

# III.

---

## BAVLI KETUBOT CHAPTER THREE

### FOLIOS 29A-41B

#### 3:1

- A. These are the girls [invalid for marriage to an Israelite] who [nonetheless] receive a fine [from the man who seduces them]:
- B. He who has sexual relations with (1) a mamzer girl, (2) a netin girl, or (3) a Samaritan girl;
- C. he who has sexual relations with (4) a convert girl, and with (5) a girl taken captive, and (6) a slave girl who were redeemed, who converted, or who were freed [respectively] when they were at an age of less than three years and one day [and who remain in the status of virgins];
- D. he who has sexual relations with (7) his sister, and with (8) the sister of his father, and with (9) the sister of his mother, and with (10) his wife's sister, and with (11) the wife of his brother, and with (12) the wife of the brother of his father, and with (13) the menstruating woman –
- E. they receive a fine [from the man who seduces them].
- F. Even though [sexual relations with] them are subject to extirpation,
- G. one does not incur through having sexual relations with them the death penalty at the hands of an earthly court.

- I.1** A. *Is the intent of the rule to say that while women invalid for marriage to the man get a fine, those who are valid for marriage to him do not?*
- B. *This is the sense of his statement: These are the girls who are invalid for marriage to an Israelite who [nonetheless] receive a fine [from the man*

who seduces them]: he who has sexual relations with (1) a mamzer girl, (2) a netin girl, or (3) a Samaritan girl.

- I.2** A. *While a girl gets the fine, a minor [less than twelve years old] does not get a fine. Who is the Tannaite authority behind this rule?*
- B. *Said R. Judah said Rab, "It is R. Meir, as has been taught on Tannaite authority":*
- C. **"A girl from the age of a day until she produces two pubic hairs is subject to sale [by her father, as a maid servant, (Exo. 21: 7)] but does not receive a fine. Once she produces two pubic hairs until she reaches maturity, she receives a fine but is not subject to sale," the words of R. Meir.**
- D. **For R. Meir would say, "In any case where there is the right of sale of a girl, there is no eligibility for a fine, and where there is eligibility for a fine, there is no right of sale."**
- E. **And sages say, "A girl from the age of a day until she produces two pubic hairs is eligible to receive a fine...."**
- F. *A fine but not subject to the right of sale! Rather, say, [29B] "Where there is eligibility for a fine, there is also the right of sale" [T. Ket. 3:8A-C].*

- II.1** A. **[He who has sexual relations with (1) a mamzer girl, (2) a netin girl, or (3) a Samaritan girl:] But are these girls eligible to receive a fine? Why should that be the case? Surely you should invoke here the verse, "And she shall be his wife" (Deu. 22:29), meaning, the law applies to a woman who is eligible to be his wife [excluding these, who are ineligible]!**
- B. *Said R. Simeon b. Laqish, "The word 'maiden' is written three times, one of them with the definite article [at Deu. 22:28, 29]. The use of one of them makes its own point, the second covers those maidens with whom a marriage violates a prohibition, and finally to cover those maidens with whom marriage is penalized by extirpation."*
- C. *R. Pappa said, "The word 'virgin' is used three times [at Exo. 22:15, 16]. The use of one of them makes its own point, the second covers those maidens with whom a marriage violates a prohibition, and finally to cover those maidens with whom marriage is penalized by extirpation."*
- D. *Why has not R. Pappa gone along with the formulation of R. Simeon b. Laqish?*
- E. *He requires that proof in line with what Abbayye said, for said Abbayye, "If he raped her and she died, he is exempt from having to*

pay the fine, in line with the verse, ‘And the man who lay with her shall give the father of the maiden fifty sheqels’ (Deu. 22:29) – meaning, to the father of the maiden, not to the father of a deceased one.”

F. *And why has R. Simeon b. Laqish not gone along with the formulation of R. Pappa?*

G. *He requires that verse to establish a verbal analogy, in line with that which has been taught on Tannaite authority: “He shall pay money according to the dowry of virgins” (Exo. 22:16) – this [penalty for seducing a virgin] is as much as the dowry of virgins, and the dowry of virgins is as much as this.*

H. *But surely R. Simeon b. Laqish requires the verse in line with Abbaye’s exposition, and R. Pappa also requires the verse in line with the requirement of the verbal analogy. But we have to take account of the appearance of six available words, namely, “maiden, maiden, the maiden, virgin, virgins, the virgins,” with the result that, two make their own point, one serves Abbaye’s ruling, the other for the analogy, and two are left over: one encompasses the maidens with whom union involves violation of a prohibition, the other, those maidens with whom union involves the penalty of extirpation.*

**II.2** A. *That formulation [He who has sexual relations with a mamzer girl, a netin girl, or a Samaritan girl] serves to reject the following Tannaite position, which has been stated on Tannaite authority:*

B. “And she shall be his wife” (Deu. 22:29) –

C. Simeon of Teman says, “This refers to a woman who can be his wife.”

D. R. Simeon b. Menassayya says, “It refers to a woman who can remain as his wife.”

E. *What is at issue between these two positions?*

F. *Said R. Zira, “At issue between them are a mamzer girl and a netin girl. From the perspective of him who says, ‘A woman who can be his wife,’ these, too, can be his wife; but from the perspective of him who says, ‘A woman who can remain as his wife,’ these cannot remain as his wife.”*

G. *And from the perspective of R. Aqiba, who has said, “A valid betrothal does not take effect in a situation in which there is a violation of a negative commandment,” what is at issue between these two positions?*

H. *At issue between them is the case of a widow married to a high priest, in line with what R. Simai said, for it has been taught on Tannaite authority: R. Simeon says, “Of all offspring of unions that violate a negative commandment, R. Aqiba declares them to be mamzerim, except for the offspring of a widow and a high priest, in which connection he says, ‘He shall not take...he shall not profane...’ (Lev. 21:14, 15) – the offspring he profanes, but he does not make the offspring mamzerim.”*

I. *And from the perspective of R. Yeshebab, who has said, “Come and let us raise a cry against Aqiba b. Joseph, who would say, ‘In the case of any union that is not legitimate in Israel, the offspring is a mamzer,’” what is at issue between them?*

J. *At issue between them [30A] are marriages of an Egyptian or an Edomite woman, in which case the violation of the law concerns a positive commandment.*

K. *That poses no problem if the intent of R. Yeshebab is to exclude the position of R. Simai. But if the statement was on his own account, then In the case of any union that is not legitimate in Israel, the offspring is a mamzer, even including those who are liable for violating a positive commandment, then what is at issue between them?*

L. *At issue between them is the case of a girl who has had sexual relations but then married a high priest.*

M. *What differentiates this case?*

N. *It represents a positive commandment that does not apply equally to everyone.*

**II.3** A. Said R. Hisda, “All parties concur that he who has sexual relations with a menstruating woman [under the present conditions] pays a fine [even though the act is punishable by extirpation]. *From the perspective of the one who maintains that the law applies only if a valid marriage can be contracted with such a woman, lo, this one is also subject to a valid marriage. From the perspective of him who holds that the law applies to a woman with whom he may remain married, lo, this one, too, is suitable to remain wed with him..*

**II.4** A. *And that formulation [He who has sexual relations with a mamzer girl, a netin girl, or a Samaritan girl] serves to reject the position of R. Nehunia b. Haqqaneh, for it has been taught on Tannaite authority:*

- B. **R. Nehuniah b. Haqqanneh** treats the Day of Atonement as in the classification of the Sabbath so far as making restitution is concerned [T. B.Q. 7:18G]. [Because one incurs the death penalty for setting a haystack on fire, he does not have to pay for the damage, so on the Day of Atonement, because he incurs the penalty of extirpation, he does not have to pay (Silverstone, *Shebuot* 33A)]. Just as one who violates the Sabbath is subject to the death penalty but is also free from having to pay monetary compensation for any damage he may do, so he who violates the Day of Atonement is subject to the death penalty but is also free from having to pay monetary compensation for any damage he may do.

C. *What is the scriptural basis for the position of R. Nehuniah b. Haqqanneh?*

D. Said Abbaye, "Reference is made to 'harm' by the hand of a human being (Exo. 21:22, 23) and reference is made to harm by the hand of heaven. Just as, in the case of harm done by the hand of a human being, one is free from payment [Exo. 21:22, the death penalty is inflicted, no compensation is exacted from the felon], so when harm is done by Heaven, one is free from having to pay compensation in addition."

E. *Objected R. Ada bar Ahba, "How so? Maybe Jacob warned his son [at Gen. 42: 4] against cold and heat, which are inflicted by heaven? Maybe his warning was against lions and thieves, which are the work of a human being?"*

F. *So did Jacob warn against the one and not the other? He warned them against everything!*

**II.5** A. *And are cold and heat inflicted by the hand of Heaven? Has it not been taught on Tannaite authority: Everything is in the hands of Heaven except cold and heat: "Colds and heat boils are in the way of the froward, he who keeps his soul holds himself far from them" (Pro. 22: 5)?*

B. *And, furthermore, do we assign lions and thieves to human responsibility? Did not R. Joseph say, and so taught R. Hiyya as a Tannaite statement: "From the day on which the house of the sanctuary was destroyed, even though the sanhedrin ceased to be, the four forms of inflicting the death penalty did not cease to be."*

C. *Lo, they surely have ceased!*

D. Rather, [30B] “The law governing the four forms of the death penalty has not ceased to be.

E. “He who became liable to the death penalty through stoning either falls from the roof or is trampled by a wild beast.

F. “He who became liable to the death penalty through burning either falls into a fire or is bitten by a snake.

G. “He who became liable to the death penalty through decapitation either is handed over for execution by the government, or thugs attack him [and cut off his head].

H. “He who became liable to the death penalty through strangulation either drowns in a river or dies by suffocation.

I. Rather, reverse the formulation: Lions and thieves are brought by Heaven, cold and heat by man.

**II.6** A. *Raba said, “The scriptural basis behind the position of R. Nehuniah b. Haqqaneh is the following: ‘And if the people of the land do hide their eyes from that man, when he gives of his seed to Molech, and do not put him to death, then I will set my face against that man and against his family and will cut him off’ (Lev. 20: 4). The Torah has said, ‘My extirpation is equivalent to the death penalty inflicted by you. Just as one put to death by you is exempt from having to pay further compensation for damage he may have done, so when put to death by extirpation on my part he likewise is exempt from having to pay further compensation for damage he may have done.’”*

**II.7** A. *What is at issue between Raba and Abbaye?*

B. At issue is the case of a non-priest who ate food in the status of priestly rations. In the opinion of Abbaye, he is exempt from having to pay the value of the food [Daiches: harm indicates any kind of death, also the milder form of death by the hand of heaven, as in this case], and Raba maintains he is bound to pay the priest.

C. But in the opinion of Abbaye, is he exempt from having to pay the value of the food? And has not R. Hisda said, “R. Nehunia b. Haqqanneh concurs in the case of someone who steals the forbidden fat belonging to his fellow and eats it, that he is liable, for he has incurred liability on account of the theft prior to his incurring liability on account

of eating the prohibited fat.” *Therefore, at the moment at which he lifted up the fat, he acquired title to it, but he did not become liable to the death penalty until he ate it. Here, too, at the moment that he lifted it up, he acquired title to it, but he became liable to the death penalty only when he ate it.*

D. *Here with what sort of a case do we deal?* It is one in which someone else stuffed the forbidden priestly rations into his mouth.

E. *Nonetheless, once he chewed it, he acquired title to it, but he did not become liable to the death penalty until he swallowed it.*

F. It is a case in which the other stuffed it into his esophagus.

G. *How so? If he can regurgitate it, let him regurgitate it, and if he cannot regurgitate it, why is he liable?*

H. *The rule is necessary to cover a case in which he can regurgitate it but only with great effort.*

I. R. Pappa said, “It is a case in which someone poured liquids in the status of priestly rations into his mouth.”

J. R. Ashi said, “It speaks of a non-priest who ate food that he himself had designated out of his own crop as priestly rations and [31A] at the same time tore silk garments belonging to someone else.” [The liability to death at the hand of heaven for the priestly rations and the obligation to pay the neighbor are incurred at the same time; he doesn’t have to pay the neighbor (Daiches).]

## **II.8** A. *Reverting to the body of the foregoing:*

B. R. Hisda said, “R. Nehunia b. Haqqanneh concurs in the case of someone who steals the forbidden fat belonging to his fellow and eats it, that he is liable, for he has incurred liability on account of the theft prior to his incurring liability on account of eating the prohibited fat.”

C. *May we then say that he differs from R. Abin, for* said R. Abin, “If someone shot an arrow [on the Sabbath in a public domain] from the beginning to the end of a space of four cubits and it cut through silk en route, he would be exempt [from having to pay for the silk, since he was going to be liable for capital

punishment for violating the Sabbath]. For lo, the beginning of the motion of the arrow was required for the completion of the end of the motion, and at the end he was liable for capital punishment.”

D. *But how are the cases comparable? In that case there can be no putting down without a taking up [so the beginning of the motion of the arrow was required for the completion of the end of the motion], but here it is possible for the act of eating to take place without an act of raising up the food, for if the man wants, he can bend down and eat.*

E. *Or, also, in that case, if he wants to retrieve the arrow, he can't retrieve it, but here, he can retrieve [and put back] the food.*

F. *What is the difference between the one explanation and the other?*

G. *The difference between them would be represented by the case of one who carried a knife in the public domain, and, en route, the knife tore silks. In accord with the one formulation, lo, the beginning of the motion of the arrow was required for the completion of the end of the motion, and at the end he was liable for capital punishment, here, too, the same is to be said, namely, there can be no putting down without a taking up [so the beginning of the motion of the arrow was required for the completion of the end of the motion]. In accord with this other formulation, if he wants to retrieve the arrow, he can't retrieve it, but here, he can retrieve [and put back] the food, here, he can retrieve the knife.*

**II.9** A. *Reverting to the body of the foregoing:*

B. Said R. Abin, “If someone shot an arrow [on the Sabbath in a public



domain] from the beginning to the end of a space of four cubits and it cut through silk en route, he would be exempt [from having to pay for the silk, since he was going to be liable for capital punishment for violating the Sabbath]. For lo, the beginning of the motion of the arrow was required for the completion of the end of the motion, and at the end he was liable for capital punishment.”

C. *Objected R. Bibi bar Abbaye*, “**He who steals a purse on the Sabbath is liable [to make restitution] since he had already incurred the liability on account of the theft prior to incurring [through carrying the purse from one domain to another] the liability for violating the Sabbath.** If he was dragging it along and so removed it from the domain of the other in that manner, he is exempt since he did not make acquisition of the purse before he had also and simultaneously violated the Sabbath [T. B.Q. 9:19A-C]. Now lo, why should this be the case? Here, too, why not invoke the principle, The beginning of the motion of the arrow was required for the completion of the end of the motion?”

D. *Here with what case do we deal? It is a case in which* he raised it up so as to hide it away and changed his mind and took it out. [Daiches: The lifting up therefore was not for the purpose of carrying out.]

E. *But in such a case would one be liable for violating the Sabbath? Has*

not R. Simon said R. Abbi said R. Yohanan [said], “One who is transferring goods from one corner to another and changed his mind in regard to them and takes them out [from private to public domain] is exempt [from liability for violating the Sabbath] because to begin with lifting them up was not for that purpose”?

F. *Do not say*, so as to hide it away, *say*, so as to take it away! *But here, with what situation do we deal?* It is one in which he paused.

G. *If he paused, for what purpose can that have been? If it is to adjust the cord on his shoulder, that is quite ordinary [and is part of the work, but does not suspend it]!*

H. Rather, he stood still to catch his breath.

I. *But what would be the rule* if he paused to adjust the cord?

J. **[31B]** He would be exempt.

K. *Then, instead of formulating matters as, **If he was dragging it along and so removed it from the domain of the other in that manner, he is exempt**, the passage should be framed so as to introduce into the original presentation the proposed distinction, namely: Under what circumstances?* It is one in which he paused to catch his breath. But if he paused to adjust the cord, he is liable.

L. *Rather, in accord with whom is this rule set forth? It accords with Ben Azzai, who has said, “Walking along is*

equivalent to pausing and standing still.”  
[Daiches: Every pace is a new lifting up and a new putting down; therefore the theft is committed with the first lifting up of the purse, and the desecration of the Sabbath, when the last pace is made; the two acts therefore do not coincide, and he is bound to pay compensation while suffering liability for violating the Sabbath.]

M. Then if he threw the purse, *what would be the rule?*

N. He would be exempt.

O. *Then, instead of formulating matters as, **If he was dragging it along and so removed it from the domain of the other in that manner, he is exempt**, the passage should be framed so as to introduce into the original presentation the proposed distinction, namely: Under what circumstances? It is one in which he walked, but if he threw it, he is exempt.*

P. *The framer of the passage found it necessary to frame matters as he did because of the consideration of **dragging it along and so removed it**. It might have entered your mind to suppose that that is no way to carry something out [and since it is an extraordinary act, no liability is incurred]. So we are informed that that consideration does not come into play.*

Q. *What sort of purse is contemplated here? If it is a big one, then it really is the normal way to move it about. If it is*

*a little one, then it is certainly not the normal way of moving it about.*

*R. So it must be a middling one.*

*S. And whither did he move it out? If it was to public domain, then while the prohibition of the Sabbath pertains, that of theft does not. If he moved it to private domain, then the prohibition of theft pertains, but the prohibition of the Sabbath does not.*

*T. The rule was necessary to a cover a case in which he brought it out to the sides of the public domain.*

*U. Then in accord with whose theory of the status of that domain is the rule framed? It cannot be in accord with R. Eliezer, who has said, "The sides of the public domain are classified as public domain," since, in that case, while a prohibition involving the Sabbath is present, one involving theft is not. It cannot be in accord with rabbis, who have said, "The sides of the public domain are not classified as public domain," since in that case, while a prohibition of theft is present, one concerning the Sabbath is not.*

*V. In point of fact, it is in accord with R. Eliezer, and when R. Eliezer said, "The sides of the public domain are classified as public domain," that statement pertained to the matter of liability in connection with the Sabbath, for sometimes because of the pressure of the crowd, people may walk there, but with respect to effecting an acquisition [through lifting up], one does effect an*

*acquisition there, since the public is not necessarily commonly in that area [but only occasionally].*

**II.10** A. R. Ashi said, “We speak of a case in which he lowered his hand to within three cubits of the ground and received the purse there.”

B. *That accords with the view of Raba, for* said Raba, “A person’s hand is classified as a place four by four handbreadths.” [Daiches: The hand of a person is a place that serves for taking up and putting down; just as that is so for the purposes of the Sabbath, so it serves for the purposes of acquisition; therefore when he received the purse into his hand, although it was lower than three handbreadths from the ground, since his hand is considered a place, in the legal sense, it is as if he had lifted up the purse above the three handbreadths from the ground and he has thus acquired it by lifting it up; the desecration of the Sabbath and the act of theft are simultaneous.]

C. *R. Aha repeated the Tannaite formulation in that language* [Daiches: as Ashi has said that there is no acquisition in public domain except by lifting up].

*D. Rabina repeated the Tannaite formulation as follows: "Under all circumstances the man took the purse out to public domain, and in public domain, too, he effected possession of it."*

*E. And both authorities differ with respect to a close reading of the following paragraph of our Mishnah, namely: [If the thief] was dragging a sheep or ox out of the owner's domain, but it died in the domain of the owner, he is exempt. If he lifted it up or removed it from the domain of the owner and then it died, he is liable. [If] he handed it over for (1) the firstborn-offering at the birth of his son, or (2) to a creditor, or (3) to an unpaid bailee, or (4) to a borrower, or (5) to a paid bailee, or (6) to a renter, and [one of these] was dragging it away, and it died in the domain of the owner, he is exempt. If he raised it up or removed it from the domain of the owner*

**and then it died, he is liable [M. B.Q. 7:6].**

*Rabina deduces his point from the first clause, R. Aha, from the second. Thus, Rabina deduces his point from the first clause: [If the thief] was dragging a sheep or ox out of the owner's domain, but it died in the domain of the owner, he is exempt – the operative consideration being that it has died in the domain of the owner, but if he had taken it out of the domain of the owner and then it died, he would have been liable. R. Aha, from the second: If he lifted it up or removed it from the domain of the owner and then it died, he is liable – the act of removing it is comparable to the act of raising it up. Just as the act of raising it up brings the object into the man's domain, so the act of drawing it out also is one that brings the object into his domain.*

*F. Then for R. Aha the first clause poses a*

*problem, and for Rabina, the second.*

*G. For R. Aha the first clause poses no problem: so long as the thing has not come into his own domain, we classify the space in which it is located as the domain of the owner.*

*H. For Rabina, the second clause poses no problem: we do not endorse the principle that bringing the object out from one domain to another is equivalent to lifting the object up.*

- III.1 A.** He who has sexual relations with (7) his sister, and with (8) the sister of his father, and with (9) the sister of his mother, and with (10) his wife's sister, and with (11) the wife of his brother, and with (12) the wife of the brother of his father, and with (13) the menstruating woman [pays a fine]:
- B. *By way of contradiction: These are the ones who are flogged: He who has sexual relations with (1) his sister, (2) the sister of his father, (3) the sister of his mother, (4) the sister of his wife, (5) the wife of his brother, (6) the wife of the brother of his father, (7) a menstruating woman [M. Mak. 3:1A-C]. [32A] And it is an established fact that one does not both receive a flogging and also have to pay monetary compensation!*
- C. *Said Ulla, "There is no contradiction, the one speaks of his sister when she is a girl [there is a fine, but no flogging], the other [intersecting rule] speaks of his sister as an adult [there is flogging, but no fine]."*
- D. *But his adult sister also is liable to receive compensation for humiliation and damages.*
- E. *The case involves an idiot [who is not compensated either for humiliation or for damages].*



- F. *Still, there is compensation for the pain.*
- G. *The case involves a seduction.*
- H. *Now that you have gone that far, you might as well say that the law speaks of his sister who was a girl, who was an orphan and who was seduced [there are damages payable to her, not her father, the father having died; and she cannot claim damages from a seduction; so he is flogged].*

- III.2** A. *Then Ulla takes the view that in any case in which there is the possibility of monetary compensation or a flogging, money is paid, but no flogging administered? How then does he know any such thing?*
- B. *He derives the rule from the law governing the case of one who injures someone else. Just as one who injures someone else, in which case compensation is to be paid and a flogging may be in order, he pays off but is not flogged, so wherever there are both money to be paid and a flogging to be administered, the guilty party pays off and is not flogged.*
  - C. *But what distinguishes the case of one who does bodily injury to his fellow is that he is liable on five counts.*
  - D. *And if you maintain that the money compensation is the lesser of the penalties [so you pay money but do not flog, the same should apply elsewhere, whether the payment is greater or smaller, it is easier than the flogging, so we impose the more lenient penalty (Daiches)], the reason is that it has been treated by the Torah as an exception and explicitly given over to the court as a penalty, [so Deu. 25: 2. But the court may prefer to compensate the injured party, so money is paid and no flogging is administered. But in other cases, such as rape or seduction, the rule may differ; here flogging is not mentioned in the Torah, so where there is a flogging and monetary compensation alongside, flogging is administered; you cannot derive other cases from this case (Daiches)].*
  - E. *Rather, he derives the position from the case of a conspiracy of perjured witnesses. Just as, in the case of the penalties imposed on a conspiracy of perjured witnesses, in which there is the possibility of both exacting monetary compensation and also imposing a flogging, money is paid, but a flogging is not administered, so in every instance in which there is the possibility of both exacting monetary compensation and also imposing a flogging, money is paid, but a flogging is not administered.*
  - F. *What distinguishes the case of a conspiracy of perjured witnesses is that there is no requirement that they be admonished [in advance not to do what they have done, with the specified penalty explicated], and if the imposition in such*

*a case, furthermore, yields a lenient outcome, it is because they have not done an actual deed [will you say the same here? Obviously that analogy will not serve].*

- G. *Rather, derive the operative rule from both cases before us: what they have in common is that there is the possibility of both exacting monetary compensation and also imposing a flogging, in which case money is paid, but a flogging is not administered, so in every instance in which there is the possibility of both exacting monetary compensation and also imposing a flogging, money is paid, but a flogging is not administered.*
- H. *What both instances have in common is that both have a strict side [damages: compensation on five counts; conspiracy: no need for admonition]. And if you say that payment of money is a milder penalty, one can say that in each of those cases, there is a lenient side as well [the exception in the case of injury, the fact that the violation was verbal, not actual, so the other cases are not comparable to this case on either the strict or the lenient side].*
- I. **[32B]** *Rather, Ulla derives [the view that in any case in which there is the possibility of monetary compensation or a flogging, money is paid, but no flogging administered] from the recurrence of the word “on account of” (Deu. 22:29, Exo. 21:24) as follows: Here it is written, “On account of his having humbled her” (Deu. 22:29), and there, “Eye on account of eye” (Exo. 21:24). Just as in the latter case, one pays monetary compensation but does not receive a flogging, so in any case in which there are the possibilities of monetary compensation or a flogging, one pays monetary compensation but does not administer a flogging.*

- III.3** A. *R. Yohanan said, “You may even say that the cited passage [M. Mak. 3:1] speaks of his sister who was a girl. There [at M. Mak. 3:1] the rule speaks of a case in which an admonition was given to the man, here, where there was no admonition given to the man.”*
- B. *Then R. Yohanan takes the view that in any case in which there is the possibility of monetary compensation or a flogging, and there was proper admonition, a flogging is administered, but money is not paid. How then does he know any such thing?*
- C. *That proposition derives from “according to his crime” (Deu. 25: 2), meaning, for one crime you hold him liable, but you do not hold him liable for two crimes, and, alongside, “Forty stripes he may give him” (Deu. 25: 3).*

D. *Now lo, when one injures another, in which case there are possibilities of both monetary compensation and a flogging, money is paid, but no flogging administered! And should you say that rule pertains in a case in which there was no prior admonition, but in a case in which there was prior admonition, he is flogged but not required to pay monetary compensation, did not R. Ammi say R. Yohanan said, "If one hit another with a blow that, in monetary damages, was not valued at a penny, he is flogged"? Now how can we imagine such a situation? If there was no prior admonition, why is he flogged? So obviously, there was prior admonition. And yet the operative consideration is that the damages are not worth a penny. Lo, if the damages had been worth a penny, he would have paid compensation but not been flogged.*

E. *It is as R. Ilai said, "The Torah has explicitly encompassed a conspiracy of perjured witnesses under the rule requiring monetary compensation." Here, too, the Torah has explicitly covered one who injures his fellow under the penalty of compensation.*

**III.4** A. *Where is that statement of R. Ilai set forth?*

B. *It is in line with the following: [If they had said,] "We testify concerning Mr. So-and-so, that he owes his fellow two hundred zuz," and they turn out to be perjurers – "They are flogged, and they pay up, [and this is on two distinct counts,] for the count which brings flogging on them is not the count which brings on them the penalty of restitution," the words of R. Meir. And sages say, "Whoever pays restitution is not flogged" [M. Mak. 2:1A-E]. But why not say, Whoever is flogged does not pay restitution? Said R. Ilai, "The Torah has explicitly encompassed a conspiracy of perjured witnesses under the rule requiring monetary compensation."*

C. *And where did the Torah explicitly encompass a conspiracy of perjured witnesses under the rule requiring monetary compensation?*

D. *"Then you shall do to him as he had thought to do to his fellow" (Deu. 19:21) – why proceed, "hand for hand" (Deu. 19:21)? This means, something that passes from hand to hand, and what is that? It is money.*

E. *With reference to one who injures his fellow, the same is said, namely, “As he has done, so it shall be done to him” (Lev. 24:19), and why go on to say, “So shall it be given to him” (Lev. 24:20)? It means, something that can be given, and what might that be? It is monetary compensation.*

- III.5** A. *Then why does R. Yohanan not concur with what Ulla has said [if he had sexual relations with his sister who is a girl, he would not be flogged if he did so after he was warned]?*
- B. *If that were the rule, you would turn out to nullify the law, “Your sister’s nakedness you shall not uncover” (Lev. 18: 9).*
- C. **[33A]** *Well, the same argument is to be made with reference to one who injures another, namely: If so [if he pays money and does not get flogged], you will turn out to nullify the law, “He shall not exceed, lest, if he should exceed...” (Deu. 25: 3). [If there is no flogging, this law cannot be observed either.]*
- D. *And, moreover, in the case of a conspiracy of perjured witnesses, you could say, if so, you will nullify the law, “Then it shall be, if the guilty man is to be flogged” (Deu. 25:32)!*
- E. *Rather, in the case of a conspiracy of perjured witnesses, it is possible to carry out that law with reference to the son of a divorcée or a woman who has performed the rite of removing the shoe; in the case of one who injures his fellow, it is also possible to carry out the law in a case in which he injured him with a blow that does not involve compensation of a penny or more; and in the case of his sister, it is also possible to carry out the cited rule, in the case of his sister who was an adult.*
- F. *And R. Yohanan?*
- G. *He requires the phrase, “On account of his having humbled her” (Deu. 22:29) [Ulla: here it is written, “On account of his having humbled her” (Deu. 22:29), and there, “Eye on account of eye” (Exo. 21:24). Just as in the latter case, one pays monetary compensation but does not receive a flogging, so in any case in which there are the possibilities of monetary compensation or a flogging, one pays monetary compensation but does not administer a flogging], in line with what Abbaye said, for said Abbaye, “Said Scripture, ‘On account of his having humbled her’ (Deu. 22:29) – [the fact that he pays the fifty sheqels] yields the implication that payment for shame and damages likewise is to be exacted.”*

- H. And Ulla?
- I. *He derives it in line with what Raba said, for said Raba, "Said Scripture, 'Then the man who lay with her shall give the father of the maiden fifty sheqels of silver' – for the pleasure of sexual relations with the girl he pays fifty sheqels of silver, and, by implication, damages for humiliation and personal injury also are to be paid."*

- III.6** A. *R. Eleazar says, "A conspiracy of perjured witnesses pays monetary compensation but is not flogged, since they are not subject to admonition at all."*
- B. *Said Raba, "You may know that this is so, for when are we supposed to warn them? If we warn them at the outset, they will say, 'We forgot.' If we warn them during the action, they will bug out and not testify. Should we warn them after it's all over? Well, what happened happened."*
  - C. *Objected Abbaye, "So warn them within the spell of their actual speech [as a statement continuous with their actual testimony]."*
  - D. *Objected R. Aha b. R. Iqa, "Well, let's warn them to begin with, and then give them signals during their actual deed, so reminding them of what was originally said."*
  - E. *Retracting, said Abbaye, "What I said is null. If you maintain that a conspiracy of perjurers has to be given an admonition, then, if they were not given an admonition in a conspiracy to bring a murder charge, they would not be subject themselves to the death penalty. But is it really possible that people who wished without a warning to inflict the death penalty should themselves be given a warning? We have to carry out the verse, 'Then shall you do to him as he thought to do to his brother' (Deu. 19:19) and that would not be the case here!"*
  - F. *Objected R. Sama b. R. Jeremiah, "Then what about the following: In the case of a son of a divorcee or the son of a woman who has performed the rite of removing the shoe, [where there was false testimony that a man was the son of such a woman and hence not a valid priest,] in a case such as this, it is not possible to carry out, 'Then shall you do to him as he thought to do to his brother' (Deu. 19:19)!"*
  - G. *"You shall have one manner of law" (Lev. 24:22), meaning, one law equally for all [Daiches: and since in most cases the conspiracy of perjured witnesses cannot be given an admonition, here, too, they need not be given one].*

- III.7** A. *R. Shisha b. R. Idi said, “He who inflicts bodily injury on his fellow also pays monetary compensation and is not flogged. Proof derives from the following: ‘And if men strive together and hurt a woman with child so that she loses the foetus’ (Exo. 21:22), on which said R. Eleazar, ‘Scripture speaks of striving with intent to kill: “But if any harm follows, then you shall give life for life” (Exo. 21:23).’ Now how can we imagine such a situation? If there was no prior admonition, then would he be subject to the death penalty? Obviously not. So it is clear that there was prior admonition. And if one is subject to an admonition concerning a more severe matter, he is also deemed subject to an admonition for a lesser matter, and yet: ‘And yet if no harm follows, he shall surely be fined.’” [Daiches: Although there was a warning and he should be liable to flogging, he pays money and is not flogged.]*
- B. *Objected R. Ashi, “How do you know that if one is subject to an admonition concerning a more severe matter, he is also deemed subject to an admonition for a lesser matter? Maybe that is not the case [so there is no admonition for the lesser matter, he is not subject to flogging, and that is why he pays the fine]. And furthermore, if you should say that that is the case, how do we know that the death penalty is the more severe? [33B] Maybe the flogging is the more severe. For said Rab, ‘If they had flogged Hananiah, Mishaël, and Azariah, they would have bowed down to the image.’”*
- C. *Said R. Sama b. R. Assi to R. Ashi, and some say, R. Sama b. R. Ashi to R. Ashi, “But is there no difference in your mind between a flogging that is determinate and one that is not determinate?”*
- D. *Objected R. Jacob of Nehar Pegod, “That poses no problem to rabbis, who maintain, ‘life’ [at Exo. 21:23] is meant literally. But to Rabbi, who said, ‘It refers to monetary compensation,’ what is to be said?”*
- E. *Rather, said R. Jacob of Nehar Pegod in the name of Raba, “Proof derives from here: ‘If he rises again and walks abroad on his staff, then he who hit him shall be free’ (Exo. 21:19). So would it enter your mind that one should be strolling around the street and the other should be put to death! [So what can the Torah possibly mean by the language, ‘shall be free’?] But rather, the Torah teaches that the felon is put into a holding tank; if the other dies, we put him to death, and if not, then ‘he shall pay for his loss of time and his complete medical expenses’ (Exo. 21:19). Now how are we going to envision the contemplated case? If the man was not admonished, then on what basis is he to be put to death? So it is obvious that he was subject to an admonition.*

*And, it must follow, if one has been warned for a more severe matter, that admonition suffices for a less severe matter, and yet, Scripture has said, ‘He shall pay for his loss of time and his complete medical expenses’ (Exo. 21:19).”* [Daiches: Although there was a warning making him liable to a flogging, this shows he pays money and is not flogged.]

- F. *Objected R. Ashi, “How do you know that if one is subject to an admonition concerning a more severe matter, he is also deemed subject to an admonition for a lesser matter? Maybe that is not the case [so there is no admonition for the lesser matter, he is not subject to flogging, and that is why he pays the fine]. And furthermore, if you should say that that is the case, how do we know that the death penalty is the more severe? Maybe the flogging is the more severe. For said Rab, ‘If they had flogged Hananiah, Mishaël, and Azariah, they would have bowed down to the image.’”*
- G. *Said R. Sama b. R. Assi to R. Ashi, and some say, R. Sama b. R. Ashi to R. Ashi, “But is there no difference in your mind between a flogging that is determinate and one that is not determinate?”*
- H. *Objected R. Mari, “How do you know that he hit the other deliberately ‘and he shall be free’ means, free of the death penalty? Maybe it means he hit him inadvertently, and ‘he shall be free’ means, free of the penalty of exile [banishment]?”*
- I. *So that’s a problem.*

**III.8** A. [Responding to the question raised above, concerning the conflict between the Mishnah paragraph at hand and that at M. **Mak. 3:1**, namely, between the language, **He who has sexual relations with (7) his sister, and with (8) the sister of his father, and with (9) the sister of his mother, and with (10) his wife’s sister, and with (11) the wife of his brother, and with (12) the wife of the brother of his father, and with (13) the menstruating woman [pays a fine] – and, by way of contradiction: These are the ones who are flogged: He who has sexual relations with (1) his sister, (2) the sister of his father, (3) the sister of his mother, (4) the sister of his wife, (5) the wife of his brother, (6) the wife of the brother of his father, (7) a menstruating woman [M. **Mak. 3:1A-C**], in light of the established fact that one does not both receive a flogging and also have to pay monetary compensation] *said R. Simeon b. Laqish, “Lo, who is the authority behind the cited passage? It is R. Meir, who has said, ‘One may be flogged and also required to pay monetary compensation.’”***



- B. *If the rule accords with R. Meir, then even one who has raped his daughter should pay a fine [as against M. 4:3A, C: **And these do not receive a fine from the man who seduces them: he who has sexual relations with his daughter**]. And should you say that, when R. Meir maintains one is both flogged and required to pay a fine, but is not required to pay a fine if he is to be put to death, has it not been taught as a Tannaite statement: “If on the Sabbath one has stolen and slaughtered an animal, or stolen and slaughtered an animal for idolatry, or stolen an ox to be stoned and slaughtered it, he pays fourfold or fivefold indemnity [in line with Exo. 21:37],” the words of R. Meir. And sages declare him exempt?*
- C. *Lo, it has been stated in respect to that item, said R. Jacob said R. Yohanan, and some say, said R. Jeremiah said R. Simeon b. Laqish, R. Ilai and all his colleagues said in the name of R. Yohanan, “[Meir speaks of] a case in which one [stole but then] slaughtered through a third party.”*
- D. *So does this one sin and that one bear the penalty?*
- E. *Said Raba, “Scripture has said, ‘And slaughter it or sell it’ (Exo. 21:37) – just as the act of sale may be carried out by a third party serving as agency, so the act of slaughter may be carried out by a third party acting as agent.”*
- F. *[Answering the same question differently,] the household of R. Ishmael’s Tannaite authority [stated], “‘...or...’ serves to encompass the agent.”*
- G. *[Answering the same question differently,] the household of Hezekiah’s Tannaite authority [stated], “‘...instead...’ serves to encompass the agent.”*
- H. *Objecting to this solution, [said] Mar Zutra, “Well, is there really a case in which if one party had done a deed, he would not have been liable to a penalty, but if his agent did the deed, he is liable to a penalty?”*
- I. *[Supply from B. B.Q. 71A:] Said R. Ashi, “In the case at hand [involving capital punishment for Sabbath violation of idolatry], the operative consideration is not that he is liable, but that we impose upon the man the more severe of the two penalties that apply [to a single action, in this case, then, capital punishment].”*
- J. *Then, if he had the act of slaughter done by a third party, how come rabbis declare him exempt?*
- K. *Who is the authority for whom “rabbis” stand? [34A] It is R. Simeon, who has said, “An act of slaughter that is inappropriate [Kirzner, Baba Qamma 7:1A: through which the animal would not become fit for food] is not classified as an act of slaughter.”*



L. *Well, certainly* in the cases of slaughtering the beast for idolatry or slaughtering an ox that was to be stoned, we really do have an act of slaughter that is inappropriate [Kirzner: through which the animal would not become fit for food], but as to doing so on the Sabbath, this is, after all, an act of slaughter that is appropriate! *For we have learned in the Mishnah: **He who slaughters on the Sabbath or on the Day of Atonement, even though he [thereby] becomes liable for his life – his act of slaughter is valid [M. Hul. 1:1J].***

M. *He concurs with the view of R. Yohanan the Sandal-maker, for we have learned in the Mishnah: “**One who tithes [his produce], or who cooks on the Sabbath – [if he does so] unintentionally, he may eat [the food he has prepared]; [but if he does so] intentionally, he may not eat [the food] [M. Ter. 2:3D-F],**”* the words of R. Meir. R. Judah says, “If he did so inadvertently, he may eat the food at the end of the Sabbath, if it was done deliberately, he may never eat it.” R. Yohanan the Sandal-maker says, “If he did so inadvertently, at the end of the Sabbath he may give to others to eat, but not to himself; if he did so deliberately, it may never be eaten either by him or by others.”

N. *What is the scriptural basis for the position of R. Yohanan the Sandal-maker?*

O. *It is in line with what R. Hiyya expounded at the gate of the patriarch’s household: “‘You shall keep the Sabbath therefore, for it is holy to you’ (Exo. 31:14) – just as what is holy is forbidden for ordinary people’s everyday consumption, so what is made on the Sabbath is forbidden for consumption. And if one were to propose, ‘Just as what is holy is forbidden for any benefit whatsoever, so what is made on the Sabbath is forbidden for any benefit whatsoever,’* Scripture says, ‘For you,’ meaning, it is yours. Might one suppose that the stated prohibition extends even to what is done inadvertently? Scripture says, ‘Those who profane it shall surely be put to death’ (Exo. 31:14), it is when they have done so deliberately that I have so instructed you, and not when they have done so inadvertently.”

P. R. Aha and Rabina –

Q. *One said, “The prohibition of what is made on the Sabbath derives from the authority of the Torah.”*

R. *The other said, "The prohibition of what is made on the Sabbath derives from the authority of the rabbis."*

S. *The one who said, "The prohibition of what is made on the Sabbath derives from the authority of the Torah," explains matters as we have just set forth.*

T. *As to the other, who said, "The prohibition of what is made on the Sabbath derives from the authority of the rabbis," Scripture has said, "It is holy," meaning, it itself is what is holy, but what is prepared on it is not holy.*

U. *Now, from the perspective of him who said, "The prohibition of what is made on the Sabbath derives from the authority of the Torah," that is why rabbis have declared one exempt [Kirzner: as the slaughter of the animal on the Sabbath would on scriptural authority render the animal unfit for food and could according to Simeon not be slaughter at all]. But from the view of rabbis, why should there be any such exemption?*

V. *The exemption pertains to serving idols and the ox that was to be stoned [but not to this case].*

W. *[Supply, from **B.Q. 7:1B**: But why should R. Meir impose liability to the fourfold or fivefold indemnity **stole and sold an ox or a sheep for idolatrous purposes**, if someone slaughtered such a beast to an idol?] As soon as one merely started the act of slaughter, he made the animal forbidden, in which case, when he continued the act of slaughter, he was slaughtering an animal that already was forbidden for any purpose, and he was therefore slaughtering something that no longer belonged to the owner!*

X. *Said Raba, "With what sort of a case do we deal? We deal with a case in which the man said, 'It is with the completion of the act of slaughter that the idol will be served by this beast.'"*

Y. *And, again, since an ox that is condemned to be stoned is forbidden for any benefit at all, so he was*

*therefore slaughtering something that no longer belonged to the owner!*

Z. Said Rabbah, “*With what sort of a case do we deal? We deal with a case in which he had handed the beast over to a bailee, and the animal did damage to others while he was in the household of the bailee, and the admonition that the beast was an attested danger was given while the beast was in the household of the bailee, and the court process was completed while the beast was in the household of the bailee.*”

AA. “*Now R. Meir concurs in one aspect with R. Jacob and he concurs in another aspect with R. Simeon. Now R. Meir concurs in one aspect with R. Jacob, who has said, ‘Even after the court process has been completed, if the bailee returned the beast to the owner, it is properly handed back.’*”

BB. “*And he concurs in another aspect with R. Simeon, who has said, ‘Something the absence of which causes a loss of money is regarded as itself possessed of monetary value,’* [Kirzner: so that since if the ox would not have been slaughtered, the bailee would have been able to restore it intact without paying anything for its value, whereas now that the ox was stolen and slaughtered, he would have to pay for the full value of the ox, the ox is considered of an intrinsic value, though it was condemned to be stoned, and the thief has to pay the fine accordingly,] *for so we have learned in the Mishnah: R. Simeon says, ‘For Holy Things [for which compensation of fourfold or fivefold indemnity is not exacted] for the replacement, if lost, of which he bears responsibility does he pay fourfold or fivefold restitution. [And for those for the replacement, if lost, of which he bears no responsibility, he is exempt]’ [M. B.Q. 7:4I]. This proves that in his view something the absence of which causes a loss of money is regarded as itself possessed of monetary value.”*

**III.9** A. Rabbah said, "In point of fact it is a case in which the thief slaughtered the animal himself. [34B] *And R. Meir takes the view that, while in general, one may be flogged and also required to pay a fine, one may not both be subjected to the death penalty and also required to pay a fine. But the cases before us are exceptional, since it is an exceptional rule that the Torah has made in requiring that the felon pay a fine even though one is put to death.*"

B. *Rabbah is consistent with views expressed elsewhere, for said Rabbah, "If there was a kid he had stolen, and he slaughtered it on the Sabbath, he is liable, for he had already become culpable for stealing before he actually profaned the Sabbath; but if he stole and slaughtered the beast, both actions on the Sabbath, he is exempt, for if there were no act of thievery, there also would have been no act of slaughter and sale."*

C. And said Rabbah, "If there was a kid he had stolen, and he slaughtered it in the place into which he had broken, he is liable, for he had already become culpable for stealing before he actually profaned the Sabbath; but if he stole and slaughtered the beast in that place into which he had broken, he is exempt, for without the act of stealing, there is no act of slaughter or sale."

D. *And both specifications of the rule were required. For if Rabbah had spoken to us about the Sabbath, I would have thought that the reason that the thief is exempt from paying the indemnity is because the prohibition of the Sabbath is perpetual, while the prohibition of breaking in is only occasional, so I might suppose that he is not exempt from having to make*

*payment [Daiches: the thief's life is forfeit only when he is found breaking in, but if he is found later on, his life is not forfeited, so Exo. 22: 2]. And if Rabbah had told us his view about breaking in, I would have supposed that the reason that he is free from having to pay the indemnity is that his breaking in constitutes the suitable admonition [and he may be killed without further admonition], but with respect to the Sabbath, where a suitable admonition would be required, I might have supposed that he is not free of having to pay the indemnity. So both cases had to be spelled out.*

**III.10** A. Said R. Pappa, "If someone had a cow that he had stolen and he slaughtered it on the Sabbath [and is liable to the death penalty], he still is liable [to pay for the cow], for he had already incurred liability for the theft before incurring liability for having violated the Sabbath. But if he had a cow that was borrowed and he slaughtered it on the Sabbath, he would be exempt, for he violated the Sabbath and also committed theft at one and the same moment [and is liable only to the more severe of the two charges]."

B. *Said R. Aha b. Raba to R. Ashi, "Did R. Pappa come to inform us merely that the same law covers a cow? [How trivial!]"*

C. *He said to him, "R. Pappa came to inform us that the same rule applies to a cow that has been borrowed. For you might have supposed that, since R. Pappa has said, 'It is from the moment that one draws the beast that he becomes responsible to feed it,' here also, it is*

*from the moment that he has borrowed the beast that he becomes responsible for any accident that takes place in its regard. So we are informed that that is not the case” [the stealing coincides with the act of slaughter, and he is free from payment if he slaughters the borrowed cow on the Sabbath (Daiches)].*

**III.11** A. Said Raba, “If he left before them a borrowed cow, they may make use of it through the entire term for which it has been borrowed. If it died, they are not liable on account of any accidents that happen to it. If they supposed that it was the property of their father and they slaughtered or sold it, they have to pay for the value of the meat at the lowest possible price. If their father left them property that would serve as security [e.g., real estate], they are liable to pay restitution for it.”

B. *There are those who repeat this statement of his with reference to the former of the two statements [If it died, they are not liable on account of any accidents that happen to it], and there are those who repeat it in connection with the latter [If they supposed that it was the property of their father and they slaughtered or sold it, they have to pay for the value of the meat at the lowest possible price]. He who takes the view that the statement pertains to the former of the two statements all the more so will apply it to the latter, but would then differ from the view of R. Pappa. One who repeats this statement as to the latter of the statement but not to the former would concur with R. Pappa. For said R. Pappa, “If someone had a*

cow that he had stolen and he slaughtered it on the Sabbath [and is liable to the death penalty], he still is liable [to pay for the cow], for he had already incurred liability for the theft before incurring liability for having violated the Sabbath. But if he had a cow that was borrowed and he slaughtered it on the Sabbath, he would be exempt, for he violated the Sabbath and also committed theft at one and the same moment [and is liable only to the more severe of the two charges].”

**III.12** A. *Now with regard to the position of R. Yohanan, there is no difficulty in understanding why he does not accord with R. Simeon b. Laqish, for he wishes to interpret the Mishnah’s rule in accord with the view of rabbis [who form the authoritative position on the matter, rather than in accord with a dissenting view]. But as to R. Simeon b. Laqish, what motive does he have not to concur with R. Yohanan?*

B. *He will say to you, “Since, even if he had been admonished, he would have been free of having to pay the indemnity, he also is free of having to pay the indemnity even if they did not admonish him.” [Daiches: Since the offense carries the penalty of a flogging, no indemnity is exacted even if a flogging is not inflicted.]*

**III.13** A. *And the two authorities are consistent with views expressed elsewhere, for, when R. Dimi came, he said, “As to those who are liable for an inadvertent act which, if done deliberately, would have been subject to the death penalty or flogging, and which is penalized in another manner as well [namely, with a fine] – R. Yohanan says, ‘He is liable [to the fine],’ and R. Simeon b. Laqish says, ‘He is exempt [from having to pay the fine].’*

B. *“R. Yohanan says, ‘He is liable [to the fine]’: for lo, he has not been admonished [thus there is no death penalty, but then a fine is to be paid];*

C. *“and R. Simeon b. Laqish says, ‘He is exempt [from having to pay the fine]’: for even if he had been admonished, he would have been*

*free of having to pay the indemnity, he also is free of having to pay the indemnity even if they did not admonish him.”*

*D. R. Simeon b. Laqish raised the following objection against the position of R. Yohanan: “‘If there be no harm, he shall surely be penalized by a fine’ (Exo. 21:22) – [35A] does this not mean, literally, harm?”*

*E. No, it means, the law concerning harm [including a proper admonition; and without admonition, the death penalty is not inflicted – but a fine is paid.]*

*F. There are those who state the matter as follows: R. Yohanan raised the following objection against the position of R. Yohanan: “‘If there be no harm, he shall surely be penalized by a fine’ (Exo. 21:22) – does this not mean, the law concerning harm?”*

*G. No, it means, literally, harm.*

**III.14** *A. Said Raba, “Now is there really anybody who takes the position that one who inadvertently did a deed which, if done deliberately, would bring the death penalty [and also is subject to a monetary penalty] is liable to make the monetary penalty!? Lo, a Tannaite statement of the household of Hezekiah: “‘He who smites a man...he who smites a beast...’ (Lev. 24:21) – just as, in the case of one who smites a beast, there is no distinction as to liability for a money payment on account of whether the act was inadvertent or deliberate, intentional or unintentional, done on the downswing or on the upswing, such as might exempt one from monetary compensation, so that, under all circumstances, one is liable to make monetary compensation, so also in the case of killing a man, there is no basis for a distinction as to liability for a money payment on account of whether the act was inadvertent or deliberate, intentional or unintentional, done on the downswing or on the upswing, such as might exempt one from monetary compensation, so that, under all circumstances, one is liable to make monetary compensation.”*

*B. Rather, when Rabin came, he said, “As to those who inadvertently do a deed that if done deliberately would have involved the death penalty and that is also subject to monetary*



penalty, *all parties concur that one is exempt from having to pay monetary compensation. Where there is a dispute, it concerns those who inadvertently do a deed that if done deliberately would have involved a flogging and that is also subject to monetary penalty.*

C. “R. Yohanan said, ‘He is liable, *for the foregoing analogy serves with respect to those who do a deed that is subject to the death penalty, but there is no comparable analogy drawn with those who do a deed that is subject to flogging.*’

D. “R. Simeon b. Laqish said, ‘He is exempt, for the Torah has explicitly extended the law covering those that are subject to the death penalty to those that are subject to a flogging.’”

**III.15** A. Where did the Torah explicitly extend the law in such wise?

B. *Said Abbaye, “The repeated reference to ‘wicked man’ [at Num. 35:31 and Deu. 25: 2] forms a verbal analogy [and the former refers to the death penalty, the latter to flogging, so the analogy is effected].”*

C. *Raba said, “The repeated reference to the word ‘smiting’ [‘he who smites a beast’] yields the point at hand.”*

D. *Said R. Pappa to Raba, “To which ‘smiting’ do you refer? Is it, ‘He who smites a beast shall pay for it, and he who smites a man shall be put to death’? But this speaks of the death penalty. Or, rather, to this verse: ‘He who smites a beast shall pay for it, life for life,’ alongside of, ‘And if a man cause a blemish in his neighbor, as he has done, so shall be done to him’ (Lev. 24:19)? But in the latter verse, there is no reference to smiting anyhow!”*

E. *“Well, we’re referring to the effects of smiting.”*

F. *“But the cited verse speaks of one who injures his fellow, and such a one has to pay damages [but is not flogged]!”*

G. *“If it has no bearing on an act of smiting that involves injury to the value of a penny, refer it to an act*

of smiting in which the damages do not add up to a penny.”

H. [35B] *“One way or the other, he does not have to pay damages!”*

I. *“No, the passage is required to deal with a case in which, while he did the damage, he also tore his silks.”*

**III.16** A. *Said R. Hiyya to Raba, “And from the perspective of the Tannaite authority of the household of Hezekiah, who has said, “‘He who smites a man...he who smites a beast...’ (Lev. 24:21) – [just as, in the case of one who smites a beast, there is no distinction as to liability for a money payment on account of whether the act was inadvertent or deliberate, intentional or unintentional, done on the downswing or on the upswing, such as might exempt one from monetary compensation, so that, under all circumstances, one is liable to make monetary compensation, so also in the case of killing a man, there is no basis for a distinction as to liability for a money payment on account of whether the act was inadvertent or deliberate, intentional or unintentional, done on the downswing or on the upswing, such as might exempt one from monetary compensation, so that, under all circumstances, one is liable to make monetary compensation], how do we know that Scripture makes reference to a weekday, and no distinctions are to be made [but one is always liable]? Maybe it refers to the Sabbath, in which case a distinction is to be made between deliberate and inadvertent action [in the latter case, there would be payment, in the former, not, since deliberate violation of the Sabbath is penalized by death]?”*

B. [Supply: He said to him,] *“Perish the thought! For it is written, ‘He who smites a beast shall pay for it, and he who smites a man shall be put to death’ (Lev. 24:22). Now how can we contemplate the case? If they did not provide an admonition, then in the case of smiting a*

*man, why should he be put to death? So it is obvious that they did warn him. And if this was on the Sabbath, if the man smote a beast, would he pay for it? Therefore it can only refer to an event that took place on a weekday."*

**III.17** A. *Said R. Pappa to Abbaye, "From the perspective of Rabbah, who has said, 'It is an exceptional rule that the Torah has made in requiring that the felon pay a fine even though one is put to death,' according to whom does he align our Mishnah paragraph? If it is to accord with the view of R. Meir, then the ruling regarding raping his daughter presents a difficulty [why no fine in that case]? If it is according to R. Nehunia b. Haqqanneh, then the law about raping his sister presents a difficulty [he concurs with Meir on flogging but not on extirpation (Daiches)]; and if it is to accord with R. Isaac, the law on the mamzer girl presents a problem [he holds if there is extirpation, there is no flogging, so why a fine here, where there is a flogging]?"*

B. *"There is no problem if he concurs with R. Yohanan [no warning was given, no penalty of flogging], for then he could explain our Mishnah paragraph in accord with R. Yohanan. But if he concurs with R. Simeon b. Laqish [even where there is no flogging, there is no monetary penalty], how can he explain our Mishnah paragraph? So he concurs with R. Yohanan."*

**III.18** A. *Said R. Mattena to Abbaye, "From the perspective of R. Simeon b. Laqish, who has said, 'The Torah has explicitly extended the law governing those who commit an act subject to the death penalty to those who commit an act penalized by a flogging, who is the Tannaite authority who differs from R. Nehunia b. Haqqanneh?'" [Daiches: so that there is no payment even if the act was done inadvertently.]*

B. *"Either R. Meir or R. Isaac."* [Daiches: Meir does not exempt from payment one who is flogged and although there is a flogging in the case of raping a sister, he still pays the fine; Isaac will hold that an offense with the sister is limited to extirpation and there is no flogging, hence, no exemption from the fine.]

**III.19** A. *Our rabbis have taught on Tannaite authority:*

B. *Those who stand in a consanguineous relationship with the lover, and those forbidden to him at the second remove, have no claim on payment of a fine in the case of rape or to an indemnity in the case of seduction.*

- C. A girl who exercises the right of refusal has no claim on payment of a fine in the case of rape or to an indemnity in the case of seduction.
- D. A barren woman has no claim on payment of a fine in the case of rape or to an indemnity in the case of seduction.
- E. She who is sent off on account of a bad reputation has no claim on payment of a fine in the case of rape or to an indemnity in the case of seduction.

**III.20** A. *What is the definition of “those who stand in a consanguineous relationship with the lover, and those forbidden to him at the second remove”?*

B. *If I should say, “those who stand in a consanguineous relationship with the lover” [36A] are those who literally stand in a consanguineous relationship with the lover, and “those forbidden to him at the second remove” are literally “those forbidden to him at the second remove” by the rulings of sages, then, in the latter case, since from the perspective of the Torah, she is suitable for him, why should she not get a monetary indemnity?*

C. *So it must mean that “those who stand in a consanguineous relationship with the lover” are those who are subject to the death penalty at the hand of a court, and “those forbidden to him at the second remove” are those subject to the penalty of extirpation. But as to the rape of women who are forbidden to marry him only by a negative commandment, they do receive a monetary indemnification.*

D. *And who is the authority behind this rule? It is Simeon of Teman. [“And she shall be his wife” (Deu. 22:29) – Simeon of Teman says, “This refers to a woman who can be his wife.”]*

E. *There are those who say: “Those who stand in a consanguineous relationship with the lover” are those liable to the death penalty at the hand of the earthly court and those liable to extirpation. And “those forbidden to him at the second remove” are those who have to bear the penalty for violating a negative commandment.*

F. *And who is the authority behind this rule? It is Simeon b. Menassia.*

**III.21** A. *“A girl who exercises the right of refusal has no claim on payment of a fine in the case of rape or to an indemnity in the case of seduction”:*

B. *It follows that a minor in general does have such a claim. In accord with whose position is that rule?*

C. *It is rabbis, who maintain [at M. 3:1] that a minor receives a fine.*

D. *But then note what follows: “A barren woman has no claim on payment of a fine in the case of rape or to an indemnity in the case of seduction! Now this accords with the position of R. Meir, who maintains that a minor does not receive a fine, and this woman [the barren woman] has passed from her childhood to her adulthood [without passing through girlhood, that is, she has not exhibited the traits of puberty, and only the girl gets the fine (Daiches)].*

E. *So the opening clause accords with rabbis, and the concluding one, R. Meir?*

F. *Not at all, the entire passage represents the position of R. Meir, but it speaks of a woman who has exercised the right of refusal, in which instance he concurs with R. Judah. [Judah maintains a girl, between minor and adult, may exercise the right of refusal.]*

G. *But has it not been taught on Tannaite authority: Until what point may a girl exercise the right of refusal? “Until she produces two pubic hairs,” the words of R. Meir. R. Judah says, “A girl may exercise the right of refusal until the black pubic hair predominates [that is, she is now a girl, no longer a minor, but not yet an adult]”?*

H. *Rather, it is in accord with R. Judah, and, in regard to a minor, he concurs with R. Meir [Daiches: that she has no claim to a fine, hence the ruling with regard to the barren woman].*

I. *But does he take that position? And did not R. Judah say Rab said, “This is the opinion of R. Meir” [in respect to exercising the right of refusal]? And if what you say were so, then what he should have said is, “This is the opinion of R. Meir and of R. Judah.”*

J. *This Tannaite authority concurs with R. Meir in one item and differs from him in another [namely, the matter of the exercise of the right of refusal].*

K. *Rafram said, “What is the definition of one who exercises the right of refusal? It is one who has the right to do so.”*

L. *So if that’s all that’s at stake, then let him formulate the Tannaite statement as “a minor”!*

M. *That’s a problem.*

**III.22** A. “A barren woman has no claim on payment of a fine in the case of rape or to an indemnity in the case of seduction”:

B. *By way of contradiction:* A deaf-mute and an idiot and a barren woman have a claim on the fine and may be subjected to a claim against their virginity!

C. *So what’s the contradiction? The one represents the position of R. Meir, the other, that of rabbis.*

D. *Well, then, what can the person who raised the contradiction possibly have been thinking?*

E. *It is because he had in mind another contradiction:* A deaf-mute, an idiot, an adult, a woman injured by a piece of wood are not subject to a claim as to their virginity. A blind woman and a barren woman are subject to a claim as to their virginity. Sumekhosh says in the name of R. Meir, “A blind woman is not subject to a claim as to her virginity.”

F. *Said R. Sheshet, “This is no contradiction. The one represents the position of Rabban Gamaliel, the other, R. Joshua.”* [Reference is made to **He who marries a woman and did not find tokens of virginity – she says, “After you betrothed me, I was raped, and your field has been flooded,” and he says, “Not so, but it was before I betrothed you, and my purchase was a bargain made in error” – Rabban Gamaliel and R. Eliezer say, “She is believed.” R. Joshua says, “We do not depend on her testimony. But lo, she remains in the assumption of having had sexual relations before she was betrothed and of having deceived him, until she brings evidence to back up her [contrary] claim” (M. 1: 6).** Gamaliel believes the woman if she says she was violated after betrothal, in the case of the deaf-mute we admit this plea, in the case of Joshua, not (Daiches)].

G. *I may well concede that Rabban Gamaliel holds that position in a case in which she makes the plea [that she was raped after she was betrothed]. But does he take that position when she does not enter that plea at all?*

H. *Yes indeed, since R. Gamaliel has said, “She is believed,” in such a case, then it is our duty to enter it: “Open your mouth for those who cannot speak” (Pro. 31: 8).*

**III.23** A. “A woman injured by a piece of wood is not subject to a claim as to her virginity”:

B. But has not Rab stated, “As to a woman who has reached maturity, she is assigned the first night”? [Daiches: We assume that bleeding is due to not menstruation but virginity, so it would prove she is a virgin.]

C. **[36B]** *If the husband raises a complaint about the [absence of] bleeding, that is a valid complaint. But here the complaint concerns an open door [and this cannot be raised against a mature woman].*

**III.24** A. “Sumekhosh says in the name of R. Meir, ‘A blind woman is not subject to a claim as to her virginity’”:

B. *What is the operative consideration in the mind of Sumekhosh?*

C. Said R. Zira, “Because she might have fallen down on the ground.”

D. *Well, any other woman also can have fallen down on the ground!*

E. Any other woman may see it and show her mother. This one is not going to see it and show her mother.

**III.25** A. “She who is sent off on account of a bad reputation has no claim on payment of a fine in the case of rape or to an indemnity in the case of seduction”:

B. A woman who goes out on account of a bad reputation is subject to stoning!

C. *Said R. Sheshet, “This is the sense of the statement: ‘A girl who had a bad name in her youth has no claim on payment of a fine in the case of rape or to an indemnity in the case of seduction.’”*

D. *Said R. Pappa, “Then it is to be inferred that on the strength of a dubious bond, we do not order the collection of a debt.”*

E. *What can possibly be in mind? If we should say that the validity of the bond has been called into the question, indicating that it is forbidden, so, too, here, a rumor has spread that she has been a whore, well, didn’t Raba say, “If around town they said a girl drove in the fast lane, people are not to pay attention to it”?*

F. *Rather, two witnesses came and said, “She begged us to commit a prohibited act with her,” and here, too, two persons came and said that he had said to them, “Forge a bond for me.”*

G. *Well, then, there's no problem in that case, since there are plenty of pretty wild guys around, but here if the man is assumed to be a forger, have all Israelites been assumed to be forgers?*

H. *Here, too, since he was running around looking for a forgery, I can well maintain that he himself forged and wrote it out.*

### 3:2

- A. **And these do not receive a fine [from the man who seduces them]:**
- B. **he who has sexual relations with (1) a convert, (2) a girl taken captive, or (3) a slave girl, who was redeemed, or who converted, or who was freed, when any of these was at an age of more than three years and one day –**
- C. **R. Judah says, “A girl taken captive who was redeemed, lo, she remains in her condition of sanctity, even though she is an adult” –**
- D. **he who has sexual relations with (4) his daughter, (5) his daughter's daughter, (6) with the daughter of his son, (7) with the daughter of his wife, (8) with the daughter of her son, (9) with the daughter of her daughter –**
- E. **they do not receive a fine [from the man who seduces them],**
- F. **for he incurs the death penalty.**
- G. **For the death penalty inflicted upon him is at the hands of an earthly court,**
- H. **and whoever incurs the death penalty [at the hands of an earthly court] does not pay out a financial penalty [in addition], since it says, “If no damage befall he shall surely be fined” (Exo. 21:22).**

- I.1** A. **[A girl taken captive who was redeemed, lo, she remains in her condition of sanctity, even though she is an adult:]** Said R. Yohanan, “R. Judah and R. Dosa take the same view. *As to R. Judah, it is just as we have now said. As to R. Dosa, it is in line with that which has been stated as a Tannaite formulation: ‘A woman taken captive [and returned to her husband] continues to eat heave-offering [when she returns to her husband, who is a priest],’ the words of R. Dosa.*” [And sages say, “There is a woman taken captive who may eat heave-offering, and there is a woman taken captive who may not do so. How so? The woman who says, ‘I was taken captive, but I remain clean,’ eats [heave-offering], for the mouth which



imposed a prohibition [on the person] is the mouth which released the prohibition [from that same person]. But if there were witnesses that she had been taken captive, while she says, 'I am clean,' she may not eat heave-offering"] [M. Ed. 3:6]. [Dosa continues:] "For what has this Arab done to her? Simply because he stroked her between her breasts, has he invalidated her for marriage into the priesthood?"

- B. *Said Raba, "But maybe that's not the point [and they really don't concur]. R. Judah takes the position that he does only in the present case, with the consideration that a sinner shouldn't get rewarded. But in that case, he may well concur with rabbis [as against Dosa]. Or, also, R. Dosa takes the position that he does there only with respect to priestly rations, which are based on rabbinical authority, but so far as the penalty of the fine is concerned, which derives from the authority of the Torah, he concurs with rabbis."*
- C. *Said to him Abbaye, "But is the operative consideration of R. Judah here assuredly that a sinner shouldn't get rewarded? Has it not been taught on Tannaite authority: R. Judah says, 'A little girl who was taken captive, even if she is ten years old, lo, she remains in her status of holiness, and her marriage settlement remains valid at two hundred zuz, [as is coming to a virgin]' [T. Ket. 3:4C]? Now in that case, what consideration can be introduced to the effect that a sinner shouldn't get rewarded?"*
- D. *There, perhaps men will hold back and not want to marry her.*

**I.2** A. *Now, is it the fact that R. Judah maintains that she remains in her status of sanctification [even when taken captive]? And has it not been taught on Tannaite authority: **He who ransoms a female captive may marry her, but he who testifies in her behalf that she has not been raped may not marry her.** R. Judah says, "One way or the other, he may not marry her" [T. Yeb. 4:4H-J]?*

B. *Now there is a contradiction in the body of the passage. On the one side, you say, **He who ransoms a female captive may marry her, and on the other, but he who testifies in her behalf that she has not been raped may not marry her!** So the operative consideration is that he has given testimony in her behalf. Lo, merely because he gave testimony, may he not marry her?*

C. *There is no problem. This is the sense of the passage:* He who ransoms a female captive may marry her and he who testifies in her behalf that she has not been raped may marry her. But if he gave testimony alone, he may not marry her.

D. *In any event there is a contradiction among the positions assigned to R. Judah!*

E. *Said R. Pappa, "Say: R. Judah says, 'One way or the other, he may marry her.'"*

F. *R. Huna b. R. Joshua says, "Under all circumstances, it is as matters now are set forth as a Tannaite statement. R. Judah responds to the opinion of rabbis in accord with their position, not his own, saying to them, 'So far as I am concerned, one way or the other, he may marry her,' but so far as you are concerned, what you should be saying is, 'One way or the other, he may not marry her.'"*

G. *And rabbis?*

H. *Someone who ransoms a captive and testifies in her behalf may marry her, because someone is not going to throw out money for nothing. But he who only gives evidence on her behalf may not marry her, because it may be that he has merely fallen in love with her.*

- I.3** A. *R. Pappa bar Samuel pointed out to R. Joseph a contradiction: [37A] "And does R. Judah really maintain that a female captive remains in her condition of sanctification? Has it not been taught on Tannaite authority: A woman who converted and only then produced a drop of [menstrual] blood – R. Judah says, 'It is sufficient for her [to reckon uncleanness from] the time [of her discovering a flow].' R. Yosé says, 'Lo, she is classified along with all other [Israelite] women, [so she is held to have been unclean only] during [the preceding] twenty-four hours [when] this lessens the period from the examination to the [last] examination, [and she is held to have been unclean only] during the period from examination to examination [when] this lessens the period of twenty-four hours.' 'And she has to wait three months before marrying [to determine she is not pregnant prior to her conversion,' the words of R. Judah. [So Judah suspects she has had sexual relations, contrary to the Mishnah's claim that he says a captive woman protects her chastity (Slotki).] R. Yosé permits her to become betrothed and to consummate the marriage forthwith."*

- B. *He said to him, "Well, are you really proposing to compare the case of a convert to Judaism to that of a captive? A convert [before conversion] doesn't guard herself, but a captive guards herself."*
- C. *Well, then, contrast the rulings concerning the captive woman with one another, for it has been taught on Tannaite authority:*
- D. *"Converts, women taken captive, or slaves, who were redeemed, converted or freed who are older than three years and a day have to wait three months before marrying,' the words of R. Judah. [So Judah once more suspects she has had sexual relations, contrary to the Mishnah's claim that he says a captive woman protects her chastity (Slotki).] R. Yosé permits betrothal and marriage right away."*
- E. *He shut up. Then he said to him, "So what have you heard about this problem?" He said to him, "This is what R. Sheshet said: 'It is a case in which people saw that she had sexual relations.'"*
- F. *"If so, what can possibly stand behind the ruling of R. Yosé?"*
- G. *Said Rabbah, "What is the operative consideration of R. Yosé? He takes the view that a woman who goes awhoring uses a diaphragm to avoid conception."*
- H. *[Supply from B. Yeb. 35A: Said to him Abbaye,] "That poses no problem in the case of a proselyte; since she is planning to convert, she guards herself [so that she can distinguish between semen that was introduced in a state of sanctification and that which was introduced not in a state of sanctification]. So, too, a woman taken captive, for she doesn't know where they're taking her. So, too, a slave girl, hearing from her master – both women in those classifications will take good care of themselves. But how does this consideration relate to a slave girl who is freed by reason of the loss of a tooth or an eye? And if you should say that in any case in which matters happen on their own, R. Yosé concedes [that there must be a three-month period of waiting], has it not been taught on Tannaite authority, 'A woman who has been raped or seduced has to wait three months,' the words of R. Judah; R. Yosé permits her to be betrothed or married forthwith?"*
- I. *Rather, said Abbaye [B. Ket.: Rabbah], "R. Yosé maintains that a woman who goes awhoring rolls over right away to prevent conception."*
- J. *And the other party [who requires a wait]?*
- K. *We take account of the possibility that she may not roll over in an effective way.*

- II.1** A. ...and whoever incurs the death penalty [at the hands of an earthly court] does not pay out a financial penalty [in addition], since it says, “If no damage befall he shall surely be fined” (Exo. 21:22):
- B. *Does that proposition derive from the text that is adduced in evidence? Lo, it derives from the following: “According to his crime” (Deu. 25: 2), meaning, for one crime you hold him liable, but you do not hold him liable for two crimes, and, alongside, “Forty stripes he may give him” (Deu. 25: 3)?*
- C. *One verse pertains to a case in which there are penalties of both death and monetary indemnity, the other, flogging and monetary indemnity.*
- D. *And both proofs are required. For had we been informed of the rule governing the death penalty and monetary indemnity, one might have supposed that the operative criterion was that in that case were involved both the loss of life and money, but here, where there is only flogging along with the monetary penalty, in which case there is no loss of life, I might have thought that that is not the case.*
- E. *And had we been informed only of the rule governing flogging and a financial penalty, that might have been because the law violation for which flogging is inflicted is not a weighty one, but where there are the death penalty and a monetary penalty as well, where, as a matter of definition, the law violation for which the death penalty is imposed is a weighty one, I might have thought that that is not the case.*
- F. *So both proofs were necessary.*
- II.2** A. *And from the perspective of R. Meir, who has said, “One may both be flogged and required to pay a monetary penalty,” what need do I have for two proofs?*
- B. *One concerns a case of the death penalty and monetary penalty, [37B] the other, the death penalty and flogging.*
- C. *And both proofs are required. For had we been informed of the rule governing the death penalty and monetary indemnity, one might have supposed that the operative criterion was that one concerned the man’s person, the other his property, in which case we do not impose both penalties, but where there are the death penalty and flogging, both of which pertain to the man’s person, I might claim that it is a prolonged form of the death penalty, and we carry it out.*

*D. And had we been informed only of the rule governing flogging and the death penalty, both of which involve the man's person, then I might have supposed that in that case, we do not carry out the double penalty, but when it comes to the death penalty and a financial indemnity, one of which pertains to the person, the other to the property, of the felon, I might have supposed that in that case we do so penalize him. [So both proofs were necessary.]*

**II.3** A. *What need do I have, then, for the proof-text, “Moreover you shall take no ransom for the life of a murderer” (Num. 35:31) [which proves that a monetary fine is not imposed in addition to the death penalty]?*

B. *The All-Merciful has indicated that you should not take a ransom and then exempt him from the death penalty.*

**II.4** A. *What need do I have, then, for the proof-text, “And you shall take no ransom for him who flees to his city of refuge” (Num. 35:32)?*

B. *The All-Merciful has indicated that you should not take a ransom and then exempt him from the penalty of exile.*

**II.5** A. *Why two verses of Scripture to make the same point [one on the death penalty and monetary penalty, the other on exile and monetary penalty, but both addressing the case of murder (Slotki)]?*

B. *One addresses a case in which the crime was inadvertent, the other, deliberate, and both are required.*

C. *For if we had been informed about the rule governing a crime deliberately committed, it might have been that that is because the violation of a prohibition here is a most weighty one, but in the case of an action that was inadvertent, in which case the violation of a prohibition is not a weighty one, I might have said that that is not the case.*

D. *And if we had been informed of the rule governing a crime that was inadvertent, I might have supposed that that is because there is no loss of life [of the felon], but in the case of the action's being done deliberately, in which case there is a loss of life, I might have thought that that is not the case. So both were necessary.*

- II.6** A. *What need do I have, then, for the proof-text, “And no expiation can be made for the land for the blood that is shed therein, but by the blood of him that shed it” (Num. 35:33)?*
- B. *That is required in line with what has been set forth on Tannaite authority:*
- C. **[If] the neck of the heifer was broken and afterward the murderer was found, lo, this one is put to death [M. [Sot. 9:7D](#)]:**  
How do we know that if after the neck of the heifer is broken, the murderer is found, [the rite already accomplished] does not exempt [the murderer] [M. [9:7D](#)]?
- D. Scripture states, “And no atonement can be made for the land for the blood that is shed therein, except by the blood of him who shed it” (Num. 35:33).
- II.7** A. *What need do I have, then, for the proof-text, “So you shall put away the guilt of the innocent blood from the midst of you” (Deu. 21: 9)?*
- B. *That is required in line with what has been set forth on Tannaite authority:*
- C. How on the basis of Scripture do we know that execution by the sword is done at the neck?
- D. Scripture states, “So you shall put away the guilt of the innocent blood from the midst of you” (Deu. 21: 9).
- E. The case of all those who shed blood is compared to the case of the heifer whose neck is to be broken.
- F. Just as in that case, the execution takes place with a sword at the neck, so here the execution takes place with a sword at the neck.
- G. If one should propose that, just as in that case, it is done with an ax at the nape of the neck, so here, too, it should be done with an ax at the nape of the neck, [the answer derives from the argument already given].
- H. Namely, said R. Nahman said Rabbah bar Abbuha, “Scripture has said, ‘You will love your neighbor as yourself’ (Lev. 19:18), meaning to choose for him a form of death that is easy.”

- II.8** A. *What need do I have, then, for the proof-text*, “None devoted, that may be devoted of men, shall be ransomed, he shall surely be put to death” (Lev. 27:29)?
- B. *That is required in line with what has been set forth on Tannaite authority*:
- C. How on the basis of Scripture do we know that in the case of him who was being taken forth to execution and said, “My Valuation is incumbent on me,” he has said nothing?
- D. Scripture has said, “No devoted thing...shall be redeemed” (Lev. 27:28). [A condemned person falls into the category of *herem*.]
- E. Is it possible [that the same rule applies] even prior to the completion of his trial?
- F. Scripture says, “...from man [in part]” and not the whole of a man [and before the end of the trial and the sentencing, he remains a whole man. Afterward he is no longer whole].
- G. *Now in the view of R. Hananiah b. Aqabya, who holds*, “**He is subject to a pledge of Valuation**,” because [in the case of a pledge of Valuation] there is a fixed fee [specified by Scripture, so the issue of the diminishing value of a person about to die does not enter],
- H. *how would one interpret this reference to* “no devoted thing [shall be redeemed]”?
- I. *It is to be interpreted [for a quite separate purpose] in line with that which has been taught by a Tannaite authority*: R. Ishmael, son of R. Yohanan b. Beroqah, says, “Since we find that those who are subject to the death penalty at the hand of Heaven are able to pay a monetary fine and attain atonement for themselves, as it is said, ‘If a ransom is laid on him’ (Exo. 21:30), is it possible to suppose that the rule is the same for one who has been condemned to the death penalty to be executed by man?
- J. “[No, it is not possible, for] Scripture states, ‘No devoted thing... shall be redeemed [and a man sentenced to death falls into that category]’ (Lev. 27:28).
- K. “I know only that rule applies in the case of those who are condemned to death as guilty of a most severe crime, the

inadvertent performance of which is not subject to atonement [such as blasphemy].

L. “How do I know that the same rule applies to those who are put to death for lesser crimes, the inadvertent performance of which is subject to atonement?

M. “Scripture states, ‘No devoted thing...’”

**II.9** A. *But would that proposition [that a ransom may not be substituted for the death penalty even in the case of death penalties of a lesser order] follow on its own from the statement, “You shall take no ransom” (Num. 35:31), which implies, you shall take no money from him to free him from the death penalty? What need is there for the language, “None devoted...”?*

B. *Said R. Ammi bar Hama, “It is in fact required. For it might have entered your mind to say [38A] that not taking a ransom in place of the death penalty applies in particular in a case in which the death was inflicted on the upswing, in which case no atonement is permitted if such an act was done unintentionally; but if the murder was committed on the downswing, in which case, if it was done inadvertently, atonement is permitted, it is then permitted to take a monetary compensation and the man is exempt from the death penalty. So we are informed that under no circumstances is the death penalty remitted in favor of a monetary fine.”*

C. *Said to him Raba, “Lo, that proposition [‘None devoted...’ – in the case of murder, the death penalty is not to be commuted for a monetary fine, without regard to whether it was on the upswing or the downswing (Slotki)] derives from what is stated by the Tannaite authority of the household of Hezekiah, for stated the Tannaite authority of the household of Hezekiah:*

D. *““And he who kills a beast [shall pay for it] and he who kills a man [shall be put to death]” (Lev. 24:21). [Freedman, Sanhedrin, p. 532, n. 4: This verse, by*



coupling the two, likens them to each other; it also implies that where monetary compensation has to be made for an animal, it is not so for a man, since 'shall pay for it' is only prescribed for the former.] Just as in the instance of one who hits a beast, you make no distinction between doing so inadvertently and deliberately, doing so intentionally and unintentionally, doing so with a downward blow or an upward blow, in no instance declaring one exempt from having to make monetary compensation but imposing liability in all cases to monetary compensation, so in the case of one who hits [and kills] a man, you should make no distinction between doing so inadvertently and deliberately, doing so intentionally and unintentionally, doing so with a downward blow or an upward blow, in no instance declaring one liable to make monetary compensation but in all cases declaring one exempt from monetary compensation [since the death penalty may be involved].”

E. *Rather, said R. Ammi bar Hama, “The proofs were required, for I might have supposed that the rule that monetary compensation cannot be required from one who suffers the death penalty pertains only where someone blinded his eye and in that way killed him, but where he blinded his eye and killed him in some other action, there must also be a monetary fine for the eye. [So we are informed that that is not the case.]”*

F. *Said Raba to [Ammi bar Hama], “This, too, derives from another teaching of a Tannaite authority of the household of Hezekiah, for stated the Tannaite authority of the household of Hezekiah:*

G. *““...eye for eye, life for life” (Exo. 21:24) – and not a life and an eye for an eye.”*

H. *Rather, said R. Ashi, “[Either ‘None devoted...’ or ‘He who smites...’] is required to deal with the following proposition: It might have entered your mind to suppose that since the monetary fine is a new point*

that the Torah has innovated, *therefore even though one is put to death, he has to pay a monetary fine in addition. So we are informed that that is not the case.*"

I. *And from the perspective of Rabbah, who has said, "It is a new point that the Torah has innovated by imposing a monetary fine, and so the man must pay the fine even though he is put to death," what is to be said of the phrase, "None devoted..."?*

J. *He accords with the position of the initial Tannaite authority as against the opinion of R. Hanania b. Aqabya.*

### 3:3

- A. **A girl who was betrothed and then divorced –**
- B. **R. Yosé the Galilean says, "She does not receive a fine [from the man who raped or seduced her]."**
- C. **R. Aqiba says, "She does receive a fine, and the fine belongs to her."**

#### I.1

- A. *What is the scriptural basis for the position of R. Yosé the Galilean?*
- B. *Said Scripture, "...that is not betrothed" (Deu. 22:28) – lo, [one who is not betrothed is one who gets the fine, but] one who is betrothed does not get it.*
- C. *And R. Aqiba?*
- D. *The fine going to one who is not betrothed is assigned to her father, if she was betrothed, it is assigned to her.*
- E. *What about the following proposition: "a girl" (Deu. 22:28) – but not a mature woman: here, too, is the fine given to the woman herself?*
- F. *So, too: "a virgin" – and not one who is no longer a virgin: here, too, is the fine given to the woman herself?*
- G. *Rather, the exclusion is complete [no fine is paid to the girl or the father (Slotki)], and here, too, the exclusion is complete [and there is no fine paid at all]!*
- H. *R. Aqiba will say to you, "This phrase, '...that is not betrothed' (Deu. 22:28), is required in line with that which has been taught on Tannaite authority:*

- I. ““...that is not betrothed” (Deu. 22:28) – “this excludes a **girl who was betrothed and then divorced – who does not receive a fine [from the man who raped or seduced her],” the words of R. Yosé.”**
- J. **R. Aqiba says, “She does receive a fine, and the fine belongs to her.**
- K. “[That she is entitled to the fine even after betrothal (Slotki)] is perfectly reasonable. Since her father takes possession of the money paid for her betrothal, and the father takes possession of the money paid for her fine, just as the money paid for her betrothal, even though she should be betrothed and divorced, is assigned to her father, so also money paid as an indemnity, even though she is betrothed and divorced, is assigned to her father.
- L. “If so, what is the point of the verse, ‘...that is not betrothed’ (Deu. 22:28)? It is left available for purposes of establishing a verbal analogy and to draw an inference from it on the strength of such an analogy:
- M. “Here we find, ‘...that is not betrothed’ and in the case of seduction, we find that same language, ‘...that is not betrothed.’ Just as here, the fine is fifty silver coins, so in that context, it is the same; just as there, the coins are sheqels, so here they must be the same.”
- N. *And how come R. Aqiba utilized the language, ‘...that is not betrothed,’ for the purposes of establishing the verbal analogy just now exploited, and the language, ‘a virgin,’ to exclude a woman who had had sexual relations? Why not say [38B] that the reference to “virgin” serves to establish a verbal analogy, and the language, “...that is not betrothed,” serves to exclude the case of a girl who was betrothed and then divorced?*
- O. *It is more reasonable to suppose that the language, “...that is not betrothed,” serves for purposes of establishing a verbal analogy, for lo, just as a girl is despite her having been betrothed and divorced still called a girl that is a virgin [Slotki: hence it is quite reasonable that her right to the fine not be lost; a non-virgin, not described as a girl that is a virgin, may lose her right to the fine].*
- P. To the contrary, “virgin” should serve for a verbal analogy, since a non-virgin may still fall into the category of “that is not betrothed” [and a girl who was betrothed and divorced would not fall into that category and would not get a fine]!
- Q. *It is more reasonable [to take R. Aqiba’s view that a girl once betrothed and divorced gets the fine, the non-virgin does not,] because the very person of the one has been changed, while the person of the other has not been changed.*

- R. *And as to R. Yosé the Galilean, whence does he derive that same logical inference [that fifty sheqels goes for both seduction and rape]?*
- S. *He derives it on the basis of that which has been taught on Tannaite authority:*
- T. *“He shall pay money according to the dowry of virgins” (Exo. 22:16) – this [penalty for seducing a virgin] is as much as the dowry of virgins, and the dowry of virgins is as much as this.*
- U. *[Since our Mishnah paragraph assigns the money to the girl, while in the cited Tannaite formulation he gives the money to the father,] there is a contradiction between one teaching attributed to R. Aqiba and another such teaching!*
- V. *What we have are two Tannaite statements in respect to the position of R. Aqiba.*

W. *Now as to the position of R. Aqiba in our Mishnah paragraph, there is no problem, since the verbal analogy does not come along and wholly deprive the scriptural verse of its surface allegation* [Slotki: in addition to the deduction of the verbal analogy, the ordinary meaning of the text, if the damsel is not betrothed, the fine is given to the damsel’s father, but if she was once betrothed, it belongs to her]. *But in the case of the Tannaite statement, does not the verbal analogy come along and wholly deprive the scriptural verse of its surface allegation?* [Slotki: The implication of the surface statement is that if the damsel was betrothed, the fine is paid to her, not to the father; according to Aqiba, it is given to the father without regard to whether or not she was betrothed.]

X. *Said R. Nahman bar Isaac, “Read [Deu. 22:28 to say], ‘That is not a betrothed maiden’ [excluding one formerly betrothed but now divorced].”*

Y. *But if she was betrothed, then the penalty for rape is stoning, not a fine [so why do I need a verse of Scripture to make that same point]!*

Z. *It might have entered your mind to suppose that, since it is an innovation that the Torah has made with respect to a monetary penalty, even though he is put to death, he also has to pay the monetary penalty. [So we are informed that that is not the case.]*

AA. *Well, then, from the perspective of Rabbah, who has said, since it is an innovation that the Torah has made with*

respect to a monetary penalty, *even though he is put to death, he also has to pay the monetary penalty, what is to be said?*

BB. *He concurs with the opinion of R. Aqiba in our Mishnah paragraph.*

- I.2** A. *Our rabbis have taught on Tannaite authority:*  
B. *To whom is paid the monetary fine of a virgin who has been raped?*  
C. *To her father.*  
D. *And there are those who say, “To herself.”*

**I.3** A. *To herself? Why should that be the case?*

B. *Said R. Hisda, “Here we deal with a case of a virgin who was betrothed and then divorced, and at issue is what is at stake in the dispute of R. Aqiba in our Mishnah paragraph as against the position of R. Aqiba expressed in the associated Tannaite statement.”*

- I.4** A. *Said Abbaye, “If he raped her and she died, he is exempt from having to pay the fine, in line with the verse, ‘And the man who lay with her shall give the father of the maiden fifty sheqels’ (Deu. 22:29) – meaning, to the father of the maiden, not to the father of a deceased maiden.”*  
B. *Concerning something so obvious to Abbaye, Raba found himself puzzled, for Raba asked, “Does a girl reach the state of maturity when in the grave or is that not the case [Slotki: a virgin who was raped while a girl and died in that same age span, but the rapist was tried after she would have attained maturity]? Does a girl reach the state of maturity when in the grave – so the fine that is paid is given to her offspring [who inherits her estate]? Or perhaps a girl does not reach the state of maturity when in the grave – so the fine that is paid is given to her father?”*  
C. **[39A]** *But would a girl prior to maturity have been able to get pregnant and so produce her own heir? And has not R. Bibi stated as a Tannaite formulation in the presence of R. Nahman, “Three classes of women have intercourse with a contraceptive device: a girl under age, a pregnant woman, and a nursing mother. A girl under age – lest she become pregnant and die. A pregnant woman, lest she make the foetus into a sandal; a nursing mother, lest she wean and so kill her infant. ‘What is a girl under age? From eleven years and one day until twelve years and one day. One younger than that or older than that – one has intercourse in the normal way. Therefore one has intercourse in the normal way and*

does not scruple,' the words of R. Meir. And sages say, 'One has intercourse in the normal way, and the Omnipresent will look out for him, as it is said, "The Lord guards the innocent"' (Ps. 116: 6)" [T. **Nid. 2:6A-E**]. [Slotki: It follows that a girl under twelve is incapable of normal conception, so how can Raba assume that a girl can give birth to a child?] *And should you say that she got pregnant when she was a girl and gave birth when she was still a girl, then can someone give birth to a child in a period of six months after conception [which is the entire length of the span at which a female is classified as a girl, that is, from twelve years to twelve and a half], has not Samuel said, "The period between the status of girlhood and the status of sexual maturity is only six months"?* *And should you say that he meant not less but more than six months, it should be added, but he used the language of "only"!*

- D. *Rather, this is the question that he raised: Does a girl reach the state of maturity when in the grave – so the father loses his right to the fine [Slotki: since the fine is not to be inherited before it is collected, the father cannot inherit it from the daughter, so the rapist goes free], or does a girl reach the state of maturity when in the grave – so the father does not lose his right to the fine?*

E. *Mar b. R. Ashi raised the question in this language: "Does death bring about maturity or is that not the case?" [Slotki: Does a girl assume the status of maturity at the moment she dies, so the father forfeits the right to the fine as though she had actually attained her adolescence while alive?]*

F. *That question stands.*

- I.5** A. *Raba asked Abbaye, "If he had intercourse with her and then [before paying the fine] betrothed her, what is the law?"*
- B. *He said to him, "Does Scripture state, 'Then the man...shall give to the father of the girl who was not a betrothed woman'? [Obviously not, for Scripture makes no such distinction.]"*
- C. *[He said to him,] "But, by your reasoning, what about that which has been taught on Tannaite authority: If he had sexual relations with her and she got married, the fine is paid to the girl herself? Is it written, 'Then the man shall give to the father of the girl who was not a married woman'?"*
- D. *"So how are these comparable cases? In that case, since reaching maturity removes the girl from the domain of the father, marriage also removes her from*

the domain of the father. But as to reaching maturity, if she reached maturity after he had intercourse with her, the fine goes to the girl herself, and likewise in the case of marriage, if she got married after she had relations with him, the fine goes to the girl herself. *But does betrothal totally remove the girl from the domain of the father? Have we not learned in the Mishnah: A betrothed girl – her father and her husband annul her vows [M. Ned. 10:1A-B]?*”

### 3:4

- A. The one who seduces a girl pays on three counts, and the one who rapes a girl pays on four:
- B. the one who seduces a girl pays for (1) the shame, (2) the damage, and (3) a fine,
- C. and the one who rapes a girl adds to these,
- D. for he in addition pays for (4) the pain [which he has inflicted].
- E. What is the difference between the one who rapes a girl and the one who seduces her?
- F. (1) The one who rapes a girl pays for the pain, and the one who seduces her does not pay for the pain.
- G. (2) The one who rapes a girl pays the financial penalties forthwith, but the one who seduces her pays the penalties when he puts her away.
- H. (3) The one who rapes the girl [forever after] drinks out of his earthen pot, but the one who seduces her, if he wanted to put her away, does put her away.

### 3:5

- A. How does he “drink from his earthen pot”?
- B. Even if she is lame, even if she is blind, and even if she is afflicted with boils, [he must remain married to her].
- C. [If] a matter of unchastity turned out to pertain to her, or if she is not appropriate to enter into the Israelite congregation, he is not permitted to confirm her as his wife, [but, if he has married her, he must divorce her,] since it is said, “And she will be a wife to him” (Deu. 22:29) – a wife appropriate for him.

## I.1

- A. **The pain which he has inflicted:** *In what connection?*
- B. Said the father of Samuel, “The pain he inflicted by throwing her on the ground.”

- C. *Objected R. Zira, "Then if he threw her on silks, here, too, would he be exempt? And should you say, yes indeed he would be, has it not been taught on Tannaite authority: R. Simeon b. Judah says in the name of R. Simeon b. Menassayya, 'In the case of rape, the rapist does not have to pay the compensation for pain, since the woman would have undergone the same pain [39B] when she had intercourse with her husband anyhow.' They said to him, 'You cannot compare the situation of a woman who has sexual relations willingly with one who has sexual relations under constraint'?"*
- D. *Rather, said R. Nahman said Rabbah bar Abbuha, "It is the pain of 'spreading the legs,' as it is said in Scripture, 'and has spread the legs to everyone who passed by' (Eze. 16:25)."*
- E. *Well, then, in the case of seduction there also should be a fine!*
- F. *Said R. Nahman said Rabbah bar Abbuha, "One who has seduced is comparable to one who said to his friend, 'Well, tear up my silks but be free of liability.'" [By her consent, she exempts the man from paying compensation (Slotki).]*
- G. *"My goodness! In this case they belong not to her but to the father!"*
- H. *Rather, said R. Nahman said Rabbah bar Abbuha, "Intelligent women among them say that in the case of seduction, there is no pain."*
- I. *But we see full well that there is pain even in the case of seduction!*
- J. *Said Abbayye, "My nurse told me, 'It is like hot water on a bald head.'"*
- K. *Raba said, "R. Hisda's daughter told me, 'It is like the prick of the blood-letting needle.'"*
- L. *R. Pappa said, "Abba of Sura's daughter told me, 'It's like a hard piece of bread against the jaws.'"*

## **II.1 A. The one who rapes a girl pays the financial penalties forthwith, but the one who seduces her pays the penalties when he puts her away:**

- B. **when he puts her away** – so is she his wife?
- C. *Said Abbayye, "Read: 'if he does not marry her.'"*
  - D. *So, too, it has been taught on Tannaite authority:*
  - E. *Although they have said, "He who seduces a woman pays off if he does not marry her, he pays compensation for humiliation and injury forthwith."*
  - F. *All the same are the cases of rape and seduction, either she or the father may object [to the marriage].*



- II.2** A. *Well, there's no problem understanding that statement [All the same are the cases of rape and seduction, either she or the father may object to the marriage] with respect to a seduction, since it is written in Scripture, "If, refusing, her father refuses" (Exo. 22:16), so I know only that the father may refuse, but how do I know that she may refuse?*
- B. Scripture, in using the duplicated verb, "refusing...refuse..." makes that clear.
- C. *But how about a case of rape? Now there is no problem understanding that she may refuse to marry the rapist, since it is written, "And unto him she shall be" (Deu. 22:29), meaning, only if this is with her knowledge and consent [as a marriage must be]. But how do we know that her father likewise may reject the rapist as a son-in-law?*
- D. Said Abbaye, "It is so that the sinner will not be rewarded."
- E. Raba said, "It is an argument a fortiori: If a seducer, who has transgressed only against the knowledge and consent of her father alone, can be rejected either by her or by her father, how much so the rapist, who acted against the knowledge and consent of both her father and the girl herself!"
- F. *Raba did not state matters as did Abbaye, since, once he has paid a fine, the rapist cannot be held to constitute a sinner getting a reward.*
- G. *Abbaye did not reply as did Raba, because, in the case of a seducer, since the lover himself may object to the marriage, so may the father, but in the case of the violator, since the rapist may not object to the marriage, her father also has no right to stop it.*

- II.3** A. *A further teaching on Tannaite authority:*
- B. Although they have said, "He who rapes pays compensation forthwith," when he divorces her, she has no claim upon him whatsoever [since the fine substitutes for the marriage settlement].
- C. "When he divorces her"! *So can he divorce her?*

D. *Read*: When she goes forth, she has no claim upon him. If he died, the money paid as a fine to her serves as payment for her marriage settlement.

E. R. Yosé b. R. Judah says, “She has a claim for a marriage settlement.”

**II.4** A. *What is at issue [between R. Yosé b. R. Judah and the prior authority]?*

B. *The rabbis take the position, what is the reason that rabbis provided a marriage settlement? It is so that he will not find it easy to divorce her, but the rapist cannot divorce her.*

C. *R. Yosé b. R. Judah maintains, but this man may torment her into saying, “I don’t want you any more.”*

**III.1** A. **...drink from his earthen pot:**

B. *Said Raba from Paraziqa to R. Ashi, “Note: [The fine paid by a rapist and a seducer] are deduced one from the other [shegels, fifty, respectively]. Why not derive [40A] this rule reciprocally as well [that the seducer has to marry the girl]?”*

C. *“Said Scripture, ‘He shall surely pay a dowry for her to be his wife,’ here, meaning, only if he wants to must he marry her.”*

**IV.1** A. **How does he “drink from his earthen pot”:**

B. *Said R. Kahana, “I stated this tradition before R. Zebid of Nehardea: Let a positive commandment [‘She shall be his wife,’ Deu. 22:29] supersede a negative commandment [the prohibition to marry one who was unfit to marry an Israelite]? He said to me, ‘Under what circumstances do we say, ‘Let a positive commandment supersede a negative commandment’? For instance, in the case of circumcision of a penis afflicted with the skin ailment, in which, otherwise it would not be possible to carry out the positive commandment of circumcision. But here, if she says she doesn’t want the man as a husband, what positive commandment would have come up?”*

### 3:6

A. **An orphan who was betrothed and divorced –**

B. **R. Eleazar says, “He who seduces her is exempt [from paying a fine], but he who rapes her is liable.”**

**I.1** A. *Said Rabbah bar bar Hannah said R. Yohanan, “R. Eleazar concurs with the theory of R. Aqiba, his master, who said, ‘She does receive a fine, and the*

**fine belongs to her.’** *How so? As it is stated as a Tannaite formulation:* An orphan who was betrothed and divorced – R. Eleazar says, ‘He who rapes her is liable, and he who seduces her is exempt [from paying a fine].’ *Now the case of the orphan is obvious* [there being no father, the fine obviously goes to her (Slotki)].

- B. “So this is what the framer of the passage wishes to tell us: The girl who was betrothed and then divorced is equivalent to an orphan. Just as in the case of the orphan, the money goes to the girl herself, so, too, in the case of a girl who was betrothed and then divorced, it goes to her herself.”

- I.2** A. Said R. Zira said Rabbah bar Shila said R. Hamnuna the Elder said R. Ada bar Ahbah said Rab, “The decided law accords with R. Eleazar.”
  - B. *Rab called R. Eleazar [Aqiba’s disciple], “the most fortunate of sages.”*

### 3:7

- A. **What is the [mode of assessing compensation for] shame?**
- B. **All [is assessed] in accord with the status of the one who shames and the one who is shamed.**
- C. **[How is the compensation for] damage [assessed]?**
- D. **They regard her as if she is a slave girl for sale: How much was she worth [before the sexual incident], and how much is she worth now.**
- E. **The fine?**
- F. **It is the same for every person [fifty selas, Deu. 22:29].**
- G. **And any [fine] which is subject to a fixed amount decreed by the Torah is equivalent for every person.**

- I.1** A. *Might one say, the “fifty selas” of which Scripture spoke serves to cover all counts of compensation?*
- B. Said R. Zira, “Then people will say, ‘Should one who had sexual relations with a princess pay the same fifty sheqels as one who had intercourse with the daughter of a common person?’”
- C. *Said to him Abbayye, “If so, then the same is to be said with reference to a slave: ‘Should a slave who can make a hole in a pearl be worth thirty, and one who does [40B] needlework also be worth thirty?’” [One form of labor is much more valuable than the other.]*

- D. Rather, said R. Zira, “[Here is a better explanation:] If two men had sexual relations with her, one vaginally, the other anally, [Slotki: then, if no compensation for indignity were paid in addition to the statutory fine,] people will say, ‘Should one who had sexual relations with a whole woman pay the same as one who had sexual relations with a damaged one, namely, the same fifty sheqels?’”
- E. *Said to him Abbayye, “If so, then with respect to a slave, too, people will say, ‘Is a healthy slave worth fifty and a slave afflicted with boils only thirty?’”*
- F. Rather, said Abbayye, “Said Scripture, ‘On account of his having humbled her’ (Deu. 22:29) – *[the fact that he pays the fifty sheqels] yields the implication that payment for shame and damages likewise is to be exacted.*”
- G. Raba said, “Said Scripture, ‘Then the man that lay with her shall give to the girl’s father fifty sheqels of silver’ (Deu. 22:29) – the enjoyment of the sexual relations is compensated by fifty sheqels of silver, *yielding the implication that there are additional payments for humiliation and damage.*”
- H. *But say:* The compensation for humiliation and damage is paid to the girl [Slotki: since the father is mentioned only in regard to the fine]?
- I. Said Scripture, “Being in her youth, in her father’s house” (Num. 30:17) – all of the increase that comes on her account when she is a girl goes to her father.
- J. *Then what about what* R. Huna said Rab said, “How on the basis of Scripture do we know that the proceeds of a daughter’s labor go to the father? ‘And if a man sell his daughter to be a maidservant’ (Exo. 21: 7) – just as the proceeds of the labor of a maidservant go to the master, so the proceeds of the labor of a daughter go to the father”? *What need do I have for such a proof, when the same proposition may be deduced from the phrase, “Being in her youth, in her father’s house” (Num. 30:17)?*
- K. *Rather, that verse refers to releasing her vows [and not to the matter at hand, as the context at Num. 30:17 makes clear].*
- L. *And, furthermore, should you say, so let us derive the rule covering money from the rule covering other propositions, in fact, we do not ever derive the rule covering money from the rule covering other propositions!*
- M. *And, furthermore, should you propose, so let us derive the rule governing the disposition of monetary payments from the rule governing fines, it is the simple fact that the rule governing monetary payments is not to be derived from the rule governing the disposition of fines.*

- N. *Then here is the reason that compensation for humiliation and damages is assigned to the father: If he wanted, he could hand her over [for marriage] to an ugly man or to a man afflicted with boils. [Since he himself could subject her to indignity and benefit from it, he gets the compensation from someone who does that to her (Slotki).]*

- II.1** A. **[How is the compensation for] damage [assessed]? They regard her as if she is a slave girl for sale: How much was she worth [before the sexual incident], and how much is she worth now:**
- B. *How do we assess her value?*
- C. Said the father of Samuel, “They make an estimate of how much more someone is willing to pay for a virgin slave than for a non-virgin slave as an attendant.”
- D. A non-virgin slave as an attendant – *so what difference does that make to him anyhow?*
- E. Rather: ... a non-virgin slave and a virgin slave to marry her off to his slave.
- F. *So to his slave, what difference does it make anyhow?*
- G. In the case of the slave, it is one who pleases his master [and so the master wants to give him the reward of a virgin wife].

### 3:8

- A. **In any situation in which there is a right of sale, there is no fine. And in any situation in which there is a fine, there is no right of sale.**
- B. **A minor girl is subject to sale and does not receive a fine.**
- C. **A girl receives a fine and is not subject to sale.**
- D. **A mature woman is not subject to sale and [does] not [receive] a fine.**

- I.1** A. Said R. Judah said Rab, “This is the opinion of R. Meir, but sages say, ‘A fine is imposed even where the right of sale applies.’”
- B. *For it has been taught on Tannaite authority:*
- C. **“A girl from the age of a day until she produces two pubic hairs is subject to sale [by her father, as a maid servant, Exo. 21:7] but does not receive a fine. Once she produces two pubic hairs until she reaches maturity, she receives a fine but is not subject to sale,” the words of R. Meir.**
- D. **For R. Meir would say, “In any case where there is the right of sale of a girl, there is no eligibility for a fine, and where there is eligibility for a fine, there is no right of sale.”**

- E. And sages say, “A girl from the age of a day until she produces two pubic hairs is eligible to receive a fine....”
- F. *A fine but then she is not subject to the right of sale! [That is obviously absurd.] Rather, say, “Where there is eligibility for a fine, there is also the right of sale” [T. Ket. 3:8A-C].*

**I.2** A. Said R. Hisda, “What is the scriptural basis for the position of R. Meir? Said Scripture, ‘And to him she shall be for a wife’ (Deu. 22:29) – that is, Scripture speaks of a girl who has the power to contract a marriage for herself [and is not dependent on the father’s choice for the making of a marriage].”

B. *And rabbis?*

C. Said R. Simeon b. Laqish, “Said Scripture, ‘a girl,’ meaning, even a minor.”

D. *Hearing this, R. Pappa b. R. Hanan of Be Keluhit went [and] said it before R. Shimi bar Ashi, who said to him, “You refer [Simeon b. Laqish’s proof] to this Mishnah paragraph, but we refer it to the following: Said R. Simeon b. Laqish, ‘He who maligns a minor girl is exempt from the fine (Deu. 22:19), for it is said, “And shall give them to the father of the girl” (Deu. 22:19), and Scripture spells out the word with all its letters to exclude the minor.”’*

E. *Objected to this proposition [explaining why the hundred sheqels is not payable to a minor] R. Ada bar Ahbah, “Is the operative consideration, then, that the All-Merciful has written ‘girl’ [with all of the letters, so excluding a minor]? Then otherwise would I have said that even a minor would get such a fine? But it is written, ‘But if this thing be true, and the tokens of virginity be not found in the girl, then they shall bring the girl to the door of her father’s house and the men of her city shall stone her’ (Deu. 22:20-21) – but a minor is not subject to such punishment [Slotki: a minor would consequently have been excluded, even if the word for girl had not been written out with all of its letters]! Rather: Since the word is written out in full here, then only here is a minor excluded, but wherever Scripture uses the word but does not write it out in full, then even a minor is included.”*

### 3:9

- A. [41A] He who says, “I seduced Mr. So-and-so’s daughter,” pays the penalties of shame and damage on the basis of his own testimony.
- B. But he does not pay a fine.
- C. He who says, “I stole and I slaughtered and sold [an animal belonging to So-and-so],” pays back the principal on the basis of his own testimony, but he does not pay double damages or four- or fivefold damages.
- D. [If he says], “My ox killed So-and-so,” or “the ox of So-and-so,” lo, this one pays on the basis of his own testimony.
- E. [If he says], “My ox killed So-and-so’s slave,” he does not pay on the basis of his own evidence.
- F. This is the general principle: Whoever pays compensation greater than the damage he has actually done does not pay said damages on the basis of his own testimony [alone, and he cannot be assessed for such damages].

- I.1
  - A. *Should not the framer of the passage not have made his Tannaite statement with reference, also, to I raped...?*
  - B. The formulation is such as to state, “There is no need to ask...,” *that is to say, there is no need to make the point with reference to the confession, I raped..., in which case he does not damage the girl’s standing, that he pays compensation for humiliation and damages on the strength of his own testimony, but even if he said, I seduced Mr. So-and-so’s daughter, in which case I might have said that he does damage the girl’s standing, and I might have thought that he does not have to pay on the basis of his own testimony. Our Mishnah paragraph so informs us that that is not the case.*
- I.2
  - A. *Our Mishnah paragraph is not in accord with the following Tannaite authority, as has been taught on Tannaite authority:*
  - B. R. Simeon b. Judah says in the name of R. Simeon, “Also compensation for the humiliation and injury he does not have to pay on the strength of his own testimony. He does not have the power to damage the reputation of someone else’s daughter.”
- I.3
  - A. *Said R. Pappa to Abbaye, “If [in order to collect compensation] the girl is willing to accept [the negative treatment of her reputation], what is the law?”*
  - B. *“Yes, but maybe the father would not be willing.”*
  - C. *“And if the father were willing?”*

- D. *"Maybe she would not be willing."*
- E. *"And if both she and the father were willing?"*
- F. *"Maybe the other members of the family would not be willing."*
- G. *"And if the other members of the family were willing?"*
- H. *"It is simply impossible that there should not be someone overseas who would be unwilling to put up with the calumny just in order to collect the indemnity."*

**II.1 A. He who says, "I stole and I slaughtered and sold [an animal belonging to So-and-so]," pays back the principal on the basis of his own testimony, but he does not pay double damages or four- or fivefold damages:**

- B. *It has been stated:*
- C. *Half damages –*
- D. *R. Pappa said, "They are classified as civil damages."*
- E. *R. Huna b. R. Joshua said, "They fall into the classification of an extrajudicial sanction."*

*F. R. Pappa said, "They are classified as civil damages": He takes the view that oxen under ordinary circumstances are not assumed to be properly guarded, and therefore as a matter of law, the owner should have to pay full damages, but it is the All-Merciful who has taken pity on his situation, since up to that point his ox has not yet been placed under a warning.*

*G. R. Huna b. R. Joshua said, "They fall into the classification of an extrajudicial sanction": He takes the view that oxen under ordinary circumstances are assumed to be properly guarded, and therefore, as a matter of law, the owner should not have to pay any damages at all. But it is the All-Merciful that has imposed an extrajudicial sanction on him so that he will take good care of his oxen.*

*H. We have learned in the Mishnah: **And the one who suffers damages and the one who causes damages [may share] in the compensation.** Now from the perspective of him who has said, "They are classified as civil damages," that is why the plaintiff, getting only half of what is coming to him, is involved in the payment. But from the perspective of him who maintains, "They fall into the classification of an extrajudicial sanction," since, after all, this payment really does not belong to the plaintiff at all, how can he be involved in the payment?*



I. *The reference is required to cover a case in which the loss derives from the decrease in the value of the carcass of the beast [which the injured party suffers].*

J. *As to the decrease in the value of the carcass of the beast [which the injured party suffers], lo, that is covered by the prior statement, namely, **I am liable for compensation as if [I have] made possible all of the damage it may do – this teaches that the owner has to take care of the disposition of the carcass [receiving the proceeds as part payment] [T. B.Q. 1:1E-F].***

K. *The one statement speaks of a beast that was deemed harmless, the other a beast that was an attested danger. And it was necessary to make the same point in both cases, for had we been given the rule concerning the beast that was deemed harmless, we might have supposed that the reason for the rule is that the owner has not yet been subjected to a warning to watch out for his ox. But in the case of an ox, in which the owner had been warned, I might have said that that is not the case. And had we been given the rule covering the beast that was an attested danger, the operative consideration would have been that he pays the whole of the damages, but as to the beast that was deemed innocent, I might not have thought that the same rule applied. So both rules are required.*

L. *Come and take note: **What is the difference between what is deemed harmless and an attested danger? But if that which is deemed harmless [causes damage], [the owner] pays half of the value of the damage which has been caused, [with liability limited to the value of the] carcass [of the beast which has caused the damage]. But [if that which is] an attested danger [causes damage], [the owner] pays the whole of the value of the damage which has been caused from the best property [he may own, and his liability is by no means limited to the value of the animal which has done the damage] [M. B.Q. 1:4K-N]. Now if it were the fact that liability for half-damages is an extrajudicial sanction, why not add***

*to the foregoing the following point of difference: The owner of the beast that was deemed harmless will not have to pay if he confesses to the matter on his own, while the owner of a beast that was an attested danger has to pay if he confesses on his own.*

*M. The Tannaite authority left out items from his list.*

*N. Yeah, well, if he left out items from his list, what else did he leave off?*

*O. He left out the matter of the half-ransom for manslaughter [which does not have to be paid by the owner of the beast that was deemed harmless; the owner of the beast that was an attested danger pays full ransom].*

*P. That is no real omission, [41B] since the Mishnah may accord with the position of R. Yosé the Galilean, who takes the view that the owner of the beast deemed harmless does pay half-liability as a ransom.*

*Q. Come and take note: “**My ox killed Mr. So-and-so,**” or “**...Mr. So-and-so’s ox**” – lo, this one pays compensation on the strength of his own testimony. Now does this not refer to the case of an ox that was deemed harmless? [Kirzner: And if the liability is created by admission, it proves that it is not an extrajudicial penalty but a civil penalty.]*

*R. No, it refers to an ox that was an attested danger.*

*S. Then what is the rule in the case of a beast that was deemed harmless? Is it not the fact that, here, too, he would not pay if he himself confessed the facts?*

*T. If so, why include further on, “**My ox killed Mr. So-and-so’s slave**” – he does not have to pay on the strength of his own confession. Why not just formulate matters covering both cases by saying the rule in this language: Under*

what circumstances? In the case of an ox that was an attested danger. But in the case of an ox that was thought to be harmless, he does not pay on the strength of his own confession?

U. *The whole of the passage speaks of an ox that was an attested danger.*

V. *Come and take note: This is the governing principle. In any case in which the payment exceeds the value of the actual damages, one does not pay on the strength of his own confession. Would this then not yield the inference that in cases where payment is less than the actual damage, liability comes about even by one's own confession?*

W. *Not at all, no, that is the case only when the payment is the same as the amount of the damage done. But what is the law where the payment is less than the value of the damage done? Would it be the fact that confession does not establish liability? If so, why state, This is the governing principle. In any case in which the payment exceeds the value of the actual damages, one does not pay on the strength of his own confession? Why not use this language: This is the governing principle. In any case in which the payment is not exactly the same as the amount of the damages..., and that would bear the inference of payment being less or more?*

X. *That's a solid refutation. Nonetheless, the decided law is that half-damages fall into the classification of an extrajudicial sanction.*

Y. *Can you have a case in which there is a refutation, but what is refuted stands as the decided law?*

Z. *Well, as a matter of fact, you can, for what constitutes the refutation anyhow? It is only that the Tannaite formulation does not say, "...where the payment does not correspond exactly to the amount of the damages." But that is not entirely precise, since there is liability for half-damages in the case of pebbles [that an animal kicks], which in accord to the law that has been received as a tradition is classified as civil. And it is on that account that the proposed formulation is not the one that was adopted.*

AA. *Now that you have reached the position that liability for half-damages is an extrajudicial sanction, lo, if a dog ate a lamb or a cat ate a hen, which is regarded as an unusual occasion, and we do not in Babylonia collect extrajudicial penalties, [so these should not be actionable cases in Babylonia], on condition that the lambs or chickens were big, but if they were little, it would be a commonplace event [and then would be a civil damage under the classification of tooth].*

BB. *Now if the injured party had seized property of the one responsible for the injury, we would not take the property back from him. And if the injured party were to say, "Set a fixed time, so that I may go to the Land of Israel, and plead my case," we do set a*

*fixed time, and if the other party did not go along for the trip, we excommunicate him. Now, one way or the other, we should excommunicate him until he removes the source of the damage, in line with what R. Nathan said.*

CC. *For it has been taught on Tannaite authority:* R. Nathan says, “How on the basis of Scripture do we know that someone should not raise a vicious dog in his house or maintain a shaky ladder in his house? ‘You shall not bring blood upon your house’ (Deu. 22: 8).”