

Talmud - Mas. Makkoth 2a

CHAPTER I

MISHNAH. HOW DO WITNESSES BECOME LIABLE [TO PUNISHMENT] AS ZOMEMIM?¹ [IF THEY SAY:] ‘WE TESTIFY THAT N. N. [A PRIEST] IS A SON OF A WOMAN WHO HAD [FORMERLY] BEEN DIVORCED² OR A HALUZAH,³ IT IS NOT SAID [IN THIS CASE] THAT EACH [MENDACIOUS] WITNESS BE HIMSELF STIGMATIZED AS BORN OF A DIVORCEE OR HALUZAH; HE ONLY RECEIVES FORTY⁴ [LASHES].

[IF THEY SAY]: ‘WE TESTIFY THAT N.N. IS GUILTY OF [A CHARGE ENTAILING] BANISHMENT,⁵ IT IS NOT SAID [IN THIS CASE] THAT EACH [MENDACIOUS] WITNESS SHOULD HIMSELF SUFFER BANISHMENT; HE ONLY RECEIVES FORTY [LASHES].

GEMARA. Should not the opening words of the Mishnah have been rather, ‘How do witnesses not become liable [to punishment] as zomemim?’ Moreover, since we read in a subsequent Mishnah: But if they [i.e. counter-witnesses] said to them, ‘How can you testify at all, since on that very day you were with us at such and such a place?’ these are condemned as zomemim,⁶ does not ‘these’ imply that those in the foregoing instances are not treated as zomemim? — The Tanna had just been dealing with the last Mishnah in the preceding tractate [of Sanhedrin]⁷ to which this Mishnah is but a sequel, namely: ‘All zomemim are led forth to meet a talionic death save zomemim in an accusation of adultery⁸ against the [married] daughter of a priest, and her paramour, who are led forth to meet not the same death [as she], but another [manner of] death.’ Accordingly in our Mishnah we are provided with other instances of zomemim where the main law of retaliation is not enforced, but ‘a flogging of forty’ [lashes] is inflicted instead: [IF THEY SAY:] ‘WE TESTIFY THAT N. N. [A PRIEST] IS A SON OF A WOMAN WHO HAD [FORMERLY] BEEN DIVORCED OR A HALUZAH,’ IT IS NOT SAID THAT EACH [MENDACIOUS] WITNESS BE HIMSELF STIGMATIZED AS BORN OF A DIVORCEE OR HALUZAH; HE ONLY RECEIVES FORTY [LASHES].

What is the sanction for this [substitutive] penalty? — Said R. Joshua b. Levi: R. Simeon b. Lakish⁹ said that it is based on the text: then shall ye do unto him as he purposed to do;¹⁰ that is to say, punish him [the culprit] and not his [innocent] offspring.¹¹ But why should not he alone be stigmatised, and not his offspring? — We must needs fulfil ‘as he had purposed to do’ and in such a case we should have failed to do so.¹²

Bar Pada¹³ says that the sanction [here, for the substitutive penalty of a flogging] may be obtained by an argument a fortiori.¹⁴ What do we find in the case of the ‘desecrator’?¹⁵ The ‘desecrator’ himself does not become ‘desecrated’ [by his forbidden association]. Is it not then logical [to argue from this] that a zomem who only came to [try and] ‘desecrate’ a person,¹⁶ but did not [in fact] desecrate him, should not become ‘desecrated’ himself?

Rabina demurred to this argument, saying that if you admit this [kind of] deduction, you nullify [in effect] the law of retaliation for zomemim.

(1) Zomem-im, the plural of zomem, lit., ‘intriguer’ or ‘schemer’ is the technical term for a type of false witnesses (v. pp. 19 ff.) and their punishment is by the law of retaliation (Deut. XIX, 16ff.).

(2) The child of a union of a priest and a divorcee is considered a Halal, i.e., vulgarized, desecrated, and disqualified from priestly office. (Lev. XXI, 6-8, 14-15; Ezek. XLIV, 22.)

(3) The widow of a man (absolutely) childless, who had been discharged by performing the halizah (lit., ‘the drawing off’, sc., the shoe. Deut. XXV, 5-10) is designated Haluzah-widow, and is (Rabbinically) considered tantamount to a divorcee and consequently may not be married to a priest. Haluzah may be taken to mean either ‘discharged’,

'withdrawn' (cf. Hosea, V. 6); or, 'drawer of the shoe', v. M. Segal, Mishnaic Hebrew Grammar, 235.

(4) According to Rabbinic interpretation of Deut. XXV, 2-3, the maximum number of lashes was 'forty save one', v. p. 155.

(5) v. Num. XXXV, 10ff. and Deut. XIX, 4-5.

(6) V. infra 5a.

(7) Mishnah Sanh., XI, 6, the final clause in that tractate, both in our editions of the Mishnah and the Palestinian recensions. The order is, however, different in our editions of the Babylonian Talmud, where it is not the last chapter, but the last but one (Chap. X, fol. 89a).

(8) The specific penalty for a priest's daughter caught in adultery was Burning (Lev. XXI, 9.; Gen. XXXVIII, 24; cf. Sanh. 50a seq.). The seducer of any married woman was to be strangled, v. 84b. On the traditional methods of execution, v. Sanh. VII.

(9) The words 'R. Simeon b. Lakish said' are omitted in some texts and questioned on the ground that R. Joshua b. Levi was the older of the two and could not have been the former's disciple; but this form of reporting does not invariably imply discipleship, v. Yad Malaki, sect. 74.

(10) Deut. XIX, 29.

(11) I.e., if the zomemim are priests, their innocent children would, on the application of the law of retaliation thenceforth, also become stigmatized as 'desecrated', cf. p. 1, n. 2.

(12) Hence 'lashes' are inflicted instead.

(13) I.e., R. Judah b. Pedayah, one of R. Joshua b. Levi's teachers.

(14) Hebrew, Kal wahomer, lit., 'the light and the grave' set in contrast; an argument by analogy, either from the lesser to the more important or from the more important to the lesser, V. Glos. Note that we have here an instance of two tendencies in attempting to trace accepted principles back to their origins. Some seek their origin in the Bible, others again delight also in giving them a logical basis by deduction.

(15) A priest who enters into a forbidden union 'desecrates' the woman and all her future offspring. V. p. 1, notes 2 and 3.

(16) Impugning by false evidence the past status of a priest's mother. For a historical illustration v. Kid. 66a, and Josephus, Ant., XIII, 10, 5 — 6.

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For, [you might argue,] what do we find in the case of one who [as witness]¹ had stoned a person? He himself is not stoned. Is it not then logical [to argue from this] that one who had only purposed to stone another [by his evidence] but did not succeed in stoning him, should not be stoned himself? Hence the derivation as taught from the text in the first instance, is the best.

[IF THEY SAY:] 'WE TESTIFY THAT N.N. IS GUILTY OF A CHARGE [ENTAILING THE PENALTY OF] BANISHMENT..... What is the sanction for this (substitutive) penalty? — Said Resh Lakish,² It is based on the text which reads: He, he-shall-flee³ unto one of the cities of refuge, which emphatically asserts that he alone shall flee, but not the zomemim.

R. Johanan said that the sanction for this (substitutive penalty of a flogging) may be obtained by argument a fortiori, thus: Now, what do we find in the case of one who had effected his intended act [of murder]? He is not banished.⁴ Is it not then logical [to argue from this] that zomemim who had not [actually] effected their intended act should not be banished?

But does not this [very] argument point to a reverse conclusion? For is it not logical [to argue] that he who had effected the intended act [of murder] is not to go into banishment, so as not to obtain the possibility of atonement; whereas the zomemim who have not effected their intended act, should be allowed to go into banishment, so as to obtain the possibility of atonement? Hence the derivation as from the text, given by Resh Lakish, is the best.

'Ulla said: Where is there found an allusion in the Torah to the treatment of zomemim-witnesses?

Where is there found an allusion in the Torah to zomemim-witnesses! Is it not prescribed, then shall ye do unto him as he had purposed to do unto his brother?⁵ What is meant is some allusion in the Torah for inflicting on Zomemim-witnesses a flogging [in lieu of retaliation]! — It is written: And they shall justify the righteous and condemn the wicked: and it shall be if the wicked man deserve to be beaten [flogged], that the judge shall cause him to lie down and be beaten . . . forty [lashes].⁶ Now, is it because the judges justify the righteous and condemn the wicked', that 'the wicked man deserve to be beaten'?⁷ But, if you refer the text to a case where witnesses had incriminated a righteous man; then came other witnesses who justified the righteous', [that is, indicated his innocence as heretofore], and 'condemned the wicked', [that is, proved the former witnesses wicked men] then [you can say that] 'if the wicked man' [the zomem] 'deserve to be beaten,⁸ the judge shall cause him to lie down and be beaten.' Cannot the sanction for the flogging be derived from the eighth Commandment: Thou shalt not bear false witness against thy neighbour?⁹ No, it cannot be, as that is a prohibition applying to no [tangible] action, and 'wherever a prohibition is contravened without [involving tangible] action, no flogging is inflicted'.¹⁰

Our Rabbis taught: Four observations were made in reference to zomemim-witnesses, they [a] are not stigmatized as born of [a priest and] a woman who had been a divorcee or a haluzah;¹¹ [b] do not go into banishment to the cities of refuge; [c] are not made to pay ransom;¹² and [d] are not sold as slaves.¹³ In the name of R. Akiba it was stated that they are also not made to pay [compensation] on their own admission.¹⁴

'They are not stigmatized as born of [a priest and] a divorcee or a haluzah' — as we have already explained [above]. 'They do not go into banishment to the cities of refuge' — as we have already explained [above]. 'They are not made to pay ransom' — because ransom is held to be [a form of] atonement and these fellows stand in no need of that.¹⁵ Who could be the Tanna who considers ransom as [a form of] atonement? — Said R. Hisda: It is R. Ishmael, son of R. Johanan b. Berokah, as it has been taught: It is written, then he shall give for the redemption of his life [whatever is laid upon him],¹⁶ that is, compensation for the [life of] the person injured [dead]. R. Ishmael, son of R. Johanan b. Berokah, says: It is compensation for [his own life], the one responsible for the injury.

Is it not right to assume that [ultimately] they differ in the interpretation of the import of kofer [ransom]; one Master considering the ransom merely as pecuniary satisfaction, whilst the other Master interprets it as [a form of] expiation [of guilt]? Said R. Papa: Not [necessarily] so! Both¹⁷ may be taken to consider ransom as a form of expiation [of guilt], only here they differ on this, that one Master considers the assessment should be based on the value of the injured [dead] person, while the other Master considers that it should be based on the value of the person responsible for the injury.

What is the reason underlying the view held by our Rabbis?¹⁸ — They argue that as the same expression for assessment is used in two proximate instances in the same chapter,¹⁹ therefore just as in the former instance the assessment is based on the injured [dead child], the assessment in the second instance²⁰ is likewise to be based on the [dead] person [injured by the ox]. And what is R. Ishmael's [reason]? — He argues that the text states [explicitly the compensation to be] for the redemption of his life [soul].

And [what is the reply of] the Rabbis [to this interpretation]? — Yes indeed, the text has it for the redemption of his life [soul]; nevertheless, in regard to the amount to be paid assessed according to the value of the injured.²¹

'And they are not sold as slaves' — R. Hamnuna²² was inclined to argue that this exemption would be granted only where the [innocently] accused had the means to pay his threatened fine; for, inasmuch as he would then not have been sold, they [the zomemim] should likewise not be sold; but

where he himself had no means, the zomemim, even though they have the means, should be sold. [Said Raba to him:] Let the zomemim say to him, 'If you had the means, would you have been sold? Therefore, we likewise should not be sold.' But what R. Hamnuna did propose to argue was that this exemption should be granted only where either he or they have the means; but where neither he nor they have means they should be sold.²³ Said Raba to him: The Divine Law²⁴ prescribes, If he has nothing, then he shall be sold for his theft,²⁵ which directs that he be sold for theft, but not for insidious scheming.

'In the name of R. Akiba it was stated that they do not pay on their own admission.' What is R. Akiba's reason [for this exemption]? — He considers this compensation as *kenas*²⁶ and *kenas* is not payable on one's own admission. Rabbah [commenting on this] said: You may recognise it as such, because, you see, these [schemers] have actually done nothing [tangible], yet they are put to death or made to pay damages. R. Nahman [commenting] said: You may recognise it as *kenas*, as the money remains [undisturbed] in the possession of the owner, yet those fellows are made to pay.

(1) 'The hand of the witness shall be upon him first to put him to death' (Deut. XVII, 7). If the intrigue was not discovered till after the execution had taken place, the zomemim were not punished by retaliation, v. p. 25.

(2) Resh Lakish's view is given by Bar Pedayah in J. Mak, i. 1.

(3) **הוּא יָנוּם** Deut. XIX, 5. The verb **יָנוּם** alone, means he shall flee; the addition of the pronoun **הוּא** = he, adds emphasis to the subject of the verb.

(4) Deliberate murder is not punished by banishment, but by death. Yet, if on technical grounds the criminal escapes the extreme penalty, he is not relegated into banishment (either for atonement, or protection from the 'avenger').

(5) Deut. XIX, 19.

(6) Deut. XXV, 1ff. Notice, there is no mention of zomemim or any indication in the text or context. What 'Ulla reads into it is therefore only claimed as a suggestion, a mere allusion and no more,

(7) V. next note.

(8) I.e., where retaliation is inapplicable or cannot be justly imposed. This is not altogether so strained an interpretation as it may seem at first. The main difficulty here is the word **רִיב**, 'a contention', 'controversy', between two parties; the penalty of flogging is not determined by the relative righteousness of the one and the wickedness of the other, but is inflicted for religious, ritual, or moral transgressions. Hence, the reference is to the attempts of contentious fellows to degrade an enemy by a false imputation; v. the comments of Nahmanides, Malbim and J.Z. Meklenburg, Ha-kebab we-ha-Kabbalah, a.I.

(9) Ex. XX, 13.

(10) V, infra, 16a. Mere speaking is generally (with the exception of some specific instances), not considered 'action'.

(11) V. Glos.

(12) Pecuniary compensation chargeable on a fatal accident caused by a vicious animal, due to the owner's negligence; v. Ex. XXI, 28ff. If the charge was made on fictitious evidence, and the witnesses were found zomemim, they do not pay the amount that the court might have imposed on the one accused innocently.

(13) If they had accused one of having stolen, and the accused had not the means to pay, v. Ex. XXI, 37; XXII, 1-3.

(14) When witnesses are proved zomemim and they make a timely confession of their guilt, they are not made to pay the statutory fines.

(15) As their beast has not actually killed a human being.

(16) Ex. XXI, 30. If there be laid on him (**כִּפָּר**, atonement) a sum of money, then he shall give for the (**פְּדִיּוֹן**, redemption) ransom of his life (Heb., soul) whatsoever is laid upon him. In view of the last part of verse 29, the ox shall be stoned and his owner also shall be put to death, it is difficult to say which of the two is demanded, atonement for the negligence which resulted in the death of a human being, or the pecuniary compensation, redemption, for the loss to the capacity of the family. V. Nahmanides and Ibn Ezra on Exodus.

(17) Lit., 'all the world.'

(18) I.e. the representatives of the anonymous opinion.

(19) I.e., Ex. XXI, 22, (where one hurt a woman with child, so that her fruit depart from her); and verse 30, (where one's ox killed a man).

(20) Ibid. 30.

(21) I.e., by the method indicated in verse 22 (in the case of the child).

(22) There were several Babylonian scholars of that name; this contemporary of Raba is the fourth on the list in Hyman's *Toledoth I*, p. 378.

(23) The words, 'said Raba to him' are to be omitted, according to a marginal note; but on closer examination the whole passage down to the next 'said Raba to him,' will be found to be a later insertion, out of harmony. It is not in the Munich text, v. D.S., p. 2.

(24) V. Glos.

(25) Ex. XXII, 2.

(26) A monetary imposition (more than is due), by way of penalty. The rule is obtained from Ex. XXII, 8, 'whom the judges shall condemn, he shall pay double . . . , but not on his own admission. (Rashi); v. Glos.

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How has this money remained undisturbed? [Obviously] because they had done nothing [tangible]! [But] that is just what Rabbah said! — Then it should be reported thus: And so had also said R. Nahman.

Said Rab Judah: Rab said that a zomem-witness pays his quota. What is meant by 'pays his quota'? If it means that this one pays half and that one half, we learn this already expressly: Monetary impositions are divided proportionately, but [the number of] lashes is not divided proportionately!¹ This dictum is applicable where only one of the witnesses was found a zomem, in which case he would be made to pay his half [of the fine]. But does he in such a case pay at all? Is it not taught: 'No zomem-witness pays money [damages] until the two of them have been found zomemim'? — Said Raba: It has a possible application where one of the zomemim admits, 'I gave false evidence'. But would we accept such statement coming from him?² What about [the rule]: A witness, once he has made his depositions [before the Court], cannot retract and testify again? — Hence this dictum can only be applied where one says: 'We gave evidence and were found zomemim by such and such a Court'.³

Now, with whose view will this explanation accord? — Not with R. Akiba's; for how could this accord with what he said: 'They also do not pay on their own admission'! Hence Rab's dictum is applicable only when one of the witnesses says, 'We gave evidence, were found zomemim by such and such a Court and were condemned to pay a sum of money'.⁴ Now [in such a case] you might presumably expect me to argue that since this fellow cannot [by his sole statement] commit his confederate, he could not commit himself either; therefore Rab teaches us that in this instance a zomem pays his quota.

MISHNAH. [IF THEY SAY:] 'WE TESTIFY THAT N.N. DIVORCED HIS WIFE AND HAS NOT PAID HER KETHUBAH'⁵ SEEING THAT HER KETHUBAH WILL ULTIMATELY HAVE TO BE PAID, SOONER OR LATER⁶ THE ASSESSMENT SHOULD BE MADE ON THE BASIS OF HOW MUCH ONE MIGHT BE WILLING TO OFFER THE WOMAN FOR HER KETHUBAH IN THE EVENT OF HER BEING WIDOWED OR DIVORCED OR, ALTERNATIVELY, HER HUSBAND INHERITING HER AFTER HER DEATH.

GEMARA. How is it appraised? — Said R. Hisda: The appraisal is made on the basis of the husband's claims.⁷ R. Nathan b. Oshaia says: On the basis of the woman's claims;⁸ R. Papa says: On the basis of the woman's claims and strictly on her kethubah.⁹

MISHNAH. [IF THEY SAY]: 'WE TESTIFY THAT N.N. OWES HIS FRIEND ONE THOUSAND ZUZ'¹⁰ WITH AN UNDERTAKING THAT HE WILL RETURN THE SAME TO HIM THIRTY DAYS HENCE', WHILE THE DEBTOR SAYS 'TEN YEARS HENCE', THE ASSESSMENT [OF THE FINE] IS MADE ON THE BASIS OF HOW MUCH ONE MIGHT BE

WILLING TO OFFER FOR [THE DIFFERENCE BETWEEN] HOLDING THE SUM OF ONE THOUSAND ZUZ TO BE REPAID IN THIRTY DAYS OR IN TEN YEARS HENCE.

GEMARA. Said Rab Judah: Samuel said that if one lent his friend a sum of money for ten years, the [end of the] Sabbatical year will cancel that debt;¹¹

(1) Infra 5a.

(2) And reverse the judgment claim?

(3) Whereas the other witness does not admit.

(4) As a judgment debt which can be proved, it is no longer a voluntary admission to be waived on technical grounds.

(5) The 'document, containing among other undertakings a settlement on the wife payable at her husband's death, or on her being divorced by him. V. Glos. The husband presumably contests this statement, and ultimately the witnesses are proved intriguers and have to pay damages as zomemim.

(6) Lit., 'to-day or to-morrow'. The husband having lost practically nothing by the evidence of these witnesses cannot expect an award equal to the full amount of the kethubah.

(7) E.g., the value of a speculative loan obtainable by the husband on the kethubah, in the event of his wife's death, and some compensation for their attempt to deprive him forthwith of his enjoyment of the usufruct of his wife's property, on which he might likewise have a favourable offer by way of a loan.

(8) E.g., the advance she might have obtained on her kethubah. As the woman's rights, however, had not been assailed by these witnesses, the estimated 'advance' is to be deducted from the actual amount due to her on the kethubah-settlement and the balance is the husband's award, apart from the threatened immediate loss of the usufruct.

(9) R. Papa does not allow the claim of the threatened loss of usufruct, of which these witnesses may plead they had no cognizance, and therefore, not having assailed this item, they are not liable on that account (Rashi).

(10) The zuz is a small silver coin corresponding to the Attic drachm and Roman denarius, worth about 9d.

(11) V.Deut. XV, 1ff.

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even though [it might be argued that] at the time of its incidence the injunction: he shall not exact it of his neighbour¹ is inapplicable,² it does nevertheless become applicable, ultimately.³ R. Kahana⁴ referred him back [to the Mishnah]: THE ASSESSMENT IS MADE ON THE BASIS OF HOW MUCH ONE MIGHT BE WILLING TO GIVE FOR [THE DIFFERENCE BETWEEN] HOLDING THE SUM OF ONE THOUSAND ZUZ TO BE REPAID IN THIRTY DAYS OR IN TEN YEARS HENCE. Now, if it were as you say that the Sabbatical year cancels the debt, then the zomemim ought to be made to pay even the whole capital? — Said Raba: The Mishnah might be dealing with the case of a loan against a pledge, or where the creditor deposited his bills at the Court, as we learnt: 'A loan against a pledge or one where the creditor had delivered the bill thereof to the court, is not cancelled⁵ [by the Sabbatical year].'

Some report this discussion thus: Rab Judah said that Samuel said that if one lends to his friend a sum of money for ten years, the Sabbatical year does not cancel the debt, and even though ultimately it becomes subject to the injunction, he shall not exact it of his neighbour, yet that injunction is inapplicable at the time of the incidence of the Sabbatical year. Said R. Kahana: We have learnt likewise: THE ASSESSMENT IS MADE ON THE BASIS OF HOW MUCH ONE MIGHT BE WILLING TO GIVE FOR HOLDING THE SUM OF ONE THOUSAND ZUZ TO BE REPAID IN THIRTY DAYS OR IN TEN YEARS HENCE. Now, if you would say that the Sabbatical year cancels the debt, then the zomemim should be made to pay even the whole capital? — Said Raba: [This argument is not conclusive, as] the Mishnah might deal with the case of a loan against a pledge, or, where the creditor deposited his bills at the Court.

This also Rab Judah said: Samuel said that if one says to his friend '[I lend you this money] on condition that the Sabbatical year shall not cancel the debt for me,' the Sabbatical year does cancel

it.

Is it to say that Samuel considers this a stipulation that is in conflict with what is prescribed in the Torah, and [the rule is]: 'If one makes a stipulation which is in conflict with what is prescribed in the Torah,⁶ his stipulation is void'? But has it not been stated: If one said to his friend, '[I sell you this thing] on condition that you have no plaint of an unfair deal⁷ against me,' Rab says he has a plaint; and Samuel says he has no plaint of an unfair deal against him? — Yes, but behold on this very point R. 'Anan is stated to have said: I had it explained to me by [Mar]⁸ Samuel himself, that [if a person stipulate] 'on condition that you have no plaint of an unfair deal against me,' he has no plaint; but if he stipulate that no plaint of an unfair deal shall obtain in the deal, it does obtain. Exactly the same [distinction holds good in regard to the Sabbatical year; if he stipulate] 'on condition that you do not cancel the debt for me in the Sabbatical year', the Sabbatical year does not cancel it, but, 'on condition that the Sabbatical year does not cancel it,' the Sabbatical year does cancel it.

A Tanna taught: If a person lends his friend some money without specifying a date [for repayment] he may not demand it of him for thirty days at least.⁹ Rabbah b. Bar Hanah put forward a reasoned argument before Rab that this restraint could only be intended for a loan against a Shetar,¹⁰ because nobody would take trouble to execute a written instrument for less than thirty days; but in the case of a loan parol, the restriction did not apply. Said Rab to him: '[No!] thus said my Beloved [Uncle]:¹¹ It is the same whether one lends against a Shetar or parol'. It has likewise been taught: If one lends money to his friend without specifying a time [for repaying], he may not demand repayment for at least thirty days, no difference being made whether it be a loan against a Shetar or parol.

Samuel [once] said to R. Mattena: Don't squat down¹² before you give me an explanation of the origin of the oft-repeated dictum of our Teachers: If one lends money to his friend without specification [of date], he may not demand repayment for thirty days, at least, no difference being made whether it be parol or against a Shetar. He replied: It is written, [Beware that there be not a base thought in thy heart saying,] the seventh year, the year of release is at hand, [and thy eye be evil against thy poor brother].¹³ Now, from the import of the words 'the seventh year . . . is at hand', is it not obvious that it is the same as 'the year of release'? What instruction is then the year of release intended to convey? It is to tell you that there is yet another, a kindred form of release; which is it? — It is when one lends his friend some money without specifying a date [for repayment], in which case he may not demand repayment of him for thirty days, at least. [Why thirty days?] Because the Master has enunciated [in other matters] that thirty days prior to the incidence of the Sabbatical year, count as a year.¹⁴

Rab Judah also said the following: Rab said that if one forcibly enlarges the opening for the neck in a new garment on the Sabbath day, he is liable in a sin-offering. R. Kahana demurred to this view, asking what is the difference between this process [of enlarging the neck] and broaching a cask [which is admittedly permitted]? — [Rab Judah] said in reply that there is a rending of integral parts of the woven material in the case of the garment; whereas the stopper is not an integral part of the cask [but merely inserted]. Rab Judah also said: Rab said that if a kortob¹⁵ of wine fell into three logs¹⁵ of water, imparting a wine colour, and this [mixture] again fell into a mikweh,¹⁶ the mikweh is not thereby rendered ineffectual. R. Kahana demurred to this, asking: What is the difference between a mixture of wine and water and the dye-water about which we learnt: R. Jose says that dye-water renders the mikweh ineffectual?¹⁷ Said Raba to him: [There is a difference], as there, people call it 'dye-water', whereas here, they call it 'diluted wine'.

But yet, did not R. Hiyya teach: These spoil the efficacy of the mikweh?¹⁸ — Said Raba to him: There is no difficulty, as one [Rab] presents R. Johanan b. Nuri's view, while the other [R. Hiyya] presents the view of the Rabbis; as we learnt:¹⁹ If a kortob of wine fell into three logs of water

(1) Ibid. 2.

(2) Because the agreed period of the loan (ten years) extends beyond the 'year of release' and the creditor could not ask for its repayment then, but only at the end of the ten years, when the cancelling power of the Sabbatical year will be past.

(3) I.e., retrospectively.

(4) Probably a disciple of Raba.

(5) Sheb. X, 2. This formal exemption was a social and economic measure called Prosbul instituted by Hillel. If a creditor deposited formally his claim to the Court, he was no longer an individual creditor against his brother (v. Deut. XV, 3). Similarly a pledge (against a debt) acted as a sort of anchorage keeping the debt fast, as a pledge cannot be wiped out like negotiable money that had actually been used. V. Git. 37a.

(6) V. Deut. XV, 2. This rule is enunciated by Rabban Simeon b. Gamaliel in Keth. IX, 1.

(7) Ona'ah overreaching, a stipulation in conflict with Lev. XXV, 14, oppress being taken to mean to overreach, to deal unfairly. Cf. B.M. IV, 3 ff. and Talm, fol. 51a seq.

(8) An honorific title, Master, a reading well attested D.S, p. 3.

(9) Tosef. B.M. X, 1.

(10) A written document. 'Starr' is an adopted word in mediaeval Anglo-Jewish history. Tovey, Anglia Judaica, p. 32.

(11) R. Hiyya the Great. Rab and Rabbah b. Bar Hanah were cousins and fellow-students under their paternal uncle Hiyya in Palestine.

(12) A familiar phrase for 'before settling down;' students usually sat low, on the floor. V. Ab. I, 4.

(13) Deut. XV, 9.

(14) V.R.H. 9bff, where it is suggested as a sort of minor year of release.

(15) Kortob: the smallest liquid measure, 1/64 of a log, which was a small domestic measure, about 2/3 of a pint; 24 logs went to one se'ah.

(16) Mikweh: a well, pool or reservoir used for ritual purification. Lev. XXII, 3-7. The water must not be contained in a vessel or filled by means of a vessel, but be naturally-gathered and in contact with the ground, Lev. XI, 36. The minimum requisite quantity for a mikweh is 40 se'ahs (or 960 logs), the amount considered necessary to allow the complete immersion of a person of average size. Once the mikweh has naturally attained the standard quantity of 40 se'ahs nothing, save reduction or discolouration, can then affect its efficacy. When under the required standard, the mikweh is ineffectual and the addition of three logs of 'vessel-drawn' water vitiates the whole entirely. The addition, however, of milk, wine, or other pure undiluted fruit-juice neither disqualifies the mikweh nor helps to bring it up to standard.

(17) Mik. VII, 3.

(18) That is, this quantity of wine and water fallen into a defective mikweh rendered the same totally useless; how could Rab, Hiyya's disciple, contradict his master?

(19) Mik. VII, 5, where, however, it should be noted, the reading in the first clause is 'three logs full', not as quoted in our Talmud texts, here, and Hul. 26a.

Talmud - Mas. Makkoth 4a

short of a kortob, imparting a wine colour, and then the whole fell into a [deficient] mikweh, the mikweh is not thereby rendered ineffectual. Likewise, if a kortob of milk fell into three logs of water short of a kortob, and then the whole fell into a [deficient] mikweh, the colour remaining that of water, the mikweh is not thereby rendered ineffectual. R. Johanan b. Nuri says that it all depends on the colour.¹ But, that is just the point on which R. Papa sought a solution.² For R. Papa asked whether Rab read in the first clause of the Mishnah 'three logs short of a kortob', and if so, then [a] the Tanna³ of that first clause [presumably] holds that [a kortob of wine which has fallen into full] 'three logs' of water would render the mikweh ineffectual, and consequently, [b] R. Johanan b. Nuri expressed his dissent, [namely] that it all depends on the colour⁴ [rather than on the measure of the liquid]. In that case, Rab [as reported above] adopted the view of R. Johanan b. Nuri. Or, alternatively, Rab did not read in the first clause of the Mishnah 'three logs short of a kortob', [but whole three logs]⁵ and consequently [a] R. Johanan b. Nuri's dissenting comment referred only to the last [milk] clause⁶ and therefore, [b] Rab [as reported] expressed a unanimous view?⁷ — This was

doubtful only to R. Papa, whereas Raba was certain about it.⁸

R. Joseph remarked: [Though a disciple of Rab Judah,] I never heard from him that ‘reported topic’.⁹ Said Abaye to him: You told us about this very theme yourself and this is how you told it to us, that Rab did not read in the first clause of the Mishnah ‘short of a kortob’; that R. Johanan dissented only from the latter clause, and that Rab's statement expresses a unanimous view.

Rab Judah also said: Rab said that if a cask-full of water had fallen into the Great Sea [the Mediterranean] and someone immersed himself [ritually] on that spot, his immersion is of no avail to him, as we have some misgiving lest three logs are left in one spot [undistributed]. Now this applies particularly to the Great Sea where the water remains stationary, which is not the case generally in stream water. The same has been also taught: If a cask-full of wine had fallen into the Great Sea and someone immersed himself on that spot, his immersion is of no avail to him, as we have some misgiving lest [three logs of] the wine¹⁰ was left in one spot [undistributed]. And likewise if a terumah¹¹ — loaf fell there, it is defiled.

What is the purport of the clause ‘And likewise . . . ’? — You might argue that, as in the former instance, [when in doubt] you consider the person in status quo [i.e. defiled], you would do the same in the second instance and consider the terumah also in status quo [as holy]; the second clause, therefore, is essential, to inform you that the loaf is defiled.

MISHNAH. [IF WITNESSES DECLARE]: ‘WE TESTIFY THAT N. N. OWES HIS FRIEND TWO HUNDRED ZUZ’, AND THEY ARE FOUND ZOMEMIM, THEY ARE FLOGGED AND ORDERED TO PAY [CORRESPONDING DAMAGES], BECAUSE THE TITLE¹² WHICH SANCTIONS THE FLOGGING¹³ IS OTHER THAN THE TITLE THAT SANCTIONS THE COMPENSATION.¹⁴ THESE ARE THE WORDS OF R. MEIR; BUT THE SAGES SAY THAT ONE WHO IS ORDERED TO PAY DAMAGES IS NOT FLOGGED.

[IF WITNESSES DECLARE:] ‘WE TESTIFY THAT N. N. IS LIABLE TO A FLOGGING¹⁵ OF FORTY LASHES, AND THEY ARE FOUND ZOMEMIM, THEY RECEIVE EIGHTY, FORTY ON THE COUNT OF ‘THOU SHALT NOT BEAR FALSE WITNESS AGAINST THY NEIGHBOUR,’¹⁶ AND FORTY ON THE COUNT OF THEN SHALL YE DO UNTO HIM AS HE PURPOSED TO DO UNTO HIS BROTHER’.¹⁷ THESE ARE THE WORDS OF R. MEIR; BUT THE SAGES SAY THAT THEY RECEIVE ONLY FORTY LASHES.

GEMARA..

(1) That means, if the colour of the mixture (that has fallen in) was that of wine or milk, it is to be taken as wine or milk, without adverse effect on the mikweh even if it fell in to whole three logs of water; and Rab thus follows the principle of R. Johanan b. Nuri (v. supra note 2, end). Whether R. Johanan's observation refers to the last clause alone, or also to the first, is discussed immediately.

(2) As Rab, in his dictum, states that if a kortob of wine fell into three logs of water, imparting a wine colour, there is no adverse effect on a defective mikweh, the discussion arises as to what reading he followed, in his interpretative dictum.

(3) I.e., the authority, though unnamed, yet representing the consensus of the Sages, v. Glos.

(4) I.e., if wine-coloured, it is as if wine had been added, without adverse effects.

(5) As in the Mishnah texts.

(6) I.e., where the colour remained that of water.

(7) For all agree that if the colour of the mixture is that of wine or milk, it is without effect on the efficacy of the mikweh, good or ill, even where the milk or wine was added to three logs.

(8) I.e., that Rab adopted the view of R. Johanan b. Nuri.

(9) שמעתא Shema'ta is something ‘heard’ from the lips of an eminent person, v. Glos. R. Joseph lost his memory after a severe illness, and Abaye often recalled to his beloved Master his own teachings.

- (10) The reason is that wine is not suitable for ritual immersion, v. Rashi on Shab., 144b. The reading ‘three logs of vessel-drawn’ is certainly incorrect in reference to wine. Cf. Hananel, Nahmanides and Strashun, a.l.
- (11) I.e., the priestly due given in kind, corn, wine and oil (also fruits), which could be consumed only by one in a state of ritual purity, cf. Num, XVIII, 11-13. V. Glos.
- (12) Literally, ‘name’ ‘denomination’ or ‘category’, meaning the Biblical text; v. next clause of the Mishnah.
- (13) The breach of the ninth Commandment, Ex. XX, 13.
- (14) The specific law of retaliation for ‘intriguers’, v. Deut. XIX, 19.
- (15) Either in connection with an offence that he had committed in their presence, or they testify that he had been sentenced to a flogging by another tribunal, but ran away.
- (16) V. p. 15, n. 4.
- (17) V. p. 15, n. 5.

Talmud - Mas. Makkoth 4b

The Rabbis’ view here is perfectly in order since, as it is written there, according to his misdeed,¹ can penalize him [once only], for a [single] ‘misdeed,’ but not [twice as] for two misdeeds. But as to R. Meir, what is his reason [for imposing two penalties for a single offence]? — ‘Ulla said that R. Meir inferred the principle [by analogy] from the case of the ‘Defaming husband’.² What do we find in the law of the ‘Defaming husband’? He is flogged and also made to pay compensation; the same should obtain in every case where the offender made himself liable to a flogging and compensation. [No!] This is no analogy, because what is that law of the ‘Defaming husband’? It is [essentially] a case of *kenas*!³ — [Admitted;] but R. Meir is of the same opinion as R. Akiba, that is that the punishment of *zomemim* is [likewise] one of *kenas*.⁴

Some introduce this Mishnah-comment of ‘Ulla in connection with that which has been taught: And ye shall let nothing of it remain until the morning; and that which remaineth of it until the morning ye shall burn with fire.⁵ Now Scripture came and provided here a [remedial] act to follow a [disregarded] prohibition,⁶ this [provision] is to convey that no flogging is inflicted for the transgression. These are the words of R. Judah. R. Jacob⁷ says: [No!] this interpretation is not relevant,⁸ as it is rather an instance of a prohibition contravened without action, and any prohibition contravened without action entails no flogging.⁹ Now, the general import of the above statement seems to imply that R. Judah is of [the] opinion that a prohibition contravened without Action does entail a flogging: whence does he obtain this principle? — ‘Ulla submitted that R. Judah derived it from the [law of the] Defaming husband. What do we find in [the case of] the Defaming husband? It is a prohibition¹⁰ contravened without action,¹¹ and yet the offender receives a flogging! [No, your conclusion falls short, as] what do we find in the law of the Defaming husband? He is flogged and also pays [one hundred shekels of silver], But, said Resh Lakish, R. Judah derived it from the [case of] *zomemim*. Now what do we find [in the case of] *zomemim*? — It is a prohibition contravened without action, and yet the offenders are flogged; the same obtains wherever there is a prohibition contravened without action. [But, can you argue that from the *zomemim*, as] what do we find in [the case of] *zomemim*? They need not be cautioned!¹² Then [I say] let the case of the Defaming husband¹³ enforce my argument. And thus the argument turns to and fro, the characteristics of one case not being quite those of the other; but they are alike in this, that they are cases of a Prohibition contravened without action, and [in each case] the offender is flogged; the same [I submit] obtains in all cases of a Prohibition contravened [even] without action — that the offender is flogged. [But yet, note] what is their common characteristic? They are both [cases of] *kenas*!¹⁴ — This presents no difficulty, as R. Judah does not take the same view as R. Akiba.¹⁵ But yet [the argument might be carried on], what they both have in common is that they have each some singular trait of severity.¹⁶ — R. Judah does not raise this point.¹⁷

[BUT THE SAGES SAY THAT THEY RECEIVE ONLY FORTY LASHES.] And what lesson do the Rabbis derive from the text, ‘Thou shalt not bear false witness against thy neighbour’? —

They must needs utilize it as the [statutory] admonition¹⁸ to zomemim. And where does R. Meir find that [requisite Scriptural] admonition? — Said R. Jeremiah that R. Meir found the same in the context, And those that remain shall hear and fear and shall henceforth commit no more such evil in the midst of thee.¹⁹ And why do not the Rabbis also adopt the same? — They apply it to another principle,

- (1) Deut. XXV, 2, as applied to zomemim. V, supra p. 4, text and notes.
- (2) V, Deut. XXII, 13-19, where it is directed to chastise him and 'amerce him 100 shekels of silver'.
- (3) I.e., a punitive treatment which cannot be taken as a standard, and from which no deductions can be drawn.
- (4) I.e. they are both of a punitive type, and the argument from them by analogy is therefore in order; v. supra p. 7, n. 4.
- (5) I.e., of the roasted flesh of the paschal lamb, Ex. XII, 10.
- (6) Lit., a prohibition translated into a positive action', לאו הניתק לעשה
- (7) Akiba is a corrupt reading.
- (8) Lit., 'is not of the proper denomination or category,' i.e. not correctly assigned, or conceived,
- (9) I.e. the offence was passive, without any bodily exertion, and therefore not punishable.
- (10) Derived from thou shalt not go up and down as a tale-bearer among thy people (Lev. XIX, 16); according to another suggestion, from keep thee free from every wicked thing (Deut. XXIII, 10), v, Keth. 46a.
- (11) I.e., slander is not the same as actual assault. Speech was deemed intangible, as mere breath without direct bodily contact. Some, however, consider that the movement of the lips in speech constitutes action, cf. infra 16a.
- (12) Whereas in all cases entailing a flogging previous caution is absolutely essential, in this case it is not even possible; for, zomemim caught in fictitious evidence could not possibly have been so warned, and yet they are flogged, which shows that their treatment is exceptional and cannot, therefore, be used for fixing a standard rule.
- (13) Who is entitled to be cautioned and yet receives a flogging for an offence of intangible action.
- (14) V, supra, p. 16 note 6.
- (15) All agree that (the secondary instance) the Defaming husband, is a case of kenas (penal), as the fixed heavy fine of 200 shekels shows. But in regard to the primary instance of zomemim, the Sages, including R. Judah, differ from R. Akiba in considering the compensation pecuniary (mamon), not penal (kenas), as the amount is not a fixed sum, but assessed according to the damage threatened by their perfidy. V. B.K. 5a (Rashi, top), kenas = poena and mamon = multa.
- (16) I.e., zomemim are to be flogged, even though they had not been previously cautioned; the Defaming husband is not only flogged, but also has to pay a fine (100 shekels) and may not send away his wife (Deut. XXII, 19).
- (17) On logical grounds, as you cannot argue from dissimilarities. Cf. Tosaf. Keth. 32b s.v. שכן.
- (18) I.e., as an explicit primary statement that such an action is a sin, as 'no punishment (עניש) can be inflicted without admonition (אזהרה)'. Cf. Mek. on Ex. XX, 13.
- (19) Deut. XIX, 20.

Talmud - Mas. Makkoth 5a

namely that of proclamation.¹

And whence does R. Meir derive that principle? — He obtains the principle of proclamation from the phrase [in the same passage], And those that remain shall hear and fear. MISHNAH. MONETARY IMPOSITIONS ARE SHARED AMONG THE OFFENDERS, BUT THE LASHES OF A FLOGGING ARE NOT SHARED AMONG THE OFFENDERS. HOW FOR INSTANCE? IF THEY GAVE EVIDENCE AGAINST A PERSON THAT HE OWED HIS FRIEND ONE HUNDRED ZUZ, AND THEY WERE FOUND ZOMEMIM, THEY DIVIDE THE CORRESPONDING DAMAGES PROPORTIONATELY BETWEEN THEM; BUT IF THEY GAVE EVIDENCE AGAINST HIM THAT HE WAS LIABLE TO A FLOGGING OF FORTY LASHES AND WERE FOUND ZOMEMIM, EACH ONE RECEIVES HIS FORTY LASHES.

GEMARA. [EACH ONE RECEIVES HIS FORTY LASHES.] What is the [Scriptural] warrant for this? — Said Abaye: The term rasha² occurs in the text prescribing a flogging,³ and also in the text

prescribing the death penalty by order of the Court:⁴ just as the death-penalty cannot be effected in half-measure, so a flogging likewise, may not be effected in half-measure.⁵

Raba said: We require to fulfil the words, Then shall ye do unto him as he purposed to do unto his brother,⁶ and this would not be done [unless each zomem-witness receives his full due]. Then, if that be so, why should not the same obtain in regard to monetary imposition? Money can be unified into one total, whereas lashes cannot be so unified.

MISHNAH. WITNESSES ARE NOT CONDEMNED AS ZOMEMIM UNTIL THEY THEMSELVES ARE [DIRECTLY] INCRIMINATED⁷; HOW, FOR INSTANCE? IF THEY HAD DECLARED: 'WE TESTIFY THAT N.N. KILLED THAT PERSON'; AND OTHER WITNESSES SAID TO THEM: HOW COULD YOU TESTIFY TO THAT, AS THAT MURDERED PERSON OR THAT [ALLEGED] MURDERER WAS WITH US ON THAT VERY DAY, AT SUCH AND SUCH A PLACE?' [THEN] THE WITNESSES ARE NOT THEREON CONDEMNED AS ZOMEMIM. BUT, IF THESE [OTHER] WITNESSES SAID: HOW COULD YOU TESTIFY TO THAT, AS ON THAT VERY DAY, YOU WERE WITH US AT SUCH AND SUCH A [DISTANT] PLACE?' [THEN] THE FORMER ARE CONDEMNED AS ZOMEMIM. IF OTHER WITNESSES CAME, AND THEY CHARGED THEM [WITH PERFDY]: THEN [AGAIN] OTHERS CAME, AND THEY [AGAIN] CHARGED THEM⁸ [WITH PERFDY], EVEN TO A HUNDRED, THEY ARE ALL TO BE EXECUTED. R. JUDAH SAYS THAT THIS IS [SEEMINGLY] A CONSPIRACY⁹ AND THE FIRST SET ALONE IS [TO BE] EXECUTED.

GEMARA. What is the [Scriptural] warrant for this? — Said R. Adda.¹⁰ The text says, and behold, if the witness be a witness-of-falsehood etc.¹¹ [which conveys that he is not a zomem] until the lie is given to the body of the evidence.¹² In the School of R. Ishmael it was taught: to testify against him¹³ a wanton perversion [sarah],¹⁴ conveys [that he is] not [a zomem] until the body of the evidence is controverted. Raba¹⁵ stated that if two came and declared that N.N. had killed that person on the eastward side of the citadel, and two others came and said [to the former witnesses]: 'But were you not [then] with us at the westward side of the citadel?' we have to consider. If while standing on the westward side of the citadel, it is possible to see that [indicated] spot on the eastward side of the citadel, they are not condemned¹⁶ as zomemim; otherwise, they are [condemned] as zomemim. But that is quite obvious! — No; you might say that we [should not convict but] consider the possibility of [the first witnesses having] a stronger eye-sight. Therefore Raba informs us that we do not give such special consideration [to zomemim].

Raba also stated that if two came and declared that N.N. had killed so-and-so early on Sunday morning at Sura, and two other witnesses came and said, 'You were with us at sunset on Sunday evening at Nehardea', we have to consider. If one can get from Sura to Nehardea between the early morning and sunset,¹⁷ the first witnesses are not condemned as zomemim; otherwise, they are zomemim. But that is quite obvious! — No; you might say that we should consider the possibility of the 'Flying Camel'.¹⁸ Therefore Raba informs us that we do not give such special consideration [to zomemim].

Raba further stated that if two witnesses came and declared that N.N. had killed so-and-so on Sunday and two others came and said, 'But were you not with us on Sunday [elsewhere]? It was [in fact] on Monday that N.N. killed him;' or, furthermore, even if the latter witnesses declared that N.N. had [actually] killed the person on the [previous] Friday, the former witnesses are still executed as zomemim, inasmuch as Sunday, the time stated in their evidence [was disproved, and] the murderer had then not yet been [found guilty and sentenced to the death-penalty].¹⁹ What new information does he proffer here? — [That the murderer as well as the perfidious witnesses are ultimately executed!]²⁰ We have learnt [that] already: Consequently, if one of these [two sets of witnesses]²¹ has been found zomemim, both the criminal and the zomemim are executed, while the

other set is let go?²² — Yes, but one must needs wait to hear the latter part of Raba's statement, in reference to evidence bearing on the time of the verdict, namely, if two came and declared that N. N. had been convicted [of murder] on Sunday, and two others then came and said to the first; 'You were with us [elsewhere] on Sunday, but N. N. was [in fact] convicted on Friday,' or furthermore, even if the latter said N. N. was [not] convicted [till] Monday, the former are not executed as zomemim, because by the time when the first witnesses gave their [fictitious] evidence,²³ the man charged had already been sentenced to death.

The same principle obtains in cases of kenas [fine].²⁴ If two came and said that N.N. had stolen and killed or sold [an animal] on Sunday, and two others came and said to the first, 'You were with us [elsewhere] on Sunday but, it was [in fact] on Monday that N.N. had stolen and killed or sold the animal,' [the first witnesses have to pay the fine];²⁵ nay, furthermore, even if the second witnesses said that N.N. had stolen and killed or sold [the animal] on the [previous] Friday, still the first witnesses have to pay, because at the time when they gave their evidence, N.N. had not yet been made liable²⁶ to pay [the fine that these perfidious fellows tried to fix on him].

If two came and declared that N.N. had stolen and killed or sold [an animal] and been convicted on Sunday, and then, two others came and said [to the witness], 'You were with us [elsewhere] on Sunday, but [in fact], N.N. had stolen and killed or sold [the animal] on Friday, when he was convicted;' nay, even if the second witnesses said that N.N. had [actually] stolen and killed or sold [the animal] on Sunday [or even on Monday],²⁷ but that he was not convicted [and fined] till Monday, the former witnesses have not to pay [the exactions], because, at the time when they were giving [their perfidious] evidence,²⁸ N.N. had already been made liable [to pay the fine] by a tribunal.

R. JUDAH SAYS THAT THIS IS [SEEMINGLY] A CONSPIRACY AND THE FIRST SET ALONE IS [TO BE] EXECUTED.

(1) On textual grounds, four criminal convictions had to be published abroad as a deterrent measure, among them that of zomemim, Sanh. 89a.

(2) רשע i.e. wicked, guilty.

(3) If the (guilty) wicked man be worthy to be beaten, that the judge shall cause him to lie down and to be beaten . . . forty stripes. Deut. XXV, 2-3.

(4) 'Ye shall take no satisfaction for the life of a murderer, which is guilty of death; but he shall surely be put to death.' Num. XXXV, 31.

(5) This exegetical method is called Gezerah Shawah, v. Glos.

(6) Deut. XIX, 19.

(7) Read יזומו את עצמן or יזומו (v. D.S, a.l) that is, not their evidence, but their personal presence at the alleged offence, is being challenged (Rashi).

(8) I.e., successive witnesses came to charge the accused, and the witnesses who came to his defence challenged them in turn as conspirators: so Rashi, Alfasi, and Maim.; on the other hand, Nahmanides defends another interpretation, that successive sets of witnesses came and contradicted each other, these for and the next against the accused, in which he is supported by the wording in the Tosefta. The alternative translation would then be: — If other witnesses came and charged them, then (again) other witnesses came and charged them (the last) even to a hundred . . .

(9) Estatis. The traditional derivation is incorrect; it is a popular contracted (or corrupt) form of the Greek stasiastes or stasiodes meaning a member of a faction or factious party.

(10) V.l. Raba (D.S); Rabbah (Han.).

(11) Deut. XIX, 18.

(12) I.e., the villany of the witness, as bearer of the evidence, is established rather than flaws in the evidence. (In Roman law, *testibus non testimoniis*.)

(13) I.e. the perfidious witness as against himself (Ritba; v. J. Z. Meklenburg's long commentary on Deut. XIX, 16.

(14) סרה — usually derived from סור — a turning or falling away (from the law of God), cf. Deut. XIII, 6; but it is

more probably from the secondary Po'el form, סורר to be pervert and rebellious, cf. Deut. XXI, 18, 29 and especially. Isa. I, 23.

(15) Var. lec. Rabbah (Han.).

(16) As both impressions may be truly received.

(17) Nehardea lay over 20 parasangs (about 70 miles) north of Sura; both were on the Euphrates: the journey would ordinarily take two days of steady travelling. V. J. Obermeyer. *Die Landschaft Babylonien*, p. 293.

(18) Probably the popular name for a special fast camel service. 'The fleeter camels will carry their rider and a bag of water for fifty miles a day without a drink'. Enc. Brit. s.v. Camel. 'The speed of the imperial post averaged five miles an hour: the distance between Antioch and Byzantium (747 miles) was accomplished in little under six days: hired vehicles would take longer.' Caroline A. J. Skeel, *Travel in the First Century*, p. 70.

(19) It was at the time a plot against a still innocent man by insidious witnesses, v. Tosaf, a.l., Han. and Maim. Yad, Eduth, XVIII, 2.

(20) The culprit for his crime, and they for their proved perfidy.

(21) I.e., who do not see each other, and are therefore unaware of their common perfidy.

(22) V. Mishnah 6b.

(23) Probably Tuesday, cf. Sifrei on Num. XXXV, 31.

(24) V. Glos.

(25) If caught with the object, the thief had to pay twofold (Ex. XXII, 3); if he killed or sold a beast, he had to pay five oxen for an ox and four sheep for a sheep (ibid. XXI, 37).

(26) I.e., by a tribunal, after a due trial. If the thief voluntarily admitted his offence, he returned either the object (if available), or its value. It is the witnesses, therefore, who force the fines upon the thief.

(27) So Maharsha, but see Maim. Yad, Eduth, XIX, 2 and comment. Kesef Mishneh.

(28) I.e., after Monday (as may be gathered from the evidence of the second witnesses).

Talmud - Mas. Makkoth 5b

If it seems a conspiracy, even the first witnesses should not be executed? — Said R. Abbahu: [The plot was discovered only] after execution had already taken place. 'After execution had already taken place'! Then the thing is done [and there is nothing more to be said]?¹ But, said Raba, he [R. Judah] means this: if there was only one set, the witnesses are executed;² but if there be more than one set, they are not executed.³ But does not R. Judah say, THE FIRST SET ALONE IS EXECUTED, [implying that there are more]? This is rather a difficult point. There was a certain woman who brought [her] witnesses and they were discredited; she brought others, and they [too] were discredited;⁴ she went and brought further witnesses [who were not discredited]. Said Resh Lakish: This woman is suspect.⁵ Said R. Eleazar to him: 'Assuming she is suspect, are all Israel to be held as suspects?' Once as they were both present at the sessions of R. Johanan, there came such a suit before them and Resh Lakish observed: 'This woman is suspect.' Thereupon R. Johanan replied to him: 'If she is suspect, are all Israel to be held as suspects?' Resh Lakish then turned round and looked askance at R. Eleazar, saying: 'So you had heard this from [Johanan] bar-Nappaha and did not tell it to me in his name!'⁶

Is it to be suggested that Resh Lakish sides here with R. Judah [in the Mishnah], while R. Johanan sides with the Rabbis — [Not necessarily, as] Resh Lakish might say: I do hold the view of the Sages,⁷ but they allow such latitude only because there we have no one running about for his witnesses, whereas here we have this one woman running about and fetching them along.⁸ And R. Johanan, likewise, might say: My view [in this instance] is in accord even with that of R. Judah, and the reason of his reservation there is only because people ask [in surprise], 'Was the whole world standing there with them?'⁹ Whereas in this case [of the woman, obviously], those who came last happened to have knowledge of the [facts in] question, and the former had not. MISHNAH. WITNESSES ARE NOT TO BE PUT TO DEATH AS ATTESTED ZOMEMIM UNTIL [AFTER] THE TERMINATION OF THE TRIAL;¹⁰ BECAUSE THE SADDUCEES CONTENDED THAT ZOMEMIM WERE PUT TO DEATH ONLY AFTER THE ACCUSED HAD [ACTUALLY] BEEN

EXECUTED, PURSUANT TO THE SCRIPTURAL TEXT, 'LIFE FOR LIFE'.¹¹ SAID THE [PHARISEE] SAGES TO THEM: BUT DOES NOT THE CONTEXT READ: THEN SHALL YE DO UNTO HIM AS HE PURPOSED TO DO UNTO HIS BROTHER,¹² WHICH CLEARLY IMPLIES WHEN HIS BROTHER IS STILL ALIVE? IF SO, WHAT IS THE PURPORT OF LIFE FOR LIFE'? YOU MIGHT ARGUE THAT ZOMEMIM ARE LIABLE TO BE PUT TO DEATH FROM THE MOMENT THEIR [PERFIDIOUS] EVIDENCE HAD BEEN TAKEN, THEREFORE THE WORDS 'LIFE FOR LIFE' ARE A POINTED INSTRUCTION THAT ZOMEMIM ARE NOT TO BE PUT TO DEATH UNTIL [AFTER] THE TERMINATION OF THE TRIAL.

GEMARA. It is taught: An eminent discipl¹³ put the principle of [the Mishnah] in this [paradoxical] form: If they have not slain, they are slain; and if they have slain, they are not slain.¹⁴ My son, said the father [or Principal],¹⁵ is there not an argument a fortiori¹⁶ against your rule? Our Master [replied the disciple], have you not taught us: No Penalty is inflicted on the strength of a logical inference?¹⁷ For it has been taught: And if a man shall take his sister, his father's daughter or his mother's daughter . . . it is a shameful thing, and they shall be cut off¹⁸ . . . Here we have it specified, his father's daughter [who is] not his mother's, and, his mother's daughter [who is] not his father's. On what [Scriptural] authority is the same penalty extended to one who is both, his father's as well as his mother's daughter? It is indicated explicitly in the additional instructive words, He hath uncovered his sister's nakedness,' he shall bear his iniquity.¹⁸ Now, even without [having recourse to] this textual addition I could have inferred it, since, if punishment is decreed in the case of [a half-sister] 'his father's daughter' not his mother's, or 'his mother's daughter' not his father's, is it not all the more evident in the case of [a full sister] the daughter of both his father and his mother? Here, therefore, you learn the rule: No penalty is inflicted on the strength of a logical inference.¹⁹

We have established the principle relative to a penalty; where do we find it in reference to admonition?²⁰ — In the instructive text, The nakedness of thy sister, the daughter of thy father, or the daughter of thy mother thou shalt not uncover.²¹ Here we have specified, 'his father's daughter', not his mother's, and 'his mother's daughter', not his father's. On what [Scriptural] authority is the same prohibition extended to one who is both, his father's as well as his mother's daughter? It is indicated explicitly in the additional instructive words, the nakedness of thy father's wife's daughter begotten of thy father, she is thy sister.²² Now even without this textual addition I could have inferred it, since, if a man is admonished about [his half-sister] 'his mother's daughter', not his father's, and 'his father's daughter', not his mother's, is it not all the more applicable to [his full sister] the daughter of both of his father and mother? Here, therefore, we learn the rule: An admonition inferred by argument is not warranted.²³

And what is the [corresponding] Scriptural reference relating to a [retaliatory] flogging of zomemim?²⁴ — It is obtained [by the linking of the law of flogging²⁵ with the law of murder]²⁶ by the term rasha' [guilty] which they both have in common.²⁷ And what is the reference for such as are liable to banishment? — It is [likewise] obtained [by the linking of the law of banishment²⁸ with the law of murder,]²⁶ by the term rozeah [murderer] which they both have in common.²⁷

It has been taught: R. Judah b. Tabbai said: 'May I [never] see consolation [of Israel] if I did not have one zomemim-witness done to death to disabuse the mind of the Sadducees, who used to say that zomemim [found guilty] were put to death only after the [falsely] accused person had [actually] been executed.' Said Simeon b. Shetah to him: 'May I [never] see consolation [of Israel] if you have not shed innocent blood because the Sages declared that witnesses found to be zomemim are not put to death until both have been proved as such, and are not [juridically] flogged until both have been proved as such.' Forthwith did Judah b. Tabbai take upon himself a resolve never to deliver a decision save in the presence of Simeon b. Shetah.²⁹ And all through his [remaining] days, Judah b. Tabbai used to go and prostrate himself on the grave of that [slain] witness, and his voice would be heard and people thought that it was the voice of the slain man; but he would tell them, 'It is my

voice! You will be convinced when on the morrow of this man's [his own] death his voice will be heard no more'.

Said R. Aha, the son of Raba, to R. Ashi: He might perhaps have answered the summons of the deceased, or else he might have obtained his forgiveness.³⁰

MISHNAH. [IT IS PRESCRIBED:] AT THE MOUTH OF TWO WITNESSES OR THREE WITNESSES SHALL HE THAT IS TO DIE BE PUT TO DEATH.³¹ IF THE FACT IS SUFFICIENTLY ESTABLISHED BY TWO WITNESSES, WHEREFORE DOES HOLY WRIT [FURTHER] SPECIFY THREE? — THIS IS ONLY TO SHOW THEIR COMPARATIVE COMPETENCY, THAT JUST AS THREE ARE COMPETENT TO INCRIMINATE TWO AS ZOMEMIM, SO ARE TWO COMPETENT TO INCRIMINATE THREE. HOW DO WE KNOW THAT [TWO OR THREE] CAN EVEN INCRIMINATE A HUNDRED? FROM THE INSTRUCTIVE CONTEXT WHICH HAS [TWICE] 'WITNESSES'.³² R. SIMEON SAYS THAT JUST AS TWO WITNESSES ARE NOT PUT TO DEATH AS ZOMEMIM UNTIL BOTH HAVE BEEN INCRIMINATED, SO THREE ARE NOT PUT TO DEATH UNTIL ALL THREE HAVE BEEN INCRIMINATED AS ZOMEMIM. HOW DO WE KNOW THAT THIS ALSO APPLIES EVEN IN THE CASE OF A HUNDRED? — FROM THE INSTRUCTIVE CONTEXT WHICH HAS [THRICE] 'WITNESSES'³³. R. AKIBA OBSERVES THAT THE THIRD WITNESS WAS SUPERADDED HERE [NOT TO MAKE HIS RESPONSIBILITY THE LIGHTER],³⁴ BUT TO RENDER IT AS SERIOUS FOR HIM AND MAKE HIS LEGAL LIABILITY EQUAL TO THAT OF THE OTHERS.³⁵ NOW, IF HOLY WRIT THUS PENALISES ONE WHO CONSORTS WITH MALEFACTORS, AS ONE OF THE MALEFACTORS, HOW MUCH MORE SHALL HE WHO CONSORTS WITH BENEFACTORS RECEIVE A REWARD AS ONE OF THE BENEFACTORS! [AGAIN,] AS IN THE CASE OF TWO WITNESSES, IF ONE OF THEM WAS FOUND TO BE A NEAR KINSMAN³⁶ OR [OTHERWISE] DISQUALIFIED,³⁷ THE WHOLE EVIDENCE IS RENDERED VOID, SO IS IT WITH THREE: IF ONE OF THEM WAS FOUND TO BE A NEAR KINSMAN OR [OTHERWISE] DISQUALIFIED, THE WHOLE EVIDENCE IS VOID. HOW DO WE KNOW THAT THIS IS THE CASE EVEN WITH A HUNDRED? FROM THE INSTRUCTIVE CONTEXT WHICH HAS [THRICE] 'WITNESSES'.

(1) I.e., what point is there in R. Judah's statement?

(2) An exemplary punishment for zomemim.

(3) Because they are regarded as victims of a plot.

(4) The bracketed words are missing in many good texts, v. D.S.

(5) I.e. to bring false witnesses.

(6) This was laid to Eleazar's charge on several occasions. V. Yeb. 96b; Keth, 26b. Cf. J. Ber, ii, 1, where an explanation is offered that it was not customary in Babylon always to mention the master's name, v. Hyman Toledo, I, p. 195.

(7) To take evidence were there 'even a hundred' sets of discrediting or discredited witnesses.

(8) And thereby creating suspicion.

(9) Explanation: — According to Rashi, Alfasi and Maimonides (v, p. 20, note 1) A and A1 charge M (Murderer) — B and B1 charge A and A1 with alibi. C ,, C1 ,, ,, ,, ,, ,, C ,, C1 ,, ,, D ,, D1 ,, ,, ,, ,, ,, D ,, D1 ,, ,, Was the whole world on the day of the murder with B and B1? According to Nahmanides and others A and A1 charge M — B and B1 charge A and A1 with alibi. C ,, C1 ,, ,, D ,, D1 ,, C ,, C1 ,, ,, E ,, E1 ,, ,, F ,, F1 ,, E ,, E1 ,, ,, etc. How was everybody conveniently present to be able to assist his own side? We have obviously a factious feud here. Cf. Han.

(10) I.e., only after a sentence had been obtained by the plotters against the innocent victim. If their perfidy is detected before sentence is given or after their victim had been executed, they escape retaliative punishment, according to the traditional (Pharisaic) interpretation; v. Maim. Yad, Eduth, XX, 2.

(11) And thine eye shall not pity; life for life . . . Deut. XIX, 21.

(12) Ibid. 19. It appears that the words stressed here are 'to do (or, to be done) unto his brother', i.e. as when yet to be done. Rashi (in Deut, a, l. and Mak, 2b, top) stresses 'as he purposed to do,' but has not yet done it. Cf. Chajes notes on 5b and Meklenburg (longer commentary) on Deut, a, l. The fact that the judges were themselves involved with the

zomemim in the unfortunate miscarriage of justice may be the reason for letting them off post eventum, since the zomemim, as the witnesses, were compelled by the judges' decision to lay hands on their victim, Cf. also Friedmann's instructive note Sifre, Num, XXXV. ** 160 n. 6 (p. 61a), and Hoffmann's **מלמד להועיל**, III, 142.

(13) b'Rabbi or b'Ribbi denotes either 'a prominent scholar of an eminent College' or, 'a rabbi-graduate, acting as tutor to senior students under his own Principal, while still at College,' v. Rashi Hul. 11b s.v. **והתניא** and Dictionaries, v. however Ginzberg, L., J.E.II, p. 52.

(14) I.e., the zomemim, who as witnesses had to strike the first fatal blow, Deut. XVII, 6.

(15) By way of test,

(16) If zomemim are put to death when their plot failed, it is surely all the more necessary that they should be where their plot had succeeded!

(17) That is, the 'principle' that 'a reprehensible action is not a punishable offence, unless it has been plainly forbidden and the form of punishment stated'.

(18) Lev. XX, 17.

(19) Sifra, Kedoshim, a.l.

(20) V. p. 18, n. 5.

(21) Lev. XVIII, 9,

(22) Ibid, 11.

(23) V. Sifra, Kedoshim on Lev. XX, 17. Mishnah 12; cf. infra 14a, 17a.

(24) The zomem-penalties as prescribed in Deut. XIX, 21, and thine eye shall not pity (the zomem); life (shall go) for life, eye for eye, tooth for tooth, hand for hand, foot for foot, apply only in cases of the death penalty and (penal compensation) for imputed bodily injuries. Scriptural authority is now sought for the remaining forms of retaliatory punishments, namely, flogging and banishment, (cf. the first Mishnah, 2a), which, like the death penalty, are incurred only after a court sentence (on fictitious evidence) had been enforced.

(25) Deut. XXV, 2-3. If the guilty **רשע** (wicked) man be worthy to be beaten . . .

(26) Num, XXXV, 31, take no satisfaction for the life of a murderer, guilty **רשע** of death. On the principle of Gezerah Shawah, v. Glos.

(27) Cf, supra, p. 19.

(28) Num. XXXV, 11, that the murderer **רצח** may flee thither, which killed a person unawares.

(29) The names are reversed in Mek. Ex. XXIII, 7. This aggadic report fixes the time of the controversy referred to in the Mishnah: Simeon B. Shetah was the brother of Queen Salome (= Shelom-Zion, Alexandra), wife of Alexander Jannaeus; v. Aboth, i. 8-9. Note the phrase, 'May I (never) see consolation' (Luke II, 25) which points to troublous times. Political reprisals were rife then. On the cause of the controversy and the treatment of Zomemim, v. Graetz, Hist, (Eng, ed.) ii, chap. 2, and J. Klausner, **היסטוריה ישראלית**, ii, 145.

(30) R. Aha argues that the fact that no voice would be heard after Judah's death would be no proof that it was not the slain man calling, as it is likely that Judah would, on death, have appeared before the Heavenly Tribunal with the deceased or obtained pardon from the wronged man, and this silenced his voice calling from the grave.

(31) Deut. XVII, 6.

(32) V, next note.

(33) 'Two witnesses or three witnesses', indicating that these are mentioned as the first in a series even to a hundred.

(34) Omitted in many texts. D.S. Cf. San. 9a.

(35) I.e. he cannot plead that, as two witnesses were enough to establish the evidence, his was superfluous and negligible and therefore he might be let off; but the context demands that all witnesses form one inseparable group and must suffer alike, if found zomemim.

(36) The exclusion is based on a traditional interpretation of Deut. XXIV, 16, thus: The fathers shall not be put to death on account of (the evidence of) the children, and vice versa. Sanh. 27b and Maim.

(37) By reason of status or crime and infamous bearing, v. Sanh. 24b.

Talmud - Mas. Makkoth 6a

SAID R. JOSE: THESE AFOREMENTIONED LIMITATIONS APPLY ONLY TO WITNESSES IN CAPITAL CHARGES;¹ BUT IN MONETARY SUITS, THE EVIDENCE MAY BE ESTABLISHED BY THE REST.² RABBI³ SAYS: IT IS ONE AND THE SAME RULE, BE IT IN

MONETARY SUITS OR CAPITAL CHARGES; THAT IS, PROVIDED THE DISQUALIFIED WITNESSES TOOK PART IN THE PRE-ADMONITION.⁴ BUT WHERE THEY WERE NOT OF THOSE WHO GAVE THE PRE-ADMONITION [TO THE OFFENDERS], WHAT COULD TWO BROTHERS DO THAT SAW⁵ SOMEONE SLAYING A PERSON?

GEMARA. [EVEN TWO OR THREE CAN INCRIMINATE A HUNDRED.] Said Raba: And such[an incrimination by two against a hundred witnesses] could be sustained only where they all had given their evidence in 'un-intermittent utterance'. R. Aha of Difti remarked to Rabina: Seeing that 'un-intermittent utterance' is generally defined as the brief interval which a disciple would take in uttering the salutation, Peace Upon Thee, my Master and Guide! — the evidence of a hundred witnesses will take a great deal more time than that! Said Rabina: [What is meant is that] each one follows the other un-intermittently [which renders the whole as one undivided group].

R. AKIBA OBSERVES THAT THE THIRD WITNESS WAS SUPERADDED... SO IT IS WITH THREE; IF ONE OF THEM WAS FOUND TO BE A KINSMAN . . . THEIR EVIDENCE IS DISQUALIFIED. R. Papa observed to Abaye: But, then, [admitting such extreme pretexts against capital punishment] let the very presence of the murdered man himself⁶ [at the murder] save [the delinquent from the 'death penalty']?⁷ — [Said Abaye: The penalty can be inflicted in case] he was attacked from behind.⁸ Let the presence of the victim in a case of sodomy save the delinquent from the death penalty? — [The penalty can be inflicted where] the assault was from behind. Then why not let the presence of the criminal⁹ [in each of these cases] be made a pretext for disqualifying the evidence? Abaye remained silent. When R. Papa came [with these questions] before Raba, the latter replied: The Holy Writ prescribes, at the mouth of two witnesses, or at the mouth of three witnesses shall the matter be established;¹⁰ the text¹¹ thus refers only to those who have to establish the matter.¹²

SAID R. JOSE: THESE LIMITATIONS APPLY ONLY. .. IN CAPITAL CHARGES ... RABBI SAYS. .. BE IT IN MONETARY SUITS OR CAPITAL CHARGES, PROVIDED THE WITNESSES DISQUALIFIED WITNESSES TOOK PART IN THE PRE-ADMONITION How do we [the Judges] put it to the witnesses? — Said Raba: [We ask them] whether they had come¹³ as mere onlookers, or to give evidence. If they say to give evidence, and one is found to be a near kinsman, or disqualified person, the entire evidence is disqualified, but if they say they had come as mere onlookers [the evidence is allowed to stand].

WHAT COULD TWO BROTHERS DO THAT SAW SOMEONE SLAYING A PERSON? It is stated: Rab Judah reported [his Master] Samuel to have said that the halachah¹⁴ was to follow the view of R. Jose¹⁵ while R. Nahman said that the halachah was to follow the view of Rabbi.¹⁶

(1) Where every effort should be made to avoid execution, pursuant to the words, And the congregation (of judges) shall deliver the slayer . . . and the congregation shall restore him . . . Num. XXXV, 25.

(2) For even in the case of two witnesses, if the evidence of one proves inadmissible, that of the other is not entirely invalidated as it serves to enforce an oath (Tosaf.). Cf. Shebu. 40a.

(3) I.e. the Patriarch, R. Judah the Prince.

(4) It was the duty of eye-witnesses to admonish and warn any person about to commit an offence of its wrong and its consequences.

(5) I.e. casually witnessed the crime together with another stranger. Cf. variant Sanh. 9b (and Rashi).

(6) Since he is an interested party in the case, and a witness of the crime, while being his own nearest kinsman! All this is sheer casuistry; yet these conundrums lead to the examination of the legal principles involved.

(7) This, however, would make the death penalty impossible of practical application.

(8) I.e. where he could not identify his assailant if the attempt failed, and could not be an 'eye-witness'.

(9) Who is deeply concerned in the issue and mixed up with the witnesses.

(10) Deut. XIX, 15.

(11) Invalidating the whole evidence through the presence of a disqualified person.

(12) I.e., to substantiate the matter; not the litigants or the principals in a criminal charge, but solely the witnesses.

(13) On the scene of the assault; on the scene of a money-transaction; or, whether they came now to Court. V. Tosaf. and Han.

(14) I.e., the rule in practice.

(15) That the association of disqualified witnesses does not vitiate the whole evidence in monetary suits.

(16) I.e., that even in monetary suits if they came to give evidence, ab initio, they disqualify the whole evidence, i.e. in verbal evidence; it is not so strictly enforced in some documentary evidence. Cf. Han. and Alfasi.

Talmud - Mas. Makkoth 6b

MISHNAH. IF TWO PERSONS SEE THE MALEFACTOR FROM ONE WINDOW AND TWO OTHER PERSONS SEE HIM FROM ANOTHER WINDOW AND ONE STANDING MIDWAY UTTERS THE PRE-ADMONITION TO HIM, THEN, IF SOME ON ONE SIDE AND SOME ON THE OTHER SIDE CAN SEE ONE ANOTHER,¹ THEY CONSTITUTE TOGETHER ONE BODY OF EVIDENCE, BUT IF THEY CANNOT [PARTLY SEE ONE ANOTHER], THEY ARE TWO BODIES OF EVIDENCE. CONSEQUENTLY, IF ONE OF THESE [BODIES] IS FOUND ZOMEMIM, BOTH HE AND THEY² ARE PUT TO DEATH, WHILE THE PARTY THAT CAME SECOND IS DISCHARGED. R. JOSE OBSERVES THAT A MALEFACTOR IS NEVER PUT TO DEATH UNLESS TWO WITNESSES HAD DULY PRE-ADMONISHED HIM, AS HOLY WRIT PRESCRIBES, AT THE MOUTH OF TWO WITNESSES OR THREE WITNESSES SHALL HE THAT IS WORTHY OF DEATH BE PUT TO DEATH; BUT AT THE MOUTH OF ONE WITNESS HE SHALL NOT BE PUT TO DEATH.³ ANOTHER INTERPRETATION OF THE WORDS, AT THE MOUTH OF TWO WITNESSES . . . IS THAT THE SANHEDRIN SHALL NOT HEAR THE EVIDENCE FROM THE MOUTH OF AN INTERPRETER.

GEMARA. R. Zutra b. Tobiah reported that Rab said: How can it be shown that ‘disjoined’ testimony⁴ is disqualified? Because, Holy Writ prescribes that at the mouth of one witness he shall not be put to death.³ Now, what is [the import of this special admonition here against] one witness? If it be taken literally as one sole witness, is not this already implied in the earlier context, at the mouth of two witnesses or three witnesses shall he that is worthy of death be put to death? What, then, is the meaning of one witness? One by one.⁵ The same is also taught, thus: Holy Writ prescribes [especially], at the mouth of one witness he shall not be put to death to cover instances where two persons see the malefactor, one from a window here and the other from a window there, without, however, seeing each other, [in which case] such evidence cannot be conjoined. Nay, furthermore, even if they both witnessed the offence from the same window, first one and then the other, their testimony cannot be conjoined.

R. Papa remarked to Abaye: Now, if, [in the first instance above,] where one saw the offence from one window and another from another window [simultaneously], one having witnessed the whole act and the other having witnessed the whole act, you say that such testimony cannot be conjoined; is there any occasion at all to give [the second instance], where two witnesses saw the act [albeit from the same window], only consecutively, and where consequently this one only saw but half the act, and the other but half the act? — Abaye replied: The second might seem unnecessary, but for such an instance as incest.⁶

Raba said: If they both saw the admonitor, or he saw them both, they can be conjoined in the testimony as a whole, Raba further said in reference to the requisite admonition, that if it was uttered even by the victim himself, or even if it came from some [invisible] demon⁷ [it was sufficient].

R. Nahman⁸ stated that in monetary suits ‘disjoined’ testimony is admissible, since Holy Writ prescribes, ‘by the mouth of one witness he shall not be put to death’. It is only in a capital charge

that ‘disjoined’ testimony is inadmissible; but in monetary suits it is admissible. R. Zutra⁹ demurred to this [and argued,] if so, why not put this forward as a plea for ‘deliverance’¹⁰ [in a capital charge]? Why, then, does the Mishnah state that BOTH HE [THE ACCUSED] AND THEY [THE ZOMEMIM] ARE PUT TO DEATH?¹¹ — This is a difficult point.

R. JOSE¹² OBSERVES THAT A MALEFACTOR IS NEVER PUT TO DEATH UNLESS TWO WITNESSES HAD DULY PRE-ADMONISHED HIM . . . Said R. Papa to Abaye: Is this really R. Jose's view? Do we not learn: R. Jose says, An [avowed] enemy is executed, because he is, as it were, attested and already pre-admonished?¹³ — To this Abaye replied that the authority of that cited Mishnah was R. Jose b. Judah, as it is taught [explicitly elsewhere]: R. Jose b. Judah says, a scholar¹⁴ needs no pre-admonition, because pre-admonition was introduced only as a means for discriminating between the inadvertent and deliberate offender.

ANOTHER INTERPRETATION OF THE WORDS, AT THE MOUTH OF TWO WITNESSES.....IS THAT THE SANHEDRIN SHALL NOT HEAR THE EVIDENCE FROM THE MOUTH OF AN INTERPRETER. Certain foreigners came [with a suit] before Raba and he appointed an interpreter. How could he do that? Do we not learn that THE SANHEDRIN SHALL NOT HEAR THE EVIDENCE FROM THE MOUTH OF AN INTERPRETER? — Raba understood well enough what they said, only he did not know how to reply.

(1) V. Tosaf, s.v. וְהָיָה.

(2) I.e., the malefactor, against whom the charge has been proved and who consequently has to pay the penalty; and the intriguers who, out of enmity to him, supported the charge against him, although by an attested alibi, they could not possibly have been eye-witnesses. ‘This is a unique instance in the jurisdiction of Sanhedrin.’ J. Makk. I, 14.

(3) Deut. XVII, 6.

(4) I.e. where each of the witnesses was unaware of the other's presence at the time of the alleged offence.

(5) And the purport of the admonition is to bar ‘disjoined’ testimony.

(6) Where the merest superficial penetration technically constitutes the carnal offence. Yet even here, ‘disjoined’ testimony is not admissible.

(7) V. K. Kohler, Demonology, J.E. IV, 514ff.

(8) Var. lec. Judah, D.S.

(9) Var. lec. Hisda, D.S.

(10) Seeing that it is the duty of ‘the Congregation’ (the Judges of the High Court) to deliver, that is, to avoid capital punishment on any and every pretext, then why not advance this argument: just as you stressed the verse, by . . . one witness he shall not be put to death, to mean, not a fit witness to effect a capital sentence, yet fit enough among others in a monetary suit; you might just as well stress it to mean, not fit to effect a capital sentence, yet fit enough to effect a deliverance (discharge) on the ground that, as a witness of ‘disjoined’ evidence (disqualified in a capital charge), he disqualifies by his presence all the other witnesses.

(11) V. supra p. 32, n. 2.

(12) Usually = R. Jose b. Halafta, but J. Mak. has here R. Jose b. Judah (see discussion).

(13) V. infra 9b.

(14) Haber חֲבֵר lit., ‘associate’, ‘fellow-student’, sometimes a colleague of prominent scholars, Talmid-haber, v. Glos.

Talmud - Mas. Makkoth 7a

Elai and Tobiah were near kinsmen to a surety, and R. Papa maintained that [their evidence was admissible, as] they were strangers to the debtor and the creditor; but R. Huna, the son of R. Joshua, pointed out to R. Papa that if the debtor were unavailable,¹ would not the creditor come down on the surety?² MISHNAH. IF ONE FLED AFTER HAVING BEEN CONVICTED AT A COURT AND AGAIN COMES UP BEFORE THE SAME COURT, THE [FIRST] JUDGMENT IS NOT SET ASIDE.³ WHEREVER TWO WITNESSES STAND UP AND DECLARE, ‘WE TESTIFY THAT N. N. WAS TRIED AND CONVICTED AT THE COURT OF X⁴ AND THAT Y AND Z WERE

THE WITNESSES IN THE CASE,' THE ACCUSED IS EXECUTED. A SANHEDRIN⁵ HAS JURISDICTION WITHIN THE LAND [OF PALESTINE] AND OUTSIDE IT. A SANHEDRIN THAT EFFECTS AN EXECUTION ONCE IN SEVEN YEARS, IS BRANDED A DESTRUCTIVE TRIBUNAL; R. ELIEZER B. AZARIAH SAYS: ONCE IN SEVENTY YEARS. R. TARFON AND R. AKIBA SAY: WERE WE MEMBERS OF A SANHEDRIN, NO PERSON WOULD EVER BE PUT TO DEATH. [THEREUPON] RABBAN SIMEON B. GAMALIEL REMARKED, [YEA] AND THEY WOULD ALSO MULTIPLY SHEDDERS OF BLOOD IN ISRAEL!

GEMARA. [IF ONE FLED . . . AND AGAIN COMES UP BEFORE THE SAME COURT . . .] This wording implies [that the first judgment] is not to be set aside in the same Court, but may be set aside In another Court, whereas in the next clause we read: WHEREVER TWO WITNESSES STAND UP AND DECLARE, 'WE TESTIFY THAT THIS MAN WAS TRIED AND CONVICTED AT THE COURT OF X AND THAT Y AND Z WERE THE WITNESSES IN THE CASE' THE ACCUSED IS EXECUTED [which conveys a contrary impression]! — Said Abaye: That presents no difficulty; [there are two domains in regard to Court decisions], one has reference to a Palestinian Court, the other to an extra-Palestinian Court, as it is taught: R. Judah b. Dosithai says [in the name of R. Simeon b. Shetah] that if a fugitive from Palestine went abroad, his sentence is not set aside; from abroad to Palestine, his sentence is set aside, on account of Palestine's prerogative.⁶

A SANHEDRIN HAS JURISDICTION WITHIN THE LAND . . . AND OUTSIDE IT.

What [Scriptural] authority is there for this? — Our Rabbis taught: [From the text,] And these things shall be for a statute of judgment unto you throughout your generations in all your dwellings,⁷ we learn that a Sanhedrin has jurisdiction both in and outside Palestine. If that be so, what is the import of [the limitation in] the text, Judges and officers shalt thou make thee in all thy gates which the Lord thy God giveth thee tribe by tribe?⁸ — [It means that] in your [own] gates you set up tribunals in every district as well as in every city, whereas outside the Land [of Palestine], you set up tribunals only in every district but not in every city.⁹

A SANHEDRIN THAT EFFECTS AN EXECUTION ONCE IN SEVEN YEARS IS BRANDED A DESTRUCTIVE TRIBUNAL; R. ELIEZER B. AZARIAH SAYS, ONCE IN SEVENTY YEARS. The question was raised whether the comment [of R. Eliezer b. Azariah was a censure, namely] that even one death-sentence in seventy years branded the Sanhedrin as a destructive tribunal, or [a mere observation] that it ordinarily happened but once in seventy years? — It stands [undecided].

R. TARFON AND R. AKIBA SAY, WERE WE MEMBERS OF A SANHEDRIN, NO PERSON WOULD EVER BE PUT TO DEATH. How could they [being judges] give effect to that [policy]? Both R. Johanan and R. Eleazar suggested that the witnesses might be plied with [intimate] questions such as, 'Did you take note whether the victim was [perchance] suffering from some fatal affection or was he perfectly healthy?' R. Ashi [enlarging on this] said: And should the reply be, 'Perfectly healthy', they might further be embarrassed by asking, 'Maybe the sword only severed an internal lesion?'¹⁰

And what would be asked, say, in a charge of incest? — Both Abaye and Raba suggested asking the witnesses whether they had seen the offenders as intimate as 'kohl-flask and probe'?¹¹

Now [with regard to] the Rabbis,¹² what kind of evidence [in such a charge] would they deem sufficient to convict? — According to Samuel's maxim; for Samuel said that being caught in the attitude of the unchaste is sufficient evidence.

CHAPTER II

MISHNAH. THE FOLLOWING GO INTO BANISHMENT: HE WHO SLAYS IN ERROR,¹³ IF [FOR INSTANCE] WHILE HE WAS PUSHING A ROLLER¹⁴ [ON THE ROOF] IT [SLIPPED OVER]. FELL DOWN AND KILLED SOMEBODY, OR WHILE HE WAS LOWERING A CASK IT FELL DOWN AND KILLED SOMEBODY, OR, WHILE COMING DOWN A LADDER HE FELL ON SOMEBODY AND KILLED HIM, HE GOES INTO BANISHMENT. BUT, IF WHILE HE WAS PULLING UP THE ROLLER IT FELL BACK ON SOMEONE KILLING HIM, OR WHILE HE WAS RAISING A BUCKET THE ROPE SNAPPED AND THE BUCKET KILLED SOMEBODY IN ITS FALL,

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- (1) The readings vary here, v. D.S, but the translation meets either.
 - (2) I.e., if the debt has been repaid, the surety is quit of his liability; if not, he has to meet it. This will have to be determined on the evidence of his near kinsmen, who are inadmissible.
 - (3) In order to have a new hearing, in the prisoner's favour.
 - (4) I.e., either at such-and-such a place, or under the presiding judge X.
 - (5) Provided the members were ordained in Palestine, v. Maim. Yad. Sanh. IV. 6.
 - (6) Cf. Tosef. Sanh III, 11, 'R. Dosithai b. Judah (J. Mak. I has 'R.D.b. Jannai) says that fugitives who had been convicted to death, having fled from Palestine abroad, are put to death forthwith; and those who fled to Palestine from abroad are not put to death (forthwith), but are sent to trial as in the first instance.' 'Dos, b. Judah' seems the better reading; also the bracketed part is missing in many good MSS.
 - (7) Num. XXXV, 29 (in reference to manslaughter). The wording makes the provision operative everywhere and always.
 - (8) Deut. XVI, 18, i.e. in Palestine only, after the distribution and occupation of the land by all the tribes.
 - (9) No city was entitled to a Sanhedrin of twenty-three judges unless it had at least 120 residents (another view 230), cf. Sanh. 17b.
 - (10) The juridical point involved in asking such intimate questions is this: that if the witnesses could not be absolutely certain on any material point in the evidence, they could not be expected to take a lead in the actual execution of the offender, as required by law. (Deut. XVII, 6-7.) Thus capital punishment fails.
 - (11) A euphemism for carnal intimacy.
 - (12) I.e., those others who do not share the views of R. Tarfon and R. Akiba in regard to capital punishment.
 - (13) I.e., accidentally, without premeditation.
 - (14) Eastern roofs are flat; they are plastered to make them water-tight and give them the necessary slope. The levelling is done by a log (or smooth flat stone) to which a long handle attached, by which it is pushed backwards and forwards. Cf. M. K. 11a and Vergil, Georgics, I, 178, area cum primis ingenti aequanda cylindro.

Talmud - Mas. Makkoth 7b

OR WHILE GOING UP A LADDER HE FELL DOWN AND KILLED SOMEBODY, HE DOES NOT GO INTO BANISHMENT. THIS IS THE GENERAL PRINCIPLE: WHENEVER THE DEATH WAS CAUSED IN THE COURSE OF A DOWNWARD MOVEMENT, HE GOES INTO BANISHMENT, BUT IF IT IS CAUSED NOT IN THE COURSE OF A DOWNWARD MOVEMENT, HE DOES NOT GO INTO BANISHMENT.

GEMARA. What is the [Scriptural] authority for these [distinctions]? — Said Samuel: It is prescribed, or . . . he let it fall upon him so that he died,¹ [meaning that one has not to go into banishment] until something fell in a downward movement.

Our Rabbis taught: [That killeth any person] by error,² precludes anyone that killed with full knowledge; [whoso killeth . . .] unawares,³ precludes anyone that killed with intent. 'By error...precludes anyone that killed with full knowledge'. — Is that not obvious [without 'stressing the text]? Such a one is 'the son of Death'! — Said Rabbah: I would suggest that it is to preclude a case where one pleads that he thought he was permitted to kill [that person]. Said Abaye to Rabbah: If [as you suggest], he thought that he had a right to kill, then [surely], he is a victim of mischance!

— [No], replied Rabbah, because I consider anyone pleading that he thought it permissible [to kill] closely akin to a wilful [murderer]. ‘Whoso killeth . . . unawares . . . precludes anyone that killed with intent’ — Is not that obvious? Such a one is ‘the son of Death’! — Said Rabbah: I would suggest that it is to meet such cases as when he intended to kill an animal, but killed a man;⁴ to kill a heathen,⁵ but killed an Israelite; to kill a premature-born,⁶ but killed a fully-developed infant.

Our Rabbis taught: if . . . suddenly,⁷ precludes [from refuge] anyone [killing through rushing precipitately] round a corner;⁸ without enmity, precludes an adversary; he thrusts him, means with his body;⁹ or have cast upon him, includes [an accident resulting from] a downward motion as a prerequisite of an upward swing; without laying of wait,¹⁰ precludes an intended throw in one direction which swerved to another. And if a man lie not in wait,¹¹ precludes anyone who intended to throw an object a distance of two ells, but made it go four ells. And as a man goeth into the wood with his neighbour,¹² [provides here a standard. For] what is the nature of this forest? It is a domain affording [free] access to the injured as well as to the injurer.¹³ In like manner every place [of injury] must be a domain of free access to the injured as to the injurer [to involve liability for injury].

R. Abbahu asked R. Johanan: If while a person is going up a ladder, a rung giving way under him comes down and kills somebody, how would this be taken? Was the death to be considered [a result] of an upward or a downward movement?¹⁴ — He replied: You have indeed laid your finger on [an accident resulting from] a downward motion as a prerequisite of an upward movement. To this R. Abbahu objected [from the Mishnah]: **THIS IS THE GENERAL PRINCIPLE: WHENEVER THE DEATH WAS CAUSED IN THE COURSE OF A DOWNWARD MOVEMENT, HE GOES INTO BANISHMENT, BUT IF [CAUSED] NOT IN THE COURSE OF A DOWNWARD MOVEMENT, HE DOES NOT GO INTO BANISHMENT.** Now, [what kind of case would be included in the general] terms of the latter principle — **BUT IF [CAUSED] NOT IN THE COURSE OF A DOWNWARD MOVEMENT . . . if not an instance of this kind?** — [R. Johanan replied:] Following your opinion, what instance would you include in the general terms of the first principle — **WHENEVER . . . IN THE COURSE OF A DOWNWARD MOVEMENT . . . ?** [You could give] but one, namely, that of a butcher; and that instance is also within the terms of the latter principle, as it is taught: If a butcher whilst chopping meat killed somebody [there are four different versions of the case]. Version A¹⁵ has it: If he killed a person in front of him, he is liable to go into banishment; if behind, he is exempt. Version B: If behind him, he is to go into banishment; if in front, he is exempt. Version C: Whether in front of him or behind, he is to go into banishment. Version D: Whether in front of him or behind, he is exempt. And [continued R. Johanan], it is really not difficult [to explain these diversities], thus: In Version A: If he killed in front by a downward stroke [he goes into banishment]; if behind him by an upward swing [of the chopper], he is exempt.¹⁶ In Version B: If he killed in front of him by the upward swing [he is exempt]; if behind him, by the downward [back] movement [he goes into banishment].¹⁷ In Version C: If he killed either in front or behind him by the downward movement [he goes into banishment]; and in Version D.’ If he killed either in front or behind him by the upward swing [he is exempt].¹⁸

May we say that this question has already been disputed by Tannaim: If while a person is going up a ladder and a rung gave way under him . . . Version A has it that he is liable, and Version B that he is exempt? Is not the point at issue between them this, that one Master considers it a downward movement, and the other an upward movement? — Not necessarily; it may be that all agree in considering it an upward movement, and yet it is not difficult [to explain the discrepancy]: Version A refers to his liability in damages,¹⁹ Version B, to his liability of banishment. And, if you prefer, I might even suggest that both versions refer to banishment,²⁰ and it is not difficult [to find an explanation]: Version A refers to a case where the rung was worm-eaten,²¹ while Version B to where it was not worm-eaten. Nay, if you prefer, I might even suggest that it was not worm-eaten, and still it is not difficult [to explain]: Version B refers to a case where the rung was fixed tightly, while Version A refers to where it was not fixed tightly.²¹ **MISHNAH. IF THE IRON SLIPPED FROM**

ITS HELVE²² AND KILLED [SOMEBODY], RABBI SAYS HE DOES NOT GO INTO BANISHMENT AND THE SAGES SAY HE GOES INTO BANISHMENT; IF FROM THE SPLIT LOG,²³ RABBI SAYS HE GOES INTO BANISHMENT, AND THE SAGES SAY HE DOES NOT GO INTO BANISHMENT.

GEMARA. It is taught: Rabbi said to the Sages: Does the text read, and the iron slippeth from its tree [wood]?²⁴ It reads only, from the tree. Moreover,²⁵ the tree occurs twice in the same text, and just as in the first instance²⁶ the reference is to the tree that is being hewn, so is the reference in the second instance²⁷ to the tree that is being hewn.

R. Hiyya b. Ashi²⁸ observed that Rab had said that both sides based their views on a different interpretation of the same text, namely, and the iron slippeth from the tree;²⁴ Rabbi maintains that the Masorah [the traditional text unvocalized],²⁹ is determinant [in Biblical exposition] and we may as well read the word as ve-nishshal [and . . . was hurled away],³⁰ and the Rabbis, on the other hand, maintain that Mikra [the text as habitually read] is determinant³¹ [in exposition] and here we have but ve-nashal³² [and . . . slipped].

But does Rabbi actually maintain that the Masorah is determinant [in exposition]?

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- (1) But if he thrust him suddenly without enmity, or have cast upon him anything . . . or with any stone . . . seeing him not and let it fall upon him, that he die . . . Num. XXXV, 22ff.
 - (2) To be cities of refuge for you; that the slayer may flee thither, that killeth any person by error. Num. XXXV, 11 and 15.
 - (3) The slayer, which shall flee thither that he may live, whoso killeth his neighbour ignorantly. AV. Deut. XIX, 4.
 - (4) I.e., he misdirected his blow.
 - (5) [The death of a heathen is as little condoned as that of a premature-born child, but is not subject to the relevant Scriptural law of refuge, v. B.K. (Sonc. ed.) p. 253, n. 6.]
 - (6) [Within 30 days of his birth. In each of these cases, the offence is treated as culpable, for which banishment is inadequate as affording neither atonement nor protection against the avenger.]
 - (7) An interpretation of, But if he thrust him suddenly without enmity, or have cast upon him any thing without laying of wait, Num. XXXV, 22.
 - (8) While carrying a dangerous object.
 - (9) I.e., unintentionally.
 - (10) The root **תצ** is taken as cognate with **צד**, side-tracking.
 - (11) Ex. XXI, 13. Cf. I Sam. XXIV, 11.
 - (12) Deut. XIX, 5.
 - (13) Both have an equal right to go into the wood to cut down trees.
 - (14) The man moves upward, the rung moves downward; which is the determining factor here as regards the law of banishment, the man's movement or that of the rung?
 - (15) Lit., 'One Tanna teaches ' . . . and another Tanna teaches . . . '
 - (16) Although the upward swing behind is the beginning of the downward stroke in front.
 - (17) Although the downward back movement is but a continuation of the upward swing in front.
 - (18) See Rashi. Cf, however, R. Han and Kesef Mishneh on Maim. Yad, Rozeah, VI, 13, for other readings.
 - (19) Man is 'constantly forewarned' and liable to pay damages in all circumstances, whether the injury or damage was caused by him through inadvertence or culpable negligence; man is held 'constantly forewarned' — v. B.K. 26a.
 - (20) Maim. seems to have read here 'damages'. Cf. Maggid Mishneh on Yad, Hobel, VI, 4.
 - (21) Easily giving way under the tread until it breaks and falls, which is a downward motion all the time, and therefore entailing banishment.
 - (22) According to Rabbi, it slipped before it struck the log; having neglected to examine his tool before using it, he does not go into banishment, i.e., he is not to be given the benefit of asylum (but must evade the avenger as best he can; V. Maim. Yad Rozeah, VI, 4).
 - (23) I.e., if the axe rebounded from the log and killed, or if a chip from the log flew out and killed, he needs, according

to the Rabbis, no atonement in exile (v. Maim, *ibid.* VI, 3), as it is a secondary force (v. Gemara) with no element of neglect in this strange unforeseen accident (Han. Cf. Rashi and Jer. Targum Deut., a.l.).

(24) Deut. XIX, 5. (As when a man goeth into the wood with his neighbour to hew trees and his hand fetcheth a stroke with the axe to cut down the tree and the iron slippeth from the tree . . . he shall flee . . . From its tree (lit., 'wood') might mean from its helve, but from the tree is open to another interpretation, namely, a rebound from the tree.

(25) He seeks support in the text for his contention that the term 'the tree' cannot refer to two different objects, when mentioned in the same context.

(26) . To hew trees,' lit., 'the tree.'

(27) 'Slippeth from the tree.'

(28) Ashi the elder, Rab's disciple.

(29) The vocalization of the Hebrew text is of very late date. The Pentateuch is still strictly retained unvocalized in the Synagogue; thus the same consonants might be read in several ways, often giving rise to different meanings, e.g. **הלב** and **הלב** and similarly **ונשל** and **ונשל** as suggested here in the discussion.

(30) **ונשל** probably meant as the Nifal form, cf. **נגש** Gen. XXXIII, 7; Ex. XX, 21, and **נתן** Lev. XIX, 20; Num. XXVI, 62. The root is found to have both a transitive meaning (Deut. VII, 22, cast away the nations; also, cast off thy shoe, Ex. III, 5), and an intransitive meaning (Deut. XXVIII, 40, thine olive shall cast its fruit). Cf. J. Mak. II, 2 (31c) and Nahmanides' Notes on Mak. Rashi suggests the Pi'el form, 'and the iron hurled away part of the tree;' on his second explanation by vocalizing it like **ונאשל** or **ונהשל** v. Rashi, Keth. 69b, top, s.v. **ינחם**

(31) [Lit., 'Mikra has a mother,' or 'there is preference to Mikra' (Halper, B., ZAW. XXX, p. 100), i.e., the reading of the sacred text according to Kere (**קרי**) the established vocalization has an authentic origin, hence well-founded, as distinct from the Masorah, the Kethib (**כתיב**) the traditional text of consonants without vowels.]

(32) **ונשל**, the Kal.

Talmud - Mas. Makkoth 8a

Did not R. Isaac b. Joseph report R. Johanan to have said that Rabbi, R. Judah b. Ro'ez, the School of Shammai, R. Simeon and R. Akiba all maintained that the Mikra is determinant [in exposition]?¹ — [Just so;] but that is why he also enforces his contention with his [additional argument], 'Moreover...'

R. Papa observed that if one flung a clod at a palm, thereby knocking off some palm-fruit, which in falling killed somebody,² then we have an instance which will aptly illustrate the controversy between Rabbi and the Rabbis.³

[What is the point of this observation?] Is it not obvious? — [Not quite so obvious, as] you might argue that the falling fruit that killed was [according to Rabbi] but a secondary force⁴ [entailing no banishment]; therefore R. Papa's statement makes it clear that it is not so [according to Rabbi].

But, what would be a secondary force according to Rabbi's interpretation? — For instance, if he flung a clod and struck a stem which precipitated a cluster of fruit, and the fruit then dropped and killed somebody.

MISHNAH. IF A MAN THREW A STONE INTO THE PUBLIC DOMAIN AND KILLED A PERSON, HE GOES INTO BANISHMENT; R. ELIEZER B. JACOB SAYS THAT IF AFTER THE STONE HAD LEFT HIS HAND ANOTHER PERSON PUT OUT HIS HEAD AND CAUGHT IT,⁵ THE THROWER IS EXEMPT [FROM BANISHMENT]. IF A MAN THREW A STONE INTO HIS [OWN] COURT AND KILLED A PERSON, THEN, IF THE VICTIM HAD A RIGHT OF ENTRY THERE, THE THROWER GOES INTO BANISHMENT,⁶ AND IF NOT, HE DOES NOT GO INTO BANISHMENT, BECAUSE IT IS WRITTEN: AS WHEN A MAN GOETH INTO THE WOOD WITH HIS NEIGHBOUR TO HEW WOOD . . .⁷ WHAT IS [THE NATURE OF] THE WOOD [REFERRED TO]? IT IS A DOMAIN ACCESSIBLE TO THE VICTIM AS TO THE SLAYER;⁸ EVEN THE SAME [LAW] OBTAINS IN EVERY DOMAIN WHICH IS

[EQUALLY] ACCESSIBLE TO THE VICTIM AND TO THE SLAYER; OUTSIDE [THIS LAW] IS THE COURT OF THE HOUSEHOLDER WHERE THE VICTIM HAS NO RIGHT OF ENTRY. ABBA SAUL SAYS: WHAT IS [THE NATURE OF] THIS HEWING OF WOOD [REFERRED TO]? IT IS AN OPTIONAL ACT; [EVEN THE SAME OBTAINS IN ALL VOLUNTARY ACTS];⁹ OUTSIDE [THIS LAW] IS THE FATHER BEATING HIS SON, OR THE MASTER STRIKING HIS PUPIL, OR THE COMMISSIONER OF THE COURT¹⁰ [ADMINISTERING THE LASH]. GEMARA . . . A STONE INTO THE PUBLIC DOMAIN — he is a deliberate offender?¹¹ — Said R. Samuel b. Isaac: It happened while he was demolishing a [defective] wall.¹² Even then, he should be circumspect? — He was demolishing it at night. At night, too, ought he not to be circumspect? — He was clearing the debris on to a rubbish-heap. On to a rubbish-heap! Under what circumstances? If the public pass there often, he is guilty of negligence; and if the public do not pass there often, he is the victim of mischance!¹³ — Said R. Papa: No! We must explain the Mishnah by an instance where the debris is thrown on to a rubbish-heap to which people resort for convenience at night-time, but not during the day; yet occasionally, someone comes and squats there. In such a case, the thrower is not guilty of negligence, because the place is not resorted to for convenience during daytime; nor is he [merely] a victim of mischance, because, occasionally, someone comes and squats there.¹⁴

R. ELIEZER B. JACOB SAYS THAT IF AFTER THE STONE HAD LEFT HIS HAND etc. Our Rabbis taught: The text, and if he [or it] found¹⁵ [his neighbour. . . he shall flee], precludes a case where the victim put himself in the way. On this text it was that R. Eliezer b. Jacob based his statement: IF AFTER THE STONE HAD LEFT HIS HAND ANOTHER PERSON PUT OUT HIS HEAD AND CAUGHT IT, THE THROWER IS EXEMPT [FROM BANISHMENT].

Is that to say that u-maza means, finding something there already ab initio?¹⁶ If so, contrast therewith that other exposition of the same form of the word in the text. [It is taught:] and he found [sufficiency to redeem it],¹⁷ which excludes other means [that were] available heretofore, that is, that he is not allowed to sell a remote property to redeem therewith one more proximate, or to sell an inferior property to redeem a fair property? — Said Raba: The expressions must each be taken in its context. There, the expression, ‘and he found sufficiency [to redeem it]’ must be taken with its context, ‘and his own hand attained [and found sufficiency to redeem it]’. Now, what is the meaning of [the phrase] ‘and his own hand attained’? [It means], what he has attained but now,’ so must [its concomitant], ‘and found [sufficiency]’ be taken in the same sense- ‘but now.’ Here, too, the expression must be taken in its proper context: ‘and if he [or it] found’ must be understood in the same sense as its concomitant, ‘the wood’; what is the case of ‘the wood’? — it was there ab initio,’ so must we take ‘and if he [or it] found’ to imply that he found his victim who was there ab initio [and not suddenly coming forward later].

ABBA SAUL SAYS, WHAT IS THE NATURE OF THIS HEWING OF WOOD etc.?¹⁸ One of the [senior] scholars said to Raba: What ground is there for Abba Saul's assumption that the hewing of wood referred to was [essentially] an optional task; it might as well be a hewing of wood [as a religious act] for building a Sukkah,¹⁹ or cutting faggots for the altar,²⁰ and accordingly, one might infer that the Divine Law ordained that the slayer shall nevertheless go into banishment? — Said Raba to him: Supposing he found some hewn wood [he would not have to hew any] and hewing would not then be any part of the prescribed command; nor can it, for the same reason, even in the first instance, be taken as part of the prescribed command.²¹ Rabina, thereupon, referred him back [to the Mishnah], OUTSIDE [THIS LAW] IS THE FATHER BEATING HIS SON, OR THE MASTER STRIKING HIS PUPIL OR THE COMMISSIONER OF THE COURT ADMINISTERING THE LASH. Here, also [he argued], where the son [or pupil] is already learned, it is no longer obligatory [on the father or master] to [teach and] strike? It should therefore not be considered even in the first instance part of a prescribed command?²² — Although the son is already taught [replied Raba], it is still obligatory on the father to chasten, because it is written, Correct thy

son and he will give thee rest, yea he will give delight to thy soul.²³ Reconsidering it, however, Raba said: What I told you was not a correct reply; because, re-examining the text, when²⁴ 'a man goeth into the wood with his neighbour,' I say its import is [clearly] that of an optional act; that is, if he wishes to go there he goes, and if he does not wish, he does not go there. Now, therefore, if [as you suggested] the context 'to hew wood' is to be applicable [also] to an obligatory act of hewing, could he sufficiently meet his obligation without going into the forest?

R. Adda b. Ahaba then asked of Raba: Does then the [conditional] particle *asher*-when-always imply an optional action? If so, considering the text, but when²⁵ a man be unclean and shall not purify himself²⁶ [that soul shall be cut off from among Israel]²⁷ — will you likewise explain it as referring only to [a case] where if he wishes he defiles himself [by touching a corpse], and if he does not care to defile himself, he need not; but in the case of an obligatory corpse²⁸ where the finder could not but defile himself [but must needs give it burial], would he indeed [on entering the Temple during defilement] be exempt [from the penalty?]²⁹ That is quite different [replied Raba], because there, the text distinctly emphasises

(1) V. Sanh. 4a and 4b where the several statements of the above-mentioned authorities are cited, all turning on the legitimate deduction, or otherwise, from the possibility of an alternative vocalization of a word, e.g. **שבועים** fortnight, as **שבועים** seventy (days); **קרנת** horns of, as **קרנת** horn of; **יראה** shall be seen (appear) as **יראה** shall see, etc.

(2) The palm is sometimes 60 to 80 feet high. There are many varieties of fruit varying in form, size, and character, e.g. dates, areca, sago and cocoa-nut. The fruits usually cluster closely together, and when precipitated from a great height can easily kill a person.

(3) In the Mishnah, the falling fruit being compared to the flying chip.

(4) As the clod, the first force, had left his hand before it struck off the palm-fruit. This is not a correct assumption; he takes the clod as the axe, and the falling fruit as the flying chip which kills, entailing banishment.

(5) And was killed, the thrower is not blamable in the least for such an unforeseen event, and needs no atonement or protection by exile.

(6) He should have been more circumspect: the guiding rule is derived from the example of the wood afforded by Scripture.

(7) Deut. XIX, 5.

(8) Lit., 'the injured as to the injurer.'

(9) This bracketed clause is absent in most texts.

(10) These are instances of accidents arising in the course of performing an act of duty, v. discussion.

(11) And is not entitled to protective banishment, as directed in the Mishnah.

(12) Removing such possible danger to the public is commendable. Cf. M. K. 7a.

(13) And as he could not have foreseen the victim's arrival on the scene of the accident, he should be exempt from banishment, and the ruling of the Mishnah as it stands is surprising.

(14) There was therefore an element of neglect, and the thrower goes into banishment.

(15) Deut. XIX, 5, that is, either the iron (axe) slipping from the helve, found, met or caught; or, he, the hewer (on the iron slipping) caught his neighbour.

(16) **מצא** is grammatically in the past tense (Perfect); the addition of **י** imports the possibility of a future sense, 'and he (it) shall have found'.

(17) Lev. XXV, 26. If a man sold a field out of necessity, he or his kinsman had the right to buy it back at any time before the next Jubilee, by paying a price proportionate to the number of years the stranger might have enjoyed it up to the Jubilee, when the property would automatically revert to the owner. This anticipatory redemption could not be enforced by using moneys that were available at the time of sale, or borrowed money, or by part-redemption, or the proceeds of the sale of inferior or remote-lying property. Such means would show that the vendor did not sell out of poverty, and the purchaser's rights must not be disturbed. V. Commentaries on Mish. 'Ar. IX, 2; Talm. 'Ar. 30b.

(18) This is the correct heading; the one in the texts is misplaced and belongs to the beginning of the Gemara.

(19) Lev. XXIII, 42, v. Glos.

(20) Ibid. VI, 5; Nehem. X, 35, and Ta'an. 28a.

(21) I.e., the obligation lies mainly in making and using the tabernacle, or donating the faggots for the altar, not in hewing, as the wood might be purchased ready cut. Acting in the discharge of a religious obligation (mizwah) is considered, in case of a resulting accident, an extenuating circumstance: the desire to do a religious act counterbalances the element of slight negligence. Cf. B.K. 30a; 32a.

(22) And according to above argument, father or teacher should go into banishment.

(23) Prov. XXIX, 17, v, ibid. XIII. 24.

(24) As when (asher, אֲשֶׁר) a man goeth into the wood = as if a man . . .

(25) Lit., rendering of וְאִישׁ אֲשֶׁר יִטְמָא

(26) Before entering the Temple.

(27) Num. XIX, 13.

(28) Of an unknown stranger found dead on the road, it was the duty of the finder, even if he were the High Priest himself, to attend to the burial, unless another was there to act for him.

Talmud - Mas. Makkoth 8b

‘he shall be unclean’ — meaning under any circumstances.¹ But has not that phrase been claimed for another deduction, namely, as it is taught: ‘He shall be unclean’ means, to include [defiled] persons who had taken their rite of ablution during daytime;² ‘uncleanness is yet upon him’ means, to include [purified] persons still short of the atonement rite?³ — [Yes,] replied Raba, but I mean to derive my point by stressing the [redundant particle] ‘yet’.⁴

Some introduce the discussion in connection with the following: [Six days thou shalt work, but on the seventh day thou shalt rest;]⁵ in ploughing time and in harvest thou shalt rest.⁶ Says R. Akiba: This [second part of the] text is not needed as a provision against ploughing or harvesting in the Sabbatical year itself, for that is explicitly dealt with elsewhere: Neither shalt thou sow thy field nor prune thy vineyard etc.;⁷ but it is a provision to restrict ploughing even in the pre-Sabbatical year, where its effect extends into the Sabbatical period;⁸ and [similarly] to restrict the harvesting of the [produce partly grown in the] Sabbatical period, which is reaped in the post-Sabbatical year.⁹ Says R. Ishmael: What is the characteristic of ploughing? It is an optional act;¹⁰ so too is the harvesting debarred¹¹ only when it is an optional act. Outside [this restriction], therefore, is the harvesting [of the first barley] for the ‘omer which is prescribed.¹²

One of the [senior] scholars then asked Raba: What ground has R. Ishmael for assuming that the ploughing [referred to in the text] is an optional act; might it not as well be the ploughing for the omer — barley which is prescribed? And accordingly one might infer that the Divine Law even in such a case enjoins the Sabbath rest! — Said Raba to him: [No,] because if he found the plot already ploughed he would not be required to plough again. The [act of] ploughing cannot therefore be considered obligatory. Rabina thereupon referred him to the Mishnah: OUTSIDE [THIS LAW] IS THE FATHER BEATING HIS SON, OR THE MASTER STRIKING HIS PUPIL, OR THE COMMISSIONER OF THE COURT [ADMINISTERING THE LASH]. Now, might we not argue [similarly] that, since where the son [or pupil] is an accomplished scholar it is no longer obligatory [on the father or master] to punish him, it should therefore not be considered even in the first instance as obligatory?¹³ — There [he replied], even though the son is accomplished, it is still a duty, because it is written, Correct thy son and he will give thee rest.¹⁴ Reconsidering it, however, Raba said: That first argument [I used] was not correct, because [continuing the analogy] I argue: What is the characteristic of ploughing? If he found the plot ploughed he need not plough [again]; so too is the characteristic of reaping; [if he found the corn cut, he need not cut again]. But if you assume that the reaping [mentioned in the text] constitutes an obligatory act, then, employing the analogy, you will conclude that if he found the sheaves cut, he need not cut again. How can this be maintained? Is not the bringing as well as the reaping prescribed?¹⁵ MISHNAH. THE FATHER GOES INTO BANISHMENT FOR [THE DEATH OF] HIS SON, AND THE SON GOES INTO BANISHMENT FOR [THAT OF] HIS FATHER. ALL GO INTO BANISHMENT FOR [THE DEATH OF] AN

ISRAELITE, AND ISRAELITES GO INTO BANISHMENT ON THEIR ACCOUNT, SAVE FOR A SOJOURNING-STRANGER,¹⁶ AND A SOJOURNING-STRANGER GOES INTO BANISHMENT¹⁷ FOR [ANOTHER] SOJOURNING-STRANGER.

GEMARA. THE FATHER GOES INTO BANISHMENT FOR HIS SON. Did you not say [before], OUTSIDE [THIS LAW] IS THE FATHER BEATING HIS SON?¹⁸ — [Here it is a case of] a son who has already learnt enough.¹⁹ But did you not [also] say that even if the son has learnt enough, the father is still obliged to teach [his son]? — He was teaching him [only] as a carpenter's apprentice. [Even so] he was teaching him [the means of] a livelihood!²⁰ — He was already accomplished in another craft.

AND THE SON GOES INTO BANISHMENT FOR THE DEATH OF HIS FATHER. This statement was contrasted with that which is taught elsewhere: That killeth a person,²¹ means, to exclude [from banishment] one that killeth his father [or mother]!²² — Said R. Kahana: It is not difficult [to explain the discrepancy]: the passage cited reflects the view of R. Simeon, while the Mishnah reflects that of the Rabbis. According to R. Simeon, execution by strangulation is a severer penalty than by the sword.²³ Therefore, in [the ordinary] case of death by error, the [incurred] penalty, of [execution by] the sword, has its appropriate form of remission [when commuted into banishment]; whereas in the case of parricide in error, the [severer] penalty by strangulation has not its appropriate form of remission [when commuted into banishment]. On the other hand, according to the Rabbis, execution by the sword is a severer penalty than by strangulation. Therefore, in the case of a parent-slayer [who committed the deed] in error, the penalty due is [the severer], that of the sword; and the penalty of the sword has its appropriate form of remission [when commuted into banishment].

Raba explained [the Baraita] thus: 'That killeth a person [through error may flee there]', means, to exclude [from banishment] one that woundeth²⁴ his father [or mother] in error. For you might possibly think that, since by deliberately wounding his parent he would incur the death penalty,²⁵ therefore, in the case of error, he also should go into banishment. The deduction, however, drawn from the text points 'to exclude one that woundeth his father [or mother] in error'.

ALL GO INTO BANISHMENT FOR [THE DEATH OF] AN ISRAELITE, AND AN ISRAELITE GOES INTO BANISHMENT ON THEIR ACCOUNT. — ALL GO INTO BANISHMENT' — What is this 'all' intended to include? — It is to include slaves²⁶ or Cutheans.²⁷ We [thus] learn [here] what our Rabbis taught [in the following]: A slave or Cuthean goes into banishment or receives a flogging on account of an Israelite, and an Israelite goes into banishment or receives a flogging on account of a Cuthean or slave. Now, [the statement] 'a slave or Cuthean goes into banishment or receives a flogging on account of an Israelite' is perfectly clear, meaning that if he [inadvertently] kills an Israelite, he goes into banishment, or that if he utters [the Divine Name in] an imprecation against an Israelite, he receives a flogging.²⁸ [But as regards the second statement] 'and an Israelite goes into banishment or receives a flogging, on account of a Cuthean or slave,' while there is a clear case for the Israelite going into banishment, namely if he kills a slave or Cuthean [inadvertently], how explain his receiving a flogging? [You will perhaps explain,] in case he cursed him. This cannot be, since the text 'nor curse a ruler of thy people' limits the offence to a curse uttered against one who acts according to the usages 'of thy people'? — Said R. Aha b. Jacob: But it might be a case where he [the Cuthean] had given evidence against him [the Israelite as liable to a flogging] and on being found a zomem — witness [is flogged himself].²⁹ And similarly does the slave's liability [to a flogging] likewise arise where he had given evidence against [an Israelite] and was then found to be a zomem — witness? Is a slave [legally] competent to give such evidence? — But no, said R. Aha son of R. Ika, [the flogging] could be explained in a case where an Israelite had struck a [wounding] blow

- (1) Even in a defilement by an obligatory corpse.
- (2) Even after ablution, defilement ceased only with sunset. Lev. XXII, 6-7.
- (3) Four persons, on emerging from their state of impurity, had to complete their purification on the day after ablution, with offerings, Lev. XII, 6ff; XIV, 9ff; XV, 13ff and 28ff. q.v.
- (4) His uncleanness is yet (וַיִּשָּׂא) upon him.
- (5) Lit. 'keep Sabbath' or 'desist (from work)'.
(6) Ex. XXXIV, 21; meaning that, however urgently the season may demand it, ploughing or reaping may not be done on the Sabbath day. The special mention here of ploughing and reaping suggests the association of the weekly Sabbath-day with the septennial Sabbath-year (cf. *ibid.* XXIII, 10-12). In the exposition that follows, R. Akiba stresses the latter; R. Ishmael the former; v, commentaries of Rashi and Maim, on Sheb. I, 1.
- (7) That which groweth of itself. . . thou shalt not reap and the grapes . . . thou shalt not gather. Lev. XXV, 4-5.
- (8) Lit. 'enters into the Sabbatical year,' i.e, produces the fruit in the seventh year.
- (9) I.e, produce grown of itself that has reached a third of its maturity in the seventh year is subject to the restrictions of the seventh year when it matures in the eighth year.
- (10) There being nowhere in the Law a command prescribing ploughing.
- (11) On the Sabbath day.
- (12) And therefore may be cut even on the Sabbath day; Lev. XXIII, 10ff, ordains: When ye come into the land . . . and reap the harvest thereof, then ye shall bring the sheaf ('omer) of the first-fruits of your harvest unto the priest. 'Omer means 'sheaf'; it is also the name of a measure, one-tenth part of an epha (Ex. XVI, 36).
- (13) And the father (or master) should go into banishment.
- (14) Prov. XXIX, 17.
- (15) Ye shall reap the harvest thereof, then shall ye bring the first-fruits of your harvest unto the priest. Lev. XXIII, 10.
- (16) A gentile resident in the midst of the Jewish community who abstains from idolatry (immorality and rapacity), v. A.Z. 64b; also Nahmanides, on Ex. XX, 10.
- (17) This reading of the J.T. is authenticated by our Gemara 9a. In our Mishnah texts the word 'only' occurs.
- (18) I.e, does not go into banishment, and here it is ruled that he does.
- (19) And the chastisement was not strictly an act of duty.
- (20) One of the duties of the father to his son, next to teaching him Torah and seeing him suitably married, v. Rashi a.l, and Kid. 30b; more fully Mekil. on Ex. XIII, 13.
- (21) . . . appoint you cities . . . of refuge . . . that the manslayer that killeth a person through error may flee there. Num. XXXV, 11.
- (22) So in Sifre text. A parent-killer is excluded and denied protection in refuge because, by wounding alone, even without fatal consequences, the smiter has already incurred the death penalty by strangulation; v. Sanh. 84b. The general manslayer is punished by the sword; if he slays in error, the punishment is commuted into banishment to one of the Cities of Refuge.
- (23) Sanh. 49b. Whenever two penalties have been incurred, the severer of the two is inflicted. V. Sanh. 81a.
- (24) The Hebrew for killeth a person is מוֹכָה נֶפֶשׁ which means literally, 'smiling a soul', that is, do to death. The word מוֹכָה by itself means 'beating', 'wounding' or 'killing', hence the interpretation of Raba. Cf. Ex. XXI, 15 (the penalty for wounding parents); *ibid.* 18 (wounding without killing), and Deut. XXV, 1-3 (beating or lashing).
- (25) By strangulation, v. Sanh. 84b.
- (26) I.e., a non — Israelite, or 'Canaanite' slave (cf. Gen. IX, 25, 26; Lev. XXV, 44ff.) who had to be circumcised (Gen. XVII, 12ff), to discard idolatry and abstain from work (for his master) on Sabbath (Ex. XX, 10; XXIII, 12) and who was a member of the household (cf. Lev. XXII, 11; Deut. XVI, 11).
- (27) Samaritans (cf. II Kings XVII, 24 ff), sometimes called 'Lion ('terrorized) Proselytes' (cf, *ibid.* 25-26). They professed adherence to the Mosaic Law, but remained outside by their laws and practices, and do so to this day,
- (28) Ex. XXII, 27, Thou shalt not revile God (or judges) nor curse a ruler of thy people. By combining the import of this text with that of Lev. XIX, 14, Thou shalt not curse the deaf the prohibition is taken to have a general application, involving a flogging if the imprecation is accompanied by the mention of God's name. The words 'of thy people' however limit the offence, as punishable only when committed against law-abiding Jews, v. Sanh. 66a.
- (29) R. Aha's explanation refers to the first clause which, however, at the same time is also explanatory of the second.

Talmud - Mas. Makkoth 9a

which is estimated [in damages] at less than a perutah, as R. Ammi, reporting R. Johanan, said that if one struck a [wounding] blow worth [in damages] less than a perutah, the assailant receives a flogging¹ [and that no analogy between battery and imprecation is admitted].²

SAVE NOT FOR A SOJOURNING — STRANGER, etc. This implies that the sojourning-stranger is treated as a heathen [in regard to the law of refuge];³ but then read the latter clause: A SOJOURNING-STRANGER GOES INTO BANISHMENT FOR [ANOTHER] SOJOURNING-STRANGER [in accordance with the law of refuge]?⁴ — Said R. Kahana: It is not difficult [to explain the seeming discrepancy]; the last clause provides for a sojourning-stranger who had slain [inadvertently] another sojourning — stranger, whereas the previous clause provides for a sojourning-stranger who had slain an Israelite. Some throw into contrast one [Scriptural] text against another. It is written: For the children of Israel and for the stranger and for the sojourner among them, shall these six cities be for refuge . . .⁵ And again it is written: [Speak unto the children of Israel . . .] and the cities shall be unto you [for refuge from the avenger]⁶ — which implies for ‘you’ [exclusively] but not for strangers? — Said R. Kahana: It is not difficult [to explain], as one text [verse twelve] provides for a sojourning — stranger who killed an Israelite,⁷ while the other text [verse fifteen] provides for a sojourning-stranger who killed another sojourning-stranger.⁸ [As against this interpretation,] some cited [in contrast] the following: ‘Therefore, stranger and heathen who killed [a person]⁹ are killed.’ In this quotation ‘stranger’ and ‘heathen’ are taken together as of the same category,¹⁰ that is to say, that just as in the case of a ‘heathen’ [killing someone] it made no difference whether he killed a person of his own status or not of his own status, he was slain: so in the case of a ‘stranger’, it likewise made no difference whether he killed a person of his own status or not of his own status, he would be slain? — Said R. Hisda: It is not difficult to explain [the seeming discrepancy in the texts],¹¹ as one¹² provides for a case where death results from a downward movement, whereas the other¹³ [provides for a case] where it results from an upward movement.¹⁴ In the case of a downward motion, where an Israelite would go into banishment, it is enough if the ‘stranger’ too is allowed to go into banishment, whereas in the case of an upward motion, where an Israelite is acquitted, the [sojourning] ‘stranger’ dies for it.¹⁵

Said Raba: But does not an argument a fortiori demand a contrary conclusion? Why, if in a death by a downward motion, where an Israelite would go into banishment, it is considered enough for a ‘stranger’ also to go into banishment, would you, in the case of death by an upward motion, where an Israelite is acquitted, insist on a ‘stranger’ being killed? — But, said Raba, [the severity is explicable] where the ‘stranger’ thought he had a right to kill. Said Abaye to him: If he thought that he had a right to kill, he is himself a victim of misadventure. Answered Raba: [Indeed, he is] for I consider anyone doing wrong thinking that it is permissible as next to a deliberate offender. And they both maintain that view [consistently] as both follow their own respective principles as expressed elsewhere. For it has been stated: Supposing one thought it was a beast and it happened to be a human being; a heathen and it happened to be a sojourning-stranger, Raba says he is liable [and R. Hisda says he is acquitted. Raba says he is liable]¹⁶ for one who thought he had a right to kill is next to a deliberate offender¹⁷ and R. Hisda says he is acquitted because one who thought he had a right to kill was [himself] a victim of a misadventure. Thereupon Raba referred R. Hisda to the [Scriptural] text, Behold, thou shalt die, because of the woman whom thou hast taken; for she is a man's wife.¹⁸ What else does it imply but liability to human execution [for his error]? — No, liability to Heaven's displeasure, and note carefully the context, And I also withheld thee from sinning against Me.¹⁹

Accepting your interpretation, how then would you explain this text, How then can I do this great wickedness and sin against God?²⁰ Does it mean only [a sin] against God and not [an offence] against man?²¹ It can only mean that his trial is left to human authority, and the same is implied in the former text, viz., that the trial is left to human authority. Abaye then referred Raba to

[Abimelech's plea], Lord, wilt Thou slay even a righteous nation?²² — But you have there the answer to that plea [of innocence], Now therefore restore the man's wife, for he is a prophet.²³

(1) Injury must be compensated. Cf. Lev. XXIV, 19ff., where 'breach for breach, eye for eye' is taken to mean monetary compensation for injuries. If the injury is too paltry for monetary compensation, the assailant is flogged. Cf. Keth. 32b.

(2) This is merely the concluding part of R. Johanan's dictum. The question of analogy between battery and imprecation is raised (in Sanh. 85a) in this way. If a son curses his condemned father who is on his way to execution, he is technically exempt although cursing a parent is a capital offence, (v. Ex. XXI, 17), as only cursing a man who did not act according to the usages 'of thy people'. Is he also exempt (by analogy with imprecation) if he struck his condemned father a wounding blow? V. Ex. XXI, 15. The analogy between the two might be suggested by the close juxtaposition of verses 15 and 17 (yet divided by verse 16). R. Johanan is reported to have decided against the analogy, and similarly, though the imprecation of a Cuthean is not punishable, battery is.

(3) The Jewish slayer does not go into banishment as he would for inadvertently slaying a Jew and the heathen likewise is afforded no refuge.

(4) That is, the sojourning — stranger slayer and slain are subject to the law of banishment. See, however, the discussion which follows.

(5) Num. XXXV, 15, granting equal enjoyment of the right of refuge.

(6) Num. XXXV, verse 12.

(7) And the slayer is not to go into banishment (for his protection), but is slain.

(8) As provided in the text.

(9) Jew or non-Jew.

(10) Whereas, in Num. XXXV, 15, (as above), equal enjoyment of the right of refuge is granted to the stranger and sojourner. The problem arises from the ambiguous use of the terms גֵר 'stranger' and תוֹשֵׁב 'sojourner'. 'Stranger' means (a) an idolatrous newcomer, or (b) one who, after a while, discontinues idolatry, and leads a moral and honourable life; he is sometimes called 'a son of Noah'. After prolonged residence he may become (c) a quasi, unavowed convert: he is then a 'sojourning-stranger, and finally, (d) the avowed and formally accepted convert, the 'righteous stranger' גֵר צַדִּיק who is an Israelite in the eyes of the law. An Israelite offender is naturally treated according to his native (Biblical) code; but if an Israelite is the victim, how is the non — Israelite offender to be legally treated, according to Biblical law or his own? There are fundamental differences, e.g., in a criminal case of incest or murder, the Israelite law demands two Jewish witnesses, at least; their forewarning to the offender; twenty-three judges, etc., which are not requisite in the non-Jewish code where one witness or even (it is surmised) the judges' personal knowledge (without other witnesses) is enough to condemn, etc.; v. Sanh. 57 ff. Maim. Yad Melakim VIII, 10 ff. IX, 14 ff.

(11) Num. XXXV, 12, and 15, as pointed out above.

(12) Verse 15.

(13) Verse 12,

(14) Cf. beginning of this chapter.

(15) I.e., by the avenger if he so choose (without consequences to himself). V. Maim. ibid. X, 1,.

(16) So in Yalkut. Gen. 88 and D.S, a, l., cf. p. 39.

(17) Because the attack was intentional, with intent to hurt ab initio, and he should have been more careful.

(18) Gen. XX, 3, Abimelech took Sarah under the belief that she was Abraham's unmarried sister, yet he was threatened with death.

(19) Ibid. 6, i.e., only against God but not an offence punishable by human law.

(20) Gen. XXXIX, 9. Joseph repulsing Potiphar's wife.

(21) Joseph knew she was his master's wife, and that he would have to pay the penalty as seducer. Tosaf. cites another explanation (and reading) that trial is left to God because there were no witnesses to prove his guilt, otherwise it would be dealt with by human authority.

(22) Gen. XX, 4, which proves that the belief that an offence was permissible exonerates the offender.

(23) Ibid. 7.

Talmud - Mas. Makkoth 9b

'Restore the prophet's wife', and were she not a prophet's wife, need she not have been restored? —

But this can only be taken as R. Samuel b. Nahmani had explained it; for R. Samuel b. Nahmani, citing R. Jonathan, said that the Divine reply was as follows: Now therefore restore the man's wife in any case, and, as regards your plea, Wilt Thou slay even a righteous nation? Said he not himself to me: She is my sister, and she, even she herself said, He is my brother? . . .¹ [Abimelech was told,] 'for he [Abraham] is a prophet' and he conjectured, from the questions put to him, the reply he was to give. A stranger coming to a city is [generally] asked about his food and drink . . .; do they ask: Is this your wife? Is this your sister? From the above data it has been deduced that 'a son of Noah'² suffers death [even for a crime committed under misapprehension], as he should have taken pains to ascertain the facts and did not.

MISHNAH. A BLIND MANSLAYER DOES NOT GO INTO BANISHMENT; THESE ARE THE WORDS OF R. JUDAH. R. MEIR SAYS HE GOES INTO BANISHMENT. AN ENEMY DOES NOT GO INTO BANISHMENT; R. JOSE³ SAYS, AN ENEMY IS SLAIN, AS HE IS QUASI-ATTESTED.⁴ R. SIMEON SAYS THERE IS AN ENEMY THAT GOES INTO BANISHMENT AND THERE IS AN ENEMY THAT GOES NOT INTO BANISHMENT, [THE CRITERION BEING THAT]⁵ WHEREVER IT CAN BE SUGGESTED THAT HE HAD SLAIN [HIS VICTIM] WITTINGLY, HE GOES NOT INTO BANISHMENT,⁶ AND WHERE HE HAD SLAIN UNWITTINGLY, HE GOES INTO BANISHMENT.

GEMARA. [A BLIND MANSLAYER DOES NOT GO . . . R. MEIR SAYS HE GOES etc.]

Our Rabbis taught: [The words] seeing him not⁷ imply the exemption of a blind manslayer⁸ [from banishment]. These are the words of R. Judah; but R. Meir says that these words seeing him not do imply the inclusion of a blind manslayer.⁹ On what [textual] ground does R. Judah adopt his interpretation? — The wording, as when (a man) goeth into the wood with his neighbour . . .¹⁰ [he argues] implies [anybody], even a blind person; but then comes [elsewhere] the qualification seeing him not¹¹ and thereby reduces the wider application.¹² And R. Meir? — Since seeing him not [he argues] is a limiting expression, and [whoso killeth his neighbour] unawares¹¹ is another, the effect of limitation after limitation [logically] only amounts to amplification.¹² And R. Judah?¹³ — He takes unawares to exclude intentional injury.¹⁴

R. JOSE SAYS, AN ENEMY IS SLAIN, AS HE IS QUASI-ATTESTED. But how? They have not duly forewarned him! — This Mishnah expresses the opinion of R. Jose b. Judah, as it is taught: R. Jose b. Judah says a Haber¹⁵ needs no forewarning, as forewarning was only introduced as a means for differentiating between one acting in error or with presumption.¹⁶

R. SIMEON SAYS, THERE IS AN ENEMY THAT GOES INTO BANISHMENT AND AN ENEMY THAT GOES NOT INTO BANISHMENT. It is taught: 'How [illustrate] R. Simeon's statement that THERE IS AN ENEMY THAT GOES INTO BANISHMENT AND AN ENEMY THAT GOES NOT INTO BANISHMENT? [In this way:] if something snapped¹⁷ [and the severed object dropped and killed], he goes into banishment;¹⁸ if it slipped,¹⁹ he goes not into banishment.

But is it not also taught, 'R. Simeon says, One never goes into banishment until the rammer-block had [all]²⁰ slipped from his hand.' — which conflicts with the above statements both in regard to something snapping and slipping?²¹ [The seeming conflict] in regard to slipping is not difficult to explain, as version A deals with a person who was ill-disposed [towards the dead man], while version B deals with one who was well-disposed;²² nor is it difficult to explain the seeming conflict in the case of snapping, as version A is in accordance with Rabbi's view, while version B agrees with the view of the Rabbis.²³ **MISHNAH. WHITHER ARE THEY BANISHED? TO THE THREE CITIES SITUATE ON THE YONDER SIDE OF THE JORDAN AND THREE CITIES SITUATE IN THE LAND OF CANAAN, AS ORDAINED, YE SHALL GIVE THREE CITIES BEYOND THE JORDAN AND THREE CITIES IN THE LAND OF CANAAN; THEY SHALL BE CITIES**

OF REFUGE.²⁴ NOT UNTIL THREE CITIES WERE SELECTED IN THE LAND OF ISRAEL DID THE [FIRST] THREE CITIES BEYOND THE JORDAN RECEIVE FUGITIVES, AS ORDAINED, [AND OF THESE CITIES WHICH YE SHALL GIVE] SIX CITIES FOR REFUGE SHALL THEY BE UNTO YOU²⁵ WHICH MEANS THAT [THEY DID] NOT [FUNCTION] UNTIL ALL SIX COULD SIMULTANEOUSLY AFFORD ASYLUM. AND DIRECT ROADS WERE MADE LEADING FROM ONE TO THE OTHER, AS ORDAINED, THOU SHALT PREPARE THEE A WAY AND DIVIDE THE BORDERS OF THY LAND INTO THREE PARTS.²⁶ AND TWO [ORDAINED] SCHOLAR — DISCIPLES WERE DELEGATED TO ESCORT THE MANSLAYER IN CASE ANYONE ATTEMPTED TO SLAY HIM ON THE WAY, AND THAT THEY MIGHT SPEAK TO HIM.²⁷ R. MEIR SAYS: HE MAY [EVEN]²⁸ PLEAD HIS CAUSE HIMSELF, AS IT IS ORDAINED, AND THIS IS THE WORD OF THE SLAYER.²⁹ R. JOSE B. JUDAH SAYS: TO BEGIN WITH, A SLAYER WAS SENT IN ADVANCE TO [ONE OF] THE CITIES OF REFUGE, WHETHER HE HAD SLAIN IN ERROR OR WITH INTENT. THEN THE COURT SENT AND BROUGHT HIM THENCE. WHOEVER WAS FOUND GUILTY OF A CAPITAL CRIME THE COURT HAD EXECUTED, AND WHOEVER WAS FOUND NOT GUILTY OF A CAPITAL CRIME THEY ACQUITTED. WHOEVER WAS FOUND LIABLE TO BANISHMENT THEY RESTORED TO HIS PLACE [OF REFUGE] AS IT IS ORDAINED, AND THE CONGREGATION SHALL RESTORE HIM TO THE CITY OF REFUGE WHITHER HE WAS FLED.³⁰

GEMARA. Our Rabbis taught: Moses had set apart three cities on the other side of the Jordan, and corresponding to them Joshua set apart [others] in the land of Canaan. And they were made to correspond on opposite sides like a double row [of trees] in a vineyard; Hebron in Judah,³¹ corresponding to Bezer in the wilderness;³² Shechem in mount Ephraim,³¹ corresponding to Ramoth in Gilead;³² Kedesh in mount Naphtali,³¹ corresponding to Golan in Bashan.³² And thou shalt divide the border of thy land into three parts³³ means that they shall form triads,³⁴ [namely], that the distance from the Darom [southern] boundary to Hebron be similar to that from Hebron to Shechem; and that from Hebron to Shechem similar to that from Shechem to Kedesh; and that from Shechem to Kedesh similar to that from Kedesh to the North [boundary].

Were³⁵ three cities [necessary] in Trans-Jordania [the same as] three cities for the [whole] land of Israel? — Said Abaye: By reason that manslaying was rife in Gilead,

(1) Ibid. 5.

(2) V, p. 54, n. 3. Thinking he had a right to kill is culpable negligence, as the attack was deliberate and there being no way of testing the slayer's intention, he has to pay the penalty of a homicide: in other words, he is judged by the non-Jewish criminal code that does not admit the plea of ignorance. In Israelite law the forewarning by the two witnesses and relegation to the 'cities of refuge' were mitigations of the death penalty.

(3) Mishnah and other texts read 'R. Jose b. Judah'; see discussion below.

(4) As hostile, virtually standing before the world as already forewarned against injuring the man he hates, and in case of wilful murder requires no formal forewarning (התראה). See Z. Tosef., p. 440. Cf. Sanh. 29a.

(5) The bracketed part is omitted in some texts, D.S.

(6) I.e., he is afforded no protection and has to evade the avenger as best he can.

(7) But if he thrust him suddenly without enmity . . . seeing him not . . . and the Congregation (of Judges) shall judge . . . and restore him to the city of refuge . . . Num. XXXV, 22-25.

(8) Unable to see at all, he need not go into banishment but is protected at home.

(9) Within the terms of the law of banishment.

(10) Deut. XIX, 5.

(11) Deut. XIX, 4

(12) In this instance, seeing him not suggests a person capable of seeing, but who on this unfortunate occasion did not see his victim; whereas unawares is applicable to the blind as to the seeing. Cf. Ned. 87-88. On this exegetical rule, see Malbim's introduction to Leviticus, * 237.

it is written, but the fields of the city and the villages thereof gave they to Caleb the son of Jephunneh for his possession.⁹ And was Kedesh a city of refuge? Is it not recorded, and the fortified cities were Ziddim, Zer, Hammath, Rakkath and Chinnereth . . . and Kedesh,¹⁰ and is it not taught: Now these cities [of refuge] are to be made neither into small forts nor large walled cities, but medium — sized boroughs? — Said R. Joseph: There were two places called Kedesh. R. Ashi observed: Such as Seleucia [Ctesifon] and the Fort of Seleucia.¹¹

[To turn to] the main text: ‘These cities [of refuge] are to be made neither into small forts nor large walled cities,¹² but medium-sized boroughs; they are to be established only in the vicinity of a water supply and where there is no water at hand it is to be brought thither; they are to be established only in marketing districts; they are to be established only in populous districts,¹³ and if the population has fallen off others are to be brought into the neighbourhood, and if the residents [of any one place] have fallen off, others are brought thither, priests, Levites and Israelites.¹⁴ There should be traffic neither in arms nor in trap- gear there:¹⁵ these are the words of R. Nehemiah; but the Sages permit. They, however, agree that no traps may be set there nor may ropes be left dangling about in the place so that the blood avenger may have no occasion to come visiting there.’

R. Isaac asked: What is the Scriptural authority [for all these provisions]? — The verse, and that fleeing unto one of these cities he might live¹⁶ which means — provide him with whatever he needs so that he may live.

A Tanna taught: A disciple who goes into banishment is joined in exile by his master, in accordance with the text, and that fleeing unto one of these cities he might live,¹⁶ which means — provide him with whatever he needs to live.¹⁷ R. Ze'ira remarked that this is the basis of the dictum, ‘Let no one teach Mishnah to a disciple that is unworthy.’¹⁸ R. Johanan said: A master who goes into banishment is joined in exile by his College. But that cannot be correct, seeing that R. Johanan said: Whence can it be shown [Scripturally] that the study of the Torah affords asylum?¹⁹ From the verse, [Then Moses separated three cities . . .] Bezer in the wilderness . . . Ramoth... and Golan . . ., which is followed by, and this-the law which Moses set before the children of Israel?²⁰ — This [discrepancy] is not difficult [to explain]. One [of his sayings] is applicable to the scholar who maintains his learning in practice, while the other saying is applicable to him who does not maintain it in practice. Or, if you will, I might say that ‘asylum’ means refuge from the Angel of Death, as told of R. Hisda who was sitting and rehearsing his studies in the school-house and the Angel of Death could not approach him, as his mouth would not cease rehearsing. He [thereupon] perched upon a cedar of the school-house and, as the cedar cracked under him, R. Hisda paused and the Angel overpowered him.²¹

R. Tanhum b. Hanilai observed: Why was Reuben given precedence to be named first in the appointment of [the cities of] deliverance?²² Because it was he who spoke first in delivering [Joseph from death], as it is said, And Reuben heard it and he delivered him out of their hand [and said, Let us not take his life].²³

R. Simlai gave the following exposition: What is the meaning of the text, Then Moses separated three cities beyond the Jordan, toward the sun — rising?²⁴ It means that the Holy One, blessed be He, said to Moses: ‘Make the sun rise²⁵ for [innocent] manslayers!’ Some say [he explained it so]: The Holy One, blessed be He, said to Moses [approvingly], ‘You did make the sun rise for [innocent]²⁶ manslayers!’

R. Simlai [also] gave the following exposition: What is the meaning of the verse, He that loveth silver shall not be satisfied with silver, and who delighteth in multitude, not with increase; [this also is vanity].²⁷ ‘He that loveth silver shall not be satisfied with silver’, might be applied to our Master Moses, who, while knowing that the three cities beyond the Jordan would not harbour refugees so

long as the [other] three in the land of Canaan had not been selected, nevertheless said: The charge having come within my reach, I shall give [partial] effect to it, now!²⁸ [The second part,] ‘And who delighteth in multitude, not with increase’ [means]: Who is fit to teach ‘a multitude’? — He who has all increase²⁹ of his own.³⁰ This is similar to the interpretation given by R. Eleazar [b. Pedath] of, ‘Who can utter the mighty acts of the Lord: [who can] show forth all His praise’?³¹ as, Who is fit to utter the mighty acts of the Lord? He [only] who is able to show forth all His praise! But the Rabbis, or some say Rabbah b. Mari, interpreted the same, ‘who delighteth in multitude has increase’, as, Whoever delighteth in the multitude [of scholars] has increase [of scholars], and the eyes of the schoolmen turned on Rabbah the son of Raba.³² R. Ashi said it meant that whoever loves studying amidst a multitudes of [fellow] students has increase, which is to the same effect as what R. Jose b. Hanina said: What is the import, [he asked], of the words, a sword upon [the boasters] ha-baddim and they shall become fools?³³ May a sword fall upon the neck of the foes³⁴ of scholar-disciples, that sit and engage in the study of the Torah, solitary [bad] and apart [b'bad]!³⁵ Nay, furthermore, such wax foolish! Holy Writ has here, and they shall become fools³³ — and elsewhere it says, wherein we have done foolishly;³⁶ nay, furthermore, they also become sinners, as it is added there, and wherein we have sinned’ If you prefer, [it is derived] from this verse, The princes of Zoan have become fools.³⁷ Rabina explained [that former passage] thus, Whoever delighteth in teaching a multitude [of scholars] has increase, which is to the same effect as what Rabbi said: Much Torah have I learnt from my Masters, more from my fellow — students and from my disciples most of all!

R. Joshua b. Levi said: What is the meaning of the [Psalmist's] words, Our feet stood within thy gates, O Jerusalem?³⁸ [It is this.] What helped us to maintain our firm foothold in war? The gates of Jerusalem³⁹ — the place where students engaged in the study of Torah! R. Joshua b. Levi said also the following: What is the meaning of the [Psalmist's] words, A song of Ascents unto David. I was rejoiced when they said unto me: ‘Let us go unto the house of the Lord’?⁴⁰ David, addressing himself to the Holy One, blessed be He, said: Lord of the Universe! I heard men saying, ‘When will this old man die and let his son Solomon come and build us the Chosen Shrine and we shall go up there [as pilgrims]?’ and I rejoiced at that. Said the Holy One, blessed be He, to him, A day in thy courts is better than a thousand!⁴¹ Better to Me one day spent by you in study of Torah than a thousand sacrifices that your son Solomon will [some day] offer before Me, on the altar!⁴²

AND DIRECT ROADS WERE MADE LEADING FROM ONE TO THE OTHER. It is taught: R. Eliezer b. Jacob says

(1) Hos. VI, 8.

(2) עקבה

(3) עקב means ‘to follow on the heel of a person,’ cf. Gen. XXV, 26 and XXVII, 36.

(4) The text is in disorder. The reading adopted is that of the Yalkut. See D.S. On the western side Hebron and Shechem lie nearer each other than the other cities on the line, and on the eastern side of the Jordan, Ramoth and Golan are closer together.

(5) Hos. VI, 9.

(6) Num. XXXV, 6-7. Cf. 1 Chron. VI, 39-66.

(7) I.e., without the refugee being aware of his safety there (v. Rashi), or, without the knowledge and assent of the city authorities (L. Ginzberg, J.E, ii, 258a, s.v. Asylum).

(8) Judg. I, 20.

(9) Josh. XXI, 12.

(10) Josh. XIX, 35-37.

(11) I.e., an open place with a fortress near by, both bearing the same name (Rashi). Kirkuk di'Sluq. Cf. Obermeyer, Die Landschaft Babylonien p. 141.

(12) The former, because they are liable to run short of necessities; the latter, because the avenger may escape notice in large crowds of strangers.

(13) To prevent a coup to carry off the slayer.

- (14) Although they were Levitical cities.
- (15) Tosef. III, 9, and J. Mak. II, 6, read here instead 'set up no olive-press nor wine-press there: these are the words of R. Nehemiah, but the Sages permit.'
- (16) Deut. IV, 42.
- (17) I.e., also the spiritual life.
- (18) As he may ultimately dishonour his master. This is cited as a dictum of Rab's in Hul. 133a and of R. Simeon b. Eleazar, Tosef. A.Z. VII, end.
- (19) Refuge from evil and wrong-doing. Cf. Sot. 21a.
- (20) Deut. IV, 41-45.
- (21) Cf. Shab. 30b, a similar incident about King David, and B.M. 86a, about Rabbah b. Nahmani.
- (22) Deut. IV, 43 and Josh. XX, 8.
- (23) Gen. XXXVII, 21 ff.
- (24) Deut. IV, 41. Cf. Num. XXXV, 14, where beyond the Jordan is not further described by toward the sunrising as here.
- (25) Taking **יבדיל** as 'let him separate,' in an exhortative sense, make now, immediate provision for the innocent manslayers' protection. Cf. Gen. XIX, 22-23; Ex. XXII, 2; Ps. CVII, 14; and Deut. Rab. II, 30.
- (26) By way of testimony, then began he already, while still on the east of the Jordan, to separate three of them. On this use of the imperfect with **וַיִּבְדֵּל** see Driver's Hebrew Tenses, III * 27 (inceptive).
- (27) Eccles. V, 9.
- (28) I.e., although the selection then was (as yet) to no purpose, it was not vanity, but pious devotion to the cause that prompted him: half a duty early begun, was better than none. It would seem that R. Simlai read it interrogatively, He that loveth silver, shall he not be satisfied with (ready) silver (to be spent in a good cause)? (the same as the second half of the verse). The implication seems to be as follows: A miser gets no joy from his hoard, as a pompous fellow will soon deplete his income on his retinue: both are victims of their vanity; but not so one who has nobler desires, e.g., Moses, who was satisfied with attaining even half an achievement in giving early effect to the law of asylum, or, say, the erudite scholar who delights in distributing his great learning to large gatherings of hearers. These suffer neither pain nor loss, as their pursuit is not after vanity.
- (29) I.e., stores of knowledge Scripture, Mishnah and traditional lore.
- (30) I.e., interpreting it as if **לֹא לֹו תבוֹאֵה** cf. Gen. XXXVIII, 9, and Sot. 27b and 31a. The transition from the negative **לֹא** to the positive **לֹו** is by logical process and not due to variant MSS, reading (for which there is no evidence). The reasoning process is as follows: (a) Some spenders are not happy; (b) Some spenders (you say) are not happy? (c) Some spenders (I say) are happy; (a) and (c)-in formal logic — are technically in Sub-contrary Opposition (O and I), and are compatible. See B. Bosanquet, Essentials of Logic, Lect. VIII, and Adamson's Teacher's Logic, Ch. XX.
- (31) Ps. CVI, 2. The interpretation is that one should not be profuse in praising God as this might savour of adulation, bordering on blasphemy. Cf. Ber. 33b and Meg. 18a; and thus it is only he who is possessed of the best store of knowledge who may presume to expound and teach the Law of God.
- (32) Whose family was distinguished by many scholars. (5) R. Ashi and Rabina (see below) were the leading heads at Matha Mehasia, the former as the Principal of the Academy and the latter as his most valuable co-adjutor, at the half — yearly so-called kallah gatherings, held for the critical discussion and redaction of the Talmud.
- (33) Jer. L, 36.
- (34) An intended euphemism, so as to avoid the appearance of cursing scholars.
- (35) A play on the word **הַבַּדִּים** ha-baddim, translated above by boasters (deluded dupes). The root **בד**, **בבד** also means to be alone, separate, solitary, e.g., Gen. XLIII, 32; Ex. XVIII, 14, 18, and Lam, I, 1.
- (36) Num. XII, 11, wherein we have done foolishly and wherein we have sinned.
- (37) Isa. XIX, 13. Cf. supra 2 and 11 ff, which show that there will be no consultation or co-operation between the wise men of Egypt, with disastrous consequences. Discussion sharpens the wits of scholars and leads to the elucidation of the true bearings of the subject under consideration. V. Ta'an. 74.
- (38) Ps. CXXII, 2.
- (39) I.e., he renders **בשעריך** 'by (virtue of) thy gates', not 'within thy gates', and by 'gates' again, he means the seat of the elders, the courts of law and learning. Cf. Deut. XVI, 18-20; XVII, 8-11; and Ber. 8a. King David is often represented rather as ardent scholar than as warrior. Wars were waged only to secure conditions of peace for study and

devotion. (Cf. Ps. XIX, LXIII and CXIX.) In Ab. VI, 3, David is said (probably by the same R. Joshua b. Levi) to have shown great deference to a scholar in return for the least information.

(40) Ps. CXXII, 1.

(41) Ibid. LXXXIV, 11.

(42) Cf. Micah VI, 6-8.

Talmud - Mas. Makkoth 10b

that the word miklat [asylum] was inscribed at the parting of the ways so that the [fugitive] manslayer might notice and turn in that direction.

Said R. Kahana:¹ What is the Scriptural authority for that? Thou shalt prepare thee the way,² meaning, make you preparation for the road.

R. Hama b. Hanina opened his discourse on the theme with this text: Good and upright is the Lord, therefore doth He instruct sinners in the way.³ Now, if He instructs sinners⁴ how much more so the righteous!

R. Simeon b. Lakish opened his discourse [on this theme] with these [two] texts: And if a man lie not in wait, but God cause it to come to hand; then I will appoint thee a place whither he may flee,⁵ and As saith the proverb of the ancients: Out of the wicked cometh forth wickedness; but my hand shall not be upon thee.⁶ Of whom does the [former] text speak? Of two persons who had slain, one in error and another with intent, there being witnesses in neither case. The Holy One, blessed be He, appoints them both [to meet] at the same inn; he who had slain with intent sits under the step-ladder and he who had slain in error comes down the step-ladder, falls and kills him. Thus, he who had slain with intent is [duly] slain, while he who had slain in error [duly] goes into banishment.⁷

Rabbah son of R. Huna reporting Rab Huna⁸ [some say,

R. Huna reporting R. Eleazar⁹ said: From the Pentateuch, the Prophets and the Hagiographa it may be shown that one is allowed to follow the road he wishes to pursue.¹⁰ From the Pentateuch, as it is written, And God said to Balaam, Thou shalt not go with them¹¹ and then it is written, [If the men came to call thee] rise up and go with them.¹² From the Prophets, as it is written, I am the Lord thy God who teacheth thee for thy profit, who leadeth thee by the way that thou shouldest go.¹³ From the Hagiographa, as it is written, If he is of the scorers, he will [be allowed to] speak scorn and [if] of the meek, he will show forth grace.¹⁴

R. Huna said that if a manslayer, on his way into banishment, was met and killed by the avenger, he is acquitted, because, he holds, the clause, and he — not deserving of death,¹⁵ refers to the blood-avenger. Thereupon an objection was raised: [It is taught]: The verse, ‘and he — not deserving of death’, is said of the manslayer.¹⁶ You say of the manslayer; maybe it refers to the blood-avenger?¹⁷ When, however, the text adds also, ‘inasmuch as he hated him not in time past’, you have to take it as referring to the manslayer!¹⁸ R. Huna follows another Tanna, as it is taught [in the following]: The clause ‘and he — not deserving of death’ is said of the blood-avenger. You say of the blood-avenger; maybe it refers to the manslayer? When, however, the text adds ‘inasmuch as he hated him not in time past’, the manslayer is already disposed of;¹⁹ what then can I make of the clause ‘and he — not deserving of death’ save that it refers to the blood avenger? [Now,] we learn, AND TWO [ORDAINED] SCHOLAR-DISCIPLES WERE DELEGATED TO ESCORT THE MANSLAYER IN CASE ANYONE ATTEMPTED TO SLAY HIM ON THE WAY THAT THEY MIGHT SPEAK TO HIM. What did they say to him? Did they not warn the avenger that if he killed the manslayer he would himself be deserving of death? — No, [not that!] as it is taught, That they might speak unto him appropriate words: they would say: ‘Do not treat him after the manner of

shedders of blood; it was but in error that he had a hand in it.' R. Meir says: He may even himself plead his cause, as it is said, And this is the word [plea] of the slayer.²⁰ They say to the avenger, Much is effected [for Providence] by agents!²¹ The Master said: 'It was but in error that he had a hand in it'. Is that not too obvious a plea, because, if he had committed it wilfully, would he be a refugee? — Yes, he would be, as it is taught: R. Jose b. Judah says, that to begin with, every slayer, be it in error or with intent, was first sent forward to [one of] the cities of refuge. The Court then sent and had him brought thence. Whoever was found guilty of a capital crime, they had put to death, as it is written, Then the elders of his city shall send and fetch him thence and deliver him into the hand of the avenger of blood, that he may die.²² Whoever was found not guilty [of murder] they acquitted, as it is said, And the congregation [of judges] shall deliver the slayer out of the hands of the avenger of blood.²³ Whoever had incurred banishment, they sent him back to his place [of refuge], as it is said, And the congregation [of judges] shall restore him to the city of his refuge, whither he was fled.²³ Rabbi says [they were not sent in the first instance], they went [there] into banishment of their own accord, thinking that every slayer, whether in error or with intent, was afforded shelter, and they knew not that those cities [only] afforded shelter to those who had slain in error, but to those who had slain with intent, they afforded no shelter.

R. Eleazar said²⁴ that a city, the majority of whose denizens were [quondam] slayers, could not [by right] admit fugitives, because [in the ordinance] it is said, And he shall declare his words [cause] in the ears of the elders of that city,²⁵ that is, [declare] his cause, but not a cause like their own.

R. Eleazar also said that a city which has no [body of] elders could not [by right] admit fugitives, as the elders of that city²⁵ are required [by the ordinance] and these were not there.

It has been stated: The [legal status of the] city which has no elders was discussed by R. Ammi and R. Assi, the one holding It could admit fugitives, the other that it could not. The one who denied it the right of admitting fugitives argued that 'the elders of the city' were [an essential] requisite [in the ordinance]²⁵ and these were not there; the other, who accorded it the right of admitting fugitives, argued that it was merely [a statement of] what was requisite generally. The city which has no elders was again discussed by R. Ammi and R. Assi, one holding that a person could [legally] be charged there as 'a stubborn and rebellious son', while the other held he could not be. He who denied it the [legal] capacity of receiving the charge of 'a stubborn and rebellious son' argued that the elders of his city²⁶ were [an essential] requisite [in the ordinance] and these were not there; while the other, who accorded it the right of receiving the charge of 'a stubborn and rebellious son', argued that it was merely [a statement of] what was requisite generally. Further, the city which has no elders was likewise, discussed by R. Ammi and R. Assi, one holding that it had to bring a murder-atonement heifer,²⁷ and the other holding that it had not to bring a murder-atonement heifer. He who said that it had not to bring the murder-atonement heifer, argued that the elders of that city²⁸ were [an essential] requisite [in the ordinance] and these were not there; while the other who maintained that it had to bring a murder-atonement heifer argued that it was merely [a statement of] what was requisite generally.

R. Hama b. Hanina remarked: Why was the section of the law of murder

(1) Var. lec. R. Huna.

(2) Deut. XIX, 3.

(3) Ps. XXV, 8 ff.

(4) In providing for signposts to direct them in their flight to the Cities of Refuge.

(5) Ex. XXI, 13.

(6) I Sam. XXIV, 13-14.

(7) Cf. Mekilta, Ex. XXI, 13.

- (8) Not his father. D.S. reads here Rabbah b. Bar Hana reporting R. Huna.
- (9) Yalkut (in all three places) has simply, 'R. Eleazar said'.
- (10) In accordance with the doctrine of Free Will.
- (11) Num. XXII, 12.
- (12) Ibid. 20.
- (13) Isa. XLVIII, 17.
- (14) Prov. III, 34.
- (15) Deut. XIX, 6. (He shall flee unto one of these cities and live) lest the avenger of blood pursue the manslayer while his heart is hot and overtake him, because the way is long, and smite him mortally, and he (the manslayer, was (the avenger, is) not deserving of death; inasmuch as he hated him not in time past. The Hebrew and he — not deserving of death may refer to either the manslayer in the first instance, or to the avenger, in the second; hence arise the two opposite interpretations in the following discussion.
- (16) I.e., taking it as he was not deserving of death, and the avenger, killing him, committed real murder.
- (17) I.e., taking it as he is not deserving of death.
- (18) Which is a refutation of R. Huna.
- (19) By being allowed to go into banishment.
- (20) Deut. XIX, 4.
- (21) Cf. Ta'an. 18b, 'Providence has many bears and lions in the world to attack and slay us.'
- (22) Deut. XIX, 12.
- (23) Num. XXXV, 25.
- (24) These discussions are merely theoretical, as the law on these points had been long in abeyance.
- (25) Josh. XX, 4.
- (26) Deut. XXI, 19, 20.
- (27) Lit., 'the heifer, whose neck was broken' in case of an untraced murderer. Deut. XXI, 1 ff.
- (28) Ibid. 3, 4, 6.

Talmud - Mas. Makkoth 11a

introduced by a strong [emphatic] term,¹ as it is written, And the Lord spake [directed] unto Joshua saying, Speak [direct] unto the children of Israel saying, Appoint for you cities of refuge, whereof I spake to you by the hand of Moses?² Because it was a direction to give effect to what had been ordained in the Torah. Does it mean to say that the use of the term dabber always denotes strong [emphatic] utterance? — Yes indeed, as it is written [explicitly], and he [Joseph] spake hard words to them.³ But, is it not taught [elsewhere] that in the passage, Then they that feared the Lord spake together one with another⁴ means none other than gentle discourse, and thus the verse says, He shall subdue [yadber] the peoples under us?⁵ — Yes; but Dabber⁶ is a form different from Yadber⁷ [with consequent different shades of meaning].⁸

R. Judah and our [other] Rabbis differ [as to the reason for the introduction of the strong term]: one thinking it is because Joshua must have somewhat delayed the appointment of those [cities of refuge]; whereas the other thinks it was simply because of its importance as being an ordinance in the Torah.

And Joshua wrote these words in the book of the Law of God.⁹ R. Judah and R. Nehemiah are divided on the interpretation thereof, one taking them as referring to the final eight verses of the Pentateuch,¹⁰ while the other takes them to be the section on the cities of refuge.¹¹ Now, according to the one who holds that they were the final eight verses of the Pentateuch, it is quite correct to say, [and Joshua wrote these words] in the book of the Law of God.¹² But, if they are taken to refer to the section on the cities of refuge,¹³ how do you explain the wording, wrote these words in the book of the Law of God? — We take them in this way: 'And Joshua wrote', in his own book, 'these words'¹⁴ [that are prescribed] 'in the book of the Law of God'.

[The fitness of] a Sefer[-Torah] whose parchment skins are sewn together with flaxen thread was a point of issue between R. Judah and R. Meir,¹⁵ one declaring that it is fit [for public use] while the other holds it to be unfit. The one who declares it unfit appeals to the verse, And it shall be for a sign unto thee upon thine hand and for a memorial between thine eyes that the Lord's law may be in thy mouth.¹⁶ The whole Torah is set thus side by side with Tefillin.¹⁷ [Accordingly we draw an analogy:] As in the case of Tefillin there is a statute [a rule in practice] received by Moses at Sinai in regard to the use of gut-string for sewing them, the same is to obtain in the sewing of Torah scrolls. And the other?¹⁸ — He applies the analogy only to the requirement that the parchment [for Torah scrolls] has to be made of skins of animals permitted as food [for Jews];¹⁹ but the argument from analogy is not carried so far as to extend to [subsidiary] 'rules in practice'.²⁰ Rab remarked: We saw the phylacteries in the household of my Beloved [uncle R. Hiyya], and they were sewn with flaxen thread. But, the halachah²¹ is not in accordance with his practice.

MISHNAH. IT IS ALL ONE WHETHER A HIGH PRIEST [WHO DIED] HAD BEEN ANOINTED WITH THE [HOLY] ANOINTING OIL;²² OR HAD BEEN CONSECRATED BY THE MANY VESTMENTS,²³ OR HAD RETIRED FROM HIS OFFICE²⁴ — ALL MAKE POSSIBLE THE RETURN OF THE MANSLAYER; R. JUDAH SAYS ALSO THE [DEATH OF THE] PRIEST WHO HAD BEEN ANOINTED FOR WAR²⁵ PERMITS THE RETURN OF THE MANSLAYER. THEREFORE, MOTHERS OF HIGH PRIESTS WERE WONT TO PROVIDE FOOD AND RAIMENT FOR THEM THAT THEY MIGHT NOT PRAY FOR THEIR SON'S DEATH.

GEMARA. What are the data [for the above statement]? — Said R. Kahana: They are [severally] indicated in the texts [the high priest being mentioned three times], And he shall abide in it unto the death of the high priest which was anointed with the holy oil;²⁶ again it is written, Because he should have remained in the city of refuge until the death of the high priest;²⁷ and once more, But after the death of the high priest the slayer shall return into the land of his possession.²⁷ And whence R. Judah's view? — It is written once again, [And ye shall take no satisfaction for him that is fled to the city of his refuge] that he should come again to dwell in the land, until the death of the priest.²⁸ And the other?²⁹ — Since the description 'high' is omitted therein, the last quoted passage is taken [by him] as [but a secondary reference to] one of the aforementioned.

THEREFORE MOTHERS OF HIGH PRIESTS [WERE WONT TO PROVIDE FOOD AND RAIMENT FOR THEM THAT THEY MIGHT NOT PRAY FOR THEIR SON'S DEATH]. The reason [given] is that the banished might not pray [for the high priest's death]; but what if they should pray, [think you] he would die? [Surely the saying is,] As the flitting bird as the flying swallow, so the curse that is causeless shall [not] follow!³⁰ Said a venerable old scholar: I heard an explanation at one of the sessional lectures of Raba, that [the high priests were not without blame, as] they should have implored Divine grace for [averting the sorrows of] their generation, which they failed to do. Others read in the Mishnah thus: THAT THEY MIGHT PRAY FOR THEIR SONS THAT THEY DIE NOT. The reason [given then] is that the banished should pray [for the high priest]; but, what if they did not pray [for him; think you] he would die? What should he have done [to avert it]? — As they say here [in Babylon]: 'Toby did the [bad] jobbing and Ziggad³¹ got the [hard] slogging,' or as they say there [in Palestine]: 'Shechem got him a wife³² and Mabgai³³ caught the knife.' Said a venerable old scholar: I heard an explanation at one of the sessional lectures of Raba that [the high priests were not without blame, as] they should have implored Divine grace for [averting the sorrows of] their generation, which they failed to do. Just as in the case of that poor fellow who was devoured by a lion some three parasangs from the town where R. Joshua b. Levi lived, when [the prophet] Elijah would not commune with the Rabbi,³⁴ on that account, for three days! Rab Judah reported Rab to have said that the curse of a Sage, though uttered without cause, takes effect. Whence is this obtained? From [the fate of] Ahithophel; because, when David was digging out the [Temple's] foundations, the Deep came surging up threatening to flood the world.³⁵

He [David] asked, ‘What [is the law]³⁶ about writing the Divine Name on a shard and throwing it into the Deep to [make it] keep to its own region?’ As no one made reply, he said, ‘Whoever knoweth aught on this topic and would not tell, may he be suffocated!’³⁷ Thereupon, Ahithophel reasoned thus in his own mind: If in the cause of restoring harmony between husband and wife³⁸ the Torah said: ‘Let My Name,³⁹ solemnly inscribed [in a scroll, rather] be blotted out in water’,⁴⁰ may that not the more readily be done for the [safety of] the whole world? ‘Yes, It is allowed!’ [exclaimed Ahithophel]. The Divine Name was thereupon inscribed on a shard and thrown in the Deep; It subsided and abode in its own region. Nevertheless it is recorded, And when Ahithophel saw that his counsel was not followed, he saddled his ass and arose and gat him home to his house, to his city and put his household in order, and hanged himself and died.⁴¹

R. Abbahu said that the curse of a Sage, though uttered without cause, takes effect — Whence is this derived? From the fate of Eli; because, Eli said to Samuel, God do so to thee, and more also, if thou hide anything from me of all the things He said to thee.⁴² Now, although it is recorded, And Samuel told him every whit and hid nothing from him,⁴³ nevertheless it is recorded, And his [Samuel’s] sons walked not in his ways.⁴⁴

(1) Dabber, דבר direct, drive forward (cf. ‘drive home’), see Dictionaries.

(2) Josh. XX, 1-2. Cf, however, XVII, 15, 17, and XVIII, 3.

(3) Gen. XLII, 7. Cf. Sifra on Lev. X, 19, where Num. XXI, 5 is quoted in support.

(4) nidberu נדברו — Mal. III, 16.

(5) Ps. XLVII, 4. Yadber ידבר — in the Hif’il (causative) form, is taken in its Aramaic sense to mean, Let Him lead, that is, induce peoples to come and submit.

(6) דבר — is in the Pi’el, emphatic, assertive form.

(7) In the Hif’il.

(8) And similarly from the Nif’al, נדברו, the passive or reflexive form, ‘spake together one with another.’

(9) Josh. XXIV, 26.

(10) Deut. XXXIV. 5-12.

(11) Josh. XX, 1-9.

(12) Josh. XXIV, 26.

(13) Ibid. XX, 1-9.

(14) Concerning the cities of refuge.

(15) R. Meir was reputed to be a remarkably skillful scribe.

(16) Ex. XIII, 9.

(17) Phylacteries, v. Glos.

(18) Who declares a scroll of the Law whose parchment skins are sewn with flaxen thread to be fit — how will he employ the analogy?

(19) I.e., that the word of God may be written only on parchment skins of animals that may be eaten, i.e, animals that have cloven hoofs and chew the cud. The words ‘in thy mouth’ occurring in the ordinance Tefillin are interpreted: What can be put in thy mouth, thus excluding skins of animals forbidden as food, and this restriction in the preparation of parchments is carried over by analogy from Tefillin to Torah scrolls.

(20) Such as sewing. Biblical texts alone are admitted for analogical comparisons, but not Rabbinical or traditional practices. Each case is considered on its own merits.

(21) V.Glos.

(22) With which Aaron and every high-priest were anointed (cf. Ex. XXX, 23ff) down to the time of Josiah. (Rashi quoting Hor. 11b.)

(23) After the cessation of the anointing oil which, according to tradition, was hidden by King Josiah (v. Yoma 52b), what distinguished the high priest from the ordinary priest was the number of vestments, the high priest having eight, the ordinary priests having only four.

(24) Lit., ‘from his anointment’ — his office of anointed priest.

(25) Cf. Num. XXXI, 6; Deut. XX, 2 ff; I Sam. IV, 4 ff.

(26) Num. XXXV, 25.

(27) Ibid. 28.

(28) Ibid. 32.

(29) Why does the former Tanna not use the latter verse likewise?

(30) Prov. XXVI, 2, where both readings, the positive **וְשׁוֹרֵף** and the negative **וְשׁוֹרֵף** are admitted as alternatives, meaning that (a) a causeless curse will not follow (the innocent), or (b) that it will follow (the person who curses without cause).

(31) Toby and Ziggad or Zingad (i.e. a Numidian slave of Zinga, Numidia, N. Africa), are popular names of slaves. (Cf. our Tommy Atkins and Jack Tar for 'soldier' and 'sailor'.). There is also probably a play here on the name Zingad in the Aramaic, Zingad (— who is hoisted) minnegad (— gets a flogging).

(32) Referring to Dinah's abduction by Shechem and subsequent circumcision of all the Shechemites. Gen. XXXIV.

(33) Another popular name for Shechemite, cf. 'Er. 64b, Josephus, Wars, IV, 8,1, mentions that Neapolis (or Sichem) was called by the people of that country Mabartha, maybe a corruption of Mabg(a)itha.

(34) Because he failed to shield a fellow man from sin, the cause of sorrow and misfortune. There are many anecdotes of Elijah's appearance as friend, guide, monitor or rescuer. See J. E. V, 122 ff. and M. Friedmann's exhaustive study in his introduction to the Seder Elijahu Rabbah (Wien, 1904). Chap. IV, p. 27 ff.

(35) Cf. Gen. VII, 11; VIII, 2; Ps. XXIV, 1-2, and CIV, 6-9, and Suk. 53a.

(36) V, 1, Is there someone who knows whether it is permitted to write . . . On the incident cf. J. Sanh. X, 29a, and Friedm. op. cit., p. 157.

(37) By way of retribution, for not speaking out when flooding waters threatened the world.

(38) I.e. in the case of a wife suspected of faithlessness; cf. Num. V, 12-36.

(39) The Torah is here identified with the Lord, whose word it reveals.

(40) Num. V, 23. which is otherwise forbidden, v. Deut. XII, 3-4.

(41) This was in connection with Absalom's rebellion. II Sam. XVII, 23.

(42) I Sam. III, 17.

(43) Ibid. 18. .

(44) I Sam. VIII, 3. Thus was fulfilled the threatened curse of Eli when he uttered the words, God do so to thee, i.e., to Samuel if he would not reveal God's word in regard to Eli's wicked sons.

Talmud - Mas. Makkoth 11b

Rab Judah reported Rab to have said that a conditional exclusion [even if self-imposed]¹ requires [formal] absolution. Whence is this derived? — From [the fate of] Judah, for it is written, And Judah said to Israel his father. 'Send the lad [Benjamin] with me . . . if I bring him not unto thee . . then let me bear the blame² for ever.'³ And [on this theme]. R. Samuel b. Nahmani repeated how [his Master] R. Jonathan said: What are [the allusions in] the text, Let Reuben live and not die; and let not his men be few. And this [is] unto Judah, and he [Moses] said, Lord, hear the voice of Judah and bring him unto his people; let his hands be sufficient for him and be Thou an help to him from his enemies?⁴ All through the forty years that Israel remained in the wilderness, Judah's bones were jolted about in their coffin until [in the end] Moses stood up and supplicated for mercy on his behalf: Lord of the Universe! [said he.] Who influenced Reuben to make free confession [of his guilt]?⁵ Was it not Judah?⁶ 'and this [was due] to Judah! And he [Moses] said, Lord, hear the voice [appeal] of Judah.' Thereupon, joint slipped into socket. Judah, not having yet been ushered in to the Celestial College.⁷ [Moses again prayed] — 'and bring him unto his people'! Judah, being unable to parry in debate [through prolonged absence, Moses prayed] — 'let his hands [capacity] be sufficient for him'; being unable to disentangle [analyse or explain] intricate points raised in discussion, Moses prayed — 'and be Thou an help unto him from his adversaries'.

[ALL PERMIT OF THE RETURN OF THE MANSLAYER.] The question was raised: Does the text mean that a manslayer returns home at the death of all the [contemporary] high priests. or at the death of any one of them?⁸ — Come and hear: If his trial was concluded while there was no high priest [in office] . . . the manslayer can never come home thence.⁹ Now if it were as you suggest [alternatively], he would get home at the death of any one of the high priests!¹⁰ — [No! The next Mishnah means when] there is none [in office at the time].

MISHNAH. IF THE HIGH PRIEST DIED AT THE CONCLUSION OF THE TRIAL, THE SLAYER GOES NOT INTO BANISHMENT. IF HE DIED BEFORE THE TRIAL WAS CONCLUDED AND ANOTHER HIGH PRIEST WAS APPOINTED IN HIS STEAD AND THE TRIAL WAS THEN CONCLUDED, THE SLAYER RETURNS [HOME] AFTER THE LATTER'S DEATH. IF THE TRIAL WAS CONCLUDED WHEN THERE WAS NO HIGH PRIEST [IN OFFICE], OR WHERE THE HIGH PRIEST WAS THE VICTIM, OR WHERE THE HIGH PRIEST WAS THE MANSLAYER, THE SLAYER CAN NEVER COME AWAY FROM THAT PLACE [OF REFUGE].

HE [THE SLAYER] MAY NOT GO OUT THENCE TO BEAR WITNESS IN RESPECT OF SOME RELIGIOUS OBSERVANCE;¹¹ NOR AS WITNESS IN A MONETARY SUIT; NOR AS WITNESS IN A CAPITAL CHARGE; NOR EVEN SHOULD [ALL] ISRAEL HAVE NEED OF HIM, NOT EVEN IF HE BE 'CAPTAIN OF THE HOST LIKE JOAB B. ZERUIAH.¹² HE MAY NEVER GO OUT THENCE, AS IT IS SAID, 'HE FLED THERE'¹³ [TO INDICATE THAT] 'THERE' MUST BE HIS ABODE, 'THERE' HIS DEATH, 'THERE' HIS BURIAL. JUST AS THE CITY AFFORDS ASYLUM SO DOES ITS BOUNDARY AFFORD ASYLUM. IF A SLAYER WENT BEYOND THE BOUNDS AND THE BLOOD — AVENGER FELL IN WITH HIM, R. JOSE THE GALILEAN SAYS THAT FOR THE AVENGER IT IS A MATTER OF OBLIGATION [TO STRIKE]; FOR EVERYONE ELSE, A MATTER OF OPTION. R. AKIBA SAYS THAT FOR THE AVENGER IT IS A MATTER OF OPTION AND ANYONE [ELSE] IS [NOT]¹⁴ RESPONSIBLE FOR HIM.

GEMARA. [IF THE HIGH PRIEST DIED AT THE CONCLUSION OF THE TRIAL, THE SLAYER GOES NOT INTO BANISHMENT.] What is the reason for this [remission]? — Said Abaye: We infer it a fortiori. For what happens to a slayer who had already gone into banishment? He comes out [free] now [on the death of the high priest]. Is it not a [logical] argument to say that he who had not gone into banishment should not have to go at all¹⁵ on the intervention of the death of the high priest? But perhaps [there is this to be said, that] while he who had gone into banishment had [suffered for] his atonement, this one who has not [yet] gone into banishment has not [yet] been granted it? [No,] do you think it is banishment that procures atonement [remission of exile]? It is the death of the [high] priest that procures the atonement.¹⁶ IF HE DIED BEFORE THE TRIAL WAS CONCLUDED . . . THE SLAYER RETURNS [HOME] AFTER THE LATTER'S DEATH. Whence is this derived? — R. Kahana said: The text¹⁷ says, and he shall abide in it [the city of refuge] unto the death of the high priest whom he¹⁸ hath anointed with the holy oil. Was it he [the slayer] that anointed the high priest? But the implication is, that high priest who was anointed in his [the slayer's] days.¹⁹ What should the high — priest [the latter] have done [to avert the unhappy event]?²⁰ He should have implored Divine mercy for the slayer's acquittal, which he [seemingly] failed to do.

Abaye observed: We have it [on good authority]²¹ that if the slayer died on the conclusion of the trial, his bones [body] would be conveyed thither, as it is written, that he should come back to dwell in the land²² [until the death of the priest].²³ Now, what dwelling is it that is in the land [in the soil]? You are bound to say, the burial place. A Tanna taught: If the slayer died [in banishment] before the high priest, they convey [on the death of the latter] the bones [body] of the slayer to the sepulchre of his forebears, as it is written, [And after the death of the high priest] the slayer shall return to the land of his possession;²⁴ now, what return²⁵ is it that is to the 'land of his possession'? — You are bound to say, it is burial [in the ancestral soil].

exile could not depend on the amount of suffering involved (in exile), as one may have to spend a day, and another a whole lifetime in exile. Cf. also Tosaf. s.v. מִיָּדֵי Where the trial had been concluded and the [high] priest was then found [to be] the son of a divorcee or haluzah,²⁶ this case was discussed by R. Ammi and R. Isaac Nappaha; one said that [in effect] the priestly Office dies,²⁷

and the other said that the priestly Office has become void.²⁸

Could it be suggested that they were differing on the same point as that on which R. Eliezer and R. Joshua differed? For we learnt: If while engaged in offering on the altar, a priest is discovered to be the son of a divorcee or haluzah, R. Eliezer says that all offerings [hitherto] laid by him on the altar are become vitiated; R. Joshua declares them appropriate.²⁹ [Accordingly,] he who [in the former instance] held that the discovery meant [in effect] the death [of the priestly Office]³⁰ takes the view of R. Joshua; and the other who said that it has become void,³¹ takes the view of R. Eliezer!

(1) So in many texts, see marginal notes and D.S, a.I. Exclusion = Nidduy נִדְדוּי a form of excommunication usually extended for thirty days.

(2) I.e., to be a sinner, under a ban.

(3) Gen. XLIII, 8-9.

(4) Deut. XXXIII, 6-7.

(5) Gen. XXXV, 22; XLIX, 4.

(6) Ibid. XXXVIII, 26.

(7) Cf. Ber. 18b, where it is told how R. Levi had been excluded from the Celestial College for as many years as he had absented himself from the College Sessions of R. Efes (of Sepphoris).

(8) I.e., 'anointed', or 'many-robed' (i.e., unanointed acting high priest), or retired, or the one consecrated for war.

(9) V, next Mishnah.

(10) Therefore it seems he can return only at the death of all the (contemporary) high priests.

(11) Such as to report to the Sanhedrin at Jerusalem the first appearance of the new moon, cf. R.H. II, 5-6; Tosef., Mak, a.I. (a Nazirite cannot go to the Temple, cf. Num. VI).

(12) Cf. I Kings II, 5 and 28ff.

(13) Num. XXXV, 25. In the Sifre, Midr. Tannaim (Hoffmann), Lek. Tob, and Yalkut, this lesson is appended to Deut. XIX, 4 — Flee there and live, 'what is the lesson from the recurring there, there, there, three times? — (To indicate that there must be his abode,' etc. (cf. Tosef.). The phrase flee there occurs only twice in Deut. XIX, in verses 3 and 4, while in Num. XXXV, it occurs four times, namely, in verses 11, 15, 25, 26. On closer examination it will be found that only three of those passages, where the phrase flee there occurs, enlarge on the safety, rights or comforts of the refugee, namely, Num. XXXV, 15 (safety for all classes), verse 25 (to be escorted after trial and his right of residence there, unmolested, till the death of the High Priest, when he may return home), and Deut. XIX, 4 (that he flee there and live) which has been explained above as directing that he be provided with all amenities of life.

(14) See D.S. The negative is the authentic reading. Both forms, the negative and positive, mean practically the same thing, namely, that besides the avenger, it is nobody's affair to avenge the death of the slain; or (taken positively), everybody else, besides the avenger, will be held responsible for killing the slayer, i.e., it will be considered as murder, if deliberate, and as a case for banishment for the slayer, if by accident. See discussion on this text later. On R. Akiba's opposition to capital punishment, cf. supra 7a.

(15) V. Tosaf s.v. אָמַר אַבִּי

(16) I.e., on Scriptural grounds, Num. XXXV, 25, 28. 'R. Meir says: A manslayer shortens a man's life while the high priest prolongs a man's life; is it not logical (to say) that he who shortens a man's life should remain in the presence of him (the priest) who prolongs a man's life? Rabbi says: A slayer defiles the earth (cf. Num. XXXV, 33-34) and causes the Divine Presence to withdraw, while the high priest causes the Divine Presence to abide with man on earth; is it not logical (to say) that he who defiles the earth should remain in the presence of him who causes the Divine Presence to abide with man on earth?' (Sifre and Yalkut on Num. XXXV, 28). Atonement, by

(17) Num. XXXV, 25.

(18) The impersonal use of the verb, מָשַׁח one has anointed, a use often preferred to the passive (who has been anointed).

(19) I.e., that he, in the status of manslayer, and the high priest, were contemporaneously together. If, therefore, the high priest died before the conclusion of the trial, that is, before the sentence of banishment was passed on the manslayer, his death has no connection with the subsequent decision of the Court.

(20) V. pp. 72-73.

(21) V. Rashi, 'Er. 5a (bottom). Abaye uses this expression נִקְטִינָן (we hold) frequently, usually quoting some text in

support of his words. (R. Ez. Michelson in the notes of R. Herschel of Berlin on Makkoth, 11b.)

(22) That the slayer should not be permitted, on the payment of a ransom, to return home before the death of the high priest, to live or be buried at home. The word ba-arez בארץ in the land, is taken to mean to be buried in the soil.

(23) Num. XXXV, 32.

(24) Ibid. 28.

(25) Reading here שִׁבְהָ (not as before יְשִׁבְהָ — dwelling). Here, too, the word land is stressed. Cf. Lev. XXV, 41 and infra, the discussion, 13a.

(26) V. Glos.

(27) Now, at the discovery of the disqualification, and with the termination of his office refugees are liberated from their banishment.

(28) Retrospectively, ab initio; and the case is treated as if THE TRIAL WAS CONCLUDED WITH NO HIGH PRIEST IN OFFICE, and there is no release.

(29) Ter. VIII, 1.

(30) Now, and with its termination refugees are liberated from their banishment.

(31) The whole past is undone with disastrous effect on the worshippers and here likewise on the refugees.

Talmud - Mas. Makkoth 12a

— [No;] accepting R. Eliezer's point of view, there can be no divergence;¹ whereas from R. Joshua's point of view, it may be argued that he who says that the priestly Office died, follows R. Joshua's view; and the other, who says that the priestly Office has become void might explain that R. Joshua considered all the [past] offerings as appropriate [for some special reason] because it is written, Bless, Lord, helo [his substance]² and accept the work of his hands,³ which [if read as hillo]⁴ means to include [the work of] even the profane [vulgarized] in his midst; whereas here [in regard to the liberation of refugees] even R. Joshua might admit [that the priestly office is rendered void]. IF HIS TRIAL WAS CONCLUDED . . . [HE MAY NOT GO OUT THENCE... NOT EVEN IF HE BE CAPTAIN OF THE HOST LIKE JOAB B. ZERUIAH . . .] Rab Judah reporting Rab said: At that hour Joab fell into two errors, as it is written, And Joab fled unto the Tent of the Lord and caught hold of the horns of the altar.⁵ He erred [once], as only the roof of the altar⁶ affords asylum and he caught hold on its horns; he erred [again], as only the altar of the permanent Temple⁷ afforded asylum and he caught hold on the altar at Shiloh.⁸ Abaye observed that he also erred in this respect, that the altar affords asylum only to a priest while engaged in actual service,⁶ whereas Joab was a lay person.

Resh Lakish said that the Prince [Guardian Angel] of Edom [Rome] is destined to fall into three errors, as it is written, Who is this that cometh from Edom with dyed garments from Bozrah?⁹ He will err [first], as only Bezer affords asylum, but he will betake himself to Bozrah [Bostra];¹⁰ he will err [again], as asylum is afforded only to slayers in error, but he slays with intent; and he will err [yet again], as asylum is afforded only to man, but he is an angel!

R. Abbahu said that the 'cities of refuge'¹¹ were not assigned for burial, as it is written, [And the cities shall they have to dwell in] and the suburbs of them shall be for their cattle and for their goods and for all their living,¹² meaning, assigned [only] for 'living' but not for burial.¹³ An objection was raised: THERE MUST BE HIS ABODE, THERE HIS DEATH, THERE HIS BURIAL. — The case of the slayer is different, because the Divine Law has [distinctly] indicated his [special] treatment.

JUST AS THE CITY AFFORDS ASYLUM SO DOES ITS BOUNDARY AFFORD ASYLUM. Against this some cited the following: [It is written,] And he shall abide in it,¹⁴ that means, In the city [of refuge] but not in its [outer] bounds?¹⁵ — Said Abaye: This is no difficulty; here [in our Mishnah], the point under consideration is [its domain] as an asylum, whereas there, [in the cited passage] it is [its limitation] as a domicile. But is not that [last] point to be derived from the fact that a 'Field is not turned into suburb, nor suburb into field; nor suburb into city, nor city into suburb'?¹⁶

— Said R. Shesheth: [Yes,] but we still need that other statement if only to debar subterranean retreats.¹⁷

IF A SLAYER WENT BEYOND THE BOUNDS AND THE BLOOD-AVENGER FELL IN WITH HIM etc. Our Rabbis taught: And the avenger of blood shall slay the manslayer, [there shall be no blood guiltiness for him];¹⁸ this means that it is an obligation for the blood-avenger [to slay the vagrant murderer]; if there be no blood-avenger, it is permissible for anyone¹⁹ [to do so]: these are the words of R. Jose the Galilean. R. Akiba says [it means] that it is permissible for the blood-avenger, and everyone [else] is [not] responsible for him.²⁰ What is the reason [for the view] of R. Jose the Galilean? — Is it written, if he shall slay him?²¹ And what is R. Akiba's reason? — Does it say, he shall slay him [yirzah]?²²

Mar Zutra b. Tobiah citing Rab said: If a slayer [who] had gone beyond the bounds [of the city of refuge] was met and slain by the avenger of the blood, the latter is slain on that account.²³ Whose view does Rab follow? It is in accord with neither R. Jose the Galilean nor with R. Akiba!²⁴ — It is in accord with the view of the following Tanna, as is taught: R. Eliezer says: [that the manslayer die not] until he stand before the Congregation [of judges] for judgment.²⁵ What does this teach? Since it is said, and the avenger of blood shall slay the manslayer,²⁶ one might presume that he [the avenger] may do so forthwith, therefore does the earlier text provide that the manslayer die not until he stand before the Congregation [of judges]²⁷ for judgment.²⁵ And what deductions do R. Jose and R. Akiba obtain from, until he stand before the Congregation? — They require that text for [another ruling], as it is taught: R. Akiba says: Whence may it be shown that, if a Sanhedrin had been eye-witnesses to an act of murder, they cannot themselves have him put to death until he stand for trial before another tribunal? From the instructive text, the manslayer die not until he stand before, the Congregation [of judges] for judgment, [which means, not] until he stood [for trial] before another tribunal.²⁸

Our Rabbis taught: But if the slayer do [verily] come out²⁹ beyond the border of his city of refuge . . . there shall be no blood guiltiness,³⁰ from this I learn, only a case of deliberate egress; whence do I derive that the same law applies for an unintentional strayer? From the instructive double-verb, which implies a coming-out anyway.³¹ But then, is it not taught [elsewhere], If [the slayer comes out beyond the bounds] deliberately, he³² is slain; if in error, he³³ goes into banishment? — This is no difficulty. One [Baraita]³⁴ is in accordance with the view that the Torah uses [occasionally] popular idiom;³⁵ while the other [Baraita]³⁶ follows the view that the Torah does not use popular idiom.³⁷ Abaye remarked: It seems logical to take the view that the Torah does [occasionally] use popular idiom, as you could not treat his later act [of accidental straying] more severely than his first act [of accidental killing], arguing: What is the law in his first act? If [the killing was] deliberate, he is slain; if in error [accidental], he goes into banishment. Similarly in his later act [of vagrancy], if the vagrancy was deliberate, he is slain [by the avenger with impunity]; if in error [accidentally], his slayer goes into banishment.

It is taught in one [Baraita]: 'If a father killed [a son], his [other] son becomes the avenger of blood.' Again it is taught in another [Baraita], 'One's [own] son cannot become the avenger of blood.' Now, could it be suggested that the first reflects the view of R. Jose the Galilean,³⁸ while the second reflects that of R. Akiba?³⁹ Can this be maintained? For whichever view you take of the avenger's role, whether that of the one who regards it as obligatory, or of him who says it is optional, is it admissible? Did not Rabbah son of R. Huna say, and the same is taught by one of the School of R. Ishmael: Never is a son [to be] commissioned [by the Court] to punish his father, whether it be to inflict a flogging or pronounce a [formal] execration on him, save only in the case of one who entices [another] to idol worship, because there the Torah says neither shall thine eye pity him, neither shalt thou spare, neither shalt thou conceal him . . . [but thou shalt surely kill him,] thine hand shall be first upon him!⁴⁰ But this [seeming] incongruity is not difficult [to explain]. One [Baraita]⁴¹ treats of a son [against a father], the other⁴² of a grandson against his grandfather.

MISHNAH. IF A TREE STANDING WITHIN THE BOUNDARY HAS ITS BOUGHS EXTENDING BEYOND [THE BOUNDARY]⁴³ OR STANDING WITHOUT THE BOUNDARY HAS ITS BOUGHS EXTENDING WITHIN, IT WHOLLY FOLLOWS⁴⁴ [THE POSITION OF] THE BOUGHS.⁴⁵

GEMARA. A point [of difficulty] was raised [from the following]:⁴⁶ If a tree standing within [the wall of Jerusalem] overhangs outside or standing without overhangs inside — the part which bends over the wall from the wall inwards is considered as within [the wall], and that part which bends over the wall from the wall outwards is considered as without [the wall]?⁴⁷

You cannot raise a point from [the law of second] tithes as against the [law of the] cities of refuge! [There is no comparison]. Tithes are associated by the Divine Law with the wall [of the Holy City]⁴⁸ whereas the cities of refuge are governed [in the Divine law] by [the principle of] domicile.⁴⁹ Now, it is the boughs that afford shelter of domicile, not the root of a tree.

Then the [same] point might be raised from another Baraitha⁵⁰ regarding [the law of] tithes, where it is taught: In regard to Jerusalem,⁵¹ follow the bough: In regard to the cities of refuge, follow the bough!⁵² — Said R. Kahana: There is no difficulty; one [this latter] citation presents the view of R. Judah, while the other [the former], adopts the view of the Rabbis, as is taught:

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- (1) I.e., his clear, emphatic disqualification leaves no room for any other suggestion.
 - (2) **הִיָּו** the traditional reading, meaning his substance or power.
 - (3) Deut. XXXIII, 11, Moses, blessing the Levite tribe for their loyalty at the time of the sin of the golden calf invokes the blessing of God upon the work of their hands, i.e., his service at the altar, v. Ex. XXXII, 26ff.
 - (4) **הִיָּו** (as the traditional text is unpointed) = **הָיו** from the root **הָיו** meaning profane, ordinary, vulgar, common, v. p. 1, nn. 2-3. In Kid. 66b, the explanation given here is ascribed to Abba, Samuel's father.
 - (5) I Kings II, 28.
 - (6) Thou shalt take him (the wilful murderer) from mine altar to die (Ex. XXI, 14) Is explained as, 'take him away from next to (**מֵעַם**) mine altar, but not from upon (**מֵעַל**) mine altar (where priests stood while placing the offerings).' V. Yoma 85a.
 - (7) This too is derived from the same text 'from next to mine altar to die,' i.e., from such an altar as has a constituted Sanhedrin sitting with the power to impose capital punishment by due trial, that is to say, a National Altar, not a local one, as prescribed in Deut. XVII, 8-11. Cf. Nahmanides on Num. XXXV, 29. Shiloh was rejected and abandoned at the death of Eli and his sons (cf. I Sam. II, 30-35; Ps. LXXVIII, 60-61); Nob was destroyed by Saul, and the altar at Gibeon was only temporary and local. I Chron. XV, 1, and XVI, 1. V. Zeb, 118b.
 - (8) D.S. has 'at a bamah (High place),' v. Rashi and marginal note. Shiloh, however, is the reading supported by the observations of R. Johanan, J. Mak. II, 6, and stands for all temporary sanctuaries.
 - (9) Isa. LXIII, 1, taken as referring to the time when Edom's (Rome's) cruelty and the murder of many innocent people will be punished.
 - (10) Suggested to Resh-Lakish by his own mistake on this point in which R. Johanan put him right. V.A.Z. 58b.
 - (11) Assigned to the Levites, Num. XXXV, 3.
 - (12) Ibid. **הַיָּוִם** translated 'living beasts', may also mean 'living persons'.
 - (13) That is, the dead had to be buried outside the bounds of the city.
 - (14) Num. XXV, 25.
 - (15) V. Z. Tosef, Mak. III, 6, p. 441.
 - (16) Cf. 'Ar. 33b. The migrash (suburb) was an open common of 1000 cubits on each side of the city and another 1000 cubits beyond that, available for cultivation, and constituted the bounds of the cities of refuge. V. Num. XXXV, 4-5.
 - (17) Which do not encroach upon the actual bounds of the cities.
 - (18) Num. XXXV, 27. R. Jose — it should be noted — takes the last part of the verse as the consequence (apodosis) of the condition set out in verses 26-27, i.e., If the manslayer ventures abroad beyond the bounds of his place of refuge and is caught outside by the avenger, the avenger is to do his duty and kill him. R. Akiba carries the conditional part a little

- further, namely, If the manslayer ventures abroad . . . and is found outside, and if the avenger (perchance) killed, then no guilt shall attach to the avenger, as the manslayer had run the risk to his own cost.
- (19) This is seemingly derived from the wording in vv. 19-21, where it is first ruled, the avenger of blood shall slay the murderer; when he meeteth him, he shall slay him (19), and then again, the avenger of blood shall slay the murderer when he meeteth him (21), that is, anyone. Cf. Sifre on those texts.
- (20) V. note on the Mishnah above.
- (21) I.e., the word if-**אם**- should have been repeated before the latter clause of verse 27, to make clear that it is part of the condition stated in vv. 26-27.
- (22) He shall slay, or let him slay, **וְרָצַח** instead of **וְרָצַח**= and '(shall) have slain', This argument (on the syntactical forms of the conditional sentence, if one do so-and-so, then such-and-such is to happen) finds ample illustration in this section, verses 16, 17, 18, 20-21, (yumath) — he shall die. R. Jose's way of reading finds illustration in vv. 22, 23, followed by another form (Perfect) in the apodosis 24, 25. Cf. Lev. XXV, 51 and 52, where the two forms appear side by side, and I Kings I, 52, where both forms are given side by side in the same verse.
- (23) Cf. Deut. XIX, 6, Lest the avenger of the blood pursue the slayer while his heart is hot.
- (24) Note that this indirectly supports the negative reading in the last part of the Mishnah, taken however to mean that it is not permissible for a stranger to kill the murderer, and yet he is not guilty of murder if he did.
- (25) Num. XXXV, 12.
- (26) Ibid. 27.
- (27) Consequently should the blood avenger kill him before he appeared before the court, he himself is slain, and similarly if he slays him on coming out beyond the border of the city of refuge.
- (28) The reason being that it is as much the duty of judges to save as to condemn (Num. XXXV, 24-25), and, judges having witnessed the act themselves, their minds are already made up before the trial commences; therefore, there is really no trial. V. R.H. 26a (top).
- (29) Lit. 'if he cometh out a-coming'.
- (30) Num. XXXV, 26-27.
- (31) Intentionally (defiantly), or unintentionally.
- (32) With impunity.
- (33) The avenger or anyone else. V. Maim. Yad, Rozeah, v. 11.
- (34) The latter.
- (35) That is, the ordinary style without stressing the use of the double verb (v, n. 7 and 9 above): here it means simply, he came out and deliberately exposed himself to danger.
- (36) The former.
- (37) I.e., each word or particle has its precise significance, and the use of a double verb here is deliberate and indicates two kinds of coming out, intentionally and unintentionally. Cf. B.M. 31a ff; and Malbim, Introduction to Leviticus, No. 38.
- (38) That it is the stern duty of the avenger to avenge the blood.
- (39) That it is merely optional.
- (40) Deut. XIII, 9-10.
- (41) The second.
- (42) The first Baraita.
- (43) I.e., beyond the 2000 cubits about the cities of refuge on each side. Cf. Num. XXXV, 4-5.
- (44) As a sheltering zone.
- (45) That is, the root follows the branch, thus: If the refugee sat at the root within the bounds and the bough extends beyond the bounds, he is considered as outside the bounds. Again, if he sits at the root outside the bounds and the bough extends within, he is considered as within the bounds and is protected.
- (46) Ma'as. Sh, III, 7. The subject here is not the law of asylum, but that of the 'second tithe'. After the first dues to the priest and the Levite (cf. Num. XVIII, 24ff.) had been given (of 'corn, wine and oil' and other fruits), a further second — tithe was set apart by the owner for himself to be taken to Jerusalem and enjoyed there, or it might be 'redeemed', that is, commuted into money which was to be spent there on victuals. (Deut. XIV, 22-26.) Fruits of the second tithe may not be eaten outside Jerusalem without first being redeemed; and when once in Jerusalem they could not be redeemed and taken out again but had to be eaten there as holy food. Cf. infra 19b.
- (47) But not the root itself; whereas in our Mishnah it is ruled that the root follows the branch. Cf. p. 84, n. 8.

(48) Deut. XII, 17 and XIV, 26, and thou shalt eat there before (in the presence of) the Lord thy God, i.e, within the walls of the Holy City.

(49) And he shall dwell therein . . . Num. XXXV, 25, 28.

(50) תניא is more authentic than תנן as can be seen from the several references in Rashi, Tosaf., Nahmanides (and others) and probably alludes to Tosef. 'Ar. V, 7, rather than to Ma'as., III, 10.

(51) The order is reversed in the Mishnah; but the Tosefta has all three mentioned together; Jerusalem, the cities of refuge and the second-tithe as following the same rule. In all cases the tree and its branches follow the root from which they spring and draw their nourishment. In the three specific instances mentioned here also the branch is a deciding factor.

(52) In reference to eating under it or redeeming fruits of the second-tithe, or partaking of certain sacrificial meats, that are likewise permitted only within the sacred area of the Holy City. Cf. Deut. XII, 7, 12-15; 20ff.

Talmud - Mas. Makkoth 12b

R. Judah says: In the case of a cavern, follow its opening;¹ in the case of a tree, follow the bough.²

Let us grant [that we may legitimately suppose] R. Judah to apply this principle³ to the [second] tithes, where it would lead to a more strict observance, thus: If the root is outside [the wall] and the bough overhangs inward, [he maintains that] just as the owner may not redeem the fruits [of the second tithe] under the bough⁴ so he may not redeem those at the root. And again, if the root is inside the wall and the bough overhangs outside, [he maintains that] just as he may not eat the fruits [of the second tithe] under the bough without first redeeming them, so he may not eat even those at the root without first redeeming them. But, take now the case of a city of refuge; the application [of the same principle] goes perfectly well where the root lies beyond the boundary and the bough overhangs inside: just as the avenger may not slay the manslayer at the bough, so he may not slay him at the root. But where the root is within and the bough extends beyond, are we to say that just as the avenger may slay him at the bough he may also slay him at the root?⁵ Surely he [the manslayer] stands within? — Said Raba: [It might be;] nobody would dispute, where he [the manslayer] stands at the root [within the boundary], that the avenger dare not slay him; nor [would anybody dispute], where he stands at the bough [outside] and the avenger can attack him by means of arrows or stones, that he may kill him.⁶ But difference of opinion may arise as to whether the root may be regarded as [some sort of] ladder for [getting on to the]⁷ bough. In this case, one master⁸ considers that [part of the] root as a [mere] ladder for the bough,⁹ while the other master¹⁰ holds that the root cannot be considered a ladder for the bough.¹¹ R. Ashi says: What is the meaning of [the expression] 'it entirely follows the bough'?¹² It means, [follow] also the bough.¹³

MISHNAH. IF [WHILE A REFUGEE] HE SLEW [SOMEONE] IN THAT CITY [OF REFUGE] HE IS BANISHED FROM ONE QUARTER [THEREOF] TO ANOTHER;¹⁴ AND A LEVITE IS BANISHED FROM ONE CITY TO ANOTHER.

GEMARA. Our Rabbis taught: [It is written:] Then I will appoint unto thee a place whither he may flee;¹⁵ [the words,] 'then I will appoint unto thee' imply, during thy life-time;¹⁶ 'unto thee a place' means, in your place;¹⁷ 'whither he shall flee' indicates that the Israelites sent slayers into banishment while yet in the wilderness. Whither did they send them into banishment? To the Levitical camp. From this text, they ruled that if a Levite slew someone he was banished from one province to another; and that if he went into banishment to his own [native] province¹⁸ it does afford him asylum. Said R. Aha the son of R. Ika: What is the Scriptural warrant [for this rule]? Because he shall abide in the city of his refuge.¹⁹ [which implies,] the city which has already afforded him shelter before.

MISHNAH. SIMILARLY²⁰ A MANSLAYER, IF ON HIS ARRIVAL AT THE CITY OF HIS REFUGE THE MEN OF THAT CITY WISH TO DO HIM HONOUR, SHOULD SAY TO THEM,

‘I AM A MANSLAYER!’ AND IF THEY²¹ SAY TO HIM, ‘NEVERTHELESS [WE WISH IT],’ HE SHOULD ACCEPT FROM THEM [THE PROFFERED HONOUR], AS IT IS SAID: ‘AND THIS IS THE WORD²² OF THE MANSLAYER.’²³

(1) I.e., if the opening is within the city, it is intra-mural, even though the whole subterranean cavity lies outside; and vice versa, if it opens outside the city walls It is considered extra-mural, even though the whole subterranean cavity lies under the city within.

(2) So that both our Mishnah and the second Baraitha (‘In regard to Jerusalem . . .’) are expressing R. Judah's view, that the root follows the branches. (Cf, nn. 3 and 8.) The Mishnah of Ma'as. Sh., on the other hand, gives the view of the Rabbis.

(3) Viz., that the whole tree including the root follows the branches.

(4) Because it overhangs within, and second tithes may not be redeemed in Jerusalem, but must be eaten there as such. Cf, p. 85, n.1.

(5) This cannot be maintained and the analogy (between Jerusalem and the city of refuge) breaks down, and consequently R. Kahana's suggestion that the Baraitha (second citation, like the main Mishnah) is R. Judah's view (in contrast to that of the Rabbis in the first citation) does not remove the difficulty felt at first, as it leaves us with a new difficulty.

(6) Since the branch does not follow the root.

(7) By which the avenger might climb up (from within bounds) to grapple with the manslayer perched on the bough (beyond bounds).

(8) R. Judah.

(9) And he may climb up the root, though it is within, in order to get at him at the bough, just as he may slay him at the bough. The analogy consequently can be maintained.

(10) I.e., the Rabbis.

(11) And must not be used by the nearest of kin to get to the bough without.

(12) In our Mishnah, q.v.: and in the other Mishnah and Baraitha cited.

(13) In the case of the second tithe and city of refuge, we follow in addition as a stringent measure also the bough, so that where the root is without and the branch within, the manslayer finds protection even at the root. And the same applies to the second tithe. In other words we always adopt the stricter measure.

(14) As he may not leave it without risking his life. Num. XXXV, 25-28.

(15) Ex. XXI, 13.

(16) Cf. supra 10a, R. Simlai's exposition of Deut. IV, 41ff.

(17) So some texts (v. D.S.), i.e, the Levite camp in the centre. Cf. Num. I, 50ff; II,17; X, 17.

(18) I.e., on slaying someone abroad he ran home for refuge. Maim. Yad, Rozeah, VII, 5. Or, if he slew someone in one quarter and he took refuge in another quarter of the same province.

(19) Num. XXXV, 18, stressing his, that is, his own home town becoming his retreat for safety.

(20) Some consider this word out of place here (and it is indeed absent in good texts), as being an unconscious repetition of an earlier Mishnah, Sheb. X, 8, where it effects a comparison. Others take it as connecting this Mishnah with the preceding, where it was indicated that a manslayer needs atonement by suffering, for instance, to be sent away from his town or district to another, and similarly he should abase himself when people wish to show him deference: he should tell them (sorrowfully), ‘I am a manslayer’. V. D.S.

(21) For this reading, v. D.S.

(22) Or (single) statement.

(23) Deut. XIX, 4.

Talmud - Mas. Makkoth 13a

THEY USED TO PAY¹ RENT TO THE LEVITES: THESE ARE THE WORDS OF R. JUDAH; R. MEIR SAYS THAT THEY DID NOT PAY THEM ANY RENT. AND [ON HIS RETURN HOME] HE RETURNS TO THE OFFICE HE FORMERLY HELD, THESE ARE THE WORDS OF R. MEIR; R. JUDAH SAYS THAT HE DOES NOT RETURN TO THE OFFICE HE FORMERLY HELD.

GEMARA. Said R. Kahana: The difference of opinion [on the question of rent] is only in regard to the [main] six cities [of refuge], as one Master takes the words, and the cities shall be unto you for refuge² [to mean,] for the purpose of refuge [and no more], while the other Master takes 'unto you' [to mean,] yours for all your needs; but, as regards the other forty-two [additional] cities³ they are agreed that they did pay them rent. Said Raba to him: The expression 'unto you' certainly implies here 'for all your requirements'! But, said Raba, the difference of opinion is rather about [the claim of] the other forty-two [additional] cities, one Master taking the words, and to them ye shall add forty and two cities⁴ to mean that these [additional] cities shall be for refuge [mainly, like the six], while the other master takes the words, and to them ye shall add forty and two cities to mean that just as the other six are for all your requirements, so are these [additional] cities [to be] for all your requirements; but as regards the [main] six they are fully in agreement that no rent was paid to them.

AND HE RETURNS TO THE OFFICE HE FORMERLY HELD etc. Our Rabbis taught: [It is written], And he shall return to his family, and unto the possession of his fathers shall he return;⁵ this means that he returns [strictly] to his 'family' [possessions] but he does not return to the station occupied by his fathers;⁶ these are the words of R. Judah;⁷ R. Meir says that he even returns to the station occupied by his fathers,[since it says] 'to the possession of his fathers', [that is, exactly] like his fathers. Similarly in the case of the exile, as the text says, he shall return, it is meant to apply the same rule to the manslayer [by way of allusion]. What is meant [exactly] by saying, 'Similarly in the case of the exile'? — It refers to what is taught [on the following text]: [And after the death of the high priest] the slayer shall return to the land of his possession,⁸ which means that he returns only to 'the land of his possession' but not to the station occupied by his fathers;⁶ these are the words of R. Judah;⁹ but R. Meir says that he returns also to the station occupied by his fathers, [and] he derives [this interpretation] from the use of the same expression yashub ['he shall return'], both here¹⁰ and there.¹¹

CHAPTER III

MISHNAH¹² AND THESE INCUR A [JUDICIAL] FLOGGING:¹³ ONE WHO CAME [CARNALLY] TO HIS SISTER.¹⁴ TO HIS FATHER'S SISTER, TO HIS MOTHER'S SISTER,¹⁵ TO HIS WIFE'S SISTER,¹⁶ TO HIS BROTHER'S WIFE,¹⁷ TO HIS FATHER'S BROTHER'S WIFE¹⁸ OR TO A NIDDAH;¹⁹ A HIGH PRIEST ON TAKING TO WIFE A WIDOW,²⁰ OR AN ORDINARY PRIEST ON TAKING A DIVORCEE²¹ OR HALUZAH;²² ANY ISRAELITE ON TAKING TO WIFE A MAMZERETH²³ OR NATHINITE²⁴ WOMAN, OR ANY ISRAELITESS BECOMING THE WIFE OF A MAMZER²⁵ OR NATHINITE.²⁶ IN THE CASE OF A DIVORCEE-WIDOW [A HIGH PRIEST] IS LIABLE ON TWO COUNTS,²⁷ BUT [AN ORDINARY PRIEST,] IN THE CASE OF A DIVORCEE-HALUZAH, IS LIABLE ONLY ON ONE COUNT.²⁸ ONE WHO WHILE UNCLEAN,²⁹ ATE HOLY MEAT³⁰ OR ENTERED THE SANCTUARY; ONE WHO ATE HELEB,³¹ BLOOD,³² OR 'LEAVINGS' [OF SACRIFICIAL MEATS],³³ OR PIGGUL;³⁴ OR [AN OFFERING] THAT HAS BECOME UNCLEAN;³⁵ , ONE WHO SLAUGHTERS,³⁶ OR OFFERS UP³⁷ A SACRIFICE, OUT-OF-PRECINCTS;³⁸ ONE WHO ATE 'LEAVENED [BREAD] DURING THE PASSOVER,³⁹ ONE WHO PARTAKES OF FOOD [OR DRINK]⁴⁰ OR DOES WORK ON THE DAY OF ATONEMENT;⁴¹ ONE WHO COMPOUNDS INGREDIENTS [AS] FOR THE [ANOINTING] OIL,⁴² OR THE INGREDIENTS [AS] FOR THE INCENSE,⁴³ OR ANOINTS⁴⁴ WITH THE [HOLY] OIL FOR ANOINTING:

ONE WHO EATS OF NEBELAH⁴⁵ OR TREFA,⁴⁶ OR ANY OF THE [CREATURES DEEMED] 'ABOMINABLE' AND 'TEEMING'.⁴⁷ WHO EATS OF TEBEL⁴⁸ OR 'FIRST-TITHE STILL COMPRISING⁴⁹ ITS 'PRIME-DUE', OR 'SECOND-TITHE UNREDEEMED,⁵⁰ OR OF 'SANCTUARY- GIFTS' UNREDEEMED.⁵¹ HOW MUCH OF TEBEL⁵² IS ONE TO EAT TO BECOME LIABLE?⁵³ R. SIMEON SAYS THE MEREST MORSEL; THE SAGES SAY AN

OLIVE'S SIZE.⁵⁴ SAID R. SIMEON: DO YOU NOT ADMIT THAT IF ONE ATE THE MINUTEST ANT HE WOULD BE LIABLE?⁵³ — SAID THEY TO HIM: [ONLY] BECAUSE IT IS A SEPARATE CREATURE,⁵⁵ SAID HE TO THEM: EVEN SO A [GRAIN OF] WHEAT IS A SEPARATE ENTITY: GEMARA. [AND THESE INCUR A FLOGGING etc.] This Mishnah [it should be noted] mentions instances of [a flogging for] such as incurred the penalty of kareth but not any of such as have incurred the penalty of death by sentence of the Court.⁵⁶ Whose is the view presented in this Mishnah? — It is R. Akiba's, as may be gathered from what is taught [in the following]: Both offenders who are liable to kareth, and offenders who are liable to death by sentence of the Court

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- (1) The refugees, or according to some texts, the cities.
 - (2) Num. XXXV, 12.
 - (3) Num. XXXV, 6.
 - (4) V, p. 88, n. 9.
 - (5) Lev. XXV, 41, referring to the Hebrew slave.
 - (6) Here, the honours of some high office, conferred by others.
 - (7) It seems that R. Judah limits this text by the terms of an earlier assertion, verse 10, where the fathers are not mentioned, but only the possessions and the family. V. Malbim, Sifra on Lev. XXV, 10.
 - (8) Num. XXXV, 28.
 - (9) He seems to stress here the word land, he returns 'to the land of his possession.'
 - (10) Num. XXXV, 28.
 - (11) Lev. XXV, 41: a Gezerah Shawah, v. Glos.
 - (12) In this chapter the Biblical basis for a judicial flogging is considered somewhat at length. The main principle to be remembered is that, (a) every prohibited act must be clearly specified in Holy Writ and (b) the threatened punishment plainly stated. This Mishnah enumerates various types of offences that entail a judicial flogging at least.
 - (13) The list is incomplete (cf. Ker. I, 1), and mostly those that require comment are enumerated here. V. Rashi and Tosaf. As the Biblical references of each prohibition and its threatened punishment (if any) are to be indicated, it will be necessary to make use of the following notation: — B denotes — 'let him (her, them) bear his (her, their) iniquity,' i.e. bear the punishment for their sin, kareth, usually. q.v.; C denotes — threatened with the death of childlessness; D denotes — threatened with death by Divine dispensation; K denotes — kareth — כרת — 'cut off'; extirpation of the soul, v. Glos. It will be noticed that B, C, D and K amount more or less to the same thing, namely, Divine retribution; N denotes — No punishment prescribed in Holy Writ for the particular offence, though distinctly prohibited.
 - (14) Lev. VIII, 9, 29 K; XX, 17 BK.
 - (15) Ibid. VIII, 12-13, 29 K; XX, 19 B.
 - (16) Only during his wife's lifetime, Ibid. VIII, 18, 29 K.
 - (17) Ibid. VIII, 16, 29 K; XX, 21 C. Not even his brother's divorcee or widow, except in levirate marriage. i.e., if this brother died absolutely childless. Cf. Deut. XXV, 5ff.
 - (18) Lev. XVIII, 14, 29 K; XX, 20 BC.
 - (19) I.e., not even to his own during her menses, ibid. XVIII, 19, 29 K; XX, 18 K.
 - (20) Ibid. XXI, 13-14 N.
 - (21) Lev. XXI, 7, 14 N.
 - (22) V. Glos. A haluzah is treated as a divorcee and is forbidden to a priest.
 - (23) Mamzer, fem. mamzereth, is a child born in incest or adultery (with the wife of another man); such a child is debarred from regular marriage within the community: the stigma is perpetual. V. Deut. XXIII, 3 N.
 - (24) The Nathinites were descendants of the old Gibeonites, Hivites in origin, who became allies of the invading Israelites by a ruse, and were reduced to communal serfs in the time of Joshua. V. Josh. IX, 3, 15, 18, 23. A Hivite intermarriage with Israelites was forbidden, Deut. VII, 1ff. Their vindictiveness in the time of David (II Sam. XXI, 1ff.) and their continued identity as Hivites in their status as serfs (v. Ezra, II, 13, 58; VIII, 20, and Nehem. X, 29) contributed to their unenviable distinction as pariahs. Cf. Yeb. 78b.
 - (25) V. p. 90, n. 12.
 - (26) V. p. 90, n. 13.
 - (27) One on each status distinctly forbidden in Lev. XXI, 14 N.

(28) As haluzah is not explicitly mentioned in Lev. XXI, 7, but is derived from the wording by implication 'a woman divorced by her man' being taken to mean, 'any woman rejected by her man' (i.e. on whom she had some claim to be his lawful wife).

(29) I.e., being in a state of impurity, unfit to participate in religious ceremonial. For instances v. Lev. XI, 24-25, 31. 39-40; XII, 2ff; Num. XIX, 11-13.

(30) E.g., sacrificial meat, Lev. VII, 20-21 K.

(31) Mainly fat which was burnt on the altar, Lev. VII, 23-25 K.

(32) Lev. VII, 26-27 K; XVII, 10ff, K.

(33) Sacrificial meats were restricted (for their consumption), some to one day and the following night, others to two days and the night; after that, the leavings had to be burnt, Lev. VII, 15-18 B. Cf. Ex. XXIX, 34 and XII, 10; P.B. pp. 12-13, sections 5-8.

(34) Lit., 'loathsome'. The intention to disregard the time-limit ab initio vitiates and renders the sacrifice (like) putrid flesh, and is not to be eaten, Lev. VII, 18 B; XIX, 7-8 K.

(35) Lev. VII, 19.

(36) Lev. XVII, 3-4 K; Deut. XII, 13 ff.

(37) Lev. XVII, 8-9 K; Deut. XII, 13ff. Killing and offering sacrifice are two separate acts. V. Zeb. 106a-b.

(38) I.e., away from the Temple.

(39) Ex. XII, 15, 19 K; XIII, 3.

(40) Lev. XXIII, 27. 29 K. Cf. Yoma, 81a.

(41) Lev. XXIII, 28, 39 K ('cause to perish', 'destroy').

(42) Ex. XXX, 32-33 K.

(43) Ibid. 37-38 K.

(44) V. p. 91, n. 18.

(45) Any animal that died of itself from disease or exhaustion, carrion (Lev. XI, 39; XVII, 15; XXII, 8) Deut. XIV, 21 N. Traditionally, any beast or fowl not killed in accordance with the Jewish laws of shechitah, is nebelah.

(46) Lit., 'torn', mortally lacerated; it also signifies afflicted with an organic disease. Ex. XXII, 30 N; Lev. XVII, 15. Cf. also Ezek. IV, 14.

(47) All animals, fowl or fish Scripturally forbidden as food are termed 'abominate' as contaminating the very soul of the eater. V. Lev. XI, 4-8 (animals); 10-13 (fishes); 13-20 (fowl); 29ff(reptiles) and generally 41ff. Deut. XIV, 7-21, N.

(48) **טְרֵמָה** Produce or fruits from which any of the 'dues' has not yet been taken, such as terumah or the 'Prime-due' (to the priest) of corn, wine and oil (Num. XVIII, 11-12) and hallah of dough or bread (ibid. XV, 19-21); 'first-tithe' (to Levite or priest); 'second-tithe' (to be eaten at Jerusalem) and poor-tithe'.

(49) 'First-tithe' was to be given to the Levite, who again had to give 'Prime-due' of it to the priest, which was also called 'tithe-of-the-tithe', and was strictly forbidden to the Levite, Num. XVIII, 26-32, BD.

(50) 'Second-tithe' had to be separated and designated as such and being holy due had to be consumed by the owner at Jerusalem. It could not be sold or bartered, but could be redeemed by the owner (outside Jerusalem) at the market price enhanced by a fifth of its value with good silver coin. Deut. XIV, 22-29; Lev. XXVII, 16, 19. Cf. M. Sh. I, 1; IV, 2, 7.

(51) Anything donated to the Sanctuary fell under a lien and its enjoyment or use by the owner was a 'trespass' which required atonement. It was, however, redeemable at its value enhanced by a fifth. Lev. V, 15-16; XXVII, 9ff. (16, 19, 30-31).

(52) V. supra n. 6.

(53) To a (judicial) lashing.

(54) The traditional requisite quantity for constituting eating (technically).

(55) As a complete organism or 'creature'.

(56) If the offenders had been warned by witnesses before the offence; also in respect of the penalty of flogging.

Talmud - Mas. Makkoth 13b

are alike subject to the sanction of 'forty lashes'; these are the words of R. Ishmael.¹ R. Akiba says that only those who are liable to kareth are subject to the sanction of 'forty lashes', because, if the offenders should betake themselves to repentance [before God], the Heavenly Tribunal would grant them remission;² whereas those who have become liable to death by sentence of the [human] Court

are not subject to the punishment of 'forty lashes' because, [even] if they should do penance, the Earthly Tribunal would not grant them remission.³ R. Isaac says: Seeing that Holy Writ had [already] comprehensively declared all the offenders [in unlawful relations to be] liable to kareth,⁴ what object was there in reiterating that penalty [solely] in the case of [the brother with] his sister?⁵ To show that kareth is their penalty, not a flogging.⁶

What is R. Ishmael's reason? — It is written: If thou wilt not observe to do all the words of this law . . . and it is further written, then the Lord will make thy strokes pronounced.⁷ I should not have known what is [really] meant by this 'pronouncement' but when it states elsewhere: [If the wicked man deserve to be beaten] the judge shall cause him to lie down and to be beaten [before his face according to the measure of his misdeed by number . . . forty stripes]⁸ then I say that the expression, this 'pronouncement' has some bearing on the [judicial] flogging; and that passage is introduced by, if thou wilt not observe to do all the words of this law.⁹ But if so, why not impose a [judicial] flogging also for [the neglect of] a positive precept?¹⁰ — It says, if thou wilt not observe to do, and this is the sense given by R. Abin as reporting R. Elai; for R. Abin reported R. Elai to have said that wherever the expression 'observe',¹¹ 'lest',¹² or 'do not'¹³ occur [in Holy Writ], it is an indication of a prohibited action.¹⁴

Then why not [give a flogging] for the contravention of a prohibition attended by no action?¹⁵ — It is written, 'If thou wilt not observe to do.' [Then again, why not give a flogging] also for [offending against] a prohibition which can be remedied by a [subsequent] action?¹⁶ — [An act entailing a flogging] must conform with the prohibition of 'Muzzling'.¹⁷

And what is R. Akiba's reason?¹⁸ — [It says,] 'according to the measure of his misdeed'¹⁹ [which means that] you make him liable to punishment for one misdeed, but you cannot hold him liable [in two ways as] for two misdeeds.²⁰ And R. Ishmael?²¹ — This objection applies only to such [diverse punishments] as a death-sentence and pecuniary compensation, or a flogging and pecuniary compensation; but death and a flogging [are cognate] as [flogging] is but a protracted death.²² But why should not R. Akiba, if [he] so [interprets the wording], exclude [from a flogging] also even those liable in kareth?²³ And if you argue: Suppose the offenders should betake themselves to repentance [before God], then [I retort], Now, after all, they have not yet done so?²⁴ — Said R. Abbahu: The Torah distinctly includes those who have incurred kareth among those who may receive a flogging; for we derive 'before the eyes'²⁵ from 'before thine eyes'.²⁶ To this R. Abba b. Memel demurred strongly: If so, why not include as well those liable to death by sentence of the Court among those who may receive a flogging, by deriving 'from the eyes'²⁷ from 'before thine eyes'?²⁶ — It is admissible to interpret 'before the eyes'²⁵ in the light of 'before thine eyes',²⁶ but hardly to interpret 'from the eyes' in the light of 'before thine eyes'. But what matters [such a slight variation in form]? Was it not taught in the school of R. Ishmael that the [variant expressions] and the priest shall come again,²⁸ and, and he shall go in [and see],²⁹ have the same import there [for the purpose of deduction]?³⁰ Nay, furthermore, one ought to be able to interpret, 'from the eyes of'²⁷ in the light of, 'before the eyes of their people',²⁵ after having already been allowed to interpret, 'before the eyes',²⁵ in the light of, 'before thine eyes'?²⁶ The explanation that R. Samuel son of R. Isaac [later] personally received from him³¹ on [the difficulty arising from R. Akiba's interpretation of] the text 'according to the measure of his misdeed' as meaning 'that you make him liable to punishment for one misdeed, but you cannot hold him liable [in two ways as] for two misdeeds', was that the verse refers only to penalties that are entrusted to Beth din.³²

Raba said:³³ Where the forewarning [to the would-be offender] was in respect of a death penalty, opinion would be unanimous that the offender should not be both flogged, and put to death.³⁴ The difference, however, arises where the forewarning was only in respect of a flogging. [In that case] R. Ishmael³⁵ holds that 'a prohibition which [has been stated to] serve as a forewarning to a capital sentence'³⁶ is [sufficient] warrant for the infliction of a flogging; while R. Akiba³⁷ holds that 'a

prohibition which [has been stated to] serve as a forewarning to a capital sentence' is no warrant for a flogging.³⁸ But if so then even those liable to kareth should also be excluded [by him from the liability to flogging], since the prohibition [in regard to such transgressions has in each case been stated to] serve as a forewarning to kareth? — Said R. Mordecai to R. Ashi: Thus said Abimi of Agrunia³⁹ in the name of Raba, that [would-be] offenders in a case of kareth do not require forewarning; the proof is that kareth is imposed for neglecting the rite of the Paschal lamb⁴⁰ and the rite of circumcision,⁴¹ although there is no [other] warning [in Holy Writ].⁴²

Maybe the forewarning is [inscribed in the Torah in case of kareth] for the purpose of a sacrifice,⁴³ as [might be proved from the fact that] the neglect of the Paschal lamb or circumcision, for which no forewarning is inscribed in the Torah, does not entail an atoning sacrifice? — [No,] this is not a correct reason [for the absence of sacrificial-atonement] in those two instances, but [there is another reason altogether]. It is because we find the sin of idolatry set in the balance against the entire [body of commandments in the] Torah,⁴⁴ and [from this we argue]: Just as the precept relating to idolatry is of the type 'Sit still and don't do it,' so any precept which is of the type 'Sit still and don't do it' [entails a sin-offering for its unintentional transgression], and we exclude these which are of the type 'Get up and do it'.⁴⁵

Rabina said: After all [the various explanations offered] we must come back

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- (1) [It is assumed at present that the warning was both in respect of lashes as well as of a death penalty or kareth.]
 - (2) As the earthly Tribunal could not allow a serious offence to go unnoticed, the flogging is the least they can impose, leaving the rest between Heaven and the offender's conscience.
 - (3) And there would thus be inflicted two penalties — flogging and execution — for one offence. V. discussion later.
 - (4) Lev. XVIII, 29. For whosoever shall do any of these abominations (mentioned in detail in verses 6-23), even the souls that do them shall be cut off from among their people.
 - (5) Lev. XX, 17, imposing only BK and not death penalty as in the other instances.
 - (6) The end of the quotation. R. Isaac disagrees with both preceding views. The case of 'brother and sister' — he contends — shows clearly that each offence has its appropriate punishment (B C D K or Execution by Court) as indicated in detail in the parallel passage. Lev. XX. Flogging, in his view, is not warranted by the written law where another penalty is definitely prescribed.
 - (7) Deut. XXVIII, 58-59. 'Will make pronounced' has here a double import, (a) to make striking, extraordinary, surprising, and (b) pronounce, speak out clearly. Cf. Lev. XXVII, 2 and Num. VI, 2.
 - (8) Deut. XXV, 2-3. The strokes (lashes) had to be clearly counted out aloud 'pronounced' before each stroke fell, by one of the judges present at the flogging. Cf. infra 22b.
 - (9) I.e., a flogging is made incidental to any and every breach of the Written Law.
 - (10) E.g., for neglecting the rite of circumcision (Gen. XVII, 10ff. 14 K), or for neglecting to offer the Paschal lamb (Num. IX, 13 KB).
 - (11) השמר, be mindful, beware. Cf. Ex. XIX, 12 and Nahmanides on Ex. XX, 8.
 - (12) פן Cf. Ex. XIX, 21.
 - (13) לא a parallel word to לא; cf. Ex. XII, 9.
 - (14) 'Don't do it!' — לא תעשה in contrast to 'Do it!' - עשה, a positive command.
 - (15) V. supra p. 17, n. 3.
 - (16) V. supra p. 16, n. 9.
 - (17) Deut. XXV, 4, which is immediately subjoined to the ordinance of the flogging and is taken as the illustration, as a type of offence, namely as one involving action, and which cannot be remedied by a subsequent action.
 - (18) For excluding those liable to a death-penalty by human tribunal from a judicial flogging.
 - (19) With reference to flogging. Deut. XXV, 2.
 - (20) I.e., death and lashes. V. supra p. 16.
 - (21) What is his answer to this?
 - (22) Lit., 'a prolonged death.'
 - (23) [Seeing that there too two penalties are involved — kareth and lashes.]

- (24) Who can judge another's conscience, whether the repentance was sincere and acceptable to Heaven or not? [By flogging them they may thus have inflicted a twofold penalty!]
- (25) With reference to kareth. Lev. XX, 17, KB for incest.
- (26) Deut. XXV, 3, with reference to flogging. Thus equating the two passages by a Gezerah Shawah.
- (27) Num. XV, 24.
- (28) Lev. XIV, 39, when a house affected with signs of leprosy was under observation by the priest at intervals of seven days.
- (29) Ibid. 44.
- (30) That the treatment prescribed in the former instance (v. 39) be fully repeated in the second instance (v. 44).
- (31) From R. Abbahu or R. Abba b. Memel.
- (32) [As we have no cognizance as to the punishment or remission by the Celestial Tribunal. So that those liable to kareth, if warned in respect of lashes, are flogged.]
- (33) [Raba rejects the assumption on which the discussion was hitherto based, v. p. 93, n. 2.]
- (34) As the major (capital) penalty already covers the minor.
- (35) Who on textual grounds considers all offenders, even those liable to a death penalty, subject to flogging.
- (36) [It is a recognised principle that no transgression carries with it a penalty unless the relevant prohibition, 'thou shalt not', is explicitly stated in the Bible., v. p. 18, n. 5.]
- (37) Who excludes from a flogging all those liable to a capital penalty.
- (38) [Where the warning of the witnesses was only in respect of lashes.]
- (39) Or Hagronia, near Nehardea. Cf. Sot. 46b.
- (40) Num. IX. 13.
- (41) Gen. XVII, 13-14.
- (42) [Hence any explicit prohibition stated in the Law in cases of kareth is designed to serve as a forewarning to the penalty of flogging.]
- (43) [I.e., that the offender is to bring a sacrifice as atonement, but not in order to make him liable to flogging.]
- (44) Num. XV, 22-23: And when ye shall err and not observe all these commandments that the Lord hath commanded you by the hand of Moses, from the day that the Lord gave commandment, and onward throughout your generations . . . [This verse is explained in Hor. 8a, as referring to idolatry.]
- (45) The rites of the Paschal lamb and circumcision are Positive Commands, of the type, Get up and do it! [This then is the reason why no sin-offering is entailed by neglect of these precepts, and not because there is no explicit prohibition stated in regard to them, as the obligation of bringing an offering for a transgression is not determined by a forewarning being stated in the Bible.]

Talmud - Mas. Makkoth 14a

to the original statement [of R. Akiba], namely, 'that if those [liable to kareth] should resort to repentance the Heavenly Tribunal would grant them remission.' And in regard to the objection, 'Now, after all, they have not yet done so [i.e. repented]?'¹ [I retort.] The penalty of kareth is not [yet] decided² [either].

R. Isaac says:³ Seeing that Holy Writ had [already] comprehensively declared all the offenders in unlawful relations to be liable to kareth, what object was there in reiterating that penalty in the instance of [the brother with] his sister? To show that kareth is their penalty, not a flogging. And the Rabbis,⁴ how do they explain [the reiteration of the penalty of] kareth in the case of [the brother with] his sister? — It is to indicate the principle of Distributive Incidence, as instanced in R. Johanan's statement; for R. Johanan said: The Mishnah⁵ means to teach us that should one happen to commit all these offences in one spell of unawareness he would [on discovering his error] become liable [to a sin-offering]⁶ on each act, separately. And R. Isaac, whence does he obtain that distributive principle? — He derives it from [the text]: And thou shalt not approach unto a woman⁷ [one being] in the separation of her uncleanness,⁸ [which he takes] to indicate liability for any and every woman approached [while being in that state]. And why do not the Rabbis derive the principle from this [text]? — They do, indeed so. But [if so], what would be the purpose of the reiteration of

kareth in the instance of [the brother with] his sister? — To indicate separate liability for the several offences⁹ — with his sister,¹⁰ his father's sister¹¹ and his mother's sister.¹²

[But] is not that obvious? Are they not diverse persons and of different denominations? — No; [I mean] a separate liability for [an unlawful association with] his sister, who is also his father's sister and his mother's sister.¹³ And [if you say], how is this possible? — It is possible in the case of a sinner the son of a sinner.¹⁴ And this last point, whence does R. Isaac derive it? — He obtains it by an [argument] a fortiori,¹⁵ as taught in the following: R. Akiba said: I [once] asked Rabban Gamaliel and R. Joshua at the fair held at Emmaus¹⁶ whether they had gone to buy an animal for the [forthcoming marriage] feast of Rabban Gamaliel's son: If one came [carnally] to his sister who is his father's sister and his mother's sister, what is the extent of his offence? Would he be liable once only for the several categories of the offence, or on each count severally? — Said they to me, This problem we have not heard, but we have heard the following: If one had come [carnally] to five [different] women during their term of niddah,¹⁷ in one spell of unawareness, [on discovering his error] he is liable [a sin-offering] for each one severally. And the point [you raise,] it seems, may be solved by an [argument] a fortiori [thus]: What say we in the problem of the niddah? That although each error is [a sin] of the same denomination, he is nevertheless liable [a sin-offering] on each act, severally; should he not all the more be held liable on each count where the sinful act falls under three different denominations? And the Rabbis [what say they]? — The [argument] a fortiori is not sound, for how can you argue from the niddah where several distinct persons are involved [to this where there is only one person]?¹⁸ And the other [R. Isaac] likewise accepts the refutation of that a fortiori; but he derives the principle of Distributive Incidence from the [redundant] expression of 'his sister' in the latter part of the same verse.¹⁹ And the other [Rabbis], what [say they] is the purport of repeating the expression — 'his sister' in the latter part of that verse? — They say, It lays down specifically the penalty of [a brother with any sister], his sister who is both his father's and mother's daughter, to indicate the [legal principle] that penalties inferred by argument are not sanctioned.²⁰

And the other [R. Isaac, whence does he derive this²¹ legal principle]? — If I may, I would say that he derives the penalty from the prohibition.²² Or, if I may, I should say that he derives it

(1) V. supra, p. 95, n. 5.

(2) It may never be inflicted, as the sinner may repent in his last hour (cf. Ezek. XXXIII, 11ff and the last Mishnah, infra 23a); the flogging therefore is the sole penalty to be imposed by the human authority.

(3) This is the third view cited in the Baraitha (at the beginning of the discussion on the Mishnah).

(4) R. Akiba and R. Ishmael.

(5) [In Ker. 2a in enumerating and giving the number of the offences liable to kareth.]

(6) The statutory offering for a sin punishable by kareth.

(7) A euphemism for intimacy.

(8) Lev. XVIII, 19 K. The text should have 'And thou shalt not approach a niddah (menstruate). The superfluous word 'woman' thus denotes every individual woman.

(9) [Committed in one spell of unawareness.]

(10) Ibid. XVIII, 9, 11, 29 K; XX, 17 KB.

(11) Ibid. XVIII, 12, 29 K; XX, 19 B.

(12) Ibid. XVIII, 13, 29 K; XX, 19B.

(13) [There being a separate prohibition stated in respect of each one.]

(14) Rake I came (carnally) to his Mother who bore him two daughters, A and B. Rake I then came to A, who bore him a son Rake II, and Rake II then came to B. B was thus to Rake II his own sister, his father's sister, and his mother's sister.

(15) I.e., not directly from a Scriptural source.

(16) A military colony not far from Jerusalem, which Vespasian had given to 800 of his war veterans (Josephus, Wars, VII, 6, 6). It is identified with Mozah, mentioned in Josh. XVIII, 26, and Suk. 45a; the Jewish colony Mozah (founded 1894) preserves the name anew, and the Arabic name of Kulonieh retains the old name. V. J. Klausner, **המטוריה ישראלית** IV, 236. The puzzling term **איטליז** may be here the Greek word telos, 'a military station',

or company. [For a full discussion of the term v. Cohn, J., *Festschrift d. jud. theolog. Seminars*, Breslau, 1929, II, pp. 11 ff.]

(17) Even his own wives, during menses, v. Glos.

(18) Whereas in the complex sister-problem there is involved in one act but one sole (physical) person, albeit of treble designation.

(19) He hath uncovered the nakedness of his sister, (meaning a sister of any and every category). Lev. XX, 17.

(20) Cf. supra 5b.

(21) Having used that text (Lev. XX, 17) for another deduction, namely, as showing that the prescribed penalty in kareth-offences is kareth and not flogging, he cannot use the same again to teach that he is liable for his sister who is both his father's and mother's daughter.

(22) Ibid. XVII, 9 and 11. It is from verse 11 that he derives the principle, from the repetition of the words, she is his sister — i.e. be she half-sister or even sister-german. Just as in the verse laying down the prohibition all kinds of sisters are included, so likewise in regard to the penalty no distinction is made.

Talmud - Mas. Makkoth 14b

from the [redundant] expression of 'his sister' in the former part of the text.¹ And the other [Rabbis]?² — They require it to teach the principle of distributive incidence in the case of one who both compounds [the prescribed ingredients for the holy anointing-oil] and anoints therewith.³ And the other [R. Isaac]?⁴ — He shares the view of R. Eleazar quoting R. Hoshaia; for R. Eleazar in the name of R. Hoshaia said that wherever you find two prohibitions with the sanction of kareth mentioned only once, each lapse occasions a sin-offering on its own account.⁵ Or, if you wish, I should say that R. Isaac does not adopt the view of R. Eleazar⁶ as citing R. Hoshaia, but he derives [the principle of distributive incidence]⁶ from the following text: And if a man shall lie with a woman [one] having her sickness.⁷ And the other [Rabbis]?⁸ — That text is required for another point, as reported by R. Johanan; for R. Johanan said in the name of R. Simeon b. Yohai: How can it be shown that a woman is not [ritually] 'unclean' [as parturient]⁹ until the flux emerges through the normal passage? From the wording of the text: And if a man . . . uncovered the fountain of her flux⁷ which teaches that a woman is not 'unclean' [as parturient] until it emerges through its normal passage.

ONE WHO WHILE UNCLEAN ATE HOLY MEAT OR ENTERED THE SANCTUARY [incurs kareth and consequently a flogging]. This is quite in order where one while [ritually] unclean entered the sanctuary, because both the penalty and the [requisite] forewarning are written [explicitly]. 'The penalty,' — as it is written: he hath defiled the tabernacle of the Lord [that soul shall be cut off from Israel];¹⁰ 'the forewarning,' — as it is written: That they [the unclean] defile not their [holy part of the] camp.¹¹ But as regards the unclean who ate holy meat, the penalty, I grant, is written: But the soul that eateth of the flesh of the sacrifice of peace offerings that pertain unto the Lord, having his uncleanness on him, that soul shall be cut off from his people.¹² But where is found the [requisite] forewarning for this? — Resh Lakish said [that it is found in the text:] She shall touch no hallowed thing.¹³ R. Johanan said that Bardela taught it [as derived] from the recurring expression of 'his uncleanness' [in two relevant passages].¹⁴ Here it is written: 'having his uncleanness on him shall be cut off,¹⁵ and in the other [context] it is written: He shall be unclean:¹⁶ his uncleanness is yet upon him. Just as in this latter passage [there is given] the warning and the penalty [if he does], so in the former [passage]¹⁷ we associate with it a warning and penalty. Now, we understand why Resh Lakish does not give the same explanation as R. Johanan, namely, that he had not received it on tradition from his master.¹⁸ But why should R. Johanan not accept the explanation of Resh Lakish? — He will tell you that the text, [She shall touch no hallowed thing]¹³ serves as admonition in respect of terumah.¹⁹ And whence does Resh Lakish derive the [requisite] admonition in regard to terumah? — He derives it from the wording: What man [person] soever of the seed of Aaron²⁰ is a leper or hath an issue [he shall not eat of the holy things until he be clean].²¹ Now, what [holy] things are permitted [as food] to the seed of Aaron alike? You are bound to say, terumah. And the

other [R. Johanan]? — That passage²¹ refers to ‘eating’ of [terumah in uncleanness] while this text²² forbids touching terumah. But, how can Resh Lakish take the text, She shall touch no hallowed thing for that [stated] purpose.²³ Does he not require it to serve as forewarning against [the unclean person] ‘touching’ holy things as was stated: If a [ritually] unclean person touches hallowed [meat], Resh Lakish says: he incurs a flogging; whereas R. Johanan says: he does not incur a flogging. ‘Resh Lakish says he incurs a flogging.’ — as it is written: She shall touch no hallowed thing; ‘R. Johanan says he incurs no flogging,’ as that text is the forewarning against terumah!²⁴ — Resh Lakish can answer that the unclean who touches hallowed meat [is liable to a flogging], because the All-Merciful has expressed the prohibition of eating [hallowed meat] in terms of touching; while the warning against the eating thereof is deduced from the fact that ‘hallowed thing’ and the ‘sanctuary’ are placed in juxtaposition.²⁵ But yet [again, I ask,] did Resh Lakish base that view on this text? Does he not require it in reference to the question of one who eats holy flesh prior to the sprinkling of the blood [of the sacrifice] on the altar? For it has been stated: If an unclean person ate holy flesh prior to the sprinkling of the blood on the altar, Resh Lakish says he incurs a flogging; R. Johanan says he incurs not a flogging. ‘Resh Lakish says he incurs a flogging.’ — because of the warning, she shall touch²⁶ no holy thing, it being immaterial whether he ate of it before the sprinkling or after the sprinkling. ‘R. Johanan says he incurs no flogging,’ — he [R. Johanan] adheres to his own [line of] interpretation [after Bardela, namely linking as analogous] the two passages having [the expression of] ‘his uncleanness’ in common, and, [argues R. Johanan, the expression] ‘uncleanness’²⁷ is written in respect of the passage [sacrificial flesh] after the sprinkling!²⁸ — That [Resh Lakish] derives from [the comprehensive negative], [She shall touch] no hallowed thing.²⁹

It is taught in accordance with [the view of] Resh Lakish: ‘She shall touch no hallowed thing’ is the admonition to one [while ritually unclean] not to eat [of hallowed flesh]. You say it is an admonition against eating? Or may it perhaps but be an admonition against touching only? The text reads: She shall touch no hallowed thing nor come into the sanctuary, thus equating [by juxtaposition] ‘hallowed thing’ with [entering] the sanctuary. Now that which is [incurred by entering] the sanctuary [while unclean] namely — the loss of a soul [kareth],³⁰ so likewise all [the prohibitions in regard to ‘hallowed things’] involve as penalty the loss of a soul. But [if you take it literally, as an admonition against] touching, is there any instance where [mere] touching [holy meat] entails the loss of a soul?³¹ It cannot therefore mean but [contact by] eating.³²

[OR WHILE UNCLEAN ENTERED THE SANCTUARY.] Rabbah b. Bar Hanah reporting R. Johanan said: The contravention of any negative command which is preceded by a positive command, entails a flogging.³³

(1) Lev. XX, 17. The verse could merely have read: And if a man shall take his father's daughter or his mother's daughter, omitting his sister. R. Isaac thus derives three points from this one verse: (a) that kareth without a flogging is the prescribed penalty; (b) Distributive incidence of guilt, which he derives from the added description his sister, i.e., sister of any category (v. p. 99 n. 4); and also (c) liability for a sister who is both the father's and mother's daughter, this being derived from the redundant ‘his sister’ in the first part of the verse.

(2) How do they expound this redundant expression of his sister, in the first part of the verse?

(3) Ex. XXX, 32-33. Verse 32 forbids distinctly, either anointing (with holy oil), or compounding (the prescribed ingredients for it); verse 33 states the penalty of kareth for both jointly. Does it mean kareth (or a sin offering, if done in error) for doing both, or severally, for either act? As there is nothing here to show whether compounding and anointing (in one occasion) are (or are not) to be taken as two offences, the principle of distributive guilt deduced above from the redundant expression of his sister (in Lev. XX, 17) is made to apply here. [This is deduced on the principle of **אם אינו ענין**, if an expression has no significance for the context in which it occurs it is employed for the exposition of another suitable passage.]

(4) Whence does he derive the principle of distributive incidence in the case first mentioned?

(5) And so likewise here, since there is a distinct prohibition both for compounding and anointing with the holy oil the penalty of kareth is attached to each separately.

- (6) In cases outside those that come under the category of forbidden relationships.
- (7) Lev. XX, 18, where נִדָּח = niddah is used. Cf. p. 98, n. 5. And since it is superfluous here, the principle as applying to a menstruous woman having been already derived from Lev. XVIII, 19, as supra, it is employed for general purposes.
- (8) How do they expound this latter verse seeing that they derived this general principle from 'his sister'.
- (9) Ibid. XII, 2-7. She would not be ritually 'unclean' if parturition was effected by a Caesarean operation.
- (10) With reference to the unclean who enters the sanctuary. Num. XIX, 13 and 20, where 'sanctuary' is used instead of 'tabernacle', on the significance of which see Shebu. 16b.
- (11) Num. V, 3.
- (12) Lev. VII, 20.
- (13) Ibid. XII, 4, referring to a woman after childbirth who after a certain period has to purify herself and bring certain offerings.
- (14) By the method of Gezerah shawah, v. Glos.
- (15) V. p. 101, n. 8.
- (16) For seven days, if he had touched the dead, and may not enter the sanctuary so long as he has not been ritually purified with the sprinkling water and ashes as prescribed in Num. XIX, 11-13. If he enters unpurified he shall be cut off from Israel. Ibid. 13.
- (17) Lev. VII, 20 (cited above), where only the penalty of being cut off for eating the flesh of the sacrifice of peace offering during uncleanness is stated but not the warning.
- (18) The rule being that the method of Gezerah shawah cannot be employed on one's own suggestion. Pes. 66a.
- (19) Cf. note on the Mishnah. Terumah was eaten by the priest and the members of his household, his wife, sons, single daughters or even childless daughter, the widow of a non-priest and his slaves; but not while ritually unclean, Num. XVIII, 11-13. and cf. Lev. XXII, 11-13. Sacrificial flesh, however, (with some very few exceptions) was restricted only to the male priests, within the Temple area. Cf. Num. VIII, 9.
- (20) 'Seed of Aaron' means both sons and daughters.
- (21) Lev. XXII, 4-6 in reference to eating terumah. Verses 3-6 refer to officiant priests at making sacrifice.
- (22) Lev. XII, 4.
- (23) To act as forewarning in respect of eating holy things in an unclean state.
- (24) Thus we see that Resh Lakish requires the verse, 'she shall touch no holy thing, with reference to touching and not as warning against eating.
- (25) The Talmud text here is in slight disorder (v. D.S.); but the meaning is clear. The twofold injunction, She shall touch no hallowed thing nor come into the sanctuary, shows clearly how both are considered as equally grave offences. This point is more fully developed later.
- (26) Taking 'touch' eat, as shown lower down in the discussion.
- (27) With reference to the eating of sacrificial flesh in an unclean state, v. Lev. VII, 20.
- (28) Lev. VII, 20-21. Cf. Deut. XII, 27, where from the wording it is clear that the flesh may be eaten only after the sprinkling on the altar, v. Men. 25a. [Thus we see that Resh Lakish requires the verse, she shall touch no hallowed thing, to extend the penalty of flogging to the eating in an unclean state prior to the sprinkling.]
- (29) בְּכֹל קֹדֶשׁ לֹא תִגַּע, i.e., not any kind whatsoever. [This extends the prohibition and penalty to the eating of sacrificial flesh prior to the sprinkling, while the text itself is employed by Resh Lakish to serve as a warning in respect of eating whether before or after the sprinkling.]
- (30) V. Glos.
- (31) Lev. VII, 21 shows clearly that only eating after touching is punishable by kareth, ibid. XXII, 6, 16, and Hag. II, 11-13. 'Said R. Eleazar, is there any case where by mere touching one incurs kareth?' Sifra on Lev. VII, 20, and Zeb. 45b.
- (32) Which supports Resh Lakish.
- (33) [Even on the view that a negative command that is attended by a positive command with remedial effect does not carry a flogging (v. supra 4b), that is, provided the positive command can be fulfilled only after the contravention of the negative command, as in the case of nothar discussed loc. cit. But where the positive command could have been fulfilled before the contravention of the negative command, as in the illustrations that follow, there is no exemption from the penalty of flogging.]

Talmud - Mas. Makkoth 15a

When he¹ was [subsequently] asked whether he had said that, he denied it.² Said Rabbah:³ God! he did say it; and furthermore, this is found in Scripture and we learn it [in the Mishnah, too]. ‘This is written : [Command the children of Israel] that they put out of the camp⁴ . . . and that they defile not their camp⁵ [in the midst whereof I dwell].⁶ Again, [bearing on this] we learnt: WHO WHILE UNCLEAN ENTERED THE SANCTUARY INCURS A FLOGGING.⁷ Why then did he⁸ retract [his statement]? — Because he found it difficult [to explain the case of] the Ravisher,⁹ as taught [in the following]: A Ravisher who put away his wife [by divorce], if he be a [lay] Israelite, he can take her back without receiving a flogging,¹⁰ but if he be a priest¹¹ he receives a flogging but does not take her back. Now, ‘if he be a [lay] Israelite he takes her back without receiving a flogging’, why,¹² seeing that this is an instance where a negative command is preceded by a positive command — why should he receive no flogging?¹³ — ‘Ulla said’¹⁴ [that the words], She shall be his wife¹⁵ could have been left out in the case of the Ravisher and have been inferred from the [somewhat analogous] case of the Defaming husband,¹⁶ thus: Since in the case of the Defaming husband, although he did no [tangible] act,¹⁷ the All-Merciful ordained that ‘she shall be his wife,’¹⁸ is not this injunction even more appropriate in the case of the Ravisher?¹⁹ What then, is the purport of those words²⁰ [in the case of the Ravisher]? [Consequently] if they are not [strictly] needed at the first stage,²¹ make use of them for the latter stage, to indicate that if the Ravisher did put her away [unlawfully], he must take her back.²²

But yet, no inference can be drawn from the case of the Defaming husband to that of the Ravisher because there is a refutation, namely, What is the [penalty of the] Defaming husband? He is flogged as well as amerced [one hundred shekels], [which is not the case with the Ravisher]! — Rather therefore argue thus: The injunction ‘she shall be his wife’ might have been omitted in the case of the Defaming husband, and inferred from the case of the Ravisher, thus: What is the [penalty of the] Ravisher? That although he is not flogged in addition to the amercement [of fifty shekels] the All-Merciful [nevertheless] ordained that, ‘she shall be his wife’;²³ how much more then should this be so in the case of the Defaming husband.²⁴ Why then were these words inserted? If they are unnecessary in the case of the Defaming husband,²⁵ utilise them in connection with the Ravisher; [and again], if they are not necessary for the first stage,²⁶ utilise them in connection with the latter stage [after the Ravisher had put her away].²⁷

[Yet again, I say] the case of the Defaming husband could not be inferred from that of the Ravisher, because there is a counter argument, namely, that the Ravisher has done a [tangible] act,²⁸ [which cannot be said of the Defaming husband]!²⁹ — Let us then rather [argue thus]: [The words] ‘she shall be his wife’ might have been omitted in the case of the Defaming husband, as she is his wife [already]. Why then, was it inserted there? If it is not essential in the case of the Defaming husband, transfer its application to that of the Ravisher;(*) and if it be not applicable there at first,³⁰ then it is to be applied to the latter stage [after he unlawfully put her away].³¹

But why not argue thus: As this order is not essential at the first stage of the Defaming husband,³² let it be referred to himself in the latter stage, so that he [the Defaming husband] receives [therefore] no flogging?³³ — Indeed, you might argue thus, and then apply the same conclusion to the Ravisher³¹ [You say, ‘Indeed’? Let us see,] by what [process of argument] is this derived? Whether by an a fortiori³⁴ or by analogy;³⁵ there is the counter argument already mentioned; [viz.:] What is the case of the Defaming husband? He has done no [tangible] action, which is not the case with³⁶ the Ravisher!

But [no], said Raba;³⁷ [the explanation must be sought in] the expression ‘all his days,’³⁸ , [which means that] ‘all his days’ he has the Scriptural demand upon him to ‘Get up and take her back.’³⁹ Likewise, when Rabin came [from Palestine], he reported R. Johanan to have said that during ‘all his days’ there is the demand upon him to get up and take her back. Said R. Papa to Raba: But [in fact]

the prohibition [contained in this combination of a negative command preceded by a positive] does not conform to the [standard] negative [command] against Muzzling [the ox]!⁴⁰ — Replied Raba: Why should the additional [charge of a] Do!⁴¹ by the All-Merciful, minimize [the force of the prohibition]?⁴² [Said R. Papa:] If that is your view, then why not say likewise, in the case of a prohibition translated into [remedial] action,⁴³ why should the additional charge of a Do! by the All-Merciful minimize [the force of] the prohibition? — Replied Raba: There, the positive command comes to remove⁴⁴ [the effects of the contravention of] the prohibition.⁴⁵

That [explanation]⁴⁶ harmonizes with the view of those who say that [the flogging depends on] whether the transgressor has nullified,⁴⁷ or not nullified [his chance of making redress]; but according to those who say that [the flogging depends on] whether he had carried out, or not carried out⁴⁸ [the act of redress], what explanation does it afford?⁴⁹

(1) Rabbah b. Bar Hanah.

(2) As he retracted from the ruling he reported in the name of his teacher R. Johanan.

(3) Var. lec.: Raba.

(4) The positive (part of the) command, here.

(5) The negative (part of the) command, here, enforcing the positive ordinance above. The ‘camp’ is here defined by ‘in the midst whereof I dwell’ and means the Tabernacle (cf. Ex. XXV, 8, and XXIX, 42-46). which was situated in the centre, there having been three camps: the priests’ in the centre, then the Levites’ and around these the Israelitish camp. V. Num. I, 50 ff; II, 17.

(6) Num. V, 2-3.

(7) [Although this is a case where a positive command (v. n. 1) attends a negative command (v. n. 2) there is nevertheless a flogging, because the former command, to put out of the camp, could be carried out even before the contravention of the negative prohibition, that they defile not the camp, by the unclean man who entered the sanctuary, i.e., by preventing his entry therein — which supports the principle formulated by R. Johanan as reported by Rabbah b. Bar Hanah.]

(8) Rabbah b. Bar Hanah.

(9) Deut. XXII, 29. A similar case of a negative preceding a positive command.

(10) Having made amends.

(11) As he is forbidden to marry a divorcee. Lev. XXI, 7, 14.

(12) Assuming that the principle enunciated by R. Johanan stands.

(13) For having unlawfully put her away. Holy Writ ordains: And she shall be his wife because he humbled her; he may not put her away all his days. Deut. XXII, 29. And it was this difficulty that constrained Rabbah b. Bar Hanah to retract.

(14) ‘Ulla attempts to explain this Baraitha on the view of R. Johanan.

(15) Deut. XXII, 29.

(16) Deut. XXII, 13-19, a similar case.

(17) Defamation is not considered a bodily injury. v. p. 17, n. 5.

(18) Deut. XXII, 19.

(19) Who committed a bodily assault.

(20) The words, ‘she shall be his wife’.

(21) As he is expected to marry her, and generally, the ravisher does.

(22) Therefore, this is really a case of the type of a prohibition translated into (remedial) action, for which there is no flogging.

(23) Deut. XXII, 18-19. An exceptionally severe penalty, whereas the Ravisher is not flogged at all and only pays half the amount! The case can hardly be taken as analogous. [Consequently, the words ‘she shall be his wife’ may still refer to the first stage, affording thus no indication that by remarrying her after the divorce he remedies the offence he committed by putting her away.]

(24) Who is much more severely punished, being flogged and amerced a hundred shekels of silver.

(25) As it can be deduced from Ravisher.

(26) As he is expected to marry her.

(27) Therefore, this is really a case of the type of a prohibition translated into (remedial) action, for which there is no

flogging. V. supra p. 105. n. 11.

(28) A bodily injury, unlike the Defamer.

(29) Cf. p. 106, n. 106 (end).

(30) V. p. 106, n. 9.

(31) V. p. 106, n. 10.

(32) As she is his wife already.

(33) [But there is still no scriptural warrant exempting a Ravisher from a flogging, unless R. Johanan's principle is rejected.]

(34) If the Defamer who was flogged (in the first instance) as well as amerced a hundred shekels can take back his wife and is not flogged for divorcing his wife if he remarries her, should not the Ravisher, who receives no flogging (in the first instance) and is amerced only half, fifty shekels be exempted from a flogging for divorcing his wife if he remarries her.

(35) **מה מצינו**

(36) V. supra p. 106 (end).

(37) As the attempted explanations so far have not been satisfactory, and the ruling of the cited Baraita, namely, that a (lay) Israelite Ravisher is not flogged if he takes back his wife (for having flouted the prohibition to put her away) is still unexplained according to R. Johanan's principle, Raba offers one.

(38) He may not put her away all his days, Deut. XXII, 29 (cf. verse 19), on the reading adopted. v. D.S.

(39) I.e., he can at all times by remarrying her remedy the offence he committed in divorcing her and for this reason he is not flogged.

(40) Deut. XXV, 4, which is taken as the typical instance of an action that involves the penalty of a flogging (ordained in verses 2-3, there): (cf. the exposition on this above, 13b) and which is not preceded by a positive command.

(41) I.e., the addition of the positive command.

(42) No longer to entail a flogging, like any ordinary prohibition, i.e., like a pure negative.

(43) E.g., Ex. XII, 'And ye shall let nothing of it (the roast meat of the Paschal lamb) remain until the morning; but that which remaineth of it until the morning ye shall burn with fire.' Cf. supra 4b.

(44) **לנתוקי** (Rashi). Nahmanides and others read **לתקוני** 'to amend'.

(45) As some sort of amends allowed by the Law for some omissions. Cf. supra 13b.

(46) Of Raba (supported by Rabin) namely, that the expression 'all his days' indicates that he can at all times remedy the offence by remarriage.

(47) Supposing he made remarriage absolutely impossible, e.g. by killing her, or getting her married (by ruse) to another man. (These instances create serious difficulties in other directions, raised later.) But, so long as he has not nullified the chance of remedying the offence, he might defer (the act of) redress to some later time.

(48) Forthwith, without delay.

(49) Because he should be flogged immediately when bidden by the court to remarry the wife and does not do so.

Talmud - Mas. Makkoth 15b

— Has not this [explanation been given] as reason for R. Johanan's view?¹ But surely it was R. Johanan [himself] who told a tanna:² If he has nullified [his chance of making redress], he is liable; and if he has not nullified it, he is exempt! Because [once] a tanna recited³ in the presence of R. Johanan: Whenever a negative precept involves the fulfilment of a positive action,⁴ then, if the offender has carried out the positive action he is exempt; if he has nullified [his chance of carrying out] the positive action he is liable. [Thereupon] R. Johanan [corrected him] saying: What did you say? 'That if he carried out the positive act he is exempt', [which implies that] if he did not carry it out he is liable [and that] 'if he has nullified [his chance of carrying out] the positive act he is liable', which implies that if he has not nullified [his chance of carrying out] the positive act he is exempt?⁵ [Not so]. Teach thus: 'If he has nullified it [he is liable], and if he has not nullified it [he is exempt].'⁶ And Resh Lakish, [on the other hand,] says that [the flogging depends on] whether he [the transgressor] has carried out, or has not carried out [the requisite act of redress]. What is the point at issue between them? — The question of a dubious warning,⁷ one Master taking the view that a dubious warning may be called [in law] a warning,⁸ while the other Master takes the view that a

dubious [warning] is not called [in law] a warning.⁹ And they follow each his point of view [in several discussions], for it has been stated: [If one said, 'I take] an oath that I shall eat this loaf to-day,' and the day passed and he ate it not, both R. Johanan and Resh Lakish concur that he is not [to be] flogged. R. Johanan says he is not flogged

(1) [It was R. Johanan's view imposing a flogging for the contravention of a negative command preceded by a positive command that gave rise to the question from a Ravisher and it was in reply to this question that Raba gave the explanation. Var. lec. reverse the reading: 'That is in order according to the view (that flogging is determined by whether) he has or has not carried out (the act of redress) but what is there to say on the view (that it depends on whether) he has or has not nullified (his chance of making redress)?' The question will accordingly refer to the last statement of Raba that the positive command comes to remove (the effects of the contravention of) the prohibition. Now this answer of Raba to R. Papa's question will be in accord with the former view, but on the latter view that although he has actually carried out the act of redress, but provided he has not cut off all chance of doing so, there is no flogging, the reason being that the prohibition does not conform to that of muzzling, the question of R. Papa remains unanswered. According to this variant preserved by R. Han., among others the statement of R. Johanan to the tanna which follows on should run: 'Teach, If he has carried it out he is liable, if he has not carried it out he is exempt.']

(2) V. Glos.

(3) A Baraitha, cf. Tosef, Mak. IV, 6.

(4) Lit., 'Rise and do', v. infra, p. 113. A combination of a negative and positive precept, v. pp. 112f.

(5) That is, showing him that such a wording involves directly contradictory conclusions. The first part yields an inference that if he carried it out immediately, he is exempt, while delay means a flogging; while the second yields the opposite conclusion, that as long as the prescribed course of redress is possible, he is exempt from a flogging.

(6) On variant, v. supra n. 1.

(7) A warning, to entail a judicial flogging, must be definite and direct to prevent an immediate breach of law; a merely pious remonstrance against some breach which may happen sometime, sooner or later, is dubious, indefinite and ineffective legally.

(8) [I.e., R. Johanan, who holds that it all depends whether or not he has nullified his chance, considers a dubious warning to be a warning, and consequently although at the time of the transgression it is not known whether he will cut off his chance of remedying the offence, he is nevertheless flogged when the circumstance arises.]

(9) [Resh Lakish holds that a dubious warning is not considered a warning and so he becomes liable to a flogging only when he is confronted by the order of the court to carry out the act of redress and refuses to do so. According to variant given p. 109. n. 1, interpret thus: R. Johanan holds that a dubious warning is considered a warning, and the transgressor can accordingly be warned at the time of the transgression, making him liable to the penalty on his failure to carry out the act of redress; whereas Resh Lakish holds that a dubious warning is considered no warning, consequently it is only when he is warned as he is about to nullify his chance of making redress that the warning is effective in making him liable to flogging.]

Talmud - Mas. Makkoth 16a

because this was [transgressing] a prohibition without [tangible] action [on his part],¹ and a prohibition [contravened] without [tangible] action does not involve a flogging. Resh Lakish [on the other hand] says he is not flogged, because the warning in this case is dubious [in character]² and a dubious warning is not [legally] regarded as a warning. And both base their views on statements of R. Judah's,³ as it is taught: And ye shall let nothing of it remain until the morning; but that which remaineth of it till the morning ye shall burn with fire.⁴ Scripture comes here providing a [positive] act to follow [in the wake of] a prohibition,⁵ thereby indicating that here no flogging is to be inflicted: these are the words of R. Judah; [etc.].⁶ Now R. Johanan argues thus: The reason [why no flogging is given here] is [only] because Scripture comes [with the direction of a positive act after the contravened prohibition]; but if Scripture had not come [and made here] this special provision, he [the offender] would have been given a flogging;⁷ this implies that a dubious warning is [legally] a warning.⁸ Resh Lakish [on the other hand] argues thus: The reason [that no flogging is given here] is because Scripture comes [with the direction of a positive act as following the contravened

prohibition]; but if Scripture had not come [and made such provision here], he would receive a flogging; this implies that a prohibition [contravened] without [tangible] action entails a flogging.⁹ But according to R. Simeon b. Lakish, surely this too also is a [good] instance of dubious warning?¹⁰ — He bases his view [on this point] on another statement of R. Judah's, as it is taught: If one [maliciously] wounded first one husband [of his mother's] and then the other husband [of hers],¹¹ or invoked a Divine imprecation,¹² first on the one and then on the other, or wounded them both simultaneously, or cursed them both simultaneously, he is liable.¹³ R. Judah says, of [he did so] to both simultaneously,¹⁴ he is liable; if to one after the other, he is not liable.¹⁵

And according to R. Johanan surely this too is a [good] instance of a prohibition [contravened] without [tangible] action?¹⁶ — On this [particular] point, his [R. Johanan's] view is in accordance with what R. Idi b. Abin stated, in the name of R. Amram who reported R. Isaac as reporting R. Johanan to have said that R. Judah, citing the name of R. Jose the Galilean, said: 'In all prohibitions of the Torah, a prohibition involving [tangible] action entails a flogging; a prohibition not involving [tangible] action, does not entail a flogging, save in the case of one who takes an oath [and does not fulfil it];¹⁷ one who commutes [one gift promised to the Sanctuary with another]¹⁸ or invokes a Divine imprecation on his fellow.'¹⁹ Then, is not one statement of R. Judah contradicting another!²⁰ — [The divergence in the statements] of R. Judah's according to R. Simeon b. Lakish [on the question of a dubious warning] may be taken as two [different] versions²¹ of R. Judah's [original] statement; again, [the divergence in R. Judah's statements] according to R. Johanan is not difficult to explain, as one may be taken as his own [R. Judah's] view and the other as that of his Master [R. Jose the Galilean].

We learnt elsewhere:²² 'If one takes the dam with the young, R. Judah says he is flogged,²³ and he does not send the dam free; but the Sages say that he lets the dam go,²⁴ and receives no flogging. This is the general principle, Whenever a negative command involves the fulfilment of a positive action²⁵ there is no flogging for contravention.' R. Johanan observed: We have only this instance and one other.²⁶ R. Eleazar asked him: Where? — When you find it [you will know], was the reply. He left him, made careful search and found [the following], as it is taught: A Ravisher who put away his wife [by divorce], if he be a [lay] Israelite, takes her back without receiving a flogging; if he be a priest, he receives flogging²⁷ but does not take her back. Now this accords well on the view that teaches [the flogging depends on] whether the transgressor had carried out,²⁸ or not carried out [the act of redress];²⁹ but what about the view that teaches that [it depends on] whether he has nullified, or not nullified [his chance of making redress]?³⁰ [True,] this [principle] applies well enough to the case of sending away the dam;³¹ but in the case of the Ravisher, how is the principle 'whether he had nullified, or had not nullified [his chance of making redress]' applicable? If [for instance], he killed his wife, he is liable to the severer penalty [of death]³² — R. Shimi of Mahuza suggested that, for instance, he accepted on her behalf a betrothal token³³ from another man. Said Rab: [Let us see:] If she had made him³⁴ her attorney, it is the woman who nullified [the chance of] redress; and if she had not made him her attorney — can he do anything of the kind? It would be futile [on his part]! — But said R. Shimi of Nehardea: [Let us say,] for instance, that he took a solemn vow publicly [that he would never again live with her]. That [suggestion] is compatible with the opinion held that a vow made publicly is not subject to [formal] rescission; but, according to the opinion that a vow made publicly is subject to [formal] rescission,³⁵ what can you then say? — That he made it dependent on the consensus of the public, as Amemar stated: The law is that a vow made in public is subject to [formal] rescission, but if made dependent on the consensus of the public, it is not subject to [formal] rescission.³⁶

And are there not other instances? (Mnemonic: Larceny, Pledge, Corner.) There is the case of Larceny, where the All-Merciful ordained, Thou shalt not oppress [withhold from] thy neighbour nor rob him,³⁷ and then [elsewhere] directs, That he shall restore that which he took by robbery!³⁸ Then again, there is the case of the Pledge, where the All-Merciful ordained, Thou shalt not go into his

house to fetch his pledge, and then [follows], Thou shalt stand without . . . thou shalt surely restore to him the pledge when the sun goeth down!³⁹ And do not these instances fit equally well [if we say that the flogging depends on] whether the transgressor has carried out, or not carried out [the act of redress], or whether he had nullified or not nullified [his chance of making redress]?⁴⁰ — [True,] but⁴¹ as [amends can be made] here by a monetary compensation [if he destroyed the pledge], he is not liable to both a flogging and compensation.⁴² To this R. Zera demurred: What if the pledge⁴³ belonged to a proselyte,⁴⁴ who has since died?

(1) Sheer dilatoriness, by omitting to do what he intended.

(2) Merely a friendly reminder not to forget, which the vower might in all sincerity have intended to fulfil, had he not inadvertently forgotten or been prevented till the time had gone by.

(3) Lit., 'according to the heart (intention) of R. Judah.'

(4) Ex. XII, 10. The meat left over is termed 'nothar'.

(5) To burn the remaining meat.

(6) V. supra p. 17.

(7) That is R. Judah's interpretation.

(8) I.e., by saying that were it not for the special dispensatory action provided, he would receive a flogging, and notwithstanding the fact that from the nature of the case the warning must be dubious and indefinite as to the exact time of its application, it is yet sufficient (judicially) for a flogging.

(9) But it affords no proof that a dubious warning should be considered a warning.

(10) Thus proving that it is a warning.

(11) The woman, divorced from her first husband, was married to another man rather soon and gave birth to this son prematurely. It was doubtful whether this child was a premature child of the second husband, or a mature child of the first, either man thus being a possible father. The warning that wounding a parent was a capital offence (Lev. XXI, 15), was here a dubious warning, in regard to whom it actually applied, maybe this one or the other.

(12) Thus cursing a parent with the Divine Name pronounced, was also a capital offence, cf. *ibid.* verse 17. Shebu. 36a, and supra p. 52, n. 1.

(13) To the death penalty.

(14) If the warning given to the son was concerning both men, and he with one deliberate aim and stroke wounded both men simultaneously, one of them was certainly his father whom he injured.

(15) Which implies that a dubious warning is regarded as no adequate (legal) warning, according to R. Judah.

(16) [The reference is to the 'leavings' nothar, (v. p. 111), from which R. Johanan infers that R. Judah holds that a dubious warning is considered a warning, why does he not also deduce that a prohibition involving no tangible action entails a flogging seeing that nothar too involves no action?]

(17) For fuller discussion on this point. v. Shebu. 21a; Tem. 3a.

(18) V. Lev. XXVII, 9-10. and Tem. 3a ff.

(19) V. p. 52. n. 1.

(20) On both issues, as regards a flogging in the case of an offence without action and the dubious warning, according to the respective implications in the statements of R. Judah which R. Johanan and Resh Lakish interpret each in his own way.

(21) Lit., 'two Tannaim'.

(22) Hul. 141a. cf. also supra 17a, where in the course of the discussion it is shown that R. Judah took that ordinance as a positive preceding a negative. viz., If you chance on a bird's nest, first, 'send away the mother bird and take the young' (positive); next, 'Thou shalt not take the dam with the young' (negative).

(23) For having contravened the above prohibition; and as the dam had been taken and the offender was punished for the offence, the matter is at an end.

(24) As an act of redress, v. next note.

(25) I.e., wherever the positive provides the (way of making) amends, and escaping the flogging.

(26) Although it is stated in the Mishnah as a 'general principle' where the exemption from flogging depends on the fulfilment of the positive command.

(27) Because as a priest, by divorcing her, he nullified his chance of making redress.

(28) V. p. 109, n. 1.

- (29) E.g., the lay-Israelite, who remarries her and escapes the flogging.
- (30) R. Johanan's view as reported above, that he is flogged only when he has made amends impossible.
- (31) If he killed her or broke her wings, he is flogged.
- (32) And there is no question of flogging.
- (33) Kiddushin — a ring or coin accepted at the hand of the groom (or his attorney) by the woman as a marriage token renders her legally bound as his wife-designate: she can be released only by formal bill of divorce, but even then he could not remarry her (after having become the wife of another man). V. Deut. XXIV, 1-4.
- (34) Her late husband, the Ravisher, authorised by her to accept the marriage-token on her behalf.
- (35) By a recognized authority who may, under certain genuine, unforeseen, extenuating circumstances, rescind a vow by declaring him absolved. Cf. Rashi on Num. XXX, 2 (end) and Ned. 77b.
- (36) And by making such a vow, the Ravisher nullifies all chance of making redress.
- (37) Lev. XIX, 13, the negative command.
- (38) Lev. V, 23, the positive command, providing the amends for the negative.
- (39) Deut. XXIV, 10-13 and 19-21.
- (40) [As on either view there is a possibility of a flogging being inflicted in the case where the article stolen or given on deposit was lost or destroyed intentionally by the thief or bailee so that he can no longer fulfil either the positive commands involved.] Why did R. Johanan say there were only two?
- (41) These cases are of a different category, he can pay the penalty in money and will not be flogged.
- (42) 'The Sages say, Whoever is ordered to pay damages is not flogged.' Cf. supra 4a [Tosaf. however shows that everywhere in such cases the offender is flogged and does not pay, the money penalty being merged in the graver penalty; they accordingly omit 'he is not . . . compensation.']
- (43) Seized unlawfully by the creditor and destroyed by him, thereby having already made himself liable to a flogging.
- (44) A proselyte, who died without a Jewish issue to whom the Hebrew law could be applicable. As on the proselyte's death the creditor is left without a claimant for damages, the offender should be flogged, as he cannot make amends by compensation. In that case, it would be a third instance.

Talmud - Mas. Makkoth 16b

— Here too the man is [in fact] liable to [pay] compensation; only the title of the proselyte has lapsed [with his death].

And is there not the instance of the 'Corner of the Field', where the All-Merciful ordained, Thou shalt not wholly reap the corner of thy field, neither shalt thou gather the gleaning of thy harvest, [and then continues,] Thou shalt leave them for the poor and for the stranger?¹ And, this too, fits equally well [if we say that the flogging depends on] whether the transgressor has carried out, or has not carried out [the act of redress], or on whether he had nullified, or not nullified [his chance of making redress],² as [is to be gathered from what] we learnt: The ordinance of the 'Corner [of the field]' is [in the first instance] to leave apart some of the standing corn [for the poor]; if he neglected to leave some of the corn standing, he sets apart some of the sheaves; if he failed to set apart some of the sheaves, he leaves apart some of the grain in the heap before winnowing; having winnowed, he should tithe the grain [first]³ and then give to the poor [his due]!⁴ — [No. R. Johanan holds] according to R. Ishmael, who said: He can also give it in part of the dough.⁵ But even according to R. Ishmael, there is still the case where the transgressor has already consumed the bread!⁶ — Hence this [indeed] is the only other instance that R. Johanan had in mind when he said, 'We have only this instance [of the Bird's Nest] and one other' — But it is not that of the Ravisher [who pledged himself publicly not to live with her], because it is only in an optional matter that we say that a vow made dependent on the consensus of the public is not subject to [formal] rescission; but where the matter involved is one in the nature of religious obligation⁷ it is subject to [formal] rescission, as for instance in the case of a certain elementary teacher treating the children harshly so that R. Aha made him pledge himself [on the consensus of the public⁸ not to teach]; but Rabina reinstated him, because no other teacher could be found who was equally reliable.⁹

ONE WHO EATS OF NEBELAH, OR TREFA, OR ANY CREATURE ABOMINABLE AND TEEMING [INCURS A FLOGGING]. Said Rab Judah: If one eats [knowingly] a worm in a cabbage¹⁰ he incurs a flogging. A certain fellow [once deliberately] ate a worm in a cabbage and Rab Judah had him chastised.¹¹ Abaye observed that if one eats an eel¹² he [technically] incurs a flogging on four¹³ counts; if an ant, on five counts, [the extra count being] for Any swarming [crawling] thing that swarmeth upon the earth [ye shall not eat them];¹⁴ if a hornet, on six counts [the extra count being] for [And all] winged swarming things [are unclean] to you; [they shall not be eaten].¹⁵ Raba¹⁶ observed that anyone confining his faeces sins against And ye shall not make your souls detestable.¹⁷ R. Bibi son of Abaye observed that anyone drinking out of a cupping-horn sins against Ye shall not make your souls detestable [by . . . what I have set apart for you to hold unclean].¹⁷ Rabbah the son of R. Huna said that if one crushed nine ants [into a mash] adding thereto another live one, thus bringing up the quantity to [the requisite] an olive's size [and ate them], he renders himself liable on six counts; five for the [live ant as a] separate creature,¹⁸ and one for [the mass as amounting to] an olive's size of nebelah.¹⁹ Rabbah reporting R. Johanan said [it would be the same], even with only two [mashes] and one other whole.

R. Joseph [reporting R. Johanan]²⁰ said even only one [mashed] and one alive. And there is no disagreement between them [in principle], for one is thinking of larger and the other of smaller sized [insects].

ONE WHO EATS OF TEBEL, OR A FIRST TITHE FROM WHICH ITS TERUMAH HAS NOT BEEN TAKEN, OR OF SECOND TITHE WHICH HAS NOT BEEN REDEEMED. Rab said that one who eats of tebel-produce from which its poor tithe²¹ has not been taken is flogged.²² Whose view is followed [in this statement of Rab's]? — That of the Tanna [in the following passage,] where it is taught: R. Jose says:²³ It might be supposed that one is liable [to a flogging] only on eating tebel-produce from which no due whatsoever has yet been set apart; but where [for instance] terumah gedolah²⁴ has been separated, but not yet the first tithe, or the first tithe, but not yet the second tithe, or [say] even the poor tithe [has not yet been separated] — whence [is derived the prohibition of] eating such produce? From the following instructive texts: Thou mayest not eat within thy gates²⁵ the tithe of thy corn, or of thy wine, or of thine oil;²⁶ and later it says, that they may eat within thy gates and be satisfied.²⁷ What is the reference in the latter [text]? To the poor tithe. So likewise in the former [text] reference is to the poor tithe, and the All-Merciful enjoins 'Thou mayest not eat of ...'²⁸

Joseph said: [Rab's point has been debated already] by Tannaim: R. Eliezer says that in the case of demai²⁹ there is no need even to designate [and assign]³⁰ the poor tithe; but the Sages say

(1) Lev. XXIII, 22, cf. ibid. XIX, 9-10.

(2) Cf. p. 109, n. 1.

(3) So as not to deprive the poor of part of his gift, namely the proportion of the tithe, as the 'Corner' is not subject at all to tithes, provided it was assigned to the poor before the winnowing when tithes become due.

(4) [So that there is a possibility for the owner to nullify the precept in the case where he ground the grain into flour after which he can no longer fulfil the command of the corner, and is consequently flogged.]

(5) [So that he can still fulfil the command even after having ground the grain.]

(6) Cf. p. 114, n. 7.

(7) As here, where it is Scripturally demanded that she shall remain his wife (unless she herself does not wish it).

(8) [According to reading in Git. 36a].

(9) in any case, the original instance which gave rise to the whole discussion (of the theory of the positive preceding negative ordinance, namely, not to defile the holy Camp — the Sanctuary), is different in nature from the others, as the positive command can be fulfilled before the actual violation of the negative command; his coming away is thus not considered (an act of) redress, and the flogging is incurred.

(10) Forbidden in Lev. XI, 43, as a 'swarming thing' (although not actually found crawling abroad) bred in the cabbage.

R. Tam (Tosaf.) suggested (instead of a cabbage-grub) a small fish found alive on the field (such as a tadpole or young eel; v. next note). Being found on dry land (not in the water, its usual habitat,) it comes under the category of a 'swarming thing' — **שרץ השרץ** — forbidden in Lev. XI, 43.

(11) Probably only a disciplinary castigation, not the judicial (39) stripes, being outside Palestine. V. **אוצר ישראל** (Eisenstein) s.v. **מלקות**. Vol. VI, p. 229b.

(12) **פוטיתא**, according to Gaonic interpretation, the young eel (Arabic garri. v. Kohut, Aruch, s.v. **פוטיתא** and B.M. Lewin, Otzar ha-Gaonim III (Pes.) No. 42). Young eels — glass eels — are often found in thousands (2 to 2 1/2 inches in size) travelling at night overland to get to the sea.

(13) Lev. XI, 10-11 (forbidden on several grounds: (a) as water-insect; (b) as finless; (c) as scaleless) and twice again, ibid. 43. Cf. Rashi 'Er. 28a.

(14) Lev. XI, 41-44: Forbidden as insect crawling on the ground (41); as many-footed (42); twice forbidden as food (43); once more forbidden as an insect crawling on the ground (44).

(15) Deut. XIV, 10, in addition to those in the preceding note.

(16) D.S. **האי מאן** of which the reading in the printed texts is a distortion; v. Friedmann, M. Tractate Makkoth a.l.

(17) Lev. XX, 25.

(18) As supra note 2 and cf. n. 13 on Mishnah.

(19) V. p. 93, n. 12.

(20) Cf. D.S.

(21) The tithe levied in the third and sixth years of the Septennial or Sabbatical cycle.

(22) A novel point, as there is no direct explicit prohibition against eating of fruits from which the poor tithe had not been set apart. It is implied in Deut. XXVI, 13 (cf. Sifre a.l.); but not openly prohibited. No judicial flogging (of 'forty' lashes) is inflicted except the offence is explicitly prohibited in Holy Writ. No punishment is warranted on logical inference, hence the search for the basis of Rab's assertion.

(23) **יוסי אומר** is the correct reading, cf. Yeb. 86a and Sifre, on Deut. XII, 17.

(24) V. Glos.

(25) **בשעריך** This phrase serves as a Gezerah shawah.

(26) Deut. XII, 17. In verse 18 it is ordered that the various offerings and hallowed dues were to be shared 'with the Levites in thy gates'.

(27) With reference to the poor tithe; Deut. XXVI, 12 (also v, 13).

(28) Not to eat of the various offerings and dues without giving the Levite and other poor their share.

(29) **דמאי** 'Suspect Produce' — produce regarding which it is not known whether the prescribed tithes have been duly set apart by the vendor before selling. An ancient tradition has it that Johanan the High Priest (the Maccabean John Hyrcanus I), discovered (after investigation) that while the priests' **terumah** (v. Glos.) was being given regularly, the **'amme ha-arez** (v. Glos.) throughout the land were none too observant about the several other tithes. To meet the scruples of the pious (and to preserve the laws regulating the tithes from extinction), he promulgated that the several tithes should be set apart by the purchaser from an **'am ha-arez**. But, as this practice would evidently fall heavily on the purchasers, it was agreed that after setting the prescribed dues apart, the buyer might retain them for his own consumption, as, firstly these tithes were not forbidden to a lay-Israelite, and secondly the claim of any particular priest (or Levite) to the first tithe, or of any particular poor man to the poor tithe was uncertain.

(30) If one had need to partake of his produce before he had set apart any of the several dues, he could provisionally 'designate' and 'assign' them by saying: 'Let the **terumah** of this bin be located in the east; the first tithe in the west; the second tithe in the north, or (in the 3rd and 6th year) the poor tithe in this or that particular spot,' and then take his temporary supply from any other part. Later he would attend to these dues.

Talmud - Mas. Makkoth 17a

that one should 'designate' it, but need not set it apart.¹ Is not here the point at issue this — that one authority [the Sages] holds that the known presence [of unseparated poor tithe in produce] makes it tebel,² while the other authority [R. Eliezer] holds that it does not make it tebel! — Said Abaye: If that were the issue, why raise it in connection with demai? It should have been raised in connection with produce which is known to be untithed! Hence, [it must be said,] all are agreed that the known presence [of unseparated poor tithe] does render the produce tebel,² and the issue involved here is rather this, that one authority [R. Eliezer] takes the view that the 'amme ha-arez'³ are not suspected of withholding the poor tithe of demai, as, being merely a money matter, they do [not fail to] set it apart;⁴ while the Rabbis⁵ take the view that 'amme ha-arez are mistrusted about it, because it involves trouble,⁶ and as the separation of the due means some trouble to them,⁷ they will not set it apart.

HOW MUCH OF TEBEL IS ONE TO EAT TO BECOME LIABLE? R. SIMEON SAYS THE MEREST MORSEL AND THE SAGES SAY AN OLIVE'S SIZE. R. Bibi reporting R. Simeon b. Lakish said that this difference of opinion referred only to the [grain of] wheat, but as to the [requisite amount of] flour all were agreed that it is an olive's size. But R. Jeremiah reporting R. Simeon b. Lakish said that there was a difference of opinion on both the [amount of] flour as well as the [grain of] wheat.

We learn [in the Mishnah]: SAID R. SIMEON, DO YOU NOT ADMIT THAT IF ONE ATE THE MINUTEST ANT HE WOULD BE LIABLE? SAID THEY TO HIM: [ONLY] BECAUSE IT IS A SEPARATE CREATURE. SAID HE TO THEM: EVEN SO A [GRAIN OF] WHEAT IS A SEPARATE ENTITY. [Does not this text show that] there was a dispute only about the [grain of] wheat, but nothing about flour! — [Not so.] R. Simeon only argues [with the Rabbis] on their own contention: My own opinion [he argues] is that even the same quantity of [tebel] flour is enough [for entailing a flogging]; but even according to your contention, you should admit to me that one [grain of] wheat is a separate entity. And the Rabbis' [reply]? — An animate thing is of sufficient importance [as to be considered a separate entity], but a [grain of] wheat is not of such importance. [In a Baraitha] it is taught as R. Jeremiah had reported: R. Simeon says that any minute quantity⁸ is sufficient to entail a flogging; the 'olive's size' mentioned [by the Rabbis] is required only to entail a [sin-offering].'

MISHNAH. ONE WHO EATS⁹ OF FIRST FRUITS PREVIOUS TO THE RECITAL OVER THEM;¹⁰ [WHO EATS] OF MOST HOLY [MEATS]¹¹ OUTSIDE THE HANGINGS; OF LESSER HOLY [MEATS]¹² OR OF SECOND TITHE, OUTSIDE THE CITY WALL.¹³ ONE WHO BREAKS A BONE OF A PASCHAL LAMB¹⁴ THAT IS CLEAN¹⁵ RECEIVES FORTY [LASHES]; BUT ONE WHO LEAVES OF THE FLESH OF A CLEAN PASCHAL LAMB,¹⁶ OR BREAKS A BONE OF AN UNCLEAR [PASCHAL LAMB],¹⁷ IS NOT GIVEN FORTY [LASHES]. IF ONE TAKES THE DAM WITH THE YOUNG,¹⁸ R. JUDAH SAYS HE IS FLOGGED AND NEED NOT [THEN] SEND THE DAM FREE; BUT THE SAGES SAY THAT HE LETS THE DAM GO AND RECEIVES NO FLOGGING. THIS IS THE GENERAL PRINCIPLE; WHENEVER A NEGATIVE PRECEPT INVOLVES THE FULFILMENT OF SOME POSITIVE ACT,¹⁹ THERE IS NO FLOGGING FOR ITS CONTRAVENTION.

GEMARA. Rabbah b. Bar Hanah citing R. Johanan said that this²⁰ is only the view of R. Akiba who is reported anonymously,²¹ but the Sages say regarding [the ceremonies of] the first fruits that only placing them [before the altar]²² is a bar [to their consumption],²³ but the [omission of the] recital is no bar [to their consumption]. Then why not say that the above is the view of R. Simeon who is reported anonymously?²⁴ — This is what he meant to tell us that R. Akiba [also] held that same view as expressed by [his disciple] R. Simeon. Which statement of R. Simeon [have you in

mind]? — As it is taught:²⁵ ‘And the raising of thy hand’ — that is the first fruits.²⁶ Said R. Simeon: What is the lesson intended by this text?²⁷ If it is merely [to forbid] eating them [first fruits] outside the wall [of Jerusalem, there is no need]; it follows a fortiori from the less restricted second tithing [in this way]: Seeing that he who eats of the less restricted²⁸ second tithing outside the wall, is flogged,²⁹ is not that [flogging] more deserved for eating first fruits [outside the wall]? The text therefore can only mean to convey that he who eats them when the [prescribed] recital has not yet taken place, is flogged.³⁰ ‘Nor of thy freewill offerings’³¹ — that means [not eating outside Jerusalem] of thank-offerings or peace-offerings. Said R. Simeon: What is the lesson intended by this verse? If [only to forbid] eating of these [meats] outside the wall, this follows, a fortiori, from the second tithing [as before].³² The text therefore can only mean to convey that he who eats of the meat of thank-offerings and peace-offerings before the blood had been sprinkled [on the altar]³³ is flogged.³⁴ ‘And the firstlings.’ — that means the firstborn [male animals].³⁵ Said R. Simeon: What lesson is intended here? If [only to forbid] eating of these [holy meats] outside the wall, this [too] is [inferred already] a fortiori, from the second tithing [as before].³⁶ If [to forbid eating of the flesh] before the blood had been sprinkled, this follows, a fortiori, from the thank-offering and peace-offering.³⁷ The text therefore can only mean to convey that [a layman] who eats of the firstling even after the ritual blood-sprinkling, receives a flogging.³⁸ ‘of thy herd or thy flock’ — that alludes to sin-offerings and guilt-offerings.³⁹ Said R. Simeon: What is the implied injunction here? If only against eating of these outside the wall, this follows a fortiori, from the second tithing [as before];³⁶ if against partaking of these before the blood-sprinkling [on the altar], this already follows a fortiori, from the thank-offering and peace-offering [as before];³⁷ if against [any layman] eating of sin-offerings or guilt-offering [even] after the ritual blood-sprinkling [on the altar], this already follows, a fortiori, from the [law of the] firstling.⁴⁰ The text therefore can only mean to convey that if a priest eats of sin and guilt-offerings even after the ritual blood-sprinkling outside the ‘hangings’, he [transgresses and] receives a flogging.³⁸ ‘Nor any of thy vows’ — that refers to burnt-offerings.⁴¹ Said R. Simeon: What is the implied injunction here? If only against eating of these outside the wall, this already follows, a fortiori, from the second tithing [as before]; if against eating of these before the blood-sprinkling, it already follows, a fortiori, from the thank-offering and peace-offering [as before]; if against [any layman] eating of these same after the ritual blood-sprinkling, it already follows, a fortiori, from the [law] of the firstling [as before]; if against [priests] eating of these outside the ‘hangings’, it follows, a fortiori, from the sin and guilt-offerings.⁴² The text therefore means to convey

(1) For the sake of preserving the principle, the particular due, poor tithing, should be mentioned (as possibly present), but need not be actually located nor separated; v. Dem. IV, 3.

(2) Debarred as *tebel*, until the due portion is taken away.

(3) V. Glos.

(4) [There is no prohibition for a lay Israelite to eat of the poor tithing and by setting it aside the owner need not necessarily give it to the poor, but can still retain it for himself. This is however not the case with the first and second tithing, since the former will remain prohibited on account of the *terumah* (v. Glos.) which it contains and the latter until it is taken up to Jerusalem.]

(5) The Sages.

(6) So D.S.

(7) Would not be bothered with the formal niceties of the ordinance.

(8) Forbidden to be eaten. Cf. e.g. Lev. VII. 26-27.

(9) This is in continuation of the list of offences that entail a flogging.

(10) Cf. Deut. XXVI, 1-10. First fruits were to be eaten only by priests, and their families, in religious purity. Num. XVIII, 13.

(11) Such as meat of sin-offerings, guilt-offerings and their accompanying meal-oblations: these were to be eaten by male priests only, in the inner precincts of the Temple (corresponding to the Court of the Tabernacle, ‘within the hangings.’ Cf. Num. XVIII, 9-10; Lev. VI, 7-11 (meal-oblation); 17-19, 22 (sin-offering); VII, 5-10 (guilt-offering); Ex. XXIX, 26 ff; Lev. VI, 9, 19 (inner holy precincts). Cf. also P.B. p. 12, sections 4-5.

- (12) Such as Peace-offerings (private), thanksgiving, Nazirite's ram, firstlings, tithe lambkins and calves and the Paschal lamb. Cf. P.B. pp. 12 and 13, section 6-8. Of these the altar, the priests and the worshippers had each their share. Cf. Lev. VII, 11 ff. 18; 28-34; Num. VI, 19-20. and XVIII, 11-19.
- (13) Of Jerusalem, the chosen place, as before the Lord. Cf. Deut. XII, 6-7; 11, 17-18.
- (14) Forbidden in Ex. XII, 46; Num. IX, 12.
- (15) Undefined; cf. Lev. VII, 19.
- (16) An offence by inaction, for which a remedial act is prescribed (Ex. XII, 10). v. supra p. 111.
- (17) No longer in the category of a proper Paschal offering.
- (18) Forbidden in Deut. XXII, 6-7. There too, a remedial action is prescribed, v. supra p. 111.
- (19) Lit., '(the command to) rise and do.'
- (20) The ruling in the Mishnah referring to the First fruits.
- (21) [Cf. Sanh. (Sonc. ed.) pp. 565 f. and notes and Rashi Meg. 2a.]
- (22) Cf. Deut. XXVI, 4: 'And set it down before the altar.'
- (23) I.e., the ceremony is indispensable for their release to be eaten by the priests.
- (24) [In the Baraita cited anon and quoted from the Sifre (v. n. 13) which generally represents the opinion of R. Simeon, cf. n. 9.]
- (25) Treated more fully in Sifre, on Deut. XII, 17. Here is the prohibiting text (Deut. XII, 17) employed: Thou mayest not eat within thy gates the tithe of thy corn, or of thy wine, or of thine oil (i.e. the second tithe of these); or of thy firstlings of thy herd or of thy flock; nor of any vows that thou vowest; nor of thy freewill offerings; nor of the raising (fruits) of thy hand. (Verse 18 continues positively: But thou shalt eat them before the Lord thy God in the place the Lord thy God shall choose (i.e. Jerusalem). Cf. *ibid.* 6-7: 11-14; 26-27.) To appreciate the subtlety of R. Simeon's ingenious arguments on this text, it is necessary carefully to note (a), that no flogging is due for not doing something recommended or even commanded, but for doing an action that is distinctly forbidden; and (b), that R. Simeon tries to prove (among many other things) from Deut. XII, 17, that the prescribed 'recital' over the First fruits is an indispensable ceremony, and if omitted, eating of the First fruits is forbidden on the pain of a flogging (of forty); (c), that to prove his theses he does not expound the verse in the order it is written, but in such a manner as will best fit in with his views, as will be seen as the argument proceeds.
- (26) And the priest shall take the basket (of first fruits) out of thy hand and set it down before the altar of the Lord thy God. Deut. XXVI, 4 ff. Cf. p. 120, n. 3.
- (27) What is the particular point forbidden, as regards first fruits?
- (28) As explained *infra*,
- (29) Deut. XII, 17: Thou mayest not eat within thy gates the (second) tithe of thy corn . . . wine . . . oil! There were no such restrictions on the first tithe that was given to the priest-Levites; it could be eaten anywhere 'even at the graveside'. Cf. Num. XVIII, 31.
- (30) [On the principle that where a superfluous phrase cannot be applied to one subject it is applied to another, v. supra p. 100, n. 6.]
- (31) On these peace-offerings cf. p. 120, n. 5.
- (32) Second tithe is less restricted in that, unlike thank and peace-offerings, its enjoyment is not restricted by any time-limit; nor debarred (technically) as 'stale remains' or 'pigul'; (v. Glos.) nor debarred to the (ritually) impure (as in the case of thank and peace-offerings), v. Lev. VII, 15-21 and XXII, 29-30. (Sifre).
- (33) Commanded (positively), Deut. XII, 26-27 (first the rites of the altar, then eat!), and here argued as negatively forbidden (in verse 27) on pain of a flogging.
- (34) V. p. 122, n. 5.
- (35) Deut. XV, 19-20 (the positive command). Num. XVIII, 15-19, grants firstlings to the priests (and their families) after the altar rites. Cf. Zeb. V, 8. and P.B. p. 13.
- (36) Cf. p. 122, n. 7.
- (37) As explained *infra*.
- (38) V. supra p. 122, n. 5.
- (39) These (and their meal-oblations) are Most Holy, permitted to male priests only, eaten only in the inner precincts of the temple — 'within the hanging'. (Cf. p. 120, n. 4.) Num. XVIII, 9-10, give the positive command about these, and R. Simeon now seeks to argue on the prohibition as entailing a flogging.
- (40) As explained anon.

(41) Cf. Lev. I, 2 ff. V. P. B. p. 12.

(42) As explained anon.

Talmud - Mas. Makkoth 17b

that he who eats of the burnt-offering after the blood-sprinkling [on the altar], even within [the 'hangings'], is flogged.¹

Said Raba: [This is ingenious;] may every bearing mother bear a child like R. Simeon! And if not [quite like him], should she not bear any at all² — though his a fortiori arguments may be refuted! For instance, in what respect [is it assumed] that first fruits are of graver importance³ [than second tithe]? In that first fruits are forbidden to lay people [non-priests]! But is not the second tithe rather of graver importance, because second tithe is forbidden to the onen⁴ [and the argument is thus unsound]? Again, in what respect [is it assumed] that thank and peace-offerings are of graver importance than second tithe? In that these have [also] the offering of blood and the certain 'prescribed' portions⁵ [of fat etc.] on the altar! But is not the second tithe rather of graver importance, because second tithe may be redeemed only with coined silver⁶ money [and no other]? Again, in what respect [do you assume] is the firstling of graver importance than thank and peace-offerings? In that it is sanctified from the womb⁷ [unlike those sacrificial animals]! But are not rather the thank and peace-offerings, of graver importance because thank and peace-offerings require the 'laying [of the hand]';⁸ 'drink-offerings' [of wine]⁹ and the waving of breast and thigh?¹⁰ Again, in what respect are the sin and guilt-offerings of graver importance than the firstling? In that they are in the category of most-holy!¹¹ But is not the firstling rather of graver importance, because the firstling is sanctified from the womb?¹² Again, in what respect is the burnt-offering of graver importance than the sin and guilt-offering? In that the burnt-offering is wholly burnt!¹³ But are not the sin and guilt-offerings rather of graver importance, because they afford atonement;¹⁴ nay, all [other] sacrifices are of graver importance than the burnt-offering, because those others are consumed in two ways?¹⁵ But if so, what [made Raba exclaim]: 'May every bearing mother give birth to such as R. Simeon'? — It is because of his method of recasting¹⁶ and expounding the text to suit his own theory. But is a prohibition based on logical deduction¹⁷ warranted? For, even those who accept¹⁸ [in principle] a penalty derived by logical deduction as warranted do not recognise a prohibition based on logical deduction? — [No, R. Simeon desired] to demonstrate mere prohibition¹⁹ [in each case]. But did not Raba say that, according to R. Simeon, any lay person eating of the flesh of burnt-offering before the sprinkling of the blood and outside the wall [of Jerusalem] is flogged on five counts?²⁰ — [He only meant to say] five mere prohibitions were involved [in this one act of eating]. But then, have we not learnt: These incur [judicial] flogging, etc?²¹

(1) The positive command to burn it wholly is given in Lev. I, 9, 13, 17; and this furnishes the negative command, cf. supra p. 122, n. 5.

(2) ['And if not . . . at all' is best omitted with MS.M.]

(3) The criterion of importance being the number of restrictions, which shows the amount of concern and interest devoted by the Torah to the matter.

(4) אֲוֹנָן, a person in deep sorrow on the day of bereavement, when the dead is still unburied. Part of a prescribed declaration to be made in the Temple (after the 3rd and 6th years in the Septennial Cycle) was: 'I have not eaten thereof (i.e. of second tithe) in my mourning . . . nor given thereof for the dead.' Deut. XXVI, 14. (The same condition attaches to first fruits, but R. Simeon does not share that view in the case of the latter. v. Yeb. 73b.)

(5) Emurin — אִמּוּרִין — 'bidden', or 'prescribed' rites. Cf. Lev. I, 5, 8, 9; II, 2, 13, 15-16; III, 3-5, 9, etc. Also Num. XV, 4 ff. Cf. the term אִמּוּר, as 'prescribed' (not, 'as it is said') in the Prayer Book, when citing the sacrifices ordained for the occasion. E.g., P.B. p. 162. [Jastrow connects it with root denoting 'to devote', 'to consecrate', cf. Deut. XXVI, 17.]

(6) V. B.M. 47b. Cf. supra p. 92, n. 8.

(7) Cf. Ex. XIII, 12-13; Num. XVIII, 15-18; Deut. XV, 19-20. A firstling is sacred and dedicated from birth. Other

sacrificial animals have to be selected and dedicated as offerings.

(8) Lev. III, 2, 8, 13. The worshipper laid his hand on the head of the animal.

(9) Num. XV, 5 ff.

(10) Lev. VII, 28-32. These were not required in the case of a firstling. Num. XVIII, 17-18.

(11) Lev. VI, 18; VII, 1.

(12) V. supra note 8.

(13) Lev. I, 9, 13, 17.

(14) Cf. Lev. IV, 20, 26, 31, 35 (Sin-offering); V, 6, 10, 16, 18, 26.

(15) Parts are burnt on the altar, other parts are eaten by the priests, and in sacrifices of minor sanctity parts are enjoyed by the owners or worshippers. It should be remembered that eating of sacrificial meat was part of the ritual, hence the importance attached to it.

(16) Lit., 'castrating'. [V. supra p. 121, n. 13. Had he, for instance, made the firstling the starting point of his arguments, he could not, in the absence of the a fortiori reasoning from thank and peace-offerings with reference to the eating of them before the blood sprinkling (as this would still remain to be proved), substantiate his thesis in regard to the eating of them after the sprinkling of the blood. The same applies to all the other arguments advanced by R. Simeon.]

(17) To sanction the penalty of flogging such as R. Simeon attempted here by his arguments. Cf. supra 5b and 14a (end).

(18) R. Isaac, v. 14a, (end).

(19) Without the infliction of a flogging.

(20) On the basis of his deductions: (i) No holy meat may be eaten outside the wall (not even second tithe, the simplest).

(ii) Sacrificial meat may not be eaten before the ritual sprinkling (on the altar). (iii) A layman (non-priest) may not eat of sacrifice-most-sacred (to which class burnt-offering belongs). (iv) Not even a priest may eat of such outside the 'hangings' (the inner precincts). (v) Burnt-offering is to burn entirely, no part thereof may be eaten. This proves that R. Simeon would also inflict the penalty of flogging.

(21) The opening words of the Mishnah, Chapter III. fol 13a, which apply also to the prohibition enumerated in the Mishnah 17a, including the EATING OF THE MOST HOLY MEATS OUTSIDE THE HANGINGS.

Talmud - Mas. Makkoth 18a

— But [yet] the text¹ is tautological! Consider: it having been written already, And thither ye shall bring . . . and there ye shall eat before the Lord thy God² — could not the All-Merciful have proceeded briefly thus: 'Thou mayest not eat them within thy gates'? What else then could be the purpose of the All-Merciful in having them all restated in detail, save to stress separately the prohibition³ attaching to every instance.

The [above] text [stated]: 'Raba said that, according to R. Simeon, any lay person eating of the flesh of burnt-offering before the sprinkling of the blood and outside the wall [of Jerusalem], is flogged on five counts.' Should he not be flogged on a sixth count arising out of the text: [And they⁴ shall eat those things wherewith atonement was made to consecrate and to sanctify them]; but a stranger shall not eat thereof because they are holy⁵ — [No, as] that [prohibition bears on such meat] as was permitted for priests [to eat],⁶ while that [referred to in Raba's statement] is not proper even for priests.

And should he not be flogged on the strength of [the text]: [And ye shall be holy men unto me: therefore] ye shall not eat any flesh in the field [like] torn [of beasts];⁷ [which is taken] to imply that any [holy] flesh that has got beyond its partition⁸ is forbidden? — [No, as] that applies to [meat] available when within the partition; whereas here [in Raba's case] it is not available even while within the partition.⁹ And should he not also be flogged on the strength of R. Eliezer's interpretation. For R. Eliezer said: [The words], it shall not be eaten because it is holy¹⁰ convey

(1) Deut. XII, 17, on which the whole discussion turns.

(2) Ibid. 6-7.

(3) And the penalty attached thereto.

(4) Aaron and his sons on being inducted into their priestly office.

(5) Ex. XXIX, 33.

(6) Note carefully vv. 18-19 and 31-33.

(7) Ex. XXII, 31, taken metaphorically.

(8) That is, taken outside, beyond its proper sphere or bound, such as the precincts of the Temple, or the walls of Jerusalem. There are several other applications of this text. Cf. Hul. 68a. (Cf. Lev. XVII, 5.)

(9) As it is to be wholly burnt. Lev. I, 9, 13, 17. Cf. Ex. XXIX, 18.

(10) Ex. XXIX, 34: And if aught of the flesh of the consecration or of the bread remain unto the morning, then thou shalt burn it with fire; it shall not be eaten, because] it is holy.

Talmud - Mas. Makkoth 18b

that the text means to declare as forbidden any [sort of] holy meat which has become disqualified? — [No, as] here too it can only refer to [meat that was] available before becoming disqualified, whereas here [in Raba's statement the meat] was not available even before it became disqualified. And should he not also be flogged on the strength of that other interpretation of R. Eliezer, as it is taught: R. Eliezer says [that the words,] It shall be wholly made to smoke; [it shall not be eaten,]¹ impose a negative command against the eating of anything [that is ordered to be wholly burnt]? — Just so, and it is on this interpretation of the text that he based his statement.²

R. Giddal citing Rab said (Kuza)³ that a priest who ate of a sin-offering or guilt-offering before the sprinkling of the blood is flogged. The reason [for this]? The writ says: And they [Aaron and his sons] shall eat of those things⁴ wherewith atonement was made⁵; which implies [that they are to be eaten only] after [ritual] atonement has been made, but not before atonement has been made; this being [an instance of] a negative command implied in a 'positive command which is [tantamount to] a negative.'⁶

Raba raised objection from the following: And every beast that parteth the hoof and hath the hoof wholly cloven into two and cheweth the cud among the beasts, that ye may eat⁷ — [implies,] 'that ye may eat,' but 'you may not eat another beast.' Now, if [the principle be] as you stated, what further need to continue, But these ye shall not eat, of them that only chew the cud and of them that only have the hoof cloven?⁸ — We must therefore say that if the reported dictum be a fact, it must have been worded thus: R. Giddal citing Rab said that a stranger⁹ [layman] who ate of a sin-offering or guilt-offering before the sprinkling [of the blood] is exempt.¹⁰ The reason [for this]? The text says: 'And they shall eat of those things wherewith atonement was made' [that is] anyone to whom the former part of the text [the positive command] — and they shall eat of those things wherewith atonement has been made — applies, to him the latter part of the text [the negative command] — but a stranger shall not eat thereof, because they are holy — applies also; and [vice versa,] anyone to whom the former part of that text — and they shall eat of those things wherewith atonement has been made — does not apply, to him the latter part of that text — but a stranger shall not eat thereof, because they are holy — does not apply.¹¹

R. Eleazar reporting R. Hoshaia, said regarding the [ceremonies of] first fruits that [the omission] to place them [before the altar] is a bar [to their release], but the [omission of the] recital is not a bar. But did R. Eleazar [actually] say that? Did not R. Eleazar reporting R. Hoshaia say that if a man had set apart [his] first fruits before the Feast [of Tabernacles] and the Feast passed [without these fruits having been presented before the altar] they are left to rot?¹² Now what [is the implication here]? Is it not that [they are to be left to rot] because it is no longer the period for the recital over them?¹³ If then you suppose that the [omission of the] recital is not a bar, why are they to be left to rot? — In accordance with [the principle enunciated by] R. Zera, for R. Zera said: Wherever the conditions for mingling [oil with the flour for a meal-offering¹⁴] are present, the [omission of the] mingling is not a bar; but where the conditions are not present the [omission of] mingling is a bar.¹⁵

R. Aha b. Jacob taught the same [lesson] as a statement of R. Assi reporting R. Johanan,¹⁶ and thus made one statement of R. Johanan clash with another: Did R. Johanan¹⁷ say regarding the [ceremonies of] first fruits that [the omission] to place them [before the altar] is a bar to their release, but the [omission of the] recital is not a bar? Why, when R. Assi asked of R. Johanan how soon were the first fruits permitted to be partaken of by the priests, did he not reply that those [that had come] at the proper time for the recital¹⁸ [were released] immediately after the recital,¹⁹ and those that were not [brought] at the proper time for the recital [were released] immediately they had come face to face with the Temple²⁰ — a statement which clashes on both points, in regard to recital as well as to placing them [before the altar]? — As regards the recital, it is not difficult [to explain the seeming discrepancy]: One statement²¹ represents the view of R. Simeon,²² while the other²³ is according to the Rabbis. Again, as regards placing them [before the altar], it is not difficult [to explain the seeming discrepancy]: One statement²¹ is according to R. Judah,²⁴ while the other²⁵ is that held by the Rabbis.²³

What statement of R. Judah [have you in mind]? — [It is the following,] as it is taught: R. Judah says, [And the priest shall take the basket out of thy hand] and set it down [before the altar].²⁶ This refers to the [ritual of] ‘waving’.²⁷ You say that it refers to the [ritual of] ‘waving’, or maybe it only means ‘setting them down’ ordinarily? As, however, [later it is said,] And thou shalt set it down [before the Lord thy God and worship before the Lord thy God,²⁸ the ordinary ‘setting down’ [of the fruit] is already indicated. What then is the meaning of the former injunction, [and the priest shall take the basket out of thy hand] and set it down [before the altar]?²⁶ It can only refer to the [ritual] ‘waving’.²⁹ And who is the Tanna that does not concur with R. Judah? — It is R. Eliezer b. Jacob,³⁰ as it is taught: And the priest shall take the basket out of thy hand³¹ — [‘out of thy hand’] indicates that the ‘waving’ is an essential part [of the ceremony]: these are the words of R. Eliezer b. Jacob. What is the reason of R. Eliezer b. Jacob? — It is derived from the occurrence of the word ‘hand’ [both here and] in connection with the peace-offerings [in this way]: Here it is written, ‘And the priest shall take the basket out of thy hand’³¹ and there it is written, His³² own hands shall bring the offering unto the Lord.³³ Just as here the priest [is the recipient],³⁴ so there the priest [is the recipient],³⁵ just as there the owner tenders, so here the owner tenders. How is it [done]? [In each case] the priest puts his hand under those of the worshipper and waves them.³⁶

Rabin b. Adda reported R. Isaac to have said: In the case of first fruits,

(1) Lev. VI, 15-16.

(2) [That he is flogged, this verse supplying the requisite explicit prohibition for the infliction of a flogging.]

(3) A Mnemonic of the two statements of Rab that follow: K = Kohen, ‘priest’, Z = Zar, ‘a layman’.

(4) of the special consecration offerings.

(5) Ex. XXIX, 33.

(6) And, as such, sanctions the flogging (which the breach of a positive command does not). This rule is soon challenged by Raba on textual grounds and, in consequence, he emends the reported dictum by an interpretation of the text. This rule was debated in Palestine, Resh Lakish taking the view expressed above, while R. Johanan contested it by asserting that a ‘positive’ command implying a ‘negation’ is tantamount to a ‘positive’. Raba elsewhere explains the difference by a very apt illustration. If the Master bids his disciple, ‘Go fetch me some wheat,’ and the disciple brings wheat and barley, it can hardly be said that he disobeyed his master, although he went beyond instructions. If, however, the Master said, ‘Don’t bring me anything else but wheat,’ he certainly disobeys instructions if he bring wheat and barley. V. Zeb. 34a. There is involved in this, the important logical difference between affirmation and negation. ‘Go fetch me wheat’ does not necessarily imply that I would not have barley — I might have it or not. But, ‘Don’t bring me barley’ is clearly prohibitory on that point. V. B. Bosanquet's *Essentials of Logic* (1897), Lect. VIII, On Negation and Opposition of Judgments.

(7) Deut. XIV, 6.

(8) *Ibid.* verse 7.

- (9) Not a priest, as first reported.
- (10) Not flogged, as first stated.
- (11) Cf. Kid. 21b.
- (12) I.e., they may not be eaten even by priest.
- (13) First fruits were tokens of gratitude and were brought in their respective harvesting periods, from the Feast of Weeks (Pentecost) to Tabernacles (for Spring and Summer produce respectively), from early Sivan to the end of Tishri; and from Tabernacles to Chanukah (end of Kislev, for late autumn fruits). The recital could only be performed at the actual time of harvesting (Ex. XXIII, 16), when the heart rejoiced at the abundance (Deut. XXVI, 11), that is, between the Feast of Weeks (Pentecost) and Tabernacles; after that, the fruits were brought without recital, till Chanukah. Cf. Bik. I, 3, 6.
- (14) V. Lev. I, 1, 6, 15 (and he shall pour oil upon the fine flour) and verses 4, 5-6; VII, 10 (mingled with oil); Num. XV, 4, 6, 9.
- (15) V. B.B. (Sonc. ed.). p. 331. nn. 4-5. V. Men. 103b.
- (16) Which Rabbah b. Bar Hanah already cited supra 17a.
- (17) As his personal opinion.
- (18) I.e., between the Feast of Weeks and Tabernacles. Cf. supra note 2.
- (19) That means that recital is indispensable and its omission is a bar to the release.
- (20) That means, immediately on entering the portals of the 'Court of Israelites', 'Azarah, without recital or placing them before the altar to be released!
- (21) That of R. Johanan to R. Assi while discussing the subject generally, it seems.
- (22) As embodied in the Mishnah (17a), namely, that eating of first fruits without recital entails a flogging.
- (23) Reported of R. Johanan by Rabba b. Bar Hanah in the opening discussion on the Mishnah (17a) and by R. Eleazar in the name of R. Hoshaiia above, the view generally held by the Rabbis.
- (24) That placing the first fruits before the altar was not indispensable or a bar to their release, as is soon to be explained.
- (25) That placing the first fruits before the altar is essential.
- (26) Deut. XXVI, 4. The direction to set them down occurs twice in the passage, here first by the priest, and in verse 10 (quoted soon), by the worshipper. In our Talmud texts the second is quoted first, which makes R. Judah's interpretation difficult to understand. The order of the Biblical texts adopted here is that given by the Wilna Gaon in his notes **שנות אליהו** on Bik. III, 6. Cf. Tosaf. here, s.v. **ומאן** and again, on Suk. 47b. s.v. **הבכורים** and **בהן**.
- (27) On the ceremony, cf. Ex. XXIX, 24, 26; Lev. VII, 30; XXIII, 11-12, 17, 20; Num. VI, 20. The priest placed his hand under those of the worshipper who tendered the gift-portions and waved them to and fro, a dedicating motion.
- (28) Deut. XXVI, 10.
- (29) Explaining these texts thus, R. Judah finds no specific direction for placing the first fruits before the altar, to make it indispensable or barring their release by its omission. [It is a well-established principle that no prescription relating to offering is deemed indispensable, unless Scripture emphasises it by reiteration.]
- (30) Whose view is followed. His Mishnah, it is said, is but a modicum (in quantity), but the finest, purest flour (in quality).
- (31) V. p. 130. n. 7.
- (32) The worshipper's hands.
- (33) Lev. VII, 30, the rule. Cf. p 130, n. 8.
- (34) Of the first fruits.
- (35) Of the portions.
- (36) [Thus we see that R. Eliezer b. Jacob does not derive 'waving' from either of the phrases 'setting down' so that he will expound both cases as denoting 'setting down' ordinarily, the reiteration thus making the ceremony of placing before the altar an indispensable rite.]

Talmud - Mas. Makkoth 19a

when does the penalty¹ begin? From the time that these come face to face with the Temple. Whose is the view [expressed here]? — That of the Tanna [mentioned in the following], as it is taught: R. Eliezer says: As regards first fruits, if some are left outside [the wall of Jerusalem] and some are taken within, those that are [still] outside are like ordinary fruits² in every respect, while those within

are [to be treated] like ‘things of the Sanctuary’³ in every respect.

R. Shesheth said:⁴ in regard to first fruits, [the omission] to place them, [before the altar] is a bar [to their release], but the [omission of the] recital is not a bar. Whose is the view expressed here? — That of the following Tanna, as it is taught: R. Jose reports three things in the name of three Elders⁵ [this statement being one of them]:⁶ R. Ishmael says that one might presume that [even] nowadays [although there is no Temple], a person must bring his second tithe to Jerusalem and eat it there [as such, instead of redeeming it]. But, there is this argument [against it]: Firstlings⁷ must be brought to [Jerusalem], the [appointed] place,⁸ even as second tithe⁹ must be brought to [Jerusalem], the [appointed] place. Now what is [requisite] in the case of firstlings? They may not [be eaten there] save when there is a Temple; and the same obtains in regard to second tithe, that it should not [be eaten there] save when there is a Temple! [This is not conclusive, because] in the case of firstlings there are requisite [specific] altar-rites, the sprinkling of blood and the burning of certain ‘prescribed’ portions [of fat].¹⁰ [But] then [I ask] let first fruits support [my contention]!¹¹ [To this, we may reply] what is [requisite] in the case of the first fruits? They too must be placed [before the altar].¹² Here then comes the instructive text, And thou shalt eat before the Lord thy God, [in the place which He shall choose to cause His name to dwell there, the tithe of thy corn, of thy wine, and of thine oil, and the firstlings of thy herd and of thy flock,]⁹ wherein [second] tithe and firstlings are set side by side, showing that what obtains in firstlings, namely, that they may not be eaten there save when there is a Temple, equally obtains in second tithe, not to be eaten there save when there is a Temple. Now if it were that the non-recital is a bar, the wording of the last objection [before finally citing the Scripture text]¹³ should have been: [To this we may reply.] What is requisite in the case of first fruits? They need both, the recital as well as laying them [before the altar].¹⁴ R. Ashi said: [This is not decisive] because even granted that [the recital] is not a bar [to the release of first fruits], yet is it not to be considered even a precept,¹⁵ and as such it¹⁶ could be made the basis of an objection!¹⁷ But no, said R. Ashi: [the reason of its omission is that] since first fruits were also brought to the Temple by proselytes¹⁸ and they ought to have recited the [prescribed] wording. I profess this day unto the Lord . . . that I am come into the land which the Lord swore to our fathers to give us¹⁹ and could not [as being inapplicable]; he [R. Jose] could not state it absolutely.²⁰

But could not the argument run on and the deduction be based on common aspects?²¹ — [No,] as this can be refuted [thus]: What is their²² common aspect? They all have some ritual association with the altar.²³

And [tell me], what is his [R. Ishmael's] view?²⁴ If he deems the first dedication [by Solomon] to have been effected ‘for the nonce, and for all time to come,’²⁵ then even [unblemished] firstlings²⁶ might be eaten nowadays [at Jerusalem even without Temple or altar]; and [on the other hand], if he deems the first dedication to have been efficient only ‘for the nonce, and not for all time to come, then the same question arises in regard to the firstlings [as to the second tithe]?²⁷ — Said Rabina: indeed he [R. Ishmael] deemed the first dedication efficient ‘for the nonce, and not for all time to come, and here [in deriving the rule of the tithe from that of a firstling] he is thinking [of some particular incident] of a firstling, where the [ritual] blood-sprinkling [on the altar] had been performed just before the destruction of the Temple, and when the Temple was destroyed the flesh was still left [unconsumed by the priests]. And we compare the flesh to the blood thereof:²⁸ just as for [sprinkling of] the blood, there is need of the presence of the altar, so for [the eating of] the flesh, there is need of the existence of the altar [not otherwise];²⁹ and then again, we compare second tithes to firstlings.³⁰ But can a ruling inferred by analogy³¹ be employed [in matters appertaining to hallowed things]³² as basis of inference for a further analogy?³³ — The tithe of corn, [wine and oil] is [considered] non-hallowed.³⁴

(1) For eating them, unlawfully, be it priest or layman. V. Tosaf. 18b, s.v. **בכורים**.

(2) Subject to no restrictions, apart from the ordinary dues.

- (3) To be enjoyed by priests only. Cf. Lev. V, 15-16; XXVII, 30-31.
- (4) In agreement with the statement of Hoshaia (cited by R. Eleazar and R. Johanan).
- (5) R. Ishmael (b. Elisha). R. Akiba (b. Joseph), the two great Masters and founders of schools and (Simeon) Ben Zoma (according to one reading, Ben 'Azzai).
- (6) Cf. the parallels, Zeb. 60b; Tem., 21a; Tosef. Sanh. III; Sifre on Deut, XIV, 23.
- (7) Firstborn of sheep and kine.
- (8) Deut. XII, 6, 17; XV, 20-21.
- (9) Ibid. XIV, 22-23, and cf. Lev. XXVII, 30, 32.
- (10) Which is not the case in second tithes. On the rites, cf. Num. XVIII, 17; v. also supra p. 125. n. 8.
- (11) First fruits have no ritual sprinkling (of blood or burning of fat) on the altar, yet they have to be brought to and be eaten at Jerusalem. Cf. Deut. XII, 6, 17; Num. XVIII, 13.
- (12) Deut. XXVI, 4, 10, but second tithe is not placed before the altar, and may be eaten in Jerusalem anywhere.
- (13) V. p. 132, n. 5.
- (14) This shows that, already according to R. Ishmael, the omission of recital is not a bar, but that of not placing the fruits before the altar is a bar to their release.
- (15) Surely it is!
- (16) [Cf. MS.M.. cur, edd.: 'let him say a precept'.]
- (17) [Thus: What is requisite in the case of first fruits? They need both the placing (before the altar) as an indispensable rite, and the recital as an enjoined (though not indispensable) precept which is not the case with the second tithe.] But in fact is not; which shows that nothing is to be inferred from its omission. (Against the other Rabbis who regard the omission of the recital as not a bar to the release.)
- (18) V. Bik. I, IV.
- (19) Deut. XXVI, 3.
- (20) That recital is indispensable.
- (21) [Common to firstlings and first fruits: Though they are unlike one another, the former not requiring to be placed before the altar, and the latter, lacking the specific altar rites of blood and fat etc., they nevertheless possess one aspect in common in that they both have to be brought to Jerusalem and consequently are in force only when there is the Temple in existence; and the same argument can similarly be applied to second tithe which also has to be brought to Jerusalem and hence not in force save when the Temple stood.]
- (22) I.e., first fruits and firstlings.
- (23) Which is not the case of the second tithe, which consequently cannot be derived from firstlings and first fruits.
- (24) On another implied issue.
- (25) A very moot question, involving many issues on which opinion is considerably divided. It has three aspects, (a) in regard to Palestine as the Holy Land of Israel, for various religious observances, dues and privileges; (b) in regard to Jerusalem, as the Holy City within the mural precincts, for eating there certain holy foods of a minor degree of sanctity, and (c) in regard to the Temple and altar, for certain sacrificial rites. Here, the question touches only the last two.
- (26) V. Deut. XV, 19-20. Blemished firstlings were unfit for the altar and could be eaten anywhere as ordinary flesh, by the pure or defiled alike (verse 21).
- (27) [This is difficult. Rashi explains the reference to the case where the Temple was destroyed between the sprinkling of the blood of the firstling and the eating of the flesh thereof; and the question would arise since it need no more be brought to the Temple, it is comparable to second tithe, and it should therefore be permitted for eating. It is however better to adopt reading of other texts and MSS. (v. D.S.) 'then even second tithe should present no problem.']
- (28) Since both are associated together in the Holy Writ. Num. XVIII, 17-18. Cf. also Deut. XII, 27.
- (29) In the parallel passage, Temurah 21a, it is put thus, that if the blood were available at the moment (since the fall of the Temple) it could not be used for the ritual without an altar, nor could, therefore, the meat be eaten then.
- (30) Both likewise being associated in the same text (v. supra p. 132, n. 5), that second tithe is not to be eaten outside Jerusalem only during the existence of the altar. [According to the preferable text of versions referred to in note 3, Read: 'Said Rabina, indeed he holds that the first dedication was for the nonce and for all time to come and the reason why R. Ishmael assumes that a firstborn may not be eaten nowadays is because he is thinking etc.']
- (31) Hekesh (v. Glos.) that the flesh of the firstling, by analogy with the blood (and fat), on Num. XVIII, 17-18, demands the presence of the altar.
- (32) 'R. Johanan said: Everywhere in the (exposition of the) Torah deduction may be drawn from deduction, save in

matters appertaining to hallowed things (i.e. Temple and sacrificial rites).’ Tem. 21b, and Zeb. 49b.

(33) By the further analogy between second tithe with the (flesh of the) firstling (on Deut. XV, 23) to require the presence of the altar likewise for eating second tithe.

(34) Second tithe may be redeemed (with silver current coin) before it passes through the gates of Jerusalem, and if it has become defiled even in Jerusalem, it may then be used just as ordinary corn, wine or oil, unlike first fruits or other sacrificial kinds (of offerings) mentioned together, which may not be eaten on becoming defiled. In using here one deduction for a further deduction on an ordinary nonsacred element, the aforementioned exegetical rule is not infringed.

Talmud - Mas. Makkoth 19b

This reply [to the objection raised] is satisfactory according to the view that we follow the derived-point;¹ but what of the view that we follow the instructive-point as well?² — [Again no difficulty here, as] blood and flesh [in this case] are one and the same thing³ [being of the same animal].

WHO EATS OF MOST HOLY [MEATS] OUTSIDE THE HANGINGS; OF LESSER HOLY [MEATS] OR OF SECOND TITHE, OUTSIDE THE CITY WALL. Have we not already learnt this [in the former Mishnah], ‘And [who eats of] second tithe or of "sanctuary-gifts" unredeemed’?⁴ — Said R. Jose b. Hanina: The latter [Mishnah] refers to a second tithe that is clean and to a person in a clean state, who [unlawfully] eats [thereof, unredeemed,] outside the city wall; whereas the former [Mishnah] to a second tithe that is unclean and to a person in an impure state, who ate [unlawfully] of it [unredeemed,] within Jerusalem. Now, where do we find [in Holy Writ] that eating of second tithe in impurity⁵ renders one liable? — As it is taught: R. Simeon says: [The text,] Neither have I put away thereof, being unclean⁶ [implies]: Neither [have I eaten of it] while I was unclean and the tithe clean, nor while I was clean and the tithe defiled. And where is the admonition not to eat it? I know not . . .⁷ [You know not?] Is not [eating of holy meats during] personal impurity explicitly prescribed: The soul that toucheth any such unclean things shall be unclean until the even and shall not eat of the hallowed things until . . .?⁸ — But [I meant] its own defilement.⁹ It is written, Thou mayest not eat within thy gates.¹⁰ And later it is said, the unclean and the clean may eat together, as the gazelle and the hart.¹¹ And the school of R. Ishmael taught that [this means that] even a ‘clean’ person and one who is ‘unclean’ may eat [meat of a blemished firstling] out of the same platter, without scruple.¹² Thus does the All-Merciful direct; that what is allowed you elsewhere,¹³ for the ‘clean’ beside the ‘unclean’ [‘to eat thereof together’]. does not apply here,¹⁴ where — ‘thou mayest not eat’. And [again], whence is it derived that second tithe which has become defiled is redeemable [even within¹⁵ Jerusalem]? — Even as R. Eleazar said: How can it be shown that second tithe which has become defiled may be redeemed even at Jerusalem? From the instructive text: [And thou shalt eat before the Lord thy God, in the place that He shall choose . . . the tithe of thy corn . . . And if the way be [too] long for thee; if thou art not able to bring it up . . . then shalt thou turn it into money,¹⁶ and the expression se'etho¹⁷ [‘to bring it up’] means [in this connection] only ‘eating’, as in the passage. And portions [mas'oth] were brought forward unto them [Joseph's brothers] from before him [Joseph].¹⁸ R. Bibi, citing R. Assi said: Whence could it be shown that clean second tithe may be redeemed even within one pace of the wall outside Jerusalem? From what is said, When thou art not able to bring it up, [then shalt thou turn it into money]¹⁹ But is that text not claimed for the point already made by R. Eleazar? — Were that the [only] lesson intended, the text should have said, ‘when thou art not able to eat it’; why was that [unusual] expression, se'etho¹⁷ [‘not able’] to bring it up’ used. Am I to take it then, entirely in the sense suggested [by you]? — [No, as then another term,] li[n]telo,²⁰ [‘(unable) to take the load’] might have been used; what then, does [this special term] se'etho¹⁷ convey? It suggests both meanings.

R. Hanina and R. Hoshai sat and raised the [following] question: What would be the case [where a pilgrim had just reached] the very entrance to Jerusalem.²¹ Obviously when he is outside and his charge inside [he cannot redeem], as the partitions [walls] have already taken in the charge; but when

he is within and his charge [still] outside, what is the law? — Thereupon a certain aged scholar imparted to them a teaching of the school of R. Simeon b. Yohai [to this effect]: If the place is far from thee . . . [turn it into money],²² the word *mi-meka*²³ [‘from thee’] [implies] ‘thy amplitude’.²⁴ R. Papa raised the question: What if he [being within the entrance] carries his load on a stick [behind him]?²⁵ — The question is left over.²⁶

[WHO EATS . . . OF SECOND TITHE, OUTSIDE THE CITY-WALL.] R. Assi citing R. Johanan said: When does the liability begin [for eating of] second tithing [outside the city-wall]? As soon as it has [once] come within sight of the [interior] wall. The reason? Because [one] text reads: And thou shalt eat before the Lord thy God,²⁷ [... the tithing of thy corn];²⁸ and again it is written, Thou mayest not eat within thy gates²⁹ [the tithing of thy corn].³⁰ [We say that] wherever [the former command,] ‘eat before the Lord thy God’ — becomes applicable, [the other,] ‘thou mayest not eat within thy gates’ becomes applicable;³¹ and [vice versa], wherever the [former command], ‘eat before the Lord thy God’, has not become applicable, there too, [the other] ‘thou mayest not eat within thy gates’ is not applicable.³² An objection [against this exposition] was raised from the following: R. Jose said: If a priest picks a fig out of *tebel*³³ produce, [and before eating] says, Let the *terumah* thereof be [situate³⁴ somewhere] near the peduncle [stalk]; the first tithing thereof in its northern [left] part; the second tithing thereof in its southern [right] part, this being in a year when second tithing is due and he being then in Jerusalem; or, [let] the poor tithing thereof [be] in its southern side, he being then in the ‘country-adjointing,’³⁵ if he then eats that fig,

(1) Here, the second tithing.

(2) Here, the inference from the ritual sprinkling-blood, the due of altar, to the flesh given to the priest or worshipper.

(3) Cf. Men. 13a. And therefore in deriving flesh from blood there is no argument from analogy.

(4) V. Mishnah, supra 13a.

(5) This has two meanings, referring to (a) the impurity of the person, or (b) the impurity of the tithing.

(6) Deut. XXVI. 13-14. A declaration to be made in the Temple on the afternoon of the 7th day of Passover, in the 4th and 7th years of the Septennial Cycle. Cf. Sifre a.l. and on Deut. XII, 17. and M.Sh. V, 10.

(7) The quotation is here interrupted by the questioner and the Scriptural passage adduced by him is not to the point, as that refers to the impurity of the person, not to the impurity of the tithing that the previous speaker wished to elucidate.

(8) Lev. XXII, 6. ‘Hallowed things’ here, and in Deut. XXVI, 13. ‘the hallowed thing’ are taken to mean ‘second tithing’.

(9) That of the tithing, not of the person.

(10) With reference to second tithing, Deut. XII, 17. Cf. also verses 6 and 11; XIV, 23.

(11) With reference to a blemished firstling. Ibid. XV, 21-22.

(12) Of bringing the meat of a firstling (that is usually considered as ‘hallowed’, v. P.B. p. 13) into contact with the (ritually) ‘unclean’ eater. It should be noted that some of the restrictions attach even to the blemished firstling, before it is killed for food, e.g., it may not be shorn of its wool or milked. V. Rashi.

(13) In the case of a blemished firstling.

(14) in the case of second tithing, which must not be eaten when it is brought into contact with what is unclean.

(15) Already implied in the wording of the Mishnah, 13a, HE WHO EATS OF SECOND TITHE UNREDEEMED (is flogged); which plainly suggests that in some cases it may be redeemed. [This however cannot apply to undefiled second tithing, which may not be exchanged into money except outside Jerusalem, and that for the purpose of taking it up there.]

(16) Deut. XIV, 23-24.

(17) **שאתו**, the verbal noun of the root **נשא** which means ‘to raise’, ‘lift’, ‘carry’, ‘bring up’. The word **משאת** has the extended meaning of a ‘portion of food’ brought to the guest, as in the passage in Genesis cited here. Cf. II Sam. XI, 8.

(18) Gen. XLIII, 34.

(19) Note the double provision made in Deut. XV, 24, ‘If the way be (too) long, and if the place (Jerusalem) be (too) far,’ which is taken to provide (a) against distance and (b) against other difficulties that may arise even close to the Holy ‘City as explained here.

(20) **נטלו** from the root **נטל** to take a load’, ‘to carry’. Cf. Isa. XL, 15, and Prov. XXVII, 3.

(21) [MS.M. ‘Sat at the entrance of Jerusalem and asked the (following) question’, v. Rashi.]

(22) Deut. XIV, 23-24.

(23) מומך seemingly taken as — מעמד — i.e., far ‘from what thou hast with thee,’ namely, the tithe of corn, wine or oil. For such use of מעם v. Gen. XXXI, 31-32; Ex. XXII, 11, 13; cf. עם Job VI, 4; X, 13 and XXIII, 14. This solves the difficulty felt by Tosaf s.v. הוא.

(24) Here, the bulging bundle of tithe-fruit. The strange word מילואך used here for the bulging load may be taken as suggested by מלאאתך (‘thy corn’). Ex. XXII, 28, and Num. XVIII, 27; Deut. XXII, 9. [The meaning of the verse is accordingly, ‘If the place is far from what thou hast with thee,’ i.e., the load which thou hast with thee on thy shoulders. Consequently where he is already within, though his charge is still outside, since he is not with it, it is not considered far.]

(25) Is the load associated with the bearer as within, or not, in spite of the connecting staff?

(26) See on this point the remark of Rabina, at the very end of this section, 20a.

(27) I.e., in Jerusalem.

(28) Deut. XIV, 23.

(29) I.e., anywhere, outside Jerusalem.

(30) Deut. XII, 17.

(31) I.e., as soon as second tithe enters within the precincts of the Holy City it is ‘seized’ to be eaten there, and not redeemable or to be taken out again, unless it has become defiled.

(32) I.e., either it has not yet been taken into the Holy City or has become defiled; it is then redeemable.

(33) V.Glos.

(34) Terumah being called ‘the Prime’, First, has to be definitely marked off, ‘designated’ and ‘allocated’, before the rest may be eaten (temporarily). V. Ter. III, 5.

(35) בגבולין, i.e., anywhere outside the Holy City. Poor tithe may be eaten anywhere.

Talmud - Mas. Makkoth 20a

he incurs a flogging on one¹ count; and if he be a layman [non-priest], he is flogged on two² counts, whereas, had he eaten it straightway [without specifying the several dues] he [the layman] would have been liable only on one³ count. [Now] the reason [that a layman is said to be liable on two counts] is because he ate in Jerusalem; but supposing he had done it in the ‘country-adjointing’, he would have incurred a flogging on three⁴ counts, [that is to say] he would be liable even though the fig [with its comprised quota of second tithe] had not come within sight of the [interior] wall [of Jerusalem]!⁵ — [No; we assume] that he had brought it in [to Jerusalem] and taken it out again. If so, [I ask] what is the object of R. Jose’s statement?⁶ — [I would suggest] that the case he has in mind is where one had taken his fruits in tebel-condition to Jerusalem, R. Jose being of opinion that gifts not yet segregated are regarded as virtually segregated.⁷ But does R. Jose hold gifts not yet segregated are regarded as virtually segregated? Why, it is taught: R. Simeon b. Judah says in the name of R. Jose that Beth Shammai and Beth Hillel were not in disagreement about fruits that were not yet completely ready [for tithing],⁸ if they were taken in transit through Jerusalem, that the [comprised quota of] second tithe in them may be redeemed and the fruits may then be eaten anywhere.⁹ Where they did differ was about fruits that were completely ready [for tithing] and were taken in transit through Jerusalem, Beth Shammai saying that the [comprised quota of] second tithe in them should be ‘brought back to Jerusalem¹⁰ and be eaten there, while Beth Hillel say that the comprised quota should be redeemed and may be eaten anywhere.¹¹ Now, if you suppose that [R. Jose considers comprised] gifts¹² not yet segregated are as virtually segregated [how could such redeemed dues be eaten anywhere] seeing that they have been received within the [city] walls? — Said Raba:¹³ [The power of the city] walls [to place an embargo] on the eating [of second tithe within] is recognised by the Scriptures, whereas [its power] of ‘seizing’¹⁴ is only Rabbinical;¹⁵ and the Rabbis declared an embargo only to second tithe overt;¹⁶ but if it is [still merged] in tebel, they made no embargo. Rabina suggested that [the first objection raised]¹⁷ might be [met by supposing the reference to be to] a man carrying his bundle of second tithe on a stick [behind him].¹⁸ And this [by the way] might offer a solution to the problem raised by R. Papa.¹⁹

MISHNAH. IF A MAN MAKES A BALDNESS ON HIS HEAD, OR ROUNDS THE CORNER OF HIS HEAD, OR MARS THE CORNER OF HIS BEARD, OR MAKES ONE CUTTING [IN HIS FLESH] FOR THE DEAD, HE IS LIABLE [TO A FLOGGING]. IF HE MAKES ONE CUTTING FOR FIVE DEAD, OR FIVE CUTTINGS FOR ONE, HE IS LIABLE [SEVERALLY] FOR EACH ONE.

ON [ROUNDING] THE HEAD [HE IS LIABLE] FOR TWO CORNERS,²⁰ ONE FOR ONE SIDE AND ONE FOR THE OTHER; ON [MARRING] THE BEARD [HE IS LIABLE] FOR TWO [CORNERS] ON ONE SIDE, FOR TWO ON THE OTHER SIDE, AND FOR ONE LOWER DOWN;²¹ R. ELIEZER²² SAYS: IF THEY WERE ALL TAKEN OFF AS ONE²³ HE IS LIABLE ONLY ON ONE COUNT. AND HE IS ONLY LIABLE ON TAKING OFF WITH A RAZOR; R. ELIEZER²² SAYS: EVEN IF HE PICKS OFF THE HAIRS WITH TWEEZERS,²⁴ OR [REMOVES THEM] WITH PINCERS,²⁵ HE IS LIABLE.

GEMARA. Our Rabbis taught: ‘[It is written]. They [the priests] shall not make bald . . . [on their head].²⁶ One might presume that if he made four or five bald patches he would be liable only on one count; we are therefore told, a baldness²⁷ — to teach that he is liable on each and every bald patch. What is the [special] import of ‘on their head’ [in this passage]?²⁸ As it is written [elsewhere], Ye shall not cut yourselves nor make a baldness between your eyes for the dead,²⁹ one might presume that [it means] he should only be liable for making a baldness between the eyes alone; how is it shown that the prohibition extends to [anywhere on] the entire head?³⁰ By the expression, ‘on their head,’ [that is, the prohibition] extends to [anywhere] on] the entire head. I have here an injunction only for priests, for whom Holy Writ has laid down many [other] additional precepts; whence is it shown that these are injunctions for Israel [at large]? Because it is said here [to priests] — [they shall not make] a baldness [on their head]³¹ — and it is said there [to all Israel] — [nor make] a baldness [between your eyes for the dead,]³² and [we say]: Just as [in the case of the priests] the offender is liable for each bald patch and on [any part of] the head as for [a baldness made] between the eyes, so likewise here [in the case of all Israel] the offender is liable for each bald patch and on [any part of] the head as for [a baldness made] between the eyes; just as there it is forbidden [only] in mourning for the dead,³³ so likewise here it is forbidden [only] in mourning for the dead.’³⁴

How, for instance, were those four or five baldnesses made?³⁵ If I say one after another, he having duly been admonished [four or] five times, it is obvious [that he is liable for each].

(1) For eating *tebel*, i.e., the first tithe from which the priestly due had not been set aside. Being a priest, he may eat *terumah* and there is no offence as regards eating the comprised quota of second tithe, because he is eating it now in Jerusalem, as stated in the data, nor as regards eating the first tithe which is permissible even to laymen.

(2) For eating (i) *tebel*, and (ii) *terumah* (twice).

(3) For *tebel* only. The version of this quotation in the *Tosef. Mak. III*, is different, but to the same effect.

(4) For eating *tebel*, *terumah* (twice) and second tithe outside Jerusalem.

(5) Which is in conflict with the (reported) statement of R. Johanan above, that the liability (technically) begins as soon as the second tithe comes within sight of the interior of the wall of Jerusalem.

(6) Why all those particulars, when and where it was done?

(7) Hence three counts for a layman: For *tebel*, for *terumah* (twice) and for second tithe, albeit as yet unsegregated.

(8) I.e., for storing and tithing. Tithes are not actually due until the final stage of harvesting. *V. Ma'as. I, 5*.

(9) As the second tithe was as yet not actually due.

(10) Having once been taken into the Holy City, they were ‘seized’ and appropriated, not to be taken out again.

(11) *M.Sh. III, 6*.

(12) *Dues*.

(13) *Var. lec.*: ‘*Rabbah*’.

(14) Preventing the redemption thereof.

(15) By interpretation of the implications of the text.

- (16) I.e., actually segregated and visibly distinct.
- (17) That if he ate the fig (instanced above) outside Jerusalem he would be liable on three counts, although it had not yet been brought within sight of the interior of the wall.
- (18) And this circumstance might be taken as if by the man's penetration his bundle too has reached within sight of the interior with him, and thereby he incurs a flogging, if he eats the fruit outside.
- (19) *Supra* p. 138.
- (20) The side growth descending over the junction of jaw-bone to the skull.
- (21) There are several explanations: (i) The corners mean the 'regions', directions of the beard: two side-whiskers; two running parallel with the jaw to the sides of the mouth; and one on and under the chin (R. Han.). (ii) Two upper junctions of the jaw to the skull, in the region of the eyes; two corners of lower-jaw below the lobes of the ear; and one on the chin. (iii) Two corners of the lower jaw-bone under the ear; two ends of the jaw-bone nearing the chin; and the chin. (Rashi — RIBN, on the text.) V. R. Shimshon (of Sens) and Raabad (of Posquieres, Beaucaire) on *Sifra*, Lev. XIX, 27; *Asheri Mak.* III, 2, and R. Jacob's Summaries (there) No. 5 and *Tur*, Y.D. 181.
- (22) Var. lec.: 'R. Eleazar'.
- (23) In a single movement.
- (24) Tweezers, the Roman *volsellae*, hairpluckers.
- (25) Or possibly the Roman *radula*, a kind of shaving spoke.
- (26) Literal rendering of Lev. XXI, 5.
- (27) [The deduction is based on the cognate accusative which is deemed superfluous.]
- (28) They shall not make a baldness on their head.
- (29) *Deut.* XIV,1. Cf. *Jer.* XVI, 6 and XLVII, 5.
- (30) Var. lec. add 'No less than between the eyes.' v. D.S.
- (31) V. p. 141, n. 7.
- (32) V. p. 141, n. 10.
- (33) As is clear from the context, Lev. XXI. 1ff.
- (34) Cf. *Kid.* 36a, and *Sifra* on Lev. XXI, 5.
- (35) For each of which he is rendered liable.

Talmud - Mas. Makkoth 20b

If [on the other hand] there had been uttered but one admonition, is he liable [on four or five counts]? Do we not learn [in the Mishnah]:¹ A nazirite² who has been drinking wine all day is liable only on one count;³ if they said to him, 'Drink not [wine]!' 'Drink not [wine]!' — and he drinks [each time], he is liable on each and every [instance]? — The ruling has application where [say] he dipped his five fingers in a [depilatory] salve and applied them simultaneously [on five places], in which case the one admonition refers to each [finger separately].

And how much constitutes a baldness? — R. Huna says: Enough to show the [bare] scalp; R. Johanan says, in the name of R. Eleazar son of R. Simeon:⁴ It is about the size of a bean. [These statements correspond] to different Tanna-statements: 'How much constitutes a baldness? About the size of a bean; others⁵ say, enough to show the [bare] scalp.' Rab Judah b. Habiba observed that three Tannaim differed on that point: one saying the size of a bean, another saying, large enough to show the [bare] scalp, and yet another saying, the removal of two hairs [at least]; some delete 'two hairs' and substitute 'about the size of a lentil'. As a mnemonic use the following [Mishnaic] phrase: 'If a [leprous] bright-spot⁶ is of the size of a halved [Cilician]⁷ bean and quick-flesh⁸ of the size of a lentil [encircles it etc.]'.⁹

A Tanna taught: 'One who removes [on the Sabbath] a scissors-nip [of hair] is liable for [a sin-offering]';¹⁰ and how much is a scissors-nip? — Said Rab Judah: Two hairs. But was it not taught¹¹ that two hairs are [the minimum] for a baldness? — Then take it as meaning, 'And the same [minimum] obtains in the case of a baldness.' It is likewise taught in [another] Baraita: One who removes [on the Sabbath] a scissors-nip [of hair] is liable [to a sin-offering]. And how much is a

scissors-nip? Two hairs; R. Eliezer says [even] one hair. Yet the Sages concede to R. Eliezer where one picks out white hair from the black that he is liable even for one, and this thing is forbidden even on week-days,¹² because it [comes under what] is said, And a man shall not put on a woman's garment.¹³

OR ROUNDS THE CORNER OF HIS HEAD. Our Rabbis taught: 'The corner of his head', is the extreme end on one's head: and what is [rounding] the extreme end on his head? If he levels his temple-growth from the back of his ears to the forehead.

A tanna recited in the presence of R. Hisda: The one who rounds [the corners], and the one who has them rounded are equally liable [to a flogging]. Said R. Hisda to him: 'Does a fellow who eats dates from a sieve get a flogging?'¹⁴ Should anyone ask whose view that is, [tell him] it is R. Judah's view who says: [The contravention of] a prohibition [involving] no [tangible] action entails a flogging.¹⁵ Raba suggested [that the dictum may refer] to one who crops himself [rounding off the corners of his head],¹⁶ and that would harmonize with either view.¹⁷ R. Ashi suggested [it might refer] to one who assists¹⁸ the hairdresser, and this [too] harmonizes with either view.

OR MARS THE CORNER OF HIS BEARD. Our Rabbis taught: 'The corner of his beard' means the 'end' of his beard; and what is the 'end' of his beard? The 'tuft'¹⁹ of his beard.

OR MAKES ONE CUTTING [IN THE FLESH] FOR THE DEAD. Our Rabbis taught: [It is written,] Ye shall not make a cutting in your flesh.²⁰ One might presume that [he is liable] even for cutting himself on the collapse of his house, or on the foundering of his ship at sea; we are therefore told 'for a soul'²⁰ — [that is to say,] he is liable only on [cutting himself] for the dead alone. And whence is it shown that one who makes five cuttings [in his flesh] for one dead is liable on each and every cutting? We learn it from the words, 'a cutting',²⁰ that is, to make one liable for every cutting. R. Jose²¹ Says: Whence can it be shown that one who makes one cutting for five dead is liable on each [of the five] dead? From the instructive text 'for a soul',²⁰ which indicates that one is liable for every soul — But, have you not already made use of this text for excluding [from this category] one 'who cut himself on the collapse of his house, or on the foundering of his ship at sea'?

(1) P. 148.

(2) V. Num. VI, 1ff.

(3) For drinking wine.

(4) Var. lec.: R. Eleazar b. Shammu'a.

(5) 'Others' a designation of R. Meir, after he came into conflict with Rabban Simeon b. Gamaliel. V. Hor. 13b.

(6) Lev. XIII, 2.

(7) The Cilician bean was a large quadrangular bean, and was taken as the standard measure for deciding on a state of impurity in skin-eruptions described in Lev. XIII, 1ff. Cf. Kel., XVII, 12; Neg. VI, 1, where it is defined as nine lentils, 3 X 3 = 36 hairbreadths, a lentil being 4 hairbreadths.

(8) Ibid. 14-15.

(9) Neg. VI, 5; cf. Kel. XVII, 8.

(10) If done in error, Shab. 94b.

(11) [This, being the continuation of the Baraita cited, implies that a scissors-nip is not the equivalent of two hairs (v. Rashi. Shab. 94b.)]

(12) As effeminacy and vanity.

(13) Deut. XXII, 5 as 'a abomination unto the Lord'.

(14) Seemingly a proverb, meaning that if one ate some dates gathered in sieve (or basket) would he be treated like a thief who was caught picking them from the tree? Ritba explains it thus: If someone had gathered some fruit on the Festival day and another came and took some out of the basket and ate them, would the second be as guilty as the first who desecrated the Festival?

(15) Cf. supra 4b.

- (16) He would be liable on two counts, for cropping or shaving and being cropped or shaved, as the expression **לֹא תְקַיְפוּ** is in the plural, i.e., more than one acting, and the meaning of the verb in this form — Hif'il — 'do not make the corner rounded' (yourself) or 'do not have someone rounding it' (for you). V. Malbim on Lev. XIX, 27.
- (17) R. Judah's, and also that of the Rabbis who require action.
- (18) By holding the hair for the barber to cut more effectively.
- (19) Lit., the 'barb' or 'tress'. V. note 2, p. 141, on the Mishnah.
- (20) Lev. XIX, 28.
- (21) Cf. Kid. 35b, where the name is R. Issi (of Huzal).

Talmud - Mas. Makkoth 21a

— [Yes, but] R. Jose¹ takes [the two terms used] — *seritah*² and *gedidah*³ as having the same import, and in the case of the latter it is said 'for the dead'.⁴ Samuel said: One who cuts himself with an instrument is liable.⁵ An objection [against this] was raised from the following: *seritah* and *gedidah* are one [and the same] thing, save that *seritah* is done with the hand, while *gedidah* is done with an instrument! — He [Samuel] shares the view of R. Jose.⁶

A tanna recited in the presence of R. Johanan: [One who cuts himself] for the dead, whether with the hand or with instrument, is liable [to a flogging]; [if he does so] as an idolatrous practice, if with hand he is liable, if with instrument, he is exempt. But, is it not written [of the priests of Baal] the other way about, and they cut themselves after their manner with swords and lances?⁷ — But rather say, 'If with the hand, he is exempt,⁸ if with an instrument, he is liable.'

ON [ROUNDING] THE HEAD [HE IS LIABLE] FOR TWO CORNERS, ONE FOR ONE SIDE AND ONE FOR THE OTHER. R. Shesheth pointed them out between the two [lateral] joints⁹ of the head. ON [MARRING] THE BEARD [HE IS LIABLE] FOR TWO [CORNERS] ON THIS SIDE, FOR TWO ON THE OTHER SIDE AND FOR ONE LOWER DOWN. R. Shesheth pointed them out between the [several] junctions of the beard.¹⁰

R. ELIEZER SAYS: IF THEY WERE ALL TAKEN OFF AS ONE, HE IS LIABLE ONLY ON ONE COUNT. [That is,] he considers the whole [process as comprised under the] one prohibition.

AND HE IS ONLY LIABLE ON TAKING OFF¹¹ WITH A RAZOR. Our Rabbis taught: [It is written], Neither shall they [the priests] shave off the corner of their beard.¹² One might suppose that [he is liable] even if he removed it with scissors; we are therefore told, neither shalt thou mar [destroy]¹³ Reading, 'neither shalt thou mar'; one might suppose that he is liable¹⁴ even if he picked off the hairs with tweezers or with pincers; we are therefore told, 'they shall not shave,' to show that it must be shaving that involves destruction,¹⁵ which is the kind of shaving that involves destruction? You must say, it is [that done] by the [use of the] razor.¹⁶

R. ELIEZER SAYS: EVEN IF HE PICKS OFF THE HAIRS WITH TWEEZERS OR PINCERS HE IS LIABLE. However you wish [to take this statement, it is difficult]. If he received on tradition¹⁷ the Gezerah shawah,¹⁸ he should insist only on the razor [as the forbidden instrument]; if [on the other hand], he does not receive on tradition the Gezerah shawah, he should not permit even scissors!¹⁹ — Indeed, he did receive on tradition the Gezerah shawah, but he considers [the process of] those instruments²⁰ practically as shaving.

MISHNAH. HE WHO WRITES AN 'INCISED'-IMPRINT [IN HIS FLESH, IS FLOGGED]. IF HE WRITES [ON HIS FLESH] WITHOUT INCISING, OR INCISES [HIS FLESH] WITHOUT IMPRINTING, HE IS NOT LIABLE: [HE IS] NOT LIABLE UNTIL HE WRITES AND IMPRINTS THE INCISION WITH INK, EYE-PAINT²¹ OR ANYTHING THAT MARKS. R. SIMEON B. JUDAH SAYS IN THE NAME OF R. SIMEON [B. YOHAI] THAT HE IS NOT

LIABLE UNTIL HE HAS WRITTEN THERE THE NAME, AS IT IS SAID: NOR PUT ON YOU ANY WRITTEN-IMPRINT, I AM THE LORD.²²

GEMARA. Said R. Aha the son of Raba to R. Ashi: [Does it mean, not] until he has actually inscribed the words, I am the Lord? — No, replied he, it means, as Bar Kappara taught,²³ [viz.:] He is not liable [to a flogging] until he inscribed the name of some profane deity, as it is said: Nor put on you any written-imprint, I am the Lord,²² [that is,] ‘I am the Lord’ and no other.²⁴

R. Malkiah, as citing R. Adda b. Ahabah, said: It is prohibited to powder one's wound with burnt wood ash, because it gives the appearance of an incised imprint. R. Nahman²⁵ the son of R. Ika said: ‘Spit’,²⁶ ‘Maids’,²⁷ and ‘Follicles’,²⁸ were subjects of comment by R. Malkio,²⁹ while the ‘Belorith-tresses’,³⁰ ‘Wood-ash’,³¹ and ‘Cheeses’,³² were subjects of comment by R. Malkiah. R. Papa said: Malkiah comments on ‘Our Mishnah’ and [other] Mishnahs,³³ while R. Malkio comments on ‘Reported-pronouncements’:³⁴ your mnemonic [for this] is, The Mishnahs³⁵ are Malkatha³⁶ [‘Queens’]. What is the difference between the two? The point of ‘Maids’.³⁷

R. Bibi b. Abaye was particular even about [powdering] the scorings of the cupping instruments. R. Ashi observed [that this was going too far, as] wherever there is a wound the wound attests the [man's] purpose.

MISHNAH. IF A NAZIRITE HAS BEEN DRINKING WINE³⁸ ALL DAY, HE IS LIABLE ONCE ONLY; IF THEY SAID TO HIM, ‘DRINK NOT [WINE]!’ ‘DRINK NOT [WINE]!’ AND HE DRANK [EACH TIME], HE IS LIABLE ON EACH [INSTANCE]. IF HE HAS BEEN DEFILING HIMSELF FOR THE DEAD³⁹ ALL DAY, HE IS LIABLE ONCE ONLY; IF THEY SAID TO HIM, ‘DEFILE NOT YOURSELF!’ ‘DEFILE NOT YOURSELF!’ AND HE DID DEFILE HIMSELF [EACH TIME], HE IS LIABLE ON EACH [INSTANCE]. IF HE WAS SHAVING⁴⁰ ALL DAY HE IS LIABLE ONCE ONLY; IF THEY SAID TO HIM, ‘SHAVE NOT!’ ‘SHAVE NOT!’ AND HE DID SHAVE [EACH TIME], HE IS LIABLE ON EACH [INSTANCE]. IF ONE WEARS A GARB OF ‘LINSEY-WOOLSEY’⁴¹ ALL DAY, HE IS LIABLE ONCE ONLY; IF THEY SAID TO HIM, ‘DO NOT PUT IT ON!’ ‘DO NOT PUT IT ON!’ AND HE TAKES IT OFF AND PUTS IT ON, HE IS LIABLE ON EACH [INSTANCE].

(1) V. p. 144, n. 8.

(2) שריטה literally scratching or tearing. Ibid. XXI, 5.

(3) גדידה — Deut. XIV, 1.

(4) [‘For a soul’ being thus superfluous is employed to teach liability for every soul.]

(5) On two counts, as it is prohibited twice, in Lev. XIX, 28, and in Deut. XIV, 1.

(6) Who holds that seritah and gedidah have one and the same signification.

(7) I Kings XVIII, 28.

(8) I.e., from the death penalty for idolatrous practice, as this is not the regular manner of doing it.

(9) Cf. p. 141, n. 1.

(10) Cf. p. 141, n. 2.

(11) I.e., the corners of the beard.

(12) Lev. XXI, 5, where the instrument is not indicated and the term ‘shaving’ denotes also cropping.

(13) Ibid. XIX, 27.

(14) To a flogging.

(15) The complete levelling of the projecting hairs.

(16) That is, the two verbs ‘shave’ and ‘destroy’ (mar) are taken together to explain each other as to the kind of action explicitly forbidden.

(17) V. supra 15b.

(18) That is, linking our two texts (where ‘corner’ of beard and head are mentioned) with Lev. XIV, 9, on the ritual-cleansing of the leper, when head, beard, etc. must be shaven. How? By a razor, as inferred from the

ritual-purification of the Levites, Num. VIII, 7, where the razor is specified as the shaving instrument. The razor alone, therefore, is to be the forbidden or recommended instrument, authentically, v. Nazir 40b-41 but cf. Kid. 35b-36.

(19) That is, permit no removal of any kind, as Scripture simply demands no rounding, no shaving and no marring.

(20) Which he forbids.

(21) Kohl.

(22) Lev. XIX, 28.

(23) Var. lec. add (v. D.S.): 'For Bar Kappara taught.' Bar-Kappara was an eminent exponent of Baraitha-teachings.

(24) 'THE NAME' in the Mishnah will accordingly denote the name of an idol.

(25) In the parallel passages it is R. Hanina son of R. Ika.

(26) A reported pronouncement of Samuel that after the meat has been roasted the (greasy) spit should not be handled again on the Festival day; but R. Malkio, citing R. Adda b. Ahabah, said it may be put aside at the time. v. Bezah, 28b.

(27) R. Eliezer says (in a Mishnah), Even if a wife brought with her a hundred maids of her own, the husband can still insist on her doing work with wool, on the ground that idleness is demoralising. On this R. Malkio's comment (as citing R. Adda b. Ahabah) is that the halachah follows R. Eliezer; Keth. 61b.

(28) R. Huna observed that the two hairs proving pubes should be set in follicles (pitlets). On this R. Malkio commented (citing R. A. b. Ah.) that the follicles alone even without the hairs are sufficient indication of pubes; Nid. 52a.

(29) All these have Malkio, while the next group has Malkiah as commentator, also as citing the same Master, R. Adda b. Ahabah.

(30) A Baraitha teaches that in trimming the hair of a pagan, a Jew should cautiously 'keep off' his (other) hand from touching the top-tresses for these were usually consecrated to some deity. On this R. Malkiah commented (in the name of his Master) that he should begin to withdraw his hand at a distance of three fingers' breadth, on each side. A.Z. 29a. On belorith v. Sanh. (Sonc. ed.) p. 114, n. 5.

(31) Mentioned above, as comment on our Mishnah.

(32) On a discussion why cheeses of heathens are forbidden (in the Mishnah) R. Malkiah (in his Master's name) comments that they are forbidden because they are smeared over with lard. A.Z. 35b.

(33) I.e., Baraitha — externa, outside the Main Collection designated here Our Mishnah.

(34) Opinions, dicta, interpretations heard from eminent teachers and reported by their disciples or visiting scholars.

(35) That is 'Our Mishnah' par excellence.

(36) I.e., they are commented upon by R. Malkiah (which name closely resembles Malkah 'queen'); not Malkio.

(37) A point in the Mishnah, on which Malkiah comments (in the first group), which clashes with R. Papa's mnemonic. V. A.Z. (Sonc. ed.) p. 145.

(38) Num. VI, 3-4.

(39) Ibid. 6 ff.

(40) Ibid. 5.

(41) Sha'atnez, mixed material of linen and wool interwoven, knitted or sewn together, forbidden to wear, in Deut. XXII, 11, or to put on oneself, in Lev. XIX, 19.

Talmud - Mas. Makkoth 21b

IT IS POSSIBLE [FOR ONE] TO PLOUGH BUT ONE FURROW AND BECOME LIABLE [THEREBY] FOR EIGHT PROHIBITED ACTS: IF HE PLOUGHS WITH AN OX AND ASS [YOKED TOGETHER]¹ AND THESE WERE [ANIMALS] OF THE SANCTUARY;² [THE PLOUGH BEING DRAWN OVER] DIVERSE MIXED-SEED³ [SOWN] IN A VINEYARD,⁴ DURING THE SABBATICAL YEAR,⁵ ON A FESTIVAL-DAY,⁶ [THE PLOUGHER BEING] A PRIEST⁷ AND A NAZIRITE⁸ AND THE PLOT BEING SITUATE ON A DEFILED AREA.⁹ HANANIA B. HAKINAI SUGGESTS ALSO THAT HE MAY HAVE BEEN WEARING THEN 'LINSEY-WOOLSEY'¹⁰ SAID THEY TO HIM: THIS [LAST] IS NOT OF THE SAME CATEGORY. SAID HE TO THEM: NOR IS THE NAZIRITE¹¹ IN THE SAME CATEGORY.¹²

GEMARA. [AND HE TAKES IT OFF AND PUTS IT ON.] Said R. Bibi as citing R. Assi: Not [necessarily] actually taking it off and putting it on, but even if he only put his hand in and out of the arm-hole.¹³ R. Aha the son of R. Ika illustrated it [as requiring] to get into the coat and to get out of

it. R. Ashi says: Even if he only wore it long enough to put it on and to take it off he becomes liable.¹⁴

IT IS POSSIBLE TO PLOUGH BUT ONE FURROW AND BECOME LIABLE. Said R. Jannai: A decision by vote was taken at a certain [Rabbinical] Convention¹⁵ that he who [only] covers over diverse seeds [with earth] makes himself liable to a flogging.¹⁶ Said R. Johanan to him: Is that not [learnt in] our Mishnah: — IT IS POSSIBLE TO PLOUGH BUT ONE FURROW AND BECOME LIABLE [THEREBY] FOR EIGHT PROHIBITED ACTS; IF HE PLOUGHS [WITH AN OX AND ASS YOKED TOGETHER AND THESE ARE THE CHATTELS OF THE SANCTUARY . . .] OVER DIVERSE SEEDS [SOWN IN A VINEYARD etc.]? Now, how does he make himself liable by ploughing for [sowing] diverse seeds unless it is by covering them over [with the clods] as he proceeds [with the plough]?¹⁷ — He [R. Jannai] replied: Had I not picked up the shard for you, you would not have found the pearl beneath it.¹⁸ Said Resh Lakish to R. Johanan: Had not that great man¹⁹ praised you, I should have said, Whose is the view expressed in the Mishnah? It is R. Akiba's, who said that one who preserves diverse seeds incurs a flogging.²⁰ Which statement of R. Akiba [have you in mind]? — [The following, as] it is taught: One who weeds or covers over diverse-seeds is flogged; R. Akiba says: Also one who preserves [them].²¹ What is R. Akiba's reason? — It is as taught [in the following]: Thou shalt not sow thy field with two-kinds-of-seeds;²² I [know that it is forbidden] to sow, whence [say I, that] preserving [is debarred]? From the instructive [order of the] wording. Two kinds of seed in thy field [there shall] not [be].²³

Said 'Ulla to R. Nahman: And why not [mention²⁴ also] that he would be flogged for sowing²⁵ on the festival-day? — Said R. Nahman to him: [The Tanna] 'teaches and leaves out [some].'²⁶ Said 'Ulla to him: The Tanna teaches eight prohibited acts and you tell me 'He teaches and leaves out [some]'? — But said Rabbah:²⁷ The [principle of] 'distributive liability²⁸ for different kinds of work' is applicable to Sabbath, but no [principle of] 'distributive liability for work' is applicable to Festivals. Said he to him [Rabbah]: Let it remain at that! Abaye, however, raised an objection against him [saying]: But is not the principle of 'distributive liability for different kinds of work' held applicable also to Festivals? Is it not taught: One who on a festival-day boils the sciatic-sinew in milk and eats it incurs a flogging on five counts, [i] for eating the sinew,²⁹ [ii] for [unnecessary] cooking³⁰ on a festival-day. [iii] for boiling the sinew in milk,³¹ [iv] for eating meat with milk,³¹

(1) Deut. XXII, 10.

(2) Votive-gifts to the Sanctuary, animals for sacrifice or service, v. Lev. XXVII, 9-12; 26-27. If these animals are firstlings they may not be worked at all, even separately. (V. Ex. XIII, 12-13; Deut. XV, 19.)

(3) Forbidden in Lev. XIX, 19. In Palestine the seeds were scattered on the ground immediately after the first rain-fall and the plough was drawn over to cover them, v. Shab. 73a.

(4) Forbidden in Deut. XXII, 9. Even if he himself had not scattered the mixed diverse-seeds on the ground, his drawing the plough to cover them over amounts to sowing; if he did scatter them too, he would also have that to his guilt, but not to be included here in the example of accumulated-offences in one single act.

(5) Forbidden Ex. XXIII, 11; Lev. XXV, 4. The ploughing here is a form of sowing.

(6) On which work is forbidden, Lev. XXIII, 7-8; 21, 25, 30-31, 35-36. Sabbath is not mentioned, as a breach of the Sabbath by ploughing involves the supreme penalty (which would cover all counts) and no flogging is given in such cases. Cf. supra 13b and Rashi Pes. 47b (top).

(7) Who may not defile himself to the dead, Lev. XXI, 1-3. Cf. Num. XIX, 11, 16 ('grave').

(8) Likewise forbidden, Num. VI, 6 ff.

(9) I.e., a graveside, or burial ground. Cf. Num. XIX, 16.

(10) V. p. 148, note 9.

(11) Nor likewise the priest.

(12) As that of the prohibited act of ploughing on account of which he is flogged and with which we are concerned.

(13) 'Neither shall there come upon thee a garment of two kinds of stuff mingled together (sha'atnez);' Lev. XIX, 19. (Cf. p. 148, n. 9.) [The reading adopted here is that of the Yalkut; cur. edd. read: Does it mean he actually takes it off . . .

or even if he only puts his hand in etc.']

(14) [I.e., he becomes liable for every space of time during which he could put it on and take it off.]

(15) On the nature and function of these, v. S.I. Zuri, *The Reign of the Patriarchate and Sanhedrin*, (in Hebrew, London, 1933) Vol. III, p. 85; v. B.K. (Sonc. ed.) p. 407, n. 11.

(16) As for sowing diverse seeds.

(17) V. p. 149, n. 3.

(18) [As you might have explained the Mishnah as representing the view of R. Akiba to be cited anon.]

(19) [I.e., had not R. Jannai accepted your inference from the Mishnah, v. Rashi.]

(20) [But on the view of the Rabbis who oppose R. Akiba (v. n. 8) there would be no flogging for covering over diverse seeds, as against the decision of the convention.]

(21) Even though he has not scattered or sown them himself, but merely preserved them from going to waste by fencing them in or manuring them. It will be noticed that this would be action, and make him liable to a flogging. Preserving, however, might be taken to mean merely leaving alone, allowing the forbidden growth without uprooting it (as was expected). From the wording of the citation here, it is doubtful whether R. Akiba imposes a flogging even for a mere passive preservation. The Tosef. Mak. IV, 5, and Kil. I, 8, distinctly says that preserving as such makes him 'a transgressor of a forbidden act' — עובר בלא תעשה — but not liable to a flogging for inaction. V. Aruch s.v. אה, and particularly the commentary of R. Shimshon (of Sens), on Sifra, Lev. XIX, 29. also J. Kil. VIII, 1. V. Friedmann, M. op. cit. a.l. [The opening clause of this Baraita is explained in M.K. 2a as introducing the view of R. Akiba. Thus: 'one who weeds or covers ... is flogged, because R. Akiba says that also one who preserves them is liable.' The Rabbis, however, who disagree with R. Akiba in the case of preserving, will also differ from him in the case of covering.]

(22) Lev. XIX, 29.

(23) שדך בלאים. This text might also be explained, that as there are several kinds of kil'ayim (diverse-mixed things) that are forbidden here, its purpose must be 'Of kil'ayim have none'!

(24) In the detailed enumeration in the Mishnah.

(25) V. p. 149. n. 6, Since covering over diverse seed is treated as sowing.

(26) I.e., it is not an exhaustive list. There are other such instances.

(27) [For this reading v. D.S. a.l.; cur. edd. Raba said.]

(28) I.e., to be liable for every category of work separately, e.g., for ploughing and sowing, or for kindling the fire and cooking. This principle is inferred in the case of Sabbath, from Ex. XXXV, 2-3, where verse 2 forbids work on the Sabbath on the pain of death (kareth, or sin-offering, as the case may be), while verse 3 singles out the kindling of fire as if in a category by itself. One of the explanations given is that verse 3 indicates the 'distributive principle' for Sabbath, namely, that if one did many kinds of work (forgetful that it was a Sabbath day) he is liable on as many counts as the different categories of work he had done during that spell of forgetfulness. (V. Shab. 70a and parallel and Sanh. (Sonc. ed.) p. 420, n. 3.) R. Jose derives the same point from another text. No such authentic indication is available in the law of the Festivals.

(29) Forbidden in Gen. XXXII, 33.

(30) Ex. XII, 16, permits the preparation of food on festival days, but the sinew is not (proper) food.

(31) The prohibition is derived from the thrice forbidden seething of the kid in its mother's milk — in Ex. XXIII, 19; XXXIV, 26; Deut. XIV, 21 — as forbidding cooking, eating, or even all manner of use thereof.

Talmud - Mas. Makkoth 22a

and [v] for kindling¹ fire. Now, if it is [as you suggested], he should not be flogged for kindling the fire, as he is already held liable for cooking it [the sinew]? — Then [perhaps] remove kindling [from this text] and substitute [eating] sinew of a nebelah instead.² But then, is it not taught by R. Hiyya [on this same point]: 'He is flogged for eating it, on two counts, and on three counts for boiling it'? Now, if it be [emended as you suggest], he would be liable on three counts for eating it! — But take out kindling [on festival-day] and put instead [kindling] fire-wood from an asherah, and as to the requisite forewarning [to justify a flogging],³ it is contained in the verse, And there shall cleave nought of the accursed thing to thy hand.⁴

Said R. Aha the son of Raba to R. Ashi: Should he then not also incur a flogging on account of, And thou shalt not bring an abomination into thy house?⁵ — But here we deal with a case where he cooked it with fire-wood belonging to the Sanctuary, and as to requisite forewarning it is contained in the following [two texts]: And burn their asherim with fire, and [on the other hand], Ye shall not do so unto the Lord your God.⁶

To this R. Oshaia⁷ demurred: Why not include [in the list] also one who sows in ‘a rough valley’, the requisite forewarning being contained in the words, Which shall neither be ploughed nor sown?⁸ R. Hanania demurred: Why not include also if he erased [with plough] the Divine Name [inscribed on something] whilst proceeding with it, the requisite forewarning being found in the words, And ye shall destroy their name out of that place. Ye shall not do so unto the Lord your God?⁹ R. Abbahu demurred: Why not include also one who cuts away a [leprous] ‘bright-spot’¹⁰ the requisite forewarning being contained in the words, Take heed in the plague of leprosy that thou observe diligently, and do according to all that the priest the Levites shall teach you?¹¹ Abaye demurred: Why not include also one who loosened the ‘breastplate’ [of the High priest] from the ephod,¹² and also one who removed the staves from [their rings] on the ark,¹³ the requisite forewarnings being, they shall not be taken from it,¹⁴ And that the breastplate be not loosed?¹⁵ R. Ashi demurred: Why not include also one who ploughed with sticks taken from an asherah tree, the forewarning being, And there shall cleave nought of the accursed thing to thy hand?¹⁶ Rabina demurred: Why not include also one who cuts down good [fruit] trees, whilst proceeding¹⁷ [with the plough], the forewarning being, for thou mayest eat of them, but thou shalt not cut them down?¹⁸ Said R. Ze'ira to R. Mani: Why not include also the case of one who solemnly swore, ‘I shall not plough on the Festival-day’? — In that case the oath has no application, because he stands already adjured¹⁹ by the law of Sinai. Then, said he [R. Ze'ira] to him: Supposing he had sworn: ‘I shall not plough [at all], be it week-day or Festival-day,’ in which case, as the oath is valid for a week-day, it attaches [incidentally] also to the Festival-day?²⁰ — The Tanna does not mention anything for which absolution may be obtained.²¹ But [does he] not? Behold there is [the mention of ANIMALS] OF THE SANCTUARY?²² — [I explain that] to refer to a firstling.²³ And what about [the mention] of A Nazirite?²⁴ — That refers to a Samson-Nazirite.²⁵ ‘A Samson-Nazirite’! Is he debarred from defiling himself to the dead?²⁶ — But [say]²⁷ that the Tanna [of this Mishnah] does not admit the principle of *issur-kolel*.²⁸

R. Hoshia²⁹ said: If a votive-ox that had become disqualified [for sacrifice]³⁰ were to be used for covering a female [for breeding], the person using it so is liable to a flogging on two [counts].³¹ R. Isaac²⁹ [similarly] observed that if one drives [works] a votive-ox that had become disqualified [for sacrifice],³² he becomes liable to a flogging [for working it]: for, although the animal is [physically] one body, Holy Writ has [by its restrictions legally] placed it in the category of two [‘diverse’] bodies.³³

MISHNAH. [AND]³⁴ HOW MANY LASHES ARE GIVEN HIM? FORTY SAVE ONE, AS IT IS SAID: BY NUMBER FORTY,³⁵ WHICH MEANS, A NUMBER COMING UP TO³⁶ FORTY. R. JUDAH SAYS: HE IS GIVEN FORTY [LASHES] IN FULL, AND WHERE IS THE ADDITIONAL LASH³⁷ APPLIED? BETWEEN³⁸ HIS SHOULDERS.

WHEN THEY ESTIMATE THE NUMBER OF LASHES HE CAN STAND IT MUST BE A NUMBER DIVISIBLE BY THREE. IF THEY ESTIMATED HIM CAPABLE OF RECEIVING FORTY, AND AFTER RECEIVING SOME³⁹

(1) V. Ex. XII, 16 and v. note 2.

(2) As the fifth count, for the flesh of *nebelah* is forbidden as food in Deut. XIV, 21.

(3) V. supra, p. 18, n. 5.

(4) Deut. XIII, 18.

- (5) Ibid. VII, 26.
- (6) Ibid. XII, 3-4. On the above discussion cf. pes. 47b-48.
- (7) Also Hoshai, the Younger (not the Great, the Elder, disciple of both Bar-Kappara and R. Hiyya). Hoshai and Hanania were brothers (also of Rabbah b. Nahmani), Babylonians, contemporaries of R. Abbahu. R. Johanan wanted to ordain them, but the special occasion was missed V. Sanh. 14a and Makk. 19b. A. Hyman. Toledoth, 116-117.
- (8) Deut. XXI, 4. If in the Mishnah, 'rough valley' be substituted for 'a vineyard', there would result nine offences, as there are two prohibitions involved there, 'neither to be ploughed nor sown.' Cf. J. Sot., IX, 5.
- (9) V. p. 152, n. 9.
- (10) Cf. Lev. XIII, 4. [I.e., the affection happened to be in his leg and he cut it away with the plough whilst proceeding with it.]
- (11) Deut. XXIV, 8.
- (12) [I.e., where he who ploughed was a high priest and he loosened during the ploughing the 'breastplate'.]
- (13) [For ploughing with them, committing the transgression as long as they are with him.]
- (14) Ex. XXV, 15. with reference to 'the staves'.
- (15) Ibid. XXVIII, 28, with reference to 'the breastplate'.
- (16) Deut. XIII, 28.
- (17) [So MS.M.]
- (18) Deut. XX, 19.
- (19) Oath or no oath, there is no option in regard to a Divine ordinance; he may not plough on the Festival-day, v. Shebu. 27a.
- (20) The assumption is this, that here, in the self-imposed oath not to plough on any day we have a more 'Comprehensive Restriction' — אִיסוּר כּוֹלֵל, extending over or inclusive of the occasional Festival-day or days, so that the particular incidental restriction not to plough on Festival-day, is embraced in the (more) comprehensive, or general restriction. For a fuller discussion of the various types of restrictions v. Shebu. (Sonc. ed.) 17b and 24b. Cf. note 10.
- (21) He may obtain absolution from his oath, and thus secure exemption from the flogging.
- (22) I.e., being of the same category, since vows, like oaths are equally subject to absolution.
- (23) Hallowed from birth, Ex. XIII, 12-13; he must remain so and is not subject to absolution.
- (24) His vow is also like the oath subject to absolution.
- (25) I.e., a permanent nazirite like Samson. As Samson had not himself taken the vow, for it was imposed on him before he was born (Judg. XIII, 5), his nazirite state was not subject to absolution. Nazir, 4a-b.
- (26) Samson did defile himself (Judg. XIV, 19; XV, 15 and Nazir, 4b), whereas here (in the Mishnah) it is counted as part of the offence.
- (27) Having exhausted all possibilities.
- (28) Comprehensive Restriction (v. supra note 1,) a principle which had been assumed by R. Ze'ira in putting the question to R. Mani.
- (29) R. Hoshai, the Elder (not the one mentioned earlier with his brother, R. Hanania, v. p. 153, n. 1). He and R. Isaac (b. Abdimi) mentioned next were contemporaries. Cf. Sanh. 24a.
- (30) By blemish.
- (31) (a) Lev. XIX, 19, Thou shalt not let thy cattle gender with a diverse kind, and (b) Deut. XV, 19. Like the firstling, even though unfit for the altar, it may be eaten but not put to work. Cf. M.K. 12a (Tosef. II) and Bek. 15b. [This interpretation assumes that assisting in the mating of a votive-ox or of a firstling is considered work involving the penalty of flogging. This, however, is a moot point: v. Maim. Yad, Me'ilah, I, 9, and Mishneh le-Melek, a.l. MS.M. Rashi and Tosaf. and Maim. Yad, Kil'ayim IX, 11, omit 'on two counts', and the liability is in respect of the reason given infra. n. 2 (a)].
- (32) V. p. 154, n. 12.
- (33) (a) Partly as an ordinary animal, whose flesh is non-hallowed in every way, and (b) and partly as sanctified not to be put to work. Cf. Tosaf. s.v. שֹׁדֵרִי
- (34) Some texts read וְכַמּוֹד connecting it with the preceding Mishnah.
- (35) Deut. XXV, 2-3. That is, as the Hebrew text is unpointed and the verses are undivided, it seems that the two verses were run together so as to read 'By the number of forty'.
- (36) מְנוּךְ, contiguous, or close to forty (not inclusive). Cf. Asheri, Pes. X, 40, about 49 days of Omer. Others read —

סכום 'coming to a total at forty'.

(37) The 40th. [MS. M. omits 'THE ADDITIONAL'.]

(38) Var. lec., 'over against his shoulders': v. D.S.

(39) And stopped on physical or other considerations.

Talmud - Mas. Makkoth 22b

THEY AGAIN ESTIMATED HIM AS NOT CAPABLE OF ENDURING FORTY, HE IS EXEMPTED [FROM THE REST].¹ IF THEY ESTIMATED HIM FIT TO RECEIVE EIGHTEEN, AND AFTER HE RECEIVED THE SAME THEY AGAIN ESTIMATED HIM AS FIT FOR RECEIVING FORTY [SAVE ONE], HE IS EXEMPTED [FROM THE REST].¹ GEMARA. [AND HOW MANY LASHES ARE GIVEN? FORTY SAVE ONE.] What is the reason for this [particular number]? — If it were written, 'forty in number,' I should have said it means [actually] forty in number; but as [the order of] the wording is 'by number forty'² [it means] a number coming up to the forty.³ Raba observed: How dull-witted are those other people⁴ who stand up [in deference] to the Scroll of the Torah but do not stand up [in deference] to a great personage, because, while in the Torah Scroll forty lashes are prescribed, the Rabbis come and [by interpretation] reduce them by one.

R. JUDAH SAYS: FORTY [LASHES] IN FULL. AND WHERE IS THE ADDITIONAL LASH APPLIED? BETWEEN THE SHOULDERS. Said R. Isaac: What is R. Judah's reason?⁵ — It is written, And one shall say, what are these⁶ wounds between thine hands?⁷ Then he shall answer, I was beaten in the house of my friends.⁸ And the Rabbis [what say they to this]? — That [say they] is written in reference to the [punishment of] school children.

WHEN THEY ESTIMATE THE NUMBER OF LASHES [HE CAN STAND] IT MUST BE A NUMBER DIVISIBLE BY THREE [IF . . . AFTER RECEIVING SOME THEY AGAIN ESTIMATED HIM . . . HE IS EXEMPT]. That is, exempt only after he had received some, but if he has not yet received any [of the first sentence] he is not [granted that consideration]. But this is contradicted by the following: If they estimated him fit for forty, and then again estimated him⁹ unfit for receiving forty, he is exempt; if they estimated him fit for receiving eighteen, and then again estimated him¹⁰ fit for receiving forty, he is exempt [from the rest]! — Said R. Shesheth: This is not difficult [to explain]. Here [in the Mishnah], they estimated his fitness for the same day,¹¹ while there [in the Baraita cited], they estimated his fitness for the next, or some other day.¹²

MISHNAH. IF HE COMMITTED A TRANSGRESSION WHICH OFFENDED AGAINST TWO PROHIBITIONS¹³ AND THEY MADE ONE ESTIMATE [FOR BOTH],¹⁴ HE TAKES HIS SCOURGING AND IS QUIT; IF NOT,¹⁴ HE IS FLOGGED [FOR ONE TRANSGRESSION], IS ALLOWED TO RECOVER AND THEN IS FLOGGED AGAIN.

GEMARA. But is it not taught: One infliction [of lashes] is not adjudged for two prohibitions? — Said R. Shesheth: This is not difficult [to explain]; in one case it is where they assigned him forty-one lashes,¹⁵ while [this Mishnah bears on a case] where they assigned him forty-two¹⁶ lashes. MISHNAH. HOW DO THEY SCOURGE HIM? HIS TWO HANDS ARE TIED TO A POST¹⁷ ON EITHER SIDE OF IT. THE SUPERINTENDENT OF THE SYNAGOGUE¹⁸ LAYS HOLD OF HIS GARMENTS, IF THEY ARE TORN THEY ARE TORN: IF THEY ARE RIPPED OPEN, THEY ARE RIPPED OPEN¹⁹ UNTIL HE EXPOSES THE OFFENDER'S CHEST. A STONE IS PLACED BEHIND THE OFFENDER ON WHICH THE SUPERINTENDENT OF THE SYNAGOGUE STANDS OVER HIM, [HOLDING] IN HIS HAND A STRAP OF CALF-HIDE, MADE OF ONE THONG, ONE FOLDED INTO TWO, AND [THE] TWO INTO FOUR,²⁰ AND [OTHER]²¹ TWO THONGS RUNNING [AS IT WERE] UP AND DOWN;²² THE HAFT IS A HANDBREADTH [IN LENGTH]²³ AND THE [THONG'S] WIDTH A HANDBREADTH: ITS TIP REACHING TO THE

EDGE OF THE ABDOMEN.²⁴ HE ADMINISTERS ONE-THIRD [OF THE LASHES] IN FRONT²⁵ AND TWO-THIRDS BEHIND.²⁶ HE LASHES HIM NOT IN A STANDING OR SITTING POSTURE BUT STOOPING, AS IT IS SAID, AND THE JUDGE SHALL CAUSE HIM TO FALL [STOOP] DOWN AND HAVE HIM BEATEN.²⁷ HE WHO ADMINISTERS THE LASHES SMITES WITH HIS ONE HAND AND WITH HIS WHOLE FORCE, WHILE THE ONE WHO RECITES, SAYS: IF THOU WILT NOT OBSERVE TO DO . . . THEN THE LORD THY GOD SHALL MAKE THY STROKES PRONOUNCED,²⁸ AND THE STROKES OF THY SEED [etc.]²⁹ AND HE GOES BACK AGAIN TO THE BEGINNING OF THE TEXT [IF NECESSARY]³⁰ AND CONCLUDES WITH: BUT HE, BEING FULL OF COMPASSION, FORGIVETH INIQUITY AND DESTROYETH NOT; YEA, MANY A TIME DOTHT HE TURN HIS ANGER AWAY AND DOTHT NOT STIR UP ALL HIS WRATH,³¹ AND AGAIN RETURNS TO THE TEXT:³² OBSERVE THEREFORE, THE WORDS OF THIS COVENANT AND DO THEM, THAT YE MAY MAKE ALL THAT YE DO TO PROSPER.³³ IF THE OFFENDER DIES UNDER HIS HAND [STROKE] HE IS EXEMPT [FROM PENALTY].³⁴ IF HE GAVE HIM ONE MORE LASH AND THE OFFENDER DIED, HE GOES INTO BANISHMENT. IF THE OFFENDER BEFOULED HIMSELF EITHER WITH FAECES OR URINE, HE IS DISCHARGED.³⁵ R. JUDAH SAYS: FAECES IN THE CASE OF A MAN AND URINE IN THE CASE OF A WOMAN.

(1) As, having had part of his degradation by order of Court, he can no longer be said to have got away unpunished for his misdeed. But if he has not yet received any strokes, and he cannot for some reason take them that day, the lashing can be deferred and even reimposed for another day.

(2) V. p. 155, n. 4.

(3) V. p. 155, n. 5.

(4) I.e., other than cultured people who generally show respect to scholars.

(5) For his view that forty lashes are given. [Or better, that the additional lash is applied between the shoulders.]

(6) Or these 'strokes', i.e. the forty lashes. The number forty is obtained from the word **לִשְׁׁוֹת** (these), in this way: the numerical value of the letters being *t* = 1; *k* = 30; *v* = 5 + 4 letters — *vktv* = total 40; v. A. Chaikin **צִיּוּנֵי רֶשֶׁי** on Mak. 22b. [V. however next note.]

(7) [I.e., 'BETWEEN THE SHOULDERS', which affords a basis for R. Judah's view as regards the place where the additional lash is inflicted, v. Ritba.]

(8) Zech. XIII, 6: 'who seek to reconcile me with God are my friends.' Cf. Midr. Tan. on Deut. XXV, 3, p. 164.

(9) Omitting any mention about him having received part of his punishment, as if that condition was of no importance and what the Court had once determined cannot be changed on further consideration. This seems an entire contradiction of the ruling in the Mishnah.

(10) V. p. 156, n. 8.

(11) That is, to be inflicted on the day of the decision. If the Court changes its mind before he received any of the lashes, there is practically no decision, the second abrogating the first: and, the second, too, may be wrong, as the man's condition could hardly have changed so quickly. His punishment must be deferred for a clearer estimation. If, however, he has already suffered part of his punishment, he has had his humiliation already, and is quit.

(12) And when on the appointed day it is found that his condition has improved or deteriorated, the Court may adjust the punishment accordingly, without any reflection on their former adjudication as to his fitness.

(13) E.g., for ploughing with ox and ass yoked together to cover over diverse-seeds scattered in (his field or) vineyard, forbidden in Deut. XXII, 9-10, and Lev. XIX, 19.

(14) For both offences.

(15) I.e., thirty-nine for one offence and two lashes only for the other. Thirty-nine is the statutory limit for any one offence at any one time: as the remaining (two lashes) are not divisible by three, they cannot be administered but he is allowed to recover and is subjected to a new series of lashes.

(16) I.e., thirty-nine for one offence and three for the other: he can take the whole number at one time and is quit.

(17) Reaching up to the middle of the body, over which the offender is bent, with his hands tied down to the post.

(18) Hazzan denotes various kinds of officials, here an executive officer of the Court. V. Kohut, Aruch s.v. **חָזָן**. It occurs in the Tel-el-Amarna Letters, Ziri-Basana, or the Field of Bashan, was then under the government of one Khazan,

or 'prefect'. Sayce, Patriarchal Palestine (1895), p. 95. Epiphanius reports that in Cilicia there were in the Jewish Community three Azanites. S. Krauss, JQR (1905) XVII (O.S.). p. 373 and p. 380, note 2. [Krauss, Sanh-Mak. p. 372, translates: 'Guardian of the Synagogue': pointing out that scourging was generally inflicted in the Synagogue.]

(19) At the seams.

(20) I.e., the thong is first doubled then redoubled.

(21) Of ass-hide.

(22) I.e., running through the fourfold thong. The words, של המור 'of ass-hide' are not authentic, but are an intrusion from the Baraita cited in the Gemara. V. marginal note on Talmud text. Cf. דרכי משה on Tur. O. H. 607, note 4.

(23) The usual standard measure of a 'grip'.

(24) I.e., long enough to swing round the sides and flip the edge of the abdomen — the navel.

(25) Of the man, the front of his (exposed) body.

(26) On his shoulders, one third on each. The reason is given later.

(27) Deut. XXV, 2. On this, v. Midr. Tan. p. 163.

(28) I.e., counted aloud, pronounced clearly, as in the case of a vow. Cf. Lev. XXVII, 2; Num. VI, 2, and supra 13b, in explanation of R. Ishmael's point of view, from this text.

(29) Deut. XXVIII, 58-59, consisting of 13 words, which, repeated three times (if necessary) counted 39.

(30) The text here is in disorder, as can be seen from various parallel sources, Mishnah, Yalkut and Midrash and Maimonides. The order adopted here is conjectural, and aims at retaining the additions, rationally arranged. [MS.M. and other texts omit the verses that follow, thus showing that they are intrusions into our text. Cur. edd. read on: And ye shall observe the words of this covenant etc. (Deut. XXIX, 9), and he concludes with, But he being full of compassion forgave their iniquity etc. (Ps. LXXVIII, 38) and he returns again to the beginning of the passage.]

(31) Ps. LXXVIII, 38, also consisting of 13 words, and used like the preceding (which is too fierce and menacing) on voluntarily submitting oneself to penitential chastisement. V. Tur. O.H. 607 (end) and Sh. 'Ar. ibid. 6.

(32) As an exhortation (not to conclude with a rebuke).

(33) Deut. XXIX, 8.

(34) Having acted under direction of the judges. Cf. supra 8a (Mishnah).

(35) Having suffered humiliation for his misdeed.

Talmud - Mas. Makkoth 23a

GEMARA. [HOW DO THEY SCOURGE HIM? HIS TWO HANDS ARE TIED TO A POST...HIS GARMENTS IF THEY ARE TORN THEY ARE TORN . . . UNTIL HE EXPOSES THE OFFENDER'S CHEST.] What is the reason for this? — The implication of [the words, And thy brother] become debased.¹

[A STRAP OF CALF-HIDE.] Said R. Shesheth in the name of R. Eleazar b. 'Azariah:² Whence may it be deduced that the strap is to be of calf-hide? It is written, Forty [lashes] shall he strike him,¹ and in proximity to it, Thou shalt not muzzle the ox when he treadeth the corn.³ R. Shesheth said also, in the name of R. Eleazar b. 'Azariah: Whence may it be shown that a yebamah⁴ who has become liable to marry a yabam⁵ smitten with boils should not be 'muzzled' [to voice her dissent from the marriage]? It is written, Thou shalt not muzzle the ox . . .³ and in proximity to it, If brethren dwell together etc.⁶ And this also said R. Shesheth in the name of R. Eleazar b. 'Azariah: To disregard the Appointed Seasons⁷ is like practising idolatry, because it is written, Thou shalt make thee no molten gods⁸ and next to it [is the ordinance of the Festivals] — The feast of unleavened bread shalt thou keep, etc.⁹ And R. Shesheth further said in the name of R. Eleazar b. 'Azariah: Whosoever bears evil tales and whosoever receives evil tales, or whosoever bears false witness deserves to be cast to the dogs; for it is written, Ye shall cast it to the dogs,¹⁰ and next to it [is the warning], Thou shalt not raise a false report: [put not thine hand with the wicked to be an unrighteous witness],¹¹ read [not only tissa,¹² but] also tasshi¹³ ['beguile not another'].

TWO [OTHER] THINGS RUNNING [AS IT WERE] UP AND DOWN. A Tanna taught [that

one thong was]¹⁴ of ass's hide, as a certain Galilean once expounded, in the presence of R. Hisda,¹⁵ [the following text]: The ox knoweth his owner and the ass his master's crib; but Israel doth not know, my people doth not consider.¹⁶ The Holy One, blessed be He, said, Let there come one that recognises its master's crib and exact punishment from him that recognises not his master's crib.

THE HAFT IS A HANDBREADTH [. . . THE ABDOMEN]. Said Abaye: That seems to imply that each person should have a lash corresponding to his back. Said Raba to him: That would mean that they would have [to keep a good] many different thongs! But no, said Raba, the lash was provided with a clasp by means of which it could be tightened [shortened] or loosened [lengthened] as required.

HE ADMINISTERS [ONE-THIRD (OF THE LASHES) IN FRONT AND TWO-THIRDS BEHIND]. What [Scriptural] ground is there for this? — Said R. Kahana: The words of the text, And the judge shall cause him to fall and have him beaten before him according to the measure of his wickedness by number,¹⁷ [that is], one [-third of 'his' wickedness] on the front¹⁸ and two [-thirds] on his back.

THEY LASH HIM NOT [STANDING OR SITTING BUT STOOPING]. Said R. Hisda as reporting R. Johanan: Whence may it be shown that the strap is to be folded?¹⁹ From the wording in the text, And the judge shall cause it²⁰ to fall [and cause it²⁰ to strike him].²¹ But is that passage not needed to tell us about [the posture of] the man himself? — If [only] that, [the more appropriate expression] yattehu ['and he shall cause him to bend'] might have been written there; what then is the import of [the peculiar expression] hippilo ['he shall cause it to fall']? To indicate both [instructions].

HE WHO ADMINISTERS THE LASHES DOES IT WITH ONE HAND, etc. Our Rabbis taught: Only men lacking in physical vigour and abounding in knowledge are appointed as 'superintendents'; R. Judah says: Even men lacking in knowledge and abounding in physical vigour. Said Raba: R. Judah's view seems the more logical, because it is written there, Forty he shall have him beaten, he shall not exceed; lest he exceed. Now, if you say that [the superintendents are men] lacking in knowledge, then [I understand that] such a warning is necessary; but if you say that only men abounding in knowledge [may be appointed as superintendents], is such a warning necessary? And [what say] the Rabbis [to this]? — [They say:] We caution only those who are cautious of themselves.

A Tanna taught: When he raises [the lash] he raises it with both hands [so as to raise it all the higher],²² and when he smites he smites with one hand so that it comes [down] of itself [vehemently].²³

AND HE WHO RECITES THE SCRIPTURAL VERSES SAYS, etc. Our Rabbis taught: The most prominent of the judges recites [the Scriptural verses]; the second counts [the strokes], and the third says, Strike him! When the 'beating' is of many strokes, he lengthens the recital; and when the beating is less, he shortens the recital. But do we not learn, HE GOES BACK TO THE BEGINNING OF THE VERSE? — [The rule is that] he should [time the recital] to correspond precisely [with the lashing]; but if he has not been so precise, he goes back again to the beginning of the verse.

Our Rabbis taught: It is written, (He shall not exceed . . .) an ample beating.²⁴ From this I gather that only 'an ample beating' [is forbidden]; whence do I learn that [not even] a slight beating [in excess of the determined number of strokes] is permissible? From the instructive words, 'He shall not exceed'. If so, what is the import of the phrase 'an ample beating'? — This phrase implies that the former [imposed number of] strokes were [in themselves] 'an ample beating'.²⁵

IF HE BEFOULED HIMSELF etc. Our Rabbis taught: The offender, whether man or woman, is discharged on losing faeces, but not urine; these are the words of R. Meir. R. Judah says: A man is discharged on losing faeces and a woman on losing urine; but the Sages say man and woman alike are discharged on losing faeces or urine. But then, is it not [also] taught: R. Judah says: The offender, whether man or woman, is discharged on losing faeces? — Said R. Nahman b. Isaac: [There is no contradiction, as the latter citation merely states that] in regard to faeces, it is the same in the case of man or woman.

Samuel said: If they had tied him [down to the post] and he [broke away and] escaped from the Court, he is exempt.²⁶ (What is the reason? — Because of [the text], lest he be dishonored,²⁷ and he has been dishonoured.)²⁸ An objection was raised: If he befouled himself either at the first or at the second stroke, they let him go. If the thong snapped at the second stroke,²⁹ they let him go, but at the first stroke³⁰ they do not let him go. Now why [not at the first stroke]?³¹ Why [not let him go] as if he had escaped?³² — [Because] there he [actually] ran away,³³ whereas here he has not run away.³⁴

Our Rabbis taught: If they estimate him that he would befoul himself as soon as they applied the lash; they let him go; if that he would befoul himself on coming away from the Court, they give the flogging.³⁵ Not only this, but even if he broke down at the very first,³⁶ they flog him, because the text reads, And he shall cause him to be beaten [. . . he shall not exceed . . .] lest thy brother be dishonoured [before thine eyes],³⁷ [implying,] but not if he had already been dishonoured while at Court.³⁸

MISHNAH. ALL WHO HAVE INCURRED [THE PENALTY OF] KARETH, ON BEING FLOGGED OBTAIN REMISSION FROM THEIR PUNISHMENT OF KARETH; FOR IT IS SAID, FORTY HE SHALL HAVE HIM BEATEN HE SHALL NOT EXCEED . . . LEST THY BROTHER SHALL BE DISHONOURED BEFORE THINE EYES,³⁹ WHICH SHOWS THAT ON HAVING RECEIVED THE FLOGGING HE IS [CONSIDERED] ‘THY BROTHER’:⁴⁰ THESE ARE THE WORDS OF R. HANANIAH B. GAMALIEL.⁴¹ AND, SAID R. HANANIAH B. GAMALIEL, IF IN ONE TRANSGRESSION A TRANSGRESSOR FORFEITS HIS SOUL, HOW MUCH MORE SHOULD ONE WHO PERFORMS ONE PRECEPT HAVE HIS SOUL GRANTED HIM? R. SIMEON⁴² SAYS THAT YOU CAN LEARN THIS FROM ITS OWN PASSAGE;⁴³ FOR IT IS SAID [THERE]: [FOR WHOSOEVER SHALL DO ANY OF THESE ABOMINATIONS,] EVEN THE SOULS THAT DO THEM SHALL BE CUT OFF FROM AMONG THEIR PEOPLE;⁴⁴ AND THERE [IN THE PREAMBLE] IT SAYS:

(1) Deut. XXV, 3. **וְנִקְלָהוּ** The implication of the passage is, do not strike the offender capriciously but a carefully determined number of lashes lest he become too degraded: yet the humiliation of an offender for his offence is the main purpose of the lashing by order of the Court. [MS.M. omits this passage. Cf. also Tosaf. Sot. 8a s.v. **וְהִכָּהוּ** where this reason is given as their own.]

(2) Who lived about 200 C.E., two hundred years before R. Shesheth, who obviously was in possession of a collection of the former's teachings.

(3) Deut. XXV, 4.

(4) The widow of a childless brother.

(5) The brother of the deceased husband.

(6) Deut. XXV, 5. The consideration demanded here for the dumb animal in not cruelly thwarting a natural desire suggests no less consideration for the woman who for her protection is required to marry her late husband's brother. Although he has a legal claim to her, she is not to be coerced when he is likely to be loathsome. Her objection to the union is (on textual grounds) not to be considered as offending against the law.

(7) That is, the Festivals, cf. Lev. XXIII, 2, 4. Commentators (v. Rashi) take it to refer to the intermediate-days of Passover and Tabernacles, when work is restricted though not forbidden. V. Hag. 18a: M. Kat. 12a-b. This Eleazar, however, may refer to the Festivals themselves, like the other R. Eleazar of Modin (Aboth III, 11), who seemingly refers to those who are misled by the allegorical misinterpretations and the abrogation of the Jewish observances by Paul and

other later Christian teachers such as are found in the Epistle of Barnabas, a contemporary of Eleazar of Modin.

(8) Ex. XXXIV, 17.

(9) Ex. XXXIV, 18-23.

(10) With reference to flesh torn by beasts. Ex. XXII, 31.

(11) Ibid. XXIII, 1.

(12) תשא, 'raise (not a false report)' from the root נשא, 'to raise', 'pick up'.

(13) תשיא, from 'deceive', 'mislead' (not another by misrepresentation). Cf. Jer. XXXVII, 9, and Gen. III, 13.

(14) So Yalkut Isa. 387: Maim. Sanh. XVI, 8, has 'two straps', probably meaning one folded in half, v. page 158, n. 6.

(15) At one of his gatherings.

(16) Isa. I, 3.

(17) Deut. XXV, 2.

(18) 'Before him' is here taken to refer to the offender, instead of the judge.

(19) That is, folded in half with the two ends left hanging free.

(20) Both expressions are taken to refer to the strap, instead of to the 'man' who is scourged. MS.M. reads here:

קרי ביה והכפילו

(21) Deut. XXV, 2.

(22) So MS. M. (v. D.S.)

(23) So MS.M. Cf. Sanh. 45b (about a stone).

(24) Deut. XXV, 3.

(25) Heavy, forcible strokes.

(26) Cf. Shebu. 28a, and Rashi there.

(27) Deut. XXV, 3.

(28) The bracketed passage is supplied from MS.M. The warning not to exceed the statutory number of strokes 'lest he be dishonoured', shows that the purpose of the 'beating' is rather corrective than punitive, and therefore, as soon as the offender has lost morale and self-control, or acts in a scared manner, the moral object has been attained.

(29) As it fell.

(30) After the first, as the second was about to fall.

(31) He has been humiliated.

(32) He has already received humiliation: the accidental snapping of the strap is in his favour.

(33) Terror-stricken and in discomfort.

(34) Showed no signs of discomfort or remorse.

(35) The text is in disorder and the interpretation adopted here is that of Rashi, for other interpretation based on a variant reading v.commentary of Riban.

(36) During preliminaries.

(37) Deut. XXV, 2-3.

(38) I.e., before the flogging. v. D.S.

(39) Deut. XXV, 3.

(40) No longer to be 'degraded' or 'cut off' from his people.

(41) Often R. Hanina b. Gamaliel and in some MS. of Sifre, b. Gamala (Friedmann op. cit.).

(42) MS. M. has R. Ishmael.

(43) On the subject of kareth, not indirectly as from the quoted text dealing with flogging.

(44) Lev. XVIII, 29.

Talmud - Mas. Makkoth 23b

YE SHALL THEREFORE KEEP MY STATUTES AND MINE ORDINANCES WHICH IF A MAN DO, HE SHALL LIVE BY THEM,¹ WHICH MEANS THAT ONE WHO DESISTS FROM TRANSGRESSING IS GRANTED REWARD LIKE ONE WHO PERFORMS A PRECEPT. R. SIMEON B. RABBI SAYS: BEHOLD HOLY WRIT SAYS, ONLY BE STEADFAST IN NOT EATING THE BLOOD . . . AND THOU SHALT NOT EAT THE LIFE WITH THE FLESH . . . [THAT IT MAY GO WELL WITH THEE AND WITH THY CHILDREN AFTER THEE WHEN THOU SHALT DO WHAT IS RIGHT IN THE EYES OF THE LORD].² NOW, IF IN THE CASE

OF BLOOD FOR WHICH MAN'S SOUL HAS A LOATHING, ANYONE WHO REFRAINS THEREFROM RECEIVES REWARD, HOW MUCH MORE SO IN REGARD TO ROBBERY AND INCEST FOR WHICH MAN'S SOUL HAS A CRAVING AND LONGING SHALL ONE WHO REFRAINS THEREFROM ACQUIRE MERIT FOR HIMSELF AND FOR GENERATIONS AND GENERATIONS TO COME, TO THE END OF ALL GENERATIONS! R. HANANIAH B AKASHIA SAYS: THE HOLY-ONE, BLESSED BE HE, DESIRED TO MAKE ISRAEL WORTHY, THEREFORE GAVE HE THEM THE LAW [TO STUDY] AND MANY COMMANDMENTS [TO DO]: FOR IT IS SAID: THE LORD WAS PLEASED, FOR HIS RIGHTEOUSNESS³ SAKE. TO MAKE THE LAW GREAT AND GLORIOUS.⁴

GEMARA. Said R. Johanan: R. Hananiah b. Gamaliel's colleagues disagree with him.⁵ Said R. Adda b. Ahaba: At Rab's college they used to say: We learn [in a Mishnah].⁶ 'There is no difference [in sanctity] between Sabbath and the Day of Atonement, save that in the case of the former, a deliberate desecration is punishable by human agency,⁷ while in that of the latter, a deliberate desecration is punished by kareth.'⁸ Now, were this [doctrine of R. Hananiah b. Gamaliel] generally accepted, [the Mishnah would have said that] the punishment of deliberate desecration in either case [of Sabbath or Day of Atonement] is [practically] left to human agency?⁹ — Said R. Nahman b. Isaac:¹⁰ Whose view may that [Mishnah] express? It is R. Isaac's,¹¹ for he says that there is no penalty of flogging for those liable to kareth, as it was taught: Seeing that Holy Writ has [already] comprehended in a single verse all the offenders in unlawful relations as being liable to kareth,¹² what object was there in singling out that penalty in the case of [the brother with] his sister?¹³ Only to show that kareth is their penalty, not flogging.¹⁴ R. Ashi said: You might even say that [the cited Mishnah expresses the opinion of] the Rabbis [by explaining that it states] that in one case [the Sabbath]¹⁵ its main punishment is delegated to human authority, whereas in the other [the Day of Atonement] it is left to the Celestial Authority.

R. Adda, as citing Rab, said that halachah rests with R. Hananiah b. Gamaliel.

Said R. Joseph: Who has gone up [to Heaven] and come [back with this information]?¹⁶ — Said Abaye to him: But then, in regard to what R. Joshua b. Levi said: 'Three things were enacted by the [mundane] Tribunal below, and the Celestial Tribunal on high have given assent to their action'; [we might also exclaim,] who has gone up [to Heaven] and come [back with this information]? Only, we [obtain these points by] interpreting certain texts; and, in this instance too, we so interpret the texts.

[To turn to] the main text: 'R. Joshua b. Levi said that three things were enacted by the [mundane] Tribunal below and the [Celestial] Tribunal on high gave assent to their action.' These were: The [annual] recital of the Scroll [of Esther];¹⁷ saluting with the Divine Name;¹⁸ and the [Levite's] tithe to be brought [to the Temple-chamber].¹⁹ 'The [annual] recital of the Scroll [of Esther],' as it is written, They confirmed,²⁰ and the Jews took upon them and their seed, etc.:²¹ they 'confirmed' above what they had 'taken upon themselves' below. 'Saluting with the Divine Name,' — as it is written, And behold, Boaz came from Bethlehem and said to the reapers, 'The Lord be with you';²² and [furthermore] it says, The Lord bless thee, thou mighty man of valour.²³ What is the purport of, 'And [furthermore] it says'? — Lest you should say that Boaz did this of his own idea and that this action of his was not approved by Heaven, come and hear what it says, The Lord be with thee, thou mighty man of valour.²⁴ 'The [Levite's] tithe to be brought [to the Temple-chamber].' — as it is written, Bring ye the whole tithe unto the store house that there may be food in My house, and try Me herewith, saith the Lord of Hosts, if I will not open you the windows of heaven and pour you out a blessing, until there be no enough.²⁵ What means, 'until there be no enough'? — Said Rami b. Rab: [It means], until your lips weary of saying 'Enough, enough'!

R. Eleazar said: The Holy Spirit manifested itself in three places; at the Tribunal of Shem,²⁶ at the Tribunal of Samuel of Ramah, and at the Tribunal of Solomon. At the Tribunal of Shem,²⁷ as it is

written, And Judah acknowledged them,²⁸ and he said, She is right, it is from me.²⁹ How did he know [for certain]? Maybe, just as he had come to [consort with] her, some other man had come to [consort with] her? [But] it was a Bath Kol³⁰ that came forth and said, 'She is right, constrained by Me these things came about.'³¹

'At the Tribunal of Samuel,'³² — as it is written, Here I am; witness against me before the Lord and before His anointed, whose ox have I taken? or whose ass . . . and they said, Thou hast not defrauded us nor oppressed us, neither hast thou taken aught of any man's hand. And he said unto them, The Lord is witness against you and His anointed is witness this day that ye have not found aught in my hand,' and He³³ said, [He is] witness.³⁴ 'And He said'; should it not be 'And they said'? [But] it was a Bath Kol that came forth and said, 'I am witness in this matter.'

'At the Tribunal of Solomon,' — as it is said, And the king answered and said, Give her the living child, and in no wise slay it; she is his mother:³⁵ 'She is his mother'; whence knew he [for certain]? Maybe, she had been acting craftily? [But] it was a Bath Kol that came forth and said, 'She is his mother'.

Said Raba: How [can we be sure of this?] Maybe Judah had reckoned the days and months and found them to coincide,³⁶ — for what we see we may presume; but we presume not what we see not.³⁷ Again, Samuel may have taken all Israel collectively, using the singular³⁸ expression [verb], as it is written [elsewhere]: O Israel, thou art saved by the Lord with an everlasting salvation, Ye shall not be ashamed?³⁹ And Solomon likewise, because he saw one woman was compassionate and the other was not compassionate! Only [of course], these [interpretations] are points of traditional lore.

[THEREFORE GAVE HE THEM TORAH (TEACHINGS) AND MANY COMMANDMENTS . . .] R. Simlai when preaching said: Six hundred and thirteen precepts were communicated to Moses, three hundred and sixty-five negative precepts, corresponding to the number of solar days [in the year], and two hundred and forty-eight positive precepts, corresponding to the number of the members⁴⁰ of man's body. Said R. Hamnuna: What is the [authentic] text for this? It is, Moses commanded us torah, an inheritance of the congregation of Jacob,⁴¹ 'torah' being in letter-value, equal to

(1) Lev. XVIII, 5.

(2) Deut. XII, 23-28.

(3) [Probably Israel's righteousness. i.e., to make Israel righteous, v. Bacher AT II, 376.]

(4) Isa. XLII, 21. [One may see in the words of R. Hananiah b. 'Akashia a polemic against the Pauline conception that puts the Law in opposition to innocence and spiritual law and considers it a source of sin and wrath. Here it is asserted that the Law was given, not as a mark of divine wrath in order to increase sin so as to make all the greater the need of divine mercy, but as a mark of divine love designed to train Israel in moral holiness in order to make them all the more worthy in the eyes of the Holy One, blessed be He.]

(5) I.e., R. Ishmael and R. Akiba, supra, both of whom hold that the remission of kareth depends on repentance rather than in punishment.

(6) Meg. 7b.

(7) Ex. XXXI, 14-15. and v. Num. XV, 32-36.

(8) That is, by Divine agency, Lev. XXIII, 29-30.

(9) Stoned for desecrating the Sabbath, and flogged for the Day of Atonement, whereby kareth is finally remitted. In making, however, this distinction, there seems to be an implied rejection of R. Hananiah's doctrine of complete remission?

(10) Meg. 7b omits 'b. Isaac'. There was another R. Nahman, b. Jacob.

(11) A personal view, in opposition to those of R. Akiba and R. Ishmael. He dissociates kareth from flogging. If so, that Mishnah does not really show the attitude of Hananiah's colleagues to his doctrine of remission.

(12) Lev. XVIII, 29.

- (13) Ibid. XX, 17.
- (14) V. supra 13b and notes on the passage.
- (15) Laid down in the Holy Writ. Cf. notes 1 and 2. By thus stating what the written law is, says R. Ashi, there is no necessary implication that Hananiah's colleagues thereby disagree with his view of remission.
- (16) R. Joseph felt that the expression halachah, 'the law in practice', was here inappropriate, as, although the offender was considered immune from further legal prosecution, it could hardly be confidently asserted that he was no longer answerable to Heaven.
- (17) On Purim, the 14th and 15th of Adar. V. reference below.
- (18) A practice not approved of by the Rabbis, as its common use tends to a loss of reverence; the Sacred Name is then 'taken in vain' and in many languages the Divine Names have become vulgar asseverations.
- (19) V. Ezra, VIII, 15 ff: Neh. X. 39-40. Some say it was Ezra that deprived the Levites of their (the first) tithe due to them according to Num. XVIII, 21 ff, and gave it entirely to the priests (instead of 1/10th only). because the Levites had not responded to his call for the return to Palestine. V. Yeb. 86a-b and Keth. 26a and Tosaf. there. Others say R. Joshua b. Levi refers rather to the view that Scripturally, tithes were due to be given only of corn, wine and oil (Num. XVIII, 27,30), but that tithes on all other produce of the soil, of fruits, legumina and vegetables, were a voluntary contribution imposed by the mundane Authorities (cf. Sifre on Deut. XIV, 22) which the statement of Malachi confirmed as approved of by the Tribunal above. V. J. Ber. IX, end. An attempt was made to restore the tithe to the Levites (instead of to priests) and R. Joshua b. Levi was invited to give his support to that movement, but he did not concur on textual grounds. V. J. M. Sh. V, 3, 56b.
- (20) I.e., the Celestial Tribunal, by inspiring the wording of the writer of Esther that the Purim institution was accepted as an ordinance for all time to come and 'never to pass away' (Esth. IX, 27). Cf. Meg. 7a on the canonicity of Esther.
- (21) Esth. IX, 27.
- (22) Ruth II, 4.
- (23) Judg. VI, 12, where the angel, or prophet-messenger used those words, indicating approval of the practice.
- (24) V. p. 167, n. 7.
- (25) Mal. III, 10, speaking in the name of God.
- (26) 'The tents of Shem' (Gen. 26-27) are taken to denote schools for the study of law and traditional lore. Cf. Rashi and Pseudo-Jonathan (Targum) a.l., and Gen. XIV, 18.
- (27) After Tamar had been condemned to death, presumably by a regular tribunal.
- (28) His pledges.
- (29) I.e., admitting that her condition was due to him. Gen. XXXVIII, 26.
- (30) A Heavenly voice, v. Glos.
- (31) [Or, From me issued these secret things]
- (32) Cf. 'Er. 45a; Tosef., Sot. XI, 12.
- (33) Kethib. The spelling is **ואמר** in the singular, instead of **ואמרו** plural.
- (34) I Sam. XII, 3-5.
- (35) I Kings, III, 27.
- (36) With the time since he had consorted with Tamar.
- (37) [He might have calculated the period, and finding that the days and months corresponded, he had no reason to presume that she had consorted with another man about the same time.]
- (38) V. David Kimhi's commentary on I Sam. XII, 5.
- (39) Isa. XLV, 17.
- (40) Joints, or bones, covered with flesh and sinews (excluding the teeth). V. M. Oha. I, 8; Bek. 45a; J. E. I. Art. Anatomy, p. 565a, and J. Preuss, Biblisch-Talmudischemedizin (2nd ed.) Berlin, 1921. p. 66 ff.
- (41) Deut. XXXIII, 4.

Talmud - Mas. Makkoth 24a

six hundred and eleven,¹ 'I am' and 'Thou shalt have no [other Gods]' [not being reckoned, because] we heard from the mouth of the Might [Divine].² David came and reduced them to eleven [principles],³ as it is written, A Psalm of David.⁴ Lord, who shall sojourn in Thy tabernacle? Who shall dwell in Thy holy mountain? — [i] He that walketh uprightly, and [ii] worketh righteousness,

and [iii] speaketh truth in his heart; that [iv] hath no slander upon his tongue, [v] nor doeth evil to his fellow, [vi] nor taketh up a reproach against his neighbour, [vii] in whose eyes a vile person is despised, but [viii] he honoureth them that fear the Lord, [ix] He sweareth to his own hurt and changeth not, [x] He putteth not out his money on interest, [xi] nor taketh a bribe against the innocent. He that doeth these things shall never be moved. 'He that walketh uprightly': that was Abraham, as it is written, Walk before Me and be thou whole-hearted.⁵ 'And worketh righteousness,' such as Abba Hilkiahu.⁶ 'Speaketh truth in his heart,' such as R. Safra.⁷ 'Hath no slander upon his tongue,' that was our Father Jacob, as it is written, My father peradventure will feel me and I shall seem to him as a deceiver.⁸ 'Nor doeth evil to his fellow,' that is he who does not set up in opposition to his fellow craftsman.⁹ 'Nor taketh up a reproach against his neighbour;' that is he who befriends his near ones [relatives].¹⁰ 'In whose eyes a vile person is despised;' that was Hezekiah the king [of Judah] who dragged his father's bones on a rope truckle-bed.¹¹ 'He honoureth them that fear the Lord;' that was Jehoshaphat¹² king of Judah, who every time he beheld a scholar-disciple rose from his throne, and embraced and kissed him, calling him Father, Father;¹³ Rabbi, Rabbi; Mari, Mari! 'He sweareth to his own hurt and changeth not,' like R. Johanan; for R. Johanan [once] said:¹⁴ I shall remain fasting until I reach home. 'He putteth not out money on interest,' not even interest from a heathen.¹⁵ 'Nor taketh a bribe against the innocent,' such as R. Ishmael son of R. Jose.¹⁶ It is written [in conclusion], He that doeth these things shall never be moved. Whenever R. Gamaliel came to this passage he used to weep, saying: [Only] one who practised all these shall not be moved; but anyone falling short in any of these [virtues] would be moved! Said his colleagues to him: Is it written, 'He that doeth all these things [shall not fall]'? It reads, 'He that doeth these things', meaning even if only he practises one of these things [he shall not be moved]. For if you say otherwise,¹⁷ what of that other [similar] passage, Defile not ye yourselves in all these things?¹⁸ Are we to say that one who seeks contact with all these vices, he is become contaminated; but if only with one of those vices, he is not contaminated? [Surely,] it can only mean there, that if he seeks contact with any one of these vices he is become contaminated, and likewise here, if he practises even one of these virtues [he will not be moved].

Isaiah came and reduced them to six [principles],¹⁹ as it is written, [i] He that walketh righteously, and [ii] speaketh uprightly, [iii] He that despiseth the gain of oppressions, [iv] that shaketh his hand from holding of bribes, [v] that stoppeth his ear from hearing of blood, [vi] and shutteth his eyes from looking upon evil; he shall dwell on high. 'He that walketh righteously,' that was our Father Abraham, as it is written, For I have known him, to the end that he may command his children and his household after him, etc.;²⁰ 'and speaketh uprightly,' that is one who does not put an affront on his fellow in public. 'He that despiseth the gain of oppressions,' as, for instance, R. Ishmael b. Elisha;²¹ 'that shaketh his hand from holding of bribes,' as, for instance, R. Ishmael son of Jose;²² 'that stoppeth his ear from hearing of blood', one who hears not aspersions made against a rabbinic student²³ and remains silent,²⁴ as once did R. Eleazar son of R. Simeon;²⁵ 'and shutteth his eyes from looking upon evil,' as R. Hiyya b. Abba [taught]; for R. Hiyya b. Abba said: This refers to one who does not peer at women as they stand washing clothes [in the court-yard]²⁶ and [concerning such a man] it is written, He shall dwell on high.²⁷

Micah came and reduced them to three [principles], as it is written, It hath been told thee, O man, what is good, and what the Lord doth require of thee: [i] only to do justly, and [ii] to love mercy and [iii] to walk humbly before thy God.²⁸ 'To do justly,' that is, maintaining justice; and to love mercy,' that is, rendering every kind office; 'and walking humbly before thy God,' that is, walking in funeral and bridal processions.²⁹ And do not these facts warrant an a fortiori conclusion that if in matters that are not generally performed in private the Torah enjoins 'walking humbly,' is it not ever so much more requisite in matters that usually call for modesty?

Again came Isaiah and reduced them to two [principles], as it is said, Thus saith the Lord, [i] Keep ye justice and [ii] do righteousness [etc.].³⁰ Amos came and reduced them to one [principle], as it is

said, For thus saith the Lord unto the house of Israel, **Seek ye Me and live.**³¹ To this R. Nahman b. Isaac demurred, saying: [Might it not be taken as,] **Seek Me by observing the whole Torah and live? — But it is Habakuk who came and based them all on one [principle], as it is said, But the righteous shall live by his faith.**³²

Said R. Jose b. Hanina: Our Master Moses pronounced four [adverse] sentences on Israel, but four prophets came and revoked them. Moses said, And Israel dwelleth in safety, alone,³³ at the fountain of Jacob;³⁴ Amos came and revoked that, as it is said, Then said I, O Lord God, cease, I beseech Thee; how shall Jacob stand [alone]? for he is small, and it goes on saying, The Lord repented concerning this; 'This also shall not be,' saith the Lord God.³⁵ Moses had said, And among those nations thou shalt have no repose;³⁶ Jeremiah came and said, Thus saith the Lord, The people that were left of the sword have found grace in the wilderness, even Israel, when I go to afford him rest.³⁷ Moses had said, The Lord is . . . visiting the iniquity of the fathers upon the children and upon the children's children, unto the third and unto the fourth generation;³⁸ Ezekiel came and declared, the soul that sinneth, it shall die.³⁹ Moses had said, And ye shall perish among the nations;⁴⁰ Isaiah came and said, And it shall come to pass in that day, that a great horn shall be blown; [and they shall come that were lost in the land of Assyria, etc.]⁴¹ Rab observed: I have misgivings about that verse, And ye shall perish among the nations.⁴⁰ R. Papa demurred at this [apprehension of Rab] saying: Could it not perhaps rather be taken in the sense of something lost and searched for, as it is written, I have gone astray like a lost sheep; seek Thy servant, etc.⁴² — But it was the latter part of that verse [that perturbed Rab]: And the land of your enemies shall eat you up.⁴³ Mar Zutra then demurred, saying: Might it not be [understood] in the way that cucumbers and pumpkins are eaten?⁴⁴

Long ago, as Rabban Gamaliel, R. Eleazar b. 'Azariah, R. Joshua and R. Akiba were walking on the road, they heard the noise of the crowds at Rome [on travelling] from Puteoli,⁴⁵ a hundred and twenty miles away. They all fell a-weeping, but R. Akiba seemed merry. Said they to him: Wherefore are you merry? Said he to them: Wherefore are you weeping? Said they: These heathens who bow down to images and burn incense to idols live in safety and ease, whereas our Temple, the 'Footstool' of our God⁴⁶

(1) *,* = 400. *u* = 6; *r* = 200; *v* = 5, total = 611.

(2) V. Hor. (Sonc. ed.) p.55, n. 14.

(3) I.e., reduced them to eleven leading virtues.

(4) Ps. XV.

(5) Gen. XVII, 1.

(6) A saint to whom the Rabbis went that he might pray for rain (as others had come, during Temple times, to his paternal grandfather, 'Onias that drew a circle' around him, in which he prayed). He was most scrupulous in his 'work', bearing and words, and would not take the least credit to himself or allow any false impression. All these are illustrated in Ta'an. 23a-b.

(7) A Babylonian scholar of eminence who settled in Palestine at Caesarea and carried on extensive trade and scholarly communication between the two countries. An offer was made once to him by a buyer for an article whilst he was reciting the Shema' when he could not indicate his acceptance and the anxious purchaser increased his offer; but R. Safra refused to receive an increased offer which had been made under misapprehension, he being satisfied with the first offer. V. Rashb. B.B. 88a. On another occasion he and Raba were walking on the road when they met Mar Zutra son of R. Nahman who expressed his appreciation on meeting these two great men, saying that it was more than he could have expected of them, to come and meet him, whereupon R. Safra felt in duty bound to explain that they had only met him casually, but added that he would have come even a longer distance to show Mar Zutra respect. V. Hul. 94b.

(8) Gen. XXVII, 12. He acted only under pressure and protest, on his mother's advice.

(9) Cf. Sanh. 81a.

(10) Cf. Sanh. 76b.

(11) V. Sanh. (Sonc. ed.) p. 310, n. 3.

(12) Cf. Keth. 103b, also II Chron. XIX, 3 ff.

- (13) Cf. II Kings II, 12. Mari is the Aramaic equivalent of Rabbi, my Master or lord. Cf. Ab., VI, 3.
- (14) I.e., acting on a self-imposed restriction. According to Ta'an., 12a, R. Johanan pleaded a fast to avoid an invitation to the table of the Nasi (R. Judah II). J. Ned. VIII, 1, however, is a more appropriate illustration, where R. Johanan said: I shall remain fasting until I have finished my (allotted) study of Mishnah or Scripture.
- (15) As a demoralizing practice, although not forbidden Scripturally, in the case of a heathen (Deut. XXIII, 21). V. B. M. 70b-71a, and Tosef. Ibid. end of Chapter V).
- (16) J. b. Halafta. He refused to take the rent-fruit that his own gardener-tenant brought him once on a Thursday instead of (as usual) on Friday, because, said the gardener, he had cited someone to appear with him before R. Ishmael. He refused the fruit and appointed two other scholars to hear the case. While listening to the proceedings he found himself unconsciously thinking of the possible pleadings in the gardener's favour, and remarked to himself how perverting an influence bribery was. Keth. 105b.
- (17) Than we interpreted it, 'some'.
- (18) Lev. XVIII, 24.
- (19) Isa. XXXIII, 15-16.
- (20) Gen. XVIII, 19.
- (21) The founder of a school, like R. Akiba, represented in the Mekilta on Exodus. Being a priest, someone brought him a gift of the first-fleece (Deut. XVIII, 4). In reply to a question whether there was not a priest in his own place to be the recipient, the visitor told him that he had a suit with someone. R. Ishmael thereupon refused the gift and appointed others to hear the case. He (as told above of his junior), found himself unconsciously biassed in the visitor's favour. Keth. 105b.
- (22) V. p. 171, n. 6.
- (23) **צורבא מדרבנן**, lit., 'one who is scorched through (his association with) rabbis.'
- (24) Without defending him.
- (25) B.M. 84b, where it is told how his widow discovered a worm emerging from her dead husband's ear, but her husband appeared and told her in a dream that it was because he had once heard aspersions being made against a scholar without defending him as he should have done.
- (26) V. B.B. 57b.
- (27) Isa. XXXIII, 15-16.
- (28) Micah VI, 8.
- (29) V. Suk. 49b, P.B. p. 5.
- (30) Isa. LVI, 1.
- (31) Amos V, 4.
- (32) Hab. II, 4.
- (33) I.e., safe in isolation, but not among the nations.
- (34) Deut. XXXIII, 28.
- (35) Amos VII, 5-6.
- (36) Deut. XXVIII, 65.
- (37) Jer. XXXI, 1 (2).
- (38) Ex. XXXIV, 7.
- (39) Ezek. XVIII, 3-4.
- (40) Lev. XXVI, 38.
- (41) Isa. XXVII, 13.
- (42) Ps. CXIX, 176.
- (43) V. p. 173, n. 12.
- (44) At varying times in different parts of the country. Some are eaten here and others left ripening there. Their great apprehension was, lest the Jew should lose identity.
- (45) A great sea-port in Italy. (This was on the occasion of their journey to Rome in the year 95 C.E.)
- (46) Ps. XCIX, 5; CXXXII, 7; Lam. II, 1.

Talmud - Mas. Makkoth 24b

is burnt down by fire, and should we then not weep? He replied: Therefore, am I merry. If they that offend Him fare thus, how much better shall fare they that do obey Him! Once again they were

coming up to Jerusalem together, and just as they came to Mount Scopus they saw a fox emerging from the Holy of Holies. They fell a-weeping and R. Akiba seemed merry. Wherefore, said they to him, are you merry? Said he: Wherefore are you weeping? Said they to him: A place of which it was once said, And the common man that draweth nigh shall be put to death,¹ is now become the haunt of foxes, and should we not weep? Said he to them: Therefore am I merry; for it is written, And I will take to Me faithful witnesses to record, Uriah the priest and Zechariah the Son of Jeberechiah.² Now what connection has this Uriah the priest with Zechariah? Uriah lived during the times of the first Temple, while [the other,] Zechariah lived [and prophesied] during the second Temple; but Holy-Writ linked the [later] prophecy of Zechariah with the [earlier] prophecy of Uriah, In the [earlier] prophecy [in the days] of Uriah it is written, Therefore shall Zion for your sake be ploughed as a field etc.³ In Zechariah it is written, Thus saith the Lord of Hosts, There shall yet old men and old women sit in the broad places of Jerusalem,⁴ so long as Uriah's [threatening] prophecy had not had its fulfilment, I had misgivings lest Zechariah's prophecy might not be fulfilled; now that Uriah's prophecy has been [literally] fulfilled, it is quite certain that Zechariah's prophecy also is to find its literal fulfilment. Said they to him: Akiba, you have comforted us! Akiba, you have comforted us!

(1) Num. I, 51.

(2) Isa. VIII, 2. Cf. Zech. I, 1.

(3) Micah III, 12; Jer. XXVI, 18-20.

(4) Zech. VIII, 4.