

משניות

(בששה כרכים)

ד

סדר נזיקין

המשניות בעברית מנקדת, הקדמות, תרגום אנגלי, פרוש אנגלי,
הוספות, לוחות המפתחות.

מאת

שלום שרגא בלאקמאן

מחבר של מלון "אנגלי-עברי", "שיחון עברי", ו"ג"

בהוצאת

משנה פרעס (ל. מ. שנפלד)

שנת תשי"ד לפ"ק

הוצאה ראשונה, תשי"ד לפ"ק

זכויות הדפסה והעתקה
שמורות לבעלים

מדפס בשביל

משנה פרעס (ל. מ. שנפלד)

על ידי

ווילימס, ליה וקו, לטד" לונדון, אנגליה

MISHNAYOTH

(In Six Volumes)

VOLUME IV

ORDER NEZIKIN

[POINTED HEBREW TEXT, INTRODUCTIONS, TRANSLATION,
NOTES, APPENDIX, SUPPLEMENT, INDEXES]

By

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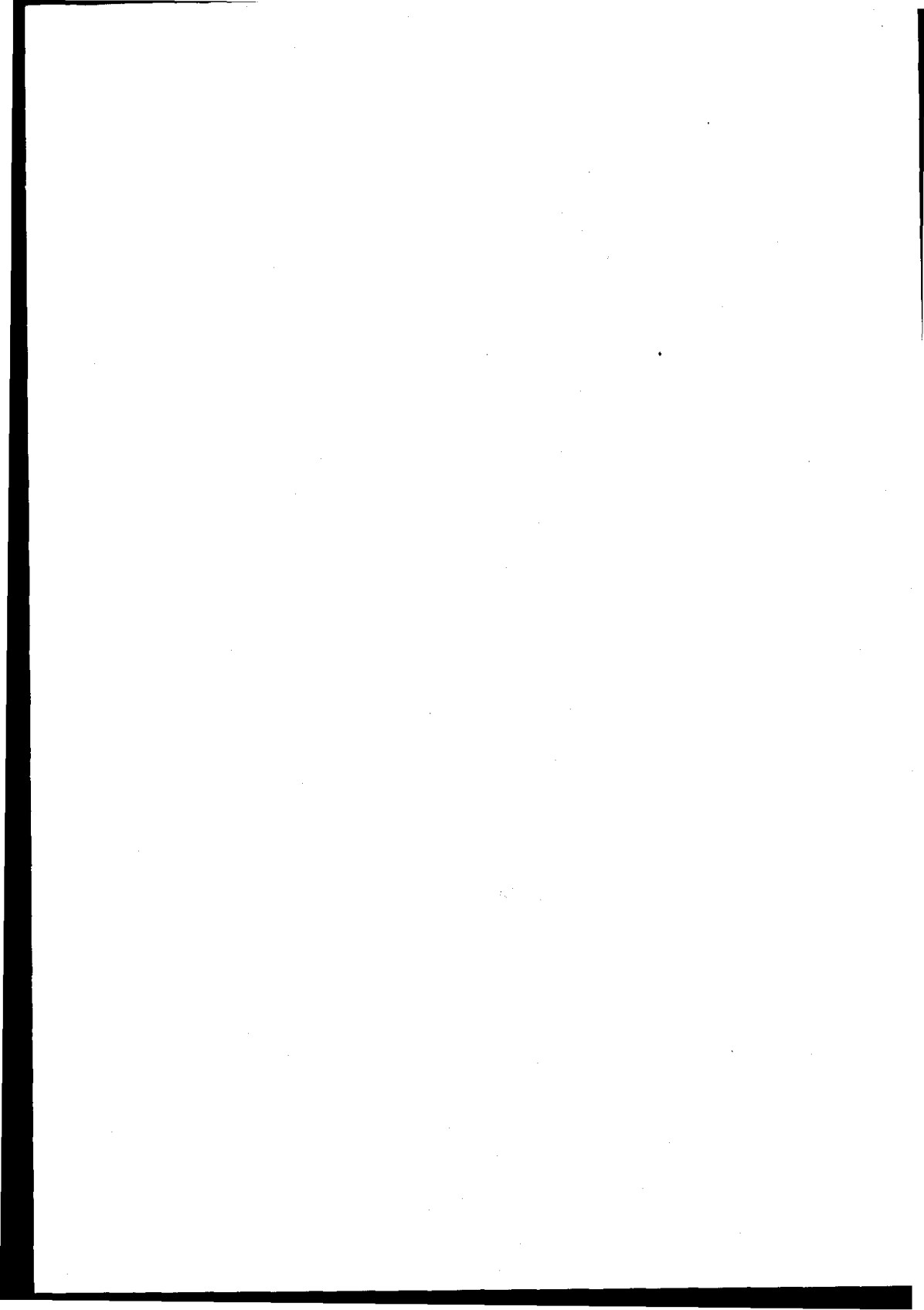
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PREFACE

This fourth volume, Order NEZIKIN, conforms in all respects to the preceding three volumes already published (Orders ZERAIM, MOED and NASHIM).

NEZIKIN is of supreme importance because it deals mainly with the whole code of the Mosaic civil and criminal laws for which reason the Order—notably its first three Tractates—receives particular attention from students and scholars, probably more than does any one of the other Orders.

NEZIKIN also contains a wealth of historical information and deals prominently with moral and social matters.

All editions of the *Prayer Book* include the whole Tractate AVOTH for recital and study (see the Introduction on page 487) and no other Tractate has received such conspicuous treatment. Other Tractates, such as YOMA, SUCCAH and ROSH HASHANAH, may be found in some *Machzorim* and in some larger editions of the *Prayer Book*, while Tractate PESACHIM is included in some Passover *Haggadahs*, yet all these are presented for reference purposes only.

The author wishes to express his indebtedness to the following Jewish scholars who have given selflessly of their time and labour in revising the MS.: Rabbi Dr. S. M. Lehrman, M.A., Ph.D. (*Baba Kamma*), Rabbi Isaac Cohen, B.A. (*Baba Metziah*), Rev. M. Zeffertt, B.A. (*Baba Bathra*), Rev. N. Bergerman, B.A. (*Sanhedrin*), Rev. Dr. S. Goldman, M.A., D. Phil. (*Makkoth*), Rabbi E. Newman, M.A. (*Shevuoth, Eduyoth*), Rabbi S. Rapoport, B.A. (*Avodah Zarah*), Rabbi I. Waller, B.A. (*Avoth, Horayoth*).

I also wish to extend my deepfelt gratitude to the Publisher, Mr. Lasar M. Schoenfeld, for his magnanimous financial support and enthusiasm which have made it possible to publish this great volume in the short time since Volume III was published.

Tribute and thanks are due to the Printers, Williams, Lea & Co., Ltd., for the excellence of their work.

PHILIP BLACKMAN.

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GENERAL INTRODUCTION

Nezikin§ is the *Fourth Order* (סֵדֶר רְבִיעִי) of the *Mishnah*.*(a)

The term נִזְקִין (or נִזְקֵין), *damages, laws concerning damages, cases of damages, tort, accidents, injuries*, is the plural form of נִזְק or נִזְקָה, *accident, damage, harm, hurt, injury, loss*, derived from the verbal form נִזַּק [Kal not used], corresponding to the *Chaldee verb* נִזַּק, *suffer loss, damage, harm, hurt, injure*.

Nezikin§ deals principally with the laws of private and civil wrongs, capital penalties, homicide, courts of justice and evidence. It consists of these ten *Tractates* (with their main contents very briefly stated):

1. *Baba Kamma** (a), deals with the laws of the deprivation or privation of natural or vested rights and of artificial rights; compensations and restitutions in connection with these. (*Exodus* 21, 28-37, 32, 1-6).

2. *Baba Metzia*, treating mainly with the laws relating to the acquirement and transfer of title to personal property, lost and found property, usury, trust, trading, and hire of labourers. (*Exodus* 22, 6-14, 24-26; *Leviticus* 25, 14, 35-37; *Deuteronomy* 22, 1-4).

3. *Baba Bathra*, dealing principally with the laws concerning the acquisition and transfer of immovable property (real estate)—mostly based on traditional law—and with the responsibilities and obligations involved in such acquirement and possession, and hereditary succession. (*Numbers* 27, 7-11).*(b).

4. *Sanhedrin*, treating with laws of evidence, courts of justice, legal action, and capital punishment.

5. *Makkoth*, deals with the laws of action against false witnesses, homicide, the Cities of Refuge, and the Forty Stripes.

6. *Shevuoth*, treats of the laws of oaths, evidence, and sacrifices.

7. *Eduyoth*, deals with various legal decisions based on traditional rules and views.

8. *Avodah Zarah*, treats of the laws in connection with idolatry.

9. *Aboth, Avoth*, contains a selection of ethical or moral maxims.

10. *Horayoth*, treats mainly with erroneous judicial decisions.

[A fuller summary of the contents are given in the separate INTRODUCTIONS to these *Tractates*.]

NOTE.—In this Volume some explanatory additions to the Translations of the Hebrew Text are interpolated in square brackets (instead of being relegated to the **Notes** as in the first three Volumes), thus simplifying and easing the intelligibility of the English rendering and affording quicker understanding of the Hebrew Text and also reducing the bulk of the **Notes** themselves. Some interesting **Notes**, not absolutely essential in the general body of the Commentary, have been collected at the end of the *Tractates* in order to avoid overloading.

* (a) פְּדַת יְשׁוּעוֹת was known as פְּדַת יְשׁוּעוֹת originally [ORDER OF SALVATION], because observance of its contents would protect the injured against those responsible for his plight. The term פְּדַת יְשׁוּעוֹת was originally given to the three BABAS only, for they deal principally with all kinds of injury and damage to persons and property. (b) The term פְּתַח is the *Arabic* for GATE.

§ The term פְּדַת יְשׁוּעוֹת for the פְּדַת is derived from the third word in פְּתַח פְּתַח פְּתַח 1¹.

VOWELISATION AND ORTHOGRAPHY

This subject is briefly treated in Volume II, Pages 11-12, 505-507, where it was illustrated that many terms have corresponding popular or traditional forms, e.g., סִפְּקָא or סִפְּקָא is popularly pronounced סִפְּקָא, and many words have legitimate alternative pointing, e.g., סִפְּקָא and סִפְּקָא, רְוּם and רוּם; also an enormous number of words have alternative spellings (*viz.*, referring to the letters themselves and not to the vowels), e.g., לְחִישָׁא, לְחִישָׁא; לְחִישָׁא, לְחִישָׁא.

There are numerous cases where *nouns* may be pointed (vocalised) in the (a) *indefinite* form or (b) *definite* form, e.g., (a) בְּזִמְן, (b) בְּזִמְן.

Many of these difficulties of pointing arise from the fact that the *Mishnah* text was set in written form long before the invention of the vowel points (*circa* the 7th Century C.E.).

In many cases of the *verbal* forms uncertainty arises regarding the pointing (though the actual meaning of a context may not be affected), e.g., בְּבַח קָמָא 23, שְׂקִיפְצוּ [Kal] or שְׂקִיפְצוּ [Pial], 53, וּפְתַחוּ (*verb* + *accusative suffix*) or וּפְתַחוּ [*noun* + *possessive suffix*]; מְקַרְאוֹת 107, בְּשׁוֹתָהּ [*participle absolute*] or בְּשׁוֹתָהּ [*participle construct*].

THE AUTHORITIES MENTIONED IN NEZIKIN

אָבא שאָנל

בָּבא מְצִיעָא 4¹², 6⁷; בָּבא בְּתָרָא 1⁸, 2⁷; סְנֵהֲדָרִין 10¹; מְכוּת 2²;
אָבוּת 2².

אָבְטֵלִיִּין

עֲדֵיִוֹת 1⁵, 5⁵; אָבוּת 1¹⁰, 1¹¹.

אָדְמוֹן

בָּבא בְּתָרָא 9²; שְׁבוּעוֹת 6⁶.

אָלִיעֶזֶר

בָּבא קָמָא 4⁴; הוֹרְיֹוֹת 1¹.

אָלִיעֶזֶר הַקָּפֶר

אָבוּת 2², 4¹².

אָלִיעֶזֶר בֶּן הוֹרְקָנוֹס

בָּבא קָמָא 1⁴, 6⁴; בָּבא מְצִיעָא 6⁶; בָּבא בְּתָרָא 3³, 4⁴, 9⁹;
סְנֵהֲדָרִין 1¹, 6⁴, 10¹⁰; מְכוּת 3³; שְׁבוּעוֹת 2⁵, 5⁵; עֲדֵיִוֹת 2², 5⁴, 5⁵;
עֲבוּדָה זָרָה 1¹, 3³; הוֹרְיֹוֹת 2², 6⁶, 7⁷, 8⁸, 7¹, 5⁵, 6⁶.

אָלִישַׁע בֶּן אַבְנֵיה

אָבוּת 4²⁰.

אָלִעֶזֶר בֶּן חֶסְמָא

בָּבא מְצִיעָא 7⁷; אָבוּת 3³.

אָלִעֶזֶר בֶּן יְהוּדָה

אָבוּת 3³.

אָלִעֶזֶר בֶּן יַעֲקֹב

מְכוּת 2²; אָבוּת 4¹¹.

אַלְעָזֵר בֶּן עֲזַרְיָה

בְּבֹא קַמָּא 6¹; מַכּוֹת 1¹⁰; עֲדוּת 3¹²; אָבוֹת 3¹⁷.

אַלְעָזֵר בֶּן עֲרִיף

אָבוֹת 2⁹, 14

אַלְעָזֵר בֶּן צְדוֹק

סִנְהֶדְרִין 7²; עֲדוּת 2⁵.

אַלְעָזֵר בֶּן שְׁמוּעַ

אָבוֹת 4¹²

אַלְעָזֵר הַמוֹדְעִי

אָבוֹת 3¹¹

אַנְטִיגֶנוֹס אִישׁ סוֹכוֹ

אָבוֹת 1³

בֵּית הַלֵּל

בְּבֹא מְצִיעָא 3¹²; בְּבֹא בִתְרָא 9⁶; עֲדוּת 1⁷⁻¹⁴, 4¹⁻¹², 5¹⁵.

בֵּית שְׁמַאי

עֲדוּת 3¹⁰

בֶּן בֶּן בֶּן

אָבוֹת 5²²

בֶּן בְּתִירָא

עֲדוּת 8¹

בֶּן הָא הָא

אָבוֹת 5²²

בֶּן עֲזַאי

(שְׁמֵעוֹן בֶּן עֲזַאי sec)

גְּמֵלֵיֶאל

(רָבֵן גְּמֵלֵיֶאל and רָבֵן גְּמֵלֵיֶאל הַגָּזֵן (see

דוֹסָא בֶּן הֶרְפִּינָס

עֲדוּת 3¹⁻⁶; אָבוֹת 3¹¹.

דוֹסָתָאִי בֶּן יַנָּאי

אָבוֹת 3³.

הַלֵּל הַגָּזֵן

בָּבָא מְצִיעָא 5⁵; עֲדוּת 1¹⁻⁴; אָבוֹת 1¹², 1¹³, 1¹⁴, 2⁵, 2⁶, 4⁵, 5¹⁷.

חֶלְפָתָא בֶּן דוֹסָא

אָבוֹת 3³.

חֲנִינָא בֶּן גְּמֵלֵיֶאל

בָּבָא בְּתַרְא 10¹; מִכּוֹת 3¹⁵.

חֲנִינָא בֶּן דוֹסָא

אָבוֹת 3¹⁰, 3¹¹.

חֲנִינָא בֶּן חֲכִינָאי

מִכּוֹת 3³; אָבוֹת 3⁴.

חֲנִינָא סֵגֵן הַפְּתָנִים

עֲדוּת 2¹, 2², 2³; אָבוֹת 3².

חֲנִינָה

(see חֲנִינָא)

. חֲנִינָא

(see חֲנִינָה)

חֲנִינָה בֶּן עֲקָשִׁיא

אָבוֹת 3³.

חֲנִינָה בֶּן תְּרַדְיִין

מִכּוֹת 3³.

טָרְפוֹן

בָּבָא קַמָּא 2⁵; בָּבָא מְצִיעָא 2⁷, 4³; מְכוֹת 1¹⁰; עֲדֵיּוֹת 1¹⁰;
אָבוֹת 2¹⁵, 1⁶.

יְדוּעַ הַבְּבִלִי

בָּבָא מְצִיעָא 7⁹.

יְהוּדָה בֶּן אֶלְעִי

בָּבָא קַמָּא 2⁴, 3¹, 4², 6⁵, 8³, 9⁴; בָּבָא מְצִיעָא 2¹, 3⁷, 8¹¹, 11³;
בָּבָא בְּתָרָא 1⁶, 2⁵, 3², 4¹, 5¹², 6⁷, 7⁹, 9⁶, 10³; סְנֵהֲדָרִין 1³, 2¹, 3³, 4⁴, 5³, 6³, 7², 8⁴, 9¹, 8⁷, 10⁶;
מְכוֹת 1⁵, 2³, 6⁸, 8¹⁰, 14¹⁴; שְׁבוּעוֹת 1⁴, 2³, 3⁶, 7¹, 10², 11⁴;
עֲדֵיּוֹת 1⁶, 3¹², 4⁶, 5¹, 8⁷; עֲבוּדָה וְנָרָה 1⁵, 2⁶, 8⁶, 11¹; אָבוֹת 4¹³;
הוֹרְיוֹת 1⁵.

יְהוּדָה בֶּן בָּבָא

עֲדֵיּוֹת 6¹, 8².

יְהוּדָה בֶּן בְּתִיבָא

שְׁבוּעוֹת 3⁸; עֲדֵיּוֹת 8⁸.

יְהוּדָה בֶּן טַבָּאי

אָבוֹת 1⁶.

יְהוּדָה בֶּן תִּימָא

אָבוֹת 5²⁰, 21⁵.

יְהוּדָה הַפְּהֵן

עֲדֵיּוֹת 8².

יְהוּדָה הַנָּשִׂיא

בָּבָא קַמָּא 5⁵; מְכוֹת 1⁸, 2¹; עֲבוּדָה וְנָרָה 2⁶, 4⁵, 11⁵; אָבוֹת 2², 4²⁰.

יוסי בן יהודה

בבא מציעא 7²; סנהדרין 8³; מכות 2^{3, 4}; אבות 4²⁰.

יוסי בן יהודה איש כפר הבבלי

אבות 4²⁰.

יוסי בן יוחנן

אבות 1⁴.

יוסי בן יועזר

עדות 8⁴; אבות 1⁴.

יוסי בן קסמא

אבות 6⁶.

יוסי הגלילי

בבא קמא 8⁸; בבא מציעא 2¹⁰; סנהדרין 10¹⁰; מכות 2²; עבודה

זרה 3³; הוריות 2².

יוסי הפהן

אבות 2^{2, 12}.

יעקב

אבות 3⁷, 4^{16, 17}.

ישמעאל

אבות 3¹².

ישמעאל בן אלישע

בבא בתרא 3^{1, 6}, 10¹⁰; סנהדרין 1²; שבועות 2², 3³. עדות 2^{4, 6}.

עבודה זרה 1¹, 2², 4⁴; אבות 3¹².

ישמעאל בן יוסף חלפתא

אבות 4⁷.

ישמעאל בנו של יוחנן בן ברוקא

בבא קמא 10¹⁰; סנהדרין 11¹; אבות 4⁴.

מֵאִיר

בָּבֶא קָמָא 2⁴, 3⁰, 4¹, 4², 9²; בָּבֶא מְצִיעָא 1⁰, 2¹, 3¹¹, 4⁵, 6⁵, 7³, 10⁵;
 סְנֵהֲדָרִין 1², 2¹, 3¹, 6⁵, 7⁰; מְכוֹת 1², 2³, 5⁰, 2³; שְׁבוּעוֹת 1¹, 1¹³, 4¹;
 עֲדֵיּוֹת 1⁰, 3¹; עֲבוּדָה וְרָה 1³, 5⁰, 2⁴, 3¹; אָבוֹת 3⁰, 4¹⁰; הוֹרֵיּוֹת 1⁰.

מְנַחֵם בֶּן סַנְגַּאי

עֲדֵיּוֹת 7⁰.

נְהוֹרָאי

אָבוֹת 4¹⁴.

נְחוּם הַמְדִי

בָּבֶא קָמָא 5².

נְחוּנְיָא בֶּן אֶלְיָנָן

עֲדֵיּוֹת 6³.

נְחוּנְיָא בֶּן גּוּדְגָדָא

עֲדֵיּוֹת 7⁰.

נְחוּנְיָא בֶּן הַקְנָה

אָבוֹת 3⁵.

נְחֻמִּיה

סְנֵהֲדָרִין 1⁰, 9¹, 10⁵.

נְחֻמִּיה אִישׁ בֵּית דָּלִי

עֲדֵיּוֹת 8⁰.

נְפָאִי הָאֲרַבְלִי

אָבוֹת 1⁰.

עֲקָבְיָא בֶּן מְהֵלְלָאֵל

עֲדֵיּוֹת 5⁰; אָבוֹת 3¹.

שְׁמֵעוֹן בֶּן זֹמָא

אָבוֹת 4¹.

שְׁמֵעוֹן בֶּן יְהוּדָה

מְכוֹת 3^o.

שְׁמֵעוֹן בֶּן יוֹחִי

בָּבָא קַמָּא 4¹, 6^{2,4}, 7^{2,4}; בָּבָא מְצִיעָא 2^{1o}, 5^o, 4², 5^{1o}; בָּבָא בִּתְרָא 2^{2,14};

4^o, 6^o; סְנֵה־דְרִין 1³, 2⁴, 3³, 7¹, 9², 10^o; מְכוֹת 1¹, 2³, 15^o, 3²;

שְׁבוּעוֹת 1⁴, 3⁴, 4³, 5², 6⁵; עֲדָיִוֹת 5³, 8⁷; עֲבוּדָה וְרָה 3²;

4^{1o}; אָבוֹת 3³, 4¹³; הוֹרְיֹוֹת 1^{2,5}, 2⁷, 3³.

שְׁמֵעוֹן בֶּן גִּנְס

בָּבָא בִּתְרָא 7^o, 10^o; שְׁבוּעוֹת 7^o.

שְׁמֵעוֹן בֶּן גִּתְנָאֵל

אָבוֹת 1², 9^o, 2^o.

שְׁמֵעוֹן בֶּן עֲזַאי

בָּבָא בִּתְרָא 9^{1o}; אָבוֹת 3³, 4³; הוֹרְיֹוֹת 1².

שְׁמֵעוֹן בֶּן שָׁטַח

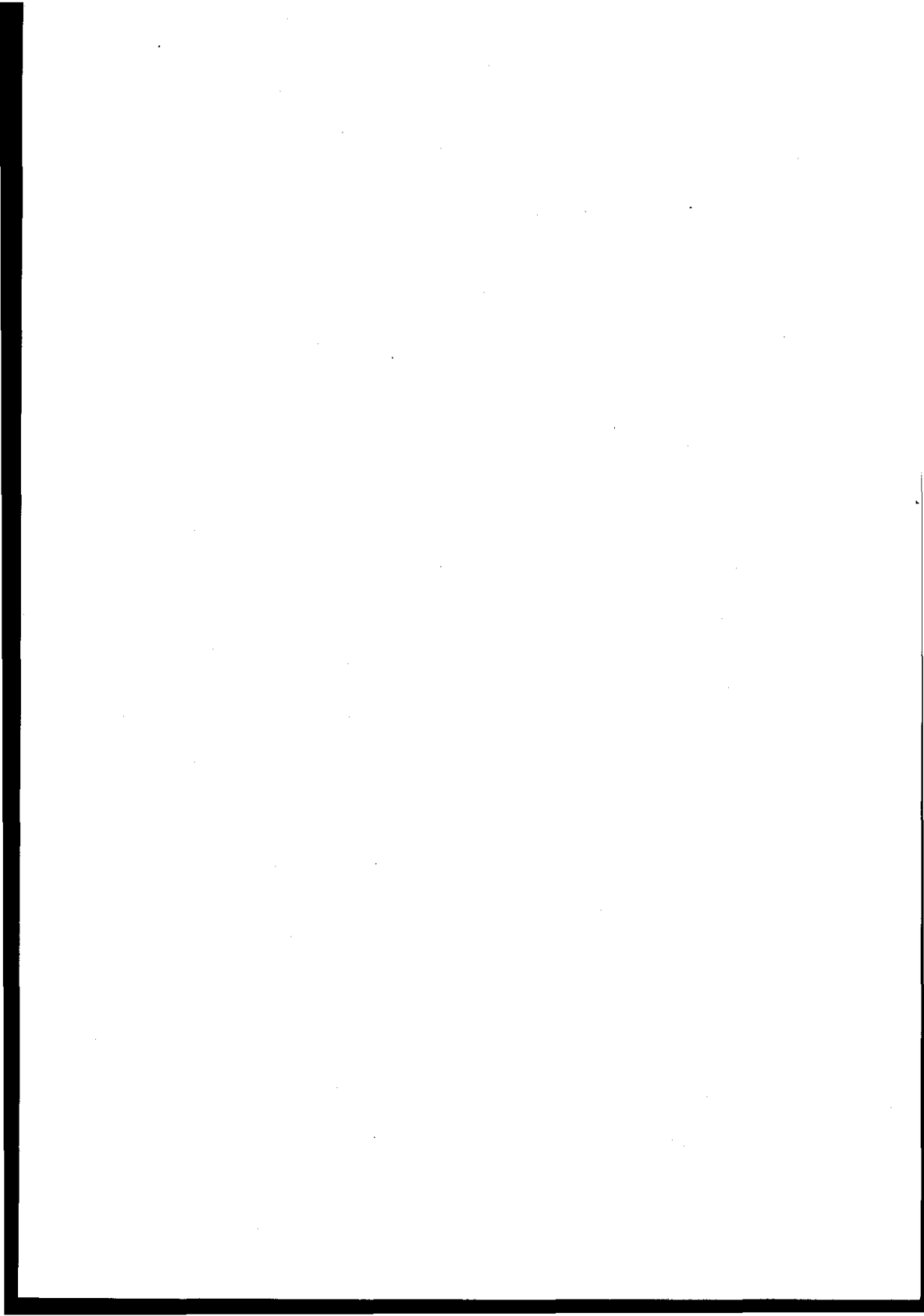
סְנֵה־דְרִין 6¹; אָבוֹת 1^o, 5^o.

שְׁמֵעוֹן הַצַּדִּיק

אָבוֹת 1², 3^o.

שְׁמֵעָה

עֲדָיִוֹת 1³, 5⁵; אָבוֹת 1^{1o}.



מִסְכֵּת

בָּבָא קָמָא

TRACTATE

BABA KAMMA

[BEING THE FIRST TRACTATE OF THE FOURTH ORDER
OF THE MISHNAH]

TEXT, INTRODUCTION, TRANSLATION, NOTES

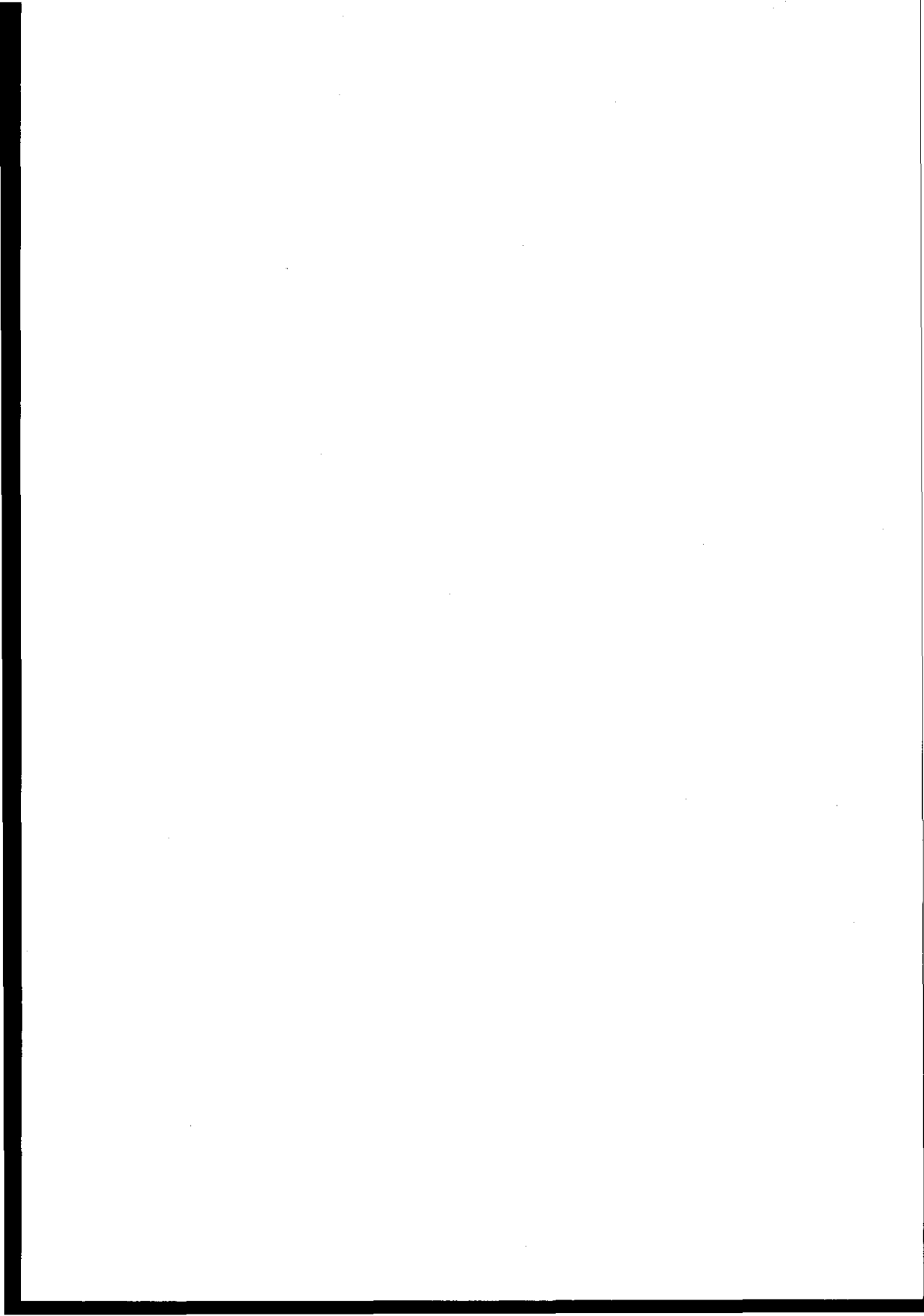
By

PHILIP BLACKMAN, F.C.S.

The MS. of this Tractate has been revised by

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INTRODUCTION

The term **בָּבָא קַמָּא**, **Baba Kamma**, *First Gate*, is made up of the two words **בָּבָא**, *door, entrance, gate*, and **קַמָּא**, *first, former, preceding, previous*.

This *Tractate* together with the succeeding two *Tractates* formed originally one *Tractate* (**בָּבָא קַמָּא**, 102a).

This *Tractate* treats principally of the laws of the privation or deprivation of (1) natural or vested rights (which an individual is entitled to), and (2) artificial rights (which are created by the voluntary action of two or more parties sanctioned by law). The main actions discussed in this *Tractate* are those concerned with the redressing the privation of natural or vested rights and of the violations of trusts, *viz.*, (a) direct intentional or unintentional injury or damage to a person or property; (b) indirectly being the cause of damage or injury; (c) responsibility for damage or injury through negligence; and (d) illegal possession of property (as by theft, robbery, misappropriation, misconversion).

The *Tractate* is based on *Exodus* 21, 18, 19, 28–37, 22, 1–6.

The *Tractate* consists of ten Chapters whose titles are:

CHAPTER 1	אַרְבָּעָה אַבוֹת	פָּרָק א
CHAPTER 2	בִּיצַד הַרְגֵל	פָּרָק ב
CHAPTER 3	*הַמְצִיחַ	פָּרָק ג
CHAPTER 4	שׁוֹר שֶׁגָּח אַרְבָּעָה יְחֻמָּשָׁה	פָּרָק ד
CHAPTER 5	שׁוֹר שֶׁגָּח אֶת-הַפָּרָה	פָּרָק ה
CHAPTER 6	הַכּוֹנֵס	פָּרָק ו
CHAPTER 7	מְרוֹבָה	פָּרָק ז
CHAPTER 8	הַחוֹבֵל	פָּרָק ח
CHAPTER 9	הַגּוֹל עֲצִים	פָּרָק ט
CHAPTER 10	הַגּוֹל וּמֵאֲכִיל	פָּרָק י

* or הַמְצִיחַ

The following is an epitome of the ten Chapters:—

Chapters 1-6 deal with (*a*) damage caused without criminal acts—damage effected by agents, in their normal state, the laws regarding compensation or damages in these cases; (*b*) damage caused by agents in their abnormal condition, either if they were harmless or forewarned; (and the) laws concerning compensation or damages in these cases.

The remaining Chapters treat of damage by theft (Chapter 7), by violence (Chapter 8), and by robbery (Chapter 9)—and Chapter 10 deals with laws of damages, compensation, restitution and fines.

בבא קמא

TRACTATE

BABA KAMMA

CHAPTER 1

פֶּרֶק א

Mishnah 1

משנה א

The four principal causes¹ of damage² are *the ox*,³ (and) *the pit*,⁴ (and) *the tooth*,⁵ and *the outbreak of fire*.⁶ [The case of] *the ox* is not like that of *the tooth*, and [the case of] *the tooth* is not like that of *the ox*;⁷ nor are [the cases of] both, which are§ living things, like that of *fire* which is inanimate;⁸ nor are [the cases of] these,⁹ whose manner is to go forth and do damage,¹⁰ like that of *the pit*, whose way is not to go forth¹¹ and do damage. The common feature in all these cases is their way to do injury, and the care of them devolves upon thee,¹² and if one of them caused damage, the one that caused the damage must* pay compensation with the choicest of his land.¹³

ארבעה אבות נזיקין, השור והבור והמבצה וההבער. לא הרי השור כהרי המבצה, ולא הרי המבצה כהרי השור, ולא זה וזה שיש בהן רוח חיים, כהרי האש שאין בו רוח חיים, ולא זה וזה שדרךן לילף וילהזיק, כהרי הבור שאין דרכו לילף ולהזיק. הצד השנה שבהן שדרךן להזיק ושמירתן עליו, וכשהזיק חב המזיק לשלם תשלומי זנוק במיטב הארץ.

*Or †Or נזק חב.

1 אבות נזיקין, the primary actionable damages or injuries, from which the subordinate or derivative ones—תולדות—are deduced. 2 Or injury, tort. A man is responsible to pay damages if he is the direct or indirect cause (see 31-6, 64-9). 3 The animal with its feet causes damage in another person's domain (see 21). [השור, literally the ox, a technical term for damage done by an ox: reference Exodus 21, 28, 22, 4]. 4 See 31-6, 45, 6, 7. Ten handbreadths (see זרעים, Page 18f.) deep and open on the public domain. [בור, a technical term for damage caused by an obstacle as

the pit (*Exodus 21, 33ff.*). 5 **הַמְבֵּעָה**, the crop-devouring beast [used as a technical term—reference to *Exodus 22, 4—*] that consumes the fruits or vegetables in another man's domain (see 22). An owner must take precautions to prevent his animal roving. 6 Fire kindled in one person's domain spreads destruction in another's domain. **הַבֵּעֵר**, damage through careless handling of fire, used as a technical term.] 7 In the case of the foot the animal derives no enjoyment from its roving, but in the case of the tooth it does derive immediate benefit, hence the one cannot be deduced from the other by analogy. 8 And the cases of animate and inanimate things cannot be deduced from one another. An owner must take all necessary precautions against the natural tendencies of animals to inflict damage wilfully. 9 *The tooth, foot, fire.* 10 And these require watching. 11 It is immovable and therefore could not be deduced from the others. 12 See 4⁵. They must be watched to prevent them causing damage. 13 But he is permitted to make restitution with personal property or movables. *Exodus 22, 5.* §Or **שֵׁשׁ-בָּהֶן**.

Mishnah 2

ב משנה

If I be responsible for the care of any thing, I have legally rendered possible the damage it may cause.¹ If I be the partial cause of that injury, I am responsible for damages as one who had caused the entire injury. [The liability for damage applies only to] property not subject to the law of sacrilege,² or property that belongs to persons of the Jewish faith, or property held by owners,³ and in any place save the private domain of him who is the cause of the damage⁴ or the common domain of the injured party*

כֹּל-שְׁחָבְתִי בְשִׁמְרָתוֹ הַכְּשָׁרְתִי
 אֶת-נִזְקוֹ. הַכְּשָׁרְתִי בְּמִקְצַת נִזְקוֹ
 חֲבָתִי בְּתִשְׁלוּמֵי כֹהֵל כְּשֶׁנִּזְקוֹ
 נִכְסִים שְׂאִין בָּהֶם מְעִילָה, נִכְסִים
 שֶׁל בְּנֵי בְרִית, נִכְסִים הַמְּיוּחָדִים
 וּבְכָל מְקוֹם חוּץ מִרְשׁוֹת הַמְּיוּחָדָת
 יִלְמִזִּיק, וְרְשׁוֹת * הַנִּזְזִיק וְהַמְּזִיק
 וְכִשְׁהִזִּיק חֵב הַמְּזִיק לְשֵׁלֵם תִּשְׁלוּמֵי
 נִזְקוֹ בְּמִיטֵב הָאָרֶץ.

or the one who is charged with the injury.⁵ And if the damage were done, he who is the cause of the damage is legally liable to make restitution for it with the best of his land. * Or [נִזְזִיק] claimant for damages.

1 If A digs a pit nine handbreadths deep he is not liable for injury caused to someone else's animal falling into it. If B deepens it to ten handbreadths—the legal depth for damages—then B is liable to damages for another's animal that fell into it. 2 The law concerning the illegal use of sacred property—a *guilt-offering* is necessitated in cases of such malappropriation.* *Leviticus 5, 15 et seq.* See **מְעִילָה** INTRODUCTION. 3 If C's ox gores an ownerless ox, or if an unowned ox gores X's ox, and then D

acquires this ownerless ox, D cannot recover restitution from C in the first instance nor D from him in the second case. 4 If E's ox enters F's domain and is injured by F's ox, then F is not liable for damages (but he may not harm the trespassing ox). 5* If G and H own one courtyard for storing fruit, cattle, etc., then if the ox of one enters and damages the stores of the other there is no liability for damages. But if the common courtyard is for one purpose only, then damage caused in another direction must be made good to the injured party. * See ADDENDA at the end of this *Tractate*.

Mishnah 3

מִשְׁנָה ג

Assessment¹ [of damages] in money and collected from what has a money value* must be [fixed] before a court of law,² and only on the testimony of witnesses that are freemen and of the Jewish faith.³ (And) women⁴ may claim compensation for damage. And the injured and the injurer must [under certain circumstances] contribute towards the damages.⁵

יְשׁוּם כֶּסֶף * וְשִׁוּהוּ כֶּסֶף בְּפָנַי בֵּית
 דִּין וְעַל פִּי עֲדִים בְּנֵי חוֹרֵין בְּנֵי
 בְּרִית. וְהַנְּשִׂים בְּכֻלָּל הַנְּזֻק. וְהַנְּזֻק
 וְהַמְּזֻק בְּתַשְׁלוּמִין.

1 Or, *evaluation* [of damages] is effected on the basis of money and collected from money's worth. If A's ox injures aught of B's and B's ox injures aught of A's, then the compensation due to each, if any, must be determined by a court and the excess of damages from one is paid over to the other. § 2 But not a court of common men. 3 Non-Jews and bondmen are ineligible as witnesses in cases of damages. 4 Women are liable to pay and they may recover damages.* 5 † The injured party must suffer any loss due to the depreciation of the beast between the times of the damage and proceedings. *Or perhaps the construct וְשִׁוּהוּ. § See ADDENDA at the end of this *Tractate*. † Or בְּתַשְׁלוּמִין, towards any damages.

Mishnah 4

מִשְׁנָה ד

Five classes [or agents of injury] are accounted *innocuous* and five that rank as *noxious*.¹ A domestic animal [or tame beast or cattle] is not considered noxious with reference to *goring*,² *pushing*, *biting*, *lying down* or *kicking*.³ The tooth [of an animal] is reckoned noxious with reference

חֲמִשָּׁה תַּמִּין וְחֲמִשָּׁה מוֹעֲדִין
 הַבְּהֵמָה אֵינָה מוֹעֲדַת לֹא לִינֹחַ וְלֹא
 לִינֹחַ וְלֹא לְשׁוֹךְ וְלֹא לְרִבּוּץ וְלֹא
 לְבִעוּט. הַשֵּׁן מוֹעֲדַת לְאָכַל אֶת־
 הָרְאוּי לָהּ, הָרֶגֶל מוֹעֲדַת לְשַׁבֵּר

to consuming whatsoever is fit to be consumed by it; *the leg* [or *the foot*] is noxious with regard to breaking down on its way as it walks along;⁴ and so, too, is the noxious *ox*;⁵ and the *ox* committing damage in the private domain of the injured party;⁶ and (the) man.⁷ The wolf, the lion, the bear, the panther, the leopard [or tiger] and the snake are accounted as noxious. R. Eliezer⁸ says, When* they are tamed they are not reckoned as noxious, but the snake is always counted as noxious. What is the distinction between the innocuous and the noxious? In the case of the innocuous,⁹ half-damages are paid from its own body; but in the case of the noxious, full damages are paid from the choicest property.¹⁰ * Or the less *definite* בְּזִמְן.

בְּדֶרֶךְ הַלֹּכָה, וְשׂוֹר הַמוֹעֵד וְשׂוֹר
הַמִּזִּיק בְּרִשׁוֹת הַיִּזְק, וְהָאָדָם.
הַזָּאֵב וְהָאֵרִי וְהַדּוֹב וְהַנֶּמֶר
וְהַבְּרָדִלִים וְהַנְּחָשׁ הָרִי אֵלּוּ מוֹעֲדִין.
רַבִּי יְאֵלִיעֶזֶר אוֹמֵר, *בְּזִמְן שֶׁהֵן בְּנֵי
תְּרֻבוֹת אֵינָן מוֹעֲדִין, וְהַנְּחָשׁ מוֹעֵד
לְעוֹלָם. מֵה-בֵּין תָּם לְמוֹעֵד? אֵלּא
שֶׁהֵתָם מְשֻׁלָּם חֲצֵי נֶזֶק *מִגּוֹפּוֹ וּמוֹעֵד
מְשֻׁלָּם נֶזֶק שְׁלֵם מִן-הַעֲלִיָּה.

1 Exodus 21, 29. מוֹעֵד, *forewarned, attested*, and hence by inference in law *dangerous, harmful, injurious, noxious, vicious*, with regard to an agent (animal) which has caused damage on three successive occasions each having been reported as a warning to its owner who is liable for full indemnity. תָּם, *perfect, innocent, artless*; used as a legal term, *innocuous, harmless, non-vicious*, with regard to an animal that caused injury for the first time or previous to any warning having been lodged. If a tame or domestic animal caused damage and it had not been proved vicious or that its owner was aware of any malicious intent or vicious propensity in the animal's nature the owner cannot be mulcted for damages; otherwise he must make full reparation. 2 Or *butting*. This (termed technically *the horn*) is the principal cause or agent in these cases, and the other cases here referred to are derived from this. 3 In all these cases the owner pays only half of the value of the damage caused.* 4 If damage is caused by its natural tendencies, and not because of savage tendency, the owner must pay full compensation. 5 The owner had been warned three times and must make full restitution. 6 Compare 2⁵. This is the view of R. Tarfon and is rejected. 7 Compare 2⁶. A man who does damage, even for the first time, must pay full compensation. 8 His opinion is not accepted because an owner must guard against the natural tendency of such an animal reverting to its savage nature. 9 *i.e.*, from the money from the sale of the carcass. If this money is insufficient the owner does not have to make up the deficiency. 10 Of the guardian or owner. Even if the noxious beast died. *See ADDENDA at the end of this *Tractate*.

CHAPTER 2

פָּרָק ב

Mishnah 1

מִשְׁנָה א

In what way is *the leg* [or *the foot*] accounted noxious?¹ In that it breaks everything on its way while walking along; [for] a beast ranks as noxious in so far as it breaks everything in its natural manner as it walks along. If it kicked, or if pebbles were tossed out from under its feet and it thus broke any vessel, one pays for *half of the damage*.² If it trampled upon a vessel and broke it, and [a fragment] fell on another vessel† and broke it, for the first he pays *full damages*³ and for the second he pays *half-damages*.⁴ Fowls rank as noxious in that as they walk along in their natural manner they break things; if their feet were entangled in some material or if they were hopping⁵ and broke⁶ any vessels, one pays only for *half the damage*.⁷

כִּיצַד הַרְגֵל יְמוּעֵדֶת? לְשֹׁבֵר בְּדַרְךְ
הַלּוֹכָה; הַבְּהֵמָה מוּעֵדֶת לְהִלָּךְ
בְּדַרְכָּהּ וּלְשֹׁבֵר. הִיְתָה מִכְעֻסָּת,
אוּ שְׁהִי צְרוּרוֹת מְנַתְּזִין מִתַּחַת
רַגְלֶיהָ וּשְׁבָרָה אֶת-הַכֵּלִי, מִשְׁלֵם
חֲצִי נִזְקֵי דְרָסָה עַל הַכֵּלִי וּשְׁבָרָתוֹ
וְנָפַל עַל אֶבְלֵי וּשְׁבָרוֹ, עַל הָרֵאשׁוֹן
מִשְׁלֵם נִזְקֵי שְׁלֵם, וְעַל הָאֲחֵרוֹן
מִשְׁלֵם חֲצִי נִזְקֵי הַתְּרַנְּגוּלִים מוּעֵדִין
לְהִלָּךְ בְּדַרְכָּן וּלְשֹׁבֵר; הִיא דְלִיל
קָשׁוּר בְּרַגְלֶיהָ, אוּ שְׁהִיא מְהָרֵס
וּמְשֹׁבֵר אֶת-הַכֵּלִים, מִשְׁלֵם חֲצִי
נִזְקֵי

†Or כֵּלִי.

1 The owner being responsible without forewarning. See 1⁴; *Exodus* 22, 4. The owner is liable for damage caused by his animal to objects in the injured party's private domain. (In a public domain, a private individual leaves his objects only at his own risk, and damage caused to such is due to his contributory negligence and he is not entitled to compensation). See *בְּבָא קָמָא* 3a, 17b. **2** Because it is not a natural malicious propensity of the creature to break anything with its foot. See 14. But the owner is liable only when the damage was caused in the injured party's private domain.* **3** This is a case of a derivative from the principal cause *foot*. **4** Compare **Note 5** re *pebbles*. **5** Or *scratching* the earth as fowls do and causing pebbles to fly into the injured's domain. Compare **Note 4**. **6** By flying pebbles. **7** But if it caused damage by the material (*e.g.*, rope) attached to it this is as if caused by the *body* itself and *full damages* must be paid. *See ADDENDA at the end of this *Tractate*. §Or הַכֵּלִי; literally *the vessel*.

Mishnah 2

In what respect is *the tooth* considered noxious?¹ With reference to consuming whatever is fit for it to consume; for an animal is ranked as noxious with regard to consuming fruits and vegetables;² if it chewed up a garment or utensils, one pays only half of the damage.³ In what cases does this apply? Where [the damage occurred] in the private domain of the injured party, but if within the offender's domain, he is exempt;⁴ but if [the animal] derived any benefit thereby, he must compensate for what it benefited by. In what case does he have to pay for what it derived any benefit from? If it consumed aught from the midst of a public place, he must pay the value of the benefit which it derived, but if from the sideways of the public place, he must pay for the damage which it has caused;⁵ if from the entrance to [or doorway of] a shop, he pays only the value of the benefit that it had, but if from within the shop, he must pay for the [full] damage which it has done.⁶

1 The owner being held accountable for damage caused without forewarning, and for total damages if the offence was committed in the injured party's private domain. 2 Even when they eat any only in times of dire need. 3 Because animals do not by nature commit such acts and owners are not on their guard against such. This is analogous to damage caused by *the horn*. 4 i.e., the owner is not liable to damages. The injured party leaves his stuff about in the public domain at his own risk. 5 If the beast ate something injurious to it, no liability attaches to its owner. 6 Because the sideways and the shop-interior are as private domains in law.

Mishnah 3

If a dog or a kid [or goat] jumped down¹ from the top of a roof and broke [some] vessels,² [the owner] must pay *full damages* since [these

משנה ב

כיצד השן מועדת? לאכל את-
 יהראוי לה. הבהמה מועדת לאכל
 פירות וירקות; אכלה כסות או
 כלים משלם יחצי נזק. במה
 דברים אמורים? ברשות הניזק,
 אבל ברשות הרבים יפטור; אם
 נהנית משלם מה-שנהנית. כיצד
 משלם מה-שנהנית? אכלה מתוך
 הרחבה משלם מה-שנהנית; מצדי
 הרחבה משלם מה-שהזיקה;
 מפתח החנות משלם מה-שנהנית,
 מתוך החנות משלם מה-שהזיקה.

משנה ג

הכלב והגדי יסקפצו מראש הגג
 ושברו את-הכלים, משלם נזק

animals] are noxious.³ If a dog took a cake⁴ [with a red-hot cinder adhering thereto] and went to a stack of corn⁵ and ate the cake and set the stack on fire, [the owner] must pay *damages in full*⁶ for the cake but only for *half the damage* to the stack of grain.⁷

שָׁלֵם, מִפְּנֵי שֶׁהָיוּ מוֹעֲדֵיָן. הַכֶּלֶב
שֶׁנֶּטַל יְחַרְרֵהּ וְהֵלֵךְ לְגֵדִישׁ, אָכַל
הַיְחַרְרֵהּ וְהֵדִילִיק הַגֵּדִישׁ, עַל הַיְחַרְרֵהּ
מִשָּׁלֵם יְנוּק שָׁלֵם, יוֹעַל הַגֵּדִישׁ מִשָּׁלֵם
חֲצֵי נֹקֵי.

1 שֶׁקָּסַפְּנוּ [Kal] or שֶׁקָּסַפְּנוּ [Piel]. 2 These being in the private domain of the injured party. 3 Because it is their nature to commit such acts (as *leaping*—derivative of רַגְלָא, foot or leg).* 4 יְחַרְרֵהּ, a thick cake baked on coals. 5 Both stack of corn and cake belonging to the same owner (claimant). See קָבֵא קָמֵא 23a. 6 The act of eating is a derivative of הִשָּׁן, the tooth. 7 Compare pebbles in 21. See ADDENDA at the end of this *Tractate*.

Mishnah 4

מִשְׁנֵה ד

Which ranks as *innocuous* and which is accounted *noxious*?¹ It is considered noxious if it had been reported² for three days; and it is considered innocuous if it had refrained for three days.³ This is the view of R. Judah.⁴ R. Meir says, It is deemed as noxious if reports against it had been made three times,⁵ and innocuous if children can touch it and it will not gore.

אֵיזָה הוּא פָּם וְאֵיזָה הוּא יְמוֹעֵד?
מוֹעֵד כָּל-שְׁהֵעִידוּ בוֹ שְׁלֹשָׁה
יָמִים, וְתָם מִשִּׁיחֲזוֹר בוֹ שְׁלֹשָׁה יָמִים.
דְּבָרֵי רַבִּי יְהוּדָה. רַבִּי מֵאִיר
אוֹמֵר, מוֹעֵד שְׁהֵעִידוּ בוֹ שְׁלֹשׁ
פְּעָמִים, וְתָם כָּל-שִׁיָּהוּ הַתְּיֻנּוּקוֹת
מִמִּשְׁמָשִׁין בוֹ וְאִינוּ נֹגְחִים.

1 With regard to *goring*. 2 To have gored. 3 *i.e.*, if it had been in the company of oxen for three days and had not gored, it is deemed innocuous. 4 His opinion is accepted. 5 Even in one day.

Mishnah 5

מִשְׁנֵה ה

If an ox cause damage in the [private] domain of an injured party, what is the case? If it gored,¹ pushed, bit, lay down or kicked while in the public domain, *half-*

שׂוֹר הַמְזִיק בְּרִשׁוֹת הַנִּזְק כִּי־צָד?
יָנַח, נָגַף, נָשַׁף, רָבַץ, בָּעַט, בְּרִשׁוֹת
הַרְבִּים מִשָּׁלֵם חֲצֵי נֹקֵי; בְּרִשׁוֹת

damages are to be paid; but if in the [private] domain of the injured party, R. Tarfon says, *Full damages*, but the Sages² say, *Half damages*. R. Tarfon said to them, What! Seeing that in the cases of the *tooth* and *foot* [that have caused damage] in the public domain the law is lenient and he is exempt, and nevertheless the law is severe [with like injury] in the private domain of the injured party when *full reparation* must be made, then in the case of the *horn* where the law is stringent that even in the public domain only *half-damages* must be paid, does it not follow logically that we ought to deal more rigorously therewith [—the damage done by *the horn*—] in the private domain of the injured party and impose on him full indemnity? They replied to him, It³ is sufficient for the inferred law to be as stringent as the premise— if [for injury occasioned by *the horn*] in the public domain *half-damages* [must be paid], even so [for like damage] in the private domain of the injured party *half-damages* [are to be paid].⁴ He said to them, 'I, too, do not make the inference of [the case of] *the horn* [in the private domain of the injured party] from [the case of] *the horn* [in the public domain],⁵ but my inference [of the case] of *the horn* is from that of *the foot*:⁶ if the law were lenient [with damage caused] with *the tooth* and *the foot*⁷ in the public domain and strict [with damage caused] with *the horn*, does it not follow logically that where the law is rigorous with *the tooth* and *the foot*⁸ in the private domain of the injured party that we should be stringent with *the horn*?⁹ They answered, It is enough if the inferred law be as strict as the premise: just as [in the case to damage

הניזק, רבי טרפון אומר, נזק שלם, ויחכמים אומרים, חצי נזק. אמר להם רבי טרפון, ומה במקום שהקל על השן ועל הרגל ברשות הרבים שהוא פטור, החמיר עליהם ברשות הניזק לשלם נזק שלם, מקום שהחמיר על הקרן ברשות הרבים לשלם חצי נזק, אינו דין שנהחמיר עליה ברשות הניזק לשלם נזק שלם? אמרו לו, ידיו לבא מן הדין להיות כנדון, מה ברשות הרבים חצי נזק אף ברשות הניזק, חצי נזק. אמר להם, אני לא אדון בקרן מקרן, אני אדון קרן מרגל, ומה במקום שהקל על השן ועל הרגל ברשות הרבים החמיר בקרן, מקום שהחמיר על השן ועל הרגל ברשות הניזק אינו דין שנהחמיר בקרן? אמרו לו, ידיו לבא מן הדין להיות כנדון; מה ברשות הרבים חצי נזק אף ברשות הניזק חצי נזק.

done by *the horn*] in the public domain only *half-damages* are paid, so, too, in the private domain of the injured party only *half-damages* are paid.

1 All these are derivatives of *the horn*. 2 Their views here expressed are the prevailing law. 3 *i.e.*, one cannot go beyond the law from which it was deduced. Compare **לִדְה** 46. 4 This is an illustration of the Talmudic hermeneutics of an *inference from minor to major*. 5 *sc.*, the domain of the injured party from the public domain. 6 *viz.*, *the horn* in the injured party's domain from *the foot* in the injured party's domain. 7 *The the foot* would be less stringent than *the horn*. 8 The less severe. 9 The stricter.

Mishnah 6

A human being is always accounted as noxious, whether¹ [he causes damage] inadvertently or wantonly, or whether when awake or asleep. If one blinded the eye of his fellow or broke [his] vessels, he must pay *full damages*.²

מִשְׁנָה ו

אָדָם מוּעָד לְעוֹלָם, בֵּין בְּשׁוּגָג בֵּין
בְּמֵזִיד, בֵּין עָר בֵּין יָשֵׁן. סִימָא אֶת-
עֵין חֲבֵרוֹ וְשָׁבַר אֶת-הַכֵּלִים מְשַׁלֵּם
נֹזֵק יִשְׁלָם.

1 See 8¹. 2 If A is asleep, B is liable if he lies down next to him and injures him, but A is not liable if in such case he injures B. If both lie down together, each is responsible for injury caused to his fellow, and must pay full damage as man is always considered a **מוּעָד** even when hurt is done accidentally.

CHAPTER 3

פָּרָק ג

Mishnah 1

If one leave¹ a jar² in the public domain and another comes along and stumbles over it and breaks it, [the latter] is exempt³, but if he were injured thereby, the owner of the jar is liable for his injury⁴. If one's jar were broken in the public domain and someone slipped in the water or was hurt by its sherds, [the owner] is liable⁵. R. Judah⁶ says, If his intention be [to recover the

מִשְׁנָה א

יְהַמְנִיחַ אֶת-הַכֵּד בְּרִשׁוֹת הָרִבִּים
וּבָא אַחֵר וְנִתְקַל בָּהּ וְשִׁבְרָהּ פָּטוּר,
וְאִם הִזְקָה בָּהּ בְּעַל הַחֲבִית חֵיִב
בְּנוֹקוֹ. וְשִׁבְרָהּ כִּדּוֹ בְּרִשׁוֹת הָרִבִּים
וְהוּחַלַק אֶחָד בְּמַיִם אוֹ שְׁלָקָה
בְּחַרְסִיהָ חֵיִב. רַבִּי יְהוּדָה אוֹמֵר,

water or the shards*], he is liable,⁷ בַּמִּתְכוּוֵּן חַיִּיב, בְּאֵינוֹ מִתְכוּוֵּן
 but if he were not still minded he is
 exempt. * Or [to collect the broken
 Pieces and save the water therein]. פְּטוֹר.

1 Or הַמִּנְיָהּ 2 Or jug, pitcher. 3 He does not have to pay for the damage.§
 None the less the owner has no right to cause a nuisance in a public thoroughfare.
 Anyone may remove such an obstruction if absolutely necessary, but not to destroy
 it intentionally. 4 Because the injured party was not guilty of negligence, provided
 that he did not intentionally break the jar. 5 Even if it happened while he was
 carrying it he must still recompense the injured party for the hurt sustained. 6 His
 view is accepted. 7 Analogous to the pit in the public domain. §See ADDENDA
 at the end of this *Tractate*.

Mishnah 2

מִשְׁנֵה ב

If one pour water¹ into the public domain and another was harmed thereby, he is liable for his injury. If one hide a thorn or glass [in the public domain], or if one make his fence out of thorns,² or if [his] fence fell into a public domain, and others were injured thereby, he is liable for their injury.³

הַשּׁוֹפֵךְ יַמִּים בְּרִשּׁוֹת הַרְבִּים וְהוֹקֵן
 בָּהֶן אַחֵר, חַיִּיב בְּנוֹקוֹ. הַמְצַנֵּץ
 אֶת-הַקּוֹץ וְאֶת הַזְּכוּכִית וְהַגֹּדֵר
 אֶת-גְּדָרוֹ בְּקוֹצִים, וְגֵדֵר שֶׁנִּפְל
 לְרִשּׁוֹת הַרְבִּים וְהוֹקֵן בָּהֶן אַחֵרִים
 חַיִּיב בְּנוֹקוֹ.

1 Even in the rainy season when this is permitted so long as it causes no mischief or contravenes any regulation, but liability still pertains. 2 And part of it protrudes into the public domain. 3 Some authorities hold the view that the owner is liable only if he had been warned of its dangerous condition. In the opinion of others the owner is liable whether he was warned or not; but in this case all agree that if he had renounced beforehand his ownership thereto he is not held liable.

Mishnah 3

מִשְׁנֵה ג

If one bring forth his straw or stubble into the public domain for conversion into manure,¹ and another is injured thereby, he is liable for his injury; and anyone who comes first may take possession of it.² Rabban Simon ben Gamaliel says, Whoso-

הַמוֹצִיא אֶת-תְּבֻנוֹ וְאֶת-קִשּׁוֹ לְרִשּׁוֹת
 הַרְבִּים יְלֻבְלִים, וְהוֹקֵן בָּהֶן אַחֵר,
 חַיִּיב בְּנוֹקוֹ; וְכֹל הַקּוֹדֵם בָּהֶן זָכָה.
 רַבִּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר כָּל-

ever leaves obstacles in the public domain and such cause damage must pay damages, and whoever comes first may take possession of them. If one turn over dung³ in the public domain and another sustained injury thereby, he is liable for his injury.

הַמְקַלְקֵלִין בְּרֵשׁוֹת הַרְבִּים וְהַזִּיקוּ
מֵיִבִּין לְשָׁלֵם, וְכֹל-הַקּוֹדֵם בָּהֶן
זָכָה. הַהוֹפֵךְ אֶת-הַגֵּלְל בְּרֵשׁוֹת
הַרְבִּים וְהוֹזֵק בָּהֶן אַחַר מֵיִב בְּנֻקְיוֹ.

1 By the rain and the treading of man and beast. Even when by law this was permitted at certain seasons, the liability for damage still remained. 2 Literally *them* [זָהוּן, plural, in agreement with לְזָבְלִים]. As a punishment for leaving a stumbling-block in public domain. 3 Intending to take it away. The turning over and raising up are legal acts that make the dung—which is otherwise *ownerless* (הַפְּקָר)—in the public domain his property.

Mishnah 4

If two potters¹ were walking one behind the other, and the first one stumbled and fell, and the second one stumbled over the first, then the former is liable for the harm suffered by the latter.²

מִשְׁנֵה ד
שְׁנֵי יַקְדְּרִין שֶׁהָיוּ מֵהַלְבִּין זֶה אַחֲרֵי
זֶה, וְנִתְקַל הָרִאשׁוֹן וְנָפֵל, * וְנִתְקַל
הַשֵּׁנִי בְּרִאשׁוֹן, יְהָרִאשׁוֹן חַיִּיב
בְּנֻקְי שְׁנֵי.

*Future; preferably וְנִתְקַל.

1 Who were carrying their wares. 2 But only if there was sufficient time for the fallen man to have got out of the way of the one behind or to warn him and he failed to do so. Otherwise he is exempt, on the principle that נִתְקַל לְאוֹ פִּשְׁעֵי הוּא, *he stumbled—he is not a transgressor.*

Mishnah 5

If one came along with his cask¹ and another came along with his plank,² [and] the cask of the one was broken by the plank of the other, he is exempt,³ since both have the right of way.⁴ If the owner of the plank were first [in front] and the owner of the cask were behind, and the cask was broken by the plank, the owner

מִשְׁנֵה ה
זֶה בָּא יַבְחֵבִיתוֹ וְזֶה בָּא יְבִקְרָתוֹ,
וְשִׁבְרָה כְּדוֹ שֶׁל זֶה בְּקוֹרְתוֹ שֶׁל זֶה
פְּטוֹר, שֶׁלְּזֶה יֵרֵשׁוֹת לְהֵלֵךְ וְלְזֶה
רֵשׁוֹת לְהֵלֵךְ. הִיָּה בְּעַל קוֹרָה
רִאשׁוֹן וּבְעַל חֵבִית אַחֲרוֹן, וְשִׁבְרָה

of the plank is exempt.⁵ (But) if the owner of the plank stopped, he is liable,⁶ but if he said to the owner of the cask, 'Halt!' he is not liable. If the owner of the cask were first and the owner of the plank behind, and the cask was broken by the plank, he⁷ is liable. (But) if the owner of the cask had stopped, he⁷ is exempt; but if he had said, 'Halt!' to the owner of the plank, [then] he⁷ is liable. And likewise⁸ in the case where one comes along with his light and the other comes along with his flax.⁹

חבית בקורה, פטור בעל הקורה.
ואם עמד בעל הקורה חייב, ואם
אמר לבעל החבית, עמוד, פטור.
היה בעל חבית ראשון ובעל קורה
אחרון, ושברה חבית בקורה חייב.
ואם עמד בעל חבית פטור; ואם
אמר לבעל קורה, עמד, חייב.
וכן זה בא בגרו וזה בפשתנו.

1 Or jar, jug, pitcher. 2 Or beam, joist, rafter. 3 i.e., there is no liability on the one carrying the plank. 4 Literally for the former has the right to walk and the latter has the right to walk. קהל? [Kal] or קהל? [Piel]. 5 The man in the rear should be on his guard, otherwise he is guilty of negligence. 6 He should have known that it was necessary to be on guard against the likelihood of an accident resulting from stopping suddenly, and it devolved on him to warn anyone behind of his intention. 7 Who was carrying the plank. 8 i.e., the same rulings apply. 9 And the flax catches fire.

Mishnah 6

משנה ו

If two men were going along in the public domain,¹ one running and the other walking,² or both of them were running,³ and they injured one another, they are both exempt.⁴

שנים שהיו מהלכין בפרשות
הרבים, אחד רץ ואחד מהלך, או
שהיו שניהם רצים, והזיקו זה את
זה, שניהם פטורין.

1 And they collided accidentally. 2 This refers to the case when both were on an errand on the eve of the Sabbath or of a Holyday to prepare necessities for those days. 3* Both are guilty of negligence towards one another. 4 *Neither can claim damages from the other. *See ADDENDA at the end of this Tractate.

Mishnah 7

משנה ז

If one were splitting wood in a private domain and injured someone in the public domain,¹ or in the

המבקע בפרשות היחיד והזיק
בפרשות הרבים, בפרשות הרבים

public domain and hurt anyone in the private domain,² or in any private domain and hurt somebody in another private domain,³ he is liable.⁴

והזיק בְּרִשׁוֹת הַיְחִיד, בְּרִשׁוֹת הַיְחִיד
והזיק בְּרִשׁוֹת הַיְחִיד אַחֵר, חָיִיב.

1 It is incumbent on the man to take precautions that flying chips or his tools cause no damage. 2 Apart from other considerations no man in ordinary circumstances should perform any work of such nature in a public space. 3 It is an obligation on every one to guard against negligence. 4 Damages must be paid.

Mishnah 8

מִשְׁנָה ח

If¹ two innocuous oxen injured² one another, only *half-damages* in excess [of the injury of one above that of the other] are to be paid;³ if both were noxious, *full excess damages* must be paid;⁴ if one were innocuous and the other noxious, and the noxious one caused [greater] damage to the innocuous one, *full excess damages* must be paid,⁵ and if the innocuous one caused [greater] injury to the noxious one, only *half-damages* are to be paid.⁶ And so, also, in the case where two men harmed⁷ one another, *full excess damages* have to be paid.⁸ If a man injured a noxious beast and the noxious beast injured the man, *full excess damages* must be paid.⁹ If a man harmed an innocuous animal and the innocuous animal harmed the man, if the man caused [greater] injury to the animal he must pay *full excess damages*,¹⁰ but if the innocuous animal caused [greater] injury to the man, only *half excess damages* must be paid.¹¹ R. Akiba¹² says, Even in the case of an innocuous beast that injured⁷ a man, *full excess damages* must be paid.¹³

יִשְׁנֵי שְׁוֹרִים תַּמִּים שֶׁחָבְלוּ זֶה אֶת־
זֶה מְשַׁלְּמִים בְּמוֹתֵר חֲצֵי נֹזֶק; שְׁנֵיהֶם
מוֹעֲדִים מְשַׁלְּמִים בְּמוֹתֵר נֹזֶק שְׁלֵם;
אֶחָד תָּם וְאֶחָד מוֹעֵד, מוֹעֵד
בְּתָם מְשַׁלֵּם בְּמוֹתֵר נֹזֶק שְׁלֵם, תָּם
בְּמוֹעֵד מְשַׁלֵּם בְּמוֹתֵר חֲצֵי נֹזֶק.
וְכֵן שְׁנֵי אָנָשִׁים שֶׁחָבְלוּ זֶה בְּזֶה
מְשַׁלְּמִים בְּמוֹתֵר נֹזֶק שְׁלֵם. אָדָם
בְּמוֹעֵד וּמוֹעֵד בְּאָדָם, מְשַׁלֵּם בְּמוֹתֵר
נֹזֶק שְׁלֵם. אָדָם בְּתָם וְתָם בְּאָדָם,
אָדָם בְּתָם מְשַׁלֵּם בְּמוֹתֵר נֹזֶק שְׁלֵם,
תָּם בְּאָדָם מְשַׁלֵּם בְּמוֹתֵר חֲצֵי נֹזֶק.
רַבִּי עֲקִיבָא אוֹמֵר, אִף תָּם יִשְׁחָבֵל
בְּאָדָם מְשַׁלֵּם בְּמוֹתֵר נֹזֶק שְׁלֵם.

1 *Exodus 21, 35*. 2 **הַבֵּל** [*Piel*] takes a *direct object* (compare **Note 7**). 3 *i.e.*, half of the difference to the greater sufferer of loss. 4 The full difference to the greater loser. 5 The full difference to the owner of the innocuous beast. 6 Half of the difference to the owner of the noxious animal. 7 Compare **Note 2**. **הַבֵּל** [*Kal*] is followed by the *preposition* **בְּ** prefixed to the *object*. 8 The full difference must be paid to the party receiving the greater injury. 9 The difference in full to the one receiving the greater damage. 10 The full difference to the owner of the animal. 11 Half the difference by the owner of the animal. 12 His view is rejected. 13 The total difference to him that suffered the more.

Mishnah 9

משנה ט

If an ox worth a *maneh*¹ gored an ox worth two hundred [*zuz*], and the carcass was worth nothing, [the owner of the dead ox] takes the other ox.² If an ox valued at two hundred [*zuz*] gored an ox of value two hundred [*zuz*] and the carcass was of no value whatever, R. Meir said, Of such it is said,³ *Then they shall sell the live ox and divide the money of it*. R. Judah⁴ replied to him, Such in fact is the law, [but this is not the case spoken of in the Law,] for if thou hast fulfilled⁵ *Then they shall sell the live ox and divide the money of it* thou hast however not fulfilled. *And the dead ox also shall they divide*.⁶ And what is the case?⁶ This is the case of an ox worth two hundred [*zuz*] that gored an ox worth two hundred [*zuz*], but the carcass was valued at fifty [*zuz*], then the one takes half [the value] of the live ox and half of the dead ox, and the other takes half [of the value] of the living ox and half of the dead one.

שׁוֹר שָׁוֶה מְנָה שְׁנַיִם שׁוֹר שָׁוֶה מֵאֲתַיִם
וְאֵין הַנְּבֵלָה יָפָה כְּלוּם, נוֹטֵל אֶת־
הַשּׁוֹר. שׁוֹר שָׁוֶה מֵאֲתַיִם שְׁנַיִם שְׁנַיִם שׁוֹר
שָׁוֶה מֵאֲתַיִם וְאֵין הַנְּבֵלָה יָפָה כְּלוּם,
אָמַר רַבִּי מֵאִיר, עַל זֶה נֶאֱמַר,
וּמָכְרוּ אֶת־הַשּׁוֹר הַחַי וְהִצּוּ אֶת־
כֶּסֶפוֹ. אָמַר לוֹ רַבִּי יְהוּדָה, וְכֵן
הִלְכָה קִיּוּמָת וּמָכְרוּ אֶת־הַשּׁוֹר
הַחַי וְהִצּוּ אֶבֶב־כֶּסֶפוֹ וְלֹא קִיּוּמָת
וְגַם אֶת־הַמֵּת יִחְצוּן. וְאִיזָה זֶה?
שׁוֹר שָׁוֶה מֵאֲתַיִם שְׁנַיִם שׁוֹר שָׁוֶה
מֵאֲתַיִם, וְהַנְּבֵלָה יָפָה חֲמִשִּׁים זָוָה,
שָׁוֶה נוֹטֵל חֲצֵי הַחַי וְחֲצֵי הַמֵּת וְזֶה
נוֹטֵל חֲצֵי הַחַי וְחֲצֵי הַמֵּת.

1 *maneh* = 100 *zuz* (see **זְרָעִים**, Page 18f.). 2 The live ox which has caused the injury. This accepted ruling is in accordance with the opinion of R. Akiba. 3 *Exodus 21, 35*. 4 His view is accepted. 5 *i.e.*, justified. 6 Referred to in the *Torah*.

Mishnah 10

משנה י

A man may be* liable for an act of his ox and be exempt¹ for a [like] act of his own, [and] he may be exempt for an act of his ox but liable for a [like] act of his own, [thus]: if his ox caused indignity [to some person], he is exempt,² but if he himself inflicted an indignity, he is liable; if his ox blinded the eye of his bondman or knocked out his tooth, he is exempt, but if he himself blinded the eye of his bondman or knocked out his tooth, he is liable;³ if his ox injured his father or his mother,⁴ he is liable,⁵ but if he himself injured, his father or his mother, he is exempt;⁶ if his ox set fire to a stack of corn on the Sabbath, he is liable,⁷ but if he himself set fire to a stack of corn on the Sabbath, he is exempt⁸ because he has made himself liable with his life.⁹

יֵשׁ חַיִּיב עַל מַעֲשֵׂה שׂוֹרוֹ וְיִפְטוֹר עַל מַעֲשֵׂה עַצְמוֹ, פְּטוֹר עַל מַעֲשֵׂה שׂוֹרוֹ וְחַיִּיב עַל מַעֲשֵׂה עַצְמוֹ; שׂוֹרוֹ שֶׁבִּיַּיֵּשׁ פְּטוֹר, וְהוּא שֶׁבִּיַּיֵּשׁ חַיִּיב; שׂוֹרוֹ שֶׁפָּסִימָא אֶת-עֵינַי עַבְדּוֹ וְהִפִּיל אֶת-שִׁנּוֹ פְּטוֹר, וְהוּא שֶׁפָּסִימָא אֶת-עֵינַי עַבְדּוֹ וְהִפִּיל אֶת-שִׁנּוֹ חַיִּיב; שׂוֹרוֹ שֶׁחָבַל בְּאָבִיו וְאִמּוֹ חַיִּיב, וְהוּא שֶׁחָבַל בְּאָבִיו וְאִמּוֹ פְּטוֹר; שׂוֹרוֹ שֶׁהִדְלִיק אֶת-הַגֵּדִישׁ בַּשַּׁבָּת חַיִּיב, וְהוּא שֶׁהִדְלִיק אֶת-הַגֵּדִישׁ בַּשַּׁבָּת פְּטוֹר מִפְּנֵי שֶׁהוּא מִתְחַיִּיב בַּנַּפְשׁוֹ.
*Or חַיִּיב יֵשׁ.

1 *i.e.*, not liable to pay compensation. 2 See 81:2; כְּתוּבוֹת 41; *Leviticus* 24, 19. The text speaks of בַּעֲמִיתוֹ אִישׁ בַּעֲמִיתוֹ and not שׂוֹר בַּעֲמִיתוֹ. 3 He must set him free. Compare *Exodus* 21, 26, 27. 4 The parents of the owner of the ox. See 39, **Note 7**. 5 For their injuries. 6 From damages because he is liable to capital punishment. 7 To half-damages. 8 *i.e.*, not liable for burning the stack of grain. הַגֵּדִישׁ, literally 'the' stack of grain. 9 *i.e.*, since he has profaned the Sabbath he has become guilty of a capital offence, and anyone guilty of a capital offence does not have to pay compensation for damage caused in connection with the same crime. See 65. Compare *Exodus* 2, 15; כְּתוּבוֹת 32.

Mishnah 11

משנה יא

If an ox were pursuing another ox and it¹ was injured, [and] this one² says, 'Thy ox caused the injury,' and the other says, 'Not so, but it hit against a rock,' he who seeks

שׂוֹר שֶׁהָיָה רוֹדֵף אַחֵר שׂוֹר אַחֵר וְהוּזַק, יֵזֶה אוֹמֵר, שׂוֹרְךָ הִזִּיק, וְהָאֵלֶּה אוֹמֵר, לֹא כִי אֶלָּא בְּסִלַּע לָקָה

indemnity from his fellow must provide proof.³ If two [oxen]⁴ were pursuing one ox, and [one] owner says, 'Thy ox did the damage,' and the other says, 'Thy ox did the damage,' both of them are exempt;⁵ but if both [oxen] belonged to one man, both are liable.⁶ If one [ox] were big⁷ and the other small,⁸ [and] the injured party says, 'The big one caused the damage,' and the one responsible for the damage says, 'Not so, but the small one caused the damage,'⁹ or if one were innocuous and the other noxious, and the injured party says, 'The noxious one did the damage,' and the one answerable for the damage says, 'Not so, but the innocuous one did the damage,' then he who seeks reparation from his fellow must produce evidence.¹⁰ If there were two [oxen] which were injured, one big and the other small, and there were two [oxen] that did the damage, one big and the other small, and the injured party says, 'The big one injured the big one and the small one [injured] the small one,' but the one responsible for the injuries says, 'Not so, but the small one [injured] the big one and the big one [injured] the small one,' or, if one ranked as innocuous and the other was accounted noxious, and the injured party says, 'The noxious one caused damage to the big one, and the innocuous one [caused damage to] the small one,' but the one liable for the damage says, 'Not so, but the innocuous one [caused the damage to] the big one, and the noxious one [caused the damage to] the small one,' he who would recover damages must bring proof.¹¹

המוציא מחברו עליו הראיה. הן
 שנים רודפים אחר אחד, זה אומר,
 שורף הדיק, וזה אומר, שורף הדיק,
 שניהן פטורין; אם הן שניהן
 של איש אחד, שניהן חייבין. הנה
 אחד גדול ואחד קטן, הדיק
 אומר, גדול הדיק, והמזיק אומר,
 לא כי, אלא קטן הדיק, אחד הם
 ואחד מועד, הדיק אומר, מועד
 הדיק, והמזיק אומר, לא כי, אלא
 הם הדיק, המוציא מחברו עליו
 הראיה. הן הדיקות שנים, אחד
 גדול ואחד קטן, והמזיקים שנים,
 אחד גדול ואחד קטן, הדיק
 אומר, גדול הדיק את הגדול וקטן
 את הקטן, והמזיק אומר, לא כי,
 אלא קטן את הגדול וגדול את
 הקטן; אחד הם ואחד מועד, הדיק
 אומר, מועד הדיק את הגדול ותם
 את הקטן, והמזיק אומר, לא כי,
 אלא הם את הגדול ומועד את
 הקטן, המוציא מחברו עליו
 הראיה.¹¹

1 The latter. 2 The owner of the injured ox. 3 To prove his claim. Compare **אֶתְּרָא בְּתָרָא** 96, **בְּכֹרֹת** 27. 4 Belonging to two different persons. 5 Neither pays compensation for each can contend that the other's ox had caused the damage. 6 *i.e.*, whichever ox caused the damage the owner is obviously liable. 7 For which half the damage caused is to be paid. 8 For which less than half payment is made for the damage. And one man owned both beasts. 9 The owner seeking to pay for less than half the damage done. 10 The claim for damages fails if no justification in support is forthcoming. 11 A general case is as follows: if A claims recovery from B the return of goods Y, and B repudiates the claim to Y but admits that he owes goods Z to A, then A cannot recover Z from B as this would relate to an entirely different case (but if A has in his keeping goods Z belonging to B he may retain possession of it as much as has been admitted by B).

CHAPTER 4

פָּרֵק ד'

Mishnah 1

If an ox gored four or five oxen, one after another, damages are paid [first] for the last of them [to be injured];¹ and if there be any surplus, the one before the last is paid therefrom; and if there be* still some surplus, then the one before that is compensated; and thus the last one has always the advantage.² This is the view of R. Meir.³ R. Simon⁴ says, If an ox worth two hundred [zuz] gored another ox worth two hundred [zuz], and the carcass [of the gored ox] be worth nothing, each [owner] takes one *maneh*;⁵ if it again gored another ox of value two hundred [zuz], [the owner of] the last one takes one *maneh*,⁶ and [the owner] of the one before it [of the first ox] takes fifty [zuz] and the other [owner of the goring ox] takes fifty [zuz]; if once again it gored another ox valued at two hundred [zuz], [the owner of] the last [third ox] receives a *maneh*, and [the

מִשְׁנֵה א'

שׁוֹר שְׁנַנְח אַרְבְּעָה וַחֲמִשָּׁה שְׁוֹרִים
זֶה אַחֵר זֶה יִשְׁלַם לְאַחֲרוֹן שְׁבָהֶם ;
וְאִם *יֵשׁ בּוֹ מוֹתֵר יִחְזִיר לְשֵׁל פְּנָיו :
וְאִם *יֵשׁ בּוֹ מוֹתֵר יִחְזִיר לְשֵׁל פְּנָיו
פְּנָיו ; וְהָאֲחֲרוֹן אֲחֲרוֹן *נִשְׁפָּר . דְּבָרֵי
רַבִּי *מְאִיר . רַבִּי *שְׁמַעוֹן אוֹמֵר ,
שׁוֹר שָׁוֶה מְאֵתִים שְׁנַנְח שׁוֹר שָׁוֶה
מְאֵתִים , וְאִין הִנְבְּלָה יָפָה כְּלוּם , זֶה
נוֹטֵל מִנֶּה וְזֶה נוֹטֵל *מִנֶּה ; חֲזֵר וַנְּנַח
שׁוֹר אַחֵר שָׁוֶה מְאֵתִים , הָאֲחֲרוֹן ,
נוֹטֵל *מִנֶּה , וְשֵׁל פְּנָיו זֶה נוֹטֵל חֲמִשִּׁים
זוֹ וְזֶה נוֹטֵל חֲמִשִּׁים זוֹ ; חֲזֵר וַנְּנַח
שׁוֹר אַחֵר שָׁוֶה מְאֵתִים , הָאֲחֲרוֹן נוֹטֵל
מִנֶּה וְשֵׁל פְּנָיו חֲמִשִּׁים זוֹ , וְשָׁנִים
הָרִאשׁוֹנִים דִּינָר זָהָב .

owner] of the one before it gets fifty [זוז], and the first two [owners of the first ox and of the goring ox take each] a golden *denar*.

1 The case here stated refers to an ox that remains innocuous throughout, it having seen and not molested other oxen after every occasion it had gored some ox, and its owner pays only half compensation for damage caused. The method adopted is that stated in 14, 39 (half-damages from the value of the goring ox). 2 Because the reparation is first made for the last one injured. For example, if the five injured oxen were each worth x and the goring ox y , then the owner of the last injured ox gets compensation $x - \frac{1}{2}y$, and the compensation for the next before the last is $x - \frac{1}{2}y - \frac{1}{2}y$ (or all of $x - \frac{1}{2}y$ if it be less than $\frac{1}{2}y$) and so on, so that working backwards there may be no restitution at all for the others. 3 But his view is rejected, except in the case (which is in agreement with R. Simon's opinion following on here) where the owner of the first injured animal seized the injuring ox to collect on it the half-damages. 4 His opinion is accepted. The owners become partners with equal share of responsibility for the damage caused by the ox. 5 מנה = 100 זוז 1 דינר = 25 דינר = 25 זוז (see זרעים, Page 18f.). 6 The owner gets half-damages for his ox, and he thus becomes joint half-owner of the other ox with an equal liability with its owner for the injury it causes; and all the others divide equally the remainder of its value. *Or שבו.

Mishnah 2

If an ox be noxious to its own kind but is not noxious towards another kind, or if it be noxious toward man but is not noxious to cattle, or if it be noxious to small beasts¹ but is not noxious to large ones, *full damages* must be paid for injuries caused to that towards which it is noxious, and *half-damages* only are to be paid for injuries done to that towards which it is not noxious.² They said before R. Judah,³ What is the law regarding an ox that was noxious on Sabbaths⁴ but not noxious on weekdays? He replied to them, For [the injuries caused on] the Sabbaths *full damages* must be paid, and for [the injuries inflicted on] the weekdays *half damages* are paid.

משנה ב

שור שהוא מועד למינו ואינו מועד לשאינו מינו, מועד לאדם ואינו מועד לבהמה, מועד לקטנים ואינו מועד לגדולים, את-שהוא מועד לו משלם נזק שלם, ואת שאינו מועד לו משלם חצי נזק. אמרו לפני רבי יהודה, הרי שהיה מועד לשבתות ואינו מועד לחול? אמר להם, לשבתות משלם נזק שלם, לימות החול משלם חצי נזק. אימתי הוא תם? משניחזור בו שלשה ימי שבתות.

When can it be ranked as innocuous?⁵ When it refrains from causing damage for three [successive] Sabbath days.⁶

1 Or to children as well. 2 Its vicious propensity is legally established as against that particular kind only, and therefore if it injures a different kind—against which it ranks legally as harmless—half-damages only are paid. 3 R. Judah's disciples propounded a question. 4 Because on Sabbaths it does no work and also because it does not recognize people dressed in their Sabbath garments, it is therefore more likely to cause harm than on ordinary weekdays.* 5 *i.e.*, return to the legal status of innocuousness. 6 Compare 24. When it met oxen or human beings on three successive Sabbaths and did not gore anyone. *See ADDENDA at the end of this *Tractate*.

Mishnah 3

משנה ג

If an ox of an Israelite¹ gored² an ox which belonged to the Temple, or if one of Temple ownership gored an ox of an Israelite, [the owner] is exempt,³ as it is said,⁴ *The ox of his neighbour*—and not an ox belonging to the Temple. If an ox of an Israelite⁵ gored an ox of a heathen, [the Israelite] is exempt;⁶ but if an ox of a heathen gored an ox of an Israelite, whether [the damaging ox] was innocuous or noxious, [the heathen] must pay full damages.⁷

שור של ישראל ישננה שור של הקדש, ושל הקדש ישננה לשור של ישראל פטור, ושנאמר, שור רעהו ולא שור של הקדש. שור של ישראל ישננה לשור של עובד כוכבים פטור, ושל עובד כוכבים ישננה לשור של ישראל, בין תם ובין מועד, משלם נזק שלם.

1 A layman (non-priest, non-Levite). 2 שָׁנְנָה [*Kal*] or שָׁנְנָה [*Piel*]. Or *butted*. 3 *i.e.*, there is no liability on the owner. Temple (sacred) property does not belong to any particular owner. 4 *Exodus* 21, 35. 5 A Jew in general. 6 There is no liability. 7 This incongruity is explained in the *Gemara* 38a that heathen property had been confiscated to God when all other nations had refused to accept the Ten Commandments at Sinai; but this apparent justification or glossing over has raised much discussion among Jewish commentators as the ruling is undoubtedly against the principles of Jewish moral law.

Mishnah 4

משנה ד

If an ox of a person of sound senses gored¹ an ox of a deaf-mute, or a mentally-defective person, or a

שור של פקח ישננה שור של חרש או שור של חרש שוטה, ושל חרש שוטה

minor,² he is liable; but if one belonging to a deaf-mute, or a mentally-defective person, or a minor gored an ox of one of sound senses, he is exempt.³ If an ox of a deaf-mute, or a mentally-defective person, or a minor had gored, the court must appoint an administrator⁴ over them and the evidence against them must be stated before the administrator. If [thereafter] the deaf-mute recovered his speech, or the mentally-defective person became sane, or the minor became of age, the ox thereupon ranks as innocuous. This is the view of R. Meir.⁵ R. Jose says, The ox remains in the same status.⁶

An ox from the arena [if it kill a person] is not liable to the death penalty, as it is said,⁷ *If it gore*—and not *if it be caused to gore*.⁸

וְקָטָן שֶׁנֶּגַח שׁוֹר שֶׁל פְּקֵה פְּטוּר.
 שׁוֹר שֶׁל חֵרֶשׁ שׁוֹטֵה וְקָטָן שֶׁנֶּגַח בֵּית
 דִּין מִצְמִידִין לָהֶן יֵאָפוּטְרוּפוֹס,
 וּמִצְמִידִין לָהֶן בְּפָנָי אִפּוּטְרוּפוֹס.
 נִתְפַקֵּה הַחֵרֶשׁ, נִשְׁתַּפֵּה הַשׁוֹטֵה,
 וְהַגְדִּיל תְּקָטָן, חֹזֵר לְתַמּוּתוֹ. דְּבָרֵי
 רַבִּי מְאִיר. רַבִּי יוֹסִי אוֹמֵר, הָרִי
 הוּא בְּחֻזְקָתוֹ. שׁוֹר הָאֶצְטְדִין אֵינוֹ
 חַיִּיב מִיתָה, יִשְׁנָאֵמַר, כִּי יָנַח, וְלֹא
 שִׁינִיחוּהוּ.

1 See 43, Note 2. 2 A boy under thirteen years of age (a girl under twelve—קָטָן). 3 There is no liability. 4 Or *guardian*, to look after their interests. In this case, when the ox gores three times and is legally declared noxious, the compensation is levied on the real estate or personal property owned by the orphans. 5 His opinion is accepted. 6 The status is not altered by change of possession—it still remains legally noxious. 7 *Exodus 21, 28*. 8 In this case the ox did not kill by its vicious tendency but because it was goaded to do so or trained to gore.

Mishnah 5

If an ox gored¹ a² man and he died, then if it were noxious, [the owner] must pay the ransom value,³ but if it ranked as innocuous, he is exempt from the indemnity; but in both cases [the oxen] suffer the death penalty.⁴ And likewise, also in the case of a son or daughter.⁵ If it gored a [Canaanite] bondman or bondwoman, [the owner] must pay thirty *shekels* whether [the bondman or bondwoman] was worth a hundred *manehs* or only worth one *denar*.⁶

מִשְׁנֵה הַ
 שׁוֹר יִשְׁנָה אֶת־הָאָדָם וּמָת, מוֹעֵד
 מִשְׁלָם כּוֹפֵר, וְתָם פְּטוּר מִן־
 הַכּוֹפֵר; וְזֶה וְזֶה חַיִּיבִים מִיתָה.
 וְכֵן בֶּבֶן וְכֵן בְּבַת. נֶגַח עֶבֶד אוֹ
 אֲמָה, נוֹתֵן שְׁלֹשִׁים סֵלְעִים, בֵּין שֶׁהוּא
 יָפֵה מֵאָה מְנֵה וּבֵין שֶׁאֵינוֹ יָפֵה אֶלָּא
 דִּינָר אֶחָד.

1 See 43, **Note 2**. 2 Literally *the*. 3 Indemnity for the loss of life to the deceased's heirs. 4 By stoning. *Exodus 21*, 28-30. 5 Minors killed by an ox. The ox is put to death, and if it was noxious its owner must pay compensation for the loss of life. 6 *Exodus 21*, 32. 1 שָׁקַל = 2 דִּינָר = 2 זוז ; 1 מָנָה = 100 זוז (see זָרְעִים, Page 18f.).

Mishnah 6

If an ox rubbed itself against a wall, and [the wall] fell upon some person,¹ or if it intended to kill an animal² but killed a person, or [if it intended to kill] a non-Jew but killed an Israelite, or [if it intended to kill] a child of untimely birth³ but it killed a viable child, it is exempt.⁴

מִשְׁנֵה ו

שׁוֹר שֶׁהִיָּה מִתְחַבֵּץ בְּכוֹתֵל וְנִפְלַע עַל
 הָאָדָם, וְנִתְּפוֹן לְהַרוֹג אֶת-הַבְּהֵמָה
 וְהָרַג אֶת-הָאָדָם, לְעוֹבֵד כּוֹכָבִים
 וְהָרַג אֶת-יִשְׂרָאֵל, לְנִפְלִים וְהָרַג
 בֶּן קַיָּמָא, פְּטוֹר.⁴

1 Literally *the man*. Who was killed. It is not stoned to death because the death was not caused intentionally. 2 Literally *the animal*. 3 Which could not live. Literally in the plural. נִפְלָה, abortion, miscarriage, nonviable birth. 4 The ox is not stoned to death, but indemnity for the loss of life must be paid.

Mishnah 7

An ox belonging to a woman,¹ an ox belonging to orphans,² an ox belonging to an administrator,³ an ox of the wilderness,⁴ an ox belonging to the Temple, an ox belonging to a proselyte who died and there are no heirs⁵—these are liable to the death penalty.⁶ R. Judah⁷ says, An ox of the wilderness, an ox belonging to the Temple, [and] an ox belonging to a proselyte who died [without leaving heirs] are exempt from the death penalty since they have no owners.

מִשְׁנֵה ז

שׁוֹר הָאִשָּׁה, שׁוֹר הַיְתוּמִים, שׁוֹר
 הָאֶפֶסְרוֹפּוֹס, שׁוֹר הַמְדָּבָר, שׁוֹר
 הַהֶקְדָּשׁ, שׁוֹר הַגֵּר שְׁמֵת וְאֵין לוֹ
 יוֹרְשִׁים, הָרִי אֶלּוֹ חַיִּיבִים מִיָּתָהּ.
 רַבִּי יְהוּדָה אוֹמֵר, שׁוֹר הַמְדָּבָר,
 שׁוֹר הַהֶקְדָּשׁ, שׁוֹר הַגֵּר שְׁמֵת,
 פְּטוּרִים מִן-הַמִּיתָה, לְפִי שְׂאִין לָהֶם
 בְּעָלִים.

1 Literally *the woman*. 2 Literally *the orphans*. Minors (boys under thirteen years of age, girls under fourteen) under the guardianship of administrators appointed by the court. 3 Literally *the administrator*, i.e., the ox belonged to the orphans but was in the care of the administrator appointed by the court. 4 i.e., a wild

ownerless ox. 5 Compare 911. 6 If they kill a human being. This is the accepted ruling. 7 His opinion is rejected.

Mishnah 8

משנה ח

If an ox be taken forth¹ to be stoned, and its owner dedicated it,² it is not dedicated.³ [If the owner] slaughtered it, its flesh is prohibited.⁴ If, however, its owner dedicated it before sentence was passed on it, it is dedicated,⁵ and if he slaughtered it, its flesh is permitted.

שור שהוא יוצא להסקל והקדישו בעליו אינו מוקדש. שחטו בשרו אסור. ואם עד שלא נגמר דינו הקדישו בעליו מוקדש, ואם שחטו בשרו מותר.

1 *i.e.*, to be condemned. 2 To be Temple property. 3 The owner having no longer vested title to it can not dispose of it, and the dedication is ineffective. The principle is אין אדם מקדיש אלא דבר שברשותו, one must not dedicate aught that does not belong to him, and once sentence has been pronounced, it is no longer his ox to dedicate. 4 Exodus 21, 28, since even if it had been ritually slaughtered correctly its flesh may not be eaten. 5 The dedication is valid and the ox becomes Temple property, since it is still the property of the owner before the court gives the final verdict. Accordingly the trespass offering (מעילה) is incurred if one derives benefit thereof.

Mishnah 9

משנה ט

If one delivered it, [namely, his ox] to an unpaid caretaker, or to a borrower, or to a paid guardian, or to a hirer,¹ then these substitute* the owner—if it were noxious,² they must pay full damages, and if it were innocuous, they must pay half-damages.³ If its owner had tied it up⁴ by the reins, or had locked it in properly, and yet it came out and did damage, be it innocuous or noxious, [the owner] is liable.⁵ This is the view of R. Meir. R. Judah⁶ says, If it be innocuous he is liable, but if it be noxious he is exempt, as it is said,⁷ *And his owner hath not kept*

מסרו לשומר חנם, וילשואל, לנושא שקר, וילשוכר, ונכנסו תחת הפעלים, מועד משלם נזק שלם ותם משלם יחצי נזק. קשרו בעליו במוסרה ונעל בפניו פראוי ויצא והיק, אחד תם ואחד מועד, חייב דברי רבי מאיר. רבי יהודה אומר, תם חייב ומועד פטור, שצאמר, ולא ישמרנו בעליו, ושומר

him in, but in this case it was kept in. R. Eliezer says, Its only secure guarding is the knife. *i.e., are as.

הוא זה. רבי אליעזר אומר, אין לו שמירה אלא סכין.

1 Compare **בבא מציעא** 78. 2 And it caused injury. 3 The actual owner therefore is not liable. But if every reasonable care as required by law was taken to guard against mishap then these substitute people are exempt from liability. 4 To a fence, etc. 5 But only if the owner had taken insufficient precautions to guard against its escape. 6 His opinion is accepted. Nevertheless it is a moral obligation to get rid of a noxious beast by having it slaughtered (and not by disposal to another owner to be the probable cause of further damage). 7 *Exodus* 21, 29.

CHAPTER 5

פרק ה

Mishnah 1

משנה א

If an ox gored¹ a cow and her embryo² was found beside her, but it is not known whether she gave birth before it gored her³ or whether she gave birth after it gored her, [the owner of the ox] must pay *half-damages* for the cow and *one-fourth damages* for the young.⁴ And similarly, also, if a cow gored an ox and her newly-born young was found at her side, and it is not known whether she gave birth before she gored⁵ or whether she gave birth after she gored, [the owner of the cow] must pay⁶ *half-damages* [corresponding to the value] of the cow and *quarter-damages* [corresponding to the worth] of the newly-born young.⁷

שור ישננה את-הפרה ונמצא עופרה בצדה, ואין ידוע אם עד שלא ננחה ילדה, אם משננחה ילדה, משלם חצי נזק לפרה, ורביע נזק יולד. וכן פרה שננחה את-השור ונמצא ולדה בצדה, ואין ידוע אם עד שלא ננחה ילדה אם משננחה ילדה, משלם חצי נזק מן-הפרה ורביע נזק מן-היולד.

1 See 4^b, **Note 2**. 2 Or *newly-born young*. Found dead. 3 **ננחה** [*Kal*] or **ננחה** [*Piel*]. 4 Compare 3¹. But the plaintiff in this case can only recover compensation if there is irrefutable evidence to prove his case, otherwise the defendant receives the benefit of the doubt and is free from liability.* 5 **ננחה** [*Kal*] or **ננחה** [*Piel*]. 6 To the owner of the injured ox. 7 In this case the court has to determine when the goring took place—if before the birth, the owner is entitled to half-damages from the cow's value and half-damages from the value of the young, and if after the birth, the owner receives only half-damages from the cow's value. *See **ADDENDA** at the end of this *Tractate*.

Mishnah 2

משנה ב

If a potter brought his pots into the courtyard¹ of a householder without permission, and the cattle of the householder broke them, [the householder] is exempt;² and if [the cattle] were injured by them, the owner of the pots is liable;³ but if [the potter] brought them in by permission, the owner of the courtyard is liable. If one brought his produce into the courtyard of a householder without permission, and the cattle of the householder consumed it, he is exempt;⁴ and if [the cattle] were injured by it, [namely, the produce] the owner of the produce is liable;⁵ but if he brought in [the produce] by permission, the owner of the courtyard is liable.⁶

הַקָּדָר שֶׁהַכֵּינִים קָדְרוּתָיו יִלְחָצֵר
בְּעַל הַבַּיִת שֶׁלֹּא בְרִשׁוֹת וְשִׁבְרָתָן
בְּהִמָּתוֹ שֶׁל בְּעַל הַבַּיִת פְּטוֹר, וְאִם
הוּזְקָה בָּהֶן בְּעַל הַקָּדְרוֹת חַיִּיב;
וְאִם הַכֵּינִים בְּרִשׁוֹת בְּעַל הַצֵּר חַיִּיב.
הַכֵּינִים פִּירוּתָיו לְחָצֵר בְּעַל הַבַּיִת
שֶׁלֹּא בְרִשׁוֹת וְאִכְלָתָן בְּהִמָּתוֹ שֶׁל
בְּעַל הַבַּיִת פְּטוֹר; וְאִם הוּזְקָה
בָּהֶן בְּעַל הַפִּירוֹת חַיִּיב; וְאִם
הַכֵּינִים בְּרִשׁוֹת בְּעַל הַחָצֵר חַיִּיב.

1 **חָצֵר**, *court, yard, courtyard*, in general *private property, private domain*. 2 He is not liable for the damaged wares. 3 Because he is like a trespasser. 4 The householder is not liable for the loss. 5 Only if the injury was caused by the animal tripping over the produce, but not by eating it (for the owner of the animal was in duty bound to prevent it eating it). 6 To repay the damage or loss caused to the produce.

Mishnah 3

משנה ג

If one led his ox into the courtyard of a householder without permission, and the ox of the householder gored it,¹ or if the dog of the householder bit it, [the householder] is exempt;² but if it,³ [namely, the outsider's ox] gored⁴ the ox of the householder, [the outsider] is liable, [or if the trespassing ox] fell into his, [namely, the householder's] cistern and fouled its water, he is liable.⁵ If his [namely, the householder's] father or son were therein, [namely, in the cistern, and were killed by the ox],

הַכֵּינִים שׁוֹרוֹ לְחָצֵר בְּעַל הַבַּיִת שֶׁלֹּא
בְרִשׁוֹת יוֹנְגָחוּ שׁוֹרוֹ שֶׁל בְּעַל הַבַּיִת
אוֹ שֶׁנֶּשְׁכּוֹ כְּלָבוֹ שֶׁל בְּעַל הַבַּיִת
פְּטוֹר; יִנְגַח הוּא שׁוֹרוֹ שֶׁל בְּעַל
הַבַּיִת חַיִּיב, נָפַל לְבוֹרוֹ וְהִבְאִישׁ
מִמֵּיו חַיִּיב. הָיָה אָבִיו אוֹ בְּנוֹ
לְתוֹכוֹ מְשֻׁלָּם אֶת־הַכֶּפֶר. וְאִם
הַכֵּינִים בְּרִשׁוֹת בְּעַל הַחָצֵר חַיִּיב.

[the owner of the ox] must pay indemnity.⁶ However, if he brought it in by permission, the owner of the courtyard is liable. Rabbi⁷ says, In all these cases the householder is not liable unless he undertook to watch over it.⁸

יְרָבִי אוֹמֵר, בְּכוֹלֵן אֵינוֹ חַיִּב עַד שִׁיקָבֵל עָלָיו לְשֹׁמֵר.

1 וְנִגְחָו [Kal] or וְנִגְחָו [Piel]. Compare 4³, Note 2. 2 שָׁשְׂכוּ [Kal] or שָׁשְׂכוּ [Piel]. 3 He is not liable for the injury because the outsider is a trespasser. 4 נִגַּח [Kal] or נִגַּח [Piel]. 5 And he must compensate the householder for any damage caused. 6 The ox does not suffer the death penalty for it did not kill with intent (הוֹאִיל וְהָרַג שְׁלֵא בְּכוּנָה). 7 His opinion* is accepted. 8 And the entrant—if not an intruder—is also exempt. *See ADDENDUM at the end of this *Tractate*.

Mishnah 4

If an ox, intending [to gore] its fellow ox, struck a woman and her young came forth,¹ [its owner] is exempt from payment for [the value of] the young.² But if a man, intending [to strike] his fellow, struck a woman and her young came forth, he must make payment [for the value of] the young.³ How does one make payment for [the value of] the young? They appraise how much the woman was worth [if sold as a slave] before the miscarriage and how much she is worth after the miscarriage.⁴ Rabban Simon⁵ ben Gamaliel said, If so, a woman's worth is enhanced⁶ after she has brought forth⁷—preferably they should assess the value of the young and he pays it to the husband, or, if she have no husband, he pays it to his heirs.⁸ If she were an emancipated bondwoman⁹ or a proselyte,¹⁰ he is exempt.

משנה ד

שׁוֹר שֶׁהָיָה מִתְכוּוֵן לְחֵבְרוֹ וְהִכָּה אֶת־הָאִשָּׁה וַיּוֹצֵאוּ יְלֵדֶיהָ פָּטוֹר מִדְּמֵי וְלָדוֹת. וְאִדָּם שֶׁהָיָה מִתְכוּוֵן לְחֵבְרוֹ וְהִכָּה אֶת־הָאִשָּׁה וַיּוֹצֵאוּ יְלֵדֶיהָ מִשְׁלֵם דְּמֵי וְלָדוֹת. כִּי־צַד מִשְׁלֵם דְּמֵי וְלָדוֹת? שָׁמִין אֶת־הָאִשָּׁה כַּמָּה הִיא יָפָה עַד שֶׁלֹּא יֵלְדָה וְכַמָּה הִיא יָפָה מִשְׁיֵלְדָה. אָמַר רַבִּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל, אִם בֵּין מִשְׁנֵהָאִשָּׁה יֵלְדָת מִשְׁבַּחַת, אֶלֶּא שָׁמִין אֶת־הַנְּלָדוֹת כַּמָּה הֵן יִפִּין וְנוֹתֵן לְבַעַל, וְאִם אֵין לָהּ בַּעַל נוֹתֵן לְיֹרְשָׁיו. הִיָּתָה שִׁפְחָה וְנִשְׁתַּחֲרָרָה אוֹ יִגְיֹרָת פָּטוֹר.

1 Premature birth, miscarriage, abortion. 2 *Exodus 21, 29*. Payment for damages by law for abortion is made only when caused by a human being. 3 Even if he did not intend to strike her. 4 According to the view of this anonymous Tanna a pregnant woman is worth more than a non-pregnant woman, and this difference in value is to be paid by him who caused the injury. This view is accepted. 5 His opinion is rejected. 6 *משבחת*, a *Hiphil* form, probably for the *Hithpaal* *משתבחת*; or perhaps *השבחת*, *Pual*. 7 In his opinion a pregnant woman being in greater danger of her life before childbirth than after delivery is of less value before the abortion. 8 The damages for the young are paid to the husband, and the damages for the woman's pain and suffering go to her. 9 Whose husband was a freed slave and died without leaving heirs. 10 Whose husband was a proselyte and died without leaving issue. The damages are not paid as there are no husbands in these two cases to whom to pay. In the case of the proselyte, however, the damages must be paid to her if the husband died before the goring took place.

Mishnah 5

If one dig a pit in a private domain and opens it¹ into the public domain,² or in the public domain and opens it into a private domain,³ [or] in a private domain and opens it into another private domain,⁴ he is liable [if anyone be injured thereby]. If one dig a pit in the public domain, and an ox or an ass falls into⁵ it and dies, he is liable.⁶ It is all one whether one digs a pit,⁷ [or] trench,⁸ or cavern,⁹ [or] channel,¹⁰ or ditches,¹¹ he is liable. If this be so, then why is it said,¹² *pit?* [The inference is that] just as a pit that is* deep enough to cause death must be [not less than] ten handbreadths deep¹³, so also any other [excavation] must be [at least] ten handbreadths deep to cause death. If they were less than ten handbreadths [in depth], and an ox or an ass fell therein and died, he is exempt,¹⁴ but if it suffered injury thereby he is liable.¹⁵

מִשְׁנֵה ה

החופר בור ברשות היחיד יפתחו
 לרשות הרבים, או ברשות הרבים
 ופתחו לרשות היחיד, ברשות
 היחיד ופתחו לרשות היחיד אחר,
 חייב. החופר בור ברשות הרבים
 ונפל לתוכו שור או חמור וימת,
 חייב. אֶחָד החופר בור, שִׁיחַ
 וּמְעָרָה, חֲרִיצִין¹⁰ וּנְעִיצִין, חייב.
 אם כן למה נאמר, בור? מה-
 בור שיש בו כדי להמית¹³ עֲשָׂרָה
 טפחים, אף כל שיש בו כדי להמית
 עֲשָׂרָה טפחים. היו פחותין מעֲשָׂרָה
 טפחים ונפל לתוכו שור או חמור
 וימת, פטור, ואם התק בו¹⁵ חייב.

1 Literally *opened it*. Some read it *וּפְתַחוּ*, and its opening. 2 *Exodus 21, 33*. He is liable because he is a trespasser, having no right to endanger the public ground against others. 3 But he is not liable if the animal trespassed into his private ground and there sustained injury. The liability applies only if the digger did not renounce his right to the pit but only to his property. 4 In this case the liability falls on him only if the possessor of the other ground repudiated his ownership to his property. 5 Literally *fell*. 6 He has no right to trespass in this manner, the general public also having the right to let their animals roam there. 7 Round like a well. 8 Long and narrow. 9 Oblong (with an overlying plank, but still open). 10 Rectangular (but not covered over). 11 Wedge-like or V-shaped (narrow at the bottom and wide at the top). 12 In the Scriptural text. 13 To entail liability for damages in case of injury. See *וְרָעִים*, Page 18f. 14 The owner of the pit is not liable for the damage. 15 Even if he had no control over the excavation or had no title to it. *Or *שִׁישׁ-בוּ*.

Mishnah 6

If a pit belonged to two partners,¹ and one went away from it but left it uncovered, (and the second one also [went away from it] but left it uncovered,²) the second one is liable.³ If the first one covered it, and the second one came and found it uncovered and did not cover it, the second is liable. If he had properly covered it, and nevertheless an ox or an ass fell therein and died, he is exempt; but if he had not covered it effectively,⁴ and an ox or an ass fell into it and died, he is liable. If [an ox or an ass] fell forward because of⁵ the noise of the excavating, he is liable; but if because of the noise of the excavating [it fell] backward, he is exempt.⁶ If an ox with its trappings fell into it and these became broken, or if an ass with its trappings fell therein and these became torn, he is liable for [the injuries suffered by] the animal, but he is exempt for [the damage

מִשְׁנֵה ו

בּוֹר שֶׁל שְׁנַי יְשׁוּתָפִין, עָבַר עָלָיו הָרְאשׁוֹן וְלֹא כָּסְהוּ, (וְיִהְיֶה שֶׁנִּי וְלֹא כָּסְהוּ), הַשֵּׁנִי חַיִּיב. כָּסְהוּ הָרְאשׁוֹן וְכֹא הַשֵּׁנִי וּמִצְאוֹ מְגוּלָה וְלֹא כָּסְהוּ, הַשֵּׁנִי חַיִּיב. כָּסְהוּ כְּרֵאִי וְנִפְלָ לְתוֹכוֹ שׁוֹר אֹו חֲמוֹר וּמֵת פְּטוֹר; לֹא כָּסְהוּ כְּרֵאִי וְנִפְלָ לְתוֹכוֹ שׁוֹר אֹו חֲמוֹר וּמֵת חַיִּיב. נִפְלָ לְפָנָיו מְקוּל הַכְּרֵייה חַיִּיב, לְאַחֲרָיו מְקוּל הַכְּרֵייה פְּטוֹר. נִפְלָ לְתוֹכוֹ שׁוֹר וְכֵלָיו וְנִשְׁתַּבְּרוּ, חֲמוֹר וְכֵלָיו וְנִתְקַרְעוּ, חַיִּיב עַל הַבְּהֵמָה וּפְטוֹר עַל הַכֵּלִים. נִפְלָ לְתוֹכוֹ שׁוֹר חֲרָשׁ שׁוֹטֵה וְקָטָן חַיִּיב. בֵּן אֹו בֵּת עֶבֶד אֹו אִמָּה, פְּטוֹר.

done to] the trappings.⁷ If an ox that was deaf, or mad or young fell into it, he is liable.⁸ If a [minor] son or [minor] daughter⁹ or a [Canaanite] bondman or bondwoman fell into it, he is exempt.¹⁰

1 Or *jointholders*. 2 Some editions omit **וְהַשְׂנִי וְלֹא כִסָּהוּ** in parentheses. 3 But if the first one was warned that the pit needed covering over and he failed to provide a cover before the other took over, then both are equally liable as they are equally guilty of neglect. 4 And the cover became rotten—and unsafe—from the under part (which could not be observed from outside), the owner is free from blame. 5 *i.e.*, frightened by. 6 *Actually the digger of the pit is liable whether the animal fell in forward or backward, and whether it died or only suffered injury; if the animal, startled by the sound, fell on the outside of the pit the digger is not liable. 7 *Exodus* 21, 33 reads *an ox or an ass*, and the inference drawn is that no liability attaches for the outfit. 8 Because a beast with such defects cannot be saddled with contributory negligence when walking (a normal animal can take care of itself while walking). 9 *i.e.*, a boy (under thirteen years of age) or girl (less than twelve years of age). 10 If they died. But there is liability if they were only injured. *See ADDENDUM at the end of this *Tractate*.

Mishnah 7

מִשְׁנָה ז

It is all one¹ whether an ox or any other animal regarding falling into a pit, keeping away from Mount Sinai,² *two-fold reparation*,³ restoring lost property,⁴ relief in unloading,⁵ muzzling,⁶ *forbidden junction*,⁷ and the Sabbath;⁸ and likewise, too, § [the law applies to] wild animals and birds. If this be so, why is it said,⁹ *an ox or an ass*?¹⁰ Because the Scriptural text speaks only of what is usual.¹¹

אֶחָד שׁוֹר וְאֶחָד כָּל-בְּהֵמָה לְנִפְלִית הַבוֹר, וְיִלְהַפְּרֶשֶׁת הָרָר סִינַי, וְיִלְתַּשְׁלוּמֵי כָּפָל, וְיִלְהַשְׁבֵּת אַבְדָּה, לְפָרִיקָה, לְחֻסְמָה, לְכֻלָּאִים, וְלִשְׁבֵּת; וְכֵן חֵיהָ וְעוֹף כִּיּוֹצָא בְּהֵן אִם כֵּן, לָמָּה יִנְאָמַר, שׁוֹר אִו חֲמוֹר? אֲלֹא שְׂדֵבֵר הַכְּתוּב בְּהוֹנָה.

1 *i.e.*, there is no distinction in law. 2 *Exodus* 19, 13.* 3 *Exodus* 22, 6. 4 *Exodus* 23, 4; *Deuteronomy* 22, 1, 2, 3. 5 *Exodus* 23, 5; *Deuteronomy* 22, 4. 6 *Deuteronomy* 25, 4. 7 *Leviticus* 19, 19; *Deuteronomy* 22, 10. 8 *Exodus* 20, 10; *Deuteronomy* 5, 14. Perhaps **וְיִלְשָׁבֶת**, and *Sabbath*. 9 *Exodus* 21, 33. 10 *i.e.*, only. 11 Compare **שְׁבֵת** 66.9; **עִירֹבֵין** 110; **יְבָמוֹת** 152; **נְדָרִים** 55; **עֵדוּת** 112.* **Notes 2-11:** in all these cases, the expressions used (mostly **כָּל**) are indicative of their wide net. §Or **בְּהֵן**.

CHAPTER 6

פָּרָק ו'

Mishnah 1

If one took¹ his flock into the fold, and locked it in properly,² but it broke out and caused damage, he is exempt.³ If he had not locked it in effectively, and it came out and did damage,⁴ he is liable. If it⁵ were broken into by night,⁶ or if robbers broke into it,⁷ and [the flock] came out and caused damage, he is exempt. If the robbers let it out, the robbers are liable.⁸

1 Literally *takes, brings*. 2 He cannot be charged with contributory negligence, especially since he had taken necessary precaution. 3 Only if he was unaware of their escape. 4 Due to natural propensity—such as eating, drinking—and to treading down. Here the neglect in shutting in the animals properly is a direct contributory cause of the damage. 5 The fold. 6 When the owner cannot be reasonably expected to know what happened or to do much about it. 7 Even the robbers are not held liable for any resulting damage. 8 If by any action on their part the creatures were made to go where the damage was subsequently done.

Mishnah 2

If one left it,¹ [namely, the flock] in the sun,² or if he put it in charge of a deaf-mute, or a mentally defective person, or a minor, and it came out and did damage, he is liable.³ If he gave it into the care of a shepherd, the shepherd enters [into the responsibilities] in his place.⁴ If it fell into a garden and derived some benefit, he must compensate⁵ for what it enjoyed;⁶ if it went down in the usual manner⁷ and did damage, he must pay for the damage it has done.⁸ How does he pay for what it has damaged? They estimate how much the *space of*

מִשְׁנָה א

יִהְיוּנוֹס צֹאן לְדִיר וְנָעַל בְּפִנֵּיהָ
כָּרְאוּי וְיִצְאָה וְהִזִּיקָה, יִפְטוֹר
לֹא נָעַל בְּפִנֵּיהָ כָּרְאוּי וְיִצְאָה
וְהִזִּיקָה, חֲיִיב. וְנִפְרָצָה בְּלֵילָה,
אוֹ שִׁפְרָצוּהָ לְסֻטִּים, וְיִצְאָה
וְהִזִּיקָה, פְּטוֹר. הוֹצִיאוּהָ לְסֻטִּים,
לְסֻטִּים חֲיִיבִים.

מִשְׁנָה ב

יִהְיִיחָה בְּחֻמָּה אוֹ שִׁמְסָרָה לְחֵרֶשׁ
שׁוֹטֵה וְקֹטֵן, וְיִצְאָה וְהִזִּיקָה, חֲיִיב.
מְסָרָה לְרוּעָה נְכוֹס רוּעָה יִתְחַתֵּיו,
וְפָלָה לְגִינָה וְנִהְיִית מְשֻׁלְמֵת מֵהֶ—
שְׁנֵהְיִית; יִרְדֶּה כְּדֹרְכָה וְהִזִּיקָה
מְשֻׁלְמֵת מֵהֶ—שֶׁהִזִּיקָה, כִּיצַד
מְשֻׁלְמֵת מֵהֶ—שֶׁהִזִּיקָה? שְׁמִין בֵּית
סָאָה בְּאוֹתָהּ שְׂדֵה כֶּמֶה הִיְתָה יָפָה
וְכֶמֶה הִיא יָפָה. רַבִּי שְׁמַעוֹן אוֹמֵר,

a *seah*⁹ in that field was worth [before the damage] and what its value is now [after the damage]. R. Simon¹⁰ says, If it consumed ripe produce, he must repay [the value of] ripe produce; if [it ate up or damaged] one *seah*,¹¹ [he repays] one *seah*, and if two *seahs*, [he repays] two *seahs*.

1 Or הַגִּיחָה 'it' refers also to a single sheep. 2 And the scorching heat caused it to break out of the fold. 3 Because those in charge are not competent to take effective custody. 4 Liability falls upon the shepherd who is a qualified custodian. 5 To the owner of the garden. 6 For the produce eaten. No restitution for damage caused is made in this case, because the sheep found themselves there by mere accident and not because of their owner's negligence. 7 *i.e.*, not by a mere accident. 8 Both for the produce consumed and for the damage caused, because their entry there was due to their owner's negligence. 9 בֵּית סָאָה = 2,500 square cubits [50 cubits square]. See וְרָעִים, Page 18f. The assessment for the damage is not evaluated from the small damaged part but from the whole area containing that part damaged. 10 His view is accepted. 11 סָאָה = about 60 pints (or 801 cubic inches).

Mishnah 3

מִשְׁנָה ג

If one stacked sheaves¹ in his fellow's field without permission, and the cattle of the owner of the field consumed them, he is exempt;² but if they were injured through them,³ the owner of the stacked sheaves is liable. But if he stacked the sheaves by permission, the owner of the field is liable.⁴

יְהַמְגִידֵשׁ בְּחוּךְ שָׂדֶה שֶׁל חֵבְרוֹ שֶׁלֹּא בְרִשׁוֹת וְאֶכְלָתוֹן בְּהֶמְתּוֹ שֶׁל בָּעַל הַשָּׂדֶה, פָּטוֹר; וְאִם הוּזְקָה בְּהֵן, בָּעַל הַגִּדִישׁ חַיִּיב. וְאִם הַגִּדִישׁ בְּרִשׁוֹת, בָּעַל הַשָּׂדֶה יְחַיֵּיב.

1 Literally *stacks*. Compare 5². 2 The owner of the animals is not liable for the loss. 3 *i.e.*, if the beasts suffered injury because of the sheaves.* 4 This ruling also applies to a caretaker left in charge of a field if he allows someone to stack sheaves there. *Or בְּהֵן.

Mishnah 4

מִשְׁנָה ד

If one caused¹ a conflagration² through a deaf-mute,* a mentally defective person, or a minor, he is

יְהַשְׁוִיחַ אֶת-הַבְּעֵרָה בְּיַד יְחָרֵשׁ, שׁוֹטֵה, וְקֹטֵן, פָּטוֹר בְּדִינֵי אָדָם,

exempt³ from the laws of man, but he is liable by divine law.⁴ If one caused [a fire] through one of sound senses, the one of sound senses is liable.⁵ If one first brought the fire and another brought the wood, he who brought the wood is liable. If one first brought the wood and another brought the fire, he that brought the fire is liable. If a third person came⁶ and set the wood ablaze, he who caused the blaze is liable.⁷ If the wind fanned it into a blaze, they are all exempt. If one started⁸ a conflagration and it consumed wood, or stones, or earth, he is liable, as it is said,⁹ *If fire break out and catch in thorns,*¹⁰ *so that the shocks of corn, or the standing corn, or the field are consumed, he who kindled the fire shall surely make restitution.* If [the fire] passed over a fence four cubits high, or across a public highway,¹¹ or a stream, he is not liable. If one kindle a blaze in his own domain, how far may the fire spread?¹² R. Eliezer ben Azariah says, They must consider it as though it were in the centre of a *kor's* area of land.¹³ R. Eliezer says, Sixteen cubits, like a public highway. R. Akiba says, Fifty cubits. R. Simon¹⁴ says, *He who kindled the fire shall surely make restitution*—it all depends on the nature of the fire.

*חֵרֵשׁ, deaf, dumb, deaf and dumb.

וְחַיִּיב בְּדִינֵי שָׁמַיִם. שְׁלַח בְּיַד פְּקָתָהּ.
הַפְּקָתָהּ חַיִּיב. אֶחָד הֵבִיא אֶת־
הָאוּר וְאֶחָד הֵבִיא אֶת־הָעֵצִים,
הֵמְבִיא אֶת־הָעֵצִים חַיִּיב. אֶחָד
הֵבִיא אֶת־הָעֵצִים וְאֶחָד הֵבִיא אֶת־
הָאוּר, הֵמְבִיא אֶת־הָאוּר חַיִּיב. בָּא
אֶחָד וְלִיבָה, הִמְלִיכָה חַיִּיב. לִיבָתָהּ
הָרוּחַ, כּוֹלֵן פְּטוּרִין. הִשְׁוִלָה אֶת־
הַבְּעֵרָה וְאֶכְלָה עֵצִים אוֹ אֲבָנִים אוֹ
עֶפֶר חַיִּיב. שֶׁנֶּאֱמַר, כִּי תֵצֵא אֵשׁ
וּמִצָּאָה יִקְוֹצִים וַיֵּאָכֵל גֹּדֵשׁ אוֹ
הַקָּמָה אוֹ הַשְּׂדֵה שְׁלֵם יִשְׁלֵם
הַמְּבַעֵיר אֶת־הַבְּעֵרָה. עֲבָרָה גֹדֵר
שֶׁהוּא גְבוּהָ אַרְבַּע אַמּוֹת, אוֹ יִדְרֹךְ
הַרְבִּים אוֹ נָהָר, פְּטוּר. הַמְּדַלֵּק
בְּתוֹךְ שְׁלוֹ, עַד כַּמָּה יִתְעַבּוֹר
הַדְּלִיקָה? רַבִּי אֶלְעָזָר בֶּן עֲזַרְיָה
אוֹמֵר, רוֹאִין אוֹתוֹ כְּאִילוֹ הוּא
בְּאֲמִצָּע יִבְיֵת כּוֹר. רַבִּי אֶלְעָזָר
אוֹמֵר, שֶׁשָּׂה עֶשֶׂר אַמּוֹת כְּדֶרֶךְ רִשׁוּת
הַרְבִּים. רַבִּי עֲקִיבָא אוֹמֵר, חֲמִשִּׁים
אַמָּה. רַבִּי יִשְׁמַעוֹן אוֹמֵר, יִשְׁלֵם
יִשְׁלֵם הַמְּבַעֵיר אֶת־הַבְּעֵרָה, הַכֹּל
לְפִי הַדְּלִיקָה.

1 Literally *causes*. 2 By sending out inflammable material. 3 If the burning material consisted of red hot coals but not if it burned with flame. 4 *i.e.*, although the act is not punishable by an earthly tribunal yet he is answerable for the con-

sequences on religious principles to the Heavenly Court. 5 Compare 87. 6 After one brought the wood and a second brought the fire, or vice versa. 7 The last one, the direct cause of the fire, is in all these cases liable. 8 Literally starts. 9 *Exodus* 22, 5. 10 קָצִים in the Scripture. 11 16 cubits wide. Compare *בְּתֵרָה בְּבֵאָה* 67. (1 cubit = 22.1 inches). 12 In order that he may be liable for damage in that area. One may make a fire on his own premises, but he is liable for damage caused to others thereby. 13 בֵּית כֶּר = 75,000 square cubits (nearly 274 cubits square; see *וְרָעִים*, Page 18f.). 14 His opinion is accepted. Every circumstance must be taken into consideration before liability can be fixed.

Mishnah 5

If one set fire to a stack of sheaves and there were utensils therein and these were burnt, R. Judah¹ says, He must pay [also] compensation for what was therein. But the Sages² say, He pays only for the stack of wheat or of barley.³ If a kid were tied to it, and a bondman was nearby, and both were burnt, he is liable⁴. If a bondman were fastened to it, and a kid was nearby, and they were burnt together, he is not liable.⁵ And the Sages agree with R. Judah that if one set fire⁶ to a (large) house⁷, he must make restitution for all that was therein, for it is customary for people to keep⁸ [their belongings] in [their] houses.⁹

1 His opinion is rejected. 2 Their view is accepted. 3 But not for the utensils, for such things are not usually found in a place like the one burnt down. 4 Only for the animal, but not for the slave who could have escaped. Compare 31⁰, 85. 5 Being guilty of murder the penalty is death, and thus he is exempt from having to be punished for the smaller offence, *viz.*, the loss of the creature. 6 Or *בְּמִדְּלִיק*. 7 Or *large building, mansion*. 8 Or *לְהִנִּיחַ*. 9 The offender should have been mindful of the possible havoc and loss his negligence might cause. This is the prevailing law. Or *בְּבָתִּים*.

Mishnah 6

If a spark flew out from under the hammer and did damage, [the user]

מִשְׁנֵה ה

הַמְדְּלִיק אֶת־הַגְּדִישׁ וְהָיוּ בוֹ כְּלִים וְדָלְקוּ, רַבִּי יְהוּדָה אוֹמֵר, יִשְׁלַם מֵה־שְׁבִתוֹכוֹ. וְנַחֲכָמִים אוֹמְרִים, אֵינּוּ מְשַׁלֵּם אֶלָּא גְדִישׁ שֶׁל חֲטִין אוֹ שֶׁל שְׁעוּרִים. הֲיָה גְדִי כְפוּת לוֹ וְעֶבֶד סְמוּךְ לוֹ וְנִשְׂרַף עִמוֹ יְחִיב. עֶבֶד כְּפוּת לוֹ וְגְדִי סְמוּךְ לוֹ וְנִשְׂרַף עִמוֹ פְּטוּר. וּמוֹדִים הַנְּחָמִים לְרַבִּי יְהוּדָה בְּמִדְּלִיק אֶת־הַבַּיִת שֶׁהוּא מְשַׁלֵּם כָּל־מֵה־שְׁבִתוֹכוֹ, שְׁכֵן דָּרָךְ בְּגִי אָדָם לְהִנִּיחַ בְּבָתִּים.

מִשְׁנֵה ו

גַּזְ שִׁיָּצָא מִתַּחַת הַפִּטְיִשׁ וְהִזִּיק יְחִיב.

is liable.¹ If a camel laden with flax passed along in the public domain, and its [load of] flax intruded into a store² and [the bundles] caught fire from the storekeeper's³ light, thus setting fire to the (large) building, the owner of the camel is liable.⁴ If the storekeeper set⁵ his light outside, the storekeeper is liable. R. Judah⁶ says, If it were a *Chanukah* light, he is exempt.

גַּמְלָה שֶׁהָיָה טְעוֹן פֶּשְׁטָן וְעָבַר בְּרֶשֶׁת הַרְבִּים, וְנִכְנַס פֶּשְׁטָנוֹ לְתוֹךְ הַחֲנוּת, וְדָלְקוּ בְּגָרוֹ שֶׁל יְחַנְּנֵי וְהִדְלִיק אֶת הַבֵּינָה, בָּעַל הַגַּמְלָה חַיִּיב. הַיָּחִיד חַנּוּנֵי גָרוּ מִבְּחוּץ, הַחֲנּוּנֵי חַיִּיב. רַבִּי יְהוּדָה אוֹמֵר, בְּגֵר חֲנוּכָה פְטוּר.

1 The act is likened to an archer's shot who causes damage. 2 Or *shop*. 3 Or *shopkeeper's*. 4 Because he had overloaded the beast. 5 Or הַיָּחִיד. 6 His opinion is rejected because the owner of the lamp is guilty of contributory negligence. The excuse that he was fulfilling a religious precept is not valid to exempt him from paying costs.

CHAPTER 7

פָּרֶק ז

Mishnah I

מִשְׁנָה א

The law of *twofold restitution*¹ is applied more often than the law of *fourfold and fivefold restitution*,² for the law of *twofold restitution* applies to what³ is† animate and to what³ is inanimate, whereas the law of *fourfold and fivefold restitution* applies to an ox or a sheep only, as it is said,⁴ *If a man steal⁵ an ox or a sheep and kill it, or sell it, etc.** One who steals [a stolen object] from a thief does not make *twofold restitution*; and one who kills or sells [aught stolen] from a thief does not make *fourfold or fivefold restitution*.⁶

מְרוּבָּה מֵדַת יְתִשְׁלוּמֵי כֹּפֶל מִמֵּדַת תִּשְׁלוּמֵי אַרְבָּעָה וַחֲמִשָּׁה, שְׁמֵדַת תִּשְׁלוּמֵי כֹּפֶל נוֹהֶגֶת בֵּין בֶּדֶבֶר וְשִׂישׁ בּוֹ רוּחַ חַיִּים וּבֵין בֶּדֶבֶר שְׂאִין בּוֹ רוּחַ חַיִּים, וּמֵדַת תִּשְׁלוּמֵי אַרְבָּעָה וַחֲמִשָּׁה אֵינָה נוֹהֶגֶת אֶלָּא בְּשׂוֹר וְשֵׂה בְּלֶבֶד, שְׁנֵאמַר, כִּי יִגְנוֹב אִישׁ שׂוֹר אוֹ שֵׂה וְטָבְחוֹ אוֹ מְכָרוֹ *וְגוֹ'. אֵין הַגּוֹנֵב אַחַר הַגָּנֵב מְשַׁלֵּם תִּשְׁלוּמֵי כֹּפֶל, וְלֹא הַטּוֹבֵחַ וְלֹא הַמוֹכֵר אַחַר הַגָּנֵב מְשַׁלֵּם תִּשְׁלוּמֵי אַרְבָּעָה וַחֲמִשָּׁה.

*The abbreviated form of the word וְגוֹמֵר.

1 *Exodus 22*, 3, 8. 2 *Exodus 21*, 37. Fourfold in the case of a lamb and fivefold in the case of an ox. This rule applies only to animate things. 3 Or בֶּדֶבֶר. 4 *Exodus 21*, 37. 5 The Scripture gives יִגְנוֹב. 6 A thief does not become the

legal possessor of a stolen article, and the above penalties do not therefore apply to cases where stolen objects are re-stolen. †Or שֵׁשׁ-בוּ.

Mishnah 2

If one stole¹ in accordance with the testimony of two witnesses, and he slaughtered or sold according to their evidence or according to the evidence of two others,² he must make *fourfold or fivefold restitution*. If one stole [aught] and sold [it] on the Sabbath,³ [or] stole and sold for idolatrous purposes,³ [or] if he sold and slaughtered on the Day of Atonement,⁴ [or] if he stole from what belonged to his father and slaughtered or sold it, and then his father died,⁵ [or] if he stole and slaughtered and then consecrated—he must [in every one of these cases] make *fourfold or fivefold restitution*. If one stole or killed for medical purposes or for [feeding] dogs,⁶ [or] if he slaughtered and it was found to be *terefah*,⁷ [or] if he slaughtered in the Temple Forecourt as for non-holy food⁸—he has to make *fourfold or fivefold restitution*.⁹

מִשְׁנָה ב
 יִגְנוֹב עַל פִּי שְׁנַיִם וְטָבַח וּמָכַר עַל
 פִּיהֶם אוֹ עַל פִּי שְׁנַיִם אֲחֵרִים, מְשַׁלֵּם
 תְּשֻׁלוּמֵי אַרְבָּעָה וְחֲמִשָּׁה. יִגְנוֹב
 וּמָכַר בַּשַּׁבָּת, יִגְנוֹב וּמָכַר לְעֵבוֹדַת
 כּוֹכָבִים, יִגְנוֹב וְטָבַח יְבוּזִים הַכַּפּוּרִים,
 יִגְנוֹב מִשָּׁל אָבִיו וְטָבַח וּמָכַר וְאַחַר
 כֵּן יָמַת אָבִיו, יִגְנוֹב וְטָבַח וְאַחַר כֵּן
 הִקְדִּישׁ, מְשַׁלֵּם תְּשֻׁלוּמֵי אַרְבָּעָה
 וְחֲמִשָּׁה. יִגְנוֹב וְטָבַח לְרְפוּאָה אוֹ
 לְכִלְבִּים, הַשּׁוֹחֵט וְנִמְצָא טְרֵיפָה,
 הַשּׁוֹחֵט חוּלִין בְּעֹזְרָה, מְשַׁלֵּם
 תְּשֻׁלוּמֵי אַרְבָּעָה וְחֲמִשָּׁה. רַבִּי
 שִׁמְעוֹן פּוֹטֵר בְּשֵׁנֵי אֱלוֹ-

R. Simon¹⁰ declares him exempt in the two latter cases.

1 An ox or a sheep. 2 The theft is deemed a distinctly separate offence from the disposal or killing, and so the thief may be convicted on the evidence for the two offences by one set or two sets of witnesses. 3 As there is no death penalty for selling on the Sabbath or for selling for idolatrous purposes the thief must make monetary restitution. 4 As the punishment in this case is that of קָרַת (see *Appendix, Note 2*) and not by the court the thief must make monetary restitution. 5 The thief, though the heir or part heir, was not the owner during his father's lifetime, and therefore if there are other heirs they are entitled to restitution in proportion to their interest in the animal disposed of. 6 In both these cases the thief must pay the fourfold or fivefold amount. 7 See *Appendix, Note 15*. The meat must not be eaten by Jews. 8 Although it had not been dedicated as a sacrifice the killing in the Temple Court renders the flesh forbidden food; but it is permitted for a cure or for his dogs. 9 In all these cases. 10 His opinion is rejected.

Mishnah 3

If one stole¹ in accordance with the evidence of two witnesses, and slaughtered or sold according to their testimony, and they were found to be false witnesses, they² must pay the full penalty.³ If he stole in accordance with the testimony of two witnesses, and killed or sold according to the evidence of two others, and both the former and the latter* were found to be false witnesses, the first must make *twofold restitution*, and the others must make *threefold restitution*.⁴ If the latter were found to be false witnesses, [the thief] must make *twofold restitution*⁵ and they must make *threefold restitution*. If one of the latter [set of witnesses] were found to be a false witness, the evidence of the second party is null and void;⁶ if one of the first [party of witnesses] were found to be a false witness, the entire testimony is null and void,⁷ since if there were no theft [proved committed] there is no slaughtering or selling [of stolen property].

1 An ox or a sheep. 2 These false witnesses. See *Deuteronomy* 19, 16-19; מִכּוֹת 1⁴. This holds good when the second evidence is proved false before the first. 3 Threefold restitution for an ox. 4 This applies when the false evidence regarding the theft follows the refutation of the evidence regarding the sale and slaughter. 5 For the theft. 6 But these two witnesses make no restitution, because to suffer this penalty both witnesses have to be proved false. And he must pay *twofold restitution* by reason of the first witnesses. See *Deuteronomy* 19, 15; מִכּוֹת 1^f 7 And no one has to make restitution. *וְאֵלֵיוּ less idiomatic.

Mishnah 4

If one stole [an ox or a sheep] according to the testimony of two witnesses, and killed or sold it in accordance with the evidence of only one witness or according to his own

מִשְׁנֵה ג

גָּנַב עַל פִּי שְׁנַיִם וְטָבַח וּמָכַר עַל פִּיהֶם, וְנִמְצְאוּ זֹמְמִין, *מִשְׁלָמִין הֵכֵל. גָּנַב עַל פִּי שְׁנַיִם וְטָבַח וּמָכַר עַל פִּי שְׁנַיִם אַחֲרֵיהֶם, אֵלָיו *וְאֵלָיו זֹמְמִין, הָרֵאשׁוֹנִים מִשְׁלָמִים תְּשַׁלּוּמֵי כֶּפֶל, וְהָאֲחֵרוֹנִים מִשְׁלָמִין *תְּשַׁלּוּמֵי שְׁלֹשָׁה. נִמְצְאוּ אַחֲרוֹנִים זֹמְמִין, הוּא מְשַׁלֵּם *תְּשַׁלּוּמֵי כֶּפֶל, וְהוּן מִשְׁלָמִין תְּשַׁלּוּמֵי שְׁלֹשָׁה. אֶחָד מִן־הָאֲחֵרוֹנִים זֹמֵם, *בְּטָלָה עֵדוּת שְׁנֵיהֶם; אֶחָד מִן־הָרֵאשׁוֹנִים זֹמֵם, *בְּטָלָה כָּל־הָעֵדוּת, שְׂאֵם אֵין גְּנִיבָה אֵין טְבִיחָה וְאֵין מְכִירָה.

מִשְׁנֵה ד

גָּנַב עַל פִּי שְׁנַיִם וְטָבַח וּמָכַר עַל פִּי עַד אֶחָד אוֹ עַל פִּי עֲצָמוֹ, מִשְׁלָם תְּשַׁלּוּמֵי כֶּפֶל וְאֵינוֹ מְשַׁלֵּם תְּשַׁלּוּמֵי

admission, he must make the *twofold restitution*, but does not make the *fourfold or fivefold restitution*.¹ If one stole [an animal] and slaughtered it on the Sabbath, [or] if he stole and killed it for idolatrous purposes,² [or] if one stole [the beast] from what had belonged to his father who then died, and thereafter he slaughtered or sold it,³ [or] if he stole it and consecrated it, and afterward slaughtered it or sold it⁴—[in every one of these cases] he must make the *twofold restitution*, but he does not have to make the *fourfold or fivefold restitution*. R. Simon⁵ says, [If one stole] consecrated [animals]⁶

for which he [who had consecrated them] is responsible [to replace them if injured or lost], he must make *fourfold or fivefold restitution*; but if [one stole consecrated animals⁷ for which] he is not responsible [to replace them if damaged or lost], he is exempt.⁸

- 1 A fine is not imposed when a wrongdoer confesses to having committed an act punishable with a fine. See *כתובות* 43a. 2 The slaughtering in both these cases is punishable with death, and the transgressor must suffer the severer punishment. Compare 65, 72. 3 See next *Mishnah*. The son, even if there are other heirs, having a share in the slaughtered animal, does not pay the fine for slaughtering. 4 The dedication makes it Temple property and the thief does not have to make restitution. 5 His opinion is rejected. 6 *Obligatory-offerings* and *vow-offerings*. 7 *Freewill-offerings*. 8 Compare *קנים* 11; *מגלה* 16.

Mishnah 5

If [the thief] sold it, [namely, the animal] except one-hundredth part of it¹, or if he had a partnership share therein,² [or] if he slaughtered³ it and it became unfit⁴ under his hand, [or] if he stabbed⁵ it or cut loose,⁶ he must make *twofold restitution*, but he does not make *fourfold or fivefold restitution*.⁷ If one stole [an

אֲרַבְעָה וְחֲמִשָּׁה. גִּב וְטָבַח בַּשַּׁבָּת, גִּב וְטָבַח לְעֹבֶדֶת כּוֹכָבִים, גִּב מִשָּׁל אָבִיו וּמֵת אָבִיו וְאַחַר כֵּךְ טָבַח וּמָכַר, גִּב וְהִקְדִּישׁ וְאַחַר כֵּךְ טָבַח וּמָכַר, מִשְׁלָם תְּשֻׁלֹּמִי כֶּפֶל וְאִינוּ מִשְׁלָם תְּשֻׁלֹּמִי אֲרַבְעָה וְחֲמִשָּׁה. רַבִּי שְׁמַעוֹן אוֹמֵר, קִדְּשִׁים שְׁחִיב בְּאַחֲרֵייתָן מִשְׁלָם תְּשֻׁלֹּמִי אֲרַבְעָה וְחֲמִשָּׁה, שְׂאֵין חֵיב בְּאַחֲרֵייתָם פְּטוֹר.

מִשְׁנָה ה'

מָכְרוּ חוּץ מֵאֶחָד מִמָּאָה יֵשְׁבוּ, אוֹ שֶׁהִיָּתָה לוֹ כּוֹ שׁוֹתְפוֹת, הַשְּׁוֹחֵט וְנִתְּנָבְלָה בְּיָדוֹ, הַנוֹחֵר וְהַמְעַקֵּר, מִשְׁלָם תְּשֻׁלֹּמִי כֶּפֶל, וְאִינוּ מִשְׁלָם תְּשֻׁלֹּמִי אֲרַבְעָה וְחֲמִשָּׁה. גִּב בְּרִשׁוֹת הַבְּעָלִים, וְטָבַח וּמָכַר חוּץ

animal] in the owner's⁸ premises, and slaughtered or sold it outside his premises,⁹ or if he stole it outside his premises, and slaughtered or sold it within his premises, or if he stole it, and killed it or sold it without his premises—[in all these cases] he must make the *fourfold or fivefold restitution*. If, however, he stole it, and killed or sold it inside his premises, he is exempt.¹⁰

מִרְשׁוֹתֵם, או שָׁנַב חוּץ מִרְשׁוֹתֵם, וְטָבַח וּמָכַר בְּרְשׁוֹתֵם, או שָׁנַב וְטָבַח וּמָכַר חוּץ מִרְשׁוֹתֵם, מִשְׁלֵם תְּשֻׁלוּמֵי אֲרֻבָּעָה וְחֲמִשָּׁה. אֲבָל גָּנַב וְטָבַח וּמָכַר בְּרְשׁוֹתֵם, פְּטוּר.¹⁰

1 He can be liable to pay the penalty only if he sold the whole of it. 2 And he cannot be declared guilty for the sale. 3 Literally *slaughters*. 4 To be used in accordance with ritual requirements. 5 Literally *stabs*, *i.e.*, pierced the windpipe (and the heart). 6 Literally *roots out*, *i.e.*, the gullet or other organ that has to be cut at slaughtering. Compare הוֹלִין 21. 7 This is inferred from the text *and he slaughter it*, *i.e.*, so that it be ritually fit for use, otherwise he is not liable under the law of *fourfold or fivefold restitution*. 8 Literally *owners'*. 9 Literally *their premises*. 10 Compare 61. If the animal does not leave its owner's possession the thief cannot be declared guilty of the offence of stealing. The theft and consequent liability can only be fixed on the thief if he becomes the technical possessor of the stolen animal.

Mishnah 6

מִשְׁנָה ו

If [the thief] were dragging it and leading it out, and it died on the owner's¹ premises, he is exempt; if he lifted it up² or led it out from the owner's premises, and it died, he is liable. If he gave it as the *firstborn offering* for his son,³ or to his creditor, [or] to an unpaid caretaker, or to a borrower, [or] to a hired guardian, or to a hirer, and while he⁴ was dragging it off it died on the premises of the owner, [the thief] is exempt; if, however, he lifted it up⁵ or led it out of the owner's premises, and it died, he is liable.

הִיָּה מוֹשְׁכוֹ וְיוֹצֵא וּמֵת בְּרְשׁוֹת הַבְּעָלִים, פְּטוּר; יִהְיֶינָהוּ אוֹ שְׁהוּצִיאוֹ מִרְשׁוֹת הַבְּעָלִים וּמֵת, חַיִּב. וְתָנוּ לְבְכוּרוֹת יָבִנוּ אוֹ לְבָעַל חוּבוֹ, לְשׁוֹמֵר הָנֶם, וּלְשׁוֹאֵל, לְנוֹשֵׂא שְׂכָר, וּלְשׁוֹכֵר, יוֹהֵגָה מוֹשְׁכוֹ וּמֵת בְּרְשׁוֹת הַבְּעָלִים, פְּטוּר; יִהְיֶינָהוּ אוֹ שְׁהוּצִיאוֹ מִרְשׁוֹת הַבְּעָלִים וּמֵת, חַיִּב.

1 Literally *owners'*. 2 Compare קְדוּשִׁין 14, 25b. The lifting up by a vendee on the premises of a vendor constitutes legal transfer of possession. Hence this act renders the thief guilty of the theft even when carried out, as in this case, in the

domain of the owner. 3 *Exodus 13, 3*; **בְּכוֹרוֹת** INTRODUCTION. 4 The priest, or creditor, *etc.*, just enumerated. 5 The act of lifting up make the thief the possessor, because the agent's act becomes the principal's act.

Mishnah 7

They may not raise small cattle¹ in the Land of Israel, but they may rear them in Syria* or in the wildernesses in the Land of Israel. They may not raise fowls in Jerusalem because of the sacrifices;² nor may priests [rear them] in the Land of Israel because of [the laws regarding Levitically prepared] clean foods.³ And no one⁴ may raise swine* in any place. A man may not rear a dog* unless it is tied on a chain. They may not set snares⁵ for doves unless they are thirty *ris*⁷ from an inhabited place.

מִשְׁנָה ז

אין מגדלין יבהמה ודקה בארץ ישראל, אבל מגדלין * בסוריא, ובמדברות שבארץ ישראל. אין מגדלין תרנגולים בירושלים מפני הקדשים; ולא כהנים בארץ ישראל מפני הטהרות. אין מגדלין * תזירים בכל מקום. לא יגדל אדם * את הכלב אלא אם כן היה קשור בשלשלת. אין פורסין נשבים ליונים אלא אם כן היה רחוק מן הישוב שלשים ימים.

1 Such as sheep, goats, which are wont to cause damage to sown fields and vegetation in their natural roving. 2 Or **הקדשים**. A bird may pick up a lentil's bulk of a dead reptile and thus convey uncleanness by pecking at the flesh of a sacrifice or by carrying the source of uncleanness into a house. 3 Or **הטהרות**. 4 Some editions have *no Israelite*. 5 Or *traps, nets*. 6 Literally *it was*. 7 **ריס** = $\frac{2}{3}$ mile. * See ADDENDA at the end of this *Tractate*. § **אין ישראל**.

CHAPTER 8

פָּרָק ח

Mishnah 1

If one wound his fellow, he is liable thereby on five grounds:¹ for damage, for pain, for healing, for loss of time, and for insult.² How, in the case of damage, [is the extent of the actual harm to be ascertained]? If one blinded another's eye, or cut off his hand, or broke his foot [or leg],

מִשְׁנָה א

החובל בחברו חייב עליו משום יחמשה דברים, בנזק, בצער, ברפוי, בשקת, ונכבושת. בנזק כיצד? סימא את-עינו, קטע את-ידו, שיבר את-רגלו, רואין אותו

they consider him [namely, the injured person] as if he were a slave to be sold in the market,³ and they appraise him how much he was worth [before the hurt] and what he is now worth. [For] pain [the indemnity is assessed thus]: if one burnt a person with a spit [or skewer], or with a nail, even if merely on his finger-nail where it produces no wound, they assess how much such a man of his position would be willing to accept to suffer so much.⁴ [For] healing [the compensation is thus determined]: if one struck another, he must heal him [by paying for all the necessaries entailed]; if ulcers appear on him, then if [they be formed] in consequence of the blow, he is liable, but if not by reason of the blow, he is exempt; if [the wound] healed up and then reopened, and healed again and opened up once more, he is liable [for all expenses] to cure him, but once it has healed up thoroughly he is no longer liable to heal him. [For] loss of time [restitution is thus estimated]:⁵ they consider him as if he were a watchman over a cucumber-field, as he was already paid the value [for the loss] of his hand or the value of his foot [or leg].⁶ [For] insult [the indemnity is thus fixed]: all in accordance with [the social status of] the one causing the indignity and of the one insulted;⁷ if one insult a naked person, or insult a blind person, or inflict

indignity on a sleeping person, he is liable; but if a sleeping person cause an indignity, he is not liable. If one fell from a roof and caused injury and inflicted disgrace, [both at the same time], he is liable [to pay com-

כְּאִילוּ הוּא עֶבֶד נִמְכָּר בַּשּׁוּק וְשִׁמִּין
כֶּמֶה הָיָה יָפֵה, וְכֶמֶה הוּא יָפֵה.
צָעַר, כְּזָאוּ בְשָׁפוּד, אוֹ בְמִסְמָר,
וְאִפְּלוּ עַל צְפוּרְנוֹ מְקוֹם שְׂאִינוֹ
עוֹשֶׂה חֲבוּרָה, אוֹמְדֵי כֶּמֶה אָדָם
כִּיּוֹצֵא בְזֶה רוּצָה לְטוֹל לְהִיּוֹת
מִצָּעַר יָכֵף. רַפּוּי, הִכָּהוּ חַיִּיב
לְרַפְּאוֹתוֹ; עָלוּ בוֹ צָמְחִים אִם
מִחֲמַת הַמַּכָּה חַיִּיב, שְׁלֵא מִחֲמַת
הַמַּכָּה פָּטוּר; חֵיְתָה וְנִסְתָּרָה, חֵיְתָה
וְנִסְתָּרָה, חַיִּיב לְרַפְּאוֹתוֹ, חֵיְתָה
כָּל-צָרְכָהּ, אֵינוֹ חַיִּיב לְרַפְּאוֹתוֹ.
שֵׁבֶת, רוֹאֵין אוֹתוֹ כְּאִילוּ הוּא שׁוֹמֵר
קִשׁוּאֵינ, שֶׁכֶּבֶר גָּתָן לוֹ דָּמֵי יָדוֹ
וְדָמֵי יָרְגָלוֹ. בְּשֵׁת, הַפֵּל לְפִי
הַמְּבִיֵּשׁ יוֹהַמְתְּבִיֵּשׁ; הַמְּבִיֵּשׁ אֶת-
הָעָרוֹם, הַמְּבִיֵּשׁ אֶת-הַסּוּמָא,
וְהַמְּבִיֵּשׁ אֶת-הַלָּשׁוֹן, חַיִּיב; וַיִּשָּׁן
שֶׁבִיֵּשׁ פָּטוּר. וְכַל מִן-הַגַּג וְהַזִּיק
וּבִיֵּשׁ, חַיִּיב עַל הַנֶּזֶק וּפָטוּר עַל
הַבּוֹשֶׁת, שְׁנֹאֲמַר: וְשָׁלַח יָדָהּ
וְהַחֲזִיקָהּ בְּמִבוּשָׁיו, אֵינוֹ חַיִּיב עַל
הַבְּשֵׁת עַד שֶׁיִּהְיֶה מִתְּכוּוֹן.

pensation] for the injury but is exempt for the disgrace, as it is said,⁸ *And she putteth forth her hand and taketh hold of his secrets*, as one is not liable [to pay a fine] for inflicting indignity unless he intends to cause it.

1 The court must assess the damages at once—even in advance—and the money is paid in by the defendant, any necessary adjustments being made when the injured party recovers completely. 2 Or indignity, loss of self-respect, disgrace. 3 Compare *כתובות* 37. Thus it is seen that all men are equal in the eye of the law—a man's social position or material worth does not count in the *dispensation of justice*. 4 viz., 'he would be willing to pay *not* to have to suffer so much pain,' and this substitute interpretation is the accepted rendering and ruling. 5 *Exodus* 21, 19. 6 And is no longer fit for any other kind of work than such as this. In actual practice the court must take into consideration what services he will be fit to give after he has been completely cured from any such injuries (to eye, ear, etc.). Compensation for loss of time—as, for instance, wrongful detention—must be paid even in the absence of actual bodily injury. Outside Palestine a *קנס*, fine, is replaced by *נדוי*, ban. 7 Compare *כתובות* 37, *עֲרֵכִין* 34. 8 *Deuteronomy* 25, 11. The infliction of a fine for indignity is based on this passage.

Mishnah 2

משנה ב

In this respect the case of a man [causing injury] is more stringent than that of an ox: the man must pay [compensation] for injury, pain, healing, loss of time, and insult, and he must pay damages for causing miscarriage;¹ while in the case of an ox indemnity is paid only for the injury,² and [the owner] is exempt from the payment of damages for causing miscarriage.³

זֶה חוֹמֵר בְּאָדָם מִבְּשׂוֹר, שֶׁהָאָדָם מְשַׁלֵּם נֹזֶק, צָעַר, רַפּוּי, שְׁכֵת, וּבֹשֶׁת, וּמְשַׁלֵּם דָּמֵי יוֹלְדוֹת; וְשׂוֹר אֵינוֹ מְשַׁלֵּם אֶלָּא נֹזֶק, וּפְטוּר מִדָּמֵי יוֹלְדוֹת.

1 *ולד*, infant, child; young of an animal; fetus, embryo. Or abortion. See 5⁴; *Exodus* 21, 22, viz., *כִּי יִגְזֹל אֲנָשִׁים* (i.e., שׂוֹר is not mentioned). 2 See *Leviticus* 24, 19, viz., *אִישׁ בְּעַמִּיתוֹ* (i.e., no mention of שׂוֹר). 3 Compare 3¹⁰.

Mishnah 3

משנה ג

If¹ one strike his father or his mother, but does not² inflict on them any wound,³ or if one wound his fellow on the Day of Atonement,⁴ he is liable on all the grounds.⁵ If

יְהִמַּכֶּה אֶת-אָבִיו וְאֶת-אִמּוֹ, וְלֹא יַעֲשֶׂה בָּהֶם חֲבוּרָה, וְחִוֵּב בַּחֲבֵרוֹ בַּיּוֹם הַכַּפּוּרִים. חַיִּב בְּכֹלֵן.

one wound a Hebrew bondman,⁶ he is liable on all the grounds, save for loss of time if§ he were his own [slave]. If one wound a Canaanitish bondman⁷ belonging to others, he is liable on all the grounds. R. Judah⁸ says, [Compensation for] indignity is not paid to bondmen.

החובל בַּעֲבָד עִבְרִי, חַיִּיב בְּכֹלֵן, חוּץ מִן־הַשְּׂבֵת בְּזִמְנֵן שֶׁהוּא שְׁלוֹ. החובל בַּעֲבָד כְּנַעֲנִי שֶׁל אֲחֵרִים, חַיִּיב בְּכֹלֵן. רַבִּי יְהוּדָה אוֹמֵר, אֵין לַעֲבָדִים בּוֹשֵׁת.

1 *Exodus* 21, 15; פִּנְהָרִין 85b. 2 Literally *did not*. 3 He is not liable to the death penalty if no wound is caused. הַבִּינָה is orthographically preferable: *mark of violence, discoloration*. 4 See 72.* 5 The five counts mentioned in *Mishnah* 1 of this Chapter. 6 *Leviticus* 25, 39 *et seq.* 7 *Leviticus* 25, 44 *et seq.* 8 His opinion is rejected. * See ADDENDA at the end of this *Tractate*. §Literally *when*.

Mishnah 4

משנה ד

It is a bad thing [for anyone] to knock against a deaf-mute, a mentally defective person, or a minor,* since he¹ that wounds them is liable, whereas if they wound others they are not liable.² It is a bad thing [for anyone] to knock against a bondman or a woman, for he that wounds them is liable, but if they wound others they are not liable,³ nevertheless they must pay compensation thereafter—if the woman were divorced or the bondman were emancipated, they are liable to pay damages.⁴

חָרַשׁ שׁוֹטֵה *וְקֵטָן פְּגִיעֵתָן רָעָה, יְהוּבֵל בְּהֵן חַיִּיב, וְהֵם שֶׁחִבְלוּ בְּאַחֵרִים פְּטוּרִין. הָעֶבֶד וְהָאִשָּׁה פְּגִיעֵתָן רָעָה, הַחֹבֵל בְּהֵן חַיִּיב, וְהֵם שֶׁחִבְלוּ בְּאַחֵרִים פְּטוּרִין, אֲבָל מִשְׁלָמִין לְאַחַר זְמַן, וְנִתְרַשָּׁה הָאִשָּׁה, וְנִשְׁתַּחֲרַר הָעֶבֶד, חַיִּיבִין לְשָׁלֵם.

1 One sound of mind and fit physically must be answerable for his actions. 2 Because of their physical or mental deficiencies they cannot be held responsible for any mishaps. 3 So long as she has a husband and the slave has a master they possess no property of their own wherewith to make restitution. 4 When she is widowed and he is freed they must pay the damages retrospectively. * A *minor*—a boy (קָטָן) under 13 years of age, a girl (קַטְנָה) under 12 years of age.

Mishnah 5

משנה ה

If one strike his father or his mother, and inflicts¹ a wound² on them, or if one wound his fellow on the

הַמִּכֶּה אָבִיו וְאִמּוֹ יִעֲשֶׂה בְּהֵן חַיִּיב, וְהַחֹבֵל בְּחֵבְרוֹ בְּשֵׁבֶת,

Sabbath, he is exempt on all the grounds,³ since he is guilty of a capital crime.⁴ And if one wound a Canaanitish bondman belonging to him, he is exempt on all the grounds.⁵

פְּטוּר מִכּוֹלֵן מִפְּנֵי שֶׁהוּא נֶדוֹן
בְּנַפְשׁוֹ וְהַחֹבֵל בְּעַבְדֵי כְּנַעֲנֵי שְׁלוֹ
פְּטוּר מִכּוֹלֵן.

1 Literally *inflicted* (*,made*). 2 See 8³, **Note 3**. 3 See 81. 4 See 65. He appeases his wrath against the oppressed by his blow. 5 Because any fine he would pay would revert to him as master.

Mishnah 6

If one cuff¹ his fellow, he must pay him a *selā*². R. Judah,³ in the name of R. Jose the Galilean, says, A *maneh*. If he slapped⁴ him, he must pay him two hundred *zuz*; [if he hit him] with the back of his hand, he must pay him four hundred *zuz*. If he split⁵ his ear, plucked out his hair, spat [at him] and the spittle touched him, stripped his cloak from him, or bared the head of a woman in the street,⁶ he must pay four hundred *zuz*. This is the general principle: it all depends on a person's dignity.⁷ R. Akiba⁸ said, Even⁹ the poorest in Israel are considered as freemen who had lost their estates, for they are the sons of Abraham, Isaac and Jacob. (And) it once happened that a man uncovered a woman's head in the marketplace, and she came before R. Akiba [and laid a complaint], and he fined him to pay her four hundred *zuz*. [The defendant] said to him, 'Rabbi, grant me time [to pay]', and he gave him time. [The defendant] watched out for her, and when she was standing at the entrance of her courtyard, he broke¹⁰ in front of her a cruse wherein was

מִשְׁנֵה ו
הַתּוֹקֵעַ לַחֲבֵרוֹ נוֹתֵן לוֹ סֶלַע.
רַבִּי יְהוּדָה אָמַר מִשּׁוּם רַבִּי יוֹסֵי
הַגְּלִילִי, מָנֶה. יִסְטְרוֹ, נוֹתֵן לוֹ
מֵאַחַד זֵוִז; לְאַחַר יָדוֹ, נוֹתֵן לוֹ
אַרְבַּע מֵאוֹת זֵוִז. יִצְרַם בְּאַזְנוֹ,
תָּלַשׁ בְּשַׁעֲרוֹ, רָקַק וְהִגִּיעַ בּוֹ רוֹקוֹ,
הִעֲבִיר טְלִיתוֹ מִמֶּנּוּ, פָּרַע רֹאשׁ
הָאִשָּׁה בְּשׁוּק, נוֹתֵן אַרְבַּע מֵאוֹת זֵוִז.
זֶה הַכֹּלֵל, הַכֹּל לְפִי כְבוֹדוֹ. אָמַר
רַבִּי עֲקִיבָא, אֲפִילוֹ עֲנִיִּים
שְׁבִישְׂרָאֵל רוֹאִין אוֹתָם כְּאֵילוֹ הֵם
בְּגֵי חוֹרֵין שִׁירְדוּ מִנְּכֻסֵיהֶם שֶׁהֵם בְּגֵי
אַבְרָהָם יִצְחָק וְיַעֲקֹב. וּמַעֲשֶׂה בְּאַתְד
שֶׁפָּרַע רֹאשׁ הָאִשָּׁה בְּשׁוּק, בָּאת לְפָנָי
רַבִּי עֲקִיבָא וְחִיְיְבוּ לִיתֵן לָהּ אַרְבַּע
מֵאוֹת זֵוִז. אָמַר לוֹ, רַבִּי, תֵּן לִי זְמַן,
וְנִתַּן לוֹ זְמַן. שָׁמְרָה עוֹמְדָת עַל פֶּתַח
חֲצָרָה¹⁰ וְשִׁבְרָתָהּ כֶּפֶד בְּפָנֶיהָ וּבוֹ
כִּיאִסַּר שָׁמַן. גָּלְתָה אֶת־רֹאשָׁהּ

an *issar*'s¹¹ worth of oil. She uncovered her head and scooping up [the oil] with her hand she laid¹² her hand on her head.¹³ He had set [eye-] witnesses against her, and he came before R. Akiba. He said to him, 'Is it to a woman of this sort¹⁴ I have to give four hundred *zuz*?' [R. Akiba] replied to him, 'Thou hast not said aught at all,¹⁵ for one who wounds himself, even though he is not permitted to do so, is exempt, but if others inflict a wound on him, they are liable;¹⁶ if one cut off his own plants, although he has no right to do so, he is exempt, but if others cut down¹⁷ his plants, they are liable.¹⁶

וְהִיָּתָה מְטַפֶּחֶת וּמְנַחֶת יָדָהּ עַל
 רֵאשָׁתָּהּ. הַעֲמִיד עָלֶיךָ עֲדִים וּבֵא
 לִפְנֵי רַבִּי עֲקִיבָא. אָמַר לוֹ רַבִּי,
 לָלוּ אֲנִי נוֹתֵן אַרְבַּע מֵאוֹת זָזִי?
 אָמַר לוֹ, לֹא אָמַרְתָּ כְּלוּם, הַחֹבֵל
 בְּעַצְמוֹ, אַף עַל פִּי שְׂאֵינוֹ רֵשָׁאֵי,
 פְטוּר, אַחֲרִים שֶׁחָבְלוּ בוֹ מְחַיִּיבִין,
 וְהַקּוֹצֵץ וְטִיעוֹתָיו, אַף עַל פִּי שְׂאֵינוֹ
 רֵשָׁאֵי, פְטוּר, אַחֲרִים שֶׁקָּצְצוּ אֶת-
 וְטִיעוֹתָיו מְחַיִּיבִים.

1 Strike or slap on the ear. 2 1 סָלַע = 2 common שֶׁקֶל (or 1 holy שֶׁקֶל).
 1 מָנָה = 100 זָזִי = 25 סָלַע (see זְרָעִים, Page 18f). 3 His opinion is rejected.
 4 With the open hand. 5 צָרָם [Kal] or צָרָם [Piel]. 6 It used to be considered
 a great insult and disgrace to loosen a woman's hair in public or even to
 uncover her hair. 7 *i.e.*, social position. 8 His view is not accepted.*
 9 For אָפְלוּ; perhaps preferably אֶפְלוּ. 10 וְשָׁבַר [Kal] or וְשָׁבַר [Piel].
 11 1 זָזִי = 24 אִיסָר = 8 פְּרוּטָה. 12 Or וּמְנַחֶת. 13 *i.e.*, the hair of her head.
 14 *i.e.*, who is not ashamed to disgrace herself in public by uncovering her hair
 for the sake of a little oil of the value of an *issar*. 15 *i.e.*, his pleading was of no
 avail and there could be no mitigation of the fine. Time can only be granted
 in the case of בְּשֵׁת but not for the actual compensation. 16 To pay damages.
 17 שֶׁקָּצְצוּ [Kal] or שֶׁקָּצְצוּ [Piel]. *Sec ADDENDA at the end of this *Tractate*.

Mishnah 7

Even¹ though he [who offers the insult] pays him [the party offended], it is not forgiven him [by God] until he seeks pardon from him,² as it is said,³ *And now restore the wife of, etc.* And whence do we infer that if he did not pardon him he is deemed cruel?⁴ As it is said,⁵ *And*

מִשְׁנָה ז

אִם עַל פִּי שֶׁהוּא נוֹתֵן לוֹ, אֵין נִמְחָל
 לוֹ עַד שֶׁיִּבְקֹשׁ מִמֶּנּוּ, שֶׁנֶּאֱמַר, וְעַתָּה
 הֲשֵׁב אִשְׁתִּי, וְגוֹמַר. וּמִיָּנֵן שָׂאֵם לֹא
 מְחַל לוֹ שֶׁהוּא (שְׁלֵא יְהֵא תְמוּחַל)
 אַכְזָרִי? שֶׁנֶּאֱמַר, וַיִּתְפַּלֵּל אַבְרָהָם

Abraham prayed unto God, and God healed Abimelech,⁶ etc. If one say [to another], 'Blind my eye', [or] 'Cut off my hand', [or] 'Break my leg' [or foot], he [who does so] is liable;⁷ [even if he requested him to do so] on the condition that he would] be exempt [from any liability], he is [still] liable. [If one say to another,] 'Tear my garment', [or] 'Break my pitcher', he [that does this] is liable; [if he asked him to do this] on the condition [that he would] be exempt⁸ [from liability], he is exempt. [If one say to another,] 'Do [such-and-such an injury] to so-and-so on the condition [that thou shalt] be exempt', he is liable,⁹ whether the injuries are against his person or to his property.

אֶל-הָאֱלֹהִים וַיִּרְפָּא אֱלֹהִים אֶת-
 אַבְיִמֶלֶךְ, וְגוֹמֵר. הָאוֹמֵר, סָמָא
 אֶת-עֵינָיו, קָטַע אֶת-יָדוֹ, שָׁבַר אֶת
 רַגְלֵי, חֵיִב; עַל מְנַת לְפָטוֹר, חֵיִב.
 קָרַע אֶת-כִּסּוּתוֹ, שָׁבַר אֶת-כַּדָּי,
 חֵיִב; עַל מְנַת לְפָטוֹר, פָּטוֹר.
 עָשָׂה כֵן לְאִישׁ פְּלוֹנִי, עַל מְנַת לְפָטוֹר
 חֵיִב, בֵּין בְּגוֹפוֹ בֵּין בְּמִמּוֹנוֹ.

1 Continued from the preceding *Mishnah*. 2 The mental distress suffered by the person insulted cannot be wiped out by the fine imposed, and the moral sin against God can only be wiped out by forgiveness from the sufferer. Compare 64; **י"מא** 85b. 3 *Genesis* 20, 7. 4 Others using the phrase in parentheses render this: *And whence do we infer that if [the injured party] did not pardon him, he who should pardon him is considered cruel?* 5 See *Genesis* 20, 17. 6 Compare *II Samuel* 22, 26; *Psalms* 18, 25. 7 He is not authorized to commit such an act merely because the other asks him to do so. 8 Even if this was put as a question, i.e., '... on condition ... be exempt?' and the reply was, 'No!'—given in a sarcastic vein—he is still exempt. 9 The agent. Compare 64. No one can become the legal agent for another for the purpose of committing a wrong.

CHAPTER 9

פֶּרֶק ט

Mishnah 1

מִשְׁנָה א

If one robbed¹ wood and made it into utensils, [or] wool and made garments thereof, he must make restitution according to [the value of the material at] the time† of the robbery. If one robbed a pregnant cow, and it brought forth young, [or] a ewe² with its fleece, and he

יִהְיוּלוּ עֵצִים וַעֲשָׂאן כְּלִים, צִמֵּר
 וַעֲשָׂאן בְּגָדִים, מִשְׁלֵם זִכְשֻׁעַת
 הַגּוֹזֵה. גּוֹל פָּרָה מְעוֹבֶרֶת וַיֵּלְדָה,
 רָחַל טְעוּנָה וַיִּגְזֹה, מִשְׁלֵם דְּמֵי פָּרָה
 הַעוֹמֶדֶת לֵילִד, דְּמֵי רָחַל הַעוֹמֶדֶת

sheared it, he must pay* according to the value of a cow about to give birth, [or] according to the value of a ewe about to be sheared. If one robbed a cow, and it became pregnant while in his possession and bore young, [or] a ewe which grew its wool while it was in his possession and he sheared it, he must make

לְגֹזוֹ. גֹּזַל פָּרָה וְנִתְעַבְרָה אֶצְלוֹ
וְיִלְדָה, רָחַל וְנִטְעָנָה אֶצְלוֹ וְנִגְזָה,
מְשַׁלֵּם כְּשַׁעַת הַגְּזֻלָּה. זֶה הַכֶּלֶל,
כָּל-הַגְּזֻלָּנִים מְשַׁלְּמִין כְּשַׁעַת
הַגְּזֻלָּה. †Or כְּשַׁעַת.

restitution* according to [the worth of the animal at] the time of the robbery. This is the general principle: all robbers³ must make restitution according to [the value of the article at] the time of the robbery.⁴ * *i.e.*, respectively.

1 The same ruling applies in the case of theft. See ADDENDA at the end of this *Tractate*. 2 *i.e.*, sheep. 3 And *thieves* also. 4 A robber or thief becomes the legal owner of the object if this acquires an unalterable change (*e.g.*, an animal grows up, a material is made into an article which cannot be undone to recover the original material), and so the twofold restitution is only according to the value of the object when it was wrongfully acquired. (Compare next *Mishnah*).

Mishnah 2

If one robbed a beast, and [while in his possession] it grew old, [or] bondmen and they grew old [while in his possession], he must make restitution according to [their value at] the time of the robbery. R. Meir¹ says, In the case of bondmen [the thief] may say to him, 'Here is thy property before thee'.² If one robbed a coin and it became cracked, [or] fruit and it rotted, [or] wine and it turned sour, he must make restitution according to [the value at] the time of the robbery.³ [If one stole] a coin and it became no longer current,⁴ [or] *priest's-due*⁵ and it became unclean, [or] leavened food and the Passover arrived and passed [while it was still in his possession],⁶ [or] an animal and an illicit act was effected therewith⁷ or it became unfit for the Altar⁸

מְשַׁנָּה ב
גֹּזַל בְּהֵמָה וְהִזְקִינָה, עֲבָדִים וְהִזְקִינוּ,
מְשַׁלֵּם כְּשַׁעַת הַגְּזֻלָּה. רַבִּי מֵאִיר
אוֹמֵר, בְּעֲבָדִים אוֹמֵר לוֹ, הֲרִי שְׁלֶךְ
לְפָנָיִךְ. גֹּזַל מִטְּבַע וְנִסְדָּק, פִּירוֹת
וְהִרְקִיבוּ, יֵין וְהִחְמִיץ, מְשַׁלֵּם
כְּשַׁעַת הַגְּזֻלָּה. מִטְּבַע וְנוֹפֶסֶל,
תְּרוּמָה וְנִטְמָאתָ, חֶמֶץ וְעֵבֶר עָלָיו
הַפֶּסַח, בְּהֵמָה וְנִתְעַבְדָּה, בְּהַעֲבִירָה,
אוֹ שֶׁנוֹפֶסֶלָה מֵעַל גְּבִי תִּמְזַבֶּתָה, אוֹ
שֶׁהִיתָה יוֹצֵאת לִיִּסְקָל, אוֹמֵר לוֹ,
הֲרִי שְׁלֶךְ לְפָנָיִךְ.

or it was condemned to be stoned,⁹ [the robber] may say to him, 'Here is thy property before thee'.¹⁰

1 His view is that slaves constitute real estate which cannot be stolen. His opinion here is accepted. **2** *i.e.*, following up with 'Take it away as it is.' **3** Compare the preceding *Mishnah*. **4** In the country where it was (though it might still have remained current elsewhere). But if it is not in circulation anywhere the thief must make restitution according to its value when he stole it. There can be no greater *שנוי*, change, than this becoming uncurrent. **5** See *Appendix, Note 1*; *תְּרוּמוֹת* INTRODUCTION. **6** And the food was prohibited to a Jew.* **7** For idolatrous purpose or illicit unnatural crime. Compare *זְבָחִים* 81. **8** By an indiscernible blemish (otherwise the thief pays according to its value when the robbery took place). **9** *Exodus* 21, 28. *לִיִּסְקַל*? [*Kal*] or *לִיִּסְקַל*? [*Niphal*]. **10** The absence of any discernible change deprives the robber of legal possession, and he must return the stolen article. *See ADDENDA at the end of this *Tractate*.

Mishnah 3

מְשֻׁנָּה ג

If one gave aught to craftsmen to repair, and they spoilt [it], they must pay [for it].¹ If one gave to a carpenter a litter,* a chest, or a cupboard to mend, and he spoilt [it], he must make restitution. (And) if a builder undertook to dismantle a wall, and he broke the stones² or caused damage,³ he must pay [therefor]; [but if] while demolishing [it] from one side it fell down on the other side, he is exempt,⁴ but if [it collapsed] in consequence of⁵ the hammering, he is liable.

גִּתָּן לְאוֹמְנֵינִי לְתַמְנָן וְקִלְקַלְנוּ, חַיִּיבִין
 לְשֵׁלֶם. גִּתָּן לְחֶרֶשׁ *שִׂדָּה תִּיבָה
 וּמַגְדֵּל לְתַמְנָן וְקִלְקַל, חַיִּיב לְשֵׁלֶם.
 וְהַבְּנָאִי שֶׁקִּבֵּל עָלָיו לְסַתּוֹר אֶת-
 הַכּוֹתֵל, *וְשָׁבַר אֶת-הָאֲבָנִים, אוֹ
 שָׁהַזִּיק, חַיִּיב לְשֵׁלֶם; הָיָה סוֹתֵר
 מִצַּד זֶה וְנָפַל מִצַּד אַחֵר יִפְטוֹר,
 וְאִם *מִחַמַּת הַמַּכָּה, חַיִּיב.

1 This refers to a case where A gives B material to be made up and the latter destroys the finished article; then B must pay to A a sum equal to the value of the finished article less the cost of the expenses and work entailed in making it. **2** Because it is implied that the artisan will save the material in the wall. **3** While at work the artisan is in sole control—and so is in possession—and is therefore responsible for any mishap. **4** Because the wall fell out of weakness and not from the demolition. **5** Or *מִחַמַּת*. *A sedan-chair for the carriage of women. Its usual meaning is *strong-box, box*.

Mishnah 4

If one gave wool to a dyer and the vat¹ burned it, [the dyer] must give him the value of his wool. If he dyed it badly,² and the value of the improvement exceeded the [dyer's] outlay, [the owner] must refund him the outlay; and if the outlay were worth more than the improvement, he must pay him the value of the improvement.³ [If he requested the dyer] to dye it red, but he dyed it black, or black but he dyed it red, R. Meir³ says, [The dyer] must repay him the value of his wool. R. Judah⁴ says, If the value of the improvement be more than the [dyer's] expenses, [the owner] must repay him the expenses, and if the expenses exceed the worth of the improvement, he must repay him the worth of the improvement.

1 יורה, boiler, cauldron, vat, especially dyer's kettle.* 2 But not if the dyer spoils the colour by dyeing the wool in the sediment in the vat instead of in the proper dye—an act which is tantamount to intentional negligence. If the unsatisfactory result was due to some defective quality of the wool the dyer is free from blame.* 3 His view is rejected.* 4 His opinion is accepted.* *See ADDENDA at the end of this *Tractate*. §Or כְּעוֹר.

Mishnah 5

If one robbed his fellow of the value of a *perutah*¹, and swore² to him, he must take it after him even³ [if he have to carry it] as far as Media. He may not give it [to be returned] to his son or to his agent, but he may give it to an agent of the court. And if [the one robbed] died, he must restore it to his heirs.

1 See 86; *Leviticus* 6, 2 *et seq.*; 47. 2 The thief swore that he had not stolen it and afterward confessed to the theft. 3 The restitution must be made

מִשְׁנֵה ד

הַנּוֹתֵן צֹמֶר לְצַבֵּעַ וְהַקְדִּיחְתּוּ יוֹרֵה, נוֹתֵן לוֹ דָּמֵי צֹמְרוֹ. צִבְעוֹ כְּאוֹר, אִם הִשְׁבַּח יוֹתֵר עַל הַיְצִיאָה, נוֹתֵן לוֹ אֶת-הַיְצִיאָה; וְאִם הַיְצִיאָה יוֹתֵרָה עַל הַשְּׂבַח, נוֹתֵן לוֹ אֶת-הַשְּׂבַח. לְצַבּוֹעַ לוֹ אֲדוֹם וְצִבְעוֹ שָׁחֹר, שָׁחֹר וְצִבְעוֹ אֲדוֹם, רַבִּי מֵאִיר אֹמֵר, נוֹתֵן לוֹ דָּמֵי צֹמְרוֹ. רַבִּי יְהוּדָה אֹמֵר, אִם הִשְׁבַּח יוֹתֵר עַל הַיְצִיאָה, נוֹתֵן לוֹ אֶת-הַיְצִיאָה, וְאִם הַיְצִיאָה יוֹתֵר עַל הַשְּׂבַח, נוֹתֵן לוֹ אֶת-הַשְּׂבַח.

improvement, he must repay him the

מִשְׁנֵה ה

הַנּוֹזֵל אֶת-תְּבֵרֹו יִשְׁוֶה פְּרוּטָה וְנִשְׁבַּע לוֹ, יוֹלִיכֵנוּ אַחֲרָיו אֶפִּילוֹ לְמַדִּי. לֹא יִתֵּן לֹא לְבִנוֹ, וְלֹא לְשִׁלּוּחוֹ, אֲבָל נוֹתֵן לְשִׁלְיֵי בֵּית דִּין. וְאִם מֵת יַחֲזִיר לְיוֹרְשָׁיו.

personally—by the wrongdoer—and not through an agent, not even through his own son. *Leviticus* 5, 24. But he is permitted to hand it over to the court to restore it to the owner. See ADDENDA at the end of this *Tractate*.

Mishnah 6

If [the robber] repaid him the actual value but had not given him the *added-fifth*,¹ or if [the owner] had forgiven him the value but had not forgiven him the *added-fifth*, or if he had forgiven him both except less² than a *perutah's* value of the principal, he does not need to go after him [to restore the remainder still owing].³ If [the robber] paid him the *added-fifth* but did not pay him the principal, or if [the owner] forgave him the *added-fifth* but did not forgive him the principal, or if he had forgiven him both save a *perutah's* worth of the principal, he must go after him [to restore the value].

משנה ו

נָתַן לוֹ אֶת-הַקֶּרֶן וְלֹא נָתַן לוֹ אֶת-
 הַחֲמִשָּׁה, מִחַל לוֹ עַל-הַקֶּרֶן וְלֹא
 מִחַל לוֹ עַל הַחֲמִשָּׁה, מִחַל לוֹ עַל זֶה
 וְעַל זֶה חוּץ מִמְּפָחוֹת מִשְׁנֵה פְרוּטָה
 בַּקֶּרֶן, אֵינּוּ צָרִיף לִילֵף אַחֲרָיו.
 נָתַן לוֹ אֶת-הַחֲמִשָּׁה, וְלֹא נָתַן לוֹ אֶת-
 הַקֶּרֶן, מִחַל לוֹ עַל הַחֲמִשָּׁה וְלֹא מִחַל
 לוֹ עַל הַקֶּרֶן, מִחַל לוֹ עַל זֶה וְעַל זֶה
 חוּץ מִשְׁנֵה פְרוּטָה בַּקֶּרֶן, צָרִיף
 לִילֵף אַחֲרָיו.

1 *Leviticus* 5, 16, 24, 6, 5, 27, 27. In actual practice *one-fourth* of the value to be added as a fine on restoring property wrongfully appropriated or on redeeming dedicated property. 2 פָּחוֹת—traditional pronunciation פָּחוֹת. 3 Restoration by the robber in person does not apply to the *added-fifth* nor to a sum less than a *perutah's* worth. (פְּרוּטָה—see זְרָעִים, Page 18f.). It is hardly fair to ask him to incur much expense for the sake of the small value of what he had stolen.

Mishnah 7

If [the robber] repaid him the value and swore to him regarding the *added-fifth*,¹ he must pay an *added-fifth* to the *added-fifth*, [and thus it is continued, if he persist in swearing falsely, until he admits to his false swearing, and] until the principal has been reduced in value to less than a *perutah's* worth. And like-

משנה ז

נָתַן לוֹ אֶת-הַקֶּרֶן, וְנִשְׁבַּע לוֹ עַל-
 הַחֲמִשָּׁה הָרִי זֶה מִשְׁלֵם חוּמֵשׁ עַל-
 חוּמֵשׁ, עַד שִׁית־מַעֲט הַקֶּרֶן פָּחוֹת
 מִשְׁנֵה פְרוּטָה. וְכֵן בְּפִקְדוֹן,
 שְׁנֵאֲמַר, בְּפִקְדוֹן אוֹ בְתִשְׁוֹמֶת יָד אוֹ
 בְגוּל אוֹ עֶשֶׂק אֶת-עַמִּיתוֹ אוֹ מִצָּא

wise, also, in the case of a deposit,² as it is said,³ *In a matter of deposit, or of pledge, or of robbery, or have oppressed his neighbour, or have found that which was lost,⁴ and deal falsely therein, and swear to a lie, he must pay the value and the added-fifth and [also bring] a guilt-offering.* [If one said to a deposit-holder], 'Where is my deposit?' and he replies to him, 'It was lost'; [and the depositor says], 'I adjure thee', and [the other] responded, 'Amen!' and then witnesses testify against him that he had consumed it, he must pay the value;⁵ but if he himself confessed, he must repay the value, and the *added-fifth* and [he must also bring] a *guilt-offering*.

אֲבִידָה וְכַחֵשׁ בָּהּ וְנִשְׁבַּע עַל שְׁקָר,
הָרִי זֶה מְשָׁלֵם קָרְנִי וְחֹמֶשׁ וְאֲשָׁם.
הֵיכָן פִּקְדוֹנִי? אָמַר לוֹ, אֶבֶד;
מִשְׁבִּיעָה אֲנִי, וְאָמַר, אָמֵן, וְהַעֲדִים
מַעֲדִים אוֹתוֹ שֶׁאֶכְלוּ, מְשָׁלֵם קָרְנִי;
הוֹדָה מֵעֲצָמוֹ, מְשָׁלֵם קָרְנִי וְחֹמֶשׁ
וְאֲשָׁם.

1 (See **Note 1** in the preceding *Mishnah*) *i.e.*, he swore falsely that it had been paid, then he confessed to his false oath, *חֹמֶשׁ עַל חֹמֶשׁ*, because the first *חֹמֶשׁ* has become *קָרְנִי*, principle. 2 The same procedure is adopted where one swears falsely and afterwards confesses. 3 *Leviticus 5*, 21-22. 4 *אֶבֶדָה* in the Scripture. 5 But not the *added-fifth* or the *guilt-offering* (which are due only when the thief confesses (*וְהִתְוֹדָה*) to having made a false oath).

Mishnah 8

מִשְׁנָה ח

[If one said to a deposit-holder], 'Where is my deposit?' and he replied to him, 'It was stolen'; and [the depositor] said, 'I adjure thee', and he responded, 'Amen!' and then witnesses¹ give evidence against him that he had stolen it, he must make *two-fold restitution*; if he himself confessed [to the theft afterward], he must repay the principle² and the *added-fifth* and [he must bring] a *guilt-offering*.

הֵיכָן פִּקְדוֹנִי? אָמַר לוֹ, נִגְבַּל,
מִשְׁבִּיעָה אֲנִי, וְאָמַר, אָמֵן, וְהַעֲדִים
מַעֲדִין אוֹתוֹ שֶׁנִּגְבַּל, מְשָׁלֵם תְּשֻׁלוֹמֵי
כֶּפֶל; הוֹדָה מֵעֲצָמוֹ, מְשָׁלֵם קָרְנִי
וְחֹמֶשׁ וְאֲשָׁם.

1 Literally *the witnesses*. 2 But not the *two-fold restitution*, because his confession to his guilt exempts him from the extra fine.

Mishnah 9

מִשְׁנָה ט

If one robbed¹ his father and swore [falsely] to him, and [the father] then died, he must pay the value²

יִהְיֶה נֹגֵל אֶת-אָבִיו וְנִשְׁבַּע לוֹ וּמָת,
הָרִי זֶה מְשָׁלֵם קָרְנִי וְחֹמֶשׁ לְבָנָיו אוֹ

and the *added-fifth* to his [father's] sons or to his [father's] brothers. (And) if he do not want [to pay]³, or if he have naught [wherewith to pay], he must borrow and the creditors will come and recover the loan.⁴

לְאָחֵיו. וְאִם אֵינוֹ רוֹצֶה אוֹ שְׂאִין לוֹ, לְוֶהוּבְעָלֵי חוּב בְּאִים יִנְפָרְעִים.

1 Literally *robs*. 2 Full restitution, although as heir he has a share in the stolen article.* 3 Or 'lose his share.' 4 *They will exact payment from the estate—they make a levy on a proportionate part of the estate (according to the number of heirs) including the stolen property. *See ADDENDA at the end of this *Tractate*.

Mishnah 10

מִשְׁנָה י'

If one say to his son, 'I vow¹ that thou derivest no benefit from what is mine!' then if [the father] die, [the son] may inherit from him;² [but if the father had vowed that the son should have no benefit] both during his lifetime and after his death, he does not inherit from him; yet he may transfer [his share in the estate] to his [father's] sons or to his brothers, and if he have naught [to eat] he must borrow and the creditors will recover the loan.³

הַאֹמֵר לְבְנוֹ, יִקְוֶם אִי אֶתָּה נִהְיֶה מְשָׁלִי, אִם מֵת יִירָשְׁנוּ; בְּחַיָּו וּבְמוֹתוֹ, אִם מֵת לֹא יִירָשְׁנוּ, וְיִחְזִיר לְבְנוֹ אוֹ לְאָחֵיו, וְאִם אֵין לוֹ, לְוֶהוּבְעָלֵי חוּב בְּאִין יִנְפָרְעִין.

1 *קוֹנֵם*, a substitute term for *קָרְבַּן*, offering, used for a vow of self-denial and for the dedication of an object (see *נִדְרִים*, INTRODUCTION and 12). 2 The estate no longer belongs to the father on his death. 3 Although the creditors can collect their debt from the estate, he is nevertheless not accounted as deriving benefit from it. Compare the preceding *Mishnah* and *נִדְרִים* 33a.

Mishnah 11

מִשְׁנָה י"א

If one robbed¹ a proselyte and swore [falsely] to him, and [the proselyte] then died,² he must pay the value and the *added-fifth* to the priests, and [he must bring] a *guilt-offering* to the Altar, as it is said,³ *But if the man have no kinsman⁴ to whom restitution may be made for the guilt, the restitution for guilt that is made*

יְהוֹזֵל אֶת-הַגֵּר וְנִשְׁבַּע לוֹ יוֹמֵת, הָרִי זֶה מְשָׁלֵם קָרְן וְהוֹמֵשׁ לַכֹּהֲנִים וְאֶשֶׁם לְמִזְבֵּחַ, יִשְׁנֹאֵמֵר, וְאִם אֵין לְאִישׁ יְגוּאֵל לְהָשִׁיב הָאֶשֶׁם אֵלָיו הָאֶשֶׁם הַמּוֹשָׁב לֵה' לַכֹּהֵן מִלְּבַד אִיל הַכַּפּוּרִים אֲשֶׁר יִכְפֹּר בּוֹ עָלָיו.

shall be the Eternal's, even the priest's, besides the ram of the atonement,⁵ whereby atonement shall be made for him. If he brought the money and the guilt-offering [to Jerusalem] and then died,⁶ the money shall be given to his children, and the guilt-offering must pasture until it acquires a blemish,⁷ and then it shall be sold and the money [thus realised] therefor shall fall as a donation.⁸

הָיָה מִצֵּלָה אֶת־הַכֶּסֶף וְאֶת־הָאֶשֶׁם
וְיָמָת, תִּכְסֹף וְיָתֵן לְבָנָיו וְהָאֶשֶׁם
יִרְעָה עַד שִׁסְתָּאב וְיִמָּכַר וְיִפְלוּ
דָּמָיו לְגִדְּבָה.

1 Literally robs. 2 Leaving no heirs. 3 Numbers 5, 8. 4 נָאֵל in the Scripture. 5 הַכִּפָּרִים in the Scripture. 6 The robber's death annuls the atonement—having expiated his transgression—and his heirs are now entitled to the stolen articles (since the death of the proselyte had already entitled the robber to possession). 7 Thus becoming unfit for a sacrifice.* 8 To the Temple treasury. *See ADDENDA at the end of this *Tractate*.

Mishnah 12

מִשְׁנָה י"ב

If [in the preceding case, the robber] gave the money to the priestly guard,¹ and he then died, the heirs cannot recover it from their hands, as it is said,² *Whatever any man giveth to the priest it shall be his*. If he gave the money to [the division of] *Jehoiarib*³ and the guilt-offering to [the division of] *Jedaeiah*,⁴ he has fulfilled his obligation;⁴ if, however, he gave the guilt-offering to [the division of] *Jehoiarib* and the money to [the division of] *Jedaeiah*, if the guilt-offering be still in existence, the members of [the division of] *Jedaeiah* shall offer it, otherwise he must bring another guilt-offering; for one who brought⁵ what⁶ he had robbed before he brought his guilt-offering has fulfilled his duty, but if he brought his guilt-offering before he brought back what he had robbed, he has not carried out his obligation.⁷ If one gave the principal but did not give the *added-fifth*,⁸ [the non-payment of the *added-fifth*] does not hinder.⁹

נָתַן הַכֶּסֶף לְאִנְשֵׁי מִשְׁמֶר וְיָמָת, אֵין
הַיֹּרְשִׁים יְכוּלִין לְהוֹצִיא מִיָּדָם,
שֶׁנֶּאֱמַר, אִישׁ אֲשֶׁר יָתַן לַכֹּהֵן לוֹ
יִהְיֶה. נָתַן הַכֶּסֶף לְיֵהוֹיָרִיב וְהָאֶשֶׁם
לְיֵדְעִיָּה, יִצָּא; אֲשֶׁם לְיֵהוֹיָרִיב
וְכֶסֶף לְיֵדְעִיָּה, אִם קָיָים הָאֶשֶׁם
יִקְרִיבוּהוּ בְּנֵי יֵדְעִיָּה, וְאִם לֹא
יִחֹזֵר וְיָבִיא אֶשֶׁם אַחֵר; שֶׁהֵמְבִיא
גִּילּוֹ עַד שֶׁלּוֹ הֵבִיא אֶשְׁמוֹ יִצָּא,
הֵבִיא אֶשְׁמוֹ עַד שֶׁלֹּא הֵבִיא גִּילּוֹ
יֵלֵא יִצָּא. נָתַן אֶת־תְּקֵרָו וְלֹא נָתַן
אֶת־הַחוּמֶשׁ, אֵין הַחוּמֶשׁ מְעַכֵּב.

1 תַּעֲצִיֵת 26. See Appendix, Note 17.* 2 Numbers 5¹⁰. 3 Or *Joiarib, Jedaiah, I Chronicles 24, 7*. The first and second weekly divisions of the twenty-four Temple divisions. 4 Provided the money was given up before the guilt-offering was brought. 5 *viz.*, restored. Literally *brings*. 6 *i.e.*, the restitution money. 7 There can be no expiation before a wrong is rectified. 8 See 96, Note 1. 9 *i.e.*, the failure to pay the *added-fifth* does not prevent the licit bringing of the guilt-offering, but none the less the *added-fifth* has to be paid thereafter. *See ADDENDA at the end of this *Tractate*.

CHAPTER 10

פָּרֶק י

Mishnah 1

If one robbed aught and fed his children¹ [therewith], or if he left [it] for them, they are exempt from repayment.² But if it were† real estate,³ they must make restitution. They must not change money from the public treasury† or from the excisemen's wallet,§ and they may not take any alms from them,⁴ but one may take [alms] from his [namely, a taxgatherer's or excise-

מִשְׁנֵה א
הַגּוֹל יוֹמְאָכִיל אֶת-בָּנָיו וְהֵנִיחַ
לְפָנֵיהֶם פְּטוּרִין מִלְּשֵׁלֵם. וְאִם הָיָה
דָּבָר שֵׁשׁ בּוֹ אַחֲרֵי־וֹת חֵיבִין
לְשֵׁלֵם. אֵין פּוֹרְטִין לֹא זְמַתִּיבַת
הַמוֹכְסִין וְלֹא מְכִיסֵי שֶׁל גַּבְאִין.
וְאֵין נוֹטְלִין מֵמָהּ צְדָקָה, אֲבָל נוֹטֵל
הוּא מִתּוֹךְ בֵּיתוֹ אוֹ מִן-הַשּׁוּק.

man's] house or in⁵ the market place. †Some render it *the treasury of the publicans*, others from *the taxgatherers' counter*. §Some render this *the collection fund of (royal) collectors*.

1 The same applies if he used the proceeds to feed others. 2 Or וְהֵנִיחַ. If they consumed it after his death, otherwise it must be restored.* 3 Or mortgaged property, land property. 4 Because in many cases tax-collecting is akin to robbery.* 5 Literally *from*. *i.e.*, from their own money not belonging to the secular authorities. *See ADDENDA at the end of this *Tractate*. †Or שֵׁשׁ-בוֹ.

Mishnah 2

If tax-collectors took away his ass and gave him another ass,¹ or if robbers robbed him of his garment and gave him another garment,¹ then this² belongs to him because the owners have despaired of [ever regaining] them.³ If one saved⁴ aught from a stream, or from

מִשְׁנֵה ב
נָטְלוּ מוֹכְסִין אֶת-חֲמורוֹ וְנָתְנוּ לוֹ
חֲמור אַחֵר, גּוֹלוּ לְסֻטִים אֶת-
כְּסוּתוֹ וְנָתְנוּ לוֹ יְכֻסוֹת אַחֲרָת, הָרִי
יֵאלוּ שֶׁלוֹ מִפְּנֵי שֶׁהִבְעֵלִים מִתִּי-אֲשִׁין
מֵהֶן. יִהְיֶה מִן-הַנְּהָר, אוֹ מִן-

marauding soldiery, or from bandits, then if the owner⁵ have renounced all hope [of ever recovering it], this⁶ belongs to him.⁷ And likewise, also, with a swarm of bees, if the owner have abandoned hope [of ever getting it back], it becomes his [namely, the finder's] property. R. Jochanan ben Baroka* said, A woman or a minor may be believed when they say, 'From here did the swarm go away'.⁸ And one may go into the field of his fellow to save his swarm, but if he caused any damage, he must pay for the damage which he has caused; but he may not cut off⁹ any branch¹⁰ of his, even on condition of paying therefor. R. Ishmael¹¹ the son of R. Jochanan ben Baroka says, He may even cut it off and pay for it.

הַנִּיֵּס אוֹ מִן־הַלְּסָטִים, אִם נִתְיָאֲשׁוּ
 הַבְּעָלִים, הָרַ אֱלוֹ יְשָׁלוּ; וְכֵן
 נִחִיל שֶׁל דְּבוֹרִים, אִם נִתְיָאֲשׁוּ
 הַבְּעָלִים, הָרַי אֱלוֹ שָׁלוּ. אָמַר רַבִּי
 יוֹחָנָן בֶּן־בְּרוּקָה, נֶאֱמַנְתָּ אִשָּׁה אוֹ קִטָּן
 לֹאמַר מִכַּאֲן יֵצֵא נִחִיל זֶה. וּמִהֲלֵךְ
 בְּתוֹךְ שָׂדֵה חֲבֵרוֹ לְהַצִּיל אֶת־נִחִילוֹ,
 וְאִם הִזִּיק מִשְׁלֵם מִה־שְּׂהִיזִיק; אֲבָל
 לֹא יִקְוֶץ אֶת־¹⁰ שׁוֹכֵוֹ עַל מְנַת לִיתֵן
 אֶת־הַדָּמִים. רַבִּי יִשְׁמַעְיָאֵל בְּנוֹ
 שֶׁל רַבִּי יוֹחָנָן בֶּן בְּרוּקָה אוֹמֵר,
 אִף קוֹצֵץ וְגוֹתֵן אֶת־הַדָּמִים.

1 Which may have been stolen also from some other person. 2 Literally *these*.
 3 A legal presumption, making it licit for the holder to be the rightful owner, since the surrender of hope of recovery is tantamount to the relinquishment of ownership.
 4 Literally *saves*. 5 Literally *owners*. 6 Literally *these*. 7 But, in these cases, only if the rightful owner has abandoned hope of regaining it. Also this refers to a robber, a non-Jew, against whom proceedings can be taken in the secular courts by the owner to recover his property. 8 *i.e.*, if their statement was made in an informal incidental manner it is accepted as reliable. But otherwise neither a woman nor a minor is competent to give testimony in legal proceedings. 9* יְקוֹץ (יְקִץ), ordinary form, יְקוֹץ (יְקִץ), Aramaic or Chaldaic form. 10 Or *bough, bush*; שׁוֹךְ, or preferably סוֹךְ. On which the bees have swarmed. 11 His opinion is rejected. *See ADDENDA at the end of this *Tractate*. *Or *Barokah*.

Mishnah 3

מִשְׁנָה ג

If one recognised¹ his utensils or his books in the possession of another, and the report of the theft had gone forth in the town, the buyer [who had the stolen articles] must swear how much he gave for them and

יְהַמְכִּיר כִּלְיוֹ וּסְפָרָיו בְּיַד אַחֵר,
 וְיֵצֵא לוֹ שֵׁם גְּנֵיבָה בְּעִיר, יִשְׁבַּע לוֹ
 לֹאֲנִי כִּפְמָה נָתַן וְיִשְׁטִיל; וְאִם יֵלֵא,

collect it [from the rightful owner on restoring the stolen property]; but if not,² his [namely, the original owner's] statement is not to be believed,³ for I might say that he himself had sold them to another and that this person⁴ [in possession of them] had bought them from him.

1 Literally *recognises*. 2 *i.e.*, no such report was spread abroad. Popular pronunciation לֹא. 3 Or הֵימְנוּ. 4 He is an innocent purchaser.

Mishnah 4

If one came along with his jar of wine and another came along with his pitcher of honey,¹ and the pitcher of honey cracked, and the former poured away his wine and saved therein the honey, he may claim no more than his hire;² but if he said, 'I will save thine but thou must give me the value of what is mine', [the latter] must pay it to him. If a stream swept away one's ass and the ass of his fellow, and his own was worth a *maneh*³ and that of his fellow two hundred [*zuz*], and he let go⁴ his own [ass] and saved that of his fellow, he is entitled only to his hire; if, however, he said to him, 'I will save what is thine, but thou shalt pay me the value of mine', [the other] must pay it to him.

1 *The honey was worth more than the wine. 2 *He is entitled only to an ordinary labourer's pay and the value of the jar (which the other takes away), but not to the value of the wine. 3 מְנָה = 100 זוז (see וְרָעִים, Page 18f.). 4 Or הֵימְנוּ. *These (*viz.*, the 'honey' and the 'asses') are parallel cases.

Mishnah 5

If one robbed a field from his fellow, and the tax-collectors¹ took it, then if this were a general confiscation

לֹא כָל-הֵימְנוּ, שְׂאֵנִי אוֹמֵר מְכָרְנָא
לְאַחֵר וּלְקָחָן יְזֵה הֵימְנוּ.

משנה ד

זֶה בָּא בְּחֵבִיתוֹ שֶׁל יָיִן וְזֶה בָּא בְּכַדוֹ
שֶׁל יֶדְבֶשׁ, גִּסְדָּקָה חֵבִית שֶׁל דְּבֶשׁ,
וְשִׁפְךָ זֶה אֶת-יַיְנוֹ וְהֵצִיל אֶת-הַדְּבֶשׁ
לְתוֹכוֹ, אֵין לוֹ אֶלָּא שְׂכָרוֹ; וְאִם
אָמַר, אֲצִיל אֶת-שְׁלֶךָ וְאַתָּה נוֹתֵן לִי
דָּמֵי שְׁלִי, חַיִּב לִיתֵן לוֹ. שֵׁטֶף נָהָר
חֲמוּרוֹ וְחֲמוּר חֲבֵרוֹ, שְׁלוֹ יָפָה מְנָה
וְשֶׁל חֲבֵרוֹ מְאָתָיִם, יִהְיֶיחַ זֶה אֶת-
שְׁלוֹ וְהֵצִיל אֶת-שְׁלֵחַ חֲבֵרוֹ, אֵין לוֹ
אֶלָּא שְׂכָרוֹ; וְאִם אָמַר לוֹ, אֲנִי
אֲצִיל אֶת-שְׁלֶךָ וְאַתָּה נוֹתֵן לִי אֶת-
שְׁלִי, חַיִּב לִיתֵן לוֹ.

משנה ה

הַגּוֹזֵל שָׂדֵה מִחֲבֵרוֹ, וְנִטְלוּהָ יְמִסִּיקִין,
אִם מִכֶּת מְדִינָה הִיא אוֹמֵר לוֹ, הָרִי

[by the authorities], [the robber] may say to him, [namely, the owner], 'Here before thee is thy property;² but if [the government confiscation were for offences committed] because of³ the robber, he must provide him with another field.⁴ If a stream inundated it, [the robber] may say to him, 'Here is what is thine before thee'.

יִשְׁלַח לְפָנָיו, וְאִם מִחֲמַת הַגּוֹזֵל תִּיָּב לְהַעֲמִיד לוֹ יִשְׁדֶּה אַחֵר. שְׂטָפָה נִקָּה אוֹמֵר לוֹ, הֲרֵי שְׂלַח לְפָנָיו.

1 Or *tyrants, government officials*, especially *Roman tax-collectors*. 2 In a general confiscation he is not liable as the field would have to be given up in any case. 3 Or *מִחֲמַת*. 4 Officials would not have taken possession of the stolen field if he had told them it belonged to another.

Mishnah 6

מִשְׁנָה ו

If one robbed aught from his fellow, or borrowed from him,¹ or received it as a deposit from him, when in an inhabited region, he must not return it to him when in the wilderness;² [but if the borrower or receiver said], 'On the condition that I go out into the wilderness', he may restore it to him when in the wilderness.³

הַגּוֹזֵל אֶת-חֵבְרוֹ אוֹ שָׁלוּהוּ יְהִימְנוּ אוֹ שֶׁהִפְקִיד לוֹ בְּיָשׁוּב, לֹא יִחְזִיר לוֹ בַּמִּדְבָּר; עַל מְנַת לְצֵאת בַּמִּדְבָּר, יִחְזִיר לוֹ בַּמִּדְבָּר.

1 Or *הִימְנוּ*. 2 Unless the owner is prepared to accept it in such an unsafe place. 3 The same applies if the claimant, when the transaction was made, said that he was also going into the wilderness.

Mishnah 7

מִשְׁנָה ז

If one say to his fellow, 'I have robbed thee', [or] 'Thou hast lent me', [or] 'Thou hast deposited it with me', [and said further] 'But I do not know whether I returned it to thee or whether I did not restore it to thee', he is bound to repay it;¹ but if he said to him, 'I do not know whether I robbed thee', [or] 'Whether thou didst lend me', [or] 'Whether thou didst deposit with me', he is exempt from repayment.²

הָאוֹמֵר לְחֵבְרוֹ, גִּזְלַתִּיךָ הֲלוֹיִתָּנִי הִפְקַדְתָּ אֵצְלִי, וְאִנִּי יוֹדֵעַ אִם הִחְזַרְתִּי לָךְ, אִם לֹא הִחְזַרְתִּי לָךְ, חַיִּיב, לְשַׁלֵּם; אֲבָל אִם אָמַר לוֹ, אִנִּי יוֹדֵעַ אִם גִּזְלַתִּיךָ, אִם הֲלוֹיִתָּנִי אִם הִפְקַדְתָּ אֵצְלִי, פְּטוֹר מִלְּשַׁלֵּם.

1 The plaintiff is entitled to repayment since the other admits the liability but can produce no evidence of having liquidated it. 2 As he definitely neither denies nor admits the liability the burden of proof rests on the claimant who cannot recover by mere statement.

Mishnah 8

משנה ח

If one stole¹ a lamb from the flock [of his fellow] and restored it,² and then it died or was again stolen, he is responsible for it.³ If the owner⁴ were not aware of its theft or of its restoration, and when he counted the flock [he found] it intact, [the thief] is exempt⁵ [from repayment].
* Or טְלָה.

יְהוֹנָב *טְלָה מִן־הָעֶדֶר וְהִחְזירוֹ, וְמָת אוֹ נִגְנַב, תִּיִּיב בְּאַחֲרֵי־וָתוֹ. לֹא יִדְעוּ יְבָעָלִים לֹא בְּגֵיבָתוֹ וְלֹא בְּחִזְרָתוֹ, וּמִגּוֹ אֶת־הַצֹּאן וְשִׁלְמָה הִיא, *פְּטוּר.

1 Literally *steal*. 2 Without the owner's knowledge. 3 Unless he had notified the owner of the restoration. 4 Literally *owners*. 5 If the lamb died or was stolen again. But the actual ruling is that the thief is liable if he had not notified the owner of the theft and return of the stolen lamb. See ADDENDA at the end of this *Tractate*.

Mishnah 9

משנה ט

None may buy from (the) shepherds any wool, or milk, or goats,¹ or from watchmen over fruit [-trees] any wood or fruit;² but from women they may purchase garments of wool in Judæa³ and garments of flax in Galilee,⁴ or calves in Sharon.⁵ But if any such [that sell them] say that they are to be hidden,⁶ it is prohibited. But they may buy eggs and poultry [from anyone] in any place.⁷

אֵין לֹקְחִים מִן־הָרוֹעִים צֹמֶר וְחֶלֶב, וְיַגְדִּיִּים, וְלֹא מִשׁוּמְרֵי פִירוֹת עֵצִים וּפִירוֹת; אֲבָל לֹקְחִין מִן־הַנָּשִׂים כְּלֵי צֹמֶר בְּיְהוּדָה וְכֵלֵי פִשְׁתָּן בְּגָלִיל, וְעִגְלִים בְּשָׂרוֹן. וְכוֹלֵן שְׂאֲמָרוֹ לְהַטְמִין אֲסוּר. וְלֹקְחִין בְּיָצִים וְתַרְנוּגוּלִים מִכָּל מְקוֹם.

1 Or *kids*. Some authorities consider וְיַגְדִּיִּים redundant. 2 Lest these mentioned have stolen the articles they sell. 3 The Palestinian Talmud does not give בְּיְהוּדָה *כְּלֵי צֹמֶר. 4 It is presumed that in these districts the husbands are aware of the sales. 5 In this region—the coastal plain between Carmel and Japho—women were wont to rear calves as their own property. 6 *i.e.*, the sale is

to be carried out secretly thus giving evidence of underhand dealing. 7 But not if the seller tells the buyer to conceal the purchase. *See ADDENDA at the end of this *Tractate*.

Mishnah 10

Shreds of threads which the washer takes out [from the wash-tub] belong to him;¹ but such which the carder² pulls out belong to the owner.³ If the washer pulled out three threads,⁴ they belong to him, [but if] more than this,* they belong to the owner. If there were black [threads] in a white [piece of material], he may take them all out and they belong to him.⁵ If a tailor left over sufficient thread to sew therewith or a piece of material of three [*fingerbreadths*⁶] square, these belong to the owner. Whatsoever a carpenter takes off with the adze⁷ belongs to him, but [whatever he takes off] with the axe⁸ belongs to the owner; but if he⁹ were working on the owner's premises, even the sawdust belongs to the owner.

מְשֻׁנָּה י

מוֹכֵרִין שֶׁהוֹבִיבִים מוֹצִיא, הָרִי אֵלָיו
 וְשֵׁלוֹ; וְשֶׁהֶסוּרֵק מוֹצִיא, הָרִי אֵלָיו
 שֶׁל בְּעֵל הַבַּיִת. הַבּוֹבֵס נוֹטֵל שְׁלֵשָׁה
 יְחוּטִין וְהֵן שְׁלוֹ, יוֹתֵר *מִכֵּן הָרִי אֵלָיו
 שֶׁל בְּעֵל הַבַּיִת. אִם הָיָה הַשְּׁחֹזֵר עַל
 גְּבִי הַלָּבָן נוֹטֵל אֶת-הַכּל וְהֵן שְׁלוֹ.
 הַחַיִּט שֶׁשָּׂיִר מִן-הַחוּט כְּדִי לְתַפּוֹר
 בּוֹ, וּמִטְלִית שֶׁהִיא שְׁלֵשׁ עַל שְׁלֵשׁ
 הָרִי אֵלָיו שֶׁל בְּעֵל הַבַּיִת. מֵהַ-
 שֶׁהַחֶרֶשׁ מוֹצִיא בְּמַעֲצָד הָרִי אֵלָיו
 שְׁלוֹ וּבְכַשִּׁיל שֶׁל בְּעֵל הַבַּיִת; וְאִם
 הָיָה עוֹשֶׂה אֶצֶל בְּעֵל הַבַּיִת, אֵף
 הַנְּסוּרֹת שֶׁל בְּעֵל הַבַּיִת.

*Or מִכֵּן.

1 The law disregards the claim of any owner for such trivial material. 2 Or *comber*. 3 Literally *householder*. 4 Threads removed at the end of the weaving to straighten out the edge and to improve its appearance. 5 The presumption is that the owner would be pleased with the improvement. 6 אֶצְבָּע or גוֹדֵל = 2.33 cm. or 0.93 inches. 7 Or *plane*. 8 Or *hatchet*. This refers to the case where a structure is being put up at an agreed price. 9 The workman referred to here is a daily wage earner. 10 In some editions קָמָא בְּבֵא קָמָא
 TRACTATE BABA KAMMA CONCLUDED.

10 סְלִיק מִסְכַּת בְּבֵא קָמָא

CONCLUSION OF TRACTATE BABA KAMMA

ADDENDA

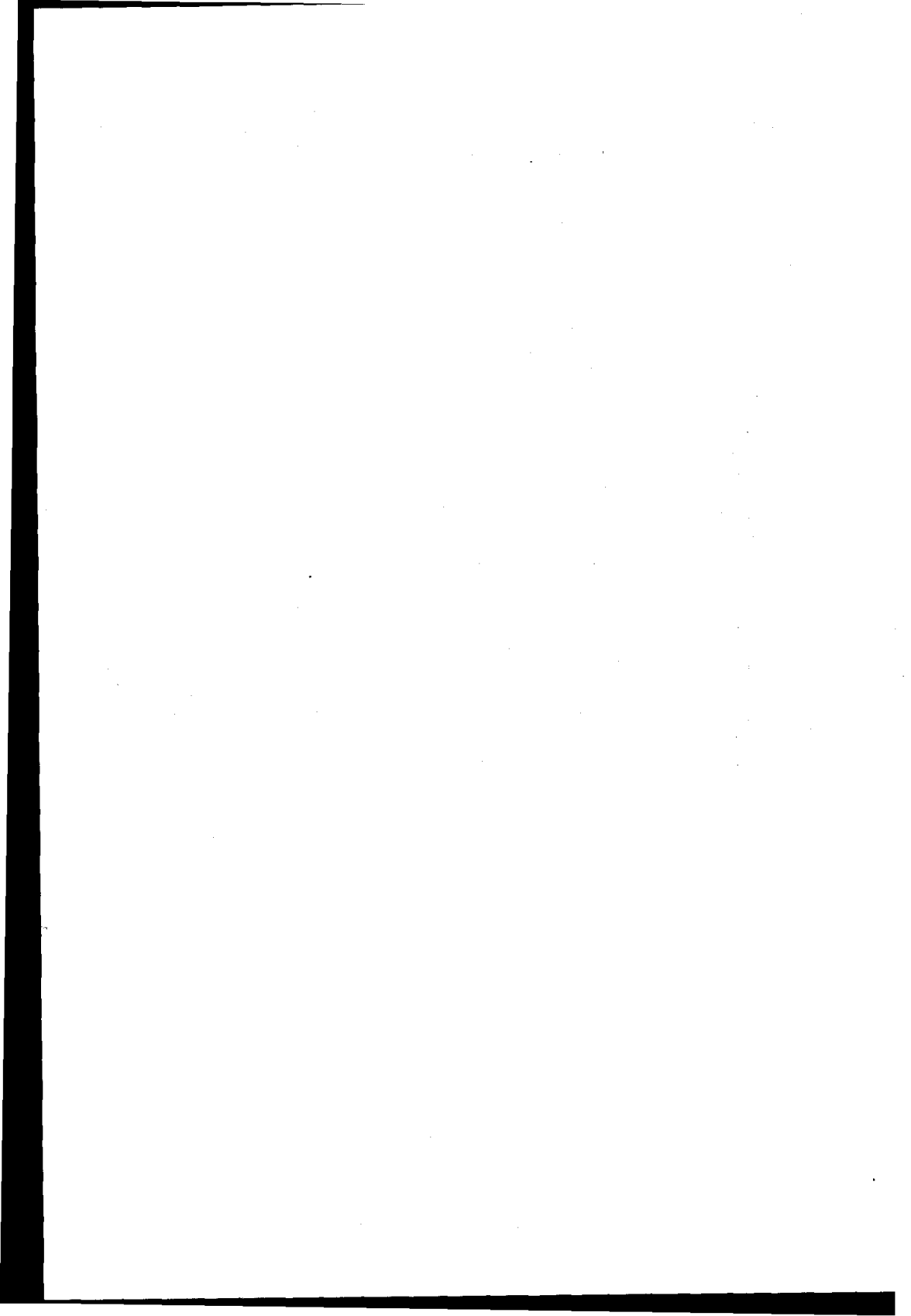
[Additional Notes to **בבא קמא**]

- 12, **Note 2.** The Rabbis derive liability from the words **שׁוֹר יַעֲהוּ**, *the ox of his fellow*, but not **שׁוֹר שֶׁל הַקֶּדֶשׁ**, *the ox of the dedication*.^{*} This principle applies to the other cases here enumerated. ^{*}*viz.*, Temple property.
- 12, **Note 5.** In the case of **קַרְנֵי**, *horn*, liability is incurred even when the courtyard is not reserved for one purpose only.
- 13, **Note 1.** If the cow of C damages the garment of D in the latter's private domain, injuring its leg in the process, C cannot say to D, "We are now quits, for we have both suffered damage!"—the **בֵּית דִּין** must estimate the extent of each one's damage in terms of money or its equivalent, and he whose damage is greater is to be compensated.
- 13, **Note 4.** The law brooks no distinction between man and woman in the case of damages.
- 14, **Note 3.** All these are derived from **קַרְנֵי**, *horn*, and therefore liable to half the damage the first three times; but even a **אֵם** has to pay full damage.
- 14, **Note 10.** Since in the case of a noxious ox the Law prescribes (*Exodus 21, 36*) **שָׁלַם יְשַׁלֵּם שׁוֹר תַּחַת הַשׁוֹר**, *he shall surely pay ox for ox*, it means full restitution; for it does *not* say that the damage has to be made good from the body of the ox that gored, since were this so if the latter is worth little the injured would suffer much.
- 21, **Note 2.** The first part of the *Mishnah* deals with damage inflicted by direct contact with the animal's feet; the latter part treats of damage caused indirectly, such as the broken object becoming entangled with the trappings of the animal. Any damage (**צָרוּרוֹת**) in public domain, though such may be normal, is compensated for by the payment of only *half* damage.
- 22, **Note 4.** The Rabbis derive this from **וּבָעַר בְּשָׂדֵה אַחֵר** (*Exodus 22, 4*) *and it feed in another man's field*; this, however, does not exempt half damage to garments or vessels left in public domain because people do leave about things for a short while in public domain; the owner of the offending ox should have accordingly taken every precaution.
- 23, **Note 3.** The *Mishnah* treats of a case of the injury having been inflicted in private domain.
- 24, **Note 3.** In the case of penitence, we also apply this test: if the sinner is confronted with the same temptation and refrained, it is a sign of genuine repentance.

- 26, **Note 2.** And full damage must be paid as man is always considered as **מְרַעַד**, even when the damage was done accidentally.
- 31, **Note 2.** For one does not ordinarily walk about the public thoroughfares with his eyes glued to the ground.
- 36, **Note 3.** Both should have realised that all are permitted to run along with their burdens at these times, and extra caution should have been displayed on both sides.
- 36, **Note 4.** Because since they hurried even on a weekday—a thing not usual—both can claim exemption.
- 42, **Note 4.** Change of attire renders them strange persons to the ox. An ox, like a human being, that does no work does damage instead.
- 51, **Note 4.** This is the accepted view of the Sages against the opinion of **סוּמְכוֹת**.
- 53, **Note 8.** If one took his ox into a householder's domain with his unqualified permission, the latter is exempt for he did not accept to watch over it and the former is also exempt since he had received permission.
- 56, **Note 6.** The reason for this liability is that, when all is said and done, the ox was found in his pit.
- 75, **Note 7.** The Law requires the thief to have 'slaughtered' it though the Rabbis contend that **שְׁחִיטָה שְׂאִינָה רְאֵינָה שְׂמָה שְׁחִיטָה**; yet these acts are not considered at all 'slaughtering' (**לָא שְׁחִיטָה הִיא כְּלָל**) but 'tearing' the gullet and windpipe.
- 77, **Note 1.** Syria was never deemed part of Israel though David had conquered part of it.
- 77, **Note 4.** The **גְּמָרָא** relates that when the Hasmonean royalties were at war with one another the opponents outside the Jerusalem wall permitted the hauling over of the animals needed for the *daily offerings* (**תְּמִידִים**) in the Temple; on one occasion they substituted a pig to be drawn over the wall, and when the beast reached half-way up and thrust its hooves against the wall the Land of Israel quaked over an area of four hundred *parasangs* square, and since then the saying arose 'accursed be he that rears swine.' The breeding of dogs is not viewed favourably because their bark is liable to frighten a pregnant woman and cause abortion. *Parasang* was an ancient Persian measure of length containing 30 *stadia* and varying between 2·8 and 4·2 miles.
- 81, **Note 3.** Where actual dispensation of justice is not involved **זֶה הַפֶּלֶל הַפֶּלֶל לְפִי** **כְּבוֹדוֹ** in 86 applies. The **הוֹשֵׁן מִשְׁפָּט** says that when a number of people is waiting to be heard by **בֵּית דִּין** a **תְּלָמִיד הַחֵם** is allowed to be heard early even out of his turn.

- 83, **Note 4.** Although in all other cases a transgressor who is liable to the *forty stripes* and also a fine suffers only the stripes; in the case cited here he pays the fine but does not receive the stripes.
- 86, **Note 8.** Since the whole idea of *בְּשֵׁת*, *shame, disgrace, dishonour, indignity*, depends on the degree of shame to which the attacked person is put; some of the lower classes seem bereft of any sense of dignity altogether, as in the example in this *Mishnah*.
- 91, **Note 1.** He need not return the actual things stolen because since he has converted the wood into utensils, he acquired the wood by virtue of the transformations they had been put to (*שְׁנוּי קוּנְוָה*). Similarly, when the lamb he stole grows into a ram which he then slaughters, he slaughters his own animal, and the restitution of *four or five* no longer applies.
- 92, **Note 6.** An account of the injunctions *לֹא יִרְאָה* and *וְלֹא יִמָּצֵא** leaven deliberately kept by a Jew during *פֶּסַח* must not be eaten after the Festival. **Exodus 12, 19.*
- 94, **Note 1.** An experienced dyer should know the exact degree of heat necessary for his process; for this negligence he must pay the full price of the work.
- 94, **Note 2.** There is no question here of *שְׁנוּי קוּנְוָה* since he used another dye to the one ordered.
- 94, **Note 3.** Because he maintains that the dyer had gained possession of the work by the change he had wrought in the material.
- 94, **Note 4.** Regardless of the improvement effected by the change, the dyer is nevertheless fined for not having faithfully carried out the instructions.
- 95, **Note 3.** The reason why it may be given to a *שְׁלִיחַ בֵּית דִּין* is in order to encourage the restitution of stolen property; were the thief required to incur great expense by searching for the robbed person himself, many will be deterred.
- 99, **Note 2.** He must not retain aught of the stolen property in his possession unless he had acquired its ownership by *שְׁנוּי* (irreparable change).
- 99, **Note 4.** *וְנִפְרָעִים בָּאִים* will come and recover the loan from the theft wherein the robber has a share; and if the robber is his father's only heir, he must borrow the full value for repayment and declare "I have robbed from my father" or he pays it into charity and states "I have robbed my father."
- 911, **Note 7.** All *guilt-offerings* which had not been sacrificed before their owners died must graze until they acquire a blemish (or die) and they forfeit all connection with the Altar.

- 9¹², **Note 1.** Though the sacrifice had not been offered yet; the mere giving of the money entitles the priests to ownership.
- 10¹, **Note 2.** Now we rule that the children must return the value of the money with movable and real estate.
- 10¹, **Note 4.** This does not apply to income tax, rates, customs dues, etc., because **דִּינָא דְּמַלְכוּתָא דִּינָא**, the [civil] laws of a country must be observed.
- 10², **Note 9.** If this swarm of bees settled on his fellow's tree and he feared to attempt to remove them lest they escaped, but he was minded to cut down the branch(es) or tree, and for removal together with the swarm he must not do it if his fellow objected even if he offered payment. Popular pronunciation **מִפְּאָן**.
- 10³, **Note 1.** The *Mishnah* speaks of a case of one who does not sell his articles, for were he a trader why should he be trusted to make this accusation? It also refers to one who had not yet abandoned hope of recovering the articles.
- 10⁵, **Note 1.** **מְסִיקָן** is also derived from the Aramaic word **סְקִיָּא**, a species of locust; the connexion between predatory tax-collectors and locusts which devour all that is left needs no stressing.
- 10⁸, **Note 5.** **בְּאַחֲרֵיחוֹ הֵיב**—because after the theft it comes under his authority and this act of restoring is not restoration.
- 10⁹, **Note 3.** The Talmud gives many such examples of avoiding suspicious transactions based on the Law, **וְהָיִיתֶם יְקִיִּים בְּעֵינֵי אֱלֹהִים וְאָדָם**, and be ye guiltless in the eyes of God and man. Compare the Rabbinic advice **לֹא תִרְחַק מִן-הַפְּעוּר וּמִן-הַדּוֹמָה לוֹ**, keep aloof from aught that is hideous and from the like thereof (**חילין 44b.**). *Or **תְּכִיעוּר**.



מִסְכֵּת

בָּבָא מֵצִיעָא

TRACTATE

BABA METZIA

[BEING THE SECOND TRACTATE OF THE FOURTH ORDER
OF THE MISHNAH]

TEXT - INTRODUCTION - TRANSLATION - NOTES

By

PHILIP BLACKMAN, F.C.S.

MS. of this Tractate revised by

RABBI ISAAC COHEN, B.A.

1998

1999

INTRODUCTION

The term **בַּבְּא מְצִיעָא**, **Baba Metzia, Middle Gate**, is composed of the two words **בַּבְּא**, *door, entrance, gate*, and **מְצִיעָא**, *middle, midst*.

This *Tractate* or *Treatise*, together with the preceding one and the succeeding one, originally formed one *Tractate* (see **בַּבְּא קָמָא** 102 a).

It is the *Second Tractate* of the *Fourth Order Nezikin* of the *Mishnah*.

It treats principally of the laws relating to sales and leases, the acquisition and transfer (by occupancy or by contract) of title to personal property (movables and money), whether in actual possession or with right in ownership, found and lost property, usury or interest, security and trust or trusteeship, hiring and borrowing, trading, and hire of labourers.

The *Tractate* is based on *Exodus* 22, 6-14, 24-26, *Leviticus* 25, 14, 35-37, and *Deuteronomy* 22, 1-4.

It has **בַּבְּא** in both the **תַּלְמוּד בְּבֵלִי**, *Babylonian Talmud*, and **תַּלְמוּד יְרוּשָׁלַיִמִי**, *Jerusalem (or Palestinian) Talmud*.

It contains ten Chapters whose titles are:

CHAPTER 1	שְׁנַיִם אַחֲזָיוֹן	פָּרֵק א
CHAPTER 2	אֵלֹו מְצִיאֹוֹת	פָּרֵק ב
CHAPTER 3	הַמִּפְקִיד	פָּרֵק ג
CHAPTER 4	הַזֶּהָב	פָּרֵק ד
CHAPTER 5	אֵיזְהוּ נֶשֶׁךְ	פָּרֵק ה
CHAPTER 6	הַשׁוֹכֵר אֵת הָאוֹמְנִין	פָּרֵק ו
CHAPTER 7	הַשׁוֹכֵר אֶת-הַפּוֹעֲלִים	פָּרֵק ז
CHAPTER 8	הַשׁוֹאֵל (אֶת-הַפְּרָה)	פָּרֵק ח
CHAPTER 9	הַמְקַבֵּל (שְׂדֵה מְתַבְּרוֹ)	פָּרֵק ט
CHAPTER 10	הַבֵּית הַזֶּעֲלִיָּה	פָּרֵק י

Chapters 1-5 treat of the laws concerning the unpaid trustee. Chapters 6 and 7 deal with the laws regarding the trustee who receives remuneration. Chapter 8 deals with the laws of the borrower, lender, aught hired. Chapter 9 treats of the laws of real estate, tenant and landlord. Chapter 10 deals with the relations between partners (or joint holders) and neighbours—whether in fields or dwellings.

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בבא מציעא

TRACTATE

BABA METZIA

CHAPTER 1

פֶּרֶק א

Mishnah 1

מִשְׁנָה א

If two persons¹ [appearing before a court] hold a cloak,² and one says, 'I found it', and the other says, 'I found it', [or] one says,* 'The whole of it is mine', and the other says, 'The whole of it is mine', each shall swear³ that not less⁴ than one half of it belongs to him, and they shall divide the value [equally between them]. If one say, 'All of it is mine', and the other say, 'Half of it is mine', he who says 'All of it is mine' shall swear that not less than three-quarters belong to him, and the one who says 'Half of it is mine' shall swear that not less than one-fourth belongs to him, the former [then] takes three-quarters and the latter takes one-quarter.

יִשְׁנִים אוֹחֲזִין בְּטִלִית, זֶה אוֹמֵר אֲנִי מְצָאתִיהָ, וְזֶה אוֹמֵר אֲנִי מְצָאתִיהָ, זֶה * אוֹמֵר כּוֹלָהּ שְׁלִי, וְזֶה אוֹמֵר כּוֹלָהּ שְׁלִי, יְזַבֵּעַ שְׁאִין לוֹ כֶּה פְּחוֹת מִחֲצִיָּה, וְזֶה יִשְׁבַּע שְׁאִין לוֹ כֶּה פְּחוֹת מִחֲצִיָּה, וְיִחְלֹקוּ. זֶה אוֹמֵר כּוֹלָהּ שְׁלִי, וְזֶה אוֹמֵר חֲצִיָּה שְׁלִי, הָאוֹמֵר כּוֹלָהּ שְׁלִי יִשְׁבַּע שְׁאִין לוֹ כֶּה פְּחוֹת מִשְׁלֹשָׁה חֲלָקִים, וְהָאוֹמֵר חֲצִיָּה שְׁלִי יִשְׁבַּע שְׁאִין לוֹ כֶּה פְּחוֹת מִרְבִּיעַ, זֶה נוֹטֵל שְׁלֹשָׁה חֲלָקִים וְזֶה נוֹטֵל רְבִיעַ.

1 If only one of them was in actual possession he would have the stronger claim. Compare *Appendix, Note 7*. **2** Or aught else.* **3** Biblical law (מִן־הַתּוֹרָה) or (מִדְּאוֹרְיִיקָא) would require an oath in such circumstances only when there is a partial admission of the claim. In this case where each denies the whole of the other's claim the oath is a Rabbinical provision (מִדְּרַבָּנָא) imposed by the Rabbis in order to induce admission of the truth. Such an oath would not be required from one who is likely to commit perjury. There is no reason to presume that either party will knowingly swear falsely. Jewish law regards all men as being

particularly scrupulous in their observance of the Third Commandment (*Exodus 20, 16*). Although a litigant may be suspected of fraud in money matters he is not necessarily also suspected of swearing falsely. 4 Traditional popular pronunciation פָּחוּת. 5 As in the former case each claimant obtains half of his claim. One-half of the garment is conceded at the outset. The dispute concerns the remaining half only which is divided. Strictly the oath should apply only to this disputed half, but in order to avoid the possibility of deceit it is extended to the whole amount that the claimant will receive. *See ADDENDA at the end of this *Tractate*.

Mishnah 2

משנה ב

If two persons were riding on an animal, or if one were riding and the other leading¹ [it], and one says, 'The whole of it is mine', and the other says, 'The whole of it is mine', the former shall swear that not less than half of it belongs to him, and the latter must swear that not less² than half of it belongs to him, and they divide [it equally]. Whenever³ they admit [however, that they both took possession of it together], or if the parties have⁴ witnesses* [to support their claims], they shall divide it without taking an oath. * See ADDENDA at the end of this *Tractate*.

היו שנים רוכבין על גבי בהימה, או שהיה אחד רוכב ואחד מנהיג, וזה אומר כולה שלי, וזה אומר כולה שלי, זה ישבע שאין לו בה פחות מחציה, וזה ישבע שאין לו בה פחות מחציה, ויחלוקו. בזמן שהם מודים, או שיש להן עדים, חולקים בלא שבועה.

1 The acts of riding or leading an ownerless animal are equally effective as a mode of acquisition. 2 See the preceding *Mishnah*, Note 4. 3 Even if the court had already adjudicated that they divide after an oath. Or בזמן. 4 Or שיש להן.

Mishnah 3

משנה ג

If a man riding on an animal saw a lost article¹ and said to his fellow, 'Give it to me'; [and the latter] took it up and said, 'I acquired it for myself', [then] it is his.² If, [however], after giving it to him [the other person] said, 'I acquired it for myself first', he has said naught.³

היה רוכב על גבי בהמה וראה את המציאה, ואמר לתברו תנה לי; ונטלה ואמר אני זכיתי בה, זכה בה. אם משנתנה לו אמר אני זכיתי בה תחלה, לא אמר כלום.

1 Literally *the find, an ownerless object*. 2 Generally the act of the agent acquires an article on behalf of his principal. Here, however, the rider did not say explicitly "acquire it for me"; he merely said, "give it to me." When he took up the article he gave no indication that he was acting as the agent of the rider. The rider had made a request, but he did not agree to comply with it. 3 By complying with the rider's request he had shown his agreement to act as his agent. As soon as he handed it over it became the rider's property. This subsequent declaration is of no avail.

Mishnah 4

If one saw a lost article¹ [in a public thoroughfare], and fell upon it [with the intention of thus acquiring title to it], and another came along and seized it, the one that laid hold of it has acquired title thereto.² If one saw people running after lost property [in his field, for example], after a lame stag [or] after pigeons³ unable to fly, and he said, 'My field acquires title for me', it vests title in him.⁴ But if the stag were running in its usual manner, or if the pigeons could fly, and he said, 'My field acquires title for me', he has said naught.⁵

מִשְׁנֵה ד
 רָאָה אֶת־הַמְצִיָּאָה, וְנָפַל עָלֶיהָ
 וְבָא אַחֵר וְהִחִיךְ בָּהּ, זֶה שֶׁהִחִיךְ
 בָּהּ זֹכֶה בָּהּ. רָאָה אוֹתוֹן רֹצֵין אַחֵר
 מְצִיָּאָה, אַחֵר צָבִי שָׁבוֹר, אַחֵר
 גּוֹזְלוֹת שְׁלֵא פָּרְחוּ, וְאָמַר זֹכֶתָה לִי
 שְׂדֵי, זֹכֶתָה לִי. הִנֵּה צְבִירֵךְ כְּדֹרְכוֹ
 אוֹ שֶׁהָיוּ גּוֹזְלוֹת מִפְּרִיחֵין, וְאָמַר
 זֹכֶתָה לִי שְׂדֵי, לֹא אָמַר כְּלוּם.

1 See the preceding *Mishnah*, **Note 1**. 2 Almost any article may be acquired* by taking hold of it or by its presence on his land or premises, or even within a radius of four cubits around him. A man's space of four cubits' radius around him does not acquire title for him. Here taking hold of the article is necessary. 3 *גוזל* brood, chick, particularly *young dove*. 4 But only if the field was well fenced in or the owner was near enough to seize the find before it leaves his field. 5 This is of no avail: since his field has no hold on these passing animals or birds it does not acquire title in them for him. *See *Appendix*, **Note 7**.

Mishnah 5

An object found by a man's son or daughter who are minors,¹ [or] by his Canaanite bondman or bondwoman,² [or] by his wife, belongs to himself.³ An object found by his

מִשְׁנֵה ה
 מְצִיאת בְּנוֹ וּבִתּוֹ הַקְטָנִים, מְצִיאת
 עֶבְדוֹ וְשִׁפְחָתוֹ הַכּוֹנְעִים, מְצִיאת
 אִשְׁתּוֹ, הָרִי אֵלוֹ שְׁלוֹ. מְצִיאת בְּנוֹ

son or daughter who are majors,⁴ [or] by his Hebrew manservant or maidservant,⁵ [or] by his wife whom he had divorced even though he has not paid [her] her *marriage settlement*,⁶ belongs to them.⁷

וּבְחוֹ הַגְּדוּלִים, מְצִיאַת עֶבְדוֹ
 וְשִׁפְחָתוֹ הָעֶבְרִים, מְצִיאַת אִשְׁתּוֹ
 שֶׁנִּשְׁרְשָׁה אַף עַל פִּי שְׂלֵא גָתָן
 כְּתוּבָתָהּ, הִרִי אֵלוֹ שְׂלָהֶן.

1 The term *minors** here does not refer to the age of the finder. If the son or daughter (being of minor age or major age) is maintained by the father, any object that they find belongs to the father. Though legally both a minor and major have the right of possession, this provision is intended to avoid ill-feeling between parent and child. 2 *Leviticus* 25, 44-46. Their entire persons are the property of their master. 3 In order that the husband maintains no ill-feeling towards her. 4 An object found by one who is not maintained by his father, even if he be a minor by age, belongs to himself. 5 *Leviticus* 25, 39-43. 6 *Appendix, Note 8.* כְּתוּבָתָהּ, INTRODUCTION 7 The finders. *See ADDENDA.

Mishnah 6

מִשְׁנָה ו

If one found bonds* of indebtedness, and§ they contain† a clause mortgaging [the debtor's] property,¹ he should not return² [them], because the court would exact payment [from the purchaser of the debtor's property] on the strength of them; if they contain no such mortgage clause, he should restore them [to the creditor] because the court exact payment [from purchasers of the debtor's property] on the strength of them. This is the view of R. Meir.³ But the Sages⁴ say, He should not restore them in either case, for the court will enforce payment [in either case] against them. * Construct plural also שְׂטָרֵי.

מְצָא * שְׂטָרֵי חוּב, § אִם זֶלַש בְּהֶן
 יֵאָחֲזוּת וְנִכְסִים לֹא יִחְזוּר, שְׁבִית
 דִּין וְנִפְרָעִין מֵהֶן; אִין בְּהֶן אֵחֲזוּת
 נִכְסִים יִחְזוּר, שְׂאִין בֵּית דִּין וְנִפְרָעִין
 מֵהֶם. דְּבָרֵי רַבִּי מֵאִיר. יִחְכְּמִים
 אֹמְרִים, בֵּין בֶּן וּבֵין בֶּן, לֹא יִחְזוּר
 מִפְּנֵי שְׁבִית דִּין וְנִפְרָעִין מֵהֶן.

1 If a debtor sells such property and fails to discharge his debt, the creditor can recover payment from the purchaser(s). 2 Neither to the creditor nor to the debtor, since in either case an injustice may be done. See ADDENDA at the end of this *Tractate*. 3 His view is rejected. 4 Their opinion is accepted. In their view every bond of indebtedness, unless expressly stated otherwise, creates a lien on the debtor's real estate and the omission of a lien clause is assumed to be due to an error on the part of the scribe. §Literally *if*. †Or יֶשׁ-בְּהֶן

Mishnah 7

If one found *bills of divorce*,¹ or *deeds of manumission*,² [or] *wills*³ [or deeds] of gift, or *quittances*,⁴ he should not return them,⁵ for I say they were written but he [who ordered them to be written] changed his mind [and decided] not to hand them over.⁶

1 See *Appendix, Note 8*; גִּטִּין, INTRODUCTION 2 Or *bills of emancipation of slaves*. 3 דִּיאֲתִיקִי, דִּיאֲתִיקִי, *contract, covenant; position of property, particularly by will and testament, bequest, thus a last will and testament*. 4 A receipt or a release *breaks* the bond of debt. 5 Literally *this, or any of these*. 6 The documents here mentioned become effective only at actual delivery. They should not be surrendered to the beneficiaries unless the benefactors state expressly that they desire the deeds to be delivered. (A deed of gift, however, should not be surrendered to the beneficiary even at the request of the donor for fear of a fraudulent agreement to recover these goods from one who had purchased them. The donor can make a new deed of gift.)

Mishnah 8

If one found documents¹ of legal assessment² or documents relating to alimony,³ [or] a certificate* of *chalitza*,⁴ [or records of] *miun*,⁵ or documents relating to the choice of arbitrators,⁶ or any other document executed by a Court of Law, he should return them to the parties for whose benefit they were drawn up. If one found [any document] in a satchel⁷ or in a case,⁸ or a roll of documents, or a batch of documents, he must return [them].⁹ And how many constitute a batch of documents? Three fastened together. Rabban Simon ben Gamaliel says, [If the documents refer to] the same borrower from three [lenders], [the finder] must return [them] to the borrower; but [if the documents refer to] three persons who borrowed

מִשְׁנֵה ז

מִצָּא יְגִטֵי נָשִׁים, יוֹשְׁהֲרוּרֵי עֲבָדִים, דִּיאֲתִיקִי מִתְּנָה, יוֹשְׁבָרִים, הָרִי זֶה לֹא יִחְזֹר, שְׂאֲנֵי אוֹמֵר כְּתוּבִים הָיוּ וְנִמְלָךְ עֲלֵיהֶם שְׂלֵא לִיתְתָּם.

מִשְׁנֵה ח

מִצָּא יֶאֱגָרוֹת שׁוּם, יוֹאֲגָרוֹת מְזוּן, שְׁטָרֵי חֲלִיצָה, וּמִיאֲוִיָּן, וְשְׁטָרֵי בִירוּרֵין, וְכָל מַעֲשֵׂה בֵית דִּין, הָרִי זֶה יִחְזֹר. מִצָּא בְּחִפְסָה, אוֹ בְּדִלוֹסְקָמָא, תְּכַרִּיף שֶׁל שְׁטָרוֹת אוֹ אֲגוּדָה שֶׁל שְׁטָרוֹת, הָרִי זֶה יִחְזֹר. וְכַמָּה אֲגוּדָה שֶׁל שְׁטָרוֹת? שְׁלֹשָׁה קְשׁוּרִין זֶה בְּזֶה. רֶבֶן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר, אֶחָד תִּלְוֶה מִשְׁלֹשָׁה יִחְזֹר לִלְוֶה; שְׁלֹשָׁה תִּלְוִין מֵאֶחָד יִחְזֹר לְמִלְוֶה. מִצָּא שְׁטָר בֵּין שְׁטָרוֹתָיו וְאִינוֹ יוֹדֵעַ מֶה טִיבוֹ, יֵהָא מוֹנֵחַ עַד שִׁבְאָא אֵלָּיהוּ. אִם

from one [lender], the finder should return [them] to the lender.¹⁰ If one found a document [that had been deposited with him] among his own documents, and he does not know the nature of its validity¹¹, it shall be left [with him] until Elijah will come.¹² If a creditor produces documents which have on them notes of cancellation,¹³ he must abide by the contents of the notes.¹⁴

1 Literally *letters*. 2 The valuation of a creditor's property by a Court of Law is recorded for the purpose of assigning it as a security to a creditor. 3 (1) A document given by a man who marries a widow or divorced woman promising to maintain her daughter of her previous marriage. (2) An order of a Court of Law authorising the disposal of a husband's property for the maintenance of his wife and children whom he had abandoned. See *כתובות* 12¹. 4 *Deuteronomy* 25, 5-9; *יבמות* INTRODUCTION and 12¹. † 5* A fatherless girl, whose mother or brother gave her in marriage when she was yet a minor (*sc.*, under twelve years of age), may on reaching her majority refuse to confirm her marriage. A document issued by the Court recording this *refusal* [*מיאון*] annuls the marriage and enables her to marry another man. *יבמות* 13¹. 6 Documents recording the selection of arbiters by contending parties. The tribunal usually consists of three judges—the two opposing parties choosing one judge each and the two judges selecting a third. See *סנהדרין* 3¹. 7 In some editions *בהפיפה*, a covering. *תפיסה*, a small leather bag or valise for documents. 8 Or *גלוסקמא*, chest, case, coffin. 9 If the claimants can satisfy the finder that they are the rightful owners. 10 But not if they are all in the same handwriting because it is possible that the scribe who had drawn these up had lost them. When they are in different handwriting and are tied together this is sufficient evidence that they all belong to the lender. 11 Whether it had been wholly or partly repaid, or whether it had been entrusted to him by a creditor or a debtor. Compare *בבא בתרא* 10⁵. 12 Who will appear to announce the advent of Messiah and will also elucidate all unsolved questions and difficulties of fact and law. 13 *סמפון*—literally a ramification—an implicit proviso whose non-fulfilment disannuls a contract. Here a postscript or note attached to a document containing a receipt of payment or a discharge of the debt. 14 The discharge of the debt is upheld although the receipt is not in the hands of the borrower. **מיאון*, literally *refusal*. *Or *שטר*. †See ADDENDA at the end of this *Tractate*.

CHAPTER 2

פרק ב

Mishnah 1

משנה א

Some¹ finds belong to the finder² and others¹ must be proclaimed.³ *יאלו מציאות ש'לו יאלו חייב*

The following finds belong to the finder: if one found scattered fruit, scattered money, small sheaves in the public thoroughfare, cakes of pressed figs, a baker's loaves, strings of fish, (and) pieces of meat, wool shearings⁴ [in their natural state] as they arrive from their places of origin, (and) bundles of combed flax or strips of purple wool⁵—these belong to the finder. This is the view of R. Meir. R. Judah says, Everything that contains* something unusual must be proclaimed. How so? If one found a cake of figs with a potsherd therein or a loaf with money in it [such must be proclaimed]. R. Simon ben Elazar says, All brand-new vessels⁶ need not be proclaimed.

לְהִכְרִיז. אֵלּוּ מְצִיאוֹת שְׁלוֹ, מְצָא פִירוֹת מְפוֹרְזִין, מְעוֹת מְפוֹרְזוֹת, כְּרִיכוֹת בְּרֶשֶׁוֹת הָרָבִים, וְעִגּוּלֵי דְבִילָה, כְּפָרוֹת שֶׁל נְחָתוֹם, מִחֲרוֹזוֹת שֶׁל דָּגִים, וְחֲתִיכוֹת שֶׁל בֶּשֶׂר, וְגִיזֵי צֹמֶר. יְהֵאֲוֹת מִמְדִּינָתָן, וְאֵינְצִי פֶשֶׁתָן וְלִשְׁנוֹת שֶׁל אֶרְגָּמָן, הֲרִי אֵלּוּ שְׁלוֹ. דְּבָרֵי רַבִּי מֵאִיר. רַבִּי יְהוּדָה אוֹמֵר, כֹּל-יִשְׁשׁ בּוֹשְׁנוֹי חַיִּיב לְהִכְרִיז. כִּי־צָד? מְצָא עִיגּוּל וּבְתוֹכוֹ חֶרֶס, כְּפָר וּבְתוֹכוֹ מְעוֹת. רַבִּי שִׁמְעוֹן בֶּן אֶלְעָזָר אוֹמֵר, כֹּל-כֶּלִי אֲנִפּוֹרְיָא אֵין חַיִּיב לְהִכְרִיז.

1 Literally *These . . . , and these . . .* 2 Literally *to him, his*. 3 A lost thing can be acquired by its finder only if the original owner has already divested himself of his right of ownership before the article is found. The loser gives up his ownership when he consciously abandons all hope of its recovery [אִשׁ]. This condition does not obtain where the loser is confident that the lost article may be recovered and that he will be able to indentify it. Similarly, it cannot be said that he has abandoned his right to the article when he is not aware that it has been lost. If, therefore, the finder discovers identifiable marks on the article, or there are other attendant circumstances whereby the owner may be able to establish his title to it, it must be assumed that the owner has not abandoned his right to it and the find must be advertised so as to enable the rightful owner to recover it. 4 Literally *that come from their country*. 5 These are examples of articles which, because of the absence of identifiable markings on them, their owners would be unable to identify. 6 This Greek word אֲנִפּוֹרְיָא for *merchandise or goods* was used by the Rabbis because of its association with the Hebrew words אֵין פֹּה רֵאִיָּה, meaning 'there is no mark of identification here.' Hence, *new merchandise, brand-new vessels*.

Mishnah 2

מְשֻׁנָּה ב

The following articles have to be proclaimed: if one found fruit in a vessel,¹ or a vessel¹ just as it is,²

וְאֵלּוּ חַיִּיב לְהִכְרִיז, מְצָא פִירוֹת בְּכֶלִי אוֹ כֶּלִי כְמוֹת שֶׁהוּא, מְעוֹת

money in a bag,¹ or a bag¹ just as it is,² heaps of fruit, heaps of money, three³ coins on top of each other, small bundles in a private domain,⁴ or home-made loaves or wool shearings from the craftsman's workshop, [or] jars⁵ of wine or jars⁵ of oil—these he must proclaim.

בְּכֵית אֹר כִּיס כְּמֹת שְׁהוּא, צְבוּרֵי פִירוֹת, צְבוּרֵי מְעוֹת, שְׁלֹשָׁה מְטַבְּעוֹת זֶה עַל גַּב זֶה, כְּרִיכוֹת בְּרִשׁוֹת הַיְחִיד, וְכִכְרוֹת שֶׁל בֹּעַל הַבַּיִת, וְגִיזֵי צֶמֶר הַלְקוּחוֹת מִבַּיִת הָאוֹמֵן, בְּדֵי יֵזוּ, וְכֵדֵי שֶׁמֶן, הָרִי אֵלּוּ תֵּיב לְהַכְרִיז.

1 Which had a distinguishing mark. 2 *i.e.*, empty. 3 Or more than three. 4 Where few people pass along. 5 These generally bear identifiable markings. **יָר**, jar, jug, pitcher.

Mishnah 3

If one found pigeons tied together behind a reed fence¹ or a hedge² or on footpaths in fields, he must not touch them.³ If one found an article* on a dung heap, if it were covered over he must not touch it,⁴ but if it be uncovered, he may take it and proclaim it. If one found [a lost article] in a ruin, or in an old wall, it belongs⁵ to him; if he found it in a new wall, if it were on the outside [of the wall], it belongs to him, but if it were on the inside [of the wall], it belongs to the householder.⁶ If it were his practice to rent the house to various tenants, [and] one found aught even within the house, it belongs to him.⁷

מִשְׁנָה ג
מָצָא אַחַר הַגֶּפֶה אוֹ אַחַר הַהַגְדָּר גּוֹזְלוֹת מְקוּשְׂרִין אוֹ בְּשִׁבְלֵין שֶׁבְשֻׂדוֹת, הָרִי זֶה לֹא יַגַּע בָּהֶן. מָצָא כְּלִי בְּאַשְׁפָּה, אִם מְכוּסָה לֹא יַגַּע בּוֹ, אִם מְגוּלָה נוֹטֵל וּמְכַרְיוֹ. מָצָא בְּגַל אוֹ בְּכוֹתֵל יֵשֶׁן הָרִי אֵלּוּ שְׁלוֹ; מָצָא בְּכוֹתֵל הַדָּשׁ, מִחֲצִי וְלַחוּץ שְׁלוֹ, מִחֲצִי וְלַפְּנִים שֶׁל בֹּעַל הַבַּיִת. אִם הָיָה מְשַׁכִּירוֹ לְאַחֲרִים, אֶפִּילוֹ בְּתוֹךְ הַבַּיִת, הָרִי אֵלּוּ שְׁלוֹ.

1 **יָפֶה**, stone fence with a gate, reed or wooden fence, a wooden gate in a wall. 2 A hedge, fence, probably of stones. 3 He must not take possession of them because they are not lost. We presume that the owner has left them temporarily in that position. Neither should he take them to proclaim them since by removing them the owner would have no means of identifying them. 4 It is not considered a lost article if it is covered up. 5 Treasure-trove, the original owner of which can no longer be traced. This does not apply where the condition of the article shows that it

has recently been placed there. 6 'Outside,' facing the street; 'inside,' facing the house. 7 Since the loser must have abandoned hope of recovering it. This is particularly so if heathens are among the tenants. *Deuteronomy* 22, 1. *Or קָלִי.

Mishnah 4

משנה ד

If one found aught¹ in a shop, it belongs to him;² if, however, [he found it] between the counter and [the seat of] the storekeeper,³ it belongs to the storekeeper; if [he found it] in front of [the counter or table of] a money-changer, it belongs to the finder;⁴ but if [he found it] between the stool [of the money-changer] and the money-changer, it belongs to the money-changer. If one bought⁵ fruit from his fellow,⁶ or if his fellow⁶ sent fruit to him, and he found money therein, it belongs to him, but if [the money] were tied up [in a package], he must take it and proclaim it.⁷

ימצא בחנות הרי אלו ישלו; בין המיכה ולחנני של חנני; לפני שולחני הרי אלו ישלו; בין הכסא ולשולחני הרי אלו לשולחני. הלוקח פירות מחברו או ששלח לו תברו פירות ומצא בהן מעות הרי אלו שלו. אם היו צרורין נוטל ומכריז.

1 Without any identification mark. 2 Presumably lost by a customer who has despaired of recovering it since a shop is a public place. 3 Or *shopkeeper*. 4 One of the customers who stand in front of the counter must have lost it. 5 Literally *buys*. 6 *i.e.*, a merchant who buys the produce from a number of others and thus it would be impossible to trace the original source; otherwise the find must be surrendered. 7 Because the owner would be able to identify it by describing the purse, etc., or would state the sum of money in it or point out the exact spot where it was lost.

Mishnah 5

משנה ה

A garment was also included among all these,¹ then why was it mentioned separately?² To compare [every lost article regarding its restoration] to it to point out to thee, that just as each garment is distinguished in that it bears* identification marks and has †claimants to it, so every article which has § both identifiable markings³ and claimants to it must

אף השמלה היתה בכלל כל-אליה, למה יצא? להקיש אליה לומר לה, מה שמלה מיוחדת שיש בה סימנים ויש לה תובעים, אף כל-דבר שיש בו סימנים ויש לו תובעים הייב להכריז.

be proclaimed [when found].

1 Deuteronomy 22, 1-3.* 2 Deuteronomy 22, 3. 3 The finder of a lost article bearing identifiable marks need not proclaim if he knows that the owner had stated that he had abandoned all expectation of recovering it. *See ADDENDA at the end of this *Tractate*. *Or שֵׁשׁ-בֵּה. †Or שֵׁשׁ-בוּ. §Or לוֹ.

Mishnah 6

And for how long a period is one bound to proclaim [the finding of a lost article]? Until his neighbours may become aware of it. This is the view of R. Meir. R. Judah¹ says, Until three Festivals² have passed, and for seven days after the last Festival, in order that [the loser] might have three days to go to his house and three days to return, and one day to announce³ [his loss].

1 This was the accepted practice. 2 Passover, Pentecost and the Feast of Tabernacles, when Jews had to appear in the Temple. 3 There was a 'stone of claims' in Jerusalem where losses and finds were announced.

Mishnah 7

If [the claimant] stated the object lost but could not describe its identification marks, [the finder] may not surrender it to him; and if [the claimant] be a [reputed] deceiver, then even though he described its markings [of identification], [the finder] may not deliver it to him,¹ as it is said,² *until thy brother inquires after it*, [which means] 'until thou shalt investigate thy brother whether he is a deceiver or not a deceiver.'³ [If one find] any beast that works and eats,⁴ it must work and eat;⁵ but [if one find] any animal that does not labour but eats, it must be sold,⁶ as it is said,⁷ *and thou shalt restore it to him*, [which means] 'see

משנה ו

ועד מתי חייב להכריז? עד כדי שידעו בו שכניו. דברי רבי מאיר. רבי יהודה אומר, שלש רגלים, ואחר הרגל האחרון שבועה ימים, כדי שילך לביתו שלשה ויחזור שלשה ויכזיר יום אחד.

משנה ז

אמר את האבדה ולא אמר סימניה, לא יתן לו; והרמאי אף על פי שאמר סימניה, לא יתן לו, שנאמר, עד דרוש אחיקה אותו, עד שתדרוש את אחיקה אם רמאי הוא אם אינו רמאי. כל דבר שעושה ונאכל יעשה וינאכל, ודבר שאין עושה ונאכל ימכר, שנאמר, והשבותו לו, ראה האיד תשיבנו לו. מה יהא בדמים? רבי טרפון אומר, ישתמש בהן, לפיכך אם אבדו חייב

in what manner⁸ thou mayest restore it to him.⁹ What is to be done with the money [realised from the sale]? R. Tarfon⁹ says, He may use it, and therefore, if it be lost, he is responsible for it.¹⁰ R. Akiba¹¹ says, He may not make use of it, and so, if it be lost, he is not responsible for it.

יִבְאֲחַרְיוֹתָן. יי רבי עקיבא אומר, לא ישתמש בהן, לפיכך אם אבדו אין חייב באחריותן.

1 Unless he can produce irrefutable evidence that he is the rightful owner. 2 *Deuteronomy* 22, 2. Scripture gives עַד דָּרַשׁ אֶתְיָךְ אִתּוֹ. 3 *i.e.*, whether he is a 'brother' [meaning an 'upright man'] or a 'deceiver' [*i.e.*, a 'dishonest man']. 4 Literally דָּבָר, *thing, i.e.*, it earns its keep by its labour. 5 *i.e.*, the finder may use it for work to earn its food. In the case of poultry and cattle he need not keep them for longer than one year. 6 The finder must hold the money for the owner. (The finder may not take care of the animal until its owner claims it, for the cost of its keep may exceed the value of the animal.) 7 *Deuteronomy* 22, 2. The Scriptural orthography is וְהִשְׁבַּתוּ. 8 הֵיאִיךְ, *how?*—preferable הֵיאִיךְ. 9 His opinion is accepted. 10 Whether he makes use of the money or not he becomes liable as if he were a borrower. 11 His view is rejected.

Mishnah 8

מִשְׁנָה ח

If one found scrolls¹ [holding them in charge for the owner], he must read them once in thirty days,² and if he do not know how to read, he must roll them,³ but he may not study from them for the first time,⁴ and no other may read with him.* If one found a garment, he must shake it⁵ once in thirty days and spread it out for its own good but not for his own honour.§ [If one found] silver vessels or copper vessels, he may make use of them for their own benefit,⁶ but not [to such an extent] that they become worn away; [if he found] vessels of gold or vessels of glass, he may not use them⁷ until Elijah will come.⁸ If one found a sack or a large basket† or

מִצָּא יספרים קורא בהן אחת לשלשים יום, ואם אינו יודע לקרות גוללן; אבל לא ילמד בהן בפתחקה, ולא יקרא אחר עמו. מִצָּא כסות מנערה אחת לשלשים יום, ושוטקה לצרכה אבל לא לכתבדו. פלי כסף וכלי נחשת משתמש בהן לצרכן אבל לא לשחקן. פלי זהב וכלי זכוכית לא יגע בהן עד שיבא אליהו. מִצָּא שק או יקופה וכל דבר

any article that he does not ordinarily carry about, he does not have to take it.⁹

שֵׂאִין דְּרָכּוֹ לְטוֹל הַרִי זֶה לֹא יִטּוֹל.
 † Or רָפָה.

1 All books in the Mishnah period were written in the form of *scrolls*. They were rolled when read. 2 In order to air them and thus prevent deterioration. 3 Open them out at least once every thirty days in order to air them. 4 A subject which he had not studied before. 5 To remove any dust and to prevent it from becoming moth-eaten. 6 That they do not tarnish or rust. 7 Literally *touch them*. These will not become tarnished or rusty even when not used. 8 Compare 1⁸, Note 12. 9 As he does not usually himself carry such articles (for instance, his social status is such that it would be undignified for him to do so), he is not bound by law to take it with him in order to care of it until its owner claims it. *The scroll may be damaged by each pulling it towards himself. §For his own benefit.

Mishnah 9

מִשְׁנָה ט

What is considered lost property?¹ If one found an ass or a cow grazing by the way,² this is not lost property; [but if one found] an ass with its gear upset, [or] a cow running among the vineyards,³ this is to be accounted lost property.⁴ [If a finder] restored it and again it escaped, [and then] he restored it and it again escaped, even [if this occurred] four or five times, he is still bound to restore it, for it is said,⁵ *thou shalt surely bring them back* . . . If [by attending to the find] he lost work⁶ to the value of a *sela*,⁷ he may not say to him [namely, the owner], 'Give me a *sela*,' but [the owner] pays him his hire as to an unemployed labourer.⁸ If there be§ a court there,⁹ [the finder] may state his terms¹⁰ before the court, [but] if there be no court there before whom to stipulate,¹¹ his own [need] takes precedence.¹²

אִיזוֹ הִיא יֹאבֵדָה? מֵצֵא חֲמוֹר אֹו פָּרָה רוֹעִין בְּדֶרֶךְ אֵין זוֹ אֲבֵדָה; חֲמוֹר וְכִלְיוֹ הַפּוֹכֵיין, פָּרָה רָצָה בֵין הַתְּחִיזָרָה, הַרִי זֶה יֹאבֵדָה. הַתְּחִיזָרָה וּבְרָחָה הַתְּחִיזָרָה וּבְרָחָה, אֲפִילוֹ אֲרַבְעָה וַחֲמִשָּׁה פְעָמִים, חֲיִיב לְהַתְּחִיזָרָה, שְׁנֵאָמַר, הָשֵׁב תְּשִׁיבֵם. הִיָּה בְטָל מְסַלֵּעַ לֹא יֹאמַר לוֹ, תֵּן לִי סֵלַע, אֲלֵא נוֹתֵן לוֹ שְׂכָרוֹ כְּפוֹעֵל בְּטָל. אִם יֵישׁ שָׁם בֵּית דִּין מִתְּנָה בְּפָנָי בֵּית דִּין; אִם אֵין שָׁם בֵּית דִּין בְּפָנָי מִי יִתְּנָה, שְׁלוֹ קוֹדֵם.

1 When it is evident that there is no owner there. 2 By day. 3 Trampling or otherwise damaging the trees. 4 Thus circumstances and conditions must be taken into consideration to determine whether any object met with is something lost and to be taken in charge. 5 *Deuteronomy 22, 1*. * 6 He lost time from his work

while occupying himself with the find. 7 1 פֶּלַע = 2 שְׁקָלִים (see וְרָעִים, Page 18f.). 8 According to the sum an unemployed labourer would expect for taking charge of and returning such a lost article. 9 Any three Jews may constitute a court for this purpose. 10 i.e., he may stipulate and ask the court's approval that he will return the find only on condition that he is compensated for the full loss sustained through neglect of his own work. 11 That his loss exceeds his gain. 12* קוֹדֵם *Kal participle* (not קוֹדֵם, antecedent, previous). *See ADDENDA at the end of this *Tractate*. §Or יִשְׁשֶׁם.

Mishnah 10

If one found it [namely, an animal] in a stable, he has no responsibility toward it,¹ [but if] in the public domain, he is bound to return it; and if it were in a cemetery,² he may not become defiled³ because of it. If his father said to him,⁴ 'Contract defilement'[†] [for it], or if he said to him, 'Do not return it', he must not hearken to him. If one unloaded and reloaded and again unloaded and loaded up,⁴ even four or five times, he is still bound [to do so again], as it is said,⁵ *Thou shalt surely release it with him*. If [the owner] went and sat down, and said [to someone], 'Since the commandment is enjoined upon thee, if it be thy desire to unload, unload!'⁶ he is exempt, for it is said,⁷ *with him*.⁸ If [the owner] were an old man⁹ or sick, one is bound¹⁰ to do it himself. It is a duty enjoined by the Law [to help] to unload, but not to load.¹¹ R. Simon¹² says, [One must assist] to load up also. R. Jose the Galilean says, If it had upon it more than its [proper] load, one is not bound [to render any aid], for it is said,¹³ *under its burden*, [implying] a burden¹⁴ that it is able to endure.¹⁵ § *Hithpaal* [abbreviated]; or יִטְמֵא, *Niphal*.

1 He does not have to concern himself about it as he may assume that being in

מִשְׁנָה י

מִצָּאָה בְּרֶפֶת אֵין חַיִּיב בָּהּ, בְּרֶשֶׁת
 הַרְבִּים חַיִּיב בָּהּ; וְאִם הָיְתָה בְּבֵית
 הַקְּבָרוֹת לֹא יִטְמֵא לָהּ. אִם אָמַר
 לוֹ אָבִיו, זֶה יִטְמֵא, אוֹ שָׂאֵמַר לוֹ,
 אַל תִּחְזֹר, לֹא יִשְׁמַע לוֹ. פָּרַק וְטָעַן
 פָּרַק וְטָעַן, אֶפְּלוֹ אַרְבָּעָה וַחֲמִשָּׁה
 פְּעָמִים, חַיִּיב, שֶׁנֶּאֱמַר, עֲזוּב תַּעֲזוּב.
 הִלֵּךְ וְשָׁב לוֹ וְאָמַר, הוֹאִיל וְעָלִיךָ
 מִצָּאָה, אִם רְצוֹנָךְ לִפְרוֹק *פְּרוֹק,
 פְּטוּר, שֶׁנֶּאֱמַר, *עֲמוּ. אִם הָיָה זָקֵן
 אוֹ חוֹלָה *חַיִּיב. מִצָּנָה מִן-הַתּוֹרָה
 לִפְרוֹק אֲבָל *לֹא לְטָעוֹן, רַבִּי
 שֶׁמְעוֹן אוֹמֵר, אַף לְטָעוֹן. רַבִּי יוֹסֵי
 הַגְּלִילִי אוֹמֵר, אִם הָיָה עָלָיו יִתֵּר עַל
 מְשָׂאוֹ אֵין זָקוּק לוֹ, *שֶׁנֶּאֱמַר, תַּחַת
 מְשָׂאוֹ, *מְשָׂאוֹ שֶׁיְכוּל *לְעֲמוֹד בּוֹ.

the stable it is not lost. 2 The law enjoining a priest or a nazirite to abstain from defilement prevents him and thus absolves him fulfilling the commandment of restoring the lost thing. *Leviticus 21, 1; Numbers 6, 6.* 3 The priest or nazirite in the case just mentioned. It is not a transgression of the Fifth Commandment to disobey a parent bidding wrongdoing. 4 Referring to a beast of burden that had fallen under its load. 5 *Exodus 23, 5.* The duplicated verbal form is interpreted as indicating that the aid must be repeated if required. Scripture gives עֲזַב תְּעֹזֵב. 6 The verb means *leave, forsake, let loose. i.e., but that he himself would not assist.* 7 *Exodus 23, 5.* 8 *i.e., the owner must also help.* 9 Some translate the term לִיָּד a *sage, or a scholar.* 10 Even without the owner's assistance. 11 The Law enjoins one to help to *unload* gratuitously, but one may demand payment for his trouble to *reload, i.e., the obligation is confined to the duty of עֲזַב, meaning release.* 12 His opinion is rejected.* 13 *Exodus 23, 5.* 14 מִשְׂאוֹ, מִשְׂאוֹ, (from verb נָשָׂא, *carry*), *burden, load.* 15 His view is rejected. The ruling is that help must be given in unloading in all circumstances without remuneration. *See ADDENDA. †*Hithpael* [abbreviation]; or הִיטְמֵא *Niphal.*

Mishnah 11

[If a man's own lost property and the lost property of his father [require attention], his own has precedence;¹ his own lost property and his teacher's lost property, his own comes first; his father's lost property and the lost property of his teacher, that of his teacher has first place,² because his father brought him into this world, but his teacher who taught him wisdom brings him thereby into the world to come;³ if, however, his father were also a sage (equal to his teacher),⁴ that of his father has precedence. If his father and his teacher were each carrying his own burden,* he must relieve⁵ his teacher first and then he relieves his father. If his father and his teacher were in (the house of) captivity, he must ransom his teacher first⁶ and then he ransoms his father; but if his father were

מִשְׁנֵה יֵא

אֲבֹדְתוֹ וְאֲבֹדַת אָבִיו, אֲבֹדְתוֹ
 קֹדֶמֶת; אֲבֹדְתוֹ וְאֲבֹדַת רַבּוֹ, שְׁלוֹ
 קֹדֶמֶת; אֲבֹדַת אָבִיו וְאֲבֹדַת רַבּוֹ,
 שְׁל רַבּוֹ קֹדֶמֶת, שְׂאָבִיו הֵבִיאוֹ
 לְעוֹלָם הַזֶּה, וְרַבּוֹ שְׂלֵמְדוֹ חֻכְמָה
 מֵבִיאוֹ לְחַיֵּי הָעוֹלָם הַבָּא; וְאִם אָבִיו
 חָכֵם (שֶׁקוֹל כְּגוֹד רַבּוֹ) שְׁל אָבִיו
 קֹדֶמֶת. הִזָּה אָבִיו וְרַבּוֹ נוֹשְׂאִין
 *מִשְׂאוֹי, מִזִּיחַ אֶת־שֵׁל רַבּוֹ וְאַחַר
 כֵּן מִזִּיחַ אֶת־שֵׁל אָבִיו. הִזָּה אָבִיו
 וְרַבּוֹ בְּבֵית הַשְּׂבִי, פּוֹדֶה אֶת־רַבּוֹ
 וְאַחַר כֵּן פּוֹדֶה אֶת־אָבִיו; וְאִם
 הִזָּה אָבִיו חָכֵם, פּוֹדֶה אֶת־אָבִיו
 וְאַחַר כֵּן פּוֹדֶה אֶת־רַבּוֹ.

also a sage,⁷ he must first ransom his father and he ransoms his teacher afterward.

1 If the time at his disposal will not allow him to attend to both losses. Compare 2⁹, **Note 12.** 2 But not if this refers to his teacher from whom he has gained most of his Torah knowledge. 3 *i.e.*, he aids him in his reward in his after-life. But not if most of his knowledge was gained from his father. 4 Equal to or greater than his teacher in knowledge. 5 Or מְיֻדָּה. 6 But only when he is more learned and receives no fee. 7 Even though not as learned as the teacher. Here real physical suffering is involved. *Literally a *burden*.

CHAPTER 3

פָּרָק ג

Mishnah 1

If one left a beast or utensils in the charge of his fellow [who guarded them gratuitously] and they were stolen or lost, [and the guardian] paid compensation¹ not wanting to take the oath—for [the sages] have said that an unpaid bailee may take an oath and be exempt from liability—and then the thief is found, [the thief] must make *double restitution*,² and if the thief had slaughtered or sold [the animal], he must make *fourfold or fivefold restitution*.³ To whom does he pay? To him with whom the property was entrusted.⁴ If he took the oath not desiring to pay,⁵ [and] the thief was found, [the thief] must make *double restitution*, and if he had slaughtered or sold [the animal], he must make *fourfold or fivefold restitution*. To whom must he pay? To the owner of the

מִשְׁנָה א
הַמִּפְקִיד אֶצֶל חֵבְרוֹ כְּהֵמָה אוֹ
כָּלִים. וְנִגְבוּ אוֹ שְׂאֵבְדוּ; יִשְׁלַם
וְלֹא רִצָּה לִישָׁבַע, שֶׁהָרִי אֶמְרוּ שׁוֹמֵר
חָנֹם גִּשְׁבַּע וְיִזְצֵא, נִמְצָא הַגָּנֵב מִשְׁלָם
תְּשַׁלְּוִמִי כָּפֶל, טֵבַח וּמָכַר מִשְׁלָם
תְּשַׁלְּוִמִי אַרְבָּעָה וַחֲמִשָּׁה. לְמִי
מִשְׁלָם? לְמִי שֶׁהִפְקִדוֹן אֶצְלוֹ.
גִּשְׁבַּע וְלֹא רִצָּה לִשְׁלֹם, נִמְצָא הַגָּנֵב
מִשְׁלָם תְּשַׁלְּוִמִי כָּפֶל, טֵבַח וּמָכַר,
מִשְׁלָם תְּשַׁלְּוִמִי אַרְבָּעָה וַחֲמִשָּׁה.
לְמִי מִשְׁלָם? לְבַעַל הַפְּקִדוֹן.

1 A gratuitous bailee is not liable for loss or damage to the article in his charge unless he himself made use of it or was negligent in the care of it. If he swears to this effect and that it is now no longer in his possession he is free from all liability. If he declines to take that oath he must pay for the full loss. Compare 7⁸. 2 If the stolen article is in his possession he must return it together with its value; if

he no longer has it he pays twice its value. The thief is thus obliged himself to suffer the loss he intended to inflict on his neighbour. **3** Compare **מָאָה קָמָא** 71. Fourfold for a lamb and fivefold for an ox (the penalty for an ox being greater because its owner had been deprived of the value of its labour). *Exodus* 21, 37. **4** By paying for the bailment he acquires all rights in it and thus restitution for its theft is due to him. **5** Thus the original owner retains the ownership and restitution is due to him.

Mishnah 2

מִשְׁנָה ב

If one hired¹ a cow from his fellow and lent it to another, and it died a natural death, the hirer must swear that it died a natural death, and the borrower must repay [its worth] to the hirer.² R. Jose³ said, How can this be? Why should this man⁴ do business⁵ with his fellow's cow? [The value of] the cow must therefore be restored to the owner.

הַשׁוֹכֵר פָּרָה מִתְּחִבְרוֹ וְהִשְׁאִילָהּ
 לְאַחֵר, וּמָתָהּ כְּדֹרְכָהּ, לְשִׁבְעַת הַשׁוֹכֵר
 שְׁמֵתָהּ כְּדֹרְכָהּ, וְהִשְׁאִילָהּ יִשְׁלֹם
 לְשׁוֹכֵרָהּ. אָמַר רַבִּי יוֹסִי, כִּי־צָדַד?
 הֲלֵהָ עוֹשֶׂה סְחוּרָה בְּפִרְתּוֹ שֶׁל
 תְּחִבְרוֹ? אֵלֹא תִחְזוֹר פָּרָה לְבַעֲלֶיהָ.

1 A hirer is not liable for damage due to an unpreventable accident. **2** Compare 7³. A borrower is liable for loss or damage in all circumstances. **3** His view is accepted. **4** הַלֵּהָ (traditional pronunciation הִלְהֵהָ) is a term mostly used in legal proceedings to designate the person concerned. **5** Make profit out of property which is not his own but his fellow's.

Mishnah 3

מִשְׁנָה ג

If one said to two persons, 'I have robbed one of you of a *maneh*,¹ but I do not know which one² of you,³ or [if he said to them], 'The father of one of you has deposited a *maneh* in my keeping, but I do not know⁴ whose father's, he must give a *maneh* to one and a *maneh* to the other, as he himself admitted the liability.⁵

אָמַר לְשְׁנַיִם וְגוֹלְתִי לְאַחַד מֵכֶם יְמָנָה,
 וְאֵינִי יוֹדֵעַ אֵי זֶה מֵכֶם, אוֹ אָבִיו שֶׁל
 אֶחָד מֵכֶם הִפְקִיד לִי מָנָה וְאֵינִי
 יוֹדֵעַ אִיזָה הוּא, נוֹתֵן לְזֶה מָנָה וְלְזֶה
 מָנָה שֶׁהוֹדָה מִפִּי עֲצֻמוֹ.

1 1 מָנָה = 100 זוז (see וְרַעִים, Page 18f.). **2** אֵי זֶה are often combined into one word אִיזָה or אִזָּה. **3** And these are also in doubt. **4** And he was also uncertain. **5** Strictly according to the law he is liable to pay one *maneh* only which the other two parties should divide, but here he wants to clear his conscience of any obligation.

Mishnah 4

If two deposited [money] with one person, one a *maneh*¹ and the other two hundred [zuz], [and thereafter] one says, '[the] two hundred are mine,' and the other says, '[The] two hundred are mine', [the holder] should give a *maneh* to the one and a *maneh* to the other, and the remainder* shall remain until Elijah will come.² R. Jose³ said, If so, what did the deceiver lose? Rather let it all remain until Elijah comes.

משנה ד

שנים שהפקידו אצל אחד, זה מנה וזה מאתים, זה אומר שלי מאתים וזה אומר שלי מאתים, נותן לזה מנה ולזה מנה, ויהשאר יהא מונח עד שיבא אליהו. אומר רבי יוסי אם כן מה הפסיד הרמאי? אלא הכל יהא מונח עד שיבא אליהו.

*Popular Pronunciation והשאר.

1 See the preceding *Mishnah*, **Note 1**. 2 Compare 1⁸, **Note 12**. This is the accepted ruling.* 3 His opinion is rejected. Why should the innocent party lose still more? *See ADDENDA at the end of this *Tractate*.

Mishnah 5

And so, also, is the case with two articles, one worth a *maneh*¹ and the other worth a thousand *zuz*, and then one said,² 'The more valuable one is mine,' and the other said, 'The more valuable one is mine', [he who is in charge of the articles] should give the less valuable article to one of them, and from [the money realised by selling] the more valuable article he gives the value of the less valuable article to the other,³ and the remainder shall remain until Elijah will come.⁴ R. Jose⁵ said, If this be so, what loss does the deceiver sustain? Let the whole remain until Elijah comes. *Popular pronunciation והשאר

משנה ה

וכן שני כלים, אחד יפה ומנה ואחד יפה אסף וזו, זה אומר יפה שלי, וזה אומר יפה שלי, נותן את הקטן לאחד מהן, ומתוך הגדול נותן דמי קטן לשני, ויהשאר יהא מונח עד שיבא אליהו. אומר רבי יוסי אם כן מה הפסיד הרמאי? אלא הכל יהא מונח עד שיבא אליהו.

1 See 3³, **Note 1**. 2 Literally says. 3 Even though, as is evident, the owner of the more valuable article must necessarily suffer loss by the sale. 4 This is the accepted ruling. Compare 1⁸, **Note 12**. 5 His opinion is rejected.

Mishnah 6

If one placed produce in his fellow's charge even if it go to waste,¹ [the one in charge] must not touch it.² Rabban Simon ben Gamaliel says, He may sell it under the supervision of a court, because he may be considered as one that restores a lost article to its owner.³

1 Through mice or decay. 2 *i.e.*, dispose of it. But this ruling holds good only where the loss of the stored produce is not greater than the limit mentioned in the next *Mishnah*. 3 Literally *to an owner* (or, if vowelised לַבְעָלִים, *to the owner*).

Mishnah 7

If one leaves produce in his fellow's charge,¹ then the latter may [when returning it] deduct for decreases as follows: for wheat and rice, nine half *kabs*² to the *kor*,³ for barley and millet,⁴ nine *kabs* to one *kor*, for spelt and linseed, three *seahs* to a *kor*. All in proportion to the quantity and according to the length of time⁵ [such produce is left in store]. R. Jochanan⁶ ben Nuri said, And what do the mice care?⁷ Do they not eat [the same amount] whether the quantity stored be large or small! Therefore he may make deductions for one *kor* only. Rabbi Judah said, If the [stored produce] were of a large quantity he may not make any deduction for decreases since [in fact] it increases.⁸

*See רַעִים SUPPLEMENT, מוֹעֵד SUPPLEMENT.

1 If the bailee mixed the deposited produce with his own he cannot ascertain the exact extent of depreciation to the deposit through decay, shrinking, or destruction by rodents. Hence fixed proportions of loss are here enunciated. Compare the

מִשְׁנָה ו

הַמְּפָקִיד פִּירוֹת אֶצֶל חֵבְרוֹ, אִפִּילוּ
הֵן יֵאָבְדוּ, לֹא יִגַע בָּהֶן. רַבִּן
שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר, מוֹכְרֵן
בְּפָנֵי בֵּית דִּין, מִפְּנֵי שֶׁהוּא כְּמֹשֵׁב
אֲבָדָה לַבְעָלִים.

מִשְׁנָה ז

הַמְּפָקִיד פִּירוֹת אֶצֶל חֵבְרוֹ הֵרִיזָה
יוֹצִיא לוֹ חֶסְרוֹנוֹת, *לְחֶשֶׁן וְלְאוֹרֵז
תְּשַׁעָה חֲצָאֵי *קָבִין לְכוֹר,
*לְשַׁעוֹרִין *וְלְדוֹחַן תְּשַׁעָה קָבִין
לְכוֹר, *לְכוֹסְמִין וְלְזֶרַע *פֶּשֶׁתָן
שְׁלֹשׁ סָאִין לְכוֹר. הַכֹּל לְפִי הַמְּדָה
הַכֹּל לְפִי *הֶזְקֵן. אָמַר רַבִּי *יוֹחָנָן
בֶּן גּוּרִי, וְכִי מָה-אֲכַפֵּת לָהֶן
לְעַכְבְּרֵין וְהֵלֵא אוֹכְלוֹת בֵּין
מִהֲרַבָּה וּבֵין מְקִימָעָא. אֲלָא אֵינוֹ
מוֹצִיא לוֹ חֶסְרוֹנוֹת אֲלָא לְכוֹר,
אָחֵד בְּלָבָד. רַבִּי יְהוּדָה אוֹמֵר,
אִם הִיתָה מְדָה מְרוּבָה אֵינוֹ מוֹצִיא
לוֹ חֶסְרוֹנוֹת מִפְּנֵי *שְׁמוֹתֵירוֹת. §

preceding *Mishnah*. 2 6 קב = 1 סאה. 30 סאה = 1 כר. See זרעים, Page 18f. 3 Or לְכוּר, to a kor. 4 Or durra, durra millet, Indian millet, sorgho grass. 5 The guardian may deduct these amounts annually by the same proportion. 6 This view is accepted. 7 About time and quantity. Or לְעֶכְפְּרִים, do mice 8 It is generally stored in summer and returned in winter when it will have grown in bulk by reason of the atmospheric moisture. This in course will outbalance the previously mentioned decrease.

Mishnah 8

מִשְׁנֵה ה

He may deduct a sixth§ [when returning a deposit] of wine. R. Judah says, One-fifth. He may deduct three logs¹ of oil in a hundred logs: one and a half logs for lees* and one and a half logs for absorption.² If the oil were refined, he may not deduct for lees; if the jars were old, he may not deduct for absorption. R. Judah³ says, If one sell refined oil⁴ to his fellow throughout the whole year, then the latter must undertake to bear the decrease of one and a half logs for lees in every hundred⁵ [logs]. Or sediment. § Traditionally pronounced שְׁתוּת.

יוציא לו שְׁתוּת לַיִן. רַבִּי יְהוּדָה אוֹמֵר, חֹמֶשׁ. יוֹצִיא לוֹ שְׁלֹשֶׁת יָלוּגִין שֶׁמֶן לְמֵאָה, לוֹג וּמִחְצָה שְׁמֵרִים לוֹג וּמִחְצָה בְּלֵעַ. אִם הָיָה שֶׁמֶן מְוַזְקָק, אֵינוֹ מוֹצִיא לוֹ שְׁמֵרִים; אִם הָיָה קִנְקָנִים יְשָׁנִים, אֵינוֹ מוֹצִיא לוֹ בְּלֵעַ. רַבִּי יְהוּדָה אוֹמֵר, אֶף הַמּוֹכֵר שֶׁמֶן מְוַזְקָק לְתַבְרוֹ כָּל־יְמוֹת הַשָּׁנָה תְּרֵי זָה מְקַבֵּל עָלָיו לוֹג וּמִחְצָה שְׁמֵרִים לְמֵאָה.

1 לוג = 550 c.cm. See זרעים, Page 18f. 2 The clay vessels were unglazed, and absorbent to a considerable extent. (Compare מְצִיעָא 40a. A log and a half was considered a not unreasonable absorption by a new vessel). 3 His view is rejected. 4 If a vendor sells a quantity of oil, e.g., 100 logs, retaining the oil in his own barrels and supplying small quantities as and when required. 5 Since the purchaser was not supplied with the 100 logs outright the sediment was left with the vendor who is entitled to retain 1½ logs of oil in respect of it.

Mishnah 9

מִשְׁנֵה ט

If one stored a cask¹ with his fellow, and the owner² had not assigned any particular place for it, and then [the guardian] moved³ it and it was broken, if it were broken while it was in his [namely, the guardian's]

הַמַּפְקִיד יְחִבִּית אֶצְלוֹ תַּבְרוֹ וְלֹא יִתְרוֹ לָהּ הַבְּעָלִים מְקוֹם, וְנִטְלְטְלָהּ וְנִשְׁבְּרָה, אִם מִתּוֹךְ יָדוֹ וְנִשְׁבְּרָה לְצָרְכוֹ חַיִּב, לְצָרְכָהּ פָּטוּר; אִם

hand, he is liable [for damage] if [he had moved it] for his own need, [but if he had moved it] for its own sake, he is not liable; [but if] it were broken after he had set it down, whether [he had moved it] for his own requirement or whether for its need, he is exempt [from having to make good the damage]. If the owner did assign a special place for it, and [the guardian] moved it and it was broken, then whether [it was broken] while it was in his hand or whether after he had set it down, he is liable if [he had moved it] for his own need,⁴ but he is exempt if [he had moved it] for its own sake.

מִשְׁהֵנִיחָהּ נִשְׁבְּרָה, בֵּין לְצָרְכוֹ בֵּין לְצָרְכָהּ, פְּטוּר. יִתְדוּ לָהּ הַבְּעָלִים מְקוֹם וְטִלְטְלָהּ וְנִשְׁבְּרָה, בֵּין מִתּוֹךְ יָדוֹ וּבֵין מִשְׁהֵנִיחָהּ יְלְצָרְכוֹ חַיִּיב לְצָרְכָהּ פְּטוּר.

1 Or *barrel, jar, jug*. 2 Literally *owners*. 3 The guardian (or caretaker) wanted to make temporary use of the place, or (according to the *Gemara* 41a) he desired to make temporary use of the cask which would be an act of wrongful conversion. 4 He is guilty of violation of trust and conversion for not having first notified the owner of his intention.

Mishnah 10

If one deposited money with his fellow [for safe keeping], and [the latter] tied it up¹ and carried it over his back, or handed it over to his minor son or minor daughter,² or he did not lock it away properly, he is liable [if it were lost in any way], because he had not taken care of it after the manner of bailees;³ but if he did guard it in the manner of bailees, he is exempt [from liability].

מִשְׁנָה י
הַמִּפְקִיד מְעוֹת אֶצֶל תַּבְּרוֹ, צָרָרָן יוֹהֵפְשִׁילָן לְאַחֲרָיו אוֹ שֶׁמָּסָרָן לְבָנוֹ וּלְבִתּוֹ יִהְיֶה קִטְנִים, וְנִעַל בְּפִנְיֵיהֶם שְׂלֵא כְּרֹאוי, חַיִּיב, שְׂלֵא שָׁמַר כְּדָרָךְ יִהְיוּ מְרִים; וְאִם שָׁמַר כְּדָרָךְ הִשְׁמְרִים, פְּטוּר.

1 In his scarf. 2 Compare 76. 3 Or *guardian*. Money is more apt to be stolen or lost than other articles, and it is incumbent upon a caretaker to take every precaution for its safe keeping. If the caretaker entrusted the money to his wife or to his adult children and it is lost, he is liable if they cannot make good the loss. See ADDENDA at the end of this *Tractate*.

Mishnah 11

If one deposited money with a money-changer¹ [for safety] and it was tied up,^{2*} [the latter] may not

מִשְׁנָה יא
הַמִּפְקִיד מְעוֹת אֶצֶל שׁוֹלְחָנִי, צָרָרָן לֹא יִשְׁמַשׁ בָּהֶם, לְפִיכָךְ

make use of it, therefore, if it were lost, he is not responsible for it³; [if the money were] loose, [the money-changer] may make use of it, hence, if it were lost, he is responsible for it. [If it were left] with a private individual,[§] whether tied up* or loose, [the latter] may not use it, consequently, if it were lost, he is not responsible for it. A shopkeeper is accounted like a private person;⁴ this is the view of R. Meir;⁵ [but] R. Judah⁶ says, A shopkeeper is to be considered like a money-changer.

אם אָבְדוּ אֵינוֹ חַיִּיב בְּאַחֲרֵי־וְתוֹן; מוֹתְרִין יִשְׁתַּמֵּשׁ בָּהֶן, לְפִיכֹף אִם אָבְדוּ חַיִּיב בְּאַחֲרֵי־וְתוֹן. אֲצֵל סְבַעַל הַבַּיִת, בֵּין *צְרוּרִין וּבֵין מוֹתְרִים, לֹא יִשְׁתַּמֵּשׁ בָּהֶן, לְפִיכֹף אִם אָבְדוּ אֵינוֹ חַיִּיב בְּאַחֲרֵי־וְתוֹן. חֲנֻנֵי כְּבַעַל הַבַּיִת; וְדַבְּרֵי רַבִּי מֵאִיר; רַבִּי יְהוּדָה אוֹמֵר, חֲנֻנֵי כְּשׁוֹלְחָנִי.

* Or *sealed up*. § Literally *householder*.

1 Who continually needs money for his transactions. Similarly, if one deposits books with a scholar the latter may use them if he had none like them. 2 An ordinary guardian may not use it even if it was loose. Money sealed up or tied up is evidently not meant by the owner to be used by the guardian. 3 Not being allowed to make use of the money he is a gratuitous bailee and thus not responsible for loss. 4 Who may not make use of any money deposited with him for safe keeping. 5 His opinion is rejected. 6 His view is accepted.

Mishnah 12

If one convert to his own use what had been entrusted to him, the School of Shammai say, He must suffer the disadvantage of fall and rise [in value];¹ but the School of Hillel² say, [He must repay at the same value] as at the time* he made use of it; R. Akiba says, [He must repay as at the time when claimed. If one declare³ his intention to make [unlawful] use of a deposit, the School of Shammai say, He is liable; but the School of Hillel say, He is not liable until he has used it, (as it is said,⁴ *Whether he hath not put his*

מִשְׁנֵה יב הַשּׁוֹלֵחַ יָד בְּפִקְדוֹן, בֵּית שַׁמַּי אוֹמְרִים, יִלְקָה בְּחֶסֶר יוֹבְיָתֵר; וּבֵית הַלְּלֵי אוֹמְרִים, *כְּשַׁעַת הוֹצָאָה; רַבִּי עֲקִיבָא אוֹמֵר, כְּשַׁעַת הַתְּבִיעָה. הַחּוֹשֵׁב לְשַׁלֵּחַ יָד בְּפִקְדוֹן, בֵּית שַׁמַּי אוֹמְרִים, חַיִּיב; וּבֵית הַלְּלֵי אוֹמְרִים, אֵינוֹ חַיִּיב עַד שֶׁיִּשְׁלַח בּוֹ יָד, (שֶׁנֶּאֱמַר, אִם לֹא שְׁלַח יָדוֹ בְּמִלְאכָתָ רָעוּהוּ); כִּי־צַד, הִטָּה אֶת-

hand unto his neighbour's goods). In what way [is one guilty of conversion liable? If he tilted the cask] that was⁵ stored with him, and took therefrom a *quarter-log* [of wine] and later it was broken,⁶ he need pay only for the *quarter-log*; but if he picked it up⁷ and took from it a *quarter-log* and thereafter it broke, then he must repay⁸ the worth of the whole of it.

הַחֲבִית וְנִטְלָה הַיְמָנָה רְבִיעִית
 וְנִשְׁבְּרָה, אֵינוֹ מְשַׁלֵּם אֶלָּא רְבִיעִית;
 הַגְּבִיחָה וְנִטְלָה הַמְּנָה רְבִיעִית
 וְנִשְׁבְּרָה, מְשַׁלֵּם דָּמֵי כֹּלָהּ.

1 He must repay according to the original worth if it depreciated or according to its present worth if it increased in value. 2 This opinion is the prevailing rule. 3 Before witnesses. 4 *Exodus 22*, 7, 10. The part trustee must take an oath that he did not put his hand into his neighbour's goods. 5 Or הַיְמָנָה. 6 Even though accidentally. רְבִיעִית, see וְרָעִים, page 18f. 7 An act of acquiring possession. See *Appendix*, Note 7. 8 In every case, whether the damage was accidental or not, and whether he took any wine or not. *Popularly כְּשֵׁעַת.

CHAPTER 4

פֶּרֶק ד

Mishnah 1

מִשְׁנָה א

[The delivery of] the gold [of the vendor] gives him title to the silver¹ [of the purchaser], but [the delivery of] the silver [of the purchaser] does not give him title to the gold [of the vendor]. [The delivery of] the copper [of the vendor] gives him title to the silver [of the purchaser], but the delivery of the silver [of the purchaser] does not give him title to the copper [of the vendor]. [The delivery of] the non-current coins [of the vendor] gives him title to the current coins [of the purchaser], but [the delivery of] the current coins [of the purchaser] does not give him title to the non-current coins [of the vendor]. [The delivery of] the bullion² [of the vendor] gives him title to the minted metal³ [of the purchaser],

הַזָּהָב קוֹנֶה אֶת-הַכֶּסֶף, וְהַכֶּסֶף
 אֵינוֹ קוֹנֶה אֶת-הַזָּהָב; הַנְּחוֹשֶׁת קוֹנֶה
 אֶת-הַכֶּסֶף, וְהַכֶּסֶף אֵינוֹ קוֹנֶה אֶת-
 הַנְּחוֹשֶׁת. מְעוֹת הָרְעוֹת קוֹנוֹת אֶת-
 הַיְפּוֹת, וְהַיְפּוֹת אֵינָן קוֹנוֹת
 אֶת-הָרְעוֹת. אֲסִימוֹן קוֹנֶה אֶת-
 הַמְּטַבֵּעַ, וְהַמְּטַבֵּעַ אֵינוֹ קוֹנֶה אֶת-
 אֲסִימוֹן. מְטַלְטְלִין קוֹנִים אֶת-
 הַמְּטַבֵּעַ, וְהַמְּטַבֵּעַ אֵינוֹ קוֹנֶה אֶת-
 הַמְּטַלְטְלִין. (זֶה *הַכָּלֵל), כָּל-
 הַמְּטַלְטְלִין קוֹנִין זֶה אֶת-זֶה.

but [the delivery of] the minted metal [of the purchaser] does not give him title to the bullion⁴ [of the vendor]. [The delivery of] the chattels [of the vendor] gives him title to the coins [of the purchaser], but [the delivery of] the coins [of the purchaser] does not give him title to the chattels [of the vendor]. This is the general principle^{5*} [in barter]: the delivery of any chattel [by the one party] gives him title to the chattel of the other.⁶ * Popularly pronounced **הַכֶּלֶל**.

1 Mere payment of the price of an article does not complete its purchase. The Rabbis instituted that a sale is completed only when the purchaser formally takes the article into his possession by lifting it or drawing it towards him. As soon as the purchaser takes the article in this way he automatically gives the seller the right to the money which is due to him in payment for the article. When money of one type or denomination is used to purchase money of another type it is here laid down that the more current type of coin is regarded as the money, or the price, and the less current is regarded as the commodity which is being purchased. **2** Literally *unstamped coins*, i.e., shaped but not bearing the usual impression. **3** i.e., current coins. **4** i.e., when the unminted or uncoined metal—deemed as goods—is delivered the purchase is included. **5** In some texts the words **זֶה הַכֶּלֶל** are bracketed and are considered redundant. **6** In barter or exchange of movable property the sale is completed as soon as either party takes possession. Compare קדושין 16.

Mishnah 2

מִשְׁנָה ב

For instance, if [a buyer] had drawn¹ produce into his possession from the seller² but had not yet paid him the money, neither party may retract; [but] if he paid him the money and had not drawn [the] produce from him into his possession, [either party] may withdraw.³ Nevertheless [the Sages] said, He who exacted punishment from the generation of the Flood⁴ and from the generation of the Dispersion⁵ will also exact punishment from one who does not abide by his word. R. Simon⁶ says, He⁷ that has possession of the money has the advantage.⁸

כִּי צִד, יִמְשֵׁךְ הַיָּמֵנוּ פִּירוֹת וְלֹא נָתַן
לוֹ מָעוֹת, אֵינּוּ יֹכֹל לְחַזֹּר בּוֹ ; נָתַן
לוֹ מָעוֹת וְלֹא מָשַׁךְ הַיָּמֵנוּ פִּירוֹת,
יֹכֹל יִלְחַזֹּר בּוֹ. אֲבָל אָמְרוּ, מִי
שִׁפְרַע מֵאֲנָשֵׁי דוֹר הַמַּבּוּל וּמִדּוֹר
הַפְּלִגָּה הוּא עֵתִיד לְהַפְרַע מִמִּי
שְׂאִינּוּ עוֹמֵד בְּדַבּוּרוֹ. רַבִּי שְׁמַעוֹן
אוֹמֵר, כָּל-שֶׁהִפְסֵף בְּיָדוֹ יָדוֹ עַל
הָעֲלִינָה.

1 Thus acquiring valid possession. See *Appendix, Note 7*. Compare קדושין 14, **Note 6**. **2** Or הַיָּמֵנוּ, Literally *from him*. **3** i.e., the sale is not formally completed. **4** Genesis 6, 11-13. See *ADDENDA* after 106. **5** Genesis 11, 1-10. They

rejected the rule of God and the moral law. 6 His opinion is rejected, because if one party may withdraw from an agreement legally, the other too is not legally bound by it. 7 Whether the seller or the buyer. 8 *i.e.*, has the privilege of nullifying the transaction.

Mishnah 3

Fraud² is constituted by an overcharge of four pieces of silver¹ in the twenty-four pieces of a *sela*, that is, one-sixth[§] of the purchase price. Until what time is [one suffering defraudment] permitted to retract? Until he can show [the purchase for an opinion as to its value] to a merchant or to his relative.³ R. Tarfon taught at Lydda,⁴ '[An overcharge of] eight pieces of silver from a *sela*—one-third of the purchase price*—constituted overreaching' and the merchants of Lydda were pleased. R. Tarfon said to them,⁵ '[The defrauded party] is allowed to retract within a whole day'. [The merchants] replied to him, 'Let R. Tarfon leave us where we were!'⁶ and they reverted to the

משנה ג

הַאֲנוּאָה אַרְבָּעָה כֶּסֶף מֵעֲשָׂרִים
וְאַרְבָּעָה כֶּסֶף לְסֵלַע, § שְׁתּוֹת לְמִקְחָהּ.
עַד מָתַי מוּתָר לְהִחְזִיר? עַד כְּדֵי
שְׂרָאָה לְתַנָּר אוֹ לְקָרוֹבוֹ. הוֹרָה
רַבִּי טַרְפוֹן בְּלוֹד, הַאֲנוּאָה שְׁמוֹנֶה
כֶּסֶף לְסֵלַע, שְׁלִישׁ לְמִקְחָהּ, וְשִׁמְחוּ
תַנָּרֵי לוֹד. אָמַר לָהֶם, כָּל-הַיּוֹם
מוּתָר לְהִחְזִיר. אָמְרוּ לוֹ, יָנִיחַ לָנוּ
רַבִּי טַרְפוֹן בְּמִקְוֵמָנוּ, וְחִזְרוּ לְדַבְּרֵי
חֲכָמִים.

§ Popularly שְׁתּוֹת.

1 Each a *maah*. 1 סֵלַע = 4 דִּינָר (silver) = 24 מָעָה. See וְרָעִים, Page 18f. 2 אֲנוּאָה, in law, *defrauding, defraudment, defraudation, imposition, overreaching* (which invalidates a transaction or requires redress, hence *redress* in such cases). *Leviticus* 25, 14. 3 And if he does not rescind the sale before the expiration of the specified reasonable time limit the transaction becomes legally consummated and he has no further redress. 4 לוֹד, *Lod, Lydda, Diospolis*, in South Palestine (not to be confused with *Lud, Lydia*, a district in Asia Minor; פְּסָחִים 50a, אֲנוּאָה בְּתָרָא 10b). 5 To the merchants of Lydda. 6 Literally *in our place*. *i.e.*, that they preferred the decision already laid down, *viz.*, that one-sixth of the purchase price counted as defrauding. *מִקְחָהּ, traditional pronunciation מִקְחָהּ.

Mishnah 4

[Relief from] overreaching is available both to the buyer and the seller.¹ Just as the law against defraudment

משנה ד

אֶחָד הַלּוֹקֵם וְאֶחָד יְהוֹמְכֵר יֵשׁ
לָהֶן אֲנוּאָה. כֹּשֶׁם שְׁאֲנוּאָה לְהַדְרִיט

applies to the private individual¹ so the law of defraudment applies to the merchant.² R. Judah³ says, The law against defraudment does not apply to the merchant. The party that has been deceived has an advantage: if he desired he could say, 'Return to me my money,'⁴ or, 'Give back to me the amount

כֶּף אֹנְאָה לְתַנְר. רַבִּי יְהוּדָה
אוֹמֵר, אֵין אֹנְאָה לְתַנְר. מִי שֶׁהוֹטֵל
עָלָיו יָדוּ עַל הָעֲלִיּוֹנָה, רָצָה אוֹמֵר,
תָּן לִי מְעוֹתַי, אוֹ תָן לִי מֵה־
שְׂאוּנִיתַי.⁵

1 A seller may also retract from a sale if he undercharged more than one-sixth of the value. In this case the vendor has no limited time to rescind the sale, for he may not neglect his business and so is given an unlimited time to retract. 2 Some read this: *just as the private person may retract because of overreaching, so equally may the merchant retract because of overreaching.* 3 His opinion that a merchant who is assumed to be an expert in his affairs would not erroneously undercharge or overpay is rejected. 4 Thus rescinding the sale. 5 Thus confirming the sale. The final ruling is: (a) less than one-sixth—the sale holds good; (b) one-sixth—the sale is valid but the deceived party can recover the overcharge or undercharge; (c) over one-sixth—the sale is voidable.

Mishnah 5

מִשְׁנָה ה

How defective may a *sela* be and yet the law of defraudment should not apply to it? R. Meir¹ says, Four *issars*² [in a *sela*, that is], an *issar* to a *denar*.³ R. Judah⁴ says, Four *pondions* [in a *sela*, that is],⁵ a *pondion* to a *denar*.⁶ R. Simon⁷ says, Eight *pondions* [in a *sela*, that is], two *pondions* to a *denar*.⁸

כַּמָּה תִּהְיֶה הַסֵּלַע חֲסֵרָה וְלֹא יִהְיֶה אֹנְאָה?
רַבִּי מֵאִיר אוֹמֵר, אַרְבַּע
אִיסָרִין, אִיסָר לְדִינָר. רַבִּי יְהוּדָה
אוֹמֵר, אַרְבַּע פּוֹנְדִיּוֹנוֹת, פּוֹנְדִיּוֹן
לְדִינָר. רַבִּי שִׁמְעוֹן אוֹמֵר, שְׁמוֹנֶה
פּוֹנְדִיּוֹנוֹת, שְׁנַי פּוֹנְדִיּוֹנוֹת לְדִינָר.

1 His view is not accepted. 2 4 אִיסָר = 1 מָעָה (see נְרָעִים, Page 18f.). 3 *i.e.*, one twenty-fourth lacking. 4 His opinion is rejected. Perhaps *pondion* more correct in agreement with the Hebrew pointing. 5 פּוֹנְדִיּוֹן = 1 מָעָה. 6 *i.e.*, one-twelfth lacking. 7 His view is the prevailing law. 8 *i.e.*, one-sixth lacking.

Mishnah 6

מִשְׁנָה ו

What length of time has one [deceived with bad money¹] to return such? In large towns, until he is

עַד מָתַי מוֹתֵר לְהַחְזִיר? בְּכַרְכִּים
עַד כָּדֵי שִׁירְאָה לְשׁוֹלְחָנֵי,

able to show it to a money-changer,² and in villages, until the eve of the Sabbath.³ If one [who gave such defective coin] recognise it [to be his], he should accept its return from him,⁴ even after twelve months,⁵ though [the deceived party] has [no legal claim] against him but only resentment. And one may give it [namely, non-current coin, to redeem] *second tithe*⁶ without any scruple,⁷ because he [that refuses to accept such coin] is deemed a person of evil disposition.

וּבְכִפְרִים עַד יַעֲרָבִי שִׁבְתוֹת. אִם
הָיָה מִכִּירָה אֶפִּילוֹ לְאַחַר שְׁנַיִם-
עָשָׂר חֳדָשׁ מִקְבֻלָּה יְהִימְנוּ, וְאִין לוֹ
עָלְיוֹ אֲלֵא תִרְעוֹמַת וְנוֹתְנָה לְמַעֲשֵׂר
שְׁנֵי יָאִינוּ חוֹשֵׁשׁ שְׂאִינוּ אֲלֵא נִפְשׁ
רָעָה.

1 Depreciated coins. 2 An ordinary person is assumed to be incompetent to appraise coins and thus is allowed a longer period to retract than in the case of goods (see *Mishnah* 3 of this Chapter). 3 Literally *the eves of Sabbaths*. When he goes shopping for the Sabbath he will know whether the money is acceptable to the merchants. 4 Or הִימְנוּ. 5 By law the aggrieved party should have returned the coin within the stated time limit. But delay in returning the defective coin does not remove the moral obligation of putting right what he has done wrong. 6 See *Appendix, Note 1*; מַעֲשֵׂר שְׁנֵי, INTRODUCTION and 12. 7 Literally *and he does not have any scruple*. Even if $\frac{1}{6}$ or $\frac{1}{12}$ or $\frac{1}{24}$ is worn away (see the preceding *Mishnah*) the coin may be exchanged for produce or for good coin to buy produce.

Mishnah 7

מִשְׁנָה ז

Four pieces of silver¹ [per *sela*] constitute defraudment, [not less than] two pieces of silver suffice for a claim,² and one *perutah*³ [or its value] suffices for an admission [of a debt].² In five cases [the value of] a *perutah* is prescribed: admission [of a debt] must be of [no less than] a *perutah*³ [or its value]; a woman may be betrothed by the value of a *perutah*;⁴ one who benefits from a *perutah*'s worth of Temple property transgresses *the law of sacrilege*;⁵ he who finds [an article] worth a *perutah* is bound to proclaim it;⁶ and he who robs his fellow of a *perutah*'s worth and swears [falsely] to him⁷ [concerning it] must return it to him [personally] even as far as Modai.⁸

הָאוֹנָאָה אַרְבַּעָה כֶּסֶף, וְהַטְעָנָה
שְׁתֵּי כֶּסֶף, וְהַהוֹדָאָה שְׁוֵה פְרוּטָה.
חֲמֵשׁ פְרוּטוֹת הֵן, הַהוֹדָאָה שְׁוֵה
פְרוּטָה, וְהָאִשָּׁה מִתְקַדְּשֶׁת בְּשְׁוֵה
פְרוּטָה, וְהַנִּהְנֶה בְשְׁוֵה פְרוּטָה מִן-
הַהֶקְדָּשׁ מְעַל, וְהַמוֹצֵא שְׁוֵה פְרוּטָה
חַיִּב לְהַכְרִיז, וְהַגּוֹזֵל אֶת-חֶבְרוֹ
שְׁוֵה פְרוּטָה יְנוֹשֵׁבֵעַ לוֹ, יוֹלִיכֵנוּ
אַחֲרָיו אֶפִּילוֹ לְמַדֵּי.

1 Each a *maah* (see *Mishnah* 3 of this Chapter). 2 If one refuses to take an oath to rebut a claim he must pay (שְׁבוּעוֹת 61). 3 32 *perutahs* = 1 *maah* (see וְרַעִים, Page 18f.). Thus the overcharge of one-sixth the value constitutes overreaching. Compare *Mishnah* 5 of this Chapter. 4 See קְדוּשֵׁין 1. 5 The transgressor must bring the prescribed offering and repay the principal plus the added fifth (see מְעִילָה, INTRODUCTION; *Leviticus* 22, 14). 6 See 21^{ff}. 7 And then admitted that he had committed perjury (see כָּבַד קָמָא 103a). 8 Or *Media*.

Mishnah 8

מִשְׁנֵה ח

In five instances does the *added-fifth* apply:¹ when [a non-priest] consumes *priest's-due*² or *tithe of priest's-due*³ or *tithe of priest's-due of produce about which there is a doubt whether it had been tithed*⁴ or the *priest's share of the dough*⁵ or the *first-ripe-fruits*⁶, in these cases he must add the *added-fifth* [on making restitution]; when one redeems [the fruits of] a fourth-year young tree⁷ or his *second tithe*,⁸ he must add the *added-fifth*; when one redeems aught that he has consecrated to the Temple,⁹ he must add the *added-fifth*; when one derives any benefit to the value of a *perutah* from property belonging to the Temple, he must add the *added-fifth*;¹⁰ and when one has robbed his fellow of a *perutah's* worth and has sworn [falsely] to him,¹¹ he must add the *added-fifth*.

יְתַמְשֶׁה חוֹמְשֵׁין הֵן, הָאוֹכֵל תְּרוּמָה, וְתִרְוַמַת מַעְשֶׂר, וְתִרְוַמַת מַעְשֶׂר שֶׁל יְדָמַי, וְהַחֲלָה, וְהַבְּכוּרִים, מוֹסִיף חוֹמֶשׁ; וְהַפּוֹדָה יִטַּע רֶבְעִי וּמַעְשֶׂר שְׁנֵי שָׁלוּ, מוֹסִיף חוֹמֶשׁ; הַפּוֹדָה אֶת-הֶקְדָּשׁוֹ, מוֹסִיף חוֹמֶשׁ; הַנֶּהֱנֶה בְּשׂוּה פְרוּטָה מִן-הֶהָקְדָּשׁ, מוֹסִיף חוֹמֶשׁ; וְהַגִּזֵּל אֶת-חֵבְרוֹ שְׂוֵה פְרוּטָה יְוַשְׁבַּע לוֹ, מוֹסִיף חוֹמֶשׁ.

1 i.e., the principal plus the *added fifth*. 2 See *Appendix, Note 1*; *Terumoth*, INTRODUCTION and 61. 3 Or *Terumah* קְטָנָה, *priest's-minor-due*. *Numbers* 18, 36. 4 See דְּמָא, INTRODUCTION and 12. 5 See *Appendix, Note 3*; *חֲלָה* INTRODUCTION and 19; *Numbers* 15, 20. 6 See *Leviticus* 2, 14; *בְּכוּרִים*, INTRODUCTION and 21; *Appendix, Note 16*. Up to this we have the divisions of the first instance. 7 See *Leviticus* 19, 23-25; *מַעְשֶׂר שְׁנֵי* 54 *עֲרָלָה*, INTRODUCTION. 8 See *מַעְשֶׂר שְׁנֵי* 43. These two are cases of the second instance. 9 See *Leviticus* 27, 19, 20. This is the third instance. 10 See *Leviticus* 5, 16. This is the fourth instance. 11 This is the fifth instance.

Mishnah 9

מִשְׁנֵה ט

The following are not subject to the law of overreaching:¹ slaves, (and)

deeds of indebtedness, (and) real estate, and aught belonging to the Temple. The laws of *twofold restitution* and of *fourfold and fivefold restitution* do not apply to them.² An unpaid guardian does not have to take the oath,³ and a paid custodian does not have to pay for them. R. Simon⁴ says, [In the case of] *hallowed things*⁵ for which one is responsible the law of overreaching* does apply§ (to them), but [in the case of such] for which one has no responsibility the law of defraudation does not apply (to them).⁶ R. Judah⁷ says, Even if one sell a scroll of the Law, or cattle, or pearls, the law of overreaching* does not apply (to them). But [the Sages⁸] said to him, They have not excepted any others besides these.⁹ * Defraudment, defraudation. § Or לָהֶן יֵשׁ.

הַעֲבָדִים, וְהַשְּׁטָרוֹת, וְהַתְּקָנָה, וְהַתְּקָנָה
וְהַתְּקָנָה. יֵשׁ לָהֶן תְּשׁוּבָה וְחַמְשָׁה.
וְלֹא תְשׁוּבָה אֶרְבָּעָה וְחַמְשָׁה.
שׂוֹמֵר חֲנָם יֵשׁ לוֹ שְׂבִיעַ, וְנוֹשֵׂא שְׂכָר
יֵשׁ לוֹ מְשָׁלִם. רַבִּי שְׁמַעוֹן אוֹמֵר,
קָדְשִׁים שֶׁהוּא חַיִּב בְּאַחֲרֵייתָן יֵשׁ
לָהֶן אוֹנָאָה, וְשֵׁאִינוֹ חַיִּב בְּאַחֲרֵייתָן
אֵין לָהֶן אוֹנָאָה. רַבִּי יְהוּדָה אוֹמֵר,
אִף הַמּוֹכֵר סֵפֶר תּוֹרָה, בְּהִמָּה,
וּמְגִלָּוֹת אֵין לָהֶם אוֹנָאָה. אָמְרוּ
לוֹ, לֹא אָמְרוּ אֵלָּא אֶת-אֱלֹהֵי.

1 Because real estate, slaves, bonds and Temple property are not included in the law stated in *Leviticus 25, 14*—for these are accounted ever-existing, imperishable, and in the last case since the law against defrauding applies only to transactions between man and man and not to dealings between man and God. 2 See **בבא קמא 71 et seq.** Because immovable property and bondmen are incapable of being stolen, being deemed at law to be in their owner's possession. In the case of consecrated Temple property the robber is exempt since the theft was not from a fellow being but from God. 3 Regarding any of the above-mentioned property if lost or stolen while in his charge. 4 His view is rejected. 5 Or קדשים. 6 See **בבא קמא 74.** 7 His opinion is not accepted. 8 Their view is accepted. 9 Enumerated at the head of this *Mishnah*.

Mishnah 10

Just as there is [fraud by] overreaching in buying and selling,¹ so there is wrong done by words. [Thus], one may not say to another, 'What is the price of this thing?' if he do not wish² to purchase it. If a man had repented, one must

מְשַׁנָּה י
כֶּשֶׁם שֶׁאוֹנָאָה יִבְמַקְחָה וּמִמְכָּרָה בְּכָף
אוֹנָאָה בְּדַבָּרִים. לֹא יֵאמַר, בְּכַמָּה
הַפֶּזֶן זֶה? וְהוּא יֵשׁ לוֹ רוֹצֵה לִיקְחָה.
אִם הָיָה בְּעַל תְּשׁוּבָה, לֹא יֵאמַר לוֹ,

not say to him, 'Remember thy former deeds!' If a man were a descendant from proselytes, one must not say to him, 'Remember the deeds of thy forefathers!'³ as it is said,⁴ *And a stranger shalt thou not wrong, neither shalt thou oppress him.*

זְכוֹר מַעֲשֶׂיךָ הָרְאוּשׁוֹנִים. אִם הוּא
בֶּן גֵּרִים, לֹא יֵאמַר לוֹ, יִזְכוֹר מַעֲשֵׂי
אֲבוֹתֶיךָ. יִשְׁאַמְרֵהוּ, וְגַר לֹא תוֹנֶה
וְלֹא תִלְחָצֶנּוּ.

1 מִקְחָ וּמִמְכָרָ * commerce, trade, commercial transactions. 2 i.e., he has no intention to buy—he asks merely out of idle curiosity. 3 And, consequently, he must not be taunted with, 'Remember thine own former deeds!' 4 Exodus 22, 20. *Popular pronunciation מִקְחָ.

Mishnah 11

One¹ must not mix together produce with other produce,² even new [produce] with new, and much less, needless to say, new with old; [yet] in truth, in the case of wine, they have permitted [the seller] to mix strong [wine] with mild,³ because this improves it. A seller may not mix the lees⁴ of [one barrel of] wine with the wine [of another barrel], but he may give him [namely, the buyer] the lees [together with the wine of the same barrel]. If one's wine were adulterated with water, he must not sell it in the shop unless he has told him [of the dilution], and he must not [sell it] to a merchant, even if he have informed him, because [he would

מִשְׁנֵה יֵא
יֵאֵין מְעָרְבִין פִּירוֹת בְּפִירוֹת אֶפְילוּ
תְּדָשִׁים בְּתַדְשִׁים, וְאֵין צָרִיף לֹדְמֵר
תְּדָשִׁים בְּיִשְׁנִים; בְּאַמַּת בֵּינָן הִתִּירוּ
לְעָרֵב קָשֶׁה בְּרַךְ מִפְּנֵי שֶׁהוּא
מְשַׁבְּיחוֹ. אֵין מְעָרְבִין יִשְׁמְרֵי יָיִן
בֵּינָן, אֲבָל נוֹתֵן לוֹ אֶת־שְׁמְרָיו. מִי
שֶׁנִּתְעָרֵב מִיִּם בְּיָיִנו לֹא יִמְכְּרֶנּוּ
בְּחַנוּת, אֲלֵא אִם בֶּן הוֹדִיעֵנו, וְלֹא
לְתַגָּר אֲף עַל פִּי שֶׁהוֹדִיעֵנו, שְׂאֵינוּ
אֲלֵא לְרִמּוֹת בּוֹ. מְקוֹם שֶׁנִּתְּנוּ לְהַטִּיל
מִיִּם בֵּינָן, יִטְיִלוּ.

buy it] only to deceive [consumers] the practice to adulterate wine with

1 Literally *They*. 2 He misleads the shopkeeper into thinking that he is interested in its purchase. 3 But only by agreement. 4 Or *sediment, dregs*. 5 Literally *they may put*. Since the buyers are aware of the prevailing practice and would consequently not be deceived by such adulteration.

Mishnah 12

A merchant may buy [grain] from five granaries and put [it] into one store-room, [or wine] from five presses and put [it] into a single cask,¹ provided he does not intend to mix² [it for fraudulent purpose]. R. Judah³ says, A shopkeeper must not distribute parched corn or nuts to children, because he accustoms them thereby to come [to buy] at his place; but the Sages⁴ allow it. And he must not lower the price;⁵ but the Sages say, He is to be remembered for good.⁶ [A shopkeeper] must not sift pounded beans,⁷ according to the view of Abba Saul; but the Sages permit it, nevertheless they admit that he may not sift them only from the top of the bin since this is intended only to mislead the eye [of the buyer]. One may not give a deceptive appearance to a human being, or cattle or implements.⁸

משנה יב
התגר נוטל מהמשגרות ונותן לתוך
מגורה אחת, מהמשגרות ונותן לתוך
יפיטם אחד, ובלבד שלא יהא
מתכוין לערב. רבי יהודה אומר,
לא יחלק התנוני קליות ואגוזין
לתינוקות מפני שהוא מרגילן לבא
אצלו; ונחכמים מתירין. ולא יפחות
את השער; ונחכמים אומרים זכור
לטוב. לא יבור את הגריסין, דברי
אבא שאול; ונחכמים מתירין, ומודים
שלא יבור מעל פי מגורה שאינו אלא
כגונב את העין. אין מפרכסין לא
את האדם ולא את הבהמה ולא
את הכלים.

1 Compare משנה 37, ראש השנה פללים 36. 2 *i.e.*, bad with good produce. 3 His view is rejected. He maintains it is reprehensible to draw the children in this way from other dealers. 4 Their opinion is accepted. They maintain it is a legitimate method for attracting custom. 5 This is R. Judah's view. 6 *i.e.*, his act is a meritorious one. This opinion is upheld by the leading authorities. 7 To sell the beans separated from the waste at a higher price to defraud the buyer. 8 For example, disguise a slave's age by dyeing his white hair, embellish an animal, refurbish old utensils to enhance their appearance—to deceive a buyer. Compare ערכין 65.

CHAPTER 5

פָּרֵק ה'

Mishnah 1

What is to be considered *usury*,¹ and what is to be deemed *increase*?² It is *usury* when one lends a *sela* for

משנה א
איזהו יגוף, ואיזהו תרבית? איזהו
יגוף, המלוה סלע בתמשה דיגרין,

five *denars*, [or] two *seahs* of wheat for three, because³ he is acting usuriously. And it is *increase* when one augments [his profits when trading] with produce. How so? If a person bought wheat from someone at a golden *denar* a *kor*, when such was the current market price,⁴ [and then] the price of wheat advanced to thirty [silver] *denars* [a *kor*], and [the buyer] said to him [namely, the vendor], 'Give me [now] my wheat⁵ for I want to sell it and buy wine with the money thus realised,' and [the vendor] said to him, 'Thy wheat is sold to me at thirty [*denars* the *kor*] and now thou hast a claim on me for wine to that amount!' but [the vendor] having no wine at the time!⁶

סאתים היטין בשלש, מפני שהוא נושא. ואיתו תרבות, המרבה בפירות. כיצד? לקח הימנו היטין בדינר זהב הכור וכן השער, עמדו היטין בשלשים דינרין אמר לו, 'תן לי חיטי שאני רוצה למכרן וליקח בהן יין; אמר לו, הרי חטיה עשויות עלי בשלשים והרי לה אצלי יין; יין אין לי.'

1 Prohibited by the Torah (*Leviticus* 25, 36). 2 Forbidden by the Sages. 3 The **אָסוּר** adds **אָסוּר**, *this is prohibited (because)*. 1 *sela* = 4 *denars*. 1 *kor* = 30 *seahs*. 1 golden *denar* = 25 silver *denars*. See **זָרְעִים**, Page 18f. He is extorting, or 'biting,' from the borrower something that the lender did not give him. 4 The seller has not yet delivered the wheat to the buyer after the agreement. 5 'Give me now my wheat'—Although the value of the wheat has now increased the purchaser is not receiving more than what he paid for, since the produce had already been sold to him at the fixed price when he paid the money. This is not *increase*. 6 'Having no wine at the time!'—If money were now paid the purchaser could acquire the wine at the fixed market price, as in the previous case. But here the purchaser pays no price and the vendor has no wine; thus no transaction takes place. The increase in payment here is, therefore, regarded as *interest*. In Biblical law *interest* referred only to a loan, but the Sages applied the law also to *sale*.

Mishnah 2

If one make a loan to his fellow, [the creditor] may not live rent-free in his courtyard or hire it from him at a reduced rent,¹ because that is *usury*. One may charge an increased rent [in respect of deferred payment], but not an increased price.

משנה ב

המלוה את חברו לא ידור בחצרו חנם, ולא ישכור ממנו ובפחות, מפני שהוא רבית. מרבין על השכר, ואין מרבין על המקר. כיצד?

How so? If one hired his courtyard to someone and said to him, 'If thou pay me now [for the whole year in advance], thou shalt have it for ten *selas* a year, but if [thou pay the rent] monthly, it shall be a *sela* per month,' it is permitted.² If one sold his field to someone and said to him, 'If thou wilt pay me for it now, thou shalt have it for one thousand *zuz*, [but] if [thou pay] at threshing time, it will be twelve *manehs*,³ this is prohibited.⁴

השְׂכִיר לוֹ אֶת הַחֲצוֹר וְאָמַר לוֹ, אִם
מֵעַכְשָׁיו אֶתָּה גּוֹתֵן לִי הָרִי הוּא לְךָ
בְּעֶשֶׂר סֵלָעִים לְשָׁנָה, וְאִם שָׁל חֲדָשׁ
בְּחֲדָשׁ, בְּסֵלַע לְחֲדָשׁ, יְמוּתָר. מְכָר
לוֹ אֶת־שָׂדֵהוּ וְאָמַר לוֹ, אִם מֵעַכְשָׁיו
אֶתָּה גּוֹתֵן לִי הָרִי הִיא שְׁלֶךְ בְּאַלְף
זוּז, אִם לְגוֹרָן, בְּשָׁנַיִם עֶשֶׂר מָנֶה,
אִסוּר.

1 בְּמַחֲזוֹת traditional reading. 2 In rent payment is not due until the end of the year. Thus the higher charge is not a payment for waiting; rather is the lower charge a reduction from the sum due. In sale, however, the higher price is payment for waiting. This is usury. 3 1 *maneh* = 100 *zuz* = 100 (silver) *denars*. See וְרֵעִים, Page 18f. 4 In the case of buying and selling if the purchase money is not immediately paid it becomes a debt, and (as here) the overcharge of 200 *denars* for the money owing is usury.

Mishnah 3

If one sold his field¹ to someone, and, when [the buyer] gave him part-payment, [the vendor] said to him, 'Bring me [the balance of] the purchase-price whenever thou desirest and then take possession of what is thine,' this is prohibited.² If a man lent another [money] on his field [as security] and said to him, 'If thou do not repay me from now,* within three years it shall belong to me,' then it passes into his possession [if the debt be not paid up]. And thus used Boethus³ ben Zonin to do with the concurrence of the Sages.

מִשְׁנָה ג'
מְכָר לוֹ אֶת־הַשָּׂדֶה וְנָתַן לוֹ מִקְצַת
דָּמִים וְאָמַר לוֹ, אֵימָתִי שְׂתַרְצֶה הַבָּא
מַעוֹת וְטוֹל אֶת־שְׁלֶכְךָ, אִסוּר. הִלְוָהוּ
עַל שָׂדֵהוּ וְאָמַר לוֹ, אִם אֵי אֶתָּה גּוֹתֵן
לִי * מִכָּאֵן וְעַד שְׁלֹשׁ שָׁנַיִם הָרִי הִיא
שְׁלִי, הָרִי הִיא שְׁלוֹי. וְכֵן הִזָּה בְּיַתוּס
בֶּן זוּזִין עוֹשֶׂה עַל פִּי חֲכָמִים.

1 Literally *the field*. 2 The seller is prohibited in the meantime from eating of the produce of the field, lest the debtor brings the balance, and he will thus have been using the produce because of the loan. And the debtor may not consume of

the produce meanwhile, lest he does not pay up the balance, and the creditor would return the deposit (in which case the debtor would have eaten the produce against the deposit in the creditor's hand). 3 A money-lender. *Traditional reading כאן.

Mishnah 4

One may not give¹ [his goods to] a shopkeeper [to sell retail] on a half-profit basis,² nor may he give [to a shopkeeper] money wherewith to buy produce on condition of receiving half the gain, unless he pays him [namely, the shopkeeper, his] wage as a labourer. One³ may not give hens [to another] to set them to brood on condition of receiving half-profit;² one may not assess⁴ the value of calves or foals [and give them to another to rear] for half-profit,³ unless he pays the other [his] wage for his labour and for his feeding-stuffs. But one may undertake to raise calves and foals* at half-profit and rear them until they attain one-third of their growth, and an ass until it can bear a burden.⁵ * viz., without previous assesment.

1 Literally *set up*. 2 The retailer to repay the cost together with half of the profit. because the half which he gives the retailer is as a loan and he himself receives half of the profit for lending the money which is tantamount to usury. 3 Literally *they*. 4 שָׁמִין, *value, value, appraise, assess, evaluate*. 5 This is permitted (as not accounted usury) because it is deemed a co-partnership—sharing both profits and losses—which must not be dissolved before the expiration of the agreed term.

Mishnah 5

A cow, or an ass, or whatever [animal] works and eats,¹ may be appraised at half-profit.² Wherever it is customary to divide out the offspring immediately [after their birth], they may so divide; and wherever is it the custom to rear

משנה ד

אין מושיבין חנוני למחצית שקר, ולא יתן מעות ליקח בהן פירות למחצית שקר, אלא אם כן נותן לו שקרו כפועל. אין מושיבין תרנגולין למחצה, ואין ששמן עגלין וסדיחין למחצה, אלא אם כן נותן לו שקר עמלו ומזונו. אבל מקבלין עגלין וסדיחין למחצה, ומגדלין אותן עד שיהו משולשין, וחמור עד שחאה טוענת.

משנה ה

ששמן פרה וחמור וכל דבר שהוא יעושה ואוכל למחצה. מקום שנהגו לחלוק את הולדות מיד חולקין. מקום שנהגו לגדל יגדלו רבן שמעון

them, they should rear them. רבן גמליאל אומר, 'שמיין עגל עם אמו, וסיה עם אמו. ומפריו על שדהו ואינו חושש משום רבית. Rabban Simon³ ben Gamaliel says, One may appraise⁴ a calf with its dam, or a foal with its dam. (And) [a tenant] may offer higher rent⁵ for his field [leased by him] in consideration for a loan for improvements and need not have any scruples that this is usury.⁶

1 *i.e.*, earns its keep by its labour. 2 This is permitted since the custodian receive the benefit of the labour. 3 His opinion is rejected. 4 *i.e.*, put out to be reared. 5 On terms of תְּכִירֹת, *tenure or tenancy at a fixed rental* (compare 92). 6 A leases a field from B at a rental of x kors of wheat per year. Then A requests from B for a loan of y zuz for manure and agrees to pay for the loan z more kors of wheat, thus at the end of the season to repay $(x+z)$ kors of wheat as well as the loan of y zuz. This is not deemed usury because the original agreement has been legally cancelled, and a new contract entered into on new terms.

Mishnah 6

One may not accept from an Israelite an *iron-sheep*¹ investment, because it is a usurious transaction, but one may accept such an investment from heathens. Furthermore one may borrow from them² [*i.e.*, heathens] and lend to them² on interest. And the same applies to a resident alien.³ An Israelite may lend a heathen's money⁴ [on interest to another Israelite] if he obtain the approval of the heathen. But [if a heathen had borrowed money on interest from an Israelite], he may not lend this money on interest to another [Israelite] with the approval of the Israelite [lender].

משנה ו
אין מקבלין יצאן ברזל מִיִּשְׂרָאֵל
מִפְּנֵי שֶׁהוּא רְבִית, אֲבָל מִקְּבָלִין
צֵאן בְּרִזָּל מִן־הָעֹבֵד גִּלּוּלִים,
וְלוֹוִין מִהֶן וּמְלוֹוִין אֹתָן בְּרְבִית,
וְכֵן בְּגֵר הַחוּשֵׁב. מִלֵּוֹה יִשְׂרָאֵל
מְעוֹתָיו שֶׁל עֹבֵד גִּלּוּלִים מְדַעַת
הָעֹבֵד גִּלּוּלִים, אֲבָל לֹא מְדַעַת
יִשְׂרָאֵל.

1 *Mortmain*—a technical term for the transaction of the following type: one undertakes to breed sheep for another on the understanding that he is responsible for the return of the full value of the sheep as agreed at the time of the investment, and that in consideration of the loan he will share with the investor all profits arising from the sheep, such as wool, milk, young, etc.; the investor accepts no responsibility for any losses; this is called an *iron-sheep* investment because its value to the investor cannot depreciate, whereas it can produce profits. Such a transaction does not

create a partnership in the sheep for in a partnership both parties must share both the profits and the losses. This transaction is therefore a loan on a usurious basis. **2** The prohibition of usury was obligatory only upon Jews (*Deuteronomy* 23, 20-21). Heathens did not abide by this restriction. They demanded interest on their loans and Jews were permitted to pay it. Reciprocally, Jews could take interest from heathens. **3** Who has undertaken not to practise idolatry (if a resident alien had undertaken to observe all the laws of the Jews he could not be treated usuriously). **4** *i.e.*, transfer this usurious loan to a Jew, but it must be done through the non-Jew as intermediary.

Mishnah 7

No arrangement may be made for [buying] produce [to be delivered at a future date] before its market price is known;¹ (but when the market price is known an agreement may be effected, for although this vendor has not the produce another vendor has*²). If he were first in the market [to reap the crop], he may conclude a bargain with him for the grain on the stack, or for the grapes in the harvesting-basket,³ or for the olives in the packing-vat⁴, or for the clay-balls of a potter, or for the lime sunk in the kiln; and one may make a bargain with his fellow for manure [even if not ready for delivery] at any time in the year. R. Jose⁵ says, No stipulation for [buying] manure may be made unless [the seller] has it on the dungheap; but the Sages permit it.⁶ An arrangement may be made⁷ [for buying goods to be delivered later] at the lowest rate⁸ [that will prevail when the goods will be delivered].⁹ R. Judah⁹ says,

Although no arrangement was concluded at the cheapest rate, [the buyer] may say [to the seller], 'Give me the goods at such [reduced] price, or else return to me my money [which I advanced.]'

משנה ז

אין פוסקין על הפירות עד שיצא
 השער; (יצא השער פוסקין ואף
 על פי שאין לזה ייש' לזה). ה'יה
 הוא תחלה לקוצרים פוסק עמו
 על הגדיש, ועל העבים של יעובים,
 ועל המצטן של ייתים, ועל הביצים
 של יוצר, ועל הסיד מששקעו
 בכבשן; ופוסק עמו על הנבל
 כל-ימות השנה. רבי יוסי אומר,
 אין פוסקין על הנבל אלא אם כן
 היתה לו נבל באשפה; ונחכמים
 מתירין. ופוסק עמו כשער
 הנבונה. רבי יהודה אומר, אף על
 פי שלא פסק עמו כשער הנבונה
 יכול לומר, תן לי כזה או תן לי
 מעותי.

1 If A pays B money in advance for produce to be delivered at a future date, then if the market price goes up at the time of delivery B will have to advance the quantity stipulated at the enhanced price and thus lose on the transaction, and in consequence A will be receiving usuriously for his money goods to a greater value. 2 (This bracketed part is not given in the *Talmud Jerushalmi*.) In this case money paid over by A to B for future delivery of wares is not a usurious transaction, since it is deemed merely a loan to be repaid with a certain quantity of wares at a particular rate irrespective whether the value of such wares will rise or fall. See ADDENDA. 3 All these here mentioned are unfinished products. 4 Once they have been bought up they become immediately the purchaser's property, and he is entitled to any increase in value such produce may acquire subsequently. (This consideration applies also to the kneaded clay balls—unfinished product—from which the potter makes utensils). 5 His opinion is not accepted. 6 But only in the summer season when manure can be obtained elsewhere. This is the accepted ruling. 7 This opinion is the prevailing law. 8 **בְּשַׁעַר הַגְּבוּהָ**, literally *according to the price at the height of the market, i.e., at the lowest price*. 9 His view is rejected. *Or **יִשְׁלֹחַ**.

Mishnah 8

מִשְׁנָה ח

A man may loan to his sharing-tenants¹ wheat for sowing² to be repaid by wheat, but not [wheat] for food.³ [This ruling was made] because Rabban Gamaliel used to loan to his sharing-tenants wheat for sowing to be repaid in kind, and if he lent it when [the price of wheat was] high and it afterwards depreciated, or when it was low and then it advanced, he used to take [wheat] back from them at the lower market price⁴—not because this [action of his] was the law, but because he desired⁵ to apply to himself the stricter ruling.

מִלֹּה אָדָם אֶת־אֲרִיסוֹ חֲטִין
בְּחֲטִין לְלוֹנֵעַ אֶבֶל לֹא לְאֹכֹל ;
שֶׁהָיָה רֶבֶן גַּמְלִיאֵל מִלֹּה אֶת־
אֲרִיסוֹ חֲטִין בְּחֲטִין לְלוֹנֵעַ בְּיוֹקֵר
וְהוֹנֵלוֹ אוֹ בְּזוֹל וְהוֹקֵרוֹ, גוֹטֵל מֵהֵן
יִבְשַׁעַר הַזּוֹל, וְלֹא מִפְּנֵי שֶׁהִלְכָה
כֵּן, אֶלֶּא שֶׁרָצָה לְהַחֲמִיר עַל עַצְמוֹ.

1 **אֲרִיס** is a tenant who tills someone else's land for a stipulated share of the produce. 2 Literally *for seed*. 3 Literally *to eat*. A mere loan of wheat, to be repaid as wheat, is prohibited. But for seed purposes it is permitted, as it is not considered as a loan to be repaid but to be replaced from the produce when grown. 4 Or *according to the lowest market price*. 5 A virtuous act to avoid the slightest suspicion of usury.

Mishnah 9

A man may not say to his fellow, 'Lend me a *kor*¹ of wheat and I will return it to thee at threshing time,'² but he may say to him, 'Lend me [a *kor* of wheat] until my son comes,' or, '... until I find [the] key;'³ but Hillel forbids [this]. And thus Hillel used to say, A woman may not lend a loaf [of bread] to her neighbour, unless she expresses its money value,⁴ lest wheat should become dearer and they be found to be transacting usury.

1 See **וְרַעִים**, Page 18f. 2 Because, should wheat then rise in price, by returning an equal quantity he would thus do so at an enhanced price and be paying usury. 3 Evidently he is in possession of wheat for repayment and this would be unaffected by any market changes. 4 *i.e.*, its value in money, not an equivalent (equal in weight) loaf to be repaid.

Mishnah 10

A man may say to his fellow, 'Help me to weed and I will help thee§ in weeding [for an equal length of time],' or, 'Help me in hoeing and I will help thee§ to hoe [for an equal length of time]';¹ but he may not say to him, 'Help me to weed and I will help thee §in hoeing [for an equal length of time],' or, 'Help me to hoe and I will help thee§ in weeding [for an equal length of time].'² All the days of the dry season³ are considered alike,⁴ and all the days of the rainy season are deemed alike.⁵ One may not say to another, 'Assist me to plough in the dry season and I will assist thee in ploughing in the rainy season [for an equal length of time].'⁶ Rabban Gamaliel says,

מִשְׁנָה ט

לֹא יֹאמֵר אָדָם לְחֵבְרוֹ, הַלְוִינִי כֹר חֲטִיִּם, וְאֲנִי אֶתֵּן לְךָ לְגֹרֶן, אֲבָל אוֹמֵר לוֹ, הַלְוִינִי עַד שְׂיָבֵא בְנִי, אוֹ עַד שְׂאֲמָצָא מִמֶּתֶחַ; וְהֵלֵל אוֹסֵר. וְכֵן הָיָה הֵלֵל אוֹמֵר, לֹא תִלְוֶה אִשָּׁה כֶּכֶר לְחֵבְרָתָהּ עַד שְׂתַעֲשֹׁנוּ דָּמִים, שְׂמָא יוֹקִירוּ חֲטִיִּם וְנִמְצְאוּ בָאוֹת לְיַדֵּי רַבִּית.

מִשְׁנָה י

אוֹמֵר אָדָם לְחֵבְרוֹ, נִכֵּשׂ עִמִּי וְאֲנִכֵּשׁ עִמָּךְ, עֵדוֹר עִמִּי וְאֵעֲדוֹר עִמָּךְ; וְלֹא יֹאמֵר לוֹ, נִכֵּשׂ עִמִּי וְאֵעֲדוֹר עִמָּךְ, עֵדוֹר עִמִּי וְאֲנִכֵּשׁ עִמָּךְ. כָּל־יָמֵי גֵרִיד אֶחָד, כָּל־יָמֵי רַבִּיעָה אֶחָד. לֹא יֹאמֵר לוֹ, תְרוֹשׁ עִמִּי בְגֵרִיד וְאֲנִי אֲחֵרוֹשׁ עִמָּךְ בְּרַבִּיעָה. רַבֵּן גַּמְלִיאֵל אוֹמֵר, יֵשׁ רַבִּית מוֹקֵדֶת וְיֵשׁ רַבִּית מְאוֹחֶרֶת; כִּיצַד, גִּתָּן עֵינָיו לְלוֹת הַיָּמִינוּ וְהָיָה מְשַׁלֵּחַ לוֹ וְאוֹמֵר, בְּשִׁבִיל שְׂתִלְוִינִי.

There is *prepaid usury and there is postpaid usury; for instance, one intended to borrow [money] from another⁷ and he sent him [a present] saying, '[This is sent to thee] that thou mayest loan [some money] to me,' this is usury paid over in advance; if one borrowed [money] from another, and when he repaid his money to him he sent him [a gift] saying, '[This is] for thy money that was idle in my hands,'⁸ this is usury which is postpaid. R. Simon says, There is* usury [that is paid] in mere words; [as for example], [a debtor] may not say to another [a creditor], 'Know that so-and-so has arrived from such-and-such a place.'⁹

זו היא רבית מוקדמת; לזה הימנו
והחזיר לו את מעותיו, והנה משלח
לו ואמר, בשביל מעותיך שהיו
בטלות אצלי, זו היא רבית
מאוחרת. רבי שמעון אומר, *יש
רבית דברים; לא יאמר לו, דע כי
בא איש פלוני ממקום פלוני.

1 Since in either case the labour is as nearly as is possible the same for each the arrangement is not deemed a usurious transaction. 2 This arrangement is prohibited as being usurious since the nature of the labour performed by one may be of greater value than that of the other. 3 *גריד*, arid land, parched field, untilled or unbroken ground. 4 The work was generally carried out between sunrise and sunset, and the daylights are nearly of equal length, so that the work put in by the parties in the agreement is about equal and not of a usurious character for one of them. 5 Here also the shorter daylights are of about equal duration. See Appendix, Note 11. 6 This is a usurious arrangement because the one who performs the labour in the shorter daylight of the rainy season puts in less time. 7 Or הימנו. 8 Literally by me, i.e., the lender had not the use of it while the borrower had it. 9 i.e., the borrower or debtor uses such information which is of the utmost importance to the lender as an inducement for special favour regarding a loan or debt. This is prohibited only when such information is supplied by reason of a future loan or in consideration of a past loan. *Or ישרבית. §Or pausal עמך.

Mishnah 11

And these transgress the *negative commandment* [regarding usury]: the lender, (and) the borrower, (and) the surety, and the witnesses; and the Sages say, The scribe¹ also. They violate these commandments:² *Thou shalt not give . . .*,³ (and) *Take thou from him . . .*,⁴ (and) *Thou shalt*

משנה יא

ואלו עוברין בלא תעשה, המלוה, והלוה, והערב, והעדים; וחקמים אומרים, אף הסופר. עוברים משום ילא תתן, ומשום בבל תקח מאתו, ומשום ילא תהיה לו פנושה,

not be to him as a creditor . . . ,⁵ (and) neither shall ye lay upon him interest,⁵ and Thou shalt not put a stumbling-block before the blind, but thou shalt fear thy God; I am the Eternal.⁶

וּמְשֹׁם וְלֹא תִשְׂמֹן עָלָיו נֶשֶׁךְ, וּמְשֹׁם וְיִלְפְּנֵי עוֹר לֹא תִתֵּן מִכְשׁוֹל וְיִרְאֵת פְּאֻלְהֵיךָ אֲנִי ה'.

1 He becomes a party to the usurious transaction by drawing up the document in connection with it. 2 Literally *They transgress by reason of*: The lender transgresses all five prohibitions. 3 *Leviticus 25, 37*. 4 *Leviticus 25, 36*. The Scripture gives אֵל and not בֵּל. 5 *Exodus 22, 24*. וְלֹא תִשְׂמֹן לֹא תִשְׂמֹן is in the Scriptural text. The surety and the witness transgress only this prohibition . . . thou shalt not lay . . . 6 *Leviticus 19, 14*. The borrower promises this as well as (*Deuteronomy 23, 20*) *Thou shalt not cause thy brother to lend on usury*.

CHAPTER 6

פֶּרֶק ו'

Mishnah 1

מִשְׁנָה א

If one engaged¹ craftsmen² and they³ deceived one another, they have only resentment against each other.⁴ If one hired an ass-driver or a carman⁵ (to bring* litter-bearers⁶) or pipers for a bride or for a dead person, or labourers to take out his flax from steeping⁷ or [to perform work] on any material that is perishable,⁸ and they retracted,⁹ if it were a locality where there are no others [to be found to carry out the work at the rate agreed on], he may either hire others [from any place] at their [namely, the defaulters'] expense or he may deceive them¹⁰ [namely, the defaulters].

יְהוֹשִׁיב אֶת-הָאוֹמְנִין וְהִטְעוּ זֶה אֶת-זֶה, אֵין לָהֶם זֶה עַל זֶה אֵלֹא תַרְעוּמוֹת. שָׂכַר אֶת-הַחֲמֹר וְאֶת-הַקָּדָר (*לְהַבִּיאַ *פְּרִיפְרִין) וְחִלְיִים לְכֻלָּהּ אוֹ לְמֵת, וּפּוֹעֲלִין לְהַעֲלוֹת פִּשְׁתָּנוֹ מִן-הַמְּשָׁרָה, וְכָל דָּבָר שֶׁאֵבֵד, וְהָזְרוּ בָהֶן, מְקוֹם שֶׁאֵין שָׁם אָדָם שׂוֹכֵר עֲלֵיהֶן אוֹ מִטְעָן.¹⁰

1 Literally *engages, hires*. 2 Skilled workmen. See ADDENDA. 3 The craftsmen. 4 *i.e.*, they have no legal claim against one another. If an employer tells his agent to hire workmen at a stated rate per day, and the latter engages them at a lower rate of pay, they cannot claim the higher rate from the employer. If the agent procured employees at a higher wage — without the employer's sanction — they have a claim against the agent for the excess difference; but if the agent made the employer a party to the new rate, then they can claim

the higher rate from the employer. If either the employer or the employees break the agreement before the work was begun, neither party has a valid claim against the other, except when, if the cancellation comes from the employer, the workers can get no other employment, they are entitled to a day's wages. 5 Literally *potter*. See ADDENDA. 6 Or *carriers of the (bridal) litter*. The Palestinian Talmud does not give this phrase in parenthesis. 7 The flax-stalks are soaked to become soft, then dried in an oven and finally beaten to release the threads; if they are left to steep too long they rot. 8 דָּבָר הָאֲבֵד, a business or material that suffers irretrievable loss if postponed or neglected. 9 Even before they began the work. 10 The employer may legally claim the excess of the higher rate of pay from the workmen who refused to fulfil their agreement, or he may promise them their demand for the higher wage and on the completion of their work pay them only at the lower rate first agreed on. *Some prefer the pointing לְהִבִּיא.

Mishnah 2

מִשְׁנָה ב

If one hired artisans and they retracted, they are at a disadvantage;¹ if the employer withdrew² therefrom, he is at a disadvantage.³ Whosoever alters [the terms of a contract] is at a disadvantage, and whosoever withdraws [from the conditions of an agreement] is at a disadvantage.⁴

הַשׁוֹכֵר אֶת-הָאוֹמְנִין וְחִזְרוּ בָהֶן, יֵיָדָן עַל הַתְּחֻמָּה; אִם בָּעַל הַבַּיִת יִחְזֹר בּוֹ יָדוֹ, יַעַל הַתְּחֻמָּה. כָּל-הַמְּשַׁנֵּה יָדוֹ עַל הַתְּחֻמָּה, וְכָל-הַחֹזֵר בּוֹ יָדוֹ עַל הַתְּחֻמָּה.

1 A employs B to perform some work, for example for 100 *dinars*, and B withdraws after completing half of the task; A hires C to finish the rest of the work for 55 *dinars*, then A needs pay B not 50 *dinars* but 100 — 55 or 45 *dinars*; if A engaged C to finish the work for 45 *dinars*, then he need not pay B 100 — 45 or 55 *dinars*, but only the 50 *dinars* for his half-share of the work. 2 Literally *withdraws*. 3 If the employer A retracts after B has completed half of the work (at the rate of 100 *dinars* for the whole work) and engages C to finish it for 55 *dinars*, then A must pay B not 100 — 55 or 45 *dinars* but 50 *dinars* for half of the work; and if A hired B for 45 *dinars*, he may not pay B only 50 *dinars* but at his own loss 100 — 45 or 55 *dinars*. 4 Compare פָּקַד קָמָא 94. See ADDENDA at the end of this *Tractate*.

Mishnah 3

מִשְׁנָה ג

If one hired an ass¹ to drive it over hilly country and he drove it in a valley,² or [if he hired it to drive it] through a valley and he drove it across hill country even when both distances were equal ten *mils*,³ and

הַשׁוֹכֵר יְאֵת-הַחֲמוֹר לְהוֹלִיכָה בְּהַר, וְהוֹלִיכָה בְּבִקְעָה, בְּבִקְעָה וְהוֹלִיכָה בְּהַר, אֲפִילוּ זוֹ עָשָׂר מִיְלִין, חֹזֵר עָשָׂר מִיְלִין, וּמִתָּה יְחַיֵּב.

it died, [the driver] is liable.⁴ If one hired an ass¹ and it became blind,* or it was seized for public service, [the owner] may say to the hirer], 'Here is thy [hired] property before thee'⁵. If it died or broke [a limb],⁶ [the owner] must provide him [another] ass.⁷ If one hired an ass¹ to drive it through hilly land, and he drove it in a valley, if it slipped [the hirer] is exempt,⁸ if however it were overcome by heat he is liable.⁹ [If he hired an ass] to drive it in a valley, and he drove it over hill country, if it slipped he is liable, but if it were overheated he is exempt, but if [it became overheated] because of¹⁰ the ascent [of the hill] he is liable.¹¹

השוכר יאת-החמור * והבריקה או
שנעשית אנגריא, אומר לו הרי שלך
לפניך. מטה או נשברה, חייב
להעמיד לו חמור. השוכר יאת-
החמור להוליכה בהר והוליכה
בבקעה, אם החליקה פטור, ואם
הותמה חייב. להוליכה בבקעה
והוליכה בהר, אם החליקה חייב,
ואם הותמה פטור, אם מחמת
המעלה חייב.

1 Literally *the ass*. 2 Where the atmospheric conditions are different. 3 Or even less than the hired distance. See *ירמיה*, Page 18 *et seq.* (1 mil = 2,000 cubits). 4 He is responsible for the loss incurred because he broke the terms of the contract. He submitted the animal to a greater strain than had been agreed upon. The owner may claim that the change in climatic conditions was responsible for the death of the animal. 5 The loss is due to supernatural or uncontrollable causes; therefore the owner is not liable to supply another animal in its place. 6 Or *were injured, were lamed, were disabled*. 7 But only if the fault is not the hirer's; and the owner is not entitled to any part pay if he cannot provide another beast to complete the contracted work, and in such a case the hirer can recover any money advanced; but if the hirer had first insisted on having that particular animal—not having left it to the owner to supply him with one—he is at a disadvantage in case of mishap. See *ADDENDA*. 8 Since on the plain there is less likelihood of slipping than on the mountain. 9 Because this would not occur in the cooler air of a hill. 10 Or *מתמה*. 11 The prevailing law is that the hirer is not liable even when he does not comply with the conditions of the agreement if it is obvious that the accident could have occurred had he acted within the terms of the agreement. He is liable when he undertakes a greater risk than was agreed upon. *Through lightning.

Mishnah 4

משנה ד

If one hired a cow [with the necessary implements] to plough on hill country and he ploughed in the

השוכר את-הפרה לתרוש בהר, ותרש בבקעה, אם נשבר המגן

valley, he is not liable if the ploughshare¹ were broken; [but if he hired it to plough] in the valley and he ploughed in the hilly land, he is liable if the ploughshare were broken.² [If he hired it] to thresh pulse³ and he threshed grain,³ he is exempt [from liability if the beast slipped and was injured]; but if [he hired it] to thresh grain and he threshed pulse, he is liable because pulse is [the more] slippery.⁴

פֶּטוּר ; בְּבִקְעָה, וְחָרַשׁ בְּהָר, אִם
 נִשְׁפַּר הַקְּטָנוֹת חֵיִב. לְדוֹשׁ בְּקִטְנוֹת
 וְדוֹשׁ בְּתִבּוּאָה פֶּטוּר; לְדוֹשׁ בְּתִבּוּאָה
 וְדוֹשׁ בְּקִטְנוֹת חֵיִב, מִפְּנֵי שֶׁהַקְּטָנוֹת
 מִחֻלְקֵת.

1 Or *coulter*. It is expected that this might happen on rocky ground. 2 The ploughshare is less likely to be broken in a valley than in hilly, rocky ground. 3 See **וְרָעִים** SUPPLEMENT, **מוֹעֵד** SUPPLEMENT. 4 Even when the hirer does not fulfil the terms of the agreement he is exempt from liability if it is evident that the mishap could have taken place had he acted within the conditions of the agreement.

Mishnah 5

If one hired an ass to carry* wheat¹ and he carried² [the same weight of] barley¹, he is liable [if the beast were injured]; [if he hired it for carrying] grain¹ and he made it carry straw¹ [of an equal weight], he is liable, because [an increase of] bulk is as a difficult addition to the load. [If he hired it] to carry* a *lethek*³ of wheat and it carried a *lethek* of barley, he is exempt;⁴ but if he increased the measure [though not the weight], he is liable. And by how much shall [the hirer] increase his load in order to render him liable? Symmachos⁵ states in the name of R. Meir, One *seah* for a camel⁶ and three *kabs* for an ass.⁷

מִשְׁנָה ה'
 הַשׂוֹכֵר אֶת-הַחֲמוֹר *לְהֵבִיא עֲלֶיהָ
 יַחְסִים, וְהֵבִיא עֲלֶיהָ יְשׁוּרִים,
 חֵיִב ; יִתְּבּוּאָה, וְהֵבִיא עֲלֶיהָ יִתְּבֵן,
 חֵיִב, מִפְּנֵי שֶׁהַגִּפּוּחַ קָשָׁה לְמִשְׁאוֹ.
 *לְהֵבִיא לְתֵדָה חֲסִים וְהֵבִיא לְתֵדָה
 שְׁעוּרִים, *פֶּטוּר ; וְאִם הוֹסִיף עַל
 מִשְׁאוֹ, חֵיִב. וְכַמָּה יוֹסִיף עַל מִשְׁאוֹ
 וַיְהִי חֵיִב ? *סוּמְכּוּס אֹמֵר מִשׁוּם
 רַבִּי מְאִיר, סָאָה *לְגַמְלָה, שְׁלֹשָׁה
 קַבִּין *לְחֲמוֹר.

* Or להביא.

1 See **וְרָעִים** SUPPLEMENT, **מוֹעֵד** SUPPLEMENT. 2 Wheat is less bulky than barley, and also because barley swells up (from the damp) and thus increases in weight. 3 6 קב = 1 סָאָה. 4 15 סָאָה = 1 לְתֵדָה. See **וְרָעִים**, Page 18f. 4 A dry

measure of barley is lighter than an equal measure of wheat, and the swelling of the barley grains is not so great as to cause the weight to exceed that of the wheat. 5 His view is accepted. 6 One-fifteenth increase. 7 One-thirtieth increase.

Mishnah 6

משנה ו

All artisans are deemed as paid guardians;¹ but all who have said [to the owner on completion of a task], 'Take what belongs to thee and pay the money,'² are considered as unpaid guardians. [If one said to his fellow,] 'Guard this for me and I will keep that for thee*,' he is accounted as a hired guardian. [If one said to his fellow]; 'Take care of this for me,' and the other said 'Set it down before me,'³ he is reckoned as an unpaid guardian.

כָּל-הָאוֹמְנִין שְׂכָרֵי הֵן; וְכוּלָן שְׂאֲמָרוּ, טוּל אֶת-שְׂלֵךְ וְהִבֵּא מְעוֹת, שׂוֹמֵר הַנֶּחֱסֵי. שְׂמוֹר לִי, וְאֶשְׂמוֹר לְךָ, שׂוֹמֵר שְׂכָרֵי. שְׂמוֹר לִי, וְאֶמַּר לוֹ, הִנֵּה יִלְפָנַי, שׂוֹמֵר הַנֶּחֱסֵי.

1 When a carpenter, for example, receives from a customer wood to make up into, a table for him he is regarded as a paid guardian of the materials left with him. The advantage of having the job to do is considered as the pay for guarding the materials. The artisan is consequently responsible for loss or the theft of the materials. 2 *i.e.*, "The job is finished and I do not wish to retain the goods." An artisan may retain articles upon which he has worked until he is paid for his labour. If he retains the article for this purpose he continues to bear the responsibilities of a paid guardian. When he intimates that he does not wish to retain the article he becomes an unpaid guardian with no responsibility for any accident that may befall the article. 3 This is deemed as a legal acceptance because of the expression *before me* or *in my presence*. If he did not use the expression *before me* he would not have undertaken any responsibility whatsoever. An unpaid guardian is responsible for loss caused by wilful neglect but not for loss by theft. *Or *pausal* לְךָ.

Mishnah 7

משנה ז

If one gave his fellow¹ a loan and took² a pledge, [he is deemed] a paid guardian.³ R. Judah⁴ says, If he lent him money [and took a pledge, he is accounted] an unpaid custodian; if he loaned him produce [and took a pledge], he is considered a paid guardian. Abba Saul⁵ says, One may hire out the

יְהִלְוֵהוּ יַעַל הַמַּשְׁכּוּן, שְׂוֹמֵר שְׂכָרֵי. רַבִּי יְהוּדָה אוֹמֵר, הִלְוֵהוּ מְעוֹתֵי. שׂוֹמֵר הַנֶּחֱסֵי; הִלְוֵהוּ פִּירוֹת, שׂוֹמֵר שְׂכָרֵי. אֲבָא שְׂאוּל אוֹמֵר, מוֹתֵר אָדָם לְהַשְׁכִּיר מַשְׁכּוּנוֹ שֶׁל עַנְיָ לְהִיּוֹת

pledged article of a poor person and thus reduce gradually the debt [by the money realised from the letting out], because he is thus as one who returns a loss [to its owner].⁶

1 Literally *gave him*. 2 Literally *against, for*. 3 He is responsible for the care of the pledge. See ADDENDA. 4 See ADDENDA at end of *Tractate*. 5 His opinion is accepted, but only when the damage or wear and tear suffered by the pledge during the letting is less than the profits realised. 6 Who is thereby benefited.

Mishnah 8

If one moved¹ a cask² from one place to another and broke it,³ whether he was an unpaid guardian or a paid guardian, he may take an oath.⁴ R. Eliezer says, '[I have also heard that] he may take an oath in either case [and so be exempt from liability], but I am astonished that in both cases they may take the oath.'

מְשֻׁנָּה ח
הַמַּעֲבִיר מִמְּקוֹם לְמְקוֹם
וְשִׁבְרָהּ, בֵּין שׁוֹמֵר תָּנִים בֵּין שׁוֹמֵר
שָׂכָר יִשְׁבַּע. רַבִּי אֱלִיעֶזֶר אוֹמֵר, זֶה
זוֹה לִישְׁבַע, וְתַמָּה אֲנִי אִם יְכוּלִין זֶה
זוֹה לִישְׁבַע. *Less idiomatic זוֹה.

1 Literally *move*. 2 Or (*earthen*) jar, jug; generally *wine-container*. 3 *וְשִׁבְרָהּ* [*Kal*] or *וְשִׁבְרָהּ* [*Piel*]. 4 That he had not been negligent and thus be free from liability. Compare 7⁸. This is the accepted ruling, *viz.*, that even a hired guardian is quit of liability if he swears that he was innocent of gross negligence.

CHAPTER 7

פָּרֶק ז

Mishnah 1

If one hired workmen and asked them to work early [in the morning] or late [in the evening],¹ he has no right to compel them² [to do so] in any locality where it is not customary to work early or to work late; where it is the custom to furnish them with food he must supply them [with food]; if it be the custom to provide³ them with sweetstuff,⁴ he must so provide⁵ [it];

מְשֻׁנָּה א
הַשׁוֹכֵר אֶת הַפּוֹעֲלִים וְאָמַר לָהֶם
לְהִשָּׁבִים יוֹלְהֶעֱרִיב, מְקוֹם שֶׁנֶּהֱגוּ
שָׂלֵא לְהִשָּׁבִים וְשָׂלֵא לְהֶעֱרִיב אִינוּ
רָשָׁאִי *לְכוּפִין; מְקוֹם שֶׁנֶּהֱגוּ לְזוֹן
זוֹן; *לְסַפֵּק בְּמַתִּיקָה *יִסְפֵּק; הַכֹּל
כְּמִנְהַג הַמְּדִינָה. מַעֲשֵׂה בְּרַבִּי יוֹחֲנָן

everything should be in accord with local custom.⁶ It once happened that R. Jochanan ben Mattia said to his son, 'Go out and engage labourers for us.' He went and arranged to supply⁷ food for them, and when he came back to his father he said to him, 'My son, even if thou should prepare for them a banquet like to that of Solomon's in his time,⁸ thou wouldst not have discharged thy obligation towards them, for they are the children of Abraham, Isaac and Jacob;⁹ but before they begin the work go and say to them, "[You are to work] on condition that I have not to give you more than bread and pulse only".' Rabban Simon¹⁰ ben Gamaliel says, 'There was no need for him to speak thus, for everything should follow local usage.'

בן מתיא שאמר לבנו, צא שכור לנו פועלים. הליך 'ופסק להם מזונות, וכשבא אצל אביו אמר לו, בני, אפילו אתה עושה להם כסעודת שלמה 'בשעתו לא יצאת ידי חובתך עמהן שהן בני אברהם יצחק ויעקב; אלא עד שלא יתחילו במלאכה צא ואמור להם, על מנת שאין לכם עלי אלא פת וקטנית בלבד. רבן שמעון בן גמליאל אומר, לא היה צריך לומר, הכל כמנהג המדינה.

1 *i.e.*, at unusual hours. 2 Not even if he paid them a higher rate than the local one. 3 לטפיק [Piel] or לטפיק [Kal]. 4 *viz.*, refreshments. 5 יטפיק [Piel] or טפיק [Kal]. 6 Unless there is an agreement drawn up stating expressly the conditions of service. 7 יטפיק [Kal] or יטפיק [Piel]. 8 *sc.*, before his downfall from fame. 9 *i.e.*, and deserve proper respect and consideration. 10 His view is accepted.

Mishnah 2

These [labourers] may eat [from the produce they are handling] in accordance with [that ordained in] the Law:¹ he that labours on what is attached to the soil when the process [of ripening] is complete, and [he who works] on what so long as its complete preparation is not yet finished,² and to whatsoever applies only to the soil.³ And these are they who may not eat: who-soever labours on what is attached

משנה ב
ואלו אוכלין מן-התורה, העושה במחובר לקרקע בשעת גמר מלאכה, ובתלוש מן-הקרקע עד שלא יגמרא מלאכתו בדבר שגדילו מן-הארץ. ואלו שאין אוכלין, העושה במחובר לקרקע בשעת שאין גמר מלאכה, ובתלוש

to the soil when* the process [of ripening] is not yet complete, and [one that works] on what already after its complete preparation is finished, and [he may not partake] of aught whose growth is not from the soil.³

1 Deuteronomy 23, 24, 25. 2 The finishing touch not yet having been given to the work and the *priest's-due* and *first tithe* had not been separated (see Appendix, Note 1). 3 Thus those employed in milking, creaming, making butter or making cheese, or at work upon flesh, may not eat of them. *Or the *definite* בשעיה.

Mishnah 3

If one labour with his hands but not with his feet, or with his feet but not with his hands, or even with his shoulder only,¹ he may eat [from the produce which he is at work on]. R. Jose² Berabbi³* Judah says, [He may eat] only when he labours both with his hands and his feet.

משנה ג
היה עושה בידיו אכל לא ברגליו, ברגליו אכל לא בידיו, אפילו בכתפו, הרי זה אוכל. רבי יוסי ברבי יהודה אומר, עד שיעשה בידיו וברגליו.

* See גטין 47.

1 Carrying produce thereon. 2 His view is rejected. 3 See אהלות 35.

Mishnah 4

If one laboured among figs he may¹ not consume grapes,¹ if among grapes he may not consume figs; he may, however, refrain [from eating] until he reaches the place where the finest [fruits] are and then eat. And in all such cases [the Sages] said, [He may eat only] during the time of* [his] labour; but for the sake of restoring a lost article to its owner² they said, Labourers may eat on their way from furrow³ to furrow, or on their return from the wine-press, and in the case of an ass, [it is entitled to eat from the load it carries] while being unloaded.⁴

משנה ד
היה עושה בתאנים לא יאכל בפענבים, בפענבים לא יאכל בתאנים, אכל מונע את-עצמו עד שמגיע למקום היפות ואוכל. וכולן לא אמרו אלא בשעת מלאכה; אבל משום השב אבדה לבעלים אמרו, פועלים אוכלין בהליכתן מאומן לאומן, ובחזרתן מן-הגת, ובחמור כשהיא פורקת.

1 See **זְרָעִים** SUPPLEMENT, **מוֹעֵד** SUPPLEMENT. Not even if he was hired to work among both; he eats of those he works among. 2 *i.e.*, to save his employer's time he must not stop work and sit down to eat. 3 Compare **פָּאָה** 45, **נְדָרִים** 44. 4 But the ruling is that an ass may eat from the burden it carries only until it is unloaded. *Popularly pronounced **בְּשֶׁעַת**.

Mishnah 5

A labourer may eat cucumbers¹ even to the value of a *denar*,² or dates¹ even to a *denar's* worth. R. Eleazar³ ben Chisma says, A labourer may not eat more than the value of his wages; but the Sages⁴ permit it, nevertheless they teach a man not to be a glutton whereby he would close the door against himself.⁵

1 **קִישוּת** both *singular* and *plural*. See **זְרָעִים** SUPPLEMENT, **מוֹעֵד** SUPPLEMENT. 2 See **זְרָעִים**, Page 18f. 3 His view is rejected. 4 Their opinion is accepted. 5 A greedy labourer might find himself shunned by employers.

Mishnah 6

A man may stipulate for himself, [or] on behalf of his grown-up son or daughter, [or] for his adult bondman or bondwoman, [or] on behalf of his wife, because these have* understanding;¹ but he may not demand terms for his son or daughter who are minors,² or on behalf of his bondman or bondwoman that is not of age,² or for his cattle, since they have no understanding.³

1 He may exact terms to receive money instead of exercising the right to eat of the fruit. 2 A boy minor is under 13 years of age, a girl minor under 12. 3 To forgo the right of eating as permitted by the Law. *Or **שֵׁשׁ-בָּהֶן**

Mishnah 7

If one hired labourers¹ to work on his *fourth-year fruit-trees*,² they may not eat therefrom;³ but if he did

מִשְׁנֵה ה
אוֹכֵל פּוֹעֵל יְקִישוּת אֶפִּילוֹ בְּדִינָר,
וְיִכְוֹחַתְתָּ אֶפִּילוֹ בְּדִינָר. רַבִּי
אֱלִיעֶזֶר בֶּן חִסְמָא אוֹמֵר, לֹא יֹאכֵל
פּוֹעֵל יֵתֵר עַל שְׂכָרוֹ; וַיְחַכְּמִים
מִתְרִין, אֲבָל מִלְמַדִּין אֶת-הָאָדָם
שֶׁלֹּא יִהְיֶה רַעֲבָתָן וַיְהִי סוּתָם אֶת-
הַפֶּתַח בְּפָנָיו.

מִשְׁנֵה ו
קוֹצֵץ אָדָם עַל יְדֵי עֲצָמוֹ, עַל יְדֵי
בְנוֹ וּבִתּוֹ הַגְּדוֹלִים, עַל יְדֵי עֶבְדּוֹ
וְשִׁפְחָתוֹ הַגְּדוֹלִים, עַל יְדֵי אִשְׁתּוֹ,
מִפְּנֵי שֵׁשׁ בָּהֶן יִדְעַת; אֲבָל אֵינוֹ
קוֹצֵץ עַל יְדֵי בְנוֹ וּבִתּוֹ הַקְּטָנִים,
וְלֹא עַל יְדֵי עֶבְדּוֹ וְשִׁפְחָתוֹ
הַקְּטָנִים, וְלֹא עַל יְדֵי בְהֵמָתוֹ,
מִפְּנֵי שֶׁאֵין בָּהֶם יִדְעַת.

מִשְׁנֵה ז
הַשׂוֹכֵר אֶת-הַפּוֹעֲלִים לַעֲשׂוֹת
בְּנֶטֶע רְבִיעֵי שָׁלוֹ, הָרִי אֵלוֹ לֹא

not inform [that they were fourth-year trees], he must redeem [the fruit] and then let them eat thereof. If one's fig-cakes were broken [or] his casks opened up, they⁴ may not partake aught therefrom; if, however, he did not notify them [that they were untithed], he must separate *first tithe*⁵ and then suffer them to eat therefrom.

יֵאָכְלוּ; אִם לֹא הוֹדִיעָן, פְּדוּהָ וּמֵאֲכִילֵין. נִתְפָּרְסוּ עֵיגוּלָיו, נִתְּפַתְחוּ חֲבִיתוֹתָיו, הֲרִי יֵאָלוּ לֹא יֵאָכְלוּ; אִם לֹא הוֹדִיעָן, מְעַשֵׂר וּמֵאֲכִילֵין.

1 Literally *the labourers*. 2 Compare 4⁸. See *Appendix, Note 10; Leviticus 19, 2, 4; עֲרָלָה*, INTRODUCTION. 3 In ordinary circumstances there is an implied understanding that the labourers may partake of the fruit they are handling. 4 Workmen engaged to put things right. 5 See *Appendix, Note 1*.

Mishnah 8

Watchers over produce¹ may eat therefrom in accordance with the custom of the country, but not by Scriptural Law.² There are four kinds of custodians: an unpaid custodian, (and) a borrower, a paid custodian, and a hirer. An unpaid custodian may take an oath in all cases;³ (and) a borrower must repay in every case;⁴ and a paid custodian⁵ or a hirer may take an oath concerning an injured beast, or a confiscated beast,⁶ or a dead beast, but they must repay in cases of loss or theft.

מִשְׁנֵה ח שׁוֹמְרֵי יִפְרוֹת אוֹכְלֵין מִהֶלְכוֹת מְדִינָה, אֲבָל לֹא מִן־הַתּוֹרָה. אֲרֻבָּעָה שׁוֹמְרֵין הֵן, שׁוֹמֵר חָנָם, וְהַשׂוֹאֵל, נוֹשֵׂא שְׂכָר וְהַשׂוֹכֵר. שׁוֹמֵר חָנָם נִשְׁבַּע עַל הַכֹּל; וְהַשׂוֹאֵל מִשְׁלֵם אֶת־הַכֹּל; וְנוֹשֵׂא שְׂכָר וְהַשׂוֹכֵר נִשְׁבָּעִים עַל הַשְּׂבוּרָה, וְעַל הַשְּׂבוּיָה, וְעַל הַמְּתָה, וּמִשְׁלֵמֵין אֶת־הָאֲבִידָה וְאֶת־הַגְּבֵיחַ.

1 Already plucked or picked. 2* Scriptural Law does not permit a watchman who performs no work on the produce to eat of it. 3 That the mischance was not the result of any negligence on their part, in order to be quit of liability. 4 Of theft, loss, etc. 5* And even an agent who sells on commission. 6 Captured by armed robbers. *See ADDENDA at the end of this *Tractate*.

Mishnah 9

[The attack made by] one wolf is not accounted an unavoidable mishap,¹ but [the attack by] two wolves

מִשְׁנֵה ט זָאֵב אֶחָד אֵינוֹ יְאוּנָס, שְׁנַי זָאֵבִים יְאוּנָס. רַבִּי יְהוּדָה אוֹמֵר, בְּשִׁשָּׁעַת

does count as an unavoidable mishap.² R. Judah³ says, At such time when* there is a general visitation of wolves, even one wolf constitutes an unavoidable mishap. [The attack of] two dogs is not considered an unavoidable mishap. Jaddua⁴ the Babylonian says⁵ in the name of R. Meir, [The attack by two dogs] from one direction does not count as an unavoidable mishap, but [that] from two directions is considered an unavoidable mishap. [The attack of] a robber⁶ is accounted an unavoidable mishap. [The attack by] a lion, or a bear, or a tiger [or panther], or a leopard, or a snake constitutes an unavoidable mishap. When is this the case? When§ they come of their own accord, but if [their custodian] led them [namely, the flocks] to a place of hordes of wild beasts or robbers, it is not considered as an unavoidable mishap.⁷

מְשַׁלַּחַת זְאֵבִים אֶף זֶאֵב אֶחָד
 אֹנֶס. שְׁנֵי כְּלָבִים אֹנֶס. יְדוּעַ
 הַבְּבֵלִי אָמַר מִשּׁוּם רַבִּי מֵאִיר,
 מְרוּחַ אַחַת אֵינוֹ אֹנֶס, מְשַׁתִּי
 רוּחוֹת אֹנֶס. הַלְסִטָּם הָרִי זֶה
 אֹנֶס. הָאָרִי, וְהָדוֹב, וְהַנְּמֵר,
 וְהַבְּרָדָלָס וְהַנְּחָשׁ הָרִי זֶה אֹנֶס.
 אֵימָתִי? בְּזִמְנֵן שְׂבָאוֹ מֵאֲלֵיהֶן, אֲבָל
 אִם הוֹלִיכֵן לְמָקוֹם גְּדוּדֵי חַיּוֹת
 לְלִסְטִים אֵינוֹ אֹנֶס.

1 Or *force majeure*, act of God, inevitable accident, irresistible interference or misfortune. A watchman or guardian can be held responsible where there is no *force majeure*.
 2 There is no liability in a case of *force majeure*. 3 His opinion is rejected. 4 His view is not accepted. 5 The Palestinian Talmud does not give the word אָמַר.
 6 Probably more correct לְסִטִּים, לִיסִטִּים. 7 A custodian has a duty to make enquiry regarding the safety or otherwise of any place to which he intends to take his charges. *Popularly pronounced בְּשַׁעַת. §Or בְּזִמְנֵן.

Mishnah 10

If [an animal in charge of a custodian] died¹ a natural death, this constitutes an unavoidable mishap,² but if one maltreated it and it died [as a result of it], this is not accounted an unavoidable mishap.³ If [a beast] went up to the top of a crag and fell down and was killed, this constitutes an unavoidable mishap; but if one led it up to the top

מְשַׁנְּהָ י'
 יְמַתָּה כְּדָרְכָּה הָרִי זֶה אֹנֶס, כְּגַפָּה
 מָתָה אֵינוֹ אֹנֶס. עָלְתָה לְרֵאשִׁי
 צוּקִין וְנִפְלָה וּמָתָה הָרִי זֶה אֹנֶס;
 הָעָלָה לְרֵאשִׁי צוּקִין נִפְלָה וּמָתָה
 אֵינוֹ אֹנֶס. מִתְּנֶה שׁוֹמֵר חָנָם לְהַיּוֹת
 פְּטוֹר מִשְׂבוּעָה; וְהַשּׂוֹאֵל לְהַיּוֹת

of a crag and it fell down and died, this is not deemed an unavoidable mishap. An unpaid custodian may stipulate that he is to be exempt from taking an oath; and a borrower to be exempt from repayment; [and] a hired* custodian and a hirer to be exempt both from taking an oath or from making restitution.⁴

1 Even if it did not die immediately on being taken in charge. 2 And there is no liability. 3 Ill-treatment such as starvation. See the preceding *Mishnah*, Notes 1, 2. 4 The whole of this *Mishnah* is ascribed to R. Meir. *Or *paid*.

Mishnah 11

משנה יא

If one make any condition contrary to that which is written in the Law, his condition is void.¹ (And) any agreement where the resulting action is expressed† before the condition is void;² and every condition which can be fulfilled eventually* and one made a condition thereon at the beginning, such a condition is valid.³

כל - המתנה על מה - שכתוב בתורה, תנאו בטל. וכל-תנאי איש מעשה בתחלתו תנאו בטל; וכל-שאפשר לו לקיימו * בסופו והתנה עליו מתחלתו תנאו קיים.

1 Compare 91 כתובות 85. 2 Every stipulation must be formulated in the manner of the stipulation made by Moses with the Gaddites and Reubenites. Compare *Numbers* 32, 20-22. The condition to be fulfilled must be mentioned before stating the action that is promised. 3 A condition is invalid if it consists of an act which the party accepting it finds it impossible to perform. *See ADDENDA. †Or שיש-מעשה.

CHAPTER 8

פרק ח

Mishnah 1

משנה א

If one borrowed a cow and borrowed [the service of] its owner¹ together with it, or hired its owner [to work together] with it, or if he [first] borrowed [the service of] the owner or hired him and then borrowed the cow, and it died [while in his charge], he is exempt [from lia-

השואל את-הפרה ושאל¹ בעליה עמה, או שכר בעליה עמה, שאל הבעלים או שכרן ולאחר כן שאל את-הפרה, ומתה, פטור, שניאמר, אם בעליו עמו לא ישלם. אבל

bility], as it is said,² *If the owner thereof be with it he shall not make it good.* If, however, he [first] borrowed the cow and thereafter requested [the service of] the owner or hired him, and it died, then he is liable, as it is said,³ *The owner thereof not being with it shall surely make restitution.*

שאל את־הפרה ואחר כך שאל את־הבעלים או שכרן, ומתה, חייב, ישנאמר, בעליו אין עמו שלם ישלם.

1 בעלים (the plural of בעל) is mostly used in the singular sense meaning owner. Borrowed, i.e., without payment. 2 Exodus 22, 14. 3 Exodus 22, 13. The borrower is exempt from liability only if the lender is in his employ from the moment the loan is effected (but the lender need not be employed at the time the mishap occurs).

Mishnah 2

משנה ב

If one borrowed a cow, and borrowed it for half a day and hired it for half a day, or borrowed it for one day and hired it for the next day, or borrowed one [cow] and hired another [cow], and it died—if the lender say, ‘The borrowed¹ one died’², [or], ‘On the day when it was borrowed it died’, [or], ‘During the hour it was borrowed it died’, and the other³ says, ‘I do not know [when it died,’ or, ‘... which one died’], he is liable.⁴ If the hirer say, ‘The hired one died,’⁵ [or], ‘On the day when it was borrowed it died,’ [or], ‘During the hour it was borrowed it died,’ and the other says, ‘I do not know,’ he [that hired it] is exempt.⁶ If one [namely, the owner] say, ‘The loaned one [died],’ and the other says, ‘The hired one [died],’ the hirer must take an oath⁷ that the hired one died. If one say, ‘I do not know,’ and the other [also] says, ‘I do not know,’ they must divide⁸ [the loss].

השואל את־הפרה שאלה חצי יום ושכרה חצי יום, שאלה היום ושכרה למחר, שכר אחת ושאל אחת ומתה, המשאיל אומר ישאלה מתה, ביום שהיתה שאלה מתה, בשעה שהיתה שאלה מתה, ונהלה אומר, איני יודע, חייב. השוכר אומר, שכורה ימתה, ביום שהיתה שכורה מתה, בשעה שהיתה שכורה מתה, ונהלה אומר, אני יודע, פטור. זה אומר שאלה, וזה אומר שכורה, ישבע השוכר ששכורה מתה. זה אומר, איני יודע, וזה אומר, איני יודע, יחלוקו.⁸

1 שאלה, loaned, borrowed. 2 And the borrower should be liable. 3 הלה (traditional reading הלה). As a legal expression it means the other person in question; here,

the defendant, in the following clause, the plaintiff. 4 Compare 7⁸. His admission of ignorance prevents him taking an oath to exempt him from responsibility. 5 And therefore as a hired custodian he is not to be held liable. 6 The defendant is not even required to take an oath in his defence if the plaintiff does not make a definite claim. 7 Strictly according to law the owner has no right to require such an oath for there is no admission here of any part of the plaintiff's claim. Since, however, the hirer is in any case required to swear that the animal died a natural death he is required at the same time to assert on oath that it was the hired animal that died. Such an oath is called *שבועה על ידי גלגיל*—a *superimposed oath*. 8 This view is not the prevailing law since the plaintiff cannot substantiate his claim in order to obtain compensation.

Mishnah 3

משנה ג

If one borrowed a cow, and [the owner] sent it¹ to him by* his son, [or] by* his bondman, [or] by* his agent, [or] by* his son, [or] by* his bondman, [or] by* the agent of [the] borrower, and it died [on the way], [the borrower] is exempt.² If the borrower said to him, 'Send it³ to me by* my son,' [or,] '... by my bondman,' [or,] '... by* my agent,'⁴ or, '... by* thy son,' [or,] '... by* the hand of thy bondman,' [or,] '... by* thy agent,'⁵ or if the lender said to him, 'I am sending it to thee by* my son,' [or,] '... by* my bondman,' [or,] '... by* my agent,' or, '... by* thy son,' [or,] '... by thy bondman,' [or,] '... by* thy agent,' and the borrower said to him, 'Send⁶ [it thus],'⁷ and he sent it¹ and it died [on the way], [the borrower] is liable. And likewise, also, [the same law applies] when [the borrower] returns it.⁷

השואל את-הפרה ושלחה-לו ביד בנו, ביד עבדו, ביד שלוחו, או, ביד בנו, ביד עבדו, ביד שלוחו של שואל ומתה פטור. אומר לו השואל 'שלחה לי ביד בני, ביד עבדי, ביד שליחי, או, ביד בנה, ביד עבדה, ביד שליחה, או, שאמר לו המשאיל הריני משלחה לך ביד בני, ביד עבדי, ביד שליחי, או, ביד בנה, ביד עבדה, ביד שליחה, ואמר לו השואל 'שלח, ושלחה ומתה חייב. וכן בשעה שמתחירה.

1 ושלחה [Piel] or ושלחה [Kal]. 2 Because the owner had made use of these agents without the consent of the borrower. Further, the liability of a borrower does not begin before the beast comes into his possession or the possession of his authorised agent. 3 שלחה [Piel] or שלחה * [Kal]. 4 Even if he was not appointed as agent before witnesses or if he was a non-Jew or a minor or a mentally defective person

who cannot have the legal status of agents. 5 A Jew; for if he is a Canaanite his action is always regarded as the action of his master under whose authority he is. 6 שלח [Piel] or שלח [Kal]. 7 If, however, he returns it *after* the time due for its return he is then a hired custodian and is liable in cases of ordinary negligence only. *Literally by the hand of. *Also Kal שלחה.

Mishnah 4

משנה ד

If one exchanged a cow for an ass, and [the cow] brought forth young, and similarly, too, if one sold his bondwoman and she gave birth to a child, [and] the one says, '[It was born] before I sold,' and the other says, '[It was born] after I bought,' they must divide [between themselves equally the value of such offspring].¹ If one possessed two bondmen, one big and the other small,* and so, too, two fields, one big and the other small,² and the purchaser says, 'I bought the big one,' and the other³ says, 'I do not know,' [the buyer] is entitled to the big one. If the vendor say, 'I sold the small one,' and the other says, 'I do not know,' [the buyer] may take possession of the small one only. If one say, '[I bought] the big one,' and the other says, '[I sold] the small one,' the seller must take an oath that he sold the small one. If one say, 'I do not know,' and the other says, 'I do not know,' they must share [between themselves equally the difference of the values].

המחליף פרה בחמור וילדה, וכן המוכר שפחתו וילדה, זה אומר עד שלא מכרתי, וזה אומר משלקחתי, יחלוקו. היו לו שני עבדים, אחד גדול ואחד קטן, וכן שתי שדות אחת גדולה ואחת קטנה, הלוקח אומר גדולה לקחתי, והלה אומר איני יודע, וזה בנדולי המוכר אומר קטן מכרתי, והלה אומר איני יודע, אין לו אלא קטן. זה אומר גדול וזה אומר קטן, ישבע המוכר שהקטן מכר. זה אומר איני יודע וזה אומר איני יודע, יחלוקו.

1 In the procedure of the 'exchange' of two objects the exchange is effected when only one object is handed over and received. Thus the ass could have been handed over and, the cow being elsewhere, it was not known whether by that moment the cow had calved or not. Similarly in the procedure of the purchase of a Canaanite slave, the handing over of the money alone was sufficient to effect the purchase. The opinion here is that of Summachos who maintains that in all cases of equal uncertainty the amount disputed is divided. This view is not followed. The accepted ruling is that where the vendee has no evidence to substantiate his claim the vendor is given the advantage. The principle followed is that the onus of

proof always rests on the claimant. 2 And in each case the vendor sold only one.
3 See 82, Note 3. *Or adult and child.

Mishnah 5

If one sold his olive-trees for wood [for fuel], and [before the buyer uprooted them] they produced [olives whose oil came to] less¹ than a *quarter-log* to a *seah*,² they belong to the owner [purchaser] of the olive-trees.³ If they bore [olives whose yield of oil was more than] a *quarter-log* to a *seah*, and the one [namely, the buyer] says, 'My olive-trees produced [it],' and the other says, 'My soil produced [it],' they must divide [the produce].⁴ If

a stream flooded out one's olive-trees and deposited them in the midst of his fellow's field [and they bore olives], and the one says, 'My olive-trees produced [them],' and the other says, 'My land produced [them],' they must share§ [the olives equally].

1 Traditional reading פחות. 2 See ורעם, Page 18f. 3* If the seller stipulated that the trees were to be removed immediately after the sale then he is entitled to them if they produce olives when the buyer does not remove them. But if an agreement was made that the trees be left for a time or be taken away by the purchaser whenever he wants them, then any olives or oil produced belong to the purchaser. 4 If the olives are of considerable value, otherwise the buyer is entitled to them. * and §, see ADDENDA.

Mishnah 6

If one let a house to his fellow during the rainy season,¹ he can not dispossess him from the Festival of Tabernacles until Passover;² and in the summer, [he must give him notice before] thirty days;³ and in large cities, whether during the summer season or whether during the rainy season, [he must give the tenant notice before] twelve months;⁴

משנה ה

המוכר זיתיו לעצים ועשו פחות מרביעית לסאה, הרי אלו של בעל הזיתים. עשו רביעית לסאה, זה אומר זיתי גדלו, וזה אומר ארצי גדלה, יחלוקי. שטף נהר זיתיו ונתנם לתוך שדה חברו, זה אומר זיתי גדלו, וזה אומר ארצי גדלה, יחלוקי.

משנה ו

המשכיר בית לחברו בבימות הגשמים, אינו יכול להוציאו מן החג ועד הפסח; בבימות החמה, ישלשים יום; ובכרפים, אחד ימות החמה ואחד ימות הגשמים, ישנים עשר חדש; ובחניות, אחד עירות

and in the case of shops, whether in small towns or whether in large cities, [the landlord must give him warning before] twelve months.⁵ Rabban Simon ben Gamaliel says, If it be a shop occupied by bakers or by dyers, [one must give the tenants notice before] three years.⁷

1 Without fixing the period of the letting. It was difficult to obtain a vacant house during the rainy season. 2 For a period of six months. He can only make him quit if he had given him notice thirty days before the rainy season set in that he would terminate the tenancy or raise the rent. If there was a general increase in rentals in the district a landlord could raise the rent without having given the thirty days' notice. A tenant also had to inform his landlord thirty days before the setting in of the rainy season of an intention to terminate his tenure. 3 To terminate the tenancy. The landlord may in summer give a tenant thirty days' notice before Passover to vacate the house at any month. 4 Because it was very difficult in big towns to obtain vacant possession in summer or during the rainy season. 5 To give the shopkeeper or storekeeper ample time to collect his debts. 6 His view is accepted. 7 Because bakers and dyers used to give long-term credits.

Mishnah 7

If one let a house to his fellow, he who lets it must provide a door, a bolt,¹ [and] a lock,² and whatsoever is the work of an artisan;³ but whatever is not the work of an artisan the tenant himself must carry out. The manure belongs to the landlord;⁴ and the tenant may have only the refuse from the oven⁵ or from the stove.⁶

מִשְׁנָה ז
הַמְשְׁכִיר בֵּית לַחֲבֵרוֹ, הַמְשְׁכִיר
הַיֵּיב בְּדֹלֶת יַבְנֵנָר יִבְמַנְעוּל וּבְכָל
דָּבָר שֶׁמַּעֲשֶׂה אִיּוֹמָן; אֲבָל דָּבָר
שֶׁאִינוֹ מַעֲשֶׂה אִיּוֹמָן הַשׁוֹכֵר עוֹשֶׂהוּ.
הַזֶּבֶל שֶׁל יַבְעַל הַבַּיִת; וְאֵין
לַשׁוֹכֵר אֶלָּא הַיּוֹצֵא מִן־הַתַּנּוּר
וּמִן־הַכִּירִים בְּלֶבֶד.

1 On the inside. 2 On the outside. 3 Or *craftsman, specialist*. 4 *i.e.*, the manure left in the courtyard by any animals other than those belonging to the tenant. 5 See *שַׁבָּת* 32, *פְּלִים* 53. 6 *Double stove, portable stove on feet* (with openings for two pots). See *שַׁבָּת* 31.

Mishnah 8

If one let a house to his fellow for one year, and the year was proclaimed a leap-year, the benefit of

מִשְׁנָה ח
הַמְשְׁכִיר בֵּית לַחֲבֵרוֹ לְשָׁנָה,
וְנִתְעַבְּרָה הַשָּׁנָה וְנִתְעַבְּרָה יַלְשׁוֹכֵר.

the intercalated month goes to the tenant.¹ If he let it to him by the month, and the year was declared a leap-year, the advantage of the intercalated month falls to the landlord.² It once happened in Sepphoris³ that a certain person hired a bath-house from his fellow at [a rental of] twelve golden [denars]⁴ a year, one golden denar a month, and the case came before Rabban Simon ben Gamaliel and R. Jose, and they said, Let them divide [equally between them] the benefit of the intercalated month.⁵

הַשְּׂכִיר לֹו לְחֻדָּשִׁים, נִתְעַבְּרָה
הַשָּׁנָה נִתְעַבְּרָה לְמִשְׁכִּיר. מִעֲשָׂה
בְּצִיפּוֹרִי בְּאֶחָד שְׂשָׁכֵר מִרְחֵץ
מִחֲבִירוֹ בְּשָׁנִים עָשָׂר זָהָב לְשָׁנָה
מִדִּינָר זָהָב לְחֻדָּשׁ, וּבָא מִעֲשָׂה
לִפְנֵי רִבֵּן שְׁמַעוֹן בֶּן גַּמְלִיאֵל וְלִפְנֵי
רַבִּי יוֹסִי וְאָמְרוּ יַחֲלִקוּ אֶת-חֻדָּשׁ
הָעֵבוֹר.

1 He does not have to pay extra rent for the added month. 2 He receives a month's extra rent. 3 In Upper Galilee. 4 See Volume I, Page 13f. 5 The difficulty in this case is caused by the fact that the rental is expressed in both annual and monthly terms and the agreement can be interpreted equally in either manner. For this reason the sum in dispute is divided. This ruling, however, is not accepted. The prevailing law is that in case of equal doubt the landlord being the owner has the advantage.

Mishnah 9

If one let a house to his fellow and it collapsed,¹ [the landlord] must build for him another house.² If it were small, he may not make the new one³ larger, [and] if it were large he may not make the new one smaller; if it were a single [house], he may not rebuild two, if it were two, he may not rebuild one. He may not make fewer windows⁴, nor may he add to them unless by mutual consent.⁵

מִשְׁנָה ט
הַמִּשְׁכִּיר בֵּית לְחֻבְרוֹ יִנְפֹּל חַיִּיב
לְהַעֲמִיד לֹו בֵּית. הֵיאָה קָטָן לֹא
יַעֲשֶׂנוּ גָדוֹל, גָּדוֹל לֹא יַעֲשֶׂנוּ
קָטָן; אֶחָד לֹא יַעֲשֶׂנוּ שְׁנַיִם, שְׁנַיִם לֹא
יַעֲשֶׂנוּ אֶחָד. לֹא יִפְחוֹת מִהַחֲלוֹנוֹת
וְלֹא יוֹסִיף עֲלֵיהֶן אֶלָּא מִדְּעַת
שְׁנֵיהֶם.

1 Or was burnt down. 2 But this ruling holds good only if the landlord had said to the tenant, "Thou mayest rent a house like this one." 3 Literally make it. 4 Or מִהַחֲלוֹנוֹת. 5 Literally by the knowledge of the two of them. This applies if

he said, "I rent to thee like this house," but not if he said, 'I rent to thee a house,' in which case he may make any *alteration* he likes.

CHAPTER 9

פָּרָק ט

Mishnah 1

If one leased¹ a field from his fellow, where it is the custom to cut [the crops the leaseholder] must cut them, [where it is the custom] to uproot them he must uproot them, [where it is the custom] to plough after reaping, or uprooting to kill the weeds] he must plough up [the ground afterwards] ; everything must conform to local method. Just as [landlord and tenant] share in the grain, so [in like proportion] they share in the straw and in the stubble; just as they share in the wine, so [in that proportion] they share in the [dead] branches² and in the reeds,³ since the two parties have to provide the reeds [in that

מִשְׁנָה א
 יִהְיֶה מִקְבֵּל שְׂדֵה מַחְבְּרוֹ, מְקוֹם שֶׁנִּהְגוּ לְקַצֹּר יִקְצוּר, לְעֻקֹּר יַעֲקוּר, לְחֵרוֹשׁ אֲחֲרָיו יִחְרוֹשׁ; הַכֹּל כְּמִנְהַג הַמְדִינָה. כָּשֶׁם שֶׁחֹלְקִין בְּתַבּוּאָה כֵּן חֹלְקִין בְּתַבָּן וּבְקֶשׂ; כָּשֶׁם שֶׁחֹלְקִין בְּיֵין כֵּן חֹלְקִין בְּיִמּוֹרוֹת יוּבְקָיִים, וְשִׁיָּהֵם מִסְפָּקִין אֶת־הַקָּיִים.

1 The leaseholder gives a fixed rent or an agreed percentage of the produce [אַרְיִסוּת or חֲכָרוֹת]. Compare פָּאָה 55, and next *Mishnah*, Note 2. 2 Of the vines. 3 Used as vine props.

Mishnah 2

If one leased a field from his fellow, and it was an irrigated field¹ or a field with trees, and the spring dried up or the trees were cut down, [the tenant] may not deduct from his stipulated rental.² But if he had said to him [when the agreement was made], 'Lease to me this field depending upon irrigation,' or, '[Lease to me] this field with a group of trees,' then if the spring dried up or the trees were cut down, he may deduct from the rental agreed on.³

מִשְׁנָה ב
 הַמְקַבֵּל שְׂדֵה מַחְבְּרוֹ וְהִיא בֵּית הַשְּׁלֵחִין אוֹ בֵּית הָאֵילָן, יָבֵשׁ הַמַּעְיָן, וְנִקְצַץ הָאֵילָן, אֵינּוּ מִנְכָּה לוֹ מִן־יַחְכּוּרוֹ. אִם אָמַר לוֹ חֲכוּר לִי שְׂדֵה בֵּית הַשְּׁלֵחִין זֶה אוֹ שְׂדֵה בֵּית הָאֵילָן זֶה, יָבֵשׁ הַמַּעְיָן וְנִקְצַץ הָאֵילָן מִנְכָּה לוֹ מִן־יַחְכּוּרוֹ.

1 Where the ordinary rainfall was insufficient and it was watered from a spring.
 2 Or **תְּחִירָו**. **תְּחִיר** is a tenant who agrees to pay an agreed rental (in money or in produce) irrespective of the yield. A tenancy on these terms is termed **תְּחִירוּת**. Compare the preceding *Mishnah*, **Note 1**. 3 The tenant's express reference to the spring or trees is sufficient evidence of his specific intention that payment was to be conditioned by the availability of the spring and the trees.

Mishnah 3

משנה ג

If one leased a field¹ from his fellow and he let it lie fallow, [the court] assess it how much it might have produced [if cultivated] and [the tenant] must pay him accordingly, for it is thus [usually] one prescribes [in a lease when leasing land] from someone [for cultivation], 'If I allow [the land] to lie fallow and do not work it, I shall pay according to the highest results.'²

הַמְקַבֵּל שְׂדֵה מַחְבִּירוֹ וְהוֹבִירָהּ, שָׁמֵן אוֹתָהּ כַּמָּה רְאוּיָהּ לַעֲשׂוֹת וְנוֹתֵן לוֹ, שֶׁכֶּף כּוֹתֵב לוֹ, אִם אוֹבִיר וְלֹא אֶעֱבִיד אֲשֶׁלֶם בְּמִיטְבָּא.

1 At an agreed share of the yield (*i.e.*, on terms of **אֲרִיסוּת**). Compare 91, **Note 1**.
 2 Or, 'I promise to pay full indemnity (*or* the highest valuation) and in best value.' It is not essential for specific mention of this to be entered in the contract since it may be taken for granted that this practice is generally followed.

Mishnah 4

משנה ד

If one lease a field from his fellow, but he does not want to weed it, and says to him, 'What does that concern thee since I will pay thee the rental agreed on?' they are not to listen to him as [the owner] may say to him, 'To-morrow¹ thou mayest perhaps leave it and it will bring forth weeds for me.'²

הַמְקַבֵּל שְׂדֵה מַחְבִּירוֹ, וְלֹא רָצָה לְנַכֵּשׁ, וְאוֹמֵר לוֹ מָה אֶכְפֹּת לָךְ הוֹאִיל וְאֲנִי נוֹתֵן לָךְ תְּכוּרָךְ, אֵין שׁוֹמְעִין לוֹ, מִפְּנֵי שֶׁיִּכּוֹל לוֹמַר לוֹ, לְמַחֵר אֶתָּה יוֹצֵא מִמֶּנָּה וּמַעֲלָה לְפָנַי עֲשָׂבִים.

1 Or any other day. 2 The law here refers to the tenancy termed **תְּחִירוּת**. See 92, **Note 2**.

Mishnah 5

משנה ה

If one leased a field from his fellow, and it was not productive, so long as there was* sufficient crop to

הַמְקַבֵּל שְׂדֵה מַחְבִּירוֹ וְלֹא עָשְׂתָהּ, אִם יֵשׁ כֶּבֶד לְהַעֲמִיד פְּרֵי חֲזִיב

make a heap he must work on it.¹
 R. Judah² said, What measure is a heap?³—Preferably if it yield *sufficient [grain] for resowing [the field, he must cultivate it.]⁴

יִלְטַפֵּל בָּהּ אָמַר רַבִּי יְהוֹדָה,
 מֵהַקְצֵבָה בְּכַרְיָ? אֵלֶּא אִם יֵשׁ
 בּוֹ כְּדֵי יַנְפִּילָהּ * Or יֶשׁ-בּוֹ.

1 This law refers to the tenant **הַקִּיר**. See 92, Note 2. 2 His opinion is rejected.
 3 Such a standard cannot be the same for different sized fields. 4 **יְנִיפָלָהּ**, *quantity of seed needed for a field*, estimated as one forty-fifth of the average crop. Compare **פֶּאֶה** 51. Alternative rendering, *Rather if it produce as much as is needed for seed.*

Mishnah 6

If one leased¹ a field from his fellow, and then the locusts devoured [the yield]² or it was blasted [by storm], if the calamity were general in that region, [the tenant] may deduct from his agreed rental, [but] if the disaster were not widespread in that district, he may not deduct from the stipulated rental. R. Judah³ says, If [the tenant] leased it from him⁴ for a money consideration, he may not deduct from the rental in either case.

מִשְׁנָה ו'
 יִהְיֶה מְקַבֵּל שְׂדֵה מִחֲבִירוֹ וְאֶכְלָהּ
 חָגַב אוֹ נִשְׂדָּפָה, אִם מִכַּת מְדִינָה
 הִיא מִנְפָּה לוֹ מִן-חֲכוּרוֹ, אִם אֵינוֹ
 מִכַּת מְדִינָה אֵין מִנְפָּה לוֹ מִן-חֲכוּרוֹ.
 רַבִּי יְהוֹדָה אוֹמֵר, אִם קִבְּלָהּ יְהִי מִנּוּ
 בְּמַעוֹת בֵּין כֶּף וּבֵין כֶּף אֵינוֹ מִנְפָּה
 לוֹ מִחֲכוּרוֹ.

1 As **אָרִיס**. See 91, Note 1. 2 Literally *devoured it*. 3 His view is rejected.
 4 Or **הִימְנוּ**.

Mishnah 7

If one leased¹ a field from his fellow for [a rental of] ten *kors*² of wheat a year, and the resulting quality was bad, he may pay [as the rental] out of this yield³; [but if] the wheat therefrom were of fine quality, he may not say to him, 'I will purchase [other wheat of ordinary quality in payment of the agreed rental] for thee in the market,' but he must pay him out of that crop.⁴

מִשְׁנָה ז'
 יִהְיֶה מְקַבֵּל שְׂדֵה מִחֲבִירוֹ בַּעֲשָׂרָה כּוֹר
 חֲטִיִּם לְשָׁנָה וְלִקְחָהּ, נוֹתֵן לוֹ
 מִתּוֹכָהּ; הֵיוּ חֲטִיֵּי הַיְּפוֹת, לֹא יֹאמֵר
 לוֹ, הֲרִינִי לִקְחָה מִן-הַשּׁוּק, אֵלֶּא
 נוֹתֵן לוֹ מִתּוֹכָהּ.

1 If in the agreement no statement is made to the contrary the payment must be made from the produce of the leased land. 2 See **נְרָעִים**, Page 18f. 3 And he is

not obliged to pay with wheat of fine quality. Literally *from it*. 4 Literally *therefrom*.

Mishnah 8

משנה ח

If one leased a field to his fellow on condition that he sowed barley,* he may not sow it with wheat,¹ but if [for the purpose of sowing] wheat,* he may sow therein barley. Rabban Simon ben Gamaliel forbids it. If [it were with the condition to sow] grain,* he may not sow pulse² therein, but if for pulse,* he may sow it with grain. Rabban Simon ben Gamaliel prohibits this.

המקבל שדה מתבירו לזרעה *שעורים לא יזרעה יחטים, יחטים יזרעה שעורים. רבן שמעון בן גמליאל אוסר. *תבואה לא יזרעה קטנית, *קטנית יזרעה, תבואה. רבן שמעון בן גמליאל אוסר.

1 Because wheat impoverishes the soil more than barley does. In all such cases the tenant may vary the seed sown only when the soil will not suffer impoverishment. 2 Leguminous plants reduce the fertility of the soil for several years. *See זרעים SUPPLEMENT, מועד SUPPLEMENT.

Mishnah 9

משנה ט

If one leased a field from his fellow for a few¹ years, he may not sow it with flax, and he may not cut timber from the sycamore²-trees. [But] if he leased it from him³ for seven years, he may sow flax therein the first year and cut* timber from the sycamore-trees. * Or ויש-לו.

המקבל שדה מתבירו לשנים ימועטות לא יזרעה פשתן ואין לו בקורת שקמה. קבלה הימנו לשבע שנים, שנה הראשונה יזרעה פשתן ויש לו בקורת שקמה.

1 Less than seven. Flax impoverishes the soil for seven years, therefore the tenant must give a sufficient length of time for the soil to recover before the expiration of the lease and surrender of possession. The same consideration applies to the cutting of timber. 2 See זרעים SUPPLEMENT, מועד SUPPLEMENT. 3 Or הימנו.

Mishnah 10

משנה י

If one leased a field for a *Sabbatical period* for seven hundred *zuz*,¹ the *Sabbatical year* is included in the

המקבל שדה מתבירו לשבע אמת בשבע מאות זוז, השבעית מן-

number.² If, however, he leased it from him³ for *seven years* for seven hundred *zuz*, the *Sabbatical year* is not included in the number.⁴

הַמְּנִין קָבְלָהּ הֵימָנוּ שְׁבַע שָׁנִים
בְּשֶׁבַע מֵאוֹת זָוָה, אֵין הַשְּׁבִיעִית מִן-
הַמְּנִין.

1 See *ירושלמי*, Page 18f. 2 *Leviticus* 25, 1-7; *Daniel* 9, 24 *et seq.*; INTRODUCTION. If the agreement expressly states for a *Sabbatical period* the tenant must not till the land more than six years (in the *Sabbatical year* no agricultural work being allowed). 3 Or *הֵימָנוּ*. 4 When the term *seven years* is explicitly stated in the agreement the tenant farms the land for seven years (not counting the *Sabbatical year*), and thus his tenancy extends to a period of eight years.

Mishnah 11

מִשְׁנָה י"א

One hired by the day collects his wages at any time during the whole of the night¹ [following the day of his engagement]; one engaged by the night may demand his wages at any time during the whole of the [ensuing] day; one employed by the hour may collect his wages during the whole of that day [on which his employment terminated] or the whole of that night [on which his employment terminated]; one hired by the week, [or] (one hired) by the month, [or] (one hired) by the year, [or] (one hired) by the *Sabbatical period*, if his term expired during the day he may exact his pay during the whole of [the remainder of] that day, and if it ended during the night, he may collect his wages at any time during the whole [of the rest] of that night and during the whole of the day [following].

שְׂכִיר יוֹם גּוֹבֶה כָּל-הַלַּיְלָה; שְׂכִיר
לַיְלָה גּוֹבֶה כָּל-הַיּוֹם; שְׂכִיר שְׁעוֹת
גּוֹבֶה כָּל-הַלַּיְלָה וְכָל-הַיּוֹם; שְׂכִיר
שָׁבֹת, שְׂכִיר חֹדֶשׁ, שְׂכִיר שָׁנָה, שְׂכִיר
שְׁבוּעָה, יֵצֵא בַיּוֹם גּוֹבֶה כָּל-הַיּוֹם,
יֵצֵא בַלַּיְלָה גּוֹבֶה כָּל-הַלַּיְלָה וְכָל-
הַיּוֹם.

1 *Leviticus* 19, 13. See the following *Mishnah*.

Mishnah 12

מִשְׁנָה י"ב

It is all one regarding the hire of a man or the hire [for the use of] a beast or the hire [for the use of] implements,¹ in accordance with [the injunctions] *In the same day thou shalt give him his hire²* and †(in accordance with) *The³ wages⁴ of a hired servant*

אֶחָד שְׂכִיר אָדָם וְאֶחָד שְׂכִיר בְּהֵמָה
וְאֶחָד שְׂכִיר יְכָלִים יֵשׁ בּוֹ מִשּׁוֹם
יְבִיאוֹ מִתַּנּוּן שְׂכָרוֹ זֵוִישׁ בּוֹ מִשּׁוֹם לֹא
תָלִין פְּעוּלַת שְׂכִיר אֶתָּה עַד בְּקָרָה.

shall not abide with thee all night until the morning. When? When he demands it;⁵ [but if] he did not make claim for it, he [namely, the employer] has not transgressed⁶ thereby. If [the employer] gave him an order to a shopkeeper or to a money-changer,⁷ he is not guilty of an infringement. A hired person [demanding his wages] within the fixed time⁸ may take an oath⁹ and receive his pay; but if the set time have expired, he may not take an oath to collect his wages; [but] if there be witnesses that he demanded his wages¹⁰ during the prescribed period, then he may take an oath and collect his wages. The precept *In the same day thou shalt give him his hire*² appliest† to a resident alien* [workman or labourer], but the precept *The wages of a hired servant shall not abide with thee all night until the morning*³ does not apply to him. § Or י-ש-בו † Or י-ש-בו.

אִמְתִּי? בְּזִמְנֵן שְׁתַּבְּעוּ; לֹא תִבְעוּ
אִינוּ עֹבֵר עָלָיו. הַמְקַהּוּ אֶצֶל
חֲנוּנִי אוֹ אֶצֶל שׁוֹלְחָנִי אִינוּ עֹבֵר
עָלָיו. שְׂכִיר בְּזִמְנֵן יִשְׁבֹּעַ וְנוֹטֵל;
עֵבֵר וּמִנּוּ אִינוּ נִשְׁבַּע וְנוֹטֵל; אִם
יִשְׁעִידִים יִשְׁתַּבְּעוּ בְּזִמְנֵן, הֲרִי זֶה
נִשְׁבַּע וְנוֹטֵל. יָגֵר תּוֹשֵׁב יִשׁוּ בּוֹ מִשּׁוּם
יְבִימוֹ תַתֵּן שְׂכָרוֹ וְאֵין בּוֹ מִשּׁוּם יֵלֵא
תְּלִין פְּעוּלַת שְׂכִיר אִתְּךָ עַד בְּקָרִי.

1 Or *utensils*. 2 *Deuteronomy 24, 15*. 3 *Leviticus 19, 13*. 4 פְּעֻלַת in the Scripture. 5 *i.e.*, when the employee claims his pay in due time then is the employer deemed to be violating the above commandments by delaying payment. 6 Literally *does not transgress*. 7 To change the order for goods or money respectively for the wages due to him. 8 *i.e.*, before the time for collecting his wages has expired. 9 Compare 1¹. This is one of the few cases where the Sages have enacted that a complainant should be put on oath in support of a claim against a defendant. See ADDENDA. 10 Literally *he demanded it*. *See ADDENDA at end of this *Tractate*.

Mishnah 13

If one lent¹ money to his fellow, he may not take a pledge from him² except only by an order from the court, and he³ must not enter his house to take his pledge, as it is said,⁴ *Thou shalt stand⁵ without*. If he had two articles, [the creditor] may detain one but must return the other;⁶ (and) he must restore the pillow for the night and the plough

מִשְׁנֵה יָג
יְהַמְלִיחַ אֶת-חֲבֵרוֹ לֹא יִמְשְׁכֶנּוּ
אֶלֹא בְּבֵית דִּין, וְלֹא יִכְנס לְבֵיתוֹ
לִישׁוֹל מִשְׁכּוֹנוֹ, יִשְׁנֹאמֵר, בַּחוּץ
תַּעֲמֹד. הָיָה לוֹ שְׁנַיִם כְּלִים נוֹטֵל
אֶחָד וּמַנִּיחַ אֶחָד; וּמַחְזִיר אֶת-הַכֶּרֶךְ
בְּלִילָה וְאֶת-הַמַּחְרֵשָׁה בַּיּוֹם; וְאִם

during the day; and if [the debtor] die, [the creditor] is not obligated to give back [any pledge] to his heirs.⁷ Rabban Simon⁸ ben Gamaliel says, Even to [the debtor] himself [the creditor] need only restore [the pledge] during the first thirty days, and after⁹ thirty days he may sell it with the permission of the court. No pledge may be exacted from a widow, whether she is poor or rich, as it is said,¹⁰ *Nor take¹¹ the widow's raiment to pledge.* If one take away the millstones in pledge, he transgresses a *negative commandment* and he is guilty of taking two implements [in pledge], as it is said,¹² *No man shall take¹³ the mill or the upper millstone to pledge.* And not only of the mill and the upper millstone did they speak, but of everything wherewith necessary food is prepared, as it is said,¹² *For he taketh¹⁴ a man's life to pledge.*

מת אינו מחזיר ל'יורשיו. רבן ישמעון בן גמליאל אומר, אף לעצמו אינו מחזיר אלא עד שלשים יום, ומשלשים יום יולהלן מוכרן בבית דין. אלמנה בין שהיא עניה בין שהיא עשירה אין ממשכנן אותה, ושנאמר, ולא תחבול בגוד אלמנה. החובל את-הרתיחים, עובר בלא תעשה וחיוב משום שני כלים, ושנאמר, לא יחבול רחים ורכב, ולא רחים ורכב בלבד אמרו, אלא כל-דבר שעושין בו אוכל נפש, ושנאמר, כי נפש הוא יחובל.

1 A creditor may take a pledge at the time when making a loan. 2 When the time for repayment has expired and the debt was not repaid. The order must be carried out by a court officer only. 3 Neither the lender nor the court official. 4 *Deuteronomy 24, 11.* 5 תעמר in the Scriptural text. 6 When required by the debtor. Or ומניח. 7 The creditor may sell the pledged articles in payment for the debt. See ADDENDA. 8 His view is rejected. 9 Or ולהלן. 10 *Deuteronomy 24, 17.* 11 תחבול in the Scripture. 12 *Deuteronomy 24, 6.* 13 יחבול in the Scripture. 14 חבל in the Scriptural text.

CHAPTER 10

פרק י

Mishnah 1

If a house and an upper room, belonging to two persons,¹ collapsed, the two of them share² in the timber and in the stones and in the mortar; and they investigate which stones [and from what part] were most

משנה א
הבית והעליה של ישינים שנפלו, שניהם חולקים בעצים ובאבנים ובקפץ; ורואים אלו אבנים הראויות להשתבר. אם היה אחד מהן מכיר

probably broken. If one [of the two owners] recognise some of the stones [to belong to him], he may take them but they are counted in the reckoning [of his share].³

1 One having the ground floor of the house and the other the upper part. 2 But only if it cannot be ascertained to which part the broken material belonged. See ADDENDA. 3 'he may take them'—He may take all the stones he recognises if the other party admits that some are his. If the other party denies the claim altogether they must share all the stones between them. 'the reckoning [of his share]'—Although he takes these particular stones, which may be of advantage to him by reason of size or quality, the amount of stones he takes is to be offset by an equal amount being reckoned to the other party in the process of dividing all the debris.

Mishnah 2

משנה ב

If there were a house [occupied by the owner] and an upper storey¹ [kept by a tenant] belonging to two persons,² and [the floor of] the upper part was broken through,* and the owner of the house did not want to repair it, the occupant of the upper storey may come down and dwell in the lower storey until [the owner] shall repair for him the upper part. R. Jose³ says, The downstairs occupant must provide [the rafters and boards for] the ceiling and the upstairs tenant [must provide] the plastering⁴ [to form the level floor above the rafters].

הבית והעליה של שנים נפתחה
העליה, ואין בעל הבית רוצה
לתקן, הרי בעל העליה יורד ודר
למטה עד שיתקן לו את העליה.
רבי יוסי אומר, הפחתון נותן את
התקרה והעליון את המעזיבה.

1 Or *upper room, upper compartment*. 2 Compare 8⁹. 3 His view is not accepted. 4 *מעזיבה, concrete pavement* (of stone chippings, mortar, etc.) covering the ceiling of a lower storey and serving as flooring of the upper storey. *See ADDENDA at end of this *Tractate*.

Mishnah 3

משנה ג

If a house and an upper storey belonging [separately] to two persons¹ collapsed, and the owner of the upper part requested the owner of the house below to rebuild [his

הבית והעליה של שנים שנפלו,
אמר בעל העליה לבעל הבית
לבנות והוא אינו רוצה לבנות, הרי

lower part] but [the latter] was not willing to rebuild it, then the owner of the upper part may rebuild [the downstairs part of] the house and dwell therein until [the other] repays him his expenses [incurred in the rebuilding].² R. Judah³ says, Then in that case this [upstairs owner] would be living in his fellow's premises and ought to pay him rent! Rather let the owner of the upper storey rebuild both the house [below] and the upper part and roof over the upper part and occupy the house below until [the other] reimburses him for his outlays!

1 One had the top part and the other the rest. 2 And he then leaves and repairs his own upper part. 3 His view is not accepted. See ADDENDA at end of this *Tractate*.

Mishnah 4

And similarly, also, if an olive-press,¹ built in [the crevice of] a rock, have a garden over its top [the press and the garden belonging] separately to two persons], and [the roof of the press] was broken through,² the owner of the garden may come down and sow at the bottom [in the press room], until the other will rebuild the vaults of his olive-press. If a wall or a tree fell into the public domain and caused damage, [the owner] is exempt from paying compensation.³ If, however, a set time had been given to him [by the court] in which to cut down the tree or to demolish the wall, then if they fell down within the time limit he is exempt, but if after that time limit he is liable.⁴

1 *בית הכר*, the building containing the vat and olive-press with the necessary implements. 2 4 handbreadths by 4 handbreadths (see *ורע"מ*, Page 18f.). So that the upper owner cannot cultivate his garden. 3 The owner must prove that the wall had been

בְּעַל הַעֲלֵיהָ בּוֹנֶה אֶת־הַבַּיִת וְדָר
בְּתוֹכוֹ עַד שְׁיַמְנֵן לוֹ אֶת־יְצִיאוֹתָיו
רַבִּי יְהוּדָה אוֹמֵר, אִפְּיֹה דָר בְּתוֹךְ
שֶׁל חֲבִירוֹ צָרִיף לְהַעֲלוֹת לוֹ שְׂכָר!
אֵלָּא בְּעַל הַעֲלֵיהָ בּוֹנֶה אֶת־הַבַּיִת
וְאֶת־הַעֲלֵיהָ וּמְקַרְהָ אֶת־הַעֲלֵיהָ
וְיוֹשֵׁב בַּבַּיִת עַד שְׁיַמְנֵן לוֹ אֶת־
יְצִיאוֹתָיו!

מִשְׁנֵה ד

וְכֵן יְבִית הַכֶּדֶר שֶׁהוּא בְּנוֹ בְּסֻלַּע,
וְנִגְּהָ אַחַת עַל גִּבּוֹ, וְנִפְחַת, הָרִי
בְּעַל הַגֵּנָה יוֹרֵד וְזוֹרֵעַ לְמִטָּה, עַד
שִׁיעֲשֶׂה לְבַיִת בְּדוֹ כִּיפִין. הַכּוֹתֵל
וְהָאֵלֶן, שֶׁנִּפְלוּ לְרִשׁוֹת הָרַבִּים
וְהַזֵּיקוֹ, פְּטוֹר מִלְּשַׁלְּמָם. נִתְּנוּ
לוֹ זְמַן לְקוֹץ אֶת־הָאֵלֶן וְלִסְתוֹר
אֶת־הַכּוֹתֵל, וְנִפְלוּ בְּתוֹךְ הַזְּמַן
פְּטוֹר, לְאַחַר הַזְּמַן חַיִּיב.

properly built, and the mishap is then considered as an unavoidable accident. 4 Thirty days' time limit was granted by the court. See ADDENDA at end of this *Tractate*.

Mishnah 5

משנה ה

If one had a wall close to his fellow's garden and it collapsed, and [the owner of the garden] said to him, 'Clear away thy stones,' and he replied, 'They have become thine,' we do not heed him;¹ [likewise] if the owner [of the garden] accepted the offer, [and] the other said to him, 'Here are thy expenses [incurred by clearing up] and I will take back what belongs to me,' we do not heed him.² If one hired a labourer to aid him in his work [to collect] straw or stubble, and [on completion of the task] he said, 'Give me my wage,' but the other said, 'Take from that on which thou hast laboured as thy pay,' we do not heed him; if, however, he accepted the offer, and [the employer] then said, 'Here is thy hire, and I will take back what belongs to me,' we do not heed him.³ If one put out his manure in the public domain, then he who puts [it] out may do so⁴ if it is applied to the soil⁵ [at once]. One may not keep clay in soak in the public street nor make bricks [there], but one may knead clay in the street [for immediate use] though not [make] bricks [there].⁶ If one build aught in the public domain, he that brings the stones may put⁷ [them there] if the builder builds [with them at once], and if he cause any damage, he must pay compensation for the harm caused. Rabban Simon⁸ ben Gamaliel says, One may, indeed, prepare for his work⁹ in the public domain for [a period of] thirty days.

1 One cannot convey a liability to another person without the other's consent; 'that on which thou hast laboured'—The wages of a hired labourer must be paid in cash unless previously agreed otherwise. 2 He cannot retract from the valid agreement entered into between them. 3 A licit contract may not be revoked without mutual consent. 4 Literally *may put out*. 5 Literally: *He who takes out the manure takes it out, and he who digs in the manure digs it in*. 6 Brickmaking is a protracted process and lumbers up the public thoroughfare too long. 7 Literally *may bring and the builder builds*. But not for an unreasonably prolonged time. 8 His opinion is rejected. 9 By assembling all required building materials. During this time he is not responsible for any damage caused by his materials lying on the building site.

Mishnah 6

If there be two gardens one above the other,¹ and vegetables [grow] between them,² R. Meir says, They belong [to the owner of] the upper* [garden]; R. Judah says, They belong to [the owner of] the lower§ [garden]. R. Meir said, If [the owner of] the upper* [garden] would wish to remove his soil, there would be no vegetables there;³ R. Judah said, [Likewise] if the lower§ one should desire to fill up his garden [with soil], there would be no vegetables there; R. Meir said, Since either one can thus thwart the other, they must investigate whence⁴ these vegetables derive their existence; R. Simon⁵ said, Whatsoever [the owner of] the upper* [garden] is able to reach with his hand and take⁶ belongs to him, and the remainder † belongs to the [owner] below. §

מְשֻׁנָּה ו
שְׁתֵּי גִּזְוֹת זוֹ עַל גַּב יוֹ וְהֵיִרָק בְּנִתְּיָם.
רַבִּי מֵאִיר אָמַר שֶׁל * עֲלִיּוֹן; רַבִּי
יְהוּדָה אָמַר שֶׁל § תַּחְתּוֹן. אָמַר רַבִּי
מֵאִיר אִם יִרְצֶה הָעֲלִיּוֹן לִיקַח אֶת-
עֲפָרוֹ אֵין קָבֵאן יָרֵק; אָמַר רַבִּי
יְהוּדָה אִם יִרְצֶה § הַתַּחְתּוֹן לְמַלְאוֹת
אֶת-גִּזְוֹתוֹ אֵין קָבֵאן יָרֵק; אָמַר רַבִּי
מֵאִיר מֵאַחַר שֶׁשְּׁנֵיהֶן יְכוּלִין לְמַחוֹת
זֶה עַל זֶה, רוֹאִין יְמַהִיכֵן יָרֵק זֶה
חֵי; אָמַר רַבִּי § שְׁמֵעוֹן כָּל-
* שֶׁהָעֲלִיּוֹן יְכוּל לְפָשׁוּט אֶת-יָדוֹ
יְוִלִיטוֹל הָרִי הוּא שְׁלוֹ, † וְהַשְּׂאָר
שֶׁל § תַּחְתּוֹן.

1 In terraces on a steep slope. 2 The growing crops overhang the garden below. 3 Traditional reading קָבֵאן. 4 From which soil. † 5 This opinion is the accepted ruling. † 6 Without incurring any danger in leaning over the edge of his garden. † 7 In some editions, סָלִיק מִפְּכַת בְּבֵא מְצִיעָה, CONCLUSION OF TRACTATE BABA METZIA. *§† See ADDENDA below. † Popular pronunciation וְהַשְּׂאָר.

וְנִשְׁלְמָה מִפְּכַת בְּבֵא מְצִיעָה

TRACTATE BABA METZIA CONCLUDED

ADDENDA

[Additional Notes to **בְּרֵאשִׁית מִצִּיעָא**]

- 11, **Note 2.** They both hold only the fringes of the garment. If they hold the garment itself they would take as much of the garment as they hold and they would then swear regarding the remainder (which they would divide equally).
 'The whole of it is mine'—each claims that the owner sold it to him. In fact the owner received payment from both—from the one by way of an agreed sale, but from the other by duress, which would render us unable to state which of them was the legal purchaser [*Bertinoro*]. But *Rashi* holds that in both cases it could be by way of an agreed sale.
- 12, **Note, a witness** (עֵדִים)—One witness is not sufficient to establish his claim but helps to relieve him from the need of an oath. Two witnesses, who would establish his claim, would certainly make an oath unnecessary.
- 15, **Note 1.** יָטוּף, a boy under thirteen years of age. קַטְנָה, a girl under twelve years of age.
- 16, **Note 2.** It cannot be given to the debtor since he might not have paid his debt. Neither can it be given to the creditor, since although the debtor admits indebtedness this admission may be the result of collusion between them to deprive the purchasers of the property bought from the debtor and to divide it between them.
- 18, **Note 4.** A document testifying that the ceremony of *pulling off the shoe* has been duly performed thus enabling the widow to remarry.
- 25, **Note 1.** 'Claimants'—a garment by its nature is not ownerless for unless agreed otherwise it automatically becomes the property of its maker.
- 29, **Note 5.** The doubling of the verb in Hebrew is taken to imply the repeated return of the find if necessary.
- 29, **Note 12.** The Torah requires that man should be circumspect and not reduce himself to poverty. *Deuteronomy 15, 4* implies such an obligation.
- 210, **Note 12.** The two forms of the commandment as given in *Exodus 23, 5* and *Deuteronomy 22, 4* imply the duty of both unloading and loading.
- 34, **Note 2.** The fault of the present uncertainty is due to the two depositors who did not make clear to which of them the 200 *zuz* belonged.
- 310, **Note 3.** When travelling, deposited money should be carried in the hand; in the house, it should be hidden in a safe place. The bailee is responsible for all loss through negligence.

- 42, **Note 4.** The Deluge was a punishment for the sin of robbery with violence. 'abode by his word'—by the strict letter of the law the Court cannot compel him to stand by his agreement, but the law of morality requires that a man must be true to his word. If therefore a man purchases an article in the usual way and then wishes to retract from the sale on the ground that he did not draw it into his possession, the Court invokes a formidable curse upon him as a transgressor against the laws of social morality. If he makes a purchase by word of mouth only and then retracts on the same legal ground he is denounced as an 'untrustworthy person.' Trustworthiness is the basis of human society.
- 57, **Note 2.** It is possible for this transaction to be completed immediately and is therefore considered as already completed. *Stack*—The Rabbis prohibited the purchase of goods before their market price was fixed since a subsequent rise in price would give the purchaser a profit on the money he had paid. This profit is designated אֶבְיָת רִבִּית—the dust of usury. This prohibition, however, obtained only when the vendor did not yet have the produce. Here where the vendor already has the produce the prohibition is not applied.
- 61, **Note 2.** These may be hired as journeymen or paid by contract for the job. The workmen referred to in the following Chapter (71) are only journeymen.
- 61, **Note 5.** Potters usually had wagons for carrying their wares.
- 62, **Note 4.** *alters*—compare אֵלֶּיךָ קָמָה 94. If a dyer was ordered to dye wool red, and dyed it black, he can demand only his expenses incurred in dyeing the wool, or the increase in the value of the wool resulting from the dyeing, whichever is less.
- 63, **Note 7.** The owner is responsible to furnish the hirer with an animal suitable for the work for which it is hired.
- 67, **Note 3.** The pay for the guardianship is the fact that while using his money in the performance of the *Mitsvah* of 'lending' he is exempt from the obligation of using it for a different *Mitsvah* such as 'giving it to the poor.' הַעֲוֹסֵק בְּמִצְוָה פְּטוּר מִמִּצְוָה.
- 67, **Note 4.** This is the accepted ruling, *viz.*, even a paid guardian can be quit from liability in this particular case by denying negligence on oath. In other circumstances a denial by oath would not help a paid guardian, but if this consideration were not allowed no one would accept responsibility for handling such jars at all. R. Eliezer differs from the accepted ruling and holds that in all cases where there is any negligence the unpaid guardian is quit with an oath that it was not wilful, but the paid guardian is liable in all circumstances.
- 78, **Note 2.** This law appears to belong more appropriately to the subject-matter of the previous *Mishnah*.

- 78, **Note 5.** In the case of a loss that occurred in circumstances that were out of his control he must swear that the mishap took place in that manner. Compare *Exodus 22, 6-14.*
- 711, **Note *.** Although it was not possible of fulfilment at the time of the agreement. If, however, the condition is completely impossible of fulfilment it is void.
- 85, **Note 3.** [Immediately following 3 interpolate:] This small amount of produce need not be taken into account. This ruling applies when no special stipulation was made regarding the removal of the trees. If the seller stipulated, however, that the trees must be removed immediately after the sale then he is entitled to any produce, however small, the trees may yield. But if an agreement . . .
- 85, **Note §.** 'share'—Both tree and soil contributed to the production of the olives. The extent of the part played by each in the production of the fruit cannot be estimated.
- 912, **Note 9.** Usually where there is no evidence to support either side the defendant takes the oath and is quit of liability, but here the oath is given to the labourer since the employer being preoccupied with his workmen might imagine he had paid him but had not in fact done so. This may lead to a false oath. When, however, the time for payment has passed and the employer is concerned that he does not transgress the commandment **לֹא תִלְוֶה** we rely on him that he will consider very carefully whether he has paid or not. In this case he is allowed to take the oath.
- 912, **Note *.** *resident alien*—a non-Jewish resident in the Land of Israel who acquires citizenship by renouncing idolatry and undertaking to observe the seven Noachide laws, the laws binding on all civilised people, *viz.*, **שִׁבְעַת מִצְוֹת בְּנֵי נֹחַ**, *the seven commandments of the sons of Noah*, the basic laws of humanity, binding on all mankind, and which, according to Tradition, were already in force in the time of Noah: (1) *the prohibition of idolatry* (**עֲבוּדָה זָרָה**); (2) *the prohibition of blasphemy* (**בִּרְפֵת הַשָּׁמַיִם**); (3) *not to murder* (**שִׁפְכֵי דָם**); (4) *not to commit adultery* (**גִּלְוי עֲרֻזָּה**); (5) *not to rob* (**גְּזֵלָה**); (6) *the institution of courts of justice* (**דִּינָיָה**); and (7) *not to eat flesh from a living animal* (**עֲבֵר מִן־חַיִּי**).
- 913, **Note 7.** The duty of returning the pledge is a personal obligation between the creditor and borrower as individuals, and the right to the pledge does not pass on to the estate of the creditor after him.
- 101, **Note 2.** They share proportionately according to the relative heights of the lower and upper parts of the house. This, however, is done only if it cannot be ascertained whose were the stones, etc.
- 102, **Note *.** 'broken through'—to the extent of a hole four handbreadths square.
- 103, **Note 3.** R. Judah maintains that since the house becomes his retrospectively

BABA METZIA—ADDENDA

when he repays the cost of its rebuilding he is entitled to receive rent from the occupier although he himself suffered no loss by the other's occupancy. If the occupier did not pay rent it may be considered as interest for the outlay of the expenses.

10⁴, **Note 4.** This liability would extend both to the damage done by the fall and any damage caused subsequently by the unremoved debris.

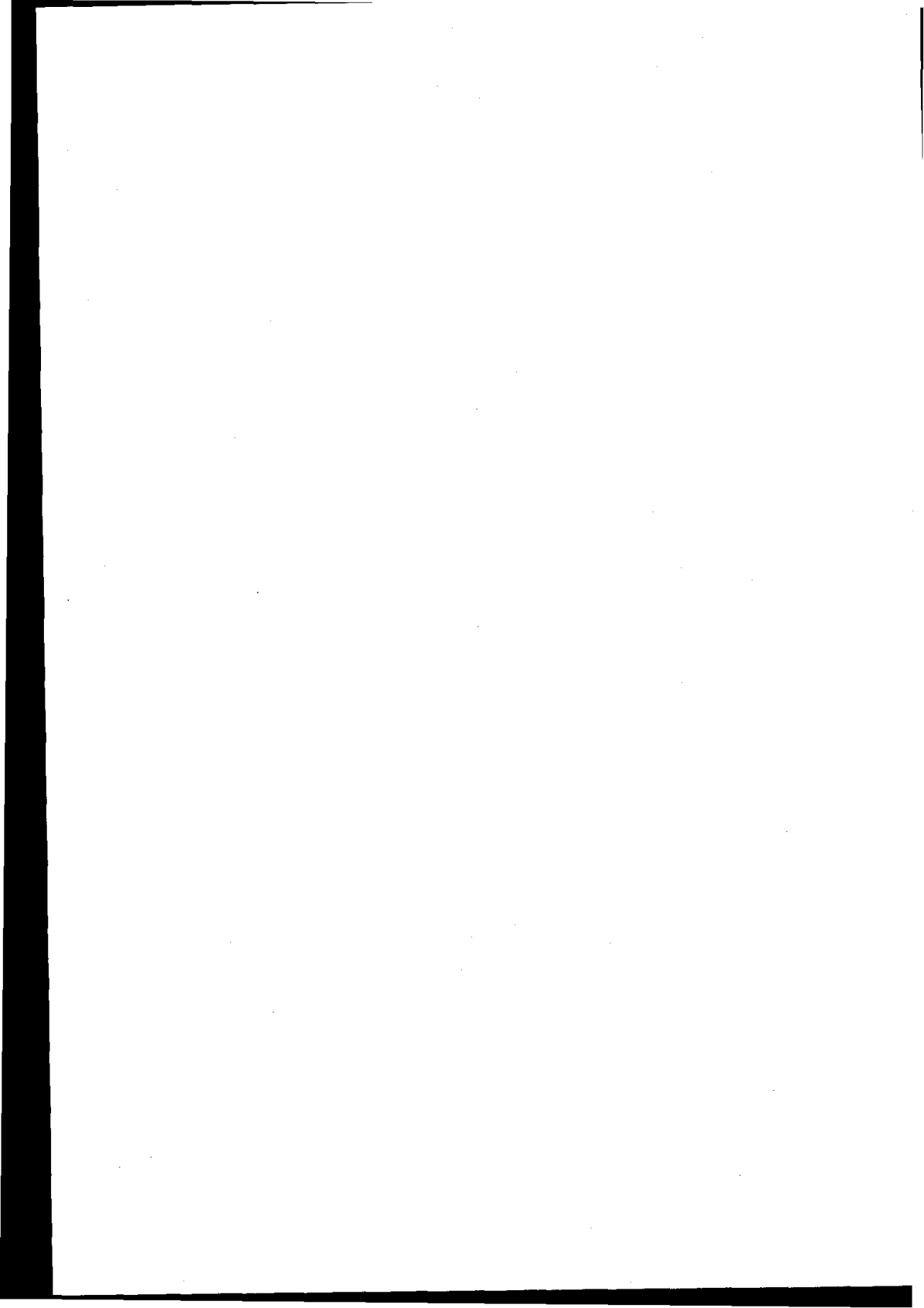
10⁶, **Note ***. 'upper'—since they grow out of the soil of the upper garden.

10⁶, **Note §.** 'lower'—since they hang over the space of the lower garden.

10⁶, **Note 4.** The vegetables should belong to the owner of the garden from whose soil the roots grow. R. Meir maintains that that which issues from the trunk and the roots belongs to the land-owner, whereas R. Judah holds that the leaves, or that which grows from the trunk, need not be regarded as belonging to the owner of the soil.

10⁶, **Note 5.** R. Simon follows the view of R. Meir that the vegetables belong to the owner of the upper garden.

10⁶, **Note 6.** He would consider it beneath his dignity to ask permission to enter the lower garden in order to climb up for them. It is therefore presumed that he renounces his right to those vegetables that are beyond his reach.



מִסְכֵּת

בָּבָא בַּתְרָא

TRACTATE

BABA BATHRA

[BEING THE THIRD TRACTATE OF THE FOURTH ORDER
OF THE MISHNAH]

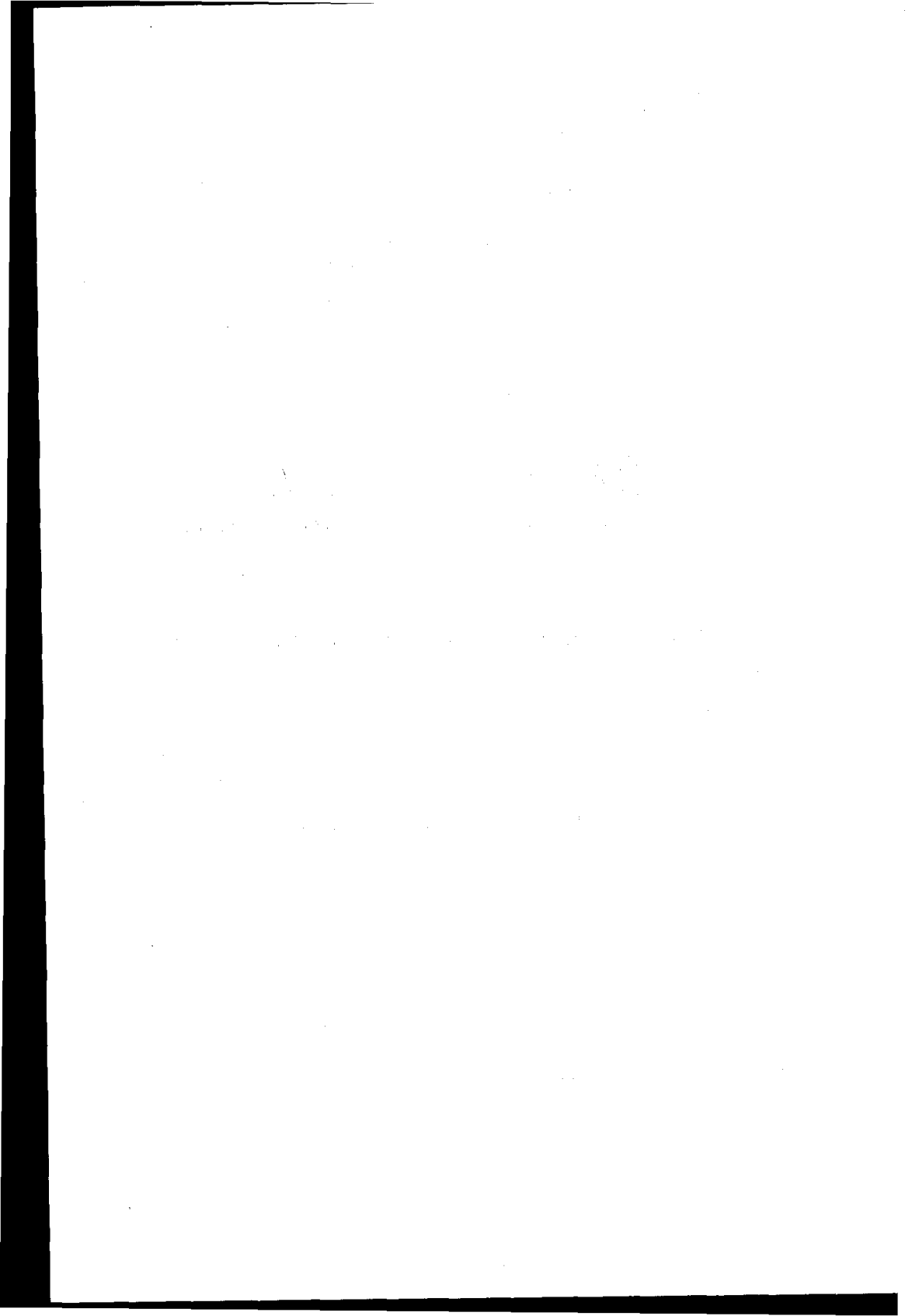
TEXT - INTRODUCTION - TRANSLATION - NOTES

By

PHILIP BLACKMAN, F.C.S.

The MS. of this Tractate was revised by

REV. M. ZEFFERT, B.A.



INTRODUCTION

The term **בְּתָרָא בְּבֵרָא בְּתָרָא**, **Baba Bathra, Last Gate**, is composed of the words **בְּבֵרָא**, *door, entrance, gate*, and **בְּתָרָא**, *last*.

This **Tractate** or **Treatise** together with the two preceding ones formed originally one *Treatise* (**בְּבֵרָא קַמָּא**, 102 a).

It is the *Third Tractate* of the *Fourth Order*, *Nezikin*, of the *Mishnah*.

The *Tractate* deals mainly with the laws and regulations concerning the right of sale, acquisition, ownership, possession, and transfer of real estate (immovable property)—mostly founded on traditional law—with the responsibilities and duties involved in such acquisition and possession, with the rights of (hereditary) succession and inheritance (*Numbers 27, 7-11*), and with legal deeds and the drawing up of legal documents.

The *Tractate* has **גְּמָרָא**, *Gemara*, to it in both the *Babylonian Talmud* and *Palestinian* (or *Jerusalem*) *Talmud*.

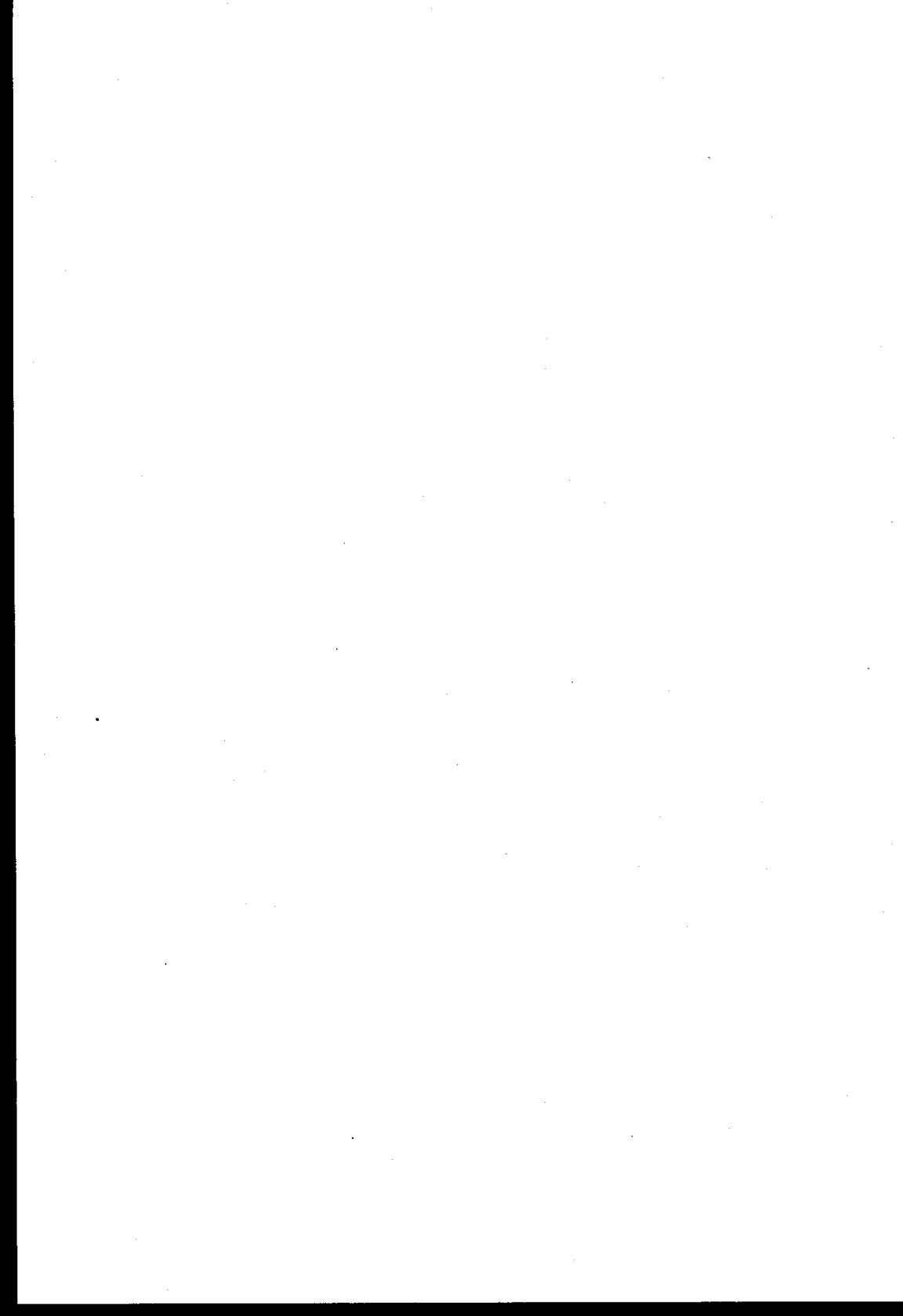
It contains ten Chapters whose titles are:

CHAPTER 1	הַשְׁוֹתֵפִין	פָּרָק א
CHAPTER 2	לֹא יִתְפוֹר	פָּרָק ב
CHAPTER 3	חֻזְקַת הַבָּתִּים	פָּרָק ג
CHAPTER 4	הַמוֹכֵר אֶת-הַבַּיִת	פָּרָק ד
CHAPTER 5	הַמוֹכֵר אֶת-הַסְּפִינָה	פָּרָק ה
CHAPTER 6	הַמוֹכֵר פִּירוֹת	פָּרָק ו
CHAPTER 7	בֵּית כּוֹר	פָּרָק ז
CHAPTER 8	יֵשׁ-גּוֹחֲלִין*	פָּרָק ח
CHAPTER 9	מִי שָׁמַת	פָּרָק ט
CHAPTER 10	גֵּט פְּשׁוּט	פָּרָק י

The main contents of the ten Chapters are briefly:

1. Laws regarding property held by joint-owners.
2. Responsibilities of an owner of property towards his neighbour's property.
3. Ownership and property—questions of established rights.
- 4-7. Laws concerning the purchase and acquisition of property.
- 8, 9. Laws of inheritance.
10. Laws regarding deeds and documents.

* Or יֵשׁ-גּוֹחֲלִין.



בבא בתרא

TRACTATE

BABA BATHRA

CHAPTER 1

פֶּרֶק א

Mishnah 1

If two jointholders* agreed to make a partition in a courtyard,¹ they have to build the wall in the middle.² Wherever it is the local custom to build of untrimmed stones, [or] of hewn stones, [or] of half-bricks, [or] of bricks, so they have to build it; everything should be in accordance with local usage.³ In the case of unshaped stones, each one has to furnish [space and material for a thickness of] three handbreadths;⁴ in the case of hewn stones, each must supply two handbreadths and a half; in the case of half-bricks, each has to give two handbreadths; [and] in the case of bricks, each has to give a handbreadth and a half.⁵ Therefore, if the wall collapsed, the space and the stones belong to both of them.⁶

מִשְׁנָה א

הַשְׁוֹתֵפִין שֶׁרָצוּ לַעֲשׂוֹת מַחֲצֵיזָה
בְּחֶצֶר בּוֹנִין אֶת-הַקּוֹתֵל בְּאֶמְצָעוֹ.
מְקוֹם שֶׁנִּהְיָ לְבָנוֹת גָּוִיל, גְּזִית,
כְּפִיסִין, לְבָנִים, בּוֹנִים; הַכֹּל כְּמִנְהַג
הַמְדִינָה. בְּגוִיל זֶה גוֹתֵן שְׁלֹשָׁה
טַפָּחִים וְזֶה גוֹתֵן יְשׁוּלָשָׁה טַפָּחִים;
בְּגִזִית זֶה גוֹתֵן טַפָּחִים וּמַחְצָה וְזֶה
גוֹתֵן טַפָּחִים וּמַחְצָה; בְּכִפִּיסִין זֶה
גוֹתֵן טַפָּחִים וְזֶה גוֹתֵן טַפָּחִים;
בְּלְבָנִים זֶה גוֹתֵן טַפַּח וּמַחְצָה וְזֶה
גוֹתֵן טַפַּח וּמַחְצָה. לְפִיכֵן אִם נִפְלָה
הַקּוֹתֵל הַמְקוֹם וְהָאֲבָנִים שֶׁל
שְׁנֵיהֶם.

1 See 16; where there are no terms of partition. 2 If the courtyard measures less than eight cubits neither jointholder can compel the other to build a dividing wall. 3 When the two parties have consented that the partition is to be built the agreement is then legally construed to imply that each has agreed to give of his ground one-half of the space required for the erection, and also it is presumed that each has consented to pay half of the necessary expense. 4 1 handbreadth = 9.34 cm. or 3.65 inches (see *נְרָעִים*, Page 18f.). 5 The actual thickness of the wall is prescribed by law

and not determined by local usage, out of due regard to security and safety of people. 6 See 16; where there are conditions of division. Compare **בָּבָא מציעא**, 10^{1a}. *Or *joint-tenants*.

Mishnah 2

And likewise, also, in the case of a garden¹ [held by two jointholders]—wherever the local custom is to fence it in [between the holdings] one is bound to do so; but in the case of a [corn-land] valley² where there is no local usage to build a fence, one is not bound to do so; but if [a jointholder] were minded to do so, he moves to his own part and builds [the fence] there and makes the border mark on the outside³ [to indicate that the fence is solely his]; therefore if the wall⁴ collapsed, the space and the stones belong to him. If they acted by mutual consent, they should build the wall along the middle and make the border mark on both sides;⁵ hence, if the wall collapsed, the place and the stones belong to both of them.

1 See 16; where there are conditions of partition. 2 Where one does not go as frequently as in a garden. 3 The side facing his fellow's domain. 4 *i.e.*, the fence. 5 Traditional reading **ומכאן**, **ומכאן**. This is not actually compulsory, but if one co-owner makes such a mark the other should also do so.

Mishnah 3

If [the land of] one surround [the land of] his fellow on (his) three sides, and he has fenced in the three sides,¹ [his fellow] can not be compelled.² R. Jose³ says, If he stood up and fenced in the fourth side, he is made to contribute towards the expense of all [the fences or walls].⁴

משנה ב

וְכֵן יִבְנֶה מְקוֹם שְׁנֵיהֶם לְגִדּוֹר
מִחֵיבִין אוֹתוֹ; אֲבָל יִבְבְּקָעָה, מְקוֹם
שְׁנֵיהֶם שְׁלֵא לְגִדּוֹר אֵין מִחֵיבִין אוֹתוֹ;
אֵלֵא אִם רָצָה כּוֹנֵס לְתוֹךְ שְׁלוֹ וּבּוֹנֶה
וְעוֹשֶׂה חֲזִית מִבְּחוּץ; לְפִיכֹךְ אִם
נָפַל הַכּוֹתֵל, הַמְּקוֹם וְהָאֲבָנִים
שְׁלוֹ. אִם עָשׂוּ מִדְּעַת שְׁנֵיהֶם, בּוֹנִין
אֶת־הַכּוֹתֵל בְּאִמְצָע וְעוֹשִׂין חֲזִית
מִכָּאן וּמִכָּאן; לְפִיכֹךְ אִם נָפַל
הַכּוֹתֵל הַמְּקוֹם וְהָאֲבָנִים שְׁלֵ
שְׁנֵיהֶם.

collapsed, the place and the stones

משנה ג

הַמְּקִיף אֶת־חֵבְרוֹ מִשְׁלֵשׁ רוּחוֹתָיו
וְגִדַר אֶת־הָרְאשׁוֹנָה, וְאֶת־הַשְּׁנִיָּה,
וְאֶת־הַשְּׁלִישִׁית אֵין מִחֵיבִין אוֹתוֹ.
רַבִּי יוֹסִי אוֹמֵר אִם עָמַד וְגִדַר אֶת־
הָרְבִיעִית מְגַלְגֵּלִין עָלָיו אֶת־הַפֶּלֶל.

1 Literally *the first* [side] *and the second* [side] *and the third* [side]. 2 To contribute to the expenses of building the enclosure, which does not benefit him as his own land is still open on one side. 3 His view is accepted. 4 If either co-owner completes the fencing of the fourth side the other must bear half the cost of what the outlay would have been had all four sides been fenced with the cheapest material. (Some render this *If the other* [with the three sides fenced in] *stood up . . .*).

Mishnah 4

If a wall [belonging to jointholders] of a courtyard collapsed, each of the co-owners is bound to [help in the cost to] rebuild it up to [a height of] four cubits,¹ and each is presumed² to have paid unless one brings evidence to show that the other has not paid.³ If [one had rebuilt it to a height] above four cubits, the other can not be compelled [to share the expense],⁴ [but if thereafter] he built another wall close to it,⁵ even though he put no roof on it, he is made to bear [the share of the outlay of] all,⁶ and it is presumed that he has not paid [his share] unless he brings evidence to prove that he has paid.⁷

משנה ד
 כּוֹתֵל חָצֵר שֶׁנִּפְל מִחִיבֵין אוֹתוֹ לְבִנוֹתוֹ עַד אַרְבַּע יָמוֹת, בְּחֻזְקָת שְׁנֵתָן, עַד שֶׁיָּבִיא רֵאֵיהּ שְׁלֵא גָּתָן. מֵאַרְבַּע אָמוֹת וְלִמְעַלָּה, אֵין מִחִיבֵין אוֹתוֹ, סָמַךְ לוֹ כּוֹתֵל אַחֵר, אִף עַל פִּי שְׁלֵא גָּתָן עָלָיו אֶת־הַתְּקָרָה, מְגַלְגֵּלִין עָלָיו אֶת־הַכֹּל בְּחֻזְקָת שְׁלֵא גָּתָן עַד שֶׁיָּבִיא רֵאֵיהּ יִשְׁנֵתָן.

1 1 cubit = 22.08 inches or 56.1 cm. (see **נְרָעִים**, Page 18f.). 2 **חֻזְקָה**, *presumption*; **בְּחֻזְקָת**, *on the presumption of*. See 2⁵, **Note 9**. 3 Witnesses must give irrefutable evidence that the other had been asked to contribute half of the expenses and had refused to do so. 4 Of reconstructing above the height of four cubits. 5 So that he could benefit by using this new wall and the other for supporting a roof. 6 *i.e.*, one-half of the cost of raising the wall above the four cubits' height. 7 Although he is the defendant in this case, this is an exception to the general rule where the burden of proof lies upon the claimant.

Mishnah 5

One [who dwells in a courtyard] is compelled to [share the cost of] building a vestibule¹ and a door² for the courtyard. Rabban Simon³ ben Gamaliel says, Not all courtyards require a vestibule. One [who

משנה ה
 כּוֹפֵין אוֹתוֹ לְבִנוֹת בֵּית שְׁעָר וְדֹלֵת לְחֻצֵר. רַבֵּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר לֹא כָּל־הַחֻצְרוֹת רְאוּיֹת לְבֵית שְׁעָר. כּוֹפֵין אוֹתוֹ לְבִנוֹת

dwells in a town] is compelled [to contribute towards the cost of building] a wall for the town [and towards the cost of] double doors and a bolt. Rabban Simon³ ben Gamaliel says, Not all cities need a wall. How long must one be in a town to be deemed as of the citizens of the town?⁴—Twelve months. If one bought⁵ a dwelling-house therein, he is straightway⁶ considered as of the citizens of the town.

לְעִיר חוֹמָה דְּלָתִים וּבָרִיחַ. רַבִּין
שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר לֹא כָל-
הָעִירוֹת רְאוּיוֹת לְחוֹמָה. כַּמָּה יֵהָא
בְּעִיר וַיֵּהָא כְּאֲנָשִׁי הָעִיר? שְׁנַיִם
עָשָׂר חֳדָשׁ. קָנָה בָּהּ בֵּית דִּירָה
הָרִי הוּא כְּאֲנָשִׁי הָעִיר מִיָּד.

- 1 Or *gatehouse, lodge*, for a watchman to keep away strangers. 2 Gate-door, wicket. 3 His view is rejected. 4 To carry out the conditions and to pay taxes. 5 Some authorities consider renting also a qualification. 6 But as a contributor to charity, thirty days; to the poor-man's soup-kitchen, three months; to the poor-man's clothing organisation, six months; and to the poor-man's burial society, nine months; according to some authorities thirty days is the qualifying period in all these cases.

Mishnah 6

They may not divide¹ a courtyard unless there is therein [a space of] four cubits for one and four cubits for the other [occupant]; and also not in the case of a field, unless there is in it [a space of at least] nine *kabs*² [for planting] for one and nine *kabs* for the other [jointholder]. R. Judah says, Unless there are nine half *kabs*³ [area of ground] for one and nine half *kabs* for the other [co-owner]; and also not in the case of a garden, unless there is [a space of at least] half a *kab* for one and half a *kab* for the other. R. Akiba says, One *quarter*,⁴ and [also] not a⁵ dining-room,⁶ a⁷ peristyle,⁸ a dove-cote, a cloak, a bath-house, or an olive-press [house], unless there is sufficient room for each [co-owner separately].⁹ This is the general

מִשְׁנָה ו
אֵין חוֹלְקִין אֶת-הַחֲצֵר, עַד שֶׁיֵּהָא
אַרְבַּע אַמּוֹת לָזֶה וְאַרְבַּע אַמּוֹת
לָזֶה; וְלֹא אֶת-הַשָּׂדֶה, עַד שֶׁיֵּהָא בָּהּ
תְּשֻׁעָה קָבִין לָזֶה וְתְשֻׁעָה קָבִין לָזֶה.
רַבִּי יְהוּדָה אוֹמֵר עַד שֶׁיֵּהָא בָּהּ
תְּשֻׁעַת חֲצָאֵי קָבִין לָזֶה וְתְשֻׁעַת
חֲצָאֵי קָבִין לָזֶה; וְלֹא אֶת-הַגֶּן,
עַד שֶׁיֵּהָא בָּהּ חֲצִי קָב לָזֶה וְחֲצִי קָב
לָזֶה. רַבִּי עֲקִיבָא אוֹמֵר בֵּית רוֹבֵעַ;
וְלֹא אֶת-הַטָּרְקָלִין, וְלֹא אֶת-
הַמּוֹרָן, וְלֹא אֶת-הַשּׁוֹבֵךְ וְלֹא
אֶת-הַטְּלִית, וְלֹא אֶת-הַמְּרַחֵץ, וְלֹא
אֶת-בֵּית הַבַּד עַד שֶׁיֵּהָא בְּהֵן כְּדִי

principle: if whatever can be divided may still retain its former name, it may be divided, but otherwise* it may not be divided. When is this the case? When both of them do not consent, but when they are both agreeable they may divide even if it be less than that¹⁰ [space prescribed]; but in the case of the Holy Scriptures, even though the two of them are willing, they may not divide [them].¹¹

לְזֶה וְכָרִי לְזֶה. זֶה הַכֶּלֶל, כָּל-
שֶׁיִּחַלֵּק וְשָׂמוּ עָלָיו, הוֹלְקִין, וְאִם
*לֹא אֵין הוֹלְקִין. אֵימְתִי?
§בּוֹמֵן שָׂאֵין שְׁנֵיהֶם רוֹצִים, אֲבָל
§בּוֹמֵן שְׁנֵיהֶם רוֹצִים, אֲפִילוֹ בְּפָחוֹת
י"מ מִכָּאן, יִחְלֹקוּ; וְכִתְבֵי הַקֶּדֶשׁ,
אֵף עַל פִּי שְׁנֵיהֶם רוֹצִים, לֹא
יִחְלֹקוּ.¹¹
§Or בּוֹמֵן.

1 *i.e.*, one jointholder cannot compel another to have this done. 2 1 *kab* space = 416 $\frac{3}{4}$ square cubits (see **זְרָעִים**, Page 18f.). 3 *i.e.*, 4 $\frac{1}{2}$ kabs (compare **מְצִיעָא** 37). 4 104 $\frac{1}{4}$ square cubits. 5 Literally *the* in all listed here. 6 Compare 6^a; **צִירֻבִין**; 66. 7 Literally *and not the* in the list here. 8 Or *watch-tower, summer house*. 9 One jointholder can compel the other (in the last-mentioned cases) to build the partition if the usefulness is not spoilt. If the place is not suitable or big enough to be partitioned, then one co-owner can compel the other to sell him his share or buy out the share he holds. 10 Traditional reading **בְּפָחוֹת מִכָּאן**. 11 Not if written in one volume or scroll. If written in separate scrolls or volumes the co-owners may share the separate parts. *Popular pronunciation **לֹא**.

CHAPTER 2

פֶּרֶק ב

Mishnah 1

A man may not dig a cistern [or well] near the cistern of his fellow,¹ nor [may he dig] a ditch [or trench], a cave [or vault], a water-channel [or water-sewer], or a [laundry] wash-pool unless he had it three handbreadths² distance from his fellow's wall³ and plasters it with lime.⁴ Refuse from olives, (or) manure, (or) salt, (or) lime, or stones must be kept at a distance of three handbreadths from his fellow's wall and must be covered up with lime. Seeds,⁵ (or) a plough,⁶ (or)

מִשְׁנָה א

לֹא יַחְפּוּר אָדָם בּוֹר סְמוּךְ לְבוֹרוֹ
שֶׁל יַחְבְּרוֹ, וְלֹא שֵׁיחַ, וְלֹא מְעָרָה,
וְלֹא אֲמַת הַמַּיִם, וְלֹא גִבְרֻכַת
כּוּבְסִין, אֲלֵא אִם כֵּן הִרְחִיק מִכּוֹתֵל
חֲבָרוֹ שְׁלֹשָׁה טַפְחִים וְסָד בְּסִיד.
מִרְחִיקִין אֶת-הַנֶּפֶת, וְאֶת-הַזָּבֵל,
וְאֶת-הַמְּלַח, וְאֶת-הַסִּיד, וְאֶת-
הַסְּלָעִים, מִכּוֹתֵלוֹ שֶׁל חֲבָרוֹ שְׁלֹשָׁה
טַפְחִים וְסָד בְּסִיד. מִרְחִיקִין אֶת-

urine⁷ must be kept at a distance of three handbreadths from [one's fellow's] wall. (And) a handmill must be kept removed three [handbreadths' distance] from the lower-millstone [away from the wall of one's fellow] which [distance] is equivalent to four [handbreadths] from the upper-millstone;⁸ and an oven⁹ [must be kept at a distance of] three [handbreadths] from the belly¹⁰ which [distance] is equivalent to four [handbreadths] from the rim.¹¹

הַנְּרָעִים, וְאֶת-הַמְּחַרְשֵׁה וְאֶת-
 מִי רִגְלִים מִן-הַכּוֹתֵל שֶׁלִּשְׁה
 טָפְחִים. וּמְרַחֲקִין אֶת-הַרְתִּים
 שֶׁלִּשְׁה מִן-הַשֵּׁכֶב שֶׁהֵן אַרְבָּעָה מִן-
 הַרְכָּב; וְאֶת-הַתְּנוּר שֶׁלִּשְׁה מִן-
 יְהִבְלִיא, שֶׁהֵן אַרְבָּעָה מִן-הַשִּׁפְהָ.

1 A man may not make use of his property in such a way that it interferes with his neighbour's present or future enjoyment of his property. 2 See וְרָעִים, Page 18f. 3 The partition wall between the two. 4 To prevent any moisture seeping into the other's property. 5 They are likely to cause the wall to rot. 6 Which can weaken the wall's foundation. 7 Which weakens the cement or mortar and unburnt bricks. 8 The concave stone on top moves freely on the lower and broader convex stone beneath which is fixed to the floor. 9 See שִׁבְתָּ 32. 10 The lower part of the oven or stove. 11 The upper part.

Mishnah 2

מִשְׁנָה ב

One must not place an oven¹ within a house unless there is a space of four cubits² above it.³ If he set it up in an upper chamber, there must be under it a cement flooring of [at least] three handbreadths [in thickness],³ and in the case of a (double) stove⁴ only one [handbreadth of thickness of stone flooring];⁵ and yet if it caused damage, he must pay for the damage caused.⁶ R. Simon⁷ says, They prescribed all these measurements only so that when damage is caused one should be exempt from having to pay compensation.

לֹא יַעֲמִיד אָדָם תְּנוּר בְּתוֹךְ הַבַּיִת,
 אֲלֵא אִם כֵּן יֵשׁ עָלָיו גֹּבִיז וְגוֹבֵה אַרְבַּע
 אַמּוֹת. הֵיאָה מַעֲמִידוֹ בְּעֵלְיָה צָרִיף
 שִׁיְהֵא תַחְתּוֹ מַעֲזִיבָה שֶׁלִּשְׁה
 טָפְחִים, יוֹבְכִירָה טָפְחָה; וְאִם
 הִזִּיק מִשְׁלֵם מֵה-שֶׁהִזִּיק. רַבִּי
 שִׁמְעוֹן אוֹמֵר לֹא אָמְרוּ כָּל-
 הַשִּׁיעוּרִין הָאֵלֶּה, אֲלֵא שְׂאֵם הִזִּיק
 פְּטוּר מִלְשֵׁלֵם.

1 See שִׁבְתָּ 32. 2 See וְרָעִים, Page 18f. 3 As a precaution against fire. 4 See שִׁבְתָּ 31. A portable stove on feet with openings for two pots. 5 A stove gives out much less heat than an oven. 6 Compliance with the above regulations does

not carry with it exemption from damages when damage is caused. 7 His opinion is rejected.

Mishnah 3

A man may not open a baker's shop or a dyer's shop under his fellow's storehouse,¹ nor a cattle-stall.² In reality, they have permitted [such below] a wine [-store]³ but not a cattle-stall.⁴ [If one desire to establish] a shop within a courtyard, another may protest against him and say to him, 'I am unable to sleep on account of the noise of those coming in and because of the noise of those going out.'⁵ But⁶ one who makes⁷ utensils [in his house] and goes forth and sells them in the market—none may protest against him and say to him, 'I can not sleep on account of the noise from the hammer,' or, '... because of the noise of the (hand-) mill,' or, '... by reason of the noise from the children.'⁸

משנה ג

לא יפתח אדם חנות של נחתומין, ושל צבצבין, תחת אוצרו של חבירו, ולא ירפת בקר. באמת בגין התירו, אבל לא ירפת בקר. חנות שבחצר, יכול למחות בגדו, ולומר לו איני יכול *לישן מקול הנכנסין ומקול היוצאין. אבל עושה כלים יוצא ומוכר בתוך השוק, אבל אינו יכול למחות בגדו, ולומר לו איני יכול *לישן, לא מקול הפטיש ולא מקול הרחיים ולא מקול התנוקות.

1 The heat from the bakery or from the dyer's ovens may damage the goods below. 2 Beneath or near by another's storehouse. 3 The heat improves the wine. 4 The stench from stables and stalls is injurious to many commodities. 5 Co-owners or partners in a courtyard may prevent one another being a source of nuisance to the rest from outside causes. 6 **אבל** is omitted in the **גמרא**. 7 Or **עושה** [construct], i.e., a maker of. 8 No co-tenant may prevent another from establishing a religion school or class. *Or **לישן**?

Mishnah 4

If one's wall adjoin¹ the wall of his fellow, he may not put up another wall adjoining it² unless [he builds it] at a distance of four cubits from it; [and he may not erect a wall near his fellow's] windows,³ whether

משנה ד

מי שהיה כותלו יסמוך לקותל חבירו, לא יסמוך לו כותל אחר אלא אם כן הרחיק ממנו ארבע

above, or below, or opposite to them, [unless at a distance of] four cubits.⁴

אמות ; וְהַחֲלוּנוֹת מִלְמַעְלָן וּמִלְמַטָּן
וּמִכְּנֻגְדָן אַרְבַּע אַמּוֹת.

1 At an angle. 2 To form a three-sided enclosure. 3 Or וְהַחֲלוּנוֹת. 4 So as to ensure privacy and not to shut out the light to be enjoyed by the other. (*cubit*, see וְרָעִים, Page 18f.).

Mishnah 5

מִשְׁנֵה ה

One must keep his ladder¹ at a distance of four cubits from [his neighbour's] dovecote, so that the marten should not jump in.² And [one must not erect] a wall [nearer than] four cubits from the roof-gutter [of his neighbour's house], so that [the latter] can put up a ladder.³ One must keep his dovecote at fifty cubits' distance from a town,⁴ and he may not build a dovecote on his own property unless there is a space of fifty cubits in every direction.⁵ R. Judah⁶ says, An area of four *kors*,⁷ the extent of the flight of a pigeon [for food]. But if one have bought it,⁸ even though there be an area of only a *quarter-kab*, he may maintain it.⁹

מִרְחִיקִים אֶת-הַסּוּלָם מִן-הַשּׁוֹבֵךְ
אַרְבַּע אַמּוֹת, כִּדִּי שְׁלֹא תִקְפּוּץ
הַמָּרְמָה. וְאֶת-הַכּוֹתֵל מִן-הַמְּזוּחֵלָה
אַרְבַּע אַמּוֹת, כִּדִּי שִׁיְהֵא זוֹקֵף אֶת-
הַסּוּלָם. מִרְחִיקֵן אֶת-הַשּׁוֹבֵךְ מִן-
הָעִיר חֲמִשִּׁים אַמָּה, וְלֹא יַעֲשֶׂה אָדָם
שׁוֹבֵךְ בְּתוֹךְ שְׁלוֹ, אֶלֶּא אִם כֵּן *שֵׁשׁ
לו, חֲמִשִּׁים אַמָּה לְכָל רֹחַ. רַבִּי
יְהוּדָה אוֹמֵר בֵּית אַרְבַּעַת כּוּרִין
מְלֵא שְׁגֵר הַיּוֹנָה. וְאִם לְקָחוּ,
אֶפִּילוּ בֵּית רוֹבַע, הָרִי הוּא
בְּחֻקָּתוֹ.
*Or שֵׁשׁ-לו.

1 For trimming trees, etc. 2 From the ladder into the dovecote. If there is a parting wall between the two properties from which a marten could jump into the dovecot, then the ladder may not be left within four cubits from it. 3 For cleaning out or for repairs. 4 So that the pigeons should not interfere with people's gardens and allotments in the suburbs or destroy seed left out to dry in the town courtyards. 5 So that the pigeons cause no damage in the fields of others. 6 His view is not accepted. 7 *בֵּית כָּר* = 75,000 square cubits. (4 *kors* = 548 cubits square, as far as a pigeon seeking for food can fly from the centre of such a square to its corners—about 387 cubits). See וְרָעִים, Page 18 *et seq.* 8 *i.e.*, a field with a dovecot already built in it. 9 *בֵּית רֹבַע* = 104½ square cubits (or 10½ cubits square nearly). His right to possession cannot be disputed as it is assumed that he has acquired such rights from the owner. חֻקָּה, *legal status*, (legal) *presumption*, *presumptive continuation of a condition until proof of change is furnished* (compare 14, **Note 2**, and 33, **Note 10**).

Mishnah 6

If a young¹ pigeon be found within fifty cubits [from a dovecote], it belongs to the owner of the dovecote;² [but if found] outside the fifty cubits, it belongs to the finder.³ If it be found between two dovecotes, it belongs to [the owner of] the nearer one;⁴ [and if found] at an equal distance from either, they must share it.

משנה ו
 יניפול הנמצא בתוך חמשים אמה, תרי הוא של בעל השוכה; חוץ מחמשים אמה, תרי הוא של מוצאו. נמצא בין שני שוכות, קרוב לזה שלו, קרוב לזה שלו; מחצה על מחצה שניהם יתלוקו.

1 Or *small and tender*. 2 When it is assumed to have come. 3 There is no legal presumption whence it came. 4 But only so within the fifty cubits' limit. Literally *if nearer to one it is his, if nearer to the other it is his*.

Mishnah 7

One must keep his tree¹ at a distance of twenty-five cubits away from a town, and, in the case of a carob-tree² or sycamore, fifty cubits. Abba Saul says, Any non-fruit-bearing tree [requires] fifty cubits. If the town were there first, the tree may be cut down without paying compensation;³ but if the tree were there first, it is to be cut down and payment for it is to be made; if there be a doubt whether the former was there first or whether the latter was there first, it shall be cut down

משנה ז
 מרחיקין את האילן מן העיר עשרים וחמש אמה, ובחרוב ובשקמה חמשים אמה. אבא שאול אומר כל אילן סרק חמשים אמה. אם העיר קדמה, קוצץ ואינו נותן דמים; ואם האילן קדם, קוצץ ונותן דמים; ספק זה קדם, ספק זה קדם, קוצץ ואינו נותן דמים. without paying for it.

1 *i.e.*, he may not have a tree growing within that distance in order not to interfere with the beauty and amenities of the town. 2 Or *algaroba, Judas-tree, locust-tree*. See **מועד** SUPPLEMENT, **ירעים** SUPPLEMENT. 3 The town is not legally bound to pay for the value of any such trees cut down.

Mishnah 8

A permanent threshing-floor¹ must be kept at a distance of fifty cubits from a town. One may not make

משנה ח
 מרחיקין גורן קבוע מן העיר חמשים אמה. לא יעשה אדם

a permanent threshing-floor within his own property unless it extends fifty cubits on every side; and it must be at a sufficient distance from the plantations and newly-broken land of his fellow to cause no damage.²

גִּוְרֵן קְבוּעַ בְּתוֹךְ שְׁלוֹ אֶלָּא אִם כֵּן
 *יש-לוֹ חֲמָשִׁים אַמָּה לְכָל רוּחַ;
 וּמְרַחֵיק מִנְטִיעוֹתָיו שֶׁל חֵבְרוֹ וּמְנִירוֹ
 *Or יש לו יתיק. כְּדֵי שְׁלֵא יִזְיק.

1 It is termed permanent if it contains enough seed to require a shovel to winnow it. Excessive chaff may cause harm to sowers and to cause their own seed to dry. 2 The scattered chaff acts as manure and the excessive heat thus produced ruins the newly sown seeds.

Mishnah 9

Carcasses, graves, and tanneries must be kept at fifty cubits' distance from a town.¹ (And) a tannery may not be established save on the east side of the town.² R. Akiba³ says, One may set it up on any side, except on the west of it, (but he must keep it at a distance of fifty cubits).⁴

מִשְׁנָה ט
 מְרַחֵקִין אֶת-הַגְּבֻלוֹת, וְאֶת-
 הַקְּבָרוֹת, וְאֶת-הַבוֹרְסָקִי מִן-
 יְהֵעִיר חֲמָשִׁים אַמָּה. וְאֵין עוֹשִׂין
 בּוֹרְסָקִי אֶלָּא לְמִזְרַח יְהֵעִיר. רַבִּי
 יְעֻקֵּבָא אוֹמֵר לְכָל רוּחַ הוּא עוֹשֶׂה
 חוּץ מִמְעַרְבָּה (וּמְרַחֵיק חֲמָשִׁים
 אַמָּה).

1 On account of their obnoxious odours. 2 The prevailing wind in Palestine is from the north-west, but the east wind is generally mild and not strong enough to carry to the town any stench. 3 His opinion is rejected. 4 The bracketed part is omitted in some texts.

Mishnah 10

One must keep his flax*-steeping-pond removed from the vegetables¹ [belonging to his fellow], and leeks* away from onions,*and mustard* [-plants] away from bees.² R. Jose³ permits it in the case of mustard [-plants].

מִשְׁנָה י
 מְרַחֵקִין אֶת-הַמְּשָׁרָה מִן-יְהִירָק,
 וְאֶת-הַכְּרָשִׁין מִן-הַבְּצָלִים,
 וְאֶת-הַחֲרָדֵל מִן-יְהִדְבוּרִים. רַבִּי
 יוֹסִי מַתִּיר בְּחֲרָדֵל.

1 The steeping-water is injurious to vegetables. 2 Honey is adversely affected by mustard-plants. 3 His opinion is accepted. The owner of the mustard-plants can counterplead that the bees damage the mustard-buds. *See יְרֵעִים SUPPLEMENT, מוֹעֵד SUPPLEMENT.

Mishnah 11

One must not have his tree within a distance of twenty-five cubits from the cistern¹ [of his neighbour], and if it be a carob-tree* or a sycamore-tree*,² fifty cubits, whether it be higher up or alongside of it. If the cistern were there first, the tree is cut down and must be paid for;³ but if the tree were there first, it may not be cut down; if there be a doubt whether the former was there first or whether the latter was there first, it may not be cut down. R. Jose⁴ says, Even if the cistern were there before the tree, it may not be cut down, since one dug⁵ on his own property and the other planted⁶ on his own property.

- 1 Or *well*. The spreading roots of a tree may damage the cistern wall.
 2 Compare 27. 3 Because initially the tree caused no damage but became harmful in the course of time during its growth. If no compensation is to be paid the law cannot enforce the removal of the tree. 4 His view is accepted. 5 Literally *digs*.
 6 Literally *plants*. *See **יָרְעִים** SUPPLEMENT, מוֹעֵד SUPPLEMENT.

Mishnah 12

A man may not plant a tree near the field¹ of his neighbour, unless he removes it therefrom four cubits away,² and it is all one whether it is a vine³ or any other tree. If there were a fence between, each one [may plant] close to the fence on his side.⁴ If its roots spread into the property of his neighbour, [the latter] may cut [them] away three hand-breadths deep, so that they⁵ shall not hinder the plough. If [the owner] were digging a pit, a trench, or a cave, he may cut away [the roots] downwards,⁶ and the wood belongs to him.

מִשְׁנֵה י"א

מִרְחִיקִין אֶת-הָאֵילָן מִן-הַבּוֹר
 עֶשְׂרִים וְחֲמֵשֶׁה אַמָּה, * וּבַחֲרוֹב
 * וּבַשְּׂקָמָה חֲמִשִּׁים אַמָּה, בֵּין
 מִלְמַעְלָה בֵּין מִן-הַצֵּד. אִם הַבּוֹר
 קָדְמָה, קוֹצֵץ יְנוֹתָן דְּמִים; וְאִם
 אֵילָן קָדָם, לֹא יְקוּץ; סָפֵק זֶה
 קָדָם, וְסָפֵק זֶה קָדָם, לֹא יְקוּץ.
 רַבִּי יוֹסִי אוֹמֵר אֵף עַל פִּי שֶׁהַבּוֹר
 קוֹדְמָת לְאֵילָן לֹא יְקוּץ, שְׂוֵה יְחוּפֵר
 בְּתוֹךְ שָׂלוֹ, וְזֶה יְנוֹטֵעַ בְּתוֹךְ שָׂלוֹ.

מִשְׁנֵה י"ב

לֹא יִטַע אָדָם אֵילָן סָמוּךְ לְשָׂדֵה
 חֲבֵרוֹ, אֲלֵא אִם כֵּן הִרְחִיק מִמֶּנּוּ
 אַרְבַּע אַמּוֹת, אֶחָד יִנְפְּוִים וְאֶחָד
 כָּל-אֵילָן. הֵיךְ נִגְדֵר בֵּינֵיהֶם, זֶה
 סוֹמֵךְ לְגֵדֵר מִכָּאן, וְזֶה סוֹמֵךְ לְגֵדֵר
 מִכָּאן. הֵיוּ שָׂרְשִׁים יוֹצְאִין לְתוֹךְ
 שֶׁל חֲבֵרוֹ, מִעֲמִיק שְׁלִשָּׁה טַפְחִים
 כְּדִי שְׂלֵא יַעֲכֹב אֶת-הַמַּחְרִישָׁה.
 הֵיךְ חוֹפֵר בּוֹר, שֵׁית, וּמַעְרָה קוֹצֵץ
 יוֹרֵד, וְהַעֲצִים שָׂלוֹ.

1 Whether a corn-field or a tree-planted field. 2 See **וְרָעִים**, Page 18f. Four cubits' space will permit the ploughing of the ground around it without trespassing on to his fellow's land. But if no ploughing is done this is not necessary. 3 Literally *vines*. See **וְרָעִים** SUPPLEMENT, **מוֹעֵד** SUPPLEMENT. 4 Literally *the one* [may plant] *close to the fence on his side and the other* [may plant] *close to the fence on his side*. Traditional reading **מִפֶּן**. 5 Literally *it*. 6 As far down as he digs when the roots prevent the work being carried out. Literally **וַיֵּרֵד**, and *descends*.

Mishnah 13

If [the branches of] a tree extend into his neighbour's field, [the latter] may cut [them] off as far as an ox-goad protrudes over the plough;¹ and in the case of a carob-tree* or a sycamore,* by the plumbline.² In the case of an irrigated field,³ any tree [that overhangs it may be cut away] as measured by the plumbline.⁴ Abba Saul⁵ says, Any non-fruit-bearing tree [may be cut away] by measuring with the plumbline.

1 *i.e.*, the branches may be cut away to a sufficient extent to enable a team of oxen with the plough to pass without hindrance. 2 Or *plummet*. The owner of the field may cut away all the overhanging branches that keep away the sun's rays from his plants. 3 Traditional reading **הַשְּׁלֵחִין**. 4 The shadow cast by trees is very harmful to soil dependent upon irrigation. 5 See **וְרָעִים** SUPPLEMENT, **מוֹעֵד** SUPPLEMENT.

Mishnah 14

If a tree extend into the public domain, one may cut off [the lower branches] so that a camel with its rider can pass by. R. Judah says, A camel laden with flax or with bundles of branches.¹ R. Simon says, Any tree [must be cut away] according to the plummet's measure, because of [the law of] uncleanness.²

1 Which may extend two cubits above the laden camel and spread out two cubits on either side. 2 The branches of a tree form a roof in the nature of a tent, and if

מִשְׁנֵה יג

אֵילָן שֶׁהוּא נוֹטֵה לְשָׂדֵה חֵבֵירוֹ,
קוֹצֵץ מְלֵא הַמְרָדֵעַ עַל גְּבִי
הַמַּחְרִישָׁה, *וּבְחֵרוֹב *וּבְשִׁקְמָה,
כְּנֶגֶד הַמְשָׁקוּלֶת. בֵּית הַשְּׁלֵחִין
כָּל-הָאֵילָן כְּנֶגֶד הַמְשָׁקוּלֶת. אָבָא
שָׂאוּל אוֹמֵר כָּל-אֵילָן סָרַק כְּנֶגֶד
הַמְשָׁקוּלֶת.

מִשְׁנֵה יד

אֵילָן שֶׁהוּא נוֹטֵה לְרֵשׁוֹת הָרִבִּים,
קוֹצֵץ כְּדִי שִׁיְהֵא גָמַל עוֹבֵר וְרוֹכְבוֹ.
רַבִּי יְהוּדָה אוֹמֵר גָּמַל טְעוֹן פְּשֵׁתָן,
אוֹ חֲבִילֵי יְמוֹרוֹת. רַבִּי שְׁמַעוֹן
אוֹמֵר כָּל-הָאֵילָן כְּנֶגֶד הַמְשָׁקוּלֶת
מִפְּנֵי הַטְּוֹמְאָה.

any defilement (as an olive's bulk of a corpse) is underneath it people passing below will become unclean. But the prevailing law is that stated at the beginning of this *Mishnah*.

CHAPTER 3

פרק ג

Mishnah 1

The legal period for undisputed possession¹ for houses, cisterns, ditches, caves, dovecotes, bath-houses, olive-presses, irrigated fields,² bondmen, and whatsoever else produces steady gain, is [obtained by occupation during] three years, from day to day³. The legal term for undisputed possession for a rain-watered field⁴ is [secured by its occupation during] three years, and it need not be from day to day. R. Ishmael⁵ says, Three months in the first year, and three months during the last year, and twelve months in the middle year, which make eighteen months. R. Akiba⁶ says, One month during the first year, one month in the last year, and twelve months during the middle year, making altogether fourteen months. R. Ishmael⁷ said, This refers only to a grain-field, but in the case of an orchard, when one has brought in his crop [of grapes] and harvested his olives and gathered in his summer harvest,⁸ this period is deemed as [equivalent to] three years.

משנה א

יְחֻזְקַת הַבָּתִּים, וְהַבּוֹרוֹת, וְהַשִּׁיחִין,
וְהַמְעָרוֹת, וְהַשׁוֹבְכוֹת, וְהַמְרַחְצָאוֹת,
וּבַיִת הַבְּדִין, וּבַיִת הַשְּׁלֵחִין,
וְהַעֲבָדִים, וְכֹל שֶׁהוּא עוֹשֶׂה פִירוֹת
תְּדִיר חֻזְקָתוֹ שְׁלֹשׁ שָׁנִים מִיּוֹם לְיוֹם.
יְשֻׁדָּה הַבַּעַל, חֻזְקָתָהּ שְׁלֹשׁ שָׁנִים,
וְאִנָּה צְרִיכָה מִיּוֹם לְיוֹם. רַבִּי
יִשְׁמָעֵאל אָמַר, שְׁלֹשָׁה חֳדָשִׁים
בְּרֵאשׁוֹנָה, וְשְׁלֹשָׁה בְּאַחֲרוֹנָה, וּשְׁנַיִם
עָשָׂר חֳדָשׁ בְּאֶמְצָע, הֲרִי שְׁמוֹנֶה עָשָׂר
חֳדָשׁ. רַבִּי עֲקִיבָא אָמַר, חֳדָשׁ
בְּרֵאשׁוֹנָה, וְחֳדָשׁ בְּאַחֲרוֹנָה, וּשְׁנַיִם
עָשָׂר חֳדָשׁ בְּאֶמְצָע, הֲרִי אַרְבָּעָה
עָשָׂר חֳדָשׁ. אָמַר רַבִּי יִשְׁמָעֵאל
בְּמַה דְּבָרִים אֲמֹרִים, בְּשֻׁדָּה לְכֹן,
אָבֵל בְּשֻׁדָּה אֵילָן, כְּנֹס אֶת-
תְּבוּאָתוֹ, מִסֶּק אֶת-זֵיתָיו, כְּנֹס
אֶת-קִיָּצוֹ, הֲרִי אֵלוֹ שְׁלֹשׁ שָׁנִים.

¹ יְחֻזְקָה, see 2⁵. In those days a deed was the sole evidence generally of the transfer of title to real estate, and as there was no system of records the loss of such deeds led to great difficulties. It was therefore legally established—a law termed *usucaption*—that undisturbed, unbroken, undisputed possession of realty for three successive years entitled the possessor to retain such estate against the claims of the former owner, as Jewish law presumes that the owner of a deed is generally careful not to

lose it for the first three years. Compare קדושין 13, **Note 3**. 2 Traditional pronunciation הַשְּׁלֵחִין. 3 *i.e.*, complete, continuous, successive, uninterrupted. The occupier who produces witnesses to this effect becomes the possessor against the former owner. 4 *i.e.*, not requiring irrigation. 5 His view is rejected. 6 His opinion is not accepted. 7 His opinion is rejected. 8 Of his figs or after storing up his other fruits. *Popular pronunciation חרשים.

Mishnah 2

מִשְׁנֵה ב

[The Land of Israel is divided into] three provinces with reference to usucaption,¹ Judæa, (and) beyond the Jordan, and Galilee. If [the former owner] were in Judæa and another held possession [of his property] in Galilee, or if he were in Galilee and someone took possession in Judæa, this is not usucaption unless they are together in the same country.² R. Judah³ said, They did not prescribe [the limit of] three years except in the case when [an owner] was in Spain and another held possession for one year, that people might have a year in which to travel to notify him and that he might have a year's time wherein to come [back to lay his claim against the occupier].

שֶׁלֶשׁ אַרְצוֹת יְלֻחֻקָה, יְהוּדָה, וְעַבְרָה הַיַּרְדֵּן, וְהַגָּלִיל. הֵיאָה בִּיהוּדָה, וְהַחֲזִיק בְּגָלִיל, וְהַחֲזִיק בִּיהוּדָה, אֵינָה חֻקָּה עַד שֵׁיָאָה עִמּוֹ יַבְמִדְיָנָה. אָמַר רַבִּי יְהוּדָה לֹא אָמְרוּ שֶׁלֶשׁ שָׁנִים, אֶלָּא כְּדִי שֵׁיָאָה בְּאֶסְפִּמָּיָא וַיַּחֲזִיק שָׁנָה, וַיֵּלֶכּוּ וַיִּדְרִיעוּהוּ שָׁנָה, וַיָּבֵא לְשָׁנָה אַחֲרָתָּ:

1 חֻקָּה, see 25. *Usucaption*, (in law) the acquisition of the right or title to property by uninterrupted and undisputed possession and enjoyment for a specified term of years. If the original owner had declared before two or more witnesses that the occupier was a usurper—when the latter was present or not when the declaration was made—then the three years' occupancy does not entitle the latter to continue in possession. 2 Three years' occupancy is only valid when both parties are in the same district, because a perfectly valid protest made in one district might not, because of poor communication, have reached the locality where the estate is situated. 3 His view is not accepted.

Mishnah 3

מִשְׁנֵה ג

Any possession¹ without plea [of purchase or right of possession] does not constitute valid possession. Thus

כָּל-יְחֻקָּה שָׂאִין עִמָּה טַעְנָה אֵינָה חֻקָּה. כִּיצַד, אָמַר לוֹ מָה אַתָּה

for instance, if one said to another, 'What art thou doing on my property?' and the latter replied to him, 'Because no one has ever said a word about it to me,' this is not usucaption. [But if he answered] 'Because thou hast sold it to me,' [or] 'Because thou gavest it as a gift to me,' [or] 'Thy father sold it to me,' [or] 'Thy father gave it to me as a gift,' this constitutes usucaption.² (And) one who holds possession by virtue of inheritance does not have to make any plea.³ (And) artisans, (and) jointholders, (and) tenants, and administrators—the law of usucaption does not apply to them.⁴ A husband can not make claim by usucaption to the property of his wife,⁵ nor can a woman secure title by usucaption to the property of her husband,⁶ nor can a father [make the claim of undisputed possession] to the property of his son nor a son to his father's property.⁷ All this applies only to one who⁸ claims title by usucaption,

but in the case when one gives away [property] as a gift or when brothers divide up [a property] or when one lays claim by usucaption to the estate of a proselyte,⁹ then if [the claimant] locked it in or fenced [or walled] it in or made any breach whatsoever, this is considered valid usucaption.¹⁰

1 See 2⁵. 2 An occupant is a usurper if he cannot substantiate his three years' possession without any further valid evidence. See 3², Note 1. 3 He does not have to produce evidence to right of possession after three years' undisputed, undisturbed occupation. 4 In the case of partners in occupation of land, they often agree to use it for periods in turn, and thus a three years' occupancy by one would not entitle him to permanent valid possession. An אָרִיס is a tenant who agrees to pay the owner a stipulated proportion of the produce (in contradistinction a חֲכִיר is a tenant who undertakes to pay a stipulated amount). 5 This does not apply to estate held by him which on her death or divorce he must restore even with all his

עוֹשֶׂה בְּתוֹךְ שְׁלִי? וְהוּא אָמַר לוֹ
שְׁלֵא אָמַר לִי אָדָם דְּבַר מְעוֹלָם,
אִינְהוּ חֻזְקָה. שְׁמַכְרַת לִי, שְׁנַתַּת לִי
בְּמַתָּנָה, אָבִיךָ מְכָרָה לִי, אָבִיךָ
נָתַנָּה לִי בְּמַתָּנָה, הָרִי זֶה חֻזְקָה.
וְהָבֵא מְשׁוּם יְרוּשָׁה אֵין צָרִיךְ טַעְנָה.
הָאוּמָנִין, וְהַשׁוֹתְפִים, וְהָאֲרִיסִין,
וְאֶפְסוֹרֹפִין אֵין לָהֶם חֻזְקָה. אֵין
לְאִישׁ חֻזְקָה בְּנֹכְסֵי אִשְׁתּוֹ, וְלֹא
לְאִשָּׁה חֻזְקָה בְּנֹכְסֵי בַּעֲלָהּ, וְלֹא
לְאָב בְּנֹכְסֵי הַבֵּן, וְלֹא לְבֵן בְּנֹכְסֵי
הָאָב. בְּמָה דְּבָרִים אָמוּרִים
בְּמַחְזִיק, אֲבָל בְּנִתּוֹן מַתָּנָה וְהֶאֱחִין
שְׁחָלְקוּ וְהַמְחִזִיק בְּנֹכְסֵי הַגֵּר, וְעַל
וְגֵדֵר וּפְרָץ, כָּל-שֶׁהוּא, הָרִי זֶה
חֻזְקָה.¹⁰

own realty for deterioration or loss. 6 Not even if he had assigned to her any land whereby to maintain herself. 7 This holds good only when father and son are still eating and living together. 8 Or *במחזיק*, to the one who. 9 If he leaves no heirs his property is deemed ownerless and may be taken possession of by any first comer. 10 Or *seisin, seizin*, act of taking possession. In these cases any one of these acts by a claimant entitles him to the possession of the property.

Mishnah 4

משנה ד

If two have testified of him, [namely, the occupant] that he had uninterrupted use [of the estate] for three years, and they were found to be false witnesses,¹ they must pay him [namely, the owner] the full value.² If two [false witnesses testified] of the first year, and another two of the second year, and two others of the third year, [payment of the fine] is divided into three parts between them.³ If there be three brothers [as witnesses] and one other combine with them [as witness], they may be accounted as three sets for evidence,⁴ but they are considered as one set of witnesses as regards the law of false evidence.⁵

היו שנים מעידין אותו שאכלה שלש שנים, ונמצאו זוממין, משלמין לו את-הכל. שנים בראשונה, ושנים בשנייה, ושנים בשלישית, משלשין בייניהם. שלשה אחים ואחד מצטרף עמָהֶם, הרי אלו שלשה עדויות, והן עדות אחת להזמה.

1 Others came forward who disproved the witnesses. *Deuteronomy* 19, 16-19. 2 The former owner recovers possession of the property and he also receives full restitution—the value of the property and also the value of the products therefrom during the three years—from the false witnesses. 3 Each pair of false witnesses must pay one-third of the full restitution—both the value of the estate and the value of the produce for the three years. 4 For each one of the three years. Though relatives are prohibited by law from giving evidence together in one and the same action, yet in this case they are not disqualified from testifying because each set is independent and the three sets are not deemed together as one set. 5 And each set pays one-third of the full restitution to the owner.

Mishnah 5

משנה ה

There are some cases which are* considered as usucaption,¹ and there are others that are not regarded as usucaption. If one were wont to keep cattle in a courtyard,² [or] an

אלו דברים שיש להם חזקה, ואלו דברים שאין להם חזקה. היתה מעמיד בהמה בחצר, תנור,

oven,³ or a (double) stove,⁴ or a handmill [or mill-stones], or rears fowls, or puts his manure in the courtyard, this does not constitute usucaption; but if he made for his cattle a partition ten handbreadths high, or likewise also for the oven, or so too for the (double) stove, or similarly for the handmill, or if he brought fowls into the house, or if he made a place for his manure three [handbreadths] deep or three [handbreadths] high, this is deemed usucaption.⁵

יְכִירִים, וְרִיחִים, וּמְגַדֵּל תְּרַגְּוֹלִין, וְגוֹתָן וְזָבְלוֹ בְּחֶצְרָא. אֵינָהּ חֻזְקָה; אֲבָל עָשָׂה מְחִיצָה לְבֵהְמָתוֹ וְגִבּוֹהַ עֲשָׂרָה טְפָחִים, וְכֵן לַתְּנֹור, וְכֵן לְכִירִים, וְכֵן לְרִיחִים, הַכֹּנִים תְּרַגְּוֹלִין לְתוֹךְ הַבַּיִת, וְעָשָׂה מְקוֹם לְזָבְלוֹ עֲמוֹק שְׁלֹשָׁה אִוָּגְבוֹהַ שְׁלֹשָׁה, הָרִי זֶה חֻזְקָה. *Or שֵׁשׁ-לָהֶם.

1 See 25. One could put forward the plea 'Thou gavest me this, to use as a gift,' or, 'Thou didst sell this to me' (see 32, Note 1). 2 The owners of which are not particular about one another's placing any movables or non-fixtures there. 3 See 22, Note 1. 4 See 22, Note 4. 5 If one carries out such acts as the co-partners might object to or if he fixes any object to the ground, and no protest or objection was made during three successive years, he acquires right of possession.

Mishnah 6

Usucaption¹ does not apply to a gutter-spout, but usucaption can be* claimed to its place.² Usucaption may be claimed§ for a [rain-] spout.³ Usucaption does not apply to an Egyptian ladder,⁴ but usucaption applies to a Tyrian [ladder].⁵ Usucaption does not apply to an Egyptian window,⁶ but usucaption applies§ to a Tyrian [window].⁷ What is [to be deemed] an Egyptian window? Any such through which a man's head can not enter. R. Judah⁸ says, If it have§ a frame, even though a man's head can not enter through it, usucaption can apply to it. If a projection extend for one handbreadth, usucaption can apply†

מְשֻׁנָּה ו
הַמְרֻזָּב אֵין לוֹ חֻזְקָה *יֵישׁ לְמִקְוֵמוֹ חֻזְקָה. הַמְּזוּחֵלָה §יֵישׁ לָהּ חֻזְקָה. סוּלָם הַמְּצָרִי אֵין לוֹ חֻזְקָה, וְיֻלְצוּרֵי יֵישׁ לוֹ חֻזְקָה. חֵלּוֹן הַמְּצָרִית אֵין לָהּ חֻזְקָה, וְיֻלְצוּרִית §יֵישׁ לָהּ חֻזְקָה. אֵיזוֹ הִיא חֵלּוֹן הַמְּצָרִית? כָּל-שְׂאֵין רֵאשׁוֹ שֶׁל אָדָם יְכוּל לִיכָנס לְתוֹכָהּ. רַבִּי יְהוּדָה אֹמֵר אִם §יֵישׁ לָהּ מַלְבָּן, אַף עַל פִּי שְׂאֵין רֵאשׁוֹ שֶׁל אָדָם יְכוּל לִיכָנס לְתוֹכָהּ, הָרִי זֶה חֻזְקָה. הַזֵּיז עַד וְטַפַּח יֵישׁ לוֹ

to it, and one⁹ may protest against it; but if [it be] less¹⁰ than a handbreadth, usucaption does not apply to it, and one can not protest against it. *Or ריש-למקומו.

חזקה ויכול ילמחות; ¹⁰פחות
מטפח אין לו חזקה ואין יכול
למחות.
‡-לו; †-לה § Or

1 See 25, **Note 9**; 32, **Note 1**. **2** The place where it discharges. Its owner, after it has been there for three years, cannot claim permanent position. Yet the owner of the adjacent land cannot enforce its removal entirely, but can enforce payment for the right to let the water discharge on his land. **3** Because it is of a stationary, permanent character fixed to realty, and absence of objection against it for three years confers on its owner right of occupancy of its location. **4** One that has no more than four rundles or rungs. It is not of a permanent nature. **5** It has many rungs or rundles and is of a permanent character. **6** Or תלון. **7** The Tyrian window is larger, and if it has not been built over for three successive years, another may not put up any structure to shut out any light into it. **8** His opinion is not accepted. **9** Into whose domain it projects. **10** Traditional pronunciation פחות.

Mishnah 7

A man must not make his windows¹ to open into the courtyard of the jointholders.² If he purchased a house in another [adjoining] courtyard, he may not open it [by a door or entrance] into the courtyard of the jointholders.³ If he built an upper storey on top of his house, he must not make [its door or entrance] to open into the courtyard of the jointholders;⁴ but if he wished to do so, he may build a chamber inside his house,⁴ or build an upper room on top of his house and make it to open into his own house.⁵ A man may not open into the courtyard of jointholders by a door opposite a door [of another], or by a window⁶ opposite [another's] window;⁷ if it⁸ were small he must not make it larger, [and if there were] one he must not make it into two.⁹ But he

משנה ז
לא יפתח אדם יחלונותיו לחצר
יחשופין. לקח בית בחצר אחרת,
לא יפתחנה לחצר השותפין. בנה
עליה על גבי ביתו, לא יפתחנה
לחצר השותפין; אלא אם רצה
בונה את החדר לפניו מביתו,
ובונה עליה על גבי ביתו, ופותחה
להוך בביתו. לא יפתח אדם לחצר
חשופין, פתח כנגד פתח, ויחלון
כנגד יחלון; היה קטן לא יעשנו
גדול, אהד לא יעשנו שנים. אבל
פוחם הוא לרשות הרבים פתח
כנגד פתח, ויחלון כנגד יחלון; ¹⁰היה

may open up into the public domain אָחַד עוֹשֶׂה אֹתוֹ גְּדוֹל, אָחַד עוֹשֶׂה
 a door opposite [another's] door or אֹתוֹ יִשְׁנִים.
 a window opposite a window [of
 another]; if it¹⁰ were small he may enlarge it, [and if there were] one
 he may make it into two.¹¹

- 1 Or תְּלוּוֹתָיו. 2 The co-partners have a right to object to being overlooked.
 3 The door would tend to increase the number of passers-by in the courtyard and
 would in consequence detract from the privacy. 4 By dividing up some room.
 5 The other jointholders cannot object if he fills up his own house with tenants.
 6 Or תְּחִלָּין. 7 So that people may enjoy privacy. Or תְּחִלָּין. 8 A window.
 9 Not to infringe on privacy. 10 A window. 11 Because the general public
 passing by are the ones concerned in the matter and yet can offer no objection.

Mishnah 8

מִשְׁנָה ח

None may make a cavity beneath
 public property, [such as] pits [or
 cisterns], trenches [or ditches], or
 caves.¹ R. Eliezer² permits [this] if
 a waggon loaded with stones can
 pass [over it]. One may not build
 out projections or balconies [or
 enclosures] into the public domain,
 but if he desire to do so, he moves
 [his own wall or the like] back into
 his own ground and builds out
 [therefrom].³ If one bought a court-
 yard in which there were projections
 or balconies [or enclosures], then he may use them undisturbed.⁴

אֵין עוֹשִׂין חֲלָל תַּחַת רְשׁוֹת הַרְבִּים,
 בּוֹרוֹת שִׁיחִין וְיַמְעָרוֹת. רַבִּי
 אֶלְעִזָּר מְתִיר, כְּדִי שֶׁתְּהֵא עֲגֹלָה
 מֵהַלְכָת וְטַעוּנָה אֲבָנִים. אֵין מוֹצִיאִין
 זֵיזִין וְגוֹזְזִין רְשׁוֹת הַרְבִּים,
 אֶלָּא אִם רָצָה כּוֹנֵס לְתוֹךְ שְׁלוֹ
 וְיִמְצֵיא. לָקַח חֲצֵר וְכָה זֵיזִין
 וְגוֹזְזִין רְשׁוֹת, הָרִי זוֹ בְּחֻזְקָתָהּ.

- 1 So that there may be no immediate or future damage or danger. 2 His view
 is rejected. 3 Thus the projecting structures will not be in the public domain.
 4 None can dispute his right to their possession. תְּחִלָּין, sec 25, Note 9.

CHAPTER 4

פֶּרֶק ד

Mishnah 1

מִשְׁנָה א

If one sold a house, he has not sold
 [with it] any annex,¹ (and) even if
 it open into the house,² nor the

הַמּוֹכֵר אֶת הַבַּיִת לֹא מְכָר הַיְצִיעַ,
 וְאִם עַל פִּי שְׂהִיא פְּתוּחָה לְתוֹכוֹ,

[When selling a building the vendor has not thereby implicitly sold also] the cistern [or pit or well] or the walled cellar [or underground store-room], even though he wrote [in the contract] *the depth and the height* [referring to the ground below the structure and the space above the roof]; but [the seller] must buy for himself the [right of] way; but the opinion of R. Akiba; but the Sages⁴ say, He need not purchase for himself a [right of] way. And R. Akiba admits that when* [the vendor] said to him, 'Save these,' it is not necessary for him to buy a [right of] way.⁵ If he sold them⁶ to another, R. Akiba⁷ says, [The buyer] need not buy for himself a [right of] way; but the Sages say, He does need to buy for himself a [right of] way.⁸ *Or the *desinite* [right of] way.⁹

Mishnah 2

1 Literally *the annex*. Or *annexe, extension, wing, supplementary building*—projecting from the house and connected with outside stairs. 2 Literally *into it*. Unless it is stated in the agreement that the annexe is included in the sale. But any annexe less than four cubits square is presumed included in the sale. 3 Even if it opens into the house such a storage enclosure is considered separate and distinct from the house and is not included in the sale unless so specifically stated. 4 See *ibid.*, Page 181. 5 A roof enclosed by a railing or parapet ten handbreadths high is deemed a separate and distinct structure from the house, and unless it is specifically mentioned in the agreement, it does not pass to the buyer. 6 His opinion is not accepted.

[special store] room⁸ that is behind [the house], nor the roof if it have⁵ a parapet ten handbreadths⁴ high.⁵ R. Judah⁶ says, If it have⁵ the shape of a doorway, even though the parapet is not ten handbreadths high, it is not sold.

*Or [right of] way.⁹

1 Compare **בְּתַרְא בְּבֵא 63b**: **עומקא ורומא בסתמא לא קני**, *depth and height unless expressly stated are not sold* [with the house, and the vendor has a right to get beneath and build over the house]; **אהני עומקא ורומא למיקני עומקא ורומא**, *the entry of 'depth and height' in the agreement gives possession of the ground underneath and the space on top*; **ואי ס"ד בסתמא קני עומקא ורומא להני עומקא ורומא למקנא בור וכ'**, *but if one assume that 'depth and height' are implied in the sale, let the specification of 'depth and height' have the effect to grant possession* [of the well, etc.] 2 Through the buyer's domain to the cistern or vault. 3 His view is accepted. 4 Their opinion is rejected. 5 The buyer cannot now prevent him having access to the pit or cellar. 6 The cistern or walled-cellar, but not the house (or even if he sold the house to a third party). 7 If however he sold the house to one and the pit or vault to another then the last must buy a right of way from the second because the first himself would have had to buy such right of way from the second.

Mishnah 3

משנה ג

If one sold a house he has also sold the door but not the key;¹ he has sold a fixed mortar but not a movable one; he has sold the lower millstone² but not the hopper³, or the oven (or the double stove),⁴ (but if he sold the oven he has sold the double stove also).⁵ But when [the vendor] said to him, 'It [namely, the house] and everything that is therein,' all these are sold also.* * See ADDENDA Page, 229.

המוכר את-הבית, מכר את-הדלת, אבל לא את-המפתח; מכר את-המכתשת הקבועה, אבל לא את-המיטלטלת; מכר את-האיצטרובל, אבל לא את-הקנקל ולא את-התנור (ולא את-הפירים), (מכר תנור מכר פירים). בזמן שאמר לו, היא וכל מה-שבחובה, הרי כולן מכורין.

1 Because a door, like a house, is deemed a fixture, but a key is not considered a fixture. 2 Because it is a fixture. 3 Through which the grain passes to the mill; or the *framework*, placed below the millstone to receive the ground flour. 4 None of which is a fixture. See 22, **Notes 1, 4**. The bracketed phrase, given in the **גמרא**, is omitted in some editions. 5 This part in parenthesis given in the *Palestinian Talmud* but omitted in some editions suggests that they were fixtures.

Mishnah 4

משנה ד

If one sold a courtyard he has also sold the houses, cisterns [or pits], trenches [or ditches, sewers], and caves [or vaults], but not the movable property;¹ but when* [the

המוכר את-החצר, מכר בתים, בורות, שיחין ומערות, אבל לו את-המיטלטלין; בזמן שאמר לו,

grantor] said to him, 'It [namely, the house] and everything contained therein,' all these are also sold.² However, in any case, he has not sold the bath-house or the olive-press [-house] therein.³ R. Eliezer⁴ says, One who sold a courtyard has sold naught but the space of the courtyard. *Or בִּימֵן.

היא וְכֹל מֵהַשְּׁבִתוּכָה, הָרִי כוֹלֵן
 מְכוּרֵינִי בֵּין בֶּדֶן וּבֵין בֶּדֶן, לֹא מָכַר
 אֶת-הַמְרָחֵץ וְלֹא אֶת-בֵּית הַבַּד
 שֶׁבְּתוֹכָהּ רַבִּי אֱלִיעֶזֶר אוֹמֵר
 הַמּוֹכֵר אֶת-הַחֲצַר לֹא מָכַר אֶלָּא
 אוֹרְחָהּ שֶׁל חֲצַר.

1 Non-fixtures, unless expressly included in the contract, even if required for the use of the houses, are not included in the sale. 2 But only utensils and tools, and not produce. 3 Because these are not usually provided in courtyards. 4 His view is rejected.

Mishnah 5

One who sold an olive-press [-house] has also sold the tank,¹ the press-stone,² and the supporting posts,³ but he has not sold the pressing-boards,⁴ or the wheel,⁵ or the beam.⁶ But when* [the vendor] said to him, 'It and all that is therein,' all these, too, are sold.⁷ R. Eliezer⁸ says, If one sold an olive-press [-house] he has also sold the beam. *Or the definite בִּימֵן.

מִשְׁנָה ה
 הַמּוֹכֵר אֶת-בֵּית הַבַּד, מָכַר אֶת-
 הַיָּם, וְאֶת-הַמָּמֶל וְאֶת-
 הַבְּתוּלוֹת, אֲבָל לֹא מָכַר אֶת-
 הָעֵבֶרִין וְאֶת-הַגִּלְגֹּל, וְאֶת-
 הַקּוֹרָה. *בִּימֵן שְׁאָמַר לוֹ, הוּא וְכֹל
 מֵהַשְּׁבִתוּכָה, הָרִי כוֹלֵן מְכוּרֵינִי.
 רַבִּי אֱלִיעֶזֶר אוֹמֵר הַמּוֹכֵר בֵּית
 הַבַּד, מָכַר אֶת-הַקּוֹרָה.

1 Literally *the sea*. The vat in the wine-press or oil-press. 2 Or press-beam for olives. 3 The two posts holding up the press-beams. 4 Or *load-stones*; or perhaps the special tool connected with the oil-press or wine-press for stirring the pulp. 5 Or *crane, pulley*. 6 Of the press; compare שֶׁבֶת 19. In a press-house objects not affixed to the ground are non-fixtures. 7 But anything left there by the seller temporarily is not included in the sale. 8 His opinion is rejected.

Mishnah 6

He who sold a bath-house has not sold the boards¹ or the benches or the curtains.² But when* [the vendor] said to him, 'It and everything that is in it,' then all these are sold

מִשְׁנָה ו
 הַמּוֹכֵר אֶת-הַמְרָחֵץ, לֹא מָכַר אֶת-
 הַנְּסָרִים, וְאֶת-הַסְּפָסְלִים, וְאֶת-
 הַיִּלְאוֹת, *בִּימֵן שְׁאָמַר לוֹ, הוּא וְכֹל

also. But in any case he has not sold to him the water-container³ or the stores of wood.⁴

*Or the definite *בְּיָמֵינוּ*.

מֵה־שְׁבִתוֹכוֹ, הָרִי כוֹלֵן מְכוֹרֵינִי.
בֵּין כֶּף וּבֵין כֶּף לֹא מָכַר אֶת־
הַמְּגִוְרוֹת שֶׁל מַיִם, וְלֹא אֶת־
הָאוֹצְרוֹת שֶׁל יַעֲצִים.

1 Planks placed on the floor for the bathers' clothes, and also for walking on because the floors were often heated from underneath and were too hot to step on. 2 Because none of these are fixtures. *וְיָלְאוֹת* plural form of *וְיָלוֹן*, curtain, door-curtain. 3 Or reservoirs for water. 4 Because the containers or stores of wood are not adapted exclusively for the efficient use of the bath-house.

Mishnah 7

If one sold a town,¹ he has also sold [the] houses, cisterns [or pits], trenches [or ditches], (and caves), bath-houses, (and) dovecotes, olive-pressing buildings,² and irrigated* fields,³ but not the movable property; but when § [the seller] said to him, 'It and all that is therein,' even if cattle and bondmen were in it, all these too are sold. Rabban Simon⁴ ben Gamaliel says, He who sold a township has also sold the fields around the town.⁵ *Or *בְּיָמֵינוּ*.

מִשְׁנָה ז
הַמּוֹכֵר אֶת־יְהוּדִיָּה, מָכַר בָּתִּים
בוֹרוֹת שִׁיחִין וּמְעָרוֹת מְרַחֲצָאוֹת
וְשׁוֹבְכוֹת, בֵּית הַפְּדִיִן וְבֵית
הַשְּׁלֶחִין, אֲבָל לֹא אֶת־הַמְּטַלְטְלִין;
וְכִבּוּשֵׁי שְׂאֵמֶר לוֹ, הִיא וְכָל מֵה־
שְׁבִתוֹכָהּ, אֲפִילוּ הָיוּ בָּהּ בְּהֵמָה
וְעַבְדִּים, הָרִי כוֹלֵן מְכוֹרֵינִי. רַבִּן
שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר, הַמּוֹכֵר
אֶת־יְהוּדִיָּה מָכַר אֶת־הַסָּבִיב.

1 Literally *the town*. 2 *בֵּית הַכֶּדֶר*, the building containing the olive-press(es) and the accompanying tank(s) and implements. 3 And *gardens, orchards*. 4 His view is not accepted. 5 Or *the guarded lands outside a town*; or according to another opinion, *the town warden or town bailiff*. *Traditional reading *הַשְּׁלֶחִין*.

Mishnah 8

If one sold a field, he has sold also the stones that are necessary to it,¹ and the canes in a vineyard that are required for its use,² and the produce attached to the ground, and any reed bushes that need less than a *quarter-kab's*³ area of ground [for seed to

מִשְׁנָה ח
הַמּוֹכֵר אֶת־הַשָּׂדֶה מָכַר אֶת־
הָאֲבָנִים, שֶׁהֵם יֹלְצוֹרְכָהּ, וְאֶת־
הַקְּנִיָּם שֶׁבְּכָרְם שֶׁהֵם יֹלְצוֹרְכוֹ, וְאֶת־
הַתְּבוּאָה שֶׁהִיא מְחוּבְּרֵת לַקֶּרְקַע,
וְאֶת־מְחִיצַת הַקְּנִיָּם שֶׁהִיא פְּחוּתָהּ

be sown on it], and the watchman's hut⁴ not plastered with clay,⁵ and the ungrafted⁶ carob-tree^{7*} and the young sycamore-tree.^{8*}

מבית רובע: ואת השומרה שאינה עשויה בטיט, ואת* החרוב שאינו מורכב, ואת בתולת* השקמה.

1 Stones in the field used for keeping down sheaves when drying, though not fixtures, may not be removed on sale. 2 The canes used for supporting the heavily laden clusters, though not fixtures, yet form a most essential part in a vineyard. 3 See **וְרָעִים**, Page 18f. 4 Or *watch-tower, lodge*. 5 Because it is of insignificant value and it is assumed that the grantor would not want to remove it. 6 Some authorities render it *stunted and fragile*. 7 Or *algaroba, Judas-tree, locust-tree*. 8 Such carobs and sycamores are considered as ordinary trees and are included in the sale of the land. *See **וְרָעִים** SUPPLEMENT, **מוֹעֵד** SUPPLEMENT.

Mishnah 9

But ¹[if one have sold a field], he has not sold the stones which are not necessary to it², or the canes of a vineyard that are not needed for its use,² or the produce that is detached from the soil.³ But when† [the vendor] said to him, 'It and everything contained therein,' then all these are also sold. But in any case, he has not sold the reed-thicket that takes up an area of a *quarter-kab*,* or a watchman's hut‡ that is plastered with clay, or a grafted carob-tree, or a fully grown sycamore-tree,⁴ or a cistern [or pit], or a wine-press, or a dovecote whether in ruin or in use. And [the grantor] must buy for himself a right of way,⁵ according to the opinion of R. Akiba; but the Sages say, He need not. And R. Akiba admits that when† [the vendor] said to him, 'These excepted,' he need not buy for himself a right of way. If he sold them to another, R. Akiba says, He must not buy a right of way for

משנה ט
 יאכל לא מכר לא את האבנים שאינן לצורקה, ולא את הקנים שבכרם שאינן לצורכו, ולא את התבואה שהיא תלושה מן הקרקע. ובזמן שאמר לו: היא וכל מה שבתוכה, הרי כולן מכורין. בין כף ובין כף לא מכר לא את מחיצת הקנים שהוא בית רובע, ולא את השומרה שהיא עשויה בטיט, ולא את החרוב המורכב, ולא את סדן השקמה, ולא את הבור, ולא את הנות, ולא את השוכה, בין תרבין בין ישובין. וצריך ליקח לו ידרך, דברי רבי עקיבא; וחכמים אומרים, אינו צריך. ומודה רבי עקיבא בזמן

himself; but the Sages say, He must buy a right of way for himself. All this applies to one who sells, but one who gives a gift gives them all. When brothers make partition,⁶ those who acquire possession of a field likewise come into possession of all those [articles above mentioned].⁷ If one take possession [by usucaption]⁸ of the property of an [heirless] proselyte, [and] he acquires title to a field, he also takes possession of all those [objects before mentioned].⁷ (And) if one dedicated⁹ a field, he has dedicated all those [articles enumerated above].⁷ R. Simon¹⁰ says He who consecrated a field has only consecrated the grafted carob-tree and the fully grown sycamore-tree.

שָׁאָמַר לוֹ, חוּץ מֵאֵלּוּ, שְׂאִינוּ צָרִיף לִיקַח לוֹ דָּרָף. מְכָרָן לְאַחַר, רַבִּי עֲקִיבָא אוֹמֵר אֵינוּ צָרִיף לִיקַח לוֹ דָּרָף; וְחֻכְמַיִם אוֹמְרִים צָרִיף לִיקַח לוֹ דָּרָף. בְּמָה דְבָרִים אָמוּרִים בְּמוֹכֵר, אֲבָל בְּנוֹתָן מִתְּנָה נוֹתֵן אֶת־כּוֹלָם. הָאֲחִין שִׁשְׁלָקוּ, וְכוּ בְשָׂדֵה, וְכוּ בְכוֹלָם. הַמַּחְזִיק בְּנוֹכְסֵי הַגֵּזֶר הַחֲזִיק בְּשָׂדֵה, הַחֲזִיק בְּכוֹלָם. וְהַמְקַדֵּשׁ אֶת־הַשָּׂדֵה, הַקַּדִּישׁ אֶת־כּוֹלָם. רַבִּי יִשְׁמַעוֹן אוֹמֵר הַמְקַדֵּשׁ שָׂדֵה לֹא הַקַּדִּישׁ אֶלָּא אֶת־הַחֲרוּב הַמְיֻרְכָב וְאֶת־סֵדֵן הַשְּׂקָמָה.

1 Compare the foregoing *Mishnah*. 2 Even if they were made ready for use in case of need. 3 Even if after gathering they still need the ground for drying they are not included in the sale of the land. 4 Or the trimmed sycamore, the trunk of a sycamore. See **וְרָעִים** SUPPLEMENT, **מוֹעֵד** SUPPLEMENT. 5 To have access to any of the aforementioned objects. 6 Of an inherited estate. 7 *sc.*, reed-thicket, etc., cistern, etc., and also right of way. 8 See 32, **Note 1**. 9 *Leviticus* 27, 16 *et seq.* 10 His opinion is rejected. *See **וְרָעִים**, Page 18f. §Literally the watchman's hut. Or lodge, watchtower. †Or the definite **בְּיָמֵן**.

CHAPTER 5

פֶּרֶק ה'

Mishnah 1

מִשְׁנָה א

If one sold a ship, he has also sold the mast, (and) the flag, (and) the anchor, and all the navigating implements;¹ but he has not sold the slaves, or the packing-bags,² or the cargo.³ But when* [the vendor] had said to him, 'It and everything in it,' then they are all sold. If one sold a wagon,

הַמּוֹכֵר אֶת־הַסְּפִינָה, מְכָר אֶת־הַתּוֹרָן, וְאֶת־הַגָּס, וְאֶת־הָעוֹגִין, וְאֶת־כָּל־יְהַמְנִיגֵין אוֹתָהּ; אֲבָל לֹא מְכָר לֹא אֶת־הָעֶבְדִּים, וְלֹא אֶת־הַמְרָצוּפִין, וְלֹא אֶת־הָאֲנָחְיָקִי. *וְכֹזֵם שָׁאָמַר לוֹ, הִיא

he has not sold the mules;⁴ if he sold the mules, he has not sold the wagon.⁵ If one sold the yoke, he did not sell the oxen; if he sold the oxen, he did not sell the yoke. § R. Judah⁶ says, The amount paid makes it evident: for instance, if [the buyer] said to him, 'Sell me thy yoke for two hundred *zuz*, it is manifest that the yoke [alone] is not worth two hundred *zuz*.⁷ But the Sages⁸ say, The sum paid is no proof.

*Or the definite יבִימֵן.

§See ADDENDA, Page 229.

וְכָל מַה שֶּׁשְּׂבָחוֹכָהּ, הָרִי כוֹלֵן
מְכוֹרִין. מָכַר אֶת־הַקָּרוֹן, לֹא
מָכַר אֶת־הַפְּרָדוֹת; מָכַר אֶת־
הַפְּרָדוֹת, לֹא מָכַר אֶת־הַקָּרוֹן.
מָכַר אֶת־הַצֶּמֶד, לֹא מָכַר אֶת־
הַבָּקָר; מָכַר אֶת־הַבָּקָר, לֹא מָכַר
אֶת־הַצֶּמֶד. רַבִּי יְהוּדָה אוֹמֵר
הַדָּמִים מוֹדִיעִין; כִּי־צַד, אָמַר לוֹ
מְכוֹר לִי צֶמֶד בְּמֵאֲתָיִם וְזוֹ, הַדָּבָר
יָדוּעַ שָׂאִין הַצֶּמֶד בְּמֵאֲתָיִם זֹוִי.
וְנַחֲכָמִים אוֹמְרִים, אֵין הַדָּמִים
רְאִיָּה.

1 Literally and all the [implements] that direct it. Everything essential for the management and sailing of the ship is included in the agreement. 2 Or leather cases. Specially adapted for ship loads. 3 Or the funds and stores. 4 If the beasts were hitched to the wagon when the sale was concluded they are included in the contract. 5 Not even if the wagon was hitched to the mules. 6 His opinion is not accepted. 7 And hence he meant also the oxen. זוֹ, see יָרְעִים, Page 18f. 8 Their view is the prevailing law.

Mishnah 2

If one sold an ass, he has not sold its trappings.¹ Nachum* the Mede² says, He has sold also its trappings.³ R. Judah⁴ says, Sometimes they are sold, and sometimes they are not sold; thus, if the ass were before him [namely, the intending buyer] and its trappings³ were on it, and he said to him, 'Sell me *this*⁵ ass of thine,' then its trappings are also sold; [but if he said to the owner, 'Sell me] *that*⁶ ass of thine,' then its trappings are not sold.

מִשְׁנֵה ב
הַמּוֹכֵר אֶת־הַחֲמוֹר, לֹא מָכַר
יְכָלָיו. נַחוּם יְהוּדִי אוֹמֵר מָכַר
יְכָלָיו. רַבִּי יְהוּדָה אוֹמֵר, פְּעָמִים
מְכוֹרִין, וּפְעָמִים אֵינֶן מְכוֹרִין; כִּי־צַד,
הָיָה חֲמוֹר לְפָנָיו, וְכָלָיו עָלָיו, וְאָמַר
לוֹ מְכוֹר לִי חֲמוֹרָךְ יָהּ, הָרִי כָלָיו
מְכוֹרִין; חֲמוֹרָךְ הוּא, אֵין כָּלָיו
מְכוֹרִין.
*Some prefer Nahum.

1 For riding, as the saddle, collar. This is the prevailing rule. 2 Or Median. His view is not accepted. 3 Here כָּלָיו refers not to the trappings but to the load

or objects carried by the beast. 4 His opinion is rejected. 5 *i.e.*, just as it is with all that is on it. 6 *i.e.*, the beast only (and not including what is on it).

Mishnah 3

If one sold (an ass, he has also its foal;² if he sold a cow, he has not sold its calf.³ If one sold a dunghill, he has also sold its manure.⁴ If one sold a cistern [or pit, or well], he has sold its water⁵ also. If one sold a beehive, he has also sold the bees. If one sold a dovecote, he has sold the pigeons too. If one buy up the contents⁶ of a dovecote from his fellow, he must let fly away the first brood.⁷ [If one buy] the [coming] contents of a beehive, he takes [only] three [of the coming] swarms, and then takes alternative swarms.⁸ [If one buy any] honeycombs, he must leave⁹ two honeycombs.¹⁰ [If one buy] olive-trees for felling, he must leave⁹ two shoots.¹¹

משנה ג
המוכר ¹(את-החמור מוכר את-
הספיח; מוכר את-הפרה לא מוכר
את-בנה. מוכר אשפה מוכר זבלה.
מוכר בור מוכר מימיו. מוכר) כנוורת,
מוכר דבורים. מוכר שוכך, מוכר
יונים. הלוקח פירות שוכך מחברו
מפריח בריכה ראשונה. פירות
כנוורת, גוטל שלשה נחילין ומסרס.
חלות דבש, מניח שני חלות. ויתים
לקוץ, מניח שני גרופיות.¹¹

1 Some authorities consider the part in parentheses redundant. Literally *the ass, the foal, the cow*. 2 But only if the buyer said 'a milching ass' (and as the milk from an ass is of no use to him it is evident that he wanted the foal too). 3 Literally *its son (offspring, child)*. Even if the buyer said 'a milching cow' this does not include the calf because there is no evidence that he did not want more than the cow giving its milk for his use. 4 A *dunghill* or *dungheap* is a place either three handbreadths high or three handbreadths deep for accumulating manure. 5 This view is attributed to R. Nathan, but the Sages do not agree with it and their opinion is accepted. 6 Literally *crop, fruit, produce*. 7 The first brood to be hatched belong to the seller and must be allowed to fly about with the mother bird(s). 8 The vendor and buyer divide the remaining swarms between them. According to another rendering, it means that the seller may render the remaining swarms impotent or non-productive by doses of mustard-seed to increase their honey productivity (compare **בבא בתרא** 80a). 9 Or **מניח**. 10 Otherwise the vendor would have no food for his bees in the winter. 11 Of two fists' size, for producing new shoots.

Mishnah 4

If one bought two trees in his fellow's field, he has not bought the

משנה ד
הקונה שתי אילנות בתוך שדה

ground [beneath them]. R. Meir¹ says, He has bought [the] ground. If they grew large, [the owner of the field] may not trim [them]. Whatever shoots up from the trunk belongs to him [namely, the buyer], but [whatever grows up] from the roots belongs to the owner of the soil. And if [the trees] die, the ground is not his.² If he bought three [trees], he has also bought the soil [with them]³; when they grow large, [the owner of the field] may trim [them];⁴ and whatsoever comes up from the stem or from the roots belongs to him [namely, the buyer]; and if [the trees] die, the ground is *his.⁵

חֲבָרוֹ, הָרִי וְהָ לֹא קָנָה קִרְקַע. רַבִּי
מֵאִיר אֹמֵר קָנָה קִרְקַע. הִגְדִּילוּ
לֹא יִשְׁפָּה, וְהָעוֹלָה מִן־הַנְּנוּעַ שְׁלוֹ,
וּמִן־הַשָּׂרְשִׁים שֶׁל בְּעַל הַקִּרְקַע.
וְאִם מָתוּ, אֵין לוֹ קִרְקַע. קָנָה
שְׁלֹשָׁה קָנָה קִרְקַע; הִגְדִּילוּ, יִשְׁפָּה;
וְהָעוֹלָה מִן־הַנְּנוּעַ וּמִן־הַשָּׂרְשִׁין,
שְׁלוֹ; וְאִם מָתוּ יִשְׁלֹ לוֹ קִרְקַע.

1 His opinion is rejected. 2 The buyer has no right to remove the dead wood and plant other trees in their stead. 3 Land having three (or more) trees on it is considered a tree-field, and so the vendor conveys title to the soil in this case and in addition outside this immediate soil as much ground as is needed by a vintner with his basket; but this holds good if (a) the trees form a triangle (or multiple-sided figure as the case may be), and (b) the distance between the trees must be over four cubits and under sixteen cubits (*cubit*, see זָרְעִים, Page 18f.). 4 If the branches interfere with the light over his field. 5 The buyer may replace the dead trees with others. *Or לוֹ.

Mishnah 5

מִשְׁנָה ה

If one sold the head of a large beast,¹ he has not sold the legs [or feet]; and if he sold the legs [or feet], he has not sold the head; if he sold the lungs,² he has not sold the liver; if he sold the liver, he has not sold the lungs. But in the case of small [cattle],³ if he sold the head, he has also sold the legs [or feet]; if he sold the legs [or feet], he did not sell the head too; if he sold the lungs, he has sold the liver also; if he sold the liver, he has not sold the lungs.⁴

הַמוֹכֵר רֹאשׁ בְּהֵמָה יְצֹפָה, לֹא מָכַר
אֶת־הָרַגְלִים; מָכַר אֶת־הָרַגְלִים,
לֹא מָכַר אֶת־הָרֹאשׁ; מָכַר אֶת־
הַקִּנָּה, לֹא מָכַר אֶת־הַכֶּבֶד; מָכַר
אֶת־הַכֶּבֶד, לֹא מָכַר אֶת־הַקִּנָּה.
אֲבָל בְּדָקָה, מָכַר אֶת־הָרֹאשׁ, מָכַר
אֶת־הָרַגְלִים; מָכַר אֶת־הָרַגְלִים,
לֹא מָכַר אֶת־הָרֹאשׁ; מָכַר אֶת־
הַקִּנָּה, מָכַר אֶת־הַכֶּבֶד; מָכַר
אֶת־הַכֶּבֶד, לֹא מָכַר אֶת־הַקִּנָּה.

1 As cow, ox. 2 Literally *trachea, windpipe*. Including the heart. 3 As sheep, calf, goat. 4 If the custom in any locality is otherwise then these rulings do not apply.

Mishnah 6

There are four rules that apply to vendors. If one sold to another wheat¹ as good, but it was found to be bad, the buyer can retract;² [if he sold it as] bad, but it was found to be good, the vendor can rescind;³ [but if he sold it as] bad, and it was found to be bad,⁴ [or as] good, and it was found to be good,⁵ then neither of them can withdraw;⁶ [if he sold it as] white [wheat], but it was found to be dark-coloured, [or if he sold⁹ as] olive-trees,¹ but they were found to be sycamore-trees,¹ [or if he sold it as] dark-coloured [wheat],⁷ but it was found to be white,⁸ [or if he sold as] sycamore-trees, but they were found to be olive-trees, [or if he sold as] wine, but it was found to be vinegar, [or if he sold as] vinegar, but it was found to be wine, both of them¹⁰ can retract.¹¹

משנה ו
 ארבע מדות במוכרין. מכר לו
 תהים יפות ונמצאו רעות, הלוקח
 יכול לתזור בו; רעות ונמצאו
 יפות, מוכר יכול לתזור בו; רעות
 ונמצאו רעות, יפות ונמצאו יפות,
 אין אחד מהם יכול לתזור בו;
 שחמתית ונמצאת לבנה, לבנה
 ונמצאת שחמתית, עצים של יית
 ונמצאו של שקמה, של שקמה
 ונמצאו של יית, יין ונמצא חומץ,
 חומץ ונמצא יין, שניהם יכולין
 לתזור בהן.¹¹

1 See רעיים! SUPPLEMENT, מועד SUPPLEMENT. 2 Compare מכא מצא 47. But the seller cannot retract even if the price has risen. 3 But the purchaser cannot withdraw even if the price has fallen. 4 The worst possible. 5 Of the highest excellence. 6 Because there was no misrepresentation and the terms were carried out correctly. 7 Which is used for making bread of inferior quality. 8 Which is used for making fine bread. 9 i.e., as wood or timber. 10 Either the buyer or the seller. 11 If there was an honest mutual misunderstanding each has the right to consider the sale as null and void.

Mishnah 7

If one sold produce to his fellow, and [the latter] drew it,¹ though he had not measured it, he has acquired possession;² but if [the seller]

משנה ז
 המוכר פירות לחברו, משך ולא
 מדה, קנה; מדה ולא משך, לא

measured it [into the buyer's vessel], but [the buyer] had not drawn it, he has not acquired title thereto. If [the buyer] were prudent, he would hire its place.³ If one bought flax from his fellow, then he has not obtained possession until he has removed it from one place to another;⁴ but if it were still attached to the soil, and [the buyer] plucked aught of it whatsoever, he has acquired title.

קָנָה. אִם הָיָה פְּקָתָהּ, שׁוֹכֵר אֶת-
 יִמְקוֹמוֹ הַלּוֹקָה פִּשְׁתָּן מִחֲבֵרוֹ הָרִי
 זֶה לֹא קָנָה, עַד שִׁטְטִלְטְלוּ מִמָּקוֹם
 לְמָקוֹם; וְאִם הָיָה בְּמַחֲבָר
 לְקָרְקַע, וְתִלַּשׁ כָּל-שֶׁהוּא, קָנָה.

1 An act of taking possession. See *Appendix, Note 7*; 14 קדושין, *Note 6*. 2 But it is understood that the price had first been agreed on. Compare 34 בָּבָא מִצִּיעָא. 3 Where the produce lies or or has to be measured. The spot being the buyer's, the produce lying there is automatically in his possession. 4 Flax being slippery, it cannot be effectively drawn or pulled for acquiring possession, hence it must be moved for that purpose.

Mishnah 8

If one sold wine or oil to his fellow, and it became¹ dearer or it became¹ cheaper, if [the price altered] before the measure² was filled up, it belongs to the seller,³ but if after the measure was filled up, it belongs to the buyer.⁴ If there were an agent⁵ between them, and the jar⁶ was broken, it was broken to the agent.⁷ And [the seller] is bound to let three more drops drip out for him [namely, the buyer].⁸ If he afterward turned the measure over and drained* [it], [this remnant] belongs to the seller.⁹ (But) the shopkeeper is not bound to let three more drops drip out.¹⁰ R. Judah¹¹ says, On the eve of the Sabbath, at dusk, one is exempt [from having to let more drops drip out]. *Compare תרוסה 11⁸; 87ab בָּבָא בִּתְרָא.

מִשְׁנֵה ח
 הַמּוֹכֵר יַיִן וְשֵׁמֶן לְחֲבֵרוֹ, וְהוֹקְרוּ
 אוֹ יִשְׁהוּלוּ, אִם עַד שֶׁלֹּא נִתְמַלְאָה
 יְהַמְדָה, לְמוֹכֵר, מִשְׁנֵתְמַלְאָה
 הַמְדָה, יִלְלוֹקְתָהּ. וְאִם הָיָה סֵרְסוּר
 בִּיגִיעָהּ, נִשְׁבְּרָה הַחֲבִית, נִשְׁבְּרָה
 לְסֵרְסוּר, וְחַיִּיב לְהַטִּיף לּוֹ שְׁלֹשׁ
 טַפִּיִּין. הַרְכִּינָה יוֹמִיצָהּ, הָרִי הוּא שֶׁל
 יִמוֹכֵר. וְהַחֲנִנִי אֵינוֹ חַיִּיב¹⁰ לְהַטִּיף
 שְׁלֹשׁ טַפִּיִּין. רַבִּי יְהוֹדָה אוֹמֵר
 עָרַב שֶׁבֶת עִם חֲשֻׁכָה, פָּטוּר.

1 Literally *they became*. 2 A middleman's measure loaned to them. 3 It is still in his possession and so he may rescind the sale or demand the new price. 4 This rule refers to the case where the measure was filled up in a courtyard or in an alley

belonging to neither of them. 5 Or *broker, middleman*. 6 Or *ask*. 7 The loss falls upon the agent; according to another opinion, the loss is the buyer's if he carried out the measuring. 8 After the measure has been emptied into the buyer's vessel it must be kept inclined to allow at the end three more drops drip out. 9 It is assumed that after the three drops had dripped off the seller has renounced his right to any further residue. 10 Since he may have no time to do so having many customers. 11 His view is rejected.

Mishnah 9

If one sent his child¹ to a shopkeeper with a *pondion*² in his hand, and [the shopkeeper] measured out an *issar*'s worth of oil for him and gave him an *issar* [in change], and [the child] broke³ the flask and lost⁴ the *issar*, the shopkeeper is liable.⁵ R. Judah exempts him,⁶ since [the father] had sent him for this purpose.⁷ But the Sages agree with R. Judah that if § the flask were in the hand of the child when the shopkeeper measured out [the oil] into it, the shopkeeper is exempt.⁸ *Or *בִּימָן*.

מִשְׁנָה ט
הַשּׁוֹלֵחַ אֶת־בְּנוֹ אֶצֶל חֲנוּנִי
וּפּוֹנְדִיּוֹן בְּיָדוֹ וּמָדַד לוֹ בְּאִיסָר
שֶׁמֶן, וְנָתַן לוֹ אֶת־הָאִיסָר, שֶׁשָּׁבַר
אֶת־הַצֵּלוֹחִית, וְאָבַד אֶת־הָאִיסָר,
הַחֲנוּנִי חַיִּיב. רַבִּי יְהוּדָה פוֹטֵר,
שֶׁעַל מְנַת כֵּן שָׁלְחוֹ. וּמוֹדִים תְּחֻמִּים
לְרַבִּי יְהוּדָה, *בְּזִמְן שֶׁהַצֵּלוֹחִית
בְּיַד הַתֵּינוּקָה, וּמָדַד הַחֲנוּנִי לְתוֹכוֹ
חֲנוּנִי פְּטוּר.
§Literally *when*.

1 A minor (a boy under twelve years of age, a girl under thirteen). 2 Or *dupondium* = 2 *issars* (see *וְרָעִים*, Page 18f.). The child was told to buy one *issar*'s worth of oil and bring back one *issar* change. 3 *שָׁבַר* [*Kal*] or *שָׁבַר* [*Piel*]. 4 *וְאָבַד* [*Kal*] or *וְאָבַד* [*Piel*]. 5 For the oil, the flask, and the lost *issar*, but only if the minor's father had clearly intimated that the child was not to be the agent on return. 6 *i.e.*, the shopkeeper (or storekeeper) is not liable. This view is not accepted. 7 Or *מְנַת*, the *Chaldaic* form, is the favoured reading. 8 He is not liable for the broken container, but he is still liable for the spilt oil and the lost *issar*.

Mishnah 10

The wholesaler¹ must clean out his measures once every thirty days, and the householder [must do so] once in twelve months.² Rabban Simon ben Gamaliel says, The reverse is the case³. The shopkeeper [or storekeeper] must clean out his

מִשְׁנָה י'
הַסֵּיטוֹן מְקַנֵּה מְדוּתוֹ אַחַת לְשָׁלְשִׁים
יּוֹם, וּבַעַל הַבַּיִת אַחַת לְשָׁנַיִם עֶשְׂרִי
יְחָדָשׁ. רַבִּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל
אוֹמֵר חֲלוּף הַדְּבָרִים. חֲנוּנִי מְקַנֵּה
מְדוּתוֹ פְּעָמִים בְּשָׁבָת, וּמִמָּחָה

measures twice a week,⁴ and rub up his weights once a week⁵ and polish up [his] scales [or balance] before each and every weighing.⁶

מִשְׁקָלוֹתָיו פְּעַם אַחַת בְּשַׁבָּת, וּמְקַנְחָם מֵאַזְנוֹיִם עַל כָּל-מִשְׁקָל וּמִשְׁקָל.

1 The wholesale provision dealer and seller of wine and oil. Dregs and sediment clinging to the bottom and sides of a measure internally reduce its correct capacity. 2 The producer does not measure out so much as the wholesaler and thus his measures do not get clogged up so quickly. 3 In his view the measures of the wholesaler being in constant use and not becoming dry do not clog so soon as those of a producer. 4 Because he is not legally obliged to let his measure drip three drops at every measure (see 5⁸). 5 Constant handling renders them heavier by dirt sticking to them, and one would cheat the wholesaler if such weights were used when buying stock. 6 Scales heavy with dirt would entail loss to a customer who would be receiving underweight.

Mishnah 11

מִשְׁנָה י"א

Rabban Simon ben Gamaliel said, All this concerns liquid measures, but in the case of dry measures it is not necessary.¹ Further, [the shopkeeper or storekeeper] must allow the scale to sink down one handbreadth.² If one balance the scales exactly,³ he must give him [namely, the customer] overweight⁴—one tenth for wet measures and one twentieth for dry measures. Where the usage is to measure with small measures, one may not measure⁵ with large ones;⁶ [and where it is customary to measure] with large measures, one should not measure with small ones;⁷ [where it is the custom] to remove the overtop,⁸ one should not heap it up;⁹ [and where it is the usage] to heap up, one is not to level down.¹⁰

אָמַר רַבִּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל בְּמֵה דְבָרִים אַמּוּרִים בְּלַח, אֶבֶל בִּיבֵשׁ אֵינוֹ צָרִיף. וְחַיִּיב לְהַכְרִיעַ לוֹ טַפָּח. הֲיָה שׁוֹקֵל לוֹ עֵץ בְּעֵין, נוֹתֵן לוֹ יִירוּמִיו, אֶחָד לְעֶשְׂרֵה בְּלַח, וְאֶחָד לְעֶשְׂרִים בִּיבֵשׁ. מְקוּם שְׁנֵהֲגוּ לְמוֹד בְּדָקָה, לֹא יִמוּד בְּגוֹסָה; בְּגוֹסָה לֹא יִמוּד בְּדָקָה; לְמַחּוֹק, לֹא יִגְדוֹשׁ; לְגְדוֹשׁ, לֹא יִמְחוֹק.

1 Because dry measures do not clog up by anything clinging to the inside. 2 See יְרֵעִים, Page 18f. The pan containing the goods must be one handbreadth lower than the pan with the weights, to the customer's advantage. This refers only to any locality where it is an established custom to do so and also only to goods weighing more than a pound. 3 i.e., allowing no overweight. Compare עֵין, [measure

with the eye] *balance exactly*. 4 **יְרוּמִים**, *customary overweight or overmeasure at sales*. 5 **יְמוּד**, general form; or **יְמוּד**, *Aramaic or Chaldaic form*. 6 So that the buyers do not lose the surpluses given with each measure. 7 There is no need for the seller to suffer loss by giving away surpluses with the small measures. 8 To brush off the dry goods from above the rim of the measure. 9 There is no call for a dealer to suffer loss. On the other hand, he must not charge for any such heaped up surplus, to prevent deception to the customer's disadvantage. 10 The customer must not lose by the non-observance of local custom, nor may the seller deduct from the price if he would smooth down as it might lead to dishonest practice on his part.

CHAPTER 6

פֶּרֶק ו'

Mishnah 1

מִשְׁנָה א

If one sold¹ grain to his fellow and it did not grow, even if it were seed of flax,² the vendor is not responsible. Rabban Simon ben Gamaliel says, In the case of garden seeds that are not used as food, he is responsible.³

הַמּוֹכֵר פִּירוֹת לַחֲבֵרוֹ, וְלֹא צָמְחוּ, וְאֶפִּילוֹ זָרַע פִּשְׁתָּן, אֵינּוּ חַיִּיב בְּאַחֲרֵייתָן. רַבֵּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר זָרַעוֹנֵי גֵּה שְׂאִיִן נֹאכְלִין חַיִּיב בְּאַחֲרֵייתָן.

1 And the seller did not state expressly whether it was fit for sowing or only fit for food. 2 Seeing that flax seed is generally bought for sowing. See **זְרָעִים** SUPPLEMENT, **מוֹעֵד** SUPPLEMENT. 3 This opinion—which is really in accord with the preceding ruling—is accepted.

Mishnah 2

מִשְׁנָה ב

If one sell produce to his fellow, the latter must accept* a *quarter-kab* of refuse in a *seah*;¹ [if one buy] figs, he must accept ten maggoty² ones in each hundred;³ [if one buy] a cellar of wine, he must accept ten [casks] of sour⁴ wine in each hundred;⁵ [if one buy] jars in Sharon,⁶ he must accept ten fragile⁷ ones in every hundred.⁸ **i.e.*, put up with.

הַמּוֹכֵר פִּירוֹת לַחֲבֵרוֹ, הָרִי זֶה מְקַבֵּל עָלָיו רֹבֵעַ טַנּוּפֹת יִלְסָאָה; תְּאֵנִים, מְקַבֵּל עָלָיו עֶשְׂרִי מִתּוֹלְעוֹת יִלְמָאָה; מִרְתֵּף שֶׁל יָיִן, מְקַבֵּל עָלָיו עֶשְׂרִי יְקוּסוֹת יִלְמָאָה; קַנְקָנִים בְּשָׂרוֹן, מְקַבֵּל עָלָיו עֶשְׂרִי פִּיטְסִיאוֹת יִלְמָאָה.

1 See **זְרָעִים**, Page 18f. 1 *kab* = 2,199 c.cm. 1 *seah* = 6 *kab*. Fruit generally contains a quarter of a *kab* of refuse in a *seah*. If this is exceeded the buyer has a right to make the seller rectify it. 2 Or *wormy*. 3 Even if the quantity bought is

less than one-hundred figs, the buyer must be prepared to accept ten per cent. maggoty ones. 4 Or *pungent*. 5 This rule applies if the vendor said, 'I sell thee this cellar of wine for flavouring,' or, 'I sell thee this cellar of wine,' or, 'I sell thee a cellar of wine.' But if he said, 'I sell thee a cellar of wine to be used *by thee* for flavouring,' then *all* the wine must be of good quality. 6 The Mediterranean coastal plain between Carmel and Jappho. 7 Or perhaps *absorbent, porous* (not properly baked). A plural form of פִּיטוּס. 8 The clay from this locality does not make good pottery—it comes out porous after baking and cannot be well glazed.

Mishnah 3

משנה ג

If one sold wine to his fellow and it turned sour, he is not answerable;¹ if, however, it were known that his wine was liable to turn sour,² then this is considered a purchase³ made in error. (And) if [the vendor] said to him, 'I sell thee spiced wine,' he must preserve it for him until the Festival of Pentecost.⁴ Old [wine] means that from last year, and *very old* [wine] means that which is three years [old].⁵

המוכר יין לחברו והתמיץ, אינו
 יחייב באחריותו; ואם ידוע שיינו
 ימתמיץ, חרי זה מקח טעות. ואם
 אמר לו יין מבושם אני מוכר לך,
 חייב להעמיד לו עד יהעצרת.
 ולשן משל אשתקד, ומיושן משל
 שלש שנים. *Or the pausal לך.

1 But only if the buyer had stated it was for flavouring and carried it away in his own vessels (which would have turned it sour). 2 But the buyer was unaware of it. If the seller knew that the nature of his wine was to turn sour, he is guilty of fraud if he did not make the buyer aware of it. Compare כחובות 16, 78. 3 Traditional pronunciation מִקָּח. 4 Or שבועות, *Feast of Weeks*. The seller must guarantee that the wine will remain good from the vintage season in the month of אב until the following month of סיון beyond which he can no longer be held answerable as wine is likely to turn sour in the hot and humid period. 5 Wine sold as *old* is presumed in law the product of the year preceding the present one; and in the case of wine termed *very old* the present year is included in the three, and the seller of such very old wine must guarantee that it will remain in good condition until the current year's harvest or סוכות, the Festival of Tabernacles.

Mishnah 4

משנה ד

If one sold to his fellow a place to build himself a house, and likewise also if one accepted from his fellow to build for him a bridal-house¹ for his son, or a widow-house for his

המוכר מקום לחברו לבנות לו
 בית, (וכן המקבל מחברו לבנות
 לו בית) תתנות לבנו ובית אלמנת

daughter,² he must build it four cubits by six; this is the opinion of R. Akiba. R. Ishmael says, This is a cattle-shed!³ If one would build a cattle-shed, he should build it four by six [cubits];⁴ a small house is six by eight [cubits]; a big [house] is eight by ten [cubits]; a dining-room⁵ is ten by ten [cubits]; and its height* should be [the sum of] half of its length and half of its width.⁶ Proof of this [last rule stated] is the Sanctuary [and its walls].⁷ Rabban Simon ben Gamaliel says, Everything should be in accordance with the structure of the Sanctuary.⁸

יִלְבְּתוּ, בּוֹנֵה אַרְבַּע אַמּוֹת עַל שֵׁשׁ ;
 דְּבָרֵי רַבִּי עֲקִיבָא. רַבִּי יִשְׁמַעְלֵאל
 אֹמֵר יִרְפֹּת בְּקֶרֶת הַזֶּה ! הַרוֹצֵה
 לַעֲשׂוֹת רִפְת בְּקֶרֶת, בּוֹנֵה אַרְבַּע אַמּוֹת
 עַל שֵׁשׁ ; בֵּית קֶטָן, שֵׁשׁ עַל שְׁמֹנֶה ;
 גָּדוֹל, שְׁמֹנֶה עַל עֶשְׂרִי ; סְרֻקְלִין.
 עֶשְׂרִי עַל עֶשְׂרִי ; רֹמוֹ כְּחֻצֵי אֶרְכּוֹ
 וְחֻצֵי רִחְבּוֹ. רֵאזָה לְדָבָר הַיָּקֵל.
 רַבֵּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אֹמֵר הֵפֵל
 כְּבִנְיַן הַיָּקֵל.
 *Or רֹמוֹ.

1 Or *additional rooms* [in the house of the bridegroom's father] for the young couple. *הַתְּנִיחַ*, wedlock, marital relation. Some consider the part in brackets as redundant. It used to be considered for a newly married couple more proper to live in the bridegroom's father's premises. 2 If a man's daughter lost her husband it was a custom for her to return to her paternal home and live there in a separate room. *אֶלְמֵנוּת*, widowhood. 3 Such a cramped structure is not fit for a dwelling. *Cubit*, see *וְרֵעִים*, Page 18f. 4 According to one opinion this rule was laid down by R. Akiba. 5 Or *reception-room*. 6 All these are minimum measurements if nothing to the contrary is mentioned in the agreement. Compare 16; *עִירֻבֵין* 66. 7 Referring to the Temple (1 *Kings* 6, 2, 17) which was forty cubits long, twenty cubits broad and thirty cubits (= half of forty plus half of twenty) high. 8 According to one opinion, this phrase should read *הֵפֵל כְּבִנְיַן הַיָּקֵל*, 'Should everything be in accordance with the building of the Sanctuary?'

Mishnah 5

If one possess* a cistern¹ behind² the house of his fellow, he may enter only at the times³ when others are wont to enter and leave at the time when others are accustomed to go out,³ and he may not bring in his cattle and water them from his cistern, but he must fill up [his vessels] and let them drink outside.

מִשְׁנֵה ה

מִי יֵשֵׁשׁ לוֹ יְבוֹר לְפָנָיִם מִבֵּיתוֹ שֶׁל
 חֲבֵרוֹ, וְכָנֵס בְּשַׁעַר שְׁדָרְךָ בְּנֵי אָדָם
 וְכָנֵסִין, וְיוֹצֵא בְּשַׁעַר שְׁדָרְךָ בְּנֵי אָדָם
 יוֹצֵאִין, וְאֵינוֹ מְכַנֵּס בְּהֵמָתוֹ וּמִשְׁקָה
 מִבוֹרוֹ, אֶלָּא מְמַלֵּא וּמִשְׁקָה מִבְּחוּץ.

The former may make himself a lock [to the cistern] and the latter may make himself a lock [to his door that gives access to the cistern].⁴

וְהָ עוֹשֶׂה לּוֹ פּוֹתַחַת, וְהָ עוֹשֶׂה לּוֹ פּוֹתַחַת.⁴

*Or שִׁישׁ-לוֹ. §Or בְּשַׁעַר.

1 Or *pit, well, tank*. 2 Literally *within*. 3 A owns the well and B owns the house, and there is only one entrance to both, then A must not go in and out at such times when this would be a nuisance to B. 4 A puts on a lock to prevent B using his water. B puts on a lock so that his wife is not suspected of using the water; or, according to another opinion, that he may deny A access to the water at inconvenient times, in which case he could fix a lock to the cistern or to the door.

Mishnah 6

מִשְׁנָה ו

If one possess* a garden situated behind¹ his fellow's garden, he may only go in at the time§ it is customary for people to enter, and he may leave only at the time§ others are wont to go out;² and he may not bring dealers into it,³ and he may not enter through it into another field,⁴ and the outer owner only may sow the pathway. If, by agreement between the two of them, he were given a path on the side, then he may go in whenever he pleases, and he may leave whenever he will; and he may bring dealers into it,⁵ but he may not enter through it into another field; and neither the one nor the other has a right to sow the pathway.⁵ *Or שִׁישׁ-לוֹ.

מִי שִׁישׁ לוֹ גִּינָה יְלִפְנֵי מְגִינְתּוֹ שֶׁל חֵבְרוֹ, נִכְנָס בְּשַׁעַר שְׂדֵרֶךָ בְּנֵי אָדָם נִכְנָסִים, וְיוֹצֵא בְּשַׁעַר שְׂדֵרֶךָ בְּנֵי אָדָם יּוֹצְאִין; וְאֵינוֹ מְכַנְּסִים לְתוֹכָהּ יִתְגַּרְרִין; וְלֹא יִכְנָס מִתּוֹכָהּ לְתוֹךְ שָׂדֶה אַחֶרֶת; וְהִחִיצוֹן זוֹרַע אֶת-הַדֶּרֶךְ. נִתְּנוּ לוֹ דֶּרֶךְ מִן-הַצַּד מִדְּעַת שְׂנֵיהֶם, נִכְנָס בְּשַׁעַר שֶׁהוּא רוֹצֵה, וְיוֹצֵא בְּשַׁעַר שֶׁהוּא רוֹצֵה; וּמְכַנְּסִים לְתוֹכָהּ יִתְגַּרְרִין; וְלֹא יִכְנָס מִתּוֹכָהּ לְתוֹךְ שָׂדֶה אַחֶרֶת; וְהָ וְהָ אֵינָם רְשָׁאִים לְזוֹרְעָהּ.

1 There is only one entrance to both gardens and the former has to go through the latter's garden to get to his own garden. 2 The former must not cause annoyance to the latter. 3 Unless there is a definite agreement that he may do so. 4 He may not make of his fellow's garden a short cut into some other property adjoining. 5 Since the pathway is at the side of the field or garden the outside owner does not suffer such great inconveniences and the inner owner has greater freedom of access. 6 Literally *to sow it*. §Or the *indefinite* בְּשַׁעַר, בְּשַׁעַר, *at a time*.

Mishnah 7

If there were a public path passing through one's field, and he took it [for himself] and gave them [another pathway] at the side [of the field], what he has given he has given but what he took for himself is not his.¹ A private path is four cubits [wide];² a public thoroughfare is sixteen cubits [wide]; the king's highway has no limit;³ the road to a grave has no limit;⁴ the [funeral] halting-place,⁵ according to the judges of Sepphoris,⁶ is to be a four *kabs*' area.⁷

1 He has no right to seize the public path, and cannot take back what he had substituted. 2 At least four cubits, to enable a loaded beast to pass along it. See **וְרָעִים**, Page 18f. 3 Sanhedrin 24. 4 So that large funeral escorts can get along it conveniently. 5 For funeral escorts, and where mourners received consolation, and for lamentation. 6 In Upper Galilee. Compare **מְגֵלָה** 6a. Literally *the judges of Sepphoris said*. 7 A space that requires four *kabs* of seed for sowing.

Mishnah 8

If one sell to his fellow a place to make a burial ground,¹ or if one accept from his fellow to make for him a burial ground,² he must make the inside of the vault [not less than] four cubits by six,³ and he must open therein eight crypts,⁴ three on one side⁵ and three on the other side and two opposite [the entrance]; and the crypts must be four cubits in length,⁶ and their height* seven [handbreadths]⁷ and their width six [handbreadths].⁸ R. Simon⁹ says, He must make the interior of the vault six cubits by eight, and he must open therein thirteen crypts, four on this side and four on the other

מִשְׁנָה ז

מִי שֶׁהֵיחָה דֶרֶךְ הַרְבִּים עוֹבְרָת בְּתוֹךְ שָׂדֵהוּ, וְנָטְלָה וְנָתַן לָהֶם מִן הַצֵּד, מֵה־שָׁנְתָן וְנָתַן וְשָׁלוּ לֹא הֵגִיעוּ. דֶרֶךְ הַיְחִיד אַרְבַּע אַמּוֹת; דֶרֶךְ הַרְבִּים שֵׁשׁ עֶשְׂרֵה אַמּוֹת; דֶרֶךְ הַמְלָךְ אֵין לָהּ יִשְׁעוֹר; דֶרֶךְ הַקֶּבֶר אֵין לָהּ יִשְׁעוֹר; הַמַּעֲמָד דִּיִּינֵי צְפוּרֵי אָמְרוּ בֵּית אַרְבַּעַת קַבִּין.

מִשְׁנָה ח

הַמוֹכֵר מְקוֹם לְחַבְרוֹ, לַעֲשׂוֹת לוֹ קֶבֶר, וְכֵן הַמְקַבֵּל מִחַבְרוֹ לַעֲשׂוֹת לוֹ קֶבֶר, עוֹשֶׂה תּוֹכָה שֶׁל מַעְרָה אַרְבַּע אַמּוֹת עַל שֵׁשׁ וּפּוֹתֶחַ לְתוֹכָה שְׁמוֹנֶה יְכוּכִין, שְׁלֹשׁ מִכָּאן וְשְׁלֹשׁ מִכָּאן וּשְׁנַיִם מִכְּנֻדָּן; וְכוּכִין אַרְבֵּן אַרְבַּע אַמּוֹת, וְרוֹמָן יִשְׁבְּעָה, וְרַחְבּוֹן יִשְׁשָׁה. רַבִּי שִׁמְעוֹן אוֹמֵר עוֹשֶׂה תּוֹכָה שֶׁל מַעְרָה שֵׁשׁ אַמּוֹת עַל שְׁמוֹנֶה, וּפּוֹתֶחַ לְתוֹכָה שְׁלֹשָׁה עֶשְׂרֵה כּוּף, אַרְבַּעַת מִכָּאן וְאַרְבַּעַת

side, and three opposite [the entrance], and one on the right side of the doorway and one on the left; and he must make a forecourt at the mouth of the vault six [cubits] by six, sufficient space for the bier and its buriers,¹⁰ and he may open therein two [other] vaults, one on one side and one on the other. R. Simon says, Four vaults on its four sides.¹¹ Rabban Simon¹² ben Gamaliel says, All depends on the character of the rock.

מִבְּאֵן וְשֵׁלֶשׁ מִכְּנֻגָּדָן, וְאַחַד מִיְמִין
הַפֶּסֶס וְאַחַד מִן־הַשְּׂמַאל; וְעוֹשֶׂה
חֲצָר עַל פִּי הַמַּעְרָה שֶׁשׁ עַל שֶׁשׁ
כְּמֵלֵא הַמָּטָא ¹⁰ וְקוֹבְרֵיהָ, וּפּוֹתֶהָ
לְחֹכָה שְׁתֵּי מַעְרוֹת אַחַת מִבְּאֵן
וְאַחַת מִבְּאֵן. רַבִּי שִׁמְעוֹן אוֹמֵר
אַרְבַּע לְאַרְבַּע ¹¹ רְחוֹתֶיהָ. רַבִּן
¹² שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר הַכֹּל לְפִי
הַסֵּלַע. *Or וְרוֹמָן.

1 Or *grave, tomb*. 2 In the buyer's ground. 3 And four cubits high. See וְרַעִים, Page 18f. 4 Or *ossuaries, niches, sepulchral chambers* in which the coffins with the dead were deposited. 5 Traditional pronunciation מִבְּאֵן (מִבְּאֵן). 6 To enclose the coffin completely. 7 To allow a free space of one handbreadth to prevent ritual uncleanness being conveyed to a bystander. 8 Thus between one grave and the next lengthwise is one and a half cubits, and two cubits between the two opposite the entrance. 9 His opinion is rejected. 10 *i.e.*, bearers. 11 *i.e.*, one vault on each of its four sides. 12 His view is not accepted.

CHAPTER 7

פָּרָק ז'

Mishnah 1

מִשְׁנָה א'

If one said¹ to his fellow, 'I sell to thee* a *kor's* area of soil,² and there were rifts ten handbreadths deep, or rocks ten handbreadths high, they are not included in the measure;³ but if they were less than this,⁴ they are included in the measurement.⁵ But if he said to him, 'About a *kor's* area of soil,⁶ even if there were rifts more than ten handbreadths deep or rocks more than ten handbreadths high, they are included in the measurement.

יְהוֹמֵר לְחֵבְרוֹ בֵּית כּוֹר יַעֲפֹר אֲנִי
מוֹכֵר * לְךָ, הֲיוּ שָׁם גְּקָעִים עֲמוּקִים
עֲשָׂרָה טַפְחִים, אוֹ סְלָעִים גְּבוּהִים
עֲשָׂרָה טַפְחִים, אֵינָן נִמְדָּדִין עִמָּה;
פְּחוֹת מִבְּאֵן נִמְדָּדִין עִמָּה. וְאִם
אָמַר לוֹ כְּבֵית כּוֹר יַעֲפֹר, אֲפִילוּ
הָיוּ שָׁם גְּקָעִים עֲמוּקִים יוֹתֵר
מִעֲשָׂרָה טַפְחִים, אוֹ סְלָעִים גְּבוּהִין
יוֹתֵר מִעֲשָׂרָה טַפְחִים, הָרִי אֵלָיו
נִמְדָּדִין עִמָּה. *Or *pausal* לְךָ.

1 Literally *say*. 2 *i.e.*, a space requiring a *kor* of seed; *kor* = 75,000 square cubits (see וְרַעִים, Page 18f.). 3 If the vendor uses the term *soil* when selling a *kor's*

space of land then the presence of such rifts or rocks render the sale null and void, and the buyer can refuse to accept even if the seller offers to make a reduction in the sale price. 4 Traditional reading **מִפְּאֵן** 5 But only if all the stones together occupy a space requiring at most four *kabs* of seed for sowing. 6 Land requiring *about* a *kor* of seed for sowing.

Mishnah 2

[If one said to his fellow,] 'I sell to thee a *kor*'s space of land,¹ as measured with the rope,² if he gave him the least bit less, he must make an allowance,³ and if he gave him the least bit more, [the buyer] must return [it].⁴ If he said, 'Whether it is less or more,' even though there was less than a *quarter-kab*'s⁵ space in every *seah*'s space⁶ or if there were more than a *quarter-kab*'s space to each *seah*'s, [the buyer] acquires possession; but if it were more than this,⁷ an adjustment must be made.⁸ What must [the buyer] restore to him? Money; but if [the seller] so desired, he must return land to him. And why⁹ did they say that he could give him back money? To give the vendor the prerogative;¹⁰ for if there remained in a field¹¹ a space requiring nine *kabs*, or half a *kab*'s space in a garden—and according to the view of R. Akiba,¹² a *quarter-kab*'s area¹³—then [the buyer] must give back to him the [excess] soil¹⁴; and not only must he restore to him the *quarter-kab*'s space but also all the remainder.¹⁵

1 Soil requiring a *kor* of seed. See **רָעִים**, Page 18f. 2 *i.e.*, exact dimensions. 3 For the deficiency. Or, the buyer may deduct from the sale price. 4 But, in either case, only if the agreement explicitly states that the measurement must be made with the line. 5 *Quarter-kab* = $104\frac{1}{4}$ square cubits. 6 *Seah's area* = 2,500 square cubits. 7 **מִפְּאֵן** popular pronunciation. 8 The value of the excess must be ascertained according to the price of a *seah*. 9 Or **וְלִמָּה**. 10 He has the option of demanding either money or land but only when the excess land is less than the

מִשְׁנָה ב

בֵּית כּוֹר עֶפְרָר אָנִי מוֹכֵר לְךָ מִדָּה¹
 בְּחֻבְל, פִּיחַת כָּל־שְׁהוּא יִנְכָּה,²
 הוֹתִיר כָּל־שְׁהוּא יִחְזִיר. אִם אָמַר
 הֵן חֶסֶר הֵן יִתֵּר, אֶפִּילוּ פִּיחַת כְּרוֹבַע
 יִלְסָאָה אוֹ הוֹתִיר רוֹבַע לְסָאָה
 הִנְיָעוּ; 'יֹתֵר מִכָּאֵן יַעֲשֶׂה חֶשְׁבוֹן.
 מָה הוּא מִחְזִיר לוֹ? מַעוֹת; וְאִם
 רָצָה מִחְזִיר לוֹ קֶרֶקַע. וְלִמָּה אָמְרוּ
 מִחְזִיר לוֹ מַעוֹת? לִפְנוֹת יִכְחוּ שֶׁל
 מוֹכֵר; שָׂאֵם שְׂיִיר¹¹ בְּשָׂדֵה בֵּית
 חֲשָׁעָה קִבּוּן, וְכִגְיָנָה בֵּית חֲצִי קֶב,
 וְכִדְבָרֵי רַבִּי עֲקִיבָא¹³ בֵּית רוֹבַע,
 מִחְזִיר לוֹ אֶת־הַקֶּרֶקַע; וְלֹא אֶת־
 הַרוֹבַע בְּלִבְד הוּא מִחְזִיר אֶלָּא אֶת־
 כָּל־הַמּוֹתֵר.¹⁵

measure mentioned in the next sentence. 11 Of a *kor* area. 12 His view is rejected. 13 Compare 16. 14 But not money. An area requiring nine *kabs* of seed is deemed a field. A piece of land requiring half a *kab* of seed is considered a garden. 15 If the field sold contains more than a *quarter-kab's* space above the sold *kor's* space, the buyer must restore both the surplus above the *quarter-kab* and every *quarter* for each *seah* legally allowed, since each part being accounted a field was not intended by the vendor to be given away as a concession.

Mishnah 3

משנה ג

[If one said to his fellow,] 'I sell to thee as measured with the rope,¹ whether it be less or more,² [the stipulation] *whether it be less or more annuls* [the condition] *as measured with the rope.* [If he said,] [I sell to thee] whether it be less or more as measured by the rope,' [the provision] *as measured by the rope nullifies* [the proviso] *whether it be less or more.* This is the view of ben Nanos.³ [If he said, 'I sell to thee a *kor's* space of land] by its description⁴ and by its boundaries,⁵ if it were less⁶ than one sixth,⁷ he takes possession of it;⁸ but if it were one sixth,⁹ he must make an allowance.¹⁰

מדה¹ בַּחֶבֶל אֲנִי מוֹכֵר לְךָ הֵן חֶסֶר
הֵן יֵתֵר, בְּטֵל הֵן חֶסֶר הֵן יֵתֵר מְדָה
בַּחֶבֶל. הֵן חֶסֶר הֵן יֵתֵר מְדָה
בַּחֶבֶל, בְּטֵל מְדָה בַּחֶבֶל הֵן חֶסֶר
הֵן יֵתֵר. דְּבָרֵי בֶן נָנוֹס.⁴ בְּסִימָנָיו
וּבְמִצְרָיו פְּחוּת מִשְׁתּוֹת⁸ הֶגְיָעוּ;
עַד שְׁתּוֹת¹⁰ יִנְכָּה.

1 The measuring line. 2 These are contradictory clauses. 3 His opinion is rejected. The rule that 'of two conflicting provisions in a contract that one which is less favourable to the grantee must hold good' is the law according to the Sages. 4 Or *marks*. 5 Or *boundary lines*. And on measuring it turns out to be less than a *kor's* area. 6 *פְּחוּת* traditional pronunciation. 7 *i.e.*, less than one-sixth of the specified area. Traditional pronunciations *שְׁתּוֹת*, *מִשְׁתּוֹת*. 8 The sale is valid. Literally *he has taken possession of it*. 9 Or more. 10 *i.e.*, the seller must make up for the deficiency. Another rendering is, [the buyer] *may deduct from the sale price*. The prevailing law is that this applies when the deficiency is above one-sixth, but if exactly one-sixth or less the buyer has no redress.

Mishnah 4

משנה ד

If one say to his fellow, 'I sell to thee* one half of the field,¹ it must be divided between them into parts of equal worth and [the buyer] must take the half of his field.² [If he

הָאֹמֵר לְחֵבְרוֹ חֲצִי יִשְׁדֶּה אֲנִי מוֹכֵר
לְךָ, מִשְׁמַנִּין בְּיָדֵיהֶן וְנוֹטֵל חֲצִי
יִשְׁדֶּהוּ. חֲצִיָּהּ בְּדָרוֹם אֲנִי מוֹכֵר

say,] 'I sell to thee* half of it on the south side,' they must divide it between them into two portions of equal value, and [the purchaser] receives³ the half of it on the south side. [The vendor] must undertake [to provide] space for a fence,⁴ and for a large ditch⁵ and for a small ditch. And what is [the width of] a large ditch? Six handbreadths. And [how wide is] a small ditch? Three handbreadths.⁶

*לך, משמנים ביניהן ינוטל הצד השמאלית. הוא מקבל עליו מקום הגדר, חריץ וכן חריץ. וכמה הוא חריץ? ששה טפחים. וכן חריץ? שלשה.

1 And one part is superior to the other part. Literally a field. 2 The field is divided into two portions of equal value, but the vendor has first choice and the purchaser must accept the part allotted to him. Compare בכורות 26,7. 3 The buyer takes first choice, and the seller must accept the part assigned to him. 4 Or dividing wall. 5 Or trench. 6 And one handbreadth between two ditches or trenches. See ירעמי, Page 18f. *Or the pausal לך?

CHAPTER 8

פרק ח

Mishnah 1

משנה א

There are such [near of kin] as both inherit property and bequeath property, some who inherit but do not bequeath, some who bequeath but do not inherit, and some that neither inherit nor bequeath. (And) these both inherit and bequeath: a father and children,¹ and children and father,² and brothers of one father³—these both inherit and bequeath property. A man [and] his mother,⁴ a man [and] his wife,⁴ and sisters' children⁵—they inherit but do not bequeath. A woman [and] her children, and a woman [and] her husband, and brothers of the mother—they bequeath but they do not inherit. And brothers of one mother neither inherit nor bequeath.⁶

יש גוחלין ומנחילין, יש גוחלין ולא מנחילין, מנחילין ולא גוחלין, לא גוחלין ולא מנחילין. ואלו גוחלין ומנחילין, האב ואת הבנים, והבנים ואת האב, והאחין מן האב, גוחלין ומנחילין. האישה ואת אמו והאיש ואת אשתו, ובני אחיות, גוחלין ולא מנחילין. האשה ואת בניה, והאשה את בעלה, ואחי האב, מנחילין ולא גוחלין, והאחים מן האב לא גוחלין ולא מנחילין.

1 If a man left no will his possessions pass to his children. 2 If the children die without issue and intestate their property passes to the father. 3 If one brother dies

leaving no issue and the father also is dead the living brothers share his property. 4 See next *Mishnah* why a woman cannot inherit from her son by descent nor a woman from her husband by descent. 5 A man or woman might inherit from his mother's sisters by descent, but it is impossible for a man to inherit from his sister's children. 6 As they are not of one father, and one dies without an heir, and she can never inherit from her son, her other son in consequence cannot inherit through her.

Mishnah 2

משנה ב

The order of inheritance [among near of kin] is as follows: If¹ a man die and he have no son, then ye shall cause his inheritance to pass unto his daughter; a son takes precedence over² the daughter,³ and all the offspring of a son take precedence over the daughter;³ a daughter takes precedence over the brothers,⁴ [and all] the offspring of a daughter take precedence over the brothers;⁴ brothers take precedence over the father's brothers, [and] the offspring of brothers take precedence over the father's brothers. This is the general principle*: whoever has precedence in an inheritance, his offspring have also precedence, and the father has precedence before all his offspring.⁵

סדר נחלות כִּף הוּא, אִישׁ כִּי יָמוּת
וּבֶן אֵין לוֹ וְהֵעֲבִרְתֶּם אֶת-נַחֲלָתוֹ
לְבָתוֹ; בֶּן קוֹדֵם לְבַת, וְכָל-יוֹצְאֵי
יָרְכוּ שֶׁל בֶּן קוֹדֵמִין לְבַת; בֵּת
קוֹדֵמֶת לְאַחִין, יוֹצְאֵי יָרְכֶה שֶׁל בֵּת
קוֹדֵמִין לְאַחִין; אַחִין קוֹדֵמִין לְאַחֵי
הָאָב, יוֹצְאֵי יָרְכוּ שֶׁל אַחִין קוֹדֵמִין
לְאַחֵי הָאָב. זֶה הַכֶּלֶל, כָּל-הַקּוֹדֵם
בְּנַחֲלָה, יוֹצְאֵי יָרְכוּ קוֹדֵמִין, וְהָאָב
קוֹדֵם לְכָל-יוֹצְאֵי יָרְכוּ.

1 Numbers 27, 8. 2 Or have priority before. 3 Or לבת, over a daughter. 4 Of the deceased. Or לאחין, over brothers. 5 If A dies without a will his sons if alive, else their sons, are the heirs; if the grandsons have no sons then their daughters are the heiresses, but if there are no such granddaughters, then A's daughters become heiresses, and when these die their sons are the heirs, or if there are none, their daughters are the heiresses. If A dies childless, his property passes to his father B on whose death it passes to his (B's) offspring (according to the order and precedence as stated with A). If B also has no issue then his father C (i.e., A's grandfather) becomes the heir, and on his death the inheritance is once again transmitted according to the above method. *Popularly pronounced הכלל.

Mishnah 3

משנה ג

The daughters of Zelophehad took three shares of the inheritance:¹ the portion of their father who was

בנות צִלְפַּחַד נָטְלוּ שְׁלֹשָׁה חֲלָקִים
בְּנַחֲלָה, חֲלָק אֲבִיהֶן שֶׁהָיָה עִמָּם

one of those that went out of Egypt, and his portion among his brothers in the property of Hopher,² and because he was the firstborn he took³ a double share.⁴

יֹצְאֵי מִצְרַיִם, וְהִלְקוּ עִם אָחִיו
בְּנֹכְסֵי חֹפֶר, וְשֶׁהָיָה בְּכוֹר, נֹטֵל
שְׁנֵי חֵלְקִים.

1 *Numbers 27, 1 et seq.* According to this opinion the Land of Canaan was divided out among those who were twenty years of age at the Exodus. Thus Zelophehad who was of this age was entitled to a share and being the firstborn he also inherited a double portion from Hopher, his father, who died in the Wilderness, and thus these shares fell to the lot of the daughters. 2 *Numbers 26, 32.* 3 Literally *takes*. 4 Canaan was already considered as being in the possession of the Israelites—otherwise no such prearrangement would have held good.

Mishnah 4

מִשְׁנָה ד

The same law of inheritance applies alike to the son and the daughter,¹ except that the son² takes a double share of the father's estate,³ but does not take two portions of the mother's estate; and the daughters are supported from the father's estate, but they are not maintained from the mother's estate.⁴

אֶחָד הֵבֵן וְאֶחָד יְהִיבַת בְּנִחְלָה, אֵלָּא
יִשְׁהֵבֵן נֹטֵל פִּי שְׁנַיִם בְּנֹכְסֵי הָאָב,
וְאִינוּ נֹטֵל פִּי שְׁנַיִם בְּנֹכְסֵי הָאֵם;
וְהַבָּנוֹת גְּזוּנוֹת מִנֹּכְסֵי הָאָב, וְאֵינָן
גְּזוּנוֹת מִנֹּכְסֵי הָאֵם.

1 Sons and (eventually if there is none) daughters inherit equally the property of both the father and the mother, with the two following exceptions where an inheritance coming from a mother differs from that obtained from a father. 2 If a firstborn. 3 *Deuteronomy 21, 17.* Double share does not mean twice as much as all the others together (in other words, two-thirds of the whole) but double that of each of the others individually; thus, if there are $x + 1$ heirs including the firstborn, the estate is divided into $x + 1$ equal portions and the firstborn is entitled to two of these portions. 4 Compare 91; *קְחוּבוֹת* 411. The daughters have priority for support, even if the sons have to go without any maintenance, in the case of a father's death, as is provided for in the *marriage settlement* (see *Appendix, Note 8; קְחוּבוֹת* INTRODUCTION), but on a mother's death the sons are entitled to the whole of her property.

Mishnah 5

מִשְׁנָה ה

If one say, 'My son so-and-so, that is the firstborn, shall not take a double portion,' or, 'My son so-and-

הָאוֹמֵר אִישׁ פְּלוֹנִי בְּנִי בְּכוֹר לֹא
יִטוֹל פִּי שְׁנַיִם, אִישׁ פְּלוֹנִי בְּנִי לֹא

so shall not inherit with his brothers,' he has said naught,¹ because he has made a condition contrary to what is written in the Law.² If one dispose of his estate to his sons by word of mouth, and gave more to one son and apportioned less to another, or made the firstborn alike with them,³ his words are valid; but if he said, '[This is to be] by inheritance,' he has said naught.⁴ If he wrote [in a will] either in the beginning, or in the middle, or at the end, '[This is to be] as a gift,' his words are licit.⁵ If one say, 'So-and-so⁶ shall inherit from me,' when there is* a daughter,⁷ or, 'My daughter shall inherit from me,' when there is§ a son, he has said naught, since he has made a provision contrary to what is written in the Law. R. Jochanan⁸ ben Baroka says, If he said it concerning one qualified⁹ to inherit from him, his words are valid, but if concerning one not qualified to be his heir, his words are not valid. If one deed his property to others and passed over¹⁰ his children, what he has done is done, but the Sages find no pleasure in him.¹¹ Rabban Simon¹² ben Gamaliel says, If his children did not conduct themselves aright, it should be reckoned to his credit.¹³

יִירַשׁ אִם אָחִיו, לֹא אָמַר כְּלוּם, שֶׁהִתְנָה עַל מַה־שֶּׁכָּתוּב בְּתוֹרָה. הַמְחַלֵּק נִכְסָיו לְבָנָיו עַל פִּיו, רִיבָה לְאָחֵד וּמֵעֵט לְאָחֵד, וְהִשָּׁנָה לְהֵן אֶת־הַבְּכוֹר, דְּבָרָיו קְיָיִמִין; וְאִם אָמַר מִשׁוּם יְרוּשָׁה, לֹא אָמַר כְּלוּם. כָּתַב בֵּין בְּתוּחְלָה בֵּין בְּאִמְצָע בֵּין בְּסוֹף, מִשׁוּם מִתְּנָה, דְּבָרָיו קְיָיִמִין. הָאוֹמֵר 'אִישׁ פְּלוֹנִי יִירָשֶׁנִּי, בְּמִקּוֹם *שְׂיִישׁ בֵּית, בְּתִי תִירָשֶׁנִּי, בְּמִקּוֹם שְׂיִישׁ בֵּן, לֹא אָמַר כְּלוּם, שֶׁהִתְנָה עַל מַה־שֶּׁכָּתוּב בְּתוֹרָה. רַבִּי יוֹחָנָן בֶּן בְּרוּקָה אוֹמֵר אִם אָמַר עַל מִי שֶׁהוּא רָאוּי לְיִוְרְשׁוֹ דְּבָרָיו קְיָיִמִין, וְעַל מִי שֶׁאִין רָאוּי לְיִוְרְשׁוֹ, אִין דְּבָרָיו קְיָיִמִין. הַכּוֹתֵב אֶת־נִכְסָיו לְאֲחֵרִים, יוֹהֵינִיחַ אֶת־בָּנָיו, מַה־שֶּׁעָשָׂה עָשָׂה, אֲבָל אִין רוּחַ חֻקִּים נוֹחָה¹¹ הֵימְנוּ. רַבֵּן יִשְׁמַעֲוֹן בֶּן גַּמְלִיאֵל אוֹמֵר אִם לֹא הָיוּ בָּנָיו נוֹהֲגִין כְּשׁוֹרָה, וְכוּר לְטוֹב.¹³

*Or שְׂיִישׁ־בֵּית.

1 Even if his son had agreed. 2 *Deuteronomy* 21, 17; 91 כְּתוּבוֹת. 3 *i.e.*, he assigned to him an equal portion with the others. 4 See 97. A man who is dangerously ill may dispose of his property, in writing or by word of mouth, among his children in any proportion in the nature of a gift, but not by will. 5 But if he says that it is given away as an inheritance to certain persons excluding legal heirs it is invalid. 6 Not a legal heir. 7 And all the more so when there is a son. 8 His opinion is accepted. 9 One of

several sons or daughters. But the law still holds good that brothers cannot inherit where there are legal children heirs, nor can a daughter take priority over a son, nor may a firstborn be deprived of the double share. 10 Or **וְהִנִּיחַ**. 11 Or **הִימָנוּ**. i.e., they do not approve of his conduct. 12 His view is rejected. Children must not be deprived of their rightful inheritance. 13 Popular reading **זָכוֹר לְטוֹב**; literally *remembered for good*. §Or **שִׁישׁ-בַּן**.

Mishnah 6

If one say, 'This is my son,' he is to be believed;¹ [if he say,] 'This is my brother,' he is not to be believed;² but he may share with him his portion.³ If he die, the property must revert to the original heirs.⁴ If property fell to him from another source, his brothers inherit it with him.⁵ If one died, and a deed of gift⁶ was found tied on to his body, this is accounted as naught.⁷ But if he granted title therewith to someone else,⁸ whether of his direct heirs or of such as were not of his heirs, his words are valid.

משנה ו

הַאֹמֵר זֶה בְּנִי, יִנְאַמֵּן; זֶה אָחִי, אִינוֹ יִנְאַמֵּן; וְנוֹטֵל עִמּוֹ בְּחֶלְקוֹ. מֵת, יַחְזְרוּ נְכָסִים לְמִקְוֵמֵן. וְכֵלֵן לֹא נְכָסִים מִמָּקוֹם אַחֵר, יִירָשׁוּ אֲחָיו עִמּוֹ. מִי שֶׁמֵּת וְנִמְצְאָת **דִּיאָתִיקָן** קְשׁוּרָה עַל יָרְכוֹ, הֲרֵי זֶה אֵינָהּ כְּלוּם. זִיכָּה בָּהּ לְאַחֵר, בֵּין מִן הַיֹּרְשִׁין, בֵּין שְׂאֵינוֹ מִן-הַיֹּרְשִׁין. דְּבָרָיו קָיָמִין.

1 And the son is entitled to a share in the inheritance, and he is also instrumental in freeing the widow his mother from the consequences of the *levirate* bond (see **יְבָמוֹת** INTRODUCTION). 2 His other brothers may repudiate the new relationship to prevent loss to themselves of the inheritance. The widow, too, would thereby be bound to *levirate union*. 3 He may give to his so-called brother as much of his share as the latter might have had if his relationship had been affirmed. 4 If the alleged brother died, and he received any inheritance from the share of his supporter, this property must be restored to his supporter. 5 If the alleged brother died, then any of his own property is shared equally by both his supporter and the opponents, because though the latter doubted him he himself had insisted on his relationship towards them, but if they repudiated him absolutely they are not entitled to inherit his property. 6 Or **דִּיאָתִיקָן**, a disposition of estate, particularly by will and testament. 7 A man dangerously ill cannot dispose of his property by a written document of gift to take effect after his death, but he may do so by word of mouth before death to be enforced after his death. 8 i.e., he made a conveyance with it, delivering the document to another instructing him to grant title with it to the one named therein.

Mishnah 7

If one assign in writing his property to his children, he must write, 'From to-day and after [my] death.'¹ This is the view of R. Judah.² R. Jose³ says, It is not necessary. If one assign in writing his estate to his son [to become his] after his death, the father can not sell it since it is conveyed to his son,⁴ and the son can not sell it because it is under the father's control.⁵ If the father sold it, it⁶ is sold until he dies; if the son sold it, the purchaser has no claim therein until the father dies.⁷ The father may pluck up [produce] and feed it to whomsoever he pleases,⁸ but whatever he left* plucked up⁹ belongs to his heirs. If he left 10 sons, some of age and some minors,¹¹ those of age may not provide for themselves at the expense of the minors, nor may the minors be maintained at the expense of those of age, but they must share [the estate] alike. If those of age married,¹² the minors may so marry;¹³ but if the minors said, 'Behold we will marry in the same manner as you married,'¹⁴ they do not listen to them, as whatever their father had given to them he has given.¹⁵

מִשְׁנָה ז'
הַפּוֹתֵב וְכָסִיו לְבָנָיו, צָרִיךְ שִׁיכְתוֹב
מֵהַיּוֹם וְלֵאחֶר יְמִיתָהּ. דְּבַרֵי רַבִּי
יְהוּדָה. רַבִּי יוֹסֵי אָמַר אֵינּוּ צָרִיךְ.
הַפּוֹתֵב וְכָסִיו לְבָנוֹ, לְאַחֵר מוֹתוֹ,
הָאָב אֵינּוּ יָכוֹל לְמַכּוֹר, מִפְּנֵי שֶׁהֵן
כְּתוּבִין לְבָנוֹ, וְהֵבֵן אֵינּוּ יָכוֹל לְמַכּוֹר
מִפְּנֵי שֶׁהֵן בְּרִשּׁוֹת הָאָב. מִכַּר הָאָב
יְמַכּוֹרִין עַד שְׁיָמוּת; מִכַּר הַבֵּן, אֵין
לְלוֹקַח בְּהֵן כְּלוֹם עַד שְׁיָמוּת הָאָב.
הָאָב תּוֹלֵשׁ וּמַאֲכִיל לְכָל מִי
שִׁירְצָה, וּמֵה-שֶׁהֵגִיחַ תּוֹלֵשׁ הָרִי
הוּא שֶׁל יוֹרְשֵׁין. הֵגִיחַ בָּנִים גְּדוּלִים
וְקֹטְנִים, אֵין הַגְּדוּלִים מִתְּפַרְנְסִים
עַל הַקֹּטְנִים, וְלֹא הַקֹּטְנִים נוֹזְנִין עַל
הַגְּדוּלִים, אֶלָּא חוֹלְקִין בְּשִׁוְהָ.
וְנִשְׂאוּ הַגְּדוּלִים, וְיִשְׂאוּ הַקֹּטְנִים;
וְאִם אָמְרוּ קֹטְנִים, הָרִי אָנוּ נוֹשְׂאִים
בְּדַרְדָּר, שֶׁנִּשְׂאָתָם אִתָּם, אֵין שׁוֹמְעִים
לָהֶן, אֶלָּא מֵה-שֶׁנָּתַן לָהֶם אָבִיהֶם
וְנָתַן.
*Or שֶׁהֵגִיחַ.

1 This refers to a healthy person who desires to retain the right to benefit from his possessions (*usufruct*)* during his lifetime. 2 His view is rejected. 3 His opinion is accepted. 4 *i.e.*, the title is automatically and immediately vested in the future recipient. 5 Because the right to *usufruct** is still vested in the donor. 6 *i.e.*, only the products thereof during his lifetime, and on his death the legal heirs come into full possession. 7 And then the heirs or donee inherit nothing therefrom. 8 Because the terms of his conveyance do not constrain him to use only so much of his produce as he actually needs for his own maintenance. 9 At the time of his death. 10 Or

הַיָּתִיב. 11 A boy under thirteen years of age is a *minor*. 12 After their father's death, defraying the expenses out of the common inheritance. 13 They may also likewise defray their marriage expenditures from the estate before partition is made. 14 *i.e.*, when their father was yet alive. 15 *i.e.*, what was given by the father during his lifetime is not taken into consideration after his death. **Usufruct, the right of enjoying the use, advantage and profit of the property of another without impairing its substance.*

Mishnah 8

If one left¹ daughters, some of age and some minors,² those of age may not provide for themselves at the expense of the minors, nor may the minors be supported at the expense of the adults, but they must share equally.³ If the adults married,⁴ the minors may [also likewise so] marry. But if the minors said, 'We will marry as you are married,'⁵ they do not listen to them. In this respect, greater stringency applies to daughters than in the case of sons, for daughters may be supported at the expense of the sons but they can not be maintained at the expense of [other] daughters.⁶

מִשְׁנֵה ח
הַיָּתִיב בָּנוֹת גְּדוּלוֹת יוֹקְטָנוֹת אֵין
הַגְּדוּלוֹת מִתְּפָרֵסוֹת עַל הַקְּטָנוֹת,
וְלֹא הַקְּטָנוֹת נוֹזְנוֹת עַל הַגְּדוּלוֹת,
אֲלָא חוֹלְקוֹת בְּשָׂוִיהֶן. וְיִשְׂאוּ גְדוּלוֹת
יִשְׂאוּ קְטָנוֹת. וְאִם אָמְרוּ קְטָנוֹת
הֵרִי אָנּוּ נוֹשְׂאִים בְּדַרְךְךָ שְׂנִישְׂאֵתֶם
אַתֶּם, אֵין שׁוֹמְעִין לָהֶן. זֶה חוֹמֵר
בְּבָנוֹת מִבְּנִיִּים, שֶׁהַבָּנוֹת נִיזְנוֹת עַל
הַבָּנִים, וְאֵין נוֹזְנוֹת עַל הַבָּנוֹת.

1 Or הַיָּתִיב. 2 A girl under twelve years of age is a minor. 3 The inheritance must be divided up equally among them all. 4 Having defrayed the expenses from the common inheritance. 5 *i.e.*, 'We will marry now and take the expenses out of the inherited estate just as you defrayed your marriage expenses during our father's lifetime.' Compare כְּתוּבֹת 66. 6 See 84, 91. Daughters are entitled to maintenance from an inheritance when there are sons left, but if no sons are left then the minors cannot receive any support from the estate.

CHAPTER 9

פֶּרֶק ט

Mishnah 1

If one died and left¹ sons and daughters, then if§ the estate be large, the sons inherit and the

מִשְׁנֵה א
מִי שָׁמַת יְהִינִי בָּנִים וּבָנוֹת, *בְּזִמָּן
שֶׁהִנְכָּסִים מְרוֹבִיִּים, הַבָּנִים יִרְשׁוּ

daughters must be supported;² but if the property were small, the daughters must be maintained, and³ the sons may go begging at the doors.⁴ Admon says, 'Must I be at a disadvantage because I am a male?' Rabban Gamaliel said, 'I approve the opinion of Admon.'⁵

וְהַבָּנוֹת יִזוּנוּ; וְנִכְסֵי מוֹעֲטִים
הַבָּנוֹת יִזוּנוּ, וְהַבָּנוֹת יִשְׁאָלוּ עַל
יְהַפְתְּחִים. אַדְמוֹן אוֹמֵר בְּשִׁבִיל
שְׂאֵנִי וְזָכַר הַפְּסָדָתִי. אָמַר רַבֵּן
גַּמְלִיאֵל רוֹאֵה אֲנִי אֶת-דְּבָרֵי
אֲדָמוֹן.
*Or בְּזִמְנָן.

1 Or הַיָּתִים. 2 Until they become adults (*i.e.*, reach the age of twelve and a half years) or until they are married, after which the balance of the estate goes to the sons. Compare פְּתוּבוֹת 133. 3 *i.e.*, and if after the daughters reach the age of adulthood and there is no balance of the estate left over. 4 *i.e.*, they must make a living otherwise as best they can. 5 According to פְּתוּבוֹת 109a that wherever Admon's view is supported by Rabban Gamaliel it is the accepted ruling, but in this instance some authorities reject Admon's opinion. §Literally *when*.

Mishnah 2

If one left¹ sons and daughters and one of indeterminate sex,² if* the estate were large the males [heirs] may push such a one among the females,³ [and] if the property were small the females may thrust such a one⁴ among the males. If one said,⁵ 'If my wife will bear a male child, it shall receive a *maneh*,⁶ then if she gave birth to a male child, it gets a *maneh*; [if he said, 'If my wife will bear] a female child, [it shall have] two hundred [*zuz*],⁷ then if she bore a female child, it receives two hundred [*zuz*]; [if he said, 'If my wife will give birth to] a male child, [it shall get a *maneh*, and if a female child, [it shall receive] two hundred [*zuz*],⁸ and if she bore both a male child and a female child, then the male takes a *maneh* and the female takes two hundred [*zuz*]; if she bore one of indeterminate sex,

מִשְׁנֵה ב
הַיָּתִים בָּנִים וּבָנוֹת וְטוֹמְטוֹם,* בְּזִמְנָן
שֶׁהַנִּכְסִים מְרוּבִים, הַזֹּכְרִים דוֹחִין
אוֹתוֹ אֶצֶל הַנְּקֻבוֹת, נִכְסִים מוֹעֲטִין.
הַנְּקֻבוֹת דוֹחִין אוֹתוֹ אֶצֶל זְכָרִים.
הָאוֹמֵר אִם תֵּלֵד אִשְׁתִּי זָכָר יִטּוֹל
מִנֶּה, יִלְדָה זָכָר נוֹטֵל מִנֶּה; נְקֻבָּה
מֵאֲתָיִם, יִלְדָה נְקֻבָּה נוֹטֵל מֵאֲתָיִם;
אִם זָכָר מִנֶּה אִם נְקֻבָּה מֵאֲתָיִם,
וְיִלְדָה זָכָר וְנְקֻבָּה, זָכָר נוֹטֵל מִנֶּה,
וְהַנְּקֻבָּה נוֹטֵל מֵאֲתָיִם; יִלְדָה
טוֹמְטוֹם אֵינוֹ נוֹטֵל; אִם אָמַר כָּל-
מֵה-שֶׁתֵּלֵד אִשְׁתִּי יִטּוֹל, הָרִי יֵה
יִטּוֹל, וְאִם אֵין שֵׁם יוֹרֵשׁ אֶלָּא הוּא,
יִרֵשׁ אֶת-הַכֶּלֶל.

it receives naught;⁷ if he said, 'Whatever my wife shall bear, it shall receive,⁸ then such a one⁹ must get it, and if there be no other heir but it, then it inherits everything.¹⁰

1 Or הַיָּתִיב. 2 A person whose genitals are undeveloped or hidden and whose sex is indeterminate (see בְּכֹרִים 41^a). 3 And such a one receives maintenance until reaching majority. 4 And this person gets no support. 5 Literally say. 6 1 maneh = 100 zuz; see וְרַעִים, Page 18f. 7 This view is rejected. If the one of indeterminate sex is a twin, it gets the smaller sum (a maneh). 8 Whatever sum he mentioned. 9 One of indeterminate sex. 10 And it cannot be maintained that this is not his natural heir in order to enable the brothers of the deceased to come into the inheritance. *Or the definite בְּיָמֵינוּ. Literally when.

Mishnah 3

משנה ג

If one left¹ grown-up sons and minor sons, and the grown-up sons improved the property, they improved it for the common benefit.² But if they said, 'Observe what our father has left* us, behold, we will labour and we will eat,' they improved it to their own profit.³ And likewise also in the case of a woman⁴ who improved the estate, she improved it to the common advantage; if, however, she said, 'Observe what my husband left* to me, lo, I will labour and I will eat,' she improved it to her own advantage.

הַיָּתִיב בָּנִים גְּדוּלִים וְקֹטְנִים, הַשְּׁבִיחוּ גְדוּלִים אֶת-הַנְּכָסִים, הַשְּׁבִיחוּ לְאִמְצָעֵ-אִם אָמְרוּ רְאוּ מַה-שֶּׁהֵינִחַ לָנוּ אָבִיא, הָרִי אָנוּ עוֹשִׂים וְאוֹכְלִין, הַשְּׁבִיחוּ לְעִצְמוֹן. וְכֵן הָאִשָּׁה שֶׁהִשְׁבִּיחָה אֶת-הַנְּכָסִים, הַשְּׁבִיחָה לְאִמְצָעֵ; אִם אָמְרָה רְאוּ מַה-שֶּׁהֵינִחַ לִי בְעָלִי, הָרִי אֲנִי עוֹשָׂה וְאוֹכְלֵת, הַשְּׁבִיחָה לְעִצְמָהּ.

1 Or הַיָּתִיב. 2 הַשְּׁבִיחַ לְאִמְצָעֵ, improve for the common fund or estate, divide the profit equally. But only if the improvement was effected from funds from the estate and before the sharing out among the heirs, otherwise the improvement belongs to those who worked at it and paid the expenses from their own means. 3 The adults state before witnesses or in court that they are prepared to share out the inheritance and that any improvement that they effect was to belong to them only, such improvement is to their exclusive advantage even though the partition had not yet been made. 4 A widow who is a legal heiress among her own children. Thus: A and B were sons of C; A married D, the daughter of B; A died leaving children and D; B died leaving only D; C died, then D inherited half of C's property, and A's children inherit his share. *Or שֶׁהֵינִחַ.

Mishnah 4

If of brothers jointholders one were taken into public service, [his remuneration] goes to the common advantage.¹ If one became ill and required curing, he must be cured at his own cost.² If some of the brothers in the father's lifetime acted as groomsmen,³ the gifts restored [to them]⁴ are restored to the common advantage,⁵ for the wedding gifts made by groomsmen may be legally recovered through the court.⁶ But if one send⁷ to his fellow jars of wine or jars of oil,⁸ they can not be reclaimed through the court as they are considered a charitable deed.⁹

1 If a man as representative of his family received a public or government appointment his salary belongs to the estate and to all the heirs. But if he gained this post because of his ability then his salary is his exclusively. 2 But only if he fell sick through his own carelessness. 3 Having given gifts paid for or furnished by their father. 4 After their father's death, on the occasion of a family wedding. 5 *i.e.*, they become part of the common inheritance. 6 Because such gifts are accounted as loans, and their return is considered as a settlement of debt. 7 One of the brothers. 8 Not for the occasion of a wedding; or if on that occasion the sender did not, however, attend the wedding meal. 9 And if they are returned they belong exclusively to the one who sent them and not to the common estate.

Mishnah 5

If one sent nuptial gifts to the house of his [prospective] father-in-law, and he sent thither a hundred *maneh*¹ and he partook there of the nuptial meal of even one *denar*'s worth, they² can not be reclaimed,³ but if he did not eat of the nuptial meal, then these can be reclaimed.⁴ If he sent many nuptial presents to be restored with her to her husband's house, these can be reclaimed;⁵ [if

משנה ד

האחין השותפין, שנפל אחד מהן לאומנות, נפל ילאמצע. קלה ונתרפא, ונתרפא משל עצמו. האחין שעשו מקצתן שושבינות בתי האב, חזרה שושבינות, חזרה ילאמצע, שהשושבינות נגבית בבית דין. אבל השולח לחברו כדי יין וכדי שמן, אין נגבין בבית דין, מפני שהן נמילות חסדים.

משנה ה

השולח סבלונות לבית חמיו, שלח שם מאה ימנה, ואכל שם סעודת חתן אפילו בדיר, אינן נגבין, לא אכל שם סעודת חתן הרי אלו נגבין. שלח סבלונות מרובין, שיחזרו עמה לבית בעלה, הרי אלו נגבין; סבלונות מועטין שתשתמש בהן בבית אביה אינן נגבין.

he sent] a few nuptial gifts which she was to use in her father's house, they can not be reclaimed.⁶

- 1 See **נְרָעִים**, Page 18f. 1 *maneh* = 100 (silver) *denars*. 2 The espousal or betrothal presents. 3 If the bridegroom or bride died or in the case of divorce before marriage. 4 In Talmudic times the betrothal before the marriage ceremony made the couple husband and wife in law and divorce was necessary to dissolve such union, and the bridegroom's presence at the engagement feast rendered all his presents to the bride her absolute property which he could not recover in case of divorce or her death. 5 The provision is proof that he had no intention of letting her have them unconditionally. 6 In actual practice the rulings are that if he or she died or he sought divorce, the imperishable articles must be returned but not the foodstuffs or their worth, and if the woman retracts she must return both imperishable objects and foodstuffs or their value.

Mishnah 6

If one that lay ill¹ assigned all his property to others,² and retained any realty whatever, his gift is valid; but if he left no realty whatever, his gift is not valid. If he had not written therein [in the deed of conveyance] *while he lay ill*, and he says that he did lie ill, then whereas they say that he was well he must produce evidence that he had lain sick; this is the view of R. Meir;³ but the Sages⁴ say, The claimants must bring the proof.

מְשֻׁנָּה ו
 יִשְׁכִּיב מֵרַע שָׁכַתְבַּת כָּל-נִכְסָיו
 לְאַחֲרִים וְשִׁיר קִרְקַע כָּל-שֶׁהוּא,
 מִתְּנָתוֹ קִיָּמָת; לֹא שִׁיר קִרְקַע
 כָּל-שֶׁהוּא אֵין מִתְּנָתוֹ קִיָּמָת. לֹא
 כָּתַב בָּהּ שְׁכִיב מֵרַע, הוּא אוֹמֵר
 שְׁכִיב מֵרַע הָיָה, וְהֵן אוֹמְרִים בְּרִיא
 הָיָה, צָרִיךְ לְהִבְיֵא רֵאִיָּה שֶׁהָיָה
 שְׁכִיב מֵרַע; דְּבַרֵּי רַבִּי מֵאִיר,
 וְחֻקְמִים אוֹמְרִים הַמוֹצִיא מִחֲבֵירוֹ
 עָלָיו הָרֵאִיָּה.

*See ADDENDA, Page 229.

- 1 Or *dangerously ill, on the point of death, expected to die*. 2 As a gift. Compare פֶּאֶה 3⁷. 3 His opinion is rejected. 4 Their view is the accepted ruling. A supposed beneficiary must produce evidence through witnesses to substantiate his claim that the donor was in good health at the time of the transfer. See קָמָא 311.

Mishnah 7

If one distribute his property by word of mouth, R. Eliezer¹ says, whether he is well or dangerously ill, possessions for which there is* security² are acquired either by

מְשֻׁנָּה ז
 הַמְּחַל קִנְיָנוֹ עַל פִּי, רַבִּי אֱלִיעֶזֶר
 אוֹמֵר אֶחָד בְּרִיא וְאֶחָד מְסוּפֵן,
 נִכְסִים *שִׁישׁ לָהֶן אַחֲרִיּוֹת, נִקְנִין

[delivering the purchase] money or by deed³ or by usucaption,⁴ but such, for which no security exists,⁵ can not be acquired otherwise than taking possession by an act of drawing.⁶ The Sages said to him, It happened that the mother of the sons of Rochel was ill and said, 'Give my brooch, which is worth twelve *manehs*,⁷ to my daughter'; and she died, and they fulfilled her words.⁸ He replied to them, 'The sons of Rochel! Their mother ought to have buried⁹ them!¹⁰ (And) the Sages say,¹¹ On the Sabbath† one's words are valid, because he is unable to write,¹² but not on weekdays. R. Joshua¹³ says, If they said that on the Sabbath† [it is valid], how much more so on a weekday! Likewise one¹⁴ may acquire title on behalf of a minor, but he can not acquire title for an adult; (this is the opinion of R. Eliezer;¹⁵) [but] R. Joshua¹⁶ says, If they said that [it is valid] in the case of a minor, how much more so in the case of an adult!

בְּכֶסֶף, וּבִשְׂטֵר, וּבְחֻזְקָה, וְשֵׂאִין
 לָהֶן יִאֲחָרִיית, אֵין גְּנֵזִין אֶלָּא
 בְּמִשְׁיכָה. אָמְרוּ לוֹ מִעֲשֵׂה בְּאֶמֶן
 שֶׁל בְּנֵי רוֹכֵל שֶׁהִיתָה חוֹלָה וְאָמְרָה
 תִּנוּ כְּבִיצְתִּי לְבֵיתִי וְהִיא בְּשָׁנִים עָשָׂר
 מָנֶה וּמֵתָה, וְקִיְּמוּ אֶת־דְּבָרֶיהָ.
 אָמַר לָהֶן, בְּנֵי רוֹכֵל.¹⁰ תִּקְבְּרֵם
 אֶמֶן. וְחֻכְמִים אוֹמְרִים זְבֻשְׁבַת
 דְּבָרָיו קִמְיִן מִפְּנֵי שֵׂאִין יָכוֹל
 לְכַתּוֹב, אֲבָל לֹא בְּחוּל. רַבִּי
 יְהוֹשֻׁעַ אוֹמֵר זְבֻשְׁבַת אָמְרוּ קָל
 וְחוֹמֵר בְּחוּל.¹⁴ כִּיּוֹצֵא בּוֹ זְכִין לְקַטָּן
 וְאֵין זְכִין לְגָדוֹל; (¹⁵דְּבָרֵי רַבִּי
 אֵילֵעֶזֶר); רַבִּי יְהוֹשֻׁעַ אוֹמֵר לְקַטָּן
 אָמְרוּ, קָל וְחוֹמֵר לְגָדוֹל.

*Or שֵׂאִין לָהֶן.

1 His view is rejected. 2 Realty from which payments for debts may be subsequently collected. Compare קְדוּשָׁין 15, Note 1. 3 A writ of sale or assignment. § 4 See 14, Note 2; 26, Note 9; 32, Note 1. 5 *i.e.*, movable property or personalty. 6 See Appendix, Note 7. However, it is accepted in law that any expressed desire by a person dangerously ill is as valid as a document delivered to the person intended. 7 See וְרָעִים, Page 18f. 8 The Sages carried out the wish of the deceased even though the sons lost thereby as contrary to Mosaic law. 9 Literally *ought to bury*. 10 The sons were notoriously wicked men, and they were deserving of being deprived of the inheritance. 11 The רַבִּי אֵילֵעֶזֶר gives גְּמָרָא אוֹמֵר. 12 Compare שְׁבַת 72. 13 His view is accepted. This is an example of *inference from minor to major (and vice versa)*. 14 An adult. This is R. Eliezer's view which is rejected. 15 This bracketed phrase is given in the גְּמָרָא. 16 His opinion is the accepted ruling. A minor: a boy under thirteen years of age, a girl under twelve. § Popular pronunciation וּבִשְׂטֵר. †Or בְּשְׁבַת, on Sabbath.

Mishnah 8

If the house fell down on one and on his father, or on one and on those from whom he inherits, and there were against him¹ his wife's *marriage settlement*² and [or or] a debt [due to some creditor] the father's heirs may contend, 'The son died first and thereafter the father died,' [and] the creditors may say, 'The father died first and afterwards the son died';³ the School of Shammai⁴ say, Let them divide [the property equally], but the School of Hillel⁵ say, The property remains in the possession of the present holders.

1 *i.e.*, he was liable. 2 See *Appendix, Note 8*; כתובות, INTRODUCTION, 12. 3 The difficulty arises when there is no evidence to show who died first to establish whether the son became the legal heir to the father's property, because if he were the rightful heir his creditors could claim on his inherited estate. 4 Their view is rejected. 5 Their opinion is accepted. According to strict law heirs are only morally bound to pay a debt from realty after the death of the deceased, but it must be met from personalty if there is any left. The creditors can only claim repayment from realty if they are able to prove that the father died first. חזקה, see 87, *Note 4*.

Mishnah 9

If the house fell down upon one and upon his wife,¹ the husband's heirs may say, 'The wife died first² and afterward the husband died,' [and] the wife's heirs may contend, 'The husband died first and the wife died thereafter,'³ the School of Shammai⁴ say, Let them share [the estate equally], but the School of Hillel say, The estate belongs to the present occupants;⁵ the *marriage settlement* is accounted as being in the possession of the husband's heirs, but her own property which comes in with her

משנה ח

גַּפְל הַבַּיִת עָלָיו וְעַל אָבִיו, אוֹ עָלָיו
וְעַל מוֹרְשָׁיו, וְהִימָתָה יְעָלָיו כְּתוּבַת
אִשָּׁה וּבְעַל חוּב, יוֹרְשֵׁי הָאָבִיאוֹמְרִים
הֵבֵן מֵת רֵאשׁוֹן וְאַחַר כִּף מֵת הָאָב,
בְּעָלֵי הַחוּב אוֹמְרִים, הָאָב מֵת
רֵאשׁוֹן וְאַחַר כִּף מֵת הֵבֵן; בֵּית
שְׁמַאי אוֹמְרִים יְחֻלְקוּ, וּבֵית הִלֵּל
אוֹמְרִים נִכְסִים בְּחֻזְקָתָן.

משנה ט

גַּפְל הַבַּיִת עָלָיו וְעַל אִשְׁתּוֹ, יוֹרְשֵׁי
הַבְּעַל אוֹמְרִים הָאִשָּׁה מֵתָה יְרֵאשׁוּנָה
וְאַחַר כִּף מֵת הַבְּעַל, יוֹרְשֵׁי הָאִשָּׁה
אוֹמְרִים הַבְּעַל מֵת רֵאשׁוֹן וְאַחַר כִּף
מֵתָה הָאִשָּׁה; בֵּית שְׁמַאי אוֹמְרִים
יְחֻלְקוּ, וּבֵית הִלֵּל אוֹמְרִים נִכְסִים
בְּחֻזְקָתָן, כְּתוּבָה בְּחֻזְקַת יוֹרְשֵׁי
הַבְּעַל, נִכְסִים הַנִּכְנְסִים וְהַיּוֹצְאִין
עִמָּהּ, בְּחֻזְקַת יוֹרְשֵׁי הָאָב.

and which goes out with her⁶ is to be considered as being in the possession of the father's heirs.

1 Who had no children by him. 2 In which case the husband inherits her. 3 In which case they claim to be her heirs. 4 Their opinion is the prevailing law. 5 תוקה, see 87, Note 4; Appendix, Note 8. 6 Her own property which she brought in on her marriage and which she should take away on divorce or should go out with her on his death. Such property can only pass into the possession of her husband if she died first, otherwise he is only entitled to the usufruct thereof. See יבמות 43; כתובות 86.

Mishnah 10

If the house collapsed upon one [an only son] and on his [widowed] mother¹ [and both died], then the former and the latter² agree that they³ should share [equally]. R. Akiba said, 'I maintain⁴ that the property should be left in the hands of the present possessors.⁵ Ben Azzai said to him, 'We grieve over the differing views,⁶ but thou comest to introduce conflicting views on us agree!'

מִשְׁנָה י
נִפְל הַבַּיִת עָלָיו וְעַל יְאִמוֹ, אָלוּ
וְאָלוּ מוֹרְדִים שֵׁיחֲלוּקֵי. אָמַר רַבִּי
עֲקִיבָא יְמוּדָה אֲנִי כֹזֵה שְׁהִנְכָסִים
בְּחֻזְקָתָן. אָמַר לוֹ בֶּן עֲזַאי עַל
הַחֲלוּקִין אָנוּ מְצַטְעֲרִין, אֲלֵא
שְׁבִאתָ לְחֵלֶק עָלֵינוּ אֶת-הַשְּׁוִין.
regarding matters on which they²

1 The son's heirs say she died first, and the paternal relations maintain that he died first. 2 i.e., the School of Shammai and the School of Hillel.* 3 The heirs of the mother and the heirs of the son. 4 In agreement with the opinion of the School of Hillel as stated in the preceding Mishnah. His view is accepted in this case in this Mishnah. 5 See 87, Note 4 (תוקה). 6 Referring to the divided opinions in the foregoing Mishnah. *Less idiomatic ואלו.

CHAPTER 10

פֶּרֶק י

Mishnah 1

A* plain document has [the signatures of] the witnesses inside, and a folded [document] has [the signatures of] the witnesses¹ on the back. A plain [document] in which the witnesses

מִשְׁנָה א
אֵט פְּשוּט עֲדָיו מִתּוֹכוֹ, וּמִקֻּשְׁר
יְעֲדָיו מֵאַחֲרָיו. פְּשוּט שִׁכְתָּבו עֲדָיו
מֵאַחֲרָיו. וּמִקֻּשְׁר עֲכָתָבו עֲדָיו

signed on the back and a *folded* [document] in which the witnesses signed within are both invalid. R. Chanina² ben Gamaliel says, A *folded* [document] which the witnesses signed inside is valid, because it could be converted into a *plain* [document]. Rabban Simon ben Gamaliel says, It all depends on local usage.³ *Popularly pronounced בָּט.

1 See בְּבֵא בְּתָרָא 160a; בִּיטִין 89. A *plain document* is drawn up on a single page and the witnesses' signatures are attached to the end. The *folded document* had its origin in the drawing up of *letters of divorce*, the method being advocated to protract the proceedings in case the husband seeking separation might change his mind—this being particularly desirable in the case of priests who could not take back their divorced wives. The *folded document* was drawn up by writing one or two lines, folding this part over and attaching the witness's signature on the fold and sewing it down, then more lines added, the part folded down, a signature appended on the back, and again sewing down; this being repeated until the whole document was completed. 2 His view is rejected. 3 Compare בְּבֵא בְּתָרָא 165a. All authorities agree that in any locality where only one kind of document is used, then if the other kind is drawn up against the express instruction of a client it is invalid.

Mishnah 2

A *plain document* requires [at least] two witnesses, and a *folded* [document] must be signed by no less than] three [witnesses]. If a *plain* [document] were signed by but one witness or if a *folded* [document] were signed by only two witnesses, they are both invalid.¹ If there were written therein,² 'One hundred *zuz* which are twenty *selas*,³ [the creditor] claims thereon only twenty *selas*.⁴ [If there were written therein] 'One hundred *zuz* which are thirty *selas*,⁵ [the creditor] can collect only one *maneh*.⁵ [If there were written on it] 'Silver *zuzin* which are . . .', and [the rest of the statement] was rubbed

מתוכו, שניהם פסולים. רבי חנינא בן גמליאל אומר מקושר שכתבו עדיו מתוכו כשר, מפני שיכול לעשות פשוט. רבן שמעון בן גמליאל אומר הכל כמנהגי הקדינה. בָּט.

גַּט פְּשׁוּט עֵדָיו בְּשָׁנִים, וּמְקוּשָׁר בְּשִׁלְשָׁה. פְּשׁוּט שְׁכָתוּב בּוֹ עַד אֶחָד, וּמְקוּשָׁר שְׁכָתוּב בּוֹ שְׁנֵי עֵדִים, שְׁנֵיהֶם יִפְסוּלִין. כֶּתֵב בּוֹ זוּזִין מֵאָה דַּאיִנוּן סְלָעִים יַעֲשֶׂרֶן, אִין לֹא אֵלָא יַעֲשֶׂרֶן. זוּזִין מֵאָה דַּאיִנוּן תִּלְחִין סְלָעִין, אִין לֹא אֵלָא מְנָה. כֶּסֶף זוּזִין דַּאיִנוּן וְנִמְחַק, אִין פְּחוּת מִשְׁתֵּיִם; כֶּסֶף סְלָעִין דַּאיִנוּן וְנִמְחַק, אִין פְּחוּת מִשְׁנַיִם? דְּרַכּוֹנוֹת

out,⁶ it means not less⁷ than two [zuz]; [if it were stated,] 'Silver selas which are . . .,' and [the remainder of the sentence] was effaced, it means no less⁷ than two [selas]; [if it read,] 'Darics which are . . .,' and the rest was erased, it means at least⁷ two [darics].⁸ If at the top⁹ it were written, 'One maneh,' and at the bottom,¹⁰ 'Two hundred zuz,' or at the top, 'Two hundred zuz,' and at the bottom, 'One maneh,' it must all follow [what is written] at the end. If this be so, for what purpose¹¹ do they write the figure at the beginning? In order that if one letter¹² be erased at the end, one can learn [the correct term] from the beginning.

דְּאִינוּן וְנִמְחַק, אֵין פְּחוֹת מִשְׁתֵּיִם.
 כְּתוּב בּוּ מִלְּמַעְלָה מְנָה¹⁰ וּמִלְּמַטָּה
 מֵאַתֵּיִם, מִלְּמַעְלָה מֵאַתֵּיִם וּמִלְּמַטָּה
 מְנָה, הַכֹּל הוֹלֵךְ אַחֲרֵי הַתְּחִתּוֹן. אִם
 כֵּן¹¹ לְמָה כּוֹתְבִין אֶת־הָעֵלְיוֹן? שְׂאֵם
 תִּמְחַק¹² אֹזֶת אַחַת מִן־הַתְּחִתּוֹן,
 יִלְמַד מִן־הָעֵלְיוֹן.

1 It is only invalid for use in seizing a debtor's estate in possession of another party. 2 In a note of indebtedness. Literally *If one wrote therein*. 3 Actually 100 zuz = 25 selas. See זְרָעִים, Page 18f. 4 According to Jewish law the party in whose favour a deed was drawn up is at a disadvantage if any terms stated are ambiguous or contradictory. 5 1 maneh = 100 zuz. Thus the creditor is at a disadvantage because of the uncertainty of the terms. 6 Or *blurred, erased, effaced, i.e., illegible*. 7 Traditional pronunciation פְּחוֹת. 8 But no more than two in all cases, since the creditor is at a disadvantage because of the uncertainty of the term. The plural form of the word indicates that the sum cannot be less than two. Daric was a Persian gold (or silver) coin; *Ezra* 8²⁷. 9 *i.e., at the beginning of the document*. 10 *i.e., at the end of the document*. 11 Or לְמָה. 12 Or *figure, sign*. See כָּבֵא בְּתֵרָא 167b. This holds good if only one sign is missing from the end term, but not if two are omitted.

Mishnah 3

They may write a letter of divorce for a man even if his wife be not with him;¹ and an acquittance² [may be written] for a woman even if her husband be not with her,³ provided that he⁴ is acquainted with them; and the husband pays the fee.⁵ They may write a bond⁶ [of indebtedness] for the debtor even

מִשְׁנָה ג
 כּוֹתְבִין גִּט לְאִישׁ, אִף עַל פִּי שְׂאִין
 אֲשֶׁתּוֹ יַעֲמוּ; וְהַשּׁוֹבֵר לְאִשָּׁה אִף
 עַל פִּי שְׂאִין בְּעֵלָהּ עִמָּה, וּבְלִבָּד
 שְׂיֵהָא מְכִירִין; וְהַבֹּעַל נוֹתֵן שְׂקָר.
 כּוֹתְבִין שְׂטָר לְלוֹה, אִף עַל פִּי

though the creditor be not with him, but they may not write one for the creditor unless the debtor be with him;⁷ and the debtor has to pay the fee.⁸ They may write a deed* [of sale] for the vendor even if the buyer be not with him, but they may not write it for the buyer unless the vendor be with him;⁷ and the buyer pays the fee.

שְׂאִין מְלוֹה עִמּוֹ, וְאֵין כּוֹתְבִין לְמְלוֹה
עַד שֶׁיְהֵא לָהּ יְעִמּוֹ; וְהַלּוֹה נוֹתֵן
שְׂכָר. כּוֹתְבִין *שְׂטָר לְמוֹכֵר, אֲף
עַל פִּי שְׂאִין לּוֹקֵם עִמּוֹ, וְאֵין כּוֹתְבִין
לְלוֹקֵם, עַד שֶׁיְהֵא מוֹכֵר יְעִמּוֹ;
וְהַלּוֹקֵם נוֹתֵן שְׂכָר.

*Popular pronunciation שְׂטָר.

1 According to Mosaic law a woman's consent is not required when her husband issues a *letter of divorce*, hence her presence is unnecessary. 2 Or *quittance, receipt*, which she delivers to the husband when he surrenders her *marriage settlement* (*Appendix, Note 8*) to her on divorce. 3 Seeing that the issue of such a receipt is to his advantage. 4 The court, or scribe, or witness must be certain of the names of the parties concerned in the case, if either one or the other is absent, to prevent confusion and miscarriage of justice in the delivery of such documents to a wrong party of similar or same names. 5 To the scribe for drawing up the *letter of divorce* or the *quittance* (*Deuteronomy 24, 1*); but the Sages enacted that the woman should pay the fee for the *bill of divorce* lest the man refuses to divorce her because of the fee. 6 שְׂטָר traditional pronunciation. 7 The party to whose advantage such a document is drawn up need not be present, but the one who incurs such obligation must be present to give consent. 8 Compare בָּבָא בִּתְרָא 104b, בָּבָא בִּתְרָא 168a.

Mishnah 4

They may not write documents of* betrothal¹ and marriage save with the knowledge [and consent] of both parties; and the bridegroom pays the fee. They may not write contracts of* share-tenancies² or fixed-rate tenancies³ except with the knowledge [and agreement] of both parties; and the tenant⁴ must pay the fee. They may not write documents* regarding the choice of arbitrators or any document of the court except with the knowledge [and approval] of both parties; and both parties pay the fee.⁵ Rabban

מִשְׁנֵה ד

אֵין כּוֹתְבִין *שְׂטָרֵי אִירוּסִין וְנִשׁוּאִין
אֶלָּא מִדְּעַת שְׁנֵיהֶם; וְהַחֲתָן נוֹתֵן
שְׂכָר. אֵין כּוֹתְבִין *שְׂטָרֵי אֲרִיסוֹת
וְקַבְלָנוֹת, אֶלָּא מִדְּעַת שְׁנֵיהֶם;
וְהַמְקַבֵּל נוֹתֵן שְׂכָר. אֵין כּוֹתְבִין
שְׂטָרֵי בִירוּרִין, וְכָל-מַעֲשֵׂה בֵּית
דִּין, אֶלָּא מִדְּעַת שְׁנֵיהֶם; וְשְׁנֵיהֶם
נוֹתְנִים *שְׂכָר. רַבֵּן *שְׂמַעוֹן בֶּן
גַּמְלִיאֵל אוֹמֵר, שְׁנֵיהֶם כּוֹתְבִין
שְׁנַיִם, לָזֶה לְעַצְמוֹ וְלָזֶה לְעַצְמוֹ.

Simon⁶ ben Gamaliel says, They write two [documents] for the two [parties], one for one party and one for the other. *Or שְׂטָרֵי.

1 See אֶתְרָא בְּבָא בְּתָרָא 167b; מוֹעֵד קָטָן 18b. This was a statement of the amounts which the respective parents promised to give to the couple. 2 The tenant (אָרִיט) agrees to pay the owner a definite *proportion* of the yield. 3 The tenant (תְּכִיר) agrees to pay the owner a certain *quantity* of produce irrespective of the yield (this is generally termed תְּכִירוֹת). 4 Or the contractor. 5 But only for documents for the choice of arbiters. 6 His opinion is rejected.

Mishnah 5

If one paid a portion of his debt and left his bond of indebtedness with a third party, and [the debtor] said to him [namely, the depository], 'If I have not paid to thee [the balance of the debt] (from now¹) by such-and-such a day, then give him [namely, the creditor] his bond,' and the time arrived and he did not pay up, R. Jose² says, He must give³ [it to him], [but] R. Judah⁴ says, He

משנה ה
 מִי שִׁפְרַע מִקְצַת חוּבוֹ, וְהִשְׁלִישׁ אֶת־שְׂטָרוֹ, וְאָמַר לוֹ אִם לֹא נָתַתִּי לְךָ יִמְכְּאֵן וְעַד יוֹם פְּלוֹנִי, תֵּן לוֹ שְׂטָרוֹ, הִגִּיעַ זְמַן וְלֹא נָתַן, רַבִּי יוֹסִי אוֹמֵר יִתֵּן, רַבִּי יְהוּדָה אוֹמֵר לֹא יִתֵּן.
 *Or He need not give [it up].

1 Popular pronunciation מִכְּאֵן. 2 His view is rejected. 3 i.e., the depository must return the note to the creditor. 4 His opinion is accepted.

Mishnah 6

If one's bond of indebtedness were effaced,¹ he [the creditor] may call witnesses to come before the court and they draw up on his behalf an attestation [to this effect:] 'So-and-so, the son of so-and-so—his bond of indebtedness was effaced on such-and-such a day, and so-and-so and so-and-so are his witnesses.'² If one discharged part of his debt, R. Judah says, He should change it;³ [but] R. Jose⁴ says, [The creditor] should write out a receipt. R. Judah said, Then it will be found

משנה ו
 מִי יִשְׁנַמְחַק שְׂטָר חוּבוֹ מְעִידִין עָלָיו עֵדִים, וּבָא לְפָנֵי בֵּית דִּין, וְעוֹשִׂין לוֹ קִיּוֹם, אִישׁ פְּלוֹנִי בֶּן פְּלוֹנִי גִמְחַק שְׂטָרוֹ בְּיוֹם פְּלוֹנִי, וּפְלוֹנִי וּפְלוֹנִי יְעִדוּ. מִי שִׁפְרַע מִקְצַת חוּבוֹ, רַבִּי יְהוּדָה אוֹמֵר יִחַלֶּיף; רַבִּי יוֹסִי אוֹמֵר יִכְתוּב שׁוֹבֵר. אָמַר רַבִּי יְהוּדָה נִמְצָא זֶה צְרִיף לְהִיּוֹת שׁוֹמֵר

that this man [the debtor] will have to guard his receipt from (the) mice.⁵ R. Jose replied to him, This is indeed better for him [the creditor] and no harm will come to his prerogative.⁶

שׁוֹבְרוֹ מִן־הַעֲכָרִים. אָמַר לוֹ
רַבִּי יוֹסֵי כִּף יָפָה לוֹ, וְלֹא יוֹרֵעַ
כּוֹחוֹ שֶׁל זֶה.

1 And there were witnesses to the effacement. 2 They must be reliable—they must of their own knowledge know the contents of the bond and the date when it was executed. 3 *i.e.*, destroy the old one and reissue another for the balance. His view is rejected. 4 His opinion is accepted. 5 If he loses it the creditor can then demand repayment of the whole debt. 6 The debtor will make an effort to discharge the balance quickly and the creditor will not have his rights impaired.

Mishnah 7

If there were two brothers, one poor and the other rich, and their father left¹ them a bath-house or [or and] an olive-press [-buildings], then if he had made them to let out for hire, the profit is for their common benefit;² but if he had made them for his own [private] use, then the rich [brother] may say to the poor one, 'Buy thee slaves to wash in the bath-house,' [or] 'Thou mayst buy thee olives and come and prepare them in the olive-press [-house].'³ If there were two persons in the same town, and the name of one [for instance] was Joseph ben Simon and the name of the other was [also] Joseph ben Simon, neither can claim a note of indebtedness against the other⁴ and another [third party] can not collect with a bill of indebtedness against [either of] them;⁵ if one [of these two with like names] find among his documents a bond paid up by Joseph ben Simon, then the bonds of both of them are accounted as discharged.⁶ What

מִשְׁנָה ז

שְׁנֵי אַחִין, אֶחָד עָנִי וְאֶחָד עָשִׁיר,
וְהָיִים לָהֶן אֲבִיהֶן מְרַחֵץ וּבֵית
הַבַּד, עֲשָׂעוֹן לְשֹׁכֵר הַשֶּׁכֶר לְאִמְצָע;
עֲשָׂעוֹן לְעֲצָמָן, הָרִי הָעָשִׁיר אָמַר
לְעָנִי, קַח לָךְ עֲבָדִים וְיִרְחֲצוּ
בְּמֶרְחֵץ, קַח לָךְ זֵיתִים וּבֹא וַעֲשֵׂם
בְּבֵית הַבַּד. שְׁנַיִם שֶׁהָיוּ בְּעִיר
אַחַת, שֵׁם אֶחָד יוֹסֵף בֶּן שִׁמְעוֹן וְשֵׁם
אַחֵר יוֹסֵף בֶּן שִׁמְעוֹן, אֵין יְכוּלִין
לְהוֹצִיא שֶׁטֶר חוֹב, יֵזֶה עַל זֶה, וְלֹא
אַחֵר יְכוּל לְהוֹצִיא יְעֲלִיהֶן שֶׁטֶר
חוֹב; וְנִמְצָא לְאֶחָד בֵּין שְׁטֵרוֹתָיו
שֶׁטֶר שֶׁל יוֹסֵף בֶּן שִׁמְעוֹן פְּרוּעַ,
שְׁטֵרוֹת שְׁנֵיהֶן יְפֹרְעִין. כִּי־צַד
יַעֲשֶׂוּ? יִשְׁלְשׁוּ, וְאִם הָיוּ מִשּׁוּלְשִׁים
יִכְתְּבוּ יִכְהֶן. הָאֹמֵר לְבָנוּ שֶׁטֶר
בֵּין שְׁטֵרוֹתַי פְּרוּעַ, וְאִי־יִדְעֵ אִיזְהוּ,

are they to do?⁷ They should write the name of the grandfather⁸ [in the document]; and if the names are alike to the third generation,⁹ let them inscribe a distinctive identification mark, and if such distinctive identification marks are also alike, let them write [*that one is a*] priest.¹⁰ If one [about to die] say to his son, 'One of the bonds among my bonds is paid up, but I do not know which one,' then all the bonds are considered as discharged;¹¹ and if two bonds were found there referring to one [debtor], the one for the bigger amount is accounted discharged and the one for the smaller amount is deemed unpaid.¹² If one lend his fellow [money] through a surety,¹³ he may not claim against the surety;¹⁴ if, however, he had said, 'On condition that I may collect*

שטרות כולן פרועין; נמצא לאחד שם שנים, הגדול פרוע, והקטן פרוע. המלוה את-הבירו על ידי פרוע, לא יפרע מן-הפרע; ואם אמר על מנת שאפרע ממי שארצה, יפרע מן-הפרע. רבן שמעון בן גמליאל אומר אם יש נכסים ללוה, בין כף ובין כף לא יפרע מן-הפרע. וכן היה רבן שמעון בן גמליאל אומר הפרע לאשה בבכתיבתה, והיה בעלה מגרשה, ידירנה הנאה, שמא יעשו קנוניא על נכסים של זה ויחזיר את-אשתו.

*See ADDENDA, Page 229.

from whomsoever I will,' then he may exact payment from the surety.¹⁵ Rabban Simon ben Gamaliel says, If the borrower have property, in neither case can he exact payment from the surety. And Rabban Simon ben Gamaliel likewise said, If one were surety to a woman for her *marriage settlement*,¹⁶ and her husband divorced her, the husband must vow that he will accept no further advantage from her,¹⁷ lest they form a conspiracy against the property of the surety and remarry his wife.¹⁸

1 Or והיית. 2 The gain must be shared between the two heirs, as they must continue to use the property for hiring out as the deceased had done during his lifetime. 3 In this case the property must continue for private use alone, and neither brother can compel the other to hire it out for profit. According to Maimonides the poor brother may demand of the other to sell his share or to buy out his share. According to *Tosafot* either brother may enforce hiring out for profit. 4 *בית הכבד* is the building containing the olive-press and the vat or tank and the implements for pressing the olives. 5 Because of the attempts to collect with the document from the other, the latter can plead that it was the note which he had returned according to law when the first had paid him the debt referred to in it. 6 Each can disclaim liability claiming that the other was the debtor. 7 Since each can plead that he had paid up the debt. 7 *i.e.*, 'How are such documents to be made binding?'

8 For the purpose of identification and avoidance of confusion, thus, for instance, *A ben B ben C*. שָׁלֹשׁ, go back to the third generation. 9 i.e., up to the grandfather. 10 Or any other distinguishing description. 11 And the heirs have no redress against the debtors each of whom can claim to have paid up his debt. 12 The debtor receives the benefit of the doubt. 13 Or guarantor. 14 The creditor must first sue the debtor, and if the latter does not pay up he may then sue the guarantor. 15 But if the debtor has property, the creditor must sue him first. If the guarantor has offered unconditional absolute responsibility, the creditor may claim against him even if the debtor possesses property. 16 See *Appendix, Note 8*. 17 So that he may not remarry her. 18 After defrauding the guarantor for the amount stated in her marriage settlement which the husband would then obtain.

Mishnah 8

משנה ח

If one loan money to his fellow on a bond^{1*} [of indebtedness, he may collect [the debt] from mortgaged property;² [if one lend] in the presence of witnesses, he may recover only from unmortgaged estate.³ [If the creditor] produced his [namely, the debtor's] written signed statement that he was indebted to him, he can claim only from unmortgaged property.⁴ If a surety signed bills [of indebtedness] after [witnesses had attached their] signatures,⁵ [the creditor] may recover only from the [surety's] unmortgaged property.⁶ Such a case once came before R. Ishmael, and he said, He can collect only from the [security's] unmortgaged estate. Ben Nanos said to him, He may claim neither from the [surety's] mortgaged property nor from unmortgaged property. [R. Ishmael] asked him, Why so?⁷ [Ben Nanos] replied to him, If a creditor seized one [a debtor] by the throat in the market place, and his fellow found him and said to him, 'Leave him

המלוה את-חברו *בשטר, גובה מנכסים משועבדים; על ידי עדים, גובה מנכסים בני חורין. הוציא עליו כתב ידו שהוא חייב לו, גובה מנכסים בני חורין. ערב היוצא לאחר חיתום שטרות, גובה מנכסים בני חורין. מעשה בא לפני רבי ישמעאל, ואמר גובה מנכסים בני חורין. אמר לו בן ננס אינו גובה לא מנכסים משועבדים ולא מנכסים בני חורין. אמר לו 'למה? אמר לו הרי החונק את-אחד בשוק, ומצאו חברו ואמר לו הנה לו, פטור, שלא על אמונתו יהלוהו. אלא איזהו ערב שהוא חייב? הלוהו ואני נותן לך חייב, שכן על אמונתו יהלוהו.

alone and I will pay thee,' he is exempt because not through trust in him had he loaned to him.⁸ But what surety is liable? [He who says to the creditor], 'Lend him the money, and I will repay thee,'⁹ he is liable, because of the trust in him did he make the loan to him.¹⁰ R. Ishmael said, He that desires to become wise should engage in the study of the laws of property,¹¹ for there is no branch of the Law greater than these [civil laws],¹² for they are like a welling spring; and he that would wish to occupy himself in the study of the laws of property should serve [as a disciple under] Simon¹³ ben Nanos.

אמר רבי ישמעאל הרוצה שיהיה
יעסוק¹¹ בדיני ממונות שאין לה
מקצוע בתורה גדול¹² מהן, שהן
במעין הנובע; והרוצה שיעסוק
בדיני ממונות, ישמש את-שמעון
בן ננס.

1 See 10^a, Note 6. **2** As soon as a creditor possesses a note of indebtedness he acquires a lien on all real estate owned by the debtor at the time, and the creditor may recover on such property even if in the hands of a third party. **3** Because of the absence of a written note of indebtedness. **4** Because this document is not attested by witnesses. **5** Literally *after the signature of deeds*. **6** A guarantor's signature following those of witnesses is considered as his signature only† being present. This is the accepted law. **7** Or למה. **8** *i.e.*, this newcomer had not originally—when the money was being lent—given any guarantee to repay the debt if necessary, and is therefore not liable for it; this opinion is accepted. **9** *i.e.*, who was guarantor before the loan was consummated. **10** This view is accepted, as the loan is made *after* the acceptance of responsibility by the guarantor. **11** *i.e.*, civil law. **12** *i.e.*, 'Thou hast no store [of knowledge and wisdom] in the [whole] Torah superior to these [civil laws].' **13** He was a famous expert in civil law. **14** In some editions ושלמה מסכת בבא בתרא, TRACTATE BABA BATHRA CONCLUDED.

*Popular pronunciation בפטר. §Or *pausal* לך. †*sc.*, only as a witness.

סליק מסכת בבא בתרא

CONCLUSION OF TRACTATE BABA BATHRA.

ADDENDA.

[Additional Notes.]

- 43, Note * [page 187.] Nevertheless, movable objects that are not required for immediate use are not covered by such terms in the agreement unless they are separately and distinctly referred to as well.
- 52, Note § [page 192.] The meaning of צִמָּד a pair of working beasts [tied to the yoke] cannot apply here because it is coupled with the term בָּקָר, cattle, oxen.
- 96, Note * [page 217] לְהִבְיָא, compare *Deuteronomy* 29, 26, *Isaiah* 60, 9, 11. Some prefer the vowelisation לְהִבְיָא.
- 107, Note * [page 226.] אִפְרַע [*Niphal*]; this might be an *abbreviation* of the *Ithpael* אִיפְרַע which is itself an *abbreviation* of the full word אִתְפְּרַע. Compare אִפְרַע in יוֹמָא 22b, אִפְרוּעֵי in פְּבָא מְצִיעָא 16a.

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מִסְכֵּת

סְנֵהֶדְרִין

TRACTATE SANHEDRIN

[BEING THE FOURTH TRACTATE OF THE FOURTH ORDER
OF THE MISHNAH]

TEXT - INTRODUCTION - TRANSLATION - NOTES

By

PHILIP BLACKMAN, F.C.S.

The MS. of this Tractate was revised by

REV. N. BERGERMAN, B.A.

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INTRODUCTION

Sanhedrin, סנהדרין, is a Hebrew-Aramaic term of Greek origin.

This **Tractate** is the fourth of the fourth *Order* (*Nezikin*) of the *Mishnah*, and deals mainly with the constitution and judicial procedure of the courts, the qualification for judgeship, criminal law, and the administration and methods of punishment of criminals charged with and condemned for capital crimes.

There is no definite historical information of either the origin or constitution or election of members of the *Sanhedrin*.

I. There was a civil political-democratic **Sanhedrin** of which very little indeed is known authentically regarding its origin, character and functions, and no reference to it appears in the *Tractate*.

II. The **Great Sanhedrin** (also designated the *Great Beth Din* and the *Beth Din*) as identified in the *Talmud* dealt exclusively with religious and ritualistic Temple matters, with criminal matters appertaining to the secular court, with the proceedings in connection with the discovery of a corpse, with the trial of the adulterous wife, with the tithes, with the preparation of Scrolls of the Torah for the king and the Temple, with drawing up the Calendar, and with the solution of difficulties relating to ritual law.

According to the *Mishnah* (סנהדרין 1⁰) the *Great Sanhedrin* had its origin in the time of Moses (the *seventy elders*—*Numbers* 11, 4–31) and is traceable to the *Great Synagogue* (הקנסת הדולה) convened by Ezra and Nehemiah.

At about 30 c.e. it lost its authority of inflicting capital punishment and it ceased to function altogether after 70 c.e. when the Second Temple was destroyed. The Jabneh Academy and the subsequent Schools then assumed the continuance of the function of the *Great Sanhedrin*.

There were seventy-one members including the *President* (נשיא, *Nasi*, *Patriarch*, *Prince*) and the *Vice-President* (אב בית דין, *Father of the Court*) before whom facing them all the others (sixty-nine) sat in the form of a semicircle. The *President* was either a man of distinction or scholarship or often the *High Priest*, and the *Vice-President* sat on his right.

The sessions were ordinarily held in a hall called לשכת הגזית, the *Hall of Hewn-Stone*, situated in one of the courts near the south-east corner of the inner court of the Temple; occasionally the meetings took place in the *High-Priest's* residence.

There is also mention in the *Mishnah* (סנהדרין 1⁶) of a **Small Sanhedrin** consisting of twenty-three members in every town in Palestine with a minimum of one hundred and twenty householders.

There is זמרא to this *Tractate* in both the *Babylonian Talmud* and the *Jerusalem* (or *Palestinian*) *Talmud*.

The *Tractate* contains eleven Chapters whose titles are:

CHAPTER 1	דיני קמונות בשלשה	פרק א
CHAPTER 2	פתן גדול	פרק ב
CHAPTER 3	זה בורר	פרק ג
CHAPTER 4	אחד דיני קמונות	פרק ד
CHAPTER 5	היו בודקין	פרק ה
CHAPTER 6	נזמר הדין	פרק ו
CHAPTER 7	ארבע מיתות	פרק ז
CHAPTER 8	פן סורר ומורה	פרק ח
CHAPTER 9	הנשקפין	פרק ט
CHAPTER 10	חלק	פרק י
CHAPTER 11	אלו הן הנחנקין	פרק יא

The most important matters dealt with in these eleven Chapters are:

1. Cases brought before a court of three, twenty-three, or seventy-one judges. 2. Rights of the High Priest. Rights of the king regarding judgment, declaring war, spoil, accumulating wealth, reverence due to him. 3. Money suits; objections to judges, witnesses; ineligible judges, witnesses; examining witnesses; retrial, reversal. 4. Money suits; criminal suits; arrangement of the Sanhedrin judges. 5. Examination of witnesses; consultation and procedure of judges. 6. Dealing with one condemned to be executed; stoning, hanging, burial. 7. Stoning, hanging, burning, strangling. 8. The stubborn and rebellious son; killing to prevent crime. 9. Criminals burned; criminals beheaded; justifiable homicide; the case of one committing two capital crimes; criminal and solitary confinement; slaying a criminal caught in the act. 10. Those who forfeit 'the life to come'; the Lost Ten Tribes; the idolatrous city. 11. Strangling; the dissenting teacher; the false prophet.

סֵנְהֶדְרִין

TRACTATE

SANHEDRIN

CHAPTER 1

פֶּרֶק א

Mishnah 1

מִשְׁנָה א

Law-suits concerning money matters¹ [are decided] by three [judges];² cases of theft or of bodily injury³ [are decided] by three [judges];⁴ cases regarding claims for full damages or for half-damages, twofold compensation,⁵ or fourfold or fivefold compensation,⁶ [are decided] by three [judges];⁷ and cases concerning claims against the violator,⁸ the seducer,⁹ and the defamer¹⁰ [are decided] by three [judges].¹¹ This is the opinion of R. Meir.¹² But the Sages¹³ say, [The case against] the defamer [is decided] by twenty-three [judges] since it may involve a capital charge.¹⁴

דיני ממונות בשלשה; גזילות ונבלות בשלשה; גזק וחצי גזק, פשלומי כפל, ותשלומי ארבעה וחמשה, בשלשה; האונס ונהמפתה, ונהמוציא שם רע, בשלשה. דברי רבי מאיר. ותקמים אומרים מוציא שם רע בעשרים ושלשה, מפני שיש בו דיני נפשות.

1 *i.e.*, legal cases concerning inheritances, loans, property, sales, etc. 2 Who may be ordinary individuals, not necessarily qualified for such purpose, but one of them should have legal knowledge. 3 Or *mayhem*, the offence of depriving a person by violence of (the use of) any limb, member, or organ, or causing any bodily mutilation. 4 *Leviticus* 6, 4. In this case the judges must be ordained and qualified for the purpose. 5 *Exodus* 22, 4. **קָמָא 1 et seq.** 6 *Exodus* 22, 1. 7 Ordained qualified judges. 8 *Deuteronomy* 22, 29. 9 *Exodus* 22, 16, 17. 10 Or *slanderer*. *Deuteronomy* 22, 19. **סוֹטָה 1ff.** 11 Who must be ordained and qualified. 12 His view is rejected. 13 Their opinion is accepted. 14 The guilty wife is liable to death by stoning. Twenty-three judges must decide a case that entails the death penalty on conviction. *Or שיש בו.

Mishnah 2

[Cases concerning crimes punishable by] flogging¹ [are decided] by three [judges]. They quoted in the name of R. Ishmael, [Cases concerning offences liable to punishment by stripes are decided] by twenty-three [judges].² The intercalation of the month³ [is decided] by three [judges]; the intercalation of the leap-year⁴ [is decided] by three [judges]. This is the view of R. Meir. But Rabban Simon⁵ ben Gamaliel says, They begin [the case] with three [judges], and it is discussed by five [judges], and it is concluded by seven [judges], but if it be concluded by three [judges], the intercalation is licit.

1 Forty stripes. *Deuteronomy* 25, 1-3. 2 A deduction between *Numbers* 35, 31 (based on רשע) where the penalty is death and *Deuteronomy* 25, 1 (where also is the term רשע) whence by analogy the death penalty should apply. 3 See ראש השנה 31. The judges have to examine the witnesses who say they have seen the new moon. 4 The addition of the second month Adar (אדר שני). מגילה 14. 5 His opinion is accepted. The discussion regarding the leap-year (the addition of the second month Adar) is begun by three; if two decide that that year is not a leap-year, the matter is settled, but if two say that further advice must be taken then two more judges are called in; if three of the five now decide that the year is an ordinary one, it is thus settled, but if three of the five decide it should be a leap-year then two more judges must be consulted for a final decision; if the first three judges unanimously agree that the year should be a leap-year, their decision at once becomes final.

Mishnah 3

The laying on of the hands by the elders,¹ and the breaking of the neck of the heifer² [are decided] by three [judges]; this is the view of R. Simon;³ but R. Judah⁴ says, By five. *Chalitzah*,⁵ and refusal by a minor⁶ [are carried out] before three. [The redemption evaluation concerning] the fourth-year tree-fruit,⁷ and [the redemption assessment regarding]

משנה ב

ימכות בשלשה. משום רבי ישמעאל
אמרו בעשרים ושלשה. עבור
החדש בשלשה, עבור השנה
בשלשה. דברי רבי מאיר. רבן
שמעון בן גמליאל אומר בשלשה
מתחילין, ובחמשה נושאים ונותנים,
וגמרין בשבעה, ואם גמרו בשלשה
מעוברת.

משנה ג

סמיכת זקנים, ועריפת עגלה,
בשלשה, דברי רבי שמעון; ורבי
יהודה אומר בחמשה. התלצה,
והמיאונין, בשלשה. נטע רבעי,
ומצטר שני שאין דמיו ידועין,
בשלשה. ההקדשות, בשלשה.

second tithe⁸ whose money values are not known [are determined] by three. [The redemption of] consecrated property⁹ [is effected] before three. [The estimation of] dedicated movables^{10*} [is made] by three; R. Judah says, One of them must be a priest; and in the case of real estate there must be nine and [also a tenth] a priest, and likewise regarding a human being.¹¹

הַעֲרֵכִין *הַמְטַלְטְלִין, בְּשֵׁלֶשָׁה;
 רַבִּי יְהוּדָה אוֹמֵר אֶחָד מֵהֵן כֹּהֵן;
 וְהַקְרָקְעוֹת, תִּשְׁעָה וְכֹהֵן, וְאֶדָם
 כִּיּוֹצֵא ¹¹כֹּהֵן.
 הַמְטַלְטְלִין

*Popularly mispronounced
 there must be nine and [also a tenth]

1 *Leviticus 4, 15.* 2 *Deuteronomy 21, et seq.* 3 סוֹטָה 91. 3 His view is rejected.
 4 His opinion is accepted. 5 Or *leviratic separation*. 6 יְבָמוֹת INTRODUCTION.
 6 כִּבְמוֹת 131. A girl a minor (one under twelve years of age) whom (her father being dead) her mother or brother had given in marriage may reject her husband without a bill of divorce (גֵּט). 7 *Leviticus 19, 23ff.*; עֲרֵלָה INTRODUCTION;
 8 *Deuteronomy 14, 23 et seq.*; בְּרִכּוֹת 11, **Note 5**; מַעֲשֵׂר שְׁנִי INTRODUCTION, 42, 54. 9 עֲרֵכִין 51^{ff}; *Leviticus 27, 14 et seq.*
 10 *Leviticus 27, 2 et seq.*; עֲרֵכִין 56. 11 מַגְלָה 43. If one vowed himself as consecrated to the Temple the judges assess him as if he would be a slave for sale and the amount thus determined is the redemption.

Mishnah 4

Cases involving capital punishment [are decided] by twenty-three [judges]. An animal with which a person commits unnatural intercourse¹ or an animal that had suffered unnatural connection² [is judged] by twenty-three, as it is said,³ *and thou shalt kill the woman and the beast, and it says,⁴ and ye shall slay the beast.* The ox that is to be stoned⁵ [is judged] by twenty-three, as it is said,⁶ *the ox shall be stoned, and its owner also shall be put to death—* according to the manner of⁷ the death of the owner so is the death of the ox. The wolf, (and) the lion, the bear, (and) the tiger,⁸ (and) the leopard,⁹ and the serpent¹⁰—

מִשְׁנָה ד

דִּינֵי גַפְשׁוֹת בְּעֵשְׂרִים וּשְׁלֹשָׁה.
 הַרְבֵּעַ יוֹהֲרָבַע בְּעֵשְׂרִים וּשְׁלֹשָׁה,
 שֵׁנְאָמֵר וְהִרְגֵת אֶת־הָאִשָּׁה וְאֶת־
 הַבְּהֵמָה, וְאוֹמֵר וְאֶת־הַבְּהֵמָה
 תִּהְרֹגוּ. שׁוֹר הַגִּסְקָל בְּעֵשְׂרִים
 וּשְׁלֹשָׁה, שֵׁנְאָמֵר הַשׁוֹר יִסְקָל וְגַם
 בְּעָלָיו יוּמָת, כְּמִיתַת בְּעָלִים בְּךָ
 מִיתַת הַשׁוֹר. הַזָּאֵב וְהָאֲרִי הַדּוֹב
 וְהַנֶּמֶר וְהַפְּרָדִלְס ¹⁰וְהַנְּחָשׁ, מִיתְּחַן
 בְּעֵשְׂרִים וּשְׁלֹשָׁה. רַבִּי אֱלִיעֶזֶר

their death [is decided] by twenty-three. R. Eliezer says, If any one killed them first,¹¹ he has performed a meritorious act. R. Akiba¹² says, Their death [is decided] by twenty-three.

אומר כל-הקודם להרצן זכה.
רבי עקיבא אומר מיתתן בפעשרים
ושלשה.

1 A male beast copulates with a woman. Some understand רובע to refer to the human being. See זבחים, 81, 93, 142. Compare קמא קמא 40b. 2 A female creature had undergone sexual connexion by a man. Compare סנהדרין 14. 3 *Leviticus* 20, 16. 4 *Leviticus* 20, 15. 5 For killing a human being. 6 *Exodus* 21, 29. 7 *i.e.*, by the decision of twenty-three judges. 8 Or panther. 9 Or cheetah. 10 Or snake. 11 *i.e.*, before the cases were brought before the court. This view is rejected. 12 His opinion is accepted, that a snake should be killed before being brought to court, but that other creatures ought to be examined by the judges first.

Mishnah 5

משנה ה

They may not try a Tribe,¹ or a false prophet,² or a High Priest³ except by the court of seventy-one; and they may not send forth [the people] to a political war⁴ save by order of the court of seventy-one; they may not add to the City⁵ or to the Temple Court⁶ except by the decision of the court of seventy-one; they may not set up sanhedrims for the Tribes save by the consent of the court of seventy-one; and they may not declare [any town to be] an apostate town⁷ otherwise than by the decision of the court of seventy-one; but they may not proclaim a city on the border⁸ an apostate city,⁹ nor three [cities together],¹⁰ but they may proclaim one or two.

אין דנין לא את-השבט, ולא את-
גבאי השקר, ולא את-כהן גדול,
אלא על פי בית דין של שבעים
ואחד; ואין מוציאין למלחמת
הרשות, אלא על פי בית דין של
שבעים ואחד; אין מוסיפין על
העיר, ועל הענרות, אלא על פי
בית דין של שבעים ואחד; אין עושין
סנהדריות לשבטים, אלא על פי
בית דין של שבעים ואחד; אין
עושין עיר הנדחת, אלא על פי בית
דין של שבעים ואחד; ואין עושין
עיר הנדחת בפספר ולא שלשה,
אבל עושין אחת או שתיים.

1 Literally *the tribe*. The majority of whose inhabitants are accused of idolatrous practices. *Deuteronomy* 17, 5. 2 *Deuteronomy* 18, 20. 3 *Deuteronomy* 17, 8. 4 Or *secular war* (*i.e.*, not a war of duty or for religious causes). See סוטה 87. 5 Jerusalem. 6 Compare שבועות 22. 7 See 104^{ff}; *Deuteronomy* 13, 12. All the inhabitants are

liable to the death penalty and all its property to be burned. 8 סָפֵר, *border, boundary, frontier*. 9 For national safety. If the town is on the border only those guilty of idolatry were to be put to death, but the town is not burned down. 10 Only the guilty were to suffer the death penalty if the three towns were near each other.

Mishnah 6

The Great Sanhedrin† was composed of seventy-one [members] and a small [sanhedrin was made up of] twenty-three. And whence [do we know] that the Great [Sanhedrin] was to have seventy-one? As it is said,¹ *Gather unto Me seventy men of the elders of Israel*, and with Moses over them [the total] is seventy-one. R. Judah says, Seventy. And whence [do we learn] that the small [sanhedrin] should have twenty-three? As it is said, *then² the congregation shall judge and and³ the congregation shall deliver*—one congregation judges* and one congregation delivers,§ thus we have here⁴ twenty. And whence [do we infer] that ten constitute a congregation? As it is said,⁵ *How long shall I bear with this evil congregation?*—and Joshua and Caleb were excluded.⁶ And whence [do we conclude] that three others were still to be brought?⁷ By logical conclusion as it is said,⁸ *Thou shalt not follow a multitude to do evil.*⁹ I infer that I am to be with them to do good.¹⁰ If so, why¹¹ is it said, *after a multitude to pervert¹² justice?* [It means that] not as thou followest the majority to effect good¹³ shalt thou likewise follow the majority to evil,¹⁴ for thy decision for good may be effected by a majority of one, but thy verdict for evil must be reached by a

משנה ו

סנהדרין גדולה, היתה של שבעים ואחד וקטנה של עשרים ושלושה. ומנין לגדולה שהיא של שבעים ואחד? שנאמר לי שבעים איש מזקני ישראל, ומשה על גביהן. הרי שבעים ואחד. רבי יהודה אומר שבעים. ומנין לקטנה שהיא של עשרים ושלושה? שנאמר ושפטו העדה והצילו העדה; עדה שופטת ועדה מצלת; הרי כאן עשרים. ומנין לעדה שהיא עשרה? שנאמר עד מתי לעדה הרעה הזאת? יצאו יהושע וקלבי. ומנין להביא עוד שלשה? ממשמע שנאמר לא תהיה אחרי רבים לרעות. שומע אני שאהיה עמהם לטובה. אם כן למה נאמר אחרי רבים להטות? לא כהטיתך לטובה, הטיתך לרעה. הטיתך לטובה על פי אחד, הטיתך לרעה על פי שנים. ואין בית דין שקול מוסיפין עליהם

majority of two.¹⁵ And since a court must not be divisible into two equal parties, they add to them one more, and thus¹⁶ there are here twenty-three. And how many [inhabitants] should there be in a town that it may be eligible to have a [small] sanhedrin? One hundred and twenty¹⁷. R. Nehemiah¹⁸ says, Two hundred and thirty, to correspond to chiefs of groups of ten men each.¹⁹

עוד אָסד, ¹⁶ הָרִי כָּאֵן עֶשְׂרִים
וְשִׁלְשָׁה וְכִמְהָ יְהֵא בְעִיר וְתֵהֵא
רְאוּיָה לְסַנְהֶדְרִין? ¹⁷ מֵאָה וְעֶשְׂרִים.
רְבִי יְחִמְיָה אוֹמֵר מֵאֲתִים וְשִׁלְשִׁים,
כְּגוֹד שְׂרֵי ¹⁹ עֶשְׂרוֹת.

1 Numbers 11, 16. 2 Numbers 35, 24. 3 Numbers 35, 25. 4 כָּאֵן traditional pronunciation. 5 Numbers 14, 27. 6 As there were twelve of them and Joshua and Caleb were not included in this statement, the reference congregation could apply to the ten only. (The term מִנְיָן, *minyan*, the requisite number of ten adult males for congregational worship, is derived from this Mishnah. Compare שְׁבַת 73b; יוֹטֵן 59a; סַנְהֶדְרִין 36a). 7 To make up the twenty-three. 8 Exodus 23, 2. 9 The Scripture gives לְרַעַת. 10 *i.e.*, the conclusion is that those who are for acquittal are one more than those to condemn. 11 Or לְמֵהָ. 12 Exodus 23, 2. The Scriptural reading is לְהַטָּה. 13 *i.e.*, to give a verdict of acquittal. 14 *i.e.*, to give a verdict of condemnation. 15 A majority of one cannot make a legal condemnation. 16 Thus to bring about a majority of two there must be twenty-two judges (twelve for and ten against); but with twenty-two there might occur a division of eleven for and eleven against when a decision would be impossible, hence there must be twenty-three judges to prevent any such possibility. See 4⁴. 17 The number 120 is made up thus (as given in the מִנְיָן): 23 members of the small sanhedrin, 69 (in three rows of 23 each) in attendance at the court for adding to the number of judges when necessary, 10 unemployed (attending the house of study), two scribes or scriveners, two superintendents or ushers, two litigants, two witnesses, two false witnesses, two to refute the false witnesses, three wardens, one physician, one clerk, one elementary† teacher. 18 His view is rejected. 19 *i.e.*, each of the twenty-three judges to be as an equivalent to ten men of the city. (Compare Exodus 18, 21.) **sc.*, condemns. †*sc.*, acquits. †See INTRODUCTION. ‡Or *primary*.

CHAPTER 2

פֶּרֶק ב

Mishnah 1

מִשְׁנָה א

The High Priest can judge, and they may judge him,¹ he can give evidence and others may give evidence against him, he must submit to *chalitzah*² and others³ may either submit to

פֶּהַן גְּדוֹל דָּן, וְדָנִין יְאוּתוֹ, מְעִיד,
וּמְעִידִין אוּתוֹ, חוֹלֵץ, וְחוֹלְצִין
לְאוּתוֹ, וּמִיבָמִין אֶת-אוּתוֹ, אֶבֶל

chalitzah from his wife or contract *levirate marriage* with his wife,⁴ but he himself may not contract *levirate marriage* for he is prohibited from wedding a widow.⁵ If one of his near of kin die, he must not follow after the bier,⁶ but when they [with the bier] enter any road he avoids it,⁷ and when they leave any road he may enter it,⁸ and he may thus go forth with them as far as the entrance⁹ of (the gate of) the city. This is the view of R. Meir.¹⁰ R. Judah¹¹ says, He may not go forth from the Temple, as it is said,¹² *neither shall he go out of the sanctuary*. And when he consoles others¹³ [mourners], it is the custom for all the people to pass by one after another, and the substitute High Priest¹⁴ places him between himself and the people¹⁵; and when he receives condolence from others,¹⁶ all the people say to him, 'May we be thy atonement', and he replies to them, 'May ye be blessed from Heaven'; and when they make the

הוא אינו מיבם, מפני שהוא אסור
 באלמנה. מת לו מת, אינו יוצא אחר
 המטה, אלא הן נכסין, והוא נגלה,
 הן נגלין והוא נכסה, ויוצא עמהן
 עד פתח (שער) העיר. דברי רבי
 מאיר. רבי יהודה אומר אינו
 יוצא מן המקדש, שנאמר ומן
 המקדש לא יצא. וכשהוא מנחם
 אחרים, דרך כל-העם עוברין
 בזה אחר זה, והממונה ממצעו
 בינו לבין העם; וכשהוא מתנחם
 מאחרים כל-העם אומרים לו אנו
 כפרתך, והוא אומר להן התברכו
 מן השמים; וכשמברין אותו,
 כל-העם מסובין על הארץ והוא
 מיסב על הספסל.

funeral meal¹⁷ for him, all the people sit on the ground and he sits on a [low] stool.¹⁸

1 *i.e.*, he may act as a judge, and he may be brought to justice. 2 See **יבמות** INTRODUCTION. He may not contract levirate union with the widow of his dead brother who died childless. 3 *i.e.*, a brother of his. 4 If he (the High Priest) died without issue. 5 *Leviticus* 21, 14; **יבמות** 64. 6 *Leviticus* 21, 11. 7 Literally, when they [with the bier or funeral cortège] are hidden [from his view on entering an alley] he appears. 8 Literally when they appear [on emerging from the alley] he disappears [from their view into the alley]. *i.e.*, he may follow on at a distance and out of sight of the funeral procession. 9 But no further—he must then return. 10 His view is rejected. 11 His opinion is accepted. 12 *Leviticus* 21, 12. 13 The High Priest may be present at the funerals of those who are not of near kin. It used to be the custom for the mourner (**אבל**) after the burial to stand still and those present passed by him pronouncing **מן השמים** **תנחם**, 'Mayest thou be comforted from Heaven.' 14 See **יבמה** 31, 71; **תמיד** 32; **סוטה** 77. He was held in readiness

to take the High Priest's place if he met with any mishap on the Day of Atonement.*

15 The substitute High Priest on the right and the people on the left. *הממנה, literally and the appointed one. 16 ברכות 21. 17 II Samuel 12, 17; 37 מועד קטן.

A mourner may not eat the first meal of his own food. 18 Literally the stool.

Mishnah 2

The king can neither judge nor can they judge him;¹ he may not give evidence, nor may they bear witness against him; he may not submit to *chalitzah*,² nor may one submit to *chalitzah* at the hands of his wife [widow]; he may not contract *levirate marriage*,³ nor may they contract *levirate marriage* with his wife [widow]. R. Judah⁴ says, If he desire to submit to *chalitzah* or to contract *levirate marriage*, it redounds to his credit.⁵ [The Sages] said to him, They should not hearken to him.⁶ And none may wed his widow. R. Judah⁷ says, The king may marry the widow of a king, for so we found it in the case of David who wedded the widow of Saul, as it is said,⁸ and I gave to thee the house of thy master,⁹ and the wives of thy master⁹ into thy bosom.

1 i.e., he may not act as judge nor can he be brought to trial. This refers only to the kings of the Kingdom of Israel (and not to those of the Kingdom of Judah; see *Jeremiah* 21, 12). 2 For the rite is derogatory to the respect due to a king. 3 And since the widow cannot perform *chalitzah** against him she is ineligible to be wed by him as an alternative. 4 His opinion is rejected. 5 Literally *he is remembered for a blessing*. 6 This is the ruling. 7 This view is accepted. 8 II Samuel 12, 8. 9 The Scriptural readings are אדניך. *Or *levirate separation*.

Mishnah 3

If one of his near of kin die, he must not go forth from the doorway of his royal residence.¹ R. Judah² says, If he be minded to go forth behind the bier, he may so go forth,

משנה ב

המלך לא דן, ולא דנין אותו; לא מעיד, ולא מעידין אותו; לא חולץ, ולא חולצין לאשתו; לא מיבם, ולא מיבמין לאשתו. רבי יהודה אומר אם רצה לחלוץ או ליבם זכור לטוב. אמרו לו אין שומעין לו. ואין נושאין אלמנתו. רבי יהודה אומר נושא המלך אלמנתו של מלך, שכן מצונו בדרך שנשא אלמנתו של שאול שנאמר ואתנה לה את בית אדוניך ואת נשי אדוניך בחיקך.

משנה ג

מת לו מת, אינו יוצא מפתח הפלטרין שלו. רבי יהודה אומר אם רצה לצאת אחר המטה יוצא, שכן מצונו

for so we have found in the case of David who went forth after the bier of Abner, as it is said,³ *And king David followed⁴ the bier.* [The Sages] replied to him, That act was merely to placate the people. And when they set before him the funeral meal, all the people sit upon the floor and he sits on a couch.⁵

בְּדוֹד שִׁיצָא אַחַר מִטָּתוֹ שֶׁל אֲבִנֵר,
שֶׁנֶּאמַר וְהַמֶּלֶךְ דָּוִד יְהוֹלֵךְ אַחַר
הַמִּטָּה. אָמְרוּ לוֹ לֹא הָיָה הַדָּבָר
אֶלָּא לְפָיִים אֶת־הָעָם. וְכִשְׂמֵכְרִין
אוֹתוֹ. כָּל־הָעָם מְסוּבִין עַל הָאָרֶץ,
וְהוּא מֵיֵסֵב עַל הַדֶּרֶגֶשׁ.

1 Or *palace*. It is derogatory to a king's dignity and position to exhibit distress in public. 2 His view is rejected. 3 *II Samuel* 3, 31. 4 The Scriptural text gives *הִלֵּךְ אַחֲרָיו*. 5 Which is low, but out of respect to a king, not so low as a stool on which the mourning High Priest sits.

Mishnah 4

And [the king] may lead forth [the army] to *political warfare*¹ by the decision of the Court* of Seventy-One;² and he may break through [private property]³ to make himself a road,⁴ and none may prevent him;⁵ the king's road has no definite measurements. And all the people that take spoil must set it before him and he takes a portion first.⁶ *Neither⁷ shall he multiply wives to himself—only eighteen.⁸* R. Judah⁹ says, He may so multiply¹⁰ to himself, only provided that they do not turn away his heart. R. Simon¹¹ says, If [he would marry] even only one and she might turn away his heart, he may not wed her. If this be so, why¹² is it said, *Neither shall he multiply wives to himself?*—Even though [they be as pious] as Abigail.¹³ *Only¹⁴ he shall not multiply horses to himself—only sufficient for his chariot.¹⁵* *Neither¹⁶ shall he greatly multiply to himself silver and gold—only enough*

משנה ד

וּמוֹצִיא לְמַלְחָמַת הַרְשׁוֹת עַל פִּי
בֵּית דִּין שֶׁל שִׁבְעִים וְאֶחָד; וּפּוֹרֵץ
לְעִשׂוֹת לוֹ יְדֵרֶךְ, וְאֵין מְמַחֵין בְּיָדוֹ;
דֶּרֶךְ הַמֶּלֶךְ אֵין לוֹ שְׁעוֹר. וְכָל־
הָעָם בּוֹזִזִין וְנוֹתְנִין לְפָנָיו, וְהוּא נוֹטֵל
חֶלֶק בְּרֵאשִׁי. לֹא יִרְבֶּה לוֹ נָשִׁים,
אֶלָּא שְׁמֹנֶה עֶשְׂרֵה. רַבִּי יְהוֹנָדָה
אוֹמֵר מִרְבֵּה הוּא לוֹ וּבִלְבָד שֶׁלֹּא
יְהוּ מְסִירוֹת אֶת־לְבוֹ. רַבִּי שְׁמַעוֹן
אוֹמֵר אֶפִּילוֹ אַחַת וּמְסִירָה אֶת־לְבוֹ
הָרִי זֶה לֹא יִשְׁאַנֶּה. אִם כֵּן לָמָּה
נֶאמַר לֹא יִרְבֶּה לוֹ נָשִׁים? אֶפִּילוֹ
כַּאֲבִיגַיִל. לֹא־יִרְבֶּה־לוֹ סוּסִים,
אֶלָּא כְּדֵי מְרַבָּתוֹ. וְכִסְף וְזָהָב
לֹא יִרְבֶּה־לוֹ מְאֹד, אֶלָּא כְּדֵי לִיתֵן

for the maintenance of [his] army.¹⁷ And he must write for himself¹⁸ a Scroll of the Law;¹⁹ when he goes forth to battle he takes it with him, and when he returns he brings it back with him; when he sits in judgment it must be with him; when he sits [at a meal] it must be before him, as it is said,²⁰ *And it shall be with him, and he shall read therein all the days of his life.*

וְאֶסְפְּנִיאֵי וְכֹתֵב לוֹ סֵפֶר תּוֹרָה
 לְשֵׁמוֹ, יוֹצֵא לְמִלְחָמָה מוֹצִיאָה
 עִמוֹ, וְכַנְס מְכַנְסָה עִמוֹ; יוֹשֵׁב בְּדִין
 הִיא עִמוֹ; מִיֹּסֵב הִיא כֹּנְנֵדוֹ,²⁰ שֶׁנֶּאֱמַר
 וְהִיָּתָה עִמוֹ וְקָרָא בּוֹ כָּל־יְמֵי חַיָּיו.

*See INTRODUCTION.

1 Any war against any of the seven nations§ of Canaan or against the Amalekites is מִלְחַמַּת חוֹבָה. 2 *i.e.*, the Great Sanhedrin. 3 Fences, hedges, walls. 4 To his field or vineyard. 5 Or *protest against him*. 6 He is entitled to half of the plunder. But royal treasure belongs to him entirely. 7 *Deuteronomy 17, 17*. The Scripture gives וְלֵא. 8 Whether good or bad. 9 His opinion is rejected. 10 *viz.*, have more than eighteen wives if the additional ones are god-fearing women. 11 His view is not accepted. He maintains that all the eighteen must be god-fearing women. 12 Or לְמָה. 13 *I Samuel 25, 3*. 14 *Deuteronomy 17, 16*. 15 And for his horsemen. 16 *Deuteronomy 17, 17*. 17 אֶסְפְּנִיאֵי, more correct אֶפְסְנִיאֵי, *provision, supplies and pay for an army, used for the standing army*. But he may have also in readiness sufficient funds to provide for extra forces in times of need. 18 Literally *for his name*. 19 In addition to the Scroll of the Law which every Jew should possess in his house. 20 *Deuteronomy 17, 19*. §See ADDENDUM, Page 297.

Mishnah 5

משנה ה

None may ride upon his horse; and none may sit upon his throne; and none may use his sceptre;¹ and none may look on him when he has his hair cut² or when he is naked or when [he is] in the bath-house, as it is said,³ *thou shalt in any wise set him king over thee*—[one such] that his awe shall be over thee.⁴

אֵין רוֹכֵבִין עַל סוּסוֹ; וְאֵין יוֹשְׁבִין
 עַל כִּסְאוֹ; וְאֵין מְשַׁתְּמְשִׁין
 בְּשַׂר־בֵּיתוֹ; וְאֵין רוֹאִין אוֹתוֹ כְּשֶׁהוּא
 יִמְסַתְּפֵר וְלֹא כְּשֶׁהוּא עָרוֹם, וְלֹא
 בְּבֵית הַמְּרַחֵץ, שֶׁנֶּאֱמַר שׁוֹם תְּשִׂים
 עֲלֶיךָ מֶלֶךְ שֶׁתְּהֵא אֵימָתוֹ עֲלֶיךָ.

1 And this applies to all his appliances and things appertaining to his office. 2 Because he looks uncouth before the completion of the hair-cut. 3 *Deuteronomy 17, 15*. 4 *sc.*, the king must always be seen at his best, not to detract from his dignity and importance.

CHAPTER 3

פֶּרֶק ג

מִשְׁנֵה א

Mishnah 1

Cases concerning money matters¹ [are decided] by three [judges]. One [litigant] chooses (for himself) one [judge] and the other [litigant] chooses (for himself) another [judge], and the two of them² together elect (for themselves) one [judge] more.³ This is the view of R. Meir. But the Sages say,⁴ The two judges⁵ choose for themselves yet one other [judge].⁶ The one [litigant] may reject⁷ the judge of [that is, chosen by] the other [litigant], and the other may reject the judge of the former.⁸ This is the opinion of R. Meir. But the Sages⁹ say, When is this so? When* one [litigant] can produce evidence against them that they¹⁰ are kinsmen or ineligible;¹¹ but if they be¹² eligible or fully qualified, he can not object¹³ to them. The one [litigant] may refuse to accept the witnesses of the other, and the other may object to admit the witnesses of the former. This is the view of R. Meir. But the Sages¹⁴ say, When does this apply?

When one [litigant] can bring proof against them that they are near of kin or ineligible; but if they be¹² eligible, he can not refuse them.

דִּינֵי יִמְמוֹנוֹת בְּשִׁלְשָׁה. זֶה בּוֹרֵר לוֹ
אֶחָד וְזֶה בּוֹרֵר לוֹ אֶחָד. וּשְׁנֵיהֶן
בוֹרְרִין לָהֶן עוֹד אֶחָד. דְּבָרֵי רַבִּי
מֵאִיר. וְנִחְכְּמִים אוֹמְרִים שְׁנֵי דִּינֵין
בוֹרְרִין לָהֶן עוֹד אֶחָד. זֶה פּוֹסֵל
דִּינֵיו שֶׁל זֶה, וְזֶה פּוֹסֵל דִּינֵיו שֶׁל זֶה.
דְּבָרֵי רַבִּי מֵאִיר. וְנִחְכְּמִים אוֹמְרִים
אֵימָתִי? בְּזִמְן שֶׁמֵּבִיא עֲלֵיהֶן רֵאיוֹהָ
שֶׁהֵן קְרוֹבִין אוֹ פְּסוּלִין; אֲבָל אִם
הֵיוּ כְּשָׂרִים אוֹ מוֹמָחִין אֵינּוּ יָכוֹל
לְפוֹסְלָן. זֶה פּוֹסֵל עֲדָיו שֶׁל זֶה,
וְזֶה פּוֹסֵל עֲדָיו שֶׁל זֶה. דְּבָרֵי רַבִּי
מֵאִיר. וְנִחְכְּמִים אוֹמְרִים אֵימָתִי?
בְּזִמְן שֶׁהוּא מֵבִיא עֲלֵיהֶם רֵאיוֹהָ שֶׁהֵן
קְרוֹבִים אוֹ פְּסוּלִים; אֲבָל אִם הֵיוּ
כְּשָׂרִים, אֵינּוּ יָכוֹל לְפוֹסְלָן.

1 Sec 1¹. 2 The two litigants or suitors. 3 And the three judges then proceed with the case. 4 Their opinion is accepted. 5 Chosen by the two suitors. 6 To avoid any possibility of bias towards either litigant. 7 *i.e.*, refuse to accept. 8 But no expert judge can be thus rejected. 9 Their opinion is the accepted ruling. 10 *viz.*, the other suitor and the judge chosen by him. 11 *i.e.*, that the one chosen is ineligible to act as judge. 12 Literally *were*. 13 Literally *render ineligible, disqualify*. 14 Their view is accepted. *Or בְּזִמְן.

Mishnah 2

If one [litigant] said to him, [the other litigant,] 'I accept my father as trustworthy',¹ or, 'I accept thy father as trustworthy',¹ or, 'I accept three herdsmen as reliable',² R. Meir says, He may retract;³ but the Sages⁴ say, He can not retract. If one had to take an oath before his fellow,⁵ and [the latter] said to him, 'Vow to me by the life of thy head', R. Meir says, He may withdraw therefrom;⁶ but the Sages⁷ say, He can not withdraw.

משנה ב

אמר לו יאמן עלי אבא, יאמן עלי אביה, יאמנים עלי שלשה רועי בקר, רבי מאיר אומר יכול לחזור בו; ונתקמים אומרים אינו יכול לחזור בו. הנה חייב להבירו שבוועה, ואמר לו דור לי בחיי ראשך, רבי מאיר אומר יכול לחזור בו; ונתקמים אומרים אין יכול לחזור בו.

- 1 To act as judge or witness. 2 To act as judges though they are ignorant men. 3 *i.e.*, even after the decision, and demand a fresh trial with other judges. But his view is rejected. 4 Their view is accepted. 5 For instance, if A claimed money from B, and A had to take an oath. See *שבועות* 81^{ff}. 6 *i.e.*, the latter who demanded this vow can retract after the vow had been made. This is not accepted. 7 Their ruling is accepted.

Mishnah 3

And these are they who are ineligible [to be judges or witnesses]: a dice-player, (and) a usurer,¹ (and) pigeon-fliers,² and traffickers in Sabbatical year produce.³ R. Simon said, Aforetime they used to call them *gatherers*⁴ of Sabbatical year produce, but when the tax-collectors⁵ increased they altered [this term] and called them traffickers in Sabbatical year produce. R. Judah⁶ said, When is this the case?⁷ When they have no other occupation except that [prohibited one], but when they have some other occupation, but not that [whereby to make a living], they are eligible.⁸

משנה ג

ואלו הן הפסולין, המשחק בקוביא, והמלוה ברבית, ומפריחי יונים, וסוחררי שביעית. אומר רבי שמעון בתחלה היו קורין אותן אוספי שביעית. משברו האנסין חזרו לקרותן סוחררי שביעית. אומר רבי יהודה אימתי? בזמן שאין להם אומנות אלא הוא, אבל יש להן אומנות שלא הוא כשרין.

1 And also one who borrows from a usurer. 2 *i.e.*, racing gamblers. 3 See *Leviticus* 25, 1; שְׂבִיעִית INTRODUCTION. 4 *i.e.*, illegally gathering ownerless property for themselves. 5 אָנָס, a violent person, one who acts violently; particularly in law, one who owns reclaimable property, a possessor of property who purchased it from one who got it by confiscation or by force; also applied to anyone who forced owners of fields to give of their produce to the ruler even in the Sabbatical year which made it impossible to declare the produce in the Sabbatical year as ownerless. 6 His opinion is accepted. 7 *i.e.*, 'When are all these ineligible?' 8 *i.e.*, only professional gamblers, etc., are ineligible. *Or בְּזִמְן. †Or לְשֵׁלְהוֹן.

Mishnah 4

מִשְׁנֵה ד

And these are they that are near of kin:¹ one's father, (and) his brother, (and) his father's brother, (and) his mother's brother, (and) his sister's brother, (and) the husband of his father's sister, (and) the husband of his mother's sister, (and) his mother's husband [that is, his step-father], (and) his father-in-law, and his brother-in-law [namely, the husband of his wife's sister], both they and their sons and their sons-in-law, but only his [namely, the litigant's] step-son.² R. Jose said, This was the traditional teaching of R. Akiba, but the original teaching included also one's uncle, and his uncle's son, and all who are qualified to inherit from him. And all that were of near kin at the time;³ but

וְאֵלוּ הֵן יְהִקְרֹבֵי, אָבִיו, וְאָחִיו, וְאָחִי אָבִיו, וְאָחִי אִמּוֹ, וּבָעַל אַחֹתוֹ, וּבָעַל אַחֹת אָבִיו, וּבָעַל אַחֹת אִמּוֹ, וּבָעַל אִמּוֹ, וְחָמִיו, וְגִיסוֹ, הֵן וּבְנֵיהֶן וְחַתָּנֵיהֶן, וְחֹרְגוֹ לְבָדוֹ. אָמַר רַבִּי יוֹסִי זֶה מִשְׁנַת רַבִּי עֲקִיבָא, אֲבָל מִשְׁנֵה רֵאשׁוֹנָה, דָּוָדוֹ וּבֶן דָּוָדוֹ, וְכָל-הָרְאוּי לְיִוְרָשׁוֹ וְכָל-הַקְּרוֹב לּוֹ בְּאוֹתָהּ יִשְׁעָהּ. הָיָה קְרוֹב וְנִתְרַחַק הָרִי זֶה יְכַשֵּׁר. רַבִּי יְהוּדָה אוֹמֵר אֲפִילוֹ מִתָּה בְּתוֹ יוֹשֵׁשׁ לוֹ בָּנִים מִמֶּנָּה, הָרִי זֶה קְרוֹב.

if one were near of kin and ceased to be a kinsman, he is eligible.⁴ R. Judah⁵ says, Even if one's daughter died, and he [that is, the son-in-law] had children from her, then the latter is still accounted a relative.

1 Ineligible to act as judges or witnesses. 2 The son of his wife by a former husband (but the stepson's son or son-in-law may act as judge or witness). If two men married sisters then they and their sons and their sons-in-law are ineligible to be judges or witnesses for one another, but the sons and sons-in-law whom one of the two brothers-in-law has from another wife [not the other wife's sister] may act as judges and witnesses in a case against the brother-in-law. If one is ineligible to be

judge or witness for a man he is also disqualified for the wife, and vice versa. 3 These are also disqualified to be judges or witnesses. 4 When the case came up for trial the relationship had ceased (for example, a man ceases to be a son-in-law if his wife dies). 5 His opinion is rejected. *Or ויש-לו.

Mishnah 5

משנה ה

A friend or an enemy [is ineligible].¹

By 'friend' is meant one's best-man,² [and] by 'enemy' is meant any one that had not spoken with him through enmity for three days.³

[The Sages]⁴ said to him, [namely, R. Judah], Israelites should not be

יְהוֹאֵב וְהַשּׂוֹנֵא אֹהֵב זֶה שׁוֹשְׁבֵינוּ, שׂוֹנֵא כָּל-שְׂלֵא דְבַר עִמּוֹ שְׁלֹשָׁה יָמִים בְּאַיְבָהּ. אָמְרוּ לוֹ, לֹא נִחְשְׁדוּ יִשְׂרָאֵל עַל כֵּן.

suspect on such ground.

1 They are disqualified from acting as judges or witnesses. 2 Or *bride's agent*. Compare בְּתוּרָא 94. 3 This is the view of R. Judah. 4 Their opinion is accepted.

Mishnah 6

משנה ו

How¹ did they examine the witnesses? They brought them (into the chamber)² and admonished them; and they sent forth outside every man [of them]³ but retained the eldest among them and said to him, 'State how thou knowest that this one is in debt to the other'. If he stated, 'He said to me, "I am in debt to him"', [or] 'So-and-so told me that he was in debt to him', he has said naught⁴ unless he can state,⁵ 'He admitted before us to him that he owed him two hundred *zuz*'.⁶ And afterward they brought in the second [witness] and examined him. If their statements were found to be in agreement, [the judges] dealt with the matter. If two [judges] said, 'He is not guilty', and one said, 'He is guilty', then he is not guilty. If two said, 'He is

יְבִיט בְּדֹקִים אֶת הָעֵדִים? הָיוּ מְכַנְּסִין אוֹתָן (לְחֹדֶר) וּמְאַיְמִין עֲלֵיהֶן, וּמוֹצִיאִין אֶת-כָּל-הָאָדָם לְחוּץ וּמְשִׁירִין אֶת-הַגָּדוֹל שִׁבְהֶן, וְאוֹמְרִים לוֹ, אָמֹר הֵיטֵב אֶתָּה יוֹדֵעַ שֶׁזֶּה חַיִּיב לְזֶה. אִם אָמַר הוּא אָמַר לִי שְׂאֵנִי חַיִּיב לוֹ, אִישׁ פְּלוֹנִי אָמַר לִי שֶׁהוּא חַיִּיב לוֹ, לֹא אָמַר כְּלוּם, עַד שֶׁאָמַר בְּפָנָיו הוֹדָה לוֹ שֶׁהוּא חַיִּיב לוֹ מֵאֲמִים זָוִי. וְאַחַר כֵּן מְכַנְּסִין אֶת-הַשֵּׁנִי וּבֹדְקִים אוֹתוֹ, אִם נִמְצְאוּ דְבָרֵיהֶם מְכוּוְנִים, נוֹשְׂאִים וְנוֹתְנִין בְּדָבָר שֶׁנִּים אוֹמְרִים

guilty', and one said, 'He is not guilty', then he is guilty. If one said, 'He is not guilty', (and one said, 'He is guilty')⁷, or even if two declared [him] not guilty or two declared [him] guilty, while one [that is, the third judge] said, 'I do not know', they must add [more] judges.

וּפְּאִי וְאֶחָד אָמַר חַיִּיב, וּפְּאִי שְׁנַיִם
אֹמְרִים חַיִּיב וְאֶחָד אָמַר וּפְּאִי,
חַיִּיב. אֶחָד אָמַר וּפְּאִי (וְאֶחָד
אֹמַר חַיִּיב), וְאֶפִּילוּ שְׁנַיִם מְזַכִּין, אוֹ
שְׁנַיִם מַחֲיִיבִין, וְאֶחָד אָמַר אֲנִי
יֹדֵעַ, יוֹסִיפוּ הַדְּיִינִים.

1 Literally *How do they examine?* 2 לְהַדָּר is omitted in some editions. *i.e.*, before the judges. 3 אוֹתָן instead of אֶת־כָּל־הָאָדָם is given in the Jerusalem Talmud. 4 *i.e.*, his evidence is of no value. 5 To make his evidence acceptable. 6 100 zuz = 1 maneh = 100 silver denar. See זְרָעִים, page 18f. 7 The phrase in parenthesis, omitted in some editions, is given in the גְּמָרָא.

Mishnah 7

מִשְׁנָה ז

When [the judges] had concluded the matter¹ they brought them [—the litigants—] in. The chief among the judges said,² 'Thou, so-and-so, art not guilty, and thou, so-and-so, art guilty'. And whence [do we know] that if one of the judges had gone out he was not to say, 'I declare him not guilty but my colleagues declare him guilty, but what am I to do when my colleagues outvoted me?' Concerning this it is said,³ *Thou shalt not go up and down as a talebearer among thy people*; and it says,⁴ *He that goeth about as a talebearer revealeth secrets.*

גָּמְרוּ אֶת־הַדָּבָר הָיוּ מְכַנְּסִין אוֹתָן.
הַגְּדוֹל שְׁבַד־יְיָנִים אָמַר אִישׁ פְּלוֹנִי
אִתָּהּ וּפְּאִי, אִישׁ פְּלוֹנִי אִתָּהּ חַיִּיב
וּמִצֵּן כְּשֵׂיזָא אֶחָד מִן־הַדְּיִינִים
לֹא יֵאמַר אֲנִי מְזַכֵּה וְחַבִּירִי מַחֲיִיבִין,
אֲבָל מָה־אֶעֱשֶׂה שֶׁחַבִּירִי רָבוּ עָלַי?
עַל זֶה נֵאמַר לֹא תִלְךָ רֶכֶל בְּעַמֶּךָ?
וְאֹמַר הוֹלֵךְ רֶכֶל מְגַלֶּה־סוֹד.

1 *i.e.*, had finished hearing the evidence and had arrived at the decision. The judges came to a decision while the suitors had to wait outside. 2 Literally *says*. 3 *Leviticus 19, 16.* 4 *Proverbs 11, 13.*

Mishnah 8

מִשְׁנָה ח

So long as he¹ can bring any proof² he can cause a reversal of the judgment.³ If [the judges] had said to him, 'Bring all the proofs

כָּל־זִמְן יִשְׁמָבִיא רְאִיָּה סוֹתֵר אֶת־
הַדִּין. אָמְרוּ לוֹ כָּל־רְאִוֹת שִׁישׁ

which thou hast between now⁴ and thirty days', and he produced them within the thirty days, he may cause the verdict to be reversed; but [if he brought the evidence] after the thirty days, he can not cause the verdict to be reversed. Rabban Simon ben Gamaliel said, What shall this man do who did not furnish [any proof] within the thirty [days] but found it after the thirty [days]? If [the judges] said to him, 'Produce witnesses', and he said, 'I have no witnesses', [or] if they said, 'Bring proof', and he said, 'I have no proof', and after some time he provided proof or found witnesses, then this is of no account.⁵ Rabban Simon⁶ ben Gamaliel said, What is this man to do who did not know that he had witnesses and he found witnesses, or did not know that he had proof and found proof, (when⁷ [the judges] had said to him, 'Produce witnesses', and he said, 'I have no witnesses, [or] 'Bring proof', and he said, 'I have no proof')? But when he saw that he would be declared guilty he said, 'Draw nigh so-and-so and give evidence on my behalf', or if he produced proof from his wallet,⁸ then this is of no account.⁹

לך קבא 'מקאן עד שלשים יום, מצא תוך שלשים יום סותר; לאחר שלשים יום, אינו סותר. אמר רבן שמעון בן גמליאל מה-יעשה זה שלא מצא בתוך שלשים ומצא לאחר שלשים? אמרו לו קבא עדים, ואמר אין לי עדים, אמרו קבא ראיה, ואמר אין לי ראיה, ולאחר זמן הביא ראיה ומצא עדים, הרי זה אינו כלום. אמר רבן שמעון בן גמליאל מה-יעשה זה שלא היה יודע שיש לו עדים ומצא עדים, לא היה יודע שיש לו ראיה ומצא ראיה (אמרו לו קבא עדים, אמר אין לי עדים, קבא ראיה ואמר אין לי ראיה). ראיה שמתחייב בדין ואמר קרבו פלוני ופלוני והעידוני, או שהוציא ראיה מתוך אפונדתו הרי זה אינו כלום.

1 The suitor against whom a verdict has been given. 2 Witnesses or a document. 3 *sc.*, disannulment of a decision. 4 Traditional pronunciation **מקאן**. 5 Having stated that he possessed no proof nor witnesses, he is suspected of having then produced false documentary evidence or false witnesses. 6 His view is rejected. 7 This bracketed part is absent in the **גמרא** and is omitted in some editions. 8 Or *his garments*. The **גמרא** gives **מתחת פונדתו**. 9 Because if the witnesses or proof had been genuine they should have been produced at the trial and not after the verdict. *Or **שיש-לך**. §Or **שיש-לו**.

CHAPTER 4

פרק ד

Mishnah 1

משנה א

Cases concerning property¹ and capital cases are alike in enquiry and examination,² as it is said,³ *Ye shall have one manner of law.* What difference is there between cases concerning property and capital cases? Cases concerning property [are tried] by three [judges] but capital cases by twenty-three. Cases concerning property may open either [with evidence] for acquittal or for conviction, but capital cases must begin [with reasons] for acquittal and may not commence [with reasons] for conviction. Cases concerning property may be decided by a majority of one [judge] either for acquittal or for conviction, but capital cases are decided by a majority of [even] one for acquittal but by [at least] a majority of two for conviction. Cases concerning property may be retried whether [the verdict was] for acquittal or for conviction, but capital cases may be retried [if the verdict were for conviction] for [obtaining an] acquittal but must not be retried [if the verdict were for acquittal] for [procuring a] conviction. In property cases all⁴ may argue for acquittal or conviction, but in capital cases all may argue for acquittal but not all⁵ may argue for conviction. In property cases one who argues for conviction may [withdraw his opinion and] argue for acquittal, and one who argues for acquittal may [retract and] argue for conviction; [but] in capital cases one who argues for

אחד דיני ממונות, ואחד דיני נפשות
בדרישה ובחקירה, שנאמר משפט
אחד יהיה לכם. מה בין דיני ממונות
לדיני נפשות? דיני ממונות בשלשה,
ודיני נפשות בעשרים ושלשה. דיני
ממונות פותחין בין לזכות בין
להובה, ודיני נפשות פותחין לזכות
ואין פותחין להובה. דיני ממונות
משין על פי אחד בין לזכות בין
להובה, ודיני נפשות משין על פי
אחד לזכות, ועל פי שנים להובה.
דיני ממונות מחזירין בין לזכות בין
להובה, דיני נפשות מחזירין לזכות
ואין מחזירין להובה. דיני ממונות
הכל מלמדין זכות וחובה, ודיני
נפשות הכל מלמדין זכות ואין
הכל מלמדין חובה. דיני ממונות
המלמד חובה מלמד זכות, והמלמד
זכות מלמד חובה; דיני נפשות
המלמד חובה מלמד זכות, אבל
המלמד זכות אין יכול לחזור
וללמד חובה. דיני ממונות דנין
ביום וגומרין בלילה; דיני נפשות

conviction may argue for acquittal, but one who argues for acquittal can not retract to argue for conviction. In property cases they conduct the trial by day and may conclude⁶ at night;⁷ [but] in capital cases they hold the trial by day and they must come to a decision during the day-time. In property cases they may arrive at a verdict on the same day whether for acquittal or for conviction; [but] in capital cases they may reach a verdict for acquittal on the same day, but on the day following [if the verdict were to be] for conviction. Therefore they may not conduct trials on the eve of a Sabbath or on the eve of a Festival-day.⁸

דָּיֵן בַּיּוֹם וְגוֹמְרִין בַּיּוֹם. דִּינֵי מְמוֹנוֹת
 גּוֹמְרִין בּוֹ בַּיּוֹם בֵּין לְזָכוֹת בֵּין
 לְחֻבָּה; דִּינֵי נַפְשׁוֹת גּוֹמְרִין בּוֹ בַּיּוֹם
 לְזָכוֹת, וּבַיּוֹם שְׁלֹא־תִרְוּ לְחֻבָּה.
 לְפִיכָךְ אֵין דָּיֵן לֹא בְעֶרֶב שַׁבָּת
 וְלֹא בְעֶרֶב יוֹם טוֹב.

1 Or *money*. 2 *i.e.*, cross-examination, examination of witnesses. See 51.
 3 *Leviticus* 24, 22. 4 Even the disciples, though they are not among the judges.
 See 4^a, 54. 5 Not even a disciple. 6 *i.e.*, give a decision. 7 The verdict is to be expedited where possible so as not to hold up business transactions. 8 The death sentence on a condemned criminal must not be pronounced and executed before the day following that on which the judges reached the decision, and if this decision would be arrived at on the eve of the Sabbath or Holyday it would be impossible to carry out the sentence on the Sabbath or Holyday and an execution was not permitted to be postponed.

Mishnah 2

In property cases concerning defilement¹ and cleanness [the judges] begin [to ask for opinions] from the eldest,² [but] in capital cases they commence [asking views] from [those that are seated at] the side.³ All⁴ are eligible to try cases concerning property, but not all are qualified to judge capital cases, but only priests, Levites and Israelites⁵ who may give [their daughters] in marriage to priests.⁶

מְשֻׁנָּה ב
 דִּינֵי יְהוּמָאוֹת וְהַטְּהָרוֹת מִתְחִילִין
 מִן-הַגָּדוֹל, דִּינֵי נַפְשׁוֹת מִתְחִילִין
 מִן-הַצָּד. הַכֹּל כְּשָׂרִים לְדוֹן דִּינֵי
 מְמוֹנוֹת, וְאֵין הַכֹּל כְּשָׂרִים לְדוֹן
 דִּינֵי נַפְשׁוֹת אֲלֵא כַהֲנִים לְוִיִּם
 וְיִשְׂרָאֵלִים הַמְּשִׂיאִין לְכַהֲנָה.

1 Particularly Levitical uncleanness. 2 *i.e.*, the most important and learned judge.
 3 *i.e.*, the younger and less experienced judges used to sit on each side of the learned judges in the Sanhedrin. 4 Even proselytes. See קְדוּשָׁין 4^{ff}. 5 Non-priests and non-Levites. 6 Literally to the priestly community, to the priesthood.

Mishnah 3

The Sanhedrin sat¹ in a semicircle² in order that they might see one another. And two scribes of the judges stood³ before them, one on the right and one on the left, and they wrote⁴ down the words of those for the defence and the words of those for the prosecution. R. Judah⁵ says, There were three [scribes], one who wrote⁶ down the words of those for the defence, and one who wrote down the words of those for the prosecution, and the third who wrote down both the words of those for the defence and the words of those for the prosecution.

1 Literally was. 2 Literally was as the half of a threshing-floor. 3 Literally stand. 4 Literally write. 5 His opinion is rejected. 6 Literally writes.

Mishnah 4

And three rows of disciples of the Sages sat before them,¹ and every one knew his own proper place.² If they had need to appoint [another judge],³ they appointed one from the first [row],⁴ one from the second [row] came to the first [row],⁵ and one from the third [row] came into the second [row];⁶ and they selected yet one other from the congregation and set him in the third [row],⁷ and he did not sit in the place of the former, but had to sit in the place proper for him.⁸

1 In a semicircle. There were twenty-three in each of the three rows, from whom if necessary two judges (and so on two more each time if required) were drawn to help the presiding judges to decide by a majority (the final total number not exceeding seventy-one). Compare 16. 2 Each one had his permanent seat. 3 When a

משנה ג

סנהדרין היתה כחצי גורן עגולה,
כדי שיהו רואין זה את-זה. ושני
סופרי הדניין עומדין לפניהם,
אחד מימין ואחד משמאל, וכותבין
דברי המזכין ודברי המסחיבין.
רבי יהודה אומר שלשה, אחד
כותב דברי המזכין, ואחד כותב
דברי המסחיבין, והשלישי כותב
דברי המזכין ודברי המסחיבין.

משנה ד

ושלש שורות של תלמידי חכמים
יושבין לפניהם, כל-אחד ואחד
מכיר את-מקומו. היו צריכין
לסמוך סומכין מן-הראשונה,
אחד מן-השנייה בא לו
לראשונה, ואחד מן-השלישית בא
לו לשנייה; ובחרין להן עוד
אחד מן-הקהל ומושיבין אותו
בשלישית, ולא היה יושב במקומו
של ראשון, אלא יושב במקום
הראוי לו.

vacancy occurred. 4 The remaining judges moved up to the head, and the newcomer took the last seat. 5 Those in the second row moved up to the head, and the newly appointed one took the last seat. 6 He took the last place in the second row, the others moving up to the head. 7 To fill up the vacancy. 8 *i.e.*, as in the former cases, they moved up to the head of the row leaving the last seat to the man newly chosen.

Mishnah 5

How did they exhort¹ the witnesses in capital cases? They brought them in and admonished them, 'Perhaps you will state what is supposition, or rumour, [or] evidence from other witnesses,² or [you will say] "We heard it from (the mouth of) a trustworthy person", or perchance you were not aware that we would test you by enquiry and examination;³ you must know that capital cases are not as cases concerning property—in cases concerning property a man may pay money and make atonement, but in capital cases his [that is, the executed person's] blood and the blood of his [eventual] posterity lie at his door⁴ to the end of the world,⁵ for thus have we found in the case of Cain who slew his brother, as it is said,⁶ *thy brother's blood crieth*⁷—it does not say *thy brother's blood* but *thy brother's bloods*, [thus indicating both] his blood and the blood of his succeeding generations'. (Another⁸ rendering is, *thy brother's blood*—because his blood was spattered over the trees and over the stones.) Therefore was a single man only⁹ [first] created to teach thee that if anyone destroy a single soul from the children of man, Scripture charges him as

משנה ה

כיצד ימאיימין את־העדים על עֲדֵי נִפְשׁוֹת? הִיוּ מְכַנְיִסִין אוֹתָן וּמֵאֲיִמִין עֲלֵיהֶם, שָׁמָּא תֹאמְרוּ מֵאוֹמֵד, וּמִשְׁמוּעָה, יַעַד מִפִּי עַד וּמִפִּי אָדָם וְאֵמֵן שְׁמֵעֵנוּ, אוֹ שָׁמָּא אֵי אַתֶּם יוֹדְעִין שְׁסוֹפֵינוּ לְבִדּוֹק אֶתְכֶם בְּדַרְיִשָּׁה וּבַחֲקִירָה, הֵווּ יוֹדְעִין שְׁלֵא כְדֵינִי מִמוֹנֹת דֵּינֵי נִפְשׁוֹת, דֵּינֵי מִמוֹנֹת אָדָם נוֹתֵן מָמוֹן וּמִתְכַפֵּר לוֹ, דֵּינֵי נִפְשׁוֹת דָּמוֹ וְדָם *וְרַעֲיוֹתָיו תְּלוּיִן יְבוֹ עַד סוֹף הָעוֹלָם, שְׁכֵן מְצִינוּ בְּקֶרֶן שֶׁהָרַג אֶת־אָחִיו, שְׁנֵאמַר, דְּמֵי אַחִיָּה צוֹעֲקִים, אֵינּוּ אוֹמֵר דָּם אַחִיָּה אֶלָּא דְּמֵי אַחִיָּה, דָּמוֹ וְדָם וְרַעֲיוֹתָיו *דְּבָר אַחֵר דְּמֵי אַחִיָּה, שֶׁהָיָה דָּמוֹ מוֹשְׁלָף עַל הָעֲצִים וְעַל הָאֲבָנִים). לְפִיכָךְ נִבְרָא אָדָם יְחִידִי לְלַמְדָּךְ שְׁכַל הַמֵּאֲבָד נִפְשׁ אַחַת מִבְּנֵי אָדָם, מֵעֲלָה עָלָיו הַכָּתוּב כִּאִילוֹ אֵיבַד עוֹלָם מְלֵא, וְכָל־הַמְּקַיִּים נִפְשׁ אַחַת

though he had destroyed a whole world, and whosoever rescues a single soul from the children of man, Scripture credits him as though he had saved a whole world. (And [a single man only was first created] for the sake of peace in the human race,¹⁰ that no man might say to his fellow, 'My ancestor was greater than thy ancestor', and that the heretics should not say, 'There are many powers¹¹ in heaven', and [only one human being was first created] to proclaim the greatness of the Holy One, blessed be He, for man stamps many coins with one die and they are all alike one with the other, but the King of the kings of kings the Holy One, blessed be He, has stamped all mankind with the die of the first man and yet not one of them is like to his fellow. Therefore every one is in duty bound to say, 'For my sake was the universe created'¹²). And if perchance you would say, 'Why should we have to bear all this annoyance?'¹³—and was it not already said,¹⁴ (and) *he being a witness, whether he hath seen or known, if he do not¹⁵ utter it, etc.¹⁶** And perhaps you might say, 'Why should we be guilty of this man's blood?'—and was it not already said,¹⁷ *when the wicked perish¹⁸ there is joy.¹⁹*

מִבְּנֵי אָדָם, מֵעֵלָה עָלָיו הַכְּתוּב
כְּאִילוֹ קִיִּים עוֹלָם מָלֵא. (וּמִפְּנֵי
שְׁלוֹם¹⁰ הַבְּרִיּוֹת, שְׁלֵא יֵאמֶר אָדָם
לְחֵבְרוֹ אָבָא גָדוֹל מֵאַבְרָהָה, וְשְׁלֵא
יְהוּ מִיֵּנֵן אוֹמְרִים הֲרַבָּה¹¹ רִשְׁוִיּוֹת
בְּשָׁמַיִם, וְלִהְיִיד גְּדוֹלְתוֹ שֶׁל הַקְּדוֹשׁ
בְּרוּךְ הוּא שְׂאָדָם טוֹבֵעַ כְּמָה
מִטְּבַעוֹת בְּחוֹתָם אֶחָד וְכוּלֵן דּוֹמֵן
זֶה לָזֶה, וּמְלֵךְ מְלִכֵי הַמְּלָכִים
הַקְּדוֹשׁ בְּרוּךְ הוּא טְבַע כָּל-אָדָם
בְּחוֹתָמוֹ שֶׁל אָדָם הֲרֵאשׁוֹן וְאֵין אֶחָד
מֵהֵן דּוֹמֵה לְחֵבְרוֹ. לְפִיכֵךְ כָּל-
אֶחָד וְאֶחָד חַיִּיב לֵאמֹר בְּשִׁבִיל
גְּבִרָא¹² (הָעוֹלָם). וְשָׂמָא תֵּאמְרוּ
מַה-לָּגוֹ¹³ וְלִצְרָה הַזֹּאת, וְהֵלֵא כְּבֵר
נִיָּאֵר וְהוּא עֵד אוֹ רָאָה אוֹ יָדַע
אִם-¹⁴ לֵא יִגִּיד *וְנִגְוִי. וְשָׂמָא תֵּאמְרוּ
מַה-לָּגוֹ לְחֹב בְּדָמוֹ שֶׁל זֶה? וְהֵלֵא
כְּבֵר¹⁷ נִיָּאֵר¹⁸ בְּאַבוּד רְשָׁעִים
וְיִרְיָה¹⁹.

וְיִמְרָ

1 Literally *do they exhort*; i.e., admonish and warn to give truthful evidence. 2 i.e., repetition of witnesses' evidence before another court. 3 i.e., otherwise they would not have come with unreliable evidence. 4 Literally *are hanging on to him*. 5 i.e., if through wrong evidence a human being was executed the one who gave that evidence was likened to one who had committed a murder, and through that act had prevented the birth of countless generations. 6 Genesis 4, 10. בְּצַעֲקֵים is the Scripture orthography. 7 Literally *thy brother's bloods cry*, the Hebrew terms for *blood* and *crieth*

being in the plural. 8 Compare שַׁבַּת 92; אֶהְלוֹת 27. This part in parenthesis is an interpolation of homiletical character, and does not form part of the admonition of the judges to the witnesses but is another meaning to explain the plural form דְּמִי. 9 *i.e.*, Adam. 10 This also, given in brackets, is merely an explanatory or homiletic rendering and not a statement by the judges to impress and overawe witnesses. 11 Governing, ruling powers. 12 Here ends the long interpolated homily. מִיָּנִים, *heretics, infidels, renegades, sectarians*, particularly *apostate Jews*, often substituted by כּוֹתִיִּם or צְדִיקִים in censor-controlled editions. 13 *i.e.*, to undergo admonition and reproof before giving evidence, for possibly there may be unconscious error in the testification. 14 *Leviticus* 5, 1. 15 Scripture gives לוֹא. 16 *then he shall bear his iniquity*. 17 *Proverbs* 11, 10. 18 וּבְאֵבֶד is the Scriptural spelling. 19 This concludes the admonition. *וְרַעוּתִי* in one text (Vilna edition) is preferable.

CHAPTER 5

פֶּרֶק ה

Mishnah 1

מִשְׁנָה א

They used to examine them¹ with seven enquiries: in what Sabbatical year,² in what year,³ in what month, on what date of the month, on what day,⁴ in what hour, in what place. R. Jose⁵ says, [They need ask only:] on what day, in what hour, in what place. [Then the judges continued to ask] 'Do you recognise him?⁶ Did you warn him? Is he an idolater? What⁷ did he worship? And in what manner did he worship?⁸

הֵיוּ בּוֹדְקִין אוֹמֵן בְּשִׁבְעַת תְּקִירוֹת, בְּאִיזוֹ שָׁבֻעַ, *בְּאִיזוֹ שָׁנָה, בְּאִיזוֹ חֹדֶשׁ, בְּכַמָּה בְּחֹדֶשׁ, בְּאִיזוֹ יוֹם, בְּאִיזוֹ שָׁעָה, בְּאִיזוֹ מְקוֹם. רַבִּי יוֹסֵי אוֹמֵר בְּאִיזוֹ יוֹם, *בְּאִיזוֹ שָׁעָה, בְּאִיזוֹ מְקוֹם. מִכִּירֵן אַתָּם אוֹתוֹ? הִתְרִיתֶם בּוֹ? הֲעוֹבֵד כּוֹכָבִים? אַתְּ-מִי עֶבֶד? וּבְמָה עֶבֶד?

1 The witnesses. 2 Literally *in what week*. *i.e.*, in what Sabbatical year of the Jubilee cycle. 3 *i.e.*, in what year of that Sabbatical period. Compare בָּבָא 99מְצִיעָא. 4 Of the week. 5 His opinion is rejected. 6 The accused (according to some, the complainant, or the slain, as the case may be). 7 Literally *Whom*. 8 These latter two questions were put by the judges if the witnesses testified that the defendant was an idolater. *Or בְּאִיזוֹ; see Volume II, Page 12.

Mishnah 2

מִשְׁנָה ב

The more [a judge] examines [the evidence] the more praiseworthy is he. It once happened that ben Zakkai¹ probed [the evidence] even regarding the peduncles² of figs.

כָּל-הַמְרַבֵּה בְּבִדְיוֹת הַרִי זֶה מְשׁוּבַח. מַעֲשֵׂה וּבִדְק יֶבֶן זַכַּאי בְּעוֹקְצֵי תְּאֵנִים. וּמָה-בֵּין תְּקִירוֹת

And what is the difference [in point of law] between inquiries and examinations?³ If in inquiries one state, 'I do not know', their evidence⁴ is annulled. If in examinations one say, 'I do not know', or even if two say, 'We do not know', their evidence holds good. Whether during inquiries or during examinations, when [the witnesses] contradict one another their evidence is nullified.⁵

לְבִדְיוֹתָּ? חֲקִירוֹת, אֶחָד אֹמֵר
אֵינִי יוֹדֵעַ, עֲדוּתָן בְּטֵלָה. בְּדִיּוֹתָּ,
אֶחָד אֹמֵר אֵינִי יוֹדֵעַ וְאֶפִּילוּ שְׁנַיִם
אֹמְרִים אֵין אָנוּ יוֹדְעִין עֲדוּתָן
קִיּוּמָה. אֶחָד חֲקִירוֹת וְאֶחָד בְּדִיּוֹתָּ
בְּזֶמֶן שֶׁמְכַחֲשִׁין זֶה אֶת־זֶה עֲדוּתָן
בְּטֵלָה.

1 Rabban Jochanan ben Zakkai, and at this time he was a disciple of Hillel (see סוֹפֵר 28a). By the ingenious questioning of a witness regarding the condition of the fig-stalks of a fig-tree under which a murder had been committed he succeeded in refuting his evidence and so saving the life of the accused, and thus he acquired the name of *ben Zakkai*. 2 Or *pedicels*, the stalks by which clusters of leaves or flowers are joined to twigs or branches. 3 *חֲקִירוֹת*, *cross-examination as to date, time, and place*; *בְּדִיּוֹתָּ*, *cross-examination referring to accompanying circumstances*. 4 Whatever the number of witnesses. 5 Even if there were many witnesses and only one gave contradictory testimony.

Mishnah 3

If one [witness] say, 'On the second day of the month', and another says, 'On the third day of the month', their evidence is licit, since the former knew¹ that the previous month was intercalated, and the latter did not know² that the preceding month was intercalated.³ If one say, 'On the third [day of the month]', and the other says, 'On the fifth', their evidence is disannulled.⁴ If one say, 'At the second hour', and the other says, 'At the third hour', their evidence stands. If one say, 'At the third [hour]', and the other says, 'At the fifth [hour]', their evidence is cancelled. R. Judah says, It is valid; but if ones ay, 'At

משנה ג

אֶחָד אֹמֵר בְּשָׁנִים בְּחֹדֶשׁ, וְאֶחָד
אֹמֵר בְּשָׁלֹשׁ בְּחֹדֶשׁ, עֲדוּתָן
קִיּוּמָה, יְשֵׁנָה יוֹדֵעַ בְּעֵבּוּרוֹ שֶׁל חֹדֶשׁ,
וְזֶה אֵינוֹ יוֹדֵעַ בְּעֵבּוּרוֹ שֶׁל חֹדֶשׁ.
אֶחָד אֹמֵר בְּשָׁלֹשָׁה, וְאֶחָד אֹמֵר
בְּחֲמֵשֶׁה, עֲדוּתָן יְבִטְלָה. אֶחָד
אֹמֵר בְּשְׁתֵּי שָׁעוֹת, וְאֶחָד אֹמֵר
בְּשֶׁלֶשׁ שָׁעוֹת, עֲדוּתָן קִיּוּמָה. אֶחָד
אֹמֵר בְּשֶׁלֶשׁ, וְאֶחָד אֹמֵר בְּחֲמֵשׁ,
עֲדוּתָן בְּטֵלָה. רַבִּי יְהוּדָה אֹמֵר
קִיּוּמָה; אֶחָד אֹמֵר בְּחֲמֵשׁ וְאֶחָד

the fifth [hour]', and another says, 'At the seventh [hour]', their evidence is invalid, for at the fifth [hour] the sun is in the east and at the seventh [hour] it is in the west.⁵

אומר בשבע, עדותן בטלה,
שבחמש חמה במזרח, ובשבע חמה
במערב.⁶

1 Literally *knows*. He knew that the past month was 'full' (had thirty days) and that the thirtieth day was ראש חודש. But their evidence is not licit after the middle of the month. 2 Literally *does not know*. He thought that the past month had twenty-nine days and that this (actual thirtieth day) was the first day of the month. 3 See ראש השנה 31. 4 There is no room for error with such a big difference of two days. 5 For here there is no excusable legitimate room for error since the position of the sun at the time determines the approximately correct hour.

Mishnah 4

And then they brought¹ in the second [witness] and examined² him. If they found their words in agreement they opened up³ for acquittal. If one of the witnesses said, 'I have* some points to argue on his behalf for acquittal',⁴ or if one of the disciples [said], 'I have* [somewhat] to argue against him for conviction', they silenced him.⁵ If one of the disciples said, 'I have* [something] to argue (in his behalf) in favour of acquittal', they brought him up and set him among them,⁶ and he did not go down thence the whole of that day. If there[§] were⁷ any substance in his statements they listened to him.⁷ And then if he said,⁸ 'I have somewhat to argue on my own behalf for acquittal', they listened⁹ to him, but provided that there[†] was some substance in his words. § Or ש-מש.

משנה ד

ואחר כך מכניסין את השני,
ויבדקין אותו. אם נמצאו דבריהם
מכוונין, פותחין בזכות. אִם אָמַר אֶחָד
מִן־הָעֵדִים יֵשׁ לִי לְלַמֵּד עָלָיו
זְכוּת, או אֶחָד מִן־הַתְּלִמִּידִים יֵשׁ
לִי לְלַמֵּד עָלָיו חוֹבָה, מְשַׁתְּקִין
אוֹתוֹ. אִם אָמַר אֶחָד מִן־הַתְּלִמִּידִים
יֵשׁ לִי לְלַמֵּד (עָלָיו) זְכוּת, מְעַלִּין
אוֹתוֹ וּמוֹשִׁיבִין אוֹתוֹ בִּיְגִיעָה, וְלֹא
הָיָה יוֹרֵד מִשָּׁם כָּל־הַיּוֹם כּוֹלּוֹ. אִם
יֵשׁ מִמֶּשׁ בְּדַבְּרָיו שׁוֹמְעִין לוֹ.
וְאִפְּלוּ: הוּא אֹמֵר יֵשׁ לִי לְלַמֵּד עַל
עַצְמִי זְכוּת שׁוֹמְעִין לוֹ, וּבְלִבְד
שִׁישׁ מִמֶּשׁ בְּדַבְּרָיו. †Or שִׁישׁ־מִמֶּשׁ.

1 Literally *bring*. 2 Literally *examine*. 3 Literally *open up*, i.e., begin to examine the evidence for defence. 4 Or if on the contrary a witness remarked that he had somewhat to argue for the defendant's conviction. 5 Literally *silence*. A man may

not act as judge in any case where he is a witness. 6 Literally *bring*. The judges. 7 Literally *listen to him*. And this qualifies him to remain a permanent judge among them. 8 The accused. Literally *say*. 9 Literally *listen*. *Or *לִשְׁלִי*.

Mishnah 5

If they found for his acquittal, they set him free; if not,* they postpone his sentence until the next day.¹ [The judges] went away in pairs [to discuss the verdict], and they indulged in little food and did not drink wine all that day, and they discussed the matter thoroughly the whole night, and rose early the following morning and came to the court.² He that was for acquittal said,³ 'I was in favour of acquittal and I am still in favour of his acquittal;' and he that was for conviction said, 'I found him guilty and I still maintain that he is guilty'. He who argued for conviction may now argue for acquittal, but he who argued for acquittal may not retract and argue for conviction.⁴ If they erred in the matter,⁵ the two scribes of the judges remind them. If they [all] found him innocent, they set him at liberty; but if not,* they stand up to a count: if twelve⁶ declare him innocent and eleven⁷ declare him guilty, he is acquitted; if twelve condemn him and eleven acquit him, or even if eleven favour acquittal and eleven favour conviction, and one other says, 'I do not know', or even if twenty-two are for acquittal or conviction, and one says, 'I do not know,' they must add [to the number of] the judges. How many may they add? By two

משנה ה

אם מצאו לו זכות, * פטרהו; ואם לאו מעבירין דינו ילמחר. היו מזדווגין זוגות זוגות, וממעטין במאכל, ולא היו שותין יין כל-היום, ונושאין ונותנין כל-הלילה, ולמחרת משכימין וקאין? לבית דין. המזכה * אומר אני מזכה ומזכה אני במקומי; והמחייב אומר אני מחייב ומחייב אני במקומי. המלמד חובה מלמד זכות, אבל המלמד זכות, אינו יכול לחזור וללמד יחובה. טעו בדבר שני סופרי הדיוטין מזכירין אותן. אם מצאו לו זכות, פטרהו; ואם לאו עומדין למנגן, שנים עשר מזכין, ואחד עשר מחייבין, וכאי; * שנים עשר מחייבין ואחד עשר מזכין, ואפילו אחד עשר מזכין, ואחד עשר מחייבין, ואחד אומר אני יודע, ואפילו עשרים ושנים מזכין או מחייבין ואחד אומר אני יודע, יוסיפו הדיוטין. עד כמה מוסיפין? שנים * שנים, עד שבעים ואחד. שלשים וששה מזכין, ושלושה

at a time⁸ up to seventy-one. If then thirty-six be for acquittal and thirty-five favour conviction, he is acquitted; if thirty-six are for conviction and thirty-five favour acquittal, then they must debate one party with the other until one of those who had favoured conviction falls in with the opinion of those who are for acquittal.

וְחַמְשָׁה מִחַיִּיבִין, וְכֹאֵי; שְׁלֹשִׁים
וְשֵׁשׁ מִחַיִּיבִין, וְשֵׁשׁ וְחַמְשָׁה
מִזְכִּין, דִּינָן אֵלּוּ כְּגוֹד אֵלּוּ, עַד
שִׁירָאָה אֶחָד מִן־הַמַּחַיִּיבִין דְּבִרֵי
הַמִּזְכִּין.

1 In order to have time to consider the case carefully. 2 And further discussed the matter all day long up to the evening. 3 *i.e.*, he had declared himself in favour for acquittal the preceding day. 4 During the proceedings before the final decision. 5 Regarding as to who had favoured acquittal and who had favoured conviction. 6 Or עָשָׂר. 7 Or יְעֹשְׂמֵי עָשָׂר. 8 So long as there is a majority of only one for conviction (there must be a majority of at least two for conviction). A majority of one only for acquittal is valid. פְּטָרוֹהוּ* (in Vilna edition) is grammatically preferable.

CHAPTER 6

פֶּרֶק ו'

Mishnah 1

מִשְׁנָה א

When the verdict has been announced¹ they take him forth to stone him. The place of stoning was outside² the court, as it is said,³ *Bring forth him that hath cursed.*⁴ One man stands at the entrance of the court with a scarf⁵ in his hand, (and another man riding)⁶ a horse far away from him but still able to see him. If one [of the judges] say, 'I have† some point to argue on his behalf for acquittal', he⁷ [namely, the first man mentioned] would wave⁸ the scarf and the horse runs and stops him.⁹ And even if [the condemned man] himself say, 'I have† aught to argue on my own behalf for acquittal', they must bring him back, even four or five times, only

יְנַמֵּר הַדִּין, מוֹצִיאִין אוֹתוֹ לְסָקְלוֹ.
בֵּית הַסְּקִילָה הָיָה חוּץ לְבֵית דִּין,
שֶׁנֶּאֱמַר הוֹצֵא אֶת־הַמְּקַלֵּל. אֶחָד
עוֹמֵד עַל פֶּתַח בֵּית דִּין, וְהַסּוֹדְרִין
בְּיָדוֹ. (וְאָדָם אֶחָד רוֹכֵב) הַסּוֹס
רְחוֹק מִמֶּנּוּ, כְּדִי שִׁיְהֵא רוֹאֶהוּ.
אוֹמֵר אֶחָד יֵשׁ לִי לְלַמֵּד עָלָיו זְכוּת,
הֵלָּה יִמְנִיף בְּסוֹדְרִין וְהַסּוֹס רָץ
יִמְעַמְדוֹ. וְאִפִּילוֹ הוּא אוֹמֵר יֵשׁ
לִי לְלַמֵּד עַל עֲצָמֵי זְכוּת, מִחֲזִירִין
אוֹתוֹ אִפִּילוֹ אַרְבַּע וְחֲמֵשׁ פְּעָמִים.

provided that there be† any substance in his statement.¹⁰ If they found for him for acquittal, they set him free,§ but if not,|| he goes forth to be stoned. And a crier goes out before him [proclaiming], ‘So-and-so, the son of so-and-so, is going forth to be stoned because he had committed such-and-such a transgression, and so-and-so and so-and-so are his witnesses. If anyone know aught in his favour for acquittal, let him come and argue on his behalf’.

וּבְלִבָּד וְשֵׁשׁ מִמֶּשׁ יִבְדְּכֶרְיוֹ מִצֵּאוֹ
לוֹ זְכוּת, §פְּטָרְהוּ, וְאִם לֹא, יוֹצֵא
לִיִּסְקָל. וְכֵרֹז יוֹצֵא לְפָנָיו, אִישׁ
פְּלוֹנִי בֶן פְּלוֹנִי יוֹצֵא לִיִּסְקָל עַל
שֶׁעָבַר עֲבִירָה פְּלוֹנִית, וּפְלוֹנִי
וּפְלוֹנִי עֲדָיו. כָּל־מִי שֶׁיִּוָּדַע לוֹ
זְכוּת, יָבֵא וְיִלְמַד עָלָיו.

* לְסוֹקְלוֹ (in Vilna edition) is perhaps preferable. § פְּטָרְהוּ preferable.

1 Literally *When the judgment had been concluded* [and the accused had been condemned to be stoned to death]. 2 *i.e.*, far away from. 3 *Leviticus 24, 14*. 4 The words following are אֶל־מַחֲוֵץ לַמַּחֲנֶה, *without the camp*. 5 Or *turban*. 6 The bracketed phrase is not given in the גִּמְרָא. 7 Or הֵלָּה (traditional reading הַלָּה), *this one here, that one there*; in legal expression, *the one concerned*; compare 32 בָּבֵא מִצֵּעָא 66 שְׁבוּעוֹת. 8 מִנִּיר undesirable pointing though favoured by some. 9 *i.e.*, the rider on the horse goes quickly and the execution is held up. 10 Only on the first two occasions—when the condemned demands a rehearing—is he brought back to the court; but on the third and subsequent demands two Sages are to be appointed each time to examine first his statements and to decide whether he is to be heard further. †Or יֵשׁ-לִי. ‡Or שֵׁשׁ-מִמֶּשׁ. ||Or לֹא.

Mishnah 2

מִשְׁנָה ב

When he was about ten cubits' distance¹ from the place of stoning they said² to him, ‘Make confession,³ for such was the manner of those about to be put to death to make confession, for every one that confesses has* a portion in the world to come. For thus have we found it in the case of Achan: for Joshua said to him, *My⁴ son, give, I pray thee, glory to the Eternal, the God of Israel, and make confession unto Him, etc.*§ And⁵ *Achan answered Joshua and said: Of a truth I have sinned against the*

הִזָּה רְחוֹק מִבֵּית הַסִּקִּילָה כְּעֶשְׂרֵי
אַמּוֹת, אָמְרִים לוֹ הַתְּוֹדָה שְׁכֵן
דָּרָךְ הַמוֹמְתִין מִתְוַדִּין, שְׁכָל
הַתְּוֹדָה יֵשׁ לוֹ חֶלֶק לְעוֹלָם הַבָּא.
שְׁכֵן מִצֵּינוּ בְּעֶכָן שְׁאָמַר לוֹ יְהוֹשֻׁעַ
'בְּנֵי שֵׁים־נָא כְבוֹד לְאֱלֹהֵי יִשְׂרָאֵל
וְחָן־לוֹ תוֹדָה וְגוֹ'. וְיַעֲזֵן עָכָן אֶת־
יְהוֹשֻׁעַ וַיֹּאמֶר אֲמָנָה אֲנֹכִי הִטָּאתִי
כְּזָאת וְגוֹ'. וּמִגִּזְזִין שְׁכִיפָר לוֹ וְדוּוֹ?

*Eternal and thus,*⁶ etc. And whence [do we infer] that his confession made atonement for him? As it is said,⁷ *And Joshua said: Why⁸ hast thou troubled us? The Eternal shall trouble thee this day*—‘this day art thou troubled, but thou shalt not be troubled in the world to come’. And if he do not know how to make confession, they say to him, ‘Repeat⁹: “May my death be an atonement for all my sins”.’ R. Judah¹⁰ says, If he knew that he had been sentenced through false evidence he says, ‘Let my death be an atonement for all my sins save this sin’. [The Sages]¹¹ said to him, If so, then all men would speak in this wise in order to clear themselves.¹²

שְׁנֵי אֲמָרֵי יְהוֹשֻׁעַ לְמָה עֲכָרְתָּנוּ
 יַעֲכָרְךָ ה' הַיּוֹם הַזֶּה, הַיּוֹם הַזֶּה אַתָּה
 עָכָר, וְאֵי אַתָּה עָכָר לְעוֹלָם הַבָּא.
 וְאִם אֵינִי יוֹדֵעַ לְהַתְנַדּוֹת אוֹמְרִים לוֹ
 אֲמֹר תְּהֵא מִיתָתִי כַפָּרָה עַל כָּל-
 עֲוֹנוֹתַי. רַבִּי יְהוּדָה אוֹמֵר אִם
 הָיָה יוֹדֵעַ שֶׁהוּא מְזוּמָם, אוֹמֵר תְּהֵא
 מִיתָתִי כַפָּרָה עַל כָּל-עֲוֹנוֹתַי חוּץ
 מִזֶּה. אֲמָרוּ לוֹ אִם בֵּן יְהוּ כָל-
 אָדָם אוֹמְרִים כִּךְ פְּדֵי לְנִקּוֹת¹² אֶת-
 עַצְמָן.
 וְגוֹמְרִים §

1 Nearer than that to the place of execution might so disturb his mind that his confession would be upset. 1 cubit = 22.1 inches or 56.1 cm. (see וְרַעִים, Page 18f.)
 2 Literally say. 3 Concerning that particular sin and also his other transgressions.
 4 *Joshua 7, 19.* Scripture gives לַה' אֱלֹהֵי and not לְאֱלֹהֵי. 5 *Joshua 7, 20.*
 6 וְכֹזֵאת in the Scripture text. 7 *Joshua 7, 25.* 8 Or לְמָה. But Scripture gives מִה. 9 Literally Say. 10 His opinion is rejected. 11 Their view is upheld.
 12 And judges and witnesses would be discredited and justice be held in contempt. After the confession the condemned is given mercifully a large cup of wine mingled with a little asafoetida to lessen the horror and pain of death. *Or יֵשׁ-לוֹ.

Mishnah 3

When [the condemned man] was at a distance of four cubits from the place of stoning they stripped¹ off his garments.² They covered³ a man in front and a woman both in front and behind;⁴ this is the view of R. Judah;⁵ but the Sages say, A man is stoned naked, but a woman is not stoned naked.⁶

מִשְׁנָה ג
 הָיָה רְחוֹק מִבֵּית הַסְּקִילָה אַרְבַּע
 אַמּוֹת, יִמְכְּשִׁיטִין אוֹתוֹ אֶת-בְּגָדָיו.
 הָאִישׁ מְכַסִּין אוֹתוֹ מִלְּפָנָיו, וְהָאִשָּׁה
 מִלְּפָנֶיהָ וּמֵאַחֲרֶיהָ; דְּבַרֵי רַבִּי
 יְהוּדָה; וְחַכְמִים אוֹמְרִים הָאִישׁ
 נִסְקָל עָרוֹם, וְאִין הָאִשָּׁה נִסְקָלָת
 עָרוֹמָה.

1 Literally *strip*. 2 Leaving a loin cloth to cover the genitals. Then the hands were bound. 3 Literally *cover*. 4 Not to expose the pudenda for the sake of decency. 5 His view is rejected. 6 She is covered with a very thin chemise.

Mishnah 4

The place of stoning was as the height of two men.¹ One of the witnesses pushed him down² by his loins; if he turned over face downward,³ he turned him⁴ on his loins. If he died thereby,⁵ that was sufficient; but if not,* the second [witness] took⁶ a stone and set⁷ it on his heart.⁸ If he died thereby, that sufficed; but if not,* his stoning [had to be carried out] by all Israel, as it is said,⁹ *The hand of the witnesses shall be first¹⁰ upon him to put him to death and afterward¹¹ the hand of all the people*. All that were stoned were [then] hanged; this is the view of R. Eliezer; but the Sages say, No one is hanged, excepting the blasphemer and the idolater.¹² They hanged¹³ a man [with his face] towards the people and a woman with her face to the gallows; this is the opinion of R. Eliezer; but the Sages say, The man is hanged, but the woman is not hanged. R. Eliezer¹⁴ said [to them], But did not Simon ben Shetach hang women in Ashkelon?¹⁵ [The Sages] replied to him, Eighty women did he hang—yet two [persons] should not be tried [on a death charge] in one day.¹⁶ How did¹⁷ they hang him? They sank¹⁸ a post into the ground and a piece of wood protruded¹⁹ from it;²⁰ and one placed²¹ together his two hands one§ upon the other§ and

משנה ד

בית הסקילה היה גבוה שתי קומות. אחד מן העדים דוחפו על מתניו; ונהפך על לבו, והופכו על מתניו. אם מת בזה יצא; ואם לאו, השני נוטל את האבן ונותנה על לבו. אם מת בזה יצא; ואם לאו, רגמתו בכל ישראל, שנאמר יד העדים תהיה בו בראשונה להמיתו ויד כל העם באחרונה. כל הנסקלין ניתלין; דברי רבי אליעזר; וחכמים אומרים אינו נתלה אלא המגדף והעובד כוכבים. האיש תולין אותו כלפי העם והאשה פניה כלפי העץ; דברי רבי אליעזר; וחכמים אומרים האיש נתלה, ואין האשה נתלית. אמר רבי אליעזר והלא שמעון בן שטח תלה נשים בִּאשְׁקֶלוֹן? אמרו לו שמונים נשים תלה ואין דנין שנים ביזם אחד. כיצד תולין אותו? משקעין את הקורה בארץ, והעץ יוצא ממנה; וימקיף שתי ידיו זו על גבי זו ונתולה

hanged²² him. R. Jose²³ says, The post is leaned against a wall²⁴ and one hangs him [thereon] in the way that butchers do. And they undid him at once,²⁵ for if it remained [suspended] overnight, a *negative command* would be transgressed thereby, as it is said,²⁶ *his body shall not remain all night upon the tree, but thou shalt surely bury him the same day; for he that is hanged is a reproach unto God* etc.,† meaning, Why was this man hanged? Because he blasphemed the Name,²⁷ and the Name of Heaven²⁷ was found profaned.²⁸

אוֹתוֹ. רַבִּי יוֹסֵי אוֹמֵר הַקּוֹרֶה
 יְמוּסָה עַל הַכּוֹתֵל, וְתוֹלֶה אוֹתוֹ
 כְּדֶרֶךְ שֶׁהַטְּבָחִין עוֹשִׂין. וּמְתִירִין
 אוֹתוֹ יְמִיד, וְאִם לָן עוֹבֵר עָלָיו בְּלֹא
 תַעֲשֶׂה, שֶׁנֶּאֱמַר לֹא-תִלֵּין וּבִלְתוֹ
 עַל הָעֵץ כִּי-קָבוּר תִּקְבְּרֶנּוּ כִּי
 קָלַת אֱלֹהִים תְּלוּי זָנוּגוֹ כְּלוֹמֵר
 מִפְּנֵי מָה זֶה תְּלוּי? מִפְּנֵי שֶׁבִירָךְ
 אֶת-הַשֵּׁם וְנִמְצָא שֵׁם שָׁמַיִם
 *Or לֹא. §Or וְ. §Or וְ. וְנִמְרָר. לֹא אוֹר.

1 Six cubits (see וְרָעִים, Page 18f.). 2 Literally *pushes*. From the height. 3 Literally *on his heart*, i.e., prone. 4 Literally *turns*. 5 i.e., forthwith from the blow and fall. 6 Literally *takes*. 7 i.e., dropped it. Literally *sets*. 8 Actually the stone was so heavy that both witnesses had to lift it over the condemned person and the second was responsible for letting it fall to cause death. 9 *Deuteronomy 17, 7*. 10 פְּרִיאֲשָׁנָה is the Scriptural orthography. 11 Scripture gives בְּאַחֲרָנָה. 12 After being stoned. 13 Literally תוֹלֵךְ, *hang*; הָאִישׁ, *the man*; וְהָאִשָּׁה, *and the woman*. 14 His opinion is rejected. 15 It was an exceptional necessity. Compare תַּעֲנִית 38, וְנִינָה 22, אָבוֹת 19. Ashkelon, a Philistian coast town. 16 By the same court. 17 Literally *do*. 18 Literally *sink*. 19 Literally *protrudes, projects*. 20 At the top end. 21 Literally *places*. 22 Literally *hangs*. 23 His view is rejected. 24 With its foot on the ground. 25 Literally *undo*. To let the body down from the gallows. All agree on this procedure. 26 *Deuteronomy 21, 23*. 27 i.e., God. 28 The corpse must be buried before sunset; the stone and the gallows are buried with the corpse; in other cases the instruments of execution are buried within four cubits of the grave.

Mishnah 5

R. Meir said, When* a man undergoes suffering,¹ what does God² say (as it were³)? 'My head is in pain, My arm is heavy'.⁴ If this be so, and the Omnipresent is troubled because of the blood of the wicked that is shed, how much more⁵ [is He sorely troubled] at the blood of

מִשְׁנָה ה'
 אָמַר רַבִּי מֵאִיר *בּוֹמֵן שְׂאֵדָם
 יִמְצָטֵעַר, שְׂכִינָה מָה הַלְּשׁוֹן
 אוֹמֵרֵת * (כְּבִיכּוֹל)? 'קִלְגִּי מֵרֵאשִׁי
 קִלְגִּי מִזְרוּעֵי. אִם כֵּן הַמָּקוֹם מִצְטָעַר
 עַל דָּמָם שֶׁל רְשָׁעִים שֶׁנִּשְׁפָּךְ, קִל

the righteous! And not only this (did they say⁶), but also every one that allows his dead to remain overnight transgresses a *negative command*; but if one suffered it to remain overnight because of the honour due to it, to bring for it a coffin⁷ or shrouds, he does not transgress thereby. And they used not to bury him in the burying-places of his ancestors,⁸ but two places for burial were maintained in readiness by the court, one for those who were beheaded or strangled, and the other for those that were stoned or burned.⁹ *Or בָּזֵמֶן.

וְחָמַר עַל דָּמָם שֶׁל צְדִיקִים! וְלֹא
זוּ בַלְבָד⁶ (אָמְרוּ) אֲלָא כָל-הַמְלִין
אֶת-מֵתוֹ עוֹבֵר בְּלֹא תַעֲשֶׂה; הֵלִינוּ
לְכַבּוּדוֹ לְהֵבִיא לּוֹ אָרוֹן וְתַכְרִיכִים,
אִינוּ עוֹבֵר עָלָיו. וְלֹא הָיוּ קוֹבְרִין
אוֹתוֹ בְּקַבְרוֹת אֲבוֹתָיו, אֲלָא שְׁמֵי
בְתֵי קַבְרוֹת הָיוּ מְתוֹקְנִין לְבֵית דִּין,
אֶחָת לְגֵהָרְזִין וְלַגְּזִנְקִין, וְאַחַת
לְנִסְקָלִין וְלַנְּשָׂרְפִין.

1 Because of his sins. 2 Literally *Divine Presence*. 3 Or as though it were possible; i.e., if it was possible to apply such an allegorical or anthropomorphous expression with reference to the Eternal. This term is absent in the גְּמָרָא and is not given in the Talmud Jerushalmi. 4 קָלְנִי, from קָלֵל. Literally 'I am lighter than My head, I am lighter than My arm,' a euphemism for 'I feel My head is heavy [or in pain], I feel My arm is heavy [or in pain].' 5 קַל וְחוֹמֵר, a conclusion from minor to major (and vice versa). 6 This term is given in the גְּמָרָא. 7 Or boards to make a coffin. 8 The body of a wicked man is not buried at once near that of a good man nor near that of one still more infamous (see next *Mishnah*). 9 Some texts give the order אֶחָת לְנִסְקָלִין וְלַנְּשָׂרְפִין וְאַחַת לְגֵהָרְזִין וְלַגְּזִנְקִין, 'one for those that were stoned or burned and one for those who were beheaded or strangled.'

Mishnah 6

When the flesh had decayed away they collected¹ the bones and buried² them in their place.³ And the near of kin came⁴ and greeted⁵ the judges and [greeted] the witnesses as if to say,⁶ 'We have naught⁷ in our heart against you, for you have given a verdict of truth'. And they did not observe mourning,⁸ but they might grieve⁹ for grieving is in the heart only.¹⁰

מִשְׁנָה ו

וְתַעֲפַל הַבָּשָׂר, יִמְלַקְטִין אֶת-
הַעֲצָמוֹת, וְקוֹבְרִין אוֹתָן בְּמִקוֹמָן.
וְהַקְרוֹבִים בָּאִים וְשׂוֹאֲלִין בְּשָׁלוֹם
הַדְּיִינִין, וּבְשָׁלוֹם הָעֵדִים, כְּלוֹמֵר
שָׂאִין בְּלִבְנוּ עֲלֵיכֶם כְּלוֹם, שְׂדִין
אָמַת דְּנִתְּם. וְלֹא הָיוּ מְתַאֲבְלִין,
אֲבָל אֹונִין, שָׂאִין אֲנִינֹות אֲלָא
בְּלִב.¹⁰

1 Literally *collect*. 2 Literally *bury*. 3 *i.e.*, on the family burial-ground. See מועד קצן 8^a פסחים 15. 4 Literally *come*; immediately after the execution. 5 Literally *great*. 6 But, of course, they did not actually say so out of self-respect. 7 *i.e.*, no enmity, no resentment. 8 *i.e.*, the seven days of mourning were not observed, nor did they cut (rend) their garments. See מועד קצן 37^a: "The destruction of the wicked is cause for rejoicing and not mourning." 9 Their countenances are sorrowful. 10 None the less one must not rejoice secretly at the death of the ungodly for the Almighty does not delight in the death of the wicked. See מגלה 10b.

CHAPTER 7

פָּרָק ז

Mishnah 1

מְשֻׁנָּה א

[The infliction of] four kinds of death penalty was vested in the court: stoning,¹ burning, beheading, and strangling. R. Simon² says, [The descending order of severity was:] burning, stoning, strangling, and beheading. This is the ordinance of those to be stoned.³

אָרְבַּע מִיתוֹת, נִמְסְרוּ לְבֵית דִּין, יִסְקִילָהּ, שְׂרָפָהּ, הֲרַג, וְחָנֵק. רַבִּי שִׁמְעוֹן אוֹמֵר שְׂרָפָה, סִקִּילָהּ, חָנֵק וְהֲרַג. זֶה מִצְוֹת הַנִּסְקָלִין.

1 In descending order of gravity, stoning being accounted the most severe. This knowledge was needed so that if a criminal was convicted of offences punishable by more than one of these forms of execution he was to be put to death by the severest of those due to him. Compare 9^b. 2 His view is rejected. 3 See 6^a.

Mishnah 2

מְשֻׁנָּה ב

[This is] the ordinance of those to be burned. They set him in manure up to his armpits¹ and put a [twisted] scarf of coarse material within a soft one² and wound it around his neck; one [witness] pulled [one end] towards him and another [witness]³ pulled [the other end] towards him until he opened his mouth; and one lit a twisted thread⁴ and threw it into his mouth, and it went down into his bowels and burnt his entrails. R. Judah⁵ says, Though he thus died at their hands⁶ they would not have

מִצְוֹת הַנִּשְׂרָפִין. הָיוּ מִשְׁקַעֲיֵן אוֹתוֹ בְּזָבֵל עַד יַאֲרְכּוּבוֹתָיו, וְנוֹתְנֵין סוּדָר קָשָׁה לְחוּף הַקֶּרֶף וְכוּרֶף עַל צִנְאוֹרוֹ; זֶה מוֹשֵׁף אֲצִלוֹ, יְהֵא מוֹשֵׁף אֲצִלוֹ, עַד שְׁפוֹתָם אֶת-פִּיו; וּמַדְלִיק אֶת-הַפְּתִילָה, חוֹרֵקָה לְחוּף פִּיו, וְיורֶדֶת לְחוּף מַעְיו, וְהוֹמַרְת אֶת-בְּנֵי מַעְיו. רַבִּי יְהוּדָה אוֹמֵר אִף הוּא אִם מֵת יִבְדָּם לֹא הָיוּ מְקַיְמִין

fulfilled thereby the ordinance of burning, but they should open his mouth with pincers by force and then light the twisted thread and throw it into his mouth, and it descends into his stomach and burns his intestines. R. Eliezer ben Zadok said, It once happened in the case of a priest's daughter who committed adultery,⁷ and they placed round her bundles of branches and burned her. [The Sages] said to him, Because there was not at that time a court versed [in the law].⁸

בו מצות שרפה, אלא פותחין את-
פיו בצנות שלא בטובתו, ומדליק
את-הפתילה וזורקה לתוך פיו,
וירדת לתוך מעיו, וחומרת את-
בני מעיו. אמר רבי אליעזר בן
צדוק מעשה בבת כהן אחת שזנתה
והקיפוה חבילי זמורות, ושרפוה.
אמרו לו מפני שלא היה בית דין
של אותה שעה בקי.

1 To enable him to sit and not twist about. 2 To force him to open his mouth quickly without undue delay and suffering, and the soft scarf prevents bruising. 3 Or the other [witness]. 4 According to סנהדרין 52a a piece of lead was melted in a ladle and the molten liquid was tipped down into his throat. 5 His opinion is rejected. 6 By strangulation during the pulling of the scarves. 7 *Leviticus* 21, 9. 8 The judges were Sadducees (סנהדרין 52b) who followed the literal injunctions and not the deduced rulings of the Sages.

Mishnah 3

משנה ג

[This is] the ordinance of those to be beheaded: they used to cut off his head with a sword just as the government does. R. Judah¹ says, This is a hideous method;² but they should lay³ his head on a block⁴ and cut it off with an axe.⁵ [The Sages]⁶ said to him, There is no more hideous death than this.^{7*} [This is] the ordinance of those to be strangled: they set him in manure up to his armpits⁸ and put a [twisted] scarf of coarse material inside a soft one⁹ and wrapped it round his neck; one [witness] pulled [one end] towards him and another [witness]⁹ pulled [the other end] towards him until his soul departed.

מצות הנהרגים, הני מתיון את-
ראשו בפייף, כדרך שהמלכות
עושה. רבי יהודה אומר יניוול הוא
זה אלא מניחין את-ראשו על
הסדן, וקוצץ בקופיץ. אמרו לו
אין מיתה מנוולת *מזו. מצות
הנחנקין, הני משקעין אותו בגובל,
עד ארכובותיו, ונותנין סדר קשה
לתוך הרפה וכורך על צנארו, זה
מושף אצלו וזה מושף אצלו, עד
שנפשו יוצאה.

*Or מזו.

1 His opinion is rejected. 2 *i.e.*, referring to the execution of a man while standing. 3 Or מניחין, less correct. 4 Fixed firmly into the ground. Literally *the block*. 5 Or *cleaver, chopper*. 6 Their view is accepted. 7 It is like chopping off the head of a beast to use an axe. 8 See the foregoing *Mishnah*, **Note 1**. So that the witnesses may carry out the operation as easily and expeditiously as possible to minimise his mental and physical sufferings. 9 See the preceding *Mishnah*, **Notes 2, 3**.

Mishnah 4

These are they that are to be stoned: he that has sexual intercourse with his mother, with the wife of his father, with his daughter-in-law,¹ with a male,² or with a beast,³ and the woman who copulates with a beast, the blasphemer, the idolater, he who offers of his seed to *Molech*,⁴ he given to necromancy and the soothsayer, he who profanes the Sabbath, he that curses⁵ his father or his mother, he that has sexual connexion with a betrothed maiden, he who entices [others to idolatry], he that misleads [a whole town to idolatry], the sorcerer, and the rebellious and disobedient son.⁶ He that has intercourse with his mother is thereby liable⁷ because of '[the law of] the mother' and because of '[the law of] the father's wife.'⁸ R. Judah⁹ says, He is only culpable according to '[the law of] the mother.' He who has connexion with his father's wife is thereby liable because of '[the law of] the father's wife' and because of '[the law of] another man's wife,'¹⁰ whether during the lifetime of his father or after the death of his father, whether following betrothal or after marriage. He who has sexual connexion with his daughter-in-law is thereby guilty because of

משנה ד

אלו הם הנסקלין, הבא על האם, ועל אשת האב, ועל הכלה, ועל הזכור, ועל הבהמה, והאשה המביאה את הבהמה והמגדף, והעובד כוכבים, והנותן מורעו למולך, ובעל אוב וידעוני, והמחלל את השבת, והמקלל אביו ואמו, והבא על נערה המאורסה, והמסית, והמדית, והמכשף, ובן סורר ומורה. הבא על האם, חייב עליה משום אם, ומשום אשת אב. רבי יהודה אומר אינו חייב אלא משום האם בלבד. הבא על אשת אב חייב עליה משום אשת אב, ומשום אשת איש, בין בחיי אביו בין לאחר מיתת אביו, בין מן האירוסין בין מן הנשואין. הבא על פלתו, חייב עליה משום פלתו, ומשום אשת איש, בין בחיי בנו בין לאחר מיתת בנו, בין מן

'[the law of] one's daughter-in-law'¹¹ and because of '[the law of] another man's wife,' whether in the lifetime of his son or after his son's death, whether after the betrothal or after wedlock. He that has connexion with a male or with a beast, and the woman that has connexion with a beast [are to be stoned].¹² If the man have sinned, how has the beast sinned?¹³ Because an offence has befallen a man through it,¹⁴ therefore Scripture has said that it must be stoned; another reason [why it must be stoned] is that lest the animal pass through the street and they say, 'This is it because of which so-and-so was stoned'.¹⁵

הָאִירוּסִין בֵּין מִן-הַנְּשׂוּאִין. הִבָּא
עַל הַזְּכוּר, וְעַל הַבְּהֵמָה, וְהָאִשָּׁה
הַמְּכַיָּאָה אֶת-הַבְּהֵמָה. אָדָם
חָטָא, בְּהֵמָה מָה? חָטָאת? אֲלֵא לְפִי
שָׂפָאָת לְאָדָם תִּקְלָה עַל יָדָהּ,
לְפִיכֹךְ אָמַר הַכֹּתוּב תִּסְקַל; דְּבַר
אַחַר שְׁלֵא תְהֵא בְּהֵמָה עוֹבְרַת
בְּשׂוּק, וְיֹאמְרוּ זוּ הוּא שְׁנִסְקַל פְּלוּנִי
עַל יָדָהּ.

1 Literally *bride*. 2 The same applies if he allows a male to practise sodomy or buggery on him. 3 Or allows a beast to copulate with him. 4 The god of fire and an idol of the Canaanites and Ammonites and others to which the idolatrous Israelites offered human sacrifices. 5 A greater offence than striking. 6 *Deuteronomy* 21, 18 *et seq.* 7 To two *sin-offerings* if the offence was committed unwittingly. *Leviticus* 4, 27. 8 *Leviticus* 18, 7, 8. 9 His view is rejected. 10 *Leviticus* 18, 20. 11 *Leviticus* 18, 15. 12, *Leviticus* 20, 15, 16; *Leviticus* 36b; *בְּבֵא בְתֵרָא* 14; *סִיְהַדְרִין* 54 b. 13 *i.e.*, why should it be stoned? 14 And that this should not recur. 15 So that the heinous immoral offence is not the subject of repeated unsavoury talk.

Mishnah 5

The blasphemer¹ is not guilty until he pronounces the Name² [expressly]. R. Joshua ben Karchah said, Every day [during the trial the court] examined⁴ the witnesses with a substitute name³ [such as] *may Jose smite Jose*. When the sentence was to be pronounced they did not condemn⁴ him to death [on the testimony given] with the substitute name, but they sent⁴ forth every person outside, and asked⁴ the chief

מְשֻׁנָּה ה
הַמְּגַדֵּף אֵינוֹ חַיִּיב, עַד שְׂיִפְרֹשׁ
הַשֵּׁם. אָמַר רַבִּי יְהוֹשֻׁעַ בֶּן קַרְחָה
בְּכָל יוֹם יִדְוִין אֶת-הַעֲדִים בְּכִינוּי
יָכָה יוֹסִי אֶת-יוֹסִי. נִגְמַר הַדִּין לֹא
הִוָּרְגִים בְּכִינוּי, אֲלֵא מוֹצִיאִים
כָּל-אָדָם לְחוּץ, וְנִשְׁאָלִים אֶת-
הַגָּדוֹל שֶׁבָּהֶן וְאוֹמְרִים לוֹ אָמַר

one among them [namely, the witnesses] and said⁴ to him, 'Say exactly what thou didst hear', and he said⁴ it, and the judges stood⁴ up on their feet and rent⁴ [their garments], but they did not repair⁴ [them]; and the second [witness] said,⁴ 'I also [heard] just as he did'; and the third one⁵ said,⁴ 'I, too, [heard] just as he did'.

מה־ששמעת בפירוש, והוא אומר, והדיינים עומדים על רגליהן וקורעין, ולא מאחין; והשני אומר אף אני כמוהו; והשלישי אומר אף אני כמוהו.

1 *Leviticus 24, 10ff.* 2 *The Divine Name, the Tetragrammaton* itself. Compare *יומה* 38, 62; *סוטה* 76. 3 *i.e.*, not using the *Divine Name* itself. 4 *Literally examine, send, etc., i.e.*, in the *present tense*. 5 If there was a third witness.

Mishnah 6

He that practises idolatry,¹ whether he worships, or sacrifices, or burns incense, or pours out a libation, or prostrates himself, or accepts it² as a god, or says to it, 'Thou art my god' [in every such case he is liable to be stoned]. But one that embraces it, or kisses it, or brushes it,³ or besprinkles it,⁴ or washes it, or anoints it, or clothes it, or shoes it,⁵ [merely] transgresses a *negative command*.^{6,7} One who vows in its name or takes an oath in its name transgresses [only] a *negative command*.^{7,8} One who uncovers himself⁹ before *Baal Peor* [is culpable⁷] because this is the manner of worshipping it.¹⁰ He who casts a stone at [a statue of] *Merkolis*¹¹ [is guilty⁷] since this* is the method of its worship.* ¶ (*m. & f., sing. & pl.*), or ¶ (*f. sing.*); see Vol. II, P. 12.

משנה ו
 יהעובד עבודת כוכבים, אהד העובד, ואהד הזובת, ואהד המקטר, ואהד המנסף, ואהד המשמתחה, ואהד המקבלו עליו לאלוה, והאומר לו אלי אמה. אבל המנפה, והמנשק, והמכבד, והמרחיץ, והמרחיץ, והמליביש, והמנעיל, עובר בלא תעשה. הנודר בשמו, והמקיים בשמו, עובר בלא תעשה. הפוער עצמו לקבל פעור, * זו היא עבודתו. הוזרק אבן למרקוליס, * זו היא עבודתו.

1 Or *He that is an idolater*. 2 An image, idol, etc., even when it is not before him. 3 Or *sweeps away [the dust]* from around it. 4 Or *sprinkles [water]* about it to lay the dust. 5 The same ruling applies to raising one's headgear to it. 6 *Exodus 20, 5.*

7 He is not liable to the death penalty by stoning but must bring a *sin-offering*.
 8 *Exodus* 23, 13. 9 *i.e.*, excretes. He must not do so even if his intention was to show contempt thereby. 10 *Numbers* 25, 3, 5; *Deuteronomy* 4, 3; *Hoshea* 9, 10.
 11 The Roman deity *Mercurius* and the Greek *Hermes*, and particularly a statue of *Hermes* or a pillar surmounted by the head of *Hermes* for the benefit of wayfarers. They used to erect a pyramid of one stone atop of two others and anyone desiring to worship threw a stone there. *The horrible rite of worshipping it.

Mishnah 7

He who offers from his seed to *Molech*¹ is not guilty until he hands over to *Molech* and has caused it to pass through the fire;² if he gave it up to *Molech*, but did not cause it to be passed through the fire, or if he passed it through the fire, but did not give it over to *Molech*, he is not guilty—[he is only culpable] when he [both] surrenders it to *Molech*³ and passes it through the fire. A necromancer⁴ is a sorcerer that makes [the dead] speak from his armpit, and the soothsayer⁵ is he that speaks with his mouth. These [must be slain] by stoning, and one that enquires of them [transgresses] against an admonition.⁶

1 *Leviticus* 18, 21, 20, 2; *מגילה* 49. See 74, Note 4. 2 The father gave his son to the priests in dedication to *Molech*; the priests returned him to his father who carried him in his arms or on his back and he walked between two bonfires from end to end. But if the son held his father's hand and walked through with him, the father is not guilty. Compare *Mishnah* 4. 3 *i.e.*, to the priests. 4 *Leviticus* 20, 27. אוב, cited ghost. בעל אוב, necromancer, sorcerer. פיתום, פיתום, conjurer, magician, necromancer, ventriloquist, who pretends to hear a voice emanate from a skull held under the armpit. כפרות 59a; שבת 152b. 5 See סנהדרין 65b. 6 *Leviticus* 19, 31; *Deuteronomy* 18, 11.

Mishnah 8

One who desecrates the Sabbath¹ by an act which renders him liable to excision² if [he transgressed] wantonly,³ or [is liable] to a *sin-*

משנה ז

הנותן מנצרו למוֹלֵךְ, אינו חייב עד שִׁימְסֹר למוֹלֵךְ וַיַּעֲבִיר בְּאֵשׁ; מָסַר למוֹלֵךְ וְלֹא הֵעֲבִיר בְּאֵשׁ, הֵעֲבִיר בְּאֵשׁ וְלֹא מָסַר למוֹלֵךְ, אינו חייב עד שִׁימְסֹר למוֹלֵךְ וַיַּעֲבִיר בְּאֵשׁ. בְּעַל אוֹב, זֶה פִּיתוּם, הַמְדַבֵּר מִשְׁחִיו, וַיִּדְעוּנֵי זֶה הַמְדַבֵּר בְּפִיו. הָרִי אֵלָיו בְּסִקְלָה, וְהַנְּשֹׂאֵל בָּהֶם בְּאוֹהֲרָה.

משנה ח

הַמְחַלֵּל אֶת-יְהוָה בְּדָבָר שֶׁחַיִּיבִין עָלָיו יְדוּנוּ בְּכַרְתּוֹ וְעַל שְׁגָגָתוֹ

offering⁴ if [he transgressed] in error. He that curses his father or his mother⁵ is not guilty until he curses them with the Name. If he cursed them with a substitute name,⁶ R. Meir declares him liable, but the Sages acquit him.⁷

1 *Numbers* 15, 32-36. And, after having been warned, is liable to death by stoning on repetition of the offence. 2 *APPENDIX, Note 2.* 3 Without forewarning. 4 *Leviticus* 4, 27 *et seq.* 5 *Exodus* 21, 17; *Leviticus* 20, 9. 6 With any one of the attributes of God such as *The All-Merciful.* 7 Compare שבועות 213.

Mishnah 9

He that has sexual intercourse with a betrothed maiden¹ is not liable [to be stoned] unless she is a betrothed virgin² (maiden) and is still in her father's house. If two had sexual connexion with her,³ the first [is punishable] by stoning and the second by strangling.

1 *Deuteronomy* 22, 23 *et seq.* 2 A girl between the ages of twelve years and one day and twelve years six months and one day. If her betrothed sent an agent for her, anyone who had connexion with her on the way is liable to strangulation. Compare נדה 56, 7. 3 Even if she still remained a virgin, *viz.*, the intercourse was not in the natural manner.

Mishnah 10

He who instigates [others to idolatry]: this is a layman¹ that has stirred up and incites another layman.² [How did he beguile him?] He said to him, 'There³ is a deity³ in such-and-such a place that eats thus, that drinks thus, that does good thus, that does harm thus'⁴—against all who become liable to death penalties as enjoined in the Law may they not set witnesses in concealment except only in this case. If he spoke

י'חטאת. המקלל אביו ואמו אינו חייב עד שיקללם בשם. קללם בכינוי, רבי מאיר מחייב, ונתקמים פוטרין.

משנה ט
הבא על נערה יהמאורסה, אינו חייב עד שתהא נערה בתולה מאורסה, והיא בבית אביה. באו עליה שנים, הראשון בסקילה, והשני בחנק.

משנה י'
המסית זה יהודיט שיהסית, והמסית את ההודיט. אמר לו יש יראה במקום פלוני, כף אוקלת, כף שותה, כף מטיבה, כף מריעה, כל-חייבי מיתות שבתורה אין מקמינין עליהם חוץ מווי. אמר לשנים והן עדי, מביאין אותו לבית דין וסוקלין אותו. אמר לאחד

[in this wise] to two persons,⁵ and they are [able to act as valid] witnesses against him,⁶ they bring him to the court and stone him. If he spoke [after this manner] to only one, he⁷ may reply, 'I have⁸ companions who also desire this',⁸ and if [the instigator] were subtle and would not speak⁹ before them, they may place [men to be] witnesses in hiding behind the fence,¹⁰ and he⁷ says to him, 'Repeat what thou didst say to me in private'; and the other¹¹ repeats to him; and he⁷ says to him, 'How shall we abandon our God that is in heaven and go and worship wood and stone?' If [the instigator] retract it, then all is well,¹² but if he say,¹³ 'This is our duty and this is better for us', then those who stand behind the fence bring him to the court and stone him. If one say, 'I will worship [idolatrously]', [or] 'I will go and worship, [or] 'Let us go and worship', [or] 'I will sacrifice'¹⁴ [idolatrously]', [or] 'I will go and sacrifice',¹⁴ [or] 'Let us go and sacrifice',¹⁴ [or] 'I will burn incense [idolatrously]', [or] 'I will go and burn incense', [or] 'Let us go and burn incense', [or] 'I will make a libation [idolatrously]', [or] 'I will go and make a libation', [or] 'Let us go and make a libation', [or] 'I will prostrate myself [idolatrously]', [or] 'I will go and prostrate myself', [or] 'Let us go and prostrate ourselves', [in every such case he is guilty and is stoned]. One who draws away¹⁵ [a whole city to idolatry]: this is one who says, 'Let us go and worship idols'.¹⁶ * Or יש-יראה § Or יש-לי.

הוא אומר יש לי חברים רוצים
בכף, אם היה ערום ואינו יכול
לדבר בפניהם, מקמינן לו עדים
אחורי הִגְדָּר. והוא אומר לו
אמור מה-שאמרת לי ביחוד;
והלה אומר לו; והוא אומר לו
היאך ניצח את-אלהינו שבשמים
וגלף ונעבוד עצים ואבנים? אם
חונך בו הרי זה מוטב, ואם אָמַר
כף היא חובותינו, וכף יפה לנו,
העומדין מאחורי הגדר מביאין
אותו לבית דין וסוקלין אותו.
האומר אַעֲבֹד, אֵלָּהּ וְאֶעֱבֹד, גִּלְגָּל
וְנַעֲבֹד, אֲצֹבַח, אֵלָּהּ וְאֶצְבַּח,
גִּלְגָּל וְנִנְצִיחַ, אַקְטִיר, אֵלָּהּ וְאַקְטִיר,
גִּלְגָּל וְנִקְטִיר, אַנְסָף, אֵלָּהּ וְאַנְסָף,
גִּלְגָּל וְנִנְסַף, אַשְׁתַּחֲוֶה, אֵלָּהּ
וְאַשְׁתַּחֲוֶה, גִּלְגָּל וְנִשְׁתַּחֲוֶה. הַמַּקְדִּיחַ
זֶה הָאֹמֵר גִּלְגָּל וְנַעֲבֹד * כּוֹכְבִים.
[or] 'I will make a libation', [or] 'I will
go and make a libation', [or] 'Let
us go and make a libation', [or] 'I
will prostrate myself [idolatrously]',
[or] 'I will go and prostrate myself',
[or] 'Let us go and prostrate
ourselves', [in every such case he is
guilty and is stoned]. One who
draws away¹⁵ [a whole city to idolatry]:
this is one who says, 'Let us go
and worship idols'.¹⁶ * Or יש-יראה § Or יש-לי.

1 In contradistinction to a priest, official, prophet, etc., who are liable to *strangling*. Deuteronomy 13, 1-11. Compare 11⁵. 2 And not a whole community. 3 רִאָּה, fear, an object of fear, an idol. 4 The instigator is not liable to the death penalty for merely uttering any such expression; the liability follows the actual act of instigating

to commit idolatrous practice. 5 Who were together being urged to idolatrous worship. 6 See 31-4. They must not be relatives or disqualified otherwise to testify. 7 The one being incited. 8 In order to entice the beguiler to speak to others and so obtain a witness or witnesses against him. 9 Literally *and cannot speak*. Knowing the risk of having witnesses against him. 10 Or *partition wall*. 11 וְהִלֵּה traditional pronunciation. Or וְהִלֵּה. 12 And no proceedings are taken against him. 13 Literally *said*. *i.e.*, he persists in urging and inciting. 14 וְאִזְבַּח, וְאִזְבַּח, וְאִזְבַּח [Kal], or וְאִזְבַּח, וְאִזְבַּח, וְאִזְבַּח [Piel]. 15 Deuteronomy 13, 14. 16 See 10⁴.

Mishnah 11

משנה יא

The sorcerer is he that performs an act¹ [of sorcery] and is guilty [and is to be stoned], but not one that deceives the eyes.² R. Akiba quotes in the name of R. Joshua, If two gather cucumbers,³ and one that gathers is not guilty and the other that gathers is guilty—[how so?] he that performs the act⁴ [of sorcery] is guilty, but he that only deceives the eyes⁵ is not guilty.⁶

הַמְכַשֵּׁף הָעוֹשֶׂה מַעֲשֵׂה חַיִּיב, וְלֹא הָאוֹחֵז אֶת הָעֵינַיִם. רַבִּי עֲקִיבָה אוֹמֵר מִשּׁוּם רַבִּי יְהוֹשֻׁעַ שְׁנַיִם לֹקְטִין יְקִישׁוּאִין, אֶחָד לֹקֵט פְּטוּר, וְאֶחָד לֹקֵט חַיִּיב, הָעוֹשֶׂה מַעֲשֵׂה חַיִּיב, הָאוֹחֵז אֶת הָעֵינַיִם פְּטוּר.

1 Exodus 22, 18; Deuteronomy 18, 10. Acts to deceive wrongfully the mind and soul. 2 Without sorcery, necromancy or witchcraft. *i.e.*, genuine conjury, legerdemain, etc., that amuse and interest but have no evil spiritual effects. 3 *i.e.*, if two sorcerers or conjurers gather cucumbers, or if two gather cucumbers with sorcery or conjuring. 4 *i.e.*, he actually gathers by the aid of sorcery. 5 It seems to the onlookers that he gathers them. 6 But such sleight of hand or trickery is nevertheless prohibited if it might lead weak-minded people to false superstitious beliefs.

CHAPTER 8

פֶּרֶק ח

Mishnah 1

משנה א

A rebellious and disobedient son¹—when does he become* a rebellious and disobedient son?² From the age when he can produce two hairs³ till he grows the lower beard,⁴ and not the upper [beard⁵ is here

יֶבֶן סוֹרֵר וּמוֹרֶה, מֵאַיְמִתִּי נִעֲשֶׂה יֶבֶן סוֹרֵר וּמוֹרֶה? מִשְׁכִּיבֵי שְׁתֵּי יִשְׁעוֹת, וְעַד שְׁיִקֵּף יֶזְקֵן הַפְּתִחוֹן, לֹא יִהְיֶה לֵיּוֹן, אֲלֵא שְׁדָּבְרוּ חֻקִּים

meant]—but the Sages spoke in chaste terms⁶—as it is said,⁷ *If a man have . . . a son*, [it means] a son and not a daughter,⁸ a son and not a man,⁴ and a minor is exempt⁴ since he has not as yet entered into the general scope of [having to observe] the commandments.

1 *Deuteronomy 21, 18 et seq.* 2 *i.e.*, at what age is he liable to stoning for the offence. 3 On the genitalia (at the age of thirteen years and one day in a normal male). 4 The hair round the genitals—only during this interval is he liable to stoning. 5 Round the chin. 6 *viz.*, using the word *beard*. 7 *Deuteronomy 21, 18.* 8 She is not liable to stoning. *See the next *Mishnah, Note*.*

Mishnah 2

When is he liable? When he eats a *tartemar*¹ of flesh² and drinks half a *log*³ of Italian wine. R. Jose⁴ says, A *maneh*⁵ of flesh and a *log* of wine. If he consumed it at a religious gathering,⁶ if he consumed it at the intercalation of the month,⁷ if he consumed it as *second tithe* in Jerusalem,⁸ if he ate carrion⁹ or *terefah* flesh,¹⁰ [or the flesh of] unclean animals¹¹ or creeping things,¹² (or if he ate completely untithed produce, or *first tithe* from which the *priest's-due* had not been separated, or *second tithe* or dedicated produce which had not been redeemed),¹³ if he ate aught and had thereby fulfilled a commandment or had committed a transgression,¹⁴ if he consumed any food but did not consume flesh, if he drank any liquid but did not drink wine, he has not become* a rebellious and disobedient son, unless § he [both] consumes flesh and drinks wine, as it is said,¹⁵ *a glutton and a drunkard*.¹⁶ And although there is

בְּלִשׁוֹן נִקְיָה, שֶׁנֶּאֱמַר פִּי יְהִי לְאִישׁ
בֵּן, בֵּן וְלֹא בֵּת, בֵּן וְלֹא אִישׁ, הִקְטִין
פְּטוֹר, שְׂלֵא בָא לְכָלֵל מִצְוֹת.

מִשְׁנָה ב

מֵאִמְתִּי חַיִּיב? מִשֵּׂאֵכֶל טַרְטִימַר
בְּשֶׁר, וְיִשְׁתֶּה חֲצִי לֹג יִין הָאִיטָלְקִי.
רַבִּי יוֹסִי אָמַר מִנֵּה בְּשֶׁר וְלֹג יִין.
אָכַל בְּחִבּוּרֵת מִצְנָה, אָכַל בְּעֵבֹר
הַחֲדָשׁ, אָכַל מִעֵשֶׂר שְׁנֵי בִירוּשָׁלַיִם,
אָכַל נִבְלוֹת וְטֵרֵפוֹת, שֶׁקָּצִים
יִירָמְשִׁים, (אָכַל טָבָל, וּמִעֵשֶׂר
רֵאשׁוֹן שְׂלֵא נִטְלָה תְרוּמָתוֹ, וּמִעֵשֶׂר
שְׁנֵי וְהִקְדֵּשׁ שְׂלֵא נִפְדָּו), אָכַל
דָּבָר שֶׁהוּא מִצְוָה וְדָבָר שֶׁהוּא
לֹא מִצְוָה, אָכַל כָּל-מֵאֲכָל וְלֹא אָכַל
בְּשֶׁר, שָׁתָה כָּל-מִשְׁקָה וְלֹא שָׁתָה
יִין, אִינוּ נִעְשֶׂה בֵּן סוֹרֵר וּמוֹרֵה,
עַד שֵׂאֵכֶל בְּשֶׁר וְיִשְׁתֶּה יִין, שֶׁנֶּאֱמַר
זוֹלֵל וְסוֹבֵא, וְאֵף עַל פִּי שְׂאִין
רָאִיהָ לְדָבָר, זָכָר לְדָבָר.

no proof for the matter, there is an indication to the subject,¹⁷ as it is said,¹⁸ *Be not among winebibbers*,¹⁹ among gluttonous eaters²⁰ of flesh.

וְשֵׁנָאֵמַר אֶל-תְּהִי בְּסוֹבְאֵי יַיִן
בְּזוּלְלֵי בָּשָׂר לָמוּ.

§i.e., he is capable only if. . .

1 טְרִימָר = 197 grams (see וְרָעִים, page 18f.). 2 Half-cooked. 3 275 c.cm. or 16 c. inches. 4 His view is rejected. 5 1 מָנָה = 3 טְרִימָר. 6 For instance, at a circumcision ceremony, wedding. 7 A festive occasion at the court. See 25; ראש השנה 31. 8 Deuteronomy 14, 26. מַעֲשֵׂר שְׁנֵי, INTRODUCTION. Appendix, Note 1. 9 Deuteronomy 14, 21. 10 Exodus 22, 31. Appendix, Note 15. 11 Leviticus 11, 4 et seq.; 20, 25. 12 Leviticus 11, 42 et seq.; וְדָה 32. 13 This part in parenthesis is not given in the Jerusalem Talmud. 14 For instance, on a fast day. 15 Deuteronomy 21, 20. 16 וְסִבָּה is given in the Scripture text. 17 See שֶׁפֶת 87. 18 Proverbs 23, 20. 19 כְּסוֹבְאֵי is given in the Scriptural text. 20 The Scripture gives בְּזוּלְלֵי. *נַעֲשָׂה, Niph'al participle; or נַעֲשָׂה, Niph'al past.

Mishnah 3

מִשְׁנָה ג

If he stole¹ from his father and consumed it² in his father's domain, [or] from others¹ and consumed it in the others' domain, [or] from others¹ and consumed it in his father's domain, he does not become a rebellious and disobedient son unless he steals¹ from his father and consumes it in others' domain. R. Jose³ the son of R. Judah says, Only if he steal¹ both from his father and from his mother.⁴

יִגְנוֹב מִשָּׁל אָבִיו וְיֹאכַל בְּרֵשׁוֹת אָבִיו,
מִשָּׁל יְאֲחָרִים וְיֹאכַל בְּרֵשׁוֹת אֲחָרִים,
מִשָּׁל יְאֲחָרִים וְיֹאכַל בְּרֵשׁוֹת אָבִיו,
אֵינוֹ נַעֲשָׂה בֶן סוֹרֵר וּמוֹרֵד, עַד
יִשְׁיַגֵּב מִשָּׁל אָבִיו, וְיֹאכַל בְּרֵשׁוֹת
אֲחָרִים. רַבִּי יוֹסִי בֶר רַבִּי יְהוּדָה
אוֹמֵר עַד יִשְׁיַגֵּב מִשָּׁל אָבִיו וּמִשָּׁל
אִמּוֹ.

1 He stole money and bought flesh and wine for consumption. 2 He ate hurriedly for fear of being seen by his father. 3 His opinion is rejected. 4 viz., from money of her own (i.e., not belonging to her husband).

Mishnah 4

מִשְׁנָה ד

If his father were willing [to bring him to the court for judgment], but his mother was not willing, [or] if his father were not willing, but his mother was willing, he does not become* a rebellious and disobedient

הָיָה אָבִיו רוֹצֵה וְאִמּוֹ אֵינָה רוֹצֵה,
אָבִיו אֵינוֹ רוֹצֵה וְאִמּוֹ רוֹצֵה, אֵינוֹ
נַעֲשָׂה בֶן סוֹרֵר וּמוֹרֵד, עַד שִׁיְהִי
שְׂנִיָּהֶם רֹצֵאִים. רַבִּי יְהוּדָה אוֹמֵר

son unless both were willing.¹ R. Judah² says, If his mother were not like to his father,³ he does not become a rebellious and disobedient son. If either of them⁴ had a maimed hand,⁵ or was lamed,⁶ or mute,⁷ or blind, or deaf,⁸ he does not become* a rebellious and disobedient son, as it is said,¹ *then shall his father and his mother lay hold on him*, and not those with maimed hand [can lay hold on him]; and⁹ *bring him¹⁰ out*, and not the lame [are able to bring him out]; and¹¹ *they shall say*, and not the mute [can so say]; *this¹¹ our son*, and not such as are blind [are able to say thus]; *he¹¹ doth not hearken¹² to our voice*, and not the deaf [are able to hear]. They must admonish him before three judges, and [if he disregard the warning], they scourge him [before three judges]. If he repeated his evil conduct, he must be tried before twenty-three [judges], and he may not be stoned unless there are there the three first [judges],¹³ as it is said,¹¹ *this is our son*, This is he that was scourged before you. If he fled before the verdict was pronounced against him, and in the meanwhile grew the lower beard,¹⁴ he is exempt,¹⁵ but if he fled after sentence on him was passed, and in the meantime grew the lower beard, he is liable.¹⁶

אם לא היתה אמו ראויה ל'אביו, אינו נעשה בן סורר ומורה. הנה י'אחד מהם גידם, או חנר, או י'אלם, או סומא, או חרש, אינו נעשה בן סורר ומורה. ש'נאמר י'ותפשו בו אביו ואמו, ולא ג'דמין; והוציאו י'אותו, ולא ח'גרין; ו'ואמרו, ולא אלמין; י'בגנו זה, ולא סומין; י'אינו שומע בקולנו, ולא חרשין. מתרין בו בפני שלשה ומלקין אותו. חזר וקלקל, ג'דון בעשרים ושלשה, ואינו נסקל עד שיהו שם י'שלשה הראשונים, ש'נאמר י'בגנו זה, זהו שלקה בפניכם. ברח עד שלא נגמר דינו, ואחר כך הקיף י'זקן הפחתון י'פטר; ואם משנגמר דינו ברח, ואחר כך הקיף י'זקן הפחתון י'חייב.

1 Based on Deuteronomy 21, 19. 2 His view is not accepted. 3 *i.e.*, had like voices and similar features, and were of the same height. 4 The parents. 5 Or י'דמ. *i.e.*, the whole hand cut off, or even some fingers or one finger cut off: they cannot grasp him with four whole hands. 6 Or *limping*. 7 Or *dumb*. 8 Or *deaf-mute*. 9 Deuteronomy 21, 21. 10 *אתו* is the orthographic form in the Scriptural text. 11 Deuteronomy 21, 20. 12 The Scriptural reading is *שמע בקולינו*. 13 By whose order he had been scourged. 14 See 81. 15 From being stoned. 16 To be stoned, irrespective of the length of time gone by.

Mishnah 5

A rebellious and disobedient son is condemned by reason of [what he may become in] the end,¹ and therefore let him rather die innocent than die guilty,² for the death of the wicked is a benefit to them³ and an advantage to the world,⁴ but [the death] of the righteous is a disaster to them⁵ and a misfortune to the world. Wine and sleep are a benefit to the wicked and an advantage to the world,⁶ but [the wine and sleep] of the righteous are an evil to them and a detriment to the world.⁷ The dispersal⁸ of the wicked⁹ is an advantage to them and a benefit to the world, but [the dispersion] of the righteous is a disaster to them¹⁰ and a disadvantage to the world. The assembly of the wicked is an evil to them¹¹ and an impairment to the world, but [the gathering together] of the righteous is a benefit to them¹² and an advantage to the world. The ease of the wicked¹³ is bad for them¹⁴ and an injury for the world, but [the ease] of the righteous is a benefit to them¹⁵ and an advantage to the world.

מִשְׁנָה ה'

בֶּן סוֹרֵר וּמוֹרֵה נֶדוּן יַעַל שֵׁם סוֹפוֹ,
 יָמוּת זָכָאי, וְאֵל יָמוּת חַיִּיב, שְׁמַתְתָּן
 שְׁל רִשְׁעִים, הַנָּאָה יִלְהֶן, וְהַנָּאָה
 יִלְעוּלָם, וְלִצְדִיקִים, רַע יִלְהֶן, וְרַע
 לְעוֹלָם. יֵין וְשֵׁנָה לְרִשְׁעִים, הַנָּאָה
 לָהֶן וְהַנָּאָה לְעוֹלָם, וְלִצְדִיקִים,
 רַע לָהֶן וְרַע יִלְעוּלָם. פִּיזוּר
 לְרִשְׁעִים, הַנָּאָה לָהֶן וְהַנָּאָה לְעוֹלָם,
 וְלִצְדִיקִים, רַע יִלְהֶן, וְרַע לְעוֹלָם.
 כְּנוּס לְרִשְׁעִים, רַע לָהֶן וְרַע
 לְעוֹלָם, וְלִצְדִיקִים, הַנָּאָה לָהֶן
 וְהַנָּאָה לְעוֹלָם. שְׁקֵט לְרִשְׁעִים רַע
 יִלְהֶן, וְרַע לְעוֹלָם, וְלִצְדִיקִים,
 הַנָּאָה לָהֶן, וְהַנָּאָה לְעוֹלָם.

1 Literally because of his end. His evil habits will ultimately lead him to robbery and murder. Compare next *Mishnah*, Note 1. 2 i.e., before he commits murder in order to satisfy his evil lusts. 3 They can no longer continue in their evil ways. 4 Which is rid of the evil-doers. 5 For humanity loses the benefit of their good deeds. 6 Sleep and drink lessen the evil doings of the ungodly. 7 For these hold up the good deeds of the godly. Compare אָבוֹת 3:10. 8 Or פִּזוּר. 9 They cannot combine for evil. 10 They cannot unite to promote good and justice. 11 They add to the score of evil against themselves. 12 They can increase justice and righteousness. 13 When they prosper in their evil doings. 14 They persist all the more in their wicked practices. 15 They can proceed with their good work undisturbed in peace.

Mishnah 6

משנה ו

He that breaks in¹ is condemned because of [what] his end [will be].² If he broke in and demolished³ a cask,⁴ and there be* bloodguiltiness for him,⁵ he is liable;⁶ but if there be no bloodguiltiness for him, he is exempt.⁷

הָבֵא יַבְמַחְתֶּרֶת, נִדוֹן עַל שֵׁם סוֹפוֹ.
הִיָּה בָּא בַּמַּחְתֶּרֶת, וְיִשְׁבֵּר אֶת-
יְהֻקְבִית, אִם יִשׁ-לוֹ דָּמִים חַיִּיב,
אִם אֵין לוֹ דָּמִים פְּטוּר.

1 *Exodus 22, 1: אִם בַּמַּחְתֶּרֶת יִמָּצֵא הַנֶּבֶל*, If a thief be found breaking in. Some render the Mishnah phrase: One that breaks in [may be killed with impunity, otherwise he] is sentenced on account of [the evil] he will ultimately do. *מַחְתֶּרֶת*, breach, breaking in. The owner of the house is free from the death penalty for killing the thief only when caught in the very act of forcing an entry, but at no other moment (compare *סִיְהָרִין* 72b). His forcible entrance proves his determination and recklessness to kill if opposed, and hence he is deemed a persecutor (*רוֹדֵף*) whom one may slay to save his own life. This law does not apply if the thief made his way in by an existent breach or opening. 2 He will only end up with murder if opposed. Compare the preceding Mishnah, Note 1. 3 *יִשְׁבֵּר* [*Kal*] or *יִשְׁבֵּר* [*Piel*]. 4 Or jar, jug (an earthen wine-container). 5 *Exodus 22, 2, אִם יִרְחַהּ הַשָּׁמֶשׁ עָלָיו דָּמִים לוֹ*, If the sun be risen upon him, there shall be bloodguiltiness for him. i.e., the thief would not have killed the other and so is not to suffer the death-penalty. 6 i.e., he must pay for the damage; for instance, if a parent broke into his son's house to steal, he would not intend to slay his son and so the latter must not kill his father, but the father must make restitution for any damage he has caused. 7 If there is no kinship between them the householder may slay the thief, and if the latter has caused damage he does not have to pay for it since anyone liable to be killed is exempt from having to make restitution. *Or לוֹ שׁ.

Mishnah 7

משנה ז

And these may be prevented¹ at [the cost of] their lives: he who pursues after his fellow to slay him, or [he that pursues] after a male [for unnatural sexual intercourse], or [he that pursues] after a betrothed maiden [to violate her];² but one who pursues after a beast,³ or he that desecrates the Sabbath, or one who practises idolatry⁴—they may not be prevented at the cost of their lives.⁵

וְאֵלוֹ הֵן יִשְׁמָצִילִין אוֹתָן בְּנַפְשָׁן,
הַרוֹדֵף אַחֵר חֲבֵרוֹ לְהַרְגוֹ, אַחֵר
הַזָּכָר, וְאַחֵר הַנְּעוּרָה הַמְּאוּרְסָה;
אֲבָל הַרוֹדֵף אַחֵר בְּבִהֵמָה, וְהַמְחַלֵּל
אֶת-הַשַּׁבָּת, וְהַעוֹבֵד כּוֹכָבִים,
אֵין מְצִילִין אוֹתָן בְּנַפְשָׁם.

1 From doing evil by being slain. 2 Deuteronomy 22, 22 et seq. 3 For unnatural copulation. 4 Literally *who worships stars*. 5 i.e., such may not be slain to prevent them transgressing. בַּנִּפְשָׁן in some texts.

CHAPTER 9

פָּרָק ט

Mishnah 1

And these are they that must be burned: he who has sexual intercourse with a woman¹ and her daughter,² and a priest's daughter that has committed adultery.³ Under the general law of *a woman and her daughter* are* included [the cases wherein one has sexual connexion with] his daughter,⁴ or his daughter's daughter,⁵ or his son's daughter,⁶ and his wife's daughter,⁷ or her daughter's daughter, or her son's daughter, (his⁸ mother-in-law, or the mother of his mother-in-law, or his father-in-law's mother). And these are they who must be beheaded: the murderer,⁹ and the people of an apostate city.¹⁰ If a murderer struck his fellow with a stone or with an iron [object], or if he forced him down¹¹ into the water or into the fire, and he was unable to come out thence¹² and died, he is guilty. If he pushed him into the water or into the fire, and he could get out thence but died, he is exempt.¹³ If he set a dog on to him or incited a serpent against him, he is exempt.¹⁴ If he caused the serpent to bite him,¹⁵ R. Judah¹⁶ declares him guilty, but the Sages declare him exempt.¹⁷ If one struck his fellow, whether with a stone or with his fist,¹⁸ and [the

מִשְׁנָה א

וְאֵלוֹ הֵן הַנּוֹשְׂרֵי פִין, הַבָּא עַל אִשָּׁה
 וּבִתָּהּ, וּבֵת פֶּהָן שְׁוִינֵתָהּ* יֵשׁ בְּכָלֵל
 אִשָּׁה וּבִתָּהּ, בֵּיתוֹ וּבֵת בֵּיתוֹ וּבֵת
 בְּנוֹ, וּבֵת אִשְׁתּוֹ וּבֵת בִּתָּהּ, וּבֵת בְּנָהּ,
 (חֲמוֹתוֹ, וְאִם חֲמוֹתוֹ וְאִם חֲמוֹ)
 וְאֵלוֹ הֵן הַנֶּהְרָגִים, הַרוֹצֵחַ, וְאִנְשֵׁי
 יֵעִיר הַגִּדְחָתִי. רוֹצֵחַ שֶׁהִכָּה אֶת־
 רֵעֵהוּ בְּאֶבֶן אוֹ בְּבַרְזֵל,¹¹ וְנִכְבַּשׁ
 עָלָיו לְתוֹךְ הַמַּיִם, אוֹ לְתוֹךְ הָאוּר,
 וְאֵינוֹ יָכוֹל לְעֵלוֹת יְמֵשֶׁם וּמַת חַיִּיב.
 דִּחְפוֹ לְתוֹךְ הַמַּיִם אוֹ לְתוֹךְ הָאוּר
 וְיָכוֹל לְעֵלוֹת מִשֶּׁם וּמַת פְּטוּר?¹³
 שִׁיפָה בּוֹ אֶת־הַפֶּלֶב, שִׁיפָה בּוֹ אֶת־
 הַנְּחֹשׁ פְּטוּר. הַשִּׁיף בּוֹ אֶת־
 הַנְּחֹשׁ, רַבִּי יְהוּדָה מְחַיֵּב, וְחַכְמֵי
 פְּטוּרִים. הַמִּכָּה אֶת־חֲבֵרוֹ בֵּין
 בְּאֶבֶן בֵּין בְּאֶגְרוֹף וְאֶמְדוּדוֹ
 לְמִיתָה וְהוֹקֵל מִמֶּה שֶׁהִיָּה, וְלֹא חָר
 מִכָּאֵן הַכְּבִיד וּמַת חַיִּיב. רַבִּי
 יְהוּמָיָה אוֹמֵר פְּטוּר שְׂרָגְלִים²⁰
 לְדָבָר.

experts] considered that he would die [of his injuries], but his condition improved, yet afterward¹⁹ it was aggravated and he died, he is guilty. R. Nehemiah says, He is exempt, for there is a reason for it.²⁰

1 His mother-in-law. *Leviticus* 18, 17. 2 But if he committed incest with her after his wife's death the penalty is כְּרִית, excision (see *Appendix, Note 2*). 3 *Leviticus* 21, 9; תְּרוּמוֹת 72. If after her marriage, she is burned and her adulterer is strangled; but if she is betrothed, both are stoned. 4 Born of a woman he had outraged. 5 The offspring of the woman he had violated. 6 The son of the woman whom he had ravaged. 7 Whether his own daughter or a step-daughter. 8 This phrase in parentheses does not occur in the *Palestinian Talmud*. 9 *Numbers* 35, 16 *et seq.* 10 *Deuteronomy* 13, 15. 11 וְכַבֵּשׁ [Kal] or וְכַבֵּשׁ [Piel]. 12 Or if he fell in and he prevented him coming out. 13 From the death penalty. 14 If the victim died in consequence. 15 By taking up the creature and forcing open its jaws to bite the victim. 16 His opinion is rejected. 17 Because the snake ejects the poison on its own account. 18 Or with a sword or aught else. 19 Traditional reading מִבְּאֵן 20 *i.e.*, there is a basis whereon to rely that the injury was not the cause of death because of the intermediate improvement. רַגְלִים לְדָבָר, literally *the thing has feet* [for support]; compare נִיֵּיר 9³.

Mishnah 2

If one intended to kill a beast¹ and killed a human being,² or [if he meant to kill] an untimely birth³ and killed one that might have lived,⁴ he is exempt.⁵ If he intended to strike one on the loins, but not [with such force] as to kill him [with a blow] upon the loins, but [the blow] lighted upon his heart [with such force] as to cause death [when it lighted] on his heart, and he died, he is exempt. If he intended to strike him upon the heart [with such force] as to slay him [if it hit] the heart, but it lighted on his loins and [the blow had] not enough [force] to cause death through the loins, and nevertheless he died, he is exempt. If he intended to strike a grown-up person, but [the force]

משנה ב

נִתְפַּוֵּן לְהַרוֹג אֶת-הַבְּהֵמָה וְהָרַג אֶת-הָאָדָם, יִלְגַּפְלִים וְהָרַג בֶּן קַיָּמָא, פְּטוּר. נִתְפַּוֵּן לְהַכּוֹתוֹ עַל מַתְנֵיוֹ וְלֹא הָיָה בּוֹ כְּדֵי לְהַמִּית עַל מַתְנֵיוֹ, וְהִלְכָה לוֹ עַל לְבוֹ וְהָיָה בּוֹ כְּדֵי לְהַמִּית עַל לְבוֹ, וּמַת פְּטוּר. נִתְפַּוֵּן לְהַכּוֹתוֹ עַל לְבוֹ וְהָיָה בָּהּ כְּדֵי לְהַמִּית עַל לְבוֹ, וְהִלְכָה לוֹ עַל מַתְנֵיוֹ וְלֹא הָיָה בָּהּ כְּדֵי לְהַמִּית עַל מַתְנֵיוֹ, וּמַת פְּטוּר. נִתְפַּוֵּן לְהַכּוֹת אֶת-הַגְּדוּל וְלֹא הָיָה בָּהּ כְּדֵי לְהַמִּית הַגְּדוּל, וְהִלְכָה לָהּ עַל הַקֶּטָן וְהָיָה

was not enough to kill a grown-up person, and [the blow] lighted on a child and [it had] sufficient [force] to cause the child's death, and it died, he is exempt. If he intended to strike a child, and [the blow] was sufficiently great to kill the child, and it alighted on a grown-up person, but [the force] was not so great as to kill the grown-up person, yet he died, he is exempt. But if he intended to strike someone on the loins, and [the blow] was great enough to kill [if it fell] on his loins, and it alighted on his heart and he died, he is liable. If he intended to kill a grown-up person, and there was enough [force] therein [in the blow] to kill the grown-up person, and it fell on a child and he died, he is liable. R. Simon⁶ says, Even if one intended to slay one, but killed another, he is exempt.

בָּה כְּדֵי לְהַמִּית אֶת־הַקָּטָן, וּמֵת פְּטוּר. נִתְכַּוֵּן לְהַכּוֹת אֶת־הַקָּטָן וְהָיָה בָּה כְּדֵי לְהַמִּית אֶת־הַקָּטָן, וְהִלְכָה לָהּ עַל הַגָּדוֹל, וְלֹא הָיָה בָּה כְּדֵי לְהַמִּית אֶת־הַגָּדוֹל וּמֵת, פְּטוּר. אֲבָל נִתְכַּוֵּן לְהַכּוֹת עַל מַתְּנוֹ וְהָיָה בָּה כְּדֵי לְהַמִּית עַל מַתְּנוֹ, וְהִלְכָה לָהּ עַל לְבוֹ וּמֵת חַיִּיב. נִתְכַּוֵּן לְהַכּוֹת אֶת־הַגָּדוֹל וְהָיָה בָּה כְּדֵי לְהַמִּית אֶת־הַגָּדוֹל, וְהִלְכָה לָהּ עַל הַקָּטָן וּמֵת חַיִּיב. רַבִּי שְׁמַעוֹן אוֹמֵר אֶפִּילוֹ נִתְכַּוֵּן לְהַרוֹג אֶת־זֶה, וְהָרַג אֶת־זֶה פְּטוּר.

1 Literally *the beast*. 2 Some editions add after **הָאָדָם**: **וּמְזֵלוֹת** : **הָאָדָם** and *killed a Jew*. 3 **נִפְל**, *premature birth, abortion, non-viable birth*. 4 **בֶּן קָיָמָא**, *a viable child*. 5 From the death penalty. Even if he was forewarned. 6 His opinion is the accepted ruling.

Mishnah 3

If a murderer were confused among others,¹ they are all exempt.² R. Judah³ says, They put them [all] into prison⁴ [for life]. All who are liable to [different kinds of] death-penalties and were confused,⁵ they must [all] be executed by the lightest⁶ [death-penalty]. If those to be stoned [were confused] with those to be burned, R. Simon says, They must be put to death by stoning, for burning is the more severe [death]. But the

משנה ג

רוֹצֵחַ שֶׁנִּתְעַרַב בְּאַחֵרִים כּוּלָן פְּטוּרֵין. רַבִּי יְהוּדָה אוֹמֵר כּוֹנְסִין אוֹתָן יְלֻכְיָפָה. כָּל־חַיִּיבֵי מִיתוֹת יִשְׁנַתְעַרְבוּ זֶה בְּזֶה, גְּדוּלֵין בְּקֻלָּה. הַנִּסְקָלִין בּוֹשְׂרֵפִין, רַבִּי שְׁמַעוֹן אוֹמֵר גְּדוּלֵין בְּסֻקְלָה, שְׁהַשְׂרָפָה חֲמוּרָה וְחַכְמִים אוֹמְרִים גְּדוּלֵין

Sages say, They are to be killed by burning, since stoning is the severer. R. Simon said to them, If burning were not the severer, it would not have been imposed for a priest's daughter who had committed adultery.⁷ They replied to him, If stoning were not the more severe, it would not have been prescribed for the blasphemer and for the idolater.⁸ If those to be beheaded were confused with those to be strangled, R. Simon says, [They must all be slain] with the sword,⁹ but the Sages say, By strangling.¹⁰

בשרפה, שהסקילה חמורה. אמר להן רבי שמעון אילו לא היתה שרפה חמורה, לא נתנה לבת כהן שזנתה. אמרו לו, אילו לא היתה סקילה חמורה, לא נתנה למגדף וילעובד גלולים. הנהרגין בנחנקין. רבי שמעון אומר בפסיף, ונחכמים אומרים בנחנקין.¹⁰

1 *i.e.*, it is impossible to determine who he is. 2 For instance, if one of a crowd shot someone dead—even in the case of two and one committed the offence—none is culpable. 3 His opinion is rejected. This is the literal rendering of R. Judah's statement in the text here; but actually his full statement refers to the case of an ox, *viz.*, *If an ox that killed a human being were confused inextricably with other oxen, they are all shut away and left to die of starvation.* The ruling in this case is that all the oxen are stoned to death. 4 *כיפה*, *כפה*, vaulted chamber, prison. Or *לכיפה*. 5 And it is not known which death-penalty each must suffer. 6 Compare 7¹. 7 Compare 9¹. 8 Blasphemy and idolatry are deemed the most heinous of all transgressions. 9 Or *בפסיף*, *with a sword*. He considered the execution with the sword to be less severe than by strangulation. 10 They maintained that slaying with the sword was more severe than by strangling.

Mishnah 4

משנה ד

Whosoever has become liable to two [different] death-penalties by order of the court must be slain by the severer one.¹ If one committed a transgression for which he was sentenced to two of the death-penalties,² he must be put to death by the more severe one. R. Jose³ says, He must be condemned [to that death] for that offence for which he first became liable.

מי שנתחייב בשתי מיתות בית דין, נדון בפחמורה. עבר עבירה שנתחייב שתי מיתות, נדון בפחמורה. רבי יוסי אומר נדון בזקקה הראשונה שבאה עליו.

1 For instance, the criminal had been condemned to death and then committed a more serious offence for which he was again liable to a more severe death-penalty.

2 If, for example, he copulated with his mother-in-law whose husband was alive, he is liable to burning because she is his wife's mother and to strangling because she has a husband (see 9¹), and he suffers therefore death by burning (see 7¹). 3 His opinion is rejected.

Mishnah 5

Whosoever had received stripes¹ and was then scourged again,² the court puts him into a prison-cell³ and feeds him with barley until his stomach⁴ bursts. If one murdered a human being, and there were no witnesses,⁵ they put him into a prison-cell and feed him with *sparing bread and scant water*.⁶

1 For an offence for which he is liable to *excision* (see *Appendix, Note 2*). 2 For repetition of the same offence. 3 If he transgresses thus a third time. See 9³ **Note 4**. 4 Or *belly, abdomen*. 5 Or the evidence of the witnesses was refuted. 6 Continually diminishing quantities of bread and water until the abdomen shrinks, then followed by feeding with barley to cause rupture of the stomach. *Isaiah 30, 20*. *Or *לְכִיפָה*.

Mishnah 6

If one stole a service-vessel,¹ or cursed [the Name of God] by enchantment,² or had sexual connexion with an Aramaic woman,³ the zealots may lay hold of him.⁴ If a priest served in uncleanness⁵, his brethren the priests do not bring him to the court, but the young men⁶ of the priesthood take him forth without the Temple Court and split his skull open with logs.⁷ If a non-priest⁸ ministered in the Temple, R. Akiba⁹ says, [He must be slain] by strangling, but the Sages say, [His punishment is] at the hands of Heaven.¹⁰

מִשְׁנֵה ה

מִי יִשְׁלָקָה וְשָׂנָה, בֵּית דִּין מְכַנְּסִים
אוֹתוֹ לְכִיפָה, וּמֵאֲכִילִין אוֹתוֹ
שְׁעוּרִין עַד שֶׁפָּרִיסוֹ מִתְּבַקְּעַת.
הַהוֹרֵג נֶפֶשׁ שְׁלֵא בְעֵדִים, מְכַנְּסִין
אוֹתוֹ לְכִיפָה וּמֵאֲכִילִין אוֹתוֹ לְלֶחֶם
צָר וּמַיִם לְחֵץ.

מִשְׁנֵה ו

הַגּוֹזֵב אֶת-הַקֶּסֶת, וְהַמְקַלֵּל
בְּקוֹסֶם, וְהַבוֹעֵל בְּאַרְמִית, קָנָאִין
פוֹנְעִין יְבוּי כֹהֵן שֶׁשָּׁמֵשׁ בְּטוֹמְאָה,
אִין אֶחָיו הַכֹּהֲנִים מְבִיאִין אוֹתוֹ לְבֵית
דִּין אֶלָּא פְּרָחִי כֹהֵנָה מוֹצִיאִין
אוֹתוֹ חוּץ לְעִזְרָה, וּמַפְצִיעִין אֶת-
מוֹחוֹ בְּגוֹזְרֵין. זָר שֶׁשָּׁמֵשׁ בְּמִקְדָּשׁ,
רַבִּי עֲקִיבָא אוֹמֵר בְּחֻנְקָה, וְחַכְמַיִם
אוֹמְרִים בְּיַדֵּי שָׁמַיִם.

1 Literally *the service-vessel*. A marked (or graduated) vessel used especially for libation. 2 Such as that of idolatry. Some render בְּקוֹסֶם by a disguised name. 3 Or *Aramaean, Chaldaic woman, i.e., an idolatress*. Numbers 25, 6 et seq. 4 The zealots of the place where the offence was committed may slay him at the moment of the act of transgression and in the presence of at least ten Jewish witnesses. 5 At the Altar. 6 Those whose beards begin to grow. 7 Or *wooden clubs*. Compare תַּעֲוִיָּה 23. According to law (מִכּוֹת 23) he is only liable to stripes. 8 *i.e., a Levite or Israelite (layman)*. 9 His view is rejected. 10 *i.e., he dies at an early age* (פְּרִת, excision, is a severer punishment; see *Appendix, Note 2*).

CHAPTER 10

פֶּרֶק י'

Mishnah 1

מִשְׁנָה א

All Israel¹ have a portion in the world to come,² as it is said,³ *Thy people also shall be all⁴ righteous, they shall inherit the land for ever; the branch of My planting,⁵ the work of My hands, wherein I glory.*⁶ And these are they who have no share in the world to come—he that says there is no resurrection of the dead laid down in the Law, and [he that says] the Law is not from Heaven,⁷ and a heretic.⁸ R. Akiba says, Also one who reads the heretical books, or he that utters charms over a wound and says, *I⁹ will put none of the diseases upon thee, which I have put upon the Egyptians; for I am the Eternal that healeth thee.*¹⁰ Abba Saul says, Also he that utters the Divine Name according to its letters.¹¹

יְכַל־יִשְׂרָאֵל יֵשׁ לָהֶם חֵלֶק לְעוֹלָם
הַבָּא שְׁנֵאמַר וְעַמּוּדָא כּוֹלֵם צְדִיקִים
לְעוֹלָם יִירְשׁוּ אֶרֶץ נֶצֶר מִטְעִי
מַעֲשֵׂה יְדֵי לְהַתְפָּאֵר וְאֵלוֹ שְׂאִין
לָהֶם חֵלֶק לְעוֹלָם הַבָּא הָאוֹמֵר אִין
תְּחִיית הַמֵּתִים מִן־הַתּוֹרָה וְאִין
תּוֹרָה מִן־הַשָּׁמַיִם וְאֵפְקוּרוֹס רַבִּי
עֲקִיבָא אוֹמֵר אֵף הַקּוּרָא בְּסִפְרִים
הַחִיצוֹנִים וְהַלּוּחַשׁ עַל הַמַּכָּה
וְאוֹמֵר כָּל־הַמַּחֲלָה אֲשֶׁר שָׁמְתִי
בְּמִצְרַיִם לֹא אֲשִׁים עָלֶיךָ כִּי אֲנִי הוּא
רׁוֹפֵאֲךָ אֲבָא שְׂאוּל אוֹמֵר אֵף
הַהוֹגֵה אֶת־הַשֵּׁם בְּאוֹתוֹתָיו.

1 Even those condemned to death by בֵּית דִּין. 2 After the *Resurrection of the Dead*. 3 *Isaiah 60, 21*. 4 כָּלֵם is given in the Scripture text. 5 The Scriptural textual orthography is מִטְעִי and the קֶרִי (corrigendum) is מִטְעִי. 6 Compare אָבוֹת, INTRODUCTION. 7 *viz., that Moses himself compiled the Pentateuch*. 8 Or *sceptic, atheist*. Literally *Epicurean*. These are the types of those who hold God's Law in contempt and forfeit the life after the Resurrection: (a) atheists; (b) apostates and converts; (c) one who does not associate himself with the welfare of the people;

(d) one who causes the multitude to sin; (e) the informer; (f) the communal warden who overawes the congregation for his own ends; (g) one who sheds blood; (h) the slanderer and libeller; (i) one who does not practise circumcision or disguises his circumcision; (j) one who denies the coming of the Messiah, the son of David; (k) one who gives an offensive nickname to his fellows; (l) one who puts his fellow to shame in public; (m) one who gains honour by the disgrace of a colleague; (n) one who despises and desecrates the Intermediate Days of Passover and of the Feast of Tabernacles; and (o) one who wantonly profanes the holy things (סוֹפָה 915). **9** Exodus 15, 26. **10** The orthography in the Scripture is רַפְּאֵה. **11** The Tetragrammation (see 7⁵).

Mishnah 2

Three kings and four commoners¹ have no portion in the world to come. The three kings² are Jeroboam, Ahab and Manasseh. R. Judah says, Manasseh has* a share in the world to come, as it is said,³ *And he prayed unto Him; and He was entreated of him, and heard his supplication and brought him back to Jerusalem⁴ into his kingdom.* [The Sages] said to him, He brought him again into his kingdom, but He did not bring him back to the life of the world to come.⁵ The four commoners⁶ are Balaam, (and) Doeg, (and) Ahitophel and Gehazi.

1 i.e., laymen, non-priests, non-officials. **2** Jeroboam, *I Kings* 11, 26; Ahab, *I Kings* 16, 28; Manasseh, *II Kings* 21, 1. **3** *II Chronicles* 33, 13. **4** יְרוּשָׁלַם is the Scriptural spelling. **5** His repentance was not sincere but was the consequence of fear. **6** According to Rabbinic doctrine the righteous among non-Jews have a share in the world to come. Balaam, *Numbers* 22, 5; Doeg, *I Samuel* 21, 8; Ahitophel, *II Samuel* 15, 12; Gehazi, *II Kings* 5, 20. *Or יֵשׁ-לוֹ.

Mishnah 3

The generation of the Flood¹ has no portion in the world to come, neither shall it stand in the judgment as it is said,² *My spirit shall not abide in*

מִשְׁנֵה ב

שְׁלֹשָׁה מְלָכִים וְאַרְבָּעָה יְהִדְיוֹטוֹת, אֵין לָהֶם חֵלֶק לְעוֹלָם הַבָּא. שְׁלֹשָׁה מְלָכִים, יִרְבָּעָם, אַחָאב, וּמְנַשֶּׁה. רַבִּי יְהוֹנָדָה אוֹמֵר מְנַשֶּׁה יֵשׁ לוֹ חֵלֶק לְעוֹלָם הַבָּא, שֶׁנֶּאֱמַר וַיִּתְפַּלֵּל אֵלָיו וַיַּעֲתֵר לוֹ וַיִּשְׁמַע תְּחִנָּתוֹ וַיִּשְׁיבֵהוּ יְרוּשָׁלַם לְמַלְכוּתוֹ. אָמְרוּ לוֹ לְמַלְכוּתוֹ הִשְׁיבוֹ, וְלֹא לַחַיִּי הָעוֹלָם הַבָּא הִשְׁיבוֹ. אַרְבָּעָה יְהִדְיוֹטוֹת בְּלָעָם, וְדוּאָג, וְאַחִיתוֹפֵל, וְגִחִזִּי.

מִשְׁנֵה ג

יְדוֹר הַמַּבּוּל אֵין לָהֶם חֵלֶק לְעוֹלָם הַבָּא, וְאֵין עוֹמְדִין בְּדִין, שֶׁנֶּאֱמַר לֹא-יִדוֹן רוּחִי בְּאָדָם לְעוֹלָם, לֹא

man for ever³—[it shall have] neither judgment⁴ nor the spirit [of resurrection].⁵ The generation of the Dispersal⁶ has no share in the world to come, as it is said,⁷ *So the Eternal scattered them⁸ abroad from thence upon the face of all the earth—so the Eternal scattered them abroad* [means] 'in this world' and *from thence* [means] 'He dispersed them in the world to come.'⁹ The men of Sodom have no portion in the world to come,¹⁰ as it is said,¹¹ *Now the men of Sodom¹² were wicked and sinners against the Eternal exceedingly—wicked* [means] 'in this world,' and *sinners* [means] 'in the world to come'; but they will stand in the judgment.¹³ R. Nehemiah says, Neither the former nor the latter^{14*} shall stand in the judgment, as it is said,¹⁵ *Therefore the wicked shall not stand¹⁶ in the judgment, nor sinners in the congregation of the righteous—therefore the wicked shall not stand in the judgment* refers to 'the generation of the Flood,' nor *sinners in the congregation of the righteous* refers to 'the men of Sodom.' [The Sages] said to him, They shall not stand in the congregation of the righteous, but they shall stand in the congregation of the wicked.¹⁷ (The Spies have no portion in the world to come, as it is said,¹⁸ *even those men that did bring up¹⁹ an evil report of the land, died²⁰ by the plague before the Eternal—died* [refers to] 'in this world,' by the plague [means] 'in the world to come.'²¹ The generation of the Wilderness²² has no portion in the world to come, neither shall it stand in the judgment; as it is said,²³ *in the wilder-*

דִּין וְלֹא רוּחַ. דִּוּר הַפְּלָגָה, אֵין לָהֶם חֵלֶק לְעוֹלָם הַבָּא, שֶׁנֶּאֱמַר וַיִּפֶץ ה' אֹתָם מִשָּׁם עַל-פְּנֵי כָל-הָאָרֶץ, וַיִּפֶץ ה' אֹתָם בְּעוֹלָם הַזֶּה, וּמִשָּׁם הִפִּיצָם ה' לְעוֹלָם הַבָּא. אֲנָשֵׁי סְדוֹם אֵין לָהֶם חֵלֶק לְעוֹלָם הַבָּא, שֶׁנֶּאֱמַר וְאֲנָשֵׁי סְדוֹם רָעִים וַחֲטָאִים לֹה' מְאֹד, רָעִים בְּעוֹלָם הַזֶּה, וַחֲטָאִים לְעוֹלָם הַבָּא, אֲבָל עוֹמְדִין בְּדִין. רַבִּי נְחֵמְיָה אָמַר אֵלּוּ וְאֵלּוּ אֵין עוֹמְדִין בְּדִין, שֶׁנֶּאֱמַר עַל-כֵּן לֹא-יָקוּמוּ רָשָׁעִים בְּמִשְׁפָּט וַחֲטָאִים בְּעֵדַת צְדִיקִים, עַל כֵּן לֹא-יָקוּמוּ רָשָׁעִים בְּמִשְׁפָּט, זֶה דִּוּר הַמְּבוּל, וַחֲטָאִים בְּעֵדַת צְדִיקִים, אֵלּוּ אֲנָשֵׁי סְדוֹם. אָמְרוּ לוֹ אֵינָם עוֹמְדִים בְּעֵדַת צְדִיקִים, אֲבָל עוֹמְדִין בְּעֵדַת רָשָׁעִים. (מְרַגְלִים, אֵין לָהֶם חֵלֶק לְעוֹלָם הַבָּא, שֶׁנֶּאֱמַר וַיָּמוּתוּ הָאֲנָשִׁים מוֹצִיאֵי דַבַּת הָאָרֶץ רָעָה בְּמַגְפָּה לְפָנֵי ה', וַיָּמוּתוּ בְּעוֹלָם הַזֶּה, בְּמַגְפָּה בְּעוֹלָם הַבָּא.) דִּוּר הַמִּדְבָּר, אֵין לָהֶם חֵלֶק לְעוֹלָם הַבָּא, וְאֵין עוֹמְדִין בְּדִין, שֶׁנֶּאֱמַר בַּמִּדְבָּר הַזֶּה יִתְמוּ, וְשָׁם

ness they shall be consumed, and there they shall die;²⁴ this is the opinion of R. Akiba; but R. Eliezer says, It says regarding them also,²⁵ *Gather My saints together unto Me, those²⁶ that have made a covenant with Me by sacrifice.* The congregation of Korah shall not again rise up [at the resurrection], as it is said,²⁷ *and the earth closed upon them—in this world; and they perished from among the assembly—in the world to come;* this is the view of R. Akiba; but R. Eliezer says, Concerning them it also says,²⁸ *The Eternal killeth, and maketh alive; He bringeth down to the grave, and bringeth up.* The Ten Tribes²⁹ shall not return again,³⁰ as it is said,³¹ *and cast them³² into another land, as it is this day—just as this day goes and does not return even so do they go and return not;* this is the opinion of R. Akiba; but R. Eliezer says, *As it is this day—just as the day grows dark and then grows light, even so will it be for the Ten Tribes, after darkness has fallen upon them so shall light hereafter shine upon them.* *Less idiomatic וְאֵלֵי.

יָמֹותוֹ, דְּבַרֵי רַבִּי עֲקִיבָא; רַבִּי אֱלִיעֶזֶר אוֹמֵר עֲלֵיהֶם הוּא "אוֹמֵר אֶסְפוּ-לִי חֲסִדֵי "כּוֹרְתֵי בְרִיתִי עֲלֵי-נֹבַח. עֲדַת קְרַח אֵינָה עֹתִידָה לְעֹלוֹת, "שֶׁנֶּאֱמַר וַתִּכַּס עֲלֵיהֶם הָאָרֶץ, בְּעוֹלָם הַזֶּה; וַיִּאֲבְדוּ מִחוּץ הַקֶּהֱל, לְעוֹלָם הַבָּא; דְּבַרֵי רַבִּי עֲקִיבָא; רַבִּי אֱלִיעֶזֶר אוֹמֵר עֲלֵיהֶם הוּא "אוֹמֵר ה' מְמִית וּמְחַיֶּה מוֹרְדֵי שְׂאוֹל וְיַעֲלֵ. "עֲשֶׂרֶת הַשְּׁבָטִים אֵינָן עֹתִידִין לְחַזֹּר, "שֶׁנֶּאֱמַר "וַיִּשְׁלַיְכֶם אֶל-אֶרֶץ אַחֲרַת כַּיּוֹם הַזֶּה, מִהַ-הַיּוֹם הַזֶּה הוֹלֵךְ וְאֵינוֹ חוֹזֵר, אֲפָהֶם הוֹלְכִים וְאֵינָם חוֹזְרִים; דְּבַרֵי רַבִּי עֲקִיבָא; רַבִּי אֱלִיעֶזֶר אוֹמֵר כַּיּוֹם הַזֶּה, מִהַ-הַיּוֹם מֵאֲפִיל וּמֵאִיר, אֲפָ עֲשֶׂרֶת הַשְּׁבָטִים שֶׁאִפֹּל לָהֶן כִּף עֹתִיד לְהֵאִיר לָהֶן.

1 The generation that perished in the Flood. *Genesis 6, 5ff.* 2 *Genesis 6, 3.* 3 לְעֵלָם is the Scriptural orthography. 4 After the 'Resurrection of the Dead' (see 10²). 5 *i.e.*, the people of that generation shall not come to life. 6 After the building of the Tower of Babel (*Genesis 11, 1-9*). 7 *Genesis 11, 8.* 8 אֲתָם is the Scripture orthography. 9 Because they denied the existence of God. 10 Because their sins were as heinous as those of the period before the Deluge. 11 *Genesis 13, 13.* 12 The Scriptural orthography is סָדָם. 13 At the 'Resurrection of the Dead.' 14 Neither the people of the era before the Deluge nor the inhabitants of Sodom. 15 *Psalms 1, 5.* 16 קָמֵי is given in the Scriptural text. 17 *i.e.*, the Sodomites will rise at the Resurrection for judgment. 18 *Numbers 14, 37.* 19 מוֹצֵאֵי is given in the Scriptural text. 20 The Scripture gives וַיִּמְתּוּ. 21 Because they denied God's ability to lead them into Canaan (35a סוֹטָה) and spoke slanderously (15a עֲרֻכִין).

This bracketed part is not given in the Palestinian Talmud and is omitted in some texts. 22 That died during the forty years' wandering in the Peninsula of Sinai. 23 Numbers 14, 35. 24 יָמָתוֹ is the Scriptural orthography. 25 Psalm 50, 5. 26 The Scripture has פָּרְתִי. 27 Numbers 16, 33. 28 I Samuel 2, 6. 29 Whom Sennacherib, king of Assyria, carried away into captivity. According to some authorities Jeremiah brought back a small number of these exiles, and that the rest were assimilated among the Hindus, Chinese and Abyssinians, retaining in their idolatrous practices some vestiges of Mosaic Law, and concerning these Akiba and Eliezer dispute whether they will be revived and accepted at the Resurrection. 30 i.e., they are lost for ever. 31 Deuteronomy 29, 27. 32 וַיִּשְׁלַכֶם is the Scriptural orthography.

Mishnah 4

The people of an apostate city have no portion in the world to come,¹ as it is said,² *Certain base fellows are gone out from the midst of thee, and have drawn away the inhabitants of³ their city*; but they may not be slain unless the seducers are of that very city and of the same tribe, and unless the majority of it has been beguiled and unless its seducers were men;⁴ if women or children seduced it, or if those beguiled were in the minority, or if its seducers came from elsewhere, then these [seduced to idolatry] are deemed as single [apostates].⁵ And they [who are charged with having been beguiled to apostasy] require [against] each one two witnesses and forewarning.⁶ In this particular greater severity pertains in the case of individuals [idolaters] than in the case of many,⁷ because single [idolaters suffer death] by stoning and so their property⁸ escapes confiscation, but many⁹ [idolaters are put to death] by the sword and hence their property⁸ is lost.¹⁰

משנה ד

אֲנָשֵׁי עִיר הַנִּזְחָחַת, אֵין לָהֶם חֵלֶק
 יְלֵעוֹלָם הַבָּא, שֶׁנֶּאֱמַר יֵצְאוּ אֲנָשִׁים
 בְּנֵי בְלִיעֵל מִקִּרְבָּךְ וַיִּדְחוּ אֶת-
 יוֹשְׁבֵי עִירָם, וְאֵינָן נִהְרָגִים עַד
 שֶׁיְהִיוּ מִדִּיחָיָהּ מֵאוֹתָהּ הָעִיר וּמֵאוֹתוֹ
 הַשָּׁבֵט, וְעַד שֶׁיּוֹדַח רֹבָהּ, וְעַד
 שֶׁיִּדְחֶנּוּ אֲנָשִׁים; הַדִּיחָהּ נָשִׁים
 וְקִטְנִים, אוֹ שֶׁהוֹדַח מִיעוֹטָהּ, אוֹ
 שֶׁהָיוּ מִדִּיחָיָהּ חוֹצָה לָּהּ, הֲרֵי אֵלוֹ
 כְּפִיחִידִים. וְצָרִיכִין שְׁנֵי עֵדִים
 וְהִתְרָאָה לְכָל אֶחָד וְאֶחָד. וְהוּא
 חוֹמֵר בְּפִיחִידִים מִבְּמֵרוֹבִים,
 שֶׁהִיחִידִים בְּסִקִּיפָה לְפִיכָךְ מִמּוֹנָם
 פָּלֵט, וְהֵמֵרוֹבִים בְּסִיף לְפִיכָךְ
 מִמּוֹנָם יִאָבֵד.

[idolaters are put to death] by the sword and hence their property⁸ is lost.¹⁰

1 See 9^{1,5}; סוֹטָה 81^{ff.}, 91^{ff.}. 2 Deuteronomy 13, 14. 3 שְׁבִי' is given in the Scripture text. 4 *i.e.*, the absence of one of these conditions nullifies the death penalty. 5 See 7¹⁰. They are liable to death by stoning (but their property is not forfeit). 6 Thus a census is obtained as to whether the majority or minority of the city is guilty. 7 Or the definite בְּיְהִידִים מִבְּמָרוּבַיִם. 8 Literally money. 9 Many have to be tried before the Great Sanhedrin. 10 *i.e.*, irretrievable.

Mishnah 5

משנה ה

Thou shalt surely smite etc.^{1*} If a company of ass-drivers or a caravan of camel-drivers were passing [through the city] from place to place, then these can deliver it². *Destroying*³ it⁴ utterly, and all that is therein and the cattle thereof, with the edge of the sword⁵—from this⁶ they inferred that the property of the righteous therein⁷ is lost, but that which is outside of it escapes [destruction]; but that of the wicked, whether inside it or outside it—then such must be destroyed.

הַכָּה תִּכָּה אֶת-יֹגֵי. הַחֲמֹרֹת וְהַגִּמְלֹת הָעוֹבְרוֹת מִמְּקוֹם לְמָקוֹם הָרִי אֵלָיו מִצִּילִין אוֹתָהּ. הַחֲרָם אוֹתָהּ וְאֶת-כָּל-אֲשֶׁר-בָּהּ וְאֶת-בְּהֵמָתָהּ לִפְנֵי-חָרָב, מִכָּאֵן אָמְרוּ נֹכְסֵי צְדִיקִים שֶׁבְּתוֹכָהּ אוֹבְדִין, שֶׁבְּחוּצָהּ לָהּ פְּלִיטִין, וְשֶׁל רְשָׁעִים, בֵּין שֶׁבְּתוֹכָהּ בֵּין שֶׁבְּחוּצָהּ לָהּ, הָרִי אֵלָיו אוֹבְדִין. וְגוֹמֵר.*

1 *The inhabitants of the city.* Deuteronomy 13, 16. 2 Although such passengers do not belong to the city, yet if they are not idolaters they may be reckoned with the minority of the city who are not apostates in order if possible to make a majority to spare all the inhabitants, and then all those guilty of apostasy are tried each singly (with liability to stoning but not loss of property). 3 Some texts precede with שְׂנֵאָמַר, as it is said. 4 The Scripture text gives אֶתָּה. 5 Deuteronomy 13, 16. 6 מִכָּאֵן traditional reading. 7 שֶׁבְּתוֹכָהּ is taken to refer to those who dwell therein and also to their property in it.

Mishnah 6

משנה ו

(As it is said),¹ *And thou shalt gather*² all the spoil of it into the midst of the broad place thereof³ etc.* If it have no broad place,⁴ they must make for it a broad place. If the broad place were outside it, they must bring it inside it.⁵ (As it is said),⁶ *and shalt burn with fire the city, and all the spoil*

(שְׂנֵאָמַר) וְאֶת-כָּל-שָׁלָלָהּ תִּקְבֹּץ אֶל-תוֹךְ יְרוּחוֹבָהּ יֹגֵי. אִם אֵין לָהּ יְרוּחוֹב, עוֹשִׂין לָהּ רְחוֹב. הֵיחָהּ רְחוֹבָהּ חוּצָהּ לָהּ, כּוֹנְסִין אוֹתָהּ לְתוֹכָהּ. (שְׂנֵאָמַר)⁶ וְשָׂרַפְתָּ בָאֵשׁ

thereof every whit, unto the Eternal thy God. The spoil thereof, [that means] but not the spoil of heaven; from this⁷ they deduced that the dedicated things therein⁸ must be redeemed, and the priest's dues⁹ must be left to rot;¹⁰ the second tithe and the Holy Scriptures must be hidden away.¹¹ Every whit unto the Eternal thy God—R. Simon said, The Holy One, Blessed be He, said, 'When you carry out the judgment against the apostate city it is as if you offer up to Me a whole burnt-offering'. And¹² it shall be a heap for ever,¹³ (it shall not be built again),¹⁴ [it means] it may not (even)¹⁴ be made into gardens or orchards. This is the opinion of R. Jose the Galilean. R. Akiba says, *It shall not be built again*, [that means] it may not be rebuilt as it was before, but it may be made into gardens or orchards. And¹⁵ there shall cleave naught of the devoted thing to thy hand, [it means] that so long as the wicked are in the world there is the fierce anger [of the Eternal] in the world; when the wicked¹⁶ are perished from the world [His] fierce wrath is removed from the world.¹⁷

אֶת-הָעִיר וְאֶת-כָּל-שְׁלָלָהּ כָּלִיל
 לַה' אֱלֹהֶיהָ. שְׁלָלָהּ, וְלֹא שְׁלָל
 שָׁמַיִם; מִכָּאֵן אָמְרוּ הַהִקְדָּשׁוֹת
 יִשָּׁבֵהוּ יִפְדּוּ, יוֹתְרוֹמוֹת¹⁰ יִרְקְבוּ;
 מִעֵשֶׂר שְׁנֵי וּכְתָבֵי הַקֶּדֶשׁ¹¹ יִגְנוּזוּ.
 כָּלִיל לַה' אֱלֹהֶיהָ, אָמַר רַבִּי שִׁמְעוֹן
 אָמַר הַקְדוֹשׁ בְּרוּךְ הוּא אִם אַתֶּם
 עוֹשִׂים דִּין בְּעִיר הַנִּדְחָת, כְּאִילוֹ
 אַתֶּם מַעֲלִין עוֹלָה כָּלִיל לְפָנָי.
 וְהָיְתָה תַל¹² עוֹלָם¹³ (לֹא תִבְנֶה
 עוֹד) לֹא תַעֲשֶׂה¹⁴ (אֲפִילוֹ) גִּזְזוֹת
 וּפְרָדְסִים דְּבַרֵּי רַבִּי יוֹסֵי הַגָּלִילִי.
 רַבִּי עֲקִיבָא אוֹמֵר לֹא תִבְנֶה עוֹד,
 לְכֻמוֹ שֶׁהָיְתָה אֵינָה נִבְנִית, אֲבָל
 גַּעֲשִׂית הִיא גִּזְזוֹת וּפְרָדְסִים.¹⁵ וְלֹא
 יִדְבַק בְּיָדָךְ מְאוּמָה מִן-הַחֲרָם,
 שֶׁכָּל זְמַן שֶׁהָרָשָׁעִים בְּעוֹלָם, חֲרוֹן
 אַף בְּעוֹלָם, אֲבָדוּ¹⁶ רָשָׁעִים מִן-
 הָעוֹלָם, נִסְתַּלַּק חֲרוֹן אַף מִן-
 הָעוֹלָם.¹⁷ וְגוֹמֵר*

1 שְׁנֵי אֲמָר, given in the גְּמָרָא, is omitted in some editions. Deuteronomy 13, 17. Compare 2 תַּעֲשֶׂית; 3 מִנְגֵלָה; 2 תִּקְבֹּץ is the Scriptural orthography. 3 The Scripture gives רַחֲבָה. 4 Or open space. 5 A wide space must be made within the town. 6 Deuteronomy 13, 17. 7 Traditional reading מִכָּאֵן. 8 Leviticus 27, 14ff. If they are dedicated for repairs of the Temple and can be redeemed they are redeemed (and according to the Rambam are then burned); but if dedicated to the Altar they must be burned. Or יִפְדּוּ [Kal]. 9 Appendix, Note 1. 10 But only if this is already in the priest's possession. 11 They must not be used. Or יִגְנוּזוּ [Niph'al]. 12 Deuteronomy 13, 17. 13 עוֹלָם is given in the Scriptural text. 14 The bracketed part is not given in the גְּמָרָא. Or תַּעֲשֶׂה [Niph'al]. 15 Deuteronomy 13, 18.

16 Who stole from the booty of an apostate city. 17 As in the case of Achan who took from the forbidden spoil of Jericho (*Joshua* 7, 1-26).

CHAPTER 11

פֶּרֶק י"א

Mishnah 1

These are they who are to be strangled: one who strikes his father or his mother,¹ and he who steals a soul from Israel,² and an elder³ who rebels against a decision of the court,⁴ and a false prophet, and he that prophesies in the name of an idol,⁵ and one who has sexual intercourse with another's wife,⁶ and the false witnesses⁷ against a priest's daughter and her paramour.⁸ He that strikes his father or his mother is not guilty unless he causes a wound in them. In this respect greater severity applies to one that curses [them] than to him who strikes—for he that curses [his parents] after [their] death is culpable, but one that strikes [them] after [their] death is exempt.⁹ He that steals a soul from Israel is not liable unless he brings such into his own domain. R. Judah says, Unless he brings such into his own domain and makes use¹⁰ of him, as it is said,¹¹ *and he deal with him as a slave, and sell him*. If one steal his own son,¹² R. Ishmael¹³ the son of R. Jochanan ben Baroka declares [him] guilty, but the Sages¹⁴ exempt [him]. If one stole anyone that was half bondman and half freedman,¹⁵ R. Judah¹⁶ declares [him] culpable, but the Sages¹⁷ exempt [him].

מִשְׁנָה א

אָלוּ הֵן הַנְּחַנְקִין, הַמִּכֶּה אָבִיו וְאִמּוֹ, וְהַגּוֹנֵב נֶפֶשׁ מִיִּשְׂרָאֵל, וְהַזֶּקֶן מִמֶּרֶא עַל פִּי בֵּית דִּין, וְהַגִּבִּי הַשֶּׁקֶר וְהַמְתַּנְבֵּא בִשְׁם עֲבֹדַת גְּלוּלִים, וְהַבָּא עַל אִשְׁתּוֹ אִישׁ, וְהַזֹּמְמֵי בַת כֹּהֵן, וְהַבּוֹעֵלָה. הַמִּכֶּה אָבִיו וְאִמּוֹ אֵינוֹ חַיִּיב עַד שֶׁיַּעֲשֶׂה בָהֶן חֲבוּרָה. זֶה חוֹמֵר בַּמִּקְלָל מִבְּמִכָּה, שֶׁהַמִּקְלָל לְאַחַר מִיתָה חַיִּיב, וְהַמִּכֶּה לְאַחַר מִיתָה פְּטוּר. הַגּוֹנֵב נֶפֶשׁ מִיִּשְׂרָאֵל אֵינוֹ חַיִּיב עַד שֶׁיִּכְנִיסֶנּוּ לְרִשּׁוֹתָיו. רַבִּי יְהוּדָה אוֹמֵר עַד שֶׁיִּכְנִיסֶנּוּ לְרִשּׁוֹתָיו¹⁰ וְיִשְׁתַּמֵּשׂ בּוֹ,¹¹ שֶׁנֶּאֱמַר וְהִתְעַמְרֵם בּוֹ וּמְכֹרֵי הַגּוֹנֵב אֶת־¹² בְּנוֹ רַבִּי יִשְׁמַעֲיָאֵל בְּנוֹ שֶׁל רַבִּי יוֹחָנָן בֶּן בְּרוּקָה מַחֲיִיב? וְנִחְכְּמִים פּוֹטְרִין. גָּב מִי שֶׁחָצִיו עֶבֶד וְחָצִיו בֶּן חוֹרֵץ, רַבִּי יְהוּדָה מַחֲיִיב, וְנִחְכְּמִים פּוֹטְרִין.¹⁷

1 *Exodus* 21, 15. 2 *Deuteronomy* 24, 7. 3 A sage and pious man. 4 The Great Sanhedrin in the Hall of Hewn Stone. 5 Or *strange god*. Literally *the worship of*

idols. 6 In all these cases the Law states the penalty is death unqualified and by strangling. 7 Whose evidence is disproved by the testimony of other witnesses. 8 Or *her lover, her co-respondent, he who has sexual connexion with her.* If she is married and is proved guilty she is put to death by burning and he suffers death by strangulation; but if she is betrothed, then both are put to death by strangulation. *Deuteronomy 19, 16-18.* See 11⁶. 9 From the death penalty. 10 To however small a value. 11 *Deuteronomy 24, 7.* 12 A minor, *viz.*, less than thirteen years of age. 13 His view is rejected. Or בְּרוֹקָא. Some point בְּרוֹקָה. 14 Theirs is the accepted ruling. 15 *i.e.*, a slave owned by two men, and one had set him free (*viz.*, the other still retaining ownership). 16 His opinion is rejected. 17 Their ruling is accepted.

Mishnah 2

An elder who rebels against a decision of the court [is strangled], as it is said,¹ *If there arise a matter too hard for thee in judgment etc.** Three courts were there²—one used to sit at the entrance to the Temple Mount,³ and one used to sit at the entrance of the Temple Court,⁴ and one used to sit in the Hall of Hewn Stone.⁵ They⁶ came [first] to [the court at the] entrance to the Temple Mount, and [the elder] would say, 'Thus have I expounded, and in that manner have my fellows expounded; in this wise have I taught,⁷ and in that way have my fellows taught'.⁷ If they had heard, they tell it to them,⁸ but if not,[§] they went on to those [of the court] at the entrance of the Temple Court, and he would say, 'Thus have I expounded, and in that manner have my fellows expounded; in this wise have I taught,⁷ and in that way have my fellows taught'.⁷ If they had heard, they tell it to them, otherwise[§] both⁹ came to the Great Court that was in the Hall of Hewn Stone from

משנה ב

זָקֵן מִמֶּרָא עַל פִּי בֵּית דִּין, וְשֹׁנְאֵימֵר
כִּי יִפְלֵא מִמֶּה דְבָר לְמִשְׁפָּט *וְגו' .
שְׁלֵשָׁה בֵּתֵי דִינִין הָיוּ שָׁם, אֶחָד יוֹשֵׁב
עַל פֶּתַח הַהַר הַבְּיָת, וְאֶחָד יוֹשֵׁב עַל
פֶּתַח הַהֶעֱזָרָה, וְאֶחָד יוֹשֵׁב בְּלִשְׁכַּת
הַגְּזִיּוֹת . בָּאִים לְזוֹה שְׁעַל פֶּתַח הַהַר
הַבְּיָת וְאוֹמֵר כֶּף דַּרְשָׁתִי, וְכֶף דַּרְשׁוּ
חֲבֵירֵי, כֶּף 'לְמַדְתִּי, וְכֶף 'לְמַדוּ
חֲבֵירֵי . אִם שָׁמְעוּ אוֹמְרִים, לָהֶם,
וְאִם לֹא בָּאִין לָהֶן לְאוֹתָן שְׁעַל
פֶּתַח הַהֶעֱזָרָה, וְאוֹמֵר כֶּף דַּרְשָׁתִי
וְכֶף דַּרְשׁוּ חֲבֵירֵי, כֶּף 'לְמַדְתִּי וְכֶף
'לְמַדוּ חֲבֵירֵי . אִם שָׁמְעוּ אוֹמְרִים
לָהֶם, וְאִם לֹא אֵלּוּ וְאֵלּוּ בָּאִים
לְבֵית דִּין הַגָּדוֹל שְׁבִלְשֵׁכַת הַגְּזִיּוֹת
שְׁמִמְנוּ יוֹצֵאת תּוֹרָה לְכָל יִשְׂרָאֵל,
וְשֹׁנְאֵימֵר מִן־הַמְּקוֹם הַהוּא אֲשֶׁר

which the Law came forth to all Israel, as it is said,¹⁰ *from that place which the Eternal shall choose*. If he¹¹ returned to his own city and repeated his [rebellious] teaching in the manner he used to teach, he is exempt, but if he gave a decision as to what was to be done,¹² he is guilty,¹³ as it is said,¹⁴ *And the man that doeth presumptuously*—he is not culpable until he shall give a decision regarding what should be done. If a disciple gave a decision¹⁵ regarding what was to be done, he is exempt,¹⁶ consequently his severer offence [in giving a practical ruling, without first having been empowered with authority to instruct,] effects his acquittal from responsibility.¹⁷ *וְגוֹמֵר*

יְבַחֵר ה' י¹¹ חָנֹךְ לְעִירוֹ וְשָׁנָה, וְלִימַד
בְּדֶרֶךְ שְׁתֵּי הָלְמַד פְּטוֹר, וְאִם הוֹרָה
י¹² לְעֲשׂוֹת, י¹³ חַיִּיב, י¹⁴ שֶׁנֶּאֱמַר וְהָאִישׁ
אֲשֶׁר יַעֲשֶׂה בְּזִדּוֹן, אִינוֹ חַיִּיב עַד
שִׁיּוּרָה לְעֲשׂוֹת. תְּלַמִּיד י¹⁵ שֶׁהוֹרָה
לְעֲשׂוֹת, פְּטוֹר, י¹⁶ נִמְצָא חוֹמְרוֹ
קוּלוֹ. §Popular pronunciation לאו.

1 Deuteronomy 17, 8. 2 In Jerusalem. 3 At the East Gate, inside the Temple fortification in front of the Women's Forecourt. See Appendix, Note 20. 4 Opening into the Court of the Israelites. 5⁴ מְדוֹת. 5 North of the Court of the Israelites, half within the Temple Court and half outside. 6 The elder and the court against whom he rebelled. 7 לְמַדְתִּי [Piel]; or this might be read לְמַדְתִּי [Kal], ... have I learned . . . ; and likewise לְמַדְתִּי [Piel], or לְמַדְתִּי [Kal], . . . they have learned . . . 8 i.e., if the court had heard by tradition or knew the legal decision concerning the matter at issue they stated it. 9 וְאֵלֵינוּ וְאֵלֵיהֶם, these and those, the former and the latter, i.e., the disputants and the Sanhedrin who were in doubt. 10 Deuteronomy 17, 10. 11 The elder who had been before the court charged with rebellious doctrine. 12 In accordance with his rebellious doctrine. 13 And liable to strangling. 14 Deuteronomy 17, 12. 15 i.e., if after having been brought to the court(s) for rebellious doctrine he persisted in his wrongful practical decision. 16 i.e., he is not liable to the death penalty, for he is not authorized to give effective decisions. 17 This is really an explanatory repetition of the preceding statement (as set out in Notes 15, 16), i.e., not being qualified to give legal decisions, his transgression saves him from the consequences of disobeying the court's findings. (Compare חֵלֶה 45: קוּלוֹ וְנִמְצָא חוֹמְרוֹ קוּלוֹ, consequently the more stringent view [or rule] implies the lenient ruling). †Less idiomatic וְאֵלֵינוּ. †Or חוֹמְרוֹ perhaps preferable.

Mishnah 3

Disregard of the enactments of the Scribes is more severely dealt with than disregard of the injunctions of

מִשְׁנָה ג

חוֹמֵר בְּדַבְרֵי סוֹפְרִים מְדַבְרֵי
תּוֹרָה. הָאוֹמֵר אֵין תְּפִילִין כְּדִי

the Law.¹ If one say, '[Not to wear] phylacteries [is] not a transgression of the Law', he is exempt.² [If one teach that in the phylacteries] there should be five partitions, thus adding to the words of the Scribes,³ he is culpable.

1 A judge must apply greater stringency to the observance of the Sopheric rulings than to those of the Law. 2 He is not liable to punishment as he does not deny the existence of the precept but he merely states that it is unnecessary to observe it, and because pupils know that the wearing of the phylacteries is obligatory and will not disregard this. 3 They prescribed four partitions.

Mishnah 4

He may not be put to death¹ either by the court* in his own city or by the court that was in Jabneh, but they brought him up to the Great Court that was in Jerusalem.² He was detained under guard until the [next] Festival³ and they put him to death on the Festival, as it is said,⁴ *And all the people shall hear, and fear, and do no more presumptuously.* This is the opinion of R. Akiba. R. Judah says, They must not delay the execution of the sentence, but they must put him to death at once,⁵ and they write out and send messengers to all the places, 'So-and-so the son of so-and-so has been sentenced to death by the court'.

1 Or *condemned to death*, but the trial may still take place there. 2 The Great Court sat in Jerusalem 70-118 C.E. If the rebellious elder had been brought before the Great Court in Jerusalem and was sent back with a caution, and when on repetition of his offence he was again brought for trial before the Great Court which happened to sit elsewhere than in Jerusalem he could not be retried to be sentenced to death until the Great Court returned to Jerusalem. 3 *Passover, Pentecost, or Feast of Tabernacles* as the case may be. 4 *Deuteronomy 17, 13.* 5 On the day of the sentence. *See INTRODUCTION.

לְעִבּוֹר עַל דְּבַרֵי תוֹרָה פְּטוֹר.
חֲמִשָּׁה טוֹטְפוֹת לְהוֹסִיף עַל דְּבַרֵי
סוֹפְרִים, חַיִּיב.

מִשְׁנָה ד

אֵין מְמִיתִין אוֹתוֹ לֹא בְּבֵית דִּין
שְׁבַעִירוֹ, וְלֹא בְּבֵית דִּין שְׁבִיבְנָה,
אֶלֶּא מְעַלֵּין אוֹתוֹ לְבֵית דִּין הַגָּדוֹל
יְשִׁבִירוּשָׁלַיִם. וּמְשַׁמְרִים אוֹתוֹ עַד
הַרְגֵל, וּמְמִיתִין אוֹתוֹ בְּהַרְגֵל, יִשְׁנֹאֲמַר
וְכָל־הָעָם לִשְׁמְעוּ וַיֵּרְאוּ וַיִּדְדוּן
עוֹד. דְּבַרֵי רַבִּי עֲקִיבָא. רַבִּי יְהוּדָה
אוֹמֵר אֵין מְעַנִּין אֶת־דֵּינוֹ שֶׁל זֶה,
אֶלֶּא מְמִיתִין אוֹתוֹ מִיַּד, וְכוֹתְבִין
וְשׁוֹלְחִין שְׁלוּחִים בְּכָל הַמְּקוֹמוֹת.
אִישׁ פְּלוֹנִי בֶן אִישׁ פְּלוֹנִי נִתְחַיֵּב
מִיתָה בְּבֵית דִּין.

Mishnah 5

The false prophet¹ is he that prophesies what he has not heard² or what has not been told to him;³ his death is by the hands of man. But he that withholds his prophecy,⁴ or he who disregards the words of [another true] prophet,⁵ or the prophet who transgressed his own words,⁶ his death is at the hands of Heaven,⁷ as it is said,⁸ *I will require*⁹ it of him.

1 Deuteronomy 18, 20. 2 He pretends to prophesy what no authentic prophet before him had prophesied. 3 He pretends to have received a Divine message which had been communicated to another prophet. Deuteronomy 18, 14-20. 4 He suppresses a Divine message which he had received to communicate to the people. Jonah 1, 3. 5 I Kings 20, 35. 6 I Kings 13, 26. 7 i.e., he will not live to old age. 8 Deuteronomy 18, 19. 9 אָדָרֵשׁ is given in the Scripture.

Mishnah 6

He that prophesies in the name of other gods¹ and says, 'Thus said the strange god', even if he conformed with the (traditional) law to declare unclean what is unclean or to declare clean what is clean, [he is guilty and liable to punishment by strangulation]. He who has sexual intercourse with another man's wife,² immediately³ she has come under the control of the husband in wedlock, even though she had not yet been copulated with [by her lawful husband], he that has sexual connexion with her [shall suffer death] by strangling. And the false witnesses against a priest's daughter and her paramour:^{4*} for all false witnesses must suffer that same death⁵ [which

משנה ה

יִנְבִיא הַשֶּׁקֶר, הַמְתַּנְבֵּא עַל מַה-
יִשְׁלֵא שָׁמַע, וּמַה-שְּׁלֵא נֹאמַר לוֹ,
מִיָּתוֹ בְּיַד אָדָם. אֲבָל הַכּוֹבֵשׁ
אֶת-יְבוֹאָתוֹ, וְהַמּוֹתֵר עַל דְּבָרֵי
יִנְבִיא, וְנֹבֵיא שֶׁעָבַר עַל דְּבָרֵי
עֲצָמוֹ, מִיָּתוֹ בְּיַד יְשָׁמַיִם, שֶׁנֹּאמַר
אֲנֹכִי יִדְרֹשׁ מֵעַמּוֹ.

משנה ו

הַמְתַּנְבֵּא בְּשֵׁם יְעֹבֹדֵת גִּלּוּלִים
וְאוֹמֵר כִּד אֲמָרָה יְעֹבֹדֵת כּוֹכָבִים,
אֲפִילוּ כּוֹזֵן אֶת-הַהֶלְקָה, לְטַמֵּא
אֶת-הַטָּמֵא, וּלְטַהֵר אֶת-הַטָּהוֹר.
הָבֵא עַל אֵשׁ אִישׁ בֵּינָן שֶׁנִּכְנָסָה
לְרֵשׁוֹת הַבַּעַל לְנִשְׁוֹאִין, אִף עַל פִּי
שְׁלֵא נִבְעָלָה, הָבֵא עָלֶיהָ הָרִי וְהֵ
בְחִנֵּק. הַזֹּמְמֵי בַת כֹּהֵן *וּבִעֻלָּה,
שֶׁקַּל הַזֹּמְמִין מִקְדִּימִין לְאוֹתוֹ
מִיָּתוֹ, חוּץ מִזֹּמְמֵי בַת כֹּהֵן
*וּבִעֻלָּה.

*Or lover, cohabiter.

the accused would have had to suffer if found guilty], except the false witnesses against a priest's daughter and her paramour.⁶

1 *Deuteronomy* 18, 20. 2 *Leviticus* 18, 20. 3 Or כִּי־יָדוּ, as soon as. 4 Are also punishable by strangling. See 11^a. 5 The condemned cannot hope for any such death. 6 That is, when they testified falsely against her only (for instance, that the paramour had fled or was dead, or that he was a minor or that he was not known) then they are sentenced to be burnt; but if their testimony against both him and her was proved false they are sentenced to be strangled; according to the *Tosefta* strangling is the penalty in both these cases. 7 In some editions, וְשִׁלְמָה מִסֵּכֶת, סִנְהֶדְרִין, TRACTATE SANHEDRIN CONCLUDED.

יְסִלִּיק מִסֵּכֶת סִנְהֶדְרִין

CONCLUSION OF TRACTATE SANHEDRIN.

ADDENDUM

[Additional Note to this Tractate]

2^a, Note 1, Page 242. Six are given together in both *Genesis* 15, 20, 21 and *Nehemiah* 9, 8: הַכְּנַעֲנִי (the Canaanite), הַחִתִּי (the Hittite), הָאֱמֹרִי (the Amorite), הַפְּרִזִּי (the Perizzite), הַיְבוּסִי (the Jebusite), הַגִּרְגִּישִׁי (the Gergishite); and the seventh, הַחִוִּי (the Hivite), is mentioned in *Genesis* 34, 2 and *Joshua* 9, 7, 11, 3, 19.

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מִסְכֵּת

מַכּוֹת

TRACTATE

MAKKOTH

[BEING THE FIFTH TRACTATE OF THE ORDER NEZIKIN]

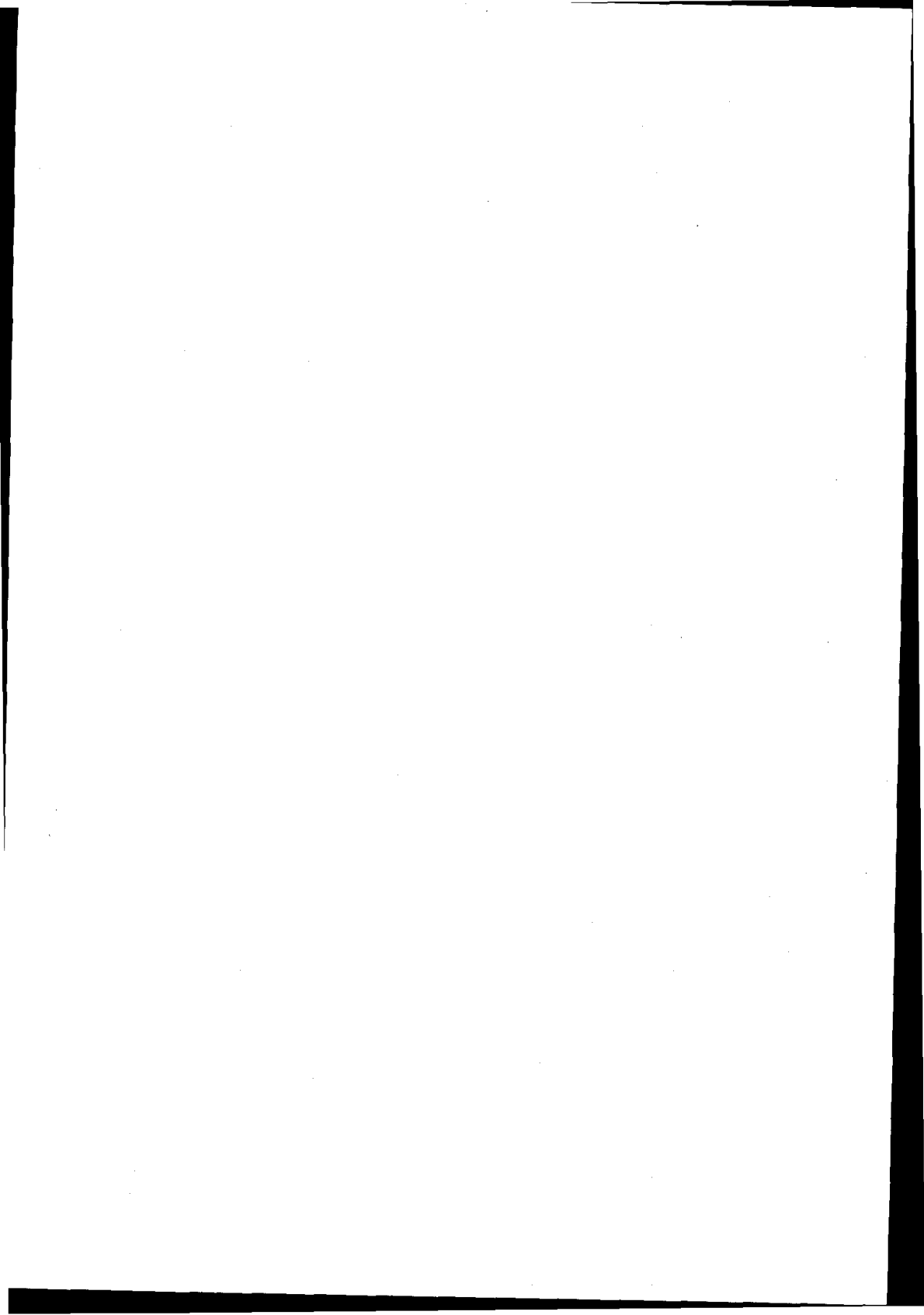
TEXT - INTRODUCTION - TRANSLATION - NOTES

By

PHILIP BLACKMAN, F.C.S.

The M.S of this Tractate was revised by the

REV. DR. S. GOLDMAN, M.A.



INTRODUCTION

The term **מַכּוֹת** (a derivative of the verb **נָכַה**) is the *plural* form of the substantive **מַכָּה**, *blow, lash, stroke, defeat, plague, wound, trouble, sorrow*, and particularly with reference to this *Tractate*, *punishment, scourging, flagellation, forty stripes*.

The contents of this *Tractate* are closely related to those of *Sanhedrin* and both were originally combined in a single *Tractate* termed *Sanhedrin*.

This *Tractate* treats chiefly with the laws and regulations regarding false witnesses and their trial and punishment (according to *Deuteronomy 19, 16 et seq.*), homicides and their internment in the Cities of Refuge (according to *Exodus 21, 13, Numbers 35, 10-32, Deuteronomy 19, 1-13, 16-19, 25, 1-3*), and of the committal of offences punishable by flagellation and the number of stripes to be imposed as punishment (according to *Deuteronomy 25, 1-3, 28, 15, 29, 29, 8*).

The *Tractate* has *Gemara* in both the *Babylonian Talmud* and the *Jerusalem* (or *Palestinian*) *Talmud*.

It is the fifth *Tractate* or *Treatise* of the fourth *Order Nezikin* of the *Mishnah*, and contains three Chapters whose titles are:

CHAPTER 1	כִּיצַד הָעֵדִים	פָּרָק א
CHAPTER 2	אֵלֵי הַן הַגּוֹלִין	פָּרָק ב
CHAPTER 3	אֵלֵי הַן הַלּוֹקֵין	פָּרָק ג

The following is a synopsis of the contents of the three Chapters:

1. The penalty for the false witness; the cities of refuge; retrial of recaptured escaped convict; sentiment against death penalty. 2. Accidental homicide; exile for killing; cities of refuge; duration of internment; exile slain by avenger outside city of refuge; status of the returned, freed exile. 3. The fifty-nine offences entailing punishment by flagellation; maximum number of lashes; the administration of the stripes; flagellation clears a sinner liable to excision (APPENDIX, **Note 2**).

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מִסְכָּח

מִכּוֹת

TRACTATE

MAKKOTH

CHAPTER 1

פֶּרֶק א

Mishnah 1

מִשְׁנָה א

What action is taken against false witnesses?¹ [If they testified against a priest saying,] 'We testify that so-and-so is the son of a divorced woman', or, ['We testify that so-and-so is] the son of a woman who had performed *chalitzah*,² [and such statements were disproved by other witnesses] we can not say, 'Let this [false witness] be made into the son of a divorced woman', or, ['Let this false witness be made into] the son of a woman that had performed *chalitzah* in place of the accused,³ but he must receive the *forty stripes*.⁴ [If false witnesses aver,] 'We testify that so-and-so is liable to be exiled',⁵ we can not say, 'Let this [false witness] be exiled in his stead', but he must suffer the *forty stripes*. [If they gave false evidence saying] 'We testify that so-and-so divorced his wife but did not give her her *marriage-settlement*'⁶—and might he not at some time have to pay her her *marriage-settlement*?⁷—they assess how much a man would be willing to pay [now] for her* *marriage-settlement*

כִּיצַד הָעֵדִים נִעְשִׂים יְזוּמָיִן? מְעִידִין אָנוּ בְּאִישׁ פְּלוֹנִי שֶׁהוּא בֶן גְּרוּשָׁה אוֹ בֶן חִלוּצָה, אֵין אוֹמְרִים יַעֲשֶׂה זֶה בֶן גְּרוּשָׁה אוֹ בֶן חִלוּצָה תַּחְתָּיו, אֵלֶּא לֹקָה יֶאֱרָבְעִים. מְעִידִין אָנוּ בְּאִישׁ פְּלוֹנִי שֶׁהוּא חֵיִב לְגִלוּת, אֵין אוֹמְרִים יִגְלֶה זֶה תַּחְתָּיו, אֵלֶּא לֹקָה אֶרְבָּעִים. מְעִידִין אָנוּ בְּאִישׁ פְּלוֹנִי שֶׁגִּירָשׁ אֶת-אִשְׁתּוֹ וְלֹא נָתַן לָהּ כְּתוּבָתָהּ, וְהֵלֵא בֵּין הַיּוֹם וּבֵין מָחָר, סוֹפוֹ לִיתֵן לָהּ כְּתוּבָתָהּ, אוֹמְדִין כַּמָּה אָדָם רוּצָה לִיתֵן בְּכְתוּבָתָהּ שֶׁל זֶו, שָׂאֵם נִתְּאֵלְמָנָה אוֹ נִתְּגַרְשָׁה, וְאֵם מָתָה יִירָשְׁנָה בְּעַלְהָ. מְעִידִין אָנוּ בְּאִישׁ פְּלוֹנִי שֶׁהוּא חֵיִב לַחֲבֵרוֹ אֶלְף יֶזוּז עַל מְנַח לִיתָנֵן לוֹ מִמָּכָאן וְעַד שְׁלֹשִׁים

on the chance that she might become widowed or be divorced,⁸ [knowing that] if she were to die her husband would inherit it from her.⁹ [If false witnesses affirmed] 'We testify that so-and-so owes to his fellow one thousand *zuz*¹⁰ with a proviso that he must repay him from now¹¹ and within thirty days', but he [the debtor] says, ['The condition is] from now and within ten years',¹² they estimate how much a man would be willing to pay to have in his hand(s) a thousand *zuz* which instead of being repayable within thirty days shall be repayable within ten years.¹³

יום, והוא אומר מִכָּאן וְעַד עֶשְׂרִים
 יִשְׁנִים, אֹמְרִין יִכְמֶה אָדָם רוֹצֶה
 לִיתֵן וְיִהְיֶה בְּיָדוֹ אֶלֶף זָוָה, בֵּין גּוֹתֵן
 מִכָּאן וְעַד שְׁלֹשִׁים יוֹם, בֵּין גּוֹתֵן
 מִכָּאן וְעַד עֶשְׂרִים שָׁנִים.

1 *i.e.*, how are false witnesses to be dealt with (as prescribed in *Deuteronomy* 19, 19) if it is impossible to inflict the punishment on them which the defendants against whom they falsely testified would have had to suffer if proved guilty (compare *סנהדרין* 111. 6). 2 See *יבמות*, INTRODUCTION; *קדושין* 41^a. If true, the son is ineligible to be a priest (and in consequence his progeny also). 3 It is evident that such punishment could not be inflicted. 4 *Deuteronomy* 25, 1 *et seq.* 5 For unwitting killing. *Numbers* 35, 14. 6 See *כתובות*, INTRODUCTION; *Appendix*, Note 8. 7 When he dies, or if he divorces her. In such a case false witnesses had caused no material harm, so why should they be made to pay? So the *Mishnah* proceeds to describe a method whereby the false witnesses are made to recompense the (morally) injured party with an amount equivalent to the speculative value of the chance that the husband might have to pay his wife her marriage-settlement. 8 In which case a woman recovers both her marriage-settlement and her property. 9 They pay this assessed amount to the husband. 10 1 *מָנָה* = 100 *זָוָה*; see *זרעים*, page 18f. 11 *מִכָּאן* traditional pronunciation. 12 And other witnesses refute the statement made by the (false) witness. 13 They estimate the value to a man of the extension of the period of repayment from 30 days to 10 years, and such an amount must be paid as damages by the false witnesses to the debtor. *Or 'l.

Mishnah 2

משנה ב

[If witnesses say] 'We testify that so-and-so owes his fellow two hundred *zuz*,' and they are found false witnesses, they must receive the *forty stripes* and also pay,¹ for the Scriptural verse that makes him liable for the [*forty stripes*]² is not the same as that which makes him liable

מְעִידִין אָנוּ בְּאִישׁ פְּלוֹנִי שְׁחָיִב
 לַחֲבֵרוֹ, מֵאֲמַרִים זָוָה, וְנִמְצְאוּ זֹמְמִין,
 לֹקֵחַן וְיִמְשְׁלֵמִין, שְׁלֹא הַשֵּׁם
 הַמְּבִיאוֹ לַיָּדִי מְכֹוֹת, מְבִיאוֹ לַיָּדִי
 מְשֻׁלְּמִין. דְּבַרִי רַבִּי מֵאִיר.

for compensation.³ This is the opinion of R. Meir.⁴ But the Sages say, Anyone who has to make recompense is not scourged.⁵ וְחֻכְמִים אֹמְרִים כָּל-הַמְשָׁלִים אֵינוֹ לֹקֵה.⁵

1 The two hundred zuz (זָרְעִים), Page 18f) as damages to the man they sought to injure. 2 Exodus 20, 1 (see next Mishnah). 3 Deuteronomy 19, 19 (see next Mishnah). Literally for the title [viz., the legal text] under which [the false witness] is condemned to the forty stripes is not the same as that under which he must pay indemnity. 4 His view is rejected. 5 This is the accepted ruling.

Mishnah 3

מִשְׁנָה ג

[If witnesses aver] 'We testify of so-and-so that he has to receive the forty stripes', and they are found¹ to be false witnesses, they are scourged with eighty stripes, [forty stripes] because of [the Scriptural verse],² *Thou shalt not bear false witness against thy neighbour*, and [forty stripes] because of [the verse],³ *Then shall ye do unto him as he had purposed to do*. This is the view of R. Meir.⁴ But the Sages⁵ say, They scourge them with only forty [stripes]. They may share out⁶ a fine [among the false witnesses] but they may not divide out the [forty] stripes.⁷ For example: if they gave evidence that one owed his fellow two hundred zuz,⁸ and they were found to be false witnesses, the fine is spread among them; but if they testified that one was liable to suffer the forty stripes and they were found to be false witnesses, each one

מְעִידִין אָנוּ בְּאִישׁ פְּלוֹנִי, שֶׁהוּא חַיִּיב מִלְּקוֹת אַרְבָּעִים, וְנִמְצְאוּ זֹמְמִים, לֹקֵין שְׁמוֹנִים, מְשׁוּם לֹא-תַעֲנֶה בְרַעְוָה עַד שֶׁקָּר, וּמְשׁוּם וַעֲשִׂיתָם לוֹ כַּאֲשֶׁר זָמַם. דְּבָרֵי רַבִּי מֵאִיר. וְחֻכְמִים אֹמְרִים אֵין לֹקֵין אֶלָּא אַרְבָּעִים. מְשַׁלְּשִׁין בְּמִמּוֹן, וְאֵין מְשַׁלְּשִׁין בְּמִכּוֹת. בִּיצַד הָעֵידוּהוּ שֶׁהוּא חַיִּיב לַחֲבֵרוֹ מֵאֲתָיִם זָוֵי, וְנִמְצְאוּ זֹמְמִין, מְשַׁלְּשִׁין בִּינֵיהֶם, אֲכָל אִם הָעֵידוּהוּ שֶׁהוּא חַיִּיב מִלְּקוֹת אַרְבָּעִים וְנִמְצְאוּ זֹמְמִין, כָּל-אֶחָד וְאֶחָד לֹקֵה אַרְבָּעִים.

of them must suffer the forty stripes.

1 Literally were found. 2 Exodus 20, 12. 3 Deuteronomy 19, 19. 4 His opinion is rejected. 5 His view is accepted. 6 Literally divide into three parts, i.e., if there be three false witnesses the money fine is shared by the three (and so on according to the number). 7 Each false witness receives the full number of lashes. 8 זָרְעִים, Page 18f.

Mishnah 4

Witnesses do not become punishably liable false witnesses unless [the refuting of witnesses] proves them in person to be false witnesses. For instance: if they affirmed, 'We testify of so-and-so that he killed the person', [and the refuting witnesses] said to them, 'How can you give such testimony since this slain person'—or, ' . . . this man who killed . . . '—'was with us on that day in such-and-such a place!' then these are not [condemned as punishably liable] false witnesses;¹ but if [the rebutting witnesses] said to them, 'How can you so testify, for you were with us on that day in such-and-such a place!' then these are [sentenced]² as false witnesses and are put to death by their [—the refuting witnesses'—] evidence.

1 Because the refuting evidence did not refer to the person. 2 For falsification of the testimony by the false witnesses.

Mishnah 5

If¹ further sets of witnesses, even up to a hundred, were to come, and they likewise were proved to be false witnesses [by the same set of refuting witnesses], they must all be put to death. R. Judah² says, This³ is a conspiracy and only the first set [of false witnesses is to suffer the death penalty].

1 This rendering follows the interpretation of this *Mishnah* in *Rashi* and *Bartenoro*. 2 His opinion is rejected. 3 Or ו"; see Volume II, Page 12.

Mishnah 6

False witnesses must not be sentenced to death unless judgment has already been pronounced [on the accused],¹

משנה ד

אין העדים נעשים זוממין עד שזומרו את עצמן. כיצד אמרו מעידין אנו באיש פלוני שהרג את הנפש, אמרו להן היאך אתם מעידין שהרי נהרג זה או הורג הנה עמנו אותו היום במקום פלוני אין אלו זוממין; אבל אמרו להם היאך אתם מעידין, שהרי אתם הייתם עמנו אותו היום במקום פלוני, הרי אלו זוממין ונהרגין על פיהם.

משנה ה

באו אחרים והזימום באו אחרים והזימום אפילו מאה כולם יהרגו. רבי יהודה אומר איסטסית היא זו ואינה נהרגת אלא פת הראשונה בלבד.

משנה ו

אין העדים זוממין נהרגין עד שיגמר הדין, שהרי הצדוקין אמרים עד

for the Sadducees maintained [that the false witnesses are not slain] unless [the accused] has been put to death, as it is said,² *life for life*. The Sages said to them, But is it not earlier stated,³ *then shall ye do unto him as he had purposed* to do unto his brother*, and [so] *his brother* must be yet alive? If this be so, why is it said, *life for life*? Since one might think that as soon as they accepted their [rebutting] evidence [the false witnesses] should be put to death, we are taught *life for life* shows that [the false witnesses] are not slain unless the verdict had been pronounced [against the falsely accused person]. * And not as he had *succeeded* in doing to his brother.

שִׁהְרַג, שְׁנֵאמַר נֶפֶשׁ תַּחַת נֶפֶשׁ.
אָמְרוּ לָהֶם חֻכִּים וְהֵלֵא כָּבֵר
יֵאמַר וַעֲשִׂיתֶם לוֹ כַּאֲשֶׁר אָמַם
לַעֲשׂוֹת לְאָחִיו, וְהָרִי אָחִיו קָיָים וְאִם
כֵּן לָמָּה נֵאמַר נֶפֶשׁ תַּחַת נֶפֶשׁ?
יְכוּל מִשְׁעָה שֶׁקָּבְלוּ עַדוּתָן, יִהְרַגוּ.
תְּלִמוּד לֹאמַר נֶפֶשׁ תַּחַת נֶפֶשׁ הָא
אֵינָן נִהְרָגִין עַד שִׁיֵּמַר הַדִּין.

1 The judges first pronounced sentence of death on the accused, then the witnesses were proved false; otherwise the false witnesses escape punishment.
2 Deuteronomy 19, 21. But the Scriptural text is *נֶפֶשׁ בְּנֶפֶשׁ*. 3 Deuteronomy 19, 19.

Mishnah 7

At the mouth of two witnesses, or three witnesses, shall he that is to die be put to death. If the testimony of two be valid, why* did the Scriptural verse mention three? Only to equate [the evidence of] three with [that of] two: just as three may refute [the evidence of] two, so may two prove false [the testimony of] three. And whence [may we deduce] that [two can rebut the evidence of] even a hundred? We deduce it from the term *witnesses*. R. Simon says, Just as two may not be slain unless both of them are shown to be false witnesses, so three may not be put to death unless all three of them are proved false witnesses. And whence do we infer [that this applies] even

מִשְׁנָה ז'
יַעֲלֶה-פִּי שְׁנַיִם עֵדִים אוֹ שְׁלֹשָׁה עֵדִים
יוֹמַת הַמָּוֶה. אִם מִתְקַיְּמַת הַעֲדוּת
בְּשְׁנַיִם יֵלָמָּה פָּרַט הַכָּתוּב בְּשְׁלֹשָׁה?
אָלֵא לְהַקִּישׁ שְׁלֹשָׁה לְשְׁנַיִם, מֵה־
שְׁלֹשָׁה מְזִימִין אֶת-הַשְּׁנַיִם אֶף הַשְּׁנַיִם
יְזַיְמוּ אֶת-הַשְּׁלֹשָׁה. וּמִנֵּן אֶפִּילוּ
מֵאַה? תְּלִמוּד לֹאמַר עֵדִים. רַבִּי
שְׁמַעוֹן אוֹמַר מֵה־שְׁנַיִם אֵינָן נִהְרָגִין
עַד שִׁיְהִיו שְׁנֵיהֶם זֹמְמִין, אֶף שְׁלֹשָׁה
אֵינָן נִהְרָגִין עַד שִׁיְהִיו שְׁלֹשְׁתָּן זֹמְמִין.
וּמִנֵּן אֶפִּילוּ מֵאַה? תְּלִמוּד לֹאמַר

to a hundred? We infer it from the term *witnesses*. R. Akiba says, The third [witness] is referred to in order to stress that like severity must be applied to him also and that the same sentence must be passed on him as on the other two. And if this be so, that Scripture has imposed the same penalty on one who attaches himself² to transgressors as on the transgressors themselves, how much more so will He reward one who attaches himself to those that fulfil the commandment.³

עֲדִים. רַבִּי עֲקִיבָא אָמַר, לֹא בָּא
הַשְּׁלִישִׁי אֶלָּא לְהַחֲמִיר עָלָיו
וּלְעֲשׂוֹת דִּינּוֹ כִּיּוֹצֵא בְּאַלּוּי. וְאִם
כֵּן עֲוֹשׂ הַפְּתוּב לְעוֹבְרֵי
עֲבִירָה כְּעוֹבְרֵי עֲבִירָה, עַל אַחַת
כִּמְהָ וְכִמְהָ יִשְׁלַם שְׂכָר לְנֹטְפֵל
לְעוֹשֵׁי מִצְוָה כְּעוֹשֵׁי מִצְוָה.

fulfil a commandment equally with
*Or לְמָה, לְמָה.

1 Deuteronomy 17, 6. 2 Or the less definite form לְנֹטְפֵל. 3 The reward of a good deed is greater than the punishment for a transgression (אִזְמָא 76a).

Mishnah 8

Just as in the case of two [witnesses], if one of them were found to be a relative or ineligible, their testimony is void,¹ so, too, in the case of three [witnesses], if one of them were found to be a kinsman or disqualified, their evidence is annulled. Whence [do we infer that this applies also in the case of one witness among] a hundred? The inference is from the term *witnesses*.² R. Jose³ said, When does this apply? In capital cases, but in cases concerning property⁴ the evidence can be upheld by the remaining witnesses.⁵ Rabbi⁶ says, It is all one⁷ in cases concerning property and in capital cases. (And when [does it apply]?)⁸ When* they [all] combined in warning them⁹ [—the evil-doers—]; but if* they did not [all] join in warning them¹⁰— [then] what are two brothers¹¹ to do who with a third witness saw a

מִשְׁנָה ח

מֵה־שְׁנַיִם וּנְמָצָא אֶחָד מֵהֶן קָרוֹב אוֹ
פְּסוּל עֲדוּתָן בְּטִלָּה, אַף שְׁלִשָּׁה
וּנְמָצָא אֶחָד מֵהֶן קָרוֹב אוֹ פְּסוּל
עֲדוּתָן בְּטִלָּה. מִזֵּן אֶפִּילוּ מֵאָה?
פְּלִמוּד לֹאמַר עֲדִים. אָמַר
רַבִּי יוֹסִי בְּמָה דְכָרִים אֲמוּרִים
בְּדִינֵי נַפְשוֹת, אֲבָל בְּדִינֵי מְמוֹנוֹת
תְּתַקְּמִים הָעֲדוּת בְּשֵׂאֵר. רַבִּי אֹמֵר
אֶחָד דִּינֵי מְמוֹנוֹת וְאֶחָד דִּינֵי
נַפְשוֹת. * (וְאִימְתִּי?) * בְּזִמְן שֶׁהִתְרוּ
בְּהֵן; אֲבָל בְּזִמְן שֶׁלֹּא הִתְרוּ בְּהֵן.
מֵה־יַעֲשׂוּ * שְׁנֵי אַחֵין שֶׁרָאוּ בְּאֶחָד
שֶׁהִרְגוּ אֶת־הַנֶּפֶשׁ?

*Or בזמן.

1 סנהדרין 33, 4; יבמות 61; כריתות 22b. 2 Compare the preceding *Mishnah*. 3 His view is rejected. 4 Or money. 5 Who are not ineligible. 6 His opinion is accepted. 7 *i.e.*, if one witness is in any way ineligible the whole evidence is annulled. 8 In capital cases, that the disqualified testimony of one renders all the evidence invalid. 9 In cases concerning capital punishment. See *אימתי* is given in the *גמרא*. 10 Then the evidence of those others not disqualified can be sustained. 11 If it is maintained that in cases where witnesses are related the evidence is to be considered invalid, what are two brothers to do who saw a murder committed? Have they to refrain from giving evidence? Rabbi notes that, when both brothers did not join in warning the accused, their evidence should be accepted when associated with the evidence of a third witness.

Mishnah 9

If two saw him¹ from one window* and two saw him from another window,* and one person in the middle warned him, so long as[§] some of them can see the others,² then they are [all] considered as one body of testimony;³ otherwise they are accounted as two groups of testimony,⁴ therefore if one party of them were found to be false witnesses, then both he [—the murderer—] and they [—the false witnesses—] are put to death,⁵ but the other party [of true witnesses] is exempt. R. Jose⁶ says, They may never put anyone to death unless two of the witnesses against him had [first] (verbally)⁷ warned him, as it is said,⁸ *At the mouth of two witnesses*. Another interpretation of *at the mouth of two witnesses* is that the Sanhedrin may not hear [the evidence given by the witnesses only] from the mouth of an interpreter.⁹

משנה ט

היו שנים רואין אותו *מחלון זה, ושנים רואין אותו *מחלון זה, ואחד מתרה בו באמצע, §בזמן שמקצתן רואין אלו את-אלו, הרי אלו עדות אחת; ואם לאו הרי אלו שתי עדות, לפיכך אם נמצאת אחת מהן זוממת, הוא והן נהרגין והשניה פטורה. רבי יוסי אומר לעולם אין נהרגין עד שיהו (פי) שני עדיו מתרין בו, שנאמר על פי שנים עדים. דבר אחר על פי שנים עדים, שלא תהא סנהדרין שומעת מפיו התורגמן. *Or מחלון.

1 Someone about to commit murder. 2 Even if they did not all see one another, or even if those at the windows did not see the one between who had warned the would-be murderer (but they heard his warning). 3 If one of them is a kinsman or is ineligible all the evidence is void. 4 *i.e.*, one pair at one window did not see

the pair at the other window, then even if they all came together at the same time to give evidence, they are still reckoned as two separate parties. 5 They suffer the death penalty for false evidence, and the accused is put to death on the testimony of the other set of witnesses. 6 His opinion is rejected. 7 פ"י is not given in the גמרא. 8 Deuteronomy 17, 6. 9 i.e., the judges hearing the evidence must themselves understand the language spoken by the witnesses, even if they cannot converse in that language. This is the prevailing law. §Or the definite בַּיָּמִן.

Mishnah 10

מִשְׁנֵה י

If one upon whom sentence [of death] had been passed escaped, and he came [again] before the same court,¹ they may not rescind his sentence. Wherever [in any court] two persons can stand up and declare, 'We testify against so-and-so that he has been condemned [to death] in such-and-such a court, and so-and-so and so-and-so were his witnesses² [but he had escaped before execution]',³ then he must be put to death. The Sandehrin may function either within the Land [of Israel] or outside the Land [of Israel].³ The Sanhedrin that puts to death one person in seven years⁴ is termed tyrannical.⁵ R. Elazar ben Azariah says, One person in seventy years.⁶ R. Tarfon and R. Akiba say, If we had been in the Sanhedrin, no one would ever have been put to death. Rabban Simon ben Gamaliel says, They would indeed have [thereby] increased the shedders of blood in Israel.⁷

מִי שֶׁנִּגְמַר דִּינוֹ וְבָרַח, וּבָא לְפָנָי אוֹתוֹ
 יְבִית דִּין אֵין סוֹתְרִין אֶת-דִּינוֹ. כָּל-
 מְקוֹם שֶׁיִּעֲמְדוּ שְׁנַיִם וַיֹּאמְרוּ מֵעִידִין
 אָנוּ בְּאִישׁ פְּלוֹנִי שֶׁנִּגְמַר דִּינוֹ בְּבֵית
 דִּין שֶׁל פְּלוֹנִי, וּפְלוֹנִי וּפְלוֹנִי יְעִידוּ,
 הֲרִיזוּהוּ יִהְרֹגוּ. סְנֵהֲדֵרִין נוֹהֲגִת בְּאֶרֶץ
 וּבחוּץ לְאֶרֶץ. סְנֵהֲדֵרִין הַהוֹרֶגֶת
 אַחַת בְּשָׁבוּעַ, נִקְרָאת חוֹבְלֵינִת.
 רַבִּי אֶלְעָזָר בֶּן עֲזַרְיָה אוֹמֵר אֶחָד
 לְשִׁבְעִים שָׁנָה. רַבִּי טַרְפוֹן וְרַבִּי
 עֲקִיבָא אוֹמְרִין אֵלוֹ הֵייוּ
 בְּסְנֵהֲדֵרִין, לֹא גִהְרֹגוּ אָדָם מֵעוֹלָם.
 רַבִּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר אִף הֵן
 מֵרַבִּין שׁוֹפְכֵי דָמִים בְּיִשְׂרָאֵל.

1 The ruling applies also to any other court outside Palestine, but if a man who had been sentenced to death in a court outside Palestine were to escape and appear again before a court in the Holy Land, this court would have the power of reconsidering the verdict. 2 Compare סְנֵהֲדֵרִין 51. 3 During the existence of the Temple. Compare סְנֵהֲדֵרִין 16. 4 Literally a week [of years]. Daniel 9, 24 et seq. 5 Or a court that does not spare human life. 6 i.e., if a Sanhedrin carries out a death penalty

even once in seventy years it is termed a tyrannical court. 7 Their reluctance to apply the death penalty would have resulted in an increase in the number of murders. Compare סְנֵה־דָרִין 5⁹.

CHAPTER 2

פֶּרֶק ב

Mishnah 1

These are they who go into exile [to the Cities of Refuge]:¹ one that slays a human being unintentionally, [for instance] he was rolling down [the cement on a roof] with a roller² and it fell down on someone and killed him, or he was *lowering* a cask and it fell on somebody and killed him, or he was *descending* by a ladder and he fell down on some person and killed him, then he flees into exile; but if he were *drawing up* with a roller, and it fell down on a man and killed him, or if he were drawing [water] with a cask and the rope parted and it fell on someone and killed him, or if he were *ascending* by a ladder, and he fell down and killed somebody, then he does not have to escape into exile. This is the general principle: in every case [where the mishap occurred] in the course of a *descent*, he must go into exile, but when *not* in the course of a *descent*, he need not flee into exile.³ If the iron [tool] came away from its haft,⁴ and it killed [someone], Rabbi⁵ says, He does not have to

משנה א
אלו הן הגולין, ההורג נפש בשגגה, היה מעגל במעגילה, ונפלה עליו והרגתו, היה משלשל ברחבת ונפלה עליו והרגתו, היה יורד בסולם ונפל עליו והרגו, הרי זה גולה; אבל אם היה מושך במעגילה ונפלה עליו והרגתו, היה דולה ברחבת ונפסק החבל, ונפלה עליו והרגתו, היה עולה בסולם ונפל עליו והרגו הרי זה אינו גולה. זה הפלל, כל שבדרך ירדתו גולה, ושלא בדרך ירדתו אינו גולה. גשמת הברזל מקתו והרג, רבי אומר אינו גולה, ונחכמים אומרים גולה. מן העץ המתבקע, רבי אומר גולה, ונחכמים אומרים אינו גולה.

escape into exile, but the Sages⁶ say, He must flee into exile. [If one were chopping wood, and a piece flew off] from the wood being chopped, Rabbi⁷ says, He must flee into exile, but the Sages⁸ say, He does not have to escape into exile.

1 See 2⁴. 2 Or *smoothing slab*, for levelling and hardening the roofing material. 3 This is based on the phrase ויפל עליו, and caused it to fall upon him, in Numbers 35, 23.

where the expression *fell* indicates downward movement. 4 קֶטֶף, *haft*, *handle*, *helve*, *shaft*. 5 His opinion is rejected. He rendered the term הֵעִץ, in *Deuteronomy 19, 5*, וְנָשַׁל הַפְּרוֹל מִן־הָעֵץ, as *the wood he was cutting* and not as the *haft* (compare *and the iron fell from the* [wooden] *haft*. 7 His view is rejected. 8 Their opinion is accepted: the casualty is not caused by a direct action (*viz.*, the axe or its haft) but by a derived action (*viz.*, a splinter set in motion by the motion of the tool).

Mishnah 2

If one threw¹ a stone into the public domain and killed² [someone], he must flee into exile. R. Eliezer ben Jacob says, If this person put out his head after the stone had left his [—the thrower's—] hand and he received it,³ then he [—the thrower—] is exempt.⁴ One threw a stone into his own courtyard and killed [somebody]—if the victim had the right to enter therein, [the thrower] must flee into exile, otherwise⁵ he does not have to escape into exile, as it is said,⁶ as when a man goeth into the forest with his neighbour, since the forest may rightfully be entered by the victim and the injurer,⁷ hence the courtyard of a householder into which the victim (and the injurer)⁸ had no right to enter is excepted.⁹ Abba Saul says, Just as the chopping of wood is an act of free choice, even so are excluded the cases of a father who chastises his son,¹⁰ of a teacher that strikes his pupil,¹¹ and of the

מִשְׁנֵה ב
 יְהוּרֵק אֶבֶן לְרִשׁוֹת הָרְבִים וְהָרֵג
 הָרִי זֶה גּוֹלָה רַבִּי אֶלְעָזָר בֶּן
 יַעֲקֹב אוֹמֵר אִם מִכְשִׁיצָאָתָה הָאֶבֶן
 מִיָּדוֹ הוֹצִיא הִלְזוּ אֶת־רֵאשׁוֹ יִקְבְּלָהּ
 הָרִי יִהְיֶה פְטוּר וְרַק אֶת־הָאֶבֶן
 לְחִצְרוֹ וְהָרֵג אִם יֵשׁ רִשׁוֹת לְגִזְקָה
 לִיכְנֹס לְשָׂם גּוֹלָה וְאִם לֹא אֵינוֹ
 גּוֹלָה שְׁנֹאמַר וְאֲשֶׁר יָבֵא אֶת־
 רַעְהוּ בִיעַר מֵהַ הֵעִיר רִשׁוֹת לְגִזְקָה
 וְלִמְזִיק לִיכְנֹס לְשָׂם יִצָּא חֹצֵר
 בְּעַל הַבַּיִת שְׂאִין רִשׁוֹת לְגִזְקָה
 (וְלִמְזִיק) לִיכְנֹס לְשָׂם אָבֵא שְׂאוּל
 אוֹמֵר מֵהַ חֲטִיבֵת עֲצִים רִשׁוֹת יִצָּא
 הָאֵב הַמִּכָּה אֶת־בְּנוֹ וְהָרֵב הָרוּדָה
 אֶת־תַּלְמִידוֹ וְשְׂלִיחַ בֵּית דִּין אֶת־

agent of the court.¹²

1 Inadvertently. 2 The reference is to a rubble heap on which rubble is generally thrown at night. 3 *i.e.*, the stone hit his head (based on *Deuteronomy 19, 6*). 4 From having to escape into banishment. 5* If he had no right to enter the courtyard. 6 *Deuteronomy 19, 5*. 7 Therefore in the case of any place where both victim and perpetrator had the right to be the latter must escape into banishment. 8 Some consider this term redundant. 9 The offender does not have to flee into exile.

10 With the object of correcting his moral conduct. 11 For remissness in his studies. 12 Who administers the stripes as ordered and the offender dies under the punishment (compare 3¹⁴). In these cases the manslaughter comes in the course of the performance of duty. *Popularly pronounced לאו.

Mishnah 3

A father must flee into exile because of his son,¹ and a son must go into exile because of his father.² All³ [classes of persons] must escape into exile [in cases of unintentional killing] because of [the death of] a Jew, and a Jew goes into exile because of [the inadvertent killing of] all these,⁴ except in the case of a half-proselyte,⁵ but a half-proselyte may not go into exile save through [the unintentional slaying of] a half-proselyte. A blind person [who committed an accidental killing] does not have to flee into exile;⁶ this is the view of R. Judah; but R. Meir⁷ says, He must escape into exile. An enemy⁸ does not have to go into exile; R. Jose⁷ (ben* R. Judah)⁹ says, An enemy must be put to death for he is as one certified [to be dangerous]¹⁰; but R. Simon⁷ says, There is§ the enemy who must go into exile and there is† the enemy that does not go into exile. This is the general principle: if it can be said that he slew wilfully, he may not flee into exile, but [if it can be said that] he did not slay wantonly, then he may escape into exile.¹¹ §Or יֵשׁ-שׁוֹנֵא †Or יֵשׁ-שׁוֹנֵא.

משנה ג

הָאָב גּוֹלָה עַל יְדֵי הַבֵּן וְהַבֵּן גּוֹלָה עַל יְדֵי הָאָב. הַכֹּל גּוֹלִין עַל יְדֵי יִשְׂרָאֵל וְיִשְׂרָאֵל גּוֹלִין עַל יְדֵיהֶן. הוֹצֵא מֵעַל יְדֵי גֵר תּוֹשֵׁב, וְגֵר תּוֹשֵׁב אֵינוֹ גּוֹלָה, אֲלָא עַל יְדֵי גֵר תּוֹשֵׁב. הַסּוֹמֵא אֵינוֹ גּוֹלָה דְּבַר רִבִּי יְהוּדָה; רַבִּי מְאִיר אֹמֵר גּוֹלָה. הַשּׁוֹנֵא אֵינוֹ גּוֹלָה; רַבִּי יוֹסִי * רַבִּי יְהוּדָה) אֹמֵר הַשּׁוֹנֵא נִהְרַג מִפְּנֵי שְׁהוּא ¹⁰ כְּמוֹעֵד; רַבִּי שְׁמַעוֹן אֹמֵר יֵשׁ שׁוֹנֵא גּוֹלָה זֶהוּ שֶׁשׁוֹנֵא שְׂאִינוֹ גּוֹלָה. זֶה הַכֹּלֵל כָּל-שְׁהוּא יְכוּל לֹמֵר לְדַעַת הָרֵג, אֵינוֹ גּוֹלָה, וְשֶׁלֹּא לְדַעַת הָרֵג, הָרֵי זֶה ¹¹ גּוֹלָה.

1 If he chastised him (causing his death) not because he wished him to progress with his religious studies or to learn a trade or to receive moral reproof, or if he killed him accidentally (not through chastisement). Compare the preceding Mishnah. See ADDENDA at the end of this Tractate. 2 If killed unwittingly. 3 Including a Canaanite slave and a Samaritan but not an idolater. 4 Whether Jew, bondman, or Samaritan. 5 Compare מְצִיָּעָא בְּבֵא 5⁶. Or resident alien, a non-Jew who, in order to acquire limited rights of citizenship in the Land of Israel, renounces idolatry

but does not observe the ordinances of the Law (except those referring to murder, incest, theft, blasphemy, the consumption of flesh with its blood, and submission to the jurisdiction of the Jewish courts of law). If a Jew kills such a person he is to be banished to a city of refuge, but if a half-proselyte kills a Jew even unwittingly he suffers the death penalty. **6** Based on בְּלֹא רְאוּת, [the slayer] seeing [him] not (*Numbers* 35, 23). **7** His opinion is rejected. **8** One who, because of hatred, has not spoken for three consecutive days to the other whom he killed unwittingly (סְנֵה־רִיף 35). **9** The bracketed phrase is not given in the מִצְוָה. **10** And therefore the killing must be accounted wilful. Compare קָמָא קַמָּא 14; קְדוּשִׁין 60a. **11** The final ruling is that an 'enemy' neither flees nor suffers the death penalty (the presumption being that his act was near to wantonness.) *See ADDENDA, Page 330.

Mishnah 4

Whither do they flee into banishment? To the Cities of Refuge¹—to the three on the other [—eastern—] side of the Jordan and to the three that are in the Land of Canaan, as it is said,² *Ye shall give three cities beyond the Jordan, and three cities shall ye give in the Land of Canaan etc.*† Before the three were chosen in the Land of Israel the three beyond the Jordan did not offer asylum, as it is said,³ *there shall be . . . six cities of refuge*, [that is] until [all] six of them shall [be ready to] grant together the right of refuge.⁴

משנה ד

לְהִיבֹן גּוֹלִיִן? לְעָרֵי מִקְלָט לְשֵׁלֶשׁ שְׁבַעֲבָר הַיַּרְדֵּן וְלְשֵׁלֶשׁ שְׁבַעֲרֵץ כְּנָעַן, שְׁנֵאמַר אֵת שְׁלֹשׁ הָעָרִים תִּתְּנוּ מֵעֵבֶר לַיַּרְדֵּן וְאֵת שְׁלֹשׁ הָעָרִים תִּתְּנוּ בְּאֶרֶץ כְּנָעַן וְגו'. עַד שֶׁלֹּא נִבְחָרוּ שְׁלֹשׁ שְׁבַעֲרֵץ יִשְׂרָאֵל, לֹא הָיוּ שְׁלֹשׁ שְׁבַעֲבָר הַיַּרְדֵּן קוֹלָטוֹת, שְׁנֵאמַר שֵׁשׁ־עָרֵי מִקְלָט תִּהְיֶינָה, עַד שֶׁיְהִיוּ שֶׁשְׁתֵּן קוֹלָטוֹת בְּאֶחָד.

1 *Numbers* 35, 6, 13, 15; *Joshua* 20, 2, 7, 9—Kedesh in Naphthali (*I Chronicles* 6, 76); Shechem in Mount Ephraim (*Joshua* 21, 21; *I Chronicles* 6, 67; *II Chronicles* 10, 1); Hebron in Judah (*Joshua* 21, 13; *II Samuel* 5, 5; *I Chronicles* 6, 55, 29, 27; *II Chronicles* 11, 10); Bezer in Reuben (*Deuteronomy* 4, 43; *Joshua* 21, 38; *I Kings* 22, 3); Golan in Bashan in the Half Tribe of Manasseh east of the Jordan (*Deuteronomy* 4, 43; *Joshua* 21, 27; *I Chronicles* 6, 71); Ramoth-Gilead in the tribe of Gad (*Deuteronomy* 4, 43; *Joshua* 2, 38; *I Kings* 22, 3). **2** *Numbers* 35, 14. **3** *Numbers* 35, 13. **4** The authorities of the six cities above mentioned had to receive and shelter the involuntary homicide gratuitously, but according to Maimonides all the forty-eight Levitical cities had the privilege of granting asylum to the homicidal fugitive (see 2⁸, Note 5). † Abbreviation of גְּלוּמֵר.

Mishnah 5

And direct roads were built to them and from one [town] to another,¹ as it is said,² *Thou shalt prepare thee the way³ and divide the borders etc.*,[§] and two disciples of the Sages⁴ were appointed for them, lest someone⁵ [seek to] slay him by the way and that they might speak to him.⁶ R. Meir⁷ says, Let him even speak up for himself,⁸ as it is said,⁹ *And this is the word of the manslayer.*¹⁰

מִשְׁנֵה ה
וּמִכּוֹנְנוֹת לָהֶן דְּרָכִים מִזֶּה לְזֶה,¹
שֶׁנֶּאֱמַר תִּכְנֶן לָךְ יְהִדְרֶךָ וְשַׁלְּשֶׁתָּ²
וְגו', וּמוֹסְרִים לָהֶן שְׁנֵי תַלְמִידֵי³
חֲכָמִים שְׂמָא יְהִרְגֵנוּ בְּדֶרֶךְ וַיִּדְבְּרוּ⁴
אֵלָיו. רַבִּי מֵאִיר אֹמֵר אֵף הוּא⁵
מְדַבֵּר עַל יְדֵי עֲצָמוֹ, שֶׁנֶּאֱמַר וְזֶה⁶
דְּבַר הַרוֹצֵחַ.¹⁰ וְגוֹמֵר §

1* From towns to the cities of refuge and from one city of refuge to another, so that fugitives should meet with as little difficulty as possible in their flight; and obstacles and obstructions as far as possible were cleared from the roads and bridges were maintained across the rivers. 2 *Deuteronomy 19, 3.* 3 Signposts were erected at cross-roads to point out the way to the cities of refuge. 4 *i.e.*, every fugitive was accompanied by two scholars for protection. Compare סוֹטָה 13. 5 A relative of the slain seeking to avenge the death. See *Deuteronomy 19, 6.* 6 To placate the avenger and restrain him from slaying the fugitive. 7 His view is rejected. The Sages, whose opinion is accepted, maintain that others are more likely to succeed in appeasing the avenger than the wrongdoer. 8 To the 'avenger of blood.' 9 *Deuteronomy 19, 4.* Compare שְׁבִיעִית 10⁸. 10 The Scriptural orthography is הַרְצִיחַ. *Or לִזֶּה; see Volume II, Page 12.

Mishnah 6

R. Jose ben R. Judah says, At first,¹ whether one caused a death unwittingly or wantonly, he proceeds immediately to a city of refuge,² and the court sends for him and brings him thence [for trial]. Whosoever was sentenced to death by the court they put (him) to death,³ and he that was not found guilty to be slain was set free; one that was condemned to be exiled him they returned to his place,⁴ as it is said,⁵ *and the congregation shall restore him⁶ to his city of refuge etc.** There is no

מִשְׁנֵה ו
רַבִּי יוֹסֵי בֶן רַבִּי יְהוּדָה אֹמֵר,¹
בְּתַחֲלָה אֶחָד שׁוֹגֵג וְאֶחָד מְזִיד²
מִקְדִּימִין לְעָרֵי מִקְלָט וּבֵית דִּין
שׁוֹלְחִין וּמְבִיאִין אוֹתוֹ מִשָּׁם. מִי
שֶׁנִּתְחַטֵּב מִתּוֹ בְּבֵית דִּין, הִרְגוּהוּ,³
וְשֶׁלֹּא נִתְחַטֵּב מִתּוֹ, פִּטְרוּהוּ; מִי
שֶׁנִּתְחַטֵּב גָּלוּת, מְחִזְרִין אוֹתוֹ
לְמִקְוָמוֹ, שֶׁנֶּאֱמַר וְהִשְׁבִּו אוֹתוֹ
הָעֵדָה אֶת-עִיר מִקְלָטוֹ יְגוּ'. אֶחָד

distinction whether [the High Priest] had been anointed with the oil of anointment⁷ or had been garbed with the manifold raiment,⁸ or had ceded his anointed position⁹—(they let the manslayer return).¹⁰ R. Judah¹¹ says, Even if he had been anointed for battle¹²—[his death] allows the return of the homicide. Therefore did the mothers of the priests¹³ provide for them [—the exiles—] food and clothing that [the exiles] should not pray that their sons should die. When sentence [of banishment] had been passed and [then] the High Priest died, then this [convicted] man is not exiled; but if the High Priest died before his [—the accused man's—] conviction was pronounced, and another [High Priest] was appointed in his stead, and then his sentence was announced, [the exile] can return only on the death of the second [High Priest].

מִשׁוּם בְּשֵׁמֶן הַמִּשְׁחָה, וְאֶחָד
הַמְרוּבָּה בְּבָגָדִים, וְאֶחָד שְׁעָבַר
מִמְשִׁיחָתוֹ¹⁰ (מִחֲזִירֵי אֶת־הַרוֹצֵחַ).
רַבִּי יְהוּדָה אָמַר, אִם מִשְׁחָה
מִלְחָמָה מִחֲזִיר אֶת־הַרוֹצֵחַ לְפִיכָף
אֲמוּתִיהֶן שֶׁל¹¹ פְּתָנִים מְסַפִּיקוֹת
לְהֵן מַחְיָה וְכִסוּת כְּדֵי שְׁלֹא יִתְפַּלְלוּ
עַל בְּנֵיהֶם שְׂמִימוֹתָיו. מִשְׁנַגְמַר דִּינֹו
מֵת כֹּהֵן גָּדוֹל, הָרִי זֶה אֵינוֹ גּוֹלָה;
אִם עַד שְׁלֹא נִגְמַר דִּינֹו מֵת כֹּהֵן גָּדוֹל
וְנִמְנֹו אַחֵר תַּחֲפִיּוֹ, וְלֹא־אֶחָר מִפֶּן
נִגְמַר דִּינֹו, חֲזָר בְּמִיתָתוֹ שֶׁל שְׁנִי.

1 i.e., Before the commencement of legal proceedings. 2 Literally cities of refuge. 3 See סִיגְהָרִין 91. 4 The city of refuge whence he had been brought for judgment. 5 Numbers 35, 25. 6 אָתוֹ is the orthographic form in the Scripture. 7 When he was made High Priest. 8 When the holy oil of unction was no longer available the dedication was performed by putting on eight special garments (see יוֹמָא 52b). 9 (See Numbers 5, 25; מְגִלָּה 19). If the High Priest for any reason was disqualified to perform the Service on the Day of Atonement his deputy carried out the functions, and he returned to his duties after the Day of Atonement when he was again ritually fit to fulfil them. 10 If any such High Priest died the murderer banished in a city of refuge was allowed to return home a free man. This bracketed phrase is not given in the Palestinian Talmud. 11 His opinion is rejected. 12 Compare סוֹטָה 81. 13 Of all priests, the High Priest included. *נִגְמַר.

Mishnah 7

If one's sentence [of banishment to a city of refuge] were pronounced when there was no High Priest,¹ or if one had slain [inadvertently] the High Priest, or if the High Priest had

מִשְׁנָה ז
נִגְמַר דִּינֹו בְּלֹא יְכֹהֵן גָּדוֹל, הַהוֹרָג
כֹּהֵן גָּדוֹל, וְכֹהֵן גָּדוֹל שֶׁהָרַג אֵינוֹ
יוֹצֵא מִשֵּׁם לְעוֹלָם, וְאֵינוֹ יוֹצֵא לֹא

killed someone [unwittingly, and sentence of exile was passed when there was no High Priest in office], such may never go forth thence [free from a city of refuge], and he may not come forth [thence] to give evidence in a matter concerning a religious obligation² or to give testimony regarding any money matter³ or to give evidence in a capital case, even though Jews may have need of him,⁴ and even if he be the commander-in-chief in Israel as [eminent a leader as was] Joab the son of Zeruiah, he may never go forth thence, as it is said,⁵ *whither he was fled*, [implying] there shall his abode be, there shall his death be,⁶ there shall his burial be.⁷ Just as the city [of refuge] gathers [him in for security] so does its [Sabbath] *boundary*⁸ [grant refuge]. If a murderer went forth⁹ beyond the [Sabbath] *boundary*, and the blood-avenger found him, R. Jose¹⁰ the Galilean says, The duty [to slay the exile] is in the hand of the blood-avenger, and the permission [to do so] is vested in every man. R. Akiba¹¹ says, The permission lies [only] in the hand of the blood-avenger, but any other man [who kills him] is not liable [to the death penalty] on his account. If a tree stand within the [Sabbath] *boundary*, and its branches extend beyond the *boundary*, or if it stand outside the *boundary*, and its branches extend inside the *boundary*, it all follows the branches.¹² If any one¹³ killed someone within that city [of refuge], he must flee into exile from one district to another [within it],¹⁴ but a Levite¹⁵ must escape into exile from that city [of refuge] to another city [of refuge].

לְעֵדוֹת מִצְוָה, וְלֹא לְעֵדוֹת מְמוֹן, וְלֹא לְעֵדוֹת נַפְשׁוֹת, וְאֶפִּילוֹ יִשְׂרָאֵל צָרִיכִים לוֹ, וְאֶפִּילוֹ שֶׁר צָבָא יִשְׂרָאֵל כִּיּוֹאֵב בֶּן צְרוּיָה, אֵינּוּ יוֹצֵא מִשֶּׁם לְעוֹלָם, שֶׁשָּׁנְאָמַר אֲשֶׁר נָס שָׁמָּה, שֶׁם תְּהֵא דִירְתּוֹ, שֶׁם תְּהֵא מִיתָתּוֹ, שֶׁם תְּהֵא קְבוּרָתּוֹ. כְּשֶׁם שְׁהָעִיר קוֹלֶטֶת, כִּף תְּחוּמָה קוֹלֶטֶת. רוֹצֵחַ שֶׁיֵּצֵא חוּץ לְתַחֲוּם, וּמִצְאוֹ גּוֹאֵל הַדָּם, רַבִּי יוֹסֵי הַגְּלִילִי אוֹמֵר מִצְוָה בְּיַד גּוֹאֵל הַדָּם, וְרִשׁוֹת בְּיַד כָּל-אָדָם. רַבִּי יְעֻקֵּב אוֹמֵר רִשׁוֹת בְּיַד גּוֹאֵל הַדָּם, וְכָל-אָדָם אֵין תְּיַבֵּין עָלָיו. אֵילָן שֶׁהוּא עוֹמֵד בְּתוֹךְ הַתְּחוּם, וְנוֹפוֹ גּוֹטָה חוּץ לְתַחֲוּם, אוֹ עוֹמֵד חוּץ לְתַחֲוּם, וְנוֹפוֹ גּוֹטָה לְתוֹךְ הַתְּחוּם, הַכֹּל הוֹלֵךְ אַחֵר הַנּוֹף. ¹² הַנּוֹף. ¹³ הָרַג בְּאוֹתָהּ הָעִיר גּוֹלָה מִשְׁכּוֹנָה ¹⁴ לְשְׁכוֹנָה, ¹⁵ וּבֶן לְוִי גּוֹלָה מֵעִיר לְעִיר.

1 Who had just died. See ADDENDA. 2 As witness regarding the advent of New Moon (ראש חודש). 3 Or non-capital case. 4 Compare יומא 75.

5 *Numbers* 35, 25. 6 Even if doctors certified that the climate there was harmful to him. 7 In the case of the High Priest his bones may be removed for reburial in his ancestral burying ground. 8 The Sabbath limit of 2,000 cubits beyond the city (*Appendix, Note 4*; עִירוֹבֵיץ, INTRODUCTION). 9 Wantonly. 10 His view is rejected. 11 His opinion accepted. 12 The מִטְּרָא explains this to mean 'the branches as well as the trunk,' so that in either case the tree affords protection. 13 Who had been banished to a city of refuge for manslaughter. 14 For he cannot be expelled from his exile in that city. 15 Who is resident in one of the cities of refuge. They were Levitical cities.

Mishnah 8

(Likewise),¹ if a homicide fled into exile to a city of refuge,² and the people of the city desired to do him honour, he must say to them, 'I am a murderer'. If they said to him, 'Nevertheless [we are minded to honour thee]', he may accept from them [to have honour shown to him], as it is said,³ *And this is the case of the manslayer*.⁴ They had to pay [their] hire to the Levites.⁵ This is the opinion of R. Judah.⁶ R. Meir⁷ says, They did not have to pay [their] hire to them. And he may return to any official position⁸ which he formerly held.⁹ This is the view of R. Meir.¹⁰ R. Judah¹¹ says, He does not return to any office that he held before.

מִשְׁנָה ח

(כַּיְדֵּיכֵן),¹ רֹצֵחַ שֶׁנָּגַלַּה לְעִיר
 'מִקְלָטוֹ וְרָצוּ אַנְשֵׁי הָעִיר לְכַבְּדוֹ,
 יֹאמֵר לָהֶם רֹצֵחַ אָנִי. אָמְרוּ לוֹ אַף
 עַל פִּי כֵן, יִקְבַּל מֵהֶן, שֶׁיִּצְאֵם וְזֶה
 דְּבַר יְהוֹצֵחַ. מֵעַלִּים הָיוּ שָׂכָר
 'לְלוֹהִים. דְּבַר רַבִּי יְהוּדָה. רַבִּי
 'מַאִיר אֹמֵר לֹא הָיוּ מֵעַלִּים לָהֶן
 שָׂכָר. וְחֹזֵר לְשִׁרְרָה שֶׁהָיָה בָּהּ.
 דְּבַר רַבִּי 'מַאִיר. רַבִּי יְהוּדָה
 אֹמֵר לֹא הָיָה חֹזֵר לְשִׁרְרָה שֶׁהָיָה
 בָּהּ.

1 The words in parenthesis are omitted in some texts. Compare שְׂבִיעִית 10⁸.
 2 Literally *his refuge*. 3 *Deuteronomy* 19, 4. 4 קְרִיצָה is the orthographical form in the Scriptural text. 5 If a homicide did not escape into exile in one of the six cities of refuge but fled into one of the forty-eight Levitical cities which also offered asylum (see 2⁴, Note 4), he was obliged to pay rental to the Levite with whom he lived. 6 His view is accepted. 7 His opinion is rejected. 8 Or לְשִׁרְרָה, to the official position. 9 Literally *in which he used to be*. A homicide returned a free man to his home on the death of the High Priest and could resume any office he occupied before. 10 His opinion is accepted. 11 His view is rejected. Some authorities favour this view and do not accept R. Meir's ruling.

CHAPTER 3

פֶּרֶק ג

Mishnah 1

משנה א

And these are they¹ that are to receive stripes: one that has sexual intercourse with his sister, or with his father's sister, or with his mother's sister, or with his wife's sister, or with his brother's wife, or with the wife of his father's brother, or with a menstruant [and these are to receive stripes:] a High Priest who wed a widow,² or a common priest that wedded a divorced woman or one that had performed *chalitzah*,³ an Israelite who married a bastard or a descendant of the Gibeonites,⁴ a Gibeonite descendant or a bastard that wed the daughter of an Israelite.

וְאֵלוֹ הֵן הַלּוֹקִין, הַבָּא עַל אָחוֹתָו וְעַל אָחוֹת אָבִיו וְעַל אָחוֹת אִמּוֹ וְעַל אָחוֹת אִשְׁתּוֹ וְעַל אֵשֶׁת אָחִיו, וְעַל אֵשֶׁת אָחֵי אָבִיו, וְעַל הַנְּדִיָּה; וְאֵלְמָנָה לְכַהֵן גְּדוּל, גְּרוּשָׁה וְחַלּוּצָה לְכַהֵן הַדִּיּוֹט, מִמְּזוּזָה וְיִגְתִּינָה לְיִשְׂרָאֵל, בֵּת יִשְׂרָאֵל לְנִתִּין וְלִמְזוּזָה. אֵלְמָנָה וְגְרוּשָׁה, חֵיבִין עָלֶיהָ מִשּׁוּם שְׁנֵי שְׁמוֹת. גְּרוּשָׁה וְחַלּוּצָה, אֵינוֹ חֵיב אֶלָּא מִשּׁוּם אֶחָד בְּלָבָד.

[If a High Priest wed] a woman that was a widow and had also been divorced,⁵ he is guilty because of her on two counts.⁶ [If a common priest wedded] a woman that was divorced and had also performed *chalitzah*, he is liable on one count⁷ only.

1 *Leviticus* 20, 17-21. 2 יְבָמוֹת 24. 3 See יְבָמוֹת, INTRODUCTION. A חַלּוּצָה is thus forbidden only מִדֶּרֶבֶנָּה (as enjoined by the Sages). 4 *Joshua* 9, 27. Compare יְבָמוֹת 83, 78b. 5 She was divorced by one husband and her second husband died, or she had been divorced by her husband who remarried her and then died. 6 He is liable to two scourgings for transgressing two prohibitory laws explicitly stated in the Law. 7 For marrying a divorced woman (the prohibition imposed on a priest not to marry a woman who had performed *chalitzah* is a Rabbinical law based on *Leviticus* 7, 8).

Mishnah 2

משנה ב

[And these, too, are to be scourged:] an unclean person who ate of [the] sacred things,¹ or [an unclean person] that entered the Temple when still unclean,² or one that ate [the] fat or blood³ or of [the] remainder⁴ or of [the] abomination,⁵ or of [an offering]

הַטָּמֵא שֶׁאָכַל אֶת-הַקֹּדֶשׁ, וְהַבָּא אֶל-הַמִּקְדָּשׁ טָמֵא, וְהָאוֹכֵל חֶלֶב, וְדָם, וְנוֹתֵר, וּפְגוּל, וְטָמֵא; הַשּׁוֹחֵט וְהַמְעֵלָה בַּחוּץ; וְהָאוֹכֵל

that had become unclean;⁶ or one who slaughtered [an offering] or offered [an offering] outside [the Temple Court],⁷ or he that ate leavened at Passover;⁸ or one that ate or performed an act of work on the Day of Atonement;⁹ or he who prepared [oil exactly like to] the oil [of anointment]¹⁰; or one that prepared [the like of] the incense,¹¹ or one who anointed himself with the anointing oil;¹² or he that ate of carrion¹³ or of unfit flesh¹³ or of unclean creatures¹⁴ or of creeping things;¹⁵ or he who ate of unliethed produce, or of first tithe from which the priest's due had not been separated, or of second tithe or dedicated produce which had not been redeemed.¹⁶ How much does one have to eat of unliethed produce to become liable?¹⁷ R. Simon¹⁸ says, Any quantity however small; but the Sages say, An olive's bulk.¹⁹ R. Simon said to them, 'Do you not agree with me that one who eats an ant of any bulk soever is liable [to scourging]?'²⁰ They replied to him, Because it is in the form in which it was created. He said to them, A single grain of wheat, too, is in the form in which it was created.

חֶמֶץ בַּפֶּסַח ; וְהָאוֹכֵל וְהַעוֹשֶׂה
מֵלֶאכָה בַּיּוֹם הַכַּפּוּרִים ; וְהַמִּפְטֵם
אֶת-יְהוָה ; וְהַמִּפְטֵם אֶת
הַקְטוֹרֶת ; וְהַסֵּךְ בְּשֶׁמֶן הַמִּשְׁחָה ;
וְהָאוֹכֵל וְהַגִּבּוֹל , וְיוֹטְרָפוֹת ,
וְשִׁקְצִים , וְיִרְמָשִׁים ; אֲכַל טָבַל ,
וּמַעֲשֵׂר רֵאשׁוֹן שֶׁלֹּא נִטְלָה תְרוּמָתוֹ ,
וּמַעֲשֵׂר שְׁנֵי וְהַקֹּדֶשׁ שֶׁלֹּא נִפְדּוּ-
בָּמָה יֹאכַל מִן-הַטָּבַל וְיֵהָא חֵיִב ?
רַבִּי שִׁמְעוֹן אוֹמֵר כָּל-שֶׁהוּא ;
וְחַכְמִים אוֹמְרִים בְּפָנוּת . אָמַר לָהֶם
רַבִּי שִׁמְעוֹן אֵין אַתֶּם מוֹדִים לִי
בְּאוֹכֵל נִמְלָה כָּל-שֶׁהוּא חֵיִיב .
אָמְרוּ לוֹ מִפְּנֵי שֶׁהִיא כְּבִרְיִיתָהּ .
אָמַר לָהֶן אַף הַטָּה אַחַת כְּבִרְיִיתָהּ .

1 Leviticus 7, 20. 2 Numbers 5, 3. 3 Leviticus 3, 17. 4 Exodus 29, 34; Appendix, Note 18. 5 Leviticus 7, 18; Appendix, Note 18. 6 Leviticus 7, 19. 7 Leviticus 17, 4, 9. 8 Deuteronomy 16, 3. 9 Leviticus 23, 29-31. 10 As produced by Moses. Exodus 30, 32. 11 Used in the Temple. Exodus 30, 37. The preparation of the incense was a closely guarded secret. 12 i.e., prepared by Moses only. Exodus 30, 32. 13 See Appendix, Note 15. 14 שִׁקְצָן, abominable thing, abomination, particularly unclean animal. Leviticus 20, 25. 15 On land and in the sea. Compare נִדְיָה 32; סִנְהֶדְרִין 82. שִׁקְצִים וְיִרְמָשִׁים, forbidden animals and reptiles (and all kinds of forbidden food). 16 See Appendix, Note 1; דְּמָאֵי, INTRODUCTION; תְּרוּמוֹת, INTRODUCTION; מַעֲשֵׂרוֹת, INTRODUCTION; מַעֲשֵׂר שְׁנֵי, INTRODUCTION. 17 To scourging. 18 His view is rejected. 19 Their opinion is accepted that one who eats less than this quantity is exempt. 20 Leviticus 11, 44 et seq.

Mishnah 3

If one ate of the *first-fruits* before he had recited over them,¹ or [ate of] the *most holy sacrifices*² outside the *curtains*,³ or [ate of] the *lesser holy sacrifices*⁴ or [of] the *second tithe*⁵ outside the Wall [of Jerusalem], or broke the bone of a clean *Passover-offering*,⁶ he must receive the *forty stripes*. But if one left over [aught] of a clean [*Passover-offering*], or broke the bone of an unclean [*Passover-offering*] he does not have to suffer the *forty stripes*.

מִשְׁנָה ג
הָאוֹכֵל בְּכוּרִים עַד שֶׁלֹּא קָרָא
יַעֲלֶיהֶם, קָדְשֵׁי קִדְשִׁים חוּץ
לְקִלְעִים, קָדְשֵׁי קָלִים וּמַעֲשֵׂר
שְׁנֵי חוּץ לַחֹמָה, הַשׁוֹבֵר אֶת־הָעֶצֶם
בַּפֶּסַח הַטָּהוֹר, הָרִי זֶה לֹקֵה
אֲרֶבְעִים. אֲבָל הַמּוֹתִיר בְּטָהוֹר,
וְהַשׁוֹבֵר בְּטָמֵא, אֲנוּ לֹקֵה
אֲרֶבְעִים.

1 The *Avowal*. Deuteronomy 26, 5-10; בְּכוּרִים, 36; Appendix, Note 16. 2 זְבָחִים 51-5. Or קִדְשֵׁי. 3 i.e., outside the עֲזָרָה, Temple Court. Exodus 27, 9, 4 זְבָחִים, 56-8. 5 Appendix, Note 1; מַעֲשֵׂר שְׁנֵי, INTRODUCTION. 6 Exodus 12, 46; פֶּסַחִים, INTRODUCTION.

Mishnah 4

If one took the mother [-bird] with the young,¹ R. Judah² says, He must suffer the *forty stripes* but he does not have to set free [the mother-bird]; but the Sages say, He must let [the mother-bird] go but he does not incur the *forty stripes*. This is the general principle:§ [whenever one transgresses] a *negative command* that is* coupled with the injunction *arise and do*, then one does not become liable³ [to scourging]. *Or שִׁישׁ-בָּהּ.

מִשְׁנָה ד
הַנוֹטֵל יָאֵם עַל הַבָּנִים, רַבִּי יְהוּדָה
אוֹמֵר לֹקֵה וְאִינוֹ מְשַׁלֵּחַ; וְנַחֲמִים
אוֹמְרִים מְשַׁלֵּחַ וְאִינוֹ לֹקֵה. זֶה
הַכֹּלֵל, כָּל־מִצְוֹת לֹא תַעֲשֶׂה *שִׁישׁ
בָּהּ קוּם עֲשֵׂה, אִין יַחֲיִיבִין עָלֶיהָ.

1 Deuteronomy 22, 6, 7; חוֹלֵין, 12^a. 2 His view is rejected. 3 קוּם עֲשֵׂה, *rise and do*, a technical expression for an act which can repair the breach of a prohibitive law (see ADDENDA). In this case the *negative command* is not to seize the mother-bird, and this transgression is remedied by the *positive command* to set it at liberty. But if the transgressor killed the mother-bird or it died while in his possession he cannot fulfil the *positive command* now, and he must therefore undergo the punishment of the *forty stripes*. §Popular pronunciation הַכֹּלֵל.

Mishnah 5

If one tore out the corners of [the hair of] his head,¹ or rounded off the *hair-corners of his head*,² or shaved off the corners of his beard,³ or made one cut for the dead,⁴ he becomes liable [to suffer the *forty stripes*]. If one made a single cutting for five dead or five cuttings for one dead, he is liable for every one.⁵ [If one round off the corners] of the head, [he is liable to] two [scourgings], one [scourging] for one side⁶ and the other [scourging] for the other side; [and for removing the hair] of the beard, [he is liable to] two [scourgings] for one side and two [scourgings] for the other side and one [scourging] for the under side. R. Eliezer⁷ says, If one took it all off at once, he is only liable to one [scourging]. And one is not liable [to the *forty stripes*] unless he removes it [—the beard—] with a razor. R. Eliezer⁷ says, even if he removed it with pincers⁸ or with a [hair-] scraper,⁹ he is liable [to the *forty stripes*].

משנה ה

הַקֹּרֵחַ קָרַחַהּ יִבְרָאשׁוּ, וְהַמְּקִיף פֶּאת רֵאשׁוֹ, וְהַמְּשַׁחִית פֶּאת וְהַשּׁוֹרֵט שְׂרִיטָה אַחַת עַל יְהַמַּת חֵיב. שָׂרַט שְׂרִיטָה אַחַת עַל חֲמֵשֶׁה מֵתִים, אוֹ חֲמֵשֶׁה שְׂרִיטוֹת עַל מֵת אֶחָד, חֵייב עַל כָּל-אַחַת וְאַחַת. עַל הָרֵאשׁ שְׁתֵּימִם, אַחַת מִכָּאן, וְאַחַת מִכָּאן, עַל הַזָּקֵן שְׁתֵּימִם מִכָּאן וּשְׁתֵּימִם מִכָּאן, וְאַחַת מִלְמַטָּה. רַבִּי אֱלִיעֶזֶר אוֹמֵר אִם נִטְלוּ כוֹלּוֹ כְּאַחַת, אֵינוֹ חֵייב אֶלָּא אַחַת. וְאֵינוֹ חֵייב עַד שִׁיִּטְלֶנּוּ בְּתַעֲרֵר. רַבִּי אֱלִיעֶזֶר אוֹמֵר אֲפִילוֹ לְקַטּוֹ בְּמַלְקָט, אוֹ בְּרֵהִיטָנִי חֵייב.

1 Literally *made a baldness on his head*—as an act of grief for the dead. *Deuteronomy* 14, 1. 2 *i.e.*, cut away the hair over the forehead and temples and behind the ears. 3 Or *the hair of his chin*. *Leviticus* 19, 27. See *מִכּוֹת* 20b. 4 *Leviticus* 19, 28. 5 To scourging on each of the five counts (for the cuttings and for the dead). 6 *מִכָּאן* traditional reading. 7 His opinion is rejected. 8 Or special *pincers, nippers, forceps, tweezers*, for plucking and picking hair, wool, etc. (see *נִייר* 40b). 9 A special tool for removing hair singly, or an instrument for shaving off hair.

Mishnah 6

If one wrote [into his skin] etched-in markings,¹ [he is liable to scourging]. If one wrote but did not etch in, or etched in but did not write,² he is not culpable, but [he is culpable]

משנה ו

הַכּוֹתֵב יִכְתּוֹבֵת קַעֲקַע. כָּתַב וְלֹא קַעֲקַע, קַעֲקַע וְלֹא כָּתַב, אֵינוֹ חֵייב, עַד שֶׁיִּכְתּוֹב וְיַקַּעֲקַע בְּדָיו, יוֹבֵכְחוּל,

only if he write and etches in with ink or with dye³ or with any substance that makes a [permanent] mark. R. Simon ben Judah states in the name of R. Simon, One does not become liable unless he writes there the name [of a deity], as it is said,⁴ *nor imprint⁵ any marks upon you* : I⁶ am the Eternal.

וּבְכָל דְּבַר שֶׁהוּא רוֹשֵׁם רַבִּי שִׁמְעוֹן
 בֶּן יְהוּדָה מְשׁוֹם רַבִּי שִׁמְעוֹן אוֹמֵר
 אֵינוֹ חַיִּב עַד שֶׁיִּכְתּוֹב שֵׁם הַשֵּׁם,
 שֶׁנֶּאֱמַר וּכְתוּבַת קַעֲקַע לֹא תִתְּנוּ
 בְּכֶם אֲנִי ה'.

1 Or קַעֲקַע. *i.e.*, a complete act of etched tattooing. 2 *i.e.*, the process of tattooing was incomplete. 3 Literally *eye-paint* (a powder for painting the eyelids). 4 *Leviticus 19, 28*. 5 The Scriptural orthography is וּכְתַבְתָּ. 6 R. Simon ben Judah stresses the word אֲנִי, I. His view is rejected.

Mishnah 7

If a *nazirite*¹ drink wine throughout the day, he is liable to only one [scourging].² If they said to him, 'Do not drink! Do not drink!'³ and yet he drank, then he is culpable on each count.⁴

מִשְׁנֵה ז'
 יְנוּיֵר שֶׁהוּא שׁוֹתֵה בְּיַזְוּ כָּל-הַיּוֹם
 אֵין חַיִּב אֶלָּא אַחַת. אָמְרוּ לוֹ אַל
 תִּשְׁתֶּה אַל תִּשְׁתֶּה, וְהוּא שׁוֹתֵה, חַיִּב
 עַל כָּל-אַחַת וְאַחַת.

1 *Numbers 6, 1 et seq.*; נְזִיר, INTRODUCTION and 64. 2 But if it was pointed out to him that a vessel contained a number of portions and he was admonished that he was liable on each of them, then he is so liable on each count even if the warning was made only once. 3 Equivalent to more than one warning. 4 To forty stripes for each warning which he disregarded.

Mishnah 8

If [a nazirite] repeatedly contract uncleanness* because of the dead throughout the whole day, he is liable to only one [scourging of the forty stripes].¹ If they said² to him, 'Do not contract uncleanness!*' and he did contract uncleanness, he is liable [to suffer the forty stripes] for each separate case. If [a nazirite] cut off his hair throughout the day, he

מִשְׁנֵה ח'
 הָיָה *מְטַמֵּא לַמֵּתִים כָּל-הַיּוֹם, אֵינוֹ
 חַיִּב אֶלָּא אַחַת. אָמְרוּ לוֹ אַל
 *תִּטְמֵא, אַל *תִּטְמֵא, וְהָיָה *מְטַמֵּא,
 חַיִּב עַל כָּל-אַחַת וְאַחַת. הָיָה
 מְגַלַּח כָּל-הַיּוֹם, אֵינוֹ חַיִּב אֶלָּא
 אַחַת. אָמְרוּ לוֹ אַל תִּגְלַח אַל תִּגְלַח,
 וְהוּא מְגַלַּח, חַיִּב עַל כָּל-אַחַת

becomes liable to only one [scourging of the *forty stripes*]. If they said² to him, 'Do not cut the hair off! Do not cut the hair off!' and he none the less did cut it off, he is liable [to receive [*forty stripes*] on every separate count. If one had on [some garment of] *forbidden junction*³ for a whole day, he is liable [to *forty stripes*] on one count only. If they said² to him, 'Do not wear [aught of] *forbidden junction*! Do not wear [aught of] *forbidden junction*!' and he nevertheless took it off and put it on again, he is liable to [*forty stripes*] for every single occasion.⁴

וְאָחַת. הָיָה לְבוּשׁ בְּכִלְאִים כָּל-
הַיּוֹם, אֵינּוּ חַיִּיב אֶלָּא אַחַת. אָמְרוּ
לוֹ אַל תִּלְבַּשׁ אֶל תִּלְבַּשׁ, וְהוּא
פוֹשֵׁט וְלוֹבֵשׁ, חַיִּיב עַל כָּל-אַחַת
וְאָחַת.

1 See זִוֵּר 6⁴. 2 *i.e.*, they admonished him more than once. 3 See Deuteronomy 22, 11; כִּלְאִים, INTRODUCTION, 81, 91ⁿ; Appendix, Note 14. 4 According to the גְּמָרָא this means that the transgressor took off and put on the prohibited garment between one warning and another and he becomes culpable for each warning uttered. *Abbreviated *Hithpael* forms of מִתְטַמֵּא, מִתְטַמְּא.

Mishnah 9

מִשְׁנָה ט

It may happen* that one ploughs a single furrow and becomes liable thereby [at the same time to eight scourgings]¹ because of [the transgression of] eight prohibitions:§ if he plough with an ox and an ass² that have been dedicated,³ [if he plough] among [plants of] *forbidden junction*⁴ in a vineyard⁵ in the *Sabbatical year*,⁶ on a *Festival-day*,⁷ and he being a priest and a *nazirite* [ploughing] in a place of defilement.⁸ Chania ben Chachinai says, Even he that wears [aught of] *forbidden junction*.⁹ [The Sages] said to him, This does not come under the same heading [of ploughing].¹⁰ He replied to them, Then even so neither does a *nazirite* come within the same category¹¹ [of ploughing]. *Or יֵשׁ-חֹרֶשׁ. §Popularly pronounced לאוֹן.

יֵשׁ חֹרֶשׁ תֵּלֵם אַחַת, וְחַיִּיב עָלָיו
מִשְׁמֵם שְׁמוֹנָה לְאוֹן, הַחֹרֶשׁ בְּשׂוֹר
וְחִמּוֹר, וְהֵן מוֹקְדָשִׁים, בְּכִלְאִים
בְּכֶרֶם וּבְשִׁבְעֵי עֵיט, יוֹם טוֹב, וְכֹהֵן
וְנָזִיר בְּבֵית הַטּוֹמְאָה. חֲנַיָּא בֶן
חַכִּינַי אָמַר אֶף הַלּוֹבֵשׁ בְּכִלְאִים.
אָמְרוּ לוֹ אֵינּוּ הַשֵּׁם. אָמַר לֵהֶם
אֶף לֹא הַנָּזִיר הוּא הַשֵּׁם.

1 If the transgressor had been warned on each count. 2 Deuteronomy 22, 10. 3 Leviticus 5, 15 *et seq.* The ox was intended for an offering, and the value of the ass was to be handed in to the Temple treasury. Here are involved two prohibitions: (i) the employment together of diverse kinds (כִּלְאִים) of animals; and (ii) the

employment of the dedicated ox (already mentioned) and of the dedicated ass (already mentioned). 4 See the preceding *Mishnah*, **Note 3**. This makes the third prohibition transgressed. 5 *Leviticus* 19, 19. Where wheat, barley and grape-seed had been scattered. This is the fourth transgressed prohibition. 6 *Leviticus* 25, 4; שְׂבִיעִית, INTRODUCTION. This constitutes the fifth violation of a prohibition. 7 This makes the sixth prohibition violated. 8 *i.e.*, a burial ground. Here are the seventh and eighth cases of transgressions of prohibitions. 9 Which should in his opinion constitute a ninth act of transgression of a prohibition, liable to the *forty stripes*. 10 The liability does not arise through the act of ploughing. 11 The liability is because of uncleanness and not because of ploughing.

Mishnah 10

How many lashes do they inflict on one? *Forty less one*,¹ as it is said, *by number*,² *forty*³—a number that is near to forty.⁴ R. Judah says, He must receive the *full forty* [*stripes*]. And where does he suffer the additional [fortieth] one? Between the shoulders.⁵

משנה י

כמה מלקין אותו? ארבעים חסר אחת, שנאמר 'במספר' ארבעים, מנין שהוא סמוך 'לארבעים' רבי יהודה אומר ארבעים שלמות הוא לוקה. והיכן הוא לוקה את-היתרה? בין 'בתיפוי'.

1 *i.e.*, thirty-nine (the term *thirty-nine* is not used because Scripture says *forty*, hence the expression *forty less one*. Compare a similar expression in שִׁבְתַּי 72. 2 *Deuteronomy* 25, 2. 3 *Deuteronomy* 25, 3. 4 The full forty lashes must not be administered to even a most powerful man. 5 According to R. Judah (whose view is rejected) the transgressor receives thirteen stripes on the body, thirteen stripes across one shoulder, and thirteen stripes across the other shoulder, in which case the *Mishnah* explains that the fortieth stripe would have to be applied between the shoulders.

Mishnah 11

The number of lashes that may be assessed for him must be divisible by three.¹ If they estimated that he could bear *forty* [*stripes less one*], and when he had borne them in part they said that he could not suffer the whole *forty* [*minus one*], he is exempt [from the remainder]. If they had

משנה יא

אין אומדין אותו אלא במכות הראויות להשתלש. אמדוהו לקבל ארבעים, לקה מקצת, ואמדו שאין יכול לקבל ארבעים פטור. אמדוהו לקבל שמנה עשר, משלקה אמדו

estimated that he could stand only eighteen, and after he had received the stripes they said that he could undergo the [whole] forty [less one], he is exempt [from the additional stripes]. If he had transgressed against* two prohibitions,²§ and they had assessed for him one assessment³ [for the two transgressions], he receives the stripes and is exempt [from any more]; but if not,⁴ he must be scourged [with the number of stripes he was first condemned to receive], and when he is healed he must once more be scourged [after a second estimation].

שִׁיכוֹל הוּא לְקַבֵּל אַרְבָּעִים פְּטוֹרֵי
 עֶבֶר עֲבִירָה *שִׁישׁ בָּהּ שְׁנֵי לְאִוִן,
 אֲמָדוּהוּ *אֲמָד אֶחָד, לֹקָה וּפְטוֹר;
 וְאִם יֵלְאוּ לֹקָה וּמִתְרַפָּא יִחוּר
 לְלֹקָהּ. לִין. §Popularly pronounced

1 The estimation must be made by an expert after thorough examination of the sentenced man's health to avoid death resulting from excessive corporal punishment. 2 And he was liable to two courses of stripes. 3 The full thirty-nine stripes for one transgression and not less than three for the other. 4 If they had estimated that he was to receive only one spell of thirty-nine (or less) lashes. Or לֵא.

Mishnah 12

משנה יב

In what manner do they scourge him? They¹ tie his two hands to a post,² on either side, and the superintendent³ of the synagogue [of the court] takes hold of his garments [at the neck and lays bare his body]—if they are rent they are rent, and if the seams are torn apart they are torn apart⁴—so that he exposes his chest;⁵ and a stone⁶ is placed behind him⁷ on which the superintendent of the synagogue stands⁸ and a strap of calf [-hide] is in his hand, first folded into two and the two folded into four⁹ and [fastened] thereto are two strips [of ass-hide] which rise and fall.¹⁰

כִּיצַד מְלַקֵּין אוֹתוֹ? יְכַפֵּת שְׁתֵּי
 יָדָיו עַל הָעַמּוּד, הַיָּמִינִי וְהַשְּׂמִינִי,
 וְחֹנֵן הַכְּנֶסֶת אוֹחֶז בְּבִגְדָיו, אִם
 נִקְרְעוּ נִקְרְעוּ, וְאִם נִפְרְמוּ יִנְפְּרְמוּ,
 עַד שֶׁהוּא מְגַלֵּה אֶת-לְבוֹ; וְהָאֶבֶן
 נִתּוּן מֵאַחֲרָיו, חֹנֵן הַכְּנֶסֶת עוֹמֵד
 עָלָיו, וְרֹצְעָה שֶׁל עֵגֶל בִּידוֹ כְּפוּלָה
 אֶחָד לְשָׁנִים וּשְׁנַיִם *לְאַרְבָּעָה וּשְׁנַיִם
 רֹצְעוֹת עוֹלוֹת *וְיִוָּרְדוֹת בָּהּ.

1 Some render this: *One fixes his two hands in stocks on the post.* 2 The post is firmly fixed upright in the ground, and the top is below the heart so that the accused can lean over the post, and also that lashes can be applied also on the chest. 3 Or יִחְזֵן. 4 Compare סוּטָה 15. 5 To receive the blows; and also the shoulders and

back are exposed, for the stripes must be laid on the bare body. 6 Literally *the stone*. 7 So that he does not see the coming blows—in order to lessen his mental suffering. 8 So that the blows come down with great force. 9 The one long strap is doubled and redoubled to form four layers. 10 ‘. . . which rise and fall,’ perhaps ‘. . . which run from one end to the other.’

Mishnah 13

משנה יג

Its handpiece is a handbreadth¹ [in length] and its width² is one handbreadth, and its end must reach up to his navel.³ And he lays on one third⁴ of the lashes in front of him [on the chest] and two-thirds behind him;⁵ and he must not scourge him when [the victim is] standing or sitting, but only when he is bending over,⁶ as it is said,⁷ that the judge⁸ shall cause him to lie down. And he who smites⁹ must smite with his one hand with all his might.¹⁰

יָדָהּ יִטְפַּח וְרִחְבָּהּ טַפַּח, וְרֵאשָׁהּ מִנְעֻת עַל פִּי כְרִסּוֹ. וּמִכָּה אוֹתוֹ שְׁלִישׁ מִלְפָּנָיו וּשְׁתֵּי יָדוֹת מִלְאַחֲרָיו; וְאֵינוֹ מִכָּה אוֹתוֹ לֹא עוֹמֵד וְלֹא יוֹשֵׁב אֶלָּא מוֹטֵה, שְׁנֹאֲמַר וְהַפִּילוֹ הַשּׁוֹפֵט. וְהַמִּכָּה מִכָּה בְּיָדוֹ אַחַת בְּכָל כָּחוֹ.

1 9.34 cm. or 3.65 inches (see וְרֵעִים, Page 18f.). 2 Of each strap. 3 Literally *the opening of his belly (stomach)*. The handpiece had a hole so that the superintendent could lengthen or shorten the strap as required in order that its end reached to the navel when laid on over the shoulders. 4 Traditional pronunciation שְׁלִישׁ. 5 One-third over one bared shoulder and the remainder across the other bared shoulder. 6 On to the post. 7 Deuteronomy 25, 2. 8 The Scriptural text gives הַשֹּׁפֵט. 9 The scourge is raised with both hands but the downward blow is delivered with one hand. 10 The punishment must be severe and not a mere formality.

Mishnah 14

משנה יד

And the reader¹ recites, *If² thou wilt not observe³ to do etc.,* then⁴ the Eternal will make thy plagues⁵ wonderful and the plagues of etc.,^{6*}* and [the reader] returns to the beginning of the passage.⁷ (*Observe⁸ therefore the words of this covenant etc.,* and he concludes with *But⁹ He, being full of compassion, forgiveth iniquity etc.,** and he goes back to the beginning of the passage¹⁰). And if he die under his

יְהִי קוֹרֵא קוֹרֵא אִם-לֹא תִשְׁמֹר לַעֲשׂוֹת נְגוּ, וְהַפְּלֵא אֶת-מִכּוֹתָךְ וְאֶת מִכּוֹת נְגוּ, וְחֹזֵר לְתַחֲלֵת הַמִּקְרָא (וְשִׁמְרָתֶם אֶת-דְּבָרֵי הַבְּרִית הַזֹּאת נְגוּ, וְחֹתֶם וְהוּא רַחוּם יִכְפֹּר עֲוֹן נְגוּ, וְחֹזֵר לְתַחֲלֵת הַמִּקְרָא). וְאִם מֵת תָּחַת יָדוֹ

hand, he is exempt,¹¹ [but] if he added to him one lash too many, and he died, then he must flee into exile because of him. If [the scourged]¹² committed a nuisance, whether with excreta§ or whether with urine, he is exempt.¹³ R. Judah¹⁴ says, A man with excretion,¹⁵ and a woman with urine.¹⁶ §Or בְּרֵעִי.

יִפְטוֹר, הוֹסִיף לוֹ עוֹד רְצוּעָה
אֶחָת וּמָת, הָרִי זֶה גּוֹלָה עַל יָדוֹ.
יִתְקַלְקַל בֵּין בְּרֵעֵי, בֵּין בְּמִים.
יִפְטוֹר. רַבִּי יִיְהוּדָה אוֹמֵר הָאִישׁ
בְּרֵעִי, וְהָאִשָּׁה בְּמִים.

1 The most important among the judges. 2 *Deuteronomy* 28, 58. 3 תְּשֹׁמֵר is the Scriptural orthography. 4 *Deuteronomy* 28, 59. 5 The Scripture gives the order מִכְתָּף. 6 The second judge counts the lashes and the third judge gives the order for each blow. 7 He repeats the recital if the punishment is not yet finished. 8 *Deuteronomy* 29, 8. Some maintain that this passage is also included in the recital before reverting to the beginning of the passage. 9 *Psalms* 78. 10 This bracketed part is considered redundant by some authorities. 11 The scourger does not go into exile to a city of refuge because his work was carried out by authority of the court. 12 Fear and pain made him incontinent. Some render . . . יִתְקַלְקַל. *If he should be dishonoured, because of the emission of excreta and urine.* 13 From the rest of the lashes. See *Deuteronomy* 25, 3. He is dishonoured by his incontinence and must not suffer further humiliation. But if this happened because of his fear before the scourging he is not exempt. 14 His view is rejected. 15 *i.e.*, he is only exempt if he befouled himself with excreta. 16 *i.e.*, she is exempt even if she befouled herself with urine. *Abbreviation for וְגוֹמֵר.

Mishnah 15

מִשְׁנָה טו

All who are liable to excision,¹ if they have been scourged,² are exempt from their [penalty of] excision, as it is said,³ then thy brother should be dishonoured before thine eyes—when he has been scourged then he is as thy brother.⁴ This is the opinion of R. Chanania ben Gamaliel. R. Chanania ben Gamaliel said, If one who commits a transgression places his soul⁵ in jeopardy thereby, how much more so, if one perform a single religious duty, shall his soul be restored to him!⁶ R. Simon says,

כָּל-חַיִּיבֵי יְכָרִיתוֹת יִשְׁלְקוּ, וְנִפְטְרוּ
יְדֵי כְרִיתָתָם, יִשְׁנֹאֲמַר וְנִקְלָה אַחֲרָיָה
לְעֵינָיָה, כְּשֶׁלָּקָה הָרִי הוּא יְכָאֲחִיָּה.
דְּכָרִי רַבִּי חֲנַנְיָא בֶן גַּמְלִיאֵל. אָמַר
רַבִּי חֲנַנְיָא בֶן גַּמְלִיאֵל מָה אִם
הָעוֹבֵר עֲבִירָה אֶחָת נוֹטֵל נַפְשׁוֹ
עָלָיָה, הָעוֹשֶׂה מִצְוָה אֶחָת, עַל אֶחָת
כְּמָה וְכְמָה שְׁתִּינְתָּן לֹא נִפְשׁוֹ. רַבִּי
שִׁמְעוֹן אוֹמֵר מִמְקוֹמוֹ הוּא לְמַד,

From the text on the subject⁷ one may learn [this], as it is said,⁷ *even the souls that do⁸ them shall be cut off etc.** and it says,⁹ *which if a man do¹⁰, he shall live by them*—thus¹¹ who-soever sits and commits no transgression to him is a reward given¹² as to one who performs¹³ a religious obligation. R. Simon the son of Rabbi says, Behold, it says,¹⁴ *Only be steadfast in not eating¹⁵ the blood ; for the blood is the life etc.** (and)¹⁶ if in the case of blood, which the soul of man abhors, he who keeps himself apart therefrom receives a reward, how much the more, in the case of robbing and incest which the soul of man lusts after and covets, shall he who keeps away from them acquire¹⁶ merit for himself and for his generations and for the generations of his generations to the end of all generations.

שֶׁנֶאֱמַר וְנִכְרְתוּ הַנֶּפְשׁוֹת הָעוֹשׂוֹת *וְגו', וְאֹמֵר אֲשֶׁר יַעֲשֶׂה ¹⁰אֹתָם הָאָדָם וְחַי בָּהֶם, ¹¹הָא כָּל-הַיּוֹשֵׁב וְלֹא עָבַר עֲבִירָה ¹²יְגוֹתֵנִן לוֹ שְׂכָר ¹³כְּעוֹשֶׂה מִצְוָה. רַבִּי שִׁמְעוֹן בֶּר רַבִּי אֹמֵר הָרִי הוּא ¹⁴אֹמֵר רַק חֲזוּק לְבַלְתִּי ¹⁵אֲכֹל הַדָּם כִּי הַדָּם הוּא הַנֶּפֶשׁ *וְגו' וּמָה אִם הַדָּם שֶׁנֶּפְשׁוֹ שֶׁל אָדָם קָצָה מִמֶּנּוּ, הַפּוֹרֵשׁ מִמֶּנּוּ מִקְבֵּל שְׂכָר, גּוֹל וְעַרְיּוֹת שֶׁנֶּפְשׁוֹ שֶׁל אָדָם מִתְאַוֶּה לָהֶן וּמִתְמַדְדֵן, הַפּוֹרֵשׁ מֵהֶן עַל אַחַת פְּמָה וּכְמָה ¹⁶שִׁיּוּפָה לוֹ וּלְדוֹרוֹתָיו וּלְדוֹרוֹת דּוֹרוֹתָיו, עַד סוֹף כָּל-הַדּוֹרוֹת. *וְגוֹמֵר.

1 פְּרִיָּוֹת, the plural form of פְּרִיָּה, is also used as the plural of פְּרִיָּה; similarly פְּרִיָּוֹת is an inflexion of פְּרִיָּה. See Appendix, Note 2; פְּרִיָּוֹת, INTRODUCTION. **2** But they must have expressed penitence. **3** Deuteronomy 25, 3. **4** An homiletic rendering of לָקַח, scourged, comparable to נִקְלָה, shamed. As thy brother, i.e., as sinless as thyself. **5** Or life (since he may succumb under the corporal punishment inflicted). Compare 3¹⁴. **6** Compare יוֹמָא 76a. **7** Leviticus 18, 29, referring to excision. **8** The Scriptural orthography is הָעוֹשֶׂה. **9** Leviticus 18, 5. **10 Literally do them. The Scripture gives אֹתָם. **11 הָא, this means to say, that is, i.e. **12** For restraint of one's inclination to transgress in face of temptation. **13** The doing to which Leviticus 18, 5 refers is in effect abstinence from the transgressions of which Leviticus 18, 29 speaks. **14** Deuteronomy 12, 25. **15 אֲכֹל is the orthographical form in the Scriptural text. **16** See ADDENDA at the end of this Tractate.******

Mishnah 16

מִשְׁנָה טז

R.¹ Chananiah ben Akashya says, The Holy One, blessed be He, was pleased to confer favour upon Israel; wherefore he multiplied for them

יְרַבִּי הַנְּבִיא בֵּן עַקְשִׁיא אֹמֵר רְצָה הַקָּדוֹשׁ בְּרוּךְ הוּא לְנוֹכַח אֶת-

the Law and commandments, as it is said,² The *Eternal* was pleased, for his righteousness' sake,³ to make the Law great⁴ and to render it honourable.⁵

יִשְׂרָאֵל לְפִיכָף הִרְבָּה לָהֶם תּוֹרָה
וּמִצְוֹת, יִשְׁנְאָמַר, ה' חֲפֵץ לְמַעַן
יַצְדִּיקוּ יִגְדִּיל תּוֹרָה יִרְאֲדִיר.

1 This *Mishnah* is also quoted at the conclusion of the *Tractate* אָבוֹת (611).
2 *Isaiah* 42, 21. Compare *Isaiah* 43, 7; *Exodus* 15, 18. 3 To justify Israel's receiving a plenitude of rewards. 4 With the numerous commandments. 5 That Israel may feel honoured and privileged to carry out the commandments. Another rendering is to aggrandise (or magnify) the Law and make it mighty. See אָבוֹת 611, Note 6. 6 In some editions גְּשֻׁלְמָה מְסַכֶּת מְכוֹת, TRACTATE MAKKOTH CONCLUDED.

סֵלִיק מְסַכֶּת מְכוֹת

CONCLUSION OF TRACTATE MAKKOTH.

ADDENDA

[Additional Notes to this *Tractate*]

- 23, Note 1. Or 'If he killed him unintentionally, and not in the course of justifiable chastisement' (compare the preceding *Mishnah*).
- 23, Note *, Page 313. בֵּי רַבִּי, בְּרַבִּי = בֵּי רַבִּי, belonging to an academy or school of an eminent teacher, title of scholars, and most often given to disciples of רַבִּי יְהוּדָה and his contemporaries, but to some of his predecessors also and occasionally to the first אַמּוֹרָאִים. See שַׁבָּת 115a; עֲרוּבִין 53a; גִּטִין 47; בָּבָא מְצִיעָא 73, 85a; אָהֳלוֹת 35; חוּלִין 137a; מְכוֹת 5b.
- 27, Note 1. The High Priest had died and his successor had not been appointed.
- 34, Note 3. Or a transgression of a prohibitive law that must be repaired by an action.
- 315, Note 16. A more literal rendering: 'and if man, whose soul abhors blood, keep himself apart therefrom and [therefore receives reward], how much the more, if he keep away from robbery and incest which the soul of man yearns for and covets, shall he acquire.'

מִסְכֵּת

שְׁבוּעוֹת

TRACTATE SHEVUOTH

[BEING THE SIXTH TRACTATE OF ORDER NEZIKIN]

TEXT - INTRODUCTION - TRANSLATION - NOTES

By

PHILIP BLACKMAN, F.C.S.

The MS. of this Tractate was revised by

RABBI EUGENE NEWMAN, M.A.

Rabbi of Portsmouth

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry, no matter how small, should be recorded to ensure the integrity of the financial statements. This includes not only sales and purchases but also expenses, income, and any other financial activity.

Next, the document outlines the various methods used to collect and analyze data. It mentions the use of surveys, interviews, and focus groups to gather information from a diverse group of participants. The data is then analyzed using statistical techniques to identify trends and patterns. This process is crucial for understanding the underlying factors that influence the results.

The third section focuses on the interpretation of the findings. It explains how the data is used to draw conclusions and make recommendations. The authors highlight the need to consider the limitations of the study and to provide a clear and concise summary of the key findings. This section is essential for ensuring that the research is accessible and useful to the intended audience.

Finally, the document concludes with a discussion of the implications of the research. It suggests that the findings have significant implications for the field and that further research is needed to explore these issues in greater depth. The authors encourage other researchers to build on their work and to continue to advance the knowledge in this area.

INTRODUCTION

שְׁבוּעוֹת, **Shevuoth**,* is the sixth מַסְפֵּקֶת (*Tractate or Treatise*) of סֵדֶר נְזִיקִין (the *Fourth Order Nezikin*) of the מִשְׁנָה (*Mishnah*). * Some prefer **Shebuoth**.

The term שְׁבוּעוֹת is the plural form of the substantive שְׁבוּעָה, *oath*, a derivative of the verb שָׁבַע (this *Kal* form is not used).

The *Tractate* deals mainly with the laws and regulations concerning various forms of oaths, not only those administered in court but also those formed in private life. Among many other subjects dealt with the principal ones are rules regarding ritual defilement and uncleanness, atonement by sacrifices, transport on the Sabbath, and wardens.

The *Tractate* is based on *Exodus* 22, 6-10, and *Leviticus* 5, 4, 5, 21, 22.

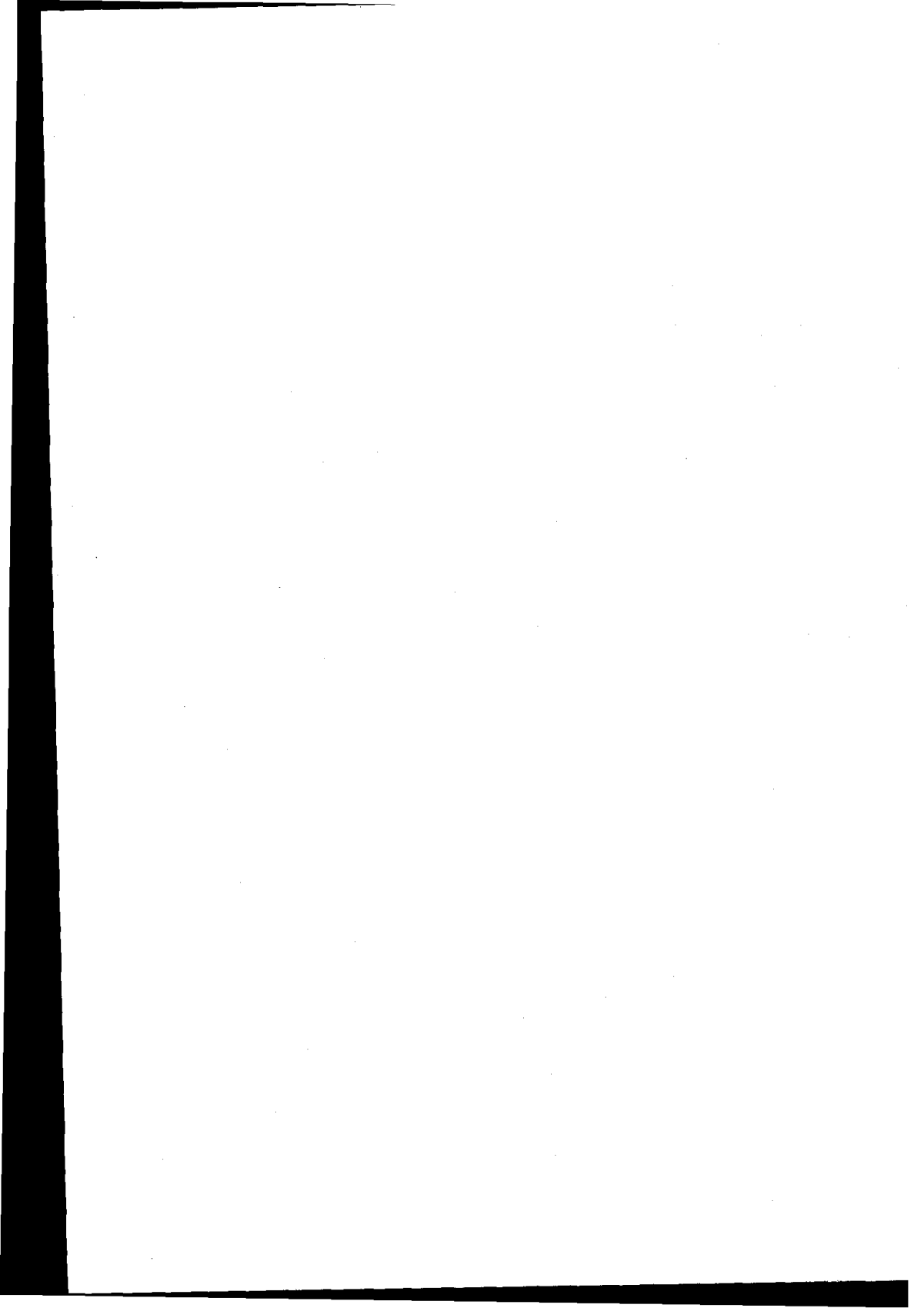
The *Tractate* has גְּמָרָא to it in both the תַּלְמוּד בְּבֵלִי (*Babylonian Talmud*) and תַּלְמוּד יְרוּשָׁלַיִם (*Jerusalem, or Palestinian, Talmud*).

The titles of its eight Chapters are:

CHAPTER 1	שְׁבוּעוֹת שְׁתֵּימִים	פָּרָק א
CHAPTER 2	יְדִיעוֹת הַטּוֹמְאָה	פָּרָק ב
CHAPTER 3	שְׁבוּעוֹת שְׁתֵּימִים	פָּרָק ג
CHAPTER 4	שְׁבוּעוֹת הָעֵדוּת	פָּרָק ד
CHAPTER 5	שְׁבוּעוֹת הַפְּקָדוֹן	פָּרָק ה
CHAPTER 6	שְׁבוּעוֹת הַדְּיִינִין	פָּרָק ו
CHAPTER 7	כְּלֵהוֹשֵׁבֵעֵין	פָּרָק ז
CHAPTER 8	אַרְבָּעָה שׁוֹמְרֵין	פָּרָק ח

The following is an epitome of the contents of the eight Chapters.

1. Classes of oaths; defilement, uncleanness, leprosy; manner of making expiation or atonement. 2. Uncleanness; entering the Temple in uncleanness, and sacrifice in atonement. 3. The kinds of oaths; swearing; vowing; penalties for the violation of these. 4. Witnesses and oaths. 5. Oaths, persons, and cases relating to deposits or objects forcibly or wrongfully retained or acquired. 6. The administration of the oath; the manner and formulation of a claim, and the objects and subjects involved. 7. The plaintiff and the oath; the defendant and the oath; the trustee and the oath. 8. Four kinds of trustees (wardens).



שְׁבוּעוֹת

TRACTATE

SHEVUOTH

CHAPTER 1

פֶּרֶק א

Mishnah 1

מִשְׁנָה א

Oaths are of two kinds,¹ that are actually four kinds;² awareness of uncleanness³ is of two kinds, and they are actually four kinds;⁴ carrying on the Sabbath is of two kinds and they are actually four kinds;⁵ the appearances⁶ of [suspected] leprosy are of two kinds, that are actually four kinds.

שְׁבוּעוֹת יִשְׁתָּיִם, שֶׁהֵן אַרְבַּע; יְדִיעוֹת הַטּוּמְאָה, שֶׁתָּיִם שֶׁהֵן אַרְבַּע; יְצִיאוֹת הַשַּׁבָּת, שֶׁתָּיִם שֶׁהֵן אַרְבַּע; מְרֵאוֹת נְגָעִים, שֶׁנִּיחַם אַרְבַּעֵיהֶן.

1 Negative and positive (Leviticus 5, 4): לְהָרַע, to do harm to oneself (e.g., if he swears, 'I shall not eat' or 'I shall not sleep'), אוּ לְהַשִּׁיב, or to do good to oneself (e.g., 'I shall eat' or 'I shall sleep'). 2 For instance, if one swore לְהָרַע to his own disadvantage [viz., 'I swear I shall not eat or sleep'], and forgetting that he swore he transgressed his oath, or if he swore לְהַשִּׁיב, to his benefit [viz., 'I swear I shall not eat or sleep'], and in forgetfulness contravened his oath, thus both oaths refer to action in the future; the רַבֵּנִין, Sages, expanded these two kinds to four, i.e., from future to past,* for example, one swears in forgetfulness that he had performed an act which indeed he had not done or he swears in forgetfulness that he had not performed an action which in fact he had done (see 32, where the subject is resumed); *'from past to present' according to one opinion. 2 Leviticus 5, 3, וְנִטְעַלְמָן מִמֶּנּוּ וְהוּא יָדַע וְאָשָׁם, and it be hid from him, and, when he knoweth of it [afterwards that he had incurred guilt], be guilty. For example, one forgetting he was unclean ate of קִדְּשִׁים, holy sacrifices, or entered the Temple, which are two kinds; the רַבֵּנִין extended these by two more kinds, thus, he knew he was unclean but did not know he was eating of קִדְּשִׁים or was not aware that he had entered the Temple. 3 יְדִיעוֹת הַטּוּמְאָה, the laws regarding the discovery of having transgressed through uncleanness. 4 This is further treated in 21. 5 These cases are fully dealt with in שְׁבֻת 11; briefly they are: (a) one outside a

house puts his hand inside and removes an object outside; (b) one in a house carries an object outside; the רַבָּנִי added here two more: (c) one in a house puts his hand outside and transfers an object inside, and (d) one outside picks up an object and carries it inside. 6 viz., colour and shade. See נִצְעִים 11. Based on *Leviticus 13, 2: שֹׁאֵת*, swelling, boil or pimple white like wool; בַּהֲרַח, spots or scurf white like the lime of the Temple wall; and the רַבָּנִי added two more colours of darker hue than these.

Mishnah 2

Whenever there was* awareness [of one's uncleanness] in the beginning¹ and awareness [of his uncleanness] in the end,² but unawareness in the meanwhile,³ then this person is liable to an offering of higher or lower value.⁴ If there were§ awareness [of his uncleanness] at the commencement,⁵ but no awareness in the end,⁶ the goat whose blood is sprinkled within [the Holy of Holies on the day of Atonement]⁷ and the Day of Atonement suspend [judgment]⁸ until [his trespass] becomes known to him, and he then brings an offering of higher or lower value. *Or שֹׁשֶׁבֶת.

מִשְׁנֵה ב
כָּל-שֵׁשׁ *בָּהּ יְדִיעָה¹ בַּתְּחִלָּה,
וְיְדִיעָה² בַּסּוֹף, וְהֵעֵלָם³ בֵּינִתְיִים,
הָרִי זֶה יְבַעוּלָה וְיֹרֵד. יֵשׁ בָּהּ
יְדִיעָה⁵ בַּתְּחִלָּה, וְאִין בָּהּ יְדִיעָה
בַּסּוֹף, שְׁעִיר הַנִּעֲשָׂה בַּפְּגָמִים יוֹם
הַכַּפּוּרִים *תּוֹלָה עַד שְׂיִוָּדַע לוֹ,
וְיָבִיא בְּעוֹלָה וְיֹרֵד. §Or יֵשׁ-בָּהּ.

1 i.e., before eating of קִדְּשִׁים, holy sacrifices or before entering the Temple. 2 i.e., after eating of the קִדְּשִׁים, or after entering the Temple. 3 i.e., he had forgotten in the meantime that he was unclean. 4 i.e., according to one's means (*Leviticus 5, 6, 7, 11*), thus, a well-to-do person offers an animal, a poor person offers a pair of doves, and one very poor offers a tenth part of an ephah (see נִרְעִים, Page 18f.) of fine flour. 5 i.e., before eating of the קִדְּשִׁים or entering the Temple, and in forgetfulness of his uncleanness transgressed. 6 i.e., he is still unaware that he had done wrong. 7 *Leviticus 16, 15; יוֹמָא* 59. 8 i.e., he is preserved from divine punishment.

Mishnah 3

If there were no awareness [of one's uncleanness]¹ at the commencement, but there was* awareness at the end,² the goat whose blood is sprinkled outside [the Holy of Holies but in the Temple Court] and the Day of Atonement effect atonement,³ as it

מִשְׁנֵה ג
אִין בָּהּ יְדִיעָה בַּתְּחִלָּה, אֲבָל *יֵשׁ
בָּהּ יְדִיעָה² בַּסּוֹף, שְׁעִיר הַנִּעֲשָׂה
בַּחוּץ, יוֹם הַכַּפּוּרִים *מְכַפֵּר,
יִשְׁנֹאֲמַר מִלְּבַד חֲטָאת הַכַּפּוּרִים,

is said,⁴ beside the sin-offering of atonement.⁵ for that which the former [sin-offering] makes atonement so does the latter [sin-offering] make atonement; just as the [sin-offering] within makes atonement only for what there was awareness⁶ of [in the beginning] so the [sin-offering] without does not make atonement save only for that whereof there was

עַל מַה־שָּׁוָה מִכֹּפֶר זֶה מִכֹּפֶר ; מָה
הַפְּנִימִי אֵין מִכֹּפֶר אֲלָא עַל דְּבָר
שֵׁשֶׁשׁ בָּהּ יְדִיעָה, אַף חִיצוֹן אֵין
מִכֹּפֶר אֲלָא עַל דְּבָר שֵׁשֶׁשׁ בָּהּ
יְדִיעָה.

1 Such as caused by contact with a שְׂרִץ, creeping thing, or נְבֵלָה, carcass, but he had no knowledge that such impart טומאה, uncleanness, and he ate of קִדְשִׁים, holy sacrifices, or entered the Temple. 2 After having in his ignorance sinned, and he had then learned that he had been rendered unclean. 3 He is pardoned and he does not have to bring a קִרְבָּן, offering. 4 Numbers 29, 11. 5 The Scriptural reading is הַכֹּפְרִים. 6 See the preceding Mishnah, Note 1. §Or שֵׁשֶׁשׁ בָּהּ.

Mishnah 4

(And) if there were no awareness¹ [of uncleanness] either at the beginning² or in the end, the goats [offered as sin-offerings] at the [Three] Pilgrimage Festivals³ and the goats [offered] at the New Moons⁴ make atonement.⁵ This is the opinion of R. Judah. R. Simon says, The goats [offered] at the [Three] Pilgrimage Festivals make atonement, but not the goats [offered] at the New Moons. (And) for what do the goats [offered] at the New Moons make atonement? For the clean person who ate what was unclean.⁶ R. Meir says, All goats⁷ [whether offered at the Three Pilgrimage Festivals or at the New Moons or in the Temple Court on the Day of Atonement] make atonement equally for uncleanness⁸ regarding the Temple and its holy sacrifices. R. Simon used to say, The goats

משנה ד

וְעַל שֶׁאֵין בָּהּ יְדִיעָה לֹא בְּתַחֲלָה
וְלֹא בְּסוֹף שְׁעִירֵי הָרִגְלִים וְשְׁעִירֵי
רְאֵשֵׁי חֲדָשִׁים מִכֹּפְרִים. דְּבָרֵי
רַבִּי יְהוּדָה. רַבִּי שְׁמַעוֹן אוֹמֵר
שְׁעִירֵי הָרִגְלִים מִכֹּפְרִין, אֲבָל לֹא
שְׁעִירֵי רְאֵשֵׁי חֲדָשִׁים. וְעַל מָה
שְׁעִירֵי רְאֵשֵׁי חֲדָשִׁים מִכֹּפְרִין? עַל
הַטְּהוֹר שֶׁאֲבָל אֶת־הַטְּמֵא. רַבִּי
מֵאִיר אוֹמֵר כָּל־הַשְּׁעִירִים בְּכַרְתָּן
שָׁוָה עַל טוֹמְאָת מִקְדָּשׁ וּמִקְדָּשֵׁי.
הִנֵּה רַבִּי שְׁמַעוֹן אוֹמֵר שְׁעִירֵי רְאֵשֵׁי
חֲדָשִׁים מִכֹּפְרִין עַל הַטְּהוֹר שֶׁאֲבָל
אֶת־הַטְּמֵא, וְשֶׁל רִגְלִים מִכֹּפְרִין
עַל שֶׁאֵין בָּהּ יְדִיעָה לֹא בְּתַחֲלָה וְלֹא

[offered] make atonement for the clean person who ate what was unclean,⁶ and those offered at the [Three] Pilgrimage Festivals make atonement where there was no awareness either at the beginning or at the end,⁹ and that¹⁰ [offered] on the Day of Atonement makes atonement¹¹ when there was no awareness at the beginning but there was* awareness in the end. [The Sages] said to him, Can¹² the one [goat] be offered [at another time] for the

other [goat]? He replied to them, They may so offer. They asked of him, But since their atonement is not alike,¹³ how can they offer one [at another time] for another one? He made reply to them, They are all brought to atone for uncleanness befalling the Temple and its holy sacrifices.¹⁴

בְּסוּף, ¹⁰ וְשֶׁל יוֹם הַפְּסוּחִים ¹¹ מְכַפֵּר
עַל שְׂאִין בָּהּ יְדִיעָה בְּתַחֲלָה, אֲבָל
יֵשׁ בָּהּ יְדִיעָה בְּסוּף. אָמְרוּ לוֹ
¹² מֵהוּ שִׁיקְרָבוּ זֶה בְּזֶה? אָמַר לָהֶם
יְקַרְבוּ. אָמְרוּ לוֹ הוֹאִיל וְאִין כִּפְּרָתָן
¹³ שְׁוֵה הֵיאָךְ קָרִיבִין זֶה בְּזֶה? אָמַר
לָהֶן כּוֹלֵן בָּאִין לְכַפֵּר עַל טוּמְאָת
מִקְדָּשׁ ¹⁴ וּמִקְדָּשָׁיו.

1 He had come in contact with something conveying uncleanness but was ignorant of the fact that such conveyed uncleanness. 2 Compare the foregoing *Mishnah*, **Note 1.** 3 Or *Pilgrims' Festivals*: פֶּסַח, *Passover*, שְׁבִיעוֹת or עֲצֵרֶת, *Feast of Weeks* or *Pentecost*, סִפּוֹת or תֵּג, *Feast of Tabernacles*. 4 Offered at the מוֹסֵף, *Additional Service*. 5 *Numbers* 28, 15, 22, 30; 29, 11, 19. 6 The flesh of an offering that had become unclean. Compare 16. 7 At the *Additional Service* (מוֹסֵף). 8 For an unclean person who ate of קִדְּשִׁים, *holy sacrifices*, or entered the Temple, whether he knew not of the uncleanness in the beginning when he ate of the קִדְּשִׁים or entered the Temple and then became aware of his uncleanness, or whether he is still unaware of his uncleanness, or whether a clean person ate קִדְּשִׁים that became unclean. 9 The goats make atonement for an unclean person who ate קִדְּשִׁים or entered the Temple and was unaware both before and after of his uncleanness. 10 In the Temple Court. 11 For one that was unclean and ate of קִדְּשִׁים or entered the Temple. 12 This refers to the he-goat that was to be offered in the Holy of Holies on the Day of Atonement but which was lost and another was offered in its place; then the lost goat being found the question is whether it could be offered on the Festival or New Moon. 13 They were meant to atone for different cases—the goat offered in the Temple Court was for the purpose of atoning for the unclean who ate of קִדְּשִׁים or entered the Temple and who at the beginning was ignorant of his uncleanness but at the end became aware of his uncleanness, how could it be offered on the Festival for an unclean person who is still unaware of his uncleanness or on the New Moon for a clean person who ate of the unclean קִדְּשִׁים? 14 His view being that they all possess one common quality of making atonement for what befell the Temple or the קִדְּשִׁים. *Or יֵשׁ בָּהּ.

Mishnah 5

R. Simon ben Judah says in his¹ name, The goats [offered] at the New Moons atone for the clean who ate what was unclean; those [offered] at the [Three] Pilgrim Festivals excel* them since they make atonement for one clean who ate what was unclean and also for [one unclean who ate of the holy sacrifices or had entered the Temple] and had no awareness [that he was unclean] either at the beginning or in the end; that [offered in the Temple Court] on the Day of Atonement excel them as it atones for the clean who ate [of the holy sacrifices which had become] unclean, and [atones also for the unclean who ate of the holy sacrifices or entered the Temple and who had] no awareness [of his uncleanness] either in the beginning or at the end, and as well [makes atonement for the unclean who ate of holy sacrifices or entered the Temple, but who had] no awareness [of his uncleanness] in the beginning but there was§ awareness in the end. They said to him,² May one [sacrifice] be offered up [at another time] for another [sacrifice]? He replied to them, Yes. They asked him, If this be so, then that³ [goat to be offered in the Temple Court] of the Day of Atonement could be offered⁴ at the New Moon,⁵ but how may that³ [goat] of the New Moon⁵ be offered on the Day of Atonement to atone for what does not appertain to it? He answered them, They are all brought to atone for uncleanness that occurs in the Temple and to its holy sacrifices.⁶

1 Referring to רַבִּי שִׁמְעוֹן בֶּן יוֹחָאי, R. Simon ben Jochai. 2 The Sages to R. Simon ben Judah. Instead of לֹא אָמְרוּ לוֹ, They said to him, some texts read אֹמֵר הָיָה רַבִּי? ,

משנה ה

רַבִּי שִׁמְעוֹן בֶּן יוֹחָאֵי אָמַר יִמְשָׁמוּ, שְׂעִירֵי רֵאשִׁי חֲדָשִׁים מִכִּפְּרִין עַל הַטְּהוֹר שֶׁאָכַל אֶת-הַטְּמֵא; *מוֹסִיף עֲלֵיהֶם שֶׁל רְגָלִים, שֶׁמִּכִּפְּרִין עַל טְהוֹר שֶׁאָכַל אֶת-הַטְּמֵא, וְעַל שְׂאִין בָּהּ יְדִיעָה לֹא בַתְּחִלָּה וְלֹא בַסּוֹף; מוֹסִיף עֲלֵיהֶן שֶׁל יוֹם הַכַּפּוּרִים, שֶׁהֵן מִכִּפְּרִין עַל הַטְּהוֹר שֶׁאָכַל אֶת-הַטְּמֵא, וְעַל שְׂאִין בָּהּ יְדִיעָה לֹא בַתְּחִלָּה וְלֹא בַסּוֹף, וְעַל שְׂאִין בָּהּ יְדִיעָה בַתְּחִלָּה, אֲבָל יֵשׁ בָּהּ יְדִיעָה בַסּוֹף. יֹאמְרוּ לוֹ מַהוּ שִׁיקְרָבוּ זֶה בְּזֶה? אָמַר לָהֶם הֵן. אָמְרוּ לוֹ אִם כֵּן יִהְיוּ יִשָּׁל יוֹם הַכַּפּוּרִים יִקְרִיבִין בְּרֵאשִׁי חֲדָשִׁים אֲבָל הַיּוֹם יִשָּׁל יֵשׁ רֵאשִׁי חֲדָשִׁים קָרִיבִים בְּיוֹם הַכַּפּוּרִים לְכַפֵּר עַל כִּפְּרָה שְׂאִינָה שְׁלָהּ? אָמַר לָהֶן כּוֹלֵם בְּאִין לְכַפֵּר עַל טוֹמְאָת מִקְדָּשׁ יִקְדָּשִׁיו. §Or יֵשׁ-בָּהּ.

Did Rabbi [viz., R. Simon ben Jochai] say? 3 Literally *those* [goats . . . 4 Seeing that it renders atonement for the same transgression as the New Moon offering atones for. 5 Literally *New Moons*. 6 *i.e.*, all these sacrifices possess this common characteristic, and so in his opinion they may be used instead of on the Day of Atonement for the Festival or for the New Moon, and even on the Day of Atonement instead of on the New Moon. *Or *surpass*.

Mishnah 6

And for uncleanness that occurs in the Temple and to its holy sacrifices through wantonness,¹ [the] goat whose blood is sprinkled within [the Holy of Holies on the Day of Atonement] and the Day of Atonement effect atonement, and for [all] other transgressions [spoken of] in the Law, light or grave,² premeditated³ or inadvertent,⁴ aware or unaware, transgressions of *positive commands* or transgressions of *negative commands*, sins whose penalty is excision* or sins punishable by death⁵ imposed by the court, the scapegoat⁶ makes atonement.⁷ *See APPENDIX, Note 2.

1 In this case, conscious premeditated sin by an unclean person who ate of קדשים, holy sacrifices, or entered the Temple, the punishment incurred is the forty stripes after warning (מכות 32). 2 Or *venial, grievous*. 3 Or *wanton*. 4 Or *unwitting*. 5 Literally *deaths*. 6 *Leviticus 16, 22*; יומא 62^{ff}. 7 According to the *Rambam* the scapegoat effects atonement for the penitent for grave transgressions, but where there is no repentance it makes atonement for the sinner for light transgressions only.

Mishnah 7

[The scapegoat effects atonement] alike¹ whether they are Israelites² or priests or the Anointed [High] Priest.³ Wherein is the distinction between Israelites and priests and an Anointed [High] Priest? Only in that the blood of the bullock⁴ [which was sprinkled in the Holy of Holies on the Day of Atonement] makes Atonement for the priests for

מִשְׁנֵה ו
וְעַל יְדוֹן טוּמְאָת מִקְדָּשׁ וּקְדָשׁוֹ
שְׂעִיר הַנִּזְעָשָׂה בַּפְּנִים יוֹם הַכַּפּוּרִים
מִכַּפְּרִין, וְעַל שְׂאֵר עֲבִירוֹת שְׁבֵתוֹרָה
הַקְּלוֹת וְהַחֲמוּרוֹת הַהִדּוּנוֹת
וְהַשְּׂגָנוֹת הוֹדַע וְלֹא הוֹדַע עָשָׂה וְלֹא
תַעֲשֶׂה, *כְּרִיתוֹת וּמִיתוֹת בֵּית דִּין,
שְׂעִיר הַמִּשְׁחָלֵחַ מִכַּפֵּר.

מִשְׁנֵה ז
אֶחָד יִשְׂרָאֵלִים וְאֶחָד כֹּהֲנִים,
וְאֶחָד כֹּהֵן מְשֻׁחַ מֵהַבְּיָן יִשְׂרָאֵלִים
לְכֹהֲנִים וּלְכֹהֵן מְשֻׁחִים? אֵלָּא שְׂדָם
הַפָּר מִכַּפֵּר עַל הַכֹּהֲנִים עַל
טוּמְאָת מִקְדָּשׁ וּקְדָשׁוֹ. רַבִּי שִׁמְעוֹן
אוֹמֵר כִּשְׂם שְׂדָם הַשְּׂעִיר הַנִּזְעָשָׂה

uncleanness⁵ that occurs in the Temple and to its holy sacrifices. R. Simon says, Just as the blood of the goat which is sprinkled within [the Holy of Holies] atones⁶ for the Israelites,⁷ so does the blood of the bullock atone⁶ for the priests,⁷ [and] just as the *Confession* [recited] over the scapegoat⁸ atones⁹ for Israel, so does the *Confession* [recited] over the bullock atone⁹ for the priests.¹⁰

בְּפִינִים מִכִּפֹּר עַל יִשְׂרָאֵל, כִּךְ דָּם
הַפָּר מִכִּפֹּר עַל הַכֹּהֲנִים, כְּשֵׁם
שְׂיִדְוִיו שֶׁל שְׂעִיר הַמִּשְׁתַּלַּח מִכִּפֹּר
עַל יִשְׂרָאֵל כִּךְ וִידְוִיו שֶׁל פָּר מִכִּפֹּר
עַל הַכֹּהֲנִים.

1 For all transgressions except for eating of unclean קִדְשִׁים, *holy sacrifices*, or entering the Temple in uncleanness. 2 Non-priests, non-Levites. 3 Or הִכְהֵן; *Leviticus* 4, 3; a High Priest inducted with the ceremony of anointing. Next to him was the כֹּהֵן הַמְּשֻׁנָּה, the Vice-High Priest (literally *priest of the second rank*); *II Kings* 23, 4; *Jeremiah* 52, 24. 4 *Leviticus* 16, 8. 5 When they were unclean and entered the Temple or ate of קִדְשִׁים. The goat whose blood is tossed against the Altar in the Temple Court makes atonement for them. 6 Without the *Confession*. יוֹמָא 3⁸. 7 Those who in uncleanness ate of קִדְשִׁים or entered the Temple. 8 *Leviticus* 16, 21; יוֹמָא 42. 9 For all other sins. 10 But the scapegoat effects atonement for the Israelites and not for the priests.

CHAPTER 2

פָּרָק ב

Mishnah 1

*Awareness of uncleanness*¹ is of two kinds, which are in fact four kinds.² If one became unclean, and was aware of it,³ and then the uncleanness escaped his memory although he was aware of the sanctity⁴ [of what he ate], or if the holiness [of what he ate] slipped from his mind, yet he was mindful of the uncleanness,⁵ or if he forgot both,⁶ and he then ate of what was holy and did not know [that he transgressed], but when he had eaten he knew,⁷ then he is liable to an offering of higher or lower value.⁸ If he became unclean, and was aware of it, and he forgot

מְשֻׁנָּה א

יָדְעוֹת הַטּוֹמְאָה שְׁתִּים שֶׁהֵן אַרְבַּע.
נִטְמָא וְיָדַע, וְנִעְלְמָה מִמֶּנּוּ הַטּוֹמְאָה,
וְזָכוֹר אֶת־הַקֹּדֶשׁ, וְנִעְלַם מִמֶּנּוּ
הַקֹּדֶשׁ וְזָכוֹר אֶת־הַטּוֹמְאָה, וְנִעְלְמוּ
מִמֶּנּוּ זֶה וְזֶה, וְאָכַל אֶת־הַקֹּדֶשׁ וְלֹא
יָדַע, וּמִשְׂאֵכֶל יָדַע, הִרְיֵז בְּעוֹלָה
וְיִוָּרֵד. נִטְמָא וְיָדַע וְנִעְלְמָה מִמֶּנּוּ
טּוֹמְאָה, וְזָכוֹר אֶת־הַמִּקְדָּשׁ, וְנִעְלַם
מִמֶּנּוּ מִקְדָּשׁ, וְזָכוֹר אֶת־הַטּוֹמְאָה,
וְנִעְלַם מִמֶּנּוּ זֶה וְזֶה, וְנִכְנס לַמִּקְדָּשׁ

about the uncleanness though he was aware of [the sanctity of] the Temple⁹ [and entered it], or if [the holiness of] the Temple was forgotten by him, though he was mindful of his uncleanness,¹⁰ or if he were unaware of both,¹¹ and he entered the Temple and was unaware [that he was guilty of transgression] but after coming out he knew, then he must bring an *offering of higher or lower value*.

1 That occurs in the Temple and to its holy sacrifices (קדשים). 2 This continues the subject begun in 11. 3 He touched a creeping thing (שׂרץ) but did not know he had become unclean, yet was aware he was in contact with holy sacrifices. 4 This case is one of the 'kinds' stated in the Law. 5 This is another case of the 'kinds' not mentioned in the Law. 6 The *Mishnah* here adds a supplementary case, *viz.*, he had forgotten that they were קדשים or that he was unclean. 7 That he had committed transgression. 8 See 12. 9 This is the second case of the 'kinds' spoken of in the Law. 10 This is the second case of the 'kinds' not quoted in the Law. 11 He had forgotten that it was (the holiness of) the Temple or that he had contracted uncleanness. This is an additional case appended by the *Mishnah* here.

Mishnah 2

It is all one whether one [who has contracted uncleanness] enters the Temple Court¹ or one enters any addition² to the Temple Court,³ since no additions may be made to the [Holy] City [of Jerusalem] nor to the Temple courts except by the decision of a king, (and) a prophet, (and) the *Urim and Thummim*⁴ and (of) a Sanhedrin of seventy-one,⁵ and with [the bringing of] two *thank-offerings*⁶ and with singing.⁷ And the court follows after the *thank-offerings*⁸ and all Israel follow behind them.⁹ The inner [loaf carried nearer to the wall of the court] is eaten [by the priests] and the outer [loaf carried farther from the court wall] is burnt. (And) if any [addition] were made not in accordance with this procedure, and one [that contracted uncleanness] entered thither, he is not thereby liable [to excision].

משנה ב

אֶחָד הַנִּכְנָס וְאֶחָד הַנִּגְכָּס
 לְתוֹסֶפֶת הָעוֹרָה, שְׂאֵין מוֹסִיפִין
 עַל הָעִיר וְעַל הָעוֹרוֹת, אֲלֵא בְּמִלְךָ
 וְנָבִיא וְאוֹרִים וְתוֹמִים וּבִסְנֵה־רִין
 שֶׁל שְׁבָעִים וְאֶחָד, וּבִשְׂתֵי יְהוּדוֹת,
 וּבִשְׂרִי. וּבֵית דִּין מִהֶלְכִין וּשְׂתֵי
 יְהוּדוֹת אַחֲרֵיהֶם, וְכֹל יִשְׂרָאֵל
 אַחֲרֵיהֶם. הַפְּנִימִית נֹאכְלֶת,
 וְהַחִיצוֹנָה גִשְׂרָפֶת. וְכֹל שְׂלֵא נַעֲשֶׂה
 בְּכֹל אֵלוֹ, הַנִּכְנָס לְשָׁם, אֵין חַיֵּיבִין
 עָלֶיהָ.

1 See **מדות** 11. The original Temple Court. 2 Built during the reign of Jehoshaphat. See **פסחים** 92a. 3 They are both equally holy and the transgressor is liable to excision (see *Appendix, Note 2*). 4 The sacred emblems or lots (gems) in the High Priest's breastplate. *Exodus* 28, 30; *Deuteronomy* 33, 8; **טובה** 912. 5 **טנהדרין** 15. They all had to make a circuit in procession round the place to be enlarged and sanctified. Then followed the two *thank-offerings*. 6 *viz.*, the two loaves belonging (one each) to the two *thank-offerings* that were to be sacrificed were carried in the procession. 7 The Levites walked in front of those carrying the loaves and chanted *Psalms* 30, 91 (to **מענה**), 3. 8 According to **שבועות** 15b. Literally *And the court follow on and the two thank-offerings after them*. 9 The Sanhedrin.

Mishnah 3

משנה ג

If one became unclean in the Temple Court, and the uncleanness escaped from his memory, yet he was aware that he was in the Temple, or if he forgot that he was in the Temple though he was conscious of his uncleanness, or if both slipped from his mind,¹ and he prostrated himself or he stayed² for as long as it takes to perform a prostration, or if he departed by the longer way,³ he is liable,⁴ but if [he went out] by the shorter way,⁵ he is exempt.⁶ This* is a *positive command* concerning the Temple regarding which they are not liable.⁷

גטמא בעזרה ונעלמה ממנו טומאה, וזכור את-המקדש, ונעלם ממנו מקדש וזכור לטומאה, ונעלם ממנו זה וזה והשתחוה, או ששקה בכדי השתחוה, בא לו בארוכה חייב, בקצרה פטור. וזו היא מצות עשה שבמקדש שאין חייבין עליה.

1 *i.e.*, he forgot that he had contracted uncleanness and that he was in the Temple. 2 Without prostrating himself. 3 See **מדות** 22. *viz.*, when he could have gone out by the shorter way. 4 To an *offering of higher or lower value* (see 1²). 5 He neither prostrated himself nor overstayed. 6 He is absolved from having to bring an *offering of higher or lower value*. 7 *Numbers* 5, 2; **הוריות** 24. *The positive command* is to leave by the short way, but if **בית דין**, the court, gave an unclean person a wrongful decision to depart by the longer way there is no liability to bring the special *sin-offering* (technically termed **פר העלם דבר**, the *bullock for the forgetfulness of* [the prohibition of] *an act*) as detailed in *Leviticus* 4, 13ff. *Or ו; see Volume II, Page 12.

Mishnah 4

משנה ד

And what is* the *positive command* regarding the *menstruant*¹ for which one becomes liable?² If one had

ואיזו היא מצות עשה שבגדה שחייבין עליה? הנה משמש עם

sexual connection with a woman that was clean,³ and she said to him, 'I am become unclean',⁴ and he straightway withdrew,⁵ he is liable [to excision],⁶ seeing that his egression is to his benefit as is his ingression.⁷

הַטְּהוֹרָה, וְאָמְרָה לוֹ יִטְמָאתִי, וּפִירֵשׁ מִיָּד חֲיִיב, מִפְּנֵי שֶׁצִּיאָתוֹ הִנָּאָה לוֹ כְּבִיאָתוֹ.

* Or וְאִיוּ; see Volume II, Page 12.

1 The menstruous woman. 2 If בֵּית דִּין, the court, gave a wrongful decision concerning copulation with a menstruous woman they are liable to a *sin-offering* (the פֶּסַח הַעֲלָם דְּכָר see 2³, Note 7). 3 There were no signs of menses (menstrua, menstruation). 4 *i.e.*, 'I am menstruating.' 5 *i.e.*, he removed the membrum virile before emission in spite of the keen urge to discharge the semen within the vulva or vagina. 6 See *Appendix, Note 2*. 7 *viz.*, the physical and mental condition he is in renders extraction as pleasurable as insertion. To comply with the *positive command* of the Law (*Leviticus 15, 24*—וַתְּהִי נִדְתָּה עָלָיו, and her [menstruating] impurity be upon him) he must not withdraw forthwith but does so only after a lapse to calm and cool down his desire and there must be no issue of semen.

Mishnah 5

R. Eliezer says, *the creeping thing*¹ *it being hidden from him*,² because the prolific creature escaped from his mind he is liable,³ but if the Temple be forgotten of him, he is not liable.⁴ R. Akiba says, *and*⁵ *it is hidden from him whilst he is unclean*, because of the forgetfulness of the uncleanness does he become liable,⁶ but he is not liable because of the forgetfulness of the Temple.⁷ R. Ishmael⁸ says, *and*⁹ *it will be hidden . . . and*¹⁰ *it will be hidden*—[Scripture says] twice, to show that he is liable [both] because of [his] forgetfulness of the uncleanness¹¹ and because of [his] forgetfulness of the Temple.¹²

מִשְׁנָה ה

רַבִּי אֱלִיעֶזֶר אוֹמֵר הַשְּׂרָץ וְנִעְלָם מִמֶּנּוּ, עַל הַעֲלָם שְׂרָץ חֲיִיב, וְאִינוֹ חֲיִיב עַל הַעֲלָם מִקֹּדֶשׁ. רַבִּי עֲקִיבָא אוֹמֵר וְנִעְלָם מִמֶּנּוּ וְהוּא טָמֵא, עַל הַעֲלָם טוֹמְאָה חֲיִיב, וְאִינוֹ חֲיִיב עַל הַעֲלָם מִקֹּדֶשׁ. רַבִּי יִשְׁמַעֵאל אוֹמֵר וְנִעְלָם וְנִעְלָם שְׁתֵּי פְעָמִים, לְחֲיִיב עַל הַעֲלָם טוֹמְאָה וְעַל הַעֲלָם מִקֹּדֶשׁ.

1 שְׂרָץ, *creeping (prolific, swarming) thing*. Compare 1³, 34. 2 The Scriptural reading in *Leviticus 5, 2* is שְׂרָץ טָמֵא וְנִעְלָם מִמֶּנּוּ, *unclean swarming creature and it be hidden from him*. Compare 1¹. 3 The fact that he became unclean by contact with a creeping thing was forgotten by him and he entered the Temple, he becomes liable to excision (*Appendix, Note 2*). But when he contracted uncleanness he was

unaware whether the source was a creeping thing (שָׂרָץ) or carrion (וּבְלֵיה), and then his uncleanness slipped his memory and he entered the Temple, he is not liable to excision. 4 He was aware that he had contracted uncleanness through a creeping thing but he was not conscious that it was the Temple he entered, he does not become liable to excision. 5 *Leviticus* 5, 2. 6 He knew he had become unclean, but not whether from a creeping thing or from carrion, and then having forgotten about his uncleanness he entered the Temple, he comes liable to excision. 7 He was aware of his uncleanness, but forgetting it was the Temple he entered it—he does not become liable to excision. 8 His view is accepted. 9 *Leviticus* 5, 2. 10 *Leviticus* 5, 3. 11 His uncleanness slipped his memory and he entered the Temple—he is liable to excision. 12 He knew he was unclean and absent-mindedly entered the Temple—he becomes liable to excision.

CHAPTER 3

פֶּרֶק ג

Mishnah 1

מִשְׁנָה א

Oaths are of two kinds, which are actually four kinds;¹ [they are,] 'I swear that I will eat',² or, ['I swear] that I will not eat',² or, ['I swear] that I have eaten',³ or, ['I swear] that I have not eaten'.³ [If one said,] 'I swear that I will not eat', and he ate the smallest quantity, he is liable.⁴ This is the opinion of R. Akiba. [The Sages] said to R. Akiba, Where have we found [in the Law or elsewhere] that one who eats aught however little [—as much as an olive's bulk of what is unclean—] is liable,⁵ and so this one also is liable?⁵ R. Akiba made reply to them, And where have we found that when one speaks [and does not fulfil his word] he must bring an offering, and therefore, too, this one must bring an offering if he do but speak [and does not keep his oath]?⁶ [If one said,] 'I swear that I will not eat', and he ate and drank, he is liable on one count only;⁷ [but if he said,] 'I swear that I will not eat and that I will not drink',⁸ and he ate and drank, he is liable on two counts.⁹

שְׁבוּעוֹת שְׁתֵּים שֶׁהֵן יֵאָרְבַּע; שְׁבוּעָה שֶׁשָּׂאֹכֵל יִשְׁלַא אוֹכֵל, שֶׁשָּׂאֲכַלְתִּי יִשְׁלַא אֲכַלְתִּי. שְׁבוּעָה שֶׁשָּׂא אוֹכֵל, וְאֲכַל כָּל-שֶׁהוּא, יְחִיב. דְּבָרֵי רַבִּי עֲקִיבָא. אָמְרוּ לוֹ לְרַבִּי עֲקִיבָא הֵיכָן מְצִינוּ בְּאוֹכֵל כָּל-שֶׁהוּ שֶׁהוּא יְחִיב, שְׁנָה חֵיִיב? אָמַר לֵהֵן רַבִּי עֲקִיבָא וְכִי הֵיכָן מְצִינוּ בְּמַדְבַּר וּמְבִיא קֶרֶבֶן, שְׁנָה מְדַבֵּר וּמְבִיא קֶרֶבֶן? שְׁבוּעָה שֶׁשָּׂא אוֹכֵל, וְאֲכַל וְשָׁתָה, אֵינוּ חֵיִיב אֶלָּא יְאָתָה; שְׁבוּעָה שֶׁשָּׂא אוֹכֵל יִשְׁלַא אֶשְׁתָּה, וְאֲכַל וְשָׁתָה, חֵיִיב שְׁתֵּים.

1 Compare 1¹, **Notes 1, 2.** 2 These are Scriptural. 3 These are Rabbinical extensions. 4 He must bring an offering for unwitting transgression and receives stripes for wanton transgression. 5 To suffer the forty stripes. 6 There is no possibility of any analogy between this law and another. 7 And he brings only one offering. 8 Here there are two oaths. 9 And he must bring two offerings.

Mishnah 2

משנה ב

[If one said,] 'I swear that I will not eat', and he ate bread of wheat and bread of barley and bread of spelt,¹ he is liable on one count only;² [if he said,] 'I swear that I will not eat wheaten bread, or bread of barley or bread of spelt', and he ate [of all of them], he is liable on every count.³

שְׁבוּעָה שְׁלֵא אוֹכֵל, וְאָכַל פַּת חֲטִיָּן
וּפַת שְׁעוּרִין וּפַת כּוֹסְמִין, אֵינוֹ חַיִּיב
אֶלָּא אֶחָת; שְׁבוּעָה שְׁלֵא אוֹכֵל
פַּת חֲטִיָּן וּפַת שְׁעוּרִין וּפַת כּוֹסְמִין
וְאָכַל, חַיִּיב עַל כָּל-אֶחָד וְאֶחָד.

1 Or *German wheat* (see וְרָעִים, SUPPLEMENT, מוֹעֵד, SUPPLEMENT). 2 And he brings only one offering. 3 And he must bring as many offerings as the sorts he had eaten.

Mishnah 3

משנה ג

[If one said,] 'I swear that I will not drink',¹ and he drank many [kinds of] liquids, he is liable on one count only;² [if he said,] 'I swear that I will not drink wine, nor oil, nor honey', and he drank [all of them], he becomes liable on each count.³

שְׁבוּעָה שְׁלֵא אֲשַׁתָּה, וְשָׁתָה מִשְׁקִין
הַרְבֵּה, אֵינוֹ חַיִּיב אֶלָּא אֶחָת;
שְׁבוּעָה שְׁלֵא אֲשַׁתָּה יַיִן וְשֶׁמֶן וְדָבָשׁ
וְשָׁתָה, חַיִּיב עַל כָּל-אֶחָת וְאֶחָת.

1 Wine, oil, honey (of bees, dates, grapes—*syrup* or *must* of grape-juice boiled down to about half). 2 And he brings one offering only. 3 He must bring as many offerings as the kinds of liquids he drank.

Mishnah 4

משנה ד

[If one said,] 'I swear that I will not eat',¹ and he ate foods that are not fit for consumption, or he drank liquids that are not fit for drinking, he is exempt.² [If one said,] 'I

שְׁבוּעָה שְׁלֵא אוֹכֵל, וְאָכַל אוֹכָלִים
שְׂאִינָן רְאוּיָן לְאֲכִילָה, וְשָׁתָה מִשְׁקִין
שְׂאִינָן רְאוּיָן לְשִׁתָּה, יִפְטוֹר.

swear that I will not eat', and he ate *carriion*, or *what is torn*,³ [or] of *forbidden animals*⁴ or of *reptiles*, he is liable;⁵ but R. Simon⁶ declares him exempt.² If he said, 'קוֹנָם'—let any benefit of my wife towards me be prohibited if I have eaten to-day!⁷ and he ate *carriion*, or *what is torn*, [or] of *forbidden animals* or of *reptiles*, his wife is forbidden to him.

שְׂבוּעָה שְׁלֵא אוֹכֵל, וְאָכַל נְבֵלוֹת
וְטֵרֵפוֹת שְׁקָצִים וְרִמָּשִׁים, חֲיִיב;
רַבִּי יִשְׁמָעוֹן פּוֹטֵר. אָמַר 'קוֹנָם'
אִשְׁתִּי נִהְיִית לִי אִם אָכַלְתִּי הַיּוֹם,
וְהוּא אָכַל נְבֵלוֹת וְטֵרֵפוֹת שְׁקָצִים
וְרִמָּשִׁים, הֲרִי אִשְׁתּוֹ אֲסוּרָה.

1 *i.e.*, foods fit to be eaten. 2 He is not liable to bring an offering. 3 *Appendix, Note 15*. 4 *Leviticus 20, 25* (compare סִנְהֵדְרִין 82, שְׁקָצִים וְרִמָּשִׁים, *all kinds of forbidden food*). שְׁקָץ, *abomination, loathing, abominable thing* (compare 25, *Note 1*). רִמָּשׁ, *creeping thing, worm, reptile, insect* (*Genesis 1, 25; 9, 3. Psalm 104, 25*). 5 He must bring an offering. Ritually forbidden foods may be consumed by non-Jews. 6 His view is rejected. 7 A substitute term for קָרְבָּן, *offering*, used for a vow of abstinence and for the dedication or consecration of an object. See נִדְרִים 12, 4, 21.

Mishnah 5

It is all one whether [one takes an oath] regarding things that belong to him,¹ or whether regarding things that belong to others,² or whether regarding things that are material³ or whether regarding things that are not material.⁴ How so? [It is all one] if he said, 'I swear that I will give [this] to so-and-so', or, ['I swear] that I will not give [this to so-and-so]', or, ['I swear] that I gave [this to so-and-so]', or, ['I swear] that I have not given [this to so-and-so]', or, ['I swear] that I will sleep', or, ['I swear] that I will not sleep',⁵ or, ['I swear] that I have slept', or, ['I swear] that I did not sleep', or, ['I swear] that I will throw* a bag⁶ into the sea', or, ['I swear] that I will not throw a bag [into the sea]', or, ['I swear] that

משנה ה

אֶחָד דְּבָרִים שֶׁל יַעֲצֻמוֹ, וְאֶחָד
דְּבָרִים שֶׁל אַחֲרִים, וְאֶחָד דְּבָרִים
שֶׁשִׁשׁ בָּהֶן מַמַּשׁ, וְאֶחָד דְּבָרִים
שֶׁאִין בָּהֶן מַמַּשׁ. כִּיצַד? אָמַר
שְׂבוּעָה שְׁאַתָּן לְאִישׁ פְּלוֹנִי, וְשְׁלֵא
אֶתְּךָ, שְׁנַתְּתִי, וְשְׁלֵא נַתְּתִי, שְׁאִישֵׁךָ,
וְשְׁלֵא אִישֵׁךָ, שְׁשִׁנְתִּי, וְשְׁלֵא לְשִׁנְתִּי,
שְׁשִׁאֲרוּק צְרוּר לַיָּם, וְשְׁלֵא אֲרוּק,
שְׁזַרְקִתִּי וְשְׁלֵא זַרְקִתִּי. רַבִּי
יִשְׁמָעֵאל אוֹמֵר אִינוֹ חֲיִיב אֶלָּא עַל
הַעֲתִיד לָבֵא, יִשְׁנָאֵמַר¹⁰ לְהִרְעֵ אוֹ
לְהִטִּיב. אָמַר לוֹ רַבִּי יִצְקִיבָא

I threw [a bag into the sea]', or, ['I swear] that I have not thrown [a bag into the sea]'.⁷ R. Ishmael⁸ says, He is liable only [for an oath] concerning the *future*, as it is said,⁹ *to do evil or to do good*.¹⁰ R. Akiba¹¹ said to him, If so, I can only swear to such things that result in evil or in good!¹² But whence [does one know that one may take an oath]

to matters that do not result in evil or in good?¹³ [R. Ishmael] made reply to him, From the extension¹⁴ in the Scripture. [R. Akiba] answered him, If the Scripture have extended [the interpretation of the Law] in this [*future*] sense, it has extended it in the other [*past*] sense also.¹⁵

1 As, for instance, 'I shall eat' or 'I shall not eat.' 2 For example, 'I will give to so-and-so' or 'I will not give' (see further on). 3 Or *not real, not substantial*. 4 For instance, *sleep*, or an *action* (e.g., *throwing*; see further on). 5 *i.e.*, for such length of time as one can go without sleep. 6 Or *bundle, purse, pebble, stone*. 7 In any such case, if he did not fulfil his oath, he must bring an offering. 8 His view is rejected. 9 *Leviticus 5, 4*. 10 The Scriptural orthography is **לְהִטִּיב** (see 11, **Note 1**). 11 His opinion is accepted. 12 Or *things associated with evil or good, vows implying self-renunciation or advantage, i.e.*, one should take an oath that concerns only the doing of evil or the doing of good! **הַרְעָה**, *harming, hurting, injuring, self-abnegation, self-renunciation, vow to harm* (oneself or others); **הִטְבָּה**, *benefiting, doing good, vow to benefit* (oneself or others); compare **שְׁבוּעוֹת** 27a. 13 Or *to matters not connected with the doing of evil or good*. 14 The extension referred to here is (*Leviticus 5, 4*) **לְכֹל אֲשֶׁר יִבְטַא הָאָדָם**, *whatsoever it be that a man shall pronounce clearly with an oath* (this is an instance of the exegetical method of 'limitation and extension' introduced by Nachum of Gamzo). 15 And culpability entails the bringing of an offering here too. ***זָרַק**, *cast, fling, hurl, throw*. §Or **שְׂיִישׁ-בְּהֵן**.

Mishnah 6

If one took an oath to set a commandment¹ at naught, but he did not set it at naught, he is exempt.² [If one swore] to fulfil [a commandment]³ but did not fulfil it, he is exempt.² It might be inferred that he should be culpable according to R. Judah ben Bathyra. R. Judah⁴

אם כן אין לי אלא דברים שיש
בהן הרעה והטבה! דברים שאין
בהן הרעה והטבה מנין? אמר
לו מריבוי הכתוב, אמר לו אם
ריבה הכתוב לכך, ריבה הכתוב
לכך.¹⁵

משנה ו
ושבע לבטל אֶת-הַמִּצְוָה, וְלֹא
ביטל פְּטוּר. יִלְקִיִּים וְלֹא קִיִּים
פְּטוּר. שֶׁהָיָה בְּדִין שֶׁיְהִי חַיִּיב
כְּדַבְּרֵי רַבִּי יְהוּדָה בֶּן בְּתִירָה.
אָמַר רַבִּי יְהוּדָה בֶּן בְּתִירָה מָה

ben Bathyra said, If one be liable⁵ [because of an oath] concerning a matter of free choice[§] whereon he was not adjured from Mount Sinai, how much more is he liable [by reason of an oath] regarding a commandment whereto he was adjured from Mount Sinai! [The Sages] said to him, No! As thou arguest about an oath regarding a matter of free choice wherein 'nay' and 'yea' are equally [licit], wouldest thou also argue about an oath concerning a commandment wherein 'nay' and 'yea' are not alike [legal]?—so that if one swore to set it at naught, but

אם הִקְרַשְׁתָּ שְׂאִינוּ מוֹשְׁבֵעַ עָלֶיךָ
מִהַר סִינַי, הֲרִי הוּא חַיִּיב עָלֶיךָ,
מִצְוָה שֶׁהוּא מוֹשְׁבֵעַ עָלֶיךָ מִהַר
סִינַי אֵינוּ דִין שֶׁיְהֵא חַיִּיב עָלֶיךָ!
אָמְרוּ לוֹ לֹא, אִם אָמַרְתָּ בְּשִׁבוּעַת
הַקְּרָשׁוֹת שֶׁכֵּן עָשָׂה בָּהּ *לֹא כָהֵן,
תֹּאמַר בְּשִׁבוּעַת מִצְוָה שְׁלֵא עָשָׂה
בָּהּ *לֹא כָהֵן, שְׂאִם נִשְׁבַּע לְבַטֵּל
*Or לֹא. בִּיטֵל *פְּטוֹר.

did not set it at naught, he is exempt.⁶

1 Whether a *positive commandment* or a *negative commandment*. Literally the *commandment*. 2 He is not liable to an offering. 3 See **Note 1** above. 4 His view is rejected. 5 He must bring an offering. 6 The argument advanced by the Sages is as follows: if one takes an oath concerning a matter of free choice he does not have to bring an offering; but R. Judah ben Bathyra says that he is liable because in an oath that concerns a matter of free choice 'nay' and 'yea' are alike lawful, e.g., if he takes an oath that he will eat but does not he is culpable and must bring an offering, or if he swears not to eat but does he must also bring an offering, as Scripture reads, *Leviticus 5, 4*, לְהַרַע, *he swears to do evil [and does not]* and לְהַטִּיב, *he swears to do good [and does not]*, then he (Judah ben Bathyra) would maintain that when he took the oath to carry out a command but did not do so he should also be culpable and bring an offering because in the oath the 'yea' and 'nay' are not alike lawful; and they conclude therefore if he swore not to perform a commandment but did carry it out he is not liable to an offering, so if he swore to carry out a commandment but did not do so he is also not liable to an offering. §Popularly pronounced הִקְרַשְׁתָּ.

Mishnah 7

[If one said,] 'I swear that I will not eat¹ this loaf! I swear that I will not eat it!² I³ swear that I will not eat it!'—and he ate it, he is culpable on one count only.⁴ This is deemed a *vain oath*⁵ for which one is liable to stripes for [uttering] it wantonly,

מִשְׁנָה ז'
שְׁבוּעָה שְׁלֵא יֹאכַל כֶּכֶר זֶה,
שְׁבוּעָה שְׁלֵא יֹאכְלֶנָּה, יִשְׁבּוּעָה
שְׁלֵא יֹאכְלֶנָּה, וְנֹאכְלָהּ אֵינוּ חַיִּיב
אֶלָּא יֶאֱחָת. זֶה הִיא יִשְׁבוּעַת בְּטוּי,

but if [he failed to carry it out] unwittingly, he is liable to an *offering of higher or lower value*.⁶ For a *false oath* one is liable to stripes if [it be uttered] wantonly, but [if it be uttered] unwittingly, he is exempt.⁷

שְׁחִיבִין עַל זְדוּנָה מִכּוֹת, וְעַל שְׁגָגָה
 קָרְבַּן עוֹלָה יוֹרֵד. שְׁבוּעַת שְׁוֹא
 תְּחִיבִין עַל זְדוּנָה מִכּוֹת, וְעַל שְׁגָגָה
 פָּטוּר.

1 i.e., an olive's bulk. 2 viz., all of it. 3 Some consider this third expression as redundant. 4 The reference is to the eating of an olive's bulk. See ADDENDA at the end of this *Tractate*. 5 שְׁבוּעַת בְּטוּי, a useless or vain oath which neither benefits nor injures anyone, in contradistinction to שְׁבוּעַת שְׁוֹא, a false oath, an oath concerning an impossibility. *Leviticus* 5, 4. 6 See 12. 7 He is not liable to an offering.

Mishnah 8

מִשְׁנָה ח

What is deemed a *vain oath*?¹ [For instance,] if one swore to alter a thing which it is known to man [can not be changed],² or if he swore³ of a pillar of stone that it was of gold, or [if he swore] of a man that he was a woman, or [if he swore] of a woman that she was a man, or if he swore to a thing that was impossible, [for example, 'I swear to forgo all produce in the world] if⁴ I did not see a camel flying in the air' or, '... if I did not see a serpent resembling⁵ the beam of an olive-press'.^{6*} If one said to witnesses, 'Come and give evidence on my behalf', [but they said,] 'We take an oath that we will not be witnesses for thee',⁷ or if one took an oath to set at naught a commandment, [such as] that he would not construct a *booth*,⁸ or that he would not carry a *palm-branch*,⁹ or that he would not put on¹⁰ *phylacteries*, this is accounted a *vain oath*, for which, if it be uttered wantonly, he becomes liable to stripes, but [if it be uttered] unwittingly, he is exempt [from stripes or an offering].

אִזּוֹ הִיא שְׁבוּעַת שְׁוֹא? וְשָׁבַע
 לְשֵׁנוֹת אֶת־הַיָּדוּעַ לְאָדָם, אָמַר
 עַל הָעַמּוּד שֶׁל אֲבָן שֶׁהוּא שֶׁל
 זָהָב, וְעַל הָאִישׁ שֶׁהוּא אִשָּׁה, וְעַל
 הָאִשָּׁה שֶׁהִיא אִישׁ, וְשָׁבַע עַל
 דָּבָר שְׂאִי אִפְשָׁר, יֵלֵא רְאִיתִי גִמְלָה
 שְׁפוֹרָח בְּאֵוִיר, וְאִם לֹא רְאִיתִי גִחַשׁ
 יִכְקוֹרֵת בֵּית הַבַּד. אָמַר לְעֵדִים
 בּוֹאוּ וְהַעֲדוּנִי, שְׁבוּעָה שְׁלֵא יִנְעִידָהּ,
 וְשָׁבַע לְבַטֵּל אֶת־הַמִּצְוָה, שְׁלֵא
 לַעֲשׂוֹת סוּפָה, וְשְׁלֵא לִיטוֹל לְלוּלָב,
 וְשְׁלֵא לְהַנִּיחַ תְּפִלִּין, זֶה הִיא שְׁבוּעַת
 שְׁוֹא שְׁחִיבִין עַל זְדוּנָה מִכּוֹת, וְעַל
 שְׁגָגָה פָּטוּר.

1 See 37. *False, vain.* 2 Some render this *if one took an oath that something well known to man* [to be impossible to be anything different from what it is] *is something else.* The obvious *impossibility of alteration* must be evident to at least three persons, otherwise the oath ranks as a *שבועת בטוי* (see the preceding *Mishnah*). 3 Literally *said.* 4 *אם לא* in some texts. 5 The rendering *as thick as* is quite wrong as there are snakes whose girth is as great as and greater than that of the beam of an olive-press. The 'resemblance' here referred to might be 'the markings on a beam,' or 'shaped square in cross-section like a beam.' 6 *בית הקדר* is actually the building with the press, tank(s) and implements for olive-pressing. 7 Refusal to give evidence is against the command in the Law (*Leviticus 5, 1*), *אם לא יגיד ונשא עונו*, *if he do not tell it then he shall bear his iniquity.* 8 The hut set up for the Festival of Tabernacles. *Leviticus 23, 34-36, 39-43.* Compare *סיכה 23a.* 9 The *לילב*, *palm-branch*, bound together with *הדסים*, *myrtle branch*, and *ערבובת*, *willow-branch*, is used with the *אתרוג*, *citron*, during the Feast of Tabernacles. *Leviticus 23, 40.* *See ADDENDA at the end of this *Tractate.* 10 Or *להניח*.

Mishnah 9

משנה ט

[If one said,] 'I take an oath that I will eat this loaf', or, [if he said,] 'I take an oath that I will not eat it', the first is a *vain oath*¹ and the second is a *false oath*.² If he ate it, he transgressed by reason of a *false oath*: if he did not eat it, he transgressed by reason of a *vain oath*.

שבועה שאוכל כפר זו, שבועה
שלא אוכלנה, הראשונה ישבועת
בטוי, והשנייה ישבועת שוא.
אכלה עבר על שבועת שוא; לא
אכלה עבר על שבועת בטוי.

1 It is a useless oath since it is a natural necessity to eat bread in any case (see 77).
2 Seeing that he disregards a natural need and thus sets a commandment at naught. He becomes liable to an offering.

Mishnah 10

משנה י

[If one take] a *vain oath*, it applies both to men and to women,¹ to such as are not relatives and to those that are relatives,² to those that are qualified [to give evidence] or to them who are not qualified [to bear witness],³ [whether the oath was made] before a court or not before a court; but [the oath must proceed] from one's own mouth.⁴ And

שבועת בטוי, נוהג באנשים ויבנות
ברחוקים ויבקורבים בכשרים
ויבפסולין, בפני בית דין ושלא
בפני בית דין; מפני עצמו. וחיבין
על דוניה מכות, ועל שגגתה קרבן
עולה ויורד.

if [he transgressed it] wittingly, he is liable to stripes, but if [he transgressed it] not wantonly, he is liable to an *offering of higher and lower value*.⁵

1 And it entails the penalty for non-fulfilment. 2 *i.e.*, whether they are eligible or not as witnesses. For instance, if one swore to give aught to anyone whatsoever, whether a relation or not, he becomes culpable for non-fulfilment. 3 Compare סְנֵה־דָרִין 3⁸. 4 If others (or another) imposed an oath on one his simple confirmation will not suffice; but if he affirms with the response אָמֵן, *so be it*, the oath is as binding as if he himself had uttered it. See the next *Mishnah*. 5 See 12, 37.

Mishnah 11

משנה יא

[The law about] a *false oath* is applicable to men and to women,¹ to such as are not kinsfolk and to them who are kinsfolk, to them that are qualified [to bear witness] and to those who are unqualified* [to give evidence], [whether the oath was taken] before a court or not before a court; but [the oath must be formed] out of one's own mouth.² And if [one transgressed it] wantonly, he is liable to stripes, but if [he transgressed it] unwittingly, he is exempt.³ It is all one in either case,⁴ if one were adjured at the mouth of others, he is culpable;⁵ for instance, if he said,⁶ 'I did not eat to-day', or, [if he said,] 'I did not put on *phylacteries* to-day', [and another said to him,] 'I adjure thee [if thou speakest the truth]', and he responded, 'Amen!'⁷ [but he lied], he is liable.⁸

שְׁבוּעַת שְׂוָא נוֹהֶגֶת בְּאֲנָשִׁים, וּבְנָשִׁים, בְּרַחוּקִים וּבְקְרוֹבִים, בְּכֹשְׂרִים, וּבְכַפְּסוּלִים, בְּפָנֵי בֵּית דִּין, וְשֵׁלֵא בְּפָנֵי בֵּית דִּין; וּמִפִּי עֶצְמוֹ. וְחִיִּבִּין עַל זְדוּנָה מְכוּת, וְעַל שְׁגָגָה פְּטוּרִין. יֵאָחַזת זוֹ וְיֵאָחַזת זוֹ, הַמּוֹשֶׁבֶע מִפִּי אֲחֵרִים חִיִּיב; כִּיֵּצֵד, אָמַר לֹא אֶקְלָתִי הַיּוֹם וְלֹא הִנָּחֲתִי תְּפִילִין הַיּוֹם מִשְׁבִּיעַה אֲנִי וְאָמַר אָמֵן, חִיִּיב.

1 They are liable to penalty for non-fulfilment. 2 Compare the preceding *Mishnah*. 3 From stripes or an offering. 4 Whether a *vain oath* or a *false oath*. 5 If he confirmed with uttering אָמֵן (see the foregoing *Mishnah*) he is liable to stripes or an offering as the case may be. 6 אָמַר is not given in the נִקְרָא. 7 Equivalent to the affirmation *so be it*. 8 To stripes or an offering as the case may be. *Or *ineligible*.

CHAPTER 4

פֶּרֶק ד

Mishnah 1

מִשְׁנָה א

[The law about] an *oath of evidence*¹ applies to men but not to women, to those who are not near of kin but not to such as are kinsfolk,² to those that are eligible [to give evidence] but not to them that are not qualified [to bear witness], and it applies only to such as are fit to give evidence;³ [and it applies whether uttered] before a court or not before a court, [but the oath must be uttered] from a man's own mouth.⁴ And if [a man be adjured] at the mouth of others [to act as witness], he is not culpable until he disclaims any knowledge⁵ [bearing on a suit] before a court. This is the view of R. Meir.⁶ But the Sages say, Whether [one swears] out of his own mouth or [is put on oath] at the mouth of others, he⁷ does not become liable until he denies any knowledge before a court.⁸

שְׁבוּעַת יְהוּדוֹת נוֹהֶגֶת בְּאִנְשִׁים, וְלֹא בְּנָשִׁים, בְּרַחוּקִין, וְלֹא בְּקְרוּבִין, בְּכֹשְׂרִים, וְלֹא בְּפְסוּלִין, וְאֵינָהּ נוֹהֶגֶת אֲלָא בְּרֵאיוֹן לְהַעֲיֵד; בְּפָנֵי בֵּית דִּין וְשֵׁלֵא בְּפָנֵי בֵּית דִּין, מִפִּי עֲצָמוֹ. וּמִפִּי אֲחֵרִים אֵין חֲיִיבִין, עַד שִׁיִּכְפְּרוּ בְּהֵן בְּבֵית דִּין. דְּבָרֵי רַבִּי מְאִיר. וְחֻקִּים אוֹמְרִים בֵּין מִפִּי עֲצָמוֹ וּבֵין מִפִּי אֲחֵרִים, אֵין חֲיִיבִין עַד שִׁיִּכְפְּרוּ בְּהֵן בְּבֵית דִּין.

1 *Leviticus* 5, 1; *Deuteronomy* 19, 17. The oath administered to witnesses before giving testimony, and they are culpable if the evidence is untrue. 2 *Deuteronomy* 17, 6; 24, 16.* 3 A ruler (סִנְהֶדְרִין 22) and those mentioned in סִנְהֶדְרִין 33, as, for instance, gamblers and pigeon-racers, are not liable if they refuse to bear witness after being put on oath. 4 If anyone states falsely on oath that he has naught to say as a witness he becomes culpable. 5 He makes an untruthful declaration that he does not know anything bearing on the case. כָּפַר, withhold the truth by pleading ignorance. 6 His opinion is rejected. 7 Literally *they*. 8 *i.e.*, he declares falsely ignorance of the testimony. *See ADDENDA at the end of this *Tractate*.

Mishnah 2

מִשְׁנָה ב

And [if they utter a *false oath*] they are culpable¹ whether they swear wantonly or in error if they wantonly [deny any knowledge of] testimony,² but they are not liable if [they refute any knowledge of evidence] in error.³

יְחִיבִין עַל זְדוּן הַשְּׁבוּעָה וְעַל שְׁגָגָתָהּ עִם זְדוּן הָעֵדוּת, וְאֵין חֲיִיבִין עַל שְׁגָגָתָהּ. וּמָה הֵן חֲיִיבִין עַל זְדוּן הַשְּׁבוּעָה? קָרַבַּן עוֹלָה וַיּוֹרֵד.

And to what are they liable if they swear wantonly? To an offering of higher or lower value.⁴

1 They falsely deny knowing the evidence, and are aware that a false oath entails culpability. 2 See the preceding *Mishnah*. They know the evidence but deny knowledge on oath, and they also know that it is wrong to swear falsely but are unaware that they are liable. 3 They think that they have no evidence to bear on the case and so swear to this effect, then they recollect that they do possess evidence. 4 See 1².

Mishnah 3

מְשֻׁנָה ג

What is the manner of an *oath of evidence*? One said to two others, 'Come and bear witness on my behalf', [and they said,] 'We swear that we know of no evidence on thy behalf', or, [if they said,¹] 'We do not know of any testimony on thy behalf', [and he said,] 'I adjure you [that you are speaking the truth!]² and they responded, 'Amen!³—they are liable.³ If he adjured them five times⁴ outside the court, and they came to the court and made confession [that they could bear witness on his behalf], they are exempt,⁵ but if they denied it⁶ [to the court], they become culpable on each count.⁷ If he adjured them five times before the court, and they denied⁸ [that they knew aught concerning his suit], they are liable⁹ on one count only. Because they can not again confess.¹¹

שְׁבוּעַת הָעֵדוּת כִּיצַד? אָמַר לְשְׁנַיִם
בוֹאוּ וְהָעִידוּנִי, שְׁבוּעָה שְׂאִין אָנוּ
יֹדְעִין לָךְ עֵדוּת, 'מִשְׁבִּיעַ אָנִי
עֲלֵיכֶם, וְאָמְרוּ 'אָמֵן, הֲרִי אֵלָיו
'חֲתִיבִין. הַשְּׁבִיעַ עָלֶיהֶן יְחַמְּשָׁה
פְּעָמִים חוּץ לְבֵית דִּין וְבָאוּ לְבֵית דִּין
וְהוֹדוּ 'פְּטוּרִים, 'כִּפְּרוּ, חֲתִיבִים עַל
כָּל-אֶחָת וְאֶחָת. הַשְּׁבִיעַ עָלֶיהֶן
חַמְּשָׁה פְּעָמִים בְּפְנֵי בֵית דִּין וְכִפְּרוּ,
אֵינָן 'חֲתִיבִין אֶלָּא אֶחָת. אָמַר רַבִּי
שִׁמְעוֹן ¹⁰מֵה-טָעַם? הוּאִיל וְאֵינָם
יְכוּלִין לְחַזֵּר ¹¹וְלְהוֹדוֹת.

R. Simon said, What is the reason?¹⁰

1 Without swearing. 2 *i.e.*, they conveyed the meaning that they were speaking the truth. 3 If actually they did know of evidence concerning him they must bring an offering for having uttered a false oath. 4 Or more than five times. And after each adjuration they made a separate denial. 5 From an offering. 6 They made no reply at all to the adjurations. 7 They have to bring a separate offering for each adjuration. 8 They maintained silence until the last appeal to them. 9 To an offering. 10 That they are liable only on one count. 11 If they had

denied knowledge before the court after the first adjuration they could not have confessed that they were able to give evidence. If it is assumed that having kept silence after the first adjuration is equivalent to a denial then they must not give testimony, so why does he repeat his adjuration seeing that the court would not accept their evidence even if they did make confession? Hence the second adjuration must be of no account, and if their silence is not deemed refutation, seeing that he had already adjured them, the prohibition concerning an oath cannot apply to a previous oath, thus the prohibition concerning only the first adjuration applies and they are liable only to one offering; but if he adjured them *outside* the court several times, then each adjuration is a separate count because even if they deny the first one they can nevertheless give evidence before the court, and so on after each adjuration, therefore they had to be put on oath the several times, and if they gave a denial after the last oath, they are liable to an offering on each separate count.

Mishnah 4

משנה ד

If both¹ denied together,² they are both liable,³ but if one [denied] after the other [had denied], the first [who had denied falsely] is culpable⁴ and the second one is exempt.⁵ If one denied [falsely] and the other⁶ confessed, he who denied is culpable.⁶ If there were two sets of witnesses [whom he had adjured], and the first set denied and then the second set [also] denied, both sets are become liable⁶ because the evidence could be sustained by either of the two sets.⁷

כָּפְרוּ שְׁנֵיהֶן בְּאֶחָת, שְׁנֵיהֶן חַיִּיבִין, בְּזֶה אַחֵר זֶה, הָרִאשׁוֹן חַיִּיב, וְהַשֵּׁנִי פְטוּר. כָּפַר אֶחָד, וְהוֹדָה אֶחָד, הַכּוֹפֵר חַיִּיב. הָיוּ שְׁנֵי כֹתֵי עֵדִים, כָּפְרָה הָרִאשׁוֹנָה, וְאַחֵר כֵּן כָּפְרָה הַשֵּׁנִיָּה, שְׁתֵּיהֶן חַיִּיבוֹת, מִפְּנֵי שֶׁהַעֲדוֹת יְכוּלָה לְהִתְקַיֵּם בְּשְׁתֵּיהֶן.

1 Those cited under oath to give evidence. 2 Saying falsely that they knew of no evidence. 3 Each brings an offering. 4 And must bring an offering. 5 He does not have to bring an offering since his testimony is now of no avail as the first had been uncovered. 6 To bring offerings. 7 Since the testimony of either set by itself could have been of benefit to him, and so each set had separately acted to his hurt. The **נִמְרָא** puts forward the following interesting illustrative case: A, B, C and D are four cited witnesses (who all know the facts of a case); then C and D marry wives who are related to one or both of the litigants and thus become disqualified to act as witnesses, and if A and B now deny knowledge of any evidence there are none else to testify, and even if the wives of C and D are on the point of death their husbands are still ineligible to bear witness, and A and B become liable; but if the wives die, then C and D cease to be kinsfolk and immediately become

qualified to give evidence, and if they now make any denial they also become liable. Some render כְּתִי here as *pairs of*.

Mishnah 5

[If one said to (two) others,] 'I adjure you that you come and testify on my behalf that in the hand of so-and-so there are of mine* a charge,¹ and a loan, and aught he had robbed me of,² and a loss [which he had found]', [and they said falsely,] 'We swear that we know not of any evidence concerning thee', they are culpable on one count only;³ [if they stated untruthfully,] 'We swear that we do not know that thou hast§ of thine in the hand of so-and-so a charge, and a loan, and aught he had robbed thee of, and a loss [which he had found]', they are liable on every count.⁴ [If he said,] 'I adjure you that you come and bear witness on my behalf that I have* in the hand of so-and-so a deposit of wheat and barley and spelt',⁵ [and they declared falsely,] 'We take an oath that we know not of any testimony on thy behalf', they are culpable on only one count;³ [if they said falsely,] 'We swear that we know of no evidence concerning thee that thou hast§ in the hand of so-and-so wheat and barley and spelt', they are culpable on each count.⁴ †Or ותשומת.

1 Or *deposit, pledge, pawn*. 2 גָּזַל, גָּזַל, *plunder, robbery*. 3 They are liable to only one offering. 4 They must bring a separate offering on each count. 5 Or *German wheat* (see אֲרָעִים, SUPPLEMENT; מוֹעֵד, SUPPLEMENT). *Or שֵׁשֶׁלִי.

Mishnah 6

[If one said to (two) others,] 'I adjure you that you come and give evidence for me that I have a claim

מִשְׁנֵה ה

מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם אִם לֹא תָבוֹאוּ
וְתַעֲדוּנִי *שֵׁשֶׁשׁ לִי בְיַד פְּלוֹנֵי פְקָדוֹן,
וְתִשְׁוֹמֶת יָד, וְגִזְלָה, וְאֶבְדָּה, שְׁבוּעָה
שָׂאִין אָנּוּ יוֹדְעִין לָהּ עֵדוּת אִין חֲזִיבִין
אֶלָּא יֵאָחַת; שְׁבוּעָה שָׂאִין אָנּוּ
יוֹדְעִין, *שֵׁשֶׁשׁ לָהּ בְיַד פְּלוֹנֵי פְקָדוֹן,
וְתִשְׁוֹמֶת יָד, וְגִזְלָה, וְאֶבְדָּה, חֲזִיבִין
עַל כָּל־אֶחָת וְאֶחָת. מִשְׁבִּיעַ אֲנִי
עֲלֵיכֶם אִם לֹא תָבוֹאוּ וְתַעֲדוּנִי *שֵׁשֶׁשׁ
לִי בְיַד פְּלוֹנֵי פְקָדוֹן חֲטִין וְשַׁעוֹרִין
וְכֹסְמִין, שְׁבוּעָה שָׂאִין אָנּוּ יוֹדְעִין
לָהּ עֵדוּת, אִין חֲזִיבִין אֶלָּא יֵאָחַת;
שְׁבוּעָה שָׂאִין אָנּוּ יוֹדְעִין לָהּ עֵדוּת
*שֵׁשֶׁשׁ לָהּ בְיַד פְּלוֹנֵי חֲטִין וְשַׁעוֹרִין
וְכֹסְמִין, חֲזִיבִין עַל כָּל־אֶחָת
וְאֶחָת.

§Or שֵׁשֶׁלִי.

מִשְׁנֵה ו

מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם אִם לֹא תָבוֹאוּ
וְתַעֲדוּנִי *שֵׁשֶׁשׁ לִי בְיַד פְּלוֹנֵי גְנוּק

against so-and-so¹ for damages',² or, '3 . . . for half-damages',⁴ or, '3 . . . to twofold compensation',⁵ or, '3 . . . to fourfold restitution',⁶ or, '3 . . . to fivefold restitution',⁷ or, '8 . . . that so-and-so violated⁹ my daughter', or, '8 . . . that so-and-so seduced my daughter', or, '8 . . . that my son struck me',¹⁰ or, '8 . . . that my fellow [on the Day of Atonement] wounded me',¹¹ or, '8 . . . that [my fellow] set fire to my shock¹² of grain on the Day of Atonement', these are culpable.¹³

וּחְצִי גֹזֵק תְּשְׁלוּמֵי כֶּפֶל, תְּשְׁלוּמֵי
 אַרְבַּעָה וְחֲמִשָּׁה, וְשֹׁאֵנס אִישׁ
 פְּלוּנֵי אֶת-בִּתּוֹ, וּפִיתָה אֶת-בִּתּוֹ,
 וְשֶׁהִכּוּ בְנֵי וְשֶׁחָבֵל בִּי תְּבָרִי,
 וְשֶׁהִדְלִיק אֶת-גְּדִישֵׁי בְּיֹום
 הַכַּפּוּרִים, הָרִי אֵלָיו חֲמִיבִין.

1 Literally that I have *in the hand of so-and-so. **2** For example, full restitution must be made for direct damage caused by a beast. **3** viz., 'I have a claim against so-and-so . . .'. **4** Compare קָמָא קָבָא 1⁴, 7¹. For instance, if a beast treading on a stone caused it to fly off and break a utensil half-reparation is made. **5** Or indemnity, payment, reparation, restitution. A theft is repaid by double value. **6** If one stole a sheep which he slaughtered or sold he has to indemnify the owner with four sheep. **7** A thief must indemnify an owner with five oxen if he stole an ox and sold it or slaughtered it. **8** viz., 'I have a lawsuit . . .'. **9** שֹׁאֵנס [Kal] or שֹׁאֵנס [Piel]. אָנס, אָנס, outrage, ravage, ravish, rape, violate. **10** See סְנִינְדִרָן 11¹. There is no compensation as capital punishment is not administered. **11** See קָמָא קָבָא 7². Compensation may still be paid although this offence incurs excision (*Appendix, Note 2*; קְרִיחוֹת 11). **12** Or stack. **13** They are liable to pay damages if they falsely denied on oath any knowledge concerning his plaint. *Or שִׁישֵׁלִי.

Mishnah 7

[If one said to (two) others], 'I adjure you that you come and give evidence on my behalf that¹ I am a priest', or, '2 . . . that I am a Levite', or, '2 . . . that I am not the son of a divorced woman', or, '2 . . . that I am not the son of a woman that had performed *chalitza*',³ or, '2 . . . that so-and-so is a priest', or, '2 . . . that so-and-so is a Levite', or, '2 . . . that [so-and-so] is not the son of a divorced woman',

מִשְׁנָה ז
 מְשָׁבִיעַ אֲנִי עֲלֵיכֶם אִם לֹא תָבֹאוּ
 וְחֲעִידוּנִי שְׂאֵנִי כֹהֵן, שְׂאֵנִי לֵוִי,
 שְׂאֵנִי בֶן גְּרוּשָׁה, שְׂאֵנִי בֶן חֲלוּצָה,
 שְׂאֵישׁ פְּלוּנֵי כֹהֵן, שְׂאֵישׁ פְּלוּנֵי לֵוִי,
 שְׂאֵינוּ בֶן גְּרוּשָׁה, שְׂאֵינוּ בֶן חֲלוּצָה,
 שְׂאֵנס אִישׁ פְּלוּנֵי אֶת-בִּתּוֹ, וּפִתָּה
 אֶת-בִּתּוֹ, וְשֶׁחָבֵל בִּי בְנֵי, וְשֶׁחָבֵל

or '2 . . . that so-and-so outraged* §גְּדִישִׁי יוֹשֶׁהֶדְלִיק 'בי חֲבִירִי, בְּשֶׁבֶת, הָרִי אֵלָיו פְּטוּרִין. the daughter [of such-and-such]', or, '2 . . . [that so-and-so] seduced the daughter of [such-and-such]', or, '2 . . . that my son wounded⁴ me', or, '2 . . . that my fellow [on the Sabbath] wounded me', or, '2 . . . that [my fellow] on the Sabbath set fire to my shock §of corn'⁵—these are exempt.

1 Some render this thus: '. . . that I, a priest [or a Levite], am not the son of a divorced woman,' or, '. . . that I, a priest [or a Levite], am not the son of a woman that had performed *chalitza*.' 2 i.e., 'I adjure you that you come and give evidence on my behalf . . .'. 3 Or *levirate separation*. See יְבָמוֹת, INTRODUCTION. 4 For which the penalty is (theoretically) death and so the question of damages cannot arise. 5 In both these last two cases the penalty is death and so no question of pecuniary compensation arises. *שְׂאֵנִס [Kal], or שְׂאֵנִס [Piel]. §Or *stack*.

Mishnah 8

מִשְׁנֵה ח

[If one said to (two) others,] 'I adjure you that you come and testify on my behalf that so-and-so promised to give¹ me two hundred *zuz*² but he did not give [them] to me', these are exempt,³ because they are only liable in the case of a claim for money⁴ which is like a deposit.⁵

מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם, אִם לֹא תָבֹאוּ וְתַעֲדוּנִי יִשְׁאָמַר אִישׁ פְּלוֹנִי לִיתֵן לִי מֵאֲתָיִם זֹז, וְלֹא נָתַן לִי הָרִי, אֵלָיו יִפְטוּרִים, שְׂאֵין חֲבִירִין אֵלָּא עַל תְּבִיעַת מְמוֹן כְּפִקְדוֹן.

1 Literally *said that he would give*. 2 See וְרָעִים, Page 18f. 3 They are not liable to an offering if they denied any knowledge of testification. 4 Or *property*. 5 *Leviticus* 6, 2. Money promised as a gift cannot be sued for at court.

Mishnah 9

מִשְׁנֵה ט

[If one said to (two) others,] 'I adjure you that when you know of testimony on my behalf you come and bear witness for me', they are exempt,¹ since the oath preceded² the evidence.³

מִשְׁבִּיעַ אֲנִי עֲלֵיכֶם כְּשֶׁתְּדַעוּן לִי עֲדוֹת שֶׁתָּבֹאוּ וְתַעֲדוּנִי, הָרִי אֵלָּו יִפְטוּרִים, מִפְּנֵי שֶׁקְּדָמָה שְׂבוּעָה יִלְעָדוֹת.

1 They are not liable to an offering if, having accepted the oath, they untruthfully denied having learned of any evidence in his favour. 2 שְׁקָדְמָה [Kal] or שְׁקָדְמָה

[Piel]. 3 Based on *Leviticus 5, 1*, וְשָׁמְעָה קוֹל אֱלֹא וְהוּא עֵד, in that he heareth the voice of adjuration, and he being a witness, i.e., the litigant called upon the witness by an oath that if he knows of any evidence in his favour he should testify on his behalf before the court; it is not a question of the witness swearing but of hearing himself adjured to testify (some authorities maintain the possibility of acting as witness either by knowing or by seeing).

Mishnah 10

If one stood in the synagogue and said, 'I adjure you, if you know of evidence on my behalf, that you come and bear witness for me', these are exempt¹ (unless he particularly indicates which ones among them).²

מִשְׁנָה י'
עָמַד בְּבֵית הַכְּנֶסֶת וְאָמַר מְשָׁבִיעַ
אֲנִי עֲלֵיכֶם שְׂאֵם אַתֶּם יוֹדְעִים לִי
עֲדוֹת, שְׁתָּבֹאוּ וְתַעֲדוּנִי הֲרֵי אֵלָיו
פְּטוּרִין, (עַד שִׁיהִיָּה מִתְּפוּיִן לָהֶם).

1 Even such of them who may have knowledge of evidence in his favour are not liable to an offering. 2 This clause in parenthesis is not given in the Palestinian Talmud (תְּלַמְדֵי יְרוּשָׁלַיִם).

Mishnah 11

If one said to two others, 'I adjure you, so-and-so and so-and-so, that if you know of testimony on my behalf you come and bear witness for me', [and they replied,] 'We take an oath that we do not know of any testimony concerning thee', and they¹ knew [indirectly] of evidence² concerning him but only from another witness,³ or if one of them was near of kin or not qualified* [as a witness], these are exempt.⁴

מִשְׁנָה י"א
אָמַר לְשְׁנַיִם מְשָׁבִיעַ אֲנִי עֲלֵיכֶם אִישׁ
פְּלוּנִי וּפְלוּנִי שְׂאֵם אַתֶּם יוֹדְעִין לִי
עֲדוֹת שְׁתָּבֹאוּ וְתַעֲדוּנִי, שְׁבוּעָה
שָׂאִין אָנוּ יוֹדְעִין לָהּ עֲדוֹת, וְיָהֵם
יוֹדְעִין לוֹ עֲדוֹת, יַעַד מִפִּי עַד, אוֹ
שְׁהִיָּה אֶחָד מֵהֶן קְרוֹב אוֹ פְּטוּל,
הֲרֵי אֵלָיו פְּטוּרִין.

1 This is not tantamount to denying falsely on oath any knowledge of evidence in his favour since they had no direct knowledge. 2 Their testimony would be of no avail. 3 The court would refuse to accept hearsay evidence. 4 From an offering.
*Or ineligible. §Or similar, like.

Mishnah 12

If one sent his slave^{1,2} [to adjure witnesses], or if the defendant* said to them 'I adjure you, if you know of evidence regarding him,³ that you come and bear testimony on his behalf', these are exempt⁴ unless they hear [the adjuration] from the mouth of the claimant.

1 A Canaanite slave. 2 Literally *by the hand of his slave*. 3 The claimant (or plaintiff, complainant). 4 If they denied falsely on oath that they knew any evidence they are not liable to an offering. **sc.*, the one sued for a claim.

Mishnah 13

[If one say to (two) others,] 'I adjure you',¹ or, 'I command you [under oath]',¹ or, 'I bind you [under oath]',¹ these are liable.² [If he say, 'I adjure you] by heaven and by earth',¹ they are exempt.³ [If he adjured them 'by *Aleph-Daleth*',⁴ or, 'by *Yod-He*',⁵ or, 'by the Almighty', or, 'by *Hosts*', or, 'by the Gracious and Merciful', or, 'by *Him Who is long-suffering and of great lovingkindness*',⁶ or by any one [of God's] attributes,⁷ they are culpable.⁸ If one blaspheme⁹ [God] by [any one of] all these, he becomes liable [to the penalty by stoning]. This is the view of R. Meir;¹⁰ but the Sages say he is exempt.¹¹ If one curse his father or his mother by [any one of] these [*Names*], he is liable.¹² This is the opinion of R. Meir;¹⁰ but the Sages say he is exempt.¹¹ If one curse himself¹³ or his fellow by [any one of] these [*Names*],* he transgresses a *negative command*.¹⁴ If one

משנה יב

שילח ביד עבדו, או שאמר לקהל הנחבע, משביע אני עליכם שאם אתם יודעין ילו עדות, שתבואו ותעידוהו, הרי אלו פטורין, עד שישמעו מפי התובע.

משנה יג

משביע אני עליכם, ומצוה אני עליכם, ואוסרכם אני, הרי אלו חייבין. בפשמים ובארץ, הרי אלו פטורין. באלף דלית, ביו"ד ה"י, בשדי, בצבאות, בחנון, ורחום, בארץ אפים ורב חסד, ובכל הנבויין, הרי אלו חייבין. המקלל בכולן חייב. דברי רבי מאיר; וחכמים פטורין המקלל אביו ואמו בכולן חייב. דברי רבי מאיר; וחכמים פטורין. המקלל עצמו וחברו, בכולן, עובר בלא תעשה. יפכה אלהים, וכן יפכה אלהים, זו היא אלה הפתובה בתורה. אל יפך,

say [to each of his intended witnesses separately,] 'God smite thee',¹⁵ or, 'And thus may God smite thee',¹⁵ this is the imprecation¹⁶ that is written in the Law.¹⁷ [If one say,] 'May He not smite thee',¹⁸ or, 'May He bless thee',¹⁸ or, 'May he do well with thee',¹⁸ R. Meir¹⁰ declares him culpable;¹⁹ but the Sages [say he is] exempt.²⁰

1 *i.e.*, to come and bear witness. **2** They must bring an offering if they declared untruthfully on oath that they know of no evidence on his behalf. **3** If they swear falsely that they knew of no testimony concerning him they are not liable to an offering. 'By heaven and by earth' is not an acceptable formula. **4** The first two letters of—and the equivalent to—אֲדֹנָי, *Lord*. **5** The initials and equivalent of the *Tetragrammaton* ['The Eternal']. **6** Compare *Exodus* 34, 6; *Psalm* 103, 8. **7** Or by any substitute Name [of the Almighty].* **8** They are liable to an offering if they lied swearing that they knew of no testimony concerning him. **9** Or curse. סִנְהֵדְרִין 75. **10** His opinion is rejected. **11** He is culpable only if he blasphemed using the *Tetragrammaton*. **12** To the penalty of death by stoning. סִנְהֵדְרִין 78. **13** Compare *Deuteronomy*, 4, 9. **14** Compare *Leviticus* 19, 14. **15** *i.e.*, 'if thou come not and bear witness for me.' **16** Or *anathema*, *curse*, *imprecation*. **17** *Leviticus* 5, 1. **18** *i.e.*, 'if thou come and testify on my behalf.' Or וְיִבְרַכְךָ, כֶּן. **19** He is liable to an offering if he declared falsely on oath that he knew of no evidence for him. **20** Because Scripture (*Leviticus* 5, 1) says, וְשָׁמְעָה קוֹל אֱלֹהִים, and hear the voice of execration, *viz.*, 'not the voice of blessing.' *See ADDENDA, Page 383.

CHAPTER 5

פֶּרֶק ה'

Mishnah 1

משנה א

The oath concerning a deposit¹ applies to men and to women, to those that are not near of kin and to those that are kinsfolk, to those who are eligible [to give evidence] and to those that are ineligible [to testify], [and it applies whether the oath is taken] before a court or not before a court, [and whether the oath is uttered from his own mouth;² and if he be adjured] at the mouth of others,³ he is not culpable unless he denies (the truth⁴) before a

שְׁבוּעַת הַפְּקָדוֹן נוֹהֶגֶת בְּאֲנָשִׁים
וּבְנָשִׁים, בְּרֵחוּקִים וּבְקֵרוּבִים,
בְּכֹשְׂרִים וּבְפֹסְלוֹתֵיהֶם, בְּפָנָיו בֵּית דִּין
וְשֵׁלָא בְּפָנָיו בֵּית דִּין, מִפִּי עֲצָמוֹ;
וּמִפִּי אַחֲרֵיהֶם, אִינוּ תַּיִב עַד שֶׁיִּכְפֹּר
'(בו) בְּבֵית דִּין. דְּבַרֵּי רַבִּי מֵאִיר;
וְנִחְכְּמִים אוֹמְרִים בֵּין מִפִּי עֲצָמוֹ בֵּין
מִפִּי אַחֲרֵיהֶם, כִּיֹּן שֶׁכָּפַר בּוֹ תַּיִב,

court. This is the opinion of R. Meir; but the Sages⁵ say, Whether [he took the oath] with his own mouth or [was adjured] at the mouth of others, so soon as he denies⁶ [falsely any knowledge of evidence] he becomes liable [to an offering]. And he is liable [to an offering whether knowing that the deposit had been left] he took the oath wantonly or [unaware that he was liable to an offering but knowing that the deposit had been left] in error if he had spoken wittingly regarding the deposit, but he is not liable [to an offering] if [unaware that the deposit had been left] he had spoken in error concerning it. And to what is he liable [if he took an oath] wantonly, [being aware that the deposit had been left]?—A *guilt-offering* of the value of [two] *shekels* in silver.⁷

וְחַיִּיב עַל זְדוֹן הַשְּׂבוּעָה, וְעַל שְׁגִיטָה
עִם זְדוֹן הַפְּקָדוֹן, וְאִינוּ חַיִּיב עַל
שְׁגִיטָתָהּ. וּמָה חַיִּיב עַל זְדוֹנָהּ? אָשָׁם
'בְּכֶסֶף שְׁקָלִים.'

1 *Leviticus* 5, 21ff. The oath a plaintiff takes when suing for the return of a deposit. See the next *Mishnah*. 2 Or also if he was adjured by his fellow and he responded with 'Amen!', the oath is binding. 3 And he responded with 'Amen!' making the oath licit. 4 Literally *it*. בּוֹ is considered redundant by some. 5 Their view is accepted. 6 Before a court or not. 7 *Leviticus* 5, 15. וְרָעִים, Page 18f.

Mishnah 2

What is the manner of the oath concerning a deposit?¹ If [a claimant] said to another, 'Give me my deposit which I have* in thy trust',² [and the other replied,] 'I take an oath that naught of thine is in my trust', or if he said³ to him, 'Naught of thine is in my trust', [and the complainant] answered, 'I adjure thee [that thou utterest the truth]', and the other said, 'Amen!' then he is liable [to an offering if he lied]. If [the plaintiff] adjured him five times, whether before a court or whether not before a court, and [the other] denied [it], he is culpable on each count.⁴ R. Simon said, What is the

מִשְׁנָה ב
שְׂבוּעַת יִהְיֶה פְּקָדוֹן בְּיָצֵד? אָמַר
לוֹ תֵּן לִי פְּקָדוֹנִי *שֵׁשׁ לִי יִבְיַדְךָ,
שְׂבוּעָה שָׂאִין לָךְ בְּיָדִי, אוֹ
שָׂאֵמַר לוֹ 'אֵין לָךְ בְּיָדִי, מִשְׁבִּיעֶךָ
אָנִי, וְאָמַר אָמֵן, הֲרִי זֶה חַיִּיב.
הַשְּׂבִיעַ עָלָיו חֲמִשָּׁה פְּעָמִים, בֵּין
בִּפְנֵי בֵּית דִּין, וּבֵין שְׂלָא בִּפְנֵי
בֵּית דִּין, וְכֹפֵר, חַיִּיב עַל כָּל-
'אֶחָת וְאֶחָת. אָמַר רַבִּי שִׁמְעוֹן מֵה-
טַעַם? מִפְּנֵי שֶׁיְכוּל לַחְזוֹר וּלְהוֹדוֹת.

reason? Because he can [after each adjuration] recant and confess [that the deposit is in his keeping]. *Or שִׁישׁ-לִי.

1 Compare the preceding *Mishnah*. 2 Literally *hand*. † 3 *viz.*, without saying, 'I swear that . . .'. 4 He is liable to a separate offering for each of the adjurations because on each occasion he withheld the truth by pleading ignorance concerning something of monetary value. † Or *pausal* בְּיָדָךְ.

Mishnah 3

If there were five claimants [against one], [and] they said to him, 'Give us the deposit that belongs to us and is* in thy charge', † [and he declared untruthfully,] 'I take an oath that I have naught of yours in my charge', he is liable [to an offering] on one count only; [but if he stated falsely,] 'I take an oath that naught of thine is in my charge, nor of thine, ‡ nor of thine, † . . .',² he is liable [to a separate offering] on each count. R. Eliezer³ says, [He is culpable, if he lied, for each count separately] only if he repeat the oath at the end.⁴ R. Simon⁵ says, [If he were lying, he is liable to an offering on each count separately] only if he repeat the oath for each one.⁶ [If one said,] 'Give me my deposit, and loan [that thou didst borrow of me], and the stolen stuff [that thou hast stolen of me], and the loss [of mine which thou hast found]—[all these] of mine§ that are in thy possession', † [and he replied,] 'I take an oath that thou hast naught in my charge', he is liable, [if he were lying, to an offering] on one count only, [but if he answered,] 'I take an oath that there is naught of thine in my keeping—neither deposit nor loan

משנה ג

הָיָה חֲמִשָּׁה תּוֹבְעִין אוֹתוֹ, אָמְרוּ לוֹ
תֵּן לָנוּ פְּקֻדוֹן שִׁישׁ לָךְ † בְּיָדָךְ,
שְׂבוּעָה שָׂאִין לָכֶם בְּיָדִי, אֵינּוּ חַיִּיב
אֶלָּא אֶחָת; שְׂבוּעָה שָׂאִין לָךְ
בְּיָדִי, וְלֹא לָךְ, וְלֹא לָךְ, חַיִּיב עַל
כָּל-אֶחָת וְאֶחָת. רַבִּי אֱלִיעֶזֶר אוֹמֵר
עַד שִׁיאֲמַר שְׂבוּעָה בְּאַחֲרוֹנָה. רַבִּי
שְׁמַעוֹן אוֹמֵר עַד שִׁיאֲמַר שְׂבוּעָה
לְכָל אֶחָד וְאֶחָד. תֵּן לִי פְּקֻדוֹן,
וּתְשׁוּמַת יָד, גְּזוּל, וְאַבְדָּה, שִׁישׁ לִי
בְיָדָךְ, שְׂבוּעָה שָׂאִין לָךְ בְּיָדִי, אֵינּוּ
חַיִּיב אֶלָּא אֶחָת, שְׂבוּעָה שָׂאִין לָךְ
בְּיָדִי, פְּקֻדוֹן, וּתְשׁוּמַת יָד, וְגִזְלָה,
וְאַבְדָּה, חַיִּיב עַל כָּל-אֶחָת וְאֶחָת.
תֵּן לִי חֲטָיִן וְשְׁעוּרִין וְכוּסְמִין שִׁישׁ
לִי † בְּיָדָךְ, שְׂבוּעָה שָׂאִין לָךְ בְּיָדִי,
אֵינּוּ חַיִּיב אֶלָּא אֶחָת, שְׂבוּעָה שָׂאִין
לָךְ בְּיָדִי, חֲטָיִן וְשְׁעוּרִין וְכוּסְמִין,
חַיִּיב עַל כָּל-אֶחָת וְאֶחָת. רַבִּי

nor stolen property nor lost goods', he is liable, [if he lied, to a separate offering] on each count. [If a claimer said], Give me the wheat⁷ and the barley and the spelt⁸ that are mine and in thy charge', [and lying he answered,] 'I take an oath that there is naught of thine in my charge', he is liable [to an offering] on only one count, [but if he lied, saying,] 'I take an oath that there is naught of thine in my charge—neither wheat nor barley nor spelt', he is liable [to a separate offering] on each count. R. Meir⁹ says, Even if he said, 'I swear that I have' neither [a grain of] wheat nor [a grain of] barley nor [a grain of] spelt', [and this was untrue], he is liable [to a separate offering] on each count. §Or שְׁשֵׁ-לִי *Or שְׁשֵׁ-לָהּ וְאַחַת.

1 Or *possession, keeping*. Literally in [or under, one's] hand. 2 And so on to each claimant. 3 His view is rejected. 4 Thus בְּשִׁבְעָה וְלֹא יֵלֶךְ, וְלֹא יֵלֶךְ, וְלֹא יֵלֶךְ בְּשִׁבְעָה 'There is naught of thine in my keeping, nor of thine, nor of thine . . . I swear.' 5 His opinion is rejected. 6 Thus . . . שְׁבֻעָה לֹא יֵלֶךְ, שְׁבֻעָה לֹא יֵלֶךְ, 'I swear that naught [or neither] of thine, I swear that naught of thine . . .'. 7 See וְרָצִים, SUPPLEMENT; מוֹעֵד, SUPPLEMENT. 8 Or *German wheat*. 9 His view is not accepted. †Or *pausal בִּידָה, בִּידָה*. ‡Or *pausal לָהּ*.

Mishnah 4

משנה ד

[If one said to another,] 'Thou hast violated or thou hast seduced my daughter', and he replied, 'I did not violate [her] and I did not seduce [her]', and [the father said,] 'I adjure thee', and he responded [untruthfully], 'Amen!' he is liable [to an offering]. R. Simon¹ exempts [him from an offering], for one does not pay a fine* through his own confession.² [The Sages] said to him, Even though he pays no fine* because of his own admission, he must nevertheless pay [indemnity] for indignity and discredit³ [inflicted on her] through his own admission.

אָנֹסֶת וּפִתְיִית אֶת-בִּתִּי וְהוּא אָמַר
לֹא אָנֹסֶתִי וְלֹא פִתְיִיתִי, מִשְׁבַּעַךְ
אָנִי, וְאָמַר אָמֵן, חִיִּיב. רַבִּי שִׁמְעוֹן
פוֹטֵר שְׂאֵינוֹ מְשָׁלִם *קָנָם יַעַל פִּי
עַצְמוֹ. אָמְרוּ לוֹ אַף עַל פִּי שְׂאֵינוֹ
מְשָׁלִם *קָנָם עַל פִּי עַצְמוֹ, מְשָׁלִם
בְּוֶשֶׁת וּפְגָם עַל פִּי עַצְמוֹ.

1 His view is rejected. 2 Literally by his own mouth. 3 Or *blemish, injury, deterioration*. קָנָם. 34. This applies also for *pain* or *suffering*. *Popular pronunciation קָנָם.

Mishnah 5

[If one lodged a claim against another saying,] 'Thou hast stolen my ox, [and the accused said untruthfully,] 'I did not steal [it]', [and the claimant said,] 'I adjure thee', and he responded, 'Amen!' he is liable [to an offering]. [If he said,] 'I stole [it] but I did not kill [it] or sell [it]', [and the claimant said,] 'I adjure thee', and [lying] he responded, 'Amen!' he is exempt [from an offering].¹ [If one said,] 'Thy ox killed my ox', [and the latter said with untruth,] 'It did not kill [it]', [and the former said,] 'I adjure thee', and he responded, 'Amen!' he is liable [to an offering]. [If one said,] 'Thy ox killed my slave', and the other replied² [untruthfully,] 'It did not kill [him]', and [the accuser said,] 'I adjure thee', and he responded, 'Amen!' he is exempt [from an offering].³ If one said to another, 'Thou hast wounded me and hast inflicted a bruise on me', and [lying] the other answered,² 'I have neither inflicted a wound on thee nor have I bruised thee', [and the former said,] 'I adjure thee', and he responded, 'Amen!' he is liable [to an offering]. If someone's slave said to him [—his master—], 'Thou hast knocked out my tooth', or, 'Thou hast blinded my eye',⁴ and he said,² 'I have not knocked [it] out', or, 'I have not blinded [it]', [and the slave said,] 'I adjure thee', and he [falsely] responded, 'Amen!' he is exempt [from an offering].⁵ This is the general principle:⁶ He who must pay a fine through his own confession is liable [to an offering if he did not admit but denied and took an oath]; but if he do not pay a fine through his own confession, he is not liable [to an offering not having made admission but denying on oath].

1 Since even if he had admitted that he had killed or sold it he would not have

משנה ה

גָּבַתְּ אֶת-שׁוֹרִי וְהוּא אֹמֵר לֹא
 גָּבַתְתִּי מִשְׁבִּיעַךְ אָנִי, וְאָמַר אָמֵן,
 חַיִּיב. גָּבַתְתִּי אָבֵל לֹא טָבַחְתִּי וְלֹא
 מָכַרְתִּי, מִשְׁבִּיעַךְ אָנִי, וְאָמַר אָמֵן,
 יִפְטוֹר. הַמִּית שׁוֹרֶךְ אֶת-שׁוֹרִי וְהוּא
 אָמַר לֹא הַמִּית, מִשְׁבִּיעַךְ אָנִי, וְאָמַר
 אָמֵן, חַיִּיב. הַמִּית שׁוֹרֶךְ אֶת-עַבְדִּי
 וְהוּא יֹאמֵר לֹא הַמִּית, מִשְׁבִּיעַךְ
 אָנִי, וְאָמַר אָמֵן, יִפְטוֹר. אָמַר לוֹ
 חֲבֵלְתָּ בִּי וְעַשִׂיתָ בִּי חֲבוּרָה, וְהוּא
 יֹאמֵר לֹא חֲבֵלְתִּי וְלֹא עַשִׂיתִּי בְּךָ
 חֲבוּרָה, מִשְׁבִּיעַךְ אָנִי, וְאָמַר אָמֵן,
 חַיִּיב. אָמַר לוֹ עַבְדְּךָ הִפְלֵת אֶת-
 שֵׁנִי וְסִמֵּית אֶת-יְעִינִי, וְהוּא אֹמֵר
 לֹא הִפְלֵתִי וְלֹא סִמֵּיתִי, מִשְׁבִּיעַךְ
 אָנִי, וְאָמַר אָמֵן, יִפְטוֹר. זֶה הַכֹּלֵל
 כָּל-הַמְּשָׁלִם עַל פִּי עֲצָמוֹ חַיִּיב
 וְשֵׁאִינוֹ מְשָׁלִם עַל פִּי עֲצָמוֹ יִפְטוֹר.

had to pay compensation, the confession would not have advantaged the claimant. 2 Literally *says, replies, answers*. 3 A confession in relation to a fine in question would not have been to the advantage of the complainant. 4 And the bondman demands his freedom. 5 Because even if the owner had made admission he would not have had to set him free for the manumission is equivalent to a fine. 6 Compare כתובות 39. Popular pronunciation הכלל.

CHAPTER 6

פרק ו

Mishnah 1

The oath¹ [imposed by] (the) judges [is administered] if the claim lodged be [not less in value than] two silver pieces,² and the claim admitted be [at least] of the value of * a *perutah*; but if the claim admitted be not of like kind as the claim lodged, [the defendant] is exempt [from the oath]. How so? [If a plaintiff said,] 'Two silver pieces of mine are in thy possession',³ [and he replied, 'Thou hast in my charge only a *perutah*', he is exempt [from the oath],⁴ [but if he said,] 'Two silver pieces and a *perutah* belonging to me are in thy charge', [and the latter replied,] 'Thou hast only a *perutah* in my keeping', he is liable⁵ [to the oath]. [If the claimant said,] 'Thou hast a *maneh* of mine in thy charge', [and the accused replied,] 'Thou hast not in my keeping save fifty *dinars*', he is liable [to the oath]. [If the claimer said,] 'A *maneh* belonging to my father is in thy charge', [and the other replied,] 'I have not in my possession save fifty⁶ *dinars* [of his]', he is exempt [from the oath] because he is as like to one who restores a loss.⁷ *Or בשוה.

מְשֻׁנָּה א
 יְשׁוּבוֹת הַדַּיְיָנוּן, הַטְּעֵנָה שְׁמִי
 כֶּסֶף, וְהַהוֹדָאָה *בְּשׁוּה פְרוּטָה;
 וְאִם אֵין הַהוֹדָאָה מִמִּין הַטְּעֵנָה
 פְּטוֹר. כִּי־צָד? שְׁמִי כֶּסֶף לִי בְיָדְךָ,
 אֵין לְךָ בְיָדִי אֶלָּא פְרוּטָה פְּטוֹר.
 שְׁמִי כֶּסֶף וּפְרוּטָה לִי בְיָדְךָ, אֵין
 לְךָ בְיָדִי אֶלָּא פְרוּטָה חַיִּיב. מָנָה
 לִי בְיָדְךָ, אֵין לְךָ בְיָדִי פְטוֹר. מָנָה
 לִי בְיָדְךָ, אֵין לְךָ בְיָדִי אֶלָּא חֲמִשִּׁים
 דִּינָר חַיִּיב. מָנָה לְאָבָא בְיָדְךָ, אֵין
 לְךָ בְיָדִי אֶלָּא חֲמִשִּׁים דִּינָר, פְּטוֹר.
 מִפְּנֵי שֶׁהוּא כְּמֹשִׁיב יְאֻבֵּי־דָה.

1 Literally *oaths*. 2 See וְרָעִים, Page 18f. 'Two silver pieces' = 2 מָעוֹת. פְּרוּטָה = 100 זוּז = 600 מָעוֹת = 19,200. According to the רַבָּנָן the oath is also imposed for smaller amounts. 3 See 5^b, Note 1. 4 Because the admission reduces the claim to less than two מָעוֹת. 5 Because the admission does not reduce the claim below two מָעוֹת. 6 Some texts give 3 instead of חֲמִשִּׁים. 7 In

שבועות 42b this is explained that the claimant is not certain of his charge, and it is similar to a claim for lost money where the finder admits to having found only half of the amount, and no oath is administered in cases of lost property.

Mishnah 2

משנה ב

[If a claimant said,] 'A *maneh*¹ of mine is in thy charge',^{2*} and [the other] said to him (before witnesses),³ 'Yea'; on the morrow [the former] said to him, 'Give it to me', [and the latter said,] 'I have [already] given it to thee', he is exempt [from the oath], but if he said, 'Thou hadst naught in my charge', he is culpable⁴ [for having falsely sworn]. [If one claimed from another,] 'A *maneh* of mine is in thy keeping',^{*} and he answered, 'Yea', [and the claimant said,] 'Do not give it to me except before witnesses', and next day he said to him, 'Give it to me', and he replied, 'I have already given it to thee,' he is liable⁵ because he ought to have given it (to him)⁶ before witnesses.

ימנה לי בידך, אומר לו (בפני עדים) הן, למחר אומר לו תניהו לי, נמתיו לה פטור; אין לה בדי, חייב. מנה לי בידך, אומר לו הן, אל תתנהו לי אלא בעדים, למחר אומר לו תניהו לי, נמתיו לה, חייב, מפני שצריך ליתנו (לו) בעדים.

1 See the preceding *Mishnah*, **Note 1**. 2 See 5³, **Note 1**. 3 This bracketed phrase is not given in the **גמרא**. 4 And he must repay the claim in full. 5 The claim must be met in full. 6 לו is not given in the **גמרא**. *Or *pausal* בידך.

Mishnah 3

משנה ג

[If one said to another,] 'I have* a *litra*¹ of gold in thy possession',^{2§} and he said, 'Thou hast naught in my charge save a *litra* of silver', he is exempt [from an oath].³ [If the claimant said,] 'There is* a golden *dinar*⁴ of mine in thy charge',[§] [and the other replied,] 'Thou hast in my charge only a silver *dinar*', or, '⁵ . . . a *tressis*',⁶ or, '⁵ . . . a *pondion*', or, '⁵ . . . a *perutah*', he is liable [to an oath], because all kinds of coins are alike.⁷ [If a claimant said,] 'A

ליטרא זהב יש לי בידך, אין לי בדי אלא ליטרא כסף פטור. דינר זהב יש לי בידך, אין לה בדי, אלא דינר כסף, וטריסית, ופונדיון, ופרוטה, חייב, שהכל מין מטבע אחת. כור תבואה יש לי בידך, אין לה בדי אלא לתך קטנית, פטור; כור פירות יש

*kor*⁶ of grain belonging to me* is in thy charge',§ [and the other answered,] 'Thou has naught in my charge except a *lethek* of pulse',⁹ he is exempt [from an oath]¹⁰; [but if he said,] 'Thou hast a *kor* of produce of mine* in thy charge',§ [and he answered,] 'Thou hast in my keeping only a *lethek* of pulse', he is liable [to an oath], since pulse is deemed in the class of produce. If he claimed from him wheat, and he admitted that he had barley [belonging to the claimant], he is exempt [from payment even for the barley], but Rabban Gamaliel¹¹ declares him liable [to the oath]. If one claim from his fellow jars of oil, and [the latter] admits to him [that he has of his only empty] jars,¹² Admon¹³ says, As he admits his claim in part he must take the oath;¹⁴ but the Sages say, The admission has no connection with the claim;¹⁵ Rabban Gamaliel says, 'I commend the opinion of Admon'. If one claimed from his fellow utensils and land, but [the latter] admitted [the claim to] the utensils and denied [the claim to] the land, or [if he] admitted [the claim to] the land but refuted [the claim to] the utensils, he is exempt [from the oath].¹⁶ If [the defendant] admitted in part [the claim to] the land, he is exempt [from the oath];¹⁷ [but if he admitted] in part [the claim to] the utensils, he is liable [to the oath],¹⁸ since property for which there can be no security enforces the necessity for an oath on property that can be secured.¹⁹ *Or לִי.

לִי בְיָדְךָ, אִין לָךְ בְּיָדִי אֶלְא לְתַךְ קִטְנִית, חַיִּיב, שֶׁהִקְטַנְתִּי בְּכֹל לִי פִירוֹת. טָעַנּוּ חֲטִין וְהוֹדָה לוֹ בְּשֵׁעוֹרִים, פְּטוּר, וּרְבֵן ¹¹ גַּמְלִיאֵל מַחַיִּיב. הַטּוֹעֵן לְחִבְרוֹ בְּכַדֵּי שֶׁמֶן, וְהוֹדָה לוֹ ¹² בְּקַנְקָנִים, ¹³ אֲדַמּוֹן אוֹמֵר הוֹאִיל וְהוֹדָה לוֹ מִקְצַת מִמֵּין הַטְּעֵנָה, ¹⁴ יִשָּׁבַע; וְחֲכָמִים אוֹמְרִים אִין הַהוֹדָאָה מִמֵּין ¹⁵ הַטְּעֵנָה; אָמַר רַבֵּן גַּמְלִיאֵל רוֹאֵה אֲנִי אֶת־דְּבָרֵי אֲדַמּוֹן. טָעַנּוּ כֵלִים וְקַרְקָעוֹת וְהוֹדָה בְּכֵלִים וְכִפָּר בְּקַרְקָעוֹת, בְּקַרְקָעוֹת וְכִפָּר בְּכֵלִים, ¹⁶ פְּטוּר. הוֹדָה בְּמִקְצַת הַקַּרְקָעוֹת, ¹⁷ פְּטוּר; בְּמִקְצַת הַכֵּלִים, ¹⁸ חַיִּיב, שֶׁהִנְקָסִים שָׂאִין לָהֶם אַחֲרֵיּוֹת, זוֹקֵקִין אֶת־הַנְּקָסִים שֶׁיֵּשׁ לָהֶן ¹⁹ אַחֲרֵיּוֹת לִישָׁבַע עֲלֵיהֶן.

§Or *pausal* בְּיָדְךָ.

1 לִיטְרָא = 358.5 grams (corresponding to the Roman *libra*). See וְרַעִים, Page 18f.
 2 Sec 5³, Note 1. 3 Because he admitted to something else. 4 One gold *dinar* = 24 silver *dinars*. 5 *i.e.*, 'Thou hast in thy charge a . . . 6 טְרִיסִית, טְרִיסִין = 3 *asses* (as a Roman copper coin weight 12 ounces). 7 פְּרוּטָה = 16 סֵנְגִידִין.
 7 Some render this for all are of the like kind of coinage. The argument here is that

the claimant demands coins for a gold denar deposited and the defendant insists that he owes only coins for a silver denar. 8 כור = 395.5 litres = 2 לֶתֶךְ. 9 Or peas, beans, small fruit. See תְּרֵיִם, SUPPLEMENT; מוֹעֵד, SUPPLEMENT. 10 Since he admits to something else altogether. 11 His opinion is rejected. 12 He repudiates the claim to any oil. 13 His view is accepted. See כְּתוּבוֹת 134. 14 That he had no oil as claimed, but he must return the jars or pay for them. 15 Their argument is that the plaintiff is not lodging a claim to jars of oil but to a quantity of oil equal to that contained in a certain stated number of jars (*viz.*, not to both oil and jars), and therefore the holder's reply in this sense has no bearing on the claim. 16 But he must surrender what he admits or pay for it. 17 He must restore what he admits. 18 In this case if the claimant also included land and a stated number of utensils and the accused admitted only to less than (*i.e.*, part claim) the number of utensils claimed but denied the claim to the land, he must take the oath. 19 Compare קְדוּשָׁין 15.

Mishnah 4

משנה ד

No oath is administered [to a defendant] in a claim¹ [lodged] by a deaf-mute, or a mentally-defective person,² or a minor;³ and a minor is not made to take the oath; but an oath is imposed [in the case of a claim lodged against the property] of a minor or [against] dedicated property.⁴

אין נשבעין על יטענת חרש, ישוטה
 וקטן, ואן משביעין את הקטן;
 אבל נשבעים לקטן, וילהקדש.

1 For a loan, debt, deposit or anything else. 2 Or imbecile. 3 קטן, a (boy) minor, under the age of thirteen years. [קטנה, a (girl) minor, under twelve years of age.] 4 Property that had been given in security by a debtor to a creditor, and which the debtor had then dedicated without having the right to do so; such property can be recovered by the creditor but he must first take the oath that he is entitled to it.

Mishnah 5

משנה ה

And these are claims¹ regarding which an oath is not imposed: bondmen,² documents,³ real estate,⁴ and sacred objects;⁵ the laws of two-fold restitution⁶ and the laws of four-fold⁷ or fivefold⁸ restitution do not apply to them. An unpaid guardian does not have to take an oath [for anything stolen], [and] a paid

ואלו ידברים שאין נשבעין עליהם,
 העבדים, והשטרות, וקרקעות,
 וההקדשות; אין בהן תשלומי כפל
 ולא תשלומי ארבעה וחמשה.
 שומר חנם אינו נשבע, נושא שכר

guardian does not pay compensation [for theft]. R. Simon says, *Hallowed things*⁹ for whose security [a guardian] is responsible¹⁰ an oath concerning them is imposed [on the guardian],¹¹ but where one is not liable for their security he is not put on oath concerning them.¹²

אֵינוֹ מְשָׁלִים. רַבִּי שְׁמַעוֹן אוֹמֵר
יִקְדָּשִׁים שְׁחֵיב בְּאַחֲרֵייתָן וְשָׁבַעַן
עֲלֵיהֶן, וְשֵׁאִינוֹ תַּיִב בְּאַחֲרֵייתָן,
אֵין וְשָׁבַעִים עֲלֵיהֶם.

1 Literally *things, matters*. See בָּבָא מִצֵּיא 4⁹. 2 For instance, A claims two slaves from B but B admits the claim to only one slave. Literally *the bondmen, and the documents, and real estate, and the sacred objects*. 3 Or *bonds, notes of indebtedness*. For example, C claims two bonds from D who admits to one bond only. 4 Thus, E claims land from F who admits only half the claim. 5 *i.e.*, Temple property. For instance, the Temple authorities lodge a claim against someone who admits to only part of the claim. 6 A thief does not pay double compensation. See בָּבָא קַמָּא 12ⁿ. 7 Thus, if one steals a sheep of Temple property and sold it he does not repay four sheep. 8 A thief does not repay five oxen for one ox of Temple property stolen and sold. 9 Less frequent קָדָשִׁים. Compare וְבָחִים 51-8. Animals set apart for offering. 10 If lost, damaged, or stolen. 11 Or else he makes restitution (for the owner must replace the missing animal(s) for offering). 12 If one dedicated an animal and it was stolen or died he does not have to replace it, or if he gave it in charge of someone and it was stolen the guardian does not take an oath.

Mishnah 6

R. Meir¹ says, There are* things that are [seemingly] real estate² and [yet] are not real estate, but the Sages do not concur with him. How so? [If one say to another,] 'I gave thee§ ten vines laden [with grapes]', and the other³ says, 'There were only five', R. Meir would make him liable to an oath. But the Sages say, Whatever is fixed to the ground is deemed as the ground.⁴ Oaths can only be imposed concerning what [can be estimated] by measure, or by weight or by number. How so? [If one say to another,] 'A houseful [of produce] have I delivered to thee', § or, 'I have delivered

מְשֻׁנָּה ו
רַבִּי יְמַאִיר אוֹמֵר *יֵישׁ דְּבָרִים שֶׁהֵן
'פְּקָרְקַע, וְאֵינָן פְּקָרְקַע, וְאֵין חֲכָמִים
מוֹדִים לוֹ. כִּיצַד? עֶשֶׂר גְּפָנִים
טַעוֹנוֹת מְסַרְתִּי לָהּ, וְהָלָה אוֹמֵר
אֵינָן אֶלָּא חֲמִשָּׁה רַבִּי מַאִיר מְחַיֵּב
שְׁבוּעָה. וְחֲכָמִים אוֹמְרִים כָּל-
הַמְּחוּבָּר לְקָרְקַע הָרִי הוּא כְּקָרְקַע.
אֵין וְשָׁבַעַן אֶלָּא עַל דְּבָר שְׁבַמְדָּה,
וְשְׁבַמְשָׁקֵל וְשְׁבַמְנֻן. כִּיצַד? בֵּית
מָלֵא מְסַרְתִּי לָהּ, וְכִיס מָלֵא מְסַרְתִּי

to thee§ a bagful [of money]', and the other answers, 'I do not know, but what thou hast left⁵ thou mayest take', he is exempt [from an oath]; [but] if he⁶ say, '[I gave thee a heap of produce reaching] to the projection',⁷ and the other replies, 'Only up to the window',⁸ he is liable [to the oath]. * Or שֶׁ-דִּבְרֵיִם § Or *pausal* לָךְ.

לָךְ, וְהָלָה אֹמֵר אֵינִי יוֹדֵעַ אֲלָא
מֵה-שֶׁהִנְחַתְּ אֶתְּהָ נֹטֵל פְּטוּר; וְזֶה
אֹמֵר עַד 'הַיּוֹז' וְזֶה אֹמֵר עַד
הַחֲלוֹן תְּיָיֵב.

1 His view is rejected. 2 *i.e.*, land, immovable property, property fixed to the soil. 3 Traditional pronunciation וְהָלָה. וְהָלָה is used mostly as a legal term meaning *the person in question*. 4 *i.e.*, it has the same legal standing as real estate or immovable property and so no oath can be administered. 5 Or שֶׁהִנְחַתְּ. 6 Literally *this one*. 7 רִז, a projection from the door-lintel to serve as an open shed over the entrance. רִז also refers to a projecting moulding like a bracket from a window-sill. 8 Or הַחֲלוֹן.

Mishnah 7

If one loan his fellow [money] on a pledge,¹ and the pledge was lost, [and] he said to him, 'I lent thee a *sela*² thereon and [the pledge] was worth a *shekel* [so allow a *shekel* for the value of the pledge and repay me a *shekel* for the loan]', and the other³ says, 'Not so, thou hast lent me a *sela* on it and it was worth a *sela* [and now I owe you naught]', he is exempt [from an oath]. [If he said,] 'I loaned thee a *sela* thereon and it was worth a *shekel*', and the other replies, 'Not so, but thou didst loan me a *sela* on it, and it was worth three *denars*, [therefore allow three *denars* for the pledge and I owe thee one *denar*]', he is liable [to an oath that the pledge was worth three *denars*].⁴ [If the borrower said,⁵ 'Thou hast lent me a *sela* on it and it was worth two [*selas*, therefore thou owest me a *sela*]', and the other

מִשְׁנָה ז
הַמְלוֹה אֶת-חֲבִירוֹ עַל הַמְשָׁכוֹן,
וְאָבַד הַמְשָׁכוֹן, אָמַר לוֹ סֹלַע
הַלְוִיתִיךָ עָלָיו, וְשָׁקֵל הָיָה שָׁוְהָ,
יְוָהֵלָה אֹמֵר, לֹא כִי, אֲלָא סֹלַע
הַלְוִיתָנִי עָלָיו, וְסֹלַע הָיָה שָׁוְהָ,
פְּטוּר. סֹלַע הַלְוִיתִיךָ עָלָיו, וְשָׁקֵל
הָיָה שָׁוְהָ, וְהָלָה אֹמֵר, לֹא כִי, אֲלָא
סֹלַע הַלְוִיתָנִי עָלָיו, וְשִׁלְשָׁה דִּינָרִים
הָיָה שָׁוְהָ, תְּיָיֵב. יסֹלַע הַלְוִיתָנִי
עָלָיו, וְשִׁתַּיִם הָיָה שָׁוְהָ, וְהָלָה אֹמֵר,
לֹא כִי, אֲלָא סֹלַע הַלְוִיתִיךָ עָלָיו,
וְסֹלַע הָיָה שָׁוְהָ, פְּטוּר. סֹלַע הַלְוִיתָנִי
עָלָיו, וְשִׁתַּיִם הָיָה שָׁוְהָ, וְהָלָה אֹמֵר,

answers, 'Not so, but I loaned thee a *sela* on it and it was worth a *sela* [thus the debt is cancelled]', he is exempt [from an oath]. [If the debtor said,] 'Thou didst lend me a *sela* thereon and it was worth two [*selas*, hence thou must give me a *sela*]', and the other responds, 'Not so, but I lent thee a *sela* on it and it was worth five *denars* [so I owe thee one *denar*]', he is liable [to an oath]. And who must take the oath [first]? He with whom is the pledge [must swear first], lest when the one has sworn the other produces the pledge [to prove that a false oath had been uttered].⁶

לא כִּי, אֵלָּא סָלַע הִלְוִיתִּיהָ, עָלָיו,
וְחַמְשָׁה דִּינָרִים הִיָּה שְׁוֵהָ, תִּיִּיבִי.
וּמִי וְשָׁבַע? מִי שֶׁהִפְקִדוֹן אֶצְלוֹ,
שָׁמָּא יִשָּׁבַע זֶה וַיּוֹצִיא הֶלְהָ אֶת-
הַהִפְקִדוֹן.

1 Or *pawn, deposit*. 2 (See וְרָעִים, Page 18f.); שְׁקָל = 4 דִּינָר. 3 See the preceding *Mishnah*, Note 3. 4 Thus far are cases where the lenders lodged claims against the borrowers. 5 Here are cases where the debtors lodge claims against the depositaries. 6 Thus: A the depositary takes the oath that it had been lost, then B the depositor swears to its value (if B swears first to its worth there is the risk that A might produce the pledge to prove that B had sworn falsely).

CHAPTER 7

פֶּרֶק ז

Mishnah 1

מִשְׁנָה א

All who take the oaths that are prescribed in the Law¹ take oaths that they do not have to make restitution; and these take an oath to regain their due: the hireling,² and he that was robbed, and he that was wounded, [and the claimant] if his opponent [the defendant] be suspected [of testifying falsely even if he take] an oath, and the shop-keeper³ concerning [what is entered] in his account-book. For instance, in the case of a hireling: if he said to him [an employer,] 'Give me my hire that thou hast* in thy hand', † [and] he replies, 'I have given [it to thee]', and he⁴ answers, 'I have

כֹּל-הַנִּשְׁבָּעִין יִשְׁבַּחְתּוּרָהּ, וְשָׁבַעִין
וְלֹא מִשְׁלָמִין; וְאֵלּוֹ נִשְׁבָּעִים וְנוֹטְלִין,
יְהַשְׁכִּיר, וְהַגָּנֹל, וְהַנֶּחֱבֵל, וְשֹׁכְנֵי
חֲשׂוֹד עַל הַשְּׁבוּעָה, יְהַחֲנוּנֵי עַל
פְּנֵי-סוֹ. הַשְּׁכִיר כִּי-צַד, אָמַר לוֹ תֵן
לִי שְׂכָרִי יִשְׁשׁ לִי זְבִידָהּ, הוּא אוֹמֵר
נִתְּתִי יְהִלָּה אוֹמֵר יֵלֵא נִטְלָתִי, הוּא
וְשָׁבַע וְנוֹטֵל. רַבִּי יְהוּדָה אוֹמֵר עַד
שֶׁתְּהָא שָׁם מִקְצַת הַזָּדָהּ, כִּי-צַד,
אָמַר לוֹ תֵן לִי שְׂכָרִי תִמְשִׁים

not had⁵ [it]', then [the employee] **וְהוּא אוֹמֵר** 'דינר שִׁישׁ לִי § בַּיָּדָה, והוא אוֹמֵר takes an oath and receives [his pay].
הַתְּקַבֵּלְתָּ דִּינָר זָהָב.
 R. Judah⁶ says, Only if the claim be admitted in part: thus, the hiring said to him, 'Give me my wage, fifty denars,⁷ that is* in thy hand', † and he answers, 'Thou hast [already] received a golden denar.'⁸ * Or שִׁישׁ לִי. § Or *pausal* בַּיָּדָה.

1 Exodus 22, 9. 2 Compare **בָּבֶא מְצִיעָא** 912. **וְלָקַח בְּעָלָיו וְלֹא יִשְׁלֵם**, and its owner shall accept it and he shall not pay. 3 Or salesman. 4 See 66, Note 3. 5 Or received. Literally taken. 6 His view is rejected. 7 דינר קָסָף = 24 זָהָב. 8 The employee takes an oath and recovers the whole amount.

Mishnah 2

מִשְׁנָה ב

What is meant by *he that was robbed*?¹ If they testified of someone that he went into somebody's house without the authority* [of the court] to seize a deposit² [for a debt], and he [who was thus robbed] says, 'Thou hast taken an article belonging to me',³ and he replies, 'I took naught [of thine]', then the debtor⁴ takes an oath and recovers [his property]. R. Judah⁵ says, Only if the claim be admitted in part: for instance, he said to him, 'Thou hast taken two articles', and he answers, 'I took only one'.

יְהַנְגֹּל כִּי־צַד? הָיוּ מְעִידִין אוֹתוֹ
שָׂנֹכְס לְבֵיתוֹ לְמַשְׁכָּנוֹ שְׁלֵא
בְּרִשׁוֹת, הוּא אוֹמֵר כָּלִי נָטַלְתָּ,
וְהוּא אוֹמֵר לֹא נָטַלְתִּי, הָרִי זֶה
וְשָׁבַע וְנוֹטֵל. רַבִּי יְהוּדָה אוֹמֵר עַד
שְׁתֵּהָא שֵׁם מִקְצַת הוֹדָאָה, כִּי־צַד,
אָמַר לוֹ שְׂעִי כָלִים נָטַלְתָּ, וְהוּא
אוֹמֵר לֹא נָטַלְתִּי אֲלֵא אֶחָד.

1 Sec 71. 2 Or *pawn, pledge*. The vowelization **מַשְׁכָּנוֹ, מְשַׁכְּנוֹ** popularly favoured do not seem justified as the simple form is **מִשְׁכּוֹן (מִשְׁכֶּן)**. 3 The witnesses testify that they saw the creditor empty handed and leave with something concealed under his cloak. 4 Literally *this one*. **הָרִי זֶה** is not given in the **גְּמָרָא**. 5 His opinion is not accepted. *Popular pronunciation **בְּרִשׁוֹת**.

Mishnah 3

מִשְׁנָה ג

What is meant by *he that was wounded*?¹ If they gave evidence of someone that he entered somebody's

יְהַנְחָבֵל כִּי־צַד? הָיוּ מְעִידִים אוֹתוֹ
שָׂנֹכְס תַּחַת יָדוֹ שְׁלֵם, וְיִצָּא חָבוּל,

premises sound [in body] and came out wounded, and he said to him, 'Thou didst inflict a wound on me', then he takes an oath and receives [compensation for the injury]. R. Judah² says, 'Only if the claim be admitted in part: for example, he said to him, 'Thou didst wound me twice', and the other replies, 'I inflicted on thee but one wound'.

וְאָמַר לוֹ חֲבַלְתָּ בִּי, וְהוּא אֹמֵר לֹא
חֲבַלְתִּי, הָרִי זֶה נִשְׁבַּע וְנוֹטֵל. רַבִּי
יְהוּדָה אֹמֵר עַד שֶׁתְּהֵא שָׁם מִקְצַת
הַדָּאָה, כִּי־צַד, אָמַר לוֹ חֲבַלְתָּ בִּי
שְׁתַּיִם, וְהָלָה אֹמֵר לֹא חֲבַלְתִּי בְךָ
אֶלָּא אֶחָת.

1 Compare 71. See קָמָא קָמָא 81^f. 2 His view is not accepted.

Mishnah 4

What is meant by [*And the claimant*] if his opponent [—the defendant—] be suspect [*of testifying falsely even if he take*] an oath?¹ It is all one whether it is an oath of evidence,² or a deposit oath,³ or even a false oath,⁴ if one of them⁵ were a dice-player,⁶ or a usurer,⁷ or a pigeon-racer, or a dealer in Sabbatical year produce,⁸ his opponent [—the plaintiff—] takes the oath and receives [his claim]. If both of them were suspected [*of being ineligible to testify*] the oath returns to its place.⁹ This is the opinion of R. Jose.¹⁰ R. Meir says, They share equally.¹¹

מִשְׁנֵה ד' וְשֶׁכֶּנְגְדוֹ חֲשׂוֹד עַל הַשְּׁבוּעָה, כִּי־צַד?
אֶחָת יִשְׁבּוּעַת הַעֲדוּת, וְאֶחָת
יִשְׁבּוּעַת הַפְּקָדוֹן, וְאֶפְּלוֹ יִשְׁבּוּעַת
שׂוּא, הִנֵּה אֶחָד יִמְהֵן יִמְשַׁחַק
בְּקוֹבְיָא, וְיִמְלֹחַ בְּרַבִּית, וּמִפְּרִיזֵי
יוֹנִים, וְסוֹחְרֵי יִשְׁבִיעֵיהֶּ, שֶׁכֶּנְגְדוֹ
נִשְׁבַּע וְנוֹטֵל. הִיוּ שְׁנֵיהֶן חֲשׂוֹדִין,
חִזְרָה הַשְּׁבוּעָה יִלְמַקְוֶמָה. דְּבָרֵי
רַבִּי יוֹסֵי. רַבִּי מֵאִיר אֹמֵר
יִחְלֹקוּ.

1 See 71. 2 Referring to one who took an oath to give testimony and then declined to testify (see 41^f). 3 With reference to one who swore falsely denying that a pledge had been left in his charge (see 51.2). 4 And also even if one took a useless oath (שְׁבוּעַת הַנֶּחֱמָ) he is suspect and the court does not impose an oath on him but on the complainant (see 38.11). 5 The litigants, suitors. 6 *i.e.*, a gambler. 7 Or money-lender. 8 Compare סְנֵהֲדָרִין 3³. See *Appendix, Note 1*; שְׁבִיעֵית, INTRODUCTION. 9 The oath recoils on the accused who must meet the claim in full. Some take it to mean that neither takes the oath and neither has his claim satisfied. 10 His opinion is rejected. 11 Only half the claim is met, and the other half is considered a loss. R. Meir's view is accepted.

Mishnah 5

And what is meant by *and the shopkeeper concerning [what is entered] in his account-book?*¹ This does not mean that he may say to him,² 'It is written in my account-book that thou owest me two hundred *zuz*', but [this means] if one said³ to him [—a shopkeeper—], 'Give my son two *seahs*⁴ of wheat', or 'Give my labourers⁵ change for a *selā*',⁶ and he replies, 'I have given [it]', but they⁷ say, 'We have not received⁸ [it]', they both take an oath,⁹ he [—the shopkeeper—] is sworn and takes [his due]¹⁰ and they are sworn and [also] take [their due].¹⁰ Ben Nanos said, How so? (Either the former will be taking a *false oath*¹¹) or the latter will be taking a *false oath*, but rather he [—the shopkeeper—] should regain [his due] without an oath and they should recover [theirs] without an oath.

1 See 71. 2 A customer, buyer, client. 3 Literally if one [a customer, etc.] say. 4 סָאָה = 135 litres (see וְרָעִים, Page 18f.). 5 Some read לְפוֹעֲלֵי, to my workman. 6 As his hire. סָלַע = 4 זָוָו. Compare בָּבָא מְצִיעָא 912. 7 The employees or son. 8 Literally taken. 9 The phrase in parentheses is omitted in some texts. 10 From the client. 11 See 3⁸. The bracketed phrase is omitted in some texts, in which case the rendering would be *And [thus] these [of one party] would swear falsely, i.e., it is obvious that if both parties take an oath one of them must be swearing falsely. The view of Ben Nanos is rejected.*

Mishnah 6

If one said to a shopkeeper, 'Give me produce to the value of a *denar*',¹ and he gave [it] to him and said to him, 'Give me the *denar*', and he replied to him, 'I gave it to thee and thou didst put it in the money-

מִשְׁנָה ה

יְוֹהֵרְוֹנִי עַל פְּנֻקְסוֹ, כִּי צַד? לֹא
שִׂיאֵמַר לוֹ כְּתוּב עַל פְּנֻקְסִי, שְׂאֵתָה
חַיִּב לִי מֵאֲתָיִם זֶה, אֶלֶּא *אוֹמֵר לוֹ
תָּן לְבְנִי *סָאֲתִים חֲטִין, תָּן *לְפוֹעֲלֵי
*בְּסָלַע מְעוֹת, הוּא אוֹמֵר נְתַתִּי, *וְהֵן
אוֹמְרִים לֹא *נָטַלְנוּ, *שְׂגִיָּהֶם
(נְשָׁבְעִין), הוּא נְשָׁבַע *וְנוֹטֵל, וְהֵן
נְשָׁבְעִין *וְנוֹטְלִין. אָמַר בֶּן נָנוֹס כִּי צַד?
אֵלּוּ *¹¹(בָּאִין לְיַדֵּי שְׁבוּעַת שׂוֹא) וְאֵלּוּ
בָּאִין לְיַדֵּי שְׁבוּעַת שׂוֹא, אֶלֶּא הוּא
נוֹטֵל שְׂלֵא בְּשְׁבוּעָה וְהֵן נוֹטְלִין שְׂלֵא
בְּשְׁבוּעָה.

מִשְׁנָה ו

אָמַר לְחֻנְנִי תָּן לִי יְבֻדְיָר פִּירוֹת,
וְנָתַן לוֹ, אָמַר לוֹ תָּן לִי אֶת-הַדְּיָר,
אָמַר לוֹ נְתַתִּיו לָךְ וְנָתַתּוּ *בְּאוֹנְפְלֵי,
לְשָׁבַע יְבַעַל הַבַּיִת. נָתַן לוֹ הַדְּיָר,

chest',³ the client takes an oath.³ If he gave him the *denar* and [then] said to him, 'Give me the produce', and he answered, 'I gave it to thee and thou hast taken it to thy house', the shopkeeper must take an oath. R. Judah⁴ says, Whoever has the produce has the advantage.⁵ If one said to a money-changer, 'Give me change for a *denar*', and he gave [it] to him and [then] said, 'Give me the *denar*', and he replied, 'I gave it to thee and thou hast placed it in the money-chest,' the client⁶ takes an oath [and gets the change]. If he gave him the *denar* and [then] said to him, 'Give me the change', and he answered, 'I gave it to thee and thou hast put it in thy purse', the money-changer takes the oath. R. Judah⁷ says, It is not a money-changer's practice to give [even] an *issar* before he receives his *denar*.

אָמַר לוֹתָן לִי אֶת־הַפִּירוֹת, אָמַר
לוֹנְתָמִים לָךְ, וְהוֹלְכָתָן לְתוֹךְ בֵּיתְךָ,
יִשָּׁבַע חֲנוּנִי רַבִּי יְהוּדָה אוֹמֵר כָּל־
שְׁהַפִּירוֹת בְּיָדוֹ, יָדוֹ עַל הַעֲלִיוָנָה.
אָמַר לְשׁוֹלְחָנִי תָן לִי בְדִינָר מְעוֹת
וְנָתַן לוֹ, אָמַר לוֹ תָן לִי אֶת־הַדִּינָר,
אָמַר לוֹ נִתְמִיו לָךְ, וְנִתְמוּ בְּאוּנְפְלִי,
יִשָּׁבַע בְּעַל הַבַּיִת. נָתַן לוֹ אֶת־
הַדִּינָר, אָמַר לוֹ תָן לִי אֶת־הַמְּעוֹת,
אָמַר לוֹ נִתְמִים לָךְ וְהִשְׁלַכְתָּם לְתוֹךְ
כִּיסְךָ, יִשָּׁבַע שׁוֹלְחָנִי רַבִּי יְהוּדָה
אוֹמֵר אֵין דָּרָךְ שׁוֹלְחָנִי לִיתָן אִיסָר,
עַד שֵׁטוֹל דִּינָרוֹ.

1 אִיסָר = 24 דִּינָר = 192 פְּרוּטָה (see וְרַעִים, Page 18f.). 2 A box with a slit through which money and receipts are dropped inside. 3 Literally *householder*. He swears that he had paid, and he takes the produce. 4 His opinion is rejected. 5 Compare מְצִיעָא 41. 6 Literally *householder*. 7 His view that the client should take the oath in this case is not accepted.

Mishnah 7.

Just as they prescribed¹ that a woman who impairs² her *marriage settlement*³ may not be paid the remainder save on oath,⁴ and⁵ that one witness gave evidence against her that she had been paid [in full] she may not be paid except on oath, and⁶ that she may not receive payment from mortgaged property⁶ nor from the property of orphans without an oath, and⁵ that a woman who

מְשָׁנָה ז'
כָּשֶׁם יִשְׁאָמְרוּ יְהַפְּנֹמֶת כְּתוּבָתָהּ
לֹא תִפְרַע אֶלָּא בְּשָׁבוּעָה, וְיַעַד
אֶחָד מֵעֵידָה שְׁהִיא פְּרוּעָה לֹא
תִפְרַע אֶלָּא בְּשָׁבוּעָה, מִמְּנֻכְסִים
מִשׁוּעָבָדִים, וּמִמְּנֻכְסֵי יְתוּמִים, לֹא
תִפְרַע אֶלָּא בְּשָׁבוּעָה, וְהַנִּפְרָעַת

is to receive payment not in his presence⁷ may not be paid save on oath, even likewise orphans may not be paid save on oath,⁸ [according to this formula,] 'We take an oath that our father did not leave us any order [concerning this case], nor did our father tell us, nor have we found in the documents of our father that this note of indebtedness has been paid'. R. Jochanan⁹ ben Baroka says, Even if the son had been born after the death of his father, he may be sworn¹⁰ and [then] receives his claim. Rabban Simon⁹ ben Gamaliel said, If there be* witnesses that at the time§ of his death the father had said, 'This bond of indebtedness has not been paid', he may receive his claim, without an oath. †Or בְּרוּקָא.

יִשְׁלַא בְּפָנָיו, לֹא תִפְרַע אֲלָא
בְּשִׁבּוּעָה, וְכֵן הֵיחֹמִים לֹא יִפְרְעוּ
אֲלָא בְּשִׁבּוּעָה, שְׁבִיבּוּעָה שְׁלֹא פְקַדְנוּ
אָבָא, וְלֹא אָמַר לָנוּ אָבָא, וְשְׁלֹא
מְצִינוּ בֵּין שְׁטְרוֹתָיו שֶׁל אָבָא שְׁשֻׁטָר
זֶה פְּרוּעַ. רַבִּי יִיחֲזֵן בֶּן אֲבִרוּקָה
אוֹמֵר אֶפְּלוּ נוֹלַד הֵבֵן לְאַחַר מִיתַת
הָאָב הָרִי זֶה יִשְׁבַּע וְנוֹטֵל. אָמַר
רַבִּן יִשְׁמְעוֹן בֶּן גַּמְלִיאֵל אִם יִשְׁעִידִים
שֶׁאָמַר הָאָב בְּשִׁעֵת מִיתַתוֹ שְׁטָר זֶה
אֵינוֹ פְּרוּעַ הוּא נוֹטֵל שְׁלֹא בְּשִׁבּוּעָה.

1 See כתובות 97. 2 פָּגַם, impair (decrease) the value of a legal document by the admission of a receipt on account. 3 See Appendix, Note 8; כתובות, INTRODUCTION. 4 If she lodges a claim against the husband. 5 viz., and like as they enjoined 6 Property purchased from a debtor (the debt being collectable from his real estate) whoever may be in possession of it. 7 sc., she claims her marriage settlement while her husband who divorced her is absent. 8 If they lodge a claim to a debt owed to the estate of their father. 9 This ruling is accepted. 10 That he had discovered no evidence among the documents that the bond of indebtedness had been paid. *Or יִשְׁעִידִים. §Or בְּשִׁעֵת.

Mishnah 8

And an oath is administered to these even if no claim be lodged [against them]:¹ partners,² and tenants,³ and guardians,⁴ and the wife who conducts and manages the affairs⁵ [of her husband] in the house, and the son⁶ of the house. If one of these said to him [—the complainant—] 'What claimest thou against me?'

מִשְׁנֵה ח
וְאֵלוּ נִשְׁבָּעִים שְׁלֹא בְּטַעֲנָה,¹
הַשּׁוֹתֵפִין,² יוֹהָאֵרִיסִין,³
וְהָאֶפְסוֹטְרוֹפִין,⁴ וְהָאִשָּׁה הַנּוֹשֵׂאת
וְהַנּוֹתֶנֶת בְּתוֹךְ הַבַּיִת, וְיֶבֶן הַבַּיִת.
אָמַר לוֹ מִה־אַתָּה טוֹעֲנִי? רְצוֹנִי

[and the other replied,] 'I lodge a complaint but] it is my wish that thou swear to me [that thou didst not defraud me',] he must [take an oath]. If the partners or tenants had already shared out,⁷ an oath can not now be imposed,⁸ but if [later on] any one [of these parties] had to take an oath to the other(s) [of the same parties respectively] concerning some claim,* then the [original] oaths may be revived. The Sabbatical year⁹ cancels the [imposition of] the oath.

1 In case they are sued and they may desire to disclaim any liability for having misused, or for having had any fraudulent dealings in, aught put in their charge. 2 Or *joint-holders*; one partner may impose an oath on another that naught had gone wrong. 3 אָרִיס is a tenant who cultivates someone's land in return for a stipulated *share of the produce*. The owner may put the tenant on oath that he had not taken more than the agreed share. (In contradistinction, a הָכִיר is a tenant who cultivates another's land for a stipulated *quantity of produce* irrespective of any yield, and the question of the imposition of an oath for the like reason here could not arise). 4 Or *administrators, directors, trustees*, who may be put on oath that there has been no misappropriation. 5 Or *business*. The husband may put her on oath that she had conducted matters honestly. 6 Who, on his father's death, takes over the management of the joint property and business of himself and his brother(s) who may put him on oath that he had not taken more than his due. 7 Without any demand having been made by anyone for an oath to be administered upon any other. 8 And this applies also to the other cases just mentioned. 9 See *Deuteronomy* 15, 1; שְׁבִיעִית, INTRODUCTION, 10¹. *Perhaps better מִמְקוֹם.

CHAPTER 8

פֶּרֶק ח

Mishnah 1

There are four classes of bailees:¹ an *unpaid guardian*, (and) the *borrower*, a *paid trustee*² and the *hirer*. An unpaid guardian may be put on oath in every case;³ (and) the borrower must pay compensation⁴ in every case; a paid trustee or the hirer may take an oath if [the beast]

מִשְׁנֵה א
אֲרָבָעָה יְשׁוּמְרֵי הֵן, שׁוֹמֵר חָנָם,
וְהַשׂוֹאֵל, גֹּשֵׁא שְׂכָר, וְהַשׂוֹכֵר.
שׁוֹמֵר חָנָם גֹּשֵׁעַ עַל הַכֹּל; וְהַשׂוֹאֵל
מִשְׁלֵם אֶת-הַכֹּל; גֹּשֵׁא שְׂכָר,
וְהַשׂוֹכֵר, גֹּשֵׁעִין עַל הַשְּׂבוּרָה, וְעַל

were lamed or were taken away or had died,⁵ but he⁶ must pay compensation if it were lost or stolen.⁷

הַשְּׂבוּיָה, וְעַל הַמֵּתָה, וּמִשְׁלָמִים
אֶת-הָאֲבֵדָה, וְאֶת-הַנֶּגְבָה.

1 Or *guards, guardians, keepers, watchmen, trustees*. See **בָּבָא מְצִיעָא** 78. 2 Or **שׁוֹמֵר שְׂכָר**. 3 Of damage or loss; he swears that he is free from blame and is exempt from liability. 4 For loss or damage. 5 No restitution is made if death occurred during work. (See 82, **Note 1**). 6 Literally *they*. 7 See *Exodus 22*, 10-13. Literally *the loss or the theft*.

Mishnah 2

מְשֻׁנָּה ב

If [an owner] said to an unpaid guardian, 'Where is my ox?' and he replied to him, 'It is dead', whereas it was lamed, or taken away,¹ or stolen or lost;² [or if he replied,] 'It is lamed', and actually it was dead, or taken away, or stolen or lost; [or if he answered,] 'It was carried off,' but in fact it was dead, or lamed, or stolen or lost; [or if he said,] 'It was stolen', but in reality it was dead, or lamed, or driven off, or lost; [or if he replied,] 'It was lost', but in truth it was dead, or lamed, or taken away or stolen; [and the owner said,] 'I adjure thee, and he responded, 'Amen!'' he is exempt [from an offering].³

אָמַר לְשׁוֹמֵר חֲנָם הֵיכֵן שׁוֹרִי? אָמַר
לוֹ מֵת, וְהוּא שְׁנֻשָּׁבֵר אוֹ נֻשָּׁבָה אוֹ
נֶגְבָב אוֹ אֲבֵד; וְנֻשָּׁבֵר, וְהוּא שְׁמֵת
אוֹ נֻשָּׁבָה אוֹ נֶגְבָב אוֹ אֲבֵד; נֻשָּׁבָה,
וְהוּא שְׁמֵת אוֹ נֻשָּׁבֵר אוֹ נֶגְבָב אוֹ אֲבֵד;
נֶגְבָב, וְהוּא שְׁמֵת אוֹ נֻשָּׁבֵר אוֹ נֻשָּׁבָה
אוֹ אֲבֵד; אֲבֵד, וְהוּא שְׁמֵת אוֹ נֻשָּׁבֵר
אוֹ נֻשָּׁבָה אוֹ נֶגְבָב; מִשְׁבִּיעֵהוּ אָנִי,
וְאָמַר אָמֵן, פְּטוֹר.

1 Or *carried away, driven off*. Literally *captured*. 2 **אֲבֵד** [*Kal past*] or **אֲבֵד** [*adjective*]. 3 Although he uttered a false oath, because even if he had admitted the truth, being an unpaid guardian, he does not make restitution (see 81).

Mishnah 3

מְשֻׁנָּה ג

[If an owner said,] 'Where is my ox?' [and the unpaid guardian] said to him, 'I know not of what thou speakest',¹ and actually it died, or was lamed, or was driven off, or was stolen or was lost, [and the owner

הֵיכֵן שׁוֹרִי? אָמַר לוֹ אֵינִי יוֹדֵעַ
מֵה-אֲתָה יֹסֵף, וְהוּא שְׁמֵת, אוֹ נֻשָּׁבֵר,
אוֹ נֻשָּׁבָה, אוֹ נֶגְבָב, אוֹ אֲבֵד, מִשְׁבִּיעֵהוּ
אָנִי, וְאָמַר אָמֵן, פְּטוֹר. הֵיכֵן שׁוֹרִי?

said,] 'I adjure thee', and he responded, 'Amen!' he is exempt [from a *guilt-offering*].² [If the owner said,] 'Where is my ox?' and he answered him, 'It was lost', [and the former said,] 'I adjure thee', and he responded, 'Amen!' and witnesses give evidence against him that he had eaten it,* he must pay the value; if [after the oath] he admitted of himself [having eaten it], he must pay the value and the *added fifth*³ and [bring] a *guilt-offering*.⁴ [If the owner said,] 'Where is my ox?' and he answered him [untruthfully], 'It was stolen', [and the other said,] 'I adjure thee', and he responded, 'Amen!' and witnesses testify against him that he had stolen it, he must pay twofold compensation;⁵ but if [after the oath] he made admission of himself [that he had stolen it], he must pay the value and the *added fifth* and [bring] a *guilt-offering*.

1 Conveying the false belief that he had not been given charge of the beast. 2 See the preceding *Mishnah*, Note 3. 3 See **בָּבָא מִצֵּיעָא** 4⁸. 4 For the false oath. *Leviticus* 6, 2ff.; *Numbers* 5, 7. 5 *Exodus* 22, 9. *viz., had slaughtered it for food (for himself and/or others).

Mishnah 4

If one said to another in the street,¹ 'Where is my ox that thou hast stolen?' And he replies, 'I did not steal [it],'² and witnesses³ testify against him that he had stolen it, he must make twofold restitution. If he had slaughtered [it] or sold [it], he must pay fourfold or fivefold compensation.⁴ If he saw witnesses coming up and said, 'I did steal [it], but I did not slaughter [it] nor did I sell [it]', he pays only the value.⁵

אָמַר לוֹ אֶבֶד, מִשְׁבִּיעֶךָ אָנִי, וְאָמַר
אָמֵן, וְהָעֵדִים מְעִידִין אוֹתוֹ *שְׂאֵכְלוּ,
מִשְׁלֵם אֶת-הַקָּרָן; הוֹדָה מְעַצְמוּ,
מִשְׁלֵם קָרָן, וְהוֹמֵשׁ, וְאָשָׁם. הֵיכָן
שׁוֹרִי? אָמַר לוֹ בְּגֵב, מִשְׁבִּיעֶךָ
אָנִי, וְאָמַר אָמֵן, וְהָעֵדִים מְעִידִין
אוֹתוֹ שֶׁנִּגְבוּ מִשְׁלֵם תְּשֻׁלוֹמֵי כֶּפֶל;
הוֹדָה מְעַצְמוּ, מִשְׁלֵם קָרָן,
וְהוֹמֵשׁ, וְאָשָׁם.

מִשְׁנָה ד
אָמַר לְאֶחָד בְּשׁוּק הֵיכָן שׁוֹרִי
שֶׁנִּגְבַּת, וְהוּא אוֹמֵר לֹא נִגְבַּתִּי,
וְהָעֵדִים מְעִידִין אוֹתוֹ שֶׁנִּגְבוּ, מִשְׁלֵם
תְּשֻׁלוֹמֵי כֶּפֶל. טָבַח וּמָכַר, מִשְׁלֵם
תְּשֻׁלוֹמֵי אַרְבָּעָה וַחֲמִשָּׁה. רָאָה
עֵדִים שֶׁמִּמְשֻׁמֵּשִׁין וּבָאִין אָמַר נִגְבַּתִּי,
אֲבָל לֹא טָבַחְתִּי, וְלֹא מָכַרְתִּי, אֵינִי
מִשְׁלֵם אֶלָּא קָרָן.

1 Or *market, market-place*. 2 Here there is no need for the owner to say מְשַׁבְּעַךְ אָנִי, 'I adjure thee,' because the other is just a thief and is liable to pay twofold restitution without having to take an oath. 3 Literally *the witnesses*. 4 Four sheep for a sheep, five oxen for an ox. *Exodus 22, 1*. See 7¹ בָּבֵא קָמָא. 5 *Exodus 22, 3*. The confession saves the thief from the penalty of twofold restitution which automatically exempts him from the consequences of the false denial of slaughtering or selling.

Mishnah 5

[If an owner] said to a borrower, 'Where is my ox?' and he replied to him, 'It is dead',¹ and in fact it was lamed, or was driven off, or was stolen or was lost;² [or if he replied,] 'It is lamed', and in truth it was dead, or was taken away, or was stolen or was lost; [or if he answered,] 'It was driven away', whereas it was dead, or was lamed, or was stolen or was lost; [or if he answered,] 'It was stolen', and actually it was dead, or was lamed, or was carried off or was lost; [or if he said,] 'It was lost', but indeed it was dead, or was lamed, or was taken away

מְשַׁנָּה ה
אָמַר לְשׂוֹאֵל הֵיכָן שׂוֹרִי, אָמַר לוֹ יָמַת, וְהוּא שְׁנִשְׁבָּר אוֹ נִשְׁבָּה אוֹ נִגְבַּב אוֹ אָבַד; וְנִשְׁבָּר, וְהוּא שְׁמַת אוֹ נִשְׁבָּה אוֹ נִגְבַּב אוֹ אָבַד; וְנִשְׁבָּה, וְהוּא שְׁמַת אוֹ נִגְבַּב אוֹ נִשְׁבָּר אוֹ אָבַד; וְנִשְׁבָּה, וְהוּא שְׁמַת אוֹ נִגְבַּב אוֹ נִשְׁבָּר אוֹ אָבַד; וְנִשְׁבָּר אוֹ נִשְׁבָּה אוֹ נִגְבַּב אוֹ אָבַד, וְהוּא שְׁמַת אוֹ נִשְׁבָּר אוֹ נִשְׁבָּה אוֹ נִגְבַּב; מְשַׁבְּעֶךָ אָנִי וְאָמַר אָמֵן, יִפְטוֹר.

or was stolen; [and the owner said,] 'I adjure thee', and he responded, 'Amen!' he is exempt [from a *guilt-offering* for a *false oath*].³

1 But not from work. 2 See 8², Note 2. 3 If the borrower had admitted to the truth he would have had to make restitution, and if he lied he would have had to make good just the same (compare 8¹).

Mishnah 6

[If an owner said to a borrower,] 'Where is my ox?' and he said to him, 'I know not of what thou art speaking', but actually it was dead, or was lamed, or was taken away, or was stolen or was lost; [and the owner said,] 'I adjure thee', and he responded, 'Amen!' he is liable¹ [to

מְשַׁנָּה ו
הֵיכָן שׂוֹרִי? אָמַר לוֹ אֲנִי יוֹדֵעַ מָה-אַתָּה סָח, וְהוּא שְׁמַת, אוֹ נִשְׁבָּר, אוֹ נִשְׁבָּה, אוֹ נִגְבַּב, אוֹ אָבַד; מְשַׁבְּעֶךָ אָנִי, וְאָמַר אָמֵן, יִחַיֵּב. אָמַר לְנוֹשֵׂא שְׂכָר, וְהִשׁוּכָר, הֵיכָן שׂוֹרִי? אָמַר

a *guilt-offering* for a *false oath*]. If he said to a paid guardian or to a hirer, 'Where is my ox?' and he answered him, 'It is dead', whereas it was lamed or was carried off; [or if he answered,] 'It is lamed', and really it was dead or was driven off; [or if he replied,] 'It was carried off', and in reality it was dead or lamed; [or if he replied,] 'It is stolen', and in fact it was lost; [or if he said,] 'It is lost', and in truth it was stolen, [and the owner said,] 'I adjure thee', and he responded, 'Amen!' he is exempt² [from a *guilt-offering*]. [If he replied,] 'It is dead', or, 'It was lamed', or, 'It was driven away', but indeed it was stolen or was lost, [and the owner said,] 'I adjure thee', and he responded, 'Amen!' he is liable³ [to a *guilt-offering* for the *false oath*]. [If he said,] 'It is lost', or, 'It was stolen', and actually it was dead, or was lamed or was taken away, [and the owner said,] 'I adjure thee', and he responded, 'Amen!' he is exempt⁴ [from a *guilt-offering* for the *false oath*]. This is the general principle*: if one [by an oath] change his liability to liability,⁵ or [change] from exemption to exemption,⁶ or [change] from exemption to liability,⁷ he is exempt⁸ [from a *guilt-offering* for a *false oath*]; [but if one by an oath change] from a liability to an exemption,⁹ he is liable [to a *guilt-offering* for a *false oath*]. (This¹⁰ is the general principle*: one who takes an oath to lighten [his penalty]¹¹ is liable [to a *guilt-offering* for the *false oath*]; [but if he swear falsely] to aggravate [his penalty],¹² he is exempt [from a *guilt-offering* for the *false oath*]).

לו מת, והוא שְׁנִשְׁבֵּר או נִשְׁבָּה ;
 נִשְׁבֵּר, והוא שְׁמֵת או נִשְׁבָּה ; נִשְׁבָּה,
 והוא שְׁמֵת או נִשְׁבֵּר ; בָּגַב, והוא
 שְׂאָבָד ; אָבָד, והוא שְׂגָבָב ; מִשְׁבִּיעֵךְ
 אָנִי, וְאָמַר אָמֵן, פְּטוּר. מֵת, או
 נִשְׁבֵּר, או נִשְׁבָּה, והוא שְׂגָבָב, או
 אָבָד, מִשְׁבִּיעֵךְ אָנִי, וְאָמַר אָמֵן,
 חַיִּיב. אָבָד, או בָּגַב, והוא שְׁמֵת,
 או נִשְׁבֵּר, או נִשְׁבָּה, מִשְׁבִּיעֵךְ אָנִי,
 וְאָמַר אָמֵן, פְּטוּר. זֶה הַכֶּלֶל, כָּל-
 הַמְשַׁנֵּה יְמִחוּבָה לְחֹבָה, יוֹמֵפְטוּר
 לְפְטוּר, יוֹמֵפְטוּר לְחֹבָה, פְּטוּר ;
 יְמִחוּבָה לְפְטוּר, חַיִּיב. (זֶה¹⁰)
 הַכֶּלֶל, כָּל-הַנִּשְׁבַּע¹¹ לְהִקְלֵל עַל
 עֲצָמוֹ, חַיִּיב ;¹² לְהַחְמִיר עַל עֲצָמוֹ,
 פְּטוּר).

- 1 Because he must make restitution in either case, *viz.*, whether he admits the truth or swears falsely (see 8¹). 2 Because his denial did not involve loss of money. 3 Because the denial entailed loss of money. If he had owned to the truth he would have had to make restitution and he sought to avoid paying compensation by lying. 4 Because his refutation did not cause any pecuniary loss. If he had spoken the

penitence of the wrongdoer. 7 רַב־חֶסֶד, and abundant in goodness, or, and abounding in lovingkindness, or plenteous in mercy, indicating the attribute of granting blessings to all without distinction and even beyond their deserts. 8 אֱמֶת, and truth, indicating the attribute of eternal justice and reward for the righteous. 9 וְצַדִּיק חֶסֶד לְאֵלֵינוּ, keeping mercy unto the thousandth generation, indicating the attribute of storing the merits of the fathers to the credit of the children. 10 וְנִשְׂא עוֹן, forgiving iniquity, indicating the attribute of indulgence to human failings. עוֹן, conscious sin, premeditated wrongdoing, indifference to sinning. 11 וּפְשָׁע, and transgression, indicating the attribute of forbearance to man's presumptuous and malicious deeds. פְּשָׁע, purposeful misdeed, rebellious sinfulness. 12 חַטָּאת, and sin, indicating the attribute of clemency to one who sins inadvertently. חַטָּאת, a wrong committed unwittingly. 13 וְנִקְיָה, and will clear the guilty, indicating the attribute of acquittal of the repentant from punishment. The quotation from Scripture, for the purpose of Prayer,* stops abruptly with the word וְנִקְיָה, to convey a positive idea, though the full phrase is וְנִקְיָה לֹא יִנְקֶה, and that will by no means clear the guilty, which clearly connotes a negative character, so that the worshipper at prayer confides his whole soul in God's tender mercy and lovingkindness and instinctively to dismiss from thought for the moment that only retribution is in store and to stress all along that there is no limit to God's forgiveness and pardon. *The passage quoted [וְנִקְיָה] . . . 'ה' is included in the Prayer Book (סִדְרָה) and in the Books for Festival Prayers and for the Solemn Holydays (מִצְוֹת), and is particularly recited many times during the Day of Atonement (יּוֹם כִּפּוּרִים) Services.

- 7³, Note 4. The following explanation is not in accordance with Talmudic teaching: 'Because the second statement is included in the first (one cannot eat all before he eats a small quantity, viz., an olive's bulk).'
- 7⁸, Note 5, Note 6. Some would introduce this part by ['I swear to forgo all produce in the world].
- 4¹, Note 2. Or is פָּסִיל if (a) he is culpable of the death penalty, (b) he is culpable of the penalty of forty stripes, or (c) he is a robber.

מִסְכֵּת

עֲדֵיּוֹת

TRACTATE
EDUYOTH

[BEING THE SEVENTH TRACTATE OF THE FOURTH ORDER OF
THE MISHNAH]

TEXT - INTRODUCTION - TRANSLATION - NOTES

By

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INTRODUCTION

סדר נזיקין * **Eduyoth**, is the seventh מסכת (*Tractate* or *Treatise*) of סדר נזיקין (*Order Nezikin*, the fourth of the משנה, *Mishnah*). This *Tractate* is also referred to several times in the *Talmud* as בכירתא **Bechirta**, 'Choice', i.e., 'The Choice of הַלְכוֹת'.

The *Tractate* is an accumulation of testimonies, traditional laws, statements and decisions of many distinguished authorities without any related coherent connection between the numerous matters dealt with and much of which is a reiteration of subjects treated elsewhere in other parts of the *Mishnah*. The subjects chiefly dealt with relate to menstruation, the priest's share of the dough, the ritual bath, Levitical purity, priestly dues, tithes, marriage laws, and some calendar topics.

The *Tractate* contains thirty הַלְכוֹת regarding which the School of Hillel adopted the stricter attitude against the School of Shammai who favoured the more lenient ruling.

This *Tractate* has no גמרא, to it in the תלמוד בבלי (*Babylonian Talmud*) and is not given at all in the תלמוד ירושלמי (*Jerusalem, or Palestinian, Talmud*).

The titles of its eight Chapters are:

CHAPTER 1	שְׁמַאי אוֹמֵר	פָּרָק א
CHAPTER 2	רַבִּי חֲנִינְיָה	פָּרָק ב
CHAPTER 3	כָּל-הַמְטַמְּאִין	פָּרָק ג
CHAPTER 4	אֵלּוּ דְבָרִים	פָּרָק ד
CHAPTER 5	רַבִּי יְהוּדָה	פָּרָק ה
CHAPTER 6	רַבִּי יְהוּדָה בֶּן בֶּבְאִי	פָּרָק ו
CHAPTER 7	הַעֲדָה רַבִּי יְהוֹשֻׁעַ	פָּרָק ז
CHAPTER 8	הַעֲדָה רַבִּי יְהוֹשֻׁעַ בֶּן בְּמִדְא	פָּרָק ח

The following is a concise summary of these Chapters.

1. Rules regarding the menstruant, the priest's share of the dough, the ritual bath. 2, 3. Certain customs in the Temple and Jerusalem; laws relating to purity, seeds, marriage. 4. Some further details referred to at the end of Chapter 1. 5. Some further particulars mentioned in the preceding Chapters. 6. Some new opinions on matters in Chapter 3. 7. The consecration of the new moon and of the leap-year. 8. Some varied opinions; a ruling on a marriage law; the future mission of the prophet.

*עֲדוּת is a variant for עֲדוּת the Aramaic (or Chaldee) plural of the Biblical word עֲדוּת or עֲדָה, ordinance, precept, **proof, evidence, certification, ratification, testimony, witness**; especially collectively *The Decalogue* or *The Ten Commandments*. The Biblical plural is עֲדוּת. עֲדוּת or עֲדָה, like the Biblical word עָד (plural עֲדִים) extensively used in the *Talmud*, is derived from the *Kal* verb עָוַד, occur, return, turn, wind, continue, endure, exist, exhort, comfort, **assure, certify, ratify**. The *Hiphil* form of this verb, הִעֲדָה (הִעֲדִי) has particularly both in the *Scripture* and in the *Talmud* the meanings (1) establish a ruling from traditional knowledge or from a witnessed precedent, (2) bear testimony before the court, (3) call upon to give evidence, (4) declare an animal noxious, (5) forewarn an owner of a noxious animal, (6) exhort, forewarn.

עֲדֵיּוֹת

TRACTATE
EDUYOTH

CHAPTER 1

פֶּרֶק א

Mishnah 1

מִשְׁנָה א

R. Shammai says,¹ It is sufficient for all women [to be considered unclean only from] their time [when they experience a menstrual discharge];² but Hillel says, [A woman's uncleanness³ dates back] from [the present] examination to the [preceding] examination, even if [the intervening period be of] many days.⁴ But the Sages say, It is not in accordance with the opinion of the former nor according to the view of the latter, but she [is considered unclean] during the [previous] twenty-four hours if this be less than [the interval] between [the preceding] examination and [the present] examination,⁵ or else [if the interval] between [the foregoing] examination to [the present] examination be less than twenty-four hours.⁶ Every woman that has* a regular date of menstruation⁷ her time [of menstruating] suffices for her [to be deemed as the commencement of her uncleanness]. [If a woman have sexual connexion, and] she makes use of pieces of cloth⁸ to ascertain her condition of cleanness or uncleanness [before and after sexual connection], this is deemed an examination,⁹ and may lessen [the interval of] the twenty-four hours or [lessen the interval] between [the preceding] examination and [the present] examination.¹⁰ * Or שִׁישׁ-לָהּ.

שָׁמַי אֹמֵר כָּל-הַנְּשִׁים דִּינָן
שְׁעָתָן; וְהַלֵּל אֹמֵר מִפְּקִידָה
לְפִקְדָה, אֶפִּילוּ לְיָמִים הַרְבֵּה.
וְחֻכְמִים אֹמְרִים לֹא כְדַבְּרֵי זֶה וְלֹא
כְדַבְּרֵי זֶה, אֲלֵא מַעַת לַעַת מְמַעֲטָת
עַל יַד מִפְּקִידָה לְפִקְדָה, וּמִפְּקִידָה
לְפִקְדָה, מְמַעֲטָת עַל יַד מַעַת
לַעַת. כָּל-אִשָּׁה שִׁישׁ לָהּ וְנֹסֶת, דִּינָה
שְׁעָתָהּ. הַמְשַׁמְשֶׁת בְּצַעֲדִים הָרִי זֶה
כְּפִקְדָה, מְמַעֲטָת עַל יַד מַעַת
לַעַת, וְעַל יַד מִפְּקִידָה לְפִקְדָה.¹⁰

1 Compare נדה 11. 2 The unclean condition due to the menstruous flow conveys uncleanness to anything that it or the menstruant comes in contact with and has no retrospective effect. 3 Because of her menses. 4 If at the previous examination she observes no sign of menstruation, but saw menstrea at the second examination, she conveys uncleanness to whatever she touches during the interval, but she is not deemed unclean to her husband during that period. 5 Thus: a woman on examination on one day saw no signs of menstruation; forty-eight hours later she suffered a menstrual flow, then she is deemed to have been clean during the twenty-four hours after the first examination and unclean after that. 6 Thus she found no symptoms of menstruous flow one day; twelve hours later she menstruated; then these hours (less than the twenty-four hours for a full day) are reckoned as the period of uncleanness. 7 Or *fixed regular premonitory symptoms of menorrhagia* [menstruation]. 8 גז; compare נדה 24. 9 Thus: after sexual intercourse she found herself clean and some hours later she observed menstruous flow, her period of uncleanness is accounted from the time of her sexual connexion. 10 Thus: if she found no signs of menstruation and a few hours later after copulating still found no symptoms of menses, and some hours later on she had menstrual discharge, she is considered to have commenced her period of uncleanness from the time of cohabiting.

Mishnah 2

משנה ב

Shammai¹ says, [Dough made] from one kab² [of flour] is liable to the priest's share of the dough,³ and Hillel¹ says, From two kabs; but the Sages⁴ say, It is neither like the view of the former nor as the opinion of the latter, but one and a half kabs are liable to the priest's share of the dough. And when the measures were increased⁵ they said, Five quarters [of a kab] are liable [to the priest's share of the dough]. R. Jose¹ said, [Only] five quarters [of a kab] are exempt, more than five⁶ [fourths of a kab] are liable.

שִׁמַּאי אוֹמֵר אֶמְקַב יִלְחָלָהּ, וְיִהְיֶה לָּהּ אוֹמֵר מְקַבִּים; וְיִחַקְמִים אוֹמְרִים לֹא כְדַבְּרֵי זֶה, וְלֹא כְדַבְּרֵי זֶה, אֶלָּא קַב וּמִחְצָה חֲזֵיבִים בְּחֻלָּהּ. וּמִשְׁהַנְּדִילוּ הַמְדוֹת, אָמְרוּ חֲמִשָּׁת רְבָעִים חֲזֵיבִין. רַבִּי יוֹסִי אוֹמֵר חֲמִשָּׁה פְּטוּרִין, חֲמִשָּׁה וְעוֹד חֲזֵיבִין.

1 His view is rejected. 2 Kab = 2.2 litres (see ורע"מ, Page 18f.). 3 See Appendix, Note 3; Numbers 15, 20; חלקה, INTRODUCTION, 26. 4 Their opinion is accepted. 5 They used the Sepphoris (in Upper Galilee) measures which were greater than the Jerusalem measures. 6 Literally five [fourths] and aught more.

Mishnah 3

Hillel says, A 'full' *hin*¹ of drawn water renders the *ritual bath of purification*² unfit. [The term 'full' is quoted] only because a man must employ the style of expression of his teacher.³ And Shammai says, Nine *kabs*. But the Sages say, It is not in accordance with the view of the former nor according to the opinion of the latter—but when two weavers⁴ came from [their home near] the Dung Gate⁵ in Jerusalem and testified in the name of Shemaiah and Abtalion that three *logs*⁶ of drawn water render the *ritual bath of purification* unfit,⁷ the Sages identified themselves with their view.⁸

1 3 קב = 1 הין (see וְרַעִים, Page 18f). 2 Traditional pronunciation מְקוּהָה. See מְקוּאוֹת, INTRODUCTION. 3 This comment or gloss added to explain the use of the word מְלֵא (literally *the fulness of*) is attributed to R. Judah Hanasi as a tradition from Shemaiah and Abtalion. 4 Or *linen weavers* according to some authorities. Their lowly occupation and humble abode did not detract from the value of their evidence. 5 At the south-east corner of Jerusalem overlooking the Valley of Hinnom (or Gehenna). Some render it the 'Hill Gate.' 6 קב = 4 לוג. 7 If added before the ritual immersion pool contained less than 40 סָאָה [= 80 הין] of (rain) water. 8 Shammai and Hillel adopted this opinion as their ruling (see מְקוּאוֹת, 31^a).

Mishnah 4

And why¹ do they place on record the views of Shammai and Hillel to no purpose [seemingly]?² In order to teach future generations that a man must not [stubbornly] persist in his views, for is it not the case that the great teachers³ did not [obstinately] maintain their opinions?

משנה ג

הֵלֵל אוֹמֵר מְלֵא הֵיִן מֵיִם שְׂאוּבֵיִן, פּוֹסְלִין הַמְּקוּהָה. אֶלֶּא שְׂאָדָם תִּיֵּב לּוֹמֵר בְּלִשׁוֹן רַבּוֹ. וְשַׁמַּאי אוֹמֵר תִּשְׁעָה קַבִּין. וְחַכְמִים אוֹמְרִים לֹא כַדְבָּרֵי זֶה, וְלֹא כַדְבָּרֵי זֶה, אֶלֶּא עַד שֶׁבָּאוּ שְׁנֵי יַגְרָדִים מִשְׁעַר הָאֲשָׁפוֹת שֶׁבִירוּשָׁלַיִם וְהַעֲיִדוּ מִשׁוּם שְׂמַעְיָה וְאַבְטָלִיּוֹן, שֶׁלֶּשֶׁת לּוּגִין מֵיִם שְׂאוּבֵיִן פּוֹסְלִין אֶת־הַמְּקוּהָה, וְקִיַּיְמוּ חַכְמִים אֶת־דְּבָרֵיהֶם.

משנה ד

וְלָמָּה מְזַכְּרִין אֶת־דְּבָרֵי שַׁמַּאי וְהֵלֵל לְבִטְלָהָ? לְלַמֵּד לְדוֹרוֹת הַבָּאִים שֶׁלֹּא יִהְיֶה אָדָם עוֹמֵד עַל דְּבָרָיו, שֶׁהֲרִי אֲבוֹת הָעוֹלָם לֹא עָמְדוּ עַל דְּבָרֵיהֶם.

1 Or וְלִמָּה. 2 viz., what useful purpose is served by recording opinions and arguments if they are rejected? 3 Literally *the fathers of the world*, referring to Hillel and Shammai who abandoned their arguments and accepted the traditional ruling brought to them by the lowliest of men (see Note 4 in the preceding *Mishnah*).

Mishnah 5

And why* do they preserve the opinion of an individual against [that of] the majority, seeing that the adopted legal ruling can only be in accordance with the opinion of the majority? [This is so] that if a court favour the view of the individual, it may depend upon him,¹ for a court must not annul the view of another court unless it excels it in wisdom and in number; if it excel it in wisdom but not in number, or in number but not in wisdom, it can not nullify its ruling—but [it can nullify a ruling] only if it exceed it both in wisdom and in number.²

1 i.e., act according to the opinion of the individual. 2 But actually it would be a presumption and a practical impossibility to say which court is superior to another in wisdom, and so if a court gives a ruling according to the opinion of an individual this ruling becomes a permanent law. *Or וְלִמָּה, וְלִמָּה.

Mishnah 6

R. Judah said, If so, why¹ do they put on record the view of the individual against [that of] the majority to no purpose [seemingly]?² [It is recorded so] that if a man shall say, 'I hold such a tradition', another may reply to him, 'Thou hast [but] heard [it] as the view of so-and-so'.³

1 Or לִמָּה. 2 Seeing that it was a foregone conclusion that it would be rejected. 3 viz., as he was the only one that persisted in that view against that of others the ruling accepted is that of the majority.

משנה ה

*וְלִמָּה מִזְכִּירִין דְּבַרֵי הַיְחִיד בֵּין הַמְּרֻבֵּין, הוּאִיל וְאִין הִלְכָה אֶלָּא כְּדַבְּרֵי הַמְּרֻבֵּין? שָׂאֵם יִרְאֶה בֵּית דִּין אֶת־דְּבַרֵי הַיְחִיד וְיִסְמֹךְ עָלָיו שָׂאֵין בֵּית דִּין יָכוֹל לְבַטֵּל דְּבַרֵי בֵּית דִּין חֲבֵרוֹ עַד שִׁיהִיָּה גְדוֹל מִמֶּנּוּ בְּחֻקָּהָ וּבְמִנְיָן; הִנֵּה גְדוֹל מִמֶּנּוּ בְּחֻקָּהָ, אָבָל לֹא בְּמִנְיָן, בְּמִנְיָן, אָבָל לֹא בְּחֻקָּהָ, אִינוּ יָכוֹל לְבַטֵּל דְּבַרֵי עַד שִׁיהִיָּה גְדוֹל מִמֶּנּוּ בְּחֻקָּהָ וּבְמִנְיָן.

משנה ו

אָמַר רַבִּי יְהוּדָה אִם כֵּן יִלְמָה מִזְכִּירִין דְּבַרֵי הַיְחִיד בֵּין הַמְּרֻבֵּין לְבַטְלָהּ? שָׂאֵם יֹאמַר הָאָדָם כִּף אֲנִי מְקוּבָּל, יֹאמַר לוֹ כְּדַבְּרֵי אִישׁ פְּלוּנִי שִׁמְעַתָּה.

Mishnah 7

The School of Shammai¹ say, A *quarter-kab*² of bones, any of the bones [of a corpse], or from two [corpses], or from three [corpses], [suffices to render unclean beneath the same roof];³ and the School of Hillel say, A *quarter-kab* of bones from the [same] corpse—and they must be the greater part in bulk,⁴ or the greater part in number⁵—[conveys uncleanness by overshadowing]. Shammai says, Even [a *quarter-kab*] from one bone⁶ [is sufficient to convey uncleanness by overshadowing].

מִשְׁנֵה ז
 יְבִית שְׁמַאי אֹמְרִים רֹבֵעַ
 עֲצָמוֹת מִן־הָעֲצָמִים, בֵּין מִשְׁנַיִם
 בֵּין מִשְׁלֹשָׁה; וּבֵית הַלֵּל אֹמְרִים
 רֹבֵעַ עֲצָמוֹת מִן־הַגּוֹיָה, מְרֹב
 הַבְּנִין, אוֹ מְרֹב הַמִּנְיָן. שְׁמַאי
 אֹמֵר אֶפְלוֹ מֵעֶצֶם אֶחָד.

1 See אֶהְלוֹת 21. 2 See 12, Note 2. 3 Or *under shelter, by overshadowing.* 4 *i.e., of the skeleton.* 5 At least 125 out of the total 248. 6 If it is a *quarter-kab* in bulk.

Mishnah 8

In the case of tares¹ of *priest's-due*,² the School of Shammai³ say, They must be steeped and rubbed with⁴ in cleanness⁵ and may be fed [to a beast] in uncleanness.⁶ The School of Hillel⁷ say, They must be soaked in cleanness,* but they may be rubbed with or given [to beasts] as food in uncleanness. Shammai says,⁸ They must be eaten dry. R. Akiba⁹ says, Whatever is done with them¹⁰ may be carried out in uncleanness.

מִשְׁנֵה ח
 יְפַרְשֵׁי תְרוּמָה, בֵּית שְׁמַאי
 אֹמְרִים שׁוֹרֵרִין וְשָׁפִין בְּטָהֳרָה
 וּמְאָכְלִין בְּטוֹמְאָה. בֵּית הַלֵּל
 אֹמְרִין שׁוֹרֵרִין בְּטָהֳרָה, וְשָׁפִין
 וּמְאָכְלִין בְּטוֹמְאָה. שְׁמַאי אֹמֵר
 יֹאכְלוּ צְרִיד. רַבִּי עֲקִיבָא אֹמֵר
 כָּל־מַעֲשֵׂיהֶם בְּטוֹמְאָה.

1 Or *darnel, horse-beans, rye-grass, vetches.* See וְרָעִים, SUPPLEMENT; מוֹעֵד, SUPPLEMENT. These are cultivated for fodder, and even eaten by human beings in times of great dearth, and that is why *priest's-due* must be separated from them. 2 See Appendix, Note 1. 3 Their view is rejected. See מַעֲשֵׂר שְׁנֵי 24. 4 They were used for rubbing the body with. 5 The hands were washed before handling them. 6 With unclean hands. 7 Their opinion is accepted. 8 The נִמְרָא has אֹמְרִים בֵּית שְׁמַאי, *The School of Shammai say.* 9 His view is rejected. 10 Even soaking. Literally *all their applications.* *Or בְּטָהֳרָה.

Mishnah 9

If one change¹ a *sela's*² worth of *second tithe*³ money, the School of Shammai say, The whole *sela*⁴ [may be changed into two silver *shekels*]; but the School of Hillel say, [He may change a *sela* into] a silver *shekel* and a *shekel's* worth of [copper] coins.⁵ (R. Meir⁶ says,) They must not convert silver [coin] and produce [together] into [other] silver [coin], but the Sages⁷ permit it.⁸

1 Before reaching Jerusalem (see מַעְשֵׂר שְׁנִי 2⁸). 2 1 סֵלַע = 2 שֶׁקֶל = 4 דִּינָר (see אֲרָצִים, Page 18f.). 3 See Appendix, Note 1; מַעְשֵׂרוֹת, INTRODUCTION; מַעְשֵׂר שְׁנִי, INTRODUCTION. He has a *sela's* worth of heavy copper coins and wants to convert them into the lighter two silver *shekels*. 4 Some editions give סֵלַע. 5 To avoid a general scarcity of small change (in Jerusalem) and so force down the value of the silver *shekel* and depreciate thereby the worth of the *second tithe* produce. 6 This opinion is rejected. Some authorities consider אֲמַיר אֲמַיר redundant. 7 Their view is accepted. 8 *i.e.*, if one has produce worth less than a *denar* and also less than a *denar's* worth of money he may change both into a *denar*, but if he has produce worth a *denar* and a *denar's* worth of money he may not change both into half a *sela*.

Mishnah 10

If one change a *sela*¹ of *second tithe*² money in Jerusalem, the School of Shammai³ say, The whole *sela* [may be converted] into small change;⁴ but the School of Hillel⁵ say, [He may only change each *sela*] into a *shekel's* worth of silver and a *shekel's* worth of [copper] coins.⁶ The disputants⁷ before the Sages say, [He may convert every *sela*] into three *denars'* worth of silver and one *denar's* worth of [copper] coins. R. Akiba⁸ says, [He may change each *sela*] into three *denars'* worth of silver, and [of the fourth *denar*]

מִשְׁנֵה ט

הַפּוֹרֵט¹ סֵלַע מִמַּעוֹת מִמַּעֲשֵׂר שְׁנִי
בֵּית שַׁמַּאי אוֹמְרִים בְּכֹל הַסֵּלַע
מַעוֹת; וּבֵית הִלֵּל אוֹמְרִים בְּשֶׁקֶל
כֶּסֶף, וּבְשֶׁקֶל מַעוֹת. (רַבִּי מְאִיר
אוֹמֵר) אֵין מִחֲלָלִין כֶּסֶף וּפִירוֹת
עַל הַכֶּסֶף, וְנִחְכְּמִים מִתִּירִין.

מִשְׁנֵה י

הַפּוֹרֵט¹ סֵלַע שֶׁל מַעֲשֵׂר שְׁנִי
בִּירוּשָׁלַיִם, בֵּית שַׁמַּאי אוֹמְרִים
בְּכֹל הַסֵּלַע מַעוֹת; וּבֵית הִלֵּל
אוֹמְרִים בְּשֶׁקֶל כֶּסֶף, וּבְשֶׁקֶל מַעוֹת.
הַדָּנִים לְפָנָיו חֲכָמִים אוֹמְרִים
בְּשִׁלְשָׁה דִּינָרִים כֶּסֶף וּבְדִינָר מַעוֹת.
רַבִּי עֲקִיבָא אוֹמֵר בְּשִׁלְשָׁה דִּינָרִים
כֶּסֶף וּבְכַרְבִּיעִית (כֶּסֶף בְּרַבִּיעִית)
מַעוֹת. וְרַבִּי טְרַפּוֹן אוֹמֵר אַרְבָּעָה

three quarters' worth into (silver⁹ אֶסְפְּרֵי כֶּסֶף. שְׁמַאי אֹמֵר יִגְיַחְנָה and one quarter's worth into [cop-
per]) coins. And R. Tarfon⁸ says, בְּחִנוּת וְאֵכֶל כְּנֻדָּה.
[He may change every sela into three silver denars, and the fourth
denar into four] aspers' worth of silver [and one asper's worth of
(copper) coins]. Shammai⁸ says, [Any silver of second tithe money may
not be changed into (copper) coins, therefore] he deposits it¹⁰ [a sela at
a time] in a shop [for the purchase of food] and consumes its value.

1 1 סֵלַע = 2 שֶׁקֶל = 4 כֶּסֶף = 20 דִּינָר. See וְרָעִים, Page 18f. 2 See
the preceding Mishnah, Note 3. 3 Their view is rejected. 4 Or (copper) coins.
5 Their opinion is accepted. 6 All at once, not in driblets. 7 R. Simon
ben Azzai, R. Simon ben Zoma, ben Nanos, Chanania ben Chachinai, and R.
Chanan the Egyptian (see סְנֵהֲרִין 17b). Their view is not accepted. 8 His
opinion is rejected. 9 This phrase in parenthesis is not given in the גְּמָרָא. 10 Lest
he forgets and expends the money on ordinary things.

Mishnah 11

מִשְׁנֵה יֵא

If a bridal chair¹ has its [protruding] אֵיכָסָא שֶׁל בֵּלָה שְׁנוּטְלָה חֲפוּיָו, בֵּית
arms missing,² the School of Sham- שְׁמַאי מְטַמְּאִין, וּבֵית הַלֵּל מְטַהְרִין.
mai [declare that] it is susceptible שְׁמַאי אֹמֵר, אִף מְלַבֵּן שֶׁל כֶּסֶף
to [contract] uncleanness, but the School טָמֵא. כֶּסֶף שֶׁקִּבְעוּ יְבַעְרִיבָהּ, בֵּית
of Hillel [maintain that] it is insu- שְׁמַאי יְמַטְמְאִין וּבֵית הַלֵּל מְטַהְרִין;
susceptible [to contract unclean- שְׁמַאי אֹמֵר אִף הָעָשׂוּי בָּהּ.
ness].³ Shammai says, Even the
frame of a chair is [susceptible to
become] unclean. If a chair be
fixed in⁴ a kneading-trough, the
School of Shammai assert it is susceptible to [contract] unclean-
ness,⁵ but the School of Hillel say it is insusceptible [to contract] un-
cleanness: Shammai says, Even if [a chair or seat] be made in it
[namely, the kneading trough], it is susceptible to contract uncleanness].§

1 Or stool. 2 See כְּלִים 224.* 3 See כְּלִים 204. 4 Or to. 5 If a בַּב (one afflicted
with a flux, issue, discharge or gonorrhœa) sits on it. *See ADDENDA at the end of
this Tractate. §See ADDENDA.

Mishnah 12

מִשְׁנֵה יֵב

These are matters concerning which אֵלוֹ דְּבָרִים שֶׁחֲזְרוּ בֵּית הַלֵּל
the School of Hillel changed their לְהוֹרוֹת כְּדַבְּרֵי יְבֵית שְׁמַאי, הָאֵשָׁה
views and taught in accordance with

the opinions of the School of Shammai:¹ if a woman returned² from a land beyond the sea,³ and said, 'My husband is dead', she may be married again; [if she said,] 'My husband died [without issue]',⁴ she may contract *leviratic union*; (these⁵ are the opinions of the School of Shammai). And the School of Hillel say, We have not heard [any such tradition] except in the case of a woman that came back from the harvest.⁶ The School of Shammai made reply to them, It is all one whether she comes from the harvest or whether she comes from the olive-picking or whether she comes from abroad, [she is believed when she reports her husband's death]; [the Sages] spoke of the harvest only as a matter that actually took place. The School of Hillel retracted and taught in accordance with the view of the School of Shammai. The School of Shammai say, [The woman who says her husband died] may be wed again and take her marriage-settlement⁷ [from her deceased husband's property]; and the School of Hillel say, She may be wedded again but she may not take her *marriage-settlement*. The School of Shammai replied to them, Seeing that you have permitted the more serious matter of prohibited marriage, should you not permit the less stringent matter concerning money? The School of Hillel said to them, We

שְׂבָאָה יִמְדִינָת הַיָּם, וְאִמְרָה מֵת
 בְּעָלֵי תַנְשֵׂא; מֵת יִבְעָלֵי תַתִּיבִים;
 (יְדַבְּרֵי בֵּית שְׁמַאי). וּבֵית הַלֵּל
 אוֹמְרִים לֹא שָׁמְעֵנוּ אֶלָּא בְּבָאָה מִן־
 הַקְּצִיר בְּלִבְדֵי. אָמְרוּ לָהֶם בֵּית
 שְׁמַאי אֲחַת הַבָּאָה מִן־הַקְּצִיר, וְאֲחַת
 הַבָּאָה מִן־הַזֵּיתִים, וְאֲחַת הַבָּאָה
 מִמְדִינַת הַיָּם, לֹא דִבְרוּ בְּקְצִיר
 אֶלָּא בְּהוֹנָה. חֲזָרוּ בֵּית הַלֵּל
 לְהוֹרוֹת כִּבֵּית שְׁמַאי. בֵּית שְׁמַאי
 אוֹמְרִים תַנְשֵׂא וְתִטּוֹל 'כְּתוּבָתָה';
 וּבֵית הַלֵּל אוֹמְרִים תַנְשֵׂא וְלֹא
 תִטּוֹל כְּתוּבָתָה. אָמְרוּ לָהֶם בֵּית
 שְׁמַאי הֲפִרְתֶּם אֶת־הָעֲרֻנָּה הַחֲמוּרָה
 לֹא תִפְרִירוּ אֶת־הַמָּוֶן הַקָּל? אָמְרוּ
 לָהֶם בֵּית הַלֵּל מְצִינוּ שְׂאִין הָאֲחִים
 וְכֹנְסִין לְנַחֲלָה יַעַל פִּיהָ. אָמְרוּ
 לָהֶם בֵּית שְׁמַאי וְהִלָּא מִסְפָּר
 כְּתוּבָתָה נִלְמַד שֶׁהוּא כּוֹתֵב לָהּ,
 שְׂאֵם תַנְשֵׂא לְאַחַר תִּטְּלֵי מֵהָ־
 שְׂכָתוֹב לִיךְ? חֲזָרוּ בֵּית הַלֵּל
 לְהוֹרוֹת כְּדַבְּרֵי בֵּית שְׁמַאי.

find that brothers⁸ do not enter into a heritage on her testimony [that their father is dead].⁹ The School of Shammai made [further] reply to them, And do we not learn from the scroll of her *marriage-settlement* that he records for her, 'If thou be wed to another thou shalt take what is written for thee'? The School

of Hillel retracted and taught in accordance with the view of the School of Shammai.

1 See INTRODUCTION. 2 See יְבָמוֹת 151-3. 3 Or from outside Palestine, from abroad, from a foreign country. 4 See יְבָמוֹת, INTRODUCTION. 5 Some authorities consider this clause in parentheses redundant and it is not given in many editions. 6 It happened once in this wise: a woman's husband while reaping was killed by a snake, and she reported the death to the court who made enquiry and found the story true; and the Sages thereupon made a ruling that in any such cases occurring in Palestine (*viz.*, not abroad) the woman was to be believed. 7 See Appendix, Note 8; כְּתוּבֹת, INTRODUCTION. 8 *sc.*, the sons due to come into an inheritance. 9 And thus they argue, though she may be remarried yet she is not believed regarding money [inheritance] matters.

Mishnah 13

If¹ a man were half bondman and half freedman, he labours for his master one day and for himself one day. This is the view of the School of Hillel. (The School of Shammai said to them²), You have benefited his master but him himself you have not benefited*; [thus] he can not wed a bondwoman,³ neither can he [marry] a freewoman;⁴ is he to remain unmarried? And was not the world created only for procreation and propagation,⁵ as it is said,⁶ *He created it not a waste, He formed it to be inhabited?* But for the sake of the social order⁷ they should force his master to set him free⁸ and [the bondman] writes him a note of indebtedness* for half his value. The School of Hillel retracted and taught in accordance with that of the School of Shammai.

מִשְׁנֵה יג

יְמֵי שְׂחָצִיו עָבַד, וְחָצִיו בֶּן חוֹרִין
 עוֹבֵד אֶת־רַבּוֹ יוֹם אֶחָד, וְאֶת־
 עַצְמוֹ יוֹם אֶחָד. דְּבָרֵי בֵּית הַלֵּל.
 (יֹאמְרוּ לָהֶם בֵּית שְׁמַאי), תִּקְנֶתֶם
 אֶת־רַבּוֹ וְאֶת־עַצְמוֹ לֹא תִקְנֶתֶם;
 לֵישָׂא יִשְׁפָּחָה אֵינּוּ יָכוֹל, יְבַת חוֹרִין
 אֵינּוּ יָכוֹל, לִיבְטֵל? וְהֵלֵא לֹא נִבְרָא
 הָעוֹלָם, אֶלָּא לְפָרְיָהּ יוֹרְבָיָהּ,
 יִשְׁנֹאֲמַר לֹא תְהוּ בְרָאָה לְשִׁבְתָּהּ
 יִצְרָהּ? אֶלָּא מִפְּנֵי תִקּוֹן הָעוֹלָם,
 כּוֹפִין אֶת־רַבּוֹ וְעוֹשֶׂה אוֹתוֹ בֶּן
 חוֹרִין וְכוֹתֵב *שֵׁטֶר עַל חָצִי דְמִיּוּ.
 חֹרְוֵי בֵּית הַלֵּל לְהוֹרוֹת כְּבֵית
 שְׁמַאי.

1 See גִּטִין 45. 2 The גְּמָרָא gives אָמְרוּ בֵּית שְׁמַאי אָמְרוּ, *The School of Shammai replied.*
 3 A Canaanite slave—because he is half free. 4 A Jewess—since he is half slave.
 5 Or the duty of continuing the human race. 6 Isaiah 45, 18. 7 Or the general welfare,

the public good. 8 And this is also the ruling in the case where a bondman belongs to any number of masters—if one manumit him the others are compelled to give him his liberty also. *Or you have made it well [or favourable] for his master but not for himself. *Popular pronunciation שָׁטַר.

Mishnah 14

משנה יד

An earthenware vessel¹ [properly closed] protects all [inside from being rendered unclean by a corpse beneath the same roof],² according to the opinion of the School of Hillel. But the School of Shammai say, It can only save [from contracting uncleanness] foodstuffs and liquids and any earthenware utensil [well enclosed within it].³ The School of Hillel asked them, Why? The School of Shammai replied to them: 'Because with an untutored person⁴ it is susceptible to contract uncleanness and a utensil that has contracted uncleanness⁵ does not interpose' [to prevent contraction of uncleanness of aught therein]. The School of Hillel said to them: 'But have you not declared clean foodstuffs and liquids [and earthenware vessels] within it?'⁶ The School of Shammai answered them, When we declared foodstuffs and liquids [and earthenware utensils] within clean, we declared [them] clean for himself⁷ [only], but when thou hast pronounced the utensil clean thou hast pronounced it clean for thyself⁸ and for him. The School of Hillel reversed their view and taught in agreement with the opinion of the School of Shammai.

יְכִלֵי חָרָס מְצִיל עַל יְהַפְל כְּדַבְּרֵי
בֵּית הַלֵּל. וּבֵּית שַׁמַּי אֹמְרִים אֵינוֹ
מְצִיל אֶלָּא עַל הָאוֹכְלִין, וְעַל
הַמְּשֻׁקֵּין, וְעַל יְכִלֵי חָרָס. אָמְרוּ
לָהֶם בֵּית הַלֵּל מִפְּנֵי מָה? אָמְרוּ
לָהֶם בֵּית שַׁמַּי מִפְּנֵי שֶׁהוּא טָמֵא
עַל גַּב יַעַם הָאֶרֶץ וְאֵין כָּלִי טָמֵא
חוּצָן. אָמְרוּ לָהֶם בֵּית הַלֵּל וְהֵלֵא
טְהַרְתֶּם אוֹכְלִים וּמְשֻׁקִין שֶׁבְּתוֹכוֹ?
אָמְרוּ לָהֶם בֵּית שַׁמַּי כְּשֶׁטְהַרְנוּ
אוֹכְלִים וּמְשֻׁקִין שֶׁבְּתוֹכוֹ, לְעַצְמוֹ
טְהַרְנוּ, אֲבָל כְּשֶׁטְהַרְתָּ אֶת־הַכֵּלִי
טְהַרְתָּ לָךְ וְלוֹ. חֲזְרוּ בֵּית הַלֵּל
לְהוֹרוֹת כְּדַבְּרֵי בֵּית שַׁמַּי.

1 See אֶהְלוֹת 53. 2 See כְּלִים 101. 3 But not the rest of the utensils. 4 See Appendix, Note 12; דְּמַאי 23. 5 Or, as some prefer to render it, that is susceptible to contract uncleanness. 6 viz., how can the two seemingly contradictory statements of the School of Shammai be reconciled? 7 i.e., the אֶרֶץ יַעַם, for a חָבֵר would not borrow from him any foodstuffs or liquids or earthenware vessels. 8 i.e., 'thyself

that art a **חֵבֵר**.¹ A **חֵבֵר** might borrow vessels (that can be cleansed by immersion in the ritual bath) from an **עַם הָאָרֶץ** and immerse them before dusk and use them after nightfall, in the belief that their uncleanness was due merely to their contact with the **עַם הָאָרֶץ**; but the uncleanness might actually have been due to the overshadowing of a corpse in which case the immersion would have been ineffective for purification, as the uncleanness would endure for seven days and then would have to be removed by the sprinkling with the water of the ashes of the *red heifer*. To obviate any such eventuality the Sages declared all vessels if placed within a closed earthenware vessel and overshadowed by the presence of a corpse are capable of being purified by immersion (actually the utensils in any vessel belonging to an **עַם הָאָרֶץ** are unclean because the container having been in contact with him is unclean, but if it had been enacted that in like case with vessels of a **חֵבֵר** that they are clean, the **עַם הָאָרֶץ** might assume that his vessels are in the same category and would lend them to a **חֵבֵר** without warning).

CHAPTER 2

פֶּרֶק ב

Mishnah 1

R. Chanina, the *prefect*¹ of the priests, testified regarding four matters.² The priests never refrained³ from burning the flesh that had become unclean from a *derived uncleanness*⁴ together with the flesh which had become unclean from a *primary uncleanness*,⁵ though they thus add uncleanness to (its) uncleanness.⁶ R. Akiba said further, The priests never refrained from kindling the oil—which was rendered unfit by one who [because of uncleanness] had immersed himself the same day—in a lamp [made of metal] rendered unclean by aught⁷ that had acquired [by contact] *corpse uncleanness*, although they thereby increase (its) uncleanness⁸ with uncleanness.

מִשְׁנָה א

רַבִּי חֲנִינְיָא יִסְגֵן הַכֹּהֲנִים הָעִיד
אֶרְבָּעָה דְדָבָרִים מִימָהֶם שֶׁל
כֹּהֲנִים יֵלֵא וְנִמְנְעוּ מִלְשַׂרוֹף אֶת־
הַבָּשָׂר שֶׁנִּטְמָא בְּוֹלֵד הַטּוֹמְאָה, עִם
הַבָּשָׂר שֶׁנִּטְמָא בְּאֵב הַטּוֹמְאָה, אִף
עַל פִּי שְׁמוֹסֵיפִין טוֹמְאָה עַל
טוֹמְאָתוֹ. הוֹסִיף רַבִּי עֲקִיבָא
מִימָהֶם שֶׁל כֹּהֲנִים, לֹא וְנִמְנְעוּ
מִלְהַדְלִיק אֶת־הַשֶּׁמֶן שֶׁנִּפְסַל
בְּטָבֹל יוֹם, בְּגֵר שֶׁנִּטְמָא בְּטָמָא
מֵת, אִף עַל פִּי שְׁמוֹסֵיפִין טוֹמְאָה
עַל טוֹמְאָתוֹ.

1 **הַפֶּקֶן** or **הַכֹּהֲנִים**, the chief (or prefect) of the priests, the adjutant High-Priest.

2 Continued in the next two Mishnahs. 3 See **פְּסָחִים** 16. 4 Or *derived uncleanness*.

5 Or *original* (or *direct*) cause of *levitical uncleanness*; for instance, a **שָׂרָץ** (creeping

thing, reptile) is deemed אב הטומאה, and anything it contacts is accounted וְלִדְ הַטּוּמְאָה (first remove or grade or degree of uncleanness), and this in turn by contact renders an object וְלִדְ וְלִדְ הַטּוּמְאָה (second grade of uncleanness), and any תְּרוּמָה (see *Appendix, Note 1*) touching this last acquires 'third degree of uncleanness'; and קִדְּשִׁים (holy sacrifices—זִבְחִים 51-8) are further susceptible to 'fourth grade of uncleanness.' 6 *i.e.*, this increase in the grade of uncleanness is of no particular consequence because the material is burned just the same. 7 This is אב הטומאה; the lamp also becomes אב הטומאה; the oil (of the second degree of uncleanness) now becomes of the first degree of uncleanness. טְבוּל יוֹם, *one who has had ritual immersion and must await sundown to be perfectly clean; Leviticus 22, 7; טְבוּל יוֹם 11.* 8 And it does not entail any grave consequence if uncleanness is added here to uncleanness in the case of oil since it is to be destroyed in any case by burning. טָמְאָה מֵת (the same as the Biblical expression לָמַת טָמְאָה לְמֵת), *one made unclean through a corpse.*

Mishnah 2

מִשְׁנָה ב

R. Chanina, the *prefect of the priests*, said,¹ I have never seen a hide² taken forth to the place of burning. R. Akiba³ said, We learn from his words that if one flay a firstling and it be found 'afflicted with a (fatal) organic disease',⁴ the priests may make use of its hide.⁵ But the Sages⁶ say, *We have not seen* is not proof, but it must be removed to the place of burning.

יֹאמַר רַבִּי חַנִּינָא סַגְן הַכֹּהֲנִים מִיָּמַי
לֹא רָאִיתִי יְעוּרֵי יוֹצֵא לְבֵית הַשְּׂרָפָה.
אָמַר רַבִּי יַעֲקֹב מִדְּבַרְיוֹ לְמַדְנֵנוּ
שֶׁהַמִּפְשִׁיט אֶת-הַבְּכוֹר וְנִמְצָא
יִטְרָפָה, שִׂיאֹתוֹ הַכֹּהֲנִים יִבְעוּרוּ.
וְיַחֲכִמִּים אוֹמְרִים לֹא רָאִינוּ אֵינוֹ
רָאִיהָ, אֶלָּא יוֹצֵא לְבֵית הַשְּׂרָפָה.

1 In continuation of the preceding *Mishnah* (and concluded in the next *Mishnah*).
2 Of an animal *after* having been slaughtered found unfit for the sacrifice. 3 His ruling is accepted in the case of a firstling (with a blemish) that had been passed by an expert as fit for sacrifice and the disqualification was discovered *after* slaughtering. 4 See *Appendix, Note 15.* 5 *i.e.*, the hide was not to be burnt. 6 Their ruling is accepted in the case of a firstling without blemish which because of some cause had become disqualified *after* slaughtering (then its flesh must be burned and the skin incinerated). The גִּמְרֵא has רָאִינוּ לֹא instead of לֹא רָאִינוּ אֵינוֹ.

Mishnah 3

מִשְׁנָה ג

He¹ testified also of a little village situated close by Jerusalem wherein dwelt a certain old man who used

אֵף יְהוּא הַעֵיד עַל כֹּפֶר קֶטֶן שֶׁהָיָה
בְּצַד יְרוּשָׁלַיִם, וְהָיָה כּוֹ זֶקֶן אֶחָד

to loan money to all the people of the village, and he used to write out [every note of indebtedness] in his own handwriting and others [used to] sign [as witnesses]. And when the matter came before the Sages they declared it to be permissible. Incidentally, thou mayest infer² that a woman may write out her own *letter of divorce*³ and that a man may write out his own receipt⁴ since the validity of a *bill of divorce*⁵ depends only on its signatories.⁶ And [he further testified]⁷ that if a needle be found in the flesh [of an offering],⁸ [the ruling is that] the hands and the knife remain clean,⁹ but the flesh is unclean;¹⁰ but if it be found in the excrement, then everything is deemed clean.¹¹

וְהָיָה מִלֹּוּה לְכָל בְּנֵי הַכֶּפֶר, וְכֹתֵב
בְּכַתֵּב יָדוֹ, וְאַחֲרֵים חֹתְמִים. וְבֹא
מֵעֶשֶׂה לְפָנָי חֲכָמִים וְהִתִּירוּ. לְפִי
דְּרַכָּךְ אֵתָּה לְמַד שֶׁהָאִשָּׁה כּוֹתֶבֶת
אֶת-גִּיטָּהּ, וְהָאִישׁ כּוֹתֵב אֶת-
שׁוֹבְרוֹ, שְׂאִין קִיּוּם טֶגֶט אֶלָּא
בְּחֹתְמָיו. וְעַל מַחַט שֶׁנִּמְצָא
בְּבָשָׂר, שֶׁהִסְכִּין וְהִדְיָם טְהוֹרוֹת,
וְהַבָּשָׂר טָמֵא, וְאִם נִמְצְאָת בְּפִרְשׁ,
הַכֹּל טָהוֹר.

1 R. Chanina (see the preceding *Mishnah*, **Note 1**). 2 Literally 'By thy way thou hast concluded.' 3 See גִּטִּין, INTRODUCTION. 4 Or *quittance* (which the divorced woman gives the man when she receives her *marriage-settlement*: see *Appendix*, **Note 8**, and כְּתוּבֹת, INTRODUCTION). 5 Or any other *document*, *writ*. 6 Provided the witnesses who sign are eligible. 7 This is the fourth and last statement (see 2¹, **Note 2**). 8 Which is slaughtered in the Temple Court and it is known that the needle had contracted uncleanness by contact with a corpse, but there is a doubt whether the hands and the knife had touched the needle (see טְהוֹרוֹת 45). 9 Because of the uncertainty. 10 There is no doubt here that the flesh had been in contact with the needle. 11 The assumption being that the needle in its passage had not been in contact with the flesh.

Mishnah 4

Three matters did R. Ishmael state before the Sages in the 'Vineyard' at Jabneh.¹ If² a beaten up egg³ were poured over vegetables⁴ of *priest's-due*,⁵ it is as a connection,⁶ but if it were like a cap, it does not act as a connection. And [he also said] if there be an ear of corn⁷

מִשְׁנֵה ד
שֶׁלֹּשָׁה דְּבָרִים אָמַר רַבִּי יִשְׁמָעֵאל
לְפָנָי חֲכָמִים יַבְנֶהוּ. עַל
בִּיצָה טְרוּפָה, שֶׁהִיא נְתוּנָה עַל
גִּבֵּי יֶרֶק שֶׁל תְּרוּמָה שֶׁהִיא יְחֻבּוֹר,
וְאִם הִיתָה כְּמִין כּוֹבַע אֵינָה יְחֻבּוֹר.

[left standing] after the reaping, and its tip touch⁸ the standing corn, if it can be reaped together with⁹ the standing corn, it belongs to the owner, but otherwise* it¹⁰ belongs to the poor. And [he said further] if¹¹ a small garden¹² be surrounded by an espalier [of grape vines],¹³ and there is therein sufficient space for a grape-gatherer and his basket on the one side¹⁴ and enough room for a grape-gatherer and his basket along the other side,¹⁵ then seed may be sown [there],¹⁶ but otherwise* it may not be sown there.

וְעַל שְׂבֻלַת שְׂבַקְצִיר וְרֹאשָׁה
 מִנְעֵת לְקָמָה אִם נִקְצְרָא יַעַם הַקָּמָה
 הַרִי הִיא שֶׁל בְּעַל הַבַּיִת וְאִם לֹא
 הַרִי הִיא שֶׁל עֲנִיִּים. וְעַל יָנָה
 קִטְנָה שֶׁהִיא מוֹקֶפֶת עָרִיס, אִם לֹשׁ
 בָּהּ כְּמֵלֵא בּוֹצֵר וְסִלּוֹ מִכְּאֵן,
 וְמֵלֵא בּוֹצֵר וְסִלּוֹ מִכְּאֵן, תִּזְרַע,
 וְאִם לֹא לֹא תִזְרַע.

1 כָּרֵם, (a) vineyard, plantation, (b) academy, college, circle of scholars. כָּרֵם בִּיבְנָה was the College of R. Jochanan ben Zaccai in Jamnia. 2 See טְבוּל יוֹם 32. 3 Both white and yolk. 4 Or greens. Or גִּרְק. 5 See Appendix, Note 1. 6 Or connective. If a טְבוּל יוֹם (see 21, Note 7) touched the egg the priest's-due becomes unclean because of the connective character. 7 See פֶּאֶה 52. 8 i.e., if inclined it could touch. 9 i.e., when inclined it can be cut together with the corn. 10 It becomes שֶׁכַּחָה, forgotten produce. 11 See כְּלָאִים 41, 61. 12 Not more than eight cubits wide. (See כְּלָאִים 73). 13 There are five trellised grape-vines outside the wall or fence on one side and five others outside the opposite wall or fence. 14 Traditional reading מִכְּאֵן. 15 If the garden is wide enough to allow a picker with a basket to pick from inside the grapes along the wall and likewise for another picker to pick along the opposite wall, i.e., the width being not less than four cubits, the middle part (two cubits in width) may be sown (leaving unsown one cubit alongside each wall). 16 Deuteronomy 22, 9. *Or לֹא?.

Mishnah 5

Three matters did they declare before R. Ishmael and he did not enjoin concerning them either a prohibition or permission;¹ but R. Joshua ben Mattia expounded them. If one cut into an abscess on the Sabbath to make an opening,² he is liable,³ but if to extract the pus, [he may open it up and] he is exempt. And [he said also] if one hunt a snake on the Sabbath, and

מִשְׁנָה ה

שְׁלֹשָׁה דְּבָרִים אָמְרוּ לְפָנָי רַבִּי
 יִשְׁמַעְיָאל וְלֹא אָמַר בָּהֶם לֹא אִיסוּר
 וְהִיתָר; וּפִירְשָׁן רַבִּי יְהוֹשֻׁעַ בֶּן
 מַתְיָא. הַמְפִּיס מוֹרְסָא בְּשַׁבָּת, אִם
 לְעֻשׂוֹת לָהּ פֶּה חֲיִיב, וְאִם לְהוֹצִיא
 מִמֶּנָּה לֶחָה פְּטוּר. וְעַל הַצֵּד נֶחֱשׂ

he is thus occupied that it should not bite him, he [may chase it and] is exempt, but if [to obtain] a remedy,⁴ he is culpable.³ And [he said further] unburned white-clay (round) dishes (which are hollow within)⁵ remain clean if overshadowed by a corpse,⁶ but they become unclean if carried by one who has a discharge.⁷ R. Elazar⁸ ben Zadok says, Even if they be carried by one with a discharge, they remain clean because their preparation is not complete.⁹

בשבת. אם מתעסק שלא ישכנו,
פטור, ואם לרפואה, חייב. ועל
לפסין אירוניות שהם טהורות
באהל הימת, וטמאות במשא הנזב.
רבי אלעזר בן צדוק אומר אף
במשא הנזב טהורות, מפני שלא
נגמרא מלאכתן.

1 The גמרא has היתר ולא. 2 See שבת 72. 3 If he does so unwittingly he brings a *guilt-offering*, and if wantonly he deserves capital punishment. 4 Or *remedial annulet*. 5 A kind of extemporised trays, dishes, or stew-pots made for immediate use by fashioning a lump of clay into a hollow ball, baking it in an oven, and splitting it into two hemispherical parts. 6 Compare 17. The closed interior is unsusceptible to *corpse uncleanness*, and an earthenware vessel does not contract uncleanness on the outside. 7 Or *flow, issue, flux, gonorrhæa*. See *Leviticus* 15, 12. 8 Or אליעזר, Eliezer, in some texts. His view is rejected. 9 See כלימ 4⁴. Before it is cut into two parts it is not a usable utensil.

Mishnah 6

Three matters did R. Ishmael state, but R. Akiba did not agree with him. If one were crushing-and-chopping¹ garlic or half-ripe grapes or unripe² [ears of] corn while it was yet day [before the beginning of the Sabbath], R. Ishmael³ says, He may finish after nightfall;⁴ but R. Akiba says, He may not finish.

משנה ו

שלישה דברים אמר רבי ישמעאל,
ולא הודה לו רבי עקיבא. השום
והבוסר, והמלילות ישריסקן
מבעוד יום, שרבי ישמעאל אומר
יגמור משתחשף; ורבי עקיבא
אומר לא יגמור.

1 See שבת 22¹. 2 Some prefer the rendering *ripe*, some *parched*, and others *green*. 3 His view is accepted that one may on the Sabbath make use of the juice that continues to exude of itself (*viz.*, without the aid on the part of anyone). 4 *חשף*, *await nightfall* (on Friday evening), *approach Sabbath limit in the daytime and wait for sunset*; compare שבת 42.

Mishnah 7

Of three things did they speak before R. Akiba, two in the name of R. Eliezer and one in the name of R. Joshua. [These are the] two in the name of R. Eliezer: a woman¹ may go out [on the Sabbath] with a golden crown² [on her head], and pigeon fliers³ are ineligible to give evidence; and [the] one in the name of R. Joshua is: if a [dead] creeping thing⁴ were in the mouth of a weasel passing over loaves of *priest's-due*,⁵ and there is uncertainty whether it touched [them] or did not touch [them], the doubt thereof is [deemed sufficient to permit them to be accounted] clean.

1 See שבת 61. 2 Literally *a city of gold*, an ornament in the figure of Jerusalem. 3 See סנהדרין 33, i.e., who bet and gamble in pigeon racing. 4 See טהרות 42. Literally *the creeping thing*. 5 See Appendix, Note 1.

Mishnah 8

Three things did R. Akiba say; with two they agreed with him, but with one they did not agree with him: that the sandal¹ of lime burners is susceptible to *treading-contact-uncleanness*;² and that the [broken] remains of an oven,³ [not less than] four handbreadths [in height], is susceptible to uncleanness—though they used to say three [handbreadths high] of a remnant sufficed to render it susceptible to uncleanness—and they agreed with him; and with [this] one they did not agree with him: if a chair⁴ had two of its adjacent seat-boards removed, R. Akiba⁵ pronounced it [still] to be susceptible to uncleanness, but the Sages⁶ declared it insusceptible to

משנה ז

שלושה דברים אמרו לפני רבי עקיבא, שנים משום רבי אליעזר, ואחד משום רבי יהושע. שנים משום רבי אליעזר יוצאה יאשה בעיר של זהב, ומפריחי יונים פסולים לעדות; ואחד משום רבי יהושע, יהשרץ בפי חולדה, ומלקת על גבי כפרות של תרומה, ספק נגע ספק לא נגע ספקו טהור.

משנה ח

שלושה דברים אמר רבי עקיבא על שנים הודו לו, ועל אחד לא הודו לו, על יסגדל של סידים שהוא טמא מדרס; ועל שירא יתנור, ארבעה שהיו אומרים שלשה, והודו לו; ועל אחד לא הודו לו, על כפסא שנטלו שנים מחפזיו זה בצד זה, שרבי עקיבא מטמא, ויחכמים מטהרין.

1 Made of wood (or straw) to protect the feet from the lime. 2 One suffering from a flux communicates uncleanness to anything he treads on or leans against or rests upon. Compare *הַיְגִיגָה* 27, *נִדָּה* 63, *פְּלִים* 241, *פְּרָה* 101. 3 See *שֶׁבֶת* 32, *פְּלִים* 51. 4 See *פְּלִים* 227. *שָׁנְטְלוּ* [*Niphal*]; perhaps *שָׁנְטְלוּ* [*Kal*], if . . . from which they removed two . . . 5 His opinion is rejected. 6 Their view is accepted.

Mishnah 9

מִשְׁנָה ט

He used to say, A father¹ endows [his] son² with beauty, and with strength, and with wealth, and with wisdom, and with [length of] years,³ and with [the characteristics of] the number of generations [that have been his progenitors] before him, and [of them] he⁴ is the end, as it is said,⁵ *He that calleth the generations from the beginning; although it is said,⁶ and shall serve them;⁷ and they shall afflict them four hundred years,* and it is [also] said,⁸ *And in the fourth generation they shall return hither.*

הוא היה אומר ¹האב זוכה ²לבן, בנאי, ובכח, ובעושר, ובחכמה, ובשנים, ובמספר הדורות לפניו, והוא תקיץ, ⁵שנאמר קורא הדורות מראש, אף על פי ⁶שנאמר ועבדום וענו אותם ארבע מאות שנה, ונאמר ודור רביעי ישובו הנה.

1 Literally *the father*. 2 *i.e.*, the son inherits from his father. 3 *i.e.*, longevity. 4 The son. 5 *Isaiah 41*, 4. The Scriptural orthography is *מֵרֵאשׁ* קרא הדורות מראש. 6 *Genesis 15*, 13. 7 The Scripture gives *אתם*. 8 *Genesis 15*, 16.

Mishnah 10

מִשְׁנָה י

[R. Akiba] also used to say, Five matters endured for twelve months: the judgment of the generation of the flood¹ [endured] twelve months; the judgment of Job² [endured] twelve months; the judgment of the Egyptians³ [endured] twelve months; the judgment of Gog and Magog⁴ that is to come [shall endure] twelve months; the judgment of the wicked in hell [endures] twelve months, as it is said,⁵ *And it shall come to pass, that from one new moon to its other⁶ new moon.*⁷ R. Jochanan ben Nuri says,

אף הוא היה אומר חמשה דברים של שנים עשר חדש, משפט ידור המבול שנים עשר חדש; משפט איוב שנים עשר חדש; משפט המצריים שנים עשר חדש; משפט גוג ומגוג לעתיד לבא שנים עשר חדש; משפט רשעים בגיהנם שנים עשר חדש, שנאמר והיה מדי חדש בחדשו. רבי יוחנן בן נורי אומר

From Passover to Pentecost, as it is said,⁸ *And from one Sabbath to its [next] Sabbath.*⁹

מִן־הַפֶּסַח וְעַד הָעֶצְרֶת, שְׁנֵי־אֲמָר
וּמְדֵי שֶׁבֶת בְּשִׁבְתָּהּ.

1 *Genesis* 7, 11; 8, 14. 2 *Job* 7, 3. 3 The Ten Plagues. 4 *Ezekiel* 38, 2ff. 5 *Isaiah* 66, 23. גֵּיהֶנְזִים, the name of a glen to the south-west of Jerusalem—*Gehinnom, Gehenna*—where מֹלֵךְ (Molech, the fire-god of the Canaanites and others) was worshipped, and the name was used for *hell, purgatory* (opposite to עֵדֶן, Paradise), where the wicked receive punishment in the hereafter. See עִירוּבֵין 19a, סוּטָה 32b, רֵאשׁ הַשָּׁנָה 17a, יוֹמָא 72b, סוּטָה 4b. 6 *i.e.*, corresponding. 7 *i.e.*, in twelve months' time. 8 *Isaiah* 66, 23. 9 *viz.*, as long as this period, *i.e.*, 50 days, is a wicked soul in hell. שֶׁבֶת is here taken to mean *week* (compare *Leviticus* 23, 11).

CHAPTER 3

פֶּרֶק ג

Mishnah 1

מִשְׁנָה א

If all [such things] that communicate uncleanness by overshadowing¹ were divided outside and brought into a shelter,² R. Dosa ben Harkinas pronounces [whatever be in the shelter] clean, but the Sages pronounce [it] unclean. How so?³ If one touch or carry two pieces of carrion, each equal in size to half an olive; or if he touch a piece of a corpse equal in bulk to that of half an olive (while he overshadows⁴ another piece of half an olive's bulk; or if he touch a half-olive's bulk), and a quantity equal to that of half an olive overshadows him; or if he overshadow two pieces each equal to the bulk of half of an olive; or if he overshadow half of an olive's bulk, and [another] half-olive's bulk overshadows him, [in each of these cases] R. Dosa ben Harkinas declares him clean, but the Sages declare him unclean. But if he touch one half-olive's bulk [of a corpse], and aught else⁵ over-

כָּל־הַמְטַמְּאִין יְבֻאֵהֶל, שֶׁנִּחַלְקוּ
וְהַכְנִיסֵן לְתוֹךְ יְהִיבֵית, רַבִּי דוֹסָא בֶן
הַרְפִּינְס מְטַהֵר, וְחַכְמִים מְטַמְּאִין.
בִּיצֵד? הַגּוֹנֵעַ בְּכֶשֶׁי חֲצָאֵי יוֹתִים
מִן־הַנְּבֵלָה, אוֹ נוֹשֵׂאֵן; וּבִמַּת הַגּוֹנֵעַ
בְּכֶחְצֵי יוֹת (יוֹמְאֵהִיל עַל כְּחֶצֵי
יוֹת; אוֹ גּוֹנֵעַ בְּכֶחְצֵי יוֹת)
וּכְחֶצֵי יוֹת מְאֵהִיל עָלָיו; וּמְאֵהִיל
עַל כֶּשֶׁי חֲצָאֵי יוֹתִים; וּמְאֵהִיל
עַל כְּחֶצֵי יוֹת, וּכְחֶצֵי יוֹת מְאֵהִיל
עָלָיו. רַבִּי דוֹסָא בֶן הַרְפִּינְס
מְטַהֵר, וְחַכְמִים מְטַמְּאִין. אֲבָל
הַגּוֹנֵעַ בְּכֶחְצֵי יוֹת, וְדָבָר אַחֵר
מְאֵהִיל עָלָיו, וְעַל כְּחֶצֵי יוֹת (אוֹ
מְאֵהִיל עַל כְּחֶצֵי יוֹת וְדָבָר אַחֵר

shadows both him and another half of an olive's bulk,⁶ (or⁷ if he overshadows one half of an olive's-bulk [of a corpse], and something else overshadows both him and another of a half-olive's bulk),⁸ he is clean. R. Meir⁹ said, Even in this case¹⁰ R. Dosa pronounces him clean, but the Sages pronounce him unclean. Any such condition renders one unclean except [in the cases where there is] both contact and carrying,¹¹

or both contact and overshadowing.¹² This is the general principle: * in every case where [the means of communicating uncleanness come] under one denomination,¹³ they render unclean, [but where the means of conveying uncleanness fall] within two separate denominations [he remains] clean. * Popularly pronounced הַקְלָל.

1 See אֶהְלוֹת 31. אֶהֱלֵי, tent, shelter; with regard to טוּמְאָה (uncleanness), aught (e.g., board, tree) spread over an unclean object (e.g., corpse). 2 Literally the house. 3 i.e., 'For instance.' 4 אֶהֱלֵי [Kal], אֶהֱלֵי [Piel], הֶאֱהֵל [Hiphil], bend over, cover, overshadow, shade, spread over—used with reference to levitical uncleanness owing to forming a shelter over, or being under the same shelter as, a corpse or other source conveying uncleanness. This bracketed part is not given in the גְּמָרָא. 5 e.g., a board—one handbreadth above the source of uncleanness. 6 A source of uncleanness of another category. 7 This part in parentheses is not given in the גְּמָרָא. 8 A cause of uncleanness of another class. 9 His view is rejected. 10 Where the pieces of half an olive's bulk of a corpse come under different categories of uncleanness. 11 If one touches half an olive's bulk of a corpse and carries half an olive's bulk of a corpse. 12 If one touches a half olive's bulk of a corpse and he is shielded over together with half of an olive's bulk of a corpse. 13 Or class, character, category; thus 'carrying,' 'touching,' and 'overshadowing' are of different categories.

Mishnah 2

Separate pieces of [unclean] food-stuff are not combined together [to constitute an egg's bulk¹ to convey uncleanness]. This is the view of R. Dosa ben Harkinas; but the Sages say, They are included together [to make up the egg's bulk to

מֵאֵהֵל עָלָיו וְעַל כַּחֲצֵי יוֹת) טָהוֹר.
אָמַר רַבִּי יְמַאִיר אָף יִבְּוֶה רַבִּי
דוֹסָא מְטַהֵר וְנִחְכְּמִים מִטְּמְאֵי־ן. הֲכֵל
מְטַמֵּא חוּץ מִן־יִי הַמְּנַע עִם הַמְּשָׂא,
וְיִהְיֶה מְשָׂא עִם הָאֶהֱלֵי. וְהֵי הַקְּלָל,
כָּל־שֶׁהוּא יִמְשֵׁם אֶחָד טְמֵא, מְשֻׁנֵי
שְׁמוֹת טָהוֹר.

מְשֻׁנֵי ב
אוֹכֵל פָּרוּד יֵאֵינוּ מְצַטְרְףֵי. דְּבָרֵי
רַבִּי דוֹסָא בֶּן הֶרְפִּיָּס; וְנִחְכְּמִים
אוֹמְרִים מְצַטְרְףֵי. מִחֻלְלֵי־ן יִמְעַשֵּׂר
שְׁנֵי עַל אֶסְמוֹן. דְּבָרֵי רַבִּי דוֹסָא ;

convey uncleanness]. They may exchange *second tithe*² for unminted metal. This is the opinion of R. Dosa; but the Sages say, It may not be changed for unminted metal. Only the hands need to be immersed [in the ritual bath before sprinkling the water] of the *sin-offering*.³ This is the view of R. Dosa; but the Sages say, If one's hands have become unclean his [whole] body has become unclean.⁴

וְחֻקִּים אֹמְרִין אֵין מְחַלְלִין.
מְטַבְּלִין יָדַיִם יְלַחֲטָאתָּ. דְּבַרֵּי
רַבֵּי דוֹסָא; וְחֻקִּים אֹמְרִים אֵם
נִטְמָאוּ יָדָיו נִטְמָא גּוּפוֹ.

1 Unclean food of less than an egg's bulk does not render anything else unclean. See *מַעֲיָלָה* 45. 2 See *Appendix, Note 1*; *מַעֲשֵׂר שְׁנִי*, INTRODUCTION and 12. 3 See *חֲגִיגָה* 25. The water of the ashes of the *red-heifer*. 4 And there must be complete ritual immersion of the whole body before using the water of the ashes of the *red-heifer*, but (if the body is clean) only the unclean hands need immersion with regard to handling *priest's-due* or *sacrifices*.

Mishnah 3

The inside (seeds and juice) of the melon¹ and the refuse parts of vegetables (that are stripped off) which are of *priest's-due*²—R. Dosa permits them to non-priests,³ but the Sages forbid them. If five⁴ sheep be shorn and produce each a *maneh*⁵ and a half of fleece, they are liable to the law of the *first shorn wool*.⁶ This is the opinion of R. Dosa; but the Sages say, Five sheep, whatever quantity their fleeces may be.⁷

מִשְׁנָה ג'
מַעֲיָ יֵאָבְטִיחַ וְקִינֵיבַת יֶרֶק שֶׁל
יִתְרוּמָה, רַבֵּי דוֹסָא מְתִיר יְלִזְרִים,
וְחֻקִּים אֹסְרִין. הַחֶמֶשׁ רְחֵלוֹת
גְּזוּזוֹת מְנָה מְנָה וּפְרָס, חֲזִיבוֹת
בְּרֵאשִׁית הַגֹּז. דְּבַרֵּי רַבֵּי דוֹסָא;
וְחֻקִּים אֹמְרִים חֶמֶשׁ רְחֵלוֹת
כָּל־שֶׁהֵן.

1 See *נְרָעִים*, SUPPLEMENT, *מוֹעֵד*, SUPPLEMENT. 2 See *Leviticus 22, 10ff*; *Appendix, Note 1*. 3 Levites and Israelites. 4 See *I Samuel 25, 18*. 5 *מְנָה* = 538 grams (see *נְרָעִים*, Page 18f.). 6 Or *the first of the fleece*. See *Deuteronomy 18, 4*; *חֲזִיזִין* 11^{1, 2}. 7 But not less than twelve *מְנָה* from each sheep. *מְנָה* = 0.6 grams.

Mishnah 4

All kinds of matting¹ are susceptible to uncleanness [by contact] with a corpse. This is the view of R. Dosa;

מִשְׁנָה ד'
כָּל־הַחֹצְלוֹת טְמֵאוֹת טְמֵא מֵת.
דְּבַרֵּי רַבֵּי דוֹסָא; וְחֻקִּים אֹמְרִים

but the Sages say, [They are also liable to contract] *treading-contact-uncleanness*.² All networks³ are clean⁴ save a network girdle.⁵ This is the opinion of R. Dosa; but the Sages say, They are all susceptible to uncleanness except [the wide-mesh

מְדָרָס. כָּל-הַקְּלִיעוֹת טְהוֹרוֹת חוץ מְשָׁל גִּלְגִּילוֹן. דְּבַר רַבִּי דוֹסָא; וְחֻכְמִים אוֹמְרִים כּוֹלָם טְמֵאוֹת, חוץ מְשָׁל צְמָרִים. packing net-material used] by wool-

1 Used for mats, coverings, partitions. 2 They contract *אב הטומאה* uncleanness (see 2¹) from a *בז* (one suffering with a flux). See *בָּלִים* 24¹⁰, 27². 3 Or *woven sheets* (not densely woven, but rather of loose texture). 4 *i.e.*, they are insusceptible to uncleanness. Compare *בָּלִים* 27^{1ff}. 5 Or *bandage, wrap*—which is not insusceptible to uncleanness. 6 Or *wool-dealers*.

Mishnah 5

A sling whose receptacle¹ is [of] woven [material] is susceptible to uncleanness,² but if [the receptacle] be of leather, R. Dosa ben Harkinas declares it clean;³ but the Sages pronounce it unclean.⁴ If its fingerhold be severed, it is clean,³ but if the end of the sling holding the thong [be snapped off], it is unclean.⁴

מְשִׁנֵּה הַקְּלִיעַ שְׁבִית קְבוּל שְׁלָה אָרוֹג טְמֵאָה, וְשֶׁל עוֹר, רַבִּי דוֹסָא בֶן הַרְקִינֹס מְטַהֵר; וְחֻכְמִים מְטַמְּאִין. נִפְסַק בֵּית אֶצְבַּע שְׁלָה טְהוֹרָה, בֵּית הַפְּקִיעַ שְׁלָה טְמֵאָה.

1 In which the missile is placed. 2 Compare *בָּלִים* 26³. 3 *i.e.*, it is insusceptible to uncleanness. 4 *i.e.*, it is not insusceptible to uncleanness.

Mishnah 6

A woman that had been captive¹ may eat of *priest's-due*.² This is the view of R. Dosa; but the Sages say, There is* a [woman] captive that may eat [of *priest's-due*] and§ a [woman] captive that may not eat [thereof]. How so? If³ a woman⁴ said, 'I was taken captive, nevertheless I am clean',⁵ she may eat [of *priest's-due*], (for⁶ the mouth that

מְשִׁנֵּה וְהַשְּׁבוּיָה אוֹכֶלֶת בְּתֵרוֹמָהּ. דְּבַר רַבִּי דוֹסָא; וְחֻכְמִים אוֹמְרִים *יֵשׁ שְׁבוּיָה אוֹכֶלֶת, וְיֵשׁ שְׁבוּיָה שְׂאֵינָה אוֹכֶלֶת. כִּיצַד? הָאֵשֶׁה שְׂאֵמְרָה נִשְׁבִּיתִי וְטְהוֹרָה אֲנִי אוֹכֶלֶת (שֶׁהִפָּה שְׂאֵסֵר הוּא הִפָּה שְׁהַתִּיר); וְאִם

prohibited⁷ is the mouth that permitted⁸); but if there be witnesses [who testify] that she had been a captive, and she declares, 'I am clean', she may not eat [of it].⁹

1 Compare *Leviticus* 22, 12. Referring to the wife of a כֹּהֵן (priest) when she returned from captivity among non-Jews. 2 See *Appendix*, Note 1. 3 See פְּתוּבוֹת 25. 4 Literally *the woman*. 5 viz., she had not been violated. 6 This clause in parentheses is omitted in some texts. 7 She did not conceal that she had been captive among non-Jews. 8 She is therefore to be believed that she had not had sexual intercourse. 9 Because she is not to be believed that she had not suffered sexual connexion when she did not disclose of herself that she had been taken captive by non-Jews. *Or יֵשׁ-שְׂבוּיָהּ. †Or יֵשׁ-עֲרִים.

Mishnah 7

Four cases of doubt¹ R. Joshua declares unclean, but the Sages declare them clean. How so? If one that is unclean stand still² and another that is clean is passing by,³ or if one who is clean stand still and one who is unclean is passing by, or if aught unclean be in a private domain and aught clean⁴ is [close by] in the public domain, or if aught clean⁴ be in a private domain and aught unclean is [near by] in the public domain, and there is a doubt⁵ whether one touched [the other] or did not touch, or there is a doubt whether one overshadowed⁶ [the other] or did not overshadow, or there is a doubt whether one moved⁷ [what was unclean] or did not move [it], R. Joshua⁸ declares [him] unclean, b t the Sages pronounce [him] clean.

מְשֻׁנָּה ז'
 אַרְבָּעָה יְסָפִיקוֹת, רַבִּי יְהוֹשֻׁעַ מְטַמֵּא
 וְחֻכְמִים מְטַהְרִין. כִּי צֵד? הַטָּמֵא,
 עוֹמֵד וְהַטָּהוֹר עוֹבֵר, הַטָּהוֹר
 עוֹמֵד וְהַטָּמֵא עוֹבֵר, טוֹמְאָה בְּרִשׁוֹת
 הַיְחִיד וְטָהֳרָה בְּרִשׁוֹת הָרַבִּים,
 טָהֳרָה בְּרִשׁוֹת הַיְחִיד וְטוֹמְאָה
 בְּרִשׁוֹת הָרַבִּים, סָפֵק נֶעַע סָפֵק לֹא
 נֶעַע סָפֵק יְהָאֵהִיל סָפֵק לֹא יְהָאֵהִיל
 סָפֵק יְהָסִיט סָפֵק לֹא יְהָסִיט, רַבִּי
 יְהוֹשֻׁעַ מְטַמֵּא, וְחֻכְמִים מְטַהְרִין.

1 See טְהָרוֹת 62. 2 A leper under a tree or shelter. 3 i.e., beneath or through. 4 Or טָהֳרָה, וְטָהֳרָה. 5 Or סָפֵק. 6 i.e., whether they stood under the same tree or shelter. 7 Or יְהָסִיט. 8 His opinion is rejected.

Mishnah 8

מִשְׁנֵה ח

Three things¹ R. Zadok pronounces susceptible to acquire uncleanness,² but the Sages declare [them] insusceptible to uncleanness.³ [They are] the banker's⁴ pin,⁵ (and) the grist-grinder's⁶ chest,⁷ and the style of a sun-dial. R. Zadok⁸ declares [them] susceptible to acquire uncleanness, but the Sages pronounce [them] insusceptible to uncleanness.

יְשֻׁלְשָׁה דְּבָרִים רַבִּי צְדוֹק מְטַמָּא וְחֻכְמִים וְחֻכְמִים מְטַהְרִין. יְהַשּׁוּלְחָנִי, וְאָרוֹן שֶׁל גְּרוֹסוֹת, וּמִסְמָר שֶׁל אֶבֶן שְׁעוֹת. רַבִּי צְדוֹק מְטַמָּא, וְחֻכְמִים מְטַהְרִין.

1 See כְּלִים 12⁵. 2 Literally *unclean*. 3 Literally *clean*. 4 Or *money-changer's*. 5 Some say it refers to the stick to hold up the lid of the opened up money chest, some say it is the peg for fastening the shutters or for hanging up the shutters, and others think it is the rod on which the weighing scales are suspended. 6 Or *grist-makers, grist-dealers*. Grist—see מוֹעֵד, SUPPLEMENT. 7 Below the mill, to receive the grist. 8 His view is not accepted.

Mishnah 9

מִשְׁנֵה ט

Four things¹ does Rabban Gamaliel declare susceptible to acquire uncleanness,² but the Sages pronounce [them] insusceptible to uncleanness.³ [They are] the metal cover of a box⁴ belonging to householders, (and) the hanger⁵ of the strigils, (and) unfinished metal utensils,⁶ and a board⁷ broken into two [equal pieces]. But the Sages concur with Rabban Gamaliel that if [such] a board be broken into two [parts], one large and the other small, the larger is susceptible to become unclean, and the smaller is insusceptible to contract uncleanness.

יְאָרְבְּעָה דְּבָרִים רַבֵּן גַּמְלִיאֵל מְטַמָּא וְחֻכְמִים מְטַהְרִין. כֶּסֶף יְטָנִי שֶׁל מַתְכוֹת שֶׁל בַּעֲלֵי בָתִּים, וְיִתְלוֹי הַמְּגַרְדוֹת, וְגוֹלְמֵי כְּלֵי מַתְכוֹת, וְטַבְּלָא שְׁנַחֲלָקָה לְשָׁנִים. וּמוֹדִים חֻכְמִים לְרַבֵּן גַּמְלִיאֵל בְּטַבְּלָא שְׁנַחֲלָקָה לְשָׁנִים אֶחָד גָּדוֹל וְאֶחָד קָטָן, הַגָּדוֹל טָמֵא וְהַקָּטָן טָהוֹר.

1 See כְּלִים 12⁶. 2 Literally *unclean*. 3 Literally *clean*. 4 Or *basket, travelling-box*—some render this *the cover of a metal box* in which are kept broken ware, shards, and metal scrap. 5 The chain on which are hung the bath-house strigils. 6 Or *vessels*. 7 Or *plate*, of earthenware, with a vertical rim to make it into a utensil-like receptacle.

Mishnah 10

In three matters¹ does Rabban Gamaliel give the stricter ruling in accord with the opinion of the School of Shammai. [They are:] food² may not be preserved* hot on a Festival-day³ for the Sabbath, nor may a candlestick⁴ be put together⁵ on a Festival-day, nor may bread be baked [on a Festival-day] in the form of twists⁶ but as thin cakes.⁷ Rabban Gamaliel said, 'Never in my father's household used they to bake [on a Festival-day] bread in the form of twists but as thin cakes'. [The Sages] said to him, 'What can we deduce from thy father's household who used to apply to themselves the stringent ruling, but for Israel [they enjoined] the lenient ruling that they might bake bread [on a Festival-day] in the form of twists and as thick cake [baked on coals].'⁸

משנה י
 יִשְׁלֹשָׁה דְּבָרִים רַבֵּן גַּמְלִיאֵל מִתְחַמֵּיר
 כְּדַבְּרֵי בֵּית שְׁמַאי אֵין *טוֹמְעִין
 אֶת-הַחֲמִין מִיּוֹם טוֹב לַשַּׁבָּת, וְאֵין
 זוֹקְפִין אֶת-הַמְּנוֹרָה בְּיוֹם טוֹב,
 וְאֵין אוֹפִין פֶּתִין *גְּרִיצִין אֱלָא
 רִקִּיקִין. אָמַר רַבֵּן גַּמְלִיאֵל מִמֵּיהֶן
 שֶׁל בֵּית אַבָּא לֹא הָיוּ אוֹפִין פֶּתִין
 גְּרִיצִין אֱלָא רִקִּיקִין. אָמְרוּ לוֹ מֵה-
 בַּעֲשָׂה לְבֵית אֲבִיךָ שֶׁהָיוּ מִתְחַמֵּירִין
 עַל עֲצָמָן וּמְקִילִין עַל יִשְׂרָאֵל לַהֲיוֹת
 אוֹפִין פֶּתִין גְּרִיצִין וְחֹרֵרִי?

1 See בִּיצָה 26. 2 Literally the food. 3 Or Holyday-day. 4 Literally the candlestick, the lamp. 5 By fitting or screwing the parts or links together. 6 Or crude loaves. 7 Or biscuits, wafers. 8 חֹרֵי or חָרֵי, חֲרָרָה, חָרָה. Compare בָּבָא קַמָּא 23, שַׁבָּת 110. *Or kept, maintained; literally hid, stored away.

Mishnah 11

[Rabban Gamaliel] moreover stated three matters¹ applying the more lenient ruling. [They are] that they may sweep up [on a Festival-day²] between the beds,³ (and) put⁴ the spices [on the glowing coals] on the Festival-day, and prepare a kid roasted 'helmeted'⁵ on Passover night; but the Sages⁶ prohibited these things.

משנה יא
 אַף הוּא אָמַר יִשְׁלֹשָׁה דְּבָרִים לְהַקֵּיל.
 מְכַבְּדִין בֵּין הַמַּטּוֹת, וְיִמְנִיחִין אֶת-
 הַמּוֹגְמָר בְּיוֹם טוֹב, וְעוֹשִׂים גְּדֵי
 מְקוּלָס בְּלֵילֵי פֶסַחִים; וְנִחְכְּמִים
 אוֹסְרִים.

1 See בִּיצָה 27. 2 Or Holyday-day. 3 Or couches. They used to sit on couches when at meals. 4 Or יִמְנִיחִין. They used to perfume or fumigate the air and

articles. 5 *i.e.*, roasted whole with the entrails and legs piled over the head. Compare פְּטָחִים 71. 6 Their view is the accepted ruling. Some would permit the use of burning incense but not for scenting or fumigating articles.

Mishnah 12

מְשֻׁנָּה יב

Three matters¹ did R. Elazar ben Azariah permit, but the Sages prohibited [them]. They [are] that one's cow may go out [on the Sabbath] with the strap* between its horns,² (and) that they may curry a beast³ on a Festival-day,⁴ and that they may grind pepper [on a Festival-day] in its usual mill.⁵ R. Judah⁶ says, A beast may not be carried on a Festival-day for a weal may be caused, but it may be scraped;⁷ but the Sages⁸ say, They may neither curry [it] nor scrape [it].

יְשַׁלְּשֶׁה דְּבָרִים רַבִּי אֶלְעָזָר בֶּן אֶזְרִיָּה מְתִיר, וְחַכְמִים אוֹסְרִין. פָּרְתוּ יוֹצֵאָה בְּרִצּוּעָה שְׁבִין קַרְנֶיהָ, וּמְקַרְדִּין אֶת־הַבְּהֵמָה בְּיוֹם טוֹב, וְשׁוֹחֲקִין אֶת־הַפְּלֶפֶלִין בְּרִחִים שְׁלֵהֵן. רַבִּי יְהוּדָה אוֹמֵר אֵין מְקַרְדִּין אֶת־הַבְּהֵמָה בְּיוֹם טוֹב, מִפְּנֵי שֶׁהוּא עוֹשֶׂה חֲבוּרָה, אֲבָל מְקַרְצְפִין; וְחַכְמִים אוֹמְרִים אֵין מְקַרְדִּין, אִף לֹא מְקַרְצְפִין.

1 See בִּיצָה 28. 2 A woman living near R. Elazar ben Azariah used to let her cow go out on the Sabbath with a rope coiled round its horns and he did not demur. This view of his is rejected. 3 Literally *the beast*. This view is accepted. 4 Or *Holiday-day*. 5 *i.e.*, the same mill as used on ordinary week days. This view is rejected. 6 His opinion is not accepted. 7 Or curried with a small-toothed strigil. 8 Their opinion is rejected. *Or בְּרִצּוּעָה, *with a strap*.

CHAPTER 4

פֶּרֶק ד

Mishnah 1

מְשֻׁנָּה א

These are the things from the lenient rulings of the School of Shammai and from the stringent restrictions adopted by the School of Hillel. If an egg¹ were laid on a Festival-day,² the School of Shammai say, It may be eaten, but the School of Hillel say, It must not be eaten.³ The School of Shammai say, [If one have in his house on Passover a piece of] an olive's bulk of *leaven*⁴ or [a piece

אֵלוֹ דְּבָרִים מְקוּלֵי בֵּית שַׁמַּאי, וּמְחֻמְרֵי בֵּית הִלֵּל. בִּיצָה שְׁנוּלָדָה בְּיוֹם טוֹב, בֵּית שַׁמַּאי אוֹמְרִים תֹּאכֵל, וּבֵית הִלֵּל אוֹמְרִים לֹא תֹאכֵל. בֵּית שַׁמַּאי אוֹמְרִים שְׂאוֹר בְּכֻזִּית, וְחֻמְץ בְּכֻכּוֹתָת, וּבֵית הִלֵּל אוֹמְרִים *וְהָ הָהָּ בְּכֻזִּית.

of aught that is] leavened of a date's bulk, [he transgresses a *negative commandment*⁵], but the School of Hillel say, An olive's bulk in both cases [constitutes a transgression of the *negative commandment*].

1 See **גִּיּוּצָה** 11. 2 Or *Holyday-day*, that happened to be a Sunday (so that the egg completed its formation on the Sabbath). 3 The Sages forbade the eating of an egg laid on any Holyday-day. 4 **שְׂאֹר** is the actual *leaven* (e.g., yeast) that renders other material **הִמְצָה**, leavened. 5 *Exodus 12, 19, שְׂאֹר לֹא יִמְצָא בְּבֵתֵיכֶם*, there shall be no leaven found in your houses. *Exodus 13, 7, וְלֹא יֵרָאֶה לְךָ חֻמֶּץ וְלֹא יֵרָאֶה לְךָ שְׂאֹר*, And there shall be seen with thee no leavened bread and neither shall there be seen with thee leaven in all thy borders. *Less idiomatic **זֶה חֻמֶּץ**.

Mishnah 2

משנה ב

(If¹ a beast were born² on a Festival-day,³ all are agreed that it is permitted⁴, but if a chick were hatched [on a Festival-day] all agree that it is forbidden⁴. If one slaughtered a wild animal or a bird on a Festival-day, the School of Shammai say, He may dig up [earth] with a mattock⁵ and cover over [the blood]⁶; and the School of Hillel say, He may not slaughter unless he has made earth ready [beforehand]. But they are in agreement that, if one did slaughter [without having beforehand set earth in readiness to cover up the blood], he may dig up [earth] with a mattock [thrust into the ground beforehand] and cover up [the blood]; [and further they concurred] that ashes in a double stove⁷ may be considered as made ready in advance.⁸

י(בְּהֵמָה שֶׁנִּוְלְדָה בְּיוֹם טוֹב, הַכֹּל מוּדִים שֶׁהִיא מוּתַרְתָּ, וְאֶפְרוֹחַ שֶׁיֵּצֵא מִן־הַבֵּיצָה, הַכֹּל מוּדִים שֶׁהוּא אָסוּר). הַשּׁוֹחֵט חֲזָה וְעוֹף בְּיוֹם טוֹב, בֵּית שְׁמַאי אוֹמְרִים יַחְפוֹר בְּדֶקֶר וַיִּכְסֶה; וּבֵית הַלֵּל אוֹמְרִים לֹא יִשְׁחוּט אֶלָּא אִם כֵּן הָיָה לוֹ עֶפְרָ מוּכָן. וּמוּדִים שָׂאֵם שָׁחַט שֶׁיַּחְפוֹר בְּדֶקֶר וַיִּכְסֶה, שְׂאֶפֶר כִּפְרִיהָ מוּכָן הוּא.

1 This part in parenthesis given in the **גִּמְרָא** is omitted in some texts. 2 After the full period of gestation. 3 Or *Holyday-day*. 4 To be slaughtered for food for the *Holyday*. 5 Or other pronged tool. 6 He digs with some pronged tool into the ground on the eve of the Festival in readiness, and when he has slaughtered near it he pulls it up letting the adhering soil fall on to the blood. 7 See **שֶׁבֶת** 31. A portable stove on supports with compartments for two pots. 8 And it may be used for covering over the blood (cold ashes from before the Holyday, or warm ashes formed during the Holyday, only may be used thus).

Mishnah 3

The School of Shammai¹ say, Produce proclaimed ownerless² for the use of the poor is deemed ownerless;³ but the School of Hillel say, It is not ownerless unless it is declared ownerless also for [the use of] the rich as in the Sabbatical year. If the sheaves in a field were each one *kab*,⁴ but one was of four *kabs* and one forgot it, the School of Shammai say⁵, It is not a *forgotten sheaf*, but the School of Hillel say, It is a *forgotten sheaf*.

1 See פאה 6¹. 2 הַבְּקָר is Jerushalmi (Palestinian) dialect for הַבְּקָר, similarly שְׂיִבְקָר for שְׂיִבְקָר. 3 And it is free from שְׂכָחָה, פָּאָה, לָקַט פָּאָה, and מַעֲשָׂרוֹת (see Appendix, Note 1). 4 קב = 2.2 litres (see וְרָעִים, Page 18f.). 5 See פאה 6⁵.

Mishnah 4

If a sheaf¹ lie near to a stone fence² or to a stack or to cattle³ or to implements,⁴ and one forgot it, the School of Shammai say, It is not accounted a *forgotten sheaf*, but the School of Hillel say, It is deemed a *forgotten sheaf*.⁵

1 See פאה 6². 2 A fence made like a wall of stones without cement or mortar (and having a gate). 3 Or oxen. 4 For ploughing in a field. 5 See Appendix, Note 1.

Mishnah 5

'A vineyard of the fourth year'¹—The School of Shammai say, The law of the *added fifth*² does not apply to it and the law of *removal*³ does not apply to it; but the School of Hillel say, (The⁴ law of the *added fifth* applies* to it and) the law of *removal*

מִשְׁנָה ג

בֵּית שַׁמַּאי אוֹמְרִים הַבְּקָר לְעֵינֵינוּ
הַבְּקָר; וּבֵית הִלֵּל אוֹמְרִים אֵינוֹ
הַבְּקָר, עַד שְׂיִבְקָר אָף לְעֵשִׂירִים
כְּשִׁמְטָה. כָּל-עוֹמְרֵי הַשָּׂדֶה שֶׁל
קָב קָב וְאַחַד שֶׁל אַרְבָּעָה קָבִין,
וְשָׂכָחוּ, בֵּית שַׁמַּאי אוֹמְרִים אֵינוֹ
שְׂכָחָה, וּבֵית הִלֵּל אוֹמְרִים שְׂכָחָה.

מִשְׁנָה ד

הָעוֹמֵר שֶׁהוּא סְמוּךְ לְגִנְפָה,
וּלְגִנְדִישׁ, וּלְבָקָר, וּלְכֵלִים, וְשָׂכָחוּ,
בֵּית שַׁמַּאי אוֹמְרִים אֵינוֹ שְׂכָחָה,
וּבֵית הִלֵּל אוֹמְרִים שְׂכָחָה.

מִשְׁנָה ה

בְּרֵם רְבָעִי, בֵּית שַׁמַּאי אוֹמְרִים
אֵין לוֹ חוֹמֶשׁ, וְאֵין לוֹ בִיעוּר;
וּבֵית הִלֵּל אוֹמְרִים יֵשׁ לוֹ (חוֹמֶשׁ
וְיֵשׁ לוֹ) בִיעוּר. בֵּית שַׁמַּאי אוֹמְרִים

applies§ to it. The School of Shammai say, The law of 'the poor man's share of the grapes' applies to it and the law of 'the small defective single cluster'⁵ applies to it, and the poor redeem [the grapes] for themselves;⁶ but the School of Hillel say, The whole of it goes to the winepress.⁷ * Or יִשְׁלֹו. § Or יִשְׁלֹו.

1 See *Leviticus* 19, 24; פֶּאֶה 76; מַעֲשֵׂר שְׁנִי 53; *Appendix, Note 10*. 2 See *Leviticus* 5, 24. If one exchange the fruit for money to be taken to Jerusalem a fourth (חֲזֻמֶשׁ מִלְּבָר) is added to it. Compare בָּבֶא מְצִיעָא 54a (see further *Leviticus* 5, 16, 27, 27). 3 The clearing out of all tithes from one's premises on the eve of Passover of the fourth year and of the Sabbatical year. See *Leviticus* 19, 10; פֶּאֶה 65; 73, 4; מַעֲשֵׂר שְׁנִי 53; 71. 4 Some consider the phrase in parentheses as redundant. 5 See פֶּאֶה 74. 6 *i.e.*, they may consume these at home if they first exchange them for coins to be taken to Jerusalem to be expended there on food. 7 The owner converts all the grapes into wine which he takes to Jerusalem or exchanges it for money to be used there for food instead.

Mishnah 6

A jar¹ of pickled² olives—the School of Shammai say, It need not be perforated;³ but the School of Hillel say, It must be perforated;⁴ but they are in agreement that if it were perforated, and the lees closed it up,⁵ it is clean⁶. If one anointed [himself] with clean oil, and he became unclean, and he then went down [into the ritual bath] and immersed himself, the School of Shammai say, Even though [the oil still] drips [from him] it is clean;⁷ but the School of Hillel say, [It is unclean if there remain on his body] sufficient to anoint a small member.⁸ And if the oil were unclean at the outset, the School of Shammai say, [It remains clean if after his immersion there be no more than] enough to anoint a small member; but the School of Hillel say, [It is

יִשׁ לֹו פֶּרֶט, וְיִשׁ לֹו עֹלְלוֹת, וְהַעֲנִיִּים פּוֹדִים לְעֶצְמָן; וּבֵית הַלֵּל אוֹמְרִים כּוֹלוֹ לְגִת.

מִשְׁנָה ו
יְחִבִּית שֶׁל זֵיתִים מְגוּלְגָלִים, בֵּית שַׁמַּאי אוֹמְרִים אֵינוֹ צָרִיךְ לְנִקֵּב; וּבֵית הַלֵּל אוֹמְרִים יְצָרִיךְ לְנִקֵּב; וּמוֹדִים שְׂאֵם נִקְבָּה וְסִתְמוּהָ שְׂמָרִים שֶׁהִיא טְהוֹרָה. הַסֶּךָ בְּשֶׁמֶן טְהוֹר וְנִטְמָא, יָרַד וְטָבַל, בֵּית שַׁמַּאי אוֹמְרִים אֵף עַל פִּי שֶׁהוּא מְנַטֵּף, טְהוֹר; וּבֵית הַלֵּל אוֹמְרִים כְּדֵי סִיכַת אֶבֶר קָטָן וְאֵם הָיָה שֶׁמֶן טְמֵא מִתְחַלְתּוֹ, בֵּית שַׁמַּאי אוֹמְרִים כְּדֵי סִיכַת אֶבֶר קָטָן; וּבֵית הַלֵּל אוֹמְרִים מִשְׁקָה טוֹפֶחַ. רַבִּי יְהוֹדָה אוֹמֵר מִשּׁוֹם בֵּית הַלֵּל טוֹפֶחַ וּמִטְפִּיחַ.

clean if the body be damp, but not] if it be dripping wet.⁹ R. Judah¹⁰ says in the name of the School of Hillel, [It remains clean only if there be no more than enough to just] moisten aught else.¹¹

1 Or *jug, cask*. 2 In brine. 3 Or *broached, holed*. לְנִקְבֵי [Kal] or לְנִקְבֵי [Piel]. 4 To permit the liquor that exudes from the olives to escape to prevent the liquid rendering it liable to acquire uncleanness—moisture renders foodstuffs unclean only if it is added purposely or to the benefit of someone. See *Leviticus* 11, 34, 38; מְכַשְׂרֵי 11, 65. נִקְבָה [Kal] or נִקְבָה [Piel]. 5 i.e., the perforations. 6 sc., insusceptive to uncleanness (see ADDENDA, Page 444). 7 Having been as part of the body that had been rendered clean. 8 i.e., if one's finger becomes wet on contact with the skin he remains unclean. מְשֻקָה כּוֹפֵחַ, *moisture dripping* (compare שִׁבֵּת 17a). 10 His view is rejected. 11 viz., one's small finger. Literally 'moist [enough] and moistens.'

Mishnah 7

A woman is betrothed [by being presented] with a *denar*¹ or with aught worth* a *denar*, according to the view of the School of Shammai;² but the School of Hillel say, By a *perutah* or aught to the value of a *perutah*.³ And how much is a *perutah*? One eighth of the Italian *issar*. The School of Shammai⁴ say, One may divorce⁵ his wife with an 'old' *letter of divorce*;⁶ but the School of Hillel forbid [it]. What is an 'old' *letter of divorce*? Any such after he had written it for her if he stayed alone with her.⁷ If he divorced⁸ his wife and she [then] lodged with him as [her] host,⁹ the School of Shammai say, She does not need a second *letter of divorce* from him; but the School of Hillel say, She does need a second *letter of divorce* from him. When is this the case?¹⁰ When she was divorced after marriage; but if she were divorced after

מִשְׁנָה ז

הָאִשָּׁה מִתְקַדְּשֶׁת ¹ בְּדִינָר * וּבִשְׁוֵהוּ
דִינָר כְּדַבְרֵי ² בֵּית שְׁמַאי; וּבֵית
הֵלֵל אוֹמְרִים בְּפֻרוּטָה, * וּבִשְׁוֵהוּ
פֻרוּטָה. וְכַמָּה הִיא פֻרוּטָה? אֶחָד
מִשְׁמֹנֶה בְּאִיסָר הָאִיטָלְקִי. ⁴ בֵּית
שְׁמַאי אוֹמְרִים ⁵ פּוֹטֵר הוּא אֶת-
אִשְׁתּוֹ ⁶ בְּגִט לֶשֶׁן; וּבֵית הֵלֵל אוֹסְרִין.
אִיזוֹהוּ גִט לֶשֶׁן? כָּל-שֵׁנִיתִיחַד עֲמָה
אַחַר שִׁכְתָּבוֹ לָהּ. הַמְגַרְשָׁת אֶת-
אִשְׁתּוֹ וְלָנָה עִמּוֹ ⁹ בְּפּוֹנוּדְקֵי בֵּית
שְׁמַאי אוֹמְרִים אִינָה צְרִיכָה מִמֶּנּוּ
גִּט שֵׁנִי; וּבֵית הֵלֵל אוֹמְרִים צְרִיכָה
מִמֶּנּוּ גִּט שֵׁנִי. ¹⁰ אִימָתִי? § בְּזִמְנָן
שֶׁנִּתְגַּרְשָׁה מִן-הַנְּשׂוּאִין; אֲבָל אִם
נִתְגַּרְשָׁה מִן-הָאִירוּסִין, אִינָה

betrothal,¹¹ she does not need a second letter of divorce from him, since he was† not intimate enough with her.¹²

צָרִיכָה מִמֶּנּוּ גַם שְׁנֵי, מִפְּנֵי שֶׁאֵין לְבוֹ
גַם יָבֵה.

† Literally is.

1 דִּינָר = 24 אֵיטְלָקִי אֵיטָר = פְּרוּטָה 192 (see זְרָעִים, Page 18f.). 2 See קִדּוּשִׁין 11. 3 *See בָּבָא מְצִיעָה 47. 4 See גִּיטִין 84. 5 Literally discharge, dismiss. 6 See Appendix, Note 8; גִּיטִין, INTRODUCTION. 7 The accepted ruling is that an 'old bill of divorce' is not licit. 8 Literally divorce. See גִּיטִין 89. 9 Some render this in an inn, which does not seem correct for פּוֹדֵדֵקִי means host, innkeeper (the terms for inn are פּוֹדֵדֵק and פּוֹדֵדֵקָא, and perhaps the rendering might be at an innkeeper's or at [the home of] an innkeeper). 10 Referring to the opinion of the School of Hillel. 11 And before wedlock, and they were alone together in a house. 12 To have had sexual intercourse before marriage. *Or וּבְשֻׁנָּה. §Or בְּזִמְן.

Mishnah 8

מִשְׁנָה ח

The School of Shammai permit¹ the fellow-wives² to the [surviving] brothers, but the School of Hillel prohibit [it]. If they performed *chalitzah*,³ the School of Shammai declare [them] disqualified to marry into the priesthood,⁴ but the School of Hillel declare [them] eligible.⁵ If they were taken in *leviratical marriage*, the School of Shammai declare [them] eligible,⁶ but the School of Hillel disqualify [them].⁷ And although these declare ineligible whom the others pronounce eligible, nevertheless they of [the families of] the School of Shammai did not refrain from marrying women from [the families of] the School of Hillel, nor did [they of the families of] the School of Hillel [refrain] from marrying women from [the families of] the School of Shammai.⁸ And [regardless of] all [the disputes of] cleanness⁹ and uncleanness, wherein these pronounce clean what those declare unclean, they however did not refrain from using one another's belongings in matters connected with cleanness.¹⁰

בֵּית שַׁמַּי יִמְתִּירִין אֶת־הַנְּזָרוֹת
לְאֶחָיו, וּבֵית הַלֵּל אוֹסְרִין. יִקְלְצוּ,
בֵּית שַׁמַּי פּוֹסְלִין מִן־הַכֹּהֲנָה,
וּבֵית הַלֵּל מְכַשְׂרִין. נִתְיַבְמוּ, בֵּית
שַׁמַּי מְכַשְׂרִין, וּבֵית הַלֵּל פּוֹסְלִין.
וְאִף עַל פִּי שֶׁאֵלוּ פּוֹסְלִין וְאֵלוּ
מְכַשְׂרִין, לֹא נִמְנְעוּ בֵּית שַׁמַּי
מִלִּישָׂא נָשִׁים מִבֵּית הַלֵּל, וְלֹא
בֵּית הַלֵּל מִלִּישָׂא נָשִׁים מִבֵּית שַׁמַּי.
וְכָל הַטְּהָרוֹת וְהַטּוּמְאוֹת שֶׁהֵיוּ אֵלוּ
מִטְּהָרִין, וְאֵלוּ מִטּוּמְאִין, לֹא נִמְנְעוּ
לְהִיזֵת עוֹשִׂים יִטְהָרוֹת אֵלוּ עַל גַּב
אֵלוּ.

1 See יבמות 14. 2 *i.e.*, to leviratic union (see יבמות, INTRODUCTION). 3 Levirate separation. 4 They maintain that the *chalitzah* is valid, but that a כהן (priest) must not wed a חלוצה (the woman who performed *chalitzah*). 5 They maintain that the *chalitzah* was unnecessary and therefore is of no consequence. 6 To be married into the priesthood if they became widows after the levirate union. 7 Because according to their view they may not be taken in levirate marriage, and so being in forbidden union they are as harlots who are ineligible to be married into the priesthood. 8 Because they told one another the origins of the parties concerned so that they knew whom to avoid marrying against their convictions. 9 Or הטהרות. 10 Because they warned one another which things or what women were permitted to them in accordance with their beliefs. Or טהרות.

Mishnah 9

משנה ט

If there were three brothers,¹ two of them married to two sisters and one unmarried, [and] one of the husbands of the sisters died, and the free one bespoke her [the widow], and after that his second brother died—the School of Shammai say, His [betrothed] wife remains with him and the other² [the widowed sister-in-law] is free as being the sister of [his] wife, but the School of Hillel say, He must release his [own] wife both by a *letter of divorce*³ and by *chalitzah*⁴ and his brother's [widowed] wife by *chalitzah*. This is a case of which they said, Woe to him because of [the loss of] his wife and woe to him because of [the loss of] his brother's [widowed] wife!

יִשְׁלַשׁ אָחִים, שְׁנַיִם מֵהֶם נִשְׂוֵאִים
לְשֵׁתֵי אֲחִיּוֹת וְאֶחָד מוּפְנָה, מִתְּאָחָד
מִבְּעָלֵי אֲחִיּוֹת וְעָשָׂה בָּהּ מוּפְנָה
מֵאַמֶּר, וְאַחַר כֵּן מִתְּאָחִיו הַשֵּׁנִי,
בֵּית שְׁמַאי אוֹמְרִים אֶשְׁתּוֹ עִמּוֹ,
וְהִלְלָה תֵּצֵא מִשּׁוּם אֲחֻת אִשָּׁה, וּבֵית
הַלֵּל אוֹמְרִים מוּצִיא אֶת-אֶשְׁתּוֹ
בְּגִט וְחֻלִּיצָה, וְאֶת-אִשְׁתְּ אֲחִיו
בְּחֻלִּיצָה. זֶה הוּא שְׂאֵמְרוֹ אִי לוֹ עַל
אֶשְׁתּוֹ, וְאִי לוֹ עַל אִשְׁתְּ אֲחִיו.

1 See יבמות 3^s. 2 ונהלה is the traditional reading. 3 See גיטין, INTRODUCTION. 4 Levirate separation. See יבמות, INTRODUCTION.

Mishnah 10

משנה י

If one vow to have no sexual connexion with his wife,¹ The School of Shammai say, [She must refrain] for two weeks, but the School of Hillel say, [She refrains only] for

הַמְדִיר אֶת-אִשְׁתּוֹ מִתְּשֻׁמִּישׁ הַמָּטָה,
בֵּית שְׁמַאי אוֹמְרִים שְׁתֵּי שָׁבָתוֹת,
וּבֵית הַלֵּל אוֹמְרִים שָׁבַת אַחַת.

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CHAPTER 5

פֶּרֶק ה

Mishnah 1

מִשְׁנָה א

R. Judah records six matters regarding which the School of Shammai adopt the more lenient rulings and the School of Hillel follow the more stringent rulings. The blood of a carcass¹—the School of Shammai declare it clean,² but the School of Hillel pronounce it unclean. An egg from a [bird's] carcass is permitted* [for use] if there be [eggs] like it sold in the market,³ but otherwise⁴ it is prohibited,⁵ according to the view of the School of Shammai; but the School of Hillel forbid it, nevertheless they⁶ agree that an egg from [a bird that is] טְרֵפָה⁷ is prohibited because it was formed [in a bird that was] under a prohibition. The blood⁸ of a non-Jewess and the blood⁹ of the purification of a leprous [Jewish] woman—the School of Shammai pronounce clean, but the School of Hillel say, [The blood] is like to her spittle and like to her urine.¹⁰ They may eat the produce of the Sabbatical year¹¹ with gratitude [to the owner] or without appreciation, according to the view of the School of Shammai, but the School of Hillel say, They may not eat save† by favour. A [skin] water-bag,¹² say the School of Shammai, if tied up [can acquire uncleanness],¹³ but the School of Hillel say, Even if it be not tied up.¹⁴

רבי יהודה אומר ששה דברים מקולי בית שמאי, ומחומרי בית הלל. דם יגבלות, בית שמאי מטהרין, ובית הלל מטמאין. ביצת הנבלה אם יש כיוצא בה נמכרת בשוק, מותרת, ואם לאו אסורה, כדברי בית שמאי; ובית הלל אוסרין, ומוזים בביצת טרפה שהיא אסורה, מפני שגדילה באיסורי. דם נכרית, ודם טהרה של מצורעת, בית שמאי מטהרין, ובית הלל אומרים כרוקה¹⁰ וכמימי רגליה. אוכלין פירות שביעית בטובה, ושלא בטובה, כדברי בית שמאי, ובית הלל אומרים אין אוכלים, ואלא בטובה.¹² ההקמת בית שמאי אומרים¹³ צרוחה עומדת, ובית הלל אומרים אף על פי שאינה צרוחה.¹⁴

1 Literally carcasses. 2 Compare 81. 3 If there was a defect in the performance of the slaughtering, the bird—or fowl—is regarded as נבלה, carrion (and consequently טְרֵפָה—see Appendix, Note 15), and if an egg (or eggs) be found in the body, this may be eaten if the shell be hard or if such eggs are sold in the shops. 4 Traditional

- 1 See יְבָמוֹת 14. 2 *i.e.*, to leviratic union (see יְבָמוֹת, INTRODUCTION).
 3 Levirate separation. 4 They maintain that the *chalitzah* is valid, but that a כֹּהֵן (priest) must not wed a תְּלוּצָה (the woman who performed *chalitzah*). 5 They maintain that the *chalitzah* was unnecessary and therefore is of no consequence.
 6 To be married into the priesthood if they became widows after the levirate union.
 7 Because according to their view they may not be taken in levirate marriage, and so being in forbidden union they are as harlots who are ineligible to be married into the priesthood. 8 Because they told one another the origins of the parties concerned so that they knew whom to avoid marrying against their convictions. 9 Or הַטְּהָרוֹת.
 10 Because they warned one another which things or what women were permitted to them in accordance with their beliefs. Or טְהָרוֹת.

Mishnah 9

מִשְׁנָה ט

If there were three brothers,¹ two of them married to two sisters and one unmarried, [and] one of the husbands of the sisters died, and the free one bespoke her [the widow], and after that his second brother died—the School of Shammai say, His [betrothed] wife remains with him and the other² [the widowed sister-in-law] is free as being the sister of [his] wife, but the School of Hillel say, He must release his [own] wife both by a *letter of divorce*³ and by *chalitzah*⁴ and his brother's [widowed] wife by *chalitzah*. This is a case of which they said, Woe to him because of [the loss of] his wife and woe to him because of [the loss of] his brother's [widowed] wife!

יִשְׁלָשָׁה אָחִים, שְׁנַיִם מֵהֶם נָשׂוּאִים
 לְשֵׁתִי אֶחָיוֹת וְאֶחָד מוּפְנָה, מִת אֶתְךָ
 מִבְּעָלִי אֶחָיוֹת וְעָשָׂה בָּהּ מוּפְנָה
 מֵאַמֶּר, וְאַחַר כֵּן מִת אֶחָיו הַשְּׁנִי,
 בֵּית שְׁמַאי אוֹמְרִים אֶשְׁתּוֹ עִמּוֹ,
 וְהִלְהָ תִצָּא מִשּׁוֹם אֶחָיוֹת אִשָּׁה, וּבֵית
 הֵלֵל אוֹמְרִים מוֹצִיא אֶת-אֶשְׁתּוֹ
 יְבָמָה יוֹחֲלִיצָהּ, וְאֶת-אֶשְׁתּוֹ אֶחָיו
 בְּחֻלְיָצָה. זוֹ הִיא שְׁאֶמְרוּ אִי לוֹ עַל
 אֶשְׁתּוֹ, וְאִי לוֹ עַל אֶשְׁתּוֹ אֶחָיו.

- 1 See יְבָמוֹת 35. 2 הִלְהָ is the traditional reading. 3 See גִּטִּין, INTRODUCTION. 4 *Levirate separation*. See יְבָמוֹת, INTRODUCTION.

Mishnah 10

מִשְׁנָה י

If one vow to have no sexual connexion with his wife,¹ The School of Shammai say, [She must refrain] for two weeks, but the School of Hillel say, [She refrains only] for

הַמְדִיר אֶת-אִשְׁתּוֹ מִתְּשִׁיבֵי הַמַּטָּה,
 בֵּית שְׁמַאי אוֹמְרִים שְׁתֵּי שָׁבָתוֹת,
 וּבֵית הֵלֵל אוֹמְרִים שָׁבַת אֶחָת.

one week. If a woman aborted² on the night of the eighty-first day, the School of Shammai exempt her from the [second] offering, but the School of Hillel declare her liable [to the two offerings].³ A [linen] cloak⁴ with [woollen ornamental] fringes—the School of Shammai declare it exempt [from the 'blue thread'],⁵ but the School of Hillel declare it subject [to the law of the 'blue thread'].⁶ A basket [of fruit] for the Sabbath⁷—the School of Shammai declare exempt [from tithes],⁸ but the School of Hillel declare it liable [to tithes].⁹

הַמַּפְלֵת לְאוֹר שְׁמוֹנִים וְאַחַד, בֵּית
שַׁמַּאי פּוֹטְרִין מִן־הַקָּרְבָּן, וּבֵית
הֵלֵל מְחַיְיבִין. יְסֻדִין בְּצִיצִית, בֵּית
שַׁמַּאי פּוֹטְרִין, וּבֵית הֵלֵל מְחַיְיבִים.
כֹּל־כֶּלֶת הַשַּׁבָּת, בֵּית שַׁמַּאי פּוֹטְרִין,
וּבֵית הֵלֵל מְחַיְיבִין.

1 *i.e.*, he forbids her under vow to approach him for cohabitation. See **כתובות** 56.
2 Or *miscarried*. See **כריתות** 16. 3 See *Leviticus* 12, 18; **שבועות** 88; **פסחים** 94; **שקלים** 15, 25; **מועד קטן** 32; **סוטה** 15; **נדרים** 43; **כריתות** 13^a, 21, 4; **קנים** 11; **ערוכות** 54; **זבחים** 143; **כלים** 18; **נגעים** 143; **פרה** 32; **נידה** 31; **זבים** 56. A woman who gave birth to a girl is unclean for 14 days, after which she immerses in the ritual bath and may then have sexual connexion with her husband; but if she is the wife of a **כהן** (priest) she is still considered unclean for 66 days more to enter the Temple or to eat of **קדשים** (*holy things*); then on the 81st day she must bring her offerings; but if before the 81st day she had become pregnant and on the 81st day she had a miscarriage, she must await afresh to bring her offerings when she again becomes clean, and the question now arises whether she has to bring two sets of offerings, one for the first birth and one for the abortion, or whether one set of offerings suffices for both the first birth and the subsequent abortion. 4 Compare **מנחות** 37b. 5 See *Numbers* 15, 38; *Deuteronomy* 22, 12. The blue thread (of wool) in a linen garment would be against the law of **לֹא תִלְבַּשׁ שַׁעֲטָנִי**, *Thou shalt not wear mingled stuff* (see **כלאים**, INTRODUCTION). 6 If it is to be worn by day. A garment worn at night is not subject to the law of the *fringe*. 7 Compare **מעשרות** 42. 8 See *Appendix, Note 1*. 9 The tithes must be separated immediately before the Sabbath.

Mishnah 11.

מִשְׁנָה י"א

If one vowed a prolonged spell of *naziriteship*,¹ and he fulfilled his spell of *naziriteship* [outside the Land of Israel], and afterward came to the Land [of Israel], the School of Shammai say, He must continue a

מִי שֶׁנָּדַר יְנִירֹת מְרוֹבָה, וְהִשְׁלִים
יְנִירָתוֹ, וְאַחַר כֵּן בָּא לְאֶרֶץ, בֵּית
שַׁמַּאי אוֹמְרִים יְנִיר שְׁלֹשִׁים יוֹם,
וּבֵית הֵלֵל אוֹמְרִים יְנִיר בְּתַחֲלָה מִי

nazirite for thirty days [longer], but the School of Hillel say, [He must again be] a *nazirite* as at the beginning.² If there were two pairs of witnesses³ who gave evidence of a man, and one⁴ witnessed that he had vowed⁵ two [*nazirite*] vows, and the other⁴ testified that he had vowed five [*nazirite*] vows, the School of Shammai say, The evidence is at variance and there is no question⁷ of *naziritism* here,⁶ but the School of Hillel say, In the five [vows] are* included§ the two [vows],⁸ and thus he must observe the two spells as a *nazirite*. § Popularly pronounced בקבל.

שְׁהִיוּ שְׁתֵּי כִּתֵּי עֵדִים מְעִידוֹת אוֹתוֹ,
אֵלּוּ מְעִידִים שְׁנֹדֵר שְׁתֵּים, וְיֵאלוּ
מְעִידִים שְׁנֹדֵר חֶמֶשׁ, בֵּית שְׁמַאי
אוֹמְרִים נִחְלָקָה הָעֵדוּת וְאִין כָּאֵן
נְזִירוֹת, וּבֵית הַלֵּל אוֹמְרִים יֵשׁ
בְּכָלֵל חֶמֶשׁ שְׁתֵּים, שְׁיֵהִיָּה נְזִיר
שְׁתֵּים.

1 Of more than thirty days. See נזיר 36.* 2 *i.e.*, he must fulfil his spell of naziritism as before. 3 See נזיר 37. 4 Literally *these*. 5 Some texts have שְׁנֹדֵר. 6 Popular reading כָּאֵן. 7 Compare סְנֵהֲדָרִין 31a. 8 *i.e.*, both (pairs of) witnesses are in agreement with regard to two vows. *נזירה, נזירות, *abstinence*, especially the *nazirite's* vow, *naziritism*, *naziriteship*. The vowelisation here might be either נזירות (the plural of נזירה, in agreement with the following term נזירות) or perhaps better נזירות (more in grammatical agreement with מְרוּבָּה). *Or יֵשׁ-בְּכָלֵל.

Mishnah 12

מִשְׁנָה יב

If a man were placed below the slit,¹ the School of Shammai say, He does not conduct the uncleanness [from the source to the utensils], but the School of Hillel say, A man is deemed 'hollow' and his upper side² conveys the uncleanness.

אָדָם שֶׁהוּא נִתּוּן תַּחַת הַפְּסָדֵק, בֵּית
שְׁמַאי אוֹמְרִים אֵינוֹ מְבִיא אֶת-
הַטּוֹמְאָה, וּבֵית הַלֵּל אוֹמְרִים אָדָם
חֲלוּל הוּא, וְיֵהָצֵד הָעֶלְיוֹן מְבִיא
אֶת-הַטּוֹמְאָה.

1 Or *split, crack*. See אֶהְלוֹת 113. A portico, with three walls (one side open), whose roof has an open split, and a source of uncleanness lies on the floor below on one side of the split and utensils lie below on the other side of the split, and a man lies on the ground between and under the split. 2 His body is accounted as a 'tube,' and the upper part of his body being a handbreadth above the ground is considered as shutting the split and capable of communicating the uncleanness in all parts inside. See אֶהְלוֹת 132, 3; סוּפָה 4a.

CHAPTER 5

פָּרָק ה'

Mishnah 1

מִשְׁנָה א

R. Judah records six matters regarding which the School of Shammai adopt the more lenient rulings and the School of Hillel follow the more stringent rulings. The blood of a carcass¹—the School of Shammai declare it clean,² but the School of Hillel pronounce it unclean. An egg from a [bird's] carcass is permitted* [for use] if there be [eggs] like it sold in the market,³ but otherwise⁴ it is prohibited,⁵ according to the view of the School of Shammai; but the School of Hillel forbid it, nevertheless they⁶ agree that an egg from [a bird that is] טְרֵפָה⁷ is prohibited because it was formed [in a bird that was] under a prohibition. The blood⁸ of a non-Jewess and the blood⁹ of the purification of a leprous [Jewish] woman—the School of Shammai pronounce clean, but the School of Hillel say, [The blood] is like to her spittle and like to her urine.¹⁰ They may eat the produce of the Sabbatical year¹¹ with gratitude [to the owner] or without appreciation, according to the view of the School of Shammai, but the School of Hillel say, They may not eat save† by favour. A [skin] water-bag,¹² say the School of Shammai, if tied up [can acquire uncleanness],¹³ but the School of Hillel say, Even if it be not tied up.¹⁴

רַבִּי יְהוּדָה אוֹמֵר שֶׁשָּׁה דְּבָרִים מִקּוּלֵי בֵּית שַׁמַּאי, וּמַחֲמֵרֵי בֵּית הֵלֵל. דָּם וְנִבְלוֹת, בֵּית שַׁמַּאי מְטַהְרִין, וּבֵית הֵלֵל מְטַמְּאִין. בֵּיצַת הַנִּבְלָה אִם יֵשׁ כִּיּוֹצֵא בָּהּ נִמְכְּרָת יִבְשֹׁק, *מוֹתֶרֶת, וְאִם לֹא אֶסְוֶה, כְּדַבְּרֵי בֵּית שַׁמַּאי; וּבֵית הֵלֵל אוֹסְרִין, וְמוֹדִים בְּבֵיצַת טְרֵפָה שֶׁהִיא אֶסְוֶה, מִפְּנֵי שֶׁגִּדְּלָהּ בְּאִסּוּר. דָּם נְכָרִית, וְדָם טְהוֹרָה שֶׁל מִצְוֹרְעַת, בֵּית שַׁמַּאי מְטַהְרִין, וּבֵית הֵלֵל אוֹמְרִים כְּרוֹקָה¹⁰ וְכַמִּימֵי רְגֵלֶיהָ. אוֹכְלִין פִּירוֹת¹¹ שְׁבִיעִית בְּטוֹבָה, וְשֵׁלָא בְּטוֹבָה, כְּדַבְּרֵי בֵּית שַׁמַּאי, וּבֵית הֵלֵל אוֹמְרִים אֵין אוֹכְלִים, וְאֵלָא בְּטוֹבָה.¹² הַחֲמַת, בֵּית שַׁמַּאי אוֹמְרִים¹³ צְרוּרָה עוֹמְדָת, וּבֵית הֵלֵל אוֹמְרִים אֵף עַל פִּי יִשְׁאַיְנָה צְרוּרָה.¹⁴

1 Literally *carcasses*. 2 Compare 8¹. 3 If there was a defect in the performance of the slaughtering, the bird—or fowl—is regarded as נִבְלָה, *carion* (and consequently טְרֵפָה—see *Appendix, Note 15*), and if an egg (or eggs) be found in the body, this may be eaten if the shell be hard or if such eggs are sold in the shops. 4 Traditional

reading לא. 5 It is deemed as נבלה, carrion. 6 Both the School of Shammai and the School of Hillel. 7 A bird that has an organic disease and cannot live is טרפה. 8 viz., menstrua. See זיה 4³. 9 After childbirth. See Leviticus 12, 1-8. 10 i.e., just as the saliva and urine are unclean only when they are moist and not when dry, even so the blood in these cases is unclean only when moist. 11 See שביעית, INTRODUCTION and 4². 12 Literally *The water-bag*. See קמת 26⁴. קמת, water-bag, water-bottle, made from a goat-skin which is drawn off the carcass without opening the belly, and is then sewed up, and the ends where the legs and tail were cut off are made water-tight by being pitched. 13 A water-skin is unclean, but when it acquires a hole it becomes clean; if the hole is tied up so firmly that the skin round it is drawn tightly together and closes the hole effectively when the string is removed, the bottle is again susceptible to uncleanness. 14 It can still contract uncleanness. *מותר in some texts. †Some consider אף redundant, which makes the rendering *They may eat by favour*.

Mishnah 2

R. Jose reports six cases wherein the School of Shammai follow the more lenient rulings and the School of Hillel adopt the stricter rulings. A fowl¹ may be served up together with cheese² on the table, but it must not be eaten [with it],³ according to the view of the School of Shammai; but the School of Hillel say, It must not be [so] served up or eaten [under such circumstances].⁴ They may separate *priest's-due*⁵ from olives instead of from oil and from grapes instead of from wine, according to the view of the School of Shammai; but the School of Hillel say, They may not [thus] separate *priest's-due*. If one sowed [seed]⁶ in a space of four cubits [away from vines] in a vineyard, The School of Shammai say, He renders forfeit one row [of vines]; but the School of Hillel say, He forfeits [the first] two rows. Flour-paste⁷—the School of Shammai exempt [it from the

משנה ב

רבי יוסי אומר ששה דברים מקולי בית שמאי, ומחומרי בית הלל. העוף עולה עם הגבינה על השלחן, ואינו נאכל כדברי בית שמאי; ובית הלל אומרים אינו עולה, ואינו נאכל. תורמין ויתים על שמן וענבים על יין, כדברי בית שמאי; ובית הלל אומרים אין תורמין. הזורע ארבע אמות שבכרם, בית שמאי אומרים קידש שורה אחת; ובית הלל אומרים קידש שתי שורות. המעיסה בית שמאי פוטרין; ובית הלל מתייבין. מטבילין בחדלית כדברי בית שמאי; ובית הלל אומרים אין

priest's share of the dough⁸]; but the School of Hillel declare it liable. They may immerse themselves⁹ in a torrent,¹⁰ according to the opinion of the School of Shammai; but the School of Hillel say, They may not immerse themselves.¹¹ If a non-Jew became a proselyte¹² on the eve of Passover the School of Shammai say, He immerses himself¹³ and eats of his *Passover offering* in the evening; but the School of Hillel say, He¹⁴ who separates himself from the uncircumcision* is as one that separates himself¹⁵ from the grave.¹⁶

מטבילין. גר שנתגייר ערב
 פסחים, בית שמאי ומחמרי בית
 ואוכל את-פסחו לערב; ובית
 הלל אומרים הפורש מן-הערלה
 כפורש מן-הקבר.

1 Literally *The fowl, The bird, viz.,* hen, duck, goose, pigeon, turkey, quail. See חילין 8¹. 2 Likewise *milk, butter, cream, or any milky food.* 3 *i.e.,* either one or the other only may be eaten (חילין 8¹). 4 For fear lest they are eaten together. 5 See Appendix, Note 1; תרומות 14. 6 See פלאים 45. 7 Literally *The flour-paste:* made by pouring flour into boiling water until it becomes thick and the mass is then kneaded. Compare חלה 16. 8 See Appendix, Note 3; חלה INTRODUCTION. 9 For the ritual bath. See מקנאות 56. 10 *viz.,* rain-water rushing down a hill slope. 11 Unless there are at least 40 סאה (סאה = 50-60 pints) collected in one spot (a hollow). See זרעים, Page 18f. 12 See פסחים 83. 13 In the ritual bath. 14 *sc.,* a non-Jew. 15 Or the more definite form כפורש, 'as the one that.' 16 He must first undergo the lustrations of one who has been in contact with a corpse—he must observe seven days of uncleanness, then the water of the red heifer ashes is sprinkled on him on the third and seventh days. (If a Jew is circumcised on the eve of Passover he immerses in the ritual bath and eats of the Passover offering in the evening.) *Literally *foreskin, prepuce.*

Mishnah 3

משנה ג

R. Ishmael¹ records three things regarding which the School of Shammai adopt the more lenient rulings and the School of Hillel follow the severer rulings. [The scroll of] *Ecclesiastes*² does not render the hands unclean, according to the view of the School³ of Shammai; but the School⁴ of Hillel say, It does render the hands unclean. The *sin-*

רבי ישמעאל אומר שלשה דברים
 מקולי בית שמאי ומחמרי בית
 הלל. יקהלת אינו מטמא את-
 הידים כדברי בית שמאי; ובית
 הלל אומרים מטמא את-הידיים.
 מי חטאת שעשו מצותן, בית שמאי

offering water [of the red-heifer's ashes] that has fulfilled its purpose—the School of Shammai declare it clean;⁵ but the School of Hillel declare it⁵ unclean. Black cummin⁶—the School of Shammai declare it insusceptible [to uncleanness];⁷ but the School of Hillel declare it susceptible [to uncleanness];⁸ and so, also, [they disagree regarding the question whether it is liable] to tithes.⁹

1 רַבִּי שִׁמְעוֹן, *R. Simon*, in some texts. 2 Written on parchment. See גִּימִי 35. 3 They did not consider it as Holy Scripture. 4 According to them *Ecclesiastes* is canonical Scripture. 5 Referring to the water that drips off the person besprinkled or from the container on to someone else or on to another vessel. See פְּרָה 124. 6 Literally 'The black cummin.' See עֵינֵי צִיָּן 36; וְרָעִים, SUPPLEMENT (FLORA); בּוֹעֵד, SUPPLEMENT (FLORA). 7 Because it is not a food. 8 Since it can be added to foodstuffs. 9 See *Appendix, Note 1*. The School of Shammai maintain that it is exempt from tithes, but the School of Hillel insist that it is liable to tithes. Or לְמַעְשָׂרוֹת.

Mishnah 4

R. Eliezer speaks of two matters wherein the School of Shammai adopt the more lenient rulings and the School of Hillel follow the stricter rulings. The blood of a woman after childbirth¹ who has not yet immersed herself [in the ritual bath]—the School of Shammai say it is like to her spittle and like to her urine;² and the School of Hillel say, [It communicates uncleanness] whether it be moist or dried up;³ with a discharge⁵ gave birth, [her blood] imparts uncleanness whether wet or dried up.

מִשְׁנֵה ד
רַבִּי אֱלִיעֶזֶר אוֹמֵר שְׁנֵי דְבָרִים
מִקּוּלֵי בֵּית שַׁמַּאי וּמַחֲוֵמֵי בֵּית
הַלֵּל. דָּם יוֹלְדֶת שְׂלֵא טְבֵלָה,
בֵּית שַׁמַּאי אוֹמְרִים כְּרוּקָה וְכַמִּימֵי
רְגֵלָה; וּבֵּית הַלֵּל אוֹמְרִים מְטֵמָא
לַח יוֹיְבֵשׁ; וּמוֹדִים בְּיוֹלְדֶת כְּבוֹב
שְׁהוּא מְטֵמָא לַח וְיִבֵּשׁ.

but they agree⁴ that if a woman

1 See *Leviticus 12*, 1-8; נִדָּה 43; compare 51. A woman who gave birth to a male child is unclean seven days, and in the case of a girl she is unclean fourteen days, and she must have immersion in the ritual bath at the night of the seventh or fourteenth day respectively, and the blood discharged later (33 days for a male child, 66 days for a girl) is deemed clean. 2 If she did not have the ritual bath (see *Note 1*). 3 If she did not have the ritual bath then any blood discharged is as the blood of

a menstruant. 4 *i.e.*, the School of Shammai agree with the School of Hillel since the blood of a זָבָה (a woman with a flux) is מִן־הַתּוֹרָה (or מִדְּאוּרֵי־תָא) —as enjoined by the Law—always unclean until she counts seven days in cleanness and then immerses herself in the ritual bath. 5 Or *flow, flux*.

Mishnah 5

There were four brothers¹ and two of them² married two sisters; those who married the sisters died;³ then these [widowed sisters] perform *chalitzah*⁴ but must not contract *levirate union*, and if [the brothers] did wed⁵ them, they must divorce them. R. Eliezer says in the name of the School of Shammai, They may continue the marriage;⁶ but the School of Hillel say, They must divorce them.

- 1 See יְבָמוֹת 31. 2 מָהֵם is not given in the זָבָה. 3 *viz.*, childless. 4 Or *levirate separation*. See יְבָמוֹת, INTRODUCTION. 5 Literally *anticipated and wedded*. 6 This is the accepted ruling.

Mishnah 6

Akabia ben Mahalaleel testified to four opinions.¹ They² (said) to him, 'Akabia, retract these four views that thou hast stated and we will make thee Head of the Court in Israel'. He replied to them, 'It is better for me to be dubbed³ a fool all my days than to be made a wicked man before the Omnipresent even for one hour, so that people should not say, He abandoned his convictions for the sake of office'. He⁴ pronounced unclean the hair of a leprous spot (remaining after the inflammation had partially subsided),⁵ and also (the) green⁶ blood [renders the woman unclean]; but

מִשְׁנֵה ה

אֲרַבְעָה אָחִים שְׁנַיִם מֵהֶם נָשׂוּאִים
שְׁתֵּי אַחֲיוֹת; יָמְתוּ הַנְּשׂוּאִים לְאַחֲיוֹת;
הָרִי אֵלָיו יְחֻלְצוֹת וְלֹא מִתְיָבָמוֹת,
וְאִם קָדְמוּ וְכָנְסוּ יוֹצִיאֵוּ. רַבִּי
אֱלִיעֶזֶר אוֹמֵר מְשֻׁם בֵּית שַׁמַּאי
יִקְיָיְמוּ; וּבֵית הַלֵּל אוֹמְרִים
יִצְיָאוּ.

מִשְׁנֵה ו

עֲקֵבָא בֶן מְהֻלְלָאֵל הָעֵיד אֲרַבְעָה
דְּבָרִים. אָמְרוּ לוֹ עֲקֵבָא חֲזוֹר
כִּד בְּאַרְבְּעָה דְּבָרִים שְׁהֵיִתְ אוֹמֵר
וְנַעֲשֶׂה אֵב בֵּית דִּין לְיִשְׂרָאֵל. אָמַר
לָהֶן מוֹטָב לִי לְהִקְרָא שׁוֹטֵה כָּל־
יָמֵי, וְלֹא לִיעֲשׂוֹת שְׁעָה אַחַת רָשָׁע
לְפָנֵי הַמָּקוֹם, שְׂלֵא יִהְיוּ אוֹמְרִים
בְּשִׁבְלֵי שְׂרָרָה חֲזוֹר בּוֹ. יְהוּא הָיָה
מְטַמֵּא שְׁעַר הַפְּקוּדָה, וְדָם הֵיזְרוּק;
וְחֻכְמִים מְטַהְרִין. הוּא הָיָה מִתִּיר

the Sages declare [these] clean. He used to permit the hair⁷ of a *firstling* with a blemish that fell out which was placed⁸ in a window,⁹ and afterwards it was slaughtered; but the Sages prohibited it.¹⁰ He used to say, They do not give a [woman] proselyte or a freed bondwoman to drink [of the *bitter water* if they had been sexually unfaithful to their husbands],¹¹ but the Sages say,¹² They do give [them] to drink. They said to him,¹³ It happened to Charkemith,¹⁴ a freed bondwoman who was in Jerusalem, that Shemaiah and Abtalion¹⁵ gave her to drink [of the *water of bitterness*]. [Akabia] replied to them, They performed the act [of administering the *bitter water*] on her that was like themselves, [a descendant of non-Jews.¹⁶] Thereupon they excommunicated him¹⁷ and he died while he was under the ban, and the court placed a stone¹⁸ upon his coffin. R. Judah said, Heaven forbid [that it should be said] that Akabia was excommunicated!—for the Temple Court was never closed against the face of any man in Israel [so eminent] in wisdom and in the fear of sin as was Akabia ben Mahalaleel. But whom did they excommunicate? It was Elazar¹⁹ ben Enoch, because he disputed [the Rabbinic regulations] concerning the cleanness of²⁰ the hands; and when he died the court sent and laid²¹ a stone upon his coffin; whence we learn that if any man be excommunicated, and dies while under his excommunication, they put a stone on his coffin.

שֶׁעַר בְּכוֹר בְּעַל מוֹם שֶׁנֶּשֶׂר וְהִנְיָחוּ
 בַּחֲלוֹן, וְאַחַר כֵּן שִׁחֲטוּ; וְחֻכְמַיִם
 אֹסְרִין. הוּא הָיָה אוֹמֵר אֵין
 מְשַׁקֵּין לֹא אֶת-הַגֵּיּוֹרֹת וְלֹא אֶת-
 שִׁפְחָה¹¹ הַמְּשׁוֹחֲרֶרֶת; וְחֻכְמַיִם¹²
 אוֹמְרִים מְשַׁקֵּין. אָמְרוּ¹³ לוֹ מַעֲשֵׂה
 בְּכַרְכְּמִית שִׁפְחָה מְשׁוֹחֲרֶרֶת
 שֶׁהִיתָה בִירוּשָׁלַיִם וְהִשְׁקוּהָ¹⁴ שֶׁמַּעֲיָה
 וְאַבְטַלְיוֹן. אָמַר לָהֶם¹⁵ דְּוַגְמָא
 הִשְׁקוּהָ. וְנִדְוָהּ וּמַת בְּנִדְוִי
 וְסִקְלוּ בֵית דִין אֶת-אֶרֶוֹנוֹ. אָמַר
 רַבִּי יְהוֹנָדָה חֵס וְשְׁלוֹם שֶׁעַבְדְּכֻיָא
 נִתְנָדָה, שְׂאִין עֲוֹרָה נּוֹעֶלֶת בְּפָנַי
 כֹּל-אָדָם מִיִּשְׂרָאֵל בְּחֻכְמָהּ וּבִירְאָתָהּ
 חֹטֵא בְּעַבְדְּכֻיָא בְּנִ מַהֲלָלָאֵל. וְאֶת-
 מִי נִדְוִי? אֵלְעֹזֵר בֶּן חֲנוּךְ שֶׁפִּקְפַּק
 בְּטַהֲרַת יָדַיִם; וְכִשְׁמַת שְׁלָחוּ בֵית
 דִין וְהִנְיָחוּ אֶבֶן עַל אֶרֶוֹנוֹ; מִלְמַד
 שֶׁכֹּל הַמְּחַנְדֵּה וּמַת בְּנִדְוִי, כּוֹקְלִין
 אֶת-אֶרֶוֹנוֹ.

1 They are not accepted. 2 The חֻכְמַיִם, Sages. 3 Literally to be called. 4 והוא in the גְּמָרָא. 5 See נִגְעִים 53. This refers to the case of a בְּהָרֵת, a bright white spot on the skin (*Leviticus 13, 2*) with white hair in it, which is eventually one of the

symptoms of leprosy, and the sufferer is unclean; then the **בַּהֲרַת** apparently vanishes (but the white hair remains) and afterwards reappears. 6 Or *yellow*. See **גִּידָה** 26. 7 To be made use of by a **כֹּהֵן** (priest). 8 Or **וְהִנִּיחוּ**. 9 Or **בַּחֲלוֹן**. Or *aperture* or *niche* in a wall. Or in some other place. Compare **בְּכוֹרוֹת** 34. 10 Using the hair. 11 *Numbers* 5, 12ff. 12 See **קִדְוִשִׁין** 72b. 13 The Sages to Akabia. 14 Compare **בְּרִכּוֹת** 19a. 15 Compare 13. 16 *sc.*, they wished to stress the fact that proselytes were to be treated exactly like Jews in all matters. Some render this thus: *It was for public appearance that they made her drink*, and others: *They pretended to make her drink*. 17 For having besmirched the names of Shemaiah and Abtalion. 18 Literally *stoned*. 19 He contended that the hands could not become unclean without the whole body acquiring uncleanness. See **יְדִים** 32. 20 Or **בַּטְהַרַת**. 21 Or **וְהִנִּיחוּ**.

Mishnah 7

In the hour of* his death [Akabia ben Mahalaleel] said to his son, 'My son, retract the four opinions that I have stated'.¹ He said to him, 'And why² didst *thou* not retract?' He said to him, 'I heard [them] from a majority,³ and they⁴ too heard [them] from a majority.³ I remained steadfast to the tradition which I had heard and they⁴ also stood fast to the tradition that they had heard. But thou hast heard a tradition from an individual,⁵ and [also] from a majority;⁶ it is better to abandon⁷ the view of the individual and to hold to the opinion of the majority'. He made reply to him, 'Father, commend me to thy colleagues'.⁸ He answered him, 'I do not commend [thee]'. He asked him, 'Hast thou perchance found some wrong⁹ in me?' He replied to him, 'Nay,¹⁰ thine own [good] deeds¹¹ will bring thee near [to them] and thine own [evil] acts¹² will remove thee far [from them]'.⁹

1 See the preceding *Mishnah*. 2 Or **וְלִמָּה**. Or **בְּדָ** [*pausal*]. 3 Literally 'the majority.' 4 The Sages who disputed with him. 5 *i.e.*, from Akabia himself

מִשְׁנָה ז

בְּשַׁעַת מִיתוֹ אָמַר לְבְנֵי חֲזוֹר
בְּאַרְבַּעַת דְּבָרִים יִשְׁהִייתִי אוֹמֵר.
אָמַר לוֹ: וְלָמָּה לֹא חֲזַרְתָּ בָּהֶן? אָמַר
לוֹ: אֲנִי שָׁמַעְתִּי מִפִּי הַמְּרוֹבִים, וְהֵם
שָׁמְעוּ מִפִּי הַמְּרוֹבִים, אֲנִי עֲמַדְתִּי
בְּשִׁמוּעָתִי, וְהֵם עֲמְדוּ בְּשִׁמוּעָתָן.
אָבֵל אַתָּה שָׁמַעְתָּ מִפִּי הַיְחִיד וּמִפִּי
הַמְּרוֹבִין; מוֹטָב לְהִנִּיחַ דְּבַרִי
הַיְחִיד, וְלֵאחֹזוּ בְּדַבְּרֵי הַמְּרוֹבִין.
אָמַר לוֹ: אֲבָא פְּקוּד עָלַי לְחַבְרִיךָ.
אָמַר לוֹ: אֲנִי מִפְּקִיד. אָמַר לוֹ: שָׁמָּא
עוֹלָה מִצָּאֵת בִּי? אָמַר לִיהִי
¹⁰לָאוּ, ¹¹מִעֲשֵׂיךָ יִקְרַבְךָ, ¹²וּמִעֲשֵׂיךָ
יִרְחַקְךָ.

who was only *one*. 6 *i.e.*, from the Sages. 7 Or להניח. 8 תביריך [or *pausal*] [תביריך] in the גמרא. Or לתביריך [*pausal*]. 9 עילה in some texts. 10 לא popular reading. 11 *viz.*, 'without my commendation.' 12 *sc.*, 'despite my recommendation.' *Or בשעת.

CHAPTER 6

פֶּרֶק ו'

Mishnah 1

משנה א

R. Judah ben Baba testified to five opinions. [These are:] that [the court eventually] may advise women wedded while minors to protest;¹ (and) that they may allow a woman² to be married again on the evidence of one witness;³ (and) that a cock was stoned in Jerusalem for having killed a human being;⁴ (and) that wine forty days old may be offered as a libation upon the Altar; and that the *morning daily (burnt-) offering* was offered at the fourth hour.⁵

רבי יהודה בן בבא העיד חמשה דברים. 1 שם מאנים את הקטנות; ושמיאין את האשה על פי יעד אחד; ושסקל תרנגול בירושלים על שהרג את הנפש; ועל היין בן ארבעים יום, שנתנסף על גב המזבח; ועל תמיד של שחר שקרב בארבע שעות.

1 *i.e.*, to exercise the right of refusal to remain married to her husband (see *יבמות* 131^a). Thus: two brothers, A and B, married respectively the adult C and her sister D a minor (less than twelve years of age); C's union is binding מן התורה (or מדאורייתא), as enjoined by the Law, but D's union (who had been given to B by her mother or brothers) is valid only מדרבנן, as enacted by the Sages. A died, childless, then his widow C is in levirate affinity to B מן התורה, and she imposes a prohibition on B against his keeping D (for מן התורה D is not B's wife), and yet B cannot wed C leviratically because מדרבנן D is B's wife, and he must not have two sisters as wives nor can he accept חליצה, *levirate separation* (see *יבמות*, INTRODUCTION) from C as he would then keep as wife the sister (D) of a חלוצה (a woman who had performed חליצה); therefore D is instructed to protest against her union with B, and when he is thus set free he can either wed C or submit to חליצה from her. 2 Literally 'the woman.' 3 See 85; *יבמות* 167. If a witness returned from outside Palestine and reported that the husband had died in the foreign land. Literally 'the human body.' 4 It had pecked at a baby's head and pierced the brain. Compare *Exodus* 21, 28. 5 Following an incident that happened during the period when the country was under the yoke of a foreign power that they had no sheep for the *daily offering*, and they found some lambs in the (Temple) lambs' stalls at the end of the fourth hour of the morning.

Mishnah 2

R. Joshua and R. Nechunia ben Elinathan of Kfar* ha-Babli testified that a member of a corpse is unclean,¹ regarding which R. Eliezer states, They have said so only of a member of a living being.² [The Sages] said to him, Is it not a *deduction from a minor to a major*,³ seeing that [if a member torn away] from a living being⁴ that is clean [is unclean⁵], how much more so should a member severed from a corpse that is⁶ unclean be unclean?⁵ He answered them, They spoke only of a member of a living being. Another explanation⁶ is: the uncleanness of living beings is greater than the uncleanness of the dead, since a living being renders unclean whatever he lies on and sits on, and these⁷ impart uncleanness to men and [also impart uncleanness] to garments, and [he imparts also] *slight uncleanness*⁸ to aught above him, and thus imparts uncleanness to foodstuffs and liquids—a manner by which a corpse does not render unclean.⁹

משנה ב

העיד רבי יהושע ורבי נחוניא בן
אלינתן איש כפר הבבלי, על אבר
מן-המת שהוא טמא, שרבי אליעזר
אומר לא אמרו אלא על אבר מן-
החיה. אמרו לו והלא קל וחומר
יומה מן-החיה שהוא טהור, אבר
הפורש ממנו טמא, המת שהוא
טמא, אינו דין שיהיה אבר הפורש
ממנו טמא? אמר להם לא אמרו
אלא על אבר מן-החיה. דבר אחר
מרבבה טומאת החיים, מטומאת
המתים, שהחיה עושה משכב ומושב
מתחתיו לטמא אדם ולטמא
בגדים, ועל גביו מדרך לטמא
אוכלים ומשקין, מה-שאין המת
מטמא.

1 See אהללות 21. However small the separated part may be, even if there is not an olive's bulk of flesh on it, it transmits uncleanness by overshadowing. 2 See אהללות 17. *i.e.*, if a member of a living person be separated and it has not an olive's bulk of flesh on it, it still communicates uncleanness by overshadowing.* 3 Or a conclusion (or inference) *a minori ad majus* ('from the less to the greater'), and vice versa. 4 Some prefer the reading ומה-החיה, 'seeing that [if a member torn away from] a living being.' 5 Even though there is less than an olive's bulk of flesh adhering to it. 6 By R. Eliezer. 7 However many there are between him and things below them. See *Leviticus* 15, 5ff; ובים 46. 8 Uncleanness of a minor degree due to indirect contact, *viz.*, conveyed by an intermediate medium, as by breathing, shaking, etc. The term is also applied to the object itself thus rendered unclean. It is not an אב הטומאה but אהל הטומאה (see 21). Compare גדה 4a; (*Palestinian Talmud*) סוטה V, 20b, דמאי II, 23a, שבת VII, 9d. 9 Objects beneath a corpse

acquire 'first,' 'second' and 'third' degrees of uncleanness; but if there be **מגע**, *contact*, the first object is as the corpse and becomes **אב הטומאה** and this in turn conveys uncleanness to three grades; and objects *above* a corpse receive consecutively three degrees of uncleanness on account of **מגע** but not from **משכב**, *lying upon*, or **מושב**, *sitting upon* (here we have an instance where the uncleanness due to a corpse is less potent than that due to a living being). *The pointing **החי** is grammatically preferable to the popular **החי**. *Or *Kefar*.

Mishnah 3

An olive's bulk of flesh separated¹ from a member² of a living being—R. Eliezer declares it unclean,³ but R. Joshua and R. Nechunia proclaim it clean. A barleycorn's bulk of bone separated from a living being—R. Nechunia proclaims it unclean,³ but R. Eliezer and R. Joshua declare it clean. [The Sages] said to him—to R. Eliezer—"What hast thou seen to pronounce unclean an olive's bulk of flesh separated from a member of a living being?" He replied to them, 'We find that a member from a living being is as a whole corpse,⁴ as with a corpse if an olive's bulk of flesh separated from it be unclean, even so in the case of a member of a living being an olive's bulk of flesh separated therefrom should be unclean'. They said to him, 'Not so!⁴ If⁵ thou hast declared unclean an olive's bulk of flesh separated from a corpse and thou hast [also] declared unclean a barleycorn's bulk of bone separated therefrom,⁶ wouldest thou [also] pronounce unclean⁷ an olive's bulk of flesh separated from a member of a living being and thou hast declared clean a barleycorn's bulk of bone separated from it?'⁸ They said to

משנה ג

כְּזֵית בָּשָׂר הַפּוֹרֵשׁ מֵאֵבֶר מִן־
הַחַי רַבִּי אֱלִיעֶזֶר *מְטַמֵּא, וְרַבִּי
יְהוֹשֻׁעַ וְרַבִּי נְחוּנְיָא מְטַהְרִין. עֲצָם
כְּשַׁעוֹרָה הַפּוֹרֵשׁ מֵאֵבֶר מִן־הַחַי
רַבִּי נְחוּנְיָא *מְטַמֵּא, וְרַבִּי אֱלִיעֶזֶר
וְרַבִּי יְהוֹשֻׁעַ מְטַהְרִין. אָמְרוּ לוֹ
לְרַבִּי אֱלִיעֶזֶר מִה־רְאִיתָ לְטַמֵּא
כְּזֵית בָּשָׂר הַפּוֹרֵשׁ מֵאֵבֶר מִן־הַחַי?
אָמַר לָהֶם מְצִינוּ אֵבֶר מִן־הַחַי
'כִּמְת שָׁלֵם, מִה־הַמֵּת כְּזֵית בָּשָׂר
הַפּוֹרֵשׁ מִמֶּנּוּ טַמֵּא, אִף אֵבֶר מִן־
הַחַי, כְּזֵית בָּשָׂר הַפּוֹרֵשׁ מִמֶּנּוּ יִהְיֶה
טַמֵּא. אָמְרוּ לוֹ לֹא * (אִם) טַמֵּאת
כְּזֵית בָּשָׂר הַפּוֹרֵשׁ מִן־הַמֵּת, שְׂכֵן
טַמֵּאת עֲצָם כְּשַׁעוֹרָה הַפּוֹרֵשׁ מִמֶּנּוּ,
'מְטַמֵּא כְּזֵית בָּשָׂר הַפּוֹרֵשׁ מֵאֵבֶר
מִן־הַחַי שְׂכֵן טַהֵרָה עֲצָם כְּשַׁעוֹרָה
הַפּוֹרֵשׁ *הִימְנוּ? אָמְרוּ לוֹ לְרַבִּי
נְחוּנְיָא, מִה־רְאִיתָ לְטַמֵּא עֲצָם

him—to R. Nechunia—‘What hast thou seen to declare unclean a barleycorn’s bulk of bone separated from a limb of a living being?’⁶ He replied to them, ‘We find that a member of a living being is like to a whole corpse, since with the corpse a barleycorn’s bulk⁹ of bone separated therefrom is unclean,⁶ even so in the case of a limb from a living being if a barleycorn’s bulk of bone be separated from it, it must [also] be unclean’.⁶ They made reply to him, ‘Nay!⁴ If thou hast declared unclean a barleycorn’s bulk of bone separated from a corpse, and thou hast declared unclean⁶ an olive’s bulk of flesh separated therefrom, wouldst thou [also] declare unclean⁶ a barleycorn’s bulk of bone separated from the member of a living being seeing thou didst declare clean an olive’s bulk of flesh separated from it?’ They said to him—to R. Eliezer—‘What hast thou seen to follow different rules? Either declare both unclean or pronounce both clean’. He said to them, ‘The uncleanness of flesh exceeds the uncleanness of bones, for [the uncleanness of] flesh applies to carcasses¹⁰ and creeping things which is not so in the case of [the uncleanness of] bones.’¹¹ Another explanation is:¹² A member that bears* its ‘proper’ flesh¹³ imparts uncleanness by contact, (and) by carrying and by overshadowing; if any of the flesh be missing, it is [still] unclean, if aught of the bone be lacking, it is clean. They said to him—to R. Nechunia—‘What hast thou seen to follow different

כשעורה הפורש מאבר מן-החיי?
 אָמַר לָהֶם מְצִינוּ אָבֵר מִן-הַחַי, כְּמַת
 שְׁלֵם, מֵה־הַמַּת עֵצָם (כְּשֵׁעוֹרָה)
 הַפּוֹרֵשׁ מִמֶּנּוּ טָמֵא, אִף אָבֵר מִן-
 הַחַי, עֵצָם כְּשֵׁעוֹרָה הַפּוֹרֵשׁ מִמֶּנּוּ,
 יִהְיֶה טָמֵא. אָמְרוּ לוֹ לֹא אִם
 טָמֵאתָ עֵצָם כְּשֵׁעוֹרָה הַפּוֹרֵשׁ מִן-
 הַמַּת, שָׁפָן טָמֵאתָ כְּנִית בֶּשֶׂר הַפּוֹרֵשׁ
 מִמֶּנּוּ, יִטְמָא עֵצָם כְּשֵׁעוֹרָה הַפּוֹרֵשׁ
 מִן-הָאָבֵר מִן-הַחַי, שָׁפָן טָהֲרָתָ
 כְּנִית בֶּשֶׂר הַפּוֹרֵשׁ מִמֶּנּוּ? אָמְרוּ
 לוֹ לְרַבִּי אֵלִיעֶזֶר מֵה־רְאִיתָ לְחִלּוֹק
 מְדוּתִיָּה? אוֹ טָמֵא בְשִׁנְיָהֶם אוֹ טָהוֹר
 בְשִׁנְיָהֶם. אָמַר לָהֶם מְרוּבָה טוּמְאָת
 הַבֶּשֶׂר מִטוּמְאָת הָעֵצָמוֹת, שֶׁהַבֶּשֶׂר
 נוֹהֵג¹⁰ בְּנִבְלֹת וּבְשִׂרְצִים מֵה־שָׂאִין
 בֵּן¹¹ בְּעֵצָמוֹת. ¹² דָּבָר אַחֵר,
 אָבֵר *שֵׁשׁ עָלָיו¹³ בֶּשֶׂר כְּרָאוּי
 מִטָּמֵא בְּמַנְעַ, וּבְמִשָּׂא, וּבְאוֹהֶל;
 חָסֵר הַבֶּשֶׂר טָמֵא, חָסֵר הָעֵצָם,
 טָהוֹר. אָמְרוּ לוֹ לְרַבִּי נְחוּנְיָה,
 מֵה־רְאִיתָ לְחִלּוֹק מְדוּתִיָּה? אוֹ
 טָמֵא בְשִׁנְיָהֶם אוֹ טָהוֹר בְשִׁנְיָהֶם.
 אָמַר לָהֶם מְרוּבָה טוּמְאָת הָעֵצָמוֹת,
 מִטוּמְאָת הַבֶּשֶׂר, שֶׁהַבֶּשֶׂר הַפּוֹרֵשׁ

rulings? Either declare the two of them unclean, or pronounce them both clean'. He made reply to them, 'The uncleanness of bones is greater than the uncleanness of flesh, since flesh that is separated from the living being is clean, and a member separated therefrom in its natural state¹⁴ is unclean'. Another statement¹⁵ is: An olive's bulk of flesh imparts uncleanness by contact, (and) by carrying and by overshadowing; and the greater part of the bones¹⁶ [of a corpse] renders unclean by contact, (and) by carrying and by overshadowing; if aught of the flesh be missing, it is clean, if the greater part of the bones lacks aught, even if it be clean and does not render unclean by overshadowing, it yet imparts uncleanness by contact and by carrying. Another explanation¹⁵ is: If all the flesh of a corpse be less¹⁷ than an olive's bulk, it is clean, but the greater part of the bulk of a corpse¹⁸ and the greater part of its members, even though there is not a *quarter-kab*¹⁹ of them, are unclean. They said to him—to R. Joshua—'What hast thou seen to pronounce both clean?' He answered them, 'Not so! If you argue of a corpse applying to them§ [the terms] 'greater part', (and) 'quarter-kab' and 'decayed corpse',²⁰ would you also argue of a human being to whom [the terms] 'greater part' (and) 'quarter-kab' and 'decayed corpse' are not applicable?'

מִן־הָחַי טָהוֹר, וְאָבֵר הַפּוֹרֵשׁ מִמֶּנּוּ
וְהוּא¹⁴ כְּבָרִייתוֹ טָמֵא. ¹⁵ יְדָבֵר אַחֵר
כְּזוֹת בֶּשֶׂר מִטָּמֵא בְּמַנְעַ וּבְמִשָּׂא
וּבְאֵהָל; ¹⁶ וּבְרוֹב עֲצָמוֹת מִטָּמְאִים
בְּמַנְעַ, וּבְמִשָּׂא וּבְאֵהָל; הָסֵר
הַבֶּשֶׂר, טָהוֹר, הָסֵר רוֹב עֲצָמוֹת,
אִף עַל פִּי שְׁטָהוֹר מִלְטָמֵא בְּאֵהָל,
מִטָּמֵא בְּמַנְעַ וּבְמִשָּׂא. ¹⁵ יְדָבֵר אַחֵר
כָּל־בֶּשֶׂר הִמַּת שְׁהוּא¹⁷ פְּחוּת מִכְּזוֹת
טָהוֹר, רוֹב ¹⁸ בְּנִינְעוֹ וְרוֹב מִנִּינְעוֹ שֶׁל
מֵת, אִף עַל פִּי שְׁאִין בָּהֶם ¹⁹ רוֹבַע,
טָמְאִין. אָמְרוּ לוֹ לְרַבִּי יְהוֹשֻׁעַ
מִה־רְאִיתָ לְטָהַר בְּשִׁנְיָהִם? אָמַר
לָהֶם לֹא אִם אֲמַרְתֶּם בְּמֵת שְׁשִׁישׁ בּוֹ
רוֹב, וְרוֹבַע, ²⁰ וְרִקְבַּ, תֹּאמְרוּ בְּחַי
שְׁאִין בּוֹ רוֹב, וְרוֹבַע וְרִקְבַּ?

1 Or *severed, removed*. 2 Or *limb*. 3 And it conveys uncleanness. 4 See אֵהָלוֹת 21.
5 אִם is not given in the גְּמָרָא. 6 By contact (מַנְעַ) or carrying (מִשָּׂא). 7 The
גְּמָרָא has נִטְמָא. 8 Or הִימְנוּ. 9 כְּשִׁעוּרָה is not given in the גְּמָרָא. 10 An olive's
bulk. 11 A barleycorn's bulk. 12 *sc.*, R. Eliezer said . . . 13 Compare כְּלִימִים 15.
A severed member—whether from a living being or from a corpse—conveys unclean-
ness only if it has flesh, veins (or arteries), tendons (or sinews) and bones; and if
a piece of the flesh is missing in such manner that, had the limb not been severed, it
could have grown again, such flesh is termed בֶּשֶׂר כְּרָאִי. 14 *i.e.*, bearing flesh, etc.

(see preceding **Note**). 15 By R. Nechunia. 16 *viz.*, at least 125 out of a total of 248 bones. 17 Traditional reading פָּחוּחַ. 18 Bones without any flesh. 19 קֶבֶב = 2:2 litres (see זָרְעִים, Page 18f.). 20 רֶקֶב, decay, rottenness; earth from a grave containing corpse dust. See אֶהְלוֹת 21. Compare נֹרֵי 72:3. יֶשְׁעָלִיו * §Or שֵׁשֶׁב־בוֹ.

CHAPTER 7

פָּרֵק ז

Mishnah 1

מִשְׁנָה א

R. Judah and R. Zadok testified that, if the [lamb designated as] redemption for the firstborn of an ass died,¹ the priest has no further claim therein, whereas R. Eliezer states, [The owner²] is still responsible for it,³ as [in similar circumstances he is answerable for the loss of] the five *selas*,⁴ [the redemption money] for a [firstborn] son.⁵ But the Sages say, He² is not responsible for it, but it is like the case of the redemption money of *second tithe*.⁶

הַעֲיִד רַבִּי יְהוֹשֻׁעַ וְרַבִּי צְדוֹק, עַל פְּדִיּוֹן פֶּטֶר יְחִמּוֹר שְׁמַת שְׂאֵין בּוֹ לַכֹּהֵן כְּלוּם, שֶׁרַבִּי אֱלִיעֶזֶר אוֹמֵר יִחְיִיבִין בְּאַחֲרֵי־וֹתָן כְּחֶמֶשׁ סֵלָעִים שֶׁל בֶּן־וְחֻכְמִים אוֹמְרִים אֵין יִחְיִיבִין בְּאַחֲרֵי־וֹתָן, אֶלֶּא כְּפְדִיּוֹן שֶׁל מַעֲשֵׂר שְׁנִי.

1 See *Exodus* 13, 13; בְּכוֹרוֹת 1⁶. 2 Literally *they*. 3 And he should replace the loss with another redemption lamb. 4 שֵׁקֶל = 2 דִּינָר = 4 סֵלָע (see זָרְעִים, Page 18f.). 5 *Exodus* 34, 20. 6 See *Appendix*, **Note** 1; מַעֲשֵׂר שְׁנִי, INTRODUCTION. If an owner exchanged second tithe produce for coins to be taken to Jerusalem to be expended there and the money was lost, he did not have to replace it.

Mishnah 2

מִשְׁנָה ב

R. Zadok testified that the juice¹ [made] from unclean locusts is clean, since the *Earliest Mishnah*² [collection taught], If unclean locusts were preserved³ with clean locusts, they do not⁴ render their juice disqualified⁵ [to be eaten].

הַעֲיִד רַבִּי צְדוֹק עַל יֶצִיר חֲגָבִים טְמֵאִים שֶׁהוּא טְהוֹר שֶׁמִּשְׁנָה רֵאשׁוֹנָה חֲגָבִים טְמֵאִים שֶׁנִּכְבְּשׁוּ עִם חֲגָבִים טְהוֹרִים, לֹא פָסְלוּ צִירָן.

1 Which contains no blood. 2 See נִדְרִים 91a.* 3 Or *pickled*. 4 Literally *did not*. 5 *i.e.*, it is not טְרֵפָה. *Compare מִשְׁנָה שְׁנִיָּה, the *Second Mishnah Edition*.

Mishnah 3

מִשְׁנָה ג

R. Zadok testified¹ that if running water² were more than the dripping [rain] water³ [falling into it], it was valid [for the ritual bath]. It once happened in Fort Pilia,⁴ and when the matter came before the Sages they pronounced it licit.⁵

הַעֵיד רַבִּי צְדוֹק עַל זֹחֲלִין שֶׁרְבוּ
עַל הַנוֹטְפִים, שֶׁהֵם כְּשָׂרִים. מַעֲשֵׂה
שְׁהִיָּה בְּבִירַת הַפִּילִיָּא, וּבֵא מַעֲשֵׂה
לְפָנֵי חֲכָמִים וְהִכְשִׁירוּהוּ.

1 See מִקְנָאוֹת 5⁵. 2 It is valid for the *red-heifer ashes water* and for the ritual bath for זָבִים who had recovered from a flux. 3 Trickling or dripping water alone is as rain-water and may be used for the ritual bath if there is 40 סָאָה (סָאָה = 1.3 litres —see וְרָעִים, Page 18f.) of it; but is not valid for the *red-heifer ashes water*. 4 Or פִּילִיָּה, *Castile Haflaya*. There was a hollow into which flowed spring-water and a little rain-water fell into it, and the mingled waters were less than 40 סָאָה. 5 For ritual immersion.

Mishnah 4

מִשְׁנָה ד

R. Zadok testified of flowing water conducted along [a channel made of] nut foliage¹ that it is valid.² It once happened in Oholaya,³ and when the matter came before [the Sages of] the Great Sanhedrin⁴ they declared it valid.

הַעֵיד רַבִּי צְדוֹק עַל זֹחֲלִין שֶׁקָּלְחָן
בְּעֵלֶה אֲגוּז, שֶׁהֵן כְּשָׂרִים. מַעֲשֵׂה
בְּאֶהֱלֵיָּה, וּבֵא מַעֲשֵׂה לְפָנֵי לְשַׁכַּת
הַגְּבוּיִת, וְהִכְשִׁירוּהוּ.

1 See פָּרָה 6⁴. 2 For ritual immersion of זָבִים who recovered from a discharge and for the *red-heifer ashes water* (compare the preceding *Mishnah*, Note 2). 3 Or אֹהֶל־יִיָּא ix; literally *tenis*; compare זְבָחִים 25b). 4 לְשַׁכַּת הַגְּבוּיִת, literally *the Chamber of Hewn Stone*, a Temple compartment forming the seat of the Great Sanhedrin (see סְנֵהֶרֶין 112, מִדּוֹחַ 5⁴).

Mishnah 5

מִשְׁנָה ה

R. Joshua and R. Yakim of Hadar testified that if the pitcher¹ [containing the ashes] of the [*red-heifer*] *sin-offering* [used for lustration] were set on top of an unclean reptile², [the ashes] became unclean, whereas R. Eliezer pronounced them clean.

הַעֵיד רַבִּי יְהוֹשֻׁעַ, וְרַבִּי יָקִים אִישׁ
הָדָר, עַל יְקָלָל שֶׁל חֲטָאת שְׁנַתְּנוּ
עַל גְּבִי הַשְּׂרָץ, שֶׁהוּא טָמֵא, שֶׁרַבִּי
אֶלְעִזָּר מְטַהֵר. הַעֵיד רַבִּי פִּפְיִים

R. Papias testified³ that, if one vowed two *nazirite vows* and cut off his hair at the end of the first spell on the thirtieth day, he must cut off his hair at the conclusion of the second period on the sixtieth day, but if he cut off his hair on the fifty-ninth⁴ day, he has fulfilled his obligation, as the thirtieth day can be counted to him towards the number [of days for the second term of *naziriteship*].⁵

עַל מִי שֶׁנָּזַר שְׁתֵּי נְזִירוֹת, שָׂאָם גִּלַּח אֶת־הָרִאשׁוֹנָה יוֹם שְׁלֹשִׁים, שְׁמַגִּלַּח הַשְּׁנִיָּה יוֹם שְׁשִׁים, וְאִם גִּילַח יוֹם שְׁשִׁים חָסַר אֶחָד יָצָא, שְׁיוֹם שְׁלֹשִׁים עוֹלָה לוֹ מִן־הַמִּנְיָן.

1 A special vessel for this purpose. See פְּרָה 3³, 10³. 2 Or *creeping thing*. 3 See נְזִיר 3². 4 Literally *on the sixtieth day less one [day]*. 5 Or *naziritism*. See נְזִיר, INTRODUCTION.

Mishnah 6

מִשְׁנָה ו

R. Joshua and R. Papias testified¹ that the young of a *peace-offering* is also offered as a *peace-offering*, for R. Eliezer says, The young of a *peace-offering* must not be offered as a *peace-offering*. But the Sages say, It must be offered up.² R. Papias said, 'I testify that we had a heifer [which was designated as] a *peace-offering* and we offered [it up and] consumed it on Passover, and we [subsequently] consumed its young [after having offered it up as] a *peace-offering* at the Festival [of *Weeks*].'³

יְהֵעִיד רַבִּי יְהוֹשֻׁעַ וְרַבִּי פַּפְיָס עַל וְלָד שֶׁל שְׁלָמִים שֶׁיִּקְרַב שְׁלָמִים, שְׂרָבִי אֵלֶיֶצֶזֶר אֹמֵר שְׂוֹלַד שְׁלָמִים לֹא יִקְרַב שְׁלָמִים. וְתַכְמִּים אֹמְרִים יִקְרַב. אָמַר רַבִּי פַּפְיָס אֲנִי מַעֲיֵד שֶׁהִיתָה לָנוּ פְּרָה זְבָחִי שְׁלָמִים וְאֶכְלָנוּהָ בַּפֶּסַח, וְאֶכְלָנוּ וְלָדָה שְׁלָמִים בְּבָחִי.

1 See תְּמִירָה 3¹. 2 Since it must not be kept for any other purpose. 3 Actually in the *Mishnah* חַי is used as an alternative for סִבּוֹת, the *Feast of Tabernacles*, but here it must exceptionally refer to שְׁבִעוֹת or עֲצֵרֶת, the *Feast of Pentecost*, because if the לָדָה has been kept beyond the *Feast of Weeks* the *positive precept* in *Deuteronomy 12, 5, 6* would have been transgressed.

Mishnah 7

מִשְׁנָה ז

They¹ testified that the long ranging-boards of bakers² are susceptible to uncleanness, whereas R. Eliezer³

יְהֵם הָעֵידוֹ עַל אַרוֹכוֹת שֶׁל נְהַתוּמִים שֶׁהֵן טְמֵאוֹת, שְׂרָבִי

pronounced them insusceptible [to uncleanness]. They testified that if one cut up an oven⁴ into tiles,⁵ and put sand between the pieces⁶ [and went over the joints with mortar or cement, and further cemented it all round to increase its girth to keep in the heat], it is still susceptible to uncleanness, whereas R. Eliezer³ declared it insusceptible [to uncleanness]. They¹ testified that the year could be announced *leap-year*⁷ [at any time] in the whole of *Adar*, for it used to be taught that only until *Purim* [could the year be declared a *leap-year*]. They¹ testified that the year could be declared a *leap-year* conditionally.⁸ And it happened that Rabban Gamaliel went to obtain authorisation⁹ from the *general*¹⁰ in Syria and he was delayed in returning, and [the court] declared the year a *leap-year* with the stipulation that Rabban Gamaliel should approve, (and¹¹ when he came back he said, 'I approve'), and thus the year was (constituted¹¹) a *leap-year*.

אֲלֵי־עֶזְרוֹ מִטְהַר. הֵם הֵעִידוּ עַל
 יַתְנוּרָה שֶׁחֲתָכוּ חוֹלִיּוֹת, וְנָתַן חוֹל בֵּין
 חוֹלֵיָא לְחוֹלֵיָא, שֶׁהוּא טָמֵא, שֶׁרַבִּי
 אֲלֵי־עֶזְרוֹ מִטְהַר. יֵהֵם הֵעִידוּ
 שֶׁמְעַבְרִין אֶת־הַשָּׁנָה בְּכָל אֶדְרָה,
 שֶׁהָיוּ אוֹמְרִים עַד הַפּוּרִים. יֵהֵם
 הֵעִידוּ שֶׁמְעַבְרִים אֶת־הַשָּׁנָה עַל
 תְּנָאִי וּמַעֲשֵׂה בְרַבָּן גַּמְלִיאֵל שֶׁהֵלֶךְ
 לִיטּוּל יְרֻשׁוֹת,¹⁰ מִהַגְמוֹן בְּסוּרְיָא,
 וְשָׁהָה לָבֵא וְעֶבְרוּ אֶת־הַשָּׁנָה עַל
 תְּנָאִי לְקַשְׁיָרְצָה רַבָּן גַּמְלִיאֵל
 (וְכִשְׁבָּא אָמַר רוֹצֵה אָנִי,¹¹ וְנִמְצְאָת)
 הַשָּׁנָה מְעוֹבְרָת.

1 *sc.*, R. Joshua and R. Papias. 2 *i.e.*, the long baking-boards used by bakers for kneading the dough and shaping the loaves. See פְּלִים 152. 3 This view is rejected. 4 See פְּלִים 58, 10. 5 Or *pieces*. 6 Literally between *ring* (or *link*) and *ring*. 7 Compare מְגִילָה 14. 8 *viz.*, the court declared a *leap-year* (with אֶדְרָה שְׁנִי) if the נְשִׂיא agreed to this. 9 Regarding his election as נְשִׂיא. 10 Or *governor*. 11 The clauses in parentheses are not given in the גְּמָרָא. *Popularly pronounced רְשׁוּת.

Mishnah 8

Menachem ben Signai¹ testified that the rim² round the boiler³ used by seethers of olives is susceptible to uncleanness,⁴ but that belonging to dyers is insusceptible to uncleanness,⁵ whereas they used to teach just the reverse.⁶

מִשְׁנֵה ח
 הֵעִיד מְנַחֵם בֶּן יִסְנָאִי עַל מוֹסָף
 הַיּוֹרָה שֶׁל שׁוֹלְקֵי זֵיתִים שֶׁהוּא
 יִטְמָא, וְשֶׁל צְבָעִים שֶׁהוּא טָהוֹר,
 שֶׁהָיוּ אוֹמְרִים חֲלוּף הַדְּבָרִים.

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and had not become defiled.⁷ The Sages said to them, 'If you believe [the evidence] that she was given in pledge, you must also believe [the evidence] that she had not retired

וְשָׁלָא נְטֻמָּאָה. אָמְרוּ לָהֶם חֲכָמִים
 אִם מֵאֲמִינִים אַתֶּם שֶׁהוֹרְהֵנָה,
 הָאֲמִינוּ שָׁלָא נִסְתָּרָה וְשָׁלָא נְטֻמָּאָה,

1 Or סִינַיִי, a derivative of a place-name סִינַיָא, *Signa*, and probably related to סִכְנִין, *Sikhnin* or *Suchnin* (north of *Jotapa* in *Galilee*). 2 Compare כְּלִים 55, 11. 3 Or הַיֹּרֶה. Or *cauldron, kettle, vat*. See כְּבֹא קָמָא 94, 99a, 100b. 4 The clay-raised rim was to enable the water to boil well above the olives, and if any source of uncleanness came in contact with this added rim it renders the whole body of the

EDUYOTH 8^{2,3}

וְאִם אֵין אַתָּם מֵאֲמִינִים שְׁלֵא
וְסִתְרָה וְשְׁלֵא וְנִטְמָאָה, אֵל תֵּאֲמִינוּ
שְׁהוֹרְהָנָה.
in secret and had not become defiled,
but if you do not believe [the
evidence] that she had not gone
aside in secret circumstances and
had not been defiled, you are not to believe that she was left as a pledge'.

1 A girl under twelve years of age. 2 *i.e.*, a non-priest. 3 See *Leviticus* 22, 11; *Appendix, Note 1*. Compare 7⁹. 4 *viz.*, had not consummated her marriage. 5 A Jew from a priestly family borrowed money from a non-Jew leaving his child as security, and when he repaid the debt he brought her home. 6 The גְּמָרָא gives [עֲדִים]. Literally *and her witnesses testified for her*. 7 And was not therefore disqualified from marriage to a priest. See *Leviticus* 21, 7.

Mishnah 3

R. Joshua and R. Judah ben Bathyra testified of a widow of a *mixed family*¹ that she was qualified [to be married] into the priesthood, and that [the members of] a *mixed family* are eligible to give evidence [regarding themselves] as to who is unclean² or clean,³ and [who must be] expelled⁴ and [who must be] received.⁵ Rabban (Simon ben⁶) Gamaliel said, 'We have accepted your testimony,⁷ but what are we to do seeing that R. Jochanan ben Zaccai decreed that courts may not be convened regarding this [matter]?⁸ The priests would hearken to you [concerning whom] to expel but not [regarding whom] to receive.'⁹

מִשְׁנָה ג
הַעִיד רַבִּי יְהוֹשֻׁעַ וְרַבִּי יְהוּדָה בֶּן
בְּתִירָא עַל אֶלְמֵנַת יַעֲיָסָה, שְׁהִיא
כְּשֶׁרָה לְכַהֲנָה, שְׁהַעֲיָסָה כְּשֶׁרָה
לְטִמָּא יוֹלְטָהּ, לְרַחֵק וּלְקָרֵב.
אָמַר רַבֵּן (שְׁמַעוֹן בֶּן) גַּמְלִיאֵל
קִבְּלָנוּ יְעֻדוֹתְכֶם אֲבָל מִהֲנַעֲשֶׂה
שְׁנֹר רַבִּי יוֹחָנָן בֶּן זַכַּאי שְׁלֵא
לְהוֹשִׁיב בְּתִי דִינִין עַל כֶּךָ?
הַכֹּהֲנִים שׁוֹמְעִים לָכֶם לְרַחֵק
אֲבָל לֹא לְקָרֵב.

1 Literally עֲיָסָה, *dough before it rises*, a term also used to designate a *family suspected of containing an offspring of an illegitimate union, i.e.*, a family one of whose members perhaps is a חֶלְל (the son of a כֹּהֵן and a woman not known whether she was a גְּרוּשָׁה—a divorcee—or not), and the widow of such an indeterminate חֶלְל is termed אֶלְמֵנַת עֲיָסָה. 2 *i.e.*, a bastard or a Gibeonite descendant, for such may not wed a Jewess. 3 *i.e.*, legitimate and be permitted to marry a Jewess. 4 On evidence that he is a חֶלְל and so ineligible to wed a priest's daughter. 5 On testification that he is not a חֶלְל and therefore may marry the daughter of a priest.

pronounced them insusceptible [to uncleanness]. They testified that if one cut up an oven⁴ into tiles,⁵ and put sand between the pieces⁶ [and went over the joints with mortar or cement, and further cemented it all round to increase its girth to keep in the heat], it is still susceptible to uncleanness, whereas R. Eliezer³ declared it insusceptible [to uncleanness]. They¹ testified that the year could be announced *leap-year*⁷ [at any time] in the whole of *Adar*, for it used to be taught that only until *Purim* [could the year be declared a *leap-year*]. They⁴ testified that the year could be declared a *leap-year* conditionally.⁸ And it happened that Rabban Gamaliel went to obtain authorisation⁹ from the *general*¹⁰ in Syria and he was delayed in returning, and [the court] declared the year a *leap-year* with the stipulation that Rabban Gamaliel should approve, (and¹¹ when he came back he said, 'I approve'), and thus the year was (constituted¹¹) a *leap-year*.

אֵלֶּיֶעָוֹר מִטְהַר. הֵם הֵעִידוּ עַל
 פְּנוּר שֶׁחֲתָכוּ חוֹלִיּוֹת, וְנָתַן חוֹל בֵּין
 חוֹלִיָּא לְחוֹלִיָּא, שֶׁהוּא טָמֵא, שְׂרָבִי
 אֵלֶּיֶעָוֹר מִטְהַר. יֵהֵם הֵעִידוּ
 שְׁמַעְבְּרִין אֶת־הַשָּׁנָה בְּכָל אֶדְר,
 שֶׁהָיוּ אוֹמְרִים עַד הַפּוּרִים. יֵהֵם
 הֵעִידוּ שְׁמַעְבְּרִים אֶת־הַשָּׁנָה עַל
 תְּנֵאִי. וּמַעֲשֶׂה בְּרַבִּין גַּמְלִיאֵל שֶׁהִלְךָ
 לִיְטוּל רְשׁוֹת, ¹⁰ מִהַגְּמוֹן בְּסוּרְיָא,
 וְשָׁהָה לְבֹא וְעָבְרוּ אֶת־הַשָּׁנָה עַל
 תְּנֵאִי לְכַשְׁיֶרְצָה רַבִּין גַּמְלִיאֵל
 (יְכַשְׁבָּא אֲמַר רוּצָה אֲנִי, ¹¹ וְנִמְצָאת)
 הַשָּׁנָה מְעוּבְרָת.

1 *sc.*, R. Joshua and R. Papias. 2 *i.e.*, the long baking-boards used by bakers for kneading the dough and shaping the loaves. See כְּלִים 152. 3 This view is rejected.

4 See כְּלִים 58, 10. 5 Or *pieces*. 6 Literally between *ring* (or *link*) and *ring*.

7 Compare מְנִיגָה 14. 8 *viz.*, the court declared a *leap-year* (with אֶדְר שְׁנֵי) if

the נְשִׂיא agreed to this. 9 Regarding his election as נְשִׂיא. 10 Or *governor*. 11 The clauses in parentheses are not given in the גְּמָרָא. *Popularly pronounced רְשׁוֹת.

Mishnah 8

Menachem ben Signai¹ testified that the rim² round the boiler³ used by seethers of olives is susceptible to uncleanness,⁴ but that belonging to dyers is insusceptible to uncleanness,⁵ whereas they used to teach just the reverse.⁶

מְשָׁנָה ח
 הֵעִיד מִנְחָם בֶּן יִסְנָאִי עַל מוֹסָף
 הַיּוֹרָה שֶׁל שׁוּלְקֵי זֵיתִים שֶׁהוּא
 טָמֵא, וְשֶׁל צְבָעִים שֶׁהוּא טְהוֹר,
 שֶׁהָיוּ אוֹמְרִים חִלּוּף הַדְּבָרִים.

1 Or סִינָי, a derivative of a place-name סִינָא, *Signa*, and probably related to סִכְנִין, *Sikhnin* or *Suchnin* (north of *Jotapa* in *Galilee*). 2 Compare פְּלִים 5^s, 11. 3 Or הַיִּירָה. Or *cauldron, kettle, vat*. See קָמָא 9^d, 99a, 100b. 4 The clay-raised rim was to enable the water to boil well above the olives, and if any source of uncleanness came in contact with this added rim it renders the whole body of the boiler unclean as the need for this extra clay height made it as an ordinary vessel. 5 In this case dyers do not want any of their dyes to boil up to and be spoilt by the clay. 6 *viz.*, 'that the rim round the boiler used by seethers of olives is insusceptible to uncleanness,' but that belonging to dyers is susceptible to uncleanness.

Mishnah 9

מִשְׁנֵה ט

R. Nechunia ben Gudgada testified¹ that a deaf-mute woman² who was given in marriage by her father [when she was a minor] may be set free by a *letter of divorce*;³ (and) that a minor,⁴ the daughter of an Israelite,⁵ wed to a priest could eat of *priest's-due*,⁶ and that if she died, her husband could inherit from her; (and) that if one built a stolen rafter⁷ into a structure, he only repays its value;⁸ and that a stolen *sin-offering* [whose theft] was not known to many could effect expiation,⁹ for the sake of the Altar.¹⁰

הַעֵיד רַבִּי נְחוּנְיָא בֶּן גּוּדְגָדָא עַל
הַחֲרָשֶׁת שֶׁהִשְׂאָה אָבִיהָ שֶׁהִיא
יֹצֵאָה בְּגֵט; וְעַל קִטְנָה בֵּת
יִשְׂרָאֵל שֶׁנִּשְׂאֶת לְכַהֵן, שֶׁהִיא אוֹכֵלֶת
בְּתַרוּמָה, וְאִם מָתָה בְּעֵלָה יוֹרֶשָׁה;
וְעַל הַמַּרְיֵשׁ הַנְּגוּל שֶׁבָּנָא בְּבִירָה
שִׁיתָן אֶת־דָּמָיו; וְעַל הַחֲטָאת
הַנְּגוּלָה שֶׁלֹּא נֹדְעָה לְרַבִּים שֶׁהִיא
מִכְפֶּרֶת מִפְּנֵי חֲקוֹן¹⁰ הַמִּזְבֵּחַ.

1 See יְבָמוֹת 14ⁱ; גִּיטִין 5^s. 2 Compare יְבָמוֹת 14ⁱ. Literally 'the deaf-mute woman.' 3 See גִּיטִין, INTRODUCTION; although the קְדוּשִׁין, *Betrothal*, was valid מִן־הַתּוֹרָה (or מִדְּאוּרֵי־תֵא), as enjoined by the Law. 4 A girl less than twelve years of age. 5 *viz.*, non-priest. 6 See *Appendix, Note 1*. Although her קְדוּשִׁין was valid מִדְּרַבָּנָן, as enjoined by the Sages, yet she was entitled to eat of such *priest's-due* as was permitted מִדְּרַבָּנָן. 7 Or *beam, joist*. Literally 'the rafter.' 8 *viz.*, he does not have to pull apart the structure to restore the stolen rafter. 9 For its offerer. Or *atonement*. 10 Otherwise the כַּהֲנִים might become hesitant to offer up sacrifices.

CHAPTER 8

פֶּרֶק ח

Mishnah 1

מִשְׁנֵה א

R. Joshua ben Bathyra testified that the blood of carrion¹ is clean. R. Simon ben Bathyra testified that if

הַעֵיד רַבִּי יְהוֹשֻׁעַ בֶּן בַּתְּיָרָא עַל דָּם
יְגֻבְלוֹת שֶׁהוּא טָהוֹר. הַעֵיד רַבִּי

an unclean person touched even a part of the ashes² of the [red-heifer] sin-offering,³ he has rendered the whole of it unclean. R. Akiba added⁴ that if one had immersed himself [in the ritual bath to purify himself from his defilement] the self-same day and [before sunset] touched even a part of the *fine flour*² [for a meal-offering], or the *incense*,² or the *frankincense*,² or the *burning coals*,⁵ he⁶ has caused the whole to become unclean.

שָׁמְעוֹן בֶּן בְּתִירָא עַל אֶפְרַח הַטָּהוֹרָה
 שֶׁנֶּעַן טָמֵא בְּמִקְצָתוֹ שְׁטִימָא אֶת-
 כּוּלוֹ. יְהוֹסִיף רַבִּי עֲקִיבָא עַל
 הַפִּסּוֹלֹת וְעַל הַקְּטוֹרֶת, וְהַלְבוֹנָה,
 וְהַנְּחָלִים, שֶׁנֶּעַן טָבוּל יוֹם
 בְּמִקְצָתָם, שֶׁשָּׁפַסַּל אֶת-כּוּלָם.

1 Or carcasses, of an animal that had died a natural death, or of an animal not slaughtered in accordance with ritual rules. Compare 51. 2 All in one vessel. 3 Numbers 19, 9. 4 To what R. Simon ben Bathyra said. 5 Taken up by the High Priest on the Day of Atonement. Leviticus 16, 12. 6 Literally he has disqualified them all.

Mishnah 2

R. Judah ben Baba and R. Judah the Priest testified that a minor,¹ daughter of an Israelite,² wedded to a priest could eat of *priest's-due*³ after she had entered the bridal chamber even if she had not had sexual connexion.⁴ R. Jose the Priest and R. Zachariah ben Ha-Katzab testified that a young child was given in pledge in Ashkelon,⁵ but she was kept far away by the members of her family [in spite of the fact that] she had witnesses⁶ who gave evidence that she did not hide secretly [to cohabit with any man] and had not become defiled.⁷ The Sages said to them, 'If you believe [the evidence] that she was given in pledge, you must also believe [the evidence] that she had not retired

מִשְׁנָה ב
 הַעִיד רַבִּי יְהוּדָה בֶּן בָּבָא וְרַבִּי
 יְהוּדָה הַפְּהֵן, עַל יְקֻטָּנָה בַּת יִשְׂרָאֵל
 שֶׁנִּשְׂאָתָא לְכַהֵן, שֶׁהִיא אוֹכֵלֶת
 בְּתַרוּמָה כִּיחַן שֶׁנִּכְנְסָה לַחֻפָּה אַף
 עַל פִּי שְׂלֵא וְנִבְעָלָה. הַעִיד
 רַבִּי יוֹסִי הַפְּהֵן וְרַבִּי זְכַרְיָה בֶּן
 הַקְּצָב, עַל תִּינוּקָתָא שֶׁהוּרְהָנָה
 בְּאֶשְׁקֶלֶן וְרַחֲקוּהָ בְּגִי מִשְׁפַּחְתָּהּ
 וְעִידָהּ מְעִידִים אוֹתָהּ שְׂלֵא נִסְתְּרָה
 וְשְׂלֵא נִטְמְאָה. אָמְרוּ לָהֶם חֲכָמִים
 אִם מֵאֲמִינִים אַתֶּם שֶׁהוּרְהָנָה,
 הָאֲמִינוּ שְׂלֵא נִסְתְּרָה וְשְׂלֵא נִטְמְאָה.

in secret and had not become defiled, but if you do not believe [the evidence] that she had not gone aside in secret circumstances and had not been defiled, you are not to believe that she was left as a pledge'.

וְאִם אֵין אַתֶּם מְאֱמִינִים שְׁלֵא
נִסְתְּרָה וְשְׁלֵא נִטְמְאַת, אֵל תִּאֲמִינוּ
שֶׁהוֹרְהָנָה.

1 A girl under twelve years of age. 2 *i.e.*, a non-priest. 3 See *Leviticus* 22, 11; *Appendix, Note 1*. Compare 79. 4 *viz.*, had not consummated her marriage. 5 A Jew from a priestly family borrowed money from a non-Jew leaving his child as security, and when he repaid the debt he brought her home. 6 The *מְקָרָא* gives *וְעֵדִים*. Literally *and her witnesses testified for her*. 7 And was not therefore disqualified from marriage to a priest. See *Leviticus* 21, 7.

Mishnah 3

מִשְׁנָה ג

R. Joshua and R. Judah ben Bathyra testified of a widow of a *mixed family*¹ that she was qualified [to be married] into the priesthood, and that [the members of] a *mixed family* are eligible to give evidence [regarding themselves] as to who is unclean² or clean,³ and [who must be] expelled⁴ and [who must be] received.⁵ Rabban (Simon ben⁶) Gamaliel said, 'We have accepted your testimony,⁷ but what are we to do seeing that R. Jochanan ben Zaccai decreed that courts may not be convened regarding this [matter]?⁸ The priests would hearken to you [concerning whom] to expel but not [regarding whom] to receive'.⁹

הַעִיד רַבִּי יְהוֹשֻׁעַ וְרַבִּי יְהוּדָה בֶּן
בַּתְיָרָא עַל אֶלְמֶנַת יַעֲיָסָה, שֶׁהִיא
כְּשֵׁרָה לְכַהוֹנָה, שֶׁהַעֲיָסָה כְּשֵׁרָה
לְטִמְאָה וְלִטְהָרָה, וְלְרַחֵק וְלְקַרֵב.
אָמַר רַבָּן (שְׁמַעוֹן בֶּן) גַּמְלִיאֵל
קִבְּלֵנוּ יְעוּדוֹתְכֶם אֲבָל מֵהַנְּעֻשָׂה
שֶׁגִּזַּר רַבִּי יוֹחָנָן בֶּן זַכַּאי שְׁלֵא
לְהוֹשִׁיב בְּתֵי דִינָן עַל כְּפֵךְ?
הַכַּהֲנִים שׁוֹמְעִים לְכֶם לְרַחֵק
אֲבָל לֹא לְקַרֵב.

1 Literally *עֲיָסָה*, *dough before it rises*, a term also used to designate a family suspected of containing an offspring of an illegitimate union, *i.e.*, a family one of whose members perhaps is a *חֶלְלֵל* (the son of a *כַּהֵן* and a woman not known whether she was a *גֵּרוּשָׁה*—a divorcee—or not), and the widow of such an indeterminate *חֶלְלֵל* is termed *אֶלְמֶנַת עֲיָסָה*. 2 *i.e.*, a bastard or a Gibeonite descendant, for such may not wed a Jewess. 3 *i.e.*, legitimate and be permitted to marry a Jewess. 4 On evidence that he is a *חֶלְלֵל* and so ineligible to wed a priest's daughter. 5 On testification that he is not a *חֶלְלֵל* and therefore may marry the daughter of a priest.

In all these cases the evidence of the members of a mixed family is admissible. 6 *שְׁמַעוּ בְּן* is omitted in some editions. 7 *i.e.*, that they had thus been taught. 8 *i.e.*, to legitimise the marriage of an *אֵלְמִנַת עֵיטָה* to a *כֹּהֵן*. 9 The final accepted ruling is that an *אֵלְמִנַת עֵיטָה* should not be taken in marriage by a *כֹּהֵן* but if the marriage took place it is valid.

Mishnah 4

מִשְׁנֵה ד

R.¹ Jose ben Joezer of Zeredah² testified of the hopping-locust³ that it is clean,⁴ and of the liquid⁵ in the [Temple] slaughterhouse⁶ that it is clean,⁷ and one who touches a corpse that he is unclean.⁸ And they called him Jose the Authoriser.⁹

הַעִיד רַבִּי יוֹסֵי בֶּן יוֹעֶזֶר אִישׁ צְרִידָה, עַל אֵיל קַמְצָא, דְּדָכָן, וְעַל מְשֻׁקָה בֵּית מִטְבַּחֲיָא דְאִינוּן דְּדָכְיָן, וְדִיקָרַב בְּמִיתָה מִסְתָּאֵב. וְקָרוּ לֵיהּ יוֹסֵא שְׂרִיָּא.

1 *רַבִּי* is omitted in some editions. 2 A town in Peræa (not to be confused with *צְרִידָה* or *צְרִדָה* in Manasseh). 3 Or perhaps *אֵיל*. Or *climbing-locust*. Compare *פְּסָחִים* 16a; *עֲבוּדָה זָרָה* 37a. From here this *Mishnah* is in *Aramaic*. 4 *i.e.*, may be eaten (or, is *כָּשֵׁר*). *דָּכָן, דְּדָכְיָן, דְּכָן* are plural forms of *דָּכָן*, *clean, clear, pure; guiltless, innocent*. 5 The blood and water flowing away. 6 Compare *פְּלִים* 156. 7 *viz.*, insusceptible to uncleanness. 8 But not if there is a doubt whether he did touch a corpse. 9 Because he permitted three things which had been considered forbidden. (Similarly any court that permits three things whose permissibility is not a simple matter is called *בֵּי דִינָא שְׂרִיָּא*).

Mishnah 5

מִשְׁנֵה ה

R. Akiba testified¹ in the name of Nehemiah of Beth Deli² that a woman is permitted to be wed again on the testimony of one witness.³ R. Joshua testified that bones found [on one occasion] in the [Temple] wood-shed [were unclean⁴]; the Sages said, One collects [them] bone by bone and all⁶ remains clean.⁶

יְהִיעִיד רַבִּי עֲקִיבָא מִשׁוּם נְהֵמְיָה אִישׁ בֵּית דְּלִי, שְׁמַשִּׁיאִים הָאֵשָׁה עַל פִּי עֵד אֶחָד. הַעִיד רַבִּי יְהוֹשֻׁעַ עַל עֲצָמוֹת שֶׁנִּמְצְאוּ בְּדִיר הָעֵצִים; אָמְרוּ חֻקְמִים מְלַקֵּט עֲצָם עֲצָם וְנֹהֲלָ טָהוֹר.

1 Compare *יְבָמוֹת* 167. 2 Or *דְּלִי*, *Doli*. 3 If he came back from a foreign land and reported that her husband had died there. 4 The clause *שֶׁהֵם טְמֵאִים* is given in the *גְּמָרָא*. 5 People and utensils in the *עֲזָרָה*, *Court*. 6 The law of a *רְשׁוּת*

הַרְבֵּים, a public domain—if there is a doubt whether there is an uncleanness therein it is declared clean—applies also to the עֲזֵרַת נָשִׁים, *Women's Court*. Compare זְבָחִים 113a; אֶהְלוֹת 163.

Mishnah 6

R. Eliezer said, 'I have heard [a tradition] that while they were constructing the [Temple] Sanctuary¹ they made curtains for the Sanctuary and curtains for the [Temple] Courts,² but they built [the walls of] the Sanctuary outside³ [the curtains] and [the walls of each] Court they built inside [the curtains]'. R. Joshua said, 'I have heard [a tradition] that sacrifices may be offered [where the Altars stood] even though there is no Temple, and that they may eat of the most holy sacrifices⁴ although there are no curtains [to enclose the Courts], and that they may eat of the *minor holy sacrifices*⁵ and of *second tithe*⁶ even if there be no wall, because the first sanctification⁷ consecrated it⁸ for its own time and also sanctified it for the future [for ever]'.⁹

מִשְׁנָה ו

אָמַר רַבִּי אֱלִיעֶזֶר שֶׁמַּעֲתִי כְּשֶׁהָיוּ בּוֹנִים יְבִהִיכַל עוֹשִׂים קִלְעִים לְהִיכָל, וְקִלְעִים לְעֲזֵרוֹת, אֲלֵא שֶׁבִּהִיכָל בּוֹנִים מִבְּחוּץ וּבְעֶזְרָה בּוֹנִים מִבְּפָנִים. אָמַר רַבִּי יְהוֹשֻׁעַ שֶׁמַּעֲתִי שֶׁמִּקְרִיבִין אֵף עַל פִּי שְׂאִין בַּיִת, וְאוֹכְלִים קִדְשֵׁי קִדְשִׁים אֵף עַל פִּי שְׂאִין קִלְעִים, וְקִלְעִים קִלְעִים, וְיִמְעָשֶׂר שְׁנֵי אֵף עַל פִּי שְׂאִין חוּמָה, וְשֶׁקִּדְוָשָׁה רֵאשׁוֹנָה קִדְּשָׁה לְשַׁעֲתָהּ, וְקִדְּשָׁה לְעֵתִיד לְבָא.

1 *The Holy Hall* (leading into the קִדְשֵׁי קִדְשִׁים, *The Holy of Holies*) containing the מְנוֹרָה, *Candlestick*, the מִזְבֵּחַ הַזָּהָב, *the Golden Altar*, and the שֻׁלְחַן לֶחֶם הַפָּנִים, *the Table for the Shewbread* (see Plan of the Temple). 2 The עֲזֵרַת הַנָּשִׁים, *Women's Court or Outer Court*, and the עֲזֵרַת יִשְׂרָאֵל, *Israelites' Hall*. See מְדוֹת 14, 25, 6. 3 To separate the workmen from the Sanctuary. 4 Or קִדְשִׁים. See זְבָחִים 51-5. These are: the *bullock* offered on the Day of Atonement; the *he-goat* offered on the Day of Atonement; the *bullock* to be burned (*Leviticus* 4, 1-12, 13-21; 16, 6); the *he-goats* to be burned (*Leviticus* 16, 5; *Numbers* 15, 24); the *sin-offerings of the congregation* and of the *individual* (the *he-goats* offered at the New Moons—*Numbers* 28, 15—and on the Festivals—*Numbers* 28, 16-31; 29, 1-38); the *burnt-offering*; the *peace-offerings of the congregation* (*Leviticus* 23, 19); the *trespass-offerings* or *guilt-offerings* (the *trespass-offering for false dealing* or *robbery*—*Leviticus* 6, 6; the *trespass-offering for sacrilege* or *for the misappropriation of sanctified things*—*Leviticus* 5, 15; the *trespass-offering for violating a betrothed bondswoman*—*Leviticus* 19, 20; כְּרִיתוֹת 25; the *trespass-offering of a nazirite*

who has contracted uncleanness from a dead body—*Numbers* 6, 12; the *trespass-offering of a leper* at his purification—*Leviticus* 14, 12; and the *suspended trespass-offering* for the *sin-offering* concerning which there was uncertainty whether it required expiation or atonement by a *sin-offering*—*Leviticus* 5, 17-19). 5 See **יְבֻחִים** 56, 7, 8. These are: the *thank-offering* (*Leviticus* 7, 12); the *ram of the nazirite* (*Numbers* 6, 14); the *peace-offerings*; the *firstlings of beasts* (*Numbers* 18, 17); the *tithe of cattle* (*Leviticus* 27, 32); the *paschal lamb* (or *Passover-offering*). 6 See *Appendix, Note 1*; **מַעֲשֵׂר שְׁנִי**, INTRODUCTION. 7 The dedication of the Temple by King Solomon. See *I Kings* 8, *II Chronicles* 5, 6, 7. 8 The **זִמְרָא** has the *noun קְדוּשָׁה* instead of the *verb קָדְשָׁה*, viz., 'because the first sanctification was holiness for . . .'

Mishnah 7

R. Joshua said, 'I have received [as a tradition] from Rabban Jochanan ben Zaccai, who heard [it as a tradition] from his teacher, and his teacher [heard it as a tradition] from his teacher, as a *traditional [interpretation of a written] law* (from Moses on Sinai)¹ that Elijah will not come to pronounce unclean² or declare clean,² or who must be expelled³ or who must be received,³ but to expel such [ineligible ones] that were received through violence⁴ and to reinstate those who were removed by violence.⁵ The family of Beth Tseri⁶ was in [the country] beyond the Jordan and Ben Zion expelled it by force.⁷ And yet another [family] was there and Ben Zion reinstated it by force.⁸ Such as these will Elijah come to declare unclean or to pronounce clean, and to remove afar or to reinstate'. R. Judah said, [Elijah will come] to bring nigh but not to expel. R. Simon says, [Elijah will come] to harmonise disputes. And the Sages say, [Elijah will come] neither to

מִשְׁנָה ז

אמר רבי יהושע מקובל אני מרבן יוחנן בן זכאי ששמע מרבו, ורבו מרבו, והלכה למשה מסיני, שאין אליהו בא לטמא ולטהר לרחק ולקרב אלא לרחק המקורבין בירוע ולקרב המרוחקין בירוע. משפחת בית צריפה היתה בעבר הירדן ורחקה בן ציון בירוע. ועוד אחרת היתה שם, וקרבה בן ציון בירוע. כגון אלו אליהו בא לטמא ולטהר, לרחק ולקרב. רבי יהודה אומר לקרב, אכל לא לרחק. רבי שמעון אומר להשוות המחלוקת. ונחמים אומרים לא לרחק ולא לקרב, אלא לעשות שלום בעולם, שנאמר הניי שולח לכם את אליה הנביא וגו' והשיב

expel nor to bring nigh, but to make **לֵב אָבוֹת עַל בְּנִים וְלֵב בְּנִים עַל**
 peace in the world, as it is said,
Behold,⁹ I will send you Elijah the **אֲבוֹתָם.¹¹**
prophet . . . etc., And¹⁰ he shall turn the heart of the fathers to the children,
and the heart of the children to their fathers.¹¹

1 Literally a usage from the time of Moses as delivered from Sinai. Such a law was accepted without dispute. See **פָּאָה** 26; **אָבוֹת** 1; **יָדִים** 43. 2 Compare 83. Referring to bastards and Gibeonites who intermarried with Jews. 3 The issue of impaired priestly stock (*sc.*, **הַלְלוֹת** and **הַלְלִים**) married into eligible priestly families. 4 *viz.*, the eligible forced to marry the ineligible. 5 *i.e.*, the law will not be changed but there will be an end of injustice. 6 A place in Babylonia. 7 *i.e.*, he declared his legitimate family to be disqualified. 8 *i.e.*, he announced an illegitimate family to be qualified as legitimate. 9 The Scriptural reading in *Malachi* 3, 23 is . . . **הִנֵּה אֲנֹכִי שְׁלַח**. 10 *Malachi* 3, 24. 11 *viz.*, Elijah will pronounce the right relationships between fathers and children. According to R. Simon the 'fathers' refers to the 'Sages' and the 'children' refers to the 'disciples.' 12 In some editions, **וְשִׁלְמָה מִסְכַּת עֲדֵינֹת**, TRACTATE EDUYOTH CONCLUDED.

יִסְלִיק מִסְכַּת עֲדֵינֹת

CONCLUSION OF TRACTATE EDUYOTH.

ADDENDA

[Additional Notes to this Tractate]

- 11, **Note 2.** *seat* or *seat-board*, as favoured by some, does not seem correct here; [*protruding*] *arms* is in agreement with the rendering suggested by Bertinoro and Maimonides [Rambam].
- 11, **Note 3.** The first case speaks of *bringing* a chair [**הִבִּיא כִּסֵּא מִמְּקוֹם אַחֵר**], and this latter case is when constructing a chair in a kneading-trough [**כִּסֵּא [הָעֵשֶׂי] בְּעֵרְבָה עֲצֻמָּה**].
- 46, **Note 6.** The perforation shows that the sap or moisture was not intended to be retained purposely or for anybody's advantage.

מִסְכֵּת

עֲבוֹדַת זָרָה

OR

עֲבוֹדַת כּוֹכָבִים

TRACTATE
AVODAH ZARAH
OR
AVODATH KOCHAVIM

[BEING THE EIGHTH TRACTATE OF THE FOURTH ORDER OF
THE MISHNAH]

TEXT - INTRODUCTION - TRANSLATION - NOTES

By

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the first two cases, the first two terms of the series are the same, and the third term is different. In the third case, the first two terms are different, and the third term is the same.

In the first case, the first two terms are the same, and the third term is different. In the second case, the first two terms are different, and the third term is the same.

In the third case, the first two terms are different, and the third term is the same. In the fourth case, the first two terms are the same, and the third term is different.

In the fifth case, the first two terms are different, and the third term is the same. In the sixth case, the first two terms are the same, and the third term is different.

In the seventh case, the first two terms are different, and the third term is the same. In the eighth case, the first two terms are the same, and the third term is different.

In the ninth case, the first two terms are different, and the third term is the same. In the tenth case, the first two terms are the same, and the third term is different.

In the eleventh case, the first two terms are different, and the third term is the same. In the twelfth case, the first two terms are the same, and the third term is different.

In the thirteenth case, the first two terms are different, and the third term is the same. In the fourteenth case, the first two terms are the same, and the third term is different.

In the fifteenth case, the first two terms are different, and the third term is the same. In the sixteenth case, the first two terms are the same, and the third term is different.

In the seventeenth case, the first two terms are different, and the third term is the same. In the eighteenth case, the first two terms are the same, and the third term is different.

In the nineteenth case, the first two terms are different, and the third term is the same. In the twentieth case, the first two terms are the same, and the third term is different.

In the twenty-first case, the first two terms are different, and the third term is the same. In the twenty-second case, the first two terms are the same, and the third term is different.

In the twenty-third case, the first two terms are different, and the third term is the same. In the twenty-fourth case, the first two terms are the same, and the third term is different.

In the twenty-fifth case, the first two terms are different, and the third term is the same. In the twenty-sixth case, the first two terms are the same, and the third term is different.

In the twenty-seventh case, the first two terms are different, and the third term is the same. In the twenty-eighth case, the first two terms are the same, and the third term is different.

In the twenty-ninth case, the first two terms are different, and the third term is the same. In the thirtieth case, the first two terms are the same, and the third term is different.

INTRODUCTION

עֲבוֹדַת זָרָה, *Avodah Zarah*, or **עֲבוֹדַת כּוֹכָבִים**, *Avodath Kochavim*, is the eighth **מַסְכָּח** (*Tractate* or *Treatise*) of **סֵדֶר נוֹזְקִין** (the *Fourth Order Nezikin*) of the **מִשְׁנָה** (*Mishnah*).

The terms, **עֲבוֹדַת זָרָה** *idolatry*, (*idol*), *idolatrous worship*, and **עֲבוֹדַת אֱלִילִים**, * *idol*, *idolatry*, *astrology*, are interchangeable with **עֲבוֹדַת גִּלּוּלִים** and **עֲבוֹדַת זָרָה** *idol*, *idol worship*, in editions of the *Mishnah* (and similarly the terms **עוֹבֵד עֲבוֹדַת זָרָה**, **עוֹבֵד כּוֹכָבִים**, **עוֹבֵד גִּלּוּלִים**, § **עוֹבֵד אֱלִילִים**, and **עוֹבֵד גִּלּוּלִים**, **עוֹבֵד זָרָה** *idolater*, *idol worshipper*, are used indiscriminately in different *Mishnah* texts).

* Or, fuller form, **עֲבוֹדַת כּוֹכָבִים וּמְזוֹלוֹת**.

§ Or, fuller form, **עוֹבֵד כּוֹכָבִים וּמְזוֹלוֹת**.

The *Tractate* deals primarily with the rules and regulations regarding the attitude and conduct of Jews towards idolatry and idolaters. It is based mainly on the laws of the Pentateuch that proscribe and interdict every manifestation and form of and association with and participation in heathenish and idolatrous worship and consequential prevalent immoral practices.

The *Tractate* has **גְּמָרָא** to it in both the **תְּלִמוּד בְּבֵלִי** (*Babylonian Talmud*) and the **תְּלִמוּד יְרוּשָׁלַּיִם** (*Jerusalem or Palestinian Talmud*).

The titles of the five *Chapters* of this *Tractate* are:

CHAPTER 1	לִפְנֵי אִידִיחֵן	פָּרָק א
CHAPTER 2	אֵין מַעֲמִידִין	פָּרָק ב
CHAPTER 3	כָּל־הַצִּלְמִים	פָּרָק ג
CHAPTER 4	רְבִי יִשְׁמַעֵאל	פָּרָק ד
CHAPTER 5	הַעוֹכֵר אֶת הַפּוֹעֵל	פָּרָק ה

The following is a brief summary of the principal subjects dealt with in the five *Chapters*.

1. When, how, and where business may be carried on with idolaters.
2. Association with idolaters; interchange with idolaters—what may or may not be used of theirs.
3. Use of their images or parts of them; use of idolaters' baths and places of worship.
4. Use of an idol or aught pertaining to it; destroying an idol; buying an idolater's winepress; helping an idolater in the vintage and wine preparation.
5. Libation wine, and Jewish labourer and ass of a Jew employed in its preparation; Jewish wine seller or merchant and idolater employee; Jew and idolater at table with wine; prohibitions of libation wine.

Some prefer the readings **Abodah** for **Avodah** and **Abodath** for **Avodath** in the title of this *Tractate*.

[*Meanings and derivations of the terms in the first two paragraphs above.*] **עֲבוּדָה**, *attendance, labour, work, service, worship*. **עוֹבֵד*** *attending, labouring, working, serving, worshipping*. Both the *noun עֲבוּדָה* and the *present participle* are derivatives of the *Kal verb עָבַד*, *attend, labour, work, serve, worship*.

* Also used as a *noun*.

זָרָה, [*feminine, from the masculine noun and adjective* § **זָר**], *outcast, stranger, non-priest(ly), shunned, loathsome, foreign, strange*; derived from the *Kal verb זָרַח*, *be estranged, turn away, deviate*, or from the *Kal verb זָרַר*, *press, stamp, scatter*, or perhaps from the *Kal verb זָרַה*, *deviate, err*.

§ Actually *present participle*.

פּוֹכְכָבִים is the plural of **פּוֹכֵךְב**, **planet, star**; derived from **פָּכַכְב** or **פָּכַכְב**, *arched round vessel, a reduplication of the Kal verb פָּכַכְב, be arched, be hollow, be thick, make round*, or of the *Kal verb פָּפַךְ*, *bend, curve, be concave*.

אֲלִילִים is the plural of **אֲלִיל**, *naught, valueless, worthless, idol*; derived, from the *Kal verb אָלַל*, *circle, roll, be of no account*, and akin to **אָל**, *לא, not*.

גִּלְגָּלִים, **גִּלְגָּלִים** plurals of **גִּלְגָּל**, **גִּלְגָּל**, *filth, log, round block, idol, idolatry*; derived from **גָּלַל**, *roll, unfold, disregard*.

מַזְלוֹת, plural of **מַזָּל**, *wandering star, zodiacal sign, constellation of the zodiac, luck, planet*; derivation uncertain; according to various authorities [in many allied words **ל** = **ר**] it may be derived from the *Kal verbs* **נָזַל**, *run, flow*, or **נָזַר**, *bind, encircle*, or **מָזַר**, *bind, combine*, or **זָוַר**, *bind, gird*, or **אָזַל**, *glide, move off*.

מִסְכֵּת

עֲבוּדָה זָרָה

OR

עֲבוּדַת כּוֹכָבִים

TRACTATE

AVODAH ZARAH

OR

AVODATH KOCHAVIM

CHAPTER 1

פֶּרֶק א

Mishnah 1

מִשְׁנָה א

For three days before the idolatrous festivals¹ of the idolaters² it is prohibited to have business dealings with them—neither to loan to them nor to borrow from them, neither to lend [money] to them nor to borrow [money] from them, neither to make payment to them nor to accept (re)payment from them.³ R. Judah⁴ says, One may be repaid by them [during these three days] since this causes them⁵ grief.⁶ [The Sages] said to him, Even though it grieves them⁶ at the time they⁷ will [nevertheless] rejoice afterwards.⁸

לִפְנֵי יְאִידֵיהֶן שֶׁל עֹבְדֵי גִלּוּלִים
שֶׁלֹּשָׁה יָמִים אֲסוּר לְשֹׂאת וּלְתַת
עֲמָהֶן לְהִשְׁאִילָן וּלְשֹׂאֹל מֵהֶן
לְהַלוּוֹתָן וּלְלוּוֹת מֵהֶן לְפוֹרְעָן
וּלְפָרוֹעַ מֵהֶן רַבִּי יְהוּדָה אוֹמֵר
נִפְרָעִין מֵהֶן מִפְּנֵי שֶׁהוּא מֵיִצֵּר לוֹ
אָמְרוּ לוֹ אַף עַל פִּי שֶׁמֵיִצֵּר הוּא
עֲכָשִׁיו שֶׁמַּח הוּא לְאַחַר וְמִן

1 From יָד, idolatrous festival, (heathen) anniversary. 2 Or heathens. 3 The idolater derives advantage in all these cases and will offer praise to his idols at the festival for the benefits he receives. 4 His view is rejected. 5 Literally *him*. 6 To have to part with the money. 7 Literally *he*. 8 They will offer thanks to their gods at the festival for this release from their debts. But the ruling is that if a loan is made by document repayment may not be recovered during this three days' period; but if money was lent on verbal promise to repay, the repayment may be accepted if offered, otherwise there is risk of losing it altogether.

Mishnah 2

R. Ishmael says, For three days before them¹ and for three days after them it is forbidden.² But the Sages say, Before their idolatrous festivals it is prohibited, but after their idolatrous festivals it is permitted.³

1 *i.e.*, the idolatrous festivals. 2 To have any business affairs and so on as set out in the preceding *Mishnah*. 3 And this is the ruling; nevertheless, on account of social and political considerations the ruling was restricted to the day of the festival only, and nowadays even this restriction has been disregarded altogether in the case of non-idolatrous festivals.

Mishnah 3

And these are the festivals of the idolatrous nations: the *kalends*,¹ (and) the *saturnalia*,² (and) the *empire day*,³ (and) the (*accession*) *anniversaries* of *emperors*,⁴ and the day of [an emperor's] birth and the day of [his] death.⁵ This is the view of R. Meir. But the Sages say, Where burning [of the emperor's raiment]⁶ took place at the death there was idol worship,⁷ and where there was no burning there was no idol worship. (But)⁸ on the day⁹ when one shaves off¹⁰ his beard, or [when one cuts off] his plait [of hair]¹¹ on the day⁹ when he returns from a sea voyage, (or) on¹² the day⁹ when one comes out of prison, [and on the day⁹ when] an idolater prepares a festivity for his son, [all business affairs with them are] prohibited on that day

מְשֻׁנָּה ב
 רַבִּי יִשְׁמַעֵאל אוֹמֵר שְׁלֹשָׁה יָמִים
 יִלְפְּנֵיהֶם וְשְׁלֹשָׁה יָמִים לְאַחֲרֵיהֶם
 אָסוּר. וְחֻכְמִים אוֹמְרִים לְפָנָיו
 אֵינָהּ אָסוּר, לְאַחַר אֵינָהּ
 מִתּוֹר.

מְשֻׁנָּה ג
 וְאֵלוֹ אֵינָהּ שֶׁל עוֹבְדֵי גִלּוּלִים,
 יְקַלְנָדָא, יוֹסְטְרֶנוֹרָא, וְקֶרְטִיסִים,
 יוֹם יְגוּסִיאָא שֶׁל מְלָכִים, וְיוֹם
 הַלֵּידָה, וְיוֹם הַמֵּיתָה. דְּבַרֵּי רַבִּי
 מֵאִיר. וְחֻכְמִים אוֹמְרִים כָּל-מֵיתָה
 שִׁיש־בָּהּ יִשְׂרָפָה, *שִׁש־בָּהּ יַעֲבֹדָת
 גִּלּוּלִים, וְשֹׂאִין בָּהּ שִׂרְפָה, אֵין בָּהּ
 עֲבֹדָת גִּלּוּלִים. (אָבָל) יוֹם
 סְתִילָחַת זְקָנוֹ, וְיּוֹבְלוּרִיתוֹ יוֹם
 שֶׁעָלָה בּוֹ מִן-הַיָּם, יוֹם שִׁיָּצָא
 (כּוֹ) מִבֵּית הָאֲסוּרִים, עוֹבֵד גִּלּוּלִים
 שֶׁעָשָׂה מִשְׁתֵּה לְבָנוֹ, אֵינוֹ אָסוּר אֶלָּא
 אוֹתוֹ הַיּוֹם, וְאוֹתוֹ הָאִישׁ בְּלִבְדּוֹ.

1 Or *kalends* (see עֲבֹדָה זָרָה, 8a), among the ancient Romans the first day of each month; but here it refers to the 29th-30th December (eight days after the *winter solstice*, that point—coinciding with the point of the sign of *Capricorn*—in the elliptic

at which the sun is farthest from the equator and where it appears to pause and is consequently at the turning point of its apparent course). 2 Or *סְטִרְיָא*, the ancient annual Roman festival beginning December 17th and lasting several days in honour of Saturn, a time of unrestrained merrymaking, unchecked licence and unbridled vice, with temporary release of slaves. 3 Or *קְרִיטִין*; to commemorate the seizure of sovereignty and conquest of eastern countries (see *עֲבוּדָה זָרָה*, 8b). 4 See *עֲבוּדָה זָרָה*, 10a. 5 On all these occasions they used to assemble for idol worship. 6 As a sign of his greatness. 7 On the anniversary of the day. All business with the idolaters was forbidden to Jews for three days before all such commemorations. 8 Some consider *אָבֵל* redundant. 9 Which the individual idolater observes as a private festival day for idol worship. 10 Or *תְּגִלַּת*. Literally (*But*) on the day of the shaving of. 11 The Roman and Greek youths of the upper classes wore the hair long and on reaching the age of puberty cut off their locks for offering to their deities. 12 *בּוּ* is not given in the *גְּמָרָא*. *Or *שֵׁשׁ בָּהּ יֵשׁ בָּהּ*.

Mishnah 4

If¹ there be* held idolatrous services in a town, it is permitted [to have business dealings with the idolaters on an idolatrous festival day] outside it;² if¹ there be held idolatrous services outside [the town], it is permitted [to carry on business with the idolaters on an idolatrous festival day] inside [the town].³ Is it⁴ permitted] to go thither?⁵—When[§] the road leads only to that place it is prohibited,⁶ but if one can go thereon to some other place,⁷ it is allowed. If idolatrous services be held in a town, and some shops therein are⁸ decorated⁹ and others are not decorated—there was such a case in Bethshean¹⁰—(and) the Sages said, Those that are adorned are prohibited and those that are not adorned are permitted.¹¹

מְשֻׁנָּה ד

עִיר * שֵׁשׁ-בָּה עֲבוּדַת גִּלּוּלִים,
 חוּצָה לָהּ מוֹתֵר; יְהִיָּה חוּצָה לָהּ
 עֲבוּדַת גִּלּוּלִים, יִתּוּכָה מוֹתֵר.
 מָהוּ לֵילֵךְ יִלְשֵׁם? § בְּזִמְן שֶׁהֲרִדָּךְ
 מִיּוֹחֶדֶת לְאוֹתוֹ מְקוֹם, יֵאָסוּר, וְאִם
 הָיָה יָכוֹל לְהֵלֵךְ בָּהּ לְמְקוֹם אַחֵר
 מוֹתֵר. עִיר שֵׁשׁ בָּהּ עֲבוּדַת גִּלּוּלִים,
 וְהָיוּ בָּהּ חֲנוּיּוֹת יְמַעוּטָרוֹת, וְשֵׂאִינָן
 מְעוּטָרוֹת, זֶה הָיָה מַעֲשֵׂה¹⁰ בְּבֵית
 שֵׂאֵן, וְאָמְרוּ חֲכָמִים הַמְּעוּטָרוֹת,
 אֵסוּרוֹת, וְשֵׂאִינָן מְעוּטָרוֹת
 מוֹתֵרוֹת.¹¹

* Or *שֵׁשׁ בָּהּ*. §Or *בְּזִמְן*.

1 Some render this *If there be an idol in a town.* 2 *viz.*, business may not be conducted with those in the town. 3 *viz.*, no business may be done with those outside the town. 4 *מָהוּ*, how (or what) is it? 5 Some render this *thereon, sc.*, on (an idolatrous)

festival day. **6** To avoid the appearance or suspicion of going there to participate in idolatrous practices. **7** Where no idolatrous observances are being held. **8** Literally *were*. **9** Where dealers leave gratuities for the idolatrous priests. **10** Or *Scythopolis* in Galilee. **11** For business purposes on (an idolatrous) festival day.

Mishnah 5

These are things¹ that it is forbidden to sell to idolaters:² stone-pine cones,^{3*} (and) white figs* on their stalks, (and) frankincense, and a white cock. § R. Judah says, It is permitted to sell to him⁴ a white cock among [other] cocks, but if† it be by itself [the Jew] cuts off one of its toes and sells it⁵ to him,⁴ because they do not offer aught defective at idolatrous service. But all other things, if it be not specified [that they are for idolatrous purposes], are permitted [to be sold to idolaters], but if it be specified [that they are intended for idolatrous practices], they are prohibited. R. Meir⁶ says, It is also prohibited to sell to idolaters fine dates,⁷ (and) sugar-cane⁸ and 'nicolaos' dates.⁹

מִשְׁנֵה ה
 יֵאָלוּ דְבָרִים אֲסוּרִים לְמִכּוֹר
 יֵלְעוּבְדֵי גִלּוּלִים, יֵאֲצְטְרוּבְלִין
 וּבְנוֹת שֹׁמֶר וּפְטוּטְרוּתֵיהֶן וּלְבוּנָה
 וְתַרְגֵּוּל הַלְבָן. רַבִּי יְהוּדָה אוֹמֵר
 מוּתָר לְמִכּוֹר יָלוּ תַרְגֵּוּל לְכֵן בֵּין
 הַתַּרְגֵּוּלִין, וּבִזְמַן שֶׁהוּא בְּפָנָי עֲצָמוֹ
 קוֹטֵעַ אֶת-אֲצָבָעוֹ יוֹמְכְרוֹ יָלוּ לְפִי
 שָׂאִין מִקְרִיבֵין חֵסֶר לְעִבּוֹדַת
 גִּלּוּלִים. וְשָׂאֵר כָּל-הַדְּבָרִים סְתֻמָּן
 מוּתָר וּפְירוּשָׁן אֲסוּר. רַבִּי מֵאִיר
 אוֹמֵר אִף *דְּקָל טַב *וְהֶחָצֵב
 *יִנְקְלִיבֵם אֲסוּר לְמִכּוֹר לְעוֹבְדֵי
 גִּלּוּלִים.

1 Used in idol worship. 2 At all times. § 3 Or stone-pine kernels, fir cones, cedar fruit.*
 4 An idolater. 5 The cock. 6 His view is accepted. 7 דְּקָל טַב, a species of superior date used at idolatrous worship. 8 Or a special variety of date. 9 Or some species of herb. *See זְרַעִים and מוֹעֵד SUPPLEMENT, Flora. § See ADDENDA at the end of this Mishnah. †Literally *but when*; or *בִּזְמַן*.

Mishnah 6

Where¹ it is a local usage to sell small beasts² to idolaters they may sell [them]; where it is not the practice to sell [them] they may not sell [them]; and nowhere may they sell them large cattle,³ calves or

מִשְׁנֵה ו
 יֵמָקוֹם שֶׁנֶּהֱגוּ לְמִכּוֹר יֵבְהֶמָה דְּקָה
 לְעוֹבְדֵי גִלּוּלִים מוֹכְרִין; מָקוֹם
 שֶׁנֶּהֱגוּ שְׁלֵא לְמִכּוֹר אֵין מוֹכְרִין;
 וּבְכָל מָקוֹם אֵין מוֹכְרִין לָהֶם

foals⁴ whether sound or maimed. R. Judah⁵ permits a maimed [animal to be sold], and Ben Bathyra⁶ permits a horse [to be sold].

בְּהֵמָה גְּסָה, עֲגָלִים וְסִיָּיִחִים
שְׁלָמִים וְשִׁבּוּרִין. רַבִּי יְהוּדָה מְתִיר
בְּשִׁבּוּרָה, וַיִּבֶן בְּתֵירָה מְתִיר בְּסוֹסֵי.

1 See פְּסָחִים, 83. 2 Sheep, goat, deer. 3 Of the bovine species. Lest the idolater works with them or hires them out for work on the Sabbath. 4 Or *young asses*. Compare בְּכוֹרוֹת, 2b; חוֹלִין, 108a. 5 His opinion that a maimed beast is not likely to be used for work is rejected. 6 His view that horses were not used for work but for hunting (which is not under the category of work) is not accepted. The Sages allow the sale or loan of a horse to an idolater if there is no doubt that it will be used for riding only on the Sabbath, but not if it is certain that it will be used for carrying on the Sabbath.

Mishnah 7

מִשְׁנָה ז

They may not sell them¹ bears, or lions or aught² that can cause* injury to (many) people. None may assist them to build a basilica,³ gallows,⁴ (or) an arena⁵ or a meeting platform;⁶ but they may help them to construct pedestals⁷ or bath-houses; but when they have reached [at the construction of] the [wall] niche⁸ wherein they set up an idol it is prohibited [to aid them] to build [it].

אֵין מוֹכְרִין לָהֶם דּוֹבֵבִין וְאַרְיֹת
וְכָל דָּבָר שֶׁשֵּׁשׁ בוֹ נֹזֵק לְרַבִּים.
אֵין בּוֹנֵין עִמָּהֶם בְּסִילְקֵי, גִּירָדוֹם,
וְאַצְטִדְיָא וּבֵימָה; אֲבָל בּוֹנִים
עִמָּהֶם בְּיְמוּסִיאוֹת, וּבֵית
מְרַחְצָאוֹת; הִגְיעוּ לְכִיפָה,
שֶׁמֶעֱמִידִין בָּהּ עֲבוֹדַת גְּלוּלִים
אָסוּר לְבַנּוֹת.

1 To idolaters. 2 Weapons. 3 Or *exchange, forum, building with colonnades*. Some render this a *high tower* where those charged with capital offences were tried and if sentenced were cast down to death. 4 Or *scaffold*. Some render this a *raised structure* whereon capital crimes were investigated. 5 Or *stadium, theatre*. 6 An elevated stand for tribunals, courts, speakers, public meetings. Some render בְּיְמָה here as a *tall narrow structure* from which a criminal condemned to death was hurled to destruction. 7 Temporary structures for the reception of important persons. Some render this *theatres*, others *public wash-houses*. 8 A cavity or vault in the wall inside the building. *Or שֵׁשׁ-בוֹ.

Mishnah 8

מִשְׁנָה ח

(And¹ none may make ornaments for an idol: chains,² or nose-rings³ or rings.⁴ R. Eliezer says, If for

וְאֵין עוֹשִׂין תְּכֵשִׁיטִין לְעֲבוֹדַת
גְּלוּלִים, קוֹטְלָאוֹת, וְנִנְמִים,

payment it is allowed). None may sell them⁵ aught attached to the soil,⁶ but one may sell it when it has been severed. R. Judah says, One may sell [it] to him⁷ on condition that it is cut away. They may not hire houses⁸ to them in the Land of Israel or, needless to say, fields; (and) in Syria⁹ they may hire houses to them but not fields; and outside the Land [of Israel] they may sell them houses and hire [to them] fields. This is the view of R. Meir.¹⁰ R. Jose¹¹ says, In the Land of Israel they may hire to them houses but not fields, (and) in Syria they may sell [to them] houses and hire [to them] fields, and outside the Land [of Israel] they may sell [to them] either.¹²

יִטְבְּעוֹת. רַבִּי אֶלְיָעָזֵר אוֹמֵר בְּשֹׁכֵר מוֹתֵר). אֵין מוֹכְרִין לָהֶם בְּמַחוּבֵּר לְקַרְקַע, אֲבָל מוֹכֵר הוּא מְשִׁיקָצוּץ. רַבִּי יְהוּדָה אוֹמֵר מוֹכֵר הוּא לֹו עַל מְנַת לְקוּץ. אֵין מְשִׁכִּירִין לָהֶם בְּתֵימִים בְּאֶרֶץ יִשְׂרָאֵל, וְאֵין צָרִיךְ לֹמַר שְׂדוֹת; יוֹבְסוּרָא מְשִׁכִּירִין לָהֶם בְּתֵימִים אֲבָל לֹא שְׂדוֹת; וּבְחוּצָה לְאֶרֶץ מוֹכְרִין לָהֶם בְּתֵימִים וּמְשִׁכִּירִין שְׂדוֹת. דְּבַרֵּי רַבִּי יוֹסֵי מְאִיר. רַבִּי יוֹסֵי אוֹמֵר בְּאֶרֶץ יִשְׂרָאֵל מְשִׁכִּירִין לָהֶם בְּתֵימִים אֲבָל לֹא שְׂדוֹת, וּבְסוּרָא מוֹכְרִין בְּתֵימִים, וּמְשִׁכִּירִין שְׂדוֹת, וּבְחוּצָה לְאֶרֶץ מוֹכְרִין אֵלֹו וְאֵלֹו.

1 This part in parenthesis is given in the גְּמָרָא. 2 Or necklaces. 3 Or ear-rings. 4 i.e., finger rings. 5 To the idolaters (see 2³). 6 i.e., in Palestine. A Jew must not invest a non-Jew with rights over land in Palestine. 7 An idolater. 8 Lest the hiring leads to sale which is prohibited מִן־הַתּוֹרָה (or מִדְּאֻרֵייתָא, as enjoined by the Law). 9 The country conquered by King David but whose sanctity is inferior to that of Palestine. 10 His opinion is rejected. 11 His view is accepted. 12 Literally both these and those. Less idiomatic אֵלֹו וְאֵלֹו.

Mishnah 9

However, where they said, 'They are permitted to hire', they did not speak of a dwelling, for he¹ might introduce into it an idol,² as it is said,³ *Thou shalt not⁴ bring an abomination into thy house*; and nowhere may one hire to him¹ a bath-house,⁵ for it would be called by his⁶ name.

מִשְׁנָה ט

אֵף בְּמָקוֹם שֶׁאָמְרוּ לְהַשְׁכִּיר, לֹא לְבֵית דִּירָה אָמְרוּ, מִפְּנֵי יִשְׁהוּא מְכַנִּית לְתוֹכוֹ יַעֲבֹדֵת גִּלּוּלִים יִשְׁנָאֵר, לֹא תְבִיא תוֹעֵבָה אֶל־בֵּיתְךָ; וּבְכָל מָקוֹם לֹא יִשְׁכִּיר יִלּוּ אֶת־הַמְּרַחֵץ, מִפְּנֵי שֶׁהוּא נִקְרָא עַל־שְׁמוֹ.

1 The idolater. 2 Or *idolatrous practices*. 3 *Deuteronomy 7, 26*. 4 Scripture gives וְלֹא. 5 Literally the *bath-house*. 6 *viz.*, the Jew's name. When the bath was being heated by the non-Jew on the Sabbath people might ascribe the act to the Jewish owner. But nowadays a bath-house may be hired to a non-Jew and used on the Sabbath when the fact is made clear to everyone.

CHAPTER 2

פֶּרֶק ב

Mishnah 1

משנה א

Cattle may not be left¹ in inns of idolaters because they are suspected [of using beasts] for carnal connexion;² (and) a [Jewish] woman may not remain alone with them since they are suspected of lechery;³ and a [Jewish] man may not remain alone⁴ with them for they are suspect of shedding blood. The daughter of an Israelite may not assist an idolatress in childbirth, because she would be aiding the birth of a child for idolatry, but the daughter of an idolater may assist in the childbirth of the daughter of an Israelite. The daughter of an Israelite may not give suck to the child of an idolatress, but an idolatress may suckle the child of an Israelite in her own domain.⁵

י אין מעמידין בהמה בפונדקאות של עובדי גלולים, מפני שהשודין על הרביעה; ולא תתיחד אשה עמהן מפני שהשודין על העריות; ולא יתיחד אדם עמהן מפני שהשודין על שפיכות דמים. בת ישראל לא תילד את העובדת גלולים, מפני שמילדת בן לעבודת גלולים, אבל עובדת גלולים מילדת בת ישראל. בת ישראל לא תניק בנה של עובדת גלולים, אבל עובדת גלולים מניקה בנה של ישראלית ברשותה.

1 But nowadays this is allowed because such immoral unnatural practices are not so prevalent. 2 Or *buggery, sodomy*. 3 Or *lecherousness, lewdness*. 4 This prohibition does not apply now. 5 *i.e.*, in the Jew's own home and when others are present (for safety's sake).

Mishnah 2

משנה ב

They may make use of their services¹ for healing their belongings,² but not for curing their bodies,³ and in no place may they have their hair cut by them. This is the opinion of

מתרפאין ימיהן רפוי ממוז אכל לא רפוי גפשות, ואין מסתפרין מהן בכל מקום. דברי רבי מאיר.

R. Meir. But the Sages say, In the public domain it is permitted, but not when they are alone.⁴

וְחֻכְמִים אֹמְרִים בְּרִשׁוֹת הַרְבִּים מוֹתֵר, אֲכָל לֹא יֵבִיאוּ לְבֵינוּ.

- 1 *i.e.*, the help and knowledge of idolaters. 2 *i.e.*, their animals. Compare **נְדָרִים 44**. 3 But they may accept their advice as to what remedies may be applied. 4 For fear of attack by the idolater with the razor or shears.

Mishnah 3

מְשֻׁנָּה ג

These things belonging to idolaters are prohibited [to Jews], and it is prohibited to have any benefit from them: wine, and the idolater's¹ vinegar that was at first wine,² and earthenware of Adria³ and 'heart-pierced' hides.⁴ Rabban Simon⁵ ben Gamaliel says, If* the rent were round, [the hide] is forbidden, [but if] long, it is permitted.⁶ Flesh that is going into [a place] for idol worship is permitted, but what comes out is prohibited,⁷ for it is as *the⁸ sacrifices of the dead*. This is the view of R. Akiba.⁹ It is prohibited to have business dealings with those¹⁰ who journey to idolatrous festivals,¹¹ but it is permitted [to deal] with those that are returning.

אֵלוֹ דְבָרִים שֶׁל עוֹבְדֵי גִלּוּלִים אֲסוּרִין, וְאִיסוּרֵן אִיסוּר הַנְּאֻה, הֵינּוּ. וְהַחֹמֶץ שֶׁל עוֹבֵד גִּלּוּלִים שֶׁהָיָה מִתְחִלָּתוֹ יַיִן, וְחָרָס הַדְּרִינִי, וְעוֹרוֹת לְבוֹבִין. רַבֵּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אָמַר בְּזֶמֶן שֶׁהִקְרַע שְׁלוֹ עֵגוּל אֲסוּר, מִשּׁוּף מוֹתֵר. בְּשָׂר הַנּוֹכֵס לְעִבּוֹדַת גִּלּוּלִים מוֹתֵר, וְהַיּוֹצֵא אֲסוּר, מִפְּנֵי שֶׁהוּא כְּזוֹבְחֵי מֵתִים. דְּבָרֵי רַבִּי יַעֲקֹבְאִי. וְהוֹלֵכִין לְתַרְפוּת, אֲסוּר לְשֵׂאת וּלְתַת עִמָּהֶם, וְהַבָּאִין מוֹתְרִין.

1 Or **שֶׁל עוֹבְדֵי גִלּוּלִים**, *the idolaters'*. 2 *i.e.*, vinegar made from wine. 3 Or *Hadria* in Venetia. These vessels were forbidden to Jews for use because of some unknown connection with idolatrous practices (perhaps for the transport of wine for idol worship). In **עִבּוֹדַת זָרָה 32a** it is explained that these vessels were called *Hadriatic ware* (named after the Emperor Hadrian); these unbaked earthenware vessels were filled with wine to soak the walls, then they were broken up and the wine-impregnated shards, by order of Hadrian, were distributed among his soldiers to steep in and flavour their drinking water. 4 See **נְדָרִים 21**. One of the idolatrous monstrous practices was to cut through the skin of a living beast to the heart which was removed and offered to an idol. No part of such a beast was permitted to be used by Jews. 5 His view is accepted. 6 The idolatrous priests used to make a round hole to remove the sacrificial heart. 7 Because it had already been used for

idol worship. 8 *Psalm 106, 28.* 9 His opinion is accepted. 10 For they may offer praise to their idols for successful trafficking. 11 Literally *debauchery, obscenity.* Some connect the term with תּוֹרְפוֹת (תּוֹרְפוֹת, plural תּוֹרְפוֹת, תּוֹרְפוֹת, dirt, filth, uncleanness, and תּוֹרְפוֹת בֵּית גֵּנוֹתא *genitals, pudenda.* *Or בְּזִמְנָה; literally *When.*

Mishnah 4

משנה ד

The leather bottles¹ of idolaters or their (wine-) vessels² filled with the wine³ of an Israelite are prohibited and it is forbidden to derive any benefit from them. This is the view of R. Meir.⁴ But the Sages say, It is not prohibited to have any benefit from them.⁵ The grape-seeds⁶ and grape-husks⁷ of idolaters are forbidden and it is prohibited to have any benefit from them. This is the opinion of R. Meir.⁸ But the Sages say, When moist they are prohibited,⁹ if dry they are permitted.¹⁰ The fish-brine¹¹ and the cheese from Beth-Unyaki¹² of the idolaters are forbidden, and it is prohibited¹³ to derive any benefit from them. This is the view of R. Meir.¹⁴ But the Sages say, It is not prohibited to derive any benefit from them.

ינודות העובדי גלולים, וקנקניהן, וינין של ישראל כנוס בהן, אסורין, ואיסורן איסור הנאה. דברי רבי מאיר. וחקמים אומרים אין איסורן איסור הנאה. החרצנים והגזין של עובדי גלולים אסורין, ואיסורן איסור הנאה. דברי רבי מאיר. וחקמים אומרים לחין אסורין, יבשין מותרין המוריס ונבינות בית אוניקי של עובדי גלולים אסורין (ואיסורן) איסור הנאה. דברי רבי מאיר. וחקמים אומרים אין איסורן איסור הנאה.

1 Or *wine-skins.* 2 Or *jars;* clay vessels which keep wine cool. 3 Which a Jew may not drink. 4 His view is rejected. 5 The vessels may be rendered ritually fit for use thus: if they are new and have not been used—they may be used forthwith; if wine had been in them, they are swilled out with clean water, then filled with clean water and left for twenty-four hours and this repeated a second and third time, when they become clean; and if an idolater had not used them at all for twelve months they are permitted for use straightway. 6 Or a *pomace* (or *pulp*) of kernels (or *shells*) of grapes. 7 Or a *pomace* (or *pulp*) of grape skins and flesh. 8 This opinion is not accepted. 9 Or twelve months after the expression of their liquor. 10 To be eaten after twelve months. 11 Or *fish-pickle* containing fish-hash with or without the addition of wine. 12 Or Bithynia in Asia Minor. 13 The bracketed term is given in the גמרא. 14 This view is not accepted.

Mishnah 5

R. Judah said, R. Ishmael asked R. Joshua when they were on a journey and said to him, Why have they prohibited the cheese of idolaters? He answered him, Because [they make cheese] by curdling [the milk] with rennet [taken] from the carcass [of an animal not ritually slaughtered].¹ He said to him, But is not the rennet from a *burnt-offering* more stringently prohibited than the rennet from a carcass,² and [nevertheless] they have said, A priest who is not fastidious may suck it up raw—and³ they⁴ did not agree with him but said, They may have no benefit [from it] and yet [if they did] *the law of the misappropriation of sacred property* does not apply? [R. Joshua] (repeated)⁵ [and] said to him, Because [they make cheese] by curdling [the milk] with rennet from calves [sacrificed] at idolatrous services.⁶ [R. Ishmael] said to him, If so, why⁷ did they not prohibit any benefit therefrom? [R. Joshua thereupon dropped the matter and] led him⁸ to another subject—he said to him, Ishmael, my brother, how dost thou read, *For⁹ thy¹⁰ love is better than wine* or *For thy¹¹ love is better . . . ?* He made reply to him, *For thy¹¹ love is better.* [R. Joshua] said to him, This is not so, for, behold, its fellow [verse]¹² teaches regarding it, *Thine¹³ ointments have a goodly fragrance.*

1 Compare חוֹלִין 22^a. 2 *viz.*, seeing that no benefit may be derived from a burnt-offering but may be had from a carcass. Compare מִנְחֹת 117. 3 Some consider מוֹעֵלִין to וְלֹא as redundant or as an editorial remark; similar asides are to be found in סְנֵהֲדָרִין 8ⁱ and עֲדֵיּוֹת 13. 4 *Leviticus* 5, 15. The argument is that since the milk from an עוֹלָה, *burnt-offering*, may be sucked out the milk from a carcass may all

משנה ה

אמר רבי יהודה שאל רבי ישמעאל את רבי יהושע בן לוי מה אסרו בגבינות של עובדי גלולים? אמר לו מפני מה אסרו מפני שמעמידין אותן בקיבה של יגבלה. אמר לו והלא קיבת עולה חמורה מקיבת יגבלה, ואמרו כהן שדעתו יפה שורפה תיה³ ולא הודו לו, אבל אמרו אין נהנין ולא מועלין. (חזר) אמר לו מפני שמעמידין אותה בקיבת עגלי עבודת גלולים. אמר לו אם כן למה לא אסרוה בהנאה? השיאו לדבר אחר, אמר לו ישמעאל אחי היאך אתה קורא כי טובים¹⁰ דודיך מנין, או כי טובים¹¹ דודיך? אמר לו כי טובים¹¹ דודיך. אמר לו אין הדבר כן שהרי¹² חברו מלמד עליו לריח¹³ שמניך טובים.

the more be sucked out, why then should the cheese be forbidden? 5 **חֹרֵר** is not given in the **גְּמָרָא**. 6 And under such circumstances everything is forbidden to be made use of. 7 Or **לְמָה**. 8 He refused to tell him why the cheese of an idolater was forbidden, for the required period of twelve months had not yet passed since the court decreed regarding the cheese of idolaters, and the reasons for decrees of the courts were forbidden to be disclosed before the passage of twelve months in order to avoid general public disputation. 9 *Song of Songs* 1, 2. 10 The Scriptural orthography is **חֹרֵר** (the suffix **ר** is masculine). 11 viz., vowelizing the term with a feminine suffix. 12 *Song of Songs* 1, 3. 13 The suffix here is masculine.

Mishmah 6

These things of idolaters are forbidden, but it is not prohibited to derive any benefit from them: milk that an idolater milked but no Israelite watched him, (and) their bread and (their) oil—Rabbi and his court permitted the oil—(and) (over)boiled or preserved¹ vegetables into which it is their wont to put wine or vinegar, (and) brine containing hashed² pickled³ fish,⁴ (and) brine in which no fish is distinguishable (with no sticklebacks⁵ floating in it),⁶ (and) the finless fish,⁷ (and) drops of asafoetida,⁸ and lumpy salt.⁹ Behold, these are forbidden, but it is not prohibited to have any benefit from them.

מִשְׁנָה ו

אֵלוֹ דְּבָרִים שֶׁל עוֹבְדֵי גִלּוּלִים
אֲסוּרִין וְאֵין אִיסוּרָן, אִיסוּר הַנְּאֻזָּה,
חֶלֶב שֶׁחִלְבוּ עוֹבְדֵי גִלּוּלִים וְאֵין
יִשְׂרָאֵל רוֹאֶהוּ, וְהִפַּח וְהִשְׁמֵן שֶׁלֶהֶן,
רְבִיּוּבֵית דִּינֵוֹ הִתִּירוּ בְּשֶׁמֶן, וְשֶׁלֶקוֹת
יֹכְבָּשֵׁן שֶׁדֶרְכָן לָמַת לְתוֹכָן יֵין
וְחֹמֶץ, יִיִּטְרִית טְרוּפָה, וְצִיר
שֶׁאֵין בָּהּ דָּגָה (יִכְלָבֵית שׁוֹטְטָת
בו), יוֹחֶחֱלֵק וְקוֹרֵט שֶׁל חֶלְתִּית,
וְמִלַּח סֶלְקוֹנְטִית. הֲרֵי אֵלוֹ אֲסוּרִין,
וְאֵין אִיסוּרָן אִיסוּר הַנְּאֻזָּה.

1 Or *pickled*. 2 Or *minced*. 3 Or *salted*. 4 Some render **טְרִית** *sardine*. 5 Or **כְּלָבֵית**. Or some unknown fish that keeps whole in clean fish brine but not in brine made with unclean fish. 6 This bracketed phrase is considered redundant by some. 7 A species of small fish that grows fins in its later stage and can be confused with unclean species of fish; it is preserved in brine. 8 Or *asafetida*, the fetid medicinal gum resin procured by drying the pulp juice from the roots of various oriental plants (genus *Ferula*) of the carrot family used as an antispasmodic. See **זְרָעִים**, SUPPLEMENT. 9 Used by bakers; it was treated with lard and oil from unclean fishes and used with foods by the Roman gentry.

Mishnah 7

משנה ז

These are permitted as food: milk that an idolater milked when an Israelite was watching him, (and) honey or honeycombs,¹ even though they drip the law [of food rendered susceptible to uncleanness] by a liquid does not apply to them,² (and) preserved³ vegetables into which it is not their wont to put wine or vinegar, (and) fish⁴ that is not hashed,⁵ (and) brine in which* the fish is distinguishable, (and) a [whole] leaf of asafetida,⁶ and olives pressed into round cakes.⁷ R. Jose says, If [the olives] be disrupted,⁸ they are prohibited.⁹ [Edible] locusts that come out of the [idolatrous] shopkeeper's basket¹⁰ are prohibited,¹¹ but [the preserved] locusts which the merchant takes from the shelves¹² are permitted.¹³ And the same applies to *priest's-due*.¹⁴

אלו מותרין באכילה, חלב שחלבו עובד גלולים וישראל רואהו, והדבש, והדברגיות אף על פי שמגופין, אין בהם משום הכשר משקה, וכבשין שאין דרכן לתת לתוכן יין וחומץ, וטריית שאינה טרופה, וציר שיש בה דגה, ועלה של החלית, וזיתים גלויסקאות המגולגלין. רבי יוסי אומר השלוחין אסורין, החגבים הפאים מן הסלולה¹⁰ אסורין, מן ההפתק¹² מותרין, וכן לתרומה.

1 Or more correct דבדברגיות. Or clusters of dripping grapes (exposed to heat). The law of libation wine (wine suspected of having been dedicated to idolatrous worship), does not apply to their liquors. 2 Leviticus 11, 34, 38. 3 Or pickled. 4 Or sardines. 5 Or minced, or cut into small pieces so that it can be seen if no unclean fish is mixed with it. 6 Sec 26. 7 גלויסקאות are a superior kind of olives from which the oil is first extracted and which are then pressed into round containers to form slabs. 8 i.e., so soft and disintegrated that their stones drop out when disturbed. 9 Because of the wine added by the idolater. But this view is rejected. 10 סלולה is a shopkeeper's basket on a stand or in front of the counter in a shop or market. 11 He is suspect of sprinkling them with wine (which is deemed נסף) to keep them soft. 12 הפתק, the retailer's shelves; also the store-room in a house whence the daily portions of provisions and of work materials are distributed. 13 Because they retain their moisture and do not need besprinkling with wine. 14 See Appendix, Note 1. A פתן is suspected of selling תרומה exposed for immediate sale as ordinary produce, and he is also suspect of sprinkling ordinary produce set out for sale with wine of תרומה. But if he sells produce direct from the store he is trusted when he says it is not תרומה (for he fears that if he is discovered thus selling תרומה the court will confiscate all the stocks in the store). *Or שיש בה.

CHAPTER 3

פֶּרֶק ג

Mishnah 1

משנה א

All images¹ are prohibited² since they are worshipped once a year. This is the opinion of R. Meir.³ But the Sages⁴ say, Only such is forbidden as bears in its hand a staff⁵ or a bird⁶ or an orb.⁷ Rabban Simon ben Gamaliel says, That⁸ which has aught whatsoever in its hand [is forbidden].

כָּל־הַצְּלָמִים אֲסוּרִים, מִפְּנֵי שֶׁהֵן נֶעְבְּדִין פְּעַם אַחַת בְּשָׁנָה. דְּבָרֵי רַבִּי מֵאִיר. יִחַכְמִים אוֹמְרִים אֵינוֹ אֲסוּר אֶלָּא כָּל־שֵׁשׁ בְּיָדוֹ מִקָּל, אוֹ צִפּוֹר, אוֹ כְּדוּרִי. רַבֵּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר: כָּל־שֵׁשׁ בְּיָדוֹ כָּל־דְּבָר.

1 Literally the *images*. צֵלָם, *idol, image, picture*. 2 Jews may not derive any benefit from them. 3 His view is rejected. 4 Their ruling is accepted. 5 Or *stick, wand*—symbol of overlordship. 6 Symbolical of dominion over the human race. 7 Or *ball, globe, sphere*, symbolical of universal supremacy. In עֲבוֹדָה זָרָה 41a are added also *sword, crown and ring*. 8 An image set up in a village is forbidden, whether it bears aught in its hand or not, for generally it is there for idolatrous worship and not for ornamentation.

Mishnah 2

משנה ב

If one find fragments of an image¹ belonging to an idolater, then these are permitted [to a Jew to have benefit from them]. If one found [some fragment in] the form of a hand or the shape of a leg,² then these are prohibited because an object such as these³ is worshipped.

הַמוּצָא שִׁבְרֵי יְאֵלִיל שֶׁל עוֹבֵד גִּילּוּלִים, הָרִי אֵלָיו מוֹתְרִים. מְצָא תְּבֻנֵית יָד אוֹ תְּבֻנֵית יָרֵגֶל הָרִי אֵלָיו אֲסוּרִים מִפְּנֵי שֶׁכִּיּוּצָא כָּהֵן נֶעְבְּדִי.

1 Or *idol*. 2 Or *foot*. 3 *viz.*, not necessarily forming parts of images or idols.

Mishnah 3

משנה ג

If one find objects, and on them is a figure of the sun, [or] a figure of the moon, [or] a figure of a dragon,¹ he must cast them into the Salt Sea.² Rabban Simon³ ben Gamaliel says, [If the figures are on] precious [objects], these are prohibited, [but]

הַמוּצָא כִלִּים וְעַלֵיהֶם צוּרַת חֲמָה, צוּרַת לְכָנָה, צוּרַת יְדִרְקוֹן, יוֹלִיכֶם יְלִים הַמְּלָח. רַבֵּן שִׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר שֶׁעַל הַמְּכוּבְּדִין

if on worthless [objects], they are permitted⁴ [to be retained]. R. Jose says, One should grind them into dust and scatter [it] to the wind or throw [it] into the sea. [The Sages] said to him, Even [if the dust be dispersed in the wind] it would become manure [and of benefit to the Jew], as it is said,⁵ *And there shall cleave naught of the doomed thing to thy hand.*⁶

אֲסוּרִים, שְׁעַל הַמְּבוּזִין מוֹתְרִין.
רַבִּי יוֹסֵי אוֹמֵר שׁוֹחֵק חוֹרֶה לְרוּחַ
אוֹ מִשָּׁיל לַיָּם. אָמְרוּ לוֹ אַף הוּא
נַעֲשֶׂה זָבֵל, יִשְׁנֹאֲמֵר וְלֹא יִדְבַק
בְּיַדְךָ מְאוּמָה מִן־הַחֲרָם.

1 Or *boa constrictor*. The Roman cohorts used its figure as a military ensign. The Talmud deems it as an emblem of idolatry. 2 Or *Dead Sea*. 3 His view is accepted. 4 Idolaters would not go to the trouble of decorating any valueless article with an emblem or symbol of idolatrous veneration. 5 *Deuteronomy 13, 18*. 6 Suggesting that no benefit however slight may be derived even from the manure of any idolatrous source.

Mishnah 4

מִשְׁנָה ד

Proclus¹ the son of a philosopher asked Rabban Gamaliel in Acco² when he was bathing in a bath [-house] where there was a statue of Aphrodite³ [and] said to him, 'It is written in your Law *And⁴ then shall cleave naught of the devoted thing to your hand*, why bathest thou in the bath [wherein is a statue] of Aphrodite?' He made reply to him, 'One may not answer [questions of Law while nude] in the bath'. And when [Rabban Gamaliel] came out he said to him, 'I came not within her limits, she came within my limits! [People] do not say, "Let us build a bath as an adornment for [the statue of] Aphrodite" but "Let us make [a statue of] Aphrodite as an adornment for the bath";⁵ further, if they were to give thee much money, thou wouldst not enter

שָׂאֵל יִפְרוֹקְלוֹס בֶּן פִּילוֹסְפוּס אֶת־
רַבָּן גַּמְלִיאֵל בְּעֵצְכוֹ שֶׁהִנֵּה רוֹחֵץ
בַּמְּרַחֵץ שֶׁל אֶפְרוֹדִיטִי, אָמַר לוֹ
כָּתוּב בְּתוֹרַתְכֶם וְלֹא יִדְבַק בְּיַדְךָ
מְאוּמָה מִן־הַחֲרָם, מִפְּנֵי מָה אַתָּה
רוֹחֵץ בַּמְּרַחֵץ שֶׁל אֶפְרוֹדִיטִי? אָמַר
לוֹ אֵין מְשִׁיבִין בַּמְּרַחֵץ. וְכִשְׂיִצֵּא
אָמַר לוֹ אֲנִי לֹא כָּאתִי בְּגִבּוּלָהּ
הִיא כָּאתָה בְּגִבּוּלִי. אֵין אוֹמְרִים
נַעֲשֶׂה מְרַחֵץ לְאֶפְרוֹדִיטִי נוֹי, אֶלֹא
אוֹמְרִים נַעֲשֶׂה אֶפְרוֹדִיטִי נוֹי
לְמְרַחֵץ; דָּבָר אַחֵר אִם נוֹתְנִים
לְךָ מְמוֹן תִּרְבֶּה אִי אַתָּה נִכְנָס
לְעִבּוֹדַת גִּלּוּלִים שְׁלָךְ עָרוֹם, וּבַעַל

before the [symbol of] thy idolatrous service naked or while [and after] suffering from a discharge, nor micturate⁶ before her; and yet this* [goddess] stands at the mouth of the gutter and all the people micturate in front of her! It is said,⁷ Their gods: what is treated as a god is prohibited,⁸ but what is not treated as a god is permitted'. * Or ו; see Volume II, Page 12.

קרי, ומשתין בפניה; וזו עומדת על פי הביב, וכל העם משתינין לפניה! לא נאמר אלא אלהיכם את-שנהג בו משום אלוה אסור, ואת שאינו נוהג בו משום אלוה מותר.

1 Or *Proklos*; perhaps a Roman general and 'son of Philosophos.' 2 Or *Accho*, *Ptolemais* (modern *Acre*), a sea-port in Phoenicia. 3 A Greek goddess (*Venus*). 4 *Deuteronomy* 13, 18. 5 *i.e.*, the bath was built for the use of bathers, the installation of a statue being merely an ornamental, decorative addition and of less than secondary importance, and the benefit derived is from the bath and not from the statue. 6 Or urinate. 7 *Deuteronomy* 12, 3. Literally *it is not said, viz.*, referring to the second statement. 8 To be kept or to derive benefit from.

Mishnah 5

If idolaters worship mountains or hills,¹ these [places] are permitted,² but what is on them is prohibited, as it is said,³ *thou shalt not covet⁴ the silver or the gold that is on them nor take it.* R. Jose⁵ the Galilean says, [It is written,⁶] *their gods upon the mountains and not the mountains are their gods, their gods on the hills and not the hills are their gods.* And why is an *Asherah*⁷ [tree (-grove)] forbidden?⁸ Because the hands of man had been concerned with it [in its planting and tending], and whatsoever the hands of man had aught to do therewith is prohibited.⁹ R. Akiba said, 'I will explain and expound [the subject] before thee: Wheresoever thou shalt find a high mount or a lofty hill and a green tree know thou that there is§ an idol!¹⁰

משנה ה
העובדי גלולים העובדים את-ההרים ואת-הגבעות, הן מותרין, ומה ששעליהם אסורים, ששנאמר לא יתחמוד כסף וזהב עליהם ולקחת לך רבי יוסי הגלילי אומר יאלהיהם על ההרים ולא ההרים יאלהיהם, אלהיהם על הגבעות, ולא הגבעות יאלהיהם. ומפני מה אשרה אסורה? מפני שיש בה תפיסת ידי אדם, וכל שיש בה תפיסת ידי אדם אסור. אמר רבי עקיבא אני אוכין ואדון לפניה, כל מקום שאתה מוצא הר גבוה, וגבעה נשאה, ועץ רענן, דע שיש שם עבודת גלולים.

* Or שיש בה. §Or שיש שם.

1 Literally *the mountains or the hills*. 2 For growing crops, or for grazing, quarrying or mining. 3 *Deuteronomy* 7, 25. 4 The Scriptural reading is תַּחְמֵד. 5 His view is rejected. 6 *Deuteronomy* 12, 2. 7 See 37. אֲשֵׁרָה, אֲשֵׁרָה, the Phœnician and Syrian goddess of fortune or blissfulness; also the tree or grove of trees used for idolatrous worship. The plurals אֲשֵׁרִים and אֲשֵׁרוֹת denote images or statues of Asherah. *Exodus* 34, 13. *Deuteronomy* 12, 3; 16, 21. *Judges* 6, 25. *I Kings* 14, 15; 15, 13; 18, 19. *Micah* 5, 13. 8 *i.e.*, why is it forbidden to make use of the wood of an Asherah? 9 *Deuteronomy* 7, 5, וְאֲשֵׁרֵיהֶם תִּגְדְּעוּן, and *hew down their Asherim*. 10 *viz.*, there is likely to be found an object of idol worship there, which must be destroyed. *Deuteronomy* 12, 3, וְאֲשֵׁרֵיהֶם תִּשְׂרֹפֶן בְּאֵשׁ. *And their Asherim shall ye burn in fire.*

Mishnah 6

משנה ו

If one had a dwelling joined on to a house for idolatrous worship and it collapsed,¹ it is forbidden to rebuild it. What is [the Jew] to do? He must move away into his own domain (four cubits²) and then rebuild.³ If [the ground which the adjoining wall occupied] belonged both to him and to the idolatrous shrine, it is accounted as belonging half to each,⁴ [and] its stones, its wood and its earth⁵ convey uncleanness⁶ as does an unclean reptile,⁷ as it is said,⁸ *Thou shalt utterly detest it*. R. Akiba⁹ says, As with a menstruous woman, as it is said,¹⁰ *Thou shalt cast them far away as a menstruant woman; thou shalt say unto it, 'Get thee hence'*; just as a menstruant communicates uncleanness by carrying even so does an idol impart uncleanness by carrying.

מי שהיה ביתו סמוך לבית עבודת גלולים ונפל, אסור לבנותו. כיצד יעשה? כונס בתוך שלו (ארבע אמות) ויבונה. היה שלו ושל עבודת גלולים גדון ממחצה על מחצה, אבניו, עציו ויעפרו, מטמאין כשרץ, שנאמר שקץ תשקצנו. רבי יעקיבא אומר כנדה, שנאמר תגורם כמו דנה צא תאמר לו, מה נדה מטמאה במשא אף עבודת גלולים מטמא במשא.

1 Even if only the common or adjoining wall fell down. 2 Some consider this redundant. (See זרעים, Page 18f. 1 cubit = 22 inches or 56 cms.). 3 But he must fill up the intervening space (which is in his own domain) with rubble and rubbish so that the idolaters derive no benefit therefrom. 4 Half of the thickness of the wall is included in the four cubits' clearance space. 5 The cement, mortar, plaster filling in the joints. 6 By מגע (touching) and not by משא (carrying), and

not כְּעֹרֶשֶׁת (by a barleycorn's bulk) but only קִיּוֹת (by an olive's bulk), concessions by the חֲכָמִים (Sages) in the case of idolatrous uncleanness since it is only a Rabbinic institution (מִדְּרַבָּנָן). 7 Or *creeping thing*; but especially *unclean reptile*. *Leviticus 11, 29ff.*; שִׁבְתָּ 14¹. 8 *Deuteronomy 1, 26*. 9 His view is rejected. 10 *Isaiah 30, 22*. Compare שִׁבְתָּ 9¹.

Mishnah 7

There are three kinds of houses¹ [to be considered in connection with idolatry]: if a house were constructed from the outset for idolatrous worship, it is prohibited;² [if it were from the first built as a dwelling, and then] it was plastered and adorned for idol worship, or if it were renovated [for idolatry], [a Jew] may remove what was renewed [and the house is permitted²]; if [an idolater] brought an idol into it and took it out again, then this [house] is permitted.² Three kinds of stones have to be distinguished [in what concerns idol worship]: a stone originally hewn for a pedestal [for an idol] is forbidden;² if one plastered it³ and bedecked it, or renovated it [for idolatrous worship], [a Jew] may remove the renewals [and use the stone]; if [an idolater] set up an idol thereon and removed it, this [stone] is permitted.² Three kinds of *Asherah* [trees]⁴ are to be distinguished [regarding idolatry]: a tree which [an idolater] planted from the first for idolatrous practices is forbidden;² if [an idolater] lopped it and trimmed it for idolatrous purposes and [the shoots] grew again, [a Jew] may remove what has sprouted anew [and burns it up and the tree is permitted for his use];

מִשְׁנָה ז

שְׁלֹשָׁה יְבָתִים הֵן, בֵּית שִׁבְנָאוֹ
מִתְחִלָּה לְעִבּוֹדַת גִּלּוּלִים הָרִי זֶה
אָסוּר; סִידּוֹ וְכִיּוֹ לְעִבּוֹדַת
גִּלּוּלִים וְחִידוֹשׁ נוֹטֵל מֵה־שְּׁחִידוֹשׁ;
הַכֵּיִס לְתוֹכָהּ עֲבוֹדַת גִּלּוּלִים
וְהוֹצִיאָהּ, הָרִי זֶה מוּפְרָי. שְׁלֹשׁ
אֲבָנִים הֵן, אֲבֵן שִׁחְצָבָה מִתְחִלָּה
לְבִימוֹס, הָרִי זֶה אָסוּרָה; סִידָּהּ
וְכִיּוֹ לְשֵׁם עֲבוֹדַת גִּלּוּלִים וְחִידוֹשׁ
נוֹטֵל מֵה־שְּׁחִידוֹשׁ; הַעֲמִיד עָלֶיהָ
עֲבוֹדַת גִּלּוּלִים וְסִילְקָהּ, הָרִי זֶה
מוּפְרָת. שְׁלֹשׁ אֲשֵׁרוֹת הֵן, אֵילָן
שֶׁנִּשְׁטְעוּ מִתְחִלָּה לְשֵׁם עֲבוֹדַת גִּלּוּלִים,
הָרִי זֶה אָסוּרָה; גִּידְעוּ וּפִיֶּסְלוּ לְשֵׁם
עֲבוֹדַת גִּלּוּלִים, וְהִחְלִיף, נוֹטֵל
מֵה־שְּׁחִיחְלִיף; הַעֲמִיד תַּחְתֶּיהָ
עֲבוֹדַת גִּלּוּלִים וְכִיִּטְלָהּ הָרִי זֶה
מוּפְרָי. אֵיזוֹ הִיא אֲשֵׁרָה? כָּל־
אֲשֵׁי־תַחְתֶּיהָ עֲבוֹדַת גִּלּוּלִים. רַבִּי
שִׁמְעוֹן אוֹמֵר כָּל־שְׁעוֹבֵדִין אוֹתָהּ.

if [an idolater] set up an idol beneath it and then cancelled it,⁵ this [tree] is permitted.² What is an *Asherah*? Any [tree] beneath which* there is an idol. R. Simon⁶ says, Any [tree] that they worship. And it once happened in *Zidon*⁷ that they used to worship a tree and they found underneath it a heap.⁸ R. Simon said to them, 'Examine this heap'. And when they examined it they found therein an image. He said to them, 'Since it is the image⁹ that [the idolaters] used to worship we permit them [—the Jews—to make use of] the tree.¹⁰

וּמַעֲשֶׂה בְּצִידוֹן בְּאֵילָן שֶׁהָיוּ עוֹבְדִין
 אוֹתוֹ וּמִצְאוּ תַחְתָּיו יָגֵל. אָמַר לָהֶן
 רַבִּי שֶׁמֵּעוֹן בְּדָקוֹ אֶת-הַגֵּל הַזֶּה.
 וּבְדָקוּהוּ וּמִצְאוּ בוֹ צוּרָה. אָמַר
 לָהֶן הוֹאִיל יוֹלְצוּרָה הֵן עוֹבְדִין
 נִתֵּיר לָהֶן אֶת-הָאֵילָן.¹⁰

1 Compare 44. 2 To be used by a Jew. 3 It had not from the first been intended to use it as an idol's pedestal. 4 See 35. 5 *i.e.*, he broke it up or desecrated it in such a manner as to disannul its idolatrous character so that it was no longer subject to the law prohibiting a Jew to derive any benefit from the tree. 6 His opinion is rejected. 7 Or *Sidon*, *Zaidan*, in Phœnicia. 8 Of stones, bones, etc. 9 And not the tree. 10 After the removal of the image. *Or תַּחְתָּיהָ שֵׁשׁ.

Mishnah 8

[A Jew] may not sit in its shade,¹ but if he did sit² [there], he remains clean; and he may not pass beneath it, and if he did pass [under it], he becomes unclean. If it overhung³ the public domain, and one passed below it, he remains clean. And [Jews] may sow greens under it in the [winter] rainy season but not in the hot season,⁴ but lettuces⁵ [may] not [be planted] either in the hot season or in the rainy [winter] season. R. Jose says, Even greens [may] not [be planted beneath an *Asherah*] in the [winter] rainy season because the foliage⁶ [of the *Asherah*] drops on them and serves for them as manure.⁷

מִשְׁנָה ח

לֹא יֵשֵׁב בְּצֵלָהּ, וְאִם יֵשֵׁב טְהוֹר;
 וְלֹא יַעֲבוֹר תַּחְתָּיהָ, וְעַם עֶבֶר טָמֵא.
 הָיְתָה יִגְוֶלֶת אֶת-הָרַבִּים, וְעֶבֶר
 תַּחְתָּיהָ, טְהוֹר. וְחֹרֶעַן תַּחְתָּיהָ
 יִרְקוֹת בֵּימֹת הַגֹּשְׁמִים אֲבָל לֹא
 בֵּימֹת הַחֶמְדָּה, וְהַחֲזָרִין לֹא בֵּימֹת
 הַחֶמְדָּה וְלֹא בֵּימֹת הַגֹּשְׁמִים. רַבִּי
 יוֹסֵי אוֹמֵר אִף לֹא יִרְקוֹת בֵּימֹת
 הַגֹּשְׁמִים, מִפְּנֵי שֶׁהַגְּמִיָּה נוֹשֶׁרֶת
 עֲלֵיהֶן, וְהֵן לָהֶן יְלוֹבֵל.

1 Or shadow of an *Asherah* (see 35, 7). 2 Within the shadow's space beyond the tree itself. 3 Or encroached upon; literally robbed. 4 In the cold season most vegetables

do not benefit from the shade, but in the warm season the shade is of benefit to most growing plants. 5 Whose growth is promoted by shade in all weathers. See וְרָעִים, SUPPLEMENT; מוֹעֵד, SUPPLEMENT. 6 Or שְׁהִנְבִייה, שְׁהִנְבִייה. 7 See עֲבוּדָה וְרָה 48b.

Mishnah 9

If [a Jew] took wood from it,¹ it is prohibited to derive any benefit [therefrom]. If he heated an oven therewith, and [the oven] was new,² it must be broken up, but if it were old, it must be cooled down.³ If he baked bread⁴ therein, it is forbidden to derive any benefit [therefrom], and if it were mixed up with other [bread], they are all prohibited for enjoyment. R. Eliezer⁵ says, Let him cast the benefit [derived from it] into the Salt Sea. [The Sages] said to him, There is no redemption-money⁶ in connection with idolatry. If [a Jew] took from it? [—an *Asherah*—a piece of wood for] a *shuttle*,⁸ it is prohibited to have any benefit [from it]; if he wove a garment therewith,⁹ (the garment) is forbidden for enjoyment; and if [this garment] were confused with other [garments], and these others again [were mixed up] with others, it is forbidden to derive any benefit from them all. R. Eliezer says, Let him throw the benefit¹⁰ into the Salt Sea. [The Sages] said to him, There is no ransom price in a matter of idol worship.

1 An *Asherah*. 2 And the heat would complete its thorough drying and thus be of service to it. 3 After which it remains clean as before. 4 Literally *the bread*. 5 His view is accepted that coins equal in value to only the forbidden batch are cast into the sea, and all the bread may then be used, for it is a transgression to waste bread. 6 To convert a prohibition into a permission. Compare *Leviticus* 5, 15ff. 7 Or הִימְנָה. 8 Or *whorl* of a spindle. 9 *i.e.*, with the shuttle. 10 *i.e.*, the money equivalent to the value of the first garment is thrown into the sea and all the other garments may be used.

מְשֻׁנָּה ט

וְטַל יִמְנָה עֲצִים אֲסוּרִין בְּהִנְאָה.
הַסִּיק בָּהֶן אֶת-הַתַּנּוּר, אִם יִחְדַּשׁ
יִוָּתֵץ, וְאִם יִשֵּׁן יִוָּצֵן. אָפָה בּוֹ אֶת-
הַפֶּת, אֲסוּרָה בְּהִנְאָה, נִתְעַרְבָה
בְּאַחֲרוֹת, כּוֹלֵן אֲסוּרוֹת בְּהִנְאָה.
רַבִּי אֱלִיעֶזֶר אוֹמֵר יוֹלִיף הִנְאָה
לַיָּם הַמֶּלַח. אָמְרוּ לוֹ אֵין פְּדִיּוֹן
לְעִבּוּדַת גְּלוּלִים. וְטַל יְהִימְנָה
כִּפְרָר אֲסוּר בְּהִנְאָה; אָרַג בּוֹ אֶת-
הַבֶּגֶד (הַבְּגָד) אֲסוּר בְּהִנְאָה; נִתְעַרְבַּ
בְּאַחֲרִים וְאַחֲרִים בְּאַחֲרִים, כּוֹלֵן
אֲסוּרִין בְּהִנְאָה. רַבִּי אֱלִיעֶזֶר אוֹמֵר
יוֹלִיף יְהִימְנָה לַיָּם הַמֶּלַח. אָמְרוּ
לוֹ אֵין פְּדִיּוֹן לְעִבּוּדַת גְּלוּלִים.

Mishnah 10

How does one disannul [the idolatrous sanctity of an *Asherah*]? If [an idolater] trim¹ [it] or prune² [it], [or if] he take³ therefrom a stick or a twig or even a leaf, then it is disannulled. If he trimmed it to improve its appearance,⁴ it is forbidden;⁵ [if he trimmed it], but not for its own improvement,⁴ it is permitted.

מִשְׁנָה י
כִּיצַד מְבַטְלָהּ? יְקִירִים וְחִירָד,
יִטַּל מִמֶּנָּה מִקַּל אוֹ שֶׁרְבִיט, אֲפִילוּ
עֵלָה, הָרִי זֶה בְּטֵלָה; שְׁפִייה
לְצַרְכָּהּ אֲסוּרָה; שְׁלֵא לְצַרְכָּהּ
מוֹתְרָתָּה.

1 Literally *trimmed*. The dry branches are cut off and burnt. 2 Literally *pruned*. The young shoots are cut away. 3 Literally *took*, i.e., broke off. 4 Literally *for its own sake, for its need*. 5 To be used in any way by a Jew.

CHAPTER 4

פֶּרֶק ד

Mishnah 1

מִשְׁנָה א

R. Ishmael¹ says, Three stones alongside each other² and beside a *Mercurius*³ are prohibited,⁴ but two [stones only] are permitted.⁴ But the Sages say, Those [stones] that obviously belong to it are prohibited^{4,5}, but those which manifestly do not pertain thereto are permitted.^{4,6}

רַבִּי יִשְׁמַעְאֵל אוֹמֵר שְׁלֹשׁ אֲבָנִים
זוֹ בְּצַד זֶה, בְּצַד מְרִקוּלִים
אֲסוּרוֹת וְשֵׁתִים מוֹתְרוֹת. וְחֻכְמִים
אוֹמְרִים שֶׁנִּרְאוֹת עִמּוֹ אֲסוּרוֹת,
וְשֵׁאִין נִרְאוֹת עִמּוֹ מוֹתְרוֹת.

1 His view is rejected. 2 *Or one stone on top of two others, something like a cromlech or dolmen composed of several megaliths; and within a radius of four cubits (see זְרָעִים, Page 18f) from the statue. 3 Or מְרִקוּלִים [Latin *Mercurius*], the Roman god *Mercury* (the god of eloquence, skill, thieving, merchandise, and the messenger of the gods), identified with the Grecian divinity *Hermes* (the patron deity of herdsmen, wayfarers, arts, thieving, eloquence, and herald of the gods), the Neo-platonist name of the Egyptian deity *Thoth* (ancient scribe of the gods and the god of alchemy, wisdom, magic, mystic and mysterious doctrines, and inventor of letters and numbers). In the *Mishnah* the term refers especially to a statue, or a pillar or a square base surmounted with the bust or head—often double-faced—dedicated to *Mercury* and serving as a way-mark (see עֲבוּדָה זָרָה 50a; כְּהֻנֵּי הַדָּרִין 78, 64a; כָּבֵא מְצִיעָא 25b). 4 To be used by Jews. 5 If the stones (or even one stone) be not further than under two cubits from the מְרִקוּלִים it must be assumed that they

had formed part of it and had fallen away. 6 If the stones (or stone) be found farther than one cubit away, as stones would not fall that distance. But if one stone is lying on top of two others they are prohibited because a large idolatrous monument is often erected within the precincts of another. *Or זו בצד זו.

Mishnah 2

[If a Jew] found on its head¹ [any] coins, clothing or objects, then these are permitted² [to him to take away]; but twigs with grapes, (or) garlands of ears of corn, (or) wine,³ (or) oil, (or) fine flour, or aught whatever the like of which is offered on the Altar⁴ are prohibited [to be made use of by a Jew].

משנה ב
מצא יבראשו מעות, כסות או כלים, הרי אלו מותרין; פרקלי ענבים, ועטרות של שבילים, יינות, ושמן, וסלתות, וכל דבר שכיוצא בו קרב על גבי המזבח, אסור.

1 Of a מרקוליס (see the preceding Mishnah). 2 Provided they are not there as offerings or to decorate the image. 3 Literally (or) wines, (or) oils, (or) fine flours. 4 Of the Temple.

Mishnah 3

If a garden or bath-house belonged to an idol,¹ such may be made use of [by Jews] if there be no need to pay [or offer thanks], but they may not be used if pay [or thanks] need to be offered. If [a garden or bath-house] belonged both to it [—the idol—] and to others, they may be used [by Jews] whether payment [or thanks must be tendered] or if there be no need [to tender] payment [or thanks].²

משנה ג
עבודת גלולים שהיה לה גינה, או מרחץ, נהנין מהן שלא בטובה, ואין נהנין מהן בטובה. היה שלה ושל אחרים, נהנין מהן בין בטובה ובין שלא בטובה.

1 In the case of idolatrous practices there is no dedication until the actual act of giving or offering is made. 2 Compare 34.

Mishnah 4

The idol of a heathen¹ is prohibited² forthwith,³ but that of an Israelite is not prohibited² provided it has not been worshipped. A heathen can disannul [by desecrating the

משנה ד
עבודת גלולים של ימצרי, אסורה מיד, ושל ישראל, אין אסורה עד שתיעבד. מצרי מבטל עבודת

sanctity of] his own idol or that⁴ of his fellow, but an Israelite can not disannul the idol of a heathen.⁵ If [a heathen] disannulled an idol, he has [also automatically] disannulled all appertaining to it; if he disannulled everything pertaining thereto, then these things that pertain to it are permitted,² but [the idol] itself is prohibited.³

גְּלוּלִים שָׁלוּ, וְשָׁל תְּבָרוֹ, וְיִשְׂרָאֵל
אֵין מְבַטֵּל עֲבֹדַת גְּלוּלִים יִשְׂרָאֵל
מִצָּרִי. הַמְּבַטֵּל עֲבֹדַת גְּלוּלִים
בֵּיתֵל מִשְׁמֹשֶׁה; בֵּיתֵל מִשְׁמֹשֶׁה,
מִשְׁמֹשֶׁה מוֹתְרִין, וְהִיא אֲסוּרָה.

1 Literally *Egyptian*. The term מִצָּרִי for *non-Jew, idolater*, is used perhaps because this *Mishnah* is based on *Deuteronomy* 7, 8, 18, 19, where reference to Pharaoh and Egypt is made in the three verses. 2 To a Jew to derive any benefit from it. 3 *i.e.*, as soon as it is made, even if it has not yet been worshipped. 4 *i.e.*, an idol belonging to both the Jew and the heathen. But the accepted ruling is that a non-Jew cannot desecrate an idol belonging to a Jew or even one belonging to both. Compare עֲבֹדָה יְרֵה 52b. 5 And not even if the heathen gave him permission to do so.

Mishnah 5

מִשְׁנָה ה

How does [a heathen] desecrate it?¹ If he cut off² the tip of its ear, [or] the point of its nose, [or] the end of its finger, or if he dented³ it⁴ even though he did not diminish its material, then he has disannulled [its sanctity by desecration]. If he spat⁵ into its face, [or] micturated⁶ before it, [or] dragged it⁷ about, or threw excrement⁸ at it, this is not disannulment [of its sanctity by desecration]. If he sold it or gave it as security,⁹ Rabbi¹⁰ says, He has disannulled [its sanctity by desecration], but the Sages¹¹ say, He has not disannulled [it].

כִּיצַד יִמְבַטֵּלָהּ? קָטַע רֹאשׁ אָזְנָה,
רֹאשׁ חוֹטְמָהּ. רֹאשׁ אֶצְבָּעָה,
פָּחַסָה, אֶף עַל פִּי שְׁלֵא חִסְרָה,
בְּטִלָּהּ. יָרַק בְּפָנֶיהָ, הִשְׁתִּין
בְּפָנֶיהָ, יִגְרָה, וְנָרַק בָּהּ אֶת־
הַצֹּאֵה, הָרִי זֶה אֵינָה בְּטִילָהּ.
מָכְרָה, אוֹ מִשְׁכָּנָה, יִרְבִּי אֹמְרִי
בֵּיתֵל, וְנִתְכַמִּים אֹמְרִים לֹא
בֵּיתֵל.

1 *i.e.*, annul the sanctity of an idol. 2 קָטַע [Kal] or קָטַע [Piel]. 3 Or *beat out of shape, smashed, battered*. 4 *i.e.*, its face. 5 יָרַק [Kal] or יָרַק [Piel]. 6 Or urinated. 7 יִגְרָה [Kal] or יִגְרָה [Piel]. 8 Or *filth*. 9 Or *pawn, pledge*. 10 His view is rejected. 11 Their opinion is accepted.

Mishnah 6

An idol whose devotees have abandoned it¹ in time* of peace is permitted,² but if in time* of war³ it is prohibited.² The pedestals for idolatrous statues⁴ for kings—these are permitted² since they were set up when the kings pass by.⁵

משנה ו

עבודת גלולים שהגזירה עובדיה,
בשעת שלום מותרת, בשעת
מלחמה אסורה. בימוסיאות של
מלכים הרי אלו מותרות, מפני
שמעמידן אותם בשעה שהמלכים
עוברים.

1 Or שהגזירה. It may be assumed that the worshippers had no further use for it. 2 To be made use of by Jews. 3 The idolaters may well have been in too great a hurry and confusion to escape and may have intended to return for it at an opportune occasion. 4 See 37. 5 For worship by them.

Mishnah 7

[Some Romans] asked the elders¹ [in Rome], 'If [God] have no desire for idolatry,² why³ does he not destroy it?' [The elders] made reply to them, 'If they worshipped a thing for which the world has no need, He would do away with it; but, behold, they worship the sun, (and) the moon, (and) the stars* and the planets,* shall He then make an end of His world because of fools?' They said to them, 'If so, let Him put an end to that which the world does not need and leave⁴ what the world does need'. [The elders] answered them, 'We should on our part only strengthen [the contention of] those that worship them⁵ since they would say, "Know that these are [true] deities,⁶ for, lo, they have not been destroyed" '.

משנה ז

שאלו את-הזקנים, אם אין רצונו
בבעבודת גלולים, למה אינו
מבטלה? אמרו להן אלו לדבר
שאין צורך לעולם בו היו עובדין,
היה מבטלו; הרי הן עובדין לחמה,
וללבנה, ולכוכבים, ולמזלות,
יאבד עולמו מפני השוטים? אמרו
להן אם כן יאבד דבר שאין צורך
לעולם בו, יניח דבר שצורך
לעולם בו. אמרו להן אף אנו
מחזיקין ידי עובדיהם של אלו,
שאומרים תדעו שהן אלוהות,
שהרי הן לא בטלו.

1 Compare מצער שני 5⁹, שבת 16⁸. 2 Or idols. 3 Or למה. 4 Or יניח. 5 The idolaters would not admit that the sun, moon, stars and planets were spared because the existence of the universe was maintained by their aid. 6 Plural of אלה. Or divinities, i.e., gods. *See INTRODUCTION.

Mishnah 8

משנה ח

[A Jew] may purchase [the contents of] a trodden vat¹ [of grapes] from an idolater² even though he [—the idolater—] took up the grapes in his hand and put [them] on the [grape-] heap, and it does not become [ritually forbidden] libation wine³ until it runs down into the [wine-] cistern.⁴ If [some] flowed into the cistern, what is in the cistern is prohibited [for use by a Jew], but the remainder* is permitted.

לוקחין ינת בעוטה מן-המצרי אף על פי שהוא נוטל בידו ונותן לתפוח, ואינו נעשה יין נסך עד שיירד לבור. ירד לבור מה-שֶׁבֶבֶר אָסוּר וְהִשָּׂאָר מוּתָר.

1 The grapes are first trodden in the vat or crushed in the press; the crushed grapes are then removed on to a pile; and the liquor is next run into a cistern or vat for further treatment. 2 See 44. 3 Popular pronunciation יין נסך. Wine of libation, wine known or suspected to have been dedicated or manipulated for idolatrous libations and therefore forbidden to be used by Jews for any purpose whatever. 4 This is not the accepted ruling, but the wine becomes יין נסך immediately it begins to run into the cistern. *Popular pronunciation והשאר.

Mishnah 9

משנה ט

[An Israelite] may tread¹ [grapes] with an idolater in a winepress but he may not cut [grapes] with him. If an Israelite were at work [cutting or treading grapes] in uncleanness, none may tread [in the winepress] nor cut [grapes] with him,² but one may help him to take [wine] casks³ to the winepress or to help him to bring [them] away from the winepress. If a baker were preparing [bread] in uncleanness, none may assist him² to knead or to roll [the dough], but he may aid him to take bread to the shopkeeper.⁴

ידורכין עם העובד גלולים בנת, אכל לא בוצרין עמו. ישראל שהוא עושה בטומאה, לא דורכין ולא בוצרין יעמו, אכל מוליכין עמו יתביות לגת, ומביאין עמו מן-הגת. נחתום שהוא עושה בטומאה, לא לשין ולא עורכין יעמו, אכל מוליכין עמו פת לפלטר.

1 Because this would be helping him to commit a transgression since he renders unclean the תרומות and מעשרות (see Appendix, Note 1) which he has to separate. 2 Since this would be tantamount to aid him to render unclean the תלה (see Appendix, Note 3) that he must separate for the כהן (priest). 3 Or jars. 4 Or, perhaps better, the baker's, the bakery shop.

Mishnah 10

If an idolater were found standing by the side of a wine cistern¹ [belonging to a Jew], and he had* a lien thereon,² [the wine] is forbidden [to the Jew],³ but if (he)⁴ had no (lien)⁴ thereon, [the wine] is permitted [for Jewish use]. If [an idolater] fell into the cistern and came up again,⁵ or if he measured it [to ascertain its depth and quantity] with a reed,* or if he flipped out a hornet⁶ with a reed,⁷ or if he slapped over the mouth of the fermenting barrel⁸—these cases all occurred—and [the Sages]⁹ said, [The wine] must be sold [to a non-Jew]; but R. Simon¹⁰ permits it [to be used by Jews]. If [an idolater] took the cask¹¹ [of wine] and (in his anger)¹² threw it into the cistern—this was a case that once happened—and [the Sages] declared [the wine] fit [for Jewish use].

משנה י
 עובד גלולים שנמצא עומד בצד
 יהבור של יין, אם יישלו עליו מלנה
 יאסור, אין לו (יעליו מלנה) מותר.
 נפל לבור ונעלה, ומדדו בקנה,
 התזו את הנצרעה בקנה, או
 שהיה מטפח על פי החבית
 מרותחת, בכל אלו, היה מעשה,
 ואמרו ימבר, ורבי שמעון מתיר.
 נטל את החבית וזרקה (בחמתו)
 לבור, זה היה מעשה והכשירו.

1 Or vat, receptacle for wine in the press. 2 i.e., the Jew had a loan from or was in debt to the non-Jew, and the latter had a right to control or to enforce a charge against the wine if the claim was not paid or satisfied. 3 Since the non-Jew may have touched the wine to test its quality. 4 Some consider עליו מלנה redundant. 5 i.e., he was dead and the corpse was brought up. 6 Literally the hornet. 7 He did not touch the wine with his hands. 8 i.e., he wiped away with his hands the froth or foam at the mouth of the wine jar to check the fermentation. 9 Their ruling is accepted. 10 His view is rejected. 11 Or jar, vessel, barrel. 12 This bracketed phrase or term is omitted in some editions. *See ADDENDA at the end of this Tractate. *Or ישלו.

Mishnah 11

[When a Jew] prepares the wine of an idolater in cleanness¹ and leaves it [in the meantime] in the charge [of the idolater] in a house open to the public domain, if there be* in the city both idolaters and Jews, [the wine] is permitted [for Jewish

משנה יא
 המטהר יינו של עובד גלולים
 ונותנו ברשותו בבית הפתוח לרשות
 הרבים, בעיר שיש בה עובדי
 גלולים וישראלים מותר, בעיר

use],² but if in the city there be only idolaters, the wine is prohibited [to a Jew] unless he placed a [Jewish] watchman [there]; and the watchman need not sit there and keep watch [without a break day and night], even if he go out and come in, [the wine] is allowed [for Jewish use].³ R. Simon⁴ ben Elazar says, It is all⁵ one whatever the domain of an idolater.⁶

שְׂכוּלָה עוֹבְדֵי גִלּוּלִים אָסוּר עַד שִׁוְשֵׁיב שׁוֹמֵר; וְאִין הַשׁוֹמֵר צָרִיף לְהִיזֵת יוֹשֵׁב וּמְשַׁמֵּר, אַף עַל פִּי שֶׁהוּא יוֹצֵא וְנִכְנָס מוֹתֵר. רַבִּי שְׁמַעוֹן בֶּן אֶלְעָזָר אָמַר (כָּל-) רְשׁוּת עוֹבֵד גִּלּוּלִים אַחַת הִיא.

1 So that the wine could be sold to Jews for their use, but he tenders no money to the non-Jew until the wine shall have been sold. 2 The idolater will not touch the wine so exposed for fear of losing the sale. 3 And there need be no apprehension that the non-Jew would touch the wine during the momentary absence of the Jewish watchman. All this refers to wine belonging to a non-Jew; but if a Jew left his own wine with a non-Jew, if there are no Jews in the town and no Jew was watching over it, such wine is forbidden to Jews. 4 His opinion is accepted. 5 כָּל is not given in the גְּמָרָא. 6 i.e., wine deposited with an idolater may be used by Jews only if there are Jews in the city and the wine is exposed to the public view or if a Jewish guardian is there to watch over it. *Or שִׁשׁ בָּהּ.

Mishnah 12

מִשְׁנָה יב

[If a Jew] prepare the wine¹ of an idolater in cleanness, and he leaves it in the charge [of the idolater],² and the latter³ wrote out for him [an acquittance, stating], 'I have received from thee payment [for the wine]', it is permitted⁴ [for use by Jews]. But if the Jew desire to remove it⁵ [—the wine—], and [the idolater] will not allow him⁶ [to do so] until he pays its price—such a case happened in Bethshean⁷—and the Sages declared [the wine] prohibited [for Jewish use].

הַמְטַהֵר יַיִנוֹ שֶׁל עוֹבֵד גִּלּוּלִים וְנִתְּנוּ יְבִרְשׁוּתוֹ, וְהִלָּה כּוֹתֵב לוֹ הַתְּקַבְּלָתִי מִמֶּךָ מְעוֹת מוֹתֵר. אָבֵל אִם יִרְצֶה יִשְׂרָאֵל לְהוֹצִיאֹ, וְאִינוֹ מְנִיחוֹ עַד שְׁתַּחַן לוֹ אֶת-מְעוֹתָיו, זֶה הִנֵּה מַעֲשֶׂה בְּבֵית שְׁאָן, וְאָסְרוּ חֲכָמִים.

1 To be sold to Jews. 2 Compare 4¹¹. 3 וְהִלָּה traditional reading. 4 If the door is open to the public gaze and Jews live in that town. See the preceding *Mishnah*. 5 The wine was in pledge to the non-Jew who had a lien upon it. Compare 4¹⁰. 6 Or מְנִיחוֹ. 7 Or *Beth-Shean, Scythopolis*, in Galilee.

CHAPTER 5

פָּרָק ה

Mishnah 1

If one¹ hired a [Jewish] labourer to assist him² with libation wine,³ his pay is forbidden,⁴ [but] if he hired him to perform with him some other work, then even if he said to him, 'Remove for me this cask of libation wine from [this] place to [that] place',⁵ his hire is permitted.⁶ If [an idolater] hired the ass [of a Jew] to bring on it libation wine, its hire is prohibited [to the Jew], [but] if he hired it to ride on it, then even if he put⁷ his wine-bag⁸ [of libation wine] upon it, its hire is permitted [to the Jew].

מִשְׁנָה א

הַשׂוֹכֵר אֶת-הַפּוֹעֵל לַעֲשׂוֹת עִמּוֹ בֵּינָן נֶסֶךְ. שָׂכְרוּ אֶסוּר, שָׂכְרוּ לַעֲשׂוֹת עִמּוֹ מִלֵּאכָה אַחֲרָת, אַף עַל פִּי שֶׁאָמַר לוֹ הַעֲבֵר לִיחֻבֵּית שֶׁל יֵין נֶסֶךְ מִמָּקוֹם לְמָקוֹם, שָׂכְרוּ מוּתָר. הַשׂוֹכֵר אֶת-הַחֲמוֹר לְהֵבִיא עָלֶיהָ יֵין נֶסֶךְ, שָׂכְרָה אֶסוּר, שָׂכְרָה לִישֵׁב עָלֶיהָ אַף עַל פִּי שֶׁהֵנִיחַ הַנְּכָרִי לְגִינוֹ עָלֶיהָ, שָׂכְרָה מוּתָר.

1 i.e., an idolater. 2 To fill vessels or to carry them from place to place. 3 See 48, **Note 3.** 4 He may not derive any benefit from the wages. 5 Perhaps in uniformity with מִמָּקוֹם the vocalization לְמָקוֹם is to be preferred. 6 This also holds good even if he said, 'For each cask shifted I will pay thee a *perutah*' (see וְרַעִים, Page 18f.); but the payment is forbidden to him if he said, 'I will give thee a hundred *perutahs* for a hundred casks shifted' and one cask contained libation wine. 7 Or שֶׁהֵנִיחַ. 8 לְגִין, *flask, flagon, bottle*, intermediate in size between כַּד, *arched or pouched vessel, jar, jug, pitcher*, and כוֹס, *cup, goblet*.

Mishnah 2

If libation wine¹ fell upon grapes, one may rinse them [with cold water] and then they are permitted,² but if they were split open, they are prohibited.^{2,3} (If⁴ [libation wine] fell on figs or on dates, and there was* sufficient to impart a [pleasant] flavour, they are prohibited.)² It once happened that Boethus⁵ ben Zonin brought dried figs in a ship and a cask of libation wine was broken and [the wine] fell upon

מִשְׁנָה ב

יֵין נֶסֶךְ שֶׁנָּפַל עַל גְּבֵי עֲנָבִים, יְדִיחֵן וְהֵן מוּתָרוֹת, וְאִם הָיוּ מְבוֹקְעוֹת אֶסוּרוֹת. (נֶפֶל עַל גְּבֵי תְּאֵנִים, אִו עַל גְּבֵי תְּמָרִים אִם יִשְׁבְּהֶם בְּנוֹתֵן טַעַם אֶסוּר.) מַעֲשֶׂה בְּבִייתוֹס בֶּן זֹנִין שֶׁהֵבִיא גְרוּגְרוֹת בְּסִפִּינָה וְנִשְׁתַּבְּרָה חֲבִית שֶׁל יֵין נֶסֶךְ וְנָפַל עַל

them; and he asked the Sages and they declared that [the figs] were permitted.⁶ This is the general principle: whatsoever acquires a [pleasant] flavour [from admixture with libation wine] is prohibited,² and whatever is not improved in its flavour [by the addition of libation wine] is permitted²—as, for example, when [libation wine] vinegar falls⁷ upon [hot or boiling] pounded beans⁸ [a Jew may eat them].

גְּבִיָּהוּ; וְשָׂאֵל לְחֻקֵּי הַתִּירוּם.
זֶה הַכֶּלֶל כָּל־שֶׁבִּהְנָאתוֹ בְּגוֹתָן
טַעַם, אָסוּר, כָּל־שֶׂאִין בִּהְנָאתוֹ
בְּגוֹתָן טַעַם, מוֹתֵר, כִּגוֹן חוֹמֵץ
שֶׁנֶּפֶל עַל גְּבִי הַתִּירוּם.

1 See 4³, Note 3. 2 For use by Jews. 3 Because the libation wine that mingled with the juices cannot be rinsed out. 4 This bracketed part is not given in the *Jerusalem* (or *Palestinian*) *Talmud*. 5 The founder of a sect בְּיִחוּסִין similar to the צְדוּקִים, Sadducees. 6 Jews could eat them. Wine spoils the flavour of dried figs. 7 Literally fell. 8 Or grits, groats. Wine or vinegar spoils their taste. But cold pounded beans mixed with wine—libation wine in this case—is not spoiled at first (although the flavour does deteriorate on heating). *Or יֶשֶׁ-בָּהֶם.

Mishnah 3

מִשְׁנָה ג

If an idolater were helping a Jew to take jars¹ of wine from one place to another (place), and [the wine] was presumed to have been watched, it is permitted² [to be used by Jews]; but if [the Jew] had informed him that he was going away, and he was absent a sufficient time for the other to pierce [the stopper of a jar] and then close up [the hole with clay] and let the clay dry,³ [the wine is prohibited to a Jew]. Rabban

עוֹבֵד גִּלּוּלִים שֶׁהָיָה מְעַבֵּיר עִם
יִשְׂרָאֵל יְבִדֵי יָיִן מִמְּקוֹם לְמִקּוֹם
אִם הָיָה בְּחֻקֵּי הַמִּשְׁתַּמֵּר מוֹתֵר;
אִם הוֹדִיעֵו שֶׁהוּא מִפְּלִיגָא, כְּדִי
שִׁישְׁתוּם וַיִּסְתוּם וַיִּגְוֹב. רַבֵּן שִׁמְעוֹן
בֶּן גַּמְלִיאֵל אוֹמֵר *כְּדִי שִׁיפְתַּח
וַיִּגְוֹף וְתִגְוֹב.

Simon⁴ ben Gamaliel says, [If the Jew were away] long enough* [for the other] to open [the jar] and close [it] up⁵ [with a new stopper], and for the clay [smearred over it] to dry, [the wine is forbidden to a Jew].

1 *i.e.*, stoppered jars. 2 Even if the Jew had been absent for some time but the heathen was not aware of it. 3 To conceal his dishonest act. 4 His opinion is accepted. 5 וַיִּגְוֹף, general form, or וַיִּגְוֹף, Aramaic or Chaldaic form. Assuming that the old stopper had been broken on removal. *See the next *Mishnah*.

Mishnah 4

If [a Jew] left¹ his wine in a waggon or in a ship,² and went by a short cut and entered a town and bathed, the wine is permitted³ [for Jewish use]; [but] if he told him [—an idolater—] that he would be absent, and he was away sufficiently long [for the idolater] to bore open [the plug of the wine container] and to restop [it] and for the clay [smearred over it] to dry, [the wine is prohibited to be used by a Jew]. Rabban Simon⁴ ben Gamaliel says, [If the Jew were gone] time enough [for the other] to open [the vessel] and re-close⁵ [it with a fresh stopper] and for the clay [spread over it] to dry, [the wine is forbidden for Jewish use]. [If a Jew] left an idolater⁶ in [his] shop, even though he went out and came in [the wine] is permitted [for Jewish use]; [but] if he informed him that he would be absent, [then if he were gone] for such length of time [to enable the other] to bore [through the plug] and close [it] up [as it was before] and let the clay [spread over it] dry, [the wine must not be used by a Jew]. Rabban Simon⁷ ben Gamaliel says, [If the Jew were absent] sufficient time [to allow the other] to open [the vessel] and restopper⁵ [it with another plug] and for the clay [smearred over it] to dry, [the wine is forbidden for Jewish use].

1 Or הַמַּיִתָּה. 2 Or boat. 3 Even if a non-Jew stayed behind with it. 4 His opinion is accepted. 5 See the preceding Mishnah. 6 Or non-Jew, heathen. 7 This view is accepted. *כְּדִי, construct, perhaps preferable to כְּדִי, absolute.

Mishnah 5

If [a Jew] were eating with him, [—an idolater—] at a table, and he put¹ a flask² [of wine] on the table [and] a flask [of wine] on the side-table,³ and he left⁴ the other [there] and went out, what [wine] is on

מִשְׁנֵה ד

הַמַּיִתָּה יֵיגוּ בְּקָרוֹן אוֹ בְּסִפִּינָה וְהֵלֵךְ לוֹ בְּקַפְנֹדֵרְיָא, וְכֹנֵס לְמַדְיָה וְרַחֵץ, יְמוּתָר; אִם הוֹדִיעֵו שֶׁהוּא מִפְּלִיג, כְּדִי שִׁישְׁתּוֹם וְיִסְתּוֹם וְיִגּוֹב. רַבֵּן יִשְׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר כְּדִי שִׁיפְתָּח וְיִגּוֹף וְתִיגּוֹב. הַמַּיִתָּה עוֹבֵד גְּלוּלִים בְּתַנּוֹת אַף עַל פִּי שֶׁהוּא יוֹצֵא וְנֹכֵס, מוּתָר; וְאִם הוֹדִיעֵו שֶׁהוּא מִפְּלִיג, *כְּדִי שִׁישְׁתּוֹם, וְיִסְתּוֹם, וְיִגּוֹב. רַבֵּן יִשְׁמְעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר כְּדִי שִׁיפְתָּח וְיִגּוֹף, וְתִגּוֹב.

מִשְׁנֵה ה

הִיָּה אוֹכֵל עִמּוֹ עַל הַשְּׁלֶחָן, וְיִהְיֶינָה לְיָגִינָה עַל הַשְּׁלֶחָן, לְיָגִינָה עַל הַדּוּלְבָקִי, וְיִהְיֶיחוּ יוֹצֵא, מֵהַשְּׁעָל הַשְּׁלֶחָן וְיִהְיֶיחוּ יוֹצֵא, וְיִהְיֶיחוּ יוֹצֵא.

the table is prohibited^{5, 6} and what [wine] is on the side-table is permitted^{5, 7}; and if [the Jew] had said to him, 'Mix⁸ [thy wine] and drink', [the wine] which is on the side-table is also forbidden.^{5, 9} Opened casks¹⁰ [of wine] are forbidden,⁵ and sealed ones [are prohibited⁵ if the Jew were absent] for sufficient time* [for the non-Jew] to open [a cask] and reseal¹¹ [it] and let [the clay smeared over it] dry.¹²

הַדּוֹלְבֵּקִי ; וְאִם אָמַר לוֹ
הָרִי מִזֶּגֶג וְשׁוֹתָהּ, אַף שֶׁעַל הַדּוֹלְבֵּקִי
אֶסְוֵר.¹⁰ חֲבִיּוֹת פְּתוּחוֹת אֶסְוֵרוֹת,
סְתוּמוֹת כְּדִי שֶׁיִּפְתַּח¹¹ וְיִגְוֶה
וְיִתְיַגֵּב.¹²

1 Or הַנִּיחָה. 2 The same as לִגְיָן; see 5¹, Note 8. 3 Or דְּלִיפְקִי, דְּלִיפְקִי, a three-legged table used as a side-table (or a toilet table) from which food and drink was served to the שְׁלֵחָן, dining-table. See עֲבוּדָה זָרָה, 69a; כְּלָיִם, 22¹, 24⁵, 25¹. 4 Or הַנִּיחָה. 5 For Jewish use. 6 Lest the non-Jew touched the wine. 7 The non-Jew would not be likely to leave the table to touch the wine on the side-table for fear that the Jew might come back and find him doing so. 8 מִזֶּגֶג, mix wine with water (spices, or honey); pour out the wine, fill the cup(s), offer drink. 9 Having received permission to help himself the non-Jew will not hesitate to touch the wine on the side-table in the other's absence. 10 Or jars, barrels. Where the non-Jew was left alone after having been told to help himself. 11 See 5³, Note 5. 12 This ruling of Rabban Simon ben Gamaliel is accepted. Compare 5⁴. *See preceding Mishnah.

Mishnah 6

מִשְׁנָה ו

If a reconnoitring troop of heathens¹ entered a city, in a time* of peace, opened† casks² [of wine] are prohibited,³ sealed ones are permitted;³ if it were a time of war, both the former and the latter are permitted³ since [the invaders] had no time to manipulate the wine for libation.⁴

בְּלִשְׁת עוֹבְדֵי גִלּוּלִים שֶׁנִּכְנְסָה
לְעִיר, בְּשֻׁעַת שְׁלוֹם, חֲבִיּוֹת
פְּתוּחוֹת אֶסְוֵרוֹת, סְתוּמוֹת
מִוִּתְרוֹת; בְּשֻׁעַת מִלְחָמָה אֵלּוּ וְאֵלּוּ
מִוִּתְרוֹת, לְפִי שְׂאִין פְּנָאֵי לְנֶסֶךְ.

1 Literally a band of marauders, idolaters. Compare בִּיצָא 21a. 2 Or barrels, jars. 3 To be used by Jews. 4 Compare שִׁבְת 41a. נֶסֶךְ, render wine נֶסֶךְ, forbidden by a non-Jew suspected of dedicating it for idolatrous purposes. *Or בְּשֻׁעַת. †Or open.

Mishnah 7

מִשְׁנָה ז

Jewish craftsmen to whom an idolater¹ sent a cask² of libation wine as their hire are permitted to say to

אוֹמְנֵינִי שֶׁל יִשְׂרָאֵל שֶׁשָּׁלַח לָהֶם
עוֹבֵד גִּלּוּלִים חֲבִיּוֹת שֶׁל יֵין נֶסֶךְ

him, 'Give us its worth in money', but [if they demanded its value in money] after it had come into their possession,³ it is prohibited.⁴ If one sold his wine to an idolater, and fixed its price before he measured⁵ [it into the utensil of the idolater], the money for it is permitted;⁶ but if he measured [it] out before he had fixed its price, the money [payment] for it is forbidden.⁷ If [a Jew] took the funnel and measured [wine through it] into an idolater's flagon,⁸ and again measured out [wine] into a Jew's flagon [using the funnel] and there remained* [in the rim of the funnel] a drop of wine⁹ [from that poured into the idolater's flagon], [the wine in the Jew's flagon] is prohibited^{10,11}. If

[a Jew] poured out [wine] from a vessel [belonging to himself] into [another] vessel [containing libation wine or held by an idolater], [the wine left in] that one from which he pours out is permitted,¹¹ [but the wine in] that one into which he pours is prohibited.¹¹

בְּשֶׁכֶּרֶן, מוֹתְרִים לֹמֵר לוֹ תֵּן לָנוּ
אֶת־דָּמִיָּה וְאִם מִשְׁנֹכְנֶסָה לְרִשְׁוֹתָן
יֵאָסוּר. הַמוֹכֵר יֵינֹו לְעוֹבֵד גְּלוּלִים,
פֶּסֶק עַד שֶׁלֹּא מֵדַד, דָּמִיּוֹ מוֹתְרִין;
מֵדַד עַד שֶׁלֹּא פֶּסֶק, דָּמִיּוֹ יֵאָסוּרִין.
וְטַל אֶת־הַמְשֻׁפָּךְ וּמֵדַד לְתוֹךְ
צְלוּחֵיתוֹ שֶׁל עוֹבֵד גְּלוּלִים וְחֹזֵר
וּמֵדַד לְתוֹךְ צְלוּחֵיתוֹ שֶׁל יִשְׂרָאֵל,
אִם יֵשׁ בּוֹ יַעֲכָבֵת יֵינֹו יֵאָסוּר.
הַמְעֵרָה מִכְּלֵי אֶל־כְּלֵי, אֶת־
שְׁעִירָה מִמֶּנּוּ מוֹתֵר, וְאֶת־שְׁעִירָה
לְתוֹכוֹ יֵאָסוּר.

1 Or *gentile, idolater*. 2 Or *jar, barrel*. 3 They would thus be selling libation wine. 4 To return the libation wine and demand payment. 5 Compare בְּחָרָא בְּבָא 57. 6 The wine becomes the non-Jew's property as soon as he receives it and the price to be paid is as a debt to the Jew. If the non-Jew now touches the wine it is no concern of the other that it has become libation wine. 7 In this case the wine is still the Jew's property, and since it has now become libation wine he may not receive money for it. 8 Or *flask* (a narrow-necked wide-bellied bottle). 9 יַעֲכָבֵת הֵן, literally *hindrance* (or *retention*) of wine. 10 The residue in the funnel had been contaminated by the libation wine in the non-Jew's flagon or by the non-Jew's (libation) flagon itself, and this remnant in turn defiled the Jew's wine next poured through the funnel. 11 For Jewish use. *Or יֵשׁ בּוֹ.

Mishnah 8

Libation wine is forbidden¹ [for any purpose whatsoever] and renders [other wine] in any quantity soever

מִשְׁנֵה ח

יֵינֹו נֶסֶךְ, יֵאָסוּר וְיֵאָסוּר בְּכָל שְׁהוּא.
יֵינֹו בֵּינֵן, וּמִים בְּמִים בְּכָל שְׁהוּא.

prohibited.¹ If [libation] wine were mingled with [permitted] wine, or if [libation] water were mixed with [permitted] water, in any quantity whatsoever, [the other is rendered

יין בְּמִים וּמַיִם בְּיַיִן, בְּנוֹתֵן טַעַם. זֶה הַכֶּלֶל מִיָּן בְּמִינוֹ בְּמִשְׁהוֹ, וְשֵׁלָא בְּמִינוֹ, בְּנוֹתֵן טַעַם.

prohibited].¹ If [libation] wine were admixed with [permitted] water, or [libation] water were commingled with [permitted] wine, the other is rendered forbidden¹ only if [there be sufficient] to impart a flavour. This is the general principle:† if any kind* [be mixed] with like kind§ in any quantity whatever, [it makes the other§ forbidden],¹ [but if one kind* be mingled] with another [different] kind,§ [the other§ is rendered prohibited¹ only if there be enough] to communicate a flavour.²

* That is valid or permitted. § That is invalid or prohibited.

1 For Jewish use. 2 But this ruling does not apply to the following case not connected with *libation* material: (a) milk, blood, carrion, *terefah*, creeping things—the mixture is not prohibited if the unclean is not more than $\frac{1}{60}$ of the clean; (b) בְּפוּרִים הִלָּה, תְּרוּמָה, הִלָּה—the mixture is permitted if the added prohibited material does not exceed $\frac{1}{100}$ of the quantity of the permitted material; (c) כְּלָאִים, עֲרָלָה—the mixture is not forbidden if the prohibited material is not more than $\frac{1}{200}$ of the quantity of the permitted material. †Popularly pronounced הַכֶּלֶל.

Mishnah 9

מִשְׁנָה ט

These are prohibited and [if mixed] in any quantity whatever they render prohibited [other things of like kind]: [a cask¹ of] libation wine, (and) an idol² (and) hides pierced over the heart,³ (and) the ox condemned to be stoned,⁴ (and) the heifer whose neck is to be broken,⁵ (and) the bird-offerings of a leper,⁶ (and) the hair-offering of a nazirite,⁷ (and) the first-born of an ass,⁸ (and) flesh [cooked] in milk,⁹ (and) the scapegoat,¹⁰ (and) unconsecrated beasts¹¹ slaughtered in the Temple Court; lo, these are forbidden and in any quantity whatsoever they render [other things of like kind if confused with them] forbidden.

אֵלוֹ אֲסוּרִין וְאוֹסְרִין בְּכָל-שֶׁהֵן יַיִן גִּסָּךְ יַעֲבֹדֶת גְּלוּלִים וְעֹרוֹת לְבוּבִין וְשׁוֹר הַגִּסְקָל וְיַעֲגָלָה עֲרוּפָה יַצְפוּרֵי מְצוּרַע וְשַׁעַר גִּזֵּיר, וּפְטָר חֲמוֹר, וּבָשָׂר בְּהֶלֶב, וְשַׁעִיר הַמִּשְׁתַּלֵּחַ, וְחוּלִין שְׁנֵשֶׁחֻמוֹ בַּעֲזָרָה, הָרֵי אֵלוֹ אֲסוּרִין, וְאוֹסְרִין בְּכָל שֶׁהֵן.

1 Or *jar, barrel*—confused with any number of other casks, jars or barrels of wine. 2 Confused with other non-idolatrous similar figures, pictures, etc. According to

Maimonides it refers to an idolatrous coin commingled with other coins. 3 Confused with other hides. See 2³. 4 Mixed up with other oxen. *Exodus* 21, 28. 5 If confused with other heifers. *Deuteronomy* 21, 4. 6 If mingled with other birds. *Leviticus* 14, 4-7. 7 If mixed up with other such bundles of hair. *Numbers* 6, 14, 15. **וְיִירֶי** 2⁵. 8 If, before being exchanged for a sheep, it is confused with other asses. *Exodus* 13, 13; 34, 20. 9 If the flesh was then mixed with other flesh. *Exodus* 23, 10; 34, 26. *Deuteronomy* 14, 21. 10 If mixed up with other goats. *Leviticus* 16, 22. **יִוְמָא** 41^a. 11 Confused with other beasts. **קָמָא קָמָא** 7².

Mishnah 10

מְשֻׁנָּה י

If libation wine fell into a vat [of wine], the whole of it is forbidden to be made use of [by a Jew]. Rabban Simon¹ ben Gamaliel says, All of it may be sold to an idolater save the worth of the libation wine therein.²

יֵין גִּסְתָּי שְׁנִפְלַל לְבוּר, כּוּלוֹ אָסוּר בְּהִנְאָה. רַבִּין שְׁמַעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר יִמְכַר כּוּלוֹ לְעוֹבֵד גִּלּוּלִים חוּץ מִדְּמֵי יֵין גִּסְתָּי שְׁבוּי.

1 His view is accepted in the case where the wine which fell in is **יָנָם** and not definite **נִסְךְ**. 2 *i.e.*, no charge must be made for the value of the admixed libation wine.

Mishnah 11

מְשֻׁנָּה יא

If an idolater coated a stone vat [for wine pressing] with pitch, [the Jew] may scour it¹ and it becomes clean. And [if the vat] were of wood, Rabbi² says, [The Jew] may scour it; but the Sages say, He must scale off the pitch [and then scour it to render it clean]. And [if the vat] were of earthenware, even though [the Jew first] scaled off the pitch,³ it is prohibited.⁴

גַּת שֶׁל אֲבָן שְׁוֹפְתָהּ עוֹבֵד גִּלּוּלִים, יִמְנַגְּבָהּ וְהִיא טְהוֹרָה. וְשֶׁל עֵץ רַבִּי אוֹמֵר יִנָּגַב; וְחַכְמַיִם אוֹמְרִים יִקְלוּף אֶת־הַנּוֹפֵת. וְשֶׁל חֶרֶס אֵף עַל פִּי יִשְׁקַלֶּף אֶת־הַנּוֹפֵת, הֲרִי וּוְ יִאָּסוּרָה.

1 With water and ashes to remove any wine from the coat of pitch. (The wine was first poured over the coating to remove the objectionable odour of the pitch.)

2 His view is rejected. 3 **שְׁקַלֶּף** [*Kal*] or **שְׁקַלֶּף** [*Piel*]. 4 For Jewish use to hold non-libation wine. The porous material absorbs the wine.

Mishnah 12

מִשְׁנֵה יב

[If a Jew] buy a utensil¹ from an idolater, that which it is the usage to immerse [in cold water to render it clean ritually] he must immerse, [that which ordinarily] is cleansed [ritually] with hot water must be scalded [to be rendered purified],² [that which it is customary] to make white hot in the fire [for ritual purification] he must make white hot in the fire [for that purpose]—a skewer³ and a grill⁴ must be made white hot in the fire, [but] a knife⁵ needs only to be polished⁶ and it becomes clean [ritually].

הַלֹּקֵחַ יְכִלִי תַשְׁמִישׁ מִן־הָעוֹבֵד גְּלוּלִים, אֶת־שֶׁדֶרְכוֹ לְהַטְבִּיל, יִטְבִּיל, לְהַגְעִיל, יִגְעִיל, לְלֶבֶן בָּאוּר, יִלְבֵּן בָּאוּר, הַשְּׁפוּד, יִהְיֶה אֶסְפָּלָא, מְלַבֵּן בָּאוּר, הַסְּפִין, שְׁפָה וְהִיא טְהוֹרָה.

1 Of metal, glass, or glazed earthenware. Literally *a utensil of use*. Or *plural* **כְּלִי תַשְׁמִישׁ**, *utensils*. 2 Compare **זְבָתִים** 117. 3 Or *spit*. Literally *the skewer*. 4 Or *gridiron*. Literally *the grille*. 5 Literally [*in the case of*] *the knife, one polished [it]* (or *rubbed [it]*). 6 By thrusting it into hard earth ten times, if it contains no indentations, and may then be used for cold foods as a temporary measure (**דִּרְךָ עֲרִיא'**); or else it is polished on a grindstone (only **בְּדִיעָבָר** but **לְכַתְחָלָה** requires **הַנְּעִלָה**) and may then be used for both hot and cold foods; and if it contains deep cuts and indentations it must be cleansed by being made white-hot. But if such a knife has been used (**בְּדִיעָבָד**) before being ritually cleansed the food so cut is permitted. 7 Or **עֲבוֹדַת כּוֹכָבִים** ***מַסְכַּת נְשִׁלְמָה מַסְכַּת**, TRACTATE AVODATH KOCHAVIM CONCLUDED. *Or **עֲבוֹדַת זָרָה** (see INTRODUCTION).

סְלִיק מַסְכַּת *עֲבוֹדַת כּוֹכָבִים

CONCLUSION OF TRACTATE AVODATH KOCHAVIM.

ADDENDA

[Additional Notes to this *Tractate*]

- 15, **Note 2.** The preponderance of opinion is inclined to forbid the sale of the articles enumerated in this *Mishnah* at all times.
- 15, **a white cock.** Whereas those who observe the **מְנַהֵג כְּפָרוֹת בְּעֶרְב יוֹם הַכִּפּוּרִים**, *the custom of the recital of the PRAYER OF ATONEMENT on [the morning of] the eve of the Day of Atonement*, prefer a white cock, which is a symbol of purity, they are forbidden to seek for or pay an excessive price for a white cock since that would imply following heathen practices as seen in our *Mishnah*.
- 410, **וּמִדְרוֹ בְּקֶנֶה**, **or if he measured it with a reed.** It is interesting to note that this is a modern problem. When the wine arrives from Israel, a measuring rod is inserted by the customs officials making the wine, according to this *Mishnah*, undrinkable for Jews. The more reliable firms send their own representative to do this and the customs officials are fully aware of, and accommodating to, the Jewish religious requirements in this matter.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry, no matter how small, should be recorded to ensure the integrity of the financial statements. This includes not only sales and purchases but also expenses, income, and transfers between accounts.

The second part of the document provides a detailed explanation of the accounting cycle. It outlines the ten steps involved in the process, from identifying the accounting entity to preparing financial statements. Each step is described in detail, with examples provided to illustrate the concepts.

The third part of the document discusses the various types of accounts used in accounting. It explains the difference between assets, liabilities, and equity accounts, and how they are classified. It also discusses the importance of understanding the normal balances for each type of account.

The fourth part of the document discusses the process of adjusting entries. It explains why adjustments are necessary and how they are recorded. It provides examples of common adjusting entries, such as depreciation, amortization, and accruals.

The fifth part of the document discusses the preparation of financial statements. It explains how the adjusted trial balance is used to prepare the income statement, balance sheet, and statement of owner's equity. It also discusses the importance of comparing the financial statements to the company's performance.

The sixth part of the document discusses the closing process. It explains how the temporary accounts are closed to the permanent accounts and how the closing entries are recorded. It provides examples of closing entries for each type of account.

The seventh part of the document discusses the importance of internal controls. It explains how internal controls help to prevent errors and fraud, and how they are implemented in a company. It provides examples of common internal controls, such as segregation of duties and authorization.

The eighth part of the document discusses the importance of ethics in accounting. It explains how accountants are expected to follow a code of ethics and how they should handle conflicts of interest. It provides examples of ethical dilemmas and how they should be resolved.

The ninth part of the document discusses the importance of communication in accounting. It explains how accountants should communicate effectively with their colleagues and clients, and how they should document their work. It provides examples of common communication scenarios and how they should be handled.

The tenth part of the document discusses the importance of continuous learning in accounting. It explains how accountants should stay up-to-date on the latest developments in the field and how they should seek out opportunities for professional growth. It provides examples of common learning activities and how they can be implemented.

מִסְכֵּת

אָבוֹת

TRACTATE
AVOTH

[BEING THE NINTH TRACTATE OF THE FOURTH ORDER OF
THE MISHNAH]

TEXT - INTRODUCTION - TRANSLATION - NOTES

By

PHILIP BLACKMAN, F.C.S.

MS. of this Tractate revised by
RABBI ISAAC WALLER, B.A.

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INTRODUCTION

אבות, *Avoth*, § or פְּרִקֵי אֲבוֹת, *Pirke Avoth*, § is the ninth מְסַכֵּת (*Tractate* or *Treatise*) of סֵדֶר נְזִיקִין (the *Fourth Order Nezikin*) of the מְשֻׁנָּה (*Mishnah*).

The term אבות 'Fathers', is the plural form of the Biblical substantive אב, and פְּרִקֵי אֲבוֹת means 'Chapters of the Fathers'.

It contains a collection of ethical maxims or rules and principles of conduct and aphorisms or precise moral precepts and principles (ascribed to some sixty Sages who lived during the period 300 B.C.E. to 200 C.E.), all of which have their origin or parallel in Scripture.

The *Tractate* is aptly designated **The Ethics of the Fathers**, and also even more appropriately **Sayings of the Fathers**, in keeping with its contents that are so eminently ethical in character.

This *Tractate* is given only in the תְּלִמּוֹד בְּבָבְלִי, *Babylonian Talmud*, but without גְּמָרָא.

There is a very voluminous extension—an homiletical exposition—of this *Tractate* under the title of אֲבוֹת דֵּרַי נָתָן, **The Sayings of R. Nathan**, which is incorporated in the *Appendix* of the fourth volume of the *Babylonian Talmud*.

The entire *Tractate* (together with an extra, sixth, Chapter, a בְּרִייתָא) is in comparatively simple attractive language, easily understood by the humblest Jewish reader, and is of such paramount practical interest and supremely moral importance that it has been incorporated in the *Liturgy* and is read on Sabbath afternoons during the summer months. The סְפָרָדִים have not followed this custom though in Spain the *Tractate* used to be read on Sabbath mornings. Among the אֲשְׁכַנְזִים these Chapters used to be read—probably the oldest custom—by some on the six Sabbaths between פֶּסַח and שְׁבוּעוֹת, but the more general practice is to read these (one Chapter on each Sabbath*) on all the Sabbaths between פֶּסַח and ראש הַשָּׁנָה.

The *Tractate* contains five Chapters, but in some *Mishnah* editions a sixth Chapter (which being a בְּרִייתָא, *Extraneous Mishnah*, forms no part of the *Mishnah*) is added, and, as already mentioned, is also included in the סֵדוּר (Daily Prayer Book). The title of this sixth Chapter is פְּרִקַּי קַנְיָן הַתּוֹרָה, *The Chapter of the Acquisition of the Law*, or קַנְיָן הַתּוֹרָה, *The Acquisition of the Law*, and it is also termed בְּרִייתָא דֵּרַי מֵאִיר, *The Boraitha of R. Meir*.

Chapters 1-4 are largely ethical and metaphysical; Chapter 5 is predominantly *Haggadah* (folk-lore); and Chapter 6 contains homiletical exhortations and is characteristically similar to the preceding Chapters.

In the Prayer Book each Chapter is preceded, as a prologue, by a passage from *10¹ סִיְהַדְרִין*, including a Scriptural quotation from *Isaiah 60, 21*, כָּל יִשְׂרָאֵל יֵשׁ לָהֶם חֵלֶק לְעוֹלָם הַבָּא, שֶׁאָמַר וְעַמּוֹ כָּלֵם צְדִיקִים לְעוֹלָם יִירָשׁוּ אֶרֶץ, נֶצֶר מְטַעֵי מַעֲשֵׂה יְדֵי לְהַתְּפָאֵר, *All Israel have a portion in the world to come, as it is said, And thy people shall be all righteous, they shall inherit the land for ever, the branch of My planting, the work of My hands, that I be glorified*, and concludes, as an epilogue, with a sentence from *3¹⁶ מִכּוֹת* followed by a quotation from *Isaiah 42, 21* (as given at the end of Chapter 6).

Note. The text given in the Prayer Book varies considerably from the *Mishnayoth* text in the numbering of some of the *Mishnahs* and in some terms and phrases; these discrepancies are indicated in the **Notes**.

* Sometimes it is necessary to read two Chapters on one or two Sabbaths before *ראש השנה* for completion of the whole *Tractate*.

§ Some prefer the orthography **Aboth**.

מִסְכֵּת

אבות

TRACTATE AVOTH

CHAPTER 1

פֶּרֶק א

Mishnah 1

מִשְׁנָה א

Moses received the Law¹ from Sinai and handed it down to Joshua, and Joshua to the elders,² and the elders to the prophets,³ and the prophets handed it down to the men of the Great Assembly.⁴ They said three things: Be deliberate in judgment,⁵ raise up many disciples, and make a fence⁶ round the Law.⁷

מֹשֶׁה קִבֵּל יְתוּרָה מִסִּינַי, וּמִסְרָהּ לַיהוֹשֻׁעַ, וַיהוֹשֻׁעַ לְזִקְנִים, וְזִקְנִים לְנָבִיאִים, וְנָבִיאִים מִסְרֻוֹהָ לְאַנְשֵׁי כְנֶסֶת הַגְּדוֹלָה. הֵם אָמְרוּ שְׁלֹשָׁה דְבָרִים, יִהְיוּ מִתּוֹנִים בְּדִין, וְהַעֲמִידוּ תַלְמִידִים הַרְבֵּה, וַעֲשׂוּ סִיָּג לַתּוֹרָה.

1 In this *Mishnah* the term *תּוֹרָה* refers to the *Oral Tradition* or *Oral Law* (*תּוֹרָה שְׁבִעֵל פִּה*); but it is also variously used for the *Pentateuch* (*תּוֹרָה שְׁבִכְתָּב*, *The Written Law*) and the entire *Scriptures* (*תְּלִצִּדָה* or *תּוֹרָה וְנְבִיאִים וְכַהוֹבִים*, *Pentateuch, Prophets and Hagiographa*). 2 *Joshua* 24, 31. The 'elders' were the 'Judges' of whom Eli was the last.* לְזִקְנִים would perhaps be preferable to זִקְנִים (but the difficulty arises with the *indefinite* form וְזִקְנִים). 3 *Jeremiah* 7, 25. Samuel was the first and Haggai, Zechariah and Malachi were the last of these prophets. 4 Or *Great Synagogue*, a body of one hundred and twenty elders, judges, prophets, sages, teachers and scribes who returned from exile with Ezra whose spiritual regeneration of the people they continued by drawing up and enacting new rules and regulations and restrictions and laid the foundation of the *Liturgy*. כְּנֶסֶת is the popular reading, but כְּנֻסָת (given in some Prayer Books) is grammatically the more correct form. 5 This was originally an injunction to judges to weigh facts and arguments and not pronounce hasty decisions. 6 סִיָּג in the Prayer Book. 7 *i.e.*, to draw up cautionary regulations to act as a check against the committal of transgressions. Compare תְּמִנָּה 16, חִזְקִין 110a, יְבֻמוֹת 20a. *See ADDENDA at the end of this *Tractate*.

Mishnah 2

Simon the Just¹ was one of the last survivors of the Great Assembly. He used to say, Upon three things is the world based:² upon the Law, upon [Divine] service,³ and upon the practice of charity.⁴

מִשְׁנַה ב
 יִשְׁמְעוֹן הַצַּדִּיק הָיָה מְשִׁירֵי כְּנָסֶת
 הַגְּדוֹלָה. הוּא הָיָה אוֹמֵר עַל שְׁלֹשָׁה
 דְּבָרִים הָעוֹלָם יְעוֹמֵד, עַל הַתּוֹרָה,
 וְעַל הָעֲבוֹדָה, וְעַל יְגִמִּילוֹת
 חֲסָדִים.

1 Either Simon ben Onias I (High Priest 310-291 B.C.E.), or, more probably, his grandson Simon II (High Priest 219-199 B.C.E.). 2 Compare *Mishnah* 18 of this Chapter. 3 In its original sense, *Temple service*. 4 Corresponding to *religion, divine prayer, and humaneness*. יְגִמִּילוֹת חֲסָדִים to all in need of help (not only to the habitual poor).

Mishnah 3

Antigonus of Socho¹ received [the tradition] from Simon the Just. He used to say, Be not like servants that minister² to the master on the condition of receiving a reward, but be³ like servants that minister² to the master without the condition of receiving a reward;⁴ and let the fear⁵ of heaven be upon you.⁶

*In some texts עַל מִנְתָּ שְׁלֵא.

מִשְׁנַה ג
 אַנְטִיגוֹנוֹס אִישׁ יְסוֹכוֹ קִבֵּל מִשְׁמְעוֹן
 הַצַּדִּיק. הוּא הָיָה אוֹמֵר אֶל תְּהִיוּ
 כְּעֹבְדִים הַמְּשַׁמְשִׁין אֶת־הָרֵב עַל
 מִנְתָּ לְקִבֵּל פְּרָס, אֲלֵא יְהִיוּ כְּעֹבְדִים
 הַמְּשַׁמְשִׁין אֶת־הָרֵב *שְׁלֵא עַל
 מִנְתָּ לְקִבֵּל פְּרָס; וְיֵהִי מוֹרָא שָׁמַיִם
 עֲלֵיכֶם.

1 Or *Soco*. In some texts, the Biblical Hebrew form שׁוֹכֹ. There are two towns of this name, both in *Judah*, one seven miles N.E. of Gath and the other ten miles S.W. of Ziph. See *Joshua* 15, 35. (See *Mishnah* 11.) 2 הַמְּשַׁמְשִׁים in the Prayer Book. 3 הָיוּ in some texts. 4 *viz.*, God must be served from pure motives. 5 *i.e.*, awe and reverence. 6 Compare בְּרִכּוֹת 5b.

Mishnah 4

Jose¹ ben² Joczer of Zeredah³ and Jose ben Jochanan of Jerusalem⁴ received [the tradition] from them.⁵ Jose ben Joezer⁶ said, Let thy house be a meeting-house for the wise⁷ and⁸ sit amidst the dust of their feet⁹ and⁸ drink in their words with thirst.

מִשְׁנַה ד
 יוֹסֵי בֶן יוֹעֶזֶר אִישׁ יְצִרְדָּה, יוֹסֵי
 בֶן יוֹחָנָן אִישׁ יְרוּשָׁלַיִם קִבְּלוּ מֵהֶם.
 יוֹסֵי בֶן יוֹעֶזֶר אוֹמֵר יְהִי בֵיתְךָ בַּיִת
 נֶעֱד לְחַכְמִים, וְנִהְיִי מֵתֹאבֵק בְּעַפְר
 רַגְלֵיהֶם, וְנִהְיִי שׁוֹתֵה בְצִמְאֹן אֶת־
 דְּבָרֵיהֶם.

1 These two belonged to the period of the זוגות, Pairs (see וְרַעִים, INTRODUCTION; פָּאָה 26; תְּגִיגָה 22). 2 The term בֶּן in the translations of this *Tractate* in the Prayer Book is given as *son*, but here *ben* is retained throughout in uniformity with *ben* in all the other *Tractates*. 3 A city in Manasseh (*I Kings* 11, 26; *II Chronicles* 4, 17; identical with צִרְדָּה, *Judges* 7, 22; probably the same as צִרְתָּן near Beth-Shean and Succoth, *Joshua* 3, 16). 4 See תְּגִיגָה 20a. 5 In some editions כִּמְנוּ. This refers to the two preceding Sages (in *Mishnah* 3), or, less probably, to the unnamed teachers in the period between Antigonus of Socho and Jose ben Joezer. 6 In some editions איש צִרְדָּה is added here. 7 Compare סִנְהֶדְרִין 100b, בְּרִכּוֹת 7b. 8 תְּהִיָּה in some texts. 9 Disciples as a rule used to sit on the floor or on a lower level before their teacher.

Mishnah 5

מִשְׁנָה ה

Jose ben Jochanan of Jerusalem said,¹ Let thy house be open wide,² and let the needy be members of thy household;³ and engage not in much gossip with womankind.⁴ They said this of one's own wife;⁵ how much more* [does this apply] to the wife of one's fellow! Hence⁶ the Sages have said, Whosoever⁷ a man engages in much gossip with womankind he brings evil⁸ upon himself, (and) neglects the study of the Law, and in the end will inherit Gehenna.⁹

יוֹסִי בֶן יוֹחָנָן אִישׁ יְרוּשָׁלַיִם אָמַר
יְהִי בֵיתְךָ פְתוּחַ לְרוֹחַהּ וְיִהְיוּ
עֲנִיִּים בְּנֵי בֵיתְךָ, וְאַל תִּרְבֶּה שִׁיחָה
עִם יְהֹאשָׁה. יְבֹאשְׁתוּ אָמְרוּ, *קַל
וְחֹמֵר בְּאִשְׁתׇּ חֲבֵרוֹ. מִכַּפָּאן אָמְרוּ
חֲכָמִים כָּל־זְמַן שֶׁאָדָם מִרְבֶּה
שִׁיחָה עִם הָאִשָּׁה גּוֹרֵם רָעָה לְעַצְמוֹ
וּבוֹטֵל מִדְּבַרֵי תוֹרָה וְסוֹפּוֹ יוֹרֵשׁ
גֵּיהֶנָּם.

1 Literally *says*. 2 As a sign of cordiality, welcome and hospitality (compare סִיבָה 92). 3 Hospitableness must be practised. 4 Protracted gossip leads to loose talk and lewdness. 5 Trivial talk with even one's own wife may lead to trouble. § 6 מִכַּפָּאן traditional reading. 7 In some texts כָּל־הַמִּרְבֶּה שִׁיחָה, *Whosoever engages in much gossip*. 8 The risk of immorality. 9 Or *Gehinnom* (גֵּיהֶנָּם), a glen to the S.W. of Jerusalem where Moloch was worshipped; it was used as a term for *purgatory*, *hell* (as opposed to עֲדֵן [עֵדֶן] where the wicked suffered punishment in the hereafter. *קַל וְחֹמֵר, *an inference a minori ad majus* (a conclusion from minor to major—and vice versa). §See the ADDENDA at the end of this *Tractate*.

Mishnah 6

מִשְׁנָה ו

Joshua ben Perachiah and Nittai¹ the Arbelite² received [the tradition] from them.³ Joshua ben Perachiah

יְהוֹשֻׁעַ בֶּן פְּרַחְיָה וְנִיטַי הָאֲרֵבֶלִי
קִבְּלוּ מֵהֶם. יְהוֹשֻׁעַ בֶּן פְּרַחְיָה

said,⁴ Procure thyself a teacher, (and) acquire unto thyself an associate,⁵ and⁶ judge all men in the scale of merit.⁷

יאומר, עשה לך רב וקנה לך חבר, ויהי דן את-כל-האדם לכהן יזכות.

1 In some texts נתיי. 2 These two were of the זוגות (see *Mishnah* 4 of this Chapter). ארבל, *Arbel, Arbela*, north of Tiberias and near Zepphoris in Galilee. 3 *i.e.*, the preceding. 4 Literally *says*. 5 See *Appendix, Note 12*. 6 ויהיה in some texts. 7 *i.e.*, charitably.

Mishnah 7

משנה ז

Nittai* the Arbelite said,¹ Keep thee far from an evil neighbour, (and) associate not thyself with the godless² and abandon not belief in retribution.³

ינתיי הארכלי יאומר הרחק משכן רע, ואל תחבר לרשע ואל תתאש מן-הפורענות.

1 See the preceding *Mishnah, Notes 1-4*. 2 Literally *wicked*. 3 *sc.*, when one sees the transgressors prosper the idea of Divine punishment must not be given up. Some render this *nevertheless yield not thyself to despair in view of retribution*. תפרענות in some texts. *נתיי in some texts.

Mishnah 8

משנה ח

Judah ben Tabbai¹ and Simon ben Shetach² received [the tradition] from them.³ Judah ben Tabbai said, Act not the part of the counsel,⁴ (and) when the parties to a cause⁵ stand before thee let them be in thine eyes as wicked,⁶ but when they have departed from thy presence let them be regarded as innocent⁷ so soon as they have acquiesced in the verdict.⁸

יהודה בן טבאי, ישמעון בן שטח קבלו מהם. יהודה בן טבאי אומר אל תעש עצמה בעורכי הדיינין, וכשיהיו בעלי דינים עומדים לפניך יהיו בעיניך כרשעים, וכשנפטרים מלפניך יהיו בעיניך כזכאין כשקבלו עליהם את-הדין.

1 טבאי in some texts. 2 They belonged to the זוגות (see *Mishnah* 4 of this Chapter). 3 *sc.*, the foregoing. 4 One must not attempt to influence the judges. הדיינים in some editions. 5 הדין in some texts. 6 *i.e.*, as guilty. 7 כזכאין in some texts. 8 A defendant must not be suspected as a robber nor the sworn witness as a liar once a case is settled (see שבת 97a, 127b).

Mishnah 9

Simon ben Shatach said, Be¹ most searching in the examination of (the) witnesses, and be² heedful of thy words,³ lest therefrom they learn to utter falsehood.

מִשְׁנֵה ט
שְׂמַעוֹן בֶּן שַׁטַּח אוֹמֵר יְהוֹי מְרַבֵּה לְחַקֹּר אֶת־הָעֵדִים, יוֹהוִי זָהִיר בְּדַבְרֵיהֶ, שְׂמָא מִתּוֹכֶם יִלְמְדוּ לְשַׁקֵּר.

1 In some texts, הָיָה. 2 וְהָיָה in some texts. 3 Not to suggest to a witness by an injudicious remark to distort and falsify his evidence.

Mishnah 10

Shemaiah and Abtalion¹ received [the tradition] from them.² Shemaiah said, Love labour,³ (and) hate lordship⁴ and seek not intimacy with the ruling powers.⁵

מִשְׁנֵה י
שְׁמַעְיָה וְאַבְטַלְיֹון קִבְּלוּ מֵהֵם. שְׁמַעְיָה אוֹמֵר אָהֵב אֶת־הַמְּלָאכָה, וְשִׂנְאָ אֶת־הַרְבָּנוּת, וְאַל תִּתְנַדַּע לְרִשׁוֹת.

1 They belonged to the זוגות (see *Mishnah* 4 of this Chapter). 2 *viz.*, the preceding. 3 Literally 'the labour.' Manual labour was not to be despised—in fact it was laid down as a virtuous necessity for a man to train his son a handicraft (compare 21 קרישין). 4 Compare הוריות 10a; ראש השנה 17a; יומא 6b. 5 When having business transactions or otherwise (compare עירובין 41b; פסחים 113a).

Mishnah 11

Abtalion said, Ye sages, be cautious of your words,¹ lest ye incur the penalty of exile and be banished to a place of evil waters² [whereof] the disciples that come after you drink and die, and the Heavenly Name be profaned.³

מִשְׁנֵה יא
אַבְטַלְיֹון אוֹמֵר חֲכָמִים הִזְהָרוּ בְּדַבְרֵיכֶם, שְׂמָא תַּחֲבוּבו חוֹבַת גְּלוּת, וְתַגְּלוּ לְמָקוֹם יְמִים הָרָעִים, וְיִשְׁתּוּ הַתְּלִמִּידִים הַבָּאִים אַחֲרֵיכֶם וְיִמְוֹתוּ, וְנִמְצָא שֵׁם שְׁמַיִם מִתְחַלְּלִי.

1 *viz.*, that their teaching should be most precise and unequivocal and leave no room for misrepresentation and heterodoxy. 2 Referring to Alexandria in Egypt where the Jews fostered Hellenistic Judaism and heresy. 3 In illustration the commentators refer to *Mishnah* 3 of this Chapter that the teaching of Antigonos of Socho was misrepresented by two of his disciples, Zadok (צדוק) and Boëthus (בִּייתוֹס), who taught that there is no immortality of the soul and no reward in the hereafter and led to the foundation of the two anti-Pharisaic parties, the *Sadducees* (צדוקים) and *Boëthusians* (בִּייתוֹסִין).

Mishnah 12

משנה יב

Hillel and Shammai¹ received [the tradition] from them.² Hillel said, Be³ thou of the disciples of Aaron, loving peace, and pursuing peace, loving [thy] fellow-creatures,⁴ and drawing them nigh to the Law.⁵

הֵלֵל וְשַׁמַּאי קִבְּלוּ יִמְהָם. הֵלֵל אָמַר יְהוֹי מִתְּלִמְדָיו שֶׁל אַהֲרֹן, אוֹהֵב שְׁלוֹם, וְרוֹדֵף שְׁלוֹם, אוֹהֵב אֶת-הַבְּרִיּוֹת, וּמְקַרְבֵּן לַתּוֹרָה.

1 The last and most renowned of the זוגות (see Mishnah 4 of this Chapter). 2 The foregoing (see יומא 32b, שבת 31a). 3 הָיָה in some texts. 4 Irrespective of race or creed. Compare 1¹⁵, 2¹⁰, 4^{1,3}, 6¹. 5 To an understanding of the existence of One God and the recognition and practice of His just moral laws.

Mishnah 13

משנה יג

He used to say, A¹ name made great is a name² destroyed;³ (and) he that adds not to his [store of] knowledge decreases it;⁴ (and) he who studies⁵ not is deserving of death;⁶ and one who makes wordy use of the crown [of the Law]⁷ shall waste away.⁸

הוּא הָיָה אָמַר יִגַּד שְׁמָא, יֵאָבֵד שְׁמִיָּה; וְדָלָא מוֹסִיף יִסְיֵף; וְדָלָא יִלְיֵף קִטְלָא חֲזִיב; וְדִשְׁתַּמֵּשׁ יִבְתָּנָא חֲלָף.

1 These sayings by Hillel are in *Aramaic* (compare 26, 522, 23). 2 In some editions שְׁמָא. 3 The ambitious seeker after fame is liable to lose his reputation. 4 יִסְיֵף in some texts. 5 Some render it *teaches* (from the *Piel* form of לָיַף). 6 יִלְיֵף in some texts. 7 Compare יומא 4¹, 38b. 8 *i.e.*, makes use of his knowledge for self-advancement or for non-moral and non-spiritual advantage. In some editions וְדִאֲשַׁתְּמֵשׁ. 8 *i.e.*, he will abandon his faith and his people from whom he will disappear as if wasted away.

Mishnah 14

משנה יד

He¹ was [also] wont to say, If I am not for myself, who will be for me?² And if I am for mine own self, what am I?³ And if not now, when [then]?⁴

יְהוּא הָיָה אָמַר אִם אֲצִין אֲנִי לִי מִי לִי? וְכִשְׂאֲנִי לְעַצְמִי מָה אֲנִי? וְאִם לֹא עַכְשָׁיו יֵאִמְתִּי?

1 *sc.*, Hillel. 2 *i.e.*, one can only attain virtue through his own strivings. 3 Selfishness and disregard of others are traits of inhumanity. 4 Moral duties must be carried out as occasions arise and must not be postponed, lest the opportunities pass by.

Mishnah 15

Shammai said, Make thy [study of the] Law a fixed duty,¹ say little and do much,² and³ receive every man with a cheerful countenance.⁴

מְשֻׁנָּה טו
שָׁמַי אֹמֵר עֲשֵׂה תוֹרָתְךָ יִקְבַּע,
אֲמֹר מְעַט וַעֲשֵׂה יִהְיֶה יוֹהוּהוּ
מְקַבֵּל אֶת-כָּל-הָאָדָם בְּסִבֵּר
יְפֹתֵי יָפוֹת.

1 *viz.*, at regular periods. 2 Compare נִוֵּר 6b. 3 נְהוּי in some editions. 4 Showing friendliness in all transactions and on all occasions. Compare 112, 210, 312, 41, 3.

Mishnah 16

Rabban Gamaliel¹ said, Provide thyself a teacher,² (and) relieve thyself of doubt, and accustom not thyself to tithe by conjecture.³

מְשֻׁנָּה טז
רַבֵּן גַּמְלִיאֵל אֹמֵר עֲשֵׂה לְךָ רֵב
וְהִסְתַּלַּק מִן-הַסֵּפֶק, וְאַל תִּרְבֶּה
לַעֲשׂוֹת אֲוָמְדוֹת.

1 Gamaliel I, the grandson of Hillel (some take him to be the son of Hillel). See שַׁבָּת 15a. 2 Compare *Mishnah* 6 of this Chapter. Here the reference is to a scholar or judge who is urged to consult another authority before formulating any decisions on legal questions. 3 Compare תְּרוּמוֹת 46. There must be no guesswork in apportioning the תְּרוּמוֹת and מַעֲשְׂרוֹת (see *Appendix, Note* 1).

Mishnah 17

Simon his son¹ said, I was brought up all my life amongst the Sages and I have found naught so essentially good as silence,² (and) not the study [of the Law] is of fundamental import³ but the practice [thereof],⁴ and whosoever is profuse of words occasions sin.⁵

מְשֻׁנָּה יז
יְשֻׁמְעוֹן בְּנוֹ אֹמֵר כָּל-יָמַי גְּדַלְתִּי
בֵּין הַחֲכָמִים וְלֹא מִצָּאִיתִי לְגוֹף טוֹב
אֲלָא שְׁתִּיקָה, וְלֹא הִמְדִּירֵשׁ הוּא
הָעֵינָר אֲלָא הַמַּעֲשֵׂה, וְכָל
הַמְרַבֵּה דְבָרִים מְבִיא חֲטָא.

1 R. Simon the son of Rabban Gamaliel. 2 Compare *Proverbs* 17, 28; בָּבָא קַמָּא 117a; מְצִיעָא 41; בָּבָא מְצִיעָא 41. In some texts מְשִׁתִּיקָה instead of אֲלָא שְׁתִּיקָה. 3 הוּא הָעֵינָר instead of עֵינָר in some texts. 4 Theory must be followed by practice; but correct practice cannot be achieved without the understanding of the underlying theoretical principles. Compare 39, 17, 514; כְּתוּבוֹת 7a; יוֹמָא 61. 5 Compare *Proverbs* 10, 19; גִּיטִין 31; חוּלִין 63b.

Mishnah 18

Rabban Simon¹ ben Gamaliel said, By three things is the world sustained:² by judgment, (and) by truth,³ and by peace, as it is said,⁴ *execute the judgment of truth and peace in your gates.*

מִשְׁנֵה יח
 יִרְבֵּן שְׁמֵעוֹן בֶּן גַּמְלִיאֵל אוֹמֵר עַל
 שְׁלֹשָׁה דְבָרִים הָעוֹלָם יְעוֹמֵד, עַל
 הַדִּין, וְעַל הָאֱמֶת, וְעַל הַשְּׁלוֹם,
 אֲשֶׁר אָמַר אֱמֶת וּמִשְׁפַּט שְׁלוֹם, שִׁפְטוּ
 בַּשַּׁעֲרֵיכֶם.

1 Son of Gamaliel II and father of Rabbi; some identify him with Simon in the preceding *Mishnah*. 2 Compare *Mishnah* 2 of this Chapter. In some texts, קִיָּם instead of עוֹמֵד. 3 The order in some texts is וְעַל הַדִּין וְעַל הָאֱמֶת, *by truth, (and) by judgment*. 4 See *Zachariah* 8, 16.

CHAPTER 2

פָּרֶק ב

Mishnah 1

Rabbi¹ said, Which² is the right path that a man should choose³ for himself? Any that is an honour to those that pursue it,⁴ and brings him honour from mankind.⁵ (And) be⁶ heedful [in the performance of a seemingly] light precept⁷ as of a grave one, for thou knowest not the grant of the reward of each precept. (And)⁸ ponder the loss incurred through [the non-fulfilment of] a precept against its reward [secured by the observance thereof], and the gain [that ensues] from transgression⁸ against its loss [which is involved]. (And) contemplate⁹ three things,¹⁰ and thou wilt not¹¹ come within the power of transgression:⁸ know what is above thee—an [all-] seeing eye,¹² and an [all-] hearing ear,¹² and all thy deeds recorded¹³ in a book.¹⁴

מִשְׁנֵה א
 רַבִּי אוֹמֵר אֵיזוֹהוּ דֶּרֶךְ יִשְׂרָאֵל
 שִׁיבוֹר לוֹ הָאָדָם? כָּל־שֶׁהִיא
 תַּפְאֲרַת יְלֻעוּשִׁיהָ וְתַפְאֲרַת לוֹ מִן־
 הָאָדָם. יוֹהִי זְהִיר בְּמִצְוָה קְלָה
 כְּבַחֲמוּרָה, שְׂאִין אֶתָּה יוֹדֵעַ מִתֵּן
 שְׂכָרָן שֶׁל מִצְוֹת. יוֹהִי מְחַשֵּׁב הַפְסֵד
 מִצְוָה כְּנֹגֵד שְׂכָרָה, וְשֹׂכֵר עֲבִירָה
 כְּנֹגֵד הַפְסָדָה. וְהִסְתַּכַּל בְּשִׁלְשָׁה
 דְּבָרִים וְאֵי אֶתָּה בֵּא לִיְדֵי עֲבִירָה,
 דַּע מֵה־לְמַעַלָּה מִמֶּךָ, עֵינַי רֹאֶה
 וְאֹזְנוֹן שׁוֹמֵעַת, וְכָל־מַעֲשֶׂיךָ
 בְּסֵפֶר וְנִכְתָּבִין.

1 Judah ha-Nasi (135-219 c.E.). 2 וְאֵיזוֹ in some texts. 3 Compare 3¹⁹. 4 Some prefer the form לְעוֹשֶׂיהָ and render it *to its Maker, sc.*, meeting with the approbation

of the Almighty. 5 See 3¹³, 4¹⁷. 6 יהוה in some texts. 7 Compare 4². 8 עברה in some editions. 9 הסתכל in some editions. 10 Compare 3¹, חגיגה 2¹. 11 In some texts [אין]. 12 Referring to the Omniscient. 13 וּבְקִטְבִים in some texts. 14 Compare 3²⁰; Exodus 32, 32; Malachi 3, 16; Daniel 7, 10; note the frequent forms בְּסִפּוֹר נְאוּלָה וְשׁוּעָה, בְּסִפּוֹר הַחַיִּים, etc., in the Liturgy.

Mishnah 2

Rabban Gamaliel the son of R. Judah¹ the Prince said, Excellent is the study of the Law in combination with some worldly pursuit,² for the exertion entailed by them both makes thoughts of sin to be forgotten. All study of the Law without toil must eventually prove futile³ and bring iniquity in its train.⁴ (And) let all that labour⁵ with [the interests of] the congregation labour⁶ with them from heavenly motives, for then the merit of their fathers supports them,⁷ and their righteousness endures for ever.⁸ 'And as for you', [will God then say,] 'I will bestow on you great reward,⁹ as if¹⁰ you had [yourselves] wrought [it all]'.

מְשֻׁנָּה ב
 רִבֵּן גַּמְלִיאֵל בְּנוֹ שֶׁל רַבִּי יְהוּדָה
 הַנְּשִׂיא אֹמֵר, יִפֶּה תַלְמוּד תּוֹרָה
 עִם דְּרֹךְ אָרֶץ, שְׂיִגִיעַת שְׁגִיָּהם
 מִשְׁכַּחַת עֵזוֹן. וְכָל תּוֹרָה שֶׁאֵין עִמָּה
 מְלָאכָה, סוֹפָה בְּטִלָּה, וְגוֹרְרַת
 עֵזוֹן. וְכָל הָעֲמֵלִים עִם הַצְּבוּר,
 יִהְיוּ עֲמֵלִים עִמָּהֶם לְשֵׁם שָׁמַיִם,
 שְׂזֻכוֹת אֲבוֹתָם מְסִיעֵתָן וְצַדִּיקָתָם
 עוֹמְדָת לְעַד. וְאַתֶּם מַעֲלָה אֲנִי
 עֲלֵיכֶם יִשְׁכַּר הַרְבֵּה ¹⁰כְּאֵילוֹ
 עֲשִׂיתֶם.

1 רבי (see the foregoing Mishnah). Compare שבח 32b, קדושין 63a. 2 Some authorities render it with good manners (meekness and morality). 3 Study is of no avail without material support; compare 3¹⁷, אם אין קמח אין תורה. 4 Poverty leads to sin. 5 העוסקים, that occupy themselves, in some texts. 6 In some texts, עוסקים. 7 In some texts, מְסִיעֵתָם. 8 Effort imbued with righteousness leads to permanent good result. 9 Some render this by the less definite and less direct: 'I will account you worthy of great recompense.' 10 כְּאֵילוֹ in some texts.

Mishnah 3

Be on your guard¹ [in your relations] with the ruling power, for they bring no man near to them except for their own interests;² seeming to be friends such time as it is to their own advantage, they stand not with a man in the hour of his need.

מְשֻׁנָּה ג
 יִהְיוּ זְהִירִין בְּרִשׁוֹת שְׂאֵין מְקַרְבִּין
 לוֹ לְאָדָם אֲלֵא לְצוּרָה עֲצָמָן;
 נִרְאִין כְּאוֹהֲבִין בְּשַׁעַת הַנְּאֻמָּה, וְאִין
 עוֹמְדִין לוֹ לְאָדָם בְּשַׁעַת דְּחִיקוֹ.

1 This admonition, applicable at all times, was particularly pertinent in the period of the Roman occupation and administration of the Holy Land. Or וְהִירִים in some texts (and similarly here עֲצָמָם, מְקַרְבִּים, גְּרָאִים, בְּאוֹהֲבִים, הַנְּאֻתָם, עוֹמְדִים, הַנְּאֻתָם).
2 In some texts לְצַרְרָה.

Mishnah 4

משנה ד

He¹ used to say, Do His will as though it were thy will² that He may carry out thy will as if it were His will.³ Nullify thy will before His will⁴ in order that He may annul the will of others⁵ before thy will. Hillel⁶ said, Separate not thyself from the community;⁷ (and) trust not in thyself until the day of thy death;⁸ (and) judge not thy fellow until thou art come into his position;⁹ (and) utter not aught that can not be¹⁰ [straightway] understood,¹¹ [on the assumption] that it will eventually be understood; and say not, 'When I have leisure I will study'—perchance thou wilt have no leisure.¹²

יְהוָה הָיָה אוֹמֵר, עֲשֵׂה רְצוֹנוֹ
כְּרְצוֹנְךָ, כְּדִי שִׁיעֲשֵׂה רְצוֹנְךָ
כְּרְצוֹנוֹ. בְּטֵל רְצוֹנְךָ מִפְּנֵי רְצוֹנוֹ,
כְּדִי שִׁיבְטֵל רְצוֹן אֲחֵרִים מִפְּנֵי
רְצוֹנְךָ. הִלֵּל אוֹמֵר אֶל תִּפְרוֹשׁ.
מִן־הַצְּבוּר; וְאַל תֵּאֱמַן בְּעַצְמְךָ
עַד יוֹם מוֹתְךָ; וְאַל תִּדְרִין אֶת־
חֲבֵרְךָ עַד שֶׁתִּגִּיעַ לְמִקְוָמוֹ; וְאַל
תֵּאֱמַר דְּבַר שֵׁשׁ אֶפְשָׁר לְשִׁמוֹעַ
שְׂסוּפוֹ לְהִשְׁמַע; וְאַל תֵּאֱמַר
לְכַשְׁאֲפֹנָה אֲשֶׁנָּה, שְׂמָא לֹא תִפְנֶה.

1 Rabban Gamaliel. 2 One should give ready and joyful obedience to God.
3 Compare בְּרָכוֹת 35b. 4 *i.e.*, one should be heedful to observe strictly God's commandments. 5 *viz.*, those who seek to act wrongly. 6 In the Prayer Book *Mishnah* 5 begins here. 7 *viz.*, cutting oneself off from the community leads to the abandonment of the Jewish way of life. Compare מְצִיעָא 86b, תַּעֲנוּחַ 11a.
8 *i.e.*, the only safe way of life lies in the Law. Compare בְּרָכוֹת 29a; יוֹמָא 38b, יוֹטִין 68b; עִירוּבִין 27a. 9 *viz.*, one must not pass judgment without full knowledge of all the circumstances. 10 An alternative reading is שֶׁאֶפְשָׁר (*sc.*, instead of (אִי אֶפְשָׁר) which would suggest the rendering 'and disclose not [forthwith] aught that can be kept a close secret [and should not be revealed] on the plea that it must be ultimately divulged'. 11 *i.e.*, there must be no room for doubt or uncertainty. 12 Compare 14.

Mishnah 5

משנה ה

He¹ used to say, An empty-minded² man doth not fear sin, nor can an ignorant man be pious, nor can the

יְהוָה הָיָה אוֹמֵר אֵין בּוֹר יִרָא חַטָּא
וְלֹא עִם הָאֲרִיץ חֲסִיד, וְלֹא הַבְּיָשָׁן

diffident man³* learn,⁴ nor can the hot-tempered man⁵ teach, nor can one who occupies himself overmuch in business grow wise;⁶ and in a place[§] where there are no [competent] men strive to be an [authoritative] man.⁷ * הַבַּיִשָּׁן in some texts.

לִמְדָה, וְלֹא הִתְקַפְּדוֹן מִלְמֵד, וְלֹא כָל-הַמְרַבֵּה בְּסִחוּרָה מִחֻכִּים; וּבְמָקוֹם שֶׁאֵין אָנָשִׁים, הַשְׂתַּדְּל לְהִיּוֹת אִישׁ.

§ Perhaps וּבְמָקוֹם.

1 *Mishnah* 6 begins here in the Prayer Book. 'He' refers to Hillel. 2 Or *uneducated, uncultured, unmannered*; some prefer the meanings *brutish, ruffianly*. 3 Popular—faulty—reading, בּוֹר. 4 Or *shamefaced, bashful*. He is too shy to ask for his difficulties to be made clear. 5 Or *impatient, impetuous, choleric, passionate*. The quick-tempered teacher will not be successful in his teaching for the pupils fear to ask him any questions. Compare פְּסָחִים 66b. 6 A man must find leisure to study the Law. Compare עִירֵיבֵיץ 55a. 7 *i.e.*, one must perform necessary duties if there is none else more qualified to do so or to co-operate. Compare בְּרִכּוֹת 28b.

Mishnah 6

Moreover,¹ he saw a skull² floating on the surface of the water [and] said to (it),³ 'Because⁴ thou hast drowned⁵ [others], they have drowned thee, and, at the last, they who have drowned thee shall themselves be drowned.'⁶

מִשְׁנָה ו
יֵאָדָּם הוּא רָאָה גּוֹלְגֶלֶת אַחַת שְׂצָפָה עַל פְּנֵי הַמַּיִם, אָמַר (לָהּ) עַל דְּאִטְפַּת אֲטַפּוּךְ וְסוּף מְטִיפֶיךָ יִטּוּפוּן.

1 *Mishnah* 7 commences here in the Prayer Book. 'He' refers to Hillel. 2 In some texts גּוֹלְגֶלֶת. 3 *לה* is considered redundant by some. Hillel evidently knew the man and his character whose skull it was. 4 This last part is in *Aramaic* (compare 113, 522, 23). 5 In some texts, דִּיאִטְפַת אֲטִיפּוּךְ. 6 Compare בְּרִכּוֹת 5b.

Mishnah 7

He¹ used to say, The more flesh, the more worms;² the more possessions, the more anxiety; the more wives,³ the more witchery;⁴ the more maid-servants,⁵ the more lasciviousness; the more menservants,⁶ the more robbery;⁷ the more [study of] the Law, the more life;⁸ the more [academic] schooling, the more

מִשְׁנָה ז
הוּא הָיָה אוֹמֵר מְרֻבָּה בֶּשֶׁר מְרֻבָּה רֵמָה; מְרֻבָּה נְכֻסִים, מְרֻבָּה דְּאָנְוָה; מְרֻבָּה נָשִׁים, מְרֻבָּה כְּשָׁפִים; מְרֻבָּה שְׂפָחוֹת, מְרֻבָּה זְמָה; מְרֻבָּה עֲבָדִים, מְרֻבָּה יָגוּל; מְרֻבָּה תוֹרָה, מְרֻבָּה חַיִּים; מְרֻבָּה יְשִׁיבָה, מְרֻבָּה

balance, and Eliezer ben Hyrcanus in the other scale, he would outweigh them all. Abba Saul said in his name, If all the Sages of Israel were in one scale of a balance, and also R.²⁰ Eliezer ben Hyrcanus with them, and R.²⁰ Elazar ben Arach in the other scale, he would outweigh them all.²¹

מֵאֲזוּזִים, וְאֵלִיעֶזֶר בֶּן הוֹרְקָנוֹס בְּכַף
שְׁנִיָּה מִכְרִיעַ אֶת-כָּלֶם. אֲבָא שְׂאוּל
אוֹמֵר מִשְׁמוֹ, אִם יִהְיוּ כָּל-חֲכָמֵי
יִשְׂרָאֵל בְּכַף מֵאֲזוּזִים, יוֹרְבִי
אֵלִיעֶזֶר בֶּן הוֹרְקָנוֹס אֶף עִמָּהֶם,
יוֹרְבִי אֵלִיעֶזֶר בֶּן עֶרְךָ בְּכַף שְׁנִיָּה,
מִכְרִיעַ אֶת-כָּלֶם.

1 *Mishnah* 9 commences here in the Prayer Book. 2 וּמְשַׁמְאֵי in some texts. 3 Compare סוּכָה 28a. 4 הַחֹזֵק, given in some texts, is more correct grammatically. 5 *i.e.*, one must not exhibit boastful self-righteousness. 6 It is one's moral duty to acquire the righteous way of life through the study of the Law. 7 In the Prayer Book *Mishnah* 10 starts here. 8 ׀, and, is omitted in some texts. 9 Compare בְּרִכּוֹת 27b, גִּיטִין 56a, תְּעֻנִית 7b, חוֹלִין 59b. 10 He was נְהוֹרְאֵי רַבִּי; some say he was עִירוּבִין רַבִּי מֵאִיר רַבִּי (see נְהוֹמִיָּה רַבִּי 147a) and others say he was יוֹרְבִי נְהוֹמִיָּה רַבִּי (see נְהוֹמִיָּה רַבִּי 147a) and others say he was יוֹרְבִי נְהוֹמִיָּה רַבִּי (see נְהוֹמִיָּה רַבִּי 147a). 11 *Mishnah* 11 starts here in the Prayer Book. 12 רַבִּי is omitted in some texts. 13 According to some סִיד [Kal Passive Participle]. 14 He had a remarkably retentive memory. Compare סוּכָה 28a, תְּעֻנִית 7a. 15 Compare יְבָמוֹת 5a. 16 Some texts have הַכֹּהֵן יוֹסִי הַכֹּהֵן, Jose the Priest. See עֲדוּת 82. Compare שִׁבְת 19a. 17 Compare 25. 18 כְּמַעְיָן, as a spring, in some texts. 19 In the Prayer Book *Mishnah* 12 commences here. 20 יוֹרְבִי is omitted in some texts. 21 Compare הוֹרִיזוּ 14a.

Mishnah 9

He¹ said to them, Go forth and see which² is the right³ way whereto a man should cleave. R. Eliezer said, A good eye;⁴ R. Joshua said, A good companion; R. Jose said, A good neighbour; R. Simon said, One who foresees the [ultimate] consequences [of an action];⁵ R. Elazar said, A good heart.⁶ [Thereupon] he said to them, I commend the words of Elazar ben Arach rather than your words for in his words are your words included. He⁷ said to them, Go forth and see which² is the evil road that a man should

מִשְׁנֵה ט

אָמַר לָהֶם צֵאוּ וּרְאוּ יֵאוּזוֹתַי יְדָרְךָ
יִשְׂרָאֵל שֶׁיִּדְבַק בָּהּ הָאָדָם. רַבִּי
אֵלִיעֶזֶר אוֹמֵר יַעֲיֵן טוֹבָה; רַבִּי
יְהוֹשֻׁעַ אוֹמֵר חֶבֶר טוֹב; רַבִּי יוֹסִי
אוֹמֵר שָׁכֵן טוֹב; רַבִּי שְׁמַעוֹן אוֹמֵר
הַרוֹאֶה אֶת-הַגּוֹלֵד; רַבִּי אֵלְעֶזֶר
אוֹמֵר יֵלֵב טוֹב. אָמַר לָהֶם רוֹאֶה
אֲנִי אֶת-דְּבַרִּי אֵלְעֶזֶר בֶּן עֶרְךָ
מִדְּבַרְיָכֶם, שֶׁבְּכֻלָּל דְּבַרְיוֹ
דְּבַרְיָכֶם. אָמַר לָהֶם צֵאוּ וּרְאוּ

shun. R. Eliezer said, An evil eye;⁸ R. Joshua said, An evil associate; R. Jose said, An evil neighbour; R. Simon said, One that borrows and does not repay—he that borrows from man is as one who borrows⁹ from the Omnipresent, Blessed be He,¹⁰ as it is said,¹¹ *The wicked borroweth, and payeth not again, but the righteous dealth graciously and giveth*;¹² R. Elazar said, A wicked heart. [Whereupon] he said to them, I commend the words of Elazar ben Arach more than your words, for in his words are included your words.

אִיווהי דָּרְךְ רָעָה שִׁתְּרַחֵק מִמֶּנָּה
הָאָדָם. רַבִּי אֱלִיעֶזֶר אוֹמֵר יֵעִין
רָעָה; רַבִּי יְהוֹשֻׁעַ אוֹמֵר חֵבֵר רָע;
רַבִּי יוֹסֵי אוֹמֵר שָׁכֵן רָע; רַבִּי
שְׁמַעוֹן אוֹמֵר הַלּוֹה וְאִינוּ מִשְׁלָם,
אֶחָד הַלּוֹה מִן־הָאָדָם, יִכְלוֹה מִן־
הַמָּקוֹם ¹⁰בְּרוּךְ הוּא, ¹¹שֶׁנֶּאֱמַר לֹהֵ
רָשָׁע וְלֹא יִשְׁלַם וְצַדִּיק חוֹנֵן ¹²וְנוֹתֵן;
רַבִּי אֱלִעֶזֶר אוֹמֵר לֵב רָע. אָמַר
לָהֶם רוֹאֵה אֲנִי אֶת־דְּבָרֵי אֱלִעֶזֶר
בְּוַעֲרֹךְ מִדְּבָרֵיכֶם, שֶׁבְּכֹלֵל דְּבָרָיו
דְּבָרֵיכֶם.

1 Rabban Jochanan ben Zakkai. *Mishnah* 13 starts here in the Prayer Book. 2 In some texts, אִיווֹ הִיא דָּרְךְ * טובָה 3, *good*, in some texts. 4 Kindly disposition, absence of envy, jealousy, greed, covetousness and ill-will. 5 And will avoid harmful action. 6 Unselfishness, absence of ill-will and hate. 7 *Mishnah* 14 commences here in the Prayer Book. 8 Jealousy, envy, covetousness, greed, ill-will. 9 Or the definite כְּלוֹה, as 'the' one who borrows—in agreement with the definite antecedent הַלּוֹה. 10 בְּרוּךְ הוּא is omitted in some texts. 11 *Psalm* 37, 21. 12 He repays acts of kindness (compare יְבֹמֹת 20a). *Or אִיווֹ; see Volume II, Page 12.

Mishnah 10

They¹ each said three² things. R. Eliezer said, Let the honour of thy fellow-man³ be as precious to thee as thine own; (and) be not easily moved to wrath;⁴ (and) repent one day⁵ before thy death; (and)⁶ warm thyself by the fire of the Sages,⁷ but⁸ beware of their glowing coals, lest thou be burnt, for their bite is the bite of a fox, and their sting is the sting of a scorpion, and their hiss is the hiss of a serpent, and all their utterances are like coals of fire.⁸

מִשְׁנֵה י
יָהֵם אָמְרוּ שְׁלֹשָׁה יְשֻׁלְשָׁה דְּבָרִים.
רַבִּי אֱלִיעֶזֶר אוֹמֵר יְהִי כְבוֹד יְחִבְרֵךְ
חֵבִיב עֲלֶיךָ כְּשֻׁלְךָ; וְעַל תְּהִי גֹחַ
יִלְכַעֲוֹס; וְשׁוּב יוֹם אֶחָד לְפָנָי
מִיתָתְךָ; יוֹהֲרֵי מִתְחַמָּם כִּנְגַד אוֹרֵךְ
שֶׁל יְחֻקִּים, וְהֲרִי וְהֲרִי בְּגַחֲלֵתָן
שֶׁלֹּא תִכְוֶה, שֶׁנֶּשִׁיכְתָן, וְנִשְׁיכַת שׁוּעַל,
וְעַקִּיצְתָן, עַקִּיצַת עַקְרָב, וְלַחִישָׁתָן,
לַחִישַׁת שָׂרָף, וְכֹל דְּבָרֵיהֶם כְּגַחֲלֵי
אֵשׁ.

1 Referring to the disciples of Rabban Jochanan ben Zakkai in the preceding *Mishnah*. Here begins *Mishnah* 15 in the Prayer Book. 2 The second שלשה is omitted in the זמרא and is not given in the Prayer Book. 3 Or תלמידך, thy disciple, according to some. Any word or deed intended to injure one's good name or to uphold one to mockery and contempt is strongly condemned. Compare 1^{12,15}, 4^{1,3}. 4 סנהדרין 7a. 5 And as no one knows which will be his last day he must always be on his guard against evil. 6 יהיה in the Prayer Book. 7 Compare ברכות 7b. One must imbibe the knowledge imparted by his teacher. 8 One must not endeavour to become too intimate with his teacher and try to impress him with his superior intelligence. The abuse and misapplication of the finest gifts will cause disadvantage instead of benefit.

Mishnah 11

משנה יא

R. Joshua¹ said, The evil eye,² (and) the evil inclination, and hatred of [one's] fellow-creatures³ put⁴ a man out of the world.⁵

רבי יהושע אומר יעין הרע ויצר הרע וישנאת הבריות מוציאין אדם האדם מן-העולם.

1 In the Prayer Book *Mishnah* 16 starts here. 2 See 2¹⁰, Note 8. 3 Misanthropy. 4 מוציאם in the Prayer Book. 5 Compare 22.

Mishnah 12

משנה יב

R. Jose¹ said, Let the property of thy fellow-man be as dear to thee as thine own; (and) qualify thyself² for the study of the Law, for [the knowledge of] it is not a heritage³ of thine;⁴ and let all thy deeds [be prompted] for the sake of Heaven.⁵

רבי יוסי אומר יהי קמון חבריך חביב עליך כשליך; ונהתגן עצמך ללמוד תורה שאינה ירושה לך; וכל-מעשיך יהיו לשם שמים.

1 In the Prayer Book *Mishnah* 17 starts here. 2 Or fit thyself, prepare thyself. 3 רשע in some texts. 4 Knowledge is an acquisition and not a bequeathal or heritance. 5 i.e., one should be inspired by high moral motives (see ברכות 63a). A parallel expression is לשמה (literally for its name), for its own sake, selflessly, without ulterior selfish motives.

Mishnah 13

משנה יג

R. Simon¹ said, Be² heedful to read the *Shema*³ and [to recite] the *Amidah*;⁴ and when thou prayest make not thy prayer a fixed mechanical task,⁵ but [an appeal for] mercy

ירבי שמעון אומר יהוי זהיר בקריאת שמע וכתפלה; וכשאתה מתפלל, אל תעש תפלתך קבע.

and supplication before the Omnipresent, Blessed be He,¹ as it is said,² *For Thou, O God, art gracious and full of compassion, slow to anger and abounding in lovingkindness, and repented Him of the evil, and be not wicked in thine own estimation.*³

אֵלֶּא רַחֲמִים וְתַחֲנוּנִים לְפָנַי הַמָּקוֹם
בְּרוּךְ הוּא, שֶׁנֶּאֱמַר כִּי־אַתָּה אֵל
חַנוּן וְרַחוּם אַרְךָ אַפַּיִם וְרַב־חַסֵּד
וְנָתַם עַל הַרְעָה, וְאֵל תְּהִי רָשָׁע
בְּפָנָי עֲצָמָהּ.

1 In the Prayer Book *Mishnah* 18 begins here. 2 הָיִי in some texts. 3 *Deuteronomy* 6, 4-9, 11, 13-21; *Numbers* 15, 37-41. 4 The *שְׁמֹנֶה עָשָׂר*, *Eighteen Benedictions*, on week-days and the corresponding *עֲמֻדוֹת* on special occasions (Sabbaths, Holydays, New Moons). See *בְּבִיאָה קָמָא* 30a. 5 Perfunctoriness in the recital of prescribed prayers is severely deprecated. Mechanical praying is particularly and inevitably the result of lack of the understanding of the Hebrew. 6 בְּרוּךְ הוּא is omitted in the Prayer Book. 7 See *Joel* 2, 13. But Scripture has כִּי תַנּוּן and not as here כִּי אַתָּה אֵל חַנוּן, and the Prayer Book gives כִּי חַנוּן וְרַחוּם הוּא. 8 An individual must not lose his self-respect and so abandon hope for God's forgiveness and mercy through repentance.

Mishnah 14

R. Elazar said, Be¹ assiduous in the study of the Law;² (and know³) what answer to give to the sceptic;⁴ and know before Whom thou toilest, and faithful⁵ is thy Employer, Who will requite thee the reward of thy labour.⁶

מִשְׁנֵה יֵד
רַבִּי אֶלְעָזָר אוֹמֵר יְהִי שְׂקוּד
לְלָמוּד תּוֹרָה; (וְדַע) מֵה־
שֶׁתִּשָּׁב לְאֹפִיקוֹרוֹס; וְדַע לְפָנָי
מִי אַתָּה עֹמֵל, וְיִנְיָמֵן הוּא בְּעַל
מְלָאכְתָּךְ שִׁישְׁלֵם־לְךָ שְׂכָר
פְּעוּלְתְּךָ.

1 הִיָּה in some texts. 2 One must learn with eagerness and enthusiasm for the successful acquisition of the knowledge and practice of correct morality. 3 וְדַע is omitted in the *גְּמָרָא*. 4 Literally *Epicurean*. Or *heretic, unbeliever*. 5 וְיָמִי, and *Who*, instead of *יִנְיָמֵן* in some texts. Compare 21b. 6 See *בְּרֵכוֹת* 35b. In some texts, פְּעוּלְתְּךָ. *Some vocalise this לְאֹפִיקוֹרוֹס.

Mishnah 15

R. Tarfon¹ said, The day is short,² and the task is great,³ and the labourers are sluggish,⁴ and the recompense is ample, and the Master of the house⁵ is urgent.³

מִשְׁנֵה טו
רַבִּי טַרְפוֹן אוֹמֵר הַיּוֹם יָקָצַר
וְהַמְּלָאכָה מְרוּבָה וְהַפּוֹעֲלִים
עֲצָלִים וְהַשְּׂכָר הַרְבֵּה יוֹבֵעַל הַבַּיִת
דְּדוֹחֵק.

1 Here commences *Mishnah* 20 in the Prayer Book. 2 Compare 1¹⁴, *And if not now, when [then]?* 3 מְרַבֵּה in some texts. 4 Compare 3¹⁴. 5 The Creator of the universe.

Mishnah 16

משנה טז

He¹ also used to say, It is not thy obligation to complete the task, nevertheless thou art not at liberty to desist therefrom;² if thou hast studied much in the Law much reward shall be given thee,³ for⁴ faithful is thy Employer who shall requite thee the reward of thy labour; and know that the bestowal of reward⁵ upon the righteous will be in the time to come.⁶

יְהוָה הָיָה אוֹמֵר לֹא עָלֶיךָ הַמְּלָאכָה לְגַמּוֹר, וְלֹא אַתָּה בֶּן חוֹרִין יִלְיָבֶטֶל מִמְּצָה; אִם לְמַדְתָּ תוֹרַת הַרְבֵּה גוֹתִימִים יִלְךְ שְׂכָר הַרְבֵּה, יִנְאַמֵּן הוּא בְּעַל מְלֹאכְתְּךָ שִׁישְׁלֵם לְךָ שְׂכָר פְּעוּלְתְּךָ; וְדַע יִמְתֵּן שְׂכָרְךָ שֶׁל צְדִיקִים לְעֵתִיד לְבֹא.

1 viz., R. Tarfon. *Mishnah* 21 begins here in the Prayer Book. 2 לְהַבְטִיל in some texts. The premonition that one may not be able to finish a good work must not be a deterrent to continue with it—one must not be disheartened and discouraged by seemingly insurmountable difficulties from attempting a worthy task. Compare בְּרִכּוֹת 16a. 3 In this life and in the world to come. 4 Compare 2¹⁴. In some texts, פְּעוּלְתְּךָ. 5 שְׂמִיתֵן שְׂכָרָם in some texts. 6 לְבֹא in some texts.

CHAPTER 3

פֶּרֶק ג

Mishnah 1

משנה א

Akabia ben Mahalalel said,¹ Reflect upon three things and thou wilt not come within the power of transgression:² know whence thou art come, and whither thou art going, and before Whom thou wilt in future render⁵ account and reckoning.³ 'Whence thou art come'—from a fetid drop; 'and whither thou art going'—to a place of dust,⁴ worms and maggots; 'and before Whom thou wilt in future render account⁵ and reckoning'—before the Supreme King of kings,⁶ the Holy One, Blessed be He.

עֲקִבְיָא בֶּן מַהֲלֵלָאֵל אוֹמֵר הִסְתַּכַּל בְּשְׁלֹשָׁה דְּבָרִים וְאֵין אַתָּה בָּא לְיַדִּי יַעֲבִירָה, דַּע מֵאֵין בָּאתָ וּלְאֵן אַתָּה הוֹלֵךְ וּלְפָנֵי מִי אַתָּה עֹתִיד יִלְיָתֵן דִּין וְחֹשְׁבוֹן. מֵאֵין בָּאתָ מִטְּפָה סְרוּחָה; וּלְאֵן אַתָּה הוֹלֵךְ לְמִקּוֹם יַעֲפֹר רֶמָה וְתוֹלְעָה; וּלְפָנֵי מִי אַתָּה עֹתִיד יִלְיָתֵן דִּין וְחֹשְׁבוֹן לְפָנֵי יְמִלְךְ מַלְכֵי הַמְּלָכִים הַקְּדוֹשׁ בְּרוּךְ הוּא.

1 Compare 2¹. 2 עֲבָרָה in some texts. 3 Compare בְּתָרָא בְּבָא 8a. 4 See Genesis 3, 19. 5 In some texts, לָמַן? 6 Literally before the King of kings of kings.

Mishnah 2

מִשְׁנָה ב

R. Chanina, the chief of the priests,¹ said, Pray² for the welfare of the ruling power, since but for the fear thereof men would engulf one another alive.³ R. Chanania⁴ ben Teradion said, If two sit together⁵ and interchange no words of the Law, they are a meeting of the scornful,⁶ as it is said,⁷ *Nor sitteth [the godly man] in the seat of the scoffers*; but if two sit together⁸ and words of the Law [pass] between them, the Divine Presence abides between them, as it is said,⁹ *then they that feared the Eternal spake one with the other; and the Eternal hearkened and heard, and a book of remembrance was written before Him, for them that feared the Eternal, and that thought upon¹⁰ His Name.* [But] the Scripture teaches this in respect to two only; when [can it be inferred] that if even¹¹ one person sits and occupies himself with the Law, the Holy One, blessed be He, appoints to him a reward?¹² Because it is said,¹³ *Let him sit alone and keep silence¹⁴* because He hath laid it¹⁵ upon him.

רְבִי חַנִּינְיָא יִסְגֵּן הַפְּהִיגִים אֹמֵר יִהְיֶה מִתְפַּלֵּל בְּשִׁלּוּמָהּ שֶׁל מַלְכוּת שְׂאֵלְמָלְא מוֹרְאָה, אִישׁ אֶת-רֵעֵהוּ יִחִים בְּלֵעֻו. רְבִי חַנְיָא בֶּן תֶּרְדִּיּוֹן אֹמֵר שְׁנַיִם שְׂיוֹשְׁבִין וְאִין בִּינֵיהֶן דְּבִרֵי תוֹרָה הֲרֵי זֶה מוֹשֵׁב יִלְצִים, יִשְׁנָאֵמֵר וּבְמוֹשֵׁב לְצִים לֹא יָשֵׁב; אֲבָל שְׁנַיִם שְׂיוֹשְׁבִין וְיֵשׁ בִּינֵיהֶם דְּבִרֵי תוֹרָה שְׂכִינָה שְׂרוּיָה בִּינֵיהֶם, יִשְׁנָאֵמֵר אֲזַנְדְּבֵרוּ יִרְאֵי ה' אִישׁ אֶל-רֵעֵהוּ וַיִּקְשֹׁב ה' וַיִּשְׁמַע וַיִּכְתֹּב סֵפֶר וַזְכָּרוֹן לְפָנָיו לִירְאֵי ה' וַיִּלְחֹשְׁבֵי שְׁמוֹ. אִין לִי אֶלָּא שְׁנַיִם, מִנֵּן יִשְׁאֲפִילוּ אֶחָד שְׂיוֹשֵׁב וְעוֹסֵק בְּתוֹרָה, שֶׁהַקָּדוֹשׁ בְּרוּךְ הוּא קוֹבֵעַ לוֹ יִשְׁכָּר? יִשְׁנָאֵמֵר יֵשֵׁב בְּרֵד וַיִּנְדוּם כִּי יִנְטֵל עָלָיו.

1 Or deputy High-Priest, vice-High-Priest, prefect of the priests, adjutant High-Priest. Compare 7¹ יוֹמָא 77. 8. 2 הָיָה in some editions. 3 i.e., chaos and anarchy would ensue. 4 In the Prayer Book Mishnah 3 begins here. Compare 5¹⁰. 5 In some texts, וְאִין בִּינֵיהֶם in some texts. 6 From which the Divine Presence is absent (see 42a סוֹטָה). 7 Psalm 1, 1. 8 In some texts, שְׂיוֹשְׁבִים. 9 Malachi 3, 16. 10 Scripture has וַיִּלְחֹשְׁבֵי. 11 אֲפִילוּ in some texts. 12 By allowing His Divine Presence rest upon him (compare 3b בְּרִכּוֹת 26b, רֵאשׁ הַשָּׁנָה, 20b) תַּעֲצִיב). 13 Lamentations 3, 28. 14 וַיִּדַּם in the Scripture. 15 The reward.

Mishnah 3

R. Simon¹ said, If three have eaten at one table and have not spoken there words of the Law,² it is as if³ they had eaten of sacrifices of the dead,⁴ as it is said,⁵ *For all [their] tables are full of vomit and filthiness;*⁶ *the Omnipresent is not [in their thoughts].* But if three have eaten at one table and have spoken over it matters concerning the Law, it is as though³ they had eaten from the table of the Omnipresent, blessed be He, as it is said,⁷ *and he said unto me, 'This is the table⁸ that is before the Eternal'.*

מִשְׁנֵה ג

יִרְבִּי שֶׁמְעוֹן אוֹמֵר שְׁלֹשָׁה שָׂאֲכָלוּ
עַל שְׁלֶחֶן אֶחָד, וְלֹא אָמְרוּ עָלָיו
דְּבָרֵי יְתוֹרָה יִכְאִילוּ אֲכָלוּ מִזְבְּחֵי
יְמִתִּים, שֶׁנֶּאֱמַר כִּי כָל־שְׁלֶחֶנוֹת
מְלֵאוּ קִיא צוֹאָה בְּלִי מְקוֹם. אֲבָל
שְׁלֹשָׁה שָׂאֲכָלוּ עַל שְׁלֶחֶן אֶחָד וְאָמְרוּ
עָלָיו דְּבָרֵי תוֹרָה יִכְאִילוּ אֲכָלוּ
מִשְׁלֶחֶנוֹ שֶׁל מְקוֹם בְּרוּךְ הוּא
שֶׁנֶּאֱמַר וַיִּדְבֵּר אֵלַי זֶה הִשְׁלֶחֶן
אֲשֶׁר לִפְנֵי ה'.

1 *Mishnah 4* begins here in the Prayer Book. 2 Reference to the recital of *Grace after meals*. Some say it means that people should refrain from discussion at a meal for fear of accident (see תַּעֲוִיִּת 5b) but not neglect religious talk *after* the meal; yet others take it literally, *sc.*, conversation during a meal should at least not entirely be banal but should partake of a religious and moral character. 3 כְּאִילוּ in some texts. 4 *Psalm 106, 28. i.e., idols.* 5 *Isaiah 28, 8.* 6 The Scriptural orthography is צִאָה. R. Simon was hinting at the revolting practices of the Roman ruling classes in the use of emetics or other means to empty their stomachs in order to enjoy further gluttony. 7 *Ezekiel 41, 22.* 8 Referring to the *Altar*. Prayer and seriousness at a table sanctify it as though it is an Altar. *בְּרוּךְ הוּא is omitted in some texts.

Mishnah 4

R. Chanina¹ ben Chachinai said, He that keeps awake in the night,² or goes on his way alone,³ and directs⁴ his heart to vain thoughts, such a one is guilty against himself.⁵

מִשְׁנֵה ד

יִרְבִּי חַנִּינָא בֶּן חַכִּינָאִי אוֹמֵר הַנְּעוֹר
יִבְלִיָּה וְהַמְהַלֵּךְ בִּדְרָךְ יִחִידִי
וְהַמְפַנֵּה לְבוֹ לְבַטְלָה הָרִי זֶה
מִתְחַיֵּב בְּנַפְשׁוֹ.

1 In the Prayer Book *Mishnah 5* begins here. 2 *Psalm 63, 6ff.*—sleepless hours should be spent in religious meditation. 3 And is not on guard against frivolous thoughts. 4 וּמְפַנֵּה in some editions. 5 *viz., he imperils his own soul or he forfeits his own life or he sins against himself.*

Mishnah 5

R. Nechunia¹ ben Hakanah said, Whosoever accepts* the yoke^{2,3} of the Law from him shall be removed the yoke^{2,4} of the kingdom and the yoke² of mundane care,⁵ but he that casts off from him the yoke² of the Law upon him shall be laid the yoke² of the kingdom and the yoke² of worldly care.

1 *Mishnah* 6 starts here in the Prayer Book. 2 [ועל] על in some texts. 3 Of service and guidance. 4 The burdens, oppressions and sufferings imposed by the ruling powers. 5 The troubles and anxieties to earn one's livelihood and communal obligations. *Literally 'accepts upon himself.'

Mishnah 6

R. Chalafta¹ of Kfar-Chanania² said, If ten men sit together³ and occupy themselves with the Law, the Divine Presence abides among them, as it is said,⁴ *God standeth in the congregation⁵ of God.* And whence [can it be concluded that it applies equally] even to five?⁶ Because it is said,⁷ *And he hath founded His band⁸ upon the earth.* And whence [can it be inferred that it also applies] even to three? Because it is said,⁹ *In the midst of the judges¹⁰ He judgeth.* And whence [can it be deduced that it applies too] even of two?¹¹ Because it is said,¹² *Then they that feared the Eternal spake one with another; and the Eternal hearkened, and heard, etc.** And whence [can it be shown that the same applies] even of one? Because it is said,¹³ *In every place where I cause My Name to be mentioned I will come¹⁴ unto thee¹⁵ and I will bless thee.*

1 *in some editions.* 2 A place in Galilee. 3 In some texts *שְׂשׂוּבִים וְעוֹסְקִים*. 4 *Psalm 82, 1.* 5 *עֲדָה* (*Numbers 14, 27*) refers

משנה ה

רַבִּי נְחוּנְיָה בֶּן הַקָּנָה אוֹמֵר כָּל-
הַמִּקְבֵּל עָלָיו עוֹל תּוֹרָה,
מֵעֲבִירִין מִמֶּנּוּ עוֹל מַלְכוּת וְעוֹל
דְּרָךְ אֶרֶץ, וְכָל הַפּוֹרֵק מִמֶּנּוּ עוֹל
תּוֹרָה נוֹחֲזִין עָלָיו עוֹל מַלְכוּת
וְעוֹל דְּרָךְ אֶרֶץ.

משנה ו

רַבִּי חֲלַפְתָּא אִישׁ כִּפָּר חֲנֻיָּא
אוֹמֵר עֲשֶׂרָה שְׂשׂוּבִין וְעוֹסְקִין
בַּתּוֹרָה שְׂכִינָה שְׂרוּיָה בֵּינֵיהֶם
יִשְׁנָאמֵר אֱלֹהִים נֹצֵב בַּעֲדַת אֵל.
וּמִנֵּן אֶפִּילוּ חֲמִשָּׁה, יִשְׁנָאמֵר
יִאֲנוּדְתוּ עַל אֶרֶץ יִסְדָּהּ וּמִנֵּן
אֶפִּילוּ שְׁלֹשָׁה, יִשְׁנָאמֵר בְּקִרְבִּי
אֱלֹהִים יִשְׁפּוֹט. וּמִנֵּן אֶפִּילוּ
שְׁנַיִם, יִשְׁנָאמֵר אֲזוּ נִדְבְּרוּ יְרֵאֵי
ה' אִישׁ אֶל-רֵעֵהוּ וַיִּקְשֹׁב ה' וַיִּשְׁמַע
וַיִּגּוֹ. וּמִנֵּן אֶפִּילוּ אֶחָד, יִשְׁנָאמֵר
בְּכָל הַמָּקוֹם אֲשֶׁר אֲזַכִּיר אֶת-שְׁמִי
אָבָא אֵלֶיךָ וּבִרְכָתֶיךָ.

to ten (סנהדרין 16; מגילה 23b). 6 See סנהדרין 13. 7 *Amos* 9, 6. 8 Or bundle grasped by the 'five' fingers of one's hand. Scripture has וְאֶגְדָּתוֹ. 9 *Psalm* 82, 1. 10 According to Jewish law three is the minimum number of judges to form a tribunal, nevertheless one judge may adjudicate in a suit involving property. יִשְׁפֹּט is the Scriptural orthography. 11 See פְּתוּבוֹת 22a. 12 *Malachi* 3, 16. 13 *Exodus* 20, 21. 14 The Scripture orthography is אָבוּא. 15 *thee* can indicate only 'one' person. *יְגוּר [וְגוּמָר] is omitted in the Prayer Book.

Mishnah 7

R. Eliezer¹ of Bertotha² said, Render unto Him what is His, for thou and what thou hast are His, as David has said,³ *For all things come of Thee, and of Thine own have we given to Thee.* R. Simon⁴ said, If one were walking by the way and is studying,⁵ and interrupts his study and says, 'How fine is this tree!' or,⁶ 'How fine is this newly ploughed field!' [then] Scripture regards him as if⁷ he were guilty against his own soul.⁸

משנה ז

רבי אליעזר איש ברתותא אומר
תן לו משלו, שאתה ושלקך שלו,
וכן ברור הוא אומר כי ממה הכל
ומידך נתנו לך. רבי שמעון אומר
המהלך בדרך וישונה, ומפסיק
ממשנתו, ואומר מה נאה אילן זה!
יומה נאה ניר זה! מעלה עליו
הכחוב כאילו מתחייב בנפשו.

1 *Mishnah* 8 commences here in the Prayer Book. אלעזר, *Elazar*, in some texts. 2 In upper Galilee (see ערלה 14). Perhaps identical with ברוחה between Damascus and Hamath (*Ezekiel* 47, 16, *II Samuel* 8, 8) or with the Syrian port Beirut. 3 *I Chronicles* 29, 14. 4 Simon ben Jochai. The Prayer Book reads *R. Jacob* (רבי יעקב), *i.e.*, the father of R. Eliezer; see 4^{11,16}). Here commences *Mishnah* 9 in the Prayer Book. 5 Compare 3⁵; תענית 10b. 6 מה in the Prayer Book. 7 כאילו in the Prayer Book. 8 The study of the Law is of the greatest importance and not to be lightly broken off to admire even the beauties of nature (compare 11).

Mishnah 8

R. Dostai¹ ben* Jannai said in the name² of R. Meir, Whosoever forgets one word of his study, him Scripture accounts as though³ he had forfeited his life,⁴ for it is said,⁵ *Only take heed to thyself, and keep⁶ thy soul diligently, lest thou forget the things which thine eyes have seen.* One

משנה ח

רבי דוסתאי ברבי ינאי משום
רבי מאיר אומר כל השוכח דבר
אחד ממשנתו מעלה עליו הכתוב
כאילו מתחייב בנפשו, שנאמר
רק השמר לך ושמור נפשך מאד

might suppose this to apply even if⁷ one's study were too difficult for him. To avoid such a conclusion,⁸ it is said,⁵ *And lest they depart from thy heart all the days of thy life*; thus one is not guilty against his soul unless he deliberately⁹ removes them [—those lessons—] from his heart.

פֶּן־תִּשְׁכַּח אֶת־הַדְּבָרִים אֲשֶׁר רָאוּ עֵינֶיךָ יָכוֹל יֵאָפִילוּ תִּקְפָּה עָלֶיךָ מִלִּמְנוֹתָו, תִּלְמֹד לֹאֲמַר יוֹפֵן־יִסּוּרוֹ מִלְּבָבְךָ כֹּל יָמֵי חַיֶּיךָ; הָאֵינוּ מִתְחַיֵּב בְּנַפְשׁוֹ, עַד יֵשֵׁיב וְיִסְרֵם מִלְּבוֹ.

*See ADDENDA, Page 552.

1 Here commences *Mishnah* 10 in the Prayer Book. 2 רבי דוסאי בר יצי משם in the Prayer Book. 3 כפאלי in some texts. 4 Probably an admonition to the Sages and their disciples not to be culpable of remissness in the study of the Law. 5 *Deuteronomy* 4, 9. 6 Scripture gives ושמר ואפילו in some texts. 8 Not all have powerful retentive memories. But assiduous, persistent study will prevail over unintentional forgetfulness. 9 Literally *unless he sits and*.

Mishnah 9

R. Chanina¹ ben Dosa said, He in whom the fear of sin predominates over his wisdom,² his wisdom endures,³ but he whose wisdom predominates over his fear of sin, his wisdom does not endure. He⁴ used to say, He whose deeds exceed⁵ his wisdom, his wisdom endures, but he whose wisdom exceeds his deeds, his wisdom does not endure.⁶

מִשְׁנֵה ט
רַבִּי חַנִּינָא בֶן דּוּסָא אוֹמֵר כֹּל שִׁירָאֵת חֲסָאוֹ קוֹדְמָת לְחַכְמָתוֹ חֲכָמְתוֹ מִתְקַיְיֶמֶת, וְכֹל שֶׁחַכְמָתוֹ קוֹדְמָת לִירָאֵת חֲסָאוֹ אֵין חֲכָמְתוֹ מִתְקַיְיֶמֶת. יְהוּא הִיָּה אוֹמֵר כֹּל שֶׁמַּעֲשִׂיו מְרוּבִין מִחַכְמָתוֹ, חֲכָמְתוֹ מִתְקַיְיֶמֶת, וְכֹל שֶׁחַכְמָתוֹ מְרוּבָה מִמַּעֲשִׂיו אֵין חֲכָמְתוֹ מִתְקַיְיֶמֶת.

1 See ברכות 5⁵, סוטה 91⁵. *Mishnah* 11 in the Prayer Book begins here. 2 Or the acquisition of knowledge. 3 And guards him against error (סוטה 3a). 4 *Mishnah* 12 begins here in the Prayer Book. 5 In the Prayer Book מרבים. 6 Compare 117, 317, 65, ולא המדרש הוא העקר אלא המעשה.

Mishnah 10

He¹ used to say, He in whom² the spirit of mankind takes delight, in him the Spirit of the Omnipresent finds pleasure, but he in whom the spirit of his fellow-creatures finds no pleasure, in him the Spirit of the Omnipresent takes no delight. R.

מִשְׁנֵה י
יְהוּא הִיָּה אוֹמֵר כֹּל שֶׁרוּחַ הַבְּרִיּוֹת נוֹחָה הֵימָנוּ, רוּחַ הַמְּקוֹם נוֹחָה הֵימָנוּ, וְכֹל שֶׁאֵין רוּחַ הַבְּרִיּוֹת נוֹחָה הֵימָנוּ, אֵין רוּחַ הַמְּקוֹם נוֹחָה הֵימָנוּ. רַבִּי דּוּסָא בֶן יְהֶרְכֵינֵס אוֹמֵר שִׁינָה

Dosa³ ben Harkinas⁴ said, Morning sleep, (and) midday wine,⁵ (and) children's talk,⁶ and sitting in the houses of assembly of the ignorant⁷ drive⁸ a man from the world.

שֶׁל שְׁחִרִית, יְהִינן שֶׁל צְהָרִים, וְשִׁיחַת הַיְלָדִים, וְשִׁיבַת בְּפִי כְּנִסְיוֹת שֶׁל 'עַמֵּי הָאָרֶץ, מוֹצִיאִין אֶת-הָאָדָם מִן-הָעוֹלָם.

1 *sc.*, R. Chanina ben Dosa. In the Prayer Book *Mishnah* 13 starts here. 2 Or הִימָנוּ. 3 *Mishnah* 14 begins here in the Prayer Book. 4 See עֲדוּיוֹת 32^a. 5 Compare בְּכָא בְּתָרָא 38b. 6 Compare פְּסָחִים 117a, טוֹבָה 21b. 7 See *Appendix, Note 12*. 8 מוֹצִיאִים in the Prayer Book.

Mishnah 11

מִשְׁנֵה יֵא

R. Elazar¹ of Modim² said, If one profane sacred things,³ and despise the Holydays, and put his fellow-man to shame publicly, and make void the covenant⁴ of Abraham our father, peace be unto him,⁵ and cause the Law to bear a meaning other than in accordance with traditional law,⁶ then even though knowledge of the Law and good deeds are his, he has no share in the world to come.⁷

יִרְבִּי אֶלְעָזָר יְהוּדֵי אֹמֵר הַמְחַלֵּל אֶת-הַקִּדְּשִׁים, וְהַמְבַּזֵּה אֶת-הַמוֹעֲדוֹת, וְהַמְלַבֵּין פְּנֵי חֲבֵרוֹ בְּרִבִּים, וְהַמְפָּר יְבָרִיתוֹ שֶׁל אַבְרָהָם אָבִינוּ עָלֵינוּ הַשְּׁלוֹם, וְהַמְגַלֵּה פְּנִים בְּתוֹרָה שְׂלֵא כְּהִלְכָהּ, אֵף עַל פִּי שֵׁשׁ בְּיָדוֹ תוֹרָה וּמַעֲשִׂים טוֹבִים, אֵין לוֹ חֵלֶק לְעוֹלָם הַבָּא.

1 Here starts *Mishnah* 15 in the Prayer Book. 2 הַמְיֻדֵּי is the vowelization preferred by some. Literally *the Modaimite*. Or *Modin, Madaim, Modain* (מְדַיִן, מוֹדַיִם), in Judaea about ten miles north-west of Beth Horon, the native place of the Hasmonean family. See שְׁבֵת 55b, פְּסָחִים 92, בְּכָא בְּתָרָא 10b. 3 Or הַקִּדְּשִׁים. Especially *holy sacrifices* (זְבָחִים 51-8). 4 *i.e.*, they either use means to conceal their circumcised state or repudiate circumcision altogether (as used to be practised by Hellenists). 5 An expression similar to 'may he rest in peace', 'may his name be remembered for good.' This phrase is omitted in some texts. 6 *i.e.*, disclose interpretations in the Law other than the right ones. Compare מְגִלָּה 49. 7 Such a one forfeits the right to be considered a member of the Jewish faith.

Mishnaah 12

מִשְׁנֵה יֵב

R. Ishmael¹ said, Be² prompt [to serve] a superior,³ (and) affable towards youth,⁴ and receive all men with cheerfulness.⁵

יִרְבִּי יִשְׁמַעֵאל אֹמֵר יְהוּי קָל יְלֹאשׁ, וְנוֹחַ יְלַתְּשׁוֹרֶת, וְהוּי מְקַבֵּל אֶת-כָּל-הָאָדָם בְּשִׂמְחָה.

1 *Mishnah* 16 commences here in the Prayer Book. 2 יהוה, יהוה in some texts. 3 *i.e.*, give swift obedience to authority, be submissive to your senior. 4 Some prefer the rendering *be amenable under forced service*. 5 Compare 115.

Mishnah 13

מְשֻׁנָּה יג

R. Akiba¹ said, Jestng and levity habituate² [a man] to lewdness.³ [The] *Tradition*⁴ is a fence* to the Law; *tithes*⁵ are a fence* to riches;⁶ vows⁷ are a fence* to abstinence; a fence* to wisdom⁶ is silence.

רַבִּי עֲקִיבָא אָמַר שְׁחוֹק וְקִלוּת רָאשׁ, מְרִגְלִין לְעֵרוּהָ. מְסוֹרֶת, סִיּוּג לַתּוֹרָה; מַעֲשָׂרוֹת, סִיּוּג לְעוֹשֶׁר; יְנֻדְרִים, סִיּוּג לְפְרִישוֹת; סִיּוּג לְחֻמְקָה שְׁתִּיקָה.

* סִיּוּג in some texts.

1 In the Prayer Book *Mishnah* 17 commences here. 2 In some texts, מְרִגְלִים אֶת-הָאָדָם. 3 Jestng and levity between the sexes accustom them to immorality. But restrained joy and joyfulness are not deprecated. 4 מְסוֹרֶת, the non-vowelized traditional text of the Scripture (in contradistinction to the מְקַרָּא, the vocalised traditional Scriptural text). 5 The giving of *tithes* does not impoverish a man; and they lead him to acquire charitable habits. 6 Some prefer the pointing לְחֻמְקָה, לְעֵשֶׂר. 7 But see יְנֻדְרִים, INTRODUCTION. They do help in self-restraint.

Mishnah 14

מְשֻׁנָּה יד

He¹ used to say, Beloved [of God] is man² for he was created in the image [of God]; [but] greater still was the love [shown him] in that it was made known to him that he was created in the image of God, as it is said,³ *For in the image of God made He man*. Beloved⁴ [of God] are Israel, for they were called children of the Omnipresent; but by a special⁵ love was it made known to them that they were called children of the Omnipresent, as it is said,⁶ *Ye are children unto the Eternal your God*. Beloved⁴ [of God] are Israel, for to them was given⁷ the desirable instrument;⁸ [but] still greater⁵ was the love since it was made known to them that to them was given⁷ the desirable instrument⁸

יְהוָה הָיָה אָמַר חָבִיב אָדָם שֶׁנִּבְרָא בְּצַלְמִם; חֶבֶד יִתְיָרָה נוֹדַעַת לוֹ שֶׁנִּבְרָא בְּצַלְמִם, יִשְׁנֹאֲמַר בְּצַלְמִם אֱלֹהִים עָשָׂה אֶת-הָאָדָם. חָבִיבִין יִשְׂרָאֵל, שֶׁנִּקְרְאוּ בְּנִים לְמִקּוֹם; חֶבֶד יִתְיָרָה נוֹדַעַת לָהֶם שֶׁנִּקְרְאוּ בְּנִים לְמִקּוֹם, יִשְׁנֹאֲמַר בְּנִים אֲתֵם לֵה' אֱלֹהֵיכֶם. חָבִיבִין יִשְׂרָאֵל שֶׁנִּימְנָן לָהֶם כְּלִי הַמְּדָה; חֶבֶד יִתְיָרָה נוֹדַעַת לָהֶם שֶׁנִּימְנָן לָהֶם כְּלִי הַמְּדָה שֶׁבוֹ נִבְרָא הָעוֹלָם, יִשְׁנֹאֲמַר כִּי לָקַח טוֹב נְתַתִּי לָכֶם תּוֹרַתִי אֶל-מַעֲזוּבוֹי.

wherewith the universe was created, as it is said,⁹ *For I give you good doctrine; forsake ye¹⁰ not my Law.*

1 viz., R. Akiba. In the Prayer Book *Mishnah* 18 begin here. 2 Irrespective of race, colour or creed. 3 *Genesis* 9, 6. 4 **חֲבִיבִים** in some texts. 5 In some texts, **יְהִי**. 6 *Deuteronomy* 14, 1. 7 **שְׁנֵיתָן** in some texts. 8 Referring to God's Law whose moral truths are valid eternally. Compare the **עֲקָרִים עֲקָרָה** * *Article* 9§ in the Prayer Book (**The Thirteen Principles [of the Faith]* formulated by Maimonides). 9 *Proverbs* 4, 2. 10 Scripture gives **תְּעֹבְרֵי**. §Also repeated in the hymn **יְגִדֵל אֱלֹהִים** יְיָ (line 9) in the Daily Prayer Book.

Mishnah 15

מִשְׁנָה טו

All¹ is foreseen [by God], yet freedom of choice is granted; and by grace² is the universe³ judged, yet all⁴ is according to the amount⁵ of the work.⁶

יֵהְיֶה כָּל צְפוּי, וְהָרְשׁוֹת וְתוֹנָה; וּבְטוֹב
הַעוֹלָם נִדוֹן, וְיֵהְיֶה לְפִי רֹב
הַמַּעֲשֵׂה.

1 Here begins *Mishnah* 19 in the Prayer Book. 2 Literally *goodness*. 3 Compare *Psalms* 145, 9. 4 i.e., reward and punishment. 5 **רֹב** in some texts. 6 i.e., the prevalence of good or bad deeds. An alternative reading according to some: **יֵהְיֶה לְפִי רֹב הַמַּעֲשֵׂה**, 'but not according to the amount of work', viz., the 'grace' is greater in proportion to the amount of the virtues or evils.

Mishnah 16

מִשְׁנָה טז

He¹ used to say, All is given on pledge,² and a net is spread³ over all the living; the shop is open, (and) the dealer gives credit, (and) the ledger lies open, (and) the hand writes, and whosoever desires to borrow may come and borrow, but the collectors regularly go their round every day and exact payment⁴ from man with his consent or without his consent,⁵ since they have that whereon they can rely [in their demand],⁶ and the judgment is a judgment of truth; and all is prepared⁷ for the feast.⁸

יְהוּא הֵיךְ אָמַר, הַכֹּל נָתַן בְּעֶרְבוֹן,
וּמִצוּדָה פְּרוּסָה עַל כָּל־הַחַיִּים;
הַחֲנוּת פְּתוּחָה, וְהַחֲנֻנִי מְקִיף,
וְהַפְּנִקִּס פְּתוּחַ, וְהַיָּד כּוֹתֶבֶת, וְכָל
הַרוּצֵה לְלוֹוֹת יָבֵא וְיִלְוֶה, וְהַגֹּבָאִים
מִחֲזִירִים תְּדִיר בְּכָל יוֹם, וְנוֹפְרֵי
מִן־הָאָדָם מְדַעְתּוֹ וְשֵׁלָא מְדַעְתּוֹ,
וְיֵשׁ לָהֶם עַל מַה־שִּׁסְמוּכוֹ; וְהַדִּין
דִּין אֱמֶת. וְהַכֹּל מְתוּקָן לְסַעֲדָה.

1 *sc.*, R. Akiba. *Mishnah* 20 begins here in the Prayer Book. 2 A picturesque series of sayings stressing that man is reponsible and accountable for all his deeds. 3 In some editions פְּרוּשָׁה. 4 וְנִפְרָעִים in some texts. 5 Referring to reward and punishment. 6 *i.e.*, the judgments are just and the penalties are just. 7 מִחֲקוֹן in some texts. 8 A symbolical reference to the world to come.

Mishnah 17

R.¹ Elazar ben Azariah said, If there be no [study of the] Law there is no good conduct, if there be no good conduct there is no [study of the] Law; if there be no wisdom there is no fear [of the Almighty], if there be no fear [of the Almighty] there is no wisdom; if² there be no understanding there is no knowledge, if there be no knowledge there is no understanding; if there be no meal there is no [study of the] Law,³ if there be no [study of the] Law there is no meal.⁴ He⁵ used to say, He⁶ whose wisdom excels his deeds, to what is he like?⁷ To a tree⁸ whose branches are many⁹ but whose roots are few,⁹ and the wind comes and uproots it and overturns it (upon its face), as it is said,¹⁰ *For he shall be like a tamarisk in the desert, and shall not see when good cometh,¹¹ but shall inhabit the parched places in the wilderness, a salt land and not inhabited.* But he⁶ whose works exceed⁹ his wisdom, to what is he like? To a tree⁸ whose branches are few,⁹ but whose roots are many,⁹ so that even though all the winds in the world come and blow against it, it can not be stirred¹² from its place, as it is said,¹³ *For he shall be as a tree planted by the waters, and that spreadeth out its roots by the river, and shall not*

מִשְׁנָה יז

יְרַבִּי אֶלְעָזָר בֶּן עֲזַרְיָה אוֹמֵר אִם אֵין תּוֹרָה אֵין דְּרָךְ אֶרְצָא. אִם אֵין דְּרָךְ אֶרְצָא אֵין תּוֹרָה; אִם אֵין חֲכָמָה אֵין יִרְאָה, אִם אֵין יִרְאָה אֵין חֲכָמָה; יֵאָם אֵין בִּינָה אֵין דַּעַת, אִם אֵין דַּעַת אֵין בִּינָה; אִם אֵין קַמַח אֵין תּוֹרָה, אִם אֵין תּוֹרָה אֵין קַמַח. הֲוֵא הֵיָה אוֹמֵר כֹּל שֶׁחֲכָמָתוֹ מְרוּבָה מִמַּעֲשָׂיו, לָמָּה הוּא דוֹמָה? לְאֵילָן שְׁעִנְפָיו יְמֻרְבִּין, וְשָׂרְשָׁיו יְמוּעָטִין, וְהָרוּחַ בָּאָה וְעוֹקְרָתוֹ וְהוֹפֵכָתוֹ עַל פָּנָיו,¹⁰ שֶׁנֶּאֱמַר וְהָיָה כְּעֶרְעֵר בְּעֶרְבָה וְלֹא יִרְאָה כִּי יֵיבֵא טוֹב וְשָׁכֵן חֲרָרִים בְּמִדְבָּר אֶרְצָא מִלְחָה וְלֹא תֵשֵׁב. אָבֵל כֹּל שְׁמַעֲשָׂיו מְרוּבִין מִחֲכָמָתוֹ לָמָּה הוּא דוֹמָה? לְאֵילָן שְׁעִנְפָיו יְמוּעָטִין, וְשָׂרְשָׁיו יְמֻרְבִּין, שְׂאֵפִילוּ כָּל-הָרוּחֹת שְׁבָעוֹלָם בָּאוֹת וְנוֹשְׁבוֹת בּוֹ, אֵין יְמִזְזִין אוֹתוֹ מִמְּקוֹמוֹ,¹³ שֶׁנֶּאֱמַר וְהָיָה כְּעֵץ שְׁתוּל עַל-מַיִם וְעַל-יִזְבֵּל יִשְׁלַח שָׂרְשָׁיו

see¹⁴ when heat¹⁵ cometh, but its foliage shall be green; and shall not be anxious in the year of drought,¹⁶ neither shall cease from yielding fruit.

וְלֹא אֵי־רָאָה כִּי־יָבֵא חוֹם וְהָיָה עָלֶיהוּ רַעֲוֵן וּבְשָׁנַת בְּצֻרַת לֹא יִדָּאָג וְלֹא יִמֵּשׁ מַעֲשׂוֹת פְּרִי.

1 *Mishnah* 21 commences here in the Prayer Book. 2 The Prayer Book has אִם * אֵין דְּעֵת אֵין בְּיָנָה אִם אֵין בְּיָנָה אֵין דְּעֵת. 3 Compare 2²; מְנַחוּת 103b. 4 Contrast 4⁸. He who neglects the study of the Law because of his wealth will in the end disregard the study in poverty (compare סוֹטָה 20a, יוֹמָא 71). 5 *Mishnah* 22 in the Prayer Book commences here. 6 Literally *Everyone*. 7 Compare 117, 39, 514, 65. 8 The vowelization could be the definite form לְאֵילָן to 'the' tree. 9 מְרַבִּים, מַעֲשִׂים, in the Prayer Book. 10 *Jeremiah* 17, 6. 11 יָבוֹא in the Scripture. 12 In the Prayer Book, מְזִיזִים. 13 *Jeremiah* 17, 8. 14 The Scripture gives יִרָאָה as the כְּתִיב and יִרָאָה as the קָרִי [in foot-note]. 15 חוֹם is in the Scriptural text. 16 The Scripture gives בְּצֻרַת. *If there be no knowledge there is no understanding, if there be no understanding there is no knowledge.

Mishnah 18

R.¹ Eliezer ben² Chisma said, [The law concerning] *bird-offerings*³ and the *onset of menstruation*⁴ are essential traditional ordinances, but the calculations of the seasons⁵ and geometry are but the after-courses⁶ of wisdom.

מִשְׁנֵה יוֹ

רַבִּי אֶלְעָזָר בֶּן הַסָּמָא אוֹמֵר, קִיּוּן, יוֹפְתֵי גְדָה, הֵן הֵן גּוֹפֵי הַלְכוֹת, תְּקוּפוֹת וְגַמְטְרִיאוֹת פְּרַפְרָאוֹת לַחֲכָמָה.

1 *Mishnah* 23 starts here in the Prayer Book. In some editions, רַבִּי אֶלְעָזָר, R. Elazar. 2 Some consider בֶּן redundant. 3 *Leviticus* 12, 13, 15. 4 *Leviticus* 15, 19ff. 5 The *equinoxes* (the two opposite points at which the sun's centre crosses the celestial equator, and day and night are everywhere of equal length; also the times of crossing, *viz.*, about March 21—*vernal equinox*—and September 22-23—*autumnal equinox*; the term is also used for the *equinoctial points* (where the celestial equator and the elliptic intersect) and the *solstices* (the points and times in the elliptic when the sun is at its greatest declination or farthest from the equator, north or south, *viz.*, the point of the sign Cancer) usually on June 21-22—the *summer solstice*—and December 22—the *winter solstice*—the first point of the sign Capricorn. Some render this *astronomy*. 6 Compare בְּרֻחוֹת 65, שָׁבָת 232. In some texts פְּרַפְרִיאוֹת. Scientific studies are not as important as the knowledge of the Law.

CHAPTER 4

פֶּרֶק ד

Mishnah 1

Ben Zoma¹ said, Who is wise? He that learns from all men, as it is said,² *From all my teachers have I acquired understanding.*³ Who⁴ is mighty? One who subdues his passions,⁵ as it is said,⁶ *He that is slow to anger is better than the mighty, and he that ruleth⁷ over his spirit than he that taketh⁸ a city.* Who is rich? He who rejoiceth in his portion,⁹ as it is said,¹⁰ *When thou eatest the labour of thine hands, happy shalt thou be, and it shall be well with thee.* 'Happy¹¹ shalt thou be'—in this world, 'and it shall be well with thee'—in the world to come. Who is honoured?¹² One that honours [his] fellow-men, as it is said,¹³ *For them that honour Me will I honour, and they that despise Me¹⁴ shall be lightly esteemed.*

1 Compare סוֹטָה 915. 2 *Psalm 119, 99.* 3 Some render this *I have more understanding than all my teachers.* 4 אִיזוּהִי in some editions. 5 *i.e.*, evil inclination. 6 *Proverbs 16, 32.* 7 וּמִשָּׁל is the orthography in Scripture. 8 מְלִכָּד is the Scriptural orthography. 9 *Psalm 128, 2.* This is repeated in 64. 10 *i.e.*, one who is contented with his lot and makes the best of things. 11 These two phrases are repeated in 64. 12 מְכַבֵּד in some texts. 13 *I Samuel 2, 30.* 14 The Scripture has וּבֹזֵי יַקְלוּ.

Mishnah 2

Ben Azzai¹ said, Run² to [the fulfilment of even] a slight precept as [thou wouldst to fulfil] a grave one,³ and flee from transgression,⁴ for one good deed draws another good deed [in its wake],⁵ and one transgression draws another transgression [in its train];⁶ for⁷ the recompense of a good deed is a good deed, and the reward of a transgression is a transgression.

מִשְׁנֵה א

בֵּן זוֹמָא אוֹמֵר אִיזוּהוּ חָכֵם? הַלּוֹמֵד מִכָּל אָדָם, שֶׁנֶּאֱמַר מִכָּל מְלַמְדֵי הַשִּׁפְלָתִי. אִיזוּהוּ גִבּוֹר? הַכּוֹבֵשׁ אֶת-יָצְרוֹ, שֶׁנֶּאֱמַר טוֹב אַרְךָ אַפַּיִם מִגִּבּוֹר וּמוֹשֵׁל בְּרוּחוֹ מִלּוֹכַד עִיר. אִיזוּהוּ עָשִׂיר? הַשֶּׂמֶח בְּהִלְקוֹ, שֶׁנֶּאֱמַר יִגַּע בְּפִיָּה כִּי תֹאכַל אֲשֶׁרֶיךָ וְטוֹב לָךְ, אֲשֶׁרֶיךָ בְּעוֹלָם הִנֵּה וְטוֹב לָךְ לְעוֹלָם הַבָּא. אִיזוּהוּ מְכַבֵּד? הַמְכַבֵּד אֶת-הַבְּרִיּוֹת, שֶׁנֶּאֱמַר כִּי מְכַבְּדֵי אֲכַבֵּד וּבֹזֵי יַקְלוּ.

מִשְׁנֵה ב

בֵּן אֶזְזַי אוֹמֵר יְהוּי רַץ לְמִצְוָה קְלָה וְכַבַּח מוֹרָה, וּבֹרַח מִן-הָעֲבִירָה, שֶׁמִּצְוָה גּוֹרֶרֶת מִצְוָה, וְעֲבִירָה גּוֹרֶרֶת עֲבִירָה; יִשְׁטָכֵר מִצְוָה, וְשָׁכַר עֲבִירָה, וְשָׁכַר עֲבִירָה, עֲבִירָה.

1 עַיִן in some editions. 2 In some editions, הָיָה רָץ. 3 Some consider כְּבִתְמוּרָה as a grave one, redundant. Compare 2¹. 4 עֲבָרָה, וְעֲבָרָה, הָעֲבָרָה in the Prayer Book. 5 i.e., one can practise and cultivate good moral habits. 6 The committal of evil actions can become a fearful habit—it may indeed be heritable* and be passed on as an inheritance (see טוֹפָה 52a). 7 This is a variation of the foregoing. *Or hereditary; conversely, it may be hereditary.

Mishnah 3

מִשְׁנָה ג

He¹ used to say, Despise not any man,² and discard not any thing,³ for there is not a man who has not his hour and there exists not a thing which has not its place.⁴

יְהוָה הָיָה אֹמֵר אֵל תְּהִי בּוֹ לְכָל אָדָם וְאֵל תְּהִי מִפְּלִיגֵי לְכָל דָּבָר, שְׂאִין לָהּ אָדָם שְׂאִין לוֹ שְׂעָה, וְאִין לָהּ דָּבָר שְׂאִין לוֹ מְקוֹם.

1 בֵּן עֲזַרְיָה. 2 Compare 11^{2,15}, 2¹⁰, 4¹. 3 One should be on his guard against saying that anything is unlikely or will not happen or is not possible. 4 The Creator has ordained time and place for all things.

Mishnah 4

מִשְׁנָה ד

R. Levitas of Jabneh¹ said, Be² exceedingly humble of spirit, since the hope of man is but the worm.³ R.⁴ Jochanan ben Baroka⁵ said, Who-soever profanes the name of Heaven in secret will suffer⁶ the penalty therefor in public; [and] it⁷ is all one whether the profanation of the Name is [committed] unwittingly or in wilfulness.

רַבִּי לְוִיטָס אֵלֶּשׁ יַבְנֵה אֹמֵר מְאֹד מְאֹד יִהְיֶה שֹׁפֵל רֵיחַ, שְׂתִקְוֹת אֲנוּשׁ יִרְמָה. יִרְבִּי יוֹחָנָן בֶּן בְּרוּקָא אֹמֵר כָּל-הַמְחַלֵּל שֵׁם שָׁמַיִם בְּסֵתֶר וְנִפְרָעִין מִמֶּנּוּ בְּגוּלָי; יֵאָחַד שׁוֹנֵג וְאֵחָד מוֹיֵד בְּחֵלוֹל הַשֵּׁם.

1 Or *Jamma*, N.W. of Jerusalem, seat of the Sanhedrin after 80 c.E. 2 הָיָה in the Prayer Book. 3 From *Ben Sira* or *Ecclesiasticus* 71⁷. 4 Here begins *Mishnah* 5 in the Prayer Book. 5 Some prefer the vowelled form בְּרוּקָא, *Beroka*. 6 In the Prayer Book. וְנִפְרָעִים. 7 אֵחָד בְּשׁוֹנֵג וְאֵחָד בְּמוֹיֵד in the Prayer Book.

Mishnah 5

מִשְׁנָה ה

R.¹ Ishmael his son² said, He who learns in order to teach³ will be granted⁴ [by Heaven] the means both to learn and to teach; but he that learns in order to practise,

יִרְבִּי יִשְׁמַעְאֵל יְבִנּוּ אֹמֵר הַלּוֹמֵד עַל מְנַת יִלְמַד, מִסְפִּיקֵין בְּיָדוֹ לְלַמּוֹד וּלְלַמֵּד; וְהַלּוֹמֵד עַל מְנַת

[Heaven] will grant⁴ him the opportunity to learn and to teach, to observe and to perform. R.⁵ Zadok said, Make⁶ not of [the Law] a crown wherewith to aggrandise thyself, nor a spade wherewith to dig. And so also used Hillel to say, He who makes worldly use of⁷ the crown [of the Law] shall waste away. Hence thou mayest deduce that whoever derives profit from the words of the Law is promoting his own destruction.⁸

לְעִשׂוֹת, מִסְפִּיקֵין בְּיָדוֹ לְלַמּוֹד
וּלְלַמֵּד, לְשִׁמּוֹר וְלְעִשׂוֹת. רַבִּי
צְדוֹק אָמַר: אַל תַּעֲשֶׂם עֲטָרָה
לְהִתְגַּדֵּל בָּהֶם, וְלֹא קַרְדּוּם לְחַפּוֹר
בָּהֶם. וְכַךְ הָיָה הַלֵּל אָמַר
'וְדִישׁתַּמֵּשׁ בְּתַנְאֵי חֻלְיָהּ. הָאֵל לְמַדְתָּ
כָּל-הַנְּהַנְהָה מִדְּבַרֵי תוֹרָה, נוֹטֵל
חַיּוֹ מִן-הָעוֹלָם.

1 *viz.*, R. Ishmael ben R. Jochanan ben Baroka. רַבִּי יִשְׁמַעֵאל בֶּן רַבִּי יוֹסִי is given in some texts. *Mishnah* 6 begins here in the Prayer Book. 2 בְּנֵי is omitted in the גְּמָרָא. 3 But action (*i.e.*, putting into practice) is implied (see יוֹמָא 72b, תַּעֲנִית 7a). 4 מִסְפִּיקֵים is given in the Prayer Book. 5 In the Prayer Book *Mishnah* 7 is given here. 6 In the Prayer Book is given אַל תַּפְרוֹשׁ מִן-הַצְּבוֹר וְעַל תַּעֲשֶׂה עֲטָרָה לְהִתְגַּדֵּל בָּהּ וְלֹא וְעַל תַּעֲשֶׂה עֲצָמָה כְּעוֹרְכֵי הַדִּינִין (or) הַדִּינִים) וְעַל תַּעֲשֶׂה עֲטָרָה לְהִתְגַּדֵּל בָּהּ וְלֹא בָּהּ קַרְדּוּם לְחַפּוֹר בָּהּ, *Separate not thyself from the congregation; and be not like those that lay down the law* (or, *act not on the counsel's part in the office of a judge, or act not like those that seek to influence the judges*), and *make not of [the Law] a crown wherewith to aggrandise thyself, nor a spade wherewith to dig.* *Compare 24. 7 The Prayer Book has וְדִישׁתַּמֵּשׁ. 8 Literally *takes his life from the world.* Compare תַּעֲנִית 7a.

Mishnah 6

מִשְׁנָה ו

R. Jose¹ said, He that honours the Law² will himself be honoured³ by his fellow-men,⁴ but whosoever dishonours the Law⁵ will himself be dishonoured⁶ by mankind.

רַבִּי יוֹסִי אָמַר כָּל-הַמְּכַבֵּד אֶת-
הַתּוֹרָה, גּוֹפוֹ מְכוֹבָד עַל הַבְּרִיּוֹת,
וְכָל הַמְּחַלֵּל אֶת-הַתּוֹרָה, גּוֹפוֹ
מִחוּלָּל עַל הַבְּרִיּוֹת.

1 *Mishnah* 8 commences here in the Prayer Book. R. Jose ben Ghalafta is referred to here. 2 *i.e.*, fulfils its precepts. 3 מְכַבֵּד in some texts. 4 Compare בְּרִכּוֹת 19b. 5 *i.e.*, disregards its moral teachings. 6 In some texts מְחַלֵּל.

Mishnah 7

מִשְׁנָה ז

R.¹ Ishmael, his son, said, Whosoever shuns judicial office² rids himself of hatred,³ (and) robbery⁴ and

רַבִּי יִשְׁמַעֵאל בְּנֵי אִיִּשְׁמָאֵל הַחוֹשֶׁף
עַצְמוֹ מִן-הַדִּין, פּוֹרֵק מִמֶּנּוּ אִיבָה

perjury, but he that presumptuously thrusts himself forward⁵ to lay down a decision is foolish, wicked and of an arrogant disposition.

1 Here commences *Mishnah* 9 in the Prayer Book. *sc.*, R. Ishmael ben Jose. R. Simon is given in some editions and *Bar Kappara* in others. 2 Or *refrains from passing* [hasty] *judgment* (see סְנֵה־רִיב 6b). 3 Compare שְׁבֵת 119a. 4 Wrongful judgment deprives an innocent man of what is rightly his. Or וְגַל. 5 Or *he that is shameless, is forward, is presumptuous*; compare סוּטָה 16.

Mishnah 8

מִשְׁנֵה ח

He¹ used to say, Judge not alone,² for none may judge alone save One; and say not [to thy fellow judges], 'Adopt my view', for³ it is for them to choose [to concur], and it is not thou [who mayest enforce accordance].⁴

יְהוּא הֵיךָ אוֹמֵר אֵל תְּהִי דָן יְחִידִי,
שְׂאִין דָן יְחִידִי, אֲלֵא אֶחָד, וְאֵל
תֹּאמֵר קִבְּלוּ דְעִמִּי שֶׁהֵן רְשָׁאִין
וְלֹא אֶתְהִי.

1 *viz.*, R. Ishmael ben Jose. Here commences *Mishnah* 10 in the Prayer Book. 2 Compare 36; סְנֵה־רִיב 5a. 3 שֶׁהֵם רְשָׁאִים in some texts. 4 A decision follows the opinion of a majority of judges.

Mishnah 9

מִשְׁנֵה ט

R.¹ Jonathan said, Whoso fulfils the Law in poverty² shall in the end fulfil it in wealth,³ and he that disregards the Law in wealth shall ultimately neglect it in poverty.

יְרֵבִי יוֹנָתָן אוֹמֵר כָּל־הַמְּקַיִם אֶת־
הַתּוֹרָה מֵעוֹנֵי סוֹפוֹ לְקִיּוּמָהּ
מֵעוֹשֶׂר, וְכֹל הַמְּבַטֵּל אֶת־הַתּוֹרָה
מֵעוֹשֶׂר, סוֹפוֹ לְבַטְלָהּ מֵעוֹנֵי.

1 In the Prayer Book *Mishnah* 11 commences here. He was probably Jonathan ben Joseph, and a disciple of R. Akiba and R. Ishmael ben Elisha. Some texts give יוֹחָנָן, *Jochanan*, and others נָתָן, *Nathan*. 2 מֵעוֹנֵי in some texts. 3 Contrast 31⁷. מֵעוֹשֶׂר in some texts.

Mishnah 10

מִשְׁנֵה י

R.¹ Meir said, Decrease² thy labours in worldly avocations and occupy thyself in the Law;³ and be⁴ humble of spirit before all men; and if thou neglect the Law, many things to

יְרֵבִי מֵאִיר אוֹמֵר יִהְיֶה מִמַּעַט
בְּעֵסֶק, וְעֵסֶק בִּתּוֹרָה; יוֹהִי שְׂפֵל
רוּחַ בְּפָנָי כָּל־אָדָם; וְאִם בָּטַלְתָּ

disregard it shall present themselves to thee,⁵ but if thou toil in the Law, He⁶ has abundant reward to give⁷ to thee.⁸

מִן־הַתּוֹרָה, יֵשׁ־לָךְ בְּטָלִים הַרְבֵּה
יִבְנֶנְךָ, וְאִם עָמַלְתָּ בַתּוֹרָה, יֵשׁ־
לּוֹ שָׂכָר הַרְבֵּה לְיָתֶן לָךְ.

1 *Mishnah* 12 starts here in the Prayer Book. 2 הָיָה in some texts. 3 Compare 25. 4 In some texts, וְהָיָה. 5 Compare טִיבָה 28b. 6 לוֹ is omitted in the גְּמָרָא, and the rendering of יֵשׁ by itself would then be *There is*. 7 לְתֵן in some texts. 8 Compare 2^{14, 16}; בְּרִכּוֹת 35b. *Or יֵשׁ לָךְ יֵשׁ לּוֹ.

Mishnah 11

R.¹ Eliezer² ben Jacob said, Whoso performs one good deed acquires for himself one advocate, but whosoever commits one transgression³ acquires for himself one accuser; repentance and good deeds are as a shield⁴ against punishment.⁵ R.⁶ Jochanan Ha-Sandelar⁷ said, Every assembly that is for the sake of Heaven will in the end be established, but that which is not for the sake of Heaven will not in the end be established.

מִשְׁנֵה יֵא
רַבִּי אֱלִיעֶזֶר בֶּן יַעֲקֹב אָמַר
הַעוֹשֶׂה מַצְוָה אַחַת קוֹנֶה לּוֹ פְּרָקְלִיט
אֶחָד, וְהַעוֹבֵר עֲבִירָה אַחַת קוֹנֶה
לּוֹ קַטְגוֹר אֶחָד; תְּשׁוּבָה וּמַעֲשִׂים
טוֹבִים יַכְתִּירִים בְּפָנָיו הַפּוֹרְעָנוֹת.
רַבִּי יוֹחָנָן הַסַּנְדְּלָר אָמַר כָּל־
כְּנִסְיָה שֶׁהִיא לְשֵׁם שָׁמַיִם סוֹפָה
לְהַתְקַיֵּם, וְשֶׁאִינָהּ לְשֵׁם שָׁמַיִם, אֵין
סוֹפָה לְהַתְקַיֵּם.

1 Here, in the Prayer Book, starts *Mishnah* 13. 2 A disciple of R. Akiba, and not to be confused with the Sage quoted in *מדות* 12. 3 עֲבִירָה in some texts. 4 Or כְּתָרִים, כְּתָרִים. 5 God's pardon and favour are not granted if there is no true repentance followed by charitable deeds. 6 Here starts *Mishnah* 14 in the Prayer Book. In some texts הַפּוֹרְעָנוֹת. 7 Literally *the Sandal-maker*. According to one opinion הַסַּנְדְּלָר = אֶלְכְּסַנְדְּרִי, *the Alexandrian*.

Mishnah 12

R.¹ Elazar ben Shammua said, Let the honour of thy disciple be as precious to thee as thine own,² and the honour of thy colleague³ be as the reverence for thy master,⁴ and the reverence for thy master be like the fear of Heaven.⁵

מִשְׁנֵה יֵב
רַבִּי אֶלְעָזָר בֶּן שָׁמוּעַ אָמַר יְהִי
כְבוֹד פְּלִמְדָּךְ חֲבִיב עֲלֶיךָ יְכַשְׁלֶךָ,
וְכְבוֹד יְתִבְרְךָ כְּמוֹרָא יְרַבְךָ, וּמוֹרָא
רַבְךָ כְּמוֹרָא שָׁמַיִם.

1 *Mishnah* 15 starts here in the Prayer Book. 2 Actually mutual reverence between master and disciple is advocated. 3 Or *associate, fellow*. 4 Or *teacher*. 5 For the master teaches the Law of God.

Mishnah 13

משנה יג

R.¹ Judah said, Be² cautious in study³ [of the Law], for an error in study⁴ [of the Law] is accounted presumptuous transgression.⁵ R.⁶ Simon said, There are⁷ three crowns: the crown of [the study of] the Law, the crown of priesthood,⁸ and the crown of royalty, but the crown of a good name surpasses them all.⁹

רבי יהודה אומר יהוי זהיר
בְּלִמּוּד שְׁשֹׁנֵת לְלִמּוּד עוֹלָה וְדוֹן.
רבי שמעון אומר שלשה כתרִים
הֵם, כֶּתֶר תּוֹרָה, כֶּתֶר כְּהוֹנָה,
וְכֶתֶר מַלְכוּת, וְכֶתֶר שֵׁם טוֹב עוֹלָה
עַל יִגְבִּיהוֹן.

1 *Mishnah* 16 begins here in the Prayer Book. 2 *היה* in some texts. 3 Some render it *Be heedful in teaching the Law*. The *נִמְרָא* has *בְּתִלְמוּד*, and thus in the Prayer Book. 4 Or *teaching*.^{*} If this is not intentional, for it may lead to false doctrine and wanton sinfulness. The *נִמְרָא* has *לְמִיד*, and thus in the Prayer Book. 5 Compare *בְּבֵא מְצִיעָא* 33b. 6 *Mishnah* 17 begins here in the Prayer Book. 7 In the Prayer Book, *הוּ*. 8 See *Exodus* 29, 6. The Prayer Book has *כְּהוֹנָה*. 9 See *Proverbs* 23, 1; *Ecclesiastes* 7, 1. ^{*}*תִּלְמוּד* in the Prayer Book.

Mishnah 14

משנה יד

R.¹ Nehorai² said, Wander³ forth to a place of the Law,⁴ and say not that it will come after thee, or that thy colleagues will establish it in thy possession;⁵ and lean not upon thine own understanding.⁶

ירבי נהוראי אומר יהוי גולה
למקום יתורה ואל תאמר שהיא
תבוא אחריך, שהביריך יקיימוה
בְּיָדְךָ, ואל בינתך אל התשען.

1 In the Prayer Book *Mishnah* 18 begins here. 2 Or *נְהוּרִי*. See 95 *גויר* 414. He is said to be R. Elazar ben Arach (see 210). 3 In some texts, *היה*. 4 Where the Law is studied (see 6⁹). 5 Compare 1¹⁶. 6 Compare *Proverbs* 3,5.

Mishnah 15

משנה טו

R.¹ Jannai² said, It is not in our power³ to explain either the prosperity of the wicked or the tribulations of the righteous.⁴ R. Mattia⁵ ben Cheres⁶ said, Be⁷ first in the

ירבי ינאי אומר אין יבְּיָדֵינוּ לֹא
משלות הרשעים, ואף לא מיסורי
הצדיקים. רבי מתאי בן חרש

salutation of peace to all men,⁸ and be⁹ [rather] a tail to (the) lions than a head to (the) foxes.¹⁰

אֹמֵר יְהוֹי מִקְדִּים בְּשָׁלוֹם כָּל-
אָדָם, יְהוֹי נֹכַח לְאַרְיֹת, וְאֵל תְּהִי
רֹאשׁ לְשׁוּעָלִים.¹⁰

1 Here begins *Mishnah* 19 in the Prayer Book. 2 Or י"י. Perhaps the father of R. Dostai quoted in 3⁸. 3 Compare תַּעֲנִית 11b. 4 Some render this: *it does not lie with us concerning the security of the ungodly or the afflictions of the righteous*—a reflection on the mediocre status of the Jews during the period 250 C.E. (*circa*). 5 Or מְתִיב; in some editions מַתְתִּיב, *Mattathiah*. See יוֹמָא 8⁶. In the Prayer Book *Mishnah* 20 begins here. 6 Or חָרַשׁ. 7 In the Prayer Book, הָוָה. 8 Particularly good advice in unfriendly surroundings. 9 וְהוֹה in the Prayer Book. 10 לְשׁוּעָלִים in the Prayer Book.

Mishnah 16

מִשְׁנֵה טו

R.¹ Jacob² said, This world is like a vestibule to the world to come; prepare thyself³ in the vestibule that thou mayest enter into the (banqueting-) hall.⁴

רַבִּי יַעֲקֹב אֹמֵר הָעוֹלָם הַזֶּה
דוֹמֶה לְפָרוּזְדוֹר בְּפִנֵי הָעוֹלָם הַבָּא;
יִהְיֶה חָקֵן עֲצָמָה בְּפָרוּזְדוֹר כְּדֵי
שֶׁתַּכְּפֹס לְטַרְקֵלֶיךָ.

1 In the Prayer Book *Mishnah* 21 commences here. 2 See 3⁷. 3 By true repentance and good deeds. Compare 3¹¹, 4¹¹. 4 Compare 3¹⁶.

Mishnah 17

מִשְׁנֵה יז

He¹ used to say, Better is one hour of repentance and good actions² in this world than the whole life of the world to come; and better is one hour of bliss³ of spirit in the world to come than all the life of this world.

הוּא הָיָה אֹמֵר יְפֵה שְׂעָה אַחַת
בְּתִשְׁבּוּבָה יוֹמְעָשִׂים טוֹבִים בְּעוֹלָם
הַזֶּה מִכָּל חַיֵּי הָעוֹלָם הַבָּא; וְיְפֵה
שְׂעָה אַחַת שְׁלֵל קוֹרֵת רוּחַ בְּעוֹלָם
הַבָּא מִכָּל חַיֵּי הָעוֹלָם הַזֶּה.

1 *i.e.*, R. Jacob. *Mishnah* 22 begins here in the Prayer Book. 2 Compare 3¹¹, 4¹¹, 4¹⁶. 3 Or קְרִית.

Mishnah 18

מִשְׁנֵה יח

R.¹ Simon ben Elazar said, Do not placate thy fellow in the hour of his wrath,² and comfort him not in the hour³ while his dead⁴ lies before him,⁵ and question him not in the

רַבִּי שִׁמְעוֹן בֶּן אֶלְעָזָר אֹמֵר אַל
תְּרַצֶּה אֶת-חֲבֵרְךָ בְּשַׁעַת כְּבֵסוֹ,
וְאֵל תְּנַחֲמֵנוּ בְּשַׁעַת שְׁמֵתוֹ מוֹטֵל

hour of his vow,* and endeavour not to see him in the hour of§ his disgrace.

לְפָנָיו, וְאֵל תִּשְׁאַל לוֹ בְשַׁעַת נִדְרוֹ,
וְאֵל תִּשְׁתַּדֵּד לְרֵאוֹתוֹ בְּשַׁעַת
קְלָקְלָתוֹ.

1 Mishnah 23 in the Prayer Book starts here. 2 Uncontrollable anger and fury must be first allowed to cool down before any attempt at appeasement and pacification is made. 3 Or the indefinite בְּשַׁעַת, in an hour. 4 Or מָטָל. 5 Only after the burial is condolence offered to a mourner. *See ADDENDA at the end of this Tractate. §Popularly pronounced בְּשַׁעַת.

Mishnah 19

מְשֻׁנָּה יט

Samuel¹ the Younger² said, *Rejoice³ not when thine enemy falleth,⁴ and let not thine heart be glad when he stumbleth, lest the Eternal see it and it displease Him, and⁵ he turn away his wrath from him [to thee].⁶*

יִשְׂמְוֹאֵל הַקָּטָן אֹמֵר בְּנֹפֵל
אוֹיְבֶךָ אַל תִּשְׂמַח וּבְכַשְׁלוֹ אַל יִגַּל
לְבָבְךָ פֶּן יִרְאֶה ה' וְרַע בְּעֵינָיו
וְהִשִּׁיב מִצְּלָיו יֵאָפוּ.

1 Mishnah 24 starts here in the Prayer Book. 2 Some render it *the Little*. 3 Proverbs 24, 17. 4 בְּנֹפֵל in Scripture. 5 Proverbs 24, 18. 6 Compare Job 31, 29.

Mishnah 20

מְשֻׁנָּה כ

Elisha¹ ben Abuyah said, If one learn as a child, what is it like? Like ink written on new paper.² He that learns as an old man, what is it like? To ink written on blotted paper.³ R.⁴ Jose ben R.⁵ Judah of Kephars⁶ ha-Babli said, If one learn from the young, to what is he like? To one that eats unripe grapes,⁷ or drinks wine⁸ from his winepress. And one who learns from the aged, to what is he like? To one that eats ripe grapes and drinks old wine. Rabbi⁹ said, Look not at the flask¹⁰ but at what is therein; there may be§ a new flask¹⁰ full of old [wine], and an old [flask] wherein is not even new [wine].¹¹ §Or קִנְיָן.

יֵאֱלִישֶׁע בֶּן אֲבוּיָה אֹמֵר הַלּוֹמֵד
יְלֵד לְמָה הוּא דוֹמָה? לְדִין כְּתוּבָה
עַל יַגִּיר חֲדָשׁ. וְהַלּוֹמֵד זָקֵן לְמָה
הוּא דוֹמָה? לְדִין כְּתוּבָה עַל יַגִּיר
מְחֻוֹק. רַבִּי יוֹסִי בְּרַבִּי יְהוּדָה
אִישׁ כִּפְרֵי הַבְּבֵלִי אֹמֵר הַלּוֹמֵד מִן־
הַקְּטָנִים, לְמָה הוּא דוֹמָה? לְאוֹכֵל
עֲנָבִים קְהוּת וְשׁוֹתָה יַיִן מִגְּתוֹ.
וְהַלּוֹמֵד מִן־הַזְּקֵנִים לְמָה הוּא
דוֹמָה? לְאוֹכֵל עֲנָבִים בְּשׁוֹלוֹת
וְשׁוֹתָה יַיִן יָשָׁן. רַבִּי אֹמֵר אֵל
הַסֵּתֶפֶל בְּבִזְזוּקָן אֵלָּא בְּמַה שִּׁישׁ
בוֹ; שִׁישׁ יִקְנֶקֶן חֲדָשׁ מִלֵּא יָשָׁן וְיָשָׁן
שֶׁאִפְּלִיו יִחְדָּשׁ אֵין בוֹ.

1 He was surnamed אחר קטן מועד קטן 20a, חגיגה 14b). *Mishnah* 25 in the Prayer Book begins here. 2 *i.e.*, clean paper. Or גיר. 3 Paper from which writing had been rubbed out. 4 *Mishnah* 26 begins here in the Prayer Book. 5 Or בר* in some texts (as in the Prayer Book). 6 A Galilean village. Compare עדייות 61. 7 They set the teeth on edge. 8 *i.e.*, wine not properly matured. 9 רבי מאיר, *Rabbi Meir*, in the Prayer Book. *Mishnah* 27 in the Prayer Book. 10 Popular reading קנן, בקנן. 11 Compare עירובין 27a. *See ADDENDA, Page 552.

Mishnah 21

משנה כא

R.¹ Elazar ha-Kapar² said, Envy, (and) cupidity³ and ambition take⁴ a man out of the world.⁵

רבי אלעזר הקפארה הקפארה יתמאנה והכבוד, מוציאין את האדם מן העולם.

1 *Mishnah* 28 begins here in the Prayer Book. 2 Or *Hakappar* (ברכות 63a). 3 Or *lust*. 4 In the Prayer Book, מוציאין. 5 Compare 21b.

Mishnah 22

משנה כב

He¹ used to say, They that are born [are destined] to die; and the dead [are destined] to be brought to life again;² and the living³ [are destined after death] to be judged,⁴ to know, to make known,⁵ and to understand⁶ that He is God, He is the Maker, He is the Creator, He is the Discerner, He is the Judge, He is [the] Witness, He is the Complainant.⁷ And He⁸ it is that shall judge in future, blessed be He, with Whom there is no unrighteousness, nor forgetfulness, nor respect of persons,⁹ nor taking of bribes¹⁰ for all is His;¹¹ and know that everything is according to the reckoning; and let not thy [evil] imagination¹² lull thee with the hope that the grave will be a refuge for thee;¹³ for perforce wast thou formed, (and¹⁴ perforce wast thou born), and thou livest despite thyself, and despite thyself wilt thou

יהוא הנה אומר הילודים למוות; והמתים להחיות; ינתחיים לידון לידע, ולהודיע, וילהודע, שהוא אל, הוא היוצר הוא הבורא, הוא המבין, הוא הדיין, הוא עד, הוא יבעל דין, והוא עתיד לדון, ברוף הוא שאין לפניו לא עולה ולא שכחה, ולא משוא פנים, ולא מקח ישוחד, ושתכל שלו; ודע שתכל לפי החשבון; ואל יבטיחה יצרה שהשאל בית מנוס לך; שעל כרחק אמה גוצר (ועל כרחק אמה גולד), ועל כרחק אמה חי, ועל כרחק אמה מת, ועל כרחק

die, and perforce in the hereafter wilt thou have to give¹⁵ account and reckoning¹⁶ before the Supreme King of kings,¹⁷ the Holy One, blessed be He.

אָתָּה עֲתִיד לִיתֵן דִּין וְיִחָשְׁבוֹן
לְפָנָי מֶלֶךְ מְלָכֵי הַמְּלָכִים הַקְּדוֹשׁ
בְּרוּךְ הוּא.

1 R. Elazar Hakappar. Here begins *Mishnah* 29 in the Prayer Book. 2 A reference to the belief in the resurrection of the dead. 3 *i.e.*, the resurrected. 4 לִדְיוֹן in the Prayer Book. 5 In the Prayer Book, וְלִהְיוֹדִיעַ, and to make known. 6 Literally and to be made to understand. 7 Or accuser, plaintiff. 8 וְהוּא, and He, in the Prayer Book. 9 *i.e.*, partiality, favouritism. 10 Compare *II Chronicles* 19, 7. 11 הַכֹּל שְׁלוֹ is omitted in the Prayer Book. 12 *i.e.*, evil nature, wicked inclination. Compare 2¹⁶. 13 *viz.*, that there is no hereafter. 14 This phrase in parenthesis is given in the גְּמָרָא. 15 לִיתֵן in the Prayer Book. 16 Compare 3¹. 17 Literally the King of kings of kings.

CHAPTER 5

פֶּרֶק ה

Mishnah 1

With ten *Sayings*¹ was the world created. And What does this teach? Could it not have been created with one *Saying*? But [the purpose was] to requite the wicked that destroy² the world which was created by ten *Sayings*, and to bestow³ the goodly reward upon the righteous who sustain³ the world that was created with ten *Sayings*.

מִשְׁנָה א

יְבַעֲשֶׂרָה מְאֲמוֹת גְּבֵרָא הָעוֹלָם.
וּמַה-תְּלַמּוּד לֹאמַר? וְהֲלֹא בְּמֵאֲמָר
אֶחָד יִכּוֹל לְהַבְרִאוֹת? אֲלֵא
לְהַפְרֵעַ מִן-הַרְשָׁעִים שְׂמֵאֲבָדִין
אֶת-הָעוֹלָם שֶׁנִּבְרָא בְּעֵשְׂרָה
מְאֲמוֹת, וְלִיתֵן שְׂכָר טוֹב
לְצַדִּיקִים שְׂמֵקִימִין אֶת-הָעוֹלָם
שֶׁנִּבְרָא בְּעֵשְׂרָה מְאֲמוֹת.

1 In *Genesis* 1, 3, 6, 9, 11, 14, 20, 24, 26, 29, and 2, 18* the formula וַיֹּאמֶר אֱלֹהִים, and God 'said' occurs ten times. Some consider *Genesis* 1, 1 should also be accounted as a *Saying* paralleled by *Psalms* 33, 6. *Actually וַיֹּאמֶר ה' אֱלֹהִים. See ADDENDA at the end of this *Tractate*. 2 In the Prayer Book, שְׂמֵאֲבָדִים, וְלִתֵּן, שְׂמֵקִימִים, respectively.

Mishnah 2

There were ten generations¹ from Adam to² Noah³ to make known how long-suffering* God is,⁴ seeing that all the generations continued to provoke Him,⁵ until He brought upon

מִשְׁנָה ב

עֵשְׂרָה יְדוֹרוֹת מְאָדָּם עַד גֵּן
לְהוֹדִיעַ כְּמָה אֲרָךְ אַפַּיִם לְפָנָיו.
שֶׁכָּל הַדּוֹרוֹת הָיוּ מְכַעֲסִין וּבְאִין.

them the waters of the Flood. There⁶ were ten generations from Noah⁷ to² Abraham,⁸ to make known how long-suffering God is, for all those generations provoked Him continually,⁵ until⁹ Abraham came and received the reward they [should] all [have earned].¹⁰

עַד שֶׁהֵבִיא עֲלֵיהֶם אֶת־מֵי הַמַּבּוּל.
 יַעֲשֶׂה דוֹרוֹת יְמֵנָה יַעַד יֵאבְרָהָם,
 לְהוֹדִיעַ כְּמָה *אֲרָךְ אַפַּיִם לְפָנָיו,
 שֶׁכָּל הַדּוֹרוֹת הָיוּ מְכַעֲסִין וְבֹאִין
 יַעַד שְׂבָא אֲבְרָהָם וְקָבַל עָלָיו טָכָר
 כּוֹלָם.¹⁰

1 יוֹר = 100 years. See *Genesis* 5. 2 יַעַד in the Prayer Book. 3 Including Noah's years of life. 4 God, in His patience, awaited their repentance. 5 The Prayer Book gives מְכַעֲסִים לְפָנָיו instead of מְכַעֲסִין וְבֹאִין. 6 Here begins *Mishnah* 3 in the Prayer Book. 7 viz., after Noah's death. 8 See *Genesis* 11, 10ff. 9 The Prayer Book has יַעַד שְׂבָא אֲבְרָהָם אָבִינוּ וְקָבַל טָכָר כָּלָם. 10 sc., which they forfeited by their transgressions. *In some texts אֲרָךְ.

Mishnah 3

מִשְׁנָה ג

With¹ ten trials was our father Abraham, peace be unto him,² tried,³ yet he stood steadfast in them all,⁴ to make manifest how great was the love of Abraham our father,⁵ peace be unto him.²

יַעֲשֶׂה נִסְיוֹנוֹת יְתוּסָה אֲבְרָהָם
 אָבִינוּ עָלָיו הַשְּׁלוֹם וְעָמַד בְּכוֹלָם,
 לְהוֹדִיעַ כְּמָה חֲבָתוֹ שֶׁל אֲבְרָהָם
 אָבִינוּ עָלָיו הַשְּׁלוֹם.

1 *Mishnah* 4 begins here in the Prayer Book. 2 עָלָיו הַשְּׁלוֹם is omitted in the Prayer Book. 3 They are enumerated in יְתוּסָה אֲבֹת דְּרַבִּי יוֹתָן 33.* 4 בְּכוֹלָם in the Prayer Book. 5 Compare *Isaiah* 41, 8. *See ADDENDA, Page 552.

Mishnah 4

מִשְׁנָה ד

Ten¹ miracles* were wrought for our ancestors in Egypt,² and ten at the Sea.³ (Ten⁴ plagues did the Holy One, blessed be He, bring upon the Egyptians in Egypt, and ten⁵ at the Sea.) With ten⁶ temptations⁷ did our forefathers tempt the Omnipresent,⁸ blessed be He, in the wilderness, as it is said,⁹ yet have they put Me¹⁰ to the proof these ten times, and have not hearkened to My voice.

יַעֲשֶׂה נִסִּים נְעֻשׂוֹ לְאֲבוֹתֵינוּ
 בְּמִצְרַיִם, וַעֲשֶׂה עַל יְהִים.
 (יַעֲשֶׂה מְכוֹת הֵבִיא הַקְּדוֹשׁ בְּרוּךְ
 הוּא עַל הַמִּצְרַיִם בְּמִצְרַיִם וַעֲשֶׂה
 עַל יְהִים.) עֲשֶׂה נִסְיוֹנוֹת נְסוֹ אֲבוֹתֵינוּ
 אֶת־הַמְּקוֹם בְּרוּךְ הוּא בַּמִּדְבָּר,
 יִשְׁנֹאמַר וְנִסּוּ אֹתִי זֶה עֲשֶׂה פְּעָמִים
 וְלֹא שָׁמְעוּ בְּקוֹלִי.

1 *Mishnah* 5 in the Prayer Book commences here. 2 *i.e.*, the Ten Plagues (*Exodus* 7, 14 *et seq.*). 3 Inferred from *Exodus* 15 and enumerated in אבות דרבי יונה 33. 4 *Mishnah* 6 commences here in the Prayer Book. The part in parentheses is not given in the גמרא. 5 ועשר in the Prayer Book. 6 In the Prayer Book עשרה. *Mishnah* 7 begins here in the Prayer Book. 7 See ערכין 15a. § 8 The Prayer Book gives את-הקדוש, the Holy One, instead of את-הפקום. 9 Numbers 14, 22. 10 אתי in the Scripture. *§See ADDENDA, Pages *552, §553.

Mishnah 5

Ten¹ miracles were wrought for our forefathers² in the Temple: no woman miscarried from the odour of the holy flesh;³ (and) the holy flesh never turned putrid; (and) no fly was [ever] seen in the slaughter-house; (and) no pollution⁴ [ever] befell* the High Priest on the Day of Atonement; (and) rains⁵ [never] quenched the fire of the wood-pile⁶ [on the Altar], (and) neither did the wind [ever] prevail over the column of smoke⁷ [that arose therefrom]; (and) [never] was there found a disqualifying defect in the omer,⁸ or in the two loaves⁹ or in the sheaf-bread;¹⁰ [and though the people] stood pressed closely together, they yet found ample space to prostrate themselves;¹¹ (and) never did serpent or scorpion cause injury in Jerusalem; and no man ever said to his fellow, 'The¹² place is too strait for me that I should lodge [over night] in Jerusalem'.¹³

משנה ה

יַעֲשֶׂה נִסִּים וְנִעֲשׂוּ לְאַבוֹתֵינוּ בְּבֵית
הַמִּקְדָּשׁ, לֹא תִפְּלֶה אִשָּׁה מֵרִיחַ
בֶּשֶׂר הַקֹּדֶשׁ; וְלֹא הִסְרִיחַ בֶּשֶׂר
הַקֹּדֶשׁ מֵעוֹלָם; וְלֹא נִרְאָה זָבוּב
בְּבֵית הַמִּטְבָּחִים; וְלֹא אֵירַע אֶקְרִי
לְכֹהֵן גָּדוֹל בַּיּוֹם הַכַּפּוּרִים; וְלֹא
כָּבוּ הַגְּשָׁמִים אֶשׁ שֶׁל יַעֲצִי הַמַּעֲרָכָה;
וְלֹא נִצְחָה הַרוּחַ אֶת-עַמּוּד הָהָעֶשֶׂן;
וְלֹא נִמְצָא פְסוּל בְּעוֹמֵר, וּבִשְׂתֵי
הַלֶּחֶם, וּבְלֶחֶם הַפָּנִים; עוֹמְדִים
צְפוּפִים וּמִשְׁתַּחֲוִים רְוָחִים; וְלֹא
הָיָה נֶחֱשׁ וְעַקְרָב בִּירוּשָׁלַיִם
מֵעוֹלָם; וְלֹא אָמַר אָדָם לְחֵבְרוֹ
יֵצֵר לִי הַמָּקוֹם שְׂאֵלַיִן בִּירוּשָׁלַיִם.

1 *Mishnah* 8 in the Prayer Book starts here. 2 Compare יומא 21b. 3 Of the sacrifices. 4 Pollution would have disqualified him from officiating. See יומא 21¹. 5 הגשמים, the rains, in the Prayer Book. 6 See פסחים 59b. 7 See יומא 21b. 8 Of new barley, offered on the second day of פסח. *Leviticus* 23, 19ff. 9 The 'first-fruits' of the wheat harvest, offered on שבועות. *Leviticus* 23, 17. 10 *Exodus* 25, 30; *Leviticus* 24, 5-9. 11 On the Day of Atonement. 12 *Isaiah* 49, 20. 13 Even during the crowded periods of the שלש רגלים. *ארע in some texts.

Mishnah 6

Ten¹ things were created on the eve of Sabbath in the twilight,² and these are: the mouth of the earth,³ (and) the mouth* of the well,⁴ (and) the mouth* of the she-ass,⁵ (and) the rainbow,*⁶ (and) the manna,⁷ (and) the rod,⁸ (and) the *Shamir*,⁹ (and) the writing,¹⁰ (and) the writing tool,¹¹ and the Tables [of Stone];¹² some say, [also] the destroying spirits,¹³ (and) the sepulchre of Moses,¹⁴ and the ram¹⁵ of Abraham our father; and others say, [also] tongs¹⁶ made with tongs.¹⁷ * The conjunction ו or ׀ is omitted in the Prayer Book.

משנה ו

יעשרה דברים נבראו בערב שבת
 בין השמשות, ואלו הן, יפי הארץ,
 יופי הבאר, יופי האתון,
 והקשת, והמן, והמטה,
 והשמיר, והכתב, והמכתב,
 והלוחות; ויש אומרים אף
 המזיקין, וקבורתו של משה,
 ואילו של אברהם אבינו; ויש
 אומרים אף צבת, בצבת עשויה.

1 *Mishnah* 9 starts here in the Prayer Book. 2 When the first Sabbath began (*Genesis* 2, 3). 3 *Numbers* 16, 32. Where Korah and his associates were engulfed. 4 *Numbers* 21, 16-18. Which supplied the Israelites with water. 5 *Numbers* 22, 28. Balaam's ass. 6 *Genesis* 9, 13. 7 *Exodus* 16, 14, 15. 8 *Exodus* 4, 17. Moses' rod. Tradition says it belonged to Adam. 9 Literally *diamond, flint*. See *גיטין* 68a; *סוטה* 48b. The *Shamir* here referred to was a legendary worm, which, when placed upon the hardest stone, had the power of splitting it instantly, and was used by King Solomon in the building of the Temple, in the construction of which and of the Altar no iron tool—the symbol of war and disharmony—was to be employed. § The *Shamir* was credited with other miraculous properties, and it vanished from earth at the destruction of the Temple. 10 Some render this by the writing on the Tables of Stone, and others by the miraculous character of the letters of the Decalogue which though cut through the Stone Tablets could be read on both sides (or on the four sides) and yet did not fall out of their position. 11 i.e., the engraving instrument, the style. Some say this refers to the miraculous characters (see the preceding Note). Compare *מגילה* 2a. 12 The first Tablets of Stone (whose fragments were deposited in the Ark—*בְּהַר אֱרֶז* 14b—together with the flask of manna—*יָמָא* 22b). *Exodus* 32, 15, 16. 13 This must be taken to refer to evil inclinations as the belief in demonology is forbidden to Jews. 14 *Deuteronomy* 34, 6. God must have made it seeing that none know its location. 15 *Genesis* 22, 13. Its presence in the thicket was pre-ordained. 16 Popular pronunciation *צבת, בצבת*, as given in the Prayer Book. 17 An attempt by the *Mishnah* to explain who fashioned the tongs to hold the first tongs being made. § Compare *Exodus* 20, 22.

die, and perforce in the hereafter wilt thou have to give¹⁵ account and reckoning¹⁶ before the Supreme King of kings,¹⁷ the Holy One, blessed be He.

אָפֵה עֲתִיד¹⁵ לִיתֵן דִּין¹⁶ וְיִחְשְׁבוּן
לְפָנָיו¹⁷ מֶלֶךְ מְלָכֵי הַמְּלָכִים הַקָּדוֹשׁ
בְּרוּךְ הוּא.

1 R. Elazar Hakappar. Here begins *Mishnah* 29 in the Prayer Book. 2 A reference to the belief in the resurrection of the dead. 3 *i.e.*, the resurrected. 4 לִדֹן in the Prayer Book. 5 In the Prayer Book, וְלִהְדִיעַ, and to make known. 6 Literally and to be made to understand. 7 Or accuser, plaintiff. 8 והוא, and He, in the Prayer Book. 9 *i.e.*, partiality, favouritism. 10 Compare *II Chronicles* 19, 7. 11 הַכֹּל שָׁלוּ is omitted in the Prayer Book. 12 *i.e.*, evil nature, wicked inclination. Compare 2¹⁶. 13 *viz.*, that there is no hereafter. 14 This phrase in parenthesis is given in the גְּמָרָא. 15 לִיתֵן in the Prayer Book. 16 Compare 3¹. 17 Literally the King of kings of kings.

CHAPTER 5

פֶּרֶק ה'

Mishnah 1

With ten *Sayings*¹ was the world created. And What does this teach? Could it not have been created with one *Saying*? But [the purpose was] to requite the wicked that destroy² the world which was created by ten *Sayings*, and to bestow² the goodly reward upon the righteous who sustain² the world that was created with ten *Sayings*.

מִשְׁנָה א

יִבְעֶשְׂרֵה מֵאֲמֵרוֹת נִבְרָא הָעוֹלָם.
וּמֵה־תִּלְמוּד לֹזְמֵר? וְהִלָּא בְּמֵאֲמָר
אֶחָד יָכוֹל לְהַבְרִאות? אֵלָּא
לְהַפְרֵעַ מִן־הַרְשָׁעִים² שְׂמֵאֲבָדִין
אֶת־הָעוֹלָם שֶׁנִּבְרָא בְּעֶשְׂרֵה
מֵאֲמֵרוֹת. וְנִלְיָתָן שְׂכָר טוֹב
לְצַדִּיקִים² שְׂמֵמְקֵי־מִין אֶת־הָעוֹלָם
שֶׁנִּבְרָא בְּעֶשְׂרֵה מֵאֲמֵרוֹת.

1 In *Genesis* 1, 3, 6, 9, 11, 14, 20, 24, 26, 29, and 2, 18* the formula וַיֹּאמֶר אֱלֹהִים and God 'said' occurs ten times. Some consider *Genesis* 1, 1 should also be accounted as a *Saying* paralleled by *Psalms* 33, 6. *Actually וַיֹּאמֶר ה' אֱלֹהִים. See ADDENDA at the end of this *Tractate*. 2 In the Prayer Book, שְׂמֵמְקֵי־מִין, וְנִלְיָתָן, שְׂכָר טוֹב, respectively.

Mishnah 2

There were ten generations¹ from Adam to² Noah³ to make known how long-suffering* God is,⁴ seeing that all the generations continued to provoke Him,⁵ until He brought upon

מִשְׁנָה ב

עֶשְׂרֵה דְּוֵרוֹת מֵאָדָם עַד נֹחַ
לְהוֹדִיעַ כְּמָה אָרְךְ אֶפְסִים לְפָנָיו.
שֶׁכָּל הַדְּוֵרוֹת הָיוּ מְכַעֲסִין וְבָאִין.

them the waters of the Flood. There⁶ were ten generations from Noah⁷ to² Abraham,⁸ to make known how long-suffering God is, for all those generations provoked Him continually,⁵ until⁹ Abraham came and received the reward they [should] all [have earned].¹⁰

עַד שֶׁהֵבִיא עֲלֵיהֶם אֶת־מֵי הַמַּבּוּל.
 יַעֲשֶׂה דוֹרוֹת מִנֹּחַ עַד אַבְרָהָם,
 לְהוֹדִיעַ בְּמָה אֲרֹךְ אַפַּיִם לְפָנָיו,
 שֶׁכָּל הַדּוֹרוֹת הָיוּ מִכְעִיסִין וּבֹאִין
 עַד שֶׁבָּא אַבְרָהָם וְקִבֵּל עָלָיו שְׂכָר
 יְכוּלִים.

1 דור = 100 years. See *Genesis* 5. 2 ועד in the Prayer Book. 3 Including Noah's years of life. 4 God, in His patience, awaited their repentance. 5 The Prayer Book gives מְכַעֲסִים לְפָנָיו instead of מְכַעֲסִין וּבֹאִין. 6 Here begins *Mishnah* 3 in the Prayer Book. 7 viz., after Noah's death. 8 See *Genesis* 11, 10ff. 9 The Prayer Book has עַד שֶׁבָּא אַבְרָהָם אָבִינוּ וְקִבֵּל שְׂכָר כָּלֵם. 10 sc., which they forfeited by their transgressions. *In some texts אָרַךְ.

Mishnah 3

With¹ ten trials was our father Abraham, peace be unto him,² tried,³ yet he stood steadfast in them all,⁴ to make manifest how great was the love of Abraham our father,⁵ peace be unto him.²

מִשְׁנָה ג
 יַעֲשֶׂה נִסְיוֹנוֹת יְנַתְּנָה אַבְרָהָם
 אָבִינוּ עָלָיו הַשְּׁלוֹם וְעָמַד בְּכֹלֵם,
 לְהוֹדִיעַ בְּמָה חֲבָתוֹ שֶׁל אַבְרָהָם
 אָבִינוּ עָלָיו הַשְּׁלוֹם.

1 *Mishnah* 4 begins here in the Prayer Book. 2 עָלָיו הַשְּׁלוֹם is omitted in the Prayer Book. 3 They are enumerated in יִתְּנֵן אָבוֹת דְּרַבֵּי יִתְּנֵן 33.* 4 בְּכֹלֵם in the Prayer Book. 5 Compare *Isaiah* 41, 8. *See ADDENDA, Page 552.

Mishnah 4

Ten¹ miracles* were wrought for our ancestors in Egypt,² and ten at the Sea.³ (Ten⁴ plagues did the Holy One, blessed be He, bring upon the Egyptians in Egypt, and ten⁵ at the Sea.) With ten⁶ temptations⁷ did our forefathers tempt the Omnipresent,⁸ blessed be He, in the wilderness, as it is said,⁹ yet have they put Me¹⁰ to the proof these ten times, and have not hearkened to My voice.

מִשְׁנָה ד
 יַעֲשֶׂה נִסִּים וְנִעֲשׂוּ לְאַבוֹתֵינוּ
 בְּמִצְרַיִם, וְנַעֲשֶׂה עַל יְהִים.
 (יַעֲשֶׂה מִכּוֹת הֵבִיא הַקָּדוֹשׁ בְּרוּךְ
 הוּא עַל הַמִּצְרַיִם בְּמִצְרַיִם וְנַעֲשֶׂה
 עַל הַיָּם.) עֲשֶׂה נִסְיוֹנוֹת נְסוּ אֲבוֹתֵינוּ
 אֶת־הַמִּקּוֹם בְּרוּךְ הוּא בְּמִדְבָּר,
 שֶׁנֶּאֱמַר וְנִסּוּ יְיָ אֱלֹהֵינוּ עֲשֶׂה פְעָמִים
 וְלֹא שָׁמְעוּ בְּקוֹלִי.

1 *Mishnah* 5 in the Prayer Book commences here. 2 *i.e.*, the Ten Plagues (*Exodus* 7, 14 *et seq.*). 3 Inferred from *Exodus* 15 and enumerated in אבות דרבי יונתן 33. 4 *Mishnah* 6 commences here in the Prayer Book. The part in parentheses is not given in the גמרא. 5 ועשר in the Prayer Book. 6 In the Prayer Book עשרה. *Mishnah* 7 begins here in the Prayer Book. 7 See ערבין 15a. § 8 The Prayer Book gives את-הקדוש, the Holy One, instead of את-המקום. 9 *Numbers* 14, 22. 10 אתי in the Scripture.
*§See ADDENDA, Pages *552, §553.

Mishnah 5

Ten¹ miracles were wrought for our forefathers² in the Temple: no woman miscarried from the odour of the holy flesh;³ (and) the holy flesh never turned putrid; (and) no fly was [ever] seen in the slaughter-house; (and) no pollution⁴ [ever] befell* the High Priest on the Day of Atonement; (and) rains⁵ [never] quenched the fire of the wood-pile⁶ [on the Altar], (and) neither did the wind [ever] prevail over the column of smoke⁷ [that arose therefrom]; (and) [never] was there found a disqualifying defect in the omer,⁸ or in the two loaves⁹ or in the shew-bread;¹⁰ [and though the people] stood pressed closely together, they yet found ample space to prostrate themselves;¹¹ (and) never did serpent or scorpion cause injury in Jerusalem; and no man ever said to his fellow, 'The¹² place is too strait for me that I should lodge [over night] in Jerusalem'.¹³

1 *Mishnah* 8 in the Prayer Book starts here. 2 Compare יומא 21b. 3 Of the sacrifices. 4 Pollution would have disqualified him from officiating. See יומא 21¹. 5 הגשמים, the rains, in the Prayer Book. 6 See פסחים 59b. 7 See יומא 21b. 8 Of new barley, offered on the second day of פסח. *Leviticus* 23, 19ff. 9 The 'first-fruits' of the wheat harvest, offered on שבועות. *Leviticus* 23, 17. 10 *Exodus* 25, 30; *Leviticus* 24, 5-9. 11 On the Day of Atonement. 12 *Isaiah* 49, 20. 13 Even during the crowded periods of the שלש רגלים. ארע* in some texts.

משנה ה

עשרה נסים נעשו ל'אבותינו בבית המקדש. לא הפילה אשה מריח ב'בשר הקדש; ולא הסריח ב'בשר הקדש מעולם; ולא נראה זכוב בבית המטבחים; ולא אירע קרי לכתן גדול ביום הכפורים; ולא כבו גשמים אש של עצי המערכה; ולא נצחה הרוח את-עמוד העשן; ולא נמצא פסול ב'עומר, ובשתי הלחם. ויבלתם הפנים; עומדים צפופים וימשתחוים רוחים; ולא הזיק נחש ועקרב בירושלים מעולם; ולא אמר אדם לחברו יצר לי המקום שאלין בירושלים.

Mishnah 6

Ten¹ things were created on the eve of Sabbath in the twilight,² and these are: the mouth of the earth,³ (and) the mouth* of the well,⁴ (and) the mouth* of the she-ass,⁵ (and) the rainbow,⁶ (and) the manna,⁷ (and) the rod,⁸ (and) the *Shamir*,⁹ (and) the writing,¹⁰ (and) the writing tool,¹¹ and the Tables [of Stone];¹² some say, [also] the destroying spirits,¹³ (and) the sepulchre of Moses,¹⁴ and the ram¹⁵ of Abraham our father; and others say, [also] tongs¹⁶ made with tongs.¹⁷ * The conjunction ׀ or ׀ is omitted in the Prayer Book.

מִשְׁנָה ו

יַעֲשֶׂהָ דְבָרִים נִבְרְאוּ בְּעֶרְבַת שַׁבָּת
 יֵבִין הַשְּׁמָשׁוֹת, וְאֵלוֹ הֵן, יִפִּי הָאָרֶץ,
 יִפִּי הַבָּאָר, יִפִּי הָאֶתוֹן,
 יִהְיֶה שֶׁת, יִהְיֶה מָן, יִהְיֶה מָטָה,
 יִהְיֶה שְׁמִיר, יִהְיֶה כְּתָב, יִהְיֶה כְּתָב,
 יִהְיֶה לִחוֹת; וְיֵשׁ אֹמְרִים אֶף
 יִהְיֶה מִזְיָקִין, וְיִקְבוּרָתוֹ שֶׁל מֹשֶׁה,
 יִהְיֶה אֵלּוֹ שֶׁל אֲבָרְקָם אֲבִינוּ; וְיֵשׁ
 אֹמְרִים אֶף יִצְבָּת¹⁶ בְּצִבָּת עֲשֶׂיהָ.

1 *Mishnah 9* starts here in the Prayer Book. 2 When the first Sabbath began (*Genesis 2, 3*). 3 *Numbers 16, 32*. Where Korah and his associates were engulfed. 4 *Numbers 21, 16-18*. Which supplied the Israelites with water. 5 *Numbers 22, 28*. Balaam's ass. 6 *Genesis 9, 13*. 7 *Exodus 16, 14, 15*. 8 *Exodus 4, 17*. Moses' rod. Tradition says it belonged to Adam. 9 Literally *diamond, flint*. See *יִסְטָן* 68a; *סוֹטָה* 48b. The *Shamir* here referred to was a legendary worm, which, when placed upon the hardest stone, had the power of splitting it instantly, and was used by King Solomon in the building of the Temple, in the construction of which and of the Altar no iron tool—the symbol of war and disharmony—was to be employed. § The *Shamir* was credited with other miraculous properties, and it vanished from earth at the destruction of the Temple. 10 Some render this by *the writing on the Tables of Stone*, and others by *the miraculous character of the letters of the Decalogue* which though cut through the Stone Tablets could be read on both sides (or on the four sides) and yet did not fall out of their position. 11 *i.e., the engraving instrument, the style*. Some say this refers to the *miraculous characters* (see the preceding Note). Compare *מִיִּלָּה* 2a. 12 The first Tablets of Stone (whose fragments were deposited in the Ark—*בְּתֹרָא* 14b—*בְּבֵא* 14b—together with the flask of manna—*יִמָּא* 22b). *Exodus 32, 15, 16*. 13 This must be taken to refer to evil inclinations as the belief in demonology is forbidden to Jews. 14 *Deuteronomy 34, 6*. God must have made it seeing that none know its location. 15 *Genesis 22, 13*. Its presence in the thicket was pre-ordained. 16 Popular pronunciation *צִבָּת*, *בְּצִבָּת*, as given in the Prayer Book. 17 An attempt by the *Mishnah* to explain who fashioned the tongs to hold the first tongs being made. § Compare *Exodus 20, 22*.

Mishnah 7

There^{1,2} are seven characteristics of an uncultured person,³ and seven of a wise man.⁴ A wise man does not speak before one who is superior⁵ to him in wisdom; (and) he does not break in upon the words of his fellow; (and) he is not hasty to answer; he questions in accordance with the subject matter, and makes answer to the point;⁶ (and) he speaks upon the first thing first, and upon the last thing last;⁷ (and) regarding what he has not heard he says, 'I do not understand it';⁸ and he admits the truth.⁹ And the reverse of [all] these is characteristic of an uncultured man.¹⁰

משנה ז

שְׁבַע דְּבָרִים בְּגוֹלָם, וְשִׁבְעָה בְּחָכְמָה. חָכָם אֵינוֹ מְדַבֵּר בְּפָנָיו מִי שֶׁהוּא גָדוֹל מִמֶּנּוּ בְּחָכְמָה; וְאֵינוֹ נֹכֵס לְתוֹךְ דְּבָרֵי חֲבֵרוֹ; וְאֵינוֹ נִבְהֵל לְהֵשִׁיב; שׂוֹאֵל כְּעֵינָיו, וּמְשִׁיב כְּהִלְכָהּ; וְאוֹמֵר עַל רֵאשׁוֹן רֵאשׁוֹן, וְעַל אַחֲרוֹן אַחֲרוֹן; וְעַל מֵה-שֶׁלֹּא שָׁמַע אוֹמֵר לֹא שָׁמַעְתִּי; וְיוֹמְדָה עַל הָאֱמֶתִּי וְחִלּוּפֵיהֶן בְּגוֹלָם.¹⁰

1 Mishnah 10 begins here in the Prayer Book. 2 *sc.*, distinguishing marks in conversation. 3 *i.e.*, one not learned, an uneducated person, a boor. 4 *i.e.*, learned, educated, tutored, scholarly. 5 In the Prayer Book, שְׁגוֹדֹל instead of גָּדוֹל. 6 *i.e.*, his reply is relevant to received doctrine (*Halachah*). 7 *viz.*, he is methodical and systematic. 8 Literally 'I have not heard,' *sc.*, he admits his ignorance. 9 He does not obstinately hold to his opinion when he has been convinced of his error. 10 In the Prayer Book, וְחִלּוּפֵיהֶם בְּגוֹלָם.

Mishnah 8

Seven¹ kinds of retribution² come³ into the world for seven cardinal transgressions. If⁴ some give tithes and others do not give tithes,⁵ a famine from drought ensues,⁴ some suffering hunger while others have sufficient. If⁶ they [all] resolve not to give tithes, a dearth from tumult⁷ and drought ensues.⁸ (And) [if they all determine] not⁹ to set apart the *dough-offering*,¹⁰ there comes⁸ an exterminating dearth. Pestilence¹¹ comes into the world because of the

משנה ח

שִׁבְעָה מִיָּי פּוֹרְעָנוּת בָּאִין לְעוֹלָם, עַל שִׁבְעָה גּוֹפֵי עֲבִירָה. מְקַצְתָּן מֵעֲשָׂרָיו, וּמְקַצְתָּן אֵינָן מֵעֲשָׂרָן, רָעַב שֶׁל בְּצוּרַת בָּאָה, מְקַצְתָּן רְעִיבִים, וּמְקַצְתָּן שִׁבְעִים. נִגְמְרוּ שֶׁלֹּא לְעֲשֹׂר, רָעַב שֶׁל מְהוּמָה וְשֶׁל בְּצוּרַת בָּאָה. וְשֶׁלֹּא לְטוֹל אֶת-הַחֶלֶה, רָעַב שֶׁל כְּלִיָּה

death-penalties enjoined in the Law, with¹² whose infliction however the human courts of justice are not empowered, and for [the transgression of the law] regarding the produce of the *Seventh year*.¹³ The sword¹⁴ comes¹⁵ into the world because of the delay of justice¹⁶ and for the perversion of justice, and on account of [the offence of] them that interpret the Law not in accordance with strict tradition.¹⁷

בָּאָהּ. ¹¹ דָּבַר בָּא לְעוֹלָם, עַל מִיתוֹת הָאֲמֹרוֹת בְּתוֹרָה ¹² שְׁלֵא וּמָסְרוּ לְבֵית דִּין, וְעַל פִּירוֹת ¹³ שְׁבִיעִית. ¹⁴ חָרַב ¹⁵ בָּא לְעוֹלָם, עַל ¹⁶ עֲוֹנוֹ הַדִּין, וְעַל עוֹת הַדִּין, וְעַל ¹⁷ הַמּוֹרִים בְּתוֹרָה שְׁלֵא ¹⁷ כִּהְלָכָהּ.

1 *Mishnah* 11 in the Prayer Book begins here. 2 פְּרַעְוִיּוֹת in the Prayer Book. 3 In the Prayer Book, בָּאִים; and likewise מְקַצְתֶּם מְעַשְׂרִים וּמְקַצְתֶּם אֵינָם מְעַשְׂרִים. 4 The first retribution. 5 Thus depriving the priests, the Levites and the needy of their just dues. See *Appendix, Note 1*. 6 The second retribution. 7 *i.e.*, war and destruction. 8 בָּא, more grammatically correct, in the Prayer Book. 9 The third retribution. 10 *Numbers* 15, 20. *Appendix, Note 3*. 11 The fourth retribution, for failure to punish the criminal and for neglect of the poor. 12 Some render this: *but are not brought before human tribunals*. 13 *Leviticus* 25, 1-7, 26, 9; שְׁבִיעִית, INTRODUCTION. 14 The fifth retribution (see the next *Mishnah*). 15 In the Prayer Book, בָּאָהּ more grammatically correct. 16 And unnecessary, undue postponement of a legal decision. 17 Confusing prohibitions and permissions (see שְׁבִית 33).

Mishnah 9

Noxious beasts¹ come into the world because of perjury,² and for the profanation of the Divine Name. Captivity³ ensues⁴ in the world on account of idolatry,⁵ (and) because of incest, (and) for bloodshed,⁶ and on account of [the neglect of the year of] *the release for the land*.⁷ At⁸ four periods does pestilence increase, in the fourth year, (and) in the seventh year, (and) at the conclusion of the seventh year, and at the conclusion of the Festival of Tabernacles⁹ in each year. In the fourth years because of [the disregard

מִשְׁנָה ט
יְחִיָּה רָעָה בָּאָה לְעוֹלָם, עַל יִשְׁבוּעַת שָׁוְא, וְעַל חִלוּל הַשֵּׁם. יְגָלוֹת יָבֵא לְעוֹלָם, עַל עֲבוֹדַת כּוֹכָבִים, וְעַל גְּלוֹי עֲרִיזוֹת, וְעַל שְׁפִיכַת דָּמִים, וְעַל הַשְּׁמַטַּת הָאֲרֶזִי. בְּאַרְבָּעָה פְּרָקִים הַדָּבָר מִתְרַבֵּה, בְּרַבִּיעִית, וּבְשִׁבְעִית, וּבְמוֹצָאֵי שְׁבִיעִית, וּבְמוֹצָאֵי הַהֶגַּל שְׁבָבֵל שָׁנָה וְשָׁנָה. בְּרַבִּיעִית, מִפְּנֵי

of] *the poor-man's tithe*¹⁰ in the third year; in the seventh year, for default of [giving] *the poor-man's tithe* in the sixth year; (and) at the conclusion of¹¹ the seventh year, because of [violating the laws] regarding *the produce*¹² of *the seventh year*; and at the conclusion¹¹ of the Festival of Tabernacles in each year, for robbing¹³ the poor of the dues [granted to them].¹⁴

מֵעֶשֶׂר עֲנִי שְׁבַשְׁלִישִׁית; בְּשִׁבְעִיעִית,
מִפְּנֵי מֵעֶשֶׂר עֲנִי שְׁבַשְׁשִׁית;
וּבְמוֹצָאֵי שְׁבִיעִית, מִפְּנֵי פִירוֹת¹²
שְׁבִיעִית; וּבְמוֹצָאֵי הַחֵן שְׁבֶכֶל
שָׁנָה וְשָׁנָה, מִפְּנֵי גִּזְלֵי מִתְּנוֹת¹⁴
עֲנִיִּים.

1 Literally *an evil beast*. In the Prayer Book, the next two sentences are part of *Mishnah* 11; they are the *sixth* and *seventh* retributions begun in the preceding paragraph. 2 Compare יוֹמָא 86a. Devastated lands become infested by wild, noisome beasts. 3 Or *exile*. 4 בְּאָה, more correct grammatically, in the Prayer Book. 5 עֲבוֹרַת אֱלִילִים in some texts. 6 שְׁפִיכוֹת in the Prayer Book. 7 *Leviticus* 25, 3ff., 26, 4ff. *Deuteronomy* 15, 1. It is most difficult to vowelise הַשְׁמַטָּה to agree with the given rendering, seeing it is a *construct* form with the *definite article* ה־; שְׁמַטָּה, as given in the Prayer Book, is grammatically correct. Perhaps it might be vocalised הַשְׁמַטָּה, the *construct* form of הַשְׁמַטָּה, and render the phrase by [*for the non-observance of the law of*] *the restoration of real estate to the vendor in the year of the jubilee*. 8 Here commences *Mishnah* 12 in the Prayer Book. 9 סְבוֹת (Feast of Tabernacles) is termed חֵן in the *Mishnah*. 10 *Deuteronomy* 14, 28ff. See *Appendix, Note 1*; מֵעֶשֶׂר, INTRODUCTION. 11 בְּמוֹצָאֵי, at the conclusion of, in the Prayer Book. 12 Perhaps, preferably, פִירוֹת. 13 Or גִּזְלֵי. 14 *viz.*, לֶקֶט (*gleanings*), שִׁכְחָה (*forgotten sheaf*), פְּאַה (*field corners*). *Leviticus* 19, 9, 10, 23, 22; *Deuteronomy* 14, 28, 29, 24, 19-22. See *Appendix, Note 1*; פְּאַה, INTRODUCTION.

Mishnah 10

There¹ are four [kinds of] characters among men: he that says, 'What is mine is mine and what is thine is thine', this² is the average³ character, and some say this is a characteristic of Sodom;⁴ [he who says,] 'What is mine is mine and what is thine is mine',⁵ [such is] an ignoramus; [one that says,] 'What is mine is mine and what is thine is thine',⁶ [he is] a saintly person; [and one who says,] 'What⁷ is mine is mine and what is thine is mine', [he is] a wicked man. § Or וְיֵשׁ-אוֹמְרִים.

מִשְׁנָה י'
אֲרַבַּע מִדּוֹת בְּאָדָם, הָאוֹמֵר שְׁלִי
שְׁלִי וְשִׁלְךָ שְׁלִי. יוֹ מִדָּה יִבְיַנּוּנִית.
וְיֵשׁ אוֹמְרִים זוֹ מִדָּת יְסֻדוֹם; שְׁלִי
שְׁלִי וְשִׁלְךָ שְׁלִי, עִם הָאֲרָץ; שְׁלִי
שְׁלִי וְשִׁלְךָ שְׁלִי, חֶסֶד; יְשׁוּלֵי שְׁלִי
וְשִׁלְךָ שְׁלִי, רָשָׁע.

1 In the Prayer Book, *Mishnah* 13 commences here. 2 Popular pronunciation **ו**.
 3 Or *common, ordinary, neutral*. 4 *i.e., selfishness, uncharitableness*. 5 This would be tantamount to social insecurity and instability, leading to anarchy. Compare 32.
 6 Charity that knows no bounds. 7 **שְׁלֵף שְׁלֵף וְשְׁלֵף שְׁלֵף**, 'What is thine is mine and what is mine is mine,' in the Prayer Book.*

Mishnah 11

משנה יא

There¹ are four types of temperaments: [one whom it is] easy to anger and easy to pacify, his gain disappears in his loss;^{2*} [he whom it is] hard to incense and hard to appease, his loss vanishes in his gain;^{3*} [one whom it is] hard to provoke and easy to placate is a saintly man;⁴ [he whom it is] easy to vex and hard to mollify is a wicked man.

יֵאָרְבַּע מִדּוֹת בְּרָעוֹת, נוֹחַ לְכַעֵס וְנוֹחַ לְרַצּוֹת, יֵצֵא שְׂכָרוֹ בְּהִפְסָדוֹ; קָשָׁה לְכַעֵס וְקָשָׁה לְרַצּוֹת, יֵצֵא הֶפְסָדוֹ בְּשְׂכָרוֹ; קָשָׁה לְכַעֵס וְנוֹחַ לְרַצּוֹת, חֲסִיד; נוֹחַ לְכַעֵס וְקָשָׁה לְרַצּוֹת, רָשָׁע.

* Some vocalise these **הֶפְסָדוֹ בְּהִפְסָדוֹ**.

1 Here starts *Mishnah* 14 in the Prayer Book. 2 This is the formula in the **וְנִמְרָא**; the Prayer Book gives **יֵצֵא הֶפְסָדוֹ בְּשְׂכָרוֹ**, *his loss disappears in his gain*. 3 This is the formula in the **וְנִמְרָא**; the Prayer Book has **יֵצֵא שְׂכָרוֹ בְּהִפְסָדוֹ**, *his gain vanishes in his loss*. 4 Nevertheless the good man should show his displeasure and indignation at the violation of truth, justice and righteous conduct of every kind.

Mishnah 12

משנה יב

There¹ are four characteristic qualities² in disciples: [he that is] quick³ of perception and quick³ to forget, his gain disappears in his loss;* [one who has] difficulty in perceiving but forgets with difficulty his loss* vanishes in his gain; [he who is] swift³ of perception and forgets with difficulty is a wise man;⁴ [and one that finds it] difficult to perceive and quickly³ forgets, this⁵ is an evil lot.

יֵאָרְבַּע מִדּוֹת בְּתַלְמִידִים, מְהֵרָה לְשִׁמּוֹעַ וּמְהֵרָה לְאַבֵּד, יֵצֵא שְׂכָרוֹ בְּהִפְסָדוֹ; קָשָׁה לְשִׁמּוֹעַ וְקָשָׁה לְאַבֵּד, יֵצֵא הֶפְסָדוֹ בְּשְׂכָרוֹ; מְהֵרָה לְשִׁמּוֹעַ וְקָשָׁה לְאַבֵּד, חֲכָם; קָשָׁה לְשִׁמּוֹעַ וּמְהֵרָה לְאַבֵּד, יוֹהָה חֲלָק רָע.

* See the preceding *Mishnah*.

1 *Mishnah* 15 starts here in the Prayer Book. This paragraph does not deal with any moral principles. 2 *i.e., mental abilities*. 3 In the Prayer Book, **מְהֵרָה מְהֵרָה**.

4 The Prayer Book gives **זו חלק טוב . . .**, *perceiving quickly and forgetting with difficulty, this is a good portion.* 5 **או (א)** in the Prayer Book. See Volume II, Page 12.

Mishnah 13

מְשֻׁנָּה יֵן

There¹ are four characteristic types among those that give alms: one who desires to give, but not that others should give, his eye is evil towards what pertains to others;² he that wishes that others should give, but he himself will not give, his eye is evil towards what appertains to him;³ one that gives, and [desires that] others should give, he is a saintly man;⁴ he who will not give, and [is] not [minded] that others should give, is a wicked man.⁵

יֵאָרְבַּע מִדּוֹת בְּנוֹתְנֵי צְדָקָה, הָרוֹצֶה שְׂיִתֵּן וְלֹא יִתְּנוּ אַחֲרָיו, עֵינָיו רָעָה בְּשָׂל אַחֲרָיו; יִתְּנוּ אַחֲרָיו, וְהוּא לֹא יִתֵּן, עֵינָיו רָעָה בְּשָׂלוֹ; יִתֵּן וְיִתְּנוּ אַחֲרָיו, חֲסִיד; לֹא יִתֵּן וְלֹא יִתְּנוּ אַחֲרָיו, רָשָׁע.

1 In the Prayer Book *Mishnah* 16 starts here. 2 *i.e.*, he grudges others the joy and merit of almsgiving and charitable deeds. 3 He is indifferent to the acquisition for himself of merit for charitable acts. 4 He possesses the disposition of the universal benefactor. 5 He is indifferent and unsympathetic towards human suffering and distress.

Mishnah 14

מְשֻׁנָּה יֵד

There¹ are four kinds of dispositions in those that attend the house² of study: one who goes³ but does not practise⁴ has the reward for going; he that practises⁴ but does not go has the reward for practising; one that goes and practises⁴ is a saintly man;⁵ [and] he who neither goes nor practises⁴ is a wicked man.⁶

יֵאָרְבַּע מִדּוֹת בְּהוֹלְכֵי בֵּית הַמִּדְרָשׁ, הוֹלֵךְ וְאֵינוֹ עוֹשֶׂה, שְׂכָר הַלִּיכָה בְּיָדוֹ; עוֹשֶׂה וְאֵינוֹ הוֹלֵךְ, שְׂכָר מַעֲשֵׂה בְּיָדוֹ; הוֹלֵךְ וְעוֹשֶׂה, חֲסִיד; לֹא הוֹלֵךְ וְלֹא עוֹשֶׂה, רָשָׁע.

1 Here begins *Mishnah* 17 in the Prayer Book. 2 In the Prayer Book, **בית** Attendance for the acquisition of religious and spiritual knowledge, leading to virtuous conduct. Compare 117, 39, 17. 3 Compare **בבא קמא** 17a. 4 *viz.*, studies the Law and practises good deeds. **ועשה, עשה**, in the Prayer Book. 5 He makes every effort to acquire knowledge to lead a virtuous life. 6 He possesses no knowledge to distinguish between good and evil and—in consequence—leads an unrighteous existence.

Mishnah 15

There¹ are four characteristic traits among them that sit in the presence of the wise: [they are like] a sponge, a funnel, a strainer, and a sieve.² A sponge—which absorbs everything;³ a funnel⁴—that lets in at one end and discharges at the other; a strainer—which lets out the wine and retains the lees;⁵ and a sieve—which lets the coarse flour pass out and retains the fine flour.⁶

מְשֻׁנָּה טו

יֵאָרְבַּע מִדּוֹת בְּיוֹשְׁבֵי לְפָנָיו
חֲכָמִים, סָפּוֹג, וּמְשַׁפֵּךְ, מְשַׁמְרֵת,
וְנֹפֶה. סָפּוֹג, שֶׁהוּא סוֹפֵג אֶת־
יֵהָל; 'מְשַׁפֵּךְ, שֶׁמְכַנִּיס בְּזוֹ
וּמוֹצִיא בְּזוֹ; מְשַׁמְרֵת, שֶׁמוֹצִיאָה
אֶת הַיַּיִן וְקוֹלֶטֶת אֶת־הַשְּׂמֵרִים;
וְנֹפֶה, שֶׁמוֹצִיאָה אֶת־הַקֶּמַח וְקוֹלֶטֶת
אֶת־הַסּוֹלֶת.

1 Mishnah 18 begins here in the Prayer Book. 2 נֹפֶה, a fine sieve or sifter [כַּבְרָה, a coarse sieve]. 3 i.e., the disciple learns the trivial and important without discrimination. 4 וּמְשַׁפֵּךְ, and a funnel, in the Prayer Book. Compare 512, 'quick to perceive and quick to forget.' וְזוֹ, בְּזוֹ,* in the Prayer Book. Literally at this, at that. 5 i.e., the disciple forgets the essentials but retains the unimportant. 6 i.e., the disciple memorises the good and rejects the worthless. *See Volume II, Page 12.

Mishnah 16

If¹ love depend on some material cause,² and the material cause passes away, the love vanishes [too]; but if it do not depend upon some material cause, it will never pass away. Which³ love was it that was dependent⁴ on a material cause? This⁵ was the love of Amnon and Tamar.⁶ And [which love was it] that was not dependent on a material cause? Such⁷ was the love of David and Jonathan.⁸

מְשֻׁנָּה טז

יְכַל־אֲהָבָה שֶׁהִיא תְלוּיָהּ בְּדָבָר,
בְּטַל דָּבָר, בְּטַלָּה אֲהָבָה; וְשֶׁאִינָהּ
תְלוּיָהּ בְּדָבָר, אִינָהּ בְּטַלָּה לְעוֹלָם.
יֵאֵזֶר הִיא אֲהָבָה הַתְלוּיָהּ בְּדָבָר?
זוֹ אֲהָבַת אֲמֹנוֹן וְתָמָר. וְשֶׁאִינָהּ
תְלוּיָהּ בְּדָבָר? זוֹ אֲהָבַת דָּוִד
וַיהוֹנָתָן.

1 Mishnah 19 in the Prayer Book begins here. Literally All love that depends. 2 An absence of morality. 3 Love for self-gratification is immoral and not enduring. 4 In the Prayer Book, שֶׁהִיא תְלוּיָהּ. 5 II Samuel 13, 1ff. 6 I Samuel 18, 1; II Samuel 1, 26.

Mishnah 17

Every¹ controversy that is for God's sake² shall in the end lead to a lasting result, but [any controversy] that is not for God's sake³ shall not in the end be permanent. Which controversy was it that was for God's sake? This was the controversy⁴ of Hillel and Shammai.⁵ And which [controversy] was not for God's sake? Such³ was the controversy⁶ of Korah and all his faction.⁷

1 In the Prayer Book *Mishnah 20* commences here. 2 Literally *in the name of Heaven*. 3 There is no sincerity for truth. 4 The search for moral truths. 5 *ושמאי* in the Prayer Book. 6 A political rebellion against established authority. 7 *Numbers 16*, 1ff. *וְכָל עֲדָתוֹ* and *all his company*, is omitted in some editions.

Mishnah 18

Whosoever¹ causes the multitude to be righteous, through him shall no sin be brought about,² but one that leads the many to sin, to him shall not be given³ the means to repentance.⁴ Moses was righteous and he made the many righteous;⁵ the righteousness of the many can be attributed to him, as it is said,⁶ *He executed the justice of the Eternal, and His judgments with Israel*. Jeroboam⁷ sinned and caused the multitude to sin; the sin of the many was laid upon him, as it is said,⁸ *For the sins of Jeroboam, the son of Nebat,*⁹ *which he sinned, and wherewith he made Israel to sin*.

1 Here commences *Mishnah 21* in the Prayer Book. 2 Compare *יומא* 86a. 3 *מספיקים* in the Prayer Book. 4 The transgressions of others being beyond the remedial action of his penitence (*יומא* 87a). 5 In the Prayer Book, *חָפָה*. 6 *Deuteronomy 33*, 21. 7 In the Prayer Book *בֶּן נְבָט*, *the son of Nebat*, is inserted here.

מִשְׁנֵה ז'

כָּל־מַחְלֹקֶת שֶׁהִיא לְשֵׁם שָׁמַיִם
סוֹפָה לְהִתְקַיֵּים, וְשֶׁאִינָהּ לְשֵׁם שָׁמַיִם
אֵין סוֹפָה לְהִתְקַיֵּים. אִיזוֹ הִיא
מַחְלֹקֶת שֶׁהִיא לְשֵׁם שָׁמַיִם? זוֹ
מַחְלֹקֶת הַלֵּל וְשַׁמַּי. וְשֶׁאִינָהּ
לְשֵׁם שָׁמַיִם? זוֹ מַחְלֹקֶת קֹרַח
וְכָל עֲדָתוֹ.

מִשְׁנֵה יח

כָּל־הַמְזַכֵּה אֶת־הַרְבִּים, אֵין חַטָּא
יָבֵא עַל יָדוֹ, וְכָל הַמַּחְטִיא אֶת־
הַרְבִּים אֵין יִמְסְפִיקוֹן בִּידָו לַעֲשׂוֹת
יְתוּשְׁבָה. מֹשֶׁה זָכָה וְוִיזָכָה אֶת־
הַרְבִּים זְכוֹת הַרְבִּים תְּלוּי בּוֹ,
שֶׁנֶּאֱמַר צִדְקַת ה' עָשָׂה וּמִשְׁפָּטֵי
עַם יִשְׂרָאֵל. יִרְבְּעֵם חַטָּא וְהַחְטִיא
אֶת־הַרְבִּים חַטָּא הַרְבִּים תְּלוּי בּוֹ,
שֶׁנֶּאֱמַר עַל חַטָּאוֹת יִרְבְּעֵם בֶּן
נְבָט אֲשֶׁר חַטָּא וְאֲשֶׁר הַחְטִיא אֶת־
יִשְׂרָאֵל.

8 *I Kings* 15, 30. 9 **בְּן נֶבֶט** is not given in Scripture and is omitted in the Prayer Book.

Mishnah 19

Whosoever¹ has^{2*} these three qualities is of the disciples³ of Abraham our father; but [he in whom there are] three other attributes is of the disciples⁴ of Balaam the wicked. A good eye,* (and) a lowly mind and a humble soul [are the traits] of the disciples of Abraham our father; an evil eye,§ (and) a haughty⁴ mind and a proud soul [are the characteristics] of the disciples of Balaam the wicked. What is the difference⁵ between the disciples of our father Abraham and the disciples of the wicked Balaam? The disciples of our father Abraham enjoy⁶ this world and inherit⁷ the world to come, as it is said,⁸ *That I may cause those that love me⁹ to inherit substance,¹⁰ and that I may fill their treasuries.*¹¹ But¹² the disciples of the wicked Balaam inherit *Gehenna*¹³ and descend¹⁴ to the pit of destruction, as it is said,¹⁵ *But Thou, O God, wilt bring them down¹⁶ into the pit of destruction; blood-thirsty and deceitful men shall not live out half their days, but as for me, I will trust in Thee.*

* Or **שֵׁשׁ-בִּידוֹ**.

1 Here in the Prayer Book starts *Mishnah* 22. 2 **שֵׁשׁ-בִּידוֹ** is given in the Prayer Book. 3 The Prayer Book has **מִתְלַמְּדֵי** הָאָבִי. 4 In the Prayer Book, **גְּבוּהָה**, grammatically more correct. 5 In their ultimate destiny. 6 **אוֹכְלִים** in the Prayer Book. Literally *eat*. 7 **וְנִוְחָלִים** in the Prayer Book. 8 *Proverbs* 8, 21. 9 Compare *Isaiah* 41, 8. The Scriptural orthography is **אֶהְבֵּי**. 10 Spiritually, of the Hereafter. 11 The Scriptural orthography is **וְאֶצְרְחֵיהֶם** which is given in the Prayer Book. 12 **אָכַל** is omitted in the Prayer Book. 13 Compare 1⁵. 14 **וְיִוְרְדִים** in the Prayer Book. 15 *Psalm* 55, 24. 16 **חֲרִידִם** is the Scripture orthography. **i.e.*, contented, not covetous. §*i.e.*, discontented, jealous, covetous.

מְשֻׁנָּה יט

כָּל-מִי שֵׁשׁ בִּידוֹ שְׁלֹשָׁה דְבָרִים
הֵלְלוּ, מִתְלַמְּדֵי שֶׁל אַבְרָהָם
אָבִינוּ; וְשְׁלֹשָׁה דְבָרִים אַחֲרֵיהֶם,
מִתְלַמְּדֵי שֶׁל בַּלְעָם הַרְשָׁעִי. * עֵין
טוֹבָה וְרוּחַ נְמוּכָה וְנַפְשׁ שְׁפֵלָה
מִתְלַמְּדֵי שֶׁל אַבְרָהָם אָבִינוּ; § עֵין
רָעָה וְרוּחַ יְגֹבָה וְנַפְשׁ רַחֲבָה
מִתְלַמְּדֵי שֶׁל בַּלְעָם הַרְשָׁעִי. * מַה-
בֵּין תְּלַמְּדֵי שֶׁל אַבְרָהָם אָבִינוּ
לְתַלְמִידֵי שֶׁל בַּלְעָם הַרְשָׁעִי?
תְּלַמְּדֵי שֶׁל אַבְרָהָם אָבִינוּ אוֹכְלִין
בְּעוֹלָם הַזֶּה וְנִוְחָלִין בְּעוֹלָם הַבָּא,
שֶׁנֶּאֱמַר לְהַנְחִיל אֶהְבֵּי יְיָ.
וְנִוְחָלִים אֶמְלֵא. * אָכַל
תְּלַמְּדֵי שֶׁל בַּלְעָם הַרְשָׁעִי יוֹרְשִׁים
וְנִוְחָלִים. * וְיִוְרְדִין לְבְאֵר שְׁחַת.
שֶׁנֶּאֱמַר וְאַתָּה אֱלֹהִים יוֹרְדִים
לְבְאֵר שְׁחַת אֲנָשֵׁי דָמִים וּמְרָמָה
לֹא-יִחַצְצוּ יְמֵיהֶם וְאֲנִי אֲבַטַח בְּךָ.

Mishnah 20

Judah¹ ben Tema said, Be strong² as the leopard, (and) light* as the eagle (and) fleet as the hart,³ and mighty as the lion⁴ to do the will of thy Father Who is in Heaven. He used to say, The bold-faced⁵ are for *Gehenna*, but the shame-faced⁶ are for the Garden of Eden.⁷ [He said further], May⁸ it be Thy will, O Eternal our God and God of our forefathers, that Thy City be rebuilt⁹ speedily in our days and grant our portion in Thy Law.¹⁰

משנה כ

יְהוּדָה בֶּן תֵּימָה אוֹמֵר הָיוּ יְעוֹ כְּפָנִים, וְקָל כְּפָנֶשֶׁת, וְרָץ כְּצִבְיָה, וְגִבּוֹר כְּפָאֵרִי, לַעֲשׂוֹת רְצוֹן אָבִיךָ שְׁבַשְׁמִים. הוּא הָיָה אוֹמֵר יְעוֹ פָּנִים לְגִיחֵנָם, וְיִבְשֶׁת פָּנִים יִלְגֵּן עֲרֹן. יִהְיֶה רְצוֹן מִלְּפָנֶיךָ ה' אֱלֹהֵינוּ יִשְׁתַּבְּחָה עִירְךָ בְּמַהֲרָה בְּיָמֵינוּ וְתֵן יְחִלְקֵנוּ בְּתוֹרַתְךָ.
*יְעוֹ in some texts.

1 Here *Mishnah* 23 starts in the Prayer Book. 2 Nothing must be allowed to stand in the way of leading a righteous life. 3 Compare 42; *Psalm* 119, 60. 4 Compare *II Samuel* 1, 23. 5 Or *shameless, brazen-faced, impudent*. See 15, Note 9. 6 A sense of shame is a preventive for transgression. *ובוש*, instead of *ויבשת*, in the Prayer Book. 7 The abode of the righteous in the Hereafter. Compare *יְדִרִים* 20a. 8 This prayer is incorporated in the Prayer Book at the end of the *עֲמֻדָה*. 9 In the Prayer Book, *שִׁיבְנָה בֵּית הַמִּקְדָּשׁ*, that the Temple be rebuilt (thus, too, at the end of the *עֲמִידָה*; and also *לְפָנֶיךָ*, instead of *מִלְּפָנֶיךָ* there). 10 Originally *Chapter* 5 concluded here. §In some texts *אֱלֹהֵינוּ וְאֱלֹהֵי אֲבוֹתֵינוּ*.

Mishnah 21

He¹ used to say, At five years of age [one is ready for [the study of] the *Scripture*, at ten [years] of age² [one is fit] for [the study of] the *Mishnah*, at the age of thirteen for [the fulfilment of] the commandments, at the age of fifteen for [the study of] the *Talmud*, at the age of eighteen for marriage,³ at the age of twenty for pursuing [a vocation],⁴ at the age of thirty for entering into one's full vigour, at the age of forty for understanding, at the age of fifty for counsel,⁵ at the age of sixty one attains old age,⁶ at the age of seventy

משנה כא

יְהוּא הָיָה אוֹמֵר בֶּן חָמֵשׁ שָׁנִים לְמִקְרָא, בֶּן עָשָׂר לְמִשְׁנָה, בֶּן שְׁלֹשׁ עֶשְׂרֵה לְמִצְוֹת, בֶּן חָמֵשׁ עֶשְׂרֵה לְתַלְמוּד, בֶּן שְׁמֹנֶה עֶשְׂרֵה לְחֻפָּה, בֶּן עֶשְׂרִים לְרֵדוּף, בֶּן שְׁלֹשִׁים לְכֶתֶת, בֶּן אַרְבָּעִים לְבִינָה, בֶּן חֲמֵשִׁים לְעֶצְהָ, בֶּן שְׁשִׁים לְזִקְנָה, בֶּן שִׁבְעִים לְשִׁיבָה, בֶּן שְׁמֹנִים לְגִבּוֹרָה, בֶּן תְּשַׁעִים לְשׁוֹחַ,

for the hoary head,⁷ at the age of eighty for special strength,⁸ at the age of ninety for bending [beneath the weight of old age], at the age of a hundred one is as though⁹ he were [already] dead and had passed away and ceased from the world.

1 *sc.*, Judah ben Tema. *Mishnah* 24 begins here in the Prayer Book. *Mishnahs* 21, 22, 23 were later supplements to *Chapter* 5. 2 The Prayer Book has בן עשר שנים. 3 לחפה in the Prayer Book. Here concludes the period of preparation for one's life. 4 Here begins the period of application and activity in one's life. 5 Based on *Numbers* 8, 25ff. 6 Here commences the period of decline in one's life. 7 Compare *I Chronicles* 29, 28. *viz.*, strength to maintain such old age. 8 Compare *Psalms* 90, 10. 9 In the Prayer Book, באלי.

Mishnah 22

משנה כב

Ben¹ Bag Bag² said, Turn³ it [—the Law—] and turn³ it over again, for everything⁴ is therein, and contemplate⁵ it, and wax gray and old over it,⁶ and stir not therefrom,⁷ for thou canst have no better principle than this.

יבן יבג בג אומר יהפוך בה, ויהפוך בה, וידכולא בה, ובה יתחזי, וסיב ובלה בה, ומינה לא תזוע, שאין לך מדה טובה הימנה.

1 In the Prayer Book *Mishnah* 25 commences here. This *Mishnah* and the next are in Aramaic, and in the אבות דרבי יוחנן they are ascribed to הלל. Compare 13, 26. 2 See BIOGRAPHIES. Compare קדושין 10b. 3 *i.e.*, study it thoroughly from all aspects. In the Prayer Book, יהפך, והפך. 4 All that pertains for righteous living. וכולא in some editions. 5 תחזי in the Prayer Book. 6 *i.e.*, study it all through life. 7 *i.e.*, do not neglect its study or deviate from its precepts.

Mishnah 23

משנה כג

Ben¹ Hai Hai said, According² to the suffering is the reward.

יבן האי האי אומר ילפום צערא אנרא.

1 Here starts *Mishnah* 26 in the Prayer Book. 2 In the Prayer Book, לפם. The more one labours at the study of the Law and practises its commandments the greater is his recompense.

ושלמה מסכת אבות

TRACTATE AVOTH CONCLUDED.

CHAPTER 6¹

The Sages taught [further the following] in the language of the *Mishnah*: Blessed be He Who made choice of them and their *Mishnah*.²

1 See INTRODUCTION. 2 Thus far, in the Prayer Book; this paragraph, from a source in the *Talmud*, is indicated as an introduction after which *Mishnah* 1 proper begins. This *Mishnah* is an encomium lauding the Law (compare 6^{8, 9}).

Mishnah 1*

R. Meir said, Whosoever engages in [the study of] the Law¹ for its own sake² merits many things, and, not only so, he is [as it were] deserving of the whole world³—he is called friend, beloved [of God], lover of the Omnipresent, lover of humanity,⁴ pleasing the Omnipresent, pleasing humanity⁵ (and) it invests him with humility and reverence⁶ (and) it fits him to become righteous, pious, upright and faithful (and) it keeps him remote from sin, and draws him nigh to virtue, and through him men enjoy⁷ counsel and sound knowledge, understanding and power, as it is said,⁸ *Counsel is mine*,³ and *sound wisdom; I am understanding, I have might*; and it gives him sovereignty and dominion and discernment in judgment (and) to him are revealed¹⁰ the secrets of the Law¹¹ (and) he is made like a spring that never fails¹² and like a stream that flows on with ever-sustained vigour; (and) he becomes¹³ modest,¹⁴ (and) long-suffering, (and) forgiving of insult (toward himself); and it magnifies him and exalts him above all things [here below].

פֶּרֶק ו'

שְׁנוּ תַּכְמִּים בְּלִשׁוֹן הַמִּשְׁנָה בְּרוּךְ
שֶׁבַחַר בָּהֶם יוֹבְמִשְׁנָתָם.

מִשְׁנָה א

רַבִּי מֵאִיר אָמַר כָּל-הָעוֹסֵק
יְבוֹחֶנָּה יִלְשָׁמָה זֹכָה לְדַבְרִים
הַרְבֵּה וְלֹא עוֹד אֵלָּא שֶׁכָּל הָעוֹלָם
כְּלוּ כְּדֵי הוּא לוֹ, נִקְרָא רַע אָהוּב
אוֹהֵב אֶת-הַמָּקוֹם אוֹהֵב אֶת-
הַבְּרִיּוֹת, מִשְׁמַח אֶת-הַמָּקוֹם
מִשְׁמַח אֶת-הַבְּרִיּוֹת; וּמְלַבֶּשְׁתּוֹ
עֲנִיָּה יוֹרְאָה; וּמְכַשְׂרֵתּוֹ לְהִיּוֹת
צַדִּיק חֹסֵד יָשָׁר וְנֹאמָן; וּמְרַחֲקֵתּוֹ
מִן-הַחַטָּא וּמְקַרְבֵּתּוֹ לְיָדֵי זְכוּת
וְנֹהֲגִין מִמֶּנּוּ עֲצָה וְתוֹשִׁיָּה בִּינָה
וְגִבּוֹרָה שֶׁנֶּאֱמַר לִי עֲצָה וְתוֹשִׁיָּה
אֲנִי בִּינָה לִי גִבּוֹרָה; וְנוֹתֶנֶת לוֹ
מַלְכוּת וּמְשָׁלָה וְחִקוֹר דִּין;
וּמְגַלֵּין לוֹ רְזֵי יִתְרוֹ; וְנֹעֲשֶׂה
כְּמַעֲזָן שֶׁאֵינוֹ כּוֹסֵק וְכֹנֵהר
הַמִּתְגַּבֵּר וְהוֹלֵךְ; יוֹהֵרָה יִצְנוּעַ
וְאֶרְךְ רוּחַ וּמוֹחַל עַל עֲלֻבוֹנוֹ;
וּמְגַדְלֵתּוֹ וּמְרוֹמְמֵתּוֹ עַל כָּל-
הַמַּעֲשִׂים.

1 Compare 1¹. 2 *viz.*, not for honour or gain. 3 Some render this *the whole world is indebted to him*. 4 Compare 11². 5 מִשְׁמַח אֶת־הַמְּקוֹם מִשְׂמַח אֶת־הַבְּרִיּוֹת is omitted in some texts. 6 For God. 7 וְנִהְיִים in some texts. 8 *Proverbs* 8, 14. 9 The תּוֹרָה is, as it were, made to say this. 10 In some texts, וּמְגִלִים. 11 Compare *Psalms* 25, 14. 12 שְׁמִתְנַבֵּר in some texts. Compare 2⁸. 13 The vocalisation וְהִנֵּה as given in some Prayer Books is grammatically incorrect. 14 Or *humble*. Compare *Micah* 6, 8. *See ADDENDA, Page 552.

Mishnah 2

R. Joshua ben Levi said, Every day a heavenly voice¹ goes forth from Horeb² proclaiming and saying, 'Woe to mankind³ for contempt⁴ of the Law!'—for whosoever does not engage in [the study of] the Law is said to be 'rebuked',⁵ as it is said,⁶ *As a ring of gold in a swine's snout, so is a fair woman that turneth aside from discretion; and it says,*⁷ *And the tables were the work of God, and the writing was the writing of God, graven upon the tables.* Read not חֲרוֹת [graven] but חֲרוֹת [freedom],⁸ for no man is free but he who occupies himself with [the study of] the Law. But whoever labours in [the study of] the Law, lo, he shall be exalted, as it is said,⁹ *And from Mattanah to Nachaliel, and from Nachaliel to Bamoth.*¹⁰

1 [בת קול] is also used for *echo*. Literally *daughter of* [the] *voice*—a belief that when Prophecy had ceased Divine pronouncements to mankind were made in this manner. 2 *i.e.*, Mount Sinai, where the Revelation of the Law was made (*Exodus* 19 *et seq.*). 3 The whole human race, irrespective of creed or colour. 4 *i.e.*, neglect of study and practice of its tenets. 5 Or *under divine censure, reprobate*; the term נִזְוֶה is here connected by the peculiar form of rabbinic interpretation known as *notarikon* with the initial letters of the words נֹחַ זָהָב and the final letter of the word בְּאֵף. 6 *Proverbs* 11, 22. 7 *Exodus* 32, 16. 8 An homiletical interpretation. 9 *Numbers* 21, 19. 10 An homiletic rendering upon the etymological meanings of these place-names: מַתְנָה, *gift, i.e.*, 'from the gift of the Law,' נַחְלֵיאל, *inheritance of God, i.e.*, 'humanity receives a divine heritage', בְּמוֹת, *high places, i.e.*, 'and he is led to high ideals.'

משנה ב

אָמַר רַבִּי יְהוֹשֻעַ בֶּן לֵוִי בְּכֹל יוֹם
 נְיוֹם יֵבֶת קוֹל יוֹצֵאת מֵהַר חוֹרֵב
 וּמְכַרְזֹת וְאוֹמְרַת אוֹי לָהֶם יִלְבְּרִיּוֹת
 יִמְעַל בְּנוֹהַ שֶׁל תּוֹרָה, שְׂכָל מִי שֶׁאִינוּ
 עוֹסֵק בַּתּוֹרָה נִקְרָא נִזְוֶה, שֶׁנֶּאֱמַר
 נֹחַ זָהָב בְּאֵף חֲזוֹר אִשָּׁה יָפָה וְסֵרַת
 טַעַם; וְאוֹמַר וְהִלְחוֹת מַעֲשֵׂה
 אֱלֹהִים הִמָּה וְהַמְּכָתֵב מִכְתָּב
 אֱלֹהִים הוּא חֲרוֹת עַל הַלְּחֹת. אֵל
 תִּקְרָא חֲרוֹת אֵלָּא חֲרוֹת שְׂאִין לָךְ
 בֶּן חוֹרִין אֵלָּא מִי שֶׁעוֹסֵק בְּתִלְמוּד
 תּוֹרָה. וְכֹל מִי שֶׁעוֹסֵק בְּתִלְמוּד
 תּוֹרָה הָרִי זֶה מִתְעַלֶּה, שֶׁנֶּאֱמַר
 וּמִמַּתְנָה נַחְלֵיאל וּמִנַּחְלֵיאל בְּמוֹת.

Mishnah 3

משנה ג

He that learns from his fellow¹ a single chapter,² or a single rule, or a single verse, or a single expression,⁴ or even a single³ letter,⁵ ought to render him honour, for so we find [it the case] with David, King of Israel, who learned only two things⁶ from Achitophel, and yet called him his master, his guide⁷ and his familiar friend, as it is said,⁸ *But it was thou, a man mine equal, my companion, and my familiar friend.* And is it not an inference from minor to major?⁹—If David, the King of Israel, who learnt only two things from Achitophel, regarded him as his teacher, his companion and his familiar friend, then how much more should one who learns from his fellow¹ a single chapter, or a single³ rule, or a single verse, or a single expression, or even a single³ letter, pay him honour? And ‘honour’ is naught but ‘the Law’, as it is said, *The¹⁰ wise shall inherit honour,* and *The¹¹ perfect shall inherit good.* And ‘good’ is nothing but ‘the Law’, as it is said,¹² *For I give you good doctrine; forsake ye not my Law.*¹³

הַלּוֹמֵד יִמְחַבְרֵוֹ יִפְרֹק אֶחָד או
הַלְכָה יֵאָחַת או פְּסוּק אֶחָד או
יְדְבוֹר אֶחָד או אֶפִּילוֹ יְאוֹת יֵאָחַת
צָרִיךְ לְהַגִּבּוֹ בּוֹ כְבוֹד, שֶׁכֵּן מְצִינֵנוּ
בְּדוֹד מֶלֶךְ יִשְׂרָאֵל שֶׁלֹּא לָמַד
מֵאַחִיתֶפֶל אֶלָּא שְׁנֵי דְבָרִים בְּלִבָּד
קָרָא רַבּוֹ אֶלּוּפּוֹ וּמִדְעוֹ, שֶׁנֶּאֱמַר
וְאַתָּה אָנּוּשׁ כְּעַרְכִּי אֶלּוּפִי וּמִדְעִי.
וְהֲלֹא דְבָרִים יִקַּל וְהִמְרֵ? וּמָה
דָּוִד מֶלֶךְ יִשְׂרָאֵל שֶׁלֹּא לָמַד
מֵאַחִיתֶפֶל אֶלָּא שְׁנֵי דְבָרִים בְּלִבָּד
קָרָא רַבּוֹ אֶלּוּפּוֹ וּמִדְעוֹ, הַלּוֹמֵד
יִמְחַבְרֵוֹ יִפְרֹק אֶחָד או הַלְכָה יֵאָחַת
או פְּסוּק אֶחָד או דְבוֹר אֶחָד או
אֶפִּילוֹ אוֹת יֵאָחַת עַל אֶחַת כַּמָּה
וְכַמָּה שְׁצָרִיךְ לְהַגִּבּוֹ בּוֹ כְבוֹד? וְאִין
כְבוֹד אֶלָּא תוֹרָה, שֶׁנֶּאֱמַר
כְבוֹד חֲכָמִים יִנְחֲלוּ¹⁰ וְחֲמִימִים
יִנְחֲלוּ טוֹב. וְאִין טוֹב אֶלָּא
תוֹרָה, שֶׁנֶּאֱמַר כִּי לָקַח טוֹב נִתְחִי
לְכֶם תוֹרָתִי אֵל תַּעֲזוּבוּ.¹³

1 Or מְחַבְרֵוֹ. 2 Or *paragraph, section*—from *Scripture* or the *Mishnah*. 3 The pointing אֶחָת is grammatically more correct than אֶחַת as given in some Prayer Books. 4 Or *word*; or, a *Scriptural* or *Mishnaic saying*. 5 With reference to its orthography. 6 Commentators differ widely as to what this expression refers. By combining the two words into one word שְׁנֵי דְבָרִים, *who [on.y] conversed together*, a plausible sense can be given to it thus: ‘seeing that a king gave honour to one with whom he merely conversed though he gained no knowledge thereby, how much more must an ordinary individual show honour to anyone, from whom he has acquired aught of the Law.’ 7 Or *companion*. Literally *chief, prince*. 8 *Psalms* 55, 14. 9 The first of the Thirteen Exegetical Principles of R. Ishmael (בְּרִייתָא דְרַבִּי) (ישמעאל) given in the Morning Service. 10 *Proverbs* 3, 35. 11 *Proverbs* 28, 10.

12 Proverbs 4, 2. 13 Or *teaching*. The deduction is as follows: as *inherit* is common to the first two quotations, these are considered equal and therefore *honour* in the first is the equivalent of *good* in the second; but seeing that *good* occurs in the second and third quotations these two are also thus equated; hence all three are balanced, and so *honour* becomes the equal of *the Law*.

Mishnah 4

משנה ד

This is the way [to acquire knowledge] of the Law: a morsel of bread with salt thou must eat and¹ water by measure shalt thou drink,² (and) upon the ground must thou sleep and live a life of trouble the while thou toilest in [the study of] the Law. If thou doest thus, *Happy³ shalt thou be, and it shall be well with thee*; 'happy⁴ shalt thou be'—in this world 'and it shall be well with thee'—in the world to come.

כף היא דררפה של תורה, פת במלח תאכל יומים במשורה יתשתה, ועל הארץ תישן ותיי צער תחיה ובתורה אתה עמל. אם אתה עשה בן אשריך לטוב לך; יאשריך בעולם הזה וטוב לך לעולם הבא.

1 Ezekiel 4, 11. 2 The happy mean (expressed by *אין קמה אין תורה* in 3¹⁷) is between the extreme asceticism advocated here and the opposite extreme of wealth as lauded in *Mishnah* 8 of this Chapter. The *Talmud* considers a poor man's meal to be 'a morsel of bread with salt.' **3 Psalm 128, 2.** This is also quoted in 4¹. **4** This last part is also given in 4¹.

Mishnah 5

משנה ה

Seek not [worldly] greatness for thyself,¹ and covet² not [earthly] honour; practise more than thy learning;³ and crave not after the table of kings,⁴ for thy table is greater than their table,⁵ and thy crown⁶ is greater than their crown, and faithful is thy Employer⁷ Who shall pay thee the reward of thy work.

אל תבקש גדלה לעצמך ואל יתחמד כבוד; יותר מלמודך עשה; ואל תתאנה לשלחנם של מלכים, ששלחנה גדול משלחנם וכתרה גדול מכתרם, ונאמן הוא בעל מלאכתה שישלם לך שכר פעלתה.

1 Compare 1¹⁰. לעצמך in some Prayer Books. **2** תחמד in some Prayer Books. **3** Compare 1¹⁷, 3⁹, 5¹⁴. Theory and practice are inseparable to be effective. The pointing מלמודך, given in some Prayer Books, is not grammatically correct. **4** Instead of מלכים some Prayer Books have שרים, *princes*. **5** Compare 3³. **6** Compare 4¹³. In some Prayer Books וכתרה גדול מכתרם is omitted. **7** *sc.*, God.

Mishnah 6

Greater is the Law than (the) priesthood and than royalty, for *royalty* is acquired by *thirty qualifications*¹ and the *priesthood* by *twenty-four*,² while [learning in] *the Law* is acquired by *forty-eight qualifications*. And these are they:³ [1] by audible study;⁴ [2] by utterance with the lips;⁵ [3] by understanding⁶ of the heart and [4] by discernment of the heart;⁷ [5] by awe, [6] by reverence,⁸ [7] by humility,⁹ [8] by cheerfulness,¹⁰ [9] by ministering to the Sages,¹¹ [10] by attaching oneself to colleagues,¹² [11] by discussion with disciples; [12] by sedateness,¹³ [13] by [knowledge of] *Scripture* and of the *Mishnah*,¹⁴ [14] by moderation in business,¹⁵ [15] by moderation in intercourse with the world,¹⁶ [16] by moderation in pleasure,¹⁷ [17] by moderation in sleep,¹⁸ [18] by moderation in conversation,¹⁹ [19] by moderation in jesting;⁴⁰ [20] by long-suffering;²¹ [21] by a good heart;²² [22] by faith in the wise; [23] by resignation under suffering;²³ [24] by recognising one's place;²⁴; and [25] rejoicing in one's lot, and [26] putting a fence round one's words,²⁵ and [27] claiming no merit for oneself;²⁶ [28] [by] being beloved,²⁷ [29] loving the Omnipresent,²⁸ [30] loving mankind,²⁸ [31] loving charitable deeds, and [32] loving rectitude²⁹ and loving reproof;³⁰ (and) [33] [by] keeping oneself far from honour;³¹ and [34] [by] not boasting of one's scholarship,³² or [35] delighting in making

מִשְׁנָה ו

גְּדוּלָה תוֹרָה יוֹתֵר מִן־הַכֹּהֲנָה
וּמִן־הַמְּלָכוֹת, שְׁתַּמְלָכוֹת נִקְנִית
יְבִשְׁלָשִׁים מַעֲלוֹת וְהַכֹּהֲנָה
בְּעֶשְׂרִים וְאַרְבַּע וְהַתּוֹרָה נִקְנִית
בְּאַרְבָּעִים וְשִׁמּוֹנָה דְּבָרִים. וְאֵלוֹ
הֵן, בְּתַלְמוּד בְּשִׁמְיעַת הָאָזְנוֹ
בְּעִרְיַכַת שְׁפָתַיִם; בְּבִינַת הַלֵּב
בְּשִׂכּוֹל הַלֵּב; בְּאַיְמָה, בְּיִרְאָה,
בְּעִנּוּה, בְּשִׁמְחָה, בְּשִׁמּוּשׁ
חֻקִּים בְּדַבּוּק חֻבְרִים,
בְּפִלְפוּל הַתְּלִמִּידִים; בְּיָשׁוּב;
בְּמִקְרָא וּבְמִשְׁנָה; בְּמַעֲוֵט
סְחוּרָה, בְּמַעֲוֵט דְּרֵךְ אֲרָץ,
בְּמַעֲוֵט תַּעֲנוּג, בְּמַעֲוֵט שְׁנָה,
בְּמַעֲוֵט שִׂיחָה, בְּמַעֲוֵט שְׁחוּק;
בְּאֲרֵךְ אַפָּיִם; בְּלֵב טוֹב; בְּאַמוּנַת
חֻקִּים; בְּקִבְלַת הַיִּסּוּרִים;
הַמְּכִיר אֶת־מְקוֹמוֹ, וְהַשְׁמַח
בְּחֻלְקוֹ וְהָעוֹשֶׂה סִיג לְדַבְּרָיו,
וְאֵינוֹ מַחְזִיק טוֹבָה לְעַצְמוֹ;
אָהוּב, אָהוּב, אָהוּב אֶת־הַמְּקוֹם,
אָהוּב אֶת־הַבְּרִיּוֹת, אָהוּב אֶת־
הַצְּדָקוֹת, אָהוּב אֶת־הַמִּישְׁרִים,
אָהוּב אֶת־הַתּוֹכָחוֹת; וּמְתַרְחֵק
מִן־הַכְּבוֹד; וְיֵלֵא מַגִּיס לְבוֹ

decisions;³³ [36] [by] bearing the yoke with one's fellow,³⁴ and [37] judging him favourably,³⁵ and [38] rendering him steadfast in truth³⁶ and [39] establishing him in peace; (and) [40] [by] concentrating³⁷ in one's study; [41] [by] asking and making answer,³⁸ [42] hearing and [43] adding thereto;³⁹ (and) [44] [by] learning with the object of teaching,⁴⁰ and [45] learning in order to practise;⁴⁰ [46] [by] making one's master wiser, (and) [47] fixing attention upon his discourse, and [48] reporting a thing in the name of him that said it.⁴¹ Behold, thou hast learnt, 'Whosoever quotes a thing in the name of him that said it, brings deliverance into the world, as it is said,⁴² *And Esther told the king thereof in the name of Mordecai*'.⁴³

בְּתִלְמוּדוֹ, וְיֵאֵינוּ שְׂמֵחַ בְּהוֹרָאָה; וְנוֹשֵׂא בְעַל עִם חֲבֵרוֹ, וְיִמְכָרֵיעוּ לְכַף זְכוּת, וְיִמְעַמִּידוֹ עַל הָאֵמֶת, וְיִמְעַמִּידוֹ עַל הַשְּׁלוֹם; וְיִמְתְּיֵשֵׁב בְּתִלְמוּדוֹ; שׂוֹאֵל וּמְשִׁיב, שׂוֹמֵעַ וּמוֹסִיף; הַלּוֹמֵד עַל מְנַת⁴⁰ לְלַמֵּד, וְהַלּוֹמֵד עַל מְנַת⁴⁰ לְעִשׂוֹת; הַמְחַכִּים אֶת-רַבּוֹ, וְהַמְכֹּנֵן אֶת-שְׂמוּעָתוֹ, וְהָאוֹמֵר דְּבָר בְּשֵׁם אוֹמְרוֹ. הָא לְמִדַּת כָּל-הָאוֹמֵר דְּבָר בְּשֵׁם אוֹמְרוֹ מְבִיא גְּאֻלָּה לְעוֹלָם, וְהַשְּׂנַאֲמֵר וְהַתְּאֲמֵר אֶסְתֵּר לְלַמֵּךְ בְּשֵׁם מְרַדְּכִי.

1 I Samuel 8, 11-17; 22ⁿ. כְּנֹהֲדִין. As set out according to I Samuel 8 : [1] אֲשֶׁר יִמְלֹךְ עֲלֵיכֶם, that shall reign over you; [2] אֶת-בְּנֵיכֶם יִקַּח, he will take your sons; [3] וְשָׂם לוֹ בְּמִרְכָּבָתוֹ, and appoint them unto him for his chariot; [4] וּבְפָרְשָׁיו, and to be his horsemen; [5] וְרָצוּ לִפְנֵי מִרְכָּבָתוֹ, and they shall run before his chariots; [6] וְלָשׂוּם לוֹ וְשָׂרֵי חֲמִשָּׁים, and he will appoint them unto him for captains of thousands; [7] וְלִקְצֵר קְצִירוֹ, and captains of fifties; [8] וְלַחְרֹשׁ חֲרִישׁוֹ, and to plough his ground; [9] וְלַקְצֹר קְצִירוֹ, and to reap his harvest; [10] וְלַעֲשׂוֹת כְּלֵי מִלְחָמָתוֹ, and to make his instruments of war; [11] וְכֵלֵי רִכְבּוֹ, and the instruments of his chariots; [12] וְאֵת בְּנוֹתֵיכֶם יִקַּח, and he will take your daughters; [13] לְרִקְחוֹת, to be perfumers; [14] וְלִטְבַּחוֹת, and to be cooks; [15] וְלֵאֲפוֹת, and to be bakers; [16] וְאֶת-שְׂדוֹתֵיכֶם, and [he will take] your fields; [17] וְאֶת-כַּרְמֵיכֶם, and your vineyards; [18] וְחֵיתֵיכֶם הַטּוֹבִים, and your oliveyards, even the best of them; [19] וְנָתַן לְעַבְדָּיו, and give to his servants; [20] וְחֲרִיעֵיכֶם, and [he will take the tenth of] your seed; [21] וְכַרְמֵיכֶם יַעֲשֶׂר, and he will take the tenth of your vineyards; [22] וְנָתַן לְסָרִיסָיו, and give to his officers; [23] וְלַעַבְדָּיו, and to his servants; [24] וְאֶת-עַבְדֵיכֶם, and [he will take] your men-servants; [25] וְאֶת-שֹׁפְחוֹתֵיכֶם, and your maid-servants; [26] וְאֶת-בְּחֹרֵיכֶם הַטּוֹבִים, and your goodliest young men; [27] וְאֶת-יָקוֹחַ, and he will take your asses; [28] וְעָשָׂה לְמִלְאֲכָתוֹ, and put them to his work; [29] וְצִאֲנֶכֶם יַעֲשֶׂר, he will take the tenth of your flock; [30] וְאַתֶּם וְתִהְיוּ לוֹ לְעַבְדִּים, and ye shall be his servants. As set out in סְנֵהֲדִין 22ⁿ: [1] הַמֶּלֶךְ לֹא דִין אוֹתוֹ, the king can neither judge; [2] וְלֹא דִין אוֹתוֹ,

judged; [3] **לֹא מַעֲדִין אוֹתוֹ**, he may not testify; [4] **לֹא מַעֲדִין אוֹתוֹ**, nor may evidence be brought against him; [5] **לֹא הוֹלִין**, he may not submit to leviratic separation; [6] **לֹא הוֹלִין לְאִשְׁתּוֹ**, nor may one submit to leviratic separation at the hands of his [widowed] wife; [7] **לֹא מִיבֵם**, he may not contract leviratic marriage; [8] **לֹא מִיבֵם לְאִשְׁתּוֹ**, nor may one contract leviratic marriage with his [widowed] wife; [9] **וְאִין נוֹשְׂאִין אֶלְמָנָתוֹ**, and none may wed his widow; [10] **מִתְּ לוֹ מִתְּ אִינוֹ יוֹצֵא**, if one of his near of kin die he must not go forth . . . ; [11] **וְכִשְׂמִבְרִין אוֹתוֹ כֹּל**, and when they set before him the funeral meal all . . . ; [12] **וְמוֹצִיא לְמִלְחָמַת הַרְשָׁוֹת עַל פִּי**, and he may lead forth [the army] to political warfare by the decision of . . . ; [13] **וּפּוֹרֵץ לְעֵשׂוֹת לוֹ דֶּרֶךְ**, and he may break through [private property] to make himself a road; [14] **הַדֶּרֶךְ הַמְּלָכָה אֵין לוֹ שִׁיעוּר**, the king's road has no definite measurements; [15] **וְכֹל הָעָם בּוֹזֵץ וְנוֹתֵן לְפָנָיו**, and all the people that take spoil must set it before him; [16] **וְהוּא נוֹטֵל תְּלַק בְּרֵאשׁ**, and he takes a portion first; [17] **לֹא יִרְבֶּה לוֹ נָשִׁים**, neither shall he multiply wives to himself; [18] **לֹא יִרְבֶּה לוֹ סוּסִים**, he shall not multiply horses to himself; [19] **וְכִסְפָּה וְזָהָב לֹא יִרְבֶּה לוֹ**, neither shall he multiply to himself silver and gold; [20] **וְכּוֹתֵב לוֹ סֵפֶר תּוֹרָה לְשֵׁמוֹ**, And he must write for himself a Scroll of the Law; [21] **וְיוֹצֵא לְמִלְחָמָה מוֹצִיאָה עִמּוֹ**, and when he goes forth to battle he takes it with him; [22] **וְכִנּוּס מִכְּנִיסָה עִמּוֹ**, when he returns he brings it back with him; [23] **יּוֹשֵׁב בְּדִין הִיא עִמּוֹ**, when he sits in judgment it must be with him; [24] **אֵין רוֹכֵב עָלָיו**, when he sits [at a meal] it must be with him; [25] **אֵין רוֹכֵב עָלָיו**, none may ride upon his horse; [26] **וְאֵין יוֹשֵׁב עַל כִּסְאוֹ**, and none may sit upon his throne; [27] **וְאֵין מְשַׁתְּמֵשׁ בְּשֵׁרָבִיטוֹ**, and none may use his sceptre; [28] **וְאֵין רוֹאִין אוֹתוֹ**, and none may look on him when he has his hair cut; [29] **וְלֹא כְּשֶׁהוּא עָרוֹם**, or when he is naked; [30] **וְלֹא בְּבֵית הַמְּרִתֵץ**, or when in the bath-house. 2 Numbers 18, 8ff. ; **בָּבָא קָמָא** 110b. As set out from Scripture: [1] **מִקְדָּשׁ הַקְּדוּשִׁים**, of the most holy things (viz., **זְבַחֵי שְׁלָמֵי צִבּוֹר**, peace-offerings (sacrifices) of the congregation); [2] **מִן־הָאֵשׁ**, from the fire (referring to **עוֹר הָעוֹלָה**, the hide of the burnt-offering, which must be wholly burned); [3, 4] **כָּל־קִרְבָּנָם**, all their offerings (viz., **שְׁתֵּי הַלֶּחֶם**, the two loaves, **וְלֶחֶם הַפָּנִים**, and the shewbread); [5, 6] **לְכֹל מִנְחָתָם**, even all their meal-offerings (viz., **וְשִׁרְי מִנְחַת הָעוֹמֵר**, the remains of the meal-offerings, and the remainder of the meal-offering of the omer); [7, 8] **וְלְכֹל חַטָּאתָם**, and even all their sin-offerings (viz., **בֶּשֶׂר שֶׁל חַטָּאת בְּהֵמָה**, the flesh of the sin-offering of a beast, **וְחַטָּאת הָעוֹף**, and of the sin-offering of a bird); [9, 10] **וְלְכֹל אֲשָׁמָם**, and (for) all their guilt-offerings (viz., **אֲשָׁם וְדָאִי**, the guilt-offering for the undoubted commission of certain offences, **אֲשָׁם תְּלוּי**, and a guilt-offering when in doubt as to having committed a sinful act); [11] **אֲשֶׁר לִי**, which they may render unto Me (viz., **גְּזֵל הַגֵּר**, robbery from the stranger); [12] **קֹדֶשׁ קְדוּשִׁים**, most holy (viz., **לֹג שֶׁמֶן שֶׁל מְצוֹרַע**, the log of oil of the leper); [13] **חֹזֶה וְשׁוֹק**, breast and shank; [14] **תְּרוּמָה**, priest's-due (or heave-offering); [15] **תְּרוּמַת רִאשִׁית**, priest's-due of the first tithe (or **תְּרוּמָה קְטַנָּה**, minor priest's-due); [16] **רֵאשִׁית הַמַּחְסֵה**, the first of the fleece; [17] **חֶלֶה**, priest's share of the dough; [18] **וְהַלְחִים**, the first-fruits; [19] **בְּכֹרִים**, the first-fruits of the fore-arm and the two weeks and the maw; [20] **שָׂדֵה אֲחֻזָּה**, inherited field; [21] **שָׂדֵה תְּרוּם**, field for priests' use; [22] **בְּכֹר אָדָם**, firstborn of man; [23] **בְּכֹר בְּהֵמָה טְהוֹרָה**, firstling of a clean beast;

for what is not due is moral theft. 42 *Esther 2, 22.* 43 The theme of this *Mishnah* is continued in the next *Mishnah*. The pointing in the Prayer Book is מְרַכְּי.

Mishnah 7

Great is the Law which bestows life upon those that practise it in this world and in the world to come, as it is said,¹ *For they are life unto those that find them, and health to all their flesh*; and it says,² *It shall be health to thy navel, and marrow to thy bones*; and it says,³ *It is a tree of life to them that lay hold upon it, and happy is every one that holdeth it fast*; and it says,⁴ *For they shall be a chaplet of grace unto thy head, and chains about thy neck*; and it says,⁵ *It shall give to thy head a chaplet of grace; a crown of glory it will bestow on thee*; and it says,⁶ *For by me thy days shall be multiplied, and the years of thy life shall be increased*; and it says,⁷ *Length of days is in its right hand; in its left hand are riches and honour*; and it says,⁸ *For length of days, and years of life, and peace, shall they add to thee.*

1 *Proverbs 4, 22.* 2 *Proverbs 3, 8.* 3 *Proverbs 3, 18.* 4 *Proverbs 1, 9.* 5 *Proverbs 4, 9.* 6 *Proverbs 9, 11.* 7 *Proverbs 3, 16.* 8 *Proverbs 3, 2.*

Mishnah 8

R.¹ Simon ben Judah, in the name of² R. Simon ben Jochai,³ said, Beauty, (and) strength, (and) riches, (and) honour, (and) wisdom,⁵ old age, (and) a hoary head, and children are comely to the righteous and comely to the world, as it is said,⁶ *The hoary head is a crown of glory; it is found in the way of righteousness*; and it says,⁷ *The glory of young men is their strength, and the beauty of*

מִשְׁנָה ז

גְּדוּלָה תוֹרָה שֶׁהִיא נוֹתַנָת חַיִּים לְעוֹשֶׂיהָ בְּעוֹלָם הַזֶּה וּבְעוֹלָם הַבָּא, יִשְׁנֹאמַר בֵּי-חַיִּים הֵם לְמִצְאֵיהֶם וּלְכָל-בָּשָׂרוֹ מִרְפָּא; וְאוֹמַר רַפְאוֹת תְּהִי לְשִׁרְךָ וְשִׁקּוֹי לְעֲצָמוֹתֶיךָ; וְאוֹמַר עֵץ-חַיִּים הִיא לַמְחַיִּיקִים בָּהּ וְתוֹמְכֶיהָ מֵאֲשֶׁר; וְאוֹמַר בֵּי לֵוִיִּת חֵן הֵם לְרֵאשִׁיף וְעֲנֻקִים לְגִרְגֻרֶיךָ; וְאוֹמַר תִּתֵּן לְרֵאשִׁיף לֵוִיִּת-חֵן עֲטָרַת תְּפָאֶרֶת תְּמַנֶּנּוּ; וְאוֹמַר כִּי בִי יִרְבוּ יָמֶיךָ וְיִוָּסִיפוּ לְךָ שְׁנוֹת חַיִּים; וְאוֹמַר אֶרֶץ יָמִים בְּיַמֶּינָהּ בְּשִׂמְאוֹלָהּ עֶשֶׂר וּכְבוֹד; וְאוֹמַר כִּי אֶרֶץ יָמִים וְשְׁנוֹת חַיִּים וְשְׁלוֹם יִוָּסִיפוּ לְךָ.

מִשְׁנָה ח

רַבִּי שִׁמְעוֹן בֶּן יְהוּדָה מִשׁוֹם רַבִּי שִׁמְעוֹן בֶּן יִיזְחָאִי אוֹמַר הַגּוֹי וְהַכֶּחַ וְהָעֶשֶׂר וְהַכְּבוֹד וְהַחֲכָמָה הַזִּקְנָה וְהַשִּׁיבָה וְהַבְּנִים נֹאֶה לְצַדִּיקִים וְנֹאֶה לְעוֹלָם, שִׁנְאוֹמַר עֲטָרַת תְּפָאֶרֶת שִׁיבָה בְּדַרְךְ צְדָקָה תִּמְצֵא; וְאוֹמַר תְּפָאֶרֶת בַּחֲוָרִים כָּחַם וְהַדָּר וְקִנְיִים

old men is the hoary head; and it says,⁸ *The crown of the wise is their riches*; and it says,⁹ *Children's children are the crown of old men, and the glory of children are their fathers*; and it says,¹⁰ *Then the moon shall be confounded and the sun ashamed; for the Eternal of hosts shall reign in Mount Zion, and in Jerusalem, and before His elders shall be glory*. R. Simon ben Menasia said, These seven qualifications which the Sages enumerated as becoming to the righteous were all realised in Rabbi¹¹ and in his sons.

שִׁיבָה; וְאָמַר עֲטֹרַת חֲכָמִים
עֲשָׂרָם; וְאָמַר עֲטֹרַת יְקָנִים בְּנֵי
בָנִים וְתַפְאֶרֶת בָּנִים אֲבוֹתָם;
וְאָמַר וְתַפְאֶרֶת הַלְבָנָה וּבוֹשָׁה
הַתְמָה כִּי-מָלַךְ ה' צְבָאוֹת בְּהַר
צִיּוֹן וּבִירוּשָׁלַיִם וַיָּנֹד וַיִּקְנֶי כְבוֹד.
רַבִּי שְׁמַעוֹן בֶּן מִנְסֵא אָמַר, אֵלּוּ
שִׁבַע מִדּוֹת שְׁמֵנו חֲכָמִים לְצַדִּיקִים
כָּלָם נִתְקַיְמוּ וּבְרַבִּי וּבְבָנָיו.

1 The panegyric extolling the Law begun in 6¹ and running through 6⁷ is resumed here and concluded in the next *Mishnah*. 2 מִשֵּׁם in some texts. 3 In some texts, יוֹחֵי. 4 See 6⁴, Note 2. 5 Elijah, the Gaon of Wilna, suggests the omission of הַחֲכָמָה, wisdom, not being referred to in the Scriptural quotations, so as to give seven qualifications—and not eight as here mentioned—in agreement with R. Simon ben Menassia's statement; on the other hand, the תַּלְמוּד יְרוּשָׁלַמִי (the *Jerusalem*, or *Palestinian Talmud*) gives seven by omitting הַזְקֵנָה, old age. 6 Proverbs 16, 31. 7 Proverbs 20, 29. 8 Proverbs 14, 24. 9 Proverbs 17, 6. 10 Isaiah 24, 23. 11 רַבִּי יְהוֹרֵה הַנְּשִׂיא. In some editions this last part from רַבִּי שְׁמַעוֹן is attached to the next *Mishnah*.

Mishnah 9

מִשְׁנָה ט

R.¹ Jose ben Kisma said, 'I was once walking by the way when a man met me and greeted me,² and I returned his salutation. He said to me, "Rabbi, from what³ place art thou?"⁴ I said to him, "I come from a great city⁵ of Sages and Scribes". He said to me, "If thou art willing to dwell with us in our place, I will give thee a thousand thousand golden *denars*⁶ and precious stones and pearls". I replied to him, "If thou wert to give me all the silver and gold and precious

וְאָמַר רַבִּי יוֹסֵי בֶן קִסְמָא פָּעַם אֶחָת
הָיִיתִי מֵהַלֵּךְ בְּדַרְךָ וּפְגַע בִּי אָדָם
אֶחָד וַיִּגְמַן-לִי שְׁלוֹם וְהִתְחַוְּרַתִּי לוֹ
שְׁלוֹם. אָמַר לִי רַבִּי מֵאַיִזָּה מְקוֹם
אַתָּה? אָמַרְתִּי לוֹ מֵעִיר גְּדוֹלָה
שֶׁל חֲכָמִים וְשֶׁל סוֹפְרִים אֲנִי. אָמַר
לִי רַבִּי רְצוֹנָךְ שֶׁתְּדוּר עִמָּנוּ בְּמִקְוָמֵנוּ
וְאֲנִי אֶתֵּן לְךָ אֶלֶף אֶלְפִים דִּינָרֵי
זָהָב וְאַבְנֵים טוֹבוֹת וּמְרַגְלִיּוֹת.
אָמַרְתִּי לוֹ אִם אַתָּה נוֹתֵן לִי כָל-

stones and pearls in the world, I would not dwell elsewhere but in a place of the Law”’ and thus it is written in the *Book of Psalms*⁷ by the hands of David King of Israel, *The Law of Thy mouth is better unto me than thousands of gold and silver*;⁸ and not only so, but in the hour of* man’s departure, neither silver nor gold nor precious jewels nor pearls accompany him, but only [the reputation of knowledge of] the Law and good works, as it is said,⁹ *When thou walkest it shall lead thee, when thou liest down it shall watch over thee; and when thou awakest it shall talk with thee*; ‘when thou walkest it shall lead thee’—in this world; ‘when thou liest down it shall watch over thee’—in the grave; ‘and when thou awakest it shall talk with thee’—in the Hereafter. And it says,¹⁰ *Mine is the silver, and Mine is the gold, saith the Eternal of hosts.*

כֶּסֶף וְזָהָב וְאֲבָנִים טוֹבוֹת וּמְרַגְלִיּוֹת
שֶׁבְעוֹלָם אֵינִי דָר אֶלָּא בְּמִקוֹם
תּוֹרָה; וְכֵן כָּתוּב בְּסִפְרֵי תְהִלִּים עַל
יְדֵי דָוִד מֶלֶךְ יִשְׂרָאֵל טוֹב לִי תוֹרַת
פִּיךָ מֵאֲלֵפֵי זָהָב וְכֶסֶף; וְלֹא עוֹד
אֶלָּא שֶׁבְשַׁעַת פְּטִירְתּוֹ שֶׁל אָדָם
אֵין מְלוּיִם לוֹ לְאָדָם לֹא כֶסֶף וְלֹא
זָהָב וְלֹא אֲבָנִים טוֹבוֹת וּמְרַגְלִיּוֹת
אֶלָּא תּוֹרָה וּמַעֲשִׂים טוֹבִים בְּלִבְךָ.
שְׁנַאמַר בְּהִתְהַלְּכְךָ תִּנְחָה אֶתְךָ
בְּשִׁכְבְּךָ תִּשְׁמַר עָלֶיךָ וְנִקְיֹצוֹת הֵיא
תְּשִׁיחֶךָ; בְּהִתְהַלְּכְךָ תִּנְחָה אֶתְךָ
בְּעוֹלָם הַזֶּה; בְּשִׁכְבְּךָ תִּשְׁמַר
עָלֶיךָ בְּקִבְרְךָ; וְנִקְיֹצוֹת הֵיא
תְּשִׁיחֶךָ לְעוֹלָם הַבָּא.¹⁰ וְאוֹמֵר לִי
הַכֶּסֶף וְלִי הַזָּהָב נְאֻם ה' צְבָאוֹת.

1 This *Mishnah* concludes the eulogy of the Law from the preceding *Mishnah*. See the foregoing *Mishnah*, **Note 11**. 2 The חָסִיד, *pious man*, should greet first; but R. Jose was so sunk in thought and study of the Law that he did not observe the other’s approach and presence. The phrase פָּעַם אַחַת suggests that this was the only case of such lapse on his part. אַחַת and בְּדֶרֶךְ given in some texts are not grammatically correct. 3 מֵאִי־זֶה in some texts. 4 אַתָּה in some texts is not grammatically correct. 5 Probably *Jabneh*. 6 See וְרָעִים, Page 18f. 7 *Psalms* 119, 72. 8 וְכֶסֶף in some texts is not the Scriptural orthography, and besides the *pausal* form is required here. 9 *Proverbs* 6, 22. 10 *Haggai* 2, 8. *Or שֶׁבְשַׁעַת.

Mishnah 10

Five¹ possessions did the Holy One, blessed be He, make especially His own in His world, and these are they, *the Law*—one possession, *heaven and earth*—one possession, *Abraham*—one possession, *Israel*—one possession, and the *Holy Temple*—one

מִשְׁנֵה י
יְחֻמְשָׁה קְנִינִים קָנָה לוֹ הַקְּדוֹשׁ בְּרוּךְ
הוּא בְּעוֹלָמוֹ וְאֵלוֹ הוּא, תּוֹרָה קְנִין
אֶחָד, שָׁמַיִם וָאָרֶץ קְנִין אֶחָד,
אַבְרָהָם קְנִין אֶחָד, יִשְׂרָאֵל קְנִין

possession. Whence [do we know this] of 'the Law'? Because it is written,² *The Eternal made³ me as the beginning of His way, before His works, of old.* Whence [know we this] of 'heaven and earth'? Because it is written,⁴ *Thus saith the Eternal, The heaven is My throne, and the earth is My footstool; what manner of house will ye build unto me? And where is the place for My rest?* And it says,⁵ *How manifold are Thy works, O Eternal! In wisdom hast Thou made them all; the earth is full of Thy possessions.* Whence [do we know this] of 'Abraham'? Because it is written,⁶ *And he blessed him, and said, Blessed be Abram of the Most High God, Possessor of heaven and earth.* Whence [do we learn this] of 'Israel'? Because it is written,⁷ *Till Thy people pass over, O Eternal, till the people pass over which Thou hast gotten; and it says,⁸ As for the saints that are in the earth, they are the excellent in whom is all my delight.* Whence [do we learn this] of 'the Holy Temple'? Because it is written,⁹ *The place, O Eternal, which Thou hast made for Thee to dwell in, the sanctuary, O Eternal, which Thy hands have established; and it says,¹⁰ And he brought them to the*

אָהַד, בֵּית הַמִּקְדָּשׁ קִנְיָן אֶחָד. תּוֹרָה
מִיָּוָה יִדְכָתִיב ה' קִנְיָן רֵאשִׁית דְּרַכּוֹ
קִדְם מִפְעֻלָּיו מֵאֵז שָׁמַיִם וְאָרֶץ
מִיָּוָה יִדְכָתִיב פֹּה אָמַר ה' הַשָּׁמַיִם
כְּסֵאֵי וְהָאָרֶץ הַדּוֹם רִגְלֵי אֵי-יָוָה
בַּיִת אֲשֶׁר תִּבְנֶנּוּ לִי וְאֵי-יָוָה מְקוֹם
מְנוּחָתִי. וְאוֹמֵר מָה רַבּוּ מַעֲשֵׂיךָ
ה' כָּלֵם בְּחֻכְמָה עֲשִׂיתָ מְלֵאָה הָאָרֶץ
קִנְיָנֶיךָ. אֲבָרְהָם מִיָּוָה יִדְכָתִיב
וַיְבָרְכֵהוּ וַיֹּאמֶר בְּרוּךְ אַבְרָם לְאֵל
עֲלִיוֹן קִנְיָן שָׁמַיִם וְאָרֶץ. יִשְׂרָאֵל
מִיָּוָה יִדְכָתִיב עַד-יַעֲבֹר עִמָּךָ ה'
עַד-יַעֲבֹר עִם-וּוּ קִנְיָתִי. וְאוֹמֵר
לְקַדוּשִׁים אֲשֶׁר-בְּאָרֶץ הַקְּדוֹה וְאֲדִירִי
כָּל-הַפְּצִי בָם. בֵּית הַמִּקְדָּשׁ מִיָּוָה
יִדְכָתִיב מְכוֹן לְשִׁבְתֶּךָ פְּעֻלָּתֶךָ ה'
מִקְדָּשׁ אֲדָנִי כוֹנְנֵנו יְדִידֶךָ; וְאוֹמֵר
וַיְבִיאֵם אֶל-גְּבוּל קִדְשׁוֹ הַר-יָוָה
קִנְיָתָהּ יְמִינוֹ.

border of His sanctuary, to this mountain

1 Three, viz., 'the Law', 'Israel', and 'the Sanctuary' (or 'Temple'), is the number given in one version. Four is the number given in the *Gemara* and *Mechilta*, viz., 'the Law', 'heaven and earth', 'Israel', and 'the Sanctuary' (or 'Temple'), and to indicate this some Prayer Books give the text thus: (. . . אֲבָרְהָם קִנְיָן אֶחָד . . . (חֲמִשָּׁה)). 2 *Proverbs* 8, 22. 3 Or *possessed*, referring to the Law. 4 *Isaiah* 66, 1. 6 *Psalms* 104, 4. 6 *Genesis* 14, 19. 7 *Exodus* 15, 16. 8 *Psalms* 16, 3. 9 *Exodus* 15, 17. 10 *Psalms* 78, 54. 11 See next *Mishnah*, Note 1.

Mishnah 11

מְשֻׁנָּה יֵא

Whatsoever¹ the Holy One, blessed be He, created in His world He created but for His glory, as it is said,² *Everything that is called by My Name, and which I have created for My glory, I have formed it, yea, I have made it*; and it says,³ *The Eternal shall reign for ever and ever*. R.⁴ Chanania ben Akashia said, The Holy One, blessed be He, was pleased to grant merit to Israel, therefore he gave them a copious Law and many commandments, as it is said,⁵ *It pleased the Eternal, for His righteousness' sake, to magnify the Law and make it honourable*.⁶

כָּל־מֵה־שֶׁבְּרָא הַקָּדוֹשׁ בְּרוּךְ הוּא
בְּעוֹלָמוֹ לֹא בְּרָאוּ אֱלֹא לְכַבְדּוֹ.
שֶׁנֶּאֱמַר כָּל הַנִּבְרָא בִשְׁמִי וְלְכַבְדִּי
בְּרָאתִיו יִצְרַתִּיו אִף עֲשִׂיתִיו;
וְאוֹמֵר ה' יִמְלֹךְ לְעוֹלָם וָעֶד.
רַבִּי חֲנַנְיָא בֶן עֲקֻשְׁיָא אוֹמֵר רַצָּה
הַקָּדוֹשׁ בְּרוּךְ הוּא לְנִכּוֹת אֶת־
יִשְׂרָאֵל לְפִיכָךְ הִרְבָּה לָהֶם תּוֹרָה
וּמִצְוֹת, שֶׁנֶּאֱמַר ה' חִפֵּץ לְמַעַן
צַדִּיק וַיַּגְדִּיל תּוֹרָה וַיַּאֲדִיר.

1 כָּל־מֵה־ in some texts. In some Prayer Books this *Mishnah* is the concluding part of the preceding *Mishnah*. 2 *Isaiah* 43, 7. 3 *Exodus* 15, 18. 4 This last section is also quoted at the conclusion of מִכּוֹת (see INTRODUCTION). 5 *Isaiah* 42, 21. 6 See מִכּוֹת 316, Note 5. That Israel may feel honoured and privileged to carry out the commandments. Another rendering is to aggrandise the Torah and make it mighty. Neither of these renderings seems satisfactory or conveys much sense, for the Torah does not need magnification, aggrandisement, glorification, honour—it already possesses these qualities; the terms הַגְדִּיל and הַאֲדִיר can be used respectively with their meanings increase, extend, and strengthen, promote honourably, and the Hebrew can then be rendered to promote (or further) knowledge (or moral teaching), but (or and) for a lofty purpose.

סְלִיק בְּרִייתָא שֶׁל קִנְיַן תּוֹרָה

CONCLUSION OF THE BARAITHA OF
'THE ACQUISITION OF THE LAW'

ADDENDA

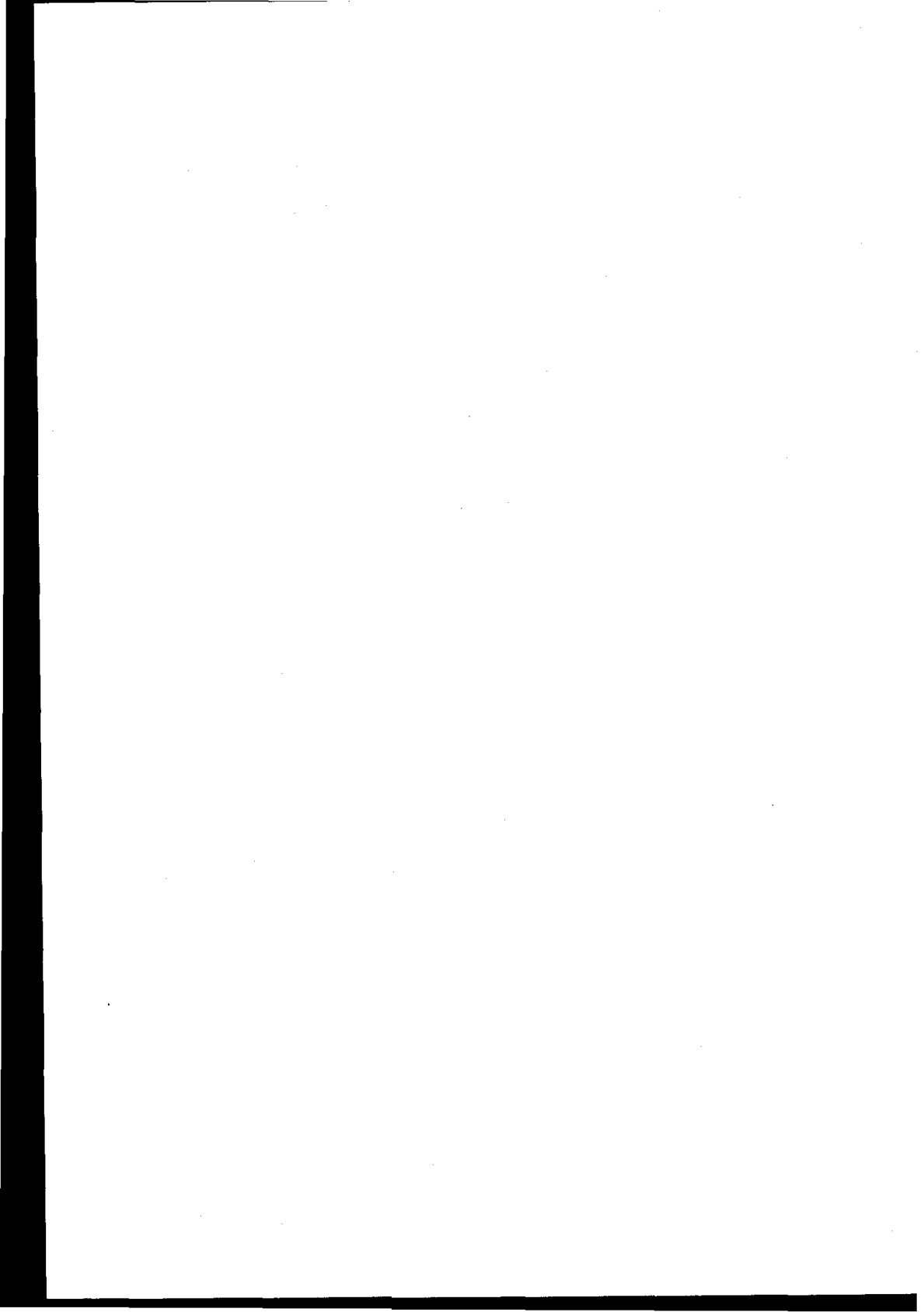
[Additional Notes to אָבוֹת]

- 1¹, **Note 2.** Many authorities hold the opinion that the וְקַיִּים could hardly have been judges but rather leaders in times of emergency, and it seems probable that they were consulted at times and their advice was accepted and practised in the tradition of the Law.
- 1⁵, **Note 5.** Their deduction—that הָאִשָּׁה refers to אִשְׁתּוֹ (בְּ)—depends on the fact that הָאִשָּׁה is prefixed with the *definite article* הַ and thus refers (as in the Talmudic method) to someone well known, *viz.*, his wife.
- 3⁸, **Note ***. See 4²⁰, **Note 5** below.
- 4¹⁸, **Note 2.** Otherwise any possible loophole for the annulment of the vow might be closed.
- 4²⁰, **Note 5.** בְּרַבִּי [בְּרַבִּי] is an abbreviation of בֵּי רַבִּי, *belonging to an academy (or a school) of an eminent teacher.* It is a title most often bestowed on disciples of אֲמוּנָה הַנְּשִׂיאַ and his contemporaries; some of his predecessors and occasionally the first אֲמוּנָה (see Volume I, GENERAL INTRODUCTION) were also thus designated. See אֲהָלוֹת 35, בְּבֹא מְצִיעָא 47, גִּיטִין 47.
- 5¹, **Note 2.** Many maintain that וְאַמֵּר אֱלֹהִים occurring 'nine' times is made up to 'ten' with the word בְּרֵאשִׁית, *In the beginning* [Genesis 1, 1] as another 'saying'.
- 5³, **Note 3.** The *ten trials* to which *Abraham* was subjected were: [1] when he was born Nimrod sought to slay him and he was hidden in an underground shelter for three years; when he emerged he rejected all idolatrous beliefs and practices and worshipped God only (בֵּית הַמִּדְרָשׁ ב . . . שֶׁל יַעֲקֹב); [2] his experience in the burning furnace (*Nehemiah* 9, 7; וְאֵלֵיהֶוּ אֵלֵיהֶוּ אֵלֵיהֶוּ); [3] his departure from his native land (*Genesis* 12, 1ff.); [4] the famine (*Genesis* 12, 10); [5] Sarai taken by Pharaoh (*Genesis* 12, 15); [6] his battle with the attackers against Sodom (*Genesis* 14, 1ff.); [7] his vision (*Genesis* 15, 1f.); [8] the circumcision (*Genesis* 17, 23, 21, 4); [9] the expulsion of Hagar and Ishmael (*Genesis* 21, 10ff.); [10] the binding of Isaac (*Genesis* 22, 1ff.).
- 5⁴, **Note 3.** The *ten miracles on the sea*, inferred from the varying phrases in *Exodus* 15, 1ff., and detailed in אָבוֹת דְּרַבִּי נְהִן: [1] tunnel-like passages were formed through the sea; [2] the sea-bottom became like a valley (or a level plain); [3] the waters turned into solid blocks; [4] the sea-bottom became clay-like; [5] the sea-bottom was like to 'a wilderness'; [6] the sea-waters were converted into solid 'crumb-like' structure; [7] the sea-waters became 'rock-like'; [8] the sea-bottom was the like of 'dry land'; [9] the sea-waters parted and

stood up like 'walls'; [10] the sea-waters stood up as 'a heap,' The same source (אָבוֹת דִּרְבֵי נֵטָן) gives an alternative list deduced from the varying phrases in *Psalms* 18, 13ff.: [1] the enemy was confused with miraculous thunderings; [2] the terrifying appearance of a wondrous rainbow; [3] showers of arrows from the sky upon the enemy; [4] swords showered down on them from the sky; [5] destruction from showers of spears upon them; [6] shields from the sky showered down upon them; [7] hooks from the sky destroyed them; [8] javelins and lances showered down from the sky to destroy them; [9] hail destroyed them; [10] burning coals from the sky fell upon them.

54, Note 7. The ten provokings at the Red Sea and in the Wilderness: [1] *Exodus* 14, 11: קָבְרִים אֵין הַמִּבְּלֵי אֵין קָבְרִים, *Because there were no graves . . . ?* [2] *Exodus* 14, 30: the fear of the people that an Egyptian army might have crossed somewhere to outflank them and so cut them off to be destroyed, and their minds were set at rest when they saw the dead cast up on the shore—וַיֵּרֶא יִשְׂרָאֵל אֶת־מִצְרַיִם מֵת־עַל שְׂפַת הַיָּם, *and Israel saw the Egyptians dead upon the sea-shore*; [3] *Exodus* 16, 20: וַיִּזְחֲרוּ אַנְשֵׁים, *but some of them left of it [viz., the manna]*; [4] *Exodus* 16, 20: וַיֵּצְאוּ מִן־הָעָם לְלֶקֶט, *that there went out some of the people to gather [viz., the manna on the Sabbath]*; some connect this with the 'quails' mentioned in *Genesis* 16, 13; [5] *Exodus* 16, 3: וַיֵּשְׁבוּ עַל סֵדֵי הַבָּשָׂר, *when we sat by the 'flesh pots'*; [6] *Numbers* 11, 4: וְהָאֶסְפָּסָף אֲשֶׁר בְּקִרְבּוֹ הָתְעוּ תַּאֲוָה, *And the mixed multitude that was among them fell a lusting—in connection with the 'quails' (see Numbers 11, 31ff.)*; [7] *Exodus* 15, 24: וַיִּלְלוּ הָעָם, *And the people murmured—when they lacked water*; [8] *Exodus* 17, 2: וַיִּרְבּוּ הָעָם, *wherefore the people strove—when they lacked water*; [9] *Exodus* 32, 1ff.: וַעֲגַל מִסְכָּה, *a molten calf—the sin of the עֲגַל הַזָּהָב, the golden calf*; [10] *Numbers* 13, 26ff.: וַיִּזְצִיאוּ דִבַּת הָאָרֶץ, *And they spread an evil report of the land—the iniquity of the ten spies.*

61, Note *. The term מִשְׁנָה, *Mishnah*, given as the heading for each of the separate passages here is not used in its *Mishnaic* sense (seeing that the whole Chapter is a בְּרִייתָא) but in its alternative meaning, *section* or *paragraph*.



מסכת

הוריות

TRACTATE
HORAYOTH

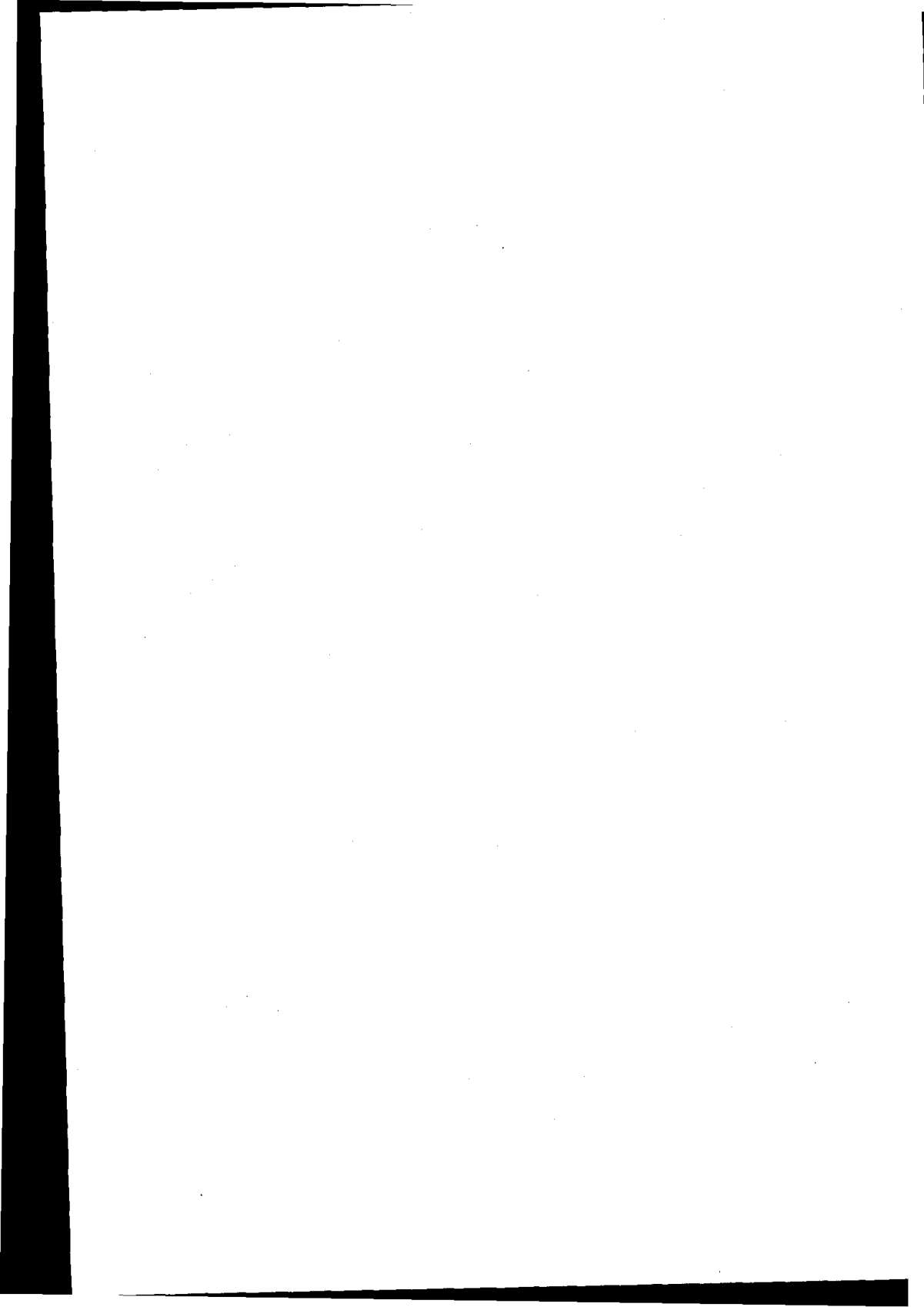
[BEING THE TENTH TRACTATE OF THE FOURTH ORDER OF
THE MISHNAH]

TEXT - INTRODUCTION - TRANSLATION - NOTES

By

PHILIP BLACKMAN, F.C.S.

MS. of this Tractate revised by
RABBI ISAAC WALLER, B.A.



INTRODUCTION

הוריות, **Horayoth**, is the tenth—and last—מסכת (*Tractate* or *Treatise*) of סדר נזיקין (the *Fourth Order Nezikin*) of the משנה (*Mishnah*).

The term הוריות is the plural form of the substantive הוריה, **instruction, teaching, decision, judge's office, teacher's office**, and is a derivative of the Hiphil הורה* from the Kal ירה, ירי, §.

The *Tractate* deals mainly with religious and legal decisions promulgated unwittingly and erroneously by authority (the Sanhedrin) and of sins committed unknowingly, and their consequences—with reference to *Leviticus* 1-21 but particularly 4-5—and also treats of the special חטאות (sin-offerings) to be brought in atonement or expiation by the community, the anointed High Priest and the נשיא.

There is גמרא to the *Tractate* in both the תלמוד בבלי (*Babylonian Talmud*) and תלמוד ירושלמי (*Jerusalem, or Palestinian, Talmud*).

The *Tractate* consists of three Chapters whose titles are:

CHAPTER 1	הורו בית דין	פרק א
CHAPTER 2	הורה פהו משין	פרק ב
CHAPTER 3	פהו משין	פרק ג

The principal matters dealt with in the three Chapters are:

1. The congregational offering. 2. Erroneous decisions and enactments of the anointed High Priest and of the court; special sacrifices of the Nasi.
3. Sin-offerings of the anointed High Priest and of the Nasi; various classes of Jews and their priority in their calling up to read from the Law.

* הורא, *penetrate, permeate; shoot, aim at, point; cast, throw, hurl; indicate, point out, decide, direct, instruct, teach.*

§ ירה, ירי, *penetrate, permeate, shoot forth, throw, shoot.*

1. The first part of the document is a list of names and addresses of the members of the committee.

2. The second part of the document is a list of names and addresses of the members of the committee.

3. The third part of the document is a list of names and addresses of the members of the committee.

4. The fourth part of the document is a list of names and addresses of the members of the committee.

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מִסְכֵּת

הוֹרְיֹוֹת

TRACTATE

HORAYOTH

CHAPTER 1

פֶּרֶק א

Mishnah 1

מִשְׁנָה א

If the court gave a decision leading to the transgression of¹ the commandments enjoined in the Law,² and an individual went and acted at their word in ignorance, then whether they [—the court—also] acted thus and he acted together with them, or they [first] acted so and he [too] acted thus after them, or whether they did not act thus but he acted so, he is exempt [from having to bring a *sin-offering*],³ since he relied on [the judgment of] the court.⁴ If the court gave a [wrongful] decision, and one of them knew that they had erred, or a disciple who was himself competent to give a decision [knew that they had given a decision contrary to the precepts of the Law], and he went and acted according to their word,⁵ whether they [also] acted so and he thus acted together with them, or they [first] acted thus and he [also] acted so after them, or whether they did not act so but he acted thus, then this person⁶ is liable [to bring a *sin-offering*], since he did not depend on [the decision of] the court.⁷ This is the general principle: he that relies on himself [judging he is acting in agreement with the tenets of the Law but in fact is acting contrary

הוֹרֵי בֵּית דִּין יִלְעָבוֹר עַל אַחַת
מִכָּל מִצְוֹת הָאֲמוּרוֹת בְּתוֹרָה,
וְהִלֵּךְ הִיחִיד וְעָשָׂה שׁוּגֵג עַל פִּיהֶם,
בֵּין שְׁעָשׂוּ וְעָשָׂה עִמָּהֶן, בֵּין שְׁעָשׂוּ
וְעָשָׂה אַחֲרֵיהֶן, בֵּין שֶׁלֹּא עָשׂוּ וְעָשָׂה,
מִפְּטוֹר, מִפְּנֵי שֶׁתָּלָה בְּבֵית דִּין. הוֹרֵי
בֵּית דִּין וְיָדַע אֶחָד מֵהֶן שֶׁטָּעוּ אוֹ
תַלְמִיד וְהוּא רָאִי לְהוֹרָאָה, וְהִלֵּךְ
וְעָשָׂה עַל פִּיהֶן, בֵּין שְׁעָשׂוּ וְעָשָׂה
עִמָּהֶן, בֵּין שְׁעָשׂוּ וְעָשָׂה אַחֲרֵיהֶן,
בֵּין שֶׁלֹּא עָשׂוּ וְעָשָׂה, הָרִי זֶה חַיִּיב,
מִפְּנֵי שֶׁלֹּא תָלָה בְּבֵית דִּין. זֶה
הַכֹּלֵל הַתּוֹלָה בְּעַצְמוֹ חַיִּיב,
וְהַתּוֹלָה בְּבֵית דִּין מִפְּטוֹר.

to its precepts] is culpable [and must bring a *sin-offering*], but he who depends on the court [that they have given a rightful decision and in consequence he unwittingly transgresses] is exempt [from having to bring a *sin-offering*].⁸

1 *i.e.*, a decision that was contrary to.... 2 And קִרַח (*excision*—see *Appendix, Note 2*) was the penalty entailed for any wanton transgression (see 2³). 3 *Leviticus 4, 27ff.* 4 This teaching of R. Judah (who maintained that an individual is exempt if he acted wrongfully by relying on the decision of the court) is not accepted. The accepted ruling, as laid down by the רַבֵּנּוּן (Sages) is that an individual who transgressed by following the court's decision is culpable, and he is only exempt if all others who also thus transgress together make the majority of the inhabitants of Palestine or the majority of the tribes of Palestine and in that case the court must bring a special *sin-offering*, פֶּר הָעֵלִים דָּבָר שֶׁל צְבוּר (the bullock for the forgetfulness of a matter on behalf of the community: *Leviticus 4, 13*)—and all the others are also exempt. 5 Thinking that it was his duty to do as they [wrongfully] decided. 6 תַּלְמִיד, disciple. 7 Compare 14. 8 But if one acted in accordance with an erroneous decision of the court, not because he had any confidence in the decision but because it seemed to him that he was doing right, then he is culpable.

Mishnah 2

If the court gave a decision¹ [contrary to the commandments enjoined in the Law] and one knew [afterward] that they had erred, and they retracted, whether they brought their [*sin-offering* of] atonement² or whether they did not bring their [*sin-offering* of] atonement, and he went and [unconscious of their retraction] acted at their word, R. Simon³ exempts [him from a *sin-offering*], but R. Eliezer⁴ says, [His case is in] doubt.^{5*} When is this in doubt? If he stayed at home⁶ he is liable⁷ [to bring a *sin-offering*], [but] if he went abroad,⁸ he is exempt [from a *sin-offering*]. R. Akiba⁹ said, 'I admit that [in such a case] this person is nearer exemption¹⁰ than liability.¹¹ Ben Azzai said to

מִשְׁנֵה ב

הורו בית דין נדע ששעו וקזרו בקו, בין שהביאו בפרתן, ובין שלא הביאו בפרתן, והלך ועשה על פיהן, רבי שמעון פוטר ורבי אליעזר אומר ספק אינהו ספק? ישב לו בתוך ביתו תיב, הלך לו למדינת הים פטור. אמר רבי יצקיבא מודה אני בזה שהוא קרוב לפטור מן החובה. אמר לו בן עזאי מאי שנא זה מן היושב בביתו? שהיושב בביתו אפשר היה לו שישמע, וזה לא היה אפשר לו שישמע.

*Or ספק.

him, 'How does this person [who had left the country] differ¹² from him that remained at home?' [R. Akiba made answer to him], 'He that stayed at home could hear [that the court had recanted], but the other could not possibly hear [of this].

1 And the majority of the nation or community acted in accordance with it. 2 *Leviticus* 4, 13ff. Some render this (as if וַיִּדְעוּ should be וַיִּדְעוּ) . . . and [the court] knew that they had erred and retracted . . . and then render וְהָלַךְ וְעָשָׂה and someone went and [ignorant of the retraction] acted . . . 3 His opinion is rejected. 4 His view is accepted. 5 And he must bring an אָשָׁם תְּלוּי (a sin-offering when in doubt as to the commission of a transgression). *Leviticus* 5, 18. 6 *i.e.*, he did not leave the country. 7 Because he could have made enquiry to discover what was happening. 8 Literally to a country beyond the sea, *i.e.*, somewhere outside Palestine. This applies also if he was on the road to leave the country. 9 His opinion is accepted. 10 פְּטוֹר [substantive], discharge, exemption [not, here, the Kal Infinitive פְּטוֹר]. 11 Because being on a journey or even preparing to depart on a journey prevents him from setting enquiry on foot to determine if any change has occurred. 12 Or שְׂנִי.

Mishnah 3

If the court gave a decision to uproot a whole principle [in the Law], [for instance], if they said, There is nothing [mentioned] in the Law concerning the menstruous woman,¹ [or,] There is naught [stated] regarding the Sabbath in the Law, [or,] There is nothing with regard to idolatry [taught] in the Law, then these [judges of the court] are exempt [from having to bring a sin-offering].² If they gave a decision to disannul [a principle] in part and to uphold [it] in part, then these [judges] are liable [to bring a sin-offering]. How so? If they said, [The subject of] the menstruant woman is [dealt with] in the Law, but if a man has sexual connection with a woman *awaiting day against day*,³ he is exempt [from extirpation⁴ and from a sin-offering], [or] The

משנה 1

הורו בית דין לעקור את-כל-
הנוף, אמרו אין יגדה בתורה, אין
שבת בתורה, אין עבודת גלולים
בתורה, הרי אלו פטורין. הורו
לבטל מקצת ולקיים מקצת, הרי
אלו חייבין. ביצד? אמרו יש גדה
בתורה, אבל הבא על שומרת יום
כנגד יום פטור, יש שבת בתורה,
אבל המוציא מרשות היחיד לרשות
הרבים פטור, יש עבודת כוכבים
בתורה, אבל המשמתחה פטור,
הרי אלו חייבין, שנאמר ונועלם
דבר, דבר, דבר ולא כל-הנוף.

Sabbath is [treated] in the Law, but if one carry out [aught] from a private domain into the public domain, he is exempt⁵ [from a *sin-offering*],⁶ [or, The matter] regarding idolatry [is treated] in the Law, but one [who does not prostrate himself] bows down to an idol, is exempt⁶ [from a *sin-offering*], then this court is culpable [and must bring a *sin-offering*], as it is said, *and the thing being hid*⁷—something, but not the entire principle. * Or יִשְׁעֲבֹדֶת.

1 *Leviticus* 15, 19; 18, 19; 20, 18. These three examples are quoted because they are full of ramifications and consequent involved prohibitions and permissions apparently in contradiction to the Law. 2 *Leviticus* 4, 13ff. 3 A woman suffering menstruation must await seven clear days after it, and having had the ritual bath she may then cohabit with her husband. But if after the ritual bath (which she has at night) she experiences a discharge of blood the next day, then she must have no sexual intercourse before again having had the ritual bath at the night of the day following. *Leviticus* 15, 19. פְּסָחִים 85. מְגִלָּה 24. נִדָּה 47. יָבִים 11. 4 *Appendix, Note 2*. 5 שָׁבַת 11, 72. 6 סְנֵהֲדָרִין 76. 7 Or *if aught be hid*. *Leviticus* 4, 13.

Mishnah 4

If the court gave a decision [contrary to the teaching of the Law], and one of them knew that they had erred, and he said to them, 'You are in error', or if the chief judge of the court were not there, or if one of them were a proselyte, or a bastard, or a Gibeonite descendant,¹ or an old man² who had never had children, then these are exempt [from having to bring a *sin-offering*]; for here³ it is said *congregation* and there⁴ [further on] it is stated *congregation*—just as *congregation* mentioned there [further on] signifies that they must all be qualified to give a decision, even so *congregation* quoted here implies that they should all be competent to give a decision. If the court gave a decision [against the tenet of the Law] unwittingly, and all the congregation acted [in accordance there-

מִשְׁנֵה ד

הִזְרוּ בֵּית דִּין, וְיָדַע אֶחָד מֵהֶן שִׁטְעוּ, וְאָמַר לָהֶן טוֹעֵין אַתֶּם, אוֹ שְׂלֵא הָיָה מוֹפְלָא שְׁל בֵּית דִּין שָׁם, אוֹ שְׁהָיָה אֶחָד מֵהֶן גֵּר, אוֹ מְמֹר, אוֹ יָתִיב, אוֹ זָקֵן שְׂלֵא רָאָה (לוֹ) בָּנִים, הָרִי אֱלוֹ פְּטוּרִין; שְׁנֵאֲמַר כָּאֵן עֵדָה, וְנֵאֲמַר לְהִלְקֵן עֵדָה, מָה עֵדָה הָאֲמֹר לְהִלְקֵן, עַד שִׁיְהִי כּוֹלָם רְאוּיִין לְהוֹרָאָה, אִף עֵדָה הָאֲמֹרָה כָּאֵן, עַד שִׁיְהִי כּוֹלָם רְאוּיִים לְהוֹרָאָה. הִזְרוּ בֵּית דִּין שׁוֹגְגִין, וְעָשׂוּ כָּל-הַקְּהָל שׁוֹגְגִין, מְבִיאִין פֶּרֶךְ מִזִּידִין, וְעָשׂוּ שׁוֹגְגִין, מְבִיאִין כֶּשֶׁבֶה וְשֹׁעִירָה. שׁוֹגְגִין, וְעָשׂוּ מִזִּידִין, הָרִי אֱלוֹ פְּטוּרִין.

with] unwittingly, [the court] must bring a bullock [as a *sin-offering*]⁵. If the court wantonly gave a decision [against the precept of the Law], and [all the congregation] unwittingly acted [in accordance therewith], [each of them separately] must bring a sheep or a goat [as a *sin-offering*].⁶ If the court unwittingly [gave a decision against the commandment of the Law], but the congregation [though aware of the court's error, nevertheless] acted wantonly [accordingly to the court's wrong decision], then all these [both the court and the congregation,] are exempt [from any *sin-offering*].

1 *Joshua* 9, 27; *1 Chronicles* 9, 2; *Ezra* 2, 43, 8, 20; *Nehemiah* 3, 26; קדוּשֵׁין 41^a. A proselyte, a bastard, and a descendant of the Gibeonites were ineligible as judges (סִנְהֶדְרִין 42). 2 Some consider לוֹ redundant. Such a person was considered disqualified to judge capital crimes as he was thought to have a cruel and unmerciful nature (see סִנְהֶדְרִין 36b). 3 *Leviticus* 4, 13. פֶּאֵן is the traditional pronunciation. 4 *Numbers* 35, 24. 5 *Leviticus* 4, 13ff. 6 *Leviticus* 4, 27-35.

Mishnah 5

משנה ה

If the court [unwittingly] gave a decision [not in accordance with the commandments of the Law] and all the congregation or the majority of them acted at their word, [the court] must bring a bullock [as a *sin-offering*];¹ and if [they had permitted] idolatry, [and the whole congregation or the greater part of them acted at their word], [the court] must bring a bullock and a he-goat [as a *sin-offering*].² This is the opinion of R. Meir. R. Judah says, The twelve tribes offer twelve bullocks [—one for each tribe]; and in the case of idolatry, they must offer twelve bullocks and twelve he-goats [—each tribe a bullock and a he-goat]. R. Simon says, [In the former case] thirteen bullocks [—one for each tribe and one for the court], and in the case of idolatry thirteen bullocks and thirteen he-goats—one

הורו בית דין, ועשו כל-הקהל
או רובן על פיהם, מביאין יפר;
ובעבודת כוכבים מביאין פר
ושעירי. דברי רבי מאיר. רבי
יהודה אומר שנים עשר שקטים
מביאין שנים עשר פרים; ובעבודת
כוכבים מביאין שנים עשר פרים
ושנים עשר שעירים. רבי שמעון
אומר שלשה עשר פרים, ובעבודת
כוכבים שלשה עשר פרים ושלשה
עשר שעירים, פר ושעיר לכל שקט
ושקט, פר ושעיר לבית דין. הורו
בית דין ועשו שכבה שקטים, או

bullock and one he-goat for each tribe and one bullock and one he-goat for the court. If the court [unwittingly] gave a decision [in disagreement with the commandments in the Law], and seven tribes [even if they comprised less than half of the Jews] or the majority of the people [even if they were less than six tribes] acted at their³ word, [the court] must bring a bullock [as a *sin-offering*]; and in the case of idolatry they must bring a bullock and a he-goat. This is the view of R. Meir. R. Judah⁴ says, The seven tribes that transgressed must bring seven bullocks [as *sin-offerings*] and the remaining tribes that did not transgress must bring on behalf of them⁵ one bullock [each tribe], because they also who had not transgressed must [each one] bring [a *sin-offering*] on behalf of the transgressors. R. Simon⁶ says, [They must bring] eight bullocks; and in the case of idolatry eight bullocks and eight he-goats [must be brought], a bullock and a he-goat for every tribe and a bullock and a he-goat for the court. If the court of one of the tribes [unwittingly] gave a decision [transgressing a precept of the Law], and that tribe acted at their word, then that tribe⁷ [only]

is liable [and must bring a *sin-offering*], but the rest of the tribes are exempt. This is the view of R. Judah.⁸ But the Sages⁹ say, They are liable only [to have to bring a *sin-offering*] through a decision given by the Great Court¹⁰ [contrary to the commandments of the Law], as it is said,¹¹ *And if the whole congregation of Israel shall err*—and not the congregation of only that tribe.

רוֹבֵן, עַל פִּיָּהֶם, מְבִיאִים פָּר; וּבַעֲבוּדַת כּוֹכְבִּים מְבִיאִין פָּר וְשֹׁעִיר. דְּבָרֵי רַבִּי מֵאִיר. יִרְבִּי יְהוּדָה אוֹמֵר שִׁבְעָה שִׁבְטִים שֶׁחָטְאוּ, מְבִיאִים שִׁבְעָה פָּרִים, וְשֹׁאֵר שִׁבְטִים יִשְׁלֵא חֲטָאוֹ, מְבִיאִין עַל יְדֵיהֶן פָּר, שֹׁאֵף אֵלּוֹ שֶׁלֹּא חָטְאוּ מְבִיאִין עַל יְדֵי הַחוֹטְאִים. רַבִּי יִשְׁמְעוֹן אוֹמֵר שְׁמֹנֶה פָּרִים; וּבַעֲבוּדַת כּוֹכְבִּים שְׁמֹנֶה פָּרִים וְשְׁמֹנֶה שֹׁעִירִים, פָּר וְשֹׁעִיר לְכָל שִׁבְט וְשִׁבְט, וּפָר וְשֹׁעִיר לְבֵית דִּין. הוֹרוּ בֵּית דִּין שֶׁל אֶחָד מִן־הַשִּׁבְטִים, וַעֲשֵׂה אוֹתוֹ הַשִּׁבְט עַל פִּיָּהֶם, יְאוֹתוֹ הַשִּׁבְט הוּא תְּיִיב, וְשֹׁאֵר כָּל־הַשִּׁבְטִים פְּטוּרִים. דְּבָרֵי רַבִּי יְהוֹנָדָה. וְחֻקְמִים אוֹמְרִים אֵין חֲטִיבִים אֶלָּא עַל הוֹרְיוֹת¹⁰ בֵּית דִּין הַגָּדוֹל בְּלִבָּד, וְיִשְׁנֹאֲמֵר וְאִם כָּל־עַדַת יִשְׂרָאֵל יִשְׁגּוּ וְלֹא עַדַת אוֹתוֹ הַשִּׁבְט.

1 *Leviticus* 4, 13ff. 2 *Numbers* 15, 24. 3 The court's. 4 His opinion is accepted.

5 Or because of them [that had sinned]. 6 His view is rejected. 7 Even if they were not the majority of the Jews. 8 This opinion is rejected. 9 Their view is accepted. 10 The Great Sanhedrin of seventy-one members. סנהדרין 11². But the number of tribes or the number of Jews must be in the majority. 11 *Leviticus* 4, 13.

CHAPTER 2

פָּרָק ב

Mishnah 1

מִשְׁנָה א

If the anointed [High] Priest¹ made a decision for himself [contrary to a commandment in the Law] unawares, and acted [thus] transgressing] unwittingly,² he must bring a bullock [as a *sin-offering*]; [if he made the wrongful decision] unwittingly but acted [transgressing]

הוֹרָה יִכְהֵן מִשִּׁיחַ לְעֲצָמוֹ שׁוֹגֵג וְעָשָׂה יִשׁוּג מְבִיא פָּר ; שׁוֹגֵג וְעָשָׂה מְזִיד ; מְזִיד וְעָשָׂה שׁוֹגֵג יִפְטוֹר ; יִשְׁהוֹרְאֵת כֹּהֵן מִשִּׁיחַ לְעֲצָמוֹ כִּהוֹרְאֵת בֵּית דִּין לְצַבּוֹר .

deliberately, [or if he made the wrongful decision] deliberately but acted [and transgressed] unwittingly [in forgetfulness of having permitted it], he is exempt³ [from a *sin-offering*]; for the decision⁴ of an anointed [High] Priest [made] for himself is as the decision of the court for the congregation.

1 See 3⁴. 2 *Leviticus* 4, 3. Concerning an act for which the penalty is extirpation if committed wantonly. See *Appendix, Note 2*. 3 Compare 2³. 4 Both the decision and the act must be done in transgression indeliberately. Compare 1¹.

Mishnah 2

מִשְׁנָה ב

If [the anointed High Priest] made a decision for himself [which transgressed a commandment enjoined in the Law] and so acted alone, he makes atonement for himself alone¹ [by bringing a *sin-offering*]. If he made [such a wrongful] decision² together with the congregation³ and acted [in accordance therewith] together with the congregation, he must make atonement for himself together with the congregation.⁴

הוֹרָה בְּפָנָיו עֲצָמוֹ וְעָשָׂה בְּפָנָיו עֲצָמוֹ מִתְכַּפֵּר לוֹ בְּפָנָיו יִעֲצָמוֹ . יוֹרָה עִם יִהְצַבּוֹר וְעָשָׂה עִם יִהְצַבּוֹר מִתְכַּפֵּר לוֹ עִם יִהְצַבּוֹר . שְׂאֵין בֵּית דִּין חִיְיָבִים עַד שְׂיִוְרוּ לְבַטֵּל מִקְצֵת יוֹלְקֵימִם מִקְצֵת ; וְכֵן הַמְשִׁיחַ . וְלֹא בְעֲבוּרַת גְּלוּלִים עַד

The court only becomes liable when it gives a decision [regarding an enjoinder in the Law] that in part annuls [it] and in part sustains [it];⁵ and thus, also, is it [in the case of] the anointed [High Priest]. And [likewise, too, the same ruling applies: they are not liable]⁶ in the case of idolatry unless they partly annul and partly uphold.

1 Even if at the same time the court also gave a decision against some other commandment enjoined in the Law. 2 He was a member of the Sanhedrin and they together made a wrongful decision unwittingly. 3 All the Jews; according to some authorities, the Sanhedrin. 4 *i.e.*, one *sin-offering* for all (see 1¹, Note 3, פֶּר הָעֹלֹם דְּבַר שֶׁל צִבּוּר). Based on *Leviticus* 4, 3; 16, 11. 5 Based on *Leviticus* 4, 13; *Numbers* 15, 24. 6 Neither the court nor the High Priest.

Mishnah 3

מִשְׁנָה 1

[If the court gave a decision contrary to the enjoinder in the Law,] they are not liable [to bring a *sin-offering*] save if *ought be hid*¹ and so an act [of transgression] is performed indeliberately. And thus, also, is it with the anointed [High Priest];² and [so, too, the same ruling pertains,] they³ are not liable [to bring a *sin-offering*] in the case of idolatry⁴ only if *ought be hid* and in consequence an act [of transgression] is performed indeliberately. The court is not liable [to bring a *sin-offering*] unless they give a decision [contrary to an enjoinder in the Law] that involves a transgression for which if it be done deliberately [the penalty is] excision,⁵ and if it be done indeliberately a *sin-offering* [must be brought]. And thus, [too, is it in the case of] the anointed [High Priest]; and also, in the case of idolatry, [they are not liable to bring a *sin-offering*] unless they make a decision [against the teaching of the Law] concerning a matter leading to a transgression for which, if it be done in wantonness, excision [is the penalty], and if it be done indeliberately a *sin-offering* [must be brought].

אֵין חֲיִיבִין אֶלָּא עַל יְהִיעֹלָם דְּבַר
עִם שְׂגֵגַת הַמַּעֲשֶׂה; וְכֵן הַמַּשִּׁיחַ;
וְלֹא בְעֵבֹדֶת גְּלוּלִים אֵין חֲיִיבִין
אֶלָּא עַל הָעֹלֹם דְּבַר עִם שְׂגֵגַת
הַמַּעֲשֶׂה. אֵין בֵּית דִּין חֲיִיבִין עַד
שִׁיּוּרוֹ בְּדָבָר שְׂזָדוּנוֹ כְּפֶרֶת וְשְׂגֵגַתוֹ
חֲטָאתוֹ. וְכֵן הַמַּשִּׁיחַ; וְלֹא בְעֵבֹדֶת
גְּלוּלִים עַד שִׁיּוּרוֹ עַל דְּבַר שְׂזָדוּנוֹ
כְּפֶרֶת וְשְׂגֵגַתוֹ חֲטָאתוֹ.

1 Compare פֶּר הָעֵלִים דְּבַר שֶׁל צִבּוֹר 11, Note 3; 2²; *Leviticus* 4, 13. 2 He does not have to bring a bullock; but if he acted unwittingly without relying on his own decision he is exempt altogether. 3 Neither the court nor the High Priest. 4 The penalty is extermination. 5 *Appendix*, Note 2.

Mishnah 4

מִשְׁנָה ד

[The court or the anointed High Priest] is not liable¹ [to bring a *sin-offering*] because [of a decision unawares transgressing] a *positive command*² or a *negative command*³ concerning the Temple, nor do they have to bring a *suspensive guilt-offering*⁴ through a *positive command*⁵ or a *negative command*⁶ regarding the Temple; but they are liable [to bring a *sin-offering*] through [a decision transgressing unawares] a *positive command* or a *negative command* concerning the menstruous woman, and they need to bring a *suspensive guilt-offering* because of a *positive command* or a *negative command* concerning the menstruant woman. What is* the *positive command* concerning the menstruating woman?⁷—*Separate thyself from a menstruous woman*. [And what is] the *negative command* [concerning the menstruant]?—*Thou shalt not come in unto a menstruous woman*.

אֵין חַיִּיבִין עַל עֲשֵׂה וְעַל לֹא תַעֲשֶׂה שְׁבַמִּקְדָּשׁ; וְאֵין מְבִיאִין אֲשָׁם תְּלוּי עַל עֲשֵׂה וְעַל לֹא תַעֲשֶׂה שְׁבַמִּקְדָּשׁ אֲבָל חַיִּיבִין עַל עֲשֵׂה וְעַל לֹא תַעֲשֶׂה שְׁבַנְדָּה, וּמְבִיאִין אֲשָׁם תְּלוּי עַל עֲשֵׂה וְעַל לֹא תַעֲשֶׂה שְׁבַנְדָּה. אֵיזוֹ הִיא מִצְוֹת עֲשֵׂה שְׁבַנְדָּה? פְּרוֹשׁ מִן-הַנְּדָה. וּמִצְוֹת לֹא תַעֲשֶׂה? לֹא תִבֵּא אֶל-הַנְּדָה.

1 If they gave an erroneous decision regarding טומאה (uncleanness) concerning the Temple. 2 For instance, one who became unclean had to leave the Temple by the shortest route, but if he delayed and left by a long route his penalty was קִרְת (see *Appendix*, Note 2); and if he was directed by the court to leave by a longer route they are not liable, but he must bring a קָרְבָּן עוֹלָה יוֹרֵד (an offering according to one's means). *Leviticus* 5, 6-11; שְׁבוּעוֹת 21a; הוֹרֵיֹת 9a. 3 For example, the court permitted a טָמֵא (one unclean) to enter the Temple. 4 See 27. 5 שְׁבוּעוֹת 23. 6 The טָמֵאִים (unclean) are forbidden to enter. Compare *Numbers* 5, 2. 7 Compare שְׁבוּעוֹת 24. *Or אֵיזוֹ; see Volume II, Page 12.

Mishnah 5

מִשְׁנָה ה

[The court] is not liable [to a *sin-offering*] because of [unintentional transgression of the laws concerning

אֵין חַיִּיבִין אֶל יִשְׁמִיעַת הַקּוֹל וְעַל בִּטּוּי שְׁפָתַיִם, וְעַל טוּמְאַת מִקְדָּשׁ

one that] *heareth the voice of adjuration*,¹ or [one who] *sweareth rashly with his lips*,² or uncleanness concerning the Temple and its *hallowed things*.³ And likewise, also is the case with a ruler⁴—this is the view of R. Jose the Galilean. R. Akiba says, The ruler is liable [to bring a *sin-offering*] in all these cases save [that of] *that heareth the voice of adjuration*,⁵ for the king can neither judge nor can he be judged;⁶ (he⁷ can not testify and none can bear testimony against him).

יִקְדָּשׁוּ. וְהִנָּשִׂיא כִּי־יֵצֵא בָהֶם,
דְּבָרֵי רַבִּי יוֹסִי הַגָּלִילִי. רַבִּי עֲקִיבָא
אוֹמֵר הִנָּשִׂיא חַיִּיב בְּכוֹלֵן חוּץ
מִשְׁמִיעַת הַקּוֹל שֶׁהַמֶּלֶךְ לֹא דָן
וְלֹא דָנִין אוֹתוֹ (לֹא מַעֲיֵד וְלֹא
מַעֲיֵדִין אוֹתוֹ).

1 *Leviticus* 5, 1. 2 *שְׁבוּעוֹת* 4, 1ff. 3 *Leviticus* 5, 4. An erroneous statement without legal consequences. 4 *שְׁבוּעוֹת* 12ⁿ. 5 *Leviticus* 4, 22ff. R. Jose's opinion is not accepted because both a king and a High Priest are also exempt from a *sin-offering* in the three cases cited. 6 He does not have to bring a *sin-offering* if he refused to give evidence under oath. R. Akiba's view is rejected. 7 Compare *סְנֵהֲדָרִין* 22. 8 *גְּמָרָא*.

Mishnah 6

Concerning all the commandments of the Law [if transgressed indeliberately] for which they are liable to excision¹ for their deliberate transgression and to a *sin-offering* for their indeliberate transgression, the individual must bring [as a *sin-offering*] a sheep or a goat,² and the ruler a he-goat,³ and the anointed [High Priest] or the court bring a bullock;⁴ and in the case of idolatry,⁵ the individual or the ruler or the anointed [High Priest] bring a she-goat,⁶ but the court [must bring] a bullock and a he-goat—the bullock as a *burnt-offering* and the he-goat as a *sin-offering*.⁷

מִשְׁנָה ו
כָּל-הַמִּצְוֹת שֶׁבַתּוֹרָה שֶׁחַיִּיבִין עַל
זְדוּנָן יִכְרֹת וְעַל שְׁגָגָתוֹן חֲטָאתָ, הַיְחִיד
מֵבִיא כִּשְׂבָה וְשִׁעִירָה, וְהִנָּשִׂיא
שִׁעִיר, וּמְשִׁיחַ וּבֵית דִּין מֵבִיאִם
פָּר; וּבְעִבּוּדַת גְּלוּלִים הַיְחִיד
וְהִנָּשִׂיא וְהַמְשִׁיחַ מֵבִיאִין שִׁעִירָה,
וּבֵית דִּין פָּר וְשִׁעִיר, פָּר לְעוֹלָה
וְשִׁעִיר לְחֲטָאתָ.

1 *Appendix, Note* 2. 2 *Leviticus* 4, 27ff. 3 *Leviticus* 4, 22ff. 4 *Leviticus* 4, 3ff., 13ff.
5 *Numbers* 15, 22ff. 6 *Numbers* 15, 27. 7 *Numbers* 15, 24.

CHAPTER 3

פֶּרֶק ג

Mishnah 1

מִשְׁנֵה א

If an anointed [High] Priest transgressed¹ and afterward resigned from his office,² and likewise, also, if a ruler sinned and afterward resigned from his high position³— [the] anointed [High] priest must [still] bring a bullock⁴ [as a *sin-offering*] and the ruler must bring a he-goat [as a *sin-offering*].

כֹּהֵן מְשִׁיחַ יִשְׁחָטָא, וְאַחַר כֵּן עָבַר
מִמְשִׁיחוֹתוֹ, וְכֵן נָשִׂיא שְׁחָטָא וְאַחַר
כֵּן עָבַר מִגְדוּלָתוֹ, כֹּהֵן מְשִׁיחַ
מְבִיא יֶפֶר וְהַנָּשִׂיא מְבִיא שְׁעִיר.

1 Concerning a wrongful decision that requires the offering of a bullock. 2 Before bringing his *sin-offering*. Literally *passed from his office of anointed priest*. One who had been the temporary substitute for the High Priest on the Day of Atonement (compare יוֹמָא 1, מְגִלָּה 19). 3 Before bringing his offering. Literally *passed from his greatness*. 4 Compare the next *Mishnah*.

Mishnah 2

מִשְׁנֵה ב

If an anointed [High] Priest resigned from his office¹ and then transgressed, and so, too, if the ruler resigned from his high position¹ and afterward transgressed, [the] anointed [High] Priest must bring a bullock² [as a *sin-offering*], but the ruler is considered as an ordinary person.³

כֹּהֵן מְשִׁיחַ שְׁעָבַר מִמְשִׁיחוֹתוֹ
וְאַחַר כֵּן חָטָא, וְכֵן הַנָּשִׂיא שְׁעָבַר
מִגְדוּלָתוֹ וְאַחַר כֵּן חָטָא, כֹּהֵן
מְשִׁיחַ מְבִיא יֶפֶר, וְהַנָּשִׂיא כִּהְדְּיוֹט.

1 Compare the preceding *Mishnah*, Notes 2, 3. 2 Because he still retains his sanctity. Compare מְגִלָּה 19, מִכּוֹת 26. 3 Because he is accounted as one of the common people. He must bring a sheep or a goat as a *sin-offering*. *Leviticus* 4, 27 *et seq.*

Mishnah 3

מִשְׁנֵה ג

If they transgressed before they were appointed and were afterwards appointed,¹ then each is considered as an ordinary individual.² R. Simon says, If their transgression were known to them before they were appointed [and they had not

חָטְאוּ עַד שֶׁלֹּא נִתְמַנּוּ וְאַחַר כֵּן
נִתְמַנּוּ, הָרִי אֵלָיו כִּהְדְּיוֹט. רַבִּי
שִׁמְעוֹן אוֹמֵר אִם נֹדַע לָהֶם עַד
שֶׁלֹּא נִתְמַנּוּ חִיִּבִּין, וּמְשֻׁנְתֵּמְנוּ

brought their *sin-offering*, they are liable [and each must bring his *sin-offering* as one of the common people], but if [their sin were made known to them] after they were appointed, they are exempt.³ And who is [meant by] the ruler? This is the king, as it is said,⁴ and doeth⁵ any one of all the things which the Eternal his God hath commanded,⁶ a ruler⁷ who has none above him save the Eternal his God.

פְּטוּרֵין. וְאִיזְהוּ הַנְּשִׂיאָ? זֶה הַמֶּלֶךְ
 יִשְׁנֹאמַר יִנְעֹשֶׂה אַחַת מִכָּל־מִצְוֹת
 ה' אֱלֹהָיו וְנִשְׂיָא שְׂאִין עַל גְּבִיר
 אֶלָּא ה' אֱלֹהָיו.

1 An ordinary priest, who had sinned, was appointed High Priest, and one of the common people was appointed נְשִׂיאָ also after commission of a transgression. 2 And bring the offerings as demanded from the common people. 3 Even from special *sin-offering* of the High Priest or the ruler. 4 *Leviticus* 4, 22. 5 *i.e.* unwantedly. 6 Followed by 'not to be done, and is guilty'. 7 נְשִׂיאָ is not given in the נְמַרְאָ making the rendering *one* instead of *a ruler*.

Mishnah 4

And who is [meant by] the anointed [High Priest]? He that is anointed with the oil of installation,¹ and not he that is distinguished by a larger number of official garments.² There is no distinction between the [High] Priest anointed with the oil of installation and him that is dedicated by the many* garments save in the bullock brought [as a *sin-offering*] for [the indeliberate transgression of] any of the commandments.³ And there is no distinction between an officiating [High] Priest and a substitute [High] Priest no longer required⁴ only in the bullock [offered] on the Day of Atonement and the *tenth of the ephah*.⁵ The former and the latter§ are equal in the [Temple] Service of the Day of Atonement,⁶ (and) they are [both]

מִשְׁנֵה ד
 וְאִיזְהוּ הַמְּשִׁיחַ? הַמְּשׁוּחַ בְּשֶׁמֶן
 יִהְיֶה מְשֻׁחָה, לֹא הַמְּרוּבָּה בְּכַנְדִּים.
 אֵין בֵּין כֹּהֵן הַמְּשׁוּחַ בְּשֶׁמֶן הַמְּשֻׁחָה
 לַמְּרוּבָּה בְּגָדִים, אֶלָּא פֶּר הַבֶּא
 עַל כָּל־הַמִּצְוֹת. וְאֵין בֵּין כֹּהֵן
 מְשֻׁמֵּשׁ לְכֹהֵן יִשְׁעֵבֵר, אֶלָּא פֶּר יוֹם
 הַכַּפּוּרִים יִנְעֹשֶׂרִית הָאֵיפָה. וְזוּה
 זֶה שׁוֹיֵן בְּעֵבוֹדַת יוֹם הַכַּפּוּרִים
 וּמִצְוִיֵן עַל יְהִבְתּוּלָה וְאַסוּרִין
 עַל הָאֵלְמָנָה, וְאֵינֶן מִשְׁמָאִין
 בְּקָרוּבֵיהֶן. וְיֵלֵא פּוֹרְעִין וְלֹא
 פּוֹרְמִין, וְיִמְחַזְרִין אֶת־הָקְרוּצָה.

enjoined [to wed only] a virgin,⁷ (and) they are [both] prohibited from [marrying] a widow,⁸ (and) they must not contract uncleanness⁹ for their near of kin.¹⁰ (and) they

than another precedes that other. If the bullock of the anointed [High Priest] and the bullock of the congregation stand [ready for sacrifice] the bullock of the anointed [High Priest] comes before² the bullock of the congregation in all the acts of its preparation.

אֶת־חֲבֵרוֹ פֶּר הַמְּשִׁיחַ, וּפֶר
הָעֵדָה עוֹמְדִים, פֶּר הַמְּשִׁיחַ יִקְדָּם
לְפָר הָעֵדָה בְּכָל מַעֲשָׂיו.

1 For instance, the עֹלֹת הַבֹּקֶר (the morning burnt-offering), because it is the offering made every day, precedes the congregational offerings that are made at intervals. Based on Numbers 28, 23. See וְזָבְחִים 101. 2 This is self-evident, for the High Priest's preparation for effecting atonement must necessarily precede the resulting atonement for the congregation. Based on Leviticus 16, 17.

Mishnah 7

A man must be rescued alive¹ sooner than a woman,² and [his] lost property must be restored [sooner than hers].³ (And) a woman's⁴ nakedness must be covered sooner than a man's,⁵ and she must be brought forth from captivity [sooner than a man].⁶ When both stand [in danger of] defilement,⁷ the man [must be freed] before the woman.⁸

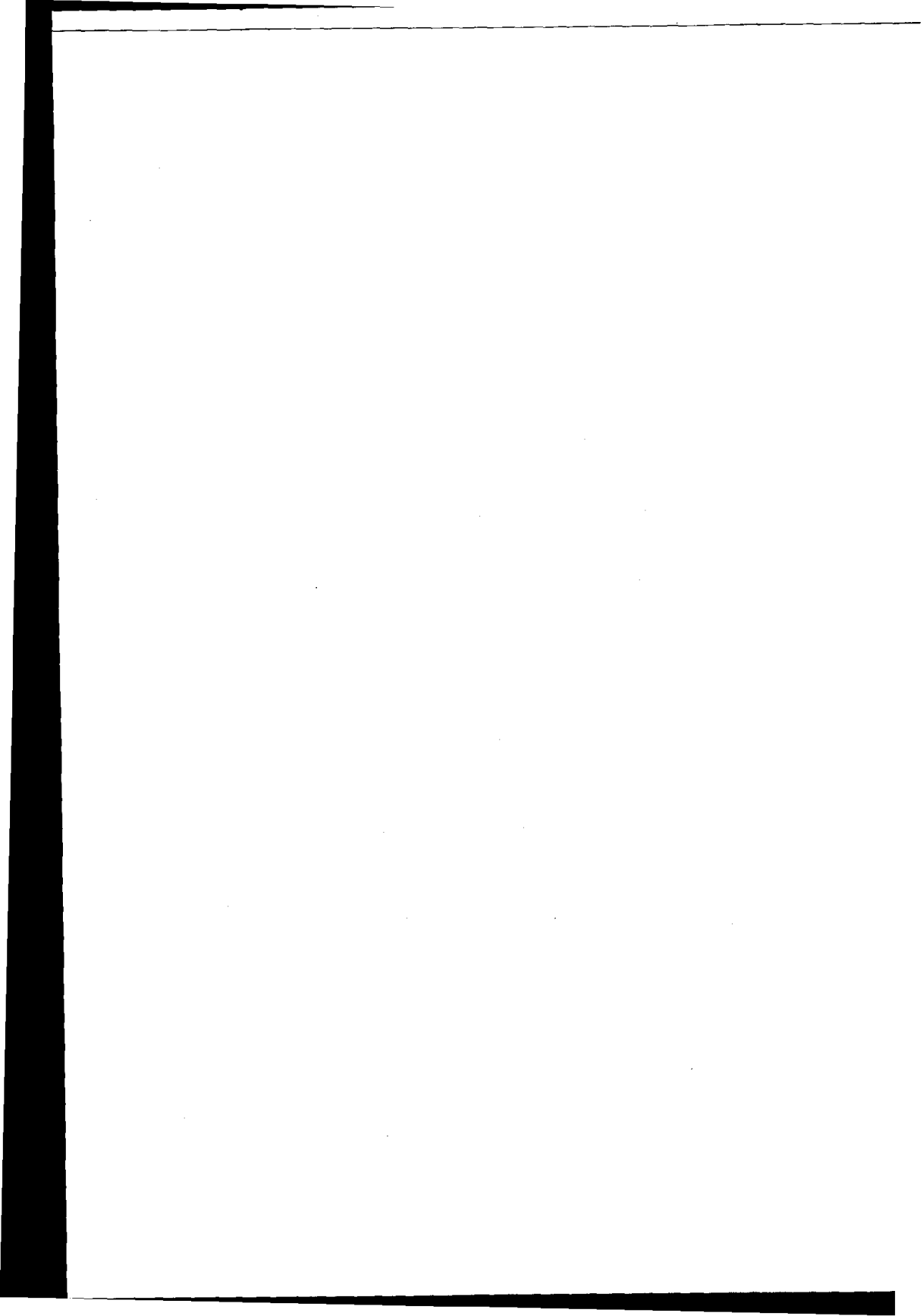
מִשְׁנֵה ז
הָאִישׁ קוֹדֵם לְאִשָּׁה יִלְהַחֲיוֹת
וְיִלְהַשִּׁיב אֲבָדָהּ. וְהָאִשָּׁה קוֹדֶמֶת
לְאִישׁ יִלְכַסּוֹת וְיִלְהוֹצִיָּאָה מִבֵּית
הַשָּׁבִי. בְּזִמְנֵי שְׁשׂוּנֵיהֶם עוֹמְדִים
יִלְקַקְלְקֵלָה הָאִישׁ קוֹדֵם לְאִשָּׁה.

1 Literally 'The' man takes precedence in being saved alive . . . (Pointing לְאִשָּׁה, and not לְאִשָּׁה, in agreement with the definite form הָאִישׁ). 2 Because a man is enjoined to carry out more commandments than a woman. A woman takes precedence over a man regarding being provided with food. 3 Literally and to restore lost property [the man precedes the woman]. 4 Literally 'the woman'. 5 A woman suffers more shame and indignity than a man. (Pointed לְאִישׁ, to 'the' man, in agreement with the definite form הָאִישׁ). 6 Literally And the woman precedes the man regarding the covering [of nakedness], and to bring her out of captivity. To rescue her from the risk of adulteration. 7 Of adultery, sodomy. 8 Literally the man takes precedence over the woman. Because sodomy is an unnatural act and more heinous than adultery.

Mishnah 8

A priest takes precedence over a Levite, a Levite over an Israelite,¹ an Israelite over a bastard,² (and)

מִשְׁנֵה ח
כֹּהֵן קוֹדֵם לְלוֹוִי, לְלוֹוִי לְיִשְׂרָאֵל,
יִשְׂרָאֵל לְמִמְזֵר, וּמִמְזֵר לְזָנוּת,



than another precedes that other. If the bullock of the anointed [High Priest] and the bullock of the congregation stand [ready for sacrifice] the bullock of the anointed [High Priest] comes before² the bullock of the congregation in all the acts of its preparation.

אֶת־חֲבָרוֹ. פֶּר הַמְּשִׁיחַ, וּפֶר
הָעֵדָה עוֹמְדִים, פֶּר הַמְּשִׁיחַ: קוֹדֵם
לְפֶר הָעֵדָה בְּכָל מַעֲשָׂיו.

1 For instance, the עֹלֹת הַבֹּקֶר (the morning burnt-offering), because it is the offering made every day, precedes the congregational offerings that are made at intervals. Based on Numbers 28, 23. See 10¹ זְבָחִים. 2 This is self-evident, for the High Priest's preparation for effecting atonement must necessarily precede the resulting atonement for the congregation. Based on Leviticus 16, 17.

Mishnah 7

A man must be rescued alive¹ sooner than a woman,² and [his] lost property must be restored [sooner than hers].³ (And) a woman's⁴ nakedness must be covered sooner than a man's,⁵ and she must be brought forth from captivity [sooner than a man].⁶ When both stand [in danger of] defilement,⁷ the man [must be freed] before the woman.⁸

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הָאִישׁ קוֹדֵם לְאִשָּׁה¹ לְהַחֲיוֹת
וּלְהַשִּׁיב אֲבָדָה. וְהָאִשָּׁה קוֹדֶמֶת
לְאִישׁ לְכַסּוֹת וּלְהוֹצִיאָהּ מִבֵּית
הַשְּׂבִי. בְּזִמְנֵן שְׁשֻׁנֵיהֶם עוֹמְדִים
לְקַלְקֵלָה הָאִישׁ קוֹדֵם לְאִשָּׁה.

1 Literally 'The' man takes precedence in being saved alive . . . (Pointing לְאִשָּׁה, and not לְאִשָּׁה, in agreement with the definite form הָאִישׁ). 2 Because a man is enjoined to carry out more commandments than a woman. A woman takes precedence over a man regarding being provided with food. 3 Literally and to restore lost property [the man precedes the woman]. 4 Literally 'the woman'. 5 A woman suffers more shame and indignity than a man. (Pointed לְאִישׁ, to 'the' man, in agreement with the definite form וְהָאִשָּׁה). 6 Literally And the woman precedes the man regarding the covering [of nakedness], and to bring her out of captivity. To rescue her from the risk of adulteration. 7 Of adultery, sodomy. 8 Literally the man takes precedence over the woman. Because sodomy is an unnatural act and more heinous than adultery.

Mishnah 8

A priest takes precedence over a Levite, a Levite over an Israelite,¹ an Israelite over a bastard,² (and)

מִשְׁנָה ח
כֹּהֵן קוֹדֵם לְלוֹי, לְלוֹי לְיִשְׂרָאֵל,
יִשְׂרָאֵל לְמִמְזוֹר, וּמִמְזוֹר לְנִתְיָן.

a bastard over a Gibeonite descendant,³ (and) a descendant of a Gibeonite⁴ over a proselyte, and a proselyte over a freed slave.⁵ When is this the case? When they are all [otherwise] equal; but if a bastard were learned [in the Law] and a High Priest were an ignorant man,⁶ the bastard learned [in the Law] precedes the High Priest that is an ignorant person.

וַיִּנְתֵּן לְגֵר, וְגֵר יִלְעָבֵד מִשׁוֹחֲרֵי.
 אִימְתִּיז בְּזִמְן שְׂכוּלָן שְׂוִין; אֲבָל
 אִם הָיָה מִמֹּזֵר תִּלְמִיד חָכֵם וְכֹהֵן
 גָּדוֹל יַעֲם הָאֲרֶז, מִמֹּזֵר תִּלְמִיד
 חָכֵם קוֹדֵם לְכֹהֵן גָּדוֹל עִם הָאֲרֶז.

1 Based on *Deuteronomy* 10, 8. 2 See *בְּמוֹת* 4¹³. Or even a priest of impaired stock. 3 *Joshua* 9, 27. 4 Because his conception and birth are of a higher character. 5 A Canaanite slave, of despised descent (see *Genesis* 9, 25). 6 *i.e.*, not learned in the Law. Compare *Proverbs* 3, 15. During the period of the Second Temple ignorant men were sometimes appointed as High Priests by bribery to the ruling powers and against the will of the nation (see *בְּמוֹת* 61a). 7 *סְלִיק מִסֻּכַּת הוֹרְיֹוֹת*, CONCLUSION OF TRACTATE HORAYOTH, in some editions.

וַיִּשְׁלֹמָה מִסֻּכַּת הוֹרְיֹוֹת

TRACTATE HORAYOTH CONCLUDED

סְלִיק סֵדֵר נִזְיקִין

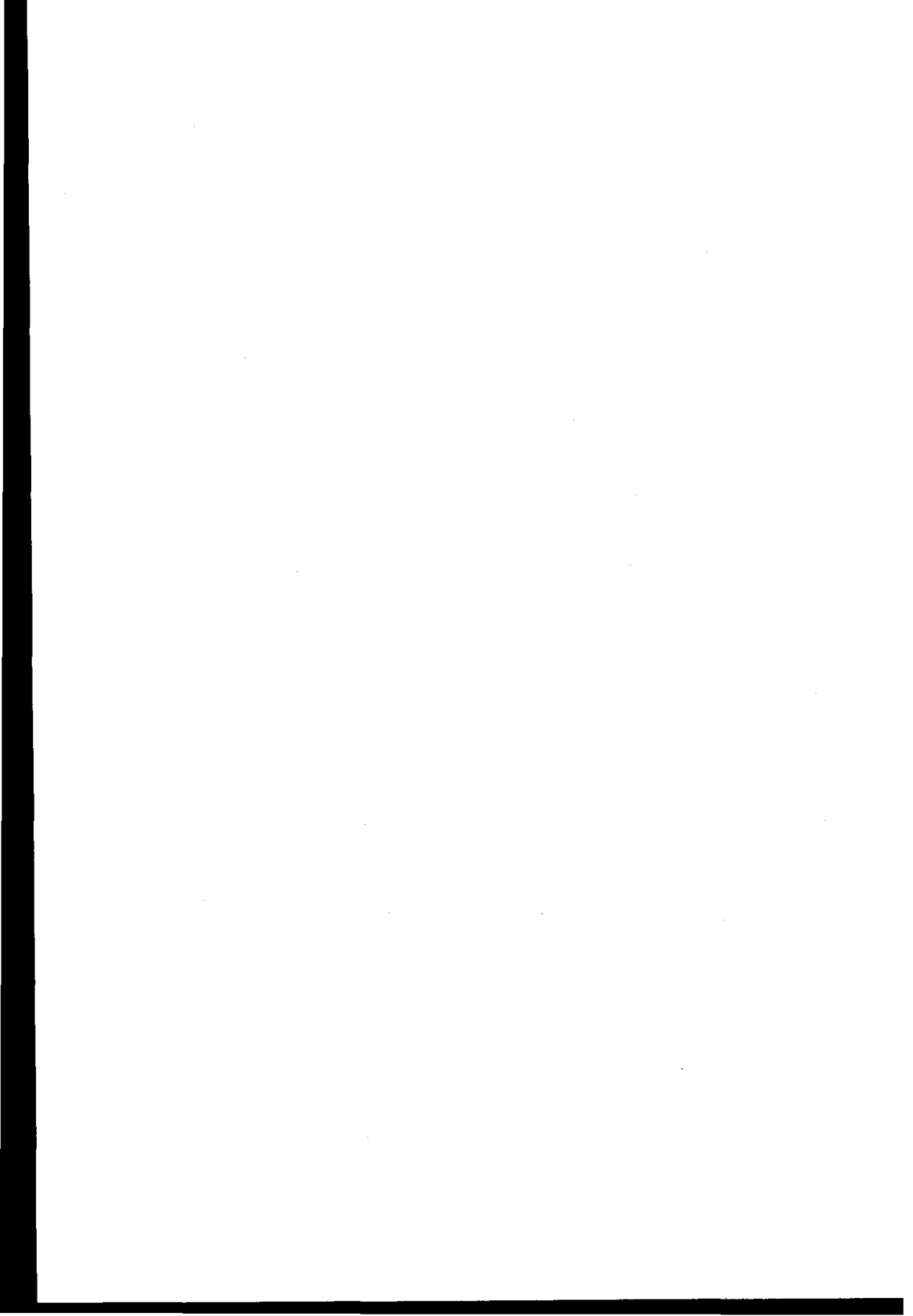
CONCLUSION OF ORDER NEZIKIN.

APPENDIX

GENERAL REFERENCE NOTES

By

PHILIP BLACKMAN, F.C.S.



GENERAL REFERENCE NOTES

Note 1.

The Jewish agriculturist in Palestine was obliged **מְדֹאֲרֵתָא** (or **מִן־הַתּוֹרָה**) as enjoined by the law (but also outside Palestine **מִדְרַבְּנֵי** as ordained by the **חֲכָמִים** Sages) to give from the produce of his field, garden, oliveyard, vineyard and orchard certain dues or levies called **מִתְנוֹת עֲנִיִּים** *poor-men's dues*, every six years, but not every seventh year called **שְׁבִיעִית** or **שְׁמִיטָה** (or **שְׁמִיטָה**), *Sabbatical Year*, when all that grew of itself was **הַפְּקָר** *ownerless, common to everyone*, and everybody—whether man, woman, or beast, rich or poor, old or young—had an equal right to it.

These dues were (1) **פֶּאֶה** *field corner* (minimum $\frac{1}{6}$), (2) **שְׂכַחָה**, *forgotten in gleaning*, (3) **לֶקֶט**, *fallen cut corn, gleaning* (including **פְּרֹט**, *fallen cut grapes*, and **עוֹלָלוֹת**, *poor, unripe clusters of grapes*), and (4) **מַעֲשֵׂר עֲנִי**, *poor-man's tithe* (see further on).

After all these dues had been allowed for then it was obligatory to separate:

(a) $\frac{1}{6}$ of the produce as **תְּרוּמַה גְּדוּלָה**, *heave-offering, priest's-s-due*, also called **תְּרוּמַה גְּדוּלָה**, *major-heave offering, major-priest's-due*, for the **כֹּהֵן**, *priest*;

(b) $\frac{1}{10}$ of the remainder as **מַעֲשֵׂר רִאשׁוֹן**, *first tithe*, for the **לֵוִי**, *Levite* (who had himself to give $\frac{1}{10}$ of this as **תְּרוּמַת מַעֲשֵׂר**, *priest's-due of the tithe*, or **תְּרוּמַה קְטַנָּה**, *priest's-minor-due*);

(c) $\frac{1}{10}$ of the rest as **מַעֲשֵׂר שְׁנִי**, *second tithe*, every 1st, 2nd, 4th and 5th years, which had to be taken by the owner to Jerusalem to be consumed there; but every 3rd and 6th years this was termed **מַעֲשֵׂר עֲנִי**, *poor-man's tithe*, and had to be delivered to the poor.

None but a **כֹּהֵן** was permitted to eat of **תְּרוּמָה**. If some **תְּרוּמָה** was mixed with **חֵיִלִין** (*non-תְּרוּמָה produce*) and the **חֵיִלִין** was less than 100 times the intermingled **תְּרוּמָה** the total mixture became **מִדְּמַע**, *subject to the law of תְּרוּמָה* and was not to be eaten by a non-priest.

Before the separation of **תְּרוּמָה** and **מַעֲשֵׂר רִאשׁוֹן** the produce was termed **טָבֵל** and was forbidden to be eaten; but after these levies had been separated the produce was termed **חֵיִלִין**, *non-holy*. When the other tithes had also been separated the remainder was termed **מִתְקָן** *adjusted*, or **חֵיִלִין מְתֻקָּנִים**, *adjusted non-holy produce* (or **נֶדְאִי** *definitely tithed*, in contradistinction to **דִּמְאִי**, *uncertain tithed*) and could then be used for all purposes.

See **פֶּאֶה** *Leviticus 19, 9, 10; Deuteronomy 24, 19, 21. שְׁבִיעִית* *Exodus 23, 11; Leviticus 25, 2-7; Deuteronomy 15, 1-11. תְּרוּמָה* *Numbers 18, 12. מַעֲשֵׂר* *Leviticus 27, 30-33; Numbers 18, 21-24; Deuteronomy 14, 22-26.*

Note 2.

כָּר, *excision, extermination, extirpation, or מיתה בידי שמים, divine punishment through sudden or premature death; also according to some opinions death without issue being left.*

Note 3.

חלה, *priest's share of the dough (Numbers 15, 20–21), must be separated after the תרומות priest's dues, and מעשרות tithes (see Note 1), had been separated. For private use the quantity to be separated is $\frac{1}{24}$; $\frac{1}{48}$ is the amount separated from the dough or bread sold to the public. Since the Dispersal the custom is continued by removing a small piece of dough or bread which is burned in the fire.*

Note 4.

ערוב (or עירוב), *mingling, combination, amalgamation, is a symbolical act by which continuity or community is legally established.*

(1) ערובי תחומים or ערובי תחומין, with reference to *Sabbath limits*. Before the Sabbath or Holyday (Festival) one deposits certain food to remain in its place over the next day by which act his abode is extended or transferred to that place and so his movements on the Sabbath or Holyday are measured from that place as centre up to a certain distance.

(2) ערובי תצרות or ערוב תצרות, with reference to *buildings or dwellings in a common court*. The inmates or tenants contribute some food to a common dish which is placed in one of the dwellings thus making all the dwellings as common to all, *i.e.*, one רשות domain, and all the participants are allowed to carry objects across the court from one dwelling to another on that Sabbath.

(3) ערובי תבשילין (or ערוב בתשילין), with reference to *preparing meals on a Friday for the Sabbath when the Friday is a Holyday*. A dish is prepared on the Thursday (the eve of יום טוב) and deposited to the end of the Sabbath, by which symbolic act all the cooking done on the Holyday Friday for the Sabbath is permissible as it is legally now simply a continuation and completion of the cooking begun on the Thursday. The appropriate *Benediction* over the ערוב תבשילין is

ברוך אתה ה' אלהינו מלך העולם אשר קדשנו במצותיו וצונו על מצות עירוב,

Blessed art Thou, O Eternal, Our God, King of the Universe, Who hath made us holy by His commandments and hath commanded us concerning the commandment of the Erub, and is followed by the formula:

בהדין עירובא יהא שרא לנא למיפא ולבשלא ולאטמנא ולאדלקא שרנא ולמעבד כל-צרכנא מימא טבא לשבתא לנו ולכל הדרים בעיר הזאת,

By virtue of this Erub may it be permitted to us to bake and to cook and to keep hot and to kindle a light and to perform all our necessary requirements on the Holyday-day for the Sabbath for ourselves and for all who dwell in this city.

[See דמאי 14, and ערוגין, INTRODUCTIONS, for a fuller account of (1) and (2) and for the appropriate Blessings, (3) 21. ביצה.]

Note 5.

רשות היחיד, *private domain*, and רשות הרבים, *public domain*.

A רשות היחיד *private domain*, is a place surrounded by four partitions, walls, etc., at least ten handbreadths high and four handbreadths minimum square (i.e., at least 4×4 handbreadths)—thus a district, town, village, mound, trench, etc., under these correct conditions become *private domains* (in the case of a trench, etc., the *depth* of ten handbreadths being equivalent to an equal *height*)—the air space above a רשות היחיד up to the skies is as the *private domain*; and the thickness of a wall of a רשות היחיד is as the *private domain*.

In the case of a רשות הרבים, *public domain*, the air space above it up to a height of ten handbreadths is considered as part of the *public domain*.

A כרמלית, *neutral domain*, is a place which cannot be determined or established whether it is a *private domain* or a *public domain*.

Note 6.

פְּרוֹחֵבִיל, *Sabbatical Year Declaration*, is a declaration made before בית דין, *Court*, before the execution of a loan to the effect that the *Sabbatical Year* (שְׁבִיעִית or שְׁמִטָּה) *law* shall not apply to and annul the loan (to be) transacted. This was instituted by הלל הגדול so that business should not be held up on account of the advent of שְׁמִיטָּה.

Note 7.

Possession. In the case of מטלטלין, *movables*, one acquires possession by the following methods:

- (1) קָנַן יָד, *by holding the object*;
- (2) קָנַן חֶצֶר, *the object is already on the premises of the purchaser*;
- (3) קָנַן תּוֹלִיסִין, *the buyer or receiver gives in exchange a complete finished article of which the other party holds at least three square inches for a while*—these three procedures are מִן הַתּוֹרָה (or מִדְּאֻרֵיחָא), *as enjoined by the Law*;
- (4) הִנְבִּיחָה* *the buyer lifts up the object*; * popularly mispronounced הִנְבָּה.
- (5) מְשִׁיבָה, *the purchaser draws away the article or animal from the vendor's place to another spot*;

(6) **מְסִירָה**, *surrender, transfer, the vendor telling the buyer to take possession by touching*;

(7) **קָנִין אֶגֶב**, *when an object is presented or sold together with land*;

(8) **מֵעֵמֶד שְׁלִישִׁתוֹן**, *a condition made in the presence of a third party*—these five last are **מִדְּרַבָּנָן**, *instituted by the Ḥakמים Sages*. (In this connection it is to be noted that *seller and donor* are synonymous terms.)

Note 8.

כְּתוּבָה, *marriage contract*, is a document given to the wife on marriage and it contains among other matters the settlement of a stated amount due to her on the husband's death or on being divorced.

Somewhat more precisely it actually consists of:

(1) **Marriage contract**, wherein the obligations of a husband towards his wife are laid down; and

(2) **Marriage settlement**, whereby are laid down the provision for the maintenance of a divorced wife or widow—for the divorced wife support by payment of alimony (called simply **כְּתוּבָה**) as agreed on and fixed before marriage (the minimum amount was 200 זוזים from a first husband and 100 זוזים from any subsequent husband), and in addition a man might allocate a *voluntary sum* (known as **תּוֹסֵפֶת**, *Additional or Supplementary כְּתוּבָה*); and she was also entitled to the return of any **נְדוּנָה** or **נְדוּנָה**, *dowry*, which she had brought on marriage and for this the obligation devolved too on the heirs.

Simeon ben Shetach introduced the **כְּתוּבָה** (during the first century B.C.E.) as a safeguard and protection to married women. * Modern term.

Note 9.

בִּיעוּר or **בִּיעוּר**, *removal*. This term refers to, in the agricultural and horticultural sense, in the removal or clearing away of the fruits or produce of the 3rd and 6th years of the Sabbatical period (Seven-Years Cycle). All **תְּרוּמַת מַעֲשֵׂר** and **תְּרוּמַת מַעֲשֵׂר** (see Note 1) had to be got rid of before **פְּסַח** of the 4th and 7th years and surrendered to the **כַּהֲנָיִם** and also all **מַעֲשֵׂר רִאשׁוֹן** (see Note 1) had to be given up to the **לוֹיִים**; and, too, all **מַעֲשֵׂר שְׁנִי** (see Note 1) had to be delivered to the **עֲנִיִּים**; and, further, all **בְּכוֹרִים** (see Note 16) and **מַעֲשֵׂר שְׁנִי** (see Note 1) had to be cleared out and destroyed.

Note 10.

עֲרֻלָּה, *uncircumcised*. When any tree bearing edible fruit is planted, during the first three years its fruit is termed **עֲרֻלָּה** and may not be consumed by the owner.

The years are reckoned from ראש השנה; but if planted not later than the 15th אב the period from this date to the New Year (during which period the new tree takes root) is reckoned as a complete year (otherwise a period less than these 44 days of grace does not count and the years begin from the 1st תשרי). The 4th year fruit called פירות רבעי or נטע רבעי had to be taken to Jerusalem to be eaten there, or else they might be eaten on the spot but only after they had been redeemed with current coins plus חמש one fifth (in actual practice חמש מלבר = one fourth) which money had to be taken to Jerusalem and spent on food there. (*Leviticus* 19, 23–25.)

Note 11.

The Palestine rains are:

(1) מלקוש, late rain, light rains that fall in ניסן and

(2) יורה or מורה, early rain, soaking rain, fructifying rain—steady heavy rains beginning after סכות and in חשון and coming in three periods, each called רביעה, fructification, the רביעה ראשונה (or אפילה) to 17th חשון the רביעה שניה (or בינונית) to 23rd חשון and רביעה שלישית (or בכירה) to 1st כסליו. If the רביעה ראשונה falls unbroken to 23rd חשון inclusive it is considered as the three רביעות.

Note 12.

עם הארץ. This term frequently occurs in the Mishnah. Literally it means *the people of the land* and is used to cover the following: *countryman, peasant, illiterate or untutored person, coarse uncouth person, unrefined person; one who does not observe certain religious ritual duties (tithes, cleanness, etc.)*.

נאמן, faithful, trustworthy, trusty, reliable, dependable. A נאמן is one who is trusted regarding the observance of the dues מעשר and תרומה (see Note 1). This reputation of being a נאמן was acquired by declaration before at least three persons and on the report of trustworthy witnesses that the candidates had carried out the laws of מעשרות for the preceding thirty days and that he undertook henceforth to *tithe* all that he ate, sold or bought and not to stay with an עם הארץ.

הבר, fellow. A תלמיד חכם had to be a הבר and had to observe all the rules of tithes and of ritual cleanness and purity. A הבר was of far greater standing than a נאמן. One who wished to obtain this qualification had to attest before no less than three competent persons, and on the report of reliable witnesses that he had carried out the practices of מעשרות and had observed the laws regarding טהרות purity, and טומאה uncleanness, for at least the past thirty days and undertook not to accept or buy from or to sell or give to an עם הארץ *wet produce* and not to stay with an עם הארץ and not allow an עם הארץ in his own garments (which are ritually טמא, *unclean*) to stay with him.

Note 13.

יין נֶסֶךְ, **wine for libation**—wine which a non-Jew has designated or dedicated or uses for any religious purpose is absolutely forbidden for Jewish use. Non-Jewish produced wines (even if there is no evidence of any form of consecration or intention to consecrate) are also considered as **יין נֶסֶךְ** and the prohibition extends similarly to **brandies** distilled from such wines. This prohibition does not apply to Jewish products (e.g., Israeli wines and brandies), nor to any alcoholic liquors produced from other sources than wines (see SUPPLEMENT, FLORA, **alcohol, wine**).

Note 14.

כְּלָאִים, *forbidden junction, prohibited proximity or contact* refers broadly to:

(1) **כְּלָאִי זְרָעִים** *forbidden junction of seeds* (and **כְּלָאִי כָרֶם** *forbidden junction in vineyard*), the forbidden proximity or contact of heterogeneous plants, or grafting such, in the same vineyard, orchard, oliveyard, garden and field;

(2) **כְּלָאִי בְּהֵמָה** *forbidden junction of animals*, the prohibited conjunction of heterogeneous animals by hybridization or by harnessing together; and

(3) **כְּלָאִי בְּגָדִים** *forbidden junction in garments*, forbidden junction or combination of wool and flax (linen) in the same web. **שֵׁטְטָנוּ** *wool and linen mixed in web*, is a compound noun from **שָׁוַע טוּוּי וְנָוּוּ** (from the verbs **שָׁוַע** *card, hackle, full, טוּוּה* or **טוּוּ**, *spin, טוּוּה* *twine, twist, weave*) *hacked, spun and twined* (see *Leviticus 19, 9; Deuteronomy 22, 9, 11; כְּלָאִים INTRODUCTION).*

Note 15.

טְרֵפָה, **טְרֵפָה** refers to:

(a) the flesh of a **בְּהֵמָה טְהוֹרָה** *clean animal*,* mauled or killed by a beast of prey;
 (b) the flesh of a *clean animal** which has been fatally injured (and could not live for twelve months);

(c) the flesh of a *clean animal** that suffered from an organic defect or disease; and

(d) the flesh of a *clean animal* that has suffered a violent death or has not been slaughtered in accordance with valid ritual requirements. * *Or bird*.

Note 16.

בְּכֹרִים, **בְּכֹרִים**, *first fruits*, refers to the products mentioned in *Deuteronomy 8, 8*: wheat, barley, grape, fig, pomegranate and date-honey (or date), the so-called **שִׁבְעַת מִיָּנִים** *seven species*, which were typical of and illustrated the fame of the fruitfulness of Palestine (see *Deuteronomy 26, 1-11; בְּכֹרִים INTRODUCTION).*

Note 17.

מִשְׁמֶרֶת and מַעֲמָד.

The people were divided into twenty-four divisions. The כֹּהֲנִים, priests, and לְוִיִּם, Levites, in each formed a מִשְׁמֶרֶת, *guard, watch*, to be on Temple duty a full week every half year; and the remaining weeks, which fell on פֶּסַח, Passover, שְׁבִיעוֹת or עֲצֵרֶת, Festival of Weeks or Pentecost, and סֻכּוֹת or נֶגַע, Feast of Tabernacles (the so-called שְׁלֹשׁ רְגָלִים, Pilgrim Festivals), were served by all the divisions as all males had to be subdivided into seven sections, each taking one day's service of the week in turn. Every מִשְׁמֶרֶת was accompanied by representative יִשְׂרָאֵלִים, laymen, called אֲנָשֵׁי מַעֲמָד, to stand by and recite prayers during the sacrificial ceremonies. Each combined party of the אֲנָשֵׁי מִשְׁמֶרֶת and אֲנָשֵׁי מַעֲמָד was termed אֲנָשֵׁי בֵּית אֵב (these two first terms were frequently interchanged and confused).

Note 18.

פְּגוּל and נותר.

נותר, *remainder*, refers to portions of sacrifices which had been left over beyond the legal time (for instance such as had to be eaten before dawn) and had to be destroyed by burning (*Exodus 34*). The penalty for the transgression of eating נותר was כֹּרֵת (see Note 2; compare זְבָחִים 71).

פְּגוּל, פִּיגוּל, *abomination, unfitness*, refers to any sacrifice which had become invalid and rejectable because of a wrong intention in the mind of the officiating כֹּהֵן, priest. In certain circumstances כֹּרֵת was the penalty for the transgression of eating פְּגוּל.

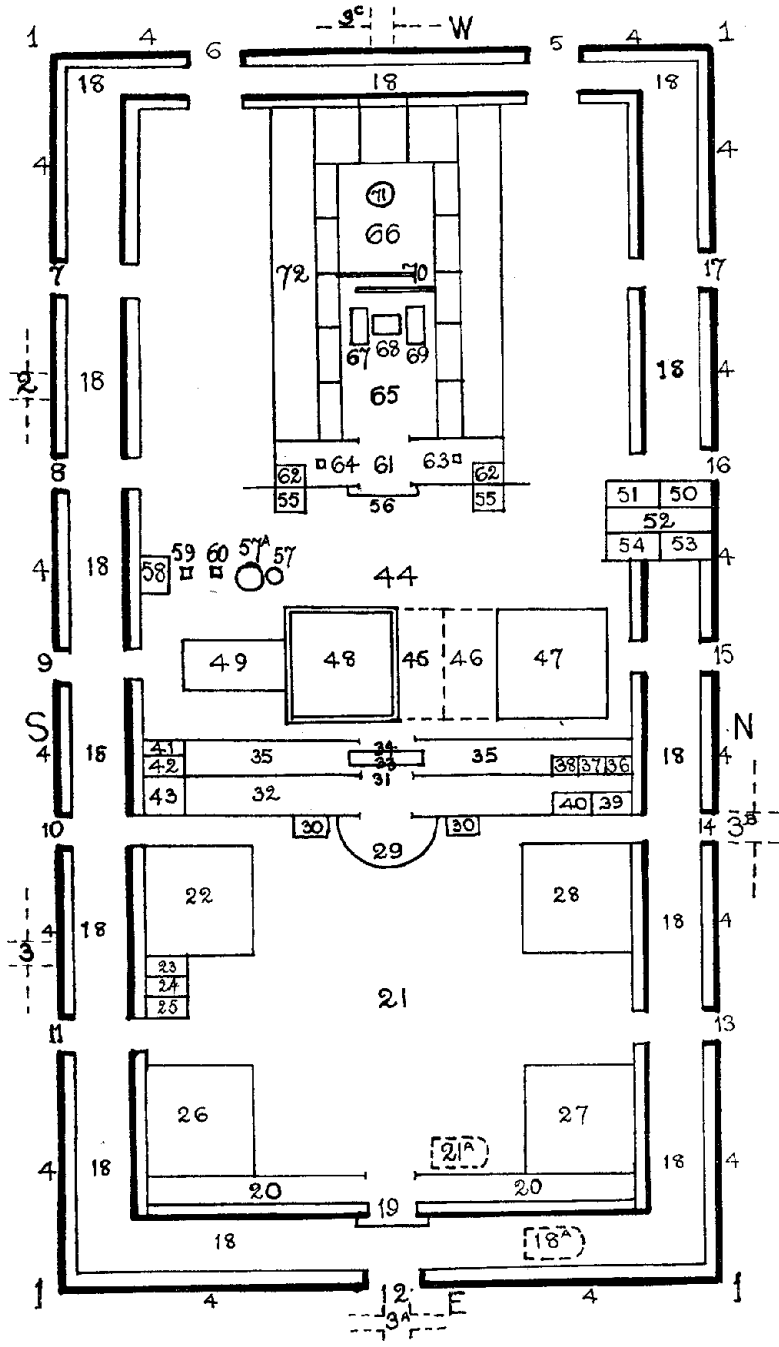
Note 19.

שְׁבֻת, *rest, abstention from secular work or pursuit* forbidden by the רַבְּבֵן on שְׁבֻת or טוֹב יוֹם as being out of keeping with the importance, dignity and observance of the holy day. (For a list of such acts of work see פִּיצָה 52.)

Note 20.

PLAN OF THE TEMPLE (II)

(not drawn to scale because of the uncertainty of many of the actual dimensions).



Some of the most important and less uncertain dimensions:

- 1-1-1-1. הַר הַבַּיִת, The Temple Mount, 500 cubits square.
4. סוּרְגָּ, Lattice-Approach Partition, 10 handbreadths high.
18. הַל or הַיֵּל, 10 cubits in width in front of the steps No. 19.
20. הָאֵיסָטֶבָּא, Colonnade, Portico, Veranda, 10 cubits broad.
21. עֲזָרֵת נָשִׁים, Women's Hall, Outer Court, 135 cubits square.
- 22, 26, 27, 28, each 40 cubits square.
32. עֲזָרֵת יִשְׂרָאֵל, Israelites Hall, 135 cubits (N.—S.), 11 cubits (E.—W.).
35. עֲזָרֵת כֹּהֲנִים, Priests Hall, 135 cubits (N.—S.), 11 cubits (E.—W.).
44. הָעֲזָרָה, Inner Court, 135 cubits (N.—S.), 94 cubits (E.—W. between No. 35 and No. 61.)
48. מִזְבֵּחַ הַנְּחֹשֶׁת, Brazen Altar, 32 cubits square (surround 1 cubit wide).
49. כִּבְשֶׁת, Altar Ramp, 32 cubits (N.—S.), 16 cubits (E.—W.). Ramp to wall, 12½ cubits.
61. הָאֵילָם, Vestibule, 70 cubits (N.—S.), 11 cubits (E.—W.).
65. הַיֵּכָל, Sanctuary, 40 cubits (E.—W.), 20 cubits (N.—S.).
66. קֹדֶשׁ הַקְּדוֹשִׁים, Holy of Holies, 20 cubits square.

1. הַר הַבַּיִת, Temple Mount.
2. שַׁעַר חוּלְדָּה, (Rear) Chuldah Gate
3. שַׁעַר חוּלְדָּה, (Rear) Chuldah Gate } viz., two (Rear) Chuldah Gates.
- 3A. שַׁעַר מְזוּזָי, East Gate.
- 3B. שַׁעַר טָדִי, Tadi Gate.
- 3C. שַׁעַר קִיפּוֹנוֹת, Kifonos Gate.
4. סוּרְגָּ, Lattice—Approach Partition.
5. שַׁעַר יְכוֹנִיָּה, Jeconiah Gate.
6. שַׁעַר הָעֲלִיּוֹן, Upper Gate.
7. שַׁעַר הַדְּלָק, Lighting Gate.
8. שַׁעַר הַבְּכוֹרוֹת, Firstlings Gate, or שַׁעַר הַקֶּרְבָּן, Sacrifice Gate.
9. שַׁעַר הַמַּיִם, Water Gate.
10. שַׁעַר הַנָּשִׁים, Women's Gate.
11. שַׁעַר כְּנִיסָה, General Entrance Gate.
12. שַׁעַר הַתַּחְתּוֹן, Lower Gate.
13. שַׁעַר הַשִּׁיר, Music Gate.
14. שַׁעַר הַנָּשִׁים, Women's Gate.
15. שַׁעַר בֵּית הַמּוֹקֵד, Hearth Gate.

16. שַׁעַר הַקָּרְבָּן, Sacrifice Gate.
17. שַׁעַר הַנִּיצוֹץ, Flame Gate.
18. חָל or חֵיל, Surrounding Space or Enclosure. (*Gentiles Court*).
- 18A. סַנְהֶדְרִין קְטָנָה ראשונה, First Small Sanhedrin.
19. י"ב מַעְלֹת, Twelve Steps.
20. הָאֵיסְטָבָא, Colonnade, Portico, Veranda.
21. עֲזֵרַת נָשִׁים, Outer Court or Women's Hall.
- 21A. לְשֵׁכֶת סַנְהֶדְרִין, Sanhedrin Chamber.
22. לְשֵׁכֶת בַּיִת שְׁמָנַיִם, Oils (and Wines) Chamber.
23. לְשֵׁכֶת הַמֶּלַח, Salt Chamber.
24. לְשֵׁכֶת הַמְדִיחִין, Washer's Hall.
25. לְשֵׁכֶת הַפְּרוּהָ or בַּיִת הַפְּרוּהָ, Parvah Chamber.
26. לְשֵׁכֶת הַנְּזִירִים, Nazirites Chamber.
27. לְשֵׁכֶת הָעֵצִים, Wood Chamber.
28. לְשֵׁכֶת מְצוֹרְעִים, Lepers Chamber.
29. ט"ו מַעְלֹת, Fifteen Steps.
30. לְשֵׁכֶת כְּנֹוֹרוֹת, Stringed-Instruments Chamber.
31. שַׁעַר נִקְנֹוֹר, Nicanor Gate.
32. עֲזֵרַת יִשְׂרָאֵל, Israelites Hall.
33. מַעְלָה, Platform (for 34).
34. דּוֹבָן, Priests Dais.
35. עֲזֵרַת כֹּהֲנִים, Priests Hall.
36. לְשֵׁכֶת פְּרֹהֲדָרִין, Counsellors Chamber.
37. לְשֵׁכֶת הָעֵץ, Wood Chamber.
38. לְשֵׁכֶת הַגּוֹלָה, Diaspora Chamber.
39. לְשֵׁכֶת הַגָּזִית, Gazith Chamber.
40. לְשֵׁכֶת פְּנַחַס הַמַּלְבִּישׁ, Chamber of Pinchas Vestments-Keeper.
41. מִקְוֵה, Bath.
42. מַעְלֵת בַּיִת אַבְטִינוֹס, Attic of Abtinias.
43. לְשֵׁכֶת עוֹשֵׂי חֲבִיתִין, Chamber of Pancake Makers.
44. (ה) עֲזֵרָה, Inner Court.
45. כ"ד טַבְּעוֹת, Twenty-four Rings.
46. שְׁלֻחָנוֹת הַנַּנְסִין, Nanasin Tables.
47. בַּיִת הַמְטַבְּחִים, Slaughterhouse.
48. מוֹזֵבַח הַנְּחֹשֶׁת, Copper Altar.
49. קַבֵּשׁ, Ramp, Altar Slope-Approach.

50. בַּיִת הַטְּבִילָה, Bath Chamber.
 51. לְשֵׁכֶת טְלָאֵי קָרְבָּן, Chamber of (Sacrificial) Lambs.
 52. בַּיִת הַמּוֹקֵד, Chamber of the Hearth.
 53. לְשֵׁכֶת אֲבֵנֵי מִזְבֵּחַ, Chamber of Stones of Defiled Altar.
 54. לְשֵׁכֶת לֶחֶם הַפָּנִים, Chamber of Shewbread.
 55. לְשֵׁכֶת סַכִּינֵי, Knives Chamber.
 56. יָב מַעְלוֹת, Twelve Steps.
 57. הַכִּיּוֹר, Laver.
 - 57A. Well to sink the Laver (57) therein nightly.
 58. לְשֵׁכֶת בֵּית אַבְטִינָס, Beth Abtinias Chamber.
 59. שֻׁלְחָן שֵׁשׁ, Marble Table.
 60. שֻׁלְחָן שֶׁל כֶּסֶף, Silver Table.
 61. הָאוּלָם, Vestibule.
 62. בַּיִת הַחֲלִיפוֹת, Chamber of Vestments.
 63. שֻׁלְחָן שֶׁל כֶּסֶף, Silver Table.
 64. שֻׁלְחָן שֵׁשׁ, Marble Table.
 65. הַיִּכָּל, Sanctuary.
 66. בַּיִת קֹדֶשׁ הַקְּדוּשִׁים, Holy of Holies.
 67. הַמְּנֹרֶה, The Candlestick.
 68. מִזְבֵּחַ הַזָּהָב or מִזְבֵּחַ הַקְּטֹרֶת, Incense Altar or Golden Altar.
 69. שֻׁלְחָן לֶחֶם הַפָּנִים, Table of Shewbread.
 70. אֲמָה סְרָקְלִין, Two Cedar-wood (or Curtains) Partitions.
 71. אֶבֶן שְׁתֵּיהָ, Foundation Stone (which marked the position of the Ark after its disappearance).
 72. בַּיִת הַוּרְדָּח הַמַּיִם, Rain-water Descent Enclosure.
- N. צָפוֹן, North.
- S. דָּרוֹם, South.
- E. מִזְרָח, East.
- W. מַעְרָב, West.

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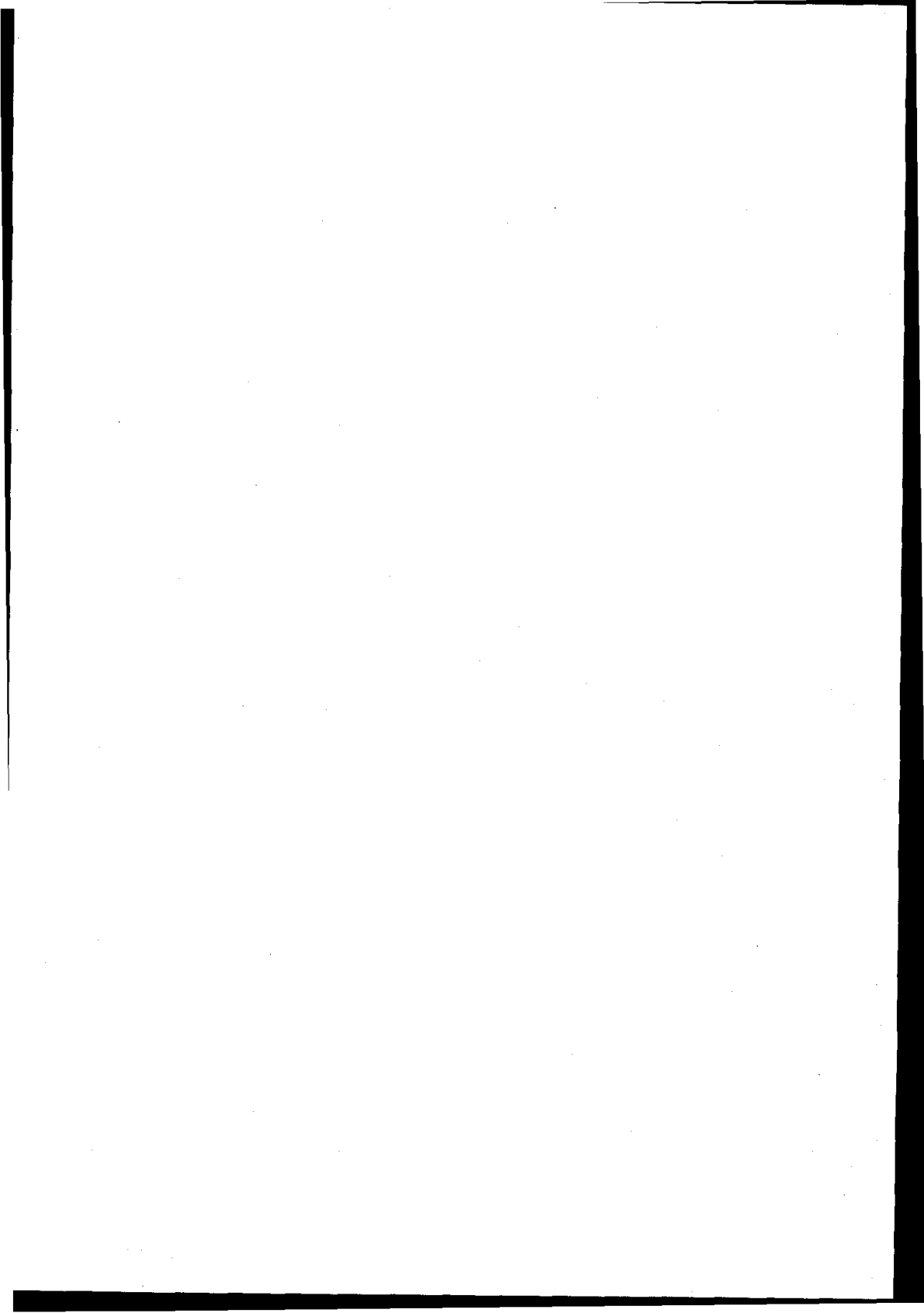
SUPPLEMENT

GLOSSARY OF THE

FLORA OF NEZIKIN

By

PHILIP BLACKMAN, F.C.S.



GLOSSARY

of the plants enumerated in Order Nezikin and some plant products.

[N.B.—I = see Volume I (Zeraim). II = see Volume II (Moed)].

alcohol—see **Note 13** in the *Appendix*. The best known and most widely used of the vast number of *alcoholic* or *spirituous* liquors (for **wine**, see special article in Volume V) are: (1) **brandy**, the ardent spirit distilled from wine; fermented fruit juices yield a similar spirit on distillation; (2) **cognac**, a superior quality of French brandy (made from wine produced near or at the French town Cognac on the Charente); (3) **whisky, whiskey**, a potent spirit produced by the distillation of the fermented extract from malted and unmalted cereals, potatoes, or any starch-yielding material; the best liquors are made either (in Scotland and Ireland) from malted barley or (in the United States of America and Canada) from dried fermented barley (or wheat or maize) and oats and a mixed grist of barley-malt; (4) **rum**, a spirit distilled from fermented molasses (a product of the sugar-cane) or from the fermented juice of the sugar-cane; (5) **gin**, an aromatic liquor made by distilling grain (particularly rye) mash in pot-stills with the addition of juniper berries, and then treated with a numerous variety of other flavours; a similar spirit is also made from plain alcohol flavoured with some of a great variety of aromatics; (6) **vodka**, the Russian spirit, properly distilled from rye, but also sometimes from barley and potatoes.

barley, I (Page 491), II Page 526).

bean, I (Page 492), II (Page 526).

carob, I (Page 492), II Page 527).

cedar, II (Page 528).

corn, I (Page 493), II (Page 529).

cucumber, I (Page 493), II (Page 529).

cumin, cummin, I (Page 494), II (Page 529).

darnel, I (Page 494), II (Page 529).

date, I (Page 494), II (Page 529).

durra, I (Page 494).

fig, I (Page 494), II (Page 530).

fir, II (Page 531).

flax, I (Page 494), II (Page 531).

garlic, I (Page 495).

grain, I (Page 495), II (Page 531).

horse-bean (see **bean**), I (Page 492).

leek, I (Page 496), II (Page 533).

lettuce, I (Page 496), II (Page 534).

melon, I (Page 497).

mustard, I (Page 498), II (Page 535).

olive, I (Page 498), II (Page 536).
onion, I (Page 498), II (Page 536).
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pepper, I (Page 499), II (Page 537).
pine, II (Page 538).
pulse, I (Page 500), II (Page 538).
ryegrass, I (Page 501).

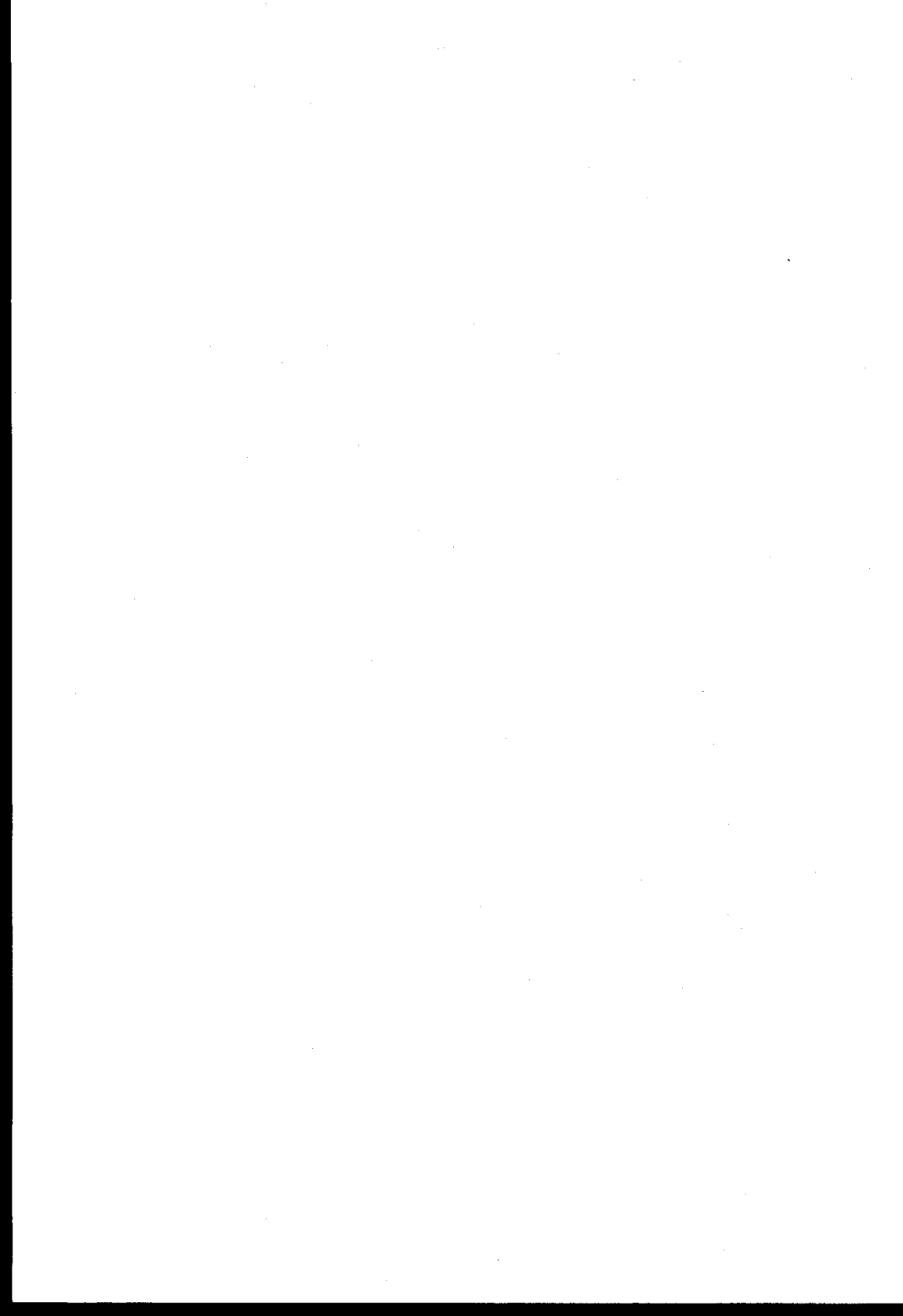
sorgho grass (*Sorghum vulgare*), a member of a genus (*Sorghum*) of tropical, cereal, stout, cane-like grasses cultivated generally for their saccharine juice and as fodder; the term *sorgo* is also used as an alternative name for *durra*, *Indian millet* and *Kaffir corn*; one species (*Sorghum vulgare*), the **common sorgo**, is especially cultivated for grain and forage, and its juice yields a syrup rich in invert sugar.

sugar-cane, II (Page 527, *cane*).
sycamore, I (Page 503), II (Page 541).
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vetch, I (Page 504), II (Page 542).
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wine, see Volume V, *Supplement, Flora*.

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