

XII.

BAVLI HULLIN CHAPTER TWELVE

FOLIOS 138B-142A

12:1

- A. [The requirement to] let [the dam] go from the nest [Deu. 22: 6-7] applies (1) in the Land and outside of the Land, (2) in the time of the Temple and not in the time of the Temple, (3) to unconsecrated [birds] but not to consecrated ones.
- B. A more strict rule applies to covering up the blood than to letting [the dam] go from the nest:
- C. For the requirement of covering up the blood applies (1) to a wild beast and to fowl, (2) to that which is captive and to that which is not captive.
- D. But letting [the dam] go from the nest applies only (1) to fowl and applies only (2) to that which is not captive.
- E. What is that which is not captive?
- F. For example, geese and fowl which make their nest in an orchard.
- G. But if they make their nest in the house (and so Herodian doves), one is free of the requirement of letting the dam go.

12:2

- A. An unclean bird is exempt from the requirement of letting the dam go.
 - B. [If] an unclean bird sits on the eggs of a clean bird,
 - C. or a clean bird sits on the eggs of an unclean bird,
 - D. one is free of the requirement of letting the dam go.
 - E. A cock partridge —
 - F. R. Eliezer declares liable [to the law of letting the dam go].
 - G. And sages exempt.
- I.1** A. R. Abin and R. Meyasha [offered two explanations of a matter]: One said, “Any time it is taught in the Mishnah [that a certain rule applies], **in the Land and outside of the Land**, it is unnecessary to state it, except for [the instance where it is stated in M. 11:1]: [The laws concerning the obligation to donate to the

priest] the first shearings [of wool from the sheep of one's flock apply both inside the Land of Israel and outside the Land of Israel]. This [explicit statement] negates the view of R. Ilai who said, '[The laws concerning the obligation to donate to the priest] the first shearings [of wool from the sheep of one's flock] applies only [to animals] in the Land of Israel [b. 136a, 11:1 I.17 J above].'"

- B. And the other said, "Any time it is taught in the Mishnah [that a certain rule applies], in the time of the Temple and not in the time of the Temple, it is unnecessary to state it, except for [the instance where it is stated in M. 5:1 A], [The prohibition against slaughtering on the same day] 'it and its young' (Lev. 22:28) applies [(1) in the Land and outside the Land, (2) in the time of the Temple and not in the time of the Temple]. You might have concluded that it makes sense to say that since [this rule] was stated in scripture in the context of [rules regarding] Holy Things [that applied in the Temple, it is therefore logical to infer that] at the time there are Holy Things [offered in the Temple, the rule] is in practice. And at the time that there are no Holy Things [offered in the Temple, the rule] is not in practice. [Mishnah therefore] makes the novel point [that it is in practice at all times]."
- C. And both of them said, "Any time it is taught in the Mishnah [that a certain rule applies], to unconsecrated [things] and to consecrated ones, it is necessary to state it, except for the instance where it is stated in M. 7:1 A]: [The prohibition of] the sinew of the hip [sciatic nerve, Gen. 32:32, applies (1) in the Land and outside of the Land, (2) in the time of the Temple and not in the time of the Temple, (3) to unconsecrated animals and to Holy Things]. For it is obvious [that the sinew remains prohibited even after the animal is consecrated. Would it make any sense to say that] since it was consecrated the prohibition of the sinew of the hip ceased to apply to it?"
- D. But did we not conclude [that the rule at M. 7:11.1 applied] to the offspring of Holy Things? And what is the basis for this conclusion? Is it not because we found it difficult [that the rule restates the obvious. It is better] that it not be taught [at all in M.]
- E. But basically it also should be no difficulty for you [to assume that the rule restates the obvious]. Because it was taught in the Mishnah-passage where it was necessary [to teach a novel rule], it is also acceptable that it be taught where it was not necessary [but where it merely restates the obvious].

II.1 A. To unconsecrated [birds] but not to consecrated ones [M. 12:1A]: Why not? Because scripture says, "You shall let the mother go, [but the young you may take to yourself; that it may go well with you, and that you may live long]" (Deu. 22: 7). [The rule applies] to that which you are commanded to let go. This excludes that which you are not commanded to let go [i.e., consecrated birds], but that you must bring to the Temple treasurer.

- B. Said Rabina, "This implies that regarding a clean bird that had killed a person, you are free from the obligation to let the mother go. What is the basis for this assertion? Because scripture says, "You shall let the mother go, [but the young you may take to yourself; that it may go well with you,

and that you may live long]" (Deu. 22: 7). [The rule applies] to that which you are commanded to let go. This excludes that which you are not commanded to let go [i.e., a bird that killed someone], but that you must bring to the court [to be judged]."

- C. *What is the situation [regarding the bird]? If they passed judgment on it — [139a] it is to be put to death [and would not have escaped]. Rather it must be the case that they had not yet passed judgment on it. And they needed to bring it to the court and to fulfill by [killing it the requirement of the verse], "So you shall purge the evil from your midst" (Deu. 13: 5).*

II.2 A. *What is the circumstance regarding these **consecrated ones**? If we say the case was that he had a nest in his house and he consecrated it, would he be liable [to let the dam go]? [The verse stipulates], "If you chance to come upon a bird's nest, [in any tree or on the ground, with young ones or eggs and the mother sitting upon the young or upon the eggs, you shall not take the mother with the young]" (Deu. 22: 6) — this excludes from the obligation that which is captive [in a house].*

- B. *Rather [it must be the case that] he saw a nest elsewhere and consecrated it.*
- C. *And [in such a case] is it consecrated? "When a man dedicates his house to be holy [to the Lord, the priest shall value it as either good or bad; as the priest values it so it shall stand]" (Lev. 27:14), said the Torah. Just as "his house" implies that it must be in his possession, so too everything [that he wishes to consecrate must be] in his possession.*
- D. *Rather [the case must be where] he picked up the young birds and consecrated them and then returned them [to the nest].*
- E. *[But the actions described in] this case, even in regard to an unconsecrated nest, would not result in an obligation [to let the dam go from the nest]. For it was taught on Tannaite authority in the Mishnah: [If] one took the young and then returned them to the nest and afterward the dam returned to them, he is free of the obligation to send forth [the dam from the nest] [M. 12:3 Q].*
- F. *Rather [the case must be that] he picked up the mother bird and consecrated it and put it [back in the nest]. [But if so] at the outset he would be obligated to let the dam go before he had a chance to consecrate it. For it was taught on Tannaite authority: R. Yohanan B. Joseph says, "One who consecrated a wild beast and then slaughtered it is free from the obligation to cover [the blood]. If he slaughtered it and then consecrated it, he is obligated to cover [the blood]. For it was already subject to the obligation to be covered, before it became sancta."*

II.3 A. Rab said, "[The case of consecrated birds in question in the Mishnah is] where one consecrated the [young] offspring of his dovecote and then they escaped."

- B. And Samuel said, "[The case in question is] where one consecrated his chicken to the Temple treasury."
- C. *Now it is consistent to say that Samuel not state the matter in accord with the view of Rab. For he explains [the case in terms of birds that were] consecrated to the Temple treasury. [Samuel's example subsumes objects that represent a value pledged to the Temple, but that have no inherent sanctity as sacrifices. It is thus a more inclusive instance.]*

- D. *But on what basis does Rab not state the matter in accord with the view of Samuel? Rab would say to you that one is free of the obligation to let go [the dam] only in the specific case such as where one consecrated the [young] offspring of his dovecote, because these are consecrated [as sacrifices to be offered] on the altar. For once they become consecrated, their intrinsic sanctity does not depart from them. But where one consecrated his chicken to the Temple treasury, this is not [a case of objects] consecrated [as sacrifices to be offered] on the altar. This is [a case of objects] consecrated for their everyday monetary value [as a pledge to the Temple]. Once they escaped, their sanctity departed from them. And they are subject to the obligation to let go the mother.*
- E. *And Samuel [would say in response to this], “Wherever it is, it remains inside of the enclosures of the merciful one. As it is written, ‘The earth is the Lord’s and the fullness thereof, the world and those who dwell therein’ (Psa. 24: 1).”*
- F. *And similarly [to the view of Samuel] said R. Yohanan, “[The case is where] one consecrated his chicken to the Temple treasury and it escaped.”*
- G. *Said to him R. Simeon B. Laqish, “Because it escaped, the sanctity departed from it.”*
- H. *He [Yohanan] said to him, “[No.] It remains inside of the enclosures of the merciful one. As it is written, ‘The earth is the Lord’s and the fullness thereof, the world and those who dwell therein’ (Psa. 24: 1).”*
- I. *But we may raise by way of contradiction one view of R. Yohanan against another view of R. Yohanan [stated elsewhere]. And we may raise by way of contradiction one view of R. Simeon b. Laqish against another view of R. Simeon B. Laqish [stated elsewhere].*
- J. *For it was stated: [If a person said], “May this maneh be consecrated to the Temple treasury” and it was stolen or lost — R. Yohanan said, “He is responsible for replacing it until it comes into the possession of the treasurer.” And R. Simeon b. Laqish said, “Wherever it is, it remains inside of the enclosures of the merciful one. As it is written, ‘The earth is the Lord’s and the fullness thereof, the world and those who dwell therein’ (Psa. 24: 1).”*
- K. *The view of R. Yohanan [in the latter case] contradicts the view of R. Yohanan [in the former case]. And the view of R. Simeon b. Laqish [in the latter case] contradicts the view of R. Simeon b. Laqish [in the former case].*
- L. *[No.] The view of R. Simeon b. Laqish [in the latter case] does not contradict the view of R. Simeon b. Laqish [in the former case]. This one [was stated] before he heard the rule from R. Yohanan, his master. And this one [was*

stated] after he heard the rule from R. Yohanan, his master.

M. *But does the view of R. Yohanan [in the latter case really] contradict the view of R. Yohanan [in the former case]? The view of R. Yohanan [in the latter case really] also does not contradict the view of R. Yohanan [in the former case]. This one refers to a case where the one who consecrated it said, "Let it be a vow upon me [to donate a certain amount]." And this one refers to a case where the one who consecrated it said, "Let this be [consecrated to the Temple]."*

N. *May we derive by implication that R. Simeon b. Laqish [holds the rule that] even though one [who consecrated] said, "Let it be a vow upon me [to donate a certain amount]" he is not liable [to replace it]? But lo it was taught on Tannaite authority in the Mishnah: **What is deemed [to be a pair of birds brought in fulfillment of] a vow? He who says, "Lo, I pledge myself to bring a burnt offering."** And what is deemed [to be a pair of birds brought] as a freewill offering? He who says, "Lo, this is a burnt offering." And what is the difference between vows and freewill offerings? In the case of vows, [if] they [the birds] died or were stolen or lost, he is answerable for them [and must replace them]. In the case of freewill offerings, [if] they died or were stolen or lost, they are not answerable for them [and need not replace them] [M. **Qinnim 1:1 G-M**].*

O. *Resh Laqish would say to you, "This concern [of M.] applies to what one sanctifies for offering on the altar [i.e., he is liable to replace it, for if not,] he is missing an offering. But [the concern of M. does not apply] to what one sanctifies for the Temple treasury [for if he loses it and does not replace it], he is not missing an offering. And even where he says, 'Lo, I pledge myself' he is not obligated [to replace them if they are lost or stolen]."*

P. *But lo, it was taught on Tannaite authority in the Mishnah: [He who says], "This ox is a burnt offering," "This house is a *qorban*," if the ox died or the house collapsed, is not liable to pay. [If he said], "The price of this ox is incumbent on me for a burnt offering," or "The price of this house*

is incumbent on me as *qorban*,” [if] the ox died or the house collapsed, he is liable to pay [M. Arakhin 5:5].

Q. *This [latter] concern applies where, the ox died or the house collapsed, he is liable to pay, for they no longer exist. But where they still exist, “Wherever it is, it remains inside of the enclosures of the merciful one. As it is written, ‘The earth is the Lord’s and the fullness thereof, the world and those who dwell therein’ (Psa. 24: 1).”*

R. *Said R. Hamnuna, “Everyone agrees with regard to Valuations that even though he said, ‘[The price...] is incumbent on me’ [and he set aside the amount and it was lost or stolen] that he is not obligated [to replace it].”*

S. *What is the basis for this opinion? For these [obligations] cannot be stated without [stating] ‘is incumbent on me.’ How else could he say it? He could say, ‘my Valuation,’ but we would not know upon whom [the obligation is incumbent]. He could say, ‘the Valuation of that person,’ but we would not know upon whom [the obligation is incumbent].*

T. *Raba raised this by way of contradiction: “Let him say, ‘Lo I am [obligated] in accord with my own Valuation’ or ‘Lo I am [obligated] in accord with the Valuation of such-and-such-a-person.’”*

U. *And furthermore it was taught on Tannaite authority, R. Nathan says: “[Then the priest shall compute the Valuation for it up to the year of jubilee,] and the man shall give the amount of the Valuation on that day as a Holy Thing to the Lord” (Lev. 27:23) — what does the verse teach us? Since we determine regarding consecrated objects and [second] tithes, that one redeemed with unconsecrated coins, that if they were stolen or lost, he is not liable to replace them, [139b] you might infer that even in this case the same rule applies, it comes to teach [to the contrary], “And the man shall give the amount of the Valuation on that day as a Holy Thing to the Lord.” It remains*

unconsecrated until it reaches the hands of the Temple treasurer.

- V. *But if you wish to state the matter, here is how you should state the matter:* Said R. Hamnuna, “Everyone agrees with regard to Valuations that even though he did not say, ‘[The price...] is incumbent on me’ [and he set aside the amount and it was lost or stolen] that he is obligated [to replace it]. For it is written, ‘And the man shall give the amount of the valuation on that day as a holy thing to the Lord.’ It remains unconsecrated in your hand until it reaches the hands of the Temple treasurer.”

III.1 A. A more strict rule applies to covering up the blood [than to letting the dam

go from the nest] [M. 12:1 B]. *Our rabbis taught on Tannaite authority:* “If you chance to come upon a bird’s nest on the way, [in any tree or on the ground, with young ones or eggs and the mother sitting upon the young or upon the eggs, you shall not take the mother with the young]” (Deu. 22: 6). What does this come to teach us? Because it says, “You shall let the mother go, but the young you may take to yourself; [that it may go well with you, and that you may live long]” (Deu. 22: 7), you might infer that one must search the hills and valleys in order to find a nest [so that he may fulfill the commandment]. It comes to teach us, “If you chance to come upon” — if by happenstance you find before you a nest [then you must send away the mother].

- B. [Continuing the interpretation of the verses]: “A bird’s” — [this implies] a clean one, but not an unclean one. “Come upon” — in a private domain; “on the way” — in a public domain. On what basis [must you send away the dams if you find nests] in trees? It comes to teach us, “in any tree.” On what basis [if you find nests] in cisterns, ditches or caves? It comes to teach, “or on the ground.” But if after all we include [in the rule] all these instances, why then must we have [in the verse the phrase], “to come upon... on the way”? To inform you that just as a nest [you find] “on the way” is not in your hands, so [too the law applies to] any nest that is not in your hands.
- C. Based on this they said: Doves of the dovecote and doves of the loft that make their nest in birdhouses or bird-towers and **geese and fowl that make their nest in an orchard** are liable to the requirement of letting the dam go. **But if they make their nest in the house (and so Herodian doves), one is free of the requirement of letting the dam go [=M. 12:1 F-G].**
- D. Said the master: What is the case [where you come upon a nest] “on the way” that the nest is not in your hands, so too in every case where the nest is not in your hands [must you send away the dam].
- E. *But why must I maintain this teaching? This can be derived from [the words in the verse], “If you chance.”* [No, this is not the case. We use that phrase to teach us something else.] “If you chance” — this excludes [from the obligation] that which is captive.

- F. *And furthermore: “To come upon” — why must I maintain this teaching? Rather “To come upon” encompasses in the rule a case where they were before you and they escaped.*
- G. *“On the way” — in accord with R. Judah, who said in the name of Rab. For said R. Judah, said Rab, “If he found a nest in the sea, he is liable for the requirement of letting the dam go. As it says [using the word for ‘way’], ‘Thus says the Lord, who makes a way in the sea, [a path in the mighty waters]’ (Isa. 43:16).”*
- H. *Accordingly we should derive the conclusion that if one found a nest [hovering] in the sky, As it is written, “The way of an eagle in the sky, [the way of a serpent on a rock, the way of a ship on the high seas, and the way of a man with a maiden]” (Pro. 30:19), it would be liable to the requirement of letting the dam go.*
- I. *[No, this is not the case.] “The way of an eagle” is stated in the verse. Just plain “way” is not stated in the verse.*
- J. *Said the people of Papunia to R. Matna, “If one found a nest on the head of a person, what is the law?”*
- K. *He said [there is proof in a verse where it speaks of ground on the head], “[When David came to the summit, where God was worshiped, behold, Hushai the Archite came to meet him with his coat rent and] earth [=ground] upon his head” (2Sa. 15:32).*
- L. *[Said the people of Papunia to R. Matna,] “Where is there reference to Moses in the Torah [in the book of Genesis]?”*
- M. *“[Then the Lord said, ‘My spirit shall not abide in man for ever,] for he is flesh, [but his days shall be a hundred and twenty years]” (Gen. 6: 3). [This is a double allusion to Moses. The numerical value of ‘for he is’ is equal to the value of ‘Moses’, and there is a reference to ‘a hundred and twenty years’, the life span of Moses.]*
- N. *[Said the people of Papunia to R. Matna,] “Where is there reference to Haman in the Torah?”*
- O. *[He said, ‘Who told you that you were naked? Have you eaten] of the tree [of which I commanded you not to eat?]” (Gen. 3:11). [“Of the” is the same spelling as Haman, *hmn*.]*
- P. *[Said the people of Papunia to R. Matna,] “Where is there reference to Esther in the Torah?”*
- Q. *“And I will surely hide [my face in that day on account of all the evil which they have done, because they have turned to other gods]” (Deu. 31:18). [“Hide” is the same spelling as Esther, *str*.]*
- R. *[Said the people of Papunia to R. Matna,] “Where is there reference to Mordecai in the Torah?”*
- S. *“As it is written, “[Take the finest spices:] of liquid myrrh [five hundred shekels, and of sweet-smelling cinnamon half as much, that is, two hundred and fifty, and of aromatic cane two hundred and fifty]” (Exo. 30:23). And that [phrase] is translated into Aramaic, *mor-decai (myr’ dky)*.*

IV.1 A. What is that which is not captive? [For example, geese and fowl which make their nest in an orchard. But if they make their nest in the house (and so Herodian doves), one is free of the requirement of letting the dam go] [M. 12:1 E-G]. R. Hiyya and R. Simeon [offered two readings of a name for the doves in M.]: One taught, Hadresian. And one taught, **Herodian**. The one who taught, **Herodian** [says they were called that] on account of Herod. The one who taught, Hadresian [says they were called that] on account of their place of origin.

B. *Said R. Kahana, "I saw with my own eyes sixteen rows [of Herodian doves] each one a mile long and they were chirping [in a voice that sounded like the Greek words for] 'Master, Master. One of them was not chirping 'Master, Master'. The bird next to it said to it, 'Blind fool bird, chirp 'Master, Master!' It said [in reply to the bird], Blind fool bird, chirp 'Master, slave.' [Greek words that sound similar. By chirping this the bird indicated disrespect for authority.] They took it and slaughtered it."*

C. *Said R. Ashi, "Said to me R. Hanina, 'These [stories] are just meaningless words.'" Do we conclude then that these [stories] are just meaningless words? [No.] Rather it makes sense to say that these [events] were accomplished through [magical] words [i.e., spells].*

V.1 A. An unclean bird is exempt from the requirement of letting the dam go [M. 12:2 A]. What is the source of this assertion?

B. *Said R. Isaac, "As scripture says, 'If you chance to come upon a bird's nest on the way' (Deu. 22: 6). The word 'bird' [i.e., the Hebrew 'wp] includes both clean and unclean. The word 'bird' [i.e., the Hebrew spwr, does not include both]. We find clean birds that are called spwr. We do not find unclean birds that are called spwr."*

C. *Come and take note: "The likeness of any winged bird [spwr] that flies in the air" (Deu. 4:17) — is it not the case that 'bird' subsumes both the clean and the unclean and that 'winged' subsumes locusts?*

D. *No. 'Bird' subsumes only the clean ones; 'winged' subsumes the unclean ones and locusts.*

E. *Come and take note: "Beasts and all cattle, creeping things and flying birds!" (Psa. 148:10) — is it not the case that 'bird' subsumes both the clean and the unclean and that 'winged' subsumes locusts?*

F. *No. 'Bird' subsumes only the clean ones; 'winged' subsumes the unclean ones and locusts.*

G. *Come and take note: "Every bird, every winged creature" (Gen. 7:14) — is it not the case as we asked above?*

H. *No. It is the case as we answered above.*

I. *Come and take note: "As for you, son of man, thus says the Lord God: Speak to the birds of every sort and to all beasts of the field, [Assemble and come, gather from all sides to the sacrificial feast which I am preparing for you, a great sacrificial feast upon the mountains of Israel, and you shall eat flesh and drink blood]" (Eze. 39:17) — is it not the case as we asked above?*

J. *No. It is the case as we answered above.*

- K. Come and take note: **[140a]** “The birds of the air nested in its branches, and from it all living beings were fed” (Dan. 4:12) — [the verse indicates that the term *spr* refers to all birds, even unclean ones].
- L. [No. This indicates that unclean birds] are called, “The birds of the air.” They are not called just plain “birds” [*spr*].
- M. Come and take note: “You may eat all clean birds” (Deu. 14:11) — may we derive from this the conclusion that there are unclean birds [called *spr*]?
- N. No. We may derive from this the conclusion that there are prohibited birds [called *spr*].
- O. What case is that? If that is the case of *terefah*, that is stated explicitly [elsewhere that it is prohibited]. If it is the case of the slaughtered bird of the leper, we may derive that rule from the continuation of the verse, “But these are the ones of which you shall not eat: [the eagle, the vulture, the osprey]” (Deu. 14: 9) — [the words “of which”] include the slaughtered bird of the leper. [This is not an acceptable line of reasoning.] Invariably [the first verse includes the case of] the slaughtered bird of the leper. [And the verse informs us that one who eats this bird] violates thereby [both] a [positive] commandment [“you may eat”] and a [negative] prohibition [“of which you shall not eat”].
- P. But why do we not support [our earlier hypothesis and say the verse includes the case of] *terefah* [and the verse informs us that one who eats this bird] violates thereby [both] a commandment [“you may eat”] and a prohibition [“of which you shall not eat”]? [We cannot accept this line of reasoning because we have a principle that] we interpret a matter in accord with its context. *And the context of the passage is [birds] that were slaughtered.*
- Q. Come and take note: “[The priest shall command them to take for him who is to be cleansed] two living clean birds [and cedarwood and scarlet stuff and hyssop]” (Lev. 14: 4) — what does “living” mean? Does it not mean that you may put them in your mouth [and eat them]?
- R. We may derive the conclusion that there are those that you may not put in your mouth [to eat that are also called “birds” (*spr*)].
- S. What does “living” mean? It means [birds] that have life in their major limbs. [This excludes a bird that has a limb that is devitalized or missing.]
- T. Come and take note: From the continuation of the verse, “clean” may we derive the conclusion that there are those that are unclean [that are called “birds”]?
- U. No. We may derive from this the conclusion that there are *terefot* [that are called “birds”]. But we derived the rule for *terefot* from the word, “living”.
- V. This settles the matter according to the authority who holds the view that a *terefah* is deemed as if it is alive. But according to the authority who holds the view that a *terefah* is not deemed as if it is alive, what can one say?
- W. And furthermore, according to both the authority who holds the view that a *terefah* is deemed as if it is alive, and the authority who holds the view that a *terefah* is not deemed as if it is alive, we derive the matter from what was taught by the House of R. Ishmael.
- X. For, taught the House of R. Ishmael: It states the matter of [sacrifices that] render fitness and that render atonement inside [the

Temple]. And it states the matter of [sacrifices that] render fitness and that render atonement outside [the Temple]. Just as we find concerning the matter of [sacrifices that] render fitness and that render atonement inside [the Temple], [scripture] equated that which renders fitness with that which renders atonement, so too, we find concerning the matter of [sacrifices that] render fitness and that render atonement outside [the Temple], [Scripture] equated that which renders fitness with that which renders atonement. [We do not need a specific teaching to exclude a *terefah* as a sacrifice for a leper, brought outside.]

Y. Said R. Nahman bar Isaac, “[Scripture states ‘clean’] to exclude the birds of a condemned city.”

Z. *With regard to what rule [does it exclude the birds]? If we say it is with regard to the rule of sending away [a bird], the Torah never said that one should send away [a bird] if that might lead one to stumble into sin [e.g., by eating a forbidden bird]. Rather it must be [that it excludes them with regard to the rule of] slaughtering. [‘Clean’ excludes this bird.]*

AA. Raba said, “[Scripture states ‘clean’] to exclude the case of one who wants to pair the bird with another [for the purification of a leper] before sending it away.”

BB. *With regard to what rule [does it exclude the birds]? If we say it is with regard to the rule of slaughtering, lo, it must be sent away! Rather it must be [that it excludes them with regard to the rule of] sending away [one bird].*

CC. R. Papa said, “[Scripture states ‘clean’] to exclude the case of one who exchanges birds for birds that were consecrated to idolatry.” As it is written, “[Do not bring an abhorrent thing into your house,] or you will be set apart for destruction like it” (Deu. 7:26) — whatever you spawn from it, takes on its characteristics. *With regard to what rule [does it exclude the birds]? If we say it is with regard to the rule of sending away [a bird], the Torah never said that one should send away [a bird] if that might lead one to stumble into sin [e.g., by eating a forbidden bird]. Rather it must be [that it excludes them with regard to the rule of] slaughtering. [‘Clean’ excludes this bird.]*

DD. *Rabina said, “In this case, what are we dealing with? With a fowl that killed a person.” What is the situation [regarding the bird]? If they passed judgment on it — it is put to death [and would not have escaped]. Rather it must be the case that they had not yet passed judgment on it. And with regard to what rule [does it exclude the birds]? If we say it is with regard to the rule of sending away [a bird], they need to bring it to the court and to fulfill by*

[killing it the requirement of the verse], “So you shall purge the evil from your midst” (Deu. 13: 5). Rather, it must be with regard to the rule of slaughtering. [‘Clean’ excludes this bird.]

VI.1 A. *If an unclean bird sits on the eggs of a clean bird [M. 12:2B] — it makes perfect sense to say that where an unclean bird sits on the eggs of a clean bird [one is free of the requirement of letting the dam go]. We need to have “a bird [=spr, a clean one]” and that is lacking [in this case]. But where a clean bird sits on the eggs of an unclean bird [C], lo this is “a bird” [and he should be liable to the requirement]. This accords with what was stated by R. Kahana, “[You shall let the mother go, but the young] you may take to yourself; [that it may go well with you, and that you may live long]” (Deu. 22: 7) — and not for your dogs. Here too [we say], “You may take for yourself” — and not for your dogs.*

B. *And with regard to what case did R. Kahana state the matter? With regard to that which was taught on Tannaite authority: **Where the dam is terefah, one is liable to the law of letting the dam go. If the young birds are terefot, one is free from the requirement of letting the dam go.** [Cf. T. 10:10 G-H.]*

C. *What is the source of these assertions?*

D. *Said R. Kahana, As scripture stated, “[You shall let the mother go, but the young] you may take to yourself; [that it may go well with you, and that you may live long]” (Deu. 22: 7) — and not for your dogs.*

E. *And why do we not link [with regard to the law, the case of] the dam that is terefah with [the case of] the young birds that are terefot? [We would then argue that] what is the case where the young birds are terefot?*

F. *One is free from the requirement of sending away the dam. So too where the dam is terefah, he also should be free from the requirement of sending away the dam.*

G. **[140b]** *If this is the case then why do I need the word “a bird” to exclude an unclean bird from the rule? Lo, was it not taught on Tannaite authority, If the dam of young birds are terefah, one is liable to the requirement of letting the dam go?*

H. *Said Abbaye, “Here is how you should state the matter: A young bird whose mother is terefah is liable to the requirement of letting the dam go.”*

VI.2 A. *R. Hoshaya posed a question: If one thrust his hand into the nest and slaughtered a portion of the organs [of a young bird by slitting less than half of its windpipe or esophagus in its throat] what is the law? Do we say that because if he leaves it [in this condition] it renders [the young bird] terefah, therefore we must follow [the implication of the verse that the law applies to young that], “[you may take] to yourself” (Deu. 22: 7), but not to [those terefah birds that you must feed] to your dogs? Or perhaps since he has it in his power to complete the act of slaughter, we label this [a case where the verse], “you may take to yourself” [applies] and he is liable to the requirement of letting the dam go.*

B. *The question stands unresolved.*

VI.3 A. *R. Jeremiah posed these questions:* [In cases where the mother bird was not sitting directly on the young, would one be liable to the requirement of letting the dam go? To wit,] if a cloth [separated the mother from the young] what is the law as to whether it interposes [and the result is a circumstance not covered by the commandment of the verse]? If its wings [separated the mother from the young] what is the law as to whether it interposes [and the result is a circumstance not covered by the commandment of the verse]? If spoiled eggs [separated the mother from the young] what is the law [as to whether it interposes and the result is a circumstance not covered by the commandment of the verse]? If there were two rows of eggs, one on top of another [and the upper row separated the mother from the lower row] what is the law [as to whether it interposes and the result is a circumstance not covered by the commandment of the verse]? If the male bird sat on the eggs and the female bird sat upon the male bird [and separated the mother from the young] what is the law [as to whether it interposes and the result is a circumstance not covered by the commandment of the verse]?

B. *The question stands unresolved.*

VI.4 A. *R. Zira posed these questions:* If a dove [sat] on the eggs of a tasil-dove, what is the law [as to whether the circumstance is covered by the commandment of the verse]? If a tasil-dove [sat] on the eggs of a dove, what is the law [as to whether the circumstance is covered by the commandment of the verse]?

B. *Said Abbaye, “Come and take note: [If] an unclean bird sits on the eggs of a clean bird, or a clean bird sits on the eggs of an unclean bird, one is free of the requirement of letting the dam go [M. 12:2 B-C].* Lo, if a clean bird [sits on the eggs of a] clean bird, one is liable to the requirement. [What then is the question?]”

C. *Perhaps [this inference from M.’s rule] applies only to a hen-partridge [which is accustomed to sit on the eggs of other birds].*

VII.1 A. **A cock partridge — R. Eliezer declares liable [to the law of letting the dam go] and sages exempt [M. 12:2 E-G].**

B. *Said R. Abbahu, “What is the basis for the view of R. Eliezer? He derives the inference from [the common use in two verses of the term] ‘brood.’” It is written here, “Like the partridge that gathers a brood which he did not hatch, so is he who gets riches but not by right; in the midst of his days they will leave him, and at his end he will be a fool” (Jer. 17:11). And it is written there, “There shall the owl nest and lay and hatch and gather her young [brood] in her shadow; yea, there shall the kites be gathered, each one with her mate” (Isa. 34:15).*

VII.2 A. *Said R. Eliezer, “The dispute pertains only to a case of a cock-partridge. But in the case of a hen-partridge [sitting on eggs], all agree that one is liable [to the requirement to send away the dam].”*

B. *But this is obvious. A cock-partridge is what is taught in the Mishnah. [Eliezer had to state the matter because] it might have made sense to maintain that sages exempted [from the requirement] even a hen-partridge. And the reason that it taught in the Mishnah, A cock-partridge, was in order to instruct you of the potency of R. Eliezer’s view. It comes to make the novel point [that a hen-partridge is not exempt].*

- VII.3** A. And said R. Eliezer, “The dispute pertains only to a case of a cock-partridge. But in the case of any other cock [sitting on eggs], all agree that one is exempt [from the requirement to send away the bird].”
- B. *But this is obvious. A **cock-partridge** is what is taught in the Mishnah. [No. Eliezer had to state the matter because] it might have made sense to maintain that R. Eliezer included [in the requirement] even any other cock. And the reason that it taught in the Mishnah, A **cock-partridge**, was in order to instruct you of the potency of the rabbis’ view. It comes to make the novel point [that a cock-partridge is liable].*
- C. *It was taught on Tannaite authority in accord with this view: Any other cock is exempt [from the requirement to send the bird away]. R. Eliezer declares liable and sages exempt.*

12:3 A-L

- A. [If the dam] was hovering [over the nest],
- B. when its wings touched the nest,
- C. one is liable to send forth the dam.
- D. [If] its wings are not touching the nest, he is exempt from the requirement to send forth the dam.
- E. [If] there was there only one nestling or one egg, one is liable to send forth the dam,
- F. as it is said, “A bird’s nest” (Deu. 22: 6) — a bird’s nest of any kind.
- G. [If] there were there nestlings able to fly
- H. or spoiled eggs
- I. one is exempt from the requirement of sending forth the dam,
- J. as it is said, “And the dam sitting upon the young or upon the eggs” —
- K. Just as the nestlings are those likely to live, so the eggs must be those likely to live, excluding those which are spoiled.
- L. And just as the eggs require their dam, so the nestlings require their dam, excluding those that can fly.
- I.1** A. *Our rabbis taught:* [The rule applies when the dam is] “Sitting upon” but not “hovering over” [the nest]. You might infer that even **when its wings touched the nest** [that the rule does not apply]. It comes to teach, “Sitting upon.” *On what basis do we derive this teaching? Because it is not written [simply], “Sitting.”*
- I.2** A. Said R. Judah, said Rab, “If she [the dam] was sitting [perched above the nest] upon two interlaced branches of a tree — we assess the situation. In any case where, if the branch is removed, she would fall down upon them [the young in the nest] — one is liable to send forth [the dam]. And if not — one is exempt.”
- B. *They posed a question:* If she was sitting among them, one is exempt from letting the dam go. If she was sitting on them, one is liable to let the dam go. If she [the dam] was hovering [over the nest], even when its wings touched the nest, he is exempt from the requirement to send forth the dam. *Is it not the case that the instance where she is hovering above them is comparable to the instance where she is sitting among them? What is the circumstance where she sits among them? She touches them. So too the circumstance where she hovers above them, she*

touches them. But where she was [sitting between] the branches of a tree, one is exempt [because she is not touching them].

- C. *No. The instance where she is hovering above them is comparable to the instance where she is sitting among them. What is the circumstance where she sits among them? She does not touch them. So too the circumstance where she is above them where she does not touch them. And this is identical to the case where she was [sitting between] the branches of a tree [one is liable].*
- D. *Here too it makes sense to say [one is liable]. For if you might have concluded [that when the dam is sitting above the nest] between the branches, one is exempt, why then did it teach [in A]: If she [the dam] was hovering [over the nest], even when its wings touched the nest, he is exempt from the requirement to send forth the dam? Let it teach [the instance where she was sitting above the nest] between two branches and we would derive that most certainly where she was hovering above [he is exempt].*
- E. *It is necessary to state the instance where she is hovering [above the nest]. For [we learn from this that] even where its wings were touching the nest, one is exempt from letting the dam go.*
- F. *But lo we know it was taught on Tannaite authority: **When its wings touched the nest, one is liable to send forth the dam** [M. 12:3 B-C].*
- G. *Said R. Jeremiah, "Concerning what case did the Mishnah teach us the rule? Where she touched [the nest] on the side."*
- H. *There are those who give another version: Let us say this supports [Rab Judah in the name of Rab]. If she was sitting among them, one is exempt from letting the dam go. If she was sitting on them, one is liable to let the dam go. If she [the dam] was hovering [over the nest], even when its wings touched the nest, he is exempt from the requirement to send forth the dam. Is it not the case that the instance where she is hovering above them is comparable to the instance where she is sitting among them? What is the circumstance where she sits among them? She does not touch them. So too the circumstance where she hovers above them, she does not touch them. And this is identical to the circumstance where she was [sitting between] the branches of a tree [and one is liable].*
- I. *No. The instance where she is hovering above them is comparable to the instance where she is sitting among them. What is the circumstance where she sits among them? She does touch them. So too the circumstance where she is above them where she does touch them. But in the case where she was [sitting between] the branches of a tree [one is exempt].*
- J. *If this is the case, why then did it teach in the latter text [in A]: If she [the dam] was hovering [over the nest], even when its wings touched the nest, he is exempt from the requirement to send forth the dam? [141a] Let it teach [the instance where she was sitting above the nest] between two branches and we would derive that most certainly where she was hovering above [he is exempt].*
- K. *It is necessary to state the instance where she is hovering [above the nest]. For [we learn from this that] even where its wings were touching the nest, one is exempt from letting the dam go.*

- L. *But lo we know it was taught on Tannaite authority: **When its wings touched the nest, one is liable to send forth the dam** [M. 12:3 B-C].*
- M. Said R. Judah, “Concerning what case did the Mishnah teach us the rule? Where she touched [the nest] on the side.”

II.1 A. [If] there was there only one nestling or one egg, one is liable to send forth the dam, as it is said, “A bird’s nest” (Deu. 22: 6) — a bird’s nest of any kind [M. 12:3 E-F].

- B. *Said one of the rabbis to Raba, “It makes sense to say the opposite: [If] there was there only one nestling or one egg, one is exempt from sending forth the dam, as it is said, “A bird’s nest” (Deu. 22: 6) — a bird’s nest of any kind. For we must have several young birds or several eggs and we do not have it.*

III.1 A. [If] there were there nestlings able to fly or spoiled eggs [M. 12:3 G-H] [why not say that] one is liable to the requirement of sending forth the dam? as it is said, “A nest” — any kind of nest.

- B. If so, let the verse say, “And the dam sitting upon them.” Why does it specify, “And the dam sitting upon the young or upon the eggs”? *It juxtaposes the young to the eggs and the eggs to the young [to teach us that they must both be healthy and neither may fly.]*

12:3 M-Q

- M. [If] one sent it forth and it returned, even four or five times, he is liable [to send it forth again],
- N. as it is said, “You shall surely send it forth.”
- O. [If] one said, “Lo, I shall take the dam and send forth the young,” he is liable to send forth [the dam],
- P. as it is said, “You shall surely send forth the dam.”
- Q. [If] one took the young and then returned them to the nest and afterward the dam returned to them, he is free of the obligation to send forth [the dam from the nest].

I.1 A. *Said one of the rabbis to Raba, “It makes sense to say that, ‘You shall send forth’ means send it one time and ‘You shall surely send forth’ means send it two times.” [How do we derive in M. from this, **even four or five times**?]*

- B. He said to him, “‘You shall send forth’ [implies that you must send it away] even one hundred times. ‘You shall surely send forth’ [implies something else]. I would have deduced [from ‘You shall send forth’] that only where [I wanted the birds] for some elective purpose [must I send away the dam]. But on what basis would we know that where I needed the birds to fulfill a commandment [such as the sacrifice of a leper or a woman after childbirth, that one still must send away the dam]? It comes to teach us, ‘You shall surely send forth’ — under all circumstances [you must do so].”

- C. *Said R. Abba the son of R. Joseph bar Raba to R. Kahana, “But what is the reason the Torah wrote, ‘You shall surely send forth’? If not for this would I have reasoned that [where I needed the birds] to fulfill a commandment [the requirement to send away the dam] did not apply?”*

- D. *[We would not have concluded that because] this is a commandment and a prohibition [‘You shall surely send forth,’ and ‘You shall not take the mother with the young.’]. And [we have a principle that] a commandment does not override both a prohibition and a commandment.*
- E. *No, it is necessary to teach the matter [to address the theoretical case wherein] he already violated the rule and took the mother. There he violated the prohibition [not to take the mother]. The commandment [to send away the mother] remains. [We might argue that] we let one commandment override another commandment [and a person would then take the birds to use for a sacrifice]. It comes to teach the novel point [“you shall surely send forth”].*
- F. *Now it would settle the matter [to reach this conclusion] in accord with the authority who taught the view that you either uphold [the prohibition] or you do not uphold it. [Once you violated it by taking the bird you cannot then reverse the situation.] But in accord with the authority who taught the view that you may annul [the prohibition by violating it] but you can restore it, as long as one did not slaughter the bird [after taking it from the nest], one did not violate [irrevocably] the prohibition. [Once you violated it by taking the bird you can then reverse the situation by letting it go as long as you did not slaughter it.]*
- G. *And furthermore according to R. Judah who said, ‘You shall... send’ implies [in the next Mishnah-passage that there is a commandment only] at the outset [but if he takes the dam, there is no longer any applicable commandment at a later time, then in the present instance] there is not even a commandment.*
- H. *Rather said Mar bar R. Ashi, “The case in question may be one where he took [the dam] on the condition that he would later send it away. [In that case] there is no prohibition [that he will transgress]. There is [still] a commandment [to fulfill]. [We might argue that] we let one commandment override another commandment [and a person would then take the birds to use for a sacrifice].”*
- I. *[However, we may counter this by asking:] Why is this commandment [to bring a sacrifice] more potent than that commandment [to let the dam go]? You might have concluded that [it is] since the master said, “Great in importance is the peace between a man and his wife. Because the Torah said that the name of the Holy One, blessed be he, that was written in sanctity should be expunged into the [bitter] water [for a Sotah-woman suspected of infidelity in order to restore the peace between a man and his wife]. And this leper, so long as does not purify himself, he is prohibited from intercourse [with his wife]. As it is written, ‘[And he who is to be cleansed shall wash his clothes, and shave off all his hair, and bathe himself*

in water, and he shall be clean; and after that he shall come into the camp], but shall dwell outside his tent seven days' (Lev. 14: 8). 'His tent' — that is his wife. This serves as a source of proof that [a leper] is prohibited to engage in intercourse.

- J. *What might you have maintained? Since he is prohibited to engage in intercourse [with his wife], we let his commandment override the commandment to send away the dam [and a person would then take the birds to use for a sacrifice]. It comes to teach the novel point [that this is not the case by using the intensive form]."*

12:4

- A. **He who takes the dam with the young —**
- B. **R. Judah says, "He incurs the penalty of stripes, but he does not send forth [the dam]."**
- C. **And sages say, "He sends forth [the dam], but does not incur the penalty of stripes.**
- D. **"This is the general principle: for any [negative] prohibition that is averruncated by affirmative [commandment] to rise up and do something, one does not incur the penalty of stripes." [The commandment eliminates or averruncates the prohibition.]**
- I.1** A. *R. Abba bar Mamal posed a question, "Is the basis of the view of R. Judah that he reasoned in accord with the opinion that a [negative] prohibition that encompasses an affirmative [commandment] to rise up and do something, does one incur the penalty of stripes? Or perhaps in general he holds the view that, for any prohibition that encompasses an affirmative [commandment] to rise up and do something, one does not incur the penalty of stripes. But here the basis for his view [that he does incur it] is because he reasoned in accord with the view that, 'You shall... send' implies [there is a commandment only] at the outset [but if he takes the dam, there is no longer any applicable commandment at a later time]?"*
- B. *Come and take note: "A robber and a thief are subject to the punishment of the penalty of stripes," the words of R. Judah. But lo this is a **prohibition that is averruncated by an affirmative [commandment] to rise up and do something.** For the Torah said, "You shall not oppress your neighbor or rob him. [The wages of a hired servant shall not remain with you all night until the morning]" (Lev. 19:13). [And it says], "Restore what you took by robbery" (Lev. 6: 4). *We may derive from this that the basis of the view of R. Judah is that he reasoned in accord with the opinion that a **prohibition that is averruncated by an affirmative [commandment] to rise up and do something,** one does incur the penalty of stripes.**
- C. *Said to him [var.: them] R. Zira, "Have I not informed you that every teaching that was not taught in the [141b] House of R. Hiyya or in the House of R. Oshaia is corrupt and you should not raise from it any objection in the House of Study?"*

Perhaps it was taught [that the correct version of the teaching at B is, ‘A robber and a thief] are not subject to the penalty of stripes.’”

- D. *It was taught on Tannaite authority: Come and take note: For R. Oshaia and R. Hiyya taught, “[When you reap your harvest in your field, and have forgotten a sheaf in the field,] you shall not go back to get it; [it shall be for the sojourner, the fatherless, and the widow; that the Lord your God may bless you in all the work of your hands]” (Deu. 24:19). But if he went back [it is taught further], “[When you reap the harvest of your land,] you shall not reap your field to its very border, [neither shall you gather the gleanings after your harvest]” (Lev. 19: 9). But if he reaped [it to its border] — “It is subsumed under the penalty of stripes,” the words of R. Judah. [Even though it constitutes a prohibition averruncated by a commandment.]*
- E. *We derive from this that the basis of the view of R. Judah is that he reasoned in accord with the opinion that a **prohibition that is averruncated by an affirmative [commandment] to rise up and do something**, one does incur the penalty of stripes.*
- F. *But perhaps here the basis for his view [that he does incur it] is because he reasoned in accord with the view that, ‘You shall... leave it’ implies [there is a commandment only] at the outset [but if he takes the produce, there is no longer any applicable commandment at a later time to leave something for the poor].*
- G. *Said Rabina to R. Ashi, “Come and take note: ‘And you shall let none of it remain until the morning, anything that remains until the morning you shall burn’ (Exo. 12:10). Scripture provides us with a commandment after a prohibition to inform us that he **does not incur the penalty of stripes** [for transgressing] this, the words of R. Judah. *We may derive from this that the basis for R. Judah’s view [in our Mishnah] is because he reasoned in accord with the view that, ‘You shall... send’ implies [there is a commandment only] at the outset [but if he takes the dam, there is no longer any applicable commandment at a later time]. We may derive [indeed] this.” [The matter does not depend on how the Torah states things but on the applicability of the commandment. Here it is not applicable so he may incur the penalty of stripes.]**
- H. *Said R. Idi to R. Ashi, “From the Mishnah itself [at A-B] you may also derive this explicitly. For it was taught: **He who takes the dam with the young — R. Judah says, “He incurs the penalty of stripes, but he does not send forth [the dam].”** And if you wish to conclude that the basis for the view of R. Judah is that for a **prohibition that is averruncated by an affirmative [commandment] to rise up and do something**, one does incur the penalty of stripes, *it would be necessary to teach, **He incurs the penalty of stripes, and he does send forth the young.****
- I. *But perhaps this is how you should state the matter in the Mishnah: One is not freed from his obligation until they administer the penalty of stripes to him.*

I.2 A. *How far must he let it go [when he sends forth the dam]?]*

- B. *Said R. Judah, “Until it is beyond his reach.”*
- B. *In what manner does he send it forth?*
- C. *R. Huna said, “On its feet.”*

- D. R. Judah said, "On its wings." [Rashi: an alternative explanation: Holding its feet or holding its wings.]
- E. R. Huna said, "On its feet." *As it is written*, "[Happy are you who sow beside all waters], who let the feet of the ox and the ass range free" (Isa. 32:20).
- F. R. Judah said, "On its wings." [For a bird], lo, its feet are its wings. [So the verse supports his view.]

I.3 A. *There was once a person who clipped the wings [of a dam] and sent it away and afterward captured it. R. Judah administered lashes to him. He said to him, "Go and allow its feathers to grow back and send it away."*

- B. *In accord with whose view [of our Mishnah] is this decision? If it is in accord with the view of R. Judah then, "He incurs the penalty of stripes, but he does not send forth [the dam]."*
- C. *And if it is in accord with the rabbis then, "He sends forth [the dam], but does not incur the penalty of stripes."*
- D. *It is consistent [to say this accords] with the view of the rabbis. And [the lashes he administered was] the penalty of stripes for insubordination, based on the authority of the rabbis [not based on the prohibition in the Torah].*

I.4 A. *A person came before Raba [to obtain a legal ruling]. He said to him, "What is [the law with regard to sending away the dam] for the bullfinch?"*

- B. *He said, "Does this man not know that it is a clean bird and one must send away [the dam]?"*
- C. *He said to him, "Was it perhaps incubating just one egg?"*
- D. *He said to him, "Correct."*
- E. *[He said to him,] "You should know this. It is in the Mishnah: [If] there was there only one nestling or one egg, one is liable to send forth the dam [M. 12:3 E]."*
- F. *He sent it forth. Raba set out snares for it and captured it.*
- G. *But should we not suspect [that his actions call into question Raba's] scruples?*
- H. *[No, because capturing it in snares is] a passive activity [i.e., indirect, and thus not a problem].*

I.5 A. *Our rabbis taught on Tannaite authority: The pigeons of a dovecote and the pigeons of an attic are liable to the requirement of sending forth and prohibited because of robbery, in order to keep peace [T. 10:13 C-D].*

- B. *But if we accept what R. Yosé b. R. Hanina said, "A person can take possession through his courtyard, even without his knowledge," then we should call this a case of, "If you chance to come upon a bird's nest, [in any tree or on the ground, with young ones or eggs and the mother sitting upon the young or upon the eggs, you shall not take the mother with the young]" (Deu. 22: 6) — this excludes from the obligation that which is captive [in a house, above 12:1-2I.2D].*

- C. *Said Rab [var. Raba], “A bird laying] an egg — as soon as the major part of it emerges, it is liable to the rule of sending away the dam. But one does not acquire possession of it until it falls into his courtyard. And where you say that it taught they **are liable to the requirement of sending forth** [it is concerning an egg] before it fell into his courtyard. If so, why then would they be **prohibited because of robbery**? [That could refer] to their mother.”*
- D. *If you prefer [another possible explanation], it [T.] consistently refers to the egg [not the dam]. And regarding an egg, as soon as the major part of it emerges, he is mindful of it [and acquires possession before it falls into his courtyard].*
- E. *But let us now consider the matter: Said R. Judah, said Rab, “It is prohibited to acquire possession of eggs that the dam is sitting upon. As it says, ‘You shall let the mother go.’ And after that, ‘But the young you may take to yourself; [that it may go well with you, and that you may live long]’ (Deu. 22: 7). Even if you maintain, even if they fell into his courtyard, in any case that he himself could take possession [of the egg], his courtyard also could take possession [of it on his behalf]. And in any case that he himself could not take possession [of the egg], his courtyard also could not take possession [of it on his behalf], if so, why are they, **prohibited [because of robbery], in order to keep peace**? If he sent away [the dam], it is a pure case of robbery. And if he did not send away [the dam], he must send away [the dam before one can take the eggs].*
- F. *[We may hypothesize that the case pertains to] a child [not subject to the commandment to send away the dam]. [But we may then ask], is a child subject to the obligation to keep peace?*
- G. *Here is how you should state the matter. The father of the child is obligated to return it, **in order to keep peace**.*

I.6 A. *Levi bar Simon gave possession of the stock of his dovecote to R. Judah. He came before Samuel. He said to him, “Go disturb the nest so they will fly up and you may acquire them.”*

- B. *Why do this? If it is in order to acquire them, let him acquire them [by the customary symbolic transfer] with a fabric. If it is a festival day [142a] [when foods that one wishes to use must be prepared in advance, let us presume that] it suffices if he stands and says [before the festival], “This one and that one I am taking [to designate them for use].”*
- C. *[We may say that] these were newly laid eggs and Levi Bar Simon himself had not yet had a chance to acquire them.*
- D. *And here is what he said to him, “Go and disturb the nest so they will fly up and Levi bar Simon will acquire them and after that you will acquire them from him [by the customary symbolic transfer] with a fabric.*

- A. One would not take the dam with the young even for the purpose of purifying a mesora.
 - B. Now if concerning an unimportant commandment, [the loss incurred in the performance of] which is worth only an issar, scripture has said, “That it may be well with you and that you may prolong your days” (Deu. 22: 7),
 - C. how much the more so for the weightier commandments that are in the Torah [will reward be given].
- I.1** A. *It was taught on Tannaite authority: [b.: The House of] R. Jacob says, “You will find no [other] commandment in the Torah, the specification of the reward for which is (not) located by its side, and the [promise of the] resurrection of the dead is written alongside it [as well] [T. 10:16 C-D].”*
- B. Regarding [the commandment] to honor one’s father and mother it is written, “[Honor your father and your mother, as the Lord your god commanded you;] that your days may be prolonged, and that it may go well with you, [in the land which the Lord your God gives you]” (Deu. 5:16).
 - C. Regarding [the commandment] to send away the dam it is written, “**That it may be well with you and that you may prolong your days**” (Deu. 22: 7).
 - D. Lo, consider this one whose father said to him, “Go up to the roof and bring me fledglings.” And he went up and sent away the dam and took the young. And on his return he fell and died. Where is the long life of this one? And where is the good for this one?
 - E. Rather it must be [**that one must therefore conclude**]: “**And that you may prolong your days**” — in the world of endless time [T. 10:16 G]. “So that it may be well for you” — in a world that is completely good.
 - F. *But perhaps this [kind of tragedy of D above] never happened.*
 - G. *R. Jacob saw it happen.*
 - H. *But perhaps [the son] was contemplating a sin [at the time he died].*
 - I. *The Holy One, blessed be He, does not transform a bad thought into a deed.*
 - J. *But perhaps he was contemplating practicing idolatry [and would be punished for his thoughts], as it is written, “That I may lay hold of the hearts of the house of Israel, [who are all estranged from me through their idols]” (Eze. 14: 5). And said R. Aha bar Jacob, “This refers to thoughts of practicing idolatry.”*
 - K. *Here is how you should state the matter. If it is so that there is reward for the performance of the commandments in this world, they should stand to his benefit and they should protect him so that he not come to contemplate [practicing idolatry] and be harmed. Rather [since he died] we must conclude that there is no reward for the performance of the commandments in this world.*
 - L. But lo, did not R. Eleazar say that agents sent to engage in the performance of commandments are not harmed?

- M. *[But we could explain that] on their return, that is a different story [they may not be protected from harm].*
 - N. But lo, did not R. Eleazar say that agents sent to engage in the performance of commandments are not harmed, neither in going nor in returning?
 - O. *It must have been a shaky ladder. And where there is clear and present danger, that is a different story, as it is written, "And Samuel said, 'How can I go? If Saul hears it, he will kill me.' [And the Lord said, 'Take a heifer with you, and say, 'I have come to sacrifice to the Lord'] (1Sa. 16: 2).*
- I.2 A.** Said R. Joseph, "If only Aher [Elisha b. Abuya] had interpreted this verse in accord with R. Jacob, his daughter's son, he would not have sinned [committing heresy]."
- B. What did he see? Some say he saw something like this incident. And some say he saw the tongue of Huspit the Meturgeman cast into the garbage.
 - C. He said, "[How awful that] the mouth that spoke pearls should now lick the dust."
 - D. And he did not know [the proper interpretation of the matter]: **"And that you may prolong your days" — in the world of endless time [T. 10:16 G].** "So that it may be well for you" — in a world that is completely good.