלֵא לְהַנִּיחַ תְּפִלִּין. זֶה הִיא שְׁבוּעַת שְׁוֹא שְׁחַיִּיבִין עַל זְדוּנָה מְכוּת וְעַל שְׁגָגָתָה 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 oath<sup>116</sup>? 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 you<sup>117</sup>. One swears not to keep commandments: not to make a booth<sup>68</sup>, not to take the *lulav*<sup>118</sup>, not to put on phylacteries<sup>119</sup>; 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 חַיִּיבִין עַל זְדוּנָה מְכוּת כּוֹל. תִּמְנָן תִּנְיִנָן. אִם לֹא רְאִיתִי בְּדַרְדָּךְ זֶה פְּעוּלֵי מִצְרַיִם. אִי־פֶשֶׁר שְׁלֵא עֵבֶר בָּהּ פְּעוּלֵי מִצְרַיִם. אֵלֶּא כִּי נָן קִימִין בְּרִיאִיָּה אַחַת. וְהָא דוֹקְלִיטִיאָנוּס כִּד נַחַת תִּמְנָן עִימִיָּה ק"כ רַבּוֹנָן. אֵלֶּא כִּי נָן קִימִין בְּרִיאִיָּה אַחַת.  
2 כִּי נָן אֶבֶן אֶבֶן 3 דוֹקְלִיטִיאָנוּס | נִלְוִיטִיס קִיסַר | תִּמְנָן | נִלְתִּמְנָן ק"כ | נִמְאָה נִאֲשֵׁרִים | בִּי נָן | נִאֲכֹן אֶבֶן

“For an intentional vain oath one is liable to be flogged,” etc. There<sup>118</sup>, we have stated: “If I did not see on this road [crowds] like those who left Egypt.”<sup>119</sup>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 Diocletian<sup>120</sup> 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 (3), 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 הַבַּד. והא חינוך דשבור מלפא בלע גמלין בלע קרונין. כד בעון מיקטלוינה 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 באויר. ניתני. עכבר פורח באויר.

“If I did not see a snake like the beam of the olive press.”<sup>121</sup> 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. Rebbi Jehudah bar Pazi said, I saw the hide of a snake made over eight spaces between pillars<sup>122</sup>. Rebbi Samuel ben Jacob said, I saw the hide of a snake covering a state coach<sup>123</sup>. Samuel said, square. If square one could state even a small one<sup>124</sup>. Rebbi Yudan the father of Rebbi 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 מששת ימי 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 אמרה 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.

<sup>125</sup>It was stated: Rabban Simeon ben Gamliel says, there is nothing square from the six Days of Creation. Rebbi 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.”<sup>126</sup> Rebbi (Yosna)<sup>127</sup> said, that in itself says that there is no square. Why was it stated

“squared”? That he should square it<sup>128</sup>. And כנעה<sup>129</sup>? It is full of knots. But there is the bunch of *pila*<sup>130</sup>! 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 נעה, 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.).

לֹא (34d line 46) שְׁבוּעָה שְׂאִין אָנוּ יוֹדְעִין לָךְ עֲדוּת. לֹקֵיִן מִשָּׁם שְׁבוּעַת עֲדוּת. שְׁבוּעָה שְׂלֵא נִעְדָּךְ. לֹקֵיִן מִשָּׁם שְׁבוּעַת בִּיטוּי.

<sup>131</sup>“An oath that we do not know testimony for you;” they are flogged because of witnesses’ oath<sup>132</sup>. “An oath that we shall not testify for you;” they are flogged because of blurted oath<sup>133</sup>.

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.

מִשְׁנֵה יִי שְׁבוּעָה שְׂאוּכֵל בְּכֶרֶז זֶה שְׁבוּעָה שְׂלֵא אוֹכְלִינָה הָרֵאשׁוֹנָה שְׁבוּעַת בִּיטוּי וְהַשְּׁנִייה שְׁבוּעַת שְׂוֵא. אֶכְלָה עִבֵּר עַל שְׁבוּעַת שְׂוֵא. לֹא אֶכְלָה עִבֵּר 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 oath<sup>133</sup>. 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 כִּכָּר זוֹ כוּל'. שְׁוֹא וְשִׁקָּר שְׁנִיָּהוּ בְּדִיבּוּר אֶחָד נֶאֱמָרוּ. מֵה שְׂאִין אֲזוֹן וְכוּלָּה לְשִׁמוּעַ וְלֹא פֶה לְדַבֵּר. מִחֲלָלִיָּה מוֹת יוֹמֵת וּבִיּוֹם הַשְּׁבִעִת שְׁנֵי־כַבְּשִׁים בְּדִיבּוּר אֶחָד נֶאֱמָרוּ. לֹא תִלְבַּשׁ שְׁעִטָּנוֹ גְּדָלִים תַּעֲשֶׂה־לָּךְ שְׁנִיָּהוּ בְּדִיבּוּר אֶחָד נֶאֱמָרוּ. עֲרוֹת אִשֶׁת־אֲחִידָבְמָה יָבֵא עָלֶיהָ בְּדִיבּוּר אֶחָד נֶאֱמָרוּ. וְלֹא־תִסָּב נְחֻלָּה וְכִלְבֵּית יִהְיֶה נְחֻלָּה שְׁנִיָּהוּ בְּדִיבּוּר אֶחָד נֶאֱמָרוּ. מֵה שְׂאִי אֵיפֶשֶׁר לָפֶה לְדַבֵּר וְלֹא לְאֲזוֹן לְשִׁמוּעַ. וְכֵן הוּא אוֹמֵר אַחַת | דְּבַר אֱלֹהִים שְׁתִּים־זוֹ שְׁמַעְנִי. וְאוֹמֵר הֲלוֹא כֹּה דְבַרִי כְּאֵשׁ נֹאֵם־יִי.

**Halakhah 10:** “An oath that I shall eat this loaf;” etc. <sup>133</sup>*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*<sup>134</sup> were said together. *Do not wear ša`atnez, fringes you shall make for yourselves*<sup>135</sup>, both were said together. *The nakedness of your brother's wife and her brother-in-law shall come to her*<sup>136</sup> were said together. *You shall not move property; any daughter inheriting real estate*<sup>137</sup> 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*<sup>138</sup>. And it says, *is not My word like fire, says the Eternal*<sup>139</sup>.

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 שִׁקָּר. נִשְׁבַּע לְהַחֲלוֹף. רַבִּי יַעֲקֹב בַּר אֲחָא בְּשֵׁם רַבִּי יוֹחָנָן. כָּל־הַיְדוּעַ לְשָׁנִים זוֹ הִיא שְׁבוּעַת שְׁוֹא. לְשִׁלְשָׁה זוֹ הִיא שְׁבוּעַת שִׁקָּר. רַבִּי לֹא בְּשֵׁם רַבִּי לְעֶזְרָא. אֶפְיִלוֹ דְּדוּעַ לְשָׁנִים וְאֶחָד בְּסוּף הַעוֹלָם מְכִירוֹ שְׁבוּעַת שְׁוֹא הִיא. מֵה מִפְּקָא מְבִינִיהוּן. שִׁינָה בְּפִנֵי שָׁנִים וְהַשְּׁלִיכוֹ לְגַם וְהִתְרוּ בּוֹ מִשּׁוּם שְׁבוּעַת שְׁוֹא. עַל דְּעִתִּיָּה דְּרַבִּי יוֹחָנָן אִין לּוֹקָה. עַל דְּעִתִּיָּה דְּרַבִּי לְעֶזְרָא לּוֹקָה. הִתְרוּ בּוֹ מִשּׁוּם שְׁבוּעַת שִׁקָּר. עַל דְּעִתִּיָּה דְּרַבִּי לְעֶזְרָא לּוֹקָה. עַל דְּעִתִּיָּה דְּרַבִּי יוֹחָנָן אִינוּ לּוֹקָה. רַבִּי בָּא בְּשֵׁם רַבִּי הִנּוּדָה. אֶפְיִלוֹ בִּיטָה וּמְרַגְלִיתָא. וְאֵהוּ אֶפְיִלוֹ. אֶלָּא כְּגוֹן בִּיטָה וּמְרַגְלִיתָא.

<sup>140</sup>A 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)<sup>141</sup> oath, to three it is (false)<sup>141</sup>.

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 flogged<sup>142</sup>. Rebbi Abba in the name of Rebbi<sup>143</sup> Jehudah, even an egg<sup>144</sup> 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 בַּיָּצֵה; it may not be a scribal error but a dialectal identification of פּ for שׁ.

34d line 63) תִּנְיִי. כְּשֵׁם שֶׁנִּדְרִי הִבְאִי מוֹתְרִין כֶּד שְׁבוּעוֹת הִבְאִי מוֹתְרִין. וְהִתְנִי. שְׁבוּעוֹת הִבְאִי אֶסוּרִין. רַבִּי יִרְמְיָהּ בְּשֵׁם רַבִּי פִּדְתָּ. כָּאֵן בְּמַעֲמִידִין כָּאֵן בְּשִׂאִין מַעֲמִידִין. וְאֶפִּילוּ תִימָא. כָּאֵן וְכָאֵן בְּמַעֲמִידִין. כָּאֵן בְּמִיחַל שְׁבוּעוֹת עַל נְכֶסֶי. שְׁבוּעָה נְכֶסֶי עֲלֵי. נְכֶסֶי אֶסוּרִין. הָא לְלִקּוֹת אֵינוּ לוֹקָה. כְּשֵׁם שֶׁנִּדְרִי זִירוּזִין מוֹתְרִין כֶּד שְׁבוּעוֹת זִירוּזִין מוֹתְרִין. עוֹד הוּא בְּמִיחַל שְׁבוּעוֹת עַל נְכֶסֶי. שְׁבוּעָה נְכֶסֶי עֲלֵי. נְכֶסֶי אֶסוּרִין. הָא לְלִקּוֹת אֵינוּ לוֹקָה.

1 אסורין | נ אסורות 2 אסורין | נ אסורות בשאין | נ בשאין ואפיל | נ אמר ר' בא. ואפיל 3 כאן וכאן בשאין מעמידין

<sup>145</sup>It 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 דְמִשְׁתַּבֵּעַ עַל תְּרִין דְּאִינוּן תְּרִין לִוְקָה מְשׁוּם שְׁבוּעַת שְׁוֹא. רַבִּי מְנַחֵם בְּשֵׁם רִישׁ לְקִישׁ. אֵהוּ דְחָמֵי מִיטְרָא נְחִית וְאָמַר. קוּרִי פְּלִי בְרִיכְסוֹן. לִוְקָה מְשׁוּם שְׁבוּעַת שְׁוֹא. רַבִּי חוּנְיָא רַבִּי יַעֲקֹב בְּרַבִּי בּוּן בְּשֵׁם רַבִּי שְׁמוּאֵל בְּרַ נְחָמָן. כ"ד בּוֹלִיּוֹת הֵיוּ בְּדָרוֹם וְכוּלָם חָרְבוּ עַל שְׁבוּעַת שְׁוֹא שֶׁהִיא אֶמְתָּ. דְּכָתִיב לְשׁוֹא הַכִּיּוֹתִי אֶת־בְּנֵיכֶם.

1 תְּרִין דְּאִינוּן תְּרִין | 2 תְּרִין דִּינוֹן תְּרִין | 2 מְנַחֵם | 3 חָגִי | 4 רִישׁ לְקִישׁ | 5 ר' שְׁמוּעוֹן בֶּן לְקִישׁ דְּחָמֵי | 6 דְּחָמָא קוּרִי פְּלִי בְרִיכְסוֹן | 7 בְּבִלִי קוּרִי בְרִיכְסוֹן | 8 בּוּן | 9 אֲבוּן | 10 כ"ד | 11 עֶשְׂרִים וָאַרְבַּע | 12 אֵמֶת | 13 שְׁלֹאמַת

Hizqiah said: he who swears that two are two is flogged for a vain oath.

Rebbi Menaḥem<sup>146</sup> in the name of Rebbi Simeon ben Laqish: He who saw rain falling and said Κύριε πόλυ βρέξον<sup>147</sup> is flogged for a vain oath. Rebbi Onias, Rebbi Jacob ben Rebbi Abun in the name of Rebbi Samuel ben Nahman: 24 city councils<sup>148</sup> 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*<sup>149</sup>.

146 In *Nedarim*: Ḥaggai.

contraction Kūri. 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 בִּיטוּי נִזְהָגַת בְּאֲנָשִׁים וּבְנָשִׁים בְּרַחֲוֹקִים וּבְקָרוּבִים בְּכִשְׂרִים וּבְפִסְלִין בְּפָנֵי בֵּית דִּין וְשִׁלָּא בְּפָנֵי בֵּית דִּין מִפִּי עֶצְמוֹ. וְחֵיבִין עַל זְדוּנָה מְכוּת וְעַל שְׁגָגָתָהּ קָרְפָן 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 mouth<sup>150</sup>. 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:** שבועת ביטוי כול'. שבועה שלא אכל כפר זו. שבועה שלא אוכלינה. שבועה שלא אוכלינה. אינו חייב אלא אחת. דבר שאילו בנדריים אסור ובשבועות מותר לא אתייהא אלא במתניתה אחד דברים שקלעצמו ואחד דברים של אחרים. אחד דברים שאין בהן ממש ואחד דברים שיש בהן ממש. ומר רבי בא בשם שמואל. שבועה שנתן פלוני לאיש פלוני מנה. ונמצא שלא נתן. מאחר שאין בידו לבא אין בידו לשעבר. אשכח תני על תרהוהו. זה חומר לשעבר משלבא. שהאומר. לא אוכל לא אוכל. אינו חייב אלא אחת. לא אכלתי לא אכלתי לא אכלתי. חייב על כל-אחת ואחת.

שבועה שאוכל כפר זו שבועה שלא אוכלנה. הראשונה שבועת ביטוי והשנייה שבועת שוא. כיצד עושין לו. אומרים לו שלאכל. מוטב לעבור על שבועת שוא ולא על שבועת ביטוי. שבועה שלא אוכל כפר זו שבועה שאוכלנה. הראשונה שבועת ביטוי והשנייה שבועת שוא. כיצד עושין לו. אומרים לו שלא לאכל. מוטב לעבור על שבועת שוא לחוד ולא על שבועת שוא וביטוי.

שבועה שאוכל כפר זו היום שבועה שלא אוכלנה היום. רבי יוחנן אמר. קיים את הראשונה וביטל לשנייה. ריש לקיש אמר. ביטל לראשונה ולא קיים לשנייה. שבועה שלא אוכל כפר זו היום שבועה שאוכלינה היום. ואכלה. רבי יוחנן אמר. ביטל את הראשונה וקיים לשנייה. ריש לקיש אמר. ביטל את הראשונה. והשנייה אומרים לו שיקיימנה בכיבד אחרת.

שבועה שאוכל כפר זו היום שבועה שאוכלינה היום. ואכלה. רבי יוחנן אמר. קיים את השתיהו. וריש לקיש אמר. קיים לראשונה. והשנייה אומרים לו שיקיימנה בכיבד אחרת. שבועה שלא אוכל כפר זו היום שבועה שלא אוכלינה היום. ואכלה. על דעתיה דרבי יוחנן חייב שתים. על דעתיה דריש לקיש אינו חייב אלא אחת. אוף רבי שמעון בן לקיש מודה. שאינו אלא כמזוז עצמו מן האיסורין.

**Halakhah 11:** “A blurted oath,” etc. <sup>151</sup>“An oath that I shall not eat this loaf, an oath that I shall not eat it’, he is liable only once”<sup>100</sup>. Something which would be forbidden for vows and is permitted for oaths<sup>152</sup>. Not on this was it said but on the following: “Whether matters of himself<sup>71</sup>, or matters of others,” as Rebbi 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 past<sup>75</sup>. 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 time<sup>153</sup>.

“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 oath<sup>133</sup>. How does one deal with him? One tells him to eat; it is better to break a vain oath than a blurted one<sup>154</sup>.

“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 Joḥanan said, he kept the first oath and invalidated the second<sup>155</sup>. 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 Joḥanan said, he invalidated the first oath and kept the second<sup>156</sup>. Rabbi Simeon ben Laqish said, he invalidated the first one. One tells him to keep the second with another loaf<sup>157</sup>.

“An oath that I shall eat this loaf today; an oath that I shall eat it today.” Then he ate it. Rabbi Joḥanan 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 loaf<sup>158</sup>.

“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 Joḥanan’s opinion he is twice liable<sup>159</sup>. Is he only once liable in Rabbi Simeon ben Laqish’s opinion<sup>160</sup>? Even Rabbi Simeon ben Laqish agrees that he only emphasizes the prohibitions<sup>161</sup>.

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 אֶכְלֶ כֶּכֶר אוֹ “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.

מִשְׁנֵה יב: שְׂבוּעַת שְׂוֹא נֹהֶגֶת בְּאִנְשִׁים וּבְנָשִׁים בְּרְחוּקִים וּבְקְרוֹבִים בְּבָשָׂרִים וּבְפָסְלִים בְּפָנֵי בֵּית דִּין וְשָׂלָא בְּפָנֵי בֵּית דִּין וּמִפִּי עֲצָמוֹ. וְחַיִּיבִין עַל זְדוּנָה מִכּוֹת וְעַל שְׂגָגָתָהּ בְּמוֹרֵין. אַחַת זֶה וְאַחַת זֶה הַמּוֹשְׁפֵעַ מִפִּי אַחֲרִים חַיִּיב. בִּיַצֵּד (אָמַר) לֹא אֶכְלֶתִי הַיּוֹם וְלֹא הֵינִי תִפְלִיץ הַיּוֹם. מִשְׁבִּיעֵד אֲנִי וְאָמַר אֲמֵן. 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 words<sup>150</sup>. For intentional violation one is liable to flogging,

for unintentional he is not prosecutable<sup>162</sup>. In both cases<sup>163</sup>, 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” he<sup>164</sup> 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 שֶׁנֶּאֱמַר בְּשְׁבוּעַת הַעֲדוּת עֲשֵׂה אֶת הַמּוֹשְׁבֵעַ כְּנִשְׁבָּע. אִף שֶׁנֶּאֱמַר בְּשְׁבוּעַת הַפִּיקְדוֹן עֲשֵׂה אֶת הַמּוֹשְׁבֵעַ 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 swearing<sup>165</sup>.

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* stars: *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) זֶה הַכֶּלֶל. כֹּל־לֹא תַעֲשֶׂה שְׂגִישׁ בּוֹ מַעֲשֵׂה לֹקֵה וְשֹׂאִין בּוֹ מַעֲשֵׂה אֵינוֹ לֹקֵה. חוּץ מִן הַמִּימָר וְהַנִּשְׁבָּע וּמִקַּלֵּל אֶת חֲבִירוֹ בְּשֵׁם. רַבִּי אֲבָהוּ בְּשֵׁם רַבִּי יוֹחָנָן. לֵית כָּאֵן מִימָר. מִימָר דִּיבּוּר וּמַעֲשֵׂה. נִשְׁבָּע לְשִׁקָּר מְנִיין. רַבִּי יוֹחָנָן בְּשֵׁם רַבִּי יִנְאִי. כִּי לֹא יִנְקֵה יי. מְנַקְוִין הֵן הַדִּינְיִין. קִילֵל אֶת חֲבִירוֹ בְּשֵׁם מְנִיין. רִישׁ לְקִישׁ בְּשֵׁם רַבִּי הוֹשַׁעְיָה. לְרִיזָא אֶת־הַשֵּׁם וּגו'. נִשְׁבָּע לְשִׁקָּר עַל דְּעֵתִיָּה דְרִישׁ לְקִישׁ מְנִיין. מִינָה. מִכִּיִּן שֶׁנִּשְׁבָּע לְשִׁקָּר אֵין זֶה נְרָא. 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 principle<sup>166</sup>: One flogs for any prohibition involving an action, but one does not flog if there is no action except for one who substitutes<sup>167</sup>, 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 action<sup>167</sup>. 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 him<sup>168</sup>. From where one who cursed his fellow man by the Name? Rabbi Simeon ben Laqish in the name of Rabbi Hoshai: *To fear the Name*<sup>169</sup>, 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]<sup>170</sup>. 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 בפסולים. ואינה נוהגת אלא בראויין להעיד בפני בית דין ושלא בפני בית דין מפי עצמו. ומפי אחרים אין חייבין עד שיכפרו בו בבית דין דברי רבי מאיר. והקמים אומרים בין מפי עצמו ובין מפי אחרים אינן חייבין עד שיכפרו בו בבית דין:

**Mishnah 1:** An oath about testimony<sup>1</sup> applies to men but not to women<sup>2</sup>, to unrelated persons but not to relatives<sup>3</sup>, to qualified but not to disqualified ones<sup>4</sup>; it applies only to those admitted to testify<sup>5</sup>, 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 Rebbi 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 court<sup>6</sup>.

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. שיהו שוין.

כְּבָשִׂים. מִיעוּט כְּבָשִׂים שְׁנַיִם. אִם כֵּן מָה תִּלְמוּד לֹאמַר שְׁנֵי שְׂיָהוּ שְׂנִיָּהוּ שְׂוִיָּן.  
 צִפְרִים. מִיעוּט צִפְרִים שְׁנַיִם. אִם כֵּן מָה תִּלְמוּד לֹאמַר שְׂתִי. שְׂיָהוּ שְׂנִיָּהוּ שְׂוִיָּן.  
 חֲצוּצָרוֹת. מִיעוּט חֲצוּצָרוֹת שְׂתִים. אִם כֵּן מָה תִּלְמוּד לֹאמַר שְׂתִי. שְׂיָהוּ שְׂתִיָּהוּ שְׂוִוֹת.  
 הַתֵּיב רַבִּי חֲגַיִי קוֹמִי רַבִּי יוֹסִי. וְהַכְּתִיב וְעַמְדוֹ שְׂנֵי־הָאֲנָשִׁים. מִיעוּט אֲנָשִׁים שְׁנַיִם. וְמָה  
 תִּלְמוּד לֹאמַר שְׁנֵי שְׂיָהוּ שְׂנִיָּהוּ שְׂוִיָּן. וְהַכְּתִיב לֹא תִטֶּה מִשְׁפָּט גֵּר יְתוֹם. הָרִי מִצִּיּוֹ גֵּר דָּן עִם מִי  
 שְׂאִינוּ גֵּר. יְתוֹם דָּן עִם מִי שְׂאִינוּ יְתוֹם. אֲלֻמְנָה עִם בְּעוּלַת בַּעַל. אִם כֵּן לָמָּה נֶאֱמַר שְׁנֵי  
 מוֹכְנָה לְהַקִּישׁ וְלָדוֹן הִימִינוּ גִּזְרָה שְׁנֵה. נֶאֱמַר כָּאִן שְׁנֵי וְנֶאֱמַר לְהֵלֵךְ וַיִּשְׁאַרְוּ שְׂנֵי־אֲנָשִׁים |  
 בְּמַחְנֶה. מָה לְהֵלֵךְ אֲנָשִׁים וְלֹא נָשִׁים וְלֹא קִטְנִים אֶף כָּאִן אֲנָשִׁים וְלֹא נָשִׁים וְלֹא קִטְנִים. הָרִי  
 לְמַדְנֵי שְׂאִין הָאִשָּׁה דְנָה. מַעֲתָה אִין הָאִשָּׁה מַעֲדָה.  
 רַבִּי יוֹסִי בִי רַבִּי בּוֹן רַבִּי הוֹנָא בְּשֵׁם רַבִּי יוֹסִי. נֶאֱמַר כָּאִן שְׁנֵי וְנֶאֱמַר לְהֵלֵךְ עַל־פִּי | שְׁנַיִם  
 עֲדִים. מָה לְהֵלֵךְ עַל־פִּי | שְׁנַיִם עֲדִים אֶף כָּאִן עַל־פִּי שְׁנַיִם עֲדִים. אִם כֵּן לָמָּה נֶאֱמַר שְׁנֵי. שְׂלֵא  
 ?הָא אֶחָד עוֹמֵד וְאֶחָד יוֹשֵׁב. אֶחָד מְדַבֵּר כְּל־צוֹרְכוֹ וְלֶאֱחָד אוֹמֵר לוֹ. קִצֵּר דְּבִרְיָךְ. כִּנְגֵד אֶחָד  
 מֵאַרְיָךְ פְּנִים וְכִנְגֵד אֶחָד מֵעֵז פְּנִים.  
 אָמַר רַבִּי יוֹדָן. שְׂמַעְתִּי שְׂאִם רְצָה הַדִּין לְהוֹשִׁיב אֶת שְׂנִיָּהוּ מוֹשִׁיב. הָאִסוּר שְׂלֵא ?הָא זָה  
 עוֹמֵד וְזָה יוֹשֵׁב. זָה מְדַבֵּר כְּל־צוֹרְכוֹ וְזָה אוֹמֵר לוֹ. קִצֵּר דְּבִרְיָךְ. רַבִּי יִשְׁמַעֵאל אוֹמֵר. אוֹמְרִין  
 לוֹ. לְבוֹשׁ כְּשֶׁלּוֹבֵשׁ. אוֹ הַלְבִּישְׁהוּ כְּשֶׁאֲתָה לּוֹבֵשׁ.  
 רַבִּי בָּא בְּשֵׁם רַב הוֹנָא. צְרִיכוֹ הָעֲדִים לְהִיּוֹת עוֹמְדִין בְּשַׁעַת שְׂמַעֲדִין. מָה טַעַם. וְעַמְדוֹ  
 שְׂנֵי־הָאֲנָשִׁים. רַבִּי יְרֵמְיָה בְּשֵׁם רַבִּי אֲבָהוּ. אֶף הַיִּידוֹנִין עוֹמְדִין בְּשַׁעַת שְׂמַקְבְּלִין עֲדוּתָן. מָה  
 טַעַם. אֲשֶׁר־לָהֶם הָרִיב לִפְנֵי יי.

**Halakhah 1:** “An oath about testimony,” etc. <sup>7</sup>Rams<sup>8</sup>, 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 equal<sup>9</sup>.

The minimum of *birds* are two. Then why does the verse say *two*? that both be equal<sup>10</sup>.

The minimum of *trumpets* are two. Then why does the verse say *two*? that both be equal<sup>11</sup>.

Rebbi Haggai objected to Rebbi Yose<sup>12</sup>. Is there not written: *The two men shall stand*<sup>13</sup>? Now, is not two the minimum of “men”? Why does the verse say *two*? That both be equal? But it is written<sup>14</sup>: *Do not bend the lawsuit of the proselyte, the orphan, . . .* That means that a proselyte can have a lawsuit against one who is not a proselyte, an orphan may have a lawsuit against one who is not an orphan, 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*<sup>15</sup>. 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 Yose<sup>16</sup>. It is said here *two* and it is said there<sup>17</sup> *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*<sup>13</sup>? 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*<sup>13</sup>. 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*<sup>13</sup>.

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'. וְהִלָּא כָּבֵד נֶאֱמַר אִישׁ בְּחֻטְאוֹ יוּמָת: מַה תִּלְמוּד לומר לֹא-יִוָּמְתוּ אָבוֹת עַל-בָּנִים. אֲלָא שְׁלֵא יוּמָתוּ בָּנִים בְּעֵדוֹת אָבוֹת וְאָבוֹת בְּעֵדוֹת בָּנִים. מִיכָן שְׁלֵא יְהוּ הָעֵדִים קְרוֹבִין שְׁלֵנִידוּבִין.

וּמִנֵּיין שְׁלֵא יְהוּ הָעֵדִים קְרוֹבִין זֶה לָזֶה. הִגַּע עֲצָמָד שְׁהוּזְמוּ לֹא מִפִּיָּהוּ נְהָרְגִין. וּמִנֵּיין שְׁלֵא יְהוּ הָעֵדִים קְרוֹבִים שְׁלֵדִינֵינִים. הִגַּע עֲצָמָד שְׁאֵם הוּזָם אֶחָד מֵהֵם אִינוּ נְהָרַג עַד שְׁיִזְזֵם חֲבִירוֹ. אִם אוֹמֵר אֶת כֵּן נִמְצָא נְהָרַג עַל פִּיו.

וּמִנֵּיין שְׁלֵא יְהוּ הַדִּינֵיין קְרוֹבִין זֶה לָזֶה. אֲמַרְהָ תוֹרָה. הָרוֹג עַל פִּי עֵדִים. הָרוֹג עַל פִּי דִינֵינִים. מַה הָעֵדִים אֵינָן קְרוֹבִין זֶה לָזֶה. אִף הַדִּינֵיין כֵּן.

אִין לִי אֲלָא אָבוֹת וּבָנִים. שְׁאָר קְרוֹבִין מִנֵּיין. אֲמַר רַבִּי זִידָא. וּבָנִים. לְרֵבּוֹת שְׁאָר קְרוֹבִין. עַד כְּדוֹן כְּרַבִּי עֲקִיבָה.

<sup>18</sup>It is written<sup>19</sup>: *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 fathers<sup>169</sup>. 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? Rebbi Ze'ira says, *and sons* includes the remaining relatives.

So far according to Rebbi 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 יִשְׁמַעְאֵל. תִּנִּי רַבִּי יִשְׁמַעְאֵל. וְשִׁפְטוּ הָעֵדָה בֵּין הַמַּכֶּה וְגו'. שְׁלֵא תִּהְיֶה הָעֵדָה קְרוֹבָה לֹא לַמַּכֶּה וְלֹא לַמוּכָה. אָמַר רַבִּי יוֹסִי. אִם אֹמֵר אֶתְּ כֹן קְרוֹבִין לְיִכָּף נִמְצְאוּ בֵּית דִּין גּוֹאֲלֵי הַדָּם. מִיִּכֹן שְׁלֵא יִהְיוּ הַדֵּיּוֹנִין קְרוֹבִין לְיִדּוֹנִין. וּמִנִּיין שְׁלֵא יִהְיוּ הָעֵדִים קְרוֹבִים לְיִדּוֹנִין. אֲמַרְהָ תוֹרָה. הָרוֹג עַל פִּי עֵדִים. הָרוֹג עַל פִּי מַטִּין. מִה הַדֵּיּוֹנִין אֵינָן קְרוֹבִין לְיִדּוֹנִין אֶף הָעֵדִים כֹּן. מִנִּיין שְׁלֵא יִהְיוּ הָעֵדִים קְרוֹבִין זֶה לָזֶה. הִגַּע עֲצָמָךְ שֶׁהוֹזְמוּ לֹא מִפִּיָּהּ הוּ נִהְרָגוּ.

From where following Rebbi Ismael? Rebbi Ismael stated: *The congregation shall judge between the beater, etc*<sup>20</sup>. The congregation be neither relatives of the murderer nor relatives of the murdered. Rebbi 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 vote<sup>21</sup>. 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) וּמִנִּיין שְׁלֵא יִהְיוּ הָעֵדִים קְרוֹבִין לְדֵיּוֹנִים. הִגַּע עֲצָמָךְ שֶׁהוֹזֵם אֶחָד מֵהֶן. כָּלוּם נִהְרָג עַד שְׁיִזֵּם חֲבִירוֹ. אִם אֹמֵר אֶתְּ כֹן לֹא נִמְצָא נִהְרָג עַל פִּי. בְּכַשְׁרֵיו וְלֹא בְּכַסּוּלָיו. מִנִּיין. אִם לֹא יִגִּיד וְנִשְׂא עוֹנוֹ: אֵת שְׂמֵגִיד וְחֲבִירוֹ מִשְׁלֵם מָמוֹן. יֵצֵא פְּסוּל שְׂמֵגִיד וְאִין חֲבִירוֹ מִשְׁלֵם מָמוֹן. בְּפִנֵּי בֵּית דִּין. לְהוֹצִיא עַד אֶחָד. בְּשִׁאֲמָרוֹ לוֹ. הֲרִי אֶתְּ מִקוּבֵל עָלֵינוּ כְּשֵׁנֵי עֵדִים. יִהְיֶה חַיִּב. תִּלְמוּד לּוֹמֵר וְהוּא יֵעַד אֹו רֵאָה אֹו יִדַּע אִם לֹא יִגִּיד וְנִשְׂא עוֹנוֹ: אֵת שְׂפָשֶׁר לְהַעִיד עֵדוֹת תוֹרָה. יֵצֵא אֶחָד שְׂאִינוּ כְּשֶׁר לְהַעִיד. שְׁלֵא בְּפִנֵּי בֵּית דִּין. אִם לֹא יִגִּיד וְנִשְׂא עוֹנוֹ: מִקוּם שְׂמֵגִיד וְחֲבִירוֹ מִשְׁלֵם מָמוֹן. יֵצֵא חוּץ לְבֵּית דִּין אֶפְּלוֹ מִגִּיד אִין 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*<sup>21a</sup>. 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*<sup>21a</sup>. 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 שודיעך הכתוב אחד. אשכח תני רבי ישמעאל. שני עדים. אחד מהו שיהו חייבין עליו משום שבועת ביטוי. אפישר לומר. אחד ראוי לצורפו ולחייבו משום שבועת עדות ואת 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 בגדו לבא אין בגדו 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. מפייסו על האמת ואינו מפייסו 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 Rebbi 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 Rebbi 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 Rebbi Abba said in the name of Samuel<sup>22</sup>: “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.” Rebbi declares him not liable for a keeper’s oath but liable because of a blurted oath. Rebbi 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.

Rebbi Ismael stated: *He has to bear his punishment*<sup>21</sup>, 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) פְּהָדָא. אין מְקַבְּלִין הַעֲדִים אֶלָּא אִם רָאוּ שְׁנֵיהוֹן כְּאַחַת. רַבִּי יְהוֹשֻׁעַ בֶּן קַרְחָה אָמַר. אֶפְּלִיזָה אַחֵר זֶה. רַבִּי יִרְמְיָהוּ רַבִּי שְׁמוּאֵל בֶּר רַב יִצְחָק בְּשֵׁם רַב יִצְחָק שְׁאָמַר בְּשֵׁם רַב. מוֹדִין חֲכָמִים לְרַבִּי יְהוֹשֻׁעַ בְּעִידֵי בְּכוּרָה וְעִידֵי חֲזָקָה. רַבִּי בָּא בְּשֵׁם רַבִּי יִרְמְיָהוּ. אַף בְּעִידֵי סִימְנִין כּוּן. מִהֲדָא פְּשִׁיטָא בְּשִׁזָּה אָמַר. רְאִיתִי שְׁתֵּי שְׁעָרוֹת בְּגָבּוּ. וְאֶחָד אָמַר. רְאִיתִי שְׁעָרָה אַחַת בְּגָבּוּ. וְאֶחָד אָמַר. רְאִיתִי אַחַת בְּכָרִיסוֹ. לֹא כְּלוּם הִיא. כָּל־שֶׁכֶן גָּבּוּ וְגָבּוּ. שְׁנַיִם אָמְרִים. רְאִינוּ שְׁעָרָה אַחַת בְּגָבּוּ. וְאֶחָד אָמַר. רְאִיתִי שְׁעָרָה אַחַת בְּכָרִיסוֹ. רַבִּי יוֹסִי בִּירְבִּי בּוֹן רַבִּי יְהוֹשֻׁעִיָּה בֶר רַבִּי שְׁמִי. חַד אָמַר. פְּסוּל. וְחַד אָמַר. כְּשֶׁר. מֵאֵן דְּאָמַר פְּסוּל. בְּמַעֲיַד בְּחֲצֵי סִימּוֹן. וּמֵאֵן דְּאָמַר כְּשֶׁר. אֲנִי אָמַר. שְׁמָא נִשְׁרָה. אֶחָד אָמַר. רְאִיתִי שְׁתֵּי שְׁעָרוֹת בְּגָבּוּ. וְאֶחָד אָמַר. רְאִיתִי שְׁנַיִם בְּכָרִיסוֹ. רַבִּי בָּא אָמַר. דְּבָרֵי הַכֹּל כְּשֶׁר. רַבִּי חֲגַיִי אָמַר. דְּבָרֵי הַכֹּל פְּסוּל. רַבִּי יוֹסִי אָמַר. בְּמַחְלוּקָתָא. רַבִּי יוֹסִי לִיה רַבִּי חֲגַיִי. הָא רַבִּי יוֹדֵן סָבַר כּוֹוֹתִי. אָמַר לִיה. עַל דְּרַבִּיָּה אֲנָא פְּלִיג כָּל־שֶׁכֶן עֲלוּי. אָמַר רַבִּי מְנָא. יְאוּת אָמַר רַבִּי חֲגַיִי. אֵילוּ שְׁטָר שְׁמַחוּתָם בְּאַרְבְּעָה חוֹתְמוֹת זֶה מִתִּיר עַל ב' וְזֶה מְעוֹרָר עַל ב' וְקָרָא עֲלוּי עָרַר. שְׁמָא כְּלוּם הוּא. וְאִין כָּל־חֲתִימָה צְרִיכָה שְׁנַיִ עֲדִים. וְכָא כָּל־סִימּוֹן וְסִימּוֹן צְרִיךְ שְׁנַיִ עֲדִים. רַבִּי חֲנִינְיָה שְׁמַע לֵה מִשְׁנֵי חֲזָקָה. אֵילוּ אֶחָד מַעֲיָדוֹ שְׁאֶכְלָה שְׁנָה אַחַת וּב' וּג'. וְאֶחָד מַעֲיָדוֹ שְׁאֶכְלָה ד' וְה'. שְׁמָא כְּלוּם הוּא. וְאִין כָּל־חֲזָקָה צְרִיכָה שְׁנַיִ עֲדִים. הֲכָא כָּל־סִימּוֹן וְסִימּוֹן צְרִיךְ שְׁנַיִ עֲדִים.

<sup>23</sup>Or 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 back<sup>24</sup> 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 back<sup>25</sup>. 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)<sup>26</sup> two, and another (questioned)<sup>26</sup> 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 זְדוּן שְׁבוּעָה וְעַל שְׁגָגָתָהּ. וְעַל זְדוּן הָעֵדוּת וְאִינוּ חֵיבִין עַל שְׁגָגָתָהּ. וְזוּמָה הוּא חֵיבִין עַל זְדוּנָהּ קֶרְבֵּן עוֹלָה וַיִּירָד:

**Mishnah 2:** They are liable both for intentional [violation of the] oath and for erroneous one<sup>27</sup>, and for intentional [refusal of] testimony, but one is not liable unintentionally<sup>28</sup>. What is one liable for if intentional? A variable value sacrifice.

**משנה ג:** שְׁבוּעַת הָעֵדוּת כִּיצַד. אָמַר לְעֵדִים בּוֹא וְהִעִידוּנִי. שְׁבוּעָה שָׂאִין אָנוּ יוֹדְעִין לָךְ עֵדוּת אִו שָׂאִמְרוּ לוֹ אִין אָנוּ יוֹדְעִין לָךְ עֵדוּת. מִשְׁבִּיעַ אָנִי עֲלֵיכֶם וְאָמְרוּ אָמֵן חֵיבִין. הַשְּׁבִיעַ עֲלֵיהֶם חֲמוּשָׁה פְּעָמִים הוּיָן לְבֵית דִּין וְכֵאֵו לְבֵית דִּין וְהוּדוּ פְּטוּרִים. כִּפְרוּ חֵיבִין עַל כָּל אַחַת וְאַחַת. הַשְּׁבִיעַ עֲלֵיהֶן חֲמוּשָׁה פְּעָמִים בְּפָנֵי בֵית דִּין וְכִפְרוּ אִינָן חֵיבִין אֲלָא אַחַת. אָמַר רַבִּי שִׁמְעוֹן מַה הַטַּעַם הוֹאִיל וְאִינָם יְכוּלִין לְחֻזֵר 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 liable<sup>1</sup>. If he asked them five times outside of court to take an oath; when they came to court and admitted it they are not liable<sup>29</sup>. 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. Rebbi Simeon said, what is the reason? Because they cannot come back and admit<sup>30</sup>.

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. נִפְּשׁ נִפְּשׁ. מַה לְהֵלֵךְ מִפִּי עֲצָמוּ אִף כָּאֵן מִפִּי עֲצָמוּ. מַה כָּאֵן מִפִּי אַחֲרִים אִף לְהֵלֵךְ מִפִּי אַחֲרִים. רַבִּי מֵאִיר דָּרַשׁ גְּזִירָה שְׁנֵיהֶם הָאֲמֹרָה בָּהּ. מַה מִפִּי עֲצָמוּ שְׁאֵמַר לְהֵלֵךְ חוּץ לְבֵית דִּין אִף מִפִּי עֲצָמוּ שְׁאֵמַר כָּאֵן חוּץ לְבֵית דִּין. וְרַבָּן

דַּרְשֵׁי גִזְיָה שְׁנֵה הָאֲמוּנָה בָּהּ. מֵה מִפִּי אֲחֵרִים שְׁנֵאָמַר לְהִלְכֵן בְּבֵית דִּין אֶף מִפִּי אֲחֵרִים שְׁנֵאָמַר  
 קָאן בְּבֵית דִּין.

**Halakhah 3:** “What is an oath about testimony,” etc. *A person, a person*<sup>31</sup>. 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’ words<sup>32</sup>. 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 court<sup>33</sup>.

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.

35c line 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 כאן בן. 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 here<sup>34</sup>? Rebbi Yose said, can relatives here be inferred from relatives there<sup>35</sup>?

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.

35c line 43) רבי יודן קפודקיא בעי. השביע עליו ה' פעמים מפי עצמו בבית דין שמא 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 admit<sup>30</sup>?” But here, since they can come back and admit, they are liable for each single instance<sup>36</sup>.

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.

35c line 46) רבי ירמיה בעי. השביע עליו חמשה פעמים מפי וְחָזַר וְהִשְׁבִּיעוּ חֲמִשָּׁה פְּעָמִים מִפִּי אֲחֵרִים מִהוּ. מֵאַחַר דְּרַבִּי מֵאִיר עָבַד מִפִּי כְּבִית דִּין מִהוּ שִׁיקְבָּעַם לְקַרְבָּן וּלְחַיִּיבָם בְּרֵאשׁוֹנָה בְּלֹא תְּבִיעָה. יֵבֵא כְּהֵדָא. מִה אֵת בָּא אַחֲרֵינוּ. שְׂבוּעָה שְׂאִין אָנוּ יוֹדְעִין לָךְ עֵדוּת. יְהוּ חַיִּיבִין. תִּלְמוּד לומר. וְשִׁמְעָה קוֹל אֱלֹהִים. אֵת שְׂשׁוּמַע קוֹל חַיִּיב. יִצְאוּ אֵילוּ שְׂאִין שׁוּמְעִין

קול. מפיו בקרקעות מהו שְׁיָהָא חַיֵּיב. מפיו בקנסות מהו שְׁיָהָא חַיֵּיב. מפיו מהו שְׁיָהָא חַיֵּיב 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, what<sup>37</sup>? 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.<sup>38</sup> “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*<sup>39</sup>. Only one who hears an imprecation<sup>40</sup>. This excludes those who did not hear a voice.”

Would he be liable from his own mouth for real estate<sup>41</sup>? From his own mouth would he be liable for fines<sup>42</sup>? From his own mouth would he be liable for a variable value sacrifice<sup>43</sup>?

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 בקרבן במזיד בקרבן. אבל אמר. סבור הייתי שאין שבוועה זו. מותר. תני חזקיה. כל מקום שנאמר בתורה חט סתם את תופש הזדון כשנגה עד שיודיעך הכתוב שהיא שנגה.

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 free<sup>44</sup>. 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 unintentional<sup>45</sup>.

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 בטא 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 הכופר 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 liable<sup>46</sup>. If one reneged but one confessed, the one who disavowed is liable<sup>47</sup>. 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 them<sup>48</sup>.

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'**: כִּפְרוּ שְׁנֵיהֶן כְּאַחַת כּוֹל'. הִפְרִישׁוּ קֶרְבָּן וְאָמְרוּ. הֲרִי אֲנִי הוֹלְכִין לְכַפּוֹר בְּבֵית דִּין. הִדָּא הִיא דְתַנִּי רַבִּי חִינְיָה. קֶרְבָּנִי לִי עַל-נִזְרוֹ. שְׁקִידִים נִזְרוּ לְקֶרְבָּנִי וְלֹא שְׁקִידוֹם קֶרְבָּנִי לְנִזְרוֹ. נִשְׁבַּעוּ חוּץ לְבֵית דִּין הִפְרִישׁוּ קֶרְבָּנִי וְאָמְרוּ. הֲרִי אֲנִי הוֹלְכִין לְכַפּוֹר בְּבֵית דִּין. מָה אֶתְ עֲבִיד לִיה. כְּמִי שְׁקִידָם חָטְאוּ לְקֶרְבָּנִי אוּ מֵאַחַר שְׁאִין חִיבִין אֲלָא בְּבֵית דִּין כְּמִי שְׁקִידָם קֶרְבָּנָם לְחָטְאִים.

**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*<sup>49</sup>. 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 sin<sup>50</sup>?

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) כִּפְרִי מִתְנִיתָהּ. כִּפְרִי אֶחָד וְהוֹדָה אֶחָד הַכּוֹפֵר חַיִּב. אָמַר רַבִּי יוֹסֵי. מִתְנִיתָהּ וְהוֹדָה שְׁנֵיהֶם בּוֹ שִׁנִּי בְּתוֹךְ כְּדִי דִּבּוּר הָרִאשׁוֹן. שְׂאִים נִחְזָר בּוֹ רִאשׁוֹן מִקְבְּלִין אוֹתוֹ. נַעֲשֶׂה שִׁנִּי רִאשׁוֹן.

So is the Mishnah: “If one disavowed but one confessed, the one who disavowed is liable.”<sup>51</sup> 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 first<sup>52</sup>.

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.

35c line 65) הָיוּ עֹשְׂרָה. אֵית תַּנְיֵי תַנְי. הָרֵאשׁוֹן חֵיב וְכוּלָּן פְּטוּרִין. אֵית תַּנְיֵי תַנְי. הָאֲחֵרוֹן פְּטוּר וְכוּלָּן חֵיבִין. מֵאן דָּמַר. רֵאשׁוֹן חֵיב וְכוּלָּן פְּטוּרִין. כְּמֵאן דָּמַר. תַּתְּקִינִים עֵדוֹת בְּשֹׁאֵר. מֵאן דָּמַר. אֲחֵרוֹן פְּטוּר וְכוּלָּן חֵיבִין. כְּמֵאן דָּמַר. עֵדוֹת שֶׁבְטָלָה מִקְצֵתָהּ בְּטָלָה כּוּלָּהּ. אָמַר רַבִּי יוֹסֵי. מִתְּנִיתָהּ אֶמְרָה כֵּן. הָיוּ שְׁתֵּי כֹתֵי עֵדִים. לֹא מֵרֵאשִׁיתָ שְׁתֵּים. הָא אַחַת עֵדוֹת שֶׁבְטָלָה מִקְצֵתָהּ בְּטָלָה כּוּלָּהּ.

If they were ten<sup>53</sup>. There are Tannaïm who state, the first one is liable and all the rest are not liable. There are Tannaïm 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 invalidated<sup>54</sup>. Rabbi Yose said, the Mishnah says so: “if there were two groups of witnesses.” He only said “two”. Therefore if there had been one<sup>55</sup>, 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 אֲנִי עֲלֵיכֶם אִם לֹא תְּבוֹאוּ וְתַעֲדוּנִי שְׁמֵשׁ לִי בְּיַד פְּלוֹנֵי פִקְדוֹן וְתִשׁוּמַת יָד וְגִזְל וְאֶבְדָּה. שְׁבוּעָה שְׂאִין אֲנִי יוֹדְעִין לֹךְ עֲדוּת אִין חֵיבִין אֶלָּא אַחַת. שְׁבוּעָה שְׂאִין אֲנִי יוֹדְעִין שְׁמֵשׁ לֹךְ בְּיַד פְּלוֹנֵי פִקְדוֹן וְתִשׁוּמַת 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 one<sup>56</sup>.

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 אֲנִי עֲלֵיכֶם אִם לֹא תְּבוֹאוּ וְתַעֲדוּנִי כֹל. וּמִיָּמִין שְׂאִינוּ מְדַבֵּר אֶלָּא בְּתַבִּיעַת מְמוֹן. אָמַר רַבִּי לִיעֶזֶר. נֹאמַר כָּאן אוֹיִים וְנֹאמַר אוֹיִים בְּפִקְדוֹן. מַה אוֹיִים הָאֲמוּרִים בְּפִקְדוֹן אֵינוּ מְדַבֵּר אֶלָּא בְּתַבִּיעַת מְמוֹן. אִף אוֹיִים הָאֲמוּרִים כָּאן אֵינוּ מְדַבֵּר אֶלָּא בְּתַבִּיעַת מְמוֹן. אוֹיֵי רוֹצֵחַ יוֹכִיחוּ שְׂאִינָן מְדַבְּרִין בְּתַבִּיעַת מְמוֹן. דְּנִין אוֹיִין שְׁלֵשׁ עֲמָהוּן שְׁבוּעָה מֵאוֹיִין שְׁלֵשׁ עֲמָהוּן שְׁבוּעָה. וְאֵל יוֹכִיחוּ אוֹיֵי רוֹצֵחַ שְׂאִין עֲמָהוּן שְׁבוּעָה. אוֹיֵי סוֹטָה יוֹכִיחוּ. שְׁלֵשׁ עֲמָהוּן שְׁבוּעָה וְאֵינוּ מְדַבֵּר בְּתַבִּיעַת מְמוֹן. דְּנִין אוֹיִין שְׁלֵשׁ עֲמָהוּן שְׁבוּעָה וְאֵין עֲמָהוּן כֹּהֵן מֵאוֹיִין כְּמוֹת אֵילוֹ. וְאֵל יוֹכִיחוּ אוֹיֵי סוֹטָה שְׁלֵשׁ עֲמָהוּן אִף כֹּהֵן. אוֹיֵי בֵּיטוּי שְׁפָתַיִם יוֹכִיחוּ שְׂאִינָן מְדַבְּרִין בְּתַבִּיעַת מְמוֹן. דְּנִין אוֹיִין שְׁעֵשָׂה בְּהוֹן דָּוֹן כְּשִׁנְגָה מֵאוֹיִין כְּמוֹתָן. וְאֵל יוֹכִיחוּ אוֹיֵי בֵּיטוּי שְׁפָתַיִם שְׁלֵשׁ עֲמָהוּן בְּהוֹן דָּוֹן כְּשִׁנְגָה. רַבִּי עֲקִיבָה אוֹמַר. לֵשׁ מֵאֶלֶּה חֵיב וְיֵשׁ מֵאֶלֶּה פְטוּר. דְּבַר מְמוֹן חֵיב וְשְׂאִינוּ מְמוֹן פְטוּר. רַבִּי שְׁמַעוֹן אוֹמַר. חֵיב כָּאן וְחֵיב בְּפִקְדוֹן. מַה פִּקְדוֹן אֵינוּ מְדַבֵּר אֶלָּא בְּתַבִּיעַת מְמוֹן אִף כָּאן אֵינוּ מְדַבֵּר אֶלָּא בְּתַבִּיעַת מְמוֹן.

**Halakhah 5**: “I am putting an oath on you that you should come and testify for me,” etc. <sup>57</sup>From where that this only refers to monetary claims? Rabbi Eliezer said, it uses here “or” and it uses “or” with a deposit<sup>58</sup>. 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 disprove<sup>59</sup> 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 disprove<sup>60</sup> 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 disprove<sup>61</sup> since they do not refer to monetary claims. One argues about “or” where He made intent equal to error<sup>62</sup> 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 liable<sup>63</sup>.

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<sup>41,64</sup>.

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) Perek 17(1)*.

64 Babli 33b, *Sifra Hova (Wayyiqra 2) Perek 17(2)*.

משנה ו: משיביע אני עליכם אם לא תבואו ותעידוני שיש לי ביד פלוני פקדון חטים ושעורים ובוסמין. שבועה שאין אנו יודעים לה עדות, אין חייבין אלא אהת. שבועה שאין אנו יודעים לה עדות שיש לה ביד פלוני חטים ושעורים ובוסמין, חייבין על כל אחת ואחת:

**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<sup>66,65</sup>.

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 ושללא בראייה. בראייה ושללא בדיעה. בדיעה שלא בראייה בממון היד עבדה. תן לי מאתים זו שיש לי בנד. אין לך בנדי. ולא הודיתה לי בפני פלוני ופלוני. לאמרו ואני נותן. זו היא ידיעה שאין עמה ראייה. אתון ואמרו. אין דאודי ליה ואין דגזליה לית אגן נדעין. ואין דאזפיה לן נדעין. בראייה בלא בדיעה בממון היד עבדה. תן לי מאתים זו שיש לי בנד. אין לך בנדי. ולא מניתי לך במושב פלוני ופלוני. לאמרו ואני נותן. זו היא ראייה שאין עמה ידיעה. אתון ואמרו. אין מנה ואין דגזליה לן נדעין. ואין מישאל ליה לן נדעין. תן לי קנס בתי שהוא בנד. והוא אומר. לא נתחייבתי קנס ממי. והעדים מעידן שנתחייב קנס. ולי נן נדעין אין קנס ברתייה אין קנס איתא אוחרי. אנסתה ופיתית את בתי. והוא אומר. לא אנסתי ופיתיתי אשה ממי. ועדים מעידן שאנס אשה. ולי נן נדעין אין ברתייה הנה אין איתא חורי. הרגת שורי קיצצתה נטיעותי. והוא אומר. איני יודע. חיב. אתה אמרת לי להרוג ולקוץ. הולכין אחר רוב נטיעות. מה הוא. הולכין אחר רוב נטיעות. אמר רבי תנאי. אין הנה תורה נגחן הוא מר ליה. אם היו נטיעותיו בטילות הוא מר ליה. אמר רבי יודן. אין אומר בממון. מאחר דו יכיל 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. <sup>66</sup>It was stated: Rabbi Yose the Galilean says, why does the verse say, *and he is a witness, or saw, or knew*<sup>67</sup>, etc.? I said this only for testimony which may be accepted about knowing without seeing, or seeing without knowing.

<sup>68</sup>How 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 know<sup>69</sup>.

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 me<sup>70</sup>.” But he says, “I never in my life was found liable for a fine.” Witnesses testify that he was found liable for a fine<sup>71</sup>, 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 woman<sup>71</sup>, 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 liable<sup>72</sup>. “You told me to kill and cut down,” one follows the majority of orchards. What means, one follows the majority of orchards? Rebbi Ḥaggai said, if his ox was goring, he would have told him; if the orchard was barren, he would have told him<sup>73</sup>. Rebbi 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 liable<sup>74</sup>.

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 עֲדִי “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:** מושביע אני עליכם אם לא תבואו ותעידוני שמש לי ביד פלוני נזק ונחצי נזק תשלומי כפל תשלומי ארבעה וחמשה שאנס איש פלוני ופתה את בתו ושהכני בני ושהכל בי חברי ושהדליק את גדישו ביום הכפורים הרי אילו חייבין:

**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 damages<sup>75</sup>, double restitution or quadruple and quintuple restitution<sup>76</sup>, that X raped or seduced my daughter<sup>70</sup>, or that my son hit me<sup>77</sup>, or that my neighbor injured me<sup>78</sup>, or that he set fire to my grain stack on the Day of Atonement<sup>79</sup>,” these are liable.

**משנה ח:** מושביע אני עליכם אם לא תבואו ותעידוני שאני כהן שאני לוי שאני בן גרושה שאני בן חלוצה שאיש פלוני כהן שאיש פלוני לוי שאינו בן גרושה שאינו בן חלוצה שאנס איש פלוני ופתה את בתו ושהכל בי בני ושהכל בי חברי ושהדליק גדישו בשבת הרי אילו פטורין:

**Mishnah 8:** “I am putting an oath on you that you should come and testify for me that I am a Cohen<sup>80</sup>, that I am a Levite<sup>81</sup>, that I am not the son of a divorcee, that I am not the son of a woman having received *ḥalīṣah*<sup>82</sup>, that X raped or seduced his daughter<sup>83</sup>, or that my son injured me<sup>77</sup>, or that my neighbor injured me or set fire to my grain stack on the Sabbath<sup>84</sup>,” these are not liable<sup>85</sup>.

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. *Gittin* 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

מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם כּוֹל. הַלְכָה ח: מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם כּוֹל. נֶפֶשׁ  
כִּי־תִחַטֵּא נֶפֶשׁ כִּי־תִחַטֵּא לְגִזְרָה שְׁוָה. מֵה נֶפֶשׁ כִּי־תִחַטֵּא שֶׁנֶּאֱמַר לְהֵלֵךְ תְּבִיעַת מְמוֹן וְיֵשׁ לוֹ.  
אִךְ נֶפֶשׁ כִּי־תִחַטֵּא שֶׁנֶּאֱמַר לְהֵלֵךְ בְּאֵן תְּבִיעַת מְמוֹן וְיֵשׁ לוֹ.

**Halakhah 7:** “I am putting an oath on you,” etc. **Halakhah 8:** “I am putting an oath on you,” etc. <sup>86</sup>*A person who would sin, a person who would sin as an equal cut*<sup>31</sup>. Since *a person who would sin* which was said further on refers to an active monetary claim<sup>87</sup>, 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 *Pereq 11(4)*.

87 There is liability for a sacrifice only if the claimant in a suit for breach of promise. the requested testimony was for the claimant

מִשְׁנֵה ט: מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם אִם לֹא תְבוֹאוּ וְתַעֲדוּנִי שֶׁאֲמַר אִישׁ פְּלוֹנִי לֵיתֵן לִי  
מֵאֲתָם זֶה וְלֹא נָתַן לִי הָרִי אֵילֵו פְּטוּרִים שֶׁאִין חֵיבִין אֲלֵא עַל שְׁבוּעַת מְמוֹן כְּפִקְדוֹן:

**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*<sup>88</sup> but did not give them to me.” These are not liable<sup>87</sup> since one is liable only for an (oath about)<sup>89</sup> 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

מִשְׁנֵה ט: מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם וְכוּל'. לֵית הָדָא פְּלִגְמָא עַל רִישׁ לְקִישׁ דְּאֲמַר. אִין  
מְמוֹן אֲצֵל מְכוֹת. פְּתֵר לֵה כְּרַבִּי מֵאִיר דְּאֲמַר. לֹקְהָ וּמְשֻׁלָּם. מְכַל־מְקוּם לֹא הֶפְסִידוּ מְמוֹן.  
פִּינּוּ דְּלֵא הִוָּה בְּעֵי מֵיתָן לֵיה וְלֵא יְהַב לֵיה כְּמִי שֶׁהֶפְסִידוּ מְמוֹן.

**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

flogging<sup>90</sup>. He explains it following Rabbi Meïr who said, he is flogged and he pays<sup>91</sup>.

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 money<sup>92</sup>.

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 עֵדוּת שֶׁתְּבוֹאוּ וּתְעִידוּנִי הֲרֵי אֵילֹוּ פְּטוּרִים מִפְּנֵי שֶׁקְדָּמָה שְׁבוּעָה לְעֵדוּת:

**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 liable<sup>93</sup> since the oath preceded the testimony<sup>94</sup>.

**משנה יא:** עָמַד בְּבֵית הַכְּנֶסֶת וְאָמַר מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם שְׂאֵם אַתֶּם יוֹדְעִים לִי עֵדוּת שֶׁתְּבוֹאוּ וּתְעִידוּנִי הֲרֵי אֵילֹוּ פְּטוּרִים:

**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 liable<sup>95</sup>.

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.

95 Since the imprecation is not directed at any specific persons.

94 This sentence is elliptic. The oath

רַבִּי יוֹסֵי רַבִּי יַעֲקֹב בַּר זְבִדִי אָבָהוּ בְּשֵׁם רַבִּי יוֹחָנָן. אָמַר לִיתִן מִתְּנָה לְחַבִּירוֹ וּבִיקֵשׁ לְחַזֵּר בּוֹ חוּזֵר. רַבִּי יַעֲקֹב בַּר זְבִדִי בְּעֵאמָר קוֹמִי רַבִּי אָבָהוּ. וְאָהָר הוּ לֹא בְּצִדָּק הוּא. וְהִין צִדָּק אָמַר. בְּשִׁעָה שְׂאֵמַר הִין שְׂלִצְדָּק הִנָּה.

**Halakhah 10:** “I am putting an oath on you,” etc. <sup>96</sup>Rebbi Yose, Rebbi Jacob bar Zavdi, Rebbi Abbahu in the name of Rebbi Johanan: If somebody wanted to change his mind after he had promised a gift to another person, he may change his mind. Rebbi Jacob bar Zavdi asked before Rebbi Abbahu: Did He not say “a true yes”<sup>97</sup>? At the moment when he said it, it was a true yes.

96 *Ševi`it* 10:9 Notes 133-134; *Giṭtin* 6:1 Note 39, *Bava meši`a* 4:2 Note 49; *Babli Bava meši`a* 49a, *Bekhorot* 13b; *Sifra Qedošim Pereq* 8(7).

of the Hebrew כן “yes”. It shows that י was pronounced like י־ (Itacistic η = י־). The verse is read as exhortation to be honest in business dealings.

97 *Lev.* 19:36. The pun identifies the measure הין with the Aramaic equivalent הין

(35d line 42) לְמַה. מְשוּם שְׂאֵינוּ יוֹדְעֵ בְּהוֹן אוֹ מְשוּם שְׂאֵין מִתְּבַוֵּין לְהוֹן. מַה נִּפְקֵ מִבְּיַנְיָהוּן. מְשַׁכְּן שְׁנַיִם שְׁנַיִם. אִין תִּימַר מְשוּם שְׂאֵינוּ יוֹדְעֵ בְּהוֹן. יוֹדְעֵ בְּהוֹן. הוּי לִית טַעְמָא דְלֹא מְשוּם שְׂאֵין מִתְּבַוֵּין לְהוֹן.

Why<sup>98</sup>? Because he does not know them, or because he does not intend to ask them<sup>99</sup>? 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 them<sup>100</sup>.

98 This refers to Mishnah 11, that a wholesale imprecation is invalid.

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

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

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 לְשְׁנַיִם מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם אִישׁ פְּלוֹנִי וּפְלוֹנִי שְׂאֵם אַתֶּם יוֹדְעִין לִי עֵדוּת שֶׁתְּבוֹאוּ וּתְעִידוּנִי וְהֵם שִׂוְדְעִין לוֹ עֵדוּת עַד מִפֵּי עַד אוֹ שְׁהִיָּה אֶחָד מֵהֶן קָרוֹב אוֹ פְּסוּל הָרִי אֵילוֹ 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 witness<sup>101</sup>, 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 the defendant to swear; he never 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 לְשְׁנַיִם מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם כּוֹל'. רַבִּי מָנָא שָׁמַע מִדְּבַתְרִיָּה אוֹ שְׁהִיָּה אֶחָד מֵהֶן קָרוֹב אוֹ פְּסוּל. הָא לֹא הִיָּה אֶחָד מֵהֶן קָרוֹב אוֹ פְּסוּל חִיבִין. וַיִּוָּדַע הוּא בְּהוֹן. הָיִי לִית טַעֲמָא דְלֹא מְשוּם שְׂאֵין מִתְּכַוֵּין לָהּ. רַבִּי יוֹסִי שָׁמַע לָהּ מִקְדָּמִיתָא. מִפְּנֵי שֶׁקְדָּמָה שְׁבוּעָה לְעֵדוּת: הָא לֹא קְדָמָה שְׁבוּעָה לְעֵדוּת חִיבִין. וַיִּוָּדַע הוּא בְּהוֹן. הָיִי לִית טַעֲמָא דְלֹא מְשוּם שְׂאֵין מִתְּכַוֵּין 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 them<sup>102</sup>.

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. Therefore it may be assumed that also in the case of Mishnah 11 it would

be ineffective even if he knew exactly whom he intended.

**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 slave<sup>103</sup> 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 claimant<sup>104</sup>.

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 עוולו: לא. מפי התובע. מתניתין צריכה למה דאמר רבי לעזר ומה דמר רבי לעזר צריכה למתניתין. אילו תנינו ולא תנא רבי לעזר הוין אפרין. ישמענו מפי התובע ולא נשבעו לנתבע חיבין. הוי צורכה למה דאמר רבי לעזר. אילו תנא רבי לעזר ולא תנינו הוין מרין. ישמענו מפי הנתבע ולא נשבעו לתובע חיבין. הוי צורכה למתניתין וצריכה למה דמר רבי לעזר עד שישמענו מפי התובע וישבעו 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?* Not<sup>105</sup>, 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 לֹא which is read both as לוֹ and as לֹא. In the first version, אִם לוֹ נִגִיד, 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, אִם לֹא נִגִיד, the liability is triggered if he does not testify.

**מִשְׁנֵה יוֹד:** מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם מִצְוָה אֲנִי עֲלֵיכֶם אוֹסְרֶכֶם אֲנִי הָרִי אֱלוֹ חַיִּיבִין. בְּשֵׁמוֹם וּבְאֲרִיז הָרִי אֱלוֹ פְטוּרִין. בְּאֵלִ"ף דְּל"ת, בְּיוֹ"ד ה"א בְּשֵׁדִי בְּצִבְאוֹת בְּחִנּוּן וְרַחוּם בְּאֲרֵךְ אַפַּיִם וְרַב חֶסֶד וּבְכָל תְּכַנְנִיז הָרִי אֱלוֹ חַיִּיבִין. תְּמַקְלֵל בְּכוֹלֵן חַיִּיב דְּבָרֵי רַבִּי מֵאִיר וְחֻכְמִים פּוֹטְרִין. תְּמַקְלֵל אָבִיו וְאִמּוֹ בְּכוֹלֵן חַיִּיב דְּבָרֵי רַבִּי מֵאִיר וְחֻכְמִים פּוֹטְרִין. תְּמַקְלֵל עַצְמוֹ וְחֻבְרֵוֹ בְּכוֹלֵן עוֹבֵר בְּלֹא תַעֲשֶׂה. יִכְבֶּה אֱלֹהִים וְכֵן יִכְבֶּה אֱלֹהִים זֶה הִיא אֵלֶּה תְּכַתּוּבָה בְּתוֹרָה. וְיִבְרַךְ וְיִיטִיב לָךְ רַבִּי מֵאִיר מְחַיֵּב וְרַבִּי יְהוּדָה פּוֹטֵר:

**Mishnah 14:** “I put an oath upon you, I command you, I bind you,” these are liable<sup>106</sup>. “By Heaven and Earth,” they are not liable<sup>107</sup>. “By יה-וה, by יה-וה, by the Almighty, by Sabaoth, by the Gracious and Merciful, by the Forbearing and Most Benevolent,” and all substitute names<sup>108</sup>, they are liable. One who curses by any of these is liable, the words of Rabbi Meïr; but the Sages declare him not liable<sup>109</sup>. One who curses his father or mother by any of these is liable, the words of Rabbi Meïr; but the Sages declare him not liable<sup>110</sup>. One who curses himself or another person by any of these violates a prohibition<sup>111</sup>. “May God punish you, so may God punish you,” this is the imprecation mentioned in the Torah<sup>67</sup>. “May He not punish you, may He bless you, may He do well with you,” Rabbi Meïr declares liable<sup>112</sup> but Rabbi Jehudah declares not liable<sup>113</sup>.

106 These are valid versions of a summons to testify.

107 "Heaven" is not a sobriquet of God's Name.

108 יה-וה stands for Adonay, יה-וה 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.

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.

113 For R. Jehudah, what has been said explicitly is the only thing that counts.

35d line 58) **הלכה יד:** משביע אני עליכם כול' עד סופה. משביע אני עליכם סתם. חייבין. אוסרם אני כובלכם אני. חייבין.

**Halakhah 14:** “I put an oath upon you,” etc. to the end. “I put an oath upon you” without addition<sup>114</sup>, 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.

35d line 60) רבי יוחנן בשם רבי ינאי כמתניתין. ואית דמרין רבי אבהו בשם רבי יוחנן. כיני מתניתין. רבי מאיר מחייב ורבי יהודה פוטר. רבי מאיר כדעתיה ורבי יונה כדעתיה. דתנינן תמן. קללם בכנוי רבי מאיר מחייב וחקמים פוטרין:

Rebbi Johanan in the name of Rebbi Yannai, as our Mishnah<sup>115</sup>. 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.<sup>113</sup>” 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.<sup>116</sup>”

115 This seems to be a scribal error; one should read as in the next sentence כיני מתניתין “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 בבלאו. מהו ללקות. חברייא אמרי. אין לוקה. אמר לון רבי יוסי. למה. שהיא לא תעשה שאין בו מעשה. והרי הממיר והנשבע לשקר לאו שאין בו מעשה הוא.

“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 action<sup>117</sup>?

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) רבי יסא בשם רבי יוחנן. רבי מאיר היא דאמר. ממשמע לאו אתה שומע הין. אל יכפך אם תבוא ותעידני. הא אם לא תבוא ותעידני יכפך. אין לי אלא אלה שיש עמה שבועה. מניין שאין עמה שבועה כשיש עמה שבועה. תלמוד לומר ושמעיה אלה ושמעיה קול. לעשות שאין עמה אלה כשיש עמה אלה. הא אלה בלא שבועה לא. רבי יוסי בשם רבי יוחנן. לא שנייא. היא אלה בלא שבועה היא שבועה בלא אלה.

Rebbi Yasa in the name of Rebbi Joḥanan: Rebbi Meïr is the one who says that out of a negative one understands a positive<sup>118</sup>. “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*<sup>119</sup>, to make one without imprecation like one with an imprecation. Therefore not an imprecation without an oath. Rebbi Yasa in the name of Rebbi Joḥanan: There is no difference; an imprecation without oath is the same as an oath without an imprecation<sup>120</sup>.

118 This is the position of the Yerushalmi here and in 7:1 (Note 11), Eruvin 3 (21b l. 24), *Qiddušin* 3:4 Note 136, *Nedarim* 1:4

Note 158. (The explanation given there that the statement of R. Yasa in the name of R. Joḥanan 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. Meir 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 נהנת באנשים ובנשים ובקרוקים ובקרובים בכשירים ובפסולים בפני בית דין ושללא בפני בית דין מפי עצמו. ומפי אחר אינו חייב עד שיכפור בו בבית דין דברי רבי מאיר. ותכמים אומרים בין מפי עצמו בין מפי אחרים כיון שכתב 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 mouth<sup>1</sup>. From the mouth of another he is liable only if he denies in court, the words of Rebbi 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 latter<sup>2</sup>. What is he liable for in case of intentional violation? A reparation offering in the value of two Šeqalim<sup>3</sup>.

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 tetrachma 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 הַפְּקֻדוֹן כּוּל. תִּנִּי. מִפִּי עֲצָמוּ בְּשׁוּבַעַת הָעֵדוּת מֵהוּ לֵהוּיֹת כְּאֵלָה. מִפִּי עֲצָמוּ בְּשׁוּבַעַת הַפְּיָקְדוֹן מֵהוּ לֵהוּיֹת כְּאֵלָה. אָמַר רַבִּי יוֹסִי. מִפִּיֹן דְּכַתִּיב נִפְשׁ נִפְשׁ כְּמָה שְׁכּוּלְהוֹן כְּאֵן וְכוּלְהוֹן כְּאֵן. אָמַר רַבִּי מְנָא. אֵלָה בְּבֵית דִּין מִחֲלוּקֹת רַבִּי מֵאִיר וְחֻכְמִים. וְכֹחֵשׁ בְּעֵמִיתוֹ. לְכַשְׁמֵצָא וּוּדְוִיּוֹ בְּשׁוּבַעַת. פְּרִט לְמַכְחֵשׁ בְּאַחַד הַשְׁוֹתֵפִין. פְּרִט לְמַכְחֵשׁ בְּעֵדִים וּבִשְׂטָר. אָמַר רַבִּי יוֹסִי. הִדָּא אֲמַרְהּ. שְׁנִים שְׁלוֹי מֵאַחַד אֶף עַל גַּב דְּלָא כְּתִבִּין. אֲחֲרָאִין וְעָרְבָאִין זֶה לְזֶה. אֲחֲרָאִין וְעָרְבָאִין זֶה לְזֶה. וְלֹא עֲבָדִין כֵּן. שְׁנִים שְׁהַפְּקִידוּ כְּאַחַד וּבִיקֵשׁ הָאֶחָד לִיטוֹל אֶת שְׁלוֹי אִין שׁוּמַעִין לוֹ. וְנַעֲשֶׂה כְּכּוֹפֵר בְּחֻלְקוֹ וְיִהְיֶה חַיִּיב. אֶחָד שְׁהַפְּקִיד לְשְׁנַיִם. כְּפִר בּוֹ זֶה חַיִּיב. כְּפִר בּוֹ זֶה חַיִּיב. הַפְּקִיד לְהֵם שְׁנֵיהּ פְּרוּטָה. לֹא נִמְצָא מְבִיא קָרְבָן עַל חֲצֵי פְּרוּטָה. וְיִמָּה כָּא. אִילוּ נִשְׁבַּע וְנִשְׁבַּע וְנִשְׁבַּע שְׁמָא אִין מְבִיא קָרְבָן עַל חֲצֵי פְּרוּטָה. תִּמְן כָּל־שְׁבוּעָה חֻלָּה עַל שְׁנֵיהּ פְּרוּטָה. הִכָּא אִין שְׁבוּעָה חֻלָּה עַל שְׁנֵיהּ פְּרוּטָה.

**Halakhah 1:** “An oath about a deposit,” etc. <sup>4</sup>It 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 imprecation<sup>5</sup>? Rabbi Yose said, since it is written “a person, a person<sup>6</sup>”, 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 Sages<sup>7</sup>.

<sup>8</sup>*He lied to his fellow man*<sup>9</sup>, if his confession was eliminated by the oath<sup>10</sup>. It excludes one who lied to one of partners; it excludes one who lied where there are witnesses and a document<sup>11</sup>. 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 this<sup>12</sup>. If two made a joint deposit and one came to retrieve his property, one does not listen to him<sup>13</sup>. 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 liable<sup>14</sup>. If the deposit was worth one *peruta*, does this not result in each of them bringing a sacrifice for half a *peruta*<sup>15</sup>? What here? If one would swear, and swear, and swear, would he not bring a sacrifice for half a *peruta*<sup>16</sup>? There, each oath refers to a *peruta*’s worth. Here no oath refers to a *peruta*’s worth<sup>17</sup>.

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. Liebermann, 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) רבי לא ורבי יוחנן וריש לקיש תריהון אמרין. לית בן אדם. כמי שניצא וידויו בשבועה. למה. משום שמצויין למות. ושטר אינו מצוי לאבד. הוי לית טעמא אלא משום שמצויין לשבח עדותן. תמן תנינן. איכן שורי. אמר לו. אבד. משביעך אני. ואמר אמון.



וְהָעֵדִים מְעִידִין אוֹתוֹ שֶׁאֵלּוּ. מְשַׁלֵּם אֶת הַקֶּרֶן. הוֹדָה מֵעֲצָמוֹ מְשַׁלֵּם קֶרֶן וְחוֹמֶשׁ וְאֶשֶׁם. מִתְנַיִתִין בְּשֵׂאִין יוֹדֵעַ בְּעֵדִים. אֵתָא מִימַר לָךְ וְאֶפִּילוּ יוֹדֵעַ בְּעֵדִין. אָמַר רַבִּי יוֹסִי. וּמִתְנַיִתָּה אֶמְרָה כֵּן. הֵיוּ שְׂוֵתֵי כֹתְי עֲדִים. כִּפְרָה רֵאשׁוֹנָה וְאַחַר כֵּן כִּפְרָה שְׁנִיָּה. שְׂוֵתֵיהֶן חִיבוֹת. נִחָא רֵאשׁוֹנָה מִתְחַיִּיבַת. שְׁנִיָּה לְמָה. לֹא מְשׁוּם שְׂמַצוּיִן לְשִׁכַּח עֲדוּתָן.

6 אמרה | G - כך | G | כן | שנייה | G | השנייה | ניחא | G | 7 ראשונה | G | הראשונה | שנייה | G | השני' | - | G | היא מתחייבת | שמצוין | G | שהן מצוים | עדותן | G | עדותן והכה מ... מצוים לשבח עדותן

Rebbi La: Both<sup>18</sup> Rebbi Johanan and Rebbi Simeon ben Laqish both are saying, there is no "witnesses" here<sup>19</sup>. Why? Because they might die. But might not a document be lost? Therefore, the reason can only be that they might forget their testimony<sup>20</sup>. There, we have stated<sup>21</sup>: "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 sacrifice<sup>22</sup>." The Mishnah [applies] if he does not know that there are witnesses. He comes to tell you, even if he knows that there are witnesses<sup>23</sup>. 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.<sup>24</sup>" One understands that the first group becomes liable<sup>25</sup>. Why the second? Not because they might forget their testimony? <sup>26</sup>[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 renegeing 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 בּוּ. בֶּן עֲזַאִי אוֹמֵר. שְׁלֹשׁ אֲבִידוֹת הֵן. בְּיֹדַעַת בָּהּ וּבְמוֹצְאָהּ. בָּהּ וְלֹא בְּמוֹצְאָהּ. לֹא בָּהּ וְלֹא בְּמוֹצְאָהּ. רַבִּי חוּנְיָהּ בְּשֵׁם רַבִּי יְרֵמְיָהּ. כְּוֹלְהוֹן לְפִטוֹר. רַבִּי יַעֲקֹב בֶּר אֲחָא בְּשֵׁם רַבִּי יוֹסִי. לֵית כֵּן. רַבִּי יוֹסִי בְּעֵי. וַיְהִי כֵן הַפִּטוֹר. אָמַר רַבִּי מְנַא. לֵית כֵּן מִשְׁלֵשׁ אֲבִידוֹת. בְּיֹדַעַת בָּהּ וּבְמוֹצְאָהּ. בָּהּ וְלֹא בְּמוֹצְאָהּ. לֹא בָּהּ וְלֹא בְּמוֹצְאָהּ. בָּהּ וּבְמוֹצְאָהּ נֶן קִלְמִין. אֲלֵא שְׂמִכְחַשׁ בָּהּ וּבְמוֹצְאָהּ. בְּמוֹצְאָהּ וְלֹא בָּהּ. בָּהּ וְלֹא בְּמוֹצְאָהּ. כִּינִי מִתְּנִיתָהּ. בָּהּ וּבְמוֹצְאָהּ.

*He denied it*<sup>27</sup>, not him<sup>28</sup>. <sup>29</sup>“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 liability<sup>30</sup>. Rabbi Jacob bar Aḥa in the name of Rabbi Yose: This is not so<sup>31</sup>. 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.”<sup>32</sup> 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 finder<sup>33</sup>. So is the *baraita*: “About it and its finder.”

27 *Lev. 5:22.*

28 In *Sifra Hova (Wayyiqra 2) Perek 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) Perek 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. אמר לו תן לי הפקדון שיש לי בידך שבועה שאין לך בדי או שאמר לו אין לך בדי משביעך אני ואמר אמן הרי זה חייב. השביע עליו המושא פגמים בין בפני בית דין ובין שלא בפני בית דין וכפר חייב על כל אחת ואחת. אמר 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,<sup>34</sup>” or that he said to him, “I am holding nothing of yours;” “I am putting an oath upon you” and he said “Amen”<sup>35</sup>; 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 admit<sup>36</sup>.

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 שונה במקום שבאתה. מה מפי עצמו שנתאמר כאן חוץ לבית דין אף מפי עצמו שנתאמר כאן חוץ לבית דין. ורבנן דרשי גזירה שונה כאמור בה. מה מפי אחרים שנתאמר להלן בבית דין אף מפי אחרים שנתאמר כאן בבית דין.

**Halakhah 2:** “What is an oath about a deposit,” etc. <sup>37</sup>A 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 here<sup>38</sup> 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.”

36a line 76) 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.

<sup>39</sup>Rebbi 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 deposits switched. In structure and Notes 34,35.

36b line 5) רבי יודן קפודקיןא בעי. השביע עליו ה' פעמים מפי אחרים חוץ לבית דין פלום. הוא חייב על פולן אלא אחת. אמר רבי יוסי. ולא מתניתא היא. אמר רבי שמעון. מה טעם. מפני שיכולין לחזור ולהודות: וכאן הואיל ואין יכולין לחזור ולהודות אין חייבין 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 once<sup>40</sup>? 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.

35c line 46) 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 את 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 Meir considered “by his own words” as in court, would this determine the sacrifice on the first occasion, even without request<sup>41</sup>? It should come like the following:<sup>42</sup> “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*<sup>43</sup>?

41 This is a bad adaptation of the text in 4:3. Following R. Meir, 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.

(fol. 36a) **משנה ג:** הוּי חֲמִשָּׁה תּוֹכְעִין אוֹתוֹ אָמְרוּ לוֹ תַּן לָנוּ פִּיקְדוֹן שְׁמִשׁ לָנוּ בְּיָדְךָ. שְׁבוּעָה שְׂאֵין לָכֶם בְּיָדֵי אֵינּוּ חַיִּיב אֶלֶּא אַחַת. שְׁבוּעָה שְׂאֵין לָךְ בְּיָדֵי וְלֹא לָךְ וְלֹא לְךָ, חַיִּיב עַל כֹּל אַחַת וְאַחַת. רַבִּי אֱלִיעֶזֶר אוֹמֵר עַד שְׂאִימֵר שְׁבוּעָה בְּאַחֲרוֹנָהּ. רַבִּי שְׁמַעוֹן אוֹמֵר עַד שְׂאִימֵר שְׁבוּעָה לְכֹל אֶחָד וְאַחַד.

**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 one<sup>44</sup>.

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. Rabinovicz, *Diqduqe Soferim Ševuot*, p. 78, Note 1.

The majority [following R. Meir in *Sifra Hova (Wayyiqra 2) Perek 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.

המושבֵּע כְּנִשְׁבָּע. אָמַר רַבִּי לְעֵזֶר. לִית כָּאן. אֵלֶּא אִף בְּשִׁבְעַת הַפִּקְדוֹן נִעֲשֶׂה הַמוֹשְׁבֵּעַ כְּנִשְׁבָּע. הָיָה חֲמִשָּׁה תּוֹבְעִין אוֹתוֹ כּוֹל. יָכוֹל אִף בְּשִׁבְעַת הַפִּקְדוֹן לֹא עָשָׂה (36b line 14) *הלכה ג*: הָיָה חֲמִשָּׁה תּוֹבְעִין אוֹתוֹ כּוֹל. יָכוֹל אִף בְּשִׁבְעַת הַפִּקְדוֹן לֹא עָשָׂה הַמוֹשְׁבֵּעַ כְּנִשְׁבָּע. אָמַר רַבִּי לְעֵזֶר. לִית כָּאן. אֵלֶּא אִף בְּשִׁבְעַת הַפִּקְדוֹן נִעֲשֶׂה הַמוֹשְׁבֵּעַ כְּנִשְׁבָּע.

**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 oath<sup>45</sup>.

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) Perek 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 לְעֶזֶר וְהוּא שְׁבוּעָה תַחֲלִילָה וְסוּף. דְּבָרֵי חֲכָמִים הַזְכִּיר שְׁבוּעָה תַחֲלִילָה וְלֹא הַזְכִּיר בְּסוּף. אִו הַזְכִּיר בְּסוּף וְלֹא הַזְכִּיר תַחֲלִילָה עַל דְּעִתּוֹ דְּרַבָּנּוּ מִבֵּיא קָרְבָּן עַל כָּל־אַחַת וְאַחַת. עַל דְּעִתּוֹ דְּרַבִּי לְעֶזֶר מִבֵּיא קָרְבָּן אֶחָד. הַזְכִּיר שְׁבוּעָה תַחֲלִילָה וְסוּף עַל דְּעִתּוֹ דְּרַבָּנּוּ מִבֵּיא שְׁנֵי קָרְבָּנוֹת עַל כָּל־אַחַד וְאַחַד. עַל דְּעִתּוֹ דְּרַבִּי לְעֶזֶר מִבֵּיא קָרְבָּן אֶחָד עַל הַכֹּל. הַזְכִּיר שְׁבוּעָה בְּתַחֲלִילָה וְלֹא הַזְכִּיר בְּסוּף מֵהוּ שֶׁתְּחִילָה שְׁבוּעָה עַל הָאֲמָצְעִיִּים. אֵיתָא חֲמִי. אִילוּ הַזְכִּיר שְׁבוּעָה תַחֲלִילָה וְסוּף שְׁמָא הַזְכִּיר בְּאֲמָצְעִיִּים. וְתִימַר חֲלָה וְהֵכֵן חֲלָה.

Rebbi Johanan said: The words of Rebbi Eleazar, only if he mentioned “oath” at the start and at the end<sup>46</sup>. 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 everything<sup>47</sup>. If he mentions “oath” at the start but did not mention it at the end, does the oath fall on the middle ones<sup>48</sup>? 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 valid<sup>49</sup>.

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 קַפּוֹדְקִינָא בְּעֵי. שְׁבוּעָה חִיטּוֹן וְשַׁעֲוֵרִין וְכוּסְמִין אִין לָךְ בְּגִדֵי מְהוּ. כְּמִי שְׁהַזְכִּיר שְׁבוּעָה תַחֲלִילָה וְסוּף. מֵאַחַר שֶׁעַל דְּיֵי זֶה וְעַל דְּיֵי זֶה שְׁבוּעָה מִתְקַיְיֶמֶת אִינוּ חַיִּיב אֱלָא אַחַת. אִין לָךְ בְּגִדֵי חִיטּוֹן וְשַׁעֲוֵרִין וְכוּסְמִין שְׁבוּעָה. כְּמִי שְׁהַזְכִּיר שְׁבוּעָה תַחֲלִילָה וְסוּף. מֵאַחַר שֶׁעַל דְּיֵי זֶה וְעַל דְּיֵי זֶה שְׁבוּעָה מִתְקַיְיֶמֶת אִינוּ חַיִּיב אֱלָא אַחַת. אִין בְּשְׁבוּעַת בֵּיטוּי כֵּן. שְׁבוּעָה שְׁלֵא אוֹכֵל. שְׁלֵא אוֹכֵל שְׁבוּעָה. עַל דְּעִתּוֹ דְּרַבָּנּוּ מִבֵּיא קָרְבָּן עַל כָּל־אַחַת וְאַחַת. עַל דְּעִתּוֹ דְּרַבִּי לְעֶזֶר מִבֵּיא אֶחָד עַל הַכֹּל. אוּף רַבִּי לְעֶזֶר מוֹדָה. שְׂאִינוּ אֱלָא כְּמַזְרֵז עֲצָמוּ מִן הָאִישׁוּרִין.



לא אֶתִּיא דְּלָא אָמַר הוּא לְשֹׁעֲבַר. שְׂבוּעָה שְׂלָא אֶכְלֵתִי. שְׂלָא אֶכְלֵתִי שְׂבוּעָה. עַל דְּעֵתִין דְּרַבִּנָּן מְבִיא שְׁנֵי קֶרְבָּנוֹת עַל כָּל־אֶחָת וְאֶחָת. עַל דְּעֵתִיהָ דְּרַבִּי לְעִזָּר מְבִיא אֶחָד בְּכָל־אֶחָד וְאֶחָד.

Rebbi Yudan from Cappadocia asked: What about “an oath that neither wheat, nor barley, nor spelt I am holding for you<sup>50</sup>”? Is it as if he had mentioned “oath” at beginning and end<sup>51</sup>? Since the oath would be confirmed by any one of them, he is liable only once<sup>52</sup>. “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 once<sup>53</sup>. 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 one<sup>54</sup>. In Rebbi Eleazar’s opinion does he bring one for the entirety? Even Rebbi Eleazar will agree that he is only emphasizing the prohibitions<sup>55</sup>. 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)<sup>56</sup>.

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”):

$$\neg(AvBvC) = \neg A \& \neg B \& \neg C,$$

$$\neg(A \& B \& C) = \neg A v \neg B v \neg C.$$

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 חיטין וחיטין אין לה בגדי. מהו. נישמענה מן הדא. לא ממקום פלוני ולא ממקום פלוני חיב. אמר רבי יוסי. מקומות הרבה עשו אותן קמינין הרבה. אילו מר. לא מאותו המקום ולא מאותו המקום. יאות.

רבי חגי בעי. י' שבועות אין לה בגדי. מהו.

רבי יוסי בעי. שבועה שבועה אין לה בגדי. מהו. אמר רבי יוסי. נשמענה מהדא. שבועה שלא אוכל כפר זו. שבועה שלא אוכלינה. ואכלה. חיב אחת. מפני שהזכיר זו. הא לא הזכיר זו חיב בכל-אחת ואחת. אף בשבועת ביטוי כן. שבועה שאוכל נבילה ופת חיטין ופת שעורין ופת כוסמין. מאחר שפטור על הנבילה פטור על השאר.

Rebbi Abbahu, Rebbi Jeremiah<sup>57</sup> 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 useful<sup>58</sup>.

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.<sup>59</sup>” 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 meat<sup>60</sup> 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 גזל ואבדה שיש לי בידך שבועה שאין לך בידי אינו חייב אלא אהת. שבועה שאין לך בידי 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 item<sup>61</sup>.

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 יקא מודה בה. נמצא שיש בידו חטים מהו שתחול שבועה בשאך המינין. חבריא אמרי. לא חלה. רבי זירא אמר. חלה. אמר רבי יעקב בר אבא. מתניתי 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. שתיקה מותרת. 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 דאמר רבי יוחנן. דברי רבי שמעון נמצא שאין בידו חטים פטור בשאך. במתפיס באומר. שעורין יהו כחטיין. כוסמין יהוא כחטיין. 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 כאמרת. הריני נזירה ל' יום. רבי שמעון כדעתיה דאמר. במגבה הדבר תלוי.

**Halakhah 4:** “Give me the deposit, the loan,” etc. <sup>62</sup>Rebbi 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)<sup>63</sup> 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 Aḥa 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. <sup>64</sup>If 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)<sup>65</sup> 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”<sup>66</sup>? Rabbi Simeon follows his own opinion, for he said, it depends on the collection<sup>67</sup>.

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.

מִשְׁנֵה ה': תָּן לִי חִטִּים וְשַׁעֲוִירִים וְכוֹסְמִין שְׂאֵשׁ לִי בְיָדְךָ שְׂבוּעָה שְׂאֵין לְךָ בְּיָדִי אֵינִי חַיִּב אֶלָּא אַחַת. שְׂבוּעָה שְׂאֵין לְךָ בְּיָדִי חִטִּין וְשַׁעֲוִירִין וְכוֹסְמִין חַיִּב עַל כָּל־אַחַת וְאַחַת. רַבִּי מֵאִיר אָמַר אֶפִּילוֹ אָמַר חֲטָה וְשַׁעֲוִירָה וְכוֹסְמֹת חַיִּב עַל כָּל־אַחַת וְאַחַת:

**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 one<sup>61</sup>. Rabbi Meïr says, even if he says, “wheat, and barley, and spelt,<sup>68</sup>” 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. Meïr is read as singular for the anonymous Tanna.

36b line 63) **הַלְכָה ה':** תָּן לִי חִטִּין וְשַׁעֲוִירִין כּוֹל. אָמַר רַבִּי יוֹחֲנָן. דְּבָרֵי רַבִּי יוֹדוּ נִכְלָלִין בְּקֶרֶבּוֹ אֶחָד וְנִפְרָטִין בְּג' קְרֻבָּנוֹת. הֵיךְ עֲבִידָא. פְּרוּטָה חִטִּין וּפְרוּטָה שַׁעֲוִירִין וּפְרוּטָה כּוֹסְמִין נִכְלָלִין בְּקֶרֶבּוֹ אֶחָד וְנִפְרָטִין לְג' קְרֻבָּנוֹת. פְּרוּטָה שְׁלִישׁ חִטִּין פְּרוּטָה שְׁלִישׁ שַׁעֲוִירִין פְּרוּטָה שְׁלִישׁ כּוֹסְמִין מֵהוּ שְׂאִיטְרַפּוּ כּוֹלָן. אֵיתָא מִמֵּי. אֵילֵּוּ הֵיוּ בְּיָדוֹ כַּמָּה מֵינִין בְּפְרוּטָה אֶפִּילוֹ כּוֹן נִכְלָלִין וְנִפְרָטִין. לֵי דָּה מִיֵּלָה. לְחִיבּוֹ בְּקֶרֶבּוֹ. הֵיוּ בְּיָדוֹ ד' מֵינִין. ב' מֵינִין בְּפְרוּטָה ב' מֵינִין בְּב' פְּרוּטוֹת. אֶפִּילוֹ כּוֹן נִכְלָלִין וְנִפְרָטִין. דְּאָמַר רַבִּי יוֹחֲנָן בְּשֵׁם רַבִּי יַנָּאי. וְשׂוֹאֵל אֲנִי בְּשֵׁלֹם פְּלוּנִי. חֲזָקָה לְכַל חֲתָם. שׂוֹאֵל אֲנִי בְּשֵׁלֹם פְּלוּנִי. לֹא חֲתָם אֶלָּא בְּשֵׁאִילַת שְׁלֹם. רִישׁ לְקִישׁ אָמַר. שׂוֹאֵל אֲנִי בְּשֵׁלֹם פְּלוּנִי. חֲזָקָה לְכַל חֲתָם. אִי זָהוּ כָּלֵל. רַבִּי יוֹחֲנָן אָמַר. אִישׁ פְּלוּנִי מִגְרֵשׁ פְּלוּנִי וּפְלוּנִי פְּלוּנִי. אִי זָהוּ כָּלֵל. רִישׁ לְקִישׁ אָמַר. אֲנִי פְּלוּנִי וּפְלוּנִי מִגְרֵשִׁין נְשִׁינִי מִמְּקוֹם פְּלוּנִי. אָמַר רַבִּי זִירָא. מוֹדָה רַבִּי יוֹחֲנָן שְׂאֵם הַזִּכִּיר גִּירוּשִׁין לְכָל־אַחַת וְאַחַת שְׂצָרִיד לִיתָן טְפוֹס וְעֵדִים לְכָל־ אֶחָד וְאַחַד. חִילִּיה דְּרַבִּי יוֹחֲנָן מִהֶדָּא. שְׂאֵינִי נִהְנֶה לָּהּ לָּהּ קֶרֶבּוֹ לָּהּ קֶרֶבּוֹ. צְרִיכִין פְּתַח לְכָל אֶחָד וְאַחַד: אָמַר רַבִּי יוֹסִי. מִתְּנִינְהָ מִסִּיעָה לְרַבִּי יוֹחֲנָן. הִנֵּה כְּתוּב טְפוֹס לְכָל־אֶחָד וְאַחַד וְהֵעֲדִים לְמִטָּה. אֵת שְׂהֵעֲדִים נִיקְרִין עִמּוֹ כְּשֵׁר:

**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 sacrifices<sup>69</sup>. 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 detail<sup>70</sup>.

<sup>71</sup>As Rebbi Johanan said in the name of Rebbi Yannai: “And I am greeting X,” one can assume that he signed concerning everything; “I am greeting X,” he signed only for the greeting. Rebbi Simeon ben Laqish said, “I am greeting X,” one can assume that he signed concerning everything. What means “collectively”? Rebbi Johanan said, “X divorces Y and Z U.” What means “collectively”? Rebbi Simeon ben Laqish said, “We, X and Z, divorce our wives at place A.” Rebbi Ze’ira said, Rebbi Johanan agrees that if he mentions divorce for each one separately that he needs the typical text<sup>72</sup> and witnesses for each one separately. The strength of Rebbi 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.<sup>73</sup>” Rebbi Yose said, the Mishnah supports Rebbi 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.<sup>74</sup>”

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 טִפְסָה “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.

36c line 4) שְׁמוּאֵל אָמַר. פָּרַט רַבִּי מֵאִיר כָּלֵל לְרַבִּי יְהוֹנָן. פָּרַט רַבִּי יְהוֹנָן כָּלֵל לְרַבִּי מֵאִיר. רַבִּי שְׁמוּאֵל בְּשֵׁם רַבִּי זִיְרָא. מִיִּלְיָהוּן דְּרַבְנָן אֶמְרִין שְׂאִין פָּרְטוּ שְׁלָרְבִי מֵאִיר כָּלֵלוּ שְׁלָרְבִי יְהוֹנָן. דָּמַר רַבִּי יוֹחָנָן בְּשֵׁם רַבִּי יְנָאִי. וְשׁוֹאֵל אֲנִי בְּשֵׁלוֹם פְּלוּנִי. חֲזָקָה לְכָל חֵתִים. שׁוֹאֵל אֲנִי בְּשֵׁלוֹם פְּלוּנִי. לֹא חֵתִים אֶלָּא בְּשֵׁאִילַת שְׁלוֹם. אִם אוֹמֵר אֶתְּ. פָּרַט רַבִּי מֵאִיר כָּלֵל לְרַבִּי יְהוֹנָן.

אמר. שואל אני בשלום פלוני. חזקה לכל חתם. אמר רבי יוסי. מתניתה 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. כלל ופרט הוא. אמר. חיטין ושעורין וכוסמין. כלל שאין עמו פרט.

<sup>75</sup>Samuel 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 details<sup>76</sup>.

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**: אַנְסָתָהּ וּפִיתִיתָהּ אֶת בְּתִי וְהוּא אוֹמֵר לֹא אֲנִסְתִּי וְלֹא פִיתִיתִי. מִשְׁבִּיעֶדְךָ אֲנִי וְאֹמֵר אֲמֵן חַיִּיב. רַבִּי שְׁמַעוֹן פּוֹטֵר שְׂאִינוֹ מִשְׁלֵם קָנָם עַל פִּי עֲצוֹמוֹ. אֲמָרוּ לוֹ אַף עַל פִּי שְׂאִינוֹ מִשְׁלֵם קָנָם עַל פִּי עֲצוֹמוֹ מִשְׁלֵם בּוֹשֶׁת וּפְגָם עַל פִּי עֲצוֹמוֹ:

**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 admission<sup>77</sup>. They told him, even though he does not pay the fine by his own admission, he pays for shame and diminution by his own admission<sup>78</sup>.

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**: אַנְסָתָהּ וּפִיתִיתָהּ אֶת בְּתִי כוּל'. רַבִּי יִזְרָא רַבִּי יְסָא בְּשֵׁם רַבִּי יוֹחָנָן. דְּבָרֵי רַבִּי שְׁמַעוֹן עֵיקָר תְּבִיעָה קָנָס. לְדְבָרֵי חֲכָמִים לֹא. אָמַר רַבִּי אֵילָא. דְּבָרֵי רַבִּי שְׁמַעוֹן בְּתוֹבְעוֹ קָנָס בּוֹשֶׁת וּפְגָם. דְּבָרֵי חֲכָמִים בְּתוֹבְעוֹ בּוֹשֶׁת וּפְגָם וּקָנָס. רַבִּינּוּן אָמְרוּ. דְּבָרֵי רַבִּי שְׁמַעוֹן בְּתוֹבְעוֹ ג' דְּבָרִים. דְּבָרֵי חֲכָמִים בְּתוֹבְעוֹ דְּבַר אֶחָד. רַבִּי יִזְרָא בְּעָא קוּמִי רַבִּי יְסָא. בְּפִירוּשׁ שְׁמַעוֹן מְרַבֵּי יוֹחָנָן אוֹ מִמְלַתִּיהּ. אָמַר רַבִּי יְסָי. דְּסָבַר פְּרָבְנָן. אָמַר רַבִּי מְנָא. וְאֶפִּילוּ דְּוִ סָבַר פְּרָבִי אֵילָא. דְּבָרֵי רַבִּי שְׁמַעוֹן בְּתוֹבְעוֹ דְּבַר אֶחָד. בְּרַם הִכָּא בְּתוֹבְעוֹ ג' דְּבָרִים. אִין לִי אֵילָא דְּבָרִים שְׂאִינוֹ מִשְׁלֵם עֲלֵיהּ אֶת הַקָּרָן. מְנִיין תְּשְׁלוּמֵי כָּפֹל וְתְשְׁלוּמֵי אַרְבַּעַה וְחִמְשָׁה הָאוּנָס וְהַמְפָּתָה וְהַמוֹצִיָּא שֵׁם רַע. תְּלַמּוּד לּוֹמֵר מִכָּל אֲשֶׁר-יִשְׁבַּע עֲלֵיךָ לְשֹׁקֶךָ. לְמוֹצִיָּא שֵׁם רַע לֹא קָנָס הוּא. אָמַר רַבִּי יְרֵמְיָהּ. רַבִּי שְׁמַעוֹן הִיא דְּאָמַר. בְּמִגְבָּהּ הַדְּבַר תְּלִי.

**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 Sages<sup>79</sup>. 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 fine<sup>80</sup>. The rabbis say, the words of Rabbi Simeon if he advances three claims; the words of the Sages if he advances one claim<sup>81</sup>. Rabbi Ze’ira asked



before Rabbi Yasa, did you hear explicitly from Rabbi Johanan, or from his word<sup>82</sup>? 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 claims<sup>83</sup>.

“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*.<sup>84</sup>” Is the calumniator's not a fine? Rabbi Jeremiah says, this is Rabbi Simeon's who said, all depends on the collection<sup>85</sup>.

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.

**מסנה ז:** (fol. 36a) גָּנַבְתָּ אֶת שׂוֹרֵי וְהוּא אֹמֵר לֹא גָּנַבְתִּי מִשְׁבִּיעֶנְךָ אָנִי וְאָמַר אָמֵן חַיִּיב. גָּנַבְתִּי אֲבָל לֹא טִבַּחְתִּי וְלֹא מָכַרְתִּי מִשְׁבִּיעֶנְךָ אָנִי וְאָמַר אָמֵן פְּטוּר. הַמֵּית שׂוֹרֵךְ אֶת שׂוֹרֵי 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 liable<sup>85</sup>. “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.

**מסנה ח:** הַמֵּית שׂוֹרֵךְ אֶת עֶבְדֵי וְהוּא אֹמֵר לֹא הַמֵּית מִשְׁבִּיעֶנְךָ אָנִי וְאָמַר אָמֵן פְּטוּר. אָמַר לוֹ הַכְּלֵת בִּי וְעָשִׂיתָ בִּי חֲבוּרָה וְהוּא אֹמֵר לֹא הַכְּלֵתִי וְלֹא עָשִׂיתָ בְּךָ חֲבוּרָה מִשְׁבִּיעֶנְךָ אָנִי וְאָמַר אָמֵן חַיִּיב. אָמַר לוֹ עֲבַדוּ הַפְּלֵת אֶת שְׁנֵי וְסִימִית אֶת עֵינַי וְהוּא אֹמֵר לֹא הַפְּלֵתִי וְלֹא סִימִיתִי מִשְׁבִּיעֶנְךָ אָנִי וְאָמַר אָמֵן פְּטוּר. זֶה הַכְּלֵל כָּל-הַמְשַׁלֵּם עַל פִּי עֲצָמוֹ חַיִּיב. וְשִׂאֵינוֹ מְשַׁלֵּם עַל פִּי עֲצָמוֹ פְּטוּר:

**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 liable<sup>86</sup>. 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 liable<sup>87</sup>. 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 liable<sup>88</sup>.

85 Since he denied only the fine, not the capital amount.

86 Since the amount payable is the biblically fixed amount of 30 *sheqalim*, 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.

36c line 28) **הלכה ז:** גנבתה את שורי כול' עד סוף פירקא. רבי יצחק שאל. מהו שישלם דמי העבד מפיו. ומה צריכה ליה. כל-ששלים קנס או יותר בדמיו קנס. אין תימר. כל-ששלים קנס. אין משלם. אין תימר. יותר בדמיו קנס. משלם. תמן תנינן. המית שורד עבדי. והוא אמר. לא המית. משביעך אני. ואמר אמן. פטור. אמר רבי חגי קומי רבי יוסי. תפתר שהמית עבד מוכה שחין. אמר ליה. ומור דבתרה. המית שורד בני. והוא אומר. לא המית. משביעך אני. ואמר אמן. חייב. ופתרה במוכה שחין ויהא פטור. לית יכיל. דתנינן. המית בן חורין ונתן שויו. אמר רבי עזרא קמי רבי מנא. תפתר כמאן דמר. ונתן פדנן נפשו שלניאק. אמר ליה. אין כמאן דמר. ונתן פדנן נפשו שלניאק. כולו קנס.

מהו שיאמר לו. צא ידי שמים. נשמעינה מן הדא. מעשה ברבן גמליאל שהפיל שן טבי עבדו. אתא גבי רבי יהושע. אמר ליה. טבי עבדי מצאתי עילא לשחררו. אמר. לית בגדך. ואין קנסות אלא בעדים ובבית דין. הדא אמרה אין אומר לו. צא מידי שמים. רבי גמליאל בירבי אילעאי בעה קומי רבי מנא. רבן גמליאל כמאן דאמר. מותר לשחרר. אמר ליה. גרמה אמרה שאסור לשחרר. דלא כן היה לו לשחררו משעה ראשונה.

**Halakhah 7:** “You stole my ox,” etc. to the end of the Chapter. <sup>89</sup>Rebbi 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 fine<sup>86</sup> 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 Haggai 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.<sup>90</sup>” You could explain it if he was covered with boils, then he would not be liable! You cannot do this, as we have stated<sup>91</sup>: “If he killed a human, he has to pay his worth.” Rebbi Ezra said before Rebbi Mana<sup>92</sup> Explain it following him who said, *he shall pay redemption of his person; of the injured*<sup>93</sup>. 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 following<sup>94</sup>: “It happened that Rabban Gamliel knocked out a tooth of his slave Tabi. He came to Rebbi 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. Rebbi Gamliel ben Rebbi Illai<sup>95</sup> asked before Rebbi 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 *Arakhin* 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 *Ševuot* 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 *Arakhin* 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 facillior*. 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 הטענה שתי כסף וההודיה בשוה פרוטה. ואם אין ההודיה ממין הטענה 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 חייב. מנה לאבא בידך אין לך בדי אלא חמשים פטור מפני שהוא כמשיב אבדה:

**Mishnah 1:** A judicial oath<sup>1</sup> is about a claim of two silver coins<sup>2</sup> and the acknowledgment of one *perutah*<sup>3</sup>. If the acknowledgment is not of the kind of the claim he is not liable<sup>4</sup>. How is this? “You are holding two silver coins for me;” “I am holding only one *perutah*.” He is not liable<sup>5</sup>. “You are holding two silver coins and a *perutah* for me;” “I am holding only one *perutah*.” He is liable<sup>6</sup>. “You are holding a *mina* for me;” “I am not holding anything for you,” he is not liable<sup>7</sup>. “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 object<sup>8</sup>.

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 Hasmonian 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 Hasmonian 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.

21 (36d line 21) **הלכה א:** שְׁבוּעַת הַדַּיְיָנוּ כוּל'. הַטְעָנָה. בֵּית שְׁמַי אומרים. מְעָה כֶּסֶף. וּבֵית הַלֵּל אומרים. שְׁתֵּי מַעֲיָן. מִחֻלְפָּה שֵׁיטְתוֹ דְּבֵית שְׁמַי. תִּמְנוֹ אָמְרוּ. כֶּסֶף דִּינָר. וְהִכָּא אָמְרוּ. כֶּסֶף מְעָה. מִחֻלְפָּה שֵׁיטְתוֹ דְּבֵית הַלֵּל. תִּמְנוֹ אָמְרוּ. כֶּסֶף פְּרוּטָה. וְהִכָּא אָמְרוּ. כֶּסֶף תְּרֵין מַעֲיָן. רַבִּי יַעֲקֹב בַּר אֶחָא בְּשֵׁם רַבִּי חִינְיָה. בֵּית שְׁמַי אומרים. מִתְחִילַת מְכִירַת הַעֲבָרִיָּה. מַה תְּחִילַת מְכִירַתָּה גְּדִינָר אֶף קִידוּשִׁיָּה גְּדִינָר. וּבֵית הַלֵּל לְמִידוּן מְסוּף גִּירוּעִיָּה. מַה סוּף גִּירוּעִיָּה בְּפְרוּטָה אֶף קִידוּשִׁיָּה בְּפְרוּטָה. וַיִּמָּה טַעֲמָא דְּבֵית שְׁמַי. וַיִּצְאָה חֲנַס אֵין כֶּסֶף. וְכִי אֵין אֲנוּ יוֹדְעִין שְׂאֵין כֶּסֶף. מַה תִּלְמוּד לומר כֶּסֶף. מֵיכֵן שְׁנַמְכְּרַת יוֹתֵר מִכֶּסֶף. וְכַמָּה הִיא יוֹתֵר מִכֶּסֶף. דִּינָר. אוֹ כֶּסֶף פְּרוּטָה. יוֹתֵר מִכֶּסֶף שְׁתֵּי פְּרוּטוֹת. סוּף מְטַבֵּעַ כֶּסֶף מְעָה. וְהִתְהַא מְעָה. רַבִּי אֲבִין בְּשֵׁם רַבִּי יוֹדָה בַּר פִּזִּי. שְׂאֵם בִּיקוּשָׁה לְמַגְרַע מַגְרַעַת מְעָה בְּכָל-שָׁנָה וַיִּצְאָה. וְתַגְרַע בְּפְרוּטָה. אָמַר רַבִּי אֲבִין. הֲגַע עֲצָמָא שְׂאֵם בִּיקוּשָׁה לִיגְרַע מִתְחִילַת הַשָּׁנָה הַשְּׂשִׁית. מַה תְּחִילַת הַשָּׁנָה הַשְּׂשִׁית גִּירוּעִיָּה בְּפְרוּטָה אֶף קִידוּשִׁיָּה בְּפְרוּטָה. אֶלָּא תְּחִילַת גִּירוּעִיָּה מְעָה כֶּסֶף וְסוּף גִּירוּעִיָּה בְּפְרוּטָה. וְכַמָּה טַעֲמָא דְּבֵית הַלֵּל. מִמָּה שְׁסוּף גִּירוּעִיָּה בְּפְרוּטָה אֶת יוֹדֵעַ שְׁקִידוּשִׁיָּה בְּפְרוּטָה. הֲגַע עֲצָמָא שְׂאֵם נִשְׁתַּיִר שֵׁם שׁוּהָ פְּרוּטָה שְׂמָא אֵינָה מַגְרַעַתָּ וַיִּצְאָ. כְּשֵׁם שְׁסוּף גִּירוּעִיָּה בְּפְרוּטָה כֶּד קִידוּשִׁיָּה בְּפְרוּטָה.

מִחֻלְפָּה שֵׁיטְתוֹהוּ דְּבֵית הַלֵּל. כִּי־תֵן אִישׁ אֶל-רֵעֵהוּ וְגו'. אִם לְלַמֵּד שְׂאֵין בֵּית דִּין נִזְקָקִין לְפָחוֹת מִשׁוּהָ פְּרוּטָה. כְּבָר כְּתוּב לְאַשְׁמֶה בָּהּ: פֶּרֶט לְפָחוֹת מִפְּרוּטָה. מֵיכֵן שְׂיֵשׁ כָּאֵין יוֹתֵר מִכֶּסֶף. וְכַמָּה הוּא. שְׁתֵּי מַעֲיָן. אוֹ כֶּסֶף פְּרוּטָה. יוֹתֵר מִכֶּסֶף ב' פְּרוּטוֹת. סוּף מְטַבֵּעַ כֶּסֶף מְעָה. וְהִתְהַא מְעָה. אוֹ-כֵלִים. מַה כֵּלִים ב' אֶף כֶּסֶף ב'. מַה מְקִיָּמִין דְּבֵית שְׁמַי אוֹ-כֵלִים. כֶּהָדָא דְּתַנְיָ רַבִּי נֶתָן. אוֹ-כֵלִים. לְהַבִּיא כְּלֵי חֶרֶס. שְׂמוּאֵל אָמַר. טַעֲנוּ שְׁנֵי מַחְסִין וְהוֹדָה לוֹ בְּאַחַת מֵהֶן חֵיב. אָמַר רַבִּי חִינְיָא. וְהוּן שְׁיָהוּ לְפוֹת שְׁתֵּי פְּרוּטוֹת. שְׁיָהוּ הַטְעָנָה פְּרוּטָה וְהוֹדָיָה פְּרוּטָה. אֶתְנָא כְּבֵית שְׁמַי דְּלָא יִלְפִי כֶּסֶף מִכֵּלִים. בְּרַם כְּבֵית הַלֵּל דִּילְפִי כֶּסֶף מִכֵּלִים. מַה כֵּלִים שְׁנִים אֶף כֶּסֶף שְׁנִים. וְדַכּוּתָהּ. מַה כֶּסֶף שְׁתֵּי מַעֲיָן אֶף כֵּלִים שְׁתֵּי מַעֲיָן.

**Halakhah 1:** “A judicial oath,” etc. <sup>9</sup>The 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*<sup>10</sup>. 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*<sup>2</sup>. So why is it not an *obolos*? Rebbi Abun in the name of Rebbi 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*? Rebbi 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*,<sup>11</sup> 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 Rebbi Nathan stated, *or vessels*, including clay vessels<sup>12</sup>. Samuel said, if he claimed from him two needles and he admitted to one, he is liable. Rebbi 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 worth<sup>13</sup>. 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־שֶׁשְׁנַיִם מְחַיְבִין אוֹתוֹ כְּמוֹן עַד אֶחָד זֹקֵקוֹ לְשְׂבוּעָה. וְהָרִי שְׁנַיִם מְחַיְבִין אוֹתוֹ קֶרֶקַע. שְׁנַיִתָּא הִיא שְׂאִין נִשְׁבְּעִין בְּקֶרֶקַעוֹת. וְהָרִי שְׁנַיִם מְחַיְבִין אוֹתוֹ קֶנֶס. שְׁנַיִתָּא הִיא שְׂאִין נִשְׁבְּעִין בְּקֶנֶס. וְהָרִי שְׁנַיִם מְחַיְבִין אוֹתוֹ פְּרוּטָה. וְכֵן הִיא דְתַנְיִין. שְׂבוּעַת הַדִּינִין. הַטַּעֲנָה שְׁתֵּי כֶסֶף וְהַהוֹדְיָה שְׁנֵי פְּרוּטָה. מִתְּנִיתָא בְּשִׁנְשָׁבַע מִפּוּי. מִה דְמַר רַבִּי שְׂמוּאֵל בְּנִשְׁבְּעַ מִפּי אַחֲרִים. רַב חֲסִדָּא וְחַבְרוּתִיָּה פְּלִיגִי. שְׂבוּעַת הַדִּינִין. כָּל־שְׂבוּעַת הַדִּינִין. לֹא שְׁנַיִתָּא בֵּין מִפּוּי בֵּין מִפּי אַחֲרִים 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 oath<sup>14</sup>. But do not two [witnesses] make him liable for real estate<sup>15</sup>? 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 *peruṭah*.” Our Mishnah, when he swears by his own formulation. What (Rebbi)<sup>16</sup> Samuel said, when he swears by the formulation of others. Rav Ḥisda 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 claim<sup>17</sup>.

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.

36d line 58) וְהַהוֹדְיָה שְׁנֵהּ פְּרוּטָה. רַבִּי יוֹחָנָן אָמַר. הַטּוֹעֵן לַחֲבֵירוֹ טַעַנְתָּ גָּנֵב אֵינוֹ חַיֵּב עַד שְׂיֻדָּה מִקְצָת. וְכֹל־חֲבֵרָיו פְּלִיגִין עָלָיו. מֵה מְקוּיָמִין כָּל־חֲבֵרָיו כִּי־הוּא זֶה. בְּטוֹעֵנוּ מִמוֹן. אִם בְּטוֹעֵנוּ מִמוֹן בְּדָא יְשַׁלֵּם שְׁנַיִם לְרַעְהוּ; וְעִירוּבֵי פְּרָשִׁיּוֹת יֵשׁ כָּאן. אָמַר רַבִּי זִירָא. אֵינוֹ חַיֵּב עַד שְׂיֻהָא בְּכַפִּירָה שְׁתֵּי כֶּסֶף חוּץ מֵהַהוֹדְיָה. אֲתֵיָא כַּחֲבֵרָיו דְּרַבִּי יוֹחָנָן.

“And the acknowledgment of one *peruṭah*.” Rebbi Johanan said, if somebody claims that another had stolen<sup>18</sup>, the latter is not liable unless he partially admit. But all his colleagues<sup>19</sup> differ from him. How do the colleagues uphold *for this is it*<sup>20</sup>? If he claims money from him. If he claims money from him, is that *double he shall pay to his neighbor*<sup>21</sup>? 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 *peruṭah*<sup>22</sup>. 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 בְגִדָּךְ. אִין לָךְ בְּגָדִי. פְּטוּר. אֶפֶילוּ. כְּפֹה לִי בְגִדָּךְ. אִין לָךְ בְּגָדִי. פְּטוּר. אֶלָּא כִינִי. מְנָה לִי בְגִדָּךְ. אִין לָךְ בְּגָדִי אֶלָּא פְּרוּטָה. חֵיב. רַב רַבִּי יוֹחָנָן תַּרְוִיחוּן אֶמְרִין. וְהוּא שְׁהִלְוֹהוּ בְּעֵדִים. אֲבָל אִם הִלְוֹהוּ שְׁלֵא בְּעֵדִים וְכִיל מִימַר לִיה. הִלְוִיתְנִי וְנִתְתִּי לָךְ מִחֲצָה. אֶמַר רַבִּי יוֹדֵן. אִין אוֹמְרִים בְּמִמוֹן מֵאַחַר. מֵאַחַר דִּיכִיל לְמִימַר לִיה. לֹא הִלְוִיתְנִי. וְכִיל מִימַר לִיה. הִלְוִיתְנִי וְנִתְתִּי לָךְ חֲצִיִּים. מִתְּנִיתָה פְּלִיגָה בְּרַבִּי יוֹחָנָן. מְנָה לִי בְגִדָּךְ אֶמַר לוֹ. הִין. לְמַחַר אֶמַר לוֹ תִּנְיָהוּ לִי. נִתְתִּיו לָךְ. פְּטוּר. אִין לָךְ בְּגָדִי. חֵיב.

“You are holding a *mina* for me’, ‘I am not holding anything for you’, he is not liable<sup>7</sup>.” 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 liable<sup>23</sup>.

Rav and Rabbi Joḥanan both are saying: Only if he made the loan in the presence of witnesses<sup>24</sup>. 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 it<sup>25</sup>? The Mishnah<sup>26</sup> disagrees with Rabbi Joḥanan: “‘You are holding a *mina* for me,’ he said ‘yes’<sup>27</sup>. 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<sup>28</sup>.”

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 *peruṭah* 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. Joḥanan 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.

מְנָה לִי בְּיָדְךָ. אִין לָךְ בְּיָדִי. אִסִּי אָמַר. הַמְלִיגָה לְחַבְרִירוּ בְּעֵדִים לֹא יִפְרָעֶנּוּ אֶלָּא בְּעֵדִים. אָמַר רַבִּי אֲבִין. מִלִּיתִיהָ דְּאִסִּי הַמְלִיגָה לְחַבְרִירוּ בְּעֵדִים לֹא יִחְזִיר לוֹ אֶלָּא בְּעֵדִים. מִתְּנִיתָהּ פְּלִיגָה עָלָיו. מְנָה לִי בְּיָדְךָ. אָמַר לוֹ הֵינָן. לְמַחֵר אָמַר לוֹ. תְּנִיחוּ לִי. נִתְּתִיו לָךְ. פְּטוּר. אִין לָךְ בְּיָדִי חֵיב.

“‘You are holding a *mina* for me,’ ‘I am not holding anything for you.’” Issy<sup>29</sup> 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 witnesses<sup>30</sup>. The Mishnah disagrees with him: “‘You are holding a *mina* for me;’ he said ‘yes’<sup>27</sup>. 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<sup>28,31</sup>.”

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.

מִנְה ב: מִשְׁנֵה ב: מִנְה לִי בְיָדְךָ אָמַר לוֹ הֵינְךָ וְלִמְחָר אָמַר לוֹ תִּגְדֹּלְתִי לִי נִתְּנִיתִי לְךָ פְּטוּר. מִנְה לִי בְיָדְךָ אָמַר לוֹ הֵינְךָ אֵל תִּגְדֹּלְתִי לִי אֵלָּא בְּפָנֵי עֵדִים. לְמָחָר אָמַר לוֹ תִּגְדֹּלְתִי לִי נִתְּנִיתִי לְךָ חַיִּב מִפְּנֵי שְׁצָרִיךְ לִיתְּנֵם בְּפָנֵי עֵדִים:

**Mishnah 2:** “‘You are holding a *mina* for me;’ he said “yes”<sup>26</sup>. The next day he said, “return it to me,” “I returned it to you;” he is not liable<sup>32</sup>. “‘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 liable<sup>33</sup> 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.

הַלְכָה ב: מִנְה לִי בְיָדְךָ כֹּל. אָמַר רַבִּי בִּין. דְּרָךְ בְּנֵי אָדָם לְהַלְוֹת לַחֲבֵירֵיהֶן שְׁלֵא בְּעֵדִים וְלִתְּוֹבְעֵן בְּעֵדִים.

**Halakhah 2:** “You are holding a *mina* for me;” etc. Rebbi Abun<sup>34</sup> 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 witnesses<sup>35</sup>.

- 34 He seems to be identical with R. Avin 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, Mishnah.

36d line 76) מְנָה לִי בְיָדְךָ. אָמַר לוֹ. הֵינִי. אֵל תִּתְּנֶיהוּ לִי אֶלְאָ בְּפָנֵי פְלוֹנִי וּפְלוֹנִי. לְמַחֵר אָמַר לוֹ. תִּתְּנֶיהוּ לִי. וְתִתִּיו לְךָ. חֵיב. שְׁצָרִיךְ לְהַחֲזִיר לוֹ בְּעֵדִים: הִגַּע עֲצָמְךָ דְאָמַר לִיה. וְתִתִּיו לְךָ בְּעֵדִים. תִּנִּי בַר קַפְרָא. בְּמַעֲמַד פְּלוֹנִי וּפְלוֹנִי. הִגַּע עֲצָמְךָ דְאָמַר לִיה. בְּמַעֲמַד פְּלוֹנִי וּפְלוֹנִי. רַבִּי בָּא רַב הַמְנוּנָא רַבִּי אֲדָא בַר אֶהֱבָה בְּשֵׁם רַב. מַעֲשֶׂה בָּא לְפָנֵי רַבִּי וְאָמַר. יָבֹאוּ פְלוֹנִי 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 liable<sup>33</sup> 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.” Rebbi Abba, Rav Hamnuna, Rebbi Ada bar Ahava<sup>35</sup> in the name of Rav: A case came before Rebbi, and he said, let X and Y come<sup>36</sup>.

- 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 שָׁבָא בְּשֵׁטֶר וּבַחֲזָקָה. רַבִּי אוֹמַר. יָדוֹן בְּשֵׁטֶר. רַבָּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל אוֹמַר. יָדוֹן בַּחֲזָקָה. רַבִּי זִירָא בְּשֵׁם רַב יִרְמְיָה. מַעֲשֶׂה בָּא לְפָנֵי רַבִּי יְהוּדָה כְּרַבָּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל. רַבִּי יִרְמְיָה בְּעֵי קַמִּי רַבִּי זִירָא. מַה. מִחֻלְפָּה שִׁטְיָתִיהָ דְרַבִּי. תַּמָּן אָמַר. יָדוֹן בְּשֵׁטֶר. וְכָא אָמַר. יָדוֹן בַּחֲזָקָה. גִּימַר. עַד דְּלֹא נְחֹזֵר בֵּיה. וְנֶאֱפִילוּ תִימַר מִדְּחֹזֵר בֵּיה. לֹא בִיקוּשׁ רַבִּי אֶלְאָ לְעַמּוּד עַל אֲמִיתָן שְׁלֵדְבָרִים. הַמְחֻזֵּק מִחֻמַּת אוֹנוֹ וְנִמְצָאת פְּסוּלָה אֵינָה חֲזָקָה. רַבִּי יִרְמְיָה אָמַר. בַּמְחֻלְקָת. רַבִּי שְׁמוּאֵל אָמַר רַבִּי זִירָא רַבִּי יַעֲקֹב בַר אֶחָא בְּשֵׁם רַבִּי אֲבִינָא. דְּבָרֵי הַכֹּל הֵיא.

אָמַר רַבִּי יוֹסִי. תִּמְנָן בְּבֵּא בְּשֵׁטֶר וּבְחִזְקָה. הֲכֵא בְּבֵא בְּשֵׁטֶר. אָמַר רַבִּי יוֹדָן. תִּמְנָן בְּבֵא בְּשֵׁטֶר  
כִּימְנָ עֵדִים. הֲכֵא בְּכּוֹפֵר בְּרֵאיוֹתָיו.

<sup>37</sup>If somebody produced both a document and *hazaqah*<sup>38</sup>. Rebbi says, it should be judged by the document. Rabban Simeon ben Gamliel says, it should be judged by *hazaqah*<sup>39</sup>. Rebbi Ze'ira in the name of Rav Jeremiah: A case came before Rebbi Jehudah following Rabban Simeon ben Gamliel<sup>40</sup>. Rebbi Jeremiah asked before Rebbi Ze'ira: How? Did Rebbi 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 opinion<sup>41</sup>? Even if you say, after he changed his opinion. Rebbi only wanted to determine the truth of the matter<sup>42</sup>.

“If somebody occupied real estate on the basis of a document of sale<sup>43</sup> and it was found invalid, this is not *hazaqah*<sup>44</sup>.”<sup>45</sup> Rebbi Jeremiah said, in dispute<sup>46</sup>. Rebbi Samuel said, Rebbi Ze'ira, Rebbi Jacob bar Aḥa in the name of Rebbi Abinna: it is everybody's opinion<sup>47</sup>. Rebbi Yose said, there if one produced both a document and *hazaqah*. Here if he came with a document<sup>48</sup>. Rebbi Yudan said, there if he presented two groups of witnesses; here one who contradicts his own proofs<sup>49</sup>.

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, *Qiddušin* 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 Rebbi, (R. Jehudah ben Simeon) as follows from the sequel, and the sentence is missing a verb. Probably one should read: Rebbi judged following Rabban Simeon ben Gamliel.

41 Since Rebbi 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 ὀνή “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 *hazaqah* 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 Rebbi 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 Rebbi and Rabban Simeon agree.

48 The difference between Rebbi and his father is about a case where both a document and a claim of *hazaqah* 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 *hazaqah* was entered.

49 Rebbi 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 לבלתייה וְהוּוּ דַיִינֵין קָמֵי רַבִּי חָמָא אָבִי בַר קַפָּרָא וְרַבִּי הוֹשִׁיעָה. מְדַהוּדָה אָמַר לִיה. יְהִיבִית. שְׁאֵלוֹן לְרַבִּי חִיָּה רֹבָה. שְׁאֵל רַבִּי חִיָּה לְרַבִּי. הַמְתַּחֲבִיב בְּבִית דִּין לֹא כְּלִהִימִינֵי. מֵאִי לֹא כְּלִהִימִינֵי. רַבִּי אֲבָהוּ בְּשֵׁם רַבִּי יוֹחָנָן. אִם מַעֲצָמוֹ מְשַׁלֵּם נְאֻמָּן לומר נְתַתִּי. וְאִם מִפִּי אַחֲרִים לֹא כְּלִהִימִינֵי. רַבִּי בּוֹן בַּר כְּהֵנָא אָמַר. אִף בְּשִׁבוּעוֹת כֵּן. מֵהוּ אִף בְּשִׁבוּעוֹת כֵּן. רַבִּי אֲבָהוּ בְּשֵׁם רַבִּי יוֹחָנָן. אִם מַעֲצָמוֹ נִשְׁבַּע נְאֻמָּן לומר נִשְׁבַּעְתִּי. וְאִם מִפִּי אַחֲרִים לֹא כְּלִהִימִינֵי.

Rebbi Marinus was guarantor for his daughter-in-law<sup>50</sup>. They went to court before Rebbi Ḥama the father of Bat Qappara and Rebbi Hoshaiā<sup>51</sup>. After he had admitted he said to him, I gave. They asked the Elder Rebbi Ḥiyya; Rebbi Ḥiyya 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 trusted<sup>52</sup>. 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. Hoshai and Bar Qappara. The latter's father was R. Eleazar haQappar.

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.

לִּי מִשְׁנֵה גִּ: לְטָרָא זָהָב לִי בְּיָדְךָ אֵין לְךָ בְּיָדִי אֶלָּא לְטָרָא כֶּסֶף פְּטוּר. דִּינָר זָהָב לִי בְּיָדְךָ אֵין לְךָ בְּיָדִי אֶלָּא דִּינָר כֶּסֶף כְּטָרִיסִית וּפּוֹנְדִיּוֹן וּפְרוּטָה חַיִּב שְׁהַבֵּל מִיָּן מְטַבֵּעַ אָהָד.

**Mishnah 3:** <sup>53</sup>“You are holding for me a pound<sup>54</sup> 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*<sup>55</sup>, or a *dupondius*<sup>56</sup>, or a *perutah*,” he is liable since all kinds of coin<sup>57</sup> 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.

(37a line 22) הַלְכָה גִּ: לְטָרָא זָהָב לִי בְּיָדְךָ כּוֹל. שְׁמוּנָה שְׁלֹזָהָב יֵשׁ לִי בְּפִיס. וְנִמְצְאוּ שְׁמוּנָה דִּינָרֵי זָהָב. אוֹ חֲמִשִּׁים סָלַע. וְנִמְצְאוּ ר' דִּינָר. אוֹ ר' דִּינָר. וְנִמְצְאוּ חֲמִשִּׁים סָלַע. הָרִי אֵילוֹ חוֹלִין. שְׁמוּנָה דִּינָרֵי זָהָב יֵשׁ לִי בְּפִיס. וְנִמְצְאוּ חֲמִשִּׁים סָלַע. אוֹ ר' דִּינָר. וְנִמְצְאוּ נ' סָלַע. הָרִי אֵילוֹ שִׁינִי. לְטָרָא זָהָב לִי בְּיָדְךָ אֵין לְךָ בְּיָדִי אֶלָּא לְטָרָא כֶּסֶף פְּטוּר. דִּינָר זָהָב יֵשׁ לִי בְּיָדְךָ. אֵין לְךָ בְּיָדִי אֶלָּא דִּינָר כֶּסֶף. אָמַר רַבִּי יַעֲקֹב בְּרַ אֲבִינָא. בְּקַדְמִיתָא הוֹיֵנן אֶמְרִין. דִּינָר זָהָב פְּרוּטָרוּט. דִּינָרֵי זָהָב אֵינן פְּרוּטָרוּט. אֵילוֹ מַר. דִּינָרֵי זָהָב תַּנִּי. אֵשְׁבַח תַּנִּי. דִּינָר זָהָב זָהָב פְּטוּר.



**Halakhah 3:** “You are holding for me a pound of gold,” etc. <sup>58</sup>“Eight of gold<sup>59</sup> 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*<sup>60</sup>; 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*.’<sup>61</sup>” 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 correct<sup>62</sup>. It was found stated, “a gold coin of a *denar*,” he is not liable<sup>63</sup>.

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:** כור תבואה לי בידך אין לך בדי אלא לתוך קמנית פטור. כור פרות לי בידך אין לך בדי אלא לתוך קמנית חייב שתקימנית בכלל פרות. טענו חיטים והודה לו בשעורים פטור. ורבי שמעון מוחיב. הטוען לחברו בבדי שמן והודה לו בקנקנים אדמון אומר הואיל והודה לו מקצת ממין הטענה ישבע. והכמים אומרים אין ההודיה ממין הטענה. אומר רבן גמליאל רואה אני את דברי אדמון.

**Mishnah 4:** “You are holding for me a *kor*<sup>64</sup> of grain;” “I am holding for you only a *letek*<sup>65</sup> 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 Simeon<sup>66</sup> 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 claim<sup>67</sup>. Rabban Gamliel said, I see<sup>68</sup> the words of Admon.

**משנה ה:** טענו בלים וקרקעות הודה בבליים וקפר בקרקעות וקפר בבליים פטור. הודה במקצת הקרקעות פטור. במקצת הבליים 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 liable<sup>69</sup>. If he admitted part of the real estate he is not liable<sup>69</sup>. Part of the vessels he is liable since non-guaranteed property obligates guaranteed property to be sworn about<sup>70</sup>.

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 חיסים 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 חיסים 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 חיסים והודה לו בשעורים דברי הכל חייב. בהדא דריש לקיש. חד בר נש אגול בעי מידן קמי רב דהנה מטעו לחבריה חיסין שעורין וכוסמין. אמר ליה רב. המתן עד דיגלגל גלך כל דבעי ובסופא תישתבע על כולן. אמר רבי אבהו. קד משיב ריש לקיש לרבי יוחנן. על דעתך דתמר טענו שני מינין והודה לו באחד מהן דברי חכמים פטור. והתנינן. טענו חיסים 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 לישבוע עליהן; ואפילו על דריש לקיש לית היא פליגא. דתנינן. הטוען לחברו כדי שמן והודה לו בקנקנים. מה נן קיימין. אם בשטענו קנקנים ושמן. כל עמא מודיי שיש הודייה מהטענה. אם בשטענו קנקנים ולא הודה בשמן. כל עמא מודו שאין הודייה מהטענה. רבי יירא ורבי 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 דמשח. וישאלוניה. בהוא דאישתתק.

**Halakhah 4:** “You are holding for me a *kor* of grain;” etc. <sup>71</sup>Rebbi Immi in the name of Rebbi Johanan: Our Mishnah if he sued him for wheat and he admitted barley; but if he sued him for two kinds<sup>72</sup> and he admitted one of them, everybody agrees that he is not liable. Rebbi Abbahu said about that of Rebbi 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. Rebbi Hiyya in the name of Rebbi 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)<sup>73</sup> 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)<sup>74</sup> vessels but not oil. Oil but not vessels<sup>75</sup>? Rabbi Eleazar in the name of Rabbi Abin formulates it as oil buckets. Can one not ask him? If he was paralyzed<sup>76</sup>.

71 A copy of this Halakhah is *Ketubot* 13:4, fully explained there in Notes 79-89. A parallel is in the Babli 40a, *Ketubot* 108b.

72 Unrelated matters.

73 This has to be deleted.

74 For the inappropriate נידה read נידא “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 כְּלִים פְּטוּר.

So is the Mishnah: If he denied part of the real estate he is liable, part of the vessels he is not liable<sup>77</sup>.

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 חֲרַשׁ שׁוֹטָה וְקָטָן וְאִין מִשְׁבִּיעִין אֶת הַקָּטָן אֲבָל נִשְׁבַּעִים לְקָטָן וְלִהְקָדֵשׁ:

**Mishnah 6:** One does not swear on the claim of a deaf-and-dumb person, an insane person, or a minor<sup>78</sup>. One does not put an oath on a minor but one swears for a minor<sup>79</sup> and the Temple<sup>80</sup>.

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 חֲרַשׁ שׁוֹטָה וְקָטָן כּוּל. כְּתִיב כִּי־יִתֵּן אִישׁ אֶל־רֵעֵהוּ. פֶּרֶט לְקָטָן. עַד כְּדוֹן בְּשִׁנְתּוֹ לֹא קָטָן וְיִתְּבַעוּ קָטָן. נִתַּן לֹא קָטָן וְיִתְּבַעוּ גְדוֹל. תִּלְמוּד לֹמַר רַעֲהוּ. עַד שֶׁיְהִי אֶתְנִינוֹ וְיִתְּבַעֲתוֹ שׁוּי. אָמַר רַבִּי בָּא בַר מַמְל. לִית הָדָא פְּשִׁיטָא עַל דְּרַבִּי יוֹחָנָן דְּאָמַר. הַטּוֹעוּן לְחַבְרֹו טַעֲנַת גָּנֵב בְּאֵבִידָה חֵיב. אִיכּוּ אֲבִידַתִּי. אָמַר לוֹ. נִגְנַבְהּ. אָמַר רַבִּי בָּא. תִּיפְתָּר שְׁאָמַר לוֹ. עַד שֶׁאֵת קָטָן תִּבְעֵתְנִי וְנִפְטַרְתִּי מִשְׁבוּעָתְךָ. שְׁבוּעַת יִי תִהְיֶה בֵּין שְׁנֵיהֶם. לְהוֹצִיא הַיּוֹרֵשׁ. רַבִּי אֵילָא בְּשֵׁם רַבִּי יֵסָא. בְּיּוֹרְשֵׁי 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*<sup>81</sup>, to exclude the minor<sup>82</sup>. 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 equal<sup>83</sup>. 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 stolen<sup>84</sup>. Rabbi Abba said, explain it if he told him, you already asked me when you were underage and I was freed from swearing for you<sup>85</sup>. *An oath of the Eternal shall be between both of them*<sup>86</sup>, to exclude the heir<sup>87</sup>. Rabbi Illa in the name of Rabbi Yasa: The *baraita* is about the heir<sup>88</sup>.

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 lohai* 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. אֵינָהּ זֶה מִבֵּין שְׁנֵיהֶן לְעוֹלָם. אִם הַמְּשַׁבֵּעַ מְשַׁבֵּעַ לְשֹׁקֵר סוּף לְצִאת עָלָיו. אִם הַנֶּשְׁבָּע נֶשְׁבָּע לְשֹׁקֵר סוּף לְצִאת עָלָיו. מֵאִי טַעַמָּא. הוֹצֵאתִיהָ נָאִם יִי צְבָאוֹת וּבָאָהּ אֶל-בַּיִת הַגָּבִיב וְאֶל-בַּיִת הַנֶּשְׁבָּע בְּשֵׁמִי לְשֹׁקֵר וְגו'. אָמַר רַבִּי שְׁמוּאֵל בַּר נַחֲמָן. מִלְּאֲכִי חִבְלָה אֵין לָהּ קִפְיָצִין. וּמָה טַעַם. מִשׁוּט בְּאַרְצָא וּמְהִתְהַלְקָא בֵּיהּ. בְּרַם הֵכָא וְכִלְתֵּי אֶת עַצְמוֹ וְאֶת-אַבְנֵיהּ: בּוֹא וְרֵא. דְּבָרִים שְׁאֵין הָאִשׁ שׁוֹרְפָן שְׁבוּעַת שְׁמִי מְכַלְתָּן. רַבִּי יוֹנָה אָמַר. עַל שֹׁקֵר. רַבִּי יוֹסִי אָמַר. אַף עַל הָאֲמֵת. חַגִּי דְרִישׁ פְּהֵדָא דְרַבִּי יוֹסִי. עוֹבְדָא הוּהוּ בְּחֵדָא אִיתָא דְאִזְלַת מִיעֲרוֹד גַּב חֲבִירָתָה וְהוּהוּ קְטִיר בְּשִׁיטִיָּה דְקוֹלְסִיתִיָּה תְּרִין דִּינְרִין. נִפְלו לָהּ וְאִיעֲרְכוּ גוֹ עִיגוּלָא. הִפְכֵּת בְּעִינָא לָהּ גוֹ בֵּיתָא וְלֹא אֲשַׁכְּחֵתוּן. חֲזַרְתָּ לְגַבְהָ אָמְרָה לָהּ. הֲבִי לִי ב' דִּינְרִין דְנִפְּוֹל לִי גוֹ בֵּיתִיד. אָמְרָה לָהּ. לֹא וְדַעְנָא. אִי גִדְעָה בְּהוּ תִיקְבּוֹר בְּרָה. קְבֵרְתִיָּה. מִי עָלוּן מִיקְבְּרִיא שְׁמַעַת קֵלָא אָמְרָה. אִילוּלָא דְהוֹת גִּדְעָה בְּהוּן לֹא קְבֵרְתִיָּה. אָמְרָה. אֵין גִּדְעָה בְּהוּן הִיא אִיתָא תִיקְבּוֹר בְּרָה חוֹרְנָה. קְבֵרְתִיָּה. עָלוּן מִנְחַמְתָּא וְקֶצוֹן חַד עִיגוּל וְאֲשַׁכְּחוּן תְּרִין דִּינְרֵיָא עֲרִיכוּן גוֹ עִיגוּלָא. הֵדָא מִילְתָּא אָמְרָה. בֵּין זְפִי בֵּין חֵיב לְשַׁבְּעָה לֹא תִיעוּל.

*Between both of them*<sup>86</sup> it will never move from between them. If the one forcing the oath forces the oath lying, at the end it<sup>89</sup> 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*<sup>90</sup>, etc. Rabbi Samuel bar Nahman said, destructive angels have no joints. What is the reason? *From roving about the Earth and walking there*<sup>91</sup>. But here, *it will destroy its wood and its stones*<sup>90</sup>. 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.

<sup>92</sup>Haggai 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 she<sup>93</sup> 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 woman<sup>93</sup> 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 oath<sup>94</sup>.

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 וחמשה. שומר הנם אינו נשבע. נושא שכר אינו משלם. רבי שמעון אומר דברים שחייב באחריותו נשבעין עליהן. ושאינו חייב באחריותו אין נשבעים עליהן:

**Mishnah 7:** About the following one does not swear: slaves, and documents<sup>94</sup>, and real estate, and gifts to the Temple<sup>95</sup>. Not about double restitution, nor quadruple or quintuple; the unpaid trustee does not swear, the paid trustee does not pay<sup>96</sup>. Rabbi Simeon says, one swears about things<sup>97</sup> 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 טעונות מסרתי לך והלה אומר אינן אלא חמש רבי מאיר מחייב שבועה וחכמים אומרים כל המחזקר לקרקע הרי הוא כקרקע.

**Mishnah 8:** Rabbi Meïr 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 vines<sup>98</sup> did I hand over to you,” but the other says, “they



are only five.” Rebbi 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 מסרתני לך וכים מלא מסרתני לך והלה אומר איני יודע אלא מה שהינחת אתה נוטל פטור. זה אומר עד היזו וזה אומר עד החלון 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 liable<sup>99</sup>.

**משנה י:** המלוה את חברו על המשכון ואבד המשכון אומר לו סלע הליתיד עליי ושלק היתה שנה והלה אומר לא כי אלא סלע הליתני עליי וסלע היתה שנה 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 *šeqel*,” but the other one says “no, a *tetradrachma* you loaned me and it was worth a *tetradrachma*”; he is not liable<sup>100</sup>.

**משנה יא:** סלע הליתיד עליי ושלק היתה שנה והלה אומר לא כי אלא סלע הליתני עליי ושלשה דינרים היתה שנה חייב.

**Mishnah 11:** “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 three *šeqel*,” he is liable<sup>101</sup>.

**משנה יב:** סלע הליתני עליי ושתים היתה שנה והלה אומר לא כי אלא סלע הליתיד עליי וסלע היתה שנה 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 liable<sup>102</sup>.

**משנה יג:** סלע הליתני עליי ושתים היתה שנה והלה אומר לא כי אלא סלע הליתיד עליי והמשה דינר היתה שנה חייב. ומי נשבע מי שהפקדון אצלו שמוא ישבע 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 liable<sup>103</sup>. Who has to swear? The one who holds the pledge, lest one swear and the other produce the pledge<sup>104</sup>.

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 transgressed<sup>105</sup> and swore, Rabbi Johanan said he brings a sacrifice for the oath<sup>106</sup>; 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 estate<sup>107</sup>? But an oath for testimony is not in court<sup>108</sup>. Would the court admit an oath of a suspect person<sup>109</sup>? Only when he transgressed and swore, you say that he brings a sacrifice for his oath<sup>106</sup>; here also if he transgressed and swore, you say that he brings a sacrifice for his oath<sup>106</sup>.

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) וְאֵת דְּבָעֵי נִשְׁמְעִינָהּ מִהֶדָּא. חֲמֹר אוֹ-שׂוֹר אוֹ-שֶׁה. מָה אֵילֹו מִיּוֹחֲדִין שְׁיֵשׁ בְּהֶן שֶׁבֶר וְשִׁבְיָה וְמוֹתָה. יִצְאוּ קַרְקָעוֹת שְׂאִין בָּהּ שֶׁבֶר וְשִׁבְיָה וְמוֹתָה. אוֹצִיא קַרְקָע וְלֹא אוֹצִיא עֲבָדִים. מָה אֵילֹו מִיּוֹחֲדִין שְׁיֵשׁ לְהֶן קִנְס. יִצְאוּ עֲבָדִים שְׂאִין לְהֶן קִנְס. אוֹצִיא עֲבָדִים וְלֹא אוֹצִיא שְׁטָרוֹת שְׁיֵשׁ לְהֶן קִנְס. מָה אֵילֹו מִיּוֹחֲדִין שְׁיֵשׁ לְהֶן אוֹנָא. יִצְאוּ שְׁטָרוֹת שְׂאִין לְהֶן אוֹנָא. מִיכֶן אָמְרוּ. הַמוֹכֵר שְׁטָרוֹת לְבִסָּם יֵשׁ לוֹ אוֹנָא. רַבִּי יִשְׁמַעְיֵאל דְרֵשׁ. אִו נֶפֶשׁ כִּי תִשְׁבַּע כָּלֵל. לְהִרְעֵ | אִו לְהִיטִיב פֶּרֶט. לְכָל אֲשֶׁר יִבְטָא חֲזֹר וְכָלֵל. כָּלֵל וּפֶרֶט וְכָלֵל אֵין אִתָּה דָן אֶלָּא כְּעִין הַפֶּרֶט. מָה הַפֶּרֶט בְּתַבִּיעַת מְמוֹן וּלְעִצְמוֹ וּמוֹצִיא בְּדִין וְיֵשׁ לוֹ דָּמִים וְדָמִיו קְצוּבִין וּבִמְטָלְטָלִין וּפְטוּר עַל הַעוֹנֵשׁ וְעַל הַקִּנְס. בְּתַבִּיעַת מְמוֹן. פֶּרֶט לְאוֹמֵר לְחַבְרֹו. תָּן לִי מֵאֵתִים זוּזִים שְׂאֵמֶרֶת לִיתָן לִי וְלֹא נִתְתָּה. לְעִצְמוֹ. פֶּרֶט לְאוֹמֵר לְחַבְרֹו. קִילְתָּנִי וּבִנִּישְׁתָּנִי. שֶׁפְטוּר. וּמוֹצִיא בְּדִין. פֶּרֶט לְאוֹמֵר לְחַבְרֹו. אֲנִסְתָּה וּפִיתִיתָה בֵּת פְּלוּנִי. וְיֵשׁ לוֹ דָּמִים. פֶּרֶט לְשְׁטָרוֹת. וְדָמִיו קְצוּבִין. פֶּרֶט לְעֲבָדִים. וּבִמְטָלְטָלִין. פֶּרֶט לְקַרְקָעוֹת. וּפְטוּר עַל הַעוֹנֵשׁ. פֶּרֶט לְאוֹמֵר לְחַבְרֹו. הִדְלַקְתָּ גְדִישִׁי בְּשִׁבְתָּ. שֶׁפְטוּר. וּפְטוּר עַל הַקִּנְס. פֶּרֶט לְתִשְׁלוּמֵי כֶּפֶל וְתִשְׁלוּמֵי אֶרְבָּעָה וְחֲמִשָּׁה. שֶׁהֶן קִנְס.

Some want to understand it from here<sup>110</sup>: *An ox, or a donkey, or a sheep*<sup>111</sup>. 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 fine<sup>112</sup>. 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 overcharging<sup>113</sup>. From here they say, if somebody sells documents to the spice trader<sup>114</sup>, 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 detail<sup>115</sup>. Since the detail<sup>116</sup> 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 gave<sup>117</sup>. [Originating] from himself, excluding one who said to another, you cursed me and shamed me, who is not liable<sup>118</sup>. Which can be collected by court order, excluding one who said to another, you raped or seduced X's daughter<sup>119</sup>. It has monetary value, excluding documents<sup>120</sup>. Which is a fixed value, excluding slaves<sup>121</sup>. 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 liable<sup>122</sup>. One is not liable for fines, excluding double, quadruple, or quintuple restitution which are fines<sup>123</sup>.

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 +/- 16 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 meṣi'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.

וחד (37b line 28) המְקָרַע שְׁטָרוֹת חֲבִירוֹ חוץ מַדְעָתוֹ. רַבִּי חֲנַנְיָה וְרַבִּי מָנָא. חַד אָמַר. חֵיב. וְחַד אָמַר. פְּטוֹר. מָאן דָּאָמַר חֵיב. מִשּׁוֹם קִנְס. וּמָאן דָּאָמַר פְּטוֹר. כְּסוּתָם פִּי עֵינֵי חֲבִירוֹ. וְדָא אַרְמְלֵתָא דַתְפֵּשָׁה שְׁטַרְיָא כְּאִינֶשׁ דְּצִייר פּוּמָהוּן דְּשְׁהֲדִיָא דְלֹא יִשְׁהָדוּן. אָמַר רַבִּי אִמִּי. אֵילִין דְּכַתְבִּין. עַל מִנְתָּ שֵׁישׁ לִי רֶשׁוֹת לְגָבוֹת מִמְטִלְטְלוּן. לֹא גָבִי. אָמַר רַבִּי מָנָא. אִין כְּתַב וְמַר. אַף עַל גּוֹ דְלִית בֵּי דִינָא יְהִיב. גְּבִי.

Somebody tears up another's documents without the latter's agreement. Rebbi Ḥanania and Rebbi Mana<sup>124</sup>, one said, he is liable; the other said, he is not liable<sup>125</sup>. The one who said he is liable, as a fine<sup>126</sup>. 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 witnesses<sup>127</sup>.

Rebbi Immi said, those who write, “on condition that I have the right to seize movables,” cannot collect<sup>128</sup>. Rebbi Mana said, if he writes and declares, “even though the Court will not enforce,” he collects<sup>129</sup>.

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. אָחַד קְדָשִׁי קְדָשִׁים וְאָחַד קְדָשִׁים קְלַיִן שְׁחִיבָ בְּאַחֲרֵי־יָתֵן קוֹרָא אֲנִי בְּהוֹן וְכֹחֵשׁ. וְשֹׂאֵין חֵיבָ בְּאַחֲרֵי־יָתֵן קוֹרָא אֲנִי בְּהוֹן בְּיִי וְכֹחֵשׁ. רַב הוּנָא אָמַר. אָחַד קְדָשִׁין בְּשִׁירֵין וְאָחַד קְדָשִׁים פְּסוּלִין שְׁחִיבָ בְּאַחֲרֵי־יָתֵן אִף עַל פִּי שְׁהוֹ לִי קוֹרָא אֲנִי בְּהוֹ וְכֹחֵשׁ בְּעַמְיֵתוֹ בְּפִקְדוֹן. וְשֹׂאֵין חֵיבָ בְּאַחֲרֵי־יָתֵן קוֹרָא אֲנִי בְּהוֹ בְּיִי וְכֹחֵשׁ וְלֹא בְּעַמְיֵתוֹ וְכֹחֵשׁ.

1 שְׁחִיבָ | קְדָשִׁים שְׁחִיבָ | 2 וְכֹחֵשׁ בְּעַמְיֵתוֹ | קְדָשִׁים בְּעַמְיֵתוֹ וְכֹחֵשׁ וְשֹׂאֵין | קְדָשִׁים וְכֹחֵשׁ | 3 קְדָשִׁין | קְדָשִׁים שְׁחִיבָ | קְדָשִׁים שְׁחִיבָ | אַע"פ שֶׁהוֹ | קְדָשִׁים שְׁחִיבָ | 4 וְכֹחֵשׁ בְּעַמְיֵתוֹ בְּפִקְדוֹן | קְדָשִׁים בְּעַמְיֵתוֹ וְכֹחֵשׁ וְשֹׂאֵין | קְדָשִׁים וְכֹחֵשׁ | 2

<sup>130</sup>“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 חֲנִינְיָה. זֶה אוֹמֵר. מְנוּחָה גְדוּלָה. וְזֶה אוֹמֵר. מְנוּחָה קְטַנָּה. חֵיב. דִּתְנֶן. אִין נִשְׁבְּעִין אֶלְאָה עַל דְּבַר שְׁבַמְיָדָה וְשְׁבַמְשָׁקֶל וְשְׁבַמְיַנְיָן. אָמַר רַבִּי בָּא בַר מַמַּל. תִּיפְתֵּר בְּמְנוּחָה שְׁלַחֲוִלְיוֹת. זֶה אוֹמֵר. אַזּוֹר גְּדוּל. וְזֶה אוֹמֵר. קְטוֹן. תִּנְי רַבִּי חֲזִיָּה וְלֹא יִדְעִין מַה תִּנְי. אִין תִּימַר חֵיב. מִתְנִיתָא פְּלִיגָא. דִּתְנֶן. אִין נִשְׁבְּעִין אֶלְאָה עַל דְּבַר שְׁבַמְיָדָה וְשְׁבַמְשָׁקֶל וְשְׁבַמְיַנְיָן. אִין תִּימַר פְּטוֹר. מִתְנִיתָא פְּלִיגָא. דִּתְנֶן. זֶה אוֹמֵר. גְּדוּל. וְזֶה אוֹמֵר. קְטוֹן. יִשְׁבַּע הַמּוֹכֵר שֶׁהִקְטֹן מְכָר. זֶה אוֹמֵר. אִינִי יוֹדֵעַ. וְזֶה אוֹמֵר. אִינִי יוֹדֵעַ. יַחֲלוּקוּ:

<sup>131</sup>Rebbi Hanina said, One says, a large candelabra, but the other says, a small candelabra; he is liable<sup>132</sup> 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 sections<sup>133</sup>.

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.”<sup>134</sup> 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.”<sup>135</sup>

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. נֶאֱמַר הַמְלֻוָּה לֹא מֵעַד כְּדֵי הַמְשֻׁכּוֹן הַלְוִיתִי. מִתְּנִיתָ אֶמְרָה. אִם הִלְוִיתָ נֶאֱמַר. דִּתְנִינָן. סָלַע הַלְוִיתִיךָ עָלָיו וְשָׁקַל הִיא שְׁוֹה. וְהִלָּה אֹמֵר. לֹא כִי אֶלָּא סָלַע הַלְוִיתִי עָלָיו וְסָלַע הִיא שְׁוֹה. פְּטוּר. חַד בַּר נֶשׁ קָם עִם חֲבֵרִיהַ בְּשׂוּקָא. אָמַר לִיה. תִּרְוּ דִּינְרִין לִי בְּדָד וּמִשְׁכּוֹנָךְ שְׁוִי תִרְוּ דִּינְרִין. אָמַר לִיה. חַד דִּינְרָא נָא בְּעֵי לְמִיתָן לָךְ וּמִשְׁכּוֹנִי טַב תִּרְוּ דִּינְרִין. אֲתָא עוֹבְדָא קוּמִי דִּינְיִי נְהַרְדְּעָא. אָמַרִי. כִּיִּן דְּכָל־עַמָּא מוּדוּ דְּמִשְׁכּוֹנָא טַב תִּרְוּ דִּינְרִין אוּחְרָנָא יִיתֵי עָלָי שְׁהִדִּי. וְלֹא שְׁמַע דְּמַר רַבִּי יוֹחָנָן. נֶאֱמַר הַמְלֻוָּה עַד כְּדֵי הַמְשֻׁכּוֹן. חַד בַּר נֶשׁ קָם עִם חֲבֵרִיהַ בְּשׂוּקָא וְאָרִים סְבִינְתִיהַ. אָמַר. לִית הָדִין סְדִינָא נִפִּיק מִן קְדִי עַד דִּתְתָן לִי מַה דְּאִית לִי בְּדָד. אֲתָא לְקַמִּי שְׁמוּאֵל. אָמַר לִיה. הַב לִיה סְבִינְתִיהַ וְיִיל דוֹן עֲמִיהַ. מַה. שְׁמוּאֵל כְּדִינְיִי נְהַרְדְּעָא. אָמַרִי. תִּמְן הוֹחֲזֵק הַמְשֻׁכּוֹן בְּדָדוּ. הִכָּא לֹא הוֹחֲזֵק הַמְשֻׁכּוֹן בְּדָדוּ.

Rebbi Johanan said, the lender can be believed if he said, I lent to you up to the value of the pledge<sup>136</sup>. 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."<sup>137</sup>

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*]<sup>138</sup>. 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 cloth<sup>139</sup> 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 him<sup>140</sup>.

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 כב reads *R. Ze'ira* instead of *Samuel*. This reading is not likely to be correct.)

שמואל אמר. שאין השבועה זזה מביניהון. אם ישבע המלוה הרי זה נשבע ונוטל. ואם נשבע הלוקח. מוציא הלה את הפקדון: מי הוא הנשבע. מי שהפקדון אצלו. רב וריש לקיש אמרי על רישא. סלע הלוייתי עליו ושתים הנה שוה. והלה אומר. לא כי אלא סלע הלוייתי עליו וסלע הנה שוה. פטור. סלע הלוייתי עליו כול'. והלה אומר. איני יודע. רבי בא רב הונא בשם רב אמר. אנת לית דע אהו דע. רבי יהושע דימא בעא קומי רבי יונה. תמן את אמר. לית את דע אהו דע. וכא את מר הכין. תמן יש חילול שבועה. הכא לית חילול שבועה.

<sup>141</sup>Samuel 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.<sup>142</sup>” Rav and Rebbi 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’.<sup>143</sup>” Rebbi Abba, Rav Hunan in the name of Rav: You do not know, the other knows<sup>144</sup>. Rebbi Joshua [the Southerner]<sup>145</sup> asked before Rebbi 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 oath<sup>146</sup>.

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 *דְּרִוּמָא* 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 שֶׁבַתְּוֹרָה נִשְׁבָּעִין וְלֹא מִשְׁלָמִין. וְאֵילוּ נִשְׁבָּעִים וְנוֹמְלִין הַשְּׂכִיר וְהַנְּזִל וְהַנְּחָבֵל וְשֶׁבְנֵי־הַחֹדֶד עַל הַשְּׂבוּעָה וְהַחֲנוּנִי עַל פִּינְקָסוֹ. הַשְּׂכִיר כִּי־צַד אָמַר לוֹ תָּן לִי שְׂכָרִי שְׂשֵׁשׁ לִי בְיָדְךָ הוּא אֹמֵר נְתַתִּי וְהִלָּה אֹמֵר לֹא נִמְלַתִּי הוּא נִשְׁבָּע וְנוֹמֵל. רַבִּי יְהוּדָה אֹמֵר גַּד שְׂתַהֵא שָׁם מִקְצַת הַחֹדֶיֶת. כִּי־צַד אָמַר לוֹ תָּן לִי שְׂכָרִי חֲמִשִּׁים דִּינָר שְׂשֵׁשׁ לִי בְיָדְךָ וְהוּא אֹמֵר הַתְּקַבְּלָת מֵהֶם דִּינָר זָהָב:

**Mishnah 1:** All who must swear by Torah standards do swear not to pay. The following do swear<sup>1</sup> and collect: The journeyman, a person robbed or injured, and one whose opponent is suspected of perjury, and the grocer on his account book<sup>2</sup>. How does the journeyman do it? He tells him, “give me my wages which you are holding;” he says, “I gave.” He swears and collects<sup>3</sup>. 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*<sup>4</sup>.”

1 By rabbinic (popular) standards.

2 These will be explained in the following Mishnaot.

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 שֶׁבַתְּוֹרָה כֹּל. מִמִּשְׁמַע שְׁנֵי אֲמָר שְׂבוּעַת יִי תִּהְיֶה בֵּין שְׁנֵיהֶם אִין אֲנוּ יוֹדְעִין שְׂאֵם לֹא יִשְׁבַּע יְשָׁלֵם. מֵה תִּלְמוּד לומר וְלִקַּח בְּעַלְוֹ וְלֹא יִשְׁלֹם: אֶלֶּא מִכֵּין שְׂקִיבֵלוּ בְּעֵלִים שְׂבוּעָה הוּא פְטוּר מִלְשָׁלֵם. רַבִּי חֲנִי בְּעֵא קוֹמִי רַבִּי יוֹסִי. וְלָמָּה לִי כְרַבִּי מֵאִיר. אֶפִּילוּ כְרַבְנִי. לֹא אָמַר רַבִּי אֲסִי בְשֵׁם רַבִּי יוֹחָנָן. דְּבָרֵי רַבִּי מֵאִיר מִמִּשְׁמַע לֹא אֶתָּה שׁוֹמֵעַ הִין. וְלִקַּח בְּעַלְוֹ וְלֹא יִשְׁלֹם. הֵא אֵם לֹא יִשְׁבַּע יְשָׁלֵם. תִּנִּי רַבִּי חֲנִיָּה. מִתְּנָה שׁוֹמֵר חֲנָם וְשׁוֹמֵר שְׂכָר לְהִיּוֹת כְּשׁוֹאֵל. אָמַר רַבִּי חֲנִיָּה. הַכֹּל מוֹדִין בְּלִשׁוֹן תּוֹרָה מִמִּשְׁמַע לֹא אֶתָּה שׁוֹמֵעַ הִין. מֵה פְּלִיגִין. בְּלִשׁוֹן בְּנֵי 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*<sup>5</sup>, would we not know that if he does not swear, he has to pay<sup>6</sup>? 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 pay<sup>7</sup>. Rabbi Ḥaggai asked before Rabbi Yose: Is this only following Rabbi Meïr or even following the rabbis? Did not Rabbi Assi<sup>8</sup> 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 pay<sup>9</sup>. Rabbi Ḥiyya stated: The unpaid and the paid trustees may stipulate to be like a borrower<sup>10</sup>. 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 speech<sup>11</sup>.

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) אמר רבי אבין. על ידי שבעל הבית עסקיו מרובין תיקנו בשכיר לישבע וליטול. [אמר רבי יוסה בירבי בון. תמן תיקנו בשכיר שיהא נשבע ונוטל.] ודכוותה תיקנו בבעל הבית שאם עבר זמנו שלא ישבע ונוטל. תני רבי חייה. אם יש עדים שתבעו בזמנו אפילו דאחר שנה נשבע ונוטל. 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 קדעיו 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. פעמים שתבעו אחר זמן ונעשה בתוך זמנו. היד עבידא. תבעו ואמר לו. לא אמרת לי מאותו היום נתתי. אותו היום נעשה כמי שהוא אומול. נותן לו שיעור אחד.

Rebbi Abin said, since the householder has many occupations they instituted that the journeyman should swear and collect<sup>12</sup>. [Rebbi Yose ben Rebbi Abun said, there<sup>13</sup> 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 collect<sup>14</sup>. Rebbi Hiyya stated, if there are witnesses that he claimed it in time, he swears and collects<sup>14</sup> even after a year. Rebbi Yose said, he has only that single day<sup>15</sup>. 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 night<sup>16</sup>. 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 gave<sup>17</sup>. 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 he<sup>18</sup> 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 measure<sup>19</sup>.

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. הֲיָהּ הַמְשֻׁכָּוּ בְּיָדוֹ. בְּדֵא נוֹטֵל בְּלֹא שְׁבוּעָה. הֲיָהּ עֶבֶד. וּבֵית דִּין מוֹסְרִין שְׁבוּעָה לְעֶבֶד. הֲיָהּ חֲשׂוּד. וּבֵית דִּין מוֹסְרִין שְׁבוּעָה לְחֲשׂוּד. הֲיָהּ שְׁנִי הַחֲשׂוּדִין. תְּפִלְגִּיתָא דְרַבִּי מֵאִיר וְרַבִּי יוֹסִי. הֲיָהּ שְׁנִי הַחֲשׂוּדִין חֲזָרָה שְׁבוּעָה לְמִקוּמָה. דְּרַבִּי רַבִּי יוֹסִי. רַבִּי מֵאִיר אוֹמֵר. וְחֲלֹקָה:

If he paid him in advance; in that case he swears and collects<sup>20</sup>. If a pledge was in his hand; in that case he collects without swearing<sup>21</sup>. If he was a slave. Would the court admit a slave to an oath<sup>22</sup>? If he was suspect? Would the court admit a suspect person to an oath<sup>23</sup>? If both were suspect, it is the dispute between Rebbi Meir and Rebbi Yose: <sup>24</sup>“If both were suspect,

the oath returns to its origin, the words of Rabbi Yose<sup>25</sup>; Rabbi Meïr says, they shall split the difference<sup>26</sup>.”

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. מַת בַּעַל הַבַּיִת הַשְּׂכִיר נִשְׁבַּע לְיֹרְשָׁיו. וְאַפִּילוּ מַת הַשְּׂכִיר יֹרְשָׁיו נִשְׁבַּעוּ לְיֹרְשָׁיו בַּעַל הַבַּיִת. כְּלוּם תִּיקְנוּ אֶלָּא בְּשְׂכִיר. שְׂמָא בְּיֹרְשָׁיו. אָמַר רַבִּי לְעֶזְרָא. בְּשִׁתְּבַעוּ בְּעֵדִים. [אֲבָל אִם תְּבַעוּ שְׂלָא בְּעֵדִים]. יְכִיל מֵימַר לֵיהּ. נִתְתִּי לָךְ שְׂכָרְךָ. אָמַר רַבִּי יוֹחָנָן. אִין אוּמְרִים בְּמִמוֹן. מֵאַחַר. מֵאַחַר דִּיכִיל מֵימַר לֵיהּ. לֹא שְׂכָרְתִּיד. יְכִיל מֵימַר לֵיהּ. שְׂכָרְתִּיד וְנִתְתִּי לָךְ שְׂכָרְךָ. מִתְּנִיתָא פְּלִגְנָא עַל רַבִּי לְעֶזְרָא. בְּמָה דְּבָרִים אָמְוִרִים. בְּשִׁנְאָה אוּמַר. נִתְתִּי וְזָה אוּמַר. לֹא נִטְלִיתִי. נִתְתִּי לָךְ שְׂכָרְךָ. וְהוּא אוּמַר. לֹא נִטְלִיתִי. וְהוּא אוּמַר. לֹא שְׂכָרְתִּיד. הַמּוּצִיא מִחֲבִירוֹ עָלָיו הָרְאִיָּה. וְקִשְׁיָא עַל דְּרַבִּי לְעֶזְרָא. אִם בְּאוּמַר. בְּעֵדִים שְׂכָרְתִּי. וְהִלְקָה אוּמַר. לֹא שְׂכָרְתִּיד.

רַבִּי בָּא קְרַתִּיגְנָא בְּעִי. יוֹם אֶחָד עָשִׂיתָ עִמִּי וְנִתְתִּי לָךְ. וְהִלְקָה אוּמַר. ב' יָמִים עָשִׂיתָ עִמָּךְ וְלֹא נִתְתָּ לִי כְּלוּם. פְּשִׁיטָא יוֹם רֵאשׁוֹן נוֹטַל בְּלֹא שְׁבוּעָה. שְׁנֵי תַּפְלוּגְתָּא דְּרַבִּי יוֹחָנָן וְרַבִּי לְעֶזְרָא. סָלַע אֶחָד פְּסִקְתִּי לָךְ וְנִתְתִּי לָךְ. וְהִלְקָה אוּמַר. ב' סָלַעִים פְּסִקְתָּה לִי וְלֹא נִתְתָּה לִי כְּלוּם. פְּשִׁיטָא סָלַע רֵאשׁוֹנָה נוֹטַל בְּלֹא שְׁבוּעָה. שְׁנֵי תַּפְלוּגְתָּא דְּרַבִּי יוֹחָנָן וְרַבִּי לְעֶזְרָא.

It is obvious: If the householder dies, the journeyman swears to his heirs<sup>27</sup>. 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 claimed<sup>28</sup> before witnesses. [But if he claimed without witnesses<sup>29</sup>, he can tell him,] I paid your wages. Rabbi Johanan said, does one not in money matters argue “because<sup>30</sup>?” Because he can say to him, I did not hire you, he can tell him, I hired you and paid your wages<sup>31</sup>. A

*baraita*<sup>32</sup> disagrees with Rebbi Eleazar<sup>33</sup>: “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.<sup>34</sup>” It is difficult for Rebbi Eleazar<sup>33</sup>, if he hired him before witnesses, how can this one say, I did not hire you?

Rebbi 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 without<sup>35</sup> oath. The second is the disagreement between Rebbi Joḥanan and Rebbi Eleazar<sup>36</sup>. “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* without<sup>35</sup> an oath. The second is the disagreement between Rebbi Joḥanan and Rebbi Eleazar<sup>36</sup>.

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. Joḥanan 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 “Joḥanan” since only R. Joḥanan 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) רב הונא אָמַר. אִם בְּשֵׁנֶשְׁבַע הִבִּיא עֲדִים. הֵיטָה עוֹמֶדֶת בְּאֵבוּס. כִּבְרָ גְזֻלְתּוּ שְׂבוּעָה. מִתְּנִיתָא פְּלִגְנָא עַל רַב הוֹנָא. אֵיכֵן שׁוֹרֵי. אָמַר לוֹ. אֲבָד. מִשְׁבִּיעַד אָנִי. וְאָמַר אָמֵן. וְעֲדִים מִעֵידִין שְׂאֲכָלוּ. מִשְׁלֵם הִקְרָן. הוֹדָה מַעְצָמוּ מִשְׁלֵם קֶרֶן וְחוֹמֶשׁ וְאֶשֶׁם. מִתְּנִיתָא בְּשֵׁאֲכָלוּ וְאַחֲרֵי כֵן נִשְׁבַּע לוֹ. מִמָּה דָּמַר רַב הוֹנָא בְּשֵׁנֶשְׁבַע 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 it<sup>37</sup>. A Mishnah disagrees with Rav Huna: <sup>38</sup>“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 שֵׁטְתִיָּה דְרַבִּי יְהוּדָה. תִּמְנֵן אֲמַר. אֶפִּילֹו לֹא יָדַע. וְהִכָּא אֲמַר. עַד שֶׁיָּדַע. תִּמְנֵן עַל יְדֵי שְׂאִינוֹ כְּעֵין שְׂבוּעַת תּוֹרָה אֶפִּילֹו שְׂבוּעַת תּוֹרָה לֹא יָדַע. בְּרַם הִכָּא עַל יְדֵי שֶׁהוּן כְּעֵין שְׂבוּעַת תּוֹרָה.

מָהוּ לְלַלְגַל שְׂבוּעַת תּוֹרָה עַל שְׂבוּעַת תּוֹרָה. נִישְׁמַעִינָה מִן הָדָא. מִגְלַלְלִין שְׂבוּעַת תּוֹרָה עַל שְׂבוּעַת תּוֹרָה. שְׂבוּעַת תִּקְנָה עַל שְׂבוּעַת תִּקְנָה. שְׂבוּעַת תּוֹרָה עַל שְׂבוּעַת תִּקְנָה. שְׂבוּעַת תִּקְנָה עַל שְׂבוּעַת תּוֹרָה. תִּמְנֵן זֶה נִשְׁבַּע וְזֶה מִשְׁלָם. בְּרַם הִכָּא זֶה נִשְׁבַּע וְנוֹטֵל. וְזֶה נִשְׁבַּע וְאִינוֹ מִשְׁלָם.

Rebbi Jehudah's argument seems inverted. There<sup>39</sup> he says, even if he does not know. But here he says, not unless he knows<sup>40</sup>. There since it is not in the form of a biblical oath even (about a biblical oath)<sup>41</sup> he does not know. But here it is in the form of a biblical oath<sup>42</sup>.

May one roll over a biblical oath on a biblical oath<sup>43</sup>? 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 pay<sup>44</sup>.

39 Mishnah *Bava qamma* 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 Mishnaïot 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 qamma* 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 qamma* 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:** הַנִּגְזָל בִּיצֵד הָיָה מְעִידִין אוֹתוֹ שֶׁנִּכְנַס לְבֵיתוֹ לְמִשְׁכָּנוֹ שְׂלֵא בְרִשְׁוֹת. אָמַר לוֹ תַּן לִי כִּילִי שֶׁנִּטְלָתָהּ וְהוּא אֹמֵר לֹא נִטְלָתִי הָרִי זֶה נִשְׁבַּע וְנִטְלָה. רַבִּי יְהוּדָה אֹמֵר עַד שֶׁתִּהְיֶה שָׁם מִקְצֵת הַיּוֹדֵיהָ. בִּיצֵד אָמַר לוֹ שְׁנֵי כִּילִי נִטְלָתָהּ וְהוּא אֹמֵר לֹא נִטְלָתִי אֶלָּא אֶחָד:

**Mishnah 2:** How about a person robbed? There were witnesses that he entered another’s house to take a pledge without authorization<sup>45</sup>. 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 creditor. This in itself is a sin (*Deut.* 24:10-11). The witnesses did not see what he took. The

**הלכה ב:** הַנִּגְזָל בִּיצֵד כּוֹל. לְתוֹךְ בֵּיתוֹ. לֹא לְתוֹךְ הַחֲצִירוֹ. לְמִשְׁכָּנוֹ. לֹא מִשּׁוּם דָּבָר אַחֵר. אָמַר רַבִּי יִצְחָק. וּבִלְבָד בְּעֵדִים. נִכְסוּ שְׁנַיִם לְמִשְׁכָּנוֹ. יָבֵא כְּהֵדָא. יָצָא חֲבוּל מִבֵּין שְׁנֵיהֶן. שְׁנֵיהֶן רְאוּיִן לְמִשְׁכָּנוֹ. וּמָה חָמִי לֵיהּ. בְּשָׂרְאוּ שְׁנַיִם חוּבְטִין לֵיהּ בְּמִקְלוֹת. רְאוּהוּ זֶרֶק צְרוּרוֹת וְנִמְצְאוּ שָׁם כְּלִים שְׁבוּרִין נוֹטֵל בְּלֹא שְׁבוּעָה.

**Halakhah 2:** “How about a person robbed,” etc. “In another’s house,” not in his courtyard<sup>46</sup>. “To take a pledge,” not for another purpose<sup>47</sup>. Rabbi Issac said, and only by witnesses<sup>48</sup>. If two entered to take pledges from him? It should come like the following: “If he was injured between the two . . .”<sup>49</sup> But if both were entitled to take pledges? What should be seen there? If they saw two [men] hitting him with sticks<sup>50</sup>.

If they<sup>51</sup> saw him throwing pebbles and broken vessels were found there, he<sup>52</sup> 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. ייבא 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. תייהבון לבנוי דבר זינא. אתון בנוי דבר זינא. אמר. יסבון בנוי 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. תייהבון לבנוי 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 שבעשה על פי בית דין נעשה. מהו דיימרון דקיקיא לרברבייא. נחלוק עמכון. יכלין מימר לון. מציאה מצאנו. אמר רבי יצחק. אין בין רברבייא לדקיקיא אלא כמי שניתן להן מתנה.

<sup>53</sup>May 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 wealth<sup>54</sup>. Rabbi Abba told<sup>55</sup>: Bar Ziza's sharecropper deposited a pound of gold<sup>56</sup> 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 Ḥiyya 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. Ḥiyya'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*.

מִשְׁנָה ג: הַנְּהַבֵּל בֵּיצַד הָיָה מְעִידִין אוֹתוֹ שֶׁנִּכְנַם לְתוֹךְ יָדוֹ שְׁלֹם וְיִצְאָ הַבּוֹל וְאָמַר לוֹ הַבְּלֵתָה בִּי וְהוּא אוֹמֵר לֹא הַבְּלֵתִי הָרִי זֶה נִשְׁבַּע וְנוֹמַל. רַבִּי יְהוּדָה אוֹמֵר עַד שֶׁתְּהֵא שֵׁם מִקְצַת הַזִּנְיָה. בֵּיצַד אָמַר לוֹ הַבְּלֵתָ בִּי שְׁתִּים וְתִלָּה אוֹמֵר לֹא הַבְּלֵתִי אֶלָּא אַחַת:

**Mishnah 3:** The injured one, how? They were testifying against him that one came to his hand whole and left injured<sup>57</sup>. 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 הנה קורא חבטי. כל-זמן שהו חוככין זה בזה הרי זה נשבע ונוטל. הנה נשוד במקום שאינו יכול לישוד עצמו נוטל בלא שבועה. לאחר זמן זה אומר. חבלת בי. וזה אומר. לא חבלתי. הרי זה כשאר הטענות.

**Halakhah 3:** “The injured one, how,” etc.<sup>58</sup> “Rebbi Jehudah was calling them beaters<sup>59</sup>. Any time they are rubbing<sup>60</sup> one another, he swears and collects<sup>61</sup>. If he was bitten at a place where he could not bite himself, he collects without oath<sup>62</sup>. At a later time if one says, you injured me, but the other says, I did not injure, this is like any other claim<sup>63</sup>.”

58 Tosefta 6:2, *Bava qamma* 9:28 (S. Lieberman *Tosefta kiFshutah Bava qamma* p. 109.)

59 In the parallel sources חביבאי, חבבאי, חבבאי, חבבאי 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. הנה אחד מהן משחק בקוביא מלוח בריבית מפריח יונים וסוחר שביעית שפנגדו נשבע ונוטל. היו שניהן השודין הורה 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 produce<sup>64</sup>, 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 split<sup>25</sup>.

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**: וְשִׁקְנָדוּ חֲשִׂיד עַל הַשְּׁבוּעָה כּוּל'. אֵילוּ הֵן הַפְּסוּלִין. הַמְּשַׁחֵק בְּקוֹבְיָא. זֶה הַמְּשַׁחֵק בְּפִסְפָּסִין. אֶחָד הַמְּשַׁחֵק בְּפִסְפָּסִין וְאֶחָד הַמְּשַׁחֵק בְּקִלְפֵי אֶגְוִזִּים וְרִמּוֹנִים לְעוֹלָם אֵין מְקַבְּלִין עִדוּתוֹ עַד שֶׁיִּשְׁבֵּר פְּסִיפָּסִין וְיִבְדֹּק וְיַחְזוֹר בְּהוֹן חֲזָרָה גְמוּרָה. הַמְּלִיָּה בְּרִבֵּית אֵין מְקַבְּלִין אוֹתוֹ עַד שֶׁיִּקְרַע שְׁטְרוֹתָיו וְיִבְדֹּק וְיַחְזוֹר בְּהוֹן חֲזָרָה גְמוּרָה.

**Halakhah 4:** “And if the opposing party was suspect of perjury,” etc.

<sup>65</sup>The dice player is the one who plays with small stones<sup>66</sup>. “Not only the player with stones, even one who plays with shells of nuts or pomegranates<sup>66a</sup> 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

66a Pomegranates (*rimmonim*) do not have shells but skins. Perhaps the reference is to Greek  $\rho\acute{\upsilon}\mu\beta\omicron\varsigma$ ,  $\rho\acute{\upsilon}\mu\beta\omicron\varsigma$ , “magic wheel, instrument used in pagan mysteries; rhomb”, from  $\rho\acute{\omicron}\mu\beta\acute{\epsilon}\omega$  “to spin, cause to whirl” (E. G.)

66 Greek  $\psi\eta\phi\omicron\varsigma$  “pebble, cube; the stones used for mosaics and tokens used in elections.” Rashi defines as “marbles”.

37d line 53) וּמִפְּרִיחֵי יוֹנִים. זֶה הַמְּמַרְהָ יוֹנִים. אֶחָד הַמְּמַרְהָ יוֹנִים וְאֶחָד הַמְּמַרְהָ בְּהֵמָה חִיָּה וְעוֹף אֵין מְקַבְּלִין אוֹתוֹ עַד שֶׁיִּשְׁבֵּר פְּגִימָיו וְיַחְזוֹר חֲזָרָה גְמוּרָה.

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 תִגְר שְׁבִיעִית. אֵי זֶהוּ תִגְר שְׁבִיעִית. יִשָּׁב לוֹ כָּל־שְׁנֵי שְׁבִיעִית וּבִשְׁבִיעִית הִתְחִיל נוֹשָׂא וְנוֹתֵן בְּפִירוֹת שְׁבִיעִית. אֵין מְקַבְּלִין אוֹתוֹ עַד שֶׁתִּגְיַע שְׁבִיעִית אַחֲרַת וְיִבְדֹּק וְיַחְזוֹר חֲזָרָה גְמוּרָה. תִּנֵּי רַבִּי יוֹסִי. שְׁנֵי שְׁבִיעִיּוֹת. רַבִּי נַחֲמָה אוֹמֵר. חֲזַרְת מִמּוֹן לֹא חֲזַרְת דְּבָרִים.

שְׁאֵמַר לָהֶם. הֲאֵלֶּם מְאֵתִים זֶה וְחֻלְקוֹם לְעֵנִיִּים שְׁכַנְסָתִי מִפִּירַת עֲבִירָה. הוֹסִיפוּ עָלַיְהוּן הַרְוֵעִין וְהַחֲמִסְנִין וְהַגְזֵלְנִין. וְכָל־הַחֲשׂוּדִין בְּמִמּוֹן עֲדוּתוֹן בְּטִילָה. אָמַר רַבִּי אֲבָהוּ. בְּרוּעֵי בְּהֵמָה דִּקְרָה.

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. <sup>6</sup>“Rabbi 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 הוֹנָא אָמַר. מֵאֵן תְּנִיתָהּ מִפְּרִיחֵי יוֹנִים. רַבִּי לִיעֶזֶר. דְּתַנְן. מִפְּרִיחֵי יוֹנִים פְּסוּלִין לְעֵדוּת. אָמַר רַבִּי מְנָא קוֹמֵי רַבִּי יוֹסֵי. וְעוֹד מֵהֵדָא דְסִנְהֶדְרִין כְּרַבִּי לִיעֶזֶר. אָמַר לֵיהּ. דְּבָרֵי הַכֹּל הִיא. הֵכָא אָמַר רַבִּי יוֹסֵי. יוֹדְעִין הֵיזֵי שְׁהֵיזָה פְּסוּל מַעֲדוֹת מְמוּן. וּמָה בָּא לְהַעֲדִי. אֶלְפָּא כְּשֵׁם שְׁפָסוּל מַעֲדוֹת מְמוּן כְּדִ פְּסוּל מַעֲדוֹת נְפֹשׁוֹת. וְעִדֵי הַחוּדָשׁ פְּעִידֵי נְפֹשׁוֹת. דְּתַנְיִן תַּמּוּן. כָּל־עֲדוֹת שְׂאֵין הָאִשָּׁה כְּשִׁירָה לָהּ אֶף הוּ אֵינּוּ כְּשִׁירִין לָהּ. מֵאֵן תְּנִיתָהּ. רַבְנִין. רַבְנִין כְּרַבִּי לִיעֶזֶר. מוֹדִיִּין לֵיהּ וּפְלִגִין עָלוּי. רַבִּי הוֹנָא בְּשֵׁם רַבִּי יוֹנָה. כּוֹלְהוֹן כְּרַבִּי לִיעֶזֶר. וְאֲתִיבִין אֵילִין פְּלוּגוֹנוֹתָא כְּאֵילִין פְּלוּגוֹנוֹתָא. דְּתַנִּי. עַד זֹמַם פְּסוּל מִכָּל־עֲדוּת שְׁבִתוֹרָה. דְּבָרֵי רַבִּי מֵאִיר. אָמַר רַבִּי יוֹסֵי. אֵימְתִי. בְּזִמְן שְׁנַמְצָא זֹמַם בְּעֵדוֹת נְפֹשׁוֹת. אֲבָל אִם נִמְצָא זֹמַם בְּעֵדוֹת מְמוּן אֵינּוּ פְּסוּל אֶלְפָּא אוֹתָהּ עֲדוֹת בְּלִבְד. וְתִיבָא דְרַבִּי יוֹסֵי כְּרַבְנִין 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.

37d line 74) הַחֲשׂוּד בְּשׁוּבָעָה מֵאִמְתִּי מְקַבְּלִין אוֹתוֹ. מִשְׁבּוּא בְּבֵית דִּין וְיֹאמֵר. חֲשׂוּד אֲנִי. מִה נֶן קִיּוּמִין. אִם בְּהוּא דְקָאִים חֵיב לְחַבְרִיה שְׁבוּעָה. וּבֵית דִּין מוֹסְרִין שְׁבוּעָה לְחֲשׂוּד. אֶלְא כֵן אֲנִי קִיּוּמִין בְּהוּא דְאֶזְל מִדּוֹן בְּבֵית דִּין דְּלֹא תְקַמִּין לֵיה וְיִימַר לוֹן. הֵהוּא גְבָרָא חֲשׂוּד הוּא. אִף בְּהוּא דְקָאִים וְחֵיב לֵיה שְׁבוּעָה וּמְחַלִּיה עֲלֵיה.

When does one accept one who is suspect in matters of oaths<sup>67</sup>? 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 person<sup>68</sup>? But we must hold about one who has a suit at a court where he is unknown and tells them, this man<sup>69</sup> is suspect. Also about one who stands and another owes him an oath and he forgives it<sup>70</sup>.

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.

38a line 3) רַב הִשְׁעִיגָה אָמַר קָמִי רַבִּי אֲמִי בְּשֵׁם רַבְּנֵנוּ דְתַמְנָן. תְּזַרָה שְׁבוּעָה לְסִינֵי. רַבִּי יוֹחָנָן בְּשֵׁם רַבִּי יַנַּאי. תְּזַרָה שְׁבוּעָה לְבַעְלִין. מָאן דְּמַר. תְּזַרָה שְׁבוּעָה לְסִינֵי. כְּמִי שְׂאִין כְּאִן עֲדוּת. הַמוֹצִיא מִחֲבִירוֹ עָלָיו הִרְאִיגָה. וּמָאן דְּמַר. תְּזַרָה שְׁבוּעָה לְבַעְלִין. מִמָּה דְהוּא גְבָרָא חֲשׂוּד וְלֹא יָכִיל מִישְׁתַּבַּע לִי קוּם שְׁלָם לִי.

<sup>71</sup>Rav Hoshai 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 claimant<sup>72</sup>. He who said, the oath returned to the parties, since that man is suspect and cannot swear for me, get up and pay me<sup>73</sup>.

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.

מִשְׁנֵה הַ: וְהַחֲנוּנִי עַל פִּינְקָסוֹ בִּיַּצֵּד לֹא שִׂיאֹמֵר לוֹ כְּתוּב עַל פִּינְקָסִי שְׂאֵתָ חַיִּיב לִי מִזֹּאתִים זֶה אֵלֶּה אָמַר לוֹ הֵן לְבָנֵי סֵאתִים הַפִּים וְלַפּוֹעֲלֵי בְסָלַע מְעוֹת הוּא אֹמֵר נְתַתִּי. וְהֵן אֹמְרִים לֹא נִטְלָנוּ הוּא נִשְׁבַּע וְנִטְלָל וְהֵן נִשְׁבַּעִין וְנִטְלָלִין. אָמַר בֶּן נָנִס בִּיַּצֵּד אֵילוֹ וְאֵילוֹ בְּאֵין לְיָדֵי שְׂבוּעַת שְׂוֹא אֵלֶּה הוּא נִטְלָל שְׂלֹא בְשְׂבוּעָה וְהֵן נִטְלָלִין שְׂלֹא בְשְׂבוּעָה:

**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 denars<sup>74</sup>, but he said to him, give my son two *se'ah* of wheat, or my worker small change for a tetradrachma<sup>75</sup>. 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 falsely<sup>76</sup>! But he takes without an oath and they take without an oath<sup>77</sup>.

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 unjustified emendation. Practice has to follow the anonymous Tanna.

38a line 8) **ה' הלכה ה'**: וְהַחֲנוּנִי עַל פִּינְקֶסוֹ כּוֹל'. חֲנוּנִי עַל פִּינְקֶסוֹ לֹא בְּמִקּוּף אָמְרוּ. שֶׁהוּא אוֹמֵר לוֹ. כְּתִבְתָּ בְּזֶה מְחוּזָה בְּזֶה.

**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]”<sup>78</sup>.

78 Tosephta 6:4. In the absence of proofs, the customer can always claim that he paid his debt but the seller failed to update his books. The customer is not required to preserve the receipt for his payment; the seller has to organize his accounts so that open accounts can be used as proof in court.

38a line 10) **רבי אומר**. אוֹמֵר אֲנִי שֶׁיְהוּ אֵילוּ נִשְׁבְּעִין בְּפָנֵי אֵילוּ מִפְּנֵי הַבוּשָׁה.

Rebbi says, I am saying that these have to swear in the presence of those because of the embarrassment.<sup>79</sup>

79 Babli 47b. He takes care of Ben Nannas’s objection by requiring both parties to swear in the presence of the other (and, in the Babli’s version, in the presence also of the person who has to pay). It can be expected that in this case the party not entitled to payment will not dare to swear falsely.

38a line 11) **הָדָא דְתִימְרָא בְּשִׁלְאָה הֶעֱמִידוּ עִמּוּ**. אֲבָל הֶעֱמִידוּ עִמּוּ אִין בְּעַל הַבַּיִת חַיִּיב כְּלוּם. כְּהָדָא דְמַר רַבִּי יוֹדָה בַּר שְׁלוּם. סְמִיכוֹן כְּתִיבָא גַבִּי קַפְלִיָא. אֲתוּן. וְאַפְקוּן דְלֹא יְהַב לְהוּן. אֲתָא עוֹבְדָא קוּמִי רַבִּי שְׁמִי. מִמָּה דְאֵילוּ הוּן קַפְלִיָא יִימַר מְסֻבּוֹת לִית סוּפְיָהוּן דְאֵילָן וְאֵילָן מִיִּסְבַּ אֶלָּא יִסְבוּן מִכְּבָר.

That is to say, only if he did not introduce them<sup>80</sup>. 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 merchants<sup>81</sup>. 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 immediately<sup>82</sup>.

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.

(fol. 37c) **משנה ו:** אָמַר לְהַנְנוּנִי תָּן לִי בְּדִינָר פִּירוֹת וְנָתַן לוֹ אָמַר לוֹ תָּן לִי הַדִּינָר אָמַר לוֹ נָתַתִּי לָךְ וְנָתַתָּוּ בְּאַנְפְּלִי יִשָּׁבַע בְּעַל הַבַּיִת. נָתַן לוֹ אֶת הַדִּינָר אָמַר לוֹ תָּן לִי אֶת הַפִּירוֹת אָמַר לוֹ נָתַתִּים לָךְ וְהוֹלַכְתָּן לְתוֹךְ בֵּיתָךְ יִשָּׁבַע הַהַנְנוּנִי. רַבִּי יְהוּדָה אוֹמֵר כָּל שְׁחִיפּוֹת פְּרִדּוֹ יָדוּ 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 *anpale*<sup>83</sup>: the householder has to swear<sup>84</sup>. 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 advantaged<sup>85</sup>.

**משנה ז:** אָמַר לְשׁוֹלְחָנִי תָּן לִי בְּדִינָר מְעוֹת וְנָתַן לוֹ אָמַר לוֹ תָּן לִי אֶת הַדִּינָר אָמַר לוֹ נָתַתִּי לָךְ וְנָתַתָּוּ בְּאַנְפְּלִי יִשָּׁבַע בְּעַל הַבַּיִת. נָתַן לוֹ אֶת הַדִּינָר אָמַר לוֹ תָּן לִי אֶת הַמְעוֹת אָמַר לוֹ נָתַתִּים לָךְ וְהִשְׁלַכְתָּם לְתוֹךְ כִּיסְךָ יִשָּׁבַע הַשׁוֹלְחָנִי. רַבִּי יְהוּדָה אוֹמֵר אֵין דְּרָךְ הַשׁוֹלְחָנִי לִיתָן 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 *anpale*: 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*<sup>86</sup>.

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) אונכלי explained by Kohout as ἀνάκωλος [χιτωνίσκος] “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: בשם שאמרו הפוגמות כתובתה לא תיפרע אלא בשבועה. ועד אחד מעידה שהיא פרועה לא תיפרע אלא בשבועה. מנכסים משועבדים ומנכסי יתומין לא תיפרע אלא בשבועה. והנפרעת שלא בפניו לא תיפרע אלא בשבועה.

**Mishnah 8:** <sup>87</sup>If 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 לְחַנּוּנֵי תָן לִי בְדִינָךְ פִּירוֹת כּוֹל'. רַבִּי חֲנִינָא אָמַר. בְּמַחְלוֹקֶת. אָמַר רַבִּי יְהוּדָה. אֵימַתִּי. בְּזַמַּן שֶׁהֵיטָה הַקּוֹפָה מּוֹנַחַת בֵּין שְׁנֵיהֶן. אֲבָל אִם הֵיטָה יּוֹצֵאָה 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 . . .”<sup>88</sup>

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. (Zuckermandel), 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 Mišpaṭ* 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 *בְּמַחְלוֹקֶת* 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 בְּמַחְלוֹקֶת. הִדָּא דִּתְּ מַר בְּאַחַסְנָאִי. אֲבָל בְּבֶן עִיר דְּרָכוּ לִיתָן אִיסָר עַד שְׁלָא יְטוּל דִּינָרוֹ.

Also this<sup>89</sup> needs to be differentiated. It is said about a stranger<sup>90</sup>. But to a fellow town dweller he will give an *as* before he takes his *denar*<sup>91</sup>.

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) אמר רבי זירא. כולהו כעין שבועת תורה נרדו להן. וכתובת אשה לא הוה זקא בידה להגבות. אלא כמי שגבת מיכן והילך. והוא בתובעה שטר שלמאתים פרוע ואומרת. אינה אלא מנה. נפרעת בלא שבועה. תמן תנינן הפוגמת כתובתה לא תיפרע אלא בשבועה. כיצד. היתה כתובתה אלקי זו ואמר לה. התקבלת כתובתך. והיא אומרת. לא התקבלתי אלא מנה. לא תיפרע אלא בשבועה. תני. הפוגמת ולא הפוחתת. רב חסדא בעי. בגין דהלך תרתין פסיעתא הוא. מפני שפגמו בבית דין את מר. אינו גובה.

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 oath<sup>92</sup>.

There, we have stated<sup>93</sup>: "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 diminished<sup>94</sup>.

<sup>95</sup>Rav 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 Ḥisda 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.

(fol. 37c) **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 נמליאל 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 us<sup>96</sup>, our father did not tell us<sup>97</sup>, and we found nothing in our father’s documents<sup>98</sup> that this note of indebtedness was paid.” Rabbi Johanan ben Beroqa testified<sup>99</sup> 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.

(38a line 27) **הלכה ט:** וכן היתומים לא יפרעו אלא בשבועה כול'. רבי יוחנן בשם רבי ינאי. אין נפרעין מניכסי יתומים קטנים אלא בשריבית אוכלת בו. רבי נתן אומר. אף לכתובת אשה. אמר רבי מנא. מפני מזונות. אמר רבי מתנייא. מאן חיש למזונות. רבי שמעון. דרבי שמעון אומר. בנקיבה הדבר תלוי. מאי כדון. משום חניא. כדי שיהו קופצין עליה לישאנה. רבי נתן אומר. אף לגזילה ולנזקין. אמר רבי יוסי. אף נן תנינו תרתייהון. לגזילה מהכא. אם הנה דבר שיש בו אחריות חייב לשלם. לנזקין מהכא. אין נפרעין מניכסי יתומים קטנים אלא מאבורית. כיני מתנייתא. אין נפרעין מניכסי יתומים קטנים לנזקין אלא מאבורית. והתני. יעמד הבן תחת האב. הנזקין שמין להן בעידיה ובעל חוב בבינונית וכתובת אשה באבורית. אמר רבי יוסי בירבי בון. תיפתר דברי הכל בהדא דייתיקי.



**Halakhah 9:** “Similarly, the orphans can collect only by an oath;” etc.

<sup>100</sup>Rebbi 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*<sup>101</sup>. 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 female<sup>102</sup>. What about it? For attraction<sup>103</sup>, 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.<sup>104</sup>” For torts from the following: “One pays from minor orphans’ property only from the least valuable.<sup>105</sup>” 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 dispositions<sup>106</sup>.

הכא את מר. אין נשבעין על טענת חרש שוטה וקטן. והכא את מר. אבל נשבעין לקטן ולהקדוש. בנפרעין מניכסי קטן. ונפרעין מאדם שלא בפניו. אמר רבי ירמיה. תיפתר בשריבית אוכלת בו. ובית דין גובין ריבית. תיפתר בערב לו מגוי.

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.<sup>107</sup>” If one pays from the minor’s property. <sup>108</sup>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 Gentile<sup>109</sup>.

ליכסה אמר קומי רבי מנא. אנו עבדין טבות סגין מינכון. אנו משלחין דנאטיגמטין. אין אתא הא טבות. ואין לא אתא מחלטין נכסוי. אמר ליה. אוף אנו עבדין פן. מכרזינו ל' יומין. אין אתא טבות. ואילא מחלטין נכסוי. אמר ליה. הגע עצמך דהנה בזווי רחיקי. אמר ליה. אנו משלחין ג' איגרות. תדא גו ל' יומין. וחדא גו ל' יומין. וחדא גו ל' יומין. אין אתא הא טבות. ואילא מחלטין נכסוי. אמר רבי חנינה. ושעמד בדין וברת. אבל אם לא עמד בדין לא מחלטין ולא מכרזינו.

<sup>110</sup>Alexis said before Rebbi Mana: We act much better than you do. We send edicts<sup>111</sup>. 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 letters<sup>112</sup>, 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)<sup>113</sup> announce.

אַשְׁפַּח תִּימָר. חָנוּ וְרַבִּי שְׁמַעוֹן שְׁנֵיהֶם אָמְרוּ דָּבָר אֶחָד. הֵיךְ מֵה דְתִימָר. הַלֵּכָה כְּחָנוּ.  
וְדִכְוֹתָהּ הַלֵּכָה כְּרַבִּי שְׁמַעוֹן.

<sup>114</sup>You find that one may say that Ḥanan and Rabbi Simeon said the same thing<sup>115</sup>. 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. ורבה.

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.

מִשְׁנָה י: וְאִילוּ נִשְׁבְּעִין שְׁלֵא בְּמַעֲנֵה הַשּׁוֹתְפִין וְהָאֲרִיסִין וְהָאֲפִיטְרוֹפִין וְהָאִשָּׁה הַנּוֹשְׂאָה וְנוֹתְנַת בְּתוּךְ הַבַּיִת וְכֵן הַבַּיִת. אָמַר לוֹ מִה אַתָּה מוֹעֲגִינִי רְצוֹנִי שְׁתִּישָׁבַע לִי חַיִּב. הִלְקוּ הַשּׁוֹתְפִין וְהָאֲרִיסִין אִין יָכוֹל לְהִשְׁבִּיעוֹ. נִתְנַגְלָה לּוֹ שְׁבוּעָה מִמְקוֹם אַחֵר מִנְגְלִין עָלָיו אֵת הַכֹּל. וְהִשְׁבִּיעִית מִשְׁמַמֶּט אֵת הַשְּׁבוּעָה:

**Mishnah 10:** The following have to swear without a claim: Partners<sup>116</sup>, and sharecroppers<sup>117</sup>, and trustees<sup>118</sup>, and a wife trading in the house<sup>119</sup>, and a family member<sup>120</sup>. If he says, what do you claim from me? “I want you to swear to me,” he is liable<sup>121</sup>. 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 him<sup>122</sup>. The Sabbatical year remits an oath<sup>123</sup>.

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 הלזה המלוה נשבע לירשיו. ואפילו מת המלוה יורשי מלוה נשבעין ללוה. אבל אם מת לוה 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 oath<sup>124</sup>. Rabbi Johanan heard and said, should that one eat and enjoy it<sup>125</sup>?

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

125 Since there is little doubt that there

to R. Eleazar.

רב חייה בר אשי בשם רב. שטר היוצא מתחת ידי המלוה בכתב דו פסול. אגני אומר. מתעסק היית בשטרותיך. הא מתחת ידי אחר קשר. רבי אבינא בשם שמואל. לעולם פסול עד שניצא מידי המלוה בכתב ידי לוה. מאי דון. אמר רבי יוסי בירבי בון. תיפתר דברי הכל בדייתיקי.

<sup>126</sup>Rav Hiyya bar Ashi in the name of Rav: A document<sup>127</sup> 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 handwriting<sup>128</sup>. What about this? Rabbi Yose ben Rabbi Bun said, explain it according to everybody about a testamentary gift<sup>129</sup>.

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).

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.

127 A term derived from Accadic *šaṭāru* "to write", usually used for documents of

אָמַר רַבִּי יוֹסֵי. הִדָּא אָמְרָה בְּנוּשָׂא וְנוֹתָן שְׁלָא בְּחֻשְׁבוֹן. אֲבָל בְּחֻשְׁבוֹן לֹא בְּדָא. וְאַהֲוֹן בְּוֹן בֵּית עוֹד הוּא בְּנוּשָׂא וְנוֹתָן שְׁלָא בְּחֻשְׁבוֹן. רַבִּי זִירָא כְּהֵדָא דְרַבִּי יוֹסֵי. חַד בַּר נֶשׁ אֲזַל לְמִידָן קָמֵי רַבִּי זִירָא וְחִיִּיבוּ שְׁבוּעָה עַל תְּרִין דִּינָרִין. אָמַר לֵיהּ. לָאוּ תְרִין דִּינָרִין אֲנִי חַיִּיב לָךְ. הָא טְרִיפִין לָךְ. אָמַר לֵיהּ. וְמִילַת פְּלוֹן וּפְלוֹן. אָמַר רַבִּי זִירָא. אוּ הֵב לֵיהּ כָּל־דְּתַבַּע לָךְ אוּ אִישְׁתַּבַּע כָּל־דְּמִגְלָגַל עֲלֵךְ. עַד כִּמָּה מִגְלָגְלִין עֲלִי. אָמַר רַבִּי יוֹחָנָן. עַד כְּדֵי שְׂאִימַר לוּ. עַבְדֵי אַתָּה. הִגַּע עֲצָמָךְ שְׁהֵיָה כְּהוּ וְעַבְד עֲבָרִי. וְכִי יֵשׁ עַבְד בְּזִמְנוּ הַזֶּה.

Rebbi Yose<sup>130</sup> said, this means if he trades without account; it does not apply if there are accounts. Also the family member trades without accounts<sup>131</sup>.

Rebbi Ze'ira agrees with Rebbi Yose<sup>132</sup>. A man came for judgment before Rebbi Ze'ira who required him to swear for two *denars*<sup>133</sup>. He told him<sup>134</sup>, do I not owe you two *denars*? Here they are thrown to you. He<sup>134</sup> 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 you<sup>122</sup>.

How far does one roll over? Rebbi Johanan said, until he say to him, you are my slave<sup>135</sup>. Think of it, could he be Cohen and Hebrew slave<sup>136</sup>? Is there such a slave today<sup>137</sup>?

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 meš'i'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 בַּר רַב יִצְחָק. שְׁמֵרָה. דְּלֹא כֹן מָה נוֹן אֶמְרִין. שְׁמֵרָה. לֹא בְּטָלִיהָ. הִיא בְּעַל בְּעַל. מָה בְּעַל שְׁנַאֲמַר לְהֵלֵךְ מִשְׁמִיט אֶף כָּאֵן מִשְׁמִיט. דְּבָרִים שֶׁהֵן מַשָּׂה גְדוֹ שְׁבִיעִית מְשַׁמְטָתוֹ. וְשֶׁאֵין מַשָּׂה גְדוֹ אֵין שְׁבִיעִית מְשַׁמְטָתוֹ לֹא אוֹתוֹ וְלֹא שְׁבוּעָתוֹ. כָּל־שְׁשִׁבְעִית מְשַׁמְטָתוֹ מְשַׁמְטָת שְׁבוּעָתוֹ. וְכָל־שֶׁאֵין שְׁבִיעִית מְשַׁמְטָתוֹ אֵינָה מְשַׁמְטָת שְׁבוּעָתוֹ.

Rebbi Samuel ben Rav Isaac said, watch it for it is otherwise<sup>138</sup>. What do we say? Watch it, for it is not negligible. “Owner,” “owner.”<sup>139</sup> Since the owner mentioned there is subject to annulment, so also here he is subject to annulment<sup>140</sup>. The Sabbatical annuls things which are his hand’s loans<sup>141</sup> 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”<sup>142</sup>.

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 בְּעַל; in the laws of annulment of debts (*Deut.* 15:2) the creditor is called בְּעַל. 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 הנזם והשוואל נושא שכר והשוכר. שומר הנזם נשבע על הכל והשוואל משלם את הכל. נושא שכר והשוכר נשבעים על השכר ועל השבועה ועל המיתה ומשלמין את האבידה ואת הנגיבה:

**Mishnah 1:** <sup>1</sup>There are four kinds of keepers: The unpaid trustee and the borrower, the paid keeper, and the renter. The unpaid trustee swears about everything<sup>2</sup>; the borrower pays for everything; the paid keeper and the renter swear about breakage, abduction, and death, but pay for the lost and the stolen<sup>3</sup>.

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 חיובין אלא דרף קניין. רבי יעקב בר אחא בשם רבי לעזר. אף לענין גזילה אין חיובין אלא דרף קניין. אמר רבי יוסי בירבי בון. ומתניתא אמרה כן. המקבל שדה מחברו כול'. רבי חנניה אמר רבי בון. אף בגניבה אין חיובין אלא דרף קניין. רבי חנניה בשם רבי פינחס. ומתניתא אמרה כן. הנה מושכו ויוצא ומת ברשות הבועלים פטור. הגביהו או שהוציאו מרשות הבועלים ומת חיוב. הגביהו ברשות הבועלים כמי שניצא כל-רשות הבועלים. הנה מושכו ויוצא עד שניצא כל-רשות הבועלים. רבי אבהו בשם רבי יוחנן. בעומדת באבוסו. רבי בון בר חייה בעי. אם בעומדת באבוסו אפילו לא משך. אלא כי נן קיימין בעומדת ברשות הרבים. מה. רבי בון בר חייה כבית שמי. דבית שמי אומרים. ילקה בחסר ובגתר. מה נן קיימין. אם בעומדת ברשות הרבים וחשב לגזילה ומתה באותה המחשבה דברי הכל חיוב. אם עד שלא משך דברי הכל פטור. אלא כי נן קיימין בעומדת באבוסו. כדאמר רבי בון בר חייה כבית שמי. אמר רבי בון. תמן בקורה שלא מדעת הבועלים. גרם הקא בקורה מדעת הבועלים.

**Halakhah 1:** “There are four kinds of keepers,” etc. Rabbi Johanan said, there are four kinds of keepers and they become liable only through acquisition<sup>4</sup>. Rabbi Jacob bar Aḥa 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,”<sup>5</sup> etc. Rabbi Hananiah said, Rabbi Abun, also in theft cases they become liable only through acquisition<sup>6</sup>. 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.”<sup>7</sup> 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 trough<sup>8</sup>. Rabbi Abun bar Ḥiyya asked: If it was standing at his feeding trough then even if he did not pull it<sup>9</sup>! But we must deal with the case that it was standing in the public domain<sup>10</sup>. Does Rabbi Abun bar Ḥiyya follow the House of Shammai, since the House of Shammai say, “he shall be hit by less or more”<sup>11</sup>? 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 liable<sup>12</sup>. But we most hold that it was standing at a feeding trough on his property<sup>13</sup>. As Rabbi Abun bar Ḥiyya 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 owner<sup>14</sup>.

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 meši`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 elliptical. 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 meši`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.

פְּתִיב כִּי־יִתֵּן אִישׁ אֶל־רֵעֵהוּ וּגו'. לְשֹׁמֵר. וְלֹא לְקָרוֹעַ. לְשֹׁמֵר. וְלֹא לְהַשְׁלִיךְ.  
לְשֹׁמֵר. וְלֹא לִיתֵן בְּמִתְּנָה. אָמַר רַבִּי יוֹסֵי. וְהוּא שְׂאֵמַר לִיתֵן מִתְּנָה לְכָל־מִי שִׁירָצָה. אֲבָל אָמַר  
לְפָלְגִי. מִכֵּיּוֹן שֶׁשְׂמִירְתּוֹ עָלָיו כְּמִי שֶׁהוּא עָלָיו.

<sup>15</sup>It is written: *If a man give to another, etc', to keep*<sup>16</sup>. *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 him<sup>17</sup>.

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.

57) תַּנִּי. וְגוֹנֵב מִבַּיִת הָאִישׁ. לֹא מֵרֹאשׁ גִּגּוֹ. אָמַר רַבִּי לְעִזָּר. הֲדָא דְתִימְרַב בְּגַגְּ שְׂאִינֵי מְבוֹצָר. אֲבָל בְּגַגְּ מְבוֹצָר כְּבַיִת הוּא.

It was stated: *If it was stolen from the man's house*<sup>16</sup>. Not from his roof. Rebbi Eleazar said, that means, from an unprotected roof. But a fortified roof is like a house<sup>18</sup>.

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.

59) תַּנִּי. וְגוֹנֵב מִבַּיִת הָאִישׁ. לֹא מִבַּיִת הַשּׂוֹאֵל. וְכֵן וְגוֹנֵב מִבַּיִת הָאִישׁ. לֹא מִבַּיִת נוֹשֵׂא שְׂכָר וְהַשּׂוֹכֵר. מִכִּינּוֹן שֶׁשְׂמִירְתּוֹ עָלָיו כְּמִי שֶׁהוּא עָלָיו. שְׂתִימְצָא אוֹמֵר. שְׁלֹשׁ פְּרָשׁוֹת הֵן. הַתְּחִלְתּוֹנָה בְּשׂוֹאֵל. וְהֶאֱמָצְעִית בְּנוֹשֵׂא שְׂכָר וְהַשּׂוֹכֵר. וְהַעֲלִינָה בְּשׂוֹמֵר חֲנָם. שׂוֹאֵל לְפִי שְׂנֵהֲנָה אֶת הַכֹּל מִשְׁלָם אֶת הַכֹּל. נוֹשֵׂא שְׂכָר וְהַשּׂוֹכֵר לְפִי שְׂנֵהֲנָה מִקְצָת וּמֵהֲנָה מִקְצָת נִשְׁבַּע מִקְצָת וּמִשְׁלָם מִקְצָת. שׂוֹמֵר חֲנָם שְׂאִין לוֹ הֲנִיחָה נִשְׁבַּע וְיוֹצֵא. מֵהוּ נִשְׁבַּע. לֹא פִשְׁעֵתִי. הֵיוּ אַחֲרֵים יוֹדְעִין שֶׁלֹּא פִשַׁע מֵאִי. נִישְׁמָעִינָה מֵהֲדָא. הֲרִי שְׂנִמְצָא הַגִּנְבֵי וְאִין לוֹ לְשַׁלֵּם. מֵהוּ שְׂאִימֵר לוֹ. בּוֹא וְהַשְׁבַּע לִי שֶׁלֹּא נָתַתְּ עֵינְךָ בָּהּ לְגוֹזְלָהּ. נִישְׁמָעִינָה מֵהֲדָא. וְאִם לֹא יִמְצָא הַגִּנְבֵי. הֵא אִם נִמְצָא פְטוֹר.

It was stated, *if it was stolen from the man's house*<sup>16</sup>; 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 renter<sup>19</sup>? Since he is obligated to watch it, it is as if it

referred to him<sup>20</sup>; for you may say that there are three paragraphs<sup>21</sup>. 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 anything<sup>22</sup>. 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 him<sup>23</sup>, swear to me that you were not thinking to take it? Let us hear from the following: *If the thief was not found*<sup>24</sup>. 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 qamma* 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 meṣi'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־תִּתֶּן אִישׁ אֶל־רֵעֵהוּ חֲמוֹר או־שׂוֹר או־שֶׁה וְגו'. שְׂבוּעַת יְיָ תִּהְיֶה בֵּין שְׂנֵיהֶם. גְּנוּבָה. אִם גְּנוּב וְגִנֵּב מֵעַמּוֹ. אֲבִידָה. וְאִם. לְרִבּוֹת הָאֲבִידָה. עַד פְּדוֹן כְּרָבִי עֲקִיבָה. כְּרָבִי יִשְׁמַעְעָל. תִּנְי רַבִּי יִשְׁמַעְעָל. מָה אִם גְּנִיבָה שְׂקֻרוּבָה לְאוֹנְסִין אֶת אֲמַר מִשְׁלָם. אֲבִידָה שְׂאִינָה קְרוּבָה לְאוֹנְסִין לֹא כָל־שֶׁכֶן.

אֵין פְּתוּב בְּשׂוֹאֵל אֶלָּא שְׂבוּרָה. אֲבִידָה וְגִנֵּיבָה מְנִיין. וְדִין הוּא. מָה אִם נוֹשֵׂא שְׂכָר וְהַשׂוֹכֵר שְׂאִין מִשְׁלָמִין שְׂבוּרָה וּמִתָּה מִשְׁלָמִין גְּנִיבָה וְאֲבִידָה. שׂוֹאֵל שְׂמִשְׁלָם שְׂבוּרָה וּמִתָּה אֵינּוּ דִין שְׂמִשְׁלָם אֲבִידָה וְגִנֵּיבָה. וְתִנְי עָלֶיהָ. הֲרִי זֶה קָל וְחוֹמֵר שְׂאִין עָלָיו תְּשׁוּבָה. שְׂבוּיָה

מְנִיין. נֶאֱמַר קָאן וְנִשְׁבַּר אוֹרְמַת וְנֶאֱמַר לְהֵלן וּמַת אוֹרְנִשְׁבַּר. מַה לְהֵלן שְׂבוּיָה עִמָּהּ אִף קָאן שְׂבוּיָה עִמָּהּ. עַד כְּדוֹן כְּרַבִּי עֲקִיבָה. כְּרַבִּי יִשְׁמַעֵאל. רַבִּי יִשְׁמַעֵאל כְּרַבִּי נֶתָן. רַבִּי נֶתָן אוֹמֵר. אוֹ. לְרַבּוֹת אֶת הַשְּׂבוּיָה. וּכְרַבִּי מֵאִיר דְּאֵמֵר. גִּזְרָה שְׁנֵה בְּמִקּוֹם שְׂבָאוֹת. מַה לְהֵלן נִשְׁבְּעִין עַל הַאוֹנְסִין. אִף קָאן נִשְׁבְּעִין עַל הַאוֹנְסִין. עוֹד דְּרַבִּי נֶתָן. דְּרַבִּי נֶתָן אוֹמֵר. אוֹרְמַת. לְרַבּוֹת אֶת הַשְּׂבוּיָה.

It is written, *if a man give to his neighbor a donkey, or an ox, or a sheep*<sup>25</sup> etc. *An oath before the Eternal shall be between the two of them*<sup>26</sup>. *Stolen, if it was stolen stealing from him*<sup>27</sup>. *Lost, and if, to include the lost one*<sup>28</sup>. 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 more<sup>29</sup>?

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 loss<sup>30</sup>. 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*<sup>31</sup>; and it is said there, *it dies or was broken*<sup>25</sup>. Since there the abducted was included, here also the abducted was included. So far following Rabbi Aqiba<sup>32</sup>. 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 from<sup>33</sup>. Since there one swears for duress, also here one swears for duress. Still following Rabbi Nathan, for Rabbi Nathan said, *or it died*<sup>31</sup>, to include the abducted one<sup>34</sup>.

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 שקלאונסין. אמר לו. בא ליסטיס מזויין ונטלה. מהו שקשלים תשלומי כפל שקלאונסין. אמר רבי יוסי. אין כיני נתיני. שומר שקר והשוכר. דתני. לא מצינו בשומר שקר והשוכר שקשלים תשלומי כפל שקלאונסין. ותני עלה. זהו קל וחומר שיש עליו תשובה. אמר רבי חנינה. אם אומר את כן נמצאת אומר. הרי זה קל וחומר שיש עליו תשובה. דו זכיל מימר ליה. מצינו בשומר שקר והשוכר שאינו משלם תשלומי כפל. תאמר בשואל שקשלים תשלומי כפל מכל-מקום. ותני עלה. הרי זה קל וחומר שאין עליו תשובה.

Rebbi Yudan asked: <sup>35</sup>If 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”<sup>36</sup>. Rebbi Hanina said, if you say so, should you say, this is an argument *de minore ad majus* which is questionable<sup>36</sup>, 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 challenged<sup>37</sup>.

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 meṣi'a* 57a/b) disagrees and holds that in this case the paid keeper has to pay double restitution (Maimonides *Hilkhot Genevah* 4:4).

רבי (38c line 16) את מר. אם-בְּעָלָיו עִמּוֹ לֹא יִשְׁלַם. מְהוּ שְׁלִישְׁבַע. רַבִּי זִירָא אָמַר. נִשְׁבַּע. רַבִּי חֲנִינְה וְרַבִּי לָא תְּרִיהוּן אָמְרִין. אֵינוּ נִשְׁבַּע. מִתְּנִיתָא מְסִיעָה לְרַבִּי חֲנִינְה וְלְרַבִּי לָא. שְׂבַר שְׂבוּיָה וְמִתָּה שְׁהוּן פְּטוּרִין בְּנוֹשָׂא שְׂכָר וְהַשׁוֹכֵר. וְהַשׁוֹאֵל בְּבָעֲלִין פְּטוּר שְׂלֵא בְּבָעֲלִים חֵיב. אַבְדִּיהָ וְגִנְיָה שְׁהוּן חֵיבִין בְּנוֹשָׂא שְׂכָר וְהַשׁוֹכֵר. לֹא כָּל־שֶׁכֶן בְּשׁוֹאֵל בְּבָעֲלִין פְּטוּר שְׂלֵא בְּבָעֲלִים חֵיב. מֵאֵן דָּמַר. פְּשִׁיטָא שְׁהוּא נִשְׁבַּע צְרִיכָה לִיהָ שְׁלִישְׁבַע. רַבִּי חֲנִינְה בְּשֵׁם רַבִּי יוֹדֵן. מִתְּנִיתָא מְסִיעָה לְרַבִּי זִירָא. שׁוֹאֵל שְׁהַחֲמִירָה הַתּוֹרָה עָלָיו בְּבָעֲלִין פְּטוּר שְׂלֵא בְּבָעֲלִין חֵיב. נוֹשָׂא שְׂכָר שְׁהַיְקִילָה הַתּוֹרָה עָלָיו לֹא כָּל־שֶׁכֶן בְּבָעֲלִים פְּטוּר שְׂלֵא בְּבָעֲלִים חֵיב. אֵין תִּימַר לְשׁוּבָה אֵי־צְרִיכָת לִיהָ. נִיתְּנִי בְּנוֹשָׂא שְׂכָר וְהַשׁוֹכֵר. הוּוִי לֹא צוּרְכָה דְּלֹא לְתַשְׁלוּמִין. וְקִשְׁנָא עַל הַדָּא דְּרַבִּי זִירָא. שׁוֹאֵל אֵם בְּעָלָיו עִמּוֹ נִשְׁבַּע. אֵין בְּעָלָיו עִמּוֹ יִשְׁלַם. נוֹשָׂא שְׂכָר אֵם בְּעָלָיו עִמּוֹ נִשְׁבַּע. אֵין בְּעָלָיו עִמּוֹ לֹא יִשְׁלַם. שׁוֹמֵר חֲנָם בֵּין שְׁהַבְּעָלִין עִמּוֹ בֵּין שְׁאֵין הַבְּעָלִים עִמּוֹ נִשְׁבַּע. אָמַרְתָּ. דְּבָרִים שְׁהַשׁוֹאֵל מְשַׁלֵּם נוֹשָׂא שְׂכָר נִשְׁבַּע. דְּבָרִים שְׁנוֹשָׂא שְׂכָר נִשְׁבַּע שׁוֹמֵר חֲנָם וְהָא פְּטוּר. דְּבָרִים שְׁנוֹשָׂא שְׂכָר מְשַׁלֵּם שׁוֹמֵר חֲנָם נִשְׁבַּע. מָה אֵת מִתְּנִי בְּשׁוֹמֵר חֲנָם. בְּשֶׁהַבְּעָלִים עִמּוֹ בֵּין שְׁאֵין הַבְּעָלִים עִמּוֹ. וְאֵית דְּבַעֲי. מָה אֵת מִתְּנִי בְּשׁוֹמֵר חֲנָם וְנוֹשָׂא שְׂכָר. בֵּין שְׁהַבְּעָלִים עִמּוֹ בֵּין שְׁאֵין הַבְּעָלִים עִמּוֹ. אָמַר רַבִּי אֲבִין. עַל־כֵּל־דְּבַר־פְּשַׁע. אָמַר רַבִּי מְנָא. לֹא מְצִינוּ שְׁהַשְׁתּוֹת הַתּוֹרָה בְּגִנְיָה וְאַבְדִּיהָ בְּשׁוֹאֵל. לָכֵן נִשְׁוֶה שׁוֹמֵר חֲנָם וְנוֹשָׂא שְׂכָר שְׂבִיבָה וְמִתָּה.

It was said, *if its owners were with him, he does not have to pay*<sup>38</sup>. Does he have to swear? Rabbi Ze'ira said, he swears. Rabbi Ḥanina and Rabbi La both are saying, he does not swear<sup>39</sup>. A *baraita* supports Rabbi Ḥanina and Rabbi La: “Breakage, abduction, and death for which he is not liable in the cases of the paid keeper and the renter<sup>40</sup>, and the borrower with the owner is not liable, without the owner is liable<sup>31</sup>; 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 owner<sup>41</sup>?” For him who says it is obvious that he swears, should he not have to pay<sup>42</sup>?

Rebbi Ḥanina<sup>43</sup> 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.<sup>44</sup>" If you are saying, his problem was swearing, he should have stated "the paid keeper and the renter<sup>45</sup>." 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 him<sup>46</sup>. You are saying that where the borrower pays the paid keeper swears<sup>47</sup>. Where the paid keeper swears, the unpaid keeper should not be liable. Where the paid keeper pays, the unpaid keeper swears<sup>48</sup>. What do you state about an unpaid keeper when the owner be with him<sup>49</sup>? But some are asking, what do you state about an unpaid and a paid keeper, whether or not the owner be with him<sup>50</sup>? Rebbi Abin said, *any word of criminality*<sup>46,51</sup>. 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 keepers<sup>42</sup>.

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 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.

37c line 37) ומה טעמון דבית שמי. על-כּל-דבר-פּשע. ומה מקיימין דבית הלל טעמון דבית שמי. פּשע. על-כּל-דבר-פּשע. תיפתר ששלח בו ד 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 רב. חיסר או אפילו לא חיסר. אמר ליה. לית הדיא שאילתא דרבי יוסי בר חנינה יטול נטל. אין תימר ליטול. אפילו לא חיסר. אין תימר. עד שעה שיחסור. אין תימר ליטול. התיזרה בין למקומו בין למקום אחר פטור. אין תימר נטל. התיזרה למקומה פטור. למקום אחר חייב.

רבי אבהו בשם רבי יוחנן. נאמרה שמירה בשומר חנם ונאמרה שמירה בשומר שָכר. ולא דמיא שמירה שנאמרה בשומר חנם לשמירה שנאמרה בנושא שָכר. שמירה שנאמרה בשומר חנם פֿינן ששימר כל-צורכו פטור. שמירה שנאמרה בנושא שָכר 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 שָכר. ולא דמיא שליחות ד שנאמרה בשומר חנם לשליחות ד שנאמרה בשומר שָכר. שליחות ד שנאמרה בשומר חנם אינו חייב עד שימשוד. שליחות ד שנאמרה בשומר שָכר פֿינן שהיחם מקלו ותרמילו עליה חייב. שמע רבי יוסי בר הוראי נמר. אני איני 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 ד' בשומר חנם שאינו צריך הייתי למד מנושא שָׁכָר. מה אם נושא שָׁכָר שהחמירה התורה עליו אינו חייב עד שימשוּ. שומר חנם שהיקלה בו התורה אינו דין שלא? והא חייב אלא דעד שימשוּ. לאי זה דבר נאמרה שלוחות ד' בשומר חנם שאינו צריך? להחמיר על נושא שָׁכָר. כיון שהניח מקלו ותרמילו עליה חייב. רבי יוסי אומר. אם אומר אתָ כן נמצאתָ למד על המלמד להחמיר עליו. דו יכיל מימר ליה. מה אם נושא שָׁכָר שהחמירה בו התורה אינו חייב עד שימשוּ. שומר חנם שהיקלה בו התורה אפילו משוּ? והא פטור. אלא כיני. לא נאמר שלוחות ד' שנאמרה בשומר שָׁכָר שאינו צריך. הייתי למד משומר חנם. מה אם שומר חנם שהיקלה בו התורה אינו חייב עד שימשוּ. נושא שָׁכָר שהחמירה בו התורה כיון שמשוּ חייב. לאי זה דבר נאמרה שלוחות ד' בנושא שָׁכָר שאינו צריך? להחמיר עליה. כיון שהניח מקלו ותרמילו עליה חייב.

Text of the Escorial ms. of *Bava meši'a* 3:13

מה טעמון דבית שמי. פשע. על-כּל-דבר-פּשע. מה מקיימין בית הלל. פשע. על-כּל-דבר-פּשע. תיפתר ששלח בו ד' על ידי שליח.

רבי יוסה בן חנינה בעי. מה את אמרת. ליטול נטל. והא תני רבי הושעיה. נשברה או שהחמיצה ונתן לו דמי בלה. כלום החמיצה אלא מחמת טילטול. רבי שמואל רבי אבהו בשם רבי לעזר. שלוחות ד' 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 שָׁכָר. ולא דמיינה שמירה בשומר חנם לשמירה שנאמרה בשומר שָׁכָר. שמירה שנאמרה בשומר חנם כיון ששימר לו כל-צורכו פטור. שמירה שנאמרה בשומר שָׁכָר אפילו הקיפו חומה של ברזל אין רואין אותו באילו שומר. הנה יכול להציל חייב. לא הנה יכול להציל פטור. אין אומרין. אלו הנה אחר שם הנה יכול להציל.

רבי לעזר בשם רבי הושעיה. נאמרה שלוחות ד' בשומר חנם ונאמרה שלוחות ד' בשומר שָׁכָר. ולא דמיינה שלוחות ד' שנאמרה בשומר חנם לשלוחות ד' שנאמרה בשומר שָׁכָר. שלוחות ד' שנאמרה בשומר חנם אינו חייב עד שעה שימשוּ. שלוחות ד' שנאמרה בשומר שָׁכָר כיון שהניח מקלו ותרמילו עליו חייב. שמע רבי יוסה בן הורזי ואמר. אני איני מקבל עלי את הדבר הזה. אלא אחת זו ואחת זו אינו חייב עד שימשוּ. רבי אימי בשם רבי לעזר. ותני רבי הושעיה כן. לא נאמר שלוחות ד' שנאמרה בנושא שָׁכָר שאינו צריך. הייתי למד משומר חנם. מה אם נושא שָׁכָר שהחמירה עליו תורה אינו חייב עד שעה שימשוּ. שומר חנם שהיקלה בו תורה אינו דין שלא? והא חייב עד שעה שימשוּ. לאי זה דבר נאמרה שלוחות ד' בנושא שָׁכָר. שאינו צריך להחמיר עליו. כיון שהניח מקלו ותרמילו עליו חייב. אמר לו רבי יוסה. אם אומר אתָ כן נמצאתָ למד קיל מחמור להחמיר עליו. דו יכיל מימור ליה. מה אם נושא שָׁכָר שהחמירה התורה בו אינו חייב עד שעה שימשוּ. שומר חנם שהיקלה בו התורה אפילו משוּ? והא פטור. אלא לא נאמר שלוחות ד' שנאמרה בשומר חנם שאינו צריך הייתי למד מנושא שָׁכָר. מה אם שומר חנם שהיקלה התורה בו אינו חייב עד שעה שימשוּ. נושא שָׁכָר שהחמירה בו התורה

כִּינּוּ שְׁמִשְׁדָּה? הֲיָא חַיִּיב. לֹאִי זֶה דְּבַר נְאֻמָּה שְׁלִיחוֹת יָד בְּשׁוּמֵר חֲנֻם שְׂאִינוּ צְרִיךְ לְהַחֲמִיר עַל נוֹשֵׂא שְׂכָר.  
כִּינּוּ שְׁהֵינִיחַ מִקְלוֹ וְתִרְמִילוּ עָלָיו חַיִּיב.

<sup>53</sup>What is the reason of the House of Shammai? *Any word of criminality*<sup>46,54</sup>. 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 agent<sup>55</sup>.

Rebbi Yose bar Ḥanina asked, what was said, to take? Took<sup>56</sup>? Did not Rebbi Hoshai state, “it broke”; if it turned into vinegar he pays for everything<sup>57</sup>? It turned into vinegar only because of its spoilage<sup>58</sup>. Rebbi Samuel, Rebbi Abbahu in the name of Rebbi Eleazar. “Grabbing<sup>59</sup>” which was mentioned for the unpaid keeper makes him liable only if he diminished<sup>60</sup>. 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 diminish<sup>61</sup>. 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 liable<sup>62</sup>. One does not say, if another had been there, he could have saved<sup>63</sup>. If he saved, he is not liable; if he did not save, he is liable<sup>64</sup>.

Rebbi Eleazar in the name of Rebbi Hoshai: “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 it<sup>65</sup>. “Grabbing” mentioned for the paid keeper, he is liable from the moment he puts his staff and his bag on it<sup>66</sup>.

Rebbi Yose ben Nehorai heard this and said, I am not accepting this, but in any case he is not liable unless he move it<sup>67</sup>. Rebbi Immi in the name of Rebbi Eleazar: But did not Rebbi Hoshai state it in this way? If “grabbing” had not been mentioned for the unpaid keeper as unnecessary<sup>68</sup>, 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 keeper<sup>68</sup>. 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 liable<sup>69</sup>.

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 meṣi`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. Hoshaiia 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  $\text{וַיִּשְׁלַח יָדוֹ}$  “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 meṣi`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 נשבה 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 lost<sup>70</sup>. “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 liable<sup>71</sup>.

**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 liable<sup>71</sup>.

**משנה ד:** איכן שורי אמר לו אבד. משביעך אני ואמר אמן והעדים מעידין אותו שאכלו משלם את הקרן. הודה מעצמו משלם קרן והומיש 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 value<sup>72</sup>. If he confessed himself he pays the value, and a fifth, and a reparation sacrifice<sup>73</sup>.

**משנה ה:** איכן שורי אמר לו נגנב. משביעך אני ואמר אמן והעדים מעידין אותו שנגנבו משלם תשלומי כפל. הודה מעצמו משלם קרן והומיש 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 restitution<sup>74</sup>. If he confessed himself he pays the value, and a fifth, and a reparation sacrifice<sup>73</sup>.

**משנה ו:** אָמַר לְאֶחָד בְּשׁוּק אֵיכָן שׁוּרֵי שְׁגָנְבָתָּ וְהוּא אֹמֵר לֹא גָנַבְתִּי וְהָעֵדִים מְעִידִין אוֹתוֹ שְׁגָנְבוּ מִשְׁלָם תִּשְׁלָמוּי כָּפֹל. טַבַּח וּמִכַּר מִשְׁלָם תִּשְׁלָמוּי אַרְבַּעַה וְחִמְשָׁה. רָאָה גְדִים שְׁמִמְשָׁמִשִׁין וּבֵאִין אָמַר גָּנַבְתִּי אֲבָל לֹא טַבַּחְתִּי וְלֹא מִכַּרְתִּי אֵינִי מִשְׁלָם אֲלֵא קָרָן:

**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 restitution<sup>74</sup>. If he slaughtered or sold it, he pays quadruple or quintuple restitution<sup>75</sup>. If he saw that witnesses appeared and said, “I stole but did neither slaughter nor sell,” he only pays its value<sup>76</sup>.

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 חֲנֹם כּוֹל. רַב אָמַר. פְּטוּר מִשְׁבוּעַת פִּיקְדוֹן וְחַיִּיב מִשׁוּם שְׁבוּעַת בֵּיטוּי. אָמַר רַבִּי יוֹחָנָן. מֵאַחַר שֶׁמִּצְוָה לְהַפִּיסוֹ אֵינִי חַיִּיב מִשׁוּם שְׁבוּעַת בֵּיטוּי. עַל דַּעֲתִיחָ דְרַב אֵינִי מִצְוָה לְהַפִּיסוֹ. מִפִּיִּסוֹ עַל הָאֵמֶת וְאֵינִי מִפִּיִּסוֹ עַל הַשֶּׁקֶר.

**Halakhah 2:** “He said to the unpaid keeper,” etc. <sup>77</sup>Rav said, he is not liable for a keeper’s oath but is liable because of a blurted oath. Rebbi 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. שְׁבוּעַת סוּטָה מְהוּ שְׁיָהוּ חַיִּיבִין מִשׁוּם שְׁבוּעַת בֵּיטוּי. מֵה נֶן קִלְמִין. אִם בְּשׁוֹגְגָת בְּעֵבֶרָה וּבְשׁוּבָעָה אֵין כָּאֵן סוּטָה. אִם בְּמִזִּידָה בְּעֵבֶרָה וּבְשׁוּבָעָה אֵין כָּאֵן קוֹרְבָן.

אֲתָנָה דְרַב קָרְבִי עֲקִיבָה. וְאִין יִסְבּוּר רַבִּי יִשְׁמַעֵאל כְּרַבִּי מֵאִיר אֲתָנָה הִיא דְרַבִּי מֵאִיר אָמַר.  
אָמֵן שְׁלֵא נְטִמְאֵתִי. אָמֵן שְׁלֵא אֶטְמָא. וְאַתָּה מְשַׁבַּח מִקְשִׁיא.

Rebbi Johanan asked: May the oath of a deviant woman<sup>78</sup> be liable for a blurted oath? Where do we hold? If she is in error in sin and oath she is not deviant<sup>79</sup>. If she is intentional in sin and error there is no sacrifice<sup>80</sup>. Rav follows Rebbi Aqiba<sup>81</sup>. If Rebbi Ismael<sup>82</sup> would argue like Rebbi Meïr it would follow, since Rebbi Meïr said<sup>83</sup>: “Amen that I was not defiled, Amen that I shall not be defiled.” But you may question this<sup>84</sup>.

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.

מִשְׁנָה ז': אָמַר לְשׂוֹאֵל אֵיכָן שׂוֹרֵי אָמַר לוֹ מֵת וְהוּא שֶׁנִּשְׁבַּר אוֹ נִשְׁבְּה אוֹ נִגְנַב אוֹ אָבַד. נִשְׁבַּר וְהוּא שְׁמֵת אוֹ נִשְׁבְּה אוֹ נִגְנַב אוֹ אָבַד. נִשְׁבְּה וְהוּא שְׁמֵת אוֹ נִשְׁבַּר אוֹ נִגְנַב אוֹ אָבַד. נִגְנַב וְהוּא שְׁמֵת אוֹ נִשְׁבַּר אוֹ נִשְׁבְּה אוֹ אָבַד. אָבַד וְהוּא שְׁמֵת אוֹ נִשְׁבַּר אוֹ נִשְׁבְּה אוֹ נִגְנַב. מִשְׁבִּיעֵךְ אֲנִי וְאָמַר אָמֵן 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 lost<sup>70</sup>. “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 liable<sup>85</sup>.

**משנה ח:** איכן שורי אמר לו איני יודע כמה אתה שָׂה והוא שָׂמַת או נִשְׁכַּר או נִשְׁבָּה או נִגְנַב או אָבַד. מִשְׁבִּיעַד אָנִי וְאָמַר אָמֵן חַיִּיב.

“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 liable<sup>86</sup>.

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. ותני 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 מתנוד כפילו. דברי רבי יעקב. אמרו לו לרבי יעקב. איכן מצינו אשם בלא חומש. אמר להן. אם נשבע ונשבע ונשבע הרי מצינו אשם בלא חומש. ורבינו אמרין. לקרן חומשין אין לשבועות חומשין.

דבר אחר. ושלם אותו בראשו וחמישתו יוסף עליו. אמר רבי זירא. ותני 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 thus<sup>87</sup>: “He<sup>88</sup> 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 sacrifice<sup>73</sup>. 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 restitution<sup>74</sup> 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 oaths<sup>89</sup>.”

Another explanation: *He shall pay the whole worth and add its fifths to it*<sup>90</sup>. 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 sanctified<sup>91</sup>, 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 טַעַנְתָּ גֵּבַי מִשְׁלָם תִּשְׁלֹמִי כְּפֹל. טַבַּח וּמְכַר מִשְׁלָם תִּשְׁלֹמִי אַרְבָּעָה וְחֲמִשָּׁה. תַּמּוֹן אָמַרְי. מִשְׁלָם תִּשְׁלֹמִי אַרְבָּעָה וְחֲמִשָּׁה. רַבִּי פְּדִת בְּשֵׁם רַבִּי הוֹשַׁעְיָה. תַּנְיִי תַמּוֹן וּמִסִּיעִין לְרַבִּי יוֹחָנָן. אֵיכָן שׁוֹרֵי אָמַר לוֹ. אֶבֶד. מִשְׁבִּיעֵד אָנִי. וְאָמַר אָמֵן. וְהַעֲדִים מַעֲיָדִין אוֹתוֹ שְׂאֵכְלוּ. מִשְׁלָם אֶת הַקֶּרֶן. הוֹדָה מַעֲצָמוֹ. מִשְׁלָם קֶרֶן וְחוֹמֶשׁ וְאֶשֶׁם. וְיֵשׁ אֵכִילָה בְּלֹא טְבִיחָה. אָמַר רַבִּי חֲגַי. תִּפְתָּר בְּשִׁשְׁחֻטוֹ אַחֵר. וְיִי דָא אָמַרְהָ דָא. אָמַר לְאַחַד בְּשׁוֹק. אֵיכָן שׁוֹרֵי שְׂגִבְתָּ. וְהוּא אוֹמַר. לֹא גִבְתָּי. מִשְׁבִּיעֵד אָנִי. וְאָמַר אָמֵן. פְּטוֹר. מִפְּנֵי שְׂאֵמַר לְאַחַד מִן הַשּׁוֹק. אֶבֶל אִם אָמַר לְאַחַד מִן הַשּׁוֹמְרִין חֵיב. מִתְּנִיתָא בְּשִׁאֲכְלוּ וְאַחֵר כֶּד נִשְׁבַּע לוֹ. מִן מַה דְּמַר רַבִּי יוֹחָנָן בְּשִׁנְשַׁבַּע לוֹ וְאַחֵר כֶּד אֶכְלוּ.

Rebbi Johanan said, if somebody claims against another a claim of thief he pays double restitution. If he slaughtered or sold, he pays<sup>92</sup> quadruple or

quintuple restitution. There, they say, he pays quadruple or quintuple restitution<sup>93</sup>. Rebbi Pedat in the name of Rebbi Hoshai: There<sup>94</sup> we state and it supports Rebbi Joḥanan: “‘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 value<sup>72</sup>. If he confessed himself he pays the value, and a fifth, and a reparation sacrifice<sup>73</sup>.’” Is there eating without slaughtering<sup>95</sup>? Rebbi Ḥaggai said, explain it if another slaughtered<sup>96</sup>. 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)<sup>97</sup> liable. Because he is one in the market place. But if he said it to one of the keepers, that one would be liable<sup>98</sup>. The *baraita* when he ate it and then swore. What Rebbi Joḥanan said, if he swore and after that ate it<sup>99</sup>.

92 The following implies that one has to read “does not pay.”

93 In Babylonia they transmit R. Joḥanan’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. Joḥanan. 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.

אָמַר לְנוּשָׂא שְׂכָר וְהַשׂוֹכֵר אֵיכָן שׂוֹרֵי אָמַר לוֹ מֵת וְהוּא שֶׁנִּשְׁפָּר אוֹ נִשְׁבֵּת. נִשְׁפָּר וְהוּא שְׂמֹת אוֹ נִשְׁבֵּת. נִשְׁבֵּת וְהוּא שְׂמֹת אוֹ נִשְׁפָּר. נִגְנַב וְהוּא שֶׁאֵבֵד. אָבֵד וְהוּא שֶׁנִּגְנַב. מִשְׁפִּיעַד אָנִי וְאָמַר אֲמֵן פְּטוּר.

**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:** אמר לנושא שכר כול'. אמר רבי יוחנן. הטוען לחבירו טענת גנב באבדה חייב. איכן אבידתי. אמר לו. נגנבה. אמר רבי יוחנן. הטוען לחבירו טענת גנב אינו חייב אלא לאחר שביעה. ומאי טעמא. נאמר פאן שליחות ד. ונאמר להלן שליחות ד. מה שליחות ד שפאמרה להלן אינו אלא לאחר השביעה. אף שליחות ד שפאמרה פאן אינו חייב אלא לאחר שביעה. אמר רבי יוחנן. טענו טענת אבוד ונשבע לו ואחר כך טענו טענת גנב. פטור. רבי יוחנן בעי. שביעת טענת גנב מהו שיהו חליבין בה משום שביעת ביטוי. מחלפה שיטתיה דרבי יוחנן. תמן אמר. טענו טענת אבוד ונשבע לו ואחר כך טענו טענת גנב פטור. וכא אמר אכין. תמן פשיטה ליה וכא צריכה ליה. מה איצטריכת ליה חזי ופשיטה. רבי חייה בר יוסף אמר. הטוען לחבירו טענת גנב אינו חייב עד שיכפור בבית דין. מה נן קיימין. אם בהוא דקאים וחיב לחבירה שביעה 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 זרעא בעי. מה איתאמרת. בעומדת או אפילו עומדת. ואין תימר אפילו עומדת. היא הדה היא הדה. אין תימר בעומדת. מחלפה שיטתיה דרבי יוחנן. תמן אמר. טענו טענת אבוד ונשבע לו והפריש קרבן ואחר כך טענו טענת אונס פטור. והכא את מר הכין. אמר רבי לא. שנייא היא שהיא ביוצא וידויו בשביעה. מקשינא על דעתיה דרבי זרעא. אמר לו. איכן שורי. אמר לו. נגנב. משביעך אני. ואמר אמן. והעדים מעידין אותו שנגנבו. 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. תלמודי דרבי חייה בר לוליני אמרי. תפתר בששחטו רבוצ. ויש טביחה בלא מכירה. פסומכוס דאמר. אף על פי שאין גניבה יש 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 Joḥanan said, one who claims before his neighbor a claim of thief in a case of loss is liable<sup>100</sup>. “Where is my lost object?” He told him, “it was stolen.”

Rebbi Joḥanan 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 oath<sup>101</sup>.

Rebbi Joḥanan said, one who claims a claim of loss, swore to him, and afterwards claimed a claim of thief is not liable<sup>102</sup>. Rebbi Joḥanan asked: May one be liable for a blurted oath in case of an oath regarding a claim of thief<sup>103</sup>? The argument of Rebbi Joḥanan 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 so<sup>104</sup>? There it is obvious to him, here it is problematic for him<sup>105</sup>. What is problematic for him? He saw and found it simple<sup>106</sup>.

Rebbi Ḥiyya bar Joseph said<sup>107</sup>, 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 oath<sup>108</sup> 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 swore<sup>109</sup>.

Rebbi Ḥiyya in the name of Rebbi Joḥanan: When it was standing at his feeding trough<sup>110</sup>. Rebbi Ze`ira asked: how was it said? “If it was standing” or “even if it was standing”<sup>111</sup>? If you say “even if it was standing,” it makes no difference<sup>112</sup>. If you say “if it was standing,” then the argument of Rebbi Joḥanan is inverted. There, he said, if he claimed before him a claim of loss, had been swearing to him, selected a sacrifice<sup>113</sup>, and then claimed a claim of duress, he is not liable<sup>114</sup>. But here you are saying so? Rebbi La said, there is a difference since he absolved himself of confession by the oath<sup>102</sup>. They objected to the opinion of Rebbi 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 restitution<sup>74</sup>. If he confessed himself he pays the value, and a fifth, and a reparation sacrifice<sup>73</sup>.” But here when he moved it<sup>115</sup> by claiming that it was lost. Afterwards he claimed a claim of

thief and is not liable<sup>102</sup>. Explain it that he swore to him but slaughtered it afterwards<sup>116</sup>. The students of Rebbi Hiyya bar Julianus say, explain it that he slaughtered it when it was lying down<sup>117</sup>. Is there slaughter without sale<sup>118</sup>? Following Symmachos who said, there can be slaughter and sale without theft<sup>119</sup>. Samuel said, if there came no witnesses of the theft, but there came witnesses of the slaughter; he is liable<sup>120</sup>.

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 אָמַר. רָאָה עֵידי גְּנִיבָה בְּאֵין וְאָמַר. גְּנַבְתִּי. מֵאַחַר שֶׁאֵין בְּהוֹדֵייתוּ מִמֶּשׁ פְּטוֹר. רָאָה עֵידי טְבִיחָה בְּאֵין וְאָמַר. טְבַחְתִּי. מֵאַחַר שֶׁאֵין (ס"א שְׁלֵשׁ) בְּהוֹדֵייתוּ מִמֶּשׁ פְּטוֹר (ס"א חֵיב). רַבִּי זִירָא בְּעֵי. רָאָה עֵידי אוֹנְסִין בְּאֵין וְאָמַר. אֲנֹסְתִי. אָמַר רַבִּי חֲנִינָה. מִתְּנִיתָה כְּרַבִּי שְׁמֵעוֹן דְּאָמַר. עֵיקָר תְּבִיעָה קֹנֵס. כְּמִי שֶׁאֵין בְּהוֹדֵייתוּ מִמֶּשׁ וּפְטוֹר. וְרַבִּנּוּן אָמְרִין. אֵין עֵיקָר תְּבִיעָה קֹנֵס. כְּמִי שֶׁלֹּשׁ בְּהוֹדֵייתוּ מִמֶּשׁ וְחֵיב.

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 liable<sup>121</sup>. If he saw that witnesses to the slaughter were approaching and he said "I slaughtered," since his confession is (another opinion: not)<sup>122</sup> operative<sup>123</sup> he is not liable (another opinion: is liable). Rebbi Ze'ira asked: that witnesses to rape were approaching and he said "I raped"? Rebbi

Ḥanina<sup>43</sup> said, the Mishnah follows Rebbi Simeon who said the main claim is for the fine<sup>124</sup>. Therefore his confession is inoperative and he is not liable<sup>121</sup>. But the rabbis say, the main claim is not for the fine. Therefore his confession is operative<sup>125</sup> and he is liable<sup>121</sup>.

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) תַּיִי. לֹא לְהַקֵּל וְלֹא לְהַחֲמִיר חַיִּיב. אָמַר רַבִּי. מִתְּנִיתָ אֲמָרָה כֵּן. אָמַר לְשׂוֹאֵל אָמַר לְשׂוֹמֵר חֵינִם אָמַר לְנוֹשֵׂא שְׂכָר וְהַשׂוֹכֵר. אֵיכָן שׂוֹרֵי. אָמַר לוֹ. מִתּוֹ. מִהוּ שְׂאִמַּר לוֹ. בּוֹא וְהַשְׁבֵּעַ לִי שְׂלֹא נִתְּתָה עֵינֶיךָ בָּהּ לְגוֹזְלָהּ. מִכָּל-מְקוֹם אֵינוּ מְשַׁלֵּם. מִהוּ דַּיִימַר לִיהָ. אֲפִילוּ דְאַתָּה יְהִיב לִי כֶּמָּה דִּידֵי אֲנָּא בְּעֵי גַבְדָּא.

It was stated: If it was neither to his benefit nor to his detriment, he is liable<sup>126</sup>. Rebbi 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.’”<sup>127</sup>

May he tell him, “come and swear to me that you never thought of rustling it”<sup>128,237</sup>? 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 לפרעון ולפרע מהן. רבי יהודה אומר נפרעין מהן מפני שהוא מצר לו. אמרו לו אף על פי שמצר הוא עכשיו שמה הוא לאחר זמן: רבי ישמעאל אומר שלשה ימים לפניהם ושלשה ימים לאחריהם אסור. וחקמים 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 them<sup>1</sup>. 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 later<sup>2</sup>. 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 כולהון מכא והביאו לבוקר זבחיכם לשלשת ימים מעשרתיכם: אמר ליה רבי יוסי. אין פניי אפילו בגליות. דתני. נחום המדי אומר. יום אחד בגליות אסור. מאי כדון. תמן בידקו ומצאו שהו עושין צרכיהן ליום אחד ואסרו יום אחד. גרם הכא בידקו ומצאו שהו עושין צרכיהן לשלשת ימים. ואסרו להו 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*<sup>3</sup>. Rabbi Yose said to him, if it were so,

even in the diasporas. But it was stated<sup>4</sup>, 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 here<sup>5</sup> 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

4 Babli 7b, slightly differently Tosephta 1:1.

followed in Egypt or other parts of the Roman Empire.

5 In Palestine. The expression גליות

(39a line 59) מה מקיים רבי יוסי אהן קרייה והביאו לבקור זבחיכם וגו'. במלכות גרבעם הכתוב מדבר. כיון ששם גרבעם 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 ברטבאל. אמר רבי אבא. חירונו בכל-המקרא ולא מצינו מקום ששמו טבאל. אלא שעושה טובה עם עובדי. התורה אמרה ובחור אותו מכל-שבטי ישראל לכהן. ועבודה זרה אומרת ויעש כהנים מקצות העם. אמר רבי לא. מן הקוצים שבעם ומפסולת שבעם. התורה אמרה ולא-ילון חלב-חגי עד בוקר: ועבודה זרה אמרה והביאו לבוקר זבחיכם. התורה אמרה ביום זבחכם יאכל וממחרת. ועבודה זרה אמרה לשלשת ימים מעשרתיכם: 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 מתנייה. לא בא הכתוב אלא להזכיר גנין של ישראל. יום מלכנו החלו שרים חמת מין משך ידו את-לוצצים: יום שםלך גרבעם על ישראל אתון כל-ישראל לגביה בפתוי 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 כיתרבנו כתנור לבם בארבים כל-הלילה ישן אופיהם. כל-הלילה לא ישן אופיהם. בוקר הוא בויער פאש להבה: בצפרא אתון לגביה. אמר לון. כדון אנא דע דאתון בען אלא דאנא דחיל מסנהדרין דדכון דלא יקטלונני. אמרו ליה. אנן קטליו לון. ההיא דכתיב כולם ילמו לפתור ואכלו את-שופטיהם. רבי לוי אמר. הרגום. היך מה דתימר כיימצא חלל. רבי לא אמר. הורידן מגדולתן. יום מלכנו החלו שרים חמת מין. יום שנעשו בו שרים חילין. מי גרם להן. חמת מין. שהיו להוטין אחר חיינו. משך ידו את-לוצצים. כד הוה חמי בר נש פשר הוה מייטיב גבי תרין ליצניו ואמרין ליה. אי זה דור חביב מפל-הדורות. אמר להן. דור המדבר. ואינון אמרין ליה. ולא עבדון עבודה זרה. והוא אמר לון. בגין

דחביבין לא אתענשו. והינו אמרין ליה. חשי דמלכא בעי מיבעד פו. ולא עוד אלא אינון עבדון חד ודיו עבד תרין. וישם את-האחד בביתאל ואת-האחד נתן בן: גסות רוחו שלגרבועם היא החליטתו. אמר רבי יוסי בר יעקב. במוצאי שמיטה מלך גרבועם על ישראל. ההוא דכתיב מקץ | שבע שנים במועד שנת השמיטה בתג הסוכות: בבוא כל-ישראל לראות את-פני יי אלהיך במקום אשר יבחר תקרא את-התורה הזאת נגד כל-ישראל באזניהם: אמר. אנה מיתבעי מיקרי קאים אנה. ואינון אמרין. מלכא דאתרא קדם. ואין מיקרי תינינו גנאי הוא לי. ואין לא ניקרי בינינו הוא לי. ואין מרפינון אלו סלקון אינון שבקון יתי. אזלין לון גבי רחבעם בן שלמה. ההוא דכתיב אם יעלה העם הזה לעשות זבחים בבית יי בירושלם לשוב לב העם הזה אל-אדנייהם אל-רחבעם. מה עשה. עשה שני עגלי זהב וכתב על ליבן. והרגוד. אמר. כל-מלך דיקום יסתפל בון. אמר רבי חונן. חובר חברים מחופם. כל-מי שהיה חוברו היה חוברו. אמר רבי חונן. ושחטה שטים העמיקו. שהעמיק ברשע. אמר. כל-דמפרסים אנה קטיל ליה.

How does Rabbi Yose uphold this verse, *bring your sacrifices in the morning*, etc<sup>6</sup>? 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*<sup>7</sup>. 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*<sup>8</sup>. Pagan worship says, *he made priests from the fringes of the people*<sup>9</sup>. 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*<sup>10</sup>, but pagan worship said, *bring your sacrifices in the morning*<sup>3</sup>. The Torah said, *it should be eaten on the day of its slaughter and the next day*<sup>11</sup>, but pagan worship said, *on the third day your tithes*<sup>3</sup>. The Torah said, *do not sacrifice the blood of My sacrifice on leavened matter*<sup>10</sup>; but pagan worship said, *and burn your thanksgiving offer of leavened matter*<sup>3</sup>. The Torah said, *if you are vowing a vow to the Eternal, your God, do not tarry to fulfill it*<sup>12</sup>, but pagan worship said, *pledge gifts, publicize them*<sup>3,13</sup>.

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*<sup>14</sup>. 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 drunk<sup>15</sup>. 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*.<sup>16</sup> All night long their baker did not sleep. *In the morning he is burning like fire of a conflagration*<sup>16</sup>. 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*<sup>17</sup>. Rabbi Levi said, they killed them, as is written, *if a corpse is found*<sup>18</sup>. Rabbi La said, they deposed them; *The day of our king, the princes are profaned from wine's heat*<sup>14,19</sup>; 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*<sup>20</sup>.

The haughtiness of Jeroboam damned him absolutely<sup>21</sup>. Rabbi Yose ben Jacob said, Jeroboam became king at the end of a Sabbatical year. This refers to what is written<sup>22</sup>, *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 read<sup>23</sup>, 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 go<sup>24</sup>, they will ascend and desert me. They will go to Rehabeam, Solomon's son. This is what is written<sup>25</sup>: *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 them<sup>26</sup>. Rabbi Ḥuna said, *companions of ingenious conjurations*<sup>27</sup>. Anybody who joined with him he will make a co-conspirator<sup>28</sup>. Rabbi Ḥuna said, *a slaughtering place deepened by seducers*<sup>29</sup>, for he deepened in crime. He said, anybody, I shall kill anybody who makes this public<sup>30</sup>.

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. Johanan.

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 הָחֵלִי in *Hos.* 4:5 not from חלה "to be sick" but

from חלל "to be perforated".

19 Deriving הָחֵלִי 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 (*Pesahim* 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 *IK*. 12:26.

27 *Ps*. 58:6.

28 Correctly reading the first *חבר* 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 שְׁבָתוֹת וַיִּמָּסוּ טוֹבִים מְצִינוּ שְׁבָדָה לְהֵם יִרְבְּעִם מְלִיבוֹ. הָהוּא דְכָתִיב וַיַּעַשׂ יִרְבְּעִם | חָג בְּחֹדֶשׁ הַשְּׁמִינִי בְּחַמְשָׁה-עָשָׂר לַיּוֹם | לַחֹדֶשׁ כְּתִיב | אֲשֶׁר בְּיַהוּדָה וַיַּעַל עַל-הַמִּזְבֵּחַ כִּן עָשָׂה בְּבֵית-אֵל לְצִבּוֹחַ בְּחֹדֶשׁ אֲשֶׁר-בָּדָא מְלִיבוֹ. מַלְבַּד כְּתִיב. כְּמָה דְאָתָּא אֲמַר מְלַבְּד שְׁבָתוֹת וַי.

Rebbi Abin bar Cahana said, we find that Jeroboam also invented Sabbaths and holidays. That is what is written<sup>31</sup>: *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 written<sup>32</sup>, as you say, *in addition to the Sabbaths of the Eternal.*

31 *IK*. 12:32-33.

32 The *Qere* is מְלִיבוֹ "by his invention"; the *Ketib* is מְלַבְּד "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) תִּנְי. עֶבֶר וַנְּשָׂא וַנְּתַן עִמּוֹ מוֹתֵר. רַבִּי יַעֲקֹב בַּר אֲחָא רַבִּי יוֹסִי בִּשְׁם רַבִּי יוֹחָנָן. וַאֲפִילוּ בְיוֹם אִידוֹ. וַתִּנְי כֵּן. בְּמָה דְבָרִים אֲמוּרִים. בְּגוּי שְׂאִינוּ מִכִּירוֹ. אֲבָל בְּגוּי הַמִּפְּרִיז מוֹתֵר מִפְּנֵי שְׁהוּא כְּמַחְנִיף לְהוֹ. תִּנְי. נִכְנַס לְעִיר וּמִצָּאָן שְׂמַחִין שְׂמִיחַ עִמָּהּ שְׂאִינוּ אֶלָּא כְּמַחְנִיף לְהוֹ. חַד דְּוִקִינָר אֻקִּיר לְרַבִּי יוֹדָן נְשִׂיָא חַד דְּיִסְקוּס מְלֵא דִּנְרִין. נִסְבַּח חַד מִיַּהוּוֹן וְשִׁלַּח לֵיהּ שְׂאֲרָא. שְׂאֵל לְרַבִּי שְׂמַעוֹן בֶּן לְקִישׁ. אָמַר. יוֹלִיד הַנִּיחָה לִים הַמְּלַח. הִרִי בְּמִפְּרִיז הִרִי לְשַׁעֲבֵר. וְרִישׁ לְקִישׁ אָמַר. יוֹלִיד הַנְּהָא לִים הַמְּלַח. אָמַר רַבִּי אֲבָהוּ. וַאֲנִי לֹא שְׂאֵלְנִי רַבָּן נְמַלִּיאֵל בְּרַבִּי.



מהו לילך ליריד. ואסרתי לו. והתני. הולכין ליריד ולוקחין משם עבדים ושפחות. ריש לקיש אמר. לא סוף דבר עבדים ישראל אלא אפילו גוים. מפני שמקרבן תחת כנפי השכינה. מאי כדון. רבן גמליאל אדם קטן היה וביקש רבי אבהו לגודרו. אבל רבי יודן נשייא אדם גדול היה וביקש ריש לקיש לגדור הדבר.

It was stated<sup>33</sup>: 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 holiday<sup>34</sup>. It was stated so.<sup>35</sup> 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*<sup>36</sup> honored Rabbi Jehudah the Prince<sup>37</sup> 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 Sea<sup>38</sup>. 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 fair<sup>39</sup>, and I forbade it to him, although it was stated<sup>40</sup>: “one goes to fairs and buys there male and female slaves.” Rabbi Simeon ben Laqish said, not only Jewish slaves<sup>41</sup> but even Gentiles, because he brings them under the wings of the *Shekhina*<sup>42</sup>. What about this? Rabban Gamliel was a minor personality and Rabbi Abbahu desired to confine him<sup>43</sup>. But Rabbi Judan the Prince was an important person and Rabbi Simeon ben Laqish wanted to limit the matter<sup>44</sup>.

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 מְלֵהֶשְׂאֵיל. מְלֵשְׂאוּל מְהוּ. מִפְּנֵי שְׁהוּא כְּמִשְׂאֵי שָׁם. נִיחָא מְלֵהֶלוּוְתוּן. מְלֵהֶלוּוֹת מְהוּ. מִפְּנֵי שְׁהוּא כְּמִשְׂאֵי שָׁם. נִיחָא מְלִפְוֹרְעוּן. מְלִפְרַע מְהוּ. שְׁלֵא לֵאמַר. עֲבוּדָה זָרָה שְׁלוֹ סִייעָה. רַבִּי בָּא בְּרַ טְבֵלִי בְּשֵׁם רַב. אִם הִיתָה מְלָה אוֹבְדָת מוּתָר. וְתֵנִי כוּן. מְלָה אוֹבְדָת בְּעֵדִים. אִין מְלָה אוֹבְדָת בְּשֵׁטֶר. אֶפִּילוּ מְלָה בְּשֵׁטֶר אוֹבְדָת הִיא. שְׁלֵא בְּכָל־שְׁעָה אָדָם זוֹכָה לְפְרוּעַ חוּבוֹ. מֵאִי כְדוֹן. מְלָה אוֹבְדָת שְׁלֵא בְּמִשְׁכוּן. אִין מְלָה אוֹבְדָת בְּמִשְׁכוּן. אֶשְׁכַּח תֵּנִי עַל קְדָמִיתָא. מְלָה אוֹבְדָת בְּעֵדִים. אִין מְלָה אוֹבְדָת בְּשֵׁטֶר.

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 him<sup>45</sup>. Rebbi 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 document<sup>46</sup>. Even a loan by document is in danger of being lost, for not at all times does a person succeed in liquidating his debt<sup>47</sup>. 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 תִּנְיָנִין. רַבִּי יוֹדָה אוֹמַר. אִשָּׁה לֹא תִסּוּד מִפְּנֵי שְׁנִיבוּל הוּא לָהּ: רַבִּי חֲנִינְיָה וְרַבִּי מִנְא. חַד אָמַר. בְּסִיד שְׁהוּא מִתִּירְתוּ בְּמוֹעֵד נְחָלְקוּ. אֶבֶל בְּסִיד שְׁמִתִּירְתוּ אַחַר הַמוֹעֵד אֶסוּר. וְחֲרָנָה אָמַר. בְּסִיד שְׁהִיא מִתִּירְתוּ אַחַר הַמוֹעֵד נְחָלְקוּ. אֶבֶל בְּסִיד שְׁמִתִּירְתוּ בְּתוֹךְ הַמוֹעֵד מוּתָר. וְלֹא יִדְעִין מָאן אָמַר דָּא וּמָאן אָמַר דָּא. מִן מַה דְּאָמַר רַבִּי חֲנִינְיָה רַבִּי יוֹסִי בְּשֵׁם

רבי יוחנן. רבי יהודה קדעתיה. כמה דרבי יהודה אמר תמן. ניבול שעה ניבול. כן הוא אמר  
הכא. צרת שעה צרה. הווי דו אמר. בסיד שהוא מותר בתוך המועד נחלקו. אבל בסיד  
שהוא מותר אחר המועד אסור.

There, we have stated<sup>48</sup>: “Rebbi Jehudah says, a woman should not apply lime because it disfigures her<sup>49</sup>.” 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 forbidden<sup>50</sup>. 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 here<sup>51</sup>, 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 forbidden<sup>52</sup>.

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 ניבול as *pi`el* but since the Babli consistently has ניול 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 ישראל שהיו עושין עם הגוי באיך בתוך ביתו אסור. בתוך בתיהן מותר. רבי שמעון בן אלעזר אומר. במה דברים אמורים. בתלוש מן הקרקע. אבל במחנב לקרקע אסור. בעיר אחרת בין קף ובין קף מותר. מהו בין קף ובין קף מותר. בין בתלוש בין במחנב בין בשכיר בין בקיבולת. אומר רבי לא. בין בתלוש בין במחנב ובלבד בקיבולת. רבי שמעון בר כרסנה בשם רבי אחא. בשבת ובאבל ובעבודה זרה הלכה כרבי שמעון בן אלעזר.

<sup>53</sup>Jewish 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 forbidden<sup>54</sup>. 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 Sabbath<sup>54</sup>, mourning<sup>55</sup>, 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. אומר רבי בא. פיון שהוא יודע שסאור 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. אומר רבי יודן. קרייא מסייע למה דאמרי חברייא. וביום עשרים וארבעה לחדש השביעי נאספו בני ישראל בצום ובכני ובשקים 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. אומר רבי יוחנן בר מדייא. אגא חשב תה ולא תהה בשובתא.

The colleagues say, the reason of Rebbi Ismael is because of the holiday's son<sup>56</sup>. Rebbi Abba said, because he knows that it is forbidden to you to trade with him, he reduces the enjoyment of his holiday<sup>57</sup>. 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 Rebbi Abba it is allowed<sup>58</sup>.

Rebbi 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*<sup>59</sup>. 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 Sunday<sup>60</sup>. And what about this? Does not Rebbi Onias make light of him who would move it from its place<sup>61</sup>? Rebbi Joḥanan 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 23<sup>rd</sup> was a Sabbath. But then the 15<sup>th</sup> and the 1<sup>st</sup> 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.* במימרת; 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. Ḥanina from Hauran. He was a member of the committee

of the Academy of Tiberias which fixed the calendar after Rebbi's death and opposed all manipulations not justified by astronomical facts.

(fol. 39a) **משנה ב:** אילו אידיהון של גוים קלנדום וסמרגלייא וקרטסים ויום גיניסא של מלכים ויום הלידה ויום המיתה דברי רבי מאיר. וזכמים אוקרים כל-מיתה שיש בה שריפה יש בה עבודה זרה. ושאיין בה שריפה איין בה עבודה זרה.

**Mishnah 2:** The following are the holidays of the Gentiles: Calendae<sup>62</sup>, Saturnalia<sup>63</sup>, and Cratesis<sup>64</sup>, and the king's birthday<sup>65</sup>, and birthday<sup>66</sup>, and the day of death<sup>67</sup>, the words of Rebbi Meir. But the Sages say, any death for which there is burning<sup>68</sup> 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 κράτης, "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:** אילו הו אידיהון של גוים כול. רב אמר. עידיהו. ושמואל אמר. אידיהו. מאן דאמר. עידיהו. ועידיהם המה. מאן דאמר. אידיהו. פי קרוב יום אידם. רב אמר. מאברים. ושמואל אמר. מעברין. מאן דאמר. מאברין. מוסיפין לה אבר. מאן דאמר. מעברין. קאשה עוברת. רב אמר. יאותו. ושמואל אמר. יעותו. מאן דאמר. יאותו. אד-בזאת נאות לכם. מאן דאמר. יעותו. לדעת לעות את-יעף דבר.

**Halakhah 2:** "The following are the holidays of the Gentiles," etc. <sup>69</sup>Rav said 'edeheh and Samuel said `edeheh. He who said 'edeheh, they are their witnesses<sup>70</sup>. He who said `edeheh, for the day of their misfortune is near<sup>71</sup>. Rav said me`abberim, and Samuel said me`abberin<sup>72</sup>. 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<sup>73</sup>. He who said ye`utu, but with this we shall be agreeable to you<sup>74</sup>. He who said ye`utu, to know, to inform the weary of wisdom<sup>75</sup>.

- 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 אָמַר . קַלְגַּדְס אָדָם הָרֵאשׁוֹן הִתְקִינוּ . פִּינּוֹן דְּחִמָּא לִילִיָּא אַרְיָד אָמַר . אִי לִי . שְׁמָא שְׁכָתוּב בּוּ הוּא יְשׁוּפְךָ רִישׁ וְאַתָּה תְּשׁוּפְנֵנוּ עֵקֶב שְׁמָא גְבוּא לְנִשְׁכִּינִי . וְאָמַר אַדְּחֹשֶׁף יְשׁוּפְנִי . פִּינּוֹן דְּחִמָּא אִימָמָא אַרְדָּא אָמַר . קַלְגַּדְס . קִלוֹן דִּיאֵו . וְאִיתָא כְּמָאן דְּאָמַר . בְּתַשְׁרֵי נְבָרָא הָעוֹלָם . בְּרָם כְּמָאן דְּאָמַר . בְּנִיסָן נְבָרָא הָעוֹלָם . יְדַע הָוָה . אָמַר רַבִּי יוֹסִי בִירְבִי בּוּן . מָאן סַבְר . בְּתַשְׁרֵי נְבָרָא הָעוֹלָם . רַב . דִּתְנִי בְתַקִּיעָתָא דְּבִי רַב . זֶה הַיּוֹם תְּחִילַת מַעֲשֵׂיךָ זְכָרוֹן לַיּוֹם רֵאשׁוֹן כּוֹל . הָוֵי . בְּרֵאשׁ הַשָּׁנָה נְבָרָא הָעוֹלָם .

<sup>76</sup>Rav 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*<sup>77</sup>, maybe it will come to bite me. *I said, but darkness will smite me*<sup>78</sup>. When he saw that days were getting longer, he said *calendas*, *καλόν dies*<sup>79</sup>. This follows him who said that the world was created in Tishre<sup>80</sup>. 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 Rav<sup>81</sup>: “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 ונתקוין שכל-מלכות שתאמר לשר צבא שלה. פול על חרבך. וישמע לה. תתפוס המלכות תחילה. דמצרים לא שמע לון. דרומי הנה תמן חד גבר סב והנה שמייה יינובריס והווי ליה תריסרי בני. אמרו ליה. שמע לון ואנו עושין בניך דוקסין ואיפרכין ואסטרטליטין. ושמע לון. בגין כן צווחין ליה. קלנדס יינובריס. מן יומא דבתריה מתאבלין עלי מילני אימנא. אמר רבי יודן ענתודרינא. 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 war<sup>82</sup>? 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 dukes<sup>83</sup>, eparchoi<sup>84</sup>, and generals<sup>85</sup>. He listened to them. Therefore, it is called *Calendae Januarii*. The next day they mourn him, a black day<sup>86</sup>. Rebbi Yudan from Antodra<sup>87</sup> said, if one sows lentils<sup>87a</sup> on that day, they will not succeed.

82 Greek πόλεμος.

*postridiani*, following *calendae*, *ides*, or

83 Latin *dux*, pl. *duces*.

*nonae*, were considered inauspicious.

84 Greek ἑπαρχος “governor, prefect.”

87 Or Antodra, Antorda; cf. *Berakhot* 4:1 Note 72.

85 Greek στρατηλάτης.

86 Greek μέλαινα ἡμέρα, translation of

87a A symbol of mourning, *Gen. rabba*

Latin *dies ater*, a black (unlucky) day. *Dies*

63(19).

(39c line 24) רב אמר. קלנדס אסורה לכל. רבי יוחנן אמר. אין אסורה אלא לפלחין בה. סטרנלייה אסורה לכל. רבי יוחנן אמר. בין קלנדס בין סטרנלייה אינה אסורה אלא לפלחין בה. חברינא בעו. נשי דפלחין כפלחין. רבי אבהו בעי. והדא טקסיס דקיסרין מכין דסוגינא שמרין כפלחין היא. הדה טקסיס דדוקים צריכא. רבי ביבי שלחיה רבי זעירא דזבון ליה צויל קטן מן סטרנלייה דבישן. 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. סטרנלייה לאחר תקופה שמונה ימים. אמר רבי יוחנן. פרוקטו ראשה שלתקופה.

Rav said, *Calendae* are forbidden for everybody<sup>88</sup>. Rebbi Johanan said, it is forbidden only for those worshipping on them. *Saturnalia* are forbidden for



everybody<sup>89</sup>. 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 parade<sup>90</sup> of Caesarea like worship, since it is full of Samaritans? The parade of Duqim<sup>90a</sup> 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 Yose<sup>91</sup>. 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 forbidden<sup>92</sup>.

Rav said, Calends are eight days before the solstice, Saturnalia eight days after the solstice<sup>93</sup>. Rabbi Johanan said, *prwqtw* is the head of the turning point<sup>94</sup>.

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 תְּקוּפָה.

32c line 39) רבי בא בשם רב. שלשה זמנים בבבל. ושלשה זמנים במדי. שלשה זמנים בבבל. מהורי וכנוני וכוונתה. שלשה במדי. נוסרדי ותיריסקי ומהירקנה. רבי הונא בשם רב נחמן בר יעקב. נרוז ב' באדר בפרס בעשרים באדר במדי.

Rebbi Abba in the name of Rav: There are three times<sup>95</sup> in Babylonia, three times in Media. Three times in Babylonia, וכוונתה<sup>96</sup>. Three in Media, מהירקנה<sup>96</sup>. נוסרדי ותיריסקי ומהירקנה<sup>96</sup>. Rebbi Huna in the name of Rab Nahman bar Jacob: New Year's Day<sup>97</sup> is on the second of March in Persia, on the 20<sup>th</sup> 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 *Tevet* (or *Kislev* and *Tevet*) which leads one also to identify the day as connected to the winter solstice. In the Babli (11b) the readings are for Persian festivals מוהרין ומוהרין, ms. readings מוטרדי וטיריסקי ומוהרין ומוהרין, מוטרדי וטיריסקי ומוהרין ומוהרין, for the

Mohariki and Mohariki, וכוונתה וכוונתה, וכוונתה וכוונתה, וכוונתה וכוונתה. 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.

35c line 39) סטורנלייא. שנאה טמונה. שונא נוקם ונוטר. היך מה דאת אמר וישטם עשו את יעקב. אמר רבי יצחק בירבי לעזר. ברומי צנוחין ליה. סנטוריה דיעשו. וקרטסיס. יום שתפשה בו רומי מלכות. ולא כבר תניתה. אמר רבי יוסי בירבי בון. פעם שנייה. אמר רבי לוי. יום שנתחתן שלמה לפרעה נכה מלך מצרים נד מיקאל ונעץ קנה בים והעלה שלעטוט ונעשה חורש גדול וזה הוא פרך גדול שברומי. יום שהעמיד נרבעם שני עגלי זקב באו רומס ורומילס וכונו שני צריפים ברומי. יום שנסתלק בו אלגהו הועמד מלך ברומי. ומלך אין באדום נצב מלך:

יום גיניסָא שֶׁל מְלָכִים. וְיָהִי | בַּיּוֹם הַשְּׁלִישִׁי יוֹם הַלְדֹת אֶת-פְּרָעָה.

“Saturnalia,” “hidden hatred; hating, taking revenge, preserving [hatred].”<sup>98</sup> This is what you say, *Esau hated Jacob*<sup>99</sup>. Rabbi Isaac ben Rabbi Eleazar said, in Rome they call it “senate of Esau”<sup>100</sup>.

“Cratesis.” The day when Rome took hold of the Empire. Was this not stated already<sup>101</sup>? Rabbi Yose ben Rabbi Abun said, for the second time<sup>102</sup>. 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*<sup>103</sup>.

“The king’s birthday.” *It was on the third day, Pharaoh’s birthday*<sup>104</sup>.

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 (סְנָטָרִי) but became hating, taking revenge, preserving [hatred]; for this one calls the Senators (סְנָטָרִי) of Rome. For סַנְטָר *saluarius* cf. *Bava mesī’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 וַיָּבֹא 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 הַלְדֵּה וְיוֹם הַמִּיתָה. עַד כָּאן לְצִיבּוֹר. מִכּוֹן וְאַיִלָּךְ לְיַחֲוִיד. וְכַתִּיב בְּשָׁלֹם תָּמוּת וּבְמִשְׁרָפּוֹת אֲבוֹתֶיךָ הָרִאשׁוֹנִים וְגו'. כִּינִי מִתְנִיתָא. כָּל-מִיתָה שֶׁיֵּשׁ בָּהּ עִישוֹן וְשָׂרִיפָה לֹשׁ בָּהּ עֲבוֹדָה זָרָה. וְשֶׁאֵין בָּהּ עִישוֹן וְשָׂרִיפָה אֵין בָּהּ עֲבוֹדָה זָרָה.

“Birthday, and the day of death.” The preceding was for the public, from here on private. But it is written<sup>104a</sup>: *You shall die in peace, and what was burned for your earlier forefathers . . .* So is the Mishnah: “Any death where there is smoke and burning<sup>105</sup> 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.

(fol. 39a) **משנה ג:** יום תגלחת זקנו ובלוריתו יום שעגלה בו מן היום ויום שזצא בו מבית האסורים אינו אסור אלא אותו היום ואותו האיש.

**Mishnah 3:** The day of the first shaving of his beard and his locks<sup>105</sup>, the day he arrived from a trip at sea<sup>106</sup>, 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 ומשתהו בנו אסורה. תיפתר שגילחו שניהן כאחת שגשאו נשים. והתני. לידתו ולידת בנו אסורה. אית לך מימר. שנוולדו שניהן כאחת. תיפתר בהווא דלא אספיק מיעבד ביומיה עד דאיתגלד בר ועבד קתדא.

**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 is<sup>107</sup> forbidden? Explain it that they had a haircut together. Did we not state, his wedding feast and his son's wedding feast are forbidden<sup>108</sup>? 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 him<sup>109</sup>.

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 ישלח לו חביות מכורות לחנוני מפני שהוא כטוענו טענת חנם. לא יסרב אדם בחבירו לארחו בשעה שאינו רוצה. לא ירבה לו בתקרובת בשעה שהוא יודע שאינו מבקש. מהו בתקרובת. רחיצו ביומי אחריו. ובירושלם הנה הוּפָד עיקליה דימינא לשמאלא.

<sup>110</sup>He 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 corner<sup>111</sup>. And in Jerusalem he was switching his ‘*ikhla* from right to left<sup>112</sup>.

110 A thoroughly corrupt paragraph; partially but defectively copied from *Demay* 4:6, Notes 73-74. The basic reference is Tosephta *Baba qamma* 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 עיקלא is otherwise unknown; cf. *Demay loc. cit.* Note 74. Compare Arabic عقال “cord (of a curtain)”.

39c line 57) תני. עיר שיש בה גוים וישראל. אם נותנין הגוים לגבאיין גובין מהו ומישראל. ומפרנסין עניי גוים ועניי ישראל. ומבקרין חולי גוים וחולי ישראל. נוחמים אבילי גוים ואבילי ישראל. וקוברין מיתתי גוים ומיתתי 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 להתיר עבודה זרה שלהן. וברוך המקום שרחקנו מהן.

<sup>113</sup>It 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 להלך בה למקום אחר מותר. עיר שיש בה עבודה זרה והיו בה הנזיות מעוטרות ושאין מעוטרות זה היה מגעשה בבית שאן ואמרו חכמים המעוטרות אסורות ושאין מעוטרות מותרות:

**Mishnah 4:** Outside a town with pagan worship it is permitted<sup>114</sup>. If the pagan worship was outside, inside is permitted. May one go there? If the road was dedicated to this place<sup>115</sup> 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 permitted<sup>116</sup>.

- 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.

65) (39c line 39c) **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 פני 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 פסות שמים. תיפתר ישראל ישראל. והתני. המוכר עבדו לגוים דמיו אסורין. עוד היא תיפתר ישראל ישראל. ישראל שהולך ליריד לוקחין ממנו מפני שהוא כמציל מידו. 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 בפונדקא אמהרה רבי יוחנן. אתא רבי בא בריה דרבי חייה בר בא בשם רבי יוחנן. אם היה פונדק מותר בפונדקא. 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 fair<sup>117</sup>. 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 stated<sup>40</sup>: “One goes to fairs and buys there slaves, slave girls, and animals.” Rabbi Simeon ben Laqish said, not only Jewish slaves<sup>41</sup> but even Gentiles, because he brings them under the wings of the *Shekhina*<sup>42</sup>. But was it not stated<sup>118</sup>: 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 castrated<sup>119</sup>? But was it not stated<sup>40</sup>: One goes to fairs and buys there slaves, slave girls, and animals.” Rabbi Simeon

ben Laqish said, not only Jewish slaves<sup>41</sup> but even Gentiles, because he brings them under the wings of Heaven? Explain it, Israel, Israel<sup>120</sup>. But was it not stated: If somebody sells his slave to Gentiles the proceeds are forbidden<sup>121</sup>. 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 worship<sup>122</sup>. 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 hostelry<sup>123</sup> 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 merchandise<sup>124</sup>. Rabbi Abba the son of Rabbi Hiyya bar Abba came in the name of Rabbi Johanan: If it was a hostelry, merchandise is permitted<sup>125</sup>, said Rabbi Johanan<sup>126</sup>.

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 (*Gitin* 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, πανδοκιον. 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 בפרגמטא



שְׁנֵנְסָה קוֹדֵם לִירִיד אֲתָאֲמַרְתָּ. אֲתָא רַבִּי זְעִירָא רַבִּי אֲבָהוּ בְּשֵׁם רַבִּי יוֹחָנָן. הִחְלִיף בְּהֵמָה בְּעִבּוּדָה זָרָה אֲסֻרָה. בְּפָרְגִמְטָא שְׁנֵנְסָה קוֹדֵם לִירִיד אֲתָאֲמַרְתָּ. אָמַר רַבִּי אֲבָהוּ. אֲסוּר לַעֲשׂוֹת חֲבִילָה בִּירִיד. וְתֵינִי כֵן. לֹא יִשְׁאַל בְּשְׁלוֹמוֹ בְּמָקוֹם שֶׁהוּא מוֹתַחֲשֵׁב. מִצָּאוֹ לְפִי דְרַכּוֹ שׂוֹאֵל בְּשְׁלוֹמוֹ בְּכוֹבֵד רֵאשׁ.

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 forbidden<sup>127</sup>. Because he bartered an animal for an idol he made it forbidden? Maybe it was said about merchandise assembled before the fair<sup>128</sup>. 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 fair<sup>129</sup>, as we have stated<sup>130</sup>: “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 חִיָּה בַר נוּה שְׁלַח מֵיזְבוּן לִיה סַנְדַּל מִן יְרִידָה דְצוּר. אָמַר לִיה רַבִּי יַעֲקֹב בַּר אֲחָא. וְאֵת מְלוֹקְחֵי יְרִיד. אָמַר לִיה. וְאֵת לֹא לְקַחְתָּ קְלוֹסְקִין מִמֵּיָדָה. אָמַר לִיה. שְׁנֵינָא הֵיא. דְמַר רַבִּי יוֹחָנָן. לֹא אֲסֻרוֹ דְבַר שֶׁהוּא חַי נְפֶשׁ. רַבִּי שְׁמַעוֹן בֶּן יוֹחָנָן שְׁלַח שְׂאֵל לְרַבִּי שְׁמַעוֹן בֶּן יוֹצֵדֵק. לִית אֵת בְּדִיק לִיה אֲהוּ יְרִידָה דְצוּר מְהוּ. אָמַר לִיה. אִין. יְהַב תְּרַתִּין לִיטְרִין דְפִינְלִפְלִין לְאִיסְקְרַנְדָּה. עָאֵל וְאֲשַׁפַּח כְּתִיב תִּמְן. אֲנָא דִּילְקִלְטִינּוּס מִלְכָּא שְׂכָנִית אֲהוּ יְרִידָה דְצוּר לְגִדְיָה דְאַרְקִלִיס אַחִי תִמְנָא יוֹמִין. רַבִּי יֶצְחָק בַּר נַחֲמֵן שְׂאֵל לְרַבִּי חֲנִינְה. יְרִיד עֲזָה מְהוּ. אָמַר לִיה. הִלְכְתָּ לְצוּר מִמֵּיָדָה וְרֵאִיתָ יִשְׂרָאֵל וְגוֹי שֶׁהוּ שׁוֹתֵפִין בְּקַדְיָה וְאִינוּ חוֹשֵׁשׁ שְׁמָא נִיעַר הַגּוֹי בְּקַדְיָה. וְקִשְׁיָא. הוּא שְׂאֵל לִיה דָּא וּמַגִּיב לִיה דָּא. אֲלָא בְּגִין דְלִית רַבִּי חֲנִינְה אָמַר מִילָה דְלֹא שְׁמַעָה מִיוֹמוֹי בְּגִין כֵּן הוּא שְׂאֵל לִיה דָּא וּמַגִּיב לִיה דָּא. אֲתָא רַבִּי יוֹסִי בִּרְבִי בּוֹן אֲבָא בַר

בַּר חֲנָה בָּשֶׁם רַבִּי יוֹחָנָן. לֹא אֶסְרוּ אֶלָּא כְּגוֹן יְרִידָה שְׁלִבוֹטְנָה. וְתַנִּי כֵן. ג' יְרִידִין הֵן. יְרֵד עֲזָה  
יְרִיד עֲפָה יְרִידָה שְׁלִבוֹטְנָה. וְהַמְחֻזָּר שְׁבַבְלָן יְרִיד בּוֹטְנָה.

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 fairs<sup>131</sup>? He answered him, did you never buy a loaf of bread<sup>132</sup>? 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 pounds<sup>133</sup> of peppers to an <sup>134</sup>איסקרנדה. He went and found an inscription there, “I, King Diocletian, settled this fair at Tyre to the genius of my brother Heraklius<sup>135</sup>, 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 that<sup>136</sup>.

Rebbi Yose ben Rebbi Abun came, Abba bar bar Ḥana in the name of Rebbi Joḥanan: They forbade only the fair at Botnah<sup>137</sup>, as it was stated thus: There are three fairs, the fair at Gaza, the fair at Acco, the fair at Botnah. The clearest of them<sup>138</sup> 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 לקום. אם היה אכסניא אסור. בן עיר מותר. שייקה מותר. שכן דרך שייקה 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 guest<sup>139</sup>, it is forbidden; a town dweller is permitted<sup>140</sup>. A caravan is permitted since caravans go everywhere<sup>141</sup>.

How are they decorated? Rabbi Johanan said, with myrrh; Rabbi Simeon ben Laqish said, with any kind<sup>142</sup>. In the opinion of Rabbi Johanan, all is forbidden<sup>143</sup>; 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 practice<sup>144</sup>, 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 *παράξ*, read פרקסיס for פרקסיס. If the store expects to do more business because of the fair but outside the fairgrounds, this is not pagan worship.

(fol. 29a) **משנה ה:** אילו דברים אסור למכור לגוים איצטריבילין וכןות שוח בפתומרותיהן ולבונה ותרגול חלבן. רבי יהודה אומר מוכר הוא לו תרגול לכן בין התרגולין. בזמן שהוא בפני עצמו קומע אצבעו ומוכרו שאין מקריבין חסר לעבודה זרה. ושאר כל הדברים סתמן מותר ופירושן אסור. רבי מאיר אומר אף דקל טב וזצד וניקלבים אסור למכור לגוים:

**Mishnah 5:** The following are forbidden to be sold to them: Pine cones<sup>145</sup>, and white figs<sup>146</sup> 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 unspecified<sup>147</sup> but forbidden if specified. Rebbi Meir says, it is also forbidden to sell good dates, and curved dates<sup>148</sup>, and Nicolaos dates<sup>149</sup> to Gentiles.

145 Greek στροβίλος “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 בפטורו ותיקו והאיצטרובלין במטוטלותיהו. ויבונה. תני. אם היתה חבילה מותר. וכמה היא חבילה. רבי יהודה בן בתיירה אמר. חבילה של לבונה אין פחות מהמשה מיניו. אם הנה כוכר אסור. רובא 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 אפרין. לא אמרו 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 אפרין. לא אמרו 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 ותרנגול לבן ביניהן ואמר. שלמי. כמי שסיים.

הנה חסר. קריא אמר. שמקריבין חסר לעבודה זרה. וקייגישון עור לזבוח אין רע. הדא אמרה. שמקריבין חסר לעבודה זרה.

רבי מאיר אומר. אף דקל טוב וחקד ונקלביס אסור למכור לגויס: רבי חמא בר עוקבה אמר. קרויטה. 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 attachments<sup>150</sup>.

“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 incense<sup>151</sup>. If he was a pagan priest it is forbidden<sup>152</sup>, 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 specified<sup>153</sup>?

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*<sup>154</sup>? 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, Caryotis<sup>155</sup>. Rabbi Eleazar ben Rabbi Yose said, it is a kind known as *ḥaṣda*. If somebody transgressed and sold? It will come similar to what Rabbi Eleazar said<sup>156</sup>, 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 καρῶτις “nut shaped kind of dates,” Babli 14b. The word חצד may be Arabic حَضد “curved, bent”. The reading of

the Yerushalmi is preferable to that of the Babli and the independent Mishnah mss., nothing to do with date palms (*Peah* 2:1 Note 24).  
 תצב, which designates a plant or bush having 156 Halakhah 7, end.

(fol. 39a) **משנה ו**: מקום שֶׁנֶּהֱגוּ לְמִכּוֹר בְּהֵמָה דְקָה לְגוֹזִים מוֹכְרִין. מְקוֹם שֶׁנֶּהֱגוּ שְׂלֵא לְמִכּוֹר אֵין מוֹכְרִין וְאֵל יִשְׁנָה אָדָם מִפְּנֵי הַמַּחְלֻקָּת. וּבְכָל־מְקוֹם אֵין מוֹכְרִין לָהֶם בְּהֵמָה גְּסָה עֲגָלִים וְסִיָּהִים שְׁלֵמִין וְשִׁבּוּרִין. רַבִּי יְהוּדָה מַתִּיר בְּשִׁבּוּרָה בֶּן בְּתִירָא מַתִּיר בְּסוּם:

**Mishnah 6**: At a place where they used to sell small cattle to Gentiles one sells<sup>157</sup>; at a place where they used not to sell one does not sell; nobody should change this because of controversy<sup>158</sup>. Nowhere does one sell to them large animals, calves, and donkey foals, whole or damaged<sup>159</sup>. Rabbi Jehudah permits damaged ones; Ben Bathyra permits horses<sup>160</sup>.

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**: מְקוֹם שֶׁנֶּהֱגוּ לְמִכּוֹר בְּהֵמָה דְקָה כּוֹל. מָה וּמוֹתֵר לְגַדֵּל. אָמַר רַבִּי בָּא. כְּגוֹן מְהִיר שֶׁהוּא שֶׁשָׂה עֶשֶׂר מִיל עַל שֶׁשָׂה עֶשֶׂר מִיל. הוּוֹן בְּעֵי מַמַּר. כִּמֵּן דְמַר. מוֹתֵר לְמִכּוֹר מוֹתֵר לְגַדֵּל. וּמֵאן דְמַר. אָסוּר לְמִכּוֹר אָסוּר לְיִיחֵד. רַבִּי יוֹנָה רַבִּי לְעִזָּר בְּשֵׁם רַב. וְאַפְּלוּ כְּמֵאן דְמַר. מוֹתֵר לְמִכּוֹר אָסוּר לְיִיחֵד. מָה בֵּין לְמִכּוֹר מָה בֵּין לְיִיחֵד. בְּשַׁעָה שֶׁמְכַוְרָה לֹא כְּבָהֱמָתוֹ שְׁלֵגוּי הִיא. בְּשַׁעָה שֶׁהוּא מִיִּיחֵדָה לֹא כְּבָהֱמָתוֹ שְׁלֵיִשְׁרָאֵל הִיא וְהוּא חֲשׂוֹד עָלֶיהָ.

1 מה ומוותר | פ מותר 3 לגדל | פ ליחיד 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 them<sup>161</sup>? Rabbi Abba said, for example Mahir which is sixteen by sixteen *mil*<sup>162</sup>. They wanted to say, he who said it is permitted to sell [says] it is permitted to raise<sup>163</sup>. But he who says, it is forbidden to sell [says] it is forbidden to leave it alone<sup>164</sup>. Rabbi Jonah, Rabbi Eleazar in the name of Rav<sup>165</sup>: 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.

מקום שנהגו שלא למכור אין מוכרין. למה. מפני שמוציאה מידי גיזה. הגע עצמך שהיתה עז. מפני שמוציאה מידי בכורה. הגע עצמך שהיה זכר. מפני שמוציאו מידי מתנות. מעתה חייטין אל ימכור לו מפני שמוציאו מן החלה. יין ושמן אל ימכור לו מפני שמוציאן מן הבכרה.

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 שמוציאן | פג שהוא מוציאו

“At a place where they used not to sell one does not sell.” Why? Because he eliminates the duty of shearing<sup>166</sup>. Think of it, if it was a goat! Because he eliminates the duty of the first-born<sup>167</sup>. Think of it, if it was a male! Because he eliminates the gifts<sup>168</sup>. Then one should not sell wheat to them because he eliminates the duty of *hallah*<sup>169</sup>; then one should not sell wine and oil to them because he eliminates the duty of benedictions<sup>170</sup>.

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.

66) (39d line 66) בְּכָל מְקוֹם אֵין מוֹכְרִין לָהֶם בְּהֵמָה גִּשָּׁה. לָמָּה. בְּהֵמָה גִּשָּׁה יֵשׁ בָּהּ חַיִּיב חֲטָאָת וּבְהֵמָה דְּרָקָה אֵין בָּהּ חַיִּיב חֲטָאָת. וְאֵינוּ חוֹלְבִים וְאֵינוּ גּוֹזְזִים. אָמַר. תַּפְּסוּן הִיא מִתְחַיֶּיבֶת. בְּרַם הִכָּא הוּא מוֹתְחִיב. מִפְּסוּן שְׁהוּא מוֹכְרָה לוֹ לֹא כְּבִהְמִתּוּ שְׁלִגּוּי הִיא. רַבִּי אֲמַי בְּבִלְיָא בְּשֵׁם רַבְּנִין דִּתְמָן. פְּעָמִים שְׁמוֹכְרָה לוֹ לְנִישּׁוֹן וְהוּא מַחְזִירָה לְאַחַר ג' יָמִים וְנִמְצָא עוֹבֵד עֲבוּדָה בְּבִהְמִתּוּ שְׁלִישְׁרָאֵל. מַעֲתָה לְנִישּׁוֹן אֲסוּר שְׁלֵא לְנִישּׁוֹן מוֹתְרָ. זוּ מִפְּנֵי זוּ.

עָבַר וּמְכַר קוֹנְסִין אוֹתוֹ. כְּשֵׁם שְׁקוֹנְסִין לוֹ לְהִלְכָה כְּדָ קוֹנְסִין לוֹ לְמַנְהָג. וּמִנְיִן שְׁקוֹנְסִין לוֹ לְמַנְהָג. חַד בַּר נֵשׁ זְבִין גְּמִלְיָה לְאַרְמָאִי. אֲתָא עוֹבְדָא קוֹמִי רִישׁ לְקִישׁ וּקְנִסִי בְּדִפְלָא בְּגִין דִּיחִזֵּר לִיהָ גְּמִלָּא. אָמַר רַבִּי יוֹסִי בִּירְבִי בּוֹן. לְסַרְסוֹר קִנְסוּ וְהוּוּ צְוֹחִין לִיהָ בְּרָא דְמַסְרִסֵּר לְאַרְמָאִי. רַבִּי שְׁמַעוֹן בֶּן לְקִישׁ כְּרַבִּי יוֹדָה. דִּתְנִי בְּשֵׁם רַבִּי יוֹדָה. הַלּוֹקַח בְּהֵמָה מִן הַגּוֹי וְלָדָה בְּכוֹר מַעֲלָה עִמּוֹ בְּשׁוּיָו וְנוֹתֵן חֲצִי דָמִים לְכֹהֵן. נִתְּנָה לוֹ בְּקַבְלָה מַעֲלָה עִמּוֹ עַד פְּמָה דָמִים וְנוֹתֵן כָּל־הַדָּמִים לְכֹהֵן. וְחֲכָמִים אוֹמְרִים. הוּאִיל וְאַצְבָּע הַגּוֹי בְּאֲמָצֵעַ נִבְטְרָה מִן הַבְּכוֹרָה. רוֹבָה דְרַבִּי שְׁמַעוֹן בֶּן לְקִישׁ מִדְּרַבִּי יוֹדָה. מַה דָּמַר רַבִּי יוֹדָה מִשּׁוּם הִילְכוֹת בְּכוֹרָה. וְמַה דָּמַר רַבִּי שְׁמַעוֹן בֶּן לְקִישׁ לְהִילְכוֹת בְּהֵמָה גִּשָּׁה.

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 וכיון | ג ומכיון | - פ ברם הכא | ג והכא | פג בהמתו של ישראל הוא והוא חשוד עליה<sup>171</sup> | אמי | פ אמי בבלייא | ג בבליה רבנין | ג רבנן | 4 פעמים | ג פעמין | לאחר | פ לו לאחר | ג' | פג שלשה עובד עבודה | פ עובר עבירה | 6 לו | פ - (2) | ג בו (2) | 7 לו | פג בו | לארמאי | פ | לחד ארמאי | ריש לקיש | פג ר' שמעון בן לקיש | בדיפלא | פ בכיפלה | 8 דיחזר | פ דיחזר | יוסי | פ יוסה | קנס | פ קנסו והוו | פ והוו | 9 לארמאי | ג לארמאיה | - פ מה | 10 בשויין | פ בשוה | עד כמה דמים | פ (ג) אפיל עשר דמים בשווה | 11 נפטר | ג נפסדה | 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 offering<sup>172</sup>; 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 liable<sup>173</sup>. But if it is sold, is it not the Gentile’s animal? The Babylonian Rebbi Immi<sup>174</sup> 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 animal<sup>175</sup>. Then on trial it should be forbidden, not on trial permitted. One is because of the other<sup>176</sup>.

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 Aramean<sup>177</sup>. The case came before Rebbi Simeon ben Laqish who fined him double<sup>178</sup> to make him take back the camel. Rebbi Yose ben Rebbi Abun said, they fined the broker and called him son who brokers to Arameans<sup>179</sup>. Does Rebbi Simeon ben Laqish follow Rebbi Jehudah<sup>180</sup>? As it was stated in the name of Rebbi Jehuda<sup>181</sup>: "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 firstling<sup>182</sup>." Rebbi Simeon ben Laqish is more than Rebbi Jehudah. What Rebbi Jehudah said because of the practice of firstlings; but what Rebbi Simeon ben Laqish said because of practice regarding a large animal<sup>183</sup>.

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 Rebbi 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 δπλῆ. 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 להתרפות. אמרו לו. והלא הוא מביא לה זכר והוא רובעה והיא יולדת. אמר להן. אף אני לא אמרתי אלא בסוס זכר שאינו יכול להתרפות. 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 שלנכרי והמוכר לו אף על פי שאינו רשאי. והמשתתף לו והמקבל ממנו והנותן לו בקבלה פטור מן הבכורה. רבי חגיגי בעא קומי רבי יוסי. לית הדא 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 מביאן והוא רובה והיא יולדת | פ ורבעת ממנו 3 בסוס | פ בשבור הוא מביא | פ מביאין והיא | והוא 4 רבעת ממנו | פ רובעה אבין | פ אבון 5 עוברין | פ זרע והמוכר | פ המובר המשתתף | 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 healed<sup>184</sup>. 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]<sup>185</sup> 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 fetuses<sup>186</sup>. There<sup>187</sup>, 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 this<sup>188</sup> 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 disabled cow will accept a male.  
 nothing to do with Sabbath prohibitions. 187 Mishnah *Bekhorot* 1:1.  
 The Babli, 16a and *Bekhorot* 2b, disagrees 188 The note that one is not authorized to  
 and reports that R. Jehudah denies that a sell a pregnant animal to a Gentile.

17) (40a line 40a) בְּנֵי בְּתִירָה מְתִיר בְּסוֹס: לֹא אָמַר בֶּן בְּתִירָה אֶלָּא בְּסוֹס זָכָר שֶׁהוֹרָג בְּעֵלְיוֹ  
 בְּמִלְחָמָה. וְיֵשׁ אוֹמְרִים. שְׂרָץ אַחַר הַנְּקִיבוֹת. וְיֵשׁ אוֹמְרִים. שֶׁעוֹמֵד וּמְשִׁיתִין. מֵה בְּיָנִיהוּן.  
 סָרִיס. מֵאֵן דְּאָמַר. שְׂרָץ אַחַר הַנְּקִיבוֹת. אֵינּוּ רָץ. וּמֵאֵן דְּאָמַר. עוֹמֵד וּמְשִׁיתִין. אִף זֶה עוֹמֵד  
 וּמְשִׁיתִין. רַבִּי תַנְחֻמִּין בְּרַחֲמֵיהֶן. לְכַשְׁאֲקִין כּוֹדְנֵי בְּרִיחִים. רַבִּי יוֹסִי בִּירְבִּי בּוֹן בְּשֵׁם רַבִּי הוּנָא. בֶּן  
 בְּתִירָה וְרַבִּי נֶתַן שְׁנֵיהֶם אָמְרוּ דְּבַר אֶחָד. דְּתַנְיָי. הוֹצִיא מִן הַבְּהֵמָה וּמִן הַחִיָּה וּמִן הַעוֹפּוֹת בֵּין  
 חַיִּים בֵּין מֵתִים חֵיב. רַבִּי נֶתַן אוֹמַר. מֵתִים חֵיב. חַיִּים פְּטוּר. וְרַבְנָן אֵית לְהוּן. חֵיב חֲטָאֵת.  
 וְאֵינוּן מְתִיבִין לִיה אֶכְךָ. כְּשִׁטְתוֹ הַשִּׁיבוּהוּ. כְּשִׁטְתָּדָּ שְׂאֵתָה אוֹמַר. מְשוּם שְׁבוּת. אוֹף אֶנָּא  
 אֵית לִי. לְכַשְׁאֲקִין כּוֹדְנֵי לְרִיחִים. רַבִּי אוֹמַר. אוֹמַר אֲנִי שְׂאֵסוּר מְשוּם שְׁנֵי דְבָרִים. מְשוּם כְּלִי  
 זֵיין וּמְשוּם בְּהֵמָה גְּסָה. וְתַנְיָי כֵּן. חִיָּה גְּסָה כְּבֵהמָה דְקָה. מֵאֵן תַּנְיָתָה. רַבִּי. דְבָרֵי חֲכָמִים.  
 רַבִּי בִּיסְנָא רַבִּי חֲנָן בְּרַבָּא בְּשֵׁם רַב. חִיָּה גְּסָה כְּבֵהמָה גְּסָה.

1 שְׁהוֹרָג | 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 חייין 6 מתים | ג מתין (2) חיים | פג חייין ורבנן | פג רבנן להון | ג לון  
 משם חייב | פ משום חייב 7 אכן | פ הכין ג הכן שאתה | פג שאת שבות | פ הילכות בהמה גסה ג הלכת  
 בהמה גסה אטא אית לי | פג אן אית לן 8 לריחים | פ בריחים שאסור | פ שהוא אסור משום | ג משם  
 9 - | פ הילכות ג הלכת דקה | פג גסה חכמים | ג חכמין ביטנא | ג ביטנא ר' חנן | פ חנין ג חנן 10 רב | ג  
 ר' חיה גסה | 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 urinate<sup>189</sup>. 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]<sup>190</sup> Rebbi Tanḥum bar Ḥiyya: If it gets old he binds it to the grindstone<sup>191</sup>. Rebbi Yose ben Rebbi Abun in the name of Rebbi Huna: Ben Bathyra and Rebbi Nathan both said the same<sup>192</sup>, as it was stated<sup>193</sup>: “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 so<sup>194</sup>? 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 weapon<sup>195</sup> and as a large animal. It was stated so: A large wild animal is like a (small) [large]<sup>196</sup> domestic animal<sup>197</sup>. Who stated this? Rabbi. The words of the Sages: Rabbi Bisna, Rabbi Hanan bar Abba in the name of Rav<sup>198</sup>: A wild animal is like a (large) [small]<sup>196</sup> 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 נרדון ואיסטדייא ובימה. אבל בונים עמקה בימיסואות וקרה צאות. הגיעו לכפה שמעמידין בה עבודה זרה אסור לבנותה:

**Mishnah 7:** One does not sell them bears and lions, or anything damaging to the public; nor does one build with them a basilica<sup>199</sup>, a gallows<sup>200</sup>, a stadion<sup>201</sup>, or a rostrum<sup>202</sup>. But one builds with them public<sup>203</sup> 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 וְאַרְיֹות כּוֹל. הָא דְּבַר שְׂאֵין בּוּ נִיזְקָא לְרַבִּים מוּתָר. מִתְּנִיתִין דְּרַבִּי דְּתַנִּי. הַרְוָאָה אֶת הַנְּחָשִׁים וְאֶת הַחֲבָרִים מוֹקִיּוֹן מוֹפְיּוֹן מוֹלְיוֹן מִלְּרִין מִלְּרִיָּה סְגִלְרִיָּה. הָרִי זֶה אֶסּוּר מְשׁוּם מוֹשֵׁב לְצִים. שְׁנַאֲמַר וּבְמוֹשֵׁב לְצִים לֹא יֵשֵׁב: וְכוּלָּן מִבֵּיאִין לִידֵי בִטּוּל תּוֹרָה. שְׁנַאֲמַר כִּי אִם־בְּתוֹרַת יְיָ חִפְצוֹ. הַעוֹלָה לְתִיאֲטֹרוֹן אֶסּוּר מְשׁוּם עֲבוּדָה זָרָה. דְּבַרֵי רַבִּי מֵאִיר. וְחֻקִּים אֹמְרִים. בְּשַׁעָה שֶׁהוּא מְזַבְּלִין אֶסּוּר מְשׁוּם עֲבוּדָה זָרָה. וְאִם לֹא מְשׁוּם מוֹשֵׁב לְצִים בְּלִבְדּוֹ. הַעוֹלָה לְתִיאֲטֹרוֹן וְצוּחַ. אִם לְצוּרָה הַרְבִּים מוּתָר. וְאִם מִתְחַשֵּׁד אֶסּוּר. הַיּוֹשֵׁב בְּאַצְטִדִין הָרִי זֶה שׁוֹפֵף דָּמִים. רַבִּי נָאָן מִתִּיר מִפְּנֵי שְׁנֵי דְּבָרִים. מְשׁוּם שְׁצוּחַ וּמְצִיל אֶת הַנְּפָשׁוֹת. וּמַעֲיֵד עַל הָאִשָּׁה שֶׁתִּינָשֵׂא.

עֵבֶר וּבְנָה. רַבִּי לְעֶזֶר אָמַר. מוּתָר. אָמַר רַבִּי מָנָא. לֹא מִסְתַּבְּרָא כְּאֵהוּן סוּבְרָה דְּלֹא אֶסּוּר דְּהוּא חַיִּיד כְּלִהָדָא כִּיפְתָא.

**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 Rebbi<sup>204</sup>. As it was stated<sup>205</sup>: “One who sees snake charmers and conjurers, *muqion, mupion, mulion, milarin, milaria, sigillarin, sigillaria*<sup>206</sup>, this is forbidden because of ‘seat of the scoffers,’ as it is said,<sup>207</sup> *in the seat of scoffers he did not sit*. All this leads to neglect of the Torah, as it is said<sup>208</sup>, *but in the teachings of the Eternal is his desire*. Going to the theater<sup>209</sup> is forbidden as pagan worship, the words of Rebbi 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 shout<sup>210</sup>; 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 blood<sup>211</sup>. Rebbi Nathan permits because of two reasons, because he can shout and save lives<sup>212</sup>, and he can testify for a woman that she can remarry<sup>213</sup>.”

If he transgressed and built. Rebbi Eleazar said, it remains permitted<sup>214</sup>. Rebbi Mana said, it rather seems reasonable following the opinion that it is forbidden because he would have prevented<sup>215</sup> 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 מילריה סגילרין סגילרה  
Tosephta ed. Zuckerman

בוקיון מוקיון מוליון סגלרין סגלריה

Tosephta ed. princeps

בוקיון מוקיון מוליון סגלאדין סגלאדה

Babli ed. princeps

בוקיון מוקיון מוליון לוליון בלורין סלגורין

Babli Ms. Munich

בוקיון מוקיון מוליון לוליון סגליון סגלקין בלרין  
בלריון מלרין מלריון סלגוריון

*Yalqut*

בוקיון מוקיון מוליון לולין סגליון סגלדין כלרין בלרין  
מלרין מלריון

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 מילריה 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 מְתַחֵשֵׁב "to ingratiate oneself" one reads מְתַחֵשֵׁב "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 *חיד* "to deviate".

Maybe if the Jew had refused to build the cupola it would not have been built.

(fol. 39a) **משנה ח:** אין מוכרין להם במחצית לקרקע אבל מוכר הוא משקיצין. רבי יהודה אומר מוכר 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 cut<sup>216</sup>. 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. אשפח 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 slaughtering<sup>217</sup>.

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. ובהוץ 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. ובהוצה לארץ מוכרין אילו ואילו:

**Mishnah 9:** In the Land of Israel<sup>218</sup> one does not lease houses to them and certainly not fields. In Syria<sup>219</sup> 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 both<sup>220</sup>.

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 תנם. לא תחנם לא תתן להם חנייה בארץ. והתנינו אף בארץ ישראל משכירין להן בתים. בית

אין מצוי להתבדף מתוכו שדה מצוי להתבדף מתוכו. הורי רבי יוסי בירבי בון שאסור להשאיר להן קבורה בארץ ישראל על שם לא תתן להם חנייה בארץ.

**Halakhah 9:** “One does not lease houses to them,” etc.<sup>221</sup> Rabbi Ze‘ira in the name of Rabbi Yose ben Hanina, Rabbi Abba, Rabbi Hiyya<sup>222</sup> in the name of Rabbi Johanan: לא תחנם<sup>223</sup> do credit them with charm; לא תחנם do not give them free gifts; לא תחנם do not give them encampment in the Land<sup>224</sup>. 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 blessing<sup>225</sup>. 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.”<sup>226</sup>

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 הנה, חנם, חנף. 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 תחנם לא תתן להם מתנת חנם. והתני. מעשה ברבן גמליאל שהיה מהלך בדדף וראה קלוסקין אחת מושלכת בדדף. 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 שמד. אמר לו. מבגיי. ומאנין אתה. אמר לו. מן העיירות שלבורגניו. ומפידף הוא רבן גמליאל מנימד. אמר לו. לא. כיוון 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. הדיא 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 ושהדדף מפיגה את היין. ואין נשאלין נדרים ולא מורים שותי יין. ולא מפירין נדרים מהלכין אלא עטופין ויושבין. אמר רבי יוחנן. כד פתח לו יש בוטה כמדקרות חרב וגו'. לאחד שנדר מן הכפר. ווי דייכול. ווי דלא ייכול. אין אכיל הוא עבר על



נִדְרֵיהֶּן. וְאִין לָא אֶכִיל הוּא חָטָא עַל נַפְשֵׁיהֶּן. כִּי צַד יַעֲשֶׂהָ. לֵלֵךְ אֶצְל חֲכָמִים וְיִתְירוּ לוֹ אֶת נְדָרוֹ.  
דְּכַתִּיב וּלְשׁוֹן חֲכָמִים מִרְפָּא:

do not give them free gifts. But was it not stated<sup>227</sup>: “It happened that Rabban Gamliel was walking on the road and saw a loaf of bread<sup>132</sup> 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, Mabgai<sup>228</sup>, 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-tower<sup>229</sup> 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 travelers<sup>230</sup>.” Rebbi Jacob bar Zavdi in the name of Rebbi Abbahu: That is, in earlier times. But today we pass over edibles because of sorcery<sup>231</sup>.

<sup>232</sup>“When he was leaving Akzib there came a person to ask about his vow<sup>233</sup>. He asked his travel companion, would you say that we drank a *quartarius*<sup>234</sup> 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 Ladder<sup>235</sup> Rabban Gamliel dismounted, covered himself<sup>236</sup>, 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 wine<sup>237</sup>. Also one does not dissolve vows while walking but covered and sitting.” Rebbi Johanan said, so he opened for him: *Some blurt out unthinkingly like sword piercing*<sup>238</sup> 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 himself<sup>239</sup>. 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 בָּג “to fatten animals” said of pasture.

229 From Latin *burgus*, watch lower at a *limes*, Greek *πυργός* “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 תַחֲנַם לֹא תִתֶן לָהֶם חוּ. וְהִתְנִי. מֵעֲשָׂה בְּרַבִּין גַּמְלִיאֵל שֶׁהִיא מְטִייל בְּהַר הַבֵּית וְרָאָה אִשָּׁה אַחַת גּוֹיָה וּבִירָדָּה עָלֶיהָ. וְכִי דָרְכוּ שְׁלֶרְבֵן גַּמְלִיאֵל לְהַבִּיט בְּנָשִׁים. אָלָּא דָרָדָּה עַקְמוּמִית הִיָּתָה כְּגוֹן אֵהִין פְּסוּרוֹס שֶׁהַבֵּית בָּהּ שְׁלֹא בְּטוּבָתוֹ וּבִירָדָּה עָלֶיהָ. וְלֹא כֵן אָמַר רַבִּי זְעוּרָה בְּשֵׁם רַבִּי יוֹסִי בֶן חֲנִינָה רַבִּי בָּא רַבִּי חִינָה בְּשֵׁם רַבִּי יוֹחָנָן. לֹא תַחֲנַם לֹא תִתֶן עֲלֵיהֶם חוּ. מֵה אָמַר. אַבְסִקְנָטָא. לֹא אָמַר אָלָּא. בְּרוּדָּה שְׂכָדָּה לוֹ בְּרִיּוֹת נְאוֹת בְּעוֹלָמוֹ. שְׂכָן רָאָה אֲפִילוּ חֲמוֹר נָאָה אוֹ גַּמֵּל נָאָה סוּס נָאָה אוֹמֵר. בְּרוּדָּה שְׂכָדָּה דוֹ בְּרִיּוֹת נְאוֹת בְּעוֹלָמוֹ.

do not credit them with charm.<sup>240</sup> But 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*<sup>241</sup>, he looked at her because he could not avoid her. But did not Rabbi Ze‘ura in the name of Rabbi Yose ben Ḥanina, Rabbi Abba, Rabbi Ḥiyya in the name of Rabbi Johanan say: לֹא תַחֲנַם do not credit them with charm? What did he say? He did not say ἄβρασαααα<sup>242</sup> but “praised be He Who has beautiful creatures in His world,” because even if one saw a beautiful donkey, a beautiful camel,

a beautiful horse, one says “praised be He Who has such beautiful creatures in His world.”

240 Babli 20a/b. A parallel (not a copy) is dragged.” (E. G.)  
in *Berakhot* 9:2, Notes 79-81.

242 Greek “free from harm” *Berakhot* 9:2,

241 The word is unexplained; perhaps Note 79.  
ἐπίστυμα “trail or track made by something

40b line 4) רבי שמעון רבי אבהו בשם רבי יוסי בר חנינה. גודלת ישראל לא תגדל את הנכרית משם לא תתן עליהם חן. ולא יעשה ישראל שושבין לגוי משום לא תתחתן בם. רבי יצחק בר גופתא בעא קומי רבי מנא. לילך לבית המשתה שלו אסור. להיעשות לו שושבין לא כל-שכן. אמר ליה. ליתן עליהם בלא תעשה.

Rebbi Simeon, Rebbi Abbahu in the name of Rebbi Yose bar Hanina: a Jewish braider should not braid a Gentile because of “do not give on them charm.” Also a Jew should not be a Gentile’s best man because of *do not contract marriage with them*.<sup>243</sup> Rebbi Isaac from Gufta asked before Rebbi Mana: It is forbidden to go to their wedding feasts, not *a fortiori* to become his best man? He told him, to put a biblical prohibition on it<sup>245</sup>.

243 *Deut.* 7:3.

Canaanites, not Gentiles in general. The prohibition remains rabbinic.

244 Halakhah 3.

245 However the verse refers only to

40b line 9) רבי סימון היו לו נוטעי כרמים בהר המלך. שאל לרבי יוחנן. אמר ליה. גבורו ואל תשפירם לגוי. שאל לרבי יהושע. מהו להשפירן לגוי. ושרא ליה רבי יהושע מקום שאין ישראל מצויין. כהדא בסוריא. הדא סוריא נישמעניה מן הדא. רבי חגי נחת לחמץ. אתון ושאלון ליה. אילין דבר עשתור בגין דלית ישראל שכוחין ואנן מוגרין לעממין מהו לעשר על דיהם. שלח שאל לרבי זעירא. שאל רבי זעירא לרבי אמני. אמר ליה. רבי. מהו לעשר. אמר ליה. אינו צריך לעשר על דיהם. מנא את ר' שמעון להשפיר כרבי יוסי. ועוד מן הדא דמר רבי חנינה ר' אבהו בריה דרבי אבהו. אבא הוה ליה עובדא ושלח שאל לרבי חייה לרבי יסא לרבי אמני והורון ליה להשפיר כרבי יוסי. הא לעשר אין מעשרין על דיהן.

1 נוטעי כרמים | (G) שדות יבור | ד יובירו | 2 תשכרים | G תשכרים יהושע | ד (G) יהושע בן לוי | (2) מהו להשפירן לגוי | G ד - ושרא | G ושרה ליה | G - 3 כהדא | G כהדא בסוריא | ד (G) סוריא הדא | ד דהדא נישמעניה | ד נישמעניה הדא | G הדה | 4 אילין | G אלן לעממין | ד (G) לעמים מהו לעשר | ד צריכין לעשר אנן | G מה הוא לעשיר | 5 דיהם | ד דיהון זעירא | G זעורה (2) אמני | ד (G) אמני אמר ליה. רבי. מהו לעשר. | ד - 6 ליה | G לה לעשר | G לעשיר דיהם | ד דיהון ר' שמעון | ד (G) שמע להשפיר | G להשכיר יוסי | G יוסה הדא | G הדה | 7 חנינה | ד חנינא ר' אבהו | ד - בריה | G ברה הוה ליה

עובדא | הוה לה עובדה ושלח | G | לר' חייה | G | ר' חמי | G | לר' יסא | † | ולר' יסא G - 8 לר' אמאי †  
 ולר' אמאי G | לר' אמאי | להשביר | G | להסכיר | יסי | G | יוסה | אין | † | על ידיהן אין G | על ידיהם לה...  
<sup>246</sup>Rabbi Simon had vineyard planters on King's Mountain<sup>247</sup>. He asked  
 Rabbi Johanan who told him, let them lie fallow and do not lease them to a  
 Gentile. He asked Rabbi Joshua [ben Levi]<sup>248</sup>, may one lease them to a  
 Gentile? Rabbi Joshua [ben Levi]<sup>248</sup> permitted it at a place where no Jews  
 could be found as for example Syria. About Syria we can understand from the  
 following: Rabbi Haggai went to Homs. Those of Bar Ashtor came and  
 asked him: Since we cannot find Jews we lease to Gentiles; do we have to  
 tithe through them<sup>249</sup>? He sent and asked Rabbi Ze'ira. Rabbi Ze'ira asked  
 Rabbi Immi (and said to him, rabbi, does one have to tithe?)<sup>250</sup> He told him,  
 one does not have to tithe because of them. From this you (Rebbi Simeon)<sup>250</sup>  
 [understand]<sup>251</sup> to lease following Rabbi Yose. In addition, from what Rabbi  
 Hanina (Rebbi Abbahu)<sup>250</sup> the son of Rebbi Abbahu said, my father had a  
 case. He sent and asked Rebbi Hiyya, Rebbi Yasa<sup>252</sup>, Rebbi Immi, and they  
 instructed him to lease following Rabbi Yose. Therefore one does not tithe  
 through them<sup>253</sup>.

246 From here intermittently through fol. 43a line 7 there is a Geniza (G) text, in many places very fragmentary, edited by L. Ginzberg (New York 1909). From fol. 41d line 42 there exists a second Geniza text from the Antonin collection edited by J.N. Epstein (E), *Tarbiz* 3 (1932) pp. 15-26, in addition to the Leiden ms. (L).

The present paragraph is a copy from *Demay* 6:1 (†) Notes 15-18. In the readings, a reference (G) means that the word is not completely preserved in G.

247 A region conquered by King Yannai and part of the later Hasmonean kingdom, not settled by the earlier returnees from Babylonia. Cf. *Demay* 5 Note 115, *Ševi'it* 9 Note 63. In Amoraic times it was settled only by Gentiles.

The text of the other two sources,

“fields” is preferable over “vineyard planters”.

248 Added from † and G, missing in L, required by the context.

249 The Gentile is not required to tithe. If he pays his rent in produce, is the landlord required to tithe? Produce in Syria has to be tithed only by rabbinic decree, twice removed from biblical duty. Since the Gentile acts on his own, not on behalf of the owner of the land, what he pays as rent is exempt Gentile produce.

250 Delete with † and G.

251 Add as reading of † and G.

252 Missing in G.

253 As explained in Note 249 there is no need to tithe. The only question is whether one should require them to tithe anyhow as a fine for leasing land to Gentiles, but since

the lease is legitimate following R. Yose agrees, 21a.  
there is no reason for such a fine. The Babli

מִשְׁנָה פ' אף בַּמְקוֹם שֶׁאָמְרוּ לְהַשְׁכִּיר לֹא לְבֵית דִּירָה אָמְרוּ מִפְּנֵי שֶׁהוּא מְקוֹמִים  
לְתוֹכוֹ עֲבוּדָה זָרָה שֶׁנֶּאֱמַר וְלֹא-תָבִיא תוֹעֵבָה אֶל-בֵּיתְךָ וְהִיִּיתְ הָרֶם בְּמֵהוּ וְגו'. וּבְכָל מְקוֹם 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*<sup>255</sup>, etc. In any case he should not lease to him a bath house because it is called by his name<sup>256</sup>.

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.

אף בַּמְקוֹם שֶׁאָמְרוּ לְהַשְׁכִּיר כוּל'. הָא בַּמְקוֹם שֶׁנֶּהְגוּ לְמַכּוֹר מוֹכֵר לוֹ אֶפְּלוֹ בֵּית  
דִּירָה וּמִשְׁכִּיר לוֹ אֶפְּלוֹ בֵּית דִּירָה. רַבִּי אֶחָא רַבִּי תַנְחוּם בַּר חִיָּה בְּשֵׁם רַבִּי לְעֶזְר בִּרְבִּי יוֹסִי.  
וְאֶפְּלוֹ תִּיבָה קִטְנָה. כְּגוֹן בּוֹרְסְקִי שֶׁבְּצִדְן. לֹא סוּף דְּבַר כּוֹלָה אֶלָּא אֶפְּלוֹ בֵּית אֶחָד. הֵיוּ  
שְׂתֵּימֵם זֹ לְפָנִים מֵאֵז הַפְּנִימִית חִיִּבְתָּ וְהַחִיצוֹנָה פְּטוּרָה. הִקְטָה אַחַת וְנִעְשִׂית שְׂתֵּימֵם  
וְנִעְשִׂית אַחַת. רַבִּי אֲבִין בְּשֵׁם רַבִּינָן דְּתַמְנָן. זֹאת אוֹמְרֵת שְׂדֵה שֶׁהִיא נְתוּנָה עַל גֶּב הַדְּרֹךְ אֶסוּר  
לְהַשְׁכִּירָה לְגוּיִם. מִפְּנֵי שֶׁנִּקְרָאת עַל שֵׁם יִשְׂרָאֵל וְהוּן חוֹרְשִׁין בָּהּ בְּשִׁבְתוֹת וּבְיָמֵם טוֹבִים.

1 מוֹכֵר | G מוֹכִיר בֵּית | G לְבֵית 2 וּמִשְׁכִּיר | G מִשְׁכִּיר בֵּית | G לְבֵית | G אַחָא | G אַחָה חִיָּה | G חִיא  
בִּיר' יוֹסִי | G בֵּן יוֹסֵה 3 בּוֹרְסְקִי | בּוֹרְסְקִי 4 שְׂתֵּימֵם | G שְׂתֵּימֵם לְפָנִים | G לְפָנִים 5 וְנִעְשִׂית | G  
וְנִעְשׂו אֲבִין | G אֲבוֹן רַבִּין | G רַבִּין אֶסוּר | G שֶׁאֶסוּר 6 לְהַשְׁכִּירָה | G לְהַשְׁכִּירָה שֶׁנִּקְרָאת | G שֶׁהִיא  
נִקְרָאת חוֹרְשִׁין | (G) חוֹרְשִׁים בָּהּ | G בָּהֶם

“Also in a case where they said to lease,” etc. Therefore, at a place where one is used to sell<sup>257</sup>, he may sell even a dwelling and lease a dwelling<sup>258</sup>. Rebbi Aḥa, Rebbi Tanḥum bar Ḥiyya in the name of Rebbi Eleazar ben Rebbi Yose: Even a small room as in the tannery of Sidon<sup>259</sup>. 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.<sup>260</sup>” If there was one and it was subdivided into two, two and combined into one<sup>261</sup>? Rebbi Abin in the name of the rabbis

there:<sup>262</sup> This<sup>263</sup> 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`serot* 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 מעמידין פרק שני

(fol. 40b) **משנה א:** אין מעמידין בהמה בפונדקאות של גוים מפני שהשודין על התרפעה. ולא תתיחד אשה עמהן מפני שהשודין על העריות. ולא יתיחד אדם עמהן מפני שהשודין 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 hostelry<sup>1</sup> of Gentiles since they are suspected of bestiality. A woman should not be alone with them<sup>2</sup> 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-Jew<sup>3</sup> 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 home<sup>4</sup>.

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 מעמידין 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. פיי דמר רבי ליעזר בשם רב. ואפילו כמאן דמר. מותר למכור אסור לייחוד. עבר וייחד דברי הכל. אמר רבי ירמיה. נישמעיה מן הדא. האשה שנחבשה בידי גוים. אמר רבי יוסי. שנייא היא אשה שדרכה לצוות. הגע עצמך 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 סילסול היא בפרה. מן מה דרבנן מתיבין לרבי ליעזר. פל-צאן קדר יקבצו לך. הדא אמרה.

אף בשאָר קל-הַדְּבָרִים חֲלוּק רַבִּי לִיעֲזָר. רַבִּי הוֹשְׁעִיָּה בְּעֵי. מְשִׁיבִין דְּבַר נְשֻׁאָה לְבוֹא עַל דְּבַר  
נְשֻׁאָה לְשֶׁעֶבֶר. רַבִּי אֲבִין בְּעֵי. מְשִׁיבִין דְּבַר שְׂיִצְרָה הִרַע בְּטַל עַל דְּבַר שְׂיִצְרָה הִרַע קִיָּם.

**Halakhah 1:** “One does not put up animals in hostelryes of Gentiles,” etc. Rabbi Ze’ira, Rabbi Abbahu in the name of Rabbi Yose ben Rabbi Hanina; Rabbi Abba, Rabbi Jonah<sup>5</sup>: explain it<sup>6</sup> following Rabbi Eliezer, since Rabbi Eliezer said “it may not be bought from Gentiles.”<sup>7</sup> 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 alone<sup>8</sup>. If he transgressed and left it alone by everybody’s opinion<sup>9</sup>. Rabbi Jeremiah said, let us hear from the following<sup>10</sup>: “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 it<sup>11</sup>? 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.”<sup>12</sup> But since the rabbis answer to Rabbi Eliezer *all sheep of Qedar will be assembled for you*<sup>13</sup>, this says that Rabbi Eliezer disagrees about everything. Rabbi Hoshai asked, does one reply with an argument about the future against one about the past<sup>14</sup>? Rabbi Abin asked, does one reply with an argument when evil inclinations will have disappeared against one when evil inclinations exist<sup>15</sup>?

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., *Qiddušin* 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 ככול להיות פחות מל' צדיקים כאבינו אברהם. ומה טעם. ולאברהם היה יתה. 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 אהפוד אל-עמים שפה ברורה. ובסוף הן עתידין לחזור בהן. ומה טעם. ונתתקה את-מוסרותיהמו ונשלקה ממנו עבותיהמו: זו מצות תפילין. זו מצות ציצית.

1 אמ' | G בני הונא | G הונה 2 שקלי | G שכרו 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 היו יהיה | G באברהם היו יהיה (remainder missing in G)

Rebbi Hoshai<sup>16</sup>, 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]<sup>17</sup>, thirty pieces of silver*. These are the thirty commandments which the descendants of Noah will take upon themselves in the future<sup>18</sup>. But the rabbis say, there are the 30 just persons which the world never will be lacking<sup>19</sup>, 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<sup>20</sup>*, the numerical value of יהיה is 30<sup>21</sup>. 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 Land<sup>22</sup>. Rebbi Hiyya bar Julianus in the name of Rebbi Hoshai: In the future the descendants of Noah will take all commandments upon themselves. What is the reason? *Then I shall transform Gentiles' purified lips<sup>23</sup>*. But at the end they will renege on it. What is the reason? *Let us break their chains, and throw from us their ropes<sup>24</sup>*! That is the commandment of phylacteries<sup>25</sup>; that is the commandment of *šišit*<sup>26</sup>.

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. מניחין.

40c line 23) רבי יצחק ורבי אמי הוון ונתבין מקשיי. והכתיב ויזבחו ליי ביום ההוא מן השלל. וקיימונה. ולא ידעין אין חברייא קיימונה ואין רבי אמי קיימינה. על ראשה. מן השלל שהיה בקדם הקריבו. והא כתיב ואנשי בית שמש העלו עולה ויזבחו זבחים ליי פרים. וכי משרגי פלשתים אנו למידין. ולא כן אמר רבי אבהו בשם רבי יוסי בר חנינה. ואפילו נקיבות הקריבו. ואת הפרות העלו עולה ליי. והכתיב ויאמר שאול מעמלקי הביאום. אין למדיו משאול. דמר ריש לקיש. שאול גרופית שלשקמה היה. והכתיב ויטח דנד את הגורן. קנה ולא הקריב. והכתיב ויאמר ארונה אל המלך יי אלהיך ירצה: ירצה בתפילה. והכתיב ומיך ברוך לא תקריבו את לחם אלהיכם מפל-אלה. מפל-אלה אין את מקריב. לוקח אתה תמימים ומקריב. מה עבד לה רבי ליעזר. לוקח אתה בדמים ומקריב. הוא תני בדמים. דלא כרבי ליעזר.

<sup>27</sup>Rebbi Isaac and Rebbi Immi were sitting and asking, is it not written<sup>28</sup>:

*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 sacrificed<sup>29</sup>.

But is it not written<sup>30</sup>: *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*<sup>31</sup>.

But is it not written<sup>32</sup>, *Saul said, they brought them from the Amalekite?* One does not learn from Saul; as Rebbi Simeon ben Laqish said, Saul was a sycamore shoot<sup>33</sup>.

But it is not written<sup>34</sup>, *David bought the threshing floor?* He bought but did not sacrifice. But is it not written<sup>35</sup>, *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 written<sup>36</sup>, *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 Eliezer<sup>37</sup>.

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 *IS.* 6:15, one the day the Philistines returned the Ark on a carriage drawn by cows.

31 *IS.* 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 *IS.* 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 *IS.* 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 Perek* 7(12) where the verse is read to prohibit accepting money of the Temple tax from Gentiles.

תַּיִן. אֵין מַעֲמִידִין בְּהֵמָה בְּפוֹדֵקָאוֹת אֲפִילוֹ זְכָרִים אֲצֶל זְכָרִים וְנִקְיֹבוֹת אֲצֶל נְקִיבוֹת. וְאֵין צָרִיף לֹמַר זְכָרִים אֲצֶל נְקִיבוֹת וְנִקְיֹבוֹת אֲצֶל זְכָרִים. זְכָרִים אֲצֶל זְכָרִים מָה אֵית

לָדָּ. אוֹהֲבָתוֹ בָּאת וְאֵינָהּ מוֹצֵאָה אוֹתוֹ וְהִיא נִרְבַּעַת הַיְמִינִי. נְקִיבוֹת אֶצֶל נְקִיבוֹת מָה אֵיִת לָדָּ. אוֹהֲבָה בָּא וְאֵינִי מוֹצֵא אוֹתָהּ וְרוֹבְעָה. רַבִּי חֲגַי בְּשֵׁם רַבִּי זְעִירָא. לֹא סוֹף דְּבַר בְּהֶמְתּוֹ שְׁלִישְׁרָאֵל אֶצֶל הַגּוֹי אֶלָּא אֶפִּילוֹ בְּהֶמְתּוֹ שְׁלִישְׁרָאֵל לֹא יִחְדִּינָהּ אֶצֶל שְׁלִישְׁרָאֵל אַחֵר חֲבִירוֹ שֶׁלֹּא תִמְצִיא לוֹ תִקְלָה. מֵעַתָּה אֶפִּילוֹ שְׂכָר אֵת בְּהֶמְתּוֹ לֹא נָאָה לְחִזּוֹר לְמִחְדָּה אֶצֶל שֶׁלֹּא תִמְצִיא לוֹ תִקְלָה. חֲשׂוֹד הוּא לְבוֹא עַל בְּהֶמְתּוֹ שְׁלִישְׁרָאֵל וְאֵינִי חֲשׂוֹד לְבוֹא עַל בְּהֶמְתּוֹ עֲצֻמוֹ. שְׁמִתוּדָּ שְׂוִידַע שְׂאָם בָּא עֲלֶיהָ הוּא מְעַקְרָה אִף הוּא לֹא בָּא עֲלֶיהָ.

It was stated:<sup>38</sup> “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 it<sup>39</sup>. Females next to females, what do you have? Her lover comes and does not find her and impregnates it. Rabbi Ḥaggai 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 mishap<sup>40</sup>. 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 her<sup>41</sup>.

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 מֵעֲמִידִין בְּהֶמָּה בְּפִינְדִקָּאוֹת שְׁלִכוֹתִים כּוֹל'. הִדָּא אֲמַרְהּ. כּוֹתִים לֹא נְחָשְׁדוּ עַל הָעֵרִיּוֹת. וְתִי כֵן. מֵתִיחַדַּת אִשָּׁה עִם שְׁנֵי אֲנָשִׁים אֶפִּילוֹ שְׁנֵיהֶם עֲבָדִים אֶפִּילוֹ אֶחָד כּוֹתִי וְאֶחָד עֲבָד. אֶבֶל לֹא תִתִּיחַד עִם הַגּוֹי. חֲמוֹתוֹ וְאַחוֹת אִשְׁתּוֹ וְשֶׁאֵר כָּל-הָעֵרִיּוֹת לֹא יִתִּיחַדוּ עִמּוֹ אֶלָּא בְּפִי שְׁנַיִם.

“But one may put up an animal in a Samaritan hostelry,”<sup>42</sup> etc. This implies that Samaritans are not suspected of forbidden relations. And it was

stated thus<sup>43</sup>: “A woman may be alone with two men<sup>44</sup>, even if both are slaves<sup>45</sup> or one a Samaritan and one a slave. But she should not be alone with a Gentile<sup>46</sup>. 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]<sup>47</sup>.”

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 משחזיזין להן את הזיין. תיפתר  
 בעיר שכולה גוים. ואין האשה בכלל שפיכות דמים. אמר רבי אמני. תיפתר בבריאה. אמר  
 רבי אבין. ואפילו תימר. כולה אשה להטמין את עצמה ולומר. גויה אני. ואין האיש יכול  
 להטמין עצמו ולומר. גוי הוא.

1 מוכרין | G מוכרים להן | G להם (2) את | G - תיפתר | G תפתר 2 אמני | G מנא 3 תימר | G  
 תמר באשה אשה | G היא האשה 4 עצמו | G את עצמו

It was stated:<sup>48</sup> “One sells them neither weapons nor accessories to weapons<sup>49</sup>. One does not sharpen weapons for them.” Explain it in a town of only Gentiles<sup>50</sup>. Is a woman not in danger to be killed<sup>51</sup>? Rebbi Immi<sup>52</sup> said, explain it about a muscular one. Rebbi Abin said, even you may say [about a weak one.<sup>53</sup>] A woman may hide herself and say, I am a Gentile, but a man cannot hide himself and say, he is a Gentile<sup>54</sup>.

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.

58) תַּנִּי. נִדְוּוּג לֹו גֹוִי לְיִשְׂרָאֵל נוֹתְנֹו לִימִינוֹ. רַבִּי יִשְׁמַעֵאל בִּירְבִי יוֹסִי אוֹמֵר. בְּסִינִי לִימִינוֹ וּבִמְקַל לְשִׁמְאֵלוֹ. עוֹלָה עִמּוֹ לְעֵלְיָהּ וַיִּוֶרֶד עִמּוֹ לְחֵרֹות יִשְׂרָאֵל לְמַעַלָּה וְהַגּוֹי מִלְמָטָה. לֹא יִשְׁיַח לְפָנָיו שְׁלֵא יָרוּץ אֶת גּוֹלְגוֹלְתּוֹ. וּמִרְחִיב לֹו אֶת הַדֶּרֶךְ. אִם שָׁאֵלוֹ לְהִיכֹו הוֹלֵךְ יִפְלִיגּוֹ. כְּשֵׁם שֶׁהַפְּלִיג יַעֲקֹב אָבִינוֹ לְעֵשָׂו. שָׁאֵמַר לֹו עַד אֲשֶׁר־אָבּוּא אֶל־אֲדוֹנִי שְׁעִירָהּ; וְהִלֵּךְ לְסוּכּוֹת. אָמַר רַבִּי הוֹנָא. לֹא מִצִּינֹו שֶׁהִלֵּךְ יַעֲקֹב אָבִינוֹ לְשַׁעִיר. אָמַר רַבִּי יוֹדֵן בְּרִיהַ דְרַבִּי. לְעֵתִיד לְבוֹא אָמַר לִיהַ. וְעָלוֹ מוֹשְׁעִים בְּהַר צִיּוֹן לְשִׁפּוֹט אֶת־הַר עֵשָׂו.

1 נידווג | G נידווג לו | G - לימינו | G מימינו יוסי | G יוסה | G בסיף 2 לימינו | G מימינו לשמאלו | G משמאלו עמו | G עימו למעלה | G לממעלן למטה | G מלמטן 3 ירוץ | G ירוץ גולגולתו | G גלגלתו להיכן | G לאיכן הוא יפליגו | G יפליגו 4 שהפליג יעקב אבינו | G שעשה אבינו יעקב אבוא | G אבא אדוני | G אדני לסוכות | G לו לסוכות 5 הונא | G חונה לשעיר | G לשעירה בריה דר' | G ביר' איבו ליה | G לה לשפט את הר עשיו | G וגו'

It was stated<sup>54</sup>: “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 left<sup>55</sup>. 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*<sup>56</sup>. 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]<sup>57</sup>, he spoke to him of the future world, *when saviors will climb on Mount Sion to judge Mount Esau*.<sup>58”</sup>

54 Tosephta 3:4, Babli 25b. weapon.  
 55 Since the sword is girded at his right side and the staff held in his left hand. The  
 56 Gen. 33:14.  
 57 Added from G, missing in L.  
 58 Ob. 21.

65) בֵּית יִשְׂרָאֵל לֹא תִיַלֵּד אֶת הַנְּכָרִית. מִפְּנֵי שֶׁמַּעֲמִדָת בֶּן לְעַבְדָּה זָרָה. אֲבָל נְכָרִית מִיַּלְדָת בֵּית יִשְׂרָאֵל. וְתַנִּי כֹן. מִיַּלְדָת מִבְּחוּץ אֲבָל לֹא מִבְּפָנִים. לֹא תִכְנִס נְדָה לְפָנִים שְׁלֵא תִמִּיק אֶת הַעוֹבֵר בְּמִיעֵינָהּ. וְלֹא תִשְׁקִינָה כּוֹס שֶׁל עֵיקָרִין. הִיָּתָה חֲכָמָה. יִבְּה כִּי דָמַר רַבִּי יַעֲקֹב בְּרַ אֲמָא בְּשֵׁם רַבִּי יוֹחָנָן. אִם הִיָּה רּוֹפֵא אוֹמֵן מוֹתֵר. וְהִכָּא. אִם הִיָּתָה חֲכָמָה מוֹתֵר.

1 בן | גוי | 2 כן | G - מיילדת | G מיילדתה | 3 במיעיה | G במעיה | עיקרין | G עיקרים | היתה | G  
 היתה | 4 - | G יוסה ביר' א' און שאילקא כן . . . מה מותר

<sup>59</sup>“A Jewish woman should not be a midwife for a Non-Jew, for she brings a son<sup>60</sup> 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 drink<sup>61</sup>. If she was a medical doctor? This will come as what Rebbi Jacob bar Aḥa said in the name of Rebbi Joḥanan: If he was a professional healer it is permitted<sup>62</sup>. And here, if she was a medical doctor it is permitted. [Rebbi Yose bar Abun, these questions . . . [doc]tor permitted.<sup>63</sup>]

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. Joḥanan. 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 תִנְיֵק בְּנֵהּ שְׁלֵנְכָרִית מִפְּנֵי שְׁנוּתָנָתָ לֹו חַיִּים. אָמַר רַבִּי יוֹסִי. הֲדָא אָמְרָה. שְׂאִסּוֹר לְלַמְדוֹ אֹמְנוֹת. כְּהָדָא תַרְתִּין אֹמְנָנוּן הוּון בְּגִירוֹ. זַגְגִינָא וְקוּבְטֵרִיא. זַגְגִינָא לָא אֶלְפִין וְקִמוּן. קוּבְטֵרִיא אֶלְפוּן וְאַתְעֵקְרוּן.

אֶבֶל נְכָרִית מְנִיקָה בְּנֵהּ שְׁלֵבַת יִשְׂרָאֵל: דְּכְתִיב וְהָלוּ מְלָכִים אֶמְנִיךָ וְשָׂרוּתֵיהֶם מִיְנִיקוּתֵיךָ. תַּנִּי. יוֹנֵק הַתֵּינוֹק וְהוֹלֵךְ מִן הַנְּכָרִית וּמִן בְּהֵמָה טְמִיאָה וּמְבִיאֵין לֹו חֶלֶב מִכָּל-מְקוֹם. וְאַנּוֹ חוֹשֵׁשׁ לֹא מְשׁוּם שְׂקָץ וְלֹא מְשׁוּם טוּמְאָה.

1 שְׁנוּתָנָתָ | G שְׁהִיא . . . יוֹסִי | G יוֹסֵה הָדָא | G הָדָה | 2 כְּהָדָא | G כְּהָדָה | הוּון בְּגִירוֹ | G הוּוה בְּעִבּוֹ  
 זַגְגִינָא | G זַגְגִינָה (2) וְקוּבְטֵרִיא | G וְקוּבְטֵרִיא | 3 קוּבְטֵרִיא | G קַטְסִין ? | 4 אֹמְנִיךָ וְשָׂרוּתֵיהֶם  
 מִיְנִיקוּתֵיךָ | אֹמְנִיךָ וְגוֹ' | 5 יוֹנֵק | G יוֹנֵק הוּא | 6 מְשׁוּם | G מְשׁוּם (2)

“A Jewish woman should not nurse the child of a Non-Jewish woman” because she gives it life<sup>64</sup>. Rebbi Yose said, this implies that one may not teach him a trade<sup>65</sup>. As the following: Two trades, glaziers and carpenters<sup>66</sup>



were at (Giro) [Acco]<sup>67</sup>. The glaziers did not teach<sup>68</sup> 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*<sup>69</sup>. 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 impurity<sup>70</sup>.

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 *καβωτόριον* 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.

מִשְׁנֵה ב: מְתַרְפְּאִין מִהֶן רִיפּוּי מְמוּזָן אֲכָל לֹא רִיפּוּי נְפֹשׁוֹת. וְאִין מְסַתְפְּרִין מִהֶן בְּכָל־מְקוֹם דְּבָרֵי רַבִּי מֵאִיר. וְהַכְּמִים אוֹמְרִים בְּרִשׁוֹת הַרְבִּים מוֹתֵר אֲכָל לֹא בִּינוּ לְבִינוּ:

**Mishnah 2:** One may be healed from the healing of property but not healing of persons. One may not be shaved from them anywhere<sup>71</sup>, the words of Rabbi Meir; 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 מהו ריפוי ממון כול'. רבי יעקב בר זבדי בשם רבי אבהו. ריפוי ממון בהמתו. ריפוי נפשות גופו. רבי בא בשם רב יהודה. אם הנה נחמס אסור. פהדא רבי אמר סלק עם רבי יודן נשייא לחמתא דגדר. לקה באצבעיה ינהב עליה אספלי. חמתה מתחלחלה וקלמה. ולא שמייע פיי דמר רבי יעקב ברבי אחא בשם רבי יוחנן. אם הנה רופא אופן מותר. ולא דמיא. תמן נחמס מותר. ברם הכא נחמס אסור.

3 אמי | אמא נשייא | G נשייא 4 בר' | G בר 5 דמייא | G דמייה 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 body<sup>72</sup>. Rebbi Abba in the name of Rav Jehudah: If it was scratched it is forbidden<sup>73</sup>. As in the following case: Rebbi Immi went with Rebbi Jehudah the Prince to the hot springs of Gader<sup>74</sup>. He hurt his finger and put a bandage<sup>75</sup> on it. He saw it penetrate and cut it off<sup>76</sup>. Did he not hear what Rebbi Jacob bar Aḥa said in the name of Rebbi Joḥanan: If he was a professional healer it is permitted<sup>62</sup>? This is not comparable. There if it was scratched it is permitted, but here it was scratched and is forbidden<sup>77</sup>.

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 **חמס** 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 מניהון. רב אמר. מאן דבעי מיסתמיא איסתמי. לוי אמר. מאן דבעי לממת גמות. רב לא עבד עינא כחל לה. לוי עבד עינא כחל לה. אמר רבי בא. והא אגון חמי לון טעמין הדא קילוריתא. נימר פדי טבא הוא טעים לה. פד לית היא טבא היא קיימא וסמיא. אהו אופיון סכנה. הדא תוריקי. רבי סימון אמר. אסורה. רבי יוחנן אמר. מותרת.

1 מיכחול | G מכחול מניהון | G מנהון מיסתמיא | G מיסתמיא איסתמי | G יסתמי 2 לממת | G גמות עינא כחל לה | G עינא כחללה (2) | G אמ' | G ומר | G והא אגן | G ון 3 הדא קילוריתא | G הדא קילוריתא

כדי G | כד היא טבא | G טבה (2) קיימא | G קיימה וסמיא | G וסמנה 4 תורייקי | G תיריקי יוחנן | G אמי

May one have one's eyelids painted by them<sup>78</sup>? Rav said, anybody who wants to be blinded may be blinded. Levi said, anybody who wants to die may die<sup>79</sup>. Rav never had his eye painted; Levi had his eye painted. Rebbi Abba said, but do we not see that they taste this *collyrium*<sup>80</sup>? We may say that they taste it if it is good. If it is no good it keeps and blinds. Opium<sup>81</sup> is dangerous. Treacle<sup>82</sup>, Rebbi Simon says it is forbidden; Rebbi Johanan<sup>83</sup> 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 *κολλύρα* "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) חברייא 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 שקלאש 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 גדים 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. רבנן דקיסרי אמרי. הדא עורדענא ספנה. רבי חזקיה אמר בשם רבנן דקיסרין. הדא עקשבוניתא ספנה. רבי שמואל בר רב יצחק. הדא גומרתא ספנה. אמר רבי ירמיה. נותניו עליה חמץ בפסח. אהו בלעה שרי. אמר רבי יוסי. מתניתא אקרה כן. מחט של יד לטול בה את הקוץ. דלא כן מה בין קוץ מה בין בלע. אהו עיימא דעינא. שאלון לרבי ירמיה. אמר לון. הא רבי בא קדמיכון. שאלון לרבי בא ושרא לון. אמר לון. אוף אגא שרי.

1 חברייא | G חבריה בא | G אבא מרפין | G מרפין 2 זעירא | G זעורא אגן תנן | G תנינן ש והתיב בשיניו | 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 ש אותה 7 סומקא | G סמוקא ש סימקא 8 שבין | G שבין אבון לוקטין | G לוקטים חמרא | ש ההו חמרא מעיינא, מן עינא | G מן עינה 9 ואהו | ש ההו לעין | G לעיין ש ליתן על גבי העין מיניה | G מנה ש מינה לחזיתא | G

לחזיתה רבנן | רבנן G | עכשבוניתא | ש עבשמוניתה 11 יצחק | ש יצחק אמ' הדא | G הדה 12 ייסי | G ייסה 13 דלאכן |  
G דלכן אהן | ש הך עיימא | ש - 14 קדמיכון | ש קמיכון

<sup>83</sup>The colleagues in the name of Rabbi Abba bar Zavda: Anything inside of the lips one heals on the Sabbath<sup>84</sup>. Rabbi Ze'ira objected, did we not state<sup>85</sup>: "A person having a tooth ache should not suck vinegar with them"? Is this not inside from the lips? Rabbi Ze'ira did not say so, but Rabbi Ze'ira in the name of Rabbi Abba bar Zavda: Anything inside a body cavity one heals on the Sabbath<sup>86</sup>. Rabbi Ze'ira, Rabbi Abba bar Zutra, Rabbi Hanina in the name of Rabbi: One treats the bone of the skull on the Sabbath<sup>87</sup>. Rabbi Hiyya the Mede, Rabbi Jona, Rabbi Ze'ira, Rabbi Abba bar Zutra, Rabbi Hanina in the name of Rabbi: One treats glands of the throat<sup>88</sup> on the Sabbath. Rabbi Abbahu in the name of Rabbi Johanan: One treats an infected eye<sup>89</sup> on the Sabbath. There, they say in the name of Rabbi Johanan: Tops of hands and feet are a danger<sup>90</sup>. Rabbi Abbahu in the name of Rabbi Johanan: Red color is dangerous<sup>91</sup>. Rabbi Abin said, one removes the sting of a scorpion on the Sabbath. Rav said, wine for exterior treatment of the eye is permitted, inside the eye it is forbidden. Samuel said, tasteless spit is forbidden for the eye on the Sabbath<sup>92</sup> From this you infer for lichen<sup>93</sup>. The rabbis of Caesarea said, *ranula*<sup>94</sup> is dangerous. Rabbi Hizqiah (said) [from Acco]<sup>95</sup> in the name of the rabbis of Caesarea: spider sickness<sup>96</sup> is dangerous. Rabbi Samuel bar Rav Isaac: gangrene is dangerous. Rabbi Jeremiah said, one can put sour dough on it on Passover<sup>97</sup>. A boil is permitted.<sup>98</sup> Rabbi Yose said, the Mishnah says this<sup>99</sup>: "A small needle to remove a thorn." Otherwise, what is the difference between a thorn and a boil? Darkening of the eye<sup>100</sup>, they asked Rabbi Jeremiah. He told them, is not Rabbi Abba available for you? They asked Rabbi Abba who permitted it to them. He<sup>101</sup> told them, also I am permitting it.

83 From here to almost the end of the Halakhah there is a parallel in *Šabbat* 14:4 (ש); in addition the present paragraph still is available in a Genizah text (G). If these two sources present a common reading different from the text here, one may assume that the text here is in error, either by the scribe or in

the text from which he copied.

84 In the Babli, 28a, this is the position of Rabbi 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 דתימטניס בטיבריא. בערובתא נחת לגבה. אמר לה. מצרוד אנה למחר פלום. אמרה ליה. לא. ואין צרכת סב גרעיניו דתומרין. ואית דאמרי. דניקלבסין בפלגיהון וקידין ואור דשערין וצואת קטן נגיבה ושחוק וטפול ולא תימר קומי בר נש. למחר אעל דרשה בבי מדרשא. שמעת וחנוקה גרמה. ואית דאמרי. איתגיירת. את שמע מינה תלת. שמע מינה.

אָהן צופֿדֿנה סכֿנָתָא. שְׁמַע מִינָהּ. כֹּל־שָׁהוּא מִן הַשָּׁפָה וְלִפְנֵים מִרְפִּין אוֹתוֹ בְּשַׁבָּת. שְׁמַע מִינָהּ. כִּי דָמַר רַבִּי יַעֲקֹב בְּרַ אֲחָא בְּשֵׁם רַבִּי יוֹחָנָן. אִם הִיָּה רֹפֵא אוּמָן מוּפְתָר. רַבִּי יְהוֹשֻׁעַ בֶּן לֵוִי הִוָּה לִיה קוֹלוֹס וְהוֹרוּן לִיה רַבִּי חֲנִינָה וְרַבִּי יוֹנָתָן מִיִּשְׁחֹק תַּחְלוּסִין וּמִיִּתָן גּוֹ חֲמֵרָא עֲתִיקָא וּמִיִּשְׁתִּי וְלֹא יִסְכֵּן.

1 צפדונה | ש ציפורנה (ספדונה) הוא ליה | ש מטתיה כן 2 דתימטיניס | ש ברתייה דדמיטינוס בטיבריא | ש דטיבריא נחת | ש בפתוי רומשא סלק למחר כלום | ש כלום למחר 3 צרכת | ש צרבתה 3-4 גרעינין דתומרין. 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 וחנקה גרמה | ש אית דאמרין דחנקת נפשה איתגייירת | ש דאיתגייירת שמע | ש את שמע 6 אהן צופדנה סבנתא | ש הון ציפורנה 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 בשותא 9 ומישתי | ש וישתי

<sup>102</sup>Rebbi Abbahu in the name of Rebbi Johanan. Scurvy<sup>103</sup> is dangerous. Rebbi Johanan had it; he was treated by the daughter of Domitianus<sup>104</sup> of Tiberias. Friday evening he went down to her<sup>105</sup> 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, skin<sup>106</sup> 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 Study<sup>107</sup>. She heard it and strangled herself; but some say that she converted<sup>108</sup>. 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<sup>84,109</sup>. 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 colic<sup>110</sup>; Rebbi Hanina and Rebbi Jonathan instructed him to grind *tahlusin*<sup>111</sup>, put it in old wine and drink it to avoid becoming endangered<sup>112</sup>.

102 It seems that the original of this paragraph is in *Šabbat* 14:4. Babli 28a.

103 This is the meaning of צַפְדִּינָה 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) בַּר בְּרִיָּה הָוָה לִיָּה בָּלַע. אֶתְנָא חַד וּלְחַשׁ לִיָּה בְּשִׁמְיָה דִּינְשׁוּ בִּן פְּנִדְרָא וְאִינְשָׁם. מִי נִפְקַ אֲמַר לִיָּה. מֵאִי אֲמַרְתָּ עֲלֵי. אֲמַר לִיָּה. מִיִּלְתָּ פִּלְן. אֲמַר. מַה הָוָה לִיָּה אִילוּ מִיִּת וְלָא שְׁמַע הָדָא מִיִּלְתָּא. וְהוֹת לִיָּה בִּן פְּשָׁנְגָה שְׁיַצָּא לִפְנֵי הַשְּׁלִיט.

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 שיצא מלפני

רבי יעקב בשם רבי יוחנן. בכל מתרפין חוץ מעבודה זרה וגילוי עריות ושפיכות דמים. רבי פינחס בעי. עד דזון. 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 זכרוניה 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 הבא | ש הבא 3 אחא | ש יונה 4 דוהי | ש דדורי ולא אישתה | ש ושתי אייתון לר' יונה ואישתי | ש ר' אחא אייתון ליה ולא שתה 5 הוה ר' יונה אבא ידע | ש ידע ר' יונה אבא ידע מאן הוון | ש מנן הוה הוה שתי | ש אשתה

אמר רבי הונא. זאת אומרת שאין מתרפין מגילוי עריות. דתני. שבת הותרה מפללה. נערה המאורסה לא הותרה מפללה. שבת שהותרה מפללה 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 וסבן. אתון שאלון לרבי לעזר. מהו דתיעבור קומוי ויחי. אמר לון. ימות ולא כן. מהו דישמע קולה ויחי. אמר לון. 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 כותא נגרא רחם איתתא ביומוי דרבי לעזר וסבן. כאן באשת איש כאן בפנויה. ואפילו תימא. כאן וכאן בפנויה וכאן באשת איש. תיפתר שנתן עיניו בה עד שהיא אשת איש. אית דבעי מימר. איתיה רובה הוות ולא הוות משמע ליה. וכלמה דהוה עבד באיסור הוה מעבד. בגין כן לא שרא ליה.

1 הונא | ש חונה | 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 - 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 | ש באשת איש 10 ולא הוות משמע ליה | ש ולא מנסבה עבד | 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. ישאל 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 בישראל חיבי. 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 שירפאיני. לא הספיק להביא ראיה עד שמת. אמר לו רבי ישמעאל. אשריך בן דמא. שצאת בשלום מן העולם ולא פרצת גדין שלחכמים. לקיים מה שנאמר ופורץ גדר ישכנו נחש. ולא נחש נשכו. אלא שלא ישכנו לעתד לבוא. ומה הוה ליה למימר. אשר יעשה 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 שירפאיני | ש שירפאיני 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

His<sup>113</sup> grandson suffered from choking; there came one, whispered something in the name of Jesus ben Pandera<sup>114</sup> and he could breathe. When he left, he asked him<sup>115</sup>, 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 him<sup>116</sup>, like an erroneous order from a ruler.

Rebbi Jacob [bar Idi]<sup>117</sup> in the name of Rebbi Johanan: One heals with anything except pagan worship, uncovering nakedness, and spilling blood<sup>118</sup>. 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 Aḥa had a fever attack. They brought him from the penis of Dohi<sup>119</sup> but



he did not drink. They brought to Rebbi Jonah and he drank. Rebbi Mana said, if my father Rebbi Jonah had known from where it was, he would not have drunk<sup>120</sup>.

Rebbi Huna said, (this means) [a *baraita* implies]<sup>121</sup> that one does not heal through uncovering nakedness<sup>122</sup>, as it was stated: The Sabbath was permitted in exceptional cases; the betrothed maiden was never permitted in exceptional cases<sup>123</sup>. 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 following<sup>124</sup>: 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 carpenter<sup>125</sup> love a woman in the days of Rebbi Eleazar and (became dangerously sick) [and he permitted him]<sup>126</sup>? 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.]<sup>127</sup> Everything which he did was forbidden; therefore he did permit nothing to him.

Rebbi Ḥanina said, (this means) [a *baraita* implies]<sup>121</sup> that one does not heal through spilling blood, as we have stated there<sup>128</sup>: “If most of his body was outside one does not touch him,” we suspect that he will live<sup>129</sup>, “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 liable<sup>130</sup>. A Jew against a Gentile is not liable<sup>131</sup>. 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”)? Rebbi Yose ben Rebbi Abun in the name of Rebbi Levi:<sup>132</sup> There it is different for it is not known who is endangering whom.

<sup>133</sup>It 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)<sup>134</sup> in the name of Jesus ben Pandera. Rebbi 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. Rebbi 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)<sup>134</sup> as it is written<sup>135</sup>, *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 World<sup>136</sup>. What could he have said? *Which a person should do and live by them*<sup>137</sup>.

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, *Pesahim* 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 Shamua.

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.

41a line 4) המספר לגוי מספר עד שמגיע לבגורית. וכןן שמגיע לבגורית הרי זה מושך את ידיו. המספר מן הגוי הרי זה רואה במראה. מן הכותני אינו רואה במראה. התירו לבית רבי שיהו רואין. שהיו זקוקין למלכות. שלשה דברים התירו לבית רבי. שיהו רואין במראה ושהיו מספרין קומי ושלמדו את בניהו וזונת. שהיו זקוקין למלכות.

"One who cuts a Gentile's hair cuts it until he comes to the lock<sup>138</sup>. Once he comes to the lock he desists. One who gets a haircut from a Gentile looks in the mirror<sup>139</sup>, from a Samaritan he does not look into the mirror<sup>140</sup>. They permitted the family of Rebbi<sup>141</sup> that they might look, because they were in need of Roman government connections.<sup>142</sup>" Three things they permitted the House of Rebbi, that they might look into a mirror, that they got a haircut with a lock<sup>143</sup>, and that they taught their children Greek<sup>144</sup>, 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 *Soṭah* 49b.

41a line 9) חד גיור הנה ספר והנה איצטרולוגוס והנה חמי באיצטרולוגיא דידיה דיהודאי שפכי אדמיה ולא הוון אלא אמגירתיה. והנה ידאי אצל בעי מוספרה 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 בצידון 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 הנה.

A convert was a barber and astrologer<sup>145</sup>. He saw in his astrology<sup>145</sup> 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 origin<sup>146</sup>.

<sup>147</sup>It was stated: One does not buy from a Gentile who sells Torah scrolls, phylacteries, and *mezuzzot*<sup>148</sup>. <sup>149</sup>“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 origin<sup>150</sup>.

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:** אילו דברים של גוים אסורין ואסורין אסור הנאה מינן ותחומין של גוים שהיה מתחילתו יין והרם אדרייני ועורות לבובין. רבן שמעון בן גמליאל אומר בזמן שהקדש שלו עגול אסור ומשוק מותר. ובשר הנכנס לעבודה זרה מותר ותוצא אסור מפני שהוא זבחי מתים דברי רבי עקיבה. ההולכין לתרפות אסור מלשאת ומלתת עמהן.

**Mishnah 3:** The following Gentile properties are forbidden and the prohibition is of usufruct: Wine<sup>151</sup>, and vinegar which originally was wine<sup>152</sup>, and Hadrianic pottery,<sup>153</sup> and heart-removed skins<sup>154</sup>. 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 Aqiba<sup>155</sup>. It is forbidden to trade with those who go to ugliness<sup>156</sup>.

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 *תָּרַם* (*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 *תָּרַם*.

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:** אילו דברים של גוים אסורין כול'. רבי יצחק בר נחמן בשם רבי יהושע בן לוי הנה אמר. מתוק מר חד אין בהן משום גילוי. רבי סימון בשם רבי יהושע בן לוי. החד והמר והמתוק אין בהן משום גילוי ולא משום יין נסוף. רבי סימון מפרש. החד קונדיטון. המר פטינטיון. והמתוק מהו. תמרא מבשלא. רבי יהושע בן זיידל הנה לו יין מבושל

שְׁנֵי תַיִחַד בְּרִשׁוֹת הַגּוֹי. שָׁאַל לְרַבִּי יַנַּאי בְּרַבִּי יִשְׁמַעֲלֵל. אָמַר לֵיהּ. כֵּן אָמַר רַבִּי שְׁמַעוֹן בֶּן לִקְיִשׁ. מִתּוֹק אֵין בּוֹ לֹא מִשּׁוּם גִּילּוּי וְלֹא מִשּׁוּם יַיִן נִסְדָּךְ. רַבִּי יַנַּאי בְּרַבִּי יִשְׁמַעֲלֵל אֵיבָאֵשׁ. סָלְקוּן רַבִּי זִירָא וְרַבִּי יְהוֹשֻׁעַ וְרַבִּי בּוּן בַּר פִּהְנָא וְרַבִּי חֲנַנְיָה הַבְּרִיּוֹן וְרַבִּי מְבַקְרֵתִיָּה. אֲשַׁכְּחוּן רַבִּי יְהוֹשֻׁעַ בֶּן זִינְדֵל וְתִיב תַּמָּן. אָמְרִי. הָא מְרָה דְשְׁמוּעֵתָא וְהָא מְרָה דְעוּבָדָא מִשְׁאַלוּנִיָּה. אָמַר לוֹן. כֵּן אָמַר רִישׁ לִקְיִשׁ. מִתּוֹק אֵין בּוֹ לֹא מִשּׁוּם גִּילּוּי וְלֹא מִשּׁוּם יַיִן נִסְדָּךְ. אָמַר לֵיהּ. דִּילְמָא מוֹ הֵדָא דְרַבִּי שְׁמַעוֹן בֶּן לִקְיִשׁ דְּאָכוּ אָכוּ. אָמַר לוֹן. לְעוּבָדָה וְסַמְכוּן עָלוּי. מוֹ דְקָמוּן רַבִּי אִילָא עִם רַבִּי בּוּן בַּר פִּהְנָא אָמַר לֵיהּ. אִילּוּלָא דְאֵתוּן רַחֲמִין שְׁמוּעֵתָא. וְלֹא מִתְּנִיתָא הִיא. תַּנִּי רַבִּי חִיָּה. מְבוּשָׁל שְׁלֵגוּי לְמָה הוּא אָסוּר. שְׁהִיָּה מִתְּחִילָתוֹ יַיִן. אָמַר רַבִּי יוֹסִי. מִתְּנִיתָא אָמְרָה כֵּן. הַיּוֹר וְהַחֹמֶץ שְׁהִיָּה מִתְּחִילָתוֹ יַיִן.

**Halakhah 3:** “The following Gentile properties are forbidden,” etc.  
<sup>157</sup>Rebbi Isaac bar Nahman in the name of Rebbi Joshua ben Levi: Bitter, sweet, and hot are not under the rules of being uncovered<sup>158</sup>. 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 wine<sup>159</sup>. Rebbi Simon explains: The hot, spice wine<sup>160</sup>. The bitter, vermouth wine<sup>161</sup>. 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]<sup>162</sup>, Rebbi Abun bar Cahana, and Rebbi Hananiah 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]<sup>163</sup>, 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 Hiyya stated, “why is cooked wine of Gentiles forbidden? Because it started out as wine.<sup>164</sup>” Rebbi Yose said, the Mishnah says so, “wine and vinegar which originally was wine<sup>165</sup>.”

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 הווי ליה אורחין. אָמַר לון. אילולי חמרא מבשלא דידי מגלי לא הוינא

משקיתכון. אָמַר ליה רב ביבי. אייתון ואָנן שתינון. אָמַר. מאן דבְּעֵי מימת ימות גו ביתיה.

בר יודנה הנה לי קונדיטון מגלי. שאל לרבנין ואָסרון. ולא כן אָמַר רבי יצחק בר נחמן

בְּשֵׁם רבי יהושע בן לוי. החד והמר והמתוק אין בהן משום גילוי. רבנין דקיסרין משום רבי

יודה בר טיטוס. באו דשחיק חד לתלתא.

בעון קומי רבי אבהו. מבושל שנתגלה מהו. אָמַר לון. קרינה צריכה לרבי יוחנן ואָתון

שָׂאלון לי הדא. שָׂאלון לרבי יצחק ואָסר לון. ואָנהר רבי אבהו דָּמַר רבי יוחנן אָסיר.

<sup>166</sup>Rebbi 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 Rebbi Judah bar Titus: About one which consists of one to three parts ground [spices]<sup>167</sup>.

They asked before Rebbi Abbahu, what is the rule for uncovered cooked [wine]? He told them, Rebbi Joḥanan had a problem with *carenum*<sup>168</sup> and you are asking me this? They asked Rebbi Isaac and he forbade it to them. Then Rebbi Abbahu remembered that Rebbi Joḥanan had said, it is forbidden<sup>169</sup>.

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 *ἀράρινον*, 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 אהא רבי אמי בשם רבי לעזר.) בר נטוזה איתגלין ליה גיגיתיה. [איל לרבי בא בר ממל. אמר ליה. אם הנה נכנס ויוצא מותר. רבי יעקב בר אהא רבי אמי בשם רבי לעזר. אם הנה ישן מותר. רבי חנינה רבי יהושע בן לוי. חד אמר. ישן מותר. וחד אמר. ישן אסור. מסתברא דרבי חנינה אמר. ישן מותר. דבכל-אתר סמיה רבי לעזר לרבי חנינה.]

(Rebbi Jacob bar Aḥa, Rebbi Immi, in the name of Rebbi Eleazar.)<sup>170</sup> 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 permitted<sup>171</sup>. 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 Ḥanina<sup>172</sup>.

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 אהו עובדא. עובדא הנה איתא תדא דהוות מרחמא מצוותא ובעלה שנה מצוותא. אתא חד מסכר ויהבת קומוי ואכל. ארגישת בבעלה. אסליק וטמרתיה בעיליתה. תבת קומי בעלה ואכל ודמד ליה. אתא חוץ ואכל מן קומוי. קם בעלה מן שיניתיה ובעא מיכול. שרי ההוא דעיליתה מלולי. תדא אמרה. לשן מותר. פריד הנה. ואינו אסור משום ייחוד. כי נאפו ודם בדיהו. מכינו דלא הנה חשיד על דא לא חשיד על דא.

<sup>173</sup>Rebbi 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 talk<sup>174</sup>. That means if he was sleeping it is permitted<sup>175</sup>. It was used to it. But is it not forbidden because of being alone? *For they committed adultery, blood is on their hands*<sup>176</sup>. Since he is not suspected of one he is not suspected of the other<sup>177</sup>.

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.

<sup>178</sup>A 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 hand<sup>179</sup>.

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.

מעשה בטבח אחד בצפורין שהיה מאכיל את ישראל נבילות וטריפות. פעם אחת ערב יום הכיפורים עם חשיכה שנתה יין הרבה ונשתכר. ועלה לראש הגג ונפל ומת. התחילו הכלבים מלקקו בדמו. אתו ושאלו לרבי חנינה. מהו מי עברתיה מן קומיהון. אמר להן. פתיב ואנשי קודש תהיון לי ובשר בשדה טרפה לא תאכלו לכלב תשלקו אתו: זה גזל את הכלבים והאכיל את ישראל נבילות וטריפות. ארפו לון. מדידהון אינו אכלין.

<sup>180</sup>It 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 Rabbi Hanina how to remove him from before them. He told them, it is written<sup>181</sup>, *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.

חד בר נש הוה ליה חד גרב מגלי בערובת צומא רבא. אזל בעי למישפכיה. אמר ליה חבריה. אייתי ואנה שתי ליה. אמר ליה. מגלי הוה. אמר ליה. מריה דיומא קאים. לא אספק מיטעם עד דאיתתחלל.

<sup>182</sup>A 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 מעליו חטטין ושלנחש ממות. רבי חייה אמר. אין נשעליו 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 kills<sup>183</sup>. Rebbi Ḥiyya said, one is not asked about uncovered [drinks]<sup>184</sup>. Rebbi Jeremiah asked before Rebbi Ze'ira; as master of the ruling he asked him<sup>185</sup>.

מתננמם הוה. רבי זעירא הוה יתיב אכיל ברמשא. איטפי בוצינא ייב גדיה על תומנתא. אדלקון בוצינא אשכחון אהו שפיפונא שהוא דזמה לשערא קריד על תומנתא. אמר ליה. רשיעא. 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 toman<sup>186</sup>. 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 אמאי. צריכין אנו חששין על מה דבריינתא חששין. אסיר למיתן פריטין גו פומה. פיתתא 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 knife<sup>187</sup> 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 שאיל ליה אמר ליה. ערבא דנפשד אגא. אמר רבי שמעון בן לקיש. אילו ללודין זבינת גרמך זבינתה גרמך בדמים ותיירין. וקא בדמיו קלילין.

Rebbi Yannai said, if you bit something off, you bit off soot. If you lose, you lose a pearl<sup>188</sup>. 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 games<sup>189</sup>, 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. Since 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 בן בתירה. אין נסף שנפל לבור ימכר פולו לגוי חוץ מדמי  
 אין נסף שבו. רבי אסי בשם רבי יוחנן. סתם יינם שלגוי 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 יינות הן. שראה גוי מנסכו ונדאי דעבודה זרה  
 מטמא טומאה חמורה כשרץ. סתם יינם שלגוי 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. והוה רבי זעירא  
 חדי בה.

Rebbi Assi<sup>190</sup>, 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 it<sup>191</sup>. Rebbi Assi in the name of Rebbi Johanan: Undetermined wine<sup>192</sup> of a Gentile is forbidden<sup>193</sup> but does not make impure. If he deposited it<sup>194</sup> 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 it<sup>195</sup>. 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 reptile<sup>196</sup>. Gentiles' undetermined wine is forbidden but does not cause impurity. If he deposited with him<sup>193</sup> with one seal it is forbidden to drink<sup>194</sup> 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 it<sup>197</sup>.

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 תַּנְיִן. אֶצֶל הַנְּכָרִי כְּפִירוֹתָיו. רַבִּי שְׁמַעוֹן אוֹמֵר. דְּמַאי: רַבִּי חֲנִינְיָהּ בְּעֵא קוֹמִי רַבִּי מְנִי. מַה. כְּפִירוֹתָיו מִמַּשׁ טַעְמוֹ פּוֹטֵר טַבֵּל בְּרוּר מִמְּקוֹם אַחֵר. אָמַר לִיה. וְלִכְלַל דְּבָהּ. וְלֹא עַל יְעוֹת רַבִּי חֲנִינְיָהּ מִתְּרַס לְקִיבֻלְיָהּ.  
הַפְּקִידוֹ אֶצְלוֹ בְּחוֹתָם. רַבִּי חֲנִינְיָהּ וְרַבִּי מְנַא. חַד אָמַר אֶסוּר. וְחַד אָמַר מוּתָר. מַה פְּלִיגִין. בְּהִנָּא. אֶבֶל בְּשִׁתְיָהּ אֶסוּר.

There, we have stated<sup>198</sup>: "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 him<sup>199</sup>.

If he deposited with him with a seal<sup>200</sup>. Rabbi Ḥananiah and Rabbi Mana, one says, prohibited<sup>201</sup>, 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 אמר. חבילת אסור. חמפ"ג מותר. חתיכת דג שאין בו סימן. בשר. יין. תכלת. אסור בחותם אחד. חילתית. מוריט. פת. גבינה. מותר בחותם אחד. אמר רבי יודן. טעמא דרב. כל שאיסורו מגופו אסור בחותם אחד. על ידי תערובת מותר בחותם אחד. רבי יעקב בר אחא רבי שמעון בר אבא רבי לעזר בשם רבי חנינה רבי אבא רבי חייה בשם רבי יוחנן רבי זעירא בשם רבי יהושע בן לוי. הכל מותר בחותם אחד חוץ מן היין.

Rav said, *hbyt* is forbidden, *hmpg*<sup>202</sup> is permitted. A piece of fish without distinguishing mark<sup>203</sup>, meat, wine, and dark blue color<sup>204</sup>, are forbidden with a single seal; *assa foetida*<sup>205</sup>, fish sauce<sup>206</sup>, 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 wine<sup>207</sup>.

202 Mnemonic marks composed of initial letters of the items to be remembered; pronounced *havit* and *hampag*. 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 *šišit*, which by tradition must be dyed with the blood of a marine snail which can easily be counterfeit 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.

וְחָרֵס אֲדָרְיָנִי. רַבִּי זְעִירָה בְּשֵׁם רַבִּי יִרְמְיָהוּ. הֲלֵכָה כְּרַבִּי מֵאִיר. הֵא דְתַנְיָה. חָרֵס אֲדָרְיָנִי אֲסוּר וְאִישׁוּרוֹ אִישׁוּר הַנְּיָה. דְּבַרִּי רַבִּי מֵאִיר. וְחֻכְמִים אוֹמְרִים. אֵין אִישׁוּרוֹ אִישׁוּר הַנְּיָה. רַבִּי יִרְמְיָה בְּעָא קוּמִי רַבִּי זְעִירָה. אָהוּ בְּגַד דְּתַנְיִן הֲכָא מָהוּ. וְאִקְפִּיד לְקוּבְלִיהּ. אָמַר לִיהּ. אֲפִילִי לְמָאן דְּמַר תַּמְן מוּתַר וְכָא אֲסוּר. תַּמְן אֵין אִישׁוּרוֹ נִיכָר. בְּרַם הֲכָא אִישׁוּרוֹ נִיכָר. וּמָהוּ לְסֻמוּדָּ בּוֹ אֶת הַמַּיְטָה. רַבִּי לְעִזָּר אָמַר. מוּתַר. וְרַבִּי יוֹחָנָן אָמַר. אֲסוּר.

“And Hadrianic pottery.”<sup>208</sup> Rabbi Ze'ira in the name of Rabbi Jeremiah<sup>209</sup>: does practice follow Rabbi Meir? As it was stated<sup>210</sup>, “Hadrianic pottery is prohibited and its prohibition is of usufruct, the words of Rabbi Meir<sup>211</sup>, 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 here<sup>212</sup>? 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 couch<sup>213</sup>? Rabbi Eleazar says it is permitted, Rabbi Joḥanan says it is forbidden<sup>214</sup>.

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. Meir, 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 לעבודה זרה. כיצד הוא יודע.  
 רבי הונא אמר. בשעה שקורעה עד שהיא בחיים הוא נסלל ונגגל. לאחר שחיטה הוא נמשך.  
 אמר רבי יוסי. ותשמע מינה. שחט בה סימן אחד. אף על גו דתימר. אין דבר שיש בו רוח  
 חיים נאסר. וכן נאסר.

"And heart-removed skins." Rabbi Jeremiah in the name of Rav: Practice follows Rabban Simeon ben Gamliel<sup>215</sup>.

How does he do it? He tears its heart out from the living animal for pagan worship. How does one know<sup>216</sup>? 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 prohibited<sup>217</sup>.

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) ובשר הנכנס לעבודה זרה מותר. רבי בא רבי חייה בשם רבי יוחנן אמר. להוציא מדברי רבי ליעזר. שרבי ליעזר אומר. מחשבת נכרי לעבודה זרה.

והוציא אסור. רבי אבינא בשם רב ירמיה. בשעהכניסו לפניו מן הקנקליו. אבל אם לא הכניסו לפניו מן הקנקליו אף הוציא מותר. בעבודה זרה שיש לה קינקליו. אבל בעבודה זרה שאין לה קינקליו כל־הבית ידון לשם קינקליו.

“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 worship<sup>218</sup>.

“But what leaves is forbidden.” Rabbi Abinna in the name of Rav Jeremiah: When he introduced it inside the lattice railing<sup>219</sup>. 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 *κτεκλις*, mostly used in the plural Greek *κτεκλιδες*, Latin *cancelli*, “lattice gates” (of Temples, etc.) Babli 51b.

(41d line 41) ההולכים בתרפות. רבי חייה בשם רבי יוחנן. תוריבס. מוליכין עבודה זרה גדולה אצל עבודה זרה קטנה. אית תני תני תרפות. מאן דאמר תרפות. תרפים. ומאן דמר תרבות. תוריבוס.

והבאין מותרין. רבי אבינא בשם רב ירמיה. בשאין חזרתו פהליכתו. אבל אם הייתה חזרתו פהליכתו אף הבאין אסורין.

“Those who go in<sup>220</sup> ugliness.” Rabbi Hiyya in the name of Rabbi Johanan, *θόρυβος*<sup>221</sup>. One brings a large idol to a small idol. Some state *תרפות*<sup>222</sup>. He who says *תרפות*, idols<sup>223</sup>. He who says *תרבות*<sup>224</sup>, *θόρυβος*.

“But those who return are permitted.<sup>225</sup>” 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 *ترف* “to live the good life”.

224 To be vocalized תרבות.

225 A quote from the Mishnah in all versions except the Yerushalmi separate Mishnah.

מסנה ד: נודות הגוים וקנקניהם ויין ישראל כגוס כהן אסורין ואיסורין איסור הנאה דברי רבי מאיר. והקמים אומרים אין איסורין איסור הנאה.

**Mishnah 4:** Gentiles’ wine skins and jugs<sup>226</sup> containing an Israel’s wine are forbidden and their prohibition is one of usufruct, the words of Rebbi Meir; but the Sages say that their prohibition is not one of usufruct<sup>227</sup>.

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 וישאל עומד על גביו פונס לתוכן יין ואינו חושש. וחש לומר. שפא ניסד הוא. אמר רבי בא. אינו מצוי לנסד על גבי דבר מאוס. מעתה אפילו אין ישאל עומד על גביו. אני אומר. שפא החליף.

קנקני גוים חדשות 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 עמדתי על זפתן של קנקנים ואין נותנין לתוכן חומץ בשעה שאופתין אותן.

**Halakhah 4:** “Gentiles’ wine skins and jugs,” etc.<sup>228</sup> “Rough Gentile wine skins<sup>229</sup> are permitted; tarred ones are forbidden. If a Gentile made it and insulated<sup>230</sup> 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 circumstances<sup>231</sup>. Then even if no Jew was watching? I say, maybe he switched<sup>232</sup>.

<sup>228</sup>“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 tarring<sup>233</sup>.

228 Tosephta 4:10; Babli 33a.

229 The interior surface is leather only; it was not smoothed by tar.

230 It is difficult to see how the scribe could have written זופתו דובב for זופתו דובב “tarred them” in the other sources; it may be better to accept the word as it stands and read it as דָּבַב “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 אחא בשם רבנן. יין שְאָסוּר בְּשִׁתִּיָּהּ וּמוֹתֵר בְּהִנָּאָה וְכִנְסוּ לְתוּדָּהּ קִנְיָנִים נַעֲשׂוּ הַקְּנָנִים כְּיִין. פִּינְהוּ וְכִנְסוּ לְתוּכּוֹ יִין אַחַר נַעֲשָׂה יִין כְּקִנְיָנִים. פִּינְהוּ וְכִנְסוּ לְתוּכּוֹ יִין אַחַר הַיִּין אָסוּר וְהַקְּנָנִים מוֹתֵרִין. וְלָמָּה אָסוּר בְּשִׁתִּיָּהּ וּמוֹתֵר בְּהִנָּאָה. בְּגִין דְּרַבִּי מֵאִיר אָמַר. אָסוּר בְּשִׁתִּיָּהּ וּבְהִנָּיָהּ.

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 wine<sup>234</sup>. If he removed it and put new wine<sup>235</sup> into them, the wine becomes like the jugs<sup>236</sup>. If he removed it and put new wine<sup>235</sup> into them, the wine is forbidden but the jugs permitted<sup>237</sup>. Why “forbidden to drink but permitted to use”? Because of Rebbi Meïr who said, forbidden to drink and for use<sup>238</sup>.

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 אֶתּוֹן שְׂאֵלוֹן לִיה. קִנְקֵימִים שְׁלֹגוּמִים בְּמָה הִיא טְהוּרָתוֹ. אָמַר. מֵאֵז לִימְדוֹתַי עָלֵיהֶם. מָה אִם בְּשַׁעָה שְׂאֵינָן זְכוּתוֹת אֶתְּ מֵר מוֹתְרֵי. בְּשַׁעָה שְׁהוּ זְכוּתוֹת אֶלָּא שְׁנוֹתְקֻלְפָה זִיפְתָּן לֹא כָּל־שֶׁכֶן. וְכִשְׁבָּאתִי אֶצֶל חֲבֵרַי אָמְרוּ לִי. עַל יָדִי זְפָתָהּ בּוֹלְעוֹת.

כְּנֶס הַגּוֹי לְתוֹכָן מִיָּם יִשְׂרָאֵל כּוֹנֵס לְתוֹכָן מִיָּם וְחוֹזֵר וְכוֹנֵס לְתוֹכוֹ יִן וְאֵינוֹ חוֹשֵׁשׁ. כְּנֶס הַגּוֹי לְתוֹכוֹ צִיר אִו מוֹרִיִּים יִשְׂרָאֵל כּוֹנֵס לְתוֹכָן יִן. כְּנֶס הַגּוֹי לְתוֹכָן יִן וְיִשְׂרָאֵל כּוֹנֵס לְתוֹכָן צִיר אִו מוֹרִיִּים וְחוֹזֵר וְכוֹנֵס לְתוֹכָן יִן וְאֵינוֹ חוֹשֵׁשׁ.

רַבִּי יוֹחָנָן נָפַק לַפְּנֵי דְרַבִּי יוֹדָן נְשִׂיאָ לַעֲבוֹ. אֶתּוֹן שְׂאֵלוֹן לִיה. קִנְקֵימִים בְּמָה הִיא טְהוּרָתוֹ. אָמַר. מֵאֵז לִימְדוֹתַי עָלֵיהֶם. מָה אִם בְּשַׁעָה שְׁכָּנֵס הַגּוֹי לְתוֹכוֹ צִיר אִו מוֹרִיִּים יִשְׂרָאֵל כּוֹנֵס לְתוֹכָן יִן. רַבִּי יִסָּא בְּשֵׁם רַבִּי יוֹחָנָן. בְּשַׁעָה שְׁמִכְנִיסָן לְאוּר לֹא כָּל־שֶׁכֶן. רַבִּי חִיָּה בְּשֵׁם רַבִּי יוֹחָנָן. בְּשַׁעָה שְׁמִשְׁחִיל אֶת זִיפְתָּן לֹא כָּל־שֶׁכֶן. קִיָּמִין אֵינוֹן. אִין קִמִּין קִמִּין. קִנְקֵימִין שְׂאֵינָן זְכוּתוֹת. רַבִּי אֲסִי אָמַר. אֲסוּרוֹת. רַבִּי אֲמִי אָמַר מוֹתְרוֹת. רַבִּי יַעֲקֹב בְּרִי אַחָא אָמַר. רַבִּי אֲסִי מִקְשִׁי. כִּי נָן אָמְרִין אֵהוּ כְּפוּהָ לֹא בְּלַע. רַבִּי בָּא אָמַר. רַב שְׁשֵׁת שְׂאֵיל. מָאן אָנָן אָמְרִין הָאִין דְּהוֹן שְׁלִמִימִי רְגִלִים לֹא בְּלַע.

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 pitch<sup>239</sup>.

<sup>228,240</sup>“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 fluid<sup>241</sup> or fish sauce<sup>206</sup> the Jew may fill it with wine<sup>242</sup>. 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 meet<sup>243</sup> 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 wine<sup>244</sup>. 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 tarring<sup>245</sup> not so much more? Do they stand this? If they stand it, they stand<sup>246</sup>.

Untarred jugs<sup>247</sup>, Rabbi Assi<sup>190</sup> said, they are forbidden<sup>248</sup>, Rabbi Immi said, they are permitted. Rabbi Jacob bar Aḥa said, Rabbi Assi questioned: do we say that a tankard does not absorb<sup>249</sup>? 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 ἀπαντάω "to meet" with Atamaic prefix ל.

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 אֶחָא רבי שמעון בר אבא בשם רבי חנינה. קנִקְנִי גוֹיִם מִמְלָאָן מִיָּם ג' יָמִים מַעַת לַעֲת. רבי יעקב בר אֶחָא אָמַר. רבי אסי מקשי ועבדין בן. רבי יוסי ממלחיא אעיל עובדא קומי רבי מנא. אָמַר ליה. הָא לְשַׁעֲבַר. אָמַר ליה. שְׂרִי. הָא לְכַתְּחִילָה. אָמַר ליה. אָסִיר. רבי ירמיה אָזַל לְגוֹבְלָנָה. הוֹרִי בְּאֵילִין פְּתַרְיָא רַבְרַבִּיָּא. מִמְלָא אוֹתָן ג' יָמִים מַעַת לַעֲת.

אָרְמִיָּא אֵיתְבַּזְעַת זִיקוּה וְקִיבְלָה יִשְׂרָאֵל גּוֹ דִּידִיהָ. אֵתָא עוֹבְדָא קוֹמֵי רַבְנָן. אָמְרֵי. מִמְלָא אוֹתָן ג' יָמִים מַעַת לַעֲת.

רבי יסא אָזַל לְצוֹר. הָמָא נִתְהוֹן זְפִתִין זִיקוּקִין זְעִירִין וְיִשְׂרָאֵל זְבִינוּ. אָמַר. מָאן שְׂרָא לְכוּן. שְׂאֵלוּן לְרַבִּי יִצְחָק וְלְרַבִּי מְנִי וְאָסְרוּן.

Rebbi Jacob bar Aḥa, Rebbi Simeon bar Abba in the name of Rebbi Hanina: One fills Gentiles' jugs with water three days from time to time<sup>250</sup>. Rebbi Jacob bar Aḥa said, Rebbi Assi<sup>190</sup> 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 forbidden<sup>251</sup>. Rebbi Jeremiah went to Goblana; he instructed about large cups<sup>252</sup> that one fills them with water three days from time to time<sup>253</sup>.

An Aramean's<sup>254</sup> leather bag split; the Jew received it into his<sup>255</sup>. The case came before the rabbis who said, one fills them with water three days from time to time<sup>256</sup>.

Rebbi Yasa<sup>257</sup> went to Tyre. He saw them<sup>258</sup> tarring small leather bags and Jews bought them. He asked, who permitted you? They asked Rebbi Isaac and Rebbi Mani<sup>259</sup>, 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.

מִשְׁנֵהּ וְהַחֲרָצִים וְהַגִּיזִין שֶׁל גּוֹיִם אֲסוּרִין וְאִיסוּרֵן אִיסוּר הַנְּאֻה דְּבָרֵי רַבִּי מֵאִיר. וְהַכֵּמִים אֲמָרִים לְהִיֵּן אֲסוּרִין בְּמִשְׁיֵן מוֹתְרִין.

**Mishnah 6**<sup>260</sup> Gentiles' grape kernels and skins<sup>261</sup> 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. 261 Which remain after the production of  
The sequence of the Halakhah also is the wine.  
one in the Babli and Maimonides's Mishnah

הלכה ה: התרצנים והגגין שלגוים כול'. רב ששת בשם רב. לחים אסורין אפילו  
בהנאה. ובישין מותרין אפילו באכילה. והא תנינו. אינו נעשה יין נסך עד שירד לבור. רבי בא  
בשם רבי יודה. במשקם לתוך הבור היא מתניתא.  
תמן תנינו. 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 eat<sup>262</sup>. But did we not state<sup>263</sup>, “it does not become libation wine until it descends into the cistern<sup>264</sup>”? Rabbi Abba in the name of Rabbi Judah: The Mishnah is about one who lowers them into the cistern<sup>265</sup>.

There we have stated.<sup>266</sup> “And so it is with new solid matter of olives; but old one is pure.<sup>267</sup>” What is new? Within twelve months. Old, after twelve months<sup>268</sup>.

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 והגבינה ותריוקי של גוים אסורין ואיסורן אסור הנאה דברי רבי מאיר. והקמים אומרים. אין איסורן איסור הנאה:

**Mishnah 5:** Fish sauce<sup>266</sup>, cheese<sup>269</sup>, and theriac<sup>270</sup> 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 תריוקי

is an error for בתייקי “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 והגבינה כול'. יין למוריים רבי מתיר. רבי לעזר בירבי שמעון אוסר. לפיכך אם עבר ונתן רבי אוסר לזרים. רבי לעזר בירבי שמעון מתיר לזרים. רבי מנא בר תנחום בעי. כדברי מי שהיה מתיר לזרים. ומוריים הגוי למה הוא אסור. רבי ירמיה בשם רבי חייה בר בר בא. משום תבשילי גוים. והתני. אומן מותר. שאינו אומן אסור. אומן מותר לא בשאינו מבושל. ודכותה שאינו אומן אסור אף על פי שמבושל. מאי כדון. את שהיה ליטול את האקמא מחמת עבודה זרה אסור. הך אקמרה. הנאת עבודה זרה אסורה והנאת תרומה מותרת. אמר רבי יוחנן בר מדינא. כדברי מי שהיה אומן מותר ובלבד בלודעו.

3 ומוריים ג מוריים 4 חייה ג חייה תבשילי ג תפשולי 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 מחמת הדא ג הדה הנאת ג הנאת ג הנאת 7 מדייא ג מדייה כדברי ג כדברי או' ג אמור אומן ג אומן ובלבד ג ובלבד

ורבי יוחנן ורבי לעזר. חד אמר. מפני שממעטו ממידתו. וחד אמר. מפני שממעטו משותיו. ולא ידעין מאן מר דא ומאן מר דא. מן מה דמר רבי יוחנן. מחלפה שיטתיה דרבי יודה. ומר רבי לעזר. אינה מחלפת. תמן בכהן והקא בבועלים. הוי דרבי יוחנן דו אמר. מפני שממעטו משותיו.

1 ור' יוחנן ור' לעזר | תת ר' לעזר ור' יוחנן מפני ג מפני שממעטו | ג שהיה ממעטו (2) ממידתו ג מימדתו וחד | ג וחרינה 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 מוחלפת והכא | ג וכה ת וכאן בבעלים | ג בבעלים הוי | ג הביא דר' | ת ר' | דו | ת דאמ' ת דהוא אמ' 4 שממעטו משותיו | ג ממעטו מישותיו ת שהוא ממעטו משותיו

**Halakhah 6:** “Fish sauce, cheese,” etc. <sup>271</sup>“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 forbidden<sup>272</sup>? Rabbi Jeremiah in the name of Rabbi Hiyya ber Abba, it is forbidden as being cooked by Gentiles<sup>273</sup>. But did not [Rabbi Yose]<sup>274</sup> state: “From a professional<sup>275</sup> it is permitted, from a non-professional it is forbidden.” From a professional it is permitted, is that not if it is not cooked<sup>276</sup>? 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 worship<sup>277</sup>. This implies that usufruct of pagan worship is forbidden, usufruct of heave is permitted<sup>278</sup>. Rabbi Joḥanan bar Madia said, following him who said from a professional it is permitted, only if he knows him<sup>279</sup>.

Rabbi Joḥanan and Rabbi Eleazar. One says because he diminishes its volume, the other says because he reduces the number of drinkers<sup>280</sup>. 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, אמון may be read either as אָמון “craftsman” with the Leiden ms. here or אָמון “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 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.

מַשְׁנֵה אֶ: אָמַר רַבִּי יְהוּדָה שֶׁאֵל רַבִּי יִשְׁמַעְיָאל אֶת רַבִּי יְהוֹשֻׁעַ כְּשֶׁהָיוּ מַחֲלִיכִין בְּדֶרֶךְ מִפְּנֵי כּוֹה אֶסְרוּ גְבִינֹת הַגּוֹיִם. אָמַר לוֹ מִפְּנֵי שֶׁמִּעֲמִידִין אוֹתָהּ בְּקַבָּה שֶׁל גְּבִילָה. אָמַר לוֹ וְהֵלֵא קִיבַת עוֹלָה הַמִּזְבֵּחַ מִקִּיבַת גְּבִילָה וְאָמְרוּ כִּהֵן שֶׁדַּעַתּוֹ יָפָה שׁוֹרְפָהּ חַיָּה וְלֹא הוֹדוּ לוֹ אֶלֶּא אָמְרוּ לֹא נִהְיִין וְלֹא מוֹעֲלִין.

**Mishnah 7:** Rabbi Jehudah said, Rabbi Ismael asked Rabbi Joshua when they were walking on a road, why did they forbid Gentiles’ cheeses<sup>281</sup>? He told him, because they make them with stomach of cadaver<sup>282</sup>. He answered him, is not the stomach of an elevation offering<sup>283</sup> more serious than the stomach of a cadaver and they said, a Cohen who is not repulsed may burn it raw<sup>284</sup>; they did not agree to this but said one has no usufruct<sup>285</sup> but does not commit larceny<sup>286</sup>.

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.

41c line 26) **הלכה ז:** אָמַר רַבִּי יְהוֹדָה שֶׁאֵל רַבִּי יִשְׁמַעֵאל אֶת רַבִּי יְהוֹשֻׁעַ כּוֹל'. רַבִּי יַעֲקֹב בַּר אֶחָא רַבִּי שְׁמַעוֹן בַּר בָּא בָשֵׁם רַבִּי יְהוֹשֻׁעַ בֶּן לֵוִי. מִפְּנֵי עֲגָלִים שֶׁשָּׂם נִשְׁחָטִין לָשֵׁם עֲבוּדָה זָרָה. שְׁמַע רַבִּי יוֹחָנָן וְזָמַר. יָנָה לִימְדֵנוּ רַבִּי. שֶׁכֵּן הַשּׁוֹחֵט בְּהֵמָה לְעֲבוּדָה זָרָה אֶפְלוּ פִירְשָׁה אֶסוּר. רַבִּי יוֹחָנָן בְּעֵי. מְצָא בָּהּ טִבְעֵת. אָמַר רַבִּי יוֹסִי. טִבְעֵת בְּעֵינָהּ הִיא. פִּירְשָׁה גּוֹפָה הִיא.  
 2 בא | ג אבא מפני | ג מפני שרוב נשחטין | ג נשחטים 3 ומר | ג ואמר לימדנו | ג לימדני ר' | ג רבו שכן | ג שכין בהמה | ג בהימה 4 יוסי | ג יוסי בעינה | ג בעינה

**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]<sup>287</sup> calves there<sup>288</sup> 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 forbidden<sup>289</sup>. Rebbi Joḥanan asked, if one found a ring in it? Rebbi Yose said, a ring is recognizable<sup>290</sup>; 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

31) line 41c רבי חייה בר בא בשם רבי יוחנן. בראשונה היו אומרי. 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. שפחשבת נכרי לעבודה זרה. אתא רבי אסי בשם רבי יוחנן. בראשונה היו אומרי. 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 הפשירה קיבתה מותרת כמשנה האחרונה. פשירה שניקה מן הטריפה קיבתה אסורה כמשנה האחרונה. ואפילו דייס ברוין בית שמי כבית הלל במשנה הראשונה היו ביצה גידולי גופה. קיבה ממקום אחר באת. ואתיא פיי דמר רבי יוסי בירבי בון בשם רבי יוחנן. מעשה בבנו שלרבי יהודה בן שמוע שבקעו 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 | 2 מעמידין | ג מעמידים הנבילה | בב הנבלה | 3 ר' בא בר זבדא | ג ר' זבידה א' מדברי | ג מדברי ר' בא ... ר' לעזר | בב ר' יוסי ביר' בון אמ'. שמואל בר אבא בעי. מה. כר' אליעזר | ג לעזר | שר' | ג שהיה ר' בב דר' | 4 או' | ג אמ' | שפחשבת | ג שהמחשבת | בב סתם מחשבת נכרי | ג הנכרי | אתא | ג אתה | ג - אסי | ג יסא | ג יסה - | ג הכין | ג הכיני | 5 מעמידין | ג אין מעמידים לא | ג לא מעמידין לא | אין | ג - מעמידין | ג מעמידים | 6 לישן | ג לישן | ג אמ' ר' יוסי. לישן | ג א' ר' יוסה לישן מסייעא | ג מסייע | ג מסייעה הנכרי | ג הנוכרי ושלנבילה | בב וקיבת נבילה כמשנה | ג כמישנה | 7 הראשונה | ג ראשונה | 7-8 טריפה ... האחרונה | גב כשירה שניקה מן הטריפה קיבתה אסורה כמשנה הראשונה | גב כשירה שניקה מן הטריפה קיבתה אסורה כמשנה הראשונה | גב כשירה שניקה מן הכשירה | קיבתה מותרת כמשנה האחרונה<sup>291</sup> | 8 שמי | ג שמי | כבית | ג לבית<sup>292</sup> | במשנה | ג במשנה | גב כמשנה | 9 הראשונה | ג האחרונה | הוי | ג הוי | גב - ואתיא | גות ... ואתיא | כ | כהיא | דמר | ג דאמ' | יוסי | ג יוסה | 10 בבנו | גב בבנו | שלר' | גב של | שמוע | ג שמועי | ג שמועי | שבקעו | ג שבקעו | להן | ג להם | זאיבים | ג זאיבין | יותר | ג יתר | משלש | ג משלוש | 11 חכמים | ג חכמין | והתירו | ג והיתירו | 12 לו | גב -

<sup>293</sup>Rebbi Hiyya bar Abba in the name of Rebbi Johanan: At first they were saying, one curdles neither with the stomach content of the carcass<sup>294</sup> 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 worship<sup>295</sup>? Rebbi (Assi) [Yasa]<sup>296</sup> came in the name of Rebbi Johanan: Originally, they said, one does curdle [neither]<sup>297</sup> 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 Hiyya

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.]<sup>298</sup> 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 outside<sup>299</sup>. It parallels what Rabbi Yose ben Rabbi Abun said in the name of Rabbi Joḥanan: It happened to the son[s]<sup>300</sup> of (Rabbi) Jehudah ben Shamma<sup>301</sup> that wolves tore more than 300 of their flock. The case came before the Sages who permitted their stomach contents<sup>302</sup>. 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 א ב, 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.

מַשְׁנֵה חֵ: הַזֶּה לֹא מִפְּנֵי שְׂמֵעֵמִידִין אוֹתָהּ בְּקִיבַת עֲגָלֵי עֲבוּדָה זָרָה. אָמַר לוֹ אִם בֶּן לְמָה לֹא אֶסְרִינָהּ בְּהֵנָאָה. הִשְׁיֵאוּ לְדָבָר אַחֵר אָמַר לוֹ וְשָׂמְעָאֵל אַחֵי הֵיאָדָּ אַתָּה קוֹרָא כִּי מוֹבָיִם דְּרִידָּ מִיֵּין אוֹ כִּי מוֹבָיִם דְּוִידָּ. אָמַר לוֹ כִּי מוֹבָיִם דְּוִידָּ. אָמַר לוֹ אֵינִן הִדְבָּר בֶּן שְׁתָּרֵי חֲבָרָו מִלְּמוֹד עֲלִיּוֹ לְרִיחָ שְׂמֵנִידָּ מוֹבָיִם:

**Mishnah 8:** He<sup>303</sup> gave a second argument and said, because they curd it with stomach content of calves for pagan worship. He<sup>304</sup> retorted, then why did they not forbid it for usufruct<sup>289</sup>? He<sup>305</sup> deflected him to an other subject<sup>305</sup> 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*<sup>306</sup>? He<sup>304</sup> told

him, *for your (f.) friendship is better*. He<sup>303</sup> answered, it is not so since the next verse implies it, *by the scent of your (m.) good oils*<sup>307</sup>.

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. Naeh<sup>1</sup>. 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 in 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 דודיך מין, מבט חדש על משנת ע"ז ביה; מחקרים בתלמוד ובמדרש, ספר זכרון לתירצה ליפשיץ, יום 2005 ע' 411-434.

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 דבְּרֵי סוֹפְרִים (41c line 45) **הַלְכָה ת**: מִפְּנֵי שְׁמַעְמִידִין אוֹתָהּ כּוֹל. חֲבֵרִיָּא בְּשֵׁם רַבִּי. דּוֹדִים דְּבֵרֵי סוֹפְרִים לְדַבְרֵי תוֹרָה וְחֲבִיבִים יוֹתֵר מִדְּבֵרֵי תוֹרָה. וְחֲפִידָא קִינֵן הָטוֹב. שְׁמַעוֹן בְּרַ בָּא בְּשֵׁם רַבִּי יוֹחָנָן. דּוֹדִים דְּבֵרֵי סוֹפְרִים לְדַבְרֵי תוֹרָה וְחֲבִיבִים יוֹתֵר מִדְּבֵרֵי תוֹרָה. כִּי־טוֹבִים דּוֹדִידָא מֵאֵין: רַבִּי בָּא בְרַ כְּהוֹן בְּשֵׁם בְּרַ פָּזִי. תִּדְעַ לָךְ שְׁדַבְרֵי סוֹפְרִין חֲבִיבִין יוֹתֵר מִדְּבֵרֵי תוֹרָה. שְׁהֵרִי רַבִּי טַרְפוֹן אֵילוֹ לֹא קָרָא לֹא הֵיָה עוֹבֵר אֶלָּא בְּעֵשָׂה. מִפְּנֵי שְׁעֵבֵר עַל דְּבֵרֵי בֵּית הַלֵּל חֵיבֵב מִיתָה. עַל שֵׁם וּפְרָצָא גְּדֵר יִשְׁכְּנוּ נַחֲשׁ.

1 ר' אג' ר' יוחנן 2 יותר מדברי אג' כדברי וחקך אג' וחקך

**Halakhah 8:** “Because they curdle it,” etc.<sup>308</sup> The colleagues in the name of Rabbi [Johanan]: 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*<sup>310</sup>. Simeon bar Abba in the name of Rabbi Johanan: The words of the Sopherim are related to the words of Scripture and are more pleasant than the words of Scripture, *for your friends are better than wine*<sup>311</sup>. 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 Tarphon<sup>312</sup> did not recite at all he would only have transgressed a positive commandment. But because he transgressed the words of the House of Hillel he should have suffered death since it says, *if one breaches a wall he will be bitten by a snake*<sup>313</sup>.

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. Johanan are undistinguishable.

310 *Cant.* 7:10; *Babli* 35a.

311 *Mishnah Berakhot* 1:7.



312 *Cant.* 1:2.313 *Eccl.* 10:8.

(41c line 53) תני רבי ישמעאל. דברי תורה יש בהן איסור ויש בהן היתר ויש בהן קלוי ויש בהן חמורין. אבל דברי סופרין כולן חומר. דתנינן תמן. האומר. אין תפילין. לעבור על דברי תורה. פטור. חמש טטפוזות. להוסיף על דברי סופרים. חייב. רבי חנניה בשם רבי אידי בשם רבי תנחום ברבי חייה. חמודין דברי זקנים מדברי נביאים. דכתיב אל־תטיפו וטיפון. וכתיב אטיף לך לזן ולשכר. נביא וזקן למה הן דומין. למלך ששילח שני סימנטירין שלו למדינה. על אחד מהן כתב. אם אינו מראה לךם חותם שלי וסימנטירין שלי אל תאמינו לו. ועל אחד מהן כתב. אף על פי שאינו מראה לךם חותם שלי וסימנטירין שלי האמינו לו. קד בנביא כתוב ונתן אלד אות און מופת. ביום הקא. על־פי התורה אשר יוריד.

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 Ḥanina<sup>314</sup> 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*<sup>315</sup>. And it is written, *I shall preach to you for wine and liquor*<sup>316</sup>. The relation of prophet and scholar can be compared to the case of a king who sent two seals<sup>317</sup> to a province. About one of them he wrote, if he does not show you my seal and *σημαστήριον*<sup>318</sup>, do not believe him. About the other he wrote, even if he does not show you my seal and *σημαστήριον*, believe him. So about a prophet is written, *he gives you a sign or miracle*<sup>319</sup>. But here it is written, *according to the teachings that they will teach you*<sup>320</sup>.

314 With the other two sources read: *diplomatarii*, persons authorized to use the Ḥinena. 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) רבי יעקב בר אבא רבי שמעון בר בא בשם רבי יהושע בן לוי. מפני שרוב עגלים ששם נשחטין לשם דעבודתה זרה. שמע רבי יוחנן ומר. לפה לימדנו רבי. שכן השוחט בהמה

לְעִבּוּדָה זָרָה אֶפִּילוּ פִּירְשָׁה אָסוּר. רַבִּי יוֹחָנָן בְּעֵי. מִצָּא בָּהּ טִבְעַת. אָמַר רַבִּי יוֹסִי. טִבְעַת  
בְּעֵינֶיהָ הִיא. פִּירְשָׁה גּוֹפָה הִיא.

מַה שׁוֹרְפָה. גְּמִי לָהּ. רַבִּי שְׁמַעוֹן בֶּן לָקִישׁ אָמַר. בְּכוֹס זוֹהֵם. הִדָּא אֲמַרְהָ. הַשּׁוֹתֶה בְּכוֹס  
זוֹהֵם לֹא נִהְיָה וְלֹא מוֹעִיל.

מִפְּנֵי מַה לֹּא גִילָה לוֹ. אָמַר רַבִּי יוֹחָנָן. מִפְּנֵי שֶׁבְּקָרוֹב אֲסָרוּם. וְרַבִּי יִשְׁמַעֵאל הֵיךָ קָטָן.

Rebbi Jacob bar Aḥa, Rebbi Simeon bar Abba in the name of Rebbi Joshua ben Levi: Because most calves there<sup>288</sup> are slaughtered in the name of pagan worship. Rebbi Joḥanan heard this and said, my teacher taught us well, since if one slaughters an animal for pagan worship even its excrement is forbidden<sup>289</sup>. Rebbi Joḥanan asked, if one found a ring in it? Rebbi Yose said, a ring is recognizable<sup>290</sup>; excrement is part of its body.

What means “burns it”? He slurps it<sup>321</sup>. Rebbi Simeon ben Laqish said, in a dirty cup. This implies that one who drinks from a dirty cup neither benefits nor commits larceny<sup>322</sup>.

Why did he not tell him? Because they prohibited it recently and Rebbi Ismael was young<sup>323</sup>.

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 Joḥanan ben Zakkai (at an unknown date). R. Ismael never appears as member of the Synhedrion.

(41c line 70) רַבִּי חוֹנִיָּה אָמַר. רַבִּי חֲמַא בַר עֹקֵבָא מְקַשִּׁי. אִם לְהַפְּלִיגוּ בְּדַבְרִים הֵיךָ מִבְּשֵׁשׁ  
הֵיךָ לוֹ לְהַשִּׂיאוֹ בְּחֵמֶשׁ הַשְּׂאוֹת שְׁבִתוֹרָה. וְאֵילוּ הֵן. שְׂאֵת. אָרוּר. מְחָר. מְשׁוֹקָדִים. וְקָם.  
הֲלֹא אִם-תִּיטִיב שְׂאֵת אוֹ שְׂאֵת אִם לֹא תִיטִיב. כִּי בְּאֶפֶס הֲרָגוּ אִישׁ וּבְרַצְנָם עֶקְרוּ-שׁוֹרְאָרוֹ  
אוֹ אָרוּר אֶפֶס כִּי עָז. וְלֹאמַר מוֹשֶׁה אֶל-יְהוָה שֶׁ צָא הַלְחָם בְּעַמְלֶק מִחֹר אוֹ מִחַר אֲנֹכִי נֹצֵב  
עַל-רֹאשׁ הַגְּבֻעָה. וּבַמִּנְחָה אַרְבַּעַה גְּבַעִים מְשׁוֹקָדִים אוֹ מְשׁוֹקָדִים כְּפַתְרִיָּה וּכְרַחֲיָה: וְלֹאמַר יִי  
אֶל-מֹשֶׁה הִנֵּה שֹׁכֵב עַם-אַבְתָּיִד וְקָם אוֹ וְקָם הָעָם הַזֶּה וְזָנָה. רַבִּי תַנְחוּמָא מוֹסִיף הִדָּא. וּבְנֵי  
יַעֲקֹב בָּאוּ מִן-הַשְּׂדֵה קְשָׁמְעָם אוֹ קְשָׁמְעָם וַיִּדְעַצְבוּ הָאֲנָשִׁים. אָמַר רַבִּי לָא. יֵשׁ דְּבָרִים  
שֶׁמְשִׁיקוּ עֲלֵהוּ אֶת הַפָּה. הִיכְמָה דָּאֵת אָמַר יִשְׁקִיל מְנַשִּׁיקוֹת פִּיהוּ. אָמַר רַבִּי יֶצְחָק. כְּתוּב

וְאוֹתֵי צִנְהָ יִי. אוֹתֵי וְאוֹתֵי. נֶאֱמְרוּ לִי דְבָרִים שֶׁנֶּאֱמְרוּ לָכֶם. וְנֶאֱמְרוּ לִי דְבָרִים שֶׁנֶּאֱמְרוּ בֵּינֵי לְבִין עֲצָמִי.

Rebbi Onias said, Rebbi Hama bar Uqba raised a difficulty: If he wanted to deflect him to another subject<sup>324</sup>, he should have removed him to the five indeterminate places in the Torah<sup>325</sup>, 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*<sup>326</sup>. *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*<sup>327</sup>. *Moses said to Joshua . . . go fight Amaleq tomorrow or tomorrow I shall stand on top of the hill*<sup>328</sup>. *On the candelabra four cups almond shaped or almond shaped their knobs and their flowers*<sup>329</sup>. *The Eternal said to Moses, you will lie with your fathers and rise or rise will this people and whore*<sup>330</sup>. Rebbi Tanhuma added the following: *Jacob’s sons came from the field when they heard or when they heard the men were offended*<sup>331</sup>. 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*<sup>332</sup>. Rebbi Isaac said, *and me did the Eternal command*<sup>333</sup>. “Me, and me.” Things were said to me that were said to you. And things were said to me alone<sup>334</sup>.

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 Jehudah<sup>2</sup>.

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. 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. Ḥama 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 חלפותא רבי חגי בשם רבי שמואל בר נחמן. כבשים לבושה ומחיר שדה עתודים: כבשים כתיב. הא כיצד. בשעה שתלמידיו קטנים כבוש לפניהם דברי תורה. הגדילו ונעשו כעתודים גלה להם רזי תורה. ודא מסייעה למה דתני רבי שמעון בן יוחי. ואלה המשפטים אשר תשים לפניהם: מה הסימה היאת 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*<sup>335</sup>. It is written “suppressings<sup>336</sup>”. 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*<sup>337</sup>. Just as this putting is not revealed to everybody<sup>338</sup> so you do have permission to immerse yourself in words of the Torah only before legitimate people.

335 *Prov.* 27:26.

336 Identifying  $\psi$  and  $\psi$  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 אסורין איסור הנאה חלב שחלבו גוי ואין ישראל רואהו הפת והשמן שלהן ושלקות. רבי ובית דינו התירו בשמן. כבשין שדרבן לתת בהן זין וחומץ וטריית טרופה וציר שאין בה דגה והחילק וקורט של חלתית ומלח סלוקנרית הרי אלו אסורין ואין אסורין 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 oil<sup>339</sup>, and anything preserved by cooking<sup>340</sup>. Rabbi and his court permitted oil. Preserves in which usually wine is used<sup>341</sup>, and vinegar<sup>342</sup>, and pieces of *triton*<sup>343</sup>, and fish sauce<sup>344</sup> not containing a whole fish, and *hallec*<sup>345</sup>, and a lump of *asa foetida*<sup>205</sup>, and *salqonarit* salt<sup>346</sup>; 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 סלקונדיית 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) **הלכה ט:** אילו דברים שקלגוים 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. ונעמיד. אמר רבי שמואל בר רב יצחק. מפני האירס הנתון בין הנקבים. ותני כן. ג' אירסים הן. אחד צף ואחד שוקע ואחד דומה לשבכה. פגעליא הוון בחקליא. אתגליית קולתא דמא. אשתון קמיא ואנכון. תיניני ומייתין. אני אומר. אירס שוקע הנה. ביומו דרבי ירמיה איתגליין גייגיתיה דסדרא רבא. אישתון קמיא ולא אינכון. תיניני ומייתו. אני אומר. אירס שוקע הנה. ותני כן. אבטיח שניקר ואכלו ממנו עשרה בני אדם וכו' ון שנתגלה ושתו ממנו עשרה בני אדם אסור לוכל ולשתות אחריהן. אני אומר. אירס שוקע הנה.

2 בר | ג' בש' | ג' | ג' שלושה | 4 לשבכה | ג' לישבכה | 5 קמיא | ג' קדמאי ואנכון | ג' ולא אנכון | 6 רובא | ג' רבה | 7 ארס שוקע | ג' אירס שוקע

אמר רבי ירמיה. חלב הגוי למה הוא אסור. משום תערובת בהמה טמאה. ותני כן. שראל יושב בעדר והגוי חולב ומביא לו ואינו חושש.

**Halakhah 9:** “The following matters of Gentiles are forbidden,” etc.<sup>347</sup> Why is Gentile’s milk forbidden? Rabbi Abba (son of) [in the name of]<sup>348</sup> Rav Jehudah, Rabbi Simon in the name of Rabbi Joshua ben Levi: Why is Gentile’s milk forbidden? Because of uncovering<sup>158</sup>. Let him make cheese! Rabbi Samuel ben Rav Isaac said, because of the poison given between the holes<sup>349</sup>. It was stated so: There are three kinds of poison; one swims, one sinks down, and one is similar to a net<sup>350</sup>. Workers were in the field. The water pitcher was uncovered. The first ones drank and were [not]<sup>351</sup> disabled. The second ones died. I say that it was sinking poison. In the days of Rabbi Jeremiah the barrels of the great assembly<sup>351</sup> were uncovered. The first ones drank and were not disabled. The second ones died. I say that it was sinking poison. It was stated thus<sup>352</sup>: “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 animals<sup>353</sup>. It was stated so<sup>354</sup>: “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  $\lambda$  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) פִּתְיָן. רַבִּי יַעֲקֹב בֶּר אֲחָא בְּשֵׁם רַבִּי יוֹנָתָן. פֶּת מְהֵלְכוֹת שְׁלַעִימְעוּם הִיא. כֶּךָ אֲנִי אוֹמֵר. מְקוֹם שֶׁפֶת יִשְׂרָאֵל מְצוּיָה בְּדִין הוּא שְׁתֵּהָא פֶת גּוֹיִם אֲסוּרָה. וְעִימְעָמוּ עָלֶיהָ וְהִתִּירוּהָ. אוֹ מְקוֹם שֶׁאֵין פֶּת יִשְׂרָאֵל מְצוּיָה בְּדִין הוּא שְׁתֵּהָא פֶת גּוֹיִם מוֹתֶרֶת. וְעִימְעָמוּ עָלֶיהָ וְאֲסוּרוּהָ. אָמַר רַבִּי מְנָא. וְכִי יֵשׁ עִימְעוּם לְאִישׁוֹר. וּפֶת לֹא כִתְבִישְׁלִי גּוֹיִם הוּא. כֶּךָ אָנוּ אוֹמְרִים. מְקוֹם

שְׂאִין תְּבַשִּׁילִי וְיִשְׂרָאֵל מְצוּיִין בְּדִין הוּא שְׂיָהוּ תְּבַשִּׁילִי גוֹיִם מוֹתְרִין. אֶלָּא כִינִי. מְקוּם שְׂאִין פַּת  
 יִשְׂרָאֵל מְצוּיָה בְּדִין הוּא שְׂתַּהֵא פַת גוֹיִם אֶסוּרָה. וְעִמְעֵמוּ עֲלֶיהָ וְהַתִּירוּהָ מִפְּנֵי חַי נֶפֶשׁ. רַבְנֵין  
 דְּקִיסְרִין בְּשֵׁם רַבִּי יַעֲקֹב בַּר אֶחָא. כְּדַבְּרִי מִי שְׂהוּא מִתִּיר וּבְלַבַּד מִן הַפְּלִטָּר. וְלֹא עָבְדִין כֵּן.  
 1 פת | ש - מ עוד היא שלעמעום | ג שלמעום | כד | גשמ | אמ' ר' | יוסה קנשייתה קומי ר' | יעקב בר אחא  
 מהוא | מהו מהלכות | שלעמעום | מ היא | כד | אני | ש | אנו | 2 | או' | ש | אומ' | מקום | ש | מ | במקום | הוא | ש | היה  
 ועמעמו | ש | ועמעמו | מ | ועמעום | והתירוה | ג | והתירוה | 3 | מקום | ש | מ | במקום | הוא | ש | היה | 4 | לאיסור |  
 ג | לאסור | כתבשילי | ש | תבשילי | מקום | ש | מ | במקום | 5 | תבשילי | ג | תפשילי | הוא | ש | היה | - | ש | מ  
 ועמעמו עליהן ואסרום | מקום | ש | מ | במקום | שפת | ש | מ | שאין פת | הוא | ש | היה | 7 | כדברי | ג | כדברי

<sup>355</sup>Their bread. Rabbi Jacob bar Aḥa in the name of Rabbi Jonathan.

Bread is of the practices of obfuscation. [Rebbi Yose said, so I asked before Rebbi Jacob bar Aḥa: What means “of the practices of obfuscation?”]<sup>356</sup> 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? Rebbi Mana said, is there any obfuscation for prohibition<sup>357</sup>? 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 permitted<sup>358</sup>? 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 Rebbi Jacob bar Aḥa: Following the words of him who was permitting, but only from the store<sup>359</sup>; but one does not do this<sup>360</sup>.

355 There are three parallels to this text, in *Ševi'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 *Ševi'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 *Ševi'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 πρᾶτήρ “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 קוּמֵי רַבִּי חִיָּה רֹבָה. תֵּינִי רַבִּי שְׁמַעוֹן בֶּן יוֹחִי כֹן. אוֹכֵל תַּשְׁבְּרוּ מֵאֲתָם בְּכֶסֶף וְאֶכְלֵתֶם וְגו'. מֵה מַיִם לֹא נִשְׁתַּנּוּ מִבְּרִייתָן אֶף כָּל־דָּבָר שֶׁלֹּא נִשְׁתַּנָּה מִבְּרִייתוֹ. הַתִּיבּוֹן. הָרִי מוּטְלָא וּפְנִקְרִיסִין וְקוּבְטִיּוֹת וְקִלְיוֹת וְחַמִּים שֶׁלְהֶן הָרִי אֵילוּ מוּתְרִין. נִתְּמָא כוּלְהוֹן שְׁהֶן יְכוּלִין לְהִישְׁרוֹת לְחִזּוֹר לְכֻמוֹת שְׁהֵי. קִלְיוֹת לָמָה. רַבִּי יוֹסִי בִירְבִי בּוֹן בְּשֵׁם רַב. כָּל־אוֹכֵל שֶׁהוּא נֹאכֵל כְּמוֹת שֶׁהוּא כְּחֵי אֵין בּוֹ מְשׁוּם בִּישׁוּלֵי גוֹיִם. עִם הַפֶּת יֵשׁ בּוֹ מְשׁוּם בִּישׁוּלֵי גוֹיִם. מֵה מְקִיִּים רַבִּי חִיָּה רֹבָה אוֹכֵל תַּשְׁבְּרוּ מֵאֲתָם. בְּאוֹכֵל תַּשְׁבְּרוּ. הַאֲכַלְתוּ שְׁבִרְתוֹ. אִם הִנֵּה קוּשָׁה עֲלֵיךְ בְּאוֹכֵל תַּשְׁבְּרוּ וְאִם לֹא הִכְרָה (הַרְבָּה) עֲלֵיו כֶּסֶף. אָמְרוּ. כֹּן הִנֵּה רַבִּי יוֹנָתָן עֲבִיד. כֹּן הִנֵּה בַר נֶשׁ רַב עֲלִיל לְקִרְתָּא הִנֵּה מִשְׁלַח לֵיהּ אִיקְרִין. דְּאֵין אֶתְּמָא דִּין דְּתָנוּס אוּ דִּין דְּאֶרְמָלָא יִשְׁכַּח אֶפְרִין מִפְּיִסָּא.

1 חייה | ג חייה רובה | ש רובה 2 וגו' | ש וגם־מים תכרו מאתם בכסף וגו' לא | ש שלא נשתנו | ג נשתנו מברייתן | ג מברייתם 3 מוטלייא | ג מוטלייה ופנקרסין | ש ופנקרסיים וחמים | ש וחמין כולהון | ש כולהון 4 להשרות | ג - ש להשרות לחזור | ש להחזיר לכמות | ג ליכמות ש כמו | ש למה | ש מה | ש אמ' ר' אוכל | ג אוכל 5 בשולי | ש תבשילי - | ויוצאין בו משום עירובי תבשילין אם הפת... גוים | ש - 6 חייה רובה | ש חייה רובה אם | ש שאם 7 תשברו | G תישברו באוכל | ש באוכל לאו | G לוו הכרה | ש הכרע הוה | G הוה עבד | ש עבד 8 הוה | G הוה - | ש חמי רב | G דרב עליל | G עלל לקרתא | ש לקרתיה הוה | G הוה - | ש מיי אמר דאין | G דאן אתא | G אתה דין | ש דין (2) דיתום | G דיתם | ש דיתם 9 ישכח | ש נישכח מפייסא | G מפייסה ש מפייסיה עלוי

<sup>261</sup>They said before the Elder Rabbi Ḥiyya: Rabbi Simeon ben Iohai stated thus: *Food you shall buy from them with money and eat, etc.*<sup>362</sup>. As water is not changed from its natural state, so anything which was not changed from its natural state<sup>363</sup>. They objected: Are there not their dry beans<sup>364</sup>, פְּנִקְרִיסִין<sup>365</sup> and קוּבְטִיּוֹת<sup>366</sup>, roasted grain, 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 Rav<sup>367</sup>: Any food which can be eaten alone raw is not in the category of Gentile cooking<sup>368</sup>. (With bread it is in the category of Gentile cooking<sup>369</sup>.) How does Rabbi Ḥiyya 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)<sup>370</sup> with him money. They said, that is what Rabbi Jonathan did. When a superior<sup>371</sup> came to [his]<sup>372</sup> 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. Joḥanan. 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, קפאטיית. 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.

46) מי אָסר אַתְּ הַשְּׁמֵן. רַב הִנְדָּה אָמַר. דְּנִימָל אָסְרוּ. וַיִּשֶׁם דְּנִימָל עַל-לֶבָו וּגו'.  
 וּמִי הִתִּירוּ. רַבֵּי הִתִּירוּ וּבֵית דִּינֵוּ. בְּשִׁלְשָׁה מְקוֹמוֹת נִקְרָא רַבֵּי הִנְדָּה הַנְּשִׂיא. רַבּוֹתֵינוּ.  
 בְּגִיטִין וּבְשִׁמְן וּבְסַנְדֵּל. וְקָרוּ לֵיהּ בֵּי דִינָא דְשָׂרוּ מִישְׁחָא. כָּל-בֵּית דִּין דְשָׂרוּ ג' דְבָרִים נִקְרָא בֵּי  
 דִּינָא שְׂרָפָא. אָמַר רַבֵּי יוֹדָן. בֵּית דִּינֵוּ חֲלוּק עָלָיו בְּגִיטִין. מִהוּ שִׁתְּהָא מוּתְרָת לְהִנְשִׂיא. רַבֵּי  
 חַגְיִי אָמַר. מוּתְרָת לְהִנְשִׂיא. רַבֵּי יוֹסִי אָמַר. אָסְרָה לְהִנְשִׂיא.

1 אסרו | שG 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 | שG ר' ובית דינו התירו בשמן נקרא | G נקרא יהודה | G  
 יודן 3 בגיטין | G בגיטין וקרו ליה בי דינא דשרו מישחא. כל | שG וקראו לו בית דין שרייה<sup>6</sup> שרייה<sup>6</sup> שכל  
 דשרו | G שהוא מתיר ש שהוא מבטל נקרא בי דינא שריא | G נקרא בית דין שרייה ש נקרא בית דין שרייה  
 4 יודן | ש יודן ביר' ישמעאל בגיטין | G בגיטין מהו... להינשא | ש - 5 יוסי | G יוסה

רבי אַחא רבי תנחום בר חייה בשם רבי חנינה ואמרי לה בשם רבי יהושע בן לוי. שְׁהוּ עוֹלֵין לְהַר הַמֶּלֶךְ וְנִהְרְגִין עָלָיו. יִצְחָק בַּר שְׁמוּאֵל בַּר מִרְתָּא נָחַת לְנִצְיָבִין. אֲשַׁפַּח שְׁמַלְאֵי הַדְּרוּמִי יְתִיב דְּרַשׁ. רַבִּי וְבֵית דִּי הִתִּירוּ בְּשִׁמְן. אָמַר שְׁמוּאֵל אָבָל. רַב לָא קָבִיל עָלֶיהָ מִיכּוֹל. אָמַר לִיהָ שְׁמוּאֵל. אָכּוֹל. דְּלָא כּוֹן אֲנָא כְּתֵב עָלֶיךָ זְקוֹן מִמְרָא. אָמַר לִיהָ. עַד דְּאֲנָא תִּפְמוֹן אֲנָא יָדַע מָאן עָרַר עָלֶיהָ שְׁמַלְאֵי הַדְּרוּמִי. אָמַר לִיהָ. מַר בְּשֵׁם גְּרַמְיָה לֹא בְּשֵׁם רַבִּי יוֹדֵן נִשְׁיָא. אֲטָרַח עָלָיו וְאָכָל.

1 בר | G ביר' ואמרי | G ואמרו | 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 ר' שמלאי | 3 דהדומי | G דרומי | ש | ש | דרש | ש | חדיש | אמ' | G | ש - אבל | G | ש | ש | קביל עלויי ואכל | קביל | G | קבל | ש - עליה מיכול | ש | ש | אכל | 4 דלא | G | אי לכן כתב עלך | ש | כתיב עלך | אמ' | ליה | G - | דאנא | G | דנה | אנא | G | אנה | 5 מאן | G | מן | ערר | ש | עירער | שמלאי | G | שמליי | ש | ר' שמלאי | הדומי | G | דרומי | אמ' | ליה | מר | ש | מהו | מר | ליה | G | מה | יודן | נשייא | ש | ר' ובית דינו | G | יודן | נשייא

רבי יוחנן בְּעֵי. וְלֹא כֹן תִּנְיִנְן. שְׁאֵין בֵּית דִּין יָכוֹל לְבַטֵּל דְּבָרֵי בֵּית דִּין חִבְרוּ עַד שְׁיָהָא גְדוֹל מִמֶּנּוּ בְּחֻקָּהָ וּבְמִנְיָן. וְרַבִּי וְבֵית דִּינוּ מִתִּירִין מֵהָ שְׁאֲסַר דְּנִינְאֵל וְחִנְיָרִי. רַבִּי יוֹחֲנָן קְדִישֵׁיהָ. אָמַר רַבִּי יוֹחֲנָן. מְקוֹבֵל אֲנִי מִרַבִּי לְעֶזְרָא בִּירְבִי צְדוֹק שְׁכַל־גְּזִירָה שְׁבֵית דִּין גּוֹזְרִין וְאֵין רוֹב צִיבוּר מְקַבְּלִין אִינְהָ גְזִירָה. בְּדָקוּ וּמִצְאוּ בְּגוֹזְרֵתוֹ שְׁלִשְׁמִן וְלֹא מִצְאוּ שְׁקִיבְלוּ רוֹב הַצִּיבוּר עָלֶיהָ.

1 ולא | G | לא | דברי | G | את דיברי | חברו | G | חבירו | 2 בחכמה | G | בחוכמה | ר' | G | ור' | וחבירוי | 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 | ו | שבדקו | בגזירתו | ש | גזירה | מצאו | שקיבלו | ש | קיבלו | G | נימצאו | שקיבלו

<sup>373</sup>Who forbade the oil? Rav Jehudah said, Daniel forbade it. *Daniel was careful, etc*<sup>374</sup>. And who permitted it? Rebbi permitted it and his court<sup>375</sup>. At three places is Rebbi Jehudah the Prince called “our teachers,” in divorce documents<sup>376</sup>, oil, and a sole<sup>377</sup>. They called him “the court which permitted oil.<sup>378</sup>” Any court which permits three [previously forbidden] things is called “permissive court.” Rebbi Yudan said, his court disagreed with him about the bills of divorce. <sup>379</sup>May she be allowed to remarry? Rebbi Haggai said, she is allowed to remarry. Rebbi 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 it<sup>380</sup>. Isaac bar Samuel bar Martha went down to Nisibis. He met Simlai<sup>381</sup> the Southerner who sat and expounded: Rebbi and his court permitted the oil. Samuel said, true<sup>382</sup>! Rav did not accept on himself to eat. Samuel told him, eat! Otherwise I shall declare you a rebellious Elder<sup>383</sup>. He answered him, when I still was there<sup>384</sup> I

knew who complained about it, Simlai the Southerner. He told him<sup>385</sup>, he said it in the name of himself, not in the name of Rabbi Jehudah the Prince. He bothered him and he ate<sup>386</sup>.

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”<sup>387</sup>? 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 Ṣadoq that any restrictive edict passed by a court which is not accepted by the majority of the public is not an edict<sup>388</sup>. They checked and found in the matter of the edict about oil and did not find that a majority of the public followed it<sup>389</sup>.

373 The following also is in *Šabbat* I, 3d line 16 ff.,  $\psi$ . 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  $\psi$  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 *Gittin* 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 שְׁלֵהָן. בַּר קַפְרָא שְׂרִי. חִזְקִיָּה אָסֵר. עַד כְּדוֹן בְּשִׁנְצָלִית לְדַעַת. נִצְלִית שְׁלֵא לְדַעַת. נִישְׁמַעִינָה מִן הַדָּא. מַעֲשֶׂה שְׁנַפְלָה דְלִיקָה בְּאֶשֶׁת קִנְיִים וּבְאִגָּם תְּמָרִים וְהִי שָׁם חֲגָבִים וְנִצְלוּ. אֲתָא עוּבָדָא קוּמִי רַבִּי מְנָא וְאָסֵר. אָמַר רַבִּי אֶבְהוּ. מִשּׁוּם תַּעֲרוּבַת חֲגָבִים טְמֵאִים. אָמַר רַבִּי יוֹסִי בִּירְבִי בּוֹן. וְהָדָא מִן חֲמִירָתָא דְרַב. רַב נָחַת לְתַמְּן חֲמִתּוֹן מְקַלְלִין וְחֲמַר עָלֵיהוֹן. חַד בַּר נֶשׁ הָוָה טַעִין קוּפְדָּא מְהַלְךְ בְּשׁוּקָא. אֲתָא דִּיִּיתָא וְחֲטַפְתָּא מִן יָדֵיהּ אֲתָר תּוֹתִיָּה. אָזַל בְּעֵי מִיִּסְבִּינִיָּה. אָמַר לִיָּהּ רַב. אָסִיר לָךְ. דְּנָא אָמַר דְּנִבְלִיָּה הָוֹת טַעִינָה וְאֲתָר תַּתָּה וְנִסְיַבַּת דִּין תַּחוּתֵי. חַד בַּר נֶשׁ אָזַל בְּעֵי מְשֻׁגָּא אִיִּסְקוּפְתָּא גּוֹ נְהָרָא. אֲנִישִׁיתָּה וְסַלְקָ לִיָּהּ. אָזַל בְּעֵי מִיִּסְבִּינִיָּה. אָמַר לִיָּהּ רַב. אָסִיר לָךְ. דְּנָא אָמַר הֵיא שְׁטַפָּה נְהָרָא וְאִיִּתֵי חוּרֵי דְנִבְלִיָּה תּוֹתִיָּה.

1 שלהן G | שלהם קפרא | G קפרא שרי | G אמר מותרת אסר | G אמר אסורה בשנצלית | G כשנצלית  
2 נצלית שלא | G ניתלאת שלוא הדא | G הדא 3 אתא עובדא | G אתא עובדה משום | G משם 4  
יוסי | G יוסה והדא | G והדה חמירתא | G חמירתה 5 הוה טעין קופד מהלך בשוקא | G הוה מהלך  
בשוקא ובדיה 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 דן 7 תחותי | G  
תחותי משוגא איסקופתיה | G משוגא איסקופתי נהרא | G נהרה ליה | G לה 8 מיסבניה | G מהבנה  
ליה | G לה דנא אמ' . . . תותיה | G דנבילה היא דנמר אהי אשתפט ואייתי נהרה תותיה

Their roasted egg, Bar Qappara permitted, Hizqiah forbade<sup>390</sup>. 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 Mana<sup>391</sup>, who forbade them. Rabbi Abbahu said, because of admixture of impure locusts<sup>392</sup>. 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 them<sup>393</sup>. A man was carrying meat while walking on the market. There came a vulture, seized it from his hand, and it dropped off<sup>394</sup> 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 instead<sup>395</sup>. A man went to wash a piece of meat<sup>396</sup> 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 place<sup>397</sup>.

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 אַתָּר is Afel of Aramaic נָתַר 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 mesi`a* 24b s. v. אַתָּא.

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*<sup>2</sup> 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.

תּוֹרְמוֹסִין שְׁלֵהֶן מֵהַן. רַבִּי אֹסֵר. גְּנִיבָה מוֹתִיר. אָמַר רַבִּי. אֲנִי זָקוּ וְהוּא זָקוּ. (41d line 76)  
אֲנִי עֲלֵת עַל לִיבֵי לְאַסּוֹר וְהוּא עֲלֵת עַל דְּעֵתוֹ לְהַתִּיר. רַבִּי מְנָא בְּרַתְנָחוּם אָזַל לְצוּר וְהַתִּיר  
תּוֹרְמוֹסִין שְׁלֵהֶן. רַבִּי חִינְיָה בְּרַבָּא אָזַל לְצוּר וְאַשְׁפַּח לְרַבִּי מְנָא בְּרַתְנָחוּם שְׁהַתִּיר תּוֹרְמוֹסִין  
שְׁלֵהֶן. אֲתָא גַבִּי רַבִּי יוֹהָנָן. אָמַר לֵיהּ. מַה מַּעֲשֶׂה אִירַע לְגִידִי. אָמַר לֵיהּ. אֲשַׁפְּחִית לְרַבִּי מְנָא

בַּר תַּנְחוּם שֶׁהִתִּיר תוֹרְמוּסִין שְׁלֵהֶן. אָמַר לִיה. וְלֹא פָּגַעַתְּ בִּיה. אָמַר לִיה. אָדָם גְּדוֹל הוּא  
וְהוּא יוֹדֵעַ לְמַתְקֵךְ אֶת הַיָּם הַגְּדוֹל. אָמַר לוֹ. לֹא בְּנִי. חֲשַׁבּוֹן מִים הוּא יוֹדֵעַ. וּבִשְׁעָה שֶׁהַמַּיִם  
מְקַלְסִין אֶת בּוֹרְאָן הוֹן מִתְמַתְקִין. אָמַר רַבִּי יִצְחָק בַּר לְעֶזֶר. בָּא לוֹמֵר גְּנִיּוֹ וְאָמַר שְׂבָחוּ. אָמַר  
רַבִּי יוֹסֵי בִּירְבִּי בּוֹן. חֲשַׁבּוֹן גְּדוֹל הוּא. רַבִּי זְכַאִי דְאַלְכְּסַנְדְּרִיאָה הָוָה יוֹדֵעַ לָהּ. אָמַר. וְאֵי בְּעִית  
לְפַתָּה מִיָּנִיה.

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' | ג' תורמוסין | ג' תורמוסין 4 שלהן  
| ג' שלהם אתא | ג' אתה ליה | ג' לה (2) לידך | ג' על ידך ניה | ג' ליה | ג' לו רבי 6 יודע | ג' יודיע  
לאו | ג' לוי

What is the status of their lupines<sup>398</sup>? 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 Ḥiyya 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 him<sup>399</sup>, no, my son. He knows how to compute the waters; when the waters come together to acclaim their Creator<sup>400</sup> 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 auto-

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 שְׁלֵהֶן מֵהוּ. נִישְׁמְעִינָה מִן הַדָּא. רַבִּי אֲמִי סָלַק עִם רַבִּי יוֹדָן נְשִׂיאָה  
לְחִמְתָּא דְגִדְרָא וְהִתִּיר חֲלוּט שְׁלֵהֶן. רַבִּי בָּא בַר מְמַל בְּעֵי. מֵה בֵּיין חֲלוּט לְתוֹרְמוּסִין. אָמַר רַבִּי  
יוֹסֵי. חֲלוּט מְחוּסָר מַעֲשָׂה יְדִי הָאוֹר הוּא. תוֹרְמוּסִין אֵינָן מְחוּסָר מַעֲשָׂה יְדִי הָאוֹר הוּא.

חונרנס אין בו משום בישולי גוים ויוצאין בו משום עירובי תבשילין. רבי בא בשם רב אפי. מרטיסה אין בו משום בישולי גוים ויוצאין בו משום עירובי תבשילין. רבי יוסי בירבי בון בשם רב הונא. קל-אוכל שהוא נאכל חי כמות שהוא אין בו משום בישולי גוים ויוצאין בו משום עירובי תבשילין.

What is the rule for their parboiled [food]<sup>401</sup>? 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*<sup>402</sup> is not forbidden because of Gentile cooking and one may use it for *eruv tavšilin*<sup>368</sup>. *Martisa*<sup>401</sup> 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*<sup>368</sup>.

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 חורנס as Babylonian הרסנא “sauce made out of ground sardines” (Jastrow) since Palestinian ח often corresponds to Babylonian ה. Also compare Latin *arvina* “grease, fat,” and *moretum*, Greek μωρτοτός, a country dish (E. G.).

מסנה י: אילו מותרין באכילה קלב שחלבו גוי וישראל רואהו והדבש. והדבדבניות אף על פי שמנטיפות אין בהן משום הכשר משקה. וכבשים שאין דרכן לתת בהן יין וחומין. וטרית שאינה טרופה וציר שיש בה דגה ועלה של הלתית ויתיה קלוסקא המוגלגלין. רבי יוסי אומר השלוחין אסורין. והתנבים מן הסלילה אסורין וכן התפתק 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 grapes<sup>403</sup> (even though they drip they do not prepare for impurity.<sup>404</sup>) Preserves in which usually wine or vinegar is not used, and uncut *triton*<sup>343</sup>, and fish sauce containing a

whole fish<sup>344</sup>, and a leaf of *asa foetida*<sup>205</sup>, and rolled olives<sup>405</sup>; Rabbi Yose says, the pitted ones are forbidden<sup>406</sup>. Locusts from the basket are forbidden<sup>407</sup>, from storage permitted; similarly for heave<sup>408</sup>.

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*: יתי קלוטטא המגולגלים 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.

42a line 20) הלכה י: אילו מותגין בהנייה כול'. אמר רבי לעזר. הדיא 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 שהו שופתין בקדירה. ישראל שופת ויהווי מנער. מי מחזיר. סברין מימר. ישראל מחזיר. אמר רבי בנימין בר ליואי. והוא שנתבשל כמאכל בן דרוסאי. רבי יוסי בעי. אם בשנתבשל כמאכל בן דרוסאי למה ליה ישראל מחזיר. אפילו יהווי מחזיר.



**Halakhah 10:** “The following are permitted for usufruct,<sup>409</sup>” 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 usufruct<sup>410</sup>.

Rabbi Jacob bar Aḥa, Rabbi Ḥiyya in the name of Rabbi Joḥanan: If a Jew and a Gentile put a pot on the fire, the Jew puts it down and the Gentile stirs<sup>411</sup>. Who puts it back? One would say that the Jew puts it back<sup>412</sup>. Rabbi Benjamin bar Levai said, only if it is cooked like Ben-Drosai’s<sup>413</sup> 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 back<sup>414</sup>.

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) אי זהו החילק. רב אמר. סולתניתא. אמר רבי יוחנן. הוא חילק הוא טרית טרופה. רבי זעירא כהנא בר תחליפה חנו בר בא בשם רב. לחלוּתתא אסורה משום תערובת דגים טמאים. רבי בא בשם רב יהודה. הדא דתימר. במקום שאין המים מהלכין. אכל במקום שהמים מהלכין אין דג טמא מהלך עם דג טהור. והא ימא דטיבריה כגון המים מהלכין הן. אמר רבי יוסי בירבי בון. ובלבד בשעה שהדג טורף. שמואל אמר. הדא חפיתה יתביה גו קליפתה. אין עבדת לחלוחי שרייא. ואילא אסירא.

אי זו הטרית שאינה טרופה. כל-שהראשים והשירות שלה קיימין. רבי לעזר בשם רבי חנינה. מעשה בספינה אחת משלביית רבי שהיו בה יותר משלש מאות חביות. ובדק רבי את

כולהון ולא מצא אלא אחת שהראשים והשיזרות שלה קיימין. והתיר את כולהן. 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. ואילן איגרתא לא גיזם לוקין פתיב בהן. ואת אמר. על ידי עילא. והכא על ידי עילא.

What is *alec*? Rav said, *soltanit*<sup>415</sup>. 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 Genezareth is similar to running water. Rabbi Yose ben Rabbi Abun said, only at times when the fish bites. Samuel said, *hafitha*<sup>416</sup> one judges according to its shell. If it produces mucus it is permitted, otherwise forbidden.

What is uncut triton? Any where heads and spines exist<sup>417</sup>. 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 Assi<sup>190</sup> asked, would it not be reasonable that one amphora be permitted but the other amphoras be forbidden? But it was by a pretext.<sup>418 419</sup> (A sale)<sup>420</sup> 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 pretext<sup>421</sup>?

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 حِفْث 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.

421 In *Terumot* one reads "cheeses", ג for

ז, 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) תַּנִּי עוֹלָא שְׁכַפְּתָא קוּמִי רַבִּי דוֹסָא. דָּג טַמָּא מִשְׁרִיץ. דָּג טְהוֹר מְטִיל בְּיָצִים. חֲזוֹר וְתִנָּא קוּמוּי. מַעֵי דָּגִים וְקִירְבֵי דָּגִים אֵינְן נֶאֱכָלִין אֶלְאָ עַל פִּי מוּמְחָה. אָמַר לִיה. חֲזוֹר בְּדָ. הֲדָא תַנִּי אוֹ הֲדָא. הֲוָה בְּעֵי מִיחְזוֹר בֵּיה. אָמַר לִיה רַבִּי זְעִירָא. לֹא תַחֲזוֹר בְּדָ. בִּיצִיאָתוֹן הֵן נִגְמְרוֹת. רַבִּי בָּא בְּשֵׁם רַב יְהוּדָה. אִם אָמַר לָךְ. מְלַחְתִּים. נֶאֱמָן. נֶתָן בַּר בָּא אָמַר קוּמִי שְׂמוּאֵל. יְדַע אָנָּה מִפְּרָשָׁא בֵּין עוֹבְרֵי דָּגִים טַמְאִין לְעוֹבְרֵי דָּגִים טְהוֹרִין. עוֹבְרֵי דָּגִים טַמְאִין עָגוּלִין. עוֹבְרֵי דָּגִים טְהוֹרִין אֲרוּכִין. אַחֲוִי לִיה הֲדָא סַלְפִּיתָא. אָמַר לָהּ. כְּזָה מָהוּ. אָמַר לִיה. טַמָּא. אָמַר לִיה. לֹא בִישׁ לִי דְאִמְרַתְּ עַל טְהוֹר טַמָּא. אֶלְאָ סוֹפְדָ דְאָמַר עַל טַמָּא טְהוֹר. תַּנִּי. אֵין לוֹקַחִין מַעֵי דָּגִים וְקִירְבֵי דָּגִים אֶלְאָ עַל פִּי מוּמְחָה. אֵין לוֹקַחִין תְּכַלֵּת אֶלְאָ עַל פִּי מוּמְחָה. אֵין לוֹקַחִין גְּבִינָה וְתִינִיקֵי אֶלְאָ עַל פִּי מוּמְחָה. אֵין לוֹקַחִין יָן בְּסוּרְיָא אֶלְאָ עַל פִּי מוּמְחָה. אֵין לוֹקַחִין בְּשֵׁר שְׂאִין בּוֹ סִימָן אֶלְאָ עַל פִּי מוּמְחָה. וְכוּלָן נֶאֱכָלִין אֶצֶל מִי שְׂאִינוּ מוּמְחָה וְאֵינוּ חוֹשֵׁשׁ.

Ulla the leatherworker<sup>422</sup> stated before Rabbi Dosa, an impure fish has live births, a pure fish lays eggs<sup>423</sup>. He started again and stated, fish intestines and fish innards are eaten only upon certification by an expert<sup>434</sup>. 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 laid<sup>425</sup>. Rabbi Abba in the name of Rav Jehudah, if one tells you, I salted them, he may be believed<sup>426</sup> 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 elongated<sup>427</sup>. He showed him a *salpe*<sup>428</sup>; 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 expert<sup>429</sup>. One buys dark blue wool only upon certification by an expert<sup>204,430</sup>. One buys Bithynian<sup>431</sup> cheese only upon certification by an expert<sup>429</sup>. One buys wine in Syria only upon certification by an expert<sup>429</sup>. One

buys meat without a mark only upon certification by an expert<sup>429</sup>. But all one may eat at a person's who is not an expert without worry<sup>429</sup>.

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 ותנייקי is a scribal error for בתיניקי "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 היניקאי, Erfurt ms. ובית היניקי, 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 בְּשֵׁם רַבִּי יְהוֹשֻׁעַ בֶּן לֵוִי. שִׁילַח לוֹ חִילְתִּית נֶאֱמָן. רַבִּי יַעֲקֹב בְּרַ אַחָא רַבִּי יַעֲקֹב בְּרַ אִזְדִּי בְּשֵׁם רַבִּי יְהוֹשֻׁעַ בֶּן לֵוִי. שִׁילַח לוֹ תַבְלַת נֶאֱמָן. טְלִינָא דְלֵוִי צְנַבְרִינָא הָהּ מְזַבְּן פִּירִין. רַבִּי יַעֲקֹב בְּרַ אַחָא בְּשֵׁם רַבִּי יֵסָא. עֲבָדוּ שְׁלָנְאָמָן נֶאֱמָן. גְּרַמְנָא עֲבָדִיה דְרַבִּי יוֹדֵן נְשִׂינָא הָהּ לֵיה תּוֹכְלָא. רַבִּי יֵסָא בְּשֵׁם רַבִּי יוֹחָנָן. עֲבָדוּ שֶׁל מוּמָחָה כְּמוּמָחָה.

Rebbi Aha, Rebbi Tanḥum in the name of Rebbi Joshua ben Levi: If one sent *asa foetida* he is trustworthy<sup>432</sup>. 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 Šanbar was selling produce<sup>433</sup>. 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 expert<sup>434</sup>.

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 תניי תניי. שחורה אסורה ולבנה מותרת. אית תניי תניי. 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 לנא והנה נותן לתוכה שומן שלחזיר.

“And *salqonarit* salt.” Some Tannaïm state, black one is forbidden but white permitted. But some Tannaïm state, white one is forbidden but black permitted<sup>435</sup>. 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 Ḥanania ben Gamliel said in the name of Rabbi Jehudah ben Gamliel, both are forbidden. Rabbi Ḥanania<sup>436</sup> 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. Ḥanania ben Gamliel, Babli 39b.

(42a line 68) הן סככות הן פרעות. הן רפפות הן רעולות. הן איסקטגיות הן ספיות. הן פוסות הן גומות. היא מקום תחת הפוסות היא מקום הנחת חתיכות. הן ייתי קלויסקא הן ייתים מגולגלים.

והשלוחין אסורין. רבי חינה בשם רבי יוחנן אמר. מין הוא והן נותנין לתוכן חומץ שניהו חולצין את גלעיניהן.

<sup>437</sup>Coverings are the same as protuberances<sup>438</sup>. Veiled is the same as hulled<sup>439</sup>. Roofs are the same as covers<sup>440</sup>. Cups are the same as grooves<sup>441</sup>. A place under cups is a place for putting down pieces<sup>442</sup>. Κυλιστόι olives are rolled olives<sup>405</sup>.

“The pitted are forbidden.” Rebbi Ḥiyya in the name of Rebbi Joḥanan said, it is a variety<sup>443</sup> 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 המגולגלין* 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 *סככות* refers to trees giving shade and *פריעות* 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 (*תפיש*).

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:** כָּל־הַצְּלָמִים אֲסוּרִין מִפְּנֵי שֶׁהֵן נֶעְבְּדִין פְּעַם אַחַת בַּשָּׁנָה דִּבְרֵי רַבִּי מֵאִיר. וְהַכְּמִים אוֹמְרִים אֵינוֹ אֲסוּר אֶלָּא כָּל־שֵׁשׁ בְּיָדוֹ מִקָּל אוֹ צְפוּר אוֹ כְּדוּר. רַבֵּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר כָּל־שֵׁשׁ בְּיָדוֹ כֵּל דְּבָר:

**Mishnah 1:** All statues are prohibited<sup>1</sup> 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 rod<sup>2</sup>, or a bird<sup>3</sup>, or a globe<sup>4</sup>. 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:** כָּל־הַצְּלָמִים אֲסוּרִין כּוֹל. אָמַר רַבִּי חִיָּבָה בַּר אֲבָא. מִפְּנֵי שֶׁהֵן נֶעְבְּדִין בְּכָרְךָ גְדוֹל שְׁבָרָמִי פְּעַמִּים בְּשַׁבּוּעַ. מַעֲתָה בְּמִקּוֹם שֶׁנֶּעְבְּדִין וְהוּא אֲסוּרִין וּמִקּוֹם שֶׁאֵינֶן נֶעְבְּדִין יְהוּ מוּתָרִין. אָמַר רַבִּי יוֹסִי. מִכֵּיוֵן שֶׁנֶּאֱסָרוּ בְּמִקּוֹם אֶחָד נֶאֱסָר מֵינֶן בְּכָל־מִקּוֹם. מָה אֲנִי קוֹיָמִין. אִם דְּבַר בְּרִיא שֶׁהֵן שֶׁל מַלְכִים. דְּבַרֵי הַכֹּל. אֲסוּר. אִם דְּבַר בְּרִיא שֶׁהֵן שֶׁל שְׁלִשְׁטוֹנוֹת. דְּבַרֵי הַכֹּל. מוּתָר. אֶלָּא כֵּן אֲנִי קוֹיָמִין בְּסֵתֵם. רַבִּי מֵאִיר אוֹמֵר. סֵתְמֵן שְׁלִשְׁטוֹנוֹת. וְרַבֵּן אֶמְרִי. סֵתְמֵן שְׁלִשְׁטוֹנוֹת.

אֲשֵׁיאוֹ נִגְרָא בְּשֵׁם רַבִּי יוֹחָנָן. אִיקוּנִיּוֹת לָמָּה הֵן אֲסוּרוֹת. מִפְּנֵי שֶׁמִּקְטִירֵיהֶן לִפְנֵיהֶן בְּשַׁעַה שֶׁהֵן עוֹלוֹת. אָמַר רַבִּי יוֹחָנָן. מוּתָר לְרֵאוֹתָן בְּשַׁעַה שֶׁהֵן יוֹרְדוֹת. מָה טַעַם. בְּהַפְרַת רְשָׁעִים תִּרְאָה: קֵתֵב הַמְּהַלֵּךְ תַּחַת הַצְּאוּרוֹת אוֹ תַּחַת הָאִיקוּנִיּוֹת אֵין מִסְתַּכְּלִין בָּהֶן בְּשַׁבָּת. וְלֹא עוֹד אֶלָּא אִף בַּחוּל אֵין מִסְתַּכְּלִין בְּאִיקוּנוֹת. וּמָה טַעַם. אֶל־תִּפְּנֹו אֶל־הַאֵלִילִם. אֵל תִּפְּנֹה לְעוֹבְדָן. רַבִּי יְהוּדָה אוֹמֵר. אֵל תִּפְּנֹה לְרֵאוֹתָן מִמֶּשׁ.

**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 period<sup>5</sup>. 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 anywhere<sup>6</sup>.

Where do we hold<sup>7</sup>? If it is certain that they are of kings<sup>8</sup>, according to everybody they are forbidden. If it is certain that they are of rulers<sup>9</sup>, according to everybody they are permitted. But where we hold is if it is indeterminate. Rabbi Meir 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 forbidden<sup>10</sup>? 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*<sup>11</sup>. One may not look at inscriptions under figures or under pictures on the Sabbath<sup>12</sup>. Not only this, but even on a weekday one does not look at pictures. What is the reason? *Do not turn to idols*<sup>13</sup>, do not turn to worship them; Rabbi Jehudah says, do not turn actually to see them.

5 This is given as R. Meir's reason.

forbids only three-dimensional forms.

6 Babli 40b (following R. Meir).

Greek εἰκόνη, "portrait".

7 Where is the disagreement between R. Meir and the rabbis?

11 Ps. 34:37.

8 Since Augustus introduced the worship of the Emperor in the provinces, any statue of an Emperor is an idol.

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.

9 The statue of a procurator is not an idol.

13 Lev. 19:4.

10 Flat pictures of pagan deities or pagan subjects, since the Second Commandment

פד דמך רבי נחום בר סימאי חפיו איקונתא מחצלן. אמרי. כמה דלא חמתן  
 בהי"י לא חמיון בךמכותיה. וחכמין אינון כלום. אמר רבי שמעון בן לקיש. אין בינינו  
 ולצדיקים אלא דיבור פה בלבד. אמר רבי זעירא. שומע הוא המות קילוסו כמתוך חלום.  
 אמר רבי אשיין. שומע המות קילוסו כמתוך החלום. ולמה נקרא שמו נחום איש קודש  
 קדשים. שלא הביט בצורת מטבע מימיו. ולמה נקרא שמו רבינו הקדוש. שלא הביט במילתו  
 מימיו.

When Rabbi Nahum bar Simai expired, the pictures were covered by bast mats<sup>14</sup>. Just as he did not see them during his lifetime, so he should not see them in his death. But do they know anything<sup>15</sup>? Rabbi Simeon ben Laqish said, the only difference between us and the just is speech<sup>16</sup>. Rabbi Ze'ira



said, the dead person hears his eulogy as in a dream. Rabbi Ashian said, the dead person hears his eulogy<sup>16a</sup> 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 coin<sup>17</sup>. Why was he called “our holy teacher”? Because he never looked at his circumcision<sup>17</sup>.

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 Sabbath* 118b, *Pesahim* 104a.

42c line 8) פד דמך רבי אהא איתחמי בטיהרא כוכבא. פד דמך רבי חנו איתכפון אנדךטיא. פד דמך רבי יוחנן איתכפון איקונייא. אמרין. דלא הנות איקונין דכותה. פד דמך רבי חנינא דברת חוורן איתבוע נמא דטיבריא. אמרין. פד הנה סליק לעיבורא הנה נמא מתבוע קומין. פד דמך רב הושעיה נפל קלון דטיבריא. פד דמך רבי יצחק בן אלשיב איתעקרון שובעין איסקופין מבגלי בתים דגלילא. אמרין. דהוי תלין בזכותיה.

פד דמך רבי שמואל בר רב יצחק איתעקרון ארזיא דארעא דישראל. אמרין. דהנה נסיב שושבתא ומקלס קומי כליה. והוון רבנן מרננין ביה. אמר לון רבי זעירא. ארפון ליה. לית אהו סבא ידע מה עביד. פון דדמך נחתת אישתא מן שמיא ואפסקת בין ערסא לקהלא והוון תלת שעין קליו וברקין בעלמא. חייא דאהו סבא דעבדת ליה שושבתא. ונפקת בת קלא ואמרה. ווי דדמך שמואל בר רב יצחק גמיל חיסדא.

פד דמך רבי יסא בר חלפותא משכו צינורות דם בלדוקיא. אמרין. דיהב נפשיה על גזירתא.

פד דמך רבי אבהו בכו עמודיא דקיסרין. אמרין כותיא. לית אינון אלא מריעין. אמר לון ישראל. ידעין רחסיקיא כמה דקריבייא מריעין. רבי אבהו מי דמך עברון קומי י"ג נהרין דאפרסמון. אמר לון. כל-אילין למאן. אמרו ליה. דידן. אמר לון. וכל-אילין דאבהו. נאני אמרת לךיק יגעת יגור.

<sup>18</sup>When 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 his<sup>19</sup>. When

Rebbi Hanina from Hauran expired, Lake Tiberias was split. They said, when he was going to intercalate<sup>20</sup>, the lake was split before him. When Rav Hoshai expired, the shame<sup>21</sup> 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.

<sup>22</sup>When 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 singing<sup>23</sup> before brides. The rabbis were complaining about him. Rebbi Ze'ira said to them, let him alone, the old man does not<sup>24</sup> 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 showed<sup>25</sup> 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 Laodicea<sup>26</sup>. 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 noise<sup>27</sup>. 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 them<sup>28</sup>, 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*<sup>29</sup>, 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 198? (Babli *Ketubot* 17a.)

23 Arabic *فلس* "to dance while singing".

This יִיָּיִ 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 חייו instead of חייה .

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 מְרַאֶה לְהוֹן לְצַדִּיקִים מִתּוֹן שְׂכָרָם בְּעוֹלָם הַזֶּה וְנִפְשָׁם שְׂבִיעָה וְהוֹן וְשִׁינּוּ לְהוֹן. לְמַלְךְ שְׁעֵשָׂה סְעוּדָה וְצָר כָּל־מִינֵי סְעוּדָה בְּמִפְּהָ. כִּיּוֹן שְׁנִכְנְסוּ הָאוֹרְחִין רָאוּ אוֹתוֹ וְנִפְשָׁם שְׂבִיעָה וְיָשְׁנוּ לְהוֹן.

<sup>30</sup>The 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.

זָבִידֵי בַר לִיזַאי וְרַבִּי יוֹסִי בַר פִּיטְרֹס וְרַבִּי יְהוֹשֻׁעַ בֶּן לִוי אֲמָרוּ וְתִלְתָּא פְּסוּקִין מִי דְמַכּוּן. וְחַד מִינְהוֹן אָמַר עַל־זֹאת יִתְפַּלֵּל כָּל־חַסִיד | אֱלִיָּהּ גוֹ'. וְחַד אָמַר וְיִשְׁמָחוּ כָל־חֹסֵי בְךָ גוֹ'. וְחַד אָמַר מִה רַב טוֹבָה אֲשֶׁר־צָפַנְתָּ לִירְאֵיךָ גוֹ'.

<sup>31</sup>Zavdai ben Levai, and Rebbi Yose bar Petrus, and Rebbi Joshua ben Levi said three verses when they expired. One of them said, *for this every pious one should pray to You*<sup>32</sup> etc. And one said, *all who rely on You will enjoy*<sup>33</sup> etc. And one said, *how great is Your bounty which You did hide for those who fear You*<sup>34</sup> etc.

30 *Gen. rabba* 63(3), an enlarged version.

32 *Ps.* 32:6.

31 *Gen. rabba* 63(4), 92(2), *Ex. rabba* 22(3), *Midrash Psalms* 5(11).

33 *Ps.* 5:12.

34 *Ps.* 31:20.

וְרַבִּי יַעֲקֹב בַר אִידִי בְּשֵׁם רַבִּי יְהוֹשֻׁעַ בֶּן לִוי. מַעֲשָׂה שְׁנִכְנְסוּ זְקִינִים לְעֵלְיִית בַּיִת גְּדִיָּא בִירִיחוֹ. יָצְתָה בַת קוֹל וְאָמְרָה לְהוֹן. יֵשׁ בִּינֵיכֶם שְׁנַיִם רְאוּיִין לְרוּחַ הַקּוֹדֵשׁ וְהַלֵּל הַזָּקֵן אֶחָד מֵהוֹן. נָתַנּוּ עֵינֵיהֶן בְּשִׁמּוּאֵל הַקָּטָן. שׁוּב נִכְנְסוּ זְקִינִים לְעֵלְיִיהַּ בְּבִבְנָה וְיָצְתָה בַת קוֹל וְאָמְרָה לְהוֹן. יֵשׁ בִּינֵיכֶם שְׁנַיִם רְאוּיִין לְרוּחַ הַקּוֹדֵשׁ וְיִשְׁמָחוּ הַקָּטָן אֶחָד מֵהוֹן. נָתַנּוּ עֵינֵיהֶן בְּרַבִּי לִיעֶזֶר. וְהָיוּ שְׂמִיחִין עַל שֶׁהִסְפִּימָה דַעְתּוֹן עַל דַּעַת רוּחַ הַקּוֹדֵשׁ.

<sup>35</sup>Rebbi 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 *Horaiot* 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.

42d line 38) חד מן איילין דנשייתא דמך וקלטת מערתא וסכנתן 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 דמאי. תמן סכנו נפשתא ברם הכא לא סכנו 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 endangered<sup>36</sup>. Rebbi Yose<sup>37</sup> came and held a funeral oration, "happy the man who leaves the world in peace." When Rebbi Yasa died, the sacred fountain<sup>38</sup> of Tiberias fell down and those of the Patriarch's court were happy<sup>39</sup>. 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 יהון 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.

<sup>40</sup>Rebbi 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) וחקמים אומרים אינו אסור אלא כל־שיש בגדו מקל או ציפור או כדור. מקל. שהיה רודה בו את העולם. ציפור. ותמצא כקן | גדל 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 היס כקערה. בגין כן ציירין לה בכדורה גדה. וציורינה 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 בעזרו. ומה כתיב בתריה. עשה | שמים וארץ. ומה ענין זה לזה. אלא מלך בשר ודם יש לו פטרון באיפרכא זו אינו שליט. שמא באחרת. 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 שמששה אומר ויצלני מחרב פרעה: אין כתוב כאן אלא מחרב. אפילו חרב נתנה על צנארו הקדוש ברוך הוא מצילו הימנה.

“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 world<sup>41</sup>. A bird, *my hand reaches to the riches of people as to a bird's nest*<sup>42</sup>. A globe, for the world is globe-shaped.

<sup>43</sup>Rebbi 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.

<sup>44</sup>Rebbi Ze'ira the son of Rebbi Abbahu preached before Rebbi Eleazar. *Happy is he whom the God of Jacob helps*<sup>45</sup>. 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<sup>45\*</sup>; in one district<sup>46</sup> he is not a ruler, maybe in another one? If you say a universal ruler<sup>47</sup> 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*<sup>48</sup>. It is written only *sword*<sup>49</sup>. 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].)

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 חותמין בפרסופות. רבי לעזר בירבי שמעון אומר. כל-פרסופות היו בירושלים חוץ משלאדם.

“They added to this the sword, the crown, and the ring.<sup>50</sup>” 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 it<sup>51</sup>. Rabbi Hanina ben Gamliel says, in my father’s family they were sealing with faces<sup>52</sup>. Rabbi Eleazar ben Rabbi Simeon says, all kinds of faces were in Jerusalem except human ones<sup>53</sup>.

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.

הסל והשילים והסמלים דבר שלבניאון הוא. הנניר והקולמוס דבר שלקבוד הוא. קלמרון צריקה. (42c line 70) רבן שמעון בן גמליאל אומר כל-שיש בידו כל דבר: ובלבד דבר שהוא שלקבוד.

“Rabban Simeon ben Gamliel says, any in whose hand is anything.” But only matters of honor<sup>54</sup>. A basket, laced shoes, and rags are matters of dishonor. Papyrus and reed pen<sup>55</sup> are matters of honor. The pen-case<sup>56</sup> is problematic.

54 Babli 43b.

55 Greek καλαμάριον, τό.

56 Latin *calamus*, -i; Greek κάλαμος, ό.

מִשְׁנֵה ב: הַמוֹצֵא שִׁבְרֵי כְלִים הָרִי אֵילֹו מִתְרִין. מִצָּא תְבֻנֵית יָד אִו תְבֻנֵית רַגְלָה הָרִי אֵילֹו אֲסוּרִין מִפְּנֵי שְׁפִיזָא בְּהוֹן נֶעְבֵּד:

**Mishnah 2:** If one finds shards of vessels<sup>56</sup> they are permitted. If one finds the figure of a hand or of a foot these are forbidden because similar ones are worshipped<sup>57</sup>.

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) הַלְכָה ב: הַמוֹצֵא שִׁבְרֵי כְלִים כֹּל. רַבִּי יוֹסֵי בְּשֵׁם רַבִּי יוֹחָנָן. מִפְּנֵי שְׂרִיבֹן בְּאִין מִן הַדְּלִפְסָיוֹת. מִעֲתָה אֶפִּילוֹ תְבֻנֵית יָד וְתְבֻנֵית רַגְלָה. שְׁנִיזָא הִיא. מִפְּנֵי שְׁפִיזָא מֵהוֹן נֶעְבֵּד.

**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 tables<sup>58</sup>. Then also figures of a hand or figures of a foot? There is a difference since similar ones are worshipped.

58 Greek δέλφισ, -ικος, a (Delphian) tripod possibility of case (2) is remote. or small three-legged table. In this case the

(42c line 75) כְּתוּב וְאֲנָשִׁי בְּכָל עֵשׂוֹ אֶת־סוּכּוֹת בְּנוֹת. תְּרַנְגּוֹלְתָא וּפְרָחִיהּ. וְאֲנָשִׁי־כּוֹת עֵשׂוֹ אֶת־נְרַגְלָה. רִיגְלִיהָ דִּינְעֻקָב וְרִיגְלִיהָ דִּי־סוֹף. נְחֻשְׁתִּי וְנִבְרַכְנִי יִי בְּגִלְלָה; וְנִבְרַךְ יִי אֶת־בֵּית הַמְצָרִי בְּגִלְלָה יוֹסֵף. וְאֲנָשִׁי חֲמַת עֵשׂוֹ אֶת־אֲשִׁימָה: אִימְרָא קָמָה דְּתִימְר וּכְפָר עָלֵיוּ הַכְּהֵן בְּאֵיל הָאֲשֵׁם. הָעֵינִים עֵשׂוֹ נִבְחָן. כְּלָבָא. וְאֶת־תְּרַתְּקָה. חֲמָרָא. וְהַסְפְּרוּיִם שׁוֹרְפִים אֶת־בְּנֵיהֶם בְּאֵשׁ. טוּסָא וּפִי־סוּיִן.

1 סוכות | G סוכות תרנגולתא | G תרנגולתה 2 ריגליה | G ריגליה וריגליה | G וריגליה ויברך יי את בית המצרי בגלל יוסף | G ויברך יי אתך לרגלי 3 אשימה | G אשימה אימרא | G אמרה דתימא | G דאת המצרי אמר וכפר עליו הכהן | G והכהן יכפר עליו 4 כלבא | G כלבה חמרא | G חמרה באש | G באש לאדרמלך וענמלך אלהי ספרויים 5 טווסא ופיסויני | G טפסה ופיסיני



<sup>59</sup>It is written<sup>60</sup>: *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 Joseph<sup>61</sup>, *I divined that the Eternal blessed me for your sake*<sup>62</sup>; *the Eternal blessed the Egyptian's house for Joseph's sake*<sup>63</sup>. *The people of Hamma made the Ashima*, a sheep, as you say, *the Cohen shall atone for him by the asham ram*<sup>64</sup>. *The Awim made the Nibhan*<sup>65</sup>, a dog, *and the Tartaq*, a donkey. *And the Sepharwites burned their sons in fire [to Adrammelekh and Annamelekh the gods of Sepharwaim]<sup>66</sup>, peacock<sup>67</sup> and pheasant<sup>68</sup>.*

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 נבחרו 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) עבוּדה זָרה שְׁנִשְׁבְּרָה. רַבִּי יוֹחָנָן אָמַר. אֲסוּרָה. רַבִּי שְׁמַעוֹן בֶּן לִקְיִשׁ אָמַר. מוֹתֶרֶת. מָה אֲנִי קִימִין. אִם בְּעֵתִיד לְהַחְזִירָן לְכָלֵּין. דְּבָרֵי הַכֹּל. אֲסוּר. אִם בְּשָׂאִינוּ עֵתִיד לְהַחְזִירָן לְכָלֵּין. דְּבָרֵי הַכֹּל. מוֹתֶר. אֲלֵא כִי אֲנִי קִימִין בְּסִתָּם. רַבִּי יוֹחָנָן אָמַר. סִתָּם כְּמִי שְׁעֵתִיד לְהַחְזִירָן לְכָלֵּין. רַבִּי שְׁמַעוֹן בֶּן לִקְיִשׁ אָמַר. סִתָּם כְּמִי שְׂאִין עֵתִיד לְהַחְזִירָן לְכָלֵּין. אָמַר רַבִּי יוֹדָן אָבִיו שֶׁל רַבִּי מִתְנִיָּה. אִם הֵי מוֹנָחִין בְּמִקּוֹמָן כְּמִי שְׁעֵתִיד לְהַחְזִירָן לְכָלֵּין. מוֹתֵיב רַבִּי שְׁמַעוֹן בֶּן לִקְיִשׁ לְרַבִּי. וְהָאֵל אֲתֵיב עַל-כֵּן לֹא-יִדְרֹכוּ כְּהִלֵּי דְגָוִן עַל-מִפְתָּן דְּגָוִן. אָמַר לֵיהּ. מְלֻמַּד שְׁהֵי נוֹהֲגִין בְּמִפְתָּן יוֹתֵר מִדְּגָוִן. רַבִּי יְרֵמְיָהּ בְּשֵׁם רַבִּי חֵינָה בְּרַבָּא אָמַר. אוֹמוֹת הַעוֹלָם עָשׂוּ מִפְתָּן אַחַד. יִשְׂרָאֵל עָשׂוּ כְּמָה מִפְתָּנִים. וְיָמָה טַעַם וּפְקֻדָּתֵי עַל הַדּוֹלָג עַל-הַמִּפְתָּן.

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 אבוי של ר' | G אבוי 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 broken<sup>69</sup>, Rabbi Johanan said it is forbidden, Rabbi Simeon ben Laqish said it is permitted<sup>70</sup>. 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 spot<sup>71</sup> it is if he would return it to its vessel. Rabbi Simeon ben Laqish objected to Rabbi [Johanan]<sup>72</sup>: Is it not written, *therefore the priests of Dagon and all visitors to Dagon's temple will not step on Dagon's threshold*<sup>73</sup>? 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]<sup>74</sup> who skips over the threshold [on that day]<sup>75</sup>.*

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*.

16) (42d line) המוצא עבודה זרה. רב אמר משברה אבר אבר והיא בטילה. ושמואל אמר. אינה בטילה לעולם.

1 רב | G ר' משברה | G משבר ושמואל | G שמואל

רבי אבין בשם רבי שמעון. הָדָא אָמְרָה בְּשִׁאִין עֲלֵיהּ בְּסִיס. אָבָל יֵשׁ עֲלֵיהּ בְּסִיס אֲנִי אוֹמֵר.  
מִן הַשְּׁבָרִים בָּאוּ.

1 אבין | G בן ר' שמעון | G שמואל | G הדא אמרה | G - יש | G אם יש עליהן | G עליהם | G 2 השברים | G

If somebody finds an idol, Rav said, he breaks it limb by limb and it becomes insignificant, but Samuel said, it never can become insignificant<sup>76</sup>.

Rebbi Abin in the name of (Rebbi Simeon) [Samuel]<sup>77</sup>: This means<sup>78</sup> 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.

(fol. 42b) מִשְׁנֵה ג': הַמוֹצֵא כְּלִים וְעֲלֵיהֶן צוּרַת חֲפָה צוּרַת לְבָנָה צוּרַת הַדְּרָקוֹן יוֹלִיכֶם לַיִם הַמֵּלֶחַ. רַבִּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר עַל הַמְּכַוְּבִים אֲסוּרִין עַל הַמְּבוּזִין מוֹתְרִין. רַבִּי יוֹסִי אוֹמֵר שׁוֹחֵק וְזוֹרָה לְרוּחַ אוֹ מַטִּיל לַיִם. אָמְרוּ לוֹ אַף הוּא נִגְעֵשָׁה זָבֵל וְנֶאֱמַר וְלֹא יִדְבַק בְּיָדְךָ מֵאוֹמָה מִן הַחֲרָם:

**Mishnah 3:** If somebody finds vessels and on them the form of the sun, the form of the moon<sup>79</sup>, the form of a dragon<sup>80</sup>, he should bring them to the Dead Sea<sup>81</sup>. Rabban Simeon ben Gamliel says, on honored ones<sup>82</sup> 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*<sup>83</sup>.

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 זהו | 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 משתחיים לדרקון שלם ונשבר אסורין.

1 ודרקון | G דרקון | בא | G הוא | 2 שברי | G שברי מותרין | G מותרים | ונשבר | G ונישבר | אסורין | G אסורים | מן | G לא מן | השלם | G השלם | 3 כיני | G האכני | לדרקון | G לדרקון | 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 planets<sup>83</sup>. They only stated “dragon”, therefore not any snakes. What is a dragon? Any which has spikes on its neck. It was stated thus<sup>84</sup>: “Rebbi Simeon ben (Azzai) [Eleazar]<sup>85</sup> says, what is a dragon? Any which has spikes on its neck.” If it<sup>86</sup> is smooth it is permitted. If one finds a dragon in the form of a something crawling<sup>87</sup> 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 permitted<sup>88</sup>. Rebbi Abba in the name of Rav: Fragments of a dragon are permitted. If it was a whole dragon and broke, it is forbidden<sup>89</sup>. 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 forbidden<sup>90</sup>.

- 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) אַם דְּבַר בְּרִיא שֶׁנֶּעֱבְדִין אֶפְּלוּ מִבּוֹיֵן אֲסוּר. אַם דְּבַר בְּרִיא שְׂאֵינָן נֶעֱבְדִין אֶפְּלוּ מִכּוֹבְדִין מוֹתֵר. אֵלָּא כִּי נֵן קֵימִין בְּסֻתָּם. אָמַר רַבִּי קְרִיסְפָּא. וְהָדָא כּוֹסוֹת דְּבַר שֶׁל בִּיזְיוֹן הוּא. דְּרַבִּי חִיָּה בַר בָּא הֵנּוּ לִיה קוֹקְוִין וְהוֹנוּת טִימִי דְרוּמֵי צִירָא גְבוּוּהָ. אֲתָא שְׂאֵל לְרַבִּי יוֹחָנָן. אָמַר לִיה. מִכִּיּוֹן שְׁהַמִּים צָפִין עַל גְּבַה דְּבַר שְׁלִבְיָיוֹן הוּא. וְאִהוּ קִיתוּנָא מִכִּיּוֹן שְׂאֲתָה מִשְׁקֵעוּ בְּמִים דְּבַר שְׁלִבְיָיוֹן הוּא. בְּיוֹמוֹי דְּרַבִּי יוֹחָנָן שְׁרוּן צִירָין עַל כּוֹתֵלָא וְלֹא מַחֵי בְּגִידֵיהוּ.

1 נ | G אֵן שְׁנַעְבְּדִין | G שְׁהָן נַעְבְּדִים מִבּוֹיֵן | G מִבּוֹיִם אֲסוּר | G יְהוּ אֲסוּרִים 2 נַעְבְּדִין | G נַעְבְּדִים מִכּוֹבְדִין | G מִכּוֹבְדִים מוֹתֵר | G יְהוּ מוֹתֵרִים כִּי נֵן | G כֵּן אֵן בְּסֻתָּם | G בְּסֻתָּם וְהָדָא 3 כּוֹסוֹת | G כּוֹסוֹת בָּא | G וּוָא הוּא | G הוּוּהוּ טִימִי | G טִיכִי צִירָא | G צִירָה 4 לְרִ' יוֹחָנָן | G לְרַבְנִין אֲמַ' לִיה | G אֲמַרִין מִכִּיּוֹן | G מִיכִיּוֹן שְׁהַמִּים | G שְׁהַמִּים וְאִהוּ | G הוּן 5 קִיתוּנָא | G קִיתוּנָה מִכִּיּוֹן | G מִיכִיּוֹן שְׂאֲתָה | G שְׂאֲתָה מִשְׁקֵעוּ | G מִשְׁקֵעוּ 6 כּוֹתֵלָא | G כּוֹתֵלִיָּה בִּידִיָּהוּ | G בִּידוֹן בְּיוֹמֵי דֵר' אַבּוּן שְׁרוּן צִירָין עַל פְּסִיפְסָס וְלֹא מַחֵי בִּידוֹן

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 cups<sup>91</sup> belong to the contemptible category, for Rabbi Hiyya bar Abba had a pitcher<sup>92</sup> and the (worth) [fortune]<sup>93</sup> of Rome<sup>94</sup> 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 cup<sup>95</sup> is contemptible since one immerses it in water. In the days of Rabbi Johanan they started painting on walls<sup>96</sup> 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.<sup>97</sup>]

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, תַּחֲסֵי “fortune, destiny” is preferable over the reading of L, תַּחֲסֵי “worth, value.”.

94 The vocalization is from G referring to

*Romae*.

95 Greek κῶθων, “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) מְתִיב רַבִּי יוֹסִי לְרַבֵּנּוּ. וְהִכְתִּיב אֶת־חֲטָאֲתָכֶם אֲשֶׁר־עָשִׂיתֶם אֶת־הָעֵגֶל. אָמְרוּ לִיה. מְלַמֵּד שֶׁהֵיא מְבַקֵּשׁ לְבוֹדֵקוֹ כְּשֶׁם שְׁבוּדָקוֹן אֶת הַסּוֹטוֹת. וְיִזְרֹעַ־עַל־פְּנֵי הַמַּיִם. אָמְרוּ לוֹ. וְהִכְתִּיב וְגַם | מְעַכָּה אִם אִסָּא הַמְלַךְ־הַסִּירָה מִגְּבִילָהּ. אָמְרוּ לוֹ. מִשָּׁם רָאִיָּה. וַיִּכְרַת אִסָּא וְגוֹ: אָמְרוּ לוֹ. וְהִכְתִּיב וְכַתֵּב נְחֹשׁ הַנְּחוֹשֶׁת. וְכִי עֲבוּדָה זָרָה הִיא. וְהִלֵּא מֹשֶׁה עָשְׂעוּ. אֵלֶּה מְלַמֵּד שֶׁהֵיוּ יִשְׂרָאֵל טוֹעִין אַחֲרָיו עַד שֶׁבָּא חֲזָקָהוּ וְהִעֲבִירוּ.

1 יוסי | יוסה לרבנן | G לרבנן והכת' | G והא כתיב העגל | G העגל וגו' אמרו ליה | G אמרו ליה לה 2 שהיה | G שהיה משה כשם | כדרך שבוֹדָקוֹן | G שבוֹדָקוֹן המים | G המים וישק א' ב' יש' 3 והכת' | G והא כתיב מגבירה | G מגבירה וגו' אסא | G אסא את מפלצתה וידק ויש' 4 הנחשת | G הנחשת אשר עשה משה 5 שהיו יש' טועין אחריו | G שתעו אחרי ישראל שבא | G שעמד

<sup>98</sup>Rebbi Yose objected to the rabbis, is it not written: *your sin which you had made, the calf*<sup>99</sup>? 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*<sup>100</sup>. He said to them, is it not written, *and also Maacah, king Asa's mother, he removed from power*<sup>101</sup>? They told him, is there proof from there? *Asa cut down*<sup>102</sup> etc. He told them, *he beat the bronze serpent to pieces*<sup>103</sup>. Was this an object of worship? Did not Moses make it? This teaches that Israel was erring after it until Hezekias came and removed it<sup>104</sup>.

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 *1K.* 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־עֲצֵי־הֵם וַיִּשְׂאֵם דָּוִד וַאֲנָשָׁיו: וְכָתוּב אַחֵר אוֹמֵר וַיֵּאמֶר דָּוִד וַיִּשְׂרְפוּ בְּאֵשׁ: רַבִּי יוֹסִי בֶר חֶלְפוּתָהּ וְרַבֵּנּוּ. רַבִּי יוֹסִי בֶר חֶלְפוּתָהּ אוֹמֵר. מִה שְׁהִיָּה שְׁלֵמֶתֶכֶת וַיִּשְׂאֵם דָּוִד וַאֲנָשָׁיו. וּמִה שְׁהִיָּה שְׁלֵמֶץ וַיֵּאמֶר דָּוִד וַיִּשְׂרְפוּ בְּאֵשׁ: וְרַבֵּנּוּ אָמְרוּ. מִה שְׁהִיָּה אִיִּתִי הַגִּיתִי מִבֵּטֵל וַיִּשְׂאֵם דָּוִד וַאֲנָשָׁיו. וּמִה שְׁלֵא הִיָּה מִבֵּטֵל וַיֵּאמֶר דָּוִד וַיִּשְׂרְפוּ בְּאֵשׁ. מִה מְקִיִּים רַבִּי יוֹסִי בֶן חֶלְפוּתָהּ וַיִּשְׂאֵם דָּוִד וַאֲנָשָׁיו. נִטְלוּם בְּשַׁפְּיָיו.

2 דוד | ג דויד בר חלפותא | ג ביר' חלפתה 3 אמרי | ג אמרין 4 הגיתי | ג הגתי היה | ג היה אייתי הגתי  
דוד | ג דויד 5 בן חלפותא | ג ביר' חלפתה

One verse says, *they abandoned their idols; David and his men carried them away*<sup>105</sup>. But another verse says, *David gave orders and they were burned in the fire*<sup>106</sup>. Rabbi Yose [ben Rabbi] Halafta<sup>107</sup> 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 Gat<sup>108</sup> 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 rims<sup>109</sup>.

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:** שאל פרקלוס בן פלוסלוס את רבן זמליאל בעכו שהיה רוחץ במרחץ של אפרודיטי אמר לו כתוב בתורתכם ולא ידבק בידך מאומה מן התורם. מפני מה אתה

רוחץ במרחץ של אפרודיטי. אמר לו אין משיבין במרחץ. כשיצא אמר לו אני לא באתי בנבולה היא באת בנבולי. אין אומרים נגשה מרחץ נוי לאפרודיטי אלא אומרים נגשית אפרודיטי נוי למרחץ.

**Mishnah 4:** Proclus ben Ploslos<sup>110</sup> asked Rabban Gamliel in Acco when he was taking a bath in the Bath of Aphrodite<sup>111</sup>. He said to him, it is written in your Torah, *nothing banned should stick to your hand*<sup>112</sup>: why are you bathing in the Bath of Aphrodite? He said to him, one does not answer in the bath<sup>113</sup>. 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 תרבה אתה נכנס לעבודה זרה שלך גרום וכעל קרי ומשתין בפניה וזו עומדת על פי הביב וכל אדם משתינין 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*<sup>114</sup>; 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 the general prohibition of pagan symbols in Halakhah 3 Note 83.  
112 *Deut.* 13:18.

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 אַן קיימיין. 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. שואליו הילכות המרחץ בבית המרחץ. הילכות בית הכסא בבית הכסא. כהדא רבי שמעון בן לעזר עאל מיסחי עם רבי מאיר. אמר לה. מהו שנדיח. אמר ליה. אסור. אמר לה. מהו שנקניח. אמר ליה. אסור. ולא כן שמואל שאל לרב.



מִהוּ לַעֲנוֹת אֲמֵן בְּמִקוֹם מְטוֹנָף. אָמַר לִיה. אָסִיר. וְאָסִיר דְּאִמְרִית לָךְ אָסִיר. אֲשַׁכַּח תִּינִי. שׁוֹאֲלִין הִילְכוֹת הַמְּרִחֵץ בְּבֵית הַמְּרִחֵץ. הִילְכוֹת בֵּית הַפְּסָא בְּבֵית הַפְּסָא. אָמַר רַבִּי יִדְן אָבִיו דְּרַבִּי מִתְּנִיָּה. מִהִילְכוֹת הַמְּרִחֵץ שְׂאֵלוֹ אֶלָּא שְׂאִין דְּרַךְ לַעֲנוֹת בַּמְּרִחֵץ. אָמַר רַבִּי שְׁמוּאֵל בַּר אֲבָדִימִי. מִהִילְכוֹת הַמְּרִחֵץ שְׂאֵלוֹ אֶלָּא שְׁהַבֵּל הַמְּרִחֵץ רַע לְשִׁינַיִם. חֲבַרְיָא רַבִּי חֲמַא בַּר יוֹסִי בְּשֵׁם רַבִּי הוֹשְׁעִיָּה רַבִּי זְעִירָא בְּשֵׁם רַבִּי יְהוֹשֻׁעַ בֶּן לִוִּי. תְּשׁוּבַת הַפֶּלֶג הִשְׁבִּיבוּ. דְּלֹא כֹן הָיָה לוֹ לְהִשְׁבִּיב מִבְּעַל פְּעוֹר שְׂאִין עֲבוּדְתוֹ אֶלָּא בְּפְעִירָא. מֵאִי כְדוֹן. אֶת שְׁהוּא נוֹהֵג בּוֹ מְשׁוּם אֶלּוּהַ אָסוּר. וְאֶת שְׂאִינוֹ נוֹהֵג בּוֹ מְשׁוּם אֶלּוּהַ מוֹתֵר:

1 בששאלו | ג בששאל 3 הילכות | ש והילכות 4 לעזר | ש אלעזר עאל | ג על 5 שנדיח | ש לקנח  
 שנקניח | ש להדיח שאל | ש שאל 6 אמ' ליה | ש והוא אמ' אסיר | גש אסור דאמרת | ג דמרת 7  
 שואל | ש אין שואל | ג אבוי 8 מהילכות | ג מהלכות דרך | ג דרך כבוד 9 חברייא | ג חברייה  
 חמא | ג חמא 10 זעירא | ג ... רה

**Halakhah 4:** “Proclus 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 answered<sup>115</sup>. <sup>116</sup>As 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 forbidden<sup>117</sup>. May one dry himself with a towel? He told him, it is forbidden<sup>118</sup>. 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 forbidden<sup>119</sup>. It was found stated, one asks<sup>120</sup> 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 done<sup>121</sup> 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 answer<sup>122</sup>, for he could have replied about Baal Pe'or whose worship only consists in exposure and defecation<sup>123</sup>. What about it<sup>124</sup>? 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 *Sabbat* 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' הַגּוֹיִם הַעוֹבְדִים אֶת הַהָרִים וְאֶת הַהַבְּעוֹת הֵם מוֹתְרִין וְכֹה שְׁעֲלֵיהֶן אֲסוּרִין שֶׁנֶּאֱמָר לֹא־תִחַמּוּד בְּסֶף וְזֹהֵב עֲלֵיהֶם וְלִקְחֹתָ לָךְ. רַבִּי יוֹסֵי הַגָּלִילִי אוֹמֵר אֱלֹהֵיהֶם עַל הַהָרִים וְלֹא הַהָרִים אֱלֹהֵיהֶם. אֱלֹהֵיהֶם עַל הַהַבְּעוֹת וְלֹא הַהַבְּעוֹת אֱלֹהֵיהֶם. וּמִפְּנֵי כֹּה אֲשִׁירָה אֲסוּרָה מִפְּנֵי שֶׁיֵּשׁ בָּהּ תַּפְּישֵׁת יְדֵי אָדָם. וְכֹל־שֵׁשׁ בָּהּ תַּפְּישֵׁת יְדֵי אָדָם אֲסוּר.

**Mishnah 6:** If Gentiles worship mountains and hills; these are permitted<sup>125</sup> but what is on them is forbidden, as it is said<sup>126</sup>, *do not covet silver or gold on them and take for yourself*. Rabbi Yose the Galilean said, *their gods [are] on the mountains*<sup>127</sup>, the mountains are not their gods. *Their gods [are] on the hills*, the hills are not their gods. Then why is an *Ashera*<sup>128</sup> forbidden? Because it was held by human hand<sup>129</sup>, 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 עמהם: אם עליהם למה עמהם. ואם עמהם למה עליהם. מה עליהם דבר שהוא מיוחד להם תכשיט להם. אף עמהם דבר שהוא מיוחד להם תכשיט להם. רבי יוחנן בשם רבי ינאי. כל-שהכניסו לפנים משקליון אסרו. כגון כיסים שלמעות. אמר רבי יסא. סימן הנה לנו והדר רבי הושעיה פליגא על דרבי ינאי. ולית היא אלא מסייעה לה. מה עליהו דבר שהוא מיוחד להו תכשיט להו. אף עמהו דבר שהוא מיוחד להו תכשיט להו. יצאו כיסים שלמעות. רבי בא בשם רב יהודה. ואפילו מים ומלח. מלח לשוף ומים לדית. ואהיו אפילו. אלא כגון מים ומלח.

1 יוסי|ג יוסה 2 תחמוד|ג תחמד 4 עמהם|ג עימהם תכשיט|ג מקשט 5 ינאי|ג יניי שהכניסו|ג שהכניסו משקליון|ג מיקוליון 6 הוה|ג הויה והדר|ג ודה ר' גדר פליגא|ג פליגת 8 בא|ג ווא ואהיו|ג ויהיו 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 Hoshaiia: One verse says<sup>126</sup>, *do not covet silver or gold on them and take for yourself*. And one verse says<sup>130</sup>, *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 them<sup>131</sup>, 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 work<sup>132</sup> he made forbidden; e. g., money pouches. Rebbi Yasa said, we had a note that (return) [this]<sup>133</sup> of Rebbi Hoshaiia 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 pouches<sup>134</sup>. Rebbi Abba in the name of Rav Jehudah: Even water and salt. Salt to rub and water to rinse<sup>135</sup>. And this is “even”? But e. g., water and salt<sup>136</sup>.

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) הַנְּעֻבָּד. אֵיט תַּנְי תַּנִּי. בֵּין שְׁלוֹ בֵּין שְׁלַחְבִּירוֹ אָסוּר. וְאֵיט תַּנְי תַּנִּי. שְׁלוֹ אָסוּר וְשְׁלַחְבִּירוֹ מוּתָר. מִן דְּמַר. בֵּין שְׁלוֹ בֵּין שְׁלַחְבִּירוֹ אָסוּר. רַבִּי יְהוּדָה. וּמִן דְּמַר. שְׁלוֹ אָסוּר וְשְׁלַחְבִּירוֹ מוּתָר. רַבִּי יוֹסִי וְרַבִּי שְׁמוּעוֹן. רַבִּי יוֹסִי בְּשֵׁם רַבִּי אֵילָא. דְּבָרֵי הַכֹּל הִיא. כְּמָה דְתַנִּימַר תַּמָּן. דְּבַר שְׁלֵשׁ בּוֹ רוּחַ חַיִּים אֵף עַל פִּי שְׂאִינוֹ נְאָסֵר לְהַדְיוּט נְאָסֵר לְגִבּוּתָהּ. וְדַכּוּתָהּ. דְּבַר שְׂאִינוֹ שְׁלֵף אֵף עַל פִּי שְׂאִינוֹ נְאָסֵר לְהַדְיוּט (אִינוֹ) נְאָסֵר לְגִבּוּתָהּ.

11 שלחבירו | כ שלאחרים ואית | כ אית 2 מותר | ג מותר הוון - | כ בעי מימר שלחבירו | כ שלאחרים ר' יהודה | ג כ' מאיר ור' יודה ומן | ג מן כ מאן דמר | כ דאמ' 3 שלחבירו | כ שלאחרים יוסי | ג יוסה (2) אילא | כ לא 4 נאסר | ג אסור דבר | ג - 5 אינו | כ - נאסר | ג אסור רבי בון בר חייה אמר. אפילו סולת של אסור ושלחבירו מותר. מה כמאן דמר בין של בין שלחבירו אסור אמר. לא איתפלגון בדבר שאין בו רוח חיים. אנתא רבי בון בר חייה מימר לך. בדבר שלש בו רוח חיים היא מתניתא. בין מה דאיפלגון בדבר שאין בו רוח חיים. הא דבר שלש בו רוח חיים אסור. ודבר שאין בו רוח חיים לא כל שכן. הוי שלא תאמר כמא דאתא אמר תמן. דבר שלש בו רוח חיים אף על פי שאינו נאסר להדיוט נאסר לגבוה. ודכותה. דבר שאינו שלף אף על פי שאינו נאסר להדיוט נאסר לגבוה.

2 אמר | ג - לא איתפלגון | ג אילו אתפלגון 4 הוי שלא | ג הביא שלא

<sup>137</sup>An 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]<sup>138</sup> Rebbi Jehudah. But he who said, his is forbidden, another person's is permitted, Rebbi Yose and Rebbi Simeon. Rebbi Yose<sup>139</sup> in the name of Rebbi Ila: It is everybody's opinion. Just as you say there, anything living<sup>140</sup> 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)<sup>141</sup> become forbidden for Heaven<sup>142</sup>.

Rebbi Abun bar Hiyya said, even his fine flour becomes forbidden and another person's is permitted<sup>143</sup>. Is this following him who said, whether it was his or another person's, it is forbidden; did he say<sup>144</sup> that they do not

disagree about something which is not alive and Rebbi 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 forbidden<sup>145</sup>. Then something which is not alive should be forbidden *a fortiori*<sup>146</sup>. 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 Heaven<sup>147</sup>.

137 This paragraph is from *Kilaim* 7:4, Notes 46-48 (ג).

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 Rebbi 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 Rebbi 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. חבריא אמרין. בחלוקי נחל פליגין. אמר רבי הונא. וקרא מסייע למאן דאמרי חבריא. בחלקי נחל חלקו; הם הם גורלו. חיליה דחזקיה מו 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 חיטה בוקעין בארץ חמשים אמה. שורשי תאינה רכים בוקעין בצור. אם כן מה יעשו שורשי חרוב ושורשי שקמה. אמר רבי חנינה. אחת לל' יום התהום עולה ומשקה אותן. ומה טעם. אני יי נצרה לרגעים אשקנה. תני. רבי שמעון בן אלעזר אומר. מלמד שאין הארץ שותה אלא לפי חיסומה.

If somebody worshipped an egg<sup>148</sup>. Hizqiah said, he did not make it forbidden; Rabbi Johanan said, he made it forbidden<sup>149</sup>. Rabbi Ze'ira said, they disagree about an egg. The colleagues say, they disagree about pebbles in a river bed<sup>150</sup>. Rabbi Huna said, a verse supports what the colleagues say: *Your part is with river pebbles; these are your destiny*<sup>151</sup>. 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 forbidden<sup>151</sup>; <sup>152</sup>as 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*<sup>152</sup>. 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'anot* 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*.

(43a line 24) בִּיצַת עֲבוּדָה זָרָה שְׁנַעֲשִׂית אֶפְרוֹחַ. רַבִּי חֲנִי בָּשֵׁם רַבִּי יֵאֵשִׂיָהּ. אֶתְפַּלְגּוּן כֶּהֱנָא וְחֻזְקָה. כֶּהֱנָא אָמַר. מוֹתֶרֶת. וְחֻזְקָה אָמַר. אֶסְוֶרָה. וְקִשְׂיָא עַל דְּעֵתִיָּה דְחֻזְקָה. הִיד אֶפְשֵׁר לְבִיצַת עֲבוּדָה זָרָה שְׁתִּיעֵשָׂה אֶפְרוֹחַ. מָה אָנּוּ קִימִין. אִם בְּשַׁפְחָסָה אִין כָּאן אֶפְרוֹחַ. אִם בְּשֶׁהֲכִיֶּסָה לְפָנִים מִן הַקִּינְקִלִין. תָּא חֲמִי. אִילוּ הִשְׁתַּחֲוִוָה לָהּ לֹא אֶסְוֶרָה. וּמִפְנֵי שֶׁהֲכִיֶּסָה לְפָנִים מִן הַקִּינְקִלִין אֶסְוֶרָה. אָמַר רַבִּי יוֹדֵן אֲבִיו שֶׁל רַבִּי מוֹתֶנְיָהּ. תִּפְתֵּר שְׁגִירָר בְּהַ לְעֲבוּדָה זָרָה.

1 שנעשית|ע שנעשה כהנא וחזקיה|ע חזקיה וכהנא 2 וחזקיה|ע חזקיה אסורה|ע אסור וקשיא|ע -  
היד|ע אי' 3 שתיעשה|ע שנעשית 4 לפנים|ע לפנימה הקינקילין|ע הקינקילין תא|ע אתא אילו|  
ע אלו ומפני|ע מפני 5 הקינקילין|ע הקינקילין מתנייה|ע מתניתה שגירר|ע שגדר  
אגוז שְׁלַעְרָלָה שְׁנִטְעוּ וְכֹן בִּיצַת הַקִּדָּשׁ שְׁנַעֲשִׂית אֶפְרוֹחַ. רַבִּי יֵסָא. אֶתְפַּלְגּוּן כֶּהֱנָא וְרַבִּי  
יֹחֲנָן. כֶּהֱנָא אָמַר. אֶסְוֶרָה. וְרַבִּי יֹחֲנָן אָמַר. מוֹתֶרֶת. אָמַר רַבִּי זְעִירָא קוּמִי רַבִּי יֵסָא. וְהָאֵמַר  
רַבִּי מוֹתֶרֶת. אָף הוּא אִינוּ פוֹדָה בְּזֶמֶן זֶרְעָה. אֶתָּא רַבִּי חֲנַנְיָה וְרַבִּי יֹנָה רַבִּי לְעֶזֶר בָּשֵׁם כֶּהֱנָא.  
פוֹדָה אוֹתָהּ בְּזֶמֶן זֶרְעָה. רַבִּי חֲנַנְיָה בָּשֵׁם רַבִּי פִּינְחָס אָמַר מִתְקַנְתָּהּ. כֶּהֱנָא אָמַר. אֶסְוֶרָה  
וּפוֹדָה אוֹתָהּ כְּמוֹת שְׂהִיא. וְרַבִּי יֹחֲנָן אָמַר. מוֹתֶרֶת פוֹדָה אוֹתָהּ בְּזֶמֶן זֶרְעָה.

1 אגוז שלערלה שנטעו וכן|ע - שנעשית|ע שנעשת יסא|ע ייסא איתפלגון|ע פלגי בה 2 קומי ר'  
יסא|ע לר' יסי והאמ' ר'|ע הא ר' יוחנן אמר 3 אף הוא אינו פידה|ע אף היא פורח אותה אתא ר'  
חנניה|ע ר' חנניא ר'|ע ור' 4 חנניה|ע ור' חנניא אמ' |ע - אמ' |ע אמ' 5 כמות|ע כמו

<sup>154</sup>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 forbidden<sup>149</sup>; 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 tow<sup>155</sup> the idol.

If an 'orlah walnut was planted<sup>156</sup> or an egg dedicated to the Temple became a chick<sup>157</sup>. Rabbi Yasa said, Cahana and Rabbi Johanan disagree. Cahana said it is forbidden and Rabbi Johanan said it is permitted<sup>158</sup>. Rabbi Ze'ira said before Rabbi Yasa, did not Rabbi [Johanan]<sup>159</sup> say it is permitted, does he not redeem it as from the time it is sown<sup>160</sup>? 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 now<sup>161</sup>; 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 גרר 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.

מִשְׁנֵה אֶ: אָמַר רַבִּי עֲקִיבָה אֲנִי אֶהְיֶה אוֹכֵין לְפָנֶיךָ. כֹּל מְקוֹם שֶׁאֵתָּה מוֹצֵא הָרָר  
נְבוֹתָה וְנִבְעָה נִשְׂאָה וְעֵץ רִגְנָן דַּע שְׁמֵשׁ שָׁם עֲבוּדָה זָרָה:

**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 idolatry<sup>162</sup>.

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:** אָמַר רַבִּי עֲקִיבָה אֲנִי אוֹבִין לְפָנֶיךָ כּוֹל. אֲנִן תַּיִנָּן. אוֹבִין. אִיתַּ תַּיִן. אוֹבִיל לְפָנֶיךָ. מֵאן דָּמַר. אוֹבִין. נְבִין. וּמֵאן דָּמַר. אוֹבִיל. נִיבֵל.

**Halakhah 7:** “Rebbi Aqiba said, I shall explain it to you,” etc. We have stated אוֹבִין. Some are stating אוֹבִיל. He who says אוֹבִין “we understand.” But he who says אוֹבִיל “we bring.”<sup>163</sup>

163 The hapax אוֹבִין is derived from the root “to transport”. Both verbs are used in *hif'il*. יבֵל “to understand”, אוֹבִיל is from the root יבֵל

43a line 39) תַּיִן רַבִּי בּוֹרְקַי קוֹמִי רַבִּי מָנָא. מִלְמַד שְׁלֵא הֵנִיחוּ הַכְּנַעֲנִים לֹא הָר וְלֹא גִבְעָה שְׁלֵא עָבְדוּ עֲלָיו. וְלֹא כֹן סָבְרִיהוּ מִימַר. דָּבַר שְׁלֵשׁ בּוֹ רוּחַ חַיִּים אֶף עַל פִּי שְׁאִינוּ אֶסוּר לְהַדְיֹוט אֶסוּר לְגַבְוָה. בַּיַּת הַבְּחִירָה אֵיכּוֹן נִבְנָה. עַל פִּי נְבִיא. וַיַּעַל דָּוִד בְּדַבְרֵי-יְהוָה אֲשֶׁר דִּבֶּר בְּיָד יְיָ.

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 Heaven<sup>165</sup>? How could the Temple have been built<sup>166</sup>? By the order of a prophet; *David went up following the word of Gad which he had said by the Hand of the Eternal*<sup>167</sup>.

165 If it was worshipped as pagan deity, as a place for the Temple. Therefore the Note 142. 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:** מִי שֶׁהָיָה בֵּיתוֹ סְמוּךְ לְבֵית עֲבוֹדָה זָרָה וְנִפְל אֶסוּר לְבָנוֹתוֹ. כִּי צִדַּד יַעֲשֶׂה כּוֹנֵם בְּתוֹךְ שְׁלוֹ וּבֹנֵה. הָיָה שְׁלוֹ וְשָׁל עֲבוֹדָה זָרָה נִדוֹן מִחֲצָה לְמַחֲצָה. אֲבָנָיו וְעֲצָיו נִעְפְּרוּ מִטְּמֵאֵין כְּשֶׁרִץ שֶׁנֶּאֱמַר שִׁשָּׁן תִּשְׁקָצְנוּ וְגו'. רַבִּי עֲקִיבָה אוֹמֵר כִּנְדָה שֶׁנֶּאֱמַר תִּזְרַם כְּמוֹ דָּוָה צֵא תֹאמַר לוֹ. מִה הִנִּידָה מִטְּמֵא בְּמִשְׁאֵ אֶף עֲבוֹדָה זָרָה מִטְּמֵא בְּמִשְׁאֵ:

**Mishnah 8:** If one's house was connected<sup>168</sup> to a house of pagan worship and collapsed, it is forbidden to rebuild it. What should he do? He restricts himself to his property<sup>169</sup> and builds. If it was his and the idolatry's, it is judged half by half<sup>170</sup>. Its stones, its wood, and its dust make impure like a

crawling animal<sup>171</sup>, as it is said<sup>172</sup>, *you shall treat it as an abomination*. Rabbi Aqiba says like a menstruating woman as it is said<sup>173</sup>, *you shall throw it away like feeling miserable; you will call it excrement*. Since the menstruating makes impure by load<sup>174</sup>, 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 שְהִיָה בֵיתוֹ סְמוּךְ לְבֵית עֲבוֹדַת זָרָה כּוּל. כְּתוּב תּוֹעֵבָה בְּנִידָה וְכְתוּב תּוֹעֵבָה בְּשָׂרְצִים וְכְתוּב תּוֹעֵבָה בְּעֲבוֹדַת זָרָה. בְּנִידָה כִּי כָל-אֲשֶׁר יַעֲשֶׂה מִכָּל הַתּוֹעֵבוֹת. בְּשָׂרְצִים לֹא תֹאכַל כָּל-תּוֹעֵבָה: בְּעֲבוֹדַת זָרָה וְלֹא-תִבְיֵא תּוֹעֵבָה אֶל-בֵּיתְךָ. אֲבָל אֵינִי יוֹדֵעַ לֵאמֹר זֶה דָּבָר הַיּוֹקֵשׁ. רַבִּי עֲקִיבָה אוֹמֵר לְתוֹעֵבָה דְּנִידָה הַיּוֹקֵשׁ. מִה הַנִּידָה מְטַמָּא בְּמִשָּׂא אֶף עֲבוֹדַת זָרָה מְטַמָּא בְּמִשָּׂא: אוּ מִה הַנִּידָה מְטַמָּא עַל גַּב אֶבֶן מְטַמָּא אֶף עֲבוֹדַת זָרָה מְטַמָּא בְּאֶבֶן מְטַמָּא. רַבִּי זְרִיקָא בְּשֵׁם רַבִּי חֲנִינָה. וְאֵית אֶמְרִין לֵהּ. בְּשֵׁם רַב חֲסִדָּא. מוֹדָה רַבִּי עֲקִיבָה לְחַכְמִים שְׂאִין עֲבוֹדַת זָרָה מְטַמָּא בְּאֶבֶן מְטַמָּא. וְרַבִּנּוּ אֶמְרִי. לְתוֹעֵבָה שְׂבִשְׂרָצִים הַיּוֹקֵשׁ. מִה הַשְּׂרָץ מְטַמָּא בְּהִיסָט אֶף עֲבוֹדַת זָרָה מְטַמָּא בְּהִיסָט. אוּ מִה הַשְּׂרָץ מְטַמָּא בְּכַעֲדָשָׁה יָכוֹל אֶף עֲבוֹדַת זָרָה תְּטַמָּא בְּכַעֲדָשָׁה. רַבִּי זְעִירָא רַבִּי יִצְחָק בֶּר נַחְמָן רַבִּי לְעִזָּר רַבִּי אֲבָהוּ בְּשֵׁם רַבִּי יוֹחָנָן. וַיִּצְמְדוּ לְבַעַל פְּעוֹר וַיֵּאכְלוּ זִבְחֵי מַתִּים: מִה הַמֵּת מְטַמָּא בְּכֹזֵית אֶף עֲבוֹדַת זָרָה תְּטַמָּא בְּכֹזֵית. אוּ מִה הַמֵּת מְטַמָּא מְשִׁיכְנִים רָאשֵׁי אֲצַבְעוֹתָיו יָכוֹל אֶף עֲבוֹדַת זָרָה מְשִׁיכְנִים רָאשֵׁי אֲצַבְעוֹתָיו. נְתִיזָה נְתִיזָה גַּמְר מִבֵּית הַמְנוּגָע. מִה בֵּית הַמְנוּגָע מְשִׁיכְנִים רָאשׁוֹ וְרוּבוֹ אֶף עֲבוֹדַת זָרָה מְשִׁיכְנִים רָאשׁוֹ וְרוּבוֹ. אָמַר רַבִּי חֲנִינָה. זֹאת אוֹמְרֵת שְׂאִין טוֹמְאֵת עֲבוֹדַת זָרָה מְחוּוֹרֵת. דְּלֹא כֹן מְקִישָׁה לְקָלִים וְאֵינָה מְקִישָׁה לְחוּמְרִין. אָמַר רַבִּי מְנָא. מְחוּוֹרֵת הִיא. וְלִמָּה הִיא מְקִישָׁה לְמַת וּלְשָׂרָץ. לְלַמֵּד מִמָּנָה לְקָלִים שְׂבָה. הִדָּא דָּאת אָמַר בְּעֲבוֹדַת זָרָה

שְׁבוּרָה. אֶבֶל בְּעִבּוּדָה זָרָה שְׁלִימָה כָּל־שָׁהִיא. דָּמַר רַבִּי יוֹסִי בִּירְבִי בּוּן רַב חֲמַא בְּרַ גּוֹרִיוֹן בְּשֵׁם  
 רַב. בַּעַל רֵאשׁ גְּוִיָּה הֵוָה וְכַאֲפִיּוֹן הֵוָה. וּמָה טַעַם. וַיִּשְׁיִמוּ לָהֶם בַּעַל בְּרִית לְאֱלֹהִים:  
 2 בשרצים | ש בע"ז | ש בשרצים | ש כת' תואבה בנידה | ש תואבות | ש התואבות האלה וגו' 3  
 בשרצים | ש תואבה בשרצים | ש תואבה בע"ז | ש תואבה בע"ז | ש ברתך וגו' איני | ש אין אני 4 ז' | ש זה  
 דבר | ש מהן דנידה | ש שבנידה 5 על גב אבן | ש באבן 6 באבן | ש על גב אבן 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 חנניה 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. <sup>175</sup>There 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*<sup>176</sup>. About vermin, *do not eat any abomination*<sup>177</sup>. About idolatry, *and do not bring any abomination into your house*<sup>178</sup>. 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 load<sup>174</sup>, also idolatry imparts impurity by load. Or since the menstruating woman imparts impurity through a cover stone<sup>179</sup>, does idolatry impart impurity through a cover stone? Rabbi Zeriqa in the name of Rabbi Hanina<sup>180</sup>, 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 motion<sup>181</sup>, so also idolatry imparts impurity by motion. Or as vermin in the size of a lentil imparts impurity<sup>182</sup> 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*<sup>183</sup>. As the dead in the size of an olive impart impurity<sup>182</sup> so idolatry in the size of an olive imparts impurity. Or since a corpse imparts impurity once a person puts his finger tips in<sup>184</sup>, could I think that idolatry imparts once a person puts his finger tips in? *Tearing down, tearing down* one infers from the leprous house<sup>185</sup>. Since in a leprous house when he entered with his head and most of his body<sup>186</sup>, so idolatry when he entered with his head and most of his body. Rabbi Hanina<sup>187</sup> said, this means that the impurity of idolatry is not consistent<sup>188</sup>. For otherwise, why

does one compare if for the facile [impurity] and does not compare for the strict? Rebbi 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 it<sup>189</sup>. This is for a broken idol. But an entire one even in the most minute size<sup>190</sup>, as Rebbi Yose ben Rebbi Abun<sup>191</sup> 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*<sup>192</sup>.

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, מַדְרֵג, “stepping on.” This kind of impurity emphatically does not exist for vermin, or anything other than genital discharges. Therefore טַהַר 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 נָתַח 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” (זירה) (שוה); 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` Perek* 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 הַצָּד הַשָּׁוה “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 *שׁ*: 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) מַה טַּעַמָּיהָ דְרַבִּי עֲקִיבָה. תַּעֲבַב תְּתַעֲבֹבָהּ כְּנִידָה. מַה טַּעַמוֹן דְּרַבָּנָן. שְׂקָאָ | תִּשְׁקָצְנָהּ כְּשֶׂרָץ. מַה מְקַיְימִין רַבָּנָן טַעַמָּיהָ דְרַבִּי עֲקִיבָה תַּעֲבַב תְּתַעֲבֹבָהּ. צֹאֵהוּ נְבִלָּיהוּ. מַה הֵן לְרַבָּנִין נְבִלָּיהוּ. רַבִּי שְׁמוּאֵל רַבִּי אֲבָהוּ בָשֶׂם רַבִּי לַעֲזָר. צֹא תֵאמַר לָךְ. אֵת שְׁקוֹרִין אוֹתוֹ פְּנֵי אֵלוֹהַּ קוֹרִין אוֹתוֹ פְּנֵי כָּלֵב. עֵין כּוֹס קוֹרִין אוֹתוֹ עֵין קוֹץ. גְּדִיָּה קוֹרִין אוֹתוֹ גְּלִיָּה. רַבִּי תַנְחוּמָא בְּעֵי רַבִּי הוּנָא. כְּתוּב הֲלֵעִי אֲשֶׁר עִם־בֵּית אֲוֹן מִקְדָּם לְבֵית־אֵל. מִקְדָּם קוֹרִין אוֹתוֹ בֵּית־אֵל וְעַל־שֵׁמוֹ קוֹרִין אוֹתוֹ בֵּית אֲוֹן. תִּנִּי בָשֶׂם רַבִּי לַעֲזָר. לֹא רָצָה לְקַרְוֹת עוֹמְדָה קוֹרִין אוֹתוֹ עֲמִידָה. וְצוּחִין לְדַהוֹן שְׁלֵמִימֵי רְגָלִים עֲמִידָה. מַה מְקַיְימִין רַבָּנִין צֹא תֵאמַר לָךְ. רַבִּי יוֹסֵי בִּירַבִּי אֲבִין רַבִּי הוּנָא בָשֶׂם רַב יוֹסֵף. מְנִיין שְׂאִין אוֹמְרִים לְאָדָם צֹא עַד שִׁכְנִס רֹאשׁוֹ וְרוּבּוֹ.

1 דרבנן | ש דרבנן 2 כשרץ | ש כשרצים צאהו | ש צאיהו - | ש מה מקיים ר' עקיבה טעמון דרבנן. שקץ תשקצנן. שקציהו נבליהו מה הן | ש מנין 3 לעזר | ש אלעזר - | צואה תאמר לך. צאיהו נבליהו 4 אלוה | ש מלך קורין אותו | ש - (2) 5 בעי | ש בשם הונא | ש חונא כת' | ש - קורין | ש היו קורין 6 לעזר | ש אלעזר לקרות | ש להיקרות עומדה | ש עמדה אותו | ש אותה 7 - | ש דאמר ר' אבא בר כהנא. תמן צוחין לפעלה טבא עמדה לדהון | 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*<sup>193</sup>, 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 vile<sup>194</sup>. 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's<sup>195</sup> 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 Undress<sup>196</sup>. Rabbi Tanhuma (asked) [in the name of]<sup>197</sup> Rabbi Huna: It is written<sup>198</sup>, *The Ai which is near Bet-Awen East of Bethel*. Earlier it was called Bethel but now one calls it Bet-Awen<sup>199</sup>. 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 ‘amida<sup>200</sup>. How (do the rabbis) [does Rabbi Aqiba]<sup>197</sup> interpret *you shall call it excrement?* Rabbi Yose ben Rabbi Abin, Rabbi Huna in the name of Rav Josef: from (where) [here]<sup>197</sup> 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 **اَوْن** “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, it<sup>201</sup> did not merit to be called the House of Work but it is called the House of Baptism<sup>202</sup>. There, they are calling a good worker **עَمَل** but the chamber pot **ἀμίδα**<sup>203</sup>.

201 The church.

202 Syriac **עמד**.

203 Accusative of **ἀμῖς, -ιδος** (identified by Musaphia.)

43c line 75) אית מתניתא אַמְרָה. עבֹדָה זָרָה כְּנִידָה וּמְשֻׁמְשִׁיָּה כְּנִידָה. וְאִית מִתְנִיתָא אַמְרָה. עבֹדָה זָרָה כְּנִידָה וּמְשֻׁמְשִׁיָּה כְּשֶׁרֶץ. מֵאן דְּמַר. עבֹדָה זָרָה כְּנִידָה וּמְשֻׁמְשִׁיָּה כְּנִידָה. נִיחָא. וּמֵאן דְּמַר. עבֹדָה זָרָה כְּנִידָה וּמְשֻׁמְשִׁיָּה כְּשֶׁרֶץ. כָּל-עֲצָמוֹ אֵינוֹ קְרוֹי נִידָה אֶלָּא בְּמְשֻׁמְשִׁיָּה. תִּיפְתָּר בְּחֻקִּיקוּן עַל גּוֹפָה. דְּאָמַר רַבִּי יַעֲקֹב דְּכַפְר חֲנָן. תִּפְתָּר בְּמִשְׁתַּחֲוֵה לְאִפּוּד עֲצָמוֹ. כְּעֵינִין שְׁנַאֲמַר וַיַּעַשׂ גְּדֵלוֹן אִפּוּד. מִתְנִיתִין כְּמֵאן דְּאָמַר. עבֹדָה זָרָה כְּנִידָה וּמְשֻׁמְשִׁיָּה כְּנִידָה. וְהִתְנִינָן. אֲבָנֵינוּ וְעֵצֵינוּ וְעֶרְוֵנוּ מִטְּמֵאִין כְּשֶׁרֶץ. תִּיפְתָּר בְּמִשְׁתַּחֲוֵה לְבֵית עֲצָמוֹ. דְּאָמַר רַבִּי בָּא רַב הוּיָא בְּשֵׁם רַב. הַמְּשַׁתַּחֲוֵה לְבֵית אֶסְרוּ. רַבִּי זְעִירָא רַבִּי אֲבָהוּ בְּשֵׁם רַבִּי יוֹחָנָן. הַמְּקַדִּישׁ אֶת הַבַּיִת אֵין מוֹעֲלִין בּוֹ. וּמֵאן דְּאָמַר. אֵין מוֹעֲלִין בּוֹ. אֶסְרוּ. הַתֵּיב רַבִּי חֲגַי קוּמִי רַבִּי יוֹסִי. וְהָא מִתְנִיתָא פְּלִגָּא עַל רַב. הַשְּׁקֵת שְׂבִפְסָלַע אֵין מְמַלְאִין בָּהּ וְאֵין מְקַדְּשִׁין בָּהּ וְאֵין מֵאִן מִמְּנָה וְאֵינָה צְרִיכָה צְמִיד פְּתִיל וְאֵינָה פּוֹסְקֵת אֶת הַמְּקֵנָה. הִיתָה כְּלִי וְחִבְרָה בְּסִיד וְכוּל' עַד וּפּוֹסֵל אֶת הַמְּקֵנָה. מִפְּנֵי שְׁחֻקָּהּ וְאַחַר כֹּד חִיבְרָה. הָא אִם חִיבְרָה וְאַחַר כֹּד חֻקָּהּ מָה אֶת עֲבֹד לָהּ. פְּתַר רַבִּי יוֹחָנָן. סִיתֵיתוּן שְׂלֵאֲבָנִים הִיא גְּמַר מְלֻאֲכָתָן. לֵית הָדָא פְּלִיגֵי עַל רַבִּי שְׁמַעוֹן בֶּן לִקְוִישׁ דְּאָמַר. עבֹדָה זָרָה שְׁנִשְׁבְּרָה מוֹתֵרָת. וְכֹן סְבָרִינוּ מִימַר. אִם בְּעֵתִיד לְהַחְזִירָן לְכַלְתֵּין דְּבָרֵי הַכֹּל אֶסְרוּ. תִּיפְתָּר לְמִשְׁתַּחֲוֵה לְכָל-אֶבֶן וְאֶבֶן וְאַחַר כֹּד בְּנִינָן. לֵית הָדָא פְּלִגָּא עַל רַבִּי יוֹחָנָן. דְּרַבִּי יוֹחָנָן אָמַר. עבֹדָה זָרָה שְׁנִשְׁבְּרָה אֶסְרוּ. וְכֹן סְבָרִינוּ מִימַר. אִם בְּשֵׁאֵינוּ עֵתִיד לְהַחְזִירָן לְכַלְתֵּין דְּבָרֵי הַכֹּל מוֹתֵר. תִּיפְתָּר בְּמִשְׁתַּחֲוֵה לְזִמְרָה וְאַחַר כֹּד נְטָעָה.

<sup>204</sup>There 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 animals<sup>205</sup>. 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 appurtenances<sup>206</sup>? 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*<sup>207</sup>. 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.<sup>208</sup>” 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 forbidden<sup>209</sup>. 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 forbidden<sup>210</sup>? 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*.<sup>211</sup>” Because he excavated it and after that combined it<sup>212</sup>. Then if he fixed it and after that excavated it, what do you do with it<sup>213</sup>? Explain it following Rabbi Johanan that the hewing of stones is the completion of work on them<sup>214</sup>. Does this<sup>215</sup> 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 everybody<sup>216</sup>. Explain it if he worships every single stone and then builds with them<sup>217</sup>. 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 everybody<sup>216</sup>. Explain it if he worshipped a vine and afterwards planted it<sup>218</sup>.

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) לוי אָמַר. מִשְׁתַּחֲוֵה לְבֵית אֶסְרָו. לְמַעַרָה לֹא אֶסְרָה. מֵה בֵּין בַּיִת לְמַעַרָה. אָמַר רַבִּי הֲנִינְהוּ בִּירְבֵי הַלֵּל. בַּיִת הִזֵּה לוֹ שְׁעֵת תְּלִישָׁה. מַעַרָה לֹא הִזֵּתָה לָהּ שְׁעֵת תְּלִישָׁה. רַבִּי יוֹחָנָן פֶּתַר מִתְּנִיתִין בְּגֵר וְגוֹי שִׁירְשׁוּ אֶת אַבְיָהֶן גּוֹי. וְלָמָּה לֹא פֶתַר לָהּ בְּשִׁבְעַת עֲבוּדָה זָרָה וְנִסְמְכָה לוֹ. תִּנְיִי. בֵּית עֲבוּדָה זָרָה וְנִסְמְכָה לוֹ וְאַחַר כֵּן הִלְכָה לָהּ מוֹתֵר. אֲבָל גֵּר וְגוֹי שִׁירְשׁוּ אֶת אַבְיָהֶן גּוֹי אֶסְרָה. תִּנְיִי. בֵּית עֲבוּדָה זָרָה וְנִסְמְכָה לוֹ וְאַחַר כֵּן הִלְכָה לָהּ מוֹתֵר. אֲבָל אִם בָּא הוּא וְנִסְמְךָ לְעֲבוּדָה זָרָה כָּל-הַבַּיִת לְשֵׁם עֲבוּדָה זָרָה. אָמַר רַבִּי יוֹסִי. מִתְּנִיתִין אָמְרָה כֵּן. הִזֵּה שְׁלוֹ וְשָׁל עֲבוּדָה זָרָה יְדוּן מִחֲצָה לְמַחֲצָה.

Levi said, one who worships a house makes it forbidden<sup>209</sup>, a cave he does not make forbidden<sup>219</sup>. 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.

<sup>220</sup>Rebbi Johanan explained the Mishnah<sup>221</sup> 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 permitted<sup>222</sup>. 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 worship<sup>222</sup>. Rebbi Yose said, our Mishnah says so, “If it was his and the idolatry’s, it is judged half by half.”<sup>223</sup>

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.

וכיירו לעבודה זרה וחדש נטמל מה שהחדש. 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 אמרו. בהכנסתו לארץ היא מתניתא. על דעתיה דרב דאמר. המשתנה לבית אסרו. בגין קד הוא פתר לה בכניסתו לארץ. על דעתיה דרבי יוחנן דו אמר. המקדיש את הבית אין מועלין בו. ויפתינה במשתנה לבית. המשתנה לבית יש לו ביטול. הכנסתו לארץ אין לו ביטול. כיצד הוא עושה. מפרק את פצימיו והוא מותר.

רבי אילא בשם רבי לעזר. והוא שהכניס לתוכו עבודה זרה. על דעתיה דרבי שני בתים הן. והתינו. ג' בתים. פאו לשעה וכאו לשהות.

**Halakhah 9:** “There are three houses,” etc. Rav and Rebbi Johanan both are saying, the Mishnah treats their entry into the Land<sup>224</sup>. 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 Land<sup>225</sup>. Following the opinion of Rebbi 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 house<sup>226</sup>? {The effect of} one who worships a house can be voided. At their entry into the Land it could not be voided<sup>225</sup>. What could he do<sup>227</sup>? He removes its clapboards and it is permitted.

Rebbi Ila in the name of Rebbi Eleazar: Only if he brought an idol into it<sup>228</sup>. In the opinion of Rebbi [Eleazar]<sup>229</sup> there are two houses. But have we not stated three? Here temporarily, there permanently<sup>230</sup>.

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.

מַשְׁנֵה פּוֹ: שְׁלֹשָׁה אֲבָנִים הֵן. אֶבֶן שֶׁהֻצְבֵּה מִתַּחֲלָה לְפִימוּם הָרִי זוֹ אֲסוּרָה. סִייד וְכִיִּירָה לְשֵׁם עֲבוּדָה זָרָה וְחִידֵשׁ נוֹטֵל מִה שֶׁחִידֵשׁ. הַעֲמִיד עָלֶיהָ עֲבוּדָה זָרָה וְסִלְקָה הָרִי זוֹ מוֹתֵרָת.

**Mishnah 10:** There are three kinds of stone. If he quarried them from the start as pedestal<sup>231</sup> 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) הַלְכָה פּוֹ: שְׁלֹשָׁה אֲבָנִים הֵן כּוֹל. רַבִּי בָּא בְּשֵׁם רַב. מֵאז הַמִּיּוֹתָכִים לְעֲבוּדָה זָרָה נֶאֱסָר מִיָּד. רַבִּי יִרְמְיָה בְּשֵׁם רַבִּי לְעֶזֶר. מֵאז הַמַּתִּיף כּוֹס לְעֲבוּדָה זָרָה נֶאֱסָר מִיָּד. רַבִּי הִילָא בְּשֵׁם רַבִּי לְעֶזֶר. וְהוּא שֶׁהֻצְבֵּה עָלֶיהָ עֲבוּדָה זָרָה. מִחֻלְפָּה שִׁיטְתִּיהָ דְרַב. תַּמָּן הוּא אָמַר. מֵאז הַמַּתִּיף כּוֹס לְעֲבוּדָה זָרָה נֶאֱסָר מִיָּד. וְהִכָּא הוּא אָמַר הַכִּין. פְּתַר לָהּ פְּהַדִּין תַּנְיִיא. דִּתְנִינָן תַּמָּן. עֲבוּדָה זָרָה שֶׁלְנִכְרִי אֲסוּרָה מִיָּד. וְשֶׁלִּישְׂרָאֵל מִשְׁתַּעֲבָד. כְּלוּם פְּלִיגִין לָהּ

בְּעֹבֵדָה זָרָה. דִּילְמָא בְּמִשְׁמָשׁוּי. רַבִּי שְׁמַעוֹן בְּשֵׁם רַבִּי לְעֶזֶר. אִף בְּמִשְׁמָשׁוּי עֹבֵדָה זָרָה מִחֲלֻקָּת.

רַבִּי אֵילָא בְּשֵׁם רַבִּי לְעֶזֶר. וְהוּא שְׁהַעֲמִיד עָלֶיהָ עֹבֵדָה זָרָה. עַל דְּעָתִיחַ דְּרַבִּי לְעֶזֶר ב' אֲבָנִים. וְהַתְּנִיחֵן. שְׁלֹשׁ אֲבָנִים הֵן. כָּאֵן לְשַׁעֲהָ וְכָאֵן לְשַׁהוֹת.

**Halakhah 10:** “There are three kinds of stones,” etc. Rabbi Abba in the name of Rav: This<sup>232</sup> 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 forbidden<sup>233</sup>.

Rabbi Ila in the name of Rabbi Eleazar: Only if he put an idol on it<sup>234</sup>. The opinions of Rav<sup>235</sup> seem inconsistent. There he says, if one casts a cup for idolatry it is immediately forbidden, and here he says so<sup>236</sup>? Explain it following what has been stated<sup>237</sup>: “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 appurtenances<sup>238</sup>? Rabbi Simeon in the name of Rabbi Eleazar: There is disagreement also about appurtenances<sup>239</sup>.

<sup>240</sup>Rabbi 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 שנטעו 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*<sup>128</sup>. A tree which originally was planted for idolatry is forbidden. If he cut and shaped<sup>241</sup> it for idolatry and it grows new shoots, one removes what grew newly. If he puts an idol under it<sup>242</sup>, 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 כולן. רבי אמר בשם רבי שמעון בן לקיש אמר. פיתחו בה פיתוחים אינה בטילה. לכן צריכה אפילו העביר הפיתוחים. תני. הרקיב נוטל מה שהרקיב. אמר רבי ינאי. והוא שהרקיב בה לעבודה זרה. רבי הילא בשם רבי לעזר. והוא שהעמיד תחתיה עבודה זרה. מחלףא שיטתיה דרבי שמעון בן לקיש. תמן אמר רבי אמר פיתחו בה פיתוחים אינה בטילה. וסברין מימר. אפילו העביר את הפיתוחים. וכא אמר אבון. חומר הוא בפיתוח.

תני. הרקיב 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. פאן לשעה וכאן לשעות.

**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 engravings<sup>243</sup>. It was stated: If he grafted, he has to remove what he grafted. Rabbi Yannai said, only if he grafted for idolatry<sup>244</sup>. Rabbi Hila in the name of Rabbi Eleazar<sup>245</sup>: 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 here<sup>246</sup> he says so? It is more severe with engravings.

<sup>247</sup>It 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.

<sup>240,248</sup>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 בִּלְשׁוֹן תַּחְתִּיּוֹת עֲבוֹדָה זָרָה. רַבִּי שְׁמַעוֹן אוֹמֵר כֹּל שְׁעוֹבְדֵי אֹתָהּ. וּמַעֲשֵׂה בְצִיּוּד בְּאֵילֵן שְׁהֵי עוֹבְדֵי אֹתוֹ וְהָיָה תַּחְתֵּי גֵל. אָמַר לֵהֵן רַבִּי יְהוֹשֻׁעַ בְּדָקוֹ אֵת הַגֵּל הַזֶּה וּבְדָקוֹהוּ וּמָצְאוּ בוֹ צִוְרָה. אָמַר לֵהֵן הוֹאִיל וְלַצִּוְרָה הֵן עוֹבְדֵי נִתִּיר לֵהֵן אֵת הָאֵילִן:

**Mishnah 12:** What is an *Ashera*<sup>249</sup>? 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 Joshua<sup>250</sup> 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 them<sup>251</sup>

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 Mishnaot 13-16 do not apply to this tree.

(43b line 55) **הלכה יב:** איזו היא אַשֵׁרָה כול'. אָמַר רַב חֲסִדָּא. בְּסֵתֶם חֲלִיקִין. מָה נֶן קִיָּמִין. אִם דָּבָר בְּרִיא שֶׁהוּ עוֹבְדִין לַצֵּדֵה וְלֵאֵילָן דְּבָרֵי הַכֹּל אֲסוּר. וְאִם דָּבָר בְּרִיא שֶׁהוּ עוֹבְדִין לַצֵּדֵה וְאֵילָן דְּבָרֵי הַכֹּל מֵתוּר. אֲלָא כֹּן אֲנִן קִיָּמִין בְּסֵתֶם. רַבִּי שְׁמַעוֹן אוֹמֵר. סֵתֶמֶן עוֹבְדִין לַצֵּדֵה וְלֵאֵילָן. וְרַבְנָן אֲמַרֵי. סֵתֶמֶן עוֹבְדִין לַצֵּדֵה וְאֵילָן עוֹבְדִין לֵאֵילָן. וְקִשְׁיָא. רַבִּי שְׁמַעוֹן חֲלוּק עַל הַחֲבָמִים וְעוֹשֶׂה מַעֲשֶׂה כִּיּוֹצֵא בּוּ.

**Halakhah 12:** What is an *Ashera*? Rav Hisda said, They disagree in the indeterminate case<sup>249</sup>. 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 sense<sup>252</sup>!

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 יַעֲבֹר תַּחְתֶּיהָ טָמֵא. הַיּוֹתֵה גּוֹזְלֵת אֶת הַרְבִּים וְעֹבֵר תַּחְתֶּיהָ טְהוֹר. וְזוֹרְעִים תַּחְתֶּיהָ יִרְקוֹת בִּימוֹת הַגֶּשְׁמִים אֲבָל לֹא בִימוֹת הַחֶמְדָּה. וְהַחֲרִיץ לֹא בִימוֹת הַחֶמְדָּה וְלֹא בִימוֹת הַגֶּשְׁמִים. רַבִּי יוֹסֵי אוֹמֵר אִף לֹא יִרְקוֹת בִּימוֹת הַגֶּשְׁמִים מִפְּנֵי שֶׁהִנְבִּיחַ נִוְשֶׁרֶת עֲלֶיהֶן וְהָיָה לָהֶן לְזָבֵל:

**Mishnah 13:** One should not sit in its shadow<sup>253</sup> 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 public<sup>254</sup> and one passed under it, he is pure. One may sow vegetables under it in the rainy season but not in summer<sup>255</sup>, 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 יֵשֵׁב בְּצִלָּהּ כּוֹל. תִּמְנֵן אֶמְרֵי בְּשֵׁם רַב חֲסִדָּא. צִלָּהּ אֲסוּר. צֶל צִלָּהּ מוּתָר. אִי זָהוּ צֶל צִלָּהּ וְאִי זָהוּ צִלָּהּ. תִּמְנֵן אֶמְרֵי. כָּל־שְׂאֵילוּ תִּפְּוֹל וְהִיא נוֹגַעַת בּוֹ זָהוּ צִלָּהּ. וְכָל־שְׂאֵילוּ תִּפְּוֹל וְאִינָהּ נוֹגַעַת בּוֹ זָהוּ צֶל צִלָּהּ.

**Halakhah 13:** “One should not sit in its shadow,” etc. There<sup>256</sup> 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-shadow<sup>257</sup>.

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 צִלָּהּ אֲסוּר. מִשּׁוּם שֶׁהוּא בְּהִנָּאָה. הָרִי הַקָּבֵר אֲסוּר בְּהִנָּאָה וְצִלּוֹ מוּתָר. הָרִי הַיֵּקֶל הוּא אֲסוּר בְּהִנָּאָה וְרַבּוֹן יוֹתֵנּוּן בּוֹן זָכָאֵי יוֹשֵׁב וְשׂוֹנֵה בְּצִלּוֹ שְׁלֵהֵיכָל. הוּא לֵית טַעַם דְּלֹא מִשּׁוּם שֶׁהוּא אֲסוּר בְּהִנָּאָה. רַב אֲבִין בְּשֵׁם רַבְּנָן דְּתַמְנֵן. זֹאת אוֹמְרַת שְׂאֵין טוּמְאַת הַמֵּתִים מְחוּוֹרֶרֶת. דְּלֹא כֵן אֵילוּ קָבֵר שֶׁהוּא גּוֹזֵל אֶת הַרְבִּים וְעֵבֵר תַּחְתָּיו טוֹהֵר.

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 Hall<sup>258</sup>! Therefore the reason cannot be that it is forbidden for usufruct. Rav Abin in the name of the rabbis there<sup>256</sup>: This implies that this impurity of the dead is not logically consistent<sup>259</sup>. 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) גמליאל זוגא הנה מסתמיך ברבי שמעון בן לקיש. מטון בהו תבניתא. אמר ליה. מהו נייעבור קומי. אמר. עבור קומי וסמי עיניה. רבי יצחק בר מתנה הנה מסתמיך ברבי יוחנן. מטון צלמא דבולי. אמר ליה. מהו נייעבור קומי. אמר ליה. עבור קומי וסמי עיניה. רבי יעקב בר אידי הנה מסתמיך ברבי יהושע בן לוי. מטון לאדורי צלמא. אמר ליה. נחום אש קודש קדשים עבר ואת לית את עבר. עבור קומי וסמי עיניה.

Gamliel the Twin was supporting<sup>260</sup> 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 eye<sup>261</sup>. Rabbi Isaac bar Mattanah was supporting Rabbi Johanan. They came to the statue of the city council<sup>262</sup>. 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 Herod<sup>263</sup>. He told him, Nahum the most holy man<sup>17</sup> 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 *מסתמיך ב* means “was supporting” but *מסתמיך על* 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) אהדורי, in *Seqalim* 2:6 אהרא, in *Midrash Shemuel* 19[4], ed. Buber Note 17, הרודיס, in *Yalqut Semuel* # 124 הרודיס. The last two readings “Herod” seem to be the correct one.

43b line 76) לית הָדָא פְּלִיגָא על רַבֵּי יוֹחָנָן. דְּרַבֵּי יוֹחָנָן אָמַר. עֲבוּדָה זָרָה שְׁנִשְׁתַּבְּרָה אֲסוּרָה. לא כּוּ סְבַרְיָנָן מִימַר. אִם בְּשֵׂאִינוּ עֵתִיד לְהַחְזִירָן לְכַלְיָנָן דְּבַרֵּי הַכֹּל מוּתָר. תִּיפְתָּר בְּעֲבוּדָה זָרָה שְׁלִישְׁרָאֵל. לִית הָדָא פְּלִיגָא על רַב. דְּרַב אָמַר. לְצוּרְכָה הִיא אֲסוּרָה וְשִׁפְיָהּ מוּתָרָן. עוּד הִיא תִיפְתָּר בְּעֲבוּדָה זָרָה שְׁלִישְׁרָאֵל. מִפְּנֵי מָה הַכֹּל פּוֹרְשִׁין הִימְנִיָהּ. מִפְּנֵי שְׁנִיבּוּלָה רַע.

Does this<sup>264</sup> 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 everybody<sup>216</sup>. Explain it about a Jew's idol<sup>265</sup>. Does this not disagree with Rav, since Rav said, for its purpose it is forbidden but its shavings are permitted<sup>266</sup>? Again explain it about a Jew's idol.

Why does everybody stay away from it<sup>267</sup>? 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. הִסִּיק בְּהֵן אֶת הַתְּנֹור אִם הָדָשׁ יוֹתֵן. וְאִם יָשָׁן יוֹצֵן. אִפְּהֵי בּוֹ אֶת הַפֶּת הַפֶּת אֲסוּרָה בְּהִנְיָהּ. נִתְעַרְכָּה בְּאַחֲרוֹת כּוּלָן אֲסוּרוֹת בְּהִנְיָהּ. רַבֵּי לִיעֶזֶר אוֹמֵר יוֹלִיד הַנְּיָה לִים הַמָּלַח. אָמְרוּ לוֹ אִין פְּדִיז לְעֲבוּדָה זָרָה.

**Mishnah 14:** If he took wood from it<sup>268</sup>, it is forbidden for usufruct. If he used it to heat an oven<sup>269</sup>, if it was new it must be destroyed<sup>270</sup>, 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 usufruct<sup>271</sup>. Rabbi

Eliezer says, he should bring his profit to the Dead Sea<sup>272</sup>. 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 יד:** 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 case<sup>273</sup>.

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.

**משנה טו:** נטל ממונה כרכר אסור בהנאה. ארג בו את הכנוד הכנוד אסור בהנאה. נתערב באחרים כולן אסורין בהנאה. רבי אליעזר אומר יליד הנאה ליום המלה. אמרו לו אין פדיון לעבודה זרה:

**Mishnah 15:** If he took from it [wood to make] a weaver's shuttle<sup>274</sup>, 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 usufruct<sup>275</sup>. Rabbi Eliezer says, he should bring his profit to the Dead Sea<sup>272</sup>. They said to him, idols cannot be redeemed.

274 Reading with the Halakhah (and Greek κερακίς, -ίδος.

Maimonides's autograph Mishnah) כרכד, 275 Same argument as in Note 271.

(43c line 8) **הלכה טו:** נטל ממנה כרפד כול. אמר רבי תגיי. כד נחתית מן אילפא אשכחית רבי יעקב בר אהא יתיב מקשי. נטל הימניה כרפד אסור בהנייה. ארג בו את הבגד הבגד אסור בהנייה. והתנינן. ימכר פולו לגוי חוץ מדמי יין נסוד שבו: אמר רבי יעקב בר אהא. תגיי קשתיה תגיי קיימה. מאי כדון. תמן אין דרד בנאדם ליקח מן הגוי. ברם הכא דרד בנאדם ליקח בגד מן הגוי.

**Halakhah 15:** "If he took from it [wood to make] a weaver's shuttle," etc.<sup>276</sup> Rabbi 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 state<sup>277</sup>, "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 buy<sup>278</sup> 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 י:** כיצד מבטלה. קורסם וירד נטל ממנה מקל או שרכיט אפילו עלה הרי זו ביטלה. שפאה לצורכה אסורה ושלא 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 insignificant<sup>279</sup>. If he planed it for its benefit it is forbidden, not for its benefit it is permitted<sup>266</sup>.

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 י:** כיצד 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 permitted<sup>280</sup>.

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 בצד זו בצד מרקוליס אסורות. ושתיים מותרות. וחקמים אומרים את שהיא נראה עמו אסור ואת שאינו נראה עמו מותר:

**Mishnah 1:** Rabbi Ismael said, three stones next to one another and next to a Mercury<sup>1</sup> are forbidden, but two are permitted<sup>2</sup>. But the Sages say, what is seen with it is forbidden<sup>3</sup>, 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 אפרי. 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 cubits<sup>4</sup>.

4 Within 50 cubits of the center of the heap the stones “are seen with it.” Babli 50a.

(43c line 69) היילכת מרקוליס כד 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 them<sup>5</sup>. If one put down the second one and they warned him because of “it and its young”<sup>6</sup>, he is whipped. Because of idolatry he is stoned<sup>7</sup>. If he put down the third<sup>8</sup>; there is a disagreement between Rebbi Johanan and Rebbi Simeon ben Laqish. <sup>9</sup>For they disagreed: If somebody slaughters an animal and its young for idolatrous purposes. Rebbi Johanan says, if he was cautioned about an animal and its young he is flogged, about idolatry he is stoned. Rebbi 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 הוּא מְרְקוּלִיס. כָּל־שֶׁהוּא סָג אֶת הַיָּם וְאֶת הַדְּרָכִים. הַיִּלְכֵת מְרְקוּלִיס בְּזָרִיקָה. הַשְׂתַּחֲוָה לָהּ מֵהוּ. אָמַר רַבִּי יוֹסֵי. כָּל־עֲצָמוֹ אֵינוֹ קָרוֹי מְרְקוּלִיס אֶלָּא בְּהַשְׂתַּחֲוָה. וְאֵבֶן מִשְׁפָּיִת לֹא תִתְנֶנּוּ בְּאַרְצְכֶם לְהַשְׂתַּחֲוֹת עָלֶיהָ. יְכוּל לֹא יִתֵּן שְׁנֵי אֲבָנִים זֶה עַל גֵּב 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 roads<sup>10</sup>. The practice of Mercurius is by throwing. What if he bowed down before it? Rabbi Yose said, essentially is is called Mercurius only for bowing down, *a maskit stone you shall not put up in your land to bow down on it*<sup>11</sup>. 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 Temple<sup>12</sup>.

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 Pereg

11 Lev. 26:1. The connection to be made

9(5).

(43d line 6) רב מפקד לבית רב אחא. רבי אמרי מפקד לאינשי ביתיה. כד תהוון נפקין לתעניתא לא תהוון רבעין פאורחכון. רבי יונה רבע על סיטריה. רבי אחא רבע על סיטריה. אמר רבי שמואל. אנא חמית רבי אבהו רבע פאורחיה. 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. מפשוטיתא דתעניתא וערוכתא דיומא שביעיא. רבנן דקיסרין אמרין. אוף הדיא מקוזתא. ואתינא 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 מיהושע. שאם יפול על פניו לאמר לו הקדוש ברוך הוא קום לך. אל יפול. ובלבד יחיד על הציבור.

Rav commanded to the family of Rav Aḥa, Rabbi Immi commanded to his own family, if you go out on the fast day<sup>13</sup> you should not incline normally<sup>14</sup>. Rabbi Jonah inclined on his side; Rabbi Aḥa 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 written<sup>11</sup>, *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 written<sup>15</sup>, *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*<sup>16</sup>. Rebbi Abbahu added up to *give thanks to the Eternal for He is good*; Rebbi Mana added up to *for eternal is His kindness to Israel*<sup>17</sup>. Rebbi Joḥanan said to Rebbi Ḥiyya bar Abba: Babylonian, two things came from you, the stretching out on the Fast Day<sup>18</sup>, and the willow of the Seventh Day<sup>19</sup>. The rabbis of Caesarea say, also this blood letting<sup>20</sup>. It follows what Rebbi Immi said, the Babylonians in the name of the rabbis there: They permitted prostrating only on a public fast, and only on the side<sup>21</sup>. The younger Rebbi 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*<sup>22</sup>, should not fall down, in the case of an individual [praying] for the community<sup>23</sup>.

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) וְחֻכְמִים אוֹמְרִים. אֵת שֶׁהוּא נִרְאָה עִמּוֹ אֶסוּר. וְאֵת שֶׁאִינוֹ נִרְאָה עִמּוֹ מוּתָר. אֵת שֶׁהוּא נִרְאָה עִמּוֹ גּוֹפּוֹ אֶסוּר. וְאֵת שֶׁאִינוֹ נִרְאָה עִמּוֹ גּוֹפּוֹ. וְאֵת שֶׁאִינוֹ נִרְאָה עִמּוֹ אִינוֹ גּוֹפּוֹ. אֵת שֶׁהוּא נִרְאָה עִמּוֹ אֶסוּר. לֵית הִדָּא פְּלִיגָא עַל רִישׁ לְקִישׁ. דְּרִישׁ לְקִישׁ אָמַר. עֲבוּדָה זָרָה שְׁנִשְׁתַּבְּרָה מוּתָרָת. לֹא כֹן סְבָרִינָן מִימַר. אִם בְּעֵתִיד לְהַחְזִירָן לְכֻלְיָן דְּבָרֵי הַכֹּל מוּתָר. לֵית הִדָּא פְּלִיגָא עַל רַבִּי יוֹחָנָן. דְּרַבִּי יוֹחָנָן אָמַר. עֲבוּדָה זָרָה שְׁנִשְׁתַּבְּרָה אֶסוּרָה. וְלֹא כֹן סְבָרִינָן מִימַר. אִם בְּשֶׁאִינוֹ עֵתִיד לְהַחְזִירָן לְכֻלְיָן דְּבָרֵי הַכֹּל מוּתָר. וְמַר רַבִּי יוֹדָן אָבִי דְּרַבִּי מִתְנִינָה. אִם הֵיוּ מוּנָחִין בְּמִקּוֹמָן כְּמִי שֶׁהוּא עֵתִיד לְהַחְזִירָן לְכֻלְיָן. וְאֵילֵיוּ בְּמִקּוֹמָן.

רַבִּי בָּא בְּשֵׁם רַב. זָמְנִין דְּאֵת אָמַר. שְׁבָרֵי עֲבוּדָה זָרָה אֵין לְהוֹן בֵּיטוּל. וְזָמְנִין דְּאֵת אָמַר. מִשְׁמָשֵׁי עֲבוּדָה זָרָה אֵין לְהוֹן בֵּיטוּל. מֵאֵין דְּאָמַר. מִשְׁמָשֵׁין. כְּלִשְׁכּוֹן עֲבוּדָה זָרָה. וְמֵאֵין דְּמַר. עֲבוּדָה זָרָה. הֵיא מִשְׁמָשֵׁין לֹא. רַבִּי שְׁמוּאֵל רַבִּי אֲבָהוּ בְּשֵׁם רַב. אֲבָנֵי מְרֻקוּלִיס שְׁנִתְפָּרְזוּ אֵין לְהוֹן בֵּיטוּל לְעוֹלָם מֵשׁוּם עֲבוּדַת עֲבוּדָה זָרָה. שְׁמַע רַבִּי יוֹחָנָן וְמַר. יָפָה לִימְדֵנוּ רַבִּינוּ. שְׁכֹן הַמִּשְׁתַּחֲוֶה לְעֲבוּדָה זָרָה שְׁקָאבְלִים אֵין לְהוֹן בֵּיטוּל לְעוֹלָם.

כִּיצַד הוּא מְבַטְלָה. רַבִּי חִינְיָ בַר אֲדָא דְּאָמַר. בְּרוּק. וְהֵתִיב רַבִּי חִינְיָ. אֲבָנֵי מְרֻקוּלִיס שְׁנִתְפָּרְזוּ אֵין לְהוֹן בֵּיטוּל. אָמַר רַבִּי פִּינְחָס. כָּאֵין בְּנִזְרָקוֹת לֵה וְכָאֵין בְּשֶׁאֵין נִזְרָקוֹת לֵה. כִּהִדָּא רַבִּי שְׁמַעוֹן בְּרַבִּי הוּהוּ לֵיה מְרֻקוּלִיס גּוֹ חֻקְלָא. אֵתֵא גַבִּי בּוֹרְגָנְרָה. אָמַר לֵיה. בְּגִין דְּשִׁמְעִית דְּאֶרְכּוֹנָה בְּעֵי מִיַּעְבּוֹר הֵכָא לְמַחֵר אֵלֵא בְּחֵידָא דְּאֵת מְרִים אֵילָן כִּיפִינָא. מֵן דְּרַמּוֹן אֵזֵל בְּעֵי מִיִּסְבִּינוּ. אָמַר לֵיה. דִּידִי אֵינוּן. שְׁמַע רַבִּי חִינְיָ בַר נוֹה וְמַר. וְאֵית לְאִימִיָּה בַר. וְלֹא רַבִּי חִינְיָ רַבָּה תִּנְיָתָה. אֵלֵא מֵן דְּשִׁמְעָה מִינִיָּה חֻזַּק וְקַבְּעָה.

“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.)<sup>24</sup> What is seen with it<sup>4</sup> is its body, what is not seen with it is not its body.<sup>25</sup> Does this not disagree with Rebbi Simeon ben Laqish since Rebbi 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

permitted<sup>26</sup> according to everybody. <sup>25</sup>Does this not disagree with Rebbi Joḥanan, as Rebbi Joḥanan 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. <sup>27</sup>But Rebbi Yudan the father of Rebbi 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 place<sup>28</sup>.

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 nullified<sup>29</sup> 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 idols<sup>30</sup>. Rebbi Joḥanan heard it and said, our teacher taught us well, since if one bows down before an idol of (mourners)<sup>31</sup> they never can be nullified.

How does one nullify it? Rebbi Ḥiyya bar Ada said, by spit<sup>32</sup>. 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 it<sup>33</sup>. As this: Rebbi Simeon ben Rebbi had a Mercurius on his field. He came to his *burgonar*<sup>34</sup> and told him, since I heard that the magistrate<sup>35</sup> wants to pass by here tomorrow, by your life lift these stones. After he<sup>36</sup> had lifted them, he wanted to take them away. He<sup>37</sup> told him, they are mine. Rebbi Ḥiyya bar Abba heard this and said, did not the Elder Rebbi Ḥiyya state this<sup>33</sup>? But since he had heard it from him, he reinforced<sup>38</sup> and fixed it<sup>39</sup>.

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.

מִצָּא בְּרֵאשׁוֹ מְעוֹת כְּסוֹת אוֹ כְּלִים הָרִי אֵילוֹ מוֹתְרִין. פְּרָכְלִי עֲנָבִים וְעֵטְרוֹת שֶׁל שֶׁבֻלִים וְיֵינֹוֹת וְשִׁמְנִים וְסִלְתוֹת וְכֹל דְּבָר שֶׁבִּיּוֹצֵא בּוֹ קָרֵב עַל גַּבֵּי הַמִּזְבֵּחַ אָסוּר:

**Mishnah 2:** If one found on top of it<sup>41</sup> coins, garments, or vessels, they are permitted<sup>42</sup>. Branches of vine<sup>43</sup>, wreaths of ears of grain, wines, oils, and fine flours, and anything similar to what is offered on the altar<sup>44</sup> 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.

הַלְכָה ב: מִצָּא בְּרֵאשׁוֹ מְעוֹת כּוֹל. אָמַר רַבִּי יוֹנָתָן. לֹא סוּף דְּבָר עֵטְרוֹת שֶׁבֻלִים אֶלָּא אֶפִּילוֹ עֵטְרוֹת שְׁלוֹוֹרֵד. אָמַר רַבִּי יוֹסִי. לֹא סוּף דְּבָר מְרֻקוּלִים וּבְרֵאשׁוֹ מְעוֹת אֶלָּא אֶפִּילוֹ עֵבֻדָּה זָרָה שֶׁאֵין לָהּ קִנְסָלִין מִצָּא בְּתוֹכָהּ כְּסוֹת אוֹ כְּלִים הָרִי אֵילוֹ 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 roses<sup>45</sup>. Rabbi Yose said, not only a Mercurius and on top of it coins but even any pagan place

which has no lattice work<sup>46</sup> 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.

appurtenances of idols (Chapter 2 Note 219, Chapter 3 Note 132). If no such separation

46 Which separates the area reserved for priests from that of common worshippers, where everything is forbidden as

exists, nothing is reserved for the idol except what is on it. The Babli has the opposite rule, 51b.

מִשְׁנָה ג: עֲבוּדָה זָרָה שִׁמֵּשׁ בָּהּ גִּינָה וּמְרֻחֵץ נִהְיֵין מִהֵן שְׂלֵא בְּמוֹבָה וְאִין נִהְיֵין מִהֵן בְּמוֹבָה. הָיָה שְׂלָה וְשָׁל אַחֲרֵים נִהְיֵין מִהֵן בְּמוֹבָה וְשְׂלֵא בְּמוֹבָה:

**Mishnah 3:** If an idol had a garden or a bath house, one may benefit from them not with a favor<sup>47</sup> but one may not benefit with a favor. If it belongs to it and a third party one benefits whether with or without a favor<sup>48</sup>.

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.

הֲלָכָה ג: עֲבוּדָה זָרָה שֶׁהָיָה לָהּ גִּינָה כּוֹל. כִּינֵי מִתְּנִיתָא. בְּטוֹבַת הַכּוֹמְרִין וְשְׂלֵא בְּטוֹבַת הַכּוֹמְרִין. הֲלִילִין שְׁלֵעֲבוּדָה זָרָה אֶסוּר לְמוֹכְרָן. אִם הָיָה מִעֲלֵין שְׂכָר לְמִדְיָנָה אֶף עַל פִּי שְׁעוֹשִׁין בְּהוֹן צוֹרֵךְ לְעֲבוּדָה זָרָה מוֹתֵר לְמוֹכְרָן. הַנּוֹת שְׁלֵעֲבוּדָה זָרָה אֶסוּר לְשׁוֹכְרָה. אִם הָיָה מִעֲלָה שְׂכָר לְמִדְיָנָה אֶף עַל פִּי שְׁעוֹשִׁין בָּהּ צוֹרֵךְ לְעֲבוּדָה זָרָה מוֹתֵר לְשׁוֹכְרָה. הַגּוֹבָה לְשֵׁם עֲבוּדָה זָרָה אֶסוּר לִיתֵן לוֹ. אִם הָיָה מִעֲלָה שְׂכָר לְמִדְיָנָה אֶף עַל פִּי שֶׁהוּא גּוֹבָה לְשֵׁם עֲבוּדָה זָרָה מוֹתֵר לִיתֵן לוֹ. וּמִתְּנִיתָא אֶמְרָה כּוֹ. הָיָה שְׂלָה וְשָׁל אַחֲרֵים נִהְיֵין מִהֵן בְּטוֹבָה וְשְׂלֵא בְּטוֹבָה:

**Halakhah 3:** “If an idol had a garden,” etc. So is the Mishnah: A favor to the priests or without a favor to the priests<sup>49</sup>. <sup>50</sup>“It is forbidden to sell<sup>51</sup> 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 sell<sup>51</sup> them<sup>52</sup>. 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.

עבודת זרה של נכרי אסורה מיד ושל ישראל מושתיעבד. נכרי מבטל עבודת זרה שלו ושל ישראל. וישראל אינו מבטל עבודת זרה של נכרי. המבטל עבודת זרה ביטל מושמשיה. ביטל מושמשיה מבוטלין והיא אסורה:

**Mishnah 4:** A Gentile’s idol is immediately forbidden<sup>53</sup> but a Jew’s only when it is worshipped<sup>54</sup>. A Gentile is able to annul his idol and that of a Jew; but a Jew cannot annul the idol of a Gentile<sup>55</sup>. 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.

עבודת זרה של נכרי אסורה מיד כול'. רבי שמעון בן לקיש אמר. באומן שעושה למכור לשוק היא מתניתא. שכיון שגמרה דבר בריא שהשתחוה לה. רבי יוסי בעי. אם דבר בריא שהשתחוה לה בידא תנינן. עבודה זרה של נכרי אסורה מיד ושל ישראל מושתיעבד.

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<sup>56</sup>”?

Rebbi Hila in the name of Rebbi 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 flogged<sup>57</sup>. Rebbi 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 mallet<sup>58</sup> and he will be flogged when it is finished<sup>59</sup>.

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.

לפיכך אין לה ביטול. אמר רבי זעירא. לית כאן לפיכך. אלא אין לה ביטול ויש לה ביטול. גבזדה זרה שלנכרי אסורה מיד לפיכך יש לה ביטול. ושל ישראל משתיעבד לפיכך אין לה ביטול. אמר רבי זעירא. לית כאן לפיכך. אלא אין לה ביטול ויש לה ביטול. גבזדה זרה שלנכרי אסורה מיד. דכתיב אבד תאבדון. מיד. ושל ישראל משתיעבד. דכתיב ארור האיש אשר יעשה פסל ומסכה וגו'. לכשישם. ואית דמחלפין ליה. גבזדה זרה של ישראל אסורה מיד. דכתיב ארור האיש. ושלנכרי עד שתיעבד. דכתיב אבד תאבדון את כל המקומות אשר עבדו לשם הגוים. רבי יצחק בר נחמן בשם שמואל שמע לון מן הדא. אם ירשתו כשהוא אלוה באש תשרפו. ואם לאו אשר אתם ירשים אתם את אלהיהם. רבי



יִוָּחַן בְּשֵׁם רַבִּי יֵנְאִי שְׁמַע לֹוּן מִן הַדָּא. לֹא־תַחֲמוּד דְּקֶסֶף וְזָהָב עֲלֵיהֶם. אֵת אֵין אֵת חוּמַד וְלוֹקַח. אַחֲרִים חוּמַדִּין וְאֵת לוֹקַח.

רבי יוחנן אמר לבר דרוסי. חות ותבר פל-אילין צלמיא דגו דימוסין. ונחת ותבר פולחון פרא חד. ולקמה כן. אמר רבי יוסי בירבי בון. מפני שנתפד 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”<sup>58</sup>, only “it cannot be annulled or it can be annulled”. “A Gentile’s idol is immediately forbidden,” as it is written<sup>59</sup>: *you certainly shall destroy*. “But a Jew’s only when it is worshipped,” as it is written<sup>60</sup>, *cursed be the man who makes a hewn or molten image*, etc., when he puts it up. But some are switching this<sup>61</sup>. “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 written<sup>59</sup>, *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 fire<sup>62</sup>, otherwise *of which you will inherit their gods*<sup>63</sup>. Rabbi Johanan in the name of Rabbi Yannai understood it from the following: *You should not covet silver or gold for them*<sup>64</sup>. 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 baths<sup>65</sup>. He went down and broke them all except one<sup>66</sup>. Why this? Rabbi Yose ben Rabbi Abun said, because another<sup>67</sup> 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 חייקא בר אשי בשם רב. רבי הנה יתיב מתני לרבי שמעון במה. הנכרי מבטל גבוהה זרה שלו ושלחבירו. אמר ליה. עד דהנה חייקא עלך. כן אית תני תני. הנכרי מבטל גבוהה זרה שלו 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 תנייא ארור האיש אשר יעשה פסל ומסכה. לעולם.

Rebbi Hiyya bar Ashi in the name of Rav: <sup>68</sup>Rebbi was sitting and teaching his son<sup>69</sup> 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."<sup>70</sup> Rav stated in the name of <sup>71</sup>the reason of this Tanna: *Cursed be the man who makes a hewn or molten image, forever*<sup>60</sup>.

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 במה "height, altar" or במה

"why?"

70 Babli 53a; as anonymous text Tosephta 5:3.

71 A name is missing here.

6) line 44a בר קפרא אשכח חד עיזקא צר. חד טלי ארמאי הנה פרי בתריה. הנה מחי ליה הנה מיסקל ליה. הנה אמר ליה. רוק עלה. והוא לא מקבל עלוי. אשתנין עלה. והוא לא מקבל עלוי. הדא אמרה. נכרי מבטל עבודה זרה שלו ושלחבירו על פרוחו. והוא שידע טיב עבודה זרה שלו. הדא אמרה. עבודה זרה שעבדה ישראל אין לה ביטול לעולם. ותיעשה כעבודה זרה שהניחיה עובדיה ונתנה בטילה. אמר רבי זעירא. כל שאילו מאיליה היא בטילה ישראל מבטלה. וכל שאילו מאיליה אינה בטילה אין ישראל מבטלה.

<sup>72</sup>Bar Qappara found a ring with an idol. An Aramean youth was running after him. He was hitting him<sup>73</sup>, 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 annulled<sup>74</sup>. Could it not be like an idol which was abandoned by its worshippers and by that being annulled<sup>75</sup>? 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 annul<sup>76</sup>.

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) line 44a רב אמר. בימוס לא בטיל. הא אם ביטלו בטל. מחלפה שיטתיה דרב. תמן הוא אמר. מאז המתיד כוס לעבודה זרה נאסר מיד. והכא את אמר הכין. פאן בשקיטר וכאן בשלא קיטר. ואפילו תימר. פאן וכאן בשקיטר. רב כדעתיה. דרב אמר. מאז המתיד כוס לעבודה זרה נאסר מיד.

רב אמר. בימוס לא בטל. הא משמשין בטלו. מחלפה שיטתיה דרב. תמן אמר רב ששת בשם רב. בשיהלכו להם המהלקים בדרך אחרת. והכא הוא אמר הכין. פאן בשקיטר וכאן בשלא קיטר. ואפילו תימר. פאן וכאן בשקיטר. רב כדעתיה. דרב אמר. מאז המתיד כוס לעבודה זרה נאסר מיד.

Rav said, a pedestal<sup>77</sup> is not annulled<sup>78</sup>. Therefore if one annulled it it is annulled<sup>79</sup>. The opinions of Rav seem inconsistent. There he says<sup>80</sup>, 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 incense<sup>81</sup>. 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 forbidden<sup>82</sup>.

Rav said, a pedestal is not annulled. Therefore its appurtenances are annulled. The opinions of Rav seem inconsistent. There<sup>83</sup> 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 forbidden<sup>82</sup>.

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 יוֹהָנָן. מִצֵּבָה כָּל־שֶׁהִיא יְחִידִית. מִזֵּבַח כָּל־שֶׁאַבְנֵינוּ מְרוּבּוֹת. הִזְקָה אָמַר. מִצֵּבָה כִּין שְׁנַפְגָּמָה בֵּיטְלָהּ. מִזֵּבַח צְרִיד לְפָנִים כָּל־אֶבֶן וְאֶבֶן. מִתְּנִיתָא דְהִזְקָה פְּלִגְנָא עָלוּ. נִתְצַת אֶת הַמִּזְבֵּחַ הַנֶּחֱלָה. שְׁבִרְתָּ אֶת הַמִּצֵּבָה הַנֶּחֱלָה. רַבִּי זְעִירָא רַבִּי יִצְחָק בַּר נַחֲמָן

בְּשֵׁם רַבִּי הוֹשַׁעְיָה רַבִּי חִיָּה רַבִּי בָּא רַבִּי לְעֶזְרָא בְּשֵׁם רַב הוֹשַׁעְיָה. בְּשׁוּמוֹ | כָּל-אַבְנֵי מִזְבֵּחַ  
כְּאַבְנֵי-גֵיז מְנוּפְצוֹת. רְדוּף אַחֲרֵיהֶם עַד שֶׁתִּקְעַקַע בַּיְצָתָם מִן הָעוֹלָם. בְּרַם הַכָּא. שְׁבִרְתָּ  
הַמִּצְבָּה הַיָּחִיד לָהּ. נִתְצַתְּ הַמִּצְבָּה חֵנַח לוֹ.

Rebbi Johanan said, a stele is a monolith, an altar has many stones<sup>84</sup>. 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 alone<sup>85</sup>. Rebbi Ze'ira, Rebbi Isaac bar Nahman in the name of Rebbi Hoshai; Rebbi Hiyya (Rebbi)<sup>86</sup> Abba, Rebbi Eleazar in the name of Rav Hoshai: *When He turns all stones of the altar like smashed pieces of chalk*<sup>87</sup>, 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 alone<sup>88</sup>.

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.

44a line 29) כְּתִיב לֹא-תַעֲשׂוּ לָכֶם אֱלִילִים וּפְסֵל וּמִצְבֵּה לֹא-תִקְמוּ לָכֶם. לֹא הִיא עֲשִׂיָה הִיא קִימָה. אָמַר רַבִּי הִילָא. עֲשִׂיָה כְּתַחֲלִילָהּ. קִימָה כָּל-שִׂאֵלוֹ תַפּוּל לֹא יְקִימֶנָה. כְּתִיב וְנִתְצַתְּם אֶת-מִזְבְּחֹתֶם וְשִׁבְרֹתֶם אֶת-מִצְבֹּתֶם. וּמִנִּיין לִיתֵן אֶת הָאָמוֹר בְּזָה לָזֶה. אָמַר רַבִּי בּוֹן בַּר חִיָּה לְצַדִּין אֶתְאָמְרַת. אוּ שִׁיבּוֹר אוּ גִדּוּעַ אוּ נִתְיָצָה לְכָל-אַחַת וְאַחַת.

It is written<sup>89</sup>, *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 written<sup>90</sup>, *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:** כיצד מבטלה קטע ראש אוזנה ראש חוטמה ראש אצבעה. פחסה אף על פי שלא חיסרה ביטלה. רקק בפניה השתיז בפניה גררה וזרק בה את הצואה הרי זו אינה בטילה. מכרה או מישכנה רבי אומר ביטל והכמים ואמרים לא ביטל:

**Mishnah 5:** How does one annul it<sup>91</sup>? 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 missing<sup>92</sup>, he annulled it. If he spat in its face, urinated before it, dragged it, threw excrement on it, this is not annulled.<sup>93</sup> If he sold or mortgaged it, Rebbi 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:** כיצד הוא מבטלה כול. אמר רבי זעירה. הדא דתימר. בשמכרה מתוך שלום. אבל מכרה מתוך הקפדה דברי הכל בטילה. והלה כירעב והתקצף וקלל במלכו וגו'. זעור בר חנינה בשם רבי חנינה. בשמכרה לצורף נחלקו. אבל אם מכרה לעובדה דברי הכל. אינה בטילה. רב ירמיה בשם רב. בשמכרה לעובדיה נחלקו. אבל אם מכרה לצורף דברי הכל. בטילה היא. רבי יעקב בר אחא בשם רבי יוחנן דברי הכל. רבי הילא בשם רבי שמעון בן לקיש במחלוקת. ואתיניא דרבי חנינה כרבי רבי יוחנן ודרב ירמיה פריש לקיש. מאי כדון. בשמכרה לצורף נחלקו. אבל אם מכרה לעובדיה דברי הכל. אינה בטילה.

**Halakhah 5:** “How does one annul it,” etc? Rebbi Ze`ira said, this is if he sold it in peace<sup>93</sup>. 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*<sup>94</sup> etc.

Ze`ur bar H̄inena in the name of Rebbi H̄anina: They disagreed in case he sold it to a goldsmith<sup>95</sup>. 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. Rebbi Jacob bar Aḥa in the name of Rebbi Joḥanan: the opinion of everybody. Rebbi Hila in the name of Rebbi Simeon ben Laqish:

in dispute<sup>96</sup>. 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 annulled<sup>97</sup>.

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.

מַשְׁנֵה וְ: עֲבוּדָה זָרָה שֶׁהִנְחִיחוּהָ עוֹבְדֵיהָ בְּשָׁעַת שְׁלֹמֹם מוֹתֶרְתָּ. בְּשָׁעַת מְלַחְמָה אֲסוּרָה. בַּיְמוֹסְיָאוֹת שֶׁל מְלָכִים הָרִי אֵלָיו מוֹתֶרִין מִפְּנֵי שֶׁמַּעֲמִידִין אוֹתוֹ בְּשָׁעָה שֶׁהַמְּלָכִים עוֹבְרִין:

**Mishnah 6:** An idol which was abandoned by its worshippers in times of peace is permitted, in times of war is forbidden<sup>97</sup>. Pedestals of kings are permitted since they put them up when the kings pass by<sup>98</sup>.

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

הַלְכָה וְ: עֲבוּדָה זָרָה שֶׁהִנְחִיחוּהָ עוֹבְדֵיהָ כוּל. תִּנְיִי. מְלַחְמַת יְהוֹשֻׁעַ אֲסוּרָה. בְּמַלְחַמַת יְהוֹשֻׁעַ מוֹתֶרְתָּ. מְלַחְמַת דָּוִד מוֹתֶרְתָּ. בְּמַלְחַמַת דָּוִד אֲסוּרָה. מְלַחְמַת יְהוֹשֻׁעַ אֲסוּרָה. דְּכַתִּיב כִּי־הִחַרְתָּם תַּחְרִימֵם. בְּמַלְחַמַת יְהוֹשֻׁעַ מוֹתֶרְתָּ. שֶׁהִיא לְשָׁעָה. מְלַחְמַת דָּוִד מוֹתֶרְתָּ. מֵה שֶׁהָיָה אֵיתֵי הַגִּיתִי מִבֶּטֶל. בְּמַלְחַמַת 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 written<sup>99</sup>, *for certainly you should ban them*. Similar to the war of Joshua is permitted, for it is a short time<sup>100</sup>. The war of David is permitted, what Itai from Gat annulled<sup>101</sup>. Like the war of David is forbidden, for it is permanent<sup>102</sup>.

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 לחמה וללבנה ולכוכבים ולמזלות לתרים ולגבעות. ואבד עולמו מפני השמים. אמרו להן אם בן יאבד דבר שאין צורך לעולם בו ויסיים דבר שצורך העולם בו. אמרו להן אף אנו מחזיקין די 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. גזל זרע וזרע אין סופו לצמות. הבא על אשת איש אין סופו להוליד ממזר. אלא הניחו לעולם שניהוג במנהגו. שוטים שקילקלו צדידין ליתן דין וחסבון.



אמר רבי זעורא. אילו הוה כתיב כמוהם יהיו עובדיהם קשא. עובדי החמה כחמה ועובדי הלבנה כלבנה. אלא כמוהם יהיו עושיהם. אמר רבי מנא. אילו הוה כתיב כמוהם יהיו עובדיהם לא קשא. דכתיב וּפְרָרָה הַלְבֵנָה וּבִשְׁשָׁה הַחֲמָה. רבי נחמן בשם רבי מנא. עתידה עבודה זרה להיות באה ורוקקת בפני עובדיה ומבישתן ובטילה מן העולם. ומה טעם. גבושו כל עובדי פסל. רבי נחמן בשם רבי מנא. עתידה עבודה זרה להיות באה וכרעת 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 moon<sup>103</sup>? But, *like them should be their makers*<sup>104</sup>. Rebbi Mana said, if it were written, “like them should be their worshippers”, it would not be difficult, as it is written<sup>105</sup>, *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*<sup>106</sup>. 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*<sup>106</sup>.

103 To compare people to sun and moon would be praise.

105 Is. 24:23.

104 Ps. 115:8. This clearly refers to idols and their makers.

106 Ps. 97:7. This homily ends the part of the Tractate devoted to idols.

**משנה ח:** לוקחין גת בעוטה מן הנכרי אף על פי שהוא נומל בידו ונותן לתוך התפוח. ואינו געשה יין נכד עד שיירד לבור. ירד לבור מה שפבור אסור ותשארו מותר:

**Mishnah 8:** One may buy a used wine-press from a Non-Jew<sup>107</sup>. Even if he<sup>108</sup> takes it in his hands and puts it on the pile<sup>109</sup>. It does not become libation wine until it flows down into the cistern. If it flowed into the cistern<sup>110</sup>, 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 נוטל לין וענבים פאחת ונותן על התפוח. הנה נותן אילו בפי עצמן ואילו בפי עצמן אפילו מן מותר גוממיות. שתחת האשכולות אסורות. שבצידיהן 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 him<sup>111</sup>. But if he turned his eyes away from him, not then. So far if he<sup>112</sup> 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.)<sup>113</sup> Rabbi Yose ben Rabbi Abun in the name of Rabbi Johanan: Itself it becomes libation wine<sup>114</sup>.

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. H̄ID Azulai seems preferable:

הָיָה נוֹתֵן אֵילָנוּ בְּפִנֵּי עֲצָמוֹ וְאֵילָנוּ בְּפִנֵּי עֲצָמוֹ אֶפְלוּ כֵן מוֹתֵר. גּוֹמְמִיּוֹת שֶׁתַּחַת הָאֲשְׁכּוֹלוֹת 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.

גַּת שֶׁפָּקְקָה גּוֹי מִבְּפִנֵּים אֲסוּרָה וּמִבְּחוּץ מוֹתֵרָה. שְׂאִי אֶפְשֵׁר שְׁלֵא הָיָה שָׁם שִׂיפָה אַחַת טְלוּלָה וְנוֹגַע בָּהּ וּמִנְסֵף כָּל-הַבּוֹר.

רַב הוֹנָא בְּשֵׁם רַב. הַקִּילוּחַ פְּבוֹר. רַבִּי זְעִירָה בְּעֵי. בְּכָל-אַתֵּר לֵית אֶתְ עֶבֶד הַנְּצוֹק חִיבוּר. וְהִכָּא אֶתְ עֶבֶד הַנְּצוֹק חִיבוּר. סָבַר רַב הוֹנָא. נִתְנַסֵּף הַבּוֹר נִתְנַסֵּף הַקִּילוּחַ. נִתְנַסֵּף הַקִּילוּחַ לֹא נִתְנַסֵּף הַבּוֹר. רַבִּי בָּא לֹא אָמַר כֵּן. אֶלֶּא נִתְנַסֵּף הַבּוֹר לֹא נִתְנַסֵּף הַקִּילוּחַ. נִתְנַסֵּף הַקִּילוּחַ לֹא נִתְנַסֵּף הַבּוֹר. הָאִי דְאָמַר רַב הוֹנָא בְּשֵׁם רַב. הַקִּילוּחַ פְּבוֹר. סָבַר רַב הוֹנָא. כְּשֵׁם שֶׁהַבּוֹר מִתְנַסֵּף כִּף הַקִּילוּחַ מִתְנַסֵּף. תָּמַן אָמַרִי בְּשֵׁם רַב. מִגְעוּ שְׁלֵגוּי עוֹשֶׂה יָוֹן נִסֵּף. רַב נַחְמוּן בְּרַ יַעֲקֹב אָמַר. וּבִלְבַד בְּשׂוֹתֵת.

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 wine<sup>115</sup>.

Rav Huna in the name of Rav: The jet is like the cistern<sup>116</sup>. Rabbi Ze'ira asked: Everywhere<sup>117</sup> 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 wine<sup>118</sup>; if the flow became libation wine the cistern did not become libation wine<sup>119</sup>. 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 flowing<sup>120</sup>.

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 *Ṭahorot* 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) אַרְמֵינָא נָפַל לְגוּבָא. אֲתָא עוֹבְדָא קוֹמֵי רַבִּי הוּנָא. אָמַר. כּוֹבֵשֵׁן עָלָיו עַד דִּתְזַחֲלוֹן גּוּבָה. אָמַר רַבִּי חֲנִינְה. יָדָא אוּשֵׁיט. אָמַר. אֵייתוֹן בְּיַצְרִין וְזָלְפוֹן מִתְּוֵיתֵיהּ יָדֵיהּ.

An Aramean fell into a cavity. The case came before Rebbi Huna who said, immobilize him<sup>121</sup> until you have emptied the cavity. Rebbi Hanina said, he is moving his hand. He said, bring willow baskets and approach from under his hand<sup>122</sup>.

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 زلف “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 הֵנִיחַ מִתְּנֵי לְחִיָּיָה בַּר רַב. גּוֹי מְאַיְמָתִי עוֹשֶׂה יַיִן נֶסֶף. אָמַר לֵיהּ. מִשְׁיֹדֵעַ בְּטִיב עֲבוּדָה זָרָה. אֲפִיק רַב יֵאשִׁיָּה מִפִּילְתָּא אָמַר לֵיהּ. הֲדָא דְאַתָּה אָמַר. בְּלוֹקַח עֲנָבִים מִן הַגּוֹי. אֲכָל הַגּוֹי עֲצָמוּ בְּן יוֹמוֹ עוֹשֶׂה יַיִן נֶסֶף.

Simeon bar Hiyya was instructing Hiyya bar Rav. Starting when does a Gentile make libation wine<sup>123</sup>? He told him, from when he knows the nature of idol worship. (Rav Joshia left) [Rav put out his head]<sup>124</sup> 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 old<sup>125</sup>.

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 Kiphshuto* New York 1995, p. 226) that one has to read not רב יאשיה but אפיק רב 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 מְהוּ שְׁיַעֲשֶׂה בְּפִי יַיִן נֶסֶף. רַבִּי אֲדָא בְּשֵׁם רַבִּי לְעֶזְרָא. אִין גּוֹי עוֹשֶׂה יַיִן נֶסֶף בְּפִי. רַבִּי יְרֵמְיָה בְּשֵׁם רַבִּי אֲבָהוּ. הַגּוֹי עוֹשֶׂה יַיִן נֶסֶף בְּפִי. וְתַנִּי כּוֹ. אֲגַרְנִיסוֹס שְׁטַעַם מִן הַכּוֹס אוֹ מִן הַמִּינְקָת וְהַחֲזִיר לְחַבְּתֵי אֶסּוֹר. עַל דְּעִתִּיהּ דְּרַבִּי אֲדָא בְּשֵׁם רַבִּי לְעֶזְרָא. וְהוּא שְׁהַחֲזִיר הַגּוֹי. עַל דְּעִתִּיהּ דְּרַבִּי יְרֵמְיָה בְּשֵׁם רַבִּי אֲבָהוּ. וְאִפְּלִי הַחֲזִיר יִשְׂרָאֵל.

May a Gentile make libation wine with his mouth? Rebbi Ada in the name of Rebbi Eleazar: A Gentile cannot make libation wine with his mouth. Rebbi Jeremiah in the name of Rebbi Abbahu: A Gentile can make libation wine with his mouth. And we have stated thus: “If a market supervisor<sup>126</sup> tasted from a cup or from a suction pipe<sup>127</sup> and returned<sup>128</sup> to the amphora it is forbidden.” In the opinion of Rebbi Ada in the name of Rebbi Eleazar, only if the Gentile returned it<sup>129</sup>. In the opinion of Rebbi Jeremiah in the name of Rebbi Hoshai, even if a Jew returned<sup>130</sup>.

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 בנת אכל לא בוצרין עמו. ישראל שיהו עושקה במומאה לא דורכין ולא בוצרין עמו. אכל מוליכין עמו חביות לגת ומביאין עמו מן הגת.

**Mishnah 9:** One may stamp with a Non-Jew in the wine press<sup>130</sup> but one may not harvest with him<sup>131</sup>. With a Jew who works in impurity<sup>132</sup> one neither stamps nor harvests with him but one transports with him amphoras to the wine press and brings with him from the wine press<sup>133</sup>.

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 אָמַר. והוא שהילכו עליהן דרוכית שתי וערב. אָבַל לא הילכו עליהן דרוכית שתי וערב לא בְּדָא. רבי יוסי בעי. אם בשְהילכו עליהן דרוכית שתי וערב אָפילו כְּמִשְׁנֵה הָרֵאשׁוֹנָה. דִּתְנִי. בְּרֵאשׁוֹנָה הִי אומְרִין. בּוֹצְרִין עִם הַנְּכָרִי וְדוֹרְכִין עִם יִשְׂרָאֵל מִפְּנֵי שְׁעוֹשָׂה בְטוּמְאָה. ואין דורכין עם הגוי. חֲזְרו לומר. אין בּוֹצְרִין עִם הַנְּכָרִי ואין דורכין עם יִשְׂרָאֵל שֶׁהוּא עוֹשֶׂה בְטוּמְאָה. אָבַל דוֹרְכִין עִם הַגּוֹי וּמְסִיפֵי עִמוּ עַד שְׂיִתְעַלַּם מְעִינֵיהֶם. נִתְעַלַּם מְעִינֵיהֶם נַעֲשֶׂה יַיִן נָסֵד.  
מה טעמיה דרבי יונה. שְׂכַבְר נְטִמּוֹ מִהַכָּשֶׁר בְּצִינְרָה. מֵה טַעְמֵיהָ דְרַבִּי יוֹסִי. טְהוֹרִים הִי דְבַר תּוֹרָה. אֵת הוּא שְׁגִינְתָּה עֲלֵיהֶן טוּמְאָה. חִילִּיָּה דְרַבִּי יוֹסִי מִהֲדָא. דְּמַר רַבִּי יוֹסִי בְּשֵׁם רַבִּי הִילָא. בְּדִין הָיָה שְׂיִהָא אָדָם פּוֹטֵר אֵת טְבֵלוֹ דְּבַר תּוֹרָה. דְּכִתִּיב וַיִּנְתְּנָם מִמֶּנּוּ אֶת־תְּרוּמַת יְהוָה לְאַהֲרֹן הַכֹּהֵן: עֲשֵׂה שְׂיִנְתְּנֵנוּ לְאַהֲרֹן הַכֹּהֵן בְּכַהֲנֻתּוֹ. וְכֹאן הוֹאִיל וְאִין אֵת יָכוֹל לִיתְנֵנוּ לְאַהֲרֹן הַכֹּהֵן בְּכַהֲנֻתּוֹ רְשָׁאֵי אֵתָּה לְטַמּוּתּוֹ.

**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 crosswise<sup>134</sup>. 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 teaching<sup>135</sup>? As it was stated:<sup>136</sup> “Originally they were saying that one harvests grapes with the Non-Jew and stamps with a Jew who works in impurity<sup>137</sup>. 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 wine<sup>138</sup>”.

What is Rabbi Jonah’s reason? Because it already became impure when it was prepared by the grape harvest<sup>139</sup>. What is the reason of Rabbi Yose? They were pure by biblical standards. You are the one who decided that they be impure<sup>140</sup>. The strength of Rabbi Yose is the following, as Rabbi Yose said in the name of Rabbi Hila<sup>141</sup> 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*<sup>143</sup>. 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.

(fol. 43c) **משנה י**: נְהַתּוּם שֶׁהוּא עוֹשֶׂה בְּמוֹמָאָה לֹא לְשׂוֹן וְלֹא עוֹרְכִין עִמּוֹ אֲבָל מוֹלִיכִין עִמּוֹ פֶת לְפִלְטָר.

**Mishnah 10:** If a baker works in impurity one does not knead with him<sup>144</sup> nor form the bread with him<sup>145</sup>, but one may bring bread to the seller<sup>146</sup> with him<sup>147</sup>.

144 For kneading one must wet the flour; this prepares it for impurity and, in an impure bakery, makes the dough impure.  
145 The dough already is impure when it is formed; this prohibition falls under the  
general prohibition “to support sinners.”  
146 Greek *πρατήρ* (Buxtorf) or *πωλητήρ* (Krauss) “seller”.  
147 Since the bread is fully baked, transporting it is not “to support sinners.”

(44b line 22) **הלכה י**: נְהַתּוּם שֶׁעוֹשֶׂה בְּמוֹמָאָה כּוֹל. וְתַנִּי עֲלָה לֹא לוֹתְתִין וְלֹא טוֹחֲנִין וְלֹא בּוֹלְלִין עִמּוֹ. אֲמַר רַבִּי הִילָא. כָּאֵן דְּחוּלִין כָּאֵן דְּתַרוּמָה. וְהַתְּנִינָן. נְהַתּוּם. אֵית לָךְ מִימַר נְהַתּוּם בְּתַרוּמָה. חֲבַרְיָה אָמַרִי כָּאֵן בְּלוֹתִת כָּאֵן בְּשֹׂאֵינִי לוֹתֵת. וְהָא תַנִּינָן. אֲבָל מִשְׁתַּטִּיל לַמַּיִם לֹא תַגַּע אֲצִלָּה שְׂאִין מִחֻזְקִין יְדֵי עוֹבְרֵי עֲבָרָה.

רַבִּי חִינָנָא וְרַבִּי אֲמִי. חַד אָמַר. חֲרוּשׁ בֵּה טְבָאוֹת וְאֲנָא נָסִב לָהּ מִינְךָ בְּתַר שְׂמִיטָתָא. וְחַד אָמַר. אֲנִשְׁר. כָּאֵן דְּאָמַר. חֲרוּשׁ בֵּה טְבָאוֹת וְאֲנָא נָסִב לָהּ מִינְךָ בְּתַר שְׂמִיטָתָא. מַהוּ שׁוֹאֲלִין בְּשֹׁמֵן. אֲנִשְׁר. וּמָאן דְּאָמַר לְגוּי. אֲנִשְׁר. מַהוּ שׁוֹאֲלִין בְּשֹׁמֵן שֶׁל יִשְׂרָאֵל. שְׁלוֹם עֲלֵיכֶם.  
1 אַמִּי | 77 \* אֲמִי טְבָאוֹת | 7 טְבֹת | נְסִיב | 7 נְסִיב | וְחַד | 77 \* וְחַרְנָה | 2 מָאן דָּאֲמַל | 7 \* מִן דְּמַר חֲרוּשׁ בֵּה טְבָאוֹת וְאֲנָא נָסִב לָהּ מִינְךָ בְּתַר שְׂמִיטָתָא | 7 \* טְבָאוֹת | 3 וּמָאן | 7 מָאן | 7 כְּשִׁלּוֹם  
דְּלִמָּא. רַבִּי חִנָּנָה בְּרַ פְּפָא וְרַבִּי שְׂמוּאֵל בְּרַ נְחֻמָּן עֲבָרוּן עַל חַד מִן חוֹרְשֵׁי שְׁבִיעִית. אָמַר לִיה רַבִּי שְׂמוּאֵל בְּרַ נְחֻמָּן. אֲנִשְׁר. אָמַר לִיה רַבִּי חִנָּנָה בְּרַ פְּפָא. לֹא כֵן אֵילְפִן רַבִּי. וְלֹא אָמַרוּ | הַעוֹבְרִים וְגו'. שְׂאָסוּר לּוֹמַר לְחוֹרְשֵׁי שְׁבִיעִית. אֲנִשְׁר. אָמַר לְקָרוֹת אֵת יוֹדֵעַ לְדְרוּשׁ אֵי אֵת יוֹדֵעַ. וְלֹא אָמַרוּ | הַעוֹבְרִים. אֵילוּ הָאֵימוֹת שֶׁהֵן עוֹבְרִין מִן הָעוֹלָם שֶׁלֹּא אָמַרוּ לִישְׂרָאֵל. בְּרַכַּת יִי אֲלֵיכֶם. וּמַה יִּשְׂרָאֵל אוֹמְרִין לָהֶם. בְּרַכְנוּ אֶתְכֶם בְּשֵׁם יִי. וְיִשְׂרָאֵל אוֹמְרִים לָהֶם. לֹא דִיִּיכֶם כְּלִי-הַטּוֹבוֹת וְהַנְּחֻמוֹת הַבָּאִים לְעוֹלָם בְּשְׁבִילֵינוּ. וְאֵין אֵתָם אוֹמְרִים לָנוּ. בּוֹאוּ וּשְׂאוּ לְכֶם מִן הַבְּרָכוֹת. וְלֹא עוֹד אֵלָּא שְׂאֵתָם מְגַלְגְּלִין עֲלֵינוּ פִּיסיִים וְזִמְיוֹת וְגוֹלְגְּלִיוֹת וְאֶרְנוֹנוֹת.

1 חִנָּנָה | 77 \* חִנָּנָא בְרַ | 7 - מִן חוֹרְשֵׁי | 77 \* מְחוֹרְשֵׁי שְׁבִיעִית | 7 שְׁבִיעִיוֹת | 2 ר' | 7 \* - חִנָּנָה | 77 \* חִנָּנָא אֵילְפִן | 7 \* אוֹלְפִן | 3 וְגו'. | 7. מְכָאן | 7 \* בְּרַכַּת יִי עֲלֵיכֶם. שְׁבִיעִית | 77 \* שְׁבִיעִיוֹת אֲמַל | 7 \* אֲמַל לִיה | 7 \* אֵין | 4 הָאוֹמוֹת | 77 \* אוֹמוֹת הָעוֹלָם עוֹבְרִים | 77 \* עוֹבְרִין שְׁלֹא | 77 \* וְלֹא | 5 וְמַה | 77 \* מַה וְיִשׁ'

אומ' להם | 7 - 7 \*אומ' להן | 6 הטובות והנחמות | 77 \*הברכות הבאים | 77 \*הבאות ושאו | 77 \*וטלו  
7 | 7 הללו. 7 \*האילו וגולגליות | 7 גולגליות וארנונות | 77 \*וארנונות

**Halakhah 10:** “If a baker works in impurity,” etc. One states about this: One does not moisten, nor grind, nor mix with him<sup>148</sup>. <sup>149</sup>Rebbi 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 moisten<sup>150</sup>. But did we not state<sup>151</sup>: “But she may not touch hers once water has been put in because one does not support transgressors.”

Rebbi Ḥiyya and Rebbi Immi. One said<sup>152</sup>, “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.<sup>153</sup>” But he who said that one says to a Gentile, may you succeed, what means that one greets Jews<sup>154</sup>? “Peace be on you.”

Explanation<sup>155</sup>. 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*<sup>156</sup>, 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 contributions<sup>157</sup> and fines<sup>158</sup>, head taxes and *annonae*<sup>159</sup>.

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 ζῆμία.

159 The annual contributions in kind for the upkeep of the Roman army.

44b line 40) הוֹרִי רַבִּי אָמֵי. לְרֵדוֹת עִמּוֹ אָסוּר. וְדִכְוֹתָהּ. לְלוֹחַף עִמּוֹ אָסוּר.

Rebbi Immi instructed: It is forbidden to take the bread out of the oven with him<sup>160</sup>. Similarly, it is forbidden to sprinkle with him<sup>161</sup>.

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:** נְכָרִי שֶׁנִּמְצָא עוֹמֵד בְּצַד הַבּוֹר שֶׁל יַיִן אִם יֵשׁ לוֹ עָלָיו מְלֶאֶה אָסוּר אֵינן לוֹ עָלָיו מְלֶאֶה מוֹתֵר. נִפְלַל לַבּוֹר וְעָלָה וּמִדְדוּ בִּקְנָה הַתַּיִן אֶת הַצָּרְעָה בִּקְנָה אוֹ שֶׁהָיָה מְטַפֵּחַ עַל פִּי הַבַּיִת מְרוֹתְחָת בְּכָל־אֵילָוִי הָיָה מַעֲשֶׂה וְאָמְרוּ יִמְכֵר. וְרַבִּי שְׁמַעוֹן מַתִּיר. נִטַּל אֶת הַחֶבֶת וּזְרָקָה לַבּוֹר זֶה הָיָה מַעֲשֶׂה וְהַכְּשִׁירוּ:

**Mishnah 11:** A Non-Jew who was found standing next to a wine cistern, if he has a loan secured by it<sup>162</sup>, [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 stick<sup>163</sup>, or was drumming on the mouth of a fermenting amphora<sup>164</sup>; all these cases happened and they said, it should be sold<sup>165</sup>, but Rebbi Simeon permits. If he took the amphora and threw it into the cistern;<sup>166</sup> this happened and they declared it kosher<sup>167</sup>.

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:** נְכָרִי שֶׁנִּמְצָא כּוֹל'. רַב שֶׁשֶׁת בְּשֵׁם רַב. וְהוּא שְׁיִהָה לּו עֲלוּ מִלְּהָ עַל אוֹתוֹ הַבּוֹר. אֲבָל אֵין לוֹ מִלְּהָ עַל אוֹתוֹ הַבּוֹר שֶׁכֵּן דָּרָךְ בְּעֲלֵי הַחוּב לְעִמוּד בְּגִיטוֹת וּבְגִרְוֹת. הוּוֹן בְּעוֹ מִימֵר. מֵאן דָּמֵר. וְהוּא שְׁיִהָה לּו עֲלוּ מִלְּהָ עַל אוֹתוֹ הַבּוֹר. בְּתוּף לְפִישׁוּט גְּדִיִּים. וּמֵאן דָּמֵר. אֵף עַל פִּי שְׂאִין לוֹ עֲלוּ מִלְּהָ עַל אוֹתוֹ הַבּוֹר. חוּץ לְפִישׁוּט גְּדִיִּים. וְלֹא כִּד אָמַר רַבִּי בָּא בְּשֵׁם רַב שֶׁשֶׁת. כְּשֵׁם שֶׁנִּתְּנוּ פִישׁוּט גְּדִיִּים בְּטְהָרוֹת כֵּן נִתְּנוּ פִישׁוּט גְּדִיִּים בִּינּוֹן נֶסֶף. אֵלָּא כִּינִי. מֵאן דָּמֵר. וְהוּא שְׁיִהָה לּו עֲלוּ מִלְּהָ עַל אוֹתוֹ הַבּוֹר. בְּתוּף פִישׁוּט גְּדִיִּים. וּמֵאן דָּמֵר. אֵף עַל פִּי שְׂאִין לוֹ עֲלוּ מִלְּהָ עַל אוֹתוֹ הַבּוֹר. וּבִלְבָד חוּץ לְפִישׁוּט גְּדִיִּים.

**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 cistern<sup>168</sup>. 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 arms<sup>169</sup>, but he who says, even if he has no lien on this particular cistern, even outside his outstretched arms<sup>170</sup>. But did not Rebbi Abba say in the name of Rav Sheshet<sup>171</sup>, 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 arms<sup>172</sup>.

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.

(fol. 43c) **משנה יב:** המטמא יינו של נכרי ונותנו ברשותו בבית הפתוח לרשות 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 רשות גוים באהרת:

**Mishnah 12:** One who makes a Non-Jew’s wine in purity<sup>173</sup> and leaves it in his domain, in a house open to the public domain<sup>174</sup> 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 permitted<sup>175</sup>. Rabbi Simeon ben Eleazar says, all Gentiles’ domains are the same<sup>176</sup>.

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 בשתיקה או אוסר בהנניקה. אמר רבי ירמיה בשם רבי אבהו. מעשה היה והורי בשתיקה כרבי שמעון. רבי שמואל בשם רבי אבהו. אין הגוי עושה יין נסך בזריקה. גוי מהו שיעשה יין נסך בחמתו. נישמענה 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 שמוג. בחמין אסור. בצונין מותר. גבוא עלי שלא עשיתי ממי. 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.

<sup>177</sup>Rebbi Abin in the name of Rebbi Samuel, practice follows Rebbi Simeon<sup>178</sup>. Rebbi Abin in the name of Samuel. I am atoning for Rebbi Simeon<sup>179</sup>, either permit to drink or forbid for usufruct<sup>180</sup>. 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 throwing<sup>181</sup>. Does a Gentile make libation wine in his rage? Let us hear from the following: An Aramean<sup>182</sup> had boxes in a wine press. There came a Jew and sprinkled wine on them. The Aramean came<sup>183</sup> [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 this<sup>184</sup>. Rebbi Yasa went to Tyre<sup>185</sup>. He saw them drinking wine with hot water and an Aramean was mixing. He told them, what<sup>186</sup> 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. מהו.

182 A Gentile, cf. Halakhah 1:6, Note 177.

183 It might be better to read אֵינִי “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.

מַעוֹת מוֹתֵר. אֲבָל אִם יִרְצֶה יִשְׂרָאֵל לְהוֹצִיאָו וְאֵינוּ מְנִיחוּ עַד שְׂוִתָּן לֹא אֶת מַעוֹתָיו זֶה הִיָּה מִנְעִשָׁה בְּבֵית שְׂאֵן וְאֶכְרֵי הַכֶּמֶיִם: (fol. 43c)

**Mishnah 13:** One who makes a Non-Jew’s wine in purity<sup>173</sup> and leaves it in his domain<sup>187</sup>, if this one writes to him that I received the money, it is permitted<sup>188</sup>. But if the Jew wants to remove it and he does not let him do it before he paid him his money<sup>189</sup>, 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.

סוֹף דָּבָר פְּתַח אֶלְא אֶפִּילוּ חִלוֹן וְיֵשׁ בָּהּ אַרְבַּע עַל אַרְבַּע עַל רוּם גְּעֻשָׁה. וּבִלְבַד מְקוּרָה וּבְמִגּוּפָה. הִנֵּה לְרַבִּי יִימָר. אִם הִנֵּה נִרְאָה עוֹלָה וְיִוֶּרֶד בּוֹ אֶסוּר וְאִם לֹא מוֹתֵר. רַבִּי בָּא בְּשֵׁם רַב יְהוּדָה. בְּעִיר שְׂיֵשׁ בָּהּ דְּלֵתִים וּבְרִיחַ הִיא מִתְנִיתָא. בְּדָא תִּנִּי. שׁוּמֵר אֶף עַל פִּי שְׂאֵינוּ בָּא אַחַת לְקִיצִים.

**Halakhah 13:** “One who makes a Non-Jew’s wine in purity,” etc. <sup>190</sup>Rebbi Abbahu in the name of Rebbi Yose ben Rebbi Hanina: Not only a door but even a window wide four by four and high ten<sup>191</sup>, on condition that it be roofed and glued closed<sup>192</sup>. If it was growing, we would say if he is seen

climbing up and coming down it is forbidden, otherwise it is permitted<sup>193</sup>. Rabbi Abba in the name of Rav Jehudah: The Mishnah speaks of a town “with double doors and bolts.<sup>194</sup>” 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.

44b line 66) תַּיְנִי. יִשְׂרָאֵל וְגוֹי שֶׁכָּנְסוּ אֶת יַיִן בְּפִרְכֵּי שֶׁלְעֵיר. אֶפְיֵלוּ שׁוּמְרִים גּוֹיִם אֶפְיֵלוּ חֲבִיטֵי פְתוּחוֹת מוֹתְרוֹת שְׂאִין מְנַסְּקִין בָּן.

רַבִּי הִילָא בְּשֵׁם רַבִּי יֵנְאִי. הַלּוֹקֵחַ כְּמוֹכֵר. וְתַיְנִי כֵן. אֶחָד הַלּוֹקֵחַ וְאֶחָד הַמּוֹכֵר בְּרִשׁוֹת הַגּוֹי. בְּזִמְן שֶׁהֵינּוּ שֶׁל יִשְׂרָאֵל וְיִשְׂרָאֵל דָּר שֶׁם מוֹתֵר. וְהוּא שְׂיֵהָא עָלָיו מִפְתָּח וְחוֹתֵם. וּבְזִמְן שֶׁהֵינּוּ שְׁלֵגוֹי וְיִשְׂרָאֵל דָּר שֶׁם מוֹתֵר. וְהוּא שְׂיֵהָא עָלָיו מִפְתָּח וְחוֹתֵם. וְאִם אֵין יִשְׂרָאֵל דָּר שֶׁם אֶסוּר אִף עַל פִּי שְׂיֵשׁ עָלָיו מִפְתָּח וְחוֹתֵם.

רַבִּי יֵילִי בְּשֵׁם רַבִּי יֵנְאִי. חַלּוּקִים עַל רַבִּי שְׂמַעוֹן בֶּן לֶעְזָר. לֹא עַל הַדָּא אֲתֵאֲמַרְתָּ אֶלָּא עַל הַדָּא דְבִתְרָה. הַמְטֵהָר יֵינוּ שְׁלֶכְכְּרִי וְכוּל'.

It was stated<sup>196</sup> “A Jew and a Gentile who brought their wine into the surroundings<sup>197</sup> 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 thus<sup>198</sup>: 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 seal<sup>199</sup>; 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 a Non-Jew's wine in purity,"<sup>200</sup> 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) פרנה "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 בין נסך שכרו אסור. שכרו לעשות עמו כולאכה אחרת אף על פי שאמר לו העבר לי חבית של יין נסך ממוקום למקום שכרו מותר.

**Mishnah 1:** If somebody hires a worker to work for him on libation wine, his wages are forbidden<sup>1</sup>. 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 permitted<sup>2</sup>.

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 קנסוהו.

תני. החמרים והפתפים וכל העושים בשביעית שכרן שביעית. אמר רבי זעירא. בפירות היתר היא מתניתא. והיא דהורי רבי יוחנן לאילין דבית רבי נאי שלא יהו נוטלין שכר בדיהו יין אלא מעות כרבי יהודה וכרבי נחמיה הורי להון. אמר רבי ילי. בפירות עבודה זרה היא מתניתא. כדמר רבי אבהו בשם רבי יוחנן. בין נסך קנס קנסוהו.

**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 fine<sup>3</sup>.

<sup>4</sup>It was stated<sup>5</sup>: “The wages of donkey drivers, carriers, and all those working with Sabbatical produce are sabbatical.”<sup>6</sup> 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 hands<sup>7</sup> wine as wages but money, he taught them following Rabbi Jehudah and Rabbi Nehemiah<sup>8</sup>. Rabbi Ilai said, this *baraita* deals with idolatrous produce<sup>9</sup>. 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 בידיהו "in their hands" is superior to the reading בדיהו "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) כִּיתֵיף עֲמוֹ חֲבִית בְּחִבִּית אֶתְּ קוֹנְסוֹ בְּחִבִּיתוֹ עַד כְּדֵי שְׁכָרוֹ. נִתֵּן לוֹ קֶרְקַע בְּשִׁכְרוֹ. בְּכֹל-אֶתֶר אֶתְּ אָמַר. אִיו קֶרְקַע נֶאֱסַר. וְכֹא נֶאֱסַר. נִתֵּן לוֹ בְּהֵמָה בְּשִׁכְרוֹ. בְּכֹל-אֶתֶר אֶתְּ אָמַר. אִין דָּבָר שְׁיֵשׁ בּוֹ רוּחַ חַיִּים נֶאֱסַר. וְכֹא נֶאֱסַר. נִתֵּן לוֹ הַכֹּל בְּשִׁכְרוֹ הַכֹּל אֶסוֹר אֶלָּא עַד כְּדֵי שְׁכָרוֹ. הִנֵּה עוֹשֶׂה עֲמוֹ בְּטוֹבַת הַנָּאָה אֶתְּ מִמְשַׁכְּנוֹ מִנְכָּסָיו עַד כְּדֵי שְׁכָרוֹ.

הִנֵּה עוֹשֶׂה עֲמוֹ חֲצִי יוֹם בְּאִיסוֹר וְחֲצִי יוֹם בְּהִיתֵר. הִנֵּה מוֹכֵר חוֹלִין וְשִׁינֵי בְּכֶרֶךְ אֶחָד אִי זֶה שְׁיִרְצָה חוֹלִין יַעֲשֶׂה. וְשִׁינֵי יַעֲשֶׂה. וְהִכָּא כֵן. נִשְׁמַעִנָּה מִן הַדָּא. הַשׁוֹכֵר אֶתְּ הַפּוֹעֵל לְהִבִּיאַן לְחוּלָה. אִם הִבִּיאַן לוֹ חֵיב לִיתֵּן לוֹ. וְאִם לָאוֹ אִין חֵיב לִיתֵּן לוֹ. אֶבֶל אִם אָמַר לוֹ. יִין לְחוּלָה מִמְקוֹם פְּלוּנִי וְתַפּוּחַ לְחוּלָה מִמְקוֹם פְּלוּנִי. בֵּין הִבִּיאַן בֵּין לֹא הִבִּיאַן חֵיב לִיתֵּן לוֹ. דְּמִי רְגָלִיו נוֹתֵן לוֹ. וְכֹא לֹא דְּמִי רְגָלִיו נוֹתֵן לוֹ.

רַבִּי יִרְמְיָהּ בְּעֵי. שְׁכָרוֹ לְשִׁבְרַת חֲבִיתוֹת שְׁלִימֵי נֶסֶף. אֶפִּילוֹ כֵן שְׁכָרוֹ אֶסוֹר.

If he transported for him amphora against amphora<sup>10</sup>, you fine him in his own amphora up to the amount of his wages<sup>11</sup>. If he paid him his wages in land. Everywhere you are saying that land is not forbidden<sup>12</sup>, here it is forbidden. If he paid him his wages in an animal. Everywhere you are saying that anything breathing is not forbidden<sup>13</sup>, here it is forbidden. If he gave him anything as his wages<sup>14</sup>, 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 chooses<sup>15</sup>. Is this the same here? Let us hear from the following<sup>16</sup>. 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 feet<sup>17</sup>?

Rebbi Jeremiah asked, if he hired him to break amphoras of libation wine; is it forbidden anyhow<sup>18</sup>?

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. דְּמֵי יַיִן נֶסֶף בְּיַד גּוֹי אֲסוּר. דְּמֵי עֲבוּדָה זָרָה בְּיַד גּוֹי. רַבִּי יוֹנָתָן אָמַר. מוֹתָר. רַבִּי יוֹחָנָן אָמַר. אֲסוּר. מִתְּנִיתָא מְסִיעָה לְדִין וּמִתְנִיתָא מְסִיעָה לְדִין. מִתְנִיתָא מְסִיעָה לְרַבִּי יוֹחָנָן. גּוֹי שֶׁהֵיךָ חַיִּיב מְעוֹת לְיִשְׂרָאֵל. לֹא אָמַר לוֹ. הַמְתִּין עַד שְׁאֵמְכּוֹר יַיִן נֶסֶף

עד שְׁאֵמְכֹר עֲבוֹדָה זָרָה וְאֵתָן לָדֹ. אֲנִי אוֹמֵר. שְׁמָא הִחְלִיף. מִתְּנִיתָא מְסִיעָה לְרַבִּי יוֹנָתָן. גּוֹי שֶׁהֵיָה חַיִּב מְעוֹת לְיִשְׂרָאֵל הֲרִי זֶה מוֹכֵר יַיִן נֶסֶד וְנִתָּן לוֹ. עֲבוֹדָה זָרָה וְנִתָּן לוֹ. מִפְּנֵי מְרַעִית הָעַיִן.

הַכֹּל מוֹדִין בְּחִלְפִין שְׁאֵסוּרוֹת. חִלְפִי חִלְפִין מֵהוּ. אָמַר רַבִּי חֲנִינְהּ. מִחְלוֹקֵת רַבִּי יִשְׁמַעֵאל וְרַבְּנָן. רַבִּי יִשְׁמַעֵאל בִּירְבִּי יוֹסִי אָמַר. אֲסוּר. וְרַבְּנָן אָמְרִי. מוּתָר. רַבִּי לֵעָזֵר בֶּן הוֹשִׁיעָה. טַעֲמוֹן דְּרַבְּנָן וְהֵיִת חֲרָם כְּמוֹהוּ. כָּל־שְׂאֵת יָכוֹל לְקַיְמוֹ מִמֶּנּוּ הֲרִי זֶה כְּמוֹהוּ. מֵאִי כְדוּן. אָמַר רַבִּי יוֹסִי בִּירְבִּי בּוּן. כְּמוֹהוּ כְּמוֹהוּ ב' פְּעָמִים עַל שֵׁם וְלֹא־יִדְבַק בְּגִדְךָ מֵאוֹמְהָ מִן־הַחֲרָם.

Assi said, the proceeds of libation wine in the hands of a Gentile are prohibited<sup>19</sup>. The proceeds of an idol in the hand of a Gentile, Rebbi Jonathan said it is permitted, Rebbi Johanan said it is prohibited. A *baraita* supports one and a *baraita* supports the other. A *baraita* supports Rebbi 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.”<sup>20</sup> A *baraita* supports Rebbi 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?”<sup>21</sup>”

<sup>22</sup>Everybody agrees that substitutes are forbidden. What about substitutes of substitutes? Rebbi Hanina said, a disagreement between Rebbi Ismael and the rabbis. Rebbi Ismael ben Rebbi Yose said, forbidden. But the rabbis say, permitted. Rebbi Eleazar ben Hoshai, the reason of the rabbis, *you would be banned like itself*<sup>23</sup>. Anything which you can keep from it is like itself<sup>24</sup>. What about it? Rebbi Yose ben Rebbi Bun said, *like itself, like itself* two times<sup>25</sup>, because of *nothing should cling to your hand from the ban*<sup>26</sup>.

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, Rebbi Jonathan said it is permitted, Rebbi 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 תָּרַם 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 שְׁכָרָה אָסוּר. שְׁכָרָה לַיִשָּׁב  
עֲלֶיהָ אַף עַל פִּי שְׁהַגִּיחַ לְגִינוֹ עֲלֶיהָ שְׁכָרָה מוֹתֵר:

**Mishnah 2:** If somebody<sup>27</sup> hires a donkey to transport libation wine, its wages are forbidden. If he hired it to sit on it, even though he put his barrel<sup>28</sup> 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 *λάγυνος*, *λάγηνος*, Latin *lagena* “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 כְּדֵי שְׁלֵא יְהֵא הַחֲמוֹר מִקְפִּיד.

**Halakhah 2:** “If somebody hires a donkey,” etc. How far? Up to when the donkey takes offense<sup>29</sup>.

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.

(fol. 44c) **משנה ג:** יין נסף שנפל על גבי ענבים ויהן מותרות ואם היו מבוקעות אסורות. מעשה בביתוס בן זונין שהביא גרוגרות בספינה ונשתברו הבית של יין נסף על גביהן וכא 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 forbidden<sup>30</sup>; anything where the taste does not improve its use is permitted<sup>31</sup>, such as vinegar on broken beans<sup>32</sup>.

30 If the taste of the forbidden wine 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

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 נסף 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 ברותחין. אבל בצונין אסור. שכן דרש בני ציפורין עושין כן וקורין אותו שהלייא. היו רותחין וצינן. מעתה אפילו רותחין יהו אסורין מאחר שדרבן לציון.

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 מתרין. והדיא מתניתא 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 injured<sup>33</sup>.

How do you treat them<sup>34</sup>? Like wine in wine or wine in a dish<sup>35</sup>? 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 Rebbi Meïr and the Sages<sup>36</sup>.

<sup>37</sup>Rebbi Joḥanan 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 laxative<sup>38</sup>. If it was hot and one cooled it down? Then even hot it should be forbidden since usually it cools down<sup>39</sup>.

<sup>40</sup>As we have stated<sup>41</sup>. “Everything that can be smelled is forbidden, whether it improves or spoils, the words of Rebbi 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. Rebbi Yasa in the name of Rebbi Joḥanan: It is Rebbi Meïr’s, as we have stated there<sup>42</sup>: “If barley grains fell into a cistern of water, even though they made it stink, [the water] is permitted.” About this Mishnah, Rebbi Meïr says it is in dispute, Rebbi Joḥanan and Rebbi Simeon ben Laqish: everybody’s opinion<sup>43</sup>. Rebbi Yose ben Rebbi Abun said this tradition so: In the opinion of Rebbi Meïr it is in dispute, in the opinions of Rebbi Joḥanan and Rebbi 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 Rebbi

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, Rebbi told R. Ḥiyya the Babylonian to be careful if he quotes *Is.* 8:17, “I am waiting (וְחִפְיָתִי) for the Eternal”, not to blaspheme by saying “I am hitting (וְהִכִּיתִי).” Now וְחִפְיָתִי are water-creases, 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 **שׁ**, 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 Meir 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:** נְכַרִי שֶׁהֵיךָ מַעֲבִיר עִם יִשְׂרָאֵל כְּדֵי יִזַּן מִמָּקוֹם לְמָקוֹם אִם הָיָה בְּהַזְקָת הַמְשַׁתְּמֵר מוֹתֵר. אִם הוֹדִיעֵנו שֶׁהוּא מְפָלֵיג כְּדֵי שִׁישְׁתּוֹם וְיִסְתּוֹם וְיִגֹּב רַבֵּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר כְּדֵי שִׁיפְתַּח וְיִגֹּף וְתַגּוֹב:

**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 permitted<sup>44</sup>. If he told him that he was leaving<sup>45</sup>, the time needed to open, close, and fill the hole<sup>46</sup>; Rabban Simeon ben Gamliel says, to open, and close, and dry<sup>47</sup>.

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:** נְכָרִי שֶׁהֵיחָ מַעֲבִיר כּוֹל. אָמַר רַבִּי שְׁמוּאֵל. מַעֲשֶׂה בְּנִכְרֵי אֶחָד שֶׁהֵיחָ מַעֲבִיר עִם יִשְׂרָאֵל כְּדֵי יַיִן מִמִּקּוּם לְמִקּוּם. אֵתָּא עוֹבְדָא קוּמִי רַבִּי אֲבָהוּ וְאָסֵר. אָמְרִי בְּפִתּוּחוֹת הָיִי עוֹבְדָא. אָמַר רַבִּי זְרִיקָן. לֹא סוּף דְּבַר מְלֵיאוֹת אֱלָא אֲפִילוּ חֲסִירוֹת. דְּטָרַף וְנִגַע בְּיָדָא וְחִזּוּר.

אֵת סָבַר דְּהָדָא דְרַבָּן שְׁמַעוֹן בְּן גַּמְלִיאֵל לְקוּלָא וְלִיתָּהּ הֵיא אֱלָא לְחוּמְרָא. דְּשִׁיתּוּמְהוֹן דְּרַבָּן מַעֲט מַגְף.

**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]<sup>48</sup>. Rabbi Zeriqan said, not only full ones but also short ones; for he suddenly could have touched with his hand and removed it<sup>49</sup>.

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 cover<sup>50</sup>.

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 פִּזְזִי בְּשֵׁם רַבִּי אֲמִי. בִּיצָה צְלוּיָה שְׁלִכּוּתִים הָרִי זֹו מוּתְרָתָּה. רַבִּי יַעֲקֹב בַּר אֶחָא בְּשֵׁם רַבִּי לְעֶזְרָא. תְּבַשְׁלִי כוּתִים הָרִי אֵילוּ מוּתְרִין. הָדָא דְאֵתָּא אָמַר. בְּתַבְשִׁיל שְׂאִין וְדָרְכוּ לְתַתּוּ לְתוֹכוֹ יַיִן וְחוּמָן. הָא דְבַר בְּרִיא שְׁנִיתָן אָסוּר אֲפִילוּ בְּהִנְיָה. כְּהָדָא דְתַנִּי. בְּרֵאשׁוֹנָה הָיִי אוּמְרִין. יֵינָה שֶׁל אוּגְדוֹר לָמָּה הוּא אָסוּר. מִפְּנֵי כֶּפֶר פֶּגַשׁ. וְשֶׁלְבוֹרְגָתָהּ מִפְּנֵי

בית סוריקה. שלעין פושית מפני כפר שלם. תזרו לומר. פתוחה בכל מקום אטורה וסתומה מותרת. נקובה וסתומה הרי היא כסתומה. רבי יצחק בן חקולה אמר. הרי זו כפתוחה. אמר רבי חנינה. ואנא יכיל קיים. אין הנה עילויה יקיר לא איתפתחת. ואין לא איתפתחת. כהדא רבי שמעון בן לעזר אצל להדא קרייה דשמריין. אתא ספרא לגביה. אמר ליה. אייתי לי הדא קולא שתימא. אמר לו. הא מבוטא קמך שתי. אטרח עלוי. אמר ליה. הא מבוטא קמך שתי. חמתיה מטרח עלוי. אמר ליה. אין את מריה דנפשך הא מבוטא קמך שתי. ואין נפשך מרתך ושמת שפין בלועך אם בעל נפש אתה: כבר נתקלקלו הכותים.

Rebbi Jehudah ben Pazi in the name of Rebbi Immi: A roasted egg of Samaritans is permitted<sup>51</sup>. 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 usufruct<sup>52</sup>. 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*<sup>53</sup>. They changed to say, open it<sup>54</sup> 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 it<sup>55</sup> it was not opened, otherwise it was opened. As the following: Rebbi Simeon ben Eleazar went to the city of Samaria<sup>56</sup>. The scribe came to him. He told him, bring me a closed jug<sup>57</sup>. 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*<sup>58</sup>. The Samaritans already are degenerate<sup>59</sup>.

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 אזל להדא ניפוליס. אתון פותינא לגביה. אמר לון. אנא מחמי לכון דלית אתון סגדין לאהין טורא אלא לצלמיא דתחותוי. דתתיב ויטמון אותם מעלב תחת האלה אשר עם-שכם: שמע קלין אמרין. נקרוץ נסדר לאילין פובינא. וידע דאינון בעו מקטלוגייה. וקרץ ונפק ליה.

רבי אחא אזל למאוס ואכל חליטון. רבי ירמיה אכל חמצין. רבי חזקיה אכל קמצין. רבי אבהו אסר יינן מפי רבי חייה ורבי אסי ורבי אמי שהיו עולין בהר המלך וראו גוי אחד שהיה חשוד על יינן. אתון אמרון ליה קומוי. אמר לון. ולא על ידי עילא. ואית דבעי מימר. חדא ערובת שובא לא אישתפח חמרא בכל-סמריטיקי. בפוקי שובא אישתפחת מליא מן מה דאייתון ארמיא וקבלוגייה פותינא מינהון. ואית דבעי מימר. כד קליק דיקלטיוס מלכא להקא גזר ואמר. כל-אופיינא ונסכון בר מן יודאיי. ונסכון פותינא ונאסר יינן. ואית דבעי מימר. כמין יון אית להון ומנסכין ליה.

Rebbi Ismael ben Rebbi Yose went to the wellknown Neapolis<sup>60</sup>. 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*<sup>61</sup>. 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 water<sup>62</sup>. Rebbi Jeremiah ate pickles. Rebbi Hizqiah ate locusts<sup>63</sup>. 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 wine<sup>64</sup>. They came and said it before him. He told them, but not as a pretext<sup>65</sup>. But some say, one Sabbath eve no wine was found in all of Samaria<sup>66</sup>. When Sabbath ended, it was found full from what the Arameans

brought and the Samaritans accepted from them<sup>67</sup>. 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.

wine which was not actually used in pagan exercises.

61 *Gen.* 35:4.

62 Dumplings or bagels, any grain product prepared in hot water is called *חלוט*.

65 He wanted to forbid Samaritan wine only upon solid evidence.

63 All three considered Samaritan cooking as kosher. (Also Samaritan slaughter, *Babli Hulin* 5b).

66 The district.

64 He was suspected of selling Gentile wine to Samaritans. The latter, as Sadducees, had no reason to forbid Gentile

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 אבהו. אבותיכם היו מסתפקין בשלנו. אתם מפני מה איכם מסתפקין ממנו. אמר להן. אבותיכם לא קלקלו מעשיהם. אתם קלקלתם מעשיכם.

The Samaritans of Caesarea asked Rebbi Abbahu: Your fathers were providing themselves from us<sup>68</sup>. Why are you not providing yourselves from us? He answered them, your fathers did not spoil their deeds<sup>69</sup>, you are spoiling your deeds.

68 They were buying Samaritan wine for personal use.

rabbinic standards. *Tosaphot Hagigah* 25a s. v. שרצועה.

69 One could assume that in earlier times Samaritan wine was made according to

44d line 58) תמן תנינו. 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. להאמינו שאינון שואבין. הא למידת ארבעים לא. דדרשי אף מעיין ובור מקוה פנים. מה מעיין מטהר כל-שהוא אף מקוה מטהר כל-שהוא.

בְּעוֹן מְרֵבֵי אֲבָהוּ. חֲלוּט שְׁלֵהוֹן קָמָהוּ. אָמַר לוֹן. הַלְנֹאֵי הַיֵּינוּ יְכוּלִין לוֹסֵר גַּם מִימֵיהֶן. רַבִּי יַעֲקֹב בֶּר אֲחָא בְּשֵׁם רַבִּי חֲנִינָה. כּוּתְאֵי דְקִסְרִין מוּתָר לְהַלְוֹתָן בְּרִיבִית. רַבִּי יוֹסֵי בְּעֵי. מַעֲפָה לֹא נְחוּשׁ לְחֻלּוֹתָן. וְנָן חֲמִי רַבְּנָן חֲשִׁוּן.

There<sup>70</sup> we have stated: “The Land of Israel is pure and its ritual baths are pure<sup>71</sup>.”<sup>72</sup> “The land of the Samaritans is pure; its ritual baths, and its dwellings<sup>73</sup>, and its paths are pure.” Its paths are pure; it is a presumption that they would not select a path unless it was pure<sup>74</sup>. And its ritual baths are pure; Rabbi Eleazar ben Rabbi Yose<sup>75</sup>: that is, to believe them that they are not from drawn water<sup>76</sup>, but not for the measure of forty; for they explain, *only a spring or a cistern, a collection of water*<sup>77</sup>,” just as a spring cleanses in any amount, any collection of water cleanses in any amount<sup>78</sup>.

They asked Rabbi Abbahu: What is the status of their parboiled food<sup>79</sup>? 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 interest<sup>80</sup>. Rabbi Yose asked, if that is so, we should not be worried about their *ḥallah*; but we see that the rabbis do worry<sup>81</sup>.

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 אַף “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.

מְשֵׁנָה ה' הַמְנִיחַ יֵינוּ בְּקֶרֶן אֹרֶז בְּסָפִינָה וְהִלֵּךְ לֹא בְּקַפְנָדְרִיא נִכְנַם לְמִדְיָנָה וְרַחֵץ מוֹתֵר. אִם הוֹדִיעֵנו שֶׁהוּא מִפְּלִיג כְּדִי שִׁשְׁתּוֹם וְיִסְתּוֹם וְיִגֹּב. רַבֵּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר כְּדִי שִׁיפְתַּח וְיִגֹּף וְתִיגֹב.

**Mishnah 5:** If somebody leaves his wine on a cart<sup>82</sup> or a ship<sup>83</sup> and went by a short-cut<sup>84</sup>, [even if] he entered a town and took a bath<sup>85</sup>, it is permitted. If he told him that he was leaving<sup>45</sup>, the time needed to open, close, and fill the hole<sup>46</sup>; Rabban Simeon ben Gamliel says, to open, and close, and dry<sup>47</sup>.

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 מִשָּׁל בֵּית רַבִּי שֶׁהִפְלִיגָה יוֹתֵר מֵאַרְבַּעַת מִיל. אֲתָא עוֹבְדָא קוֹמֵי רַבְּנָן וְאַכְשָׁרוֹן. אָמְרִין. בְּהִדָּא אֶסְטָרְטָא דְצִיָּדָן הָיָה וְכוּלָּהּ מִיִּשְׂרָאֵל הָיוּת. אָמַר רַבִּי חֲנִינָה. זְמַנֵּי דוֹ חַמֵּי סִיגְיָן כּוֹבְדִין וְהוּא סְבוּר דִּינָן בְּנֵי נֶשׁ וְהוּא מְתַבְּעָת.

**Halakhah 5:** “If somebody leaves his wine on a cart,” etc.<sup>86</sup> Rebbi Hanina said, it happened that a cart of the family of Rebbi was leaving for more than four *mil*<sup>87</sup>. The case came before the rabbis who declared it kosher. It was on the road to Sidon populated by Jews<sup>88</sup>. Rebbi Hanina<sup>89</sup> said, sometimes he sees a fence formed by thorn bushes<sup>90</sup> 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 בהננתו 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 leaving<sup>45</sup>, the time needed to open, close, and fill the hole<sup>46</sup>; Rabban Simeon ben Gamliel says, to open, and close, and dry<sup>47</sup>.

(44d line 70) **הלכה ו:** המניח את הנכרי בהננתו כול'. וכרבי מאיר. דרבי מאיר אמר. בין כך ובין כך הבית טמא. רבי חמא בשם רבי יוסי בר חנינה. בחצר החלוקה במסיפס בטהרות טמא. בין נסך טהור. והא רבי מאיר מחמיר בטהרות ומיקל בין נסך. אור רבנו מחמירין בטהרות ומיקילין בין 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?”<sup>91</sup> Rabbi Ḥama in the name of Rabbi Yose bar Ḥanina: If a courtyard is subdivided by a low wall<sup>92</sup>, for purities it is impure, in matters of libation wine it is pure<sup>93</sup>, since Rabbi Meïr is restrictive for purities but lenient for libation wine; also the rabbis are restrictive for purities but lenient for libation wine<sup>94</sup>.

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 ψήφος "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.

מִשְׁנָה ז' : הָיָה אוֹכֵל עִמּוֹ עַל הַשְּׂוֹלְתָן וְהֵנִיחַ לְפָנָיו לְגִין עַל הַשְּׂוֹלְתָן וְלָגִין עַל הַדּוֹלְפָקִי וְהֵנִיחוּ וַיֵּצֵא מֵהָ שְׂעַל הַשְּׂוֹלְתָן אֶסוּר וּמֵהָ שְׂעַל הַדּוֹלְפָקִי מֵוֹתֵר. וְאִם אָמַר לֹא הָיָה מֵוֹזֵג וְשׂוֹתֵהּ אַף שְׂעַל הַדּוֹלְפָקִי אֶסוּר. הַבֵּיט פְּתוּחוֹת אֶסוּרוֹת סְתוּמוֹת כְּדִי שְׂיִפְתְּהָ וַיִּגְזַף וְתִיגֹב:

**Mishnah 7:** If he was eating with him<sup>95</sup> at one table, he put a pitcher<sup>96</sup> on the table and one on a Delphic table<sup>97</sup>, then let him stay there and left. Anything on the table is forbidden, on the Delphic table is permitted<sup>98</sup>. But when he told him, mix with water and drink, also the one on the Delphic table is forbidden<sup>99</sup>. Open amphoras are forbidden<sup>100</sup>, sealed after the time needed to open, and close, and dry<sup>47</sup>.

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 כּוֹל. הוּוֹן בְּעֵינָיו מִימֵר. מֵה שְּׁעַל הַשּׁוֹלְחָן אֲסוּר בְּתוֹךְ פִּישׁוּט גֵּימ. וּמֵה שְּׁעַל הַדּוֹלְפָקִי מוֹתֵר חוּץ מִפִּישׁוּט גֵּימ. וְלֹא כֵן אָמַר רַבִּי בָּא בְּשֵׁם רַב שְׁשֵׁת. כְּשֵׁם שְׁנֵתְנוּ פִישׁוּט גֵּימִים בְּטַהֲרוֹת כֶּךָ נִתְּנוּ פִישׁוּט גֵּימִים בֵּינּוּ נִסְדָּ. אֶלָּא כִּינִי. מֵאן דְּאָמַר. מֵה שְּׁעַל הַשּׁוֹלְחָן אֲסוּר. בְּתוֹךְ פִּישׁוּט גֵּימ. וּמֵה שְּׁעַל הַדּוֹלְפָקִי מוֹתֵר. וּבִלְבָד חוּץ מִפִּישׁוּט גֵּימ.

**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 arms<sup>101</sup>. But did not Rebbi Abba say in the name of Rav Sheshet<sup>102</sup>, 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 if<sup>103</sup> 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:** בּוֹלְשֵׁת שְׁנֵתְנוּ לְעִיר בְּשַׁעַת שְׁלוֹם חֲבִיט פְּתוּחוֹת אֲסוּרוֹת וּסְתוּמוֹת מוֹתֵרוֹת. בְּשַׁעַת מִלְחָמָה אֵילּוֹ וְאֵילּוֹ מוֹתֵרוֹת לְפִי שְׁאִין פְּנָאִי לְנִסְדָּ:  
 מוֹתֵרוֹת. בְּשַׁעַת מִלְחָמָה אֵילּוֹ וְאֵילּוֹ מוֹתֵרוֹת לְפִי שְׁאִין פְּנָאִי לְנִסְדָּ:

**Mishnah 8:** If an investigative unit<sup>104</sup> came to a village in times of peace, open amphoras are forbidden<sup>105</sup> and sealed ones permitted. In times of war these and those are permitted since there is no time to make libations<sup>106</sup>.

- 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.

(45a line 4) **הלכה ח:** בולשת שנכנסה לעיר כול'. בשעת השמד הכל אסור. שאי אפשר שלא היה שם ישראל שלא עבדה על פורחו. הדא אמרה. עבודה זרה שעבדה ישראל אינה בטילה לעולם. אמר רבי יוסי. ואת שמע מינה. עבודה זרה שעבדה ישראל על פורחו אינה בטילה לעולם.

**Halakhah 8:** “If an investigative unit came to a village,” etc. In times of a religious persecution all is forbidden<sup>107</sup>; 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 invalidated<sup>108</sup>. Rabbi Yose said, you infer from this that an idol which was worshipped by a Jew under duress is never invalidated<sup>109</sup>.

- 107 This does not refer to the Mishnah but there.  
 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. 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

(45a line 8) אמר רבי יוחנן. לית קאן אסורות אלא מותרות. אמר רבי זעירא. אית קאן אסורות. דאין מטא ביה הוא מודע ליה. ואין לא מטא ביה לא מודע ליה דלא יהא שלימ ליה טיבו. רבי אמי בשם רבי יוחנן. בשלום בולשת ובמלקמת בולשת.

Rebbi Johanan said, there is no “forbidden” here, only “permitted”. Rebbi Ze’ira said, there is “forbidden” here<sup>110</sup>. For if he reaches it he will inform him; if he does reach it he will not inform him, lest he owe him a favor<sup>111</sup>.

Rebbi Immi in the name of Rebbi Johanan: If the investigative unit comes in peaceful or warring manner<sup>112</sup>.

- 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.

אֵתָא עוֹבְדָא קוֹמֵי רַבָּנָן וְאַכְשָׁרוֹן. אֶמְרִין. אֵין פְּנָאי לְהַטִּיל אֵירֶס. (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 poison<sup>113</sup>.

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.

אֲוֹמְנִין וְיִשְׂרָאֵל שִׁשְׁלָח לְהֵם נְכָרֵי הַבַּיִת שֶׁל יֵין גָּסֵךְ מוֹתֵר שִׁיאֲמְרוּ לוֹ תֵּן לָנוּ אֵת דְּמִיתָ. אִם מִשְׁנֵבְנֵם לְרִשׁוֹתָן אֲסוּר. (fol. 44c)

**Mishnah 9:** Jewish craftsmen whom a Gentile sent an amphora of libation wine<sup>114</sup> as their wages are permitted to tell him, give us its worth<sup>115</sup>. After it came to their possession it is forbidden.

114 Which is forbidden for usufruct to the Jew and therefore worthless to them.

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.

115 They can refuse to accept the amphora and ask for payment in money. But they

וְאֵין אֲסוּר מִשׁוּם יֵין גָּסֵךְ. תֵּנִי 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 houses<sup>116</sup>.

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.

(fol. 44c) **משנה י:** המוכר יינו לנכרי פסק עד שלא מיד דמיו מותרין. מיד עד שלא פסק דמיו אסורין. נטל את המשפך ומיד לתוך צלוחיתו של נכרי ונטלו ומיד לתוך צלוחיתו של ישראל אם יש בו עקבת יין אסור. המערה מבלי אל כלי את שערה ממונו מותר את שערה לתוכו אסור:

**Mishnah 10:** If somebody sells his wine to a Non-Jew, in case he fixed the price before that one measured, the proceeds are permitted<sup>117</sup>; if that one measured before he fixed the price, the proceeds are forbidden<sup>118</sup>. 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 forbidden<sup>119</sup>. If somebody pours from a vessel to another, what is poured from is permitted<sup>120</sup>, what is poured into is forbidden<sup>121</sup>.

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. ואהו 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 שתתקנה 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.<sup>122</sup> Rebbi 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. Rebbi Yose ben Rebbi 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 rate<sup>123</sup>? Rebbi Haggai said before Rebbi 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 *Qiddušin* 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 עֵקֶבֶת יַיִן. בְּהֵוֹא דְמִלְכָּדָךְ. כְּמָה דְתֵימַר עֵקֻבָּה מַדָּם.

What means “contaminated with wine”<sup>124</sup>? If it is dirty, as one says, *immersed in blood*<sup>125</sup>.

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 הַמְשָׁפֵד וְהַגּוֹי מְעַרָּה דְבָרֵי הַכֵּל אֲסוּר. גּוֹי תּוֹפֵשׁ בְּמִשְׁפֵּד וְיִשְׂרָאֵל מְעַרָּה. רַבִּי אֲסִי אוֹסֵר וְרַבִּי אֲמִי מַתִּיר. גּוֹי תּוֹפֵשׁ בְּפִי הַנּוֹד וְיִשְׂרָאֵל מְעַרָּה. רַבִּי יְרֵמְיָה בְּשֵׁם רַבִּי זְעִירָא. הֵיא הַמַּחְלוּקֹת. רַבִּי מָנָא בְּעָא קוֹזְמִי רַבִּי יוֹסִי. הֵיִיְדָא מַחְלוּקֹת. אָמַר לֵיהּ. מַחְלוּקֹת רַבִּי אֲסִי וְרַבִּי אֲמִי. יִשְׂרָאֵל תּוֹפֵשׁ בְּנוֹד וְגוֹי מְעַרָּה. סָבְרִין מִימַר. דְּבָרֵי הַכֵּל מוֹתֵר. רַבִּי שְׁמוּאֵל כָּל גְּרָמָא אָמַר שְׁאֲסוּר. שְׁפָעִמִּים שְׁיִשְׂרָאֵל מְרַפָּה לְדִין וְנִמְצָא כָּל־הָעִירוֹי מִחֻמַּת הַגּוֹי. וְאֵהוּ דְמַרְגַּל זִיקָא מַעִיל לָרַע אִין בּוּ מְשׁוּם מְעַרָּה מִכְּפִלִי לְכָלִי.

The following is obvious: If the Jew holds the funnel and the Gentile pours, everybody agrees that it is forbidden<sup>126</sup>. If the Gentile holds the funnel and the Jew pours, Rabbi Assi<sup>127</sup> forbids and Rabbi Immi permits. If the Gentile holds the opening of the wineskin and the Jew pours<sup>128</sup>, 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 Gentile<sup>129</sup>. If somebody lets down<sup>130</sup> 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 رجل “to lower”. If a sealed kosher wineskin is handled by a Gentile it remains permitted.

יין משנה יא: יין נסך אסור ואסור בכל־שהוא. יין ביין ומים במים כל־שהוא. יין במים ומים ביין בנותן טעם. זה הכלל מין במינו כל־שהוא. ושלא במינו בנותן טעם:

**Mishnah 11:** Libation wine is forbidden and makes forbidden in the most minute amount. Wine mixed with wine<sup>131</sup> or water mixed with water<sup>132</sup> in the most minute amount. Wine in water or water in wine, if it gives taste<sup>133</sup>. 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.

יין נסך אסור כול. חיזקיה אמר. הדא דתימר. במקום שאין המים נמכרין במידה. אבל במקום שהמים נמכרין במידה קמין ביין 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 wine<sup>134</sup>.

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) חִזְקִיָּה אָמַר. כּוֹס שֶׁמִּזְגָּג מֵאִיסוּר וּמֵהֵיתֵר וְנָפַל אִיסוּר בְּתוֹךְ אִיסוּר וְהֵיתֵר בְּתוֹךְ הֵיתֵר. אָמַר רַבִּי שְׁמוּאֵל. דְּרַבִּי לִיעֶזֶר הֵיא. דְּרַבִּי לִיעֶזֶר אָמַר. אַחַר אַחֲרוֹן אָנִי בָּא. אָמַר רַבִּי יִרְמְיָהוּ. חוֹמֶר הוּא בֵּינָן נֶסֶף. רַבִּי יוֹסֵי בְּעֵי. אִם חוֹמֶר הוּא בֵּינָן נֶסֶף אֶפִּילוּ נָפַל הֵיתֵר בְּסוּף יָהּ אִיסוּר. רַבִּי אֲסִי בְּשֵׁם רַבִּי יוֹחָנָן. כּוֹס שֶׁמִּזְגָּג מֵאִיסוּר וּמֵהֵיתֵר אֶת רוּאָה אֶת הֵיתֵר כְּמִי שְׁאֵינּוּ. וְהָאִיסוּר אִם יֵשׁ בּוֹ בְּנוֹתָן טַעַם אִיסוּר. וְאִם לֹא מוֹתֵר. אָמַר רַבִּי הוֹשְׁעִיָּה. וְהוּא שֶׁנָּפַל הֵיתֵר בְּסוּף. רַבִּי אֲמִי בְּשֵׁם רַבִּי יוֹחָנָן. וְלֹא שְׁנִיָּא בֵּין שֶׁנָּפַל אִיסוּר בְּתַחֲלִילָה וְהֵיתֵר בְּסוּף הֵיתֵר בְּתַחֲלִילָה וְאִיסוּר בְּסוּף. אֶפִּילוּ מִיָּם בֵּינָן אֶפִּילוּ נִמְצָג כֹּל-צָרְכוֹ מֵהֵיתֵר אֶת רוּאָה אֶת הֵיתֵר כְּמִי שְׁאֵינּוּ. וְהָאִיסוּר אִם יֵשׁ בּוֹ בְּנוֹתָן טַעַם אִיסוּר. וְאִם לֹא מוֹתֵר. אָמַר רַבִּי זִירָא. הִדָּא לְמַעַלְלָן אִיתְּאַמְרַת וְכֹלְהָ תִּינִיין הִיף עֲבִידָא. רַבִּי יוֹסֵי בִּירְבִי בּוֹן רַבִּי אֲבָהוּ בְּשֵׁם רַבִּי יוֹחָנָן. צְלוּחִית יִין נֶסֶף שֶׁנָּפַלָה לְחִבִּית שֶׁל מִיָּם וְאַחַר כֵּן נָפַלָה לְתוֹךְ בּוֹר שֶׁל מִיָּם. אֶת רוּאָה אֶת הֵיתֵר כְּמִי שְׁאֵינּוּ. וְהָאִיסוּר אִם יֵשׁ בּוֹ בְּנוֹתָן טַעַם אִיסוּר. וְאִם לֹא מוֹתֵר.

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 ביין | ע ויין מהיתר | ע מן ההיתר 8 והאיסור | ע אותו האיסור זירא | ע זעירא למעלן | ע - 9 איתאמרת | ע דאת אמר תניין | ע תניין יין | ע שליין 10 לחבית | ע לתוך חבית של מים | ע שליין ואחר כך | ע וחזרה נפלה | ע ונפלה 11 והאיסור | ע אותו האיסור

<sup>135</sup>Hizqiah said, if somebody mixed a cup from forbidden and from permitted [wine], if the forbidden fell in [last]<sup>136</sup> it makes it forbidden, permitted [last] makes it permitted. Rebbi Samuel [bar Rav Isaac] said, this follows Rebbi Eliezer, as Rebbi Eliezer said, I am going after the last one<sup>137</sup>. Rebbi Jeremiah said, this is a stringency about libation wine. Rebbi Yose asked, if it were a stringency about libation wine, even if the permitted fell in last it should be forbidden! Rebbi Assi<sup>127</sup> in the name of Rebbi 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. Rebbi Hoshai said, only if the permitted fell in last. Rebbi Immi in the name of Rebbi 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 permitted<sup>138</sup>. Rebbi Ze'ira said, this has been said about the preceding; how can it be? Rebbi Yose ben Rebbi Abun, Rebbi Abbahu in the name of Rebbi Johanan, if a flask of libation wine fell into an amphora of (water)<sup>139</sup> and then it fell into a water

cistern, one considers the permitted as nonexistent; if the forbidden does impart taste it is forbidden, otherwise permitted<sup>140</sup>.

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 פדון בשנפלו זה אחר זה. נפלו שנים כאחת. נישמענינה מהדא. מאימתי חמץ כותים מותר לאחר הפסח. של בעלי בתים שלש שבטות שלאפיייה. ושלנחתומין בכרכים אחר ג' ימים. בכפרים אחר ג' תנורים. רבי שמעון בן אלעזר אומר. אף כשאמרו: שלבעלי בתים אחר שלש שבטות שלאפיייה. 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-אוחתו היום. אותה העיסה השנייה לא מאיסור והיתר מתחמץ. אמר רבי ירמיה בשם ריש לקיש. מאן תנא חמיצן שלכותים. רבי לעזר. אמר רבי יוסי לרבי חנינה ענתונייא. 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 ולרביסי 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 | ע אחר (2X) | ע שלשה (always) בכפרים | ע ושלנחתומין בכפרים 4 | לבנו | ע את בנו 5 | ע תנורים אחד | ע אחת - | ע וזה אחר זה אף | ע ואף בכפרין | ע בכרכים אחר | ע לאחר 6 | 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 לי נן 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' | ע ולרבמי ולרביסי | 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 following<sup>141</sup>: “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]<sup>142</sup> bakers after three days, if he was under pressure and baked three loads one after the other, it is permitted. It was stated: Rebbi 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 Rebbi Jeremiah said in the name of Rebbi Simeon ben Laqish, who is the Tanna of “the leavened matter of the Samaritans”? Rebbi Eliezer! And Rebbi Yose said to Rebbi Ḥanina Eytanaya: Do you remember that you and Rebbi Jeremiah were instructing in the name of Rebbi Simeon ben Laqish, who is the Tanna of “the leavened matter of the Samaritans”? Rebbi Eliezer! But here we do not instruct so but Rebbi Hila in the name of Rebbi Simeon ben Laqish, they treated leavened matter of the Samaritans following Rebbi Eliezer. In addition from the following:: Rebbi Ḥananiah bar Rebbi Abbahu said, my father had a case; he sent to Rebbi Ḥiyya, and Rebbi Immi, and Rebbi Yasa, and they instructed him following Rebbi Eliezer. How? Would they instruct following an isolated opinion? No, since they treated leavened matter of the Samaritans following Rebbi Eliezer<sup>142</sup>.

אמר רבי מני קומי רבי יוסי. כמה דתמר תמן. הלכה כרבי ליעזר. אוף הקא הלכה כרבי ליעזר. אמר ליה. ולכל דבה.

1 מני | עמא כמה דתמר | ע היך מה דתימר | אוף הכא | ע וכא 2 דבה | ע דבר

Rebbi Mani said before Rebbi Yose: as you are saying there<sup>143</sup>, “practice follows Rebbi Eliezer”, also here practice follows Rebbi Eliezer. He said to him, for everything<sup>144</sup>?

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.<sup>145</sup> Libation wine, idols, heart-removed skins<sup>146</sup>, and an ox which was stoned<sup>147</sup>, and the calf whose neck was broken<sup>148</sup>, and the birds of the sufferer from skin disease<sup>149</sup>, and the *nazir*'s hair<sup>150</sup>, and the firstborn donkey<sup>151</sup>, and meat in milk<sup>152</sup>, and profane animals slaughtered in the Temple precinct<sup>153</sup>. 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 השחוטא. או חילוף. רבי יוחנן בשם רבי ישמעאל. לא התפישה התורה איסור הנניה דבר שיש בו רוח חיים.

ושיער 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*<sup>154</sup>.

An ox which was stoned. From the meaning of what was said, *the ox shall be stoned*<sup>147</sup> 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 usufruct<sup>155</sup>.

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 usufruct<sup>156</sup>.

And the birds of the sufferer from skin disease. *Any pure bird you may eat*<sup>157</sup>, this is the living bird. *But the following you may not eat of them*<sup>158</sup>, that is the slaughtered one<sup>159</sup>. Or the other way around? Rebbi Johanan in the name of Rebbi Ismael: The Torah has no prohibition of usufruct which applies to any living thing<sup>160</sup>.

And the nazir's hair. *He shall put it in the fire which is under the well-being offering*<sup>150,161</sup>.

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 usufruct<sup>162</sup>.

And meat in milk. It was stated: At three places it is written *do not cook a kid goat*<sup>152</sup>, about eating, about usufruct, and about cooking<sup>163</sup>.

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 place<sup>153</sup> and what is yours in yours. Since Mine in yours is forbidden, also yours in Mine<sup>164</sup>. 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*<sup>165</sup>?

154 *Deut.* 13:18. *Sifry Deut.* 96.

155 This is a very short reference to a text in *Orlah* 3:1 (Notes 26-28, *Pesaḥim* 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; *Pesaḥim* 2:1; Babli *Pesaḥim* 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 יִסְקַל הַשּׁוֹר וְג' מִפְּשָׁמַע שֶׁנִּי סֶקֶל יִסְקַל וְכִי אֵין אָנוּ יוֹדְעִין לֹא אֵכֵל. מִה תִּלְמֹד לֹמַר לֹא אֵכֵל. אֵלֶּה שֶׁהוּא אִסּוּר בְּאֵכִילָה וְאִסּוּר בְּהִנְיָה. ר' אֲבִי בְּשֵׁם ר' יוֹחָנָן כָּל-מִקּוּם שֶׁנִּי לֹא אֵכֵל לֹא תֹאכְלוּ. . . . אִסּוּר

And an ox which was stoned. *The ox should certainly be stoned*. From the meaning of what was said, *shall certainly be stoned*<sup>147</sup> 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 *Pesaḥim* 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 *heqqeš* 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 תִנְיֵנוּ נְבִילָה עִמָּהֶן. אָמַר רַבִּי יוֹסֵי בִּירְבִי בּוּן. לֹא מִתְּנִי אֶלָּא דָּבָר שְׂאֵסוּר בִּהְנִינְיָה. נְבִילָה מוּתַרְתָּ בִּהְנִינְיָה. הִתִּיבּוּ. הֲרִי חֵמֶץ בְּפֶסַח. חֵמֶץ יֵשׁ בּוֹ כֶּרֶת וְאֵילּוּ אֵין בָּהֶן כֶּרֶת.

Why did we not state carcasses with them<sup>166</sup>? Rabbi Yose ben Rabbi Abun said, it did state only things forbidden for usufruct. Carcass meat is permitted for usufruct<sup>167</sup>. They objected, is there not leavened matter on Passover<sup>168</sup>? Leavened matter makes liable to extirpation<sup>169</sup>, but for these<sup>170</sup> 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 יוֹסֵי בְּשֵׁם רַבִּי חֲנִינְיָה בְּעֵי. אִיסוּרֵי הֲנִינְיָה מְהוּ שְׂיִבְטֵלוּ (בְּצִירוֹף) [בְּטִירוֹף]. וְהִתְנִינוּ שׁוֹר הַנֶּסֶקֶל. תִּפְתָּר בְּחִתִּיכוֹת. וְהִתְנִינוּ צִיפְרֵי מְצוֹרָה. תִּיפְתָּר צִיפּוֹר בְּצִיפְרֵין. וְהִתְנִינוּ שְׂעִיר נָזִיר. אֵית לָךְ מִימֹר צִיפּוֹר בְּצִיפְרֵין. כִּד מִטּוֹן לְעֶרְלָה הִתִּיב רַבִּי יַעֲקֹב קוֹמֵי רַבִּי יוֹסֵי. וְהִתְנִינוּ הָאוֹרֵג מְלֵא הַסֵּיט מְצֻמֵר בְּכוֹר יְדֵלֵק הַבְּגָד. וּמְשִׁיעַר הַנְּזִיר מִפְּטֹר חֲמוֹר בְּשֶׁק יְדֵלֵק הַשֶּׁק. אָמַר לִיה. אֵילוּ 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]<sup>171</sup>? But did we not state “the ox which was stoned”? Explain it in pieces<sup>172</sup>. But did we not state “the birds of the sufferer from skin disease”? Explain it as a bird among birds<sup>173</sup>. But did we not state “the *nazir*’s hair”? Can you say a bird among birds<sup>174</sup>? When they came to study *Orlah* did Rabbi Jacob object before Rabbi Yose, did we not state<sup>175</sup>, “if somebody weaves the length of a *šit* 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)<sup>176</sup> 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): אילו איתקבת תמן אית אילו תקות אית. 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.

משנה יג: יין נסך שנפל לבור כולו אסור בהננייה. רבן שמעון בן גמליאל אומר ימכר כולו לגוי הוין מדימי יין נסך שמש בו: (fol. 44c)

**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 it<sup>177</sup>.

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 בן בתירה. יין נסוף שנפל לבור יימכר כולו לגוי חוץ מדמי יין נסוף. רבי שמואל בר נתן בשם רבי חמא. הלכה כרבו שמעון בן גמליאל. אמר רבי יסא. חד רבנין נפק מבית וועדא. אמר. אתפלגון רבי יוחנן וריש לקיש. חד אמר. הלכה כרבו שמעון בן גמליאל. וחד אמר. אין הלכה כרבו שמעון בן גמליאל. ומודה רבו שמעון בן גמליאל ביין לתבשיל שהוא אסור. רבי בון בשם רב. מודין חכמים לרבו שמעון בן גמליאל בחבית בין חביות לימכר כולו לגוי חוץ מדמי יין נסוף שבן. אמר רבי זירא קומי רבמי. עד דלא אתאמרת הדיא מילתא לא הוינו יודעין דו כן. לא אתאמרת אלא מודין חכמים לרבו שמעון בן גמליאל. או דילמא לא אתאמרת אלא מודין רבו 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 wine<sup>178</sup>. Rabbi Samuel bar Nathan in the name of Rabbi Hama: practice follows Rabban Simeon ben Gamliel<sup>179</sup>. 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 forbidden<sup>180</sup>. 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 wine<sup>181</sup>. Rabbi Ze'ira said before Rabbi Immi: Before this was said did we not know that it was so<sup>182</sup>? 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 it<sup>183</sup>.

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.

**משנה יד:** גַּת שֶׁל אֶבֶן שְׁזַפְתָּהּ גּוֹי מְנַגְבָּה וְהִיא טְהוֹרָה. וְשֶׁל עֵץ רַבִּי אוֹמֵר יִנָּב. וְהַכִּמִּים אוֹמְרִים יִקְלוֹף אֶת הַזֶּפֶת. וְשֶׁל הָרֶם אֵף עַל פִּי שֶׁקָּלַף אֶת הַזֶּפֶת הָרִי זֶה אֲסוּרָה:

**Miashnah 14:** A wine press of stone which a Gentile had pitched one has to wipe dry<sup>184</sup> and it is pure. But one of wood, Rabbi said he shall wipe it dry but the Sages say he must remove the pitch<sup>185</sup>. And one of pottery, even if he removed the pitch, remains forbidden<sup>186</sup>.

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.)

**הלכה יד:** (45b line 37) גַּת שֶׁלְאֶבֶן שְׁזַפְתָּהּ גּוֹי כּוֹל. מִתְנִיתִין דְּרַבִּי. שֶׁלְעֵץ רַבִּי אוֹמֵר. יִנָּב. וְהַכִּמִּים אוֹמְרִים. יִקְלוֹף אֶת הַזֶּפֶת. וְשֶׁלְחָרֶס דְּלֹא כְּרַבִּי. דְּתַנִּי. הַגַּת וְהַמַּחֲץ וְהַמְשַׁפֵּד שֶׁלְגוֹי. רַבִּי מִתִּיר וְהַכִּמִּים (אוֹמְרִים). מוֹדָה רַבִּי בְּשֶׁנִּקְנִים שְׁאֲסוּרוֹת. וּמִפְּנֵי מַה אֵילֹף אֲסוּרִין וְאֵילֹף מוֹתְרִין. אֵילֹף מִכְּנָסוֹ לְקָדַד וְאֵילֹף אֵין מִכְּנָסוֹ לְקָדַד. רַבִּי יוֹסִי בְּשֵׁם רַבִּי יוֹחָנָן. הַלְכָה כְּרַבִּי. כְּלֵי פְּפִייר שְׁזַפְתָּן גּוֹי. רַבִּי יוֹסִי בְּרַבִּי בּוֹן בְּשֵׁם שְׁמוּאֵל. הַלְכָה כְּרַבִּי. מִחֲלוּקֵת רַבִּי וְהַכִּמִּים. דְּתַנִּי. הִיתָה גִיתוֹ טְמִיאָה וּמִבְּקֹשׁ לְטְהָרָה. הַלּוּלָבִין וְהַדְּפִין וְהַעֲדָשָׁה מְנַגְבוֹ וְטְהוֹרִין. וְהַעֲקָל

שְׁלֵנְצָרִין וְשֶׁלְבָטוּב וְשֶׁלְעֵץ שֶׁלְשִׁיפָה שֶׁלְחוּטִין שֶׁלְגָמִי מִיִּשְׁנָן כָּל-שָׁנִים עֶשֶׂר חוּדָשׁ. רַבֵּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר. מִבַּד לְבַד וּמִגַּת לְגַת. תַּנִּי. אָמַר רַבֵּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל. אִם רָצָה לְטַהֵרוֹ מִיַּד נוֹתֵן בְּצִינוֹר שְׁמִימִיו מְקַלְחִין אוֹ בְּנֶהָר שְׁמִימִיו מְהַלְכִין כְּדֵי עוֹנָה. כָּשֶׁם שֶׁאֵת מְנַגֵּב בְּטַהֲרוֹת כֶּף מְנַגֵּב בְּיַיִן נֶסֶף. כַּמָּה הִיא עוֹנָה. רַבִּי יוֹסִי בְּשֵׁם רַבִּי יוֹחָנָן אוֹמֵר. חֲצִי יוֹם. וְחֲצִי לַיְלָה. תַּנִּי רַבִּי חִיָּה. אוֹ יוֹם אוֹ לַיְלָה. מֵה וּפְלִיג. אֶלְא כֵּאֵן שֶׁהַיּוֹם וְהַלַּיְלָה שְׁוִין וְכֵאֵן שֶׁאֵין הַיּוֹם וְהַלַּיְלָה 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 stated<sup>187</sup>: A Gentile’s wine-press, bucket, and funnel, Rabbi permits but the Sa (say)<sup>188</sup>. 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 it<sup>189</sup>. Rabbi Yose in the name of Rabbi Johanan: practice follows Rabbi<sup>190</sup>. If a Gentile pitched a papyrus vessel<sup>191</sup>. Rabbi Yose ben Rabbi Abun in the name of Samuel, practice follows Rabbi<sup>192</sup>. It is the disagreement of Rabbi and the Sages, as we have stated<sup>193</sup>: “If somebody’s wine-press was impure<sup>194</sup> and he wants to purify it, the brooms, the planks, and the lentil<sup>195</sup> 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 next<sup>196</sup>. Rabban Simeon ben Gamliel said<sup>197</sup>, 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 purity<sup>198</sup> 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 Hiyya 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 unequal<sup>199</sup>.

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 אוסרים “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.

מְשֻׁנָּה טוֹ: הַלּוֹקֵחַ בְּלֵי תַשְׁמִישׁ מִן הַגּוֹי אֶת שְׂדֵרָבוֹ לְהַטְבִּיל וְיַבִּיל לְהַנְעִיל יִנְעִיל.  
לְלֶבֶן בְּאוֹר יִלְבֵּן. הַשְּׁפוּד וְהַאֲכִכְלָה מִלְּבָנָן בְּאוֹר וְהַסְבִּין שְׁפָה וְהִיא טְהוֹרָה:

**Mishnah 15:** If somebody buys crockery<sup>200</sup> from a Gentile, what usually is immersed one immerses<sup>201</sup>, cleansed in boiling water one cleanses in boiling water, making glowing white in fire one makes glowing white<sup>202</sup>. The spit and the grill<sup>203</sup> one makes glowing white in fire but a knife one rubs clean<sup>204</sup> 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. pushes it three times into hard soil. This  
 203 Greek ἐσχάρρα, with change of the should eliminate all fat particles clinging to  
 liquid. the knife.  
 204 As explained in the Halakhah, one

45b line 53) **הלכה טו:** הלוקח כלי תשמיש מן הגוי כול'. הלוקח כלי תשמיש מן הגוי  
 דברים שיעודע שעושין בהן אוכל נפש כגון כוסות מדיחן וטהורין. אבל יורות וקומקומים  
 מגעילן בחמין. וכילן שנסתמש בהן אף על פי שלא הטביל והגעיל ושאף וליבו הרי אילו  
 טהורין. תני רבי הושעיא. צריך להטביל. כהדא. רבמי סלק עם רבי יודן נשיא לחמתא  
 דגדר ושאלו כסף מן איילו דאוסינוס. שאלו לרבי ירמיה אמר. צריך להטביל לפי שאצאו  
 מטומאת הגוי ונקנסו 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.

הכא את אמר. מדיחן והו טהורין. וכן את אמר. מגעילן בחמין. חומר הוא בגיעולי  
 גוים.

סבין תוכה בארץ ג' פעמים ודייו. רבי בא בשם רב יהודה. הדיא דתימר בסבין קטנה.  
 אבל בסבין גדולה צריכה ליבון. והליבון צריך שיהו ניצוצות מנתזין ממנו.

**Halakhah 15:** “If somebody buys crockery from a Gentile,” etc. <sup>205</sup>“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 kettles<sup>206</sup> 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  
 Hoshai said, one has to immerse them<sup>207</sup>, as by the following. Rabbi Immi  
 and Rabbi Jehudah the Prince went down to the hot springs of Gadara<sup>208</sup> and  
 borrowed silverware from the family Osinos<sup>209</sup>. They asked Rabbi Jeremiah  
 who said, one must immerse them because they left the impurity of Gentiles  
 and entered the holiness of Israel<sup>210</sup>. He went out and we want to learn<sup>211</sup>.  
 They left and heard Rabbi Jacob bar Aḥa, Simeon bar Abba in the name of  
 Rabbi Johanan: they said only “who buys”, but the borrower is permitted<sup>212</sup>.  
 Then even vessels<sup>213</sup>. Rabbi Hoshai bought vessels and immersed them<sup>214</sup>.

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 Gentiles<sup>215</sup>.

A knife one sticks into the ground three times and it is enough<sup>216</sup>. 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 it<sup>217</sup>.

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 *למנוח ללמוד* "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.





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