

III.

BABYLONIAN TALMUD MAKKOT CHAPTER THREE

FOLIOS 13A-24B

3:1-2

3:1

- A. These are the ones who are flogged:
- B. He who has sexual relations with (1) his sister, (2) the sister of his father, (3) the sister of his mother, (4) the sister of his wife, (5) the wife of his brother, (6) the wife of the brother of his father,
- C. (7) a menstruating woman,
- D. (8) a widow in the case of a high priest, (9) a divorcée or a woman who has performed the rite of removing the shoe with an ordinary priest, (10) a mamzer girl and a (11) Netin girl with an Israelite, (12) an Israelite girl with a Netin [descendant of the caste of Temple slaves] or with a mamzer [offspring of a couple who cannot legally marry, e.g., by reason of consanguinity].
- E. As to a widow and a divorcée, [priests] are liable in her case on two counts.
- F. In the case of a divorcée and a woman who has performed the rite of removing the shoe, [a priest] is liable in her case on only one count alone.

3:2

- A. [Also subject to flogging are]: (1) an unclean person who ate food in the status of Holy Things: (2) he who enters the Temple unclean,
- B. (3) he who eats forbidden fat, blood, remnant of a sacrifice left overnight, meat of a sacrifice rendered invalid by the improper intention of the officiating priest, or unclean [sacrificial meat];
- C. (4) he who slaughters an animal and offers it up outside of the Temple;
- D. (5) he who eats leaven on Passover;
- E. (6) and he who eats or who does an act of labor on the Day of Atonement;
- F. (7) he who prepares anointing oil like the anointing oil of the Temple, (8) he who prepares incense like the incense of the Temple, or (9) he who anoints himself with anointing oil;

- G. (10) he who eats carrion or terefah meat [that is, meat from a beast that was dying on its own], forbidden things, or creeping things.
- H. [If] one ate (1) food from which tithes had not been removed at all, (2) first tithe from which heave offering had not been removed, (3) second tithe or consecrated food which had not been redeemed, (he is liable to flogging).
- I. How much food which had not been tithed at all does one eat so as to be liable?
- J. R. Simeon says, "Any amount at all."
- K. And sages say, "An olive's bulk."
- L. Said to them R. Simeon, "Do you not agree with me in the case of one who eats an ant, however small, that he is liable?"
- M. They said to him, "It is because that is how it has been created."
- N. He said to them, "Also a single grain of wheat is precisely in the form in which it has been created."

I.1 A. *Those that incur a flogging in connection with extirpation are listed, but not those that incur the death penalty by a court decree are not listed.* [We note that the penalty of extirpation is incurred for the actions listed here, as is clear from M. Keritot 1:1, and yet the authority behind our anonymous and authoritative rule imposes a flogging as well; that is, if an admonition is given prior to the deed that the penalty of flogging will be incurred if the deed is done, then the sinner or felon is both flogged and also is subject to extirpation. Those subject to the death penalty at the hands of the earthly court are not flogged in addition, and that is without regard to the character of the prior admonition. We therefore want to know who holds the view that one may be subject to both penalties, flogging and supernatural extirpation, but not to the death penalty and flogging.]

- B. *Who is the authority behind this Mishnah-paragraph?*
- C. *It is R. Aqiba, as has been taught on Tannaite authority:*
- D. "All the same are those that are liable to extirpation and those that are liable to the death penalty inflicted by the earthly court: **[13B]** both classes of offenders are subject to flogging of forty lashes," the words of R. Ishmael.
- E. R. Aqiba says, "Those that are liable to extirpation also are subject to flogging of forty lashes, for if the offender should repent, the court on high will forgive them [the sin for which they would have been subjected to extirpation]. But those liable to the death penalty inflicted by the earthly court are not subject to a flogging of forty lashes, for if they should repent, the earthly court will nonetheless not forgive them [and remit the punishment, so they will be punished as decreed no matter what happens, in which case there is no basis for a flogging in addition]."

I.2. A. R. Isaac says, "All those violations of the law that are punishable by extirpation were subject to a single encompassing statement ["For whoever shall do any of these abominations — the persons that do them shall be cut off from among their people" (Lev. 18:29)], and why was the penalty of extirpation made explicit in particular in the case of 'his sister'? It was to impose in that case the penalty of extirpation and not mere flogging."

- B. *What is then the scriptural basis for the position of R. Ishmael?*

- C. “If you will observe to do all the words of this law...,” “then the Lord will make your strokes pronounced” (Deu. 28:58-9). Now I should not have understood the sense of this “pronouncement,” but when Scripture states, “If the wicked man deserves to be beaten, the judge shall make him lie down and beaten before his face according to the measure of his misdeed by number, forty stripes (Deu. 25: 2-3), then I understand that “pronouncement” has a bearing on flogging. The passage commences, “if you will not observe to do all the words of this law.” [Thus a flogging is made incidental to every breach of the Torah (Lazarus).]
- D. *If that is the case, then those that are liable on account of violating an affirmative commandment should be subject to a flogging too!*
- E. [Matters are framed negatively:] “if you will not observe to do all the words of this law.”
- F. *And that is in accord with what R. Abin said R. Ilai said, for said R. Abin said R. Ilai, “In any passage in which in Scripture you find the language, ‘observe,’ ‘lest,’ ‘do not,’ that means an action is prohibited [and subject to a negative commandment only].”*
- G. *If that is the case, then why not flog also in the case of a violation of a prohibition that does not involve a concrete action?*
- H. [Matters are framed in terms of action:] “if you will not observe to do all the words of this law.”
- I. *If so, why not flog even in the case of violating a prohibition that can be remedied by an action later on?*
- J. *We draw an analogy to the prohibition of muzzling [an ox in its ploughing, Deu. 25: 4, which is joined to flogging and illustrates offenses for which one is flogged, that is, there is an action but it cannot be remedied by a later action].*
- I.3.** A. *And what is the scriptural basis for R. Aqiba’s [excluding from a flogging those who are subject to the death penalty inflicted by the earthly court]?*
- B. “According to the measure of his misdeed” (Deu. 25: 2) means, on account of one misdeed you may hold someone liable, but you may not hold someone liable on two counts of misdeeds.
- C. And R. Ishmael?
- D. *That argument covers not holding one liable for the penalties of both death and monetary compensation, or flogging and monetary compensation, but as to death and flogging, what we are inflicting is a prolonged death.*
- E. *And from R. Aqiba’s perspective, if what he has said [at B] is the case, he should exclude from a flogging also those who are liable to extirpation!*
- F. *And as to your statement, for if the offender should repent, the court on high will forgive them, I should reply, at this moment, in any event, they have not repented.*
- G. Said R. Abbahu, “Scripture explicitly extended to those who have become liable to extirpation the penalty of a flogging, for we derive the rule ‘before your eyes’ (Lev. 20:17, extirpation for incest) from the rule ‘before your eyes’ (Deu. 25: 3, with reference to flogging). [So a verbal analogy joins the two, and that is the basis for Aqiba’s position.]”
- H. *To that proposition objected R. Abba bar Mammel, “If so, we also should derive the rule governing those who are liable to the death penalty at the hand of an*

earthly court, appealing to the meaning of ‘from the eyes’ (Num. 15:24) from ‘before your eyes’ (Lev. 14:39).’’

- I. We may draw the meaning of “before the eyes” from “before your eyes,” but we may not derive the meaning of “from the eyes” from the sense of “before your eyes.”
- J. *What difference does such a minor variation in like words really make? And lo, a Tannaite authority of the household of R. Ishmael stated, “‘And the priest shall return’ (Lev. 14:39), ‘and the priest shall come’ (Lev. 14:44). ‘Returning’ and ‘coming’ are the same thing [even though they make use of different verb-roots].”*
- K. *Furthermore, we really should read “from the eyes of” (Num. 15:24) in light of “before the eyes of their people” since we already have found it permissible to read “before the eyes” in light of “before your eyes.”*
- L. *R. Samuel b. R. Isaac received from [Abbahu] an explanation of the difficulty deriving from the reading, “according to the measure of his misdeed,” meaning, “on account of one misdeed you may hold someone liable, but you may not hold someone liable on two counts of misdeeds,” specifically: the verse speaks of penalty that are in the hands of the earthly court [but that has no bearing on extirpation, which is in the hands of the heavenly court.]*

Now that we have provided a solid foundation in Scripture to both parties’ views, we turn to the refinement of what is subject to dispute.

- I.4.** A. *Raba said, “If the offender was admonished that, if he did the act, the death penalty would follow, all parties concur that, in such a case, the man is not flogged but will be put to death if found guilty. Where there is a dispute, it concerns a case in which there are admonition as to the penalty of flogging [but not concerning the penalty of death]. R. Ishmael takes the view that on account of violating a negative commandment that is subject to the admonition that the penalty will be death at the hands of an earthly court one may nonetheless be subject to a flogging, and R. Aqiba takes the view that on account of violating a negative commandment that is subject to the admonition that the penalty will be death at the hands of an earthly court one may not be subject to a flogging.”*
- B. *From R. Aqiba’s perspective, if so, then those that are liable to extirpation also fall into the classification of having violated a negative commandment that is subject to the admonition that the penalty of extirpation!*
- C. *Said R. Mordecai to R. Ashi, “This is what Abimi of Hagronayya said in the name of Raba: ‘Those who are liable to extirpation do not have to be given an admonition, for lo, not offering the Passover and not circumcising a male child are subject to a penalty, even though there has been no prior admonition.’” [Lazarus: hence any explicit prohibition stated in the Torah in cases of extirpation is designed to serve as an admonition concerning the penalty of flogging.]*
- D. *But perhaps the admonition in the case of extirpation only serves the purpose of imposing the obligation of bringing an offering [that is, the offender has to bring an offering, but the admonition is not to make him liable to a flogging (Lazarus)], for lo, there are the cases of Passover and circumcision, in which case there is no admonition, but these are not liable to present an offering!*

- E. *But that is not the operative consideration behind the fact that they do not have to present an offering in those cases. There is another one. It is that we find that the sin of idolatry outweighs all the commandments in the Torah, which yields this argument: just as the commandment concerning idolatry falls into the classification of, “just sit still and don’t do anything,” so any commandment that falls into the classification, “just sit still and don’t do anything” involves a sin offering for unintentional violation, and we then exclude those acts that are in the classification of “get up and go do it” [the Passover, or circumcision, both of which are commandments that require affirmative action]. [Lazarus: the reason no sin offering is entailed by neglect of those precepts is that, and not because there is no explicit prohibition stated in regard to them, as the obligation of bringing an offering for transgression is not determined by a forewarning being stated in the Torah.]*
- F. *Rabina said, “In point of fact matters are [14A] as we have stated to begin with, namely: ‘But those liable to the death penalty inflicted by the earthly court are not subject to a flogging of forty lashes, for if they should repent, the earthly court will nonetheless not forgive them [and remit the punishment, so they will be punished as decreed no matter what happens, in which case there is no basis for a flogging in addition].’ And as to what you have said, ‘at this moment, in any event, they have not repented,’ still, the penalty of extirpation also has not yet been determined upon.” [Lazarus: it may never be inflicted, since the sinner may repent in his last hour].*

Having completed our analysis of the Mishnah-paragraph, we now backtrack and pursue the discussion of No. 2.

- I.5.** A. R. Isaac says, “All those violations of the law that are punishable by extirpation were subject to a single encompassing statement [“For whoever shall do any of these abominations — the persons that do them shall be cut off from among their people” (Lev. 18:29)], and why was the penalty of extirpation made explicit in particular in the case of his sister? It was to impose in that case the penalty of extirpation and not mere flogging.”
- B. *And how do the other rabbis [Aqiba and Ishmael] respond? Specifically, what need is there to make explicit the penalty of extirpation in connection with consanguineous marriage of brother and sister?*

We now introduce into the exegesis of our Mishnah’s catalogue the governing concern of the exegesis of Mishnah-tractate Keritot 1:1ff., which is Yohanan’s interest in the possibility that by a single action, one may be subject to multiple penalties (as many as thirty-six, in context). What this indicates is that the exegetical program of one Mishnah-tractate influences the analytical initiatives taken in another.

- C. *It serves to make one liable on a variety of counts [if one does a series of offenses in a single spell of unawareness]. That is in line with what R. Yohanan said, “It is to indicate that if one committed all of them within a single spell of inadvertence, he is liable on each count.”*
- D. *And [since he has utilized the present verse for a purpose of his own, then] on what basis does R. Isaac [for his part] take the view that one is liable on a variety of counts if one does a series of offenses in a single spell of unawareness?*

- E. *He derives it from the statement, “And you shall not approach a woman in the separation of her uncleanness” (Lev. 18:19) — serving to impose liability for sexual relations with each and every menstruating woman with whom the same man has had such relations.*
- F. *And why should rabbis also not derive the same fact from that matter?*
- G. *Well, as a matter of fact, they do.*
- H. *Then what need is there to derive the fact that extirpation is incurred count by count, from the case of one’s having sexual relations with his sister?*
- I. It serves in that case to impose liability on the count of doing so with his sister, the sister of his father, or the sister of his mother.
- J. *So what else is new! These are, after all, each separate persons, and each represents a distinct classification of relationship!*
- K. Rather, it is to impose liability on the count of her being his sister, on the count of her also being the sister of his father, on the count of her furthermore being the sister of his mother.
- L. *And how would you find such a case?*
- M. *You would, where there is a wicked man who is the son of a wicked man [the father had sexual relations with his mother, who bore two daughters, and the father had sexual relations with one of those daughters, who bore him a son; the son then had sexual relations with the other daughter; that other daughter to the son is the sister of the son, the sister of his father, and the sister of his mother (Lazarus)].*
- N. *And how does R. Isaac derive that rule?*
- O. *He derives it from an argument a fortiori, for we have learned in the Mishnah:*
- P. **Said R. Aqiba, “I asked Rabban Gamaliel and R. Joshua in the meat market of Emmaus, where they had gone to buy a beast for the banquet of Rabban Gamaliel’s son:**
- Q. **“He who has sexual relations with his sister, with his father’s sister, and with his mother’s sister in one spell of inadvertence [M. Ker. 1:1E9, 10, 11] — what is the rule?**
- R. **“Is he liable once [on a single count] for all of them, or once [on distinct counts] for each and every action?**
- S. **“They said to me, ‘We have not heard [the rule on that case], but we have heard the rule, ‘He who has sexual relations with his five wives when they are menstruating, in a single spell of inadvertence, is liable for on the count of each and every act of sexual relations.**
- T. **““And we regard the matters [in the former case] as subject to a proof by an argument a fortiori [from the latter case]’ [M. Ker. 3:7]. Namely, If through sexual relations with a menstruating woman, in which case each action is of the same classification, he is liable on each count severally, then in the case in which he is liable on each count where the act falls into three different classifications, all the more so should he be liable on each count!”**
- U. *And the other party?*

- V. *That is assuredly not a valid argument a fortiori, for how draw an analogy from the case of menstruating women, where there are several distinct parties involved, to a case where there is only a single individual involved?*
- W. *And the other party?*
- X. *Well, he of course concurs that it is a faulty argument a fortiori, so he derives the rule from the reference in the latter part of the same verse to "his sister."*
[Lazarus: "he has uncovered the nakedness of his sister" (Lev. 20:17), meaning, a sister of any and every category].
- Y. *And from the perspective of the other party — what need do I have for the reference in the latter part of the same verse to "his sister"?*
- Z. *It is to impose liability in an explicit manner to one who has sexual relations with his sister who is the daughter of his father and the daughter of his mother, indicating, therefore, that merely on the basis of a good argument, we do not impose a sanction that the Torah does not otherwise make explicit.*
- AA. *And the other party?*
- BB. *If you wish, I shall say that [Isaac] derives the penalty from the prohibition [at Lev. 17: 9, 11].* [Lazarus: it is from Lev. 17:11 that he derives the principle, from the repetition of the words, "she is his sister," meaning, if she is half sister or actual sister; just as in the verse laying down the prohibition, all kinds of sisters are included, so likewise in regard to the penalty no distinction is made].
- CC. *And if you wish, I shall say that [Isaac] derives the penalty from the redundant use of [14B] "his sister" in the former part of the verse.* [Lazarus: Lev. 20:17 could have read, "And if a man take his father's daughter or his mother's daughter, omitting his sister. Isaac derives three points from this one verse: extirpation without a flogging is the prescribed penalty; distributive incidence of guilt, which eh derives from the added description of his sister; and liability for a sister who is both the father's and the mother's daughter, deriving from the redundant "his sister" in the first part of the verse.]
- DD. *And rabbis?* [How do they expound the redundant "his sister" in the first part of the verse?]
- EE. *They require that to impose the principle of liability on multiple counts in the case of someone who both compounds the holy anointing oil and also uses it for anointing [Exo. 30:32-33].* [Lazarus: Exo. 30:32 forbids anointing with the oil or compounding it; 30:33 imposes extirpation for both jointly; does this mean extirpation for doing both or each on its own for each act? The answer derives from the redundant expression of "his sister" at Lev. 20:17.]
- FF. *And the other [Isaac]?*
- GG. *He concurs with what R. Eleazar said R. Hoshaiia said, for said R. Eleazar said R. Hoshaiia, said R. Eleazar said R. Hoshaiia, "In any case in which two negative commandments are joined within a single specification that extirpation is the penalty, one designates a specific animal as a sin offering brought for each one of them separately."*
- HH. *But if you prefer, I shall say that R. Isaac does not concur with what R. Eleazar said R. Hoshaiia said. He derives the principle that a single spell of unawareness may yield liability on a variety of counts from the following:*

- II. “If a man shall lie with a woman having her sickness” (Lev. 20:18). [This is superfluous, since Lev. 18:19 yields the same point. Hence the statement serves this other purpose.]
- JJ. *And the other?*
- KK. *They require the verse for a different purpose, in line with what R. Yohanan said. For said R. Yohanan in the name of R. Simeon b. Yohai: “How on the basis of Scripture do we know that a woman is not unclean unless the discharge comes out of its normal channel? ‘And if a man shall lie with a woman having her menstrual discharge and shall uncover her nakedness — he has made naked her fountain’ (Lev. 20:18) — this teaches that a woman is not unclean unless the discharge comes out of her ‘nakedness’ [vagina].”*

In the exposition of the next item to be taken up, we ask about where Scripture sets forth an admonition against doing a given deed, the penalty of which is made explicit. The premise is that Scripture has both to admonish people not to do the deed and also to specify the penalty of they do do it.

II.1 A. (1) an unclean person who ate food in the status of Holy Things: (2) he who enters the Temple unclean [is subject to extirpation and also is flogged]:

- B. *Now there is no problem in understanding why that should be the case for one who enters the Temple unclean, since Scripture explicitly states both the sanction and also the admonition. The sanction: “he has defiled the tabernacle of the Lord, that soul shall be cut off from Israel” (Num. 19:13); and the admonition: “that the unclean not defile their holy part of the camp” (Num. 5: 3).*
- C. *But as to the unclean person who ate food in the status of Holy Things, while there is no problem in understanding the scriptural source of the penalty, since Scripture says, “But the soul that eats of the meat of the sacrifice of peace offerings that pertain to the Lord, having his uncleanness on him, that soul shall be cut off from his people” (Lev. 7:20), where in Scripture do we find the appropriate admonition?*
- D. R. Simeon b. Laqish says, “[An unclean person who poked his hands inside the Temple court is flogged, for it is said,] ‘She shall not touch any Holy Things nor come into the sanctuary’ (Lev. 12: 4) — [Scripture thereby treats as analogous entering the sanctuary and touching the Holy Things. Just as partially touching something is classified as wholly doing so even though one does not touch the thing with the whole of his body, so partially entering the sanctuary is treated as equivalent to wholly entering it.]”
- E. R. Yohanan says, *“Bardela repeated as a Tannaite statement: the rule derives from the verbal analogy formed of the recurrence of the word ‘his uncleanness.’ Here it is written, ‘his uncleanness:’ ‘having his uncleanness on him shall be cut off’ (Lev. 7:20), and elsewhere, ‘He shall be unclean;’ ‘his uncleanness is yet upon him’ [for seven days, Num. 19:11-13]. Just as in the latter case we find both the warning not to do so and the penalty for doing so, so in the former case we identify both the warning and the statement of the penalty.”*
- F. *Now we can understand why R. Simeon b. Laqish does not concur with R. Yohanan, since he does not have the verbal analogy as a tradition from his master [and none has the right to make one up, but may invoke only a traditional*

proof found acceptable over generations]. But why does R. Yohanan not adopt the reading of R. Simeon b. Laqish?

- G. He will say to you, “The verse, ‘she shall touch no hallowed thing’ (Lev. 12: 4) forms an admonition in particular in regard to food in the status of heave offering.”
- H. *And how does R. Simeon b. Laqish derive the admonition in regard to food in the status of heave offering?*
- I. From the following: “What person whatsoever of the seed of Aaron who is a leper or has a flux shall not eat of the holy things until he is clean” (Lev. 22:4-6). Now what is the Holy Thing that is eaten equivalently by all the seed of Aaron” It has to be food in the status of heave offering.
- J. *And the other party?*
- K. *[Yohanan maintains that that passage] speaks of eating food in the status of heave offering if one is unclean, while the verse at hand [Lev. 12: 4] speaks of not touching Holy Things for that purpose [that is, an admonition not to eat Holy Things when unclean and that would not be effected by heave offering, which is in a different, and lower classification].*
- L. *And does R. Simeon b. Laqish maintain that the verse, “she shall not touch any Holy Thing,” serves this purpose? Is that verse not required to deal with the case of an unclean person who has touched a Holy Thing? For it has been stated:*
- M. An unclean person who touched consecrated meat —
- N. R. Simeon b. Laqish said, “He is flogged.”
- O. R. Yohanan said, “He is not flogged.”
- P. R. Simeon b. Laqish said, “He is flogged: ‘she shall touch no holy thing’ (Lev. 12: 4). [A negative commandment that is violated bears the sanction of flogging.]”
- Q. R. Yohanan said, “He is not flogged. *The cited verse speaks of food in the status of heave-offering.*”
- R. *The unclean person who touches Holy Things is liable to a flogging, because the All-Merciful has stated the prohibition of eating Holy Things in terms of touching it, while the warning against eating it derives from the fact that Holy Things and sanctuary are juxtaposed [copying Lazarus’s translation here].*
- S. *And still, is it for this purpose that, in R. Simeon b. Laqish’s view, the verse is meant to serve? Does he not require the verse to deal with one who eats Holy Things before the blood for his purification rite has been sprinkled on the altar? For it has been stated:*
- T. An unclean person who ate eating holy meat prior to the sprinkling of the blood of the offering on the altar —
- U. R. Simeon b. Laqish said, “He is flogged.”
- V. R. Yohanan said, “He is not flogged.
- W. R. Simeon b. Laqish said, “He is flogged: ‘she shall touch no holy thing’ (Lev. 12: 4). [A negative commandment that is violated bears the sanction of flogging.] *There is no distinction to be made whether this is before the sprinkling of the blood or afterward.* “
- X. R. Yohanan said, “He is not flogged.”

- Y. R. Yohanan is consistent with a view expressed elsewhere. For *[that is in line with what Bardela repeated as a Tannaite formulation,]* “It derives from the use of the word “his uncleanness” in the present context and also in the context of an unclean person’s going into the sanctuary. [Lev. 7:20: ‘but the soul that eats of the meat of the sacrifice of peace offerings...having his uncleanness upon him...shall be cut off from his people.’ Num. 19:13: ‘whoever touches the dead and does not purify himself — he has defiled the tabernacle of the Lord, and that soul shall be cut off from Israel’]. And that is written with regard to the rule governing after the sprinkling of the blood.” [Freedman, *Zebahim*: the penalty of extirpation is incurred only after the sprinkling].
- Z. [R. Simeon b. Laqish] derives that from the negative, “She shall touch no Holy Thing” (Lev. 12: 4).
- AA. *It has been taught on Tannaite authority in accord with the position of R. Simeon b. Laqish:*
- BB. “She shall touch no holy thing” (Lev. 12: 4) — that represents an admonition as to not eating holy things when unclean.
- CC. You say that that represents an admonition as to not eating holy things when unclean. But perhaps that is not the case, but rather it forms an admonition in regard to touching. So the same passage goes on to state, “She shall not touch any Holy Thing nor come into the sanctuary.” The Holy Thing is treated as comparable to the sanctuary. Just as an offense against the sanctuary involves the death penalty, so an offense in connection with Holy Things involves the death penalty. *If this treats merely touching the meat, can there be a death penalty? [Obviously not]. So it must deal with eating.*
- We examine the operative principle that is illustrated by the next item on the list. But the composition is not constructed as Mishnah-commentary but focuses upon its own issue, which is the principle stated at B.

III.1 A. [he who enters the Temple unclean:]

- B. Said Rabbah bar bar Hannah said R. Yohanan, “On account of violating any negative commandment set forth in Scripture that is preceded therein by a positive commandment people are flogged.”
- C. **[15A]** They said to him, “Did you say this?”
- D. He said to them, “No.”
- E. Said Rabbah, “By God! He did say it, and furthermore it is written in so many words Scripture, and it is also repeated in the Mishnah!
- F. “In Scripture: ‘Command the children of Israel that they put out of the camp [the positive commandment]...and that they do not defile the camp’ [the negative].
- G. “In the Mishnah: **he who enters the Temple unclean [is flogged].**”
- H. *So why did he retract?*
- I. *Because who found a problem deriving from the case of the rapist [Deu. 22:29, where there is a negative preceding a positive commandment]. For it has been taught on Tannaite authority:*
- J. He who raped a woman and then after marrying her divorced her, if he is an Israelite, remarries her and is not otherwise punished, but if he is a priest, he is

punished with a flogging, but [since a priest may not marry a divorcee], he may not remarry her.

- K. ...if he is an Israelite, remarries her and is not otherwise punished: *but why should that be the case, since here we deal with a negative commandment that has been preceded by a positive one, so why should he not be flogged?* [He should not have divorced her, since the Torah says, “And she shall be his wife because he humbled her, he may not put her away all his days” (Deu. 22:29), and this is what led Rabbah to retract (Lazarus)].
- L. *Said Ulla, “Let Scripture omit the words, ‘she shall be his wife’ (Deu. 22:29), in the case of rape, and the rule could have been inferred by analogy to the case of the husband who defamed his wife [Deu. 22:13-19]. This is the way in which it would have been inferred: if the one who defamed his wife, who performed no concrete deed, is instructed by the All-Merciful, ‘she shall be his wife’ (Deu. 22:19), a rapist all the more so should be subject to the same provision, since he has done a concrete deed. Now, if the language that is used in the case of the rapist [‘she shall be his wife’ (Deu. 22:29)] is hardly needed to cover the first stage of the relationship [at which point he is going to marry her], then apply them to the latter stage, to show that if the rapist did divorce her, he must take her back [Lazarus: therefore this is really a case of the type of a prohibition translated into a remedial action, for which there is no flogging].”*
- M. *Nonetheless, there is no reason to draw an analogy for the rapist from the defaming husband, for there is the following challenge to the analogy: the distinctive trait of the defamatory husband is that he is both flogged and also required to pay compensation. [That is not so of the rapist.]*
- N. *Rather, frame matters in this way: if the language “she shall be his wife” had been omitted in the case of the defamatory husband, the rule could have been drawn by analogy from the case of the rapist: if in the case of the rapist, although he is not flogged in addition to paying the fine, the all-Merciful still required, “she shall be his wife,” then how much the more so should this be the rule for the defamatory husband! So why was the language, “she shall be his wife” included? If the language is not required in its own context, concerning the defamatory husband, apply it to the rapist, and if they do not apply to the first stage of the relationship, then apply them to the latter stage [after he divorced her]. [Lazarus: therefore this really is a case of the type of a prohibition translated into remedial action, for which there is no flogging.]*
- O. *Still, the rule concerning the defamatory husband is not to be inferred by analogy from the case of the rapist, for there is this challenge to the analogy: the distinctive rule pertaining to the rapist is that he has done a deed [which is not the case with the defamatory husband]. Rather, if the language, “she shall be his wife,” had been omitted in reference to the defamatory husband, she being his wife already, why is it included there? If it is not required to cover the case of the defamatory husband, then apply it to the case of the rapist; and if it is not applicable at the first stage, then it is to be applied at the later one.*
- P. *But I might challenge this reasoning as follows: since this is not required at the first stage in the transaction of the defamatory husband [she is his wife already],*

refer it to himself at the later stage, so that the defamatory husband is not to be flogged.

- Q. *Well, that is perfectly well and good, but then the case of the rapist should be treated in a comparable way!*
- R. *But how will you draw the analogy? Will it be by an argument a fortiori, or will it be by appeal to a shared generative trait? In any event, there is the following objection to be raised, as we have said before: the distinctive trait affecting the defamatory husband is that he has not done a deed.*
- S. *Rather said Raba, "Scripture has said, 'All his days' (Deu. 22:29), which bears the meaning, all his days if he has divorced her, he remains subject to the obligation of bringing her back." [Lazarus: he can at all times by remarrying her remedy the offense he committed in divorcing her, and for this reason he is not flogged.]*
- T. *So too, when Rabin he said R. Yohanan said, "Scripture has said, 'All his days' (Deu. 22:29), which bears the meaning, all his days if he has divorced her he remains subject to the obligation of bringing her back."*

We now take up the analysis of the solution just now set forth. We have assumed that a negative commandment preceded by a positive one is comparable to a negative commandment in general. But that analogy is now called into question.

- III.2.** A. *Said R. Pappa to Raba, "But lo, the prohibition pertaining to it [combining a negative commandment preceded by a positive one] is not comparable to the generative model of a negative commandment, which is the one against muzzling an ox in its threshing [Deu. 25: 4]."*
- B. *He said to him, "Merely because there is an additional positive commandment provided by the All-Merciful, does that lessen the force of the negative commandment at all?"*
- C. *[Said to him R. Pappa,] "If so, then why not say along these same lines in the instance of a prohibition that is associated with a remedial action, 'Merely because there is an additional positive commandment provided by the All-Merciful, does that lessen the force of the negative commandment at all?'"*
- D. *He said to him, "In that case, the positive commandment serves the purpose of making amends for violating the prohibition."*
- E. *That poses no problems for him who has said, "Flogging depends upon whether the law-violator has nullified or not nullified the chance of making amends. [Lazarus: if he made remarriage impossible by marrying her off to someone else. But so long as he has done nothing to make it impossible to remedy the offense, he might defer the act of redress to some later time.] But from the perspective of him who says, the flogging depends on whether or not he has actually carried out the redress without delay, what is there to say? [Lazarus: he should be flogged immediately when ordered by the court to remarry the wife and does not do so.]*
- F. **[15B]** *Is this not supplied as the operative consideration for R. Yohanan's view? [Lazarus: it was Yohanan's view imposing a flogging for the contravention of a negative command preceded by a positive command that gave rise to the question from the case of the rapist, and it was in reply to this question that Raba gave his explanation.]*

- G. *But has not R. Yohanan said to a Tannaite authority: "Repeat as your Tannaite version, 'if he has nullified the possibility of making redress, he is liable to a flogging, and if he has not nullified it, he is exempt from flogging'?"*
- H. *For a Tannaite authority repeated as a Tannaite statement before R. Yohanan, "In the case of a negative commandment that contains within it an affirmative action, if one has carried out the affirmative action that is contained therein, he is exempt from a flogging; if he nullified the very possibility of carrying out the affirmative action, he is liable to a flogging."*
- I. *R. Yohanan then said to him, "What did you say? 'If one has carried out the affirmative action that is contained therein, he is exempt from a flogging'? Then it must follow that if he has not carried the affirmative action, he is liable to a flogging! And you say, 'If he nullified the possibility of carrying out the affirmative action, he is liable to a flogging'? Then if he did not nullify the possibility of carrying out the positive act, he is exempt. [So the wording yields contradictions.] Here is how to repeat the rule: if he nullified...if he did not nullify...."*
- J. And R. Simeon b. Laqish says, "The proper language is, 'the flogging depends on whether the law violator has carried out the actual redress or has not carried it out.'"

The Admonition that is Subject to Doubt

We now specify that the issue is how we dispose of an admonition that is subject to doubt, as is now explained. While this discussion clearly continues the foregoing, it pursues its own interests and is not put together in response to the exegetical problem we have now worked out.

- K. *What is subject to dispute between them?*
- L. *It is the status of an admonition that is subject to doubt.* [The admonition must be precise; if it is a merely general warning against violating the law at some future point, this is an admonition that is subject to doubt and is not effective (Lazarus)]. *One master maintains that an admonition that is subject to doubt nonetheless is classified as an admonition.* [Yohanan says it depends on whether one has nullified the possibility of making amends, so he considers the admonition subject to doubt to be a valid one, and so, even though at the time of the offense we do not know whether the offender will cut off the chance of remedying the offense, he is flogged (Lazarus)]. *The other master holds that an admonition that is subject to doubt is not classified as an admonition.* [Simeon b. Laqish holds the man liable to a flogging only when the court orders him to carry out the act of redress and he refuses to do so.]
- M. *Both parties are consistent with principles espoused elsewhere. For it has been stated:*
- N. "By an oath! I shall eat this loaf of bread today" and the day passed and he had not eaten it,
- O. R. Yohanan and R. Simeon b. Laqish say, "He is not flogged."
- P. R. Yohanan says, "He is not flogged, for **[16A]** it is a negative commandment that does not involve a concrete deed, and any negative commandment that does not involve a concrete deed does not bear the sanction of flogging."

- Q. And R. Simeon b. Laqish said, "He is not flogged, because this is a matter of his having been given only a doubtful warning [since we do not know whether or not he has received a warning, for he has plenty of time through the day, and in the end he may not have been subject to a valid admonition at all]."
- R. *And both of them make their statements within the premise of R. Judah, for it has been taught on Tannaite authority:*
- S. "'And you shall let nothing of it remain until the morning, but that which remains of it until the morning you shall burn with fire' (Exo. 12:10) — the purpose of Scripture is to assign an affirmative commandment after a negative one, to indicate that on account of such a violation no flogging is incurred," the words of R. Judah. [R. Aqiba says, "That is not the pertinent consideration here, but rather because we deal with a negative commandment that does not involve the commission of an actual deed, and in the case of any negative commandment that does not involve a concrete deed, flogging is not incurred."]
- T. *R. Yohanan carries out a close reading of the language, and this is how this is how R. Yohanan reads the matter: "The reason is that there is no flogging here is that Scripture assigns an affirmative commandment after a negative one, to indicate that on account of such a violation no flogging is incurred. But had Scripture not served that purpose, one would have been flogged. It then must follow that admonition that is subject to doubt is classified as an admonition."*
- U. *And this is how R. Simeon b. Laqish reads the matter: "The operative consideration that there is no flogging here is that Scripture assigns an affirmative commandment after a negative one, to indicate that on account of such a violation no flogging is incurred. But had Scripture not served that purpose, one would have been flogged. It then must follow that on account of a negative commandment that does not contain an actual deed one is flogged."*
- V. *But from the perspective of R. Simeon b. Laqish, is this not a first rate example of an admonition that is subject to doubt?*
- W. *He concurs with another Tannaite formulation assigned to R. Judah, for it has been taught on Tannaite authority:*
- X. If one hit first of all a husband of his mother, then the other husband of the same woman [she divorced the first husband and remarried quickly and turned out to be pregnant, and we do not know whether the child was a premature child of the second husband or a mature one of the first; the warning against injuring a parent as a capital offense, Lev. 21:15, is subject to doubt, since we do not know to which husband the law applied (Lazarus)]; or if he cursed this one and then went and cursed that one; or if he hit both of them simultaneously or cursed both of them simultaneously, he is liable.
- Y. R. Judah says, "If he did so simultaneously, he is liable, but if it was sequentially, then he is exempt."
- Z. *And from R. Yohanan's perspective too, is this not a first rate example of the violation of a negative commandment that does not involve an actual deed [that is, the case of leaving food over, the case from which Yohanan infers that Judah holds that a warning subject to doubt is classified as a warning; why does he not also deduce that a prohibition involving no*

tangible action entails a flogging, since the matter f left over involves no concrete action (Lazarus)]!

- AA. *He concurs with this Tannaite formulation, for said R. Idi bar Abin said R. Amram said R. Isaac said R. Yohanan, “R. Judah says in the name of R. Yosé the Galilean, ‘On account of every negative commandment in the Torah in which a positive deed is involved, people are flogged; on account of every case in which there is a negative commandment not involving a positive deed, people are not flogged, except for the cases of one who takes an oath but does not carry it out, one who effects an act of exchange for something that has been sanctified, and one who curses another person by using the divine name’ [cf. T. Mak. 4:1B-D].*
- BB. *Then one statement of R. Judah contradicts another statement of his [Lazarus: on both issues, as regards a flogging in the case of an offense without action, and the warning that is subject to doubt, according to the implications of the statements of Judah that Yohanan and Simeon b. Laqish interpret, each in his own way].*
- CC. *From the perspective of R. Simeon b. Laqish [on the question of a warning subject to doubt] represents two different Tannaite versions of R. Judah’s opinion.*
- DD. *And from the perspective of R. Yohanan there also is no contradiction, for one represents his own view, the other the view of his master [Yosé the Galilean].*

The composite devoted to the admonition that is subject to doubt has now been completed, and we revert to the discussion broken off at the end of No. 1.

- III.3.** A. *There we have learned in the Mishnah: He who takes the dam with the young — R. Judah says, “He incurs flagellation, but he does not send forth [the dam].” And sages say, “He sends forth [the dam), but does not incur flagellation. This is the general principle: For any negative commandment which encompasses an affirmative one to rise up and do something, one does not incur flagellation” [M. Hul. 12:4].*
- B. *Said R. Yohanan, “We have only this case and one more [illustrative of what is set forth as a general principle, that is, not much of a series].”*
- C. *Said to him R. Eleazar, “Where is it?”*
- D. *He said to him, “Go, find it for yourself.”*
- E. *He went out and took a close look and found the following, taught on Tannaite authority: He who raped a woman and then after marrying her divorced her, if he is an Israelite, remarries her and is not otherwise punished, but if he is a priest, he is punished [with a flogging].*
- F. *That poses no problem to the one who repeats as the Tannaite version, “the flogging depends on whether he has carried out the act of redress or not done so.” But from the perspective of him who repeats as the Tannaite version, it depends whether he has nullified or not nullified the opportunity of making redress [Yohanan holds that the flogging is only when he has made it impossible to correct the situation], there is a question. Now, from the perspective of sending out the dam, there is such a case and the principle pertains. But in the case of the rapist,*

where are we going to find a case in which it is relevant to ask whether he has nullified or not nullified the opportunity of making redress? If he killed the wife, he is liable to a more severe penalty anyhow! [So how would this illustrate the principle?]

- G. Said R. Shimi of Mahuza, "There would be the case in which he had accepted in her behalf a token of betrothal from a third party."
- H. [That illustration really does not serve, for] *said Raba, "If she is the one who made him her agent, then she is the one who has rendered impossible his remedying his wrong. If she did not make him her agent, does he have the power of accepting a token of betrothal for her? [Obviously not!] He has done nothing at all."*
- I. *Rather, said R. Shimi of Nehardea, "It would be, for example, a case in which he imposed against her an oath in public [that he would never live with her again]."* [Now he has nullified the possibility of repairing the damage and so would have to be flogged.]
- J. *That poses no problem to him who maintains that a vow that is taken in public is not subject to remission, but from the perspective of him who says that it is subject to remission, what is to be said?*
- K. He took an oath against her based on the consensus of the public, for said Amemar, "The decided law is that an oath that is taken in public is subject to remission, but an oath that is taken based on the consensus of the public is not subject to remission."
- L. *But are there no other cases besides this one?*
- M. *Surely there is the case of theft, in which the All-Merciful has said, "You shall not oppress your neighbor nor rob him" (Lev. 19:13), "You shall restore that which he took by robbery" (Lev. 5:23) [thus a negative, then a positive command, the latter providing a remedy].*
- N. There is the matter of the pledge: "You shall not go into his house to fetch his pledge", followed by, "You shall stand outside, you shall surely restore to him the pledge when the sun goes down" (Deu. 24:10-13 and 19-21), [thus a negative, then a positive command, the latter providing a remedy].
- O. *And have we not found examples that fit quite nicely if we maintain that the flogging depends on whether the offender has carried out or not carried out the act of remedy, whether he has nullified or not nullified the change of making a remedy?*
- P. *But in these instances the remedy is by monetary compensation, and [if he destroyed the pledge] in fact he is not liable to both a flogging and financial penalty. [So we have not succeeded in finding the besought example at all.]*
- Q. *Objected R. Zira, "But there is the case of his taking a pledge from a proselyte, who died" [in which case the pledge does not have to be returned; the offender then should be flogged, since he cannot make emends by compensation, so it would be a third case (Lazarus)].*
- R. **[16B]** *There the man really does have to pay compensation; for it is only the title of the proselyte that has been annulled.*

- S. *But there is the case of the corner of the field, concerning which the All-Merciful has stated, "You shall not wholly reap the corner of your field nor gather the gleanings of your harvest" and then "You shall leave them for the poor and for the stranger" (Lev. 23:22, 19:9-10) [thus a negative, then a positive command, the latter providing a remedy].*
- T. *And have we not found examples that fit quite nicely if we maintain that the flogging depends on whether the offender has carried out or not carried out the act of remedy, whether he has nullified or not nullified the change of making a remedy? For it has been taught on Tannaite authority: The religious duty of carrying out the obligation of designating peah is to do so from standing grain. If one did not designate it from standing grain, he designates it from the sheaves. If he did not designate it from the sheaves, he designates it from the pile of grain before he smooths it down. If he had smoothed it, he tithes it and then gives peah to the poor man.*
- U. *R. Yohanan concurs with R. Ishmael, who in the same context stated, "He even may separate it from the dough." [So he can make up the loss to the poor even after the grain has been ground.]*
- V. *But even from the perspective of R. Ishmael's ruling, you still can find such a case, for instance, one in which the dough was eaten up.*
- W. *So in all, what can R. Yohanan have possibly meant when he said, "We have only this case and one more"?*
- X. *It is not the case of the rapist who publicly took a vow not to live with her, because it is only in an optional matter that we say that a vow that depends on public consensus is not subject to remission, but where it is a religious obligation, it is certainly subject to remission.*
- Y. *For instance, there was the case of a certain children's teacher who sinned against the youngsters. R. Aha imposed an oath on him not to teach, but Rabina restored him to his work, because there was no other teacher who could teach so punctiliously.*

We have now completed the rather ambitious secondary expansion on the problem of the twin-principles that governing whether or not one is flogged in the stated situation: the flogging depends on whether the offender has carried out or not carried out the act of remedy, or on whether he has nullified or not nullified the change of making a remedy. We proceed to the next clause of the Mishnah.

IV.1 A. [Also flogged is] **he who eats carrion or terefah meat, forbidden things, or creeping things:**

- B. *Said R. Judah, "Someone who ate a worm in a cabbage do we flog, on the count of 'a creeping thing that crawls on the ground' (Lev. 11:43)."*
- C. *Somebody once ate a worm in a cabbage and R. Judah had him flogged."*

IV.2. A. Said Abbayye, "If someone ate an eel, he is flogged on four counts [specified at Lev. 11:10-11: a water insect, finless, scaleless, and twice again (Lazarus)]. If someone ate an ant, it is on five counts, the additional one being, 'Any crawling thing that swarms on the earth you shall not eat' (Lev. 11:41-44). If it is a hornet, there are six counts, adding, 'and all winged swarming things are unclean to you, they shall not be eaten (Deu. 14:10).'"

- B. Said R. Ahai, "Anyone who holds in his shit violates 'and you shall not make your souls detestable' (Lev. 20:25)."
- C. *Said R. Bibi bar Abbaye, "Anyone who drinks out of a cupping horn [that is, blood] violates, 'you shall not make your souls detestable by...what I have set apart for you to hold unclean' (Lev. 20:25)."*
- D. Said Rabbah b. R. Huna, "If one crushed nine ants into a mash and added a live one, so forming the minimum volume of an olive's bulk, and ate the lot, he is liable to flogging on six counts: five for the live one on its own, one for the mass that adds up to an olive's bulk of carrion."
- E. Rabbah said R. Yohanan [said], "Even if it were only two mashed together and one whole."
- F. R. Joseph said, "Even one mashed plus the live one."
- G. *There really is no disagreement between them, however, since the one is referring to big, the other little, ants.*

V.1 A. If one ate food liable to tithing from which tithes had not been removed at all, first tithe from which heave offering had not been removed, second tithe or consecrated food which had not been redeemed, he is liable to flogging:

- B. Said Rab, "If one ate food from which tithes had not been removed, from which poor tithe also had not been removed, is flogged." [That penalty is not made explicit in Scripture; it would involve forty lashes, that is, two distinct counts (Lazarus).]
- C. *In accord with what authority does he make that statement?*
- D. *It is in accord with the Tannaite framer of the following, which we have learned on Tannaite authority:*
- E. Said R. Yosé, "Might one suppose that one is liable to a flogging only on the count of eating produce liable to tithing from which tithes had not been removed at all, but in a case in which the great heave offering [2% for the priest] has been taken up but not the first tithe, first tithe but not second tithe, or even the tithe for the poor, [that would not be the case? How on the basis of Scripture do we know that that in fact is the case [so one is flogged for eating produce liable to tithing in a case in which the great heave offering [2% for the priest] has been taken up but not the first tithe, first tithe but not second tithe, or even the tithe for the poor]?"
- F. "Scripture states, 'You may not eat within your gates the tithe of your grain, wine, or oil' (Deu. 12:17), and, further, 'that they [the poor] may eat within your gates and be satisfied' (Deu. 26:12, 13). Just as the latter speaks of tithe for the poor, so the former encompasses tithe for the poor, and the All-Merciful has said, 'You may not eat within your gates the tithe of your grain, wine, or oil' (Deu. 12:17)."
- G. *Said R. Joseph, "[Rab's proposition is subject to a conflict] between Tannaite formulations: R. Eliezer says, 'A man need not designate poor man's tithe from demai produce.' [17A] And sages say, 'He designates [poor man's tithe] but he need not separate it' [M. Dem 4:3]. Now is this not what is subject to dispute? One master maintains that the certain presence [in the batch] of tithe for the poor that has not been designated classifies the whole as produce that is subject to tithe from which no tithe has been removed, while the other master [Eliezer] maintains that the certain presence of tithe for the poor that has*

not been designated does not classify the whole as produce that is subject to tithe from which no tithe has been removed."

- H. *Said to him Abbaye, "If that were the issue, then, instead of debating the issue in connection with produce subject to doubt as to its status [dema], let them debate as to produce the status of which is not subject to any doubt whatsoever! So, it must follow, all parties concur that the certain presence of tithe for the poor that has not been designated classifies the whole as produce that is subject to tithe from which no tithe has been removed. But then what is at stake here? One authority [Eliezer] takes the position that ordinary folk [who are not meticulous in every detail of tithing] are not assumed to keep back the tithe owing to the poor that derives from doubtfully tithed produce, since, the matter being merely one of material gain, they will set it apart [but not hand it over, so we may take for granted that ordinary folk do just that], and rabbis maintain that the ordinary folk are suspect of not honoring the rule at all, since it involves a measure of inconvenience, and since separating the tithe due to the poor is inconvenient, they won't bother to do it at all." [Lazarus: the Israelite may eat the tithe anyhow, and does not have to give it to the poor but may retain it; first and second tithe remain subject to a prohibition of one sort or another.]*

VI.1 A. How much food which had not been tithed at all does one eat so as to be liable? R. Simeon says, "Any amount at all." And sages say, "An olive's bulk:"

- B. *Said R. Bibi said R. Simeon b. Laqish, "The dispute concerned a grain of wheat, but so far as the required volume of flour, all concur that it is subject to a prohibition and a flogging only if the volume were that of an olive in bulk."*
- C. *R. Jeremiah said R. Simeon b. Laqish [said], "As is the dispute in the one matter [the grain of wheat] so is the dispute in the other [flour]."*
- D. *We have learned in the Mishnah: Said to them R. Simeon, "Do you not agree with me in the case of one who eats an ant, however small, that he is liable?" They said to him, "It is because that is how it has been created." He said to them, "Also a single grain of wheat is precisely in the form in which it has been created." Now that can only mean, the dispute concerned a grain of wheat, but not flour!*
- E. *Not at all. In point of fact, he was answering them within the framework of their own suppositions, saying to them, "So far as I am concerned, the same quantity of flour suffices to impose a flogging, but even within your view, you have to concede that even a single grain of wheat forms a distinct entity!"*
- F. *And rabbis?*
- G. *An animate thing is taken into account as a distinct entity, but a mere grain of wheat as such is not taken into account.*
- H. *There is a Tannaite formulation of the matter in accord with the position of R. Jeremiah:*
- I. *R. Simeon says, "Eating any volume at all is sufficient to subject the offender to flogging. The specification of the volume of an olive's bulk concerned only the matter of [whether or not having done so inadvertently, one is liable to present] a sin-offering."*

I.1 comments on the character of the catalogue at hand. Nos. 2, 3 -4+5 then spell out the considerations operative in the foregoing and supplies it with its own talmud. II.1 goes through the work of finding a scriptural basis for the rule at hand. III.1+2 is included because the rule of the Mishnah figures in the discussion. This is an unusually run on extension of materials that are hardly demanded for Mishnah-exegesis, but that in sequence flow from Mishnah-exegesis. IV.1 amplifies the rule with an example, and No. 2 does the same. V.1 develops a problem of its own, which is secondary to the rule of the Mishnah. VI.1 clarifies the applicability of the law.

3:3-4

3:3

- A. **[Also subject to flogging are]: (1) he who eats first fruits over which one has not made the required declaration;**
- B. **(2) Most Holy Things outside the Temple veils, (3) Lesser Holy Things or second tithe outside the wall [of Jerusalem].**
- C. **He who breaks the bone of a Passover offering which is in a state of cleanness — lo, this one is flogged with forty stripes.**
- D. **But he who leaves over meat of a clean Passover offering or who breaks the bone in the case of an unclean one is not flogged with forty stripes.**

3:4

- A. **He who removes the dam with the offspring —**
- B. **R. Judah says, “He is flogged, and he does not have to send the dam away.”**
- C. **And sages say, “He sends the dam away, and he is not flogged.”**
- D. **This is the governing principle, In the case of any negative commandment which involves doing a positive deed, one is not liable.**

- I.1 A. [he who eats first fruits over which one has not made the required declaration:]** Said Rabbah bar bar Hannah said R. Yohanan, “This represents the opinion of R. Aqiba *presented without attribution* [thus one authority’s position portrayed as the decided law], but sages say, ‘As to the presentation of first fruits, the act of placing them before the altar is essential to the rite [and they may not be eaten before that act], but the act of the declaration is not essential to the rite.’”
- B. *Well, then why not specify, “this represents the opinion of R. Simeon presented without attribution”?*
 - C. *In framing matters as he did, [Yohanan] so informs us that R. Aqiba sees matters as does R. Simeon.*

We now proceed to a systematic exposition of the position of Simeon. The exegesis of the Mishnah-rule is complete, and a substantial account of Simeon’s framing of matters occupies us. Obviously, the what follows stands on its own and in no way is formulated to serve the purposes of the exposition just now completed.

- D. *What position of R. Simeon?*
- E. *It is in accord with what has been taught on Tannaite authority:*
- F. **[“You may not partake in your settlements [of the tithes of your new grain or wine or oil or of the firstlings of your herds and flocks or of any of the votive**

offerings that you vow, or of your freewill offerings of of your contributions. These you must consume before the Lord your God in the place that the Lord your God will choose — you and your sons and your daughters, your male and female slaves, and the Levite in your settlements — happy before the Lord your God in all your undertakings. Be sure not to neglect the Levite as long as you live in your land]” (Deu. 12:13-19)]:

- G. “‘Nor your freewill offerings’ [‘the offering of your hand’]:
- H. “this refers to first fruits.”
- I. Said R. Simeon, “Now what precisely does this verse of Scripture serve to tell us? If it is that first fruits are not to be eaten outside of the wall of Jerusalem, that rule derives from the one pertaining to tithe.
- J. “Specifically, if tithe, which may be eaten by non-priests, imposes liability for violating a negative commandment on anyone who eats it outside of the wall of Jerusalem, first fruits, which are forbidden to non-priests, surely should impose liability for violating a negative commandment on anyone who eats them outside of the wall of Jerusalem.
- K. “The purpose of the verse of Scripture is solely to tell you that one who consumes first fruits prior to their having been designated as such violates a negative commandment.
- L. “‘...[of any of the votive offerings that you vow,] or of your freewill offerings of your contributions:”
- M. “This refers to the thank-offering and peace-offerings.
- N. “Now what precisely does this verse of Scripture serve to tell us? If it is whether or not one may eat the meat of thank-offerings or peace-offerings outside the wall of Jerusalem, that prohibition in fact derives from the one governing tithe.
- O. “Specifically, if one is liable for eating outside of the wall of Jerusalem tithe, which is not subject to liability on the counts of allowing the meat to lie over, leaving remnants of the meat unconsumed, and eating the meat in a state of uncleanness, surely one should be liable for eating outside of the wall of Jerusalem the meat of thank-offerings and peace-offerings, which is not subject to liability on the counts of allowing the meat to lie over, leaving remnants of the meat unconsumed, and eating the meat in a state of uncleanness.
- P. “The purpose of the rule is solely to let you know that one who eats the meat of a thank-offering or peace-offerings prior to the tossing of the blood [on the corner of the altar] is liable for violating a negative commandment.
- Q. “‘Nor of your free will offerings:’
- R. “this means not eating outside of Jerusalem thank offerings or peace offerings.
- S. “But what is the purpose of the verse? If it is only to forbid eating meat in that classification outside of the wall, this derives from an argument a fortiori, as stated earlier. The purpose then is to indicate that one who eats the meat of thank offerings or peace offerings before the blood has been tossed has violated a negative commandment and is to be flogged.

- T. “Firstlings:’
- U. “this refers to a firstling.
- V. “Now what precisely does this verse of Scripture serve to tell us? If it is whether or not one may eat the meat of thank-offerings or peace-offerings outside the wall of Jerusalem, that prohibition in fact derives from the one governing tithe;
- W. “if it has to do with the rule governing eating the meat prior to the sprinkling of the blood, that derives from an argument *a fortiori* from the rule governing the thank-offering and peace-offerings.
- X. “Specifically, if one is liable for eating prior to the sprinkling of the blood the thank-offering and peace-offerings, which are permitted for consumption by non-priests, in the case of a firstling, which is forbidden for eating by non-priests, surely one who eats the meat prior to the sprinkling of the blood should be liable.
- Y. “The purpose of the Scripture is solely to let you know that a non-priest who ate the meat of a firstling, whether this was before the sprinkling of the blood or afterward, is liable for violating a negative commandment” [Sifré to Deu. LXXII:II.6-8 (Bavli’s readings differ in some minor details)].
- Z. “Of your herd or of your flock:’
- AA. “This refers to sin offerings and guilt offerings.
- BB. “What is the point of this statement? If it is only that these are not to be eaten outside of the wall, that rule follows by an argument based on the rule governing second tithe; if it is against eating these prior to the sprinkling of the blood, that rule derives by an argument *a fortiori* from the thank offering and peace offering; if it is against a non-priest’s eating the sin offering or guilt offering even after the sprinkling of the blood on the altar, that rule derives from an argument *a fortiori* based on the rule of the firstling. The purpose therefore is only that if a priest outside of the hangings of the Temple eats a sin or guilt offering even after the tossing of the blood, he is flogged for violating a negative commandment.
- CC. “Nor any of your vows:’
- DD. “This refers to burnt offerings.
- EE. “But what is the purpose of that clause? If it is merely to tell us that meat in that classification is not to be eaten outside of the wall, that fact derives from an argument *a fortiori* in connection with the second tithe; if it is against eating them before the sprinkling of the blood, that prohibition follows *a fortiori* from the rule governing the thank offering and the peace offering; if it is against a non-priest’s eating of meat of that classification even after the blood has been sprinkled on the wall, that follows by an argument *a fortiori* from the rule governing the firstling; if it is against the priests’ eating of meat of this classification, it follows from an argument *a fortiori* based on the rule governing sin and guilt offerings. The purpose of the text can only be that **[17B]** he who eats meat in the classification of the burnt offering after the sprinkling of the blood on the altar, even within the hangings, is subject to a flogging for having violated a negative commandment.”

We now undertake the systematic exegesis of the foregoing propositions and the proofs based on logical arguments that have been put forth.

- I.2.** A. *Said Raba, “Any mother who gives birth should give birth to someone like R. Simeon or just not give birth at all!*
- B. *“Nonetheless, there are all sorts of challenges that one can raise to his arguments.*
- C. *“As to first fruits: what is it that makes first fruits weightier than second tithe? It is that first fruits may not be eaten by non-priests [but food in the status of second tithe is eaten by non-priests, when they bring it up to Jerusalem]! But to the contrary, for its part, food in the status of second tithe is weightier, because it may not be eaten by one who has suffered a bereavement but not yet buried his deceased.*
- D. *“As to thank offerings and peace offerings it is alleged that they are weightier than second tithe because they produce a blood rite and portions that have to be burned on the altar. But to the contrary, second tithe may held to be weightier, in that it may be redeemed only with minted silver coins and no other!*
- E. *“As to a firstling it is held to be weightier than thank, and piece offerings in that it is sanctified from the womb, while animals used for those other purposes are not. But to the contrary, thank offerings and peace offerings must be weightier, because they require laying on of hands by the donor, libations, and waving of the breast and thigh, conditions that do not apply to the firstling.*
- F. *“As to the sin and guilt offerings they are held to be weightier than the firstling because they are in the category of Most Holy Things. But to the contrary, the firstling may be held to be weightier, because it is sanctified from the womb.*
- G. *“As to the burnt offering it is held to be weightier than the sin and guilt offerings, because the burnt offering is wholly burned up on the altar fire. True enough, but the sin and guilt offerings are weightier, because they accomplish atonement. In point of fact, all other offerings are weightier than the burnt offering because the others are eaten in two different ways [parts burned on the altar, parts eaten by the priests, and in the Lesser Holy Things, parts eaten by the owners].”*
- H. *So [if there is such a systematic refutation of Simeon’s arguments based on a fortiori facts, all of them now shown dubious, then] what in the world led Rabbah to exclaim, “Any mother who gives birth should give birth to someone like R. Simeon or just not give birth at all”?*
- I. *It is because of his ability to cut up and interpret the bits and pieces of a verse of Scripture [in an order that suits his purpose]. [Lazarus: Had he made the firstling the starting point for his arguments, then without the a fortiori argument from thank and peace offerings with reference to eating them before the sprinkling of the blood, he could not substantiate his thesis in regard to eating them after sprinkling the blood, and the same throughout.]*
- I.3.** A. *In any event, is an admonition [not to do a given deed] going to be constructed merely on the basis of a logical argument [such as Simeon*

has proposed]? Surely not, for even in the opinion of one who maintains that one may inflict a given punishment solely on the basis of a logical argument resting on Scripture, nonetheless, one may not derive an admonition [not to do a given deed] merely on the basis of a logical argument [such as Simeon has proposed]!

- B. *What he has come up with is a mere prohibition [but not the penalty of flogging attached thereto].*
- C. But has not Raba said, “In R. Simeon’s view, a non-priest who ate meat deriving from a burnt offering, prior to the tossing of the blood, outside of the wall of Jerusalem, is flogged on five counts”? [Lazarus: and this would be on the basis of the deductions that (1) no holy things may be eaten outside of the wall; (2) meat of sacrifices may not be eaten before the sprinkling of the blood, (3) a non-priest may not eat the meat of Most Holy Things, (4) a priest may not eat Holy Things outside of the hangings, (5) burnt offerings may not be eaten at all; so he would surely inflict a flogging!]
- D. *What he meant to say was only that there were five prohibitions involved in a single action [but he would not inflict a flogging].*
- E. *But have we not learned in the Mishnah: **These are the ones who are flogged: ... one who ate Most Holy Things outside the Temple veils..!***
- F. **[18A]** *Rather, we have a redundant clause, since it is written, “And there you shall bring...and there you shall eat before the Lord your God” (Deu. 12: 6-7). Scripture could as well have written, “you may not eat them within your gates.” What purpose is there in the All-Merciful’s going and restating everything in detail? It can only be to state each on its own the prohibitions that pertain in all cases [and the penalties that pertain (Lazarus)].*

I.4. A. *Reverting to the body of the prior composition:*

- B. Said Raba, “In R. Simeon’s view, a non-priest who ate meat deriving from a burnt offering, prior to the tossing of the blood, outside of the wall of Jerusalem, is flogged on five counts.”
- C. *But why should he not also be flogged on the [sixth] count of “And the priest shall eat those things with which atonement was made to consecrate and sanctify them, but a stranger shall not eat of them because they are holy” (Exo. 29:33)?*
- D. *That rule would apply to a case in which the meat is such that the priests may eat it, but Raba spoke of a case in which the meat was not appropriate even for priests to eat [so this item would not belong on the list].*
- E. *But why should he not also be flogged on the count of “And you shall be holy to me, therefore you shall not eat any flesh of the field torn of beasts” (Exo. 23:31), that is, any meat that has been taken beyond the limit applying to it, which forbidden?*
- F. *That rule applies to a case in which it would have been suitable were it inside of the appropriate boundary, but Raba’s rule speaks*

of meat that would not have been available even within its appropriate boundary [but is to be wholly burned up on the altar].

- G. *But why should he not also be flogged on the count of the position of R. Eliezer, for said R. Eliezer, “‘It shall not be eaten because it is holy’ (Exo. 29:34) means this: [18B] ‘Any kind of Holy Things that has been invalidated is subject to a negative commandment as to its being eaten’”?*
- H. *That passage speaks only of meat that was suitable before it was invalidated, by Raba speaks of meat that was not suitable even before it was invalidated.*
- I. *But why should he not also be flogged on the count of another position of R. Eliezer, as has been taught on Tannaite authority: [I know only that the meal offering deriving from the superior priest is to be wholly burned up, and the meal offering deriving from the inferior priest is subject to not being eaten. How do I know that the meal offering of the superior priest is subject to not being eaten, and the meal offering of the inferior priest is subject to being wholly burned up? Scripture uses the language of “wholly burned up” to establish an appropriate analogy thus imposing the rule governing the one upon the other, since they are declared to be like species in a common genus (Sifra LXXVI:I.6). Just as in the former case the meaning is that the offering is wholly burned, so in the latter case it means that it is wholly burned.] R. Eliezer says, “‘Every cereal offering of a priest shall be wholly burned; it shall not be eaten’ serves to yield the rule that whatever is subject to being wholly burned up also is subject to the negative commandment concerning not being eaten.”*
- J. *That is quite true, and it is on the strength of this verse of Scripture that Raba made his statement. [Raba says the offender is flogged, and this verse is explicit that that is the rule.]*

The statement of the preceding, that rule would apply to a case in which the meat is such that the priests may eat it, but Raba spoke of a case in which the meat was not appropriate even for priests to eat [so this item would not belong on the list, accounts for the insertion of an exposition of the point at which it is inappropriate even for priests to eat Holy Things. That is prior to the sprinkling of the blood. We now demonstrate that if a priest does eat the meat that is coming to him prior to the sprinkling of the blood of the animal that has yielded that meat for the priest, he is flogged. The discussion is free-standing but amplifies a detail of the foregoing.

I.5. A. Said R. Giddal said Rab, “A priest who ate meat deriving from a sin offering or guilt offering prior to the sprinkling of the blood is flogged.

- B. “*What verse of Scripture sustains that ruling? It is said, ‘And Aaron and his sons shall eat of those things with which atonement was made’* (Exo. 29:33) — they are eaten only after atonement has been made, not before atonement has been made. This is a case in which a negative commandment implied in a positive statement adds up to a negative commandment [so a flogging is incurred].”
- C. *Objected Raba*, “‘And every beast that parts the hoof and has the hoof wholly cloven into two and chews the cud among beasts you may eat’ (Deu. 14: 6). If matters were as you have said, then why go on, ‘But these you shall not eat, of them that only chew the cud and of them that only have the hoof cloven’ (Deu. 14: 7)?”

[This is clarified by what we find at B. Zeb.

34A: *Objected Raba*, “If Scripture had said, ‘When any man of you brings an offering to the Lord, cattle...’ (Lev. 1: 2), I should concur that the wild beast is encompassed by the word, ‘cattle,’ as in the verse, ‘These are the animals that you may eat: ox, sheep, goat, hart, gazelle, roebuck’ (Deu. 14: 4-5) and the last three are wild and not domesticated. But Scripture does indeed state, ‘even of the herd or of the flock’ (Lev. 1: 2), meaning, of the herd or of the flock are the beasts of which I have spoken to you, and not a wild beast. Might one take the view that one should not bring a wild beast to begin with, but if after the fact one has presented a wild beast, it is valid? To what should such an action be compared? To a disciple whom the master ordered, ‘Bring me wheat,’ and he brought him wheat and barley, in which case the disciple has not disobeyed but only added to the master’s instructions, in which case it is a valid action. But Scripture states, ‘even of the herd or of the flock,’ so the sense is exclusionary: of the herd or the flock is what I have

instructed you to bring, but not a wild beast. For to what may the matter be compared? To the case of a disciple whom the master ordered, 'Bring me only wheat,' and he brought him wheat and barley, in which case the disciple has not merely added to, but actually disobeyed, the master's instructions. So the action is invalid."]

- D. *"Rather, if such a statement was made, this is how it must have been worded: 'Said R. Giddal said Rab, "A priest who ate meat deriving from a sin offering or guilt offering prior to the sprinkling of the blood is exempt from being flogged. What verse of Scripture sustains that ruling? It is said, 'And Aaron and his sons shall eat of those things with which atonement was made' (Exo. 29:33) — in any case in which we may invoke the former part of the text, 'and they shall eat of those things with which atonement has been made,' we may invoke the latter part of the text, 'but a stranger shall not eat thereof because they are holy.' And wherever we cannot apply the former part of the text, 'and they shall eat of those things wherewith atonement has been made,' we also cannot apply the latter part of the text, "but a stranger shall not eat thereof because they are holy."'"*

The exposition of details of the foregoing continues with another free-standing exposition of a rule introduced in the prior composite.

- I.6.** A. Said R. Eleazar said R. Hoshaia, "As to the presentation of first fruits, the act of placing them before the altar is essential to the rite [and they may not be eaten before that act], but the act of the declaration is not essential to the rite."
- B. *But did R. Eleazar make such a statement? And lo, said R. Eleazar said R. Hoshaia, "If one designated first fruits prior to the Festival of Tabernacles and the Festival of Tabernacles passed [without their having been presented] — they are to be left to rot." Is not the reason that the farmer cannot make the required declaration over them? And if it should enter your mind that the recitation of the required declaration is not indispensable to the rite, then why should they be left to rot?*

- C. *The answer accords with what R. Zira said, for said R. Zira, “In the case of whatever is suitable for mingling, mingling is not essential, and in the case of whatever is not suitable for mingling, mingling is indispensable.” [Cashdan, Menahot: in Zira’s view the law before us is that mingling can be omitted so long as it is possible to do so if one wants, and the Mishnah’s rule would mean that no oil at all was poured in. In this case, the declaration can be omitted so long as it is possible to do so if one wants; after the Festival, it is no longer possible to do so, and at that point, the declaration becomes indispensable].*

This long exposition is now completed, and we revert to the amplification of the Mishnah’s rule, with reference to Aqiba’s sponsorship of the decided law. The issue is whether the presentation of the first fruits may be performed without the required declaration. We have taken the view that Aqiba holds subject to flogging is he who eats first fruits over which one has not made the required declaration. Then Yohanan is supposed to concur, for the reason explained, and yet Yohanan can be shown to take a different position on the same question. So the exposition of the theoretical framework of the Mishnah expands.

- I.7.** A. *R. Aha bar Jacob repeated as a statement that R. Assi said R. Yohanan said [presented earlier as follows: Said Rabbah bar bar Hannah said R. Yohanan, “This represents the opinion of R. Aqiba presented without attribution [thus one authority’s position portrayed as the decided law], but sages say, ‘As to the presentation of first fruits, the act of placing them before the altar is essential to the rite [and they may not be eaten before that act], but the act of the declaration is not essential to the rite’”], and so proposed a contradiction between two statements of R. Yohanan: “Did R. Yohanan really say, ‘As to the presentation of first fruits, the act of placing them before the altar is essential to the rite [and they may not be eaten before that act], but the act of the declaration is not essential to the rite’? Then when R. Assi asked R. Yohanan, “How soon are first fruits available for the priests to eat,” did he not say that those that were presented at the proper time for the declaration were released right after the declaration was made, but those not brought at the proper time for the declaration as soon as they were face to face with the Temple [without declaring what the farmer is required to say]? Such a statement then would present contradictions on both points, in regard to recital and also in regard to placing the fruit before the altar!*
- B. *There is no contradiction between the two statements regarding making the required declaration. One of them represents the position of R. Simeon, the other of rabbis. There also is no contradiction between the two statements respecting the presentation of the first fruits by placing them before the altar. The one represents the position of R. Judah, the other of rabbis.*
- C. *What is the statement of R. Judah to which reference is made?*
- D. *It is in accord with that which has been taught on Tannaite authority:*
- E. *R. Judah says, “‘And you shall set [the basket of first fruits] down’ (Deu. 26:10).*

- F. "This refers to waving the basket.
- G. "You say it refers to waving the basket, but perhaps the sense is that it is literally set down.
- H. "Since further on, it says, 'And set it down' (Deu. 26: 4), that takes care of that action.
- I. "To what, then, does the cited verse, 'And you shall set ... down ...' refer? It can only refer to waving."
- J. *And who is the Tannaite authority who differs from him?*
- K. *It is R. Eliezer b. Jacob.*
- L. *For it has been taught on Tannaite authority:*
- M. "“And the priest shall take the basket out of your hand’ (Deu. 26: 7) — this teaches concerning first fruits that they have to be waved,” the words of R. Eliezer b. Jacob.
- N. *What is the scriptural basis for the position of R. Eliezer b. Jacob?*
- O. *He forms a verbal analogy based on the occurrence of the word “hand” both here and in the context of peace offerings: here is it written “And the priest shall take the basket out of your hand” (Deu. 26: 7), and in connection with the other subject, “His own hands shall bring the offering to the Lord” (Lev. 7:30). Just as here the priest receives the offering, so there the priest receives the offering [of the portions], and just as there, the owner does the presenting, so here the owner does the presenting.*
- P. How was it done?
- Q. The priest puts his hand under the hands of the sacrificer and waves the offering.

The topic of first fruits continues to receive a sustained exposition. But the whole relates to the Mishnah's basic statement, that one is flogged if he eats the first fruits without proper presentation; the Mishnah is concerned with the declaration, and we are now told when the entire procedure takes effect.

- I.8.** A. Said Raba bar Ada said R. Isaac, "With respect to first fruits, [19A] at what point does the obligation to present these particular pieces of fruit take effect [so that one would violate the law if one ate them without proper presentation]? From the moment at which they come face to face with the Temple house."
- B. In accord with what authority is that statement made?
- C. It is in accord with the Tannaite master who set forth that which has been taught on Tannaite authority:
- D. R. Eliezer says, "In the case of first fruits, if some of them are outside the wall of Jerusalem and some inside, as to those outside, lo, they are classified as unconsecrated for all purposes concerning them; as to those that are inside, lo, they are classified as Holy Things for all matters concerning them."
- I.9.** A. Said R. Sheshet, "As to the presentation of first fruits, the act of placing them before the altar is essential to the rite [and they may not be eaten before that act], but the act of the declaration is not essential to the rite."
- B. *In accord with what authority is that statement made?*

- C. *It is in accord with the Tannaite master who set forth that which has been taught on Tannaite authority:*
- D. **[In the version of T. [Sanhedrin 3:6A-Q](#):] R. Yosé says three matters in the name of three elders:**
- E. **“R. Ishmael says, ‘Is it possible to suppose that a person should bring second tithe up to Jerusalem at this time [after the destruction of the Temple] and eat it there? Now it is logical to think that that might be the case. For the firstling requires transportation to the holy place, and second tithe requires transportation to the holy place. Just as the firstling is eaten only in the time of the Temple, so second tithe should be eaten only in the time of the Temple. But no, if you state that rule in regard to the firstling, which produces blood and sacrificial parts for the altar [and for which, therefore, the sacrificial service is necessary], will you say the same rule in regard to second tithe, which does not, after all, produce blood and sacrificial parts for the altar? But the matter of first fruits will prove the case, for they do not produce blood and sacrificial parts for the altar, and yet they are eaten only in the time of the Temple. But no, if you have stated that rule in the case of first fruits, which require being set into place before the altar, will you state the same rule for second tithe, which does not require being set into place before the altar? Scripture says, ‘And you will eat before the Lord your God the tithe of your grain wine and oil, and the firstborn of beasts’ (Deu. 14:23). Just as the firstling is eaten only in the time of the Temple, so second tithe should be eaten only in the time of the Temple.”**
- F. *Now if it were the fact that failure to make the declaration were indispensable, the wording of the final objection should be as follows:*
- G. The distinctive trait of first fruits is that they are subject to the requirements of both the declaration and also the presentation.
- H. *Said R. Ashi, “Granted that it is not indispensable, still, is it not deemed to be at least a religious duty involved in doing so? And then, on that basis to, there can have been an objection!” [Lazarus: first fruits have to be placed before the altar, a rite that is indispensable, and the declaration is required, though not indispensable, as part of the religious duty, and neither is the case with second tithe, but that is not stated, so nothing is to be inferred from the omission of such an argument one way or the other.]*
- I. *Rather, said R. Ashi, “The omission is that, since first fruits also are presented to the Temple by converts, and they should have recited, ‘I profess this day to the Lord and to have come to the land that the Lord swore to our fathers to give us’ (Deu. 26: 3) but they cannot do so, R. Yosé could not include that item without qualification and so omitted it.”*
- J. *But why not reverse the argument and prove the case of second tithe by appeal to the analogy of the shared traits [Miller: if you say that the analogy between firstfruits and tithe is not exact, since in the former there is no setting before the altar, then the case of firstling will prove that even without the setting before the altar it is necessary for the Temple to be in existence in order that the firstling can be brought, and the same therefore will apply to second tithe. Again, if you say that the firstling is different because it requires the application of its blood to the*

altar, then the case of firstfruits will prove that although there is no application of blood, only when the Temple stands can they be brought, and the same therefore will apply to second tithe. Firstlings and firstfruits have one point in common, the need of bringing them to a holy place, and the Temple must be standing; the same will apply to second tithe, that it will be brought only when the Temple is standing.]

- K. [Omitted by our Talmud but introduced at the parallel at B. Temurah 21A: Said R. Ashi,] *“The reason that that is not so is that one may raise the following problem: the point in common among them [the firstling and firstfruits] is that they have some relationship to the altar. Now what is R. Ishmael’s conception [since he knows that a firstling is not eaten when the Temple is not standing, but is not sure about second tithe]? If he holds that when the Temple was originally consecrated, Joshua consecrated the land for the time being [when it was inhabited by Jews] and also for the future [in which case, even without the Temple, Jerusalem is still a holy place]? Then there should be no difference between the case of the firstling and that of the second tithe, both of them being appropriately brought. But if R. Ishmael maintained that the initial act of consecration was for the moment but that he did not consecrate it for all time in the future, then even the status of the firstling also should be a problem for you!”*
- L. Said Rabina, *“In point of fact, he takes the view that the initial act of consecration was for the moment but that he did not consecrate it for all time in the future, but here, what is at stake? The case in which the blood of the firstling was tossed on the altar while the Temple was still standing, but then the Temple was destroyed, and the meat is still there. Since, if the blood were available, it would no longer be suitable for sprinkling [Jerusalem then having been destroyed in the interim,] we derive the case of the flesh of the firstling [as regards eating it] from the case of the blood of the firstling. [Miller, Temurah: And just as the blood cannot be sprinkled, so the flesh cannot be eaten.] And then we derive the case of second tithe from the case of the firstling [Miller: just as the firstling is certainly not eaten in Jerusalem, there being no Temple, so second tithe is not eaten in Jerusalem.]*
- M. *But do we infer the rule of one matter of consecration from another? And has not R. Yohanan said, “Throughout the Torah we infer one rule from another that has itself been derived by inference, except for the matter of consecration, in which we do not derive a rule from another that has itself been inferred”?*
- N. Tithe is a matter of what is secular [Miller: therefore when we compare second tithe with the firstling, we are not really making an analogy between dedications, as is the case when we inferred “flesh” from “blood.”]
- O. **[20A]** *That poses no problem to one who maintains that we follow the upshot of that which is derived [whether the subject is dedications or not. And since it is second tithe that is the subject learned and derived from dedication, it is quite in order, because second tithed can be rendered unconsecrated (Miller)]. But what will you say to one who maintains that that from which the derivation comes is the operative consideration [Miller: here, the blood of the firstling, as we derive the rule for second tithe from it, and this does belong to the category of that which has been consecrated]?*

- P. *“Flesh” and “blood” in the matter of the firstling are deemed a single subject* [Miller: and since this is the case, we are only making one inference, i.e., second tithe from the blood and flesh of a firstling, which are considered as one subject as regards dedications].

We proceed to the next clause of the Mishnah, asking about why the Mishnah’s author has repeated himself.

II.1 A. (2) Most Holy Things outside the Temple veils, (3) Lesser Holy Things or second tithe outside the wall [of Jerusalem]:

- B. *We have learned this in another Mishnah-passage: **second tithe or consecrated food which had not been redeemed** [M. 3:2H]!*
- C. *Said R. Yosé bar Hanina, “The latter part of the passage refers to second tithe in a condition of cultic cleanness and a man in a condition of cultic cleanness, who ate it outside of the wall; the former passage refers to second tithe in a condition of cultic uncleanness and a man in a condition of cultic cleanness, who ate it in Jerusalem.”*

The premise of the foregoing now has to be validated.

II.2. A. And what is the source of that rule that one is liable for eating in a state of uncleanness second tithe?

- B. *It is in line with that which has been taught on Tannaite authority:*
- C. **R. Simeon says, “I have not cleared out any of it while I was unclean’ (Deu. 26:13-14): Not at a point at which I was unclean and the portion of the crop was clean, nor at a time at which I was clean and the designated part of the crop was unclean” [Sifré Deu. CCCIII:VIII.2].**
- D. And where do we find an admonition against eating it?
- E. I don’t know.
- F. *Indeed! The prohibition of eating Holy Things when one is personally unclean is stated quite explicitly: “The soul that touches any such unclean things shall be unclean until the evening and shall not eat of the Holy Things until...” Lev. 22: 6)!*
- G. I meant, how do we know from Scripture that there is an admonition against eating it when it itself is unclean?
- H. As it is written, ““You may not eat it within your gates” (Deu. 12:17), and further, “In your gates the unclean and the clean may eat together, as the gazelle and the hart” (Deu. 15:21-22). *And it has been taught by a Tannaite authority of the household of R. Ishmael: “Even the unclean and the clean persons may eat together in a single dish, and we do not take account of the possibility of the one making the other unclean,” and Scripture has said that what is permitted elsewhere, in the case of the blemished firstling, for the unclean and the clean person to eat together, is not permitted here, in the case of second tithe, [which may not be eaten if it is in contact with something unclean].*
- I. *And how do we know that second tithe that has been made unclean may be redeemed even in Jerusalem?*
- J. *It is in line with what R. Eleazar said, “How on the basis of Scripture do we know that second tithe that has been made unclean may be redeemed even in Jerusalem? ‘And you shall eat before the Lord your God in the place that he shall choose...the*

tithe of your grain...and if the way be too long for you, if you are to able to bring it up...then you shall turn it into money' (Deu. 14:23-24), the usage of 'bring it up' in this passage bears the sense of the same consonants when used in the verse, that is, the sense of eating: 'and portions [which uses the same consonants] were brought forward to them from before him'(Gen. 43:34)." [Thus if you are not able to bring it up means, if you are not able to eat it, but you may nonetheless turn it into money and bring the money and use it in Jerusalem.]

- II.3.** A. Said R. Bibi said R. Assi, "How on the basis of Scripture do we know that second tithe that is uncontaminated may be redeemed even a single step before the wall of Jerusalem? 'When you are not able to bring it up, then you shall turn it into money' (Deu. 15:24)."
- B. *But that phrase is required to make the point that has been made by R. Eleazar!*
- C. *If the sense were limited to the specified point, Scripture should have said, "You cannot eat it"! Why "bring it up?"*
- D. *And shall I say that the whole of it serves only the specified purpose? If so, Scripture should have said, "you are unable to take the load"! Why use the language of "carry"? It is for both purposes!*

- II.4.** A. *In session R. Hanina and R. Hoshiaia raised this question: "At the very gate to Jerusalem, what is the rule? It is obvious that if he is outside the gate and his load is inside, the wall of the city has extended its protection over the produce. If he is inside and the burden outside, what is the law?"*
- B. *A certain elder of the household of R. Simeon b. Yohai repeated the Tannaite statement for them: "'If the place is far from you...turn it into money' (Deu. 14:23-24) — far from your full [load, that is, if the place is far from what you have with you]." [Lazarus: where he is already within, the burden being outside, since he is not with it, it is not considered far.]*
- C. *R. Pappa raised this question: "What if he is in the gate and his load is on a stick behind him?"*
- D. *So that question will have to stand.*

- II.5.** A. Said R. Assi said R. Yohanan, "How soon are people liable for eating produce in the status of second tithe if they do so [outside of the wall of Jerusalem, that is, at what point is it no longer permitted to redeem the produce for money]? As soon as they were face to face with the interior wall.
- B. "What is the Scriptural basis for that position"
- C. "'And you shall eat before the Lord your God the tithe of your grain"' (Deu. 14:23), and further, 'You may not eat within your gates the tithe of your grain' (Deu. 12:17). *When the first of the two passages takes effect, the second of the two takes effect, and when the second of the two is not in effect, then the first of the two is not in effect.*" [That is, the produce has not yet been taken into the city or it has been defiled; then it may be redeemed (Lazarus).]
- D. *An objection was raised on the basis of the following: R. Yosé says, "A priest in whose hand turned up a fig that had not been tithed in any way, in the year*

in which second tithe is set aside, in Jerusalem, or in the year in which poor man's tithed is set aside, in the provinces, and who said, 'The heave offering owing from it is in its stem,' and ate it, 'the first tithe owing from it is in its southern portion,' and ate it, 'the second tithe owing from it is in its northern portion,' and ate it, [20A] is flogged on one one count [T.: is exempt from punishment]. But if it had been a non-priest, he would have been liable on two counts. But if he had eaten the whole thing up all at once, to begin with, he would have been liable only on one count" [T. **Mak. 4:5**]. [That is, he would have been flogged for inadvertently eating produce that was liable to tithing but had not yet been tithed]. *Now the operative consideration that the non-priest is liable on two counts is that he ate it in Jerusalem, but if he had done it in the provinces, he would have been flogged on three counts, which is to say, he would have been liable even though the fig had not come within sight of the interior wall of Jerusalem* [Lazarus: and this conflicts with Yohanan's statement that liability begins as soon as the second tithe comes within sight of the interior of the wall of Jerusalem].

- E. *We deal with a case in which he brought it into Jerusalem and took it out again.*
- F. *If so, what then is the point of the statement?*
- G. *Here, with what sort of a case do we deal? With one in which the farmer brought the produce into Jerusalem on the condition of being subject to tithing but not at all tithed, and he takes the view that* priestly gifts that have not been taken out of a batch of produce are as they they already have been removed from the batch. [So there are three counts for the layman: for the untithed produce, for the heave offering, and for the second tithe, even though these have not yet been designated.]
- H. *And does R. Yosé really take the view that* priestly gifts that have not been taken out of a batch of produce are as they they already have been removed from the batch?
- I. *But have we not learned in the Mishnah: [Untithed] produce, the processing [for use as food] of which is completed and which passed through Jerusalem — [let produce separated from it as] second tithe be returned and eaten in Jerusalem. [And as for produce] whose processing is not completed [and which passes through Jerusalem], such as grapes [being brought] to the winepress or baskets of figs [being taken] to a drying place — the House of Shammai say, "[Let produce separated from it as] second tithe be returned and eaten in Jerusalem." And the House of Hillel say, "Let it be redeemed and [then] eaten in any place." R. Simeon b. Judah says in the name of R. Yosé, "The House of Shammai and the House of Hillel did not disagree concerning produce the processing of which was not completed, that [produce separated from it as] second tithe may be redeemed and [then] eaten anywhere. About what did they disagree? About produce the processing of which was complete [and so was liable to the designation of portions for the agricultural taxes] which passed through Jerusalem. For the House of Shammai say, 'Let [produce separated from it as] second tithe be eaten in Jerusalem.' And the House of Hillel say, 'Let it be redeemed and eaten in any place.'" And [produce separated as second tithe from] doubtfully tithed produce enters Jerusalem and comes out, and is*

[afterwards] redeemed [M. M.S. 3:6]? Now if you take the view that R. Yosé maintains that priestly gifts that have not been taken out of a batch of produce are as they already have been removed from the batch, how could the produce that was redeemed be eaten anywhere, since it has been taken in within the walls of Jerusalem?

- J. Said Raba, "The law of the walls of Jerusalem that requires the produce in the second tithe to be eaten within them is on the authority of the Torah, but the law that they have such power that, even when fallen, they demarcate the area in which the produce is to be eaten is merely on the authority of rabbis. To what circumstances, with regard to the produce, would rabbis have made such a rule? Only when the second tithe was in hand, but if it was still mixed up with the untithed but liable produce, they made no such decree."
- K. Rabina said, "Why not solve the problem [of the fig outside of Jerusalem that one ate, in which case he should be liable on three counts, even though the fig had not yet come within sight of the interior of the wall] by supposing that it is in a case in which the man was carrying second tithe on a stick behind him [Lazarus: and this circumstance might be taken as if by the man's penetration his bundle too has reached within sight of the interior wall with him, on which account he incurs a flogging if he then eats the fruit outside], and this would further solve the problem brought up by R. Pappa."

I.1 simply identifies the issue to which the cited clause pertains, with the authority behind it then noted. No. 2 then undertakes the examination of the foregoing. The entire composite therefore goes its own way, with only the most minimal engagement with the rule of the Mishnah. But the principle is the key: identifying negative commandments for the violation of which one is flogged; and that is the very centerpiece of the entire chapter, certainly justifying the compositors' inclusion of the whole. Coming from a fresh angle, No. 3 then challenges the entire prior composition. No. 4 undertakes the clarification and criticism of components of the original composition. No. 5 presents a fresh initiative of complementing the rule of the Mishnah, adding yet another case of flogging in the context of the cult. Nos. 6-9 continue the exposition of the prior composite and the exposition of its theme, an anthology parachuted down here for no very good reason, from a redactional viewpoint, just padding; but the Bavli is padded only occasionally. II.1 shows that perfection of the Mishnah, which does not repeat itself; Nos. 2-3+4-5 then ask a set of secondary questions.

3:5

- A. (1) He who makes a baldness on his head [Deu. 14: 1], (2) he who rounds the corners of his head and (3) mars the corners of his beard [Lev. 19:27], (4) or he who makes a single cutting for the dead [Lev. 19:28] is liable.
- B. [If] he made a single cutting on account of five different corpses,
- C. or five cuttings on account of one corpse,
- D. he is liable for each and every one of them.
- E. For [cutting off the hair of] the head, he is liable on two counts, one for each side of the head.

- F. For cutting off the beard, he is liable on two counts for one side, two counts for the other side, and one count for the lower part.**
- G. R. Eliezer says, “If he removed all of it at once, he is liable only on one count.”**
- H. And he is liable only if he will remove it with a razor.**
- I. R. Eliezer says, “Even if he removed it with pincers or with an adze, he is liable.”**

We commence with a standard Tannaite complement to the Mishnah’s rule: the number of counts for which a given action produces liability.

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

- B. “They shall not make tonsures [upon their heads, nor shave off the edges of their beards, nor make any cuttings in their flesh]:”**
- C. Might one suppose that for making four or five tonsures, one should be liable only on one count?**
- D. Scripture refers to “tonsure” in the singular, so imposing liability for each cut.**
- E. “upon their heads:”**
- F. What is the point of Scripture here?**
- G. Since it is said, “[You are the sons of the Lord your God: you shall not cut yourselves nor make any baldness on your foreheads for the dead” (Deu. 14: 1),**
- H. one might have thought that liability is incurred only for a cut on the forehead.**
- I. How do we know that the prohibition extends to the entire head?**
- J. Scripture says, “upon their heads,”**
- K. to encompass the entire head.**
- L. Might one suppose that in the case of priests, for whom Scripture has specified numerous supererogatory commandments, liability extends to each cut and also to the entire head,**
- M. while for ordinary Israelites, for whom Scripture has not specified supererogatory commandments, liability should be incurred only on one count for however many cuts and only for a cut on the forehead?**
- N. Scripture refers to “tonsure” in several passages [here and at Deu. 14: 1, here speaking of the priests, there speaking of Israelites as well], so establishing grounds for the following analogy:**
- O. just as in the case of “cutting” stated with reference to priests, liability is incurred for each cut and is incurred for a cut on any part of the head as much as on the forehead, so “cut” spoken of in connection with an Israelite, liability is incurred for each cut and is incurred for a cut on any part of the head as much as on the forehead.**
- P. And just as “cutting” stated with reference to an Israelite imposes liability only if it is made for a deceased, so “cutting” stated with reference to priests imposes liability only if it is made for a deceased [Sifra CCXII:I.1-3]**

We proceed to the clarification of the foregoing in particular, then the more general amplification of the topic at hand.

I.2. A. *And just how are the four or five cuts made? If we say that they are made sequentially, one after the other, in the aftermath of five admonitions, then the rule is self-evident! [20B] And if it was a single admonition, is he going to be liable on four or five counts? Have we not learned in the Mishnah: A Nazirite who was drinking wine all day long is liable on only one count,[If] they said to him, “Don’t drink, don’t drink!” yet he continued to drink, he is liable on each count [M. 3:7A-C]?*

B. *The pertinent case is one in which he dipped all five fingers in a salve and applied them at the same moment at five places, so each admonition refers to each finger separately.*

I.3. A. And what is the measure of a baldness?

B. R. Huna says, “Sufficient so that some of the bare scalp appears.”

C. R. Yohanan says in the name of R. Eleazar b. R. Simeon, “The size of a bean.”

D. *This is in accord with a Tannaite statement of the matter:*

E. What is the measure of a baldness?

F. The size of a bean.

G. Others say, “Sufficient so that some of the bare scalp appears.”

H. *Said R. Judah bar Habiba, “There are three conflicting Tannaite statements on the matter:*

I. “One says, ‘The size of a bean.’

J. “Another says, ‘Sufficient so that some of the bare scalp appears.’

K. “And the third says, ‘Two hairs.’”

L. There are those who remove “two hairs” and put in “about the size of a lentil.”

M. *Your mnemonic is: A bright spot the size of a split bean — and quick flesh the size of a lentil [M. Neg. 6:5A-B].*

I.4. A. *A Tannaite statement:*

B. One who on the Sabbath removes a scissors’ nip of hair is liable [if he did so inadvertently] to a sin offering.” And how much is “a scissors’ nip of hair”?

C. Said R. Judah, “Two hairs.”

D. *But has it not been taught on Tannaite authority: “What is the measure of a baldness in connection with violating the law against making a bald spot?..Two hairs”! [The measure is then specific to the bald spot.]*

E. Say, “Also the same minimum applies in the case of making a bald spot.”

F. *So too it has been taught on Tannaite authority: He who removes on the Sabbath a scissors’ nip of hair is liable. And how much is a scissors’ nip of hair? Two. R. Eliezer says, “One.” But sages concur with R. Eliezer in the case of one who removes white hair from among black hair that he is liable for removing even one. And such an action is forbidden even on weekdays by virtue of “And a man shall not put on a woman’s garment” (Deu. 22: 5) [T. Shab. 9:12].*

Once more we clarify a clause of the Mishnah with a Tannaite complement.

II.1 A. he who rounds the corners of his head:

- B. *Our rabbis have taught on Tannaite authority:*
- C. “The corner of the head” is the end of the head, and what constitutes rounding the extreme end of the head? Leveling the temple growth from the back of the ears to the forehead.
- II.2. A. A Tannaite authority repeated before R. Hisda:** “All the same are rounding the corners and having someone else round them, both are equally subject to a flogging.”
- B. *He said to him, ““Is he who eats dates out of a sieve is flogged! Who then is the authority behind this formulation? It is R. Judah, who has said, ‘On account of violating a negative commandment that does not involve the commission of an actual deed, and in the case of any negative commandment that does not involve a concrete deed, flogging is incurred.’”*
- C. Raba says, “This refers to one who rounds the corners himself, and it would represent the opinion of all parties.”
- D. R. Ashi says, “It refers to someone who assists in doing so, and it would represent the opinion of all parties.”

III.1 A. mars the corners of his beard:

- B. *Our rabbis have taught on Tannaite authority:*
- C. The corner of the beard means the end of the beard, and what constitutes the end of the beard? The tuft of the beard.

IV.1 A. or he who makes a single cutting for the dead:

- B. *Our rabbis have taught on Tannaite authority:*
- C. “You shall not make a cutting in your flesh” (Lev. 19:28) —
- D. Might one suppose that one is liable even for making a cutting on account of the collapse of his house, or the sinking of his ship at sea?
- E. Scripture says, “for a soul,” meaning, only on account of cutting oneself for the dead is one liable.
- F. And how do we know that one who makes cuttings five times for a single deceased party is liable on all five counts?
- G. Scripture says, “nor make any cuttings in their flesh” — which imposes liability for each cut.
- H. R. Yosé says, “How on the basis of Scripture do we know that one who makes a single cutting for five deceased persons is liable for each one? Scripture says, ‘for a soul,’ meaning that one is liable on each count.”
- J. *But lo, that verse of Scripture has already served the purpose of showing that one is not liable for making a cutting on account of the collapse of his house, or the sinking of his ship at sea!*
- K. **[21A]** *R. Yosé takes the view that the two distinct terms used for the same action [at Lev. 21: 5 and Deu. 14: 1 respectively] have the same meaning, and in the latter case it is specifically said, “for the dead.”*

IV.2. A. Said Samuel, “He who makes a cut with an instrument is liable” [Lazarus: on two counts, as this is prohibited at Lev. 21: 5 and Deu. 14: 1 respectively].

- B. *An objection was raised: the two distinct terms used for the same action [at Lev. 21: 5 and Deu. 14: 1 respectively] have the same meaning, but one term refers to doing so by hand, the other with a utensil.*
- C. *Samuel concurs with the position of R. Yosé.*

IV.3. A. *A Tannaite authority repeated before R. Yohanan: “If one made a cut for the dead, whether by hand or with an instrument, he is liable on one count; if he did so as an act of idolatry, if it was by hand, he is liable, if with an instrument, he is not liable.”*

- B. *But lo, to the contrary, “And they cut themselves after their manner with swords and lances” (1Ki. 18:28)!*
- C. *Repeat it in this way: [with respect to idolatry,] if with the hand he is exempt, if with an instrument he is liable.*

V.1 A. **For [cutting off the hair of] the head, he is liable on two counts, one for each side of the head.**

- B. *R. Sheshet pointed out the distinct areas, between the two joints of the head.*

VI.1 A. **For cutting off the beard, he is liable on two counts for one side, two counts for the other side, and one count for the lower part:**

- B. *R. Sheshet pointed out the distinct areas, between the junctions of the beard.*

VII.1 A. **R. Eliezer says, “If he removed all of it at once, he is liable only on one count:”**

- B. *He takes the view that the whole constitutes a single prohibition.*

VIII.1 A. **And he is liable only if he will remove it with a razor.**

- B. *Our rabbis have taught on Tannaite authority:*
- C. *“Neither shall the priests shave off the corner of their beard” (Lev. 21: 5):*
- D. *Might one suppose that he is liable even if he shaved it off with scissors?*
- E. *Scripture says, “Neither shall you mar...” (Lev. 19:27).*
- F. *Might one suppose if one removed it with tweezers or pincers he is liable?*
- G. *Scripture says, “Neither shall you mar” — which involves destruction. How so? It must be a kind of shaving that involves destruction, and that is with a razor.*

IX.1 A. **R. Eliezer says, “Even if he removed it with pincers or with an adze, he is liable:”**

- B. *Which way shall we go? If he has in hand an analogy established through verbal intersection [Lev. 14:9 and Num. 8:7, the corner of the beard must be shaved off, shaving involves a razor, in which case the razor is the one forbidden instrument, or the one required one, where a shaving is involved], then he should require use of a razor! And if he does not have in hand an analogy established through verbal intersection, then he should not permit even the use of scissors!*
- C. *In point of fact, he does have in hand an analogy based on verbal intersection, but he takes the view that these others things also serve as instruments of shaving.*

I.1 enriches the Mishnaic statement with a Tannaite exegesis and amplification. No. 2 amplifies the foregoing. No. 3 asks a question to amplify the law. No. 4 is tacked on because of the obvious point of intersection. II.1 complements the Mishnah’s rule with a further Tannaite amplification. No. 2 follows suit. III.1,

IV.1 complement the Mishnah's rule with a further Tannaite amplification. No. 2 is tacked on to the foregoing for obvious reasons, and No. 3 to No. 2. V.1, VI.1, VI.1, VII.1 add light glosses. VIII.1 adds a Tannaite complement. IX.1 clarifies the exegetical foundations for the statement in the Mishnah.

3:6

- A. **He who tattoos his skin —**
- B. **[If] he made a mark but did not tattoo it in,**
- C. **tattooed it in but did not make a mark,**
- D. **he is not liable —**
- E. **unless he makes a mark and tattoos with ink or with eye paint or with anything that makes a permanent mark.**
- F. **R. Simeon b. Judah says in the name of R. Simeon, “He is liable only if he will write the name [of a god],**
- G. **“as it is written, ‘Nor will you tattoo any marks on you, I am the Lord’(Lev. 19:28).”**

I.1 A. **[He is liable only if he will write the name of a god:]** *said R. Aha b. Raba to R. Ashi, “Does that mean, ‘he will actually write, “I am the Lord”?!”*

B. *He said to him, “Not at all. It is in accord with that which Bar Qappara repeated as a Tannaite statement: ‘He is liable to a flogging only if he has inscribed the name of some other god, in line with this verse: “Nor put on you any written imprint, I am the Lord,” that is, “I am the Lord,” there is no other.”*

I.2. A. Said R. Malkiah said R. Ada bar Ahbah, “It is forbidden for someone to put wood ash on a wound, because it appears to be a tattoo.”

The attributive formula of the foregoing is now clarified.

I.3. A. Said R. Nahman [B. A.Z. 29A:] Hanina] b. R. Iqa, “Statements about a spear, maid-servants, depressions are by R. Malkio; those concerning the forelock, vegetable-ashes, and cheese are by R. Malkiah.”

B. Said R. Pappa, “A statement that pertains to a passage of the Mishnah or to an external Tannaite formulation belong to R. Malkiah. Statements that pertain to what is free-standing belong to R. Malkio.”

C. And your mnemonic is, “the Mishnah is the queen.”

D. *What is at stake in the debate?*

E. *At stake is the attribution of the statement about maid-servants.* [Mishcon: According to Hanina, it is attributed to Malkiah, and according to Pappa, it is attributed to Malkiah.]

I.4. A. *R. Bibi bar Abbaye was meticulous even about powdering the [Lazarus:] scorings of the cupping instruments.*

B. R. Ashi said, “In any place in which there is some sort of wound, however, the wound indicates the purpose of the action [so that is uncalled for].”

I.1 provides an important clarification. Nos. 2+3, 4 continue the amplification of the details of the rule.

3:7-9

3:7

- A. A Nazirite who was drinking wine all day long is liable on only one count.
- B. [If] they said to him, “Don’t drink, don’t drink!” yet he continued to drink,
- C. he is liable on each count.

3:8

- A. [If a Nazirite] was contracting corpse uncleanness all day long, he is liable on only one count.
- B. [If] they said to him, “Do not contract corpse uncleanness! Do not contract corpse uncleanness!” yet he continued to contract corpse uncleanness,
- C. he is liable on each count.
- D. [If] he was shaving himself all day long, he is liable on only one count.
- E. [If] they said to him, “Don’t shave! don’t shave!” yet he continued to shave,
- F. he is liable on each count.
- G. If someone was wearing a garment of diverse kinds [Lev. 19:19, Deu. 22:11] all day long, he is liable on only one count.
- H. [If] they said to him, “Don’t put it on! don’t put it on!” yet he took it off and then put it on, he is liable on each count.

3:9

- A. [21B] There is one who ploughs a single furrow and is liable on eight counts of violating a negative commandment:
 - B. [specifically, it is] he who (1) ploughs with an ox and an ass [Deu. 22:10], which are [2, 3] both Holy Things, in the case of (4) [ploughing] Mixed Seeds in a vineyard [Deu. 22: 9], (5) in the Seventh Year [Lev. 25:41, (6) on a festival [Lev. 23: 7] and who was both a (7) priest [Lev. 21: 1] and (8) a Nazirite [Num. 6: 6] [ploughing] in a graveyard.
 - C. Hananiah b. Hakhinai says, “Also: He is [ploughing while] wearing a garment of diverse kinds” [Lev. 19:19, Deu. 22:11].
 - D. They said to him, “This is not within the same class.”
 - E. He said to them, “Also the Nazir [B8] is not within the same class [as the other transgressions] .”
- I.1** A. [yet he took it off and then put it on, he is liable on each count:] said R. Bibi said R. Yosé, “It does not have to be actually taking it off and putting it on, taking it off and putting it on, but even if he put his hand in and out of the sleeve [the multiple liabilities are incurred].”
- B. *R. Aha b. R. Iqi showed how in such a way as to indicate it meant getting into the coat and getting out of it again.*
 - C. R. Ashi said, “Even if he remained in the coat only enough time to take it off and put it on, he is liable on a single count.”

- II.1** A. There is one who ploughs a single furrow and is liable on eight counts of violating a negative commandment:

- B. Said R. Yannai, "In a gathering people voted and decided: he who covers mixed seeds with dirt is liable to a flogging."
- C. *Said to him R. Yohanan, "Is this not exactly what our Mishnah states: **There is one who ploughs a single furrow and is liable on eight counts of violating a negative commandment: [specifically, it is] he who (1) ploughs with an ox and an ass [Deu. 22:10], which are [2, 3] both Holy Things, in the case of (4) [ploughing] Mixed Seeds in a vineyard [Deu. 22: 9]! Now how are we going to find such a case? Is it not that he covers them with dirt as he goes along with the plough?"***
- D. *He said to him, "If I had not picked up the sherd for you, would you have ever found the pearl under it?"*
- E. *Said R. Simeon b. Laqish to R. Yohanan, "If an eminent authority had not praised you, I should have said, to the contrary, [that the passage is schismatic, for] who is the authority of this passage? It is only R. Aqiba, who has said, 'He who preserves and does not destroy mixed seeds in a vineyard is flogged.'"*

II.2. A. Which statement of R. Aqiba?

- B. *It is as has been taught on Tannaite authority:*
- C. **He who sows, weeds, over covers over seeds of diverse kinds transgresses a negative commandment. R. Aqiba says, "Even he who sustains plants of diverse kinds transgresses a negative commandment" [T. Kil. 1:15A-B].**
- D. *What is the scriptural basis of the position of R. Aqiba?*
- E. Scripture has said, "You shall not sow your field with two kinds of seed" (Lev. 19:19) — I know only that culpability applies to sowing. How on the basis of Scripture do I know that culpability extends even to preserving them? Scripture states, "...not...with diverse kind" (Lev. 19:19) — *yielding the result that if the purpose is to diminish impropriety, the action is permitted* [Cohen, *Abodah Zarah*: although it is in the worker's interest that they should be cultivated, since he would have employment].

II.3. A. *Said Ulla to R. Nahman, "And should he not be flogged also on the count of sowing seed on the festival day?"*

- B. *He said to him, "The Tannaite authority has made his statement but left out other items that could have been included."*
- C. *He said to him, "The Tannaite authority has listed eight items, and you claim that the Tannaite authority has made his statement but left out other items that could have been included. [What else might he have left out?]"*
- D. Said Rabbah, "Well, the reason for the omission is that to the Sabbath applies the principle that distinctions are made, for purposes of assessing the number of counts on which one may be liable for a single action, among diverse types of labor, but to festivals does not apply the principle that distinctions are made, for purposes of assessing the number of counts on which one may be liable for a single action, among diverse types of labor."
- E. *He said to him, "[Lazarus:] Let it remain at that!"*
- F. Objected Abbaye, "Is it really the fact that but to festivals does not apply the principle that distinctions are made, for purposes of assessing the

number of counts on which one may be liable for a single action, among diverse types of labor? *But has it not been taught on Tannaite authority:* One who, on a festival day, boils the sciatic sinew in milk and eats it is flogged on five counts: for eating the sinew, cooking on a festival day [what is not ordinarily eaten]; boiling the sinew in milk, eating meat with milk, and [22B] kindling a fire. *But if, it were as you maintain, then one should not be liable on the count of kindling a fire."*

- G. *Then delete kindling a fire, but add to the list instead eating the sinew of carrion.*
 - I. *But did not R. Hiyya repeat as a Tannaite statement, "One is flogged on two counts for eating it and on three for coking it," but if it were as you say, then there should be three counts for eating it on account of which he is liable to a flogging!*
 - J. *So instead, delete kindling a fire and substitute using firewood from an asherah, and for an admonition on such a count, it is this: "And there shall cleave nothing of the accursed thing to your hand" (Deu. 13:18).*
 - K. *Said R. Aha b. Raba to R. Ashi, "But he should also be flogged on the count of, 'You shall not bring an abomination into your house' (Deu. 7:26)!"*
 - L. *Rather, here with what case do we deal? It is a case of his having done the cooking over wood that had been consecrated, and the appropriate admonition is from this verse: "And burn their asherim with fire" and "you shall not do so to the Lord your God" (Deu. 12: 3-4).*
- II.4.** A. *Objected R. Hoshai, "But to the list should also be added him who sows in a 'rough valley,' the associated admonition being: 'which shall neither be ploughed or sown' (Deu. 21: 4)."*
- B. *Objected R. Hanania, "But to the list should also be added one who with the plough blots out the divine name as he goes along [e.g., the name was written on some object in the field], the associated admonition being: 'and you shall destroy their name out of that place, you shall not do so to the Lord your God' (Deu. 12: 3-4)."*
 - C. *Objected R. Abbahu, "But to the list should also be added one who cuts off a white spot on his flesh [which may be the sign of the skin ailment], the associated admonition being, 'Take heed in the plague of the skin ailment that you observe diligently and according to all that the priest the Levites shall teach you' (Deu. 24: 8)."*
 - D. *Objected Abbayye, "Then how about adding to the list one who loosened the breastplate of the high priest from the ephod [while ploughing up the breastplate], and one who removed the staves from their rings on the ark [and ploughed with them], and the associated admonition is in the verses, 'they shall not be taken from it,' 'and the priest plate be not loosed' (Exo. 25:15), (Exo. 28:28)?"*
 - E. *Objected R. Ashi, "But to the list should also be added one who ploughed with boughs taken from an asherah, the associated admonition being, 'And*

there shall cleave nothing of the accursed thing to your hand’ (Deu. 13:18).”

- F. *Objected Rabina, “But to the list should also be added he who cuts down productive fruit tress while ploughing, the associated admonition being ‘for you may eat of them but you may not cut them down’ (Deu. 20:29).”*
- G. *Said R. Zeira to R. Mani, “But to the list should also be added the case of one who said, ‘By an oath, I shall not plough on the festival’ [but did so]!”*
- H. *But he is subject to a standing oath that came forth from Mount Sinai [and it is not an option governed by an oath as to whether he will plough on the festival; so that has no validity]. [The prohibition would apply to an ordinary day, and that then extends to the festival day, which is already prohibited, for the purpose of assessing culpability; this is the notion of a prohibition that extends beyond its own narrow limits.]*
- I. *He said to him, “The case would involve one who said, ‘By an oath! I shall not plough either on an ordinary day or on a festival,’ in which case, since the oath applies to the ordinary day, it also carries over to the festival day.”*
- J. *The framer of the catalogue does not include anything that may be remitted by an inquiry to a sage.*
- K. *So he doesn’t, does he? Then what about the following: **ploughs with an ox and an ass, which are Holy Things!***
- L. *That refers to a firstling [that was consecrated from birth and cannot be remitted, Exo. 13:12-13].*
- M. *Lo, there is the case of the Nazirite [and the vow can be remitted by a sage]!*
- N. *It was a Nazirite for life, like Samson.*
- O. *But is a Nazirite for life, like Samson prohibited from contracting corpse uncleanness?*
- P. *Well, in point of fact, the Tannaite authority before us does not adopt the principle of a prohibition that extends beyond its own narrow limits.*

- II.5.** A. Said R. Hoshiaia, “He who breeds with a female an ox that had been sanctified but that was unfit, the farmer is liable on two counts” [Lev. 19:19: “You shall not let your cattle breed with a diverse kind” and Deu. 15:19 (Lazarus)].
- B. Said R. Isaac, “He who drives an ox that had been sanctified and become unfit for an offering is liable on the count of working it, for while the animal is a single corpus, Scripture has placed it in the category of two distinct bodies” [Lazarus: as an ordinary animal, the meat is not sanctified, but, because it is sanctified, it may not be worked].

I.1 amplifies a detail in a familiar manner. II.1 goes its own way, citing our Mishnah-passage for its own purpose. No. 2 fills out the passage with required information. Nos. 3, 4+5 then revert to the Mishnah’s catalogue and analyzes it.

3:10-11C

3:10

- A. How many times do they flog him?
- B. Forty stripes less one,
- C. as it is said, “By number, forty” (Deu. 25:2,3) — a number near [but less than] forty.
- D. R. Judah says, “He is flogged a full forty times.”
- E. And where does the additional one fall?
- F. Between the shoulders.

3:11

- A. They make an estimate of his capacity to take the flogging [without being irreparably injured or killed] only by a number divisible by three.
- B. [If] they estimated him as able to take forty, [if] he then received part of the flogging, [22B] and they said that he cannot take all forty, he is exempt.
- C. [If] they estimated him as able to take eighteen, [and] once he has received the flogging [of eighteen], they said that he can take all forty, he [still] is exempt from the rest.

We proceed through the familiar proofs from Scripture for the Mishnah’s propositions.

- I.1** A. **How many times do they flog him? Forty stripes less one:]** *what is the scriptural basis for this definition?*
 - B. *If Scripture said, “Forty in number,” with no further specification, I should have assumed it meant forty in number. But now that it is written, “By number, forty,” we have in mind a number that completes the complement of forty [and that is thirty-nine].*
- I.2.** A. *Said Raba, “What jerks! The rest of the people stand up in front of a scroll of the Torah but don’t stand up in front of an eminent authority! For in the Scroll of the Torah it is written, ‘forty,’ and it is rabbis who have the wit to cut that number down!”*
- II.1** A. **R. Judah says, “He is flogged a full forty times.” And where does the additional one fall? Between the shoulders:**
 - B. *Said R. Isaac, “What is the scriptural basis behind the position of R. Judah? It is written, ‘And one shall say, what are these wounds between your hands [that is, between the shoulders, explaining the place of the additional one], then he shall answer, I was beaten in the house of my friends’ (Zec. 13: 6) [who once more make me a friend of God].”*
 - C. *And rabbis?*
 - D. *That verse speaks of punishing school children [not law-violators].*
- III.1** A. **They make an estimate of his capacity to take the flogging [without being irreparably injured or killed] only by a number divisible by three. [If] they estimated him as able to take forty, [if] he then received part of the flogging, and they said that he cannot take all forty, he is exempt:**

- B. So it follows that, if he has been flogged at all, then that rule applies, but if he has not been flogged at all, that rule does not apply! *But there is the following contradictory statement:* If they estimated that he can take forty stripes, then they estimated that he cannot take forty stripes, he is exempt from a flogging. If they estimated that he can take eighteen and then they estimated that he can take forty, he is exempt. [This statement does not tell us that he has been flogged at all, so the condition of the Mishnah-rule is not in play here.]
- C. *Said R. Sheshet, "There is no contradiction. The one passage refers to a case in which they made the estimate of the fitness for the same day as the flogging, the other, the estimate of his fitness concerned the next or some later day [and in that case, the court may adjust the penalty].*
- I.1 provides the required scriptural explanation. Nos. 2-3 are tacked on. II.1 follows the usual program.

3:11D-F

- D. [If] he committed a transgression on which he is liable on two counts of violating negative commandments, and they make a single estimate [of what he can take, covering both sets],
- E. he is flogged and exempt [from the other].
- F. And if not, he is flogged and allowed to heal, and then goes and is flogged again.
- I.1 A. *But has it not been taught on Tannaite authority: an estimate concerning one flogging is not made in connection with the penalty for violating two prohibitions?*
- B. *Said R. Sheshet, "There is no contradiction. In the one case, they made an estimate in a case in which he was subject to forty-one stripes, but the Mishnah's rule speaks of a case in which they assigned him forty-two [thirty-nine for one count, three for the other; he can take the whole at once and is done]."*

All we have is a harmonization of a rule in the Mishnah with a corresponding rule of equal validity.

3:12-14

3:12

- A. How do they flog him?
- B. One ties his two hands on either side of a pillar,
- C. and the minister of the community grabs his clothing —
- D. if it is torn, it is torn, and if it is ripped to pieces, it is ripped to pieces —
- E. until he bares his chest.
- F. A stone is set down behind him, on which the minister of the community stands.
- G. And a strap of cowhide is in his hand, doubled and redoubled, with two straps that rise and fall [fastened] to it.

3:13

- A. Its handle is a handbreadth long and a handbreadth wide,
- B. and its end must reach to his belly button.

- C. And he hits him with a third of the stripes in front and two-thirds behind.
- D. And he does not hit [the victim] while he is either standing or sitting, but bending low,
- E. as it is said, “And the judge will cause him to lie down” (Deu. 25: 2).
- F. And he who hits him hits with one hand, with all his might.

3:14

- A. And a reader reads: “If you will not observe to do... the Lord will have your stripes pronounced, and the stripes of your seed” (Deu. 28:58ff.) (and he goes back to the beginning of the passage). “And you will observe the words of this covenant” (Deu. 29: 9), and he finishes with, “But he is full of compassion and forgave their iniquity” (Psa. 78:38), and he goes back to the beginning of the passage.
- B. And if the victim dies under the hand of the one who does the flogging, the latter is exempt from punishment.
- C. [But if] he added even a single stripe and the victim died, lo, this one goes into exile on his account,
- D. If the victim dirtied himself, whether with excrement or urine, he is exempt [from further blows].
- E. R. Judah says, “In the case of man, with excrement; and in the case of a woman, with urine.”

I.1 A. [23A] How do they flog him? One ties his two hands on either side of a pillar, and the minister of the community grabs his clothing — if it is torn, it is torn, and if it is ripped to pieces, it is ripped to pieces — until he bares his chest:

- B. *What is the scriptural basis?*
- C. It is on the count of, “And your brother become debased” (Deu. 25: 3). [Lazarus: one is not to strike the offender capriciously but a carefully determined number of lashes, lest he become too degraded.]”

II.1. A. And a strap of cowhide:

- B. Said R. Sheshet said R. Eleazar b. Azariah, “How on the basis of Scripture do we know that it is of calf-hide? ‘Forty lashes shall he strike him’ (Deu. 25: 4) alongside ‘you shall not muzzle the ox in its ploughing’ (Deu. 25: 4).”

II.2. A. Said R. Sheshet said R. Eleazar b. Azariah, “How on the basis of Scripture do we know that the deceased childless brother’s widow who is obligated to enter into levirate marriage with her late husband’s surviving brother, in the case in which the latter is suffering with boils, is not to be muzzled [but may dissent from the marriage]? It is written, ‘you shall not muzzle the ox in its ploughing’ (Deu. 25: 4), and, alongside, ‘if brothers dwell together’ (Deu. 25: 5).”

II.3. A. And said R. Sheshet said R. Eleazar b. Azariah, “Whoever treats with contempt the intermediate days of festivals is as though he worshiped an idol.

- B. “For it is written, ‘You shall make no molten gods’ (Exo. 34:17), *and, alongside*, ‘The feast of unleavened bread you shall keep’ (Exo. 34:18-23).”

II.4. A. And said R. Sheshet said R. Eleazar b. Azariah, “Whoever carries gossip and whoever receives it and whoever bears false witness is worthy of being thrown to

the dogs, for it is written, 'you shall throw it to the dogs' (Exo. 22:31), and alongside, 'You shall not carry a false report, do not put your hand with the wicked to be an unrighteous witness' (Exo. 34: 1), reading the word as though it were written to yield 'do not beguile someone else.'"

III.1 A. ...doubled and redoubled, with two straps that rise and fall [fastened] to it:

B. *A Tannaite statement:* it was made of the hide of an ass.

III.2. A. That is in line with what a certain Galilean said in this regard before R. Hisda:

"The ox knows its own, and the ass its master's crib, but Israel does not know, my people does not consider' (Isa. 1: 3) —

B. "Said the Holy One, blessed be he, 'Let the one come who recognizes its master's crib and exact punishment from one who does not recognize his master's crib.'"

IV.1 A. Its handle is a handbreadth long and a handbreadth wide, and its end must reach to his belly button:

B. *Said Abbaye, "That is to say: for each individual we should provide a lash in proportion to his back."*

C. *Said to him Raba, "If so, there will be a great many sets of lashes!"*

D. *Rather, said Raba, "The lash has a clasp, so that, if necessary, it can be shortened, and, if necessary, it can be lengthened."*

V.1 A. And he hits him with a third of the stripes in front and two-thirds behind:

B. *What is the source in Scripture for this statement?*

C. Said R. Kahana, "Said Scripture, 'And the judge shall have him lie down and have him beaten before him according to the measure of his wicked action, by number' (Deu. 25: 2), that is, one third of 'his wicked action' on the front side, two thirds on the back."

VI.1 A. And he does not hit [the victim] while he is either standing or sitting, but bending low:

B. [With reference to the detail, ...**doubled and redoubled**:] Said R. Hisda said R. Yohanan, "How on the basis of Scripture do we know that the lash is folded? 'And the judge shall have it fall [lie down] and have it strike him [beaten before him] according to the measure of his wicked action, by number' (Deu. 25: 2)."

C. *But lo, that verse is required to make its own point!*

D. *If so, Scripture should have stated, "he shall have him bend over," so why say, "he shall make it fall"? It is to make both points.*

VII.1 A. And he who hits him hits with one hand, with all his might:

B. *Our rabbis have taught on Tannaite authority:*

C. They appoint in charge of the flogging not those who bear public responsibility [*hazanim* (?)] only those who lack physical power but exhibit abundant knowledge.

D. R. Judah says, "They appoint even though who lack knowledge but exhibit physical power."

E. *Said Raba, "Reason accords with the view of R. Judah, for it is written, 'Forty he shall have him beaten, he shall not exceed, lest he exceed (Deu. 25: 2). Now if you maintain that the rite may be in the hands of those who lack knowledge, that*

explains why it is necessary to include such an admonition not to exceed the requisite number. But if you say that the flogging is to be in the hands of those with abundant knowledge, is it necessary then to include that admonition?"

F. *And rabbis?*

G. *Only the cautious are cautioned.*

VII.2. A. *A Tannaite statement:*

B. When he raises up the lash, he raises it up with both hands, but when he smites, he smites with only one hand,

C. *so that it comes down on its own momentum.*

VIII.1. A. **And a reader reads: "If you will not observe to do... the Lord will have your stripes pronounced, and the stripes of your seed" (Deu. 28:58ff.) (and he goes back to the beginning of the passage). "And you will observe the words of this covenant" (Deu. 29: 9), and he finishes with, "But he is full of compassion and forgave their iniquity" (Psa. 78:38), and he goes back to the beginning of the passage:**

B. *Our rabbis have taught on Tannaite authority:*

C. The most important of the judges makes the recitation, the second does the counting, the third says, "Smite him."

D. When the flogging involves many strokes, he draws out the recitation, when it is few, he cuts it short.

E. *But lo, we have learned in the Mishnah: and he goes back to the beginning of the passage!*

F. What he should do is make the recitation exactly as long as the flogging, but if he did not accomplish that, then he goes back to the beginning of the verse of Scripture.

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

B. "He shall not exceed an ample flogging" (Deu. 25: 3).

C. I know only that "an ample beating" is prohibited, how do I know that even a slight flogging over and above the prescribed number is not permitted?

D. From the language, "He shall not exceed," which indicates that even the prescribed number of strikes was enough.

IX.1. A. **If the victim dirtied himself, whether with excrement or urine, he is exempt [from further blows]. R. Judah says, "In the case of man, with excrement; and in the case of a woman, with urine:"**

B. *Our rabbis have taught on Tannaite authority:*

C. **"All the same are man and woman: the flogging is suspended if the dirtying was with excrement, but not with urine," the words of R. Meir.**

D. **R. Judah says, "In the case of a man, with excrement, and in the case of a woman, with urine."**

E. **And sages say, "All the same are man and woman: whether the soiling is with excrement or urine, one is exempt from further flogging" [T. Mak. 5:14N-P].**

F. *But has it not been taught on Tannaite authority: "All the same are man and woman: the flogging is suspended if the dirtying was with excrement"!*

- G. Said R. Nahman bar Isaac, “In regard to excrement, the two classes of person are the same.”

IX.2. A. Said Samuel, “If they tied him to the post and he fled from the court, he is exempt.”

- B. *It was objected:* If he dirtied himself, whether at the first or the second stroke, they let him go. If the thong snapped at the second stroke, they let him go, but if it was at the first, they do not. *But why not at the first stroke? Why just treat it as if he had escaped?*

- C. *In that case, he really did run away, in this one, he did not.*

IX.3. A. *Our rabbis have taught on Tannaite authority:*

- B. **If they came to an estimate that if he is flogged, he will have loose bowels, they flog him. If they came to an estimate that if he leaves the court, he will have loose bowels, they flog him. If he had loose bowels before he was flogged, the flog him nonetheless, as it is said, “Then if the guilty man deserves to be beaten, the judge shall cause him to lie down and be beaten in his presence with a number of stripes in proportion to his offence; forty stripes may be given him, but no more, lest, if one should go on to beat him with more stripes than these, your brother be degraded in your sight” (Deu. 25:2-3) [T. Mak. 5:14H-J], not if he had already been degraded while in court.**

I.1, II.1 find the scriptural basis for the Mishnah’s facts. Nos. 2-4 are tacked on for obvious reasons. III.1 clarifies the statement of the Mishnah, itself complemented by No. 2. IV.1 explains the practical application of the rule. V.1 provides a scriptural foundation for the Mishnah’s law. VI.1 refers back to an earlier clause of the Mishnah in sequence, but is located here because it invokes the immediately-prior proposition. VII.1 adds a Tannaite complement. No. 2 follows suit. VIII.1,2 and IX.1, 3 provide Tannaite expansions of the Mishnah’s statements. No. 2 adds an important supplementary rule.

3:15-16

3:15

- A. **“All those who are liable to extirpation who have been flogged are exempt from their liability to extirpation,**
- B. **“as it is said, ‘And your brother seem vile to you’(Deu. 25: 3) —**
- C. **“once he has been flogged, lo, he is tantamount to your brother,” the words of R. Hananiah b. Gamaliel.**
- D. **Said R. Hananiah b. Gamaliel, “Now if one who does a single transgression — [Heaven] takes his soul on that account, he who performs a single religious duty — how much the more so that his soul will be saved for [handed over to] him on that account!”**
- E. **R. Simeon says, “From its own passage we may learn that same proposition,**
- F. **“for it is written, ‘Even the souls that do them shall be cut off’ (Lev. 18:29);**
- G. **[23B] “and it is said, ‘Which if a man do he shall live by them’ (Lev. 18: 4).**

- H. “Lo, whoever sits and does no transgression — they give him a reward like that which goes to one who [goes and] does a religious duty.”
- I. R. Simeon b. Rabbi says, “Lo, it says, ‘Only be sure that you do not eat the blood, for the blood is the life’ (Deu. 12:23).”
- J. “Now if for keeping away from eating blood, which the soul of man despises — he who keeps away from it receives a reward,
- K. “robbery and fornication, which the soul of a man desires and after which he lusts — he who keeps away from them how much the more will attain merit —
- L. “for him, and for his descendants, and for the descendants of his descendants, to the end of all generations!”

3:16

- A. R. Hananiah b. Aqashia says, “The Holy One, blessed be he, wanted to give merit to Israel.
- B. “Therefore he gave them abundant Torah and numerous commandments,
- C. “as it is said, ‘It pleased the Lord for his righteousness’ sake to magnify the Torah and give honor to it (Isa. 42:21).”

The issues of the Mishnah-dispute are clarified.

- I.1** A. [Said R. Hananiah b. Gamaliel, “Now if one who does a single transgression — Heaven takes his soul on that account, he who performs a single religious duty — how much the more so that his soul will be saved for him on that account!”:] Said R. Yohanan, “R. Hananiah b. Gamaliel’s colleagues [Aqiba and Ishmael, who insist upon repentance, not punishment, as the condition of avoiding extirpation] differed from him.”
- B. *Said R. Adda bar Ahbah, “They say in the household of the master, ‘We have learned in the Mishnah: There is no difference between the Sabbath and the Day of Atonement except that deliberately violating this one is punishable at the hands of an earthly court, while deliberately violating that one is punishable through extirpation [M. Meg. 1:5C]. Now if [Hananiah b. Gamaliel were right,] then both the one and the other should be punishable in the hands of an earthly court.’”*
- C. *R. Nahman bar Isaac says, “Lo, who is the authority behind this Mishnah-passage? It is R. Isaac, who has said, ‘There is no flogging of those who are subject to the penalty of extirpation. For it has been taught on Tannaite authority:*
- D. “R. Isaac says, ‘All those violations of the law that are punishable by extirpation were subject to a single encompassing statement [‘For whoever shall do any of these abominations — the persons that do them shall be cut off from among their people’ (Lev. 18:29)], and why was the penalty of extirpation made explicit in particular in the case of his sister? It was to impose in that case the penalty of extirpation and not mere flogging.”
- E. *R. Ashi said, “You may even say the opinion accords with the view of rabbis. In the case of the Sabbath, the principal penalty is inflicted by the earthly court, in the*

case of the Day of Atonement, the principal penalty is inflicted by the heavenly court.”

I.2. A. Said R. Adda bar Ahbah said Rab, “The decided law is in accord with R. Hananiah b. Gamaliel.”

B. *Said R. Joseph, “Well, who has gone up to heaven and ‘said’ [that is, returned and made this definitive statement]?!”*

C. *Said to him Abbaye, “But but then, in line with what R. Joshua b. Levi said, ‘Three rulings were made by the earthly court, and the court on high concurred with what they had done,’ ask the same question — who has gone up to heaven and returned and ‘said’ [made this definitive statement]?! Rather, we expound verses of Scripture [to reach dependable conclusions], and in this case, too, we expound verses of Scripture.”*

I.3. A. *Reverting to the body of the foregoing:* R. Joshua b. Levi said, “Three rulings were made by the earthly court, and the court on high concurred with what they had done,’ ask the same question:”

B. And what were these?

C. Reciting the scroll of Esther, greeting people with the divine name, and the presentation of the Levite’s tithe to the Temple chamber.

D. Reciting the scroll of Esther, as it is written, “They confirmed, and the Jews took upon them and their descendants” (Est. 9:27) —

E. “they confirmed” above what they had “taken upon themselves” below.

F. greeting people with the divine name: as it is written, “As it is said, “And behold Boaz came from Bethlehem; and he said to the reapers, ‘The Lord be with you’ And they answered, ‘The Lord bless you’” Rut. 2: 4). And Scripture says, “The Lord is with you you mighty man of valor” (Jud. 6:12).

G. *What is the point of the addition, “The Lord is with you you mighty man of valor” (Jud. 6:12)?*

H. *Lest you say that Boaz made this up on his own, and Heaven did not approve, come and note what follows: “The Lord is with you you mighty man of valor” (Jud. 6:12).*

I. and the presentation of the Levite’s tithe to the Temple chamber: as it is written, “Bring the whole tithe to the store house that there may be food in my house and try me herewith, says the Lord of hosts, if I will not open for you the windows of heaven and pour out for you a blessing, until there be no enough” (Mal. 3:10).

J. *What is the meaning of the phrase, “until there be no enough” (Mal. 3:10)?*

K. Said Rami bar Rab, “Until your lips get tired of saying, ‘Enough, enough.’”

I.4. A. Said R. Eleazar, “In three places the Holy Spirit made an appearance: at the court of Shem, at the court of Samuel in Ramah, and at the court of Solomon.

B. “at the court of Shem: ‘And Judah acknowledged them and said, she is right, it is from me’ (Gen. 38:26).

C. *“And how did he know for sure? Perhaps as he had come to her, so other men had come to her?”*

D. “But an echo came forth and said, ‘She is right, these things have come about by my insistence.’”

- E. “at the court of Samuel in Ramah: “Here I am, witness against me before the Lord and before his anointed: whose ox have I taken or whose ass?” And they said, “You have not defrauded us nor oppressed us, nor have you taken anything from anybody.” And he said to them, “The Lord is witness against you and his anointed is witness this day that you have found nothing against me,” and he said, “he is witness”” (1Sa. 12: 3-5).”
- F. ““And he said’ should be, ‘and they said,’ But an echo came forth and said, ‘I am witness in this matter.’
- G. “and at the court of Solomon: ‘And the king answered and said, “Give her the living child and in no way kill it, she is his mother”” (1Ki. 3:27).
- H. “*So how did he know for sure? Maybe she was just crafty?* But an echo came forth and said, ‘She is his mother.’”

I.5. A. *Said Raba, “But maybe Judah was able to calculate the months and days and found them to coincide?”*

- B. “‘{And the answer is:] *Where we can see evidence, we may propose a hypothesis, but where there is no evidence to be discerned, there also is no hypothesis to be proposed!*
- C. “*Maybe Samuel referred to all Israel using a collective noun and a singular verb, in line with the usage here: ‘O Israel, you [sing.] are saved by the Lord with an everlasting salvation, you shall not be ashamed’ (Isa. 45:17)?*
- D. “*And with Solomon too, could he reached such a conclusion merely because he saw that one woman was compassionate, the other not?*
- E. “*All of these conclusions, therefore, are tradition.*”

II.1 A. Therefore he gave them abundant Torah and numerous commandments:

- B. R. Simelai expounded, “Six hundred and thirteen commandments were given to Moses, three hundred and sixty-five negative ones, corresponding to the number of the days of the solar year, and two hundred forty-eight positive commandments, corresponding to the parts of man’s body.”
- C. *Said R. Hamnuna, “What verse of Scripture indicates that fact? ‘Moses commanded us Torah, an inheritance of the congregation of Jacob’ (Deu. 33: 4). The numerical value assigned to the letters of the word Torah is [24A] six hundred and eleven, not counting, ‘I am’ and ‘you shall have no other gods,’ since these have come to us from the mouth of the Almighty.”*
- D. [Simelai continues:] “David came and reduced them to eleven: ‘A Psalm of David: Lord, who shall sojourn in thy tabernacle, and who shall dwell in thy holy mountain? (i) He who walks uprightly and (ii) works righteousness and (iii) speaks truth in his heart and (iv) has no slander on his tongue and (v) does no evil to his fellow and (vi) does not take up a reproach against his neighbor, (vii) in whose eyes a vile person is despised but (viii) honors those who fear the Lord. (ix) He swears to his own hurt and changes not. (x) He does not lend on interest. (xi) He does not take a bribe against the innocent’ (Psalm 15).”
- E. “He who walks uprightly.” this is Abraham: “Walk before me and be wholehearted” (Gen. 17: 1).
- F. “and works righteousness.” this is Abba Hilqiahu.

- G. “speaks truth in his heart:” for instance R. Safra.
- H. “has no slander on his tongue:” this is our father, Jacob: “My father might feel me and I shall seem to him as a deceiver” (Gen. 27:12).
- I. “does no evil to his fellow:” he does not go into competition with his fellow craftsman.
- J. “does not take up a reproach against his neighbor:” this is someone who befriends his relatives.
- K. “in whose eyes a vile person is despised:” this is Hezekiah, king of Judah, who dragged his father’s bones on a rope bed.
- L. “honors those who fear the Lord:” this is Jehoshaphat, king of Judah, who, whenever he would see a disciple of a sage, would rise from his throne and embrace and kiss him and call him, “My father, my father, my lord, my lord, my master, my master.”
- M. “He swears to his own hurt and changes not:” this is R. Yohanan.
- N. For said R. Yohanan, “I shall continue fasting until I get home.”
- O. “He does not lend on interest:” not even interest from a gentile.
- P. “He does not take a bribe against the innocent:” such as R. Ishmael b. R. Yosé.
- Q. “He who does these things shall never be moved:”
- R. When Rabban Gamaliel *reached this verse of Scripture, he would weep, saying, “If someone did all of these [virtuous deeds], then he will never be moved, but not merely on account of one of them.”*
- S. They said to him, “Is it written, ‘Who does all of these things;’? What is written is only ‘who does these things,’ meaning, even one of them.”
- T. “For if you do not say this, then there is another verse of Scripture of which we have to take account: ‘Do not defile yourselves in all of these things’ (Lev. 18:24). Does this mean that one is unclean only if he touches all of these things, but not if he touches only one of them? But does it not mean, only one of them:?”
- U. “Here too it means that only one of these things is sufficient.”
- V. [Simelai continues:] “Isaiah came and reduced them to six: ‘(i) He who walks righteously and (ii) speaks uprightly, (iii) he who despises the gain of oppressions, (iv) shakes his hand from holding bribes, (v) stops his ear from hearing of blood (vi) and shuts his eyes from looking upon evil, he shall dwell on high’ (Isa. 33:25-26).”
- W. “He who walks righteously:” this is our father, Abraham: “For I have known him so that he may command his children and his household after him” (Gen. 18:19).
- X. “speaks uprightly:” this is one who does not belittle his fellow in public.
- Y. “he who despises the gain of oppressions:” for example, R. Ishmael b. Elisha.
- Z. “shakes his hand from holding bribes:” for example, R. Ishmael b. R. Yosé.
- AA. “stops his ear from hearing of blood:” *who will not listen to demeaning talk about a disciple of rabbis and remain silent.*
- BB. *For instance, R. Eleazar b. R. Simeon.*
- CC. “and shuts his eyes from looking upon evil:” that is in line with what R. Hiyya bar Abba said.

- DD. For said R. Hiyya bar Abba, "This is someone who does not stare at women as they are standing and washing clothes.
- EE. Concerning such a man it is written, "he shall dwell on high."
- FF. [Simelai continues:] "Micah came and reduced them to three: 'It has been told you, man, what is good, and what the Lord demands from you, (i) only to do justly and (ii) to love mercy, and (iii) to walk humbly before God' (Mic. 6: 8)."
- GG. "only to do justly:" this refers to justice.
- HH. "to love mercy:" this refers to doing acts of loving kindness.
- II. "to walk humbly before God:" this refers to accompanying a corpse to the grave and welcoming the bread.
- JJ. And does this not yield a conclusion a fortiori: if matters that are not ordinarily done in private are referred to by the Torah as "walking humbly before God," all the more so matters that ordinarily are done in private.
- KK. [Simelai continues:] "Isaiah again came and reduced them to two : 'Thus says the Lord, (i) Keep justice and (ii) do righteousness' (Isa. 56: 1).
- LL. "Amos came and reduced them to a single one, as it is said, 'For thus says the Lord to the house of Israel. Seek Me and live.'"
- MM. *Objected R. Nahman bar Isaac, "Maybe the sense is, 'seek me' through the whole of the Torah?"*
- NN. Rather, [Simelai continues:] "Habakkuk further came and based them on one, as it is said, 'But the righteous shall live by his faith' (Habakkuk 2: 4)."

Reflections on Israel's Life within History

- II.2.** A. Said R. Yosé bar Hanina, "Four decrees did our lord, Moses, make against Israel. Four prophets came along and annulled them.
- B. "Moses said, 'And Israel dwells in safety alone at the fountain of Jacob' (Deu. 33:28). Amos came and annulled it: 'Then I said, O Lord God, stop, I ask you, how shall Jacob stand alone, for he is small,' and it goes on, 'The Lord repented concerning this: This also shall not be, says the Lord god' (Amo. 7: 5-6).
- C. "Moses said, 'And among those nations you shall have no repose' (Deu. 28:65). Jeremiah came and annulled it: 'Thus says the Lord, the people that were left of the sword have found grace in the wilderness, even Israel, when I go to provide him rest' (Jer. 31: 1).
- D. "Moses said, 'The Lord...visits the sin of the fathers upon the children and upon the children's children to the third and to the fourth generation' (Exo. 34: 7), but Ezekiel said, 'the soul that sins it shall die' (Eze. 18: 3-4).
- E. "Moses said, 'And you shall perish among the nations' (Lev. 26:38), but Isaiah said, 'And it shall come to pass in that day that a great horn shall sound and they shall come who were lost in the land of Assyria' (Isa. 27:13)."
- II.3.** A. Said Rab, "I am troubled by this verse: 'And you shall perish among the nations' (Lev. 26:38)."
- B. *To this objected R. Pappa, "Perhaps the meaning is, something that was lost and searched for, in line with this usage: 'I have gone astray like a lost sheep, seek your servant' (Psa. 119:176)?"*

- C. *At issue for Rab was the end of the same verse: "And the land of your enemies shall eat you up" (Lev. 26:38).*
- D. *To this objected Mar Zutra, "But perhaps the meaning is, in the way in which cucumbers and pumpkins are eaten [that is, slice by slice]."*

- II.4.** A. Once upon a time Rabban Gamaliel, R. Eleazar b. Azariah, R. Joshua, and R. Aqiba were walking along the way and heard the roar of Rome all the way from Puteoli, at a distance of a hundred and twenty miles. They began to cry, but R. Aqiba brightened up.
- B. They said to him, "Why so cheerful?"
 - C. He said to them, "Why so gloomy?"
 - D. They said to him, "These Cushites worship sticks and stones and burn incense to idolatry but live in safety and comfort, while as to us, the house that was the footstool for our God is burned **[24B]** with fire! Why shouldn't we cry?!"
 - E. He said to them, "But that's precisely why I rejoice. If those who violate his will have it so good, those who do his will all the more so!"

- II.5.** A. Once again, they were going up to Jerusalem. When they got to Mount Scopus, they tore their garments. When they reached the Temple mount, they saw a fox emerge from the house of the Holy of Holies. They began to cry, but R. Aqiba brightened up.
- B. They said to him, "Why so cheerful?"
 - C. He said to them, "Why so gloomy?"
 - D. They said to him, "The place of which it once was said, 'And the non-priest who draws near shall be put to death' (Num. 1:51) has become a fox hole, so shouldn't we weep?"
 - E. He said to them, "But that's precisely why I rejoice. It is written, 'And I will take to me faithful witnesses to record, Uriah the priest and Zechariah son of Jeberechiah' (Isa. 8: 2). And what has Uriah the priest to do with Zechariah? Uriah lived during the first Temple, and Zechariah during the second, but Scripture had linked the prophesy of Zechariah to the prophecy of Uriah. In the case of Uriah: 'Therefore shall Zion for your sake be ploughed as a field' (Mic. 3:12). Zechariah: 'Thus says the Lord of hosts, there shall yet old men and old women sit in the broad places of Jerusalem' (Zec. 8: 4). Until the prophecy of Uriah was fulfilled, I was afraid that the prophecy of Zechariah might not be fulfilled. Now that the prophecy of Uriah has come about, we may be certain that the prophecy of Zechariah will be fulfilled word for word."
 - F. They said to him, "Aqiba, you have given us comfort, Aqiba, you have given us comfort."

I.1 identifies contrary positions to the one expressed in the Mishnah. No. 2 investigates the issue of the divided law. Nos. 3, 4+5 footnote the foregoing. II.1 concludes with a flourish. II.1, 2+3, 4, 5 tack on free-standing compositions that concern the interpretation of Israel's life in history.