

IX.

BAVLI SANHEDRIN CHAPTER NINE

FOLIOS 75A-84A

9:1A-C

- A. And these are those who are put to death through burning:
 - B. he who has sexual relations with both a woman and her daughter [Lev. 18:17, 20:14], and a priest's daughter who committed adultery [Lev. 21:9].
 - C. In the same category as a woman and her daughter are [the following]: his daughter, his daughter's daughter, his son's daughter, his wife's daughter, the daughter of her daughter, the daughter of her son, his mother-in-law, the mother of his mother-in-law, and the mother of his father-in-law.
- I.1** A. *The framer of the passage does not say, "He who has sexual relations with a woman whose daughter he has married," but rather, **He who has sexual relations with both a woman and her daughter** [M. 9:1B].*
- B. *What follows is that both of them are prohibited.*
 - C. *And who are they? They are his mother-in-law and the mother of his mother-in-law.*
 - D. *Then it further goes on, **In the same category as a woman and her daughter...**, which leads to the inference that the two that are specified are stated explicitly in Scripture, with the others derived by exegesis [from them].*
 - E. *That poses no problem to the view of Abbaye, who has said, "[Aqiba and Ishmael, cited below], differ on the basis on which the rule at hand is derived."*
 - F. *In accord with whose view is the Mishnah-passage at hand?*
 - G. *It is R. Aqiba [who maintains that the prohibition of marriage to the mother-in-law's mother is explicitly prohibited by Scripture (Freedman, p. 507, n. 4)].*
 - H. *But in the view of Raba, who has said, "At issue [between Aqiba and Ishmael] is the status of his mother-in-law after his wife's death [at which point the woman is no longer his mother-in-law]," in accord with authority is the Mishnah-passage at hand?*

- I. *Raba will tell you, "Repeat it as follows: 'He who has sexual relations with a woman whose daughter one has married' [so obviating the question with which we began, A]."*
- J. **In the same category as a woman and her daughter are...his mother-in-law, the mother of his mother-in-law, and the mother of his father-in-law [M. 9:1C].**
- K. *In Abbaye's view [Freedman, p. 508, n. 2: that burning for the first two is explicitly decreed, so that they cannot be included in 'a woman, etc.,' but are identical therewith], since the framer of the passage wished to make reference to the mother of his father-in-law, he stated also, "His mother-in-law and the mother of his mother-in-law." [that only the mother-in-law is forbidden on pain of death by fire, but not her mother (Freedman, p. 508, n. 3)].*
- L. *In Raba's view since the framer of the passage wanted to make reference to the mother of his father-in-law and the mother of his mother-in-law, he made reference also to his mother-in-law.*

I.2 A. *What is the source of the rule at hand?*

- B. *It is in accord with what our rabbis have taught on Tannaite authority:*
- C. "And if a man takes a woman and her mother [it is wickedness, they shall be burned with fire, both he and they]" (Lev. 20:14).
- D. I know only that the law applies to marriage with both a woman and her mother. How do I know that the same law applies to [marriage with] the daughter of the woman, the daughter of her daughter, or the daughter of her son?
- E. In the present passage, the word "wickedness" appears, and elsewhere the same word appears [namely, at Lev. 18:17: "You shall not uncover the nakedness of a woman and her daughter, neither shall you take her son's daughter or her daughter's daughter to uncover her nakedness, for they are her near kinswomen; it is wickedness"].
- F. Just as, when the word "wickedness" occurs elsewhere, it encompasses her daughter and the daughter of her daughter as well as the daughter of her son, so here it encompasses her daughter, the daughter of her daughter, and the daughter of her son.
- G. How do we know that one should treat the males as equivalent to the females?
- H. Here the word "wickedness" occurs, and elsewhere, that same word occurs.
- I. Just as there [at Lev. 18:17] males are treated as equivalent to females [so the son's daughter is forbidden as much as the daughter's daughter], so here the males are treated as equivalent to females.
- J. How do we know that those below are treated as equivalent to those above?
- K. Here the word "wickedness" occurs, and elsewhere the word wickedness occurs. Just as elsewhere those below are treated as equivalent to those above, so here those below are to be treated as equivalent to those above. And just as here, those above are treated as equivalent to those below, so elsewhere, those above are treated as equivalent to those below.

I.3 A. A master has said, "How do we know that one should treat the males as equivalent to the females?"

- B. *What is the sense of “the males as equivalent to the females”?*
- C. *If we should say that one should treat the daughter of her son as equivalent to the daughter of her daughter, these derive together [from the same proof-text, based on “wickedness”].*
- D. *Rather, it means to treat his father-in-law’s mother as equivalent to his mother-in-law’s mother [in both cases, incest is punished by execution through burning].*
- E. *But if at this point we have not proved that fact in the case of the mother of his mother-in-law, can we proceed to take up the case of the mother of his father-in-law?*
- F. **[75B]** *Said Abbaye, “This is the sense of the passage: ‘How do we know that we should treat his issue as equivalent to hers? Here the word ‘wickedness’ is used, and elsewhere, the word ‘wickedness’ is used,’ and so on. [Freedman, p. 509, n.5: So we prove that his daughter, his son’s daughter, or his daughter’s daughter by a mistress are forbidden to him on pain of burning, just as are the wife’s daughter, her son’s daughter, and her daughter’s daughter. For Lev. 18:17 refers to the offspring of marriage, not of seduction or outrage. On this interpretation ‘male’ refers to his issue, ‘female’ to his wife’s.]”*
- G. *But lo, with reference to his issue, the word “wickedness” in point of fact is not used at all. [Freedman, p. 509, n. 6: For that his issue is at all forbidden is derived not from Lev. 18:17 but from Lev. 18:10].*
- H. *Said Raba, “R. Isaac bar Abodimi said to me, ‘We derive the application of the law to both cases from the facts, first, that ‘they’ appears in two related passages and the fact that ‘wickedness’ occurs in two. [Freedman, p. 509, n. 7: In Lev. 18:10 it is stated, “The nakedness of thy son’s daughter, or of thy daughter’s daughter, even their nakedness thou shalt not uncover: for they (hennah) are thine own nakedness.” Further, it is written (ibid. 18:17): “Thou shalt not uncover the nakedness of a woman and her daughter, neither shall thou take her son’s daughter, or her daughter’s daughter, to uncover her nakedness; for they (hennah) are her near kinswomen; it is wickedness (zimmah).” Since hennah occurs in these two passages, they are identified with each other, and zimmah in the second passage, referring to her issue, is understood to be implicit in the first too, which refers to his issue. Then the first passage is further identified with Lev. 20:14. “And if a man take a wife and her mother, it is wickedness (zimmah): They shalt be burnt with fire.” thus we derive burning for incest with his issue.]*

I.4 A. The master said, “How do we know that those below are treated as equivalent to those above?”

- B. *What is the meaning of the phrase, “those below as those above”?*
- C. *If one should wish to propose that the sense [of “those below”] is that the daughter of her son and the daughter of her daughter are equivalent to her daughter [“those above”], these derive all together from the same proof-texts.*
- D. *Rather, it refers to the mother of his father-in-law and the mother of his mother-in-law, treating them as equivalent to his mother-in-law.*
- E. *But if so, then instead of saying, “Those below are equivalent to those above,” what is required is “Those above are equivalent to those below”. [The older generation are “those above.”]*

- F. *Repeat the passage in just this way: "Those above are equivalent to those below" [exactly as you propose].*
- G. If so, then the statement, "Here, 'wickedness' is stated, and there 'wickedness' is stated" [makes no sense]. *For, at this point, the prohibition they themselves have not yet been established through proof-texts, so the use of the word "wickedness" in their connection also can prove nothing.* [Freedman, p. 509. n. 4: At this stage, nothing has been adduced to show that incest with his mother-in-law's mother is thus punished, for 'a woman' has been translated literally. Consequently, only his mother-in-law is forbidden in this verse.]
- H. Said Abbaye, "This is the sense of the passage: How do we know that we should treat the third generation above as equivalent to the third generation below [that is, the daughter's daughter and the son's daughter are forbidden, so too the father-in-law's mother and the mother-in-law's mother]?"
- I. "With respect to the generations below, the word 'wickedness' is used, and with reference to the generations above, the word 'wickedness' is used.
- J. "Just as for the generations below, the prohibition extends for three generations, so for the generations above, the prohibitions extend for three generations.
- K. "And just as with respect to the penalty, the law has treated the generations below as equivalent to the generations above, so with regard to the admonition the same is the case, the law having treated the generations above as equivalent to the generations below." [Freedman, p. 510, n. 10: For in Lev. 18:10, where the third lower generation is forbidden, nothing is said about punishment, which is derived from Lev. 20:14, as stated above. On the other hand, in Lev. 20:14, which is made to include the third generation above, though only explicitly stating the second, no formal prohibition is given. This in turn is derived from Lev. 18:10. (Both are derived through the medium of Lev. 18:17, the connecting link between the other two.) One Abbaye's interpretation it is necessary to emend the Baraita from 'and the lower is as the upper', to 'that the upper is as the lower etc.']
- L. *R. Ashi said, "Indeed, matters are just as stated [and require no revision, contrary to Abbaye's view]. And what is the sense of "those below"? It is "those below" in the seriousness of the prohibition.* [Freedman, pp. 510-511, n. 12: 'the upper' or higher prohibition is that of his mother-in-law, his more immediate relation, whilst the prohibition of her mother, as also of his father-in-law's mother, is regarded as 'lower', i.e. weaker, as they are a generation further removed. Hence this is its meaning: Whence do we know that his mother-in-law's mother and his father-in-law's mother, whose relationships are lower (i.e., further removed, and consequently weaker) than his mother-in-law's, are treated as his mother-in-law? It is derived from his wife's daughter: just as in the latter case, the 'lower' relation is as the 'upper' (stronger), i.e., his wife's daughter's daughter is as his wife's daughter, though more distant; so here too, his mother-in-law's mother is as she herself. This deduction is in respect of equal punishment. The second clause is explained by R. Ashi as Abbaye, as referring to the prohibition.]"

I.5 A. [Referring back to III A, how do we know that the male's relations are regarded as the female's relations], if so, then just as the mother of her mother is forbidden, so the mother of his mother is forbidden.

- B. Said Abbayye, “Scripture says, ‘The nakedness of your father or the nakedness of your mother you shall not uncover; she is your mother’ (Lev. 18: 7) — On account of [incest with] one’s mother you impose a penalty, on account of the mother of his mother you do not impose a penalty.”
- C. *Said Raba, “Whether matters accord with him who has said, [Freedman:] ‘Judge from it in its entirety,’ or ‘Judge from it and place it on its own basis,’ this could not be deduced. [Freedman, p. 511, n. 5: A verse is unnecessary, because his maternal grandmother could not be deduced from the gezerah shawah based on zimmah, whatever view be held on the scope of a gezerah shawah. There are two views on this. One is that the identity of law taught by a gezerah shawah must hold good in all respects, so that the case deduced is equal to the premise in all points; this is called ‘judge from it and from (all) of it.’ An opposing view is that the analogy holds good only in respect of the main question at issue, but that thereafter, the case deduced may diverge from its premise. This is called, ‘judge from it, but place it on its own basis’, i.e., confine the analogy to the main question, not to the subsidiary points.]*
- D. “[Freedman, p. 11:] *For on the view, ‘judge from it in its entirety’, [the deduction would proceed thus:] Just as her [his wife’s] maternal grandmother is forbidden [to him], so is his maternal grandmother forbidden. [Then carrying the analogy] to its uttermost, just as in her case [i.e., incest with the former] is punished by fire so in his case [i.e., incest with the latter] is punished by fire.*
- E. *“In the view of him who says that the execution through burning is the more severe penalty, there is the possibility of raising the following question: What is the particular trait affecting his wife’s maternal grandfather [that she should be forbidden and the penalty of burning applies]?”*
- F. “It is that his wife’s mother is subject to the same penalty. [Freedman, p. 512, n. 2: Hence, since the prohibition of his wife’s mother is so severe, it is natural that it should extend to her maternal grandmother too.]
- G. “But will you make such a statement in his case, for [should he have incest with] his wife, the penalty is stoning?
- H. “Furthermore, the penalty for incest with his mother is through stoning. Will the penalty for incest with his mother’s mother be burning?
- I. “And furthermore, just as there is no distinction made in her case between her mother and her mother’s mother, so in his case, there should be no distinction between the penalty inflicted in the case of incest with his mother and with the mother of his mother.
- J. “*And in the position of him who maintains that stoning is the more severe, on account of this problem, there is in any event no analogy.*
- K. “[Freedman, p. 512:] *Whilst on the view, ‘judge from it and place it on its own basis’, [the deduction would proceed thus:] Just as her [his wife’s] maternal grandmother is forbidden [to him], so is his maternal grandmother forbidden. But ‘place it on its own basis’, thus: in the former case the punishment is burning; but in the latter, stoning, the*

penalty which we find prescribed for incest with his mother. Now, in the view that burning is severer, this can be refuted, [76A] [Thus]: Why is her case [i.e., his wife's maternal grandmother forbidden]? Because her mother is [forbidden] on pain of death by fire. But can you say the same in his case, seeing that his mother is forbidden on pain of stoning [only]? Further, his maternal grandmother is like her's: just as in the latter case no distinction is drawn between his wife's maternal grandmother and her [his wife's] daughter, so in the former, no distinction should be allowed between his own maternal grandmother and his daughter. Whilst on the view that stoning is severer, the analogy cannot be made on account of this last difficulty.'"

- L. If [we compare his relatives to hers], then just as his daughter-in-law is forbidden, so her daughter-in-law should be forbidden [to him, that is Freedman, p. 513, n. 5: the wife of her son by a previous husband. But she is not forbidden to him.]
- M. Said Abbaye, "Scripture has said, 'You shall not uncover the nakedness of your daughter-in-law, she is your son's wife' (Lev. 18:15), meaning, on account of the wife of your son you impose liability, but you do not impose liability on account of the wife of her son."
- N. Raba said, "[Freedman, p. 513:] *Whether it be maintained, 'judge from it in its entirety,' or 'judge from it and place it on its own basis,' this could not be deduced. For on the first view, [the deduction would proceed thus:] just as his daughter-in-law is forbidden him, so is her's forbidden him. [Then carrying through the analogy] 'in its entirety,' just as in his case [the penalty] is stoning, so in her case is the penalty stoning. But if we regard stoning severer, this analogy can be refuted. [Thus]: Why is his [daughter-in-law forbidden]? Because his mother is forbidden him on pain of stoning: Can you then say the same of her daughter-in-law, seeing that incest with her mother incurs only death by fire? Moreover, her daughter is forbidden on pain of burning: shall her daughter-in-law be forbidden on pain of stoning? [No.]*"
- O. [In reply to Raba:] Let his own circumstance prove to the contrary, for his daughter [should he have incest with her] produces the penalty of burning, while his daughter-in-law produces that of stoning.
- P. *Rather:* Just as in his case you do not draw a distinction between his own case and that of his mother and his daughter-in-law, so in her case you should draw no distinction between her mother and her daughter-in-law. [Freedman, p. 514, n. 1: Hence, incest with the latter should be punished by burning. But as has already been proved, stoning is the proper punishment; therefore the entire analogy is impossible.]
- Q. [Freedman, p. 514:] *And on the view that burning is considered more severe, the analogy cannot be made because of this last difficulty. Whilst on the view, 'judge from it and place it on its own basis,' [the deduction would proceed thus:] just as his daughter-in-law is forbidden him, so is her daughter-in-law forbidden; and place it on its own basis, thus: in the former case, [his daughter-in-law] the punishment is stoning; but in the*

latter, burning, the punishment we find for incest with her mother. But if stoning is severer, this can be refuted. [Thus]: Why is his daughter-in-law forbidden? Because his mother is forbidden him on pain of stoning. But can you say the same of her daughter-in-law, seeing that her mother is forbidden only on pain of burning! Moreover, just as in his case, you draw a distinction between his daughter [punished by burning] and his daughter-in-law [by stoning], so in her case, you should draw a distinction between her daughter and her daughter-in-law. [Freedman, p. 514, n. 3: i.e., just as the punishment for his daughter-in-law is severer than for his daughter, viz., stoning instead of burning, so her daughter-in-law should be more stringently interdicted than her daughter, viz., by stoning, instead of burning. But if we compare her daughter-in-law to her mother, the punishment is burning. Hence the entire deduction is impossible.]

- I.6 A.** How do we know that one's [own] daughter born of a woman one has raped [is forbidden]?
- B. Has not Abbaye said, "It is an argument a fortiori. If one is punished on account of incest with the daughter of his daughter, will he not all the more so be punished on account of his daughter?"
- C. But do [courts] inflict punishment because of a logical argument?
- D. *It serves to clarify the matter in general [but Lev. 18:10 in fact prohibits relationships with any sort of daughter].*
- E. *Raba said, "R. Isaac bar Abodimi said to me, "The matter derives from the use of the word 'they' in the two passages and the word 'wickedness' in two [as above]."*
- I.7 A.** *The father of R. Abin taught on Tannaite authority, "It is because have we have not derived from Scripture that **a man's incest with his daughter produced by a rape is punishable that it was necessary for Scripture to state, 'And the daughter of a man and a priest,** [if she profane herself through her father, she profanes him, she shall be burned with fire]' (Lev. 21: 9) [cf. T. **San. 12:1H**]. [Freedman, p. 515, n. 4: Lev. 21:9, 'A man' is superfluous, and therefore teaches that even if she is only his daughter, not his wife's, this law holds good. By translating the rest of the verse as in the text, we deduce that an illegitimate daughter is burnt for incest with her father; and by regarding 'a man' as distinct from 'priest' (the latter being attached to the former with the copula 'and'), the deduction is made to refer to any illegitimate daughter, not only a priest's]"*
- B. [Might one then reason as follows:] Just as the daughter of a priest is punished by execution through burning, but her lover is not punished by execution through burning, so incest with one's daughter produced by a rape produces the penalty of death through burning for her but not for her lover [her father]?
- C. Said Abbaye, "Said Scripture, 'She profanes her father' (Lev. 21: 9). The law applies to one who profanes her father, thus excluding the case at hand, in which her father has profaned her. [So her lover, that is, her father, shares the same punishment.]"

- D. *Raba said, "In the case [of the lover of a priest's daughter, guilty with her of adultery] you have removed such a one from the penalty inflicted on the daughter of a priest and imposed upon him the penalty that applies to the daughter of an Israelite [stoning, not burning]."*
- E. *"But in the present case, in accord with the death penalty of what classification of woman will you have him put to death? Will it be to that of an unmarried woman?" [Freedman, p. 516, n. 2: For if an incestuous paramour be excluded from the punishment of an adulterous woman, whether the daughter of a priest or an Israelite (since the relationship is independent of these), his law can only be assimilated to that of an unmarried woman, whose unchastity is not punished at all. But surely it cannot be maintained that an illegitimate daughter is burnt for incest with her father, though her offense is a passive one, and less than the man's, whilst he goes scot free! Hence the limitation of 'she' cannot apply to this.]"*
- I.8 A.** Whence do we derive the admonition that a man not commit incest with his daughter produced by his act of rape?
- B. *Now with respect to Abbaye and Raba, from the very same source from which they derive the mode of execution, they also derive the admonition [since the verses they cite contain both elements]. But what is the equivalent for the Tannaite teaching transmitted by the father of R. Abin?*
- C. Said R. Ilaa, "Scripture has said, 'Do not profane your daughter to cause her to be a whore' (Lev. 19:29) [including incest, and 'daughter' involves an illegitimate one too (Freedman, p. 516, n. 5)]."
- D. *R. Jacob, brother of R. Aha bar Jacob, objected to this statement, "Does the cited verse, 'Do not profane your daughter to cause her to be a whore' (Lev. 19:29) serve the stated purpose? To the contrary, it is required for a quite different purpose, namely, for that in the following teaching, taught on Tannaite authority:*
- E. *"Do not profane your daughter to cause her to be a whore" (Lev. 19:29)"*
- F. *"Is it possible to maintain that Scripture speaks of a priest who may marry his daughter to a Levite or an Israelite [indicating that, since the daughter is thereby profaned, because she may no longer eat priestly rations, he is not to marry her off to a Levite or an Israelite]?"*
- G. *"Scripture says, "To cause her to be a whore" (Lev. 19:29), meaning to refer to that sort of profanation that takes place through whoredom [and not in the context of profanation resulting in her disqualification from eating priestly rations]."*
- H. *"So at issue is one who hands over his daughter [for a sexual liaison] not involving marriage."*
- I. *[Ilaa replies], "If so, Scripture should have said, 'Do not treat profanity' [spelling the verb with one L, rather than two Ls]. Why does Scripture say, 'Do not profane' [spelling the verb with two Ls]? It is to teach both lessons."*
- J. *And how do Abbaye and Raba interpret this same verse, "Do not profane your daughter to cause her to be a whore" (Lev. 19:29)?*
- K. Said R. Mani, "This refers to one who marries his young daughter off to an old man."
- L. *It accords with that which has been taught on Tannaite authority:*

- M. “Do not profane your daughter to cause her to be a whore” (Lev. 19:29):
- N. R. Eliezer says, “This is one who marries off his young daughter to an old man.”
- O. R. Aqiba says, “This refers to one who postpones marrying off his daughter once she has reached puberty.”

Marrying Off One’s Children in the Proper Manner

- I.9 A.** Said R. Kahana in the name of R. Aqiba, “You have none who is poor in Israel except because of one who is clever in acting wickedly and one who delays marrying off his daughter once she has passed puberty.”
- B. *But is not the one who delays marrying off his daughter once she has passed puberty also in the category of a person who is clever in acting wickedly?*
- C. *Said Abbaye, “ [76B] This is the sense of the statement at hand: Who is one who is clever in acting wickedly? It is he who delays marrying off his daughter once she has passed puberty.”*
- D. And R. Kahana said in the name of R. Aqiba, “Be careful about someone who gives you advice in accord with his own interest.”
- E. Said R. Judah said Rab, “He who marries off his daughter to an old man, and he who takes a wife for his minor son, and he who returns a lost object to a Samaritan — in respect to all of these, Scripture says, ‘[That he bless himself in his heart, saying, I shall have peace, though I walk in the imagination of my heart] to add drunkenness to thirst. The Lord will not spare him’ (Deu. 29:18-20).”
- F. *An objection was raised: “He who loves his wife as he loves himself, he who honors her more than he honors himself, he who raises up his sons and daughters in the right path, and he who marries them off close to the time of their puberty — of such a one, Scripture says, ‘And you shall know that your tabernacle shall be in peace and you shall visit your habitation and you shall not sin’ (Job. 5:24). [So it is good to marry off a minor.]”*
- G. *If the marriage is arranged just prior to puberty, the case is different [and meritorious].*

I.10 A. *Our rabbis have taught on Tannaite authority:*

- B. He who loves his neighbors, he who draws his relatives near, he who marries his sister’s daughter, and he who lends a sela to a poor person when he needs it —
- C. concerning such a person Scripture says, “Then you will call, and the Lord will answer” (Isa. 58: 9).

I.11 A. *Our rabbis have taught on Tannaite authority:*

- B. “[And if a man take a wife and her mother, it is wickedness; they shall be burned with fire,] both he and they” (Lev. 20:14).
- C. “He and one of them,” the words of R. Ishmael.
- D. R. Aqiba says, “He and both of them.”
- E. *What is at issue between them?*
- F. *Said Abbaye, “At issue is interpreting the implication of the passage at hand.*

- G. *“R. Ishmael takes the view that the meaning of ‘he and they’ is that they are to burn him and one of them, for in the Greek language, the word for ‘one’ is hena [in the biblical text at hand, ‘THN’]. And the penalty against incest with one’s mother-in-law’s mother derives from exegesis [of Scripture].*
- H. *“R. Aqiba maintains that ‘he and they’ means ‘he and both of them,’ in which case the penalty against incest with one’s mother-in-law derives from what is explicitly written in the passage at hand directly [and not through exegesis].”*
- I. *Raba said, “At issue between them is the case of having sexual relations with his mother-in-law after his wife’s death.*
- J. *“R. Ishmael takes the position that if one has sexual relations with his mother-in-law after his wife’s death, he is put to death through burning.*
- K. *“R. Aqiba takes the view that he merely violates a general prohibition [but not penalized]. [Freedman, p. 518, n. 6: R. Ishmael interprets the verse, ‘he and one of them’ i.e., even if only one of them is alive (viz., his mother-in-law), the penalty for incest is burning, whilst R. Aqiba maintains, ‘he and both of them’ i.e., only during the lifetime of both is incest with his mother-in-law punished by fire. Otherwise, there is no penalty, though it is forbidden.”*

The fact that the composition was planned at the outset and follows a clear program is shown by the fact that unit I.1 is incomprehensible without the information provided, in an appendix, only at unit I.11. What we want to know is the basis for prohibiting incest with certain female relations: on the one side, the man’s mother-in-law after the wife’s death, on the other, the man’s daughter produced through a rape. The latter of the two categories come under discussion at unit I.2, and the exegesis of the materials of unit I.2 occupies units I.3-4. Unit I.6 then reverts to the proof-texts for the prohibition against incest with a daughter produced by a rape, and units I.7, 8 pursue the same topic. Units I.9, 10 are attached prior to inclusion of the whole in the present composition and do not belong, and then, as I said, unit I.11 presents the locus classicus for the dispute to which unit I has made reference. If then we turn back to the Mishnah-paragraph and ask whether the exegesis of the statements we find there has generated the composition at hand, we look in vain for a reference to the daughter of a man produced by his act of rape. So the issue is essentially a theoretical one, resting on how we can prove, on the basis of Scripture or reason, that such a relationship is incestuous. Then the entire composition is attached to the Mishnah-paragraph at hand, on the pretext supplied by unit I’s reading of the exegetical foundations of what turns out to be an oblique and secondary issue — the mother-in-law. In fact, we begin with reference to the mother-in-law, but we mean the daughter produced in a rape. In all, it would be difficult to find a more subtle exercise in the theory of the exegesis of Scripture in relationship to the exegesis of the law.

9:1D-M

- D. **And these are those who are put to death through decapitation:**
- E. **the murderer, and the townsfolk of an apostate town.**
- F. **A murderer who hit his neighbor with a stone or a piece of iron [Exo. 21:18],**
- G. **or who pushed him under water or into fire, and [the other party] cannot get out of there and so perished,**

- H. he is liable.
- I. [If] he pushed him into the water or into the fire, and he can get out of there but [nonetheless] he died, he is exempt.
- J. [If] he sicked a dog on him, or sicked a snake on him, he is exempt.
- K. [If] he made a snake bite him,
- L. R. Judah declares him liable.
- M. And sages declare him exempt.

- I.1 A. Said Samuel, "Why [at Num. 35:16-18, where we take up murder with iron, stone, or wooden weapons] the word 'hand' is not stated when we speak of an iron weapon [indicating that the weapon must be sufficiently large to be held in the hand only when it is a weapon of stone or wood, but not of iron]?"
- B. "It is because an iron weapon may inflict death no matter its size."
- C. *It has been taught on Tannaite authority to the same effect:*
- D. Rabbi says, "It is obvious to Him who spoke and brought the world into being that iron inflicts death no matter what its size."
- E. "Therefore the Torah did not assign a minimum measure to it."
- F. *That rule pertains, however, only in the case of piercing someone with iron [but if one hit him with iron, it must be of requisite size actually to inflict death].*

- II.1 A. Or pushed him under water [and he cannot get out...he is liable. If he pushed him into water...and he can get out...he is exempt] [M. 9:1G,I]:
- B. *The first of the two statements [M. 9:1G] makes its own point, and the second of the two statements [M. 9:1I] makes its own point, too.*
- C. *The former of the two statements makes its own point, namely, even though he is not the one who pushed the other into the water, since the other cannot get up from there and so dies, he is liable.*
- D. *The latter of the two statements makes its own point, namely, even though he is the one who pushed the other into the water, since the other can climb up out of the water and nonetheless dies, he is exempt from penalty.*

- II.2 A. How do we know that one keeps the other under [is liable]?
- B. Said Samuel, "It is because Scripture has stated, 'Or if with enmity he smote him with his hand' (Num. 35:21)."
- C. "This serves to encompass who one holds his neighbor [under the water]."

- II.3 A. A man confined the beast of his fellow in the sun, and it perished.
- B. Rabina declared him liable [to pay the value of the beast].
- C. R. Aha, son of Rab, declared him exempt.
- D. Rabina declared him liable on the basis of an argument a fortiori:
- E. "Now if in the case of murder, in which the law does not treat inadvertent action as equivalent to deliberate action, or action done under constraint as equivalent to action done willfully, the law has imposed liability in the case of one who confines his neighbor [and so causes his death],
- F. "[77A] in the case of property damage, in which the law did not distinguish but treated as equivalent an act done inadvertently and one done

deliberately, and an act done under constraint as equivalent to an act done willfully, is it not a matter of reason that one should impose liability on one who causes damage by confining [a beast]?”

G. R. Aha, son of Rab, declares such a one exempt [from penalty].

H. *Said R. Mesharshia, “What is the scriptural basis on which the father of my father declares such a one exempt?”*

I. *“Scripture has said, ‘He who smote him shall surely be put to death, for he is a murderer’ (Num. 35:21). It is in the case of a murderer that the law has made such a one liable in the consequence of an act of confinement, but in a case of causing civil damages, the law has not made such a one liable in the consequence of an act of confinement.”*

II.4 A. And said Raba, “If one tied up [another person] and the latter dies of starvation, he is exempt.”

B. And Raba said, “If one tied up a beast in the heat and it died, or if he did so in the cold and it died, he is liable.

C. “If he did so when the sun was going to come [but had not yet risen], or that the cold had not yet taken effect, he is exempt. [In this case he is merely an indirect cause (Freedman, p. 520, n. 4)].”

D. And Raba said, “If he tied him up before a lion, he is exempt. If he tied him up before mosquitoes, he is liable.”

E. *R. Ashi said, “Even if he did so before mosquitoes, he also is exempt, because the ones who are there [when he tied the man up] go along, and others come and take their place.”*

II.5 A. *It has been stated on Amoraic authority:*

B. If one turned a vat over upon someone [who died of suffocation] or broke open a ceiling above him [and he caught cold and died],

C. Raba and R. Zira:

D. One said, “He is liable,” and the other said, “He is exempt.”

E. *You may conclude that it is Raba who said that he is exempt, for Raba said, “If he tied him up and he died on account of starvation, he is exempt.”*

F. *To the contrary, you may draw the conclusion that R. Zira is the one who has said that he is exempt, for R. Zira said, “He who brought his fellow into a marble chamber and lit a lamp there so that the latter dies [because of the fumes], he is liable.”*

G. *What is the reason? It is that he lit a lamp. Lo, had he not lit a lamp, he would not have been liable [even though the other had died because of lack of air]. [So Zira, too, does not impose a penalty for indirectly causing death.]*

H. *One might say that if there had been no lamp, the heat would not have begun [to affect the man] [77B] at the moment [at which he put him in the room]. But in the present case [that of the overturned vat,] the heat begins to produce its effects immediately.*

II.6 A. Said Raba, “If one pushed someone into a pit, and there was a ladder in the pit, and someone else came along and took it away, or even if he himself removed the ladder, he still is exempt.

B. *“For at the point at which he threw the man into the pit,. [the victim] could climb out of it.”*

C. And Raba said, “If one shot an arrow, and there was a shield in the hand [of the person at whom he shot the arrow], and someone else came long and took the shield away, or even if he came along and took it away, he is exempt.

D. *“For at the moment at which he shot the arrow at him, the force of the arrow would have been broken [on the shield].”*

E. And Raba said, “If one shot an arrow at someone, and the latter had ointment in his hand [which would heal the wound of the arrow], and someone else came along and scattered the ointment, or even if he came along and scattered it, he is exempt.

F. *“For at the moment at which he shot the arrow, the man could have healed himself.”*

G. Said R. Ashi, “Therefore, even in the case of ointment in the market-place [the same rule applies, since someone could have gotten the ointment when it was needed].”

H. Said R. Aha, son of Raba, to R. Ashi, “If [when the man was hit, he did not have ointment, but] ointment came to hand, what is the law?”

I. He said to him, “Lo, this one goes forth from court a free man.”

J. And Raba said, “If one threw a stone against the wall and it bounced back and killed someone, he is liable.”

K. *And a Tannaite authority repeats: “It would be exemplified in a case of people playing with a ball, who deliberately committed murder. They are put to death.*

L. *“If this happened inadvertently, they go into exile.”*

M. *The point that, if it was inadvertent, they go into exile, is self-evident. It was included only because the framer of the passage wished to make the point concerning those who do so deliberately, stressing that they are put to death. What might you have said? It is a case in which it was an admonition that was subject to doubt. Nor who may say for sure that the ball will bounce back. So we are taught to the contrary.*

II.7 A. R. Tahalipa of the West repeated on Tannaite authority before R. Abbahu, “In a case of people playing ball, if the one who was killed was within four cubits [of the wall], the player is exempt. If he was outside of four cubits, he is liable.”

B. *Said Rabina to R. Ashi, “What would such a case involve? If it suited [the player that the ball rebound], then even if the man was nearer than four cubits [and the ball rebounded], he should be liable, and if he did not want [the ball to rebound], then even if the man were at a greater distance, he should be exempt from liability.”*

C. *He said to him, “Ordinary ball-players want the ball to rebound more. [Freedman, p. 522, n. 9: Therefore it may be presumed that he intended it to rebound at least four cubits, hence if less, he is not liable.]”*

- D. *May we then conclude that in a case such as this, [the murder is deemed to happen] by the man's direct action? An objection was raised on the basis of the following: He who mixes ash and water in a trough and the ash fell on his hand or on the side of the trough and afterward it fell into the trough — the act of mixing is unfit, [since the mixing must be done by human action] [M. Par. 6:1A-E]. [Here, therefore, in a parallel case, human action does not encompass what happens on a rebound].*
- F. *With what sort of a case do we deal? With a case in which [ash] was dripping down [into the trough]. [But had the ash fallen with force, the fall would be regarded as part of the man's action in dropping them onto the utensil (Freedman, p. 523, n. 2)].*
- G. *Come and take note: A needle which is fixed in an earthenware utensil, and one sprinkled on it — one is in doubt whether he sprinkled on the needle, or whether from the clay utensil water merely dripped on the needle — the sprinkling is unfit [M. Par. 12:2F-H]. [The sprinkling has not been done by human action].*
- H. *Said R. Hinena b. R. Judah in the name of Rab, "The word should be read, 'It was found' [so the water was found on the needle, and we do not know how it got there.] That explains the unfitness.]"*

II.8 A. *Said R. Papa, "If someone tied up his fellow and inundated him with a column of water, it is as if it was done by his arrows and he is liable.*

- B. *"That is the case if the death was due to the first flow of the water [directly], but if it was through the second flow of the water, he is merely a secondary cause of death. [Freedman, p. 523, n. 5: If the victim was lying immediately in front of the burst, where the strength of the water's flow is still due to the man's action, the drowning is by his direct agency. But if he was lying at some distance, he is held to be an indirect or secondary cause]."*
- C. *And R. Papa said, "If one threw a stone upward and it went to the side and killed someone, he is liable."*
- D. *Said Mar, son of R. Ashi, to R. Pappa, "What is the reason for that ruling? It is because of the man's direct action. But then, if it is because of what the man as done, the stone should continue to go upward. [78A] And if it is not because of his direct action, then it should come straight down. Rather, it is because of his direct action, but it was weakened [Freedman, p. 524, n.3: Most of the force with which he threw it was already expended but sufficient was left to impel it in the direction in which it fell]."*

II.9 A. *Our rabbis have taught on Tannaite authority:*

- B. *If ten men hit someone with ten sticks and the victim died, whether they did so simultaneously or sequentially, they are exempt.*
- C. *R. Judah b. Betera says, "If they did so sequentially, the last one is liable, because he brought the death nearer."*
- D. *Said R. Yohanan, "And both authorities [B, C] interpret the same verse: 'And he who kills an entire life of a man shall surely be put to death' (Lev. 24:17).*

- E. *“Rabbis understand by ‘an entire life’ to mean that one is liable only if the whole of the life of the man is intact [when he inflicts the death blow].*
- F. *“R. Judah b. Betera takes the position that an aspect of the entire life is at issue [Freedman, p. 524, n. 8: however little life the man has, even if he is nearly dead, the man who actually kills him is liable].”*
- G. Said Raba, “Both parties concur in the case of one who kills one afflicted with a fatal disease that he is exempt.
- H. “If he killed someone dying because of heavenly action [that is, of natural causes] he is liable.
- I. “The dispute concerns only one who is dying on account of the act of man.
 - J. *“One party compares the case to that of one who is dying because of an incurable diseases [and so exempts the killer]. The other party compares the case to that of one who is dying because of heavenly action [of natural causes, so imposes liability on the murderer].*
 - K. *“As to the one who compares the case to that of one who is dying because of an incurable disease, what is the reason that he does not compare the case to that of one who is dying because of heavenly action?*
 - L. *“To one who is dying at the hand of heaven, no concrete injury has been done, while to the other, a concrete injury has been inflicted.*
 - M. *“As to the one who compares the case to that of one who is dying because of heavenly action, what is the reason that he does not compare the case to that of one who is dying because of an incurable disease? In the case of one who is dying because of an incurable disease, [Freedman:] the vital organs are affected, while in the case of the other, the vital organs are not affected.”*

II.10 A. *A Tannaite authority repeated before R. Sheshet:*

- B. “‘And he that kills all of the life of man’ (Lev. 24:17):
- C. “This serves to encompass the case of one who hits his fellow, and in his blow there is not sufficient force to inflict death, and then another party comes along and actually delivers the death blow, indicating that the latter is liable.”
- D. *Since the blow that the former gave him was not sufficient to inflict death, it is self-evident [that the former is not liable].*
- E. Rather, it should be that the blow that the former gave was sufficiently strong to inflict death, but another party came and actually inflicted the death blow, and that second party is liable.
- F. *The unattributed teaching belongs to R. Judah b. Betera.*

II.11 A. Said Raba, “He who kills someone afflicted with an incurable disease is exempt.

- B. “And someone inflicted with an incurable disease who committed murder in the presence of a court is liable.
- C. “If it was not in the presence of a court, he is exempt.
- D. “If it was in the presence of a court, he is liable, for it is written, ‘So shall you put away evil from the midst of you’ (Deu. 13: 6). [The court acts on what it sees on its own.]

- E. If it was not in the presence of the court, he is exempt, for you have in hand an act of testimony that is not subject to the test of conspiratorial perjury [since in this case, the perjurers are beyond penalty. Who so? One has to do to them what they conspired to do to their victim. He is regarded as legally dead. They therefore cannot have conspired to kill him.] So their testimony is not subject to the usual test and thus is null.
- F. And said Raba, "One who commits pederasty with someone afflicted with an incurable disease is liable.
- G. "If one inflicted with an incurable disease committed pederasty, if it was before a court, he is liable.
- H. "If it was not before a court, he is exempt.
- I. "If it was before a court, he is liable, for it is written, 'So shall you put away evil from the midst of you. (Deu. 13: 6).
- J. "If it was not before the court, he is exempt, for you have in hand an act of testimony that is not subject to the test of conspiratorial perjury."
- K. *What need to I have for this further case [having made the same point with reference to the former]? The latter case is identical to the former!*
- M. *The matter is at issue because of the clause about having sexual relations with a person dying of an incurable disease.*
- N. *So we are informed that, because of the pleasure assumed to have been gained, [a penalty is imposed], and in this case we do invoke the principle that pleasure may be presumed to have been gained through the act [and so penalize the pederast].*
- O. And said Raba, "Witnesses who gave testimony against someone dying of an incurable disease and who were then proved to be a conspiracy for perjury are not put to death.
- P. "Witnesses who were suffering an incurable disease who were proved to be a conspiracy for perjury are put to death."
- Q. R. Ashi said, "Even in the case of witnesses suffering from an incurable disease who were proved to be a conspiracy for perjury are not put to death.,
- R. "For the testimony against them [proving that they constituted a conspiracy for perjury] itself is not subject to the same test [since those who testify against them cannot be put to death. Why not? The men were dying anyhow, as Raba originally said]."
- S. And said Raba, "An ox, dying of an incurable disease, that killed someone is liable, and an ox belonging to a man suffering from an incurable disease that killed someone is exempt.
- T. *"What is the scriptural basis for this rule?*
- U. "Scripture has said, 'The ox shall be stoned and its owner shall also be put to death' (Exo. 21:29).
- V. *"Wherever we can invoke the rule, 'And also its owner shall be put to death,' we also do not invoke the rule, 'The ox will be stoned.'"*
- W. *"And wherever we cannot invoke the rule, 'And also its owner shall be put to death,' we also do not invoke the rule, 'The ox will be stoned.'"*

- X. R. Ashi said, “Even an ox that is suffering from an incurable disease that killed a man would be exempt [under the stated circumstance].
- Y. *“What is the reason for this ruling? Since, were it the owner, it would have been exempt [dying from an incurable disease, the owner would not be liable in this case, as Raba has said], the ox also is exempt [in a parallel case].”*

III.1 A. If he sicked a dog on him, etc. [M. 9:1J]:

- B. Said R. Aha bar Jacob, “When you look into the matter [A at M. 9:1K-M], you will find that, in R. Judah’s opinion [who holds one liable who makes a snake bite a man], the poison of a snake is between its teeth. Therefore the one who makes the snake bite a man is put to death through decapitation, while the snake itself is exempt.
- C. “In the opinion of sages, the poison of the snake its vomited up out of its midst [on its own], and therefore the snake is put to death through stoning, and the one who made the snake bite the man is exempt. [Freedman, p. 526, n. 8: On Judah’s view the fangs themselves are poisonous. Consequently the snake does nothing, the murder being committed by the person. But the sages maintain that even when its fangs are embedded in the flesh, they are not poisonous, unless it voluntarily emits poison. Consequently the murder is committed by the snake, not the man.]”

Unit I turns immediately to the proof-text on the basis of which the Mishnah’s rule is framed. Unit II.1 then deals with the exegesis of the Mishnah-paragraph. Unit II.2 provides a proof-text for the same. Unit II.3 then expands upon the matter. II.4 introduces the first of a long series of Raba’s excellent clarifications of the principle of the law. The entire composition involving Raba is inserted whole, in the appropriate position at which a compositor aiming at Mishnah-commentary chose for it.

9:1N-T

- N. **He who hits his fellow, whether with a stone or with his fist,**
- O. **and they diagnosed him as likely to die,**
- P. **but he got better than he was,**
- Q. **and afterward he got worse and he died**
- R. **he is liable.**
- S. **R. Nehemiah says, “He is exempt,**
- T. **“for there is a basis to the matter [of thinking that he did not die from the original injury].”**

I.1 A. Our rabbis have taught on Tannaite authority:

- B. [In T.’s version:] **And this is yet another exegesis which R. Nehemiah stated, “[When men quarrel, and one strikes the other with a stone or with his fist, and the man does not die but keeps his bed], then if the man rises again and walks abroad [78B] with his staff, he that struck him shall be clear; only he shall pay for the loss of his time, and shall have him thoroughly healed (Exo. 21:18-19)**
- C. **“Now would it enter one’s mind that this one should walk around in the market, while the other should be put to death on his account?”**

- D. **“But the meaning is that, if he should recover somewhat, then get worse, and finally even if he should die [on account of the original blow], the other is exempt,” [T. B.Q. 9:7A-C].**
- E. *And how do rabbis deal with the proof-text [important to Nehemiah], “And then shall he who smote him be quit” (Exo. 21:19)?*
- F. It teaches that the court imprisons the man [until we see whether the victim dies of the original blow].
- G. *And how does R. Nehemiah prove that one imprisons the man?*
- H. *He derives it from the case of the wood-gatherer (Num. 15:32-36) [who was held in prison until the case was settled on high].*
- I. *And why should the rabbis also not derive their principle from the case of the wood-gatherer?*
- J. *The wood-gatherer was subject to the death penalty, and what Moses did not know was simply how he was to be put to death. But that would exclude the present case, in which we do not know whether the one who hit the other is subject to the death penalty or not subject to the death penalty.*
- K. *And R. Nehemiah points to a parallel in the case from that of the blasphemer, [at Lev. 24:10-14], in which, not knowing whether he was subject to the death penalty or not, the court imprisoned the man [until the decision would come from on high.]*
- L. *And rabbis? The case of the blasphemer involved decisions on an ad hoc basis. [Such a decision cannot be taken as precedent for normal procedure.]*
- M. *This foregoing report accords with the following teaching on Tannaite authority:*
- N. Moses, our rabbi, knew that the wood-gatherer was subject to the death penalty.
- O. For it is said, “Those who defile [the Sabbath] shall surely be put to death” (Exo. 31:14).
- P. But he did not know by what means he was to be put to death, for it is written, “And they put him in ward, because it was not declared what should be done to him” (Num. 15:34).
- Q. But as to the blasphemer, it is stated only, “And they put him in ward, that the mind of the Lord might be showed to them” (Lev. 24:12).
- R. This teaches that Moses did not know whether or not he was subject to the death penalty at all.
- S. *Now with respect to the view of R. Nehemiah, that is why the Scripture twice makes reference to assessing the man’s condition [Exo. 21:18-19: And if men strive together and one smite another with a stone...and he die not but keeps his bed, if he rises again and walk abroad upon his staff, then he that hit him shall be quit.”] [Freedman, p. 528, n. 4: Two phrases are superfluous, that is, “And he die not,” and “If he rise again and walk abroad upon his staff,” for it is self-evident that the assailant cannot be executed under such circumstances; hence they must refer to two judicial calculations that he would not die, which was, however, subsequently falsified]. One reference to an assessment concerns a case in which the court assessed the victim, holding that he would die, and he turned out to live.*

The other deals with a case in which the court assessed that he would die, then he recovered somewhat.

- T. *But from the perspective of rabbis, what need is there for two assessments of the man's condition?*
- V. The one refers to a case in which the court assessed the man's condition and held that he would die and he lived, and the other treats a case in which the court assessed the man's condition and held that he would live, but he died.
- W. And in R. Nehemiah's view?
- X. The case of the court's assessing the man and holding that he would live, and in which he then dies, does not require a verse of Scripture, since in such a case, the accused has already left the court a free man.

I.2 A. *Our rabbis have taught on Tannaite authority:*

- B. "He who hits his fellow, and the court made an assessment that the man would die but he lived — they free the accused.
- C. "If they assessed that he would die and he got somewhat better, they make a second assessment as to the monetary compensation that he is to pay.
- D. "If after a while the ailment grew worse and the man died, one is guided by the second assessment [and the accused pays for the monetary claim, as originally assessed, but is not liable to death], "the words of R. Nehemiah.
- E. And sages say, "There is no assessment after [the original one].
- F. *There is a further teaching on Tannaite authority:*
- G. **[Tosefta's version:] He who hit his fellow.**
- H. **[if] they formed a prognosis that he would die, they again assess that he would live.**
- I. **[If they formed a prognosis] that he would live, they do not again assess that he would die.**
- J. **[T. adds: If they assessed that he would die, then the defendant is liable to the death penalty but exempt from having to pay monetary compensation. If they made an estimate as to the monetary compensation, the defendant is liable to pay monetary compensation and exempt from the death penalty.]**
- K. **If they assessed that he would die, and he got better, they make an estimate of the monetary compensation to be paid a second time.**
- L. **[If] they assessed that he would live and he died, [the defendant] pays compensation for injury, pain, medical costs, loss of income, and indignity, to the estate of the deceased.**
- M. **From what point does he pay him off?**
- N. **From the point at which he hit him [T. **B.Q.9:5A-H, 9:6A**].**
- O. *This unattributed teaching represents the view of R. Nehemiah [that one pays financial compensation and the accused is not put to death].*

Both units of the Talmud take up and analyze the Tosefta's complement to the Mishnah-paragraph at hand.

9:2

- A. [If] he intended to kill a beast and killed a man,
- B. a gentile and killed an Israelite,
- C. an untimely birth and killed an offspring that was viable,
- D. he is exempt.
- E. [If] he intended to hit him on his loins with a blow that was not sufficient to kill him when it struck his loins, but it went and hit his heart, and there was sufficient force in that blow to kill him when it struck his heart, and he died,
- F. he is exempt.
- G. [If] he intended to hit him on his heart, [79A] and there was in that blow sufficient force to kill when it struck his heart, and it went and hit him on his loins, and there was not sufficient force in that blow to kill him when it struck his loins, but he died,
- H. he is exempt.
- I. [If] he intended to hit a large person, and there was not sufficient force in that blow to kill a large person, but it went and hit a small person, and there was sufficient force in that blow to kill a small person, and he died,
- J. he is exempt.
- K. [If] he intended to hit a small person, and there was in that blow sufficient force to kill a small person, and it went and struck the large person, and there was not sufficient force in that blow to kill the large person, but he died,
- L. he is exempt.
- M. But: [if] he intended to hit him on his loins, and there was sufficient force in the blow to kill him when it struck his loins, and it went and hit him on his heart and he died,
- N. he is liable.
- O. [If] he intended to hit a large person, and there was in that blow sufficient force to kill the large person, and it went and hit a small person and he died,
- P. he is liable.
- Q. R. Simeon says, “Even if he intended to kill this party, and he actually killed some other party, he is exempt.”

I.1 A. *To what passage does R. Simeon make reference [at Q]?*

- B. *Should we say that it is to the final clause [M-P]? Then what is required is, “R. Simeon declares exempt,” [Freedman, p. 530, n. 2: Why repeat, “Even if he intended...”? Since it bears upon the clause immediately preceding, the circumstances having been stated, it is sufficient just to give Simeon’s ruling].*
- C. *Rather, he refers to the opening clause: **If he intended to kill a beast and killed a man, a gentile and killed an Israelite, an untimely birth and killed an offspring that was viable, he is exempt [M. 9:2A-D].***
- D. *Thus the contrary intent is: “If one intended to kill this party but killed another party, he is liable.”*

- E. [Then the sense of Simeon follows:] **R. Simeon says, “Even if he intended to kill this party, and he actually killed some other party, he is exempt” [M. 9:2Q].**
- F. *Now the point is self-evident that if Reuben and Simeon were standing [together], and [the killer] said, “I intended Reuben, I did not intend Simeon,” here we have the dispute [of R. Simeon and the anonymous authority]. But if he had said, “I had in mind one of them,” or if he had said, “I was thinking it was Reuben but it was Simeon,” what is the law?*
- G. *Come and take note of the following:* R. Simeon says, “He is liable only if he states, ‘I intended to kill So-and-so.’”

I.2 A. *What is the Scriptural basis for the position of R. Simeon?*

- B. Said Scripture, “[But if any man hates his neighbor] and lies in wait for him and rises up against him” (Deu. 19:11) meaning that [one is liable only if the killer] has hostile intentions against him in particular.
- C. *And rabbis [view of the language, “for him” and “against him”?]*
- D. *Members of the house of R. Yannai say, “[The language, ‘for him’ or ‘against him’ serves] to exclude one who throws a stone into the midst [of Israelites and gentiles].”*
- E. *Now what sort of case is at hand? Should we say that there were nine Samaritans and only one Israelite among them? Then you should conclude that the majority of those [among whom he threw the stone] were Samaritans. Or again, if half were of one group and half of the other group, you have a case of doubt, and in a case of doubt as to capital crimes, one must impose the more lenient ruling.*
- F. *The matter is made pressing by the case in which there were one Samaritan and nine Israelites, in which case the Samaritan is a settled fact [as one of those present], and where there is a settled fact, it counts as one half of the facts at hand [where there is a case of doubt]. [The verse at hand applies to this case and tells us that in such a case, one is not liable; in the other possible cases, it is self-evident that he is not liable, and no proof-text is required].*

I.3 A. *Now from the viewpoint of rabbis, there is no problem, for they maintain that if one intended to kill one party and killed another, he is liable, for it is written, “If men strive and hurt a woman with child: (Exo. 21:22). In this connection, said R. Eleazar, “Scripture addresses the case of a fight involving intent to kill, for it is written, ‘And if any accident follow, then you shall give life for life’ (Exo. 21:23).*

- B. *But how does R. Simeon deal with the clause, “You shall give life for life” (Exo. 21:23) [Freedman, p. 53, n. 8: Since the murder of the woman was unintentional, according to Simeon there is no death penalty]?*
- C. *It means that there has to be a payment of monetary compensation for the death, in accord with the view of Rabbi.*
- D. *For it has been taught on Tannaite authority:*
- E. Rabbi says, “‘You shall give life for life’ (Exo. 21:23).
- F. That means that monetary compensation is paid.
- G. “You maintain that monetary compensation is paid. But perhaps it means that a life must actually be taken?

- H. “The word ‘giving’ is stated here [at Exo. 21:23] and the same word is stated [79B] elsewhere [“If no accident follow, he shall give what the judges determine”].
- I. “Just as in that passage what is at hand is a monetary payment, so here what is expected is a monetary payment.”

I.4 A. *Said Raba, “The following Tannaite authority of the house of Hezekiah differs from both Rabbi and rabbis.”*

- B. *For a Tannaite authority of the house of Hezekiah taught, “‘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, 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.]*
- C. “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,
- D. “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. *[Reverting to Raba’s observation,] “Now what is the sense of ‘unintentionally’? Should we say that one is totally unintentional in what he has done? Then we deal with nothing other than a case of inadvertence. Rather, it is self-evident, it is a case that one does not intend to kill this one but rather that one.*
- F. *“And it has been taught, ‘...not imposing a monetary compensation but declaring him free of monetary compensation’? Now if the person at hand is subject to the death penalty, why is it necessary to indicate that he is exempt from monetary compensation? [Rather, does it not emerge from the passage at hand that such a one is neither subject to the death penalty nor subject to the requirement to pay monetary compensation. [Rabbi, by contrast, imposes the requirement of monetary compensation, and rabbis hold that he is subject to the death penalty].”*

M. 9:2 A-C introduce the whole, stating the basic principle which the triplet will proceed to unpack. The matter of intention is at issue. Simeon will reject the entire construction of M. 9:2 E-P, because, so far as he is concerned, so long as one’s intention has not been carried out, he remains exempt, without regard to the distinctions of the antecedent triplet. Their point is clear in the contrast between E-H-I-L, and M-P. If the death is caused in such a way that the person’s original intent in no way leaves him culpable, he is exempt. But if what he did would have caused death to the person to whom he intended to do it, then he is liable on account of the death of the other person, to whom he actually did it. Units I.1-4 of the Talmud provide a careful exegesis of the meaning of the Mishnah’s statements, with special reference to Simeon’s position and the scriptural basis for it. Unit I.2 then carries forward discussion of an item introduced by unit I.3, so the whole, at the end, is a unitary composition — and a quite elegant one at that.

- A. A murderer who was confused with others — all of them are exempt.
 - B. R. Judah says, “They put them [all] in prison.”
 - C. All those who are liable to death who were confused with one another are judged [to be punished] by the more lenient mode of execution.
 - D. [If] those to be stoned were confused with those to be burned —
 - E. R. Simeon says, “They are to be judged [to be executed] by stoning, for burning is the more severe of the two modes of execution.”
 - F. And sages say, “They are adjudged [to be executed] by burning, for stoning is the more severe mode of execution of the two.”
 - G. Said to them R. Simeon, “If burning were not the more severe, it would not have been assigned to the daughter of a priest who committed adultery.”
 - H. They said to him, “If stoning were not the more severe of the two, it would not have been assigned to the blasphemer and to the one who performs an act of service for idolatry.”
 - I. Those who are to be decapitated who were confused with those who are to be strangled —
 - J. R. Simeon says, “They are killed with the sword.”
 - K. And sages say, “They are killed by strangling.”
- I.1** A. *Who are the others [mentioned at M. 9:3A]? If we should maintain that these others are upright people, then the rule [at M. 9:3A] is self-evident. Furthermore, in such a case would R. Judah say, “They put them into prison”? [Surely not!]*
- B. *Said R. Abbahu said Samuel, “Here we deal with a case in which a murderer whose trial was not complete got mixed up with other murderers, whose trials had come to an end. Rabbis maintain that the court concludes the trial of a person only in that person’s presence. Therefore all of them are treated as exempt [and released]. And R. Judah holds that one cannot free them entirely, since they are, after all, murderers. Therefore, they put them into prison.”*
 - C. *R. Simeon b. Laqish said, “If it is a case involving human beings all parties concur that they free [all of those who are confused with one another]. But here we deal with a dispute involving the case of an ox, the trial of which had not been completed, and which was confused with other oxen, the trial of which had been completed. Rabbis hold that the capital trial of the master defines the rules governing the capital trial of the ox, and so the court may conclude the trial of an ox only in that ox’s presence. Therefore all of them are treated as exempt [and released]. R. Judah maintains that they put them into prison.”*
 - D. *Said Raba, [80A] “If so, then we must take up what R. Yosé observed on this passage, namely, ‘Even if my father, Halapta, [a pious man] were among them, [would Judah take the view that he does]?’”*
 - E. *Rather, said Raba, “The sense [of Yosé’s statement] is as follows: If two people were standing, and an arrow came forth from their midst and killed someone, both of them are exempt [since we do not know who shot the arrow]. And said R. Yosé, ‘Even if my father, Halapta, were among them [The rule would be the same,*

and the thought of Halapta's committing murder is unthinkable. Still, the other party cannot be convicted.] But if an ox that had been tried and convicted was confused with other oxen of a perfectly good [character, not gorers], [the court nonetheless has] them stoned. R. Judah says, 'They are put into prison.'"

F. *And so it has been taught on Tannaite authority:*

G. In the case of a cow which killed someone and then gave birth, if before the trial was complete it gave birth, the offspring is permitted.

H. If after the trial was completed it gave birth, the offspring is forbidden [as part of the mother at the point at which the cow was condemned to stoning. Hence the calf may not be utilized].

I. If the cow was confused with others, and others with others, they put them all into prison.

J. R. Eleazar b. R. Simeon says, "They bring them all to court and they stone them."

I.2 A. A master said: "If before the trial was complete, it gave birth, the offspring is permitted."

B. *And is that the case, even though, when it gored, it was pregnant?* And has Raba not said, "The offspring of a cow that gored is forbidden [for use in the cult], both the cow and the offspring are deemed to have gored. If the offspring was used for bestiality, both the cow and the offspring are deemed to have been used for bestiality. [If the cow was pregnant, therefore, when it gored, the calf is regarded as identical with its mother (Freedman, p. 534, n. 9)]."

E. *Then read the passage in this way:* If before the trial was completed, it became pregnant and produced an offspring, the offspring is permitted. If after the trial was complete, the cow became pregnant, and it produced the offspring, the offspring is forbidden.

F. *That version of matters poses no problem to him who has said, "[If] both this and that constitute the causes [here: if both an ox and a cow have produced the offspring] [and one of the causes, that is, the cow, is forbidden, then] the offspring is likewise forbidden."* **[80B]** *But in the view of him who maintains that in such a case, it is permitted, what is there to be said?*

G. *Rather, said Rabina, "This is how the rule is to be stated:* If before the trial was completed the cow became pregnant and produced the offspring, the offspring is permitted. And if before the trial was completed, the cow became pregnant, but it was only after the trial was completed that the cow gave birth, the offspring is forbidden. The reason is that the embryo is deemed an integral part of the mother. [Freedman, p. 535, n. 3: In this case, it is forbidden, not because it is the product of its mother, but because before birth it is part of its mother, and the prohibition applicable to the latter applies to the embryo too.]"

II.1 A. All those who are liable to death [who were confused with one another are judged to be punished by the more lenient mode of execution] [M. 9:3C]:

- B. *That indicates that admonition [not to commit a crime] which serves for a more severe infringement of the law applies as an admonition for a less severe infringement of the law. [The criminals had been admonished with a statement on the mode of execution that applies to the crime they had been about to commit. The admonition referred to a more severe mode of execution. The stated law then indicates that admonition served for a less severe mode of execution.]*
- C. *Said R. Jeremiah, “[Not so,] for with what sort of a case do we deal here? It is with one in which an admonition was given without specification [as to the mode of execution]. And the rule at hand accords with the Tannaite authority who stands behind this following on Tannaite teaching:*
- D. **“And as to all others liable to the death penalty imposed by a court, they convict them only on the testimony of witnesses, after warning, and after they inform him that what he is going to do subjects him to liability to the death penalty in court.**
- E. **“R. Judah says, “Only if they will inform him specifically as to the sort of death penalty to which he will be subjected” [T. San. 11:1A-C].**
- F. *“The former of the two authorities derives the rule from the case of the wood-gatherer, R. Judah takes the view that the wood-gatherer represented an ad hoc case.”*

III.1 A. If those to be stoned were confused with those to be burned [M. 9:3D]:

- B. *R. Ezekiel repeated the passage at hand for Rami, his son, as follows: ‘If those to be burned were confused with those to be stoned, R. Simeon says, “They are judged to be executed by stoning, for burning is the more severe of the two modes of execution” [M. 9:3E].’*
- C. *Said R. Judah to him, “Father, do not repeat it in this way. Why give as the reason, ‘Because burning is more stringent’? Rather, derive the fact that the larger number of those who are put to death are put to death through stoning. [Freedman, p. 536, n. 3: For ‘if criminals condemned to burning became mixed up with others condemned to stoning’ implies that the latter were in the majority, as the smaller number is lost in the larger]. Instead, this is how it should be repeated: “If those to be stoned were confused with those to be burned, “R. Simeon says, “They are judged to be executed by stoning, for burning is the more severe of the two modes of execution” [M. 9:3D-E].”*
- D. *Then take up the concluding clause: But sages say, “They are adjudged to be executed by burning, for stoning is the more severe mode of execution of the two” [M. 9:3F]. But derive that point from the simple fact that the greater number of those who are put to death are put to death through burning?*
- E. *In that case, it is rabbis who frame matters so as to state to R. Simeon, “In accord with your view, for you maintain that burning is more severe, but to the contrary, stoning is the more severe. [Freedman, p. 536, n. 4: But their ruling could be deduced from the fact that the majority are to be executed through burning].”*
- F. *Said Samuel to R. Judah, “Sharp one! [81A] Do not say things in this way to your father! This is what has been taught on Tannaite authority: Lo, if one’s father*

was violating the teachings of the Torah, he should not say to him, ‘Father, you have violated the teachings of the Torah.’ Rather, one should say to him, ‘Father, this is what is written in the Torah.’”

G. *Still, this is the same as that!*

Q. *Rather, he says to him, “Father, there is a verse of Scripture that is written in the Torah, and this is what it says. [He does not state the law directly but lets the father draw his own inference (Freedman, p. 536, n. 8)].”*

Unit I.1 provides an important clarification for the rule of the Mishnah. Unit I.2 continues unit I. Unit II.1 takes up the implications for an extraneous issue of the rule at M. 9:3C, and unit III.1 clarifies the wording of M. 9:3D.

9:4

A. **He who is declared liable to be put to death through two different modes of execution at the hands of a court is judged [to be executed] by the more severe:**

B. **[if] he committed a transgression which is subject to the death penalty on two separate counts, he is judged on account of the more severe.**

C. **R. Yosé says, “He is judged by the penalty which first applies to what he has done.”**

I.1 A. *It is self-evident [that he is subject to the more severe mode of execution]. [For, after all], should he profit [from committing the further crime]?*

B. *Said Raba, “With what sort of case do we deal here? It is one in which the man committed a lesser transgression and was convicted for the lesser transgression. Then he went and committed a greater transgression. Now it might have entered your mind to rule that, since he was tried and convicted for the lesser transgression, this man is as if dead [for he is going to be put to death no matter what else he does]. So we are informed [to the contrary, that we do try him for the offense that produces the more severe mode of execution].”*

I.2 A. *The brother of R. Joseph bar Hama asked Rabbah bar Nathan, “What is the source of this view of rabbis: **He who is declared liable to be put to death through two different modes of execution at the hands of a court is judged to be executed by the more severe [M. 9:4A]?**”*

B. *[The reply:] “As it is written, ‘If [the righteous man] beget a son who is a robber, a shedder of blood...who has eaten upon the mountains and defiled his neighbor’s wife’ (Eze. 18:10-11).*

C. *“‘If he beget a son who is a robber, a shedder of blood’ — such a one is subject to the death penalty of decapitation.*

D. *“‘And defiled his neighbor’s wife’ — this is adultery, punished through [the more severe penalty] strangulation.*

E. *“‘And has lifted up his eyes to idols’ (Eze. 18:12) — this is idolatry, punished through stoning.*

F. *“And it is written, ‘He shall surely die, his blood shall be upon him’ (Exo. 18:13) — this refers to stoning. [Freedman, p. 537, n. 6: Thus we see that the severest penalty is imposed, and it must be under the circumstances posited by Raba, for otherwise the verse is unnecessary.]”*

- G. *To this proof R. Nahman b. Isaac raised an objection, “May I propose that all of the clauses refer to crimes punished by stoning?”*
- H. *“If he beget a son, a robber, a shedder of blood’ — this refers to a wayward and incorrigible son, who is put to death through stoning.*
- I. *“And defiled his neighbor’s wife’ — this refers to a betrothed girl, on account of intercourse with whom one is put to death through stoning.*
- J. *“And has lifted up his eyes to the idols’ — this refers to idolatry, penalized by the death-penalty of stoning.”*
- K. *“If that is the case, then what is it that Ezekiel tells us?”*
- L. *“Perhaps he was simply reviewing the teachings of the Torah.”*
- M. *“If so, he should have reviewed it in the way in which Moses, our master, reviewed it.”*

- I.3** A. *R. Aha, son of R. Hanina, interpreted Scripture, “What is the meaning of the verse, [‘But if a man be just and do what is lawful and right...], and has not eaten upon the mountains’ (Eze. 18:16)?*
- B. *“It means that he did not eat only on account of the merit of his ancestors [but on his own merit].*
 - C. *“And did not lift up his eyes to the idols of the house of Israel’ — that he did not walk about in a proud way [but in a humble way].*
 - D. *“Nor did he defile his neighbor’s wife’ — that he did not compete with his fellow in trade.*
 - E. *“And did not have sexual relations with a menstruating woman’ — that he did not derive benefit from the charity-fund.*
 - F. *“And it is written, ‘He is just, he shall surely live’ (Eze. 18: 9).”*
 - G. *When Rabban Gamaliel reached this verse of Scripture, he would weep, saying, “If someone did all of these [virtuous deeds], then he will live, but not merely on account of one of them.”*
 - H. *Said R. Aqiba to him, “But take account of the following: ‘Do not defile yourselves in all of these things’ (Lev. 18:24). Here too does it mean that one is liable only for doing all of the [vile deeds that are catalogued], but not if he did only one of them?*
 - I. *“Rather, the meaning is in ‘only one of these things’ [one violates the law], and so here to, if one does only one of all of these things, [he shall live].”*

II.1 A. If he committed a transgression... [M. 9:4B-C]:

- B. *It has been taught on Tannaite authority:*
- C. **Said R. Yosé, “He is judged by the penalty which first applies to what he has done [M. 9:4C]:**
- D. **“If he had sexual relations with her when she was his mother-in-law, and then she got married and so was a married woman, he is judged on the count of her being his mother-in-law.**
- E. **“If she was a married woman and then became his mother-in-law, he is judged on the count of her being a married woman” [T. San. 12:5D-I].**
- F. *Said Ada bar Ahbah to Raba, “If she was his mother-in-law and then became a married woman, should he be judged only on account of having sexual relations*

with his mother-in-law? *Let him be judged also on account of the prohibition applying to having sexual relations with a married woman!*

G. “For lo, R. Abbahu said, ‘R. Yosé concurs in the case of a prohibition that adds [to the prohibition already in place].’”

H. **[81B]** *He said to him, “Ada, my son, are you going to kill him twice?”*

The point of concurrence at M. 9:3C is repeated. The important point is not at M. 9:4A, but at M. 9:4B. Once more, we find ourselves engaged in the exposition of the materials of Chapter Seven, now M. 7:4K-R, the sages’ view that there may be two counts of culpability on the basis of a single transgression. A’s point is that if one has intercourse with a married woman and is liable for strangulation, and afterward he has sexual relations with his mother-in-law and is liable for burning, he is judged on the count of burning. If his mother-in-law had been married, we should have the problem of B. He then would be tried on the count of the mother-in-law, which produces the execution by burning, rather than on the count of the married woman, which produces the penalty of strangulation. Yosé’s clarification requires that the woman have passed through several relationships to the lover. First she was a widow, whose daughter he had married, and so she was his mother-in-law. Afterward she was married. He had sexual relations with her. He is tried for having had sexual relations with his mother-in-law, thus for burning, since that was the first aspect in which the woman was prohibited to him. If the story were reversed, he would be tried under the count of strangulation for his sexual relations with a married woman. Unit I.1 of the Talmud clarifies the allegation of M. 9:A, and unit I.2 provides a proof-text for that proposition. Unit I.3 then adds a further exegesis of the same proof-text. Unit II.1 proceeds to the clarification of M. **9:4B-C**.

9:5A-B

A. **He who was flogged [and did the same deed] and was flogged again —**

B. **[if he did it yet a third time] the court puts him in prison and feeds him barley until his belly explodes.**

I.1 A. Merely because **he was flogged and flogged again** does **the court put him in prison?**

B. *Said R. Jeremiah said R. Simeon b. Laqish, “Here we deal with flogging administered in a case in which the real penalty is extirpation [but in which the felon was warned only of the penalty of flogging], so that the felon in point of fact is subject to the death penalty. Now as yet, death has not drawn near this man, and, since he has allowed himself [to violate the law again], we bring him near to death.”*

C. *Said R. Jacob to R. Jeremiah b. Tahalifa, “Come and I shall explain this matter to you. The passage at hand refers to flogging administered on account of a single sort of sin that involves the penalty of extirpation. But in the case of one who commits two or three different sorts of sins that are penalized by extirpation, this man is just trying out [different sorts of sins] and has not abandoned himself to sink to such an extent [that we hasten his death].”*

- I.2 A. He who was flogged and flogged again [M. 9:5A]:** *He did it twice and not a third time. Then may we say that the Mishnah-passage at hand does not accord with the view of R. Simeon b. Gamaliel?*
- C. *For in the view of Rabban Simeon b. Gamaliel, lo, he has said, “Only in the case of three occurrences [of a given phenomenon] do we recognize a presumption [that such a thing is regularly going to happen].”*
- D. *Said Rabina, “You may maintain even that it is in accord with Rabban Simeon b. Gamaliel.*
- E. *“He takes the view that in the case of the commission of transgressions, even less than three actions, establish a presumption as to the character of the man.”*
- F. *An objection was raised [on the basis of the following passage:]*
- G. **Those who are liable for flogging who were flogged [and did the same deed] and were flogged again [M, 9:5A] —**
- H. **and this happened once, twice, and yet a third time —**
- I. **they put him into prison.**
- J. **Abba Saul says, “Also on the third occasion they flog him.**
- K. **“But if he repeats it a fourth time,**
- L. **they put him into prison and feed him barley until his belly explodes” [M. 9:5B]. [T. San. 12:8B-G].**
- M. *May we not say that all parties concur that the fact that one has been flogged establishes a presumption [about his character], and at issue is the dispute between Rabbi and Rabban Simeon b. Gamaliel. [Freedman, p. 540, n. 4: The first Tannaite authority agrees with Rabbi that twice affords presumption, Abba Saul with R. Simeon b. Gamaliel. But since the first authority is identical with that of our Mishnah, it follows that it cannot agree with R. Simeon b. Gamaliel. This refutes Rabina.]*
- N. *No, all parties concur with the view of Rabban Simeon b. Gamaliel. And in the present case, the point at issue is this: One authority takes the view that the commission of transgressions establishes a presumption [as to one’s character] and the other party takes the view that inflicting a flogging establishes the presumption [as to one’s character].*
- O. *But has it not been taught on Tannaite authority:*
- P. **[If] they warn him and he remains silent,**
- Q. **warn him and he nods his head,**
- R. **warn him once, twice, and a third time [and he repeated the same transgression],**
- S. **they put him into prison [cf. M. 9:5A-B].**
- T. **Abba Saul says, “Also on the third occasion they warn him.**
- U. **“but if he repeats it a fourth time,**
- V. **“they put him into prison and feed him the bread of adversity and the water of affliction (Isa. 30:20)” [M. 9:5C] [T. San. 12:7A-G].**
- W. *Now in this case there is no issue of flogging! [Here, therefore, there is no flagellation to afford a basis for presumption (Freedman, p. 540, n. 8)].*

- X. *So what is at issue?*
- Y. *Said Rabina, "What is at issue is whether there is necessity to give an advance admonition concerning the punishment of imprisonment in a cell."*

I.3 A. *And what is a cell?*

- B. *Said R. Judah, "It was the height of the prisoner."*
 - C. *And where in Scripture do we find an allusion to such a thing?*
 - D. *Said R. Simeon b. Laqish, "'Evil shall slay the wicked' (Psa. 34: 2)."*
 - E. *And said R. Simeon b. Laqish, "What is the meaning of that which is written, 'For man also knows not his time, as the fishes that are taken in an evil trap' (Qoh. 9:12)?*
 - F. *"What is an evil trap?"*
 - G. *Said R. Simeon b. Laqish, "It is a hook."*

Unit I clarifies the reasoning behind M. 9:5A. Unit I.2 then investigates its own problem, using the materials of M. 9:5A for that purpose. But the problem is integral to the Mishnah-paragraph, as Tosefta's contribution shows. Unit I.3 then deals with the definition of the prison of M. 9:5B.

9:5C

A. **He who kills a someone not before witnesses they put him in prison and feed him the bread of adversity and the water of affliction (Isa. 30:20).**

I.1 A. *How do we know [that this man has killed someone]?*

- B. *Said Rab, "We deal with a case in which the testimony is disjoined [since the two witnesses saw the act individually, but were not on a line of sight with one another]."*
- C. *And Samuel said, "It was an act committed without prior admonition [as to the consequences]."*
- D. *And R. Hisda said Abimi said, "We deal with a case in which the testimony as contradicted in some minor detail as to circumstance but was not disproved as to major details of what had actually been done."*
- E. *"This is as we have learned in the Mishnah: **There was the case in which Ben Zakkai examined a witness as to the character of the stems of figs under which the incident took place [M. 5:2B].**"*

II.1 A. **And feed him the bread of adversity and the water of affliction [M. 9:5C]:**

- B. *Why does the passage at hand frame matters as, **And they feed him the bread of adversity and the water of affliction [M. 9:5C], while the other passage states, The court puts him in prison and feeds him barley until his belly explodes [M. 9:5B]?***
- C. *Said R. Sheshet, "Both, in point of fact, mean that **they feed him the bread of adversity and the water of affliction. This is until his innards shrink. Then they give him barley-bread until his belly explodes.**"*

The Talmud at Unit I.1 asks the obvious question and in unit II.1 explains divergent formulations of the law at hand.

- A. He who stole a sacred vessel [of the cult (Num. 4: 7)], and he who curses using the name of an idol, and he who has sexual relations with an Aramaean woman —
- B. zealots beat him up [on the spot (Num. 25:8, 11)].
- C. A priest who performed the rite in a state of uncleanness —
- D. his brothers, the priests, do not bring him to court.
- E. But the young priests take him outside the courtyard and break his head with clubs.
- F. A non-priest who served in the Temple —
- G. R. Akiba says, “[He is put to death] by strangling [Num. 18:7].”
- H. And sages say, “[He is put to death] at the hands of Heaven.”

I.1 A. *What is a sacred vessel [M. 9:6A]?*

- B. Said R. Judah, “It is a utensil used in the ministry. And so it says, ‘And the vessels of libation’ (Num. 4: 7).
- C. “*And where in Scripture do we find an allusion to the matter?*
- D. “‘That they come not to see how the holy things are stolen, lest they [who stole them] die’ (Num. 4:20).”

II.1 A. **He who curses using the name of an idol. [M. 9:6A]:**

- B. *R. Joseph taught on Tannaite authority, “May the idol smite its enchanter.”*
- C. *Rabbis, and others say, Rabbah b. Mari, say, ““May the idol slay him, his master, and the one who gives him ownership.””*

II.2 A. **...and he who has sexual relations with an Aramaean woman [M. 9:6A]:**

- B. *R. Kahana asked Rab, [82A] “What is the law if the zealots do not beat him up [M. 9:6B]?”*
- C. *Rab had forgotten his learning on the subject, and in a dream, R. Kahana received the following verse of Scripture, “As Judah has dealt treacherously, and an abomination is committed in Israel and in Jerusalem, for Judah has profaned the holiness of the Lord which he loved and has been intimate with the daughter of a strange god” (Mal. 2:11).*
- D. *He came to Rab and said to him, “This is what I was made to recite in my dream.”*
- E. *Rab then remembered what he had learned: “Judah has dealt treacherously — this refers to idolatry, and so it is written, ‘Surely as a wife departs treacherously from her husband, so have you dealt treacherously with me, O house of Israel, says the Lord’ (Jer. 3:20).*
- F. “‘And an abomination is committed in Israel and in Jerusalem’ — this refers to pederasty. And so it is written, ‘You shall not lie with mankind as with womankind; it is an abomination’ (Lev. 18:22).
- G. “‘For Judah has profaned the holiness of the Lord’ — this refers to prostitution, and so it is written, ‘There shall be no consecrated harlot of the daughters of Israel’ (Deu. 3:18).

- H. “‘And has been intimate with the daughter of a strange god’ — this refers to one who has sexual relations with a Samaritan woman.
- I. “‘And thereafter it is written, ‘The Lord will cut off the men who do this, the master and scholar, out of the tabernacles of Jacob, and him who offers an offering to the Lord of hosts’ (Mal. 2:12).
- J. “‘If he is a disciple of a sage, he will have no witness among sages or response among disciples.
- K. “‘If he is a priest, he will have no son to make a meal offering to the Lord of hosts.’”

II.3 A. Said R. Hiyya bar Abbuyah, “Whoever has sexual relations with a Samaritan woman is as if he marries an idol.

- B. “‘For it is written, ‘And has had sexual relations with the daughter of a strange god’ (Mal. 2:11).
- C. “‘And does a strange god have a daughter?
- D. “‘Rather, this refers to someone who has sexual relations with a Samaritan woman.’”
- E. And said R. Hiyya bar Abbuyah, “On the skull of Jehoiakim is written ‘This and yet another.’”
- F. *The grandfather of R. Perida found a skull which was tossed near the gates of Jerusalem, and written on it were the words, “This and yet another.”*
- G. *He buried it and it came up again. He buried it and it came up again.*
- H. *He said, “This must be the skull of Jehoiakim, concerning whom it is written, ‘He shall be buried with the burial of an ass, drawn and cast forth beyond the gates of Jerusalem’” (Jer. 22:19).*
- I. *He said, “Still, he was a king, and it is not proper to treat him with disrespect.”*
- J. *He took the skull and wrapped it in silk and put it in a chest.*
- K. *His wife came along and saw it. She took it out and showed it to the neighboring women, who said to her, “It must be his [that is, your husband’s] first wife, for he cannot forget her.” She lit the oven and burned it.*
- L. *When he came home he said, “This is in line with what is written on [the skull], ‘This and yet another.’”*

II.4 A. When R. Dimi came, he said, “The court of the Hasmoneans made a decree that one who has sexual relations with a Samaritan woman is liable on her account on the counts of having sexual relations with a menstruating woman, a gentile maid servant, a gentile woman, and a married woman.”

- B. When Rabin came, he said, “He is liable on the counts of having sexual relations with a menstruating woman, a gentile maidservant, a gentile woman, and a prostitute, *but not on the count of having relations with a married woman, since valid marital relations do not apply to them.*”
- C. *And the other [Dimi]?*
- D. *They most assuredly do not allow their women to have sexual relations freely [with any man other than the husband].*

II.5 A. Said R. Hisda, “[If a zealot] comes to take counsel [as to punishing a law violator, such as is listed at M. 9:6A], they do not give him instructions to do so.”

- B. *It has been stated along these same lines on Amoraic authority:*
- C. Said Rabbah bar bar Hannah said R. Yohanan, “[If a zealot] comes to take counsel, they do not give him instructions to do so.
- D. “And not only so, but if Zimri had separated from [his girl-friend] and had Phineas then killed him, Phineas would have been put to death on his account.
- E. “[Under these same conditions] had Zimri turned on Phineas and [in self-defense] had he killed Phineas, he would not have been out to death on his account, for lo, [Phineas then] was in the position of being a pursuer.”

The Zealotry of Phineas

- II.6 A.** “And Moses said to the judges of Israel, Slay every one his men that were joined to Baal Peor” (Num. 25: 5).
- B. The tribe of Simeon went to Zimri b. Salu and said to him, “Lo, the judges are judging capital cases, and you sit silent.”
 - C. What did he do? He went and called together twenty-four thousand Israelites and went to Kozbi and said to her, “Listen to me [and have sexual relations with me].”
 - D. She said to him, “I am a royal princess, and father has told me, ‘Listen [I have sexual relations] only with the greatest man among them.’”
 - E. He said to her, “Even I am the prince of a tribe, and not only so, but [my tribe] is greater than his [Moses’], for he is second in order of birth, and I am third in order of birth.”
 - F. He took her by her forelock and brought her to Moses. He said to him, “Ben Amram, is this woman forbidden or permitted? And if you should rule that she is forbidden, as to the daughter of Jethro, who permitted you to marry her?”
 - G. Moses forgot the law, and all of them broke out in tears, as it is written, “And they were weeping before the door of the tabernacle of the congregation” (Num. 25: 6).
 - H. And it is written, “And Phineas, son of Eleazar, son of Aaron the priest, saw” (Num. 25: 7).
 - I. What did he see?
 - J. Said Rab, “He saw the deed and then remembered the law.” He said to him, “O brother of the father of my father, have you not taught us as you came down from Mount Sinai, **‘He who has sexual relations with an Aramaean woman — zealots beat him up on the spot’** [M. 9:6A-B]?”
 - K. *He said to him, “The one who reads the letter should be the one to serve as agent [to carry out its orders] [So, do it].”*
 - L. Samuel said, “He saw that, ‘There is no wisdom, understanding, or counsel against the Lord’ (Pro. 21:30). In any circumstance in which there is a profanation of the Name [of God], people are not to defer to the master [but are to correct the situation immediately].”
 - M. R. Isaac said R. Eleazar said, “He saw that an angel came and destroyed some of the people.”

- N. “And he rose up out of the midst of the congregation and took a spear in his hand” (Num. 25: 7).
- O. On this basis we learn that people may not enter the school house carrying weapons.
- P. He took off the spear-head and put it in his garment and was [82B] leaning on the stock. He went along as if leaning on his staff. When he came to the tribe of Simeon, he said, “Where do we find that the tribe of Levi is greater than the tribe of Simeon? [Let me do it too!]”
- Q. They said, “Let him too do what he needs to do. The people who kept separate now have permitted the matter too.”
- R. Said R. Yohanan, “Six miracles were done for Phineas:
- S. “First, that Zimri should have taken out his penis from the woman and he did not do so [leaving Phineas free to act];
- T. “another, that he should have spoken out [for help] but he did not speak out;
- U. “a third, that Phineas got his spear right through the penis of the man and the vagina of the woman’
- V. “fourth, that they did not fall off the spear;
- W. “fifth, that an angel came and raised up the lintel [so he could carry them out on his spear];
- X. “and sixth, that an angel came and destroyed the people [so they paid no attention to what Phineas had done].”
- Y. “Phineas came and cast them down before the Omnipresent, and said, ‘Lord of the world, on account of these should twenty-four thousand Israelites die?’
- Z. “For it is said, ‘And those that died in the plague were twenty-four thousand’ (Num. 25: 9).
- AA. “Thus it is written, ‘Then Phineas stood up and executed judgment’ (Psa. 106:30).”
- BB. Said R. Eleazar, “‘And he prayed’ is not written, but rather, ‘And he argued with ...,’ teaching that it was as if he made an argument with his Maker [about punishing them].”
- CC. The ministering angels wanted to push him aside. He said to them, “Let him be. He is a zealot, son of a zealot, he is one who seeks to turn away anger, son of one who seeks to turn away anger.”
- DD. The other tribes began to tear him down, “Do you see this son of Puti [Putiel]. For the father of his mother fattened [PTM] calves for idolatry, and he has himself killed the head of a tribe of Israel.”
- EE. Scripture came along and spelled out his genealogy: “Phineas, son of Eleazar, son of Aaron the priest” (Num. 25:11).
- FF. Said the Holy One, blessed be he, to Moses, “[When you see him], greet him in peace first, as it is written, ‘Wherefore say, Behold, I give to him my covenant of peace’ (Num. 25:12).

GG. “And this act of atonement is worthy that it should continue to make atonement forever.”

II.7 A. *Said R. Nahman said Rab, “What is the meaning of the verse of Scripture, ‘A greyhound, a he-goat also, and a king, against whom there is no rising up’ (Pro. 30:31)?*

B. “Four hundred twenty-four acts of sexual relations did that wicked man have that day.

C. “Phineas waited for him until he grew weak, for he did not know that ‘a king, against whom there is no rising up’ is [God].”

D. *In a Tannaite teaching it is taught:*

E. He had sexual relations sixty times, until he became like an addled egg, and she became like a furrow filled with water.”

F. *Said R. Kahana, “And her ‘seat’ was a seah [in size].”*

G. *R. Joseph taught on Tannaite authority, “Her womb-opening was a cubit.”*

II.8 A. *Said R. Sheshet, “Her name was not Cosbi but Shewilani, daughter of Zur.*

B. “Why was she called Kozbi? Because she violated her father’s instructions [in having sexual relations with someone as unimportant as Zimri].”

C. Another explanation of Kozbi:

D. She said to her father, “Devour (kosbi) this people for me.”

E. *So it is in line with what people say, “What does Shewilani want among the reeds of the lake, what does Shewilani want among the peeling rushes? Did she embrace her mother?”*

II.9 A. *Said R. Yohana n, “Zimri had five names: Zimri, son of Salu; Saul, son of the Canaanite woman; and Shelumiel, son of Zurishaddai.*

B. “‘Zimri,’ because he became like an addled egg.

C. “‘Son of Salu,’ because he outweighed the sins of his family;

D. “‘Saul,’ because he lent himself to sin;

E. “‘Son of the Canaanite woman,’ because he acted like a Canaanite.

F. “But what was his real name? It was Shelumiel, son of Zurishaddai.”

III.1 A. **A priest who performed the rite in a state of uncleanness [M. 9:6C]:**

B. *R. Aha, son of R. Huna, asked R. Sheshet, “Is a priest who performed an act of service while in a state of uncleanness liable to the death penalty at the hands of heaven, or is he not liable to the death penalty at the hands of heaven?”*

C. *He said to him, “You have learned to repeat the following passage of the Mishnah: **A priest who performed the rite in a state of uncleanness — his brothers, the priests, do not bring him to court. But the young priests take him outside the courtyard and break his head with clubs [M. 9:6C-E].***

D. *“Now if you think that he is liable to the death penalty at the hands of heaven, then they should let him be, and let him be put to death at the hands of heaven.*

E. *“Then what is the upshot? He is not liable [to death at the hands of heaven].”*

F. *But is there any action which the All-Merciful has treated as exempt from penalty, and on account of which we should go and inflict the death penalty?*

- G. *And is there none? And lo, have we not learned in the Mishnah:*
- H. **He who was flogged and did the same deed and was flogged again — if he did it yet a third time, the court puts him in prison and feeds him barley until his belly explodes [M. 9:5A-B]?**
- I. *Here the All-Merciful has treated him as exempt from penalty, but we put him to death.*
- J. *[That poses no problem], for has not R. Jeremiah said R. Simeon b. Laqish said, “We deal with a case in which the flogging was administered in a case in which the penalty is extirpation, for the man was subject to the death penalty”?*
- K. *But lo, there is the case of **one who steals a sacred vessel [M. 9:6A]!***
- L. *[That too is no problem], for has not R. Judah said, “We deal with utensils used for the cult, and there is an allusion to [the death penalty for stealing them] in that which is written, ‘That they come not to see how the holy things are stolen, lest they die’ (Num. 4:20).”*
- M. *And lo, there is the case of **one who curses using the name of an idol [M. 9:6A]!***
- N. *Lo, did not R. Joseph repeat on Tannaite authority, “May the charm slay the enchanter”? It is because he appears to commit blasphemy.*
- O. *And lo, there is **he who has sexual relations with an Aramaean woman [M. 9:6A]?***
- P. *Lo, in that same case R. Kahana in a dream was made to recite a verse of Scripture, and this reminded Rab of the law.*
- Q. *An objection was raised:*
- R. **He pours out oil over a meal-offering, he who mixes meal with the oil, he who breaks meal-offering cakes into pieces, he who salts meal-offering, he who waves it, he who brings it near [opposite the southwest corner of the altar], he who arranges the bread on the table, he who trims the lamps, he who takes the handful of meal-offering, he who receives the blood [none of which actions completes the sacrificial rite] outside of the Temple is exempt [from all penalty]. They are not liable on account of such actions [83A] either because of being a non-priest or because of uncleanness or because of lacking the proper vestments or because of having unwashed hands and feet [M. Zeb. 14:3F-I].**
- S. *Lo, if such a one had burned incense [and so completed an act of service], he would have been liable. Now is this not liable to the death penalty?*
- T. *No, it is liable to violating an admonition [not to do so].*
- U. *And is that the case also for a non-priest, that he is merely subject to violating an admonition?*
- V. *And is it not written, “And the non-priest who comes near shall be put to death” (Num. 18: 7)?*
- W. *Each item on the list is subject to its own rule [and for the one who is unclean, on violates a prohibition, but for the one who is a non-priest, the death penalty applies].*

- X. *Does it then follow that pouring and mingling [oil for the meal-offering] are not violations of a negative commandment?*
- Y. *But has it not been taught on Tannaite authority:*
- Z. **Whence in Scripture do we find an admonition [that an unclean priest] nor pour or mingle [oil]?**
- AA. **As it is written, “They shall be holy to their God and not profane the name of their God” (Lev. 21: 6).** [Freedman, p. 550, n. 9: This is referred to the performance of one of these acts of service while unclean.]
- BB. **It is merely on the authority of rabbis, and the verse provides an additional support.**
- CC. *An objection was raised on the basis of the following:*
- DD. **And these are the ones who are subject to the death penalty: an unclean priest who performed an act of service [T. Zeb. 12:17].**
- EE. *That indeed refutes the view of R. Sheshet.*

III.2 A. Reverting to the body of the cited text:

- B. **And these are the ones who are subject to the death penalty:**
- C. **He who eats untithed food, and a non-priest, an unclean person, who ate heave-offering, and an unclean priest who ate clean heave-offering,**
- D. **and a non-priest, one in the status of Tebul Yom, one lacking priestly vestments, one whose rites of atonement were not yet complete, and one with unwashed hands and feet, and those with unkempt hair, and those who were drunk, who served [at the altar]**
- E. **all of them are subject to the death penalty.**
- F. **But an uncircumcised [priest] and a priest in mourning, and one who was sitting down [while at the altar], lo, these are subject to warning.**
- G. **“A blemished priest [who performed a sacrificial rite] is subject to the death penalty,” the words of Rabbi.**
- H. **And sages say, “He is subject to the penalty for transgressing a negative commandment.”**
- I. **He who deliberately carried out an act of sacrilege**
- J. **Rabbi says, “He is subject to the death penalty.”**
- K. **And sages say, “He is subject to the penalty for transgressing a negative commandment,” [T. Zeb. 12:17A-I].**
- L. *He who eats untithed food: Whence in Scripture do we find proof [of the fact that such a one is subject to the death penalty]?*
- M. *It is in accord with what Samuel said in the name of R. Eleazar, “How do we know of one who eats untithed food that he is subject to the death penalty?”*
- N. *“It is in accord with the following verse of Scripture: ‘And they shall not profane the holy things of the children of Israel, which they shall offer to the Lord’ (Lev. 22:15).*
- O. *“Scripture speaks of what they are going to offer up to the Lord [heave-offering or priestly rations] [and this is in the future, hence, what is going*

to be designated from the produce, and the produce at this point therefore is liable to tithing and not yet tithed].

- P. “And we establish an analogy between two laws, in the framing of both of which there is reference to ‘profanation.’ [Reference is to (Lev. 22:9: ‘They shall therefore keep my ordinance, lest they bear sin for it and die therefore, if they profane it,’ alluding to the eating of priestly rations by a priest who is unclean (Freedman, p. 551, n. 6)].
- Q. “Just as, in that other setting, the penalty is death, so here it is death.”
- R. But might we not derive the penalty from the appearance of a reference to “profanation” both here and with regard to what is leftover from sacrificial meat beyond the point at which one is supposed to eat that meat?
- S. [Such a proof would be as follows:] Just as in that case, [as specified at Lev. 19:6-8] the penalty is extirpation, so here too it should be extirpation.
- T. *[We may reject that possibility on the basis of this argument:] It is more reasonable to derive the law from the matter of the penalty for violating the sanctity of the priestly rations, for the two matters have in common the following points: both are raised up, both are subject to the same rule outside of the Holy Land, both are remitted, both are given in the plural, both are produce of the land, both are subject to the same rule as regards improper priestly intention regarding their disposition, and both are subject to the same rule in regards what is left over [and not to be eaten after a certain point]. [That is, in neither case do the rules apply outside of the Holy Land; the prohibitions in both cases can be annulled, while that concerning what is left over of the offering cannot be annulled; the laws governing priestly intention and the disposition of what is left over do not apply either to what is untithed or to priestly rations].*
- U. *But to the contrary, [we may argue in a different way]: One should derive the governing analogy from the case of leftover sacrificial meat, for they share in the traits of being unfit as food and not being subject to remission through the taking of a cultic bath. [In respect to both untithed produce and leftover sacrificial meat, one cannot eat the substance; a priest who is clean, by contrast, may eat priestly rations. The prohibition of untithed produce and leftover sacrificial meat is not affected by a cultic bath.]*
- V. *The common traits [shared by untithed produce and priestly rations] are more numerous [and therefore the proper analogy for the one is to be drawn from the other].*
- W. *Rabina said, “The use of the plural with reference to ‘profanation’ [linking untithed produce and priestly rations] presents a preferable [basis for analogy].”*
- X. An unclean priest who ate clean heave-offering: *Whence in Scripture do we find proof [of the fact that such a one is subject to the death penalty]?*
- Y. *It is in line with what Samuel said, “How do we know on the basis of Scripture that an unclean priest who ate clean heave-offering is subject to the death penalty at the hands of heaven?”*

- Z. *“Since it is written, ‘Therefore they shall keep my ordinance, lest they bear sin for it and die on that account if they profane it’ (Lev. 22: 9).”*
- AA. That statement speaks of what is clean, but not of what is unclean.
- BB. For Samuel said R. Eleazar said, “How do we know that an unclean priest who ate unclean priestly rations is not subject to the death penalty?”
- CC. “As it is said, ‘And die on that account, if they profane it’ (Lev. 22: 9). **[83B]**. That excludes [unclean priestly ration], that is already profaned [and cannot be made more profane].”
- DD. A non-priest who ate heave-offering:
- EE. Rab said, “A non-priest who ate heave-offering is flogged.”
- FF. *R. Kahana and R. Assi said to Rab, “But should not the master rule that he is subject to the death penalty.*
- GG. *“For it is written, ‘There shall no stranger eat of the holy thing [and die on that account]’ (Lev. 22:10)?”*
- HH. *“‘I the Lord sanctify them’ interrupts the matter. [Freedman, p. 552, n. 5: Consequently the penalty of death stated in Lev. 22:9 does not apply to the prohibition at Lev. 22:10.]”*
- II. *They raised an objection: “**And these are the ones who are subject to the death penalty...A non-priest who ate heave-offering [T. Zeb. 12:17B]!**”*
- JJ. *Is teaching on Tannaite authority what you raise in contradiction to Rab?! Rab himself enjoys Tannaite status and differs [from the view expressed by the teaching on the same status, as he has every right to do].*
- KK. A non-priest who served at the altar: As it is written, “And the stranger who comes nigh shall be put to death” (Num. 18: 7).
- LL. An unclean person who served at the altar:
- MM. *The answer derives from the inquiry addressed by R. Hiyya bar Abin to R. Joseph, “How on the basis of Scripture do we know that an unclean priest who served at the altar is subject to the death penalty?”*
- NN. “Since it is written, ‘Speak to Aaron and to his sons, that they separate themselves from the holy things of the children of Israel and that they not profane my holy name’ (Lev. 22: 2). [Freedman, p. 553, n. 3: The reference is to abstention from sacrificial service during their uncleanness.]
- OO. “We then establish an analogy on the basis of the use of the word ‘profanation’ both here and with regard to heave-offering.
- PP. “Just as in the case of heave-offering, violation of the law produces the death penalty, so here too violation of the law produces the death penalty.”
- QQ. But why not derive the meaning of the word ‘profanation’ from its use with reference to leftover sacrificial meat [not eaten in the specified span of time]. Then the result would be that, just as in that case, the penalty is extirpation, so too here the penalty is extirpation.
- RR. *It is more reasonable to derive the meaning of the word from its use with reference to heave-offering, for in common in both matters are the*

considerations of the bodily unfitness [of the person involved], uncleanness, use of the immersion-pool, and use of the plural.

- SS. *Quite to the contrary, it would be better to derive the sense of the word from its use with respect to leftover sacrificial meat. For to both matters apply the considerations of sanctity, conduct of the rite within the Temple court, the matter of the disqualifying affect of a priest's improper intention, and the issue of the rules governing leftover sacrificial meat themselves.*
- TT. *The use of the plural with reference to "profanation" presents a preferable basis for analogy.*
- UU. One in the status of a Tebul Yom [who had immersed that day but who had to wait for sunset to complete the rite of purification] who served at the altar:
- VV. *How on the basis of Scripture do we know that fact?*
- WW. *It accords with what has been taught on Tannaite authority:*
- XX. R. Simai says, "Whence in Scripture do we find an indication that if a priest awaiting sunset for the completion of his rite of purification performed an act of service, he has profaned [the cult]?"
- YY. "Scripture says, 'They shall be holy to their God and not profane the name of their God' (Lev. 21: 6).
- ZZ. "If [because we have already proved the matter on another basis] that verse cannot refer to an unclean priest who served at the altar, for we have derived the fact from the reference to 'that they separate themselves' (Lev. 22: 2), apply it to the matter of a priest's serving at the altar on the day on which he has immersed but prior to sunset.
- AAA. "And we further derive the sense of 'profane' here from the sense of 'profane' with reference to heave-offering.
- BBB. "Just as in that matter, the death penalty is invoked, so here too the death penalty is invoked."
- CCC. One lacking priestly vestments:
- DDD. *How on the basis of Scripture do we know that fact?*
- EEE. *Said R. Abbahu said R. Yohanan (and some attribute it to the name of R. Eleazar b. R. Simeon), "'And you shall put coats on them and you shall gird them with girdles...[and the priest's office shall be theirs...]' (Exo. 29: 9).*
- FFF. "When their garments are upon them, their status as priests applies to them. When their garments are not on them, their status as priests does not apply to them, and they are deemed non-priests, and a master has said, 'A non-priest who served at the altar is subject to the death penalty.'"
- GGG. One whose rites of atonement were not yet complete:
- HHH. *How on the basis of Scripture do we know [that such a one is subject to the death penalty]?*
- III. Said R. Huna, "It is because Scripture has said, 'And the priest shall make an atonement for her and she shall be clean' (Lev. 12: 8).
- JJJ. "'And she shall be clean' — indicates that before she had been unclean.

- KKK. “And a master has stated, ‘An unclean person who served at the altar is subject to the death penalty.’”
- LLL. And one with unwashed hands and feet:
- MMM. *How on the basis of Scripture do we know that fact?*
- NNN. Scripture states, “And when they go into the tabernacle of the congregation, they shall wash with water, so that they do not die” (Exo. 30:20).
- OOO. And those who were drunk:
- PPP. For it is written, “Do not drink wine or strong drink...lest you die” (Lev. 10: 9).
- QQQ. And those with unkempt hair:
- RRR. For it is written, “Neither shall they shave their heads nor suffer their locks to remain unshorn” (Eze. 44:20).
- SSS. And thereafter: “Neither shall they drink wine” (Eze. 44:21).
- TTT. The matter of unkempt hair is thus made comparable to the matter of wine-drinking.
- UUU. Just as ministering while drunk is penalized by death, so ministering with unkempt hair is subject to the death penalty.
- VVV. But an uncircumcised priest, a priest in mourning, and one who was sitting down while at the altar — lo, these are subject to warning [but not to the death penalty]:
- WWW. *How on the basis of Scripture do we know that that is the case for the uncircumcised priest?*
- XXX. Said R. Hisda, “This matter we did not derive from the Torah of Moses, our master, until Ezekiel, son of Buzi, came and taught it to us:
- YYY. “‘No stranger, uncircumcised in heart [84A] or uncircumcised in flesh, shall enter my sanctuary’ (Eze. 44:20).”
- ZZZ. *How do we know that this is the case for the priest in mourning [who has not yet buried his deceased]?*
- AAAA. As it is written, “Neither shall [the high priest in mourning] go out of the sanctuary, yet shall he not profane the sanctuary of his God” (Lev. 21:12).
- BBBB. Lo, another priest [than the high priest] who did not go forth has profaned the rite [and therefore he is required to deal with his deceased].
- CCCC. Said R. Ada to Raba, “And let us derive the sense of the word ‘profane’ from the meaning of the word ‘profane’ as used with reference to heave-offering?
- DDDD. “Just as in that case, the penalty is death, so here too the penalty should be death.”
- EEEE. *[He replied,] “But is the prohibition of the priest in mourning stated explicitly in the cited verse of Scripture? It derives, rather, by inference [from the explicit reference to the high priest]. And in respect to any matter which derives only by inference, one does not construct a further argument by analogy.”*

FFFF. *How on the basis of Scripture do we know that one who performs a rite while sitting down [is not subject to the death penalty]?*

GGGG. Said Raba said R. Nahman, “Scripture has said, ‘For the Lord your God has chosen him out of all your tribes, to stand to minister’ (Deu. 18: 5).

HHHH. “I have chosen him for standing, and not for sitting.”

III. “A blemished priest who performed a sacrificial rite is subject to the death penalty,” the words of Rabbi. And sages say, “He is subject to the penalty for transgressing a negative commandment” [T. Zeb. 12:17G-H].

JJJJ. *What is the Scriptural basis for the position of Rabbi?*

KKKK. Since it is written, “Only he shall not go in to the veil nor come near the altar, because he has a blemish, that he not profane my sanctuaries? (Lev. 21:23).

LLLL. We then derive the sense of the word “profane” as it is used here from the meaning of the word when used with reference to heave-offering. Just as, in that context, the penalty is death, so here too, the penalty is death.

MMMM. But why not derive the sense of the work “profanation” from its use with respect to left-over sacrificial meat?

NNNN. Just as in that case, the penalty is extirpation, so here too the penalty should be extirpation..

OOOO. *It is more reasonable to derive the meaning of the work from its use with reference to heave-offering, for in that case, as in the present one, we have the shared trait that what is invalid is the body of the priest himself, and so we derive the rule from a parallel case of bodily invalidity.*

PPPP. To the contrary, he should derive the rule from the law governing left-over sacrificial meat, for in both cases, we have the considerations of sanctification, conduct of the rite within the Temple court, the priest’s capacity to invalidate the rite through an improper intention, and the rule of not eating left-over sacrificial meat.

QQQQ. Rather, one should derive the analogy [hence the penalty] from the case of an unclean priest who served at the altar, in which case we derive the rule governing the invalidity of the priest’s body from another case in which the priest’s body is invalid, as well as from the fact that there are the shared considerations, in both matters, of holiness, conduct of the rite inside the Temple, the matter of the priest’s invalidating the offering through improper intention, and, finally, the consideration of the rules governing left-over sacrificial meat.

RRRR. *And rabbis [who ignore these proofs and regard it as merely a negative prohibition]?*

SSSS. Scripture says, “...and die on that account” (Lev. 22: 9) [with respect to an unclean priest who ate heave-offering], meaning for that particular sin, but not for the sin of serving at the altar when one is blemished.

TTTT. He who deliberately carried out an act of sacrilege — Rabbi says, “He is subject to the death penalty.” And sages say, “He is subject to the

penalty for transgressing a negative commandment” [T. Zeb. 12:17I-K]:

UUUU. *What is the scriptural basis for the position of Rabbi?*

VVVV. Said R. Abbahu. “One derives the meaning of the law by analogy based on the use of the word ‘sin’ both here and in the matter of heave-offering. [Here: ‘if a soul commits a trespass and sin through ignorance in the holy things of the Lord’ (Lev. 5:15), and, with respect to heave-offering, ‘Lest they bear sin for it and die on that account’ (Lev. 22: 9).]

WWWW. “Just as in that case, the penalty is death, so here the penalty is death.”

XXXX. And rabbis say, “Scripture has said, ‘...on that account...’ (Lev. 22: 9) — and not on account of an act of sacrilege.”

IV.1 A. A non-priest who served in the Temple:

B. *It has been taught on Tannaite authority:*

C. R. Ishmael says, “Here it is said, ‘And the non-priest who comes near shall be put to death’ (Num. 18: 7), and elsewhere, ‘Whosoever comes anything near to the tabernacle of the Lord shall die’ (Num. 17:28).

D. “Just as in the latter case [the rebellion of Korah and the subsequent plague], it is death at the hands of heaven, so here it is death at the hands of heaven” [= M. 9:6H].

E. R. Aqiba says, “Here it is said, ‘And the non-priest who comes near shall be put to death’ (Num. 18: 7), and elsewhere, ‘And that prophet or that dreamer of dreams shall be put to death’ (Deu. 18: 6).

F. “Just as there it is by stoning, so here too it is by stoning.”

G. R. Yohanan b. Nuri says, “Just as in that case it is by strangling, so here it is by strangling.”

H. *What is at issue between R. Ishmael and R. Aqiba?*

I. *R. Aqiba takes the view that* we derive the sense of the work, “shall be put to death” from the meaning of the word “shall be put to death” as it occurs elsewhere, and not from the meaning of the word “shall die.”

J. *And R. Ishmael maintains that* we derive the rule governing an ordinary person from the rule governing another ordinary person, and we do not derive the rule governing an ordinary person from the rule governing a prophet.

K. And R. Aqiba?

L. If someone has enticed [a town to commit idolatry], you have no greater evidence that one is an ordinary person than that [for such a one cannot be regarded as a prophet].

M. *What is at issue between R. Aqiba and R. Yohanan b. Nuri?*

N. *At issue is the dispute involving R. Simeon and rabbis.*

O. *For it has been taught on Tannaite authority:*

P. A prophet who enticed [a town to commit idolatry] is subject to the death penalty inflicted by stoning.

Q. R. Simeon says, “It is through strangulation.”

R. *But we have learned in the Mishnah: R. Aqiba says, “He is put to death by strangling” [M. 9:5G]!*

- S. *There are two Tannaite authorities on the view of R. Aqiba. The Mishnah before us is R. Simeon's view of R. Aqiba's rule, and the other Tannaite tradition [holding that a non-priest who served at the altar is put to death through stoning] and deriving that view from the analogy [to the false prophet] represents rabbis' view of R. Aqiba's opinion.*

Our attention is drawn, first of all, to the splendid and satisfying exegesis of the Tosefta-passage at unit III.1. This sort of sustained composition shows the powers of Bavli's authors at their best. The claim that their fundamental approach to their work lay in the exegesis of authoritative materials at hand finds full validation in the elegant unit before us. When we revert to the Mishnah-passage, we have no reason to compare unfavorably the exegetical efforts devoted to the principal document.