JUDAISM

The Talmud

Makkot

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Chapter 1

[1] MISHNA: How are witnesses rendered conspiring witnesses? This applies in a case where two witnesses came before the court and said: We testify with regard to so-and-so, who is a priest, that he is the son of a divorced woman or the son of a ḥalutza, a yevama who performed the rite of ḥalitza to free herself from the levirate bond. Those testimonies render him a ḥalal (see Leviticus 21:6–7), one disqualified from the priesthood due to flawed lineage. If a second set of witnesses testifies in court and renders the first set conspiring witnesses, one does not say with regard to each of the conspiring witnesses: This witness shall be rendered the son of a divorced woman or the son of a ḥalutza in his stead. Rather, he receives forty lashes as punishment for his false testimony.

[2] Likewise, in a case where two witnesses came before the court and said: We testify with regard to so-and-so that he is liable to be exiled to a city of refuge for unwittingly killing another (see Numbers 35:11), and a second set of witnesses testifies in court and renders the first set conspiring witnesses, one does not say with regard to each of the conspiring witnesses: This witness shall be exiled in his stead. Rather, he receives forty lashes.

[3] GEMARA: The Gemara analyzes the opening question of the mishna: But based on the cases discussed in the mishna, the tanna should have asked: How are witnesses not rendered conspiring witnesses? The standard punishment for conspiring witnesses is the punishment that they conspired to have inflicted upon the subject of their testimony. The mishna cites anomalous cases where their punishment does not correspond to the punishment they sought to have inflicted. The Gemara asks: And furthermore, from the fact that the tanna teaches in a mishna cited later (5a): But if the second set of witnesses attempting to render the first set conspiring witnesses said to them: How can you testify to that incident when on that day you were with us in such and such place, these first witnesses are conspiring witnesses. One learns by inference from the final phrase in the cited passage: These are conspiring witnesses, that those enumerated in the mishna here are not conspiring witnesses.

[4] The Gemara answers both questions: The tanna is standing there in his studies, at the end of tractate Sanhedrin, which immediately precedes Makkot, and Makkot is often appended to the end of Sanhedrin. The mishna there teaches (89a): All those who are rendered conspiring witnesses are led to be executed with the same mode of execution with which they conspired to have their victim executed, except for conspiring witnesses who testified that the daughter of a priest and her paramour committed adultery, where the daughter of the priest would be executed by burning (see Leviticus 21:9) and her paramour would be executed by strangulation. In that case, they are not taken directly to be executed with the same mode of execution that they sought to have inflicted on the woman; rather, they are executed with a different mode of execution, the one they sought to have inflicted on the paramour.

[5] Therefore, the tanna continues in this first mishna in Makkot: And there are other conspiring witnesses with regard to whom the court does not apply the halakhot governing the punishment in standard cases of conspiring testimony at all, and they do not receive the punishment they sought to have inflicted. Rather, they receive forty lashes. How, and in what cases, is this applied? This is applied in a case where two witnesses came before the court and said: We testify with regard to so-and-so that he is the son of a divorced woman or the son of a ḥalutza, one does not say with regard to each of the conspiring witnesses: This witness shall be rendered the son of a divorced woman or the son of a ḥalutza in his stead. Rather, he receives forty lashes.

[6] The Gemara asks: From where is this matter derived that the court does not punish the witnesses with the punishment they sought to have inflicted and disqualify them from the priesthood? Rabbi Yehoshua ben Levi says that Rabbi Shimon ben Lakish says: It is derived from a verse, as the verse states: “And you shall do to him as he conspired” (Deuteronomy 19:19), from which the Gemara infers: It is done “to him,” but not to his offspring. Rendering the witness a ḥalal would disqualify his offspring as well. The Gemara challenges: Let the court invalidate the witness and not invalidate his offspring. The Gemara explains: That too would not accord with the directive in the verse, as based on the verse we require that the punishment be “as he conspired to do” (Deuteronomy 19:19), and that is not the case here, as the witness conspired to disqualify the subject of his testimony and his offspring.

[7] Bar Padda says that this alternative form of punishment is derived through an a fortiori inference: If one who actually disqualifies another from the priesthood, i.e., a priest who fathers a son with a divorcée disqualifies their son from the priesthood, is not himself disqualified from the priesthood, so too with regard to this witness who came to disqualify another from the priesthood but was unsuccessful and did not disqualify him because he was rendered a conspiring witness, isn’t it logical that he should not be disqualified? Ravina objects to this reasoning: If so, that the failure of the conspiring witnesses to achieve their objective is the consideration at the basis of the a fortiori inference, you have thereby rendered the halakha of conspiring witnesses obsolete, as one could claim:

[8] If one who stones another, i.e., who testified that another is liable to be executed via the death penalty of stoning and was rendered a conspiring witness after that person was executed, is not stoned, as the halakha is that conspiring witnesses receive the punishment that they conspired to have inflicted and not the punishment that they actually had inflicted, then with regard to a conspiring witness who came to stone another and was unsuccessful and did not stone him, as he was rendered a conspiring witness before that person was executed, isn’t it logical that he should not be stoned? The Gemara concludes: Rather, it is clear as we answered initially: “And you shall do to him as he conspired”; this should be done to him, but not to his offspring.

[9] § The mishna teaches that in a case where two witnesses came before the court and said: We testify with regard to so-and-so that he is liable to be punished with exile, one does not say that these witnesses shall be exiled in his stead; rather, they receive forty lashes. The Gemara asks: From where is this matter derived? Reish Lakish says: It is derived from a verse, as the verse states with regard to an unwitting killer: “And he shall flee to one of the cities” (Deuteronomy 19:5), and the Gemara infers: He shall flee, but conspiring witnesses shall not.

[10] Rabbi Yoḥanan says: It is derived through an a fortiori inference: If the killer, who performed an action that, had he done so intentionally, he would not be exiled for it even if he were not sentenced to death, e.g., because there was no forewarning, then in the case of the conspiring witnesses, who did not perform an action, as their conspiracy was exposed and their testimony rejected, even if they testified intentionally, isn't it logical that they should not be exiled?

[11] The Gemara challenges: But that distinction provides support to the contrary. Could this not be derived through logical inference? With regard to one who performed an action, i.e., killed a person, if he did so intentionally, let him not be exiled so that he will not have atonement for his action, and he will instead receive harsh punishment at the hand of Heaven. With regard to the conspiring witnesses, who did not perform an action, even if they testified intentionally, let them also be exiled so that they will have atonement for their misdeed. The Gemara concludes: Rather, it is clear in accordance with the explanation of Reish Lakish: "And he shall flee to one of the cities"; he, but not conspiring witnesses.

[12] § Ulla says: From where is an allusion in the Torah to conspiring witnesses derived? The Gemara asks: Is an allusion to conspiring witnesses required? But isn't it written explicitly: "And you shall do to him as he conspired" (Deuteronomy 19:19)? Rather, Ulla's question is: From where is an allusion in the Torah to the halakha that conspiring witnesses are flogged in certain cases derived? It is derived from that which is written: "If there is a quarrel between people and they come to judgment, and the judges judge them, and they vindicated the righteous and condemned the wicked, and it shall be if the wicked is deserving of lashes" (Deuteronomy 25:1–2). Ostensibly, this verse is difficult: Is it due to the fact that "they vindicated the righteous" that they "condemned the wicked, and it shall be if the wicked is deserving of lashes"? In most disputes, the fact that one party is vindicated does not necessarily lead to lashes for the other party.

[13] Rather, the verse is addressing the case of witnesses who, through their testimony, condemned the righteous, and other witnesses came and vindicated the original righteous person and rendered these first set of witnesses wicked conspiring witnesses. In that case, the verse states: "And it shall be if the wicked is deserving of lashes," indicating that lashes are an appropriate punishment for conspiring witnesses.

[14] The Gemara asks: And why not derive the halakha that conspiring witnesses are liable to receive lashes from the prohibition: "You shall not bear false witness against your neighbor" (Exodus 20:13)? The Gemara answers: One is not flogged for violating that prohibition, due to the fact that it is a prohibition that does not involve an action, as one violates it through speech, not action, and the principle is: For every prohibition that does not involve an action, one is not flogged for its violation. Therefore, it was necessary to derive the halakha from the verse: "And they vindicated the righteous."

[15] § The Sages taught in a baraita: Four matters were stated with regard to conspiring witnesses, i.e., there are four cases in which their punishment deviates from the norm. They are not rendered the son of a divorced woman or the son of a ḥalutza; they are not exiled to a city of refuge; they do not pay the ransom if they testified that the forewarned ox of someone killed another; and they are not sold as a Hebrew slave in a case where they testified that one stole property and he would be sold into slavery if he lacked the means to repay the owner. The Sages said in the name of Rabbi Akiva: They also do not pay based on their own admission. If they were rendered conspiring witnesses in one

court, and before that court managed to collect the payment that they owed, they appeared in a different court and admitted that they had been rendered conspiring witnesses, they are exempt from payment.

[16] The Gemara elaborates: They are not rendered the son of a divorced woman or the son of a ḥalutza, as we stated and explained earlier. And they are not exiled to a city of refuge, as we stated and explained earlier. And they do not pay the ransom, as these Sages hold that the ransom paid by one whose ox killed another is atonement for him, as he is liable for the actions of his animal, and it is not payment of damages. And these conspiring witnesses are not subject to a need for atonement, as their ox did not kill anyone.

[17] The Gemara asks: Who is the tanna who taught that the ransom is atonement? Rav Ḥisda says: It is Rabbi Yishmael, son of Rabbi Yoḥanan ben Beroka, as it is taught in a baraita with regard to the verse concerning a case where the ox of one person gored another: "If ransom is imposed upon him, and he shall give the redemption of his soul" (Exodus 21:30); the term "his soul" means the value of the victim, i.e., the owner of the ox must pay the heirs of the deceased his value as it would be assessed were he sold as a slave in the market. Rabbi Yishmael, son of Rabbi Yoḥanan ben Beroka, says: The term "his soul" means the value of the one liable for the damage. What, is it not that they disagree with regard to this principle: That one Sage, the Rabbis, holds that the ransom is monetary restitution for the damage that his ox caused the victim; and one Sage, Rabbi Yishmael, holds that the ransom is atonement, as he thereby redeems his own soul from death at the hand of Heaven?

[18] Rav Pappa says: No, perhaps everyone agrees that the ransom is atonement, and here, it is with regard to this matter that they disagree: One Sage, the Rabbis, holds that we assess the payment in terms of the value of the victim; and one Sage, Rabbi Yishmael, holds that we assess the payment in terms of the value of the one liable for the damage.

[19] The Gemara asks: What is the reason for the opinion of the Rabbis, who abandon the straightforward meaning of the verse? The Rabbis derive it in the following manner: Imposition is stated below with regard to one whose ox killed another: "If ransom is imposed upon him" (Exodus 21:30), and imposition is stated above, in the case of one who struck a pregnant woman, causing her to miscarry: "He shall be punished, as the husband of the woman imposes upon him" (Exodus 21:22). Just as there, with regard to the miscarriage, it is in terms of the value of the victim, the fetus, that we assess the payment, here too, in the case of the ransom, it is in terms of the value of the victim that we assess the payment.

[20] And Rabbi Yishmael, son of Rabbi Yoḥanan ben Beroka, says: "And he shall give the redemption of his soul" is written, indicating that the sum is based on the value of the one seeking atonement. And the Rabbis explain: Yes, the phrase "redemption of his soul" is written, and the payment functions to redeem his soul. Nevertheless, when we assess the sum of the redemption payment, it is in terms of the value of the victim that we assess the payment.

[21] § The baraita teaches: Conspiring witnesses are not sold as a Hebrew slave in a case where they testified that one stole property. Rav Hamnuna thought to say: This statement applies only in a case where the falsely accused has means of his own to repay the sum of the alleged theft, as since, had the testimony been true, he would not have been sold for his transgression, the witnesses too are not sold when they are rendered conspiring witnesses. But in a case where the falsely accused does not have means of his own, and would have been sold into slavery had their testimony been accepted,

even if the witnesses have means of their own, they are sold, as they sought to have slavery inflicted upon him.

[22] Rava said to him: And let the witnesses say to the person against whom they testified: If you had money, would you have been sold? We too will not be sold. Since they have the means, they can pay the sum that they owe and not be sold as slaves. Rather, the Gemara proposes an alternative formulation of the statement of Rav Hamnuna. Rav Hamnuna thought to say: This statement applies only in a case where either he, the falsely accused, or they, the witnesses, have the means to pay the sum; but in a case where neither he nor they have the means, the witnesses are sold. In that case, had their testimony stood, the alleged thief would have been sold into slavery, and they too lack the means to pay the sum that they are liable to pay as conspiring witnesses. Therefore, they are sold. Rava said to him: That is not so, as the Merciful One states: "And he shall be sold for his theft" (Exodus 21:30), from which it is inferred: For his theft, but not for his conspiring testimony.

[23] § It is taught in the baraita: The Sages said in the name of Rabbi Akiva: They also do not pay based on their own admission. The Gemara explains: What is the reason for the opinion of Rabbi Akiva? He holds that money paid by a convicted conspiring witnesses is a fine [kenasa], and the principle is: One does not pay a fine based on his own admission; one pays a fine only on the basis of testimony. Rabba says: Know that it is a fine, as these witnesses did not perform an action and caused no actual damage, and yet they are executed or pay depending on the nature of their testimony, indicating that it is a fine rather than a monetary restitution. Rav Naḥman says: Know that it is a fine rather than a monetary restitution for damages, as the money they sought to compel him to pay ultimately remains in the possession of the owner against whom they testified, and yet they pay him.

[24] The Gemara is puzzled by this: What is the meaning of the statement: The money remains in the possession of the owner? It means that they did not perform an action. That is identical to the reasoning of Rabba, and it is not an additional explanation. The Gemara emends the formulation of the presentation of the statement. Say: And likewise Rav Naḥman says: Know that it is so, as the money remains in the possession of the owner. Rav Naḥman is not disagreeing with Rabba; he merely formulates the statement differently.

[25] § Apropos the statement of Rabbi Akiva in the baraita, Rav Yehuda says that Rav says: A conspiring witness pays according to his share. The Gemara asks: What is the meaning of: Pays according to his share? If we say that it means that this witness pays half of the sum that the set conspired to render another liable to pay with their testimony, and that witness pays the other half, we already learned this in a mishna (5a): When punishing conspiring witnesses, one divides the punishment of money among them, but one does not divide the punishment of lashes among them; each receives the full thirty-nine lashes.

[26] Rather, the Gemara explains that the expression: Pays according to his share, means that in a case where only one of the set was rendered a conspiring witness, the halakha is that he pays his half of the sum. The Gemara asks: And does he pay at all in that case? But isn't it taught in a baraita: A conspiring witness pays money only when both were rendered conspiring witnesses? If only one was rendered a conspiring witness, he does not pay.

[27] Rava says: The statement is not referring to a case of conspiring witnesses; rather, Rav's statement applies to the case of one who says: It was false testimony that I testified. The Gemara asks: Is it in

his power to have this statement accepted by the court? That runs counter to the principle: Once a witness stated his testimony he may not then state a revision of that testimony.

[28] The Gemara answers: Rather, Rav's statement applies to the case of one who says: We testified and were rendered conspiring witnesses in such and such a court. Since he was already convicted as a conspiring witness, it is as though he is admitting an obligation to give monetary restitution, and he is therefore liable to pay his share. The Gemara asks: In accordance with whose opinion is this halakha? It is not in accordance with the opinion of Rabbi Akiva, since if it were in accordance with the opinion of Rabbi Akiva, doesn't he say: A conspiring witness also does not pay based on his own admission?

[29] The Gemara answers: Rather, Rav's statement applies to the case of one who says: We testified and were rendered conspiring witnesses in such and such a court and we were rendered liable to pay a specific sum of money. In that scenario, Rabbi Akiva would concede that one pays on the basis of his own admission. Once the court rendered him liable to pay a specific sum, his admission is not that he is liable to pay a fine, in which case he would be exempt. Once the court actually instructed them to pay, the debt has the status of any other monetary restitution, and one does pay monetary restitution based on his own admission.

[30] The Gemara explains the novel element in Rav's statement: It might enter your mind to say that since he is unable to render his fellow witness liable to pay based on his admission, as only the testimony of two witnesses is capable of doing so, he too is not liable to pay based on that admission. To counter this, Rav teaches us that his admission that he owes money renders him liable to pay.

[31] MISHNA: In the case of witnesses who said: We testify with regard to a man called so-and-so that he divorced his wife and did not give her payment of her marriage contract, and they were then rendered conspiring witnesses, the question arises with regard to the manner in which the sum of their payment is calculated. It is not possible to render the witnesses liable to pay the entire sum of the marriage contract, as they can claim: But isn't it so that either today or tomorrow, i.e., at some point in the future, he may divorce his wife or die and ultimately he will be liable to give her payment of her marriage contract? That being the case, the witnesses did not conspire to render him liable to pay a sum that he would otherwise not be liable to pay.

[32] The sum of their payment is calculated as follows: The court assesses how much money another person would be willing to give in order to purchase the rights to this woman's marriage contract, cognizant of the uncertainty that if she was widowed or divorced the purchaser will receive payment of the marriage contract but if she dies, her husband will inherit from her, and the one who purchased her marriage contract will receive nothing.

[33] GEMARA: The mishna establishes that the payment of the conspiring witnesses is calculated based on the sum that one would be willing to pay for rights to payment of the marriage contract, taking into consideration the uncertainty whether he will ultimately receive that payment. The Gemara asks: How does the court assess that sum? Rav Ḥisda says: One calculates the sum in terms of the husband: How much would one be willing to pay for the husband's rights to the marriage contract based on the likelihood that his wife will die first and he will inherit from her?

[34] Rav Natan bar Oshaya says: One calculates the sum in terms of the wife: How much would one be willing to pay for the wife's rights to the marriage contract based on the likelihood that the husband will die first or divorce her?

35 Rav Pappa says: One calculates the sum in terms of the wife, as Rav Natan bar Oshaya said, and the assessment is done in terms of the sum of her marriage contract. One does not include in the calculation any usufruct property that the wife brought with her into the marriage, the profits of which belong to the husband, despite the fact that as a result of the testimony of the conspiring witnesses the husband would lose his rights to those profits. One calculates the sum only in terms of her marriage contract.

36 MISHNA: In the case of witnesses who said: We testify with regard to a man called so-and-so that he owes another person one thousand dinars that he borrowed on the condition that he is to give the money back to him from now until thirty days have passed, and the borrower says that he borrowed that sum but it was on the condition that he is to give the money back to him from now until ten years have passed, and they were rendered conspiring witnesses, here too, it is not possible to render the witnesses liable to pay the entire sum.

37 Rather, the court estimates how much money a person would be willing to give so that he would keep a loan of one thousand dinars in his possession, and one calculates the difference between that sum in a situation where he would be required to give the money back from now until thirty days have passed, and that same sum in a situation where he would be required to give the money back from now until ten years have passed. That difference is the sum that the testimony of the conspiring witnesses sought to have the borrower lose; therefore, it is the sum that they must pay.

38 GEMARA: Rav Yehuda says that Shmuel says: In the case of one who lends money to another for a period of ten years, the Sabbatical Year abrogates the debt (see Deuteronomy 15:1–11) and absolves the borrower of the obligation to repay it.

39 And even though now, during the Sabbatical Year, we do not yet read concerning his loan the prohibition: “He shall not exact it of his neighbor and his brother, because the Lord’s release has been proclaimed” (Deuteronomy 15:2), as the time for repayment has not yet arrived, ultimately, when the time for repayment arrives, he will come to a situation where the prohibition “He shall not exact it” applies. Therefore, like all other debts it is abrogated by the Sabbatical Year.

40 Rav Kahana raises an objection from the mishna: Rather, the court estimates how much money a person would be willing to give so that he would keep a loan of one thousand dinars in his possession, and one calculates the difference between that sum in a situation where he would be required to give the money back from now until thirty days have passed, and that same sum in a situation where he would be required to give the money back from now until ten years have passed. And if you say that the Sabbatical Year abrogates a ten-year loan, the conspiring witnesses need to pay the borrower the entire sum of the loan as well, as their testimony sought to render the borrower liable to pay a debt that by right should be entirely forgiven.

41 Rava said: What are we dealing with here in our mishna? We are dealing with debts that are not abrogated with the passing of the Sabbatical Year, e.g., in the case of one who lends money on the basis of collateral, or in the case of one who transfers his promissory notes to the court for collection. As we learned in a mishna (Shevi’it 10:2): In the cases of one who lends money on the basis of collateral and one who transfers his promissory notes to the court for collection, the Sabbatical Year does not abrogate those loans. In those cases, the debt would not have been forgiven during the Sabbatical Year. Therefore, the conspiring witnesses are not liable to pay the entire sum.

42 There are those who state another version of this discussion: Rav Yehuda says that Shmuel says: In the case of one who lends money to another for a period of ten years, the Sabbatical Year does not abrogate the debt. And even though when the time for repayment arrives he will come to a situation where the prohibition “He shall not exact it” applies, now, in any event, during the Sabbatical Year we do not yet read the prohibition of “He shall not exact it” concerning his loan.

43 Rav Kahana says: We learn this ruling in the mishna as well: The court estimates how much money a person would be willing to give so that a loan of one thousand dinars will be in his possession, and one calculates the difference between that sum in a situation where he would be required to give the money back from now until thirty days have passed, and that sum in a situation where he would be required to give the money back from now until ten years have passed. And if you say that the Sabbatical Year abrogates a ten-year loan, then the conspiring witnesses should pay the borrower the entire sum of the loan as well, as their testimony sought to render the borrower liable to pay a debt that by right should be entirely forgiven. The fact that they are not required to pay the entire sum proves that a ten-year loan is not abrogated by the Sabbatical Year.

44 Rava said: No proof may be cited from there, as what are we dealing with here in our mishna? We are dealing with debts that are not abrogated with the passing of the Sabbatical Year, e.g., in the case of one who lends money on the basis of collateral, or in the case of one who transfers his promissory notes to the court for collection. As we learned in a mishna (Shevi’it 10:2): In the cases of one who lends money on the basis of collateral and one who transfers his promissory notes to the court for collection, the Sabbatical Year does not abrogate those loans. In those cases, the debt would not have been forgiven during the Sabbatical Year. Therefore, the conspiring witnesses are not liable to pay the entire sum.

45 § And Rav Yehuda says that Shmuel says with regard to abrogation of debts: In the case of one who says to another the stipulation: I am lending you money on the condition that the Sabbatical Year will not abrogate my debt, even if the borrower agrees to that stipulation, the Sabbatical Year abrogates the debt. The Gemara suggests: Let us say that Shmuel holds that the lender who proposed that stipulation is one who stipulates counter to that which is written in the Torah, and in the case of anyone who stipulates counter to that which is written in the Torah, his stipulation is voided.

46 The Gemara asks: But wasn’t it stated that there is a dispute between Rav and Shmuel concerning this matter? In the case of one who says to another the stipulation: I am selling you this item on the condition that you have no claim of exploitation against me if I charge you more than the item is worth, Rav says: The buyer has a claim of exploitation against him, as one cannot stipulate to waive the halakha of exploitation. And Shmuel says: He has no claim of exploitation against him. Apparently, according to Shmuel, one may stipulate to waive a Torah law in monetary matters, as it is tantamount to waiving his rights to money due him and it is not in effect counter to that which is written in the Torah.

47 The Gemara answers: Wasn’t it stated with regard to that halakha that Rav Anan said: It was explained to me personally by Shmuel himself that the matter depends on the formulation of the stipulation. If the seller stipulates: On the condition that you have no claim of exploitation against me, then the buyer has no claim of exploitation against him, as it is as though he is waiving his right to money due him. But if the seller stipulates: On the condition that there is no prohibition of exploitation in this transaction, there is a prohibition of exploitation in that transaction.

[48] Here too, if the lender stipulated to the borrower: I am lending you money on the condition that you will not abrogate the debt during the Sabbatical Year, the Sabbatical Year does not abrogate his debt, as the borrower is merely waiving money due him. But if he stipulated: On the condition that the Sabbatical Year will not abrogate my debt, the Sabbatical Year abrogates the debt, as that is a stipulation to nullify the halakha of the Sabbatical Year concerning that loan, and one may not stipulate counter to that which is written in the Torah.

[49] § Apropos the loan discussed in the mishna, the Gemara cites a Sage who taught: One who lends money to another for an unspecified period is not permitted to demand repayment from him less than thirty days after the loan took place. The Gemara comments: Rabba bar bar Ḥana, who was seated before Rav, thought to say: This statement applies only with regard to a loan with a promissory note, as a person does not typically exert himself to write a promissory note for a loan whose duration is less than thirty days. But with regard to a loan by oral agreement, no, it may be for less than thirty days. Rav said to him: This is what my uncle, Rabbi Ḥiyya, said: This halakha applies to both one who lends with a promissory note and one who lends by oral agreement. If one fails to establish a time for repayment of the loan, he may not demand repayment until thirty days have passed since the loan was given.

[50] The Gemara notes: That is also taught in a baraita: One who lends money to another for an unspecified period is not permitted to demand repayment from him less than thirty days after the loan took place, and that is the case with regard to both one who lends with a promissory note and one who lends by oral agreement.

[51] The Gemara relates: Shmuel said to Rav Mattana: You shall not sit on your feet until you have explained this halakha; explain it immediately. From where is this matter that the Sages stated derived: One who lends money to another for an unspecified period is not permitted to demand repayment from him less than thirty days after the loan took place, and that is the case with regard to both one who lends with a promissory note and one who lends by oral agreement?

[52] Rav Mattana said to him that it is derived from a verse, as it is written: “The seventh year, the Sabbatical Year, approaches” (Deuteronomy 15:9). The question arises: From the fact that it is stated: “The seventh year…approaches,” don’t I know that it is the Sabbatical Year? Rather, why must the verse state: “The Sabbatical Year”? It is to tell you that there is another period that is like the Sabbatical Year; and which period is it? It is the period in the case of one who lends money to another for an unspecified period, who is not permitted to demand repayment from him less than thirty days after the loan took place. During that period, as during the Sabbatical Year, one may not exact payment for his loan. In what sense can that period be characterized as a year? It is as the Master said: Thirty days in a year are considered a year.

[53] § And Rav Yehuda says that Rav says: One who unwittingly opens a new neck opening in a shirt on Shabbat by cutting through the fabric and threads that kept it closed is liable to bring a sin-offering. By creating the opening he renders the shirt fit to wear, thereby fashioning a utensil on Shabbat. Rav Kahana objects to this: And what is the difference between this and the stopper of a wine barrel, which the Sages permitted piercing on Shabbat in order to serve wine to guests? There too, by piercing the stopper he fashions a utensil. Rava said to him: The cases are not comparable: In this case, that of the neck opening of a shirt, the material closing the neck hole is considered a connecting element, i.e., it is an organic part of the weave of the fabric; and in that case, that of the

stopper of the barrel, the stopper is not considered a connecting element, as its purpose is to be removed from the barrel.

54 § And Rav Yehuda says that Rav says: In the case of three log of drawn water into which one sixty-fourth of a log [kortov] of wine fell, and the color of the water is like the color of wine, and that liquid fell into a ritual bath containing less than forty se'a, although the Sages ruled that three log of drawn water invalidate a ritual bath, in this case the liquid does not invalidate it, because the halakhic status of the liquid that fell into the ritual bath is that of wine, and wine does not invalidate a ritual bath. Rav Kahana objects to this: And what is the difference between this case of water into which wine fell and the case of dye water, as we learned in a mishna (Mikvaot 7:3): Rabbi Yosei says: Dye water in the amount of three log invalidates a ritual bath? The wine, like the dye, colors the water. Rava said to him: The difference is that there the mixture is called dye water, where the water maintains the status of water; here it is called diluted wine.

55 The Gemara asks with regard to Rav's statement: But didn't Rabbi Ḥiyya teach that three log of water into which a kortov of wine fell reduce the ritual bath into a state where it is no longer valid? Rava said that this baraita is not difficult, as this statement of Rav is in accordance with the opinion of Rabbi Yoḥanan ben Nuri, and that baraita taught by Rabbi Ḥiyya is in accordance with the opinion of the Rabbis, who disagree with Rabbi Yoḥanan ben Nuri. As we learned in a mishna (Mikvaot 7:5): In a case where there are three log of drawn water

56 less one kortov or any small measure of water, into which a kortov of wine fell, increasing the measure of liquid to a total of three log, and the appearance of those three log is like the appearance of wine; and then those three log fell into a ritual bath, completing its requisite forty se'a, it did not invalidate the ritual bath, because three log of drawn water invalidate the ritual bath, and less than that measure of water fell into the ritual bath. And likewise, in a case where there are three log of drawn water less one kortov into which a kortov of milk fell and the appearance of those three log is like the appearance of water, and those three log fell into a ritual bath, completing its requisite forty se'a, it did not invalidate the ritual bath, because in this case too, less than three log of drawn water fell into the ritual bath.

57 Rabbi Yoḥanan ben Nuri says: Everything follows the appearance of those three log. Therefore, if it has the appearance of wine it does not invalidate the ritual bath; if it has the appearance of water it invalidates the ritual bath. Perhaps Rav Yehuda says that Rav says that the mixture of water and wine does not invalidate the ritual bath because he holds in accordance with the opinion of Rabbi Yoḥanan ben Nuri that everything follows the appearance. Rabbi Ḥiyya holds in accordance with the opinion of the first tanna that the amount of drawn water is the decisive factor, and therefore, regardless of its appearance, three log of water invalidates a ritual bath.

58 The Gemara asks: Wasn't this matter already raised as a dilemma by Rav Pappa? As Rav Pappa raised a dilemma: There are two ways to explain the mishna. One is that Rav teaches: In a case where there are three log of drawn water less one kortov, in the first clause. But in a case where there are three complete log of water, according to the first tanna, it invalidates the ritual bath even if its appearance is that of wine. And Rabbi Yoḥanan ben Nuri comes to say: Everything follows the appearance, meaning that even in that case, if its appearance is that of wine it does not invalidate the ritual bath. And if that is the dispute, Rav states his opinion in accordance with the opinion of Rabbi Yoḥanan ben Nuri.

[59] Or perhaps Rav did not teach: In a case where there are three log of drawn water less one kortov, in the first clause of the mishna; rather, he taught: In a case where there are three complete log of water into which a kortov of wine fell. According to this version of the mishna, even the first tanna agrees that if its appearance is that of wine it does not invalidate the ritual bath. And when Rabbi Yoḥanan ben Nuri disagrees, it is only with regard to the latter clause that he disagrees, in the case of three log of drawn water less one kortov into which a kortov of milk fell and the appearance of those three log is like the appearance of water. The first tanna holds that in order to invalidate a ritual bath two criteria must be fulfilled: There must be three log of water and its appearance must be that of water. In this case there is less than three log of water. Rabbi Yoḥanan ben Nuri holds that there is only one criterion, appearance. Therefore, in the case of milk, the ritual bath is invalidated.

[60] And according to this latter rendering of the dispute, Rav states his opinion in accordance with the opinion of everyone. Why then does Rava state: This statement of Rav is in accordance with the opinion of Rabbi Yoḥanan ben Nuri?

[61] The Gemara answers: This is not difficult, as although for Rav Pappa there is a dilemma how to interpret the mishna, for Rava it is obvious.

[62] Apropos this discussion, the Gemara relates that Rav Yosef said: I did not hear this halakha with regard to the dilemma whether the first clause of the mishna includes the phrase: Less one kortov. Abaye said to him: You said it to us, but you forgot due to your illness. And this is what you said to us: Rav did not teach: Less one kortov, in the first clause of the mishna, and Rabbi Yoḥanan ben Nuri disagrees only with regard to the latter clause, and it is Rav who states his opinion in accordance with the opinion of everyone.

[63] § And Rav Yehuda says that Rav says: In the case of a barrel full of drawn water that fell into the Mediterranean Sea, concerning one who immerses there in the spot where the water fell, the immersion did not effect his purification, because we are concerned that three log of drawn water should not be collected in one place, in the place where he immerses. The Gemara qualifies this halakha: And this applies specifically to the Mediterranean Sea, whose waters are largely stagnant. But in the case of a standard river, whose waters flow, no, this halakha does not apply, as the water from the barrel will immediately intermingle with the river water.

[64] The Gemara notes: This is also taught in a baraita: In the case of a barrel full of wine that fell into the Mediterranean Sea, concerning one who immerses there, the immersion did not effect his purification, because we are concerned that three log of drawn wine that is unfit for immersion should not be collected in one place. And likewise, a loaf of teruma that fell there, where the wine fell, is impure through contact with the wine.

[65] The Gemara asks: What is added by the clause introduced with the term: And likewise? If the concern is that the wine remained in one place and did not intermingle with the seawater, ostensibly that concern applies to halakhot of ritual impurity. The Gemara answers: Lest you say that there, with regard to immersion, the reason he is impure is that since there is uncertainty whether his immersion effected his purification, the principle is: Establish the person on his presumptive status of impurity. But here, in the case of a loaf of teruma, since there is uncertainty whether it was rendered impure, the principle is: Establish the teruma on its presumptive status of purity. Therefore, the tanna of the baraita teaches us that the concern that the loaf touched the wine is substantial to the extent that it prevails even over the loaf’s presumptive status of purity.

[66] MISHNA: If witnesses said: We testify with regard to a man called so-and-so that he is liable to pay another person two hundred dinars, and they were found to be conspiring witnesses, they are flogged, and they pay the money they sought to render him liable to pay. Why do they receive two punishments? It is due to the fact that the source that brings them to liability to receive lashes is not the source that brings them to liability for payment; this is the statement of Rabbi Meir. And the Rabbis say: Anyone who pays as punishment for a transgression is not flogged for that same transgression.

[67] Likewise, if witnesses said: We testify with regard to a man called so-and-so that he is liable to receive forty lashes, and they were discovered to be conspiring witnesses, they are flogged with eighty lashes; one set of lashes due to violation of the prohibition: "You shall not bear false witness against your neighbor" (Exodus 20:13), and one set of lashes due to the verse: "And you shall do to him as he conspired" (Deuteronomy 19:19), which is the punishment for conspiring witnesses; this is the statement of Rabbi Meir. And the Rabbis say: They are flogged with only forty lashes, due to the verse "And you shall do to him as he conspired."

[68] GEMARA: With regard to the initial dispute between Rabbi Meir and the Rabbis in the mishna whether conspiring witnesses pay and are flogged, the Gemara asks: Granted, according to the Rabbis, the verse that states: "The judge shall cause him to lie down, and to be beaten before him, according to the measure of his wickedness" (Deuteronomy 25:2), is written concerning one who was liable to receive lashes. From "according to the measure of his wickedness" it is inferred with regard to an individual who commits one transgression: For one evildoing you can render him liable, but you cannot render him liable for two evildoings, i.e., one cannot receive two punishments for the same act. But according to Rabbi Meir, what is the reason that he is punished twice for committing a single transgression?

[69] Ulla said: Rabbi Meir derived this halakha from the halakha concerning one who defames his wife, claiming that when he consummated the marriage he discovered that she was not a virgin: Just as the defamer is flogged and pays, as it is written: "And they shall chastise him and fine him one hundred silver coins" (Deuteronomy 22:18–19), so too, anyone who commits a transgression punishable with lashes and a monetary payment is flogged and pays. The Gemara questions this derivation: What is notable about the case of a defamer? It is notable in that the payment of the defamer is a fine, which is a fixed sum that the Torah deems him liable to pay. How can the halakha of conspiring witnesses, whose payment is monetary restitution, be derived from there? The Gemara answers: Rabbi Meir holds in accordance with the opinion of Rabbi Akiva, who says: The payment that conspiring witnesses are liable to pay is a fine.

[70] The Gemara comments: There are those who teach this statement of Ulla with regard to that which is taught in a baraita: It is stated with regard to the Paschal offering: "And you shall let nothing of it remain until morning, but that which remains of it until morning you shall burn with fire" (Exodus 12:10). The verse comes to provide a positive mitzva to burn the remains after it has taught a prohibition, which states: "You shall let nothing of it remain," to say that one is not flogged for its violation; this is the statement of Rabbi Yehuda. This is a prohibition whose transgression entails the fulfillment of a positive mitzva, in which the mitzva serves to rectify the violation of the prohibition, and no lashes are administered.

[71] Rabbi Akiva says: The fact that one is not flogged is not for that reason; rather, it is due to the fact that this prohibition: “And you shall let nothing of it remain,” is a prohibition that does not involve an action, as one violates the prohibition through failure to take action, and concerning any prohibition that does not involve an action, one is not flogged for its violation. The Gemara learns by inference that Rabbi Yehuda holds in principle with regard to a prohibition that does not involve an action, that one is flogged for its violation. From where does Rabbi Yehuda derive that one is flogged in that case?

[72] Ulla said: Rabbi Yehuda derived this halakha from the defamer; just as the defamer violates a prohibition that does not involve an action, as it involves only speech, and one is flogged for its violation, so too, with regard to any prohibition that does not involve an action, one is flogged for its violation. The Gemara questions this derivation: What is notable about the case of the defamer? It is notable in that he is flogged and pays for violation of a single prohibition. Due to that stringency, other less stringent prohibitions cannot be derived from the case of the defamer.

[73] Rather, Reish Lakish says: Rabbi Yehuda derives this principle from the case of conspiring witnesses. Just as the conspiring witnesses violate a prohibition that does not involve an action and an individual is flogged for its violation, so too, with regard to any prohibition that does not involve an action, one is flogged for its violation. The Gemara questions this derivation: What is notable about the case of conspiring witnesses? It is notable in that the witnesses do not require forewarning in order to administer their punishment, which is an exception to the principle that corporal punishment may be administered only after forewarning. Due to that stringency, other less stringent prohibitions cannot be derived from the case of conspiring witnesses.

[74] The Gemara answers: The case of the defamer will prove that the absence of forewarning is not a significant factor, as the defamer requires forewarning and nevertheless is flogged for a prohibition that does not involve an action. And the inference has reverted to its starting point. The defining characteristic of this case is not like the defining characteristic of that case, and the defining characteristic of that case is not like the defining characteristic of this case. Their common denominator is that in both cases there is a prohibition that does not involve an action and one is flogged for its violation. So too, with regard to any prohibition that does not involve an action, one is flogged for its violation.

[75] The Gemara questions this derivation: What is notable about their common denominator? They are notable in that payment in both cases is a fine, and therefore other, less stringent prohibitions cannot be derived from them. The Gemara answers: This is not difficult; Rabbi Yehuda does not hold in accordance with the opinion of Rabbi Akiva that the payment of conspiring witnesses is a fine. In his opinion, therefore, that is not a common denominator.

[76] Rather, the Gemara proposes an alternative refutation: What is notable about their common denominator? They are notable in that the cases of the defamer and of conspiring witnesses both contain a stringent aspect; therefore, other, less stringent prohibitions cannot be derived from them. The stringency in the case of the defamer is that he both is flogged and pays, and the stringency in the case of conspiring witnesses is that they do not require forewarning. The Gemara answers: And Rabbi Yehuda does not refute a derivation from a common denominator based on the fact that both cases contain a different stringent aspect. He holds that the mere fact that there is a stringency in each does not serve as a common denominator.

[77] § The Gemara resumes its analysis of the dispute between Rabbi Meir and the Rabbis in the case of conspiring witnesses who testify that another is liable to receive lashes. Rabbi Meir holds that they are flogged with eighty lashes, one set of lashes due to violation of the prohibition: “You shall not bear false witness against your neighbor” (Exodus 20:13), and one set of lashes due to the verse: “And you shall do to him as he conspired” (Deuteronomy 19:19). The Rabbis say: They are flogged with only forty lashes, due to the verse “And you shall do to him as he conspired.” The Gemara asks: And with regard to the Rabbis, concerning this verse: “You shall not bear false witness against your neighbor,” what do they derive from it, if one is not flogged for its violation?

[78] The Gemara answers: They require that verse as a prohibition against conspiring witnesses. Every punishment enumerated in the Torah, including that of conspiring witnesses, is accompanied by an explicit verse prohibiting the action that results in the punishment. The Gemara asks: And with regard to Rabbi Meir, who holds that conspiring witnesses are flogged for violating this prohibition, from where does he derive a prohibition for conspiring witnesses? Rabbi Yirmeya said: He derives it from the verse written in the context of conspiring witnesses: “And those who remain shall hear and fear, and shall not continue to perform any more evil of this kind in your midst” (Deuteronomy 19:20). The verse warns that conspiring witnesses should not continue with their sinful conduct.

[79] The Gemara asks: And concerning the Rabbis, what do they derive from that verse? The Gemara answers: That verse is necessary according to the Rabbis

[80] for the requirement of proclamation. When the witnesses are taken to their execution, there is a mitzva for the court to publicly proclaim the transgression for which they are being punished, in order to deter others from committing the same transgression. And Rabbi Meir derives the requirement of proclamation from the phrase in that verse: “Shall hear and fear.” The prohibition is derived from the phrase “and shall not continue to perform any more evil.”

[81] MISHNA: When punishing conspiring witnesses based on the verse: “As he conspired to do to his brother” (Deuteronomy 19:19), one divides the punishment of money among them, but one does not divide the punishment of lashes among them; each receives thirty-nine lashes. The mishna elaborates: How so? If the witnesses testified about someone that he owes another person two hundred dinars and they were then found to be conspiring witnesses, the witnesses divide the sum among themselves and pay a total of two hundred dinars. But if they testified about someone that he was liable to receive forty lashes and they were then found to be conspiring witnesses, each and every one of the witnesses receives forty lashes.

[82] GEMARA: The Gemara asks: From where are these matters, that the witnesses do not divide the punishment of lashes among themselves, derived? Abaye said: “Wicked” (Deuteronomy 25:2), is stated with regard to those liable to receive lashes, and: “Wicked” (Numbers 35:31), is stated with regard to those liable to receive a court-imposed death penalty. Just as there, with regard to those sentenced to be executed, there is no partial death penalty, so too here, with regard to those liable to receive lashes, there is no partial administering of lashes.

[83] Rava said: The reason the punishment of lashes is not divided is that we require fulfillment of the verse: “As he conspired to do to his brother” (Deuteronomy 19:19), and were the conspiring witness to receive fewer than thirty-nine lashes, the verse would not be fulfilled. The Gemara asks: If so, in the case of money too, one should not divide the sum between them, as each sought to cause the defendant loss of the entire sum. The Gemara answers: Sums of money paid by the witnesses can

combine, as the person against whom they testified receives the entire sum that they sought to cause him to lose, but lashes administered to the witnesses cannot combine.

[84] MISHNA: Witnesses are not rendered conspiring witnesses until the witnesses who come to render them conspiring impeach the witnesses themselves and not merely their testimony.

[85] How so? A set of witnesses said: We testify with regard to a man called so-and-so that he killed a person, and they attested to the precise time and place that the murder took place. Then, a second set of witnesses came to court and said to them: How can you testify about this event? This person who was killed, or this person who killed, was with us, i.e., with the second set of witnesses, on that day in such and such place, which is not the location identified by the first set of witnesses. In that case, although the second set of witnesses contradicted the testimony of the first set, these first witnesses are not rendered conspiring witnesses. But if the second set of witnesses came to court and said to them: How can you testify about that event? You were with us on that day in such and such place. In this case, these first witnesses are rendered conspiring witnesses, and are executed on the basis of their, i.e., the second set's, testimony.

[86] If other witnesses, i.e., a third set, came and corroborated the testimony of the first set of witnesses, and the second set of witnesses testified that this third set of witnesses were also with them elsewhere that day and rendered them conspiring witnesses, and similarly, if yet other witnesses, i.e., a fourth set, came and corroborated the testimony of the first set of witnesses and the second set rendered them conspiring witnesses, even if one hundred sets of witnesses were all rendered conspiring witnesses by the same second set of witnesses, all of them are executed on the basis of their testimony, as the authority of two witnesses is equivalent to the authority of numerous witnesses. Rabbi Yehuda says: This situation where a set of witnesses renders all the others conspiring witnesses is a conspiracy [istatit], as there is room for suspicion that they simply decided to impeach all witnesses who offer that testimony, and it is only the first set alone that is executed.

[87] GEMARA: With regard to the halakha that witnesses are rendered conspiring witnesses only if the second set testifies that the first set was with them elsewhere at that time, and not if they directly contradict the testimony of the first set, the Gemara asks: From where are these matters derived? Rav Adda said: It is derived from a verse, as the verse states with regard to conspiring witnesses: "And the witness is a false witness; he testified falsely against his brother" (Deuteronomy 19:18), indicating that they are not rendered conspiring witnesses until the body of the testimony is rendered false, i.e., the testimony with regard to the actual witnesses was proven wrong, as they were not there at the time of the event in question.

[88] The school of Rabbi Yishmael taught a different source for this halakha. It is stated in that passage: "If an unrighteous witness rise up against any man to bear perverted witness against him" (Deuteronomy 19:16), indicating that the witnesses are not rendered conspiring witnesses until the body of the testimony is rendered perverted, but not through contradiction of any aspect of the testimony.

[89] § Rava says: Two witnesses came and said: So-and-so killed a person to the east of a building [bira], and two other witnesses came to court and said to the first set: But were you not with us to the west of the building at that time? How can you testify to an incident that transpired on the other side of the building? We see: If, when people are standing to the west of the building they see to the east

of the building, these witnesses are not conspiring witnesses. But if it is not possible to see from one side of the building to the other, these witnesses are conspiring witnesses.

[90] The Gemara asks: Isn't that obvious? The Gemara answers: Lest you say: Let us be concerned about the possibility that these witnesses have particularly good eyesight and were able to see that far despite a typical person being unable to see that far. Therefore, Rava teaches us that one does not take that possibility into account.

[91] And Rava says: If two witnesses came and said: So-and-so killed a person in Sura in the morning on Sunday, and two other witnesses came to court and said to the first set: In the evening on Sunday you were with us in Neharde'a, we see: If one is able to travel from Sura to Neharde'a from morning until evening they are not conspiring witnesses, as conceivably they could have witnessed the murder in Sura and traveled to Neharde'a by evening. And if it is not possible to travel that distance in that period of time, they are conspiring witnesses.

[92] The Gemara asks: Isn't that obvious? The Gemara answers: Lest you say: Let us be concerned about the possibility that these witnesses traveled on a flying camel, i.e., one that runs so quickly that it enabled them to traverse the distance faster than the typical person. Therefore, Rava teaches us that one need not take that possibility into account.

[93] And Rava says: If two witnesses came and said: On Sunday so-and-so killed a person, and two other witnesses came and said: You were with us on Sunday, but on Monday that same so-and-so killed that same person. Moreover, even if the second set of witnesses said: On Shabbat eve so-and-so killed that same person, the first set of witnesses is executed, despite the fact that the person against whom they testified was liable to be executed without their testimony. The reason they are liable is that at the time that they testified, conspiring to have him executed by the court, the man was not yet liable for execution by the court.

[94] The Gemara asks: What is Rava teaching us? We learn in a mishna (6b) with regard to two sets of witnesses who testified that one person killed another: Therefore, if one of the sets of witnesses was found to be a set of conspiring witnesses, he, the accused, and they, the conspiring witnesses, are executed by the court, and the second set of witnesses is exempt. The accused is executed because the testimony of the witnesses who were not rendered conspiring witnesses remains unchallenged. The first set of witnesses is executed because they were rendered conspiring witnesses. Clearly, conspiring witnesses may be executed even though they testified against a guilty person who was sentenced to death, provided that their testimony was delivered before he was sentenced.

[95] The Gemara answers: It was the latter clause of this halakha, teaching that it is not so with regard to the verdict, that contains a novel element, and therefore it was necessary for Rava to teach it, and in the context of teaching the latter halakha he taught the first case as well. The latter clause is: If two witnesses came on Tuesday and said: On Sunday so-and-so was sentenced to death in a certain court, and two other witnesses came and said: On Sunday you were with us elsewhere and you could not have witnessed the verdict in that court, but on Shabbat eve the same so-and-so was sentenced to death, the first set of witnesses are not executed. Moreover, even if the second set of witnesses said: On Monday the same so-and-so was sentenced to death, the first set of witnesses are not executed, as at the time that they testified against him, on Tuesday, the man was already liable to be executed, and it is as though they conspired to kill a dead man.

96 The Gemara adds: And likewise, the same halakha that applies with regard to witnesses who testify about one who is sentenced to death applies to the matter of payments of a fine.

97 The Gemara explains: If two witnesses came and said: On Sunday this person stole and then slaughtered or sold an ox or a lamb, thereby rendering him liable to pay a fine of four or five times the value of the stolen animal (see Exodus 21:37), and then two other witnesses came and said to the first set of witnesses: On Sunday you were with us elsewhere, but on Monday this same person stole and then slaughtered or sold an ox or a lamb, the first set of witnesses pay the accused four or five times the value of the stolen animal. This is because at the time that according to their testimony he stole the animals, he had not yet stolen. Moreover, even if the second set of witnesses said: It was earlier, on Shabbat eve, that he stole and then slaughtered or sold the animals, the first set of witnesses pay the accused the amount of the fine he would have had to pay, as at the time that they testified the accused man had not yet been found liable for payment by the court, and he could have admitted his guilt and exempted himself from paying the fine. They conspired to render him liable.

98 But if two witnesses came on Tuesday and said: On Sunday this person stole and then slaughtered or sold an ox or a lamb and was sentenced to pay a fine of four or five times the value of the stolen animal, and two other witnesses came and said: On Sunday you were with us, but that person stole and then slaughtered or sold an ox or a lamb, and was sentenced on Shabbat eve, the first set of witnesses are exempt from payment. Moreover, even if the second set of witnesses said: On Sunday he stole and then slaughtered or sold an ox or a lamb, corroborating the testimony of the first set, and on Monday he was sentenced to pay the fine, the first set of witnesses do not pay the accused. This is because at the time that they testified against him, on Tuesday, the man had already been found liable for payment by the court, and therefore they are not conspiring witnesses.

99 § The mishna teaches that Rabbi Yehuda says that if a single set of witnesses rendered numerous sets of witnesses, all of whom testified that one person killed another, conspiring witnesses, this situation is a conspiracy, and only the first set of conspiring witnesses is executed.

100 The Gemara asks: If Rabbi Yehuda states that this situation is a conspiracy, and there is suspicion that the second set is not truthful, let even the first set of witnesses who were rendered conspiring witnesses based on their testimony also not be executed. Rabbi Abbahu said: The mishna is referring to a case where the judges already executed the first set of witnesses. Rabbi Yehuda is saying that no witnesses are executed other than the first set of witnesses, who were already executed.

101 The Gemara challenges: If so, what was, already was; there is no point in stating it as a halakha. Rather, Rava said this is what Rabbi Yehuda is saying: If it is only one set of witnesses that is rendered conspiring witnesses by the second set, the witnesses are executed; if there is more than one set they are not executed at all. The Gemara asks: But doesn’t Rabbi Yehuda say: It is only the first set alone that is executed? This indicates that contrary to Rava’s explanation, it is a case involving more than one set of witnesses. The Gemara notes: Indeed, this matter is difficult.

102 Apropos the dispute in the mishna, the Gemara relates: There was a certain woman who brought witnesses to testify on her behalf, and they were proven to be liars. She brought other witnesses, and they too were proven to be liars. She went and brought yet other witnesses, who were not proven to be liars. There is an amoraic dispute whether the testimony of the third set of witnesses is accepted. Reish Lakish said: This woman has assumed the presumptive status of dishonesty because of her repeated reliance on false witnesses; therefore, the testimony of the third set is rejected. Rabbi Elazar

said to him: If she has assumed the presumptive status of dishonesty, has the entire Jewish people assumed that presumptive status? Why assume that these witnesses are dishonest?

[103] The Gemara relates: On another occasion, Reish Lakish and Rabbi Elazar were sitting before Rabbi Yoḥanan and an incident similar to this one came before them for judgment. Reish Lakish said: This woman has assumed the presumptive status of dishonesty. Rabbi Yoḥanan said to him: If she has assumed the presumptive status of dishonesty, has the entire Jewish people assumed that presumptive status? When Reish Lakish heard Rabbi Yoḥanan respond in a manner identical to the earlier response of Rabbi Elazar, he turned his head and glared angrily at Rabbi Elazar, and he said to him: You heard this matter from bar Nappaḥa, i.e., Rabbi Yoḥanan, and you did not say it to me in his name? Had I known that you were stating Rabbi Yoḥanan's opinion I would have accepted it.

[104] The Gemara suggests: Let us say that Reish Lakish stated his opinion that this woman has assumed the presumptive status of dishonesty in accordance with the opinion of Rabbi Yehuda, who invalidates the testimony of witnesses based on suspicion that arises due to the circumstances even though there is no proof that they lied. And Rabbi Yoḥanan stated his opinion in accordance with the opinion of the Rabbis, who do not invalidate testimony based on unsubstantiated suspicion.

[105] The Gemara rejects this suggestion: Reish Lakish could say to you: I state my opinion even in accordance with the opinion of the Rabbis, as the Rabbis say that one relies on witnesses who render multiple sets of witnesses conspiring witnesses only there, in the mishna, in a case where there is no one who is seeking to hire witnesses to testify on his behalf, and one could assert that their testimony is true. But here, there is this woman who is seeking to hire witnesses to testify on her behalf, which arouses suspicion that she hired them to lie on her behalf.

[106] And Rabbi Yoḥanan could say to you: I state my opinion even in accordance with the opinion of Rabbi Yehuda, as Rabbi Yehuda says that the testimony of the second set is invalid based on unsubstantiated suspicion only there, in the mishna, where circumstances exacerbate the suspicion that they are lying, as we say: Is that to say that everyone, the numerous sets of witnesses, was standing near these witnesses who testify in order to render them conspiring witnesses? But here, perhaps these witnesses who came last and were not proven to be liars know the content of the testimony, and these witnesses who were proven to be liars do not know the content of the testimony. The fact that the testimony of the first sets of witnesses was rendered void has no bearing on the status of other witnesses.

[107] MISHNA: The conspiring witnesses are executed only if they are rendered conspiring witnesses after the verdict of the accused is concluded. This is in contrast to the opinion of the Sadducees, as the Sadducees say: Conspiring witnesses are executed only if they are rendered conspiring witnesses after the accused is killed on the basis of their testimony, as it is stated: "A life for a life" (Exodus 21:23; see Deuteronomy 19:21).

[108] The Rabbis said to the Sadducees: But wasn't it already stated: "And you shall do to him as he conspired to do to his brother" (Deuteronomy 19:19), and this latter verse indicates that his accused brother is alive? And if so, why is it stated: "A life for a life"? One might have thought that if they are rendered conspiring witnesses from the moment the judges accepted their testimony in court, they will be executed, even though no verdict was concluded. Therefore, the verse states: "A life for a life," teaching that they are executed only if they are rendered conspiring witnesses after the verdict of the accused will be concluded, from the moment that the court is on the verge of taking his life.

[109] GEMARA: It is taught with regard to the halakha in the mishna that a Sage referred to as the Distinguished [Beribbi] says: If the conspiring witnesses have not yet killed the accused with their testimony they are executed, but if they killed the accused with their testimony they are not executed. The father of that Sage, who was also a prominent Sage, said to him: My son, is this matter not derived through an a fortiori inference? If, when they were unsuccessful in their attempt to kill the accused they are executed, all the more so if they were successful in killing him should they be executed.

[110] He said to his father: You have taught us, our teacher, that one does not administer punishment based on an a fortiori inference. The punishment must be stated in the Torah. As it is taught in a baraita that among the relatives with whom engaging in intercourse is forbidden it states: "A man who takes his sister, the daughter of his father or the daughter of his mother" (Leviticus 20:17): I have derived only the daughter of his father who is not the daughter of his mother, or the daughter of his mother who is not the daughter of his father. From where is it derived that one is liable for engaging in intercourse with his sister who is both the daughter of his mother and the daughter of his father? It is derived from a verse, as the verse states: "He has uncovered the nakedness of his sister" (Leviticus 20:17), indicating that one is liable for engaging in intercourse with any sister.

[111] The baraita continues: Even if the verse had not stated that one is liable for engaging in intercourse with his sister, i.e., one's sister with whom he has both parents in common, I have proof from an a fortiori inference: If the Torah punished an individual for engaging in intercourse with the daughter of his father who is not the daughter of his mother, or for engaging in intercourse with the daughter of his mother who is not the daughter of his father, is it not all the more so clear that he should be punished for engaging in intercourse with his sister who is both the daughter of his father and the daughter of his mother? From the fact that the Torah explicitly prohibited intercourse in that case and did not rely on the inference, you learn that one does not administer punishment based on an a fortiori inference.

[112] The baraita continues: We heard from that verse (Leviticus 20:17) the punishment for engaging in intercourse with one's sister with whom he has both parents in common. From where is the prohibition against engaging in those acts of intercourse derived? It is derived from a verse, as the verse states: "The nakedness of your sister, the daughter of your father or the daughter of your mother…you shall not uncover" (Leviticus 18:9). I have derived the prohibition against engaging in intercourse only with the daughter of his father who is not the daughter of his mother, or with the daughter of his mother who is not the daughter of his father. From where do I derive a prohibition against engaging in intercourse with his sister who is both the daughter of his father and the daughter of his mother? It is derived from a verse, as the verse states: "The nakedness of the daughter of your father's wife, born of your father; she is your sister" (Leviticus 18:11), indicating that engaging in intercourse with any sister is prohibited.

[113] The baraita continues: Even if the verse had not stated that engaging in intercourse with one's sister with whom he has both parents in common is forbidden, I have proof for this from an a fortiori inference: If one was prohibited from engaging in intercourse with the daughter of his mother who is not the daughter of his father, and with the daughter of his father who is not the daughter of his mother, is it not all the more so clear that he is prohibited from engaging in intercourse with his sister

who is both the daughter of his father and the daughter of his mother? You learn from this that one does not derive a prohibition based on an a fortiori inference.

[114] The baraita continues: From where is it derived that one does not administer punishment to those liable to receive lashes based on an a fortiori inference, and that the principle is not limited to capital punishment? The verse states a verbal analogy between the term “wicked” written with regard to those liable to be executed and the term “wicked” written with regard to those liable to receive lashes. With regard to those liable to be executed, it is written: “Who is wicked and deserves to die” (Numbers 35:31). With regard to those liable to receive lashes, it is written: “And it shall be if the wicked is deserving of lashes” (Deuteronomy 25:2).

[115] From where is it derived that one does not administer punishment to those liable to be exiled based on an a fortiori inference? It is derived by means of a verbal analogy between the term “murderer” written with regard to those who kill intentionally (see Numbers 35:21) and the term “murderer” written with regard to those who kill unwittingly (see Numbers 35:11). The conclusion is that one does not administer any punishment based on an a fortiori inference.

[116] § Apropos the dispute between the Sadducees and the Sages, it is taught in a baraita: Rabbi Yehuda ben Tabbai says in the form of an oath: I will not see the future consolation of the Jewish people if I did not as a member of the court kill a single conspiring witness, in order to eradicate this reasoning from the hearts of the Sadducees, who would say: The conspiring witnesses are executed only if they are rendered conspiring witnesses after the accused will be killed. Rabbi Yehuda ben Tabbai killed the conspiring witness while the accused remained alive.

[117] Shimon ben Shataḥ said to him: I will not see the consolation of the Jewish people if you did not shed thereby innocent blood, as the Sages said: Conspiring witnesses are not executed unless both of them are rendered conspiring witnesses, and they are not flogged unless both of them are rendered conspiring witnesses. In this case, only one was rendered a conspiring witness.

[118] Rabbi Yehuda ben Tabbai immediately accepted a commitment upon himself that he would issue a halakhic ruling only when he was before Shimon ben Shataḥ, to avoid mistakes in the future. And throughout all of Rabbi Yehuda ben Tabbai’s days he would tearfully prostrate himself on the grave of that witness whom he executed, to request forgiveness for having done so, and his voice was heard from a distance. And the people thought to say that it was the voice of the executed witness that was heard. Rabbi Yehuda ben Tabbai said to them: It is my voice. Know that this is so, as tomorrow, i.e., sometime in the future, he, referring to himself, will die, and his voice will no longer be heard.

[119] Rav Aḥa, son of Rava, said to Rav Ashi: The fact that the voice will cease after Rabbi Yehuda ben Tabbai’s death is inconclusive as proof that the voice is not that of the executed witness. Perhaps the reason that the voice of the executed person will no longer be heard is that he confronted Rabbi Yehuda ben Tabbai in trial before the heavenly court, obviating the need for crying from his grave. Alternatively, perhaps Rabbi Yehuda ben Tabbai appeased the executed witness in the World-to-Come, and there is silence because no grievances remained.

[120] MISHNA: It is written: “At the mouth of two witnesses or three witnesses shall he who is to die be executed” (Deuteronomy 17:6). The question is: If the testimony is valid with two witnesses, why did the verse specify that it is valid with three? Rather, it is to juxtapose and liken three to two: Just as three witnesses can render the two witnesses conspiring witnesses, so too, the two witnesses can render the three witnesses conspiring witnesses. And from where is it derived that two witnesses can

render even one hundred witnesses conspiring witnesses? It is derived from a verse, as the verse states: “Three witnesses.” Since the verse is obviously discussing witnesses, the term witnesses is superfluous, as it could have stated: Two or three. The term “witnesses” teaches that two witnesses can render a set of witnesses conspiring witnesses irrespective of their number.

121 Rabbi Shimon says that three witnesses are mentioned in the verse in order to teach: Just as two witnesses who testified that a person is liable to be executed are not killed for this testimony unless both of them are found to be conspiring witnesses, so too, three witnesses who testified together are not killed unless all three of them are found to be conspiring witnesses. And from where is it derived that the same halakha applies even to one hundred witnesses? It is derived from a verse, as the verse states: “Three witnesses.” The superfluous term “witnesses” teaches that the status of all witnesses who come to court as a single set of witnesses is that of one testimony with regard to this halakha.

122 Rabbi Akiva says: The third witness mentioned in this verse does not come for the judges to be lenient concerning him; rather, its mention comes for the judges to be stringent concerning him and to render his halakhic status like that of these two witnesses who testified with him. One could claim that since the testimony of the third witness is superfluous, as the testimony of the other two witnesses sufficed, the third witness and any other witnesses beyond the first two should be exempt. Therefore, the verse teaches that since he testified with them and was rendered a conspiring witness with them, he too is executed.

123 One can learn a moral from this halakha: And if the verse punished one who associates with transgressors with a punishment like the one received by the transgressors, even though his role in the transgression is ancillary, all the more so will God pay a reward to one who associates with those who perform a mitzva like the reward of those who perform the mitzva themselves, even though his role in performing the mitzva is ancillary.

124 The mishna cites another derivation based on the juxtaposition of two to three: And just as with regard to two witnesses, if one of them is found to be a relative or is otherwise disqualified, their entire testimony is voided, as it is no longer the testimony of two witnesses, so too, with regard to three witnesses who came to testify as one set, if one of them is found to be a relative or is otherwise disqualified, their entire testimony is voided, even though two valid witnesses remain. From where is it derived that the same halakha applies even in the case of one hundred witnesses? It is derived from a verse, as the verse states: “Witnesses.”

125 Rabbi Yosei says: In what case is this statement, that if one of the three witnesses is disqualified the entire testimony is voided, said? It is said with regard to cases of capital law, which are adjudicated stringently. But with regard to cases of monetary law, which are adjudicated more leniently, even if one of the witnesses is disqualified, the testimony will be validated with the testimony of the rest of the witnesses, and if it is sufficient the case can be adjudicated on that basis. Rabbi Yehuda HaNasi disagrees and says: If one of the three witnesses is disqualified the entire testimony is voided in both cases of monetary law and cases of capital law.

126 And when does one disqualified witness void the entire testimony? Only when the witnesses forewarned them before they performed the transgression, thereby demonstrating their desire to fill the role of witnesses in that case. But when they did not forewarn them, what shall two brothers do in a case where they, together with others, saw someone who killed a person? Will the murderer escape punishment because two relatives happened to be there at the time of the murder and their presence

voids the entire testimony? No, the testimony is voided by the presence of relatives or disqualified witnesses only when their intent was to testify. If that was not their intent, they do not void the testimony.

127 GEMARA: Apropos the statement in the mishna that the halakhic status of one hundred witnesses equals that of two witnesses with regard to the halakha of conspiring witnesses among other halakhot, Rava says: And that is their status only in a case where all the witnesses testified within the time required for speaking a short phrase. If their testimony extended over a longer period, the testimony of the witnesses does not constitute one testimony. Rav Aḥa of Difti said to Ravina: Now, what are the circumstances of the period of time indicated by the words: Within the time required for speaking a short phrase? It is a period whose duration is equivalent to the duration of the greeting of a student to a rabbi: Shalom alekha, rabbi, which means: Greetings to you, my teacher. The duration of the testimony of one hundred witnesses is always greater than the duration of that greeting. How, then, can one hundred witnesses testify within the time required for speaking a short phrase?

128 Ravina said to him: Rava means that each and every witness must begin testifying within the time required for speaking a short phrase after the other witness completes his testimony. The result is an uninterrupted series of testimonies that combine into a single testimony.

129 § The mishna teaches that Rabbi Akiva says: The third witness mentioned in this verse does not come for the judges to be lenient concerning him; rather, its mention comes for the judges to be stringent concerning him and to render his halakhic status like that of these two witnesses who testified with him. And just as with regard to two witnesses, if one of them was found to be a relative or otherwise disqualified their entire testimony is voided, the same is true for a set consisting of numerous witnesses. Rav Pappa said to Abaye: But if that is so, that a relative or other disqualified witness who witnesses an incident voids the entire testimony, the murdered victim should spare the accused from execution because the victim himself witnessed his own murder, and he is considered a disqualified witness because of his personal stake in the verdict. Therefore, the entire testimony should be voided. Abaye said to Rav Pappa: A murderer is executed only when he killed the victim from behind him and the victim did not witness his murder.

130 Rav Pappa said to Abaye: It is not uncommon for a murder to take place without the knowledge of the victim. But in a case where one is sentenced to death for sodomizing a male, why is he executed? The one who was sodomized should spare the accused from execution. Here too, since the victim witnessed the sodomy, and he is disqualified from bearing witness due to his personal stake in the verdict, the entire testimony should be voided. The Gemara answers: The sodomizer, too, is executed only when he sodomized the victim from behind him, and the victim did not witness the act of sodomy.

131 Rav Pappa said to Abaye: Although it is possible to construct a scenario where the victim did not witness the act, it is difficult to construct a scenario where the perpetrator did not witness the act. Therefore, the murderer and the one who sodomizes should spare themselves from execution and void the testimony because they witnessed the act, and they are disqualified from bearing witness on the grounds that a person is not capable of testifying about himself. Abaye was silent and was unable to respond. When Rav Pappa came before Rava with this question, Rava said to him: It is written: “According to two witnesses or three witnesses shall a matter be established” (Deuteronomy 19:15);

it is with regard to those who establish a matter as legal fact in court that the verse is speaking. It is only witnesses who are relatives or otherwise disqualified who void the entire testimony, not subjects of the matter. Therefore, there is no basis for the questions of Rav Pappa.

[132] § The mishna teaches that Rabbi Yosei says: In what case is this statement said…what shall two brothers do in a case where they, together with others, saw someone who killed a person? Rabbi Yosei says that it is only with regard to cases of capital law that one disqualified witness voids the entire testimony, and Rabbi Yehuda HaNasi says that this is the halakha even with regard to cases of monetary law. The mishna continues and says that it is only if the witnesses forewarned the perpetrators that they are classified as witnesses capable of voiding the entire testimony. The Gemara poses a question: How do we, the members of the court, formulate what we say to the witnesses in order to ascertain whether their intent was to testify?

[133] Rava says: This is what we say to the witnesses who come to the court: Did you come to observe the proceedings or did you come to testify? If the witnesses say they came to testify, then if one of them is found to be a relative or otherwise disqualified, their entire testimony is voided. If the witnesses say that they came to observe, in that situation, what shall two brothers do in a case where they saw someone who killed a person? It is certainly unusual for those who witnessed the murder to not even attend the court hearing.

[134] With regard to the dispute in the mishna, it was stated that there is an amoraic dispute: Rav Yehuda says that Shmuel says: The halakha is in accordance with the opinion of Rabbi Yosei, and Rav Naḥman says: The halakha is in accordance with the opinion of Rabbi Yehuda HaNasi.

[135] MISHNA: In a case where there were two witnesses observing an individual violating a capital transgression from this window in a house, and two observing him from that window in a house, and one person was forewarning the transgressor in the middle between the two sets of witnesses, the halakha depends on the circumstances. In a situation where some of the witnesses observing from the two windows see each other, the testimony of all these witnesses constitutes one testimony, but if they do not see each other, the testimony of these witnesses constitutes two independent testimonies. Therefore, as two independent sets of witnesses, if one of the sets was found to be a set of conspiring witnesses, while the testimony of the other set remained valid, both he, the one accused of violating the capital transgression, and they, the conspiring witnesses, are executed, and the second set, whose testimony remained valid, is exempt.

[136] Rabbi Yosei says: Transgressors are never executed unless his two witnesses are the ones forewarning him, as it is stated: “At the mouth of two witnesses…he who is to be put to death shall die” (Deuteronomy 17:6), from which it is derived that it is from the mouths of the two witnesses that the accused must be forewarned, and forewarning issued by someone else is insufficient. Alternatively, from the phrase “at the mouth of two witnesses” one derives that the judges must hear the testimony directly from the witnesses, and the Sanhedrin will not hear testimony from the mouth of an interpreter.

[137] GEMARA: Rav Zutra bar Tuvya says that Rav says: From where is it derived with regard to disjointed testimony, in which each of the witnesses saw the incident independent of the other, that it is not valid? It is derived from a verse, as it is stated: “He shall not die at the mouth of one witness” (Deuteronomy 17:6). The exposition is as follows: What is the meaning of “one witness”? If we say that it means one witness literally, we learn it from the first portion of the verse: “At the mouth of

two witnesses,” indicating that the testimony of fewer than two witnesses is not valid. Rather, what is the meaning of “one witness”? It means that the accused is not executed based on the testimony of people who witnessed an incident with one witness here and one witness elsewhere.

[138] The Gemara notes: This is also taught in a baraita: It is written: “He shall not die at the mouth of one witness,” from which it is derived to include the halakha that in the case of two witnesses who observe an individual violating a capital transgression, one from this window and one from that window, and they do not see each other, that they do not join to constitute a set of witnesses. Moreover, even if they witnessed the same transgression from the same perspective, watching the incident not at the same time but one after the other in one window, they do not join to constitute a set of witnesses.

[139] Rav Pappa said to Abaye: Why is it necessary to mention both cases? Now if in the case where one witness views the incident from this window and one witness views the incident from that window, where this witness sees the entire incident and that witness sees the entire incident, you say that they do not join to testify together as two witnesses, if they see the incident one after the other, where this witness sees half the incident and that witness sees half the incident, is it necessary to say that the witnesses do not join together? Abaye said to him: It is necessary to state this halakha only with regard to a case where they witnessed one who engages in intercourse with a forbidden relative, which is a continuing act, and each of the witnesses saw sufficient behavior to render the transgressor liable. The tanna of the baraita teaches that even in that case, they do not join to constitute a set of witnesses.

[140] Apropos witnesses joining to constitute a set of witnesses, Rava says: Even if the witness in either window is unable to see the witness in the other window, if the witness in each window sees the one who is forewarning the accused, or if the one who is forewarning the accused could see the two disjointed witnesses, they join to constitute a set of witnesses. Rava says: The one forewarning the accused of whom the Sages spoke need not be a third witness, but even if the victim forewarns the murderer from his own mouth, and even if the forewarning emerged from the mouth of a demon, meaning the source of the forewarning is unknown, the forewarning is legitimate.

[141] Rav Naḥman says: Disjointed testimony of two witnesses, each of whom observed an incident independent of the other, is valid in cases of monetary law, as it is written: “He shall not die at the mouth of one witness” (Deuteronomy 17:6). This indicates that it is only with regard to cases of capital law that disjointed testimony is not valid, but with regard to cases of monetary law that testimony is valid.

[142] Rav Zutra objects to this: But if that is so, and disjointed testimony is effective in certain cases, in cases of capital law disjointed testimony should spare the accused from execution. Since one must exploit every avenue possible to prevent executions, in a case where some of the disjointed witnesses were rendered conspiring witnesses, the entire testimony should be voided on their account. Why, then, did we learn in the mishna that if one set witnessed the capital transgression from one window and one set from the other window, and one set was found to be a set of conspiring witnesses, he, the accused, and they, the conspiring witnesses, are executed? The Gemara comments: Indeed, that is difficult according to Rav Naḥman.

[143] § The mishna teaches that Rabbi Yosei says: Perpetrators are never executed unless his two witnesses are the ones forewarning him. Rav Pappa said to Abaye: And is Rabbi Yosei of the opinion

that this line of reasoning is correct, and forewarning by the witnesses is indispensable? But didn't we learn in a mishna (9b): Rabbi Yosei says: An enemy who commits murder cannot claim that he killed the victim unwittingly. Rather, he is executed even if there was no forewarning, due to the fact that his halakhic status is like that of one who is cautioned and forewarned. Apparently, Rabbi Yosei does not always require that there be forewarning.

144 Abaye said to him: That statement in the mishna you cited that is attributed to Rabbi Yosei is actually the opinion of Rabbi Yosei bar Yehuda, as it is taught in a baraita: Rabbi Yosei bar Yehuda says: A ḥaver does not require forewarning, as forewarning was instituted only to distinguish between one who commits a transgression unwittingly and one who does so intentionally. A ḥaver, who is a Torah scholar, does not require forewarning to distinguish between them. Rabbi Yosei ben Ḥalafta, whose opinion is cited in the mishna here, is of the opinion that forewarning is a necessary prerequisite to executing someone who is judged liable, and that forewarning must be issued by the witnesses.

145 § The mishna teaches: Alternatively, from the phrase in the verse "at the mouth of two witnesses" one derives that the Sanhedrin will not hear testimony from the mouth of an interpreter. The Gemara relates: There were certain people who spoke a foreign language who came before Rava for judgment. Rava installed an interpreter between them and heard the testimony through the interpreter. The Gemara asks: And how did he do so? But didn't we learn in the mishna that the Sanhedrin will not hear testimony from the mouth of an interpreter? The Gemara answers: Rava knew what they were saying, as he understood their language, but he did not know how to respond to them in their language. He posed questions through the interpreter but understood the answers on his own, as required by the mishna.

146 Apropos disqualified witnesses, the Gemara relates: Two people called Ile'a and Tuviyya, who signed as witnesses on a promissory note, were relatives of the guarantor of the loan. Rav Pappa thought to say that since vis-à-vis the borrower and lender these witnesses are distant and are not related, their testimony on the document is valid. Rav Huna, son of Rav Yehoshua, said to Rav Pappa: If the borrower does not have the means to repay the loan, doesn't the lender pursue the guarantor to claim his debt? Therefore, the guarantor is party to the loan, and his relatives are not eligible to serve as witnesses on the promissory note.

147 MISHNA: This mishna continues to discuss the matter of testimony in the case of one who is liable to be executed. Concerning one whose verdict was delivered and he was sentenced to death and he fled, and he then came before the same court that sentenced him, they do not overturn his verdict and retry him. Rather, the court administers the previous verdict. Consequently, in any place where two witnesses will stand and say: We testify with regard to a man called so-and-so that his verdict was delivered and he was sentenced to death in the court of so-and-so, and so-and-so and so-and-so were his witnesses, that person shall be executed on the basis of that testimony.

148 The mishna continues: The mitzva to establish a Sanhedrin with the authority to administer capital punishments is in effect both in Eretz Yisrael and outside Eretz Yisrael. A Sanhedrin that executes a transgressor once in seven years is characterized as a destructive tribunal. Since the Sanhedrin would subject the testimony to exacting scrutiny, it was extremely rare for a defendant to be executed. Rabbi Elazar ben Azarya says: This categorization applies to a Sanhedrin that executes a transgressor once in seventy years. Rabbi Tarfon and Rabbi Akiva say: If we had been members of

the Sanhedrin, we would have conducted trials in a manner whereby no person would have ever been executed. Rabban Shimon ben Gamliel says: In adopting that approach, they too would increase the number of murderers among the Jewish people. The death penalty would lose its deterrent value, as all potential murderers would know that no one is ever executed.

[149] GEMARA: The Gemara infers: It is in the case of one who comes before the same court that they do not overturn the verdict, but if one comes before a different court they overturn the verdict and retry the case. The Gemara asks: Isn't it taught in the latter clause of the mishna: Any place where two witnesses will stand and say: We testify with regard to a man called so-and-so that his verdict was delivered and he was sentenced to death in the court of so-and-so, and so-and-so and so-and-so were his witnesses, that person shall be executed on the basis of that testimony? This indicates that the verdict is not overturned and the defendant is not retried even before another court.

[150] Abaye said: This apparent contradiction is not difficult, as here, in the first clause of the mishna, from which it was inferred that the second court overturns the initial verdict, it is referring to a case where the initial verdict was outside Eretz Yisrael and the defendant came before a court in Eretz Yisrael. There, in the latter clause, which indicates that the second court sustains the initial verdict and does not retry the defendant, it is referring to a case where the initial verdict was in Eretz Yisrael, and the case subsequently came before a court outside Eretz Yisrael.

[151] This is as it is taught in a baraita, that Rabbi Yehuda ben Dostai says in the name of Rabbi Shimon ben Shataḥ: If a convicted defendant fled from Eretz Yisrael to outside Eretz Yisrael one does not overturn his verdict. Rather, they implement the initial verdict. But if one fled from outside Eretz Yisrael to Eretz Yisrael, one overturns his verdict and the defendant is retried. Perhaps, due to the merit of Eretz Yisrael, the court will discover a reason to exonerate him.

[152] § The mishna teaches: The mitzva to establish a Sanhedrin with the authority to administer capital punishments is in effect both in Eretz Yisrael and outside Eretz Yisrael. The Gemara clarifies: From where are these matters derived? It is as the Sages taught: It is written with regard to the sentencing of murderers: "And these shall be for you as a statute of justice for your generations in all your dwelling places" (Numbers 35:29), from which we learn that the mitzva to establish a Sanhedrin is in effect both in Eretz Yisrael and outside Eretz Yisrael.

[153] If so, what is the meaning when the verse states: "Judges and officers you shall appoint in all your gates" (Deuteronomy 16:18), which indicates that the mitzva to establish a Sanhedrin is in effect where the gates are yours, i.e., only in Eretz Yisrael? The explanation is as follows: In your gates, in Eretz Yisrael, you establish courts in each and every district and in each and every city, and outside Eretz Yisrael you establish courts in each and every district, but you do not establish courts in each and every city. The requirement to establish courts in every city is only in Eretz Yisrael.

[154] § The mishna teaches: A Sanhedrin that executes once in seven years is characterized as a destructive tribunal. Rabbi Elazar ben Azarya says: This categorization applies to a Sanhedrin that executes once in seventy years. A dilemma was raised before the Sages: Is Rabbi Elazar ben Azarya saying that a Sanhedrin that executes once in seventy, rather than seven, years is characterized as a destructive tribunal? Or perhaps he is saying that standard conduct is for a Sanhedrin to execute once in seventy years, and only if it executes more than one person during that period is it characterized as destructive? The Gemara concludes: The dilemma shall stand unresolved.

155 The mishna teaches that Rabbi Tarfon and Rabbi Akiva say: If we had been members of the Sanhedrin, we would have conducted the trials in a manner where no person would have ever been executed. The Gemara asks: How would they have acted to spare the accused from execution if witnesses testified that he intentionally committed murder? Rabbi Yoḥanan and Rabbi Elazar both say that they would have asked the witnesses: Did you see whether the accused killed a tereifa, i.e., a person with a condition that would lead to his death within twelve months, or if he killed someone who was intact? The halakhic status of a tereifa is like that of one who is dead, in the sense that one who kills him is not executed. Since no witness can be certain with regard to the victim's physical condition, they would invalidate any testimony to a murder.

156 Rav Ashi said: Even if you say that they examined him postmortem and he was intact the testimony could be challenged, as perhaps in the place that the sword pierced the victim's body there was a perforation in one of the organs that renders the person a tereifa, but which was rendered undetectable by the wound caused by the sword.

157 The Gemara asks: With regard to one who engages in intercourse with a forbidden relative, how would they have acted to spare the accused from execution? Abaye and Rava both say that they would have asked the witnesses: Did you see the intercourse, like a brush entering into a tube? Since witnesses rarely witness the act that closely, one could claim that the testimony is incomplete. The Gemara asks: And concerning the Rabbis, who disagree with Rabbi Tarfon and Rabbi Akiva, how would they have adjudicated that case? The Gemara answers: They hold in accordance with the statement of Shmuel, as Shmuel says: In cases involving adulterers one can testify and convict them from when they will appear as adulterers, without any need for him to witness the act in graphic detail.

Chapter 2

1 MISHNA: These are the people who are exiled: Anyone who kills a person unintentionally. Whether one is liable to be exiled depends on the particular circumstances of the case: If one was rolling a roller to smooth the covering of mortar that he applied to seal his roof and the roller fell upon a person and killed him, or if one was lowering a barrel from the roof and it fell on a person and killed him, or if he was descending a ladder and he fell on a person and killed him, in all of these cases, he is exiled. But if one was pulling a roller toward him and it fell from his hands upon a person and killed him, or if one was lifting a barrel and the rope was severed and it fell upon a person and killed him,

2 or if one was climbing a ladder and he fell upon a person and killed him, that unintentional murderer is not exiled. This is the principle: Any murderer who kills unintentionally through his downward motion is exiled, and one who kills not through his downward motion is not exiled.

3 GEMARA: The Gemara asks with regard to the principle that one is exiled only if he killed unintentionally through a downward motion: From where are these matters derived? It is derived from a verse, as Shmuel says that the verse states with regard to those exiled to a city of refuge: "And he cast it down upon him and dies" (Numbers 35:23), indicating that one is not liable to be exiled unless the item falls in a downward motion.

[4] The Sages taught in a baraita derivations from verses written with regard to the unintentional murderer: “Unintentionally” (Numbers 35:11); to exclude from exile the one who kills intentionally. “Unawares” (Deuteronomy 19:4); to exclude from exile the one who kills with intent.

[5] The Gemara asks: Why is a derivation necessary to exclude one who kills intentionally? It is obvious that he is not exiled; he is subject to the death penalty. Rather, Rava said: Say that the type of intentional killer referred to is meant to exclude the one who says that it is permitted to kill the victim. The verse teaches that this person is neither executed nor is he exiled. Abaye said to Rava: If the reference is to one who says that it is permitted, he is a victim of circumstances beyond his control, as he did not know any better. How could that be characterized as intentional? Rava said to him: That is not a problem, as I say that with regard to one who says that it is permitted, his action borders on the intentional.

[6] The baraita states: “Unawares”; to exclude from exile the one who kills with intent. The Gemara asks: With intent? It is obvious that he is not exiled; he is subject to the death penalty. Rabba said: The reference is to exclude the one who acted with the intent to kill an animal and he killed a person inadvertently, or one who acted with the intent to kill a gentile and he killed a Jew, or one who acted with the intent to kill a non-viable newborn and he killed a viable newborn.

[7] The Sages taught in a baraita based on the verse written with regard to an unintentional murderer: “And if suddenly, without enmity, he thrust him or cast upon him any vessel without lying in wait” (Numbers 35:22). “If suddenly”; this serves to exclude one who unintentionally kills another that he encounters at a corner. “Without enmity”; this serves to exclude one who unintentionally kills his enemy, as even if the act appears unintentional, the presumption is that it was not. “He thrust him”; this indicates that even if he unintentionally shoved him with his body and killed him, he is liable to be exiled. “Or cast upon him”; this serves to include the case of a downward motion that is for the purpose of an upward motion, e.g., if one bent down in order to lift an item from the ground, and in the process of bending down he killed another unintentionally, he is exiled. “Without lying in wait”; this serves to exclude one who had the intent to throw a stone to this side and it went to a different side and killed a person.

[8] And it is written with regard to an unintentional murderer: “And who did not lie in wait” (Exodus 21:13); this serves to exclude one who had intent to throw a stone two cubits and he inadvertently threw it four cubits and killed a person. And it is written concerning an unintentional murderer: “And as one who goes with his neighbor into the forest” (Deuteronomy 19:5), from which it is derived: Just as a forest is ownerless property, and there is permission for the victim and for the assailant to enter there, so too, unintentional murder that occurs in any place where there is permission for the victim and for the assailant to enter there, is punishable with exile. The unintentional murder of one who entered the assailant’s property without his permission is not cause for the murderer to be exiled.

[9] § The Gemara cites a related discussion. Rabbi Abbahu raised a dilemma before Rabbi Yoḥanan: If one was ascending a ladder and the rung was displaced from beneath him, and the rung fell and killed another, what is the halakha with regard to his being exiled? In a case like this, is it considered killing in an upward motion, as he was climbing the ladder, and therefore he is exempt, or is it considered killing in a downward motion, as when he stepped on the rung he pushed it down, and therefore he is liable? Rabbi Yoḥanan said to him: In the scenario you described, you already touched upon the case in the baraita cited above, the case of unintentional murder that is performed with a

downward motion that is for the purpose of an upward motion. The ruling in the baraita is that one is liable to be exiled in that case.

[10] Rabbi Abbahu raised an objection to the explanation of Rabbi Yoḥanan from the mishna, which states: This is the principle: Any murderer who kills unintentionally through his downward motion is exiled, and one who kills not through his downward motion is not exiled. Rabbi Abbahu clarifies: With regard to the phrase in the mishna: One who kills not through his downward motion, what case that was not already specified does this serve to add? Is it not to add a case like this, and to teach that even though the death was caused by the falling rung, since the assailant was ascending the ladder at the time, he is not exiled? Rabbi Yoḥanan replied: And according to your reasoning that this apparently extraneous phrase serves to include a case that is not addressed explicitly, with regard to the previous phrase in the mishna: Any murderer who kills unintentionally through his downward motion, what case that was not already specified does this serve to add?

[11] Rather, one may say that it serves to add the case of a butcher. Here too, in the latter clause, the phrase: One who kills not through his downward motion, serves to add the case of a butcher, as it is taught in a baraita: With regard to a butcher who was chopping animal limbs with a cleaver, one Sage taught that if he killed a person in front of him, he is liable to be exiled; if he killed a person behind him, he is exempt. And it is taught in another baraita: If he killed a person behind him, he is liable; if he killed a person in front of him, he is exempt. And it is taught in another baraita: Both if he killed a person in front of him and if he killed a person behind him, he is liable. And it is taught in another baraita: Both if he killed a person in front of him and if he killed a person behind him, he is exempt. And although these baraitot appear contradictory, the apparent contradiction is not difficult.

[12] When a butcher is about to cut the meat of an animal, he raises the cleaver and lowers it behind him in order to create momentum that will generate power. Then he raises the cleaver from behind him and brings it down forcefully onto the meat. In that process, the butcher lowers the cleaver in front of him and behind him and raises the cleaver both in front of him and behind him. Each of the four baraitot addresses a different stage of the process. Here, the baraita that says he is liable if he unintentionally murders a person in front of him and exempt if he unintentionally murders a person behind him, is referring to a case where the butcher swings the cleaver with a downward motion in front of him and an upward motion behind him. There, the baraita that says he is exempt if he unintentionally murders a person in front of him and liable if he unintentionally murders a person behind him, is referring to a case where the butcher swings the cleaver with an upward motion in front of him and a downward motion behind him.

[13] In addition, here, the baraita where he is liable in both instances, is referring to a case where the butcher swings the cleaver with a downward motion both in front of him and behind him. There, the baraita where he is exempt in both instances, is referring to a case where the butcher swings the cleaver with an upward motion both in front of him and behind him. The two phrases that constitute the principle in the mishna teach that the determining factor is whether the motion is upward or downward, not whether it is in front of him or behind him. This is Rabbi Yoḥanan’s reply to the objection of Rabbi Abbahu.

[14] The Gemara suggests: Let us say that Rabbi Abbahu’s dilemma with regard to unintentional murder committed by one climbing a ladder is the subject of a dispute between tanna’im: If one was ascending a ladder and its rung was displaced from beneath him, it is taught in one baraita that he is

liable, and it is taught in another baraita that he is exempt. What, is it not that the tanna’im disagree with regard to this, as one Sage holds: It is unintentional murder in a downward motion, and therefore he is liable, and one Sage holds: It is unintentional murder in an upward motion, and therefore he is exempt?

[15] The Gemara rejects that parallel: No, that is not the point of contention, as everyone agrees that it is an upward motion, and there is no dispute between the Sages in the baraitot. Nevertheless, the apparent contradiction between them is not difficult, as here, in the baraita that rules him liable, the reference is to payment of damages, as with regard to one’s liability to pay damages, there is no difference between upward and downward motions, or between intentional and unwitting damage; and there, in the baraita that rules him exempt, the reference is to exile, from which one who murders unintentionally in an upward motion is exempt by Torah edict.

[16] If you wish, say instead that in both this baraita and that baraita the reference is to exile, and it is not difficult, as this baraita, where the ruling is that he is liable, is referring to a case where the rung of the ladder was worm infested and he should have been cautious before stepping on it, and that baraita, where the ruling is that he is exempt, is referring to a case where the rung was not worm infested, as in that case it is murder due to circumstances beyond his control, as he could not have anticipated that the rung would be displaced.

[17] And if you wish, say that in both this baraita and that baraita the reference is to a rung that was not worm infested, and it is not difficult, as this baraita, where the ruling is that he is exempt, is referring to a case where the rung was tightly inserted into the ladder, and therefore he could not have foreseen that it would be displaced, and that baraita, where the ruling is that he is liable, is referring to a case where the rung was not tightly inserted and he should have anticipated its displacement.

[18] MISHNA: If the blade of an ax or hatchet was displaced from its handle, and it flew through the air and killed a person, Rabbi Yehuda HaNasi says: He is not exiled, and the Rabbis say: He is exiled. If part of a tree that is being split flew through the air and killed a person, Rabbi Yehuda HaNasi says: The murderer is exiled, and the Rabbis say: He is not exiled.

[19] GEMARA: It is taught in a baraita that Rabbi Yehuda HaNasi said to the Rabbis: Is it stated in the verse: And the blade displaces from its wood handle? But isn’t it stated: “And the blade displaces from the wood” (Deuteronomy 19:5), indicating that it is a wood chip from the tree that causes the death of the person? And furthermore: Etz is stated below: “And the blade displaces from the etz,” and etz is stated above, earlier in the same verse: “And his hand wields the ax to cut down the etz.” Just as the term etz stated above is referring to wood from the tree that is being split, so too, the term etz stated below is referring to wood from the tree that is being split, not to the wood of the ax handle.

[20] Rav Ḥiyya bar Ashi says that Rav says: And both of them, Rabbi Yehuda HaNasi and the Rabbis, interpreted one verse to arrive at their rulings. The verse states: “And the blade displaces [venashal] from the wood.” Rabbi Yehuda HaNasi holds: The tradition of the manner in which the verses in the Torah are written is authoritative, and one derives halakhot based on the manner in which the words are written, not on the manner in which they are vocalized. And it is written venishel, a transitive verb, indicating that the blade displaced wood chips from the tree. And the Rabbis maintain: The vocalization of the Torah is authoritative, and we read the term as venashal, an intransitive verb indicating that the blade is displaced from its wooden handle and kills a person.

[21] The Gemara asks: And does Rabbi Yehuda HaNasi hold that the tradition of the manner in which the verses in the Torah are written is authoritative?

[22] But doesn't Rav Yitzḥak, son of Rabbi Yosef, say that Rabbi Yoḥanan says: Rabbi Yehuda HaNasi, and Rabbi Yehuda ben Roetz, and Beit Shammai, and Rabbi Shimon, and Rabbi Akiva all hold that the vocalization of the Torah is authoritative, not the manner in which it is written? How can Rav Ḥiyya bar Ashi ascribe Rabbi Yehuda HaNasi's ruling to the contrary opinion? The Gemara answers: That is the reason that Rabbi Yehuda HaNasi said to the Rabbis: And furthermore. Rabbi Yehuda HaNasi said to them: If the tradition of the manner in which the verses in the Torah are written is authoritative, that supports my interpretation of the verse; if not, there is an additional proof.

[23] Rav Pappa said: In the case of one who cast a clod of earth onto a palm tree, and he severed dates from the tree, and the dates went upon a person and killed him, we have arrived at the dispute between Rabbi Yehuda HaNasi and the Rabbis in a case where one was splitting wood and a wood chip flew through the air and killed a person. In that case, Rabbi Yehuda HaNasi deems him liable to be exiled, and the Rabbis deem him exempt from exile. The Gemara asks: Isn't that obvious? The cases are identical. What novel element is Rav Pappa introducing? The Gemara answers: The parallel between the cases drawn by Rav Pappa is necessary. Lest you say that these severed dates were not propelled by the force of his action but are like an item propelled by a force generated by the force of his action, and even Rabbi Yehuda HaNasi would concede that in that case he is exempt from exile, Rav Pappa teaches us that the dates are considered to have been severed by the force of his action.

[24] The Gemara asks: But according to Rabbi Yehuda HaNasi, how can you find circumstances of a force generated by the force of his action where he would be exempt from exile? The Gemara answers: It can be found in a case where one cast a clod of earth and it struck a branch of the palm tree, and the branch, propelled by the clod, proceeded to strike a cluster of dates [likhevasa] and severed the dates from the branch they were on and the dates proceeded to kill a person.

[25] MISHNA: One who threw a stone into the public domain and killed a person is exiled. Rabbi Eliezer ben Ya'akov says: If after the stone left his hand the other person placed his head out into the public domain and received a blow from the stone, he is exempt, as when he cast the stone into the public domain there was no one there.

[26] In the case of one who threw the stone into his courtyard and killed a person, if the victim had permission to enter into there, the murderer is exiled, but if not, he is not exiled, as it is stated with regard to the cities of refuge: "And as one who goes with his neighbor into the forest" (Deuteronomy 19:5), from which it is derived: Just as with regard to a forest, the victim and the assailant both have equal permission to enter there, so too, with regard to all places that the victim and the assailant have permission to enter there, the killer is liable. This serves to exclude the courtyard of the homeowner, where the victim and the assailant do not both have permission to enter there. Since the victim had no right to enter his courtyard, the unintentional murderer is exempt from exile.

[27] Abba Shaul says: Another halakha can be derived from that verse: Just as the cutting of wood that is mentioned in the verse is optional, so too, all those liable to be exiled are examples of cases where the unintentional murderer was engaged in an activity that is optional. This serves to exclude a father who strikes his son, and a teacher who oppresses his student, and an agent of the court deputized to flog transgressors. If, in the course of performing the mitzva with which they are charged, they

unintentionally murdered the son, the student, or the person being flogged, respectively, they are exempt.

[28] GEMARA: The mishna teaches: One who threw a stone into the public domain and killed a person is exiled. The Gemara asks: If he threw the stone into the public domain, why is he exiled? He is an intentional murderer. He knows that there are generally people in the public domain and is aware that he is likely to harm someone with the stone. Rav Shmuel bar Yitzḥak says: The reference in the mishna is not to one who threw a stone for no reason; rather, it is a case where one is demolishing his wall, and one of the stones struck a person. The Gemara counters: That too is intentional, as he should have examined the other side of the wall to determine if there was anyone there. The Gemara answers: It is a case where one is demolishing his wall at night, when passersby are scarce. The Gemara asks: At night too he is required to examine the other side of the wall to determine if there is anyone there, as although it is uncommon, people are apt to walk through a public domain at all hours.

[29] The Gemara answers: The reference in the mishna is to a case where one demolishes his wall into a scrap heap, where there is no reasonable expectation to find anyone there, as it is located out of the way. The Gemara asks: What are the circumstances of this scrap heap? If it is frequented by the multitudes because it is utilized as a bathroom, he is negligent; if it is not frequented by the multitudes, although it is a public domain in the sense that it is not private property, he is a victim of circumstances beyond his control, as there was no reason to consider the possibility that someone was there.

[30] Rav Pappa said: It is necessary to state this halakha only in the case of a scrap heap that is utilized for people to defecate there at night but is not utilized for people to defecate there during the day, but it happens on occasion that one will sit there and defecate during the day. One who demolishes his wall into the scrap heap during the day is neither negligent, as the scrap heap is not utilized for people to defecate there during the day, nor is he a victim of circumstances beyond his control, as it happens on occasion that one will sit there and defecate during the day, which he should have considered. Therefore, his status is that of an unintentional murderer who is liable to be exiled.

[31] § The mishna teaches that Rabbi Eliezer ben Ya’akov says: If after the stone left his hand the other person placed his head out into the public domain and received a blow from the stone, he is exempt. The Gemara cites a related baraita. The Sages taught that it is written: “And the blade displaces from the wood and finds his neighbor and he dies” (Deuteronomy 19:5), from which it is inferred: “And finds”; this serves to exclude one who presents himself and is thereby killed by the stone. From here Rabbi Eliezer ben Ya’akov says: If after the stone left his hand the other person placed his head out into the public domain and received a blow from the stone, the murderer is exempt.

[32] The Gemara asks: Is that to say that the term “and finds” indicates an item that was there initially, prior to the incident in question? And the Gemara raises a contradiction from that which is written with regard to one who seeks to redeem an ancestral field that he sold: “And he acquires the means and finds sufficient funds for his redemption” (Leviticus 25:26). The term “and finds” serves to exclude one who, in order to accrue funds to redeem his field, sells a field that was found in his possession when he originally sold the field. It means that he may not sell land that he owns in a distant place and redeem land that he owns in a proximate place, or sell a low-quality tract of land and redeem with the funds accrued from that sale high-quality land. One may not exploit his right to

redeem his land for his own advantage. This baraita indicates that the term “and finds” indicates an item that was not there at the time but presents itself later.

[33] Rava said: This is not difficult, as here, with regard to exile, the term is interpreted in keeping with the context of the verse, and there, with regard to the redemption of land, the term is interpreted in keeping with the context of the verse. There, the term is interpreted in keeping with the context of the verse. The term “and finds” is similar to the phrase that precedes it: “And he acquires the means.” Just as the meaning of the phrase “he acquires the means” is that he acquires the means from now, as had he possessed the means beforehand he would not have sold his ancestral field at all, so too, the meaning of the term “and finds” is also that he finds sufficient funds from now and no earlier. Here, with regard to exile, the term is interpreted in keeping with the context of the verse, as the term “and finds” is similar to a forest: Just as a forest is an entity that is there initially, so too, the term “and finds” also is referring to an entity that is there initially.

[34] § The mishna teaches: One who throws a stone, etc. Abba Shaul derives from the verse: “And as when one goes with his neighbor into the forest” (Deuteronomy 19:5): Just as the cutting of wood mentioned in the verse is optional, so too, all those liable to be exiled are in cases where the unintentional murderer was engaged in an activity that is optional. One of the Sages said to Rava: From where do you know that the derivation is from the cutting of wood for a purpose that is optional? Perhaps the derivation is from the cutting of wood for the purpose of building a sukka or from cutting wood for the arrangement of wood on the altar, both of which are obligatory, since they are mitzvot, and even so the Merciful One states: Let him be exiled. Rava said to him: Since if one found wood already cut he does not cut other wood, as in that case it is not a mitzva to cut, now, when there is no wood cut as well, although he is cutting wood to facilitate fulfillment of a mitzva, the act of cutting the wood itself is not a mitzva.

[35] Ravina raised an objection to the opinion of Rava from a clause of the mishna that states that the example of the forest serves to exclude a father who strikes his son, and a teacher who oppresses his student, and an agent of the court. Let us say with regard to a father who strikes his son: Since if the son was learned, it is not a mitzva to strike him, now, in a case where the son is not learned and the father strikes him to facilitate his education too, it is not a mitzva, and therefore he should be exiled. Rava replied: There, even though the son is learned, it is a mitzva to strike him from time to time, as it is written: “Chastise your son, and he will give you rest; and he will give delight to your soul” (Proverbs 29:17).

[36] Rava then said: That which I said is nothing, as there is a different proof that the verse is not referring to cutting wood in fulfillment of a mitzva. It is written: “And as when one [ve’asher] goes with his neighbor into the forest.” Based on the term asher, which indicates that the entering into the forest may or may not occur, what is the nature of the forest mentioned in the verse? It is a place where if one wants to, he enters the forest, and if one wants to, he does not enter. And if it enters your mind that the verse is referring to one who cuts wood to fulfill a mitzva, would it suffice if he did not enter the forest? He must enter the forest to fulfill the mitzva.

[37] Rav Adda bar Ahava said to Rava: Is it so that wherever the term asher is written in the Torah it is a case where if he wants to he does so, and it is not referring to a mitzva or an obligation? If that is so, that which is written: “And a man who [asher] becomes impure and does not purify himself, and that soul shall be excised…as he has impurified the Sanctuary of God” (Numbers 19:20), can be

referring only to a case where if he wants to he becomes impure, and if he wants to, he does not become impure. But in the case of a corpse with no one to bury it [met mitzva], where it would not suffice for him not to become impure in the process of burying it, would you say: So too, he is exempt from the punishment of karet if he enters the Temple in a state of impurity?

[38] Rava replied: There it is different, as the verse states with regard to one impure with impurity imparted by a corpse:

[39] "He shall be impure" (Numbers 19:13), indicating that the same halakhot apply in any case, unrelated to the manner in which he became impure.

[40] The Gemara challenges: He requires that verse for a different derivation, as that which is taught in a baraita: The phrase "He shall be impure" serves to include one who immersed that day and whose purification process will be completed at nightfall. If he enters the Temple before nightfall, he is also liable to receive karet. The phrase later in that verse: "His impurity is upon him," serves to include one who has not yet brought an atonement offering to complete the purification process, e.g., a leper or a zav. Rava said to Ravina: I said that the halakha that one rendered impure by a met mitzva is liable to receive karet is derived from the extraneous term "yet," in the phrase later in that same verse: "His impurity is yet upon him," which indicates that one is liable for entering the Temple in a state of impurity regardless of the manner in which he became impure. That is one version of the discussion.

[41] Some teach this exchange with regard to this baraita: "In plowing and in harvest you shall rest" (Exodus 34:21). Rabbi Akiva says: This verse is referring to the Sabbatical Year. The Torah does not need to state the prohibition against plowing during the Sabbatical Year or harvesting during the Sabbatical Year, as it is already stated: "You shall neither sow your field, nor prune your vineyard" (Leviticus 25:4). What, then, is derived from this verse? Rather, it is derived that even plowing on the eve of the Sabbatical Year, which facilitates growth of crops when the Sabbatical Year enters, and the harvest of crops that grew during the Sabbatical Year, which emerged and were reaped after the conclusion of the Sabbatical Year, are prohibited.

[42] Rabbi Yishmael says: This verse in Exodus is not referring to the Sabbatical Year; rather, the reference is to plowing and harvesting on Shabbat. Just as plowing is optional, as there is no case where there is a mitzva to plow per se, so too, the harvesting mentioned in the verse is optional. This serves to exclude from the prohibition the harvesting of barley for the omer offering, which is a mitzva, and is therefore permitted on Shabbat.

[43] One of the Sages said to Rava: From where does Rabbi Yishmael ascertain that the plowing mentioned in the verse is referring to plowing that is optional? Perhaps the reference is to plowing a field to grow barley for use in the omer offering, which is a mitzva, and even so the Merciful One states: "You shall rest." Rava said to him: Since if one found the field already plowed, he need not plow the field but he may directly proceed to sow the barley in the plowed field, clearly, even if one plows a field to facilitate fulfillment of a mitzva, plowing is not a mitzva per se.

[44] Ravina raised an objection to the opinion of Rava from the clause of the mishna that states that the example of the forest serves to exclude a father who strikes his son, and a teacher who oppresses his student, and an agent of the court. And according to your opinion, why are a father who strikes his son and a teacher who oppresses his student excluded from exile? Let us say with regard to a father who strikes his son: Since if the son was learned, it is not a mitzva to strike him, now, in a case where

the son is not learned and he strikes him to facilitate his education too, it is not a mitzva, and therefore he should be exiled. Rava replied: There, even if the son is learned, the father is performing a mitzva by striking him from time to time, as it is written: “Chastise your son, and he will give you rest; and he will give delight to your soul” (Proverbs 29:17).

[45] Rava then said: That which I said is nothing, as there is a different proof that the verse is not referring to plowing that is a mitzva. Based on the juxtaposition of the two, it is derived that harvesting is similar to plowing: Just as in the case of plowing, if one found the field already plowed, he need not plow, as there is no case where there is a mitzva to plow per se, so too with regard to harvesting as well, as if one found the barley already harvested, he need not harvest. And if it enters your mind that the reference in the verse is to plowing and harvesting for the purpose of a mitzva, is it so that if one found the barley already harvested, he need not harvest? There is a mitzva to harvest and bring the barley for the omer offering. The prohibition in the verse applies only to harvesting that is optional.

[46] MISHNA: The father is exiled to a city of refuge due to his unintentional murder of his son. And the son is exiled due to his unintentional murder of his father. Everyone is exiled due to their unintentional murder of a Jew, and a Jew is exiled due to his unintentional murder of any of them, except for the unintentional murder of a gentile who resides in Eretz Yisrael and observes the seven Noahide mitzvot [ger toshav]. And a ger toshav is exiled only due to his unintentional murder of a ger toshav.

[47] GEMARA: The mishna teaches: The father is exiled to a city of refuge due to his unintentional murder of his son. The Gemara asks: But didn’t you say in the previous mishna: To exclude a father who strikes his son, who is not exiled? The Gemara answers: This mishna is referring to a son who is learned, and there is no mitzva to strike him; therefore, since the striking is optional, the father is exiled. The Gemara asks: But didn’t you say: Even if the son is learned, the father performs a mitzva by striking his son? The Gemara answers: This ruling of the mishna is stated with regard to a carpenter’s apprentice [bishevaleya]. Since the father is teaching his son carpentry, not Torah, there is no mitzva to strike him to spur him to study.

[48] The Gemara challenges: In the case of a carpenter’s apprentice, his father is teaching him a livelihood, which is also a mitzva. The Gemara answers: The reference is to a son who has already learned another craft, and since he is able to earn his livelihood there is no mitzva to teach him a second craft.

[49] § The mishna teaches: And the son is exiled due to his unintentional murder of his father. And the Gemara raises a contradiction from a baraita. It is written: “And a murderer shall flee there, one who strikes a person unintentionally” (Numbers 35:11), from which it is derived that one who strikes a person is exiled. This serves to exclude one who strikes his father, whose punishment for doing so intentionally is more severe than that of the standard intentional murderer, and therefore the son is not subject to exile. Rav Kahana said: This is not difficult; this baraita is in accordance with the opinion of Rabbi Shimon, and that mishna is in accordance with the opinion of the Rabbis. Rabbi Shimon and the Rabbis disagree (Sanhedrin 50a) whether a son who kills his father intentionally is executed by strangulation or by the sword.

[50] According to Rabbi Shimon, who says: Strangulation is more severe than execution by the sword, which is why a son who kills his father is liable to be executed by strangulation, one who commits

the unwitting violation of a prohibition generally punishable by execution by the sword, i.e., intentional murder of one who is not a parent, is eligible for atonement by means of exile; one who commits the unwitting violation of a prohibition generally punishable by the more severe death of strangulation, i.e., intentional murder of a parent, is not eligible for atonement by means of exile.

51 By contrast, according to the Rabbis, who say: Execution by the sword is more severe than strangulation, which is why a son who kills his father is liable to be executed by the sword, a son who unintentionally kills his father has performed an unwitting violation of a prohibition generally punishable by execution by the sword. And one who commits an unwitting violation of a prohibition generally punishable by execution by the sword, i.e., intentional murder of one who is not a parent, is eligible for atonement by means of exile.

52 Rava says: That which was derived in the baraita that one who strikes a person is exiled, to exclude one who strikes his father, who is not exiled, is not referring to a son who unintentionally kills his father, as in that case the son is certainly exiled. Rather, it is to exclude one who inflicts a wound on his father unwittingly. The novel element of this derivation is that it enters your mind to say: Since in a case where he wounded his father intentionally, he is liable to be executed like a murderer (see Exodus 21:15), if he did so unwittingly, let him also be exiled like an unintentional murderer. Therefore, this derivation teaches us that exile is administered specifically to an unintentional murderer, but it is not administered to the unwitting performer of any other transgression.

53 § The mishna teaches: Everyone is exiled due to their unintentional murder of a Jew, and a Jew is exiled due to his unintentional murder of any of them. The Gemara asks: Everyone is exiled due to their unintentional murder of a Jew: What case that was not already specified does this phrase serve to add? The Gemara answers: It serves to add a Canaanite slave and a Samaritan. The Gemara notes: We learn by inference from this mishna that which the Sages taught explicitly in a baraita: A Canaanite slave and a Samaritan are exiled and flogged due to a Jew, and a Jew is exiled and flogged due to a Samaritan and a Canaanite slave.

54 The Gemara analyzes the baraita: Granted, a slave and a Samaritan are exiled and flogged due to a Jew; either of them is exiled in a case where he killed a Jew unintentionally, and flogged in a case where he cursed the Jew, thereby violating a Torah prohibition. But with regard to the halakha that a Jew is exiled and flogged due to a Samaritan, granted, the Jew is exiled in a case where he killed the Samaritan unintentionally, but the Jew is flogged for violating what prohibition? For cursing the Samaritan? Isn’t that prohibition derived from the verse: “And a leader in your people you may not curse” (Exodus 22:27), from which it is inferred that the prohibition is in effect only with regard to one who performs an action characteristic of your people, who comports himself as an observant, God-fearing Jew? Even if the conversion of the Samaritans was valid, they regularly violate numerous prohibitions, and they do not comport themselves as observant Jews.

55 Rather, Rav Aḥa bar Ya’akov said: This baraita is not referring to lashes administered for cursing; rather, one is flogged in a case where a Jew testified against a Samaritan and a Samaritan testified against a Jew and he was rendered a conspiring witness. The Gemara asks: Does that mean that in the corresponding situation with regard to a Canaanite slave, a slave is flogged in a case where he testified against a Jew and was rendered a conspiring witness? Is a slave eligible to give testimony? Rather, Rav Aḥa, son of Rav Ika, said: What are we dealing with here? The Jew is flogged due to a

slave and a Samaritan, and the slave and the Samaritan are flogged due to the Jew in a case where one struck the other with a blow

[56] that does not have the capacity to cause damage worth one peruta, as Rabbi Ami says that Rabbi Yoḥanan says: Although one who strikes another pays damages and is not flogged, if he struck him with a blow that does not have the capacity to cause damage worth one peruta, since there is no payment, he is flogged for violating a Torah prohibition. The Gemara comments: And according to this opinion, contrary to those who hold that based on their virtual juxtaposition (see Exodus 21:15, 17) or on an analogy between them, the halakhot of striking and cursing are identical, we do not liken striking to cursing. Therefore, although one is flogged for cursing another only if the other comports himself as an observant, God-fearing Jew, one is liable for striking another even if the other was a sinner, e.g., a Samaritan.

[57] § The mishna teaches: Everyone is exiled due to their unintentional murder of a Jew, and a Jew is exiled due to all of them, except for when it is due to a ger toshav. And a ger toshav is exiled due to his unintentional murder of a ger toshav. The Gemara comments: Apparently, one may conclude that a ger toshav is a gentile, and therefore he is not exiled when he unintentionally kills a Jew. Say the latter clause of the mishna: A ger toshav is exiled due to his unintentional murder of a ger toshav, indicating that his halakhic status is not that of a gentile, as gentiles are not liable to be exiled. There is an apparent contradiction between the two clauses in the mishna. Rav Kahana said: This is not difficult. Here, in the latter clause of the mishna, it is in the case of a ger toshav who killed a ger toshav that he is exiled; there, in the first clause, it is in the case of a ger toshav who killed a Jew. In the case described in the first clause he is not exiled, as his halakhic status is not that of a Jew, for whom the sin of unintentional murder of a Jew can be atoned through exile.

[58] There are those who raised a contradiction between two verses. It is written: “For the children of Israel and for the stranger and for the resident [velatoshav] among them, shall these six cities be for refuge” (Numbers 35:15), indicating that a ger toshav is exiled. And it is written in a previous verse: “And the cities shall be for you for refuge” (Numbers 35:12), from which it is inferred: A refuge for you but not for a ger toshav, indicating that a ger toshav is not exiled. Rav Kahana said: This is not difficult. Here, the verse that indicates that they are not exiled is concerning a ger toshav who killed a Jew; there, the verse that indicates that they are exiled is concerning a ger toshav who killed a ger toshav.

[59] And the Gemara raises a contradiction to the halakha of the mishna from a baraita, which teaches: Therefore, a ger toshav and a gentile who killed a person are killed, even if they did so unintentionally. The Gemara infers based on the juxtaposition of a ger toshav and a gentile in the baraita: The tanna teaches the case of a ger toshav in a manner similar to the case of a gentile: Just as with regard to a gentile it is no different in a case where he killed one of his kind, a gentile, and it is no different in a case where he killed one not of his kind, a Jew, as in either case he is executed and is not exiled, so too, with regard to a ger toshav, it is no different in a case where he killed one of his kind, a ger toshav, and it is no different in a case where he killed one not of his kind, a Jew, as in either case he is executed and is not exiled.

[60] Rav Ḥisda said: The contradiction between the mishna and the baraita is not difficult. Here, the mishna is referring to a case where he killed him in a downward motion; there, the baraita is referring to a case where he killed him in an upward motion. Rav Ḥisda elaborates: If one ger toshav killed

another ger toshav in a downward motion, which is a case where if the perpetrator were a Jew, he would be exiled, the ger toshav also suffices with exile. But if the ger toshav killed his counterpart in an upward motion, which is a case where if the perpetrator were a Jew, he would be exempt from exile, the ger toshav is executed.

61 Rava said to him: And is it not derived by means of an a fortiori inference to the contrary? If one unintentionally kills another in a downward motion, which is a case where if the perpetrator were a Jew, he would be exiled, the ger toshav also suffices with exile and nothing more, but if he killed in an upward motion, which is a case where if the perpetrator were a Jew, he would be exempt from exile, is he killed?

62 Rather, Rava said: The case in the baraita where a ger toshav is killed rather than exiled is where the ger toshav who killed another ger toshav says that it is permitted to kill the victim. If he killed him unintentionally he is exiled, in accordance with the ruling in the mishna. Abaye said to him: One who says that it is permitted to kill the victim is a victim of circumstances beyond his control, as he was unaware of the prohibition. Why, then, should he be executed? Rava said to him: That is not a problem, as I say that with regard to one who says that it is permitted, since he intended to kill the other, his action borders on the intentional.

63 The Gemara observes: And Rava and Rav Ḥisda follow their standard line of reasoning, as is indicated by the fact that it was stated that they disagree in the case of a ger toshav who killed a person. If he thought he was killing an animal and it was discovered that it was a person, or if he thought he was killing a gentile and it was discovered that he was a ger toshav, Rava says he is liable to be executed, as with regard to one who says that it is permitted, his action borders on the intentional. Rav Ḥisda says he is exempt, as one who says that it is permitted to kill the victim is a victim of circumstances beyond his control.

64 Rava raised an objection to the opinion of Rav Ḥisda from that which is written with regard to Abimelech, king of Gerar, who took Sarah, Abraham’s wife: “And God came to Abimelech in a dream of the night and said to him: You shall die for the woman you took, as she is a man’s wife” (Genesis 20:3). When Abimelech took Sarah he was under the impression that she was unmarried, as Abraham said that she was his sister. Despite the fact that Abimelech was one who says that it is permitted, he was liable to be executed for his action. What, is it not that he was liable to be executed at the hand of a court composed of people, indicating that one who says that it is permitted is liable?

65 The Gemara rejects that conclusion: No, it means that he was liable to be executed at the hand of Heaven, but not by a court. The Gemara adds: The language of the verses is also precise in this regard, as it is written: “And I also prevented you from sinning against Me” (Genesis 20:6), indicating that it was a sin vis-à-vis God and was not in the jurisdiction of a court of men.

66 The Gemara asks: And according to your reasoning that based on the formulation of the verse one concludes that it was a sin exclusively vis-à-vis God, where Joseph says to Potiphar’s wife: “And how can I perform this great evil, and sin to God” (Genesis 39:9), may one also infer that it was a sin vis-à-vis God and not vis-à-vis man? Joseph is referring to adultery, which is punishable by execution according to the Noahide laws as well. Rather, in that case it means that although he performed a sin vis-à-vis God, his judgment is given over to the ruling of man; here too, in the verse about Abimelech, it can be explained that although he performed a sin vis-à-vis God, his judgment is

given over to the ruling of man. There is no proof from this verse with regard to the status of one who says that it is permitted to perform a transgression.

[67] Abaye raised an objection to the opinion of Rava from the reply of Abimelech: “Will You even slay a righteous nation?” (Genesis 20:4). God appears to accept Abimelech’s contention, as He did not respond by calling him wicked, indicating that one who says that it is permitted to perform a transgression is a victim of circumstances beyond his control. The Gemara rejects that understanding. There, the reason for the rejection of Abimelech’s contention is as they responded to him from Heaven: “And now, restore the man’s wife, as he is a prophet” (Genesis 20:7).

[68] This Gemara questions that response. Is it the wife of a prophet that is returned, and the wife of one who is not a prophet is not returned?

[69] Rather, the explanation is as Rabbi Shmuel bar Naḥmani says, as Rabbi Shmuel bar Naḥmani says that Rabbi Yonatan says: This is what God is saying to Abimelech: “And now, restore the man’s wife” (Genesis 20:7), in any case, whether or not he is a prophet. And as for that which you said: “Will You even slay a righteous nation? Didn’t he say to me: She is my sister” (Genesis 20:4–5), claiming that you are a victim of circumstances beyond your control and exempt from punishment, that is not a valid claim. He is a prophet and it is from you that he learned to conduct himself in that manner. With regard to a stranger [akhsenai] who comes to the city, one asks him about matters of eating and drinking, e.g., whether he is hungry or thirsty. Does one ask him: Is that your wife? Is that your sister? Abraham understood from this line of questioning that you are suspect with regard to abducting women, and that is the reason that he introduced Sarah as his sister. Therefore, you are liable to be executed for her abduction.

[70] The Gemara comments: From here it is derived that a descendant of Noah, i.e., a gentile, is executed for a capital offense even if he says that it is permitted, as he should have learned that it is prohibited and he did not learn.

[71] MISHNA: A blind person who unintentionally murdered another is not exiled; this is the statement of Rabbi Yehuda. Rabbi Meir says: He is exiled. The enemy of the victim is not exiled, as presumably it was not a completely unintentional act. Rabbi Yosei says: Not only is an enemy not exiled, but he is executed by the court, because his halakhic status is like that of one who is forewarned by witnesses not to perform the action, as presumably he performed the action intentionally. Rabbi Shimon says: There is an enemy who is exiled and there is an enemy who is not exiled. This is the principle: In any case where an observer could say he killed knowingly, where circumstances lead to the assumption that it was an intentional act, the enemy is not exiled, even if he claims that he acted unintentionally. And if it is clear that he killed unknowingly, as circumstances indicate that he acted unintentionally, he is exiled, even though the victim is his enemy.

[72] GEMARA: Apropos the dispute in the mishna between Rabbi Yehuda and Rabbi Meir with regard to a blind person, the Sages taught: It is written that one is exiled to a city of refuge if he killed another “without seeing” (Numbers 35:23), indicating that the reference is to one who has the capacity to see. This serves to exclude a blind person; this is the statement of Rabbi Yehuda. Rabbi Meir says: On the contrary, the term “without seeing” serves to include a blind person.

[73] The Gemara elaborates: What is the reason for the opinion of Rabbi Yehuda? It is as it is written with regard to those who are exiled: “And as one who goes with his neighbor into the forest”

(Deuteronomy 19:5), which is stated in general terms, applying even to a blind person. The phrase “without seeing” comes and excludes a blind person from this halakha.

74 And Rabbi Meir interprets the verses differently: “Without seeing” serves to exclude a blind person, and “without knowledge” (Deuteronomy 19:4) also serves to exclude a blind person. This is an example of a restrictive expression following a restrictive expression, and there is a hermeneutical principle that a restrictive expression following a restrictive expression serves only to amplify the halakha and include additional cases. In this case, it includes a blind person in the halakhot of exile as well.

75 The Gemara asks: And how does Rabbi Yehuda respond to that derivation? The Gemara answers that Rabbi Yehuda says that the phrase “without knowledge” comes to exclude one with intent, e.g., one who had intent to kill an animal and who killed a person, from the halakha of exile. Rabbi Yehuda interprets the two restrictive expressions as excluding two unrelated cases from the halakha of exile, and therefore the principle of: A restrictive expression following a restrictive expression serves only to amplify, is not relevant in this case.

76 § The mishna teaches that Rabbi Yosei says: An enemy is executed because his halakhic status is like that of one who is forewarned. The Gemara asks: But why is an enemy executed? The witness did not actually forewarn him, and courts administer corporal punishment only to a defendant who was forewarned. The Gemara answers: The mishna is in accordance with the opinion of Rabbi Yosei, son of Rabbi Yehuda, as it is taught in a baraita that Rabbi Yosei, son of Rabbi Yehuda, says: One who is devoted to the meticulous observance of mitzvot [ḥaver] does not require forewarning for the court to administer corporal punishment to him, because fundamentally the obligation to issue forewarning was established only to distinguish between unwitting and intentional actions. The presumptive status of a ḥaver is that of one who knows the halakha; therefore, his action is presumed to have been intentional.

77 § The mishna teaches that Rabbi Shimon says: There is an enemy who is exiled and there is an enemy who is not exiled. The Gemara adds: It is taught in a baraita: In what circumstances did Rabbi Shimon say that there is an enemy who is exiled and there is an enemy who is not exiled? He said that in a case where the rope snapped and the object attached to the rope fell and killed a person, he is exiled, as that appears to be an accident. But if an object was displaced from his hands, he is not exiled, as presumably he loosened his grip until it fell.

78 The Gemara asks: But isn’t it taught in a baraita that Rabbi Shimon says: One is never exiled unless his trowel with which he was working was displaced from his hand? As Rabbi Shimon stated that halakha without distinguishing between friend and enemy, therefore, the apparent contradiction between a case where the rope snapped, according to the first baraita, and a case where the rope snapped, according to the second baraita, is difficult. And the apparent contradiction between a case where the object was displaced, according to the first baraita, and a case where the object was displaced, according to the second baraita, is difficult.

79 The Gemara answers: The apparent contradiction between a case where the rope snapped according to the first baraita and a case where the rope snapped according to the second is not difficult. This case in the second baraita is referring to a friend of the victim, and presumably if the rope snapped it is considered a case of circumstances beyond his control and he is exempt from exile, and that case in the first baraita is referring to an enemy of the victim. In that case, although the

presumption is that the act was not intentional, due to his enmity toward the victim, it is also not assumed to be the result of circumstances that were completely beyond his control. Therefore, he is exiled.

[80] The apparent contradiction between a case where the object was displaced according to the first baraita and a case where the object was displaced according to the second baraita is not difficult, as this case in the first baraita is the opinion of Rabbi Yehuda HaNasi, who ruled in a mishna (7b) that if the blade of one's ax was displaced from its handle and flew through the air and killed a person, he is exempt from exile, in accordance with the opinion of Rabbi Shimon, and that case in the second baraita is the opinion of the Rabbis, who rule that in that case, the person wielding the ax is exiled, in accordance with the opinion of Rabbi Shimon.

[81] MISHNA: To where are the unintentional murderers exiled? They are exiled to cities of refuge, to three cities that were in the east bank of the Jordan and to three cities that were in the land of Canaan, i.e., Eretz Yisrael, as it is stated: "Three cities shall you give beyond the Jordan and three cities shall you give in the land of Canaan; they shall be cities of refuge" (Numbers 35:14). The mishna comments: Until the three cities of refuge that were in Eretz Yisrael were selected, an unintentional murderer would not be admitted to the three that were in the east bank of the Jordan, even though the latter three were already selected by Moses (see Deuteronomy 4:41), as it is stated: "Six cities of refuge shall they be" (Numbers 35:13), from which it is derived that they do not become cities of refuge until all six of them admit unintentional murderers as one.

[82] The mishna continues: And roads were aligned for them from this city, i.e., all cities, to that city, i.e., they would pave and straighten the access roads to the cities of refuge, as it is stated: "Prepare for you the road, and divide the borders of your land, which the Lord your God causes you to inherit, into three parts, that every murderer may flee there" (Deuteronomy 19:3).

[83] And the court would provide the unintentional murderers fleeing to a city of refuge with two Torah scholars, due to the concern that perhaps the blood redeemer, i.e., a relative of the murder victim seeking to avenge his death, will seek to kill him in transit, and in that case they, the scholars, will talk to the blood redeemer and dissuade him from killing the unintentional murderer. Rabbi Meir says: The unintentional murderer also speaks [medabber] on his own behalf to dissuade the blood redeemer, as it is stated: "And this is the matter [devar] of the murderer, who shall flee there and live" (Deuteronomy 19:4), indicating that the murderer himself speaks.

[84] Rabbi Yosei bar Yehuda says: Initially, either one who killed another unintentionally or one who killed another intentionally would hurry and flee to the cities of refuge, and the court in his city would send for him and would bring him from there to stand trial. For one who was found liable to receive the death penalty in court for intentional murder, the court would execute him, and for one who was not found liable to receive the death penalty, e.g., if they deemed that the death occurred due to circumstances beyond his control, they would free him. For one who was found liable to be exiled, the court would restore him to his place in the city of refuge, as it is stated: "And the congregation shall judge between the murderer and the blood redeemer…and the congregation shall restore him to his city of refuge, that he fled there" (Numbers 35:24–25), indicating that he had been in a city of refuge before his trial.

[85] GEMARA: The Sages taught: Moses designated three cities of refuge in the east bank of the Jordan, and corresponding to them, Joshua designated three cities of refuge in the land of Canaan.

And the cities were aligned like two rows of vines in a vineyard: In Eretz Yisrael there was Hebron in Mount Judea, corresponding to Bezer in the wilderness; Shechem in Mount Ephraim, corresponding to Ramoth in the Gilead; and Kadesh in Mount Naphtali, corresponding to Golan in the Bashan. From the term “And you shall divide [veshilashta]” (Deuteronomy 19:3), it is derived that the three cities in Eretz Yisrael will serve as three [meshulashin] lines of demarcation dividing the length of the land into four equal parts, in a manner that the distance from the southern border of Eretz Yisrael to Hebron, the southernmost city of refuge, will be like the distance from Hebron to Shechem, and the distance from Hebron to Shechem will be like the distance from Shechem to Kadesh, and the distance from Shechem to Kadesh will be like the distance from Kadesh to the northern border.

[86] The Gemara questions the distribution of the cities: Why were there three cities designated on the east bank of the Jordan, where two and a half tribes resided, and three cities designated in Eretz Yisrael, where more than nine tribes resided? Abaye said: In Gilead, which is located on the east bank of the Jordan, murderers are common.

[87] Therefore, a greater number of cities of refuge per capita were required there, as it is written: “Gilead is a city of those who work iniquity; it is covered [akuba] with blood” (Hosea 6:8). What is the meaning of: Covered [akuba] with blood? Rabbi Elazar says: It means that they would set an ambush [okevin] to kill people.

[88] The Gemara asks: And what is different about the cities of refuge closest to the border on this southern side of the country and from the border on that northern side of the country, that are distanced one-quarter of the length of Eretz Yisrael from the border, and what is different about the city of refuge in the middle of the country, which is relatively close to any potential murderers? The maximum distance that one would need to travel to reach the middle city is one-half the distance from the northern and southern borders to their respective cities of refuge.

[89] Abaye said: Murderers are also common in Shechem, as it is written: “And as troops of robbers wait for a man, so does the band of priests; they murder in the way toward Shechem, yes, they commit enormity” (Hosea 6:9). What is the meaning of “the band of priests”? Rabbi Elazar says: It means that the people would band together to kill people, like those priests who band together to distribute teruma among themselves in the granaries.

[90] The Gemara asks: And are there no more cities of refuge beyond these six? But isn’t it written: “And the cities that you shall give to the Levites: The six cities of refuge you shall give for the murderer to flee there, and beyond them you shall give forty-two cities” (Numbers 35:6), indicating that the status of all the Levite cities is that of cities of refuge? Abaye said: With regard to these six cities designated specifically for this purpose, unintentional murderers in need of refuge are admitted there whether they entered the cities deliberately, aware that they are cities of refuge, or whether they entered inadvertently. By contrast, with regard to those forty-two Levite cities, unintentional murderers are admitted only if they entered the cities deliberately, but if they entered the cities inadvertently, they are not admitted to the cities.

[91] The Gemara asks: And is Hebron a city of refuge? But isn’t it written: “And they gave Hebron to Caleb, as Moses had spoken” (Judges 1:20)? This indicates that Hebron belonged to Caleb from the tribe of Judah, and it was not a Levite city. Abaye said: Its suburbs [parvadaha] were given to Caleb; the city itself was a city of priests, as it is written in the context of the distribution of the Levite cities:

“And they gave them Kiryat Arba…which is Hebron…and the field of the city and its courtyards they gave to Caleb, son of Jephunneh” (Joshua 21:11–12).

92 The Gemara further asks: And is Kadesh a city of refuge? But isn’t it written: “And the fortified cities were Ziddim Zer, and Hammath, Rakkath, and Chinnereth…and Kedesh and Edrei and En Hazor” (Joshua 19:35–37), and it is taught in a baraita: With regard to these cities of refuge, one does not establish them in small settlements [tirin] or in large cities; rather, one establishes them in intermediate-sized towns? Apparently, Kadesh was a large, fortified city. Rav Yosef said: There were two cities named Kedesh, and the one listed among the fortified cities in the book of Joshua is not the one that was a city of refuge. Rav Ashi said: The listing of Kadesh among the fortified cities is not difficult, as it is similar to the two adjacent yet separate cities of Selikum and the fortification [ve’akra] of Selikum. Likewise, there was the fortified city of Kadesh, mentioned in Joshua, and the city itself, which was an intermediate city that served as city of refuge.

93 § The Gemara discusses the matter itself, and it cites the complete baraita: With regard to these cities of refuge, one does not establish them in small settlements or in large cities; rather, one establishes them in intermediate-sized towns. And one establishes them only in a place where water is available, and if there is no water available there, as there is no spring accessible from the city, one brings them water by digging a canal. And one establishes them only in a place where there are markets, and one establishes them only in a populated place, where there are many people who regularly frequent the town. If the population of the surrounding areas diminishes, one adds to it. If the number of residents in the city of refuge itself diminishes, one brings new residents to the city, among them priests, Levites, and Israelites.

94 The baraita continues: And one may not sell weapons or hunting tools in the cities of refuge, to prevent the blood redeemer from gaining access to means that he could exploit to kill the unintentional murderer who fled to the city of refuge; this is the statement of Rabbi Neḥemya. And the Rabbis permit selling weapons and hunting tools. And Rabbi Neḥemya and the Rabbis agree that one may not spread nets in the cities of refuge, nor may they braid [mafshilin] ropes in those cities, so that the foot of the blood redeemer will not be found there. If the blood redeemer were to enter the city of refuge to purchase nets or ropes, he is apt to encounter the murderer and kill him.

95 Rabbi Yitzḥak says: What is the verse from which these matters are derived? It is written: “And he shall flee to one of these cities and live” (Deuteronomy 4:42), meaning: Perform some actions for the unintentional murderer so that life in the city of refuge will be conducive to living for him. All these steps are taken to facilitate that objective.

96 The Sages taught: In the case of a student who was exiled, his teacher is exiled to the city of refuge with him, so that the student can continue studying Torah with him there, as it is stated: “And he shall flee to one of these cities and live,” from which it is derived: Perform some actions for the unintentional murderer so that life in the city will be conducive to living for him. Since Torah study is an integral component of his life, arrangements must be made to ensure continuity in that facet of his existence. Rabbi Zeira says: From here one learns that a person should not teach a student who is not fit, as that may result in the teacher following the student into exile.

97 Rabbi Yoḥanan says: In the case of a teacher of Torah who was exiled, his school is exiled with him. The Gemara asks: Is that so that a teacher of Torah is exiled? But doesn’t Rabbi Yoḥanan himself say: From where is it derived that matters of Torah provide refuge, i.e., that the blood

redeemer may not harm one who is engaged in Torah? It is derived from a verse, as it is stated: “Bezer in the wilderness, in the flatlands, for the Reubenites; and Ramoth in Gilead, for the Gadites; and Golan in Bashan, for the Manassites” (Deuteronomy 4:43), in the list of cities of refuge designated by Moses, and it is written thereafter: “And this is the Torah” (Deuteronomy 4:44). Based on that juxtaposition it is derived that the status of Torah is like that of a city of refuge.

98 The Gemara answers: This is not difficult, as this statement of Rabbi Yoḥanan, that the status of Torah is like that of a city of refuge, is referring to Torah at the time that one is engaged in its study, and that statement of Rabbi Yoḥanan, that the teacher of Torah must take his school to the city of refuge, is referring to the teacher of Torah at the time that he is not engaged in its study. His mere presence in a city of refuge provides him with continuous protection.

99 And if you wish, say: What is the meaning of Rabbi Yoḥanan’s statement that matters of Torah provide refuge? It means protection, but not for an unintentional murderer from the blood redeemer; rather, it means protection from the Angel of Death. This is as it was in this incident where Rav Ḥisda was sitting and studying in the study hall of Rav and the agent of the Angel of Death was unable to approach him and take his life because his mouth was not silent from his study for even a moment. The agent ascended and sat on the cedar tree of the study hall of Rav. The cedar tree broke and Rav Ḥisda was momentarily silent, startled by the sudden noise, and the agent of the Angel of Death overcame him. Apparently, matters of Torah provide protection from the Angel of Death only when one is actively engaged in their study.

100 § Rabbi Tanḥum bar Ḥanilai says: For what reason was Reuben privileged to be enumerated first in the rescue, as the first city of refuge listed is Bezer (see Deuteronomy 4:43), which is located in the tribal portion of Reuben? It is due to the fact that he began the rescue of Joseph first, as it is stated: “And Reuben heard and delivered him from their hands” (Genesis 37:21).

101 Rabbi Simlai taught: What is the meaning of that which is written: “Then Moses separated three cities beyond the Jordan, to the east of the sun [mizreḥa shamesh]” (Deuteronomy 4:41)? The Holy One, Blessed be He, said to Moses: Shine the sun [hazraḥ shemesh] for murderers, i.e., provide them with the hope of rescue. Some say that God said to Moses: In designating these cities of refuge you have shined the sun for murderers.

102 On a related note, Rabbi Simai taught: What is the meaning of that which is written: “He who loves silver shall not be satisfied with silver; nor he who loves abundance with increase” (Ecclesiastes 5:9)? “He who loves silver shall not be satisfied with silver”; this is a reference to Moses our teacher, whose love of mitzvot was so great that although he knew that an unintentional murderer would not be admitted to the three cities of refuge that were in the east bank of the Jordan until the three cities of refuge that were in the land of Canaan were selected, and that his designation of cities of refuge would have no practical ramifications in his lifetime, he nevertheless said: When there is a mitzva that has come my way, I will fulfill it.

103 The next phrase in that verse: “Nor he who loves abundance with increase,” is also interpreted as referring to Torah: For whom is it fitting to teach an abundance of people? One for whom all its increase belongs to him, i.e., one who knows all the content of the Torah is worthy of teaching it in public. And that is identical to that which Rabbi Elazar says: What is the meaning of that which is written: “Who can express the mighty acts of God, or make all His praise heard” (Psalms 106:2)? For

whom is it fitting to express the mighty acts of God? It is one who can make all His praise heard. One who knows only part of it is unfit to teach the multitudes.

104 And the Rabbis say, and some say Rabba bar Mari says, that the passage “nor he who loves abundance with increase” means whoever loves a Torah scholar who teaches in the presence of an abundance of people, to him shall be increase, i.e., sons who are Torah scholars. The Gemara relates: When they heard that interpretation, the Sages cast their eyes upon Rava, son of Rabba, who loved Torah scholars who disseminate Torah, and he was blessed with sons who were Torah scholars.

105 The Gemara provides a mnemonic for the ensuing interpretations of the second part of the verse cited earlier (Ecclesiastes 5:9): Ashi to study, Ravina to teach.

106 Rav Ashi says: Anyone who loves to study in abundance, i.e., with many colleagues, to him shall be increase, i.e., he will succeed in his studies. And that is parallel to that which Rabbi Yosei, son of Rabbi Ḥanina, says: What is the meaning of that which is written: “A sword is upon the baddim, veno’alu” (Jeremiah 50:36)? It is fitting that a sword be placed on the necks of the enemies of Torah scholars, a euphemism for Torah scholars, who sit and engage in the study of the Torah individually [bad bevad]. Moreover, they grow foolish through individual study, as it is written here: Veno’alu, and it is written there: “For we have been foolish [no’alnu]” (Numbers 12:11). Moreover, they thereby sin, as it is stated immediately thereafter: “And for we have sinned.” And if you wish, say that from here it is derived that no’alu means sinned: “The ministers of Zoan have sinned [no’alu]” (Isaiah 19:13).

107 Ravina says that there is a different interpretation of the verse cited earlier (Ecclesiastes 5:9): Anyone who loves to teach in abundance, before the multitudes, to him shall be increase, as his Torah knowledge is enhanced through those lectures. And that is the parallel to that which Rabbi Yehuda HaNasi says: Much Torah have I studied from my teachers, and I have learned more from my colleagues than from them, and I have learned more from my students than from all of them.

108 Apropos the virtue of Torah study, Rabbi Yehoshua ben Levi says: What is the meaning of that which is written: “Our feet were standing in your gates, Jerusalem” (Psalms 122:2)? What caused our feet to withstand the enemies in war? It is the gates of Jerusalem, where they were engaged in Torah study. He interprets the term “in your gates” to mean: Because of your gates, the place of justice and Torah.

109 And Rabbi Yehoshua ben Levi says: What is the meaning of that which is written: “A song of the ascents to David: I rejoiced when they said to me, let us go to the house of God” (Psalms 122:1)? David said before the Holy One, Blessed be He: Master of the Universe, I heard people who were saying in reference to me: When will this old man die, and Solomon his son will come and succeed him and build the Temple and we will ascend there for the pilgrimage Festival? It was common knowledge that the Temple would be constructed by David’s successor. David continued: And despite my pain that I am not privileged to build the Temple, I rejoiced. The Holy One, Blessed be He, said to him: “For better is one day in your courtyard than one thousand” (Psalms 84:11), meaning, I prefer one day during which you engage in the study of Torah before Me than the one thousand burnt-offerings that your son Solomon is destined to sacrifice before Me upon the altar (see I Kings 3:4).

110 § The mishna teaches: And roads were aligned for them from this city to that city. It is taught in a baraita that Rabbi Eliezer ben Ya’akov says:

[111] Refuge was written on signs at every crossroads marking the path to a city of refuge, so that the unintentional murderer would identify the route to the city of refuge and turn to go there. Rav Kahana said: What is the verse from which this is derived? “Prepare for you the road” (Deuteronomy 19:3), meaning: Perform for you preparation of the road.

[112] § Apropos that halakha, the Gemara cites that Rav Ḥama bar Ḥanina introduced this portion with regard to the halakhot of exile with an introduction from here: “Good and upright is God; therefore He directs sinners along the way” (Psalms 25:8). He said: If He directs sinners by commanding the placing of signs directing them to the city of refuge, it may be inferred a fortiori that He will assist and direct the righteous along the path of righteousness.

[113] Rabbi Shimon ben Lakish introduced this portion with an introduction from here: It is stated with regard to an unintentional murderer: “And one who did not lie in wait, but God caused it to come to his hand, and I will appoint you a place where he may flee” (Exodus 21:13). Now this is puzzling. Why would God cause one to sin in this manner? The verse states: “As the ancient parable says: From the wicked comes forth wickedness” (I Samuel 24:13). Evil incidents befall those who have already sinned.

[114] Reish Lakish explains: In this light, the verse “But God caused it to come to his hand” may be understood. With regard to what scenario is the verse speaking? It is with regard to two people who killed a person, where one killed unintentionally while the other killed intentionally. For this person there are no witnesses to his action, and for that person there are no witnesses to his action; therefore, neither received the appropriate punishment of exile and execution, respectively. The Holy One, Blessed be He, summons them to one inn. This person who killed intentionally sits beneath a ladder, and that person who killed unintentionally descends the ladder, and he falls upon him and kills him. There were witnesses to that incident and therefore, that person who killed intentionally is killed, and that person who killed unintentionally is exiled, each receiving what he deserved.

[115] Apropos the path upon which God leads people, the Gemara cites a statement that Rabba bar Rav Huna says that Rav Huna says, and some say it was a statement that Rav Huna says that Rabbi Elazar says: From the Torah, from the Prophets, and from the Writings one learns that along the path a person wishes to proceed, one leads and assists him.

[116] One learns this from the Torah, as it is written that initially God said to Balaam with regard to the contingent dispatched by Balak: “You shall not go with them” (Numbers 22:12). After Balaam implored Him and indicated his desire to go with them, it is written: “Arise, go with them” (Numbers 22:20). One learns this from the Prophets, as it is written: “I am the Lord your God, Who teaches you for your profit, Who leads you on the path that you go” (Isaiah 48:17), indicating that along the path that one seeks to go, God will direct him. One learns this from the Writings, as it is written: “If one seeks the cynics, He will cause him to join the cynics, but to the humble He will give grace” (Proverbs 3:34), indicating that if one chooses cynicism God will direct him there and if he opts for humility God will grant him grace.

[117] § The Gemara resumes its discussion of the halakhot of exile. Rav Huna says: In the case of an unintentional murderer who was exiled to a city of refuge, and the blood redeemer found him on the way and killed him, he is exempt. The Gemara notes: Rav Huna holds that the verse: “Lest the blood redeemer pursue the murderer…and strike him fatally…and for him there is no sentence of death, as

he did not hate him from before” (Deuteronomy 19:6), is written with regard to the blood redeemer, teaching that the blood redeemer is not liable to be executed for killing the murderer.

118 The Gemara raises an objection to the opinion of Rav Huna from a baraita: “And for him there is no sentence of death”; the verse is speaking with regard to the unintentional murderer, teaching that the unintentional murderer is not liable to be executed. That is why the Jewish people were commanded to establish cities of refuge to protect him. The baraita proceeds to prove that the verse is written with regard to the murderer. Do you say that it is speaking with regard to the unintentional murderer, or is it speaking only with regard to the blood redeemer? When it states in an earlier verse: “And he did not hate him from before” (Deuteronomy 19:4), it is clear that the reference is to the unintentional murderer, and therefore, you must say that in the phrase: “And for him there is no sentence of death,” the verse is speaking with regard to the unintentional murderer.

119 The Gemara answers: Rav Huna states his opinion in accordance with the opinion of that following tanna, as it is taught in another baraita: “And for him there is no sentence of death”; the verse is speaking with regard to the blood redeemer. The baraita clarifies: Do you say that it is speaking with regard to the blood redeemer, or is it speaking only with regard to the unintentional murderer? When it states: “As he did not hate him from before,” the unintentional murderer is already stated, as that phrase certainly is referring to him. How do I realize the meaning of the verse: “And for him there is no sentence of death”? It is with regard to the blood redeemer that the verse is speaking.

120 The Gemara cites proof concerning Rav Huna’s ruling from the mishna. We learned in the mishna: And they would provide the unintentional murderer fleeing to a city of refuge with two Torah scholars, due to the concern that perhaps the blood redeemer will seek to kill him in transit, and in that case they will talk to the blood redeemer. The Gemara asks: What, is it not that the Torah scholars forewarn him that if he kills the unintentional murderer he would be liable to be executed? That contradicts Rav Huna’s opinion that a blood redeemer who kills the unintentional murderer is exempt.

121 The Gemara rejects this proof: No, the statement of the Torah scholars to the blood redeemer can be explained as it is taught in a baraita: And they will speak to him about matters appropriate to him. They say to the blood redeemer: Do not accord him treatment appropriate for murderers, as it was unintentionally that he came to be involved in the incident. Rabbi Meir says: The unintentional murderer too speaks [medabber] on his own behalf to dissuade the blood redeemer, as it is stated: “And this is the matter [devar] of the murderer, who shall flee there and live” (Deuteronomy 19:4), indicating that the murderer himself apologizes and speaks to the blood redeemer. The Sages said to Rabbi Meir: Many matters are performed more effectively through agency.

122 The Gemara analyzes the baraita. The Master says in the baraita: It was unintentionally that he came to be involved in the incident. The Gemara asks: Isn’t this obvious? As, if it were intentionally that he killed a person, is he liable to be exiled? The Gemara answers: Yes, even intentional murderers flee to a city of refuge on occasion.

123 The Gemara continues: And so it is taught in a baraita: Rabbi Yosei, son of Rabbi Yehuda, says: Initially, either one who killed another unintentionally or one who killed another intentionally would hurry and flee to the cities of refuge, and the court in his city would send for him and would bring him from there to stand trial.

124 The baraita continues: With regard to one who was found liable to receive the death penalty for intentional murder, after the trial the court would execute him, as it is stated: “And the elders of his city shall send and take him from there and deliver him into the hands of the blood redeemer and he shall die” (Deuteronomy 19:12). And with regard to one who was not found liable to receive the death penalty, e.g., if they deemed that it was due to circumstances beyond his control, they freed him, as it is stated: “And the congregation shall rescue the murderer from the hands of the blood redeemer” (Numbers 35:25). With regard to one who was found liable to be exiled, the court would restore him to his place in the city of refuge, as it is stated: “And the congregation shall judge between the murderer and the blood redeemer…and the congregation shall restore him to his city of refuge, that he fled there” (Numbers 35:24–25).

125 The baraita continues: Rabbi Yehuda HaNasi says: The Torah does not command intentional murderers to flee to a city of refuge; rather, the Torah is cognizant of the fact that in practice, intentional murderers would exile themselves on their own, as they thought that they would be admitted to these cities, which would provide refuge for both unintentional and intentional murderers, and they do not know that only those who murder unintentionally are admitted to these cities, but those who murder intentionally are not admitted.

126 § Rabbi Elazar says: An unintentional murderer is not admitted to a city of refuge whose majority consists of unintentional murderers, as it is stated with regard to an unintentional murderer who fled to a city of refuge: “And he shall speak his matters in the ears of the elders of that city” (Joshua 20:4), indicating that there is some novel element in the matters that he seeks to convey to the elders of the town, but not when their matters are equal to his matters, as those elders made the same statements when they arrived at the city of refuge as unintentional murderers.

127 And Rabbi Elazar says: An unintentional murderer is not admitted to a city in which there are no elders, as we require the fulfillment of the verse: “And he shall speak in the ears of the elders of the city” (Joshua 20:4), and there are none. It was stated: A city in which there are no elders is the subject of a dispute between Rabbi Ami and Rabbi Asi. One says: An unintentional murderer is admitted there, and one says: An unintentional murderer is not admitted there. The Gemara explains: According to the one who says that an unintentional murderer is not admitted to a city in which there are no elders, his reasoning is due to the fact that we require the presence of the elders of the city and there are none. According to the one who says that an unintentional murderer is admitted there, his reasoning is that he holds that speaking to the elders is merely a mitzva ab initio, but it does not affect the city’s status as a city of refuge.

128 And a city in which there are no elders is the subject of another dispute between Rabbi Ami and Rabbi Asi. One says: One can become a wayward and rebellious son in it. And one says: One cannot become a wayward and rebellious son in it. The Gemara explains: According to the one who says that one cannot become wayward and rebellious son in it, it is due to the fact that we require the presence of the elders of the city, as it is written: “And his father and mother shall take hold of him and bring him out to the elders of his city and the gate of his place” (Deuteronomy 21:19), and there are none. According to the one who says that one can become a wayward and rebellious son in it, the presence of the elders is merely a mitzva ab initio.

129 And a city in which there are no elders is the subject of another dispute between Rabbi Ami and Rabbi Asi. One says: If a corpse was discovered proximate to that city, the inhabitants of the city

bring a heifer whose neck is broken. And one says: The inhabitants of the city do not bring a heifer whose neck is broken. The Gemara explains: According to the one who says that the inhabitants of the city do not bring a heifer whose neck is broken, it is due to the fact that we require the presence of the elders of the city, as it is written: “And the elders of that city shall bring the calf down to a rough valley” (Deuteronomy 21:4), and there are no elders. According to the one who says that the inhabitants of the city bring a heifer whose neck is broken, the presence of the elders is merely a mitzva ab initio.

[130] § Rabbi Ḥama bar Ḥanina says: For what reason was the portion discussing murderers stated

[131] with harsh language, as it is written: “And the Lord spoke [vayedabber] to Joshua saying: Speak [dabber] to the children of Israel, saying: Assign you the cities of refuge of which I spoke [dibbarti] to you by means of Moses” (Joshua 20:1–2). Why does the Torah repeatedly employ a term of dibbur, connoting harsh speech, as opposed to the term of amira, connoting neutral speech? It is due to the fact that the cities of refuge are a mitzva of the Torah, and therefore they warrant emphasis.

[132] The Gemara asks: Is that to say that all instances of speaking [dibbur] indicate harsh language? The Gemara answers: Yes, as it is written with regard to Joseph’s brothers: “The man, the lord of the land, spoke [dibber] harshly to us” (Genesis 42:30). The Gemara asks: But isn’t it taught in a baraita with regard to the verse: “Then they who feared the Lord spoke [nidberu] with one another” (Malachi 3:16), that the term “they spoke” is nothing other than a term of gentleness, and likewise, the same is true of the verse which states: “He subdues [yadber] peoples under us” (Psalms 47:4), meaning that God will calmly and gently conduct the nations under the influence of the Jewish people? The Gemara answers: The meaning of dibber is discrete and the meaning of yadber is discrete. There is a difference between the two conjugations of the same root.

[133] The Gemara provides a mnemonic for the disputes involving Rabbi Yehuda that follow: Rabbis; mehemni, i.e., the dispute with Rabbi Neḥemya; and the dispute with regard to Torah scrolls sewn with threads of flax.

[134] The Gemara resumes the discussion of the harsh language employed in the portion discussing murderers in the book of Joshua. Rabbi Yehuda and the Rabbis disagree with regard to this matter. One says harsh language was employed because Joshua delayed fulfilling the mitzva of designating cities of refuge, and one says it is because the cities of refuge are a mitzva of the Torah, and therefore they warrant emphasis.

[135] The Gemara cites an additional dispute with regard to the portion of the cities of refuge in the book of Joshua. It is written: “And Joshua wrote these matters in the scroll of the Torah of God” (Joshua 24:26). Rabbi Yehuda and Rabbi Neḥemya disagree with regard to this matter. One says: The reference is to the final eight verses in the Torah that record the death of Moses and were recorded by Joshua in the scroll of the Torah, in addition to the rest of the Torah that was written by Moses (see Bava Batra 15a). And one says: The reference is to the portion of the cities of refuge that appears in the book of Joshua.

[136] The Gemara discusses these two opinions: Granted, according to the one who says that the reference is to the final eight verses in the Torah, that is the reason that it is written: “And Joshua wrote these matters in the scroll of the Torah of God,” as he wrote those verses and they were included in the Torah. But according to the one who says that the reference is to the portion of the cities of refuge in the book of Joshua, what is the meaning of the phrase “in the scroll of the Torah of

God”? They appear in the book of Joshua, not in the Torah. The Gemara answers: This is what the verse is saying: And Joshua wrote in his book these matters that are also written in the scroll of the Torah of God.

137 The Gemara proceeds to cite another dispute between Rabbi Yehuda and one of the Sages in which it is not clear which opinion is attributable to which Sage. In the case of a Torah scroll where one sewed its sheets with linen threads, Rabbi Yehuda and Rabbi Meir disagree with regard to this matter. One says: The Torah scroll is fit for use, and one says: The Torah scroll is unfit for use.

138 The Gemara elaborates: According to the one who says that the Torah scroll is unfit for use, the reason is as it is written with regard to phylacteries: “And it shall be for you a sign on your hand and a memorial between your eyes, in order that the Torah of God shall be in your mouth” (Exodus 13:9). And in this verse the entire Torah is juxtaposed and likened to phylacteries: Just as with regard to phylacteries, there is a halakha transmitted to Moses from Sinai to sew them with sinews, so too, with regard to all sheets of the Torah scroll, there is a requirement to sew them with sinews. And the other Sage holds: When the Torah scroll is juxtaposed and likened to phylacteries, it is only with regard to the principle that the sheets of the Torah scroll may be prepared only from a species of animal that is permitted to your mouth, i.e., that it is permitted for a Jew to eat; but with regard to its other halakhot, it is not juxtaposed and likened to phylacteries.

139 Rav said: I saw that the phylacteries of the house of my uncle, Rabbi Ḥiyya, were sewn with linen. But the halakha is not in accordance with his opinion; phylacteries may be sewn only with sinews.

140 MISHNA: The Torah states that an unintentional murderer is required to remain in the city of refuge to which he fled until the death of the High Priest. The mishna elaborates: With regard to High Priests, who were appointed in several different manners, one anointed with the anointing oil, which was the method through which High Priests were consecrated until the oil was sequestered toward the end of the First Temple period; and one consecrated by donning multiple garments, the eight vestments unique to the High Priest, which was the practice during the Second Temple period; and one who received a temporary appointment due to the unfitness of the serving High Priest, who departed from his anointment with the restoration of the serving High Priest to active service, their deaths facilitate the return of the murderer from the city of refuge to his home. Rabbi Yehuda says: Even the death of a priest anointed for war to address the soldiers (see Deuteronomy 20:1–7) facilitates the return of the murderer.

141 The mishna continues: Therefore, the mothers of High Priests would provide those exiled to cities of refuge with sustenance and garments so that they would not pray that their sons would die. The more comfortable their lives in the city of refuge, the less urgency they would feel to leave, and the less likely it would be that they would pray for the death of the High Priests.

142 GEMARA: The Gemara asks: From where are these matters, that the death of these High Priests facilitates the return of the murderer, derived? Rav Kahana said they are derived from a verse, as the verse states: “And he shall dwell there until the death of the High Priest who was anointed with the sacred oil” (Numbers 35:25), and it is written: “For in his city of refuge he shall dwell until the death of the High Priest” (Numbers 35:28), and it is written: “And after the death of the High Priest the murderer shall return to his ancestral land” (Numbers 35:28). The three mentions of the death of the High Priest correspond to the three types of High Priest enumerated by the first tanna of the mishna:

One anointed with oil, one consecrated by donning the eight vestments, and one who was relieved of his position.

143 And Rabbi Yehuda holds that another verse is written: “And you shall take no ransom for him that fled to his city of refuge, to return and dwell in the land until the death of the priest” (Numbers 35:32), from which it is derived that the death of the priest anointed for war also facilitates the return of the murderer. And the other tanna says: From the fact that High Priest is not written in that verse, it is clear that the reference is not to an additional type of High Priest; rather, the reference is to one of those High Priests mentioned in the preceding verses.

144 § The mishna teaches: Therefore, the mothers of High Priests would provide those exiled to cities of refuge with sustenance and garments so that they would not pray that their sons will die. The Gemara asks: The reason that the High Priest will not die is that they do not pray; but if they prayed for the death of the High Priest, would he die? But isn’t it written: “As the wandering sparrow, as the flying swallow, so a curse that is baseless shall come home” (Proverbs 26:2)? Why does the mishna express concern over a baseless curse? A certain elder said to him: I heard in the lecture delivered by Rava that it is not a baseless curse, as the High Priests share the blame for the unintentional murders performed by these people, as they should have pleaded for mercy for their generation, that no murder should transpire, even unintentionally, and they did not plead. Due to their share in the blame, prayers for their death could be effective.

145 And some teach a variant reading of the mishna: Therefore, the mothers of High Priests would provide those exiled to cities of refuge with sustenance and garments, so that those exiled would pray that their sons will not die. The Gemara infers: The reason that the High Priests will not die is that they pray, but if they did not pray for the High Priest not to die, would the High Priest die? What could the High Priest have done to prevent the unintentional murder? Here, in Babylonia, we say an adage to describe a situation of that sort: Toviyya sinned and Zigud is flogged. Toviyya violated a prohibition and Zigud came as a single witness to testify against him. Since the testimony of a single witness is not valid in court, he is flogged for defaming Toviyya. The sinner is unpunished and the person who sought to testify against him is flogged. This became a colloquialism for a situation where one is punished for the sin of another.

146 There, in Eretz Yisrael, they say a different adage with the same application: Shechem married a woman and Mavgai circumcised himself. This is based on the episode of the abduction of Dinah in the city of Shechem (see Genesis, chapter 34), where Shechem compelled all the male residents of the city to undergo circumcision so that he could marry Dinah. Shechem married Dinah, while the rest of the males suffered the pain of circumcision and received no benefit.

147 A certain elder said to him: I heard in the lecture delivered by Rava that the High Priests share the blame, as they should have pleaded for mercy for their generation and they did not plead. Consequently, they required the exiles to pray on their own behalf. The Gemara illustrates the concept of the responsibility held by the spiritual leadership: This is like in this incident where a certain man was eaten by a lion at a distance of three parasangs from the place of residence of Rabbi Yehoshua ben Levi, and Elijah the prophet did not speak with him for three days because of his failure to pray that an incident of this kind would not transpire in his place of residence.

148 Apropos curses that are realized, Rav Yehuda says that Rav says: With regard to the curse of a Sage, even if it is baseless, i.e., based on a mistaken premise, it nevertheless comes to fruition and

affects the object of the curse. From where do we derive this? It is derived from this incident involving Ahithophel. When David dug the drainpipes in preparation for building the Temple, the waters of the depths rose and sought to inundate the world. David said: What is the halakha? Is it permitted to write the sacred name on an earthenware shard and throw it into the depths, so that the water will subside and stand in its place? There was no one who said anything to him. David said: Anyone who knows the answer to this matter and does not say it shall be strangled.

149 Then Ahithophel raised an a fortiori inference on his own and said: And if in order to make peace between a man and his wife in the case of a sota, when the husband suspects his wife of having committed adultery, the Torah says: My name that was written in sanctity shall be erased on the water, then, in order to establish peace for the whole world in its entirety, is it not all the more so permitted? Ahithophel said to David: It is permitted. David wrote the sacred name on an earthenware shard and cast it into the depths, and the water in the depths subsided and stood in its place.

150 And even so it is written that during the rebellion of Absalom: “And Ahithophel saw that his counsel was not taken, and he saddled his donkey and he arose and went to his house, to his town, and he commanded his household and strangled himself” (II Samuel 17:23). Although David stipulated that his curse would take effect only if one who knows the answer fails to share it with him, and Ahithophel did not fail to share it with him, the curse was realized.

151 The Gemara cites a similar statement: Rabbi Abbahu says: With regard to the curse of a Sage, even if it is stated conditionally, it comes to realization. From where do we derive this? It is derived from an incident involving Eli the High Priest, as Eli said to Samuel, after the latter had received a prophetic vision with regard to Eli, that his sons do not follow his path: “Therefore may God do to you, and more also, if you hide any matter from me of all the matters that He spoke unto you” (I Samuel 3:17). And even though it is written immediately thereafter: “And Samuel told him all the matters, and did not hide from him” (I Samuel 3:18), it is written at the time of Samuel’s death: “And his sons did not follow in his ways” (I Samuel 8:3), indicating that God did to Samuel as he prophesied with regard to Eli, and his own sons did not follow his path. Despite the fact that Eli stated the curse conditionally, Samuel was affected by the curse.

152 Apropos declarations that take effect even if they were stated conditionally and the condition was not fulfilled, Rav Yehuda says that Rav says: Ostracism that was declared conditionally requires nullification, even though the condition was not fulfilled. From where do we derive this? It is derived from Judah, as it is written with regard to his request that his father allow the brothers to take Benjamin to Egypt: “If I do not bring him to you…I would have sinned to you for all days” (Genesis 43:9), i.e., I will remain ostracized as a sinner. And Rabbi Shmuel bar Naḥmani says that Rabbi Yonatan says: What is the meaning of that which is written: “Let Reuben live and not die” (Deuteronomy 33:6), followed immediately by the verse: “And this for Judah” (Deuteronomy 33:7)? Why was the blessing of Judah linked to that of Reuben?

153 Throughout those forty years that the children of Israel were in the wilderness, Judah’s bones were rattling in the coffin, detached from one another, because the ostracism that he declared upon himself remained in effect, until Moses stood and entreated God to have mercy upon him. Moses said before Him: Master of the Universe, who caused Reuben to confess his sin with Bilhah? It was Judah. Judah’s confession to his sin with Tamar led Reuben to confess to his own sin. Moses continued: “And this is for Judah…hear God, the voice of Judah” (Deuteronomy 33:7).

[154] At that point his limbs entered their designated place [leshafa] and no longer rattled, but the Heavenly court still would not allow him to enter the heavenly academy. Moses continued: “And bring him to his people” (Deuteronomy 33:7), so that he may join the other righteous people in Heaven. That request was also granted, but Judah did not know how to engage in the give-and-take of halakha with the Sages in the heavenly academy. Moses continued: “His hands shall contend for him” (Deuteronomy 33:7). That request was also granted, but Judah did not know how to resolve any difficulty raised to reject his opinion until Moses prayed: “And You shall be a help against his adversaries” (Deuteronomy 33:7).

[155] The mishna enumerates those High Priests whose death facilitates the return of unintentional murderers to their homes from the city of refuge to which they fled. A dilemma was raised before the Sages: Is it only with the death of all of the High Priests enumerated in the mishna that the unintentional murderer returns, or perhaps it is even with the death of one of them that he returns?

[156] The Gemara suggests: Come and hear a resolution to the dilemma from the succeeding mishna: If the verdict of a murderer was decided at a time when there was no one filling the position of High Priest, he never leaves the city of refuge. And if it is so that the death of any of those listed in the mishna facilitates his return, let him return with the death of one of these other High Priests, the one who was sanctified by donning the eight vestments or a priest who was relieved of his position. The Gemara rejects the proof: The mishna is referring to a case where there were no High Priests when the verdict was decided.

[157] MISHNA: If, after the unintentional murderer’s verdict was decided and he was sentenced to exile, the High Priest died, he is not exiled, as the death of the High Priest exempts him from exile. If it was before his verdict was decided that the High Priest died and they appointed another in his place, and thereafter his verdict was decided, he returns from exile with the death of the second High Priest. If the verdict of a murderer was decided at a time when there was no High Priest, and likewise in the cases of one who unintentionally killed a High Priest and in the case of a High Priest who killed unintentionally, the unintentional murderer never leaves the city of refuge.

[158] And one who is exiled may not leave the city at all, either for testimony relating to a mitzva, or for testimony relating to monetary matters, or for testimony relating to capital matters. And even if the Jewish people require his services, and even if he is the general of the army of Israel like Joab ben Zeruiah, he never leaves the city of refuge, as it is stated: “And the congregation shall restore him to his city of refuge, that he fled there” (Numbers 35:25), from which it is derived: There shall be his dwelling, there shall be his death, there shall be his burial.

[159] The mishna continues: Just as an unintentional murderer is admitted to the city of refuge, so is he admitted to its outskirts, located within the Shabbat boundary. Once he entered the outskirts of the city, the blood redeemer may not kill him. In a case where a murderer emerged beyond the Shabbat boundary of the city of refuge and the blood redeemer found him there, Rabbi Yosei HaGelili says: It is a mitzva for the blood redeemer to kill him, and it is optional for every other person to do so. Rabbi Akiva says: It is optional for the blood redeemer, and every other person is liable for killing him.

[160] GEMARA: The mishna teaches: If after the unintentional murderer’s verdict was decided and he was sentenced to exile, the High Priest died, the unintentional murderer is not exiled. The Gemara asks: What is the reason for this? Abaye says: It is derived through an a fortiori inference: If one who

was already exiled now emerges with the death of this High Priest, with regard to one who was not yet exiled, is it not right that he should not be exiled? The Gemara rejects this reasoning: And perhaps with regard to this one, who was already exiled, his sin was atoned for by his exile, and therefore the death of the High Priest facilitates his return, but that one, who was not yet exiled, no, his sin was not atoned for and the death of the High Priest should not prevent his exile. The Gemara rebuts: Is it his exile that atones for his sin? It is the death of the High Priest that atones for his sin, and the High Priest died.

161 The mishna teaches: If it was before his verdict was decided that the High Priest died and they appointed another in his place, and thereafter his verdict was decided, he returns with the death of the second High Priest. The Gemara asks: From where are these matters derived? Rav Kahana said that they are derived from a verse, as the verse states: “And he shall dwell there until the death of the High Priest, whom he anointed with the sacred oil” (Numbers 35:25). Now is it the unintentional murderer who anoints the High Priest? Rather, the reference is to that High Priest who was anointed during his days, after he committed the unintentional murder.

162 The Gemara asks: Why is his return home dependent on the death of the second High Priest? Earlier (11a), the Gemara explained that the High Priest bears a share of the responsibility for unintentional murderers, as he should have pleaded for mercy for his generation and he did not do so. In this case, as the High Priest in question was appointed only after the murder transpired, what could he have done to prevent the unintentional murder? The Gemara answers: He should have pleaded for mercy that the verdict of the unintentional murderer would be decided by the court favorably, so that he would not be sentenced to exile, and he did not plead.

163 § Abaye said: We have a tradition that with regard to an unintentional murderer whose verdict was decided and who was sentenced to exile, and he died before he was exiled to the city of refuge, one transports his bones to the city of refuge, and buries him there, as it is written: “To return and dwell in the land until the death of the priest” (Numbers 35:32). And what is the dwelling that is in the land? You must say it is referring to his burial. A Sage taught: If an unintentional murderer died in a city of refuge before the High Priest died, one transports his bones to the graves of his ancestors after the High Priest dies, as it is written: “The murderer shall return to his ancestral land” (Numbers 35:28). What is the dwelling that is taking place in his ancestral land? You must say it is his burial.

164 § The Gemara cites a dispute with regard to a case where the murderer’s verdict was decided, i.e., he was sentenced to exile, and the High Priest filling the position at the time was deemed the son of a divorced woman or the son of a ḥalutza, and the High Priest was thereby disqualified from the priesthood. Rabbi Ami and Rabbi Yitzḥak Nappaḥa disagree with regard to this matter. One says: The priesthood died, i.e., it is as though the High Priest died, and all exiles return home from the city of refuge. And the other one says: The priesthood is voided, i.e., it is as though there was no High Priest filling the position during that period, and therefore, the exiles may never leave the city of refuge.

165 The Gemara suggests: Let us say that these amora’im, Rabbi Ami and Rabbi Yitzḥak Nappaḥa, disagree with regard to the issue that is the subject of the dispute between Rabbi Eliezer and Rabbi Yehoshua, as we learned in a mishna (Terumot 8:1): If a priest was standing and sacrificing offerings upon the altar, and it became known that he was the son of a divorced woman or the son of a ḥalutza, and he was disqualified from the Temple service, Rabbi Eliezer says: All offerings that he sacrificed

up to that point are not valid, as it is apparent that he is not and never was fit for Temple service, and Rabbi Yehoshua deems all offerings that he already sacrificed as valid.

166 The Gemara explains: Let us say that the one who says here that the priesthood died holds in accordance with the opinion of Rabbi Yehoshua. He holds that the High Priest is disqualified only from the time of the discovery that he is disqualified from the priesthood and forward, while any service performed previous to that discovery is valid. The discovery that he is disqualified from the priesthood is like the High Priest's death, but his priesthood is not invalidated retroactively. And the one who says that the priesthood is voided holds in accordance with the opinion of Rabbi Eliezer, and since his priesthood is voided retroactively, there was no High Priest filling the position when he was sentenced.

167 The Gemara rejects this parallel: According to the opinion of Rabbi Eliezer, everyone agrees that he holds that the priesthood is voided. When they disagree, it is according to the opinion of Rabbi Yehoshua: The one who says the priesthood is dead holds in accordance with the straightforward understanding of the opinion of Rabbi Yehoshua. And the one who says the priesthood is voided can also hold in accordance with his opinion and explain that Rabbi Yehoshua states his opinion only there, with regard to Temple service, as it is written: "Bless, God, his property [ḥeilo], and accept the work of his hands" (Deuteronomy 33:11). The term ḥeilo is interpreted homiletically to mean that even the offerings of those disqualified from Temple service due to flawed lineage [ḥalalin] are accepted after the fact. But here, with regard to the status of the priest, even Rabbi Yehoshua concedes that the priesthood is voided retroactively.

168 § The mishna teaches: If the verdict of a murderer was decided at a time when there was no High Priest, and likewise in the cases of one who unintentionally killed a High Priest and in the case of a High Priest who killed unintentionally, the unintentional murderer never leaves the city of refuge. And one who is exiled may not leave the city at all; even if the Jewish people require his services, and even if he is the general of the army of the Jewish people like Joab ben Zeruiah, he does not leave the city of refuge ever. Rav Yehuda says that Rav says: Joab made two errors at that moment, when he fled from Solomon, as it is written: "And Joab fled to the Tent of God and grasped the horns of the altar" (I Kings 2:28).

169 He erred in that only the top of the altar provides refuge, and he grasped its corners. Moreover, he erred in that only the altar of the eternal House, i.e., the Temple. provides refuge, and he grasped the altar at Shiloh. Abaye said: It is with regard to this that Joab also erred, as the altar provides refuge only for a priest who grasps the roof of the altar and his service is in his hand, and Joab was a non-priest.

170 Apropos errors, the Gemara cites that Reish Lakish says: The angel of Rome is destined to make three errors, as it is written: "Who is this who comes from Edom, with crimsoned garments from Bozrah?" (Isaiah 63:1), which is a parable for God's arrival after killing the angel of Rome in Bozrah. The angel of Rome will err in that it is only the city of Bezer that provides refuge and he exiled himself to Bozrah; he will err in that it provides refuge only to an unintentional murderer and he was an intentional murderer; and he will err in that it provides refuge only to a person and he is an angel.

171 § The Gemara resumes its analysis of the mishna. Rabbi Abbahu says: Cities of refuge were not given for the purpose of burial of unintentional murderers within them, as it is written with regard to

the Levite cities: “And their open land shall be for their cattle, and for their property, and for all their beasts [ḥayyatam]” (Numbers 35:3), from which it is derived: For life [leḥayyim] they are given, but not for burial. Even Levites who reside in these cities are buried beyond the open land surrounding the city. The Gemara raises an objection to this from the mishna’s interpretation of the term: “That he fled there” (Numbers 35:25), from which it is derived: There shall be his dwelling, there shall be his death, there shall be his burial. The Gemara answers: A murderer is different, as the Merciful One revealed concerning him that he is to be buried there. That does not apply to the other residents of the city.

172 The mishna teaches: Just as an unintentional murderer is admitted to the city of refuge, so is he admitted to its outskirts, located within the Shabbat boundary. And the Gemara raises a contradiction from a baraita with regard to that which is written concerning the unintentional murderer: “And he shall dwell in it” (Numbers 35:25), from which it is inferred: “In it,” but not within its boundary. Abaye said: This is not difficult. Here, the mishna is referring to the unintentional murderer being admitted to the city, which will provide refuge from the blood redeemer, who may not kill him there. There, the baraita is referring to the place where it is permitted for the murderer to dwell, i.e., within the city itself and not on its outskirts.

173 The Gemara asks: Why is it necessary to state that the murderer may not dwell on the outskirts of the city? Let him derive that halakha from the fact that one may not render the field of a Levite city an open space, nor an open space a field, nor an open space part of the city, nor the city an open space. Apparently, the outskirts of the city, whose status is that of an open space, may not be utilized for residential purposes. Rav Sheshet said: It is necessary to state this halakha only for tunnels. If a murderer excavated a tunnel on the outskirts of the city, although he did not violate the prohibition against ruining the fields of the city, he may not reside there based on the halakha by Torah law that he must reside inside the city.

174 § The mishna teaches a dispute between Rabbi Yosei HaGelili and Rabbi Akiva with regard to a case where the unintentional murderer emerged beyond the Shabbat boundary of the city of refuge, and the blood redeemer found him there. The Sages taught that it is written: “And the blood redeemer finds him outside the border of his city of refuge and the blood redeemer murders the murderer, he has no blood” (Numbers 35:27): It is a mitzva for the blood redeemer to kill him, and if there is no blood redeemer available to fulfill this mitzva, it is optional for any person to do so; this is the statement of Rabbi Yosei HaGelili. Rabbi Akiva says: It is optional for the blood redeemer to kill him, and any other person is liable for killing him.

175 The Gemara analyzes the mishna: What is the reason for the opinion of Rabbi Yosei HaGelili? He says: Is it written: If the blood redeemer murders the unintentional murderer, he has no blood? It states: “And the blood redeemer murders the murderer,” indicating that it is a mitzva. And Rabbi Akiva says: Is it written: The blood redeemer shall murder, in the imperative? It merely states: “And the blood redeemer murders,” which is merely relating the scenario under discussion.

176 On a related note, the Gemara cites that Mar Zutra bar Toviyya says that Rav says: In the case of a murderer who emerged beyond the Shabbat boundary of the city of refuge, and the blood redeemer found him there and killed him, the blood redeemer is executed for killing him. The Gemara asks: In accordance with whose opinion did Rav issue this ruling? He issued it neither in accordance with the opinion of Rabbi Yosei HaGelili, who maintains that there is a mitzva for the blood redeemer to kill

him, nor in accordance with the opinion of Rabbi Akiva, who says the blood redeemer has the option of killing him.

177 The Gemara answers: Rav states this ruling in accordance with the opinion of that tanna, as it is taught in a baraita that Rabbi Eliezer says with regard to the verse: “And the murderer shall not die, until he stands before the congregation for judgment” (Numbers 35:12): Why must the verse state this? It is necessary since it is stated: “And the blood redeemer finds him…and the blood redeemer murders the murderer” (Numbers 35:27). One might have thought that the blood redeemer may murder him immediately; therefore, the verse states: “Until he stands before the congregation for judgment,” from which it is derived that the blood redeemer may kill the murderer only after he is convicted in court. Mar Zutra bar Toviyya says that Rav says that the blood redeemer is liable if he kills the murderer before he is convicted.

178 The Gemara asks: And as for Rabbi Yosei HaGelili and Rabbi Akiva, with regard to this verse: “Until he stands before the congregation for judgment,” what do they derive from it? The Gemara answers: That verse is necessary for that which is taught in a baraita that Rabbi Akiva says: From where is it derived in the case of a Sanhedrin that saw one kill a person that they may not execute him until he stands trial in a different court? It is derived from a verse, as the verse states: “Until he stands before the congregation for judgment,” meaning: Until he stands before a different court. Since they themselves witnessed the murder, they are no longer capable of considering the possibility that he may be innocent.

179 The Sages taught in a baraita with regard to the verse: “And if the murderer emerges [yatzo yetze] …and the blood redeemer murders the murderer, he has no blood” (Numbers 35:26–27): I have derived only that the blood redeemer may kill the unintentional murderer if the unintentional murderer emerges from the city intentionally. From where is it derived that the same applies if he emerges unwittingly? It is derived from this verse, as the verse states: “If yatzo yetze”; the doubled form of the verb serves to teach that this halakha applies in any case where the unintentional murderer emerges from the city of refuge.

180 The Gemara asks: But isn’t it taught in a baraita with regard to an unintentional murderer who emerged from the city of refuge unwittingly: And one who kills him intentionally is executed, and one who kills him unintentionally is exiled? The Gemara answers: This is not difficult, as this second baraita is in accordance with the opinion of the one who says that we say: The Torah spoke in the language of people, and no halakha is derived from the doubled form of the verb: Yatzo yetze, as it is merely a rhetorical flourish, and that first baraita is in accordance with the opinion of the one who says that we do not say: The Torah spoke in the language of people, and the compound verb was employed in order to derive that the blood redeemer may kill the unintentional murderer even if he emerged from the city of refuge unwittingly.

181 Abaye said: It stands to reason that the halakha is in accordance with the opinion of the one who says: The Torah spoke in the language of people, and the blood redeemer is liable for killing an unintentional murderer who emerged from the city of refuge unwittingly, in order to ensure that the ultimate punishment of the unintentional murderer, when he emerges from the city of refuge, will not be more severe than his initial punishment, when he is sentenced in court. Just as with regard to his initial punishment for murder, if he killed intentionally he is executed, and if he killed unintentionally he is exiled, so too, with regard to his ultimate punishment, if he emerges from the city of refuge

intentionally he is killed by the blood redeemer, and if he emerges unwittingly he is returned to exile in the city of refuge.

182 § It is taught in one baraita: In the case of a father who killed his son, his surviving son becomes his blood redeemer and may kill him. And it is taught in another baraita: His son does not become his blood redeemer. The Gemara suggests: Let us say that this baraita, which states that his son does become his blood redeemer, is in accordance with the opinion of Rabbi Yosei HaGelili. Since there is a mitzva for the blood redeemer to kill the murderer, this mitzva applies equally to a son. And that baraita, which states that a son does not become a blood redeemer to kill his father, is in accordance with the opinion of Rabbi Akiva, who holds that the blood redeemer has only the option, not a mitzva, to kill the murderer.

183 The Gemara rejects that understanding. And how can you understand it in that manner? Both according to the one who says that there is a mitzva for the blood redeemer to kill the unintentional murderer and according to the one who says that it is optional, is it permitted for a son to do so? But doesn’t Rabba bar Rav Huna say, and likewise the school of Rabbi Yishmael taught: With regard to all transgressions of the Torah, even if the father is liable to receive lashes or be ostracized, a son does not become an agent of the court to flog his father or to curse him, apart from the case of a father who acted as one who incites others to engage in idol worship, as the Torah states in his regard: “You shall neither spare nor conceal him” (Deuteronomy 13:9)?

184 Rather, the Gemara suggests that the apparent contradiction between the two baraitot is not difficult, as this baraita, which says that the son does not become a blood redeemer to kill his father, is referring to his son, and that baraita, which says that the son does become a blood redeemer, is referring to the son of his son, who can become a blood redeemer to kill his grandfather, as the grandson is not required to honor his grandfather as he is required to honor his father.

185 MISHNA: The previous mishna teaches that the halakhic status of the outskirts of the city is like that of the city itself in terms of the unintentional murderer being provided refuge there. The mishna adds: With regard to a tree that stands within the Shabbat boundary of a city of refuge, whose boughs extend outside the boundary, or a tree that stands outside the boundary and its boughs extend inside the boundary, the status of the tree, whether it is considered inside or outside the boundary, in all cases follows the boughs.

186 GEMARA: And the Gemara raises a contradiction from a mishna (Ma’aser Sheni 3:7) taught with regard to second tithe. Second-tithe produce must be consumed within Jerusalem or redeemed outside of Jerusalem: With regard to a tree that stands within Jerusalem, and whose boughs extend outside the city wall, or a tree that stands outside the city wall and whose boughs extend inside the wall, the principle is: The halakhic status of any part of the tree that is above the wall and inward is that of an area within the wall and the halakhic status of any part of the tree that is above the wall and outward is that of an area outside the wall. Apparently, the trunk does not follow the boughs and the boughs do not follow the trunk. The status of each part of the tree is determined by its position relative to the wall.

187 The Gemara rejects the parallel between the cases. Are you raising a contradiction between the halakha of second tithe and the halakha of cities of refuge? With regard to the halakha of second tithe, the Merciful One made the status of the tree dependent on the wall, and with regard to cities of refuge, the Merciful One made the status of the tree dependent on dwelling. One can dwell in its

boughs, but one cannot dwell in its trunk. Therefore, with regard to cities of refuge, the halakhic status of the tree is determined by the boughs.

188 And the Gemara raises a contradiction between the previous baraita with regard to the halakha of second tithe and another baraita with regard to the halakha of second tithe, as it is taught in a baraita (see Ma'asrot 3:10): In Jerusalem, follow the boughs in determining the status of the tree with regard to consuming second-tithe produce, and likewise, with regard to cities of refuge, follow the boughs in determining the status of the tree with regard to providing refuge for an unintentional murderer. Rav Kahana said: This apparent contradiction is not difficult, as this baraita is in accordance with the opinion of Rabbi Yehuda, and that baraita is in accordance with the opinion of the Rabbis. As it is taught in a baraita with regard to partaking of second tithe in Jerusalem:

189 Rabbi Yehuda says: With regard to a cave, follow its entrance; if the entrance is inside the city, the status of the entire cave is that of part of the city, and one may partake of tithes in it. With regard to a tree, follow its boughs. The baraita that states that with regard to second tithe in Jerusalem and cities of refuge one follows the boughs is in accordance with the opinion of Rabbi Yehuda.

190 The Gemara rejects that explanation. Say that you heard Rabbi Yehuda express this opinion with regard to second-tithe produce in a situation where his ruling is a stringency, as in the case where the trunk of a tree is outside Jerusalem and its boughs are inside Jerusalem, just as among its boughs, one may not redeem second-tithe produce, and he must partake of it in Jerusalem, so too at its trunk he may not redeem second-tithe produce, even though it stands outside of Jerusalem. So too in a case where the trunk of a tree is inside and its boughs outside, there is a stringency: Just as among its boughs, one may not partake of second-tithe produce without redemption, so too at its trunk he may not partake of second-tithe produce without redemption, even though it stands inside Jerusalem.

191 But with regard to cities of refuge, it may be otherwise: Granted, if its trunk is outside the boundary and its boughs are inside, just as among its boughs, the blood redeemer may not kill the unintentional murderer, so too at its trunk, he may not kill him. But if its trunk was inside and its boughs outside, would one say that just as among its boughs, the blood redeemer may kill him, at its trunk, he may also kill him? Isn't the unintentional murderer standing inside the city of refuge? How could one say that it is permitted for the blood redeemer to kill him inside the city?

192 Rava said that it can be explained as follows: In the case where its trunk is inside the boundary and its boughs outside, and the unintentional murderer was standing at its trunk, everyone agrees that the blood redeemer may not kill him, and when Rabbi Yehuda said that the trunk follows the boughs, he did not intend to include that case. If the murderer is standing among the boughs of the tree, and the blood redeemer is able to kill him with arrows and pebbles, everyone, including the Rabbis, agrees that the blood redeemer may kill him, as the boughs are outside the city.

193 When they disagree is with regard to whether its trunk can become a step for its boughs, enabling the blood redeemer to gain access to the unintentional murderer there. One Sage, Rabbi Yehuda, holds: Its trunk can become a step for its boughs; the blood redeemer may gain access to the boughs extending outside the boundary and kill the unintentional murderer by climbing the trunk inside the city. It was in that context that Rabbi Yehuda says that the trunk follows the boughs. And one Sage, the Rabbis, holds: Its trunk cannot become a step for its boughs.

194 Rav Ashi said: What is the meaning of Rabbi Yehuda's statement: Follow its boughs? It does not mean that the location of the boughs is the only determining factor; rather, it means that in addition to

the trunk, follow the boughs as well in a case where it is a stringency. Therefore, with regard to a city of refuge a tree whose trunk is inside the boundary and its boughs extend beyond the boundary, the halakhic status of the boughs is the same as what it would be were they inside the boundary.

195 MISHNA: If an unintentional murderer, exiled to a city of refuge, unintentionally killed a person in the same city, he is exiled from that neighborhood where he resided to another neighborhood within that city. And a Levite who is a permanent resident of a city of refuge and unintentionally killed a person is exiled from that city to another city.

196 GEMARA: Apropos the halakha in the mishna that a Levite is exiled from one city to another city, the Gemara cites that which the Sages taught with regard to the verse: “And one who did not lie in wait…and I will appoint for you a place where he may flee” (Exodus 21:13). “And I will appoint for you”; God said to Moses: There will be a place that provides refuge for unintentional murderers already during your lifetime. “A place”; it will be from your place, meaning the Levite camp served as the place that provided refuge in the wilderness. “Where he may flee”; this teaches that Israel would exile unintentional murderers in the wilderness as well, before they entered the land. To where did they exile unintentional murderers when they were in the wilderness? They exiled them to the Levite camp, which provided refuge.

197 From here the Sages said: A Levite who killed unintentionally is exiled from one district to another district, to a different Levite city in the other district. And if he was exiled to a city in his own district, he is admitted to the city in his district, which provides him with refuge. Rav Aḥa, son of Rav Ika, said: What is the verse from which it is derived that a murderer who unintentionally killed in the city of refuge where he was exiled is exiled to another neighborhood in that same city? It is derived from a verse, as it is stated: “For in his city of refuge he shall dwell” (Numbers 35:28), indicating that it is a city in which he was already admitted, as the verse is referring to it as his city, and he shall continue to reside there as well.

198 MISHNA: Similarly, in the case of a murderer who was exiled to a city of refuge and the people of the city sought to honor him due to his prominence, he shall say to them: I am a murderer. If the residents of the city say to him: We are aware of your status and nevertheless, we wish to honor you, he may accept the honor from them, as it is stated: “And this is the matter [devar] of the murderer” (Deuteronomy 19:4), from which it is derived that the murderer is required to say [ledabber] to them that he is a murderer. He is not required to tell them any more than that.

199 The unintentional murderers would pay a fee to the Levites as rent for their living quarters in the cities of refuge, which were Levite cities; this is the statement of Rabbi Yehuda. Rabbi Meir says: They would not pay a fee to them, but would reside rent free, as they are required to live there by Torah law. They also disagreed with regard to the status of the unintentional murderer when he returns home after the death of the High Priest. He returns to the same public office that he occupied prior to his exile; this is the statement of Rabbi Meir. Rabbi Yehuda says: He does not return to the office that he occupied.

200 GEMARA: Rav Kahana said: This dispute between Rabbi Yehuda and Rabbi Meir is with regard to payment of rent to the Levite landlords in the six cities of refuge designated in the Torah and in the book of Joshua, as one Sage, Rabbi Yehuda, holds that in the verse: “They shall be cities of refuge for you” (Numbers 35:11), the term “for you” means that the cities shall be for you only for providing refuge, and therefore they must pay rent to the Levites. And one Sage, Rabbi Meir, holds

that the term “for you” means for all your needs; therefore, they are not required to pay rent. But with regard to the forty-two additional Levite cities, which also served as cities of refuge, everyone agrees that the unintentional murderers would pay rent to the Levite landlords.

[201] Rava said to him: But the term “for you” certainly indicates for all your needs; therefore, the dispute cannot be as Rav Kahana explains it. Rather, Rava said: The dispute is only with regard to the forty-two Levite cities, as one Sage, Rabbi Yehuda, holds that from the verse: “They shall be the six cities of refuge…and beside them you shall give forty-two cities” (Numbers 35:6), it is derived that the forty-two cities are like these original six cities, only insofar as with regard to the unintentional murderer being admitted. And one Sage, Rabbi Meir, holds that from the verse: “They shall be the six cities of refuge…and beside them you shall give forty-two cities,” it is derived that the forty-two cities are like these original six cities in every sense: Just as those six cities were given to you, i.e., the unintentional murderers, for all your needs, so too, these forty-two cities were given to you, i.e., the unintentional murderers, for all your needs. But with regard to the six cities specifically designated as cities of refuge, everyone agrees that unintentional murderers would not pay the Levites a fee.

[202] § The mishna teaches that there is a dispute as to whether the unintentional murderer returns to the same public office that he occupied prior to his exile. On a related note, the Sages taught with regard to a Hebrew slave liberated during the Jubilee Year, about whom it is written: “And he returns to his family, and to the estate of his fathers he shall return” (Leviticus 25:41): He returns to his family, but he does not return to that status of prominence and honor that his ancestors held; this is the statement of Rabbi Yehuda. Rabbi Meir says: He even returns to that status of prominence and honor that his ancestors held. From the phrase “to the estate of his fathers he shall return,” it is derived that he returns to be like his fathers.

[203] And likewise, the same is true with regard to an exile sent to a city of refuge, as when the verse states: “To the estate of his fathers he shall return,” the term “he shall return” is redundant and it serves to include the unintentional murderer.

[204] The Gemara asks: What is the meaning of: And likewise, the same is true with regard to an exile? The Gemara explains: It is as it is taught in a baraita with regard to the verse: “The murderer shall return to his ancestral land” (Numbers 35:28), from which it is derived that he returns to his ancestral land, but he does not return to that status of prominence and honor that his ancestors held; this is the statement of Rabbi Yehuda. Rabbi Meir says: He even returns to that status of prominence and honor that his ancestors held. Rabbi Meir derives this by means of a verbal analogy from there, i.e., between the term of “return” written with regard to the unintentional murderer, and the term of “return” written with regard to the Hebrew slave. The verbal analogy teaches that just as a Hebrew slave returns to his father’s estate and the status of prominence held by his ancestors, so too, the unintentional murderer returns to his ancestral land and to the status of prominence held by his ancestors.

Chapter 3

[1] MISHNA: After enumerating in tractate Sanhedrin those liable to be executed and in the previous chapter those liable to be exiled, the mishna proceeds to enumerate those liable to receive lashes. These are the people who are flogged by Torah law for violating a prohibition: One who engages in 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 menstruating woman. Likewise, one is flogged in the case of a widow who married a High Priest, a divorcée or a ḥalutza who married an ordinary priest, a mamzeret, i.e., a daughter born from an incestuous or adulterous relationship, or a Gibeonite woman who married a Jew of unflawed lineage, and a Jewish woman of unflawed lineage who married a Gibeonite or a mamzer, i.e., a son born from an incestuous or adulterous relationship.

[2] The mishna elaborates: If a woman was both a widow and a divorcée, as after she was widowed she remarried and was divorced, a High Priest is liable to receive two sets of lashes for marrying her due to the violation of two different prohibitions, that of his marrying a widow and that of his marrying a divorced woman. If a woman was both a divorcée and a ḥalutza, from two different men, an ordinary priest who marries her is liable to receive only one set of lashes, due to the violation of one prohibition alone.

[3] The mishna continues enumerating those liable to receive lashes: A ritually impure person who ate sacrificial food and one who entered the Temple while ritually impure. And one who eats the forbidden fat of a domesticated animal; or blood; or notar, leftover flesh from an offering after the time allotted for its consumption; or piggul, an offering invalidated due to intent to sprinkle its blood, burn its fats on the altar, or consume it, beyond its designated time; or one who partakes of an offering that became impure, is flogged.

[4] And one who slaughters a sacrificial animal or sacrifices it on an altar outside the Temple courtyard, and one who eats leavened bread on Passover, and one who eats on Yom Kippur and one who performs labor on Yom Kippur, and one who blends the anointing oil for non-sacred use, and one who blends the incense that was burned on the altar in the Sanctuary for non-sacred use, and one who applies the anointing oil, and one who eats unslaughtered animal or bird carcasses, or tereifot, which are animals or birds with a condition that will lead to their death within twelve months, or repugnant creatures, or creeping animals, is liable to receive lashes.

[5] If one ate untithed produce, i.e., produce from which terumot and tithes were not separated; or first-tithe produce whose teruma of the tithe was not taken; or second-tithe produce or sacrificial food that was not redeemed; he is liable to receive lashes.

[6] With regard to the measure for liability for eating forbidden food, the mishna asks: How much does one need to eat from untithed produce to be liable to receive lashes? Rabbi Shimon says: If one ate any amount of untithed produce he is liable to receive lashes. And the Rabbis say: He is liable only if he eats an olive-bulk, which is the minimum measure characterized as eating. Rabbi Shimon said to them: Do you not concede to me with regard to one who eats an ant of any size that he is liable to receive lashes? The Rabbis said to Rabbi Shimon: He receives lashes for eating an ant of any size due to the fact that it is an intact entity in the form of its creation, and that is what the Torah

prohibited. Rabbi Shimon said to them: One kernel of wheat is also in the form of its creation, and therefore one should be liable to receive lashes for eating any intact entity.

[7] GEMARA: Apropos the list in the mishna of those liable to receive lashes, the Gemara notes: The tanna teaches those liable to receive excision from the World-to-Come [karet], as most of the cases enumerated at the beginning of the mishna include actions that not only entail violation of a prohibition but are also punishable by karet. But the tanna does not teach those liable to be executed with court-imposed death penalties among those liable to receive lashes. Apparently, lashes are not administered to those who violate a prohibition punishable by execution. The Gemara asks: Whose opinion is expressed in the mishna? It is the opinion of Rabbi Akiva, as it is taught in a baraita that there is a tannaitic dispute: Both those liable to receive karet and those liable to be executed with court-imposed death penalties

[8] are included in the category of those liable to receive forty lashes for violating a Torah prohibition. This is the statement of Rabbi Yishmael.

[9] Rabbi Akiva says: Those liable to receive karet are included in the category of those liable to receive forty lashes, because if they repented, the heavenly court absolves them of the punishment of karet. Therefore, karet does not absolve them of the punishment of lashes. Those liable to be executed with court-imposed death penalties are not included in the category of those liable to receive forty lashes, as even if they repented, the earthly court does not absolve them of execution; and one is not punished by the court twice for performing the same transgression.

[10] Rabbi Yitzḥak says that like those liable to be executed, those liable to receive karet are not flogged. Those liable to receive karet for incest were included in the generalization: “For anyone who performs any of these abominations, the souls who do so shall be excised [venikhretu] from among their people” (Leviticus 18:29). Included in that category is one who engages in intercourse with his sister. And why then did the halakha of karet with regard to intercourse with one’s sister emerge from the generalization and receive specific mention: “And a man who takes his sister…and they shall be excised before the eyes of the children of their people” (Leviticus 20:17)? It is in order to sentence one who engages in intercourse with his sister with karet, and not with lashes. This is the source for the opinion that those liable to receive karet are not flogged.

[11] The Gemara elaborates: What is the reason for the opinion of Rabbi Yishmael, who holds that even those liable to be executed are liable to receive lashes? It is as it is written: “If you will not observe to perform all the matters of this Torah” (Deuteronomy 28:58), and it is written immediately thereafter, with regard to the punishment of one who violates that verse: “And God will make your plagues wondrous [vehifla]” (Deuteronomy 28:59). The Sages interpreted that verse: This term, hafla’a, I do not know what its meaning is. When the verse states concerning those liable to receive lashes: “And the judge shall cause him to lie down [vehippilo] and to be beaten before him” (Deuteronomy 25:2), you must say that this hafla’a is a term referring to lashes, and it is written that this hafla’a is administered in any case where one does not fulfill the verse “if you will not observe to perform all the matters of this Torah,” including those prohibitions punishable by death.

[12] The Gemara objects: If so, and Rabbi Yishmael interprets the verses in that manner, those liable for failing to perform positive mitzvot should also be flogged, as those mitzvot too are included in “all the matters of this Torah.” The Gemara answers: Positive mitzvot are not included in this phrase, because “if you will not observe” is written, and this is in accordance with the principle that Rabbi

Avin says that Rabbi Elai says, as Rabbi Avin says that Rabbi Elai says: Wherever it is stated in the Torah the terms: Observe, lest, or do not, it is nothing other than a prohibition. Since in this verse “if you will not observe” is written, only those who violate prohibitions are liable to receive lashes.

13 The Gemara objects: If so, one should also be flogged for violating a prohibition that does not involve an action, but the halakha is that one is not flogged in that case. The Gemara rejects that contention: “If you will not observe to perform” is written, and in violating a prohibition that does not involve an action, one performed no action.

14 The Gemara objects: One should also be flogged for violating a prohibition that entails fulfillment of a positive mitzva, where the Torah provides the means to rectify the transgression through performance of a positive mitzva, as it does involve an action. Yet the halakha is that one is not flogged for violating that type of prohibition. The Gemara rejects that contention: One is not flogged in that case because lashes are administered only for violation of prohibitions similar to the prohibition of muzzling an ox while it is threshing grain (see Deuteronomy 25:4). The Torah juxtaposed that prohibition to the halakhot of lashes in the same passage, from which it is derived that lashes are administered only for violations similar to muzzling, i.e., a prohibition that does not entail fulfillment of a positive mitzva.

15 The Gemara comments: Now that you have arrived at this understanding, all the previous objections can also be resolved in the same manner: No lashes are administered for failure to fulfill a positive mitzva or for violation of a prohibition that does not entail an action, because one is flogged for violation only of prohibitions similar to the prohibition of muzzling, which is a prohibition and involves an action.

16 The Gemara continues its analysis of the opinions cited in the baraita: And with regard to Rabbi Akiva, what is the reason he maintains that those liable to be executed are not flogged? It is written: “And the judge shall cause him to lie down and to be beaten before him, according to the measure of his wickedness” (Deuteronomy 25:2), from which it is derived with regard to one who commits one transgression: For one evildoing you can render him liable, but you cannot render him liable for two evildoings, i.e., one cannot receive two punishments for the same act. Therefore, execution suffices and he is not flogged.

17 And Rabbi Yishmael holds that this matter applies only with regard to one transgression punishable by both death and monetary restitution, or punishable by both lashes and monetary restitution. But death and lashes are not considered two separate punishments, rather both forms of physical punishment are together considered an extended death, with the lashes followed by the execution.

18 The Gemara asks: And according to Rabbi Akiva, if that is so, that one does not receive two punishments for one transgression, those liable to receive karet too should not be flogged. What did you say in response, that if they repented they are exempt from karet, and therefore they are flogged instead? Now, in any event, at the point when they are flogged they have not yet done so, i.e., repented.

19 Rabbi Abbahu says: The Torah explicitly included with regard to lashes those liable to receive karet, as is derived by means of a verbal analogy: “And they shall be excised [venikhretu] before the eyes of [le’einei] the children of their people” (Leviticus 20:17), from: “Forty he shall flog him…and your brother shall be dishonored before your eyes [le’einekha]” (Deuteronomy 25:3). Rabbi Abba bar

Memel objects to this: If so, the inclusion of those liable to be executed with court-imposed death penalties should also be learned by means of a verbal analogy: “If from the eyes of [me’einei] the assembly it was performed unwittingly” (Numbers 15:24) stated with regard to idol worship, for which one is liable to be executed, from: “Before your eyes,” stated with regard to lashes. On that basis, one should derive that those liable to be executed with a court-imposed death penalty should also be flogged.

[20] The Gemara rejects that objection: One derives by means of a verbal analogy le’einei from le’einekha, due to the similar prefix, but one does not derive me’einei from le’einekha.

[21] The Gemara asks: And what significant difference is there between them that prevents derivation by means of a verbal analogy? But didn’t the school of Rabbi Yishmael teach a verbal analogy with regard to leprosy of houses? The verse states: “And the priest shall return [veshav] on the seventh day” (Leviticus 14:39), and another verse with regard to the priest’s visit seven days later states: “And the priest shall come [uva] and look” (Leviticus 14:44). This returning and this coming have the same meaning, and one can therefore derive by verbal analogy that the halakha that applies if the leprosy had spread at the conclusion of the first week applies if it had spread again by the end of the following week. Obviously, the less pronounced difference between me’einei and le’einekha should not prevent the teaching of a verbal analogy.

[22] And furthermore, why not derive by means of a verbal analogy me’einei written with regard to court-imposed death penalties from le’einei written with regard to karet, since those two terms are more similar, just as a verbal analogy of le’einei from le’einekha was derived.

[23] The Gemara answers: Rabbi Shmuel bar Rav Yitzḥak received a tradition from Rabbi Abbahu that the reason those liable to receive karet are flogged and it is not considered two punishments for one transgression is that when the verse states: “According to the measure of his wickedness” (Deuteronomy 25:2), from which it is derived: For one evildoing you can render him liable, but you cannot render him liable for two evildoings, the verse is speaking with regard to an evildoing that is given to the jurisdiction of the court, not to an act of wickedness punishable at the hand of Heaven.

[24] § Rava says with regard to the dispute between Rabbi Yishmael and Rabbi Akiva: If the witnesses or other onlookers forewarned him that if he performs the transgression he will be sentenced to death, everyone, even Rabbi Yishmael, agrees that he is not both flogged and executed. When they disagree, it is in a case where they forewarned him that he will be sentenced to lashes. Rabbi Yishmael maintains that with regard to a prohibition in the Torah that potentially serves as a mandate for court-imposed capital punishment, one is flogged for its violation in a case where there is no actual death penalty, and Rabbi Akiva maintains that with regard to a prohibition in the Torah that potentially serves as a mandate for court-imposed capital punishment, one is not flogged for its violation even if no death penalty is imposed, as that prohibition is punishable only by death.

[25] The Gemara asks: And according to Rabbi Akiva, if so, with regard to those liable to receive karet as well, they violated a prohibition in the Torah that serves as a mandate for karet and not for lashes. Rav Mordekhai said to Rav Ashi: This is what Avimi from Hagronya said in the name of Rava: Those liable to receive karet do not require forewarning, as in the case of one who fails to fulfill the positive mitzvot of the Paschal offering and circumcision the Torah punished them with karet even though it did not warn that it is prohibited to fail to fulfill the mitzva. Therefore, the prohibitions

written in cases punishable with karet are written to teach that one can receive lashes for their violation, not to mandate the punishment of karet.

[26] The Gemara asks: But perhaps the prohibition is written concerning those liable to receive karet with regard to liability to bring an offering for unwitting violation of the prohibition, not to teach that the transgressor will receive lashes, as for failure to fulfill the positive mitzvot of the Paschal offering and circumcision, for which there is no biblical prohibition, one does not bring an offering.

[27] The Gemara rejects that suggestion: There, with regard to the Paschal offering and circumcision, that is not the reason that one does not bring an offering. Rather, it is due to the fact that all the mitzvot in the entire Torah whose unwitting violation requires the transgressor to bring a sin-offering are juxtaposed to and likened to idol worship. Just as idol worship is a prohibition about which the Torah commands: Sit and do not perform the transgression, and one who unwittingly performs the transgression is liable to bring a sin-offering, so too, with regard to any prohibition about which the Torah commands: Sit and do not perform the transgression, one who unwittingly performs the transgression is liable to bring a sin-offering. This serves to exclude these mitzvot of the Paschal offering and circumcision, concerning which the Torah commands: Arise and perform the mitzva, and one violates the mitzva by refraining from action. In those cases, one who unwittingly fails to perform these mitzvot is not liable to bring a sin-offering.

[28] Ravina says: Actually, the reason Rabbi Akiva rules that those liable to receive karet are flogged is

[29] as we stated initially, that if they repented the heavenly court absolves them of the punishment of karet, and therefore this is not a case of two punishments for one transgression, and there is no exemption from lashes. What do you say in response, that they did not yet repent? Nevertheless, since the matter is not clear-cut with regard to karet, as perhaps they repented, they are therefore not exempt from lashes.

[30] § It is taught in the baraita that Rabbi Yitzḥak says: Those liable to receive karet in cases of incest were included in the principle: “For anyone who performs any of these abominations, the souls who do so shall be excised from among their people” (Leviticus 18:29). And why was the punishment of karet, when administered to one who engages in intercourse with his sister, excluded from this verse and mentioned independently (Leviticus 20:17)? It is to sentence him to be punished with karet and not to be punished with lashes.

[31] The Gemara asks: And according to the Rabbis, i.e., Rabbi Yishmael and Rabbi Akiva, who maintain that those liable to receive karet are flogged, why do I need karet to be written in the case of one who engages in intercourse with his sister; what does it teach? The Gemara answers: It teaches to divide the various prohibitions of sexual intercourse with forbidden relatives, and is in accordance with the statement of Rabbi Yoḥanan, as Rabbi Yoḥanan says that if one performed all the transgressions described in the passage in the Torah enumerating forbidden relatives during one lapse of awareness, he is liable to bring a separate sin-offering for each and every one, as one is liable to receive karet for each and every one.

[32] The Gemara asks: And concerning Rabbi Yitzḥak, who derives the halakha that one who is liable to receive karet is not flogged from the fact that karet for one who engages in intercourse with his sister emerged from the generalization, from where does he derive the concept to divide the various prohibitions? The Gemara answers: He derives it from the verse written with regard to a menstruating woman: “And to a woman in the separation of her impurity you shall not approach”

(Leviticus 18:19). From the superfluous expression “and to a woman,” Rabbi Yitzḥak derives that one is liable for intercourse with each and every forbidden woman.

33 The Gemara asks: And with regard to the Rabbis as well, let them derive the division of the prohibitions from this verse, rather than from the fact that karet for one who engages in intercourse with his sister emerged from the generalization. The Gemara answers: Yes, it is indeed so, they derive division from the verse with regard to a menstruating woman; but rather, the question again arises: Why do I need karet to be written in the case of one who engages in intercourse with his sister; what does it teach? The Gemara answers: It teaches to render him liable to bring three separate sin-offerings for engaging in intercourse with his sister, and with his father’s sister, and with his mother’s sister, during a single lapse of awareness.

34 The Gemara asks: Isn’t the fact that he is liable to bring three sin-offerings obvious? The actions were performed with separate bodies, i.e., three different women, and those actions violated the names of three separate prohibitions; no derivation is required. Rather, it is to render him liable to bring three separate sin-offerings for engaging in intercourse with his sister who is also his father’s sister and who is also his mother’s sister. The Gemara inquires: And how can you find these circumstances? The Gemara answers: It is found in the case of a wicked person, son of a wicked person. How so? If a man engages in intercourse with his mother, and she bears him two daughters, and he then engages in intercourse with one of the daughters and fathers a son, that son could engage in intercourse with the other daughter, who is his half sister through his father, as well as being his father’s half sister and his mother’s half sister.

35 The Gemara asks: And with regard to Rabbi Yitzḥak, from where does he derive this? He derives it by means of an a fortiori inference, as it is taught in a baraita that Rabbi Akiva says: I asked Rabban Gamliel and Rabbi Yehoshua a question in the meat market [itliz] of the town of Emmaus, where they went to purchase an animal for the wedding feast of Rabban Gamliel’s son. Rabbi Akiva asked: In the case of one who engages in intercourse with his sister who is also his father’s sister and who is also his mother’s sister, what is the halakha with regard to bringing a sin-offering? Is he liable to bring only one sin-offering for engaging in intercourse that violated all of the prohibitions, or is he liable to bring a sin-offering for each and every prohibition that he violated when he engaged in intercourse with that woman?

36 Rabban Gamliel and Rabbi Yehoshua said to him: We did not hear the halakha in that case. But we heard the halakha in a similar case: One who engages in intercourse with five menstruating women during one lapse of awareness is liable to bring a sin-offering for each and every one of the women with whom he engaged in intercourse, and it appears with regard to the matter of your inquiry that he is liable to bring a sin-offering for each and every prohibition, by means of an a fortiori inference. How so? If in the case of a menstruating woman, which involves violation of the name of one prohibition, he is liable for intercourse with each and every one, here, where the woman is forbidden due to the names of three prohibitions, is it not all the more so logical that he is liable to bring three sin-offerings?

37 The Gemara explains: And according to the other opinion of the Rabbis, who maintain that liability for intercourse with each and every one is derived from an explicit verse, it is a refuted a fortiori inference: What is notable about the case of a menstruating woman? It is notable in that the

actions were performed with separate bodies, i.e., different women, while in the case in question, the person engaged in intercourse with one woman.

[38] The Gemara asks: And according to the other opinion of Rabbi Yitzḥak too, this is certainly a refuted a fortiori inference, from which no halakha can be derived. Rather, as for the halakha that a person is liable to bring three sin-offerings for engaging in intercourse with his sister who is also his father's sister and who is also his mother's sister, Rabbi Yitzḥak derives it from the phrase "his sister" written in the latter clause of that verse. The verse begins: "And a man who takes his sister, the daughter of his father or the daughter of his mother…and they shall be excised…the nakedness of his sister he has revealed, he shall bear his transgression" (Leviticus 20:17). From the repetition of the term sister, it is derived that he is liable to bring a sin-offering for each and every prohibition that he violated.

[39] The Gemara asks: And according to the other opinion of the Rabbis, who derive this halakha from the term "sister" at the beginning of the verse, why do I need the phrase "his sister" to be written in the latter clause of that verse; what does it teach? The Gemara answers: It teaches to render him liable for engaging in intercourse with his sister who is also the daughter of his father and the daughter of his mother, which comes to say that one does not administer punishment based on an a fortiori inference. Although the Torah specified liability for one who engaged in intercourse with his paternal sister and for one who engaged in intercourse with his maternal sister, an independent derivation is necessary for liability for one who engaged in intercourse with a woman who is both his paternal and his maternal sister.

[40] The Gemara asks: And according to the other opinion of Rabbi Yitzḥak, who derives another matter from the term "sister" in the latter verse, from where does he derive liability for one who engaged in intercourse with a woman who is both his paternal and his maternal sister? The Gemara answers: If you wish, say he derives the punishment from the prohibition; just as the prohibition includes intercourse with a woman who is both his paternal and his maternal sister, the same applies to the punishment. And if you wish, say instead that he derives it

[41] from the term "his sister" at the beginning of the verse (Leviticus 20:17), as the verse could have been formulated: And a man who takes the daughter of his father or the daughter of his mother, and there is no need to mention a sister at all. Liability for intercourse with a woman who is the daughter of both his father and his mother is derived from the term "his sister."

[42] And according to the other opinion of the Rabbis, since nothing relevant to the topic of intercourse with one's sister is derived from the term "sister," that term is necessary in order to derive an unrelated matter, i.e., to divide the various prohibitions and establish liability for either one who blends anointing oil or for one who applies anointing oil to receive karet, if he performed either intentionally, and to bring a sin-offering if he performed either unwittingly, even though only a single punishment of karet is written in the verse: "A man who blends a mixture like it and who places any of it upon a non-priest, and he shall be excised from his people" (Exodus 30:33).

[43] And the other, Rabbi Yitzḥak, holds in this regard in accordance with that which Rabbi Elazar says that Rabbi Hoshaya says, as Rabbi Elazar says that Rabbi Hoshaya says that there is a principle: Any place where you find two different prohibitions and one punishment of karet stated concerning them, they are distinct with regard to liability to bring an offering; if he performed both unwittingly, he is liable to bring two sin-offerings. According to Rabbi Yitzḥak, there is no need for an additional

derivation to render one who unwittingly blends and applies anointing oil liable to bring two sin-offerings.

[44] And if you wish, say instead that he does not hold in accordance with that which Rabbi Elazar says that Rabbi Hoshaya says in this regard, and he derives liability to bring two sin-offerings for one who unwittingly blends and applies anointing oil from a superfluous term elsewhere: “And a man who lies with a woman who is afflicted, and…both of them shall be excised” (Leviticus 20:18). Intercourse with a menstruating woman is already included in the verse: “For anyone who performs any of these abominations, the souls who do so shall be excised from among their people” (Leviticus 18:29). Since this verse does not introduce any nuance concerning the punishment of karet for one who engages in intercourse with a menstruating woman, an unrelated matter is derived, which establishes liability for one who blends anointing oil and for one who applies anointing oil to receive karet if he performed either act intentionally, and to bring a sin-offering if he performed either act unwittingly.

[45] And according to the other opinion of the Rabbis, what is derived from the verse? That verse is necessary for him to derive the halakha in accordance with the statement of Rabbi Yoḥanan, as Rabbi Yoḥanan says in the name of Rabbi Shimon ben Yoḥai: From where is it derived that a woman is impure as a menstruating woman only if the blood of menstruation is discharged through her vagina? Blood discharged from any other orifice does not render her impure. It is derived as it is stated: “And a man who lies with a woman who is afflicted, and uncovers her nakedness” (Leviticus 20:18), which teaches that a woman is impure only if the blood of menstruation is discharged through her vagina.

[46] § The mishna teaches: And a ritually impure person who ate sacrificial food, and one who entered the Temple while ritually impure, are flogged. The Gemara asks: Granted, one who entered the Temple while ritually impure is flogged, as a punishment is written and a prohibition is written. The Gemara elaborates: There is a punishment, as it is written: “He has rendered impure the Tabernacle of the Lord, and that soul shall be excised” (Numbers 19:13). And there is a prohibition, as it is written: “And they shall not render their camp impure” (Numbers 5:3). But with regard to a ritually impure person who ate sacrificial food, granted, a punishment is written: “And the soul that eats from the flesh of a peace-offering that pertains to the Lord and his impurity is upon him, and that soul shall be excised” (Leviticus 7:20). But from where is a prohibition derived?

[47] Reish Lakish says: The prohibition is derived from that which is written with regard to a woman after childbirth who has not yet completed the purification process: “No consecrated item shall she touch” (Leviticus 12:4), and the reference is not merely to touching, but to eating.

[48] Rabbi Yoḥanan says that a Sage named Bardela teaches: The matter is derived by means of a verbal analogy between the term “his impurity” written here, and the term “his impurity” written there. Here, with regard to a ritually impure person who eats sacrificial food, it is written: “And his impurity is upon him, and that soul shall be excised,” and there, with regard to a ritually impure person entering the Temple, it is written: “He shall be impure, his impurity is yet upon him” (Numbers 19:13). Just as there, with regard to a ritually impure person who entered the Sanctuary, there is a punishment and there is a prohibition, as noted earlier, so too here, with regard to a ritually impure person who ate sacrificial food, it is derived that there is a punishment and there is a prohibition.

[49] The Gemara analyzes the dispute: Granted, Reish Lakish did not say that the source for the prohibition is a verbal analogy in accordance with the opinion of Rabbi Yoḥanan, as he did not receive this verbal analogy as a tradition from his teachers and one may not derive a verbal analogy on his own. But what is the reason that Rabbi Yoḥanan did not say that the source of the prohibition is the verse "No consecrated item shall she touch," in accordance with the opinion of Reish Lakish, as that appears to be a more straightforward source? The Gemara answers: Rabbi Yoḥanan could say to you: That is not a prohibition for partaking of sacrificial food in a state of impurity; rather, it is a prohibition for partaking of teruma in a state of impurity.

[50] The Gemara asks: And Reish Lakish, from where does he derive a prohibition against partaking of teruma in a state of impurity? The Gemara answers: He derives it from that which is written: "Any man from the descendants of Aaron who is leprous or a zav may not partake of the sacred food until he will be pure" (Leviticus 22:4). The phrase "descendants of Aaron" indicates that the prohibition applies to all descendants, including women. What, then, is an item whose status is equal with regard to all descendants of Aaron, as opposed to certain sacrificial foods that may be eaten only by males? You must say it is teruma. The Gemara asks: And according to the other opinion of Rabbi Yoḥanan, what is derived from this verse? The Gemara answers: This verse serves to prohibit partaking of teruma while impure; and that verse: "No consecrated item shall she touch," serves to prohibit touching teruma while impure.

[51] The Gemara asks: And according to Reish Lakish, does this verse: "No consecrated item shall she touch" (Leviticus 12:4), come to teach this prohibition concerning partaking of sacrificial food? He requires that verse in order to derive the prohibition of a ritually impure person who touched sacrificial food. As it was stated that there is an amoraic dispute with regard to a ritually impure person who touched sacrificial food. Reish Lakish says: He is flogged. Rabbi Yoḥanan says: He is not flogged. The Gemara elaborates: Reish Lakish says: He is flogged, as it is written: "No consecrated item shall she touch." Rabbi Yoḥanan says: He is not flogged, because it is to teach a prohibition for touching teruma that this verse comes.

[52] The Gemara answers: Reish Lakish derives both prohibitions from this verse. The prohibition concerning a ritually impure person who touched sacrificial food is derived from the fact that the Merciful One formulates the prohibition with the term touching. The prohibition for a ritually impure person who partakes of sacrificial food is derived because the matter of a ritually impure person eating sacrificial food is juxtaposed to the matter of entering the Temple while ritually impure, as the Gemara explains below.

[53] The Gemara asks: And still, does the verse come for that derivation? Reish Lakish requires that verse in order to derive the prohibition for a ritually impure person who ate sacrificial meat before the sprinkling of the blood of the offering on the altar, when it is not permitted to partake of the meat. As it was stated, there is an amoraic dispute with regard to a ritually impure person who ate sacrificial meat before the sprinkling of the blood. Reish Lakish says: He is flogged for doing so; Rabbi Yoḥanan says: He is not flogged.

[54] Reish Lakish says: He is flogged, as it is written: "No consecrated item shall she touch," which is stated in general terms, indicating that it is no different whether one touches the consecrated item prior to sprinkling the blood, and it is no different if one touches the consecrated item after sprinkling the blood. Rabbi Yoḥanan says: He is not flogged. Rabbi Yoḥanan conforms to his standard line of

reasoning, that the prohibition is derived by means of the verbal analogy cited above, as the verse states “his impurity,” written with regard to a ritually impure person who eats sacrificial food, and the meaning of that term is derived from “his impurity,” written with regard to a ritually impure person entering the Temple. And when “his impurity” is written, it is with regard to partaking of sacrificial meat after the sprinkling of the blood that it is written. The Gemara explains that according to Reish Lakish, that prohibition is derived from the term: “No [bekhol] consecrated item,” as the term bekhol is inclusive and prohibits one from partaking of sacrificial meat even before the sprinkling of the blood.

55 The Gemara comments: It is taught in a baraita in accordance with the opinion of Reish Lakish. It is written: “No consecrated item shall she touch”; this is a prohibition for a ritually impure person who eats sacrificial food. Do you say that it is a prohibition for a ritually impure person who eats sacrificial food, or perhaps it is only a prohibition for a ritually impure person who touches sacrificial food? The verse states: “No consecrated item shall she touch, and to the Temple she may not come” (Leviticus 12:4). The verse juxtaposes the matter of a ritually impure person eating sacrificial food to the matter of entering the Temple while ritually impure. Just as entering the Temple is a matter that entails a punishment that involves the taking of a life, i.e., karet, so too, every matter in that verse entails a punishment that involves the taking of a life. The Gemara explains: And if the prohibition is with regard to touching sacrificial food, is there a punishment that entails the taking of a life? Rather, the prohibition is with regard to eating.

56 § Rabba bar bar Ḥana says that Rabbi Yoḥanan says: With regard to any prohibition that has a positive mitzva that preceded it, everyone agrees that one is flogged for its violation, as it is not classified as a prohibition that entails fulfillment of a positive mitzva.

57 They said to Rabbi Yoḥanan: Did you say this halakha? Rabbi Yoḥanan said to them: No. Rabba bar bar Ḥana said in the form of an oath: By God, he said it, and this halakha is written in the Torah and we learn it in the mishna. It is written: “And they shall send from the camp any man who is leprous, and any zav…and they shall not render their camp impure” (Numbers 5:2–4). There is a prohibition against rendering the camp impure, and there is a positive mitzva to send them out of the camp. Since the positive mitzva precedes and is independent of the prohibition, one is flogged for the violation of that prohibition, as we learn in the mishna among those liable to receive lashes: One who entered the Temple while ritually impure.

58 The Gemara asks: Rather, what is the reason he retracted his statement and claimed he did not say it? The Gemara answers: It is due to the fact that the halakha concerning one who rapes a virgin young woman, who is required by Torah law to marry her and for whom it is prohibited to divorce her as long as he lives, is difficult for him, as it is taught in a baraita: In the case of a rapist who divorced the woman he raped, if he is a non-priest, he remarries her, and he is not flogged for violating the prohibition: “He may not send her away all his days” (Deuteronomy 22:29). If he is a priest, he is flogged for violating the prohibition, and he does not remarry her because it is prohibited for him to marry a divorcée.

59 The Gemara elaborates: If he is a non-priest, he remarries her, and he is not flogged. Why? It is a prohibition that has a positive mitzva which preceded it, as the positive mitzva: “And she shall be his wife” (Deuteronomy 22:29), precedes the prohibition “He may not send her away.” But let him be

flogged, since he violated the prohibition by divorcing her. Apparently, one is not flogged even if the positive mitzva precedes the prohibition.

60 Ulla says in response: The positive mitzva in the case of a rapist is not a mitzva that precedes the prohibition. Rather, it follows the prohibition and rectifies it, as it is referring to a case of one who married his victim and then divorced her. Let the verse not state: “And she shall be his wife,” in the case of a rapist, and let us derive it by means of an a fortiori inference from the case of one who defames his bride, claiming that she was not a virgin when he consummated the marriage: If in the case of a defamer, who did not perform an action but sinned through speech, the Merciful One states: “And she shall be his wife” (Deuteronomy 22:19), then in the case of a rapist, who performed an action, is it not all the more so that he is obligated to take her as a wife?

61 Ulla continues: Why, then, is the mitzva stated in the case of the rapist? If it is not relevant to the matter of before the rapist marries the victim, apply it to the matter of after the rapist marries the victim, teaching that if he divorced her he must remarry her. Although in the verse it appears prior to the prohibition “He may not send her away,” it actually serves to rectify that prohibition.

62 The Gemara asks: But still, this affords no proof, as one cannot derive the case of a rapist from the case of a defamer, as the a fortiori inference can be refuted: What is notable about the case of a defamer, which is more stringent than the case of a rapist? It is notable in that he is flogged and is liable to pay retribution, which is contrary to the principle that in general, two punishments are not administered for one transgression.

63 The Gemara suggests: Rather, let the verse not state: “And she shall be his wife,” in the case of the defamer, and let us derive it by means of an a fortiori inference from the case of a rapist: And if in the case of a rapist, who is not both flogged and liable to pay restitution, but is liable to receive only one punishment, the Merciful One states: “And she shall be his wife,” in the case of a defamer, who is flogged and liable to pay retribution, is it not all the more so that he is obligated to take her as a wife? And why, then, is it stated in the case of the defamer? Rather, if the mitzva is not relevant to the matter of the defamer, apply it to the matter of the rapist, and if the mitzva is not relevant to the matter of before the rapist marries the victim, apply it to the matter of after the rapist marries the victim, teaching that if he divorced her he must remarry her. Although in the verse it appears prior to the prohibition “He may not send her away,” it actually serves to rectify that prohibition.

64 The Gemara asks: But this affords no proof, as one cannot derive the case of a defamer from the case of a rapist either, as the a fortiori inference can be refuted: What is notable about the case of a rapist? It is notable in that he performed an action, while the defamer performed no action.

65 The Gemara suggests: Rather, let the verse not state: “And she shall be his wife,” in the case of the defamer because the expression is redundant, as she is already his wife. It would have been sufficient for the verse to state that it is prohibited for him to send her away. Why, then, is it stated in the case of the defamer? Rather, if the mitzva is not relevant to the matter of the defamer, apply it to the matter of the rapist, and if the mitzva is not relevant to the matter of before the rapist marries the victim, apply it to the matter of after the rapist marries the victim, teaching that if he divorced her he must remarry her. Although the positive mitzva appears in the verse prior to the prohibition “He may not send her away,” it actually serves to rectify that prohibition.

66 The Gemara questions that derivation: And say instead: And if the mitzva is not relevant to the matter of the defamer before he marries his bride, as they are married, apply it to the matter of the

defamer himself after they are married, teaching that if he divorced her and violated the prohibition against divorcing her, he is obligated to remarry her, and it teaches that he is not flogged, as the positive mitzva rectifies the prohibition. But in the case of a rapist, the mitzva is to marry her after the rape but there is no mitzva to marry her after he divorces her, and nevertheless, he is not flogged.

[67] The Gemara answers: Yes, it is indeed so; the halakha is derived with regard to the defamer himself, teaching that if he divorces his bride he is obligated to remarry her. And the case of the rapist comes and is derived from the case of the defamer, and the same halakha applies there as well. The Gemara asks: With what derivation is the case of a rapist derived from the case of a defamer? If it is by means of an a fortiori inference or if it is by means of the inductive hermeneutical principle: What do we find, those derivations can be refuted, as we refuted the derivations earlier in the Gemara: What is notable about the case of a defamer? It is notable in that he did not perform an action.

[68] Rather, Rava says: From where is it derived that a rapist must remarry his victim if he divorced her because the positive mitzva rectifies the prohibition "He may not send her away"? It is derived from the superfluous phrase: "All his days" (Deuteronomy 22:29), indicating that all his days, even after he marries and divorces her, he is obligated to arise and remarry her and is consequently not liable to receive lashes. The Gemara adds: And likewise, when Ravin came from Eretz Yisrael to Babylonia, he said that Rabbi Yoḥanan says: All his days he is obligated to arise and remarry her.

[69] Rav Pappa said to Rava that a question arises with regard to Rabbi Yoḥanan's statement that one is flogged for violating a prohibition preceded by a positive mitzva: But isn't its prohibition dissimilar to the prohibition of muzzling an ox while it is threshing grain (see Deuteronomy 25:4), which is the paradigm for all prohibitions for whose violation one is flogged, as no positive mitzva is stated in conjunction with the prohibition of muzzling? Rava said to him: Is it reasonable to say that due to the fact that the Merciful One wrote in its regard an additional positive mitzva, the stringency of the prohibition lessens, so that no lashes are administered?

[70] Rav Pappa objected to this claim: If so, with regard to a prohibition that entails fulfillment of a positive mitzva as well, let us say: Is it reasonable to say that due to the fact that the Merciful One wrote in its regard an additional positive mitzva, the stringency of the prohibition lessens, so that no lashes are administered? Rava said to him: In that case, the transgressor is not flogged because the mitzva comes to sever the prohibition from the punishment of lashes.

[71] The Gemara returns to the statement of Rava, who said with regard to the rapist: All his days he is obligated to arise and remarry her, and that is why he is not flogged for violating the prohibition "He may not send her away," and asks: This works out well according to the one who says that the criterion for determining whether one is flogged for violating a prohibition that entails fulfillment of a positive mitzva is whether he nullified the mitzva or did not nullify the mitzva. According to this opinion, one is flogged only if fulfillment of the mitzva is no longer possible, e.g., a priest who divorced the woman whom he raped. By contrast, a non-priest would not be flogged, because the option of remarriage remains viable.

[72] But according to the one who says that the criterion for determining whether one is flogged in that case is whether he fulfilled the mitzva or did not fulfill the mitzva, and if he did not immediately fulfill the mitzva he is flogged, what can be said? Even in the case of a non-priest who divorced the rape victim, once he fails to remarry her immediately, he is liable to receive lashes.

[73] The Gemara answers: The only reason Rava stated his explanation, that all his days he is obligated to arise and remarry her and that is why the rapist is not flogged even though it is a prohibition preceded by a positive mitzva, is to explain the opinion of Rabbi Yoḥanan, who said that for any prohibition that has a positive mitzva which preceded it, everyone agrees that one is flogged for its violation. Didn't Rabbi Yoḥanan say to the tanna who would recite the mishnayot and baraitot in the study hall: Teach that if he nullified the mitzva, he is liable to receive lashes, and if he did not nullify the mitzva, he is exempt from lashes? According to Rabbi Yoḥanan, it works out well.

[74] What is the dispute to which the Gemara is alluding? The tanna taught a baraita before Rabbi Yoḥanan: With regard to any prohibition that entails a command to arise and perform a mitzva, if he fulfilled the positive mitzva that is entailed therein, he is exempt from lashes, and if he nullified the positive mitzva that is entailed therein, he is liable to receive lashes.

[75] Rabbi Yoḥanan said to the tanna: What is it that you are saying? The baraita that you recited is self-contradictory, as based on the first clause: If he fulfilled the mitzva he is exempt, apparently, if he did not fulfill the mitzva he is liable. Yet based on the latter clause: If he nullified the mitzva, he is liable, apparently, if he did not nullify the mitzva he is exempt, even though he failed to fulfill the mitzva. Rather, teach: If he nullified the mitzva, he is liable to receive lashes, and if he did not nullify the mitzva, he is exempt from lashes. And Rabbi Shimon ben Lakish says: The formulation of the baraita must be consistent; therefore, teach: If he fulfilled the mitzva, he is exempt, and if he did not fulfill the mitzva he is liable.

[76] The Gemara inquires: With regard to what matter do they disagree? They disagree with regard to uncertain forewarning, i.e., forewarning concerning a transgression with regard to which it will not be clarified whether or not his action will render him liable to receive lashes. One Sage, Rabbi Yoḥanan, holds: Uncertain forewarning is characterized as forewarning; therefore, even if it is unclear whether the action that the transgressor is about to perform will render him liable to receive lashes, he can be forewarned, and if he violates the prohibition in a manner that will render him liable, he is flogged.

[77] And one Sage, Reish Lakish, holds: Uncertain forewarning is not characterized as forewarning. According to Rabbi Yoḥanan, the rapist is forewarned when he is about to divorce his wife, even though there is uncertainty whether he will nullify the mitzva. If he nullifies the mitzva, e.g., if he vows that deriving benefit from his ex-wife is forbidden to him, thereby ensuring that he cannot remarry her, he is flogged. Reish Lakish holds that if one's liability to receive lashes was dependent upon the nullification of the mitzva, the rapist would never be flogged, as in that case the forewarning would of necessity be uncertain. Therefore, he explains that the criterion for determining whether one is flogged is whether he fulfilled the mitzva immediately. Violating the prohibition renders him liable to receive lashes; he may then choose to be flogged or to fulfill the mitzva. Therefore, when he is forewarned that he will be flogged if he divorces her, it is not uncertain forewarning.

[78] And they follow their standard lines of reasoning, as it was stated that Rabbi Yoḥanan and Reish Lakish disagreed in a case where one said: On my oath I will eat this loaf today, and the day passed and he did not eat it. Rabbi Yoḥanan and Reish Lakish both say: He is not flogged for taking a false oath. They disagree with regard to the reason that he is not flogged. Rabbi Yoḥanan says: He is not flogged,

[79] because it is a prohibition that does not involve an action. He violates the oath by failing to perform an action, rather than by performing an action, and the principle is: With regard to any prohibition that does not involve an action, one is not flogged for its violation. Reish Lakish says: He is not flogged, because the forewarning in this case is an uncertain forewarning. One cannot properly forewarn him before he takes the oath, because as long as time remains in the day he can still eat the loaf at a later time and fulfill the oath; and any uncertain forewarning is not characterized as forewarning.

[80] The Gemara adds: And both Rabbi Yoḥanan and Reish Lakish hold in accordance with the opinion of Rabbi Yehuda, as it is taught in a baraita: It is stated with regard to the Paschal offering: "And you shall let nothing of it remain until the morning, and that which remains of it until the morning you shall burn in fire" (Exodus 12:10). The verse comes to position the positive mitzva of burning the leftover flesh after the prohibition against leaving over the flesh, to say that one is not flogged for its violation; this is the statement of Rabbi Yehuda. Rabbi Yoḥanan inferred this from the statement of Rabbi Yehuda: The reason he is not flogged is that the verse comes and positions the mitzva after the prohibition; but if the verse had not come and positioned the mitzva after the prohibition, he would have been flogged. Apparently, uncertain forewarning is characterized as forewarning, as he can be forewarned not to leave over the flesh of the offering, even though he would not be flogged were he to burn it.

[81] And Reish Lakish inferred this: The reason he is not flogged is that the verse comes and positions the mitzva after the prohibition; but if the verse had not come and positioned the mitzva after the prohibition, he would have been flogged. Apparently, one is flogged even for violating a prohibition that does not involve an action, as he violates the prohibition without performing an action.

[82] The Gemara asks: And according to Rabbi Shimon ben Lakish too, this is certainly a case of uncertain forewarning; why, then, does he not conclude based on Rabbi Yehuda's statement that uncertain forewarning is characterized as forewarning?

[83] The Gemara answers: He holds in accordance with the opinion of the other tanna in the name of Rabbi Yehuda, as it is taught in a baraita: If a woman was divorced and remarried soon after, and a son was born seven months after her remarriage and nine months after her divorce, it is unclear whether he is the son of the first husband or of the second husband. In that case, if this son struck this husband of his mother, and then struck that husband, or if he cursed this husband and then cursed that one, and likewise if he struck both of them simultaneously or cursed both of them simultaneously, he is liable for striking or cursing his father. Rabbi Yehuda says: If he cursed or struck both of them simultaneously he is liable, but if he cursed or struck them one after the other, even if he was forewarned prior to cursing or striking each one, he is exempt. Apparently, Rabbi Yehuda is of the opinion that one is not flogged after uncertain forewarning; since in this case it is impossible to determine which of them is the father, inevitably the forewarning is uncertain.

[84] The Gemara asks: And according to Rabbi Yoḥanan too, this is certainly a case of a prohibition that does not involve an action. Why, then, does he not conclude based on Rabbi Yehuda's statement that one is flogged for violating a prohibition of that kind?

[85] The Gemara answers: Rabbi Yoḥanan holds in accordance with that which was cited in his name, as Rav Idi bar Avin says that Rav Amram says that Rabbi Yitzḥak says that Rabbi Yoḥanan says that Rabbi Yehuda says in the name of Rabbi Yosei HaGelili: With regard to any prohibition in the Torah,

if it is a prohibition that involves an action, one is flogged for its violation; if it is a prohibition that does not involve an action, one is not flogged for its violation, except for one who takes a false oath, one who substitutes a non-sacred animal for a sacrificial animal, saying: This animal is substituted for that one, and one who curses another invoking the name of God. In those three instances, the perpetrator is flogged even though he performed no action.

[86] The Gemara asks: Although the difficulties that were raised with regard to the opinions of Rabbi Yoḥanan and Reish Lakish were answered, the apparent contradiction from one statement of Rabbi Yehuda to another statement of Rabbi Yehuda is difficult. The Gemara cited contradictory statements of Rabbi Yehuda with regard to lashes both in the case of a prohibition that does not involve an action and in the case of uncertain forewarning.

[87] The Gemara answers: If it is according to Rabbi Shimon ben Lakish, the contradiction may be resolved with the explanation that the two sources reflect the opinions of two tanna'im, who disagree in accordance with the opinion of Rabbi Yehuda. If it is according to Rabbi Yoḥanan, the contradiction is not difficult, as this baraita reflects his opinion, that one is flogged for violating a prohibition that involves an action, and that baraita reflects the opinion of his teacher, Rabbi Yosei HaGelili, who holds that one is not flogged for violating a prohibition that involves an action.

[88] § We learned in a mishna there (17a): With regard to one who takes the mother bird with her fledglings, thereby violating the Torah prohibition: "You shall not take the mother with her fledglings; you shall send the mother, and the fledglings you may take for yourself" (Deuteronomy 22:6–7), Rabbi Yehuda says: He is flogged for taking the mother bird, and he does not send the mother, and the Rabbis say: He sends the mother and is not flogged, as this is the principle: With regard to any prohibition that entails a command to arise and perform a mitzva, one is not liable to receive lashes for its violation. Rabbi Yoḥanan says: We have only this mitzva and another where one would be flogged if not for the relevant mitzva.

[89] Rabbi Elazar said to Rabbi Yoḥanan: Which is that other mitzva? Rabbi Yoḥanan said to him: You will know when you discover it yourself. Rabbi Elazar went out, examined the matter, and discovered the answer, as it is taught in a baraita: With regard to a rapist who divorced the woman he raped, if he is a non-priest, he remarries her, and he is not flogged for violating the prohibition: "He may not send her away all his days" (Deuteronomy 22:29). And if he is a priest, he is flogged for violating the prohibition, and he does not remarry her.

[90] The Gemara states: This works out well according to the one who teaches that the criterion for determining whether one is flogged for violating a prohibition that entails fulfillment of a positive mitzva is whether he fulfilled the mitzva or did not fulfill the mitzva, and if he does not fulfill the mitzva immediately when he is instructed to do so, he is flogged when he fails to do so.

[91] But according to the one who teaches that the criterion for determining whether one is flogged in that case is whether he nullified the mitzva or did not nullify the mitzva, and one is flogged only if he performed an action that renders it impossible to fulfill the mitzva, granted, with regard to the sending away of the mother bird from the nest, you can find a situation where he nullifies the mitzva, e.g., if he killed the mother bird. But in the case of a rapist, if the criterion is whether he nullified the mitzva or he did not nullify it, how can you find a situation where the man is flogged because he nullified any possibility of remarrying her?

[92] If he cannot remarry her because he killed her, he will be executed, not flogged, based on the principle: He receives the greater punishment. Rav Shimi of Meḥoza said: He nullifies the possibility of remarriage in a case where he received, on her behalf, the money for betrothal from another, thereby ensuring that his own remarriage to her is no longer an option. Rav said: That is not a viable solution; if his ex-wife designated him as an agent to receive the money of betrothal on her behalf, it is she who nullifies the possibility of fulfilling the mitzva for him, as a woman is betrothed only with her consent, and he is not liable at all. If she did not designate him as an agent, is it in his power to accept betrothal on behalf of a woman who did not designate him to do so? His action is nothing, and the betrothal does not take effect.

[93] Rather, Rav Shimi of Neharde'a said: He nullifies the possibility of remarriage in a case where he vowed in public that it is prohibited for him to derive benefit from her, and it is consequently prohibited for him to marry her. The Gemara asks: This works out well according to the one who says that a vow that was taken in public has no nullification; he is flogged, since by taking that vow he has rendered remarriage impossible. But according to the one who says that even a vow taken in public has the possibility of nullification, what can be said? He can nullify the vow and remarry her. The Gemara answers: The reference is to a case where he vows on the basis of the consent of the public that it is prohibited for him to derive benefit from her, as Ameimar says that the halakha is: A vow that was taken in public has the possibility of nullification; a vow that was taken on the basis of the consent of the public has no nullification.

[94] The Gemara questions Rabbi Yoḥanan's statement: And are there no more prohibitions that entail fulfillment of a positive mitzva for which one is flogged? But aren't there others? Before stating its challenges, the Gemara provides a mnemonic for the cases that it will cite: Robbery, collateral, and pe'a. The Gemara elaborates: Isn't there the case of robbery, where the Merciful One states: "You shall not rob" (Leviticus 19:13), and also states: "And he shall return the stolen item" (Leviticus 5:23)? Isn't there the case of collateral, where the Merciful One states: "You shall not come into his house to fetch his pledge" (Deuteronomy 24:10), and He then states: "You shall return to him the pledge when the sun sets" (Deuteronomy 24:13)?

[95] The Gemara continues: And you find that one is liable to receive lashes in those cases both if the criterion is whether he fulfilled the mitzva or did not fulfill the mitzva, and if the criterion is whether he nullified the mitzva or he did not nullify it. According to the first criterion, he is flogged if he fails to return the stolen item or the collateral; according to the second criterion, he is flogged if he destroys the stolen item or the collateral. The Gemara answers: There, in both those cases, he is not flogged, since he is liable to remit monetary payment for the stolen item or the collateral, as the principle is: One is not both flogged and liable to pay restitution for one transgression.

[96] Rabbi Zeira objects to this: But isn't there a case where he is not liable to pay, e.g., if he appropriated the collateral of a convert and the convert died with no heirs. In that case, there is no payment, and nevertheless, he is not flogged.

[97] The Gemara answers: There, the man who appropriated the collateral is liable to remit monetary payment, and it is only that the lien of the convert on the property has lapsed, as there is no one to receive payment. Therefore, he is not flogged, based on the principle: One is not both flogged and liable to pay restitution.

[98] The Gemara asks: But isn’t there the case of pe’a, where there is a prohibition, as the Merciful One states: “You shall not wholly reap the corner of your field” (Leviticus 23:22), followed by the mitzva: “To the poor and the convert you shall leave them” (Leviticus 23:22)?

[99] And you find one liable to receive lashes in those cases both if the criterion is whether he fulfilled the mitzva or did not fulfill the mitzva, and if the criterion is whether he nullified the mitzva or he did not nullify it, as we learned in a baraita: The mitzva of pe’a is to separate it from the standing grain still growing from the ground. If he did not separate it from the standing grain, but reaped the entire field, he separates a portion from the sheaves as pe’a. If he did not separate it from the sheaves, he separates it from the pile where one places the kernels after threshing, before he smooths the pile. Once he smooths the pile, the produce is considered grain from which one is obligated to separate terumot and tithes. If he already smoothed the pile before designating the pe’a, he tithes the grain in the pile and then gives the pe’a to the poor person. Once he grinds the kernels into flour, he no longer separates pe’a.

[100] Apparently, it is possible to nullify the possibility of fulfilling the mitzva of leaving pe’a by grinding the grain; why, then, did Rabbi Yoḥanan omit this case from his list of prohibitions rectified by a positive mitzva for which one is flogged? The Gemara answers: Rabbi Yoḥanan holds in accordance with the opinion of Rabbi Yishmael, who says: One separates pe’a even from the dough. He maintains that the possibility of fulfilling the mitzva of pe’a is never nullified, as one may separate pe’a even after grinding and kneading. The Gemara challenges: And according to Rabbi Yishmael, you also find a way to nullify the possibility of fulfilling the mitzva, in a case where one ate the dough.

[101] Rather, the Gemara retracts its previous understanding of the statement of Rabbi Yoḥanan: We have only this mitzva and another where one would be flogged if not for the relevant mitzva. The term: This, is in reference to the sending away of the mother bird, and the term: Another, is in reference to this halakha of pe’a. But in the case of a rapist, no, the possibility of remarrying the rape victim whom he divorced is not nullified, even if he vows on the basis of the consent of the public. Where do we say that a vow on the basis of the consent of the public has no nullification? It is only in a case where one seeks nullification of the vow for the purpose of a matter that is optional, i.e., not a mitzva; but if one seeks nullification of the vow for the purpose of a matter that is a mitzva, even a vow taken on the basis of the consent of the public has the possibility of nullification. In the case of the rapist, he could seek nullification of his vow to enable him to fulfill the mitzva of remarrying his divorcée, and therefore the vow can be nullified.

[102] The Gemara relates an incident that proves this point. As this happened in that incident where there was a certain teacher of children who was negligent in his supervision of the children, and Rav Aḥa vowed on the basis of the consent of the public that he would no longer be allowed to teach children. And nevertheless Ravina restored him to his position, because no other teacher was found who was as accurate as he. Apparently, even a vow taken on the basis of the consent of the public has the possibility of nullification, if that nullification is sought in order to fulfill a mitzva.

[103] § The mishna teaches: And one who eats unslaughtered animal or bird carcasses, or tereifot, or repugnant creatures, or creeping animals, is liable to receive lashes. Rav Yehuda says: One who eats a fish-like creature found in the furrows of a field formed by a plow [binnita devei kerava], we flog him due to violation of the prohibition: “Creeping animals that creep on the ground…shall not be

eaten” (Leviticus 11:41). The Gemara relates: There was a certain person who ate a fish-like creature found in the furrows of a field formed by a plow, and Rav Yehuda flogged him.

[104] Abaye says: One who ate a putita, a creeping animal found in the sea, is flogged with four sets of lashes. There are two prohibitions stated with regard to creeping animals in the sea: “And any that do not have fins and scales in the seas and in the rivers…you shall not eat of their flesh” (Leviticus 11:10–11), and: “And any that do not have fins and scales you shall not eat” (Deuteronomy 14:10). In addition, there are two other prohibitions stated with regard to creeping animals in general: “You shall not render yourselves detestable with any creeping animal that creeps, neither shall you render yourselves impure with them” (Leviticus 11:43), for a total of four.

[105] If one ate an ant, he is flogged with five sets of lashes. In addition to the two prohibitions stated with regard to repugnant creatures in general, he is also flogged for violating the prohibitions: “Creeping animals that creep on the ground…shall not be eaten” (Leviticus 11:41), and: “And all creeping animals that creep on the ground, you shall not eat them” (Leviticus 11:42), and: “Neither shall you render yourselves impure with any manner of creeping things that crawls upon the ground” (Leviticus 11:44).

[106] If one ate a wasp, he is flogged with six sets of lashes. In addition to the five prohibitions violated by one who eats an ant, he is flogged with an additional set of lashes due to violation of the prohibition with regard to winged creeping creatures: “And all winged creeping creatures are impure for you, they may not be eaten” (Deuteronomy 14:19).

[107] Rav Aḥai says: One who delays relieving himself through his orifices when the need arises violates the prohibition of: “You shall not make your souls detestable” (Leviticus 20:25). Rav Beivai bar Abaye says: One who drinks from the horn of a bloodletter through which blood has passed violates the prohibition of: “You shall not make your souls detestable.”

[108] Rava bar Rav Huna says: If one crushed nine ants and brought another one that was alive and thereby completed their measure to an olive-bulk and ate them, he is flogged with six sets of lashes: Five for eating an entity for which one is flogged five times as stated above with regard to one who eats an ant, and one for eating an olive-bulk of an unslaughtered carcass all together. Rava says that Rabbi Yoḥanan says: Even if he ate two crushed ants and the ant that was alive, he is flogged with six sets of lashes. Rav Yosef says: Even if he ate one crushed ant and the ant that was alive. The Gemara comments: And they do not disagree; this case, where Rava and Rav Yosef say that he is flogged for eating one or two crushed ants and one that is alive, is referring to large ants, which together amount to an olive-bulk. And that case, where Rava bar Rav Huna mentions nine ants, is referring to small ants, as a greater number of ants is required to constitute an olive-bulk and render him liable. Consequently, there is no halakhic dispute in this case.

[109] § The mishna teaches that among those flogged is one who ate untithed produce or first-tithe produce whose teruma of the tithe was not taken. Rav says: If one ate untithed produce from which teruma and first tithe were separated and poor man’s tithe was not separated, he is flogged.

[110] The Gemara explains: In accordance with whose opinion did Rav issue this ruling? It is in accordance with the opinion of this tanna, as it is taught in a baraita that Rabbi Yosei says: One might have thought that one is liable for eating only untithed produce from which no gifts were taken at all; but if teruma gedola was taken from the produce, but first tithe was not taken from it, or if the first tithe was separated but not second tithe, or even if only poor man’s tithe was not separated, from

where is it derived that the halakhic status of the produce is that of untithed produce and one is liable for eating it?

111 The baraita continues: It is derived as the verse states: “You may not eat within your gates the tithe of your grain or of your wine or of your oil” (Deuteronomy 12:17), and there it states: “And you shall give to the Levite, to the convert, to the orphan, and to the widow, and they shall eat within your gates and be satisfied” (Deuteronomy 26:12). Just as there, with regard to the phrase “and they shall eat within your gates,” it is referring to poor man’s tithe, here too, “you may not eat within your gates” is referring to produce in which there is poor man’s tithe, as it has not yet been separated, and the Merciful One states a prohibition: You may not eat it.

112 Rav Yosef said: This matter is subject to a dispute between tanna’im. Rabbi Eliezer says: One need not separate by means of calling the name upon poor man’s tithe of doubtfully tithed produce [demai]. With regard to produce purchased from an am ha’aretz, i.e., one who is unreliable with regard to tithes, there is a rabbinic ordinance requiring one to separate first and second tithe and teruma of the tithe from it. Nevertheless, one is not required to separate poor man’s tithe from that produce, because poor man’s tithe is a monetary debt owed to the poor, and in a case of uncertainty, the principle is: The burden of proof rests upon the claimant. Rabbi Eliezer holds that failure to separate poor man’s tithe does not accord the produce the status of untithed produce. And the Rabbis say:

113 He designates a portion of the produce by means of calling the name upon poor man’s tithe, but he is not required to physically separate that portion and give it to the poor.

114 Rav Yosef suggests: What, is it not that they disagree with regard to this: That one Sage, the Rabbis, holds that produce from which poor man’s tithe was certainly not separated is rendered untithed produce, and therefore, in a case where there is uncertainty whether poor man’s tithe was separated, one is required to separate it; and one Sage, Rabbi Eliezer, holds that produce from which poor man’s tithe was certainly not separated is not rendered untithed produce, and therefore, one need not even designate poor man’s tithe by calling its name upon a portion of the produce? Abaye said to Rav Yosef: If it is so, that this is the point in dispute, rather than disagreeing with regard to a case of uncertainty whether poor man’s tithe was separated, let them disagree with regard to a case of certainty that poor man’s tithe was not separated.

115 Rather, contrary to the previous suggestion, say that everyone agrees that produce from which poor man’s tithe was certainly not separated is rendered untithed produce. And here, it is with regard to this that they disagree: One Sage, Rabbi Eliezer, holds: Amei ha’aretz are not suspected of refraining from separating poor man’s tithe of demai. Since it is merely a matter of money, and no sanctity is involved, he separates poor man’s tithe, although he does not actually give it to the poor. And the Rabbis hold: Since the matter involves exertion for him, he does not even separate poor man’s tithe.

116 § The mishna teaches: How much does one need to eat from untithed produce and be liable to receive lashes? Rabbi Shimon says: Even if one ate any amount of untithed produce he is liable to receive lashes. And the Rabbis say: He is liable only if he eats an olive-bulk. Rav Beivai says that Rabbi Shimon ben Lakish says: Their dispute is with regard to one who eats one kernel of wheat of untithed produce. But with regard to flour, everyone agrees that one is liable only if he eats an olive-

bulk. And Rabbi Yirmeya says that Rabbi Shimon ben Lakish says: Just as there is a dispute with regard to this case of a kernel of wheat, so too, there is a dispute with regard to that case of flour.

117 The Gemara cites proof from that which we learned in the mishna: Rabbi Shimon said to them: Do you not concede to me with regard to one who eats an ant of any size that he is liable to receive lashes? The Rabbis said to Rabbi Shimon: He is flogged for eating an ant of any size due to the fact that it is an intact entity in the form of its creation. Rabbi Shimon said to them: One kernel of wheat is also in the form of its creation. The Gemara infers from Rabbi Shimon's response: For a kernel of wheat, yes, one is liable; for any amount of flour, no, one is not liable. Apparently, even Rabbi Shimon concedes that one is liable for eating only an olive-bulk of wheat flour, in accordance with the statement that Rav Beivai says that Rabbi Shimon ben Lakish says.

118 The Gemara answers: It is in accordance with the statement of the Rabbis that Rabbi Shimon spoke to them, and he meant as follows: According to my opinion, even if one ate any amount of flour he is also liable. But according to your opinion, concede to me at least that one is liable if he eats one kernel of wheat, as it is in the form of its creation. And the Rabbis say in response: There is a difference; an entity with a soul, i.e., a living creature, is significant, and one is liable for eating an entity of any volume. A kernel of wheat is not significant. The Gemara notes: It is taught in a baraita in accordance with the opinion of Rabbi Yirmeya, that Rabbi Shimon says: One who eats any amount of food that is forbidden is liable to receive lashes; the Sages said the measure of an olive-bulk only with regard to liability to bring a sin-offering for one who unwittingly ate forbidden food.

119 MISHNA: In the case of a priest who eats first fruits before the one who brought the fruits to the Temple recited over those fruits the Torah verses that he is obligated to recite (see Deuteronomy 26:3–10); and one who ate offerings of the most sacred order outside the curtains surrounding the Tabernacle courtyard, or outside the Temple courtyard; and one who ate offerings of lesser sanctity or second-tithe produce outside the wall of Jerusalem; and also one who breaks the bone of a ritually pure Paschal offering; in all these cases he is flogged with forty lashes. But one who leaves the flesh of the ritually pure Paschal offering until the morning of the fifteenth of Nisan, and one who breaks a bone of a ritually impure Paschal offering, is not flogged with forty lashes.

120 With regard to one who takes the mother bird with her fledglings, thereby violating the Torah prohibition: "You shall not take the mother with her fledglings; you shall send the mother, and the fledglings you may take for yourself" (Deuteronomy 22:6–7), Rabbi Yehuda says: He is flogged for taking the mother bird, and does not send the mother, and the Rabbis say: He sends the mother and is not flogged, as this is the principle: With regard to any prohibition that entails a command to arise and perform a mitzva, he is not liable to receive lashes for its violation.

121 GEMARA: The mishna teaches that a priest who eats first fruits before the one who brought the fruits to the Temple recited the accompanying Torah verses is liable to receive lashes. With regard to this statement, Rabba bar bar Ḥana says that Rabbi Yoḥanan says: This is the statement of Rabbi Akiva, whose statements are often cited in the mishna unattributed. But the Rabbis say: With regard to first fruits, the lack of placement alongside the altar invalidates them, and they may not be eaten; but the lack of recitation of the accompanying Torah verses does not invalidate them, and if one placed them and did not recite the accompanying Torah verses, the priest who eats them is not flogged.

122 The Gemara suggests: And let Rabbi Yoḥanan say: This statement in the mishna is the unattributed statement of Rabbi Shimon, who stated this halakha explicitly, rather than attributing the statement to Rabbi Akiva, whose statement was not explicit. The Gemara answers: This teaches us that although he did not say so explicitly, Rabbi Akiva holds in accordance with the opinion of Rabbi Shimon.

123 What is the statement of Rabbi Shimon? It is as it is taught in a baraita with regard to food items that may not be eaten outside the walls of Jerusalem. It is written: “You may not eat within your gates the tithe of your grain, or of your wine, or of your oil, or the firstborn of your herd or of your flock, nor any of your vows that you vow, nor your gift offerings, nor the donation of your hand” (Deuteronomy 12:17). The Sages explain that with regard to the phrase “nor the donation of [terumat] your hand,” these are first fruits.

124 Rabbi Shimon said: What does this phrase come to teach us? If it is to teach the prohibition to eat the first fruits outside the wall of Jerusalem, there is no need for a verse, as it may be derived by means of an a fortiori inference from the lenient case of second-tithe produce. If with regard to the lenient case of second-tithe produce, one who eats them outside the wall is flogged, then with regard to first fruits, all the more so is it not clear that he is flogged? Rather, the verse comes to teach only with regard to a priest who partakes of first fruits before the person who brought the fruits to the Temple recited the accompanying Torah verses over them, teaching that he is flogged.

125 The baraita continues: “Nor your gift offerings”; this is a thanks-offering and a peace-offering that one donates voluntarily. Rabbi Shimon says: What does this phrase come to teach us? If it is to teach that it is prohibited to eat a thanks-offering and a peace-offering outside the wall of Jerusalem, there is no need for a verse, as it may be derived by means of an a fortiori inference from the case of second-tithe produce, for whose consumption outside the wall one is flogged, despite the fact that it is not an offering. Rather, the verse comes to teach only with regard to one who partakes of a thanks-offering or of a peace-offering before the sprinkling of its blood on the altar, before the consumption of its flesh is permitted, that he is flogged.

126 The baraita continues: “Or the firstborn”; this is the firstborn. Rabbi Shimon says: What does this verse come to teach us? If it is to teach that it is prohibited to eat a firstborn animal outside the wall of Jerusalem, there is no need for a verse, as it may be derived by means of an a fortiori inference from the case of second-tithe produce. If it is to teach that it is prohibited to eat a firstborn animal before the sprinkling of the blood, it may be derived by means of an a fortiori inference from the case of a thanks-offering and a peace-offering, which are offerings of lesser sanctity, as even non-priests may partake of their flesh. Rather, the verse comes to teach only with regard to a non-priest who partakes of the flesh of a firstborn even after the sprinkling of its blood, that he is flogged.

127 The baraita continues: “Of your herd or of your flock”; this is a sin-offering and a guilt-offering, which are offerings of the most sacred order, which may be eaten only within the Temple courtyard. Rabbi Shimon says: What does this verse come to teach us?

128 If it is to teach that it is prohibited to eat a sin-offering and a guilt-offering outside the wall, there is no need for a verse, as it may be derived by means of an a fortiori inference from the case of second-tithe produce. If it is to teach that it is prohibited to eat a sin-offering and a guilt-offering before the sprinkling of the blood, it may be derived by means of an a fortiori inference from the case of a thanks-offering and a peace-offering, which are offerings of lesser sanctity. If it is to teach that it

is prohibited for a non-priest to eat a sin-offering and a guilt-offering after the sprinkling of its blood, it may be derived by means of an a fortiori inference from the case of a firstborn animal. Rather, the verse comes to teach only with regard to one who partakes of the flesh of a sin-offering or a guilt-offering even after the sprinkling of its blood, which is the correct time to partake of it, but he partakes of it outside the curtains surrounding the Tabernacle courtyard or outside the Temple courtyard, that he is flogged.

[129] The baraita continues: “Your vows”; this is the burnt-offering, which is an offering of the most sacred order and is entirely consumed upon the altar, and is brought as a gift offering, not as an obligation. Rabbi Shimon says: What does this verse come to teach us?

[130] If it is to teach that it is prohibited to eat a burnt-offering outside the wall of Jerusalem, there is no need for a verse, as it may be derived by means of an a fortiori inference from the case of second-tithe produce. If it is to teach that it is prohibited to eat a burnt-offering before the sprinkling of the blood, it may be derived by means of an a fortiori inference from the case of a thanks-offering and a peace-offering, which are offerings of lesser sanctity. If it is to teach that it is prohibited for a non-priest to eat a sin-offering and a guilt-offering after the sprinkling of its blood, it may be derived by means of an a fortiori inference from the case of a firstborn animal. If it is to teach that it is prohibited to eat a burnt-offering outside the curtains surrounding the Tabernacle courtyard or outside the Temple courtyard there is an a fortiori inference from a sin-offering and a guilt-offering. Rather, the verse comes

[131] to teach only with regard to one who partakes of the flesh of a burnt-offering after the sprinkling, even inside the courtyard, that he is flogged.

[132] Rava says with regard to Rabbi Shimon’s statement in the baraita: With regard to anyone whose mother is bearing a child who is like Rabbi Shimon, she should bear that child, and if not, it is preferable that she does not bear him at all. Rava was so impressed by Rabbi Shimon’s statement that he praised him and characterized him as the model of a wise man. Rava added: And I say this even though there is a refutation for each of his conclusions. What are the refutations?

[133] What is the stringency of first fruits vis-à-vis second-tithe produce? It is that first fruits are forbidden to non-priests, who are permitted to eat second-tithe produce. That can be refuted; on the contrary, second-tithe produce is more stringent than first fruits, in that it is forbidden to an acute mourner, i.e., one whose close relative died that day, which is not the case with regard to first fruits according to the opinion of Rabbi Shimon (see Yevamot 73b).

[134] And what is the stringency of a thanks-offering and a peace-offering vis-à-vis second-tithe produce? It is that the thanks-offering and the peace-offering require the placement of blood and sacrificial portions upon the altar. That can be refuted; on the contrary, second-tithe produce is more stringent than the thanks-offering and the peace-offering, in that the redemption of second-tithe produce requires money minted into a coin. A disqualified thanks-offering and peace-offering, like other disqualified offerings, may be redeemed with any object of equal value.

[135] And what is the stringency of a firstborn offering vis-à-vis a thanks-offering and a peace-offering? It is that the sanctity of the firstborn takes effect from the womb, while the other offerings are consecrated by their owners. That can be refuted; on the contrary, a thanks-offering and a peace-offering are more stringent, in that they require placing hands on the head of the offering before its

sacrifice, and libations, and the waving of the breast and the thigh, which is not the case with regard to a firstborn offering.

[136] And what is the stringency of a sin-offering and a guilt-offering vis-à-vis a firstborn offering? It is that a sin-offering and a guilt-offering are offerings of the most sacred order. That can be refuted; on the contrary, a firstborn offering is more stringent, in that its sanctity takes effect from the womb, not from consecration by its owner.

[137] And what is the stringency of the burnt-offering vis-à-vis a sin-offering and a guilt-offering? It is that it is burnt in its entirety upon the altar, and no part of it is given to the priests. That can be refuted; on the contrary, the sin-offering and the guilt-offering are more stringent, in that they atone for one's sins, and a burnt-offering is brought as a gift offering.

[138] And all of those matters listed in the baraita are more stringent than the burnt-offering because there are two consumptions with regard to each of these matters, as they are consumed upon the altar and consumed by their owner and the priests, whereas the burnt-offering is consumed in its entirety upon the altar.

[139] The Gemara asks: Rather, what is the meaning of this statement of praise: With regard to anyone whose mother is bearing a child who is like Rabbi Shimon, she should bear that child, and if not, it is preferable if she does not bear him at all? Ultimately, all of his derivations can be refuted. The Gemara answers: The praise is based on the fact that in order to arrive at what he himself holds, he transposes the verse and interprets it. Rabbi Shimon does not interpret the verse from beginning to end; rather, he begins with the final case of first fruits, in order to arrive at the desired conclusion. Rava was impressed with Rabbi Shimon's interpretation.

[140] The Gemara asks with regard to Rabbi Shimon, who derived prohibitions not written in the Torah by means of a fortiori inferences: And does one derive a prohibition from an a fortiori inference? But even according to the one who says that if there is a prohibition written explicitly in the Torah, one administers punishment based on an a fortiori inference, one does not derive a prohibition from an a fortiori inference. The Gemara answers: Rabbi Shimon does not derive prohibitions for which one is flogged from those inferences; rather, he derives a mere prohibition.

[141] The Gemara asks: But doesn't Rava say: With regard to a non-priest who ate the flesh of a burnt-offering before sprinkling its blood, outside the walls, according to Rabbi Shimon he is flogged with five sets of lashes: One because he is a non-priest; one for eating a burnt-offering; one for eating the flesh of an offering before its blood was sprinkled; one for eating offerings of the most sacred order outside the Temple courtyard; and one for eating sacrificial food outside of Jerusalem. Apparently, Rabbi Shimon holds that all these are actual prohibitions for which one is flogged. The Gemara answers: It does not mean that one is actually flogged; rather, it means that they are five prohibitions.

[142] The Gemara asks: But didn't we learn in the mishna: And these are the people who are flogged by Torah law? Among them is a priest who eats first fruits before the recitation of the accompanying Torah verses, and the Gemara established that the mishna is in accordance with the opinion of Rabbi Shimon.

[143] Rather, the derivation is that the entire verse beginning: "You may not eat within your gates the tithe of your grain" (Deuteronomy 12:17) is a superfluous verse. After all, it is already written: "And there you shall bring your burnt-offerings, and your sacrifices, and your tithes, and the donation of

your hand, and your vows, and your gift offerings, and the firstborn of your herd and of your flock, and there you shall eat before the Lord your God” (Deuteronomy 12:6–7); all the items that must be eaten within the walls of Jerusalem are enumerated. Let the Merciful One write simply: You may not eat them, in general terms, which would constitute a prohibition for which one would be liable to receive lashes for each of the cases enumerated. Why do I need the Merciful One to again specifically enumerate and detail each of them?

144 Rather, this repetition serves to designate additional prohibitions for each and every one of the cases enumerated in the later verse (Deuteronomy 12:17). The prohibition is derived not by means of an a fortiori inference; rather, it is derived from the superfluous verse. Rabbi Shimon derives by means of the a fortiori inferences the additional prohibition that is in effect in each of these cases.

145 § With regard to the matter itself, Rava says: With regard to a non-priest who ate the flesh of a burnt-offering before sprinkling its blood, outside the walls, according to Rabbi Shimon he is flogged with five sets of lashes. The Gemara suggests: And let him also be flogged for violating the prohibition: “And a non-priest may not eat, as they are sacred” (Exodus 29:33). The Gemara explains: This matter prohibiting a non-priest from eating consecrated food applies only in a case where the food is fit for consumption by priests. Here, where the food is not fit for consumption by priests either, as it is not permitted for anyone to partake of a burnt-offering, there is no specific prohibition that applies to a non-priest.

146 The Gemara suggests: And let him also be flogged for violating the prohibition: “And any flesh torn of animals in the field you shall not eat” (Exodus 22:30). From the term “in the field,” a general halakha is derived: Once the flesh emerged outside its partition and is in the field, e.g., sacrificial meat that was taken outside the Tabernacle curtains that demarcate the courtyard, there is a prohibition, and the flesh is forbidden. The Gemara explains: This matter, the prohibition against eating sacrificial flesh outside the partition of the Temple courtyard, applies only in a case where the flesh is fit for consumption inside the courtyard. Here, in the case of a burnt-offering, where the flesh is not fit for consumption inside the courtyard either, as it is not permitted for anyone to partake of a burnt-offering, there is no specific prohibition that applies to a non-priest partaking of the flesh outside the courtyard.

147 The Gemara suggests: And let him also be flogged in accordance with the statement of Rabbi Eliezer. As Rabbi Eliezer says that when it is stated with regard to leftover flesh and loaves from the inauguration offerings: “It shall not be eaten because it is sacred” (Exodus 29:34),

148 it is derived that with regard to any item that is sacrificial and disqualified for whatever reason, the verse comes to impose a prohibition upon its consumption. The Gemara explains: This matter applies only in a case where before its disqualification it was fit; here, it is a case where before its disqualification it was not fit either, and therefore the prohibition does not apply.

149 The Gemara suggests: And let him also be flogged in accordance with the other statement of Rabbi Eliezer, as it is taught in a baraita that Rabbi Eliezer says: With regard to any item that is included in the mitzva: “It shall be burned in its entirety” (Leviticus 6:16), the verse serves to impose a prohibition upon its consumption, as it is written: “It shall be burned in its entirety; it shall not be eaten” (Leviticus 6:16). The Gemara explains: Yes, it is indeed so that according to Rabbi Shimon one is flogged for violating this prohibition as well, and Rava is saying that from this verse he is interpreting that it is derived that one is flogged with five sets of lashes according to Rabbi Shimon.

150 § Rav Giddel says that Rav says a statement about a priest [kohen] and another statement about a non-priest [zar]. Before proceeding, the Gemara provides a mnemonic for these statements: Kaf, vav, zayin, ales. Rav says: A priest who ate of a sin-offering or a guilt-offering before sprinkling their blood on the altar is flogged. What is the reason that he is flogged? It is as the verse states with regard to the inauguration offerings, whose halakhic status was like that of sin-offerings and guilt-offerings in that it was permitted only for priests to partake of their flesh: “And they shall eat them, that with which they were atoned” (Exodus 29:33), from which it is inferred: After atonement, yes, they may eat the flesh of the offerings; before atonement, no, they may not eat it. And in Rav’s opinion, the status of a prohibition that stems from a positive mitzva is that of a prohibition, for which one is flogged.

151 Rava raises an objection based on the verse: “And every beast that splits the hoof and has the hoof cloven in two, and chews the cud among the animals, that, you may eat” (Deuteronomy 14:6), from which a prohibition may be inferred: “That, you may eat,” but there is not any other animal that you may eat. The Torah prohibits eating the flesh of any animal that lacks the indicators that it is a kosher animal. And if it is as you say, that an inference from a positive mitzva entails a prohibition, why do I need the following verse: “This you may not eat” (Deuteronomy 14:7), as it was already inferred from the mitzva? Rather, apparently, the status of a prohibition that stems from a positive mitzva is that of a positive mitzva, and one is not liable to receive lashes for its violation.

152 Rather, if it was stated, this was stated: Rav Giddel says that Rav says: A non-priest who ate of a sin-offering or a guilt-offering before the sprinkling of their blood is exempt from receiving lashes. What is the reason for this? It is as the verse states: “And they shall eat them, that with which they were atoned…and a non-priest may not eat, as they are sacred” (Exodus 29:33), and it is expounded as follows: Anywhere that we read concerning it: “And they shall eat them, that with which they were atoned,” we read concerning it: “And a non-priest may not eat sacrificial food.” But anywhere that we do not read concerning it: “And they shall eat them, that with which they were atoned,” e.g., in this case, where it is prohibited for priests to partake of the flesh of the offerings before the sprinkling of their blood, we do not read concerning it: “And a non-priest may not eat.”

153 § The Gemara resumes the discussion of the halakha that was mentioned in the mishna with regard to the Torah verses that one recites when he brings his first fruits to the Temple. Rabbi Elazar says that Rabbi Hoshaya says: With regard to first fruits, the lack of placement alongside the altar invalidates them, and they may not be eaten by the priest; the lack of recitation of the accompanying Torah verses does not invalidate them.

154 The Gemara asks: And did Rabbi Elazar say that? But doesn’t Rabbi Elazar say that Rabbi Hoshaya says: If one set aside first fruits before the festival of Sukkot and the Festival elapsed over them while they remain in his possession, they shall be left to decay, as they cannot be rendered fit for consumption. What, is it not that they cannot be rendered fit due to the fact that he can no longer recite the Torah verses over them, as one may recite the Torah verses only until Sukkot? And if it enters your mind to say that the lack of recitation does not invalidate them, why must they be left to decay?

155 The Gemara answers: Rabbi Elazar holds in accordance with the opinion of Rabbi Zeira, as Rabbi Zeira says a principle with regard to a meal-offering that applies in other areas as well: For any measure of flour that is suitable for mixing with oil in a meal-offering, the lack of mixing does not

invalidate the meal-offering. Even though there is a mitzva to mix the oil and the flour ab initio, the meal-offering is fit for sacrifice even if the oil and the flour are not mixed. And for any measure of flour that is not suitable for mixing with oil in a meal-offering, the lack of mixing invalidates the meal-offering. Here too, although failure to recite the Torah verses does not invalidate the first fruits for consumption by the priest, that is referring only to when reciting the portion is possible. After Sukkot, when it is no longer possible to recite the portion, failure to recite the Torah verses invalidates the first fruits.

[156] Rabbi Aḥa bar Ya'akov teaches this halakha that was cited in the name of Rabbi Elazar as the statement that Rabbi Asi says that Rabbi Yoḥanan says, and as a result, an apparent contradiction between one statement of Rabbi Yoḥanan and another statement of Rabbi Yoḥanan is difficult for him. Rabbi Aḥa bar Ya'akov asks: And did Rabbi Yoḥanan say that with regard to first fruits, the lack of placement alongside the altar invalidates them and they may not be eaten; while the lack of recitation of the accompanying Torah verses does not invalidate them? But didn't Rabbi Asi raise a dilemma before Rabbi Yoḥanan: With regard to first fruits, from when is it permitted for priests to partake of them? And Rabbi Yoḥanan said to Rabbi Asi: It is permitted for the priest to partake of those first fruits that are fit for recitation of the accompanying Torah verses from when he recites those verses over them, and those first fruits that are not fit for recitation of the Torah verses are permitted once they entered inside the Temple.

[157] Rabbi Yoḥanan apparently holds that first fruits that are not fit for recitation are not invalidated. In addition, he did not mention placement of the first fruits, indicating that the lack of their placement does not invalidate them for consumption by the priest. The Gemara notes: The apparent contradiction between one statement of Rabbi Yoḥanan with regard to recitation and another statement of Rabbi Yoḥanan with regard to recitation is difficult; and the apparent contradiction between one statement of Rabbi Yoḥanan with regard to placement and another statement of Rabbi Yoḥanan with regard to placement is difficult.

[158] The Gemara answers: The apparent contradiction between one statement of Rabbi Yoḥanan with regard to recitation and another statement of Rabbi Yoḥanan with regard to recitation is not difficult, as this statement, that when recitation is impossible, lack of recitation invalidates the first fruits, is in accordance with the opinion of Rabbi Shimon cited in the mishna, and that statement, which states that when recitation is impossible, lack of recitation does not invalidate the first fruits, is in accordance with the opinion of the Rabbis. The apparent contradiction between one statement of Rabbi Yoḥanan with regard to placement and another statement of Rabbi Yoḥanan with regard to placement is not difficult either, as this statement, that lack of placement does not invalidate the first fruits, is in accordance with the opinion of Rabbi Yehuda, and that statement, which states that lack of placement invalidates the first fruits, is in accordance with the opinion of the Rabbis.

[159] The Gemara asks: What is the statement of Rabbi Yehuda? It is as it is taught in a baraita: Rabbi Yehuda says with regard to the verse written in the portion of first fruits: "And you shall place it before the Lord your God" (Deuteronomy 26:10), that the reference is not to the placement of the fruits alongside the altar; rather, this is a reference to waving the first fruits. Do you say that this is a reference to waving, or perhaps it is a reference only to actual placement of the first fruits? He explains: When it states earlier: "And the priest shall take the basket from your hand and place it before the altar of the Lord your God" (Deuteronomy 26:4), placement alongside the altar is already

stated; how do I realize the meaning of the term “And you shall place it”? This is a reference to waving.

160 The Gemara clarifies: And who is the tanna who disagrees with Rabbi Yehuda? It is Rabbi Eliezer ben Ya’akov, as it is taught in a baraita with regard to the verse written in the portion of first fruits: “And the priest shall take the basket from your hand” (Deuteronomy 26:4); this verse taught about first fruits that they require waving, this is the statement of Rabbi Eliezer ben Ya’akov. The Gemara asks: What is the reason for the opinion of Rabbi Eliezer ben Ya’akov?

161 The Gemara explains: The matter is derived by means of a verbal analogy from one instance of the word “hand” written with regard to first fruits and from another instance of the word “hand” written with regard to a peace-offering. It is written here, with regard to first fruits: “And the priest shall take the basket from your hand” (Deuteronomy 26:4), and it is written with regard to a peace-offering: “He who offers his peace-offering to God…his hands shall bring it, the fire of God…to raise it as a waving before God” (Leviticus 7:29–30). Just as here, in the case of first fruits, it is the priest who takes the basket in his hand and waves it, so too there, in the case of the peace-offering, a priest performs the waving. Just as there, with regard to a peace-offering, it is the owner who performs the waving, as it is written: “He who offers…his hands shall bring it,” so too here, the owner waves the first fruits. How so; how can the waving be performed by both the priest and the owner? The priest places his hands beneath the hands of the owner and waves the first fruits together with the owner.

162 § Rava bar Adda says that Rabbi Yitzḥak says: With regard to first fruits,

163 from when is a non-priest who eats first fruits liable to receive death at the hand of Heaven for their consumption? One is liable from when the fruits will enter inside the Temple. The Gemara notes: In accordance with whose opinion is this halakha stated? It is in accordance with the opinion of this tanna, as it is taught in a baraita that Rabbi Eliezer says: With regard to first fruits, some of which are outside and some of which are inside the Temple, the halakhic status of those that are outside the Temple is like that of non-sacred produce for all matters concerning them, and the halakhic status of those that are inside the Temple is like that of consecrated produce for all matters concerning them.

164 § Rav Sheshet says: With regard to first fruits, the lack of placement alongside the altar invalidates them; while the lack of recitation of the accompanying Torah verses does not invalidate them.

165 The Gemara notes: In accordance with whose opinion is this halakha stated? It is in accordance with the opinion of this tanna, Rabbi Yishmael, as it is taught in a baraita that Rabbi Yosei says three statements in the name of three elders, and one of those statements is that which Rabbi Yishmael says: One might have thought that a person would bring second-tithe produce up to Jerusalem in the present, after the destruction of the Temple, and eat it. And ostensibly, it could be derived by means of a logical inference that one may not do so: A firstborn offering requires bringing it to the place, to Jerusalem, and eating it there, and second-tithe produce requires bringing it to the place; just as the firstborn offering may be eaten there only in the presence of the Temple, so too, second-tithe produce may be eaten there only in the presence of the Temple.

166 Rabbi Yishmael continues and counters: What is notable about a firstborn? Bringing the firstborn to Jerusalem is required only in the presence of the Temple, because it is notable in that it requires

placement of its blood and its sacrificial portions upon the altar; will you say the same with regard to second-tithe produce, which requires only that it be consumed in Jerusalem? He then suggests: First fruits will prove that placement of blood upon the altar is not a factor, as they do not require placement of blood upon the altar, and yet they are brought to Jerusalem only in the presence of the Temple. Rabbi Yishmael counters: What is notable about first fruits? They are notable in that they require placement alongside the altar. Perhaps, since second-tithe produce does not require placement at all, even in the present one must bring it to Jerusalem and eat it there.

167 Rabbi Yishmael concludes: Therefore, the verse states: "And you shall eat before the Lord your God…the tithe of your grain…and the firstborn of your herd and your flock" (Deuteronomy 14:23); the Torah juxtaposes second-tithe produce to the firstborn. Just as the firstborn may be eaten there only in the presence of the Temple, so too, second-tithe produce may be eaten there only in the presence of the Temple. The Gemara explains: the proof of Rav Sheshet's opinion from the baraita is: And if it is so that the lack of recitation of the Torah verses invalidates the ritual of first fruits, let the baraita refute the derivation by saying: What is notable about first fruits? They are notable in that they require recitation of the Torah verses and placement alongside the altar.

168 Rav Ashi said: There is no proof from the fact that recitation is not mentioned. Although the lack of recitation does not invalidate the first fruits, is there no mitzva? Everyone agrees that there is a mitzva to recite the Torah verses. And therefore let the tanna say that there is a mitzva to recite the portion; and refute the proof from first fruits in that manner, as in the case of second tithe there is no mitzva to recite Torah verses. Rather, Rav Ashi said that there is a different reason that recitation was omitted from the refutation: It is that there is the case of the first fruits of a convert, who needs to recite: "I have come to the land that the Lord swore unto our fathers" (Deuteronomy 26:3), and since he cannot say it, as the Lord did not swear to give the land to the ancestors of the convert, he brings the first fruits but does not read the portion. Therefore, the obligation to recite the Torah verses is not clear-cut for the tanna and he did not mention it.

169 The Gemara asks: Why was it necessary for the tanna to derive that second-tithe produce is not brought to Jerusalem at present from the juxtaposition in the verse? And let the derivation revert to its starting point, and derive the halakha through an analogy derived from the common factor of first fruits and the firstborn. Each of the sources neutralizes the significance of the notable factor in the other, leaving the common factor: One must bring them to Jerusalem. From there it may be derived that second-tithe produce, which one must also bring to Jerusalem, need not be brought there when the Temple is not standing. The Gemara answers: The juxtaposition is necessary due to the fact that this analogy can be refuted: What is notable about the common factor that is true of both first fruits and the firstborn? It is notable in that they have an aspect involving the altar, which is not so in the case of second tithe.

170 The Gemara asks: And what opinion does Rabbi Yishmael hold that led to his initial assumption that one is obligated to bring a firstborn animal to Jerusalem only when the Temple is standing? If he maintains in general that the initial consecration of the Temple sanctified Jerusalem for its time and sanctified Jerusalem forever, and the location of the Temple remains sacred even after the Temple was destroyed, then one should also be obligated to bring a firstborn animal to the place of the Temple and sacrifice it on an altar and eat it. If he maintains that the initial consecration of the

Temple sanctified Jerusalem for its time but did not sanctify Jerusalem forever, then he should raise a dilemma even with regard to a firstborn, whether it may be eaten in Jerusalem.

171 Ravina said: Actually, Rabbi Yishmael maintains that the initial consecration of the Temple sanctified Jerusalem for its time but did not sanctify Jerusalem forever; and why is it obvious to him that the firstborn is not eaten? It is because here, he is stating the halakha with regard to the case of a firstborn whose blood was sprinkled before the destruction of the Temple, and the Temple was then destroyed, and its flesh is still intact. And based on a juxtaposition: "You shall sprinkle their blood upon the altar…and their flesh shall be for you" (Numbers 18:17–18), we compare the status of its flesh to the status of its blood; just as its blood must be sprinkled at a time when the altar is standing, so too its flesh may be eaten only at a time when the altar is standing. And he compares the status of second-tithe produce to the status of a firstborn offering, and derives that one may partake of second-tithe produce in Jerusalem only when the Temple is standing.

172 The Gemara asks: And does a matter derived via juxtaposition then teach another matter via juxtaposition? The principle with regard to the halakhot of consecrated matters is that a halakha derived via one of the hermeneutical principles cannot serve as the basis for derivation of another halakha; each halakha requires its own source. The Gemara answers: Second tithe of grain is non-sacred produce, and halakhot of non-sacred matters derived via hermeneutical principles may serve as the basis for deriving other halakhot using hermeneutical principles.

173 The Gemara asks: This works out well according to the one who says: In determining whether a derivation involves consecrated matters or whether it involves non-sacred matters, we follow the matter that is derived from a matter derived from juxtaposition. Since in this case the matter derived is second-tithe produce, which for these purposes is non-sacred, its halakhic status may be derived from juxtaposition with the halakhot of sacrificial matters. But according to the one who says: We follow the matter that teaches, i.e., from which the halakha is derived, what is there to say? The status of second-tithe produce may not be derived by means of juxtaposition from the status of the firstborn offering, which itself was derived from the blood of the offering, because the firstborn offering is a sacrificial matter.

174 The Gemara answers: This is not a matter derived from a matter derived from a juxtaposition, as the status of the firstborn offering is not derived from the status of blood; blood and flesh are one matter. There is only one derivation in this case, which is that the status of second-tithe produce is derived from the status of the blood and the flesh of the firstborn.

175 § The mishna teaches that one who ate offerings of the most sacred order outside the Temple courtyard and one who ate second-tithe produce outside the wall of Jerusalem is flogged with forty lashes. The Gemara asks: Didn't we already learn this one time in the previous mishna (13a), that one who ate second-tithe produce or sacrificial food that was not redeemed is flogged? Why does the tanna repeat the halakha of second-tithe produce in this mishna? Rabbi Yosei bar Ḥanina said: These are different cases; the latter clause, this mishna, is in the case of ritually pure second-tithe produce and a ritually pure person who eats it outside the wall of Jerusalem. The first clause, the previous mishna, is in the case of ritually impure second-tithe produce and a ritually impure person who eats it within Jerusalem.

176 The Gemara asks: And from where do we derive that one is liable to receive lashes due to impurity? It is derived as it is taught in a baraita that Rabbi Shimon says that the verse in the portion

of the declaration of tithes: “I have not put any of it away when impure” (Deuteronomy 26:14), is a general formulation that is interpreted to mean: Whether I am impure and the second-tithe produce is ritually pure, or whether I am ritually pure and the second-tithe produce is impure. Rabbi Shimon adds: And I do not know where it is that one is warned, i.e., where is there a prohibition, with regard to eating. Although it is clear from the verse cited that it is prohibited for one to partake of second-tithe produce while impure, the source for this prohibition is unclear.

177 Before citing the source of the prohibition, the Gemara asks: With regard to one with impurity of the body who partakes of second-tithe produce, it is explicitly written: “A soul that touches it shall be impure until the evening and shall not eat of the consecrated food” (Leviticus 22:6), which the Sages interpret to include second-tithe produce. This is a prohibition with regard to a ritually impure person partaking of second-tithe produce. But when Rabbi Shimon says: I do not know where it is that one is warned with regard to eating, he is stating: With regard to the impurity of the second-tithe produce itself, from where is the warning derived?

178 The Gemara answers: It is derived as it is written with regard to second-tithe produce: “You may not eat within your gates the tithe of your grain or of your wine or of your oil” (Deuteronomy 12:17), and later, with regard to a blemished firstborn animal, the verse states: “Within your gates you may eat it, the impure and the pure may eat it alike” (Deuteronomy 15:22).

179 And it is taught in a baraita of the school of Rabbi Yishmael: Even a ritually pure person and a ritually impure person may eat the flesh of a blemished firstborn animal in one dish and need not be concerned, as there is no prohibition for one to eat it while he is impure or while it is impure. And the Merciful One says: It is that impure flesh of the blemished firstborn that is permitted for you to eat with a ritually pure person within your gates there, whereas here, in the case of second-tithe produce in Jerusalem, you may not eat it within your gates in the manner that one eats the flesh of the firstborn.

180 The Gemara stated that the case of second-tithe produce that was not redeemed, cited in the previous mishna, is referring to second-tithe produce that is impure. This indicates that impure second-tithe produce can be redeemed. The Gemara asks: And from where do we derive that impure second-tithe produce is subject to redemption?

181 It is as Rabbi Elazar says: From where is it derived with regard to second-tithe produce that became impure that one may redeem it even in Jerusalem? It is derived as the verse states: “Because you are unable to carry it [se’eto], as the place is too far from you…and you shall turn it into money” (Deuteronomy 14:24–25). And se’et means nothing other than eating, as it is stated: “And portions [masot] were taken to them from before him” (Genesis 43:34), referring to gifts of food. Therefore, the phrase: You are unable se’eto, means: You cannot eat it, referring to a case where it is impure. The Torah states that in that case one may redeem the produce even if it is in Jerusalem, not at a distance.

182 The Gemara cites another, related interpretation. Rav Beivai says that Rav Asi says: From where is it derived with regard to ritually pure second-tithe produce that one may redeem it even if it is one stride outside the wall of Jerusalem, contrary to the plain understanding of the verse: “As the place is too far from you”? It is derived as it is stated: “Because you are unable to carry it [se’eto],” indicating that if there is any reason that one is unable to carry the produce and bring it into Jerusalem, he may redeem it regardless of its distance from Jerusalem. The Gemara objects: That

verse is necessary to derive the halakha of Rabbi Elazar that one may redeem impure second-tithe produce even in Jerusalem.

183 The Gemara answers: If so, that the verse is required to derive only the halakha of Rabbi Elazar, then let the verse state explicitly: You are unable to eat it. What is the reason that the verse employs the term “se’eto”? The Gemara objects: And say that the term comes entirely for this purpose, to teach that one may redeem the produce even if it is not far from the city, and nothing is derived with regard to impure produce. The Gemara answers: If so, let the verse state: You are unable to take it. Why does the verse employ the term “se’eto”? Conclude two conclusions from it: One may redeem ritually pure second-tithe produce even if it is just outside the walls of Jerusalem, and one may redeem ritually impure second-tithe produce even in Jerusalem.

184 In connection to the discussion of where one may redeem second-tithe produce, the Gemara relates: Rav Ḥanina and Rav Hoshaya sat, and a dilemma was raised before them: If the second-tithe produce is at the entrance of Jerusalem, what is the halakha; can one redeem it there? The Gemara elaborates: It is obvious in a case where one is outside Jerusalem and his burden of second-tithe produce is inside Jerusalem; the tithe is admitted by the walls of Jerusalem and its status is that of produce that entered the city. But in a case where one is inside Jerusalem and his burden of second-tithe produce is outside Jerusalem, what is the halakha?

185 A certain elder taught them a baraita of the school of Rabbi Shimon ben Yoḥai. It is written: “As the place is too far from you [mimmekha]” (Deuteronomy 14:24); and the term “mimmekha” is interpreted as: From your fullness [mimmilluakha], indicating the person and all his appurtenances, including the burden he bears. If any part of him or his appurtenances is inside the city, it is as though he is entirely inside the city, and therefore he may not redeem the second-tithe produce.

186 Rav Pappa raises a related dilemma: If one is holding the second-tithe produce on a reed, and it is suspended behind him, what is the halakha? Since he is carrying the burden, does it fall into the category of his fullness, and it is no different from a burden that he bears on his person, or does its status differ because it is not actually resting on his body? The Gemara concludes: The dilemma shall stand unresolved.

187 § Rabbi Asi says that Rabbi Yoḥanan says: With regard to second-tithe produce, from when is one liable to receive lashes for eating it outside the walls of Jerusalem? It is from when the produce entered within the wall of Jerusalem. What is the reason for this? It is derived as the verse states with regard to second-tithe produce: “Before the Lord your God you shall eat it” (Deuteronomy 12:18), and it is written in the previous verse: “You may not eat within your gates” (Deuteronomy 12:17), from which it is derived: Anywhere that we read concerning it: “Before the Lord your God you shall eat it,” we read concerning it the prohibition: “You may not eat within your gates,” i.e., it may not be eaten outside the walls of Jerusalem; and anywhere that we do not read concerning it: “Before the Lord your God you shall eat it,” as the produce remained outside the walls, we do not read concerning it the prohibition: “You may not eat within your gates.”

188 The Gemara raises an objection from that which Rabbi Yosei says: With regard to a priest that a fig of untithed produce came into his possession, and he seeks to separate terumot and tithes from it, he says: This fig, I designate its teruma at its stem, I designate its first tithe at its north side, and I designate its second tithe at its south side; and it is a year when second tithe is separated, i.e., the first, second, fourth, or fifth years of the Sabbatical Year cycle, and he is in Jerusalem, when he

recites this formula. Or he says that poor man’s tithe shall be designated at its south side if it is a year of poor man’s tithe, i.e., the third or sixth years of the Sabbatical Year cycle, and he is located anywhere in the outlying areas, not in Jerusalem. In those cases, if he ate the fig,

[189] he is flogged with one set of lashes, because he ate it without separating teruma of the tithe from the first tithe and is consequently liable for eating untithed produce. Had he separated teruma of the tithe, it would have been permitted for him to eat the entire fig, as it is permitted for a priest to partake of both teruma gedola and teruma of the tithe.

[190] And a non-priest who eats the fig is flogged with two sets of lashes, for both eating untithed produce and eating the teruma therein, which is forbidden for all non-priests. The baraita notes: As if the non-priest ate the fig initially, before separating teruma and tithes, he is flogged with only one set of lashes, for eating untithed produce. Once he separated the teruma and tithes, he is flogged for eating teruma as well.

[191] The Gemara infers from the statement in the baraita: And it is a year when second tithe is separated and he is in Jerusalem, that the reason he is flogged with two sets of lashes is that he is currently in Jerusalem, where it is permitted to partake of second-tithe produce. But if he ate the fig in the outlying areas, outside of Jerusalem, and he designated second tithe in the fig, he is flogged with three sets of lashes. It is apparent that even if this second-tithe produce has not entered within the wall of Jerusalem, one is liable to receive lashes for its consumption. This contradicts Rabbi Yoḥanan’s opinion, as he holds that one is liable to receive lashes for eating second-tithe produce only if it entered Jerusalem. The Gemara answers: The case in the baraita is one where they took the fig into Jerusalem and then took it out of Jerusalem. That is why he is liable to receive a third set of lashes.

[192] The Gemara asks: If so, what is the purpose of stating this halakha? If the fig entered and exited Jerusalem there is no novel element in the fact that one is liable to receive lashes. The Gemara answers: There is a novel element in this halakha, as what are we dealing with here? We are dealing with a case where one took figs into the city while they had the status of untithed produce, before terumot and tithes were separated, and Rabbi Yosei holds that the status of gifts that were not yet separated from the produce is like that of gifts that were already separated. The novel element is that although second tithe was not separated in practice, all the halakhot of second tithe are in effect with regard to the portion that he intends to separate as second tithe. Therefore, if after taking the untithed produce into Jerusalem he took it outside of Jerusalem, and ate it, he is liable to receive lashes.

[193] The Gemara asks: And does Rabbi Yosei hold that the status of gifts that were not yet separated from the produce is like that of gifts that were already separated? But isn’t it taught in a baraita that Rabbi Shimon ben Yehuda says in the name of Rabbi Yosei: Beit Shammai and Beit Hillel did not disagree with regard to produce whose labor was not completed and the obligation to tithe had consequently not yet taken effect, and which at that stage passed through Jerusalem, that its second-tithe produce may be redeemed and may be eaten anywhere. As long as the obligation to tithe has not taken effect, the sanctity of Jerusalem does not affect the produce.

[194] With regard to what case did they disagree? It is with regard to produce whose labor was already completed and it passed through Jerusalem before terumot and tithes were separated from it, as Beit Shammai say: Since one is obligated to separate second tithe from this produce, and the produce was in Jerusalem, he must bring its second-tithe produce back to Jerusalem, and it shall be eaten it in

Jerusalem; and Beit Hillel say: The produce may be redeemed and eaten anywhere. And if it enters your mind to say the status of gifts that were not yet separated from the produce is like that of gifts that were already separated, how can Beit Hillel hold that the second-tithe produce may be redeemed; wasn't the produce admitted by the walls of Jerusalem? Therefore, even though second tithe was not yet separated, it can no longer be redeemed. Apparently, Rabbi Yosei, who certainly holds in accordance with the opinion of Beit Hillel, holds that the status of gifts that were not yet separated from the produce is not like that of gifts that were already separated.

195 Rabba said: The halakha of the wall with regard to eating second-tithe produce, i.e., that second-tithe produce may not be eaten outside the wall of Jerusalem, is by Torah law; the halakha of the wall with regard to the admitting of second-tithe produce, i.e., that once the produce enters within the wall of Jerusalem, it may not be redeemed or taken beyond the wall, is by rabbinic law. And when the Sages issued the decree that one may not remove from Jerusalem second-tithe produce that entered within the walls, they did so when the tithe is in its unadulterated form after it was separated; but in a case where it is in its status of untithed produce, the Sages did not issue a decree.

196 Ravina said: Rabbi Yosei is referring to the case of second-tithe produce that was already separated and brought into Jerusalem, and the novel element of his statement is that he is referring to a fig that was not physically taken into Jerusalem; rather, it is a case where one is holding the fig on a reed outside Jerusalem, while he is standing inside Jerusalem. And resolve the dilemma of Rav Pappa (19b) and conclude that if one is standing inside Jerusalem and holding second tithe outside the city on a reed, it is as though the produce entered the city.

197 MISHNA: One who creates a bald spot upon his head, and one who rounds the edge of his head by shaving the hair adjacent to the ear, and one who mars the edge of his beard, and one who cuts one incision in a display of mourning over the dead, are all liable to receive lashes. If he cut one incision over five dead people, or five incisions over one dead person, he is liable to receive lashes for each and every one.

198 For rounding the edges of his head, one is liable to receive two sets of lashes, one from here, the hair adjacent to one ear, and one from there, the hair adjacent to the other ear. For marring the edges of his beard there are two edges from here, on one side of his face, and two from there, on the other side, and one from below, on his chin. Rabbi Eliezer says: If he removed the hair on all the edges of his beard in one action, he is liable to receive only one set of lashes for all of them.

199 And one is liable for marring the edges of his beard only if he removes the hair with a razor. Rabbi Eliezer says: Even if he removed the hair with tweezers [malket] or with a plane [rehitni], he is liable to receive lashes.

200 GEMARA: The Sages taught: From the verse concerning priests: "They shall not create a bald spot upon their heads" (Leviticus 21:5), one might have thought that even if he created four or five bald spots in one action, he will be liable to receive only one set of lashes. Therefore, the verse states: "Bald spot," in the singular, to render one liable to receive lashes for each and every bald spot. The verse continues: "Upon their heads"; what is the meaning when the verse states that term? Since it is stated: "You shall neither lacerate yourselves, nor place a bald spot between your eyes for the dead" (Deuteronomy 14:1), one might have thought that one would be liable only for placing a bald spot between the eyes. From where is it derived that the prohibition includes placing a bald spot on the entire head? The verse states: "Upon their heads," to include the entire head.

[201] And I have derived this prohibition only with regard to priests, for whom the Torah established numerous additional mitzvot, since the verse “They shall not create a bald spot” is written in the context of the halakhot of priests. From where do I derive that a non-priest is also liable for violating that prohibition?

[202] “Bald spot” is stated here (Deuteronomy 14:1) with regard to non-priests, and “bald spot” is stated there, with regard to priests; just as there, with regard to priests, one is liable for each and every bald spot that he creates, and is liable for a bald spot created anywhere on his head as he is for a bald spot created between the eyes, so too here, with regard to a non-priest, one is liable for each and every bald spot that he creates, and is liable for a bald spot created anywhere on his head as he is for a bald spot created between the eyes. And just as there, with regard to non-priests, the prohibition is stated with regard to creating a bald spot as an expression of mourning over the dead; so too here, with regard to priests, the prohibition is stated with regard to creating a bald spot as an expression of mourning over the dead.

[203] The Gemara asks: With regard to these four or five bald spots created over one dead person, for which one is liable to receive lashes for each and every spot, what are the circumstances? If we say that he created those bald spots one after the other and with five separate forewarnings, one preceding each action, it is obvious that he is liable for each and every bald spot; in that case he is one who violates the same prohibition several times and is punished for each violation for which he was forewarned.

[204] Rather, say that he created five bald spots with one forewarning; is one liable in that case? But didn’t we learn in a mishna (21a): A nazirite who was drinking wine all day is liable to receive only one set of lashes; if onlookers said to him: Do not drink, do not drink, forewarning him several times, and he drinks after each forewarning, he is liable to receive lashes for each and every drink. The Gemara answers: No, this halakha is necessary only with regard to one who, after one forewarning, smeared his five fingers in a depilatory agent [nasha] and then placed his fingers simultaneously on his hair, thereby creating five bald spots, as in that case, it is tantamount to a forewarning for each and every bald spot that he created. The novel element is that each bald spot is an independent transgression.

[205] § The Gemara asks: And how much is the measure of a bald spot for which one is liable? Rav Huna says: It must be of sufficient size so that bald skin will be visible on his head. Rabbi Yoḥanan says in the name of Rabbi Elazar, son of Rabbi Shimon: It is the size of a Cilician bean [kigeris]. The Gemara comments: This amoraic dispute is parallel to a dispute between tanna’im: And how much is the measure of a bald spot? It is the size of a Cilician bean. Aḥerim say: It must be of sufficient size so that bald skin will be visible on his head.

[206] Rav Yehuda bar Ḥaviva said that there are three tanna’im who disagree concerning this matter. One says: A spot the size of a Cilician bean; and one says: A spot of sufficient size so that bald skin will be visible on his head; and one says: A spot that is the measure of two hairs. And there is one who removed the opinion that it is the measure of two hairs, and inserted an opinion that it is the size of a lentil. And your mnemonic to remember the different opinions is from a mishna with regard to the halakhot of leprosy (Nega’im 6:5): The measure of impurity for a snow-white leprous mark [baheret] is a Cilician bean, and the measure of impurity for the raw flesh that grows within the baheret is a lentil.

207 In a related halakha, the Sages taught: One who removes a scissorsful [melo pi hazug] of hair from his head on Shabbat is liable. And how much is a scissorsful? Rav Yehuda says: Two hairs. The Gemara asks: But isn't it taught in a baraita: For a bald spot the measure is two hairs, from which it may be inferred that the measure with regard to labor on Shabbat is different than for a bald spot. The Gemara answers: Emend the baraita and say: And likewise with regard to a bald spot the measure is two hairs, indicating that the measure for Shabbat and the measure for a bald spot are the same.

208 That is also taught in a baraita: One who removes a scissorsful of hair on Shabbat is liable. And how much is a scissorsful? It is two hairs. Rabbi Eliezer says: One hair. And the Rabbis concede to Rabbi Eliezer in the case of one who removes white hairs from black ones, even if he removes one hair, that he is liable. Since his intent was to remove that particular hair, its removal constitutes a complete action. The Gemara adds: And for a man, that matter is prohibited even during the week, due to the fact that it is stated: "Neither shall a man don a woman's garment" (Deuteronomy 22:5). Removal of white hairs for the purposes of beautification is characteristic of women, and it is prohibited for a man to perform those actions.

209 § The mishna teaches: And one who rounds the edge of his head is flogged. The Sages taught: The edge of his head is the extremity of his head. And what is the extremity of his head? This is a reference to one who levels the hairline of his temples to the hairline behind his ear and to the hairline of his forehead. There is no hair behind the ears or on the forehead. One who removes the hair from the temples so that they are like those areas violates the prohibition against rounding the edges of his head.

210 The tanna taught a baraita before Rav Ḥisda: Both one who rounds the edges of his head and one for whom the edges of his head are rounded are flogged. Rav Ḥisda said to him: Is one who eats dates that are in a sieve [arbeila] flogged? By analogy, if a person rounded the edges of another's head, why should the person whose head was rounded receive lashes? He performed no action. Rav Ḥisda proceeded to explain to the tanna: In response to one who says to you: Who is the tanna of the baraita? Say that it is Rabbi Yehuda, who says: In the case of a prohibition that does not involve an action, one is flogged for its violation.

211 Rava says: This baraita can be explained as referring to one who rounds the edges of his head for himself, and he is liable both for rounding the edges of his head and for having the edges of his head rounded; and everyone agrees that he is flogged because he performed an action. Rav Ashi says: This baraita can be explained as referring to a case where the one for whom the edges of his head are being rounded assists the person rounding his head, by repositioning his head to facilitate that rounding, and everyone agrees that he is flogged.

212 § The mishna teaches: And one who mars the edge of his beard is flogged. The Sages taught: The edge of his beard is the extremity of his beard. And what is the extremity of his beard? It is the stalk of his beard, i.e., the five edges of the beard enumerated in the mishna where hair collects in one spot, like grain on stalks.

213 § The mishna teaches: And one who cuts one incision in a display of mourning over the dead is flogged. The Sages taught a halakhic midrash on the verse: "And an incision for the soul you shall not place in your flesh" (Leviticus 19:28). Had the verse stated only: "And an incision," one might have thought that this prohibition applies to any incision cut in sorrow, even if he cut an incision in sorrow over his house that collapsed, or over his ship that sunk at sea. Therefore, the verse states:

“For the soul,” from which it is derived that he is liable for an incision in mourning only for the dead alone. And from where is it derived that one who cuts five incisions in mourning over one dead person is liable for each and every incision? The verse states: “And an incision” to render him liable for each and every incision.

[214] Rabbi Yosei says: From where is it derived concerning one who cuts one incision in mourning over five dead people, that he is liable for each and every person for whom he cut that incision? The verse states: “For the soul,” to render him liable for each and every dead person.

[215] The Gemara asks: But didn’t you already derive from the term “for the soul” an exemption for one who cut an incision in sorrow over his house that collapsed, or over his ship that sunk at sea?

[216] The Gemara answers: Rabbi Yosei derives that halakha from a different source, as Rabbi Yosei holds that an incision over the dead and a laceration over the dead are one transgression, and it is written there, with regard to laceration: “You shall neither lacerate yourselves, nor place a bald spot between your eyes for the dead” (Deuteronomy 14:1), indicating that one is liable for cutting oneself in mourning only over a dead person. Therefore he can derive from the term “for the soul” that one is liable for each and every soul over whom he cut the incision.

[217] On a related note, the Gemara cites that which Shmuel says: One who cuts [mesaret] his flesh with a utensil in mourning over the dead is liable. The Gemara raises an objection from a baraita: An incision [serita] and a laceration are one transgression, as they are both performed over the dead; but the difference is that an incision is cut by hand, i.e., with one’s fingernails, while a laceration is cut with a utensil. Apparently, cutting an incision is not accomplished with a utensil. The Gemara answers: Shmuel stated his opinion in accordance with the opinion of Rabbi Yosei, who holds that an incision and a laceration are synonymous in every sense.

[218] The Gemara relates: A tanna taught a baraita before Rabbi Yoḥanan: One who cuts an incision over a dead person, whether he did so by hand or with a utensil, is liable. Concerning one who cuts an incision for idolatry, if he does so by hand, he is liable, but if he does so with a utensil, he is exempt. Rabbi Yoḥanan was puzzled by this baraita: But isn’t the reverse written with regard to the priests of Baal: “And they lacerated themselves in accordance with their custom, with swords and lances” (I Kings 18:28), indicating that customarily laceration is with a utensil? Rabbi Yoḥanan instructed the tanna: Rather, emend the baraita and say: Concerning one who cuts an incision for idolatry, if he does so by hand, he is exempt; but if he does so with a utensil, he is liable.

[219] § The mishna teaches: And for rounding the edges of his head, one is liable to receive two sets of lashes, one from here, the hair adjacent to one ear, and one from there, the hair adjacent to the other ear. The Gemara relates that when he taught this mishna, Rav Sheshet would gesture toward his temple, which is the point between the two parts of the head, the front and back. Similarly, with regard to the halakha in the mishna: For marring the edges of his beard there are two edges from here, and two from there, and one from below, Rav Sheshet would gesture toward the point between the parts of the beard.

[220] § The mishna teaches that Rabbi Eliezer says: If he removed the hair on all the edges of his beard in one action, he is liable to receive only one set of lashes. The Gemara clarifies: He maintains that the prohibition of marring the edges of the beard is a single prohibition, and therefore, one is not liable for marring each edge.

221 The mishna teaches: And one is liable for marring the edges of his beard only if he removes the hair with a razor. The Sages taught a halakhic midrash: The verse states: “And the edge of their beard they may not shave” (Leviticus 21:5). One might have thought that for any manner of shaving, even if he shaved the beard with scissors, he would be liable; therefore, the verse states: “You may not mar the edge of your beard” (Leviticus 19:27), indicating that one is liable only for shaving that destroys the hair from the root, which is not the case with scissors. If the verse had stated only: “You may not mar,” one might have thought that even if he removed the hair with tweezers or with a plane he would be liable to receive lashes, as they destroy the hair from its roots; therefore, the verse states: “They may not shave,” indicating that only hair removal by means of shaving is prohibited, and that is not accomplished with a tweezers and a plane.

222 How so? Based on these two verses, for what form of hair removal is one liable? One is liable only for shaving that involves marring. You must say that this is shaving with a razor.

223 The mishna teaches that Rabbi Eliezer says: Even if he removed the hair with tweezers or with a plane, he would be liable to receive lashes. The Gemara objects: Whichever way you look at it, it is difficult. If he derives the halakha by means of a verbal analogy that he received from his teachers between the halakhot of shaving written with regard to priests (Leviticus 21:5) and the halakhot of marring written with regard to non-priests (Leviticus 19:27), let Rabbi Eliezer require shaving with a razor in order to render him liable, as did the Rabbis. If he does not derive the halakha by means of a verbal analogy, he should also not exempt one who removes the hair with scissors, as that should be included in the category of shaving.

224 The Gemara answers: Actually, he derives the halakha by means of a verbal analogy, and he holds that these too, the tweezers and the plane, accomplish shaving. His dispute with the Rabbis does not relate to the derivation of the halakha; rather it is a dispute with regard to the definition of shaving.

225 MISHNA: One who imprints a tattoo, by inserting a dye into recesses carved in the skin, is also liable to receive lashes. If one imprinted on the skin with a dye but did not carve the skin, or if one carved the skin but did not imprint the tattoo by adding a dye, he is not liable; he is not liable until he imprints and carves the skin, with ink, or with kohl [keḥol], or with any substance that marks. Rabbi Shimon ben Yehuda says in the name of Rabbi Shimon: He is liable only if he writes the name there, as it is stated: “And a tattoo inscription you shall not place upon you, I am the Lord” (Leviticus 19:28).

226 GEMARA: Rav Aḥa, son of Rava, said to Rav Ashi: Is Rabbi Shimon saying that one is liable only if he actually inscribes the words “I am the Lord” in his skin? Rav Ashi said to him: No, he is saying as bar Kappara teaches: One is liable only if he inscribes a name of an object of idol worship, as it is stated: “And a tattoo inscription you shall not place upon you, I am the Lord,” which means: Do not place an idolatrous name on your skin, as I am the Lord, and no one else.

227 Rav Malkiyya says that Rav Adda bar Ahava says: It is prohibited for a person to place burnt ashes on his wound to promote healing, because it looks like a tattoo. Since few statements were attributed to Rav Malkiyya, and there was another Sage named Rav Malkiyyu who also cited statements in the name of Rav Adda bar Ahava, the Gemara provides a mnemonic for these halakhot. Rav Naḥman, son of Rav Ika, says: The halakhot of skewer, maidservants, and follicles were stated by Rav Malkiyyu. The halakhot of forelock, burnt ashes, and cheese were stated by Rav Malkiyya.

228 Rav Pappa says: The distinction is a different one. Those statements that relate to a mishna or a baraita were stated by Rav Malkiyya. Independent halakhot were taught by Rav Malkiyyu. And your mnemonic, to remember that distinction, is: The Mishna is queen [malketa], indicating the connection between Rav Malkiyya and the Mishna. The Gemara asks: What is the practical difference between the criteria of Rav Naḥman and Rav Pappa in this regard? The Gemara answers: The practical difference between them is with regard to the halakha of maidservants, which appears in a mishna. According to Rav Pappa, this halakha was stated by Rav Malkiyya, not Rav Malkiyyu.

229 The Gemara addresses the matter of placing burnt ashes on a wound. The Gemara relates: Rav Beivai bar Abaye was fastidious and did not place ashes even on the wound of bloodletting [arivda dekhusilta], as that too appears like a tattoo. Rav Ashi says: Any place where there is a wound, his wound proves about itself that the person's intent when he covers it with ashes is to promote healing, and it is not a tattoo.

230 MISHNA: A nazirite who was drinking wine all day is liable to receive only one set of lashes. If onlookers said to him: Do not drink, do not drink, forewarning him several times, and he drinks after each forewarning, he is liable to receive lashes for each and every drink. If the nazirite was rendering himself impure through exposure to corpses all day, he is liable to receive only one set of lashes. If they said to him: Do not render yourself impure, do not render yourself impure, and he renders himself impure after each forewarning, he is liable for each and every incident. If the nazirite was shaving his hair all day, he is liable to receive only one set of lashes. If they said to him: Do not shave, do not shave, and after each forewarning he shaves, he is liable for each and every time he shaves.

231 If a person was wearing a garment consisting of diverse kinds of wool and linen all day, he is liable to receive only one set of lashes. If they said to him: Do not wear it, do not wear it, and he removes it and dons it after each forewarning, he is liable for each and every time that he dons the garment.

232 Apropos the case where one receives several sets of lashes for performing a single action, the mishna continues: There is one who plows a single furrow and is liable to receive lashes for violating eight prohibitions. How so? For plowing with an ox and a donkey, in violation of the prohibition: "You shall not plow with an ox and a donkey together" (Deuteronomy 22:10); and they are consecrated, and therefore he is guilty of misuse of consecrated property; and he is plowing diverse kinds in a vineyard; and it is during the Sabbatical Year, when it is prohibited to work the land; and it is on a Festival, when plowing is a prohibited labor; and he is both a priest and a nazirite and is performing the plowing in a place of impurity imparted by a corpse, which is prohibited for both a priest (see Leviticus 21:1) and a nazirite (see Numbers 6:6).

233 Ḥananya ben Ḥakhinai says: If he was wearing a garment consisting of diverse kinds of wool and linen while plowing he is also flogged for violating that prohibition. The Sages said to him: That is not a prohibition in the same category as the others, as it is not connected to the act of plowing. Ḥananya ben Ḥakhinai said to them: According to that criterion, the fact that he is a nazirite is also not in the same category, as a nazirite and a priest are not flogged for plowing; rather, they are flogged for contracting impurity imparted by a corpse.

234 GEMARA: Rav Beivai says that Rabbi Yosei says that when the mishna teaches with regard to wearing a garment of diverse kinds of wool and linen: And he removes it and dons it after each

forewarning, does it mean that one is liable for each forewarning only if he actually removes and dons it, or perhaps one is liable even if he inserts and removes his arm from the sleeve of his garment [unkali]; perhaps this is also considered removing and donning the garment? The Gemara relates: Rav Aḥa, son of Rav Ika, gestured: One is liable only for actually inserting his body in the garment entirely and then removing it. Rav Ashi says: The reference in the mishna is not to actually removing and donning the garment; rather, even if he only waited an interval equivalent to the period required to remove and to don the garment, he is liable to receive lashes for each and every forewarning.

[235] § The mishna teaches: There is one who plows a single furrow and is liable to receive lashes for violating eight prohibitions. Rabbi Yannai says that when the Sages sat in a group, their opinions were counted and they concluded: One who covers seeds of diverse kinds with dirt is flogged for sowing diverse kinds. Rabbi Yoḥanan said to them: Isn't this the halakha in our mishna: There is one who plows a single furrow and is liable to receive lashes for violating eight prohibitions, including: For plowing with an ox and a donkey, and they are consecrated, and he is plowing diverse kinds in a vineyard. With regard to this person who plows who is liable to receive lashes due to violating the prohibition of diverse kinds, how can you find these circumstances? Plowing a field is unrelated to sowing diverse kinds. Is it not a case where one covers the seeds with dirt in the course of his plowing as he proceeds, indicating that one who covers the seeds of diverse kinds is flogged?

[236] Rabbi Yannai said to him: You are correct; but if I had not lifted the earthenware shard for you, would you have found the gem beneath it? It was only after I told you the halakha that you succeeded in finding a source in the mishna. Later, Reish Lakish said to Rabbi Yoḥanan: If it was not for the fact that a great man, Rabbi Yannai, praised your statement, I would say that there is no proof from the mishna, as it is possible to say: Whose opinion is expressed in the mishna? It is that of Rabbi Akiva, who says: One who maintains diverse kinds by performing actions essential for their existence is flogged. Therefore, one who plows and covers seeds of diverse kinds is liable to receive lashes, as he facilitates the existence of the diverse kinds, not because in covering the seeds it is as though he sowed them.

[237] The Gemara asks: What is the aforementioned statement of Rabbi Akiva? It is as it is taught in a baraita: One who weeds and one who covers the seeds of diverse kinds with dirt is flogged, as he performed an action that promotes the growth of the diverse kinds, which is tantamount to sowing. Rabbi Akiva says: Even one who maintains diverse kinds violates the prohibition.

[238] The Gemara asks: What is the reason for the opinion of Rabbi Akiva? As it is taught in a baraita that it is written: "Your field you shall not sow with diverse kinds" (Leviticus 19:19), I have derived only that sowing diverse kinds is prohibited. From where do I derive that maintaining diverse kinds, which does not involve any positive action, is also prohibited? It is as the verse states: "Your animals you shall not breed with different species [kilayim]; your field you shall not sow with diverse kinds [kilayim]" (Leviticus 19:19), which is interpreted as though it is written: Diverse kinds [kilayim] in your field you shall not sow, indicating that one may not allow diverse kinds to remain in his field.

[239] Ulla said to Rav Naḥman: And let him be flogged also for violating the prohibition of sowing on a Festival. Rav Naḥman said to him: Indeed, lashes for that prohibition could have been included in the mishna. The tanna taught certain prohibitions and omitted other prohibitions.

[240] Ulla said to him: The tanna taught and specifically enumerated eight sets of lashes, and you say that he taught some and omitted some? Rava says: The reason that sowing on a Festival was omitted

is that there is a division of labors on Shabbat, but there is no division of labors on a Festival. On Shabbat, one who unwittingly performs several prohibited labors during one lapse of awareness is liable to bring one sin-offering for each labor that he performed. On a Festival, if one performs several prohibited labors, he is liable to receive only one set of lashes, as there is one prohibition against performing labor on a Festival. Since the mishna listed plowing on the Festival, it does not also list sowing on the Festival. Ulla said to him: That [ada] is so.

241 Abaye raised an objection to the opinion of Rava: And is there no division of labors on a Festival? But didn't we learn in a baraita: One who cooks a sciatic nerve in milk on a Festival and eats it is flogged with five sets of lashes. How so? He is flogged for violating the prohibition of eating a sciatic nerve (see Genesis 32:33); and he is flogged for violating the prohibition of cooking on a Festival not for the purpose of the Festival, as he is prohibited from eating it; and he is flogged for violating the prohibition of cooking a sciatic nerve, which is meat, in milk; and he is flogged for violating the prohibition of eating meat cooked in milk; and he is flogged

242 for violating the prohibition of kindling a fire on a Festival. And if it is so, that there is no division of labors on a Festival, he is not liable for violating the prohibition of kindling a fire, as he is already liable for violating the prohibition of cooking the sciatic nerve on a Festival. Rava said: Remove kindling from the list of five prohibitions for which he is flogged, as he is not liable for violating that prohibition, and insert the prohibition of eating the sciatic nerve of an unslaughtered animal carcass.

243 The Gemara asks: But didn't Rabbi Ḥiyya teach a baraita that summarizes the prohibitions listed in this mishna: One is flogged with two sets of lashes for his eating and three sets of lashes for his cooking? And if it is so, that the prohibition of kindling a fire is replaced with the prohibition of eating the sciatic nerve of an unslaughtered animal carcass, he is liable to receive three sets of lashes for his eating; for eating a sciatic nerve, for eating meat cooked in milk, and for eating an unslaughtered animal carcass. Rather, say: Remove kindling from the list of prohibitions, and insert the prohibition of using wood of a tree worshipped as part of idolatrous rites [ashera], whose prohibition is derived from here: "And nothing of the dedicated item shall cleave to your hand" (Deuteronomy 13:18), indicating that it is forbidden to derive benefit from accoutrements of idol worship.

244 Rav Aḥa, son of Rava, said to Rav Ashi: If the reference is to the wood of an ashera, let him also be flogged for violating the prohibition: "You shall not bring an abomination into your house" (Deuteronomy 7:26), in addition to the other prohibitions enumerated. Rather, say: What are we dealing with here? We are dealing with a case where one cooked the sciatic nerve with wood consecrated for use in the Temple, whose warning, the source of its prohibition, is from here: "And their asherim you shall burn in fire…you shall not do so to the Lord your God" (Deuteronomy 12:3–4), indicating that one who destroys a consecrated item violates a prohibition.

245 § The Gemara provides a mnemonic: Shin, nun, beit, ales, yod; shin, nun, zayin; representing the amora'im who suggest additions to the eight prohibitions violated by the person in the mishna who plows the field with diverse kinds: Hoshaya; Ḥananya; Abbahu; Abaye; Ashi; Ravina; Zeira.

246 Rav Hoshaya objects to this: And let the tanna also enumerate in his list the prohibition of sowing in a forceful stream, the land where a heifer's neck is broken by the Elders of the city closest to the corpse of a murder victim whose murderer is unknown, and its prohibition is from here: "And the

Elders of that city shall bring the heifer down to a forceful stream, which will be neither plowed nor sown” (Deuteronomy 21:4). The verse is written in the future tense as a prohibition for the future: It is prohibited to work the land there after the heifer’s neck is broken.

247 Rav Ḥananya objects to this: And let the tanna also enumerate one who erases the name of God in the course of his walking and plowing, and its prohibition is from here: “And you shall destroy their names…you shall not do so to the Lord your God” (Deuteronomy 12:3–4).

248 Rabbi Abbahu objects to this: And let the tanna also enumerate one who severs his snow-white leprous mark in the course of his plowing, and its prohibition is from here: “Take heed of the plague of leprosy” (Deuteronomy 24:8), indicating the prohibition against severing the mark.

249 Abaye objects to this: And let the tanna also enumerate one who loosens the breastplate from upon the ephod in the course of plowing, or one who removes the staves of the Ark of the Covenant. And its prohibition is from here: “The staves shall be in the rings of the Ark; they shall not be removed from it” (Exodus 25:15), while the relevant verse with regard to the breastplate is: “And the breastplate shall not be loosened from the ephod” (Exodus 28:28).

250 Rav Ashi objects to this: And let the tanna also enumerate one who plows with a plow crafted from the wood of an ashera, and its prohibition is from here: “And there shall cleave nothing of the dedicated item to your hand” (Deuteronomy 13:18).

251 Ravina objects to this: And let the tanna also enumerate one who chops down beautiful fruit trees in the course of plowing, and its prohibition is from here: “For you may eat of it, and you shall not chop it down” (Deuteronomy 20:19).

252 Rabbi Zeira said to Rabbi Mani: And let the tanna also enumerate a case where one says: On my oath I will not plow on the Festival, and then proceeds to violate his oath. Rabbi Mani said: There, the oath does not take effect, as he is already under oath from Mount Sinai not to plow on a Festival, and an oath does not take effect when another oath is already in effect. Rabbi Zeira said to him: The oath can take effect in a case where one says: On my oath I will not plow whether during the week or on a Festival, as in that case, since the oath takes effect in his regard during the week, it takes effect in his regard on a Festival as well. Rabbi Mani replied: The mishna did not include that prohibition because the tanna is not teaching a matter that is in the category of those matters subject to dissolution by means of posing a request to a Torah scholar. As oaths fall into that category, this case is not enumerated in the mishna.

253 Rabbi Zeira asked: And did the tanna not teach matters subject to dissolution by means of a Torah scholar? But isn’t there the matter of consecrated animals, whose sanctity can be repealed by means of dissolution of the vow by a Torah scholar, which was included in the mishna? Rabbi Mani answered: The tanna is referring to a firstborn animal, which is consecrated from the womb. Since it was not consecrated by means of a vow, the sanctity cannot be dissolved by a Torah scholar. Rabbi Zeira asked: But isn’t there the matter of the impurity of a nazirite, whose vow of naziriteship can be dissolved by a Torah scholar, which was included in the mishna? Rabbi Mani answered: The reference in the mishna is to one who is a nazirite like Samson, for whom there is no dissolution.

254 Rabbi Zeira asked: Is a nazirite like Samson subject to the prohibition of contracting impurity imparted by corpses? He is not. As the tanna enumerated the prohibition of a nazirite becoming impure with impurity imparted by a corpse, clearly he is not a nazirite like Samson. Rather, the tanna

does not enumerate the case of one who violated an oath not to plow both during the week and on a Festival, because this tanna is not of the opinion that a more inclusive prohibition takes effect when the standard prohibition does not take effect. Just as with regard to one who takes an oath not to perform labor on a Festival, the oath does not take effect, so too, even if he adds to it an oath not to plow during the week, it does not take effect, because he is already under oath from Sinai not to plow on a Festival.

255 Rabbi Hoshaya says: One who breeds a disqualified consecrated ox with a female even of the same species is flogged with two sets of lashes, one for labor with a disqualified consecrated animal, and one for breeding two animals of diverse kinds. Even after the animal is desacralized through redemption, it remains prohibited to perform labor with it. It is considered diverse kinds because the Torah accorded disqualified consecrated animals the status of two animals, one consecrated and one non-sacred. If one breeds such an animal with an ox, it is as though he bred it with an animal of a different species, thereby violating the prohibition. Likewise, Rabbi Yitzḥak says: One who drives a disqualified consecrated ox to plow the field is flogged, as it is one body, and the verse accorded it the status of two bodies. One who plows with two different species of animals together is liable to receive lashes.

256 MISHNA: With how many lashes does one flog a person sentenced to receive lashes? One flogs him with forty lashes less one, as it is stated: “And he shall strike him before him, in accordance with his wickedness, by number. Forty he shall strike him, he shall not add” (Deuteronomy 25:2–3). The mishna joins the end of the first verse and the beginning of the second, forming the phrase: “By number, forty,” which is interpreted as: A sum adjacent to forty. Rabbi Yehuda says: He is flogged with a full forty lashes. And where is he flogged the extra lash? As the mishna proceeds to explain, the thirty-nine lashes are divided into three and administered in three places on the body of the person being flogged; according to Rabbi Yehuda there is one lash that remains. That lash is administered between his shoulders.

257 One assesses the number of lashes that the one being punished is capable of withstanding only with a number of lashes fit to be divided into three equal groups. If the assessment was that he can survive twenty lashes, he is flogged with eighteen. Likewise, if doctors assessed concerning him that he is able to receive forty lashes and survive, and he is then flogged some of those forty lashes,

258 and then they assessed him again and concluded that he cannot receive forty lashes and survive, he is exempt from the additional lashes. If the doctors initially assessed concerning him that he is able to receive only eighteen lashes, and once he was flogged eighteen times they assessed that he is able to receive forty, he is exempt from receiving additional lashes.

259 GEMARA: The Gemara begins with a discussion of the number of lashes. What is the reason that the Rabbis said that he receives forty lashes less one? If it had been written: Forty by number, I would say that it means forty as a precise sum; now that it is written: “By number, forty,” the reference is to a sum that approaches forty. Likewise, Rava said: How foolish are the rest of the people who stand before a Torah scroll that passes before them, and yet they do not stand before a great man, when a Sage passes before them; as in a Torah scroll, forty is written and the Sages came and subtracted one, establishing the number of lashes as thirty-nine. Apparently, the authority of the Sages is so great that they are able to amend an explicit Torah verse.

260 The mishna teaches: Rabbi Yehuda says: He is flogged with a full forty lashes, with the additional lash administered between his shoulders. Rabbi Yitzḥak says: What is the reason for the opinion of Rabbi Yehuda? It is as it is written: “And one shall say to him: What are these wounds between your arms? Then he shall answer: Those with which I was wounded in the house of my friends” (Zechariah 13:6). Rabbi Yehuda understands that this verse is referring to one with wounds from lashes administered between his arms, indicating that there is one lash administered between the shoulders. And how do the Rabbis, who hold that one is flogged only thirty-nine lashes, explain this verse? They explain that this verse is written with regard to schoolchildren struck by their teacher for laxity in their studies, and is not referring to lashes administered by the court.

261 The mishna teaches: One assesses the number of lashes that the one being punished is capable of withstanding only with a number of lashes fit to be divided into three equal groups. If doctors assessed concerning him that he is able to receive forty lashes and survive, and he is then flogged some of those forty lashes, and they then assessed him again and concluded that he cannot receive forty lashes and survive, he is exempt from any additional lashes. If the doctors initially assessed concerning him that he is able to receive only eighteen lashes, and once he was flogged with eighteen lashes they assessed that he is able to receive forty, he is exempt from receiving further lashes. The Gemara infers: If he was flogged in practice, yes, he is exempt; if he was not flogged, no, he is not exempt from the rest of the forty lashes.

262 And the Gemara raises a contradiction from a baraita: If doctors assessed concerning him that he is able to receive forty lashes and survive, and they then assessed him again and concluded that he cannot receive forty lashes and survive, he is exempt. If the doctors initially assessed concerning him that he is able to receive only eighteen lashes, and they then assessed that he is able to receive forty, he is exempt. Apparently, even if he did not receive any lashes, if the assessment changes, it is as though he was flogged.

263 Rav Sheshet said: This is not difficult, as this case in the mishna is one where doctors assessed his fitness to receive lashes for that day, and there was no change in his condition; rather, it was discovered that the initial assessment was mistaken. He is exempt only if he was already flogged; if not, another assessment is performed. That case in the baraita is one where doctors assess his fitness to receive lashes for the next day or for a different day. In that case, the initial assessment was accurate; it is his condition that changed. Therefore, if it is determined that he is unable to receive lashes, he is exempt.

264 MISHNA: If one performed a transgression that involves two prohibitions, and they assessed concerning him a single assessment of the number of lashes that he could withstand in punishment for both transgressions, he is flogged in accordance with their assessment and is exempt from any additional lashes. And if not, if he was assessed with regard to the lashes that he could withstand for one transgression, he is flogged and is allowed to heal, and then is flogged again for violating the second prohibition.

265 GEMARA: The case in the mishna is one where there is one assessment performed for two sets of lashes. The Gemara asks: But isn’t it taught in a baraita: One does not perform one assessment for two prohibitions?

266 Rav Sheshet said: This is not difficult; this ruling in the baraita that one does not perform a single assessment for two prohibitions is in a case where doctors assessed concerning him that he is able to

receive forty-one lashes, two lashes beyond a full set. Since those two additional lashes are not divisible by three, which is a requirement based on the previous mishna, he receives only thirty-nine lashes. That constitutes just one set of lashes. He remains liable to receive another set of lashes after he recovers, requiring another assessment and another set of lashes. That ruling in the mishna that one performs a single assessment for two prohibitions is in a case where doctors assessed concerning him that he is able to receive forty-two lashes. In that case, it is possible to ascribe thirty-nine lashes to one prohibition and three additional lashes to the second prohibition. That is tantamount to two separate assessments, although in practice only one assessment was performed.

267 MISHNA: How do they flog him? He ties the two hands of the person being flogged on this side and that side of a post, and the attendant of the congregation takes hold of his garments to remove them. If they were ripped in the process, they were ripped, and if they were unraveled, they were unraveled, and he continues until he bares his chest. And the stone upon which the attendant stands when flogging is situated behind the person being flogged. The attendant of the congregation stands on it with a strap in his hand. It is a strap of calf hide, and is doubled, one into two, and two into four, and two straps of donkey hide go up and down the doubled strap of calf hide. The length of its handle is one handbreadth, and the width of the straps is one handbreadth, and the strap must be long enough so that its end reaches the top of his abdomen, i.e., his navel, when he is flogged from behind.

268 And the attendant flogs him with one-third of the lashes from the front of him, on his chest, and two one-third portions from behind him, on his back. And he does not flog him when the one receiving lashes is standing, nor when he is sitting; rather, he flogs him when he is hunched, as it is stated: “And the judge shall cause him to lie down, and strike him” (Deuteronomy 25:2), which indicates that the one receiving lashes must be in a position that approximates lying down.

269 And the attendant flogging the one receiving lashes flogs [makeh] him with one hand with all his strength, and the court crier recites the verses: “If you do not observe to perform all the words of this law that are written in this book, that you may fear this glorious and awesome name, the Lord your God. And the Lord will make your plagues [makkotekha] outstanding, and the plagues of your descendants, and even great plagues, and of long continuance, and severe sicknesses, and of long continuance” (Deuteronomy 28:58–59). And then he returns to the beginning of the verse. He also recites: “And you shall observe the matters of this covenant, and do them, that you may make all that you do to prosper” (Deuteronomy 29:8), and concludes with the verse: “And He is merciful and shall atone for transgression, and destroys not; and many a time does He turn His anger away, and does not stir up all His wrath” (Psalms 78:38), and then returns to the beginning of the verse that starts: “If you do not observe to perform.”

270 If the one being flogged dies at the hand of the attendant, the latter is exempt, because he acted at the directive of the court. If the attendant added for him an additional lash with a strap and he died, the attendant is exiled to a city of refuge on his account, as an unwitting murderer. If the one being flogged involuntarily sullies himself, due to fear or pain, whether with excrement or with urine, he is exempt from further lashes. Rabbi Yehuda says that the threshold of shame for men and women is different: The man is exempted if he sullies himself with excrement, and the woman is exempted even with urine.

271 GEMARA: The mishna teaches that the attendant rips the garments of the person about to be flogged. The Gemara explains: What is the reason for this? It is due to the verse: “Forty he shall flog him…and your brother shall be debased before you” (Deuteronomy 25:3), as tearing his garments debases him.

272 Rav Sheshet says in the name of Rabbi Elazar ben Azarya: From where is it derived with regard to the strap used for flogging that it is a strap from the hide of a calf? It is as it is written: “Forty he shall flog him,” and juxtaposed to it is written: “You shall not muzzle an ox in its threshing” (Deuteronomy 25:4), indicating that the strap is from the hide of an ox.

273 And Rav Sheshet says in the name of Rabbi Elazar ben Azarya: From where is it derived with regard to a yevama who happened before a yavam afflicted with boils, that one does not compel her to enter into that levirate marriage? It is derived from a verse, as it is written: “You shall not muzzle an ox in its threshing,” and juxtaposed to it is written: “When brothers dwell together” (Deuteronomy 25:5), which is the passage dealing with levirate marriage. The yevama is not muzzled, as it were, when she states that she does not want to enter into levirate marriage with him.

274 And Rav Sheshet says in the name of Rabbi Elazar ben Azarya: Concerning anyone who treats the Festivals with contempt, it is as though he is worshipping idols, as it is written: “Molten gods you shall not make for yourself” (Exodus 34:17), and juxtaposed to it is written: “The festival of Passover you shall observe” (Exodus 34:18).

275 And Rav Sheshet says in the name of Rabbi Elazar ben Azarya: Concerning anyone who speaks malicious speech, and anyone who accepts malicious speech as the truth, and anyone who testifies a false testimony, it is fit to throw him to the dogs, as it is written: “To the dog you shall cast it” (Exodus 22:30), and juxtaposed to it is written: “You shall not accept [lo tissa] a false report; do not join with the wicked to be a false witness” (Exodus 23:1). In addition to prohibitions against false testimony and against accepting malicious speech, Rav Sheshet also reads into the verse the meaning: You shall not relate [lo tassi] a false report.

276 § The mishna teaches: And two straps go up and down the doubled strap of calf hide. The Sage taught: And they are straps of donkey hide. As a certain Galilean interpreted before Rav Ḥisda: It is written: “The ox knows its owner, and the donkey its master’s trough; but Israel does not know, My people does not consider” (Isaiah 1:3). The Holy One, Blessed be He, says: Let the one who recognizes its master’s trough, an ox and donkey, come and exact retribution, through lashes with a strap of ox and donkey hide, from one who does not recognize his Master’s trough and performs transgressions.

277 The mishna teaches: The length of its handle is one handbreadth, and the width of the straps is one handbreadth, and the strap must be long enough so that its end reaches the top of his abdomen. Abaye said: Conclude from it that for each and every one, we craft the strap according to the size of their back. Rava said to him: If so, there will be numerous straps in court for them. Rather, Rava said: It has loops; when the attendant wants, he ties the loops to shorten the strap, and when the attendant wants, he loosens the loops to lengthen the strap. The length of the strap can be adjusted to correspond to the height of the person being flogged.

278 § The mishna teaches: One flogs him with one-third of the lashes from the front of him and two one-third portions from behind him. The Gemara asks: From where are these matters derived? Rav Kahana said: It is derived from a verse, as the verse states: “And the judge shall cause him to lie

down, and strike him before him in accordance with his wickedness, by number” (Deuteronomy 25:2), indicating that the attendant strikes him in accordance with one portion of wickedness from the front of him, and two portions of wickedness from behind him.

279 The mishna teaches: And he does not flog him when the one receiving lashes is standing, nor when he is sitting; rather, he flogs him when he is hunched, as it is stated: “And the judge shall cause him to lie down.” Rav Ḥisda says that Rabbi Yoḥanan says: From where is it derived with regard to the strap that it is doubled? It is derived from a verse, as it is stated: And he shall cause him to lie down [vehippilo], which is interpreted based on the similar Aramaic root ayin, peh, peh, meaning double. The Gemara asks: But doesn’t he require that verse for the fundamental halakha itself, as the mishna teaches: He flogs him when he is hunched. The Gemara answers: If so, let the verse write: Shall bend him. What is the meaning of: “Shall cause him to lie down”? Conclude two conclusions from it: The halakha that the person being flogged must be hunched, and the allusion to the doubling of the strap.

280 § The mishna teaches: And the attendant flogging the one receiving lashes flogs him with one hand with all his strength. The Sages taught: For the administration of lashes, the court appoints only attendants who are lacking in strength and are exceedingly knowledgeable in Torah. Rabbi Yehuda says: The court may appoint even those who are lacking in knowledge and are exceedingly strong.

281 Rava said: It is reasonable to rule in accordance with the opinion of Rabbi Yehuda, as it is written: “Forty he shall flog him; he shall not exceed, lest he continue to beat him” (Deuteronomy 25:3). He explains: Granted, if you say that even people lacking in halakhic knowledge are appointed, that is why it is necessary to warn him not to add lashes. But if you say only people who are exceedingly knowledgeable are appointed, does the Torah need to warn the attendant? Apparently, even a person lacking in knowledge can be appointed as an attendant. And according to the Rabbis, that is no proof, as there is an expression that one implores only one who is already implored. In other words, only one who is already cognizant of a halakha can be effectively warned to observe it.

282 It is taught: When the attendant raises the strap to administer the lashes, he raises it with both hands, and when he flogs the one receiving lashes, he flogs with one hand, so that the lashes will come from him in a deliberate manner.

283 § The mishna teaches: And the court crier recites the verse beginning: “If you do not observe to perform,” as well as other verses. The Sages taught: The most prominent of the judges recites the verses, the second most prominent judge counts the lashes, and the third most prominent says to the attendant: Strike him. When the lashes are numerous, the one reciting the verses extends his recitation; when the lashes are few, he curtails his recitation by reciting it faster. In both cases, he does so to coordinate the recitation with the duration of the lashes. The Gemara asks: But didn’t we learn in the mishna: And then he returns to the beginning of the first verse, indicating that one could read the passage several times? The Gemara answers: The mitzva is to precisely coordinate recitation of the verses with the flogging, and if he did not precisely coordinate between them, and he completed the recitation of the verses before completing the lashes, he returns to the beginning of the first verse.

284 The Gemara cites another baraita with regard to the number of lashes. The Sages taught: From the verse: “He shall not exceed, lest he continue to beat him beyond these, a great flogging”

(Deuteronomy 25:3), I have derived only a prohibition with regard to a great flogging; from where do I derive that even a minimal excessive flogging is prohibited? I derive it from the verse that states: “He shall not exceed,” at all. The Gemara asks: If so, why must the verse state: “A great flogging”? This teaches that the initial lashes must be administered as a great flogging, with all of the attendant’s strength.

285 § The mishna teaches: If the one being flogged sullies himself, with excrement or urine, he is exempt from further lashes. Rabbi Yehuda says: The man is exempted with excrement, and the woman is exempted even with urine. The Sages taught in a baraita: For both a man and a woman, they are exempted if they sully themselves with excrement, but not if they do so with urine; this is the statement of Rabbi Meir. Rabbi Yehuda says: The man with excrement, and the woman even with urine. And the Rabbis say: Both a man and a woman are exempt from further lashes whether they sullied themselves with excrement or with urine.

286 The Gemara asks with regard to the opinion attributed to Rabbi Yehuda: But isn’t it taught in a baraita that Rabbi Yehuda says: Both a man and a woman are exempted with excrement, indicating that Rabbi Yehuda holds that a woman is not exempted with urine. Rav Naḥman bar Yitzḥak said: There is no contradiction; that baraita is merely stating that according to Rabbi Yehuda both are equal with regard to excrement. That does not mean that Rabbi Yehuda holds that a woman is not exempted with urine.

287 Shmuel says: If they bound him to be flogged and he fled from the court, he is exempt. The Gemara raises an objection from a baraita: If he was debased with excrement, whether during the first lash or during the second lash, the court exempts him. But in a case where the strap was severed during the course of the flogging, if this occurred during the second lash they exempt him, but if it happened during the first lash, they do not exempt him. Why is he not exempted during the first lash? Let his status be like one who fled from the court before the flogging began, in which case he is exempt. The Gemara answers: There, in that case, he fled from the court and he is not compelled to return; here, he did not flee, and therefore he is not exempted without being flogged.

288 The Sages taught: If they assessed concerning him that when he is flogged he will be debased with excrement, they exempt him, as the court does not administer a punishment that will lead to debasing the one being flogged beyond the shame generated by the lashes themselves. But if they assessed concerning him that it is only when he will leave the court that he will be debased with excrement, they flog him. Moreover, even if he was debased initially, before any lashes were administered, they nevertheless flog him, as it is stated: “And strike him…and your brother shall be debased” (Deuteronomy 25:2–3), indicating that the reference is to one debased as a result of the lashes, and not to one who was already debased in court prior to being flogged.

289 MISHNA: All those liable to receive karet who were flogged are exempted from their punishment of karet, as it is stated: “And your brother shall be debased before your eyes” (Deuteronomy 25:3), indicating: Once he is flogged he is as your brother, as his sin has been atoned and he is no longer excised from the Jewish people; this is the statement of Rabbi Ḥananya ben Gamliel.

290 And Rabbi Ḥananya ben Gamliel says: And if for one who performs one transgression his soul is taken for it, as one’s soul can be uprooted from the world for one transgression, for one who performs a single mitzva, it is all the more so the case that his soul will be given to him, as the

reward for performing mitzvot is greater than the punishment for performing transgressions. Rabbi Shimon says: It is derived from its own place in the Torah, as it is stated at the conclusion of the passage discussing intercourse with forbidden relatives, which is punishable with karet: “And the souls that perform them shall be excised” (Leviticus 18:29), and it states toward the beginning of that chapter:

[291] “That a person shall perform and live by them” (Leviticus 18:5). It is inferred that with regard to one who sits and did not perform a transgression, God gives him a reward like that received by one who performs a mitzva.

[292] Rabbi Shimon bar Rabbi Yehuda HaNasi says that as the verse states: “Only be steadfast to not eat the blood, as the blood is the soul” (Deuteronomy 12:23), it can be derived a fortiori: And if with regard to the blood, which a person’s soul loathes, one who abstains from its consumption receives a reward for that action, as it is written in a subsequent verse: “You shall not eat it, so that it shall be good for you and for your children after you” (Deuteronomy 12:25); then concerning robbery and intercourse with forbidden relatives, which a person’s soul desires and covets, one who abstains from their performance and overcomes his inclination, all the more so that he and his descendants and the descendants of his descendants until the end of all generations will merit a reward.

[293] Rabbi Ḥananya ben Akashya says: The Holy One, Blessed be He, sought to confer merit upon the Jewish people; therefore, He increased for them Torah and mitzvot, as each mitzva increases merit, as it is stated: “It pleased the Lord for the sake of His righteousness to make the Torah great and glorious” (Isaiah 42:21). God sought to make the Torah great and glorious by means of the proliferation of mitzvot.

[294] GEMARA: Rabbi Yoḥanan says: Rabbi Ḥananya ben Gamliel’s colleagues are in disagreement with him and hold that lashes do not exempt the sinner from karet. Rav Adda bar Ahava said that this is so, as they say in the school of Rav that we learned in a mishna (Megilla 7b): The difference between Shabbat and Yom Kippur with regard to the labor prohibited on those days is only that in this case, Shabbat, its intentional desecration is punishable by human hands, as he is stoned by a court based on the testimony of witnesses who forewarned the transgressor, and in that case, Yom Kippur, its intentional desecration is punishable at the hand of God, with karet. And if the statement of Rabbi Ḥananya ben Gamliel is so, in both this case, Shabbat, and that case, Yom Kippur, the punishment would be by human hands. Apparently, the tanna of the mishna, the Rabbis, disagrees with Rabbi Ḥananya ben Gamliel.

[295] Rav Naḥman bar Yitzḥak says: There is no proof from here that Rabbi Ḥananya ben Gamliel’s colleagues disagree with him, as in accordance with whose opinion is this mishna taught? It is in accordance with the opinion of Rabbi Yitzḥak, who says: There are no lashes in cases of those liable to receive karet. As it is taught in a baraita that Rabbi Yitzḥak says: All those liable to receive karet in cases of forbidden relations were included in the principle: “For whoever shall commit any of these abominations, even the people who commit them shall be cut off from among their people” (Leviticus 18:29). And why was karet in the case of relations with one’s sister excluded from this verse and mentioned independently (Leviticus 20:17)? It is to sentence one who transgresses a prohibition punishable with karet to be punished with karet alone, and not with lashes. Other Sages disagree with Rabbi Yitzḥak (see 13b).

296 Rav Ashi said: Even if you say that the mishna is in accordance with the opinion of the Rabbis, who disagree with Rabbi Yitzḥak and hold that there are lashes even in cases where there is liability for karet, there is no proof that Rabbi Ḥananya ben Gamliel's colleagues disagree with him. The mishna can be understood as follows: In this case, Shabbat, the primary punishment for its intentional desecration is by human hands, and in that case, Yom Kippur, the primary punishment for its intentional desecration is karet, which is a punishment at the hand of Heaven. If he was flogged, he is exempt from karet.

297 Rav Adda bar Ahava says that Rav says: The halakha is in accordance with the opinion of Rabbi Ḥananya ben Gamliel, who ruled that lashes exempt the sinner from karet. Rav Yosef said: Who ascended on high and came and said to you that one who is flogged is exempted from karet? That is not dependent upon the decision of an earthly court. Abaye said to Rav Yosef: But according to your reasoning, then with regard to that which Rabbi Yehoshua ben Levi says: There are three matters that the earthly court implemented and the heavenly court agreed with them, the same question applies: Who ascended on high and came and said to him that this is so? Rather, in arriving at Rabbi Yehoshua ben Levi's conclusion we homiletically interpret verses. Here too, with regard to lashes and karet, we homiletically interpret verses.

298 § With regard to the matter itself, Rabbi Yehoshua ben Levi says: There are three matters that the earthly court implemented and the heavenly court agreed with them, and these are they: Reading the Scroll of Esther on Purim, and greeting another with the name of God, and bringing the first tithe to the Temple treasury in Jerusalem. From where is it derived that the heavenly court agreed with them?

299 Reading the Scroll of Esther is derived from a verse, as it is written: "The Jews confirmed, and they took upon themselves" (Esther 9:27). The verse could have simply said: They took upon themselves. From the formulation of the verse it is interpreted: They confirmed above in Heaven that which they took upon themselves below on earth.

300 And greeting another with the name of God is derived from a verse, as it is written: "And presently Boaz came from Bethlehem and said to the harvesters: The Lord is with you, and they said to him: May the Lord bless you" (Ruth 2:4). And it states: "And the angel of the Lord appeared to him and said to him: The Lord is with you, mighty man of valor" (Judges 6:12). The Gemara asks: What is the reason that the Gemara cites the additional source about Gideon, introduced with the phrase: And it states? Why was the proof from Boaz's statement to the harvesters insufficient? The Gemara explains: And if you would say: It is Boaz who did so on his own, and from Heaven they did not agree with him; come and hear proof, and it says: "The Lord is with you, mighty man of valor." The angel greeted Gideon with the name of God, indicating that there is agreement in Heaven that this is an acceptable form of greeting.

301 From where is it derived that the heavenly court agreed to the bringing of the first tithe to the Temple treasury in Jerusalem? It is derived from a verse, as it is written: "Bring you the whole tithe into the storehouse, that there may be food in My house, and try Me now with this, says the Lord of hosts, if I will not open for you the windows of heaven and pour you out a blessing, that there shall be more than sufficiency [ad beli dai]" (Malachi 3:10). This indicates that the heavenly court agreed that the first tithe should be brought to the Temple treasury. The Gemara asks: What is the meaning of "ad beli dai"? Rami bar Rav says: It means that the abundance will be so great that your lips will be worn out [yivlu], from saying enough [dai].

[302] The Gemara cites a somewhat similar statement. Rabbi Elazar says: In three places the Divine Spirit appeared before all to affirm that the action taken was appropriate: In the court of Shem, in the court of Samuel the Ramathite, and in the court of Solomon. The Gemara elaborates: This occurred in the court of Shem, as it is written in the context of the episode of Judah and Tamar: "And Judah acknowledged them and said: She is more righteous than I [mimmenni]" (Genesis 38:26). How did Judah know that Tamar's assertion that she was bearing his child was correct? Perhaps, just as he went to her and hired her as a prostitute, another person went to her and hired her as well, and he is not the father. Rather, a Divine Voice emerged and said: It is from Me [mimmenni] that these secrets emerged. God affirmed that her assertion was correct and that it was His divine plan that Judah would father a child from Tamar.

[303] Likewise, this occurred in the court of Samuel, as it is written: "Here I am; testify against me before the Lord and before His anointed: Whose ox have I taken…And they said: You have neither defrauded us nor oppressed us…And he said to them: The Lord is witness against you, and His anointed is witness this day, that you have not found anything in my hand. And he said: He is witness" (I Samuel 12:3–5). Based on the context, instead of the singular: "And he said," the plural: And they said, should have been written, as the verse appears to be the reply of the Jewish people to Samuel's challenge, attesting to the truth of his statement. Rather, a Divine Voice emerged and said: I, God, am witness to this matter.

[304] This occurred in the court of Solomon, when the Divine Spirit appeared in the dispute between two prostitutes over who was the mother of the surviving child, as it is written: "And the king answered and said: Give her the living child, and do not slay him; she is his mother" (I Kings 3:27). How did Solomon know that she was the mother? Perhaps she was devious and was not the mother of the surviving child at all. Rather, a Divine Voice emerged and said: She is his mother.

[305] Rava said: From where do you draw these conclusions? None of these proofs is absolute. Perhaps in the case of Judah, once he calculated the passage of the months and the days from when he engaged in intercourse with Tamar and it happened to correspond with the duration of her pregnancy, he realized that her assertion is correct. There is no room to suspect that another man was the father, as the principle is: Based on that which we see, we establish presumptive status; based on that which we do not see, we do not establish presumptive status.

[306] With regard to Samuel too, no proof may be cited from the use of the singular, as on occasion the entire Jewish people is referred to in the singular, as it is written, e.g.: "The Jewish people is saved by the Lord" (Isaiah 45:17).

[307] With regard to Solomon too, perhaps he reasoned that due to the fact that this woman is merciful and seeks to spare the baby and this woman is not merciful, it is evident that the former is its mother. Rather, Rava concludes: There is no proof from the verses that a Divine Spirit appeared in those circumstances; rather, there is a tradition that this is the case.

[308] § Rabbi Simlai taught: There were 613 mitzvot stated to Moses in the Torah, consisting of 365 prohibitions corresponding to the number of days in the solar year, and 248 positive mitzvot corresponding to the number of a person's limbs. Rav Hamnuna said: What is the verse that alludes to this? It is written: "Moses commanded to us the Torah, an inheritance of the congregation of Jacob" (Deuteronomy 33:4). The word Torah, in terms of its numerical value [gimatriyya],

[309] is 611, the number of mitzvot that were received and taught by Moses our teacher. In addition, there are two mitzvot: “I am the Lord your God” and: “You shall have no other gods” (Exodus 20:2, 3), the first two of the Ten Commandments, that we heard from the mouth of the Almighty, for a total of 613.

[310] The Gemara provides a mnemonic for the biblical figures cited in the course of the discussion that follows: Dalet, mem, shin, mem, kuf; samekh, kuf; representing David, Micah, Isaiah, Amos, Habakkuk, Amos, and Ezekiel.

[311] Rabbi Simlai continued: King David came and established the 613 mitzvot upon eleven mitzvot, as it is written: “A Psalm of David. Lord, who shall sojourn in Your Tabernacle? Who shall dwell upon Your sacred mountain? He who walks wholeheartedly, and works righteousness, and speaks truth in his heart. Who has no slander upon his tongue, nor does evil to his neighbor, nor takes up reproach against his relative. In whose eyes a vile person is despised, and he honors those who fear the Lord; he takes an oath to his own detriment, and changes not. He neither gives his money with interest, nor takes a bribe against the innocent. He who performs these shall never be moved” (Psalms, chapter 15). Eleven attributes that facilitate one’s entry into the World-to-Come appear on this list.

[312] The Gemara analyzes these verses: “He who walks wholeheartedly”; this is referring to one who conducts himself like our forefather Abraham, as it is written concerning him: “Walk before Me and be wholehearted” (Genesis 17:1).

[313] “Works righteousness”; this is referring to one such as Abba Ḥilkiyyahu, a laborer who would not pause from his labor even to greet people; he righteously continued working.

[314] “And speaks truth in his heart”; this is referring to one such as Rav Safra, who was reciting Shema when a person approached him to purchase an item. He intended to accept the man’s offer, but he was unable to respond because it is prohibited to interrupt the recitation of Shema. The buyer misinterpreted Rav Safra’s silence and concluded that Rav Safra demanded a higher price, so he raised his offer. Rav Safra insisted on selling him the item for the sum that he was offered initially.

[315] “Who has no slander upon his tongue”; this is referring to one who conducts himself like our forefather Jacob, who did not want to mislead his father in order to receive his blessings, as it is written: “Perhaps my father will feel me, and I will be in his eyes like a fraud” (Genesis 27:12).

[316] “Nor does evil to his neighbor”; this is referring to one who did not infringe upon another’s trade, constituting illegal competition.

[317] “Nor takes up reproach against his relative”; this is referring to one who draws his relatives near, and does not distance them when they embarrass him.

[318] “In whose eyes a vile person is despised”; this is referring to one who conducts himself like King Hezekiah, who dragged the bones of his evil father, King Ahaz, in a bed of ropes, because he despised those considered vile by God.

[319] “And he honors those who fear the Lord”; this is referring to one who conducts himself like Jehoshaphat, king of Judea, who when he would see a Torah scholar would arise from his throne and hug him and kiss him, and call him: My father, my father, my teacher, my teacher, my master, my master.

[320] “He takes an oath to his own detriment, and changes not”; this is in accordance with the conduct of Rabbi Yoḥanan, as Rabbi Yoḥanan would say in the form of a vow when seeking to refrain from eating in another’s home: I shall fast until I will come to my house. He would fulfill that vow and refrain from eating, even though he took the vow only to avoid eating in that place.

[321] “He neither gives his money with interest”; meaning he does not lend money with interest even to a gentile, which is permitted by Torah law.

[322] “Nor takes a bribe against the innocent”; this is referring to one such as Rabbi Yishmael, son of Rabbi Yosei, who refused to sit in judgment in a case involving his sharecropper. Since the latter would bring him a basket of fruit, he was concerned that he might unconsciously favor him.

[323] At the conclusion of the verses, it is written: “He who performs these shall never be moved.” The Gemara relates: When Rabban Gamliel would reach this verse he would cry, and he said: It is one who performed all these actions who shall never be moved; but if he performed only one of them, he shall be moved.

[324] The Sages said to him: Is it written: He who performs all these? Rather, the phrase “he who performs these” is written, indicating that one is blessed even in a case where he performed one of them. As if you do not say so, compare that to a different verse that is written with regard to severe transgressions punishable by karet: “Do not impurify yourselves with all these” (Leviticus 18:24). Would you say that there too it means that it is one who comes into contact with all these who becomes impure, but one who comes into contact with one of these, no, he does not become impure? Rather, is it not that the phrase “with all these” means: With one of all these? Here too it means that one who performs one of all these has a place in the World-to-Come.

[325] Rabbi Simlai’s exposition continues: Isaiah came and established the 613 mitzvot upon six, as it is written: “He who walks righteously, and speaks uprightly; he who despises the gain of oppressions, who shakes his hands from holding of bribes, who stops his ears from hearing blood, and shuts his eyes from looking upon evil” (Isaiah 33:15).

[326] The Gemara elaborates: “He who walks righteously”; this is referring to one who conducts himself like our forefather Abraham, as it is written concerning him: “For I have known him, that he will command his children…to perform righteousness and justice” (Genesis 18:19).

[327] “And speaks uprightly”; this is referring to one who does not shame another in public.

[328] “He who despises the gain of oppressions”; this is referring to one such as Rabbi Yishmael ben Elisha, who refused to sit in judgment in a case involving one who gave him priestly gifts, to avoid the appearance of impropriety.

[329] “Who shakes his hands from holding of bribes”; this is referring to one such as Rabbi Yishmael, son of Rabbi Yosei, who, as explained above, refused to sit in judgment in a case involving his sharecropper.

[330] “Who stops his ears from hearing blood”; this is referring to one who would not hear derision of a Torah scholar and remain silent, such as Rabbi Elazar, son of Rabbi Shimon, who was well known for this.

[331] “And shuts his eyes from looking upon evil” is to be understood in accordance with the statement of Rabbi Ḥiyya bar Abba, as Rabbi Ḥiyya bar Abba says: This is referring to one who does not look

at women when they stand over the laundry at the river. The women would lift the garments they were wearing to keep them out of the water, and thereby expose part of their bodies.

[332] And it is written with regard to one who performs these matters: “He shall dwell on high; his fortress shall be the munitions of rocks; his bread shall be given, his waters shall be sure” (Isaiah 33:16).

[333] Micah came and established the 613 mitzvot upon three, as it is written: “It has been told to you, O man, what is good, and what the Lord does require of you; only to do justly, and to love mercy, and to walk humbly with your God” (Micah 6:8).

[334] The Gemara elaborates: “To do justly,” this is justice; “to love mercy,” this is an allusion to acts of loving-kindness; “and to walk humbly with your God,” this is an allusion to taking the indigent dead out for burial and accompanying a poor bride to her wedding canopy, both of which are to be performed without fanfare glorifying the doer. The Gemara notes: And are these matters not inferred a fortiori? If, with regard to matters that tend to be conducted in public, e.g., funerals and weddings, the Torah states “walk humbly” when doing them, then in matters that tend to be conducted in private, e.g., charity and Torah study, all the more so should they be conducted in private.

[335] Isaiah then established the 613 mitzvot upon two, as it is stated: “So says the Lord: Observe justice and perform righteousness” (Isaiah 56:1). Amos came and established the 613 mitzvot upon one, as it is stated: “So says the Lord to the house of Israel: Seek Me and live” (Amos 5:4). Rav Naḥman bar Yitzḥak objects to this: There is no proof that the verse in Amos is establishing all the mitzvot upon one; say that Amos is saying: Seek Me throughout the entire Torah, as the verse does not specify the manner in which one should seek the Lord. Rather, say: Habakkuk came and established the 613 mitzvot upon one, as it is stated: “But the righteous person shall live by his faith” (Habakkuk 2:4).

[336] § Rabbi Yosei bar Ḥanina says: Moses our teacher issued four decrees upon the Jewish people, and four prophets came and revoked them. Moses said: “And Israel dwells in safety, the fountain [ein] of Jacob alone” (Deuteronomy 33:28), indicating that the Jewish people will dwell in safety only when they reach a lofty spiritual level similar to [me’ein] that of Jacob our forefather. Amos came and revoked it, as it is stated: “Lord God, cease, I beseech You; how shall Jacob stand, as he is small” (Amos 7:5), and immediately afterward it states: “The Lord regretted this; it too shall not be, says the Lord God” (Amos 7:6).

[337] Moses said: “And among these nations you shall have no repose” (Deuteronomy 28:65). Jeremiah came and revoked it, and said: “Even Israel, when I go to cause him to rest” (Jeremiah 31:1), indicating that the Jewish people will find rest even in exile.

[338] Moses said: “He visits the transgression of the fathers upon the sons” (Exodus 34:7). Ezekiel came and revoked it: “The soul that sins, it shall die” (Ezekiel 18:4), and not the children of that soul.

[339] Moses said: “And you shall be lost among the nations” (Leviticus 26:38). Isaiah came and revoked it, and said: “And it shall be on that day the great shofar shall be sounded, and those lost in the land of Assyria shall come” (Isaiah 27:13).

[340] Rav says: I am afraid of that verse: “And you shall be lost among the nations.” Rav Pappa objects to this: Perhaps it means that the Jewish people will be like a lost item that is sought by its owner, and God will restore those lost in exile, as it is written: “I have gone astray like a lost lamb; seek

Your servant” (Psalms 119:176). Rather, Rav was afraid from that which is written in the latter portion of that verse, where it is written: “And the land of your enemies shall consume you.” Mar Zutra objects to this: Perhaps it means like the consumption of cucumbers and gourds, which are not consumed in their entirety. Some is left over, from which additional plants can grow.

341 § Apropos tribulations of exile and hope for redemption, the Gemara relates: And it once was that Rabban Gamliel, Rabbi Elazar ben Azarya, Rabbi Yehoshua, and Rabbi Akiva were walking along the road in the Roman Empire, and they heard the sound of the multitudes of Rome from Puteoli at a distance of one hundred and twenty mil. The city was so large that they were able to hear its tumult from a great distance. And the other Sages began weeping and Rabbi Akiva was laughing. They said to him: For what reason are you laughing? Rabbi Akiva said to them: And you, for what reason are you weeping? They said to him: These gentiles, who bow to false gods and burn incense to idols, dwell securely and tranquilly in this colossal city, and for us, the House of the footstool of our God, the Temple, is burnt

342 by fire, and shall we not weep? Rabbi Akiva said to them: That is why I am laughing. If for those who violate His will, the wicked, it is so and they are rewarded for the few good deeds they performed, for those who perform His will, all the more so will they be rewarded.

343 The Gemara relates another incident involving those Sages. On another occasion they were ascending to Jerusalem after the destruction of the Temple. When they arrived at Mount Scopus and saw the site of the Temple, they rent their garments in mourning, in keeping with halakhic practice. When they arrived at the Temple Mount, they saw a fox that emerged from the site of the Holy of Holies. They began weeping, and Rabbi Akiva was laughing. They said to him: For what reason are you laughing? Rabbi Akiva said to them: For what reason are you weeping? They said to him: This is the place concerning which it is written: “And the non-priest who approaches shall die” (Numbers 1:51), and now foxes walk in it; and shall we not weep?

344 Rabbi Akiva said to them: That is why I am laughing, as it is written, when God revealed the future to the prophet Isaiah: “And I will take to Me faithful witnesses to attest: Uriah the priest, and Zechariah the son of Jeberechiah” (Isaiah 8:2). Now what is the connection between Uriah and Zechariah? He clarifies the difficulty: Uriah prophesied during the First Temple period, and Zechariah prophesied during the Second Temple period, as he was among those who returned to Zion from Babylonia. Rather, the verse established that fulfillment of the prophecy of Zechariah is dependent on fulfillment of the prophecy of Uriah.

345 In the prophecy of Uriah it is written: “Therefore, for your sake Zion shall be plowed as a field, and Jerusalem shall become rubble, and the Temple Mount as the high places of a forest” (Micah 3:12), where foxes are found. There is a rabbinic tradition that this was prophesied by Uriah. In the prophecy of Zechariah it is written: “There shall yet be elderly men and elderly women sitting in the streets of Jerusalem” (Zechariah 8:4). Until the prophecy of Uriah with regard to the destruction of the city was fulfilled I was afraid that the prophecy of Zechariah would not be fulfilled, as the two prophecies are linked. Now that the prophecy of Uriah was fulfilled, it is evident that the prophecy of Zechariah remains valid. The Gemara adds: The Sages said to him, employing this formulation: Akiva, you have comforted us; Akiva, you have comforted us.