

# X

## THE STRUCTURE AND SYSTEM OF BABYLONIAN TALMUD BEKHOROT

Whether or not the Talmud of Babylonia is carefully organized in large-scale, recurrent structures and guided by a program that we may call systematic forms the principal question addressed by an academic commentary. The preceding chapters therefore have pointed toward the presentation set forth here. By “structure” I mean, a clearly-articulated pattern that governs the location of fully-spelled out statements. By “system,” I mean, a well-crafted and coherent set of ideas that explain the social order of the community addressed by the writers of a document, a social philosophy, a theory of the way of life, world view, and character of the social entity formed by a given social group. I see a collective, anonymous, and political document, such as the one before us, as a statement to, and about, the way in which people should organize their lives and govern their actions. At issue then in any document such as the remarkable one before us is simple: does this piece of writing present information or a program, facts to whom it may concern, or a philosophically and aesthetically cogent statement about how things should be?

The connection between structure and system is plain to see. From the way in which people consistently frame their thoughts, we move to the world that, in saying things one way rather than in some other, they wish to imagine the world in which they wish to live, to which they address these thoughts. For if the document exhibits structure and sets forth a system, then it is accessible to questions of rationality. We may ask about the statement that its framers or compilers wished to make by putting the document together as they did. But if we discern no structure and perceive no systematic inquiry or governing points of analysis, then all we find here is inert and miscellaneous information, facts but no propositions, arguments, viewpoints.

Now the Talmud commonly finds itself represented as lacking organization and exhibiting a certain episodic and notional character. That view moreover characterizes the reading and representation of the document by learned and experienced scholars, who have devoted their entire lives to Talmud study and exegesis. It must follow that upon the advocate of the contrary view — the one implicit in the representation of the document for academic analysis — rests the burden of proof. I set forth the allegation that the Talmud exhibits a structure and follows a system and therefore exhibits a commonly-intelligible rationality. The claim to write an academic commentary explicitly states that proposition. For the tractate before us, I have therefore to adduce evidence and argument.

I maintain that through the normal procedures of reasoned analysis we may discern in the tractate a well-crafted structure. I hold that the structure made manifest, we may further identify the purpose and perspective, the governing system of thought and argument, of those who collected and arranged the tractate's composites and put them together in the way in which we now have them. By "structure" I mean, how is a document organized? and by "system," what do the compilers of the document propose to accomplish in producing this complete, organized piece of writing? The answers to both questions derive from a simple outline of the tractate as a whole, underscoring the types of compositions and composites of which it is comprised. Such an outline tells us what is principal and what subordinate, and how each unit — composition formed into composites, composites formed into a complete statement — holds together and also fits with other units, fore and aft. The purpose of the outline then is to identify the character of each component of the whole, and to specify its purpose or statement. The former information permits us to describe the document's structure, the latter, its system.

While the idea of simply outlining a Talmud-tractate beginning to end may seem obvious, I have never made such an outline before, nor has anyone else.\* Yet, as we shall now see, the character of the outline dictates all further analytical initiatives. Specifically, when we follow the layout of the whole, we readily see the principles of organization that govern. These same guidelines on organizing discourse point also to the character of what is organized: complete units of thought, with a beginning, middle, and end, often made up of smaller, equally complete units of thought. The former we know as composites, the latter as compositions.

\*I have provided complete outlines for the Mishnah and for the Tosefta in relationship to the Mishnah, and, not always in outline form, for the Midrash-compilations of late antiquity as well.

Identifying and classifying the components of the tractate — the composites, the compositions of which they are made up — we see clearly how the document coheres: the plan and program worked out from beginning to end. When we define that plan and program, we identify the facts of a pattern that permit us to say in a specific and concrete way precisely what the compilers of the tractate intended to accomplish. The structure realizes the system, the program of analysis and thought that takes the form of the presentation we have before us. From what people do, meaning, the way in which they formulate their ideas and organized them into cogent statements, we discern what they proposed to do, meaning, the intellectual goals that they set for themselves.

These goals — the received document they wished to examine, the questions that they brought to that document — realized in the layout and construction of their writing, dictate the points of uniformity and persistence that throughout come to the surface. How people lay out their ideas guides us into what they wished to find out and set forth in their writing, and that constitutes the system that defined the work they set out to accomplish. We move from how people speak to the system that the mode of discourse means to express, in the theory that modes of speech or writing convey modes of thought and inquiry.

We move from the act of thought and its written result backward to the theory of thinking, which is, by definition, an act of social consequence. We therefore turn to the matter of intention that provokes reflection and produces a system of inquiry. That statement does not mean to imply I begin with the premise of order, which sustains the thesis of a prior

system that defines the order. To the contrary, the possibility of forming a coherent outline out of the data we have examined defines the first test of whether or not the document exhibits a structure and realizes a system. So everything depends upon the possibility of outlining the writing, from which all else flows. If we can see the order and demonstrate that the allegation of order rests on ample evidence, then we may proceed to describe the structure that gives expression to the order, and the system that the structure sustains.

The present work undertakes the exegesis of exegesis, for the Talmud of Babylonia, like its counterpart in the Land of Israel, is laid out as a commentary to the Mishnah. That obvious fact defined the character of my academic commentary, since we have already faced the reality that our Bavli-tractate is something other than a commentary, though it surely encompasses one. The problems that captured my attention derived from the deeper question of how people make connections and draw conclusions. To ask about how people make connections means that we identify a problem — otherwise we should not have to ask — and what precipitated the problem here has been how a composition or a composite fits into its context, when the context is defined by the tasks of Mishnah-commentary, and the composition or composite clearly does not comment on the Mishnah-passage that is subjected to comment.

The experience of analyzing the document with the question of cogency and coherence in mind therefore yields a simple recognition. Viewed whole, the tractate contains no gibberish but only completed units of thought, sentences formed into intelligible thought and self-contained in that we require no further information to understand those sentences, beginning to end. The tractate organizes these statements as commentary to the Mishnah. But large tracts of the writing do not comment on the Mishnah in the way in which other, still larger tracts do. Then how the former fit together with the latter frames the single most urgent question of structure and system that I can identify.

Since we have already examined enormous composites that find their cogency in an other than exegetical program, alongside composites that hold together by appeal to a common, prior, coherent statement — the Mishnah-sentences at hand — what justifies my insistence that an outline of the document, resting on the premise that we deal with a Mishnah-commentary, govern all further description? To begin with, the very possibility of outlining Babylonian Talmud tractate Sotah derives from the simple fact that the framers have given to their document the form of a commentary to the Mishnah. It is in the structure of the Mishnah-tractate that they locate everything together that they wished to compile. We know that is the fact because the Mishnah-tractate defines the order of topics and the sequence of problems.

Relationships to the Mishnah are readily discerned; a paragraph stands at the head of a unit of thought; even without the full citation of the paragraph, we should find our way back to the Mishnah because at the head of numerous compositions, laid out in sequence one to the next, clauses of the Mishnah-paragraph are cited in so many words or alluded to in an unmistakable way. So without printing the entire Mishnah-paragraph at the head, we should know that the received code formed the fundamental structure because so many compositions cite and gloss sentences of the Mishnah-paragraph and are set forth in sequence dictated by the order of sentences of said Mishnah-paragraph. Internal evidence alone suffices, then, to demonstrate that the structure of the tractate rests upon the Mishnah-tractate cited and discussed here. Not only so, but the sentences of the Mishnah-

paragraphs of our tractate are discussed in no other place in the entire Talmud of Babylonia in the sequence and systematic exegetical framework in which they are set forth here; elsewhere we may find bits or pieces, but only here, the entirety of the tractate.

That statement requires one qualification, and that further leads us to the analytical task of our outline. While the entire Mishnah-tractate of Sotah is cited in the Talmud, the framers of the Talmud by no means find themselves required to say something about every word, every sentence, every paragraph. On the contrary, they discuss only what they choose to discuss, and glide without comment by large stretches of the tractate. A process of selectivity, which requires description and analysis, has told the compilers of the Talmud's composites and the authors of its compositions\* what demands attention, and what does not. Our outline has therefore to signal not only what passage of the Mishnah-tractate is discussed, but also what is not discussed, and we require a general theory to explain the principles of selection ("making connections, drawing conclusions" meaning, to begin with, making selections). For that purpose, in the outline, I reproduce the entirety of a Mishnah-paragraph that stands at the head of a Talmudic composite, and I underscore those sentences that are addressed, so highlighting also those that are not.

\*This statement requires refinement. I do not know that all available compositions have been reproduced, and that the work of authors of compositions of Mishnah-exegesis intended for a talmud is fully exposed in the document as we have it. That is not only something we cannot demonstrate — we do not have compositions that were not used, only the ones that were — but something that we must regard as unlikely on the face of matters. All we may say is positive: the character of the compositions that address Mishnah-exegesis tells us about the concerns of the writers of those compositions, but we cannot claim to outline all of their concerns, on the one side, or to explain why they chose not to work on other Mishnah-sentences besides the ones treated here. But as to the program of the compositors, that is another matter: from the choices that they made (out of a corpus we cannot begin to imagine or invent for ourselves) we may describe with great accuracy the kinds of materials they wished to include and the shape and structure they set forth out of those materials. We know what they did, and that permits us to investigate why they did what they did. What we cannot know is what they did not do, or why they chose not to do what they did not do. People familiar with the character of speculation and criticism in Talmudic studies will understand why I have to spell out these rather commonplace observations. I lay out an argument based on evidence, not on the silences of evidence, or on the absence of evidence — that alone.

It follows that the same evidence that justifies identifying the Mishnah-tractate as the structure (therefore also the foundation of the system) of the Talmud-tractate before us also presents puzzles for considerable reflection. The exegesis of Mishnah-exegesis is only one of these. Another concerns the purpose of introducing into the document enormous compositions and composites that clearly hold together around a shared topic or proposition, e.g., my appendix on one theme or another, my elaborate footnote providing information that is not required but merely useful, and the like. My earlier characterization of composites as appendices and footnotes signalled the fact that the framers of the document chose a not-entirely satisfactory way of setting out the materials they wished to include here, for large components of the tractate do not contribute to Mishnah-exegesis in any way at all. If these intrusions of other-than-exegetical compositions were proportionately modest, or of topical composites negligible in size, we might dismiss them as appendages, not structural components that bear much of the weight of the edifice as a whole. Indeed, the language that I chose for identifying and defining these composites —

footnotes, appendices, and the like — bore the implication that what is not Mishnah-commentary also is extrinsic to the Talmud's structure and system.

But that language served only for the occasion. In fact, the outline before us will show that the compositions are large and ambitious, the composites formidable and defining. Any description of the tractate's structure that dismisses as mere accretions or intrusions so large a proportion of the whole misleads. Any notion that "footnotes" and "appendices" impede exposition and disrupt thought, contribute extraneous information or form tacked-on appendages — any such notion begs the question: then why fill up so much space with such purposeless information? The right way is to ask whether the document's topical composites play a role in the re-presentation of the Mishnah-tractate by the compilers of the Talmud. We have therefore to test two hypotheses:

**1.** the topical composites ("appendices," "footnotes") do belong and serve the compilers' purpose,

or

**2.** the topical composites do not participate in the re-presentation of the Mishnah-tractate by the Talmud and do not belong because they add nothing and change nothing.

The two hypotheses may be tested against the evidence framed in response to a single question: is this topical composite necessary? The answer to that question lies in our asking, what happens to the reading of the Mishnah-tractate in light of the topical composites that would not happen were we to read the same tractate without them? The outline that follows systematically raises that question, with results specified in due course. It suffices here to state the simple result of our reading of the tractate, start to finish: the question of structure, therefore also that of system, rests upon the position we identify for that massive component of the tractate that comprises not Mishnah-commentary but free-standing compositions and composites of compositions formed for a purpose other than Mishnah-commentary.

The principal rubrics are given in small caps. The outline takes as its principal rubrics two large-scale organizing principles.

The first is the divisions of the Mishnah-tractate to which the Talmud-tractate serves as a commentary. That simple fact validates the claim that the tractate exhibits a fully-articulated structure. But the outline must also underscore that the Mishnah-tractate provides both more and less than the paramount outline of the Talmud-tractate. It is more because sentences in the Mishnah-tractate are not analyzed at all. These untreated Mishnah-sentences are given in bold face lower case caps, like the rest of the Mishnah, but then are specified by underlining and enclosure in square brackets.

Second, it is less because the structure of the tractate accommodates large composites that address topics not defined by the Mishnah-tractate. That brings us to the second of the two large-scale modes of holding together both sustained analytical exercises and also large sets of compositions formed into cogent composites. These are treated also as major units and are indicated by Roman numerals, alongside the Mishnah-paragraphs themselves; they are also signified in small caps. But the principal rubrics that do not focus on Mishnah-commentary but on free-standing topics or propositions or problems are not given in boldface type. Consequently, for the purposes of a coherent outline we have to

identify as autonomous entries in our outline those important composites that treat themes or topics not contributed by the Mishnah-tractate.

## **I. Mishnah-Tractate Bekhorot 1:1A-E**

**A. (1) HE WHO PURCHASES THE UNBORN OFFSPRING OF THE ASS OF A GENTILE, (2) AND HE WHO SELLS IT TO HIM (EVEN THOUGH ONE IS NOT PERMITTED TO DO SO), (3) AND HE WHO IS A PARTNER WITH HIM; (4) AND EITHER HE WHO RECEIVES ASSES FROM HIM UNDER CONTRACT TO REAR THEM AND SHARE IN THE PROFIT, (5) AND OR HE WHO DELIVERS ASSES TO HIM UNDER CONTRACT TO REAR THEM AND SHARE IN THE PROFIT — IT THE FOETUS, WHEN BORN IS EXEMPT FROM THE LAW OF THE FIRSTLING, SINCE IT IS SAID, “ALL THE FIRSTBORN IN ISRAEL” (NUM. 3:13) — BUT NOT THE FIRSTBORN PRODUCED AMONG OTHERS.**

**1. I:1:** Why was it necessary to specify all of these cases that are listed by the Mishnah? All were necessary. For if the Tannaite authority had listed only the matter of the purchaser of the embryo from a gentile, I might have supposed that that is because an Israelite purchaser in any event brings the offspring into a state of consecration, when it is born, but one who sells it to a gentile removes the embryo from a state of consecration, I might have supposed should be subjected to an extrajudicial sanction and so forbidden to do so. So we are informed that that is not the case. And so for the others.

**2. I:2:** Analysis of a Mishnah-rule, to which our Mishnah makes a tangential contribution: The question was raised: As to selling an embryo to a gentile, what is the rule? Is the operative consideration of R. Judah for permitted the sale of lame cattle to gentiles because the beast is maimed and so not going to be used for idolatry? The embryo also is in that classification. Or perhaps while the maiming of an animal is uncommon, an embryo is of course common and so is not comparable at all to the case of a maimed animal?

**3. I:3:** The foregoing analysis is now attached to our Mishnah-paragraph: and he who sells it to him (even though one is not permitted to do so): May we say that our Mishnah-paragraph's rule does not accord with the position of R. Judah?

**a. I:4:** Secondary development of the foregoing. The question was raised: if one sold a beast to a gentile as to its future offspring the animal is not sold, only the offspring, what is the rule? This question may be addressed to both R. Judah and rabbis of the analysis of I:2-3.

**b. I:5:** Continuing the foregoing: He who sells a large beast to a gentile — they impose upon him an extrajudicial penalty of up to ten times its value to buy the beast back.

**c. I:6:** As above. The same issue in a different formulation.

**I. I:7:** Gloss of a detail of I:4 at I:4N.

**II. I:8:** Further gloss of the same: in line with the view of Judah, how much of the beast must be shared in partnership with a gentile so that the beast may be exempt from the law of the firstborn?

III. I:9: Even if a gentile owned in the firstling something that would add up to only a minor blemish the law of the firstling does not apply.

4. I:10: Case on the participation of a gentile in the ownership of a firstling.

5. I:11: As above.

## II. Mishnah-Tractate Bekhorot 1:1F-H

**A. PRIESTS AND LEVITES ARE EXEMPT FROM THE LAW OF GIVING A LAMB IN REDEMPTION OF THE FIRSTBORN OF AN ASS, BY AN ARGUMENT *A FORTIORI*: IF THOSE OF ISRAELITES WERE EXEMPTED IN THE WILDERNESS BY REASON OF THE LEVITES, NUM. 3:45, HOW MUCH THE MORE SO SHOULD THEY EXEMPT THEIR OWN!**

1. I:1: This is the sense of the Mishnah-passage: As for priests and Levites, their animals are exempt a fortiori: if the beast (the sheep) of a Levite released the beast of an Israelite in the wilderness from the requirement of the redemption of the firstborn of an ass, it is a matter of reason that it should release their own firstborn of their asses; similarly, just as the Levites themselves exempted the firstborn of Israelites in the wilderness, so a fortiori they should exempt their own firstborn

2. I:2: How do we know that the exemptions of priests and Levites from the requirement to redeem firstborn applies for generations to come? Scripture states, “and the Levites shall be mine” (Num. 3:45) — “and they shall be” means that the Levites will retain their status for all time. And how do we know that the Levi exempted the Israelite’s asses’ firstborn in the wilderness with a sheep.

3. I:3: A single sheep of a Levite exempted any number of firstborn of asses for Israelites.

4. I:4: R. Yohanan said, “The firstborn of men and beasts in the wilderness were sanctified.” R. Simeon b. Laqish said, “The firstborn of men and beasts in the wilderness were not sanctified.”

5. I:5: General Quntroqos asked Rabban Yohanan b. Zakkai, “When the Levites were counted out, you find the total to be 22,300, but in the sum total you find only 22,000. What happened to the other three hundred?” He said to him, “Those three hundred were firstborn, and a firstborn cannot cancel the holiness of a firstborn.” It suffices for a firstborn to cancel out the sanctification that pertains to him himself.”

6. I:6: Said R. Hanina, “I asked R. Eliezer *in the great session*: what differentiates firstborn of asses from firstborn of horses and camels?” He said to me, ‘It is merely a scriptural decree.’”

## III. Mishnah-Tractate Bekhorot 1:2A-H

**A. A COW WHICH BORE AN OFFSPRING LIKE AN ASS, OR AN ASS WHICH BORE AN OFFSPRING LIKE A HORSE — IT THE OFFSPRING IS EXEMPT FROM THE LAW OF THE FIRSTLING, SINCE IT IS SAID, *THE FIRSTLING OF AN AS* (EXO. 13:13), *THE FIRSTLING***

**OF AN ASS (EXO. 34:20) — TWO TIMES, MEANING THAT THE RULE APPLIES ONLY WHEN THAT WHICH GIVES BIRTH IS AN AS AND THAT WHICH IS BORN IS AN ASS.**

1. I:1: An intersecting rule and the scriptural foundation for the principle behind both rules: “Scripture has said, ‘But the firstling of an ox’ (Num. 18:17) — both it and the firstling must be an ox; ‘firstling of a sheep’ — both it and its firstling must be a sheep; ‘firstling of a goat’ — both it and its firstling must be a goat.

2. I:2: If a cow gave birth to a species of an ass, which had some of the traits of the mother, what is the law?

**B. WHAT IS THE RULE AS TO EATING THEM? A CLEAN BEAST WHICH BORE AN OFFSPRING LIKE AN UNCLEAR BEAST — IT THE OFFSPRING IS PERMITTED AS TO EATING. AND AN UNCLEAR BEAST WHICH BORE AN OFFSPRING LIKE A CLEAN BEAST — IT THE OFFSPRING IS PROHIBITED AS TO EATING:**

1. II:1: What need was there to specify, For that which comes forth from the unclean is unclean, and that which comes forth from the clean is clean? It serves as a mnemonic, so that you should not revise the Mishnah’s version and so that you should not say, “follow the status of the offspring, and this is a perfectly clean animal and that is a perfectly unclean animal” Rather, follow the status of the mother.

2. II:2: And what is the scriptural source for this rule?

3. II:3: Tannaite complement: A sheep which gave birth to an offspring something like a goat, or a goat which gave birth to an offspring something like a sheep — the offspring is exempt from the law of the firstling. But if it bears some of the traits of the mother, it is liable. R. Simeon says, “That is the case only if its head and the greater part of its body bear the traits of the mother”

**C. FOR THAT WHICH COMES FORTH FROM THE UNCLEAR IS UNCLEAR, AND THAT WHICH COMES FORTH FROM THE CLEAN IS CLEAN.**

1. III:1: The question was raised before R. Sheshet, “As to the urine of an ass, what is the law?” Said to them R. Sheshet, “You have yourselves learned the rule of the Mishnah: that which comes forth from the unclean is unclean, and that which comes forth from the clean is clean. What the Mishnah states is not, ‘from what is unclean’ but rather, from the unclean. This too is from that which is unclean.

a. III:2: Gloss of an item tangentially introduced in the foregoing.

2. III:3: As regard to the gall-like concretions in a fallow-deer, rabbis considered stating that they are classified as eggs and therefore are forbidden like a limb from a living animal, having been communicated from the male organ to the womb

3. III:4: The skin that covers the face of an ass at birth may be eaten.

#### **IV. Mishnah-Tractate Bekhorot 1:2I-K**

**A. AN UNCLEAR FISH WHICH SWALLOWED A CLEAN FISH — IT THE CLEAN FISH IS PERMITTED AS TO EATING. A CLEAN FISH WHICH SWALLOWED AN UNCLEAR FISH — IT THE UNCLEAR FISH IS PROHIBITED AS TO EATING, FOR IT IS NOT ITS PRODUCT.**



1. I:1: The operative consideration that allows eating the clean fish is that we have seen that the unclean fish swallowed it. But if we had not seen it, we might say that the clean fish had been bred by an unclean fish. How do we know that fact?

2. I:2: Most fish breed their own species, so if we discover a different kind of fish inside it is as though the unclean fish had swallowed the clean one in our very presence.

3. I:3: Tannaite complement: An unclean fish casts forth young. A clean fish lays eggs.

#### **B. THE CLASSIFICATION OF FAUNA: SEXUAL TRAITS**

1. I:4: Any creature that has its testicles outside gives birth, and any creature that has its testicles inside casts forth eggs.

2. I:5: All animals that copulate and are pregnant in accord with a common rule e.g., dogpatch-style, pregnancy for five months, such as sheep and goats give birth from one another and can nurse one another's offspring.

3. I:6: A chicken lays eggs after twenty-one days, and corresponding to the hen is the almond tree among trees from the time it blossoms to when the fruits ripen, twenty-one days pass.

4. I:7: Said Caesar to R. Joshua b. Hananiah, "How long is the pregnancy and parturition of a snake?" He said to him, "It takes seven years." "But did not the sages of the Athenian academy mate a male serpent with a female and the pregnancy and parturition took three years?"

### **V. Mishnah-Tractate Bekhorot 1:3-4**

#### **A. AN ASS WHICH HAD NOT GIVEN BIRTH AND WHICH BORE TWO MALES AND IT IS NOT KNOWN WHICH OF THEM CAME FORTH FIRST — THE FARMER GIVES A SINGLE LAMB TO THE PRIEST.**

1. I:1: Who is the Tannaite authority behind this formulation of the rule, An ass which had not given birth and which bore two males and it is not known which of them came forth first — the farmer gives a single lamb to the priest? Said R. Jeremiah, "It does not accord with the principle of R. Yosé the Galilean, who has said, "It is possible to determine exactly that both heads came forth simultaneously, in which case, both would be deemed firstborn."

2. I:2: And as to rabbis represented by the rule, An ass which had not given birth and which bore two males and it is not known which of them came forth first — the farmer gives a single lamb to the priest, may one say that rabbis take the view that even if a portion of the womb has touched the firstling, it consecrates the beast? For if it consecrates only when the whole womb has touched the firstling, while it is impossible to ascertain that both heads came forth at once, still, there is an interposition.

#### **B. IF IT BORE MALE AND FEMALE AND IT IS NOT KNOWN WHICH OF THEM CAME FORTH FIRST — ONE SEPARATES A SINGLE LAMB BUT KEEPS IT FOR HIMSELF.**

1. II:1: Since he keeps the lamb for himself, why does he have to bother to designate it in any event? It is so as to remove from the beast the prohibitions that attach to the firstborn of an ass not to work with it, not to shear it. This represents the view of Judah, It is forbidden to derive benefit from the firstborn of an ass. What is the operative consideration behind the position of Judah? Said Ulla, “Do you have something that has to be redeemed and nonetheless is permitted for benefit even before it has been redeemed?”

a. II:2: Continuation of the secondary component of II:1’s analysis.

I. II:3: Gloss of a detail of the foregoing.

3. II:4: R. Yosé b. R. Judah says, “Redemption cannot take place with something worth less than a shekel.”

a. II:5: The decided law is in accord with the opinion of sages in the foregoing. And how much must be the worth of the lamb exchanged for the ass’s firstborn?

4. II:6: Illustrative case on how much is paid to for the redemption. R. Judah Nesiah had the firstborn of an ass. He sent it to R. Tarfon and said to him, “How much do I have to give to a priest? He said to him, “Lo, sages have said: a liberal person gives a sela; a stingy person, a shekel; an average person, a *rigia*.”

5. II:7: One who has the firstling of an ass and has no sheep with which to redeem it may redeem it with something of equivalent value. Does this accord with Judah or Simeon in the foregoing composite?

6. II:8: He who redeems the firstling of an ass belonging to another party — his act of redemption is valid. This forms the basis for a theoretical question that continues the program of II:1 ff., in terms of Judah’s position overall.

**C. TWO ASSES WHICH HAD NOT GIVEN BIRTH AND WHICH BORE TWO MALES — ONE GIVES TWO LAMBS TO THE PRIEST. IF THEY BORE (1) A MALE AND A FEMALE OR (2) TWO MALES AND A FEMALE, ONE GIVES A SINGLE LAMB TO THE PRIEST. IF THEY BORE (1) TWO FEMALES AND ONE MALE, (2) OR TWO MALES AND TWO FEMALES, THERE IS NOTHING WHATSOEVER HERE FOR THE PRIEST.**

1. III:1: Tannaite complement: Under what circumstances is it the case that it enters the fold to be tithed? You cannot maintain that the firstling has come into the possession of a priest and then went back to an Israelite, e.g., as a gift, for lo, we have learned in the Mishnah: a beast that is purchased or given to him as a gift is exempt from the law of tithing animals (M. [Bekh. 9:3A](#)). Rather, we speak of an Israelite who possessed in his household ten firstlings of asses that were subject to doubt, in which case he sets aside as their counterparts ten lambs, tithes them, but then keeps them.

a. III:2: Secondary development of the foregoing: An Israelite who possessed in his household ten firstlings of asses that were in no way subject to doubt, which he received as an inheritance from his maternal grandfather, who was a priest, who himself had received the animals from his maternal grandfather who was an Israelite and therefore was required to redeem the animals, which were born in the domain of an Israelite sets aside as their counterparts ten lambs, tithes them, but then keeps them.

**b.** III:3: Continuation of foregoing: He who purchases from a gentile produce from which the priestly and levitical dues had not yet been set aside, which had been piled up and smoothed and so is liable for tithing, tithes the produce but keeps ownership of the part of the crop designated for the required tithes Miller & Simon: the priest's share of the crop he sells to a priest.

**D. TWO ASSES, ONE OF WHICH HAD GIVEN BIRTH AND ONE WHICH HAD NOT GIVEN BIRTH, AND WHICH BORE TWO MALES — ONE GIVES A SINGLE LAMB TO THE PRIEST. IF THEY PRODUCED A MALE AND A FEMALE, THE FARMER SEPARATES A SINGLE LAMB FOR HIMSELF. FOR IT IS SAID, “AND EVERY FIRSTLING OF AN ASS YOU SHALL REDEEM WITH A LAMB” (EXO. 34: 20) — (1) A LAMB DERIVING FROM SHEEP OR FROM GOATS, (2) MALE OR FEMALE, (3) LARGE OR SMALL, (4) BLEMISHED OR UNBLEMISHED. (1) AND ONE REDEEMS WITH A SINGLE LAMB MANY FIRSTLINGS. (2) AND IT ENTERS THE FOLD TO BE TITHED. (3) AND IF IT DIES, THEY DERIVE BENEFIT FROM IT.**

1. III:1: How shall we say that it died? If we say that it died when in the domain of a priest, and he is permitted to derive benefit from the beast, that is self-evident, since the beast belongs to him anyhow! Rather, that it died in the domain of the owner and the priest derives benefit from it? This too is obvious!

## **VI. Mishnah-Tractate Bekhorot 1:5**

**A. THEY DO NOT REDEEM A FIRSTLING OF AN ASS WITH (1) A CALF, OR (2) WITH A WILD BEAST, OR (3) WITH AN ANIMAL WHICH HAS BEEN PROPERLY SLAUGHTERED, OR (4) WITH AN ANIMAL WHICH IS *TEREFAH*, OR (5) WITH A HYBRID OF A HE-GOAT AND A EWE, OR (6) WITH A *KOY* THE OFFSPRING OF A HE-GOAT AND A HIND. R. ELIEZER PERMITS IN THE CASE OF A HYBRID, BECAUSE IT IS DEEMED A LAMB, AND PROHIBITS IN THE CASE OF THE *KOY*, BECAUSE IT IS A MATTER OF DOUBT WHETHER IT IS DEEMED A LAMB.**

1. I:1: Who is the authority behind the anonymous rule of the Mishnah? It is Ben Bag Bag, who holds: Just as in excluded are all those who have been named in the Mishnah, none of which may be used for the Passover offering, so lamb here is meant to excluded all those classes of beasts listed in the Mishnah, which may not serve in redemption of the firstling of an ass.

2. I:2: Continuing the foregoing, the question was raised: how about redeem the firstborn of an ass with an animal that has been taken live from the slaughtered mother's womb?

3. I:3: what is the law as to redeeming the firstling of an ass with an animal that appears to be a hybrid the father a ram, the mother a ewe, and the offspring looks like some other species? The question cannot be raised within the premises of Eliezer, for if he actually permits redemption with a hybrid beast, will the beast that merely appears to be a hybrid cause him any problems? The question may be raised only within the premises of rabbis. We may say that it is in particular with hybrids that we may not redeem the firstling of an ass, but with a beast that merely looks like a hybrid, we do so. Or perhaps there is no difference anyhow?

4. I:4: what is the law as to redeeming the firstling of an ass with beasts that are invalid for serving as Holy Things and that have been redeemed? Within the premises of R. Simeon it is not a question, for, since he has said, “Such beasts are available for one’s own benefit,” he deems them to be unconsecrated. The question arises solely from the position of R. Judah, who has said, “Such beasts are not available for one’s own benefit but have to be redeemed.”

5. I:5: what is the law as to redeeming the firstling of an ass with an animal purchased with produce of the Seventh Year? With respect to an ass that is beyond doubt a firstborn, there is no basis for raising the question, since the All-Merciful has specified that the produce of the Seventh Year is to be used “for food” (Lev. 25: 6), meaning, for food but not for commerce. The question arises with regard to a firstborn of an ass that is subject to doubt as to its status.

**B. IF ONE GAVE IT THE OFFSPRING OF AN ASS DIRECTLY TO THE PRIEST, THE PRIEST IS NOT PERMITTED TO KEEP IT UNLESS HE SETS ASIDE AND DESIGNATES A LAMB IN ITS PLACE WHICH HE ALSO, OF COURSE, KEEPS.**

1. I:1: Tannaite complement: what is the law as to redeeming the firstling of an ass with an animal purchased with produce of the Seventh Year? With respect to an ass that is beyond doubt a firstborn, there is no basis for raising the question, since the All-Merciful has specified that the produce of the Seventh Year is to be used “for food” (Lev. 25: 6), meaning, for food but not for commerce. The question arises with regard to a firstborn of an ass that is subject to doubt as to its status.

## **VII. Mishnah-Tractate Bekhorot 1:6**

**A. HE WHO SEPARATES A REDEMPTION LAMB FOR A FIRSTBORN OF AN ASS AND WHO DIED — R. ELIEZER SAYS, “THE HEIRS ARE RESPONSIBLE FOR IT TO GIVE THE REDEMPTION-LAMB TO THE PRIEST, AS THE HEIRS ARE LIABLE FOR REPLACING, SHOULD THE MONEY BE LOST THE FIVE SELAS PAID IN THE REDEMPTION OF THE FIRSTBORN SON.”**

**AND SAGES SAY, “(1) THEY ARE NOT LIABLE FOR IT TO GIVE THE REDEMPTION-LAMB TO THE PRIEST, (2) AS THEY ARE NOT LIABLE IN THE CASE OF THE REDEMPTION OF SECOND TITHE.” TESTIFIED R. JOSHUA AND R. SADOQ CONCERNING THE REDEMPTION-LAMB WHICH WAS SET ASIDE FOR THE FIRSTLING OF AN ASS AND WHICH HAD DIED, THAT THERE IS NOTHING WHATSOEVER FOR THE PRIEST HERE. IF THE FIRSTLING OF AN ASS DIED, R. ELIEZER SAYS, “IT IS TO BE BURIED. AND THE OWNER IS PERMITTED TO DERIVE BENEFIT FROM THE LAMB WHICH HAD BEEN SET ASIDE TO REDEEM IT.” AND SAGES SAY, “IT NEED NOT BE BURIED. AND THE LAMB BELONGS TO THE PRIEST.”**

1. I:1: What is the scriptural basis for the position of R. Eliezer?

2. I:2: Theoretical problem parallel to the one at hand: Valuations are assessed in accord with the situation prevailing when he made the pledge of valuation even though the pledge is paid later on; the redemption of a firstborn son is to take place after thirty days have passed; the redemption of the firstborn of an ass takes place immediately. Is it the fact that the redemption of the firstborn of an ass takes place immediately?

## **VIII. Mishnah-Tractate Bekhorot 1:7**

**A. IF ONE DID NOT WANT TO REDEEM IT THE FIRSTLING OF AN ASS, HE BREAKS ITS NECK FROM BEHIND WITH A HATCHET, AND BURIES IT. THE REQUIREMENT OF REDEMPTION TAKES PRECEDENCE OVER THE REQUIREMENT OF BREAKING THE NECK, SINCE IT IS SAID, “AND IF YOU WILL NOT REDEEM IT, THEN YOU WILL BREAK ITS NECK” (EXO. 34: 20). THE REQUIREMENT OF ESPOUSING A HEBREW BONDWOMAN TAKES PRECEDENCE OVER THE REQUIREMENT OF REDEMPTION, SINCE IT IS SAID, “SO THAT HE HAS NOT ESPOUSED HER, THEN HE SHALL LET HER BE REDEEMED” (EXO. 21: 8). THE REQUIREMENT OF LEVIRATE MARRIAGE TAKES PRECEDENCE OVER THE CEREMONY OF HALISAH — AT FIRST, WHEN THEY WOULD CONSUMMATE THE LEVIRATE MARRIAGE FOR THE SAKE OF FULFILLING A COMMANDMENT. BUT NOW, THAT THEY DO NOT CONSUMMATE THE LEVIRATE MARRIAGE FOR THE SAKE OF FULFILLING A COMMANDMENT, THEY HAVE RULED: THE REQUIREMENT OF HALISAH TAKES PRECEDENCE OVER THE REQUIREMENT OF LEVIRATE MARRIAGE. THE REQUIREMENT OF REDEEMING AN UNCLEAN BEAST DEDICATED TO THE TEMPLE IS INCUMBENT UPON THE MASTER. HE TAKES PRECEDENCE OVER EVERY OTHER PERSON M. Ar. 8: 2, SINCE IT IS SAID, “THEN HE SHALL RANSOM IT... OR IF IT IS NOT REDEEMED, THEN IT SHALL BE SOLD ACCORDING TO THY ESTIMATION” (LEV. 27: 27).**

## **IX. Mishnah-Tractate Bekhorot 2:1**

**A. MISHNAH-CRITICISM: THE SEQUENCE OF TOPICS, FROM CHAPTER TO CHAPTER.**

**1. I:1:** How come the framer of the Mishnah formulates the rule for the embryo of the ass first (in Mishnah-tractate Bekhorot Chapter One), and then reverts and considers the matter of the embryo of a cow? Why not encompass in the initial chapter the rule for the embryo of the cow as well, for it is a matter concerning the consecration of an animal as to its body, and then take up the matter of the embryo of an ass, which involves the consecration not of the body of the animal itself but only of the value of the animal?

**B. (1) HE WHO PURCHASES THE UNBORN OFFSPRING OF THE COW OF A GENTILE, (2) AND HE WHO SELLS IT TO HIM (EVEN THOUGH ONE IS NOT PERMITTED TO DO SO), (3) AND HE WHO IS A PARTNER WITH HIM, (4) AND HE WHO RECEIVES COWS FROM HIM (5) AND HE WHO DELIVERS COWS TO HIM UNDER CONTRACT TO REAR THEM AND SHARE IN THE PROFIT IS EXEMPT FROM THE LAW OF THE FIRSTLING, SINCE IT IS SAID, “ALL THE FIRSTBORN IN ISRAEL” (NUM. 3:13) – BUT NOT THE FIRSTBORN PRODUCED AMONG OTHERS.**

**PRIESTS AND LEVITES ARE LIABLE. THEY ARE NOT EXEMPTED FROM THE LAW OF THE FIRSTBORN OF A CLEAN BEAST. BUT THEY ARE EXEMPT ONLY FROM THE REDEMPTION OF THE FIRSTBORN SON AND FROM THE LAW OF THE FIRSTLING IN REGARD TO THE FIRSTBORN OF AN ASS.**

**1. II:1:** An Israelite who handed over money to a gentile for his beast — the matter is adjudicated in accord with their laws, even though he has not made formal acquisition of the beast by drawing it, has acquired possession of it, in

consequence of which the beast is liable to the law of the firstling; and a gentile who handed over money to an Israelite for his beast — the matter likewise is adjudicated in accord with their laws, even though he has not made formal acquisition of the beast by drawing it, he has acquired possession of it, in consequence of which the beast is liable to the law of the firstling.

a. II:2: Amplification of the foregoing.

l. II:3: Secondary development of an exegesis important to the foregoing.

## **X. Mishnah-Tractate Bekhorot 2:2-3**

**A. ALL HOLY THINGS, THE PERMANENT BLEMISH OF WHICH CAME BEFORE THEIR CONSECRATION, AND WHICH WERE REDEEMED ARE LIABLE TO THE LAW OF THE FIRSTLING, AND TO THE PRIESTLY GIFTS:**

1. I:1: The framer of the passage maintains that when something is sanctified as to its value, that sanctification overrides the law of the firstling and the requirement to hand over the priestly gifts.

**B. ...AND GO FORTH FOR SECULAR PURPOSES, FOR SHEERING AND FOR LABOR:**

1. II:1: The operative consideration that shearing and working with the beasts are permitted is that they are redeemed. Lo, if they are not redeemed, they may not be sheared or worked with. That supports the view of R. Eliezer, who has said, “Animals that have been sanctified

**C. AND THEIR OFFSPRING AND THEIR MILK ARE PERMITTED AFTER THEIR REDEMPTION**

1. III:1: What sort of case can be in mind? If I say that we deal with a case in which it was only after they were redeemed that the beasts became pregnant and gave birth, that is a perfectly obvious inference, since we are dealing with unconsecrated beasts. So, rather, we are dealing with a case in which the beast became pregnant before it was redeemed, but it gave birth afterward.

**D. AND HE WHO SLAUGHTERS THEM OUTSIDE THE TEMPLE COURT IS FREE OF PUNISHMENT:**

1. IV:1: R. Eleazar repeats this passage in the version, “He is culpable,” and he refers the passage to the context of offering the beast on the high place belonging to an individual.

**E. AND THEY ARE NOT SUBJECT TO THE LAW OF THE SUBSTITUTE.**

1. V:1: What is the scriptural basis for this fact?

**F. AND IF THEY DIED, THEY ARE REDEEMED, EXCEPT FOR THE FIRSTLING AND FOR TITHE OF CATTLE:**

1. VI:1: This represents the opinion of R. Simeon, who has said, Objects that were consecrated for use on the altar were subjected to the requirement of being presented to the priest and being evaluated, while objects that were consecrated only for the upkeep of the Temple house were not included in the law of presentation to the priest and evaluation.

**G. ALL HOLY THINGS, THE CONSECRATION OF WHICH CAME BEFORE THEIR BLEMISH, OR IN WHICH WAS A TRANSIENT BLEMISH BEFORE THEIR CONSECRATION, AND IN WHICH AFTERWARD A PERMANENT BLEMISH APPEARED, AND WHICH WERE REDEEMED. ARE FREE OF THE LAW OF THE FIRSTLING, AND FROM THE PRIESTLY GIFTS**

1. VII:1: What is the scriptural basis for this rule?

a. VII:2: Gloss on a detail of the foregoing.

b. VII:3: As above.

**H. AND DO NOT GO FORTH FOR SECULAR PURPOSES, FOR SHEERING AND FOR LABOR:**

1. VIII:1: What is the source of this rule in Scripture?

**I. AND THEIR OFFSPRING AND THEIR MILK ARE PROHIBITED EVEN AFTER THEIR REDEMPTION:**

**AND HE WHO SLAUGHTERS THEM OUTSIDE IS LIABLE. AND THEY ARE SUBJECT TO THE LAW OF THE SUBSTITUTE. AND IF THEY DIE, THEY ARE BURIED.**

1. IX:1: How shall we imagine this case? If I say that the beast became pregnant and gave birth after being redeemed, then why should the offspring be forbidden? They are in the status of the gazelle and the hart entirely unconsecrated animals! So we must deal with a case in which the animal became pregnant before being redeemed but gave birth after being redeemed. But if they were born before they were redeemed, they would become holy.

a. IX:2: Clarification of the foregoing: May one consecrate the offspring of a blemished Holy Thing for any purpose of his choice?

I. IX:3: Gloss of a detail of the foregoing.

II. IX:4: Gloss of a detail of the foregoing.

III. IX:5: Gloss of a detail of the foregoing.

## **XI. Mishnah-Tractate Bekhorot 2:4-5**

**A. He who receives under contract to raise and share in the profits a flock from a gentile on “iron-flock terms”— the offspring are exempt from the law of the firstling. But the offspring of the offspring are liable.**

1. I:1: Does this rule bear the amplification that, since the owner does not take money, the cattle remain the property of the owner? But an objection may be raised from the following: People may not accept responsibility for raising a herd of cattle on iron-flock terms from an Israelite, because this is none other than a usurious arrangement. This proves that the flock is deemed in the ownership of the contractor and therefore it is as if the one who gives the money in return for waiting for his money receives a share of the offspring, and this is usury; if the money remains in the possession of the giver, it would not be usury.

**B. If the Israelite had stipulated that they should stand in place of their mothers, the offspring of the offspring are exempt. And the offspring of the offspring of the**



**offspring are liable. Rabban Simeon b. Gamaliel says, “Even up to ten generations are they exempt, for the right to lay claim to them belongs to the gentile.”**

1. I:1: Said R. Huna, “He who receives under contract to raise and share in the profits a flock from a gentile on “iron-flock terms”— the offspring are exempt from the law of the firstling. But the offspring of the offspring are liable.” And R. Judah said, “The offspring of the offspring likewise are exempt. The offspring of the offspring of the offspring are liable.”

**C. A sheep which gave birth to an offspring something like a goat, or a goat which gave birth to an offspring something like a sheep — it the offspring is exempt from the law of the firstling. But if it bears some of the traits of the mother, it is liable.**

1. I:1: R. Oshaia came from Nehardea bearing in hand a Tannaite formulation as follows: “A sheep which gave birth to an offspring something like a goat, or a goat which gave birth to an offspring something like a sheep — R. Meir declares liable, and sages exempt.

2. I:2: Continuation of the foregoing: Said R. Yohanan, “R. Meir concedes that the goat that is offered on the New Moon must be the offspring of a goat. How come? Scripture says, ‘and one he goat’ (Num. 28:15) — one that is distinctive and derives from a line of goats back to the beginning of the six days of creation.”

3. I:3: All concur that if one uses the wool, he does not become liable to a flogging on the count of violating the law against mixed species. For Scripture has said, ‘You shall not wear mingled stuff, wool and linen together’ — (Deu. 22:11) — just as it must be linen without adulteration, so it must be wool without adulteration.

## **XII. Mishnah-Tractate Bekhorot 2:6**

**A. A SHEEP WHICH HAD NOT GIVEN BIRTH AND WHICH BORE TWO MALES, AND BOTH OF THEIR HEADS EMERGED SIMULTANEOUSLY — R. YOSÉ THE GALILEAN SAYS, “BOTH OF THEM BELONG TO THE PRIEST, SINCE IT IS SAID, “THE MALES EVEN MORE THAN ONE BELONG TO THE LORD” (EXO. 13:12).” AND SAGES SAY, “IT IS NOT POSSIBLE TO DETERMINE EXACTLY FOR THERE TO BE SIMULTANEOUS BIRTH. BUT: ONE BELONGS TO HIM AND ONE TO THE PRIEST.”**

1. I:1: The household of R. Yannai said, “Of R. Yosé the Galilean, we have heard the ruling that he maintains, ‘It is possible to ascertain simultaneity in natural processes, and all the more so in human actions.’ And as to rabbis, it is impossible to ascertain simultaneity in natural processes, but as to human actions, what is the rule?”

**B. R. TARFON SAYS, “THE PRIEST SELECTS FOR HIMSELF THE BETTER.”**

1. II:1: What is the operative consideration behind the position of R. Tarfon?

**C. R. AQIBA SAYS, “THEY COMPROMISE BETWEEN THEM” WITH THE ONE WHO TAKES THE FATTER GIVING THE OTHER HALF THE EXCESS VALUE.”**

1. III:1: Said R. Hiyya bar Abba said R. Yohanan, “The priest has to take the weaker of the two.”



**D. AND AS TO THE SECOND, IT PASTURES UNTIL IT BECOMES BLEMISHED. “AND IT IS LIABLE TO THE PRIESTLY GIFTS. R. YOSÉ DECLARES IT EXEMPT FROM THE PRIESTLY GIFTS.**

1. IV:1: What is the reasoning behind the position of R. Meir, the unnamed authority of the rule at hand?

**E. IF ONE OF THEM DIED, R. TARFON SAYS, “LET THEM DIVIDE THE VALUE OF THE LIVING ONE.”**

1. V:1: Why should they divide it up? Rather, let us see, if the fat one died, it belongs to the priest since we have already said he gets the healthier one, and the survivor is the owner's. If the thin one died, it is the owner's, and the survivor is the priest's!

**F. R. AQIBA SAYS, “HE WHO LAYS CLAIM AGAINST HIS FELLOW BEARS THE BURDEN OF PROOF.” IF IT BORE SIMULTANEOUSLY A MALE AND A FEMALE, THERE IS NOTHING WHATSOEVER FOR THE PRIEST HERE.**

1. VI:1: Said R. Hiyya, “To what is the case comparable in the view of R. Tarfon? To the case of two farmers who handed over sheep to a shepherd, and one died; the shepherd leaves the survivor to them both and takes his leave. To what is the case comparable in the view of R. Aqiba? To the case of someone who left an animal with a householder. One who lays claim against his fellow bears the burden of proof.”

### **XIII. Mishnah-Tractate Bekhorot 2:7-8**

**A. TWO SHEEP WHICH HAD NOT GIVEN BIRTH AND WHICH BORE TWO MALES — ONE GIVES BOTH OF THEM TO THE PRIEST. IF THEY BORE A MALE AND A FEMALE, THE MALE GOES TO THE PRIEST. IF THEY BORE TWO MALES AND A FEMALE, ONE OF THEM GOES TO HIM THE OWNER AND ONE TO THE PRIEST. R. TARFON SAYS, “THE PRIEST SELECTS THE BETTER OF THEM FOR HIMSELF.” R. AQIBA SAYS, “THEY COMPROMISE BETWEEN THEM.” AND AS TO THE SECOND: IT PASTURES UNTIL IT IS BLEMISHED. AND IT IS LIABLE FOR PRIESTLY GIFTS. R. YOSÉ DECLARES IT EXEMPT FROM PRIESTLY GIFTS. IF ONE OF THEM DIED, R. TARFON SAYS, “THEY DIVIDE IT.” R. AQIBA SAYS, “HE WHO LAYS CLAIM AGAINST HIS FELLOW BEARS THE BURDEN OF PROOF.” IF THEY BORE TWO FEMALES AND A MALE OR TWO MALES AND TWO FEMALES, THERE IS NOTHING WHATSOEVER FOR THE PRIEST HERE. TWO, OF WHICH ONE HAD GIVEN BIRTH AND ONE HAD NOT GIVEN BIRTH, WHICH BORE TWO MALES — ONE IS FOR HIM AND ONE FOR THE PRIEST. R. TARFON SAYS, “THE PRIEST SELECTS FOR HIMSELF THE BETTER OF THE TWO.” R. AQIBA SAYS, “THEY COMPROMISE BETWEEN THEM.” AND AS TO THE SECOND: IT PASTURES UNTIL IT IS BLEMISHED. AND IT IS LIABLE FOR THE PRIESTLY GIFTS. R. YOSÉ DECLARES EXEMPT. R. YOSÉ DID RULE: “ANY ANIMAL THE EXCHANGE OF WHICH IS IN THE HAND OF A PRIEST IS FREE OF THE OBLIGATION TO PRIESTLY GIFTS.” R. MEIR DECLARES LIABLE. IF ONE OF THEM DIED, R. TARFON SAYS, “THEY DIVIDE IT.” R. AQIBA SAYS, “HE WHO LAYS CLAIM AGAINST HIS FELLOW BEARS THE BURDEN OF PROOF.” IF THEY BORE MALE AND FEMALE, THERE IS NOTHING WHATSOEVER FOR THE PRIEST HERE.**

1. I:1: All of these cases are required. For if we had the first case the birth of two males, it might have been thought that it is in that case in particular that R. Aqiba made his rulings, because you have two males from a single ewe, but in a case in which there are two ewes who had never given birth and where two animals came from a single ewe, one male and one female, and one male from the other, I might have said that he concurs with R. Tarfon that the animal that came forth without a twin is the better of the two.

#### **XIV. Mishnah-Tractate Bekhorot 2:9**

**A. A BEAST BORN FROM THE SIDE AND THAT WHICH COMES AFTER IT — R. TARFON SAYS, “BOTH OF THEM PASTURE UNTIL THEY ARE BLEMISHED. AND THEY ARE EATEN BY THE OWNER WHEN BLEMISHED.” R. AQIBA SAYS, “BOTH OF THEM ARE NOT SUBJECT TO THE LAW OF THE FIRSTLING: THE FIRST, BECAUSE IT IS NOT THAT WHICH OPENS THE WOMB, AND THE SECOND, BECAUSE THE OTHER CAME BEFORE IT.”**

1. I:1: What is at issue between them? The case of a firstling in one aspect but not in another.

a. I:2: Tannaite complement: Scriptural treatment of that problem, namely, whether a firstling in only one aspect is deemed to be classified as the firstling of which Scripture speaks.

I. I:3: Secondary analysis of the foregoing.

#### **XV. Mishnah-Tractate Bekhorot 3:1A-R**

**A. HE WHO PURCHASES A BEAST FROM A GENTILE, AND IT IS NOT KNOWN WHETHER IT HAS GIVEN BIRTH OR WHETHER IT HAS NOT GIVEN BIRTH — R. ISHMAEL SAYS, “A GOAT A YEAR OLD WHICH PRODUCED AN OFFSPRING — THE OFFSPRING CERTAINLY BELONGS TO THE PRIEST. FROM THAT AGE AND ONWARD IT IS A MATTER OF DOUBT WHETHER OR NOT THE OFFSPRING IS A FIRSTBORN.**

**A SHEEP TWO YEARS OLD WHICH PRODUCED AN OFFSPRING — IT CERTAINLY BELONGS TO THE PRIEST. FROM THAT AGE AND ONWARD IT IS A MATTER OF DOUBT. A COW AND AN ASS THREE YEARS OLD WHICH PRODUCED OFFSPRING — THEY CERTAINLY BELONG TO THE PRIEST. FROM THAT AGE AND ONWARD IT IS A MATTER OF DOUBT.” SAID TO HIM R. AQIBA, “IF BY THE OFFSPRING ALONE AND NOT BY A DISCHARGE THE BEAST WERE EXEMPTED FROM THE LAW OF THE FIRSTLING, IT WOULD BE IN ACCORD WITH YOUR WORDS. BUT THEY HAVE SAID: THE TOKEN OF HAVING GIVEN BIRTH TO AN OFFSPRING, IN A SMALL BEAST IS WOMB-DISCHARGE, IN A LARGE BEAST IS AFTERBIRTH. AND IN A WOMAN ARE THE FOETUS-SACK AND AFTERBIRTH.” THIS IS THE GENERAL PRINCIPLE: IN THE CASE OF ANY BEAST OF WHICH IT IS KNOWN THAT IT HAS GIVEN BIRTH, THE PRIEST HAS NOTHING WHATSOEVER HERE. AND IN THE CASE OF ANY BEAST OF WHICH IT IS KNOWN THAT IT HAS NOT GIVEN BIRTH, LO, THIS GOES TO THE PRIEST. IF IT IS A MATTER OF DOUBT, LET IT THE NEW-BORN BEAST BE EATEN BY THE OWNER WHEN IT IS BLEMISHED.**

1. I:1: From that age and onward why is it a matter of doubt? Follow the rule of the majority of beasts, and the majority of beasts get pregnant and give birth in their first year, so this one too certainly gave birth in the first year! May we say that R. Ishmael accords with the view of R. Meir, who takes account of the minority of cases and not only of the rule to which the majority adheres?

2. I:2: A goat a year old which produced an offspring — the offspring certainly belongs to the priest. From that age and onward it is a matter of doubt whether or not the offspring is a firstborn. A sheep two years old which produced an offspring — it certainly belongs to the priest. From that age and onward it is a matter of doubt. A cow and an ass three years old which produced offspring — they certainly belong to the priest. From that age and onward it is a matter of doubt. An ass is in the classification of a cow.

3. I:3: Said R. Aqiba, “For my part I do not accept this reasoning. Rather, in the case of any beast of which it is known that it has given birth, the priest has nothing whatsoever here. And in the case of any beast of which it is known that it has not given birth, lo, this goes to the priest. If it is a matter of doubt, let it the new-born beast be eaten by the owner when it is blemished.” What is the difference between what he had learned which is Joshua’s statement about what sages have said, and what he had produced through his own processes of reasoning “but I do not accept this...”?

4. I:4: As above: What is at issue between R. Aqiba and R. Joshua?

a. I:5: Appendix: A she-kid that produced three females, and the females produced three at the end of their first year — all three enter the corral to be tithed. Said R. Simeon, “I saw a she-kid, the offspring of which was tithed in its first year.” If one had beasts two or three years old, if one recognizes those of one year as distinct from those of another, it enters the corral to be tithed; and if not, it does not enter the corral to be tithed.

b. I:6: As above.

c. I:7: As above.

5. I:8: We have now found the rule for the case of one who purchases a beast from a gentile. But what is the rule governing one who purchases such a beast from an Israelite?

## **XVI. Mishnah-Tractate Bekhorot 3:1S**

**A. R. ELIEZER B. JACOB SAYS, “A LARGE BEAST WHICH DISCHARGED A CLOT OF BLOOD — LO, THIS CLOT IS TO BE BURIED. AND THE MOTHER THEREBY IS EXEMPTED FROM THE LAW OF THE FIRSTLING.”**

1. I:1: The clot does not impart uncleanness to one who touches it nor to one who carries it and that which is born after the mother is exempt from the law of the firstling on account of doubt. Then why does it have to be buried? Yields: the issue of neutralization.

**B. TOPICAL APPENDIX: THE UNCLEANNESS OF THE STILL-BORN OFFSPRING, THE PLACENTA, AND OTHER DISCHARGES**

1. I:2: The still-born child has not opened the womb unless the head is rounded like a spindle-top (M. **Oh. 7:4C**). What kind of coil?

**C. A FREE-STANDING DISCUSSION ON THE PRINCIPLE OF NEUTRALIZATION, IN WHICH ELIEZER B. JACOB'S MISHNAH-SAYING FIGURES.**

1. I:3: He who buys brine from a person who does not observe the laws of cultic cleanness when dealing with unconsecrated food must bring the brine into contact with water in an immersion pool, so that the water in the brine mingles with that in the immersion pool and then the brine is deemed cultically clean.

a. I:4: Secondary gloss of the foregoing.

## **XVII. Mishnah-Tractate Bekhorot 3:2**

**A. RABBAN SIMEON B. GAMALIEL SAYS, "HE WHO PURCHASES FROM A GENTILE A BEAST THAT WAS NURSING DOES NOT SCRUPLE LEST THE SUCKING ANIMAL BE THE OFFSPRING OF ANOTHER BEAST. IF HE WENT INTO HIS FOLD AND SAW BEASTS WHICH HAD NOT PREVIOUSLY GIVEN BIRTH NURSING, AND THOSE WHICH HAD PREVIOUSLY GIVEN BIRTH NURSING, HE DOES NOT SCRUPLE LEST THE OFFSPRING OF ONE HAS COME TO ANOTHER OR THAT THE OFFSPRING OF THE OTHER HAS COME TO THIS ONE."**

1. I:1: The decided law throughout this chapter is in accord with what is stated in the Mishnah, except where there is a dispute. In point of fact, he makes reference to Rabban Simeon b. Gamaliel, and what he means to imply is that the difference of opinion recorded in the associated Tannaite version in point of fact does not represent a disagreement at all.

a. I:2: Information is supplied on which the foregoing depends.

2. I:3: is Rabban Simeon b. Gamaliel's ruling based upon the presumption that a beast will give suck only if it has already given birth so he makes reference he need not take into account the possibility that the offspring of the one have come to nurse with the other to beasts that had not previously given birth, but if it had given birth we take account of the possibility that it nurses an animal that was not its own? Or perhaps he takes as his premise that it will nurse its own, and one that is not its own it will not nurse?

3. I:4: If one saw a creature that looked like a pig clinging to a ewe, the ewe is exempt from the law of a firstling, but the pig-like creature may not be eaten. in accord with whom is that ruling? It is in accord with Rabban Simeon b. Gamaliel.

4. I:5: If one saw a pig-like creature clinging to a ewe, what is the law?

## **XVIII. Mishnah-Tractate Bekhorot 3:3**

**A. R. YOSÉ BEN HAMMESHULLAM SAYS, "HE WHO SLAUGHTERS THE FIRSTLING MAKES A PLACE WITH THE HATCHET ON EITHER SIDE**

1. I:1: Rab said, "The law is in accord with R. Yosé b. Hammeshullam."

2. I:2: What is the rule concerning the festival day? Is the operative consideration of R. Yosé b. Hammeshullam that he conceives that tearing out the hair is not

considered tantamount to shearing, but on a festival day it would be forbidden to do so, since it would be detaching something from the place in which it grows? Or perhaps in general R. Yosé b. Hammeshullam takes the view that tearing up is tantamount to shearing, but the reason that in the Mishnah's version he permits doing so is that it is a forbidden act that was done without intent and the sense of 'tearing' to pull the hair on both sides is so as to clear a place, but not to tear or pluck the hair, and if the hair should be plucked or torn, that is a violation of the law carried out without improper intentionality, and doing a forbidden act without improper intentionality is permitted on a festival day?

**B. AND PULLS OUT THE HAIR. AND THIS IS SO ON CONDITION THAT HE DOES NOT REMOVE THE WOOL FROM ITS PLACE.**

1. II:1: Said R. Assi said R. Simeon b. Laqish, "That statement (and pulls out the hair) has been made only if it is done by hand, but it is forbidden to do so with a utensil."

**C. AND SO HE WHO PULLS UP THE HAIR TO EXAMINE THE PLACE OF A BLEMISH.**

1. III:1: The question was raised: is this procedure applicable to begin with or only after the fact?

2. III:2: What is the meaning of the phrase, "And so"?

### **XIX. Mishnah-Tractate Bekhorot 3:4**

**A. "THE HAIR OF A BLEMISHED FIRSTLING WHICH FELL OUT, AND WHICH ONE PUT IN A WALL-NICHE, AND WHICH FIRSTLING ONE AFTERWARD SLAUGHTERED — AQABYA B. MEHALALEL PERMITS THE PRIEST TO USE THE WOOL, FOR AS KILLING THE BEAST MAKES THE MEAT AND SKIN AND WOOL ATTACHED TO THE ANIMAL AVAILABLE FOR PRIESTLY USE, SO THE PART THAT WAS DETACHED CAN ALSO BE USED, AND SAGES PROHIBIT," THE WORDS OF R. JUDAH. SAID R. YOSÉ, "NOT IN THIS CASE DID AQABYA DECLARE PERMITTED, BUT IN THE CASE OF: THE HAIR OF A BLEMISHED FIRSTLING WHICH FELL OUT, AND WHICH ONE PUT IN A WALL-NICHE, AND WHICH FIRSTLING AFTERWARD DIED — IN THIS CASE AQABYA B. MEHALALEL PERMITS AND SAGES PROHIBIT."**

1. I:1: Is it then to be inferred that the wool is forbidden? If in the case of a dead firstling, the wool is permitted, then how can it be any question that in a case in which the beast is slaughtered, the wool that is torn away is permitted?

2. I:2: The dispute concerns a case in which an acknowledged expert had permitted the firstling, and one party maintains that we prohibit utilizing the wool as a precaution, lest the owner turn out to detain the beast so he can use the wool, while the other authority holds that we do not make such a precautionary ruling. But where an expert had not yet permitted use of the beast, all parties concur that use of the wool is forbidden

a. I:3: Gloss on foregoing.

3. I:4: He who plucks wool from an unblemished burnt-offering — what is the rule? The burnt offering was alive and was blemished and redeemed. From rabbis' perspective, what is the law?

**B. THE WOOL WHICH DANGLES FROM A FIRSTLING'S HIDE AFTER THE FIRSTLING IS SLAUGHTERED — THAT WHICH APPEARS DISTINCT FROM THE REST OF THE WOOL IS PERMITTED. AND THAT WHICH DOES NOT APPEAR DISTINCT FROM THE REST OF THE WOOL IS PROHIBITED.**

1. I:1: How are we to understand the formulation, that which does not appear distinct from the rest of the wool?

## **XX. Mishnah-Tractate Bekhorot 4:1-2**

**A. HOW LONG ARE ISRAELITES LIABLE TO TEND TO THE FIRSTLING BEFORE HANDING IT OVER TO THE PRIEST? IN THE CASE OF A SMALL BEAST, FOR THIRTY DAYS. AND IN THE CASE OF A LARGE BEAST, FOR FIFTY DAYS. R. YOSÉ SAYS, "IN THE CASE OF A SMALL ONE, THREE MONTHS."**

1. I:1: How on the basis of Scripture do we know that Israelites are liable to tend to the firstling before handing it over to the priest in the case of a small beast, for thirty days?

2. I:2: Tannaite restatement of the same.

**B. IF THE PRIEST SAID TO HIM DURING THIS PERIOD, "GIVE IT TO ME," LO, THIS ONE DOES NOT GIVE IT TO HIM. IF IT WAS BLEMISHED, IF HE SAID TO HIM, "GIVE IT TO ME THAT I MIGHT EAT IT," IT IS PERMITTED. AND IN THE TIME OF THE TEMPLE, IF IT WAS PERFECT, IF HE SAID TO HIM, "GIVE IT TO ME THAT I MAY OFFER IT UP," IT IS PERMITTED.**

1. II:1: What is the operative consideration?

2. II:2: Tannaite recapitulation: Priests, Levites, and the poor who were helping out in the household of shepherds, at the threshing floors, or in the slaughter house — they do not give them heave-offering and tithes as wages. And if they gave heave offering and tithes as their wages, behold, these are deemed merely unconsecrated produce, as it is said, Scripture says, "You have corrupted the covenant of Levi, says the Lord of hosts" (Mal. 2: 8). And Scripture further says, "And you shall profane the holy things of the people of Israel that you not die" (Num. 18:32). The heave offering and tithes are already unconsecrated produce retrospectively deemed never to have been consecrated produce.

3. II:3: Secondary development of the foregoing: And in all the cases just now noted, the owners enjoy the return of putting the other under obligation.

4. II:4: Produce designated as heave-offering that has grown abroad is not subject to the rule of the priest who helps out at the threshing floor.

5. II:5: Produce designated as heave-offering that has grown abroad is neutralized in a larger part of unconsecrated produce.

6. II:6: Produce designated as heave-offering that has grown abroad — one may proceed to eat the produce and leave for the end the actual separation of the portion that is heave-offering.

7. II:7: Produce designated as heave-offering that has grown abroad is forbidden only for someone the source of whose uncleanness is a bodily excretion.

a. II:8: Gloss: Therefore a menstruating woman may cut off dough offering and a priest who is a minor may eat it.

b. II:9: Illustrative case. R. Nahman and R. Amram and Rami b. Hama were traveling on a ship. R. Amram went away to defecate. A woman came along and asked them, “Is it permitted that someone who has suffered corpse-uncleanness bathe and eat heave-offering that has been separated from produce outside of the Holy Land?”

### **C. THE FIRSTLING IS EATEN WITHIN A YEAR, WHETHER IT IS UNBLEMISHED OR BLEMISHED, SINCE IT IS SAID, “BEFORE THE LORD YOUR GOD WILL YOU EAT IT YEAR BY YEAR” (DEU. 15:20).**

1. III:1: Since the Mishnah states, If a blemish appeared in it during its first year, it follows that we count according to the year from the birth of the beast so that if it was born in Nisan, he may keep it until the following Nisan; we do not consider that a new year for this purpose commences in Tishré.’ What is the scriptural basis for this ruling?

### **D. IF A BLEMISH APPEARED IN IT DURING ITS FIRST YEAR, IT IS PERMITTED TO KEEP IT FOR THE WHOLE TWELVE MONTHS. IF A BLEMISH APPEARED IN IT AFTER ITS FIRST YEAR, IT IS PERMITTED TO KEEP IT ONLY FOR THIRTY DAYS.**

1. IV:1: The question was raised: What is the sense of this passage? When it says, If a blemish appeared in it during its first year, it is permitted to keep it for the whole twelve months, does it mean, and an additional thirty days as well? Or perhaps the sense is, If a blemish appeared in it during its first year, it is permitted to keep it for the whole twelve months — but no longer, and If a blemish appeared in it after its first year, it is permitted to keep it only for thirty days?

## **XXI. Mishnah-Tractate Bekhorot 4:3-4:4C**

### **A. HE WHO SLAUGHTERS A FIRSTLING AND THEN SHOWS ITS BLEMISH TO AN EXPERT — R. JUDAH PERMITS. R. MEIR SAYS, “SINCE IT WAS SLAUGHTERED NOT AT THE AUTHORITY OF AN EXPERT, IT IS PROHIBITED.”**

1. I:1: As to blemishes of withered spots in the eye, all parties concur that the beast permitted by an amateur is forbidden, because these change. Where there is a disagreement, it concerns blemishes that affect the body, for R. Meir takes the view that we make a decree concerning blemishes affecting the body by reason of the withered spots in the eye, and R. Judah maintains that we do not make a decree concerning blemishes affecting the body by reason of the withered spots in the eye.

2. I:2: The question was raised: is the sense of the statement, “because of those blemishes that do change,” to mean, all withered spots in the eye change, or some change and some don’t change?



**B. HE WHO WAS NOT AN EXPERT AND EXAMINED THE FIRSTLING, (AND) WHICH WAS SLAUGHTERED ON HIS INSTRUCTIONS — LO, THIS FIRSTLING IS TO BE BURIED:**

1. II:1: May we say that the Tannaite framer has stated anonymously the position of R. Meir so establishing his principle as law as well?

**C. AND THE AMATEUR PAYS FROM HIS OWN FUNDS:**

1. III:1: Tannaite complement: *It was taught by a Tannaite authority:* when he pays the priest, he pays a quarter of the loss, for a firstling of small cattle, and half of the loss, for a firstling of large cattle

## **XXII. Mishnah-Tractate Bekhorot 4:4D-G**

**A. IF ONE WHO WAS NOT AN EXPERT JUDGED A CASE, DECLARING THE LIABLE PERSON TO BE FREE OF LIABILITY:**

1. I:1: May one say that the Tannaite author of the passage has stated anonymously the opinion of R. Meir, which is that we adjudicate liability for damage that one has caused only indirectly here the judge by his words has caused damage to the defendant?

**B. DECLARING THE PERSON FREE OF LIABILITY TO BE LIABLE, DECLARING WHAT IS CLEAN TO BE UNCLEAR:**

1. II:1: for example, where he touched what was actually clean with a dead creeping thing.

**C. DECLARING WHAT IS CLEAN TO BE UNCLEAR:**

**WHAT HE HAS DONE IS DONE. AND HE PAYS FROM HIS OWN FUNDS. BUT IF HE WAS AN EXPERT RECOGNIZED BY A COURT, HE IS FREE FROM THE LIABILITY OF PAYING.**

1. III:1: for example, where he mixed what was actually unclear with the otherwise-clean produce of the farmer.

## **XXIII. Mishnah-Tractate Bekhorot 4:4H-M**

**A. THERE WAS THE FOLLOWING CASE: THE WOMB OF A COW WAS REMOVED. AND R. TARFON HAD IT THE COW FED TO THE DOGS. THE CASE CAME BEFORE SAGES, AND THEY DECLARED IT PERMITTED. SAID TODOS, THE PHYSICIAN, “NEITHER A COW NOR A PIG LEAVES ALEXANDRIA WITHOUT THEIR RIPPING OUT ITS WOMB, SO THAT IT WILL NOT BEAR OFFSPRING.” SAID R. TARFON, “THERE GOES YOUR ASS, TARFON.” SAID TO HIM R. AQIBA, “RABBI TARFON, YOU ARE EXEMPT, FOR YOU ARE AN EXPERT RECOGNIZED BY A COURT. AND ANY EXPERT RECOGNIZED BY A COURT IS FREE FROM THE LIABILITY OF PAYING.”**

1. I:1: And why cannot he derive his ruling that there is no need for compensation from the fact that if one has erred in a matter in which the Mishnah is explicit, one can retract?



## **XXIV. Mishnah-Tractate Bekhorot 4:5**

**A. HE WHO TAKES PAYMENTS FOR EXAMINING FIRSTLINGS — THEY DO NOT SLAUGHTER UPON HIS ADVICE A BLEMISHED FIRSTLING, UNLESS HE WAS AN EXPERT LIKE ILA IN YAVNEH, WHOM SAGES PERMITTED TO RECEIVE FOUR *ISSARS* FOR EXAMINING A SMALL BEAST, AND SIX FOR A LARGE ONE:**

1. I:1: What is the difference in the fees he was permitted to receive?

**B. WHETHER HE RULED IT TO BE UNBLEMISHED OR BLEMISHED**

1. II:1: Now we have no problem understanding that the expert gets paid when he declares the beast permanently blemished, since he permits use of the beast, but how come he is paid when he declares the firstling unblemished?

## **XXV. Mishnah-Tractate Bekhorot 4:6**

**A. HE WHO TAKES PAYMENT FOR JUDGING — HIS JUDGMENTS ARE NULL. HE WHO TAKES PAYMENT FOR TESTIFYING — HIS TESTIMONY IS NULL.**

1. I:1: What is the scriptural basis for this rule?

**B. HE WHO TAKES PAYMENT TO SPRINKLE PURIFICATION-WATER ON ONE MADE UNCLEAN BY A CORPSE AND TO MIX ASH OF A RED COW WITH WATER FOR THE PURPOSE OF MAKING PURIFICATION-WATER — HIS WATER IS CAVE-WATER, AND HIS ASH IS HEARTH-ASH.**

1. II:1: And objection was raised: He who betroths a woman through an exchange of purification-water or purification-ash, lo, this one is betrothed, even though he may be an Israelite.

**C. IF HE WAS A PRIEST, AND BY EXAMINING THE BEAST HE WAS MADE UNCLEAN FOR EATING HIS HEAVE-OFFERING, ONE FEEDS HIM ORDINARY FOOD AND GIVES HIM TO DRINK AND ANOINTS HIM.**

1. III:1: How could the priest himself go to such a place anyhow since a priest is to protect his cultic cleanness in line with Lev. 21: 1?

**D. AND IF HE WAS AN ELDER, ONE PUTS HIM UP ON AN ASS AND GIVES HIM A WAGE IN ACCORD WITH THAT PAID TO A DAY-LABORER.**

1. IV:1: A Tannaite authority stated: he is paid like an unemployed worker.

## **XXVI. Mishnah-Tractate Bekhorot 4:7**

**A. HE WHO IS SUSPECTED OF BREAKING THE LAW OF FIRSTLINGS — THEY DO NOT PURCHASE FROM HIM MEAT OF GAZELLES OR UNTANNED HIDES.**

1. meat of gazelles: it might be exchanged for the meat of calves, untanned hides: but tanned ones may be purchased, how come?

**B. R. ELIEZER SAYS, “THEY PURCHASE FROM HIM THE HIDE OF A FEMALE.”**

1. II:1: How come? It is easy to recognize.

**C. AND THEY DO NOT PURCHASE FROM HIM BLEACHED WOOL OR DIRTY WOOL.**

1. III:1: If not washed wool, why ask at all about dirty wool? Obviously one cannot buy it.

**D. BUT THEY PURCHASE FROM HIM SPUN WOOL AND WOOL MADE INTO GARMENTS.**

1. IV:1: If we may not buy spun wool, is there any question about clothing?

## **XXVII. Mishnah-Tractate Bekhorot 4:8**

**A. HE WHO IS SUSPECTED OF TRANSGRESSING THE SEVENTH YEAR — THEY DO NOT PURCHASE FROM HIM FLAX, AND EVEN IF IT IS COMBED.**

**BUT THEY PURCHASE FROM HIM SPUN FLAT AND WOVEN FLAX.**

1. I:1: If one may buy spun wool, is there any question about woven?

## **XXVIII. Mishnah-Tractate Bekhorot 4:9**

**A. “HE WHO IS SUSPECTED OF SELLING HEAVE-OFFERING AS UNCONSECRATED FOOD — THEY DO NOT PURCHASE FROM HIM EVEN WATER OR SALT,” THE WORDS OF R. JUDAH. R. SIMEON SAYS, “WHATEVER IS SUBJECT TO THE RULES OF HEAVE-OFFERINGS AND TITHES THEY DO NOT PURCHASE FROM HIM.”**

1. I:1: What does “Whatever” serve to encompass?

2. I:2: Case report: There was a butcher who was suspect of selling kidney fat for fat of ileum. Raba imposed the sanction of forbidden him to sell even nuts.

## **XXIX. Mishnah-Tractate Bekhorot 4:10**

**A. HE WHO IS SUSPECTED OF VIOLATING THE SEVENTH YEAR IS NOT SUSPECTED ON ACCOUNT OF TITHES.**

1. I:1: What is the operative consideration for the rule, He who is suspected of violating the Seventh Year is not suspected on account of tithes?

**B. HE WHO IS SUSPECTED ON ACCOUNT OF TITHES IS NOT SUSPECTED ON ACCOUNT OF VIOLATING THE SEVENTH YEAR.**

1. II:1: What is the operative consideration?

**C. HE WHO IS SUSPECTED BOTH IN THIS REGARD AND IN THAT REGARD IS SUSPECTED IN REGARD TO OBSERVANCE OF THE LAW OF PURITIES.**

1. III:1: Since one is suspect as to the observance of laws of the Torah, all the more is one suspect as to observance of laws that derive only from the authority of rabbis.

**D. AND THERE IS HE WHO IS SUSPECTED ON ACCOUNT OF VIOLATING THE LAWS OF PURITIES BUT IS NOT SUSPECTED EITHER ON THIS ACCOUNT OR ON THAT ACCOUNT:**

1. IV:1: What now is the operative consideration?

**E. WHO IS THE AUTHORITY BEHIND OUR MISHNAH-RULE**

1. IV:1: He who is suspected of violating the Seventh Year is not suspected on account of tithes: Said Rabbah bar bar Hana said R. Yohanan, “This — he who is

suspected of violating the Seventh Year is not suspected on account of tithes — represents the opinion of R. Aqiba, which has been given anonymously and therefore authoritatively, but sages say, “One who is suspect of violating the Seventh Year is suspect of violating the laws of tithes as well.”

2. IV:2: Continuation of the foregoing. R. Jonah and R. Jeremiah, disciples of R. Zeira, and some say, R. Jonah and R. Zeira, disciples of R. Yohanan — one said, “Truly did sages say, ‘One who is suspect of violating the laws of the Seventh Year is suspect of violating the laws of tithing. And who are the sages under discussion? It is R. Judah.’” and the other said, “One who is suspect of violating the laws of tithing is suspect of violating the laws of the Seventh Year. And who is sages? It is R. Meir.” Tannaite evidence for the foregoing.

a. IV:3: Complement to the foregoing Tannaite evidence.

I. V:4: Topical gloss of a detail of the foregoing.

**F. THIS IS THE GENERAL PRINCIPLE: WHOEVER IS SUSPECTED ON ACCOUNT OF ANY MATTER DOES NOT MAKE JUDGMENTS NOR TESTIFY CONCERNING THAT MATTER:**

1. V:5: Tannaite statement of the same principle: All firstlings does a man examine, except for his own firstlings With what sort of case do we deal here? If we say that it is a case in which a single individual does the examination, is a single individual believed anyhow? So we must image that it is a group of three persons that do the examination.

### **XXX. Mishnah-Tractate Bekhorot 5:1**

**A. ALL INVALIDATED HOLY THINGS AFTER THEY HAVE BEEN REDEEMED — THEIR ADVANTAGE FALLS TO THE SANCTUARY,**

**AND THEY ARE SOLD IN THE MARKETPLACE, AND ARE SLAUGHTERED IN THE MARKETPLACE, AND ARE WEIGHED BY THE *LITRA*:**

1. I:1: when is this the case? If I should say that this is after one has redeemed the invalidated Holy Things? Then how come the Mishnah states that the profit goes to the sanctuary, when, in point of fact, the profit on them now goes to the owner? And if you maintain that the rule speaks of the period before the invalidated Holy Things have been redeemed, then why does the Mishnah state, and are slaughtered in the marketplace? Lo, there are still the requirements of presentation to the priest and evaluation by the priest prior to any such procedure!

**B. ...EXCEPT FOR THE BLEMISHED FIRSTLING AND TITHE OF CATTLE. FOR THE ADVANTAGE OF SELLING THEM IN THE MARKET, WHERE DEMAND IS HIGHER, WOULD FALL TO THE OWNER.**

**INVALIDATED HOLY THINGS — THEIR ADVANTAGE FALLS TO THE SANCTUARY. BUT: THEY WEIGH A *MANEH* AGAINST A *MANEH* IN THE CASE OF THE MEAT OF THE FIRSTLING.**

1. II:1: Now there is no problem with regard to the firstling, which, while not to be sold in the market, may be sold within the household. But is it permitted to sell animals designated as tithe even within the household? Has it not been taught on

Tannaite authority that selling the meat of an animal designated as tithe is forbidden altogether:

- a. II:2: Information required to complete the presentation of the foregoing.
  - l. II:3: Expansion on a subsidiary point of the foregoing: What is the law as to selling the meat of a beast belonging to an adult that has been designated as tithe in conjunction with the bones?
- b. II:4: Continuation of II:2: further analysis of the proof texts presented therein.

### **XXXI. Mishnah-Tractate Bekhorot 5:2A-C**

**A. THE HOUSE OF SHAMMAI SAY, “AN ISRAELITE IS NOT NUMBERED WITH A PRIEST FOR EATING A FIRSTLING.” AND THE HOUSE OF HILLEL PERMIT, AND EVEN IN THE CASE OF A GENTILE.**

1. I:1: Who is the authority of this passage? It represents the view of R. Aqiba.

a. I:2: Gloss of proof adduced in the foregoing.

**B. HOUSES DISPUTE ON THE DISPOSITION OF A FIRSTLING:**

2. I:3: Tannaite rule on another Houses' dispute with reference to the firstling, namely: “As to a firstling, people do not feed it to menstruating women,” the words of the House of Shammai. And the House of Hillel say, “They do feed it to menstruating women.”

a. I:4: Secondary utilization of a detail of the foregoing in an independent inquiry, namely: On a festival day people are not to flay an animal from the feet since the purpose of doing so is to make a bellows, and on a festival day meat may be prepared only for eating; along these same lines people are not to flay a firstling or Holy Things that have been made unfit even though the animal has been redeemed and slaughtered properly.

### **XXXII. Mishnah-Tractate Bekhorot 5:2D-J**

**A. A FIRSTLING WHICH SUFFERED FROM A CONGESTION OF BLOOD, EVEN THOUGH IF ONE DOES NOT LET BLOOD IT MAY DIE — “THEY DO NOT DRAW BLOOD FROM IT,” THE WORDS OF R. JUDAH. AND SAGES SAY, “ONE DRAWS BLOOD FROM IT, ON CONDITION THAT ONE NOT MAKE A BLEMISH IN IT. AND IF HE MADE A BLEMISH IN IT, LO, THIS ONE SHOULD NOT BE SLAUGHTERED ON THAT ACCOUNT.” R. SIMEON SAYS, “ONE DRAWS BLOOD FROM IT, EVEN THOUGH ONE MAKE A BLEMISH IN IT THEREBY.”**

1. I:1: Tannaite complement: “They do not draw blood from it in a place on which one makes a blemish. But they draw blood from it in a place on which one does not make a blemish,” the words of R. Meir. And sages say, “Also: They draw blood from it in a place on which one makes a blemish, on condition that it may not be slaughtered on account of that blemish, but on account of some other blemish.”

### **XXXIII. Mishnah-Tractate Bekhorot 5:3A-C**

**A. HE WHO SLIT THE EAR OF THE FIRSTLING — “LO, THIS SHOULD NEVER BE SLAUGHTERED BY REASON OF A BLEMISH,” THE WORDS OF R. ELIEZER. AND SAGES SAY, “WHEN ANOTHER BLEMISH WILL APPEAR IN IT, IT IS SLAUGHTERED ON ITS ACCOUNT.”**

1. I:1: Does R. Eliezer impose an extrajudicial sanction for all time without time limit? There is evidence to the contrary.

a. I:2: Amplification of a detail of the evidence to the contrary that is cited at I:1.

2. I:3: If one slit the ear of a firstling and then died, what is the rule as to imposing an extrajudicial sanction on his son after him?

### **XXXIV. Mishnah-Tractate Bekhorot 5:3D-O**

**A. THERE WAS THE CASE OF AN OLD RAM, WITH ITS HAIR DANGLING. A ROMAN DETECTIVE SAW IT. HE SAID, “WHAT SORT OF THING IS THIS?” THEY SAID TO HIM, “IT IS A FIRSTLING. AND IT IS SLAUGHTERED ONLY IF THERE IS A BLEMISH ON IT.” HE TOOK A DAGGER AND SLIT ITS EAR. AND THE CASE CAME BEFORE SAGES, AND THEY DECLARED IT PERMITTED. HE SAW THAT THEY PERMITTED IT AND WENT AND TORE THE EARS OF OTHER FIRSTLINGS. AND THEY DECLARED THEM PROHIBITED.**

**ANOTHER TIME CHILDREN WERE PLAYING IN THE FIELD, AND THEY TIED THE TAILS OF LAMBS TO ONE ANOTHER. AND THE TAIL OF ONE OF THEM SPLIT OFF. AND LO, IT WAS A FIRSTLING. AND THE CASE CAME BEFORE SAGES, AND THEY DECLARED IT PERMITTED. THEY SAW THAT THEY DECLARED IT PERMITTED, AND THEY WENT AND TIED TOGETHER THE TAILS OF OTHER FIRSTLINGS. AND THEY DECLARED THEM PROHIBITED.**

1. I:1: This case too was required. For had the Mishnah given us only the first case, involving a gentile, I might have thought that if we permit it, there is no danger that the gentile will go sour, but an Israelite child, who might go sour, I should say that the beast should not be permitted.

2. I:2: This rule that a gentile’s action may permit the use of the firstling applies only if they used the language, ‘Until it has a blemish.’ But if they used the language, ‘Until it has been made blemished,’ it is as though they had instructed him, ‘Go and blemish it.’

**B. THIS IS THE GENERAL PRINCIPLE: ANYTHING DONE DELIBERATELY — IT IS PROHIBITED.**

1. II:1: What does the general principle add?

**C. AND ANYTHING DONE UNINTENTIONALLY — IT IS PERMITTED.**

1. III:1: What does the general principle add?

## **XXXV. Mishnah-Tractate Bekhorot 5:4A-B**

**A. IF A FIRSTLING WAS RUNNING AFTER HIM, AND HE KICKED IT AND MADE A BLEMISH IN IT — LO, THIS IS SLAUGHTERED ON THAT ACCOUNT.**

1. I:1: This rule permitting the beast under these circumstances only if one kicked the beast while it was running after him, but if it was after the pursuit was over, that is not the case.
2. I:2: It is permitted to cause a blemish to a firstling before it has been born.
3. I:3: If the beast eats and the defect is not visible, but when it bleats, the defect is visible, that is regarded as a blemish.

## **XXXVI. Mishnah-Tractate Bekhorot 5:4C-G**

**A. ANY BLEMISHES WHICH ARE LIKELY TO HAPPEN AT THE HANDS OF MAN — ISRAELITE-CAST SHEPHERDS ARE BELIEVED TO TESTIFY THAT THE BLEMISHES CAME ABOUT UNINTENTIONALLY. BUT PRIESTLY-CAST SHEPHERDS ARE NOT BELIEVED. RABBAN SIMEON B. GAMALIEL SAYS, “HE A PRIEST IS BELIEVED CONCERNING ANOTHER’S FIRSTLING BUT IS NOT BELIEVED CONCERNING HIS OWN.” R. MEIR SAYS, “HE WHO IS SUSPECT IN A GIVEN MATTER NEITHER JUDGES NOR BEARS WITNESS IN THAT MATTER.”**

1. I:1: “Israelite-cast shepherds in the household of priestly-caste shepherds are believed to testify that the blemishes came about unintentionally. We do not take account of the possibility that their testimony is on account of their living. But priestly-cast shepherds in the household of Israelite-caste householders are not believed. The shepherd might say, ‘Since I work for him, he will not pass me by and give it to someone else. And the same applies to a priest employed by another priest, for we take account of the possibility of their favoring one another. And Rabban Simeon b. Gamaliel comes to say, ‘A priest is believed concerning another’s firstling but is not believed concerning his own.’ And R. Meir comes along to say, ‘He who is suspect in a given matter neither judges nor bears witness in that matter.’” Vs. a contrary view.

a. I:2: Secondary development of a detail introduced at I:1 to settle a subsidiary problem of analysis.

3. I:3: R. Nahman said, “The decided law accords with the position of Rabban Simeon b. Gamaliel, “Even his son and even his daughter.” Raba said, “The decided law accords with the position of Rabbi Even ten in the household are not believed.”

4. I:4: Said R. Pappa to Abbayye, “In the opinion of R. Meir, who has said, ‘He who is suspect in a given matter neither judges nor bears witness in that matter,’ and who holds that one who is suspect concerning one matter is suspect concerning the entire Torah, then a priest should never be able to take the role of a judge at all. But has it not been written, ‘And by their word shall every controversy and every stroke be’ (Deu. 21: 5)”?

5. I:5: What is the law concerning the testimony of one witness reporting what another witness has said hearsay, which normally is not accepted in regard to testimony having to do with the status of a firstling that the blemish was not intentionally caused?

6. I:6: If people did not assume that an animal was a firstling, and someone came and said that it was a firstling with a blemish on it, he is believed.

7. I:7: Illustrative case: R. Sadoq who was a priest had a firstling. He set barley for it in wicker baskets of peeled willow twigs. In eating, its lip was slit. He came before R. Joshua, and said to him, "Have we made a distinction between a priest who is classified with those who meticulously observes the law and one who is classified with those who do not?"

### **XXXVII. Mishnah-Tractate Bekhorot 5:5A**

**A. A PRIEST IS BELIEVED TO STATE, "I SHOWED THIS FIRSTLING TO AN EXPERT AND HE RULED THAT IT IS BLEMISHED."**

1. I:1: A priest is believed to testify, 'An Israelite gave me this firstling, with a blemish on it.' What is the operative consideration? In regard to any matter which is going to come out in the end, people don't lie anyhow.

a. I:2: Secondary development of the foregoing.

b. I:3: Illustrative case: Rafram of Pumbedita had a firstling, which he handed over, unblemished, to a priest. The priest had it blemished. One day Rafram's eyes grew weak. The priest brought the animal back to him and said to him, "This firstling was given to me by an Israelite, already blemished."

c. I:4: As above.

### **XXXVIII. Mishnah-Tractate Bekhorot 5:5B**

**A. ALL ARE BELIEVED TO TESTIFY CONCERNING BLEMISHES OF TITHE OF CATTLE THAT THEY WERE NOT DELIBERATELY CAUSED.**

1. I:1: What is the operative consideration here?

### **XXXIX. Mishnah-Tractate Bekhorot 5:5C-G**

**A. A FIRSTLING, THE EYE OF WHICH IS BLINDED, THE HOOF OF WHICH IS CUT OFF, THE HIND-LEG OF WHICH IS BROKEN — LO, THIS IS SLAUGHTERED ON THE ADVICE OF THREE MEMBERS OF THE ASSEMBLY.**

1. I:1: Overseas, permitting a firstling as blemished and hence edible is done by three members of the assembly.

2. I:2: In a place in which there is no expert, three ordinary men may permit the slaughter of a firstling by reason of blemishes.

3. I:3: In a place in which there is no expert, three ordinary men may permit the slaughter of a firstling by reason of blemishes.



**B. R. YOSÉ SAYS, “EVEN IF THERE ARE TWENTY-THREE THERE, HE IS TO BE SLAUGHTERED ONLY ON THE ADVICE OF AN EXPERT.”**

1. II:1: The law does not accord with the position of R. Yosé.

## **XL. Mishnah-Tractate Bekhorot 5:6**

**A. HE WHO SLAUGHTERS THE FIRSTLING AND SOLD IT, AND IT BECOMES KNOWN THAT HE DID NOT SHOW IT TO AN EXPERT — THAT WHICH THE PURCHASERS HAVE EATEN, THEY HAVE EATEN. AND HE RETURNS TO THEM THE COST OF THE MEAT. AND AS TO WHAT THEY HAVE NOT EATEN — THE MEAT IS TO BE BURIED. AND HE RETURNS TO THEM THE COST WHAT THEY PAID FOR IT..**

**AND SO: HE WHO SLAUGHTERS A COW AND SOLD IT AND IT BECOMES KNOWN THAT IT IS *TEREFAH* — WHAT THEY HAVE EATEN, THEY HAVE EATEN. AND AS A PENALTY HE RETURNS TO THEM THE COST. AND AS TO WHAT THEY HAVE NOT EATEN — THEY RETURN THE MEAT. AND HE RETURNS THEIR MONEY.**

**IF THEY SOLD IT TO GENTILES OR TOSSED IT TO THE DOGS, THEY RETURN TO HIM THE VALUE OF THE *TEREFAH* MEAT, WHICH IS CHEAP, AND HE REPAYS THE DIFFERENCE BETWEEN WHAT THEY PAID AND WHAT THEY RECEIVED.**

1. I:1: He who sells meat to his fellow and it turns out to be the meat of an unblemished firstling, produce and it turns out to have been liable to tithing but wholly untithed, wine and it turns out to have been libation wine — what they have eaten they have eaten, and he returns the money.

## **XLI. Mishnah-Tractate Bekhorot 6:1**

**A. ON ACCOUNT OF THESE BLEMISHES DO THEY SLAUGHTER THE FIRSTLING: IF ITS EAR IS DAMAGED IN THE GRISTLE BUT NOT IN THE SKIN (EAR LOBE):**

1. I:1: Why should the defects that are catalogued blemish a firstling? Does not Scripture state, “Lame or blind” (Deu. 15:21) — these are blemishes on account of which one may eat the firstling, implying that no other defects are taken into account?

**B. IF IT IS SLIT, EVEN THOUGH THERE IS NO LOSS OF SUBSTANCE:**

1. II:1: Tannaite complement: The split of the ear in any measure at all damages the ear. And as to the ear if it is damaged, whether by man or naturally — it is blemished.

**C. IF IT HAS A HOLE:**

1. III:1: Tannaite complement: To what extent is it to be perforated so that a hole in the ear constitutes a blemish?

**D. ...AS BIG AS A VETCH**

**OR IF IT IS DRIED UP. WHAT IS THE MEANING OF ‘DRIED UP’? ANY WHICH, IF PIERCED, DOES NOT PRODUCE A DROP OF BLOOD. R. YOSÉ B. MESHULLAM SAYS, “SO DRIED UP THAT IT CRUMBLES.”**

1. IV:1: what is the definition of a vetch? An Indian one.



2. IV:2: Must the hole be so large that the vetch can go in and come out easily, or may it be only so large as to hold a vetch?

a. IV:3: Secondary amplification of a detail incidental in the foregoing.

## **XLII. Mishnah-Tractate Bekhorot 6:2**

**A. THE EYELID WHICH IS PERFORATED, WHICH IS DAMAGED, WHICH IS SLIT.**

1. I:1: What is the meaning of “lid”?

**B. LO, IF IN ITS LID IS (1) A CATARACT, (2) A COMMINGLING:**

1. II:1: A cataract that causes the eye to sink is a blemish. That which floats on the surface of the eye, and is not sunk into the base of the eye is not a cataract.

**C. (3) A SNAIL-SHAPED GROWTH, (4) A SNAKE-SHAPED GROWTH, AND (5) A BERRY-SHAPED GROWTH.**

1. III:1: Is a snail-shaped growth the same as a snake-shaped growth or is the meaning, a snail-shaped growth or a snake-shaped growth?

**D. WHAT IS THE MEANING OF “COMMINGLING”? THE WHITE BREAKS THROUGH THE RING AND ENTERS THE BLACK.**

**IN THE CASE OF THE BLACK’S ENTERING THE WHITE, IT IS NOT A BLEMISH, FOR BLEMISHES DO NOT AFFECT THE WHITE OF THE EYE.**

1. IV:1: Who is the authority of this Mishnah that a blemish does not disqualify if it is in the white part of the eye?

## **XLIII. Mishnah-Tractate Bekhorot 6:3**

**A. (1) A WHITE CATARACT AND (2) RHEUM WHICH ARE LASTING CONSTANTLY DRIP. WHAT IS A WHITE CATARACT WHICH IS LASTING? ANY WHICH REMAINED EIGHTY DAYS.**

1. I:1: Who is the authority of our Mishnah?

2. I:2: And what is the definition of cases of permanent cataracts?

a. I:3: Gloss on the foregoing: Is the fresh fodder given to the firstling to eat for a cure to be in the season of fresh fodder, and is the dry fodder to be in the period of dry, or is the sense that we give the firstling fresh fodder together with dry in the period of fresh fodder?

b. I:4: And how much is fed to the beast?

**B. R. HANINA B. ANTIGONOS SAYS, “THEY EXAMINE IT THREE TIMES IN EIGHTY DAYS.”**

**WHAT IS RHEUM WHICH IS LASTING? IF IT ATE FRESH OR DRY FODDER FROM RAIN-WATERED FIELDS, AND THE WATER IN THE EYE REMAINED — THIS IS RHEUM WHICH IS LASTING. IF IT ATE FRESH OR DRY FODDER FROM IRRIGATED FIELDS, OR IF IT ATE DRY FODDER AND AFTERWARD ATE FRESH AND THE WATER REMAINED IN THE EYES, IT IS NOT A BLEMISH — UNLESS IT ATE DRY FODDER AFTER FRESH FODDER.**

1. II:1: And that is on condition that the cure is given three times in the eighty days.
2. II:2: If the beast ate and did not get better, is this deemed a blemish retrospectively, or is it only a blemish from this point and onward?

#### **XLIV. Mishnah-Tractate Bekhorot 6:4A-B**

##### **A. ITS NOSE WHICH IS PERFORATED, WHICH IS DAMAGED, WHICH IS SLIT.**

1. I:1: If the partitions of the nostrils are perforated right through from the outside, this is a blemish; if the perforation is inside, it is not a blemish

##### **B. ITS LIP (1) WHICH IS PERFORATED, WHICH IS DAMAGED, WHICH IS SLIT.**

1. II:1: The outer edge of the lip is what is meant.

#### **XLV. Mishnah-Tractate Bekhorot 6:4C-F**

##### **A. ITS FRONT TEETH INCISORS WHICH ARE DAMAGED, OR WORN DOWN; AND THE BACK ONES MOLARS WHICH ARE UPROOTED. R. HANINA BEN ANTIGONOS SAYS, "THEY DO NOT EXAMINE THE DOUBLE TEETH BACKWARD, OR EVEN THE DOUBLE-TEETH THEMSELVES."**

1. I:1: What are the double-teeth M. Bekh. 6:4D? Inside from the double-teeth, or from the double-teeth and inside.

##### **B. THE THEORY OF DISQUALIFICATION THROUGH LOSS OF A LIMB I:2: Does the consideration of loss of a limb apply to the animal's innards e.g., the loss of a kidney or milt , or does the consideration of loss of a limb not apply to the animal's innards?**

#### **XLVI. Mishnah-Tractate Bekhorot 6:5**

##### **A. IF THE SHEATH OF THE MALE ORGAN IS DAMAGED OR THE FEMALE ORGAN IN FEMALE BEASTS IN THE CASE OF HOLY THINGS.**

1. I:1: If the scrotum was mutilated, but not if it was removed; the scrotum, but not the penis.

##### **B. IF THE TAIL IS DAMAGED AT THE BONE, BUT NOT AT THE JOINT; OR IF THE ROOT-END OF THE TAIL HAS A DIVIDED BONE, OR IF THERE IS A FINGER'S BREADTH OF FLESH BETWEEN ONE LINK OF THE TAIL AND THE NEXT LINK.**

1. II:1: The fingerbreadth of which they have spoken is a fourth of any man's handbreadth.

#### **XLVII. Mishnah-Tractate Bekhorot 6:6**

##### **A. IF IT HAS NO TESTICLES, OR HAS ONLY ONE TESTICLE. R. ISHMAEL SAYS, "IF IT HAS TWO POUCHES, IT HAS TWO TESTICLES. IF IT HAS ONLY ONE POUCH, IT HAS ONLY ONE TESTICLE." R. AQIBA SAYS, "ONE SETS IT ON ITS BUTTOCKS AND SQUEEZES: IF THERE IS A TESTICLE THERE, IT ULTIMATELY WILL DESCEND."**

1. I:1: Now if the beast has only one testicle you say in the Mishnah that that constitutes a blemish, so if it had none would there be any question that the Mishnah should be formulated in the language, If it has no testicles, or has only one testicle?

**B. THERE WAS THE CASE IN WHICH SOMEONE SQUEEZED AND IT DID NOT DESCEND. AND IT WAS SLAUGHTERED. AND IT THE TESTICLE WAS FOUND CLEAVING TO THE GROIN. AND R. AQIBA DECLARED THE BEAST PERMITTED, AND R. YOHANAN B. NURI PROHIBITED IT.**

1. II:1: Tannaite complement.

## **XLVIII. Mishnah-Tractate Bekhorot 6:7**

**A. A BEAST WITH FIVE LEGS, OR WHICH HAS ONLY THREE**

1. I:1: The statement, A beast with five legs, applies only in a case in which there are too many or too few in front, but if it is the back hooves, the beast is also classified as terefah, for any additional limb is classified as though the actual limb had been removed.

**B. ONE THE LEGS OF WHICH ARE CLOSED NOT CLOVEN, LIKE THOSE OF THE ASS:**

1. II:1: You need not say that they are both round and not cloven, but even if the feet are round like those of an ass, though not cloven, that is a blemish.

**C. AND ONE WITH A DISLOCATED HIP; AND ONE WITH A DEFORMED HIP.**

**WHAT IS ONE WITH A DISLOCATED HIP? THAT THE THIGH-BONE HAS SLIPPED FROM ITS SOCKET. AND DEFORMED? THAT ONE OF ITS HIPS IS HIGHER THAN THE OTHER.**

1. III:1: Tannaite complement.

## **XLIX. Mishnah-Tractate Bekhorot 6:8**

**A. IF A BONE IN THE FORELEG IS BROKEN, OR A BONE IN THE HIND-LEG, EVEN IF IT IS NOT VISIBLE.**

1. I:1: Is an invisible trait a blemish at all?

**B. THESE BLEMISHES DID ILA LIST IN YAVNEH. AND SAGES CONCURRED WITH HIM. AND THREE MORE DID HE ADD. THEY SAID TO HIM, "WE HAVE NOT HEARD THESE."**

1. II:1: Does this mean to say that it was not usual for the eyeball to be round?

**C. THAT BEAST THE EYE OF WHICH IS ROUND LIKE THAT OF A MAN; AND THE MOUTH OF WHICH IS LIKE THAT OF A PIG;**

1. III:1: You need not maintain that the mouth must be pointed, besides the lip's being parted, but even if the lip is parted though the mouth is not pointed, the animal is deemed blemished.

**D. AND THAT, THE GREATER PART OF FORE-TONGUE OF WHICH IS REMOVED. AND THE COURT WHICH SUCCEEDED THEM SAID, "LO, THESE ARE DEEMED BLEMISHES."**

1. IV:1: Who is the authority for our Mishnah's rule?

## **L. Mishnah-Tractate Bekhorot 6:9A-C**

**A. THERE WAS A CASE IN WHICH THE LOWER JAW STRETCHED BEYOND THE UPPER ONE. AND RABBAN SIMEON B. GAMALIEL CONSULTED SAGES. AND THEY SAID, "LO, THIS IS A BLEMISH."**

1. I:1: What is the intent of the Tannaite authority who has added the case?

## **LI. Mishnah-Tractate Bekhorot 6:9D-H**

**A. THE EAR OF A KID WHICH WAS DOUBLED UP — SAGES SAID, "WHEN IT IS ALL A SINGLE BONE, IT IS A BLEMISH. AND IF IT NOT ALL A SINGLE BONE, IT IS NOT A BLEMISH."**

1. I:1: Tannaite complement.

**B. HANANIA B. GAMALIEL SAYS, "THE TAIL OF A KID WHICH IS LIKE THAT OF A PIG,**

1. II:1: Do not imagine that it has to be both round and thin; even if it is round, though thick, it is a blemish.

**C. AND THAT WHICH DOES NOT HAVE THREE LINKS VERTEBRAE — LO, THIS IS A BLEMISH."**

1. III:1: In the case of a kid, the absence of two vertebrae mark a blemish, but there not; in the case of a lamb, the absence of three vertebrae mark a blemish, but four not.

## **LII. Mishnah-Tractate Bekhorot 6:10**

**A. R. HANINA B. ANTIGONOS SAYS, "IF IT HAS A WART IN ITS EYE; AND IF THE BONE OF ITS FORE-LEG WAS DAMAGED; AND THE BONE OF ITS HIND-LEG; AND IF THE BONE OF THE MOUTH OF WHICH IS SEVERED:"**

1. I:1: Does the statement then bear the implication that a wart is a blemish? And an objection was raised from the following formulation of the Mishnah: These are the ones on account of which they do not slaughter firstlings either in the sanctuary or in the provinces: and a beast with scurvy; and a beast with warts.

**B. "AND IF ONE EYE IS LARGE AND ONE SMALL:"**

1. I:1: Tannaite complement: "large" as large as one of a calf, "small," as small as one of a goose.

**C. "AND IF ONE EAR IS LARGE AND ONE SMALL — IN APPEARANCE UPON VISUAL EXAMINATION, BUT NOT BY ACTUAL MEASURE."**

**R. JUDAH SAYS, "IF ONE OF ITS TESTICLES IS TWICE AS LARGE AS ITS FELLOW." AND SAGES DID NOT CONCUR WITH HIM.**

1. I:1: Tannaite complement: others say, "Even if the second is only the size of a bean, the animal is permitted."

### **LIII. Mishnah-Tractate Bekhorot 6:11A-E**

**A. THE CALF'S TAIL WHICH DOES NOT REACH THE KNEE-JOINT — IT IS A BLEMISH. SAGES SAID, "THROUGH THE WHOLE PERIOD OF GROWTH OF CALVES IT IS SO. ALL THE TIME THAT THEY ARE GROWING, THEY GROW LONGER SO THE TAIL ALWAYS REACHES THE KNEE-JOINT." TO WHAT JOINT DID THEY REFER? R. HANINA B. ANTIGONOS SAYS, "TO THE JOINT IN THE MIDDLE OF THE THIGH."**

1. I:1: the upper joint, not the lower knuckle.

### **LIV. Mishnah-Tractate Bekhorot 6:11F-G**

**A. ON ACCOUNT OF THESE BLEMISHES DO THEY SLAUGHTER THE FIRSTLING. AND INVALIDATED HOLY THINGS ARE REDEEMED ON THEIR ACCOUNT.**

1. I:1: What need to I have for a reiteration of the matter? This has already been given its Tannaite formulation to begin with: On account of these blemishes do they slaughter the firstling

### **LV. Mishnah-Tractate Bekhorot 6:12**

**A. THESE ARE THE ONES ON ACCOUNT OF WHICH THEY DO NOT SLAUGHTER FIRSTLINGS EITHER IN THE SANCTUARY OR IN THE PROVINCES: A WHITE CATARACT OR RHEUM IN THE EYE WHICH ARE NOT LASTING; AND BACK TEETH THAT ARE DAMAGED BUT ARE NOT UPROOTED; AND A BEAST WITH SCURVY; AND A BEAST WITH WARTS; AND A BEAST WITH LICHEN LEV. 22:22;**

1. I:1: Are not warts a blemish? Does Scripture not say, "or a wart" (Lev. 22:22)? is lichen not a blemish? Does Scripture not say, "scurvy"?

**B. AND AN OLD BEAST, AND A SICK BEAST; AND A SMELLY BEAST:**

1. II:1: What is the source of this ruling?

**C. AND A BEAST ON WHICH A BESTIAL TRANSGRESSION WAS COMMITTED:**

1. III:1: What is the source of this ruling?

**D. AND ONE WHICH KILLED A MAN, ACCORDING TO THE TESTIMONY OF A SINGLE WITNESS OR ACCORDING TO THE TESTIMONY OF THE OWNER; AND A BEAST OF DOUBTFUL SEX; AND A BEAST OF DOUBLE SEX — NEITHER IN THE SANCTUARY NOR IN THE PROVINCES.**

1. IV:1: Now there is no difficulty in understanding why a beast of doubtful sex would be excluded, since it might be a female; and it would be disqualified for use outside of the Temple, since it is a male that is not yet blemished. But as to a beast of double sex, while there is no problem on why it should not be used for the sanctuary, since it might be female, what is the problem about using it in the provinces? Granting that it is male, let it be seen as though it has a depression at the place of the female gentiles, on account of which the farmer may slaughter the animal?

**E. R. ISHMAEL SAYS, "THERE IS NO GREATER BLEMISH THAN THAT."**

1. V:1: He does not concur with Abbayye (in the discussion at IV: 1), for we do not draw an analogy between the incised part and 'broken.

2. V:2: What premise underlies the position of R. Ishmael? Is it self-evident to him that a hermaphrodite is a firstling male that is blemished, or is it because he is in doubt as to the gender, and permits it to be slaughtered since, if you assume it is a firstling, it is permitted as a blemished one?"

**F. AND SAGES SAY, "IT A BEAST OF DOUBLE SEX IS NOT DEEMED A FIRSTLING AT ALL, BUT IT MAY BE SHEARED AND USED FOR LABOR."**

1. VI:1: At issue is the hermaphrodite, but as to the beast of unclear sexual traits, all parties concur that it is subject to doubt and it deemed consecrated by reason of uncertainty so that it may not be sheared or worked.

## **LVI. Mishnah-Tractate Bekhorot 7:1-2D**

**A. THESE BLEMISHES THAT HAVE BEEN LISTED IN THE PRECEDING CHAPTER, WHETHER PERMANENT OR TRANSIENT, DISQUALIFY MAN FROM SERVING IN THE TEMPLE.**

1. I:1: How so? Why do these alone mark points of invalidation in a priest? Lo, there is the case of the wart, which is not specified in the Torah as a blemish in man? And, further, there are the cataract (Lev. 21:20) and the disintegration of the eye in which the white encroaches on the black or vice versa, Lev. 21:20), which are not listed in the Torah in regard to blemishes affecting animals but only man?

2. I:2: Said Raba, "How come Scripture listed blemishes in the setting of a human being, Holy Things, and a firstling? It was, indeed, necessary to specify them in each case..."

**B. IN ADDITION TO THEM IN THE CASE OF MAN:**

1. II:1: What is the source of this rule?

**C. THE ONE WHOSE HEAD IS WEDGE-SHAPED,**

1. III:1: His head is like a basket.

**D. OR TURNIP-SHAPED,**

1. IV:1: His head is looks like a turnip.

**E. OR HAMMER-SHAPED.**

1. V:1: his head looks like a mallet.

**F. AND THE ONE WHOSE HEAD IS SUNK IN,**

1. VI:1: there is an angle in the front of the head which recedes abruptly.

**G. OR FLAT ON THE BACK.**

1. VII:1: This refers to the back part of the head.

**H. HUMP-BACKS — R. JUDAH DECLARES VALID. AND SAGES DECLARE INVALID.**

1. VIII:1: If the hump has a bone, all parties concur that he is invalid. Where there is no bone, that is subject to dispute.

**I. A BALD-HEADED MAN IS INVALID. WHAT IS A BALD-HEADED MAN? ANY WHO DOES NOT HAVE A ROW OF HAIR GOING AROUND FROM EAR TO EAR. BUT IF HE HAS, LO, THIS ONE IS VALID.**

1. IX:1: Said Raba, “This rule pertains only where the man does not have a line of hair from ear to ear in the back part of the head but has it in the front; but where he has a line of hair in both the back part and the front, he is suitable for the Temple service. And that is certainly so where he has a line of hair in the back part but not in the front part.”

2. IX:2: Said R. Yohanan, “Bald-heads, dwarfs, and bleary-eyed are unfit for the priesthood, because they are not like the offspring of Aaron.”

## **LVII. Mishnah-Tractate Bekhorot 7:2E-I**

**A. IF HE DOES NOT HAVE EYEBROWS, OR IF HE HAS ONLY ONE EYEBROW, HE IS THAT GIBBEN LEV. 14:9 OF WHICH THE TORAH SPEAKS.**

1. I:1: But does the word “gibben” mean that one has no eyebrows?

**B. R. DOSA SAYS, “ANY WHOSE EYEBROWS HANG DOWN.” R. HANANIAH B. ANTIGONOS SAYS, “HE WHO HAS TWO BACKS AND TWO BACKBONES.”**

1. II:1: Does this then imply that a person with a double back or double spine can live?

## **LVIII. Mishnah-Tractate Bekhorot 7:3**

**A. THE MAN WHO IS FLAT-NOSED IS INVALID. WHAT IS THE MAN WHO IS FLAT-NOSED? HE WHO PAINTS BOTH EYES IN ONE MOVEMENT.**

1. I:1: One who can paint both of his eyes in one movement is such because his nose is depressed between the eyes.

**B. IF (1) BOTH EYES ARE ABOVE, OR (2) BOTH EYES ARE BELOW, OR (3) ONE EYE IS ABOVE AND ONE EYE IS BELOW SO THAT HE SEES THE ROOM AND THE ATTIC SIMULTANEOUSLY,**

1. II:1: What is the meaning of the phrase, If (1) both eyes are above, or (2) both eyes are below? If I say that both eyes are above means that they are always focused above, or both eyes are below and both eyes are below means that they are always focused below, and means that one eye sees below and one sees above, then that is the same as he sees the room and the attic simultaneously!

2. II:2: What is the source of this rule?

3. II:3: Further Tannaite exegesis of the relevant verses. “Blind” (Lev. 21:18) — whether blind in both eyes or blind in one eye. How do we know that if one has white spots on the cornea, or eyes dripping with water, one is blemished with perpetual blemishes? Scripture states, “a blind man” (Lev. 21:18).

**C. THOSE WHO COVER THEIR EYES FROM THE SUN,**

1. III:1: It is one who hates the sun.

**D. IF HE HAS UNMATCHED EYES,**



1. IV:1: R. Huna indicated by gestures: “One eye like ours, one like theirs.”

**E. (3) IF HE HAS BLEARY EYES, HE IS DISQUALIFIED. AND HE WHOSE EYELASHES HAVE FALLEN OUT IS INVALID, FOR APPEARANCE’S SAKE.**

1. V:1: One whose eyes are bleared, granulated; weeping, dripping, running.

### **LIX. Mishnah-Tractate Bekhorot 7:4-5D**

**A. IF HIS EYES ARE AS LARGE AS THOSE OF A CALF, OR AS SMALL AS THOSE OF A GOOSE, IF HIS BODY IS TOO BIG FOR HIS LIMBS, OR TOO SMALL FOR HIS LIMBS,**

1. I:1: Said Rab, “Our lord, Moses, had arms ten cubits long: ‘And he spread abroad the tent over the tabernacle’ (Exo. 40:19). Who spread it out? It was our lord, Moses, who spread it out. And it is written, ‘Ten cubits shall be the length of the board’ (Exo. 26:16).” Said R. Shimi bar Hiyya to Rab, “If so, you have treated our lord, Moses, as though he were blemished, for we have learned in the Mishnah: if his body is too big for his limbs, or too small for his limbs!”

**B. IF HIS NOSE IS TOO BIG FOR HIS LIMBS, (6) OR TOO SMALL FOR HIS LIMBS — HE IS DISQUALIFIED.**

1. II:1: the width of a small finger.

**C. IF HE IS SIMMEM OR SIMMEA — HE IS DISQUALIFIED.**

**WHAT IS THE MEANING OF *SIMMEA*? THAT HIS EARS ARE TOO SMALL. AND OF *SIMMEN*? THAT HIS EARS LOOK LIKE SPONGES. (1) IF HIS UPPER LIP STUCK OUT OVER THE LOWER, (2) OR THE LOWER STUCK OUT OVER THE UPPER, LO, THIS IS A BLEMISH. AND IF HIS TEETH ARE TAKEN OUT, HE IS INVALID, FOR APPEARANCE’S SAKE.**

1. III:1: A Tannaite version: also a semeah.

a. III:2: A goat that has no horns, and a ewe that has horns, are suitable for the altar.

b. III:3: If its horns and the bony inside were removed, the animal is unfit for the altar, but the beast may not be redeemed if it was consecrated merely on that account since it is unfit for the altar, but otherwise not sufficiently blemished to be redeemed and discarded. If the hooves were removed together with the bony inside, the animal is unfit, and it may be redeemed on account of that blemish.

### **LX. Mishnah-Tractate Bekhorot 7:5E-K**

**A. IF HIS BREASTS LIKE LIKE THOSE OF A WOMAN, IF HIS BELLY IS SWOLLEN, IF HIS BELLYBUTTON PROTRUDES, IF HE IS SMITTEN WITH EPILEPSY, EVEN ONCE IN A WHILE.**

**B. EXCURSUS ON URINATING**

1. I:1: One may urinate in public but not drink water in public.

2. I:2: There are two holes in a man, one for urine, one for semen, and the distance from the one to the other is no broader than a garlic-peel.

3. I:3: *What is the meaning of the verse, “There shall not be male and female barren among you or among your cattle” (Deu. 7:14)?* When will there not be a male barren among you? When you are at a level with your animals and not hold in your urine.

4. I:4: A man should not urinate in a clay utensil or on a hard place.

5. I:5: A woman must not stand up before a child and urinate, but if she does it sideways, there is no objection

6. I:6: A suppressed discharge produces dropsy. Urine in the urinary duct produces jaundice.

#### **C. IF LOCKJAW AFFECTS HIM,**

1. II:1: What causes this?

#### **D. THE ONE WHOSE TESTICLES ARE TOO LARGE, (7) AND THE ONE WHOSE PENIS IS TOO LARGE:**

1. III:1: the former statement refers to the testicles, the latter to the penis; the former refers to testicles that are too large, the latter to the penis that is too large.

### **LXI. Mishnah-Tractate Bekhorot 7:5L-Q**

**A. IF HE HAS NO TESTICLES, OR HAS ONLY ONE TESTICLE. THIS IS “HE THAT HAS HIS STONES BROKEN” (LEV. 21:20) OF WHICH THE TORAH SPEAKS. R. ISHMAEL SAYS, ‘SCRIPTURE REFERS TO ANY WHO HAS TESTICLES CRUSHED.’ R. AQIBA SAYS, “IT REFERS TO ANY WHO HAS WIND IN HIS TESTICLES.” R. HANANIAH B. ANTIGONOS SAYS, “IT REFERS TO ANY WHOSE COMPLEXION IS VERY DARK.”**

1. I:1: The reason that R. Ishmael found the opinion difficult to accept if he has no testicles, or has only one testicle, this is “he that has his stones broken” (Lev. 21:20) of which the Torah speaks is that, if that were the sense of Scripture, it should have said, ‘deficient in testicles.’ Therefore he says that it is any who has testicles crushed.” The reason that R. Aqiba found the opinion difficult to accept any who has wind in his testicles is that, if that were the sense of Scripture, it should used the passive participle. He therefore says that it means, any who has wind in his testicles.”

### **LXII. Mishnah-Tractate Bekhorot 7:6A-S**

**A. HE WHO KNOCKS TOGETHER HIS ANKLES OR HIS KNEES, AND ONE WHO HAS SWELLINGS IN THE FEET, AND ONE WHO IS BOW-LEGGED. WHO IS BOW-LEGGED? ANY WHO PUTS TOGETHER HIS SOLES AND WHOSE KNEES DO NOT TOUCH ONE ANOTHER.**

1. I:1: “Broken footed” (Lev. 21:19) — I know only that one who is broken fitted is unfit for the priesthood. How do I know that the law encompasses him who knocks together his ankles or his knees, one who has swellings in the feet, and one who is bow-legged?

2. I:2: as to one who has swellings in his feet or one who has a file-shaped leg.

**B. IF HE HAS A SWELLING ON THE BIG TOE, IF HIS HEEL JUTS OUT BACKWARD,**

1. II:1: In the latter case, his leg comes out in the middle of the foot. **C. IF HIS SOLE IS AS WIDE AS THAT OF A GOOSE,**

1. III:1: That is not to say the feet are squared and not separated, even if they are square but separated, he is unfit.

**D. IF HIS TOES LIE ONE ABOVE THE OTHER, OR ARE WEBBED TO THE MIDDLE-JOINT, HE IS VALID. IF THEY ARE WEBBED BELOW THE MIDDLE JOINT AT THE TOES AND ONE CUT IT THE TISSUE, HE IS VALID.**

1. IV:1: “Broken handed” — I know only that a broken hand renders the priest blemished. How do I know that if his toes or: fingers lie one above the other, or are webbed to the middle-joint and he cut them, he is unfit?

**E. IF THERE WAS AN EXTRA FINGER ON HIM AND HE CUT IT OFF, IF THERE IS A BONE IN IT, HE IS INVALID. AND IF NOT, HE IS VALID.**

1. V:1: That is so only when it is counted in the row of the fingers of the hand.

a. V:2: Secondary expansion on a detail of the foregoing.

b. V:3: As above;

c. V:4: As above.

d. V:5: As above.

**F. IF HE HAS EXCESS ON HIS HANDS AND FEET — SIX IN EACH LIMB, TWENTY-FOUR IN ALL — R. JUDAH DECLARES VALID. AND SAGES DECLARE INVALID.**

1. VI:1: And both parties interpret a single verse of Scripture: ‘And there was yet a battle in Gath where there was a man of great stature, who had six fingers on every hand and six toes on every foot, twenty-four in all’ (2Sa. 21:20).

a. VI:2: Gloss on the foregoing: Why does Scripture say both ‘six...,’ ‘six...,’ and ‘twenty-four in all’?

2. VI:2: Illustrative case.

**G. HE WHO IS AMBIDEXTROUS — RABBI DECLARES INVALID. AND SAGES DECLARE VALID.**

1. VII:1: If one is left-handed or left-legged — he is invalid.

### **LXIII. Mishnah-Tractate Bekhorot 7:6T-X**

**A. THE ETHIOPIAN SWARTHY,**

1. I:1: that is unusually dark-complexioned.

**B. AND THE RED-SKINNED,**

1. II:1: blotchy-skinned.

**C. AND THE ALBINO,**

1. III:1: with red spots on the face.

**D. AND THE GIANT, AND THE DWARF,**

1. IV:1: That means someone very tall.

2. IV:2: A very tall man should not marry a very tall woman, lest their children be like ships' masts.

**E. AND THE DEAF-MUTE, AND THE IMBECILE, AND THE DRUNKARD, AND THE ONE WHO HAS CLEAN *NEGA'IM* ARE INVALID AMONG MEN, AND VALID AMONG BEASTS. RABBAN SIMEON B. GAMALIEL SAYS, "AN IMBECILE AMONG BEASTS IS NOT THE CHOICEST." R. ELIEZER SAYS, "ALSO: THOSE WHO HAVE DANGLING WARTS ARE INVALID AMONG MEN, AND VALID AMONG BEASTS."**

1. V:1: But does not a drunkard simply profane the liturgy of the offering? How is this defect parallel with the blemishes that disqualify a priest?

### **LXIV. Mishnah-Tractate Bekhorot 7:7**

**A. THESE ARE VALID AMONG MEN AND INVALID AMONG BEASTS: PROGENITOR AND HIS OFFSPRING: AND A *TEREFAH*, AND ONE BORN FROM THE SIDE, AND THAT UPON WHOM A SIN WAS COMMITTED, AND ONE WHO KILLED A MAN.**

1. I:1: What is the meaning of a progenitor and his offspring? Aaron and his sons a father and a son may officiate on the same day, and the corresponding case is a he-goat and its offspring.

**B. HE WHO MARRIES WOMEN THAT ARE FORBIDDEN IS INVALID UNTIL HE WILL VOW NOT TO DERIVE BENEFIT.**

1. II:1: He takes a vow not to derive benefit from her and then may perform the Temple liturgy; then he descends from the altar and issues the writ of divorce.

**C. AND HE WHO CONTRACTS CORPSE-UNCLEANNES IS INVALID UNTIL HE WILL UNDERTAKE NOT TO CONTRACT CORPSE-UNCLEANNES.**

1. III:1: What is the difference between this case, in which it is sufficient for him to give such an undertaking, and the case prior, in which we impose a vow on the man?

### **LXV. Mishnah-Tractate Bekhorot 8:1A-Z**

**A. THERE IS A FIRSTBORN IN RESPECT TO INHERITANCE, WHO IS NOT A FIRSTBORN IN RESPECT TO THE PRIEST, A FIRSTBORN IN RESPECT TO THE PRIEST WHO IS NOT A FIRSTBORN IN RESPECT TO INHERITANCE, A FIRSTBORN IN RESPECT TO INHERITANCE AND IN RESPECT TO THE PRIEST, AND THERE IS ONE WHO IS NOT A FIRSTBORN EITHER IN RESPECT TO INHERITANCE OR IN RESPECT TO THE PRIEST. WHO IS HE WHO IS A FIRSTBORN IN RESPECT TO INHERITANCE AND NOT A FIRSTBORN IN RESPECT TO THE PRIEST?**

**HE WHO COMES AFTER AN UNTIMELY BIRTH WHOSE HEAD EMERGED ALIVE**

1. I:1: The appearance of the head of a twin, if it was drawn back after having emerged does not exempt the other twin, born first, from the duty of being redeemed from the priest in line with Num. 18:15-16 in the case of a miscarriage. Cites: He who comes after an untimely birth whose head emerged alive.

2. I:2: The emergence of the forehead in all cases is regarded as the moment of birth, except for purposes of inheritance; the one who follows is firstborn unless the face of the first infant came forth.

**B. ...OR AFTER A NINE-MONTH-OLD BIRTH THE HEAD OF WHICH EMERGED BUT WHICH WAS DEAD, “AND HE WHO COMES AFTER AN ABORTION WHICH WAS LIKE A BEAST, A WILD ANIMAL, OR A BIRD,” THE WORDS OF R. MEIR. AND SAGES SAY, “ONLY IF THE ABORTION BEARS THE APPEARANCE OF MAN.” SHE WHO ABORTS A SANDAL, AN AFTERBIRTH, OR A FULLY-FORMED FOETUS, AND THAT WHICH GOES FORTH IN PIECES — THAT WHICH IS BORN AFTER THEM IS A FIRSTLING IN RESPECT TO INHERITANCE BUT NOT A FIRSTLING IN RESPECT TO THE PRIEST. HE WHO HAD NO CHILDREN AND WHO MARRIED A WOMAN WHO ALREADY HAD GIVEN BIRTH — OR IF SHE WAS A BONDWOMAN AND THEN MADE FREE, A GENTILE AND CONVERTED, AFTER SHE CAME TO THE ISRAELITE, SHE GAVE BIRTH, HE IS A FIRSTBORN IN RESPECT TO INHERITANCE BUT NOT A FIRSTBORN IN RESPECT TO THE PRIEST. R. YOSÉ THE GALILEAN SAYS, “HE IS A FIRSTLING FOR INHERITANCE AND FOR THE PRIEST, SINCE IT IS SAID, ‘WHATSOEVER OPENS THE WOMB AMONG THE CHILDREN OF ISRAEL’ (EXO. 13: 2) — THIS IS APPLICABLE ONCE THEY THE OFFSPRING WILL OPEN THE WOMB OF ISRAELITES.”**

**HE WHO HAD CHILDREN, AND WHO MARRIED A WOMAN WHO HAD NOT GIVEN BIRTH, SHE CONVERTED WHEN PREGNANT, OR IF SHE WAS FREED WHEN PREGNANT, IF THERE GAVE BIRTH SHE AND A PRIEST’S WIFE AND THE BABIES WERE MIXED UP, SHE AND A LEVITE’S WIFE AND THE BABIES WERE MIXED UP, SHE AND A WOMAN WHO HAD ALREADY GIVEN BIRTH AND THE BABIES WERE MIXED UP.**

1. II:1: If a man had children while he was a gentile and then he converted. The Mishnah-passage serves in the analysis of the problem introduced by the foregoing proposition.
2. II:2: A priest who died and left a son who is profaned from the priesthood because his mother was not appropriate for marriage into the priesthood — R. Hisda said, “The son is liable to redeem himself as a firstborn.” He is equivalent to an Israelite, subject to the law of the firstborn. Rabbah b. R. Huna said, “He is not liable to redeem himself.”
3. II:3: A priest who died within thirty days of the birth of a child and left a son who was of profaned priestly stock — the son is liable to redeem himself, for the father did not acquire title to the money to be paid for his redemption.

**C. AND SO SHE WHO DID NOT WAIT AFTER HER HUSBAND’S DEATH FOR THREE MONTHS BUT GOT MARRIED AND GAVE BIRTH — SO IT IS NOT KNOWN WHETHER IT IS AN OFFSPRING AT NINE MONTHS ATTRIBUTED TO THE FIRST HUSBAND OR AT SEVEN MONTHS ATTRIBUTED TO THE SECOND — IT IS A FIRSTBORN IN RESPECT TO THE PRIEST BUT NOT A FIRSTBORN IN RESPECT TO INHERITANCE.**

1. III:1: He is not a firstborn as to inheritance, which bears the implication that he takes his share as an ordinary son. But why should this be the case? Let him go to the sons of this one the first husband, who can reject his claim since he cannot prove that he is a son of the first husband, and let him go to the sons of that one the second husband, who also can reject his claim he cannot prove he is their brother either!

## **LXVI. Mishnah-Tractate Bekhorot 8:1AA-8:2**

**A. WHO IS HE WHO IS A FIRSTBORN IN RESPECT TO INHERITANCE AND IN RESPECT TO THE PRIEST? SHE WHO ABORTS A FOETUS FILLED WITH BLOOD, FILLED WITH WATER, FILLED WITH VARIEGATED MATTER, SHE WHO ABORTS SOMETHING LIKE FISH, LOCUSTS, INSECTS, OR CREEPING THINGS, SHE WHO ABORTS ON UP TO THE FORTIETH DAY AFTER CONCEPTION — HE WHO COMES AFTER THEM IS A FIRSTLING IN RESPECT TO INHERITANCE AND IN RESPECT TO THE PRIEST.**

**THAT WHICH GOES FORTH FROM THE SIDE AND THAT WHICH COMES AFTER IT — BOTH OF THEM ARE NEITHER A FIRSTBORN IN RESPECT TO INHERITANCE NOR IN RESPECT TO THE PRIEST.**

1. I:1: The first is not a firstborn as to inheritance because of the requirement of Scripture: “And they have borne him” (Deu. 21:15) implying that in the case of inheritance the offspring must be born in the normal way, through the womb; and not firstborn as regards redemption with five selas.

**B. R. SIMEON SAYS, “THE FIRST IS A FIRSTBORN IN RESPECT TO INHERITANCE. AND THE SECOND IS A FIRSTBORN IN RESPECT TO THE FIVE *SELAS* \TO BE PAID TO THE PRIEST.”**

1. II:1: R. Simeon is consistent with views expressed elsewhere, for he has said, ““But if she bear” (Lev. 12: 5) — encompassing the child born by caesarean section.” And the second is firstborn in respect to the five selas because he takes the view, a firstborn in one respect only as to the womb is not classified as a firstborn.”

## **LXVII. Mishnah-Tractate Bekhorot 8:3**

**A. HE WHOSE WIFE HAD NOT GIVEN BIRTH AND WHOSE WIFE GAVE BIRTH TO TWO MALES GIVES FIVE *SELAS* TO THE PRIEST. IF ONE OF THEM DIED DURING THE FIRST THIRTY DAYS AFTER BIRTH, THE FATHER IS EXEMPT FROM THE OBLIGATION TO GIVE FIVE *SELAS* TO THE PRIEST.**

**IF THE FATHER DIED AND THE SONS LIVE, R. MEIR SAYS, “IF THEY HAD GIVEN THE FIVE *SELAS* BEFORE THEY DIVIDED THE INHERITANCE, THEY HAVE GIVEN IT. THE PRIEST KEEPS IT, SINCE ONE OF THE TWO IS SURELY LIABLE AS FIRSTBORN. AND IF NOT, THEY ARE EXEMPT. WE DO NOT KNOW WHICH ONE IS LIABLE TO PAY THE MONEY.” R. JUDAH SAYS, “THE ESTATE IS LIABLE. THE FATHER IS IN ANY CASE LIABLE FOR THE FIVE *SELAS*.” IF SHE BORE MALE AND FEMALE, THERE IS NOTHING WHATSOEVER HERE FOR THE PRIEST.**

1. I:1: Now when did the father die? If we say that he died after thirty days of the son’s birth, then is it in such a case that R. Meir said, “When they have divided up the estate, they are exempt from paying the five selas”? Has the property not already been mortgaged to the priest for the five selas? So you must say that he died within thirty days of the birth of the son. But if they have divided up the estate, why are the sons exempt? It is presumably because if the priest goes to this one, his claim can be rejected since this one claims the other is the first born, and if

he goes to that one, his claim can be rejected. But why should that not be the rule, also, if they have not divided up the property, namely, the priest goes to this one and his claim is rejected, and if he goes to that one, his claim is rejected?

### **LXVIII. Mishnah-Tractate Bekhorot 8:4-6D**

**A. TWO WOMEN MARRIED TO THE SAME MAN WHO HAD NOT GIVEN BIRTH AND WHO BORE TWO MALES — HE THE FATHER GIVES TEN *SELAS* TO THE PRIEST. IF ONE OF THEM DIED DURING THE FIRST THIRTY DAYS AFTER BIRTH, IF THE FATHER HAD GIVEN THE TEN *SELAS* TO ONE PRIEST, HE THE PRIEST RETURNS FIVE *SELAS* TO HIM THE FATHER. IF HE HAD GIVEN THE TEN *SELAS* TO TWO PRIESTS, HE CANNOT RECOVER THE FUNDS FROM THEIR HAND.**

1. I:1: How come in the case of two priests the redemption money cannot be reclaimed? Because the man may go to one priest and be dismissed, and then to the other and be dismissed. Why not apply the same principle to the case of a single priest, so that if one father goes to the priest, he can reject the demand “it is not your son who died but your neighbor’s, and I am entitled to the five selas”, and if the other goes and demands the money, he too can reject the demand on the same ground?

**B. IF THEY BORE A MALE AND A FEMALE, OR TWO MALES AND A FEMALE, HE GIVES FIVE *SELAS* TO THE PRIEST. IF THEY BORE TWO FEMALES AND A MALE, OR TWO MALES AND TWO FEMALES, THERE IS NOTHING WHATSOEVER HERE FOR THE PRIEST. IF ONE HAD GIVEN BIRTH AND ONE HAD NOT GIVEN BIRTH, AND THEY BORE TWO MALES, HE THE FATHER GIVES FIVE *SELAS* TO THE PRIEST. IF ONE OF THEM DIED DURING THE FIRST THIRTY DAYS AFTER BIRTH, THE FATHER IS EXEMPT. IF THE FATHER DIED, AND THE SONS LIVE, R. MEIR SAYS, “IF THEY HAD GIVEN THE FIVE *SELAS* BEFORE THEY DIVIDED THE INHERITANCE, THEY HAVE GIVEN THEM. AND IF NOT, THEY ARE EXEMPT.” R. JUDAH SAYS, “THE ESTATE IS LIABLE.”**

**IF THEY BORE MALE AND FEMALE, THERE IS NOTHING WHATSOEVER HERE FOR THE PRIEST.**

**TWO WIVES OF TWO MEN, WHO HAD NOT GIVEN BIRTH, AND WHO GAVE BIRTH TO TWO MALES — THIS ONE GIVES FIVE *SELAS* TO THE PRIEST, AND THAT ONE GIVES FIVE *SELAS* TO THE PRIEST. IF ONE OF THEM DIED DURING THE FIRST THIRTY DAYS AFTER BIRTH, if they had given the five *selas* to one priest, HE RETURNS THE FIVE *SELAS* TO THEM. IF THEY HAD GIVEN THE FIVE *SELAS* TO TWO PRIESTS, THEY CANNOT RECOVER THE FUNDS FROM THEIR HAND. IF THEY GAVE BIRTH TO A MALE AND A FEMALE, THE FATHERS ARE EXEMPT. BUT THE SON IS LIABLE TO REDEEM HIMSELF. IF THEY GAVE BIRTH TO TWO FEMALES AND A MALE OR TO TWO MALES AND TWO FEMALES, THERE IS NOTHING WHATSOEVER HERE FOR THE PRIEST. IF ONE HAD GIVEN BIRTH AND ONE HAD NOT GIVEN BIRTH, TO TWO MEN, AND THEY GAVE BIRTH TO TWO MALES, THIS ONE WHOSE WIFE HAD NOT GIVEN BIRTH GIVES FIVE *SELAS* TO THE PRIEST. IF THEY GAVE BIRTH TO A MALE AND A FEMALE AND THE CHILDREN WERE MIXED UP, THERE IS NOTHING WHATSOEVER HERE FOR THE PRIEST.**



1. II:1: A Tannaite version of R. Huna: “If there were two males and a female, the priest has nothing here.”

### **LXIX. Mishnah-Tractate Bekhorot 8:6E-I**

**A. IF THE SON DIED DURING THE FIRST THIRTY DAYS AFTER BIRTH, EVEN THOUGH HE THE FATHER HAD GIVEN TO THE PRIEST FIVE *SELAS* TO THE PRIEST, HE MUST RETURN THE MONEY. IF IT WAS AFTER THIRTY DAYS, EVEN THOUGH HE HAS NOT YET GIVEN THE MONEY, HE MUST GIVE IT. IF THE MALE DIED ON THE THIRTIETH DAY, IT IS DEEMED EQUIVALENT TO THE DAY BEFORE IT THE TWENTY-NINTH, AND THE FATHER OWES NOTHING. R. AQIBA SAYS, “IF HE GAVE THE FIVE *SELAS*, BUT THE SON DIED ON THE THIRTIETH DAY, HE THE FATHER SHOULD NOT TAKE THE MONEY BACK. AND IF HE DID NOT GIVE OVER THE FIVE *SELAS*, HE THE FATHER SHOULD NOT GIVE OVER THE FIVE *SELAS*.”**

1. I:1: What is the scriptural basis for the positions of rabbis and of Aqiba?
2. I:2: All concur in respect to the rules of mourning that the thirtieth day is classified as the day prior to it.

### **LXX. Mishnah-Tractate Bekhorot 8:6J-P**

**A. IF THE FATHER DIED DURING THE THIRTY DAYS AND IT IS NOT KNOWN WHETHER OR NOT HE HAD REDEEMED THE FIRSTBORN MALE, IT IS ASSUMED THAT HE THE FIRSTBORN HAS NOT BEEN REDEEMED UNTIL ONE WILL BRING PROOF THAT HE HAS BEEN REDEEMED. IF THE FATHER DIED AFTER THIRTY DAYS, IT IS ASSUMED THAT HE HAS BEEN REDEEMED, UNTIL THEY WILL TELL HIM THAT HE HAS NOT BEEN REDEEMED.**

1. I:1: He who redeems his son within the first thirty days — Rab said, “His son is validly redeemed.” And Samuel said, “His son is not validly redeemed.”

**B. IF A MAN WHO WAS FIRSTBORN SON HAD A FIRSTBORN SON AND WAS TOLD THAT HE HAD NOT BEEN REDEEMED SO THAT HE IS TO REDEEM HIMSELF AND HE IS TO REDEEM HIS SON, HE COMES BEFORE HIS SON. R. JUDAH SAYS, “HIS SON COMES BEFORE HIM. FOR THE REQUIREMENT OF REDEEMING HIM THE FATHER FALLS UPON *HIS* FATHER, WHILE THE REQUIREMENT OF REDEEMING HIS SON FALLS ON HIM.”**

1. II:1: If he was to be redeemed and his son was to be redeemed, he takes precedence over his son. R. Judah says, “His son takes precedence over him, for the religious duty pertains to his father, and the religious duty involving the son is pertains to the father.”

### **LXXI. Mishnah-Tractate Bekhorot 8:7**

**A. THE FIVE *SELAS* FOR REDEEMING THE FIRSTBORN SON ARE IN TYRIAN COINAGE.**

1. I:1: A Tyrian maneh — said R. Assi, “It is a maneh that is Tyrian currency.” R. Ammi said, “These are Arabian denars.” R. Hanina says, “It is a Syrian istira, eight for a golden denar, five to be used for the redemption of the first born.”

2. I:2: The selas to which the Torah makes reference contain three and a third denars. Scripture states, 'A shekel is twenty gerahs' (Exo. 30:13), which we translated 'twenty maahs,' and it has been taught on Tannaite authority: 'Six silver maahs make up a denar.'"

a. I:3: R. Ashi sent R. Aha b. Rabina seventeen zuz for the redemption of a firstborn son, with the message, "Let the master give me the extra third of a sela change from the redemption money that I have sent."

3. I:4: Every reference in the Torah to 'silver coinage' without further specification means a sela; in the prophets, it is litrae; in the Writings, centenaria.

a. I:5: They wanted to hide away all of the silver and gold in the world, on account of the silver and gold of Jerusalem.

4. I:6: Every reference in the Torah to 'silver coinage' without further specification means Tyrian coinage, in the teaching of sages, it means, currency of the province which is an eighth of the silver coinage of the Pentateuch."

a. I:7: Hanan, a bully, boxed someone's ear. The case came before R. Huna, who said to him, "Give him half a zuz."

**B. (1) THE THIRTY FOR THE SLAVE EXO. 21:32, AND (2) THE FIFTY TO BE PAID BY THE RAPIST AND SEDUCER EXO. 22:15-16, DEU. 22:28-29, AND (3) THE HUNDRED TO BE PAID BY THE GOSSIP DEU. 22:19 — ALL ARE TO BE PAID IN THE VALUE OF SHEQELS OF THE SANCTUARY, IN TYRIAN COINAGE.**

1. II:1: Why does the author of the passage repeat himself when he says all are to be paid in the value of sheqels of the sanctuary, in Tyrian coinage? He has already said this at the outset!

**C. AND EVERYTHING WHICH IS TO BE REDEEMED IS REDEEMED IN SILVER OR ITS EQUIVALENT, EXCEPT FOR SHEQEL-DUES.**

1. III:1: *A Tannaite version:* except for shekel payments, money used to exchange for produce designated as second tithe which must be in stamped money, and the money to be paid for the appearance-offering brought by pilgrims which must be two maah, in stamped money.

## **LXXII. Mishnah-Tractate Bekhorot 8:8**

**A. THEY DO NOT PAY THE PRICE OF FIVE SHEKELS FOR THE REDEMPTION OF THE FIRSTBORN EITHER WITH SLAVES OR WITH DEEDS OR WITH LAND:**

1. I:1: Our Mishnah-paragraph does not accord with the view of Rabbi. For it has been taught on Tannaite authority: Rabbi says, "With anything whatsoever one may redeem a firstborn, except for notes of indebtedness."

**B. NOR IS ANYTHING WHICH HAS BEEN SANCTIFIED REDEEMED WITH SLAVES, DEEDS, OR LAND.**

1. II:1: That is self-evident! Are these are not things that belong to him anyhow!

**C. IF ONE WROTE A DOCUMENT FOR THE PRIEST THAT HE OWES HIM FIVE SELAS, HE IS LIABLE TO PAY HIM THE FIVE SELAS, BUT HIS SON IS NOT YET REDEEMED UNTIL THE FATHER PAYS FIVE SELAS.**

1. III:1: So far as the Torah is concerned, the son is redeemed when the father has paid the money. So how come the Mishnah states, but his son is not yet redeemed until the father pays five *selas*?" This represents a precautionary decree, lest people say that firstborn may be redeemed with bonds of indebtedness.

2. III:2: His son is redeemed when he pays.

**D. THEREFORE IF THE PRIEST DID NOT CHOOSE TO COLLECT THE FIVE *SELAS*, BUT DECIDED TO GIVE THE FIVE *SELAS* OF THE BOND TO HIM AS A GIFT, HE HAS THE RIGHT.**

1. IV:1: If one gave the five selas simultaneously to ten priests, he has carried out his obligation; if he did so in sequence, one after the other, he has carried out his obligation. If the priest took the money and gave it back to him, he has carried out his obligation.

a. IV:2: R. Hanina had the habit of taking the money and giving it back.

**E. HE WHO SETS ASIDE THE REDEMPTION MONEY FOR HIS SON, AND IT WAS LOST, IS LIABLE FOR IT, SINCE IT IS SAID, "IT SHALL BE YOURS, AND YOU SHALL SURELY REDEEM IT" (NUM. 18:15).**

1. V:1: What is the scriptural basis for this rule?

### **LXXIII. Mishnah-Tractate Bekhorot 8:9**

**A. THE FIRSTBORN TAKES A DOUBLE PORTION IN THE ESTATE OF THE FATHER. BUT HE DOES NOT TAKE A DOUBLE PORTION IN THE ESTATE OF THE MOTHER.**

1. I:1: What is the scriptural basis for this rule?

**B. AND HE DOES NOT TAKE A DOUBLE PORTION OF THE INCREASED VALUE**

1. II:1: Scripture has said, "of all that he has" (Deu. 21:17) at this time.

**C. OR A DOUBLE SHARE OF WHAT IS GOING TO ACCRUE TO THE ESTATE OF THE FATHER AS HE RECEIVES A DOUBLE SHARE OF WHAT ALREADY IS IN HAND.**

1. III:1: Scripture has said, "of all that he has" (Deu. 21:17) at this time.

**D. AND THE SAME APPLIES TO THE WIFE IN RESPECT TO HER MARRIAGE-SETTLEMENT,**

1. IV:1: Is this really the case? And did not Samuel state, "A creditor can also claim the improvement in the value of the estate"?

**E. AND TO THE DAUGHTERS IN RESPECT TO THEIR MAINTENANCE:**

1. V:1: What is the operative consideration

**F. AND TO THE LEVIR.**

1. VI:1: What is the scriptural basis?

2. VI:2: This rule pertains only to the increase in the value of the estate between the death of the brother and the entry into levirate marriage; but he does take a double portion of the increase in the value of the estate that takes place between the period of the levirate marriage's consummation and the actual division of the estate.

**G. NONE OF THEM TAKES WHAT IS OWING THE INCREASED VALUE:**

1. VII:1: What does this generalization mean to encompass?

**H. OR OF WHAT IS EXPECTED TO ACCRUE TO THE ESTATE AS THEY RECEIVE A DOUBLE SHARE OF WHAT ALREADY IS IN HAND.**

1. VIII:1: This encompasses under the rule the estate of the grandfather.

**LXXIV. Mishnah-Tractate Bekhorot 8:10**

**A. THESE ARE THE THINGS WHICH DO NOT REVERT TO THE ORIGINAL OWNERS IN THE JUBILEE LEV. 25:10: THE PORTION OF THE FIRSTBORN; “AND WHAT IS GIVEN AS A GIFT,” THE WORDS OF R. MEIR. AND SAGES SAY, “THAT WHICH IS GIVEN AS A GIFT IS EQUIVALENT TO THAT WHICH IS SOLD.”**

1. I:1: What is the reason for the position of R. Meir

**B. AND THE INHERITANCE OF ONE WHO INHERITS HIS WIFE’S ESTATE;**

1. II:1: The inheritance on the part of the husband derives from the law of the Torah.

**C. AND THE INHERITANCE OF THE ONE WHO PERFORMS LEVIRATE MARRIAGE.**

1. III:1: Scripture refers to him as firstborn.

**D. “AND WHAT IS GIVEN AS A GIFT,” THE WORDS OF R. MEIR. AND SAGES SAY, “THAT WHICH IS GIVEN AS A GIFT IS EQUIVALENT TO THAT WHICH IS SOLD:”**

1. IV:1: What is the scriptural basis for the position of rabbis?

**E. R. ELEAZAR SAYS, “ALL OF THEM REVERT IN THE JUBILEE.”**

1. V:1: He concurs with rabbis, who has said, “You shall return” (Lev. 25:10) serves to encompass gifts, and all other cases are treated as inheritance. In the case of the firstborn, Scripture says, “By giving him a double portion,” treating the double portion as a gift.

2. V:2: Brothers who have divided up the estate are classified as purchasers and they return to one another their portions in the year of the Jubilee.

**F. R. YOHANAN B. BEROQAH SAYS, “HE WHO INHERITS HIS WIFE’S ESTATE RESTORES THE PROPERTY TO THE MEMBERS OF HER FAMILY AND ALLOWS THEM A DEDUCTION FROM THE PURCHASE-MONEY.”**

1. VI:1: What is his theory of the matter? If his theory is that the right that the husband has to inherit the wife’s estate rather than having the estate revert to her family derives from the Torah, then why should he have to restore the property to the members of her family when the Jubilee comes? And if his theory is that the right that the husband has to inherit the wife’s estate rather than having the estate revert to her family derives from the authority of sages, then what claim is there to the money on his part, since it is not an inheritance that is coming to him anyhow?

## **LXXV. Mishnah-Tractate Bekhorot 9:1**

### **A. THE LAW CONCERNING TITHE OF CATTLE APPLIES IN THE LAND AND OUTSIDE OF THE LAND:**

1. I:1: May we say that the Mishnah-paragraph does not accord with the view of R. Aqiba?

### **B. IN THE TIME OF THE TEMPLE AND NOT IN THE TIME OF THE TEMPLE:**

1. II:1: If that is the rule, then even today the law of tithing the herd should apply!

### **C. IN THE CASE OF UNCONSECRATED BEASTS BUT NOT IN THE CASE OF CONSECRATED BEASTS.**

1. III:1: But it is self-evident that the law of tithing the herd does not apply to consecrated beasts, since they belong to God anyhow!

### **D. AND IT APPLIES TO THE HERD AND TO THE FLOCK, BUT THEY ARE NOT TITHED ONE FOR ANOTHER; TO SHEEP AND TO GOATS, AND THEY ARE TITHED ONE FOR ANOTHER: TO WHAT IS NEW BORN AFTER NEW YEAR AND TO WHAT IS OLD BORN BEFORE NEW YEAR, BUT THEY ARE NOT TITHED ONE FOR ANOTHER. FOR IT MIGHT HAVE BEEN LOGICAL TO CONCLUDE AS FOLLOWS: NOW IF THAT WHICH IS NEW AND THAT WHICH IS OLD, WHICH ARE NOT PROHIBITED AS MIXED KINDS WITH ONE ANOTHER, ARE NOT TITHED ONE FOR ANOTHER, SHEEP AND GOATS, WHICH ARE PROHIBITED AS MIXED KINDS WITH ONE ANOTHER, LOGICALLY SHOULD NOT BE TITHED ONE FOR ANOTHER. SCRIPTURE ACCORDINGLY IS REQUIRED TO STATE, “AND OF THE FLOCK,” (LEV. 27:32) — IMPLYING THAT ALL FLOCK IS ONE AND TITHED TOGETHER.**

1. IV:1: Why not take the position that what is born after the new year and what is born beforehand ought to be tithed one for another, with the following argument *a fortiori*: if sheep and goats, which are treated as diverse species in regard to one another, are tithed one for the other, then old animals, born prior to the new year, and new animals, born afterward, ought to be tithed one for the other!

a. IV:2: A corresponding rule about keeping apart various components of a crop for purposes of tithing, secondary expansion of the foregoing: We have learned in the Mishnah: They may not separate heave offering from produce of one kind for produce which is not of its same kind. And if he separated heave offering in this way — that which he has separated is not valid heave offering M. **Ter. 2:4A-B**. How on the basis of Scripture do we know that fact, pertinent to our Mishnah-passage as well.

I. IV:3: Gloss of the foregoing: In light of the statement, “‘All the best of the oil and all the best of the wine and of the wheat’ (Num. 18:12) — give the best of this for its own species, and the beast of that for its own species — thus we have found the rule for wine and oil, said Raba bar R. Hanan to Abbayye, “But then with regard to the designation of the tithe of beasts, in which Scripture does not say, ‘And concerning the tithe of the herd and the tithe of the flock,’ it should be permitted to tithe one for the other.”

## **LXXVI. Mishnah-Tractate Bekhorot 9:2**

**A. FOR PURPOSES OF TITHE OF CATTLE THOSE CATTLE WHICH ARE FOUND WITHIN THE RADIUS OF PASTURING CATTLE ARE INCLUDED TOGETHER. AND HOW MUCH IS THE RADIUS OF PASTURING CATTLE? SIXTEEN MILES.**

1. I:1: What is the scriptural basis for this rule?

**B. IF THERE WAS BETWEEN THESE AND THOSE CATTLE THIRTY-TWO MILES, THEY DO NOT JOIN TOGETHER FOR THE PURPOSES OF TITHING. IF HE HAD CATTLE IN THE MIDDLE, HE BRINGS AND TITHES THEM WITH THOSE WHICH ARE IN THE MIDDLE.**

1. II:1: If the distance from flock to flock was thirty-two miles, the animals do not form a single flock for the purposes of tithing, thus bearing the implication that if the space between them is less than that distance, they do form a single flock. But does not the Mishnah state that the distance within which animals are treated as a single flock is sixteen miles, but no more?

2. II:2: And how many animals are to be in the diameter of thirty-two miles, so that the herd in the middle forms the nucleus around which all the beasts are formed into a single herd for tithing?

**C. R. MEIR SAYS, "THE JORDAN IS A BOUNDARY TO A HERD FOR PURPOSES OF TITHE OF CATTLE."**

1. III:1: That is the rule only when there is no bridge. But if there is a bridge, the bridge serves to form the animals into a single herd for the purposes of tithing. It follows that the operative consideration is that the animals on opposite sides of the stream are not in contact with one another.

a. III:2: Gloss of a detail of the foregoing. Whether or not the Jordan is part of the Land of Israel is subject to dispute among Tannaite authorities.

b. III:3: The Jordan is only from Jericho and below T. **Bekh. 7:4**. For what purpose is such a law set forth?

c. III:4: Why is it called 'Jordan'?

d. III:5: The principal source of the Jordan is the cave of Paneas. When someone says, 'I shall not drink water from the cave of Paneas, forbidden to him is the whole of the Jordan river

e. III:6: The principal source of the Jordan is the cave of Paneas. When someone says, 'I shall not drink water from the cave of Paneas, forbidden to him is the whole of the Jordan river.

## **LXXVII. Mishnah-Tractate Bekhorot 9:3A**

**A. THAT WHICH IS PURCHASED OR THAT WHICH IS GIVEN TO ONE AS A GIFT IS EXEMPT FROM THE LAW TO TITHE CATTLE.**

1. I:1: What is the scriptural basis for this rule?

a. I:2: Gloss of a detail of the foregoing.

- i. I:3: Another reference to the detail of the foregoing that is glossed; but the detail is tangential to the composition in which it now occurs.

## **LXXVIII. Mishnah-Tractate Bekhorot 9:3B-G**

**A. BROTHERS IN PARTNERSHIP WHO ARE LIABLE TO A SURCHARGE ARE EXEMPT FROM TITHE OF CATTLE. AND THOSE WHO ARE LIABLE TO TITHE OF CATTLE ARE EXEMPT FROM SURCHARGE.**

1. I:1: "...shall be yours..." (Num. 18:15) — and not the property of a partnership. Might one suppose that the exemption from tithing applies even if the beast are acquired from the estate?
2. I:2: In some instances partners are liable for both tithe and surcharge, sometimes exempt from both, sometimes pay the surcharge but animals owned in partnership are exempt from tithing, and sometimes they are obligated to tithe the animals but exempt from paying the surcharge.

**B. IF THEY ACQUIRED CATTLE FROM THE PROPERTY OF THE ESTATE OF THEIR FATHER, THEY ARE LIABLE. AND IF NOT, THEY ARE EXEMPT. IF THEY DIVIDED THE ESTATE AND THEN WENT AND FORMED A PARTNERSHIP, THEY ARE LIABLE TO SURCHARGE AND EXEMPT FROM TITHE OF CATTLE.**

1. II:1: As to the rule that when they divided the estate and then became partners they are exempt from tithing the beasts, said R. Anan, "That rule applies only when they had divided up kids against he-goats in accord with their value and he-goats against kids. The rule that when they divided the estate and then became partners they are exempt from tithing the beasts applies only if they divided nine large animals against ten small ones that is, according to value, or ten small ones against nine big ones. But if they divided nine against nine or ten against ten, one can say, 'This is the part that was his to begin with.'

## **LXXIX. Mishnah-Tractate Bekhorot 9:4**

**A. EVERY SORT OF BEAST ENTERS THE CORRAL TO BE TITHED, EXCEPT FOR HYBRID-BEASTS, AND *TEREFAH*-BEASTS. AND BEASTS BORN FROM THE SIDE, AND THAT WHICH IS NOT YET OLD ENOUGH, AND THE ORPHAN. WHAT IS THE ORPHAN? ANY, THE DAM OF WHICH HAS DIED OR BEEN SLAUGHTERED.**

1. I:1: What is the scriptural source for this ruling?
2. I:2: What does the language "all" (Every sort of beast enters the corral to be tithed) encompass?
  - a. I:3: Gloss of a detail tangential to the foregoing.
3. I:4: "All lambs enter the corral to be tithed, except for hybrids and terefah-beasts," the words of R. Eleazar b. Judah of Kefar Bartota, which he stated in the name of R. Joshua. Said R. Aqiba, "I heard from him also: 'the beast born by caesarean section and the best that is not yet old enough and the beast that is an orphan.'"



**B. R. JOSHUA SAYS, “EVEN IF ITS DAM IS SLAUGHTERED, BUT THE HIDE IS WHOLE, THIS IS NOT DEEMED AN ORPHAN.”**

1. II:1: R. Ishmael b. Satriel...testified before Rabbi, “In our locale they flay the hide from the dead mother and put it on the living offspring.”

### **LXXX. Mishnah-Tractate Bekhorot 9:5-6**

**A. THERE ARE THREE SEASONS “THRESHING-FLOORS” FOR THE TITHE OF CATTLE IN WHICH ONE TAKES THE TENTH OF ANIMALS BORN IN THE STATED PERIOD, AT WHICH POINT ONE MAY NOT USE THE ANIMAL UNTIL THE TITHING PROCESS IS COMPLETE:**

1. I:1: Why are there three seasons in particular?

**B. “*PERAS* THAT IS, HALF A MONTH BEFORE PASSOVER, *PERAS* HALF A MONTH BEFORE PENTECOST, AND *PERAS* HALF A MONTH BEFORE THE FESTIVAL SUKKOT,” THE WORDS OF R. AQIBA. BEN AZZAI SAYS, “ON THE TWENTY-NINTH OF ADAR, ON THE FIRST OF SIVAN, AND ON THE TWENTY-NINTH OF AB.”**

1. II:1: Since Ben Azzai concedes that fifteen days prior to Passover the animal becomes liable to tithing, for the twenty-ninth of Adar and fourteen days of Nisan add up to fifteen days before Passover what is the point at issue between R. Aqiba and Ben Azzai.

**C. ...ON THE TWENTY-NINTH OF AB:**

1. III:1: Ben Azzai is consistent with his other views when he says, “Cattle born in Elul are tithed by themselves.” We do not fix the period earlier than the twenty-ninth of Ab, because we must defer the period of tithing to as near to the Festival as possible.

**D. R. ELEAZAR AND R. SIMEON SAY, “ON THE FIRST OF NISAN, ON THE FIRST OF SIVAN, AND ON THE TWENTY-NINTH OF ELUL.”**

1. IV:1: On the first of Nisan: this is in accord with Rabban Simeon b. Gamaliel, who has said, “Two weeks” fourteen days are the time for preparing for Passover.

**E. AND WHY DID THEY SAY ON THE TWENTY-NINTH OF ELUL AND THEY DID NOT SAY ON THE FIRST OF TISHRÉ? BECAUSE IT IS A FESTIVAL, AND IT IS NOT POSSIBLE TO TITHE ON THE FESTIVAL. THEREFORE THEY PUSHED IT UP TO THE TWENTY-NINTH OF ELUL.**

1. V:1: And why not give as the reason that we require a distinction between the new and the old?

**F. R. MEIR SAYS, “ON THE FIRST OF ELUL IS THE NEW YEAR FOR THE TITHE OF CATTLE.” BEN AZZAI SAYS, “CATTLE BORN IN ELUL ARE TITHED BY THEMSELVES. ALL BEASTS BORN FROM THE FIRST OF TISHRÉ TO THE TWENTY-NINTH OF THE FOLLOWING ELUL, LO, THEY JOIN TOGETHER FOR PURPOSES OF TITHE. FIVE BORN BEFORE NEW YEAR AND FIVE BORN AFTER NEW YEAR DO NOT JOIN TOGETHER TO FORM THE REQUISITE HERD OF TEN BEASTS FOR TITHING.’ THOSE BORN FIVE DAYS BEFORE THE TITHING SEASON AND THOSE BORN FIVE DAYS AFTER THE TITHING SEASON DO JOIN TOGETHER.”**

**IF SO, THEN WHY HAVE THEY SAID, “THERE ARE THREE SEASONS FOR TITHE OF CATTLE”? FOR: UNTIL THE SEASON HAS COME, IT IS PERMITTED TO SELL AND TO SLAUGHTER. ONCE THE SEASON HAS COME, ONE SHOULD NOT SLAUGHTER. BUT IF HE HAS SLAUGHTERED, HE IS EXEMPT FROM PENALTY.**

1. VI:1: Tannaite gloss: Said R. Simeon b. Azzai, “Since these rule, ‘On the first of Elul,’ and these rule, ‘On the first of Tishré,’ those born in Elul are tithed by themselves.”

2. VI:2: Continuation of the foregoing: in accord with the view of Ben Azzai, if five beasts were born to the former in Ab, five in Elul, and five in Tishré, he collects them into the corral to be tithed. He may take one from the group born in Elul, and the rest will be exempt.

### **LXXXI. Mishnah-Tractate Bekhorot 9:7**

**A. HOW DOES ONE TITHE THEM? HE BRINGS THEM INTO A CORRAL AND MAKES A SMALL CHUTE, SO THAT TWO CANNOT EXIT SIMULTANEOUSLY. AND HE COUNTS USING A STAFF: ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN, EIGHT, NINE. AND THE ONE WHICH EXITS TENTH DOES HE MARK WITH A RED MARK, SAYING, “LO THIS IS TITHE.” IF (1) ONE DID NOT MARK IT WITH A RED MARK, OR (2) DID NOT COUNT THEM WITH A STAFF, OR (3) IF ONE COUNTED THEM WHILE THEY WERE CROUCHING OR STANDING, LO, THESE ARE DEEMED TITHED. IF HE HAD A HUNDRED AND TOOK ANY TEN OF THEM, OR HAD TEN AND TOOK ANY ONE OF THEM, THIS IS NOT DEEMED TITHE.**

1. I:1: But why should he not bring them out himself? It is written, “...shall pass...” (Lev. 27:32) — and not that he should make them pass.

2. I:2: Scripture states, “Even of whatever passes under the rod” (Lev. 27:32) — excluding the terefah-beast, which cannot pass under the rod on its own, having lost the physical capacity to do so. It is a religious duty to count them with the rod. If one counted them when they were crouching, or standing around, how do we know that what he has done is valid? Scripture states, “The tenth is holy” (Lev. 27:32) — under all circumstances.

**B. R. YOSÉ BAR JUDAH SAYS, “LO, THIS IS TITHE.”**

1. II:1: What is the scriptural basis for the position of R. Yosé b. R. Judah?

**C. IF ONE OF THOSE WHICH HAD ALREADY BEEN NUMBERED JUMPED AMONG THEM WHICH HAD NOT BEEN NUMBERED, LO, THESE ARE EXEMPT. IF ONE OF THOSE WHICH WAS MARKED AS TITHE JUMPED INTO THEIR MIDST, ALL OF THEM MUST PASTURE UNTIL THEY ARE BLEMISHED. AND BY REASON OF THEIR BLEMISH THEY MAY BE EATEN BY THEIR OWNERS.**

1. III:1: Said Raba: The tenth is holy eo ipse, of its own accord, so that, if one counted nine lambs and one remained in the corral, though not counted, it is sacred of itself.

2. III:2: Said Raba: An interrupted count that began properly exempts the beasts that have already been counted.

3. III:3: Said Raba: If one had fourteen lambs and drove them into the corral, and six of them went out one chute, and four another chute, and four remains there — if the four that remained eventually went through the same chute as the six, he takes one of them as tithe, and the rest the four that went through the other chute combine in one corral with those born in a later tithing period.

4. III:4: Said Raba: If a farmer had fifteen lambs, he cannot say, ‘I shall choose ten, drive them into the corral, select one as tithe from the group, and the rest are exempt.’ He must drive them all into the corral and lead ten of them down through the chute and select one of them, and the remainder, left in the corral, will join together with another group at the next season for tithing.

## **LXXXII. Mishnah-Tractate Bekhorot 9:8**

**A. IF THE FIRST TWO EXITED SIMULTANEOUSLY, HE COUNTS THEM TWO BY TWO.**

**IF HE COUNTED THEM AS ONE, THEN THE NINTH AND THE TENTH ARE SPOILED. IF THE NINTH AND THE TENTH EXITED SIMULTANEOUSLY, THE NINTH AND THE TENTH ARE SPOILED.**

1. I:1: If he counted them out in pairs or in hundreds, the tenth in the count becomes holy.

**B. IF HE CALLED THE NINTH, TENTH, AND THE TENTH, NINTH, AND THE ELEVENTH, TENTH, ALL THREE ARE SANCTIFIED: THE NINTH IS EATEN BY REASON OF ITS BLEMISH; THE TENTH IS TITHE; AND THE ELEVENTH IS OFFERED AS PEACE-OFFERINGS.**

**“AND IT THE ELEVENTH IS SUBJECT TO THE LAW OF THE SUBSTITUTE,” THE WORDS OF R. MEIR. SAID R. JUDAH, “AND IS THERE A SUBSTITUTE WHICH IMPARTS THE STATUS OF A SUBSTITUTE TO ANOTHER?” THEY SAID IN THE NAME OF R. MEIR, “IF IT HAD BEEN A SUBSTITUTE, IT COULD NOT HAVE BEEN OFFERED.” IF HE CALLED THE NINTH, TENTH, AND THE TENTH, TENTH, AND THE ELEVENTH, TENTH — THE ELEVENTH IS NOT SANCTIFIED. THIS IS THE GENERAL PRINCIPLE: IN ANY CASE IN WHICH THE TENTH WAS NOT DEPRIVED OF ITS PROPER DESIGNATION, THE ELEVENTH IS NOT SANCTIFIED.**

1. II:1: How on the basis of Scripture do we know that, If he called the ninth, tenth, and the tenth, ninth, and the eleventh, tenth, all three are sanctified? Scripture states, “And concerning the tithe of the herd or of the flock, even of whatever passes under the rod, the tenth shall be holy” (Lev. 27:32) — including all and whatever the farmer calls the tenth is holy, whatever its ordinal position.

2. II:2: Said Raba: If two animals came out of the corral at the ninth, and he called them the ninth, the tenth and unconsecrated beasts are treated as a single group ‘mixed together’ and may not be eaten until blemished, but are otherwise classified as unconsecrated.

a. II:3: Gloss of a detail tangential to the foregoing.

3. II:4: Said Raba: If two animals came out of the corral at the ninth, and he called them the ninth, the tenth and unconsecrated beasts are treated as a single group ‘mixed together’ and may not be eaten until blemished, but are otherwise classified

as unconsecrated. The tenth is sanctified eo ipse even though not called 'tenth, and the ninth is unconsecrated, having been designated, correctly, as ninth.

**4. II:5: Pappi in Raba's name:** He who says to his agent, "Go and tithe my herd for me" If he called the ninth tenth, it is holy; and if he called the eleventh tenth, it is not holy." In the former case, the owner loses nothing; he can wait until the animal is blemished and then can it eat. In the latter case, since it is a peace offering, the owner loses the breast and right shoulder, which goes to the priest; so the man can say, "I didn't send you to cause me a loss," and the agency is null

## Points of Structure

### **1. DOES BABYLONIAN TALMUD-TRACTATE FOLLOW A COHERENT OUTLINE GOVERNED BY A CONSISTENT RULES?**

The foregoing outline shows that a few rules instruct the framer of a composite on how to do his work. He undertakes to compose a commentary to the Mishnah. In hand are diverse materials, some of which serve that purpose, some of which do not. He selects those that do and gives them pride of place; then he choose secondary materials, relevant in topic if not in problematic to the Mishnah's statements. And beyond that point, as we have seen, he makes use of very little more.

### **2. WHAT ARE THE SALIENT TRAITS OF ITS STRUCTURE?**

At any Mishnah-passage that is chosen for discussion — and nearly all of them are — a simple logic dictates what comes first, and what questions are postponed to await. At the risk of specifying what is already obvious from the results of analysis of prior tractates, we note the simple order: explain the external traits of the Mishnah-paragraph ("why specify all these cases), then explain its language, sources, and the authority behind the anonymous and authoritative statement of the law. The second layer of exegesis will then encompass theoretical questions, analysis of principles present in the rule and comparison of other rules that express those same principles, and the like. Thus, for a fine example, see III.B of the foregoing outline: II:1: what need to specify? II:2: what is the scriptural source? II:3: Tannaite complement. We may say that where all three types of compositions occur, the order will be fixed as above.

### **3. WHAT IS THE RATIONALITY OF THE STRUCTURE?**

On that basis, we may say that to the framers of the Bavli, rationality finds its definition in the Mishnah, and to master the rational rules of thought, one investigates the Mishnah's rules of inquiry, evidence, logical proof, and argument, or more truly, the principles of thought and analysis that come to concrete expression in those manifest exercises of enduring rules.

### **4. WHERE ARE THE POINTS OF IRRATIONALITY IN THE STRUCTURE?**

The first point of irrationality is the familiar one: large-scale composites that compare to those serving as Mishnah-commentary in rhetoric and formal traits, but that in fact do not comment on the Mishnah at all. The second point of irrationality (in the sense used here) will be identified presently. Examples of the former are at IV.B, IX.A, XVI.B, C; XXVIII.E, XXXI.B, XLV.B, and LX.B.

## Points of System

### **1. DOES THE BABYLONIAN TALMUD-TRACTATE SERVE ONLY AS A REPRESENTATION OF THE MISHNAH-TRACTATE OF THE SAME NAME?**

Because the Talmud does not treat every Mishnah-passage, and because it contains large composites that do not serve as Mishnah-commentary, the answer is negative. But that fact by itself bears no consequences obvious to me. For it does not tell us what our compilers wished to give us, if it was not simply a Mishnah-commentary; nor does it indicate the dimensions of the real problem, which is not solely to define what the Talmud is, but also to find, within the Talmud itself, guidelines that will indicate to us what the framers of the Talmud chose not to give us: the Talmud that might have been.

### **2. HOW DO THE TOPICAL COMPOSITES FIT INTO THE TALMUD-TRACTATE AND WHAT DO THEY CONTRIBUTE THAT THE MISHNAH-TRACTATE OF THE SAME NAME WOULD LACK WITHOUT THEM?**

While in other tractates the topical (and other) composites that fall outside of the framework of Mishnah-commentary or the amplification thereof vastly change the character of the Mishnah's topic, by requiring us to contemplate that topic in a setting or context quite different from the one that the framers of the Mishnah-tractate defined, that is not the case in Bekhorot. I see nothing in the following composites to change the way in which the subject before us is presented by the Mishnah, no stunning juxtapositions, no insertion of wildly-inappropriate subjects to make us see our subject in some other context or light than we do in the Mishnah's presentation of it.

IV.B: This item is invited by the Mishnah-composition that it follows; once we deal with unclean and clean fish, we ask also about the classification of other fauna.

IX.A: This is Mishnah-criticism of another order, not a free-standing composition; the composition is incomprehensible outside of the framework of the Mishnah's pertinent chapters.

XVI.B: Here we have a topical appendix that takes the subject of the Mishnah — discharges by pregnant beasts or women.

XVI.C: Here is an appendix on a principle, attached because the statement of the Mishnah's authority figures. Both items are little more than random add-ons.

XXVIII.E: This composite is nothing more than a familiar exercise in Mishnah-commentary, given a more-ambitious-than-usual form.

XXXI.B: Here we have further disputes by the same authorities on the same topic.

XLV.B: This amplifies the topic at hand by investigating the theory behind a fact.

LX.B: The topical composite on urinating presents no surprises; it is inserted because of a detail in the foregoing.

None of these composites changes the reading of the Mishnah-passage that is under discussion in context. The topical indices do not impart to their context a vastly different quality from what it would have had in their absence.

### 3. CAN WE STATE WHAT THE COMPILERS OF THIS DOCUMENT PROPOSE TO ACCOMPLISH IN PRODUCING THIS COMPLETE, ORGANIZED PIECE OF WRITING?

On the strength of our clear picture of what the writers of the Talmud wished to accomplish, we now are able to begin to frame a theory on what the compilers of this Talmud chose not to do. That theory emerges from not an abstract or theoretical picture of other talmuds besides the one we have but from the evidence in hand, and only from that evidence.\* The data to which I refer are those many compositions and even sizable composites that do not take shape around a problem of Mishnah-commentary or other forms of Mishnah (or Tosefta) exegesis. In this tractate, as in all others, we confront both large-scale exercises in Mishnah-commentary and also large-scale writings that in no way take shape around the amplification of things that the Mishnah says or implies. These other writings take up law in an abstract context, not the Mishnah in all is concrete and specific presence.

\*Compare my *The Bavli That Might Have Been: The Tosefta's Theory of Mishnah-Commentary Compared with that of the Babylonian Talmud*. Atlanta, 1990: Scholars Press for South Florida Studies in the History of Judaism.

To show what I mean, I point to the Bavli's reading of Mishnah-tractate Bekhorot I:21I-K. The opening pericope of that composite asks the familiar question, what is the operative consideration in our ruling, and what further inferences are we to draw therefrom? Secondary and tertiary amplification do not change the picture. The framer has selected from a corpus of materials framed in response to explicit statements of the Mishnah. But then IV.B, as noted just now, goes on to a quite different program. What differentiates that composite of seven compositions (at least, as I analyze the group) and holds it together is a common theme, the classification of the sexual traits of fauna. That theme is not relevant to the Mishnah-paragraph before us. To the contrary, the theme that has led the compiler of these items to group them derives from a quite different program of thought and inquiry from the Mishnah's. It is clear, then, that the framers of the Talmud had access to a corpus of writings that divides sharply into two quite different parts: writings that link to the Mishnah, yielding composites that begin with the Mishnah and augment or amplify its materials; and writings that do not. These other writings form a sizable segment of the Talmud, and that proves that the framers of the document had access to writings in no way composed or compiled into sets with Mishnah-commentary in mind.

In producing the Talmud, the compilers not only gave to the Mishnah the privilege of defining nearly the entire structure of category-formation. They also subordinated whatever they selected out of the corpus of other-than-Mishnah-centered composites, and they placed in a subsidiary position, within the framework of their commentary to the Mishnah, composites of considerable weight and (proportionate to the whole) enormous dimensions. What the compilers of the Bavli chose not to accomplish was the formation of a vast collection of received writings — writings of considerable intellectual ambition! — into some framework appropriate to them; they reduced them to ancillary and subordinated appendices to a framework decidedly inappropriate to them.

This tractate, among many, not only tells us with clarity and force what the framers wished to accomplish, but also what they did not choose to do at all. And, furthermore, the tractate allows us a more than brief glimpse into the vast array of ready-made writings that the framers of the Bavli used only at the cost of producing a document that was less



coherent than their best efforts would have led us to expect. Another glance at unit X, the Bavli's reading of Mishnah-tractate Bekhorot 2:2-3, shows us what might have been, which is, a remarkably cogent and coherent exposition of the Mishnah, with some secondary footnotes, tacked on where needed. But, as we recognize, that magnificent and disciplined presentation hardly exhausts the Bavli's repertoire. Since at some points, what I classify as an appendix or a protracted footnote in volume exceeds what I classify as the document's main statement, the problem becomes clear. It is to examine the pre-history of the Bavli.

When this academic commentary has laid out the materials in the proper manner, I therefore shall conduct an initial probe into the Talmud's other-than-redactional compositions and composites, that is, into that vast heritage of writing upon which the Bavli's framers drew, but which, in the nature of things, we cannot imagine their having created. Once we know the full extent, within the Bavli, of this quite other kind of writing, we shall identify its traits, both formal and intellectual, and these will open the way toward the examination of the sources of the Bavli's intellectual program and results — that is, the sources besides the Mishnah, the ones generated by a problematic of thought or inquiry or speculation other than that set forth within the Mishnah's inner dynamics.